

1 A Yeah, Zaia, I know him. He came to Iraq, as I say, in
2 '62 or '63, I don't remember that year, but it was in that
3 particular year and he was a congressman with Syrian govern-
4 ment, and he came to visit Assyrian people in Iraq.

5 Q Did you know David's father?

6 A I hear about him. I read history about his father,
7 was one of the greatest Assyrian generals, that he worked
8 diligently and honestly with people.

9 Q And did you hear, also, that he was interested in
10 finding the Assyrian people a home? A Homeland, right,
11 he was representative from Assyria in Iraq.

12 Q And did you, also, hear that he was a very religious man?

13 A Well, all of the Assyrians are really religious, but
14 how much, I don't know.

15 Q You don't know? A No.

16 Q Now, when you talked with David on these short meetings
17 did you discuss politics or religion at all?

18 A Not really.

19 Q Not really. What do you mean by that, "Not really"?

20 A Well, we didn't say anything, like going into deep
21 conversation or slightly of it, it is just I talk about his
22 father, how he passed away and where he was living in Iraq,
23 and how was the response of the people, and you know, and
24 during the ceremony he talk about them.

25 Q Did he talk then about his father? A Yeah, he did
26 talk about his father.

1 Q And about some of the things that his father had done?

2 A Well, not -- in brief, just like, he was in the process
3 of talking with Iraqi government, what the changes was in Iraq,
4 but different slight revolutions that keep him out of this
5 conversation, at time he was ill, sick, and he passed away,
6 and I asked him about his father in 1933, '32, like, and
7 Assyrian history that has been written in the books, and he
8 told me about his father and all of the generals of Assyrians.
9 It was in general the history of Assyrian at that time from
10 1908 until 1933, '34.

11 Q Let me ask you this, Mr. Lazar, you have this radio
12 program and you are promoting not only the culture of the
13 Assyrian people but you talk about the history and you talk
14 about, you are trying to talk about what the future will be
15 for the Assyrian people, aren't you? Are you putting on
16 a program, is that pretty much what your program is?

17 A No, really, I am alone working for the program, like I
18 am the program director, I am doing the program and putting
19 everything together. Once in awhile I write an editorial,
20 write something about 2,000 years Assyrian Empire, or things
21 like that, and write about educational stuff, like that, but
22 not that great or much, you know.

23 Q What keeps the Assyrian people together?

24 A Well, we are from the same blood and same language, and
25 we are proud of ourself being Assyrian. And I love my
26 people, they are good people. I, of course, everybody does,

1 but as an Assyrian I am proud of it. They are good people,
2 you know.

3 Q And I suppose you people try to help one another, don't
4 you? A They do. I mean, it depends what kind of
5 help, money-wise, job, piece of bread or --

6 Q Are all Assyrian people, so far as you know, interested
7 in politics to that extent, to the extent they want a home-
8 land?

9 MR. ROBINSON: I am going to object. Unless this
10 witness can talk for all Assyrian people I don't see how he
11 can possibly give his opinion on that.

12 MR. PESTARINO: Mrs. Shimun gave all kinds of
13 opinions this morning. All I am asking for is his knowledge,
14 as far as what he knows.

15 THE COURT: Well, he may answer to the best of his
16 knowledge in view of the fact that he runs a radio program,
17 and the history and culture and background of the people,
18 yes. Go ahead.

19 THE WITNESS: Yes, sir.

20 Q (By Mr. Pestarino) Now, did you get the question? Do
21 most of the Assyrian people, as far as you know, are they
22 interested in politics to the extent that they want a home-
23 land? A They are interested to have a homeland.

24 MR. ROBINSON: I am going to object to that question.

25 THE WITNESS: They are interested very much.

26 MR. ROBINSON: As being vague and ambiguous. First

1 the question is, "Are all of the Assyrian people." Now,
2 my objection, "Do most of the Assyrian people." What do
3 we mean by that "most"? Two-quarters, one-quarter?

4 THE COURT: Let's not quibble. I think it is
5 immaterial to the main issue here, and we are trying to get
6 some background information, and I am going to be liberal on
7 that. I don't think that it is prejudicial.

8 MR. ROBINSON: Thank you, Your Honor. That is fair.

9 Q (By Mr. Pestarino) So what I am getting at, just
10 because a person talks about politics and wants a homeland,
11 that doesn't make him a revolutionary in your opinion, does
12 it? A No, sir. Everybody talks in the United

13 States about politics, but it doesn't have to be violent.

14 Q Let me ask you another question. Are most Assyrians
15 religious in one denomination or another as far as you know?

16 A Well, you got Assyrian different religions, you know,
17 but into one body as an Assyrian, they don't care whether I
18 am a Catholic or Protestant or Nestorian, we are one body,
19 we respect each other as an Assyrian.

20 Q Okay. I understand when Mr. Ismail left your motel he
21 paid in cash? A Yes, sir.

22 Q His bill? A Yes, sir.

23 Q Did you mention anything to David Ismail about some kind
24 of a meeting in Turlock before he left?

25 A No, we had a party on Saturday that he was trying to,
26 try and come and check in the hotel, and I say I cannot make

1 it on Saturday because I am leaving to Turlock for this
2 particular party --

3 Q And the party that -- excuse me -- and the party that
4 you had mentioned in Turlock, was that a meeting of the
5 Assyrian people? A Well, in Turlock you have the

6 Civic Center Turlock Club, you Nabate - Naharain (sic)
7 Magazine and you have Nabate - Naharain (sic) radio broadcast.
8 These people, they make a party each month and invite all
9 Assyrians to join the party, and in the party you would have
10 Assyrian dances, western dances, drinking, singing, all fun.

11 Q You indicated that the A.U.A. is registered with the
12 government. What do you mean by that? A I think is
13 an official political body recognized by the United States.

14 Q Counsel mentioned something about the suit and the
15 casual wear. I don't know how important it is --

16 MR. ROBINSON: I am going to object to that. It
17 is for the jury to decide how important it is.

18 THE COURT: That may be stricken. Any statement of
19 counsel made during the trial is not evidence.

20 Q (By Mr. Pestarino) All right. Was your testimony that
21 you saw him on two occasions dressed in a suit similar to
22 that? A Yes, sir.

23 Q And on one occasion a sport outfit? A Right.

24 Q And was that sport outfit different from the suit or do
25 you know? A Really, put it this way, that is long
26 time happen. I cannot tell you exactly I saw him definitely

1 100 per cent, but I could say yes or no to it because, I
2 mean, you can see a person with different suit, different
3 ties, different things, you can't tell exactly whether it is
4 or not, because if I am telling you something here, should
5 be that thing exactly 100 per cent. So I won't put myself
6 in that situation, you know.

7 Q Let me ask you this, Mr. Lazar, you testified you had
8 never seen the gun, People's Exhibit for identification No.

9 22? A Yes, sir.

10 Q You had never seen that gun before? A Right.

11 Q You have seen it at the Grand Jury, hadn't you?

12 A Yes, sir.

13 THE COURT: Excuse me, it is item 4 for the record.
14 You said 22.

15 MR. PESTARINO: Pardon me. Item 4. Of course,
16 that is right, People's 4.

17 Q (By Mr. Pestarino) You seen it at the Grand Jury?

18 A Yes, sir.

19 Q And you testified at the Grand Jury under oath?

20 A You know I have seen it at the Grand Jury, right.

21 Q You testified under oath at the Grand Jury, didn't you?

22 A Right.

23 Q And you told the Grand Jury --

24 MR. ROBINSON: I am going to object. It is
25 irrelevant.

26 MR. PESTARINO: A prior consistent statement.

1 MR. ROBINSON: He hasn't made an inconsistent one
2 yet.

3 MR. PESTARINO: Well, somebody else has.

4 THE COURT: Overruled. He may answer.

5 Q (By Mr. Pestarino) And you testified under oath then
6 that you had never seen this gun? A Right. And I
7 testified now that I haven't seen it, just now, well, besides
8 the Grand Jury, you know.

9 Q I understand. Now, let me go into this gun deal a
10 little bit further. First of all, there is Siegle's Sport
11 Shop located on West MacArthur Boulevard in Oakland?

12 A Right.

13 Q Your testimony was that you have never been there?

14 A No.

15 Q Never at all? A I don't know whether there is
16 a Siegle Shop there or not. I haven't seen it.

17 Q You indicated, also, in your testimony that after you
18 sold the service station you went back there twice, only
19 twice? A Yes, sir.

20 Q And one time to purchase some gasoline?

21 A The first time I cashed \$20 check.

22 Q And the second time? A To purchase gas.

23 Q Do you have those checks? A Yes, sir.

24 MR. PESTARINO: I think I am going to be a bit longer
25 with this witness, and if Your Honor wishes to adjourn now --

26 THE COURT: I have no objection. I assume you will

1 be back tomorrow, Mr. Lazar.

2 THE WITNESS: Sir, I apologize for this because I
3 am really swamped in the hotel. Kitty is one of my
4 employees, I got new employee --

5 THE COURT: Can you come back some other time?

6 MR. PESTARINO: Tomorrow afternoon?

7 THE WITNESS: What time?

8 THE COURT: Well, you name it.

9 MR. PESTARINO: All right, two o'clock?

10 THE WITNESS: How about we will do it day after
11 tomorrow?

12 MR. ROBINSON: Well, Your Honor, I suggest to keep
13 his testimony in order before the jury, to have some
14 continuity to it, I am sure that there are other employees
15 of this hotel could take over.

16 THE COURT: Do you have witnesses available tomorrow
17 morning?

18 MR. ROBINSON: We have a lot of witnesses available
19 outside right now. We have witnesses.

20 THE COURT: Well, it is cross-examination and I am
21 sure that there will be redirect. Do you have enough
22 for tomorrow without Mr. Lazar and call him back Wednesday?
23 Or would you rather have him tomorrow afternoon?

24 MR. ROBINSON: I would rather have him tomorrow.

25 THE COURT: Could you come back tomorrow afternoon?

26 THE WITNESS: Really, if I could do it, I got a

1 statement to pull out, send it to San Diego, I got Kitty
2 Benjamin, she didn't testify yet and she is off the job right
3 now, and I have a new employee at the hotel.

4 MR. PESTARINO: I would agree that he could come
5 back Wednesday.

6 THE WITNESS: That will be perfect.

7 THE COURT: All right, sir, you come back Wednesday
8 morning at 9:45 in the morning.

9 MR. PESTARINO: And before we adjourn, I want it
10 marked for identification.

11 THE COURT: We will mark these two checks as B-1 and
12 B-2 for identification.

13 (Whereupon, the above-mentioned documents, being two
14 checks, were marked as Defendant's Exhibits B-1 and B-2 for
15 identification.)

16 MR. ROBINSON: May Mr. Lazar be given the admonition
17 he is not to discuss his testimony with any of the other
18 witnesses who haven't testified in this proceeding yet?

19 THE COURT: All right.

20 MR. PESTARINO: I would agree.

21 THE COURT: Mr. Lazar, as you know Kitty Benjamin is
22 a potential witness, and I think maybe your brother Sam is a
23 potential witness.

24 THE WITNESS: Right.

25 THE COURT: I am going to instruct you that in view
26 of the fact that you are still on the witness stand that you

1 are not to discuss anything you have said or anything about
2 the case with either of those or any other witness. Do you
3 understand?

4 THE WITNESS: Sure.

5 THE COURT: And if they try to discuss it with you
6 then you are to tell them that that would be in contempt of
7 court, and you would be punished for it.

8 MR. ROBINSON: Excuse me, are we going to leave these
9 here so the Clerk can make copies of them?

10 THE COURT: Yes.

11 MR. ROBINSON: Also, might we have the other witnesses
12 brought in and asked to return tomorrow at 9:30?

13 MR. PESTARINO: I have asked you, one other question,
14 to bring those documents tomorrow.

15 THE WITNESS: Yes, I will do.

16 THE CLERK: Can we give those back to you Wednesday?

17 THE COURT: Yes, we will give those back to you
18 Wednesday.

19 THE WITNESS: Wednesday, 9:30?

20 THE COURT: 9:45. All right. The witnesses who
21 have just entered the courtroom, we are going to recess and
22 adjourn for the day and resume tomorrow morning at 9:45. I
23 will ask you and order you to return at that time. You
24 will not receive any further notice or subpoenas, and I would
25 admonish you not to discuss the case or your testimony with
26 any of the persons who have either testified or who will

1 testify.

2 MR. ROBINSON: With the exception they can, of
3 course, discuss the case with counsel.

4 THE COURT: Yes, you, of course, may talk to the
5 lawyers.

6 MR. PESTARINO: I am not his lawyer.

7 THE COURT: Well, either lawyer, I have no
8 objection.

9 MR. PESTARINO: You can talk to the District
10 Attorney.

11 THE COURT: Ladies and gentlemen, we will take our
12 adjournment and resume tomorrow morning at 9:45. You will
13 keep in mind my prior admonition and we will order the
14 defendant back, also, tomorrow morning.

15 (Whereupon, Court adjourned until March 16, 1976,
16 at 9:45 o'clock a.m.)

17 ---oOo---

2

1 Q. Now, Mr. Beamon, I'm going to direct your attention
2 to November 6th, 1975, at approximately six o'clock in the
3 evening give or take a few minutes. Were you directed by
4 your dispatcher to respond to fifty-three forty Monterey
5 Road, Room Number 129, the Oasis Motel?

6 A. Yes, I was.

7 Q. And Mr. Beamon, does your cab -- do you keep records?

8 A. Yes, we maintain a log of time and place we pick up and
9 where we disembark passengers.

10 MR. ROBINSON: May we have this copy of a log
11 marked as People's next in order for identification, Your
12 Honor?

13 THE COURT: Yes. It will be number 22.

14 (Whereupon, the above-mentioned document, being
15 a log, was marked as People's Exhibit No. 22 for
16 identification.)

17 MR. ROBINSON: Thank you. May I approach the
18 witness, Your Honor?

19 THE COURT: Surely.

20 Q. (By Mr. Robinson) Mr. Beamon showing you People's 22
21 marked for identification, could you look at that and tell
22 me if you can identify it? A. Yes, I do.

