

TO THE COURT OF APPEALS OF THE STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT

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THE PEOPLE OF THE STATE OF CALIFORNIA, )  
Plaintiff & Respondent, )  
vs. )  
DAVID MALEK ISMAIL, )  
Defendant & Appellant. ) VOLUME I  
Pages 1 - 285

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REPORTER'S TRANSCRIPT ON APPEAL FROM THE  
JUDGMENT OF THE SUPERIOR COURT OF THE  
STATE OF CALIFORNIA, IN AND FOR THE  
COUNTY OF SANTA CLARA.

HONORABLE GEORGE H. BARNETT, JUDGE, AND A JURY.

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APPEARANCES:

For the Plaintiff & Respondent:	EVELLE J. YOUNGER, ESQ., Attorney General of the State of California.
For the Defendant & Appellant:	PESTARINO, WINNINGHAM, MENARD & TENENBAUM, ESQS. 777 North First Street San Jose, California.

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1 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

2 IN AND FOR THE COUNTY OF SANTA CLARA

3 COURTROOM NO. 5

4 BEFORE HONORABLE GEORGE H. BARNETT, JUDGE, AND A JURY.

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6 THE PEOPLE OF THE STATE OF CALIFORNIA, )

7 Plaintiff, )

8 vs. )

) No. 61669

9 DAVID MALEK ISMAIL, )

10 Defendant. )

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12 San Jose, California, March 8, 1976.

13 APPEARANCES:

14 For the Plaintiff:

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18 For the Defendant:

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San Jose, California.  
By Angelo Pestarino, Esq.

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	INDEX OF WITNESSES				
	<u>Name</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
3	Adams, Virginia S.	296	305	307	-
4	Andrews, Sam	1215			
5		1237(res)	1238	1332(cont)1347	-
6	Beaman, Monte	287	294	-	
7	Benjamin, Kitty	371	400	409	-
8	(recalled)	1210	-		
9	Birnie, Michael J.	1468	1480	-	
10	Borg, Joseph A.	362	368	369	-
11	Crowley, Larry Joe	414	428	443	-
12	Damron, Carol Jean	62	70	-	
13	Damron, Robert	72	80	-	
14	DeBaz, Aprim E.	1112	1121	-	
15	(recalled)	1487	1501	-	
16	Hart, Edith May	214	218	-	
17	Haynes, Sandra Lee	449	-		
18	Herilck, Robert W.	1404	1409	1413	1416
19				1422	-
20	Inami, S. Henry	452	472	493	505
21				508	-
22	Ismail, David Malek	597			
23		Voir Dire			
24		621	623(cont)		
25		650(res)	687		
26	(recalled)	1508	739(res)	776	-
27			1510	-	
28	Ismail, Zaia M.	1182	1192	-	
29	Kallu, Joseph Shimoun	1354	-		
30	Kelaita, Frederick S.	511	553	-	
31	(recalled)	1246	1288		
			1309(res)	-	

1	INDEX OF WITNESSES (Continued)				
2	<u>Name</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
3	Lazar, Dennis Robert	1423	1436 1448(res)	1464	1464
4	Lazar, Joe	1205	-		
5	Lazar, Samuel J.	1213	1214	-	
6	Lazar, Yule (recalled)	227	266 570(res)	- 584	-
8	Lintern, Charles Melvin	97	99	-	
9	Mason, Richard, M.D.	4	12	-	
10	Morgan, David P.	89	94	-	
11	Michael, Ninos	989	995	1006 1007	1006 1008
12	Myers, Ronnie	100	106	115	-
13	Neal, James Melvin	309	343	352	352
14	Nidever, Jack	814	841 846(res) 911(res) 939(res)	-	
15	Parrott, Aubrey R.	17	47 59(res)	60 446 1377 1382	61 448 1378 -
16	(recalled)				
17	(recalled)				
18	Patel, Ranjam, Mrs.	353	359	-	
19	Rapaport, Walter	1010 1026(cont)	1044 1105(cont)	-	
20	Scrivens, Peter W.	1383	1393	1401	1403
21	Shimun, Emama Mar Eshai (recalled)	121 1370	159 189(res) -	211	-
22	Siegler, David K.	219	224	226	-

## INDEX OF WITNESSES (Continued)

<u>Name</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
Stukan, Nicholas	80	86	87	-
Vola, Robert	793	805	808	811
Younan, Esha	1162	1170	1180	1181

---oOo---

# INDEX OF EXHIBITS

<u>Number</u>		<u>Identification</u>	<u>Evidence</u>
People's			
1	Diagram	6	596
2 & 3	Bullets	12	596
4	Gun	14	596
5	Aerial Photo	18	596
6	Sketch	20	596
7	Gun Clip	27	596
8-1 thru 8-4	Latent Fingerprints	28	596
9	Containers & contents	30	596
10-A thru 10-EE	Photographs	32	596
11	Coat	43	43
12	Pants		43
13	Tie		44
14	Shirt		44
15	Notebook	45	596
16	Address Book & contents	45	596
17	Travel Service Card	46	596
18	Loose Papers	46	596
19	Registration Card	215	596
20	Registration Form, Invoice and a recording form		221
21-A thru F	PSA Hotel Records	228	596
22	Log	287	596
23	Chart	298	596

## INDEX OF EXHIBITS (Continued)

<u>Number</u>		<u>Identification</u>	<u>Evidence</u>
People's			
24-A thru D	Inked Fingerprints	301	596
25-A & B	Two Envelopes	336	596
26	Bag of Personal Items	340	596
27	Registration Card	354	596
28	Travel Agency items	363	596
29	Christmas Card	394	596
30	Brown Leather Bag	447	596
31-A & B	Diagrams	485	596
32	Writing by witness		772
33	Letter	952	
34	Wexler Test	955	
35, 36 & 37	Tapes	1083	
38	Mailgram	1053	
39	Letter	1249	
40 thru 45	Pictures	1251	
47	Newspaper	1346	
48	Photograph	1369	
Defendant's			
A	Letter	199	
B-1 & B-2	Checks	283	
C	Diagram	510	
D-1 & D-2	Gas Station Papers	583	

1  
2  
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4  
5  
6  
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## INDEX OF EXHIBITS (Continued)

<u>Number</u>		<u>Identification</u>	<u>Evidence</u>
Defendant's			
E	Papers	584	
F	Photograph	603	
G	Letter	627	
H	Letters	628	1522
I, J & K		988	1522
L	Repair Bill	1209	1522
M	Cancelled Check	1211	1522
N	Letter	1227	1522
O	Bylaws	1227	1522
P	Various documents	1233	1522
Q	Documents	1448	1522
R +	Document	1488	



## FIRST DAY

March 8, 1976. 1:30 o'clock p.m.

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THE COURT: Ladies and gentlemen, those of you who have been summoned for jury service, as you can see there are quite a number of you. And I believe a good many of you have been called here on the one-hour standby, and therefore you may not have had a briefing downstairs as to the function of a juror. So before we draw any of you into the jury box, I would like to explain that in the trial of a lawsuit, civil or criminal, it is the duty of jurors to be the judges in the case. In other words, you will decide the case as judges. I will be only the judge of the law, and therefore I will rule on procedural matters during the trial and on the admissibility of evidence. And at the end of the case will instruct you in the law so that you can make your decision. Just as I'm qualified to serve as a judge of the law, you must be qualified to serve as a judge of the fact. And in order to find out if you are qualified, some of you may have served in other cases, I will have to ask you certain questions. And then the attorneys will ask you certain questions. We will try not to get too personal or pry into your private lives. If there are any things that might prevent you in your mind from serving, or in our mind from serving as fair and impartial jurors, as soon as twelve of the jurors are drawn into the jury box I will explain what

1 the case is about, I will tell you how long it will be. I  
2 will answer many of the questions that you have in your own  
3 minds. And I would just ask that you please relax and don't  
4 be uptight. I know a lot of you are nervous and never been  
5 in court before. And the first part of the case is more or  
6 less informal, when we try to find out whether or not you  
7 would be a juror in this case.

8 Now, the law requires that all prospective jurors  
9 answer the questions under oath. So I am going to ask all  
10 of you to please stand and be sworn at this time. If there  
11 is anybody who does not wish to take an oath you may merely  
12 say that I affirm.

13 (Whereupon, the prospective jurors were duly sworn  
14 to answer questions pertaining to their qualifications to  
15 act as jurors.)

16 THE COURT: Would you please be seated?

17 Now, I know some of you incidentally may have some  
18 problems about time, and we will discuss these as you get  
19 into the box. We don't anticipate that the jury will be  
20 selected today. But should any of you not be selected  
21 today and have any time problems I will give you an opportu-  
22 nity to discuss that after court, although I do have a motion  
23 for new trial at 4:30.

24 Would you draw for seat No. 1, please?

25 THE CLERK: Yes, Your Honor.

26 (Whereupon, the Clerk then drew twelve names from the  
box and the prospective jurors were seated in the jury box.)

1 (Whereupon, voir dire examination of prospective  
2 jurors was begun.)

3 THE COURT: Ladies and gentlemen, let's take a  
4 short recess. And I would like to admonish all of you,  
5 because of the fact that we are in the jury selection  
6 process, that you should please not discuss the facts of the  
7 case or any of the questions or the matters we have talked  
8 about with each other or with any other person. And you  
9 should not let anybody discuss the case or anything about the  
10 guilt or innocence of the defendant in your presence. Should  
11 anyone do that would you please report it to Mr. Brown, our  
12 Bailiff? We will take a 15-minute recess and at that time,  
13 at 3:30 we will resume with the deliberations.

14 (Short recess taken.)

15 THE COURT: Let the record show that the counsel and  
16 defendant are present. You may proceed, Mr. Pestarino.

17 MR. PESTARINO: Thank you, Your Honor.

18 (Voir dire examination of prospective jurors resumed.)

19 THE COURT: All right, counsel, I am going to  
20 adjourn for this evening because I do have a motion at 4:30.  
21 I would like to instruct all of you on a few things that  
22 are relevant. First of all, all of you who are still in  
23 the audience will be asked to return tomorrow morning and be  
24 here at 9:45. You don't have to go down to the jury assembly  
25 room but you can come straight to this room. The same thing  
26 applies to you in the box, and you will please take the same

1 seats for the time being. Be sure and get your parking  
2 tickets stamped before you leave the building tonight and you  
3 will be entitled to free parking each day that you are  
4 required to be here if you are selected as a juror.

5 If there is anyone who has any serious problems  
6 about coming back tomorrow or serving as a juror, would you  
7 please remain for just a couple moments and we will discuss  
8 the matter with you.

9 I would admonish you again to please not discuss the  
10 case, those of you who are on the panel and those of you who  
11 are still waiting. Some of you may be jurors, some of you  
12 may not. The law requires that you not discuss the case  
13 either among yourselves or with any other person. You may  
14 say what am I going to tell my boss, or husband, or wife, or  
15 whoever you have to talk to. You can tell them that we are  
16 in the process of selecting a jury, that it involves a charge  
17 of first degree murder, and another charge, but that you don't  
18 know anything about the facts of the case and, therefore, you  
19 are not at liberty to discuss them. And if you are selected  
20 as a juror you will be required not to discuss them any more  
21 than I am permitted to discuss them. And for that reason if  
22 you will ask them to just be patient and at the end of the case  
23 you will be free to discuss the matter. Does anybody have  
24 any questions? All right. You are excused then until  
25 tomorrow morning at 9:45. The defendant is instructed to  
26 return, any witnesses subpoenaed are instructed to return

1 tomorrow morning at 9:45. Anybody who has any serious problems,  
2 would you please come forward, please?

3 (Whereupon, at 4:25 o'clock p.m., an adjournment was  
4 taken until March 9, 1976, at 9:45 o'clock a.m.)

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## 1 SECOND DAY

2 March 9, 1976. 9:45 o'clock a.m.

3 (Pursuant to adjournment, Court convened, and the  
4 following proceedings were had:)5 THE COURT: Good morning, ladies and gentlemen,  
6 counsel.

7 MR. ROBINSON: Good morning, Your Honor.

8 THE COURT: Let the record show that the defendant  
9 and counsel are present. You may proceed with your voir dire.

10 MR. ROBINSON: Might we approach the bench?

11 (Discussion off the record.)

12 THE COURT: We will proceed with the examination of  
13 prospective jurors.

14 (Voir dire examination of prospective jurors resumed.)

15 THE COURT: It is noon now so we are going to have  
16 to take a recess. Because I have a committee meeting over  
17 at Juvenile Hall, we will resume at 1:30, and we will continue  
18 the questioning of you at that time. I would ask all of  
19 the jurors to please return at 1:30, and not to discuss the  
20 case either among yourselves or with any other person or  
21 permit anybody to discuss it with you. And I will order the  
22 defendant and all subpoenaed witnesses to return at that time.  
23 Thank you. Be sure and get your parking tickets stamped if  
24 you haven't done so already.25 (Whereupon, at 12:00 o'clock Noon, a recess was taken  
26 until 1:30 o'clock p.m., this day.)

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1  
2 AFTERNOON SESSION

3 March 9, 1976. 1:30 o'clock p.m.

4 (Pursuant to recess, Court convened, and the  
5 following proceedings were had:)6 THE COURT: Let the record show that the defendant  
7 is present, counsel are present.

8 (Voir dire examination of prospective jurors resumed.)

9 THE COURT: All right, ladies and gentlemen, let's  
10 take our afternoon recess at this time. We will take 15  
11 minutes and you will keep in mind the admonition I have given  
12 you previously about not discussing the case. We will resume  
13 at 10 after 3:00.

14 (Short recess taken.)

15 THE COURT: All right. Let the record show that  
16 the defendant is present with counsel. Would you draw for  
17 seat No. 11, please?

18 (Voir dire examination of prospective jurors resumed.)

19 THE COURT: Counsel, would you approach the bench,  
20 please?

21 (Discussion off the record.)

22 THE COURT: All right. Ladies and gentlemen, we  
23 still haven't completed the selection of the jury. I am  
24 sure that we will do that tomorrow morning, which will be  
25 a half-day for all of us, that is, for all of you, not for  
26 all of me -- but we will adjourn now. I have a motion which  
I am going to hear commencing at 4:30. I would like to

1 admonish you, those of you in the box, those of you still  
2 in the audience, some of you will be seated on this jury,  
3 and to please return tomorrow morning at 9:45. Keep in  
4 mind the admonition I have given you before about not  
5 discussing the case, the facts of the case or any of the  
6 details with anyone. And get your parking tickets stamped  
7 before you leave. See you at 9:45. I will order the  
8 defendant and any witnesses to return. And we will  
9 adjourn at this time.

10 (Whereupon, at 4:25 o'clock p.m. the proceedings  
11 in the above-entitled matter were continued to March 10,  
12 1976, at 9:45 o'clock a.m.)

