

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT NO. 106

HON. RAYMOND CHOATE, JUDGE

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

-VS-

BRUCE MCGREGOR DAVIS,

Defendant.

NO. A-267861

EWART

CHAMOUSIS

WHITELEY (DAVIS' PRESS)  
(CONFERENCE)

BARBER

LIRSELL

REPORTERS' DAILY TRANSCRIPT

Friday, February 11, 1972

VOLUME 42

APPEARANCES:

For the People:

JOSEPH P. BUSCH, JR., District Attorney

BY: ANTHONY MANZELLA

and

STEPHEN R. KAY, Deputies District  
Attorney

For Defendant Davis:

GEORGE V. DENNY, III

MARY LOU BRIANDI, CSR  
ROGER K. WILLIAMS, CSR  
Official Court Reporters

COPY

I N D E XPEOPLE'S WITNESSES:    DIRECT    CROSS    REDIRECT    RECROSS    VOIR DIRE

EWART, Paul	6550 K	6554			
CHAMOUSIS, Peter	6556 K	6679	6719 K	6724	6576 D
	6588 K				
	6669 K				
WHITELEY, Paul J.	6601 K	6602	6654 D	6666 M	
		6611 M			
		6649 M			
BARBER, Richard	6728 K	6734	6736 K		
PURSELL, James L.	6738 M	6748			

WHITELEY, Paul J.

EXAMINATION

Denny: 6628, 6639

Manzella: 6633.

E X H I B I T SPEOPLE'S                      FOR IDENTIFICATION                      IN EVIDENCE

85 - latent fingerprint lift	6561	
86-A and B - fingerprint exemplar cards	6566	
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87 - fingerprint blowup	6594	
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94 - photograph	6688	

1 LOS ANGELES, CALIFORNIA, FRIDAY, FEBRUARY 11, 1972 9:52 A.M.

2 - - - -

3  
4 THE COURT: Good morning, ladies and gentlemen.

5 (Whereupon, murmurs of "Good morning, your  
6 Honor," were heard from members of the jury.)

7 THE COURT: Good to see you.

8 Well, we didn't do so well this morning.

9 (Proceedings had on an unrelated matter.)

10 THE COURT: All right. In the case of People vs. Davis,  
11 all of our jurors are present, the record will show, and all  
12 counsel are present. The defendant is present.

13 The People may proceed.

14 MR. KAY: Thank you. We'll call Mr. Paul Ewart.

15 THE CLERK: Do you solemnly swear that the testimony you  
16 are about to give in the cause now pending before this court,  
17 shall be the truth, the whole truth, and nothing but the  
18 truth, so help you God?

19 THE WITNESS: I do.

20  
21 PAUL EWART,

22 called as a witness by and on behalf of the People, having  
23 been first duly sworn, was examined and testified as follows:

24 THE CLERK: Please take the stand and be seated.

25 THE BAILIFF: Would you state and spell your full name,  
26 sir?

27 THE WITNESS: Paul Ewart, E-w-a-r-t.  
28

## DIRECT EXAMINATION

BY MR. KAY:

Q Mr. Ewart, are you the owner of Calabasas Towing?

A Yes, I am.

Q Is that the name of the business?

A Calabasas Garage, yes.

Q And where is that located, sir?

A 23528 Calabasas Road, in Calabasas.

Q And how long have you been the owner of that business?

A About six years.

Q All right. Now, directing your attention to December 9th, 19 -- well, let me first approach you.

I show you a picture which has previously been marked as People's 61-D, depicting a white Mercury Comet, license No. NLM 841.

Do you recognize that car?

A Yes, I do.

Q All right. And was that car towed into your lot on December 9th, 1969?

A Yes, it was.

Q Now, do you still have this car?

A Yes.

Q All right.

A Yes.

Q And are you the present owner of this car?

A Yes, we are.

Q All right. And how did you become the owner of

1 this car?

2 MR. DENNY: Irrelevant.

3 THE COURT: Sustained.

4 Q BY MR. KAY: Well, you became --

5 Excuse me, your Honor. May we approach the  
6 bench? I believe it's relevant.

7 THE COURT: The Court believes it's irrelevant, as to  
8 how he became the owner.

9 Q BY MR. KAY: Well, Mr. Ewart --

10 MR. DENNY: I don't mind if he gets in when. How is  
11 irrelevant.

12 MR. KAY: Well, it's not irrelevant for a specific --

13 All right. Okay. Let me get at this way.

14 Q Mr. Ewart, did anyone ever -- well, first, when  
15 did you become the owner of this car?

16 A Three or four months later, after we brought it  
17 in.

18 Q All right. Did anybody come and make a claim  
19 for this car --

20 A No.

21 Q -- saying that they were the owner or anything?

22 A No.

23 Q All right. And then you became the owner through  
24 a lien sale; is that correct?

25 A Yes.

26 Q Because the car remained there, and nobody paid  
27 the charges for storage or --

28 A That's right.

1 MR. DENNY: Leading and suggestive, and irrelevant.

2 THE COURT: Well, that --

3 MR. DENNY: That's all right, your Honor. I'll with-  
4 draw that.

5 THE COURT: Very well.

6 Q BY MR. KAY: Now, Mr. Ewart, what was the condi-  
7 tion of the car when you first saw it?

8 A It was dirty, like it had been setting for quite  
9 a while; full of leaves and dirt.

10 Q Did you try and operate the car right away?

11 A Not right away, no.

12 Q All right. When was the first time that you tried  
13 to operate the car?

14 A When we became the owner of the car, which was  
15 a few months later.

16 Q And when was that?

17 A Well, in March, '70, was when we first started  
18 doing some work on it.

19 Q All right. And at the time you started doing  
20 work on it, what -- well, was the battery dead?

21 A Yes, um-hmm.

22 Q All right. And did you -- did you have to  
23 replace anything?

24 A We didn't have to. The car was operable.

25 Q All right.

26 A We had to have a key made, and the battery  
27 charged. It was driveable.

28 But we did do some work on it, to make it safer

1 on the streets.

2 Q And I take it you still use this car in your  
3 business?

4 A Yes, we do.

5 Q As a loner?

6 A Yes, um-hmm.

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Aa fls.

AA-1

1 Q And has anyone ever come into your garage and made  
2 a claim on that car saying they were the owner?

3 A No, sir.

4 MR. KAY: All right. Thank you.

5 I have no further questions.

CROSS

## CROSS EXAMINATION

6  
7  
8 BY MR. DENNY:

9 Q Sir, who was the registered owner of that car?

10 MR. KAY: Objection. Calls for hearsay.

11 THE COURT: Sustained.

12 Q BY MR. DENNY: At the time you had a lien sale,  
13 it was necessary for you to notify the registered owner; is  
14 that correct?

15 A That's correct.

16 Q As part of the lien sale?

17 A That's correct.

18 Q And who did you notify?

19 A I don't recall at this time.

20 Q Was it a Barbara Enfield?

21 A I believe that's correct, yes, sir. Um-hmmm.

22 Q All right.

23 Donald Jerome Shea was not the registered owner of  
24 that car?

25 A No.

26 Q All right. And when you say you had to do some  
27 work to make it safer on the streets, the brakes on the car were  
28 in very bad shape; isn't that correct?



AA-2

1 A They were in bad shape, yes.

2 Q All right. And in order to make it safe to operate  
3 on the streets, as far as you were concerned, as far as having  
4 it a loaner car, as far as having yourself liable for anyone  
5 driving in that car, you changed the brakes; isn't that correct?

6 A That's correct.

7 Q All four brakes?

8 A No, sir. The front brakes.

9 Q The front brakes were badly worn; is that correct?

10 A Yes, sir.

11 Q All right. And you also did some other minor repair  
12 work to the engine; is that correct?

13 A None to the engine. I put an idler arm bushing in.

14 Q An idler arm bushing? And what is that?

15 A Just tightens the steering on it.

16 Q So the steering was also what you might call, at  
17 least from the standpoint of a prudent owner, unsafe?

18 MR. KAY: Well, that calls for speculation.

19 THE COURT: Overruled.

20 THE WITNESS: Yes, I would say it would be unsafe.

21 MR. DENNY: Thank you, sir. No further questions.

22 MR. KAY: No further questions.

23 THE COURT: You may step down. Thank you.

24 MR. KAY: The People will call Deputy Chamousis

25 (Proceedings had on an unrelated matter.)

26

27

28

21 fol

1-1

1 THE CLERK: Do you solemnly swear the testimony you may  
2 give in the cause now pending before this court shall be the  
3 truth, the whole truth, and nothing but the truth, so help you  
4 God?

5 THE WITNESS: I do.

6 THE CLERK: Please take the stand and be seated.

7  
8 PETER CHAMOUSIS,  
9 called as a witness by and on behalf of the People, having been  
10 first duly sworn, was examined and testified as follows:

11 THE BAILIFF: Please state and spell your full name.

12 THE WITNESS: Peter Chamousis, C-h-a-m-o-u-s-i-s.

13  
14 DIRECT EXAMINATION

15 BY MR. KAY:

16 Q Sir, what is your occupation and assignment?

17 A I am a Deputy Sheriff for the County of Los  
18 Angeles, presently assigned to the fingerprint section of the  
19 Technical Services Division.

20 Q How long have you been in the fingerprint section?

21 A Over fifteen years.

22 Q And is your field of specialization the identifica-  
23 tion and comparison of fingerprints and palm prints?

24 A Yes, it is.

25 Q All right. And would you please relate to the  
26 ladies and gentlemen of the jury your background and experience  
27 in the field of fingerprint and palm print identification?

28 A I have been assigned to the fingerprint section of

1 the Technical Services Division for over fifteen years. All of  
2 the time being spent in the rolling, comparing and classifying  
3 of fingerprints under the direct supervision of recognized  
4 experts.

5 MR. DENNY: I'll object to that as calling for an opinion  
6 and conclusion and hearsay as "recognized experts."

7 THE COURT: The last statement "recognized experts" is  
8 stricken.

9 Q BY MR. KAY: All right, name the men, if you would.

10 A The late Lieutenant Baker and Schilling of the  
11 Sheriff's department.

12 Q Excuse me, how long did Lieutenant Baker have  
13 in fingerprints? How long was his experience in the field of  
14 fingerprint identification?

15 A At that time I assumed it was fifteen or twenty  
16 years.

17 Q All right.

18 MR. DENNY: Object to what he assumes and move that be  
19 stricken.

20 Q BY MR. KAY: Well, was that approximately how much  
21 it was?

22 MR. DENNY: I'll object and move it be stricken.

23 THE COURT: The first answer is stricken and the objection  
24 is sustained to the second question as it calls for a conclu-  
25 sion.

26 Q BY MR. KAY: Yes, Deputy Chamousis, to your  
27 knowledge how much time did Lieutenant Baker have in the finger-  
28 print identification section?

1 MR. DENNY: As of what time? It is ambiguous.

2 Q BY MR. KAY: As of the time you came in.

3 A To the best of my knowledge, it was over fifteen  
4 years.

5 Q All right. And, go ahead. Who was the next man  
6 you mentioned?

7 A Lieutenant Schilling, also, the Sheriff's Office.

8 Q All right. At the time you came into the section,  
9 how much time did he have in the section, to your knowledge?

10 A He had approximately the same time as Lieutenant  
11 Baker.

12 Q All right. Did both of these men train you?

13 A Yes, sir, under -- they were supervisors under  
14 the section I worked on.

15 Q Okay. Continue, Deputy Chamousis.

16 A And then, Sergeants Charles Hammond and Franis  
17 Smongesky, S-m-o-n-g-e-s-k-y, and Deputy Howard Speaks.

18 Q How much time did these men have in fingerprint  
19 identification at the time you came into the section?

20 A Howard Speaks had -- he had about fifteen years  
21 at that time.

22 Sergeant Smongesky about ten years. And Charles  
23 Hammond, also, about ten years.

24 Q All right. Continue with your background and  
25 training in the field of fingerprint identification.

26 A I have taken and passed the course in the study of  
27 fingerprints given by the Los Angeles City Schools.

28 Q Who was the instructor in that course?

1           A       Mr. Earl Howe of the Los Angeles City -- city of  
2 Los Angeles. He worked for the City.

3           Q       Who is he?

4           A       He's in charge of the fingerprint section over at  
5 the Glass House now.

6           Q       That's the Los Angeles Police Department?

7           A       Yes, sir.

8           Q       The Glass House is what?

9           A       The police administration building.

10          Q       The Los Angeles Police Administration Building over  
11 at --

12          A       Yes.

13          Q       Okay, continue, sir.

14          A       I have made in excess of thirty thousand compari-  
15 sons as concerns latents, latent fingerprints.

16                   I have testified in Municipal and Superior Court  
17 in excess of 250 times.

18          Q       And have you qualified as an expert on all of  
19 those occasions?

20          A       As a qualified expert, yes, sir.

21          Q       What is a latent fingerprint or palm print?

22          A       It is an impression that is left on the surface by  
23 the oils and the salts that are in the friction ridges of the  
24 skin.

25          Q       And do you have some way of removing a latent  
26 fingerprint from the surface where you find it?

27          A       Yes, sir. In our department we apply a black  
28 fingerprint powder to the latent fingerprint, and then lift it

1a-1

off the surface with some tape similar to Scotch tape.

Q Approximately how many latent fingerprints and palm prints have you lifted during your 15 years with the Sheriff's Department?

A Oh, 50,000 I guess would be a conservative estimate.

Q Okay. What is a fingerprint exemplar card?

A Fingerprint exemplar card is a card we take off a known person to make a comparison with latent fingerprints.

Q Approximately how many fingerprint exemplar cards have you rolled in your career with the Sheriff's Office?

A Several thousand.

Q Now, with respect to the over 250 times when you've testified as an expert in the courts of the State of California, have you been called upon to make a comparison between an unknown latent print -- in other words, a latent print made by someone whom you don't know, to compare that with a fingerprint exemplar card of a person whose identity you do know?

A Yes, I have.

Q Now, in connection with your job as a fingerprint expert, did you go to the Calabasas Garage on December 10, 1969, to check a white Mercury Comet?

A Yes, sir, I did.

Q Deputy Chamousis, I show you the photographs which have been marked People's 61-A through -J, which was in front of you.

Would you please look through these photographs

1a-2

1 and tell me if you can -- if you recognize the car depicted  
2 in the photograph?

3 A Yes, I recognize this automobile.

4 Q All right. And did you see that automobile at  
5 the Calabasas Garage when you went there on December 10,  
6 1969?

7 A I did.

8 MR. KAY: Your Honor, I have an exhibit here which is  
9 a latent fingerprint lift. It has previously been marked  
10 People's 85. May it also be marked as People's 85 in this  
11 proceeding?

12 THE COURT: So ordered.

13 MR. KAY: For identification.

14 Q Now, Deputy Chamousis, directing your attention  
15 to People's 85.

16 Do you recognize what that is?

17 A Yes, sir, this is a fingerprint lift.

18 Q All right. And what -- did you make -- take that  
19 lift?

20 A Yes, sir, I did.

21 Q All right. And where did you take that lift  
22 from?

23 A Off of the footlocker in the trunk of the automo-  
24 bile on the right-hand side of the trunk.

25 Q Now, directing your -- a -- your attention to  
26 People's 61-I. It shows the trunk of the car with two  
27 footlockers that have red on the top and the name "Donald  
28 Jerome" on each of them.

1a-3

1 Do you recognize those footlockers?

2 A Yes, sir, these were the footlockers here.

3 Q All right. And directing your attention to the  
4 one on the right which has been -- has a red G on it, is that  
5 the footlocker from which you took this lift?

6 A Yes, sir, it is.

7 Q All right. And from what area of the footlocker  
8 did you take the lift?

9 A Right adjacent to the strap that was on it --  
10 I assume the top of the footlocker.

11 Q All right. And did you circle that at a prior  
12 proceeding?

13 A I circled the strap and I put an X where the  
14 approximate area was where I lifted the fingerprint off of.

15 Q All right. And if you could, would you step down  
16 here. This has previously been identified as People's G  
17 by Sergeant Whiteley as being the trunk on the right in this  
18 photograph, 61-I.

19 Let's see.

20 Now, does that appear to you that the trunk is  
21 now in the same position as it was in the trunk when you took  
22 the lift?

23 A Yes, it does.

24 Q All right. And could you point out to the ladies  
25 and gentlemen of the jury on the trunk the way it is now the  
26 location from where you took the lift?

27 MR. DENNY: I don't think that some of the jurors could  
28 see without standing. Perhaps you could lift it.



1a-4

1 Q BY MR. KAY: Here, I'll do the lifting and you do  
2 the pointing.

3 A I obtained the lift off of either this side of the  
4 strap (indicating) or this side of the strap (indicating).  
5 I'm not sure which side it was.

6 Q And could you --

7 MR. DENNY: Well, indicating either above or below the  
8 strap on the side of the trunk.

9 THE COURT: Thank you, Mr. Denny.

10 Watch the woodwork, Mr. Kay.

11 MR. KAY: It is difficult to handle this and --

12 THE WITNESS: Either above or below the strap handle  
13 (indicating).

14 Q BY MR. KAY: All right, and you've marked both  
15 positions with a red X?

16 A Yes, I did.

17 Q All right. And you don't recall at this time  
18 whether it was above or below?

19 A No, I do not.

20 Q But you remember it was either one of those two  
21 locations?

22 A Yes, I do.

23 Q All right.

24 Please resume the stand.

25 Looking at the photograph the way the trunks --  
26 well, does People's 61-I represent how the trunks, the  
27 footlockers were located in the trunk of the car when you  
28 saw them?

1a-5

1 A Yes. To the best of my knowledge that's just  
2 about the way they were.

3 Q All right. Was the trunk of the car opened in  
4 your presence?

5 A Yes, it was.

6 Q And from the way that the footlocker is in the  
7 car, in this photograph 61-1, does that refresh your  
8 recollection at all as to whether you took the lift from  
9 above or below the strap?

10 A No, it does not, because I removed the trunk from  
11 the -- I removed the footlocker from the trunk, and then dusted  
12 the entire area.

1b fls.

1b-1

1 Q Okay.

2 How did you remove the lift which is People's 85  
3 from the footlocker which has been identified as People's  
4 65-G? How did you do that?

5 A I applied the fingerprint powder to the entire  
6 surface of the trunk, and then with a flashlight I noticed  
7 what came up, so to speak.

8 Q In other words, does the powder make the vacant  
9 fingerprint appear?

10 A Yes, it does.

11 Q All right. And did you dust both trunks for  
12 fingerprints and palm prints?

13 A I did.

14 Q All right. Now, what was the condition of the  
15 interior of the car?

16 A It looked awfully dusty to me, like it had been  
17 out in the weather for some time.

18 Q All right. What effect does dust have on finger-  
19 prints?

20 A It tends to evaporate them or dry them out.  
21 The dust acts similar to a blotter.

22 Q All right. Now, did you dust the inside of the  
23 vehicle?

24 A Yes, sir, all principal surfaces I dusted.

25 Q All right. And did you find any?

26 A No, sir, I did not.

27 MR. KAY: Your Honor, I have here two fingerprint  
28 exemplar cards. They previously have been marked as People's

1b-2

1 86-B, the one on the left, and 86-A, the one on the right  
2 in the manila folder.

3 THE COURT: They may be so marked for this proceeding.

4 MR. KAY: Thank you.

5 THE COURT: 86-A and -B.

6 Q BY MR. KAY: All right. Now, directing your  
7 attention to People's 86-B for identification --

8 Oh, excuse me, your Honor, there are also two  
9 other parts. There is an 86-C and something that I would  
10 like to have marked as People's 86-D. It wasn't marked in  
11 the Manson trial but it was marked as 8341 -- but I would  
12 ask that that which is on the lower right-hand side be  
13 marked 86-D.

14 MR. DENNY: Well, your Honor, may I see it?

15 THE COURT: How do you characterize it?

16 MR. KAY: Well, it is the top of the fingerprint  
17 exemplar card which is marked as 86-A.

18 MR. DENNY: May I see the document, your Honor?

19 THE COURT: It may be so marked for identification.

20 (Whereupon, there was a pause in the proceedings  
21 while Mr. Denny reviewed the document.)

22 Q BY MR. KAY: Now, directing your attention to  
23 December 11, 1970, and further directing your attention to  
24 People's 86-B and 86-C.

25 Well, first let me ask you, was 86-C originally  
26 a part of 86-B?

27 A Yes, sir.

28 Q All right.

1                   Now -- and is this what is known as the finger-  
2 print exemplar card?

3           A       That's right.

4           Q       86-B and 86-C together?

5           A       Yes, the top part with the prints on it is the  
6 exemplar and on the bottom of the envelope is the informa-  
7 tion that we fill out.

2 fls.

2-1

1 Q All right. Now, directing your attention to  
2 December 11th, 1970, did you take -- roll this fingerprint and  
3 palm print identification card?

4 A Yes, sir, I did.

5 Q All right. And where did you roll that?

6 A At the Main Central Jail, in the I room.

7 Q And was that -- was anyone present besides the  
8 person whose prints you rolled, and yourself? During this  
9 process?

10 A There was one or two other deputies in the area.

11 MR. KAY: Okay. Your Honor, I have here a photograph --  
12 let's see. Well, I would ask that it be marked People's next  
13 in order. Let's see. I think that would be 110.

14 THE COURT: Yes, 110 for identification. That's a  
15 photograph of --

16 MR. DENNY: Well, may I see the photograph, your Honor?

17 MR. KAY: Yes.

18 (Pause in the proceedings while Mr. Denny examined  
19 the exhibit.)

20 MR. DENNY: May we approach the bench a moment, your  
21 Honor?

22 THE COURT: Yes, you may.

23 (Whereupon, the following proceedings were had at  
24 the bench among Court and counsel, outside the hearing of the  
25 jury:)

26 MR. DENNY: Your Honor, I would ask that the Court look  
27 at the photograph, which I think is sought to be introduced  
28 merely for the purposes of inflaming the jury in this case.

110 ID

2-2

1 MR. KAY: No, it's not. It's introduced because this  
2 is how Deputy Chamousis identifies Mr. Davis.

3 MR. DENNY: Well --

4 MR. KAY: If you'll remember, at the --

5 MR. DENNY: Excuse me, Mr. Kay.

6 MR. KAY: Certainly.

7 MR. DENNY: Deputy Chamousis can look at Mr. Davis now  
8 and determine whether that is the person whose prints he  
9 rolled.

10 MR. KAY: I think that the --

11 MR. DENNY: The photograph here, the record will show --  
12 it's marked for identification -- has the X mark on Mr. Davis's  
13 forehead, which at one time was very characteristic of the  
14 Manson Family members, which -- which at this time, at the  
15 time of trial, has almost completely disappeared from his  
16 forehead.

17 And I think there's no earthly reason to seek to  
18 introduce that photograph at all.

19 MR. KAY: Well, as Mr. Denny knows --

20 MR. DENNY: And I think the only purpose for which they  
21 are seeking to introduce this is to inflame the jury.

22 MR. KAY: I think that Mr. Denny is trying to mislead  
23 the Court, because I am sure that he's aware that at the  
24 Grand Jury indictment in this case, that Mr. Chamousis was  
25 shown a picture of Mr. Davis --

26 MR. DENNY: Well, that's not --

27 MR. KAY: -- somewhat as he looks now, and Mr.  
28 Chamousis could not identify Mr. Davis as a person whose

1 prints he rolled, until he was shown a picture of Mr. Davis as  
2 he looked at the time the prints were rolled.

3 THE COURT: Overruled.

4 MR. DENNY: Well, I will stipulate that Mr. Davis is the  
5 person whose prints he rolled, on 86-B and -C.

6 MR. KAY: No, I think that it goes to Mr. Chamousis's  
7 identification.

8 MR. DENNY: Your Honor, that is absolutely incredible,  
9 to me, that the People will not stipulate to that, when I offer  
10 to stipulate to the identity.

11 THE COURT: Well, it takes two to stipulate.

12 MR. DENNY: Well, your Honor --

13 THE COURT: Let's proceed.

14 MR. DENNY: Well, excuse me, your Honor. Is the Court  
15 saying that this witness now is going to be able to say, "Well,  
16 I took the prints of the man in that photograph. And that is  
17 the person whose prints I took." And then, they're going to  
18 show that photograph was taken of Bruce Davis?

19 THE COURT: Apparently that's what the People wish to  
20 do.

21 MR. DENNY: Well, are they trying to impeach their own  
22 witness, by showing that he can't recognize Bruce Davis? That  
23 he can recognize him by a photograph?

24 I think we should be permitted to see at this time,  
25 your Honor, before this interrogation goes on, whether he can  
26 look at Bruce Davis now, now that Bruce Davis is before him,  
27 and to determine, as every other witness has, that he  
28 recognizes Bruce Davis as the person with whom he has had some



1 contact.

2 THE COURT: Well, he -- I assume the People will probably  
3 do that. I don't know.

4 Let's proceed.

5 (Whereupon, the following proceedings were had in  
6 open court, within the presence and hearing of the jury:)

7 MR. DENNY: Your Honor, may I take the witness on voir  
8 dire for a moment?

9 MR. KAY: I would object to that. I see no reason for  
10 it.

11 THE COURT: There would appear to be no reason.

12 MR. DENNY: Well, your Honor, I believe I have the right  
13 to take him on voir dire as to his qualifications, and I would  
14 like to do that.

15 THE COURT: He hasn't been asked to express any opinion  
16 yet.

17 MR. DENNY: He is going to be, your Honor.

18 THE COURT: Well, at that time, you can take him on  
19 voir dire.

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2a fol

2a-1

1 Q BY MR. KAY: Deputy Chamousis, now, directing your  
2 attention again to December 11th, 1970 -- and I show you  
3 what's been marked as People's 1 --

4 MR. MANZELLA: 10.

5 Q BY MR. KAY: -- 10 for identification, do you  
6 recognize the photograph of this individual?

7 A Yes, I do.

8 Q And --

9 A I'll object to that as irrelevant and immaterial,  
10 whether he recognizes a photograph of the individual, without  
11 determining first whether he recognizes the individual.

12 THE COURT: All right. Sustained.

13 Q BY MR. KAY: All right. On December 12th, 1970,  
14 whose prints did you roll on People's 86-B and 86-C?

15 A A Bruce Davis.

16 Q All right.

17 THE COURT: Do you recognize Mr. Davis from his  
18 appearance today?

19 THE WITNESS: No, sir, I do not.

20 THE COURT: You may ask your question.

21 Q BY MR. KAY: All right. Now, showing you  
22 People's 110 for identification, do you recognize this  
23 photograph?