23 Q. Okay. And can you tell us what that is?

24 A. Well, it is a Xerox copy of my log of that date that I
25 maintain as I work.

26 Q. Okay. And is that an accurate reproduction of that log?

3
1 A. Yes, it is.

2 Q. Can you tell us how that log is -- strike that.

3 Can you tell us how the information contained on
4 that copy is put there? A. Well, at the time
5 that I pick up a person, then when I deliver them, why, I
6 record in where I picked them up and what time and where I
7 delivered them and at what time.

8 Q. Is that log kept in the regular course of your business?

9 A. Yes.

10 Q. Does your business rely upon that log?

11 A. Yes.

12 Q. Okay. Directing your attention to that log is there
13 any indication on that log as to what day that log is kept
14 for? A. Yes.

15 Q. And what day is that? A. November 6th.

16 Q. 1975? A. Yes.

17 Q. Okay. And is there any indication on that log that you
18 responded to the Oasis Motel at 5340 Monterey Road?

19 A. Yes.

20 Q. Can you tell us what information is contained on that
21 log regarding that response? A. Well, the

22 log says, "One passenger, paid \$2.40," and I received the
23 order in area two oh four, when I received the order to go
24 there. I picked up the passenger at five fifty p.m. I
25 delivered, I finished my trip at 6:00 o'clock, picked him up
26 at 5340 Monterey, Number 129, and he was disembarked at

4
1 Cottle and Santa Theresa, or in that general area.

2 Q. The number 129 at 5340 Monterey, does that represent a
3 room number in a motel? A. That is a room
4 number in the Oasis Motel.

5 Q. The area in which this passenger disembarked, Cottle and
6 Santa Theresa, is that near a shopping center?

7 A. Yes, it was in a shopping center.

8 Q. You dropped the passenger off in a shopping center?

9 A. Yes, sir.

10 Q. Now, when you responded to the Oasis Motel at
11 approximately 6:00 o'clock on November the 6th, 1975, where
12 did you go? A. I drove up directly in
13 front of the room, you can see the numbers from the parking
14 area.

15 Q. That would be Room 129? A. Yes.

16 Q. And after driving your cab in front of Room 129 what did
17 you do? A. I went up and knocked on
18 the door.

19 Q. Did somebody open that door? A. The
20 gentleman came to the door and said, "I'll be with you
21 shortly."

22 Q. After this person indicated that to you, what did you
23 do? A. I went back and stood outside
24 the cab and waited for him.

25 Q. Approximately how long did you wait for the individual
26 in 129 when you stood outside the cab?

5
1 A. It was less than five minutes, I would say.

2 Q. Now, when you approached the door to Room 129 and this
3 individual opened the door, did he open it all of the way,
4 halfway, or part-way?

A. I can't recall.

5 Q. And did you notice any other individual in Room 129?

6 A. No.

7 Q. Okay. Now, did this individual in Room 129 eventually
8 leave that room and come to your cab?

9 A. Yes.

10 Q. Okay. And did he get in your cab?

11 A. Yes.

12 Q. Can you describe this individual for us?

13 A. Well, he was a middle-aged man, as I remember he was
14 wearing a coat and tie, nothing unusual about the person
15 that would make him stand out.

16 Q. Okay. Was he nicely dressed? A. Nicely
17 dressed.

18 Q. Okay. And when this individual got into your cab did
19 he get into the front seat or the back seat?

20 A. He sat in the front seat. I invited him to sit in the
21 front seat with me.

22 Q. Did he sit right next to you? A. Yes.

23 Q. And as you -- when this individual got into the cab,
24 did he say anything? A. I can't recall what
25 was said. There was small talk about the weather, and you
26 know, chit-chat was all. I can't recall the sequence.

6
1 Q. Did he tell you where he wanted to go?

2 A. Yes, he asked me to go to Santa Theresa and Cottle to
3 the pizza restaurant.

4 Q. He told you he wanted to go to a pizza restaurant there?

5 A. Yes.

6 Q. Did you drive him there? A. Yes.

7 Q. Can you estimate how long it took you to get from
8 Monterey Road where you picked him up to the pizza restaurant
9 at Santa Theresa and Cottle? A. Approximately
10 ten minutes.

11 Q. You were with this individual for approximately ten
12 minutes? A. Yes.

13 Q. And during this time you told us you had some small talk
14 with the man? A. Yes.

15 Q. Talked about the weather? A. Yes.

16 Q. Did the individual mention anything about how dark it
17 got early, do you remember that? A. I think
18 this was a part we were talking about, that the days were
19 getting shorter at this time of year. I think, yes, that was
20 part of the conversation.

21 Q. Okay. And when you arrived at the pizza restaurant at
22 Santa Theresa and Cottle did the individual ask you anything?

23 A. Yes, he inquired as to where Woosley Street was
24 located.

25 Q. Okay. And did you tell him that you didn't know where
26 it was? A. I told him I didn't know

7
1 but I would check my map and show him how to get there.

2 Q. Okay. And did you check your map?

3 A. I did.

4 Q. Where is your map located? A. I carry it
5 with me all of the time. It is a County LoCaide System.

6 Q. And is that located in the front seat of the cab?

7 A. Yes, I always carry it there.

8 Q. Did you open your map on the front seat?

9 A. Yes.

10 Q. And did this individual look at the map with you?

11 A. No, as I recall I don't think he did. I think I looked
12 at it and immediately I recognized Woosley which is a very
13 short distance from where we were located.

14 Q. Did you give this person directions as to how to get to
15 Woosley? A. Yes, I told him to walk
16 down to Cottle to Los Pinos and turn right and go a couple
17 blocks and he'd run into Woosley Street.

18 Q. What did he do next? A. He paid his fare
19 and I drove off.

20 Q. Did he pay by cash? A. Yes.

21 Q. And did you see where he went when you drove off?

22 A. No.

23 Q. Okay. Now, this individual, did you smell any alcohol
24 about this person? A. No.

25 Q. Okay. Was this individual, did he appear intoxicated
26 at all to you? A. Not in the least.

8

1 Q. Did he appear under the influence of alcohol?

2 A. No.

3 Q. I take it in your profession, Mr. Beamon, you have had
4 occasion to view people that were under the influence of
5 alcohol?

A. Yes, quite often.

6 Q. In your opinion this person showed no signs of being
7 under the influence?
8 A. No, not in my
9 opinion, no.

9 Q. Was his speech slurred at all?
10 A. Not at
11 all.

11 Q. Did he wobble when he walked?
12 A. Not in
13 the least.

13 Q. Did he appear to understand what he was doing and saying?
14 A. He seemed very intelligent, educated, very pleasant man
15 to talk to .

16 Q. Okay. Now, did this individual, when you talked to him,
17 did he appear worried or upset?
18 A. Not in the
19 least.

19 Q. Did he appear excited at all?
20 A. Not in
21 the least.

21 Q. Would you describe his demeanor as cool and calm?

22 A. Yes, I would.

23 Q. Okay. Now, this person that you drove to the pizza
24 parlor, do you see him in Court today?

25 A. Yes.

26 Q. Would you point him out, please?

1 A. It is this gentleman over to the right (indicating).

2 MR. ROBINSON: Thank you. I have no further
3 questions.

4 THE COURT: All right. The record will show the
5 identification of the defendant.

6 You may cross-examine.

7 CROSS-EXAMINATION

8 BY MR. PESTARINO:

9 Q. Mr. Beamon, how far is the Oasis Motel from the pizza
10 place on Cottle and Santa Theresa?

11 A. I would estimate approximately three miles.

12 Q. And are you generally familiar with that area?

13 A. Yes, sir.

14 Q. Are there any restaurants really between the Oasis
15 Motel and the pizza parlor?

16 A. I think there
17 is one called "The Sherwood Forest" down there. It's
probably the only one we passed.

18 Q. The only one? A. That I am familiar
19 with, yes.

20 Q. And that is by a service station, isn't it?

21 A. I think it is, yes.

22 Q. Yes. Okay. Now, this man, Mr. Ismail was the man that
23 you transported from the Oasis Motel to the pizza parlor;

24 is that right? A. I think so. But I meet
25 a lot of people, and it has been some months ago.

26 Q. Okay. Do you recall how he was dressed? They have an

10 1 exhibit here, he had purportedly --

2 MR. PESTARINO: Let me have the picture. That is
3 fine. Thank you.

4 Q. (By Mr. Pestarino) You indicated that he was dressed
5 neatly and appeared well -- A. Yes.

6 Q. And I will show you People's Exhibit for identification
7 10-B. Does that look like the way he was dressed?

8 A. I can't be sure, sir.

9 Q. Okay. You didn't notice anything unusual about Mr.
10 Ismail, the defendant, at that time? He talked to you?

11 A. Yes.

12 Q. He was pleasant? A. Very pleasant.

13 Q. He didn't appear to be drinking?

14 A. No, not to me, no.

15 Q. You don't know whether or not he was drinking?

16 A. No, I couldn't say.

17 Q. You can't? A. No.

18 Q. No way in the world you can tell that?

19 A. I didn't detect the odor of alcohol.

20 Q. You didn't detect it, but on the other hand you weren't
21 particularly looking for it? A. Or I

22 wasn't that close to him, that is very possible, yes.

23 Q. So he seemed to know where he was going, generally
24 speaking? A. Yes.

25 Q. He talked to you, he was well-dressed, he behaved, and
26 as far as you are concerned he was every bit of a gentleman?

11

1 A. Yes, sir, very pleasant man to be with.

2 Q. Did he appear worried or preoccupied in any way?

3 A. Not in the least.

4 Q. Okay. Thank you.

5 MR. PESTARINO: No further questions.

6 THE COURT: Thank you, Mr. Beamon.

7 MR. ROBINSON: The People call Virginia Adams.

8 Thank you.

9 (Witness excused.)

10 VIRGINIA S. ADAMS,

11 (called as a witness on behalf of the people, being first
12 duly sworn, was examined and testified as follows:)

13 THE CLERK: Take the witness stand, please.

14 DIRECT EXAMINATION

15 BY MR. ROBINSON:

16 Q. Can you state your full name, spelling your last name
17 for the record, please? A. Mrs. Virginia S.

18 Adams, A-d-a-m-s.

19 Q. Your occupation? A. Assistant
20 policewoman, City of San Jose.

21 Q. Mrs. Adams, how long have you been employed in that
22 capacity? A. I have been employed for
23 the San Jose Police Department since 1954.

24 Q. And Mrs. Adams, what are you currently assigned to?

25 A. Latent fingerprints.

26 Q. How long have you worked in the latent fingerprint

12

1 section? A. I first started working
2 on latent fingerprints in 1963. I was assigned to latent
3 fingerprints as my principle function in 1968.

4 Q. And could you give us your background and training that
5 qualifies you to work in latent fingerprints?

6 A. I have eighty hours of basic training with the FBI back
7 in 1957 through 1960. I have, in 1974, I was appointed by
8 this area to attend the FBI latent fingerprints, Academy for
9 Advanced Latent Fingerprints in Washington. I have studied
10 periodicals as they continue to come out. I have worked with,
11 directly and indirectly with personnel in Sacramento on
12 latent fingerprints. At the present I am secretary-
13 treasurer for the State Association of Identification Officers
14 which is a portion of the national and international
15 association.

16 Q. Mrs. Adams, could you give us an approximation -- I
17 know that you are going to kill me when I ask you this
18 question -- as to how many latent fingerprints you have
19 compared and analyzed in the course of your work?

20 A. Thousands.

21 Q. Have you testified in Court, both Municipal and Superior
22 of this county on numerous occasions?

23 A. Yes.

24 Q. And could you estimate approximately how many occasions?

25 A. Sometimes it is twice a week, sometimes I go for
26 several months.

13

1 Q. And have you qualified as an expert on latent
2 fingerprints in that previous testimony?

3 A. Yes.

4 Q. Okay.

5 MR. ROBINSON: Does counsel have any questions on
6 Voir Dire?

7 MR. PESTARINO: I think she is well-qualified.

8 THE COURT: She has appeared in my Court before.

9 Q. (By Mr. Robinson) Mrs. Adams, did I ask you to prepare
10 some sort of little exhibit for us?

11 A. Yes.

12 Q. All right. Did you do that? A. Yes.

13 Q. Could we see that, please?

14 MR. ROBINSON: Your Honor, might we have this --

15 THE COURT: Yes. That will be 23 for
16 identification.

17 (Whereupon, the above-mentioned document, being
18 a chart, was marked as People's Exhibit No. 23 for
19 identification.)

20 Q. (By Mr. Robinson) Mrs. Adams, showing you People's
21 Exhibit No. 23, could you explain that for us, what inked
22 means and what latent means? Perhaps I can hold it up.

23 THE COURT: Do you want to put that on the board?

24 MR. ROBINSON: Sure.

25 THE COURT: I think you will find a pointer around
26 the corner, also.

14 1 Q. (By Mr. Robinson) Could you briefly describe that for
2 us, what the latent is and what the inked is?

3 A. Latent fingerprint is an unknown, many times not
4 visible fingerprint, that is left by chance. These are
5 developed by the investigating officer by various methods
6 they may use. This particular one was developed by using a
7 powder. The inked fingerprint is an impression, and we say
8 fingerprint, in this particular case it is a palm area, which
9 is still your friction ridges similar to, the same as the
10 one on your fingerprints. The inked impression is a
11 deliberate inked impression that is placed on a surface,
12 usually a fingerprint card, and that is a deliberate
13 impression given by a person where this is a chance
14 impression that is left, and usually it is unknown, this is
15 given by an unknown person.

16 Q. Okay. And when you say, "Given by a known person", the
17 inked print, would that be somebody who is arrested, an
18 officer takes their fingerprints.?

19 A. An inked impression can be anyone that has given. In
20 this particular case, the subject was in custody.

21 Q. Okay. And it could be, also, from say like a driver's
22 license application, an inked print?

23 A. Correct.

24 Q. And the latent print is a print recovered by the officer
25 at the scene? A. Yes.

26 Q. Mrs. Adams, I am going to show you People's Exhibit 8

15

1 marked for identification and ask you to look at those and
2 tell me if you have ever seen those before?

