CERTIFICATE OF OFFICIAL COURT REPORTER

STATE OF CALIFORNIA]
] ss.
COUNTY OF SACRAMENTO]

I, KENNETH D. HADSELL, hereby certify that I am a Certified Shorthand Reporter, and that at the times and places shown I recorded verbatim in shorthand writing proceedings in the following described action completely and correctly to the best of my ability:

Court:	SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE COUNTY OF SACRAMENTO
Judge:	ROBERT W. COLE, Department Number One
Action Number:	44362
Action Title:	THE PEOPLE OF THE STATE OF CALIFORNIA -vs- CHOL SOO LEE
Dates:	MONDAY, JUNE 3, 1974 WEDNESDAY, JUNE 5, 1974 THURSDAY, JUNE 6, 1974 TUESDAY, JUNE 11, 1974 WEDNESDAY, JUNE 12, 1974 MONDAY, JUNE 17, 1974 TUESDAY, JUNE 18, 1974 WEDNESDAY, JUNE 19, 1974 WEDNESDAY, JULY 10, 1974

I further certify that my said shorthand notes have been transcribed into typewriting, and that the preceding pages, 2 through 533 inclusive, constitute an accurate and complete transcript of all of my shorthand writing for the case and dates specified.

August _____, 1974.

KENNETH D. HADSELL, C.S.R.

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SACRAMENTO

DEPARTMENT NUMBER ONE — HON. ROBERT W. COLE, JUDGE

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THE PEOPLE OF THE STATE OF CALIFORNIA,

-vs-

CHOL SOO LEE,

Defendant. — No. 44362

---o0o---

MONDAY, JUNE 3, 1974
WEDNESDAY, JUNE 5, 1974
THURSDAY, JUNE 6, 1974
TUESDAY, JUNE 11, 1974
WEDNESDAY, JUNE 12, 1974
MONDAY, JUNE 17, 1974
TUESDAY, JUNE 18, 1974
WEDNESDAY, JUNE 19, 1974
WEDNESDAY, JULY 10, 1974

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REPORTER'S TRANSCRIPT OF PROCEEDINGS HAD UPON TRIAL

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APPEARANCES:

For the People: JOHN JAY FERNDON,
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County of San Francisco,
State of California

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Q I'm going to show you People's Number Nineteen which is marked for identification and ask you to look in its contents and see if you can recognize the handgrip. Are those the handgrips that you observed on Beckett Alley?

A Yes.

Q And are those the ones that you picked up from the scene?

A Yes, they are.

Q Okay. When you picked up the gun in Beckett Alley was it in a loaded or unloaded condition?

A It had five empty casings in the cylinder.

Q And did you examine and see that they were empty casings?

A Yes.

Q And did you eventually remove the casings from the cylinder?

A I did.

Q I want to show you People's Number Eighteen which is marked for identification and I ask you to examine its contents and tell the jury whether or not those are the casings that were in the weapon that you found in Beckett Alley?

A These are the same casings.

Q Have you marked them in any particular way?

A Yes, I did.

Q How did you mark them?

A I placed an "X" inside the casing, showing that that particular shell was under the hammer inside the cylinder.

Q Okay. Now first of all let's talk about the gun a little bit. What is the make of the gun before you?

A It's a Smith and Wesson.

Q Smith and Wesson firearms have a rotation on the firearm

when you have a revolver; is that correct?

A That's correct.

Q And the Smith Wesson revolver rotates in which direction when it's fired?

A Rotates to the left.

Q That's opposed to say a Colt weapon which rotates to the right; is that correct?

A That's correct.

Q You have a Smith and Wesson before you and it rotates to the left?

A Right.

Q Now by rotation you mean -- what do you mean by rotation?

A The cylinder revolves to the left.

Q Now to your left is an easel or a board and I have drawn a large circle on that particular board. And for illustrative purposes we will consider that as the back of the cylinder of the weapon which is before you.

May that piece of paper with the large circle on it be marked People's next in order for identification?

THE COURT: Twenty-three.

[A drawing of a cylinder was marked People's Exhibit Twenty-three for identification.]

Q [MR. LASSART] Now the Smith and Wesson revolver which is before you is a five-shot revolver?

A That's correct.

Q It's a light-weight weapon?

A Yes.

Q Now if we take the diagram to your left with a circle drawn

on that diagram to your left as a cylinder as you are looking at the hammer of the gun or the barrel, can you place five circles on that to indicate the general position of the chambers of that particular revolver in front of you? Do it rather large within that circle so the jury can get a good look at what you are doing.

A [Witness marked the diagram.]

Q Now to show the jury the direction in which that would be rotating, if we are looking at this as if we are looking at the front side, would you draw a line around the exterior of your circle and put an arrow on the end of your line to indicate the direction?

A Do you want another circle?

Q Just a circle to the outside of the circle with an arrow before you close the circle.

A [Witness marked the diagram.]

Q Okay. That's fine. Just draw the arrow right there. Just point the arrow in the direction it rotates.

A [Witness marked the diagram.]

Q All right. Now when you found the revolver in Beckett Alley there were five expended cartridges?

A That's correct.

Q Is that correct? Now the expended cartridge that was under the hammer, let us assume that is the last cartridge fired?

A That's correct.

Q Okay. Did you mark that cartridge in any particular way to indicate that that was the cartridge under the hammer?

A Yes, I marked it with an "X".

Q And would you go ahead and mark the middle of that circle,

the little circle.

A [Witness marked the diagram.]

Q Now did you mark the other cartridges to indicate their exact position within that weapon when you discovered it?

A Yes.

Q And how did you mark those?

A I just marked each one with a line.

Q All right. And would you mark each one of the individual circles to indicate the way you marked them.

A [Witness marked the diagram.]

Q Now, assuming that the one that has the "X" on it was the last shot fired, which would be the first shot fired?

A The one marked with one line.

Q Next to that circle with the one line write the number, the numerical number one and continue in sequence all the way around to the one with the "X".

A [Witness marked the diagram.]

Q Now the cartridges that you gathered from that firearm were of three different makes; is that correct?

A Correct.

Q There was what is known as a supervel? In fact there were three supervel cartridges?

A Correct.

Q One WW, which is a Winchester Western and one Western cartridge?

A Right.

Q Do you have a record or indication in which position on that cylinder each one of the cartridges were?

A Yes.

Q And could you show the jury by indicating first of all "WW" to indicate the position of the Winchester Western cartridge .

A "WW" first?

Q "WW" first.

A [Witness marked the diagram.]

Q Okay. And can you next locate the Western cartridge and just put a circle -- well, to make it even clearer write W-E-S-T period under the cylinder where that was located.

A [Witness marked the diagram.]

Q And place an "S" under the remainder -- excuse me. Can you tell which supervel cartridge was in which place?

A Yes. [Witness marked the diagram.]

Q All right. I see you have marked these positions there. You have checked each one of the cartridges. Is there a corresponding mark on the cartridge to the place in the cylinder to where they were?

A Yes, there is.

Q And, in other words, when you scratched on the shell three lines or two lines, you actually also made a notation on the butt of the cylinder to indicate that was the position where the shell came from; is that correct?

A That's correct.

Q All right. You can have a seat.

Now part of your duties with the crime laboratory is fingerprint analysis and identification; is it not?

A Yes.

Q You have qualified as an expert in that field before?

REDIRECT EXAMINATION of FLORENCE ETCHEVESTE

By MR. LASSART:

Q Mrs. Etcheveste, when you were in Mr. Lee's room, when you were cleaning it up on the 7th, did you see any newspaper clippings in the room?

A Yes.

Q Do you remember where they were in the room?

A On the dresser. In one of the drawers that you open.

Q And did you -- when the police came did they take those newspaper clippings with them?

A Yes, they picked them up and took them.

MR. LASSART: Thank you. I have no further questions.

THE COURT: Mr. Hintz?

MR. HINTZ: No, your Honor.

THE COURT: Thank you, ma'am. Step down.

MR. HINTZ: Your Honor, may I have her for one more question, please?

RECROSS-EXAMINATION of FLORENCE ETCHEVESTE

By MR. HINTZ: Mrs. Etcheveste, when you went back in to clean up the room did you find Mr. Lee's alien card?

A I can't remember.

Q Did you find any personal papers that belonged to him?

A Yes, I think there was something.

Q Did it have his picture on it?

A Yes.

MR. HINTZ: That's all.

MR. LASSART: Nothing further, your Honor.

THE COURT: Step down, ma'am. Thank you.

Call your next witness, please.

MR. LASSART: I would like to call Mr. David Lennon, your Honor.

DAVID LANCE LENNON

witness called on behalf of the People.

THE CLERK: What is your name again, please?

THE WITNESS: David Lance Lennon.

THE CLERK: How do you spell the last name?

THE WITNESS: L-E-N-N-O-N.

THE CLERK: Would you raise your right hand. Do you swear to tell the truth, the whole truth and nothing but the truth, so help you God?

THE WITNESS: I do.

THE CLERK: Be seated right up here, please.

DIRECT EXAMINATION

By MR. LASSART:

Q Mr. Lennon, what is your address, sir?

A Box 133, Woody Creek, Colorado.

Q And do you live there now?

A That's my postal address. I live in, actually, Aspen, Colorado.

Q And what is your occupation, sir?

A I work for Look-Nevada Service Competition which is a company which makes ski bindings for ski racing.

Q And how long have you worked for Look-Nevada?

A. Almost two years. It will be two years in August.

Q. Have you served in the military, sir?

A. Yes, sir.

Q. And what branch of the service were you in?

A. I was in the U.S. Marine Corps.

Q. How long were you in the Marine Corps, sir?

A. Twenty-nine days short of three years.

Q. And did you serve an overseas tour of duty in the Marine Corps?

A. Yes, I did.

Q. And what country did you serve in in your tour of duty?

A. I went to Okinawa, to Formosa and Japan.

Q. What period of time did you spend in the Orient?

A. I spend six weeks in Formosa, sometime over two months in Okinawa and just a very small time in Japan. Maybe six days in Japan.

Q. Now in your -- I want to call your attention to the 3rd of June of 1973. Were you in San Francisco on that day?

A. Yes, sir.

Q. And prior to that day -- or did you just arrive in San Francisco that day?

A. Right.

Q. Where had you been prior to your arrival?

A. Been -- had been in Los Angeles, left Los Angeles early -- early that day and drove up to San Francisco.

Q. And when you drove up to San Francisco who came with you in your vehicle?

A. Steve Main and Andy Mill.

Q. And these people were friends of yours, I take it?

A. Right. I worked -- at the time I worked with Steve Main, and Andy Mill is a good friend of mine.

Q. You came in contact with Andy Mill through your skiing endeavor?

A. Right. He skis with the National Team.

Q. Had you been familiar at all with San Francisco before the day of June 3rd, 1973?

A. Yes, sir.

Q. Had you ever lived there before?

A. I lived in San Francisco for two years and I visited many times.

Q. At the time you lived in San Francisco did you ever work for the juvenile court system there?

A. Yes, sir, I worked as a counselor at the Youth Guidance Center.

Q. The Youth Guidance Center is --

MR. HINTZ: Object to this line of questioning as being irrelevant, sir.

THE COURT: Sustained unless you can show me what the relevance is.

MR. LASSART: All right, your Honor.

Q. [MR. LASSART] When you arrived in San Francisco on June the 3rd and were accompanied by Mr. Main and Mr. Mill, where were you intendent upon going?

A. We were going to go to a restaurant on Washington and have a meal and then go down south on the peninsula and to a motel and spend the night and in the morning go by a company that we worked

for, pick up some equipment and go to Squaw Valley to a ski camp.

Q. Between 7:00 and 7:30 on the evening of June 3rd did you have occasion to go by the intersection of Grant and Pacific?

A. Yes, sir.

Q. And at that time when you first went through the intersection were you driving?

A. I can't remember.

Q. Okay. When you came into the Chinatown area or the area of Grant and Pacific did you come in your vehicle?

A. Yes, sir, I drove -- I drove the vehicle into the Chinatown area.

Q. And after you drove your vehicle to the Chinatown area did you park your vehicle there?

A. Right.

Q. And after you parked your vehicle what did you do with relation to your vehicle? In other words, where did you go from your vehicle?

A. Parked the vehicle in a garage in a situation where you drive it inside the building, walk down out of the building, got a little ticket, turned left, walked down Pacific toward the intersection of Pacific and Grant.

Q. Okay. And when you got to the intersection of Pacific and Grant did anything of an unusual nature catch your attention?

A. Yes, sir.

Q. What was that?

A. Got to the intersection, I heard a sound like loud fire-crackers and my attention at that time was just generally directed right toward the sound and then I saw the transpiring

of a whole series of events that brought me here.

Q All right. Now you were standing on, which, the northwest corner of that intersection? Is that right? When you heard those sounds?

A Right, northwest corner.

Q When you heard the sounds what were you doing when you first heard the sounds?

A I was preparing to cross the street to go -- I believe it's two blocks further up Grant Avenue -- and I was right at the curb just preparing to step off the curb, step across the street.

Q Now would you tell the jury what you saw after you heard these sounds and your attention was directed?

A I heard -- I heard sounds like two firecrackers. My attention was diverted straight across the street in a diagonal line from what would probably be -- would be called the northeast corner to the southeast corner, and I saw an individual with a pistol in his hand behind another individual and I saw the pistol like buck when it went off. And I saw the face of the individual who was pulling the trigger of the pistol very clearly from -- I can't say exactly in time, but I saw it well before the time the gun went off until the gun went off and then I made a full realization that the gun was partially aimed in my general direction. And when I made that full realization I went back up Pacific about two car lengths.

Q Okay. You made a certain motion as you were describing how the pistol was held. Can you describe that verbally how that pistol was held by the man who pulled the trigger?

A It was held in both hands in front exactly like this

[indicating]. It looked like the left hand was over the right hand and it was a fairly small pistol. But it was held directly behind the head and neck of the person that it was being fired into.

Q Now you demonstrated for the jury. Describe that for the record. You placed both hands straight out from your chest and clasped them together, left over right; is that correct?

A Yes.

Q Did you see the face of the man who was pulling the trigger?

A Yes, I did.

Q Do you see that man in the courtroom today?

A Yes, sir.

Q Could you point him out for the jury?

A The gentleman right over here [pointing].

Q You pointed to the defendant, Mr. Lee; is that correct?

A Yes, sir.

Q Now when you saw Mr. Lee pull the trigger could you see what happened with regard to the man who was shot?

A The man, when -- the shot that I saw come out of the pistol, at that specific instant the man that was being shot was already in the motion of going down. In other words, he wasn't standing up. He wasn't walking straight forward. He was in a forward motion already going down. And the individual was, I would say, in pursuit. He was moving rapidly behind him staying up with him and actually making sure that what he intended to do was being done.

MR. HINTZ: Object to this speculative nature.

THE COURT: Sustained.

Q [MR. LASSART] Now when you saw that action and you saw his face, then you, yourself, moved; is that correct?

A Yes.

Q And in which direction did you move?

A I went back up the -- the street which I believe was Pacific. I went back up, I believe, two car lengths. Somewhere in there. There was a Volkswagen, I remember, because it wasn't very high. I ran and ducked behind the Volkswagen and then things quieted down for a little while and I kind of looked out over the car back across the scene where the incident just transpired.

Q Did you see what Mr. Lee did after he fired the shot you saw him fire?

A No. In between the time that I left the corner and I got behind that Volkswagen other things happened, other shots. At least one other shot was fired. I heard it. And when I stuck my head up over the car he was running. He was running down Pacific, down toward the bay.

Q Okay. And that's down towards the area of Columbus Street; is that right?

A Yes.

Q And when you observed him turn around and run in that direction what did you do afterward?

A Sequentially, I'm not exactly positive because I didn't know for sure what was happening. So I think I went back under the car for a while and just stayed there. And it got very, very quiet. Intersection was completely clear, so I walked across the street. There was a phone booth on the corner. I put a quarter in the phone and dialed the operator and said give me the

police emergency number. There has been -- my direct quote is "There has been a homicide on the corner of Pacific and Grant." And she put me in communication with the police officer and I described to him what I had just seen.

Q Now when you got off that phone, what happened?

A I was on the phone for -- again, time is a little out of joint in this kind of situation. I don't know exactly how long it was, but as I was stepping out of the phone booth a police car pulled up right there on the curb and the police officer that I talked to me told me to wait around and identify myself to the policeman when he showed up. So when the car drove up I said to the first policeman out of the car "I'm the one that made the phone call," and they wanted me to wait around. So I stayed there while they went through what their normal functions were right there.

Q Okay. Subsequent to your being coming in contact with that police officer -- that was a uniformed police officer?

A Yes, sir.

Q You went to the homicide detail in the Hall of Justice; is that correct?

A Right.

Q And there did you have an occasion to look through a large book of photographs of Oriental people?

A Yes, sir.

Q And did you, during that time, pick out some people that had some similarities to the man that you saw?

A Yes, sir.

Q Now first of all let's take a step backwards. Do you recall

the color of the clothing of Mr. Lee when he pulled the trigger?

A. I recall the color of the coat that I saw. Not exactly at the time he pulled the trigger because my intention was completely on his face, but when I looked up over the car and he was running down the street I saw the whole back of his jacket. It was kind of a rust, gold colored jacket. I do recall the color.

Q. And when you got up to the homicide detail and looked through these series of photographs did you pick any photographs out that had some characteristics that you thought could be drawn to the attention of the police?

A. Yes.

Q. And when you picked these photographs out -- I'll withdraw that.

I'm going to call your attention now to People's Exhibit Number Eleven which is in evidence and I ask you to take a look at this manila folder with five photographs taped therein and I ask you first of all have you ever seen that manila folder before?

A. Yes, sir.

Q. And you saw that, I take it, at the time of the preliminary hearing; is that correct?

A. Yes, sir.

Q. And for the clarity of the record, at the time of the preliminary hearing in court you identified Mr. Lee as the shooter of the weapon that day also; did you not?

A. Yes, I did.

Q. Now when you looked through the police photographs the night of the incident, were the photographs in a folder in that order? In other words, was that one of the folders you looked at?

A. No, there were -- there were two books about this thick and about this big by about this big by about that big, two books, large books. And there were a lot of photographs in both books.

Q. And you picked out, I take it, some that had some characteristics that you thought should be brought to the attention of the police?

A. I did.

Q. In that folder which is before you, People's Number Eleven, are any of the photographs that you picked out placed in that folder?

A. Yes.

Q. Which ones are they?

A. These four right here.

4

Q. I saw you direct your finger down the left-hand side as you are looking at the folder. Is there any distinct mark by the photographs in the folder that would indicate to you those are the ones you picked out?

A. There are "Xs," four "Xs".

Q. Do you know when those "Xs" were placed next to the photograph in that particular folder?

A. They were put there at the time of the preliminary hearing.

Q. And at that time you saw that exhibit as it is before you at the preliminary hearing?

A. Yes, sir.

Q. Now out of the photographs that you picked, the four with the "Xs" next to them, did any of those photographs show a likeness to you as you remarked -- and I don't mean at the time of the preliminary hearing, but I mean at the time you initially picked

them at the homicide detail?

A Yes, sir.

Q And which one was that?

A This one right here [indicating].

Q You are pointing to the one in the upper left?

A Yes, sir.

Q Is that a photograph that you also made your initials next to at the time of the preliminary hearing?

A Yes, sir.

Q Now would you do that once again, please, place your initials and this time date your initials next to the photograph that you picked out when you were in the homicide detail, the photograph that you liked -- that had some likenesses.

A [Witness marked the exhibit.]

THE COURT: Counsel, we will take the afternoon recess.

Ladies and gentlemen, adhere to the admonition heretofore given. We will take fifteen minutes.

[A recess was taken.]

---oOo---

THE COURT: All right, let the record indicate the jurors are all in place, counsel for both sides and defendant present.

Proceed, counsel.

Q [MR. LASSART] Mr. Lennon, with regard to the folder which is in front of you, the photo in the top left which you have initialed and placed today's date, I believe June 6th next to it; is that correct?

A Yes.

Q That photograph was not configured within that folder when

you picked it out?

A. No.

Q. I'm going to show you People's Number Ten which is marked in evidence at this time and I ask you if that photograph fairly and accurately depicts how the pages of the large book you were looking at held the various photos from which you were viewing?

A. Yes. Yes, it does.

Q. Now at the time that you saw Mr. Lee pull the trigger and shoot the man did you have an occasion to estimate the length of his hair?

A. Yes, I did. Like I said, he was moving forward. The victim was in a position of starting to fall and his hair was rather long and it was -- it was flowing or it was like the way he was driving his body forward, had his hair going out like that from behind. His hair was quite long, quite long back in here [indicating].

Q. I'm going to show you a photograph which is People's Number Fourteen which is marked for identification and I ask you first of all if you recognize that photograph as a picture of Mr. Lee, the defendant in this case?

A. Yes.

Q. And do you recognize that as a photograph that fairly depicts his hair length?

A. Yes.

Q. Okay. Now after that incident you had an occasion on June 11th in the Hall of Justice auditorium in the San Francisco Police Department to view a lineup; is that correct?

A. Yes.

Q. And during that lineup you were separated from the other participants in the lineup -- and by participants I mean other people that were going to view the lineup -- were you not?

A. Yes.

Q. And were you given instructions pertaining to what you should do during the lineup by the police?

A. Right. The officer said we could ask some specific questions if we wanted to, have people do certain things, and not to make any notations on the card until you are told to do so.

