

23

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT NO. 52

HON. JOSEPH L. CALL, JUDGE

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

v.

NO. A 267861

STEVE GROGAN

Defendant.

REPORTERS' DAILY TRANSCRIPT

FRIDAY, JULY 30, 1971

WATLEY  
EWART  
SHEEHAN

APPEARANCES:

(See Volume 1)

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Official Reporters

COPY

1 PEOPLE v. GROGAN  
2 NO. A 267861

VOLUME 23- Pages 2888 - 3021 inc.  
Friday, July 30, 1971

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LOS ANGELES, CALIFORNIA, FRIDAY, JULY 30, 1971; 9:40 A. M.

THE COURT: Now, let's see, gentlemen. We will proceed here. People against Grogan.

The defendant is here. Defendant's counsel is here. The district attorney is here.

Now, if you will bring in the jury, sheriff, we will go right ahead. Thank you.

THE BAILIFF: Yes, sir.

(The following proceedings were had in open court in the presence of the jury.)

THE COURT: Now, gentlemen, we have all of our jurors here, plus the three alternates.

The People may proceed.

MR. KATZ: Thank you.

Sergeant Paul Whiteley.

THE COURT: All right.

PAUL J. WHITELEY,  
resumed the stand and testified further as follows:

THE COURT: Yes. Be seated and state your name.

THE WITNESS: Paul J. Whiteley. W-h-i-t-e-l-e-y.

THE COURT: Thank you.

DIRECT EXAMINATION (Resumed)

BY MR. KATZ:

Q Sergeant Whiteley, at the conclusion of

2

1 yesterday's session, we were talking about, you will recall,  
2 your recovery of a white Mercury Comet, bearing license  
3 number NEM 841.

4 In that connection I believe you told us you  
5 found this car in the vicinity of Independence and Greshen  
6 Street, is that right?

7 A That's correct.

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1 Q Is that in some part of the Valley?

2 A Yes, it is.

3 Q What part of the Valley is it?

4 A It is in Chatsworth, which is part of the San  
5 Fernando Valley.

6 Q All right. At the conclusion of yesterday's  
7 session you were telling us some of the items that you found  
8 in the car itself, and also in the footlockers.

9 Let me direct your attention now to some magazines  
10 which are labeled People's 25 for identification.

11 I will ask you to look at these magazines and tell  
12 us whether or not you recognize these magazines as having seen  
13 them before?

14 A Yes, I do.

15 Q Where had you seen those magazines?

16 A These were in the trunks or footlockers in the  
17 trunk of the vehicle.

18 Q Were they in the same footlockers or were they in  
19 different footlockers or what?

20 A The gun magazines were in one footlocker, and the  
21 Ebony magazine was in another footlocker.

22 Q Did you pay particular attention to the publication  
23 dates on the magazines?

24 A Yes, I did.

25 Q They range from what date to what date?

26 A They are from June through August issue of 1969.

27 Q Now, did you find a writing or yellow piece of  
28 paper on which you saw some writing with the signature "Don"?

1 A Yes, I did.

2 Q Where did you find this?

3 A This was in one of the footlockers in the trunk  
4 of the vehicle.

5 Q Showing you People's 19 for identification, what  
6 purports to be a letter addressed to "Dearest Niki," and  
7 signed "Love always, Don," do you recognize this as having  
8 seen it before?

9 A Yes, I do.

10 Q Where had you seen it?

11 A This was in one of the footlockers in the vehicle.

12 Q And once again you recovered this on December 10th,  
13 1969, the day after you first saw the car?

14 Is that correct?

15 A That is correct.

16 Q Excuse me, am I incorrect?

17 A Yes, incorrect.

18 I first saw the car on the 8th.

19 Q All right. When was it when you actually saw the  
20 letter?

21 A On the 10th.

22 Q And the letter, of course, is People's 19 for  
23 identification?

24 Is that correct?

25 A Yes.

26 Q Where was it that you found the letter, People's  
27 19?

28 A In the footlocker in the trunk of the vehicle.

1 Q Once again, this trunk of the vehicle was locked?  
2 Is that correct?

3 A Yes.

4 Q Now, you have told us that you found some keys on  
5 the floor of the car when you first recovered the automobile?  
6 Is that correct?

7 A Yes, they were underneath the seat.

8 Q And you had been directed to that location?  
9 Is that correct?

10 A Yes.

11 Q Now, once you found the keys, did you make any  
12 attempt to place the keys in the ignition?

13 A Yes, I did.

14 Q What did you do in that regard?

15 A I placed the key in the ignition.

16 Q Did you try to start the car?

17 A Yes, I did.

18 Q Were you able to do so?

19 A No, I was not.

20 Q What happened when you turned the ignition key?

21 A The ignition light came on on the car. However,  
22 the battery wouldn't turn the motor over.

23 Q All right. Now, did you see some shoes in the car?

24 A Yes, I did.

25 Q Where did you see the shoes?

26 A They were in the back seat on the floor.

27 Q Showing you specifically 18-G for identification,  
28 will you look at this photograph and tell us whether or not

1 you recognize those mismatched shoes as having seen them  
2 before?

3 A Yes, I have.

4 Q Where had you seen them?

5 A This was in the back seat on the floor of the  
6 vehicle that I recovered.  
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1 Q Quickly showing you People's 18 for identification,  
2 is this one of the two shoes that you recovered from the car  
3 of Shorty Shea?

4 A Yes, it is.

5 Q Now, did you find any negatives in the car?

6 A Yes, I did.

7 Q And did you take those negatives to some place  
8 in your department?

9 A Yes, I did.

10 Q Where did you take those negatives?

11 A I took them to the Los Angeles County photographic  
12 laboratory.

13 Q And did you cause some photographs to be made  
14 from those negatives?

15 A Yes, I did.

16 Q And did you receive the photographs from your  
17 laboratory department?

18 A Yes, I did.

19 Q And did you then compare those photographs with  
20 the negatives to determine that these were in fact the  
21 photographs taken from the negatives which you brought to the  
22 photography lab?

23 A Yes.

24 Q And were they in fact the pictures made from the  
25 negatives?

26 A Yes.

27 Q And where are the negatives now?

28 A They are at the Los Angeles County photographic

1 laboratory.

2 Q They are still available, is that correct?

3 A Yes.

4 MR. KATZ: All right.

5 Your Honor, I have a series of photographs that  
6 I would ask be marked People's 33-A through --

7 THE COURT: Have you shown them to the defendant?

8 MR. KATZ: I will in a moment, your Honor.

9 THE COURT: Those are the photos taken from the nega-  
10 tives the officer just testified about?

11 MR. KATZ: Yes, your Honor.

12 THE COURT: All right.

13 They may be so marked and shown to the defendant  
14 and counsel.

15 MR. KATZ: 33-A through 33-28.

16 And I will show them to counsel.

17 May the record reflect I just handed them to the  
18 defendant?

19 THE COURT: Yes. All right.

20 (Pause.)

21 MR. KATZ: Your Honor, may I approach the witness while  
22 counsel is looking?

23 THE COURT: Yes. All right.

24 MR. KATZ: Thank you.

25 (Counsel and witness confer. Not reported.)

26 MR. KATZ: May I approach the witness, your Honor.

27 THE COURT: Yes.

28 Q BY MR. KATZ: I want to quickly show you these

IDEN  
P 33-A  
-28

3  
1 photographs 33-A through 33-Z8. And look at them quickly,  
2 if you will and tell me whether or not these are the same  
3 photographs that you compared with the negatives that are  
4 presently at the sheriff's crime lab (handing).

5 Would you pass them to his Honor as you are looking  
6 at them, please.

7 A (Handing.)

8 THE COURT: Thank you.

9 Q BY MR. KATZ: Thank you.

10 A Yes. These are the photographs (handing).

11 THE COURT: Thank you.

12 Q BY MR. KATZ: In other words, these photographs  
13 truly and accurately are copies made from the negatives which  
14 you recovered from the car of Mr. Shea, is that correct?

15 A That's correct.

16 Q And just characterizing those photographs, these  
17 are photographs of Ruby Pearl and Donald Shea, and horses,  
18 and Spahn Ranch, and Corriganville and the like; is that  
19 correct?

20 A Yes.

21 MR. KATZ: Your Honor, I have a series of two photographs  
22 which appear to be aerial photographs.

23 THE COURT: Yes. Go ahead.

24 MR. KATZ: And I would ask respectfully that they be  
25 marked People's 40-A and 40-B for identification.

26 I will show them to counsel (handing).

27 THE COURT: All right.

28 And show them to defendant and counsel.

29 So marked.

1 MR. KATZ: Your Honor, I also have a series of color  
2 photographs. I ask they be marked 34-A through F, and counsel  
3 has had an opportunity to see them.

34 id.

4 THE COURT: They may be so marked.

5 MR. KATZ: May I approach the witness?

6 THE COURT: Yes.

7 Q BY MR. KATZ: Officer, first let me direct your  
8 attention to exhibits 34-A through 34-F, and tell me whether  
9 or not you recognize the subject depicted in these photographs  
10 as having seen it before?

11 A Yes, I have.

12 Q Now, let's start off with 34-A.

13 Tell us what this photograph depicts.

14 A This is a photograph taken south of Greshen Street  
15 on Independence depicting a house which is 21019 Greshen  
16 Street.

17 Q Now, you say depicting a house. Is it clearly  
18 visible, or is it somewhat concealed in the trees in the  
19 forefront?

20 A It is concealed in the trees. However, you still  
21 can see portions of the house in the photograph.

22 Q All right. Now, is this house on Greshen Street  
23 encircled at this time with the initials "L.S." below it?

24 A Yes.

25 Q Which way does Greshen Street run in Chatsworth?

26 A East and west.

27 Q And Independence runs north and south?

28 Is that correct?

1 A That is correct.

2 Q Does this photograph truly and accurately depict,  
3 then, this house that you identified on Greshen Street in  
4 relation to the intersection of Independence and Greshen?

5 A Yes, it does.

6 Q Let's go on to 34-B for identification.

7 Tell us what that shows?

8 A This is a photograph just west of the address of  
9 21019 Greshen Street.

10 Q All right. So in other words this is the house.  
11 This is a full and clear view of the house which is encircled  
12 in 34-A for identification?

13 Is that correct?

14 A That is correct.

15 Q Going on to 34-C for identification, what does this  
16 picture show us?

17 A This is a picture also of the house taken further  
18 west, and it is in an easterly direction down Greshen Street.

19 You can see in the photograph here Independence  
20 crossing.

21 Q All right. Would you please take a grease pencil  
22 of some kind and just draw a line perpendicular to Greshen  
23 Street indicating where Independence joins Greshen Street in  
24 this photograph?

25 For that purpose I will provide you with a marking  
26 pen.

27 Would you use this green felt pen and draw a line  
28 perpendicular to Greshen?

1 A Yes.

2 Q Would you place your initials just above that,  
3 "P.W." just above that, indicating that you are the gentleman  
4 that made these designations?

5 A Yes.

6 MR. KATZ: May the record reflect that the witness has  
7 complied?

8 THE COURT: Yes.

9 Q BY MR. KATZ: In other words, 34-C for identifica-  
10 tion is a photograph which shows us a view looking easterly  
11 on Greshen Street and shows in the center portion of the  
12 picture the intersection of Independence and Greshen?

13 Is that correct?

14 A That is correct.

15 Q Now, in the left center portion is the same house  
16 on Greshen Street which is more clearly depicted in People's  
17 34-B?

18 Is that correct?

19 A That is correct.

20 Q Going on to 34-D for identification, what does that  
21 photograph show us?

22 A This is a picture that is taken in a northerly  
23 direction of Independence. It shows the area where I  
24 recovered the vehicle in here.

#5

1 Q All right.

2 Now, let me ask you this. As you look at this  
3 picture, was this picture taken from a point of view north of  
4 the intersection of Independence and Greshen?

5 A I am not sure whether it was north or whether it  
6 was in the intersection it was taken.

7 Q All right.

8 But in other words, the intersection itself is  
9 not visible, is that correct?

10 A That's correct.

11 Q Now, would you please use the green felt pen and  
12 designate by an X the approximate area where you recovered  
13 this car.

14 THE COURT: Pardon me. You should have a reference that  
15 you are talking about the photograph marked so-and-so.

16 MR. KATZ: Yes. Thank you, your Honor.

17 I appreciate your Honor's help.

18 THE COURT: All right.

19 Q BY MR. KATZ: With respect to 34-D for identifica-  
20 tion, would you please place on this photograph a designation  
21 indicating the approximate area in which you recovered the car  
22 we have been talking about.

23 A (Marking.) Do you want me to place my initials  
24 on it?

25 Q Yes. Would you please.

26 A (Writing.)

27 Q Would you also draw an arrow indicating in which  
28 direction the car was facing at the time you recovered it.

2-2

1 A (Drawing.)

2 MR. KATZ: All right.

3 May the record reflect that the witness has com-  
4 plied with my request.

5 THE COURT: Yes. As is depicted on exhibit --

6 MR. KATZ: 34-D for identification.

7 THE COURT: For identification.

8 MR. KATZ: Thank you.

9 THE COURT: All right.

10 Q BY MR. KATZ: Now, as we look at 34-D for identi-  
11 fication, you have drawn a rectangle and placed your initials  
12 therein and then placed an arrow indicating the direction in  
13 which the car was facing, is that correct?

14 A That's correct.

15 Q Now, the direction of the arrow is facing north  
16 or south?

17 A South.

18 Q All right.

19 So in other words, as you look straight on to the  
20 picture 34-D for identification, we are looking north on  
21 Independence, is that correct?

22 A That's correct.

23 Q Going on to 34-F -- or strike that -- 34-E for  
24 identification, what does this photograph depict?

25 A This is looking south on Independence towards  
26 Gresham Street.

27 Q Once again, is there visible the approximate area  
28 where you recovered the car we have been talking about?



3

1 Q Would you again place some designation on this  
2 indicating the approximate area you recovered the car and  
3 place your initials below that designation.

4 A (Marking.)

5 Q And would you please draw an arrow indicating the  
6 direction in which the car was facing in this photograph.

7 A (Drawing.)

8 MR. KATZ: All right.

9 May the record reflect the witness has complied  
10 with respect to 34-E for identification.

11 THE COURT: Yes.

12 MR. KATZ: Thank you, your Honor.

13 THE COURT: All right.

14 Q BY MR. KATZ: Now, as we look at 34-E for identifi-  
15 cation, as we look towards the center and top of the photo-  
16 graph, we are looking in the southerly direction on Independ-  
17 ence, is that correct?

18 A That's correct.

19 Q And once again, you drew the arrow going towards  
20 the top of the picture, is that correct, and that is a  
21 southerly direction?

22 A That's correct.

23 Q And the car was on the west side of Independence,  
24 is that correct?

25 A That's correct.

26 Q Incidentally, are you able to see the intersection  
27 of Independence and Greshen in this photograph?

28 A Yes.

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Q And can you designate that by drawing a line perpendicular to Independence indicating that's where Grashen joins Independence?

A (Drawing.)

Q All right.

Would you draw it longer so that we will know what that line indicates.

A (Drawing.)

MR. KATZ: All right.

May the record reflect the witness has drawn a line which appears parallel to the street -- not parallel but perpendicular to the street which appears in People's 34-E for identification.

THE COURT: All right.

MR. KATZ: Thank you, your Honor.

Q Going on lastly to the photograph 34-F for identification, what does this photograph show us?

A This is a photograph that was taken in a vacant lot just west of Independence. And it's looking due east.

Q All right.

Once again, is the area visible in this photograph wherein you found Mr. Shea's car?

A Yes.

Q And would you place a designation and then indicate by the arrow in which direction the car was facing?

A (Marking.)

Q And would you please place your initials so that we know you made the designation.