3 A. Yes.

4 Q. Okay. And can you tell us where you saw those?

5 A. These were given to me by the investigating officers.

6 Q. By Sergeant Parrott? A. May I check with
7 my report here?

8 Q. Sure. A. It was submitted by
9 Sergeant Parrott.

10 Q. And the latent print that you have, is that a blowup of
11 one of those fingerprints? A. Yes, it is.

12 Q. Could you tell us which one it is a blowup of?

13 A. The one that I have marked lift A.

14 Q. Was that the fingerprint that was taken from the gun?

15 A. All indications are that it was taken from the gun. I
16 do not have exact knowledge of it. There is a picture of a
17 gun and the number that was given by the officer.

18 Q. That was unfair. Sergeant Parrott already testified to
19 that. I'm sorry. So what you did, you photographed that and
20 blew it up? A. No, I looked at it
21 first, what we refer to as one to one, as is submitted, then
22 we had it blown up.

23 Q. All right.

24 MR. ROBINSON: Your Honor, might we have this set
25 of inked fingerprints containing the name of David Malek
26 Ismail marked as People's next in order, A, B, C, D?

1 THE COURT: Yes. They will be 24-A through C.

2 MR. ROBINSON: A through D, Your Honor.

3 THE COURT: I'm sorry.

4 (Whereupon, the above-mentioned items, being a set
5 of inked fingerprints, were marked as People's Exhibits
6 24-A through D for identification.)

7 Q. (By Mr. Robinson) Mrs. Adams, showing you People's 24-A
8 through D, could you look at those, please, and tell me if
9 you have ever seen those before?

10 A. Yes, sir.

11 Q. And were those provided to you by a police officer?

12 A. Yes.

13 Q. Okay. And did you compare 24-A through D with People's
14 Exhibit 8? A. Yes, I did.

15 Q. Okay. And does 24-A through D, is that indicated on the
16 inked print? A. Yes. And may I
17 make a correction? I said this was a palm area. This is
18 from a thumb.

19 Q. And is that an enlargement of 24-A through D, the ink
20 print? A. It is an enlargement of
21 a portion of this card.

22 Q. Okay. Thank you. Now, Mrs. Adams, could you tell us
23 how you compare fingerprints and what processes you use, and
24 what you look for? A. In comparing
25 fingerprints, the first thing to do is to look at the latent
26 impression to see if there is sufficient characteristics.

17

1 Now, these characteristics are the areas where the ridges
2 are rather than going straight, will give you some type of
3 break in the ridge. It may either be an ending ridge where
4 the ridge travels and stops abruptly, it may be a bifurcation
5 which is a single ridge travelling and then separating, it
6 may be a short ridge, it may be an angle of a ridge. But
7 those are the areas in the pattern or in the ridges that are
8 different and you look for those. And then you go from there
9 and look at the known ridges and try to find the same
10 configurations in the same locations, the same distances
11 apart, the same number of ridges apart without there being
12 a difference showing up on either one of them.

13 Q. Okay. And Mrs. Adams, you always hear it said that, at
14 least if you watch the FBI on television, that no two
15 people have the same set of fingerprints. Is that a correct
16 statement?

17 A. That is definitely
18 correct.

19 Q. And what is it that prohibits people from having the
20 same two sets of fingerprints?

21 A. It is
22 these ridge characteristics. You are, before you are born,
23 the ridges start forming on your fingers and hands and the
24 soles of your feet. And these it is these characteristics
25 in here that do make it different. They may look similar to
26 an untrained eye, but to a trained eye there will be the
differences in each print. As a matter of fact, each
individual, all ten prints that you have, the patterns may

18 1 be similar but they are different due to the characteristics.

25 2 Q. And briefly, Mrs. Adams -- I'm sorry, could you sit
3 down a few minutes, then I will have you stand again, if you
4 would. Can you tell us how somebody leaves what we call a
5 latent fingerprint? Can you tell us how that is left on
6 the scene or on an object? A. There is pores

7 in your hand that exude moisture, and there are chemicals in
8 that particular moisture, and when you touch something this
9 is left on the surface and it stays for quite a while,
10 depending on the atmospheric conditions, then these are
11 developed either by powders or inhydrate sprays as the
12 investigating officer would do, and occasionally if you have
13 rubbed your hand on your forehead or have had them around an
14 oily substance, then there would also be oil in this. And
15 in the ridges, there are pores in the ridges, and the ridges
16 will stand up. They are just like a mountain and in between
17 each ridge is a valley, and it is the tops of these ridges
18 or the mountains that when pressed on a surface will leave
19 this residue which is developed later.

20 Q. Okay. And Mrs. Adams, do fingerprints go away in time?
21 If I touch, say, this substance over here, would my
22 fingerprint remain on that substance indefinitely or do they
23 go away? Or how does that work?

24 A. There again, it depends on the conditions. There have
25 been articles even written on locating fingerprints from the
26 tombs of Egypt. But it depends on the atmospheric

1 conditions, again, and the surface and hand.

2 Q. Does it, also, depend on whether somebody else might
3 touch the same surface and imprint their print over mine?

4 A. That would be an overlay, but of course, they can be
5 removed.

6 Q. And does the type of surface which one touches, is that
7 of any significance in lifting a latent fingerprint?

8 A. Quite often it is. The more porous surfaces, of course,
9 tend to absorb the prints rather than leaving them on the
10 surface to be lifted or developed.

11 Q. And this is for my own information, I have heard lately
12 they have done studies where they can lift fingerprints from
13 human beings, if somebody touches another human being, is
14 that true? A. That is correct.

15 Q. That is a relatively new development in the field?

16 A. Yes.

17 Q. Mrs. Adams, did you compare the latent print supplied
18 you by Sergeant Parrot with the inked print supplied you by
19 another police officer? A. Yes.

20 Q. And could you tell us the results of your comparison?

21 A. It was my finding that the latent print impression was
22 made by the right thumb of the subject Ismail.

23 Q. Okay. And is there any doubt in your mind?

24 A. Absolutely no doubt.

25 Q. Okay. And Mrs. Adams, I notice that you put some
26 numbers up here, one through seven, would you mind stepping

20

1 to the board and indicating the significance of those numbers
2 and what they indicate to you? A. These
3 numbers correspond to areas in this known print. This is,
4 of course, your latent, the unknown area (indicating), and
5 these numbers will be marked and they will correspond to the
6 areas that are marked over on this one.

7 Q. And that is your points of characteristics that you
8 talked about? A. Yes.

9 Q. Okay. Now, Mrs. Adams, did you compare the fingerprints
10 that you received from Sergeant Perrott with the fingerprints
11 of the victim, Mar Eshai Shimun, the Patriarch of the Church
12 of the East? A. You mean did I compare
13 the latent print?

14 Q. Yes. A. Yes, I did.

15 Q. Did you find any of Mar Eshai Shimun's fingerprints
16 with -- A. Not with this.

17 Q. -- with the latent? A. No.

18 Q. The only print you found that you were able to identify
19 is that of a subject indicated to you by the card as David
20 Malek Ismail? A. Yes.

21 MR. ROBINSON: Okay. I have nothing further.

22 CROSS-EXAMINATION

23 BY MR. PESTARINO:

24 Q. Mrs. Adams, how many prints did you look at and compare?
25 Was it just the one that you have on the board?

26 A. No, I looked at the whole case print card.

21

1 Q. Is that the only one that you could identify, the thumb?

2 A. Definitely.

3 Q. The others you could not identify?

4 A. That is correct.

5 Q. In your notes or in talking to Sergeant Parrot could
6 you ascertain from what portion of the weapon the latent
7 fingerprint was taken that is identical to Ismail's
8 fingerprint?

9 A. I believe he drew
10 a picture of a weapon on the back of the card and put an X
11 mark there and that was my only information.

12 Q. Do you remember whether that was on the barrel or the
13 butt or on the clip?

14 A. I believe -- I
15 don't remember, I'm not sure -- I believe it was just above
16 the trigger area.

17 Q. Around the trigger area?

18 A. But I'm not
19 sure. I would have to look at the picture.

20 Q. Now, were there, in looking for comparisons, did you
21 find other fingerprints on the gun?

22 A. May I have the prints back?

23 Q. Yeah. Do we have them here? Sure.

24 A. They are, I believe they are laying right there
25 (indicating).

26 Q. Yeah.

A. Lift A was the only one
that was of any value for comparison.

Q. Why weren't the others of any value?

A. They were either smudged or not sufficient

22

1 characteristics.

2 Q. Did you compare the smudged fingerprints with any
3 other fingerprints? For example, does the name Yule Lazar
4 mean anything to you? A. No, it doesn't.

5 I don't have it in my report here.

6 Q. Does the name Ron Meyers mean anything to you?

7 A. No.

8 Q. So in making these comparisons you had obtained the
9 samples from Ismail and you compared all of these, or the
10 series of prints with Ismail's prints?

11 A. And the victim.

12 Q. And the victim? A. Yes.

13 Q. And those are the only two comparisons?

14 A. To my knowledge.

15 Q. To your knowledge? A. Unless they gave
16 them to me at another time.

17 Q. How many prints were there all together that were lifted
18 from that weapon? A. We have four here.

19 Q. Four. And from your recollection or from your notes
20 were there more smudge prints than just the four on the gun,
21 do you know? A. No.

22 Q. You don't know? A. No, I don't know.

23 Q. You don't know. Okay.

24 MR. FESTARINO: Thank you very much.

25 REDIRECT EXAMINATION

26 BY MR. ROBINSON:

23

1 Q. Mrs. Adams, you told us that you received four prints
2 from the gun? A. Four lifts were given to
3 me.

4 Q. Four lifts from the gun and only one of them was of
5 any value? A. That is correct.

6 Q. And when you talk about only one was of any value, what
7 do you mean by the other three? A. They were
8 either smudged or of no value as far as not having
9 characteristics in them.

10 Q. Okay. Let me ask you another question. Regarding
11 fingerprints, is it usual or unusual that you are able to
12 find a latent fingerprint from the scene and identify with an
13 ink print? A. Is it usual or unusual?

14 Q. Yeah. Do they usually, are they usually able to obtain
15 latent fingerprints from the scene of a crime?

16 A. I would say there are a lot of times latent fingerprints
17 but there are very few identifications compared to the
18 number of latent prints that are turned in.

19 Q. What is the reason for that? A. It could
20 be that a lot of them belong to -- of course, most of the
21 cases that I work on are burglaries so many of those prints
22 belong to victims and parties in the home.

23 Q. Many a time isn't it true that the latent print that you
24 recover from the scene is of no value whatsoever? They are
25 smudged, smeared, and not much that you can do with it?

26 A. Yes, that is correct.

24
1 Q. And isn't that the rule rather than the exception?

2 A. Yes, it is.

3 Q. Okay.

4 MR. ROBINSON: Thank you. I have no further
5 questions.

6 MR. PESTARINO: Thank you.

7 THE COURT: Thank you very much.

8 THE WITNESS: May I return to work?

9 MR. ROBINSON: Yes. Thank you very much.

10 (Witness excused.)

11 MR. ROBINSON: The People will call Officer Neal.

12 JAMES MELVIN NEAL,

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

15 THE CLERK: Take the witness stand, please.

16 DIRECT EXAMINATION

17 BY MR. ROBINSON:

18 Q. Can you state your full name spelling your last name for
19 the record, and give us your occupation?

20 A. Yes, sir. James Melvin Neal, N-e-a-l, San Jose Police
21 Department, Patrol Division.

22 Q. Officer Neal, how long have you been employed by the
23 San Jose Police Department? A. Be three
24 years.

25 Q. Okay. And is that three years of full time employment?

26 A. Three years of full time employment, yes.

25

1 Q. Prior to that were you employed by the San Jose Police
2 Department? A. As a reserve officer for

3 three years, also.

4 Q. So you have a total of six years police experience?

5 A. Yes.

6 Q. Officer Neal, directing your attention to November 6th,
7 1975, at 6:53 p.m. in the evening, could you tell us where
8 you were? A. Yes, sir, I was at a call

9 box on Monterey Highway at Cottle.

10 Q. Is that in Santa Clara County? A. Yes, it
11 is.

12 Q. City of San Jose? A. Yes, it is.

13 Q. And when you were at the call box were you in a police
14 car? A. Yes, I was in a marked

15 patrol vehicle.

16 Q. Were you on duty and in uniform? A. Yes,
17 I was.

18 Q. And at that time at 6:53 p.m. were you advised by radio
19 of anything? A. Yes, I was advised

20 that a shooting had taken place.

21 Q. All right. And did you get the address for the shooting?

22 A. They gave the address as next door to 6205 Woosley
23 Drive.

24 Q. And how did this information, how did you receive it?

25 A. Over the police radio.

26 Q. You have a radio in your car? A. Um-hum.

26

1 Q. How do you make contact on that radio? Do you have a
2 dispatcher? A. Yes, we have a dispatcher,

3 have a communications department downtown, telephone call
4 comes in they receive the message and broadcast it to all
5 units in the area.

6 Q. So you were advised of a possible shooting at 6205
7 Woosley, the next-door neighbor's house?

8 A. Yes.

9 Q. And what did you do upon hearing that?

10 A. Got back in my unit, they were asking for any unit to
11 respond as we were short of police units that night, back in
12 my unit and I advised radio I would be responding to the area.

13 Q. And did you start to respond to the area?

14 A. Yes, I did.

15 Q. In responding to the area did you receive another radio
16 broadcast? A. Yes, I did.

17 At that time they advised location again, and, that,
18 they also put out a possible description or a description of
19 a suspect.

20 Q. Okay. And Officer, I notice that you are referring to
21 something in front of you. For the benefit of the jury,
22 could you tell us what that is? A. Yes, it is,
23 this is a supplementary offense report that I wrote shortly
24 after the situation at 6205 Woosley.

25 Q. Does that report accurately reflect the events as you
26 determined them to be that night? A. Yes, in

27

1 chronological order.