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THIRD DAY

March 10, 1976. 9:45 o'clock a.m.

(Pursuant to adjournment, Court convened, and the following proceedings were had:)

THE COURT: Let the record show that the defendant is present with his counsel.

(Voir Dire examination of prospective jurors resumed.)

THE COURT: Let's take a short recess, ladies and gentlemen, since we have been sitting for awhile. We will take, oh, about 12 minutes, resume at a quarter after eleven, as close thereto as we can. You will keep in mind the admonition about not discussing the case.

(Short recess taken.)

THE COURT: Let the record show that the defendant and counsel are present.

(Voir Dire examination of prospective jurors resumed.)

THE COURT: Thank you, counsel, it is the defendant's challenge.

MR. PESTARINO: The defendant is satisfied.

THE COURT: The People's challenge.

MR. ROBINSON: The People are satisfied, Your Honor.

THE COURT: All right. Ladies and gentlemen, will you stand then and be sworn to try this action.

(Whereupon, the jury was duly sworn to try the case.)

THE COURT: Would you be seated, please. Now, ladies and gentlemen, we have agreed, because of the length

1 of the trial and the fact that the flu season is around, that  
2 it would be appropriate to have a couple of alternate jurors  
3 in this case. And I should explain for those of you who  
4 will be drawn and questioned that an alternate juror is  
5 exactly the same as one of the regular panel, under the same  
6 rules, listens to the evidence and is bound by the same obliga-  
7 tions, and is, if I may use the analogy, sort of like a spare  
8 quarterback or relief pitcher who is all warmed up and ready  
9 to go in case he or she is needed during the trial. Some-  
10 times people who are called as alternates feel they are sort  
11 of second-class jurors, but that is not the case at all.

12 We will draw now for the first alternate juror.

13 (Whereupon, voir dire examination of prospective  
14 jurors resumed until two alternate jurors were duly sworn.)

15 THE COURT: All right. Would you be seated? Those  
16 of you still in the audience, I want to thank you very much  
17 for your attention and, of course, as you can see, we have  
18 used, according to my count, about 58 people who have actually  
19 got into the box. So we never known how many people are  
20 required. I appreciate your cooperation. And the Clerk  
21 will fill out a slip and I would ask one of you to please take  
22 it back to the jury assembly room where you will be given  
23 further instructions.

24 While he is doing that I would like to just give you  
25 a few preliminary admonitions, to those of you on the jury,  
26 to help guide you during the course of the trial.

1           Now, first of all, naturally because of the tension  
2 involved in the selection of a jury there have been times when  
3 we have been either humorous or we have laughed at things.  
4 But obviously this is a serious trial. A man is on trial  
5 based upon the fact that it is alleged he killed another human  
6 being. And the consequences, of course, are serious although  
7 the death penalty is not involved. And so I doubt if there  
8 will be much more levity during the trial, and we would expect  
9 you to keep a serious attitude.

10           Now, secondly, I would like to tell you, as counsel  
11 has indicated, not to be your own detective and go out and do  
12 anything on your own with regard to the area or talk to any-  
13 body, or get anybody's advice or opinion because that would  
14 not be fair. The law requires that you be bound by the  
15 evidence presented in court, and if you tell people what is  
16 going on in the case they will begin to tell you what they  
17 know about it and give you good advice, and since the attorneys  
18 won't be there to respond to it, and your fellow jurors  
19 wouldn't hear it, that would be taking evidence, which would  
20 be illegal. So you have to tell your family, your friends,  
21 and everybody that you are absolutely required, not allowed,  
22 rather, to discuss the case. As you know, in some cases of  
23 this kind the jury is sequestered, like in the Hearst case,  
24 locked up, not allowed to talk to anybody. We are not doing  
25 that in this case, but we expect you to follow basically the  
26 same rules. Among those rules are these, I am going to

1 instruct you that you are not to read any newspaper articles  
2 about the evidence or the case during the course of the trial.  
3 Now, that means, of course, that if you are reading the news-  
4 paper and you come to that we will trust you to pass over that.  
5 If you would like to have your family or friends clip out  
6 the articles and save it until the case is all over with, then  
7 you could read it, that would be appropriate. But you are  
8 not to read anything in the newspaper about the trial.

9 The reporter, during the course of a trial,  
10 naturally he reports for the interest of the general public.  
11 But they can't report all of the evidence that goes on and  
12 sometimes they editorialize as to what they think a witness  
13 says or credibility of a witness. Whereas that is your  
14 function, and we don't want you to be contaminated. The same  
15 thing is true of radio or television. If you should be  
16 listening to the news and a mention is made of this trial we  
17 ask that you please turn it off, at least for that portion of  
18 the news.

19 Counsel has mentioned evidence, and I am not going to  
20 give you a lot of instructions in law, but there are two or  
21 three things that are important as you listen to the case.  
22 First, as we have indicated over and over again, you are going  
23 to be asked at the end of the case to judge the credibility  
24 of the witnesses who are going to testify. That means whether  
25 or not they are telling the truth. And in doing that we  
26 expect you to observe the witnesses, to listen to them, to

1 make up your mind as to how they testify as to whether there  
2 is any bias or any prejudice, any inconsistencies in their  
3 testimony, any consistencies, things that we would normally  
4 judge someone else who is telling us what they saw, or whatever  
5 they may have to tell about.

6 The second thing is that at the end of the case I  
7 will instruct you in the law. Now, the reason we don't do  
8 that at the beginning of the case is because we don't want you  
9 to be lawyers but judges of the facts. And if I instruct you  
10 in the law at the beginning of the case you might try to place  
11 things in different slots and say, well, as counsel has  
12 indicated, it fits this but it doesn't fit that. At the end  
13 of the case I will do that for you to make it easier for you.

14 Now, it is my responsibility as a judge during the  
15 trial to rule on evidence, legal matters, whether it is  
16 admissible or not. Now, over the years there are rules of  
17 evidence that have evolved out of practicality and fairness.  
18 The attorneys have a duty in their jobs to present evidence,  
19 and also if they feel that something is going to be presented  
20 that is improper, they have an obligation or the right to  
21 object to it. Now, we have two good attorneys here and I  
22 don't know whether we will run into this problem, but sometimes  
23 there are objections that are made during the course of a  
24 trial. When an attorney objects it is based upon his belief  
25 that something is going to be improperly admitted. It is my  
26 duty to rule on that objection. If I overrule it, the

1 objection, and allow the evidence in, you are not to hold  
2 any bias against the attorney because he objected. I just  
3 merely say that you are entitled to listen to it. And if I  
4 do allow the evidence to come in, it doesn't mean that I favor  
5 the evidence or I have any opinion about it. You are just  
6 allowed to hear it and weigh it as any other evidence. If I  
7 sustain an objection, if I say no, that evidence can't come in.  
8 Then you are not to speculate as to what the answer might be  
9 or the reason for the objection because that is a legal matter,  
10 also. Sometimes evidence comes in, and then an attorney will  
11 ask me to strike that because it was improper, something pops  
12 out, I will instruct you at the time and at the end of the case  
13 that you are not to consider that evidence. You are to, as  
14 judges, erase that from your consideration because we don't  
15 want you to consider evidence which is improperly admitted.  
16 Because each of you as jurors is a separate judge, each of  
17 your opinions is important, and therefore each of you must  
18 listen to the evidence and at the end of the case discuss it  
19 with your fellow jurors.

20 Now, another thing that comes up during a trial  
21 sometimes is the taking of notes. Sometimes, particularly  
22 in a long trial, a juror may want to take notes. There is no  
23 law or rule that says you can't do that. My experience, and  
24 that of the other judges, is this, that if you become obsessed  
25 with the taking of notes you can't hear and observe a witness.  
26 We have a court reporter here who is qualified and experienced,

1 he has taken down everything that has been said by anybody up  
2 to now and will take down everything that is said during the  
3 trial. If you need to hear any evidence reread or restated  
4 he can read that back to you. Unless you happen to be  
5 highly skilled at shorthand reporting you will find it very  
6 difficult to take complete notes. And, therefore, it has  
7 been my personal opinion that note-taking normally does not  
8 serve any real purpose. However, if you feel that you would  
9 like to do so you may. There is no law against it.

10 Now, again, under the Penal Code I am required to  
11 admonish you every time we recess or adjourn that you cannot  
12 discuss the case either among yourselves or with anyone else  
13 on any subject of the case, and you are not to express any  
14 opinion about how you feel about any witness or the case until  
15 you finally get it submitted to you. Should anybody attempt  
16 to discuss the case with you or make any remarks to you about  
17 the case, or any witnesses or anything that you feel is  
18 relevant, then it would be your duty to let us know.

19 I would like at this time to introduce to you the  
20 other people who will participate in the trial. To your  
21 left is the Deputy Sheriff, Mike Brown, who is the Bailiff  
22 of the court. He is in charge of the courtroom and the jury.  
23 And if you have any problems or any questions Mike will be  
24 very happy to answer them for you and to look after them. You  
25 are entitled to free public parking during the course of the  
26 trial each day that you are here. And be sure and get your

1 ticket stamped any time during the day that you are on jury  
2 duty before you leave the building.

3 The official court reporter for this department is  
4 Mr. Calvin Markey, who has been with me since I came on the  
5 bench some sixteen plus years ago. He is very experienced,  
6 and his duty, as I have indicated, is to take down all of the  
7 evidence and if necessary in your deliberations read some of  
8 it back to you.

9 The gentleman immediately in front of me is Mr. Jack  
10 Clinch, who is a deputy county clerk. He is sort of the  
11 secretary of the court. He keeps the minutes, sees that what  
12 we do here is recorded downstairs, is in charge of the evidence,  
13 and makes sure that you get compensated for your work here,  
14 helps me out when I do things that I am not supposed to do,  
15 and is very important in the trial. If you have any  
16 questions at all during the trial we would ask that you please  
17 not verbalize them because usually things that you want to  
18 know will be presented later. However, if you feel it very  
19 important to let me know that you have a problem, will you  
20 please put it in writing and the Bailiff will pass it to me.

21 We are going to adjourn now and recess until Friday  
22 morning at 9:45. And at that time we will commence with the  
23 opening statements of counsel and then the evidence. We hope  
24 to proceed in regular course without undue delay, except for  
25 Thursdays, as I indicated, where I have other duties.

26 Counsel, may I have a stipulation that I don't have



1 to repeat this admonition each time?

2 MR. ROBINSON: So stipulated.

3 MR. PESTARINO: Yes.

4 THE COURT: And may it also be stipulated, unless  
5 otherwise noted, the defendant is present with counsel and  
6 the jury is present?

7 MR. ROBINSON: So stipulated.

8 MR. PESTARINO: Yes.

9 MR. ROBINSON: May we approach the bench?

10 (Discussion off the record.)

11 THE COURT: Just one final comment before we adjourn.  
12 It would be improper for people to talk to you about the case,  
13 as I mentioned. And it would be improper, for example, for  
14 the attorneys to talk to me about the case without the other  
15 attorney being present. As I indicated earlier, we have  
16 sort of been hanging loose during the selection of the jury  
17 because it is a process of trying to find out if you are  
18 qualified. Now, during the course of the trial, you will  
19 find that the attitude of the attorneys will be directed  
20 toward the case itself. The ethics of the profession require  
21 that they not try in any way to influence the jury. Now,  
22 they are both very nice people, as you know. They may ride  
23 down the elevator with you or see you downstairs getting  
24 coffee, or in the hall, whatever. If they don't say hello to  
25 you, how are you, what do you think about the basketball game,  
26 or whatever, it is not that they don't like you or don't want

1 to be friendly. They don't want to try to influence you in  
2 any way by ingratiating themselves with you. So if they  
3 don't greet you or don't recognize you or don't say anything  
4 to you, you will understand that that is the reason and you  
5 will not, of course, hold it against them.

6 During the course of the trial you will be given  
7 little badges to wear so that people will know you are jurors.  
8 And then at the end of each day you will return them.

9 Does anybody have any questions? At the end of the  
10 trial we will give you a note to your employer indicating the  
11 number of days that you have served and the fact that you have  
12 been here. So if any of you have any problems about that we  
13 will take care of that.

14 JUROR NO. 9: Our day off like tomorrow, can --

15 THE COURT: You can do anything you want, go to  
16 work, stay home.

17 JUROR NO. 9: But we are covered on jury duty even  
18 if I wasn't to go to work?

19 THE COURT: No. I am sorry, you are not. You are  
20 only covered during the days you are actually here.

21 JUROR NO. 9: Okay. Fine.

22 THE COURT: So if you have to go to work you have to  
23 go to work.

24 JUROR NO. 1: What about like today?

25 THE COURT: Today is a full day. You get paid for  
26 today.

1 JUROR NO. 7: If there is a need for an alternate,  
2 one of us should happen to get very ill, is there someone we  
3 must call?

4 THE COURT: Just call me or call the Clerk and we  
5 will discuss it. We hope that doesn't happen. Most of the  
6 cases it doesn't but sometimes events occur, things happen in  
7 the family, and just in order to avoid a mistrial we have the  
8 alternates available. It is just a precaution like carrying --  
9 well, that is a bad analogy -- I was going to say like carry-  
10 ing a spare tire in your car. You will forgive me, Mrs.  
11 Kittie and Mr. Nelson.

12 I have kept you past the lunch hour. I will see you  
13 at 9:45 on Friday morning and hope you have a good day.

14 JUROR NO. 5: Do we have to check in downstairs?

15 THE COURT: No. Thank you for reminding me. You  
16 can come directly to this courtroom every day. You don't have  
17 to go downstairs. You can if you want to have coffee, dough-  
18 nuts, but just get up and leave when it is time to go.

19 Thank you very much.

20 (Whereupon, at 12:10 p.m. the proceedings in the  
21 above-entitled matter were continued to Friday, March 12, 1976,  
22 at 9:45 o'clock a.m.)

23 ---oOo---

24  
25  
26

1                                   FOURTH DAY

2                                   March 12, 1976.    9:45 o'clock a.m.

3                                   ---oOo---

4                   THE COURT: Please be seated.    Good morning, ladies  
5 and gentlemen, counsel.    Let the record show that the  
6 defendant is present with counsel, the jury is present.    You  
7 may proceed to make your opening statement.

8                   MR. ROBINSON: Thank you, Your Honor.

9                   (Whereupon, the Deputy District Attorney, Mr.  
10 Robinson, presented his opening statement on behalf of the  
11 People of the State of California.)

12                  THE COURT: Thank you, counsel.    Do you wish to  
13 make an opening statement.

14                  MR. PESTARINO: If Your Honor please, I think I  
15 will reserve my opening statement until the beginning of my  
16 case.

17                  THE COURT: All right, sir.

18                  MR. ROBINSON: The People call Dr. Mason.

19                  THE COURT: Counsel, I think we should read the  
20 Indictment before we call the first witness.    Would you  
21 do that?