5

1 A (Writing.)

2 MR. KATZ: May the record reflect the witness has placed  
3 the designation on 34-F for identification.

4 THE COURT: Yes.

5 MR. KATZ: Thank you.

6 Q So, in other words, as we look at 34-F we are  
7 looking due east, so to speak, is that correct?

8 A That's correct.

9 Q And the arrow which points to the right shows  
10 the car was facing south, is that correct?

11 A That's correct.

12 Q And this vacant lot here is on the west side of  
13 the street of Independence, is that right?

14 A That's correct.

15 Q That's the street which runs north and south, is  
16 that right?

17 A That's correct.

18 Q Incidentally, do those photographs truly and  
19 accurately depict that which they purport to depict, sir?

20 A Yes.

21 Q Now, showing you 40-A and 40-B for identification,  
22 let's start out with 40-A.

23 This is apparently an aerial view of some sort.  
24 Would you look at this and tell us what this shows.

25 A Yes. This is an aerial view here. This is  
26 Independence, and Greshen Street runs across here.

27 This location here is where I recovered the vehicle  
28 where the X is, and my initials.

1 Q All right.

2 Now, you testified, once again, to the grand jury in  
3 December of 1970, is that correct?

4 A That's correct.

5 Q You placed some designations previously on this  
6 photograph in the course of that proceeding, is that right?

7 A Yes, I did.

8 Q Let's talk about the X. And I believe your  
9 initials are below that, P W, is that correct?

10 A Yes.

11 MR. WEEDMAN: Excuse me, your Honor. May I approach the  
12 witness so I can tell where the X is on the exhibit.

13 MR. KATZ: No objection.

14 THE COURT: Sure you can.

15 MR. WEEDMAN: Thank you, your Honor.

16 Q BY MR. KATZ: Referring to the left center portion  
17 of the photograph in blue ink, is that correct?

18 A That's correct.

19 Q This is the X which designates the approximate area  
20 where you found the car on Independence just north of the  
21 intersection of Independence and Greshen, is that right?

22 A That's correct.

23 Q Did you encircle the home on Greshen Street, which  
24 is more clearly depicted in the series of photographs denomi-  
25 ated 34 series?

26 A No, sir, I didn't encircle it. However, I see the  
27 house in the photograph.

28 Q All right.

7  
1 Q Now, the house we are talking about, let's look  
2 at 34-B for identification,

3 This is the house you previously identified as  
4 the house on Creshen, is that correct?

5 A That's correct.  
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6 fls

1 Q And what was the address, sir?

2 A 21019.

3 Q Now, with respect to the house that is clearly  
4 depicted in 34-B for identification, this house is encircled  
5 on 40-A for identification?

6 Is that correct?

7 A Yes, that is correct.

8 Q Somebody else made that designation?

9 Is that correct?

10 A Yes.

11 Q Does the X which shows the place of the car show  
12 the approximate relationship between where the car was  
13 recovered and this house on Greshen Street?

14 A Yes.

15 Q And approximately how far is the distance between  
16 the house and the place where you found the car?

17 A Approximately 200 yards.

18 No, it wouldn't be that far. Approximately 100  
19 yards.

20 Q So it is just around the corner?

21 Is that right?

22 A Yes, that is correct.

23 Q Incidentally, do you know how many houses from the  
24 corner this house on Greshen Street is?

25 Do you recall?

26 A Approximately two or three.

27 Q So it is close to the corner, then, of Independence  
28 and Greshen?

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Is that right?

A Yes.

Q Now, let me show you this second photograph in the 40 series, 40-B for identification.

This is another aerial photo, and I will ask you whether or not once again you recognize this photograph as depicting something you have seen before?

A Yes.

Q Now, directing your attention to the upper right-hand portion of the photograph, 40-B for identification, which has an X with the initials "P.W." did you place that designation there?

A Yes, I did.

Q Would you be kind enough to take the green felt pen and indicate once again in this picture the direction the car you recovered was facing?

A Yes.

Q Now, you have made an arrow. Does that arrow indicate a southerly direction?

A Yes, it does.

Q So as you look forward in the picture towards the upper right-hand corner, we would be looking basically in a northerly direction?

Is that right?

A That is correct.

Q With reference to a house which appears just beyond an intersection on Greshen Street with the label "Vance home," do you recognize that home as having seen it before?

6-3

1 A Yes.

2 Q Is that the home that has previously been identi-  
3 fied by you in the other photographs, such as 34-B for  
4 identification?

5 A Yes.

6 Q Once again, that is the same home which is  
7 encircled on 40-A for identification?

8 Is that correct?

9 A That is correct.

10 Q This street that runs just in front of the -- what  
11 is designated the Vance home, is that Greshen Street?

12 A Yes, it is.

13 Q Once again, that runs basically in an easterly-  
14 westerly direction?

15 Is that right?

16 A Yes.

17 Q Does this photograph truly and accurately depict  
18 the relationship of the place where you found the car in  
19 relation to this Greshen Street home?

20 A Yes.

21 MR. KATZ: Thank you.

22 Your Honor, I have here a schematic diagram.

23 I ask that it be marked out of order People's 49  
24 for identification.

25 I will show it to counsel.

26 THE COURT: It will be so marked. Show it to defendant.

27 Is it so marked now?

28 MR. KATZ: Yes, it is. 49, your Honor.

49 id.



6-4

1 THE COURT: All right.

2 Q BY MR. KATZ: If I may just put it up here, it is  
3 a little unwieldy to work with.

4 All right, do you recognize this schematic  
5 diagram?

6 A Yes, I do.

7 Q Did you cause this to be made up by the sheriff's  
8 department?

9 A Yes, I did.

10 Q Can you tell us, as you look at the diagram, which  
11 direction is north?

12 A The top.

13 THE COURT: Lady, just move around here. All right.

14 Q BY MR. KATZ: Now, as we look at the top of the  
15 photograph, is this north (indicating)?

16 A Yes, it is.

17 Q In other words, at the bottom of the photograph  
18 it is south?

19 A That is correct.

20 Q And to the right it is east, and to the left it is  
21 west?

22 A That is correct.

23 Q What does that photograph depict?

24 A It shows the relationship between Spahn's Movie  
25 Ranch and Greshen and Independence where the car was recovered.

26 Q Now, can you indicate on this diagram where Spahn  
27 Ranch is located?

28 A Yes.

6-5

Q Would you please get off the witness stand and point?

A Right here where it says "Spahn Movie Ranch," and there is an arrow.

Q And there is a little rectangle or square that has been blocked in?

Is that correct?

A That is correct.

6-6

Q And that is the approximate area of Spahn Movie Ranch on the east side of Susana and Pass Road?

Is that right?

A That is correct.

Q Following what appears to be a red line, there is another area here where there is a circle and it is near the location of what is designated as Greshen and Independence.

What does that indicate in the bottom right-hand portion of this exhibit?

A That is where I recovered the vehicle on December 9th.

Q Now, where is Independence?

Is that indicated?

A This is Independence (indicating), and this Greshen Street.

Right here is where I recovered the car.

THE COURT: Thank you.

Q BY MR. KATZ: Let me see if I understand you.

This street, Independence, once again is a street which runs north and south?

Is that correct?

A That is correct.

Q And Greshen is indicated here on exhibit 49, which runs east and west?

Is that right?

A That is right.

Q Now, just north of the intersection of Greshen and Independence is the place where you found the car?

6-7

1 Is that correct?

2 A That is correct.

3 Q Would you be kind enough to place an X designating  
4 the approximate location of this house we had referred to as  
5 the Vance house?

6 A Yes.

7 Q Please place your initials below that.

8 A Yes.

9 MR. KATZ: May the record reflect that on People's  
10 exhibit 49 Sgt. Whiteley has complied with my request?

11 THE COURT: Yes, it may so show.

12 Q BY MR. KATZ: So in other words this X on Greshen  
13 Street is the approximate area of the house you have already  
14 identified in the numerous photos I have shown you in relation-  
15 ship to where the car was recovered on Independence just north  
16 of the intersection of Greshen and Independence?

17 Is that correct?

18 A That is correct.

19 Q Now, how far is Spahn's Ranch from the Greshen  
20 Street address?

21 A It is approximately four and a half to five miles.

22 Q Is that as the crow flies or by surface streets?

23 A That is by surface streets.

24 Q So in other words this arrow which is drawn  
25 diagonally across this diagram to the Greshen Street address  
26 from Spahn Ranch doesn't mean as the crow flies, but as you  
27 would take surface streets?

28 Is that correct?

608

1 A That is correct.

2 Q Now, Sgt. Whiteley, did you also find a white  
3 registration slip to the vehicle you previously described in  
4 the vehicle?

5 A Yes, I did.

6 Q Where did you find it?

7 A It was in the front portion of the vehicle.

8 I believe it was on the -- either the dashboard  
9 on the right side or it was in the glove compartment.

10 Q All right.

11 Showing you People's 27 for identification, do  
12 you recognize that registration slip as having seen it before?

13 A Yes, I have.

14 Q Where did you find it?

15 A I found it in the vehicle.

16 Q Incidentally, did you place your initials on the  
17 back to assist you in your identification of that today?

18 A Yes.

19 Q That is "P.W."?

20 Is that correct?

21 A That is correct. Yes.

22 Q Incidentally, this is a registration slip which has  
23 the name Barbara P. Enfield?

24 A Yes.

25 Q Lastly, with respect to the car, can you describe  
26 how dirty the car was when you recovered it?

27 A It was extremely dirt, both inside and out.

28 Q How would you characterize the exterior?

6-9 1 A It was, as I say, very dusty and it had water spots  
2 on it.

3 The car appeared that it had been there a long time.

4 Q All right. Had you observed also the interior of  
5 the car?

6 A Yes, I did.

7 Q Did you find any water stains and dust and debris  
8 in the car?

9 A It was extremely dirt in the car.

10 Q All right. I would like to show you another exhibit  
11 here.

12 I will ask respectfully that this be marked People's  
13 41-A for identification.

41-A id. 14 THE COURT: So marked. It has the number on it?

15 MR. KATZ: Yes, 41-A, your Honor.

16 THE COURT: Show it to the defendant.

17 MR. KATZ: May I approach the witness?

18 THE COURT: Yes, sir.

19 Q BY MR. KATZ: I am going to hold this up for a  
20 moment, 41-A for identification.

21 Can you tell us what this map shows us?

22 A Yes, it is the Death Valley area.

23 Q Once again, there is some markings on the map.  
24 Would you tell us what that depicts?

25 A Yes, it is the turnoff to Ballarat, and then the  
26 road south to Goler Wash, and then the area up to the Myer  
27 Ranch.

28 Q All right. So we can get oriented, the top of the

6-10

map, once again, that is a northerly direction?

Is that right?

A That is correct. Approximately north.

Q Approximately north?

A Yes.

Q And at the bottom it is approximately south?

A That is correct.

7

#27

- 1 Q And the left side is approximately west?
- 2 A Yes.
- 3 Q And the right side is approximately east, is that
- 4 right?
- 5 A Yes.
- 6 Q So the first line up here in the center portion or
- 7 just above the center portion of this diagram or map 41-A for
- 8 identification, shows a road which runs east and west, is
- 9 that correct?
- 10 A That's correct.
- 11 Q And in other words, it shows one moving in an
- 12 easterly direction towards Ballarat, is that correct?
- 13 A That's correct.
- 14 Q What is that road?
- 15 A That is the turnoff to Ballarat. It's a dirt
- 16 road.
- 17 Q And then right at the end of that road which jogs
- 18 slightly north, there is Ballarat, is that correct?
- 19 A That's correct.
- 20 Q Now, if you proceed south from Ballarat, you go
- 21 towards Goler Wash, is that correct?
- 22 A That's correct.
- 23 Q That is the long line which is indicated in red,
- 24 is that correct?
- 25 A That's correct.
- 26 Q Now, at some point in perpendicular to the
- 27 southerly road or the north-south road which leads from
- 28 Ballarat to Goler Wash, we reach the mouth of Goler Wash, is



1 that right?

2 A That's correct.

3 Q Then the road at the bottom which apparently is  
4 perpendicular to the north-south road, is the Coler Wash area,  
5 is that correct?

6 A That's correct.

7 Q And that goes in approximately an easterly direc-  
8 tion?

9 A Yes.

10 Q Into the pass, is that correct?

11 A Yes.

12 Q There is a place which is encircled here at the  
13 end of that road. What does that indicate?

14 A There are two ranch houses at that location and  
15 a small valley.

16 Q And is that Death Valley?

17 A Yes. It's part of the -- well, it's just outside  
18 of the Death Valley Monument area. Apparently a mile, mile  
19 and a half.

20 Q All right.

21 This is pretty hot country up there, is that  
22 correct?

23 A Yes. Very hot.

24 Q All right.

25 And that designates the Myers Ranch and Barker's  
26 Ranch area, is that correct?

27 A That's correct.

28 MR. KATZ: Your Honor, may I ask for just a two-minute

7-3 1

recess?

2

THE COURT: Recess?

3

MR. KATE: Yes. I would like to talk with the sergeant  
for a moment.

5

THE COURT: All right.

6

Let's take a short recess, and we will go right  
ahead. Do not discuss the case, ladies and gentlemen. Thank  
you.

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7A

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(Recess.)

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THE COURT: Now, gentlemen, we will go right ahead.  
People against Grogan.

Defendant is here. Counsel are here.

We will bring in the jury, sheriff, if you will.

And the witness back on the stand. Yes. Thank  
you.

THE BAILIFF: Yes, sir.

THE COURT: Officer, you have been sworn. State your  
name again, please.

THE WITNESS: Paul J. Whiteley.

THE COURT: Thank you.

(Following proceedings were had in open  
court in the presence of the jury.)

THE COURT: Now we have all of our jurors plus the three  
alternates.

You may proceed.

MR. KATZ: Thank you, your Honor.

I have a series of black and white photographs  
that I have shown to counsel during the recess.

And I ask that they be marked 39-A through 39-I.

THE COURT: So marked.

MR. KATZ: Thank you.

THE COURT: You say you have shown them to counsel?

MR. KATZ: Yes, I already have.

THE COURT: All right.

MR. KATZ: And I also have a series of black and white  
photographs, and I ask that they be marked People's 38-A  
through 38-D for identification.

39-A-I ID

1 THE COURT: Be so marked.

2 Had counsel seen those?

3 MR. KATZ: Yes.

4 MR. WEEDMAN: Yes, your Honor. Thank you.

5 THE COURT: All right.

6 MR. KATZ: May I approach the witness, your Honor?

7 THE COURT: Yes.

8 MR. KATZ: Thank you.

9 Q Now, Sergeant Whiteley, I have put 41-A for iden-  
10 tification, this geological map, up so that we can orient  
11 ourselves once again.

12 And I am going to show you some photographs -- and  
13 perhaps you can get off the witness stand at this time--

14 A (At the board.)

15 Q -- in the 39 series. And we will start out with  
16 39-A for identification.

17 Can you tell us what this photograph depicts, 39-A  
18 for identification?

19 And perhaps if you could stand, so his Honor will  
20 be able to see, too.

21 THE COURT: All right.

22 Let's step over where the district attorney is.  
23 Let's somehow work it out. We have got to let this lady, our  
24 juror, see too.

25 Now, try that.

26 MR. KATZ: Yes, your Honor.

27 THE COURT: I know there is some difficulty here.

28 Q BY MR. KATZ: All right.

7A-3

1 A That is the photograph here that shows an asphalt  
2 highway. That is the asphalt highway running right in here.

3 The picture is west. This dirt road here leads  
4 to Ballarat, which is this way, easterly direction.

5 Q So as we are looking at the roadway, which is in  
6 the center of the photograph and going into the center, that's  
7 the easterly road leading towards Ballarat, which is depicted  
8 on 41-A for identification, is that right?

9 A That's correct.

10 Q Now, this apparent intersection here, this is a  
11 highway, is that right?

12 A That's correct.

13 Q This is paved, this highway at this point, is that  
14 correct?

15 A Yes.

16 Q All right. Going on to 39-B for identification,  
17 this is a photograph. Tell us what this depicts.

18 A This photograph shows -- is east. And it's coming  
19 into the town of Ballarat, which is located at the crest here  
20 of the two junctions.

21 Q All right.

22 That's the crest of the two junctions at the top  
23 central portion of this diagram, which has been marked in red,  
24 is that correct?

25 A That's correct.

26 Q And there is a sign here which says "Ballarat,"  
27 is that right?

28 A That's correct.

7A-4

Q All right.

Now, let's go on to 39-C. What does this photograph depict?

A This photograph is south, and it's the area right after the turnoff at Ballarat to come south.

Q All right.

So this long line which proceeds in a southerly direction from Ballarat is shown here, that is a portion of it in 39-C, is that correct?

A That's correct.

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7A-5

1 Q It runs in a southerly direction just after you  
2 make the turn from Ballarat at the crest of the line, is that  
3 right?

4 A That's correct.

5 Q All right.

6 Going on to 39-D for identification, this photo-  
7 graph, what does this show us?

8 A This is the -- just down the roadway approximately  
9 a half a mile to a mile, looking in a southerly direction.

10 Q All right.

11 In other words, this is on the road which proceeds  
12 southerly to the point where you have the junction of Goler  
13 Wash and this road out of Ballarat, is that right?

14 A That's right.

15 Q Going on to 39-E for identification, what does this  
16 photograph show us?

17 A This photograph is the entrance to Goler Wash look-  
18 ing in an easterly direction at this point where it comes off  
19 this way to an easterly direction.

20 Q All right.

21 So, in other words, just as you begin the turn that  
22 would be a left turn, if you were proceeding in a southerly  
23 direction from Ballarat, you would then get on to the Goler  
24 Wash area, is that correct?