2 Q. Is that report of any benefit to you to refresh your
3 recollection as to the events? A. Yes, it is.

4 Q. I take it in your three years as a police officer you
5 have made numerous police reports? A. Yes, I
6 have.

7 Q. Numerous arrests? A. Yes.

8 Q. Is the purpose of the police report to accurately
9 depict the scene and situation as you find it to be?

10 A. That is correct.

11 Q. And help an officer refresh his memory if he has to
12 subsequently testify in Court? A. Yes, sir.

13 Q. Do you have any independent recollection other than
14 reading that police report of the events that happened that
15 night?

16 MR. PESTARINO: I will stipulate that he can read
17 the police report.

18 THE WITNESS: Yes.

19 MR. PESTARINO: Or refresh his recollection.

20 Q. (By Mr. Robinson) You do have an independent
21 recollection? A. Yes, I do.

22 MR. PESTARINO: As far as I am concerned he can
23 use the police report any way he wants.

24 MR. ROBINSON: Of course he can.

25 THE COURT: He can use his own recollection. All
26 right.

28

1 MR. PESTARINO: Yes.

2 MR. ROBINSON: Counsel have anything else he
3 would like to add before I go on?

4 MR. PESTARINO: I didn't want to interrupt you.

5 Q. (By Mr. Robinson) This description, this subsequent
6 description you received by the radio, could you tell us
7 what that was?

8 A. Yes, radio advised it was
9 a white male adult, about forty-five, about five foot nine,
10 wearing a gray suit, had a black shirt, and then they
11 further advised that the party possibly went into a location
12 at Santa Theresa and Cottle.

13 Q. And what did you do, Officer Neal?

14 A. I was listening to the radio and responding to the area,
15 I was on Cottle Road.

16 Q. All right. Did you respond to the area of Santa Theresa
17 and Cottle?

18 A. Yes, I did.

19 Q. And upon responding to the area of Santa Theresa and
20 Cottle what did you do?

21 A. I was approaching
22 the intersection of Santa Theresa on Cottle Road, radio
23 further advised, another broadcast, and I advised radio I
24 was in that location at the time.

25 Q. And this other broadcast, what did that say?

26 A. The broadcast advised there were some citizens or witnesses
had followed a particular party to that location, was at a
phone booth at the seventy-six station at Santa Theresa
and Cottle.

29

1 Q. And did you respond to that phone booth?

2 A. Yes, I did. I advised radio I was at that location at
3 the time and I was being waved down by some citizens.

4 Q. Okay. Some citizens waved you down?

5 A. Yes, they did.

6 Q. Okay. And when these citizens waved you down did they
7 say anything to you? A. They advised me that,
8 they were calling the Police Department, they were on the
9 phone at that time, and another citizen had followed the
10 party from the Woosley Drive address to Thrifty's or the
11 pizza parlor, and they advised me that the party was there
12 at the time.

13 Q. This seventy-six gas station where the phone booth was
14 located, is this in a shopping center?

15 A. In a shopping center parking lot.

16 Q. How far away is this seventy-six gas station with the
17 phone back from the pizza parlor or the Thrifty Drug Store,
18 if you can tell us? A. I would have to
19 estimate at about seventy-five yards.

20 Q. And upon receiving the information, Officer Neal, that
21 the possible suspect either went into the Thrifty or pizza
22 parlor, what did you do? A. I tried to ask
23 or find out or pinpoint exactly where they advised me, they
24 didn't know exactly. However, they felt it was either the
25 Thrifty Drug Store or Shakey's Pizza Parlor or Roundtable.

26 Q. And then what did you do? A. I pulled my

30

1 unit around the cars and parked just to one side of the
2 Thrifty Drug Store and exited my vehicle at that time.

3 Q. Then what happened? A. I responded to the
4 front of the Thrifty Drug Store where I took up a position
5 where I could see through the windows into the Thrifty Drug
6 Store first.

7 Q. Did you see anyone in the drug store?

8 A. I saw an older white male who was talking on the
9 telephone, pay phone. I waited for a moment to be sure that
10 this was the party, the party vaguely matched the description
11 but wasn't perfect, didn't have the coat or gray suit that
12 the radio advised me.

13 Q. Did he have on a black shirt? A. Yes, he
14 did.

15 Q. Okay. A. No tie however.

16 Q. All right. A. I waited a moment,
17 the party hung up the telephone and then started to exit the
18 door.

19 Q. What did you do? A. When he exited the
20 door I advised him right away of my presence, told him to
21 keep his hands where I could see them. At that point the
22 reserve officer that works security at the shopping center
23 responded to my assistance, as I was alone. When the party
24 came out he complied with what I wanted, and I asked the
25 reserve officer to take charge of the party.

26 Q. Okay. A. From there we went

31

1 behind a pylon where we could get out of the way of everybody.
2 That is a column, large column. The reserve officer took
3 charge of him. We quickly patted him down and he right
4 away advised me that he was the citizen that had followed the
5 party to the shopping center.

6 Q. Was that Mr. Stukan? A. I believe it
7 was, yes.

8 Q. Was he sort of nervous and upset?

9 A. He was very nervous and upset.

10 Q. Were you nervous thinking you were apprehending a
11 possible homicide suspect? A. I did, I did

12 exit my vehicle with a shotgun. There was a lot of people
13 around and they were nervous, people scurrying for cover.

14 Q. Did you release Mr. Stukan? A. Yes, I did.
15 He pointed out to me at the time that the suspect was in the
16 pizza parlor. That is what he was doing, trying to get
17 through to the Police Department to tell us.

18 Q. After Mr. Stukan pointed this out to you, Officer Neal,
19 what did you do? A. I responded to the
20 front door of the pizza parlor.

21 Q. Were you still alone at this time?

22 A. Yes, I was. The officer, reserve officer Ardonis was
23 standing behind me and taking care of the gentleman I had
24 just talked to.

25 Q. And prior to entering the pizza parlor did you instruct
26 the citizens to do anything? A. Yes, I did.

1 There were four to five citizens that were standing in the
2 doorway of the pizza parlor and several that were coming
3 toward us to see what was going on. I advised them to
4 please leave the area, and I instructed Officer Ardonis to
5 get the citizens out of the way and to safety.

6 Q. What was your purpose in doing that?

7 A. So that none of them would get injured if in fact
8 shooting took place.

9 Q. Did you enter the pizza parlor?

A. Yes, I

10 did.

11 Q. Could you tell us how you entered?

12 A. I opened the door and entered very carefully through
13 the right-hand side of the pizza parlor against the bar area.

14 Q. Did you have a weapon drawn at that time?

15 A. I had a shotgun.

16 Q. And as you entered the pizza parlor was it dark or light
17 in there? A. It wasn't real dark. It was

18 light enough to where I could tell who was in there.

19 Q. And could you tell us what you saw, Officer? Well, what
20 did you do immediately upon entering the pizza parlor?

21 A. I stepped in the door and walked four or five steps.

22 As soon as I walked in I looked the crowd over that was

23 sitting directly in front of me, I stepped to my right,

24 positioned myself up against the bar with my back, making

25 myself less of a target. As soon as I entered I observed

26 three tables in front of me, two of which contained citizens

1 and children. The third table contained the suspect. I
2 looked him directly in the face.

3 Q. Okay. Now, as you entered and you observed the three
4 tables would the suspect have been sitting at the closest
5 table, the second one, or third one back?

6 A. I believe the suspect was sitting at the third table.

7 Q. From the door? A. Yes.

8 Q. And you looked at this man? A. Yes, I did.

9 Q. And could you describe what this man was wearing, for
10 us? A. He was wearing a gray suit,
11 sort of small check, a tie, and a black shirt.

12 Q. And did this man fit the description of the suspect that
13 you had? A. Yes, he did.

14 Q. Now, when you observed this person did he look at you?

15 A. Yes, he did.

16 Q. Okay. Could you describe what he did when he looked at
17 you? A. When I first saw him he was
18 holding or he was cupping a beer mug. He looked directly in
19 my eyes and I looked directly in his. I observed him to
20 have a fresh cigarette in his mouth. He looked me in the
21 eyes, then quickly looked back down, then quickly looked back
22 up again, and then quickly looked back down. The third time
23 he looked at me is when I gave him the first order.

24 Q. Okay. Now, could you perhaps demonstrate for us,
25 Officer Neal, how he looked up and down? Was it a quick up
26 and down or what? A. Well, he was sitting

1 in a manner of this nature leaning slightly forward, cupping
2 the beer mug, saw me come in, he looks up, he looked back
3 down at his beer, and looked up this way, looked back down
4 again. When he looked at me he stared right in my face.

5 Q. And it was at this time that you gave him your first
6 order?

7 A. Yes. I was moving closer to
8 him each time very slowly. I gave him my first order.

9 Q. Okay. And what did you tell him to do, Officer Neal?

10 A. I told him to place his hands flat on the table and not
11 to move.

12 Q. Okay. What did he do? A. Uncupped the
13 beer mug and placed his hands this way flat on the table.

14 Q. Did he have any trouble understanding you?

15 A. No. I only stated it one time and he complied the first
16 time.

17 Q. So you told him place your hands flat on the table and
18 don't move, and he did that? A. Yes, he
19 certainly did.

20 Q. So did it appear to you that he could understand what
21 you told him to do? A. Yes.

22 Q. Okay. And after you told him to place his hands on the
23 table and not move, and he did that, what did you tell him
24 to do next? A. I walked, at that point I

25 walked closer to him. My second order was to have him stand
26 very slowly keeping his hands on the table.

Q. Okay. And what did he do? A. He stood

1 very slowly and kept his hands on the table flat.

2 Q. And did it appear to you that he understood what you
3 told him to do?

4 A. Yes. That was my
5 second order. I only said it one time.

6 Q. Did he do exactly what you told him?

7 A. Yes, he did.

8 Q. Did you have another order for him?

9 A. At that point I walked to the suspect and placing the
10 shotgun on his back I pat-searched him for a concealed
11 weapon of any kind.

12 Q. Did you find any weapons on him?

13 A. No, I did not.

14 Q. After you pat-searched the suspect what did you tell
15 him to do?

16 A. He stood there very still.
17 The next order I gave him was to straighten up and interlock
18 his fingers behind his head.

19 Q. Okay. And did he do that?

20 A. Yes, he
21 did.

22 Q. Did he have any difficulty understanding that?

23 A. Again, a third order, I gave it to him one time and he
24 complied.

25 Q. Locked his fingers like that behind his head?

26 A. Yes.

Q. And put them back? You said that he stood up very
still?

A. Well, he stood up very
slowly, straightened up, very still.

1 Q. He wasn't weaving or wobbling around or anything?

2 A. No.

3 Q. Okay. Now, after this occurred, Officer Neal, what did
4 you do? A. I moved the stool he was

5 sitting on with my right foot, still keeping the suspect
6 secured. I advised him to walk behind the table and walk to
7 the door.

8 Q. Okay. Did he do that? A. Yes, he did.

9 Q. Did he indicate that he understood by his actions what
10 you told him to do? A. Yes, again he
11 complied and walked very slowly to the front door area.

12 Q. And during this time, Officer Neal, from the time you
13 first confronted the suspect until you were telling him to
14 walk towards the front door did he say any words or sounds
15 or anything like that? A. No, he did not.
16 He didn't utter any sound, make any noises, state anything
17 to me at all. He did comply with everything.

18 Q. Okay. Now, did you lead him outside the pizza parlor?

19 A. Not right away. No, I led him to the front door. At
20 that point I told him to place his hands against the wall.

21 Q. Did he do that? A. Yes, he did.

22 Q. Seemed to understand what you told him?

23 A. Um-hum.

24 Q. As you led him towards the front door I take it you
25 had an opportunity -- strike that. When you led him
26 towards the front door were you behind him?

1 A. Yes, I was.

2 Q. And I take it your eyes were focused on him?

3 A. Yes.

4 Q. You had an opportunity to see him walk?

5 A. Yes, I did.

6 Q. How far did he have to walk approximately?

7 A. I would say about twenty, twenty feet.

8 Q. And did you notice anything unusual about his walk?

9 A. Very slow.

10 Q. Did you notice that he was wobbling or weaving, anything
11 like that?

A. No, he was not.

12 Q. Any sort of a stagger or anything?

13 A. No, he was not.

14 Q. Would it be a normal slow walk?

15 A. Yes.

16 Q. After you had him -- you told him to place his hands
17 against the wall inside the pizza parlor?

18 A. Yes, he did.

19 Q. He did that for you? A. He did that.

20 Q. What happened next? A. Officer Ardonis
21 had come into the --

22 Q. That is the reserve officer? A. Yes,
23 Reserve Officer Ardonis had come into the pizza parlor and
24 was standing there, and Officer Gromott, a fill officer, was
25 also standing in the door with drawn shotgun. I had the
26 defendant put his hands against the wall at which time he

1 complied. I gave an order to the Reserve Officer Ardonis
2 to place handcuffs on the suspect.

3 Q. And when the officer had to place the handcuffs on the
4 suspect, did he tell the suspect anything?

5 A. No. I gave the orders.

6 Q. You gave the orders. What did you tell the suspect?

7 A. I told him to place one hand behind his back, I believe
8 it was the left hand.

9 Q. Did he do that? A. He did.

10 Q. Did he place his left hand behind his back?

11 A. Yes, he did.

12 Q. He understood the difference between left and right
13 at that time? A. Again, one order.

14 Q. Did you handcuff -- did the reserve officer handcuff
15 his left hand? A. I believe it was his
16 left hand, yes.

17 Q. Then did you give him another order?

18 A. No, the reserve officer then grabbed him by the
19 shoulders, straightened him up, and took his right hand and
20 secured his handcuffs on him.

21 Q. When you say "Grabbed him by the shoulder and
22 straightened him up" had he fallen down or anything?

23 A. No, he still had his right hand on the wall and it is
24 a matter of holding the suspect so they won't fall at the time,
25 so you reach up and grab them by the shoulder and straighten
26 them up.

1 Q. So you have somebody, police procedure is instead of
2 having them straight against the wall you have them at an
3 angle so that they can't make any movement or anything like
4 that? A. Yes.

5 Q. Okay. What did you do next, Officer?

6 A. After the party was handcuffed and secured, he was then
7 taken by me to Officer Gromott's patrol car since Officer
8 Gromott had a caged police vehicle for prisoners and I didn't.
9 I was a canine officer at that time and I had a police dog
10 in the car.