24 A Yes. This person's fingerprints were put on the  
25 card.

26 THE COURT: The person in this photograph was the  
27 Bruce Davis whose fingerprints you rolled?

28 THE WITNESS: Yes, sir.

2a-2

1 MR. KAY: All right. Your Honor, at this time, I  
2 would ask that People's 110 be admitted into evidence, so  
3 that I can show it to the jury, so that they will --

4 MR. DENNY: And I will certainly object to that, your  
5 Honor.

6 THE COURT: The Court sustains the objection. I  
7 don't think it's necessary for the jury at this time to see  
8 that.

9 MR. MANZELLA: Is the Court rejecting the -- excluding  
10 the photograph from evidence, your Honor?

11 THE COURT: No.

12 Mr. Kay offered it into evidence.

13 MR. DENNY: Your Honor, I'm going to object to its  
14 receipt into evidence, until I have an opportunity to  
15 cross-examine the witness, at least, your Honor.

16 THE COURT: All right. The Court will hold its  
17 ruling.

18 Q BY MR. KAY: I take it that the person in this  
19 photograph doesn't look anything like Mr. Davis looks?

20 MR. DENNY: The photograph speaks for itself.

21 THE COURT: The photograph and Mr. Davis do speak  
22 for themselves.

23 The jury can compare them --

24 Q BY MR. KAY: Now, Officer --

25 THE COURT: -- if they wish to. And if the photograph  
26 is accepted in evidence.

27 (Pause in the proceedings while a discussion  
28 off the record ensued at the counsel table between

2a-3

1 Mr. Kay and Mr. Manzella.)

2 Q BY MR. KAY: Deputy Chamousis, did you have an  
3 occasion to -- well, first, tell me, on the exemplar card  
4 that you took of the person who you identified on the  
5 exemplar card as Bruce Davis, what portions of Mr. Davis'  
6 hands and fingers did you put on the card?

7 A I rolled the fingers of both hands, plus the  
8 palms of both hands.

9 Q All right. Now, on People's 85, this latent  
10 lift, is this the original lift?

11 A Yes, it is.

12 Q All right. And I notice that there appears  
13 to be some tape on the card. Is this the tape that you  
14 actually make a lift with?

15 A Yes, it is.

16 Q So this is the actual lift itself?

17 A That's the whole thing, right there.

18 Q And did you fill out the top part of this  
19 lift card, which is People's 85?

20 A I did.

21 Q And also, did you fill out the fingerprint  
22 exemplar card which is People's 86-B and 86-C?

23 A Yes, I did.

24 Q And did you have the -- did you have the person  
25 whose prints you rolled in the name of Bruce Davis, did you  
26 have him sign the card after you rolled the fingerprints  
27 and palm prints?

28 A I had him sign the card before I rolled them.

2a-4

1 Q Okay. And he signed it where it says "Signature  
2 of person being fingerprinted"?

2b fls.

3 A Yes, he did.  
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1 Q And this is signed "Bruce Davis"?

2 A It is.

3 Q Now, did you compare People's 85, the latent  
4 lift, that you took from the footlocker which has the name  
5 "Donald Jerome" on it, did you compare this slip,  
6 People's 85, with the fingerprint exemplar card which is  
7 marked 86-B and 86-C, in order to make a determination  
8 whether, in your opinion, the same person who left the  
9 latent print on the footlocker was the person whose prints  
10 you rolled on the fingerprint exemplar card?

11 A Yes, I did.

12 THE COURT: You may take him on voir dire now, Mr.  
13 Denny.

14 MR. DENNY: Thank you, your Honor.

15  
16 VOIR DIRE EXAMINATION

17 BY MR. DENNY:

18 Q Mr. Chamousis, is it Sergeant or Deputy or what?

19 A Deputy.

20 Q You have been a deputy for over 15 years?

21 A Yes, sir.

22 Q How long have you been a deputy, sir?

23 A 15 years and five months.

24 Q And for 15 of those years, you have been in the  
25 fingerprint section of the technical services division of  
26 the Sheriff's Crime Lab?

27 A Yes, sir.

28 Q And for the five months preceding, what were you

2b-2

1 doing?

2 A I've spent all my time in the fingerprint  
3 section, sir.

4 I'm sorry if I gave you the wrong opinion there.

5 Q All right. Well, you indicated for over 15  
6 years, so it's 15 years and five months that you have been  
7 in that section; is that right?

8 A Yes, sir.

9 Q All right. And your educational background  
10 before that was what, sir?

11 A Before the 15 years?

12 Q Yes, sir.

13 A I was a high school graduate.

14 Q From what high school?

15 A Polytechnic High School in San Francisco.

16 Q And did you do any work after you graduated from  
17 Poly High in San Francisco?

18 A Yes, sir.

19 Q What was that?

20 A I was a machine operator for a paper company.

21 Q What paper company?

22 A Beemis-Jason Company?

23 Q I'm sorry?

24 A Beemis-Jason Company, in San Francisco.

25 Q For how long?

26 MR. KAY: Your Honor, I think that this is --

27 THE COURT: Sustained.

28 MR. KAY: -- irrelevant.

2b-3

1 Q BY MR. DENNY: Well, what did you next do, sir?

2 MR. KAY: Well, I think this is irrelevant. It's what  
3 he did in the area of fingerprints. That's the only important  
4 thing.

5 MR. DENNY: That's what Mr. Kay says.

6 THE COURT: All right. You may answer.

7 Did it have anything at all to do with fingerprints?  
8 Did you have anything at all to do with fingerprints, before  
9 you were a deputy sheriff?

10 THE WITNESS: No, sir, I did not.

11 Q BY MR. DENNY: Well, what did you do before you  
12 became a fingerprint expert?

13 MR. KAY: That's irrelevant.

14 THE COURT: Sustained.

15 MR. DENNY: Well, your Honor, it goes again to his  
16 qualifications.

17 MR. KAY: It's irrelevant. It's only what he's done  
18 as a fingerprint expert that's relevant.

19 THE COURT: Sustained.

20 He might have pumped gas or washed dishes or  
21 whatever it might have been.

22 Let's proceed.

23 Q BY MR. DENNY: All right, sir. You have told  
24 us about some men under whom you worked, all of whom you have  
25 described as having so many years in service, so many years --  
26 15 years, 10 years.

27 What were their qualifications, besides longevity?

28 Do you know what the qualifications were of



2b-4

1 Lieutenant Baker?

2 A Yes, sir. He was a recognized fingerprint  
3 expert.

4 Q Recognized by whom?

5 A By the courts of the County of Los Angeles.

6 Q The same way you are recognized?

7 A I -- Mr. Baker might have been recognized by  
8 other departments. I don't know that of my own knowledge.

9 Q Well, what were his background qualifications and  
10 expert training in the field? And was he a member of any  
11 societies?

12 A I know he wrote --

13 Q Is he a member, for instance, of the American  
14 Academy of Forensic Scientists?

15 A I don't know that.

16 Q Do you know anything about his background and  
17 training?

18 A Yes. I know he wrote one book, that had some-  
19 thing to do with fingerprints.

20 I didn't read the book.

2c fls.

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2c-1

1 Q You didn't read the book. What books have you  
2 read on fingerprints?

3 A Just the FBI Manual.

4 Q Just the FBI Manual?

5 A Yes, sir.

6 Q And when did you read that?

7 A I have read it all the time, so to speak. I  
8 read it while I was taking my course. I read it before I  
9 took the course, in the study of fingerprints.

10 Q Well, when was it that you took the course in  
11 the study of fingerprints?

12 A 1962 or 1963.

13 Q This is after you had been a fingerprint expert  
14 for how many years? Five years, by then; is that right?

15 A I didn't say that, sir.

16 Q Well, were you testifying in the courts of  
17 Los Angeles County in those first five years as a fingerprint  
18 expert?

19 A No, sir.

20 Q When did you start testifying in the courts of  
21 Los Angeles County as a fingerprint expert, these 250 times  
22 you've told us about?

23 A I'm not sure of the date of my first qualifica-  
24 tion. I think it was 1963 or 1964. I don't recall.

25 Q Well, before that time, what were you doing?

26 A Rolling, comparing, classifying fingerprints.

27 Q Rolling, comparing --

28 A Yes.

2c-2

1 Q -- and classifying?

2 A Yes, sir.

3 Q Comparing in what way?

4 A Comparing knowns with unknowns.

5 Q Doing --

6 A Latent against rolled impressions.

7 Q Doing just exactly what you are doing now; is

8 that right?

9 A Yes, sir.

10 Q You just weren't testifying about it?

11 A That's correct.

12 Q And the only training you have had, other than

13 on-the-job training, since you started, is this course that

14 you took, a Los Angeles course somewhere?

15 A Yes, sir. In the Glass House, the Police

16 Administration Building.

17 Q Parker Center?

18 A Yes, sir.

19 Q And what course was that?

20 A It was -- as I recall, they called it the

21 Study of Fingerprints. Given by Earl Howe. That brought us

22 up with classifying, comparing, and rolling of fingerprints.

23 Q How long a course was it?

24 A One semester.

25 Q And when you say a semester, under whose aegis

26 or whose authority -- whose sponsorship was this course?

27 A Los Angeles City Schools. Given by East L. A.

28 College, I guess, as an extension course from East L. A.

2c-3

College -- East L. A. Junior College.

Q East L. A. Junior College at that time, isn't that right?

A Yes, sir.

Q Did you receive academic credit for it?

A I did.

Q And how many units was that?

A Three units.

Q Three hours a week?

A Yes, that's correct.

Q Did you get a grade in that?

A Yes, I did.

Q What was that?

A B.

Q And other than that one three-unit course, the one semester, you have had no formal academic training in the field of forensic sciences; is that correct?

MR. KAY: Well, your Honor, I'm going to object. That assumes that there are any other courses given on fingerprints, other than that one course that was given.

THE COURT: Overruled. You may answer.

THE WITNESS: I've taken courses in physical evidence also, if that has anything to do with it.

Q BY MR. DENNY: It doesn't have anything to do with fingerprints, does it?

A Yes, it does, sir.

Q Where did you take that course?

A Long Beach State College.

2c-4

1 Q When?

2 A 1970 -- or '69 or '70; I can't recall which.

3 Q And it was called Physical Evidence?

4 A Yes.

5 Q In what section of the college was that given?

6 A I'm not sure. I assume it was the Police  
7 Science section down there.

8 Q Is there some reason why you assume that?

9 MR. KAY: That's argumentative.

10 THE COURT: Sustained.

11 Q BY MR. DENNY: How many units was that?

12 A Three years, upper division.

13 Q Upper division. And one semester, again?

14 A Yes, sir.

15 Q And a portion of that, I take it, was devoted  
16 to fingerprint identification, classification, --

17 A Yes, sir.

18 Q -- rolling?

19 A That's true.

20 Q Well, it was just a repeat of what you'd had in  
21 this other course; isn't that right? It was old hat to you  
22 at that point, isn't that right?

23 A Some of it was new, but most of it was repeat,  
24 yes, sir.

2d fls.

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2d-1

1 Q All right. Now, there are other recognized  
2 works in the field besides the FBI Manual on fingerprinting,  
3 are there not?

4 A Yes, sir.

5 Q And what are they?

6 A I don't know.

7 Q You don't know any of the books on fingerprint-  
8 ing?

9 A No, sir.

10 Q Are there certain journals in which articles are  
11 normally found, on the latest advances -- or interesting  
12 cases -- in fingerprinting?

13 A Yes, sir.

14 Q What are they?

15 A There's publications all the time that come out.  
16 We browse through them. We have no reason to remember where  
17 they came from or why. We --

18 Q Well, you don't subscribe to any such journals?

19 A My office does.

20 Q Well, what journals?

21 A Like I say, sir, there's no reason for me to  
22 remember any of the names.

23 Q Well, there are a few journals that are  
24 particularly devoted to physical evidence, and particularly  
25 fingerprinting and the advances in the field, and also the  
26 interesting cases in the field, are there not, sir?

27 A Yes.

28 Q All right. What are the names of those?

2d-2

1 A I do not know.

2 Q Lieutenant Schilling, who also had a longevity  
3 of 15 years, was he a member of the American Academy of  
4 Forensic Scientists?

5 A I don't know.

6 Q Do you know what formal training he had --

7 A I don't know.

8 Q -- other than just being there 15 years?

9 A I know he was a recognized expert by the courts;  
10 that's --

11 Q The same that you are a recognized  
12 expert by the courts?

13 A Yes, sir.

14 Q And Sergeant Hammond, Charles Hammon<sub>d</sub>, who had  
15 been there ten years. Was he a member of the American  
16 Academy of Forensic Scientists?

17 A I don't know.

18 Q Was he a member of any recognized academy,  
19 that -- the membership of which is recognized as being perhaps  
20 a cut above the average in the particular area of expertise,  
21 to which that group is directed?

22 MR. KAY: Well, that assumes facts not in evidence.

23 THE COURT: Sustained.

24 Q BY MR. DENNY: Well, there are certain specific  
25 organizations, are there not, sir, to your knowledge, in  
26 the field of forensic sciences, the membership in which is  
27 based on high qualifications in the field?

28 A Yes, sir.

2d-3

1 Q All right. And are any of these people that  
2 you've listed -- Sergeant Hammond, Sergeant Smongesky,,  
3 Deputy Howard Speaks -- are any of those people members  
4 thereof, to your knowledge?

5 A Not to my knowledge. I don't think so.

6 Q And you are not a member thereof?

7 A No, sir.

8 Q You say you have lifted 50,000 latent prints?

9 A Somewhere around there, yes.

10 Q Over a period of 15 years?

11 A Yes, sir.

12 Q And you have made 30,000 comparisons?

13 A That's just an approximate number. I may have  
14 made more -- I know it would have to be that or more.

15 Q Do you work 25 hours a day, sir?

16 A No, sir.

17 Q How many prints a day do you regularly lift?  
18 Lifting 50,000 in the space of 15 years, on the average?

19 A Maybe a hundred a day, 150 a day.

20 Q And when you make comparisons, this is a careful  
21 job of making comparisons, under magnified conditions?

22 A Yes, sir.

23 Q It takes time to do that?

24 A Sometimes it takes time. Sometimes it's very  
25 quick.

26 Q And you have made 30,000 comparisons, or maybe  
27 more?

28 A Probably more, yes, sir.



2d-4

1 MR. DENNY: Probably more. All right. May I have just  
2 a moment, your Honor?

3 THE COURT: Yes, you may.

4 (Pause in the proceedings while Mr. Denny  
5 perused his notes.)

6 MR. DENNY: I have no further questions at this point.

7 I would object, however, to any opinion expressed,  
8 as insufficient foundation as to his qualifications.

3 fls.

9 THE COURT: The objection is overruled.  
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## DIRECT EXAMINATION (Continued)

BY MR. KAY:

Q Deputy Chamousis, is there some work that's considered the bible in the area of fingerprint identification and comparison?

MR. DENNY: I'll object to that as ambiguous, considered by whom?

Q BY MR. KAY: Well, considered by the experts in the field, at least the experts that you know in the field?

A Yes, sir, to my knowledge the FBI manual was considered the bible of fingerprint men.

Q All right. And to your knowledge, are there any college courses or anything like that given specifically in the area of fingerprint or fingerprint identification?

A Lower division courses, is all I know of, sir.

Q Well, they don't have any specific courses in fingerprint identification, do they?

MR. DENNY: Asked and answered.

Q BY MR. KAY: To your knowledge.

MR. DENNY: Asked and answered.

THE COURT: Sustained.

Q BY MR. KAY: Now, I think we were at the point where you said you did make a comparison between the list that you took from the footlocker, People's 65-G, that has the name Donald Jerome on it, with the fingerprint exemplar card that you rolled of the person who identified himself as Bruce Davis; is that right?

A Yes, sir.

1           Q       All right. And did you formulate an opinion as to  
2 whether or not the person who made this -- well, who left the  
3 print on the footlocker, 65-G, that you made the list of, was  
4 the same person who made the fingerprint exemplar card and  
5 identified himself as Bruce Davis?

6           A       Yes, sir. In my opinion they were made by the same.

7           MR. DENNY: Just a moment, I'll object again to the opin-  
8 ion as improper foundation, improper qualification.

9           THE COURT: The objection is overruled.

10          MR. KAY: All right.

11          THE COURT: You may answer.

12          THE WITNESS: In my opinion, the latent fingerprint card  
13 and both rolled impressions were all made by one and the same  
14 person, Bruce Davis in this case.

15          MR. DENNY: Excuse me, I'll move that the answer be  
16 stricken for the purpose of objection to both rolled impressions.

17                   May I have the question reread, your Honor?

18          THE COURT: Yes, you may.

19                   (Whereupon, the question was read by the reporter  
20 as follows:

21                   "Q       All right.

22                   And did you formulate an opinion as to whether  
23 or not the person who made this -- well, who left the  
24 print on the footlocker, 65-G, that you made the list  
25 of, was the same person who made the fingerprint  
26 exemplar card and identified himself as Bruce Davis?")

27          MR. KAY: I'm referring to the exemplar card 86-A and  
28 86-D, which was all the same card.

1 MR. DENNY: I have no objection in the form of the  
2 question, I have an objection to the expression of the opinion.  
3 But that's already been ruled on.

4 THE COURT: Yes, the objection is overruled.

5 Q BY MR. KAY: All right, do you understand the  
6 question I'm asking you?

7 THE COURT: The answer may remain. He's already answered.

8 MR. DENNY: No, he did not answer a specific question. He  
9 answered a general question which I think the answer tended to  
10 indicate that he made a comparison with two cards that have not  
11 been -- the foundation of which has not been introduced, and  
12 that is A and D.

13 THE COURT: Perhaps, Miss Briandi, you would read the last  
14 question for me.

15 MR. DENNY: May the answer --

16 MR. KAY: I'll just ask the question again. It may be  
17 easier.

18 MR. DENNY: May the answer be stricken that is in, the  
19 answer to which I objected and moved to have it stricken for  
20 the purpose of objection, your Honor? May that be stricken?

21 THE COURT: Yes.

22 The objection is overruled, the answer may remain  
23 in the record.

24 Q BY MR. KAY: Deputy Chamousis, again, for  
25 clarification, did you formulate an opinion as to whether or not  
26 the person who left the print on People's 65-G, that you took  
27 the latent print of, was the same person who identified himself  
28 as Bruce Davis, whose prints you rolled on People's 86-B and 86-  
29 G?

1           A       Yes, I formed an opinion that they were made by one  
2 and the same person.

3           Q       All right. Is there any doubt at all about that at  
4 all in your mind?

5           A       No, sir, there is not.

6           Q       All right.

7                   And I -- there is the second exemplar card here,  
8 People's 86-A and 86-D, did you also -- that was not taken by  
9 yourself, is that correct?

10          A       That's correct.

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1 Q It was taken by a "J. W. Hearn"?

2 MR. DENNY: Just a moment, I'll object. That document  
3 speaks for itself.

4 THE COURT: Sustained.

5 Q BY MR. KAY: Okay. Do you know who J. W. Hearn  
6 is?

7 A No, I do not.

8 Q All right. Did you also compare this finger-  
9 print exemplar card, People's 86-A and -D with the fingerprint  
10 exemplar card that you took and the latent fingerprint,  
11 People's 85?

12 MR. DENNY: Irrelevant and immaterial, improper  
13 foundation.

14 THE COURT: Overruled. You may answer.

15 A Yes, I did.

16 MR. DENNY: Also object, if he is seeking to introduce  
17 it as a business record, there is no foundation. A and D  
18 there is no foundation.

19 THE COURT: All right, sustained.

20 Q BY MR. KAY: Okay. Deputy Chamousis, did you  
21 determine that the same person that made 86-A and 86-D also  
22 was the same person that made your fingerprint exemplar card  
23 and made the lift, People's 85?

24 MR. DENNY: Objection, irrelevant and immaterial,  
25 improper foundation.

26 MR. KAY: Your Honor, I think he can --

27 MR. DENNY: As a business record.

28 MR. KAY: I think he can compare the fingerprints.

3a-2

1 MR. DENNY: And if there is any argument, it should be  
2 at the bench.

3 THE COURT: Yes, it should be.

4 Q Did you make a comparison between 86-A and the  
5 other exemplar which you took?

6 THE WITNESS: Yes, sir, I did.

7 THE COURT: All right.

8 MR. MANZELLA: Excuse me, your Honor, may I talk to  
9 Mr. Kay for a minute?

10 THE COURT: Yes, you may.

11 (Whereupon, Mr. Kay and Mr. Manzella conferred  
12 at the counsel table, out of the hearing of the  
13 jury:)

14 MR. KAY: All right, I'll withdraw the question as  
15 to People's 86-A --

16 THE COURT: -A and -B?

17 MR. KAY: -A and -D. -A and -D.

18 Q BY MR. KAY: Deputy Chamousis, I show you here --

19 Well, your Honor, I have an exhibit that's  
20 previously been marked as 106 for identification, May it  
21 remain as 106 in this proceeding?

22 THE COURT: Yes, it may remain as 106 for identification.

23 MR. KAY: All right.

24 Q Deputy Chamousis --

25 THE COURT: Excuse me, we have -- we do have 106-A  
26 through -F marked as certain photographs.

27 MR. KAY: Oh, well, then, I'd ask that this be marked  
28 as People's next in order, 110 or 111.

106 id.

3a-3

1 THE COURT: So it would be -- would you describe it?

2 MR. KAY: It is a blowup of the latent print and the  
3 ink print.

4 MR. MANZELLA: Your Honor, I believe it was previously  
5 marked 87. May it be marked as People's 87 for identifica-  
6 tion at this proceeding?

7 MR. KAY: That's right, so many markings.

8 THE COURT: Rather than 111, it is 87, a blowup of a  
9 fingerprint.

10 MR. KAY: The 106 I was looking at was the courtroom  
11 number, not the exhibit.

12 Q All right, Deputy Chamousis, you've seen this  
13 before, is that correct?

14 A Yes, sir.

15 Q And you've testified from this before at other  
16 proceedings?

17 A I have.

18 MR. DENNY: I'll object to that as irrelevant and  
19 immaterial.

20 THE COURT: Sustained.

21 Q BY MR. KAY: All right. And this is a blowup --

22 MR. DENNY: I'll object to that as leading and  
23 suggestive.

24 THE COURT: Sustained.

25 MR. DENNY: May I take the witness on voir dire?

26 MR. KAY: I'll object to that, your Honor.

27 THE COURT: There doesn't appear to be any reason for  
28 voir dire at this time. But I sustained the objection to the

87 id.



3a-4

1 last question.

2 Q BY MR. KAY: All right, what is shown in  
3 People's 87, the blowup, the two photographs?

4 A It is a copy of a palm print, two palm prints.  
5 One is a rolled impression and the other is a latent  
6 impression.

7 Q Okay. And are these blowups of the two  
8 impressions that you've already identified, the lift and the  
9 exemplar card?

10 MR. DENNY: Object to that as ambiguous, which exemplar  
11 card?

12 THE COURT: Sustained.

13 Q BY MR. KAY: All right. Is this a blowup of  
14 the photograph of the latent print and the exemplar card  
15 of Mr. Davis that you have identified?

16 MR. DENNY: Object to that as still ambiguous. Which  
17 one is he talking about?

18 THE COURT: Sustained.

19 Q BY KAY: All right, describe, then, what this is.

20 A The --

21 MR. DENNY: Well, without showing the jury he can still  
22 describe which exemplar card, your Honor. Improper foundation.

23 THE COURT: Just describe what it is.

24 THE WITNESS: I have here a -- two photographs. One  
25 is a photo of a latent print and the other is a photo of a  
26 palm print.

3b fls.

3b-1

1 Q BY MR. KAY: Okay.

2 Is the latent print, is that what's been marked as  
3 People's 85 for identification?

4 A It is a copy of the print marked 85, yes.

5 Q That's on the left of the exhibit card?

6 A It is.

7 Q All right. And the item on the right, where it  
8 says "ink print," is that a photograph from the -- from one of  
9 these -- well, is it a photograph from one of the two exemplar  
10 cards in People's 86?

11 A It is.

12 Q All right. And which one?

13 A It would be 86 -- would this be "A" here?

14 Q Yes.

15 A 86-A, it is a copy of the right palm print,  
16 86-A.

17 Q All right. And that was the card that you did not  
18 take, is that correct?

19 A That is correct.

20 Q And did you compare the palm print of the card in  
21 86-A with the palm print on the rolled impressions that you  
22 took on your exemplar card 86-B and 86-C?

23 MR. DENNY: Object to that as irrelevant and immaterial.  
24 No proper foundation.

25 THE COURT: Overruled.

26 Q BY MR. KAY: You can answer that.

27 A Yes, it is.

28 Q Did you formulate an opinion as to whether or not

1 they were identical?

2 A I did.

3 MR. DENNY: Object to that as irrelevant and immaterial,  
4 improper foundation, seeking to introduce a business record.

5 THE COURT: Overruled.

6 Q BY MR. KAY: And what was that opinion?

7 A My opinion the palm print 86-A and the palm print  
8 86-D were made by one and the same person, Bruce Davis in this  
9 case.

10 Q Now, Deputy Chamousis, would you please step down  
11 from the witness stand.

12 Now, in making your -- in your comparison between  
13 the palm print from the -- well, first, let me ask you, this  
14 latent lift that you took on People's 85, is that a fingerprint  
15 or a palm print?

16 A It is a palm print.

17 Q All right.

18 Now, -- well, now, and -- all right.

19 And in making the comparison between that lift and  
20 the palm print on the exemplar card 86-A and 86-D, did you,  
21 uh -- did you note certain points of similarity between the  
22 latent palm print lift and the two exemplar cards?

23 MR. DENNY: I'll object to the question as assuming facts  
24 not in evidence that he made such a joint or multiple compar-  
25 ison.

26 THE COURT: All right, sustained.

27 Q BY MR. KAY: All right. Did you compare the latent  
28 lift that you took from this footlocker here, People's 65-G,

1 with both the exemplar cards and the palm prints on the exemplar  
2 cards?

3 A Yes, I did.

4 Q All right. And in making the comparison, did you  
5 notice certain points of similarity?

6 A Yes, I did.

7 Q How many points of similarity are -- do you require  
8 before you will give an unqualified opinion that the prints  
9 were made by the same person?

10 In other words, the person who made the latent print  
11 was the same person who made the print on the exemplar card.

12 A There is no specific amount of points, but as a  
13 general rule of thumb, everybody takes ten as a good round  
14 figure.

15 MR. DENNY: I'll object to what everybody takes as  
16 calling for hearsay and move the answer be stricken. He's  
17 expressing hearsay.

18 THE COURT: Sustained.

19 Q BY MR. KAY: Well, is that standard operating  
20 procedure in the field of fingerprint identification and  
21 comparison?

22 MR. DENNY: I'll object to that as calling for improper  
23 foundation and hearsay.

24 THE COURT: Overruled.

25 Q BY MR. KAY: You can answer that.

26 A In our department, we can -- there is no definite  
27 amount of points. It is just enough to satisfy the deputy in  
28 his own mind that the fingerprints are one and the same.