25 A That's correct.

26 Q This is the first part of Goler Wash as you enter  
27 the mouth of Goler Wash as depicted in 39-E for identification?

28 A Yes.

7A-6

1 Q All right.

2 Now, let's go on to 39-F for identification. Do  
3 you recognize this rugged terrain which is depicted in 39-F  
4 for identification?

5 A Yes.

6 Q What is that?

7 A That's a dry falls which is just after you pass  
8 the entrance into Goler Wash moving in an easterly direction.

9 Q This is the rugged terrain you had previously  
10 described in your testimony when you traversed the Goler Wash  
11 area to Myers Ranch and Barker Ranch, is that correct?

12 A Yes.

13 Q That is depicted in 39-F for identification, is  
14 that correct?

15 A Yes.

16 Q Once again showing you another photograph, 39-G for  
17 identification, which shows apparently a four-wheel drive  
18 vehicle of some kind, do you recognize what this depicts?

19 A Yes. This is still in the Goler Wash just past  
20 the dry falls area.

21 Q When you say dry falls, what do you mean?

22 A It's a rock area, at one time where water came down,  
23 and now it's loose rock over the falls.

24 Q And do these rocks sometimes impede the ingress  
25 and egress in this area?

26 A Yes.

27 Q All right.

28 They are pretty big?



7A-7

1 A Some of them.

2 Q All right.

3 And going on to 39-H for identification, what does  
4 this photograph depict?

5 A This photograph shows the vehicles coming out of  
6 Goler Wash into the Valley area in just prior to the Lotus  
7 Mine shown on this map here, traveling -- these vehicles now  
8 are traveling in an easterly direction.

9 Q I see.

10 And this is close to the -- this encircled area  
11 which indicates the Barker and Myers Ranch area?

12 A Yes. It would be approximately halfway or almost  
13 halfway between the junction point here at the mouth of Goler  
14 Wash and the Myers Ranch.

15 Q I see.

16 And going on to 39-I, the last photograph in this  
17 series, would you please tell us what this shows us?

18 A This picture is east, and it is just past the Lotus  
19 Mine, and it's coming up to the Barker-Myer ranch area which  
20 would be just over this hill.

21 Q Now, you did indicate for the jurors that there is  
22 a designation on the map which indicates Lotus Mine, is that  
23 correct?

24 A Yes.

25 Q And the photograph -- and let me get out of the  
26 way -- 39-I depicts a place just beyond the Lotus Mine, is  
27 that correct?

28 A That's correct.

7A-8

1 Q When you say beyond the Lotus Mine, that is closer  
2 towards Barker Ranch, is that correct?

3 A Yes.

4 MR. KATZ: Your Honor, would you like to see these  
5 (handing)?

6 THE COURT: Yes. Thank you.

7 MR. KATZ: Thank you.

8 fls

8-1

1 Q I would like to show you a series of photographs  
2 that have been marked 38-A through 38-D, and we will start  
3 out with 38-A.

4 Perhaps once again I can hold them up and ask you  
5 to step down off the witness stand so that the jurors can see.

6 What does 38-A show us?

7 A This is the front yard of the Barker Ranch, or a  
8 portion of the front yard.

9 Q I notice that there is a prominent vehicle in the  
10 foreground?

11 Is that correct?

12 A Yes.

13 Q That is a bus?

14 Is that correct?

15 A Yes.

16 Q Incidentally, is there another way into the Barker-  
17 Myer Ranch?

18 A Yes.

19 Q How do you get there?

20 A Through Mengel Pass.

21 Q How do you approach Mengel Pass in order to gain  
22 access to the Barker Ranch area?

23 A Through the Death Valley area.

24 On this photograph here this is the Death Valley  
25 area. There is a main highway that runs down here running in  
26 a somewhat north-south direction, and there is a passable road  
27 that moves through these mountains, and coming to the back of  
28 Barker and Myers Ranch.

8-2

1 Q You say "passable"?

2 It is not as rugged in terrain as that depicted in  
3 the Goler Wash area?

4 Is that correct?

5 A That is correct.

6 Q If you were to gain access to the Barker and Myers  
7 Ranch by using Mangel Pass, would you have to go out of your  
8 way if you were proceeding from Los Angeles to this area?

9 A Yes.

10 Q How much further would you have to go out of your  
11 way?

12 A Approximately 100 miles.

13 Q All right. Going on to 38-B for identification.  
14 Would you tell us what this depicts?

15 A This is the Barker Ranch, and it looks -- it would  
16 be west down through the valley to -- this way here (indicating),  
17 and Goler Wash would be over the top of this mountain on the  
18 other side.

19 Q You are saying "this way," and obviously the  
20 record can't reflect that. You have pointed to a location on  
21 the upper right-hand portion of 38-B.

22 Now, does this picture show the approximate area  
23 where Goler Wash empties into this valley, or is it better  
24 shown on another picture?

25 A It is better shown on another picture.

26 Q All right. Then let's pass 38-B and I will ask  
27 you one last question with respect to 38-B for identification.  
28 Where in the upper right-hand corner of 38-B is

8-3

1 the place where Goler Wash empties into the valley leading into  
2 the Barker-Myers Ranch area?

3 There is a place there, is that correct?

4 A That is correct.

5 Q Now, let's get on to 38-D for identification, and  
6 please explain to the jurors what this photograph depicts.

7 A This photograph is showing the Barker Ranch area  
8 and it is in an easterly direction.

9 The roadway coming in Death Valley is just over the  
10 crest of this hill in the upper left-hand portion of the  
11 picture.

12 Q Leading outside its border to the left as you look  
13 at the photograph?

14 A That is correct.

15 Q Is there in this picture depicted the end of  
16 so-called Goler Wash Road that leads up to the Barker Ranch  
17 here?

18 A Yes.

19 Q Would you please take a green felt pen and define  
20 that road for us on photograph 38-D for identification?

21 A Well, the road would end -- it is actually off the  
22 picture, back at the Myer Ranch, which is in this direction  
23 (indicating), east.

24 Q Well, you are pointing to a direction which would  
25 proceed to the right.

26 That is the right of the picture beyond the borders  
27 of 38-D for identification?

28 Is that correct?

8-4

1 A That is correct.

2 Q Well, is there any designation you can place that  
3 would show us just the approximate direction or area in which  
4 you would find Goler Wash?

5 A No, on this picture Goler Wash would be back to  
6 the left-hand side of the picture.

7 Q Going out of its margin?

8 Is that correct?

9 A Yes.

10 Q Is there any photograph in the 38 series which  
11 depicts the Goler Wash area at all?

12 A Yes.

13 Q All right. Showing you 38-C, and I am sorry for  
14 confusing you, I thought we had 38-C here, but we apparently  
15 skipped it.

16 Does this photograph show us the Goler Wash area  
17 at the crest or top before it leads into the valley where we  
18 find Barker and Myers Ranch?

19 A Yes.

20 Q Would you please use the green felt pen and  
21 delineate that area of Goler Wash which empties into this  
22 valley?

23 Please place your initials above that designation  
24 so we know that you made that delineation.

25 A Between these two mountain crests is Goler Wash  
26 coming up, and then you wind through the valley in an easterly  
27 direction coming up to the Barker Ranch.

28 Q All right. May the record reflect that the witness

1 has complied with my request with respect to the designating  
2 of a point indicating Goler Wash on 38-C for identification?

3 THE COURT: Yes.

4 Q BY MR. KATZ: All right. Now, let me see if I  
5 understand you.

6 As we look, then, at 38-C you have drawn a line,  
7 that is a horizontal line, and then a line which is perpen-  
8 dicular to that.

9 Does that indicate the approximate area where  
10 Goler Wash ends at the top of the valley?

11 A That's correct.

12 Q And then there is apparently another valley  
13 between the mountain crests before you reach the Barker Ranch?

14 Is that correct?

15 A Yes.

16 Q Now, where is Myers Ranch located in relation to  
17 Barker's Ranch?

18 A It is further east through this picture off to the  
19 left-hand portion.

20 Q So if you were to proceed beyond the margins, the  
21 left-hand portion of 38-C, you would then come upon Myers  
22 Ranch?

23 Is that correct?

24 A That is correct.

25 Q As you proceed from Goler Wash up to the top of  
26 the valley or into the valley, do you first come upon Barker  
27 Ranch or do you first come upon Myer Ranch?

28 A Barker.

8-6

1 Q And then if you proceed further on down you come  
2 to Myers Ranch?

3 Is that correct?

4 A That is correct.

5 Q And how far is Myers Ranch from Barker Ranch?

6 A Several hundred yards.

7 Q So in other words it is not a great distance?

8 Is that correct?

9 A That is correct.

10 Q Do these photographs truly and accurately depict,  
11 that is the 38 series, 38-A through D, the terrain that you  
12 discerned when you were in that area?

13 A Yes.

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8a-1

Q Incidentally, do you know a Richard Allen Smith?

A Yes, I do.

Q Do you know him by another name?

A Danny De Carlo.

MR. KATZ: Your Honor, I have a series of photographs that I would ask to be marked 38-A through 38-CC.

THE COURT: Very well, show them to the defendant, please.

THE CLERK: Counsel, what was the marking of that again?

MR. KATZ: 32-A through 32-CC.

Q I am showing you this photograph, 32-A for identification.

Do you recognize that individual as having seen him before?

A Yes, I do.

Q By what name do you know this individual?

A Danny De Carlo.

Q By any other name?

A Richard Allen Smith.

Q Do you know what address he has given?

A Yes, he gives combinations on Colegio Drive in Culver City.

Q So in other words 32-F depicts the person known to you as Danny De Carlo and/or Richard Allen Smith?

Is that correct?

A That is correct.

Q With an address of Colegio Drive?

Is that correct?

A That is correct.

8a02

1 MR. KATZ: Thank you. I have no further questions of  
2 Sgt. Whiteley.

3 THE COURT: Cross-examine.

4  
5 CROSS-EXAMINATION

6 BY MR. WEEDMAN:

7 Q Sergeant, how do you connect Colegio Drive to  
8 Mr. De Carlo?

9 A Mr. De Carlo's parents live on Colegio Drive, or  
10 they used to.

11 Q Is that the basis for your telling us here this  
12 morning that that is where Mr. De Carlo lives?

13 A That is what he told me.

14 MR. WEEDMAN: I will object to that and move to strike  
15 the officer's testimony as hearsay, your Honor, insofar as it  
16 purports to indicate Mr. De Carlo's residence.

17 THE COURT: Well, wait a minute. I was reading.

18 Read the question, please.

19 (The record was read by the reporter  
20 as follows:

21 "Q Sergeant, how do you connect  
22 Colegio Drive to Mr. De Carlo?

23 "A Mr. De Carlo's parents live on  
24 Colegio Drive, or they used to.

25 "Q Is that the basis for your telling  
26 us here this morning that that is where Mr.  
27 De Carlo lives?

28 "A That is what he told me.")

8a-3

1 THE COURT: It may stand.

2 MR. WEEDMAN: Your Honor, it is hearsay.

3 It is the most blatant variety of hearsay, your  
4 Honor.

5 THE COURT: Well, that may be so. Anyway, it may stand.

6 Ask your next question.

7 Are you moving to strike it? Is that it? It is  
8 your question.

9 MR. WEEDMAN: No, it is counsel's question. It is  
10 counsel's question. Counsel elicited from this witness that  
11 he knew Danny De Carlo's address. I have shown that he only  
12 knows it by virtue of hearsay. Therefore, I am moving to  
13 strike his testimony.

14 THE COURT: Give me the original question and answer  
15 again, Mr. Reporter, please.

16 (The record was read by the reporter  
17 as follows:

18 "Q Sergeant, how do you connect  
19 Colegio Drive to Mr. De Carlo?

20 "A Mr. De Carlo's parents live on  
21 Colegio Drive, or they used to.

22 "Q Is that the basis for your telling  
23 us here this morning that that is where Mr.  
24 De Carlo lives?

25 "A That is what he told me.")

26 THE COURT: It would be hearsay. You want to be heard?

27 MR. KATE: No, I have no objection.

28 THE COURT: Strike it?

1 MR. WEEDMAN: Yes, your Honor.

2 THE COURT: All right. It may be stricken.

3 MR. WEEDMAN: Your Honor, I wonder if in connection with  
4 questioning Sgt. Whiteley I may be permitted to sketch roughly  
5 the streets he was talking about on the blackboard?

6 THE COURT: Yes.

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1 MR. KATZ: Your Honor, excuse me. With respect to any  
2 diagram which is to be made for purposes of cross examination  
3 by counsel, I believe the court has some white pieces of paper  
4 which may be attached to the board, and then that should  
5 become part of the record.

6 THE COURT: I think probably that is well taken.

7 MR. KATZ: Thank you, your Honor.

8 THE COURT: We will mark it for identification at this  
9 time defendant's next.

10 MR. KATZ: Defendant's A.

Deft A 11 THE COURT: Then we will see where you go. You can offer  
12 it or not.

13 What is the next exhibit for defendant?

14 THE CLERK: It would be A, sir.

15 THE COURT: Thank you. You can mark it if you so desire.

16 Q BY MR. WEEDMAN: Sgt. Whiteley, I am just going  
17 to attempt to sketch a portion of this diagram which you have  
18 already testified to, which appears on People's exhibit 49  
19 for identification.

20 The top being north. I hope my pen is -- let's  
21 see -- oh, thank you very much.

22 A (Handing.)

23 (Counsel drawing exhibit A.)

24 Q BY MR. WEEDMAN: All right.

25 Sergeant, if you would look at defendant's A for  
26 identification, I will ask you if that is at least roughly  
27 illustrative of the respective positions of Gresham, Independ-  
28 ence and the surrounding streets, Nordhoff to the north,

1 Parthenia to the south, and a short street, Osborne to the  
2 north of Gresham.

3 A Yes.

4 Q All right.

5 Would you come up here, Sergeant Whiteley, and  
6 indicate with an X the approximate position where you saw the  
7 automobile which has been identified as Mr. Shea's.

8 A (At the board, marking.)

9 THE COURT: Better identify that where he put the X as  
10 the initial of the witness, 1. The initial showing the witness,  
11 what his initial is, then 1. Draw a little line out there.

12 MR. WEEDMAN: All right.

13 (Drawing.) Drawing a little line.

14 THE COURT: That's it. Now, initial of the witness.

15 MR. WEEDMAN: All right. (Writing.)

16 THE COURT: Al. That is his first identification, 1  
17 meaning his first identification.

18 That's it. The next would be the initial, 2,  
19 initials 3.

20 MR. WEEDMAN: I see.

21 THE COURT: Then we have a continuity there.

22 MR. WEEDMAN: All right.

23 Q Now, you are indicating by this, then, of course in  
24 with your earlier testimony, Sergeant, that the vehicle was  
25 found on Independence Street?

26 A That's correct.

27 Q Just north of Gresham?

28 A That's correct.

3

1 Q Okay. Now, could you indicate -- if I may, your  
2 Honor, may I just write "car" in parentheses here.

3 THE COURT: Sure you can. Certainly.

4 MR. WEEDMAN: Or automobile, perhaps. "Auto."

5 I have just written "auto" after that.

6 THE COURT: All right.

7 Q BY MR. WEEDMAN: Then would you indicate the  
8 residence which to your knowledge, at least at one time was  
9 occupied by someone named Bill Vance.

10 A (At the board.)

11 Q Would you put another X there, Sergeant.

12 A (Marking.)

13 Q Thank you.

14 Now, Sergeant, you have indicated the Bill Vance  
15 residence somewhat to the west of Independence, but still on  
16 Gresham Street, is that correct?

17 A That's correct.

18 Q Okay. And I take it from your diagram that it is  
19 on the north side of Gresham?

20 A That's correct.

21 Q Okay. Now, Sergeant, to your knowledge wasn't  
22 there an individual by the name of Lee Sinooke that lived in  
23 this area at one time?

24 A Yes.

25 Q And where was her house located?

26 A On the south side of Gresham Street.

27 Q All right.

28 Would you indicate with one more X, Sergeant

4 1 Whiteley, the location of that.

2 A (Marking.) Approximately there.

3 MR. KATZ: May we have that designated -- Thank you,  
4 Mr. Weedman.

5 Q BY MR. WEEDMAN: You are indicating, then, Sergeant,  
6 that that residence was more or less across the street from  
7 the Vance residence?

8 A Yes.

9 Q (Writing in.) Now, Sergeant, wasn't Lee Sinooke,  
10 to your knowledge, a second cousin to Mr. Shea?

11 MR. KATZ: Excuse me, your Honor. I'm going to object  
12 on the grounds, calling for hearsay and a conclusion, and out  
13 of the scope of the direct. We will be calling that witness.