22                  (Whereupon, the Clerk read the Indictment.)

23                  THE COURT: The defendant pleads not guilty to both  
24 of those charges?

25                  MR. PESTARINO: Yes, Your Honor.

26                  THE COURT: You may proceed.

1 MR. ROBINSON: Thank you. Call Dr. Mason.

2 RICHARD THOMAS MASON, M.D.,

3 called as a witness on behalf of the People, being first duly  
4 sworn, was examined and testified as follows:

5 MR. ROBINSON: The People in this case would like a  
6 motion to exclude all witnesses and prospective witnesses  
7 who might have some knowledge or testify about this matter.

8 MR. PESTARINO: I have no objection.

9 THE COURT: All right. The Court will make its  
10 order that anyone who is going to testify or who may be called  
11 to testify would please remain out of the courtroom until they  
12 are called, he or she is called.

13 MR. PESTARINO: If Your Honor please, maybe I ought  
14 to approach the bench. May we do that?

15 (Off-the-record discussion at the bench.)

16 THE COURT: It has been stipulated, for the record,  
17 that the defendant's investigator may remain as well as the  
18 prosecution's chief investigator, should that be desired.

19 DIRECT EXAMINATION

20 BY MR. ROBINSON:

✓ 21 Q Can you state your full name, spelling your last name,  
22 for the record? A Richard Thomas Mason, M.D., M-a-s-o-n.

23 Q And are you a coroner for the County of Santa Clara?

24 A I am the assistant medical examiner coroner for the  
25 County of Santa Clara.

26 MR. ROBINSON: I believe we have a stipulation

1 between Mr. Pestarino and myself that this doctor is  
2 eminently qualified to testify as a doctor and give his  
3 opinion regarding certain medical aspects of this case.

4 MR. PESTARINO: So stipulated.

5 THE COURT: Thank you, gentlemen.

6 Q (By Mr. Robinson) Dr. Mason, did you perform --

7 MR. PESTARINO: I will further stipulate you may  
8 lead him.

9 MR. ROBINSON: Thank you.

10 Q (By Mr. Robinson) Dr. Mason, did you perform an autopsy  
11 on November 7th, 1975, at 10:15 A.M. in the morning?

12 A Yes.

13 Q And was this autopsy on His Holiness Mar Eshai Shimun?

14 A Yes.

15 Q Where was this autopsy performed?

16 A Santa Clara Valley Morgue.

17 Q Did you determine the cause of death?

18 A Yes.

19 Q Could you tell us what the cause of death was, please?

20 A Gunshot wounds of the chest and abdomen.

21 Q Now, did you determine any external or internal evidence  
22 of injury to the decedent? A There were three gunshot  
23 wounds of entrance present on the front surface of the body.  
24 There was a single gunshot wound of exit present on the right  
25 posterior shoulder --

26 Q And did you -- excuse me, go ahead.

WHOLE  
PAGE

1 A -- there was a bruise at the left corner of the eye and  
2 small laceration over the bridge of the nose where he had  
3 struck his head in falling.

4 Q When he had fallen? A Yes.

5 Q Now, Dr. Mason, did you perform -- did you prepare a  
6 little diagram for us regarding this? A Yes.

7 Q Do you have that with you? A Yes.

8 Q Can I see that, please?

9 (Document handed to Mr. Robinson.)

10 MR. ROBINSON: Your Honor, could we have this  
11 diagram marked as People's 1 for identification?

12 THE COURT: Yes.

13 MR. PESTARINO: Okay.

14 (Whereupon, the above-mentioned item, being a  
15 diagram, was marked as People's Exhibit No. 1 for identifica-  
16 tion.)

17 MR. ROBINSON: Do we have some way that --

18 THE COURT: Yes, if you will open the board, counsel.

19 (Diagram placed on board.)

20 Q (By Mr. Robinson) Doctor, is that a diagram of Mar  
21 Shimun, the injuries? A Yes, it is.

22 Q Okay. And did you prepare that? A Yes.

23 Q Perhaps, could you step to the board and explain to us  
24 what you have prepared, People's Exhibit 1?

25 A This is basically an enlargement of the body diagram  
26 that is used in preparation of the autopsy notes. Various

1 symbols present on it represent in red three gunshot wounds  
2 of entrance. In black, this is a surgical wound that was  
3 made in the emergency room at Santa Teresa Hospital by the  
4 doctors in the resuscitator process. There were two other  
5 wounds in the front of the chest which were again surgical  
6 wounds in which plastic tubes had been inserted into the  
7 chest cavities to drain blood. This particular wound on  
8 the back of the right shoulder was a gunshot wound exit.

9 Q So basically what you saw was three gunshot wounds of  
10 entrance and one gunshot wound of exit? A That is  
11 correct.

12 Q Did you recover two bullets from the body of Mar Shimun?

13 A Yes, I did.

14 Q Could you tell us about those gunshot wounds of entrance,  
15 if you would, please, where they went in, the angle, things  
16 like that? A There was a gunshot wound of entrance

17 over the left upper front chest at a point 12 1/2 inches  
18 beneath the top of the head and 2 1/2 inches to the right of  
19 midline, represented by this red spot here. There was a  
20 second gunshot wound of entrance which was present at 16 1/2  
21 inches beneath the top of the head and 1 1/2 inches to the  
22 right of midline. The third wound of entrance was just below  
23 the rib margin at 19 inches beneath the top of the head and  
24 1 1/2 inches to the left of midline. The upper wound  
25 penetrated the upper lobe of the right lung and exited through  
26 the right back. The second wound penetrated the right lung



1 and the bullet was impacted in the posterior wall of the  
2 chest on the right. The third wound penetrated the liver  
3 and perforated the stomach and the bullet was impacted in  
4 the spine in the cartilaginous disk between the second and  
5 third vertebra, the second and third lumbar vertebra.

6 Q Let's talk about the upper wound for a minute, if we  
7 might. Do we have an angle on that wound or is that rather  
8 a straight wound? A It is pretty much straight across.  
9 It goes in at a point 12 1/2 inches beneath the top of the  
10 head and comes out at a point 13 inches beneath the top of  
11 the head.

12 Q That is the angle of the bullet? A Yes.

13 Q And what about the second wound, could you tell us the  
14 angle of the bullet on that? A It is approximately  
15 30 degrees downward with regard to a plane parallel to the  
16 floor. Now, if the body was inclined at all at the time  
17 the wound was sustained this might not have very much  
18 significance.

19 Q And when you mean inclined, you mean bent over?

20 A Bent over.

21 Q As if it had been hit by a previous wound?

22 A Yes.

23 Q And the third wound, could you tell us the angle on that?

24 A It is approximately 25 degrees downward.

25 Q Okay. Did you notice any other marks, wounds, or  
26 evidence of injury on the body surfaces of the decedent?

1 A Other than the wounds on the face which were consistent  
2 with the decedent falling, striking the left side of his  
3 head and striking the left side of his nose, there were no  
4 other wounds. There were no wounds on the hands.

5 Q Okay. Now, Doctor, did you see any evidence of any  
6 powder burns on the decedent? A No, there was no  
7 evidence of powder residue on the skin around the wound.

8 Q Okay. A There was no powder residue deep  
9 within the wound.

10 Q Were you shown the shirt that the decedent was wearing  
11 when he was killed? A Yes, Sergeant Parrott brought  
12 the yellow gold-colored shirt to the autopsy room on the day  
13 of the autopsy and I examined it.

14 Q And did you examine that shirt? A Yes.

15 Q Did you notice any evidence of powder patterns of powder  
16 burns on the shirt? A I didn't see any powder residue  
17 around the bullet holes in the shirt.

18 Q Okay. And you could see where the bullet holes were  
19 in the shirt? A Yes, I could.

20 Q And did they correspond to the bullet holes you had seen  
21 on the body? A Yes.

22 Q Now, by not finding any evidence of powder burns or  
23 patterns on the victim's body or on the shirt, does that  
24 indicate something to you? A It would indicate that  
25 the range of fire, the distance between the muzzle of the  
26 weapon and the surface of the body would be in excess of two

1 feet.

2 Q Okay. And why do you say that?

3 A If the muzzle of the weapon were closer to the surface  
4 of the shirt than that it would leave gun powder residue on  
5 the surface of the shirt.

6 Q Doctor, I know that you also besides being a doctor are  
7 an expert marksman and familiar with firearms. Are you  
8 familiar with a .22 caliber? A Yes, I own several.

9 Q And are you familiar with the sort of powder markings  
10 that a .22 caliber would leave? A Yes, I have some  
11 test patterns here that I have shot recently with a .22  
12 caliber automatic weapon.

13 Q And you did not find any of those markings or test  
14 patterns on the decedent's clothing or on the decedent  
15 himself? A I didn't see any gross gun powder residue  
16 on the shirt. It is possible if you tested it chemically  
17 or looked at it with a high power microscope you might find  
18 some stray particles, but there was no residue to indicate  
19 it was a close-range wound.

20 Q Now, you say that this indicates to you that the  
21 distance between the weapon and the decedent when he was  
22 killed was in excess of two feet? A Yes.

23 Q Why do you say that? Is there any special reason?

24 A If you were closer you would see a definite pattern on  
25 the surface of the cloth.

26 Q Okay. And what causes that definite pattern by being

1 closer? A The gun powder residue that emerges from  
2 the muzzle of the weapon following a bullet.

3 Q So the gun powder comes out and leaves a specific  
4 pattern you could see? A Yes.

5 Q Are you able to tell us anything else except that the  
6 weapon was in excess of two feet from the decedent?

7 A The bullets have peculiar -- the bullets were .22 long  
8 rifle. They had a peculiar gold-colored metal plating which  
9 functions as a lubricant which indicates to me that it was  
10 undoubtedly Remington ammunition, sort of a trademark of  
11 Remington.

12 Q Did you recover the bullets from the decedent?

13 A Yes.

14 MR. ROBINSON: Might we have these two bullets  
15 marked People's 2 and 3 for identification, Your Honor?

16 THE COURT: Yes.

17 (Whereupon, the above-mentioned items, being two  
18 bullets, were marked as People's Exhibit Nos. 2 and 3 for  
19 identification.)

20 MR. ROBINSON: May I approach the witness?

21 THE COURT: Yes.

22 Q (By Mr. Robinson) Doctor, showing you People's Exhibit  
23 2 marked for identification, are you familiar with that?

24 MR. PESTARINO: I will save some time. I will  
25 stipulate that he is familiar with them and he removed the  
26 bullets, if that will help.

1 MR. ROBINSON: Okay. I believe we have a  
2 stipulation, Your Honor, that People's 2 and 3 were the  
3 bullets that were removed from the decedent, Mar Shimun,  
4 and these bullets were handed over to an agency from the  
5 San Jose Police Department.

6 MR. PESTARINO: If the doctor will so testify.

7 THE WITNESS: Yes.

8 MR. PESTARINO: All right.

9 THE COURT: Do you want those admitted?

10 MR. ROBINSON: The People will move to admit them  
11 later.

12 Thank you, Doctor. I have no further questions.

13 CROSS-EXAMINATION

14 BY MR. PESTARINO:

15 Q Dr. Mason, I stipulated to your qualifications as a  
16 medical man but I didn't as a firearms expert.

17 Will you tell me just briefly what experience you  
18 have had with .22 caliber pistols?

19 A I own several. I have about 20 years' experience as  
20 a hobbyist with firearms. I was a pathologist for the  
21 United States Army for two years, including a year in Vietnam.  
22 I have done several hundreds of gunshot wound autopsies.  
23 I have done experiments with firearms.

24 Q All right. Fine. You are qualified as far as I am  
25 concerned. People's 2 and 3 for identification, the two  
26 bullets that you removed, did you see any corresponding

1 cartridge cases to these bullets? A They would have  
2 been ejected at the scene. They were not with the body.

3 Q No one showed them to you? A No, I did see the  
4 magazine, the weapon and the magazine of the weapon.

5 Q Now, you indicated that these were long .22 caliber  
6 bullets? A Long rifle.

7 Q Long rifles. Are they really? A Yes, I think  
8 they are.

9 Q Take another look. A Here is two cantilevers  
10 on them, from the size of them I would say they are undoubt-  
11 edly long rifle bullets.

12 Q Long rifle bullets. And long rifle bullets will fit  
13 easily in the weapon? A The gun is chambered for  
14 the long rifle cartridge.

15 Q Have you also looked at this gun -- excuse me for taking  
16 the exhibit -- have you also looked at the gun?

17 MR. ROBINSON: I would suggest if counsel is going  
18 to show an exhibit to the witness he have it marked first.

19 MR. PESTARINO: I am not going to use it. You can  
20 use it.

21 MR. ROBINSON: For the record.

22 MR. PESTARINO: There is only one gun, and the  
23 record --

24 THE COURT: Well, the gun has not been marked for  
25 identification. If you want to mark it --

26 MR. PESTARINO: I don't want to mark it.

1 THE COURT: But Mr. Robinson wants to mark it  
2 People's 4. For the record we will do so.

3 MR. ROBINSON: I believe we have to.

4 MR. PESTARINO: I don't think that we have to.

5 THE COURT: Well, we will do it anyway.

6 MR. PESTARINO: Fine.

7 THE COURT: The gun will be marked People's 4 for  
8 identification.

9 (Whereupon, the above-mentioned item, being a gun,  
10 was marked as People's Exhibit No. 4 for identification.)

11 Q (By Mr. Pestarino) Doctor, had you examined this

12 weapon? A Sergeant Parrott showed it to me on the

13 night of the 6th. I didn't actually handle it or work the

14 action. The magazine was out of it at the time I saw the  
15 weapon, and the magazine --

16 Q And by examining it what do you mean? Did you really  
17 look at it? A I didn't pick it up and work the action  
18 or touch it at all.

19 Q Now, my impression is that there were some copper shell  
20 casings or cartridge cases connected with these bullets?

21 A There would be.

22 Q That the police have. Is there any difference in the  
23 noise that bullets make if they are copper or if they are a  
24 certain texture, huh? A No, the noise would be  
25 dependent on the cartridge, on the size and caliber of the  
26 cartridge and whether or not the weapon had a silencer on it.

1 Q Well, for instance, in a .22, if you use certain type of  
2 cartridges, would they make less noise than using another  
3 type of cartridges would make more noise? A No.

4 Q On a .22? A .22, I would say not.

5 Q Not, huh? A The length of a barrel is an  
6 important factor because the muzzle blast is increased with  
7 a short weapon, as with a hand weapon like that.

8 Q You have never fired this gun, have you?

9 A Not this particular one. I own a PPKS, not in that  
10 caliber, in another caliber.

11 Q And you indicated that these were Remington bullets that  
12 came out of there? A They'd be most consistent with  
13 Remington. I have never seen that particular plating which  
14 is a lubricant on the bullet in any other brand. It might  
15 occur in another brand, but I have never seen it. It is  
16 uncommon.