Q. Were you told to direct your attention to any particular person in the lineup?

A. No.

Q. Were you given cards to fill out and mark if you were to see the man who did the shooting?

A. Right.

Q. And did you, during the course of the lineup, see the man who did the shooting on the street?

A. Yes.

Q. And did you fill out your card at the end of the lineup accordingly?

A. Yes, I did.

MR. LASSART: At this time, your Honor, I would ask that this card, a three-by-five card with some printing thereon with the name David L. Lennon, be marked People's next in order for identification.

THE COURT: It will be so marked.

[A lineup card was marked People's Exhibit Twenty-seven for identification.]

Q. [MR. LASSART] Now I'm going to show you People's Number Twenty-seven for identification, Mr. Lennon, and I ask you if yo recognize the handwriting on the card?

A. Yes, I do.

Q. And is that your handwriting?

A. Yes.

Q. And on that lineup card there is also a circle around the number five; is that correct?

A. Yes.

Q. And did you make that mark?

A. I did.

Q. And when did you make that mark at the time the lineup was -- at the end of the lineup you had just viewed?

A. Right. I made it when the inspector said everybody that is going to put any marks on any card was supposed to make it at one specific time, and that's when I did.

Q. And you picked out number five as the one who did the shooting on Grant and Pacific; isn't that correct?

A. Yes.

Q. And that's Mr. Lee, the defendant in this case?

A. Yes, sir.

Q. I'm going to show you People's Number Twelve which is in evidence and I ask you to look at the lineup photograph -- I put it before you -- and if that's a fair and accurate depiction of the lineup as you viewed it on June 11th, 1973?

A. Yes.

Q. And in that photograph, number five, is a picture of Mr. Lee; is that correct?

A. Right.

Q. Also during the lineup you had an occasion to have -- or they made the people who were participating in the lineup turn sideways and walk and do various activities; is that right?

A. Yes.

MR. LASSART: At this time I would ask this eight-by-ten photograph of a side view of the lineup be marked People's next in order for identification.

THE COURT: Twenty-eight.

[A photograph was marked People's Exhibit Twenty-eight for identification.]

Q. [MR. LASSART] I show you People's Number Twenty-eight which is marked for identification and I ask you if this is a fair and accurate photograph of the side view of the lineup, when you attended on June 11th when you identified Mr. Lee?

A. Yes.

Q. Mr. Lee also has the number five in that particular lineup; isn't that correct?

A. Yes.

MR. LASSART: Your Honor, I would like to have the weapon, if I may.

Q. [MR. LASSART] Now, Mr. Lennon, you are somewhat familiar with firearms, I take it?

A. Yes.

Q. You have fired a pistol before?

A. Yes.

Q. You are trained when you are in the Marine Corps with fire-arms; aren't you?

A Yes.

Q I'm going to ask you to take a look at People's Number Seventeen which is marked for identification and I ask you to take a look at this particular firearm and I ask you to tell the jury whether or not that resembles or looks like the weapon that Mr. Lee held when he shot the man on Grant and Pacific?

A Yes, it does.

Q And you described that weapon or weapon similar to that to the police; did you not?

A Yes, I did. I specifically stated it had a short barrel.

MR. LASSART: No further questions of the witness.

THE COURT: Cross-examine, please.

CROSS-EXAMINATION of DAVID LANCE LENNON

By MR. HINTZ:

Q Are you identifying this weapon based upon your observation of the weapon as the suspect held it in both hands from across the street or are you basing this identification upon having seen the weapon after it was picked up by the police on Beckett Court?

A The identification that I make now of that pistol is of the pistol that was picked up in the alley because they put it in the front seat of the police car that I was sitting in and I was there for a long time and I eventually leaned up and looked in between two police seats and looked at the pistol. I looked at it long enough -- I didn't look at it really long, but I looked at it long enough to get a good glimpse of what it was.

Q So your in-court identification of the so-called murder weapon was based upon the fact that you had already seen the

weapon after it was already in police custody and not from seeing it in the hands of the victim that fired it?

A Yes, essentially that's true. I said when it was in the man's hand it was going off and it had a short barrel.

Q Was your in-court identification of the weapon at the preliminary hearing a year ago also based upon the fact that you had seen the weapon in police custody and not based upon your observation of the weapon in the suspect's hands as he shot it?

A The specific identification I made of the pistol, that's right, I made the specific identification from what I saw in the police car because when it was going off in the man's hand I didn't have a real long time to look at it and make a real valid judgment on what the pistol was. I said that it was a small-caliber short-barreled pistol and that was all I could garnish from what I saw at the time it was going off.

Q So the effect of your identification of this gun merely goes to the fact that this is the same gun that you saw that the police had later?

MR. LASSART: Objection. That's a misstatement of the man's testimony.

THE COURT: Rephrase your question.

Q [MR. HINTZ] Is it not a fact your identification of this gun goes to the fact that it appears to be the same gun that the police took in custody?

A Yes.

Q Really, Mr. Lennon, you couldn't see the gun in the hands of the person who fired it; could you?

A Yes, I could. I saw the gun -- when the gun went off I saw

it buck or lurch forward. A .38-caliber pistol or whatever it is, when it goes off, has a tendency to move. All weapons do. When it went off I saw it move. I saw it before it moved. I saw it move. I saw a little -- I don't know what you call it -- at the mouth of the barrel when the bullet goes out there is a certain disturbance of the air and then it didn't move and I went up the street.

Q Well, really all you are telling this jury is what you saw in the hands of the suspect was a short-barreled pistol; isn't that correct?

MR. LASSART: Objection. That's --

THE COURT: That's what the witness testified to basically. Proceed.

Q [MR. HINTZ] Now this weapon, as you saw it in the hand of the suspect, was curled around both hands; right?

A No. Take the pistol by the pistol grip with your right hand. Put your finger in the trigger. Put your hand right here on the trigger guard and if you have fairly small thumbs you are not covering up the pistol except the pistol grip.

Q Are you telling this jury that the trigger guard was held by the person across the street in his right hand?

A No. I said this hand had a hold of the pistol like that and this hand was over it [indicating]. The left hand would be the one that wrapped around the trigger guard.

Q Is it your testimony that the trigger was fired by the person's right hand as you saw it across the street?

A Yes, sir.

Q There is no question about that in your mind?

A. No, because the left hand was wrapped around outside like this [indicating].

Q. And you could clearly see that it was the man's right hand on the trigger guard from across the street?

MR. LASSART: I must object, your Honor. It's vague. What is meant by trigger guard and trigger?

THE COURT: Rephrase the question, please.

Q. [MR. HINTZ] You are definite about the fact that it was the right hand that fired the trigger, pulled the trigger?

A. Right.

Q. Now, Mr. Lennon, is it not true that this entire episode occurred in less than ten seconds?

A. It is true.

Q. And is it not true that your entire observations of the suspect from across the street were confined to three seconds?

A. Yes.

Q. Now in that three-second opportunity that you had to observe the suspect, you are identifying the gun, I take it; correct?

A. Right.

Q. You are identifying the man's face?

A. That's it.

Q. And his hair?

A. [Witness nodded head in the affirmative.]

Q. Anything else?

A. That's it. I consider his hair to be essentially part of his face.

Q. You didn't see the entire body of the suspect; did you?

A. No, at that time I didn't.

Q. In fact you didn't see anything of his lower body; did you?

A. No, I never saw anything of his lower body.

Q. You only saw portions of his upper body and that was somewhat shielded by the victim himself?

MR. LASSART: Excuse me, your Honor. That assumes a fact not in evidence.

THE COURT: This is cross-examination. Go ahead.

A. As the victim was -- as the victim was being shot and starting to fall forward, the man who was doing the shooting was directly behind him. He was not -- he was not being blocked from my vision. In other words, it was like one person following another and it just happened to be that the person that was behind him was pulling the trigger. And I saw -- my attention was -- my attention span was very narrow. It was like I wasn't -- the sound initially caught my attention. Bang, bang. I looked. I scanned over there. I saw the gun and the face and I saw the gun go off and I continued to look for a second and that gun was aimed generally in my direction. The bullets were going into the man's head, but it was aimed enough in my direction that I decided I would get out of there until the bullets were -- whatever was going to happen.

Q. Were you frightened when you saw this?

A. When I made a realization that there was a gun going off, yes, I was frightened.

Q. You never did see the profile of the suspect; did you?

A. No, I never did get a real good profile. I got a straight-on look.

Q. Yet you identified a profile view of the lineup of the

suspect?

MR. LASSART: Objection. That's argumentative.

THE COURT: Sustained.

MR. LASSART: Thank you.

Q. [MR. HINTZ] You saw the suspect's face only for three seconds and then saw him run, I gather?

A. Yes, sir.

Q. Is it not a fact that the face of the suspect as you saw it from across the street was somewhat distorted?

A. The face was in motion. He was in motion pursuing the individual in front of him.

Q. Did you not tell Inspector Falzon that the face was distorted when you first talked to him the night of the offense?

A. Yes, I did. I said that his hair was flying out behind him and his face was -- "distortion" was perhaps an incorrect word. What I should have said was it was very intense.

Q. You told the inspectors too, did you not, that the hair of the suspect was down to his -- below his ears, down his neck behind his ears?

A. Yes, I did. At the time when -- part of the visualization that I remember in that whole sequential period of time was that the man's hair was driven out from behind his head by the velocity of his body moving forward and his hair was quite long, especially back here [indicating].

Q. I would like to have you look at the diagram behind you, please, Defendant's Exhibit B. Are you oriented with respect to that diagram?

A. Yes, sir.

Q Do you see the area marked "Royal Pacific Garage" in the upper left?

A Yes, sir.

Q Is that where you parked your truck?

A Yes, sir.

Q And did you proceed down the sidewalk towards the center of the truck?

A Right. We went in that entrance right there, walked down, came to that corner right there and started to cross from this corner to this corner [indicating].

Q Do you see the three initials marked, "LM" and "S" at the northwest corner of that intersection?

A Right.

Q Does that accurately depict where you and your friends were preparatory to crossing the street?

A Right. Right on the breaking point of the curb. I was preparing to step off the curb when it happened.

Q Does that correctly reflect the relationship of each of the two others with respect to the "M" referring to Andy Mill, "L" to yourself and "S" to Steve Main?

A Yes.

Q You were attempting to cross Pacific Avenue going from the north side of the street to the south side of the street, were you not, or were you intending to do so?

A Right.

Q And it was at that location that you first heard the sound of two reports of some kind that you thought to be fire-crackers?

A Right.

Q You didn't see either one of these first two shots fired; did you, sir?

A No, I did not.

Q And then you looked and you saw activity across the intersection diagonally; did you not?

A Yes.

Q Is it your testimony you saw the third shot?

A Yes.

Q And that was to the head area?

A Yes.

Q And you described the falling action of the victim?

A Yes.

Q And then did you turn around?

A Yes.

Q You ran about twenty feet or so, as I understand it; is that right?

A I ran -- there were cars parked here and I ran far enough up so that there was, I believe, a Volkswagen, small car parked here, and I ducked out in the street behind the car and hid behind the car.

Q Would you put your finger in the location where you stopped running, please?

A This is -- I don't know who set the scale up on this map.

Q A square is a quarter of an inch to one foot, I believe.

MR. LASSART: Your Honor, just a minute. I hope all the marks on this were not to be to scale. Up to now no one has indicated this.

THE COURT: No one has indicated that.

MR. LASSART: And I take it this marking is not going to be to scale either.

Q. [MR. HINTZ] In relation to the buildings, would you first go there and mark the approximate area to where you ran?

A. Right about here.

Q. All right. And was there a car in that location?

A. Yes, there were cars in the street.

Q. Which direction was the car pointed, to the west or to the east?

A. It was pointed -- I hid behind the front of the car, behind the, what you call the radiator.

Q. Was the car pointed in this direction?

A. It was pointed this way.

Q. And about in this location?

A. Right.

Q. You move me either way. Which way?

A. I can't say definite specific --

Q. Approximately?

A. That would be as good as anything I could come up with.

Q. Would that be about where the nose of the car was or the rear?

A. The nose of the car.

[Counsel marked the diagram.]

Q. Does that symbol substantially depict the area of approximately where this car was, sir?

A. That's where the car was parked right on that side of the street and it was -- I would say in that general area.

Q So after having heard the third shot which you saw you then ran to the vicinity of that car?

A Right.

Q And you took cover toward the front portion of the car?

A I ducked behind the car, right.

Q Would that be on the sidewalk side or the street side?

A I was behind the car and I don't have no recollection of -- I was close to the street or the sidewalk. I was just behind the car and I had as much of a buffer between myself and what was happening across the street as I could get into as quickly as possible.

Q Do you have any recall right now when you ran from the corner where the letter "L" is to the vicinity of this car, whether you ran out in the street or on the sidewalk?

A I ran up the sidewalk and ducked from the sidewalk side.

Q And your recollection is you were near the front side of the car?

A Right.

Q And would you take this marker and put your initial "L-1" --

A Where?

Q To depict where you hid or where you took cover.

A [Witness marked the diagram.]

Q While you were running did you have occasion to hear the fourth shot?

A Yes, I heard one more shot.

Q As you were running did you look back at all or were you --

A No, I never looked back until I got behind the car and it started to quiet down a little bit.

Q. By the time you reached "L-1" I assume all four shots or all the shots that you heard at least had already gone off?

A. Yes. This is a -- this is a difficult place to be making statements in a court under this situation for me because at the time my back was turned and I was in flight for my own life and in my own eyes and once I made the full realization of what was happening I would say that some of my perceptions may have been a little jarred for a second.

Q. All right. Thank you.

A. I mean I went very quickly to where I hid behind that car.

Q. By the time you reached "L-1" had the suspect reached the southeast corner of the intersection?

A. Yes, he had. He was on the way -- I ducked around the car. It was a little quiet. I just looked up a little bit like that and I could see him going down the sidewalk on the opposite side of the intersection very quickly running down towards San Francisco Bay.

Q. When you observed the suspect shoot the victim, did you notice whether or not the suspect was wearing a mustache or any facial hair?

A. Yes. Somewhere -- maybe it's in the police records down at wherever the first police station we went to is -- I mentioned that the man had a light sandy mustache. Sandy is perhaps an inappropriate word, but a very light mustache.

Q. Light, meaning light in color or --

A. Thin.

Q. Light in growth?

A. Thin. Light in growth.

Q. Who did you tell this to, sir?

A. I can't specifically remember.

Q. Was it Inspector Falzone to my right?

A. I mentioned that to Inspector Falzone later. I think the first policeman I talked to was a man named Joel Harms.

Q. What was the name again?

A. Joel Harms, H-A-R-M-S.

Q. He's a police officer?

A. Right.

Q. You told Mr. Harms that the suspect had a mustache?

A. In my description, right.

Q. Your recollection is you told the same thing to Inspector Falzone?

A. At the police station, right, at the -- we went from the scene to a local police station and into a headquarters building.

Q. Did you tell Inspector Falzone that the suspect was about five foot seven?

A. My first description of five seven was over the phone to the police dispatcher. I think you probably have a verbatim report of everything I said into the phone.

Q. Did you repeat that to an officer you saw face-to-face?

A. Yes.

Q. Did you tell the police officers who investigated this case the suspect was a hundred and forty-five to a hundred and fifty pounds?

A. Yes.

Q. At the lineup you were concerned, were you not, as to whether or not any of the persons appearing in the lineup had had a hair-

cut recently?

A. Yes.

Q. Is that due to the fact that the suspect who shot the victim as you remembered him had somewhat longer hair than any of the people you saw in the lineup?

A. This, again, is a fairly difficult question to answer because at the time that I have most vivid recollection of the man's face, his hair, as I said, was being driven back. And in the lineup there was no way that he would move in such a violent manner as to have his hair flair out like that. But essentially, yes.

Q. During the course of the lineup itself did you ask one of the inspectors whether anybody had had a recent haircut?

A. Yes.

Q. And that was due to your concern to the effect that you recalled the suspect as having had longer hair than any of the other fellows you saw?

A. No.

Q. You did not testify at the preliminary hearing that you were concerned because of the fact that the hair of the suspect was distorted?

A. The face was distorted. The hair was flaired out, sir.

Q. Well, the hair was an important feature to your identification; was it not?

A. Right. And there is no way at the lineup for me to completely remember, totally reconstruct the situation, and identify the man in a way such as his hair was flaired out behind him. I asked the inspector to have everybody in the lineup do a gun simulation situation with both hands out in front in a three dimensional

setup, but you don't get the same flair hair length.

Q You asked the inspector about haircuts at the time of the lineup because you knew nothing that would help you to be more certain in your identification of anyone; right?

A That's true.

Q And you got no answer?

A Right. He -- I think he fell under the -- I don't know. Perhaps under the constitutional structure he is not supposed to say anything to me.

Q He didn't tell you; did he?

A No, he didn't say a word.

Q Initially the night of the shooting you picked three people as looking similar to the suspect is that right?

A Yes, sir.

Q Or was it four?

A Four.

Q And they would be the persons who appear on the left-hand side at the top right of the folder of People's Number Eleven?

A Yes, sir.

Q Is that correct?

A Yes, sir.

Q Okay. Did you make an "X" to the right of each of these four photographs yourself?

A Yes, sir.

Q And that was at the time of the preliminary hearing or when?

A At the preliminary hearing, right.

Q At some point in time I understood you to say that you felt that the man at the top left who is Mr. Lee looked like the person

who you saw shoot the victim but two others looked very similar too; is that right?

A. Yes, sir.

Q. Is that what you testified to at the preliminary hearing on June 28, that Lee looked like the guy but two more looked very similar?

A. I don't -- I don't recollect exactly saying that. I'm sure that when I picked all four of these people out I thought they all looked essentially like the man who had pulled the trigger.

MR. LASSART: May I have the page and line on that, please?

THE COURT: Counsel, do you have the page and line?

MR. HINTZ: Yes.

Q. [MR. HINTZ] Did you testify at the preliminary hearing at page 33, lines 4 to 8, in response to a question asked by the district attorney:

"Question: Now while looking through those photographs did you see one photograph in particular which appeared to you to be the individual who fired the shots?

"Answer: I picked out one photograph. I believe that -- I listed them in order. One photograph looked like the person, two more looked very similar to the person."

A. I did say that.

Q. Okay.

A. Unfortunately this all transpired in such an amount of time in the past that my mind isn't exactly as sharp as it was at the

time of the hearing.

Q. Can you indicate which of the two remaining in there looked very similar to the suspect?

A. This gentleman and this gentleman [indicating].

Q. I would like to have you make your mark to the right of the first one.

A. My initials?

Q. "DL" will be fine. And on the other one.

A. [Witness marked the exhibit.]

Q. And to --

A. Date them?

Q. Date them. Instead of using the six, just put the figure 6-6-74.

A. [Witness marked the exhibit.]

MR. HINTZ: And for purposes of illustration, your Honor, may we refer to these as number two and number four respectively in the file?

THE COURT: Go ahead.

[Counsel marked the exhibit.]

MR. HINTZ: In fact if I could number them all one, two, three, four, five, if I may.

THE COURT: Go ahead.

[Counsel marked the exhibit.]

Q. [MR. HINTZ] Okay. Number one on the top left is Mr. Lee; right?

A. Yes.

Q. And according to the information on the photograph, that was taken about five years ago, 1969?

A. Right.

Q. The number two and the number four photographs were of the persons you felt looked very similar to the guy?

A. Right.

Q. Now at the time that you attended the police lineup on June 8, I believe it was, do you have any recollection whether either number two/or number four, the ones who looked very similar, were present in that police lineup?

MR. LASSART: Excuse me. Just for clarification, June 11th is the lineup date.

MR. HINTZ: June 11th.

THE COURT: Also, Mr. Hintz, would you number those all one, two, three, four and five and put your own initials beside the number one, two, three, four and five.

MR. HINTZ: Yes. I'll reframe the question.

Q. [MR. HINTZ] At the time of the lineup on June 11th did either number two or number four who were noted to you to be very similar to the killer, did either of those two persons appear in the lineup that you saw? And I hand you People's Number Twelve.

MR. LASSART: Objection, your Honor. What relevance is that?

THE COURT: I don't know what it is going to, but I'll allow it. Go ahead. If you can tell.

Q. [MR. HINTZ] Were either number two or number four in the actual lineup that you saw?

A. Do you want me to say to you now?

Q. Now, yes.

A. I have no recollection of either of those gentlemen being in the lineup.

Q. So that Mr. Lee, the one you have designated here in number one, was the only person in the actual lineup that looked similar to the person that you had seen?

MR. LASSART: Objection. That's not the testimony, your Honor. Not similar. It's a misstatement. He said it is the man he saw on the street.

THE COURT: That's what he said. Sustained. Rephrase your question.

Q. [MR. HINTZ] Did anyone other than Mr. Lee, of the persons whose photographs you saw, actually appear in the lineup?

A. Not to my knowledge. I picked these out on the night of the murder.

MR. HINTZ: There is no question before him right now.

Q. [MR. HINTZ] Your initial observations -- strike that.

Your initial hearing of the two reports you thought to be firecrackers; right?

A. Yes.

Q. And when you looked and saw and recognized what it was you had seen, your initial concern at that point was concern for your own safety and desire to get out of there?

MR. LASSART: Objection, your Honor. That's argumentative.

THE COURT: It certainly is. Sustained.

Q. [MR. HINTZ] After hearing the two initial reports were you not concerned about your own safety?

A. No. The point that I became concerned for my own safety was somewhere in that split second of time after I saw the bullet

come out of the gun and I realized that there was a firearm being discharged across the street and it was aimed into someone's head but essentially also in my direction, enough in my direction with my experience of firearms, I got out of the firing line as quickly as I could.