14 THE COURT: Well, probably would be.

15 MR. WEEDMAN: Your Honor, it is a relationship between  
16 persons. It is a subject of chronology outside the hearsay  
17 rule, your Honor.

18 MR. KATZ: Your Honor --

19 MR. WEEDMAN: It's like knowing how old someone is.  
20 Almost invariably hearsay, since none of us were around when  
21 that person was born, yet we are competent to testify to  
22 someone's age.

23 THE COURT: I think you have to be a member of the  
24 family. In other words, if you are a brother or a sister,  
25 you can testify as to your brother or sister or cousin or  
26 uncle. But you are asking a stranger this question.

27 MR. KATZ: That is precisely my objection, your Honor.

28 THE COURT: I think the objection is well taken.



Sustained.

MR. WEEDMAN: Very well, your Honor. We will just hold that in abeyance then.

Q Now, Sergeant, I take it from your testimony on direct that you formed the opinion that this automobile, later identified as Mr. Shea's, had been at that location on Independence for a considerable period of time?

THE COURT: Wait a minute. I may withdraw my thinking.

Just give me a minute here if you will.

MR. WEEDMAN: Certainly, your Honor.

THE COURT: There may be some exceptions written in there. The question calls "do you know."

Will you back up to that question again, Mr. Reporter.

(The question was read by the reporter as follows:

"Q Now, Sergeant, wasn't Lee Sinooke, to your knowledge, a second cousin to Mr. Shea?")

THE COURT: If you can inject a little background in there, "Do you know the family? Are you acquainted with some members of the family?" Or in some way develop an acquaintance-ship, then I think you are entitled to an answer to the question.

I don't think quite the foundation is there yet.

MR. WEEDMAN: Well, I won't attempt to lay any foundation because I have no reason to believe that Sgt. Whiteley has any such familial knowledge, only as an investigator for the Sheriff's office.

1 THE COURT: Well, I would be inclined to stand on the  
2 ruling, then, at this time.

3 MR. WEEDMAN: Very well, your Honor.

4 THE COURT: It is not without prejudice. You may bring  
5 it in later.

6 Q BY MR. WEEDMAN: Sergeant, my last question per-  
7 tained to your opinion relative to how long that car had been  
8 there. And I believe that you are of the opinion that it  
9 had been there for a considerable period of time?

10 A Yes.

11 Q Is that because of the dirt that was on the out-  
12 side of the car, as well as the dirt on the inside of the car?

13 A Partially, yes.

14 9A fls

1 Q Well, this is a dirt road, is it not, Officer,  
2 where this car was parked?

3 A Yes.

4 Q And can you give us any idea as to whether that  
5 section of Independence where you found the car was very  
6 heavily traveled or not?

7 A No, it's not heavily traveled.

8 Q But it is a road, is it not, that would be used for  
9 travel into the residences along Independence and adjoining  
10 streets?

11 A Yes.

12 Q Okay. Did you take into account in forming your  
13 opinion that the car had been there for a long time the fact  
14 that it was a dirt road and that perhaps automobiles traveling  
15 up and down that road would create an abnormal amount of dirt  
16 and dust?

17 A Yes.

18 Q Okay. With respect to the dirt inside the car,  
19 can you tell us in what way you felt or observed that there  
20 was a considerable amount of such dirt?

21 A It was on the dashboard, on the top of the seats,  
22 on the rear window ledge. Any flat surface had a lot of dust  
23 on it.

24 Q Okay.

25 Can you give us any idea with respect to your  
26 opinion, if you formed such an opinion, as to how long the car  
27 had been there? That is, in days, weeks?

28 A No.

1 Q Months?

2 A I could not. I only judged it by the other  
3 vehicles that were parked in the area.

4 Q Okay. Did you take any photographs of this  
5 vehicle before it was towed away to the Calabasas Garage?

6 A Yes.

7 Q Are those photographs in evidence? I may have  
8 missed that.

9 A Yes.

10 Q Are there any photographs which show more than just  
11 the interior of the automobile? That is, would show it in  
12 relation to Independence Street where it was found?

13 A Yes, I believe so.

14 MR. KATZ : 16 series.

15 MR. WEEDMAN: Forgive me, your Honor. There are so many  
16 photographs that I must have lost track here.

17 THE COURT: All right.

18 Q BY MR. WEEDMAN: Well, Sergeant, let me show you  
19 all of the photographs which comprise People's 16 for  
20 identification and ask you to select from those photographs the  
21 ones which show the automobile in relation to its position on  
22 Independence Street.

23 A No, you can't see it because it's too dark in this  
24 photograph.

25 THE COURT: Identification, pardon me.

26 THE WITNESS: I am on 16-D.

27 THE COURT: That's right.

28 THE WITNESS: You can see the street lights south on

1 Independence.

2 Q BY MR. WEEDMAN: Well, I realize it is rather  
3 difficult to describe these photographs as such. But in an  
4 effort to do that would it be fair to say, Officer, that you  
5 really cannot see anything beyond the automobile and the ground  
6 around the car for perhaps no more than 6 to 10 feet?

7 A That's correct.

8 Q Now, do you have any other photographs that were  
9 perhaps taken from a greater distance which would perhaps show  
10 this vehicle in relation to its position on Independence Street?

11 A No, sir. The vehicle was recovered at night and  
12 the flash just doesn't penetrate very far down the street to  
13 show any relationship.

14 Q Were any diagrams made at or about the time that  
15 the vehicle was recovered showing its precise location on  
16 Independence Street?

17 A No. I don't believe a diagram was made, to my  
18 knowledge.

19 Q Were any notes or reports prepared indicating the  
20 street address, if there was such a street address, at precisely  
21 where the automobile was located?

22 A Yes, there was.

23 Q And is that contained in some report?

24 A Yes.

25 Q And do you have that report handy, or is it  
26 available?

27 (Short pause.)

28 THE COURT: Do you want to look through it for a few

minutes?

MR. WEEDMAN: May we, your Honor. It will take me a few minutes to find it.

THE COURT: We will take a short recess and go right ahead.

Do not discuss the case or come to any opinion or conclusion.

Take a short recess.

MR. WEEDMAN: Thank you.

(Short recess.)

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(The following proceedings were in open court outside the presence of the jury.)

THE COURT: Now, gentlemen, let's go ahead.

Did you finish up, Mr. Weedman?

MR. WEEDMAN: Yes, your Honor.

THE COURT: All right, let's go ahead. Both counsel are here, and the defendant is here. The witness may take the stand.

You have been sworn, Officer, if you will state your name again.

THE WITNESS: Paul J. Whiteley.

(The following proceedings were had in open court in the hearing and presence of the jury.)

THE COURT: We have all of our jurors and our alternates present, so you may go ahead with your cross.

MR. WEEDMAN: Thank you, your Honor.

Q BY MR. WEEDMAN: Sgt. Whiteley, I will show you what appears to be a copy of an investigation report from your department.

I am asking you to look at the last paragraph thereof and at an address.

Does that indicate the address that you placed in your report as indicating the location of the automobile?

A Yes.

Q What is that street address where the car was found, Sergeant?

A 8864 Independence.

1 MR. WEEDMAN: May I have just a moment, your Honor?

2 THE COURT: Go ahead. Take your time.

3 (Short pause.)

4 Q BY MR. WEEDMAN: Sergeant, I wasn't up here at  
5 the time when you were marking some of these photographs that  
6 indicate where the car was found, but I will show you 34-C  
7 for identification -- not that one, I am sorry -- let me  
8 withdraw that.

9 I will show you 34-D, and ask you if the green  
10 square there, with what appear to be your initials, is  
11 approximately where the car was found.

12 A Yes.

13 Q Is the same true with respect to 34-F?

14 A Yes.

15 Q That indicates, then, does it not, that the car  
16 was found across from some two-story apartment buildings that  
17 were -- that is to say, that were across the street?

18 A That is correct.

19 Q What about People's 34-E for identification?

20 Does that show by your green square approximately  
21 where the car was found?

22 A Yes.

23 Q Were all of the photographs which comprise  
24 People's 34 for identification taken on the same day?

25 A I have no idea.

26 Q Were you present when any of the photographs in  
27 People's 34 were taken?

28 A No.



1 MR. WEEDMAN: Your Honor, if I may have just a moment.

2 THE COURT: All right.

3 MR. WEEDMAN: I will conclude in a moment. I want to  
4 compare these for my own purposes with the aerial photographs.

5 (Short pause.)

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1 Q BY MR. WEEDMAN: Finally, Sgt. Whiteley, you  
2 indicated that the battery would not turn the engine over.  
3 Was there, however, some power left in the battery?

4 A Yes.

5 Q And was that power such as to enable you to turn  
6 the lights on in the car?

7 A Are you speaking of the headlights?

8 Q Well, or any lights, actually.

9 MR. KATZ: Well, I will object on the grounds it is  
10 compound, unless he asks the question specifically.

11 MR. WEEDMAN: Yes, counsel is correct.

12 Q Let me start over again. How were you able to  
13 determine that there was some power left in the battery,  
14 Sergeant?

15 A As I turned the ignition switch over, the solenoid  
16 engaged.

17 Q And you mean it made some clicking?

18 A Yes.

19 Q Sound?

20 How many times did you try to start the vehicle?

21 A Once.

22 Q Where you have found a vehicle such as you found  
23 this car, Sergeant, would it be customary in the Sheriff's  
24 Department for the vehicle to be driven to an impound garage,  
25 or to have it towed to an impound garage?

26 A It would be towed.

27 Q Would it be fair to say, then, that the reason  
28 you attempted to start it was just to determine perhaps what

1 the operating condition of the car was at the time you found  
2 it?

3 A Yes, it was.

4 Q Now, Officer, when you indicate that the battery  
5 wouldn't turn the engine over, is that conclusion based upon  
6 the fact that the solenoid was clicking, but that the engine  
7 itself was not turning over?

8 A Yes. I didn't personally look at the engine  
9 itself as I was turning it over, but it would just click.

10 Q All right.

11 As far as you know, Officer, could it be that  
12 something was wrong with the starter motor?

13 A I would have no way of knowing.

14 Q Did you or anyone under your direction run any  
15 hydrometer tests on the battery itself?

16 A No.

17 Q And we understand, do we not, the term hydrometer  
18 meaning to check the specific gravity of the fluid in the  
19 battery to determine the electrical charge therein?

20 A That's correct.

21 MR. WEEDMAN: Thank you, Sergeant.

22 That is all I have.

23 THE COURT: Is that all?

24  
25 REDIRECT EXAMINATION

26 BY MR. KATZ:

27 Q Sergeant, you gave a partial opinion to Mr. Weedman  
28 that Mr. Shea's car, found on Independence on December 9, 1969,

1 had been there a long time.

2 Now, in that connection had your investigation  
3 revealed another reason for that conclusion?

4 A Yes.

5 Q And what were some of the reasons that you had  
6 concluded that the car had been there for a long time?

7 MR. WEEDMAN: Your Honor, I am going to object to any-  
8 thing that is outside the officer's direct observation, your  
9 Honor, as calling possibly -- I don't know where we are going,  
10 but it's possibly calling for hearsay, your Honor.

11 THE COURT: It could or couldn't call for hearsay.  
12 It's very hard to say.

13 I will have to get the answer and I will rule on  
14 the motion to strike. I don't know what to rule on as yet.

15 MR. WEEDMAN: Well --

16 THE COURT: Obviously it must be something he knows or  
17 sees, to give an opinion on.

18 MR. WEEDMAN: Well, it may not be something that he knows  
19 in the sense it might not be competent.

20 THE COURT: If it isn't, I will strike it out.

21 MR. WEEDMAN: Rather than risk that, may we discuss the  
22 matter in chambers, your Honor?

23 MR. KATZ: Your Honor, may I approach the witness and  
24 just confer with him privately.

25 MR. WEEDMAN: Fine.

26 THE COURT: All right.

27 Just do that, if you will.

28 (Counsel and witness confer. Not reported.)

1 THE COURT: You want to talk to your witness and step  
2 him out in the hall?

3 MR. KATZ: Thank you, your Honor.

4 THE COURT: You have that right.

5 MR. KATZ: Thank you, your Honor. I appreciate it.

6 THE COURT: All right.

7 (Counsel and witness leave the courtroom.)

12 fls

1 THE COURT: Take the stand and state your name again,  
2 Officer.

3 THE WITNESS: Paul Whiteley.

4 MR. KATZ: Thank you, your Honor.

5 I have no further questions.

6 MR. WEEDMAN: I have nothing further.

7 THE COURT: Well, for the sake of either party I don't  
8 want to break up the testimony when it is not particularly  
9 necessary.

10 MR. KATZ: I appreciate that, your Honor.

11 THE COURT: Come right up here, if you will.

12 Raise your right hand and be sworn.

13  
14 PAUL EWART,

15 called as a witness by the People, testified as follows:

16 THE CLERK: You do solemnly swear that the testimony you  
17 may give in the cause now pending before this court shall be  
18 the truth, the whole truth and nothing but the truth, so help  
19 you God?

20 THE WITNESS: I do.

21 THE CLERK: Thank you, sir.

22 Take the stand and be seated.

23 State your name for the record.

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

25 THE COURT: Talk right into that like a telephone.  
26  
27  
28

12-2

## DIRECT EXAMINATION

BY MR. KATZ:

Q What is your business or profession, sir?

A I am in the towing business.

Q How long have you been so employed?

A Five years.

Q On the average how many cars are towed into your place a month?

A 100 to 150.

Q A month?

A Yes.

Q Mr. Ewart, how many cars do you store?

A Oh, I store 100 to 150. I tow much more than that.

Q I want to direct your attention to a series of photographs which depict a white Mercury Comet, and ask you whether or not you recognize this car bearing license No. MLM941 as having seen it before?

A Yes, I have seen the car.

Q Was that car towed into your Calabasas Garage?

A Yes, it was.

Q You were operating that garage in 1969?

Is that correct?

A That is correct.

Q When you saw the car, in what condition was it?

A It was operable, but it had been sitting for a long time.

Q How would you characterize the condition of the car, the cleanliness of the car, et cetera?

12-3

1 A Well, it was full of leaves and dirt.

2 It had been sitting for a long time in the street.

3 Q As you indicated before, you see some 100 to 150  
4 cars a month?

5 Is that right?

6 A Right.

7 Q And you see them in varying degrees of weathered  
8 condition?

9 Is that right?

10 A That is correct.

11 Q And in comparison to the number of cars you see  
12 coming in, do you characterize this car as having been sitting  
13 for a long time?

14 A That is correct.

15 MR. WEEDMAN: I am going to move to strike that as a  
16 conclusion on the part of the witness, "sitting for a long  
17 time."

18 I'm not sure how long is a long time.

19 THE COURT: Let's have both the question and answer,  
20 please.

21 (The record was read by the reporter  
22 as follows:

23 "And in comparison to the number of cars  
24 you see coming in, do you characterize this car  
25 as having been sitting for a long time?

26 "A That is correct.")

27 THE COURT: I think he is in a position to give an  
28 answer. It is debatable to the jury and subject to cross-



1 examination how he makes up his opinion.

12-4

2 I will let it stand.

3 MR. WEEDMAN: Thank you, your Honor.

4 Q BY MR. KATZ: Mr. Ewart, did you do anything to the  
5 car after you took possession of it?

6 A After we took possession?

7 Q Yes.

8 A We stored it for several months, and then we lien-  
9 saled the vehicle, and we are still using it.

10 Q When you say you lien-sold the vehicle, you lien-sold  
11 it to yourself?

12 A That is correct.

13 Q That was based on the services performed in  
14 connection with the towing and storage?

15 A That is correct.

16 Q You still presently have that car?

17 Is that right?

18 A I still do.

19 Q In order to put it into full operation, did you put  
20 some brakes on it?

21 A We put brakes on it and charged the battery or put  
22 in a new one.

23 MR. KATZ: All right.

24 Now, your Honor, I have here a document which is  
25 from the Department of Motor Vehicles, and is certified.

26 I ask that it be marked People's 47 for identifica-  
27 tion.

28 THE COURT: It may retain the identification number.

47-1d

9-5

1 Show it to counsel, please.

2 MR. KATZ: May I approach the witness, your Honor?

3 THE COURT: Yes, sir.

4 Q BY MR. KATZ: Quickly, showing you People's 47 for  
5 identification, there are a series of Department of Motor  
6 Vehicle slips which relate to the car bearing license  
7 No. NLM 841.