1 MR. DENNY: Well, move the answer be stricken as not  
2 responsive to the question as asked.

3 THE COURT: Sustained.

4 Q BY MR. KAY: How many points do you require?  
5 Personally, talking about you, yourself.

6 A I, uh -- I --

7 Q Does that depend on the print?

8 A It depends on the print.

9 Q How many prints of similarity did you find between  
10 the latent print that you took the footlocker, People's 65-G, and  
11 the palm prints on the two fingerprint exemplar cards, 86-A and  
12 86-C?

13 A To the best of my recollection, I stopped counting  
14 at 21 or 22 points.

15 Q All right. And on this exhibit here, did you help  
16 prepare this exhibit?

17 A Yes, I did.

18 Q By "this exhibit," I mean People's 87 for identifica-  
19 tion.

20 And did you make certain points of similarity on  
21 this chart between the latent print and the ink print?

22 A Yes, I did.

23 MR. MANZELLA: Your Honor, may I approach the witness  
24 stand?

25 THE COURT: Yes, you may.

26 Q BY MR. KAY: Now, I note on this exhibit, People's  
27 87 for identification, that you have 14 -- uh, 14 points marked  
28 for the latent print and 14 points marked for the ink print, but

1 you just testified that you found 21 points of similarity.

2 Is there any reason why you didn't put all 21 points?

3 A It would have kind of made it a -- uh, too messy an  
4 exhibit to mark all the points down. We figured -- myself and  
5 the fellow that helped me prepare it, Mr. Howard Speaks,  
6 figured that 14 would be a sufficient amount to mark down.

7 Q All right. In other words, you didn't want to mess  
8 up the exhibit?

9 A No.

10 Q All right. But you say you stopped counting when  
11 you found 21 points of comparison?

12 MR. DENNY: Asked and answered three times.

13 THE COURT: Sustained.

14 Q BY MR. KAY: All right. And would you explain to the  
15 ladies and gentlemen of the jury, using this -- maybe you can  
16 use the pointer.

17 Well, here.

18 THE COURT: Let's take a recess at this time. It is  
19 11:00 o'clock and you've been sitting for an hour.

20 During the recess you are obliged not to converse  
21 amongst yourselves, nor with anyone else, nor permit anyone to  
22 converse with you on anything connected with this matter nor  
23 are you to form or express any opinion on it until it is  
24 finally submitted to you.

25 (Morning recess.)

3c-1

1 THE COURT: Sorry, ladies and gentlemen.

2 Incidentally, any matters that you may hear  
3 while you're waiting in this courtroom, is not to in any  
4 way to be considered, and of course you couldn't in any event  
5 consider it because it has nothing to do with this case. But  
6 it is not to be considered in your making any decision that  
7 might be involved in this case.

8 All: right, the record will show the defendant  
9 to be present with his counsel. All counsel are present.

10 Ready to proceed.

11 Go ahead.

12 MR. KAY: I would like -- I just talked to Mr. Denny.  
13 He has no objection. I would like to interrupt Mr. Chamousis  
14 to recall Mr. Whiteley for two questions.

15 THE COURT: All right, you may.

16 MR. KAY: Sergeant Whiteley.

17 Just sit in the front row.

18 MR. MANZELLA: Your Honor, can Deputy Chamousis --  
19 there is an order excluding witnesses. Can he remain  
20 through this or --

21 MR. DENNY: Certainly, there is no objection.

22 THE COURT: Sergeant Whiteley.

23  
24 PAUL J. WHITELEY,  
25 recalled as a witness by and on behalf of the People, having  
26 been previously duly sworn, resumed the stand and testified  
27 further as follows:

28 THE COURT: Sergeant Whiteley.

3c-2

## DIRECT EXAMINATION

BY MR. KAY:

Q Sergeant Whiteley, directing your attention to People's 110, the photograph of a male individual.

Do you recognize who is depicted in that photograph?

A Yes.

Q Who is that?

A That's the defendant in this case, Bruce Davis.

Q All right. And did -- during what period of time did he look the way he looks in that picture?

A The first part of December of 1970.

MR. KAY: No further questions.

THE COURT: Any questions.

MR. DENNY: Yes, your Honor.

## CROSS-EXAMINATION

BY MR. DENNY:

Q Did he look that way on December 1st?

A I don't know.

Q December 2nd?

A I don't know.

Q December 3rd?

A I don't know.

Q December 4?

A I don't know.

Q December 5th?

A I don't know.

Q December 6th?



3c-3

1 A I don't know.

2 Q December 7th?

3 A I don't know.

4 Q December 8th?

5 A I don't know.

6 THE COURT: All right, that's far enough, Mr. Denny.

7 Q BY MR. DENNY: When did he look that way that you  
8 do know?

9 A Sometime around the 10th of December of 1970.

10 Q Were you present when that picture was taken?

11 A No, I was not.

12 Q Was the 10th of December the day he turned  
13 himself in to you?

14 MR. KAY: Well, that assumes a fact not in evidence,  
15 your Honor, that he turned himself in.

16 THE COURT: Sustained. You may rephrase your question.

17 Q Did he turn himself in to you on the 10th?

18 A I don't recall the specific date. It was  
19 somewhere around that time.

20 Q And he met you and Officer Guenther and  
21 surrendered himself to you on or about the 10th, is that  
22 correct?

23 MR. KAY: Well, I'm going to object that it is beyond  
24 the scope of direct, your Honor.

25 THE COURT: Yes, it is beyond the scope of direct.

26 MR. DENNY: Well --

27 THE COURT: Did you see him on that date, about the  
28 10th, Mr. Denny asked?

3c-4

1 THE WITNESS: Yes.

2 Q BY MR. DENNY: Well, were you present when he  
3 was booked, Sergeant Whiteley?

4 A Yes.

5 Q And as part of the booking process, was a  
6 photograph taken?

7 A Not immediately.

8 Q So that you don't know if that picture was taken  
9 in the booking process or do you?

10 A No, I do not.

11 Q When he is booked as a County prisoner, is he  
12 given a number?

13 A A booking number, yes.

14 Q Booking number.

15 And in this case was that number 1358518?

16 MR. KAY: Well, that's irrelevant, your Honor.

17 THE COURT: Sustained.

18 Q BY MR. DENNY: Does that booking number appear  
19 on the exemplar card, People's 86-C?

20 MR. KAY: I'll object to that. It is outside the scope  
21 of direct. It is irrelevant.

22 MR. DENNY: May I take him as my witness for that  
23 purpose, your Honor?

24 THE COURT: Yes, you may.

25 THE WITNESS: Would you read the numbers again to me?  
26 I wasn't present when this fingerprint card was rolled.

27 MR. KAY: Well, then, that would call for hearsay,  
28 your Honor.

3c-5

1 THE COURT: All right, sustained, unless -- did you  
2 know the booking number that was assigned to him?

3 THE WITNESS: Yes, I assigned it to him. It is in my  
4 murder book.

5 Q BY MR. DENNY: Your homicide manual?

6 A Yes.

7 Q All right. Well, would it refresh your recollec-  
8 tion to see it or have me read the booking number from  
9 Mr. Davis' arm band?

10 MR. KAY: Well, I'll object to that because I don't  
11 know if he has the same number now as he had then.

12 Q BY MR. DENNY: Would that refresh your recollec-  
13 tion, sir?

14 A No, sir. I've arrested probably 100 people since  
15 then.

16 Q All right.

17 MR. DENNY: Your Honor, may I have just a moment to  
18 get the other manual? I think it is in the other manual.

19 THE COURT: Well, is there any other inquiry now that  
20 you could pursue?

21 MR. DENNY: It will take me 30 seconds to get it, your  
22 Honor.

23 THE COURT: All right, you may.

24 (Whereupon, Mr. Denny exited the courtroom,  
25 returning shortly, and the following proceedings  
26 were had:)

27 (Whereupon there was a pause in the proceedings  
28 while Mr. Denny and Sergeant Whiteley leafed through  
the manual.)

4 fls.

4-1  
1 THE COURT: Ladies and gentlemen, we'll recess until  
2 1:30, rather than watch this interesting experiment.

3 (Laughter.)

4 THE COURT: During the recess, you are advised not to  
5 converse amongst yourselves, nor with anyone else, nor permit  
6 anyone to converse with you on any subject connected with the  
7 matter, nor to form or express any opinion on the matter  
8 until it is finally submitted to you.

9 See you at 1:30.

10 (Whereupon, at 11:54 o'clock a.m., the jury  
11 exited the courtroom, and the following proceedings  
12 were had:)

13 THE COURT: Officer Chamousis, you can come back at  
14 1:30.

15 OFFICER CHAMOUSIS: Yes, sir.

16 (Whereupon, a discussion off the record ensued  
17 at the witness stand and the bench among the Court,  
18 counsel, and the witness.)

19 THE COURT: On the record.

20 Mr. Denny, would you tell me, for the record,  
21 Mr. Denny -- would you indicate why you want to pursue  
22 the question of what booking number he has?

23 MR. DENNY: Yes, your Honor.

24 I have stated to the Court, at the bench, that  
25 I feel that the -- the only reason the People are attempting  
26 in any way to get the picture in -- whichever that picture  
27 of Mr. Davis is, taken on or about December 11th, 1970 --  
28 is to inflame the jury;

1                   And that that picture shows Mr. Davis with the  
2 X on his forehead. And the fact that Mr. Chamousis says  
3 now he can't look at Mr. Davis and recognize that person  
4 astounds me so much, because I think he can look at the  
5 picture, and the picture and Mr. Davis' appearance now are  
6 not that different.

7                   But be that as it may, the identity of the party--

8           THE COURT: Well, the Court would observe that the  
9 appearance has altered considerably.

10          MR. DENNY: Well, be that as it may, your Honor, his  
11 identification of the person by facial identification is  
12 unnecessary at this time, one, because I have offered to  
13 stipulate that the person whose prints he rolled on the  
14 fingerprint exemplar card that was rolled is indeed and was  
15 indeed Bruce Davis, the defendant in this case;

16                  And secondly, because the identity can be  
17 established without resort to the picture, simply by virtue  
18 of the fact that he was assigned a booking number at the time  
19 he was arrested -- or, at the time he surrendered himself --  
20 and that booking number appears on the fingerprint exemplar  
21 card that Mr. Chamousis rolled; and it is the same booking  
22 number that he presently has, that he has had ever since  
23 the time of his surrender.

24          THE COURT: The People?

25          MR. KAY: Obviously, the best way to prove it is by  
26 the photograph, and this is the way we have done it.

27                  Just because there are different ways of doing  
28 it, the People, if they want to do it the best way possible,

1 the best way is by the indentification of the photograph,  
2 of the picture of the individual.

3 THE COURT: Well, I can't understand why you'd take the  
4 time of the jury to do that. We've spent 15 minutes on the  
5 question of the booking number, Mr. Denny, and it's just not  
6 warranted under the circumstances.

7 MR. DENNY: Well, your Honor --

8 MR. KAY: We would object to it, your Honor,

9 THE COURT: And the Court does sustain the objection.

10 I think it's immaterial, what his booking number  
11 is.

12 If the People seek to prove it by the photograph,  
13 particularly since Chamousis does not now recognize Davis in  
14 the courtroom, I think they're entitled to do so.

15 MR. DENNY: Well, your Honor, it's irrelevant that he  
16 recognizes the picture of the person at the time; that's  
17 irrelevant. It's absolutely irrelevant that he recognizes  
18 a picture now of the person whose prints he rolled a year  
19 ago.

20 THE COURT: He identifies the person in the picture  
21 as Mr. -- as being Mr. Davis, the Mr. Davis he knew at that  
22 time.

23 MR. KAY: That's correct.

24 THE COURT: Ultimately, I suppose it's for the jury to  
25 look at the picture and look at Davis and see whether it's  
26 a different man, --

27 MR. DENNY: Well, your Honor --

28 THE COURT: -- if they believe the fingerprint testimony.

1 But in any event, that would be the Court's  
2 ruling, that --

3 MR. DENNY: Well, your Honor --

4 THE COURT: -- the question of the booking number is  
5 immaterial. The Court notes that there are two booking  
6 numbers, in any event, on that.

7 MR. DENNY: No, there's only one booking number, your  
8 Honor, as of the date that he was arrested.

9 THE COURT: On the fingerprint cards, there are  
10 different booking numbers.

11 MR. DENNY: Yes. But there are different dates, your  
12 Honor. They're different dates.

13 THE COURT: Yes, the Court knows that.

14 MR. DENNY: There's an earlier date of arrest.

15 THE COURT: In any event, --

16 MR. DENNY: Well, your Honor --

17 THE COURT: -- I'll see you at 1:30.

18 MR. MANZELLA: I take it the Court is ordering Sergeant  
19 Whiteley to come back at 1:30?

20 THE COURT: Yes. Do you want him for any other reason  
21 at this time, other than the booking number?

22 MR. DENNY: I don't have to go into any other matters  
23 at this time.

24 THE COURT: All right.

25 MR. KAY: Well, I want him for a little redirect.

26 THE COURT: On this point?

27 MR. KAY: On some of the cross-examination; not on --

28 MR. DENNY: Well, if he's coming back, let him come

1 back, and I will ask him a few more questions, too.

2 THE COURT: All right. I'll see you at 1:30.

3 (Whereupon, at 12:02 o'clock p.m., an adjournment  
4 was taken in this case until 1:30 o'clock p.m.  
5 of the same day.)  
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1 LOS ANGELES, CALIFORNIA, FRIDAY, FEBRUARY 11, 1972, 1:40 P. M.

2  
3 MR. DENNY: I have no further questions, your Honor, in  
4 view of the Court's ruling.

5 THE COURT: All right.

6 Anyone else? Anything further?

7 MR. MANZELLA: Yes, your Honor. I had some cross  
8 examination of Sergeant Whiteley with regard to the matter  
9 covered by Mr. Denny.

10 THE COURT: Well, you mean with reference to the booking  
11 number?

12 MR. MANZELLA: No, your Honor, when Mr. Denny took  
13 Sergeant Whiteley as his own witness for a series of questions.

14 THE COURT: All right, let's hear what you have.

CROSS

15  
16 CROSS EXAMINATION

17 BY MR. MANZELLA:

18 Q Sergeant Whiteley, were you present when the  
19 original indictment for the Hinman murder was returned?

20 MR. DENNY: Objection, irrelevant and immaterial, and  
21 beyond the scope of direct examination, my direct examination  
22 of Sergeant Whiteley.

23 THE COURT: Sustained.

24 MR. MANZELLA: Perhaps it was brought out on cross  
25 examination. I thought it had been brought out. That was the  
26 matter of Mr. Davis turning himself in. I thought --

27 THE COURT: Well, that was mentioned, but the Court  
28 doesn't recall any reference to the Hinman indictment. I think

5-2

1 Mr. Denny is correct.

2 MR. MANZELLA: All right, may we approach the bench  
3 your Honor?

4 THE COURT: All right, you may.  
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1 (Whereupon, the following proceedings were had at  
2 the bench among Court and counsel, outside the hearing of the  
3 jury:)

4 MR. MANZELLA: Mr. Denny brought out that Mr. Davis had  
5 turned himself in, and he brought that out over the objection of  
6 the People.

7 What I want to show now --

8 THE COURT: Oh, I don't think it --

9 MR. MANZELLA: Yes, he did.

10 THE COURT: Not over objection. I don't think there was  
11 an objection.

12 MR. KAY: No, I objected that it was beyond the scope.

13 THE COURT: The second time it was said, somebody  
14 objected, and I think I sustained the objection.

15 MR. DENNY: And then I took him as my own witness.

16 MR. KAY: And brought it out, yes.

17 THE COURT: All right. Well --

18 MR. MANZELLA: On direct. I am on cross examination.

19 THE COURT: All right. You are on cross, but --

20 MR. MANZELLA: All right.

21 THE COURT: What does that have to do with Hinman?

22 MR. MANZELLA: What it has to do is this: At the time  
23 Davis turned himself in, he wasn't indicted for the Shea  
24 murder.

25 It should be clear that he didn't turn himself in  
26 for the Shea indictment. That's certainly relevant.

27 THE COURT: All right.

28 MR. MANZELLA: What I am basing this on is that the Hinman

1 indictment was returned on April 14th, 1970. A warrant was  
2 issued for Davis's arrest on that indictment and certain case  
3 number.

4 MR. DENNY: Well, your Honor -- excuse me for interrupt-  
5 ing -- but you can take judicial notice --

6 MR. MANZELLA: I don't excuse you for interrupting.

7 MR. DENNY: Well, we can save time --

8 MR. MANZELLA: Mr. Davis was arrested --

9 THE COURT: Keep your voice down.

10 MR. MANZELLA: Mr. Davis -- well, I have to talk louder.  
11 to be heard over Mr. Denny, when he interrupts me.

12 Mr. Davis --

13 THE COURT: Keep quiet.

14 MR. MANZELLA: Mr. Davis was arrested on December 2nd of  
15 1970. The Shea indictment was not returned until December  
16 16th, the first Shea indictment.

17 MR. DENNY: All I can say is that the Court can take  
18 judicial notice of when the Shea indictment was returned. We  
19 don't have to go through all this gobbly-gook.

20 MR. MANZELLA: It's not gobbly-gook, except when you ask  
21 the questions. When I ask them, they're precise and to the  
22 point.

23 MR. DENNY: Interesting how we differ on that.

24 THE COURT: Let's see. He had been indicted for the  
25 Hinman matter --

26 MR. DENNY: Yes, certainly.

27 MR. MANZELLA: On April 14th.

28 MR. DENNY: So he only gave himself up for one murder,

1 instead of two. That's what they're trying to show.

2 MR. MANZELLA: Sure. Sure. I mean, I didn't bring out  
3 that he turned himself in.

4 MR. DENNY: I would ask the Court to take judicial  
5 notice -- if anybody wants to make a point of it -- to take  
6 judicial notice that the --

7 THE COURT: Shea indictment --

8 MR. DENNY: -- Shea indictment was returned on December --  
9 it was not December 14th; I think it was December 15th -- what-  
10 ever the court files show.

11 MR. MANZELLA: And --

12 MR. DENNY: And that the Hinman indictment, under the  
13 particular indictment number which is another number, was  
14 returned in April.

15 MR. MANZELLA: All right. And this is one --

16 THE COURT: Of that same year, '70?

17 MR. DENNY: '70.

18 MR. MANZELLA: At the time Davis was arrested on  
19 December 2nd, that he made statements that we are offering as  
20 admissions -- or, in the alternative, as statements to explain  
21 his conduct, before turning himself in.

22 That's admissible as an exception to the hearsay  
23 rule. It explains his conduct at the time.

24 MR. DENNY: Oh, his conduct is not relevant.

25 THE COURT: What is the --

26 MR. MANZELLA: He asked the question about turning him-  
27 self in.

28 THE COURT: What do you purport to show?

1 MR. MANZELLA: That Davis said, "I am doing it for --"  
2 he was asked why he turned himself in, and he said, "I'm doing  
3 it for my brother. He would do the same for me. We have made  
4 some deals with the police." And, "Aren't they throwing every-  
5 body in jail?"

6 And Sergeant Whiteley will testify furthermore  
7 that there was an agreement with Mr. Davis.

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1 THE COURT: All right.

2 MR. DENNY: "I am doing it for my brother. He would  
3 do the same for me."?

4 MR. MANZELLA: "He would do the same for me."

5 And that, "We made some deals with the police."

6 And that, "Aren't they throwing everybody in  
7 jail?"

8 Those were the statements he made when he  
9 surrendered down here on the southwest corner of the Hall  
10 of Justice, on the corner of Temple and Broadway; and that--  
11 well, those are statements -- I forget what -- oh, right.  
12 And that there was an agreement with Mr. Davis that if he  
13 turned himself in, that Sergeant Whiteley would go before  
14 the Judge in Van Nuys, the Van Nuys court, where she had been  
15 convicted of forgery --

16 MR. KAY: Brenda McCann.

17 MR. MANZELLA: Brenda McCann. (Continuing) -- and  
18 would ask the Judge to grant her probation on that forgery.

19 THE COURT: Davis said that to the police?

20 MR. MANZELLA: That was the agreement with the -- that  
21 was the agreement that they had. He said, "We have made--"  
22 that was one of the reasons he turned himself in, was  
23 because, "We have made some deals with the police."

24 THE COURT: Well --

25 MR. KAY: And that was the deal, your Honor.

26 MR. MANZELLA: And I think that's all relevant. I  
27 didn't bring out that Davis turned himself in. He did.

28 MR. KAY: I think that we have to explain Mr. Davis --

6a-2

1 MR. MANZELLA: And he's certainly going to argue that  
2 Davis isn't guilty of these crimes; that he has got nothing  
3 to hide, because he came in to clear all this up.

4 And we are going to show that Davis wasn't even  
5 indicted for the Shea case at the time he turned himself  
6 in; and that at least one of his motives for turning himself  
7 in was that Brenda McCann, his girl friend, was going to --  
8 was going to get probation on a forgery charge; and that --

9 We can certainly argue, at the time, he was only  
10 indicted for the Hinman killing, and he felt that he -- he  
11 may have felt that he wasn't really involved in the Hinman  
12 killing, since he never struck a fatal blow or never struck  
13 any blow on Mr. Hinman; but he didn't know at that time that  
14 we were about to indict him for the Shea killing, the Shea  
15 murder, with which he was actively involved.

16 MR. DENNY: Well, your Honor, first of all --

17 MR. KAY: It's certainly relevant.

18 THE COURT: All right. I assume --

19 MR. DENNY: In the first place --

20 THE COURT: -- that it is relevant.

21 MR. DENNY: -- I'm taken completely by surprise, by  
22 the offer of proof here, not having had -- by way of any  
23 discovery at all, ever -- and the Court has noted that the  
24 discovery in this case had probably been as extensive as in  
25 any case the Court ever sat on -- that I have had no  
26 discovery of these statements.

27 It's in no report, nowhere, at no time, no way,  
28 no how, have I been apprised of this until now.



6a-3

1 MR. MANZELLA: Your Honor, Mr. Denny had the best  
2 discovery he could have. These were statements that were  
3 broadcast over television and radio.

4 MR. KAY: I myself will represent that I heard these  
5 various statements over Channel --

6 THE COURT: Wait a minute.

7 MR. MANZELLA: These statements were made in answer to  
8 questions asked by reporters, when his client turned himself  
9 in down here on the southwest corner of the Hall of Justice.

10 MR. DENNY: He was not my client at that time. I was  
11 not appointed to represent him until --

12 THE COURT: That's correct. Is there anything --

13 MR. DENNY: -- until much later.

14 THE COURT: -- in your file that reflects these state-  
15 ments?

16 MR. MANZELLA: In our file?

17 THE COURT: Yes.

18 MR. KAY: No.

19 MR. MANZELLA: No, not in our file -- except in the  
20 broadest sense, that it includes everything that's happened,  
21 and that we know about the case.

22 THE COURT: Well, is there something that I have ordered  
23 that you divulge to Mr. Denny that you have not divulged --

24 MR. MANZELLA: No.

25 THE COURT: -- concerning this?

26 MR. MANZELLA: No. There's no report -- no police  
27 report made of these statements.

28 This is just somewhere in the memory of the

officer, as to what occurred.

7-1  
1 MR. MANZELLA: That's true, it is in the memory of a lot  
2 of people.

3 MR. KAY: It is in my memory.

4 MR. MANZELLA: I imagine it is also on the memory of video  
5 tape.

6 THE COURT: Well, I suppose that you do have a right to  
7 explain why he turned himself in, because it -- certainly to turn  
8 one's self into the police --

9 MR. MANZELLA: Is evidence of innocence.

10 THE COURT: -- could be argued as evidence of innocence --

11 MR. DENNY: Let me do this, under the circumstances --

12 THE COURT: -- evidence of feelings --

13 MR. MANZELLA: It is a motion to withdraw your question  
14 and strike the answer?

15 MR. DENNY: That is correct.

16 MR. MANZELLA: (Laughing.)

17 MR. DENNY: If the People are going to attempt to sand-  
18 bag me --

19 MR. MANZELLA: Oh.

20 MR. DENNY: It is sandbagging me, without any question,  
21 to put on --

22 THE COURT: How he came to be in custody was really not  
23 relevant.

24 MR. MANZELLA: We objected and Mr. Denny got cute and  
25 he's going to pay for it.

26 THE COURT: I don't recall that you objected in time. You  
27 did on one question, but I think it was already in when you  
28 objected. But that's beside the point.

1 MR. DENNY: Well, I think it is beside the point now,  
2 your Honor, if the People are going to proceed in this way,  
3 taking me, as I say, with the vast amount of discovery as there  
4 has been in this case, completely by surprise and what they  
5 believe amounts to an admission, and if I have not been apprised  
6 of an admission by this defendant in the course of discovery,  
7 that's been ordered by the Court, then certainly the People  
8 should not be permitted to put that on.

9 In order to cover that, I will move to have his  
10 testimony stricken and I will certainly not advert to it in  
11 any argument concerning the fact that he gave himself up.

12 MR. MANZELLA: Now that it is in, your Honor, the damage  
13 has already been done. I think Mr. Denny used the expression  
14 of unringing the bell --

15 MR. DENNY: No, Mr. Denny didn't use that.

16 MR. MANZELLA: Well, I confused the two.

17 Since it is in, the answer is already in, it is  
18 proper cross examination to bring this out and explain why.

19 In fact, Mr. Denny --

20 THE COURT: What about lack of discovery?

21 MR. MANZELLA: I'll state something about that in a minute.

22 THE COURT: Say it now.

23 MR. MANZELLA: During voir dire, Mr. Denny asked, brought  
24 it up in questions, which I thought were improper, about  
25 Mr. Davis surrendering himself and where the jurors could consider  
26 that. He's brought it up before.

27 MR. DENNY: Well, you brought up things during voir dire  
28 and opening argument.

1 THE COURT: Well, the Court --

2 MR. DENNY: Now --

3 THE COURT: The Court will deny the motion to strike and  
4 let you present --

5 MR. MANZELLA: All right, as far as discovery is  
6 concerned, in answer to the Court's questions, there is nothing  
7 in our files, there is no report of the statements made. There  
8 was no -- and the reason there is no need to make a report, it  
9 is not written in any District Attorney's notes or police  
10 reports, these were statements made in answer to television  
11 reporters' questions.

12 THE COURT: The Court recalls having read something like  
13 that.

14 MR. MANZELLA: Right. There was TV cameras down on the  
15 corner.

16 MR. KAY: I, myself, remember I was on the Tate-LaBianca  
17 case at the time I saw it on television.

18 MR. DENNY: Well, may I just be heard on this rather  
19 interesting point, and that is, one, I will place on the record  
20 my objection that we were given a number of statements at the  
21 time of the Aranda-Bruton hearing as to the statements that the  
22 People would seek to have admitted, what was purportedly  
23 all of the statements by way of admission, confession or any-  
24 thing else and at that time there was no such statement made.  
25 Some of the statements appeared in reports, some of them did  
26 not appear in reports. Some of them were simply testimony that  
27 had been given at the Grand Jury hearing.