Q Did you not testify in the preliminary hearing that you saw the pistol and your main desire was to get out of the line of fire for your own safety?

A Perhaps so. In the time sequence I saw the pistol, it went off once and that's when I felt the fear. As soon as I was actually cognizant that it was a firearm and what was going on, I developed a serious fear.

Q Did you not testify at page 31, line 28 through page 32, line 6:

"The point at which I achieved a state of -- lot of fear was when I saw the pistol going off in someone's hand aimed essentially in my direction. Then I was very afraid and --

"Question: And your main desire at that point in time was to get out of the line of fire for your own safety?

"Answer: Yes, sir."

Were not those the questions asked and the answers given by you?

A Right.

Q And are you reasonably certain at this time, Mr. Lennon, that

you did inform not only Officer Harms for sure and probably or possibly Inspector Falzon that the suspect, as you observed him, had a mustache?

A. Yes.

Q. At the time that you had these interviews with the officers, were they taking notes?

A. I can't remember. I made out a statement at the police headquarters building. I talked to policemen on the corner of Pacific and Grant, in the police car, at the police station in North Beach and at police headquarters. And I'm sure that they were taking notes sometime, but I have no specific recollection of speaking in a transcribed sense.

Q. You did not testify at the preliminary examination that the suspect had a mustache; did you?

MR. LASSART: Objection, your Honor. That's argumentative. The question may not have been asked.

THE COURT: Sustained.

MR. HINTZ: No other questions.

REDIRECT EXAMINATION of DAVID LANCE LENNON

By MR. LASSART:

Q. Mr. Lennon, when you testified or when you indicated your attention span and then you used this circular method with your fingers, what do you intend to indicate by that gesture?

A. The scope of my vision, in a sense the attention of my whole sensory perception went from walking down the street with two of my friends to a situation where I just started to negative everything else that was happening around me and I went to the

spot in which the things that were transpiring had captured my attention.

Q. Did you center your concentration, in other words?

A. Right. I completely concentrated my attention right there.

Q. What did you concentrate on?

A. I concentrated on the man's face and the whole movement and the gun.

Q. And the man's face you concentrated on is the face of Mr. Lee; is it not?

A. Yes.

Q. Now at the time of the lineup you indicated or it has been brought out that you had a question concerning a haircut?

A. Yes, sir.

Q. Of the people, of any of the people involved. Which of the people in particular were you talking about when you asked the question about haircut?

A. I was talking about Mr. Lee.

Q. Number five?

A. Right.

Q. All right. I'm going to show you People's Number Twenty-eight which is the side view of the lineup and I'm going to show you People's Number Fourteen which is a full-face photograph and a side-view photograph of Mr. Lee. First of all I'll show you the lineup side view, People's Twenty-eight, and I ask you to look at the hair length in that photograph. And I'm going to show you People's Exhibit Number Fourteen which is a full face and side view of Mr. Lee with the date on the photograph of June 8th, and I ask you which of these two photographs more

clearly indicate the length of hair of Mr. Lee at the time you saw him shoot the man on the corner of Pacific and Grant?

A I would say this one.

Q Now which one are you pointing to? Could you turn it over?

A Number -- this one. I think it's number --

THE COURT: On the back.

A 4-3-62. There is no --

Q [MR. LASSART] There is a written designation?

THE COURT: People's Exhibit Number Fourteen.

Q [MR. LASSART] Now again which one of these two more clearly depicts the length of hair of Mr. Lee at the time you saw him shoot the man on Pacific and Grant?

A People's Exhibit Number Fourteen. But I would suggest that from now on you write it out fully because "Exhibit" is an "EXL".

THE COURT: That's some of our jargon, sir.

Q [MR. LASSART] Mr. Lennon, just one further question. Is there any doubt in your mind that Mr. Lee is the man that killed the man at Pacific and Grant?

A No, sir.

MR. LASSART: No further questions.

THE COURT: Anything further?

MR. HINTZ: No.

THE COURT: Call your next witness, please.

MR. LASSART: Your Honor, at this time I would ask to move certain exhibits into evidence, if I may.

THE COURT: Would you fellows approach the bench, please.

[There was a conference at the bench off the record.]

THE COURT: Call your next witness, please.

MR. LASSART: I would like to call Ken Moses, please.

KENNETH MOSES

witness called on behalf of the People.

THE CLERK: Right up here, please. What is your name?

THE WITNESS: Kenneth Moses, M-O-S-E-S.

THE CLERK: Would you raise your right hand. Do you swear to tell the truth, the whole truth and nothing but the truth, so help you God?

THE WITNESS: I do.

THE CLERK: Be seated right up here, please.

DIRECT EXAMINATION

By MR. LASSART: Now, Mr.

Q Now, Mr. Moses, what is your occupation?

A I'm a Police Inspector for the City and County of San Francisco assigned to the crime laboratory.

Q And how long have you been so assigned?

A Three years.

Q And in your assignment with the crime laboratory do you have an occasion to go out to certain crime scenes on call and gather evidence?

A I do.

Q And I want to call your attention to June 7th, 1973, at about 4:00 p.m. in the evening. Did you have an occasion to go to 438 Broadway Street in San Francisco, Apartment Number 8, in that vicinity, and act in your functions as an investigator for the crime laboratory?

A Yes, I did.

Q And were you called to that scene by any particular person or inspector?

A Yes, I was requested to respond to that scene by Inspector Cleary of the homicide detail.

Q And when you got to that location there were other inspectors there; is that correct?

A Yes, sir.

Q And did you also meet a lady that was seen in the courtroom this morning, a Mrs. Etcheveste?

A Yes, she was at the premises.

Q And while you were at the premises did you have occasion to gather in your custody a holster?

A Yes, I did.

Q I'm showing you now People's Number Twenty-four which is marked for identification and I ask you if that holster was given to you while you were at 438 Broadway Street?

A Yes, it has my star number, 1275, on the back.

Q Now in your -- when you were at the scene or at 438 Broadway Street on June 7th did you have an occasion to be directed to a place where -- a garbage dump area?

A Yes. It was in kind of a closet of the main hallway at the head of the stairs.

Q And when you were at that area was there also a photographer there with you?

A Yes, Inspector Slead from the photo lab responded with me.

Q I'm going to show you People's Exhibit Number Twenty-six which is marked for identification and ask you -- this photograph

of what appears to be a trash can or some contents of that trash can, and I ask you if in looking at that if that is a fair and accurate representation of one of the trash cans you observed in the garbage closet?

A. It is.

Q. You had been directed to that particular trash area by Mrs. Etcheveste; is that correct?

A. That's correct.

Q. And when you got to that area did you have the camera man take a picture of what you observed in that can?

A. Yes. I directed him to take this picture.

Q. And in that photograph did you -- when you had the picture taken, did you have a particular object in mind that you wanted the camera man to focus on?

A. Yes, there was a .38-caliber ammunition box in the garbage can.

Q. Can you see that in the photograph which is before you?

A. Yes, it appears quite clearly with the numbers "38" on the side of the box.

Q. All right. Now would you just please circle that on the photograph, that box, as you see it in the photograph.

A. [Witness marked the photograph.]

Q. Have you circled it, sir?

A. Yes, I have.

Q. Now subsequent to the photograph being taken did you remove or take the box out of that receptacle and take it with you for preservation in the property clerk's office?

A. I took it first to the crime lab and processed it.

Q. Now I show you People's Number Twenty-five which is marked for identification and I ask you to look at this container which has in it a box of Western -- an empty box of Western Cartridges. Now is that the box that you removed from the garbage can?

A. This is the box. Both the box and plastic bag have my star numbers on them.

Q. I take it you placed that box in the plastic bag either at the scene or sometime later?

A. Yes, at the scene.

Q. And your star number is on both of the objects?

A. That's correct.

Q. You said you processed the box. What did you process the box for?

A. I processed it to see if there were any latent fingerprints present.

Q. And were you able to gather any?

A. No, there were none.

Q. You are also an expert in the field of fingerprint identification, I take it?

A. I am.

Q. Now along with other matters that you collected at the time of the -- that you were at 438 Broadway Street, did you collect or have pointed out to you newspaper clippings?

A. Yes, there were numerous newspaper clippings.

Q. And did you gather these clippings up?

A. Yes, I did.

Q. And did you gather any other papers up that were pointed out to you?

A. There were miscellaneous papers involved.

Q. And did you also gather those items up?

A. Yes, I did.

Q. Did you actually, yourself, go into Room 430 -- excuse me, Apartment 8 at 438 Broadway?

A. Yes, I processed that room also.

Q. Now the room itself, it has one door as an entrance and exit; correct?

A. That's correct.

Q. And one window in the room; is that correct?

A. That's correct.

Q. And there is no other door except the one down in the hallway; is that correct?

A. That's correct.

MR. LASSART: At this time, your Honor, I would ask that this paper bag which contains therein certain newspaper clippings and other papers be marked People's next in order for identification.

THE COURT: Twenty-nine.

MR. LASSART: Thank you.

[A paper bag and contents was marked People's Exhibit Twenty-nine for identification.]

THE COURT: Collective exhibit.

MR. LASSART: Thank you, your Honor.

Q. [MR. LASSART] I ask you to look at People's Exhibit Number Twenty-nine which is marked for identification and I ask you to just briefly look at the contents. You will have to go through it completely and see if there is any markings on that bag to indicate that is the bag that you placed those clippings in that

you picked up.

MR. HINTZ: I will stipulate he found those things.

THE COURT: Accept the stipulation?

MR. LASSART: Surely, your Honor.

THE COURT: All right.

MR. LASSART: Now I would ask at this time that this eight-by-ten photograph depicting an interior of a room and a doorway, a door with the number -- I believe it's eight on it be marked People's next in order for identification.

THE COURT: That will be the order.

MR. LASSART: I can't recall whether this was duly marked as an exhibit or not.

THE COURT: Which one?

MR. LASSART: The one with the doorway and number eight on it.

THE CLERK: No.

MR. LASSART: May that be marked next in order for identification, your Honor?

THE CLERK: Thirty.

[A photograph was marked People's Exhibit Thirty for identification.]

MR. LASSART: I would ask that an eight-by-ten black and white photograph of the interior of a room, background, window, be marked People's Number Thirty-one for identification.

THE COURT: That will be the order.

[A photograph showing the interior of a room was marked People's Exhibit Number Thirty-one for identification.]

Q [MR. LASSART] This picture I show you, People's Number Thirty, which is marked for identification, I ask you if this is a fair and accurate representation of the interior of the apartment of Apartment Number Eight at 438 Broadway, the apartment that you responded to on the 7th of June?

A Yes, this is a picture taken from inside the room.

Q And was that photograph taken at your direction?

A It was by Inspector Slead.

Q I show you now People's Number Thirty-one which is marked for identification which is another photograph of the interior of the room. This time in the center background of the photograph is a picture of a window. Is this a fair and accurate representation of the interior of the room and the apartment number eight at 438 Broadway?

A It is looking the opposite direction from the other photograph.

Q In other words, if your back was in the direction of the door you would be looking at the window?

A Correct.

Q And visa versa?

A Right.

Q All right. Now, Inspector, you have been with the police department in San Francisco a period of years; have you not?

A Yes.

Q Have you ever had an occasion to observe the area in the Hall of Justice where people are photographed near a height standard?

A Yes, many times.

Q And where is this particular area located in the Hall of Justice in San Francisco?

A It is in the City Prison on the 6th floor of the Hall of Justice behind the fingerprinting room.

Q Pursuant to request -- how long -- excuse me. I'll withdraw all that.

How long has the police used this particular area to take photographs of people who are accused of crimes?

A Several years.

Q And this is the room which was used in June of 1973; is that correct?

A Yes.

Q Now pursuant to requests, Inspector, have you gone over within the last few days and remeasured the height standard which is there in the Hall of Justice?

A I did.

Q And that height standard, is that affixed to the wall in some way?

A It's a ruler connected to a metal clamp which then attaches itself to the wall.

Q So it's affixed; is that correct?

A To a metal clamp.

Q Is it kept in one place in the Hall of Justice?

A Yes, it is.

Q And it is a fixture that is on the end of a sort of spring; isn't that right, metal; it will move?

A It's a metal clamp, yes.

Q It will move a little bit?

A Yes.

Q Did you measure to see if the standard which is on the wall is actually five foot six or five foot five from the floor, depending on the numerical designation on the scale?

A Yes, I did.

Q And is that an accurate representation of height as you have measured it?

A I would say it is accurate within plus or minus half an inch.

Q Why do you say plus or minus half an inch?

A Because of the clamp which attaches it to the wall has a bit of spring to it and it's possible it could vary some.

Q I show you People's Exhibit Number Four which is marked for identification and I ask you to look at that photograph. In this case it's the photograph of the defendant's picture next to the height standard. Is that the height standard which you examined just recently?

A Yes.

Q Is that a standard that has been there for a number of years?

A That's correct.

MR. LASSART: No further questions.

THE COURT: Cross-examine.

CROSS-EXAMINATION of KENNETH MOSES

By MR. HINTZ:

Q Mr. Moses, you say you are a fingerprint expert?

A Yes.

Q And did you look for prints on the box of ammunition, the

empty box of ammunition?

A Yes, I did.

Q Did you chem print that or what?

A No. No, the surface of that would have been susceptible to powder, and I dusted powder on it.

Q And you dusted that and couldn't find any latent print; is that right?

A That's right.

Q The newspaper clippings that you referred to that are inside that brown envelope, they have nothing to do with this case; do they?

MR. LASSART: Objection, your Honor. That would be speculative.

THE COURT: Sustained.

Q [MR. HINTZ] You've read those, have you not, that you booked for evidence?

A No, I did not read them.

Q Did you glance at them?

A I believe I glanced at them, yes.

Q You can't testify at this time whether or not they relate to this homicide or something totally unrelated?

MR. LASSART: Objection, your Honor. This is argumentative.

THE COURT: It is. Sustained.

MR. HINTZ: I presume at some point in time they will be offered in evidence?

THE COURT: You assume they will, counselor.

Q [MR. HINTZ] You never saw that room prior to the 7th of June; did you?

A. That's correct.

Q. Do you know whether or not the room had been rearranged before your entry there on the 7th of June?

A. No, I do not.

Q. I notice one item on the back of People's Exhibit Twenty-one on top of the dresser. Do you see what I'm pointing to?

A. It would be a sauce pan.

Q. Yes. I'll circle it. Can you tell us what that was?

A. It's a sauce pan and top.

Q. The top that you would cook something in?

A. That's correct.

Q. Did you have occasion to observe the cabinet, the dresser and/or the closet?

A. The cabinet, dresser and closet?

Q. Yes.

A. Yes, sir.

Q. Were there any clothes within Room Number Eight at the time of your entry there?

A. No.

Q. No clothes whatsoever?

A. I know there were no clothes in the room. I'm not certain of the closet.

Q. I would like to refer to your report. Did you not pick up a blue jacket and a blue slip-over shirt from Room Eight?

A. I believe the blue jacket was handed to me by Inspector Podesta.

Q. Was the blue jacket booked as evidence in this case?

A. Yes, sir, it was.

Q Do you know where the blue slip-over shirt came from?

A Yes, it came from a box in the hallway.

Q Did Inspector Podesta tell you where he had acquired the blue jacket which was booked for evidence?

A No, sir.

Q Did you observe any rust or gold or mustard or copper colored jacket or windbreaker in Room Eight?

A I did not.

Q Do you know what had become of the personal effects or clothing of Mr. Lee prior to your arrival there on June 7th?

A I was led to understand that the contents of the room had been removed to the boxes outside the doorway.

Q By whom, sir?

A I believe it might have been the husband of the manager, but I'm not certain.

Q By the contents of the room are you referring to the clothing as well as other personal effects?

A Yes, sir, everything, I believe.

Q The contents of the room were placed in some type of cardboard box or boxes?

A Yes.

Q These boxes were stacked in the hallway?

A Directly outside of Room Eight, yes, sir.

Q Did any police officials inventory the contents of these various boxes which would have been the personal clothing and personal effects of the defendant?

A I have no knowledge of an inventory.

Q You have no knowledge of such?

A Right. I don't know if they did or not.

Q Did you do all of your follow-up work during the night of June 7th or did you come back during the next day?

A I completed my investigation of the room on the 7th.

Q Can you tell me approximately what time you arrived there and what time you left?

A I believe I arrived there approximately 7:00 p.m.

Q June 7th?

A That's correct. And I left about one hour later.

Q Was the investigation with respect to that room completed as of your departure on June 7th, 8:00 p.m.?

A The contents of the room, yes, I believe it was.

Q Can you tell me the names of other officers who were there during the time that you were there?

A Inspectors Podesta, Snider and Erdelatz are the ones I recall. I believe there were some others.

Q Any uniformed officers?

A I don't recall.

Q Any homicide investigators?

A The three gentlemen I mentioned were all from homicide.

Q Oh, I see. Anyone else from the laboratory in the police work other than yourself?

A Besides Inspector Slead of the photo lab, no, sir.

Q Had you been briefed by any of the homicide inspectors regarding the killing on June 3rd and/or the clothing allegedly worn by the suspect at the time of your appearance there?

A No, sir, I was not.

Q Do you know whether or not Inspector Podesta, Snider or

Erdelatz had anything to do with the investigation of the homicide?

MR. LASSART: Objection. That's very vague.

THE COURT: It's pretty vague, but I'll allow it. Go ahead.

A I have no knowledge of whether they were or not.

Q Isn't it a fact that Inspector Snider was one of the two arresting officers that arrested Mr. Lee that same evening?

MR. LASSART: Objection. And it's only because the name is the same and I know they are different people, your Honor.

THE COURT: Sustained.

MR. HINTZ: That takes care of that.

Q [MR. HINTZ] Did you have occasion to know whether or not any of these homicide inspectors who were on the scene went through the boxes of effects and clothing that were purportedly taken from Room Eight?

A I spent most of my time within the room fingerprinting, et cetera, and I'm not sure how extensively they were going through the boxes outside or not.

Q But I understand your testimony was Inspector Podesta who was one of these gentlemen did give you the jacket?

A That's correct. He brought it into the room and handed it to me.

Q He didn't have that before he arrived there?

MR. LASSART: Objection. Improper foundation.

THE COURT: Sustained.

Q [MR. HINTZ] Do you know where he got the jacket from?

A No, I do not.

Q Was it your understanding at the time that the jacket had been found in the box or one of the boxes of Mr. Lee's clothing?

MR. LASSART: Objection. That's irrelevant based on hearsay.

THE COURT: Overruled. It's preliminary, I presume.

A I'm sorry. Could you --

THE COURT: Ask the question again, could you, please?

Q [MR. HINTZ] Do you know whether or not the blue jacket that Inspector Podesta gave you came from one of the boxes?

A I don't know for sure, no.

Q Do you have an opinion with respect to that?

THE COURT: Sustained.

MR. LASSART: Thank you.

MR. HINTZ: Thank you.

Q [MR. HINTZ] You, yourself, did not see any rust or gold or mustard-colored jacket or windbreaker in or about that room?

A No, sir, I did not.

Q If you would have seen such, would that have been booked as evidence in this case?

A Inside the room --

MR. LASSART: Objection, your Honor. That would be speculative.

THE COURT: Sustained.

MR. HINTZ: No other questions.

THE COURT: Anything further?

MR. LASSART: Just to clarify one.

REDIRECT EXAMINATION of KENNETH MOSES

By MR. LASSART:

Q Again, you got to Apartment B, 438 Broadway, and looked inside. Did the apartment look as if it had been recently cleaned

out?

A Yes, it appeared to be.

Q And there was, I take it, a stack of material out near the front door of that apartment, cardboard boxes, et cetera, when you arrived there?

A Yes.

MR. LASSART: At this time, your Honor, I would ask this eight-by-ten photograph containing -- eight-by-ten black and white photograph be marked as People's next in order for identification.

THE COURT: All right.

[A photograph was marked People's Exhibit Thirty-two for identification.]

MR. LASSART: Thank you. That is People's Thirty-two, your Honor?

THE COURT: Correct.

Q [MR. LASSART] I'm going to show you People's Thirty-two which is marked for identification and ask you to look at People's Thirty-two which is a photograph depicting boxes, cardboard boxes and some sort of -- looks like a sheet laying over the top of it. Is that a fair and accurate representation of what you observed with regard to the hallway area at the front or near the Apartment Number Eight?

A Yes, these are the boxes that were outside Apartment Number Eight.

Q And that's how they were when you arrived there?

A Yes.

Q You didn't, yourself, go into the boxes in any way?

A No, I did not.

MR. LASSART: I have no further questions.

THE COURT: Mr. Hintz?

MR. HINTZ: Nothing further.

THE COURT: Step down, sir.

Witness excused?

MR. LASSART: Yes, your Honor.

MR. HINTZ: May we approach the bench?

[There was a conference at the bench off the record.]

THE COURT: Now, ladies and gentlemen of the jury, I'm going to admonish you please don't discuss the case with one another or allow anybody else to discuss it with you in any way, shape or form. Keep an open mind on the case until you have heard all the evidence of both sides, the prosecution and defense, arguments of counsel and law of the case. Again, if there is any news medium with relation to this case, please disregard it because you are going to hear all the evidence, all admissible evidence, right here in this court. If anybody attempts to talk with you in any way, shape or form, about the case, please contact myself or one of my bailiffs and we will handle the situation.

Now here is the situation. It's unavoidable and it has to be. As I told you already, this Court does not handle jury trials on Friday. We are in what we call law and motion, and due to some other matters that came up, this case has to be continued until next Tuesday morning which is, what?