8 Are these the documents which reflect that the  
9 car have been lien-sold to yourself?

10 A Yes, that is the ownership certificate now made out  
11 to Calabasas Garage.

12 Q That is 23528 Calabasas Road, Calabasas, California?

13 A That is right.

14 MR. KATZ: If I may have one moment, I think I have  
15 concluded, your Honor.

16 Thank you, nothing further.

17 THE COURT: Any questions?

18 MR. WEEDMAN: Yes, your Honor, I have.

INDEX

## CROSS-EXAMINATION

20  
21 BY MR. WEEDMAN:

22 Q Mr. Ewart, did you make any effort to contact the  
23 apparent owner of that vehicle?

24 A Under lien-sale procedures you have to.  
25 I don't have a choice.

26 Q Well, I take it that you were directed to tow this  
27 car in by the sheriff's department?

28 Is that correct?

1 A That is right.

2 Q Now, once it had been towed in, did you make any  
3 effort to contact the owners?

4 A We don't make an effort, an immediate effort.

5 The sheriff or officer, whoever brings it in, does  
6 that immediately. The next day a letter goes out to the  
7 registered or legal owner notifying them that the car is in  
8 there.

9 Q Who sends that registered letter to the legal owner,  
10 Mr. Ewart?

11 A Whatever office brings it in, the sheriff's office  
12 or CHP, whoever it is.

13 They do this the next day.

14 Q Was any reply received to that?

15 A I have no way of knowing. I don't send the letter.

16 Q All right. Now, what do you then, Mr. Ewart, just  
17 keep the car until the charges are such that you can sell it  
18 to yourself?

19 A We keep all of our vehicles -- I think it was 30  
20 days now, but they may have even shortened it to 20.

21 After 20 days if nobody attempts to recover the car,  
22 then we go through a lien-sale procedure which we have to go  
23 through the Department of Motor Vehicles, and they furnish the  
24 registered and legal owner. We have to send them certified  
25 letters notifying them we intend to sell this vehicle, if they  
26 don't pick it up.

#13

1 Q Where are such letters that you apparently sent  
2 out in connection with this car, Mr. Ewart?

3 A Where are they?

4 Q Yes.

5 A They would be in the DMV files now.

6 Q Well, didn't you keep copies for your own purposes?

7 A No. These are legal forms we send out. And you  
8 collect all your forms together and take them to DMV, and  
9 they give you a title back for them.

10 Q Oh, I'm sorry. Perhaps I misunderstood.

11 What kind of notice do you send out to the legal  
12 owner?

13 A Certified letters.

14 Q Well, who sends those letters out?

15 A We do.

16 Q Don't you have copies of those letters?

17 A No, sir.

18 Q You don't keep any copies of those letters?

19 A No, sir.

20 Q What sort of a record do you have, then, Mr. Ewart,  
21 that such letters were ever sent?

22 A We have the title which verifies that it had to  
23 be done.

24 Q What do you mean, it had to be done?

25 A We don't get the title otherwise.

26 Q Excuse me, Mr. Ewart. What if you sent the letters  
27 out and you don't keep copies of them, you then go down to the  
28 DMV and say, "Hey, we want this car now. It belongs to us"?

13-1

1 A No, if the letter is returned, we have the letter.  
2 But otherwise, we don't have it. We don't have a copy of it.

3 We have certain legal forms we have to go through,  
4 and all those legal forms are turned in to DMV, and they give  
5 us a title in return for it.

6 Anyone could buy the car from us. Not necessarily  
7 us.

8 In this case nobody else wanted it. Nobody come  
9 after it. So we transferred the title to ourself.

10 Q Did you attempt to contact one Magdalene Shea as  
11 a possible owner of this vehicle?

12 A I don't recall the name that was on the title at  
13 the time. But whoever's name was on it had to be notified by  
14 certified mail.

15 MR. WEEDMAN: Your Honor, I am looking for the exhibit  
16 which was that of the vehicle registration.

17 MR. KATZ: We will help you, Mr. Weedman.

18 MR. WEEDMAN: Well, I appreciate that. Thank you.

19 Yes. People's 27.

20 THE COURT: Well, let's go over till 2:00 o'clock,  
21 gentlemen.

22 Take a recess, gentlemen, till 2:00 o'clock. I  
23 will ask the jury, do not discuss the case or come to any  
24 opinion or conclusion.

25 We will take a recess till 2:00. Court's adjourned.  
26 Thank you.

27 (At 12:00 noon adjournment was had until 2:00 p.m.  
28 of the same day, Friday, July 30, 1971.)

1 LOS ANGELES, CALIFORNIA, FRIDAY, JULY 30, 1971, 2:20 P.M.

2  
3  
4 (Proceedings were resumed in open court  
5 outside the hearing and presence of the jury.)

6 THE COURT: All right, gentlemen, let's proceed.

7 Now we have the defendant here and the defendant's  
8 counsel. We have the People's counsel.

9 You may bring in the jury, sheriff.

10 We had a witness on the stand. Step up, if you  
11 will.

12 You be seated, please, and state your name again.

13 You have been sworn.

14 THE WITNESS: Paul Ewart.

15 (The following proceedings were had in open  
16 court in the presence of the jury.)

17 THE COURT: Now we have all twelve jurors, plus three  
18 alternates.

19 You were cross examining, Mr. Weedman.

20  
21 PAUL L. EWART,  
22 resumed the stand and testified further as follows:

23  
24 CROSS EXAMINATION (Continued)

25 BY MR. WEEDMAN:

26 Q Mr. Ewart, did you or anyone in your company or  
27 business attempt to contact Barbara P. Enfield as the regis-  
28 tered owner of this automobile we have been talking about?

1 A I don't recall who Barbara Enfield is,

2 Q Well, my question is whether or not any attempt  
3 was made to contact her as the registered owner of this  
4 vehicle.

5 A If she was --

6 MR. KATZ: I will object on the grounds that the witness  
7 does not have the benefit of the exhibit.

8 Mr. Weedman is keeping it from the witness.

9 THE COURT: Well, he asked what he did of his own  
10 knowledge.

11 Now, if you know, answer. If you do not know,  
12 why, you can't answer it.

13 MR. WEEDMAN: I think Mr. Katz's suggestion is a fair  
14 suggestion.

15 Q In connection with my question, I show you  
16 People's 27 for identification, which appears to be a regis-  
17 tration certificate for the automobile in question, naming  
18 Barbara P. Enfield.

19 I will ask you, of course, whether or not she was  
20 contacted, to your knowledge.

21 A She was notified by certified mail.

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15-1

1 Q Who notified her?

2 A We did.

3 Q You did not receive any reply from her?

4 A No.

5 Q Okay.

6 Now, you indicated that the brakes were, I believe,  
7 repaired or fixed. I have forgotten your exact language. But  
8 can you tell us what was done in that connection?

9 A I don't recall exactly what was done. I know they  
10 weren't operating properly. The car had been sitting for a  
11 long time, and this is normal for brakes to go bad, battery to  
12 go bad just from sitting.

13 And you might have to just bleed them and adjust  
14 them. I don't know.

15 Q You are telling me now, Mr. Ewart, that it is  
16 normal for brakes to go bad merely because they are not in use?

17 A They would bleed off, yes. You have to bleed them  
18 and adjust them. Maybe bleed them is all. It might have air  
19 in the lines.

20 Q Are you telling us, Mr. Ewart, that in your opinion  
21 the brake condition on this car was caused by its not being  
22 used?

23 A Sitting. That's correct.

24 That's correct.

25 Q Okay, Mr. Ewart, tell us how that works and why  
26 that is, if you will. If you know.

27 A I don't know offhand. I'm not a mechanic. I know  
28 that it happens.



15-2

1 Q Let's find out. Are you a mechanic, Mr. Ewart?

2 A No, sir.

3 Q What are you?

4 A I am an owner and operator of a towing service and  
5 a garage.

6 Q What experience have you had, if any, that leads  
7 you to tell us here that merely because a car sits for a period  
8 of time its brakes are no longer operative?

9 A My experience --

10 MR. KATZ: Excuse me. I am going to object on the  
11 grounds this assumes facts not in evidence. He didn't say they  
12 were no longer operative. He talked about defective brakes.

13 THE COURT: Read the question, please.

14 (The question was read by the reporter  
15 as follows:

16 "Q What experience have you had,  
17 if any, that leads you to tell us here that  
18 merely because a car sits for a period of  
19 time its brakes are no longer operative?")

20 THE COURT: I think the question is a little bit  
21 argumentative the way it is framed.

22 You may ask what experience he has. The balance  
23 of the matter is conclusional. Sustained the way it is  
24 framed.

25 You can reframe the question if you wish.

26 Q BY MR. WEEDMAN: What happens in the brake system  
27 when the system isn't being used?

28 A Possibly the fluid just bleeds off, I don't know.

15-3

1 Q What causes it to bleed off, Mr. Ewart?

2 A I don't know.

3 Q You must have some basis for your telling us a  
4 few moments ago that its likely to bleed off. At least, that  
5 is what I think you told us in substance.

6 A My only basis is experience. It has happened  
7 numerous times.

8 Q This happened numerous times. What do you mean by  
9 that?

10 A By a car sitting so long and you get in to move it  
11 and there are no brakes, and you have to bleed them to get a  
12 pedal back up.

13 Q This is a hypothetical question: Do you know  
14 where Vallejo, California is, first of all?

15 A Not offhand. I know it is up north somewhere.

16 Q Well, let's just assume it's within 25 miles of  
17 San Francisco for purposes of my question. All right?

18 Were the brakes on this car, in your opinion,  
19 sufficiently operative to have permitted that car to have been  
20 safely driven to Vallejo, California?

21 MR. KATZ: Objection, on the grounds there is no  
22 foundation to show that this witness can give that kind of  
23 conclusion or speculation.

24 THE COURT: Overruled. You can answer the question.

25 Give your opinion for the jury to pass on the  
26 strength of the answer.

27 THE WITNESS: Now, at what period are you speaking of,  
28 sir? After it's been sitting for five months, or when?

15-4

1 Q BY MR. WEEDMAN: Who told you that car was sitting  
2 five months?

3 A It was sitting in my lot for three or four months  
4 before we ever touched it.

5 Q I am sorry, Mr. Ewart. I have misunderstood you,  
6 and I apologize right now.

7 When did you determine that the brakes were  
8 inoperative?

9 A When we became the owner of the car, and we tried  
10 it to see if it was operable.

11 Q Then it had been sitting in your lot for five  
12 months, is that correct?

13 A I don't recall exactly. Several months. I don't  
14 know what date it was registered.

15 Q Do you have any paper work on this car at all?

16 A I have a title to it. I don't have it with me.

17 Q Do you have any paper work that reflects any work  
18 done on the car, for example, the brakes or the battery?

19 A Yes, I do. I have a repair order on it in my  
20 shop. I would have to dig it out. I don't even remember when  
21 it was.

22 MR. WEEDMAN: Your Honor, I would respectfully request  
23 that Mr. Ewart be directed to return to this court at least  
24 sometime in the next week or as soon as is convenient to  
25 Mr. Ewart, and that he bring back any and all paper work or  
26 correspondence or anything that he has that pertains to this  
27 automobile, your Honor.

28 THE COURT: Any opposition by the People?

1 MR. KATZ: I have no objection.

2 THE COURT: I think it is a fair request. Before I rule  
3 I wanted to know if you had any position to state.

4 MR. KATZ: Without imposing or inconveniencing Mr. Ewart,  
5 I have no objection.

6 THE COURT: Well, I think you are entitled to whatever  
7 he has.

8 MR. WEEDMAN: Your Honor, I would respectfully request  
9 that I be permitted to stop cross-examination of Mr. Ewart at  
10 this time and resume it when he is able -- rather when he  
11 does appear.

12 THE COURT: Well, let's find out if he will.

13 MR. WEEDMAN: With his papers.

14 THE COURT: What he may have, first of all, in his  
15 possession up at his garage.

16 What do you have?

17 THE WITNESS: I can tell you that. We keep one repair  
18 order which has everything that we do on our own vehicles, is  
19 charged against it for the month, each month.

20 THE COURT: What does that show?

21 THE WITNESS: All it will show is what was charged  
22 against that vehicle during that month, whether it was some  
23 brakes or what.

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THE COURT: Where is that piece of paper?

THE WITNESS: Well, it is in my files.

THE COURT: Your files?

THE WITNESS: At my shop.

THE COURT: Up at your garage?

THE WITNESS: Right. And I don't even remember what month. I would have to dig it out.

We did at one time.

THE COURT: Counsel is entitled to see it.

When can you get back with it?

THE WITNESS: Next week.

THE COURT: All right.

How about Monday?

MR. WEEDMAN: Well, at Mr. Ewart's convenience.

THE COURT: Well, we have got to move the trial. That we have got to do.

MR. WEEDMAN: Yes, your Honor. Monday.

THE COURT: Monday morning the first thing.

THE WITNESS: Right.

THE COURT: Return with everything you have got respecting this automobile. And if counsel can weed it out, I don't want to go back again for more. Whatever you have got, bring it down here respecting this automobile.

THE WITNESS: All right, sir.

THE COURT: In a sack, or whatever you have got, bring it back.

THE WITNESS: All right, sir.

THE COURT: All right.

Any further cross at this time?

MR. WEEDMAN: Not at this time. Thank you very much.

THE COURT: Anything by the People? Any redirect at this moment up to this point or not?

MR. KATZ: Well, I would defer redirect until counsel concludes further cross examination.

THE COURT: All right. Fair enough.

Then I will excuse you until Monday morning at 9:30.

THE WITNESS: Thank you, sir.

THE COURT: Thank you very much.

MR. KATZ: Deputy Sheehan.

JOHN S. SHEEHAN,

called as a witness by the People, being first sworn, testified as follows:

THE COURT: Raise your right hand and be sworn, if you will.

THE CLERK: You do solemnly swear the testimony you will give in the cause now pending before this court shall be the truth, the whole truth, and nothing but the truth, so help you God?

THE WITNESS: I do.

THE CLERK: Thank you, sir.

Will you take the stand and be seated, please.

THE COURT: Now, state your name, please.

THE WITNESS: John S. Sheehan.

THE COURT: Thank you.

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THE CLERK: Would you spell the last name, sir.  
THE WITNESS: S-h-e-e-h-a-n.  
THE CLERK: Thank you, sir.

DIRECT EXAMINATION

BY MR. KATZ:

Q Deputy, what is your occupation and assignment?

A I am deputy sheriff for the Los Angeles County,  
assigned to patrol, Malibu Station.

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16 fls

#16

Q Yes, and how long have you been so employed?

A As a deputy sheriff?

Q Yes.

A Approximately seven years.

Q All right. Directing your attention to August 16, 1969. What was your occupation?

A I was patrol.

MR. WEEDMAN: Your Honor, may we approach the bench?

THE COURT: All right.

(The following proceedings were had  
in chambers.)

THE COURT: We are in chambers. The defendant and both counsel are here, and the clerk and the reporter.

All right, go ahead.

MR. WEEDMAN: Your Honor, since I do have the benefit of the grand jury testimony of virtually all of the People's witnesses --

THE COURT: You are talking about the transcript of this witness here?

MR. WEEDMAN: Yes, your Honor.

THE COURT: Go ahead.

MR. WEEDMAN: For that reason, I generally feel that I know pretty much what their testimony is going to be.

THE COURT: All right.

MR. WEEDMAN: I say that by way of apologizing, really, for stopping the proceedings when Mr. Katz hasn't really asked any questions yet, but appears as though Mr. Katz may likely seek to introduce evidence that this man participated in the



1 arrest of Danny De Carlo, otherwise known as Richard Allen  
2 Smith.

3 I will object to that, if such be the case, on  
4 the grounds that his arrest has nothing to do with my client,  
5 and I think would be prejudicial to my client's position in  
6 this case. Some kind of guilt by association.

7 THE COURT: Can you read what you expect him to testify?

8 MR. WEEDMAN: Perhaps Mr. Katz can answer that question  
9 for us, your Honor.

10 Maybe Mr. Katz will tell us what he expects to  
11 elicit from Mr. Sheehan.

12 MR. KATZ: Well, your Honor, our evidence shows that  
13 Danny De Carlo is the person who, indeed, redeemed Shorty's  
14 guns, indeed, after he disappeared, under the name of Richard  
15 Allen Smith.

16 Now, in connection with that proof, the People are  
17 going to show that Deputy Sheehan effected an arrest during  
18 the Spahn Ranch raid August 16 --

19 THE COURT: Not quite so fast.

20 MR. KATZ: Yes, your Honor.

21 THE COURT: Let me take my time here. All right.

22 MR. KATZ: Yes, that Deputy Sheehan effected an arrest  
23 of a Danny De Carlo, also known as Richard Allen Smith, on  
24 August 16, 1969?