28 MR. MANZELLA: That is correct.

1 MR. DENNY: And had not specifically appeared in reports.

2 MR. MANZELLA: That's correct.

3 MR. DENNY: All of this, your Honor, was part of the  
4 discovery process and part of the process of the People  
5 disclosing what admissions or confessions they were going to  
6 produce.

7 Now, they've had the opportunity since -- as far as  
8 I am concerned, when I got into this case about December 19,  
9 1970, to make this particular little piece of information known  
10 to me because I did not know it before I was appointed to  
11 represent Mr. Davis. I paid no attention to it. I didn't see  
12 the television news. I didn't even know who Mr. Davis was.  
13 And now, to have that sprung on me at this point, is, I submit,  
14 a violation of due process and equal protection under the  
15 Fourteenth Amendment, under the right to counsel, under the  
16 Sixth Amendment, under all the discovery provisions that have  
17 been ordered by this court. And this court has stricken a  
18 number of things during this case, a number of answers have  
19 been stricken and this court can just as easily strike this  
20 and does not have to commit error at this point by permitting  
21 the People to sandbag me. I am willing to have that answer  
22 withdrawn. And if the jury can't understand that and are willing  
23 to do it, then every order this court has made to strike an  
24 answer is nullity.

7a fol

1 MR. MANZELLA: The People didn't sandbag Mr. Denny be-  
2 cause this statement is not reported in any of the materials  
3 which the Court ordered supplied to Mr. Denny. There has been  
4 full compliance with discovery. There is no reports that exist  
5 which have not been disclosed which contain the statement.

6 At the time of the Aranda-Bruton hearing, the  
7 statements were not relevant because there was no issue of  
8 surrender raised at that point. And the People would not have  
9 offered this -- the People would not have offered this statement  
10 had it not been for Mr. Denny attempting to create the im-  
11 pression in the minds of this jury that Mr. Davis surrendered  
12 himself on the Hinman and Shea indictments.

13 MR. DENNY: I am not attempting to make that point.

14 MR. MANZELLA: If Mr. Denny had not brought up that  
15 point, we would not have -- we never intended to offer the  
16 statements as admissions. We never intended to. And it was  
17 Mr. Denny -- all Sergeant Whiteley was called back for was to  
18 testify who was in that photograph, to identify Mr. Davis as  
19 the person in the photograph.

20 It was Mr. Denny, then, that brought up the  
21 surrender.

22 We never intended to offer the statements as  
23 admissions. The only reason we're offering them is to rebutt  
24 the inference that Mr. Denny is trying to create in the jurors'  
25 minds that Mr. Davis is innocent because he surrendered him-  
26 self.

27 MR. DENNY: Your Honor, I have asked the Court to take  
28 judicial notice, and I ask the Court again to take judicial

1 notice, that the Shea indictment was returned at the time Davis  
2 surrendered himself.

3 THE COURT: I think that's proper.

4 MR. DENNY: I'm not trying to urge he surrendered himself  
5 in connection with the Shea matter, that there's any motive to  
6 show innocence in his surrender in the Shea matter at all.

7 MR. KAY: Well, at least that's your motive on the Hinman  
8 case.

9 MR. DENNY: Well, it may be my motive on the Hinman case,  
10 but I'm willing to have that testimony, in view of what has  
11 transpired here and in view of what I consider sandbagging,  
12 withdrawn and the Court admonish the jury to disregard it.

13 MR. MANZELLA: It is not sandbagging. We never held it  
14 back. We never sought to offer it as an admission in the first  
15 place, and had Mr. Denny never brought up the question of  
16 surrender, we never would have offered this.

17 MR. DENNY: In the first place, I have never received an  
18 arrest report showing anything concerning the arrest of Bruce  
19 Davis. And I assume there is an arrest report made.

20 Secondly, you just said yourself a few minutes ago  
21 that on voir dire I attempted to question the jury as to their  
22 state of mind as to whether or not the fact he surrendered him-  
23 self would be of any significance to them. You were put on  
24 notice then, you had that in mind that I would bring out that  
25 evidence, and even at that time, and during the three months,  
26 the course this case has run, you have not disclosed to me,  
27 knowing that, by virtue of what you have just related, as to my  
28 voir dire of the jury, I would probably attempt to get in this

1 information. You still have not given me the information you  
2 just presented at this time, and I know it is sandbagging.

3 MR. MANZELLA: I didn't know you would try to get it in  
4 evidence, in trying to create the impression that Davis is  
5 innocent of the Hinman as well as the Shea --

6 MR. DENNY: I didn't try.

7 MR. MANZELLA: Well, now you're not with what evidence  
8 the People are --

9 MR. DENNY: I know what the sequence of events was.

10 MR. MANZELLA: But it is certainly relevant to explain  
11 Mr. Davis's conduct. And Mr. Denny has brought it out with  
12 Sergeant Whiteley as his own witness, and we're entitled now  
13 to --

14 THE COURT: The Court will permit that.

15 MR. DENNY: Your Honor, excuse me, before the Court  
16 permits that, I would like now at this time to request a  
17 copy of whatever report was made at the time Bruce Davis was  
18 arrested. And if it was on December 2nd, I would like to see  
19 that. I have never seen it and I'm sure there is such a  
20 report in existence. And before Sergeant Whiteley testifies  
21 any further, I think I am entitled to that report.

22 MR. MANZELLA: I don't know if there is one, but I'll ask  
23 him.

7b fol



1 THE COURT: All right. I'll just run the jury out in the  
2 corridor there, it shouldn't take long.

3 (Whereupon, the following proceedings were had in  
4 open court within the presence and hearing of the jury:)

5 THE COURT: Ladies and gentlemen, the Court will ask you  
6 to simply retire to the corridor. Don't converse amongst  
7 yourselves, nor with anyone else, nor permit anyone to converse  
8 with you during the time that you are out of the courtroom.

9 It shouldn't be long, you shouldn't be out there  
10 long. I hope not, anyhow. We want to conduct some business out  
11 of your hearing.

12 (Whereupon, the jury retired from the courtroom,  
13 and the following proceedings were had:)

14 MR. MANZELLA: May I say something, your Honor?

15 THE COURT: The record will show that the jurors have  
16 left.

17 Mr. Denny.

18 MR. MANZELLA: Your Honor, I just wanted to make this  
19 one point. That what the People are attempting to introduce  
20 as evidence at this point cannot be considered sandbagging --  
21 I don't know a better word for it than "sandbagging." I  
22 don't know what other words there are to describe it, but,  
23 in any event, it is not considered sandbagging because the  
24 People did not feel that this testimony was relevant on their  
25 case in chief unless Mr. Denny brought up the subject of  
26 surrender, and, therefore, we could not offer it on our case in  
27 chief because it is not admissible. It is only admissible in  
28 rebuttal to the evidence that Mr. Davis surrendered himself.

1 And that's why it is not sandbagging, because we don't have a  
2 choice. Because we could not offer it in our case in chief  
3 unless Mr. Denny brought up the subject of Mr. Davis's surrender.  
4 That's why it is not sandbagging.

5 MR. DENNY: Your Honor, I think the record will reflect I  
6 have attempted, on a couple of other occasions, to question  
7 Sergeant Whiteley about that on a couple of prior occasions,  
8 at which time objections have been raised and have been  
9 sustained by the Court.

10 The People have been apprised --

11 THE COURT: Well, that would lead the People to believe  
12 that the Court would continue to sustain --

13 MR. MANZELLA: That's correct. It should put Mr. Denny  
14 on notice he shouldn't ask the question again.

15 THE COURT: I don't know how that went down, but I may  
16 have misheard the question or the objection, I don't know. But  
17 for some reason or other it got in the record and the jury does  
18 know that Mr. Davis did turn himself in. And as a result, I  
19 think the People do have a right to say what his explanation was  
20 at the time of the arrest.

21 Now, what you are interested in now, Mr. Denny, is  
22 knowing whether there existed a report of his statements; is  
23 that right, at the time of arrest?

24 MR. DENNY: I would like to ask Sergeant Whiteley --

25  
26 EXAMINATION

27 BY MR. DENNY:

28 Q Is there an arrest report which was made by you or

EXAM.

1 anyone else at or about the time of Mr. Davis's surrender on  
2 or about December 2nd, 1970?

3 A Yes, there is a report that reflects that he was  
4 arrested on December 2nd.

5 Q Where is that report?

6 A It is in that book.

7 MR. MANZELLA: In what book?

8 MR. DENNY: In what book?

9 THE WITNESS: The homicide book.

10 Q BY MR. DENNY: Which homicide book?

11 A I'd have to see them. I don't know which one it is  
12 in.

13 MR. DENNY: Well, could we ask him to look at either one  
14 of the manuals, your Honor, because I have been unable to find  
15 the report that so reflects.

16 THE COURT: Do you know whether that report has been  
17 provided Mr. Denny?

18 THE WITNESS: Yes.

19 THE COURT: What do you know about that?

20 THE WITNESS: The report states that on December 2nd --

21 THE COURT: No, what do you know about it having been  
22 provided to Mr. Denny?

23 THE WITNESS: I provided everything that's in this book.

24 THE COURT: Have you shown him that book?

25 MR. MANZELLA: Your Honor, one was deposited with  
26 Mrs. Holt.

27 THE COURT: I see.

28 Go ahead and see if you can find it in there.

1 (Whereupon, there was a pause in the proceedings  
2 while Sergeant Whiteley leafed through a book.)

3 THE COURT: While you're looking for it, I'm going to --  
4 you may step down off the stand.

5 (Whereupon, unrelated matters were called and heard  
6 before the Court.)

7 THE COURT: Resume the stand, Sergeant Whiteley.

8 Sergeant Whiteley, what have you found?

9 THE WITNESS: I found the report.  
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1 THE COURT: Back to the case of People vs. Davis,  
2 Sergeant Whiteley, have you found anything?

3 THE WITNESS: Yes.

4 THE COURT: What have you found?

5 THE WITNESS: I have a report here dated December 19th,  
6 1970, page 294, that reflects Mr. Davis' arrest.

7 MR. DENNY: Yes, your Honor. I would like the Court  
8 to look at that copy. When Sergeant Whiteley and I were  
9 on the stand previously, it was my impression that there had  
10 been some mention of arrest -- not an arrest report made at  
11 the time of the arrest, but a later report that we were look-  
12 ing for.

13 This is it. And pursuant to discovery, the only  
14 thing that I have been apprised of is that which appears  
15 on the last two lines of the first paragraph -- or the last  
16 three -- "Constitutional rights were read to the suspects  
17 by Deputy Guenther, and both suspects refused to make any  
18 statements on the advice of their attorneys."

19 THE COURT: This is an arrest report?

20 THE WITNESS: It's a supplementary report, your Honor.  
21 It is not an arrest report.

22 MR. DENNY: Yes, you are correct. December 19th. And  
23 it's labeled County of Los Angeles Sheriff's Department,  
24 Supplementary Report.

25 It does state that on December 2nd "Davis, in  
26 the company of Nancy Pitman, surrendered to the undersigned--"  
27 and the undersigned are Paul J. Whiteley and Charles C.  
28 Guenther -- "at Temple and Broadway Streets in Los Angeles.

8-2

1 "Suspects were taken to the Homicide Bureau  
2 in the company of attorneys D. Shinn and P. Fitzgerald.  
3 Constitutional rights were read to the suspects by Deputy  
4 Guenther, and both suspects refused to make any statements  
5 on the advice of their attorneys."

6 THE COURT: Well, as to the statements which are now  
7 attributed to Mr. Davis, that he's said to have made on  
8 December 2nd, are they written anywhere?

9 MR. DENNY: No, sir.

10 MR. MANZELLA: Well, the --

11 THE COURT: To your knowledge, has -- have you ever  
12 reduced them to writing?

13 THE WITNESS: No, sir.

14 THE COURT: Mr. Denny?

15 MR. DENNY: Your Honor, I again submit that I have been  
16 misled here, by the discovery that we have gotten, by the  
17 only report that apparently is in existence, to the effect  
18 that on advice of their attorneys, both Miss Pitman, who  
19 was Mr. Davis, and Mr. Davis, made no statements.

20 Now, almost at the close of the trial -- a trial  
21 which, as the Court knows, has lasted very long -- we are  
22 led to believe that there were some statements made, and  
23 statements which have some bearing on -- or purported bearing  
24 on Mr. Davis' motive for surrendering.

25 Your Honor, I think it is sandbagging, if there  
26 ever was such a thing, to provide that kind of discovery,  
27 those statements; and then at this point, to come in and say,  
28 "Oh, well, we had this waiting in reserve, but we didn't

8-3

1 tell you about it, because it wasn't reduced to writing, and  
2 because it wasn't reduced to writing we didn't have to give  
3 it to you.

4 "And we knew, from the time you started voir  
5 diring the jury, that you did have it in mind to -- to get  
6 this into evidence. But we still didn't have to give it to  
7 you, simply because we didn't reduce it to writing.

8 "And we knew, by virtue of the fact that you had  
9 asked a couple of times during the course of this trial,  
10 before today, that you were going to attempt to get that --  
11 or, probably going to attempt to get that in evidence. But  
12 we didn't have to tell you what -- what we have here, that we  
13 are holding back, because we didn't reduce it to writing.

14 "And we don't have to tell you anything that we  
15 don't reduce to writing, by virtue of discovery."

16 I submit, your Honor, that that just flies in the  
17 face of the spirit, if not the letter, of the discovery laws  
18 and the discovery order that this Court made. And it does  
19 deprive the defendant of the effective aid of counsel and  
20 due process under the 14th Amendment.

21 MR. MANZELLA: May I inquire of Sergeant Whiteley,  
22 your Honor?

23 THE COURT: Yes, you may.

24  
25 EXAMINATION

26 BY MR. MANZELLA:

27 Q Sergeant Whiteley, the -- strike that.

28 At the time that Mr. Davis surrendered, did he

8-4

1 make some statements?

2 A Yes, he did.

3 Q Were these statements made before or after you  
4 advised him of his constitutional rights?

5 A They were before.

6 Q Did you consider these statements to be admissions?

7 A No.

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8a-1

1 Q Were these statements made to you, or were they  
2 made to other persons?

3 A They were made to other persons.

4 Q What class or types of persons were they made to?

5 A Television and radio people.

6 Q Was this down here on the southwest corner of  
7 the Hall of Justice, at the corner of Temple and Broadway?

8 A Yes.

9 Q And was this surrender publicized?

10 A Yes.

11 Q All right. Through the various news media, radio,  
12 television and newspapers?

13 A Yes.

14 MR. MANZELLA: I have no further questions, your Honor.

15 The People's point in asking those questions was  
16 if Sergeant Whiteley did not consider these to be admissions;  
17 that Mr. Davis was invited, after he was taken away from his  
18 audience -- he was then advised of his rights to remain  
19 silent, his right to an attorney, and on advice of his  
20 attorney, he made no statements about the case.

21 Sergeant Whiteley did not consider these to be  
22 admissions, and that is why they're not reduced to writing  
23 in any report. They were made to an audience of television  
24 reporters and so on.

25 THE COURT: Were you aware of them?

26 MR. MANZELLA: I beg your pardon?

27 THE COURT: Were you aware of them, and did you  
28 consider them to be admissions?

8a-2

1 MR. MANZELLA: Well, I was not aware --

2 MR. DENNY: Well, Mr. Kay just said to you up at the  
3 bench that he was aware of them; that he heard them.

4 THE COURT: Did you consider them to be admissions?

5 MR. KAY: No. But I saw them on television.

6 MR. DENNY: Your Honor --

7 MR. MANZELLA: We did not consider them to be admissions,  
8 your Honor, or we would have offered them in our case in  
9 chief.

10 MR. KAY: We don't consider them to be admissions to  
11 the murder, but we consider them to be admissions as to why  
12 he was surrendering himself.

13 MR. MANZELLA: Yes.

14 THE COURT: All right. The Court --

15 MR. DENNY: Your Honor, if I may be heard just briefly,  
16 your Honor? And this is Miranda vs. Arizona, that makes the  
17 point very clearly that exculpatory statements, as well as  
18 incriminatory statements, are the types of statements that  
19 are made inadmissible under the Miranda doctrine.

20 And I think that when the People say, "Well,  
21 we don't consider them admissions; we didn't consider them  
22 admissions," it doesn't matter whether they're considered  
23 admissions or not, if they're statements made by the  
24 defendant which may be used against him -- and, in this case,  
25 obviously are going to be used against him -- whether they  
26 are exculpatory or incriminatory.

27 They are statements which, under the discovery  
28 order, should have been made known to me. And they were not.

8a-3

1 MR. MANZELLA: Miranda does not apply, your Honor,  
2 because this was not custodial interrogation.

3 MR. KAY: There was no interrogation.

4 THE COURT: Let's find out about that.

5 Q BY MR. MANZELLA: All right. Sergeant Whiteley,  
6 prior to the time that Mr. Davis made these statements, had  
7 you asked him any questions?

8 A No.

9 Q Were there persons asking questions of Mr. Davis?

10 A Yes.

11 Q Who were those people?

12 A The television people and newspapers and radio.

9 fls.

9-1

1 Q Were there any attorneys or lawyers present on the  
2 corner down here where Mr. Davis held this news conference?

3 A Yes.

4 Q Who was present?

5 MR. DENNY: Well, I'll object to the question "held this  
6 news conference" as assuming facts not in evidence.'

7 THE COURT: All right.

8 MR. DENNY: And move the answer be stricken.

9 THE COURT: All right, the reference to the news  
10 conference is stricken.

11 Q BY MR. MANZELLA: Was -- were there any lawyers  
12 present at the corner of Temple and Broadway when -- on  
13 December 2nd, 1970, when Mr. Davis surrendered himself?

14 A Yes.

15 Q What lawyers were present?

16 A Mr. Davis and Mr. Paul Fitzgerald.

17 Q Did they arrive at the location with Mr. Davis?

18 A No, sir, they arrived with me.

19 Q Did -- had one of those lawyers previously advised  
20 you that Mr. Davis wanted to surrender himself?

21 A Yes, they both did.

22 Q Uh, did -- when previously, the same date or  
23 earlier?

24 A As to the exact location and time?

25 Q Yes.

26 A Earlier that morning.

27 Q Those two lawyers told you when and where he would  
28 surrender himself, is that correct?

9-2

1           A       They told me when. They didn't tell me where until  
2 five minutes before we went to the corner.

3           Q       Right.

4                   And did you pick the location where Mr. Davis  
5 surrendered?

6           A       No, sir.

7           MR. MANZELLA: No further questions.

8                   Your Honor, it is clear from the testimony that  
9 somebody other than law enforcement or the District Attorney's  
10 Office wanted publicity for the surrender of Mr. Davis. And it  
11 didn't involve the District Attorney's Office and it didn't  
12 involve the Sheriff's department. And I think that in view of  
13 those facts, what occurred down there could best be described  
14 as Mr. Davis's news conference for that reason.

15           THE COURT: What happened when you and the attorneys  
16 arrived at the corner?

17           THE WITNESS: Mr. Shinn asked me if I could wait a  
18 few moments to allow Mr. Davis to speak to the television  
19 people and the newspaper people prior to placing him under  
20 arrest.

21                   He then -- Mr. Davis then crossed the street and  
22 went over to where the girls were.

23                   Then, Mr. Shinn approached him and they held a  
24 short conversation with the newspaper and television people,  
25 and he was placed under arrest, along with Nancy Pitman.

26           THE COURT: All right, any questions?

27           MR. DENNY: Yes.

28  
EXAMINATION

1 BY MR. DENNY:

2 Q Where were you when the -- you say you stood on one  
3 corner and Mr. Davis walked over to where the girls and the  
4 television people were?

5 A Yes, that's correct.

6 Q And he had a conversation with them?

7 A Yes.

8 Q And then, he came back and you subjected him to  
9 arrest at that point or did you go over there and subject him  
10 to arrest?

11 A No, he came to us.

12 Q He came back from the corner where he had the  
13 conference?

14 A No, I first saw Mr. Davis on the southeast corner  
15 of Temple and Broadway, crossing the street in a northbound  
16 direction. I was standing at the south -- wait a minute, I'm  
17 getting the directions wrong here.

18 The first time I saw him he was at the southeast  
19 corner of Temple and Broadway. He was walking northbound to  
20 the southwest corner of this building where I was standing  
21 with Mr. Shinn.

22 Q The southwest corner of this building?

23 Right, it is the northeast corner of Temple and  
24 Broadway.

25 THE WITNESS: That's right.

26 Q BY MR. DENNY: All right, and you were where, I'm  
27 sorry?

28 A I was standing on the corner down at the southwest

1 portion of this building or at the northeast corner of Temple  
2 and Broadway with Mr. Shinn, Mr. Fitzgerald and Deputy Guenther.

3 Q Where were the television cameras, et cetera, news-  
4 men and the girls?

5 A At what point?

6 Q At this point.

7 A When he was crossing the street?

8 Q That's right.

9 A Part of them were crossing the street towards him.

10 Q From where? From where you were?

11 A Yes.

12 Uh, -- and the rest of them were around the girls  
13 that were down at the corner.

14 Q At which corner?

15 A The northwest corner of Temple and Broadway.

16 Q Is that by the little newsstand there?

17 A Yes.

18 Q That's the corner where you were?

19 A Yes.

20 Q And then, Mr. Davis came to that corner?

21 A Yes.

22 Q And the news people followed him?

23 A Part of them did.

24 Q Where were the other part?

25 A They waited --

26 Q Until he arrived?

27 A They assumed he was crossing the street.

28 Q And how close to you was he when this alleged

1 news conference was carried on?

2 A Six feet.

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1 Q And you waited until that concluded in order to  
2 arrest him?

3 A Yes.

4 Q You were not going to let him go from that moment  
5 forward, were you?

6 A Huh-uh, no.

7 Q So if he had tried to leave, he would have been  
8 stopped; is that right?

9 A Yes, he would have.

10 Q And if he tried to run, you'd have shot him?

11 A I doubt that.

12 MR. MANZELLA: That's irrelevant, your Honor.

13 MR. DENNY: Well, I submit that he was under constructive  
14 arrest at the time and the officers had an obligation at that  
15 time to advise him of his rights and to advise him at that time,  
16 since he was obviously a suspect in the Hinman case, if not the  
17 Shea case, and I'm certain he was a suspect in the Shea case at  
18 that point, it was just a week away or two weeks away from  
19 hearing before the Grand Jury, he was obviously a suspect and  
20 should have been advised of his rights. He was under  
21 constructive arrest. He could not have moved. He could not  
22 have gone. There were two officers there who were there to  
23 make sure he did not.

24 THE COURT: Had you said anything to him?

25 THE WITNESS: No, sir.

26 THE COURT: Or had your partner?

27 THE WITNESS: No, sir. He went --

28 THE COURT: I don't think this is a constructive arrest

1 and it sounds to me as though the statements were voluntary and  
2 not a result of any interrogation.

3 The Court doesn't believe the Miranda warning need  
4 be given under those circumstances.

5 The Court doesn't believe there is any violation of  
6 discovery order, and the Court will permit the presentation of  
7 the proof of the statements.

8 MR. DENNY: Well, may I say again, for the record, I am  
9 surprised --

10 THE COURT: I think you've got the record abundantly  
11 clear you are surprised by it.

12 MR. DENNY: There are two things that happened today that  
13 flabbergasted me.

14 One, the use of this picture, which is purely  
15 being used for inflammatory purposes.

16 THE COURT: I think you've been heard in respect to that.  
17 The Court believes it is not inflammatory. The Court believes  
18 that it is probative in view of --

19 MR. DENNY: Your Honor, how can it be probative when I  
20 have offered to stipulate to the fact that those are his finger-  
21 prints? If the People are in good faith and not doing this  
22 simply to inflame the jury, they will accept that stipulation.

23 THE COURT: The Court believes it is probative.

24 MR. DENNY: Probative to what?

25 THE COURT: And the Court believes the People have the  
26 right to present the proof rather than rely on a stipulation or  
27 a booking number.

28 MR. DENNY: Your Honor, probative to what? Those are his

1 fingerprints. I'm willing to stipulate those are his finger-  
2 prints.

3 THE COURT: Get the jury in, Mr. Kuczera.

4 MR. DENNY: How can you have anything more probative  
5 than the stipulation?

6 (Whereupon, the jury was brought into the court-  
7 room, and the following proceedings were had:)

8 THE COURT: The jurors are all in the box, the record  
9 will show.

10 The defendant is present. All counsel are  
11 present.

12 You may proceed.

13 MR. MANZELLA: Your Honor, the People would ask the  
14 Court to take judicial notice that on April 14, of 1970, an  
15 indictment was returned charging Mr. Davis with the murder of  
16 Gary Hinman in case No. A258361, in that on that date, April  
17 14, 1970, a bench warrant was issued for the arrest of  
18 Mr. Davis on that indictment.

19 MR. DENNY: Your Honor, I'd ask the Court to take  
20 judicial notice of the fact that that indictment was returned  
21 against Charles Manson, Susan Denise Atkins and Bruce McGregor  
22 Davis.

23 THE COURT: On that date?

24 MR. MANZELLA: Yes, your Honor.

25 MR. DENNY: On the date of April 14, 1970.

26 THE COURT: Bench warrant issued that day?

27 MR. DENNY: Your Honor, I don't have any record to  
28 reflect that.

1 If the Court's record --

2 THE COURT: Or thereabouts.

3 MR. DENNY: -- shows what sort of warrant was issued on  
4 what date, I would be perfectly to have the Court take judicial  
5 notice and stipulate to it. Until such is shown in the record,  
6 I don't think that I --

7 MR. MANZELLA: Perhaps I can do this easier by Sergeant  
8 Whiteley.

9 I offered to have the Court take judicial notice --

10 THE COURT: Well, regardless of the warrant, by  
11 stipulation of counsel, the Court will take judicial notice  
12 that there was such an indictment returned against Mr. Davis  
13 in the case number mentioned --

14 MR. MANZELLA: On April 14, 1970.

15 THE COURT: On April 14, 1970.

16 MR. DENNY: Two Counts. Count I, the charge of murder;  
17 and, Count II, also against Charles Manson and Susan Denise  
18 Atkins and Bruce McGregor Davis, the conspiracy to commit  
19 murder and robbery.

20 THE COURT: All right, so ordered. The Court takes  
21 judicial notice of that.

22 And you, ladies and gentlemen, may do so, are to  
23 do so, also.  
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1 MR. MANZELLA: And that includes the date of April  
2 14, 1970?