THE CLERK: June 11th, your Honor.

THE COURT: June 11th. So it will be, as far as we are

concerned, a four-day holiday from this court. So with that in mind --

MR. LASSART: Your Honor, excuse me. I wanted to ask one further thing. I wish the Court would, if I could, put some of the exhibits -- move certain exhibits in evidence so the jury can look at them in light of the testimony at this time.

THE COURT: All right. We can do that.

MR. LASSART: Thank you. I would ask at this time that People's Number Fourteen which is an eight-by-ten photograph of the defendant in this case be marked and placed in evidence.

THE COURT: Be admitted.

[People's Exhibit Fourteen was received in evidence.]

MR.LASSART: People's Number Fifteen which is the lineup card of Mr. John Huey be placed in evidence.

THE COURT: Be admitted.

[People's Exhibit Fifteen, lineup card of Mr. Huey, was received in evidence.]

MR. LASSART: People's Number Sixteen which is a four-by-four colored photograph of the scene be placed in evidence.

THE COURT: Be admitted.

[People's Exhibit Sixteen, a photograph, was received in evidence.]

MR. LASSART: And ask that People's Number Seventeen, which the Smith and Wesson Revolver, be placed in evidence.

THE COURT: Be admitted.

[People's Exhibit Seventeen, a revolver, was received in evidence.]

MR. LASSART: People's Number Eighteen, the five indications in the manila envelope which contains them, be placed in evidence.

THE COURT: Be admitted.

[People's Exhibit Eighteen, envelope and contents, was received in evidence.]

MR. LASSART: People's Nineteen, which is the white envelope with the broken pistol grips be placed in evidence.

THE COURT: Be admitted.

[People's Exhibit Nineteen, envelope containing pistol grips, was received in evidence.]

MR. LASSART: People's Twenty-three, which is a drawing of the cylinder which is on the easel to the right of the jury be placed in evidence.

THE COURT: Be admitted.

[People's Exhibit Twenty-three, a drawing, was received in evidence.]

MR. LASSART: That People's Number Twenty-four which is the gun case from 438 Broadway be placed in evidence.

THE COURT: You mean the holster?

MR. LASSART: Yes.

THE COURT: Be admitted.

[People's Exhibit Twenty-four, a holster, was received in evidence.]

MR. LASSART: People's Twenty-five which is the empty .38-caliber box of shells be admitted.

THE COURT: Be admitted.

[People's Exhibit Twenty-five, empty .38-caliber shell box, was received in evidence.]

MR. LASSART: People's Twenty-six, which is the black and white photograph of the garbage paper be placed in evidence.

[People's Exhibit Twenty-six, a photograph, was received in evidence.]

MR. LASSART: People's Twenty-seven, which is a lineup card filled out by Mr. Lennon, be placed in evidence.

THE COURT: Be admitted.

[People's Exhibit Twenty-seven, a lineup card, was received in evidence.]

MR. LASSART: People's Twenty-eight, the black and white side view of the lineup, be placed in evidence.

THE COURT: Be admitted.

[People's Exhibit Twenty-eight, a photograph, was received in evidence.]

MR. LASSART: People's Thirty, which is the black and white of the interior of the room showing the doorway, be placed in evidence.

THE COURT: Be admitted.

[People's Exhibit Thirty, a photograph, was received in evidence.]

MR. LASSART: People's Thirty-one, which is the black and white of the interior of Room Number Eight with the window be placed in evidence.

THE COURT: Be admitted.

[People's Exhibit Thirty-one, a photograph, was received in evidence.]

MR. LASSART: And finally People's Thirty-two, which is the black and white photograph showing the outside of Room Number Eight

be placed in evidence.

THE COURT: Be admitted.

[People's Exhibit Thirty-two, a photograph, was received in evidence.]

THE COURT: All right. At this time we will adjourn. Will you stipulate the jury will refer to the admonition I just gave them?

MR. LASSART: Yes, so stipulate, your Honor.

MR. HINTZ: Yes.

THE COURT: Adhere to the admonition heretofore stated, ladies and gentlemen.

Now with that in mind we will again adjourn until June what?

THE CLERK: June 11th, 10:00 o'clock in the morning.

THE COURT: Good night and have a good weekend.

[The evening recess was taken.]

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TUESDAY, JUNE 11, 1974

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The matter of the People of the State of California versus Chol Soo Lee, having been continued to this date, was commenced before the Honorable Robert W. Cole, Judge of the Superior Court, Department Number One thereof, at 10:00 o'clock in the a.m.

The People were represented by James A. Lassart, Deputy District Attorney in and for the County of San Francisco.

The defendant was personally present and he was attended and represented by Hamilton L. Hintz, Jr., as his counsel.

The following proceedings were had:

THE COURT: All right, let the record reflect the jurors are not present, counsel for both sides and the defendant are present.

Counselor?

MR. LASSART: Yes, your Honor.

DEFENDANT LEE: Your Honor, may I say something right now?

THE COURT: Talk through your attorney, sir.

MR. HINTZ: Yes, your Honor, he has a complaint to make. As I understand it, he had visitors over the weekend in jail to whom it was suggested they should not have contact with him by reason of the fact that he was no good; he was a killer, words to this effect. Mr. Lee reported to me just before court this morning -- what?

DEFENDANT LEE: Two girls and one guy.

MR. HINTZ: That these visitors have been discouraged from seeing him by either the police, prosecutor in this case, according to what they have told them, source of the discouragement, the fact that he is on trial and is a killer, so-to-speak.

Is that correct?

DEFENDANT LEE: Yes. The district attorney told the girls that two times I shot a man in the back of the head. At the same time I was shooting the person I was wearing a smile the same time I was shooting the person. If the jury is not supposed to talk about it among themselves, I don't think the district attorney has a right to talk about it. It's bad enough that I have to be here today to go to trial for something I don't know nothing of for the district attorney to go out and tell some friends I'm a killer and things.

THE COURT: All right. We'll proceed. Call your witness, please.

MR. LASSART: Call Inspector Cleary, please, to the witness stand.

JOHN J. CLEARY

witness called on behalf of the People outside the presence of the jury.

THE CLERK: What is your name, sir?

THE WITNESS: John J. Cleary, C-L-E-A-R-y.

THE CLERK: Do you swear to tell the truth, the whole truth and nothing but the truth, so help you God?

THE WITNESS: Yes, sir.

THE CLERK: Be seated right up here, please.

THE COURT: How long do you think this will take, gentlemen?

MR. LASSART: I think in fifteen or twenty minutes I can have the direct with Inspector Cleary.

THE COURT: And what about any other evidence?

MR. LASSART: And I intend to also put Mr. Snider on with regard to -- Officer Snider on with regard to the Miranda, and also Inspector Cleary to cover that issue. The direct would take maybe a half-hour.

THE COURT: How long do you think, Mr. Hintz? I'm thinking about my jury sitting out there in the hall.

MR. HINTZ: I would say no more than that much time for myself, probably less.

THE COURT: [To the Bailiff] Tell them to come back at 11:00 o'clock.

DIRECT EXAMINATION of JOHN J. CLEARY

By MR. LASSART:

Q Would you state your full name for the record and spell your last name, please?

A John J. Cleary, C-L-E-A-R-Y, Inspector of Police, San Francisco Police Department.

Q How long have you been an inspector with the San Francisco Police Department?

A Inspector since -- full inspector since 1966, I believe.

Q And how long have you been with the homicide detail?

A Ten years.

Q And in your connection with the homicide detail in the year of 1973 was your partner Inspector Falzon who is seated at the counsel table?

A Yes, sir.

Q And with regard to your status at that time were you called or assigned to, in June of 1973, a case involving investigation

of a man named -- the death of a man named Yip Yee Tak?

A Yes, sir, I was.

Q And I call your attention now to June 4th, 1973. Is that the first time that you had an opportunity to begin the investigation?

A Yes, that would be Monday morning when Inspector Falzon advised me of the situation.

Q Okay. I take it you did not go to the scene of the homicide yourself?

A No, I was relieved of duty that night.

Q You were relieved of duty?

A Yes, another man took my place.

Q And in the morning of June 4th did you come into the homicide detail on the fourth floor of the Hall of Justice?

A I did, sir.

Q And there did you talk with or speak with Inspector Falzon?

A Yes, sir.

Q And did he brief you with regard to any information he had gathered the night before?

A That's correct, the homicide that took place on Grant Avenue and Pacific Street.

Q And at that time did he indicate he had spoken with any witnesses?

A Yes, he stated he talked to several witnesses.

Q And with regard to the witnesses he spoke to did he have any information concerning identification of the suspect?

A Yes. He advised me that a suspect was identified by, I believe it was, two individuals and a subject that was identified

was a gentleman by the name of Mr. Lee, Chol Lee.

Q Now at the time that you received this information from Inspector Falzon -- that was on the morning of the 4th -- did any other inspectors from any other details in San Francisco come into the homicide detail?

A Yes, sir, retired -- now retired Inspector Emil Dutil from the general works detail came to our desk and advised Inspector Falzon and myself that he was in hand of a suspicious occurrence reported that had taken place a few nights previous at 438 Broadway Street.

Q Okay. And this is a suspicious occurrence report that involved shots fired; is that correct?

A That is correct.

Q And this was on June 2nd that this report occurred?

A Yes, sir.

Q And did you have at that time an opportunity to review the report?

A Yes, I did, along with Mr. Falzon and Mr. Dutil.

Q The first of the shots, the review of the report indicated 438 Broadway, apartment -- a certain apartment was involved?

A I believe it was Apartment Number Eight wherein a shot was fired out through the apartment and hitting an adjoining building next-door.

Q Okay. And were there suspects listed at the bottom of the report?

A Yes.

Q And do you recall who the suspects were?

A Yes, if I -- I haven't seen this report, but I believe it

mentioned Mr. Lee, Chol Lee.

Q And there was also another name at the bottom?

A Yes, a Mr. Fong, if I recall rightly.

Q And from that report did you gather whether or not a slug or any item of evidence was recovered as the result of that shots-fired report?

A Yes, I was aware that a .38 slug was taken from the adjoining building.

Q Okay. Now with regard to the slug, did that have any significance to you in your determination of how that may be involved in this particular case?

A Well, Inspector Falzon also advised me that the decedant, Yip Yee Tak, was shot with a .38 and also recovered from 438, or the building adjacent to it, was also a .38-caliber bullet.

Q Had you at that time had any indication whether or not a suspected murder weapon had been recovered?

A Yes. Also in the information that a short ways from the scene a .38-caliber revolver was recovered.

Q Okay. Now when you saw this report and you heard of the -- what the witnesses had said, did you have occasion to review the report, police report of Mr. Lee?

A Yes. Mr. Falzon already had the report and I knew of the suspect. I didn't know him personally, but I knew of him and another Chinese gentleman acquainted with him.

Q Okay. And the physical description in the police report of Mr. Lee, is it similar to that of the information received from the witness?

A That is correct. And on the morning shortly after quitting

there Mr. Falzon put out a teletype, an all points teletype, and it matched Mr. Chol Lee's physical description.

Q. Now had the name -- had you had any information concerning the gun that was recovered near the scene of the homicide?

A. Other than that it was a .38-caliber snub-nosed.

Q. Did you run a --

A. NCIC? I, myself, did not.

Q. Did you receive information regarding an NCIC check, gun?

A. Yes, I did.

Q. And what information did you receive?

A. To the best of my knowledge now that gun was taken during the robbery of a theater in the Chinatown area.

Q. And that was a robbery that occurred prior to June 3rd of 1973?

A. Yes, sir, sometime prior to that.

Q. And do you recall what the race of the suspects were that committed that robbery of the Sun Sing Theater?

A. Chinese male and juveniles.

Q. And were they masked or unmasked, to your recollection?

A. I don't recall at this time. I'm not sure if they were masked at that time. In that robbery I'm not sure.

Q. Okay. With regard to Mr. Chol Lee, had you ever heard of him before?

A. Yes, sir, I -- just shortly prior to this incident took place, on Sunday night there was an arrest made in Reno where several Chinese individuals were arrested called the Ski Mask Bandits, and in fact Inspector Falzon and I knew some of them, Ronald Gong, Phillip Gee, and I also knew Mr. Chol Lee was arrested

at this time. It was my belief that he was still in custody. I checked with the Federal Bureau of Investigation through one of the agents. I believe that I talked to him personally in the office, and I says I'm sure this gentleman must still be in custody. And he said, no, to the best I recall now, even though he had bait money at the time of the arrest, the U.S. Attorney did not feel at this time there was enough evidence to file criminal charges against Mr. Lee at this time and he was released. To my surprise.

Q. Now he was released prior to June 3rd; was he not?

A. That is correct.

Q. And an arrest was made sometime in May that you are referring to, the bank robbery arrest?

A. Yes, made in Reno.

Q. All right. And bait money, can you explain what that is?

A. Well, it's marked money that banks have in case of holdup so they can trace it back.

Q. Now you mentioned some other people that were arrested with Mr. Lee, Phillip Gee?

A. Yes, and to serve my memory approximately two years ago, two and a half years ago when Inspector Falzon and I first became partners, we had another homicide case involving shotgun -- several shotguns, and during this investigation this young man, Phillip Gee, was taken into custody during this investigation.

Q. And that is a murder case that was involving a defendant by the name of Douglas Hom?

A. Yes. That's correct. He's serving time now for the charge.

Q. Now Ronald Gong, had you information with regard to him?

A Yes. Well, our detail -- we were having at that time several Chinese incidents. We were all familiar with Ronald Gong, Phillip Gee, Doug Hom and that group.

Q Now these Ski Mask Bandits, the men referred to, in your recollection Ronald Gong and Phillip Gee, people connected with the Ski Mask Bandits, what type institutions was it they robbed?

A Well, to the best of my memory now it was banks and savings and loan companies and also I believe small stores. But I distinctly remember banks and savings and loan companies.

Q Now with that information that you had at that time did you thereafter on the 7th of June 1973 go to the area or address of 438 Broadway Street?

A Yes, I did, sir, on the evening of that date. I believe it's called the Skyway Hotel, 438 Broadway Street.

Q And did you speak with a lady there then?

A Yes, she is -- a woman and her daughter. She was the manager of the hotel. I entered along with, I believe it was, Inspector McKinnon and other members of our detail, identified myself as Inspector Cleary, told them I was from the homicide detail.

Q And did you inquire of her concerning any person who you thought resided there?

A Yes, I asked her if there was a gentleman by the name of Mr. Lee that resided here, and I also had a picture of the individual. She identified the picture and indicated, yes, he did live there but he had left.

Q Did she explain the circumstances and conditions of his leaving?

A Yes. Briefly to put it, that she said there was trouble with the individual when he was there, I believe, going back as far as a date around June the 5th. There was an argument there, apparently a young girlfriend visiting or living with him, and there was a loud argument and then she went back down and told him -- or informed him that she was going to call the police or would call the police. Shortly after that the young girl left by the main entrance down the stairs and out and she heard scurrying or moving about of furniture and shortly after that she saw the gentleman going up the side of the cliff and rocks falling and leaving. That was the last she saw of him. I believe that was around the 5th.

Q Did she say she had any contact with him other than subsequent or after the date of the 5th of June?

A She got a phone call, I believe, the following night wherein he was interested in a welfare check or subsistence check and also he was concerned regarding if the police were there and what she may have told the police.

Q Now while you were there with Mrs. -- was the lady's name Mrs. Etcheveste?

A That's correct. I believe she is a Basque.

Q You don't speak Spanish; do you?

A I do not.

Q Did anybody help through talking that day?

A Well, her daughter was there and she helped us out.

Q Her daughter speaks English?

A Yes, very good. She went to the neighborhood Catholic school. The mother seemed to understand everything I asked her.

Q All right. While you were there did Mrs. Etcheveste give you anything that you confiscated as evidence?

A Yes, she gave me a holster, kind of a western-type holster that would hold a large gun.

Q And did you take anything else from that area of the room that was labeled as having belonged to Mr. Lee?

A Well, she then took me down to the area where Room Eight was and all his belongings, his personal belongings were placed to one side outside the room. I asked her if there was anything in the room now and she said she believed not. All she said was in cleaning up that she had found an empty bullet box. She believed it was empty, cartridge box, and she thought it was still in the waste basket. The room was open and it was just a very small room. You could see it from the outside and the basket was empty. I asked her -- then she recalled that possibly it was already put in the trash can. I asked if the trash had been picked up for the day and she said no. I asked her where the trash can was at the time. She said down the hallway. She took me there. I opened the door. Inside the trash can -- I looked inside the trash can and in fact almost on top of this trash can was the empty bullet box. I believe it was Western-X.

Q What was the caliber of the bullets?

A Thirty-eight caliber. 38

Q Now when you observed this I take it there were people from the crime laboratory there at that time?

A Yes. Inspector Ken Moses and I believe also a photo lab man responded.

Q Now did you have any further conversation with Mrs. Etcheveste

concerning any of Mr. Lee's belongings or anything that had come for him?

A. Yes. As you know, I was aware that he was wanted -- I mean that he was wanted to pick up a welfare check, I believe it was, and that I was sure that he would call back for it and make arrangements to pick it up.

Q. Did you see his welfare check there then?

A. Yes, it was still in an envelope, white envelope.

Q. And when you saw the welfare check there what did you -- what actions did you take?

A. I immediately notified my lieutenant what had taken place and then we notified Central Station, wherein this district 438 Broadway Street would be, and advised them that I would request the assistance of two plain clothes men, two plain clothes men to participate in the stakeout for the individual hoping that he would come back to pick up this check, that the subject was wanted and the charge was murder, 187 Penal Code.

Q. When you did that did you take any procedures, for instance a teletype card?

A. Yes, a teletype and all points bulletin was put out.

Q. Did you ever talk to the two plain clothes men yourself?

A. Yes, they arrived shortly after I made a phone call. Officer Bill Johnston and I believe it was Officer Snider, both plain clothes men from Central Station. I advised them -- and it's not a lobby, it's an old type hotel, Skyway Hotel. I advised them of the circumstances. I believe one of the officers knew the gentleman here from a prior occasion, and I also left them with a picture of the subject. Also advised them that possibly

he would be armed.

Q Did you indicate to them whether or not he was armed and dangerous?

A Yes, I also did that, and also I believe it was in the teletype that he would be armed and dangerous.

Q Okay. Did you give them any instructions what to do if they saw Mr. Lee?

A Yes, advised them that he was to be taken into custody and charged with murder.

Q And did you then leave them at the Skyway Hotel and yourself leave?

A I did, sir.

Q And when you did that did you proceed to go home?

A I may have went to the Hall of Justice, but I was only home a short time and I had just got home when I was advised that the arrest was made.

Q That was on June 7th?

A That's correct. And I returned immediately to the Hall of Justice.

Q And when you got to the Hall of Justice was Mr. Lee at the homicide detail?

A I believe we got there just about the same time or I got there a little before.

Q And when he came in did he come in alone?

A No, he was accompanied by the two officers that made the arrest, Mr. Johnston and Mr. Snider.

Q When you came into the Hall of Justice into the homicide detail did you have an occasion to speak with him to some extent?

A I did, sir.

Q And prior to speaking with him did you advise him of his rights per the Miranda decision?

A I did, sir.

Q And did you recite from memory or do you use a card?

A Use a card.

Q And do you have your card with you today?

A Yes, sir. It's a plastic card which carries on it the statement of the Miranda warning.

Q Now when you first advised -- did you advise Mr. Lee -- did you advise Mr. Lee before -- I'll withdraw that.

When you first talked to Mr. Lee after you advised him of his rights did you have a tape recording going at that time?

A No. The first discussion -- I had just a brief discussion first. I had contacted Inspector Falzon who was the initial investigator in this arrest, and he had just got home himself, and advised him that Mr. Lee was taken into custody. He said he would be in the detail in a matter of a few minutes. We only live a few blocks apart and he was there a few minutes after I arrived. We went into our interview room. I took Mr. Lee in there and advised him of his rights from the Miranda warning card. I took brief notes of it.

Q When you first advised him of his rights, could you read to the Court and into the record what you said when you advised him of his rights?

A Yes, sir. I advised him this: You have the right to remain silent. Number two, anything you say can and will be used against you in a court of law. Three, you have the right to

talk to a lawyer and have him present while you are being questioned. If you cannot afford to hire a lawyer, one will be appointed to represent you before any questioning if you wish one.

He was also asked do you understand each of these rights I have explained to you, and he stated yes. And having these rights in mind, do you wish to talk to us now. He stated yes.

Q. Now you talked to him then briefly?

A. Just briefly, yes.

Q. You took notes of that?

A. I did, sir.

Q. Now after you took notes and talked to him briefly, did you make any attempt to try to tape record a conversation?

A. Yes, I advised him I thought we should go further into this. He agreed to it and I also advised him since our partner, Inspector Falzon, was the initial investigator on it and had done most of the work, that he would take the taped statement, and he took it in my presence.

Q. And did you take a taped statement from Mr. Lee?

A. Yes, this was done in -- by Mr. Falzon. And I was there. I also asked him questions, but Mr. Falzon was the initial interrogator.

Q. And was Mr. Lee advised of his Miranda rights again on that tape, the tape recording?

A. Definitely, sir, yes.

Q. Do you know who advised him of his rights by tape recording?

A. Inspector Falzon, I believe.

Q. And were you there present when he was advised?

A. That's correct.

Q And did Inspector Falzon use also a Miranda card?
A Yes, we each have a card.
Q Pardon me?
A We each -- everybody has one of these.
MR. LASSART: I have no further questions.
THE COURT: Cross-examine, please.