11 Q. You had a police dog in the car? A. Yes.

12 Q. Did you bring your police dog into the restaurant?

13 A. No, I did not.

14 Q. Why not? What is the story on that?

15 A. Well, I would have had to control the dog and carry a
16 shotgun, and it would have been awkward. The sight of the
17 dog in a congested area like that would cause a lot of
18 turmoil.

19 Q. Just for our own -- I am sure that the jury would like
20 to know, what do you use a police dog for? What sort of
21 stuff does he do? A. The police dog offers

22 protection, citizen protection searching for suspects in
23 buildings, so forth.

24 Q. Does that dog live at your house? A. Yes.

25 He is retired now. He lives with me.

26 Q. He is retired? All right. Now, you took the suspect

1 and placed him in Officer Gromott's vehicle?

2 A. Yes, I did. Right away.

3 Q. Then what happened next? A. I placed him
4 in the rear seat of the police vehicle and secured by locking
5 the rear door. I advised Officer Gromott we were going to
6 return to the scene.

7 Q. Okay. And did you return to the scene?

8 A. Yes, we did. Officer Gromott followed me to, at that
9 time the address corrected to 6217 Woosley, and that is
10 where the two of us responded.

11 Q. Okay. Now, at 6217 Woosley what happened?

12 A. When we arrived I observed two other officers which are
13 our merge officers or SWAT team officers, Officers Terry
14 Madocus and Officer Stangle. At that point I observed them
15 roping off the front door area of the residence at 6217
16 Woosley.

17 Q. And did you then respond over to Officer Gromott's
18 vehicle where the suspect was? A. Officer
19 Gromott was there and he secured the prisoner and stood by.
20 Then I responded to make contact with Officer Madocus.

21 Q. And what did you do next? A. When I
22 arrived and made contact with Officer Madocus he was
23 advising me there was evidence lying on the scene, it was
24 lying near the front door of the residence, and at that
25 point pointed out several empty twenty-two caliber casings.

26 Q. What happened next? A. We roped off

1 the area and I went back to my patrol vehicle and at that
2 point radioed for Detective Technician Crew and detectives
3 to respond to the scene.

4 Q. That would be Sergeant Parrott, Randall, Newkowsky?

5 A. Right. I don't know who exactly, who responded. I
6 left prior to their arrival.

7 Q. What did you do after you radioed in?

8 A. I asked them also for a supervisor, uniformed
9 supervisor to respond, bring a camera, and two other officers
10 arrived, made contact with me, Officer Beckwith and Officer
11 Lintern. They asked at that time if a weapon had been
12 found. I had told them no weapon had been found, and that
13 apparently from witnesses the defendant or the suspect at
14 that time ran on foot away from the residence. I advised
15 Officer Beckwith and Lintern to make a foot-search in the
16 direction the suspect ran in lieu of recovering the weapon.

17 Q. When they asked you if any weapon had been found they
18 asked you because you were the individual that apprehended
19 the individual? A. That is correct.

20 Q. And you meant no weapon had been found on the
21 individual? A. That is correct.

22 Q. Then what happened next? A. The two
23 officers went on their foot-search and I went back to
24 Officer Cromott's patrol car. I was going to take the
25 defendant out of the rear of the car and place him in my
26 patrol car at that time.

1 Q. Okay. And then what happened?

2 A. I went back to Officer Gromott's car and opened the
3 door. Officer Beckwith and Lintern came back and made
4 contact with me and advising me that they had found a weapon
5 at that time.

6 Q. And then what happened? A. Well, I closed
7 the door of the vehicle, again securing the defendant in the
8 patrol vehicle, went back to my own vehicle and radioed for
9 more assistance to come in and recover the weapon.

10 Q. Then what happened? A. They recovered
11 the weapon and I went back again to Officer Gromott's
12 vehicle. At that point I opened the rear door and I read
13 the defendant his rights.

14 Q. All right. Now, when you read the defendant his rights
15 where was he seated? A. Seated in the rear of
16 the patrol vehicle.

17 Q. And where were you in relation to him?

18 A. I was directly out of the door.

19 Q. Okay. And how far away were you from him when you read
20 him his rights? A. Well, I was leaning in,

21 my head was inside the vehicle. I was approximately four to
22 five inches away from his right ear.

23 Q. Inside the vehicle. When you open the door does a light
24 go on? A. A light comes on.

25 Q. Could you see the defendant? A. Yes.

26 Q. You were approximately four or five inches away?

1 A. Yes.

2 Q. What rights did you read him, Officer Neal?

3 A. I read him his constitutional rights from a Miranda
4 card that is supplied by the Police Department.

5 Q. And did you read it right off the card?

6 A. Word for word.

7 Q. Do you have that card with you?

8 A. No, I don't. A recent decision, we are not using them.

9 Q. Pardon me? A. A recent decision, I
10 guess we are not using them very much anymore.

11 Q. Really? Do you know that card by memory?

12 A. Yes, I believe I do.

13 Q. Okay. Could you tell us what you read to the
14 defendant? A. Yes.

15 Q. Excuse me, this individual that we have been talking
16 about, do you see him in Court today?

17 A. Yes, I do.

18 Q. Would you point him out, please?

19 A. Sitting over here (indicating).

20 MR. ROBINSON: Indicating the defendant, Your
21 Honor?

22 THE COURT: Yes. So ordered.

23 Q. (By Mr. Robinson) Officer Neal, would you tell us what
24 you read to the defendant? A. First of all, I
25 advised him verbally I was going to read him his rights, for
26 him to listen very carefully.

1 Q. When you said that what did he say or do?

2 A. He turned his head slightly and was looking at me, and
3 he nodded as though he understood.

4 Q. Okay. A. I advised him that I was
5 going to read him his rights, to listen very carefully, and
6 if he did not understand anything to indicate so and I would
7 explain it to him. He said, his word was, "Okay."

8 Q. Indicating that he had understood what you had told him?

9 A. With a nod, also.

10 Q. All right. A. We were both
11 speaking very softly, and at that point I started and I
12 advised him that he had the right to remain silent.

13 Q. And when you said that did he do or say anything?

14 A. I asked him if he understood after each question, I said,
15 "Do you understand that?" He said, "Yes," with a nod. I
16 said, "You have the right to an attorney present," and I
17 asked him if he understood that. And he said, "Yes." And I
18 advised him that anything that he said could and would be
19 used against him in a Court of Law. I asked him if he
20 understood that. He said, "Yes." I advised him if he didn't
21 have an attorney one would be appointed to represent him in
22 Court, and I asked him if he understood that. He said, "Yes."

23 Q. And when you were reading him these rights could you
24 tell us what he was doing? Was he listening?

25 A. He was handcuffed sitting in the vehicle, and he was
26 looking at me each time, and he nodded his head and said yes.

1 Q. At any time did he indicate that he didn't know what
2 was going on? A. No.

3 Q. Okay. Did it appear to you that he knew what was going
4 on? A. It appeared so.

5 MR. ROBINSON: Might we approach the bench, please?

6 THE COURT: Yes.

7 (Discussion off the record.)

8 THE COURT: Ladies and gentlemen, it has been
9 agreed by counsel that I could advise you of the fact that
10 when the constitutional rights are read, and a person elects
11 not to respond, in other words, to remain silent, you are
12 not to infer anything from that because it is a constitutional
13 right, and that the purpose of eliciting the testimony that
14 the constitutional rights were presented to the defendant in
15 this case are presented only for the purpose of showing the
16 observation of the officer as to the defendant's demeanor,
17 state of mind, et cetera, it has no inference, no
18 implication by the fact that he remained silent that you are
19 to infer anything from that. Do you all understand that?
20 He has a right to remain silent.

21 MR. ROBINSON: Thank you, Your Honor.

22 Q. (By Mr. Robinson) Now, did you ask Mr. Ismail -- after
23 you asked him at the completion of each right did he
24 understand it, did he indicate that he did?

25 A. He said yes, nodding his head.

26 Q. And could you tell us what happened next, Officer?

1 A. I asked him if he wished to waive his right to remain
2 silent.

3 Q. What did he say? A. He responded
4 verbally by stating no.

5 Q. Okay. And what happened next? A. I asked
6 him if we had any questions would he like to talk to us.

7 Q. What did he say? A. Again he verbally
8 stated no.

9 Q. What happened next? A. I then advised
10 him at that point that I had some basic questions to ask him,
11 such as his name, et cetera.

12 Q. Okay. And what did he say then? A. He
13 verbally stated, "That is okay."

14 Q. Okay. Now, when you asked him he -- strike that.

15 When you asked him the question if you had any
16 questions would he like to talk to you about it, did you
17 mention anything regarding the incident regarding the
18 incident, the shooting, or anything like that, or did he
19 say anything about the incident of the shooting?

20 A. I said in regard to the incident.

21 Q. Okay. So what did you say to him regarding that?

22 A. Refer to my report here again --

23 Q. Okay. A. I asked if we had any
24 questions would he talk to us, verbally stated no, in regard
25 to the incident.

26 Q. Okay. And after that, then what did you ask him?

1 A. Again I advised him that I, that I had basic questions
2 to ask, such as his name. He stated verbally that was okay.

3 Q. Then what did you ask him? A. I then
4 asked him for his name.

5 Q. Okay. And did he give it to you?

6 A. Yes. He indicated by turning slightly to me and very
7 slowly and very softly he stated, "David Ismail."

8 Q. And did you ask him more basic questions?

9 A. Well, after he stated his name was David Ismail, he
10 spelled his last name for me.

11 Q. He spelled it? A. Yes. And I was
12 writing it down.

13 Q. Okay. And did you ask him a few more basic questions?

14 A. Yes, I believe only one or two. I asked him if he
15 owned a car, and he stated yes. The last question I asked
16 the, "Did you drive to the shopping center?" And he stated,
17 "No, I walked."

18 Q. Okay. Now, at this time did you ask him any more
19 questions? A. No, I did not.

20 Q. Now, what did you do -- strike that.

21 During this time you were having this brief
22 conversation with Mr. Ismail, Officer Neal, did you notice
23 whether or not he slurred his speech?

24 A. No, he did not.

25 Q. Would slurred speech be an indication that somebody was
26 under the influence of alcohol? A. Yes, it

1 would.

2 Q. And did you notice whether or not he understood what
3 you were asking him to do?

4 A. I felt at that
5 point he did understand. He indicated by nodding his head
6 and also giving me a verbal answer at the same time.

7 Q. Okay. After this took place did you take Mr. Ismail
8 someplace?

9 A. Yes, at that point I asked
10 him no more questions, and I asked him to step out of the
11 patrol vehicle. It is not too easy getting out of the rear
12 seat of a patrol vehicle, so I told him watch your head,
13 and grabbed him by his right arm, placing my hand on his
14 back so as not to injure him when he exited the vehicle, and
15 I had him exit the vehicle and at that time walked him to
16 my patrol car which contained the canine.

17 Q. He was handcuffed getting out of the patrol vehicle?

18 A. Yes.

19 Q. Did he make it out of the vehicle okay?

20 A. Yes, he did.

21 Q. Didn't stumble or hit his head? A. No.

22 As a matter of fact he thanked me, whatever reason.

23 Q. Then did you transport him to the Police Department?

24 A. I walked him to my patrol vehicle. We got to my patrol
25 vehicle I advised Mr. Ismail at that point I had a police
26 dog in the car. I advised him further that the police dog
so responds to any hostility, so that if he became irate or
hostile or upset of any kind that the dog would

1 unfortunately bite him if I couldn't control him. He told me
2 he understood that and looked at the dog, and I opened the
3 door, set him in the patrol vehicle in the front seat with me
4 and secured him with a seat belt. I asked him if he was
5 comfortable and he stated yes, he was, except that the
6 handcuffs were a little tight.

7 Q. Okay. And then what did you do?

8 A. I told him at that time, that point that we would be
9 down, we were going downtown and we'd be down there very
10 shortly and I would take the handcuffs off of him. I
11 secured the door by locking it and securing him in the seat,
12 at that point walked around to the driver's door, I advised
13 the officers on the scene I would be responding to the
14 detective bureau with Mr. Ismail, that is where they could
15 find me.

16 Q. Okay. Officer, did the defendant sit there knowing that
17 this was a police dog in the car without making any sudden
18 moves or things like that?

19 A. Yes, he knew
20 that the dog was there. As a matter of fact, the dog came
21 over and introduced himself, and he looked at the dog, smiled,
22 and was just turning very slowly in the car. My dog turned
23 back around and stuck his head out the window.

24 Q. Okay. You took him down to the detective bureau?

25 A. Yes. I advised radio I was enroute to the detective
26 bureau and to have the detectives stand by.

Q. Did you walk him up to the third floor?

1 A. Pulled to the rear of the building, we went downstairs
2 to where the elevator is to go to the third floor of the
3 Police Department and the detective bureau, we did, we went
4 up to the elevator and through another set of doors.

5 Q. Did you notice anything unusual about his ability to
6 walk during this time? A. No. After we got
7 out of the vehicle and were at the Police Department I no
8 longer held onto Mr. Ismail and allowed him to walk himself.
9 I walked slightly behind him.

10 Q. Okay. And at the detective bureau did you contact a
11 technician to draw blood from Mr. Ismail?

12 A. Yes, as soon as I got into the bureau I put Mr. Ismail
13 into one of the interview rooms, Room B and I went to the
14 telephone, had a radio call for a technician to come and
15 extract blood.

16 THE COURT: Perhaps this would be a good time to
17 take a break.

18 MR. ROBINSON: Fine, Your Honor.

19 THE COURT: Ladies and gentlemen, we will take our
20 morning recess of fifteen minutes, you will keep in mind my
21 admonition not to discuss the case among yourselves or with
22 anyone else or express any opinion about the case or permit
23 anybody to discuss it with you. We will resume at 11:15.
24 The defendant will be ordered to return, also.

25 (Short recess taken.)

26 THE COURT: Let the record show that the jury is

1 present, defendant is present.

