

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.

244

No. A-267861

JOHNSON (CII BALLISTICS)

REPORTERS' DAILY TRANSCRIPT

Tuesday, February 15, 1972

VOLUME 44DEFENSE:
MATLOVSKYAPPEARANCES:

For the People:

JOSEPH P. BUSCH, JR., District Attorney
BY: ANTHONY MANZELLA

and

STEPHEN R. KAY,
Deputies District Attorney* CLEMENTS
LIT

For Defendant Davis: GEORGE V. DENNY, III

KIENAST
WINTER
KAMIDOI
SPAHN

COPY

MARY LOU BRIANDI, C.S.R.
ROGER K. WILLIAMS, C.S.R.
Official Court Reporters

I N D E XPEOPLE'S WITNESSES:

DIRECT

CROSS

REDIRECT

RECROSS

VOIR
DIRE

JOHNSON, Harry

7001K

7021

7043K

7046

7047K

7048

7049K

7050

DEFENDANT'S:

MATLOVSKY, Isreal Lloyd

6896

6911K

6916

6918K

CLEMENTS, Wendell W.

6921

6937M

6940

LITT, Ronald A.

6944

KIENAST, Cecelia

6948

WINTER, Robert W.

6971

6975K

KAMIDOI, Eugene N.

6980

6991K

6994

6999K

SPAHN, George

7052

7074M

E X H I B I T SPEOPLE'S:

FOR IDENTIFICATION

IN EVIDENCE

111 - bullet

7044

DEFENDANT'S:

X - (previously identified)

6990

AA - ten photographs

6899

6905

AA-1 - Scale

6917

1 LOS ANGELES, CALIFORNIA, TUESDAY, FEBRUARY 15, 1972 9:50 A.M.

2 - - -

3
4 THE COURT: The record will show the jurors are all
5 in the box. The defendant is present.

6 Mr. Kay, did the People have trouble with their
7 alarm clocks?

8 MR. MANZELLA: We were trying to decide whether I
9 should bring my fever up to court.

10 THE COURT: Your what?

11 MR. MANZELLA: My fever, and we decided to bring it up.

12 (Laughter.)

13 THE COURT: The Court is sorry to hear you did.

14 MR. MANZELLA: Mr. Kay is worried about it.

15 MR. KAY: Mr. Kay is more worried than the Court is.

16 THE COURT: Now, Mr. Denny -- if we can find him.

17 (Whereupon, there was a pause in the proceedings
18 until Mr. Denny entered the courtroom.)

19 THE COURT: All right, now, all counsel are present.

20 Once again, gentlemen, when the Court calls the
21 case for 9:30, the Court anticipates that you'll be present.
22 And I realize that many times the Court is not ready, but
23 nevertheless, it is your obligation as officers of the court
24 to be present.

25 MR. KAY: We called Joyce this morning at about
26 9:25 and she said you were just starting your calendar.
27 And I asked her if it would be all right to come up at a
28 quarter of 10:00, and she said fine.

1 THE CLERK: But they weren't here at a quarter of 10:00.

2 THE COURT: The Court will excuse it this time, but see
3 if you can be on time.

4 MR. DENNY: Before I bring out my first witness, I would
5 like --

6 THE COURT: People rest, gentlemen?

7 MR. KAY: Yes, your Honor.

8 MR. MANZELLA: Yes.

9 THE COURT: The Court has admitted into evidence
10 People's 1 through 110 except for -- there were some gaps
11 in some numbers that were unmarked, other items that were not
12 admitted.

13 Do you have those, Mrs. Holt?

14 (Whereupon, there was a pause in the proceedings
15 while the clerk exited the courtroom, returning
16 shortly, and the following proceedings were had:)

17 THE COURT: Let's see what you've got.

18 (Whereupon, there was a pause in the proceedings
19 while the Court conferred with the clerk.)

20 THE COURT: People's 1 through 110, with the exception
21 of 103, 104, 91-A and -B, were withdrawn and in their place
22 108 has been substituted.

23 There was no 66, 69, 75, 63, 60-A and 60-B are
24 excluded.

25 There was no 50.

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2 fls.

2-1

1 No No. 40 was offered. No. 16 was offered. 22
2 and 23 for identification were excluded. There was no 15.
3 And the Court has stated all of the exceptions. In addition,
4 the Defendant's A, the Defendant's B are admitted. C-1
5 through -12 are admitted. F is excluded. I, J, K, L, O, P
6 are excluded.

7 The remainder, through X, are excluded, with the
8 exception of V, a chart of a floor plan, which is drawn on
9 the board.

10 Is the defense ready to proceed?

11 MR. DENNY: Yes, your Honor.

12 May I do so?

13 THE COURT: You may do so.

14 MR. DENNY: All right. Mr. Matlovsky, would you take
15 the stand, please?

16 THE CLERK: Would you raise your right hand, please, to
17 be sworn?

18 Do you solemnly swear that the testimony you
19 are about to give in the cause now pending before this court,
20 shall be the truth, the whole truth, and nothing but the
21 truth, so help you God?

22 THE WITNESS: I do.

23
24 ISREAL LLOYD MATLOVSKY,
25 called as a witness by and on behalf of the defendant, having
26 been first duly sworn, was examined and testified as follows:

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

28 THE BAILIFF: Would you state and spell your full name?

2-2

1 THE WITNESS: My name is Isreal Lloyd Matlovsky;
2 I-s-r-e-a-l; Lloyd, L-l-o-y-d; last name, Matlovsky,
3 M-a-t-l-o-v-s-ky.

4
5 DIRECT EXAMINATION

6 BY MR. DENNY:

7 Q Mr. Matlovsky, what is your present position or
8 occupation?

9 A I am the chief medical photographer for Los
10 Angeles County, USC Medical School.

11 Q That's at the big County Hospital?

12 A The County Hospital and the Medical School.
13 I am in charge of both laboratories, which are one and the
14 same.

15 Q All right. And how many people are employed
16 in that laboratory, sir, under your direction and supervision?

17 A I have 16 people with me.

18 Q All right. And specifically, what do you do?
19 And what does the laboratory do, in connection with the
20 hospital and the school?

21 A The laboratory produces photographic medical
22 records for the patients, and my specialty is microscopic
23 photography, for both the Medical School and the Medical
24 Center.

25 Q And in that particular field of specialty, how
26 long have you been practicing, sir?

27 A Continuously since 1946. In addition, between
28 1942 and 1946, I was in charge of photophysics and optics

2-3

1 for Bureau of Aeronautics for U. S. Navy, doing photo-
2 micrography.

3 Q All right, sir. And would you state for the jury,
4 please, what your qualifications and background are,
5 starting, if you would, with: Do you have a college degree?
6 And from whom, if --

7 A I have an Associate of Arts degree.

8 Q At which college?

9 A From Los Angeles City College. But I have taken
10 additional courses work at USC, in engineering, cinemato-
11 graphy, the non-destruction -- non-destructive inspection of
12 metals, and in photogrammetry.

13 Q All right, sir. And has that been over a period
14 of years that you have done so, or --

15 A Yes, since 1942.

16 Q All right, sir. And you say you did work with
17 the Navy for what period?

18 A From 1942 to 1946, I was a Chief Petty Officer.

19 Q And in charge of what?

20 A Photophysics and optics for Bureau of Aeronautics,
21 testing of captured enemy equipment and the evaluation of
22 optical things normally through microscopic photography.

23 Q All right, sir. And have you done any teaching
24 in the field of photography and photomicrography?

25 A Yes. I have been doing that since 1942, starting
26 an adult evening high school. At present I teach a seminar
27 at Rochester Institute of Technology in Rochester, New York,
28 in the summer for one continuous week.

2a fls.

2a-1

1 At present, I am teaching in extension with
2 UCLA, in Medical Photography and Microscopic Photography.

3 Q And how long have you been teaching at Rochester?

4 A The past six years. And at UCLA, the past three
5 years.

6 Q All right, sir. And have your works appeared
7 as illustrations in any books, texts, other writings on the
8 subject of medicine?

9 A I have illustrated numerous textbooks -- oh, at
10 least, I would guess, 20 -- as well as the Armed Forces
11 Institute of Pathology, which are recognized landmark books
12 in photographic illustration of pathological microscopy.

13 Q All right, sir.

14 And do you belong to any particular societies of
15 organizations having to do with your particular field or
16 specialty?

17 A The Society of Photographic Instrumentation
18 Engineers; the Society of Photographic Scientists and
19 Engineers; and the Biological Photographic Association.

20 Q Now, sir, last February 8th, Tuesday, were you
21 present when Mrs. Holt, the lovely clerk before you, and I
22 appeared with a bullet for you to photograph?

23 A I was.

24 Q And did you, in the presence of Mrs. Holt,
25 photograph that bullet?

26 A I did.

27 Q And as a result of that photograph, that photo-
28 graphic work -- by the way, was that photographed under

2a-2

1 particular conditions or with a particular type of instru-
2 ment?

3 A Yes.

4 Q What instrument?

5 A It was done with a Leitz Aristophot Camera.

6 Q That's L-e-i-t-z?

7 A L-e-i-t-z, Aristophot, A-r-i-s-t-o-p-h-o-t,
8 with a Zeiss Micro-Luminar lens, 40 millimeter focal length.

9 Q All right, sir. And your purpose in photo-
10 graphing the bullet was to photograph the entire circum-
11 ference of that bullet; is that correct?

12 A As much as I possibly could.

13 Q And did you do so, sir?

14 A I did so.

15 MR. DENNY: All right. Your Honor, I have ten photo-
16 graphs. May they together be marked Defendant's next in
17 order?

18 THE COURT: That would be AA, double A.

19 MR. DENNY: Double A? Fine.

20 Q Mr. Matlovsky, if you would take this hand
21 microphone?

22 (Pause in the proceedings while Mr. Denny
23 pinned a series of photographs on the board.)

24 Q BY MR. DENNY: Now, sir, having posted these
25 photographs in sort of a circular pattern, could you point
26 out to the jury the series in which you took the photographs,
27 the manner in which the bullet was turned, and what is
28 depicted on each of these ten photographs?

AA id.

2a-3

1 A The bullet --

2 Q Again, you must stand so that our No. 1 juror
3 can see.

4 A The bullet was set on a piece of glass, using
5 two glued cardboard pieces, to maintain the bullet so that
6 it would not move up and down.

7 And I started photographing it, rotating it as
8 carefully as I could, between 30 and 40 degrees for each
9 photograph, taking No. 1, No. 2 and so on in consecutive
10 order, rotating the bullet between 30 to 40 degrees --
11 estimated.

12 As I did so, these photographs were taken on
13 4 X 5 inch film, in holders that were consecutively numbered.
14 After that, they were marked with an optical image and
15 processed.

16 After all of the processing, then the numbers
17 were written below the object --

18 Q Now, when you say "the processing," do you mean
19 the processing of the negative?

20 A Yes, the negative processing, which is the
21 development, and then a rinse, and then fixation, and then
22 washing, which takes a total of approximately 30 minutes.

23 Then, after drying, these numbers were written
24 on the negative, and then the negative was enlarged to
25 make these prints.
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27
28

2b fls.

2b-1

1 Q Now, just by way of illustration, I note that
2 in photograph No. 1, there appear to be a few light scratches
3 on the bottom; and in photograph No. 2, those scratches
4 appear quite sharp.

5 A In photograph No. 3, those scratches, which
6 appeared in the middle, seem to be over now to the left.

7 Does that indicate that you are turning --

8 A Yes.

9 Q -- the bullet to the left?

10 A And those things appeared and then disappeared
11 from right to left?

12 A Correct. And I'm only maintaining a very narrow
13 range of focus. So the first mark is considerably blurry;
14 and then it is carefully shown and in good focus; and then
15 it starts going out of focus again.

16 Q On the third photograph?

17 A This is one of the problems of using optical
18 things.

19 Q All right. Now, your light source for these
20 photographs was what?

21 A It was a single spotlight with a little sheet
22 of translucent plastic placed around it to make a sort of
23 a tent, so that I could get reasonably good lighting on the
24 top, as well as some of the sides.

25 Q All right. Now, sir, I note that in the
26 photographs, there appears to be a lightened area and a
27 darkened area, on each of the photographs.

28 It appears that the lightened area is in the same

2b-2

1 location on each photograph, about the left-hand third,
2 going over toward the more darkened area, over to the right-
3 hand third or fourth of the picture.

4 A Yes.

5 Q What does that indicate?

6 A Well, the bullet is a cylinder (indicating) with
7 its long direction, let's say, north and south; and its
8 circumference going east and west.

9 I took one spotlight, putting it onto the side;
10 and you get, we'll say, a specular reflection from one surface;
11 and this is the highlight.

12 It is a specular reflection which you see on the
13 one surface.

14 It isn't possible, except with great difficulty,
15 to photograph something like this, without having a highlight
16 and some -- the darkness.

17 It's the difference between the light and the dark
18 that gives you the detail.

19 Q All right. And, sir, does the darkness that
20 appears on each of these photos -- particularly over the
21 right-hand third -- indicate in any way that there is a dark
22 area or dark spot on the bullet there?

23 A No. That indicates the lighting, rather than the
24 detail of the bullet itself.

25 It isn't possible to show everything in uniform
26 light, and have detail. That requires light and dark.

27 Q All right. So that the darkened area, say, that
28 appears over the right-hand picture, the right-hand side of

2b-3

1 the bullet, in picture No. 2, becomes the light area, when
2 it is turned to picture No. 3; is that correct?

3 A That is correct.

4 Q All right. Now, sir, did you, in addition,
5 prepare some sort of diagram indicating the magnification of
6 these pictures?

7 A I did.

8 MR. DENNY: Your Honor, may this diagram also be marked
9 part of the exhibit, as AA-1?

10 THE COURT: Very well. So ordered. AA-1 for identifica-
11 tion.

12 Q BY MR. DENNY: And, sir, what does that photo-
13 graph represent?

14 A This is a piece of glass that has been very
15 accurately ruled into half millimeter increments , and you
16 can see the very long line, where there is a zero, and the
17 long line where there is a 10.

18 On the original glass slide, that is 10 milli-
19 meters apart.

20 After I finished the photographs of the bullet,
21 I replaced the bullet with this stage micrometer and photographed
22 it, without changing any of the optical arrangement.

23 Q And that indicates what, then, as far as the
24 magnification, anything of that kind?

25 A That is a measure of the magnification,

26 Q Well, would that indicate in any way that the
27 bullet -- say that is shown directly over it, over the scale
28 -- is some seven and a half millimeters in width?

AA-1 id.

3 fls.

3-1

1 MR. KAY: Well, I'll object. That's leading and
2 suggestive.

3 THE COURT: Sustained.

4 Q BY MR. DENNY: Well, can you determine the
5 width of the bullet from a comparison, that is the -- in
6 effect, the diameter of the bullet from the comparison of
7 that carefully measured scale?

8 A The scale was prepared to be used against
9 anything in the photograph to indicate size.

10 By taking the scale and placing it against the
11 photograph, you can determine what the size of the original
12 is, because you know the size of the scale.

13 Q All right. And though the edges of the bullet
14 do appear somewhat out of focus, as you say because of the
15 roundness of the object and the depth of scale involved,
16 is it possible by using that scale up against the bullet,
17 the photograph of the bullet, to state with some approximate
18 specificity the diameter of that bullet?

19 MR. KAY: Well, I'll object. That's irrelevant,
20 "approximate specificity."

21 THE COURT: Sustained.

22 Q BY MR. DENNY: Well, can you tell by using the
23 scale how wide the bullet is?

24 A Approximately you can.

25 For precise accurate measurement, you would use
26 a micrometer on the bullet.

27 Q All right. Now, sir --

28 Your Honor, I would ask that the photographs at

1 this time be received into evidence.

2 MR. KAY: No objection.

3 THE COURT: There being no objection, the Court will
4 receive them as AA.

5 MR. KAY: Well, excuse me, your Honor, I think as to
6 AA-1, I will object, that that's irrelevant.

7 THE COURT: It is not offered --

8 MR. KAY: Oh, AA-1 --

9 MR. DENNY: Yes, I did. I meant all of the photographs.

10 MR. KAY: Well, we object to that. That seems to be
11 irrelevant, if you can't make an accurate measurement with
12 it.

13 THE COURT: Sustained.

14 MR. DENNY: Well, your Honor, this is the scale,
15 indicating the scale by which the bullet was photographed.
16 It is necessary to show the scale involved.

17 THE COURT: The Court understands. The objection is
18 sustained.

19 MR. DENNY: Very well.

20 Q Now, sir, I want to show you a series of six
21 photographs heretofore marked Defendant's H and received
22 into evidence.

23 Now, sir, there has been testimony in this
24 case that the bullet appearing on the right-hand side of
25 each of these photographs is the same bullet that you
26 photographed, namely, People's 31.

27 There appears to be, in these photographs,
28 lighted areas on either side or the top or bottom, as they're

1 placed here, of the bullet, and darkened areas to the
2 middle portion of the bullet.

3 Looking at those photographs, can you determine
4 what causes the lighter portions and what causes the
5 darkened portion?

6 A It is my opinion that the lighted areas are
7 the specular reflections of the lights that were used when
8 these bullets were photographed.

9 Q Now, when you say "the lights that were used,"
10 you testified that you used one light source; is that
11 correct?

12 A I used one light source on one side.

13 Q And do these photographs indicate the one light
14 source or a light source and a reflector was used?

15 A That's why I used the term "two light source."
16 It could be a single light source and a highly polished
17 reflector or it could be two lights of slightly different
18 intensity.

19 Q All right. The darkened portion, then, in the
20 middle, what does that represent?

21 A That represents the portion of the object that
22 is not strongly reflecting part of the light.

23 The one on this side (indicating), and the one
24 on this side (indicating).

25 Q Now, then, assuming, then, that you were
26 attempting to photograph the middle image, the middle
27 portion, as that portion of the photograph being in focus,
28 are you indicating by your testimony that the portion, then,

1 that would be in focus is out of light?

2 A Well --

3 MR. KAY: Well, that's leading and suggestive and
4 irrelevant, your Honor.

5 THE COURT: Sustained.

6 Q BY MR. DENNY: Well, in setting up photographs of
7 this kind, sir, does it appear in these particular photographs
8 that the middle portion, the darkened portion, is that
9 portion which, assuming they are in focus at all, is most
10 nearly in focus?

11 MR. KAY: Well, that calls for speculation. It is
12 irrelevant.

13 THE COURT: Overruled on that ground.

14 A It looks as though there is a compromise focus
15 through this (indicating), an attempt to get maximum detail.
16 However, my opinion is that in the dark area it is quite
17 difficult to carefully see the detail that you are looking
18 for.

19 Q All right, sir.

20 THE COURT: Would you read me that answer, please?

21 (Whereupon, the answer was read by the reporter
22 as follows:

23 "A It looks as though there is a compromise
24 focus through this (indicating), an attempt to get
25 maximum detail. However, my opinion is that in the
26 dark area it is quite difficult to carefully see
27 the detail that you are looking for.")

28 MR. KAY: Well, I'd ask that the latter part of that

1 answer --

2 THE COURT: The Court strikes the latter part of the
3 answer, after "compromise,"

4 Q BY MR. DENNY: All right, Mr. Matlovsky, again,
5 looking at the darkened area of this particular photograph,
6 which is 5 of Defendant's H, does the darkened area -- and
7 let's keep now to the bullet that you are familiar with,
8 People's 31, the bullet on the right in this comparison
9 photo, does the darkened area here indicate that there are
10 any darkened areas in the bullet itself or is that merely
11 the result of the lighting?

12 MR. KAY: Well, I'll object that that's leading and
13 suggestive.

14 THE COURT: Overruled. You may answer.

15 A The darkened area is the result of the lighting.

16 Q BY MR. DENNY: All right, sir.

17 And you may retake the stand, if you like, sir.

18 Now, at my request, Mr. Matlovsky, this morning
19 did you bring your microscope to examine certain negatives
20 which have heretofore been received as Defendant's B?

21 A I did.

22 Q And did you examine those negatives, both
23 microscopically and any other way?

24 A With my glasses visually, and with my deflecting
25 microscope.

26 Q All right. Now, sir, did you examine specifically
27 the numbers 1 through 6 appearing on each of the negatives
28 numbered 1 through 6?

1 A I did.

2 Q And did you examine them for the purpose of
3 determining whether or not those numbers had been placed on
4 the negatives before those negatives had been processed
5 in any way or after?

6 A I looked to see if I could be certain when the
7 numbers were placed on the film, yes.

8 Q All right. And did you determine from your
9 examination of those negatives whether or not the numbers
10 that appeared on the negatives were placed on there before
11 they were -- the pictures, themselves, that appear on those
12 negatives, were taken, or afterwards?

13 A It is my opinion the numbers were placed on
14 the film after the photographs were taken and the negatives
15 processed.

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4 fls.

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1 Q And what is the basis of that opinion, sir?

2 A By looking at the film, I can see that the number
3 is not part of the silver image, but a number that has been
4 written with some sort of a device onto the glossy surface of
5 the negative.

6 Q And is that negative -- you indicated earlier that
7 in developing and processing the negatives that you did, it
8 took approximately a half an hour to go through the solution
9 for developing, the fixer, the wash, I believe -- I'm not sure
10 whether you indicated all those terms -- but would you state
11 to the jury what if anything would occur to the markings that
12 presently appear there, if they went through that developing
13 process?

14 A Usually, the pigment would not remain so intact,
15 if the numbers were put on the film prior to processing.

16 Q All right. And insofar as the ability of someone
17 to place those numbers on the film, before it was exposed --
18 that is, before the picture was taken -- would there be any
19 difficulty in doing that, under the conditions that would be
20 required to do it?

21 A In this instance, especially so.

22 Q Why?

23 A Because you can't be certain where the image is
24 going to be; and consequently, you can -- you would not wish
25 to place a number onto the film prior to exposure.

26 Also, it would be visible in a different way than
27 this is. This indicates the number has been placed after
28 processing and after exposure.

4-2

1 Q And is there a problem in writing on pre-exposed
2 film?

3 A It would be difficult, because the film has
4 sensitivity. It is sensitive to light.

5 You would therefore have to work under extremely
6 low light level, or under total darkness.

7 Q All right, sir. Fine. Thank you very much,
8 Could you replace those?

9 A Yes.

10 MR. DENNY: Thank you, Mr. Matlovsky.

11 I have no further questions.

12 THE COURT: Any cross examination?

13 MR. KAY: Yes, just briefly.

14 THE COURT: Do you wish to approach the bench, gentlemen,
15 without the reporter?

16 (Whereupon, proceedings were had at the bench among
17 Court and counsel, outside the hearing of the jury, which were
18 not reported.)

19 THE COURT: All right.

20 MR. KAY: Thank you. I just have a few brief questions of
21 Mr. Matlovsky.

22

CROSS
EXAM, K

23

CROSS EXAMINATION

24

BY MR. KAY:

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26

Q Now, sir, you are very much an expert in the field
of taking photographs through a microscope, aren't you?

27

A Yes, sir.

28

Q All right. And you have done that on what, tens of

4-3

1 thousands of occasions, probably? Taking photographs through a
2 microscope?

3 A Approximately 25,000.

4 Q Okay. And that is your specialty, isn't it?

5 A Yes, sir.

6 Q And you are probably at least, in this area,
7 regarded as one of the top men in the field, aren't you?

8 A I am.

9 Q Okay. Now -- and also, the equipment you use is
10 very, very modern and up-to-date, isn't it?

11 A Yes, it is.

12 Q It's just about the best money can buy, isn't it?

13 A Yes, it is.

14 Q Okay. And the microscope from which you took the
15 photographs that are marked Defendant's AA -- you can see these
16 from here, can't you, the ones I am referring to?

17 A (Witness indicating affirmatively.)

18 Q (Continuing) -- this was a 40-powered microscope,
19 that you took these through?

20 A Those pictures were taken with a single lens,
21 not with a microscope.

22 Q Now, what do you mean by a single lens?

23 A They were taken, using the lens and a long bellows,
24 a distance -- the distance from the lens to the film at the
25 actual taking was -- let's see -- was approximately ten focal
26 lengths.

27 That would be 400 millimeters.

28 I did not use an eyepiece on the camera -- or on the

4-4

1 microscope. Therefore, it's called a simple microscope.

2 Q Now, I'm not very much of a photographer, and I must
3 confess that I don't really understand what you are saying.

4 In other words, are you saying that you didn't use a
5 microscope at all? That you just like put the camera up next
6 to the bullet and took --

7 A I used a microscopic camera, and this technique
8 is known as photomacrography.

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1 Q All right. I see. In other words, it's a
2 special type of camera that acts as a microscope to take
3 photographs; is that right?

4 A Yes, it is. Any --

5 Q All right.

6 A -- camera used properly will accomplish the same
7 thing.

8 Q But in such detail as the camera that you used?

9 A Not in as much, no.

10 Q All right. And what again is the type of camera
11 that you use?

12 A I used an Aristophot, it was called, made by the
13 Leitz Corporation, from Wetzlar, Germany.

14 Q And that's a very specialized type camera, isn't
15 that?

16 A Yes, it is.

17 Q All right. Okay. And that's used mainly for
18 taking photomicrographs?

19 A Of small objects.

20 Q Okay. Now, these photographs that you took,
21 is this the -- is this the only bullet that Mr. Denny brought
22 to you to photograph?

23 A It is.

24 Q No other bullet?

25 A It is not, no; no other bullet.

26 Q And the other photographs that Mr. Denny showed
27 you -- these are Defendant's H-1 through -6 -- these are just
28 blowups that you made of the negatives; is that right?

4a-2

1 A I did not make these pictures.

2 Q Oh, you didn't make these pictures?

3 A No.

4 Q All right. Well, these are blowups of the
5 negatives that you just got finished looking at, aren't
6 they?

7 A I believe they are.

8 MR. KAY: May I have just a moment, your Honor? I
9 think I don't have any further questions, but I just want to
10 check.

11 THE COURT: Yes, you may.

12 (Pause in the proceedings while Mr. Kay perused
13 his notes.)