CROSS-EXAMINATION of JOHN J. CLEARY

By MR. HINTZ:

Q Inspector Cleary, addressing myself first to the information you received from Inspector Falzon the night of the murder, you indicate that Falzon told you that Lee had been identified by two witnesses?
A Yes, two, three. There were several witnesses there, but my information was that two of the witnesses, I believe, made an identification. I don't believe -- no, made an identification of Mr. Chol Soo Lee from the photographs.
Q Did Inspector Falzon state which two witnesses these were?
A He named them to me. I don't recall which ones. He told me that morning that he named them.
Q Did he state with what degree of specificity or positiveness the witnesses identified Lee?
A Didn't go into that. Just said identified them. Told me what their occupation was, were skiers.
Q Were they both skiers or in ski related work?
A I believe they were all visitors in town, something to do with skiing. In fact I've talked to one of the gentlemen myself on one occasion. I think it was Mr. Lennon.

Q Do you have any idea whether Inspector Falzon said the identification was positive or tentative?

A Just what I stated, that an identification was made.

Q Well, at that time did he give you any further information as to whether the identification was tentative only or was positive?

A Just like I answered, sir. I would say just an identification was made. He didn't say anything that I recall.

Q Did you question him further as to whether it was positive?

A I don't recall now.

Q Did you have information at that time as to whether or not anyone else was also identified other than Lee?

A That some other subjects was identified?

Q Yes.

A I don't remember hearing that.

Q Did you have information to the effect that there were as many as nine witnesses to this incident?

A I know there were several witnesses, but I just -- I don't know how many identified this gentleman. I know of two that I am certain of. I don't recall who else made an identification. All I was instructed Inspector Falzon was that witnesses had identified Mr. Chol Lee as being the person responsible for the shooting.

Q There was no supplementary information to the effect that there were other witnesses who could identify nobody; is that right?

A Oh, sure there were a lot of people there that couldn't make any -- not a lot, there were people that couldn't make an

identification, any other identification. People that are there that cannot make an identification.

Q. Did Inspector Falzon also give you information that several of the witnesses had picked out a series of photographs of look-alikes which included that of Lee?

A. My main interest was the subject that was picked up, Mr. Chol Lee. There was no discussion of look-alikes to my memory.

Q. Had you known that there were as many as three look-alikes would you have issued a wanted APB for Mr. Lee?

A. Would I if I knew that?

Q. Yes.

MR. LASSART: Objection. That is lacking foundation, your Honor.

THE COURT: Sustained. Reframe your question, counsel.

Q. [MR. HINTZ] If you have received information that of a number of witnesses that were there to view photographs that all witnesses had picked people other than Lee as a possible suspect in this incident, would you have issued the APB?

MR. LASSART: Objection. That's speculative.

THE COURT: Sustained.

Q. [MR. HINTZ] You issued the APB based upon the strength of the fact that there was two identification witnesses as to Lee; right?

MR. LASSART: Objection, your Honor. That's a misstatement of the total testimony.

MR. HINTZ: At this point in time on the 4th of June.

MR. LASSART: I must object, your Honor, as there was no APB

for an arrest of Mr. Lee issued until the 7th of June.

THE COURT: I'll sustain it. Rephrase your question.

Q [MR. HINTZ] Turning to the time that you went to the room of Mr. Lee, Room Eight, at 438 Broadway, you were with Inspector McKinnon, I take it?

A McKinnon, Erdelatz, and I know one more. It could have been Inspector McCoy, but I definitely know those three men were there.

Q This was on June 7th, prior to the time you were actually picked up; right?

A Yes, sir.

Q What time would you estimate your time of arrival on those premises?

A Well, it was tow-away time so it was between, let's say --

Q Four and 6:00?

A It was around 5:30, close to 5:30, I would say. Definitely tow-away time.

Q And you were directed to the area of the hallway outside Room Eight by Mrs. Etcheveste and you saw a series of cardboard boxes; is that right?

A Correct.

Q And was it represented to you by Mrs. Etcheveste that these boxes contained effects or clothing of Mr. Lee?

A Yes.

Q And did you or some other inspector go through those things? I did.

Q Within any of those boxes did you observe either a gold or mustard colored jacket similar to the jacket described by the

witnesses to this murder?

A. No, sir, I don't believe so.

Q. Other than the blue jacket that appears in the police report was any other clothing from that series of boxes booked evidence in this case?

A. No, sir.

Q. What was your first contact, Inspector Cleary, with Mr. Lee?

A. On the evening of his arrest, first time that I met him personally.

Q. What time was that?

A. It would be prior to midnight.

Q. May I have the location of that first meeting?

A. Hall of Justice, Room 450.

Q. And at that time he was under arrest?

A. Yes, sir.

Q. Could you determine at that time as to what his condition was as to sobriety or lack of sobriety?

A. He was sober.

Q. Did it appear as if he was taking this entire pickup lightly or casually?

A. It's hard to answer. I just can't -- you're talking about his demeanor at the time; is that correct?

Q. Yes, attitude and demeanor.

A. Well, I'm not trying to say -- I'm just -- I don't want to give you the impression of cocky attitude, but that's the impression he gave me. Kind of a cocky attitude. But maybe not so severe as being cocky. But he could have been obnoxious at times.

Q. Did he appear to be unconcerned about the fact that he was being arrested for murder?

A. Did he appear to be concerned?

Q. Did he appear to be unconcerned?

A. Well, I can't say he was unconcerned, no. I can't say that.

Q. Was anything said to him to the effect, you talk to us and perhaps you can clear yourself?

A. No, sir.

Q. Was anything said to him to the effect that, if you talk to us it may go easier for you or better for you, or words to that effect?

A. No, sir. We have no authority to make any promises with regard to anything like that.

Q. Were any threats or any suggestion of threats of force imposed upon him as an enticement to get him to speak to you regarding the circumstances of his arrest?

A. Definitely not.

Q. Did he sign any type of written waiver?

A. No, sir.

Q. Does your department possess a written Miranda waiver form on cases such as these?

A. No, sir.

Q. I take it you read the admonition to him from the card as you did in court a moment ago?

A. Correct, sir.

Q. Did it appear to you that he had any problems understanding the English language?

A. No, sir.

Q Did it appear to you that he voluntarily waived his rights and agreed to talk to you?

A Yes, sir, talked to us on two occasions.

Q Now with respect to the first warning and waiver, when did that occur in terms of time?

A Within minutes after he was brought to the detail.

Q Ten minutes?

A No, within minutes.

Q Do you have the approximate time of that?

A I couldn't give you -- it was shortly after he was brought to the detail and I haven't got the approximate time. I haven't seen it.

Q This would be on the night of the --

A Seventh.

Q Seventh of June?

A That's correct, 7th of June, evening of the 7th.

Q And at what approximate time?

A I would have to give you a guess now.

Q That's all right. First warning and waiver.

THE COURT: We'll take a fifteen minute recess.

[A recess was taken.]

---oOo---

THE COURT: All right, let the record reflect the jurors are not present, counsel for both sides and defendant are present in court.

Proceed, counselor.

Q [MR. HINTZ] I take it, Inspector Cleary, then the first interview with Mr. Lee occurred on or about midnight between

June 7th and June 8th, 1973; is that about right?

A Within a couple minutes right after each other. The exact time I can't give you, but that would be the time close enough, I guess.

Q At that time you got some information from them which you took some notes on?

A Yes, sir.

Q And then you felt it best to defer to Inspector Falzon for a formalized statement?

A Yes, sir.

Q Which he agreed to go for?

A Yes, sir.

Q How this second statement, that was on the 8th of June; right?

A Then it would have to be after midnight, right.

Q A steady sequence of events, or did that occur the next morning?

A Oh, no, I wrote up that brief statement within the time it took to set up the tape recorder, which only takes a couple seconds, and continually right through.

Q Then he was re-Mirandized by Inspector Falzon?

A Correct.

Q After he was advised of his rights, but prior to any waiver did he say to you that he wanted a lawyer?

A At no time did he request a lawyer during my talking to him.

Q Did he say anything to the effect that he wanted a lawyer before answering any questions, at which time the recorder was then shut off?

A I haven't listened to the statement. I can't remember that. If it was, it would have been shut off. Any time anybody asks for a lawyer, it automatically stops, all interrogation stops.

Q Let me review this, if I may, for the record. Statement or question by Falzon:

"This is Friday, June 8, 1973. We are presently in the homicide detail at Room 450 of the Hall of Justice. Present at this interview is Inspector John Cleary, and conducting the interview is Inspector Frank Falzon.

"And, for the record, sir, your full name, Chol Soo Lee?

"Answer: Chol Soo Lee.

"Falzon: You have an address, Mr. Lee?

"Lee: 438 Broadway, Room Eight.

"Falzon: Your date of birth, sir?

"Answer: August 15, 1952.

"Falzon: Mr. Lee, before Inspector Cleary and myself ask you any questions, I have to advise you of the Miranda warning. Number one, you have the right to remain silent. Number two, anything you say can and will be used against you in a court of law. Number three, you have a right to talk to a lawyer and have him present with you while being questioned. Number four, if you cannot afford to hire a lawyer, one will be appointed to represent you before questioning if you wish one. Do you under-

stand each of these rights I have explained to you?"

At that point did he say "Yes, I do, but I want a lawyer." At which point my question to you, sir, is, was the recording stopped and further off-the-record discussion had with him relative to desireability or the need for a lawyer?

A I don't recall any -- that was just a continual -- once that started, my memory, continued straight through. I don't recall anything else.

Q Can you exclude the possibility that the recording was stopped and an off-the-record discussion was had with him relative to having a lawyer or not?

MR. LASSART: Objection, your Honor. That would be speculative. He either -- the possibility is not the question.

THE COURT: Rephrase your question. I'll sustain your objection.

MR. HINTZ: I'm sorry?

THE COURT: Rephrase your question.

Q [MR. HINTZ] To your recollection was the recording stopped at all for an off-the-record discussion?

A Regarding a lawyer or anything like that, no, sir.

MR. HINTZ: No further questions, your Honor.

THE COURT: Redirect.

MR. LASSART: No further questions, your Honor.

THE COURT: Step down, sir.

Call your next witness, please.

MR. LASSART: Yes, I want to call Officer William Johnston, your Honor.

WILLIAM JOHNSTON

witness called on behalf of the People outside the presence of the jury.

THE CLERK: Right up here, sir. What is your name?

THE WITNESS: William Johnston.

THE CLERK: Would you raise your right hand. Do you swear to tell the truth, the whole truth and nothing but the truth, so help you God?

THE WITNESS: Yes, I do.

THE CLERK: Be seated right up here, please.

DIRECT EXAMINATION

By MR. LASSART:

Q. Mr. Johnston, you are a police officer with the City and County of San Francisco; is that correct?

A. Yes.

Q. And how long have you so been a police officer?

A. Approximately six and one-half years.

Q. And in June of 1973 were you assigned to Central Station?

A. Yes, I was.

Q. Is that the area, the station which covers the area of Broadway to Pacific and Grant and that Chinatown area?

A. Yes.

Q. One June 7th of 1973 did you have an occasion to be assigned to a stakeout detail at 438 Broadway?

A. Yes, I did.

Q. And when you were assigned to that stakeout detail did you proceed to 438 Broadway?

A. Yes, I did.
Q. And when you did so were you attired in a police uniform?
A. I was not. I was in plain clothes.
Q. And in plain clothes did you have a partner?
A. Yes, I did.
Q. And who was your partner?
A. William Snider, S-N-I-D-E-R.
Q. And was he also in plain clothes?
A. Yes, he was.
Q. And when you got to 438 Broadway did you have a discussion with the inspector from the homicide detail?
A. Yes, I did.
Q. And that was Inspector Cleary?
A. That's correct.
Q. Did he give you some facts with regard to your specific assignment?
A. Yes, he did.
Q. He did not actually assign you to the hotel before you met him; did he? Did you talk to him before you met him at the hotel is the question?
A. No, I did not.
Q. Were you assigned by your own lieutenant?
A. Yes.
Q. When you got to the hotel did he give you any information regarding a suspect?
A. Yes, he did.
Q. And did he tell you what the suspect's name was?
A. Yes.

Q And who was the suspect?
A Chol Soo Lee.
Q Is he the gentleman seated in the courtroom here?
A Yes, he is.
Q Had you ever seen him prior to June the 7th?
A Yes, I had.
Q You had seen him before. When he gave you the information concerning Mr. Chol Lee did he give you any instructions with regard to Mr. Lee if you saw him?
A Yes, he wanted me to arrest him for murder.
Q Did he give you any facts behind what -- did he give you any facts concerning the particular case?
A Yes, he did.
Q And do you recall some -- do you recall the facts at this time that Inspector Cleary gave you?
A Yes, I do.
Q Did he tell you any facts concerning Mr. Lee's being armed or not armed?
A Yes, he did.
Q And what did he tell you?
A He told me that Mr. Lee was most probably armed.
Q And did he tell you any precautions you should take?
A That I should consider him extremely dangerous.
Q Now how were you conducting your stakeout?
A Well, initially it was from within Room Number Eight at 438 Broadway. As the evening went on my partner and I both left the room to the hallway and at one point I exited the hotel and was standing outside and opposite the door of the hotel.

Q And when you were standing outside opposite the door of the hotel, what do you mean opposite the door? How many feet were you from the door?

A Approximately ten feet to fifteen feet.

Q Were you standing right in the middle of the sidewalk?

A No, I was not. I was standing almost on the curb next to a pole, I believe, which is situated there.

Q And did you see Mr. Lee at about 11:00 o'clock on June 7th?

A Yes, I did.

Q And what was Mr. Lee doing when you first saw him?

A He was walking eastbound on Broadway toward my location.

Q Now had you had information as you saw him walking eastbound toward your direction as to his activities in the past four days, four or five days before June 7th?

A Yes, I had.

Q What information did you have regarding the homicide that occurred on June 3rd?

A I'm sorry? What?

Q What information did you have regarding Mr. Lee's involvement in a homicide on June 3rd?

A I'm sorry, I really don't know what you are --

Q You don't understand the question? Did you have any information as to identification of a person who was a suspect of a homicide?

A Yes, I did.

Q And what information did you have?

A Well, I was told by Inspector Cleary that two witnesses at the scene of the homicide had identified the picture of Chol

Soo Lee. Additionally Inspector Cleary told me that a search had been made of Room Number Eight in the Skyway Hotel and in that room a gun holster was found. In addition to that an empty box of .38-caliber cartridges had been found. He stated that there was indication that a .38-caliber bullet had been fired from within Room Eight. Additionally he stated that a newspaper clipping of the ski mask gang which was a group of Chinese males which had been perpetrating bank robberies in the San Francisco area had been found in the room. Inspector Cleary also advised me that Mr. Lee had been arrested in Reno and at the time of his arrest in Reno some bait money which had been taken in the course of one of the bank robberies perpetrated by the ski mask gang had been found on his person.

Q Okay. Now did Inspector Cleary tell you he searched the room or items from the room which were pointed out to him by a civilian, a lady?

A I believe that some of the items were pointed out by the civilian.

Q Now when you had this information and you saw Mr. Lee coming up the street about 11:00 o'clock that night, what did you do?

A I stayed where I was until Mr. Lee entered the front door of 438 Broadway. I entered after Mr. Lee and I drew my service revolver and I told Mr. Lee to stop, identified myself as a police officer, and advised him that he was under arrest.

Q Did you hold Mr. Lee physically when you had your revolver out?

A I had to after advising him he was under arrest. I did so by

propping myself against the wall and propping Mr. Lee against the opposite wall, holding him against the wall with my foot.

Q Okay. And you had your service revolver out; right?

A Yes.

Q And you had him pinned against the wall with your foot?

A Yes.

Q And what did you do then?

A I hollered upstairs to my partner and told him to come down. As he was coming down I asked Mr. Lee whether he had any weapons or not and Mr. Lee stated that he did not.

Q What did you do then?

A My partner came down the stairs with his gun drawn. I then put my gun away and proceeded to perform a pat search of Mr. Lee.

Q By a "pat search," can you explain what you mean by a pat search?

A I just started to pat his body for something that might be a weapon.

Q You are indicating the front portion of your body. That is where you started your pat search?

A Yes, it's a very small aisle we were in and I just took him from the front first.

Q Was he facing you when you patted the front portion of his body?

A Yes, he was.

Q Did your partner have his gun drawn?

A Yes, he did.

Q And when you patted the front portion of his body what did

you observe or find, if anything?

A. I felt a bulge in his right front shirt pocket.

Q. And when you felt that bulge did it have any particular feeling to your senses? Were you able to identify it by feeling it?

A. Well, it felt like it had cylindrical items in it, something round, something small. And there were numerous of these cylindrical items.

Q. Were they hard?

A. Yes, they were hard.

Q. And did they feel like ammunition to you?

A. Yes. That's what I thought they were.

Q. And what did you do when you felt that?

A. I reached into his pocket and removed a purple pouch which I found to contain .38-caliber ammunition.

Q. Now when you did that, after you removed that, did you continue the pat search?

A. Yes, I did.

Q. And how did you conduct the pat search from that point?

A. I continued on down the front portion of his body until I reached his waistband or his waist. At that point I felt a revolver.

Q. Now was his waistband -- could you see the area where his belt was?

A. No, I couldn't.

Q. What was covering your vision?

A. It was covered by his shirt. The shirt was worn out.

Q. In other words, the shirt tails were hanging below his belt

line?

A. Right.

Q. Did you hit the outside of the shirt when you felt the gun?

A. Yes, I did.

Q. And when you hit that where did you hit the object that felt like a gun to you?

A. Directly in the center portion of his stomach.

Q. And how was the gun kept in the center portion of his stomach?

A. It was secreted between his pants and stomach.

Q. And did you remove that gun?

A. Yes, I did.

Q. Did you examine it?

A. Yes, I did.

Q. Could you tell whether or not it was loaded?

A. It was loaded.

Q. Now did Mr. Lee make any comment to you while this procedure was going on?

A. Yes. As I -- was in the process of handcuffing Mr. Lee, my partner still had the gun on him, Mr. Lee stated "Go ahead and kill me. I would be rather off -- I would be better off."

Q. After you apprehended him, took the gun away from him,had him handcuffed, what did you do with Mr. Lee?

A. We walked Mr. Lee to our vehicle which was parked approxiamtely two blocks away.

Q. And when you got to the car did you undertake any precaution with regard to Mr. Lee?

A. Yes, we placed him in the back seat. I sat next to Mr. Lee.

My partner was driving. I then advised Mr. Lee of his Miranda rights.

Q Of his what?

A Miranda rights.

Q And did you do that from memory?

A No, I have a card. I read it from the card.

Q Do you have the card with you in court today?

A Yes, I do.

Q Would you take the card out, please. Now when you advised Mr. Lee from the Miranda card, can you relate to the Court and read from your card exactly how you advised Mr. Lee?

A Yes. It is a matter of procedure whenever I arrest anyone to read off this card. It starts off, number one, you have the right to remain silent. Number two, anything you say can and will be used against you in a court of law. Three, you have the right to talk to a lawyer and have him present with you while you are being questioned. Four, if you can not afford to hire a lawyer, one will be appointed to represent you before any questioning if you wish one. At the end of which I asked him do you understand each of these rights that I have explained to you, and that was it.

Q Did you ask him any questions then?

A No, I did not.

Q All right. Did he say he didn't want to talk to you and wanted a lawyer?

A It was not my investigation so I had no intention of questioning him, just a matter of procedure I advised him of his rights.

Q. You advised him and you didn't ask him any questions and he didn't say anything about wanting a lawyer and not talking to you?

A. No, he did not.

Q. And subsequent to that advice did Mr. Lee make any statements while in the back of the car?

A. Yes. When we were enroute to the station Mr. Lee inquired stating "Does this have anything to do with Chinatown?"

Q. And did you answer him?

A. I said, yes, it does, explained exactly what it was, about which murder it was about. Further on he made a statement "You guys are always picking me up. Last time it was robbery. This time it's murder." The final statement was "And I was just going home tomorrow." I asked him where home was and he stated Korea.

Q. He said Korea; is that right?

A. Correct.

MR. LASSART: I have no further questions.

THE COURT: Cross-examine, please.

CROSS-EXAMINATION of WILLIAM JOHNSTON

By MR. HINTZ:

Q. Were you on the sidewalk outside of 438 Broadway, Mr. Johnston?

A. Yes, sir.

Q. And at that time you saw Mr. Lee coming eastbound? That would be coming towards Columbus?

A. No, he was walking eastbound. That would be in the opposite direction.

Q. In the opposite direction?

A Yes.
Q Toward the Bay Bridge?
A Correct.
Q And at that time you approached him and moved him inside of the hotel lobby; is that right?
A No, that's not correct.
Q Where did you move him?
A I didn't move him at all. I let him walk in, into the hotel, and as the door was closing I opened it and followed him in.
Q And at what point did you put him under arrest?
A As he was inside the hotel, a small aisleway there.
Q Is this on the first floor or second floor?
A This is on the street floor.
Q The main floor. At the time you put him under arrest you did make a pat down on him; did you not?
A That's correct.
Q You actually overlooked the gun on the first pat down; did you not?
A There was only one pat down.
Q Wasn't it he who told you he was carrying a gun?
A No, he denied having a gun.
Q Specifically my question is, didn't he bring the fact of the gun to your attention rather than you finding the gun on the pat down?
A No, that's not correct.
Q You state that when you felt his shirt pocket you felt a bulge-like cylinder-type object; is that correct?
A Objects, plural.