25 THE COURT: Yes.

26 MR. KATZ: He will identify that person by picture.

27 He will state in his testimony that pursuant to  
28 the normal booking procedure following the arrest, that the

1 man whom he identified as -- the man whom he arrested and who  
2 will be hereafter identified as Danny De Carlo, was booked  
3 under the name of Richard Allen Smith.

4 He will identify two signatures that appear on  
5 the official police records in connection with the booking  
6 procedure which have the writing, "Richard Allen Smith," and  
7 which was, in fact, written in his presence and signed in his  
8 presence by Daniel De Carlo.

9 THE COURT: Let me repeat it, then.

10 You are expecting to establish that the signature  
11 of De Carlo and Smith are one and the same?

12 MR. KATZ: Absolutely.

13 THE COURT: What else do you expect to show?

14 MR. KATZ: That is it.

15 THE COURT: That is all from this witness?

16 MR. KATZ: Correct.

17 MR. WEEDMAN: Well, your Honor, that can all be estab-  
18 lished without this officer testifying that he arrested  
19 Mr. De Carlo.

20 In other words, the officer can identify Mr. De  
21 Carlo's photograph. Then counsel can ask him is he known to  
22 you by any other name. Yes, he is. Then what is his name.  
23 Richard Allen Smith. Is that Mr. De Carlo's signature, to your  
24 knowledge. Yes, it is.

25 We don't need to go into the fact that he was  
26 booked or arrested or any of those things.

27 I think to bring in the fact that someone else was  
28 arrested here serves no useful purpose, and it tends to

1 prejudice my client because obviously it will be shown later  
2 that my client knows Mr. De Carlo.

3 THE COURT: Well, I would be inclined to overrule the  
4 objection.

5 You may take your testimony.

6 MR. WEEDMAN: Your Honor, may I just submit this?  
7 I'm not seeking to exclude any of the evidence, your Honor.  
8 It is just that Mr. Katz, it seems to me, does not have to  
9 show that Mr. De Carlo was arrested.

10 All Mr. Katz has to do is say -- all the witness  
11 has to do is say, "I know this man. I know him by another  
12 name, and this is his signature."

13 There is no need to talk about his being arrested  
14 and booked and charged and so on. It merely tends to blacken  
15 Mr. De Carlo, and it is obviously prejudicial to my client's  
16 position in this case.

17 THE COURT: I don't think so. I will overrule the  
18 objection.

19 You may take the testimony. The objection is  
20 overruled.

21 (The following proceedings were in open  
22 court in the presence of the jury.)

23 THE COURT: Now, gentlemen, the court is in session.

24 The defendant is here, and both counsel are here.

25 The witness is on the stand. All jurors are here,  
26 and you may ask your question.

27 MR. KATZ: Thank you, your Honor.

28 Q Deputy Sheehan, I believe you were telling us you

24977  
1 were assigned to a patrol unit August 16, 1969?

2 A That is correct.

3 Q In connection with what substation, sir?

4 A Malibu.

5 Q And you participated in some arrests that occurred  
6 at the Spahn Ranch August 16, 1969?

7 Is that correct?

8 A That is correct.

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16a-1

1 Q And in particular did you assist in the arrest of  
2 a man known to you as Richard Allen Smith?

3 A That is correct.

4 Q Showing you this photograph, 32-F for identification,  
5 do you recognize this man as Richard Allen Smith?

6 A I do.

7 Q Is this one of the persons arrested August 16th,  
8 1969 at the Spahn Ranch?

9 A Yes, he was.

10 Q Now, after arresting this Mr. Smith, which you have  
11 identified as the person in 32-F for identification, did you  
12 take to some place where booking procedures occurred?

13 A I did.

14 Q Did you assist in the booking process of the man  
15 that you identified in 32-F for identification?

16 A Yes, I did.

17 Q Is there some form that you are required to fill out  
18 in connection with each and every arrest that you make after  
19 which a person is booked?

20 A Yes. We fill out a booking and property record.

21 MR. KATZ: Your Honor, I have here a document entitled  
22 County of Los Angeles Sheriff's Department booking and property  
23 record, with the name Richard Allen Smith.

24 Allen is spelled A-l-l-e-n.

25 I ask that the original be marked People's 52 for  
26 identification.

27 THE COURT: It will be so marked for identification.

28 MR. KATZ: I will show it to counsel.

52-1d

16a-2

1 Q Now, I want to show you 52 for identification.

2 Would you please tell us what this document is?

3 A It is a booking and property record for Richard  
4 Allen Smith.

5 Q In the ordinary course of police business after  
6 arresting a person as one of the arresting officers are you  
7 required to fill out a police document indicating the booking  
8 of that given suspect?

9 A We are.

10 Q Are you required in the ordinary course of police  
11 business to put down the information such as physical  
12 description, the suspect's name, and the date the person and  
13 the time the person was arrested?

14 A We are.

15 Q And also is there a stamp or a place where a stamp  
16 appears indicating the date and time of the booking procedure  
17 on that document?

18 A Yes, there is.

19 Q And this is done in each and every instance when a  
20 person is booked?

21 Is that correct?

22 A Yes.

23 Q Now, do you recognize this particular document,  
24 People's 52 for identification, as having seen it before?

25 A I do.

26 Q Did you place any of the writing which appears  
27 thereon on that document?

28 A Yes, I did.

16a-3

1 Q Which is your writing?

2 A I recorded the subject's name, physical description,  
3 and personal information as far as home address, property in  
4 his possession and I entered the file number, and I recorded  
5 his phone call.

6 Q Now, did you secure information from this person,  
7 Richard Allen Smith, which you have identified in the photograph  
8 previously shown to you?

9 A Yes, I did.

10 Q Did you indicate his physical description?

11 A Yes.

12 Q What appears on this police document by way of  
13 physical description?

14 A Would you like me to read the physical description?

15 Q Yes, please.

16 A Five foot four, 130 pounds, black hair, brown eyes,  
17 male Caucasian, 27 years old, birth date of 6-20-42.

18 Q Did you also secure a residence address?

19 A I did.

20 I have the address of 8350 Colegio Drive.

21 MR. WEEDMAN: I will object to that, your Honor, and move  
22 to strike that as hearsay.

23 THE COURT: Well, I don't know the materiality of all  
24 the details with respect to Smith.

25 I would sustain it at this juncture as immaterial.

26 MR. KATZ: Excuse me, your Honor. I would like to be  
27 heard on this. It is not hearsay.

28 THE COURT: A part of it is hearsay. The matters that

16a-4

1 go into the date of birth --

2 MR. KATZ: Your Honor, with respect to the information  
3 which is secured in the ordinary course of police business,  
4 respectfully, this officer is entitled to state that which he  
5 must put down in each and every booking procedure, and it  
6 certainly is material to the issues with respect to the address  
7 of Richard Allen Smith.

8 THE COURT: I think it is immaterial.

9 What would it prove or disprove?

10 MR. KATZ: I shouldn't argue in front of the jury. I am  
11 sorry, your Honor.

12 MR. WEEDMAN: Your Honor, we had much the same kind of  
13 problem earlier.

14 The officer can testify that this is what he  
15 wrote down.

16 MR. KATZ: That is all I'm asking.

17 THE COURT: Well, whatever he wrote down has to have  
18 materiality.

19 MR. WEEDMAN: I don't want it admissible that that, in  
20 fact, was this man's address, because that is hearsay.

21 MR. KATZ: Yes, your Honor.

22 THE COURT: If you want to argue it, come in chambers.

23 MR. KATZ: Mr. Weedman and I are agreeable.

24 It is not offered for the truth of the assertions,  
25 but that Mr. Smith gave this address.

26 MR. WEEDMAN: Yes. Thank you, Mr. Katz.

27 THE COURT: That is agreeable. All right.

28 Q BY MR. KATZ: This Richard Allen Smith that was



16a-5

1 arrested 8-16-69, sometime in the early morning hours, gave  
2 you an address of 8350 Colegio Drive, Los Angeles?

3 Is that right?

4 A That is correct.

17

#17

1 Q And Colegio is spelled C-o-l-e-g-i-o, is that  
2 correct?

3 A That is correct.

4 Q And you secured that information from the person  
5 who represented himself to be Richard Allen Smith, is that  
6 correct?

7 A That is correct.

8 Q Now, did you require this Richard Allen Smith or a  
9 Richard A. Smith, if you will, to sign this document, People's  
10 52, in your presence?

11 A Yes, I did.

12 Q And did he sign in two locations on this document?

13 A He signed in three locations.

14 Q Three. All right. Would you indicate where he  
15 signed and how he signed in your presence.

16 A As receiving his phone call, he signed the initials  
17 R. A. Smith.

18 Q Well, let's stop there now. You are referring to  
19 the upper right-hand portion, People's 52, is that correct?

20 A That's correct.

21 Q This is a box in which there is a stamp that  
22 indicates that a prisoner is entitled to a phone call, is  
23 that correct?

24 A That's correct.

25 Q And it indicates with boxes whether or not he  
26 completed the phone call, is that right?

27 A That's right.

28 Q And you require the suspect to then sign indicating

1 that this has been available to the prisoner, is that correct?

2 A That's correct.

3 Q All right.

4 Now, with respect to that box in the upper right-  
5 hand corner, there is a signature, R. A. Smith. Did this  
6 Richard Allen Smith sign that signature in your presence?

7 A Yes, he did.

8 Q All right.

9 And I see a name, Sheehan, which is just below  
10 that signature. Is that your name?

11 A It is.

12 Q And did you write that after he signed it in your  
13 presence?

14 A I did.

15 Q Now, going down just below that box still in the  
16 upper right-hand portion, there is another place where there  
17 appears to be a signature, Richard Allen Smith. Was that  
18 signed in your presence?

19 A Yes, it was.

20 Q And going down to the lower left-hand corner of  
21 the document, People's 52 for identification, there appears  
22 to be a signature, Richard A. Smith. Was that signed in your  
23 presence?

24 A Yes, it was.

25 Q Were all three signatures, that is, R. A. Smith,  
26 Richard Allen Smith, and Richard A. Smith, signed by one and  
27 the same person, namely, the person you identified in  
28 People's 32-F for identification?

1 A Yes, they were.

2 Q Incidentally, with respect to what appears to be  
3 a Xerox copy of the original, would you compare the two and  
4 tell me whether in all respects the Xerox copy truly and  
5 accurately records and reflects what appears on the original?

6 A Yes, it does.

7 MR. KATZ: Thank you.

8 Your Honor, I'm going to ask permission to sub-  
9 stitute the Xerox copy for the original at this time.

10 THE COURT: Any objection, Mr. Weedman?

11 MR. WEEDMAN: May I examine them again just briefly.

12 THE COURT: Sure you can. Step right up here.

13 MR. WEEDMAN: I don't think there will be any objection.

14 (Short pause.)

15 MR. WEEDMAN: Your Honor, the only thing is that  
16 Mr. Sheehan's name is written on the bottom of the Xerox copy.  
17 May that just be clipped off of there if we are going to have  
18 an exact copy.

19 THE COURT: All right.

20 MR. WEEDMAN: Probably it doesn't make any difference.

21 I appreciate that, Mr. Katz.

22 MR. KATZ: May the record reflect I have complied with  
23 Mr. Weedman's request?

24 MR. WEEDMAN: Yes. Thank you.

25 THE COURT: All right.

26 MR. WEEDMAN: It is a torn copy.

27 MR. KATZ: Somewhat irregular, your Honor.

28 We now have a torn substitute copy. May I return

1 the original to Officer Gleason?

2 THE COURT: Yes. Thank you.

3 Is that all the direct?

4 MR. KATZ: Yes, your Honor.

5 THE COURT: Cross.

6  
7 CROSS EXAMINATION

8 BY MR. WEEDMAN:

9 Q Deputy Sheehan, were you the booking officer in  
10 connection with the arrest of this man named Smith?

11 A I booked him. I didn't sign as the booking  
12 officer.

13 Q Why is that?

14 A The booking officer is the one that apparently  
15 wrote the report on the arrest.

16 Q You mean you didn't write this report that you have  
17 been referring to or not?

18 A That's a booking receipt, not a report.

19 Q Oh, excuse me. Did you write the booking report?

20 A I wrote that booking and property report you have  
21 in your hand.

22 Q Referring now to People's 52 for identification?

23 A That's correct.

24 Q Why does it have somebody else's name on here as  
25 the booking officer, that is, a name other than yours?

26 A These were the two officers that arrested and  
27 wrote the report of Richard Smith.

28 Q Well, maybe my question assumes something that

1 isn't so, but isn't it the booking officer that fills out  
2 the booking record?

3 A Not necessarily.

4 Q Well, if he didn't fill it out, how come he signs  
5 it? That is, I guess, my real question to you, Officer.

6 A These are the ones that are of most importance  
7 usually on our report. They are the ones that physically  
8 made the arrest and wrote the report concerning the arrest.

9 Q Well, there is a little space here, isn't there,  
10 that says, "Booking Officer"?

11 A That's correct.

12 Q It says -- looks like G. Gully. Is he a deputy  
13 sheriff?

14 A I believe that's possibly P. Guillory's signature.  
15 He did arrest, to the best of my knowledge, he did arrest  
16 Mr. Smith.

17 Q You didn't arrest him?

18 A No, I did not.

19 Q And P. Guillory, or whatever it is -- the thing  
20 will speak for itself -- it's a signature, and it's not too  
21 legible. But in any event, can you tell us with any more  
22 particularity why his name, his signature, as a matter of  
23 fact, is on People's 52 for identification when he apparently  
24 was not the booking officer and, as you have told us, he  
25 didn't even fill out the booking record?

26 A Yes, as I said, the most important names involved  
27 in the arrest usually are the officers who make the arrest  
28 and who write the report. And I believe that's why their

1 names were entered here.

2 I was simply going through the mechanics of  
3 recording the information on the booking slip at the station.

4 Q An officer makes the report as distinguished from  
5 the booking record, then he usually puts his signature on  
6 the report, doesn't he?

7 A That's correct.

8 Q Well, is that your answer, then, to why this other  
9 officer put his signature on the booking record, because he  
10 is the one who made up the report?

11 A I don't know. I don't remember why he put it on  
12 there. I would assume that is why he did it.

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1 Q Did you ask him to do it?

2 A Not to my knowledge. I don't remember asking him.

3 Q Well, do you recall the circumstances under which  
4 that officer's signature appears on this report and yours,  
5 apparently, does not?

6 A No, I do not.

7 Q Is there any reason why your signature isn't at  
8 least somewhere on that booking record, inasmuch as you have  
9 told us you are the one that made it out?

10 A It is.

11 MR. KATZ: I will object on the grounds that the fact  
12 is, that it is. That is assuming facts not in evidence. A  
13 misstatement.

14 MR. WEEDMAN: Counsel may be correct. Let me back up a  
15 little and withdraw that.

16 THE COURT: All right.

17 Q BY MR. WEEDMAN: Who filled out the booking record  
18 you have there?

19 A I filled it out.

20 Q Maybe I missed your name. Where is it, Officer?

21 A I signed in the portion at the top where I offered  
22 him his phone call when the booking was completed.

23 Q Well, now, that's a stamp, that's on there, isn't  
24 it?

25 A That's correct.

26 Q And when was that stamp that says "Prisoner phone  
27 call date 8-16, prisoner signature," and so on, when was that  
28 placed on this form?



1 A It was placed on the form after all information  
2 was completed on the booking and property record.

3 Q Well, in any event, Deputy, are you telling us  
4 that the printing that appears on this form is your printing?

5 A I am.

6 Q Okay. Now, what was Mr. Smith otherwise known as  
7 Danny De Carlo; or Mr. De Carlo, otherwise known as Smith,  
8 whichever way it may be -- what was he arrested for?

9 A He was charged with grand theft and with assault  
10 with a deadly weapon.

11 Q Was he arrested for anything else at that time?

12 A Not to my knowledge.

13 Q Okay. Was he charged, that is, was he formally  
14 charged by the district attorney's office with grand theft auto  
15 and/or assault with a deadly weapon?

16 MR. KATZ: Excuse me. I will object on the grounds, one,  
17 calls for hearsay; two, it is out of the scope of the direct;  
18 and, thirdly, this officer would have no knowledge of the same.  
19 He is not the arresting officer. He is the booking officer.

20 Calls for hearsay.

21 If Mr. Weedman wants to subpoena records, that is  
22 fine.

23 MR. WEEDMAN: I asked the officer if he arrested, I  
24 thought he said he did. I may be mistaken.

25 MR. KATZ: He assisted in the arrest, counsel.

26 MR. WEEDMAN: Oh, he assisted in the arrest. Well.

27 THE COURT: He has testified he is not the arresting  
28 officer. He has testified that the man was booked, and for

1 what he was booked.

2 Now he is asked a question whether there was fur-  
3 ther proceedings in the matter by the filing of a complaint  
4 or information or indictment.