17 Q And in an automatic -- that would be an automatic,  
18 wouldn't it? A That is an automatic pistol.

19 Q What do you mean by an automatic?

20 A It is automatic, on loading it will, the first round has  
21 to be removed from the top of the clip by working the slide,  
22 inserting it in the chamber. Every time the weapon is fired  
23 after that the explosive force of the gas that is a blow-back  
24 action pushes the slide back, ejects the empty cartridge case  
25 and strips another cartridge off the top of the magazine.

26 Q That is done very rapidly? A Very rapidly, yes.



1 Q And these particular weapons, the pistols particularly  
2 and particularly this People's Exhibit 4 for identification,  
3 it is loaded by a magazine that is placed in the butt of the  
4 weapon, isn't it? A That is correct.

2 5 Q Then the slide is pulled back? A Yes.

6 Q From then on it is automatic action? A Yes, it is  
7 automatic on loading. It is not -- automatic in the  
8 weapon would mean if you held the trigger down it would fire  
9 the whole magazine. This is semi-automatic.

10 Q It is not like the machine gun? You pull the trigger  
11 of a machine gun and it will give forth a burst? A Yes.

12 Q This you have to pull the trigger, it is more like a  
13 Browning automatic rifle? A You have to pull the  
14 trigger for each shot.

15 Q Would you characterize the explosion or the report of  
16 these bullets as being loud? A I would. When I  
17 fire the weapons in a closed room I use ear plugs. It can  
18 be painful.

19 Q And even a small weapon like that the report would be  
20 loud enough so that you could hear it? A Yes.

21 Q You could hear it, for example, maybe in a neighborhood  
22 house, or you could hear it from some distance?

23 A It would depend on the insulation and substance of the  
24 room in which it was fired.

25 Q And at night, too, probably the sound would carry further?

26 A If there was less background noise.

1 Q Okay.

2 MR. PESTARINO: That is all I have. Thank you.

3 MR. ROBINSON: I have nothing further.

4 THE COURT: Thank you, Doctor. You are excused.

5 (Witness excused.)

6 MR. ROBINSON: The People call Sergeant Parrott.

7 AUBREY RAYMOND PARROTT,

8 called as a witness on behalf of the People, being first duly  
9 sworn, was examined and testified as follows:

10 DIRECT EXAMINATION

11 BY MR. ROBINSON:

12 Q Can you state your full name, spelling your last name  
13 for the record? A Aubrey Raymond Parrott,  
14 P-a-r-r-o-t-t.

15 Q Your occupation? A Detective Sergeant.

16 THE REPORTER: How do you spell your first name?

17 THE WITNESS: A-u-b-r-e-y.

18 Q (By Mr. Robinson) Sergeant Parrott, you are involved  
19 with the gathering of evidence in homicide cases?

20 A Yes, I am.

21 Q Directing your attention to November 6th, 1975, at  
22 approximately 7:10 P.M. in the evening were you contacted by  
23 county communications? A I was contacted by them,  
24 yes, sir.

25 Q And were you directed that there was a possible homicide?

26 A That is correct.

1 Q And were you given the address and location of this  
2 homicide? A That is correct.

3 Q And upon receiving this notice what did you do?

4 A I responded to the garage, picked up my vehicle which  
5 is specially equipped for gathering evidence and responded  
6 to the area of Woosley and Los Pinos.

7 Q And are you familiar with that area?

8 A Somewhat. I wasn't prior to this, but I am now.

9 Q Now that you have been out there and gathered evidence  
10 you are familiar with it? A Yes, sir.

11 MR. ROBINSON: May we have this aerial photograph  
12 marked as People's next in order for identification?

13 THE COURT: Yes. It will be People's 5.

14 (Whereupon, the above-mentioned item, being an  
15 aerial photograph, was marked as People's Exhibit No. 5 for  
16 identification.)

17 Q (By Mr. Robinson) Sergeant Parrott, I am going to ask  
18 you, perhaps, if you could, to take this aerial photograph,  
19 we can put it right over here and set it up.

20 Now, Sergeant Parrott, I am going to ask you to go  
21 to People's Exhibit 5 and, if you can, there are some crayons  
22 up there, or whatever you can use, and can you show us in  
23 People's Exhibit 5 where Woosley Street is?

24 A This would be Woosley right here running in a north-  
25 south direction.

26 Q And perhaps, can you take -- A You want me to

1 write on the street?

2 Q Yeah. Can you write Woosley right on there?

3 A (Writing.)

4 Q Okay. And Los Pinos, is that indicated on this aerial  
5 photograph? A Yes, sir, it is. It is this street  
6 running in an east-west direction.

7 Q Perhaps, could you write Los Pinos up here and draw an  
8 arrow? A Why don't I make it here? I believe there  
9 will be some activity in this area (indicating).

10 Q Okay. And do you know where Cottle is?

11 A Yes, sir.

12 Q And could you write that in for us?

13 A This is Cottle right here (indicating).

14 Q Okay. A Shall we put a north designation on  
15 here?

16 Q Yeah. Can you do that for us?

17 Now, directing your attention to People's 5 again,  
18 this conglomerate of buildings in here, do you know what  
19 that is (indicating)? A It is a shopping center.

20 Q Perhaps on the roof here could you write shopping center?

21 A (Writing.)

22 Q And is there a pizza parlor contained in that shopping  
23 center? A I believe there is.

24 Q Would that be over in this area here (indicating)?

25 A I am not familiar where that location is.

26 Q Okay.

1 MR. ROBINSON: Now, I'd like to have this sketch  
2 marked as People's next in order, Your Honor. I believe it  
3 is 6.

4 THE COURT: Yes, it will be People's 6.

5 (Whereupon, the above-mentioned item, being a sketch,  
6 was marked as People's Exhibit No. 6 for identification.)

7 Q (By Mr. Robinson) Sergeant Parrott, directing your  
8 attention to People's Exhibit 6, are you familiar with that?

9 A Yes, sir.

10 Q How is it that you are familiar with that?

11 A I drew it.

12 Q And what does that depict? A That depicts the  
13 downstairs southeast portion and the entranceway from the  
14 sidewalk of 6217 Woosley.

15 Q Is that the home of the patriarch, Mar Shimun?

16 A Yes, sir, it is.

17 Q And, perhaps, could you go to People's 6 and explain  
18 that for the ladies and gentlemen of the jury?

19 A Yes. Here is, north would be in this direction, the  
20 front, past the sidewalk here, would correspond to Woosley  
21 Drive. You can enter the residence either through a small  
22 sidewalk here that goes through the grass area with junipers  
23 on this side or via the side of the driveway here next to a  
24 vehicle which was parked in the driveway, then entering the  
25 main sidewalk area, going around the garage area, around the  
26 planter strip, coming up here into an enclosed porch area,

1 covered overhead. There are a set of double front doors  
2 on the residence. You enter the residence into an entryway  
3 area, there is a hall that goes off down to the right to other  
4 portions of the residence. Immediately in front of you are  
5 the stairs which go up to the upstairs of the residence.  
6 Coming around on your left as you enter into, would be the  
7 living room area, and then as you continue on around here  
8 past the end of the stairs you enter the dining room area,  
9 then kitchen area.

10 Q Thank you. Now, what time did you respond to the  
11 scene of the homicide that night, on November 6th?

12 A The actual scene of the homicide itself I arrived there  
13 at approximately 2000 hours.

14 Q Eight o'clock? A Eight o'clock in the evening.

15 Q Could you describe the scene for us physically as you  
16 saw it that night? A Okay. The scene is, as I have  
17 described in the residence, it is a two-story frame and  
18 stucco dwelling with the attached garage. Upon my arrival  
19 the front door on the south side of the two doors was in a  
20 full open position. The overhead porch and the garage wall  
21 light which shines into the walkway area there were in an  
22 on position. The entryway interior light was off. There  
23 was no living lights on. There was an upstairs stairwell  
24 light on which gave a little bit of light down into the entry-  
25 way area. The dining room chandelier light was on, and the  
26 front door, as I indicated, was open. However, it did not

1 show any signs of forced entry.

2 Q When you look for signs of forced entry, what do you look  
3 for? A Look for breakage, pry marks, damage to the  
4 jamb area, this type of thing.

5 Q And you didn't see any in that particular door?

6 A No, sir. It appeared to be completely intact.

7 Q Now, let's talk about the front of the residence near  
8 the curb line. Did you notice any lights outside?

9 A Yes, sir, there is, in addition, the wall light on the  
10 side of the garage which I previously mentioned. In front  
11 of the residence located at the curb line, and roughly at the  
12 north property line of the victim's residence, is an overhead  
13 mercury vapor streetlight, and this was operating at the time.

14 Q Sergeant Parrott, when you arrived at the scene of the  
15 homicide, was your attention directed to any specific area by  
16 some of the officers that were there? A My attention  
17 was directed to a specific area prior to my arriving at 6217  
18 Woosley.

19 Q Where was that area your attention was directed to?

20 A About 15 minutes before that I was directed to an address  
21 on Los Pinos.

22 Q Could you go to the board and mark in that address on  
23 Los Pinos where your attention was directed?

24 A How would you want me to mark this now?

25 Q Just an X there.

26 MR. PESTARINO: Might we put a P, if I may suggest?

1 THE COURT: Beg pardon?

2 MR. PESTARINO: Maybe a P, initial P there?

3 THE WITNESS: P-1.

4 THE COURT: P-1, or something of that --

5 Q (By Mr. Robinson) And can you describe that area for  
6 us, Sergeant? A P-1 is the area located between the  
7 residences at 376 and 378 Los Pinos. It is an area normally  
8 in front of the storage area and planter strip adjacent to  
9 the sidewalk. This area at this particular residence is  
10 covered with junipers. Then down the property line itself  
11 is a post and chain link, single chain-type of fence.

12 Q Would that be a corner house, on the corner of Woosley  
13 and Los Pinos? A Actually 376 is one house up. The  
14 area we are talking about is the area between the corner house  
15 and the second house.

16 Q And who directed your attention to that area?

17 A I was flagged down by the officers as I approached the  
18 scene.

19 Q Okay. And did you see something in the juniper bushes  
20 in that area? A Yes, sir, I did.

... 21 Q What did you see? A Officer Lintern and other  
22 officers there directed my attention to the junipers and  
23 spread the junipers there and looking down into the junipers  
24 I saw what appeared to be a weapon.

25 Q Showing you --

26 THE CLERK: People's 4.



1 Q (By Mr. Robinson) -- People's 4 marked for identifica-  
2 tion, have you ever seen that before?

3 A Yes, sir.

4 Q Okay. And could you tell us where you saw that?

5 A Yeah, this is the weapon that I saw in the bushes.

6 Q And that is the weapon that you saw in the bushes right  
7 there on Los Pinos? A Right at the location marked  
8 P-1.

9 Q What did you do upon seeing that weapon?

10 A I proceeded to photograph it in place.

11 Q Okay. And then did you pick up that weapon?

12 A Yes, sir, I did.

13 Q How did you pick it up? A I picked it up by the  
14 narrow portion of the gun butt.

15 Q And are you trained, Sergeant Parrott, specifically in  
16 gathering evidence at homicide scenes? A Yes, sir.

17 Q And have you been doing this quite a number of years?

18 A About three and a half years.

19 Q And was there anything inside that weapon?

20 A Yes, sir, there was.

21 Q Could you tell us what was inside the weapon?

22 A Well, the clip was in the weapon and the clip was  
23 partially loaded.

24 Q Partially loaded with bullets? A That is correct.

25 MR. ROBINSON: Your Honor, I believe prior to  
26 entering the court today Sergeant Parrott and your Bailiff

1 checked this weapon out to make sure it wasn't loaded now.

2 Q (By Mr. Robinson) Showing you these items contained in  
3 the plastic containers inside the bag marked as People's 4,  
4 can you tell us what those are? A Yes, sir.

5 Q What are they? A These are .22 caliber cartridges.

6 Q And where did you find those .22 caliber cartridges that  
7 night? A The single cartridge was in the chamber of  
8 the weapon.

9 Q In the chamber? A That is correct. The six  
10 cartridges here were in the clip which was in the weapon.

11 MR. PESTARINO: May I see those, please?

12 THE WITNESS: Sure, certainly.

13 MR. PESTARINO: I'm sorry, I would like to see them.

14 MR. ROBINSON: Might the record indicate that  
15 counsel has had four months to come over and view this  
16 evidence.

17 THE COURT: Well, he is entitled to look at them  
18 again.

19 Q (By Mr. Robinson) Sergeant Parrott, is the clip in that  
20 weapon? A Yes, sir, it is.

21 Q And could you pull it out for us, please, and show us  
22 how? A (Demonstrating.)

23 Q Okay. Where do the bullets go?

24 A They go in here (indicating).

25 Q So if --

26 THE COURT: In here for the record indicating through

1 the top.

2 Q (By Mr. Robinson) Through the top? A Yes, slide  
3 in through the ramp putting the rear of the bullet here,  
4 pushing it down and sliding it in through the ramp.

5 Q This thing keeps depressing as you put more and more  
6 bullets in? A That is correct, spring-loaded so it  
7 forces the first bullet to the top.

8 MR. PESTARINO: Thank you.

9 Q (By Mr. Robinson) Showing you this brown mechanism on  
10 the weapon, was that on the weapon that night?

11 A No, sir, that trigger guard and lock, that was placed  
12 on by the Bailiff and myself prior to today's court session.

13 Q You just put it on now? A That is correct.

14 THE COURT: Perhaps we ought to explain for the  
15 jury that that is to prevent the weapon from being used by  
16 accident or on purpose during the court trial.

17 MR. ROBINSON: That is correct. Thank you.  
18 Counsel, would you be willing to stipulate these are  
19 included in the exhibits that you wanted marked as People's 4?

20 MR. PESTARINO: I really didn't get a good look at  
21 them, but I will stipulate.

22 THE COURT: By these you mean the two vials?  
23 Two plastic vials with the contents? So ordered.

24 MR. ROBINSON: Might we have this additional clip  
25 marked as People's next in order for identification?

26 THE COURT: Yes. That will be People's 7, a gun

1 clip.

2 (Whereupon, the above-mentioned item, being a gun  
3 clip, was marked as People's Exhibit No. 7 for identification.)

4 Q (By Mr. Robinson) Sergeant Parrott, showing you  
5 People's Exhibit 7 marked for identification, are you  
6 familiar with that, sir? A Yes, sir, I am.

7 Q Can you tell us how you are familiar with that?

8 A This clip and the bullets contained in it were found  
9 under the previous People's 4, I believe it was, the pistol  
10 that we observed, and was found in the same junipers only  
11 under it.