Q. Did you strike him anywhere about the face with that pouch during the time that you were with him in the hallway or in his room?

A. I did not.

Q. In removing the pouch from his pocket did you swing it in such a fashion as to cause it to accidentally strike his face?

A. I did not.

Q. Can you exclude the fact that that pouch had any contact with his face?

MR. LASSART: Objection, your Honor. It either did or didn't.

THE COURT: Rephrase your question, please.

Q. [MR. HINTZ] In your presence did the pouch have any type violent contact with the face of Mr. Lee either accidentally or otherwise?

A. No.

Q. Your answer is no?

A. It did not.

MR. HINTZ: No other questions.

MR. LASSART: I have no other questions of this witness, your Honor.

THE COURT: Step down, sir.

MR. LASSART: Your Honor, the certain questions were asked. I would have -- may I call Inspector Falzon to the stand?

THE COURT: Please do.

MR. LASSART: Your Honor, is the Court -- I'm not familiar with where the Court would like to set up a tape recorder.

THE COURT: We usually set it right on the jury -- right in

front of the jury.

MR. LASSART: All right.

FRANK FALZON

witness called on behalf of the People outside the presence of the jury.

THE CLERK: What is your name, please?

THE WITNESS: Frank Joseph Falzon, F-A-L-Z-O-N.

THE CLERK: Would you raise your right hand. Do you swear to tell the truth, the whole truth and nothing but the truth, so help you God?

THE WITNESS: I do.

THE CLERK: Be seated right up here, please.

DIRECT EXAMINATION

By MR. LASSART:

Q Inspector Falzon, you are an inspector assigned to the homicide detail in San Francisco; is that correct?

A That's correct, sir.

Q Your partner is Inspector Jack Cleary; is that correct?

A That is also correct.

Q June 3rd were you one of the investigating officers remanded to the scene of Grant and Pacific in an investigation of this particular homicide, the one involving Mr. Chol Soo Lee?

A That's correct, I was the inspector in charge.

Q Subsequent to June 3rd, 1973 -- as a matter of fact, on June 7th of 1973, the time Mr. Lee was arrested, you went to the homicide detail; did you not?

A. I was called in. An arrest had been made of a suspect in the case, yes, sir.

Q. And when you got to that location Inspector Cleary was there already?

A. He was.

Q. And during that time Inspector Cleary initially talked to Mr. Lee; is that right?

A. He did.

Q. And then subsequent or right at the tail end of the conversation there was another taped conversation; was there not?

A. Yes, sir, there was.

Q. And during the taped conversation that had occurred you were the beginner or the man who started the taped conversation and you were speaking to Mr. Lee first; were you not?

A. I initiated the taped conversation, yes, sir.

Q. All right. During that conversation a tape recorder had been set up?

A. That is correct.

Q. And a cassette tape was used; was it not?

A. Yes, sir.

MR. LASSART: All right. At this time, your Honor, I would ask this cassette tape be marked as Pecple's next in order for identification.

THE COURT: That will be Thirty-three?

THE CLERK: Thirty-three, yes, your Honor.

[A cassette tape was marked People's Exhibit Thirty-three for identification.]

Q. [MR. LASSART] Now, Inspector Falzon, I want to show you

People's Number Thirty-three which is marked for identification. This is a tape cassette. Do you recognize the tape cassette?

A. I do, sir.

Q. And also along with that tape -- is that the tape cassette that was taken by yourself and Inspector Cleary of Mr. Lee's interrogation?

A. Yes, sir, it is. In my own handwriting I have written on the front where it is marked number one side, Friday, 8 June '73, statement of C. Lee, L-E-E, 187 PC, Falzone and Cleary. I also was the individual that punched out this tape after the recording was completed.

Q. Okay. Now by punching out a tape what does that mean?

A. As far as I know it eleminates any erasures at a later date or substitutions.

Q. That was your intent when you punched the tape out?

A. Yes, sir, any accidental erasures that may occur at a later date when I was transcribing it for defense counsel.

Q. You have since that date heard that tape recording?

A. Yes, sir, I have.

Q. And is that tape recording a fair and accurate representation of the time sequence and the flow of the interrogation of Mr. Lee that you and Inspector Cleary conducted on June 8?

A. Yes, sir, to my knowledge this is exactly what occurred in the interrogation room at the Hall of Justice in San Francisco.

MR. LASSART: All right, your Honor, may I move this tape into evidence at this time?

MR. HINTZ: I have certain objections to make as to the substance or the subject matters discussed, if the Court finds at

a later time that the foundation is proper.

MR. LASSART: Your Honor, like I specified, I do not intend to play the entire tape to the Court. I plan to play through and including certain portions where there was an indication there may have been a pause for -- or the tape may have been turned off to show there was a continuous flow.

THE COURT: All right.

MR. LASSART: May I play the tape, your Honor?

THE COURT: Go ahead.

MR. LASSART: Inspector Falzon, would you please step down and work the tape.

[The tape recording was played as follows:]

"We are presently in the homicide detail, Room 450 at the Hall of Justice. Present here in this interview is Inspector John Cleary. Conducting the interview is Inspector Frank Falzon. And, for the record, sir, your name?

"Answer: Chol Soo Lee, C-H-O-L, S-O-O, Lee, L-E-E.

"Question: Do you have an address, Mr. Lee?

"Answer: 438 Broadway, Room Eight.

"Question: And your date of birth, sir?

"Answer: August 15, 1952.

"Question: Mr. Lee, before Inspector Cleary and I ask you any questions, I have to advise you of the Miranda warning. Number one, you have the right to remain silent. Number two, anything you say can and will

be used against you in a court of law. Number three, you have a right to talk to a lawyer and have him present with you while you are being questioned. Number four, if you cannot afford to hire a lawyer, one will be appointed to represent you before any questioning if you wish one.

"Do you understand each of these rights that I have explained to you?

"Answer: Yes, sir, I do.

"Question: Having these rights in mind, do you wish to talk to Inspector Cleary and myself now?

"Answer: Yes.

"Question: As you see, this is being tape recorded, Mr. Lee, so can you please speak up. For the past couple of days have you been living at 438 Broadway Street, Room Number Eight?

"Answer: No.

"Question: Where have you been living, sir?

"Answer: At a friend's house.

"Question: And could you tell us who this friend is?

"Answer: Joanie.

"Question: Joanie. Is this a female, sir?

"Answer: Yes.

"Question: White or Oriental?

"Answer: Oriental.

"Question: Approximately how old is -- "

- - - - -

Q [MR. LASSART] Inspector Falzon, you have just heard the tape that has been marked as People's Thirty-three in evidence for the limited purpose at this time. Is that a fair and accurate representation of the interrogation, the beginning of the interrogation with regard to Mr. Lee?

A It's exactly what transpired in that room, sir.

Q Did that tape stop at any other portion during that entire interrogation with Mr. Lee asking for an attorney?

A At no time.

MR. LASSART: I have no further questions.

MR. HINTZ: No questions.

THE COURT: Step down, sir.

Anything further?

MR. LASSART: Nothing further, your Honor.

MR. HINTZ: Call the defendant.

CHOL SOO LEE

called as a witness.

THE CLERK: What is your name, sir?

THE WITNESS: Chol Soo Lee.

THE CLERK: Would you raise your right hand. Do you swear to tell the truth, the whole truth and nothing but the truth, so help you God?

THE WITNESS: I do.

THE CLERK: You may be seated right up here, please.

MR. HINTZ: This is for the limited purpose of determining the foundation of the statement, your Honor.

THE COURT: All right.

DIRECT EXAMINATION of CHOL SOO LEE

By MR. HINTZ:

Q Mr. Lee, I call your attention to the statement just referred to. At any time during the preliminary discussion between yourself and Inspector Falzon seated next to me, was the tape being played in any way stopped?

A Yes, sir.

Q At what point was it stopped?

A After he advised me of my rights and I asked for could I have an attorney.

Q Who was present with you during the time that this interview was being conducted?

A Mr. -- him and this other gentleman with the cane that was sitting here.

Q Mr. Falzon and Mr. Cleary?

A Yes, sir.

Q Which of the two officers was asking you the questions?

A I don't recall. Both of them were asking me questions, taking turns.

Q Which of the two officers was handling the recording device, the tape?

A He was handling the recording device.

Q At what point in time was the tape stopped?

A After he read off my rights and I asked him may I have an attorney and I was told -- the tape was stopped. I was told everything I say, if -- if my stories check out to be right I will be released.

Q Just a second. You say that after you were advised of your

Q. Before Inspector Falzon came in did you make an earlier unrecorded statement to Inspector Cleary, the man with the cane?

A. No, both of them were there at the same time.

Q. Had you made an earlier and informal statement that was not recorded?

A. Yeah, they was writing it down.

Q. In this earlier unrecorded statement did you generally speaking deny your guilt with respect to this killing?

A. I don't understand.

Q. In your earlier statement, before the recording was turned on, did they go over with you in essence what your story was, what your statement was? Speak up.

A. Well, where I was at and things like that.

Q. I'll start again. You were arrested in your hotel room or in your hotel; right?

A. Yes.

Q. And you were then taken down to the Hall of Justice?

A. Yes.

Q. And you were then in the presence of either one or the other of the two inspectors; right?

A. Both of them.

Q. Both of them. And at that time was an effort made to talk to you about the offense which was not being recorded?

A. Yes.

Q. And was there a short conversation with either or both of the two officers at that time that was not being recorded?

A. Yes, they was asking me do I want some coffee and things and after that they started writing out -- started asking me questions

and started writing.

Q. They were asking you questions and they were writing things down?

A. Yes.

Q. Okay. Now during this earlier period of questioning did you deny killing anybody?

A. They didn't ask nothing about --

MR. LASSART: Pardon me. I didn't understand that.

A. They didn't ask nothing of killing or anything at the time. They asked me about where I was at.

Q. [MR. HINTZ] They were asking about your whereabouts?

A. Yes.

Q. And you were seeking to answer them?

A. In a way, yeah. I was just asking them as they say.

Q. Do you have any idea how long this earlier conversation that was not recorded lasted?

A. About twenty minutes, fifteen minutes.

Q. Okay. And was it then that the decision to get the whole thing on tape--

A. Yes.

Q. And once you were on tape --

A. I was told we were just going to go over what we talked about on the tape.

Q. And you were re-advised on the tape; right? Re-advised of your rights?

A. [Witness nodded head in the affirmative.]

Q. You have to speak up, Chol.

A. I don't understand.

Q You were advised of your Miranda rights, you had the right to remain silent and so on?
A Yes.
Q And was it then at the point, at the conclusion of the warning, that you said that you wanted to see a lawyer or talk to a lawyer?
A Yes, I asked them do I want to have a lawyer with me at the time of questioning.
Q And was it at that point in time that the tape was shut off?
A Yes.
Q And you had the off-the-record conversation for two or three minutes?
A Yes.
Q And the off-the-record conversation dealt with what might happen; is that right?
A Might happen after the --
Q Tell the Judge what was said during the period of time that you stated that the record player was turned off. Look at the Judge and speak.
THE COURT: Speak loud.
A After they turn the tape off --
THE COURT: Yes.
A They asked me do I want -- they asked me do I still want a lawyer. And I told them yeah. And they say, well, if your story check out to be true, what you are saying, I would be released. And if this could happen, they say you have no need for an attorney. And from that I just said okay. I just soon talk on the tape then. They say okay. So they got the tape

started, erased the whole thing and start over again. And said wait a minute until we get this erased and start all over again. As a matter of fact, first tape recorder they had there was something wrong with it so they had to go out and get another one, I think. I'm not sure, too sure.

Q [MR. HINTZ] Were you told that if your story checked out you would have no need for a lawyer?

A Yes.

Q Was that what caused you then to agree to talk without a lawyer?

MR. LASSART: Objection. This is leading, your Honor.

THE COURT: I'll allow it. Go ahead.

Q [MR. HINTZ] Was that what caused you to talk without a lawyer present?

A What caused me to talk mainly was because, you know, what I say, if I'm true, so I would be released after the questioning if the story checked out. But the next day I received a visitor, girl named Joanie. She told me -- she come up to visit and she say same day I was registered or day after, met her midnight or something, 3:00 or 4:00 in the morning, six or seven hours, officers went to their house, shoot guns and everything, shake her house down.

Q My question to you, Mr. Lee, was, was the alleged statement that if your story checked out you would have no need for a lawyer, the reason why you continued to carry through with this conversation that was later recorded?

A [Witness nodded head in the affirmative.]

Q Yes or no?

A. Yes.

THE COURT: Counselor, I'm going to send the jury out until 1:30. Tell them to be back at 1:30.

Q [MR. HINTZ] Turning now to the earlier part of that evening when you were arrested, would you describe your contact with Officer Johnston in the lobby of your hotel when he placed you under arrest. Tell the Judge what happened there.

A After I stopped in front of my door, I got my key out, opened the door. And after I got in, I was getting ready to close the door and the door was jerked out of my hand and from there a foot was on my waist where the gun was at. And also he had his gun pointed at me, told me don't move or he would shoot. So I don't do nothing. Then he call his partner, I guess, and he was coming down the stairway with his gun out. He came down. He patted me down. He took the little pouch where the .38 bullets was at. Took it out. Seen what was in it and then hit me across my nose with it.

Q Who hit you across the nose with the bullet pouch?

A The person that came down the stairway.

Q Was that the man who testified here this morning or the other fellow?

A No. The person that came down the stairway. After I was hit with the bullets, from that point I was afraid and I --

MR. LASSART: Object. It's nonresponsive.

THE COURT: Yes, just answer the question. Go ahead.

A Then he had told them --

MR. LASSART: There is no question, your Honor.

THE COURT: Go by question and answer.

Q [MR. HINTZ] What emotion or what feeling did you have after you were hit in the face with the bullet pouch?

A I was afraid and also -- I was afraid.

Q You heard the statement of Officer Johnston that he claims that you made after you were in the car, quote, go ahead and kill me; I would be better off. Did you make that statement?

MR. LASSART: Objection.

A No, sir.

MR. LASSART: Objection only as to foundation, your Honor.

THE COURT: Sustained.

MR. HINTZ: He can answer the question whether he made the statement or not.

MR. LASSART: The assumption was it was in the car. It was not in the car.

THE COURT: Rephrase your question.

Q [MR. HINTZ] Did you make that statement at any time to Officer Johnston, "Go ahead and kill me; I would be better off"?

A I said it right after I think I was hit on the nose.

Q And where were you at the time that you said that?

A Right in the hotel lobby, hallway.

MR. HINTZ: No further questions.

THE COURT: Cross-examine.

CROSS-EXAMINATION of CHOL SOO LEE

By MR. LASSART:

Q Mr. Lee, you talked to those police officers about -- you talked to the police officers that night about and answered their questions because you thought you were innocent and wanted to

clear yourself; didn't you?

A Yes.

Q That was the only reason you really told them what happened; isn't it?

A Where I was at?

Q Isn't that the reason why you told them everything that happened was because you knew you were innocent and you wanted to clear yourself?

A That I wished to go home, yeah.

Q Didn't you talk to them freely because you thought you were innocent and you wanted to clear yourself?

A Yes, sir.

Q You weren't -- you didn't think they were going to beat the answer out of you; did you?

A No.

Q The answer is no. As a matter of fact, they gave you a cup of coffee up there; didn't they?

A Right.

Q Sat down, talked to you quietly?

A Right.

Q Nobody screamed at you; nobody hit you?

A Not there, no.

Q When you first talked to Inspector Cleary before the tape recording went on you had been advised of your rights per the Miranda decision; hadn't you?

A Yes, sir.

Q He read the card to you?

A Yes, sir.

Q You knew what the Miranda decision sounded like?
A Yes, sir.
Q You had it read to you in May in Reno; didn't you?
A Yes, sir.
Q You didn't even talk to those police officers there; did you? You said you didn't want to talk?
A Yes, sir.
Q So you knew you didn't have to talk; right?
A Yes, sir.
Q When you were speaking with Inspector Cleary when the tape wasn't on, you mentioned you lived at the address of 602 Anza; didn't you?
A No, this is where I was staying at before I was --
Q That's the house of Joanie Hu?
A Yes, sir.
Q You said that's where you were staying?
A After I left the hotel, yes.
Q And on the tape you told the inspector you were staying also at 438 Broadway, Apartment Eight?
A They asked me where is my present address.
Q Okay. The police advised you of your rights on the tape; is that right?
A Yes, sir.
Q And at the close of that advice of rights -- I'll withdraw that.

Did you say you wanted an attorney before they turned the tape off?
A Yes, sir.

Q And then what was the next thing that you recall happening?

A They stopped the tape.

Q Now they started the tape up again after that, after they had stopped the tape at sometime?

A After we talked for a couple minutes about the lawyers and things, that I wouldn't need it, then they started the tape again afterward and I told them okay.

Q How did they go about starting the tape again after they stopped it?

A They got the tape, erased again, erased the whole thing. I don't know which buttons or what, but they erased the whole tape again. After that I was told we are going to start all over again from the start.

Q And how did they erase the tape, do you remember?

A [Witness shook head in the negative.] Ran it backwards.

Q Did they just run it backwards?

A I don't know. I cannot tell.

Q After that you told them again everything?

A Yeah, advised me of my rights again from the start, asked my name. I told where I was at. Start all over.

Q And the next time they turned the tape off was at the end of the interview? It was all over; is that right?

A I don't remember. I think so. I'm not sure.

Q Did they ever stop the tape again?

A I don't think so. I'm not sure.

Q Well, can you remember?

A No.

Q Were you looking kind of -- trying to keep your eye on that

to make sure they didn't stop the tape or you again?

A. No.

Q. All right. Do you remember the time they stopped the tape and turned the tape around or did they do that?

A. I don't remember what they did to the tape, but I do remember they erased the tape and started all over.

Q. You are sure it was erased?

A. Yes, sir.

Q. When they punched the button the next time after you say it was erased, could you hear your voice as they played it?

A. No.

Q. You heard the tape here in the courtroom, a portion of the tape that was played?

A. I remember something about some numbers on the tape or something that he started from me or erased this back or something. I don't remember all of that.

Q. Can you explain that to me, please?

A. I don't know how to explain it.

Q. What did you say?

A. Something about -- I don't remember it all.

Q. Well, what did you just say, sir? I didn't hear you.

A. I can't explain myself.

Q. Well, say what you just said. We'll work it out.

A. Something about numbers on the tape or something. I don't know.

Q. What about the numbers on the tape?

A. That's what I'm saying. I don't know nothing about the tape. What can I say? I don't know.

Q Who said something about numbers on the tape?

A He did, sir [pointing].

Q When?

A Right after they stopped the tape.

MR. LASSART: I have no further questions.

THE COURT: Step down. Wait, I want to ask you a question. You say you got hit with the pouch?

THE WITNESS: Yeah, the bullets.

THE COURT: Did that cause your nose to bleed or anything like that?

THE WITNESS: No, but tears came down my eyes afterward.

THE COURT: Was your face cut at all?

THE WITNESS: No. But also after inspector shook me down, during the time he was shaking me down, the foot was still on the waist so after I got hit with the bullets I told him there is a gun down there and they went and got it. Then after that the same guy that took the gun out went back up about five feet or so and say "Let's kill him, you know, he said he went for the gun."

THE COURT: Who said that?

THE WITNESS: One of the inspectors, the person that came down the stairway. Not the one that was here.

THE COURT: All right.

MR. LASSART: Your Honor, a question came into my mind.

THE COURT: All right.

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CROSS-EXAMINATION [Resumed] of CHOL SOO LEE

By MR. LASSART:

Q When the inspector stopped you was your back up against the wall?

A Yes, sir.

Q And where was his foot?

A Right on my waist. Right on -- right -- right on the gun.

Q His foot was right on the gun?

A Yes, sir.

Q And did you tell him about the gun according to your testimony before or after the shells were pulled out?

A After he hit me I told him.

Q After he hit you, after the shells were pulled out?

A Yes.

Q And the inspector didn't say anything about feeling the gun; did he?

A No.

MR. LASSART: No further questions.

THE COURT: Step down. Anything further?

MR. HINTZ: No, your Honor.

THE COURT: Anything further, counsel?

MR. LASSART: Nothing further, your Honor.

THE COURT: The evidence will be admissible.

Now do we have anything else? I want to get this jury in here and are we going to have any interruptions we are going to have to excuse the jury for?

MR. HINTZ: Does your ruling go to the gun, your Honor?

THE COURT: There has been no offer in evidence as to the

gun at this time.

MR. HINTZ: I think we can clear this at this point. I recognize the logical relevance of the .38-caliber ammunition in view of the fact that it will be undoubtedly connected up by testimony to show that the deceased was killed with a .38-caliber weapon, which weapon was found at the scene. I do not see any logical relevance of proof of a .357 magnum which is the kind of gun he had concealed on his person at the time of his arrest. I would strongly object to any evidence before this jury in the form of either the gun or by reference of any part of his statement that touches upon questions and answers relating to that gun. The certainty -- I mean the fact is clear or will be clear that the deceased was killed with a .38, .38-caliber ammunition was partly found on the defendant, a .38-caliber box was found in his room. These things logically tie it together as a matter of relevant evidence, but I clearly feel the prejudicial effect of the admissibility in evidence of a .357 magnum would clearly outweigh any remote logical relevance because it touches upon none of the issues in the case. Furthermore, the defendant before trial has admitted to the 3024 allegation for purposes of punishment.

THE COURT: I'm aware of that, counsel.