14 Q BY MR. KAY: And you said -- I just wanted to
15 make sure of this -- in response to a question by Mr. Denny
16 that it appeared, on these photographs, that the person was
17 trying to bring out the maximum detail, and the photograph
18 was -- was that your response?

19 A That would be my opinion.

20 Q All right. So, in other words, the person who
21 took these photographs was trying to bring out the maximum
22 detail on the two bullets photographed; that's your opinion?

23 A Yes. He was trying for as much area that he
24 could examine.

25 MR. KAY: Thank you. I have no further questions.

26 Thank you very much, sir.

27 MR. DENNY: Just a couple of matters.
28

4a-3

REDIRECT EXAMINATION

1
2 BY MR. DENNY:

3 Q I don't believe I did finally get in, Mr.
4 Matlovsky, the magnification of these bullets that you
5 photographed -- that is, of the photographs.

6 What was the magnification?

7 MR. KAY: Well, excuse me, your Honor. I'm going to
8 object that this is a fact not in evidence. He said "these
9 bullets," and I believe Mr. Matlovsky testified that Mr. Denny
10 only brought one bullet.

11 MR. DENNY: I thought I corrected my -- when I
12 misspoke myself. I'm not talking about bullets. I am talking
13 about the picture.

14 Q The magnification in producing the picture of the
15 bullet that you photographed was what?

16 A The resulting magnification on those prints is
17 23 times.

18 Q All right, sir. And is that demonstrated by
19 that scale, that we have had marked as AA-1?

20 A It is.

21 Q And how is that demonstrated by that scale?

22 A Well, the scale originally -- the piece of glass
23 that is engraved, between that zero and the 10, is 10
24 millimeters long.

25 That was photographed at the same time the bullet
26 was photographed; and after processing, the negatives were
27 all enlarged equally, so that by measuring the zero to 10,
28 you will see it is 230 millimeters on the print, resulting in

4a-4

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an actual magnification of 23 times.

2

Q BY MR. DENNY: So that this then --

3

THE COURT: The Court will admit AA-1.

4

MR. DENNY: Thank you, your Honor.

5

Fine. I have no further questions. Is there

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any --

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MR. KAY: Yes, I do have some further questions.

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AA-1 ev.

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RECROSS EXAMINATION

1
2 BY MR. KAY:

3 Q On this scale, however, you are not saying that
4 you match this scale up to the bullet, like that (indicating),
5 that you would have an accurate measurement of the width of
6 the bullet? You are not saying that, are you?

7 A Not absolutely accurate.

8 Q All right. In other words, to have an accurate --
9 an absolutely accurate measurement, you would have to --
10 wouldn't you -- you would have to photograph this scale in the
11 middle of the bullet; because otherwise, you'd be looking
12 down on the bullet, and the perspective, looking down, would
13 be different than if it was right in the middle; isn't that
14 true?

15 A It is. That's why I suggested a micrometer.

16 Q Right. In other words, for precise measurements
17 of the diameter?

18 A Right.

19 Q So the micrometer would be the accurate thing to
20 use, if you wanted an accurate measurement of the bullet?

21 A Of the diameter of the bullet.

22 Q Right. And what about the width?

23 A In the plane of the sharp focus, this (indicating)
24 is quite accurate.

25 Q Well, in other words, the length of the bullet?

26 A For the length or any of the length of the
27 markings, in the correct focus -- meaning the sharp focus --
28 this scale is quite accurate (indicating).

4b-2

1 Q All right. But it's not accurate if you were to
2 take the bullet and put it on top like this, to try and
3 measure the diameter?

4 THE COURT: Well, he has answered that.

5 MR. KAY: All right.

6 THE WITNESS: The outer focus image is not accurate.

7 THE COURT: Is that all, gentlemen?

8 (Pause in the proceedings while a discussion
9 off the record ensued at the counsel table between
10 Mr. Kay and Mr. Manzella.)

11 MR. KAY: All right. Excuse me. I just have --

12 Q Now, I wonder if, when you are talking about the
13 area in focus, if you could delineate on these photographs,
14 in each photograph, the area that you consider to be in
15 focus?

16 A Well, the precise focus is a -- is an opinion,
17 pardon me. I can give you my opinion of the area of focus.

18 Q Okay. Just so you don't mark up the bullet,
19 why don't you, just below the bullet, kind of put one line on
20 each side, to delineate the area?

21 A All rightee.

22 I will mark a red line --

23 MR. DENNY: Well, excuse me. I'm going to object at
24 this time to the question, unless there's a better definition.

25 I think it's ambiguous, to the "area of focus,"
26 because this gentlemen talks in very precise terms, and --

27 THE COURT: Well, he knows -- he can explain it.

28 MR. DENNY: Well, I am --

4b-3

1 THE COURT: The objection is overruled.

2 THE WITNESS: Should I go ahead?

3 THE COURT: You may proceed, yes.

4 THE WITNESS: I'll indicate what I think good focus is,
5 by placing a red line in the margin.

6 Q BY MR. KAY: Below the bullet.

7 A Below the bullet. And not on the image.

8 Q Okay. You've done that on photograph No. 1.

9 THE COURT: Would it be approximately the same on each
10 of the photographs?

11 THE WITNESS: It would be approximately the same in all
12 the photographs.

13 THE COURT: On each photograph, then, it would be a
14 width of about three inches, in the middle of the photograph?

15 THE WITNESS: Approximately three inches in the middle
16 of the photograph, yes, sir.

17 MR. DENNY: Well, perhaps we could designate it by
18 AA-1, the number of millimeters, your Honor.

19 THE COURT: The Court doesn't think that's necessary.
20 He has designated it with the markings.

21 MR. KAY: Thank you. I have no further questions.

22 MR. DENNY: May this witness be excused, your Honor?

23 THE COURT: Yes, you are excused. Thank you.

24 MR. DENNY: Thank you, Mr. Matlovsky.

25 Now, I would like to call your clerk for just a
26 moment, your Honor.

27 MR. KAY: Do you want to stipulate that --

28 MR. DENNY: That she brought the bullet?

4b-4

1 MR. KAY: Oh, sure.

2 MR. DENNY: The People have offered to stipulate, to save
3 her the rigors and the anguish of examination and cross-
4 examination, that it was People's 31, the bullet, that she
5 took, and that was the bullet that was photographed by Mr.
6 Matlovsky?

7 MR. KAY: So stipulated.

8 THE COURT: Very well.

9 MR. DENNY: Mr. Clements?

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

14 THE WITNESS: I do.

15
16 WENDELL W. CLEMENTS,
17 called as a witness by and on behalf of the defendant, having
18 been first duly sworn, was examined and testified as follows:

19 THE CLERK: Please state and spell your full name.

20 THE WITNESS: Wendell W. Clements; W-e-n-d-e-l-l,
21 C-l-e-m-e-n-t-s.

22
23 DIRECT EXAMINATION

24 BY MR. DENNY:

25 Q Sir, what is your profession?

26 A I am a latent fingerprint expert for the Los
27 Angeles Police Department.
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5 fls.

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Q And how long have you been so employed?

A Since 1964.

Q And always in that particular field of work?

A Yes, sir.

Q Prior to that, what was your occupation?

A I spent seven years in the Identification Bureau of the Beverly Hills Police Department.

Q All right. Are you a civilian employee, sir?

A Yes, sir, I am.

Q All right. You're not --

A I'm not a policeman, no, I am not, no.

Q All right. And, sir, what has been your background, training and experience in the field of fingerprint identification?

A I have been in the field now for approximately 14 years. And I have also completed a course with the Federal Bureau of Investigation in advance latent fingerprint techniques. And I graduated from the Institute of Applied Science.

Q Now, where is that institute and what does it do?

A It is in Chicago, Illinois, and it deals with scientific investigation.

Q All right.

Now, sir, are you familiar with some of the leading works in literature in the field of fingerprint investigation and identification?

A Yes, sir, with some of it, yes.

Q And specifically what works?

A Well, the works that's published by the Federal

1 Bureau of Investigation, plus the publication by Dr. Harold
2 Cummins and Charles Midlo, titled Fingerprints, Palms and
3 Soles.

4 I've read numerous, perhaps hundreds of articles
5 in magazines which deals with scientific investigation.

6 Q Are these part of a library which you maintain?

7 A Yes, sir, it is.

8 Q You personally maintain it?

9 A I personally maintain it.

10 Q Now, have you qualified as an expert in the field
11 of fingerprint identification in the courts of the County of
12 Los Angeles and in any other courts?

13 A Yes, sir, numerous times. Perhaps several hundred.
14 Federal courts and before grand jury, Superior Courts, and
15 Municipal Courts in California.

16 Q Is it your normal position to be testifying in those
17 cases for the prosecution?

18 A For the prosecution, yes, sir, it is.

19 Q All right, sir, at my request did you examine the
20 latent print which has been received heretofore marked People's
21 85 in evidence, and I show you that latent lift?

22 A Yes, sir, I did. I examined it this morning in the
23 room to my right.

24 Q What did you use for that examination, sir?

25 A I used a glass. A glass, a magnifying glass, a
26 four-power magnifying glass.

27 Q Is that part of the tools of your trade, as it were?

28 A It is part of the tools of my trade.

1 Q And for what purpose did you make that examination?

2 A I wanted to study the actual list that was made
3 by some fingerprint expert to determine whether or not the
4 print was identifiable in any other characteristics that might
5 be in the print.

6 Q All right. And did you determine whether or not,
7 in your opinion, that was a palm print?

8 A Yes, sir, it is a palm print of the right palm.

9 Q And from what particular portion? Could you
10 identify, indicate to the jury on your own right palm what
11 portion?

12 A Yes, surely.

13 It comes from the right side of the palm
14 (indicating). It is called the hypothenar area right in
15 here (indicating).

16 Q Indicating the --

17 A This section right here (indicating).

18 Q The lower right?

19 A Well, it goes from here (indicating) to here
20 (indicating).

21 Q Up to about the --

22 A To the crease.

23 Q -- to the crease?

24 A Yes.

25 Q All right.

26 MR. KAY: That's below the little finger?

27 THE WITNESS: Yes, below your right little finger, you
28 are correct.

1 Q BY MR. DENNY: Now, sir, in your opinion did that --
2 Well, first of all, could you tell by looking at the
3 latent, as it appears before you, what sort of material was
4 used to dust with, to get that latent?

5 A Yes, I would say that a lampblack powder was used.

6 Q All right. And is that such a material that is
7 normally, regularly used in the field?

8 A It is commonly used. It is almost a pure carbon.

9 Q All right. Is there another kind of material that is
10 perhaps as frequently or more frequently used in the field?

11 MR. KAY: It is irrelevant.

12 THE WITNESS: Yes, sir, there is.

13 THE COURT: It would be irrelevant, sustained.

14 Q BY MR. DENNY: All right, is there any particular
15 reason to use a lampblack type as distinguished from the other
16 kind which is also used?

17 A It would be a matter of preference, I imagine, sir.

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1 Q All right.

2 In other words, it -- as far as picking up
3 anything because of moisture or dryness or anything, one is
4 no better than the other; is that correct?

5 A Well, that's a matter of opinion. I have a
6 different opinion.

7 Q What is that opinion?

8 MR. KAY: That's irrelevant.

9 THE COURT: Sustained.

10 Q BY MR. DENNY: All right, sir, now, in your
11 opinion, sir, does this lift constitute a reasonably good
12 lift for identification purposes?

13 A For identification purposes, yes, it does.

14 Q All right. I take it, however, that from
15 looking at the lift itself, there is no way for you to
16 determine the place from whence that lift was taken?

17 A No, sir, I could not possibly do that.

18 Q All you know is that you have a lift before you
19 of a lift taken from some sort?

20 A That's correct, uh-huh. Yes, sir.

21 Q All right.

22 Now, I want to direct your attention to a
23 footlocker which has heretofore been received in evidence as
24 People's 65-F.

25 And particularly the surface of this locker,
26 on the top, as I'm holding it up here, the top here showing
27 a strap,

28 THE COURT: Indicating the side near the strap?

5a-2

1 MR. DENNY: Yes.

2 Q Now, does that surface constitute a particularly
3 good surface for the reception and retention of fingerprints?

4 A You're referring to the strap, sir?

5 Q No, the metal.

6 A Oh, to the metal.

7 Yes, the metal does, definitely.

8 Q Why?

9 A Because it is a hard surface. It is not a
10 porous surface. It will retain a print, and perhaps for
11 some time.

12 Q All right.

13 Now, sir, based on your training and experience,
14 is there any way for you to tell how long any particular
15 print has been on a surface?

16 A No, sir, there is no way to my knowledge to
17 determine the age of a print.

18 Q All right.

19 Again, based on your training and experience,
20 are you aware of cases in which prints, latent prints left
21 on such surfaces have lasted in excess of three or four months?

22 A Yes, sir, I am.

23 Q Have you done any experiments yourself?

24 A I have, yes.

25 Q And what sort of experiments have you done in
26 that particular area?

27 A Well, experimented at my home by taking a piece
28 of glass --

5a-3

1 MR. KAY: Well, your Honor, I'm going to object on the
2 same grounds as was Dr. Kaufmann's testimony that Mr. Denny
3 objected to. I believe the conditions aren't the same.

4 THE COURT: That's not a very good objection, Mr. Kay.
5 Overruled.

6 Do you want to state the grounds for your objec-
7 tion?

8 MR. KAY: Yes. The conditions aren't the same as here.
9 It is an improper hypothetical. It is an improper -- in other
10 words, we're talking about --

11 THE COURT: Sustained.

12 MR. KAY: Okay.

13 Q BY MR. DENNY: All right, sir, again, without
14 going into the tests which you have done over a period of
15 time, based on your training, experience, the reading that
16 you have done in the field, all of the factors upon which
17 you call upon to form an opinion, is it your opinion that
18 a latent print may exist for three, four, five months or
19 even longer?

20 MR. KAY: Asked and answered.

21 THE COURT: Sustained.

22 MR. DENNY: I don't believe I said five months or
23 longer, your Honor.

24 THE COURT: All right, I'll overrule the objection.
25 You may answer.

26 THE WITNESS: Yes, it is possible, Mr. Denny.

27 Q BY MR. DENNY: All right.

28 And assume, if you will, a print such as the one

5a-4

1 you have in 85 there, People's 85, is there any way for you
2 to determine simply from looking at that list whether that
3 print came solely from the matter laid down by the fingers,
4 from the pores of the hand or whether that print was deposited
5 there as a result of, say, running the hand across the face
6 and picking up the oils of the face or perhaps through the
7 hair, the oils of the hair, and then being deposited?

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

9 THE COURT: Overruled. You may answer.

10 A No, there is really no way. You see, what will
11 happen --

12 THE COURT: You've answered it.

13 THE WITNESS: I beg your pardon?

14 THE COURT: You've answered it when you say "No, there's
15 no way."

16 THE WITNESS: Yes, your Honor.

17 Q BY MR. DENNY: Well, is there some explanation
18 for the fact that there is no way of determining that?

19 A Well, you see the perspiration will evaporate
20 in a given time. How much of a given time nobody knows.
21 But what may happen is if you take your hand and run it
22 through your hair, across your forehead, down the bridge of
23 your nose, you're going to pick up an oily substance which
24 is exuded by the pores here, which is not exuded on the
25 hands in the epidermis ridges. Now, this may last quite
26 some time, even though the perspiration may evaporate.

27 Q But as you look at the latent print itself,
28 there is no way of determining what the source of that was,

1 whether it was from simply the amino acids, et cetera, from
2 the pores from the oils of the skin or face or hair; is that
3 correct?

4 A There is no way.

5 Q All right. Now, sir, again, based on your train-
6 ing and experience, if such a trunk as we have here, the
7 footlocker, People's 65-F, were to remain in an automobile,
8 a closed, locked trunk of an automobile, for a period of, say,
9 from three months in the weather period of the fall, the late
10 summer and fall, early fall months, would you have any
11 opinion as to whether or not such a print, placed as simply
12 a latent print from the materials that are put down by the
13 finger itself, would last over such a period of time? Could
14 you say?

15 MR. KAY: Well, I'm going to object. It is an improper
16 hypothetical. Not enough information. You still don't know
17 the weather conditions.

18 THE COURT: I'll sustain the objection.

19 You may rephrase your question.

20 We'll take a short recess, however, before you
21 do that.

22 The Court admonishes you, ladies and gentlemen,
23 that you are not to converse amongst yourselves, nor with
24 anyone else, nor permit anyone to converse with you on any
25 subject connected with this matter, nor form or express any
26 opinion on the matter until it is finally submitted to you.

27 About 15 minutes, ladies and gentlemen.

28 (Morning recess.)

6-1

1 THE COURT: All right. The jurors are all present.
2 The defendant -- the record may show. All counsel are
3 present. The defendant is present.

4 You may proceed.

5 (Whereupon, a loud noise was heard throughout
6 the courtroom, when the witness moved the microphone.)

7 MR. DENNY: I hope our witness isn't coming apart.

8 THE WITNESS: I hope not.

9 Q BY MR. DENNY: Mr. Clements, I think we were
10 almost at the end of your examination, as far as I am
11 concerned, frankly.

12 A Um-hmm.

13 Q Again, assuming a situation where you have a
14 trunk -- and by the way, I think I may have pulled out
15 -F instead of -G here as the -- yes, 65-G --

16 A Yes, sir.

17 Q -- which has been marked with two X's, one above
18 and one below the strap.

19 I take it your testimony concerning whether the
20 surface would be susceptible to and receptive of fingerprints
21 would be the same?

22 A It would be the same, sir.

23 Q Yes. All right. They're the same type surface--

24 A They are, sir.

25 Q -- on both of them?

26 A Yes.

27 Q And by the way, as I look at the surface here, I
28 see what appears to be a number of fingerprints on that

6-2

1 surface.

2 Did you have an opportunity to check that,
3 yourself, just now?

4 A Yes, sir, I examined it with a glass. And there
5 are no what they call fingerprints, but there are ridge
6 structures there, some ridges.

7 Q That's below the strap?

8 A Below the strap.

9 Q And just above the --

10 A The metal strip.

11 Q -- the metal strip?

12 A Yes. There is some ridge structure there. And
13 apparently, in my opinion, it was made by a residue of some
14 kind, not of perspiration, but it's a residue.

15 It's hard to even rub out (indicating).

16 Q Well, you have no way of determining, I take it--
17 simply looking at it at this time -- when that was put on
18 there?

19 A No, sir, I do not.

20 Q Whether it was my sweaty palm or someone else's,
21 in moving this thing around?

22 A No, sir, I have no idea.

23 Q All right. But getting back now to the situation
24 that we were talking about, a trunk such as that which we've
25 referring to, 86-G -- 86 or 85? I'm sorry.

26 A JUROR: 65.

27 Q BY MR. DENNY: 65, I am advised. All right.

28 65-G.

6-3

1 THE COURT: Who had that?

2 (Laughter.)

3 Q BY MR. DENNY: (Continuing) -- in the trunk of an
4 automobile.

5 First of all, sir, how long have you lived in
6 this area?

7 A In Southern California?

8 Q Yes.

9 A Since 1957.

10 Q And what area of the county do you live in, sir?

11 MR. MANZELLA: That doesn't appear to be relevant.

12 THE COURT: Sustained.

13 MR. DENNY: It will be to the foundation, your Honor,
14 that apparently there was an objection to last time.

15 THE COURT: The objection is sustained.

16 Q BY MR. DENNY: Well, sir, are you familiar with
17 the weather conditions in the Los Angeles County area, having
18 lived here since then?

19 A Yes, I believe I am.

20 Q All right.

21 And are you familiar with the climatic conditions
22 in the San Fernando Valley, particularly, as distinguished
23 from that at the Santa Monica Beach?

24 A Yes, sir, I am.

25 Q All right. And are you familiar with the general
26 pattern of weather in the San Fernando Valley area, in the --
27 what we might call the Indian summer months, the late summer
28 months of September, October and November?

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A Yes, sir.

Q All right. And to your knowledge, do those months generally follow a fairly normal pattern?

MR. MANZELLA: Objection, your Honor. It doesn't appear to be relevant.

MR. DENNY: It goes again to the foundation, your Honor.

THE COURT: The objection is sustained.

6a fls.

6a-1

1 MR. DENNY: Your Honor, I have a right to establish a
2 foundation.

3 THE COURT: You do.

4 Q BY MR. DENNY: Well, sir, were you here in the
5 months of August, September -- or, September, October and
6 November of 1969?

7 MR. MANZELLA: It's vague and ambiguous as to what
8 "here" means, your Honor.

9 It's also irrelevant.

10 THE COURT: Sustained.

11 Q BY MR. DENNY: Were you in the Los Angeles County
12 area?

13 A During those months, yes, sir, I was.

14 Q And 1970?

15 A Yes, sir.

16 Q And in 1971?

17 A In 1971.

18 Q And 1972 has not yet come to that particular
19 area; right?

20 A Right.

21 Q All right. We hope you'll be here then, too.

22 A Thank you.

23 Q All right.

24 And, sir, do you have an independent recollection
25 of the type of weather that occurred in the San Fernando
26 Valley area, about that time, --

27 A Well --

28 Q -- in each of those years?

6a-2

1 MR. MANZELLA: Your Honor --

2 Q BY MR. DENNY: The general type of weather?

3 MR. MANZELLA: Your Honor, excuse me. I would have to
4 object again. It's vague and ambiguous. It calls for an
5 opinion, and it's irrelevant.

6 THE COURT: Sustained.

7 MR. DENNY: It doesn't call --

8 THE COURT: Sustained.

9 MR. DENNY: -- for any conclusion. It calls for
10 recollection.

11 Well, your Honor, may I approach the bench a
12 moment?

13 THE COURT: Sustained. No, you may not. You may
14 continue.

15 MR. DENNY: Well, your Honor, I will have to establish
16 the foundation through another witness. I will have to recall
17 this witness, then.

18 THE COURT: Mr. Denny, you need not make argument. Just
19 simply ask your next question.

20 MR. DENNY: I cannot ask the next question, your Honor,
21 without calling another witness to establish that.

22 I will have to ask that this witness be excused,
23 until I am able to establish the foundation, your Honor.

24 I must terminate my examination now.

25 THE COURT: The objection is sustained to that question.

26 MR. DENNY: That's fine. I terminate my examination
27 now, with a request that I may reopen when I am able to
28 present the necessary foundational material to ask my next

6a-3

question.

THE COURT: Cross-examination?

MR. MANZELLA: Just briefly.

CROSS-EXAMINATION

BY MR. MANZELLA:

Q Mr. Clements, I just have a few questions I would like to ask you.

You said that the latent lift -- that's People's 85 --

A Oh, yes. Right here (indicating).

Q -- right there in front of you, --

A Surely.

Q -- People's 85, you said that that was a good print or a good lift, I believe.

What did you mean by that?

A I mean it's identifiable.

Q The ridge structure is good?

A The ridge structure and the characteristics are identifiable, yes.

Q All right. Now, in your opinion, there's no way to determine the age of a print?

A No, sir, there is not.

Q So that that latent lift could have been on the surface from which it was taken -- assuming it was taken from the footlocker, the surface you've already examined -- that latent lift -- or rather, that latent print could have been there for three and a half months?

6a-4

1 A It is possible, yes.

2 Q Now, directing your attention to the two
3 exemplar cards which make up People's 86, did you compare
4 People's 86-B -- maybe if I could just hold this up here,
5 so the jury may see what we are referring to.

6 Did you compare the palm prints appearing on
7 People's 86-B with the palm print appearing on People's 86-A?

8 A Yes, sir, I did.

9 MR. DENNY: Well, I think that's --

10 Q BY MR. MANZELLA: And did you --

11 MR. DENNY: Just a moment. I think that's ambiguous,
12 since there are two palm prints on each of them, one the
13 left palm print which appears now presented to the jury,
14 and the other I believe the right palm print, which is on the
15 back side of each of them.

16 It's ambiguous as to which he compared.
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6b fls.

6b-1

1 MR. MANZELLA: Right. Thank you, Mr. Denny.

2 That's correct. It is, your Honor.

3 Q Did you compare the right palm print appearing on
4 People's 86-D (indicating), with the right palm print
5 appearing on People's 86-A?

6 A Yes, sir, I did.

7 Q All right. And did you form an opinion, based
8 upon your background, training and experience, as to whether
9 or not the person whose prints appear on People's 86-B is
10 the same person whose prints appear on People's 86-A?

11 A I did form a conclusion, sir.

12 Q And what was that opinion?

13 A They were made by one and the same person.

14 Q Now, Mr. Clements, did you compare the right
15 palm print appearing on People's 86-A -- again, People's 86-A
16 -- with the latent impression which is People's 85?

17 A Yes, sir, I did.

18 Q And as a result of that comparison, and your
19 background, training and experience, did you form an opinion
20 as to whether or not the person whose prints appear on
21 People's 86-A is the same person whose print is -- whose
22 latent print is People's 85?

23 A Yes, I did.

24 Q And what was that opinion?

25 A That they were made by one and the same person.

26 MR. MANZELLA: Thank you. I have no further questions,
27 Mr. Clements.

28 Thanks for coming down.

6b-2

1 MR. DENNY: Yes. I have just one, sir.

2 THE WITNESS: Surely.

3
4 REDIRECT EXAMINATION

5 BY MR. DENNY:

6 Q The exemplar of the two exemplars that you
7 spoke to Mr. Manzella about having compared --

8 A Yes, sir.

9 Q -- that is, 86-A, apparently having been rolled
10 by some Deputy Hearn on January 21, 1970 -- in your opinion,
11 does that constitute a good exemplar?

12 A Yes, sir, it does.

13 Q And 86-D, apparently the exemplar rolled by
14 Deputy Chamousis on December 11, 1970, does that constitute
15 a good exemplar?

16 A Hmmm -- not as good as the first exemplar, sir,
17 no.

18 Q Specifically, would you say that that was --
19 as far as competency, does that exhibit good work or poor
20 work, as far as the exemplar in 86-B?