3 THE COURT: Yes.

4 MR. MANZELLA: Am I correct?

5 THE COURT: And there was another stipulation in  
6 respect to it.

7 MR. MANZELLA: The People would ask the Court to take  
8 judicial notice that at the time of the return of that  
9 indictment that the Court issued a warrant for the arrest of  
10 Mr. Davis on that indictment.

11 THE COURT: So stipulated.

12 MR. DENNY: Your Honor, I assume that is to be so,  
13 that is the normal procedure and I would assume that is so,  
14 under the circumstances.

15 THE COURT: All right. The stipulation is received.  
16 There is a further stipulation?

17 MR. MANZELLA: I don't believe there is a stipulation.

18 I ask the Court to take judicial notice -- Mr.  
19 Denny has not stipulated. If he wants to, I'll be glad --

20 THE COURT: Well, he stipulates, and so, therefore,  
21 no proof need be adduced on it.

22 MR. MANZELLA: Your Honor, he assumed --

23 MR. DENNY: I will stipulate that pursuant to normal  
24 procedure --

25 MR. MANZELLA: All right.

26 MR. DENNY: -- that a warrant was issued for the  
27 arrest --

28 MR. MANZELLA: Your Honor, we're asking for the Court to

1 take judicial notice that a warrant was issued for Mr. Davis'  
2 arrest.

3 MR. DENNY: Well, let's let the Court look at Volume I  
4 of the file.

5 THE COURT: The Court does not believe it is necessary,  
6 in view of Mr. Denny's stipulation that pursuant to normal  
7 procedure, a bench warrant was issued, as I understand it.

8 MR. MANZELLA: He said "a court would have issued a  
9 bench warrant in view of the normal procedure."

10 We're asking the Court to take judicial notice  
11 of the fact that a bench warrant was issued in this case for  
12 that indictment.

13 MR. DENNY: I'm sure it was, a regular warrant.

14 THE COURT: In view of that, the Court believes that  
15 the stipulation is satisfactory.

16 MR. MANZELLA: All right.

17 THE COURT: Let's not quibble any longer about it.

18 Now, there was another stipulation you wished to  
19 offer in connection with another count?

20 MR. MANZELLA: Yes, your Honor.

21 The People would ask the Court to take judicial  
22 notice of the fact that on December 16, of 1970, an indictment  
23 was returned against Bruce Davis, Charles Manson and Steve  
24 Grogan for the murder of Donald Shea. That indictment bearing  
25 case No. A267493.

26 THE COURT: All right, so ordered, on December 16, then,  
27 the Shea indictment was returned.

28 MR. MANZELLA: And the People would further ask the

1 Court to take judicial notice that on December 29, 1970, the  
2 two cases were combined by the Grand Jury under a new case  
3 number, A-267861.

4 THE COURT: All right, that's a matter of judicial  
5 notice, too.

6 MR. MANZELLA: Thank you, your Honor.

7 Thank you, Mr. Denny.

8 MR. DENNY: Yes, sir.

9  
10 CROSS EXAMINATION (Continued)

11 BY MR. MANZELLA:

12 Q Now, on -- Sergeant Whiteley, on what day did  
13 you arrest the defendant, Bruce Davis?

14 A December 2nd, 1970.

15 Q And did Mr. Davis surrender himself?

16 A Yes.

17 Q Directing your attention to the photograph which  
18 has been marked People's 110, 110 for identification, is that  
19 how, about, Davis looked when he surrendered himself?

20 A Yes.

21 Q Including the mark cut into his forehead?

22 MR. DENNY: Just a moment, I'll object to that. The  
23 photograph speaks for itself and move the question be stricken.

24 THE COURT: The question is stricken. The Court  
25 sustains the objection. The photograph speaks for itself.

26 Q BY : MR. MANZELLA: All right. He looked as he  
27 does in this photograph? That's the way he looked on the  
28 day he surrendered, is that correct?

1 A Yes.

2 Q Where did Mr. Davis surrender himself?

3 A At the corner of Temple and Broadway.

4 Q That's right out here, outside the Hall of  
5 Justice?

6 A Yes.

7 Q Who was present when Mr. Davis surrendered  
8 himself?

9 A Myself, Charles Guenther, attorneys Paul Fitz-  
10 gerald, and Mr. Daye Shinn, an attorney, and approximately  
11 25 people from the television, radio and newspapers.

12 Also, there were members of the Family. The  
13 girl -- the female members at the corner.

14 Q Of what Family?

15 A The Manson Family.

16 9c fls.



9c-1

1 Q Now, did you see Mr. Davis approach -- strike  
2 that.

3 Were you at the location, that is the intersection of  
4 Temple and Broadway, before Mr. Davis arrived?

5 A Yes. I arrived approximately the same time on the  
6 north corner as he arrived on the south corner.

7 Q Did you see him approaching the south corner?

8 A Yes.

9 Q Was he with anyone or was he alone?

10 A He was with someone.

11 Q Who was that person?

12 A Brenda McCann, also known as Nancy Pitman.

13 Q Now, did you arrest Mr. Davis immediately upon his  
14 arriving at the intersection of Temple and Broadway?

15 A No.

16 Q What happened after he arrived at the intersection?

17 A He spoke to the news people and his attorney spoke  
18 with the news people.

19 Q Did you hear Mr. Davis make any statements at that  
20 time?

21 A Yes.

22 Q What statements did you hear him make?

23 MR. DENNY: Object on the grounds heretofore enunciated  
24 to the Court, your Honor.

25 THE COURT: The objection is overruled. You may answer.

26 Q BY MR. MANZELLA: Sergeant Whiteley, let me with-  
27 draw the question.

28 Prior to the time that you heard Mr. Davis speak,

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1 did you hear him asked any questions by any of the persons  
2 present?

3 A Yes.

4 Q By whom?

5 A One of the television people.

6 Q One of the television reporters?

7 A Yes. He had a microphone in his hand. I assume  
8 that it was connected to a cable in the rear.

9 Q All right. Can you tell us in sum and substance  
10 what the question or questions were?

11 A The question was: "Why are you surrendering?"

12 Q Did you hear Mr. Davis reply to that question?

13 A Yes.

14 Q Would you tell us what he said?

15 A He said, "I'm doing it for my brother. He'd do the  
16 same for me. And the police have made some deals with us."

17 Q Now, had you made any deal or agreement with Mr.  
18 Davis with regard to his surrender?

19 A Directly?

20 Q No, directly or indirectly.

21 A Yes.

22 Q What was the agreement?

23 MR. DENNY: Object to that as calling for -- well, no,  
24 I won't, either.

25 THE COURT: You will or you won't?

26 MR. DENNY: I'll object only as to with whom it was made,  
27 is ambiguous and not stated in the question.

28 MR. MANZELLA: I'll withdraw that question.

9c-3

1 Q BY MR. MANZELLA: Let me ask it this way:

2 Did you make an agreement concerning Mr. Davis and  
3 his surrender with anyone?

4 A Yes.

5 Q With whom?

6 A With Catherine Share, known as Gypsy, and with  
7 Mr. Daye Shinn.

8 Q He's the attorney about which you spoke previously?

9 A Yes.

10 Q When did you make that agreement?

11 A The last part of November. It was approximately  
12 five weeks -- or five days to a week prior to December 2nd.

13 Q And what was the agreement?

14 A That we would attempt -- or we would help Nancy  
15 Pitman get off of a forgery charge out in Van Nuys, which there  
16 was an outstanding warrant for her arrest on.

17 Q And to your knowledge, had she been convicted of  
18 that forgery charge or was it still pending?

19 A No, she had been convicted.

20 Q And was your agreement with regard to sentencing?

21 A Yes.

22 Q And specifically what was the agreement?

23 A That we would represent to the, uh, judge in Van  
24 Nuys that an agreement had been made where we would get a  
25 murder suspect if he would consider probation for Miss Pitman.

26 Q And Nancy Pitman is also known as Brenda McCann?

27 A Yes.

28 Q All right. And did you, in fact, secure that

1 disposition for Brenda McCann after Mr. Davis surrendered  
2 himself?

3 A I represented what I told you to the judge in Van  
4 Nuys for his consideration.

5 MR. MANZELLA: All right, thank you. I have no further  
6 questions.

7  
8 REDIRECT EXAMINATION

9 BY MR. DENNY:

10 Q And what happened in Van Nuys after you had  
11 represented to the judge for his consideration?

12 A She received probation.

13 Q So this was another number of deals you made in  
14 connection with the Manson Family cases, is that right,  
15 Sergeant Whiteley?

16 MR. MANZELLA: Objection, argumentative and, also,  
17 leading and suggestive. This is his witness.

18 THE COURT: Uh, the question is argumentative, but you  
19 may rephrase it.

20 Q BY MR. DENNY: Well, what number in the succession  
21 of deals that you made for the testimony of witnesses was this,  
22 Sergeant Whiteley?

23 MR. MANZELLA: Objection, your Honor, the question is  
24 argumentative. It is also leading and suggestive.

25 THE COURT: Sustained.

26 Q BY MR. DENNY: Had you made --

27 THE COURT: Sustained on the first ground, not on the  
28 latter ground.

1 MR. DENNY: Well, I can't recall which was the first and  
2 which was the second, your Honor.

3 THE COURT: Just rephrase it, that's probably best.  
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1 Q BY MR. DENNY: How many deals had you made to  
2 secure testimony of witnesses in the Manson matters or  
3 Manson related matters up to the time you made this deal?

4 MR. MANZELLA: Objection, it is beyond the scope of  
5 cross-examination.

6 THE COURT: Sustained.

7 Q BY MR. DENNY: And with whom did you deal on this  
8 deal?

9 A Catherine Share, also known as Gypsy and with  
10 Mr. Daye Shinn, and in some small part with Mr. Paul Fitz-  
11 gerald, another attorney.

12 Q When was Nancy Pitman or Brenda McCann coming up  
13 for sentencing?

14 A The date had already passed.

15 Q Was it part of the deal, then, that the date be  
16 put over?

17 A There --

18 Q Or was there a bench warrant out for her, to  
19 your knowledge?

20 A There was a bench warrant out for her arrest.

21 Q So you were looking for her, too, is that right?

22 A Yes.

23 Q So part of the deal was that she would surrender  
24 herself, too, huh?

25 A Yes.

26 Q Part of the deal was that Mr. Davis could be  
27 permitted to make some statements to the press before he was  
28 arrested?

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A No.

Q Didn't you just testify before this Court that you had some discussion with Mr. Shinn and Mr. Fitzgerald that you would not arrest him until he had had an opportunity to talk to the girls and the press?

A You keep using the word "deal."

Q Yes, I do.

A And I try to keep it in that context, then, and that was not part of the --

Q Oh, this was a separate deal?

MR. MANZELLA: Objection, it is argumentative.

THE COURT: Sustained.

Q BY MR. DENNY: Is that right?

MR. MANZELLA: Objection, your Honor --

THE COURT: Sustained.

Q BY MR. DENNY: Well, was there a separate agreement made --

MR. MANZELLA: Objection, that's irrelevant.

Q BY MR. DENNY: -- between you and Mr. Shinn just a few minutes before you did arrest Mr. Davis to allow him to talk freely with the press?

MR. MANZELLA: Objection, that's irrelevant. Also vague and ambiguous.

THE COURT: Sustained. You can put it more directly than that.

Q BY MR. DENNY: Well, more directly, did you make a deal that he could talk to the press, make a deal with his attorneys?

1 THE COURT: I'll sustain the objection. The Court  
2 will sustain its own objection. It is argumentative in that  
3 form.

4 Q BY MR. DENNY: Mr. Whiteley, did you and Mr.  
5 Shinn discuss verbally back and forth the fact that you would  
6 not arrest Mr. Davis as soon as you saw him; did you do that?

7 A Yes.

8 Q And did you and Mr. Shinn discuss back and forth,  
9 verbally, the fact that you would let Mr. Davis talk with the  
10 press before you took his body into custody?

11 A No.

12 Q Talk with the girls before you took his body into  
13 custody?

14 A No.

15 MR. MANZELLA: Objection, this is argumentative.

16 I'll withdraw the objection.

17 Q BY MR. DENNY: What did you say to Mr. Shinn?

18 MR. MANZELLA: Objection, it is not relevant.

19 MR. DENNY: It is relevant, your Honor, to this whole  
20 subject which the People have now brought up on cross-  
21 examination.

22 THE COURT: The objection is overruled. You may state  
23 the conversation as it occurred.

24 THE WITNESS: Mr. Shinn asked me if I would wait a  
25 few minutes before placing him under arrest, and I said "Yea."

26 MR. DENNY: All right.

27 THE COURT: Where did that occur?

28 THE WITNESS: On the corner.



1 Q BY MR. DENNY: And you knew that the period of  
2 waiting would be occupied with discussion by Mr. Davis  
3 before these cameramen that were following him; is that  
4 not right?

5 MR. MANZELLA: Vague and ambiguous as to when Sergeant  
6 Whiteley knew that.

7 MR. DENNY: At the time that you had the conversation  
8 with Mr. Shinn.

9 THE WITNESS: No.

10 Q BY MR. DENNY: At the time you had this conversation  
11 with Mr. Shinn, were there not newspapermen going to meet  
12 Mr. Davis as he was crossing the street?

13 A Shortly -- just a few seconds after that, yes.  
14 But I didn't know that they were going to hold any type of  
15 a news conference.

16 I seen newsmen myself, but I don't go up and talk  
17 to them.

18 Q Well, you knew from the deal that had already  
19 been worked out that Mr. Davis was going to surrender there  
20 that day, didn't you?

21 MR. MANZELLA: That's argumentative, your Honor.

22 THE COURT: Overruled. You may answer.

23 A Yes, I knew he was going to surrender.

24 Q BY MR. DENNY: And you knew when he came down and  
25 saw those newspapermen and the cameras that they were there  
26 for the very same purpose that you were; not quite the same  
27 purpose, they weren't going to arrest him, but they were  
28 there to see you take Mr. Davis into custody, isn't that right?

1 MR. MANZELLA: Objection, your Honor, it is vague and  
2 ambiguous as to what the purpose was.

3 THE COURT: Overruled. You may answer.

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4 A Yes.  
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1 Q BY MR. DENNY: And you knew when you had this  
2 conversation with Mr. Shinn to permit him a few minutes before  
3 you arrested him, that what would occur there is exactly what  
4 did occur and that is that he would have a conversation with  
5 the news media; is that not correct?

6 A No, I can't say that.

7 Q You thought he was going to stand mute before the  
8 news media, is that right?

9 MR. MANZELLA: Objection, it is argumentative.

10 THE COURT: Sustained.

11 Q BY MR. DENNY: Did you think he was going to stand  
12 mute before the news media?

13 MR. MANZELLA: Objection, it is vague and ambiguous, what  
14 he means by "stand mute before the news media."

15 MR. DENNY: Stand mute.

16 THE COURT: Whatever he said, the objection is overruled.  
17 Answer it.

18 THE WITNESS: I forgot what the question was now.

19 Q BY BY MR. DENNY: Did you think he was going to  
20 stand mute before the news media and say nothing to them?

21 A Yes.

22 MR. MANZELLA: Your Honor, that -- I'm sorry.

23 Q BY MR. DENNY: You did?

24 A Yes.

25 Q Then, you thought simply that you were going to  
26 wait two or three minutes while he silently stood before the  
27 newsmen who would be asking him questions, is that --

28 A He had his attorney standing right there. I

1 assumed his attorney would talk with him.

2 Q I see.

3 Now, sir, did you make any report reflecting what  
4 occurred at this very time, that is the arrest of Mr. Davis?

5 MR. MANZELLA: Objection, that's irrelevant.

6 MR. DENNY: It goes --

7 THE COURT: Sustained.

8 Q BY MR. DENNY: Well, isn't it a fact, sir, that  
9 the report that you did write, doesn't mention he said any-  
10 thing to anybody?

11 In fact, it says "both suspects refused to make any  
12 statements on the advice of their attorneys"; is that not a  
13 fact?

14 A What the report says and what happened --

15 Q What the report says --

16 MR. MANZELLA: Your Honor, the question is vague --

17 Q BY MR. DENNY: -- and what the report doesn't say.

18 MR. MANZELLA: The question is vague and indefinite.

19 THE COURT: It is vague and indefinite.

20 Q BY MR. DENNY: Let me make it a report dated  
21 September 19, 1970, and reflected "An arrest of 12-2-70,  
22 constitutional rights were read to the suspects by Deputy  
23 Guenther and both suspects, that is Mr. Davis and Nancy Pitman  
24 or Brenda McCann, both suspects refused to make any statements  
25 on the advice of their attorneys"; is that correct?

26 A That's correct. That was in the Homicide Bureau.

27 Q That's what the report says, is that right?

28 A Yes.

1 Q Well, when did you advise them of their rights?

2 A It was in the Homicide Bureau.

3 Q Here on the third floor of the Hall of Justice at  
4 that time?

5 A Yes.

6 Q You took them into custody down on the corner?

7 A Yes.

8 Q Let's not say "them," Mr. Davis, we're talking about  
9 now?

10 A Yes.

11 Q And you waited until you got him upstairs to advise  
12 him of his rights?

13 A Yes.

14 Q You didn't think it was necessary to advise him of  
15 his rights down on the corner?

16 THE COURT: That's argumentative. Let's proceed.

17 MR. DENNY: Your Honor, there may be some argument, but  
18 there are some constitutional issues involved here.

19 MR. MANZELLA: If there are --

20 THE COURT: Mr. Denny's statements are stricken. The  
21 Court will raise its own objection. It is immaterial.

22 Q BY MR. DENNY: Sergeant Whiteley, isn't it a fact  
23 you permitted Mr. Davis an opportunity to talk to the press in  
24 hopes that he would say something incriminatory against him?

25 A No.

26 Q You expected that he would say something which  
27 was purely exculpatory?

28 MR. MANZELLA: It assumes facts not in evidence, he

1 assumes his attorney would speak to him.

2 MR. DENNY: His state of mind is still an issue on this  
3 point, on the Miranda issue.

4 THE COURT: The Court thinks not, and we're not going to  
5 try the Miranda issue in front of the jury.

6 MR. DENNY: It is also on the credibility issue.

7 Q Did you write down anywhere, in any form, in any  
8 way, the statements you have attributed to Mr. Davis?

9 A No, sir, I did not.

10 Q And so those statements that you have related to  
11 the Court are statements which now you recall some two years  
12 and some-odd months later, is that correct?

13 A Yes. I heard him say it, you realize, more than  
14 one time. Because I watched it on television later.

9f fol

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1 Q Oh, you watched it on television?

2 A Yes.

3 Q I see. And when was the last time you watched it  
4 on television?

5 A It was that evening.

6 Q All right. And so it is still December 2nd, 1970,  
7 is the last you heard any such statement or any statement at  
8 all from Mr. Davis?

9 A That's correct.

10 Q And when, sir, was it that you worked out this deal  
11 that Nancy Pitman would get probation on her forgery charge?

12 A The agreement was reached approximately November  
13 the 30th or December 1st.

14 Q Well, how long a period of time were negotiations  
15 going on to secure this deal?

16 A Uh, I say roughly a week.

17 Q All right. And at this particular time, it is a  
18 fact, is it not, that Bobby Beausoleil had already been tried  
19 and convicted --

20 MR. MANZELLA: Objection.

21 Q BY MR. DENNY: -- of the Hinman murder?

22 MR. MANZELLA: It doesn't appear to be relevant.

23 MR. DENNY: It goes to this defendant's state of mind  
24 which is the thing that's in issue now, apparently.

25 THE COURT: Sustained.

26 Q BY MR. DENNY: It is a fact, is it not, that that  
27 conviction got a good deal of publicity?

28 MR. MANZELLA: Objection, it assumes a fact not in

1 evidence, and irrelevant.

2 THE COURT: Sustained.

3 MR. DENNY: It goes to this defendant's state of mind on  
4 the basis of why he surrendered himself.

5 THE COURT: Sustained.

6 Q BY MR. DENNY: And it is a fact that there had been  
7 a good deal of publicity about the return of the indictment of  
8 Charles Manson, Susan Denise Atkins and Bruce Davis for the  
9 murder of Gary Hinman?

10 MR. MANZELLA: Objection, it is irrelevant.

11 Q BY MR. DENNY: Is that not a fact?

12 MR. MANZELLA: Objection, it is irrelevant.

13 THE COURT: Sustained.

14 MR. DENNY: It goes to his state of mind, basis of  
15 surrendering himself, consciousness of innocence.

16 All right, I have no further questions.

17

EXAM

18

RECROSS EXAMINATION

19

BY MR. MANZELLA:

20

21 Q Sergeant Whiteley, did you ask Mr. Davis any  
22 questions before you advised him of his rights?

23

A No.

24

25 Q After advising Mr. Davis of his rights, did he  
26 agree to talk to you or refuse to talk to you?

27

A He never spoke to me directly -- uh --

28

MR. DENNY: Uh, just a moment, I'll object to that on the  
grounds of Miranda, on the grounds of the Fifth Amendment.

THE COURT: All right. Sustained. The answer is stricken.



1 The question is stricken.

2 Q BY MR. MANZELLA: Did he talk to you after you  
3 advised him of his rights?

4 MR. DENNY: Objection, your Honor, that's the same --

5 THE COURT: The objection is sustained.

6 MR. DENNY: Your Honor, I would ask that Counsel be  
7 cited for what he has just done as misconduct, because the  
8 Court --

9 MR. MANZELLA: Your Honor, the same material is --

10 THE COURT: Just a minute.

11 MR. MANZELLA: -- in the homicide --

12 THE COURT: Just a minute, Mr. Manzella.

13 MR. MANZELLA: -- manual and --

14 MR. DENNY: Your Honor --

15 THE COURT: Would you be seated, Mr. Manzella.

16 MR. MANZELLA: -- I don't think it is proper for  
17 Mr. Denny to ask that I be cited for misconduct.

18 THE COURT: Sir, the next time you do this, you will  
19 be found in contempt. Mr. Manzella, now, when the Court speaks,  
20 I don't want you to interrupt me.

21 MR. MANZELLA: I apologize, your Honor.

22 THE COURT: Your apology is accepted.

23 Ladies and gentlemen, that question is stricken.

24 The Court admonishes you, as it has admonished you  
25 in any case where there has been something stricken, to  
26 disregard it completely as if it had not been heard. It  
27 agrees the subject should not have been broached and the Court  
28 has advised the jury previously in connection with it.

1                   Let's proceed.

2           MR. MANZELLA: Your Honor, I would like to say I do  
3 apologize to the Court for the outburst, and Mr. Denny has just  
4 apologized to me, and I believe it was just the excitement of  
5 the moment that caused both of us to do what we did.

6           MR. DENNY: It has been a long trial and I believe  
7 that's true.

8           THE COURT: Very well, let's proceed.

9           MR. MANZELLA: I have no further questions. Thank you.

10          MR. DENNY: I have no further questions.

11                   At this time I would request Sergeant Whiteley to  
12 remain on call.

13          MR. MANZELLA: Well, your Honor --

14          MR. KAY: Would this be a good time for a brief recess  
15 before we take Deputy Chamousis?

16          THE COURT: Yes.

17                   Ladies and gentlemen, you are not to converse  
18 amongst yourselves, nor with anyone else, nor permit anyone to  
19 converse with you on any subject connected with the matter,  
20 nor form or express any opinion on it until it is finally  
21 submitted to you.

22                   (Afternoon recess.)  
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1 THE COURT: All the jurors are present. The defendant is  
2 present with counsel, and Mr. Kay for the People.

3 And we are ready to proceed.

4  
5 PETER CHAMOUSIS,  
6 having been previously duly sworn, resumed the stand and  
7 testified further as follows:

8  
9 DIRECT EXAMINATION (Continued)

DIRECT  
10 BY MR. KAY:

11 Q Now, Mr. Chamousis, I would like to get back to you,  
12 after a two-hour interruption, on my questions of Sergeant  
13 Whiteley, but we are at the point where I wanted you to describe,  
14 using People's 87, to describe the points of similarity that you  
15 found between the latent print and the inked print that's on  
16 People's 87 for identification.

17 Can all of the jurors see, if I stand in this  
18 position?

19 JUROR OBRADOVICH: Yeah.

20 THE COURT: All right. Maybe you can use the pointer.

21 THE WITNESS: First-off, I would like to explain that  
22 points of similarity --

23 Q BY MR. KAY: Well, maybe just stand out here a  
24 little bit, so Mrs. Sandberg can see.

25 MR. DENNY: Well, I'm going to object to any voluntary  
26 information by Deputy Chamousis.

27 THE COURT: Sustained. Just answer the question.

28 MR. DENNY: And move that it be stricken.

10-2

1 MR. KAY: Well, I don't think --

2 THE COURT: He hadn't said anything yet.

3 MR. KAY: No, he hadn't said anything.

4 THE COURT: First, what do you mean by "points of  
5 similarity," Mr. Chamousis?

6 THE WITNESS: The differences in the ridges or the  
7 similarities in the ridges; or spaces or dots. This is what  
8 we consider points of identification.

9 Q BY MR. KAY: Now, could you please point out the --  
10 the points of similarity, the 14 points that have been marked  
11 on this exhibit, People's 87, and explain why they are points  
12 of similarity, in your opinion?

13 A All right. For example, point number one is an  
14 ending ridge to the left. Now, we go over to the latent  
15 impression, and point number one is an ending ridge to the  
16 left (indicating).

17 Q Now, what do you mean by an ending ridge to the  
18 left?

19 A It's merely one of the friction ridges, suddenly  
20 stops at that point.

21 Q And what is a friction ridge?

22 A -- friction ridges are found on the fingers and  
23 on the soles of the feet. It's just the -- like the mountains,  
24 and the ridges are the -- I mean, and the depressions are the  
25 valley.

26 Q Now, continue.

27 A All right. Point number two (indicating) is a  
28 bifurcation to the right.

10-3

1 Up here, point number two, is a bifurcation to the  
2 right.

3 Point number three and number four are the two ends  
4 of the short ridge, point number three being the right-hand end,  
5 point number four being the left-hand end --

6 Q All right.

7 A -- here (indicating).

8 Q Now, what --

9 A Oh, I'm sorry. You can see, by point number three  
10 here, the right-hand end of the short ridge, and point number  
11 4 being the left-hand edge of the short ridge.

12 Q Well, first, let me ask you this:

13 Before you continue, do you notice any difference  
14 in appearance between the two -- the latent print and the inked  
15 print?

16 A The latent impression seems to be on a smaller  
17 area. The rolled impression looks -- it looks wider.

18 And this is merely because the rolled impression was  
19 taken under ideal conditions, whereas the latent impression was  
20 some -- he probably just leaned against the trunk and made --  
21 and maybe his hand was scrunched up or whatever would be the  
22 reason.

23 Q Well --

24 A That's why they look a little different.

25 Q Now, is that why the latent print appears to be a  
26 bit messier than the inked print, --

27 A Yes.

28 Q -- because the other print was taken under ideal

10-4

1 conditions?