2 MR. ROBINSON: Thank you.

3 Q. (By Mr. Robinson) Officer, where we left off, I think
4 you walked Mr. Ismail up to the third floor of the Police
5 Department? A. That is correct.

6 Q. At that time what did you do next?

7 A. Walked into the detective bureau where I placed Mr.
8 Ismail into interview room B, detective bureau.

9 Q. Then you called for a technician?

10 A. Yes, I did.

11 Q. Now, during this time were you having a conversation
12 with Mr. Ismail? A. Basic questions.

13 I kept asking if he was comfortable, there was anything I
14 could do for him.

15 Q. And was he responding to these questions?

16 A. Yes, he was. He indicated the handcuffs were a little
17 tight and I advised him I would be taking them off him
18 shortly.

19 Q. Did you take them off in the interview room?

20 A. Yes, I did.

21 Q. Now, did a technician respond to draw blood from Mr.
22 Ismail? A. Yes, she did.

23 MR. ROBINSON: Might we have these two envelopes
24 marked People's next, A and B?

25 THE COURT: Yes, be 25A and B.

26 (Whereupon, the above-mentioned items, being two

1 envelopes, were marked as People's Exhibits 25A and B for
2 identification.)

3 MR. ROBINSON: May I approach the witness, Your
4 Honor?

5 THE COURT: Surely.

6 Q. (By Mr. Robinson) Showing you the People's Exhibit 25A
7 and B, do you recognize that? A. Yes, I do.

8 Q. Can you tell us what that is? A. It is the
9 data sheet for blood and urine sample from the County lab.

10 Q. Did you fill out any information contained on that?

11 A. Yes, I did, several parts of it.

12 Q. Could you tell us what you put thereon in your writing?

13 A. Yes, number one, submitting agency, I wrote S.J.P.D.
14 indicating the Police Department; number two, the case, I
15 indicated number four, my name, J. Neal, the name of the
16 suspect, I wrote his name in, David M. Ismail, and his age,
17 forty; item seven, the date and time of the incident, 11-6-
18 75, 1900 hours; number nine, the place where the specimen
19 was taken was detective bureau.

20 Q. And did you indicate on there the time that the
21 specimen was taken? A. I did not. However,
22 the technician did.

23 Q. Okay. What time is that? A. 11-6-75,
24 8:32 p.m.

25 Q. 8:32 in the evening? A. Yes.

26 Q. Were you present when the blood sample was drawn from

1 Mr. Ismail? A. Yes, I was.

2 Q. Did you have any conversation with Mr. Ismail prior to

3 drawing the blood sample? A. I advised him

4 we were going to take a chemical blood sample from him. He
5 indicated okay. I had him take his coat off and roll up his
6 sleeve.

7 Q. And did Mr. Ismail do that? A. Yes, he did.

8 Q. As he sat there was he seated in a chair?

9 A. Yes, he was.

10 Q. By a table? A. Yes.

11 Q. Okay. Could you describe how he was seated, please?

12 Was he weaving back and forth or falling off the chair,

13 anything like that? A. No, my recollection he

14 sat straight up in the chair, both feet on the floor with his

15 hands in his lap and clasped together.

16 Q. And you were present while a blood sample was withdrawn?

17 A. Yes, I was.

18 Q. What happened to that blood sample?

19 A. After the blood sample was extracted, the technician
20 had taken it, put the cap on it, placed it into a bottle,
21 put the cap on it, at that point put a little, I guess it
22 would be a white sticker on it indicating, I believe, the
23 time and the case number, and so forth, and then gave it to
24 me for my initials.

25 Q. Did you put your initials on it?

26 A. Yes, I did.

1 Q. Then what did you do with the sample?

2 A. I placed it into this envelope here.

3 Q. 25A ? A. Yes.

4 Q. What did you do with the envelope?

5 A. After I placed it in there I sealed the envelope and
6 then kept it.

7 Q. And where did you place the envelope?

8 A. I placed the envelope in the County lab where they have
9 a little box inside there that no one can get in once it
10 goes in.

11 Q. Is it sort of like, a drop-chute to a mailbox?

12 A. Like a drop-chute to a mailbox, yes.

13 Q. And is the seal that you placed on that envelope still
14 on there? A. Yes, it is.

15 Q. Okay. I notice that the envelope is cut at the bottom.
16 Did you cut it -- A. No, I did not.

17 Q. -- open? Now, was Mr. Ismail, did he say anything
18 to you after the blood sample was withdrawn regarding going
19 to the bathroom or anything like that?

20 A. Yes, he did. I believe he asked to go to the bathroom.

21 Q. Okay. And what happened then?

22 A. Well, I advised him that we were going to be taking a
23 urine sample, also, and that I took and I had a urine bottle
24 there for the sample, and I responded to the restroom with
25 him.

26 Q. And is there any means by which you do that? Does

1 somebody have to void their bladder or anything like that?

2 A. Yes, they do.

3 Q. Could you tell us about that, please?

4 A. They have to void the bladder the first time, I believe
5 twenty minutes later or so void for a second time.

6 Q. Okay. And which sample do you take, the first or the
7 second? A. Take them both.

8 Q. You would take them both, huh? A. Yeah.

9 Q. Did Mr. Ismail do that? A. Yes, he did.

10 Q. And that sample, the urine sample, were those also
11 turned over to the lab? A. Yes, they were.

12 Q. Now, at the detective bureau did you ask Mr. Ismail to
13 do anything regarding any property he had?

14 A. Yes, I advised him to take all of the property that he
15 had out of his pockets, his watches, rings, money, wallets,
16 and place it on the table.

17 Q. Did he do that? A. He complied, yes.

18 Q. And did you identify what property he had and things
19 like that? A. Yes, I did.

20 Q. Okay.

21 MR. ROBINSON: Your Honor, might we have this next
22 exhibit marked as People's next in order, various items
23 contained in a plastic bag?

24 THE COURT: Yes, it will be number 26, defendant's
25 personal items.

26 (Whereupon, the above-mentioned items, being a bag

1 of personal items, were marked as People's Exhibit No. 26 for
2 identification.)

3 Q. (By Mr. Robinson) Showing you People's Exhibit 26 with
4 a tag on the inside, do you know what that tag is?

5 A. Yes, that is what we call a form 13-A, it is an evidence
6 tag that is attached to the evidence which is placed in a
7 plastic bag and secured by wire.

8 Q. Okay. And did Mr. Ismail have any money on him?

9 A. I don't remember.

10 Q. Okay. Showing you, showing you an address book, red on
11 the outside, do you recognize that address book?

12 A. Yes, I do.

13 Q. Okay. How do you recognize that?

14 A. By my initials, badge number, case number that I wrote
15 in there the night of the incident.

16 Q. Is that something Mr. Ismail removed from his property
17 the night you had him at the detective bureau?

18 A. Yes.

19 Q. And showing you this Oasis Motel key, number 129, do
20 you recognize that?

A. Yes, I do.

21 Q. Okay. And did Mr. Ismail have that on his person?

22 A. Yes, he had it in his pocket.

23 Q. And showing you this wallet containing some money and
24 some cards, do you recognize that?

25 A. Yes, I did.

26 Q. Okay. And did Mr. Ismail have that?

1 A. Yes, he did. One of the detectives had taken charge of
2 this.

3 Q. Okay. And also some loose change? Do you recall loose
4 change that night? A. Yes, I do.

5 Q. And did he have that on him? A. Yes.

6 Q. Now, are these the only items that you recovered from
7 Mr. Ismail that night? A. The best of my
8 recollection, yes.

9 Q. Okay. Showing you People's Exhibit 10-BB, does that
10 appear to be the way Mr. Ismail was dressed the night that
11 you apprehended him? A. Yes, it was.

12 Q. Okay. Thank you. Now, Officer, did you form an
13 opinion as to Mr. Ismail's state of sobriety the night in
14 question? A. Yes, I did.

15 Q. And could you tell us if you felt whether or not Mr.
16 Ismail was under the influence of any alcohol?

17 A. I felt no, he was not.

18 Q. Did you feel he was in any way impaired by alcohol?

19 A. No.

20 Q. Okay. Could you smell alcohol on his breath?

21 A. Slightly, yes.

22 Q. And you told us that you came within five inches of him
23 in the patrol vehicle. What sort of alcohol could you smell,
24 if you can tell us that? A. Beer.

25 Q. Smelled beer. Okay. And you saw him drinking a beer
26 or having a beer in his hand in the pizza place?

1 A. Right.

2 Q. Now, Officer, are you trained in observing whether or
3 not an individual that you have arrested, or a suspect that
4 you have taken into custody, is in fact under the influence
5 of any alcohol or narcotics? A. Yes.

6 Q. Okay. And why are you trained to observe this?

7 A. So when you make the arrest it would be a valid arrest
8 on the party, and in lieu of the indications that you have of
9 the party at the time, fits the elements of the crime.

10 Q. And also for possible evidentiary value as to whether
11 or not a person is under the influence of anything?

12 A. That is correct.

13 Q. Now, you talked with Mr. Ismail, you saw him walk, you
14 saw him comply to instructions, you saw him do certain things
15 you asked him to do, you were in the patrol car with him, and
16 it is your opinion that he wasn't impaired in any amount?

17 A. That is correct.

18 Q. Okay.

19 MR. ROBINSON: Thank you. I have nothing further,
20 Officer.

21 CROSS-EXAMINATION

22 BY MR. PESTARINO:

23 Q. Officer, this sounds like a drunk-driving case. Let me
24 ask you this, on patrol you have had occasions to arrest
25 people for driving under the influence of alcohol, have you
26 not? A. Yes.

1 Q. And you probably make many arrests?

2 A. Yes, sir.

3 Q. And sometimes it is difficult to tell whether a person
4 is under the influence, even when you suspect that he is,
5 isn't that right?

6 A. Sometimes. But very
7 very slight.

8 Q. Sometimes people who have pretty good tolerance for
9 alcohol don't show any visible signs, isn't that right?

10 A. Yes.

11 Q. That is why you use an expert in Court?

12 A. Yes.

13 Q. And you have been in Court, you have listened to expert
14 testimony about the effects and of the amount of alcohol
15 that people have drank, have you? A. Yes, sir,
16 I have.

17 Q. And you know that sometimes with a very little amount
18 people can --

19 MR. ROBINSON: Wait a minute, I am going to object
20 to this. It is hearsay.

21 THE COURT: It is cross-examination, overruled.

22 Q. (By Mr. Pestarino) And you know from your experience
23 and from being in Court that sometimes people that have little
24 to drink show some signs, don't they?

25 MR. ROBINSON: I am going to object to this unless
26 the witness has personally testified as an expert. Counsel
is trying to do indirectly what he can't do directly.

1 THE COURT: He has testified he has had training.

2 MR. ROBINSON: Now counsel is saying, "Haven't you
3 sat in Court and listened to expert testimony," and,
4 "Isn't it a fact that experts testify to that"?

5 MR. PESTARINO: That is part of his training,
6 isn't it?

7 THE COURT: If you are going to testify as to what
8 experts testify to then I will sustain the objection. I
9 understand the question to require Officer Neal to answer
10 from his own experience.

11 MR. PESTARINO: From his own experience and what
12 he has testified, because, if Your Honor please, part of his
13 training is being in Court and listening to experts.

14 MR. ROBINSON: No.

15 MR. PESTARINO: Of course.

16 MR. ROBINSON: Why don't you ask him that?

17 THE COURT: He did testify that he had been in
18 Court listening to experts. The question you asked him,
19 whether or not people who had had a slight amount to drink
20 show effects of it, are you asking whether experts have
21 testified to that or whether he knows?

22 MR. PESTARINO: I asked him if he'd been in
23 Court and he heard that.

24 MR. ROBINSON: That is hearsay.

25 MR. PESTARINO: It is hearsay, but it is part of
26 his opinion as it is part of the history of his training in

1 this particular field.

2 THE COURT: Well, I am going to sustain the
3 objection to that question. However, you may go into his
4 training as to whether or not --

5 MR. ROBINSON: Thank you, Your Honor.

6 MR. PESTARINO: All right.

7 Q. (By Mr. Pestarino:) Officer, you have had sufficient
8 training in this field both in police school as a reserve
9 officer and as an officer? A. I have had some
10 training, yes.

11 Q. And in the ordinary case when you suspect that a person
12 is under the influence of liquor, in the driving - drinking
13 cases I am talking about mostly, you put --

14 MR. ROBINSON: I am going to object to that,
15 drink and driving cases are irrelevant to this particular
16 proceeding. We are talking about alcoholic mental state.

17 THE COURT: Counsel, give him a chance to finish.

18 MR. ROBINSON: Thank you.

19 MR. PESTARINO: Thank you, Your Honor. I don't
20 think that it is irrelevant, Your Honor. I think that this
21 is --

22 MR. ROBINSON: There is no objection before the
23 Court, counsel. Ask your next question.

24 THE COURT: I indicated that you may proceed.
25 This was a preliminary statement and not evidence, and you
26 haven't gotten around to the question yet.

1 MR. ROBINSON: Thank you, Your Honor.

2 Q. (By Mr. Pestarino) Well, you in the ordinary drinking
3 and driving case where you suspected a person has been
4 drinking and driving, and you arrest him or stop him, you
5 put him through certain sobriety tests, don't you?

6 A. Yes, I do.

7 Q. And the reason for those sobriety tests is to enhance
8 or confirm your opinion, isn't it, as to sobriety or not being
9 sober, isn't it? A. That is correct.

10 Q. So sometimes a person even though he is under the
11 influence of liquor can still walk and talk and act?

12 A. Um-hum, that is correct.

13 Q. Again, it goes back to the question of tolerance,
14 doesn't it? A. Tolerance level, yes.

15 Q. Yes.

16 MR. ROBINSON: I am going to object and make a
17 motion to strike. Unless this officer has done empirical
18 study regarding tolerance he can't give an opinion to that.

19 MR. PESTARINO: It is part of his ordinary
20 business to know these things. I can ask him some more
21 preliminary questions.

22 THE COURT: Well, he is certainly not a technical
23 expert, but he can testify as to his own observations. I
24 might admonish the jury that whenever anyone is asked for
25 an opinion, whether an expert or a lay person, and the Court
26 allows that opinion to be given, the fact that I allow the

1 answer to stand, doesn't mean that I am expressing any
2 opinion of my own as to what weight you should give that
3 opinion. You may proceed.