12 Q What you basically found in that area was a gun with a  
13 bullet in the chamber and other bullets in the pistol, in  
14 the weapon? A That is correct.

15 Q And, also, a separate spare clip. Does that separate  
16 spare clip, does that contain bullets? A Yes, sir, it  
17 does.

18 Q Would that be a clip to the weapon you found?

19 A Yes, sir.

20 Q So you found a separate spare clip loaded with ammunition,  
21 too? A That is correct.

22 Q And these were both in the area you previously described  
23 on Los Pinos? A That is correct.

24 Q In the junipers? A Yes, sir.

25 Q Sergeant Parrott, did you take any fingerprints from  
26 People's Exhibit No. 4, the weapon? A Yes, sir, I did.

1 Q Okay. And where did you take those fingerprints?

2 A At a later time they were turned over to the latent  
3 print section.

4 MR. ROBINSON: Your Honor, might we have these  
5 sets of latent fingerprints marked as People's next in order  
6 for identification?

7 THE COURT: Do you want them all as one exhibit?

8 MR. ROBINSON: That is correct.

9 THE COURT: How many of them are there?

10 MR. ROBINSON: I believe there are four.

11 THE COURT: It will be 8-1, 8-2, 8-3, and 8-4.

12 (Whereupon, the above-mentioned items, being latent  
13 fingerprints, were marked as People's Exhibit Nos. 8-1, 8-2,  
14 8-3 and 8-4 for identification.)

15 Q (By Mr. Robinson) Showing you People's 8-1 through 4,  
16 are you familiar with that?

17 A Yes, sir, I am.

18 Q Okay. How are you familiar with that?

19 A These were the prints that I lifted from the weapon.

20 Q Okay. And can you tell us how you lift fingerprints?

21 A There are a number of ways. Particularly referring to  
22 this instance here, a very fine powder consisting of graphite,  
23 lamp black, and other ingredients is put on a very soft fiber  
24 glass brush, this is brushed over the weapon, and even though  
25 it is black in color and against a black or dark-colored  
26 weapon, you can still, held to the proper light, see the

1 development of the print. When you see a print that has  
2 some detail, then you use a special type of what is basically  
3 Scotch tape that you then put down over that print, being  
4 careful to remove bubbles and get it down securely. This is  
5 lifted. Then, because you are using a dark powder, it is  
6 put against a contrasting background, in this particular case  
7 put against a white acetate-type of card, and you then have a  
8 fingerprint lift.

9 Q What you do, you put some powder on there, it is a dark  
10 powder, then from looking at that you can see if in fact  
11 there is an identifiable print on there? A Yes, sir.

12 Q Then you take a piece of like Scotch tape, put it on  
13 that and that absorbs the black powder on the Scotch tape?

14 A The powder is simply transferred to the tape because  
15 the tape is sticky.

16 Q Then you take that print and you put it onto a white  
17 card and remove the Scotch tape and the print transfers onto  
18 the white card? A That is correct.

19 Q Is that what was done in this case?

20 A That is correct.

21 Q And were these prints given to anybody?

22 A Yes, sir, they were.

23 Q And who were they given to? A They were given to  
24 Mrs. May in latent fingerprinting section on November 10th.

25 Q And Mrs. May is employed by the San Jose Police Depart-  
26 ment? A That is correct.

1 MR. ROBINSON: Might we have these plastic  
2 containers containing cartridges, Your Honor, marked as  
3 People's next in order for identification?

4 THE COURT: Yes. It will be People's 9. Do you  
5 want them marked separately?

6 MR. ROBINSON: 9 is fine, Your Honor.

7 MR. PESTARINO: What are you calling them?

8 THE CLERK: Is it cases?

9 (Whereupon, the above-mentioned items, being plastic  
10 containers containing cartridges, were marked as People's  
11 Exhibit No. 9 for identification.)

12 Q (By Mr. Robinson) Showing you People's Exhibit 9,  
13 Sergeant Parrott, could you look at that and tell us if you  
14 are familiar with that? A Yes, sir, I am.

3 15 Q Okay. And can you tell us how you are familiar with  
16 People's 9? A People's 9 consists of three plastic  
17 vials. They are numbered by my numbering of 3, 4 and 6.  
18 This corresponds to my evidence log to items which were found  
19 at the scene. No. 3 is an expended .22 caliber cartridge  
20 casing; No. 4 is expended .22 caliber cartridge casing, and  
21 No. 6 is an expended .22 caliber bullet.

22 Q Okay. That's right, 6 is a bullet. Now, could you  
23 go over to this diagram for us and indicate where you found  
24 items 1, 2 and 3 in People's 9? Perhaps with a pen you  
25 could write that in, Sergeant. A I believe it is  
26 already in corresponding to the numbers that I just gave you

1 that are my numbers. If you want to correspond it with  
2 People's number --

3 MR. PESTARINO: Can I make a suggestion that we put  
4 P-2, or 3, whatever?

5 MR. ROBINSON: Perhaps we will write in casing,  
6 casing, bullet. Casing, casing, bullet.

7 THE WITNESS: (Writing.)

8 Q (By Mr. Robinson) Okay. So basically what you have  
9 put in on People's 6 is a cartridge casing on the walkway,  
10 the sidewalk? A That is correct.

11 Q And that is where you found the cartridge casing that  
12 night? A That is correct.

13 Q A cartridge casing would be on the entrance way to the  
14 house? A That is correct. It is on the step-up  
15 porch.

16 Q And a bullet up here (indicating), would that bullet be  
17 laying on the stairs or in a wall or --

18 A No, it was lodged in the wallboard itself a number of  
19 feet up from the stairs.

20 Q Okay.

21 MR. PESTARINO: Excuse me, counsel, I hate to  
22 interrupt but it might save time. Did you testify that you  
23 found just two cartridge casings?

24 THE WITNESS: That is correct.

25 MR. PESTARINO: Okay.

26 Q (By Mr. Robinson) Sergeant Parrott, did you take



1 photographs of the scene that night? A Yes, sir, I did.

2 THE COURT: Do you want to take a recess?

3 MR. PESTARINO: You might as well.

4 THE COURT: Ladies and gentlemen, we will take our  
5 morning recess, about 15 minutes. You will keep in mind the  
6 admonition I have given you previously. And we will resume  
7 at a little before 11:15. You can step down, also, Sergeant,  
8 if you would like to.

9 (Short recess taken.)

10 THE COURT: Let the record show that the defendant  
11 is present, the jury is present.

12 MR. ROBINSON: At this time I would ask the Court  
13 to have the photographs marked as People's 10-A through EE  
14 for identification, please.

15 THE COURT: So ordered.

16 (Whereupon, the above-mentioned items, being  
17 photographs, were marked as People's Exhibit Nos. 10-A  
18 through 10-EE for identification.)

19 Q (By Mr. Robinson) I will ask some other questions while  
20 the Clerk is marking those.

21 THE COURT: Surely.

22 Q (By Mr. Robinson) Sergeant Parrott, when you found the  
23 gun, People's 4 for identification in, in the juniper bushes,  
24 could you tell us if the gun was in a cocked or uncocked  
25 position? A The weapon was cocked.

26 Q Was the safety on or off? A The safety was off.

1 Q And showing you People's Exhibit 4, the weapon, and the  
2 clip inside of the weapon that you found that night, is that  
3 the clip that goes with that weapon? A As near as I  
4 can tell it does. The plastic portions are consistent.

5 Q The plastic portion on the clip is the same as the  
6 plastic portion on the handle? A That is correct.

7 Q Appear to be the same sort of a make which would go  
8 with that weapon? A That is correct.

9 Q Now, showing you People's Exhibit 7, the extra clip  
10 that you found, does that clip appear to go with that weapon?

11 A By appearance it is consistent with the clip that will  
12 slide inside the weapon. However, the clip is obviously  
13 a different type for a different end piece on it, than is  
14 consistent with the one in the weapon.

15 Q That clip though, the extra clip, would in fact fit in  
16 that weapon and could be used to discharge bullets from that  
17 weapon? A As far as I know it does fit in the weapon.  
18 I checked that.

19 Q Okay. Sergeant Parrott, did you respond along with  
20 other sergeants from the police department to the Oasis Motel?

21 A Yes, sir, I did.

22 Q And did you respond there on November 7th, 1975, at  
23 approximately 6:15 A.M. in the morning? A Yes, sir, I  
24 did.

25 Q And at that time did you have in your possession a  
26 search warrant? A Yes, sir, I did.

1 Q Was that search warrant signed by a Superior Court judge  
2 of this County? A Yes, sir.

3 Q And did you search a room in the Oasis Motel?

4 A Yes, sir, I did.

5 Q What room did you search? A Room 29.

6 Q No. 29? A Yes, sir.

7 Q Okay. A Or, correction, 129.

8 Q 129. And can you describe that room for us, please?

9 A It is a motel room with a bed and in the immediate area  
10 after entering through the door has a small desk over against  
11 the window with a lamp on it and I believe a chair there for  
12 sitting and writing, or so forth. As you would then go from  
13 that main room, you go through a sort of a dressing area,  
14 there is a mirror and another vanity type of table, and then  
15 the bathroom at the end of that hallway area. That is the  
16 total of the room.

17 Q Did you see any clothes in the closet in that room?

18 A Clothes in the closet? No, sir, there was none.

19 Q Okay. Did you photograph that room?

20 A Yes, sir, I did.

21 Q And did you remove articles from that room?

22 A Yes, sir, I did.

23 Q Did you remove all of the articles that were in that  
24 room? A Not all of them, no, sir.

25 Q What articles did you leave in the room?

26 A The AWOL bag that was on the first counter next to the

1 front window, the bag and some of the toiletry articles, and  
2 I believe a dress shirt, that were in that were left at the  
3 scene. Other articles were removed from the bag itself.

4 Q Do you know if one of the other officers from the police  
5 department moved the AWOL bag, Sergeant Newkowsky?

6 A No, sir, at a later time I went back to the motel,  
7 secured that from the motel owner and had Sergeant Newkowsky  
8 give it to the defendant at the County Jail.

9 Q Okay.

10 MR. ROBINSON: May I approach the witness?

11 THE COURT: Surely.

12 Q (By Mr. Robinson) Sergeant Parrott, showing you  
13 People's Exhibit 10-A marked for identification, did you  
14 take that photograph? A Yes, sir, I did.

15 Q Okay. And could you tell us what that photograph  
16 depicts? A This photograph is the item that I

17 previously had, I'm not sure of the People's number, my  
18 number was 6. It was the bullet remains in the small plas-  
19 tic vial. This corresponds with the No. 6 on the drawing  
20 that is labeled bullet.

21 Q Okay. That would be the bullet in the wall?

22 A That is correct, up on the stairwell.

23 Q Did you take all of these photographs in People's 10,  
24 did you take all of these? A I would have to see all  
25 of them. There are some.

26 Q Just glance through them briefly, please.

1 A I took all of the photographs except those of the  
2 defendant.

3 Q Okay.

4 MR. PESTARINO: I have no objection to all of the  
5 photographs. If that will help.

6 MR. ROBINSON: No objection as to what?

7 MR. PESTARINO: Introducing them into evidence.

8 MR. ROBINSON: That is fine. The People would like  
9 the Sergeant to explain these, Your Honor.

10 THE COURT: All right.

11 Q (By Mr. Robinson) Showing you 10-T, that photograph,  
12 can you tell us what that depicts? A This is item 4.  
13 It is the cartridge casing that I previously testified to.  
14 It corresponds with the 4 on the diagram labeled casing.

15 Q That is the diagram, People's Exhibit 6?

16 A That is correct.

17 Q And this casing labeled 4 here? A That is correct.

18 Q And showing you 10-S, can you describe that for us,  
19 please? A That shows a number stanchion 3, on the  
20 other side of the stanchion, you can't see in the photograph  
21 from this angle, is the casing labeled No. 3 on the People's  
22 6, the diagram.

23 Q Okay. And People's 10-R? A This is simply  
24 another angle taken from the doorway showing No. 4, the casing.

25 Q Okay. And that is the doorway of the victim's residence?

26 A That is correct. This picture was taken from the inside

1 looking out.

2 Q Showing you People's 10-Q.

3 A This photograph depicts the entry way to the residence,  
4 the hallway, and the start of the living room carpeted area.  
5 The No. 5 stanchion there is simply placed there to designate  
6 an area that had been pointed out to me as where the victim  
7 had been lying prior to removal by ambulance service.

8 Q 10-P. A 10-P is an overall picture of the bullet,  
9 6, which was lodged in the wall, and you can see its location  
10 in reference to the stairwell that is depicted in the drawing.

11 Q Okay. 10-O? A 10-O is looking from the living  
12 room area back past the No. 5, the alleged body location,  
13 towards the entry way of the residence.

14 Q Okay. 10-N? A 10-N is just a mid-range  
15 photograph of the bullet No. 6 lodged in the stairwell wall.

16 Q Okay. 10-M? A 10-M is the living room area  
17 leading into the dining room area showing the number stanchion  
18 5, a pair of slippers and blanket located on the floor.

19 Q Okay. 10-L? A This shows a portion of the entry  
20 way on the left side and on the right side is the start of  
21 the living room area with a pair of glasses in one of the  
22 little flexible leatherette-type of glass holders located  
23 on the floor.

24 Q Okay. 10-I? A 10-I is an overall of the front  
25 of the residence and depicting the area I previously described,  
26 and it includes a portion of the one vehicle parked in the

1 driveway, the other vehicle here is a patrol car that was  
2 not there, of course, previously.

3 Q Okay. And the vehicle that is the patrol car, that  
4 isn't there, is that the vehicle that is parked on the side-  
5 walk? A Yes, the one closest to the camera is the  
6 patrol car.

7 Q And I notice in 10-I that there is some rope around a  
8 tree and extending across a portion of the residence. Do you  
9 know how that rope got there? A That was put up by  
10 patrol officers. It is a standard surveyor's tape we use  
11 to rope off a scene to prevent entrance to an area.

12 Q To preserve the scene? A That is correct. That  
13 was not there at the time of the shooting.

14 Q Showing you 10-K. A 10-K is the area I described  
15 with a chain and post-type of fence and the juniper area at  
16 376 Los Pinos where the weapon and extra clip were found in  
17 the junipers.

18 Q 10-J? A 10-J is the same photograph. However,  
19 just from a different angle, taken from the sidewalk further  
20 west of the juniper area.

21 Q Where the gun was found? A That is correct.

22 Q 10-H? A 10-H is the vehicle that was parked in  
23 the driveway of the Shimun residence.

24 Q 10-G? A 10-G is an overall of the front of the  
25 residence taken from the southeast looking northwest towards  
26 the residence.