2 A Yes. That's from -- there may have been dirt on  
3 the trunk; there probably was -- or some -- I'm sorry; the  
4 footlocker, as there probably was, or some on his hand.

10a fol

10a-1

1 Q All right. Now, let me ask you this: When the  
2 inked print is rolled, under what you say is ideal conditions,  
3 how is it done?

4 A It is done -- the way I do it, I just take the  
5 hand, and I roll it with a fingerprint roller. I lay the  
6 hand right on the piece of paper, or the card, as it may be,  
7 and I just put my hand on top and press down, and the print  
8 comes out.

9 Q Now, what's a fingerprint roller?

10 A Well, it's a small rubber roller, approximately--  
11 the rubber's approximately three inches wide by three-  
12 quarters of an inch in diameter, with a metal handle; and  
13 just like a --

14 Q Does it have any type of ink on it?

15 A No. You put the ink on the roller.

16 Q You put the ink on the roller?

17 A And then you apply it on the screen, and then  
18 take the hand and put it on the paper.

19 Q And you press the hand down?

20 A And generally, you come out with --

21 Q Well, generally, do you come out with a very  
22 clear impression, when it's done under those type of conditions?

23 A Yes, unless you -- yes, you do.

24 Q An experienced person, at any rate, would come  
25 out with a clear impression; is that right?

26 A Yes, sir.

27 Q All right. Okay. Now, getting up to -- I think  
28 we are on point No. 5.

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A 5, yes.

Q And what is --

A Point No. 5 is an ending ridge to the right --

MR. MANZELLA: Excuse me, Deputy Chaumosis. Would you move back a little bit? Mrs. Sandberg keeps getting left out.

THE WITNESS: I'm sorry.

Point No. 5 would be an ending ridge to the right.

And on the rolled impression, it's -- you see point No. 5 is an ending ridge to the right (indicating).

Point No. 6 is an ending ridge to the left (indicating). Point No. 6 is an ending ridge to the left (indicating).

Point No. 7 is a bifurcation to the left (indicating). A bifurcation -- meaning one branch breaking off into two branches.

Q One branch of what?

A Of these ridges.

Q Okay.

A No. 7, a bifurcation to the left (indicating).

No. 8, being an ending ridge to the right -- I'm sorry; to the left. No. 8 being an ending ridge to the left (indicating).

No. 9 being an ending ridge upward. No. 9 -- I'm sorry. No. 9 being an ending ridge upward here (indicating) --

Q Well, let me ask you this. Are these points of similarity that you are pointing out now, are they all on the same part of the palm, on each one of these?



10a-3

1 A Yes, they are.

2 In other words, they're in the same place in  
3 relation to each other?

4 A Not exactly the same. They never are exactly the  
5 same.

6 But they are in the same relative spot where they  
7 should be, and that's all that makes the difference.

8 Q In other words, it would depend on whether the  
9 hand was completely flat when the impression was made, or  
10 whether it was scrunched up, or just how it was as to the exact  
11 location of where they would be?

12 A Yes.

13 Q But in other words, when you say "a point of  
14 similarity," are you saying that -- like point No. 6 on here  
15 would be exactly what it is over here, on --

16 A No. In the same relative position, yes.

17 Q In other words, it's the same thing you are talking  
18 about?

19 A Yes.

20 Q All right.

21 A It's never exactly the same.

22 Q Let's see. I think you were on No. 9.

23 A Let's see. I think we passed No. 9. Didn't we  
24 pass No. 9?

25 Q Well, you'd better do No. 9 again, because I  
26 don't --

27 MR. DENNY: You have done No. 9.

28 MR. KAY: Have we? Okay.

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Q No. 10?

A Okay. No. 10 is an ending ridge up (indicating).  
No. 10 is an ending ridge up (indicating) on the rolled  
impression.

Q Now, when you say "up," what do you mean by  
that?

A Well, that's approximately -- straight up and  
down, what I would say, either left or right or up or down.

Q So when you say "up," you mean it's pointed up?

A Yes, towards the ceiling.

10b fls.

10b-1

1 Number eleven is also an ending ridge up (indicat-  
2 ing). Number eleven is the ending ridge up (indicating).

3 Number twelve is an ending ridge down (indicating).

4 Number twelve is the ending ridge down (indicating).

5 Number thirteen is two points, both dots.

6 And number thirteen, again, is two points, both  
7 dots (indicating).

8 And number fourteen is a bifurcation to the left,  
9 upwards to the left.

10 And number fourteen is a bifurcation, upwards to  
11 the left (indicating).

12 Q And this was at the point that you say you found  
13 21 points of similarity, at the time you stopped counting?

14 A Yes.

15 Q All right. And to your knowledge, as an expert in  
16 the field of fingerprints, have any -- have any two people ever  
17 been found in the world to have the same palm prints?

18 A No. To my knowledge, I've never heard of it.

19 Q Or any two people, have they ever been found to have  
20 the same fingerprint?

21 A No, sir.

22 Q Let me ask you this: What portion of the palm of  
23 the man that you rolled as Mr. Davis, what portion of his palm  
24 does the latent print and the inked print represent in People's  
25 87?

26 A This is the lower right-hand portion of the palm  
27 (indicating), the lower quarter of the right -- what we'd call  
28 the heel of the hand.

10b-2

1 Q That's below the little finger --

2 A Right.

3 Q -- on the right hand?

4 A Yes.

5 Q All right. I think you can resume the stand.

6 By the way, Deputy Chamousis, is there any -- to  
7 your knowledge, is there any section in the American Society  
8 of Forensic Scientists, for fingerprint -- for a fingerprint  
9 expert?

10 A No, sir. I checked with my office after --

11 MR. DENNY: Well, just a moment. I'll object and move  
12 that the answer be stricken, as obviously hearsay.

13 THE COURT: Sustained.

14 Q BY MR. KAY: Well, to your knowledge --

15 MR. DENNY: And lack of first-hand knowledge.

16 Q BY MR. KAY: To your knowledge, is there any such  
17 section?

18 A Not to my knowledge.

19 MR. KAY: All right. May I have just a moment, your  
20 Honor?

21 THE COURT: Yes, you may.

22 (Pause in the proceedings while Mr. Kay perused  
23 his notes.)

24 Q BY MR. KAY: When you say "points of similarity,"  
25 on these -- that you've pointed out on the People's 87, are  
26 these also known as points of identification?

27 A Yes.

28 (Further pause in the proceedings while Mr. Kay

10b-3

1 perused his notes.)

2 MR. KAY: Thank you, Deputy Chamousis. I have no further  
3 questions at this time.

4  
5 CROSS EXAMINATION

6 BY MR. DENNY:

7 Q Deputy, what -- what organization is it you say  
8 that there is no section for fingerprint specialists?

9 A The organization?

10 Q Yes.

11 A I called the American --

12 Q No, what organization?

13 I'm sorry. You called somewhere?

14 A Yes. The American Association of Forensic  
15 Sciences, to inquire about --

16 Q The American Association of Forensic Scientists?

17 A Scientists or sciences.

18 Q Well, is it sciences or scientists?

19 A Sciences.

20 Q I see. And you called them over the noontime?

21 A Yes, I did.

22 Q And you determined that there was no special  
23 section for fingerprint experts; is that right?

24 A Per se, there isn't, yes, sir.

25 Q But per se, fingerprint experts, who are  
26 recognized in the field, are made Fellows of the American  
27 College -- or Society or Association or whatever -- of Forensic  
28 Scientists; isn't that right?

10b-4

1 A I don't know, sir.

2 Q You don't know what the qualifications are of any of  
3 the members of that organization; is that right?

10e fol 4 A No, sir, I don't.

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10c-1

1 Q Well, sir, have you ever read Fingerprint  
2 Mechanics by Thomas?

3 MR. KAY: It's irrelevant.

4 MR. DENNY: It goes to his expertise.

5 THE COURT: Overruled -- excuse me. Sustained.

6 Q BY MR. DENNY: Are you familiar with the book  
7 "Fingerprinting," by Charles Edward Chappel?

8 MR. KAY: That's irrelevant also.

9 THE COURT: Sustained.

10 MR. DENNY: It goes to his expertise.

11 THE COURT: Sustained.

12 Q BY MR. DENNY: Have you read -- or even heard of--  
13 have you heard of, sir, the work Practical Fingerprinting,  
14 by Charles O'Hara?

15 MR. KAY: That's irrelevant, your Honor.

16 THE COURT: Sustained.

17 MR. DENNY: Again, it goes to his expertise.

18 THE COURT: The objection is sustained.

19 Q BY MR. DENNY: Have you heard of the book  
20 "Fingerprints and the Law" by Andre A. Moenssens?

21 MR. KAY: That's irrelevant, your Honor.

22 THE COURT: The objection is sustained.

23 Q BY MR. DENNY: Have you heard of the work  
24 "Fingerprints" by Wilton?

25 MR. KAY: It's irrelevant, your Honor.

26 THE COURT: The objection is sustained.

27 Q BY MR. DENNY: Have you read any of those books?

28 MR. KAY: That's irrelevant.

10c-2

1 THE COURT: Sustained.

2 MR. DENNY: On his qualifications, your Honor?

3 THE COURT: Yes. The objection is sustained.

4 Q BY MR. DENNY: Well, sir, have you read any book  
5 on fingerprinting other than the FBI book?

6 MR. KAY: Asked and answered.

7 THE COURT: Sustained -- well, overruled. You may  
8 answer.

9 THE WITNESS: Just fingerprint bulletings that have  
10 come out, from the FBI, and -- and I don't recall the other.  
11 We get the publications up in the lab, and I read those.

12 Q BY MR. DENNY: What is the name of the book that's  
13 put out by the FBI?

14 A The FBI Monthly Manual.

15 Q Oh. What is the name of the book that you say  
16 you read?

17 A The book?

18 Q Yes, the book.

19 A The FBI Manual that I used for my schooling?

20 Q Yes.

21 A That's what it's called, the FBI Manual on --  
22 the Fingerprint Manual.

23 Q Well, there's a proper name for it, isn't there?

24 A No, sir. That's the name of it.

25 Q Isn't it called "Classification of Fingerprints"  
26 by the FBI?

27 A I'm sorry. I don't --

28 Q When's the last time you looked at that book?



10c-3

....

10d fls.

1 A Last month, I would say.

2 Q And have you ever heard of the book, "The

3 Fingerprint Examiner," by Kuhne, K-u-h-n-e?

4 MR. KAY: That's irrelevant.

5 THE COURT: Sustained.

6 Q BY MR. DENNY: Or "The Science of Fingerprint

7 Classification," by Holloway?

8 MR. KAY: That's irrelevant.

9 THE COURT: Sustained.

10 MR. DENNY: Or "Classification and Uses of Fingerprints"

11 by Henry?

12 MR. KAY: That's irrelevant.

13 THE COURT: The objection is sustained.

14 Q BY MR. DENNY: Or "Identification Problems" by

15 Castellanos?

16 MR. KAY: Same objection, your Honor.

17 THE COURT: Sustained.

18 Q BY MR. DENNY: Or a "Journal of Police Science

19 and Criminology"?

20 MR. KAY: Same objection.

21 THE COURT: The objection is sustained.

10d-1

1 MR. DENNY: Well, he says he gets some publication and  
2 doesn't know the name of it. I thought maybe I could help  
3 him with that, your Honor. He should certainly --

4 MR. KAY: Objection to Mr. Denny's comments.

5 THE COURT: The objection is sustained.

6 Q BY MR. DENNY: Well, sir, do you know the name  
7 of any other publication, in the whole world, that's written  
8 on the subject of fingerprint identification, other than the  
9 FBI book, the FBI Manual, as you call it?

10 MR. KAY: That's irrelevant.

11 MR. DENNY: Again, it goes to his expertise, your  
12 Honor.

13 THE COURT: Overruled. You may answer.

14 THE WITNESS: (No response.)

15 THE COURT: You may answer.

16 THE WITNESS: Would you repeat the question?

17 THE COURT: Mr. Williams, would you read it back,  
18 please?

19 (Whereupon the record was read by the reporter  
20 as follows:

21 "Q Well, sir, do you know the name of any  
22 other publication, in the whole world, that's written  
23 on the subject of fingerprint identification, other  
24 than the FBI book, the FBI Manual, as you call it?")

25 THE WITNESS: I don't feel I need it. If I thought  
26 there was a use for it, or I thought it would increase  
27 my qualifications, I would read it.

28 Q BY MR. DENNY: I see. So that as of the time

10d-2

1 that you read that book, some 15 years ago --

2 A I didn't say that, sir.

3 Q When did you first read that book?

4 A I got it 15 years ago. But I haven't put it  
5 down since.

6 Q And you feel that that is the final authorita-  
7 tive, definitive work, and no other book would help you  
8 learn anything about your trade; is that right?

9 A I just -- well, I feel -- if I felt it would  
10 help me, I would read it.

11 MR. DENNY: Could I have the question reread? I  
12 don't think the answer is responsive.

13 THE COURT: The Court believes it was responsive.

14 You may proceed.

15 Q BY MR. DENNY: Now, you have testified that you  
16 roll something like 50,000 prints -- no, those are lifts  
17 you have made.

18 And you have compared 30,000 prints.

19 How many prints have you rolled, say, in the  
20 last -- oh, three years?

21 A Three or 400, maybe.

22 Q Three or 400?

23 A Yes.

24 Q And how many in the month of December, 1969?

25 A I have no way of knowing, sir.

26 Q Do you remember the face of the person that --  
27 whose fingerprints you rolled, just before you rolled Mr.  
28 Davis'?

10d-3

1 A No, sir.

2 Q Do you remember the face of the person you rolled,

3 afterwards?

4 A No, sir.

5 Q Or the face of the person you rolled two people

6 afterwards?

7 A No, sir.

8 Q Or the face of the person you rolled last month?

9 MR. KAY: This is irrelevant, your Honor.

10 MR. DENNY: It goes to his identification of this

11 picture.

12 THE COURT: The objection is overruled.

13 You may answer.

14 THE WITNESS: No, I don't.

15 Q BY MR. DENNY: Isn't it a fact, sir, that you

16 just remember the face in this picture, Exhibit 110, that's

17 been marked for identification here, because Mr. Kay stuck

18 it in front of you today and said, "Hey, you remember that

19 this is Bruce Davis"?

20 A That's not a fact.

21 Q You have got a specific memory --

22 A Yes, I do, sir.

23 Q -- of that particular picture?

24 A Yes, I do.

25 Q You can't recognize the man as he sits here

26 in front of you (indicating)?

27 A No, sir.

28 Q How about anybody on this exhibit, People's 22?

10d-4

1 A Do I recognize anybody there?

2 MR. KAY: That's irrelevant.

3 THE COURT: Sustained.

4 MR. DENNY: It goes to his identification of the  
5 picture, your Honor.

6 MR. KAY: It's irrelevant.

7 THE COURT: All right. You may answer. The Court  
8 will overrule the -- or sustain -- overruled.

9 THE WITNESS: No, I don't recognize anyone on that  
10 picture.

11 Q BY MR. DENNY: You don't recognize any of them?

12 A No, sir.

13 MR. DENNY: All right. Have you got --

14 (Pause in the proceedings while a discussion  
15 off the record ensued at the counsel table between  
16 Mr. Denny and Mr. Kay.)

17 MR. DENNY: May I approach the witness, your Honor?

18 THE COURT: You may.

10 e fls.

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10e-1

1 Q BY MR. DENNY: Sir, showing you this photograph,  
2 People's 41, do you recognize the person depicted there?

3 A No, sir.

4 Q You don't.

5 Showing you the photograph depicted on the  
6 California driver's license --

7 MR. MANZELLA: I don't think that's been marked.

8 Q BY MR. DENNY: -- People's 94, do you recognize  
9 the person depicted there?

10 MR. MANZELLA: Your Honor, I don't think 94's been  
11 marked yet for identification.

12 MR. DENNY: Well, may it be marked for identification  
13 at this time?

14 THE COURT: It will be by the same number, if the  
15 People have no objection?

16 MR. MANZELLA: No objection, your Honor.

17 THE COURT: All right. So ordered.

94 id.

18 People's 94 for identification.

19 THE WITNESS: No, sir, I don't.

20 Q BY MR. DENNY: Now, sir, this picture that you  
21 identified, 110, what kind of hair do you remember that that  
22 person had, that causes you to help recognize that picture?

23 MR. KAY: That's irrelevant.

24 THE COURT: Overruled.

25 MR. DENNY: It goes to his memory, again.

26 THE WITNESS: The main --

27 Q BY MR. DENNY: What kind of hair did he have,  
28 sir? Not "the main."

10e-2

1 A Disheveled, I would say.

2 Q How long?

3 A Medium length.

4 Q Did he have any facial hair?

5 A Yes, he did.

6 Q What sort of facial hair?

7 A He had a beard and a mustache.

8 Q A beard and a mustache?

9 A Yes. What you'd call a mustache. It grew

10 together (indicating) --

11 Q Like this one in People's 41?

12 A Not that heavy.

13 Q A little bit lighter?

14 A Yes.

15 Q The person depicted in 41 is not the same person

16 as depicted in 110?

17 MR. KAY: Well, that calls for a conclusion.

18 Q BY MR. DENNY: Do you know, sir?

19 THE COURT: The objection is sustained.

20 Q BY MR. DENNY: Well, do you recognize the person

21 with the beard and the mustache, in People's 41 here?

22 MR. KAY: Asked and answered.

23 THE COURT: He has already answered that.

24 The objection is sustained.

25 Q BY MR. DENNY: The hair was disheveled, do you

26 say?

27 A Yes, sir.

28 Q How was it disheveled? Just sort of --

10e-3

1 A Well, just, say, uncombed?

2 Q Well, did it appear about as long as --

3 A Not that long.

4 Q -- the hair in -- I beg your pardon?

5 A It didn't appear that long to me, no.

6 Q Just a little shorter?

7 A Yes.

8 Q A little bit longer than it is now?

9 A I would say that was about the length of it.  
10 Maybe a little shorter.

11 I just remembered that that picture was the  
12 person of the prints I took on that particular day.

13 Q You remember that particular picture? Were you  
14 looking at that picture when you took his prints?

15 A No. The picture was shown to me later.

16 Q How much later?

17 A I don't recall offhand.

18 Q Well, when was the next time -- when was the  
19 last time you saw that picture before you saw it today?

20 A I think -- I don't recall the time or the date  
21 or anything. It was the last trial I testified to that  
22 picture.

23 Q Oh. The last trial that you testified to in  
24 connection with that picture?

25 A And those fingerprints, and that --

26 Q All right, sir. Now, when you make an identifica-  
27 tion of somebody, you made the identification by virtue of  
28 the fact that you put down their booking number on the



10e-4

1 exemplar card; isn't that right?

2 A No, sir.

3 Q And the name?

4 A Name and fingerprints. Mainly the fingerprints.

5 Q Well, that is, when you tie the fingerprints into  
6 a particular individual, you do that by virtue of the fact  
7 that, at the time you rolled the prints, you wrote down  
8 their name, and you wrote down their booking number; is that  
9 right?

10 MR. KAY: That's irrelevant, your Honor.

11 THE COURT: Sustained.

12 Q BY MR. DENNY: Well, showing you People's 86,  
13 -B and -C, that -- in two pieces -- is the card that you  
14 rolled the prints for Mr. Davis; is that right?

15 A Yes, sir.

10f fls.

10f-1

1 Q And when you rolled that card, you wrote some  
2 information on it; is that right?

3 A Yes, sir.

4 Q And what information did you write on it?

5 MR. KAY: That's irrelevant.

6 THE COURT: Sustained.

7 Q BY MR. DENNY: Did you write his booking number?

8 MR. KAY: Same objection.

9 THE COURT: Sustained.

10 MR. DENNY: Well, your Honor, I think we have the  
11 right to show that he did --

12 THE COURT: The objection is sustained.

13 The Court believes it's immaterial.

14 Would you approach the bench, Mr. Denny, please?

15 (Whereupon, the following proceedings were had  
16 at the bench among Court and counsel, outside the  
17 hearing of the jury:)

18 THE COURT: I see that you are still trying to  
19 establish the booking number as being a means of identifica-  
20 tion here. This is what you are purporting to do here?

21 MR. DENNY: Yes, your Honor.

22 THE COURT: With the idea in mind of showing the  
23 Court that -- and apparently the Appellate Court -- that  
24 it's unfair to ask this man to -- unfair to you to ask this  
25 man to use that photograph to identify the defendant, --

26 MR. DENNY: That is correct, your Honor.

27 THE COURT: -- is that right? All right.

28 I will ask you to desist from that, because you've

10f-2

1 already established your point. And this is not for the  
2 jury, at any event, and you know every well -- you are not  
3 disputing the fact of the identification -- you are not  
4 disputing the fact that Mr. Davis made those cards, are you?

5 MR. DENNY: Well, I guess I have to. I guess I have  
6 to, if the People aren't going to stipulate to it.

7 THE COURT: Stipulate to what?

8 MR. DENNY: That Mr. Davis made these cards.

9 THE COURT: That he made the prints?

10 MR. DENNY: That's right. I've offered to stipulate  
11 to it. The People won't accept my stipulation, so I guess  
12 I'm going to have to fight it all the way.

13 THE COURT: Well -- all right.

14 MR. DENNY: Now -- all right. Now, if I --

15 THE COURT: So far as the booking number is concerned,  
16 and any questions concerning that, the Court believes that  
17 that would be immaterial at any event.

18 MR. DENNY: Very well, your Honor.

19 THE COURT: It's just a waste of time to continue this.

20 (Whereupon, the following proceedings were had  
21 in open court, within the presence and hearing of the  
22 jury:)

23 Q BY MR. DENNY: Now, sir, among other things,  
24 you are an expert in rolling prints?

25 A Yes, sir.

26 Q And you have described how simple it is to  
27 take the roller that's about three inches wide and about  
28 three-quarters of an inch in diameter, with a metal handle,

10f-3

1 and to ink it up, and to roll it over the print -- roll it  
2 over the palm of the hand, and then press that onto paper;  
3 is that right?

4 A Yes, sir.

5 Q And you have done this for 15 years; is that  
6 right?

7 A Yes, sir.

8 Q And you can take a good print any time; is that  
9 right? Given the proper circumstances?

10 A That's true.

11 Q And when you rolled the print of Mr. Davis,  
12 those were proper circumstances, were they?

13 A Yes, sir.

14 Q They were not taken under any adverse conditions,  
15 were they?

16 A No, sir.

17 Q All right. And that print that was rolled by  
18 you, on the 11th of December, 1970, that particular print,  
19 as far as you were concerned, was the exemplar; is that  
20 right?

21 A Yes, sir.

22 Q As distinguished from the latent; is that  
23 right?

24 A Yes, sir.

25 Q All right. And the exemplar, then, is the  
26 known print with which the latent is compared, to determine  
27 if there is a comparison; is that right?

28 A That's true.

10f-4

1 Q All right. Now, I notice, sir, that this  
2 particular palm print appears to be very light, almost gray  
3 in color instead of a darker, clearer black; is that right?  
4 This is the one you rolled, --

5 A Yes, sir.

6 Q B; is that correct?

7 A Yes, sir.

8 Q Well, was there something wrong, that you  
9 couldn't get a good black print, such as the one that appears  
10 over here in People's 86-A?

11 A I was satisfied with the print, sir.

12 Q You were satisfied with the print?

13 A Yes, sir.

10g fls.

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10g-1

1 Q Well, then, why did you not use an enlargement  
2 of your print, in making up this exhibit here, People's --

3 MR. KAY: Well, I will object to that, as it assumes a  
4 fact not in evidence, that he was the one who made that up.

5 THE COURT: Sustained.

6 Q BY MR. DENNY: Well, you said you asked someone  
7 else, Mr. Easley --

8 A Speaks.

9 Q -- Speaks, I'm sorry. He made this up; is that  
10 true?

11 A Yes.

12 Q All right. And you didn't use the exemplar that  
13 you had rolled; isn't that correct?

14 A That is true.

15 Q You used someone else's, a year earlier; is that  
16 right?

17 A Yes, sir.

18 Q Because it was a heck of a lot better than yours;  
19 is that right?

20 A No, sir. It's the only one we had.

21 Q It's the only one you had? Oh, is that right?

22 A Yes, sir.

23 Q And when was it that you made this up?

24 A Sometime after the make was accomplished. I  
25 don't recall just exactly the date. First, we had the make,  
26 and then we made up the exhibit.

27 Q I see. Well, it is a fact, is it not, sir,  
28 looking at the two, that --

10g-2

1 By the way, which hand -- which palm print is --  
2 A The right.  
3 Q Is this the right?  
4 A Yes, sir.  
5 Q The right. And looking at the right palm print  
6 that you made, that you rolled, particularly the section  
7 of the hand that you talked about here, the lower right-  
8 hand portion, that's not as clear even as the latent, is it?  
9 A It's just about the same as the latent.  
10 Q Well, did you do that on purpose, sir? Did you  
11 make an exemplar that was just about as clear as an almost  
12 illegible latent?  
13 A I was satisfied.  
14 MR. KAY: Objection, your Honor. That assumes a fact  
15 not in evidence, that the latent was illegible.  
16 THE COURT: Sustained. Argumentative.  
17 Q BY MR. DENNY: Well, do you call this latent a  
18 good latent?  
19 A Good enough.  
20 Q Good enough?  
21 A Yes, sir.  
22 Q It's not what you would call a good latent,  
23 though?  
24 A It's good enough.  
25 Q Good enough. All right.  
26 You would prefer to have a better latent to make  
27 a comparison, though; is that right?  
28 A It was good enough, sir.

10g-3

1 Q Would you have preferred to have a better latent  
2 print than that to make a comparison?

3 MR. KAY: That's irrelevant.

4 THE COURT: Sustained.

5 Q BY MR. DENNY: Now, sir, in your experience as  
6 an expert, in the field of fingerprint identification, would  
7 you tell us again what a latent print is?

8 A It's an impression left by the friction ridges of  
9 the skin when placed on a surface.

10 Q An impression left by the friction ridges of the  
11 skin, when what?

12 A When placed on a flat surface.

13 Q Well, the friction ridges themselves don't leave  
14 any impression, do they?

15 A Yes, sir.

16 Q It's the oils of the skin, the moisture?

17 A That's where they come from, the friction ridges  
18 of the skin. The little pore openings that exude the  
19 amino acids and proteins and salts and otherwise.

20 Q All right.

21 Well, then, it's the amino acids and the salt  
22 and the oils that cause the latent, and not the friction  
23 ridges themselves; isn't that right?

24 A Yes. Actually, it would be.

25 Q And if a hand is very, very dry -- or has for  
26 some reason been dried out -- there will be no print left;  
27 is that right?