21 MR. MANZELLA: Objection, your Honor. That's
22 irrelevant.

23 THE COURT: Overruled. You may answer.

24 THE WITNESS: Well, Mr. Denny, it isn't a matter of
25 poor work or bad work or good work. It's a matter of lack
26 of ink in the exemplar. It wasn't well inked.

27 Q BY MR. DENNY: That's what I am talking about.
28 Thank you very much, sir.

6b-3

1 A Yes, sir.

2 MR. DENNY: Your Honor, I would request that Mr.
3 Clements be placed on call. I hate to do so, but I --
4 I am required to do so, in view of the Court's ruling.

5 THE COURT: Mr. Clements, --

6 THE WITNESS: Yes, sir.

7 THE COURT: -- assume a footlocker such as 65-F or -G,
8 with a latent fingerprint or palm print in the spot that has
9 been indicated, in a locked trunk of an automobile, for any
10 period of time.

11 Would weather necessarily affect the -- would
12 weather in the area where the automobile is, would the weather
13 necessarily affect the longevity of the latent print?

14 THE WITNESS: It's my opinion, sir, that the climatic
15 conditions would affect it, yes.

16 THE COURT: In what way?

17 THE WITNESS: By taking the perspiration from the
18 prints.

19 In other words, evaporating the perspiration that
20 was left by the print, thereby leaving any residue that may
21 be left -- and there may be no residue at all left.

22 You see, it depends -- you see, we don't know
23 at a particular time whether or not a person putting a print
24 down is leaving any oily residue, because the -- the pores
25 from the ridge structure do not exude oil, just water,
26 perspiration, sodium chloride and amino acid.

27 THE COURT: All right. Beginning, let's say, at a
28 very low temperature, near freezing, and taking -- considering

6b-4

1 all the temperatures up to a hundred and five degrees, could
2 you arrive at an opinion, given the circumstances which I
3 have stated to you, as to how long any particular latent
4 may have been on the footlocker?

5 THE WITNESS: No, sir, your Honor. Simply because,
6 once again, we do not know just how much a person perspired
7 at that particular given moment, when he put his hand down
8 on that footlocker.

9 And you couldn't -- you just can't duplicate
10 that situation at that moment.

11 We do not know, for example, that perhaps he had
12 an oily residue on his hands, on his epidermal ridge
13 structures, that he may have obtained from his hair or his
14 forehead (indicating).

15 We don't know these things, your Honor. And
16 so consequently, we can't possibly say that this print
17 could have -- could last just as long and no longer.

18 THE COURT: At any given temperature, then?

19 THE WITNESS: At any given temperature.

20 MR. DENNY: Thank you, your Honor.

21 Q Just one more thing, in view of the Court's
22 question, and that is:

23 Are you familiar, sir, with situations where,
24 because of extremely high temperatures, prints may have been
25 burned into a structure?
26
27
28

7 fls.

1 MR. MANZELLA: Objection, it doesn't appear to be
2 relevant, your Honor.

3 THE COURT: Sustained, but you may rephrase your
4 question.

5 Q BY MR. DENNY: Well, are there situations where,
6 because of high heat, they would preserve rather than
7 dissipate a fingerprint?

8 A I believe there is a possibility of that, yes.
9 Once again, not due to the perspiration in the
10 print or to the sodium chloride in the print, but simply
11 because there may have been present an oily or fatty residue.

12 Q And, again, just finally, the print, then, that is
13 shown by the latent, People's 85, I believe, -- I think you
14 answered Mr. Manzella?

15 A Yes, right.

16 Q -- even assuming it had been in the locked trunk of
17 a car on a footlocker for three and a half months, it may have
18 been on that trunk even longer than that; is that correct?

19 A That is possible.

20 Q All right, fine.

21 I have no further questions, and thank you, your
22 Honor, for taking care of the ambiguity. I would not, under
23 the circumstances, ask that Mr. Clements be recalled.

24 MR. MANZELLA: Okay, we have no further questions. Thank
25 you, Mr. Clements.

26 THE COURT: You may step down. Thank you, Mr. Clements.

27 MR. KAY: May we approach the bench, your Honor?

28 THE COURT: Yes, you may.

1 MR. KAY: Oh, we don't need the reporter.

2 (Whereupon, proceedings were had at the bench among
3 Court and counsel, outside the hearing of the jury, which was
4 not reported:)

5 THE CLERK: Raise your right hand.

6 You do solemnly swear the testimony you may give in
7 the cause now pending before this Court shall be the truth,
8 the whole truth, and nothing but the truth, so help you God?

9 THE WITNESS: I do.

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

11
12 RONALD A. LITT,

13 called as a witness by and on behalf of the defendant, having
14 been first duly sworn, was examined and testified as follows:

15 THE BAILIFF: Would you state and spell your full name?

16 THE WITNESS: Ronald A. Litt, L-i-t-t.

17
18 DIRECT EXAMINATION

19 BY MR. DENNY:

20 Q Sir, what is your occupation or profession?

21 A I'm an attorney.

22 Q And how long have you been an attorney, sir?

23 A Approximately five years.

24 Q Do you specialize in any particular field of
25 specialty?

26 A No, I do not.

27 Q Do you engage in the practice of criminal defense
28 work?

1 A Yes, I do.

2 Q Are you and have you been -- well, let's take it
3 first.

4 Have you been an attorney for Alan Larry Springer?

5 A Yes, I have.

6 Q And are you presently so engaged?

7 A Yes, I am.

8 Q Does he presently have a case pending in the Van Nuys
9 Superior Court, to your knowledge?

10 MR. KAY: Object.

11 THE WITNESS: Yes, he does.

12 Q BY MR. DENNY: And were you involved, sir, in the
13 pre-negotiations in -- in any pre-negotiations which took place
14 in connection with cases which he had pending as a result of
15 arrests in October of 1969?

16 A Yes, I was.

17 Q And have you been involved, sir, in any pre-
18 negotiations or bargaining in connection with the pending case
19 now pending in Van Nuys Municipal Court under case No. A113570,
20 as consolidated with case No. A116,185?

21 And I'm showing you copies of the court reports
22 in connection with those two cases?

23 A Yes, I have been involved in these cases.

24 Q And, sir, has there been any negotiated plea worked
25 out in connection with those cases?

26 A Yes, there has.

27 Q With whom -- you say you were involved in that
28 negotiation?

1 A Yes, I was.

2 Q With whom did you negotiate working out that
3 negotiated plea?

4 A The Deputy District Attorney that was representing
5 the People on those cases.

6 Q And was that Mr. Herzbrun?

7 A To the best of my memory, I do not remember the
8 name of the District Attorney that was on the cases.

9 Q Well, would it refresh your recollection to see
10 the minute order of the date of July 16, the date when that
11 plea was entered?

12 MR. MANZELLA: Your Honor, excuse me, that's vague and
13 ambiguous as to what plea. I'm not sure what case we're speak-
14 ing of.

15 MR. DENNY: The date I think that has previously been
16 testified to, the plea to Count IV of a consolidated informa-
17 tion in the two cases, A113 and A116 as consolidated under
18 case No. A113, et cetera.

19 THE WITNESS: His name appears on the record as being
20 the Deputy District Attorney on the case.

21 Q BY MR. DENNY: And that's Mr. Herzbrun, is that
22 correct?

23 A That's correct.

24 Q Spelled H-e-r-z-b-r-u-n?

25 A That's right.

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1 Q Does that refresh your recollection at all?

2 A No, it does not.

3 Q All right, sir.

4 All you recall is you did have negotiations with
5 the deputy that handled the case on that particular date?

6 A Yes, I did.

7 Q All right. And you indicate that a plea bargain
8 was worked out, is that correct?

9 A Yes, it was.

10 Q What was that plea bargain?

11 A That he would be sentenced as a misdemeanor and
12 only receive a County Jail sentence at maximum.

13 Q Was there any statement made in connection with
14 that plea bargain that he would receive no County Jail time?

15 MR. MANZELLA: Objection, that's leading and sugges-
16 tive, your Honor.

17 THE COURT: Sustained.

18 Q BY MR. DENNY: Was there any discussion concerning
19 whether or not jail time would be imposed?

20 MR. MANZELLA: Objection, that's leading and suggestive.
21 He can ask him what else was said, your Honor.

22 THE COURT: Overruled. You may answer.

23 THE WITNESS: There was discussion that based upon Mr.
24 Springer's cooperation with the law enforcement officers,
25 that if they felt his cooperation was, in fact, sufficient,
26 that they might make a recommendation to the Judge that there
27 be no time.

28 MR. DENNY: Thank you very much, Mr. Litt. No further

7a-2

1 questions.

2 THE COURT: Cross?

3 MR. KAY: No questions.

4 MR. MANZELLA: Thank you.

5 MR. DENNY: May this witness be excused, your Honor?

6 MR. MANZELLA: We have no objection, your Honor.

7 THE WITNESS: Thank you.

8 THE COURT: Next witness.

9 MR. DENNY: She's being called, your Honor.

10 THE CLERK: Raise your right hand.

11 You do solemnly swear the testimony you may give
12 in the cause now pending before this court shall be the truth,
13 the whole truth, and nothing but the truth, so help you God?

14 THE WITNESS: I do.

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

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

17 THE WITNESS: Cecilia Kienast, K-i-e-n-a-s-t.

18
19 CECILIA KIENAST,
20 called as a witness by and on behalf of the defendant, having
21 been first duly sworn, was examined and testified as follows:
22

23 DIRECT EXAMINATION

24 BY :MR. DENNY:

25 Q And although you don't appear in uniform, you
26 are a Deputy Sheriff, is that correct?

27 A Yes, sir.

28 Q And what rank, ma'am?

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1 A Sergeant.

2 Q How long have you been employed as a Deputy
3 Sheriff?

4 A About ten years.

5 Q Ma'am, could you just take that microphone and
6 bring it up close to your face.

7 A (Witness complies.)

8 Q Sounds as if bones are creaking when you do it,
9 but it is easier for you. You can just sit back, then. You
10 won't have to bend over.

11 All right, and in October of 1969, what was your
12 assignment?

13 A Assigned to the Homicide Bureau.

14 Q Did you have any particular partner at that time?

15 A Yes, Deputy Winter.

16 Q All right.

17 May I approach the witness, your Honor.

18 THE COURT: Yes, you may.

19 Q BY MR. DENNY: In connection with your function
20 in the Homicide Bureau, did you send out a number of tele-
21 types to various agencies throughout California and Nevada
22 in connection with the investigation of the alleged
23 disappearance or the disappearance of Donald Jerome Shea?

24 A Yes, sir, I did.

25 Q All right. And in that connection did you list
26 addresses that were the most recent or the latest known
27 addresses of Mr. Shea?

28 A I don't recall that specifically.

7a-4

1. Q Would it refresh your recollection to see copies
2 of the telegrams or --

3 A Yes, sir, it would.

4 Q -- the teletypes that you did send?

5 All right, let me direct your attention, then, to
6 page 6 of the Sheriff's homicide manual in this particular
7 investigation.

8 Do you recall specifically now looking at that,
9 sending that particular teletype?

10 A Yes. Yes, sir.

11 Q And that was sent to CII?

12 A Yes, sir.

13 Q All right. And his address at that time or his
14 latest known address was what?

15 A 8010 Hollywood Boulevard.

16 Q In Hollywood, California?

17 A Yes, sir.

18 Q Or Los Angeles?

19 All right, turning to page 9, again, in connection
20 with the teletypes that you had sent, did you receive any
21 further information from any of the sources to whom you sent
22 the telegrams in the ordinary course of business as to
23 other recent addresses?

24 A Well, I really didn't know how recent, but we
25 did receive a reply from the motor vehicles.

26 Q On what date?

27 A Which appears, an address October 27, 1969.

28 Q What address?

1 MR. MANZELLA: Objection, your Honor, all of this calls
2 for hearsay.

3 THE COURT: Sustained.
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1 Q BY MR. DENNY: All right.

2 Turn to Page 12 of the manual, again, did you send
3 to another agency a teletype indicating other recent addresses
4 of Mr. Shea that you had found?

5 A There were other addresses listed, yes.

6 Q And what addresses?

7 MR. MANZELLA: Objection, your Honor, that calls for
8 hearsay.

9 THE COURT: Sustained.

10 Q BY MR. DENNY: Did you determine yourself
11 locations and addresses of Mr. Shea relative --

12 MR. MANZELLA: Objection, it --

13 Q BY MR. DENNY: -- to your investigation?

14 MR. MANZELLA: That doesn't appear to be relevant, your
15 Honor.

16 MR. DENNY: Your Honor, it is relevant to the movement of
17 Mr. Shea.

18 THE COURT: Overruled. You may answer, Sergeant.

19 THE WITNESS: The addresses that I received, that I
20 listed, I really don't recall about these addresses.

21 Q BY MR. DENNY: You mean you don't recall the source
22 of the information about those addresses?

23 A No, sir, I don't.

24 Q Well, was the source of the information through
25 the normal investigative sources that you used in order to
26 try to locate a missing person?

27 A Yes, sir.

28 Q All right. And in that connection you got the

1 address of 8010 Hollywood Boulevard, is that correct?

2 A Yes, sir.

3 MR. MANZELLA: Objection, it calls for hearsay and ask
4 the answer be stricken.

5 THE COURT: Sustained.

6 MR. DENNY: Well, she's already so testified.

7 THE COURT: The objection is sustained.

8 Q BY MR. DENNY: And did you send out to agencies
9 in an attempt to locate Mr. Shea any other address for him?

10 A I don't recall, sir.

11 Q Well, showing you the teletype on Page 12.

12 A Yes, on October 27th I sent a teletype.

13 Q To whom?

14 A To Motor Vehicles.

15 Q What addresses did you list then?

16 MR. MANZELLA: Object, calls for hearsay.

17 MR. DENNY: Not for the purpose of the truth of the
18 matter asserted, your Honor, but just for the fact they were
19 sent in an attempt to locate Shea.

20 MR. MANZELLA: Then, it is irrelevant, your Honor. If it
21 is not offered for the truth of the matter, then, it is
22 irrelevant.

23 THE COURT: All right, overruled. You may answer.

24 THE WITNESS: Yes, I sent a teletype to Motor Vehicles
25 listing two addresses, one in Paramount and one in Los Angeles.

26 Q BY MR. DENNY: Well, would you give us the addresses?

27 MR. MANZELLA: Your Honor, I'm going to object on the
28 grounds these call for hearsay.

1 THE COURT: All right, sustained.

2 Q BY MR. DENNY: Well, did you give them -- when you
3 listed the one in Paramount and the one in Los Angeles, the one
4 in Paramount is the last known address and the one in Los
5 Angeles as a prior address?

6 MR. MANZELLA: Objection, it calls for hearsay.

7 THE COURT: Will counsel approach the bench.

8 (Whereupon, the following proceedings were had
9 at the bench among Court and counsel, outside the hearing of
10 the jury:)

11 MR. DENNY: Your Honor, this Court has permitted to get
12 in through Sergeant Whiteley all --

13 THE COURT: Excuse me just a minute.

14 What's the basis for the objection?

15 MR. MANZELLA: The basis of the objection is the only
16 way she could have known or concluded last known address or an
17 address is through hearsay and the People were not permitted
18 to get in hearsay. The People were only permitted to --

19 THE COURT: I think the question is whether or not how
20 effective the check for Mr. Shea's whereabouts is. And may --

21 MR. MANZELLA: But she doesn't have to --

22 THE COURT: The question is not whether Shea actually
23 resided at the place in question --

24 MR. MANZELLA: Right, but --

25 THE COURT: -- but whether --

26 MR. MANZELLA: -- but whether they followed up on the
27 information.

28 THE COURT: Yes.

1 MR. MANZELLA: But the point is, they don't need hearsay
2 to do that. She doesn't have to testify to every address and
3 every person, what people told her.

4 MR. DENNY: I'm not asking her --

5 MR. MANZELLA: Yes, you are. There were no addresses --
6 she's testifying to hearsay. Sergeant Whiteley never testified
7 to hearsay.

8 MR. DENNY: Yes, he did.

9 THE COURT: Excuse me, one at a time. I'll give each of
10 you a chance.

11 MR. MANZELLA: He made inquiries of various people and
12 various agencies.

13 MR. DENNY: And then he testified --

14 THE COURT: Excuse me, I'll give you an opportunity,
15 Mr. Denny.

16 MR. MANZELLA: She testified as a result of those
17 inquiries he was unable to locate Shea. I have no quarrel
18 with asking Cecilia Kienast if she attempted to locate the last
19 known addresses, if she contacted people and did this and did
20 that. What I object to is the information they gave her,
21 the substance of the information. I have no objection to her
22 testifying as to whether or not she followed up, whether or not
23 she attempted to get addresses, check them out and so on, but
24 what I object to is the hearsay -- hearsay being offered.

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1 In other words, what information did these
2 people get you? Nobody testified to that. Sergeant
3 Whiteley never testified what information he got from the
4 Internal Revenue Service or Social Security. He never
5 testified to that. He introduced no hearsay.

6 MR. DENNY: Your Honor --

7 MR. MANZELLA: And that's what I object to, because
8 it is being offered for the truth of the matter, because
9 Shea had the address, last known address -- how did she
10 know that? That's hearsay.

11 THE COURT: All right.

12 MR. DENNY: First of all, the People got in every kind
13 of possible hearsay under the guise of Sergeant Whiteley
14 saying, in effect, they told me that they had no information.
15 When he says --

16 MR. MANZELLA: That's not true.

17 THE COURT: I don't think that was his response. I
18 think his response to it --

19 MR. DENNY: No, sir.

20 THE COURT: His response was that as a result of the
21 efforts to locate Shea, he was unable to do so.

22 MR. DENNY: All right. That, in effect, is indirect
23 hearsay, saying they told me that they couldn't find him,
24 that they didn't have anything on him, et cetera, et
25 cetera.

26 Now, that is indirect hearsay just as much as
27 if he had testified just exactly --

28 THE COURT: What is your point?

1 MR. DENNY: My point is, I have the right, just as the
2 Court said, to determine what leads they followed up, what
3 addresses they followed up, what attempts they made to find
4 him.

5 THE COURT: Well, isn't --

6 MR. DENNY: Whether those were good attempts or not.
7 And certainly to determine what locations were sought to be
8 checked out.

9 THE COURT: Well, isn't it true, then, if that is
10 taking your last phrase that they are being offered for the
11 truth of the matter, that is the location was a proper one--

12 MR. DENNY: Not necessarily that he lived there, but
13 they did check them out and for what reason they checked
14 them out. Just the same reason Whiteley checked the Internal
15 Revenue Service. Whiteley checked out Social Security.
16 This officer and her function checked out or supposedly
17 checked out or had people check out those addresses.

18 MR. MANZELLA: Your Honor, that would be like Sergeant
19 Whiteley -- not only was he not able to locate Shea, but what
20 information did you receive from the Internal Revenue Service,
21 what information did you receive from Social Security, what
22 did you do to check out that information. That would all be
23 hearsay and we never went into that. We never went into that.

24 The testimony of Sergeant Whiteley actually
25 doesn't have much weight on that point because --

26 THE COURT: Are any of these addresses in evidence?
27 A couple of them are, aren't they?

28 MR. DENNY: The only one in evidence is 8010 Hollywood

1 Boulevard. The others are not.

2 MR. KAY: That's near the Wilcox Hotel or Jerry Binder's--

3 MR. DENNY: No, Jerry Binder's.

4 We certainly have a right to show these other
5 locations.

6 MR. MANZELLA: I don't see why the locations are
7 important. And the important thing is whether or not they
8 checked out -- whether or not they did things on the case,
9 whether they checked out locations and addresses and so on.
10 What those addresses were is not important. It is hearsay
11 because it is being offered to show for the truth of the
12 matter.

13 MR. DENNY: It is just --

14 MR. MANZELLA: And we've never offered that kind of
15 hearsay from Sergeant Whiteley.

16 MR. DENNY: It is just as important as going to talk
17 to Niki Shea, Sandra Harmon, and so and so, and such and such.
18 That they can check out these addresses.

19 THE COURT: What did the addresses mean to the jury?

20 MR. DENNY: The addresses mean to a jury, presumably,
21 that Shea had contacted there, lived there.

22 THE COURT: How many addresses will you mention?

23 MR. DENNY: There are three addresses, 9831 Oakdale
24 in Chatsworth.

25 THE COURT: How does the jury know what significance
26 9831 --

27 MR. DENNY: That's the DMV reply as to the address they
28 had at a particular time.

1 MR. KAY: Well, we --

2 MR. DENNY: And part of it, your Honor, is to show that
3 Shea was this peripatetic character.

4 MR. MANZELLA: Exactly. That's why it is hearsay. It
5 is being offered for the truth of those statements, and we
6 can't cross-examine who says it is the last known addresses.
7 That's exactly the point.

8 THE COURT: All right, I'll sustain it.

9 MR. DENNY: All right.

10 (Whereupon, the following proceedings were had
11 in open court within the presence and hearing of the
12 jury:)

13 Q BY MR. DENNY: Now, Deputy Kienast, in the course
14 of your investigation of this missing persons investigation,
15 did you attempt to locate the wife of Donald Shea?

16 A Yes, sir, I did.

17 Q And in that connection, I'll direct your attention
18 to page 13 of the document.

19 Did you attempt to contact Las Vegas as concern-
20 ing an effort to determine the identity of Mrs. Shea?

21 A Yes.

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1 MR. MANZELLA: Objection. It doesn't appear to be
2 relevant, your Honor.

3 Ask that the answer be stricken.

4 MR. DENNY: Relevant as to her testimony, your Honor.

5 I can connect it up if the Court wishes me by an
6 offer of proof.

7 MR. MANZELLA: It's vague and ambiguous, your Honor.

8 THE COURT: Sustained.

9 MR. DENNY: On which ground, your Honor?

10 THE COURT: The latter.

11 Q BY MR. DENNY: Did you, on October 27, 1969, send a
12 teletype to the police department in Las Vegas, in an attempt
13 to determine the identity of the person most recently married
14 to Donald J. Shea?

15 MR. MANZELLA: Objection. It's vague and ambiguous, and
16 it's leading and suggestive.

17 THE COURT: Overruled. You may answer that yes or no.

18 THE WITNESS: Yes, sir.

19 Q BY MR. DENNY: And at the time you sent that --
20 that is, on October 27, 1969 -- did you know the name of the
21 most recent Mrs. Donald Shea?

22 MR. MANZELLA: Objection. It doesn't appear to be
23 relevant.

24 THE COURT: Sustained.

25 MR. DENNY: Again, your Honor, I would make an offer of
26 proof, if the Court wants.

27 It's relative to her testimony, as to when she
28 contacted the police -- relevant, that is, as to Niki Shea or

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1 Magdalene Shea's testimony.

2 THE COURT: The objection will be sustained.

3 MR. DENNY: May I make an offer of proof, your Honor?

4 THE COURT: You may.

5 (Whereupon, the following proceedings were had at
6 the bench among Court and counsel, outside the hearing of the
7 jury:)

8 MR. DENNY: Your Honor, this testimony is directed toward
9 the testimony of --

10 THE COURT: You may ask her whether or not there was --
11 to her knowledge, there was any report of a missing person, I
12 think, but --

13 MR. DENNY: Well, your Honor, I -- I would like to take it
14 step by step as to their investigation, as to what they knew at
15 any given time in connection with Magdalene Shea.

16 I offer to prove --

17 THE COURT: Well, aren't you assuming that this lady
18 would have known?

19 MR. DENNY: Yes, I am, your Honor.

20 THE COURT: Well, is that --

21 MR. DENNY: Because she was in on the investigation of the
22 missing person, Shorty Shea.

23 THE COURT: She's a Sheriff's officer, and -- and
24 Magdalene Shea did make a missing person's report at some time
25 later, to the Los Angeles Police Department, did she not?

26 MR. DENNY: Well, that's part of my offer of proof, that
27 she did not do so, your Honor. And I will offer to prove that
28 she did not do so; that the first missing persons report she

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1 made out was to the Sheriff's Office, and that was after she had
2 been arrested by the L.A.P.D. for --

3 THE COURT: Well, the objection to the question at this
4 point is sustained.

5 MR. DENNY: Well, your Honor, I offer to show that she
6 had --

7 THE COURT: It's immaterial, whether this person --

8 MR. MANZELLA: How is that relevant? I just don't see the
9 relevance.

10 MR. DENNY: Well, the relevance is that in October, and
11 even as to November, 1969, that the People who were conducting
12 this investigation, and trying to get in touch with Magdalene
13 Shea, were unable to do so, because they -- all they knew about
14 her was that she was a topless dancer, a black woman by the name
15 of Niki.

16 MR. KAY: So what?

17 MR. DENNY: But up until November 4, 1969 --

18 THE COURT: All right. The Court will sustain the
19 objection.

20 MR. DENNY: -- she did not contact them.

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

23 Q BY MR. DENNY: Sergeant Kienast, you were assigned,
24 were you not, specifically, among other assignments, to the case
25 of the missing person Shorty Shea? Or Donald Jerome Shea?

26 A I was assisting Sergeant Whiteley. Sergeant Whiteley
27 had the case.

28 Q All right. And were you, in October, attempting to

8-4

1 locate Mrs. Shea?

2 A Yes, sir.

3 Q And what attempts did you make to locate her?

4 MR. MANZELLA: Objection. It doesn't appear to be
5 relevant.

6 THE COURT: Sustained.

7 Q BY MR. DENNY: Did she contact you at any time in
8 October of 1969?

9 A No, sir.

10 Q Or anybody on the team that was looking for her?

11 A I don't know, sir.

12 Q Well, to your knowledge, she did not contact you and
13 Sergeant Whiteley; is that right?

14 A To my knowledge, she did not contact me, sir.

15 Q All right. And in November, did she contact you?

16 A No, sir.

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1 Q Were you still looking for her?