1 Q 10-F? A 10-F is the main entry way and the  
2 porch area that I previously described. Also has number  
3 stanchion 3 which corresponds to the 3 in the diagram and at  
4 the base of that you can see the casing that is described  
5 as No. 3.

6 Q 10-E? A 10-E is again an overall of the front  
7 of the residence depicting the major portion of the sidewalk  
8 area, the juniper planter area, the grass, the entry way,  
9 and also number stanchion 3 again.

10 Q 10-D? A 10-D is the weapon, People's 1, I  
11 believe it is.

12 Q People's 4. A Or People's 4, correct. And the  
13 clip, the extra clip which is People's --

14 Q 7. A -- 7, located in the junipers. The hands  
15 in the photograph are the officer's hands parting the junipers  
16 so that the photograph could be taken.

17 Q Okay. 10-C? A 10-C is the weapon in the  
18 junipers without the officer spreading it apart, as it was  
19 in its natural state.

20 Q Okay. 10-B? A This is a close-up of the area  
21 designated by the number stanchion 5, the area which was  
22 believed to be the location of the victim's body.

23 Q 10-EE? A 10-EE is a close-up of the number  
24 stanchion 3 and the expended casing.

25 Q 10-A? A 10, this is a close-up of the bullet  
26 lodged in the wall, No. 6 on the diagram.



1 Q Okay. 10-Y? A 10-Y is the front of the  
2 Oasis Motel, Room No. 129.

3 Q Okay. 10-X? A 10-X depicts the AWOL bag and  
4 other articles located on the little dresser area adjacent  
5 to the front window in the main room of the Oasis Motel, Room  
6 129.

7 Q Okay. 10-B? A This depicts a partially  
8 consumed bottle of Johnny Walker Whiskey which was located  
9 in the dressing-vanity area of the motel room between the  
10 bathroom and the bedroom area.

11 Q Okay. 10-W? A This is simply an overall view  
12 of the same area where the bottle was contained.

13 Q And 10-BB? A This shows the front windows of  
14 the motel room, Room 129, shows them in a closed position  
15 sealed with police seals.

16 Q Did you see Mr. Ismail when he was arrested on November  
17 the 6th, 1975? A Yes, sir, I did.

18 Q And do you recall what he was wearing?

19 A Yes, sir.

20 Q Okay. Showing you People's 10-Z for identification,  
21 does that accurately depict Mr. Ismail's condition as you  
22 viewed him on November the 6th, 1975? A Yes, sir, this  
23 is the way he was dressed.

24 Q Can you tell us where that picture was taken?

25 A This was taken in the hallway right outside of the  
26 Detective Division at the San Jose Police Department.

1 Q 10-DD, same question. A This was taken in the  
2 same location, it is simply a view of the rear of Mr. Ismail  
3 while he was standing.

4 Q 10-CC? A Same location, same date and time,  
5 this is a picture of him facing the camera.

6 Q 10-BB? A This is another photograph of the  
7 same thing, apparently has some type of a green streak from  
8 the photo malfunction.

9 Q 10-AA? A This is a picture of Mr. Ismail, same  
10 date, location, time, and facing to the left of the camera.

11 Q Okay. Thank you. Now, the area in which the weapon  
12 was found which you indicated by a P No. 1 on People's  
13 Exhibit No. 5, was that area, where the chain-link fence is,  
14 was that area dark or light? A It is quite dark.

15 Q Okay. And in these pictures where you show the gun and  
16 how it was found, it appears quite light. Can you explain  
17 that for us? A The photographs were taken with  
18 artificial illumination. In this particular case it was use  
19 of a strobe flash.

20 Q So you needed an artificial light to illuminate that  
21 chain-link fence? A That is correct. It was dark  
22 enough I had the officers shine a light down there so I was  
23 even able to focus on the subject prior to taking the picture.

24 Q Without shining the light on the chain-link fence is it  
25 visible at night? A I think that would be a little  
26 subjective. You could see it there but you would have to

1 look very closely, and you would not see it from a great  
2 distance. You would probably see the posts as they are  
3 painted.

4 Q Also showing you the pictures of the house that you have  
5 described, were these photographs also taken with artificial  
6 illumination? A That is correct. In fact, all of

7 the photographs that you showed me, I believe they are all  
8 by artificial illumination with the exception of the exterior  
9 of the motel.

10 Q Now, directing your attention once again to the Oasis  
11 Motel at approximately 6:15 in the morning when you were  
12 there, did you go through and see if any items had been put  
13 away, such as clothing, shirts, things like that?

14 A The entire room was searched, yes, sir.

15 Q And what did you find as a result of your search?

16 A The only items that were found were, the items that were  
17 found were the items that were shown in the photograph, the  
18 bottle of alcoholic beverage, a plastic cup which contained  
19 what appeared to be an alcoholic beverage, I believe there  
20 was a pair of sunglasses and the AWOL bag.

21 Q Didn't find anything in the closet that someone was  
22 going to spend some time there? A No, sir.

23 Q Okay. No extra shirts or change of clothes or anything  
24 like that? A I believe in the AWOL bag was one extra  
25 shirt.

26 Q One extra shirt? A I believe so.

1 Q Okay.

2 MR. ROBINSON: Might we have this coat, Your Honor,  
3 marked as People's next in order for identification?

4 THE COURT: It will be 11.

5 (Whereupon, the above-mentioned item, being a coat,  
6 was marked as People's Exhibit No. 11 for identification.)

7 Q (By Mr. Robinson) Sergeant Parrott, showing you  
8 People's Exhibit 11 marked for identification, is that the  
9 coat that Mr. Ismail was wearing the night he was arrested?

10 MR. PESTARINO: I will stipulate that it was,  
11 counsel.

12 THE WITNESS: Yes, sir.

13 MR. ROBINSON: Okay. Might we have these suit pants  
14 to match the coat marked as People's next in order?

15 THE COURT: They will be No. 12.

16 MR. PESTARINO: I will stipulate that they can go  
17 into evidence, too.

18 MR. ROBINSON: Stipulate they were, also, worn by  
19 the defendant?

20 MR. PESTARINO: Yes.

21 THE COURT: So ordered.

22 MR. PESTARINO: And any other items of clothing.

23 (Whereupon, the above-mentioned items, being a coat  
24 previously marked as People's Exhibit No. 11 for identifica-  
25 tion and a pair of pants marked People's Exhibit No. 12 for  
26 identification, were received into evidence.)

1 MR. ROBINSON: Your Honor, may we have this tie  
2 marked as People's next in order?

3 THE COURT: That will be No. 13.

4 Do you stipulate to that also, Mr. Pestarino?

5 MR. PESTARINO: I better check.

6 THE COURT: Okay.

7 MR. PESTARINO: Yeah.

8 THE COURT: All right. Stipulation that the tie  
9 was the defendant's, worn at the night of the arrest.

10 (Whereupon, the above-mentioned item, being a tie,  
11 was marked as People's Exhibit No. 13 for identification and  
12 received into evidence.)

13 MR. ROBINSON: And a black shirt, Your Honor,  
14 People's next in order.

15 MR. PESTARINO: So stipulated.

16 THE COURT: 14. The same stipulation as to the  
17 shirt and other items?

18 MR. PESTARINO: Yes, Your Honor.

19 THE COURT: So ordered.

20 (Whereupon, the above-mentioned item, being a shirt,  
21 was marked as People's Exhibit No. 14 for identification and  
22 received into evidence.)

23 MR. ROBINSON: Your Honor, might we have this black  
24 notebook with some writing in it marked as People's next in  
25 order for identification?

26 THE COURT: Yes. It will be No. 15.

1 (Whereupon, the above-mentioned item, being a note-  
2 book, was marked as People's Exhibit No. 15 for identification.)

3 Q (By Mr. Robinson) Showing you People's Exhibit 15  
4 marked for identification, could you tell us, is that one of  
5 the items that you recovered from the Oasis Motel, six  
6 o'clock in the morning on November the 7th?

7 A Yes, sir, it is.

8 Q Okay. Where was that item located?

9 A This was inside of the AWOL bag.

10 Q Okay.

11 MR. ROBINSON: May we have this brown address book,  
12 Your Honor, marked as People's next in order containing  
13 writing and also scraps of paper inside of it?

14 THE COURT: That will be 16.

15 (Whereupon, the above-mentioned item, being an  
16 address book and contents, was marked as People's Exhibit No.  
17 16 for identification.)

18 Q (By Mr. Robinson) Sergeant Parrott, showing you People's  
19 Exhibit 16 marked for identification, can you tell us if you  
20 have ever seen that before? A Yes, sir, I have.

21 Q And can you tell us where you found that?

22 A This was also inside the AWOL bag.

23 Q In the motel room in the Oasis? A That is correct.

24 MR. ROBINSON: Might we have this Byron Swazi Travel  
25 Service card marked as People's next in order for identifi-  
26 cation?

1 THE COURT: That will be No. 17.

2 (Whereupon, the above-mentioned item, being a Byron  
3 Swazi Travel Service card, was marked as People's Exhibit No.  
4 17 for identification.)

5 Q (By Mr. Robinson) Sergeant Parrott, showing you People's  
6 Exhibit 17 marked for identification, can you identify that?

7 A Yes, sir, I can.

8 Q Can you tell us where you saw that?

9 A This was inside the AWOL bag in Room 129 in the Oasis  
10 Motel.

11 MR. ROBINSON: And, Your Honor, can we have these  
12 loose papers marked as People's next in order?

13 THE COURT: All right. They will be marked as 18,  
14 one exhibit.

15 MR. ROBINSON: One exhibit, Your Honor.

16 (Whereupon, the above-mentioned items, being loose  
17 papers, were marked as People's Exhibit No. 18 for identifi-  
18 cation.)

19 Q (By Mr. Robinson) Showing you People's Exhibit 18,  
20 Sergeant Parrott, could you remove those papers and tell me  
21 if you have seen those before? A Yes, sir, I have.

22 Q Could you tell us where, please?

23 A They were also inside the AWOL bag in the Oasis, Room  
24 129.

25 Q Now, Sergeant Parrott, did you have an occasion to view  
26 Mr. Ismail the night he was arrested? A Yes, sir, I did.

1 Q Did you have an occasion to see him walk?

2 A Yes, sir.

3 Q Did you have an occasion to see him stand up?

4 A Yes, sir.

5 Q Did you have an occasion to hear him talk?

6 A I believe a couple sentences.

7 Q Okay. Did you have an occasion to smell his breath?

8 A I don't believe I was ever that close to him, no, sir.

9 Q Okay. Sergeant Parrott, are you familiar with people  
10 who are under the influence of alcohol? A Yes, sir.

11 Q Okay. Have you made arrests for people that in your  
12 opinion have been under the influence of alcohol?

13 A A number of them, yes, sir.

14 Q And in your experience as a police officer?

15 A Yes, sir.

16 Q Did you form an opinion as to Mr. Ismail's state of  
17 sobriety on November the 6th, 1975? A Yes, sir.

18 Q And what was that opinion? A There was nothing  
19 that would indicate to me that the man was intoxicated.

20 Q Okay. Thank you.

21 MR. ROBINSON: I have nothing further.

22 THE COURT: All right. You may cross-examine.

23 MR. PESTARINO: Thank you, Your Honor.

24 CROSS-EXAMINATION

25 BY MR. PESTARINO:

26 Q What time did you see Mr. Ismail? A I saw Mr.



1 Ismail later on that -- it was actually the morning of the  
2 7th.

3 Q The morning of the 7th? A That is correct. It  
4 would have been approximately one o'clock in the morning,  
5 thereabouts.

6 Q Did you have any idea -- excuse me, strike that.

7 Sergeant Parrott, I take it that basically you are  
8 in charge of this investigation, are you not?

9 A No, sir, I am not.

10 Q Oh. All right. In the course of your investigation  
11 you learned that this particular killing took place about  
12 6:30 or 6:45 in the evening of the 6th, did you not?

13 A That is correct.

14 Q And did you learn the evening of the 6th that Mr. Ismail  
15 was apprehended shortly thereafter, relatively shortly?

16 A Yes, sir.

17 Q And that when he was apprehended he was drinking a beer?

18 A I don't know that for a fact.

19 Q Did you hear that when you talked to others?

20 A The only thing I heard was he was in an establishment  
21 that serves that type.

22 Q So you saw him somewhat eight hours after purportedly  
23 he had been drinking? A I actually saw him before that.  
24 The last time I saw him was roughly around somewhere 1:00 in  
25 the morning just before he was booked.

26 Q So that is about when you talked to him briefly?

1 A Yes, sir. Not at that time. I had already talked to  
2 him previous to that when we went down to the fingerprinting  
3 room and within the Bureau.

4 Q That was within the same general hour, 12:30, 1:00  
5 o'clock?

6 A Somewhere around the midnight hour,  
7 give or take.

8 Q All right. Give or take. Okay. And you had obtained  
9 the search warrant to search his motel room at the Oasis  
10 Motel?

11 A No, sir, I did not obtain the search warrant.

12 Q You went there pursuant to a search warrant?

13 A Yes, sir.

14 Q And in one of those photos there is a bottle of, looked  
15 like a fifth of Johnny Red, Johnny Walker Red?

16 A Johnny Walker, correct.

17 Q Thank you. And I am referring specifically to, excuse  
18 me, to 10-V and 10-W.

19 A That is correct.

20 Q And there appears to be what, how much left in that fifth?  
21 About a third roughly, huh?

22 A I would guess closer  
23 to a fourth.

24 Q Or a fourth. Okay. And as far as your investigation  
25 is concerned you learned, did you not, that Mr. Ismail had  
26 done some drinking at the motel?

A I don't know whether  
he had or not.

Q You don't know? A No, sir.

Q Anyway, you did see this fifth with about a fourth of  
Johnny Red in it?

A Yes, sir, that and some other.

1 Q And then you saw a plastic glass with some alcohol in it?

2 A That is correct.

3 Q And you learned what time approximately Mr. Ismail had  
4 left that motel, didn't you? A I did not have that  
5 knowledge at that time, no, sir.

6 Q Did you read any of the reports? A I may have  
7 read those later. I don't recall the time.

8 Q But you knew he took a taxi from that motel, and did  
9 you talk to the taxi driver? A No, sir, I did not.

10 Q All right. So, when you say in your opinion he was  
11 relatively -- or I don't know how you phrased it -- was he  
12 sober at the time you saw him? A When I saw him this  
13 midnight hour, give or take, my statement was that he showed  
14 no obvious signs of intoxication.

4 15 Q Now, by obvious signs you mean signs of staggering,  
16 signs of speech defect? A That is correct. That is  
17 what I am referring to.

18 Q How long did you talk to him? A A very short  
19 period of time. We went down to the fingerprinting room to  
20 redo one of the fingerprints and returned him back upstairs  
21 and that was about the extent of my contact with him.