28 A Yes, sir, that could be.



10g-4

1 Q In other words, if a hand sweats greatly, there  
2 will probably be quite a bit of amino acids, et cetera, that  
3 are left by the placement of the finger or palm on a surface;  
4 is that right?

5 A Yes, sir.

6 Q All right. What is poroscopy?

7 MR. KAY: That's irrelevant, your Honor.

8 MR. DENNY: This goes to his expertise.

9 THE COURT: You may answer.

10 The objection is overruled.

11 THE WITNESS: That's the study of the pores in the  
12 friction ridges of the skin --

13 Q BY MR. DENNY: And --

14 A -- and the valleys.

10h fls.

28

10h-1

1 Q Well, a study for what purpose?

2 A For identification purposes.

3 Q And how does one make identifications by the use  
4 of poroscopy?

5 THE COURT: That's irrelevant.

6 MR. DENNY: Again, it goes to the expertise.

7 THE COURT: I'll sustain my own objection. Let's  
8 proceed.

9 Q BY MR. DENNY: Well, sir, in this particular case,  
10 now, you say you found a latent after you had completely  
11 dusted that particular footlocker?

12 A Yes, sir.

13 Q And when you say you had completely dusted it, was  
14 that top, bottom and all sides?

15 A Yes, sir.

16 Q Well, it was standing on something, wasn't it? Or  
17 did you have it suspended?

18 A It was standing on something.

19 Q What was that?

20 A On the ground.

21 Q Well, when you dusted it, what end -- what portion  
22 of it was standing on the ground?

23 A I guess the bottom of it would have been standing on  
24 the ground.

25 I moved it around to get all the sides.

26 Q Well, when the bottom was standing on the ground,  
27 then, is it fair to say that you didn't dust the bottom?

28 A Not at that time, no, sir.

10h-2

1 Q Well, was this a dirt floor, or what was it?

2 A No, it was a garage floor.

3 Q A garage floor. And does movement around a surface

4 tend to disturb fingerprints that might be there?

5 A No, sir -- not unless you rub against it.

6 Q Well, if a trunk such as that runs against a floor,

7 a -- was this a concrete floor?

8 A Yes, sir.

9 Q Does that not tend to eradicate any prints that may

10 be there?

11 A That's hard for me to say, sir. This is -- you know,

12 I don't know whether there's any ridges on that -- as you

13 notice, that trunk has ridges on the corners.

14 Q Right.

15 A And that would keep that surface from touching

16 the ground.

17 Q All right. Did you check the bottom of that trunk,

18 then?

19 A I checked all the sides.

20 Q All right. And did you find any prints at all?

21 Other than the one you say you found the latent here, 86, --

22 A No, sir.

23 Q I'm sorry. 85.

24 A Just that one.

25 Q And you used what kind of powder?

26 A It's a fingerprint powder that we have in the

27 Sheriff's Office.

28 Q Well, what is it, sir? What is the formula?

KOH-3

101-2

1 A It contains lampblack, graphite, fuller's earth, and  
2 resin, finely ground.

3 Q All right. And you take this and dust it on, with a  
4 dusting brush?

5 A Yes, I do.

6 Q And then you blow it off somewhat, do you?

7 A No, sir.

8 Q What do you do with it, after you have dusted it on  
9 with a dusting brush?

10 A Then we lift the print off with tape and put it on a  
11 white piece of paper.

12 Q Well, this is if you -- if you see something that  
13 appears to be a print; is that right?

14 A Yes, sir.

15 Q And is it a fact, sir, that there is an art to  
16 dusting for prints?

17 A Yes, sir.

18 Q In fact, you might say it's an art, rather than a  
19 science, --

20 A Yes, sir.

21 Q -- Is that right? And that if, for instance, you  
22 brush a little too hard with the brush, you can destroy prints;  
23 is that right?

24 A Yes, sir.

25 MR. KAY: That's irrelevant, your Honor.

26 THE COURT: Sustained.

27 Q BY MR. DENNY: If you put too much powder on, you  
28 might destroy or -- or make unobservable the prints; is that

10h-4  
10h-3x

1 right?

2 MR. KAY: That's irrelevant.

3 THE COURT: The objection is sustained.

4 MR. DENNY: Your Honor, this goes to whether or not there  
5 are more prints or not, or whether he did a job or not on it.

6 THE COURT: The objection is sustained.

7 Q BY MR. DENNY: Well, sir, were you able to find any  
8 prints on any other trunk, footlocker?

9 A No, sir. Just on the one.

10 Q Well, did you print anything else in the car?  
11 Attempt to print anything else in the car?

12 A Yes, I did.

13 Q What was that?

14 A The entire inside of the car, the printable  
15 surfaces. Three containers -- I think there were three bottles,  
16 partially filled -- two were partially filled; one was empty.

17 Q These were liquor bottles; is that right?

18 A I think two were liquor bottles and one was a coke  
19 bottle -- and a canteen, as I recall.

101 fol

10i-1

1 Q And the entire inside of the -- in the car?

2 A Yes.

3 Q Were there leaves in the car, did you say?

4 A Just dust, mainly.

5 Q Just dust?

6 A Dust and debris, I guess.

7 Q Inside or outside?

8 A Inside.

9 Q How about the outside?

10 MR. KAY: That's irrelevant.

11 THE COURT: I'm not sure I understand the question.

12 Q BY MR. DENNY: Was there dust on the outside of  
13 the car?

14 A Yes. The car was generally dirty, in and out.

15 Q Did you attempt to print anything on the outside?

16 A Just the windows, as I recall, and the edges of  
17 the door.

18 Q Did you attempt to print the inside of the windows?

19 A Yes, sir.

20 Q In other words, you took that powder, and by the  
21 time you were through, the whole inside -- and at least the  
22 windows on the outside -- and all of the two footlockers,  
23 and three bottles and one canteen, at least, were covered  
24 with that fine dust; is that right?

25 A Yes, sir.

26 Q And the only print you found was this latent,  
27 People's 85; is that right?

28 A Yes, sir.

10i-2

1 Q Now, sir, as a latent print, is there anything  
2 known as a true latent, as distinguished from any other kind  
3 of latent?

4 A I don't -- that's not familiar to me. All I've  
5 heard is latent prints. I don't know whether they're true  
6 or false.

7 A latent print is a latent print.

8 Q In other words, if I put down my hand here  
9 (indicating), and just the sweat of my fingers appears on  
10 the wood, that's a latent print; is that right?

11 A Yes.

12 Q And suppose I stick my finger in my ear and  
13 get a little wax on it, and stick it down there.

14 Is that a latent print?

15 A That could be a latent print. It could be a  
16 plastic print.

17 Q Oh, a plastic print?

18 A Yes, sir.

19 Q Is that something -- is there a difference, now,  
20 between a latent print and a plastic print?

21 A Yes, sir.

22 Q And what is that?

23 A The plastic print, you could probably lift  
24 three or four dozen times, maybe; whereas a latent print,  
25 you might only lift it once or twice, by applying the power.

26 Q Now, when you are talking about lifting a print,  
27 once or twice or half a dozen or so times, it depends on the  
28 amount of time that's passed since that print was placed

10i-3

1 there; isn't that correct?

2 A Yes, sir.

3 Q So that even with the plastic print, from ear  
4 wax or something like that, after a period of time that  
5 disappears; is that correct?

6 A Yes. That would be a fair assumption.

7 Q All right. Or, if I cut myself -- as I did  
8 this morning, with a piece of paper -- and put my finger  
9 on the blood, and placed that down there, would that also be  
10 a plastic print?

11 A Yes, sir. I would consider that more of a plastic  
12 print than a latent print.

13 Q All right. And something like that would tend  
14 to last almost -- oh, almost indefinitely, as a print?

15 A That would be hard to say.

16 Q You don't have the experience or the expertise  
17 to know how long a print might last that was made by a  
18 finger that had hit some blood and then placed that bloody  
19 print down?

20 MR. KAY: Well, that assumes a fact not in evidence,  
21 that anybody knows that.

22 THE COURT: Overruled. You may answer.

23 THE WITNESS: I don't think anybody would know that,  
24 sir.

25 Q BY MR. DENNY: Well, it would depend on the  
26 surface, wouldn't it?

27 A Do you mean you want a definite time as to how  
28 long the print would last on the surface?



10i-4

1 Q Well, taking this blood, sir, a print made with  
2 a bloody finger, placed on the surface like this (indicating)--

3 MR. KAY: That appears to be --

4 Q BY MR. DENNY: -- the longevity, the lifetime  
5 that that print would last, depends upon the type or surface  
6 that it's placed upon, isn't that correct?

10j fls.

7 A Yes.  
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MR. KAY: That appears to be irrelevant, your Honor.

THE COURT: All right. The answer is stricken. It is irrelevant.

Q BY MR. DENNY: Well, sir, a latent print -- let's just take a latent print, not a plastic print.

Does it make any difference as to how long such a print will last -- that is, a latent print, one made simply by the oils of the fingers, from the pores of the fingers?

Does it make some difference on how long that will last, as to the surface upon which that print is placed?

A Yes, it does.

Q And if a print is placed, for instance, on a very porous surface, it will not last very long; is that right?

A Yes, sir.

Q And if a print is placed on a very non-porous surface, it will tend to last somewhat longer?

A Yes, sir.

Q And under the most ideal circumstances, sir, is there a period of time within which you can say that a latent print, placed on an ideal, non-porous surface, would be expected to disappear, so that you could not get a lift from it?

MR. KAY: That's irrelevant.

MR. DENNY: It's certainly relevant, your Honor.

THE COURT: Read it back to me, will you, Mr. Williams?

(Whereupon the record was read by the reporter as follows:

10j-2

1 "Q And under the most ideal circumstances,  
2 sir, is there a period of time within which you can  
3 say that a latent print, placed on an ideal, non-  
4 porous surface, would be expected to disappear,  
5 so that you could not get a lift from it?"

6 MR. KAY: It's also ambiguous.

7 THE COURT: It's rather ambiguous.

8 But if he understands it, he may answer. Over-  
9 ruled.

10 Q BY MR. DENNY: Do you understand the question?  
11 I can rephrase it.

12 A I would say that you'd have to have more informa-  
13 tion, than what you are giving me, before I can make a safe  
14 assumption.

15 If this print that you are talking about is  
16 protected, it will last sometime. If it's left out in the  
17 weather, and the elements, it won't last very long at all.

18 Q Well, I'm talking about just a normal latent  
19 print, such as one that I am making right now (indicating)  
20 on the jury box here; right? Let's take that, a normal  
21 latent print.

22 MR. KAY: Well, that --

23 Q BY MR. DENNY: And assume the print is placed  
24 on a non-porous surface, a metal surface -- an enamel metal  
25 surface; all right?

26 A (Witness indicating affirmatively.)

27 Q Now, under the most ideal circumstances,  
28 protected, everything else, how long will such a print last?

10j-3

1 MR. KAY: Well, that's ambiguous, as to what "ideal  
2 circumstances" --

3 THE COURT: The objection is sustained.

4 Q BY MR. DENNY: Well, what are the ideal circum-  
5 stances that you talk about? What are the circumstances  
6 under which a print will last longest?

7 A Protected mainly from the elements, and on a  
8 good surface.

9 Q All right. Under the circumstances that such a  
10 print as I've just described, placed on the type of surface  
11 I've just described, is protected from the elements, and  
12 on the surface we have been talking about, how long, sir,  
13 would you expect such a print to last?

14 A I don't think there's any definite time that  
15 you could put down, where that print would disappear.

16 It could be any time from within five minutes,  
17 when you left it, up to 30 days ago.

18 Q I'm sorry?

19 A Up to 30 days ago, maybe two months ago.

20 Q Is it your testimony it would last up to two  
21 months?

22 A It could.

23 Q Is Mr. Flois White one of the deputies in  
24 your section, sir?

25 A Yes, he is.

26 Q Is he over you or under you? Or the same?

27 A On a par.

28 Q On a par. Well, would it in any way alter your

10j-4 1

statement to know that Mr. White testified before this jury  
that, at the most, it would last two weeks?

10k fls. 3

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1 MR. KAY: Well, that assumes a fact not in evidence.

2 MR. DENNY: It is in evidence.

3 MR. KAY: The record speaks for itself on that.

4 It's irrelevant.

5 MR. DENNY: It's not irrelevant.

6 THE COURT: Sustained.

7 Q BY MR. DENNY: Well, sir, is it a fact that under  
8 the most ideal circumstances, protected from the elements,  
9 on a surface such as we have been talking about, an enamel  
10 metaled surface, that a latent print will last no longer  
11 than two weeks?

12 A I don't think you can say that, sir.

13 Q Well, how long will it last?

14 A I think I've already answered the question.

15 THE COURT: Yes. He has said --

16 Q BY MR. DENNY: Well, you've said two months.  
17 Is that the outside limit, two months?

18 A I don't -- there's just no way to know; five  
19 minutes before, until maybe two months afterwards; just  
20 depending on the -- maybe it was -- there was a vacuum;  
21 maybe there was no friction, no elements on the surface at  
22 all.

23 It might last two months.

24 Q All right. Now, what causes a print to  
25 disappear?

26 A Evaporation, or work on the -- the elements  
27 working on the print.

28 Q All right. Heat?

10k-2

1 A Heat is one thing. Moisture is another.

2 Q All right. If a trunk, for instance a metal  
3 trunk such as we have here, People's 65-G (indicating),  
4 and the surface of this trunk, an enamel surface --  
5 the surface, indeed, from which you got the print -- that  
6 is metal, by the way, this green material; is that metal?

7 A I would assume, yes, sir -- or plastic.

8 Q Well, which is it? Do you know?

9 THE COURT: It's immaterial, anyway.

10 THE WITNESS: I don't.

11 THE COURT: Let's proceed, Mr. Denny.

12 Q BY MR. DENNY: And you place that in the trunk  
13 of the car, the closed, locked trunk of a car, in the  
14 San Fernando Valley -- indeed, in the Chatsworth area;  
15 indeed, around the intersection of Gresham and Independence  
16 Street -- and let that car remain there for a period of  
17 days, until it gets to the point where there is dust all  
18 over the inside and the outside of it, so that it looks as  
19 if it's been there for quite a period of time -- and take  
20 the period from September, October and November of 1969,  
21 the Indian summer months --

22 MR. KAY: Well, I'll object to that, because that --

23 MR. DENNY: All right. I'll --

24 MR. KAY: -- that comment by Mr. Denny --

25 MR. DENNY: I'll stipulate that the Indian summer  
26 months may go out.

27 Q Take that period of time, that trunk, that  
28 footlocker in the trunk of that car, subject it to whatever

10k-3

1 heat may have been generated by the San Fernando Valley sun  
2 during that particular period of time, in a closed trunk of  
3 a car,

4 Would you expect, under the circumstances, that  
5 a normal latent print, such as we have been talking about,  
6 would be eradicated --

7 MR. KAY: Well, your Honor --

8 Q BY MR. DENNY: -- in a very short period of time?

9 MR. KAY: I'm going to object. It calls for specula-  
10 tion.

11 MR. DENNY: It goes to his expertise.

12 THE COURT: Overruled.

13 MR. KAY: Well, your Honor, I'll object unless he can  
14 show what the weather conditions were during those three months.

15 THE COURT: Overruled. You may answer.

16 THE WITNESS: I have no way of knowing the time element  
17 on those latent prints. This is what I told you before.

18 There's no way of predicting that.

101 fls.



101-1

1 Q BY MR. DENNY: All right. I am not --

2 A To my knowledge, there's no way of anybody  
3 predicting the exact time a latent print will stay on a  
4 surface.

5 Q Well, you can predict with reasonable certainty  
6 that within just a few days, a print will disappear from a  
7 porous surface; isn't that right?

8 A It probably wouldn't even go on the porous surface,  
9 depending on the material.

10 Q You'd have to use ninhydrin or something like  
11 that --

12 A Yes, sir.

13 Q -- to bring it out; is that right?

14 A Yes, sir.

15 Q All right. But you could bring it out with  
16 ninhydrin?

17 A Perhaps.

18 Q But are you saying now that when you get to the  
19 more non-porous surfaces, then there is no way of determining  
20 how long a print will last?

21 A Not within the time limit that you are saying, no,  
22 sir.

23 Q I'm sorry. Not within the time limit that I'm  
24 saying?

25 A You are saying two weeks.

26 I don't see how anybody can predict that.

27 Q Well, all right. Let's get off the two-week kick.  
28 That's not what I said; that's what someone else said. But --

10L-2

1 A Oh, I'm sorry.

2 Q -- I am asking you -- and you can tell, based on  
3 your expertise, your expert knowledge or your experience --  
4 isn't it a fact that a latent print on a metal trunk, a metal  
5 footlocker in a metal car, sitting for three months in the  
6 San Fernando Valley sun, day in and day out, would have --  
7 would be expected to have disappeared within the space of a very  
8 short period of time?

9 MR. KAY: That assumes a fact not in evidence.

10 THE COURT: Sustained.

11 Q BY MR. DENNY: Well, sir, let's take a hypothetical  
12 situation --

13 A Okay.

14 Q -- in connection with this situation.

15 Well, first of all, you indicated, I think, that  
16 there was a great deal of dust on the car; is that right?

17 A Yes, sir.

18 Q And did it appear that the -- by the amount of  
19 dust, that the car had been sitting out for at least a month?

20 MR. KAY: Well, that calls for speculation.

21 THE COURT: Sustained.

22 Q BY MR. DENNY: Well, sir, based on the amount of  
23 dust and debris on that car, could you determine how long it  
24 might have been sitting out there?

25 A I have no --

26 MR. KAY: I'm sorry. I withdraw the objection.

27 THE WITNESS: I have no way of knowing, sir. It just  
28 looked dirty to me.

101-3

1 Q All right. Now, sir, now assume a person was  
2 killed at about the end of August, 1969, and assume his car was  
3 taken from him at about the end of August, 1969, and assume  
4 that his car was taken to the corner of Gresham and Independence,  
5 at about the end of August, 1969;

6 And assume someone, for some reason, had taken that  
7 trunk at about that time, and had placed a palm print, somehow,  
8 on that trunk (indicating).

9 And assume that the car and the trunk had remained  
10 there, at about the intersection of Independence and Gresham,  
11 in the Chatsworth-Canoga Park area, during the end of August  
12 until the time you saw it, December 9, 1969.

13 Have you got all those assumptions?

14 A Yes, sir.

15 Q Assuming all those facts to be so, would you not  
16 expect, based on just normal knowledge of what the weather  
17 conditions are in the San Fernando Valley, in those late summer  
18 or early fall months -- in the winter months, would you not  
19 expect that a latent print, a palm print placed there  
20 (indicating), would have disappeared within that period of  
21 time?

22 MR. KAY: Well, your Honor, I am going to object. It  
23 calls for speculation. He doesn't know what the weather  
24 conditions were in the San Fernando Valley at that time.

25 THE COURT: Overruled. You may answer.

26 THE WITNESS: Just with what assumption you gave me, I  
27 would say that the probabilities are that the print might not  
28 stay on the trunk.

101-4

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Q BY MR. DENNY: All right. And why do you say that, sir?

A Well, like you mentioned before, the heat would tend to evaporate the print.

MR. DENNY: I have no further questions.

10M fol

10m-1

1 THE COURT: Mr. Kay?

2  
3 REDIRECT EXAMINATION

4 BY MR. KAY:

5 Q Deputy Chamousis, you don't know what the weather  
6 conditions were in the San Fernando Valley in September,  
7 October or November of 1969, do you?

8 A No, sir.

9 Q All right. And can you tell us, for -- well,  
10 can you tell us how long that latent print, People's 85,  
11 was on the trunk, People's 65-G?

12 A No, sir. I have no way of knowing.

13 Q All right. So you don't know whether it could  
14 have been one month or two months or three months or one  
15 day or two days; is that right?

16 A I have no way of knowing, sir.

17 Q And when you answered Mr. Denny's question about,  
18 "It probably wouldn't have remained on there from the end of  
19 August till the time that you discovered it, in 1969," you  
20 were just speculating, weren't you?

21 A Yes, sir. That was just taking a general rule.

22 Q All right. And again, you didn't know the weather  
23 conditions out there?

24 A No.

25 Q So is it possible that the print could have  
26 remained on there for that period of time?

27 A I assume it is, yes, sir.

28 Q And, Deputy Chamousis, does one become a

10m-2

1 fingerprint expert by reading books, or by working in the  
2 field?

3 A I'd say more working in the field, after you get  
4 your basic knowledge. The main thing is to get out there and  
5 do it.

6 Q All right. And this is what you have done for  
7 15 years; isn't that right?

8 A Yes, sir.

9 Q All right. And the exhibit, People's 87, when  
10 you made the comparison between the inked print and the latent  
11 print, you made this comparison before -- or, did you make  
12 this comparison before you rolled Mr. Davis' prints on  
13 December 11th, 1970?

14 A Yes, sir, I did.

15 Q All right.

16 And you made this comparison before Mr. Davis  
17 was arrested, isn't that right? Assuming that he was  
18 arrested on December 2nd, 1970?

19 A Yes, I did.

20 Q All right. And again, the first comparison you  
21 made, which is part of People's 87, the exemplar, the blowup  
22 exemplar picture, where it says "Inked print" on People's 87,  
23 that was taken from a fingerprint exemplar card which you  
24 yourself did not prepare; is that correct?

25 A That's true.

26 Q All right. And this is People's -- that's  
27 People's 86 -- 96-A?

28 A Yes, that's true.

10m-3

1 Q All right. And that was prepared on January  
2 21st, 1970?

3 MR. DENNY: I'll object to that as calling for hearsay.

4 THE COURT: Sustained.

5 Q BY MR. KAY: Well, do you recognize the card,  
6 People's 86, as being a fingerprint exemplar card of the  
7 Los Angeles County Sheriff's Department?

8 MR. DENNY: I will object to that as irrelevant and  
9 immaterial. And the card speaks for itself.

10 THE COURT: Overruled. You may answer.

11 THE WITNESS: Yes, I do.

12 Q BY MR. KAY: All right. And when fingerprints  
13 are -- are rolled, of a person, does the deputy rolling  
14 the print put the date that the prints were rolled in the  
15 space where it says "Date" in the upper right-hand corner  
16 of the fingerprint exemplar card?

17 MR. DENNY: Object to that as irrelevant and immaterial.

18 THE COURT: Sustained.

19 Q BY MR. KAY: Well, in other words, People's 86  
20 was the card that you first made the comparison from; is  
21 that right?

22 A That's true.

23 Q All right. And then you later on made a compari-  
24 son between the card that you took and the latent print; is  
25 that right?

26 MR. DENNY: Objected to as asked and answered.

27 THE COURT: Overruled. You may answer.

28 THE WITNESS: Yes, it is.

10m-4

1 Q BY MR. KAY: And again, showing you People's  
2 110, the photograph of the male individual, is there any  
3 doubt at all in your mind that this is the individual whose  
4 prints you rolled on December the 11th, 1970, who identified  
5 himself as Bruce Davis?

6 A Yes, that's the fellow.

7 MR. KAY: All right. Your Honor, at this time, I  
8 would ask that People's 110 be received into evidence,  
9 so that I can pass it to members of the jury, so that they  
10 could see the photograph and make a comparison between the  
11 photograph and Mr. Davis.

10n fls.



10N-1

1 MR. DENNY: Well, I'll object to its introduction, your  
2 Honor, on the grounds previously stated.

3 Two, it does not need to be passed to the jury.  
4 Every People's exhibit does not need to be passed to the jury  
5 at this time.

6 THE COURT: All right. The Court will admit 110 into  
7 evidence.

110 AD

8 However, I don't think it's necessary for the jury  
9 to see it at this time.

10 MR. KAY: Well, may we approach the bench?

11 THE COURT: All right. You may.

12 MR. KAY: Thank you.

13 (Whereupon, the following proceedings were had at  
14 the bench among Court and counsel, outside the hearing of the  
15 jury:)

16 MR. KAY: The reason I wanted to do it at this time is  
17 because I think that the Court's observations earlier were  
18 correct; that it's up to the jury to make the comparison be-  
19 tween the photograph and Mr. Davis.

20 Now, obviously, up in the jury room, they're not  
21 going to have Mr. Davis -- or, at least I hope they're not  
22 going to have Mr. Davis up there in the jury room, to make the  
23 comparison.

24 Obviously, at one time or another, they're going  
25 to have to look at the picture and look at Mr. Davis at the  
26 same time. That's why I wanted to give it to them now, your  
27 Honor.

28 MR. DENNY: Your Honor, this is such a farce. This is

10N-2

1 really such a farce.

2 THE COURT: Well, the Court doesn't believe so,  
3 Mr. Denny.

4 MR. DENNY: Well, how -- why do they have to look at the  
5 picture to make a comparison with Mr. Davis, now? When we'll  
6 stipulate that Mr. Davis was the one whose prints were rolled  
7 there.

8 THE COURT: They'll have opportunity to see it, and they  
9 will remember Mr. Davis. They've sat opposite from him for  
10 months now.

11 Let's proceed.

12 (Whereupon, the following proceedings were had in  
13 open court, within the presence and hearing of the jury:)

14 THE COURT: Anything further?

15 MR. KAY: I don't think so. But let me just -- if I  
16 may have a moment?

17 (Pause in the proceedings while Mr. Kay perused  
18 his notes.)

19 MR. KAY: No, I don't have any further questions.

20 Thank you, Mr. Chamousis.

21 THE COURT: Any further questions?

22 MR. DENNY: Yes.

RE CROSS

## RE CROSS EXAMINATION

25 BY MR. DENNY:

26 Q Deputy Chamousis, why did you look over at  
27 Mr. Davis, when Mr. Kay handed you that picture?

28 MR. KAY: That's irrelevant.

10n-3

1 MR. DENNY: It goes to his --

2 THE COURT: Sustained.

3 Q BY MR. DENNY: Well, sir, is it a fact that you did  
4 look over at him when Mr. Kay handed you the picture?

5 MR. KAY: That's irrelevant.

6 THE COURT: Sustained.

7 Q BY MR. DENNY: Well, sir, you can tell Mr. Davis  
8 is the guy whose prints you rolled, can't you?

9 MR. KAY: That's irrelevant.

10 Q BY MR. DENNY: From looking at him?

11 THE COURT: Overruled.

12 THE WITNESS: (No response.)

13 THE COURT: You may answer.

14 THE WITNESS: No. I looked at you, sir. I didn't look  
15 at Mr. Davis. I'm sorry.

16 Q BY MR. DENNY: Oh, I thought your eyes wandered a  
17 little bit farther.

18 They didn't go over to Mr. Davis?

19 A No. I was looking at you, for an objection.

20 (Laughter.)

21 Q BY MR. DENNY: Well, all right. That's reasonable.

22 Now, you said that after you read the book -- or  
23 even maybe while you are reading the book -- or let's even go  
24 back.