5 MR. KATZ: The objection is it is immaterial.

6 THE COURT: Well, now, wait a minute. Let's take our  
7 time.

8 MR. KATZ: Yes, your Honor.

9 THE COURT: You want to jump too fast for me. I don't  
10 want to go that fast.

11 I think it is a proper question to ask. If the  
12 officer knows, he can answer. If he doesn't know, he can say,  
13 "I don't know."

14 You can ask the question.

15 MR. WEEDMAN: All right.

16 Thank you, your Honor.

17 THE COURT: Overruled.

18 Q BY MR. WEEDMAN: Let me withdraw the question and  
19 ask it this way. As a matter of fact, Officer, despite the  
20 fact that Mr. De Carlo was arrested for grand theft auto, as  
21 you have indicated, and arrested by your department for assault  
22 with a deadly weapon, isn't it true that no charges were filed  
23 against Mr. De Carlo?

24 A I don't know. I didn't participate in this end of  
25 the case.

26 Q Were you ever subpoenaed as a witness in any  
27 criminal action against Mr. De Carlo for grand theft auto or  
28 assault with a deadly weapon in connection with your assisting

1 in the arrest of him?

2 MR. KATZ: Objection would be on the grounds it would  
3 be totally immaterial.

4 THE COURT: Probably.

5 MR. KATZ: Have no relevance.

6 THE COURT: Well, I think that comes into speculation  
7 or conclusion. He said, "I don't know," to the first question.

8 I think probably the objection is well taken.  
9 It calls for speculation.

10 Q BY MR. WEEDMAN: How long have you been a deputy  
11 sheriff, Deputy Sheehan?

12 A Approximately seven years.

13 Q How long had you been assigned to the Malibu sub-  
14 station as a deputy sheriff as of August 16, 1969?

15 A I believe about two and a half, three years.

16 Q How many other persons were arrested at the Spahn  
17 Ranch on August 16, 1969?

18 A There were approximately 30.

19 Q Can you tell us whether any charges were filed  
20 against any of those persons in connection with their being  
21 arrested?

22 A I don't recall.

23 Q Did you leave the Malibu substation right after  
24 August 16th?

25 A No, I did not.

26 Q You remained there?

27 A I did.

28 Q Are you still on duty there?

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A I am.

Q Are you telling us that 30 people were arrested and you don't know what happened to any of them as far as charges were concerned?

A I don't know what charges were filed.

Q As a matter of fact, Officer, no charges were filed, and you know that, don't you, Officer?

MR. KATZ: Excuse me, I will object on the grounds it is argumentative.

THE COURT: I will sustain the objection to the last question. Sustained.

Q BY MR. WEEDMAN: When was Mr. De Carlo released from custody?

A I have no idea.

Q Did you ever see Mr. De Carlo again, otherwise known as Mr. Smith, or the other way around, whatever way it is? That is, again after you arrested him, after you assisted in arresting him?

A I don't remember seeing him after the time of the arrest.

Q Okay. Isn't --

A Not in person.

Q Well, I mean in person, Officer.  
Did you see him in person?

A No, I did not.

MR. WEEDMAN: All right. That's all I have, then.

THE COURT: Is that all?

REDIRECT EXAMINATION

BY MR. KATZ:

Q Officer, do you have any doubt in your mind that the gentleman you identified in 32-F for identification is the man who appears on the booking slip, People's 52 for identification, and who gave you the information contained on that booking slip, including the name Richard Allen Smith?

A No, I have no doubt.

MR. KATZ: Thank you. I have no further questions.

RECROSS EXAMINATION

BY MR. WEEDMAN:

Q Do you know when this photograph 32-F was taken, Officer?

A Appears to have been taken shortly after the time of arrest.

Q Do you know who took this photograph?

A No, I don't.

Q Do you know what department -- well, do you know whether or not the Sheriff's Department took this photograph?

A I don't know.

Q When did you see this photograph for the first time, Officer? Talking about People's 32-F.

A I don't remember if I saw it at the time of the grand jury. I saw it yesterday. That may have been the first time, yesterday.

Q Does that appear to you in your experience to be what's known as a mug shot, that is, a photograph that's taken

7  
3236  
1 by an arresting agency for booking and identification purposes?

2 A Yes, it does.

3 Q Is that the way this gentleman depicted in 32-F  
4 appeared to you at the time of his arrest or shortly there-  
5 after?

6 A Yes, it is.

7 MR. WEEDMAN: I have nothing further of this witness.

8 THE COURT: Is that all, gentlemen?

9 MR. KATZ: No, your Honor.

10 Your Honor, I have a series of black and white  
11 photographs that I ask be marked 50-A through -H for identi-  
12 fication.

13 THE COURT: So ordered.

14 MR. KATZ: Yes. Counsel has seen these photographs.

15 THE COURT: Have you seen them?

16 MR. WEEDMAN: Yes, I have. Thank you, your Honor.

17  
18 REDIRECT EXAMINATION

19 BY MR. KATZ:

20 Q Showing you 50-E for identification now, do you  
21 recognize the individual on the left-hand side of the picture?

22 MR. WEEDMAN: Excuse me, your Honor. Perhaps we can  
23 go in chambers again. This is much the same matter as we  
24 discussed earlier.

25 THE COURT: Yes. Let me see the picture again.

26 MR. KATZ: Yes, your Honor (handing).

27 THE COURT: Thank you.

28 Let's go in chambers if you are going to proceed

1 further at this time.

2 MR. KATZ: Yes, your Honor.

3 THE COURT: All right.

4 MR. KATZ: Thank you.

5 THE COURT: All right.

6 Ladies and gentlemen, take a short recess for the  
7 jury. You may recess, folks.

8 Do not discuss the case or come to any opinion  
9 or conclusion.

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18-1

(The following proceedings were had  
in chambers:)

THE COURT: Now, we are in chambers. The defendant and both counsel and the reporter.

MR. WEEDMAN: Your Honor, the photograph, 50-E, shows a number of persons who I understand were arrested at the Spahn Ranch, August 16, 1969.

Among them is Charles Manson.

In the group are at least one, two, three, four, five, six, seven, eight, nine, ten police officers. I don't think it is probative of any issue in this case, your Honor. That has been more than adequately explored by the district attorney's office and again it is highly prejudicial to my client's position in this case. We have spent hours examining the jury with respect to any knowledge of Charles Manson, and the Tate-La Bianca trial.

Now, counsel wants to throw a picture in showing Charles Manson arrested, and indeed in the company of Mr. De Carlo.

I have already objected to evidence of the arrest of Mr. De Carlo.

THE COURT: Which one is De Carlo?

Now, wait a minute. I will listen to you.

MR. WEEDMAN: That is all, your Honor.

THE COURT: Just give me a minute here.

MR. KATZ: Certainly, your Honor. I am not rushing at all.

THE COURT: Do you have that last question?



18-2

1 I believe it asked the officer to look and say who  
2 was on the left-hand side of the picture.

3 Isn't that what the question was?

4 MR. WEEDMAN: Yes, your Honor.

5 MR. KATZ: Yes, your Honor.

6 THE COURT: I will ask the district attorney. Now, what  
7 do you expect to show, Mr. Katz?

8 Suppose he says -- let me ask your question and  
9 answer it.

10 Suppose the officer says that it is Smith or  
11 De Carlo on the left-hand side of the picture. Now, what is  
12 your next question?

13 MR. KATZ: Well, then it unequivocally identified himself  
14 as the Richard Allen Smith or Danny De Carlo we are talking  
15 about.

16 This is extremely important.

17 Mr. Weedman brought out or asked the question  
18 concerning People's 32-F as to whether or not this was the way  
19 that Richard Allen Smith and/or Danny De Carlo looked on or  
20 about the date he was arrested, and the date he was booked.

21 Now, this photograph was taken at Spahn's Movie  
22 Ranch at the time of the arrest, before they were even booked  
23 on August 16th.

24 I can authenticate the photograph.

25 THE COURT: Let me ask you this.

26 Is this arrest shown on the picture No. --

27 MR. KATZ: 50-E.

28 THE COURT: 50-E. Is that the arrest that resulted in

1 the booking of which testimony was given?

2 MR. KATZ: Yes, absolutely.

3 THE COURT: Now, let me tell you my feeling in this  
4 matter.

5 I think if you would sever the picture, if you  
6 would cut off this part here (indicating), knock out Manson  
7 and the rest of those, your purpose would be served.

8 I think the defense has a position in there that  
9 at this juncture it could be inflammatory testimony.

10 I don't know the balance of what you are going to  
11 ask him, but I don't think injecting Manson in there at this  
12 time is going to prove anything for you, in any event.

13 I don't see where you are going to show anything  
14 at this moment by Manson.

15 MR. KATZ: Well, if your Honor please, the August 16th  
16 raid of Spahn Ranch is the pivotal date upon which we have  
17 alleged the disappearance of Mr. Shea, and indeed the evidence  
18 is going to show, and it is going to readily unfold, that  
19 Mr. Manson and Mr. Grogan under the name of Grant Mollan  
20 was arrested on August 16, 1969 together with Richard Allen  
21 Smith, whose true name is Danny De Carlo, together with other  
22 individuals.

23 Obviously, one of the key factors in the case is  
24 to show that these people were associating with one another.  
25 They were living with one another on or about August 16, 1969.  
26 It has tremendous probative value.

27 THE COURT: It might have at a later time, but I think  
28 you -- I think as far as showing -- I might jump ahead of

18-4

1 myself a little bit and bypass this immediate question.

2 I think the testimony probably indicates a prima  
3 facie showing of a corpus, and the defendant can take issue.

4 I mean you can make any statement you want  
5 respecting that. That is, of the deceased body, the inferences  
6 are there.

7 Whether it is to the extent the jury wants to give  
8 credence to it, is another matter entirely.

9 I think you are very close to establishment of a  
10 corpus. I don't know any testimony, though, that establishes  
11 conspiracy in here.

12 That is why I say I think you are ahead of yourself  
13 in getting -- the getting -- these are damaging statements until  
14 you get a conspiracy, to show an arrested man here.

15 It is going to prejudice the jury. Now, I think  
16 if you want to show that much you could do it, but I hesitate--  
17 I say you are asking for something that isn't going to help  
18 you any at this moment.

19 MR. KATZ: Your Honor, my only purpose at this time, and  
20 I think your Honor is correct at this time at least, and so far  
21 as it concerns the immediate purpose of this proffered  
22 evidence -- that is, namely, to show that the officer, once  
23 again, can identify unequivocally and positively this Richard  
24 Allen Smith as Danny De Carlo, and he looked as he does in  
25 32-F when he was arrested at Spahn Ranch, August 16th, I will  
26 sever the photograph.

18a

18a-1

1 THE COURT: You can make your objection, Mr. Weedman.

2 I think to that extent at this time that that  
3 segment of the picture would be admissible.

4 If you have an objection you state it for your own  
5 protection, if you have it.

6 MR. WEEDMAN: Well, now, I am going to object to a  
7 severed picture too, because the jury knows, undoubtedly, there  
8 is something on there, and I don't think that they should be  
9 presented with a fragment of a photograph that has been  
10 obviously edited.

11 Mr. Katz, your Honor, is merely putting in  
12 cumulative evidence now.

13 I asked the officer, and I held up the picture, the  
14 large picture of De Carlo, if that was the man. Yes, it was.

15 As to how he looked at or shortly after he was  
16 arrested. Yes, it is.

17 Now, Mr. Katz wants to come back with yet another  
18 photograph which is merely cumulative of the evidence that he  
19 has already.

20 THE COURT: I will overrule the objection if you desire  
21 to sever the picture.

22 MR. KATZ: I will, your Honor.

23 THE COURT: To that extent, the rest of this is to be  
24 held until we get further on.

25 MR. KATZ: So we retain the record, your Honor, the small  
26 end I am severing, which I will show to the witness, we will  
27 mark 50-E1 with your permission.

28 THE COURT: Let's do it out of the presence of the jury.

18a-2

1 MR. WEEDMAN: Your Honor, I think --

2 THE COURT: Don't show the severing in front of the jury.  
3 Sever it here.

4 MR. KATZ: In other words, if I mark this 50-E1 and the  
5 severed portion not shown to the witness just to retain  
6 continuity and know from where it came, it will be marked  
7 50-E2.

8 That will not be shown to the jury.

9 MR. WEEDMAN: Your Honor, I do not wish to be understood  
10 as having waived any objection as to counsel going into the  
11 subject of arrests at the Spahn Ranch.

12 I was forced to ask the officer questions about  
13 that on cross-examination because, of course, the court --

14 THE COURT: Well, he hasn't gone into that yet. He is  
15 simply saying here that Smith was arrested. Here is a picture  
16 of Smith, and it is the purpose at the moment for showing that  
17 picture of Smith at the Spahn Ranch, or De Carlo as the same  
18 picture that is here, known as 32-F. That is what I gather  
19 he is asking.

20 MR. KATZ: That is all I am going to ask, Mr. Weedman.

21 MR. WEEDMAN: Excuse me, your Honor, I couldn't help but  
22 pay a lot of attention to your Honor's remark that you felt that  
23 perhaps the corpus delicti is established.

24 THE COURT: I am not asking you to agree with that.

25 MR. WEEDMAN: When the time comes, I am sure we will have  
26 a time to argue that.

27 THE COURT: Well, I am just giving you that as a reaction.

28 I will listen to any argument or discussion that

18a-3

1 you have. That is my feeling at the moment.

2 MR. WEEDMAN: Very well, your Honor.

3 MR. KATZ: May we continue?

4 THE COURT: Yes, let's go ahead. I would keep that to  
5 yourself.

6 MR. WEEDMAN: Your Honor, I wonder if I might inquire of  
7 Mr. Katz at this time if he would be willing to stipulate that  
8 no charges were filed against any of those persons that were  
9 arrested at the Spahn Ranch August 16, 1969?

10 MR. KATZ: Not at this time, Mr. Weedman.

11 I will discuss it with you further, but at this  
12 time I would want to not offer you the stipulation.

13 MR. WEEDMAN: Well, it is my understanding that no one  
14 was, and I again feel, your Honor, for the record, that this is  
15 extremely misleading to the jury, number one, there have  
16 evidence of arrests before this jury and, number two, to have  
17 Mr. Katz making an objection in front of the jury to my  
18 perfectly proper question of this officer, and Mr. Katz'  
19 objection seemingly --

20 THE COURT: Your question again was what? State your  
21 question.

22 MR. WEEDMAN: I asked this officer whether or not these  
23 persons had ever been charged, and Mr. Katz objected to that.

24 THE COURT: That was answered?

25 MR. WEEDMAN: Yes, vociferously, leaving the impression  
26 that perhaps my question was an idle question.

27 I think it has left this jury with a double impact  
28 now with respect to these arrests.

18a-4

THE COURT: Well, you can bring it in.

I would have no objection if you can establish --

MR. WEEDMAN: I don't want to wait to put my defense on.

MR. KATZ: I will have some records that indicate these people have been released.

THE COURT: Why don't you take a stipulation on it?

MR. KATZ: Because there are crucial dates of release that have to come in.

THE COURT: Bring it in Monday.

MR. KATZ: I would be happy to discuss that with Mr. Weedman.

MR. WEEDMAN: Very well, your Honor.

THE COURT: We will take it up again Monday.

MR. WEEDMAN: That is fine, just as long as we can do it before we finish the People's case.

MR. KATZ: Oh, very definitely.

19-

19-1

(The following proceedings were had  
in open court outside the presence  
of the jury:)

THE COURT: All right. Now, gentlemen, we will go ahead.  
People against Grogan.

Defendant is here. Both counsel are here.

You can bring in the jury, sheriff.

The witness take the stand, please.

State your name again. You have been sworn.

THE WITNESS: Deputy John S. Sheehan.

THE COURT: Thank you.

You can pull that back a little. That's it.

(The following proceedings were had  
in open court in the presence of the  
jury:)

THE COURT: Well now, we have all of our jurors plus the  
three alternates.

So you may proceed.

MR. KATZ: Yes. Thank you, your Honor.

May I approach the witness?

THE COURT: Yes, sir.

Q BY MR. KATZ: I would like to show you, Deputy  
Sheehan, 50-E1, this photograph, and ask you whether or not  
you recognize the individual in the T-shirt?

A I do.

Q Who is that?

A That's Richard Allen Smith.

Q And also known as Danny De Carlo, is that right?



19-2

1 A That's correct.

2 Q Was that photograph taken at Spahn's Ranch?

3 A Yes, it was.

4 Q Incidentally --

5 THE COURT: May I just to clarify the continuity, this  
6 photo indicates the man that was booked to which you have just  
7 testified, is that correct?