4 Q. (By Mr. Pestarino) So anyway, there was something that
5 prompted you to have not only a blood test taken but a urine
6 sample taken in this particular case, wasn't there, Officer?

7 A. Yes, sir, it is a procedure.

8 Q. And that is basic police procedure you followed in
9 doing this?

A. Yes, sir, on felony cases,

10 yes.

11 Q. Even though you saw no apparent or outward or objective
12 signs or symptoms.

A. That is correct.

13 Q. Why did you take two samples?

14 A. Again, this is a procedure of the police department
15 where you take both samples. I believe one can be proven in
16 alcohol and one in drugs.

17 Q. And you didn't see any symptoms or signs that would
18 lead you to tend to believe that Mr. Ismail was under drugs,
19 did you?

A. No, sir, I did not.

20 Q. And how long in all did you spend with Mr. Ismail that
21 particular night? Just a rough idea.

22 A. A rough idea?

23 Q. Yeah.

A. I believe from about seven
24 p.m. to approximately twelve thirty in the morning.

25 Q. Seven p.m. to twelve thirty in the morning?

26 A. Four, maybe five hours.

1 Q. Now, he gave you some certain basic information when
2 you asked him for his name and his age, and so forth?

3 A. Yes, sir.

4 Q. Did you find out that what he gave you as to his date of
5 birth was incorrect? You want to look at that?

6 A. I don't have this in my notes, sir. I don't remember.
7 The detectives had taken charge of his personal belongings.

8 Q. Later on you found that he was forty years of age,
9 didn't you?

10 A. Yes, I did. I wrote it on
11 the sheet.

12 Q. Do you remember him giving you the date of birth?

13 A. No, I do not.

14 Q. You don't remember that. And do you remember him
15 spelling his father's name wrong?

16 A. No, I do not.

17 MR. ROBINSON: I am going to object to that, that
18 assumes something not in evidence.

19 MR. PESTARINO: It is cross-examination.

20 THE COURT: It assumes facts not in evidence.
21 However, it may be tied up later. If not, it can be
22 stricken.

23 MR. ROBINSON: Thank you, Your Honor.

24 THE COURT: In any event, the Officer says he
25 doesn't have the information. So it doesn't make any
26 difference.

MR. PESTARINO: Doesn't matter, doesn't matter that

1 much.

2 Q. (By Mr. Pestarino) Let me understand, what you did
3 with those samples, you gave them to the technician, or did
4 you take them?

5 A. I took them from the
6 technician.

7 Q. And what did you do with them?

8 A. After marking them with my name, badge number, and
9 securing them into the envelope I took them to the County
10 Jail where they have inside of an alcoholic investigation
11 bureau there, they have the chute or slot where you place
12 the evidence.

13 Q. Now, when you arrested Mr. Ismail what time was that?

14 A. About eighteen fifty-seven hours.

15 Q. Eighteen fifty-seven would be six fifty-seven?

16 A. Yes, sir.

17 Q. What time was it when you went back to the scene?

18 A. Approximately, I'd have to give you an approximate
19 time. I didn't indicate it down. The approximate time
20 was about twenty minutes later .

21 Q. About twenty minutes later? A. About
22 nineteen twenty or seven twenty hours.

23 Q. Did you do anything at the scene except -- excuse me --
24 did you do anything at the scene except help secure the
25 scene?

26 A. At the scene at 6217
Woosley or at the arrest scene?

Q. No, at the scene on Woosley.

1 A. No, I did not.

2 Q. You didn't do anything except secure the --

3 A. Two other officers had taken charge. When we take
4 charge of a scene it is a problem if another officer steps
5 in because he doesn't know what the other officer has done.
6 So, no, I did not.

7 Q. How long did you stay there?

8 A. Approximately fifteen minutes.

9 Q. And the defendant was in the police car all of the time?

10 A. Yes, he was.

11 Q. Alone? A. Yes, he was. He was alone
12 in the police vehicle but there was an officer standing
13 outside.

14 Q. With the dog? A. At which time?

15 Q. At the scene. A. The first time he
16 was in the patrol vehicle he was alone in the car with an
17 officer standing outside. The second time he was there he
18 was with my dog who was keeping him company.

19 Q. And was the -- would you characterize the defendant's
20 behavior that particular night from the time that you saw
21 him at six fifty-seven until you left him almost the next
22 morning, would you characterize his behavior? How would
23 you characterize it? A. His demeanor

24 was very well, excellent. I had no problems with him. He
25 complied with everything I asked him to do. And -- or any
26 of the other officers asked him to do, was very quiet, very

1 cooperative. About the size of it. I couldn't go any
2 farther. I had no problem whatsoever with Mr. Ismail. Very
3 courteous, very kind.

4 Q. But he wouldn't talk about what had happened?

5 A. No.

6 Q. Okay.

7 MR. PESTARINO: Thank you.

8 MR. ROBINSON: Yes.

9 REDIRECT EXAMINATION

10 BY MR. ROBINSON:

11 Q. Officer, you told us that in any felony arrest it is
12 the policy of the San Jose Police Department to take both
13 a blood and urine sample? A. Yes, it is.

14 Q. And a felony arrest, I take it a murder is a felony
15 arrest? A. Yes.

16 Q. Burglary? A. Yes.

17 Q. Robbery? A. Yes.

18 Q. Any sort of a crime involving a felony you automatically
19 take a blood and urine sample from the defendant?

20 A. Yes.

21 Q. Regardless of whether you even smell any alcohol or
22 observe any sign of intoxication or not?

23 A. That is correct.

24 MR. ROBINSON: Thank you. I have nothing further,
25 Officer. Good job.

26 RECROSS-EXAMINATION

1 BY MR. PESTARINO:

2 Q. Does it have on that envelope what the blood alcohol
3 was?

4 MR. ROBINSON: Objection --

5 THE WITNESS: No.

6 MR. PESTARINO: I am just asking.

7 THE COURT: You can ask if it is on the envelope.

8 Answer yes or no. He said no.

9 THE WITNESS: Not that I recall.

10 MR. PESTARINO: Thank you.

11 THE COURT: Thank you, Officer.

12 (Witness excused.)

13 MR. ROBINSON: People call Mrs. Patel.

14 THE COURT: Ranjan Patel.

15 RANJAN PATEL,

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

18 DIRECT EXAMINATION

19 BY MR. ROBINSON:

20 Q. Could you state your full name, spelling your last
21 name for the record? A. Patel, Ranjan,

22 P-a-t-e-l.

23 Q. And Mrs. Patel, do you own a business?

24 A. Yes.

25 Q. And what business do you own?

26 A. Motel business.

1 Q. And what is the name of that motel?

2 A. Oasis Motel.

3 Q. Where is that located? A. 5340

4 Monterey Road.

5 Q. Santa Clara County? A. Yes.

6 Q. San Jose? A. Um-hum.

7 Q. And do you own that business with your husband?

8 A. Yeah.

9 Q. Now, Mrs. Patel -- strike that.

10 MR. ROBINSON: Your Honor, could we have this
11 registration card marked as People's next in order?

12 THE COURT: Be number 27, the Oasis Motel
13 registration card.

14 (Whereupon, the above-mentioned item, being a
15 registration card, was marked as People's Exhibit no. 27
16 for identification.)

17 Q. (By Mr. Robinson) Mrs. Patel, I am going to show you
18 People's Exhibit No. 27, okay? Can you tell me, do you
19 recognize that? Do you know what that is?

20 A. Um-hum. It is --

21 Q. Why don't you sit closer to the mike. Can you tell us
22 what that is? A. Yeah, it is my card.

23 Q. What is that card? Is that a registration card?

24 A. Yeah, is registration card.

25 Q. Is that a registration card for your motel?

26 A. Yeah.

1 Q. And can you tell us how the information contained on
2 that registration card is put there?

3 A. I didn't get you .

4 Q. How does that writing get on that card?

5 A. I didn't get you.

6 THE COURT: Who put it on?

7 THE WITNESS: I did this one.

8 Q. (By Mr. Robinson) This information with the name, the
9 address, and everything, who writes that on there?

10 A. There it is mine.

11 MR. PESTARINO: Counsel, I will stipulate that
12 everything is in order here and if you want to lead her go
13 ahead.

14 MR. ROBINSON: Thank you.

15 MR. PESTARINO: Make it easier for you .

16 Q. (By Mr. Robinson) Would you tell us, did you write
17 this information on there in ink?

18 A. No, this one, this, the man is there.

19 Q. The man that registers writes that?

20 A. Yeah.

21 Q. And is that kept in the course of your business? Does
22 your business keep those cards? A. Yeah.

23 Q. Do you rely upon that information?

24 A. Um-hum.

25 Q. Okay. Now, directing your attention to November the
26 6th, 1975, did David Ismail come to your motel?

1 A. Um-hum.

2 Q. And did he register? A. Yeah.

3 Q. Check in for a room? A. Yeah.

4 Q. Okay. And what room did he check into?

5 A. One twenty nine.

6 Q. One twenty nine? A. Um-hum.

7 Q. And how many nights did Mr. Ismail register for?

8 How many days was he going to stay there?

9 A. He just took the room for only one day.

10 Q. One day? A. Yeah.

11 Q. And did he pay for that room?

12 A. Yeah.

13 Q. How did he pay? A. \$20.00.

14 Q. Cash money? A. Yeah. And I give a
15 little thing, just for the room rent is \$11.66, but he give
16 me the twenty dollar bill and I gave him the rest of the
17 money.

18 Q. You gave him change money? A. Yeah.

19 Q. All right. And do you have a policy in your motel
20 about paying in advance for rooms? A. Yeah.

21 Q. Okay. And how many nights did he tell you he was
22 going to stay there? A. He just took
23 the room for one day.

24 Q. One day. So if he said he was going to stay there two
25 days you would have charged him for two days at the start?

26 A. Yeah.

1 Q. So he just stayed there one day, right?

2 A. Yeah.

3 Q. Okay. Now, Mrs. Patel, what time on November the 6th,
4 1975, did Mr. Ismail come to your motel?

5 A. Around about 4:00 o'clock.

6 Q. 4:00 o'clock in the afternoon?

7 A. Yeah.

8 Q. Okay. And how did he arrive? How did he get there?

9 A. I think he came by the cab.

10 Q. By cab? A. Yeah.

11 Q. Okay. And the cab dropped him off in front of the
12 motel? A. Um-hum.

13 Q. And then he came in and registered?

14 A. Yeah.

15 Q. Okay. Told you he would be there for one day, right?

16 A. Yeah.

17 Q. Okay. And did you give, then give him his room key?

18 A. Yeah.

19 Q. And did he go to his room? A. Yeah.

20 Q. Okay. Now, did he talk to you later on that day after
21 he registered? A. Yeah, he just called me
22 for the cab.

23 Q. All right. He came out or called you on the phone?

24 A. No, he came in the office and told me for the cab.

25 Q. Told you to call a cab? A. Yeah.

26 Q. Did you call a cab? A. Yeah.

- 1 Q. And did you tell the cab where to go?
- 2 A. Just in room, in his room.
- 3 Q. One twenty nine? A. One twenty nine.
- 4 Q. Okay. And is that the last time you saw Mr. Ismail?
- 5 A. Yeah.
- 6 Q. All right. Now, besides registering for the room and
- 7 telling you to call a cab did you have any other conversation
- 8 with him? A. No.
- 9 Q. Okay. Did you ask him why he was in the area or what
- 10 he was going to do, anything like that?
- 11 A. No, I didn't ask him anything.
- 12 Q. Okay. Did he tell you anything about why he was down
- 13 there? A. No.
- 14 Q. Okay. There was no real conversation?
- 15 A. No.
- 16 Q. Okay. Now, did Mr. Ismail have any luggage with him,
- 17 suitcases, anything like that? A. I don't
- 18 think so. I didn't see that.
- 19 Q. You didn't see that? A. No.
- 20 Q. Did you know -- what was he wearing, do you know?
- 21 A. He wear the suit.
- 22 Q. Was wearing a suit? A. Um-hum.
- 23 Q. With a tie? A. Yeah.
- 24 Q. And shirt? A. Um-hum.
- 25 Q. And was his suit, Mrs. Patel, when he checked in, was
- 26 it buttoned up like this or was it open, do you remember?

1 A. I didn't really look at it.

2 Q. Did you see any gun with Mr. Ismail?

3 A. No.

4 Q. Didn't see a gun? Okay. Had Mr. Ismail ever stayed at
5 your motel before? A. No, I don't think
6 so.

7 MR. ROBINSON: Thank you, Mrs. Patel. I have no
8 further questions.

9 THE WITNESS: Okay. Thank you.

10 THE COURT: Just a moment, please, the attorney may
11 ask you a question.

12 MR. PESTARINO: Yeah, I want to ask you a few
13 questions.

14 CROSS-EXAMINATION

15 BY MR. PESTARINO:

16 Q. I am referring to People's Exhibit for identification
17 number 27, Mrs. Patel, the writing that is on that card, did
18 you put it there or did the person put it there?

19 A. This? All of this?

20 Q. Yeah. A. By this, staying, you
21 know who is staying this motel, this is by himself, and this
22 one, and this one, and this one I did myself (indicating).

23 Q. So the name David Ismail was written by David Ismail?

24 A. Yeah.

25 Q. The address, 1297 Huron Street -- A. Um-hum.

26 Q. -- number 402 was written by David Ismail?

1 A. By person, yeah.

2 Q. And the city, London, Ontario, and the state, Canada,
3 was all written by David Ismail?

4 A. Yeah.

5 Q. Okay. Thank you. I have a few more questions.

6 How did it happen -- strike that. Did you see
7 David Ismail arrive at your motel?

8 A. Yeah.

9 Q. How did he come to your motel?

10 A. By the cab.

11 Q. What kind of a cab?

A. I think it is

12 yellow cab, yeah.

13 Q. Yellow, green, what?

A. Yellow cab, I

14 think.