2 A I was looking for -- at that time, I was checking
3 on Donald Jerome Shea, sir.

4 Q Well, were you also attempting to -- at least, as
5 of November 4, to locate Mrs. Shea?

6 A I don't recall --

7 MR. MANZELLA: Objection. It doesn't appear to be
8 relevant, your Honor.

9 THE COURT: Sustained.

10 Would you read it to me, Mr. Williams? I'm
11 sorry.

12 (Whereupon, the record was read by the reporters
13 as follows:

14 "Q Well, were you also attempting to -- at
15 least, as of November 4, to locate Mrs. Shea?"

16 THE COURT: Overruled. You may answer that.

17 THE WITNESS: I don't recall.

18 Q BY MR. DENNY: Well, to refresh your recollection,
19 would you look at Page 2, Paragraph 2, of the document? Does
20 that refresh your recollection, ma'am?

21 (Pause in the proceedings while the witness
22 perused the document.)

23 THE WITNESS: Yes. I recall this memo, this note.

24 Q BY MR. DENNY: All right. And having looked at
25 that, does that refresh your recollection as to whether or
26 not you were still looking for her on November 4?

27 A I really don't recall if I was still looking for
28 her or if this was just something that I gave to Sergeant

8a-2

1 Whiteley when I received it.

2 Q Who are the "Bill and Joe"?

3 MR. MANZELLA: Objection. It's not relevant.

4 Q BY MR. DENNY: Who signed that?

5 THE COURT: Sustained.

6 MR. MANZELLA: It's not relevant.

7 THE COURT: The objection is sustained, sir.

8 Q BY MR. DENNY: Well, as of that date, did you know
9 anything more about her, other than the fact that her name was
10 Niki?

11 MR. MANZELLA: Objection. It's not relevant.

12 THE COURT: Sustained.

13 Q BY MR. DENNY: Well, now, again, you say that
14 in November you were attempting to locate the missing person,
15 Donald J. Shorty Shea; is that right?

16 A I was still doing some preliminary investigation
17 on it for Sergeant Whiteley.

18 Q All right. And did you make any effort to check out
19 his ownership of a 1960 T-Bird, as reflected in that report on
20 Page 2?

21 MR. MANZELLA: Objection. The way that question is
22 phrased, it assumes a fact not in evidence, your Honor, --

23 THE COURT: Sustained.

24 MR. MANZELLA: -- that he owned a 1962 T-Bird.

25 MR. DENNY: Your Honor, I --

26 Q Well, did you make any attempt to locate a 1962 --
27 a 1960 T-Bird, under the name of -- or, owned by or possibly
28 owned by -- that's going to be compound that way, so let me

8a-3

1 rephrase it.

2 MR. MANZELLA: I won't object if you ask it that way.

3 MR. DENNY: You won't object? All right. I'll leave it.

4 THE COURT: You have got "owned or possibly owned by --"

5 MR. DENNY: Yes. Thank you, your Honor.

6 Q (Continuing) -- Donald J. Shea?

7 A I sent a teletype to Motor Vehicles, to try and
8 determine what type of vehicles were registered to him.

9 Q All right. But specifically, as far as this 1960
10 T-Bird, did you make some specific effort to determine whether
11 Shorty Shea or Donald J. Shea had purchased, was driving, or
12 owned this 1960 T-Bird, --

13 MR. MANZELLA: Objection.

14 Q BY MR. DENNY: -- that's referred to in that report?

15 MR. MANZELLA: Objection, your Honor. It assumes a fact
16 not in evidence, that there was a 1960 T-Bird.

17 THE COURT: Sustained.

18 MR. DENNY: Well, there --

19 Q There is a 1960 T-Bird referred to in that report,
20 on Page 2; is that correct?

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

22 MR. DENNY: Not irrelevant.

23 THE COURT: Sustained.

24 Q BY MR. DENNY: Sergeant, in the course of your
25 investigative work, in trying to determine the whereabouts of
26 the missing person, Shorty Shea, did you attempt to locate
27 specifically a 1960 T-Bird owned or driven by Donald J. Shea?
28

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8b-1

1 MR. MANZELLA: That assumes a fact not in evidence, your
2 Honor, that he owned or drove a 1960 T-Bird.

3 MR. DENNY: Well, let me rephrase it.

4 Q Did you attempt to locate a T-Bird, a 1960 T-Bird,
5 in some way connected in your investigation with Donald J.
6 Shea?

7 A I don't recall specifically a 1960 T-Bird.

8 Q You don't recall specifically running down that?

9 A No, sir. You see, much of the information given to
10 me was just turned over to Sergeant Whiteley. They were
11 conducting the field investigation.

12 MR. DENNY: All right, ma'am. Fine. I have no further
13 questions.

14 MR. MANZELLA: No questions, your Honor.

15 MR. DENNY: May this witness be excused?

16 MR. MANZELLA: We have no objection.

17 THE COURT: Just a moment, Sergeant.

18 Would you gentlemen approach the bench?

19 (Whereupon, the following proceedings were had at
20 the bench among Court and counsel, outside the hearing of the
21 jury:)

22 THE COURT: I didn't mean to preclude you from inquiry
23 as to whether or not various checks were made to find Shea,
24 with listings from various addresses.

25 But as to the specific addresses, I thought that
26 the objection was well taken.

27 MR. DENNY: All right. I'll ask the question, your
28 Honor.

8b-2

1 Sergeant Winter -- or, Deputy Winter is here. We
2 had him yesterday. He was held over today, and I understand that
3 he and Sergeant Kienast have an extradition down in San Diego --

4 THE COURT: How long will it take you to --

5 MR. DENNY: It shouldn't take more than ten minutes.

6 I wonder if we could go over for that period of
7 time?

8 THE COURT: All right.

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

11 THE COURT: Does anyone have an appointment at 12:00?
12 There is a witness whom we could accommodate, who has to, as I
13 understand it, get down to San Diego on a --

14 MR. DENNY: An extradition.

15 THE COURT: -- an extradition matter.

16 And we could put him on and let him go. It will
17 take about ten minutes.

18 I see no hands, so I'll assume that you are not
19 otherwise engaged, and I can keep you here until 12:15.

20 Anything further?

21 MR. DENNY: Yes, I do have a couple of further questions,
22 in view of the Court's statement.

23 May we get Mr. Williams back where he will be more
24 comfortable?

25 (Laughter.)

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

28 Q BY MR. DENNY: Sergeant Kienast, again, just

8b-3

1 referring to the two pages, 9 and 12, of the manual -- and
2 without stating specifically the locations -- did you attempt
3 to run down information concerning addresses of Mr. Shea?

4 (Pause in the proceedings while the witness
5 perused a document.)

6 Q BY MR. DENNY: Actually, 6, 9 and 13.

7 A Here again, I don't recall if I ran it down, or if
8 this was just information I gave to Sergeant Whiteley.

9 Q All right. But your own attempts were made
10 certainly by teletype, that you sent out; is that correct?

11 A Yes. Some was information received, and some was
12 what I sent out.

13 Q All right. And how many addresses, specifically,
14 were you involved in, either receiving or running down your-
15 self, by sending out teletypes?

16 A I don't recall, sir.

17 Q Well, specifically referring to Page 6, there's
18 one that you have previously mentioned on Hollywood Boulevard;
19 is that correct? 8010 Hollywood Boulevard?

20 A That's listed on Page 6.

21 Q All right. On Page 9, there's another one -- and
22 don't tell us the address -- but there is another one from a
23 DMV reply; is that correct?

24 A Yes, sir.

25 Q And on Page 12, there were two addresses, which you
26 sent out by telegram; is that right?

27 A Yes, sir.

28 Q And two different addresses than the other two that

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we have talked about; is that correct?

A Yes, sir.

MR. DENNY: All right. Fine. I have no further questions.

8c fol

MR. MANZELLA: No questions, your Honor.

8c-1

1 THE COURT: May we get Deputy Winter, please?

2 MR. MANZELLA: May Sergeant Kienast be excused?

3 MR. DENNY: Yes, I certainly hope so.

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

8 THE WITNESS: I do.

9
10 ROBERT W. WINTER,
11 called as a witness by and on behalf of the defendant,
12 having been first duly sworn, was examined and testified
13 as follows:

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

15 THE BAILIFF: Please state and spell your full name,
16 sir.

17 THE WITNESS: Robert W. Winter; W-i-n-t-e-r.

18
19 DIRECT EXAMINATION

20 BY MR. DENNY:

21 Q Sir, what is your present occupation and
22 assignment?

23 A I am a Deputy Sheriff, Los Angeles County,
24 presently assigned to Homicide Bureau, missing person
25 detail.

26 Q And were you so assigned in the months of
27 September through at least December of 1969?

28 A I was.

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Q And in what specific capacity were you assigned?

A Missing person investigator.

Q And in that connection, did you have any conversations concerning the missing person, Donald J. Shea, otherwise known as Shorty Shea, with Mrs. Magdalene Shea, sometimes referred to as Niki?

A Yes, sir, I did. On one occasion only.

Q And when was that occasion, sir?

A That would be December 11th, 1969.

Q And did you make a report concerning that?

A Yes. I wrote a report on December 12th.

9 fls.

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Q Were there actually two reports that you wrote?

A No, it was just the one report. No, just one report. There were two parts I wrote.

Q All right.

And this conversation that you had with her was held where?

A On an address on South LaBrea in the City of Los Angeles.

Q If you want to turn to Page 3 of the manual, it is back in the back of that notebook, sir.

Is that a copy of your report?

A Yes, it is.

Q And does that indicate the address at which you held this conversation?

A I believe the address is indicated on Page 1, 3451 South LaBrea Avenue, Apartment -- Room 206, Los Angeles.

Q All right. And, sir, was that interview had in response to a call from her?

MR. MANZELLA: Objection, it doesn't appear to be relevant, your Honor.

MR. DENNY: Again, it goes to her testimony, your Honor.

THE COURT: Sustained -- overruled, you may answer.

THE WITNESS: I was directed by then Lieutenant Hamilton, now Captain Hamilton to go out and contact her and take a missing person report in regards to Mr. Shea.

Q All right. Had you personally, up to that time, in any way been contacted by her?

1 A I have not, no.

2 Q You had not, you say?

3 A I had not.

4 Q Yes, all right.

5 Now, sir, do you remember specifically what she
6 told you? Do you have any independent recollection of what she
7 told you?

8 A Just refreshing my memory from the reports, is
9 about all.

10 Q All right. Specifically on December 11, 1969, at
11 the location indicated, 3451 South LaBrea Avenue, Room 206 --
12 and were there any other persons present at the time besides
13 you and she?

14 A I believe there was a man, a woman and a child
15 there.

16 Q Did they identify themselves?

17 A I believe they did at the time, but I didn't make
18 any notes on it and I don't recall who they were. I believe
19 they were relatives.

20 Q All right. And did she state to you the following:

21 "When missing person left the Wilcox address, he
22 left a note stating he was going to the Valley but did not
23 specify as to where. The informant," that's Mrs. Shea, "was
24 asleep at the time and presumed the time was approximately
25 6:00 A. M. the missing person took all of his belongings at the
26 time, which included two metal trunks, a suitcase, an attache
27 case, and a small gun bag"?

28 A Yes, she did.

1 Q Did she state to you she was not concerned as to
2 his leaving until his name was mentioned by the various news
3 media?

4 A I believe that that is correct.

5 Q And did she state to you that she could be
6 contacted daily at her location as she was presently unemployed
7 or through a friend Jackie Jackson, phone number 936-6343
8 after 1800 hours?

9 A That's correct.

10 MR. DENNY: All right, sir, I have no further questions.

CROSS

12 CROSS EXAMINATION

13 BY MR. KAY:

14 Q Deputy Winter, did she also tell you that --

15 MR. DENNY: Just a moment, I'll object to any other
16 conversation on the grounds it is beyond the scope of direct
17 examination.

18 MR. KAY: I think under 356 I can get in the entire --

19 THE COURT: Excuse me, don't argue in front of the jury.
20 I'll let you argue here at the bench.

21 Is this part of the same conversation?

22 MR. KAY: Yes.

23 MR. DENNY: May we approach the bench?

24 MR. KAY: Unless your Honor feels we need to.

25 MR. DENNY: I do.

26 THE COURT: The Court will hear from you.

27 (Whereupon, the following proceedings were had at
28 the bench among Court and counsel, outside the hearing of the

1 jury:)

2 MR. DENNY: Your Honor, we went in --

3 THE COURT: What are you seeking to offer?

4 MR. KAY: A prior consistent statement, "The cause of
5 their separation was a disagreement over her continuing to work
6 as a topless dancer. She was not concerned as to his leaving
7 until his name was mentioned by the various news media. The
8 informant felt the missing person still loved her and would
9 return."

10 MR. DENNY: I have no objection to that, if that's all
11 they're seeking to introduce as a prior consistent statement.

12 THE COURT: Part of the same conversation.

13 MR. DENNY: If that's all they're attempting to do.

14 MR. KAY: At this time.

15 THE COURT: All right, go ahead.

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

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1 Q BY MR. KAY: Do you have -- I think that you don't
2 have a copy.

3 Did Mr. Shea also state to you that "the cause of
4 their separation was a disagreement over her continuing to
5 work as a topless dancer"?

6 A That's correct.

7 Q Did she tell you that she felt that "the missing
8 person still loved her and would return"?

9 A That is correct.

10 MR. KAY: May I have just a moment, your Honor?

11 THE COURT: Yes, you may.

12 Q BY MR. KAY: Did she also tell you that --

13 MR. DENNY: Just a --

14 Q BY MR. KAY: -- the last time she saw him --

15 MR. DENNY: Just --

16 Q BY MR. KAY: -- was August 16, 1969?

17 A That is correct.

18 Q BY MR. KAY: This Jackie Jackson that you mentioned
19 to -- on Mr. Denny's examination, that's spelled J-a-c-k-i-e;
20 is that right?

21 A That is correct.

22 Q Jackie Jackson.

23 And she said there was -- she is presently
24 unemployed. She could be reached through a friend Jackie
25 Jackson, 936-6348?

26 A That's correct.

27 Q All right.

28 Did she tell you that she had also attempted to

9a-2

1 contact Mr. Shea at Spahn Ranch --

2 MR. DENNY: Just a moment.

3 Q -- but had been unsuccessful?

4 MR. DENNY: I won't object to that.

5 A Yes, she had.

6 THE COURT: Is that all, gentlemen?

7 MR. KAY: Nothing else.

8 MR. DENNY: May this witness be excused, your Honor?

9 THE COURT: He is excused.

10 Ladies and gentlemen, you are excused until 2:00
11 o'clock.

12 During the recess you are admonished that you are
13 not to converse amongst yourselves, nor with anyone else, nor
14 permit anyone to converse with you on any subject connected
15 with the matter, nor form or express any opinion on it until
16 it is finally submitted to you.

17 See you all at 2:00 o'clock.

18 (Whereupon, at 12:15 o'clock p.m. the noon
19 recess was taken.)
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1 LOS ANGELES, CALIFORNIA, TUESDAY, FEBRUARY 15, 1972 2:05 PM

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4 THE COURT: The defendant is present with his counsel.
5 All jurors are present. Mr. Kay and Mr. Manzella for the
6 People.

7 (Proceedings had on unrelated matters.)

8 THE COURT: Mr. Kay?

9 MR. KAY: Yes, your Honor. The People would like to
10 call Mr. Harry Johnson at this time, your Honor, with the
11 Court's permission.

12 MR. DENNY: Well, your Honor, I wonder if I could
13 call one witness, who is going to be a short witness, a
14 good deal shorter in duration, I think than Mr. Johnson,
15 who has been waiting all morning also, and is supposed to
16 get -- he's a police officer who is supposed to get down to
17 Juvenile Hall to do some work on a case there.

18 He will be just a very short witness.

19 MR. KAY: Who is that, George? Kamidoi?

20 MR. DENNY: Kamidoi.

21 MR. KAY: Okay. Very well.

22 MR. DENNY: Officer Kamidoi.

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

27 THE WITNESS: I do.
28

2/15/72
10-2

EUGENE N. KAMIDOI,

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

THE CLERK: Please take the stand and be seated.

State and spell your full name.

THE WITNESS: Eugene, middle initial "N", Kamidoi;
K-a-m-i-d-o-i.

DIRECT EXAMINATION

BY MR. DENNY:

Q Sir, what is your occupation and assignment?

A Police officer for the City of Los Angeles, presently assigned to Hollywood Detectives.

Q And how long have you been employed as a police officer, LAPD?

A In excess of 12 years.

Q And, sir, on February 18th and thereabouts, you were so employed?

A Yes, I was.

Q In what capacity?

A I was assigned as an investigator, Robbery-Homicide Division.

Q All right, sir. I want to show you a report which has heretofore been marked for identification as Defendant's Exhibit X, a copy of that report, which I understand you have heretofore seen today?

Did you and your partner prepare the original of that report?

2/15/72
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1 A Yes, I did.

2 Q And your partner at that time was whom?

3 A Dale Brown.

4 Q And would you state to us the manner in which
5 you prepared that particular report?

6 First of all, would you identify what sort of
7 report it is?

8 A It's a Los Angeles Police Department property
9 report -- or evidence report.

10 Q And is that a report which is used by the members
11 of the Los Angeles Police Department in the ordinary course
12 of business?

13 A Yes, it is.

14 Q All right. Excuse me just one moment.

15 (Pause in the proceedings.)

16 Q BY MR. DENNY: Now, would you state what you did
17 in order to prepare that report? What you and your partner
18 did?

19 A When we first got custody of it, are you referring
20 to?

21 Q Well, let's start from the top of that report.
22 How was that report prepared? What is the
23 information?

24 A We received the above evidence from Deputy
25 Sheriff Cox, from Inyo County Sheriffs.

26 Q Now, when you are speaking of "the above evidence,"
27 are you referring to the evidence which appears in the body
28 of that, as an inventory of items received?

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A That's correct.

Q All right. Go ahead.

A We transported the items from Independence, California, to Los Angeles, to Robbery-Homicide Division, and -- at which time my partner, Dale Brown, typed the items as I pulled them out and identified them to him.

And he listed them on our property evidence report here, and then they were booked down in Central Property.

Q All right. Now, who was it who did the typing?

A Dale Brown --

Q All right.

A -- my partner.

Q And is that his signature which appears over the two typed names at the bottom of the first page of the report?

A That's correct.

10a fls.

2/15/72
10a-1

1 Q All right. And this, then, was made in the
2 ordinary course of business by the two of you; is that
3 correct?

4 A Yes, it was.

5 Q All right. And it was made when in relationship
6 to the time that you received the items inventoried?

7 A We received these items on the 18th of February,
8 1970, at approximately 1300 hours; and they were then booked
9 into evidence -- into our Central Property Division on the
10 20th of February, 1970.

11 Q In whose custody were they during the period
12 between?

13 A My partner's and mine.

14 Q All right. And was this report, as evidenced
15 by Defendant's X, made before the property was deposited
16 with Central Property?

17 A That's correct.

18 Q All right. So that the items that are reflected
19 in that report, as part of the inventory, were in the custody
20 of yourself and your partner, from the time you received
21 them until the time you booked them into Central Property;
22 is that right?

23 A That's correct.

24 Q All right. And let me show you an attache case
25 which has been marked -- well, so many times, it's almost
26 hard to say -- marked People's 54 in evidence.

27 Does that look at all familiar to you?

28 A Vaguely.

2/15/72
10a-2

1 Q Do you recall whether or not that was one of
2 the items which you received from Deputy Cox, and which
3 appears as one of the items on the inventory in that report?

4 A Yes, it is.

5 Q All right.

6 And does it -- and it does appear on the
7 inventory?

8 A Yes. It does appear on the inventory.

9 Q All right. As what item, sir?

10 A Item No. 12.

11 Q All right. And showing you this bluish suitcase,
12 which has been received in evidence as 65-H -- although the
13 condition may not be quite the same as when you received it--
14 does that appear familiar to you?

15 A Vaguely.

16 Q All right. And perhaps opening it to disclose
17 the contents thereof, does that look familiar to you?

18 A Vaguely.

19 Q All right. And do you recall whether this was
20 the suitcase that you received, along with the attache case,
21 from Deputy Cox?

22 A It appears to be.

23 Q All right. And you and your partner then
24 inventoried the contents of each?

25 A That's correct.

26 Q Now, sir, I wonder if you would take the hand
27 microphone?

28 First of all, Item 24, "Cash register tapes

2/15/72
10a-3

1 dated October 3rd, with the name 'Dale's' amount, \$21:32,"
2 do you recall independently at all whether those cash
3 register tapes were in the attache case or in the blue
4 suitcase?

5 A I don't recall.

6 Q But they were there somewhere, in one of the two?

7 A I assume they were, if we put them on the
8 report.

9 Q All right. And a check protector, Hedman, Gray,
10 and an adding machine, Ohdner, O-h-d-n-e-r, Gray.

11 Do you recall whether those were in the attache
12 case or in the suitcase?

13 A As I recall, they were in a paper box, a carton,
14 a cardboard -- a carton box.

15 Q Separate and apart from the attache case and the
16 suitcase?

17 A I am just assuming this. I can't be sure of
18 where.

19 Q Well, do you have any independent recollection
20 now of receiving those items in a separate cardboard box,
21 from Deputy Cox, at the same time that you received the
22 suitcase and the attache case?

23 A I can't recall.
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11 fls.

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1 Q Did you -- perhaps -- let me give you this so that
2 you can see.

3 Did you specifically inventory the items of
4 clothing in the suitcase?

5 A As each individual shirt or just --

6 Q Either as each individual shirt or any mention made
7 of any shirts?

8 A I don't see it down here.

9 Q Do you have any independent recollection of whether
10 there were, in fact, any shirts in the suitcase at the time you
11 received it from Deputy Cox?

12 A Not to my personal recollection, no, sir.

13 Q Well, so that we get it straight, are you saying
14 that you have a recollection that there were not any shirts
15 in the suitcase?

16 A My recollection is just from this evidence report.
17 Uh, I had this property in my custody from the 18th of February
18 until the 20th, and I haven't seen it until today. So --

19 Q Well, again, so we get straight the manner in which
20 it was prepared, did you and your partner at the time you made
21 up this inventory that now appears as Defendant's X, did you
22 inventory everything that was in the suitcase, the attache case,
23 and if you received a box with a check protector and other
24 items in it, in that?

25 A To my recollection we inventoried everything that we
26 brought back from Inyo County. Whether the check protector was
27 in that box, I don't recall.

28 Q All right. But, again, you inventoried things down

11-2

1 to a bottle of Anacin, a bottle of No-doz, a black felt pen,
2 an envelope, several different envelopes bearing several differ-
3 ent names; is that right?

4 A That's correct.

5 Q All right. And would it have been, sir, your normal
6 procedure if shirts had been in the suitcase to include those on
7 the inventory?

8 A Yes, it would have.

9 Q So does the fact that no shirts appear on the
10 inventory as far as your own personal habit, custom and practice
11 in making up such inventories, would that indicate to you that
12 they were not there?

13 MR. KAY: Your Honor, that calls for a conclusion.

14 THE COURT: Sustained.

15 Q BY MR. DENNY: All right. Now, sir, showing you
16 specifically this shirt which appears to be sort of a stained
17 cream-colored shirt; does there appear to be a laundry label
18 or cleaning tag on that shirt?

19 A Yes, there is.

20 Q And that is the blue tag stapled to a portion
21 of the shirt?

22 A That's correct.

23 Q With the name what on it?

24 A DeCarlo.

25 Q Sir, showing you this gray shirt, short sleeved,
26 looks like Finchley label.

27 Does there appear to be a laundry tag on the tail
28 of that shirt?

1 A Yes, there is.

2 Q And what is the name on that?

3 A The written name is DeCarlo. The printed name is
4 Doheny.

5 Q Based on your experience, training, as a homicide
6 officer, Officer, would you be able to say whether the Doheny
7 is the name of the cleaning establishment?

8 MR. MANZELLA: Well, that's irrelevant. Lack of
9 foundation.

10 THE COURT: Sustained.

11 Q BY MR. DENNY: All right.

12 And on this striped white and gray short sleeved
13 shirt, does there appear a laundry tag on that?

14 A Yes, there is.

15 Q And the printed name on that, again, is what?

16 A Doheny.

17 Q Looking at this white shirt, "Silverwoods," does
18 there appear to be a laundry tag on that?

19 A Yes, there is.

20 Q And the printed name, again, is what?

21 A Doheny.

22 Q And the written name is what?

23 A DeCarlo.

24 MR. DENNY: Your Honor, I'd ask at this time that
25 Defendant's X be received into evidence.

26 THE COURT: All right, the Court received -- let's see,
27 is it there?

28 MR. DENNY: Yes, it is, your Honor.

1 MR. KAY: May we approach the bench on this a moment,
2 your Honor?

3 THE COURT: The first paragraph, though, would not be
4 admissible, but the -- the Court believes that the inventory
5 list prepared by Officer Kamidoi would be admissible.

6 MR. KAY: Well, may we approach the bench on this?

7 THE COURT: I'll hear from you.

8 MR. KAY: Thank you.

9 (Whereupon, the following proceedings were had at
10 the bench among Court and counsel, outside the hearing of the
11 jury:)

12 MR. KAY: It appears that on --

13 THE COURT: This is the first paragraph. The inventory,
14 I think, it has been established,

15 MR. KAY: Also the last page, the bottom of the last
16 page, I would not --

17 THE COURT: "Swan from latent prints dusted items for
18 prints. Checks to crime lab for prints"?

19 MR. KAY: It would not be admissible.

20 THE COURT: No, it would not be, but I think the inventory
21 is reliable and the method of preparation has been testified
22 to.

23 MR. KAY: There is no objection to that as long as this
24 part has been deleted and this part --

25 MR. MANZELLA: Can Mrs. Holt delete those two paragraphs?

26 MR. DENNY: I'm sure she can.

27 THE COURT: Let's simply have those objectionable portions
28 lined out with ink.

1 MR. MANZELLA: That's agreeable with the People.

2 MR. DENNY: That's fine, your Honor.

3 THE COURT: Would you take a heavy pen and line out this --

4 MR. DENNY: Or you can paste a piece of paper over it,
5 as far as --

6 THE COURT: Or paste a piece of paper over it, either
7 way. These here (indicating).

8 MR. DENNY: May I have it before she does, though? I
9 have one more question of the officer.

10 THE COURT: Yes.

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

3 Q BY MR. DENNY: Now, Officer Kamidoi, after you had
4 inventoried these items, was any effort made by you to get the
5 items, that is a suitcase and its contents, the attache case and
6 its contents, and the check protector and the adding machine
7 dusted for prints?