8 THE WITNESS: I am sorry, your Honor?

9 THE COURT: This photograph indicates -- is the man that  
10 you booked at the station, that you have just testified to?

11 THE WITNESS: That's correct.

12 THE COURT: All right.

13 Q BY MR. KATZ: In other words, this is the man whose  
14 name appears on the document 52 for identification, is that  
15 correct?

16 A That is correct.

17 Q And the name originally given to you was Richard  
18 Allen Smith, is that right?

19 A That's right.

20 Q We are talking about this photograph 50-E1 for  
21 identification, is that right?

22 A That's right.

23 THE COURT: Pardon me. I am sorry to interrupt you.  
24 You will excuse me, Mr. Katz.

25 MR. KATZ: Yes.

26 THE COURT: I want to say to the jury again because I  
27 happen to ask a question now and then it is done for no purpose  
28 of advocating one side as against the other. I had a continuity

19-3

1 I wanted to establish myself.

2 You are the judge of the facts. Anything I say is  
3 not intended to advocate one side or the other. I could  
4 probably ask the same questions as far as the defendant if  
5 he were putting on his side of the case.

6 Remember you are the judge. I am not trying to  
7 advocate or suggest any facts one way or the other. You pass  
8 on the facts.

9 All right.

10 MR. KATZ: Thank you.

11 Q Lastly, Officer, the deputy sheriff who is just  
12 behind this Mr. De Carlo, or Mr. Smith, do you know that  
13 person?

14 A Yes, I do.

15 Q Who is that?

16 A Sgt. Neureither.

17 Q Does his name appear on People's 52 for identifica-  
18 tion as the arresting officer?

19 A It does.

20 MR. KATZ: Thank you. I have nothing further.

21 THE COURT: Anything else, Mr. Weedman? Is that all?

22 MR. WEEDMAN: Yes. If I may take a look at that  
23 photograph for a moment.

24 MR. KATZ: Yes. It is up there.

25 MR. WEEDMAN: Thank you.  
26  
27  
28

RECROSS EXAMINATION

BY MR. WEEDMAN:

Q I notice an injury to Mr. De Carlo's nose. Was his nose broken on the day he was arrested, August the 16th, Officer?

A Not to my knowledge.

Q Did that, at least from the photograph, laceration that appears on the bridge of his nose -- was that on his nose before the arrest or before the so-called raid of August the 16th?

A It was apparently made during the raid.

Q Do you know if somebody hit him in the face?

A Yes.

Q Who did?

A It was Deputy Guillory.

Q Is that Deputy Guillory whose names appears on this exhibit as the booking officer?

A I can't identify that signature. It's apparently Guillory's signature.

Q Did Deputy Guillory hit this man in the face at the ranch or when he was booked?

MR. KATZ: Is he asking for personal knowledge? Anything else would be hearsay.

MR. WEEDMAN: I don't want any hearsay. I have been objecting to hearsay throughout this trial.

THE COURT: Do you know, Deputy?

If you will preface your statement, "Do you know?" it's permissible.

19-5

1 MR. KATZ: I have no objection.

2 Q BY MR. WEEDMAN: Well, do you know -- you knew he  
3 hit him, isn't that so, Officer?

4 A That's correct.

5 Q Well, do you know where he hit him? I don't mean  
6 on the nose, I mean did he hit him during the raid or did he  
7 hit him during the booking procedure?

8 A It was during the raid.

9 MR. WEEDMAN: All right. That's all I have.

10 THE COURT: Is that all?

11 MR. KATZ: One last question.

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## REDIRECT EXAMINATION

14 BY MR. KATZ:

15 Q As we look at Mr. De Carlo's nose and what appears  
16 to be a wound on his nose, did you see what was in Mr.  
17 De Carlo's hand at the time he was struck?

18 A Yes, I did.

19 Q What?

20 A It was a .45 caliber pistol.

21 Q Where was it pointed?

22 A In the direction of Deputy Guillory.

23 MR. KATZ: Thank you, sir.

24 Nothing further.

INDEX

## RE CROSS EXAMINATION

26 BY MR. WEEDMAN:

27 Q Any charges filed against Mr. De Carlo in connection  
28

19-6

1 with the display of this weapon you told us about?

2 MR. KATZ: Objection. Asked and answered. There was  
3 an ADW charge on the booking slip.

4 THE COURT: Read the question.

5 MR. WEEDMAN: That is not the kind of charge I am talking  
6 about. I am talking about were any formal charges, that is,  
7 by the district attorney's office, against Mr. De Carlo because  
8 he had this weapon as you have alleged in his hand?

9 THE WITNESS: Not to my knowledge.

10 I don't know what was done.

11 Q BY MR. WEEDMAN: You were never called as a witness?

12 A No.

13 Q In any such case, were you, Officer?

14 A No, I was not.

15 Q So to the best of your knowledge no such charge  
16 was ever filed against Mr. De Carlo, isn't that so?

17 MR. KATZ: Objection, calling for conclusion and  
18 speculation.

19 THE COURT: Give me the last question, please.

20 (The question was read by the reporter  
21 as follows:

22 "Q So to the best of your knowledge  
23 no such charge was ever filed against Mr.  
24 De Carlo, isn't that so?"

25 THE COURT: That is probably conclusional. That could  
26 well be established later.

27 The question "Have you ever been subpoenaed?" he  
28 said no, I have not been.

I think the last question, though, is conclusional.

MR. WEEDMAN: Very well, your Honor.

THE COURT: It may be established at a later date. You are not prohibited from establishing it if you desire. It is conclusional, I am sure, as far as this witness is concerned.

MR. WEEDMAN: All right.

Thank you, your Honor.

Your Honor, may we approach the bench?

THE COURT: All right.

Do you want the reporter?

(The following proceedings were had  
in chambers:)

THE COURT: We are in chambers. Defendant and counsel are here. The reporter is here.

Go ahead.

MR. WEEDMAN: Your Honor, at this time I respectfully am moving for a mistrial. Counsel was of course permitted by the court to go into the fact that Mr. De Carlo had been arrested. I objected to that just as strenuously as I could. It permitted -- it forced me, as part of my responsibilities to my client, to cross-examine this witness.

During the course of the cross-examination I brought out things it seems to me that were imminently proper. Counsel thereupon took advantage, it seems to me, of the court's ruling to elicit without any warning at all, to elicit the fact that Mr. De Carlo had this .45 caliber automatic in his hands, as I understand the testimony.

#20

1 I can't imagine now anything more unfairly  
2 prejudicial to my client's case, your Honor.

3 Mr. Katz deliberately went into this matter. He  
4 elicited this highly prejudicial material without any warning,  
5 without any opportunity for the court to rule upon it in  
6 advance.

7 I am suggesting now, your Honor, that there is no  
8 way in the world that we are going to get a fair trial before  
9 this jury with that kind of material before them.

10 For the record, I will also move to strike it, your  
11 Honor, but I don't think it is going to do any good.

12 THE COURT: I'm inclined to deny the motion.

13 I wouldn't have any objection to advising the jury  
14 to disregard entirely the fact that De Carlo had a revolver,  
15 or not.

16 I don't think it helps or hurts anybody. It is not  
17 going to help your case one way or the other, anyway.

18 MR. KATZ: It does, your Honor. I think I had a right  
19 to go into it. He brought out the fact that Mr. De Carlo had  
20 a laceration that was discernible in the pictures. He was  
21 implying, I think very efficaciously so by way of the questions  
22 that he directed to this officer, that there was some mis-  
23 treatment of this particular individual, and he was showing,  
24 and in fact he was saying this was inflicted on him during the  
25 arrest, or following the arrest.

26 I'm allowed to explain those circumstances which  
27 were brought out on cross examination, and I explained the  
28 circumstances by that laceration that it was inflicted,

1 namely, that De Carlo had a .45 pointed in the direction of  
2 the officers, and it is not fair to leave just the unfavorable  
3 inferences against the officers that they are brutal and  
4 vicious and just going around harassing a much of people when  
5 a guy has a .45 automatic pointed at them.

6 THE COURT: Well, you have an overriding problem.

7 The court has to grab hold of this one way or the  
8 other.

9 MR. KATZ: Let's strike all of the testimony concerning  
10 that.

11 THE COURT: Wait just a minute. You are moving too fast  
12 for me.

13 Let me take my time.

14 MR. KATZ: I am sorry, your Honor.

15 THE COURT: You have an overriding problem here that I  
16 have to decide on. If we branch out there on this gun busin-  
17 ess with De Carlo, a situation arises analogous, corollary  
18 arises, that arises in so many cases, and that is particularly  
19 with the jury, that you wind up with them discussing or possibly  
20 thinking or analyzing other lawsuits, or what happened to De  
21 Carlo, matters that aren't at issue here.

22 De Carlo -- I'm not denying his testimony has  
23 significance for the People, but we are getting into another  
24 matter. We are getting into De Carlo's problems rather than  
25 Grogan's.

26 MR. KATZ: But Mr. Weedman brought them out, your Honor.

27 THE COURT: I know that, but the best thing is to keep  
28 them out, if it can be done.



20-3

1 I don't think it is justified as a mistrial, but  
2 the question is, can they be weeded out?

3 I think that -- I don't really think it makes an  
4 awful lot of difference as far as Grogan was concerned whether  
5 or not he had the gun. It isn't going to prove or disprove,  
6 so far as I can see, anything.

7 MR. KATZ: And it can't be argued as such, your Honor.

8 THE COURT: I don't think it will prove or disprove  
9 anything at this juncture as far as Grogan is concerned, whether  
10 he had a gun or didn't have one.

11 It might be a reason for a dislike, but we are  
12 pulling away and getting away and trying another lawsuit.  
13 That is what I am trying to avoid.

14 MR. KATZ: Yes, your Honor. However, we can't be left  
15 with the inference brought out on cross examination that it  
16 was the inference that the police were guilty of harassment.

17 THE COURT: Well, it might be that the answer is for the  
18 court to simply make a statement for the jury to disregard the  
19 question and answers respecting De Carlo of the gun, and also--

20 MR. KATZ: The injury to his face.

21 THE COURT: Did he have an injury or broken nose or  
22 injury to his face.

23 Let's forget it. It would be better. Everyone  
24 would be better off.

25 MR. KATZ: I would be willing to do that, but I don't  
26 want this to be construed as a concession of any error, because  
27 I feel there is no error whatsoever, but I am willing, if  
28 counsel is willing, to stipulate that the entire inquiry both

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1 on cross examination and redirect concerning the injury to  
2 Mr. De Carlo and the gun incident be stricken from the record.

3 THE COURT: I think it would be better to come out on  
4 both sides, really.

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1 MR. WEEDMAN: Well, your Honor, I never anticipated  
2 that counsel was going to be talking about the arrest of some-  
3 one else, and inasmuch as he is, and inasmuch as he has now  
4 elicited even additional evidence of the circumstances  
5 surrounding the arrest, I at this time, your Honor, respect-  
6 fully move for an evidentiary hearing outside the presence  
7 of the jury with respect to probable cause, if any, for the  
8 arrest and subsequent evidence and testimony of August 16, 1969.

9 I will now, your Honor, for the record state  
10 that the officers' observations, together with any evidence  
11 that they received, together with any statements that they  
12 received, are all the product of an illegal and unlawful  
13 search and seizure, your Honor.

14 THE COURT: Motion denied.

15 MR. WEEDMAN: Thank you, your Honor.

16 THE COURT: The question in my mind at the moment is  
17 whether I should on my own initiative, instruct the jury to  
18 disregard the examination respecting De Carlo or Smith having  
19 a gun, and also to disregard the question and answer respect-  
20 ing the --

21 MR. KATZ: The injury.

22 THE COURT: The position of whether De Carlo was struck  
23 or wasn't struck, to disregard it entirely, disassociate it  
24 with the issues here.

25 I may do that.

26 I may do that, and be justified because of the  
27 position that the defendant has respecting the gun.

28 MR. WEEDMAN: Well, I agree, your Honor, that in the

20A-2

1 event that we cannot have a mistrial granted, then I obviously  
2 would move that this testimony be stricken. Otherwise, I'm  
3 going to ask him questions such as where is the gun. I will  
4 be forced to ask more questions about the gun.

5 You are right, we are going to be trying another  
6 lawsuit.

7 THE COURT: Yes, trying another lawsuit.

8 I have had so many cases -- I have tried my  
9 level best to stop them when they branch out, but sometimes  
10 it is difficult.

11 Anyway, I think I will strike the testimony  
12 respecting the fact that Smith had a gun, and also the testi-  
13 mony that there was some abrasion, or the fact that Smith  
14 had been or was said to have been hit in the face or in the  
15 nose.

16 I will disregard it and forget about it.

17 MR. WEEDMAN: Your Honor, I haven't raised any direct  
18 inference, certainly, that Mr. De Carlo was abused. That is  
19 counsel's inference. Maybe he was abused, but I have not  
20 raised that as an inference.

21 THE COURT: I don't have to put the word "abused" in.  
22 It will be simply any testimony or reference to the condition  
23 or mark around the nose of De Carlo in the photograph.

24 MR. WEEDMAN: I think it goes to his identity as much  
25 as anything else, your Honor.

26 MR. KATZ: Your Honor, once again counsel is attempting  
27 to use whatever is favorable to him, and strike whatever is  
28 unfavorable to him.

20-A3

1 THE COURT: I will strike them both. I will do it  
2 on my own initiative.

3 You are within your rights. I am taking no  
4 stipulation. That is for your protection.

5 You are not stipulating to anything at all.

6 (The following proceedings were had in  
7 open court.)

8 THE COURT: We are back in court. The jury and the  
9 defendant and counsel are here.

10 The jury is in the jury box. The witness is on  
11 the stand.

12 Now, ladies and gentlemen, of my own incentive,  
13 and this is not pursuant to agreement or stipulation of counsel,  
14 but of my own incentive, I am striking the testimony of the  
15 witness respecting the fact that Smith at the time of the  
16 arrest at the Spahn Ranch, had a gun, revolver, in his hands.

17 I am striking it and asking the jury to disregard  
18 it in its entirety, and also I am striking the testimony that  
19 was elicited from the witness in which the witness was shown  
20 a photograph, and it purported to have a mark or an abrasion  
21 on the nose, and the testimony that the witness gave respecting  
22 the fact that he was hit or struck by the officer. That is  
23 all stricken.

24 The jury is instructed to disregard that testimony  
25 in its entirety.

26 The reason is because I don't feel that certainly  
27 at this juncture, and maybe not at all, can it have anything  
28 to do with the case.

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1 I will be blunt about it. We are trying Mr. Grogan  
2 and not Mr. Smith.

3 Now, I'm not saying that the testimony of the  
4 officer respecting Smith may not have a strong materiality.  
5 That is for the jury to determine respecting Smith and other  
6 matters testified to, but the fact as to the arrest of Smith  
7 and the incidents that may have occurred, are entirely im-  
8 material to this case.

9 That is the reason I am asking you to disregard  
10 that statement or portion of the questions and answers to  
11 this witness.

12 All right, let's go ahead.

13 MR. KATZ: I have nothing further.

14 MR. WEEDMAN: I have nothing further.

15 Thank you, Deputy.

16 MR. KATZ: Thank you, Deputy.

17 THE COURT: That is all, Officer.

18 MR. KATZ: Sergeant Campbell.

19 THE COURT: Now, if you will kindly raise your right  
20 hand and be sworn.

21 THE CLERK: You do solemnly swear that the testimony  
22 you may give in the cause now pending before this court shall  
23 be the truth, the whole truth and nothing but the truth,  
24 so help you God?

25 THE WITNESS: I do.

26 THE COURT: Thank you, sir.

27 Take the stand and be seated.

28 State your name for the record, please.

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1 THE WITNESS: Herbert L. Campbell.

2 THE COURT: Will you gentlemen approach the bench,  
3 please?

4 (Conference in chambers outside the  
5 presence of the jury, not reported.)  
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(The following proceedings were had  
in open court in the presence of the  
jury:)

THE COURT: Now, we are back in court. Defendant and  
counsel are all here and all jurors are here.

Now, ladies and gentlemen, we are up to 16 minutes  
before 4. And I don't think that counsel are taking exception  
to my ruling.

It would be better if we take the testimony of this  
gentleman as a unit and not take part of the testimony and then  
go over the weekend and take the rest of it.

I would like to hear it as a unit, although I do  
not decide the facts, as I constantly repeat and say.

But I think it is better for everybody to take it  
as a unit.

Let's go till Monday morning at 9:30.

Do not discuss the case or come to any opinion or  
conclusion, and we will proceed at 9:30 Monday.

And please return at that time.

THE WITNESS: Yes, sir.

THE COURT: All right.

Thank you very much.

(An adjournment was taken to Monday,  
August 2, 1971 at 9:30 a.m.)