MR. LASSART: Your Honor, I have prepared a trial brief on this issue. I have not presented it to the Court and this Court knows I'm not familiar with the procedures of the district attorney's office. They have given me a single copy of the trial brief and I really don't want to hand it to the Court and not give counsel a copy.

THE COURT: I suggest you do this. Go up and have the district attorney's office or public defender's office make a copy, two, three copies of it.

MR. LASSART: May I argue though, orally, what is in the brief and then present it when appropriate copies have been made?

THE COURT: Sure.

MR. LASSART: The position of the People, your Honor, is clearly the ammunition is admissible. The pistol is the item in question. The reason it's in question is you take a look at the totality of the actions of Mr. Lee once he felt he was going to or thought he was going to come into contact with the police. This goes to the issue of his state of mind, consciousness of guilt proved to be the conduct of a person who is accused or knows he is accused of a crime. On June 5th when Mrs. Etcheveste yelled down the hall the police are coming, he took the first act of a person who is very conscious that he is guilty of a serious offense. Out of the room comes a young girl. Mr. Lee slams the door, pushes a dresser up against the door, goes out the back window and scrambles up the hill. A further look at the room indicates a few things. One, a holster, which indicates he hasn't returned to the room for all the evidence; that is, he took the gun and left the holster. A further item, a box of .38-caliber ammunition, the type caliber ammunition used in the gun, although not the same manufacturer.

He then calls back on June 6th with regard to his welfare check and he is extremely concerned or is concerned about what contact was made with the police department. On the 7th of June he still has in his possession a loaded .357 magnum. He still has

it on his possession. Mr. Lee, as a person who is a felon, knows he is not supposed to carry a gun so he is taking an enhanced risk showing more conscious guilt of his conduct. When he is apprehended he not only has a gun on his person, but he still has got the forty-one extra rounds of ammunition. The logical conclusion is that he is armed to the teeth. When he was apprehended he tells the police officer he does not have a gun. When he is apprehended the gun is found. He says, I would be better off -- in essence, I would be better off dead than in custody or incarcerated.

These are the statements of a person who is conscious -- a person who is very conscious of guilt and who knows the seriousness of the offense with which he is being accused.

When Mr. Lee gets into the car he makes a further statement after his arrest that he is on his way home or Korea.

DEFENDANT LEE: Let me --

THE COURT: Just a moment, please.

MR. LASSART: Now Mr. Lee then shows a further fear of apprehension. The circumstances of carrying that weapon in a loaded condition shows the complete indication of flight and the degree of activity he will go through to complete his flight and stay out of incarceration. Had not that officer apprehended him the way he did with total surprise from the back side and put him up against that wall, from all indications of Mr. Lee's conduct up to that point he would have fought apprehension. These, your Honor, in looking in full perspective, show the attitude of Mr. Lee that this jury should see. Let alone the fact that to unload the gun of five rounds of ammunition and have the officer

testify he found five other rounds of ammunition does not really give them a full -- the full view of the story of exactly what occurred. The case of the People versus Risor has handled this question.

THE COURT: All right, I'll read the case.

MR. LASSART: It's 47 Cal 2nd, and I can't recall the page number. They indicate in that case that the ammunition should be admitted. They also indicate that if the only reason that the weapon is being introduced is to show the man is a type of man who carries a weapon, then it's not admissible. But this is not the position in this case.

The People then refer to cases with regard to flight cases. And People versus Anderson which is 57 Cal Ap -- and I can't recall the page on that either -- and it's progeny indicates that the full circumstances of flight can be shown to show the consciousness of guilt of a defendant. We distinguish the case from Risor in that we show here the gun is a part of the flight.

THE COURT: I get your point.

MR. HINTZ: May I be heard, your Honor?

THE COURT: Sure.

MR. HINTZ: We have here a situation where the district attorney is kind of asking to have each several ways. At the outset they charge Mr. Lee with a separate indictment, ex-con with a gun, had that charge joined with that count for trial. Judge Puglia never had to rule on the severance because of the defect in the transcript of the Grand Jury which resulted in that being set aside on the 995. He is additionally charged with 3024 allegation involving the same gun. Now he has admitted that before trial.

I would submit to the Court that the prejudicial effect outweighs any type of probative value that the introduction of that gun would have in this particular murder trial. There is an abundance of evidence. There have been three eye witnesses who have positively testified in court to the effect that he is the man who was seen both at the intersection and then running down Pacific Avenue. There is corroborating circumstances by virtue of the fact that a .38 weapon was found, a .38 box was found in his room. The D.A. is able to argue what he wants with respect to flight, but I see this, as far as a legal question of flight, for purposes of the Court's ruling outside the presence of the jury, we have to take that so-called departure on the 5th of June in its proper context.

This man was a probationer. He was on felony probation. There had been an incident in his hotel room with a girlfriend the second morning after the offense. The landlady had warned them to quiet down or I'll call the cops. They quieted down and it flared up again. This time she says the cops are on their way. Who knows what went through his mind, whether it was fear of being arrested on a new charge, on a probation violation, involving a peace disturbance or whatever. He split. I think what is truly significant is the fact that he calls back the next day, explains to the landlady I'm sorry. She says she's sorry too. He inquires about his check. He inquires about whether the police came in reference to his probation status as equally in reference to this new charge. He voluntarily returns on the 7th to pick up some of his things, including the welfare check. I can see no sinister consequence to be drawn from his return to the place where he had

left.

THE COURT: I get your appropriate point. Can I have a copy of that brief?

MR. LASSART: Yes.

THE COURT: Serve a copy on Mr. Hintz too, please. Anything further, gentlemen?

MR. LASSART: Nothing further, your Honor.

MR. HINTZ: I think the Court ought to probably hear the tape through to its conclusion.

THE COURT: How long is the tape?

MR. HINTZ: I don't know. It's twenty-four pages or something like that reduced to typewriting, but probably a fourth of the tape has reference to questions asked and answers given regarding the gun that is found on his person, and I would ask the Court to not only suppress evidence of the gun but also to suppress portions of the tape which would reflect to questions and answers regarding it.

MR. LASSART: To clarify the matter, your Honor, the People have no intention at this time of introducing the tape in evidence in our case.

THE COURT: All right. That resolves that then.

MR. LASSART: At a later time it may become relevant.

[A recess was taken.]

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THE COURT: Let the record reflect the jurors are not present, counsel for both sides and defendant are present.

At this time, relying upon People versus Jones, 195 Cal Ap 2nd, 452, and People versus Hall, 199 Cal 451, plus the other

authorities cited to me, the evidence will be admitted and the jury will be admonished it will be introduced for the limited purpose.

MR. HINTZ: May the record show the exception, your Honor, is based on the fact that in my assessment of the case --

THE COURT: The Risor case.

MR. HINTZ: Yes. That the presence of a weapon different from the murder weapon proves nothing in the case other than the fact that the defendant was armed at the time of his arrest. Under the cases, as I understand it, it does not tend to show flight or consciousness of guilt.

THE COURT: That's your theory, Mr. Hintz. I don't agree with that theory.

All right. Let's call the jury in, please, gentlemen.

[The jury returned to the courtroom.]

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THE COURT: All right, let the record reflect the jurors are all in place, counsel for both sides and defendant present.

I apologize to you for what happened this morning, but there were certain matters we had to take up outside of the presence of the jury. I don't like having you sit out there any more than you like to be sitting out there, but it is no fault of the attorneys. I'm not blaming anybody. It's really not my fault either.

Proceed, counsel.

MR. LASSART: Call Officer William Johnston to the stand, please, your Honor.

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WILLIAM JOHNSTON

witness called on behalf of the People.

THE CLERK: Would you raise your right hand. Do you swear to tell the truth, the whole truth and nothing but the truth, so help you God?

THE WITNESS: Yes, I do.

DIRECT EXAMINATION

By MR. LASSART:

Q Would you state your full name, please and spell your last name?

A Yes. It's William Johnston, J-O-H-N-S-T-O-N.

Q Officer Johnston, you are a member of the San Francisco Police Department; are you not?

A That's correct.

Q And you were a member of that department on June 3rd of 1973; were you not?

A Yes, I was.

Q And how long have you been a police officer, Officer?

A Approximately six and a half years.

Q And what particular station are you assigned to?

A To Central Police Station.

Q San Francisco is made up of a number of district stations that cover certain areas; is that correct?

A That is correct.

Q What particular area does Central Station in San Francisco cover generally?

A Encompasses Chinatown, the financial district, North Beach,

Fisherman's Wharf and what is known as the tenderloin area.

Q. Does it encompass Broadway Street area?

A. Yes, it does.

Q. And does it encompass the area of Grant and Pacific in San Francisco?

A. Yes, it does.

Q. And what is your particular duty assignment with Central Police Station?

A. I'm assigned to a plain clothed car which deals with felony activity within the Central Police District.

Q. And on June -- in June of 1973 were you so assigned to a plain clothed car?

A. Yes, I was.

Q. And that means that you, yourself, were not dressed in uniform; is that correct?

A. Yes.

Q. Now you do have a partner, I take it, Officer?

A. Yes, sir, I do.

Q. And what was your partner's name during the month of June?

A. William Snider, S-N-I-D-E-R.

Q. Now, Officer Snider is also assigned to Central Station; is that correct?

A. Yes.

Q. And he is your partner as you handle the duties of a plain clothed officer out of Central Station?

A. Yes.

Q. I want to call your attention to June 7th of 1973. On that day did you have an occasion to be assigned to stake out a

particular area?

A. Yes.

Q. Now what do you mean -- what does stake out mean in your mind?

A. Well, we were assigned to this particular area in order to locate and apprehend a suspect.

Q. And were you looking for a particular suspect?

A. Yes, I was.

Q. And who were you looking for?

A. Chol Soo Lee.

Q. Do you see the man you were looking for on June 7th here in the courtroom today?

A. Yes, he is the Chinese male sitting at the defense table with the black hair, blue shirt.

[There was an unintelligible outburst by the defendant.]

Q. [MR. LASSART] Now, the gentleman who spoke up just a moment ago?

A. Yes.

MR. LASSART: May the record so reflect?

DEFENDANT LEE: I'm tired of these people coming in and lying.

THE COURT: Mr. Lee, there are two ways to handle a jury trial, the easy way and the hard way. Just calm down.

Proceed.

Q. [MR. LASSART] Now, Officer, when did you begin on June 7th a stakeout of that particular area?

A. Approximately 6:30 or 7:00 o'clock p.m.

Q. And did you eventually on that evening, June 7th, see Mr. Lee?

A. Yes, I did.

Q. About what time did you see Mr. Lee?

A. Approximately 11:00 o'clock that evening.

Q. And where were you -- I'll withdraw that. A foundational question.

Where in the Central Station area were you staking out -- what area were you staking out?

A. I was staking out the hotel located at 438 Broadway Street.

Q. And that's the Skyway Hotel?

A. That's correct.

Q. Now when you began that stakeout had you spoken with inspectors from the San Francisco Police Department Homicide Detail?

A. Yes, I had.

Q. And had they given you any instruction on what you should do when you saw Mr. Lee?

A. Yes, Inspector Cleary advised me that Mr. Lee was extremely dangerous and that he was --

MR. HINTZ: Object to that as irrelevant.

THE COURT: Sustained.

Q. [MR. LASSART] Did he advise you of what to do if you saw Mr. Lee?

A. Yes, I was advised to use extreme caution.

MR. HINTZ: Same objection, your Honor. This is immaterial.

THE COURT: This has already been gone into, counsel.

Q. [MR. LASSART] Were you advised to arrest Mr. Lee when you saw him?

A. Yes.

Q And on what charge were you advised to arrest him?
A For murder.
Q When you, as you continued through the evening from 7:30 until about 11:00, you changed positions during this stakeout; did you not?
A That's correct.
Q Can you give us a general rundown of how you and your partner proceeded with the stakeout?
A Initially we began in Room Number Eight which was located in the Skyway Hotel. As the evening went on we relocated ourselves at various places, the hallway outside of Room Eight, the stairway leading up to the floor in which the apartment was located, and during the end of the evening I located myself outside the door.
Q Now this is Broadway Street in San Francisco; is that correct?
A That's correct.
Q You were out on that sidewalk area?
A That's correct.
Q Was there any pedestrian traffic on that sidewalk?
A Yes, there was quite a bit of traffic, pedestrian traffic.
Q Now as you were out on that Broadway Street area did you see Mr. Lee?
A Yes, I did.
Q And what did you see Mr. Lee doing when you first saw him?
A Mr. Lee was walking eastbound on Broadway towards the entrance way of 438 Broadway.
Q Were you able to see if he looked in your direction?

A. I don't recollect him looking at me.

Q. Now what did Mr. Lee do when he got to the area where the 438 Broadway entrance was located?

A. He opened the front door and proceeded inside.

Q. And as he opened the front door what did you do, Officer?

A. I followed, followed behind him.

Q. And explain exactly what you did when you followed him into that particular doorway?

A. Yes. I drew my weapon. I entered behind him -- I identified myself as a police officer and ordered him to stop, put his hands up. And at that time I put him with his back to one side of the aisle and put my own back against the opposite wall and propped him against it with my foot and called upstairs for my partner.

Q. Now this entrance way to 438 Broadway, is it a wide or narrow area? Can you describe that?

A. It's quite narrow. Approximated to be four, four and a half feet.

Q. And how deep is that particular little alcove we are speaking of?

A. Approximately ten feet before you reach the stairs, decend.

Q. Now did you advise Mr. Lee of what he was -- what you were apprehending him for?

A. I advised Mr. Lee he was under arrest and that he was under arrest for murder.

Q. And as you did that and had him up against the wall, what did you next do?

A. As I was waiting for my partner to come down I inquired as to whether or not he had any weapons.

Q Okay. And did he answer you?
A His reply was that he did not.
Q Would you raise your voice, please?
A Yes. He said he did not have any weapons.
Q Now you say you waited for your partner. Was your partner upstairs?
A Yes, he was.
Q Now did you -- was there a way he could visually observe you take Mr. Lee into custody?
A I had Mr. Lee in custody already as he came down the stairs.
Q And did you shout to him or something?
A Yes.
Q Now after Mr. Lee told you he had no weapons on him, what did you do?
A I waited until my partner came downstairs and when my partner got down he had his gun in his hand so I put mine away and proceeded to pat search the front of Mr. Lee which was facing me.
Q Now by pat search, exactly what do you mean by you pat searched him?
A I started at the top of his body with my hand pushing against his pockets, chest, see if there is anything inside.
Q And as you pat searched Mr. Lee did you have an occasion to feel any objects on his person that you took into your possession?
A Yes, in his right shirt pocket he had what felt like a bag containing round, cylindrical objects which I felt to be bullets, possibly could be bullets.
Q And did you take them from his pocket?

A. Yes, I did.

Q. And did you examine what you found?

A. Yes, I did.

Q. And what was it that you found?

A. It was a purple or maroon pouch which I believe contained forty-one .38-caliber bullets.

MR. LASSART: At this time, your Honor, I would ask that this maroon pouch and its contents, which are forty-one .38-caliber bullets, be marked People's Thirty-four for identification purposes.

THE COURT: Thirty-four.

MR. LASSART: Collectively.

[A maroon-colored pouch containing bullets was marked People's Exhibit Thirty-four for identification.]

Q. [MR. LASSART] I show you People's Number Thirty-four which is marked for identification and I ask you to examine People's Number Thirty-four and tell the jury is that the bag and the contents that you took from Mr. Lee the night of June 7th when you arrested him?

A. Yes, this is the same bag. I have my star number and initials inside the bag which I did at the time.

Q. Now that was the first object you hit on Mr. Lee. Did you continue your pat search?

A. Yes, I did.

Q. And what, did you find anything else of a hard nature on Mr. Lee as you pat searched him?

A. Yes. As I patted down his body, as I reached his -- what would be his belt line I felt another hard object which felt to me

to be a weapon.

Q Okay. Now the weapon that you felt or you thought you felt that which felt like a weapon, could you see it when you first felt it?

A No, I could not.

Q How was it carried by Mr. Lee?

A It was secreted between his pants and his stomach underneath his shirt which was hanging out over his pants.

MR. LASSART: At this time, your Honor, I would ask that thi Python .357 magnum with the serial number 3301 be marked as People's Number Thirty-five for identification purposes.

THE COURT: That will be the order.

[A .357 magnum revolver was marked People's Exhibit Thirty-five for identification.]

THE COURT: Now, ladies and gentlemen, at this time I'm goin to admonish you this exhibit, People's Number Thirty-five, being marked for identification at this time, if it comes into evidence, it will be allowed into evidence only for a limited purpose which I will thoroughly instruct you on, and I will instruct you further on that. Just remember that this particular weapon is being introduced only for a singular purpose, and I'll instruct you on that further, and for no other purpose.

Q [MR. LASSART] I'm going to show you People's Number Thirty-five which is marked for identification and I ask you to examine People's Number Thirty-five and I ask you to tell the jury if that's the weapon you found secreted between Mr. Lee's pants and stomach and under his shirt?

A Yes, this is. This also has my star number and partner's

star number scratched in the butt of the gun.

Q Now after you took that from Mr. Lee did you have an occasion to examine it to see whether or not that particular weapon was loaded?

A Yes, I did.

Q And was it loaded?

A Yes, it was.

Q Do you remember how many rounds were in that weapon?

A One cylinder was empty. There were five rounds in it.

Q This is a six-shot revolver; is that correct?

A That's correct.

Q And only five rounds were in it?

A That's correct.

Q Do you recall which, under which chamber or upon which chamber the hammer lay?

A I do not.

MR. LASSART: At this time, your Honor, I would ask that this paper bag containing five rounds of .38-caliber W and W ammunition be marked as People's next in order for identification.

THE COURT: People's Thirty-six for identification.

MR. LASSART: This is also a collective marking, please, your Honor.

[An envelope containing five shells was marked People's Exhibit Thirty-six for identification.]

Q [MR. LASSART] I'm going to show you People's Thirty-six which is marked for identification. I ask you if those resemble the shells that you took from the .357 magnum on Mr. Chol Lee's person at the time of the arrest?

A Yes, they do.

Q Are there any markings on that bag to indicate that you or your partner bagged them at that time?

A Yes, they have my partner's printing on the outside.

Q You observed your partner put them into the bag, I take it?

A Yes, I did.

Q Now after you took the weapon and the ammunition and unloaded the weapon, was Mr. Lee handcuffed?

A I handcuffed him after I finished pat searching him.

Q Okay. And when you, after you handcuffed him, or at the time you handcuffed him, did Mr. Lee say anything?

A Yes. He said, "Go ahead and kill me. Go ahead and kill me. I would be better off." Were his words.

Q Now I'm going to show you People's Number Fourteen which is an exhibit which is placed in evidence and I ask you if this is a fair and accurate photograph and does it fairly and accurately represent the dress and looks of Mr. Lee as you saw him on the street on June 7th when you arrested him?

A Yes, it is.

Q Now the arrest was at 11:00 o'clock, about 11:00 o'clock at night; is that correct?

A That's correct.

Q Now the photograph has the date written on the bottom, June 8, 1973. Can you explain why it does not have June 7th, 1973?

A Because the time -- by the time he was actually booked in at city prison it would have been early morning hours on the 8th.

Q So past midnight?

A. Correct.

Q. All right. And after you handcuffed Mr. Lee and he made that statement to you, what did you then do with Mr. Lee?

A. I walked him to my vehicle which was parked approximately two blocks away. I then placed him in the back seat. I got in and sat next to him. My partner was driving.

Q. Did you advise Mr. Lee of his rights per the Miranda decision as he was in the back of the car?

A. Yes, I did.

DEFENDANT LEE: No, he didn't. You didn't advise me of no rights.

THE COURT: Now wait a minute.

MR. HINTZ: Take a recess for a minute, your Honor?

THE COURT: We will take a ten minute recess. Ladies and gentlemen, adhere to the admonition heretofore given. We will remain in session. The jury can step outside, please.

[A recess was taken.]

---oOo---

THE COURT: All right, let the record reflect the jurors are not present.

Now, Mr. Lee, I want to tell you this for your own good. I will not permit any disruptions during any trial in this courtroom.

DEFENDANT LEE: I'm the person who has to go to prison, nobody else, sir.

THE COURT: Just simmer down. I'm trying to do this for your own benefit.

DEFENDANT LEE: If you are concerned about my benefit,

release me.

THE COURT: You are not helping yourself by making these outbursts. You'll get a chance to tell your entire story and all the evidence. Your attorney will be able to cross-examine the witnesses, all the witnesses. Now if there is any more outbursts, I'll be forced to have you sit in there while the case goes on. Now I don't want to do that. I want you to be able to sit here and listen to the entire case. Now just keep calm.

Do you understand?

[The defendant nodded his head in the affirmative.]

THE COURT: All right. Talk to him.

[A recess was taken.]

---oOo---

[Court reconvened outside the presence of the jury.]

DEFENDANT LEE: That's all right, your Honor.

THE COURT: All right, just don't let it happen again, sir. Call the jury in, please.

[The jury returned to the courtroom.]

THE COURT: All right, let the record reflect the jurors are all in place, counsel for both sides and defendant present. Proceed, counsel.

Q [MR. LASSART] Officer Johnston, after the arrest of Mr. Lee you took him then, I take it, to where your police vehicle was parked?

A That's right.

Q And after he went -- after you took him to that police vehicle you got in the back seat where he was?

A That's right.

Q And you gave him his Miranda warning; is that right?

A I read him his Miranda warning.

Q After that was given to him and while you were in the car did Mr. Lee say anything to you about the fact that he was going to leave the San Francisco area?

A He made the statement at one point "And I was going home a couple of weeks."