8 MR. KAY: Well, that calls for hearsay, your Honor.

9 Q BY MR. DENNY: Did you do anything to get them
10 dusted for prints?

11 MR. KAY: Same objection.

12 THE COURT: Overruled.

13 THE WITNESS: Uh, prints were notified to dust.

14 Q BY MR. DENNY: The fingerprint section was notified
15 to dust for prints, is that right?

16 A Right.

17 MR. DENNY: All right, I have no further questions.

18
19 CROSS EXAMINATION

20 BY MR. KAY:

21 Q Sergeant Kamidoi, what was the reason that you went
22 up to this area where you were presented with these two items?

23 A To bring it back and book it in property.

24 Q Well, that wasn't the reason you went up there.

25 A I went up there on --

26 MR. DENNY: Just a moment, I'll object to that as
27 irrelevant and immaterial, why he went up there.

28 THE COURT: Sustained.

1 Q BY MR. KAY: Well, the reason you went up there was
2 not to retrieve these two items, was it?

3 MR. DENNY: Objection, irrelevant and immaterial.

4 THE COURT: Sustained.

5 MR. KAY: Well, I would like to be heard on that.

6 MR. DENNY: Beyond the scope of direct examination.

7 MR. KAY: He can just answer that yes or no. He doesn't
8 have to say what his reason was.

9 MR. DENNY: It is irrelevant.

10 THE COURT: Sustained.

11 MR. KAY: Okay.

12 Q Sergeant Kamidoi, your reason for going up there
13 was not to receive -- obtain these two items, was it?

14 MR. DENNY: Irrelevant and immaterial.

15 THE COURT: Sustained.

16 Q BY MR. KAY: After receiving these two items, did
17 you pay too much attention to them?

18 A Not much.

19 Q All right. And you were just kind of acting as a
20 carrier to bring them back to Los Angeles, is that right?

21 A That's correct.

22 Q All right. And do you remember specifically whether
23 or not these items of clothing were or were not in the blue
24 suitcase at the time you observed it back here at the Los
25 Angeles Police Department?

26 A I don't recall whether they were or weren't.

27 Q Officer, would you step down a minute.

28 Can you tell whether these -- now, this one here,

1 this CaliCraft, what size is that?

2 A Medium.

3 Q And this Hansom, what size is that?

4 MR. DENNY: Speaks for itself, your Honor.

5 THE COURT: I'm sorry, would you read the question back?

6 (Whereupon, the question was read by the reporter
7 as follows:

8 "Q And this Hansom, what size is that?")

9 MR. DENNY: The exhibit speaks for itself.

10 MR. KAY: Well, Mr. Denny --

11 THE COURT: I don't know whether it does or not -- I
12 don't know -- if it does not -- that the officer would be
13 qualified to answer it. Sustained.

14 Q BY MR. KAY: What happened after you took the
15 inventory of the suitcase?

16 MR. DENNY: Object to that as vague and ambiguous.

17 Q BY MR. KAY: Well, what did you do with it? What
18 did you do with it?

19 A I took it down to Central Property and booked it
20 into evidence.

21 Q Have you seen it since that time?

22 A Not since that date.

23 Q Okay.

24 And have you had anything to do with the investiga-
25 tion of either the Shea or Hinman murders?

26 MR. DENNY: Object to that as irrelevant and immaterial.

27 THE COURT: Sustained.

28 Q BY MR. KAY: Well, you are a Los Angeles Police

1 officer, aren't you?

2 A Yes, I am.

3 Q You're not connected with the Sheriff's department?

4 A No, I am not.

5 MR. DENNY: Object to that as irrelevant and immaterial.

6 THE COURT: The answer may remain. Overruled.

7 MR. KAY: I have no further questions. Thank you,

8 Officer Kamidoi.

9

10 REDIRECT EXAMINATION

11 BY MR. DENNY:

12 Q One further question.

13 Officer Kamidoi, if the shirts had been in that
14 suitcase at the time you inventoried them, would you have
15 placed them on the inventory?

16 MR. KAY: Calls for a conclusion and speculation.

17 THE COURT: Sustained.

18 MR. DENNY: No further questions.

19 MR. KAY: No further questions.

20 MR. DENNY: Well, your Honor, let me pursue that just a
21 minute, and I would like to approach the bench just briefly
22 for an offer of proof.

23 THE COURT: All right, you may.

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

27 MR. DENNY: Your Honor, I think under the Evidence Code
28 we can establish habit and custom with this particular

1 individual if, in fact, it is his usual practice and habit and
2 custom in making up an inventory that he will include in that
3 inventory everything that he has before him to inventory. Then,
4 under the rules of showing his habit and custom --

11b fol

11b-1

1 THE COURT: You can have him testify to something that
2 is -- as to what he --

3 MR. DENNY: Normally, ordinarily --

4 THE COURT: Usual.

5 MR. DENNY: -- does by habit. That he has done it so
6 long in his 12 plus years on the Police Department, that when
7 he is called upon to inventory something, he inventories
8 everything that is before him to inventory. And I think,
9 your Honor --

10 THE COURT: I think if you were to ask -- ask it
11 properly, that it -- it could be asked in that way.

12 Assuming that you had a container of vitamins
13 to inventory, is it your habit and custom to --

14 MR. DENNY: To list everything in that container.

15 THE COURT: -- to list everything in the container.

16 MR. DENNY: All right.

17 MR. KAY: Well, except -- go ahead.

18 MR. MANZELLA: If the Court allows Mr. Denny eventually
19 to get that in, I think the Court ought to allow Mr. Kay's
20 questioning, what Mr. Kay was going to show by that line of
21 questioning, that they didn't go up to retrieve the suitcase
22 and attache case, they went up there on a completely different
23 purpose. And what Mr. Kay was trying to elicit was that he
24 just made a mistake. Richard Barber --

25 THE COURT: What kind of mistake?

26 MR. MANZELLA: He didn't inventory everything in the
27 suitcase because he didn't go up there for that purpose.

28 THE COURT: Who didn't inventory everything?

1 MR. MANZELLA: The officer didn't inventory everything
2 in there. That's what Mr. Kay was trying to show.

3 MR. KAY: He didn't go up there for that specific
4 purpose. He went up there and they just gave them to him
5 and told him to bring them back.

6 THE COURT: Can you prove conduct by habit and custom?

7 MR. KAY: Not in this case. What Mr. Denny is going
8 to do --

9 THE COURT: Why not?

10 MR. KAY: The question is what he did in this specific
11 case.

12 MR. DENNY: In this specific case he did exactly what
13 he said he did, and that is what the report shows, he put
14 everything that was in that suitcase right down to almost
15 needles and pins, aspirin, ink eradicator, every small thing
16 that is in there.

17 MR. KAY: I would like to see the Evidence Code that
18 Mr. Denny is citing.

19 THE COURT: It is 1105. He didn't cite it, but it
20 is 1105, I think.

21 Any otherwise admissible evidence of habit or
22 custom.

23 1105: "Any otherwise admissible evidence of
24 habit or custom is admissible to prove conduct on a
25 specified occasion in conformity with the habit or custom."

26 MR. DENNY: I submit the Court's question as posed:

27 "Is it your habit or custom, if you are given
28 a container to inventory, to inventory everything in

1 "that container and put everything down on that
2 list?"

3 And he says "Yes."

4 "Did you follow that habit and custom in this
5 case?"

6 "Yes."

7 That is proper.

8 THE COURT: Apparently, if you establish a response
9 to -- a regular response to a repeated specific situation,
10 it is admissible. Admissibility of habit evidence to prove
11 conduct in conformity with habit has not been established
12 in California. It does -- I think it is admissible.
13 There's no -- of course, there's nothing to prevent the
14 People from putting on evidence otherwise by separate -- by
15 their own separate proof.

16 But to ask why he went up there, would appear
17 to be outside the scope of direct.

18 MR. KAY: No, no --

19 MR. MANZELLA: What Mr. Kay wanted to show was that
20 he went up for some specific purpose other than getting
21 this. He didn't care what the real reason --

11c fls.

11c-1

1 THE COURT: What's the materiality of that, if somebody
2 inventoried it? You can establish the inventory was improper,
3 you can question about that, because he has testified to this
4 method of inventorying.

5 MR. KAY: Well --

6 MR. MANZELLA: Well, Richard Barber has testified and
7 Sergeant Whiteley has testified that when he got -- when
8 Sergeant Whiteley got the suitcase, the clothes were in there.

9 THE COURT: They were not?

10 MR. MANZELLA: They were there when he got it from L.A.P.D.,
11 the clothes were in there. It is clear they made a mistake.

12 THE COURT: I'll admit that.

13 MR. DENNY: Thank you, your Honor.

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

16 Q BY MR. DENNY: Officer Kamidoi, over the years of
17 your practice and as a homicide investigator have you established
18 a habit or custom as far as the manner in which you inventory a
19 container of things given to you to inventory?

20 A Yes, I have.

21 Q And is it your habit or custom to inventory each and
22 every item in a container that's given to you?

23 A Yes, it is.

24 Q And did you conform to that habit or custom in
25 preparing the inventory that appears now as Defendant's X?

26 A Yes, I think so.

27 MR. DENNY: All right, no further questions.

28
RE CROSS

RE CROSS EXAMINATION

11c-2

1 BY MR. KAY:

2 Q Officer Kamidoi, where -- from the time you brought
3 this back to L. A., the two items, where were they until you
4 inventoried them?

5 A In a locked locker in Robbery Homicide Division.

6 Q All right. And did any of the other officers,
7 such as people like Gutierrez or Sartuche or Galkins or McGann,
8 any of the Tate investigators, did they have access to that
9 locker?

10 A Yes, they did.

11 Q So is it possible that they could have removed
12 some of these items for investigation after you brought the
13 suitcase back?

14 MR. DENNY: I'll object to that as calling for speculation.

15 THE COURT: Sustained.

16 Q BY MR. KAY: All right. But it is your testimony
17 that they did have access to that locker?

18 A Yes, sir.

12 fol

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12-1

1 MR. KAY: Okay. I have no further questions. Thank
2 you.

3 MR. DENNY: May this officer be excused, your Honor?

4 THE COURT: You may be excused, Officer.

5 THE WITNESS: Thank you.

6 MR. DENNY: Thank you, Officer Kamidoi.

7 MR. KAY: Call Mr. Harry Johnson.

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

12 THE WITNESS: I do.

13
14 HARRY JOHNSON,
15 called as a witness by and on behalf of the People, out of
16 order, having been first duly sworn, was examined and
17 testified as follows:

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

19 THE BAILIFF: State and spell your full name, please.

20 THE WITNESS: Harry Johnson.

21
22 DIRECT EXAMINATION

23 BY MR. KAY:

24 Q Mr. Johnson, what is your occupation, sir?

25 A A criminalist, in the State Department of
26 Justice.

27 Q All right. And are you the supervising
28 criminalist for the State of California?

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12-2

1 A Yes.

2 Q And what is a criminalist?

3 A A criminalist examines various types of evidence.
4 We receive it from the law enforcement agencies throughout
5 the state.

6 We make physical comparisons, determine the
7 physical features, characteristics and chemical nature of
8 various objects, usually for purposes of identification.

9 Q And, sir, how long have you been a criminalist?

10 A For 20 years.

11 Q And have you been with the State of California,
12 Department of Justice, for that whole time?

13 A Yes.

14 Q All right. And would you please tell the
15 ladies and gentlemen of the jury your educational back-
16 ground?

17 A Yes. I have a Bachelor of Science degree in
18 chemistry at the University of California. This includes
19 studies in physics, mathematics.

20 I have graduate work at the University of
21 California, including studies in criminalistics.

22 I worked as a chemist and as a biochemist prior
23 to my work as a criminalist.

24 Q Now, does the major part of your work as a
25 criminalist include the field of ballistics?

26 A Yes, it does.

27 Q All right. The identification of firearms and
28 bullets?

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12-3

1 A That's right.

2 Q All right. And approximately how many times have
3 you qualified as an expert in the State of California, in the
4 courts of the State of California, in the field of ballistics?

5 A Oh, I think hundreds of times in this period of
6 time.

7 Q And do you maintain a library in the field of
8 ballistics?

9 A Yes. We have a library in the laboratory, a
10 part of which covers the field of ballistics.

11 Some of these were by men such as Professor Kirk,
12 Lucas, Cerdman and O'Connell.

13 Then, there are books by -- let's see. Specifically,
14 in the field of ballistics, we have Hatcher -- who I think is
15 probably the best known -- Hatcher, Jury and Weller wrote one
16 book.

17 Mathews has two volumes on identification, and
18 Burrard has a book on identification, much of which covers
19 the specifics of identification.

20 Some of it covers the ballistics phase.

21 Q I take it, sir, that you read and studied all
22 of these books?

23 A Yes, I am well familiar with these.

24 Q And as the supervising criminalist for the State
25 of California, how many men do you have under you?

26 A Let's see. At the present time, there are five
27 positions.

28 Q Okay. Now, at the request of Judge Choate, did you

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12-4

1 fly down here from Sacramento yesterday?

2 THE COURT: Excuse me. I'll strike the question.

3 MR. DENNY: I have no objection to the question whatso-
4 ever, your Honor. I would ask it myself.

5 THE COURT: The Court is striking it.

6 MR. KAY: Well, I would like to approach the bench,
7 then. I think we are in a different position here than with
8 any other witness.

9 THE COURT: All right, you may.

10 (Whereupon, the following proceedings were had
11 at the bench among Court and counsel, outside the
12 hearing of the jury:)

13 THE COURT: As I said to you, I don't want the jury to
14 believe -- I don't -- I suppose because you are introducing
15 him, this man, that you believe that his testimony may be
16 favorable to you -- but it may not be, when he's testified
17 on direct and cross.

12a fls.

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12a-1

1 And however it may turn out, I didn't want the
2 jury to take it that the Court was in any way sponsoring
3 or urging this man as a witness.

4 MR. DENNY: Well, your Honor, I think we are in a
5 different position here than we are in connection with Dr.
6 Brill, whom the Court appointed at my request, and indicated
7 that neither of us should refer to the fact that he had been
8 appointed by the Court.

9 I think it is most relevant, most pertinent.

10 THE COURT: Why?

11 MR. DENNY: That this man comes down as an independent
12 expert, neither called by the People nor by the defense.

13 THE COURT: All right. If you put it down in that way--

14 MR. DENNY: But called by the Court.

15 THE COURT: If you say, "an independent expert, called
16 by neither side," that might be acceptable, rather than --

17 MR. KAY: Okay.

18 THE COURT: -- giving the impression that the Court is
19 in some way endorsing what he's testifying to.

20 His expertise was made available -- of course,
21 the jury can't know this, but his expertise was made available
22 to both sides.

23 MR. DENNY: Well, I think the jury should be advised,
24 your Honor, that --

25 THE COURT: Well --

26 MR. DENNY: -- he was called --

27 THE COURT: -- I think that type of question is --

28 MR. KAY: All right. I'll ask him if he is an independent

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12a-2

1 expert, that wasn't contacted by either side.

2 MR. DENNY: All right.

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

6 THE COURT: Let me -- Mr. Johnson, let me put it this
7 way. You are an independent expert in this case, aren't you?
8 In other words, you were neither contacted by Mr. Davis or
9 by the prosecution; is that right?

10 THE WITNESS: That's right.

11 Q BY MR. KAY: Okay. And did you fly down from
12 Sacramento yesterday?

13 A Yes.

14 Q I take it your headquarters are in Sacramento?

15 A Yes.

16 Q Now, Mr. Johnson, when you flew down yesterday,
17 did you come to this courtroom to pick up certain items of
18 evidence?

19 A Yes.

20 Q All right. And one of these items of evidence
21 that you picked up, was that a bullet which has been marked
22 in this case as People's 31 for identification?

23 MR. DENNY: 31 in evidence, Counsel.

24 MR. KAY: Oh, yes.

25 Q 31 in evidence?

26 A Yes.

27 Q All right. And did you also pick up a bullet
28 which is -- it says "Bullet, test fired, People's 99"?

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1 Did you also pick up a bullet and shell casing
2 which had been marked as People's 99 in evidence?

3 A Yes.

4 Q All right. And did you also pick up a bullet
5 which has been marked -- a bullet and shell casing which
6 has been marked as Defendant's A in evidence?

7 A Yes.

8 Q All right. And did you also examine this Radom,
9 which -- a 9 millimeter Radom which has been marked as
10 -30, People's 30 in evidence?

11 A Yes.

12 Q All right. Now, when you picked up the items
13 of evidence, where did you take them, sir?

14 A To the Los Angeles Police Department Laboratory.

15 Q To their ballistics laboratory?

16 A Yes.

17 Q All right. And did you perform an examination
18 of People's 31, 99 and Defendant's A?

19 A Yes.

20 Q And also, did you examine People's 30 for
21 identification? But more specifically, the barrel of
22 People's 30?

23 A I did.

24 THE COURT: Mr. Johnson, would you open that Radom,
25 just to check it, to be sure that it's unloaded?

26 (Witness complies.)

27 THE COURT: Thank you.

28 Q BY MR. KAY: Now, directing your attention to

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12a-4

1 People's 31, did you have an opportunity, at the Los Angeles
2 Police Department and Ballistics Lab, to weigh and measure
3 the diameter of that bullet?

4 A Yes.

5 Q And what did you determine was the weight of that
6 bullet?

7 A This bullet weighed 126 grains.

8 Q And what did you determine the average diameter
9 of People's 31 to be?

10 A I measured it to be .353 inches in diameter.

11 Q All right. And was this what -- well, what did
12 you measure it with?

12b fls. 13 A This is with a scaled micrometer.

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12b-1

1 Q Now, when you examined People's 30, the Radom,
2 did you form an opinion as to the condition of the barrel of
3 that gun?

4 A Yes.

5 Q And what is your opinion, sir?

6 A That it was badly worn.

7 Q Now, did you compare the bullet in question,
8 People's 31, with the test-fired bullet, People's 99,
9 and Defendant's A?

10 A Yes.

11 Q All right. And did you formulate an opinion as
12 to whether or not the same gun that fired People's 31 also
13 fired People's 99 and -- a test-fired bullet -- and
14 Defendant's A, a test-fired bullet?

15 Did you formulate any opinion?

16 A Yes.

17 Q And what was that opinion?

18 A That this bullet, 31, could have been fired from
19 this weapon.

20 Q And when you say "this weapon," you are indicating
21 People's 30, the 9 millimeter Radom?

22 A Yes.

23 Q All right. I take it for the purpose of that
24 opinion, you are assuming that the two test-fired bullets
25 were fired from People's 30; is that right?

26 A That's right.

27 Q Now, did you determine, in -- before I get into
28 the basis of your opinion, I want to ask you, on People's

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1 31, did you determine what type of bullet this was?

2 A Yes. From the measurements and the weight.

3 Q And what type of bullet did you determine that
4 it was?

5 A It's a 9 millimeter projectile.

6 MR. DENNY: I'm sorry. I didn't hear the last --

7 MR. KAY: Projectile.

8 Q That's correct? That's what you said, wasn't it--

9 A Yes.

10 Q -- 9 millimeter projectile?

11 And People's 30, the Radom, did you determine
12 what caliber that was?

13 A Yes.

14 Q And what is that?

15 A 9 millimeter.

16 Q Now, was there anything at all about People's
17 31, the bullet that you examined, was there anything about
18 that bullet which would allow you to exclude People's 31
19 as having been fired from People's 30?

20 A No, I couldn't exclude it.

21 Q And what was your basis for your opinion, that
22 People's 31 could have been fired from People's 30, the
23 9 millimeter Radom?

24 A The caliber of the bullet is the same as that of
25 the barrel of the weapon. The bullet lacks definite land
26 and groove structure, and the size of the bullet is somewhat
27 less than the standard size of the 9 millimeter.

28 And thus, this worn barrel may have failed to

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12b-3

1 leave a definite impression of lands and grooves.

2 Q So is what you are saying is that there is just
3 not enough markings on the bullet, one way or the other,
4 for you to tell whether or not it was fired -- was or was
5 not fired from this gun?

6 A That's right.

7 Q And again, what -- in your opinion, what caused
8 the lack of impressions left on People's 31, the bullet?

9 A Oh, I consider that to be due to the worn
10 condition of the barrel, and the fact that this bullet has
11 a somewhat smaller than standard diameter.

12 Q I wonder if you could explain that to the ladies
13 and gentlemen of the jury, what you mean by that?

14 Why would the fact that the barrel was in bad
15 condition, and the bullet was undersized, why would that mean
16 that, in your opinion, that there would be a lack of
17 impressions on the bullet?

18 MR. DENNY: Well, just a moment. I'll object to the
19 form of the question.

20 I don't think he's testified that specifically
21 that bullet was fired from that gun, and therefore that's
22 why the bullet looks as it does.

23 The question as it's framed posits that as a --

24 THE COURT: Excuse me. Just state the objection,
25 without arguing.

26 MR. DENNY: That is the objection: That it assumes
27 facts not in evidence.

28 THE COURT: All right. Just state it that way, rather

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12b-4

1 than --

2 MR. DENNY: All right, your Honor.

3 THE COURT: -- adding your argument.

4 All right. Sustained.

5 Q BY MR. KAY: All right. I take it your opinion
6 is that People's 31 could have been fired --

7 MR. DENNY: Asked and answered.

8 THE COURT: Sustained.

9 Q BY MR. KAY: All right. Will you explain to the
10 ladies and gentlemen of the jury what effect -- the fact that
11 a barrel of a gun is worn, what effect that would have on
12 People's 31, assuming that it was fired from a gun that had
13 a worn barrel?

14 MR. DENNY: Well, I'll object to that as assuming a
15 fact not in evidence, and an improper hypothetical question.

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12c fls.

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12c-1

1 THE COURT: You may restate your hypothetical.

2 Q BY MR. KAY: All right. You've testified that
3 People's 30 has a worn barrel. Now -- and you testified that
4 People's 31 does not -- well, let me ask you this:

5 Why in your opinion does People's 31 not have --
6 well, why does it have a lack of impressions on it, if you
7 could explain that to the ladies and gentlemen of the jury?

8 A Yes. I found that the -- that the diameter of this
9 bullet is less than the standard diameter of the 9-millimeter
10 bullet, by about two thousandths of an inch.

11 That means that there is a looser fit for this
12 bullet than for the standard bullet; consequently, the im-
13 pressions left by the weapon would be lighter or less.

14 Q In other words, are you saying, then, that People's
15 31 is an undersized bullet, an undersized 9-millimeter bullet?

16 A Yes.

17 Q And what -- what effect would it have on leaving
18 impressions on -- on a bullet, the fact that a bullet was fired
19 from a gun that had a worn barrel?

20 A The worn barrel means that the bore is enlarged,
21 and consequently making for a looser fit between the bullet and
22 the -- and the weapon.

23 Q In other words, when the bullet goes through the
24 barrel, it doesn't touch the sides that much? Is that what you
25 are saying?

26 A It touches, but it is not in contact as deep as it
27 would be as if it had the full diameter.

28 Q Now, Mr. Johnson, is it your practice in testifying

12c-2

1 as a ballistics expert to use photomicrographs?

2 MR. DENNY: Just a moment. I'll object to that as
3 irrelevant and immaterial.

4 MR. KAY: Well, your Honor, I submit it isn't.

5 THE COURT: Overruled.

6 Q BY MR. KAY: I'll stand over here, so you can look at
7 the jury while you are speaking.

8 If you could answer that, Mr. Johnson?

9 A Yes. Commonly, I don't make photomicrographs of
10 bullets.

11 Q And do you feel that photomicrographs of bullets
12 are helpful for use in the identification of firearms?

13 MR. DENNY: I will object to that as irrelevant and
14 immaterial.

15 THE COURT: Sustained as to its form.

16 Q BY MR. KAY: Well, why don't you use photomicro-
17 graphs in testifying as a ballistics expert?

18 MR. DENNY: Object -- I don't think that -- that assumes
19 facts not in evidence, one, and I don't think --

20 THE COURT: Sustained.

21 MR. DENNY: -- it's relevant or material, two.

22 Q BY MR. KAY: Why is it your practice not to use
23 photomicrographs, Mr. Johnson?

24 MR. DENNY: It's irrelevant and immaterial.

25 THE COURT: Overruled.

26 THE WITNESS: Because the photograph isn't the identifica-
27 tion, doesn't show the identification. It's -- it's an attempt
28 to illustrate the manner in which it's done.

12c-3

1 Q BY MR. KAY: Have you ever made an identification of
2 a bullet as being fired from a particular gun, from a photo-
3 micrograph?

4 A No.

5 Q Do you have an opinion as to whether or not
6 photomicrographs are misleading?

7 MR. DENNY: Well, just a moment. I'll object to that
8 as irrelevant and immaterial.

9 THE COURT: Sustained as to the form.

10 Q BY MR. KAY: Do you -- do you have an opinion as
11 to whether or not photomicrographs of bullets are misleading,
12 when used in firearms identification?

13 MR. DENNY: Object to that as irrelevant and immaterial.

14 THE COURT: Sustained.

15 MR. KAY: Well, may we approach the bench, your Honor?

16 THE COURT: Yes, you may.

17 (Whereupon, the following proceedings were had at
18 the bench among Court and counsel, outside the hearing of the
19 jury:)

20 THE COURT: A great deal has been made of photomicro-
21 graphs and photomacrographs -- I suppose you call them --

22 MR. KAY: Sure.

23 THE COURT: -- so I suppose this is a legitimate
24 subject of inquiry, and you can extract from this expert his
25 opinion of the utilization of such photographs in ballistics
26 identification.