22 Q And did you talk to him during that period of time?

23 A Just briefly, giving directions of what I wanted him to  
24 do and where to go.

25 Q Did he answer you? A As I recall he did. I  
26 believe I stated he didn't say more than one or two sentences

1 in the entire conversation.

2 Q Or one or two words? A That is possible.

3 Q Yes or no, when he followed your directions?

4 A I don't remember the exact content. I am sure it  
5 wasn't over a couple sentences.

6 Q And your entire contact with him that early morning was  
7 about how long? A I would say in the neighborhood of  
8 around five to ten minutes.

9 Q Five to ten minutes. Okay. Let's go back to where  
10 you found the gun at point P-1 on your diagram. Indicating  
11 that the X on -- what's the name of this street? Los Pinos?

12 A Los Pinos.

13 Q All right. And is there lights along this street?

14 A I believe there is.

15 Q Streetlights? A Yes, sir.

16 Q In the course of your investigation did you check to see  
17 how close a streetlight was to the residence at point P-1 on  
18 your aerial photograph? A No, sir, I did not.

19 Q Do you remember was there a light there close by?

20 A There were streetlights at the normal intervals along  
21 that street. How far it was from P-1 I did not make any  
22 notation of that, no, sir.

23 Q And the chains on that link fence were black, were they,  
24 or rusty or dark, do you know? A To tell you the truth  
25 I don't recall.

26 Q Okay. The posts that supported those chains, were

1 they painted a bright color? A I believe they are  
2 painted a pale green.

3 Q A pale green. Okay. When you appeared at the victim's  
4 residence on Woosley Drive, or Avenue, or Street, what time  
5 was it approximately? A It was approximately 8:00 P.M.

6 Q Did you have occasion to talk with anyone at that time?

7 A At the scene, yes, sir, I did.

8 Q Yes. To whom did you speak? A Well, other than  
9 patrol officers and other detectives I spoke to an Eric  
10 Anderson.

11 Q An Eric Anderson? A That is correct.

12 Q And was he a neighbor? A I believe so.

13 Q And how long did you speak to him? A Oh,  
14 approximately five minutes.

15 Q Did you speak to any other people other than police  
16 officers? A Eventually I did. There was a gentleman  
17 across the street whose telephone I wanted to borrow and I  
18 just spoke briefly with him regarding that matter.

19 Q Okay. Anybody else? A Not that I recall.

20 Q You being a detective looked at the front doors to see  
21 if someone had forced their way in? A Yes, sir.

22 Q And, of course, you couldn't ascertain anything that  
23 would indicate a forced entry, could you?

24 A You really have to define force. If you are meaning  
25 someone that could just push the door open, I wouldn't be  
26 able to ascertain that.

1 Q No. You wouldn't be able to ascertain that, but any  
2 marks to indicate that a door was pried or kicked or some  
3 force used on it? A That is correct.

4 Q Other than pushing it open? A Yes. I looked for  
5 that and didn't find any signs of that.

6 Q Didn't find anything. And when you got there, Officer --  
7 or Sergeant, what lights were on? I know you went through  
8 this once before, but I -- A The overhead porch light,  
9 which would be the bottom of the two designated by the word  
10 overhead light and the arrows, the one nearest No. 4.

11 Q Can you take a pointer and point to them, please?

12 A Okay. The overhead porch light.

13 Q That was on? A That was on.

14 Q Do you know whether that was on earlier that evening?

15 Did you ascertain this? A I asked one of the first  
16 officers at the scene, I don't recall who the officer was,  
17 if he had changed any lights around or anything, and he  
18 indicated that none had been changed by himself or any others  
19 that he had seen. This isn't to say that it could not have  
20 been done. My notation simply depicted what I found at 8:00  
21 P.M.

22 Q Okay. I understand that. So you found the overhead  
23 light. A The overhead light there was on. The garage  
24 wall light was on and the interior light was off. There was  
25 a light up, somewhere up in the stairwell area here that some  
26 light came down the stairs and spilled over into the entry way

1 here. The chandelier in the dining room was on, and the  
2 living lights were off.

3 Q Now, the lights above the entry way was on? Right?

4 A No, sir, not upon my arrival.

5 Q Huh? A Above this portion, the interior entry  
6 way?

7 Q Exterior. A The exterior front porch, that was  
8 on.

9 Q Was there any light on in the interior entry way?

10 A No, sir. The interior entry way light was off when I  
11 arrived.

12 Q And you walked into the interior of the house, didn't  
13 you? A Yes, sir.

14 Q As part of your -- was there enough light to illumine  
15 the entry way in the interior from upstairs, or from the  
16 dining room area? A Again, your definition of  
17 illuminate and mine might be different.

18 Q Well, let me show you People's 10-Q for identification,  
19 or People's 10-Q, yeah, for identification.

20 A Yes, sir.

21 Q Was that the way it was when -- A No, sir, as I  
22 indicated, these photographs were all taken with an artificial  
23 strobe light which, as you can see, with the doors that  
24 close it actually burns it.

25 Q When you went there could you see all of the articles  
26 here, the staircase, and the vase, and the rug, and --

1 A Yes, sir, you could see those articles. It wasn't  
2 a total darkness or anything of that type.

3 Q Fine. All right. You mentioned finding the gun in  
4 the junipers and you took a photograph of the gun, then you  
5 removed it very carefully from the junipers?

6 A That is correct.

7 Q And you did the same with the clips? A Yes, sir.

8 Q Did you find any fingerprints on the clips or magazines?

9 A I don't believe so. I believe all of them were on the  
10 exterior of the weapon itself.

11 Q If you were to -- well, okay. On the weapon. You  
12 mentioned that there were latent fingerprints, I think that is  
13 the term you used? A That is correct.

14 Q What does latent mean? A Latent fingerprint means  
15 a fingerprint that is there, has not been developed. The  
16 developing process is the process I described of putting the  
17 powder on it. Powder adheres on the oils that have been  
18 deposited on the latent print, then making it a visible print.

19 Q In other words, latent means kind of hidden?

20 A That is correct.

21 Q All right. Now, is it possible to take fingerprints --  
22 did you take those from the barrel of the gun?

23 A They were taken from various portions of the gun. One  
24 of them was taken from the barrel that I know of for sure.

25 Q Was the gun somewhat oiled? A Somewhat in that  
26 it has a surface that maybe has a very fine coating of oil.



1 If you get into the interior working parts then you normally  
2 get into more oil.

3 Q Yeah. Is it possible to take fingerprints from the  
4 barrel of a gun that has been oiled? A If it has  
5 been oiled to any degree it is pretty difficult. Again, it  
6 depends on how much oil and how it is spread on.

7 Q So, anyway, you found at least one print on the barrel  
8 of the gun? A Yes, sir.

9 Q And the other prints were found where?

10 A Various portions of the gun. On the back of each card  
11 I have made a diagram and marked depicting the location.

12 Q Were any prints found on that gun that were not the  
13 defendant's or could not be ascertained as the defendant's  
14 fingerprints? A I believe of the four fingerprints  
15 found two were marked by the technician to be of no value  
16 indicating that there simply are not enough points of  
17 identification. There are smears, overlays, something is  
18 wrong that prevents the print from being identified. The  
19 fourth print was then one that has not been identified as  
20 belonging to the defendant.

21 Q What you are saying then is that there could have been  
22 more prints on the gun but only some were ascertainable or  
23 identifiable? A Well, by prints I refer to anything  
24 that has half a chance of being identified. If I don't  
25 lift it I don't even call it a print.

26 Q So there could have been smudge marks on there that

1 certainly were totally unidentifiable? A Oh, I'm sure  
2 there were.

3 Q Okay. Now, you went over to this area as depicted in  
4 People's 10-J where the junipers and the chain-link fence is  
5 before going to the house? A That is correct.

6 Q And I take it somebody told you, "Look, there might be  
7 something over in the junipers"? A No, they told me  
8 there was something in the junipers.

9 Q They told you there was? A Yes.

10 Q Who told you that? A I believe Officer Lintern  
11 and Sergeant Shriver.

12 Q And did you find out how they knew something was there  
13 in the bushes? A To my knowledge Officer Lintern was  
14 the one who found something in the bushes.

15 Q Did you know what caused Officer Lintern to go over to  
16 the junipers and look? A I believe he was directed  
17 there by residents in the area.

18 Q And do you know why they directed him to that particular  
19 area?

20 MR. ROBINSON: I am going to object. I sat back  
21 not objecting, but that calls for hearsay upon hearsay.

22 THE COURT: Yes.

23 MR. PESTARINO: If he knows, and he is investigating  
24 this case. I don't -- I can ask -- all right, withdraw it.  
25 Fine.

26 THE COURT: Do you want to take the noon recess?

1 MR. PESTARINO: All right. Fine.

2 MR. ROBINSON: I have some witnesses outside.

3 Could we bring them in and ask the Court to ask them to come  
4 back?

5 THE COURT: Yes. Would you do that, Mr. Bailiff,  
6 please?

7 You can step down.

8 THE WITNESS: Mr. Pestarino, do you want this  
9 photograph back?

10 MR. PESTARINO: The Clerk wants it, sir.

11 THE COURT: I'd like the record to show that a  
12 number of people have entered the courtroom who I understand  
13 are witnesses under call in this case. We are going to take  
14 the noon recess and you are all directed to return at 1:30.  
15 Okay.

16 Ladies and gentlemen of the jury, you will likewise  
17 return at 1:30 and keep in mind the admonition I have given  
18 you before. The defendant will likewise be ordered to return  
19 at 1:30.

20 (Whereupon, Court adjourned until 1:30 o'clock p.m.,  
21 this day.)

22 ---oOo---

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## 1 AFTERNOON SESSION

2 March 12, 1976. 1:30 o'clock p.m.

3 (Pursuant to recess, Court convened, and the  
4 following proceedings were had:)5 THE COURT: Please be seated. Let the record show  
6 that the jury is present; the defendant is present with  
7 counsel.8 AUBREY RAYMOND PARROTT,  
9 the witness on the stand at the time of the recess, resumed  
10 the stand and testified further as follows:

## 11 CROSS-EXAMINATION (Resumed)

12 BY MR. PESTARINO:

13 Q A few more questions, I think. In going through,  
14 pursuant to a warrant, the Oasis Motel, did you find two other  
15 notebooks besides the ones that are marked for identification16 here? A No, sir, I have no notation other than what  
17 I have here. If there had been notebooks of this type we  
18 would have taken them.19 Q If I understand it, the next day somebody else went  
20 through the motel or somewhat later that day?

21 A Not to my knowledge. I guess someone could have.

22 Q Okay. But you don't have any notebooks other than --

23 A Other than the ones that we have there. No, I have  
24 the brown address book, the black loose-leaf notebook, and  
25 the four pieces of note paper.

26 Q Okay. All right. Had you looked at the cartridges in

1 the clips there, and the ones that were removed from the  
2 body, had you looked and examined those?

3 MR. ROBINSON: I am going to object, that question  
4 is vague and ambiguous. I don't believe that there has been  
5 any testimony that cartridges were removed from the body.

6 THE COURT: Those are bullets.

7 MR. PESTARINO: Bullets. Excuse me, counsel, I  
8 didn't mean to upset you.

9 MR. ROBINSON: I just want to get the record  
10 straight.

11 Q (By Mr. Pestarino) Did you look at the bullets?

12 A I looked at them briefly is all.

13 Q Yeah. Are they .22 longs or can you say?

14 A They appear to be a .22 long rifle.

15 Q You are familiar with .22 long rifle bullet?

16 A Yes, sir.

17 MR. PESTARINO: Okay. That is all I have. Thank  
18 you.

19 MR. ROBINSON: A couple quick ones, Sergeant.

20 REDIRECT EXAMINATION

21 BY MR. ROBINSON:

22 Q You testified that when you had an occasion to be with  
23 Mr. Ismail in the early morning hours of November 7th, 1975,  
24 you gave Mr. Ismail directions? A Yes, sir.

25 Q Such as to stand up, sit down, follow you here, follow  
26 you there? A Yes, sir.

1 Q And did Mr. Ismail understand those directions?

2 A Appeared to. He complied.

3 Q When you asked him to stand up he stood up?

4 A Yes, sir. My contact with him was going from the  
5 third floor interview room down to the second floor finger-  
6 printing room and back up at which time I directed him in and  
7 out of the elevator, down the hallway, and into the room,  
8 this type of thing.

9 Q And it appeared that he had no trouble understanding  
10 where to go and what to do? A Didn't appear to me. It  
11 was a very uneventful trip.

12 MR. ROBINSON: I have nothing further.

13 RECROSS-EXAMINATION

14 BY MR. PESTARINO:

15 Q You have had quite a bit of experience seeing people that  
16 have been drinking or arresting people that have been  
17 drinking and driving, haven't you? A Yes, sir.

18 Q How long have you been in the department, Sergeant?

19 A Be 15 years in July.

20 Q So you have seen a considerable number?

21 A Yes, sir.

22 Q And you have had drunks who understood and followed  
23 directions, haven't you? A I am sure I have.

24 Q Sure. It depends on, you understand this, that some-  
25 times being able to understand and follow directions and do  
26 a number of things depends sometimes on a person's tolerance,

1 doesn't it? A That would be one factor, yes, sir.

2 Q And the other factor sometimes would be when he had his  
3 last drink? A Well, that would have a direct bearing  
4 on how intoxicated he was.

5 Q Sure. Because, you know from your experience in  
6 handling people, and I suppose you have testified in court  
7 many times, haven't you? A Yes, sir.

8 Q You know that sometimes liquor leaves the body, the body  
9 dissipates the alcohol over a period of time, isn't that  
10 right? A Yes, sir, there is a calculated time at which.

11 Q Sure. So time is a factor in this, isn't it?

12 A Yes, sir.

13 MR. PESTARINO: Okay. That is all.

14 MR. ROBINSON: I have nothing further.

15 THE COURT: Thank you, Officer.

16 THE WITNESS: Thank you, Your Honor.

17 (Witness excused.)

18 MR. ROBINSON: People call Mrs. Damron.

19 CAROL JEAN DAMRON,

20 called as a witness on behalf of the People, being first duly  
21 sworn, was examined and testified as follows:

22 THE CLERK: Take the witness stand, please.

23 DIRECT EXAMINATION

24 BY MR. ROBINSON:

25 Q Could you state your full name, spelling your last name  
26 for the record, please? A Carol Jean Damron,

1 D-a-m-r-o-n.

2 Q And Mrs. Damron, your occupation? A Housewife.

3 Q Okay. And could you tell us where you live?

4 A 6205 Woosley.

5 Q Is that in San Jose? A Yes.

6 Q And how long have you lived there?

7 A About a year and three months.

8 Q All right. Directing your attention to November the  
9 6th, 1975, did you reside at 6205 Woosley Drive?

10 A Yes, sir.

11 Q And is the house directly next door to you, 6217 Woosley  
12 Drive? A Yes.

13 Q And did you know that to be the home of the Patriarch  
14 Mar Shimun? A Yes.

15 Q Had you ever met the Patriarch before? A Yes.

16 Q Did you know his wife? A Yes.

17 Q Now, directing your attention to the 6th of November,  
18 1975, at approximately 6:40 to 6:45 P.M., could you tell us  
19 where you were? A I was in the front room of my home.