25 Reading the book isn't all that important; it's  
26 experience that counts; is that right?

27 A I feel that way, yes, sir.

28 Q All right. But is it a fact, sir, that you really

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haven't had an awful lot of experience in determining how long latent prints last, under given conditions? Is that a fact?

A I don't think there's any such experience, sir, to my knowledge.

Q Because you haven't read the knowledge that's accumulated in the books (indicating) that are written on the subject; isn't that right?

MR. KAY: That's assuming a fact not in evidence, that any books say that there is any such experience.

THE COURT: Sustained.

Q BY MR. DENNY: Well, sir, have you had the opportunity to read from "Fingerprint Mechanics," the chapter on the longevity of fingerprints?

MR. KAY: That's irrelevant.

THE COURT: Sustained.

10o fol

10b-1

1 Q BY MR. DENNY: Is there a chapter on longevity of  
2 fingerprints in the FBI Fingerprint Manual?

3 MR. KAY: That's irrelevant.

4 THE COURT: Overruled.

5 THE WITNESS: I think they briefly cover the subject,  
6 but like I say, there's no definite black and white rule that  
7 you can go to as to longevity of fingerprints.

8 Q BY MR. DENNY: Well, how do you know, if you  
9 haven't read the literature on the subject?

10 MR. KAY: Argumentative.

11 THE COURT: Sustained.

12 Q BY MR. DENNY: Well, can you say, sir, for a fact,  
13 that there is no definite rule, set forth in any literature  
14 on the subject, on the longevity of fingerprints?

15 MR. KAY: It's irrelevant.

16 THE COURT: Sustained.

17 MR. DENNY: No further questions, your Honor.

18 MR. KAY: No further questions.

19 May Deputy Chamousis be excused?

20 MR. DENNY: No objection.

21 THE COURT: Deputy Chamousis, you are excused.

22 MR. KAY: We do have a young fellow here that's been  
23 waiting for a couple of days, and he's a student, and I  
24 would like to put him on this afternoon, if possible.

25 I think he will be pretty short.

26 THE COURT: All right.

27 MR. KAY: Richard Barber.

28 THE COURT: Anybody desperately need a recess?

10b-2

1 I don't see any hands.

2 JUROR OBRADOVICH: One. Next Monday.

3 THE CLERK: You do solemnly swear that the testimony  
4 you may give in the cause now pending before this Court  
5 shall be the truth, the whole truth, and nothing but the  
6 truth, so help you God?

7 THE WITNESS: I do.

8  
9 RICHARD BARBER,  
10 called as a witness by and on behalf of the People, having  
11 been first duly sworn, was examined and testified as follows:

12 THE CLERK: Please take the stand and be seated.  
13 Please state and spell your full name.

14 THE WITNESS: Richard Barber; R-i-c-h-a-r-d,  
15 B-a-r-b-e-r.

16 THE COURT: Richard, you can pull that microphone over  
17 to your face.

18  
19 DIRECT EXAMINATION

20 BY MR. KAY:

21 Q All right. Richard, directing your attention  
22 to the middle of February, 1970, did you go on an outing  
23 to the Goler Wash-Ballararat area?

24 A Yes.

25 Q And who did you go with?

26 A My father and my brother.

27 Q All right. And what was the purpose of your  
28 outing there?

10b-3

1 A To look for wild burros there.

2 Q Now, directing your attention to the period of  
3 February 14th and 15th, 1970, did you go along the road  
4 leading from Ballarat to the Goler Wash area?

5 A Yes.

6 Q And while you were going up that road, did you  
7 find anything unusual?

8 A Yes.

9 Q What did you find?

10 A A briefcase and a suitcase.

11 Q All right. And whereabouts in relation to the  
12 road did you find these items?

13 A Right next to the road.

14 Q All right. Were they over anything or under  
15 anything?

16 A Under some bushes.

17 Q And can you describe the items that you found?

18 A Well, the suitcase was blue, and the briefcase  
19 was reddish-brown.

20 Q All right. Richard, I show you People's 54 for  
21 identification. Do you recognize this briefcase or attache  
22 case as being one of the two items that you found?

23 A Yes.

24 Q All right. And do you recognize the "Reverend  
25 Donald Jerome Shea" that it has on it?

26 A Yes.

27 Q And did it have it on it at the time that you  
28 found it?

10b-4

1 A Yes.

2 Q All right. And directing your attention to my  
3 right here, I have a blue suitcase, which is People's 65-H.

4 Do you recognize -- excuse me. Do you recognize  
5 this suitcase?

6 A Yes.

7 Q And is that the blue suitcase that you described  
8 as having found?

9 A Yes.

10 Q Now, did you open the attache case and the  
11 suitcase after you found them?

12 A Yes.

13 Q And do you remember any of the items that you  
14 saw inside the attache case?

15 A There were checks and some aspirin and some  
16 ink, and other things I can't remember.

17 Q All right. Now, directing your attention to an  
18 item -- well, one of the contents; I've opened the attache  
19 case, and -- in front of you, and inside, as you notice,  
20 there are several envelopes with items inside.

21 You say that you found some checks in the  
22 attache case.

23 Do you recognize the checks in this black -- this  
24 little black checkbook, which is from the First -- the First --  
25 in Steubenville, the First National Bank and Trust Company in  
26 Steubenville?

27 Do you recognize those checks?

28 A Yes.

10 p fls.



10p-1 1

Q And they have the name Dwayne E. Schwarm on the checks, --

A Right.

Q -- you recognize that?

A And does the internal condition of the attache case appear to be similar to the way it was when you found it?

A Yes.

Q There appears to be a bottle of Double Action Ink Eraser.

A Do you remember that specifically being in there?

A Yes, I do.

Q And a bottle of Anacin tablets?

A Yes.

Q Those are the aspirins that you described?

A Um-hmm.

Q And a -- some Rizla licorice paper.

A Do you recognize that?

A I don't recall that.

Q You don't remember that?

A No.

Q And do you remember there being some other miscellaneous papers and objects that appeared as the ones I am holding in front of you?

A Yes.

Q All right. And I got these out of the envelope that had been marked 10-F, that's inside.

A Now, directing your attention to this blue

10p-2

1 suitcase, People's 65-H, I have opened it up now in front  
2 of you.

3 Does the suitcase appear to be in about the same  
4 condition as when you found it, --

5 A Yes, it does.

6 Q -- this suitcase? And there appear to be items  
7 of -- well, shirts and -- well, do you remember the shirts  
8 as --

9 A No, I don't remember them.

10 Q You don't remember them?

11 Do you remember specifically any items that were  
12 in the blue suitcase?

13 A An adding machine, a check machine, and checks,  
14 and ledger books and --

15 Q I show you here that there appear to be some  
16 ledger books in here, and some checks.

17 Do these appear to be familiar?

18 A Yes, they do.

19 Q And did there appear to be miscellaneous papers  
20 and things like that in the suitcase --

21 A Yeah.

22 Q -- when you found it?

23 A Yes.

24 Q Now, after you found the suitcase, did you  
25 notify your father about it, the fact that you found the  
26 suitcase?

27 A Yes.

28 Q All right. And was the Highway Patrol then

10p-3

1 called?

2 A They weren't called, but they were coming by  
3 there. They come by every Saturday or Sunday or something  
4 like that.

5 Q So did you stop them?

6 A Yes.

7 Q All right. Okay.

8 And then did you turn the suitcase and the  
9 attache case over to the Highway Patrol?

10 A Yes.

11 Q Now, Richard, if you could just step down here  
12 a minute and pick up this hand microphone here?

13 I have a map which has previously been marked  
14 and identified as People's 76, which shows the Ballarat-  
15 Goler Wash-Meyers Ranch-Barker Ranch area of Death Valley.

16 And I show you on the map where it says "Ballarat"  
17 here (indicating).

18 Now, can you show the ladies and gentlemen of the  
19 jury the approximate location in which you found the two --  
20 well, the briefcase and the blue suitcase?

21 A I found it just around the bend (indicating) --

22 THE COURT: Keep your -- that microphone up to your  
23 mouth, would you, please?

24 THE WITNESS: (Continuing) -- hid right beside the  
25 bend of the road (indicating).

26 Q All right. And have you marked that with an  
27 X and a RB at a previous proceeding?

28 A Yes.

10p-4

1 Q That is your marking there (indicating)?

2 A Yes, it is.

3 Q All right. Thank you. You can resume the stand.

4 Now, did you -- or anyone with you -- remove  
5 any of the contents from either the suitcase or the briefcase?

6 A We removed it to look at it, but we put it back.

7 MR. KAY: Thank you. I have no further questions.

8 Thank you, Richard.

9  
10 CROSS-EXAMINATION

11 BY MR. DENNY:

12 Q Richard, when you say that these two items  
13 were off to the side of the road, were they within just  
14 a few feet of the road?

15 A Yes.

16 Q About three feet or so of the edge of the road?

17 A Hmmm -- about that.

10q fls.

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10q-1

1 Q All right. And what was it? Sage brush,  
2 greasewood, or --

3 A Tumble weeds and brush, sort of.

4 Q Piled up along the side of the road there?

5 A Just in that one spot where I found the brief-  
6 case and the suitcase.

7 Q All right. And was it -- as it was you were  
8 driving along or walking along the road there that you saw  
9 this?

10 A Walking.

11 Q Walking? And were you walking on the same  
12 side of the road as these items were found?

13 A Well, no. Not really. We were on the side of  
14 the hill.

15 Q I see. All right.

16 In other words, you were some distance away,  
17 off the road?

18 A Hmmm -- well, yeah, sort of.

19 Q All right. And you just sort of looked down,  
20 and you could see these things?

21 A Well, I saw the red briefcase, and it showed  
22 up out of the tumble weed.

23 Q All right. You couldn't tell whether the  
24 tumble weed had blown over it after perhaps it had been thrown  
25 out or something like that, could you?

26 A Well, I -- it was kind of pushed over, you know,  
27 like there was a -- kind of like bushes, and then underneath  
28 the bushes were the briefcase and the suitcase. And then

10q-2

1 there was tumble weed around it.

2 Q Tumble weed that had accumulated?

3 MR. KAY: Well, that calls for speculation.

4 MR. DENNY: All right.

5 Q And -- and this was an area, as you say, where  
6 the tumble weed does move around, --

7 A Yeah, I guess so.

8 Q -- is that right? All right.

9 And the suitcase here, you looked through that  
10 suitcase?

11 A Yes.

12 Q And did you look through it pretty carefully?

13 A No, we just opened it up, and we picked up a  
14 few things, but we didn't want to touch too much.

15 Q All right, did you, by any chance, notice in  
16 the suitcase -- in the attache case -- four envelopes,  
17 white with flowered flaps, one with "One dollar bills"  
18 written on the front, one with "Five dollar bills",  
19 one with "Ten dollar bills," and one, "Twenty dollar bills"?

20 A No.

21 MR. DENNY: Fine. I have no further questions.

22  
23 REDIRECT EXAMINATION

24 BY MR. KAY:

25 Q Richard, how many bushes were these two items  
26 under, when you found them?

27 MR. DENNY: That assumes facts not in evidence.

28 THE WITNESS: Well, I don't really --

10q-3

1 THE COURT: Overruled.

2 THE WITNESS: I don't really remember how many there  
3 was.

4 Q BY MR. KAY: All right. And were you about the  
5 location where these two items were, when you saw them?  
6 Or were you right next to them?

7 A Yes.

8 THE COURT: You were looking down on them?

9 THE WITNESS: Sort of.

10 Q BY MR. KAY: All right. Do you remember whether  
11 the bushes that these items were under -- I'm not talking  
12 about these tumble weeds, now, but I am talking about the  
13 bushes -- were they rooted bushes, that were rooted into the  
14 ground?

15 A Yes.

16 MR. KAY: All right. Thank you. I have no further  
17 questions.

18 THE COURT: All right. You may step down.

19 MR. KAY: May he be excused?

20 THE COURT: You are excused.

21 You can go back to school now, can't you?

22 (Laughter.)

23 MR. MANZELLA: We have one other witness, your Honor.

24 (Pause in the proceedings while a discussion  
25 off the record ensued at the counsel table between  
26 Mr. Manzella and Mr. Kay.)

27 THE COURT: Will that be the People's last witness?

28 MR. MANZELLA: Yes, your Honor.

1 THE COURT: All right. Let's hear him.

2 MR. MANZELLA: The People call Mr. James Pursell.

3 THE COURT: How about a five-minute break, anybody?

4 (No affirmative response.)

5 THE COURT: All right.

6 THE CLERK: You do solemnly swear that the testimony  
7 you are about to give in the cause now pending before this  
8 court, shall be the truth, the whole truth, and nothing but the  
9 truth, so help you God?

10 THE WITNESS: I do.

11  
12 JAMES L. PURSELL,  
13 called as a witness by and on behalf of the People, having  
14 been first duly sworn, was examined and testified as follows:

15 THE CLERK: Please take the stand and be seated.

16 THE BAILIFF: Would you state and spell your full name?

17 THE WITNESS: James L. Pursell; P-u-r-s-e-l-l.

18  
19 DIRECT EXAMINATION

20 BY MR. MANZELLA:

21 Q All right. Officer Pursell, what is your  
22 occupation?

23 A State Traffic Officer, California Highway Patrol.

24 Q How long have you been a traffic officer with the  
25 Highway Patrol?

26 A 14 years.

27 Q And where are you assigned presently?

28 A Death Valley resident post, Bishop area.



1 Q And how long have you been so assigned?

2 A Four years.

3 Q Are you familiar with that area which includes  
4 Ballarat, Goler Wash and the Barker and Meyers Ranches?

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5 A Yes, sir.  
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1 Q All right. Directing your attention to the latter  
2 part of September of 1969, in that period of time, did you meet  
3 a person by the name of Brooks Posten?

4 A Uh -- not September. This was in mid-October.

5 Q All right. And did you meet a man by the name of  
6 Paul Crockett?

7 A Yes, I did.

8 Q And was that about the same time?

9 A Yes.

10 Q Now, were you in the area of the Barker and  
11 Meyers Ranches on October 10th of 1969?

12 A Yes, I was.

13 Q And did you see certain people at those locations  
14 or at that location on October 10th of 1969?

15 A Yes, sir, I did.

16 Q All right. Would you tell us -- well, strike  
17 that.

18 Were you there alone, or were you there with other  
19 officers of the Highway Patrol?

20 A With other officers from other agencies also.

21 Q All right. And who did you see at the Barker and  
22 Meyers Ranches on October 10th of 1969?

23 MR. DENNY: I'll object to that as irrelevant and  
24 immaterial, and ask for an offer of proof.

25 THE COURT: Sustained.

26 MR. MANZELLA: I would be glad to make the offer of proof,  
27 your Honor.

28 (Whereupon, the following proceedings were had at

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1 the bench among Court and counsel, outside the hearing of the  
2 jury:)

3 MR. MANZELLA: Your Honor, the People are offering to  
4 prove that the People were up there on two dates, October 10th  
5 and October 12th. On October --

6 THE COURT: Go ahead.

7 MR. MANZELLA: On October 10th, we feel it's relevant,  
8 because of the persons arrested, and -- well, for the same  
9 reason on October 12th, when the defendant was arrested at  
10 the Barker-Meyers Ranch area.

11 The reason we feel it's relevant is that there has  
12 been lots of testimony with regard to who was in the desert,  
13 when certain persons went to the desert, when they left the  
14 desert, and so on, with regard to both the statements of Mr.  
15 Davis, his presence in the desert, and the actions of -- or,  
16 witnesses like Watkins and Crockett.

17 We are offering this testimony in part at least as  
18 to corroboration of the fact that these people were in fact on  
19 the desert, as was testified to by Paul Watkins and Paul  
20 Crockett.

21 THE COURT: All right.

22 MR. DENNY: But they're -- your Honor, excuse me. They're  
23 testifying to different times. Watkins -- Watkins left at a  
24 time before this. Crockett left on October 2nd, according to  
25 his testimony.

26 And now, we are talking about times after both  
27 Watkins and Crockett have left.

28 THE COURT: Well, it's somewhat corroborative of their

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1 testimony.

2 MR. MANZELLA: We don't have any testimony from any  
3 officer or any other independent witness, other than this  
4 officer, as to October 10th and 12th. So we have nothing else  
5 to offer by way of corroboration.

6 THE COURT: All right. It's not very strong, but --

7 MR. DENNY: Well, I would submit it's irrelevant. And  
8 the prejudicial effect of a mass arrest outweighs the proba-  
9 tive value.

10 MR. MANZELLA: I'm not going into the arrest, your  
11 Honor. I'm asking him who he saw. I am not asking him, you  
12 know, whether there were arrests made or anything.

13 THE COURT: All right. The Court would permit it. The  
14 Court believes that it's -- it's not unduly prejudicial, and  
15 that the probative value would outweigh the prejudice, never-  
16 theless.

17 (Whereupon, the following proceedings were had in  
18 open court, within the presence and hearing of the jury:)

19 THE COURT: All right. You may proceed.

20 Q BY MR. MANZELLA: All right. Officer Pursell,  
21 if there is a question pending, let me withdraw that for the  
22 moment.

23 Did you see a group of people in that area on  
24 October 10th of 1969?

25 A Yes, I did.

26 Q All right. Specifically, where did you see this  
27 group of people? Was it at one ranch or the other? Or was it  
28 -- did it include both ranches?

10r-4

1 A In and around Barker Ranch.

2 Q All right. Would you tell us, then, who did you see  
3 on October 10th of 1969?

4 A There were 15 subjects.

5 Q All right. Officer Pursell, did you bring some  
6 notes with you that you made at the time, or shortly after the  
7 time you saw these people on October 10th of '69?

8 A Yes.

9 Q And would you need to refer to these notes to  
10 refresh your memory with regard to the persons that you saw on  
11 October 10th, 1969?

12 A Yes, I do.

13 Q All right. With the Court's permission, then, you  
14 may refer to your notes.

15 Would you tell us who you saw on and around Barker  
16 Ranch on October 10th of 1969?

17 A The subjects were Gary Tufts, also known as Steve  
18 Grogan.

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1           There was -- Randy Mourglea; Robert Lane; Catherine  
2 Lutesinger; Stephanie Schram; Elizabeth Williamson -- also known  
3 as Lynn Fromme, also known as Squeaky;

4           Donna Powell, also known as Susan Atkins; Linda  
5 Baldwin, also known as Madeline Cottage; Sandra Pugh, also known  
6 as Sandy Good; Rachel Morris; Mary Schwarm, also known as  
7 Diane Van An; Manon Minette, also known as Kathleen Wright,  
8 also known as Gypsy;

9           Louella Alexandria, also known as Leslie Sankston;  
10 Marnie Reeves, also known as Patricia Krenwinkel;

11           And Sidette Purrell, also known as Brenda McCann,  
12 also known as Nancy Pitman.

13           Q       All right. There is onename I would like to ask you  
14 to spell for us. It was a name by which Gypsy was also known  
15 as. I'm not sure what you said. Minette Monet?

16           A       Manon Minette.

17           Q       Would you give us the spelling you have for it?

18           A       First name, M-a-n-o-n; and the last name,  
19 M-i-n-e-t-t-e.

20           Q       All right. Directing your attention to the  
21 photograph which has been marked People's 77-K, do you  
22 recognize the person shown in that photograph?

23           A       Yes.

24           Q       And who is that?

25           A       That's Steve Grogan.

26           Q       All right. Officer Pursell, directing your  
27 attention to People's -- the photographs marked People's 96-A  
28 and -B, do you recognize what is shown in those photographs?

1 A Yes.

2 Q And what is that?

3 A These were some of the girls arrested on the 10th.  
4 The photographs were taken on Mingo Pass in the  
5 Panamint Mountain Range.

6 Q And the girls shown in the photograph, 96-D, were  
7 those some of the girls that you saw on October 10th of 1969,  
8 that you have named?

9 A Yes, that's correct.

10 Q All right. Now, did you return to the Barker  
11 and Meyers Ranches area on October 12th of 1969?

12 A Yes, I did.

13 Q And on that date, again, did you see some people  
14 in the area?

15 A Yes.

16 Q And specifically, was this -- strike that. Again,  
17 would you tell us more specifically where you saw these  
18 people?

19 A This was in the Barker Ranch.

20 Q All right.

21 A The building.

22 Q All right. Would you tell us, now, who did you see  
23 on October 12th of 1969, at Barker Ranch?

24 A On that date --

25 Q Yes, October 12th, 1969.

26 A Yes. On the 12th, there were six male and three  
27 female. There was Tracy Beth; Diane Bluestein, also known as  
28 Diane Lake; Sherry Andrews; Christopher Jesus; Kenneth Brown;

1 Bruce Davis; Lawrence Bailey; Charles Manson; David Lee Hemic,  
2 also known as William Rex Cole, also known as Bill Vance.

3 Q Now, directing your attention to the defendant in  
4 this case, is this the man that you saw on October 12th, 1969,  
5 Bruce Davis?

6 A Yes.

7 Q All right. Directing your attention to the photo-  
8 graph which is People's 77-E, do you recognize the person shown  
9 in that photograph?

10 A Yes. This is Bill Vance, or Cole.

11 Q All right. And directing your attention to People's  
12 49, do you recognize who is shown in that photograph?

13 A Yes. Charles Manson.

14 Q All right. Very briefly, Officer Pursell, are you  
15 familiar with the area that -- about which we have been  
16 talking?

17 A Yes.

18 Q All right. Would you describe it briefly for us?

19 A Goler Wash is a very narrow, rocky canyon, entering  
20 the Panamint Mountain Range from Panamint Valley.

10 t fol



1 MR. DENNY: Excuse me, your Honor. I think this is  
2 cumulative to Sergeant Whiteley's testimony.

3 THE COURT: It does appear to be.

4 MR. DENNY: I think he described it with pictures and  
5 maps and everything else.

6 THE COURT: The jury has seen pictures of the area, and  
7 it's also been described.

8 Q BY MR. MANZELLA: All right. Briefly, then,  
9 Officer Pursell, along the road from Ballarat to Goler Wash, are  
10 there any residences along that area?

11 A No.

12 Q Are there any structures at all along that area and  
13 road from Ballarat to Goler Wash?

14 A No.

15 MR. MANZELLA: I just have a few more questions on this  
16 point, your Honor. Very specific questions.

17 Q Officer Pursell, can a vehicle travel -- can any  
18 kind of vehicle travel Goler Wash, from the road to the  
19 Barker or Meyers Ranch area?

20 A Definitely not.

21 Q Does it take a particular kind of vehicle?

22 A Yes, it does.

23 MR. MANZELLA: All right. Thank you. I have no further  
24 questions, your Honor.

25 THE COURT: Any questions?

26 MR. DENNY: Yes, your Honor.

27  
28 CROSS EXAMINATION

1 BY MR. DENNY:

2 Q Officer, did you say that between Ballarat and  
3 Goler Wash, there are no residences?

4 A That is correct.

5 Q How about -- well, about halfway between, up the  
6 mountainside, is there a kind of a dry lake area?

7 A At some distance off that roadway, there is a  
8 mine cabin.

9 Q And a trailer?

10 A Could be.

11 Q And when you go -- oh, there's some trees up there,  
12 too?

13 A I believe so, yes.

14 Q All right. And when you say "some distance off the  
15 main road," just how far distant?

16 A This would be in excess of a mile.

17 Q All right. But can it be seen from the road?

18 A Yes.

19 MR. DENNY: All right. No further questions.

20 MR. MANZELLA: No questions, your Honor. May Officer  
21 Pursell be excused?

22 THE COURT: Officer Pursell, you are excused.

23 MR. MANZELLA: Thank you, your Honor.

24 MR. DENNY: Your Honor, may I have just a moment, please,  
25 before Officer Pursell leaves?

26 THE COURT: Yes.

27 May he just stand right there?

28 MR. DENNY: Yes. May I talk with him just a moment here?

1 THE COURT: Yes.

2 I hope you all have pleasant weekends, ladies and  
3 gentlemen. And I will see you on Valentine's Day at 9:30  
4 in the morning. February 14th. I guess that's Valentine's  
5 Day.

6 MR. DENNY: Your Honor, I wonder if -- we'd better  
7 approach the bench a moment, before the jury retires. There's  
8 a matter I think might affect their time.

9 THE COURT: All right.

10 (Whereupon, the following proceedings were had at  
11 the bench among Court and counsel, outside the hearing of the  
12 jury:)

13 MR. DENNY: I assume that the People will rest at this  
14 point?

15 MR. MANZELLA: Subject to the exhibits.

16 MR. DENNY: Right. And this is what I was going to  
17 question the Court about. I think there will be some objec-  
18 tions to evidence, that will take some time, and I was just  
19 wondering if the Court might not want to put the jury over,  
20 their appearance, until 10:00 o'clock or 10:30, anyway,  
21 because I -- I think there will be some discussion on points of  
22 law submitted to the Court on some of these exhibits.

23 THE COURT: All right. Let's have them come in at  
24 10:30, rather than 9:30.

25 MR. MANZELLA: Fine.

26 MR. KAY: That's reasonable.

27 THE COURT: I'll expect to see you fellows at 9:30, and  
28 I will hear argument at 9:30.

1           If you have any points and authorities on anything  
2           in particular that you want to submit to me in the meantime,  
3           I'll take a look at it.

4           MR. DENNY: Fine.

5           MR. MANZELLA: Yes, your Honor.

6           MR. KAY: Have a very good weekend.

7           (Whereupon, the following proceedings were had in  
8           open court, within the presence and hearing of the jury:)

9           THE COURT: All right. Rather than 9:30, I'll make it  
10          10:30. You are to be here on Monday morning at 10:30.

11          And Mrs. Obradovich, you gave me leave to know that  
12          you --

13          JUROR OBRADOVICH: Yeah.

14          THE COURT: -- want to be released early.

15          JUROR OBRADOVICH: After 4:00.

16          THE COURT: After 4:00?

17          JUROR OBRADOVICH: 4:15, 4:20.

18          THE COURT: Well, the Court will be very liberal. 4:00  
19          o'clock.

20          JUROR OBRADOVICH: Okay. Thank you.

21          THE COURT: But in any event, don't worry about whatever  
22          appointment it is. If it has to be earlier, let us know.

23          And that, of course, applies to all of you. If you  
24          have something that's extremely pressing, let us know, and we  
25          will see if we can help you.

26          During the recess, you are obliged not to converse  
27          amongst yourselves nor with anyone else, nor permit anyone to  
28          converse with you on any subject connected with the matter, nor

1 to form nor express any opinion on the matter until it is  
2 finally submitted to you.

3 Good night.

4 (Whereupon, murmurs of "Good night," were heard  
5 from members of the jury.)

6 (Whereupon, at 4:48 P. M., an adjournment was  
7 taken in this matter until 9:30 A. M., the following Monday  
8 morning, February 14, 1972.)  
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