27 MR. KAY: That's what I am trying to do.

28 THE COURT: The Court would permit you to do that, and I

12c-4

1 think your questions have to be properly put. I don't suppose
2 that every photograph would be misleading.

3 MR. DENNY: That's the whole point, your Honor.

4 The way it's phrased, it appears that that's a
5 fact.

12d fol

12-d-1

1 MR. KAY: Well, that's his opinion.

2 THE COURT: Well, you may ask him to state the reasons
3 for his opinion, as to why he doesn't utilize such photographs
4 in effecting ballistics identifications.

5 MR. DENNY: Well, your Honor, if the Court please, he
6 has already stated that photographs are simply illustrative
7 of the identification; that the identification is made through
8 the microscope.

9 And I don't think any reason of why he doesn't
10 use them has any relevancy or bearing on this particular case.

11 THE COURT: Well, if there is a practice in the field
12 that he knows about, and can testify to, I think that could be
13 indicated.

14 And I think the reasons for the failure to utilize
15 photographs -- if there is such a practice or habit -- then I
16 think that that could be made clear.

17 MR. DENNY: Well --

18 THE COURT: I --

19 MR. DENNY: -- if there is such a habit or practice,
20 and he is aware of it, and he knows --

21 THE COURT: Yes.

22 MR. DENNY: -- what that is in a -- in, say, the area of
23 California, or the area of Los Angeles, if he is familiar with
24 that --

25 THE COURT: I think you may -- I think the problem is
26 simply the form of your questions.

27 MR. DENNY: I think, however, your Honor, that this is
28 similar to doctors attempting to show the standard in their

12d-2

1 profession is low; and therefore, they must meet only that low
2 standard.

3 I don't think it's relevant, --

4 THE COURT: I suppose it's a matter of --

5 MR. DENNY: -- what the standard practice is.

6 THE COURT: It may be a matter of argument. I haven't
7 heard him on cross, and I don't know what he would say.

8 MR. DENNY: I think it's irrelevant, what the standard
9 practice is.

10 THE COURT: If you intend to cross examine -- well, if he
11 knows, and knows why photographs are not properly utilizable --
12 some photographs are not properly utilizable in making identifi-
13 cations, well, he may so state, give his opinion as to why.

13 fol

13-1

1 MR. DENNY: Your Honor, I think we stipulate by virtue
2 of his answers that the -- his testimony has been that the
3 photographs are not used in the identification --

4 THE COURT: You may ask him about that.

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

8 Q BY MR. KAY: Mr. Johnson, why is it not your
9 practice to use photomicrographs for the purpose of identifi-
10 cation of bullets in the field of firearms identification?

11 MR. DENNY: Object to that as irrelevant and immaterial.

12 THE COURT: Overruled.

13 A In photographing a bullet with a round surface,
14 the limited depth of focus limits the field of view that you
15 have to demonstrate. The actual structure of the areas
16 that you are comparing are three dimensional. The photograph
17 loses the dimension of depth.

18 Furthermore, the follow through, the relationship
19 of one area to another as you go around the bullet isn't
20 demonstrated in the photograph. Very commonly one demon-
21 strates with this, perhaps, the gross features, considering
22 these to be the most obvious. There may be the conclusion
23 drawn that the -- that the whole bullet is in complete
24 correspondence in this same manner and this would be an
25 error.

26 MR. KAY: May I have just a moment, your Honor?

27 THE COURT: Yes.

28 Q BY MR. KAY: In examining People's 31 for

1 identification, did you use a microscope with a common
2 prism?

3 A Yes. As a matter of fact, a comparison micro-
4 scope is a paired set of microscopes, using prisms to bring
5 the fields of view together into one single field.

6 Q Now, did you determine or did you find on
7 People's 31 any part of the bullet that, in your opinion,
8 may have been part of a landmark?

9 A Yes, I found one feature that -- or a fragmentary
10 feature that suggested the edge of a land or groove.

11 MR. KAY: Thank you. I have no further questions at
12 this time.

13 THE COURT: Will you be long?

14 MR. DENNY: Yes, I will, your Honor.

15 THE COURT: Well, we'll take a recess, then. We'll
16 take a short recess.

17 During the recess you are admonished not to
18 converse amongst yourselves, nor with anyone else, nor permit
19 anyone to converse with you on any subject connected with the
20 matter, nor form or express any opinion on it until it is
21 finally submitted to you.

22 About ten or fifteen minutes, if you will,
23 ladies and gentlemen.

24 (Afternoon recess.)

25 THE COURT: The jurors are all present. The record
26 may show the defendant is present with his counsel.

27 You may proceed.
28

CROSS-EXAMINATION

1
2 BY MR. DENNY:

3 Q Mr. Johnson, going to the use of photomicrographs
4 and your background experience as a criminalist.

5 Your work extends not only in the field of
6 ballistics as a criminalist, but, say, handwriting, does it
7 not?

8 A No, I don't do handwriting.

9 Q You have people under your supervision, direct
10 supervision and control who make a practice of determining
11 questioned documents or authenticity of handwriting --

12 THE COURT: Is that material?

13 MR. DENNY: I think so, your Honor.

14 THE COURT: The Court thinks not.

15 MR. DENNY: It goes to the use of photomicrographs or
16 illustrative, your Honor.

17 MR. KAY: Objection, your Honor.

18 THE COURT: The Court will sustain its own objection.

19 Q BY MR. DENNY: All right, sir, specifically in
20 the field of criminalistics, are there not enlargements made,
21 magnifications made of types of evidence with which you,
22 as a criminalist deal --

23 MR. KAY: That's irrelevant.

24 Q -- in order to present that evidence graphically
25 to a jury?

26 MR. KAY: That's irrelevant, your Honor.

27 THE COURT: Sustained.

28 MR. DENNY: Your Honor, it goes --

1 THE COURT: The objection is sustained. If you wish
2 to argue, you may approach the bench.

3 MR. DENNY: May I approach the bench?

4 THE COURT: You may not.

5 (Laughter.)

6 THE COURT: Although the Court tells you if you want
7 to argue you may approach the bench, at this occasion I
8 don't want to hear argument. The objection is sustained.
9 It is immaterial.

10 Q BY MR. DENNY: Well, sir, you have stated that you
11 do not use photomicrographs frequently or you do not generally
12 use photomicrographs in ballistics; is that correct?

13 A That's right.

14 Q Photomicrographs are nothing more than magnific-
15 ations of an object that you are looking at, isn't that
16 correct?

17 A Yes.

18 Q All right. You do use, in every other field
19 of criminalistics, magnifications of objects looking at --
20 that you look at in order to present that evidence graphically
21 to a jury, do you not?

22 MR. KAY: That's irrelevant, your Honor.

23 THE COURT: Sustained.

24 MR. DENNY: Well, may I approach the bench, your
25 Honor?

26 THE COURT: No, you may not.
27
28

13a fls.

13a-1

1 Q BY MR. DENNY: Well, sir, is it your position that
2 photomicrographs of bullets are perhaps misleading if they're
3 poorly taken or taken by a nincompoop which can't show what's
4 there in the picture?

5 MR. KAY: That's argumentative and irrelevant.

6 THE COURT: Sustained.

7 Q BY MR. DENNY: If they're taken by people who just
8 don't know what they're doing, so they don't portray what's
9 there to be seen, that's when they're misleading; is that
10 right?

11 MR. KAY: Argumentative and irrelevant.

12 THE COURT: Overruled. You may answer.

13 THE WITNESS: Well, that isn't specifically what I had
14 in mind. I think I pointed out that you lose the dimension.
15 That after all, you show in the field of ballistics some
16 gross features because these are more readily observed and
17 conceived than the finer structure and that the depth of focus
18 limits you to a small segment of the curved surface.

19 Q BY MR. DENNY: If, on the other hand, you get
20 photomicrographs which, indeed, show step by step by step,
21 picture by picture by picture the entire circumference, are
22 not such photomicrographs good demonstrative evidence to show
23 to a jury to help you testify before that jury?

24 A Well, I haven't felt the necessity, but there are
25 devices that purport to take a continuous strip photograph of a
26 bullet.

27 Q I'm not talking about the Bellikon.

28 Is that what it is called, the Bellikon camera?

13a-2

1 A I have forgotten. I haven't used it. I am not
2 familiar with the operation of it.

3 Q All right. Well, sir, looking at the photographs
4 that appear here, and these are Defendant's AA that has been
5 received into evidence, and you have seen them yesterday; is
6 that correct?

7 A Yes.

8 Q All right. Now, such photographs as appear there,
9 are those photographs good reproductions of what you saw in
10 examining the bullet, People's 31 under the microscope?

11 A Uh, in part they show the structure that I saw. I
12 mean, I can't verify this because I have no way really of
13 relating except through the statements I've heard. But this is
14 the sort of thing that I would expect to see if I took a photo-
15 graph. That is, I would have the center of the field in focus
16 and if I tried to show the whole perimeter, I would take a
17 series of them and hope that I had shown all of the field of
18 view in some part of each photograph.

19 Q All right.

20 MR. KAY: Your Honor, I'm going to object. I think
21 that's non-responsive.

22 THE COURT: You are a little late, overruled.

23 Q BY MR. DENNY: Now, sir, I want to show you a
24 photomicrograph, Defendant's M in evidence, taken from Gunther's
25 work.

26 This is a photomicrograph of a bullet, is that
27 correct?

28 A Yes.

13a-3

1 Q Showing very distinct land impressions on the bullet;
2 is that correct?

3 A Yes, it does.

4 Q And such a photomicrograph, if there were, indeed,
5 land impressions on a bullet, in your opinion would be useful
6 to demonstrate to a jury exactly what that land impression was
7 and where it appeared on the bullet; is that correct?

8 A Well, I think I would use the bullet itself.

9 Q If it were as clear as that?

10 A Well, if it isn't this clear on the bullet, the
11 photograph won't be that clear.

12 Q All right. Assuming that you wanted to blow it
13 up, you could blow it up and show it with a photomicrograph?

14 MR. KAY: Objection, irrelevant.

15 THE COURT: It is immaterial, Mr. Denny. Let's move it
16 along.

17 Q BY MR. DENNY: All right.

18 On the bullet you examined, People's 31,
19 specifically, in evidence, you've stated that there was one
20 single mark on that bullet which could be one edge of a land
21 impression; is that correct?

22 A Yes.

23 Q You did not find, then, what is necessary to
24 determine the width of a land impression; that is two
25 consecutive edges of such a land, the right and the left-hand
26 impression of a land; is that correct?

27 A That's right.

28 Q And this is after exhaustive study of that bullet,

1 a good portion of yesterday?

2 A Yes, I studied it for some time yesterday.

3 Q Under differing magnifications or different
4 magnifications and, if so, what magnification?

5 A Yes, I varied the magnification. It was a
6 zoom lens and I varied the lighting.

7 Q All right. So that you, with all of your
8 experience and all of your expertise, were unable to find
9 a single land impression with what appeared to be groove
10 impressions on either side, is that correct?

11 MR. KAY: Asked and answered.

12 MR. DENNY: No, not with the groove impressions, your
13 Honor.

14 THE COURT: You may answer.

15 THE WITNESS: No, I didn't recognize this sort of
16 structure, no.

17 Q BY MR. DENNY: All right, sir.

18 Now, seeing only one mark which could have been a
19 land shoulder, was there any way for you to determine by
20 looking at that bullet how many lands and grooves were on the
21 gun that fired that bullet?

22 A No, I couldn't determine that.

23 Q Was there any way for you to determine what the
24 pitch was, to the right or the left?

25 A Of the weapon from which it was fired?

26 Q That's correct.

27 A No, I couldn't determine that.

28 Q So that looking in that -- looking at that bullet,

1 you could not say that it was fired from a gun having six lands
2 and grooves with a one-to-one land to groove ratio with a right-
3 hand twist; is that correct?

4 A That's right.

14 fol

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14-1

1 Q All right. Now, sir, the particular bullet you
2 have described having measured -- and when you measured it
3 with a micrometer, did you take just one measurement on that
4 micrometer?

5 A No, I took several.

6 Q And then averaged them?

7 A Yes.

8 Q All right. And that is the proper way to do it,
9 in order to determine the average diameter of the bullet; is
10 that correct?

11 MR. KAY: Well, that calls for a conclusion. I would
12 object to that.

13 MR. DENNY: He's an expert.

14 THE COURT: You may answer.

15 THE WITNESS: It's proper, if the -- if it isn't too
16 far out of round.

17 It wouldn't be proper to describe a bullet that's
18 flattened out, for example.

19 Q BY MR. DENNY: All right. But one that -- this
20 bullet -- appears essentially round, it is a fair practice?

21 A It seemed reasonable, yes.

22 Q All right. And the bullet was what, now? .357,
23 did you say?

24 MR. KAY: Three.

25 THE WITNESS: The average was .353.

26 Q BY MR. DENNY: .353. And that's thousandths of an
27 inch; is that correct?

28 A Right.

14-2

1 Q Now, sir, you have said that this bullet, People's
2 31, is a 9-millimeter bullet; is that correct?

3 A Yes. It's the -- it's recognized as a 9-millimeter
4 bullet, that's right.

5 Q Can you say specifically, sir, that it is a 9-
6 millimeter, rather than a .38-caliber bullet?

7 A Yes. This size bullet is a 9-millimeter bullet.

8 Q And what is the difference in size between the
9 standard sized 9-millimeter and the standard size .38-caliber
10 bullet?

11 A Speaking of size, I'm talking about weight, because
12 the diameter is essentially the same.

13 Q Ahh! All right. What is the difference in weight
14 between the standard 9-millimeter and the standard .38-caliber
15 lead-jacket bullet?

16 A Uh -- speaking of the .38 caliber, the round is
17 known as the 380, which is a 95 grain weight, of the same
18 diameter as this 9-millimeter of 125 grains weight.

19 Q All right. It is then possible, is it not, sir,
20 for People's 31, the 9-millimeter bullet, not only to have been
21 fired from a 9-millimeter automatic, but to have been fired
22 from a .38-caliber automatic; is that correct?

23 A Uh -- the -- the case length differs, and I'm not
24 sure -- I'm not sure that this would seat in the .38, at least
25 in the 380.

26 Q And what other automatic close to the .38 or the
27 380 is there that uses such ammunition?

28 A The 380 --

14-3

1 MR. KAY: Well, excuse me. I'm going to object that that
2 assumes a fact not in evidence, that the 380 uses 9-millimeter
3 bullets. I think it -- he didn't testify to that.

4 THE COURT: Sustained.

5 MR. DENNY: Well, let me rephrase the question.

6 Q Is it your testimony, sir, that you simply have not
7 done the research to determine whether or not a 9-millimeter
8 bullet can be fired from a 380 automatic?

9 A The other way around can be done, but --

10 Q That is, a .38 --

11 A A 380.

12 Q -- or a 380 can be fired from a 9-millimeter?

13 A Could be fired from this --

14 Q You are saying "Could be fired in this," and you
15 have reference to the Radom which is --

16 A Or the 9-millimeter in general, yes.

17 Q All right. Now, are you saying that you simply do
18 not know whether, in fact, a 9-millimeter can be fired from a
19 380?

20 A Uh -- I don't recall having tried it. But the case
21 is longer, and there is a ridge against which the case rests when
22 it loads, and I don't think the 9-millimeter would go in deep
23 enough in the 380 weapon.

14a fol

uesday
14a-1

1 Q You are saying that a 380 case is longer?

2 A Shorter.

3 Q The 380 case is shorter than the 9 millimeter
4 case?

5 A Right.

6 Q Well, the over-all length of the bullet, then,
7 is different?

8 A It is.

9 Q And do you know how much different?

10 A Well, no. I can't say in inches. But it may be
11 -- oh, it may be a quarter of an inch difference.

12 Q All right. Is it, however, your -- the present
13 state of your knowledge on the subject that you simply do
14 not know whether or not a 9 millimeter bullet could be fired
15 from a 380 automatic?

16 A I think not, but I -- I can't recall having
17 tried it, so I won't say flatly.

18 Q You won't say definitely. All right, sir.

19 Now, so we get one thing straight, as far as the
20 gun that might have fired this People's 31, the bullet, in
21 your opinion now, that gun that might have fired that is not
22 restricted to even a 9 millimeter with six lands and grooves,
23 with a right-hand twist and a 1 to 1 land and groove ratio?

24 It might have anywhere from four lands and grooves
25 to seven and eight lands and grooves; is that correct?

26 A Well, it's -- the only restriction I -- is the
27 caliber of the barrel.

28 Q That's right. The only thing you can say about it

Tuesday
14a-2

1 is that it was probably fired from a 9 millimeter automatic;
2 is that right?

3 A Yes.

4 Q But it could have been fired from any 9 millimeter
5 automatic, having from the minimum number to the maximum
6 number of grooves that are -- lands or grooves that are made,
7 manufactured; is that correct?

8 A Well, there again, there has to be a correspondence
9 of the automatic, for example, to -- to fit the -- so that
10 the charge -- or, the cartridge will seat in the weapon.

11 Q Well, we are assuming a standard size 9 millimeter
12 automatic that will accept standard 9 millimeter ammunition.

13 But assuming -- well, I think we have an exhibit
14 from the Mathews book, showing that there are 9 millimeter
15 automatics produced with four lands and grooves, right-hand
16 twist and left-hand twist; there are those with five lands
17 and grooves, right-hand twist and left-hand twist; then there
18 are six and seven lands and grooves, right-hand twist and
19 left-hand twist.

20 And that bullet, People's 31, could have been
21 fired from any of those; is that right?

22 A Yes, that's right.

23 Q All right. Now, insofar as the effect of the
24 passage of this bullet through various media, do you have an
25 impression, sir -- well, first of all, have you performed
26 tests in the course of your work, to determine the effect
27 on a copper jacket slug, of the passage of that slug through
28 various media?

Tuesday
14a-3

1 A Yes. I have seen slugs that have been recovered
2 from a variety of media, from water tanks, through our
3 collection box, and sand, and various types of materials.

4 Q All right. Have you performed any specific tests,
5 yourself personally, to determine the effect on a copper-
6 jacketed slug, of passing through a piece of about one-inch
7 wood, three-quarter inch of plaster, and about a half an inch
8 of wood thereafter?

9 A Well, I don't recall that specific combination
10 of material, no. But I've seen those that have passed
11 through plaster and wood.

12 Q All right. And taking just the experience that
13 you have had in the latter respect, in the passage through
14 such media, does the bullet have a tendency, because of
15 abrasive factors, in going through the media, to lose some
16 of its size in diameter?

17 A Well, no. I -- I think, if anything, it would be
18 the opposite.

19 Q That because of the compression of the head of
20 the bullet, it would tend to expand it?

21 A Yes.

22 Q And have you had any occasion to determine the
23 effect of the passage of a bullet, a copper-jacketed slug,
24 through plaster?

25 A Well, I have seen such, yes.

26 Q All right. And in your experience, is there a
27 difference in the effect on such a copper-jacketed slug,
28 depending on the type of plaster through which that slug or

Tuesday
14a-2

bullet has passed?

A: The -- well, the resistance of the bullet depends
on the mass of the material that it meets and the abrasiveness
would have some effect on it.

14b fls.

14b-1

1 Q That's what I am talking about specifically.

2 In your experience, in noting particularly the
3 effect of plaster on a bullet passing through that plaster, if
4 the plaster is extremely abrasive, will that tend to create
5 striations and marks on the bullet itself?

6 A Yes, it can score the bullet.

7 Q And will that tend possibly to erase some marks
8 which may be on the bullet itself?

9 A Well, it's possible that the features from the
10 barrel are obliterated by the materials that the bullet
11 strikes. We find that.

12 Q All right. Now, again, insofar as this particular
13 bullet, People's 31, is concerned, you've indicated that it is
14 in your opinion probable that the gun which fired it had a
15 worn barrel.

16 A Yes.

17 Q Or possibly?

18 A Well, it would appear probable to me.

19 Q All right. And insofar as the passage of that
20 bullet through the barrel of the gun, would the -- would the
21 bullet be simply going along -- we had a diagram at one point
22 here -- I'm sorry, but -- the lands are the little impressions
23 here that stick down from the outer bore of the gun; is that
24 correct?

25 A The lands in the barrel are the ridges within the
26 barrel.

27 Q All right. There was some question among the jury
28 on that.

14b-2

1 Would it be your statement, then, that the bullet
2 would simply have exited the barrel, going straight down, not
3 being caught up by those lands and twisted?

4 A Do you mean with respect to this --

5 Q People's 31, yes.

6 A Yes, that's right.

7 Q All right. In such a passage, would there be some
8 marks of some kind left on the bullet? Would you expect some
9 marks of some kind left on the bullet by the lands?

10 A Yes, I would. The -- if the -- the bullet is
11 confined to the barrel by the lands.

12 Q All right. And did you find any such parts on this
13 bullet?

14 A Yes. It was considerably marked in this respect.

15 Q The striations that you saw, are those striations --
16 or the markings that you saw, are those markings anywhere in
17 evidence on the photographs here, Defendant's AA?

18 A Yes, they are.

19 Q Could you illustrate those to the jury, just by
20 pointing them out to them?

21 There's a pointer here, if you could come down.

22 A All right.

23 Q And standing over here again, so that --

24 A Yes. In looking at these photographs, these
25 striations in the bullet are seen in focus in the center of each
26 of these photographs (indicating).

27 And as I observed them under the microscope, they
28 were linear and parallel to the axis of the bullet.

14b-3

1 Q Now, would those striations, sir, in your opinion,
2 have been caused by the lands of the gun, as it passed through
3 the barrel, or by the action of the wood and the plaster
4 through which that bullet had passed?

5 A These are clearly from the barrel of the weapon,
6 the lands.

7 Q And what makes you say that, sir?

8 A In traversing a barrel, a bullet rides on the --
9 on the lands. And the only part of the bullet that touches
10 the barrel is the cylindrical part, behind the curved nose.
11 The part of the bullet that impacts the target is essentially
12 a curved nose, and any markings that you see there would not
13 be from the barrel, because that part does not touch the barrel.

14 And the markings that one would expect to pick up
15 from the target are not, regularly, such as those which you
16 would get from the bullet traversing the barrel, but irregularly,
17 depending upon the manner in which the bullet strikes the
18 target.

19 Q Well, again, I'm not sure if we've got to the point
20 yet as to why you say that these striations, which appear to be,
21 in these pictures, with the nose at the top and the base at
22 the bottom, which appear to be vertical -- why those striations
23 came, in your opinion, from the gun, rather than from the action
24 of the wood and plaster on the sides that the bullet passed
25 through, when it hit the wall and plaster.

26 A Well, because the impact of the bullet is largely
27 on the nose, and not on this part (indicating).

28 And we don't see any of these on the nose.

14b-4

Consequently, it is clear that this is from the barrel, and
no striations are obtained from the wood and the plaster.

14 c. fol

14c-1

1 Q All right.

2 MR. KAY: Could the record -- could the record
3 reflect that when he says, "this is from the barrel," he is
4 pointing to the lower part of the -- I believe it is --
5 photograph No. 1 of Defendant's AA?

6 MR. DENNY: Yes, right.

7 MR. KAY: And when he said, "This is from the target,"
8 it was from the upper part of the bullet, of photograph No. 1
9 of Defendant's AA.

10 THE COURT: Anything further?

11 MR. DENNY: Yes. May I have just a moment, your Honor?

12 (Pause in the proceedings while Mr. Denny
13 engaged in a discussion off the record at the clerk's
14 desk with the clerk.)

15 MR. DENNY: Sorry for the delay, your Honor. I thought
16 they were out here.

17 Q Now, Mr. Johnson, you did have an opportunity to
18 look at People's 99, a test-fired bullet which I think the
19 evidence has disclosed was test fired from the Radom here,
20 People's 30; is that correct?

21 A Yes.

22 Q And did you determine whether that was an
23 undersized bullet?

24 A No.

25 Q Did you make any attempt to so determine?

26 A No.

27 Q All right. And are there, on that bullet,
28 visible land impressions?

14c-2

1 A Yes, they are. They are not clearly defined,
2 but they are obvious.

3 Q All right. Certainly, clear enough so that you
4 can see that there are, on that bullet, at least six land
5 impressions; is that correct?

6 A That's right.

7 Q I take it you were not actually able to determine,
8 from a measurement of those, what the width of the lands were,
9 of the gun that fired that bullet; is that correct?

10 A Yes, I did make such a measurement.

11 Q On 99?

12 A Yes.

13 Q And were you able to determine from your
14 examination what the width of the lands were, of the gun that
15 fired that?

16 A Yes. I -- I could determine it from the markings
17 that were on there.

18 Q What did you determine --

19 A Well, the --

20 Q -- as to the width?

21 A I -- I found the width of the land to be between
22 seven and eight-hundredths of an inch.

23 The groove width was .1 inch, or, ten-hundredths.

24 Q All right. Not exactly what you would call a
25 1 to 1 ratio of land to groove width; is it?

26 A No. 8 to 10.

27 Q 8 to 10. All right.

28 And again, assuming -- as has been testified by

14c-3

1 Sergeant Christansen -- that that was an undersized bullet,
2 did you then have an opportunity to look at the impressions
3 on Defendant's A?

4 A Yes. I examined this in the same manner.

5 Q And did you in fact place the green markings
6 on each of the land impressions, on the shoulder of the bullet,--

7 A Yes.

8 Q -- as part of your examination?

9 A Yes, I did. Yes.

10 Q All right. And did you have any difficulty in
11 determining the presence of land impressions on that bullet?

12 A No. They're -- they're obvious.

13 Q Quite obvious.

14 Q And did you then have the opportunity to look
15 at Defendant's G, the bullet which, by the wrapper, indicates
16 it was test fired on March 13, 1970?

17 A I don't recall examining --

18 Q 99?

19 A A and 99.

20 Q All right. Looking at it now, with your naked
21 eye, do you have any trouble at all seeing the land and
22 groove impressions on that bullet?