20 Q Okay. And was there anybody else in the front room  
21 with you? A My husband.

22 Q All right. That would be Robert Damron?

23 A Yes.

24 Q Do you have any children? A Three.

25 Q Where were your children? A They were there with  
26 us.



1 Q What were you doing in the front room of your home about  
2 6:40 to 6:45 P.M.? A I was just serving my husband  
3 dinner.

4 Q Your husband had just gotten home from work?

5 A Yes.

6 Q At that time did you hear anything unusual?

7 A I heard noises out front.

8 Q Okay. And what sort of noises did you hear?

9 A Well, I thought it was the kids knocking over my garbage  
10 cans.

11 Q Were these loud noises? A Yeah, like your tin  
12 trash cans when they bang together.

13 Q And where were your trash cans? A Directly out  
14 front of my house to the right between my driveway and the  
15 Shimuns' driveway.

16 Q And had you put them out there for a purpose?

17 A The garbage collection was that morning.

18 Q You just hadn't brought them in yet? A Yes.

19 Q So after hearing these noises, what did you do?

20 A I told my husband I was going to catch the kids that  
21 were fooling around this time, and I ran out of the front door.

22 Q You mean kids had been fooling around with your garbage  
23 cans? A Yes, previously.

24 Q On prior occasions. How soon after the noises did you  
25 run out the front door? A The same time I was hearing  
26 them.

1 Q And can you estimate how long it took you from the time  
2 you heard the noise to the time you got out of the front door?

3 A Five, six seconds.

4 Q How did you go from your living room out the front door?

5 A To my right.

6 Q Is it right there? A Straight ahead a few feet,  
7 then to my right.

8 Q Was your door open or shut? A Shut.

9 Q I take it you opened the door? A Yes.

10 Q Did you run down the path to the street?

11 A My sidewalk, yes.

12 Q Okay. And when you came out into the area of your front  
13 sidewalk, could you tell us what you saw?

14 A Just as I got to my driveway I saw a man running from  
15 the Shimuns' sidewalk and across their driveway and in front  
16 of me going into Woosley.

17 Q You said this man was running? A Running.

18 Q Was he running fast or slow? A Very fast.

19 Q Very fast? A Yes, sir.

20 Q Okay. Did this man as you exited your house, did he  
21 run from your right to your left? A Yes.

22 Q Okay. And I take it if you stand with your back to  
23 your house, is the Shimun residence on your right?

24 A My right.

25 Q When you saw this man running very fast, what did you  
26 do? A I didn't have time to do anything, I looked at

1 him and then Mrs. Shimun was there instantly.

2 Q You saw Mrs. Shimun? A Yes.

3 Q Did you see where she came from? A She came from  
4 her front door.

5 Q Would you describe her condition?

6 A She was completely hysterical.

7 Q And was Mrs. Shimun saying anything?

8 A She was just screaming, "Help me, help me."

9 Q Now, after you saw Mrs. Shimun run from the residence,  
10 did you see the man again? A Yes, sir.

11 Q Okay. Could you describe what he did?

12 A He ran, well, he was in the middle of Woosley when Mrs.  
13 Shimun came out, he then crossed over to the house directly  
14 across the street from my house and ran across the front lawn  
15 and then tripped over a chain fence.

16 Q Okay. Would that be the direction he was running,  
17 towards Los Pinos? A Yes.

18 Q And you said this man tripped? A Yes, sir.

19 Q All right. And this is a chain fence on the corner of  
20 Los Pinos there? A Just one chain, yes.

21 Q Just one chain. All right. Now, what did this man  
22 do after he tripped? A Immediately got up and started  
23 running down Los Pinos again.

24 Q When you say immediately you mean the minute he went  
25 down he was back up? A He was up awfully fast, yes.

26 Q And as he started running down Los Pinos was that in the

1 direction of Cottle? A Yes.

2 Q What did you do after seeing this man run, trip, get up,  
3 and run again and hearing Mrs. Shimun? A Well, all  
4 together I was standing in my front yard screaming for my  
5 husband all of the time.

6 Q What were you screaming? A I was just yelling,  
7 "Bob, Bob."

8 Q Were you screaming loud? A Very loud.

9 Q Okay. And did you see your husband come out of the  
10 house? A Yes.

11 Q All right. And did you say anything to your husband?

12 A Yes, I told him that the man was running down Los Pinos  
13 and that our next-door neighbor had been shot.

14 Q How did you know your next-door neighbor had been shot?

15 A After Mrs. Shimun had yelled, "Help me, help me," and  
16 then I asked her what was the matter and she said, "He's been  
17 shot."

18 Q Mrs. Damron, this man you saw running from the Shimun  
19 residence, could you describe him for us, please?

20 A He was dark-complected and he had a gray suit on, and  
21 height was about five eleven.

22 Q Okay. Now, did you also furnish a description to the  
23 police that night? A Yes, I did.

24 Q And did you further describe the suit as having either  
25 a check or tweed design? A Something in it, yes, sir.

26 Q Okay. Now, do you see this man in court today?

1 A I couldn't swear to it, no.

2 Q Okay. That is fair. How close did this man come to  
3 you? A Oh, he was within nine, twelve feet of me.

4 Q And when you came out of your house did this man ever  
5 look at you? A I am not sure. When I was screaming  
6 I thought he turned back just before he fell.

7 Q Just before he fell? A Yes.

8 Q Okay. Now, are you familiar with the residence on the  
9 corner of Los Pinos with that chain fence? A Yes.

10 Q Okay. And have you seen that fence, that chain fence  
11 many times? A Yes.

12 Q Okay. You live in the area for about a year and a half?

13 A Yeah.

14 Q Have you had occasion to see that chain fence at night?

15 A You can't see it at night.

16 Q You can't see it at night? A No, sir.

17 Q So that chain is just about invisible at night?

18 A Yes.

19 Q What does it look like when you view that area at night?

20 A It is a big patch of junipers.

21 Q And the direction of travel this man took, Mrs. Damron,  
22 would that be the shortest distance between the Shimun  
23 residence and the corner of Los Pinos?

24 A Yes.

25 Q So he knew enough to run directly in that direction?

26 MR. PESTARINO: I think that is argumentative.

1 THE COURT: Yes. The objection is sustained.

2 Q (By Mr. Robinson) That is the shortest distance though?

3 A Yes, sir.

4 Q Okay. Now, after you called your husband and told him  
5 what had happened, did your husband do something?

6 A Yes, he yelled at or was talking with somebody, I don't  
7 know who, and got in his truck and went after him, but I  
8 yelled after him before he got in that the man had a gun.

9 Q Approximately how much time elapsed, if you know, from  
10 the time your husband got in the truck until the time he took  
11 off? A Maybe three minutes, maybe four.

12 Q You think that long? A Three minutes probably.

13 Q Okay. Okay. Now, Mrs. Damron, were you approached  
14 by the police that night and asked to give a statement?

15 A Yes.

16 Q And did you indicate to the police basically what you  
17 have told us here today? A Yes.

18 Q About the man falling and where he fell?

19 A Yes.

20 Q Had you ever seen this man before? A No, sir.

21 Q Showing you People's Exhibit 10-K, is this the chain-link  
22 fence we have talked about? A Yes.

23 Q Okay. And showing you People's Exhibit 10-I, are you  
24 familiar with that residence? A Yes.

25 Q Okay. And could you tell us whose residence that is?

26 A That is the Shimuns' residence.

1 Q And could you indicate for us, perhaps, if you can with  
2 a crayon on 10-I, the direction that this individual ran as  
3 he came out that night? A You want me to put it on  
4 here?

5 Q If you can. Just write it right on there.

6 A All right. Across this way (drawing).

7 Q Okay. And I take it that this car wasn't here that  
8 night? A No.

9 Q The police car? A No.

10 Q Now, I am going to show you People's Exhibit 10-CC and  
11 ask you to look at the clothing that that individual is  
12 wearing. Does that clothing look familiar to you?

13 A It looks like it, yes.

14 Q That looks like the clothing that what?

15 A That the man was wearing.

16 Q And showing you 10-DD, the same question.

17 A Yes.

18 Q That appears to be the gray suit -- A Yes.

19 Q -- with the check or tweed design? A Mm-hmm.

20 Q And the man that was running that night, what color  
21 shirt did he have on? A Black.

22 Q Black shirt. Okay. When your husband came out and got  
23 into the van did you tell him the direction this man had run?

24 A Yes.

25 MR. ROBINSON: Thank you. I have nothing further.

26 CROSS-EXAMINATION

1 BY MR. PESTARINO:

2 Q Just a couple of questions, Mrs. Damron. How long have  
3 you been a neighbor of the Shimuns? A About, well,  
4 then it was about nine months.

5 Q Nine months. Had you visited back and forth with them  
6 at their home? A With Mrs. Shimun, yes.

7 Q Yeah, had you visited in the evenings after dark?

8 A Never.

9 Q Never. Okay. Do you know whether or not it was  
10 their practice to keep the door locked, the front door locked?

11 A By hearsay, yes.

12 MR. ROBINSON: Then I am going to object --

13 MR. PESTARINO: Okay.

14 THE COURT: The objection is sustained.

15 Q (By Mr. Pestarino) All right. Let me ask you another  
16 question. The first thing you heard that night was what you  
17 thought were garbage cans? A Yes.

18 Q You didn't hear anything preceding that, did you?

19 A No.

20 Q Did you by any chance that evening hear a car, what  
21 appeared to be a sports car leaving the scene?

22 A No.

23 Q Or going down the street? A No.

24 MR. PESTARINO: That is all I have. Thank you.

25 MR. ROBINSON: I have nothing further.

26 THE COURT: Thank you, Mrs. Damron. You are excused.



(Witness excused.)

MR. ROBINSON: People call Mr. Damron.

ROBERT DAMRON,

called as a witness on behalf of the People, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. ROBINSON:

Q Could you state your full name, spelling your last name for the record? A Robert Damron, D-a-m-r-o-n.

Q Your occupation? A Trenching contractor.

Q And Mr. Damron, did you live at 6205 Woosley Drive in San Jose on November 6th, 1975? A Yes, I did.

Q And directing your attention to approximately 6:40 to 6:45 P.M. in the evening, could you tell us where you were at that time? A I was home eating dinner.

Q Had you just arrived home from work? A Yes, I just got home.

Q And could you tell us what room of the house you were in? A I was sitting in the living room.

Q Was your wife with you? A Yes.

Q At approximately 6:40 to 6:45 P.M. on the above-described date did you hear anything unusual? A We heard what we thought was someone knocking over our garbage cans.

Q Was that the only noise that you heard? A Yes.

Q And upon hearing that noise did your wife do anything?

A Yes, she ran out of the door. She thought it was the

1 kids that usually knock over the garbage cans.

2 Q Did you continue eating? A Yes, I just stayed there.

3 Q And as your wife ran out the door did you hear her  
4 say anything when she got outside? A Not when she ran  
5 out, after she was outside I heard her yell and scream.

6 Q What did you hear her yell and scream?

7 A She yelled, "Bob," you know, like that.

8 Q And when your wife yelled your name what did you do?

9 A I kind of got up and just walked to the door, and then I  
10 heard her screaming some more, and I heard this other lady,  
11 so then I went on outside.

12 Q When you went on outside did you see anything?

13 A No.

14 Q Did you see your wife outside? A Yes.

15 Q Did you see -- do you know Mrs. Shimun?

16 A Yes, I know her.

17 Q Did you see her outside? A Yes, I saw Mrs. Shimun.

18 Q And when you got outside what happened next?

19 A My wife said that he went running down the street and --

20 Q Okay. A -- that is when I ran into my other  
21 neighbor, and I said, told him, "Let's get my truck, maybe  
22 we can find out who it was," you know.

23 Q This other neighbor, do you know his name?

24 A Not then. We were fairly new in the neighborhood. I  
25 just knew him by "Nick."

26 Q You know him to be Mr. Nick Stukan now? A Yes.

1 Q Where was your -- was it a truck there that you had or  
2 a van? A It is a small van.

3 Q Where was that parked? A It was parked on Los  
4 Pinos facing Cottle.

5 Q Okay. So your truck wasn't parked in front of your  
6 house? A No, it is alongside of the house.

7 Q You live on the corner house? A Yes, I live on  
8 the corner.

9 Q And the Shimuns live right next to you? A Right  
10 next.

11 Q Did you go to your van? A Yes.

12 Q Okay. And prior to your going to your van had your wife  
13 pointed out to you the route this individual took?

14 A Yes, she said, "Down the street."

15 Q Did you have any knowledge as to whether or not this  
16 man was armed? A No, except I think my wife or Mrs.  
17 Shimun said something about a shooting, been shot. I think  
18 Mrs. Shimun was yelling, "My husband has been shot."

19 Q Okay. And when you got into your van what did you do?

20 A Nick got in with me, we started up, and we started down  
21 the street.

22 Q What street was that? A Los Pinos.

23 Q And as you started down Los Pinos did you see anybody  
24 in the area? A Well, the only person we saw was

25 another fellow right down the street, we stopped and asked  
26 him if he had saw anybody run down the street, and he said --

1 you want me to go ahead?

2 Q Sure. A He said, "Yes, we saw a fellow running  
3 down the street." I said, "Come on, get in."

4 Q And is this Mr. Morgan, David Morgan? A Yes.

5 Q Had you ever seen Mr. Morgan before? A No.

6 Q Okay. And so now there were three of you in the van?

7 A Yes.

8 Q You were driving? A Yes.

9 Q Mr. Stukan was in the middle? A Yes.

10 Q And Mr. Morgan was in the passenger side?

11 A Mm-hmm.

12 Q Okay. And where did you drive? Down Los Pinos?

13 A Yes, we went down Los Pinos to Cottle.

14 Q When you arrived at the intersection of Los Pinos and  
15 Cottle what did you do? A We looked to see someone,  
16 we didn't see no one except across the street there was two  
17 fellows getting out of a car. We drove over to them, asked  
18 them if they saw anybody running down the street. One of  
19 them said, "Yes, we saw a person right down there," so we  
20 backed up and went on down Cottle.

21 Q And as you drove down Cottle, did you see anybody?

22 A Yes. About half a block down from Los Pinos on Cottle  
23 we saw this fellow walking down the street.

24 Q Okay. And when you say "this fellow," do you recognize  
25 in court today the person you saw walking down the street?

26 A Yes. That is him there (indicating).