15 Q. Do you know what time he arrived there?

16 A. Around about 4:00 o'clock.

17 Q. About 4:00 o'clock. Did he have a small suitcase?

18 A. I didn't see the luggage.

19 Q. You didn't see the luggage?

A. Yeah.

20 Q. Okay. Did he come to see you later and ask you about
21 a place to eat? A. No.

22 Q. He didn't ask you where he could eat?

23 A. No.

24 Q. Did he ask you for a bar or where there was a bar?

25 A. He asked me for the cab.

26 Q. He just asked you for a cab?

A. Yeah.

1 Q. But he didn't ask you for a place to eat?

2 A. No, I don't remember that.

3 Q. You don't remember that. So the only thing you remember
4 is that he asked you for -- A. Yeah.

5 Q. -- to call a cab? A. Yeah.

6 Q. Did you talk to him at all other than just getting the
7 cab for him? A. No, I just called for
8 the cab and I told her, the cabdriver, to go to one twenty
9 nine.

10 Q. Did he tell you where he wanted to go?

11 A. No.

12 Q. Do you know when he called you, he called you on the
13 phone for a cab? He didn't talk to you personally?

14 Face to face? A. Yeah.

15 MR. ROBINSON: Well, I am going to object to that,
16 that question can't be answered.

17 THE COURT: It is ambiguous.

18 Q. (By Mr. Pestarino) Did he talk to you or did he phone
19 you? A. He came in the office and

20 asked for the cab.

21 Q. All right. He came to your office and he asked for a
22 cab? A. Um-hum.

23 Q. Did you smell any liquor on his breath?

24 A. No, because there is a glasses in the office.

25 Q. Okay. All right.

26 MR. PESTARINO: Thank you. That's all .

1 MR. ROBINSON: Thank you. I have nothing further.
2 Thanks for coming in.

3 (Witness excused.)

4 MR. ROBINSON: The People call Mr. Borg.

5 JOSEPH ARTHUR BORG,

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

8 THE CLERK: Take the witness stand please.

9 DIRECT EXAMINATION

10 BY MR. ROBINSON:

11 Q. Could you state your full name spelling your last name
12 for the record, please? A. Yes, it is

13 Joseph Arthur Borg, B-o-r-g.

14 Q. And Mr. Borg, your occupation?

15 A. I am a travel consultant.

16 Q. Who do you work for? A. I work for
17 Byron Swazey Travel in the City of London, Ontario.

18 Q. Do you also live in the City of London, Ontario?

19 A. I do.

20 Q. Did you fly in yesterday? A. Yes, I did.

21 Q. How's the weather up there? A. Cooler.

22 MR. PESTARINO: I object --

23 THE COURT: You can't object to the weather.

24 MR. ROBINSON: People complain about the weather
25 all of the time.

26 THE COURT: It's immaterial, if that's what your

1 objection is.

2 MR. PESTARINO: All right. It is not very well
3 taken, I agree. I'm sorry.

4 MR. ROBINSON: Counsel is always apologizing.

5 THE COURT: He's good-natured.

6 Q. (By Mr. Robinson) Mr. Borg, did you bring with you
7 any documents? A. Yes, I did.

8 Q. Could I see those documents, please?

9 A. Yes, sir.

10 (Documents handed to counsel.)

11 MR. ROBINSON: Your Honor, might we have a copy of
12 this document marked as People's next in order?

13 THE COURT: Yes. They will be 28, the travel
14 agency items.

15 (Whereupon, the above-mentioned documents, being
16 travel agency items, were marked for identification as
17 People's Exhibit No. 28.)

18 Q. (By Mr. Robinson) Now, Mr. Borg, showing you People's
19 Exhibit No. 28, is that a photostatic copy of an original
20 document? A. Yes, it is.

21 Q. Okay. And is all of the information contained on
22 People's 28 duplicate information contained on the original?

23 A. Yes, it is.

24 Q. And could you look at People's 28 and tell us how that
25 is prepared? A. Well, on the top
26 right-hand corner you see the date that this thing started,

1 October the 29th.

2 Q. And what do you mean, the date this thing started?

3 A. Well, when this travel arrangement was originated.

4 Q. Okay. A. The gentleman came in on
5 October the 29th, and as you can see on the left-hand corner
6 is my name on there as the agent and the agency that looked
7 after it. And we have the gentleman's name, address, and
8 telephone number, and then the reservation is made and the
9 date.

10 Q. And is this kept in the ordinary course of your
11 business? A. Yes.

12 Q. Does your business rely upon these documents?

13 A. We keep them for --

14 Q. Records? A. --- A period of
15 three years.

16 Q. Okay. And these are made at the time this information
17 is given to you? A. Yes.

18 Q. Now, what other information is contained on the big
19 document besides the date, the individual's name, the agent?
20 What about on the left where it says, "Date, October 30th,
21 1975," could you explain that for us?

22 A. Okay. October 30th or in that column there is the date
23 of travel.

24 Q. Okay. A. So it shows there that
25 the gentleman wanted to travel on October 30th, 1975. Now,
26 the codes there are the airline codes for the cities, and

1 YXU, from YXU, that is the airline city code for London,
2 Ontario, to YYZED, which was the airline city code for
3 Toronto, then the line that the person travels on, in this
4 case was AC, which was Air Canada, flight number 704, in Y
5 class, which is your economy class, departing London twelve
6 fifteen in the afternoon, arriving in Toronto at twelve
7 forty-five. And there he connected from Toronto to SFO
8 which is San Francisco on American Airlines, flight 205,
9 which left at four fifteen and arrived into San Francisco
10 at seven fifty-one p.m.

11 Q. On the 30th of October?

A. On the 30th of

12 October.

13 Q. Okay. Let me write some of that down then.

14 A. Then on the far right column is the status and the fare.
15 If it is a confirmed flight we just put a tick beside it. As
16 you can see, both of those flights were confirmed
17 immediately and then the fare breakdown as to what he paid,
18 or what we charged him for the ticket.

19 Q. Can you tell us about that fare breakdown? I notice
20 there is \$23.00?

A. Well, the

21 \$23.00 is the fare from London, Ontario, to Toronto. The
22 \$168.00 is the fare from Toronto to San Francisco. This is
23 one-way fare, economy class. That totalled \$191.00. Then
24 there was an \$8.00 Canadian departure tax, making a grand
25 total of \$199.00 that he paid our agency for that ticket.

26 Q. You also have two other items listed. Can you tell us

1 A. Yes, sir.

2 Q. Now, can somebody purchase a return ticket from you,
3 too, both ways? A. Yes, sir.

4 Q. Is that the common way of doing it?

5 MR. PESTARINO: Excuse me, if Your Honor please,
6 I think that is calling for the opinion and conclusion, what
7 is common.

8 THE COURT: Well, he is an airline agent.

9 MR. PESTARINO: I don't think that there is any
10 -- all right. I'll withdraw the objection.

11 THE WITNESS: Would you repeat the question?

12 MR. ROBINSON: Yes.

13 Q. (By Mr. Robinson) If somebody wanted to come from
14 Canada -- strike that.

15 If somebody wanted to come from Canada to the
16 United States and then return to Canada could they purchase
17 a both-ways ticket from you?

18 A. A return ticket, yes.

19 Q. Okay. And is there any sort of a discount for
20 purchasing a both-ways ticket from you? Do they save any
21 money by doing that? A. Sometimes they

22 can. It depends on how long they intend to stay in the
23 other country. They have excursion fares which you can use.

24 Q. Okay. And suppose somebody was indefinite about the
25 length of time they intended to stay in the other country,
26 could they still purchase a round trip ticket from you?

1 A. Yes, they could still purchase a round trip ticket and
2 leave the return as an open ticket where they paid for the
3 ticket but no actual return reservations have been made.

4 Q. In your experience, Mr. Borg, in the travel agency
5 business, how long have you been doing it?

6 A. I have been in it as a travel agent for three and a half
7 years.

8 Q. And your experience in dealing with citizens that are
9 leaving Canada to go to another country and then return, do
10 they usually buy a round trip ticket or usually buy a one-
11 way ticket, or can you tell us?

12 A. Well, it is more or less fifty fifty. A lot of people
13 know they are going to come back and they generally
14 purchase the return ticket beforehand, so that is less cash
15 they have to carry with them and something less they have to
16 worry about. But generally, we do have people that don't
17 know how long they are going to be away for and they decide
18 they are not going to be saving any money, they decide to
19 purchase a one-way and purchase a return at their destination.

20 MR. ROBINSON: I have nothing further.

21 CROSS-EXAMINATION

22 BY MR. FESTARINO:

23 Q. So the fact that a one-way ticket was purchased creates
24 no significance in your mind does it, as to what a person is
25 going to do or what he wants to do?

26 A. No, sir.

1 Q. It happens both ways? A. Sure.

2 Q. Sure. Were you subpoenaed to come in here?

3 A. Beg pardon?

4 Q. Were you given a subpoena to appear here in Court?

5 A. No, sir. I was requested to come by the police in
6 London, Ontario.

7 Q. And I take it your fare was paid and everything?

8 A. Yes, sir, it was.

9 Q. Even though you have a travel agency?

10 A. Yes, sir, it was.

11 Q. Thank you. A. It is not my agency.

12 REDIRECT EXAMINATION

13 BY MR. ROBINSON:

14 Q. Mr. Borg, we wouldn't expect you to pay your own fare
15 to come down here and help us out, would we?

16 A. I don't think you would.

17 MR. ROBINSON: Nothing further. Thank you.

18 THE COURT: Thank you, Mr. Borg. I appreciate
19 your coming all this way. Thank you.

20 Ladies and gentlemen, we are going to take the
21 noon recess, and one of the attorneys has an appearance in
22 another Court so we are going to have a little longer lunch-
23 hour, until 2:00 o'clock today. It is a very balmy day and
24 for those of you who haven't had a chance to do anything in
25 downtown San Jose, which is kind of a disaster area in
26 general, there are a few things that are interesting if you

1 got the time and energy. If you walk down Market south you
2 will come to the San Antonio Plaza. It is very pleasant if
3 you walk up about four blocks to that fascinating fountain
4 they have up there. There is the museum of art across from
5 the Wells Fargo Bank at San Fernando which is free. And
6 there is the library. And, of course, there is the Park
7 Central Plaza which you can stroll through. I know it gets
8 a little tedious as to where to have lunch, and if you have
9 been eating downstairs in the coffee shop, there are several
10 little places around downtown, some of them are kind of kicky
11 if you can find them. I think you are perfectly safe almost
12 anyplace you want to go. Those of you who are aficionados
13 of Jack in the Box or McDonalds, if you want to walk down
14 to San Carlos around the college there are two or three of
15 those franchise places, and I frequently go there during the
16 noon-hour to get a little exercise. So I will see you at
17 2:00 o'clock, and you will keep in mind the admonition I
18 have given you before. The defendant will be ordered to
19 return also at 2:00 o'clock.

20 (Whereupon, Court adjourned for the luncheon
21 recess.)

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AFTERNOON SESSION

March 16, 1976. 2:00 o'clock p.m.

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

THE COURT: All right. You have another witness?

MR. ROBINSON: The People call Kitty Benjamin.

THE COURT: All right. Let the record show that the jury is present, the defendant is present.

KITTY BENJAMIN,

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

THE CLERK: Take the witness stand, please.

DIRECT EXAMINATION

BY MR. ROBINSON:

Q Can you state your full name, spelling your last name for the record, please? A Kitty Benjamin,

B-e-n-j-a-m-i-n.

Q And your occupation? A I am an accounts receivable clerk with the PSA San Franciscan Hotel.

Q And are you familiar with Mr. Yule Lazar?

A Yes, I am.

Q And how is it that you are familiar with Mr. Lazar?

A Mr. Lazar is my boss.

Q Okay. And where do you live? A I live in San Francisco at 1477 21st Avenue.

Q Okay. And do you know where Mr. Lazar lives?

2
1 A Mr. Lazar lives, I don't know his address, but he is up
2 on 21st Avenue.

3 Q Same street as you? A Same street, about four
4 blocks up.

5 Q Are you familiar with Mr. David Ismail?

6 A Yes, I am.

7 Q Do you see him in court today? A Yes, I do.

8 Q Would you point him out, please? A The gentleman
9 over there (indicating).

10 Q Okay. Now, directing your attention to October the
11 30th, 1975, did you have an occasion to pick up Mr. Ismail?

12 A Yes, I did.

13 Q And where did you pick him up? A San Francisco
14 International Airport.

15 Q And what time did you pick him up?

16 A I don't remember the exact time. It was in the early
17 evening.

18 Q Okay. And did you pick him up in your car?

19 A Yes, I did.

20 Q Okay. Was this a pre-arranged meeting?

21 A Well, I got a phone call from him and he told me that
22 he was coming in, I was very happy, and I picked him up.

23 Q All right. So he was expecting you to pick him up?

24 A Yes.

25 Q Now, when had you met Mr. Ismail? A I met him
26 about eight years ago, I believe.

Q Okay. Where was that?

1 A At a convention, an Assyrian convention.

2 Q What city was that located? A I think it was
3 Fli --

4 Q Does Chicago ring a bell? A Chicago or Hartford,
5 Connecticut. I can't remember.

6 Q And during that period of time from approximately -- what
7 is it, eight years ago? A I would say.

8 Q Okay. From approximately eight years ago, and so we
9 have a reference date can we call it 1967?

10 A Whatever goes back eight years.

11 Q Well, 1975 minus 8 is 1967. Is that fair?

12 A Okay. Fair.

13 Q So from 1967 until October the 30th, 1975, had you ever
14 seen Mr. Ismail? A Yes.

15 Q Okay. Where had you seen him? A I have seen him
16 at other conventions. We have these conventions annually
17 and in varying cities where there are Assyrian communities.

18 Q So is it fair to say you would see him a minimum of
19 once a year? A Perhaps if he made the convention.

20 Q Do you recall how many times he made these conventions
21 in that eight-year period? A I really don't remember.
22 Various times.

23 Q Okay. Now, when had Mr. Ismail called you to let you
24 know that he was coming to San Francisco?

25 A He called me, well, he called me on various occasions,
26 but he called me a week prior to coming.