23 A No, they're recognizable..

24 Q All right.

25 So then, of all the bullets which are in evidence,
26 the only bullet -- strike that.

27 Of all the bullets that are in evidence, other
28 than People's 31, all being bullets test fired from People's

14c-4

1 30, the Radom, each of the bullets test fired from People's
2 Exhibit 30, the land impressions are easily identifiable,
3 even by the naked eye; is that correct?

4 A Yes, they're obvious.

5 Q All right. The only bullet, where the land
6 impressions are not easily identifiable -- indeed, where
7 you can't even say that there is a land impression with both
8 shoulders showing -- is People's 31; is that correct?

14d fls. 9 A Yes.

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14d-1

1 MR. DENNY: I have no further questions.

2
3 REDIRECT EXAMINATION

4 BY MR. KAY:

5 Q Mr. Johnson, to be clear on this, I take it it
6 is your opinion that People's 31 could not have been fired
7 from a .38 caliber weapon; is that correct? Is that your
8 opinion?

9 A Yes. That is, from the 380. Now, this is a
10 .38 caliber. The 9 millimeter is the same caliber as the
11 .38.

12 Q It has the same diameter of the -- do you have a
13 .38 with you?

14 (Laughter.)

15 Q No, I don't mean a gun. But I mean a bullet.

16 A Yes.

17 Q Is it something that we could use, or is it for
18 another case?

19 A No, these are some that I fired to measure the
20 diameter.

21 Q Now, what you've just removed from this envelope
22 is a .38?

23 A It's a 380.

24 Q All right. And can we use this in this case?
25 I mean --

26 A Well, you may have these, yes.

27 Q No, I'm just talking about this one. I don't --
28 that's all right,

14d-2

1 Your Honor, could this be marked as People's next
2 in order? I guess that would be 111?

111 id.

3 THE COURT: All right. It may be marked 111 for
4 identification.

5 And what is that, Mr. Johnson?

6 That's a .38 caliber?

7 THE WITNESS: Yes, it is the -- it was the same
8 diameter bullet as the 9 millimeter, but this is the 380.

9 THE COURT: What does that mean to us? What should that
10 mean to us?

11 THE WITNESS: Well --

12 THE COURT: I know nothing about what you are talking
13 about, when you say 380.

14 THE WITNESS: What it means is that the -- the 380
15 is an automatic that takes a -- a round that's designed
16 for this, and known as a 380 automatic.

17 It has a case and a bullet that is smaller than
18 the 9 millimeter round.

19 Q BY MR. KAY: And this is the -- the 380 is the
20 type that's fired from the .38 caliber weapon?

21 A Well, from the -- it's a .38 caliber, but it's
22 known as the 380.

23 Q All right. And this is People's 31; is that
24 right, that I just removed from here?

25 A Yes.

26 Q So when you match them up, back to back, it
27 appears that they have the same diameter; is that right?

28 A It does.

14d-3

1 Q But their sizes are quite different; is that
2 right?

3 MR. DENNY: It speaks for itself, your Honor. Objec-
4 tion.

15 fls. 5

6 THE COURT: Well, it's asked and answered.
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15-1

1 Q BY MR. KAY: And you -- the weight is also
2 quite different, is that right?

3 A The -- yes, the weight, of course, is obviously
4 different there, different mass.

5 THE COURT: Anything more now, Mr. Kay?

6 MR. KAY: Yes.

7 Just a moment, your Honor, I would like to --

8 Thank you, I have no further questions.

9

10

RECROSS EXAMINATION

11 BY MR. DENNY:

12 Q Mr. Johnson, how about a .38 Special, the
13 bullet size of a .38 Special; is that essentially the same
14 size as a 9 millimeter?

15 A The .38 Special for the revolver?

16 Q Yes.

17 A Is 9 millimeter, yes. It is .355 inches in
18 diameter.

19 Q As distinguished from .357 for the 9 millimeter?

20 A Well, the 9 millimeter is 355.

21 Q Oh.

22 A I mean, they are the same diameter.

23 Q All right. So, let's look at the .38 Special,
24 then, revolver, not the automatic but the revolver.

25 Can a 9 millimeter bullet such as People's 31
26 be inserted into and fired from a .38 Special revolver?

27 A Uh, the .38 Special has a flanged rim. The
28 9 millimeter is rimless. But I have come across some of

15-2

these automatic rounds that have been fired in revolvers.

Q So that it could be fired from a revolver, is that right?

A Yes, I would say so.

MR. DENNY: Thank you, sir, no further questions.

REDIRECT EXAMINATION

BY MR. KAY:

Q Would you say it is very probable, though?

MR. DENNY: That's speculative. I don't think that comes within his expertise.

THE COURT: Sustained.

Q BY MR. KAY: Well, in responding to Mr. Denny's question, how certain are you of that, that it could be fired --

THE COURT: Restate your question.

Q BY MR. KAY: All right, in your opinion is it probable that a 9 millimeter bullet could be fired from a .38 Special?

A Well, it is not likely that it is, but it is possible, I would say.

Q All right. And how does the weight of a .38 -- well, what is the weight of a bullet that is ordinarily fired in a .38 Special?

A Well, these are lead bullets, now, for a revolver, and not the jacketed metal bullets. And the weight can be up to about 150, I believe, 158 grains for the .38 Special.

Q Are you saying that in a revolver the lead bullets

15-3

1 are fired from a revolver and copper-jacketed bullets are
2 fired from an automatic?

3 A Yes, the unjacketed lead bullet in the revolver
4 and, normally, the jacketed bullet is an automatic round.

5 Q All right. And I take it that People's 31 is a
6 copper jacketed bullet?

7 A It is.

8 MR. KAY: Thank you, I have no further questions.

9
10 RE CROSS EXAMINATION

11 BY MR. DENNY:

12 Q Just one question finally, sir.

13 Although it is not normally done, a copper-
14 jacketed bullet can however be fired from a revolver, is that
15 not correct?

16 A Uh, yes, I think so.

17 Q Yes.

18 No further questions.

19 MR. KAY: No further questions.

20 MR. DENNY: Stipulate Mr. Johnson may go back to
21 Sacramento?

22 THE COURT: Was 31 so undersized that there would be
23 no land and groove marks left on it even should it be fired
24 through a new barrel of a 9 millimeter weapon?

25 THE WITNESS: Uh, I don't think so.

26 Q Do you have an opinion as to that?

27 THE WITNESS: Well, the depth of the land -- or the
28 groove is about three to four thousandths.

1 Now, this No. 31, I measured to be, uh, 353
2 instead of 355. And that is two-thousandths across the
3 diameter and the depth in the two grooves is greater than
4 this, so that with the original or with the grooves -- with
5 this bullet fired in a weapon with a barrel that is in good
6 condition, I expect that there would be grooves pressed into
7 the bullet.

8 THE COURT: Thanks, Mr. Johnson.

9 MR. KAY: May I ask a question along that line, your
10 Honor?

11 Just what --

12 THE COURT: All right.

13 MR. KAY: Okay.

14 THE COURT: Sorry I started it.

15
16 REDIRECT EXAMINATION

17 BY MR. KAY:

18 Q Mr. Johnson, is what you are saying, then, --
19 along the line of what the Judge asked you, because this
20 bullet is undersized, this bullet -- I mean, People's 31 --
21 that when it was fired from a gun, if it was fired from a
22 9 millimeter gun, that it would probably not have picked up
23 the land and grooves because it was undersized; is that what
24 you are saying?

15a fls.

15a-1

1 MR. DENNY: I don't think that is what he was saying.

2 THE COURT: It assumes a fact not in evidence. I think
3 he testified clearly. Mr. Denny.

4 MR. DENNY: Yes, I do have, a reinforce question, just a
5 couple of points.

6 MR. KAY: Well --

RECROSS

RECROSS EXAMINATION

9 BY MR. DENNY:

10 Q Mr. Johnson, insofar as the affect on the barrel
11 of a gun, is it not so that a gun barrel may be worn down
12 between the time when it may have been purchased -- let's give
13 you a hypothetical situation, if I may.

14 Assume a gun purchased in July of 1969, assume
15 that gun gets into the hands of the police, the Sheriff, in
16 March of 1970.

17 Is it possible for a barrel to be worn down within
18 that period of time with constant firing?

19 MR. KAY: It assumes a fact not in evidence.

20 THE COURT: Sustained.

21 Q BY MR. DENNY: Is it possible in any respect,
22 Mr. Johnson, for a gun barrel to be worn with constant firing?

23 MR. KAY: Assumes a fact not in evidence.

24 THE COURT: Overruled, you may answer that question.

25 THE WITNESS: Yes, the barrel will be worn with use.

26 Q BY MR. DENNY: All right. So that when you look
27 at and examined People's 30, the Radom here, you see a gun
28 with what you describe as a fairly worn barrel -- the interior

15a-2

1 of the barrel, obviously, we're talking about?

2 A Yes.

3 Q Assume that came into police custody around March,
4 around March 11 or 12th, 1970.

5 You have no way of determining from looking at that
6 barrel now, do you, what the condition of that barrel was in
7 July of 1969?

8 A No, I can't say that, what might have happened
9 during the interim to a weapon.

10 MR. DENNY: No further questions.

11 MR. KAY: No questions.

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

13 And as somebody has said, you may go back to
14 Sacramento, but only if you want to.

15 THE WITNESS: Oh, thank you.

16 THE COURT: You are not ordered to.

17 THE WITNESS: I just about have to.

18 MR. DENNY: Thank you, Mr. Johnson.

19 MR. KAY: Thank you, Mr. Johnson.

20 MR. DENNY: Get Mr. Spahn.

21 THE COURT: Call your next witness.

22 MR. DENNY: I have, your Honor.

23 THE COURT: You have.

24 MR. DENNY: Your Honor, there are some exhibits here which
25 appear to be out of order and --

26 THE COURT: Mrs. Holt will straighten them out.

27 MR. DENNY: All right.

28 THE COURT: Have him stand there.

15a-3

1 THE CLERK: Raise your right hand to be sworn.

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

5 THE WITNESS: I do.

6 THE CLERK: Please take the stand.

7 THE COURT: Mr. Spahn, the microphone would be right in
8 front of you. Just reach out and touch it.

9 THE WITNESS: Oh, it is right there.

10

11 GEORGE C. SPAHN,
12 called as a witness by and on behalf of the defendant, having
13 been first duly sworn, was examined and testified as follows:

14 THE CLERK: Would you please state your name for the
15 record?

16 Would you please state your name?

17 THE WITNESS: Oh, George C. Spahn.

18

19 DIRECT EXAMINATION

DIRECT

20 BY MR. DENNY:

21 Q Mr. Spahn, is it proper to ask how old you are?

22 A Why, just a few days ago on the 11th, I was 83.

23 Q All right, sir. And I take it at this point you
24 are totally blind, is that correct?

25 A That's right, sir, yeah.

26 Q All right. Now, how long have you had this
27 blindness?

28 A Oh, probably six years.

5a-4
1 Q Do you recall, sir, having testified in this matter
2 before the Grand Jury in December of 1970?

3 MR. MANZELLA: That doesn't appear to be relevant, your
4 Honor.

5 MR. DENNY: Your Honor --

6 THE COURT: Sustained.

7 MR. DENNY: Your Honor, relative to my opening statement to
8 this jury.

9 THE COURT: The objection is sustained.

10 Q BY MR. DENNY: Now, sir, have you been the owner
11 of Spahn Ranch, also called Spahn Movie Ranch?

12 A Yes, sir.

13 Q For a number of years you were the owner of that?

14 A Twenty-one.

15 Q All right. And sometime recently did you sell that
16 property to Frank Retz?

17 A That I did, yes, sir.

18 Q And did the negotiations for that sale extend over
19 a period of a couple of years?

20 A Yes, sir.

21 Q During a portion of the period of time when you
22 were negotiating with Frank Retz to sell the Spahn Ranch, was
23 the group of people known as the Manson Family occupying the
24 Spahn Ranch?

25 A Yes, sir.

26 Q And specifically in the summer of 1969, was the
27 Manson Family there?

28 A Yeah. Yes.

15a-5

1 Q And did these negotiations take place during the
2 summer of 1969, among other periods?

3 A Yes, sir.

4 Q And were these, in large measure, face-to-face
5 negotiations between you and Frank Retz?

6 MR. MANZELLA: Excuse me, your Honor. I'm going to object
7 on the grounds it is leading and suggestive.

8 MR. DENNY: I don't think that --

9 THE COURT: Overruled. You may answer.

10 Q BY MR. DENNY: You may answer the question,
11 Mr. Spahn.

12 THE COURT: You may answer it.

13 THE WITNESS: I'm afraid I didn't hear it.

14 Q BY MR. DENNY: All right.

15 Were the negotiations between you and Frank Retz
16 carried on mostly on a face-to-face basis?

17 A Yeah,

18 Q Excuse me, let me put this microphone down a
19 little closer to your mouth and you just sit there right where
20 it is.

21 All right, now, in the course of these negotiations,
22 did you carry on such negotiations in front of any members of
23 the Manson Family?

24 MR. MANZELLA: Objection, it is leading and suggestive,
25 your Honor.

26 THE COURT: Sustained.

16 fol

16-1

1 Q BY MR. DENNY: All right.

2 A Shall I answer?

3 Q Well, I guess you can't to that one, Mr. Spahn.

4 THE COURT: No.

5 Q BY MR. DENNY: Were other people present during the
6 course of these associations in the summer of 1969, at any time?

7 MR. KAY: Calls for a conclusion.

8 THE COURT: Overruled.

9 MR. KAY: If he can't see.

10 THE COURT: He can hear.

11 MR. KAY: All right.

12 Q BY MR. DENNY: You may answer that question.

13 Were any other people present during any time?

14 A Well, they could have been, and maybe I wouldn't
15 know it, see?

16 Q All right, sir. And did Mr. Retz indicate to you in
17 any way a -- a feeling on his part as to whether or not he
18 wanted to carry on his negotiations between you privately, or
19 with anybody else present?

20 MR. MANZELLA: Objection. Calls for hearsay.

21 THE COURT: Sustained.

22 Q BY MR. DENNY: Well, did Mr. Retz and you do any-
23 thing to carry on your negotiations privately?

24 MR. MANZELLA: Objection. It's vague and ambiguous, your
25 Honor.

26 THE COURT: Sustained.

27 Q BY MR. DENNY: Did you go anywhere, away from the
28 Spahn Ranch, to carry on your negotiations privately?

16-2

1 MR. MANZELLA: That's leading and suggestive, your Honor.
2 THE WITNESS: Yes, we did.
3 MR. MANZELLA: I will withdraw the objection.
4 THE COURT: All right.
5 Q BY MR. DENNY: All right. And what, if anything,
6 caused you to do that?
7 MR. MANZELLA: Objection. That's irrelevant, your
8 Honor.
9 THE WITNESS: Well --
10 THE COURT: Sustained.
11 THE WITNESS: -- we --
12 MR. DENNY: Just a moment.
13 THE COURT: You needn't answer that.
14 Q BY MR. DENNY: With whom did you go when you went
15 places away from the Spahn Ranch, to carry on these negotiations?
16 MR. KAY: That's ambiguous as to time, your Honor.
17 MR. DENNY: We are talking about the period of time in
18 the summer of 1969.
19 THE COURT: Overruled. You may answer.
20 THE WITNESS: Yes, I went down to Frank's office.
21 Q Any other place?
22 A Well, he used to take me out to a restaurant
23 there for dinner sometimes, and then we may have said some-
24 thing.
25 Q All right. Now, you've known Don Shea for some
26 period of time; is that right?
27 A Did I know him?
28 Q Yes.

16-3

1 A Oh, yeah. For seventeen years.

2 Q All right, sir. And over that period of time, did
3 Don come to work for you off and on --

4 A That's right.

5 Q -- and stay with you?

6 MR. MANZELLA: Objection. That's leading and
7 suggestive, your Honor. And ask that the answer be stricken.

8 THE COURT: Sustained -- well, it may remain in.

9 Q BY MR. DENNY: All right. Now --

10 THE COURT: The objection is overruled.

11 Q BY MR. DENNY: And was Don there on a regular
12 basis, or on an irregular basis?

13 MR. MANZELLA: Objection. It's vague and ambiguous as to
14 time.

15 Q BY MR. DENNY: Over this period of seventeen years
16 that we are talking about?

17 MR. MANZELLA: Still ambiguous as to time, your Honor.

18 THE COURT: Overruled.

19 Q BY MR. DENNY: You may answer that question,
20 Mr. Spahn.

21 A Say it again, please?

22 Q Was Don there on a regular or an irregular basis,
23 working over this period of time?

24 A Oh, well, just now and then. He never stayed all
25 the time.

26 Q All right. And what kind of work did he do when
27 he was there?

28 A Oh, work around the horses.

16-4

1 Q Doing what around the horses?

2 A Well, cleaning, take care of them. He worked in
3 pictures a whole lot, too.

4 Q Well, when you say "A whole lot" --

5 A Well, quite a bit.

6 Q How's that?

7 A He worked on pictures quite a bit.

8 Q All right, sir. Now, what kind of worker was
9 Don?

10 A When he worked in the pictures?

11 Q No. When he worked for you.

12 A Oh. Well, he would take care of the horses,
13 fed them and cleaned them, cleaned the stables and so on.

14 Q Well, was he a reliable worker?

15 A Well, yes. You couldn't complain when he was
16 there.

17 But he didn't stay there too long.

18 Q All right, sir. By the way, did you know a woman
19 by the name of Lee Saunooke?

16a fol

20 A Yes, sir.

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16a-1

1 Q And was she ever there with Don?

2 MR. MANZELLA: Objection. It doesn't appear to be
3 relevant, your Honor.

4 MR. DENNY: Well, your Honor --

5 THE WITNESS: Well, I would say yes, too.

6 THE COURT: The answer may remain in the record.

7 The objection is overruled.

8 Q BY MR. DENNY: All right. And to your knowledge,
9 was she -- were she and Don living together for a period in
10 1968?

11 MR. MANZELLA: Objection. It doesn't appear to be
12 relevant.

13 THE COURT: Overruled. You may answer.

14 MR. MANZELLA: Calls for hearsay, your Honor.

15 THE WITNESS: May I answer?

16 THE COURT: No, you may not. That's sustained.

17 Q BY MR. DENNY: To your own knowledge, sir, did
18 you ever determine whether they were living together? Did
19 you ever go --

20 MR. MANZELLA: Well --

21 Q BY MR. DENNY: -- to a place where they were
22 living together? With them?

23 A Am I to answer?

24 Q If you did so, sir.

25 A Well, yes.

26 Q All right. And where were they living together?

27 A Am I to answer?

28 Q Yes.

16a-2

1 A Down at the farmhouse, on the Spahn Ranch.

2 Q All right. Now, did you know Bill Vance?

3 A That I did -- may I answer?

4 Q Yes, sir.

5 A That I did.

6 Q All right. I think unless there's an objection
7 by a voice other than mine, you may go ahead and answer, sir.

8 All right. And how long had you known Bill
9 Vance?

10 A Oh, around seven years, anyhow.

11 Q All right. And he -- had he been in or around
12 the ranch off and on for that period of time?

13 A Well, yes. Um-hmm. But he wasn't there steady.

14 Q All right. Now, I want to direct your attention
15 specifically to August 16, 1969.

16 Do you recall on that day a large police raid?

17 A Yes, I do.

18 Q And were the men from the ranch, in the main,
19 removed from the ranch by the police? On that day?

20 A Well, yeah. They took everybody.

21 Q All right. And sometime following that -- by
22 the way, before that time, had Don brought you his new
23 wife up there, and introduced his new wife to you?

24 A Yes.

25 Q All right. Now, after that time, did Don come
26 to the ranch and indicate to you that he and his wife had
27 split up?

28 MR. MANZELLA: Objection. That's leading and suggestive,

16a-3

1 your Honor.

2 THE COURT: Sustained.

3 You needn't answer that.

4 Q BY MR. DENNY: All right.

5 A Don't answer?

6 THE COURT: No, don't answer.

7 THE WITNESS: Okay.

8 Q BY MR. DENNY: All right. Mr. Spahn, did you
9 see Don -- or Shorty -- sometime following that raid?
10 And when I use the term "see," I mean figuratively, rather
11 than literally, obviously.

12 Did you and Don have some conversation, sometime
13 after that?

14 A May I answer?

15 THE COURT: Yes.

16 THE WITNESS: Well, I am reasonably sure that we did--
17 although if someone says it's not so, well, I couldn't
18 argue, because I didn't keep no dates.

19 Q Now, you are talking about the time now involved;
20 is that right?

21 A Yes.

22 Q All right. Whether it was after or somewhat
23 before the raid.

24 Is that why you are saying you are not sure of
25 the date?

26 A Yeah.

27 Q All right.

28 A See, he come and went all the time.

16a-4

1 Q All right.

2 A For 17 years.

3 Q Now, sir, did you have any conversation with
4 Don concerning his split up with his wife?

5 A Yes, sir.

6 MR. DENNY: All right. And for the limited purpose
7 of Don's state of mind, your Honor, I would like to have
8 this answered.

9 Q Would you tell us what Don told you about -- in
10 that conversation, about the split up he had had with his
11 wife?

12 MR. KAY: Well, your Honor, that's ambiguous as to
13 time.

14 THE WITNESS: Can I answer?

15 MR. DENNY: This is after they split up.

16 MR. KAY: Still ambiguous as to time.

17 THE COURT: Sustained. He -- yes, hold your answer,
18 Mr. Spahn.

19 Q BY MR. DENNY: Well, Mr. Spahn, was this right
20 around the -- sometime around the time of the raid on the
21 ranch, by the police?

22 MR. KAY: Objection. Leading and suggestive.

23 THE COURT: Overruled.

16b fls.

16b-1

1 Q BY MR. DENNY: You may answer that, Mr. Spahn.

2 THE COURT: If you know.

3 THE WITNESS: Yeah. Well, ask it again, please.

4 Q BY MR. DENNY: Well, let me go back.

5 Was this conversation that you had with Don some-
6 time after he had initially introduced his new wife to you?

7 A Yes. I talked to him after that.

8 Q All right. And the new wife that he had introduced
9 to you, did he introduce her to you by name?

10 A Yeah, he did tell me it was -- may I answer?

11 THE COURT: Yes.

12 THE WITNESS: He did tell me, but I've forgot what it
13 was.

14 Q BY MR. DENNY: Would it refresh your recollection to
15 hear a name? Hear the name?

16 A It might.

17 Q Was Niki the name?

18 A Well -- uh --

19 Q Or Magdalene?

20 A I'd rather not say, because I can't remember.

21 Q If you don't remember, that's perfectly right, sir.
22 Don't say.

23 All right. Did you, sir, give the new wife a
24 particular nickname?

25 MR. MANZELLA: Objection. It doesn't appear to be
26 relevant.

27 MR. DENNY: Your Honor, this --

28 THE COURT: Sustained.

16b-2

1 MR. DENNY: Your Honor, it establishes the identity of
2 the woman.

3 I'll make an offer of proof, if the Court wants.

4 THE WITNESS: I'm not supposed to answer; is that right?

5 THE COURT: Again, --

6 MR. DENNY: Not yet.

7 THE COURT: -- please don't argue. The Court will hear
8 argument at the bench, if you like.

9 MR. DENNY: Well, may we --

10 THE COURT: The objection is overruled -- strike that.

11 The objection is sustained.

12 MR. DENNY: Well, may we approach the bench, your Honor?

13 THE COURT: Yes, you may. All right.

14 THE WITNESS: May I answer?

15 MR. DENNY: Not yet, Mr. Spahn.

16 THE COURT: Mr. Spahn, do you know what month it was in
17 1969 -- if it was in 1969 -- that you had this conversation with
18 Mr. Shea about his split-up with his wife?

19 MR. DENNY: Well, your Honor, may I object to the Court's
20 question at this time?

21 THE COURT: The objection is overruled.

22 THE WITNESS: May I answer?

23 THE COURT: Yes, you may answer.

24 (Laughter.)

25 THE WITNESS: I'm a farm boy. I don't know too much
26 about this court business.

27 THE COURT: Well, a lot of us are.

28 Go ahead, Mr. Spahn.

16b-3

1 THE WITNESS: Well, we talked about them, and the date,
2 I can't say, because I'm not certain to say.

3 THE COURT: Do you know what year it was?

4 THE WITNESS: Well -- yeah. It was shortly after he
5 married her.

6 I guess it was in '69, wasn't it?

7 (Whereupon, the following proceedings were had at
8 the bench among Court and counsel, outside the hearing of the
9 jury:)

10 MR. DENNY: Your Honor, may I make my offer of proof?

11 He nicknamed her "Black Beauty," and that's the
12 nickname he gave her, obviously designating her black color.

13 THE COURT: All right.

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

16 Q BY MR. DENNY: All right, Mr. Spahn. We can get
17 back to answering the question now.

18 This new wife that Shorty introduced to you, did
19 you give her a nickname?

20 A May I answer that?

21 THE COURT: Yes.

22 THE WITNESS: Yes, I did.

23 Q BY MR. DENNY: And what was that nickname?

24 A Uh-huh. I'm afraid to tell you.

25 Q That's all right, sir. Perfectly all right.

26 A Well, I -- I can tell you if you want me to.

27 Q I want you to. That's why I'm asking.

28 A Oh, yes, I give her a nickname.

16b-4

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Q What was it, sir?

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A Black Beauty.

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Q Black Beauty?

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A (Indicating affirmatively.)

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Q All right. And sometime after he introduced her to
you, you then had a conversation with him about the breakup of
the marriage?

16c fol

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1 MR. KAY: Well, that's leading and suggestive.

2 MR. DENNY: I'm sorry.

3 Q You then had a conversation with him about
4 their split up; is that correct?

5 MR. KAY: Leading and suggestive.

6 THE WITNESS: May I answer?

7 THE COURT: Yes. Overruled.

8 I'll permit you to answer.

9 You may answer that yes or no.

10 THE WITNESS: Oh. Well, it wasn't --

11 THE COURT: You may answer it yes or no, Mr. Spahn.

12 Q BY MR. DENNY: Did you have such a conversation
13 with him, or --

14 A About the name, or about --

15 Q No, no. Not about the name. About their
16 marital status at that time.

17 A Yeah. He told me all about it -- or told me a
18 lot about it.

19 MR. DENNY: All right. Again, not for the truth of the
20 matter, but to his state of mind.

21 Q Would you tell me what he told you about this
22 marital status thereafter?

23 A May I answer?

24 THE COURT: Yes.

25 THE WITNESS: Well, he said that he loved the girl,
26 and -- but they just didn't -- different ones made some
27 remarks with her, about her marrying a white guy.

28 Q Well, was there any conversation about who had

16c-2

1 left whom?

2 MR. MANZELLA: Objection. That's leading and
3 suggestive, your Honor.

4 THE COURT: Sustained.

5 Q BY MR. DENNY: Well, sir, was there any further
6 conversation --

7 A May I answer that?

8 Q -- as to their marital status?

9 THE COURT: Yes, you may answer it.

10 THE WITNESS: Yes. He said that she left him.

11 Q BY MR. DENNY: All right. And did he indicate
12 in any way to you how he felt about that?

13 MR. MANZELLA: Objection. That's leading and sugges-
14 tive, your Honor.

15 MR. DENNY: I don't think that is.

16 MR. MANZELLA: He can ask for the conversation, your
17 Honor.

18 THE COURT: Sustained.

19 Q BY MR. DENNY: Well, sir, did you --

20 THE COURT: Was there any further conversation at that
21 time, Mr. Spahn?

22 THE WITNESS: May I answer it?

23 THE COURT: Yes.

24 THE WITNESS: Yes. He felt terrible about it.

25 Q BY MR. DENNY: And this is what he told you;
26 is that right?

27 A Oh, yes.

28 Q All right. Now, sometime after Don's arrival,

16c-3

1 and sometime after this conversation that you had with him
2 about the fact that she had left him, did you have some
3 conversation with Frank Retz concerning the hiring by Retz
4 of a watchman?

5 A May I answer?

6 Q Yes.

7 A Yes. Yes, he did.

8 Q All right. And were there more than one
9 conversations concerning that subject, between you and Mr.
10 Retz?

11 A Yes, several.

12 Q All right. And was there finally a conversation
13 that you had with Mr. Retz, on a particular day of the week,
14 before you spoke to Don -- or Shorty -- about this?

15 MR. MANZELLA: Excuse me, Mr. Spahn.

16 I object, your Honor, on the grounds that that's
17 leading and suggestive.

18 THE COURT: Sustained.

19 Q BY MR. DENNY: Well, following this series of
20 conversations that you had with Mr. Retz, did you have any
21 conversation with Don concerning the subject matter of Mr.
22 Retz' hiring a watchman?

23 A Yes, sir.

24 Q All right. And did you talk to Don more than once
25 about that subject matter?

26 A Yes, sir.

27 Q On several occasions?

28 A Yes, sir.

16c-4

1 Q All right. Now, the last occasion when you talked
2 to Don about this, do you remember about what day of the week
3 that was?

4 A No, I'm not sartain.

5 Q What did you tell him, the last occasion that you
6 spoke to him?

7 A Well, I told him now to be sure and go see Frank,
8 "Because Frank wants to see you."

9 And I understood it to be a -- he said -- it was
10 on a Monday that Shorty should go down there, between 8:00
11 and 9:00.

12 And I told him just, "To be sure and do it,
13 Shorty, because he wants to see you, and he won't fool around."

14 Q And do you recall what Shorty replied, if anything?

15 A Well -- no. I took it for granted that he went.

16 Q Well, no. Wait a second. You are getting ahead
17 of the story a little bit.

18 This conversation that you had, was this conver-
19 sation on the day that he was supposed to go, --

20 MR. MANZELLA: Objection.

21 Q BY MR. DENNY: -- which was a Monday?

22 MR. MANZELLA: Objection. That's leading and suggestive,
23 and assumes a fact not in evidence.

24 THE COURT: Sustained.

17 fls.

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17-1

1 Q BY MR. DENNY: Well, do you know what -- was
2 this conversation on the same day or another day, this last
3 conversation that you have just talked about when you told
4 Shorty to be sure and go there and go on Monday?

5 MR. MANZELLA: Objection, that assumes a fact not in
6 evidence. Mr. Spahn did not testify --

7 THE COURT: Sustained.

8 Q BY MR. DENNY: Well, sir, he has just told us
9 about a conversation about Shorty going to meet Mr. Retz
10 on Monday?

11 A Yes.

12 Q Between 8:00 and 9:00, is that right?

13 A Yes.

14 MR. MANZELLA: Objection, excuse me, that's not what
15 the conversation was. And I object that it assumes a fact
16 not in evidence.

17 THE COURT: Overruled.

18 Q BY MR. DENNY: Now, this conversation that you
19 had with Don, was that had on the day that Don was supposed
20 to go meet Mr. Retz?

21 You can answer that.

22 A May I answer?

23 Q Yes.

24 A No, that wasn't the day.

25 Q How many days before the day that Don was
26 supposed to meet Mr. Retz did you have that conversation with
27 him, do you recall?

28 A Well, it was just a mighty few days before he was

17-2

1 supposed to go I reminded him again to be sure and be there.

2 Q All right.

3 A And he said he sure would.

4 Q All right, sir. And to your recollection, is
5 that the last conversation that you had with Don?

6 A I think that was it.

7 Q All right.

8 Now, was there a period of time thereafter, Mr.
9 Spahn, at which you began to be concerned about the fact that
10 Don was missing?

11 A Yes.

12 Q And about how long thereafter was that that you
13 became concerned about the fact that Don wasn't around any
14 more?

15 A Well, it was, uh -- I would say six weeks.

16 Q Was there some particular incident that made you
17 particularly concerned or brought it to your attention at
18 that time?

19 MR. MANZELLA: Excuse me, Mr. Spahn.

20 Your Honor, this doesn't appear to be relevant.

21 MR. DENNY: Well, again, it goes -- I don't want to
22 argue it.

23 THE COURT: Well, you may approach the bench.

24 MR. DENNY: Thank you.

25 THE WITNESS: Go ahead?

26 MR. DENNY: No, just a moment, Mr. Spahn.

27 THE COURT: Hold up just a moment, Mr. Spahn.

28 (Whereupon, the following proceedings were had

1 at the bench among Court and counsel, outside the
2 hearing of the jury:)

3 THE COURT: What's your offer of proof?

4 MR. DENNY: The relevancy is simply --

5 THE COURT: No, what's the offer of proof?

6 MR. DENNY: The offer of proof is that a policeman
7 came at that time and said Shorty was missing and they were
8 looking for him and up until that time they weren't particu-
9 larly worried about him because they didn't hear from him.
10 And this controverts Pearl's testimony and other testimony
11 by virtue of the fact they didn't hear from him for a period
12 of time. They weren't really concerned about him.

13 THE COURT: It would appear to be -- Pearl's testimony
14 doesn't reflect what this man might have been testifying --

15 MR. KAY: No, she didn't testify about George.

16 MR. DENNY: No, all of them said that they heard from
17 him within a very short period of time, within three weeks,
18 a very few weeks they heard from him, and I think it is
19 relevant to show that George Spahn hadn't heard from him in
20 six weeks and still he wasn't concerned about him. And the
21 only thing that caused him to be particularly concerned
22 because Shorty hadn't come in or anything was the fact that
23 a policeman came and it wasn't until then that anybody was
24 concerned about him.

17a fls.

1 MR. MANZELLA: I don't see where Spahn's state of mind
2 has to do --

3 MR. DENNY: Well, Spahn wasn't --

4 MR. MANZELLA: And all of them have testified they
5 did miss Shorty. For example, John Swartz asked Manson
6 within a few days.

7 THE COURT: I don't think it is admissible.

8 MR. DENNY: All right, your Honor.

9 (Whereupon, the following proceedings were had
10 in open court within the presence and hearing of the
11 jury:)

12 MR. DENNY: Mr. Spahn, you don't have to answer any
13 further questions asked by me. I have no further questions,
14 but the prosecution may want to ask you a few questions.

15 THE WITNESS: Are you through with me, then?

16 MR. MANZELLA: Thank you, your Honor.

17 THE COURT: Wait for the questions, now.

18
19 CROSS-EXAMINATION

20 BY MR. MANZELLA:

21 Q Mr. Spahn, I am another lawyer. I have a few
22 questions I would like to ask you.

23 A Yeah, okay.

24 Q Shorty was a trusted employee of yours, wasn't
25 he?

26 A What is it?

27 Q Shorty, he was a trusted employee, wasn't he?

28 A Well, I always found him that way.

1 Q And you had other cowboys or people working for
2 you, doing what Shorty did, isn't that right, over the years?

3 A Yeah.

4 Q Shorty was the type of person, he appeared more
5 loyal than the other people, didn't he?

6 MR. DENNY: I'll object to that as irrelevant and
7 immaterial.

8 THE COURT: Sustained.

9 THE WITNESS: Answer that?

10 THE COURT: No, don't answer that.

11 MR. MANZELLA: Your Honor, excuse me, I believe that
12 Mr. Spahn testified with regard to his opinion of Shea as
13 a worker. We're offering it on that point.

14 MR. DENNY: I don't think comparative --

15 THE COURT: I'll sustain it in that form.

16 MR. MANZELLA: All right.

17 Q Did Shorty -- strike that. Shorty, he appeared
18 to be a loyal person, didn't he?

19 MR. DENNY: That's asked and answered.

20 THE COURT: Overruled. You may answer.

21 THE WITNESS: I may answer?

22 THE COURT: Yes, you may, Mr. Spahn.

23 THE WITNESS: Yes, yes, I would say he was.

24 Q BY MR. MANZELLA: Some of the conversations that
25 you had with Frank Retz, Mr. Spahn, some of those conversa-
26 tions where you negotiated for the -- for your property, to
27 sell your property, did those take place at Spahn Ranch as
28 well; at your ranch as well as in Frank Retz' office?

1 A Well, they --

2 May I answer?

3 THE COURT: Yes.

4 THE WITNESS: It never was mentioned much around the
5 ranch, because like I said, Frank didn't want everyone to know.
6 So we generally went down to Frank's office.

7 Q Did some of the conversations take place at the
8 ranch?

9 A Well, if it was, it was very brief.

10 Q Now, did you ever have any conversations with
11 Frank Retz in the summer of '69 about getting rid of Charles
12 Manson and the Family?

13 MR. DENNY: Object to that as irrelevant and immaterial
14 and beyond the scope of the direct examination.

15 THE WITNESS: May I answer that?

16 THE COURT: Overruled. Yes, you may answer.

17 MR. DENNY: Well, your Honor, --

18 THE WITNESS: Well, Frank did say something about why
19 didn't I get rid of them. And, uh, I said -- I did say they
20 were going to leave.

21 Q BY MR. MANZELLA: And did you have -- you had more
22 than one conversation with Frank about this, didn't you?

23 A About the --

24 Q About getting rid of Manson and the Family?

25 A Yes.

26 Q And --

27 A It was about the same thing, see, as soon as they
28 got their truck fixed, they would leave.

1 Q Who told you that?

2 MR. DENNY: I'll object to that, your Honor, as calling
3 for hearsay.

4 THE COURT: Sustained.

5 Q BY MR. MANZELLA: Now, these conversations that
6 you had with Frank about getting rid of Manson and the Family,
7 those took place on Spahn Ranch, didn't they? They took
8 place at your ranch?

9 A Yeah, uh-huh.

10 Q They took place in your home there?

11 A Yes, uh-huh.

12 Q And during those -- during some of those conver-
13 sations, when you talked to Frank about getting rid of Manson
14 and the Family, Squeaky was present, wasn't she?

15 MR. DENNY: Your Honor, I'm going to object to this
16 whole line of questioning as beyond the scope of direct
17 unless the People are attempting to call him as their own
18 witness.

19 THE COURT: Overruled.

20 THE WITNESS: May I answer?

21 THE COURT: Yes, you may.
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17b fls.

17b

1 THE WITNESS: Oh.

2 Well, I wouldn't say whether she was there or not. She
3 was there a whole lot of times. But Squeaky never said too
4 much about what went on between Frank and so on.

5 Q BY MR. MANZELLA: And if she didn't talk, you didn't
6 know whether she was there or not, is that right?

7 MR. DENNY: Well --

8 THE WITNESS: No, that's right, I wouldn't know.

9 Q BY MR. MANZELLA: Did you ever tell Charles Manson
10 directly to leave the ranch?

11 MR. DENNY: Your Honor, I'm going to object to this again
12 as beyond the scope of direct examination.

13 THE COURT: Sustained to that.

14 Would you approach the bench, gentlemen?

15 THE WITNESS: Should I answer?

16 THE COURT: No, hold up on that, Mr. Spahn.

17 (Whereupon, the following proceedings were had at
18 the bench among Court and counsel, outside the hearing of the
19 jury:)

20 THE COURT: The subject of the night watchman, apparently,
21 was discussed, and that appears to have been as a result of
22 what I understand of troubles raised at the ranch, but the
23 Court would sustain the last question -- sustain the objection
24 to the last question.

25 MR. MANZELLA: When I finish with cross, may I take
26 Mr. Spahn as my own witness?

27 MR. DENNY: I'm going to object strenuously and strongly
28 to the People taking this witness as their own witness. They

1 had every opportunity and I fought in every way I could to get
2 the People to bring George Spahn down to testify and I think
3 it is bad faith at this point, and a violation of every concept
4 of fair play for them to require me to bring George Spahn down
5 and to go through all the hassle that I went through to bring
6 George Spahn down when they just as easily could have done it
7 and done when Pearl came down. And now for them to call him
8 as their own witness, and I would object strongly to them
9 calling George Spahn as their own witness during the defense.

10 THE COURT: The Court believes that any witness who can
11 shed light on any aspect of this case should be called to
12 testify, and the fact that the People didn't call him, but you
13 did, doesn't appear to alter that at all. Both sides have been
14 on notice as to what Mr. Spahn might say if he were called. I
15 can't see that the defendant would suffer any prejudice by
16 reason of his being called as a People's witness.

17 However, I would not -- I'll permit you to finish
18 your proof, and then have Mr. Spahn back, if that's what you
19 want.

20 MR. DENNY: That's all right.

21 MR. MANZELLA: I'm sorry, I didn't hear that.

22 THE COURT: I should think that the Court might permit
23 Mr. Denny to finish his defense, and then you can call
24 Mr. Spahn back.

25 MR. MANZELLA: You mean from Oregon?

26 MR. DENNY: He'll have to stay.

27 THE COURT: No, I'm assuming he'll stay. It is a
28 quarter to 5:00. When will you finish your case?

1 MR. DENNY: I expect to finish tomorrow.

2 THE COURT: What time?

3 MR. DENNY: In the afternoon. He has a flight
4 scheduled for return leaving at approximately 5:00 in the
5 afternoon.

6 THE COURT: Tomorrow afternoon?

7 MR. DENNY: I expect.

8 THE COURT: That might work out all right. If it
9 gets tight, I might reconsider and allow the People to present
10 him.

11 All right, you can continue with cross examination.

12 MR. MANZELLA: All right.

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

15 THE COURT: Is that all for now, gentlemen?

16 MR. KAY: No, your Honor, we're trying to find something.

17 (Whereupon, Mr. Kay and Mr. Manzella conferred at
18 the counsel table.)

19 THE COURT: Since Mr. Spahn will be coming back in any
20 event --

21 MR. KAY: We still have some cross examination left, I
22 think.

23 MR. MANZELLA: Yes, your Honor.

24 Q BY MR. MANZELLA: Mr. Spahn, did Frank Retz tell
25 you to send Shorty down on a Monday?

26 A Yes, sir.

27 Q Did he tell you to send him down on a Monday or
28 a Tuesday because that's when he was in his office?

1 A Monday.

2 Q And you talked to Shorty a few days before that and
3 asked him if he was -- to tell him to go see Frank?

4 A Yes, sir.
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1 Q And you don't recall what day of the week that was,
2 do you?

3 A No, I don't.

4 Q All right.

5 A I -- uh --

6 Q All right, thank you, Mr. Spahn.

7 A Okay.

8 Q I just have a few more questions, your Honor.

9 Now, from the period, Mr. Spahn -- from the period
10 1956 to 1966, in other words the first ten years that Shorty
11 was at the ranch, he was there pretty regularly, wasn't he,
12 during the first ten years?

13 A Well, a few days out of a month, I would think.

14 Q And he worked on pictures quite a lot?

15 A Yes.

16 Well, not too much, you know. Maybe two or three
17 days out of a month. Maybe more. Maybe next month nothing, you
18 see.

19 Q Some of those pictures were pictures, at least part
20 of them were shot at Spahn Ranch?

21 A Well, some of them, and then across the street.

22 Q At Iverson Ranch?

23 A Yeah.

24 Oh, he was a good picture man all right, there's
25 no question about that.

26 Q Now, Mr. Spahn, you knew a girl by the name of
27 Squeaky, didn't you?

28 A That I do.

1 Q And do you know if her real name was Lynn Fromme?

2 MR. DENNY: Again, your Honor, I think this goes beyond
3 the scope of --

4 THE WITNESS: What, -- what?

5 MR. MANZELLA: Well, just a minute, Mr. Spahn, I think
6 there was an objection.

7 THE COURT: The objection is overruled.

8 Q BY MR. MANZELLA: Did you know Squeaky? Was her
9 real name Lynn Fromme, Lynn, L-y-n-n, Fromme, F-r-o-m-m-e?

10 A I think it was, yes. She always said so.

11 Q Squeaky spent a lot of time with you, didn't she,
12 helping you out and taking care of you?

13 A Oh, yeah, uh-huh.

14 Q And on the conversations that you had with Frank
15 Retz about getting rid of Manson and the Family, do you know
16 whether Squeaky was there or not?

17 A Well, I know she was on the place.

18 MR. DENNY: Just a moment.

19 THE WITNESS: She was on the place, but whether she was
20 right present so she could hear any conversation, that I
21 couldn't say.

22 Q BY MR. MANZELLA: In any event, when you had the
23 conversations with Frank Retz, you didn't hear her speak; is
24 that right?

25 MR. DENNY: That's asked and answered.

26 MR. MANZELLA: If it has, I'll withdraw it. I just
27 didn't remember it.

28 MR. DENNY: It has been.

1 MR. MANZELLA: I'll withdraw it.

2 THE WITNESS: Do you want me to answer it?

3 MR. MANZELLA: No, that's all right, Mr. Spahn. I think
4 you've already answered it. Thank you.

5 THE COURT: No, you've answered.
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1 May I have just a moment, your Honor?

2 THE COURT: Yes, you may.

3 (Pause in the proceedings while a discussion off
4 the record ensued at the counsel table between Mr.
5 Manzella and Mr. Kay.)

6 MR. MANZELLA: All right. I have no further questions.

7 Thank you, your Honor.

8 THE COURT: Well, other --

9 MR. MANZELLA: Other than what I asked before.

10 THE COURT: Any redirect?

11 MR. DENNY: No, I have no redirect examination, your
12 Honor.

13 THE COURT: All right. Mr. Spahn, the Court will
14 excuse you for today, and will ask you to come back tomorrow
15 morning at about 11:00 o'clock. 11:00 o'clock.

16 MR. SPAHN'S DAUGHTER: 11:00?

17 THE COURT: Can you accomplish that all right?

18 THE WITNESS: Oh, yeah.

19 MR. SPAHN'S DAUGHTER: Yeah. Here's your hat. We are
20 going to step down the minute you turn.

21 MR. DENNY: Well, your Honor, perhaps we could excuse
22 the jury. I think perhaps that would expedite things, and
23 then let Mr. Spahn leave.

24 MR. SPAHN'S DAUGHTER: No. Let's get out of the way.

25 Now, start right down, Dad. There's one -- one
26 more. That's right.

27 Now, turn to the left.

28 THE COURT: All right. Ladies and gentlemen, we will

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1 recess until 9:30 tomorrow, and during the recess, you are
2 obliged not to converse amongst yourselves nor with anyone
3 else, nor permit anyone to converse with you on any subject
4 connected with the matter, nor to form or express any opinion
5 on it until it is finally submitted to you.

6 The Court expects to try to start -- that's a
7 strange sentence, isn't it? "Expects to try to start"?

8 (Laughter.)

9 THE COURT: (Continuing) -- as close as possible to
10 9:30. So I'll see you tomorrow at 9:30.

11 And I would like to have everyone present. Did
12 the District Attorney's staff hear that?

13 MR. KAY: Yes, your Honor.

14 MR. DENNY: Your Honor, I would like to address the
15 Court, after the jury has left.

16 (Whereupon, at 4:51 p.m., the jury exited the
17 courtroom, and the following proceedings were had:)

18 THE COURT: The jury's gone. You may address the
19 Court.

20 MR. DENNY: Yes, your Honor. Sergeant Whiteley was
21 supposedly on call, and I had discussed with Mr. Kay and
22 Mr. Manzella his being present today.

23 I had wanted him this morning, and I was advised
24 yesterday that he was supposed to have a meeting with Mr.
25 Manzella in his office at 12:00 noon. I checked, and
26 apparently he has not shown up yet.

27 I do need the presence of Sergeant Whiteley, and
28 I would like to have him here tomorrow, so that we can examine

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1 him,

2 MR. MANZELLA: That's correct, your Honor. Sergeant
3 Whiteley was supposed to meet with me in my office at noon,
4 and he -- he didn't show up. And I haven't been able to
5 contact him. I've tried by phone to get ahold of him. I'll
6 try again tonight, and --

7 THE COURT: All right. See if you can have him avail-
8 able, if you would, for the defense tomorrow.

9 MR. MANZELLA: Sure.

10 THE COURT: Because -- it's Mr. Denny's plan to put him
11 on in the morning; is that right?

12 MR. DENNY: I would like to have him here in the morning,
13 so that I can, yes.

14 THE COURT: All right. And we wouldn't be -- I shouldn't
15 like to have anything happen to hold up the defense, the
16 presentation of defense witnesses; because apparently,
17 with -- if things go smoothly, we can anticipate -- or hope
18 that you will be able to finish your defense tomorrow.

19 MR. DENNY: I expect to be able to, yes, your Honor.

20 Now, your Honor, there is one other problem, and
21 it's been an oversight on my part. And I've just discussed
22 it with Mr. Davis, and that is: The Court had held in abeyance
23 the subpoenas that I had served on Mr. Grogan and Mr. Manson.

24 There's some question now, in my discussion with
25 Mr. Davis, as to the feelings of whether or not they should
26 be used as witnesses, or put on, and --

27 THE COURT: Well, let's -- that's what you'll have to
28 let the Court know.

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1 MR. DENNY: Well, your Honor, I am letting the Court
2 know now, that, in accordance with my client's expressed
3 wish to me, I do feel that I have to have them down here, to
4 talk with them, with my client, to make that determination.

5 And I realize that --

6 THE COURT: It's rather late.

7 MR. DENNY: It is on short notice. It -- it is simply
8 an oversight on my part, with all of the other preparation
9 and work that I have done.

10 THE COURT: Well, this isn't just to give them a trip?

11 MR. DENNY: It is not just to give them a trip, your
12 Honor. And I feel I certainly owe this to my client, whose
13 wishes are certainly of some moment in connection with this
14 case.

15 THE COURT: And your purpose in calling them down -- at
16 this moment, at least -- is not to have them testify, but to
17 inquire as to whether or not they will testify, or determine
18 whether or not they will testify; is that what you mean?

19 MR. DENNY: And -- yes, your Honor. And as to certain
20 matters as to which their testimony might have relevance.

21 THE COURT: Well, the Court remembers that you had
22 extensive conversations with both Mr. Grogan and Mr. Manson--

23 MR. DENNY: Well, that was --

24 THE COURT: -- before they left Los Angeles County.
25 And now, Mr. Manson is in San Quentin, and I -- I don't know
26 where Grogan is.

27 MR. DENNY: I'm sure he's in San Quentin.

28 THE DEFENDANT: He's in Tracy.

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1 THE COURT: Oh, that's right. Apparently -- he was
2 in Tracy; that's right. Apparently the death sentence was
3 reduced in that case.

4 MR. DENNY: Your Honor, I did have certain conversations
5 with them, but that was a long time ago, and the complexion
6 of this case is such, particularly in view of the Court's
7 rulings yesterday, on my motions for verdicts of acquittal,
8 that I think the circumstances have changed somewhat at this
9 date.

10 THE COURT: The Court will do what it can to accommodate
11 you, so that you can terminate this case tomorrow.

12 Have you advised your client with respect to his
13 right to testify, Mr. Denny?

14 MR. DENNY: We have discussed that, your Honor, and it is
15 his wish --

16 THE COURT: The Court will -- you needn't say anything at
17 this moment.

18 But the Court will advise you, Mr. Davis, that you
19 do have the right to testify, or to refuse to testify, and
20 it's for you to determine.

21 If there should be any disagreement -- I don't
22 mean to hint that there is; I've noted none between you and
23 your attorney -- but if there should be, you are the one who
24 will have the final determination as to whether or not to
25 take the witness stand.

26 Do you understand?

27 THE DEFENDANT: (Indicating affirmatively.)

28 THE COURT: Do you understand?

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1 THE DEFENDANT: Yes.

2 MR. DENNY: You have to indicate verbally, so that the
3 reporter --

4 THE DEFENDANT: Yes, I understand it.

5 MR. MANZELLA: Your Honor, I don't think that Mr.
6 Manson and Mr. Grogan would be able to be brought down
7 tomorrow.

8 THE COURT: I know that -- or, I doubt it, that that
9 could be accomplished.

10 It may very well delay the proceedings consider-
11 ably, if -- if the Court orders it.

12 All right. We are in recess until 9:30 tomorrow
13 morning.

14 MR. DENNY: Thank you, your Honor.

15 MR. KAY: See you in the morning.

16 (Whereupon, at 4:57 o'clock p.m., an adjournment
17 was taken in this matter until 9:30 o'clock a.m.
18 of the following morning, Wednesday, February 16,
19 1972.)
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