Q Pardon me? What exactly did he say to you, do you remember?

A Let's see. Start out, "And I was going home in a couple of weeks." Those were his words.

Q And did anyone ask him where home was?

A Yes.

Q And where did he say home was?

A Korea.

MR. LASSART: All right. I have no further questions of this witness.

THE COURT: Cross-examine, please.

CROSS-EXAMINATION of WILLIAM JOHNSTON

By MR. HINTZ:

Q Showing you the photograph, People's Fourteen, is that the way Lee looked on the night of his arrest?

A As best I can remember, yes.

Q Do you clearly remember he had a mustache? Do you clearly remember he had a mustache at the time of his arrest?

A Yes, it was a very faint mustache.

MR. HINTZ: No other questions.

THE COURT: Step down.

Call your next witness, please.

MR. LASSART: At this time, your Honor, we would call Mitchell Luksich, please.

MITCHELL LUKSICH

witness called on behalf of the People.

THE CLERK: Right up here, please. What is your name?

THE WITNESS: Mitchell, M-I-T-C-H-E-L-L, Luksich, L-U-K-S-I-C-H.

THE CLERK: All right. Would you raise your right hand. Do you swear to tell the truth, the whole truth and nothing but the truth, so help you God?

THE WITNESS: I do.

THE CLERK: Be seated right up here, please.

DIRECT EXAMINATION

By MR. LASSART:

Q. Mr. Luksich, what is your occupation, sir?

A. I'm an Assistant Criminalist for the San Francisco Police Department.

Q. And as such are you employed with the work in the San Francisco Police Department Crime Laboratory?

A. Yes, I do.

Q. What is your educational background, Mr. Luksich?

A. I have a Bachelor's Degree in the biological sciences. I have two and a half years graduate level in this work also.

Q. And subsequent to your education what was your work experience?

A I had approximately a little over six years of laboratory equipment and research experience prior to my appointment to the crime laboratory. That is a combination of the USNRDL, or the Naval Radiation Detection Laboratory, in two years with Brintmon Instruments of New York.

Q And subsequent to that, that employment, when did you become a member of the San Francisco Crime Laboratory?

A September 1973.

Q And when you got to the crime laboratory did you work under tutoridge or with someone in the area of identification of firearms and as a criminalist?

A Yes, I did.

Q And with whom was that?

A Mr. John Williams.

Q Mr. Williams is now retired from the San Francisco Crime Laboratory?

A That's correct.

Q And he was there how long, sir, do you recall?

A He was there approximately thirteen years.

Q Now during the period of time that you were there in the crime laboratory did you have an occasion to work in the area of firearms identification?

A Pardon me? Prior or subsequent to?

Q Subsequent. If I said prior, I'm wrong.

A Yes, subsequent to I did.

Q And do you have your own particular interest in firearms?

A Yes, I do.

Q And what parti cular interest is that?

A Well, I'm a collector and student of firearms, have been for fifteen, sixteen years now.

Q Now have you ever testified in a court of law as an expert in the area of firearms identification?

A Yes, I have.

Q And what actually does firearms identification mean?

A Firearms identification encompasses a broad spectrum concerning firearms, whether it's something as simply as identifying a cartridge, just reading the head stamp of it, or something as complicated as the determination of a bullet coming from a particular weapon.

Q Now have you been qualified in a court of law more than one time or two times in the area of firearms identification?

A Yes, I have.

Q About how many times have you qualified?

A It would be an approximation, but something over a hundred times now.

Q And is this both in the Municipal and Superior Courts of San Francisco?

A That's correct.

Q Mr. Luksich, did you have an occasion to examine a particular firearm that was presented to you with regard to the case of the People versus Chol Soo Lee?

A Yes, I did.

Q And that weapon that you examined, was it a five-shot Smith and Wesson revolver?

A Yes, it was.

Q Mr. Luksich, I'm going to show you People's Number Seventeen

which is marked in evidence at this time and I ask you to look at that particular revolver and ask you if that is the weapon, one of the weapons you examined with regard to the case of the People versus Chol Soo Lee?

A Yes, it is. This is a Smith and Wesson .38-special revolver model thirty-seven, serial number J19385.

Q And when you examined that weapon did you have an occasion to fire the weapon?

A Yes, I did.

Q And does that weapon fire?

A Yes, it does.

Q Now is that being a Smith and Wesson -- I'll withdraw that.

Did you in your examination of that weapon examine slugs which you fired from that weapon?

A Yes, I did.

Q And those slugs that you fired, did you have an occasion to compare them and to form an opinion as to other slugs that were presented to you?

A Yes, I did.

Q At this time I'm going to show you People's Number Three and then People's Number Four which are marked in evidence at this time and first of all I'll show you People's Number Three, small bottle containing a lead item which has written on it the word "head", and I ask you if you've ever examined that particular slug before?

A Yes, I have.

Q Recalling your initial examination of that slug, what caliber is that slug?

A. This bullet is of .38-special caliber.
Q. Can you tell if it belongs or is of any particular type of ammunition?
A. Yes, it's a bullet that is most commonly manufactured by Winchester or Winchester Western, a division of the Oldham Corporation, and it's a lubaloy-type bullet.
Q. What is a lubaloy-type bullet?
A. That is a particular type gilding lubricant that is used by the Winchester Company on some of their cartridges, in this case the round-nose 158-grain .38-special bullet.
Q. Now I'm going to show you People's Number Four, this small bottle which contains also another bullet and has the word "chest," written on it and I ask you if you've examined that slug in that bottle?
A. Yes, I have.
Q. And first of all what is the caliber of that slug?
A. This, again, is a .38-special 158-grain round-nosed bullet.
Q. And is there any particular type slug or type ammunition that particular slug happens to be?
A. Yes. Again it's a lubaloy-type bullet.
Q. And that means it's made by Winchester or Western; is that correct?
A. That's correct.
Q. All right. Now when you test-fired the pistol which is before you, did you take the samplings from the shots you -- in other words, did you withdraw or look at the slugs you fired through that particular gun?
A. Yes, I did.

Q And did you have an occasion to compare the markings of the bullets that you fired through the gun to those in People's Three and Four?

A. Yes, I did.

Q All right. Now is there a particular way or method in which you can identify whether or not slugs or bullets had been fired out of a certain gun?

A. Yes, there are. The first thing we do, of course, is the determination of the class characteristics of the bullet -- in other words, the caliber; could it have been fired in a particular caliber of weapon. Then we go on to the determination of the type barrel markings. In other words, in the case of a Smith and Wesson it's a five right, five land an grooves of a right-hand twist going down the barrel. Once we've gone this far, we proceed to a microscopic comparison. Now as for each pistol barrel the lands and grooves are either cut into it or forged into it, depending on the type of manufacture. The tools used in it will leave tool marks and the tool marks in each barrel will be a bit different. It's known that two revolvers manufactured at the same time and both rifled by the same cutting instrument will have their own distinct barrels. And we can fire test bullets which are then engraved by the barrel of the gun as they are passing down the barrel and can use these to compare with suspect bullets.

Q Now you said that a Smith and Wesson has a five right characteristic. What does that mean?

A. Well, it means that there are five lands and grooves. To simplify it, you have a barrel which is a hole drilled through a piece of steel or forged into a piece of steel. Five grooves are

cut into this hole. In other words, five lengthwise grooves which are spiral in either a right or left direction are cut into the barrel. Now then between each groove we have what is called a land, which you can visualize as an island sticking up between those two grooves. So naturally if you cut five grooves you are going to have five lands. So we have five lands and grooves. They are like teeth. You can look at the muzzle of the weapon and it almost looks like teeth and the spaces between the teeth.

Q. When a shot or bullet is fired into a barrel such as that, the bullet, as it moves down the barrel, takes on the characteristics that are engraved into it; is that correct?

A. That's correct. These lands cut into the surface of the bullet.

Q. And from that engraved bullet are you able to compare it with say an unknown bullet fired from an unknown gun to determine if they are fired from a known gun?

A. That's correct. We can put them on a comparison microscope and try to find the same microscopic strides left on both bullets.

Q. You said strides?

A. Yes.

Q. What does that mean?

A. As you look at the bullet in a comparison microscope in a lengthwise fashion -- in other words, this would be the base of the bullet and this would be the -- the stride would be the microscopic lines in the bullet which would be down in the landmarks which are groves on the bullet.

See, of course, the bullet would be reverse from the barrel. What would be land marks in the barrel or raised portions would

now be grooves in the bullet which are called landmarks. If this is clear.

Anyway, you will get very fine microscopic strides in the bottom of these groove marks and top of the landmarks.

Q. Now the test bullets that you fired through the weapon which is before you, did you compare those test bullets with the bullets which are in People's Three and Four?

A. Yes, I did.

Q. All right. First of all class characteristics, does the weapon before you, does this fire a .38-caliber bullet?

A. Yes, it does, .38-special caliber weapon.

Q. People's Three and Four are a .38-caliber slug; is that correct?

A. That's correct.

Q. Now the test bullets that you fired through the weapon which is before you, did you compare them microscopically with People's Three and Four which are before you?

A. Yes, I did.

Q. And can you give the jury the results of your comparison?

A. Yes, I compared them to the test bullets and it was my determination and my opinion that both bullets are of the same class characteristics as the test bullets fired from this weapon. And I was positively able to make one of the bullets. In other words, identify it as being fired from this weapon. The other bullet is -- I'm sort of leaving that with an indifferent opinion because of the mutilation of the bullet.

Q. Can you say in determining which -- is it the bullet from the head, marked head on People's, I believe it's Three, that is

mutilated to the extent that you can make just a class characteristic comparison?

A. Yes, it is. That's correct. If I could possibly clarify it. I can -- I can't make it, but I can't exclude it either. It's an in between thing. This does occur.

Q. Can you tell whether or not that that bullet was fired from a five right pistol?

A. Yes, it was.

Q. So in other words you know it was a .38; is that correct?

A. That's correct.

Q. And you know it was fired from a pistol that has five right-barrel characteristics?

A. That's correct.

Q. And both of those characteristics you have made a determination of with regard to People's Three match the weapon before you?

A. That's correct.

Q. Now as to People's Four, the slug which is before you, the one marked chest, did you compare that with slugs fired -- that you fired from the pistol which is before you?

A. Yes, I did.

Q. And what is the result of your comparison?

A. It was my determination and opinion that this bullet was fired in this Smith and Wesson revolver.

Q. Now you made a class characteristic examination?

A. That's correct.

Q. And found that it was .38 caliber; is that right?

A. That's correct.

Q. It was fired from a five right pistol?

A. That's also correct.

Q. And then you went further than that to make an identification?

A. Yes. I went to a microscopic identification on the comparison microscope.

Q. And the results of that were that the land and groove markings from the test bullet matched those of People's Four; is that correct?

A. That's correct.

Q. Now I'm going to show you some cartridges, expended cartridges, which are People's Number Eighteen in evidence, and I ask you to examine those cartridges, People's Number Eighteen, and I ask you if you can tell the jury whether or not those type cartridges can be fired from the pistol which is before you?

A. Yes, these are all .38-special caliber cartridge cases and can be used in a weapon such as this.

Q. Now excuse me a second. I want to call your attention now to People's Number Twenty-three which is marked in evidence at this time and I ask you if you recognize that as a very rough drawing of the rear portion of what shells would look like as they are placed in the cylinder of the weapon before you?

A. Yes, this would be a facsimilie of a Smith and Wesson five-shot cylinder.

Q. Very good. You explained to the jury that the Smith and Wesson before you is a five right weapon; isn't that correct?

A. That's correct.

Q. That means that the barrel twists to the right and there are five grooves and lands; is that correct?

A. That's correct.

Q Now when [illegible]e Smith and Wesson fires, in which direction does the cylinder rotate?

A Well, looking from the butt of the gun toward the muzzle of the gun, the cylinder rotates to the left or from a counter-clockwise fashion.

Q That's to differentiate the matter of the twist in the barrel from the twist of the cylinder; isn't that correct?

A Correct.

Q All right. Fine. Now the ammunition before you, those five expended cartridges, how many of those cartridges before you contain lubaloy ammuntion?

A Well, there are two cartridge cases here that could have been loaded with lubaloy bullets.

Q And which two are those?

A Well, we have one marked "Western .38 Special" and we have another one that is "WW .38 Special" and that is Winchester Western.

Q Three other cartridges are supervel cartridges; is that correct?

A That's correct.

Q Do they have lubaloy ammuntion?

A No, they are not loaded with lubaloy or plain lead bullets. They are only loaded with jacketed bullets.

Q Now if you would please, would you place a couple markings on the diagram. This is People's Twenty-three. And do you recognize the abbreviations, "WW" and "West" for Western as you look at the diagram?

A Yes, I do.

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Q. Would you write the word "lubaloy" next to the two appropriate slots which would indicate they used lubaloy ammunition.

A. [Witness marked the diagram.]

Q. Okay. Go ahead and have a seat. Now, Mr. Luksich, Winchester Western has a particular type style or box in which they package their .38-caliber ammunition; do they not?

A. That's correct.

Q. And Western has also its own style of box and its exterior characteristics in which they sell and package their Western ammunition; isn't that right?

A. That's correct.

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Q. Now I'm going to show you People's Number Twenty-five which is placed in evidence and I ask you to examine People's Number Twenty-five, the type box that is. Are you familiar with that type box?

25

A. Yes, I am. This is a Western cartridge box.

Q. All right. Now the shells are kept or sold in a box such as that when the box is brand new are labeled in which fashion on the cartridge and where on the cartridge?

A. Okay. The Western ammunition or "Super X" as is indicated is head stamped on the base of the cartridge "Western." The word is spelled out.

Q. On the cartridge before you, that would have been packaged when it was first sold in a box similar to that in the exhibit I've just shown you?

A. Yes, there is one cartridge marked Western on the head stamp.

Q. Now Winchester Western has its own packaging; isn't that

correct?

A. That's correct.

Q. Is that box before you the type of box that Winchester Western packages its .38 caliber ammunition in?

A. No, it is not.

Q. I'm going to show you People's Number Thirty-four which is marked for identification purposes, and that's a purple sack containing some ammunition, and I ask you if you have ever examined that sack and its contents before?

A. Yes, I have.

Q. I would ask you to take a look at the ammunition in the sack at this time. Now is that a -- tell the jury what exactly is the manufacture's make and type of cartridge contained in that sack?

A. Yes. This is a .38-special cartridge head stamped "WW" or "Winchester Western" and it's the 158-grain round-nose lubaloy bullet or the golden colored bullet.

Q. Now I would like you to look at the exhibit I've shown you before and the expended cartridge, Winchester Western Cartridge. Is that cartridge similar to the manufacturer's type and make as the loaded cartridge that you have removed from the purple sack before you?

A. Yes, it is. They are both WW .38-special. 35

Q. I'm going to show you now People's Number Thirty-five which is a Colt .357-magnum pistol. Have you examined that pistol before?

A. Yes, I have.

Q. Now what caliber of ammunition is fired out of the .357

magnum pistol?

A Well, a .357 magnum revolver is basically intended to be shot with .357 magnum ammunition.

Q And what type ammunition is that?

A Well, this is a cartridge which is similar to a .38 special in that it is the same diameter bullet, the same diameter cartridge case and same diameter and thickness of rim. The only difference being that the .357 magnum is, oh, approximately a tenth of an inch longer than the .38-special cartridge case.

Q Has a little more powder than a .357 magnum?

A Yes, that's correct. It's longer, has larger powder charge of a different powder. Originally .38 specials were loaded quite hot in the 1930s and intended to be a hotter cartridge, but they decided to lengthen the cartridge case somewhat so that the new hotter ammunition could not be chambered in the shorter chambered .38 special.

Q Now the ammunition in the purple pouch which is before you, could that be fired out of the .357 magnum which is before you?

A Yes, it could.

Q The cartridges that are before you, the expended cartridges, could they be fired out of the .357 magnum before you?

A Yes, they could.

Q Now and I finally will show you People's Number Thirty-six which is marked for identification, and there are five rounds of ammunition in there and I ask you to examine those, please. Those are .38-special Winchester Western cartridges; isn't that right?

A That's correct.

Q And they are lubaloy?

A. Correct.

Q. Are they similar in make and characteristics as far as their manufacture stamp to the items in the purple sack which are before you?

A. Yes, they are. It's the same type ammunition by the same manufacturer.

Q. And can those shells, those bullets, be fired from the .357 magnum?

A. Yes, they can.

Q. Can those shells be fired from the .38 Smith and Wesson which is before you?

A. Yes.

Q. As a matter of fact, can all of the shells in the purple sack, .38-special shells, can they be fired through the Smith and Wesson .38, the smaller gun?

A. Yes, they can. The gun is specially designed for this ammunition.

Q. All the ammunition and all the expended cartridges before you, can they all be interchanged to fire in both those guns?

A. Yes, they can.

MR. LASSART: I have no further questions of this witness.

THE COURT: Cross-examine, please.

CROSS-EXAMINATION of MITCHELL LUKSICH

By MR. HINTZ:

Q. It was your finding, was it not, that the .38-caliber weapon in front of you was in fact the weapon that fired the slug taken from the chest of the victim?

A. That's corre .

Q. And of the five expended casings found in that gun only one of them could have come from the box found in the defendant's room?

A. That's correct, the WW cartridge.

MR. LASSART: Excuse me. I must object. Only to lay a better foundation as to what the box that came out of the room he is referring to. He may have mistaken that with --

THE COURT: I don't follow your objection, counsel.

MR. LASSART: Well, the objection is if he knows what box he is referring to that came out of the room.

THE COURT: That's just a matter of language.

MR. HINTZ: I'll reframe the question.

THE COURT: Yes, please.

Q. [MR. HINTZ] Of the five expended casings found in the so-called murder weapon, only one of those slugs or casings could have come from the box found in People's Exhibit Number Twenty-five; is that right?

A. That's correct.

MR. HINTZ: No further questions.

MR. LASSART: Just to clarify that.

REDIRECT EXAMINATION of MITCHELL LUKSICH

By MR. LASSART:

Q. The one in the murder -- or excuse me, I'll withdraw that. The one expended casing that could have come from the box has what stenciled or impressed into its cartridge rim?

A. "Western .38 Special."

MR. LASSART: hank you. I have nothing further.

THE COURT: Step down, sir.

Call your next witness, sir.

MR. LASSART: At this time, your Honor, the People would wish to move certain items into evidence and then we would rest our case.

THE COURT: All right. What are those items?

MR. LASSART: We would ask that People's Number Thirty-four be placed in evidence.

THE COURT: Be admitted for the limited purpose.

[People's Exhibit Thirty-four, maroon pouch containing shells, was received in evidence.]

MR. LASSART: That's the ammunition, your Honor.

THE COURT: For all purposes.

MR. LASSART: That People's Number Thirty-five which is the .357 python be placed into evidence.

THE COURT: Be admitted for the limited purpose.

[People's Exhibit Thirty-five, a revolver, was received in evidence.]

MR. LASSART: And People's Thirty-six which are the five rounds of ammunition that came from the python be placed in evidence.

THE COURT: Be admitted.

[People's Exhibit Thirty-six, envelope containing shells, was received into evidence.]

THE COURT: Anything else?

MR. LASSART: Nothing further, your Honor. The People would rest.

THE COURT: You rest.

Mr. Hintz, do you want to approach the bench?

[There was a conference at the bench off the record.]

THE COURT: Your witnesses are prepared for tomorrow morning, Mr. Hintz?

MR. HINTZ: Yes, your Honor, I have several.

THE COURT: Ladies and gentlemen, we will adjourn early. Again I'm going to admonish you please don't discuss the case with one another or allow anybody else to discuss it with you in any way, shape or form. Keep an open mind on the case until you have heard all the evidence of both sides, argument of counsel and law of the case. If there is any news medium with relation to the case, please disregard it because you are going to hear all the evidence there is to hear, arguments of counsel and law of the case. If anybody does attempt to discuss the matter with you in any way, shape or form, please don't hesitate to contact one of my bailiffs or myself.

And with that in mind, we will adjourn until 10:00 o'clock tomorrow morning. And we will remain in session and the jury will file out.

See you tomorrow morning at 10:00 o'clock.

[The jury left the courtroom.]

THE COURT: Was Twenty moved into evidence, Exhibit Twenty?

MR. LASSART: No, your Honor, that was just a manila envelope.

MR. HINTZ: I have an objection to part of People's Twenty-nine.

THE COURT: Wait. We will get to it.

THE CLERK: That was never admitted, never offered for all purposes.

THE COURT: It's not in evidence.

MR. HINTZ: Twenty-nine. Do you want us to address ourselves to that now?

THE COURT: Twenty-nine is not in evidence.

MR. HINTZ: It's not going to be offered?

MR. LASSART: Not at this time.

THE COURT: What is Twenty-nine?

MR. HINTZ: Articles -- they are newspaper articles relating to the defendant's arrest on another offense.

THE COURT: Well, unless there is a foundation shown they are certainly not going to come into evidence.

Anything further? Do you think we can conclude the evidence tomorrow?

MR. HINTZ: I hope so, your Honor. There is a matter I would like to take up with the Court in connection with the location of the given witness, whether we should do this on the record or informally in chambers. I would defer to your thinking. The public defender was appointed sometime after the 8th of June 1973. I know that he represented the defendant at the time of the preliminary hearing on June 28th, three weeks later. I assume that they had conversation in that interim period of time. I have notes from Mr. Gould that are very garbled which reflect the identity of a particular witness whose name is Sandra Oyang. She is a very necessary and very material and, I submit, indespensable witness on behalf of this defendant in view of the fact that it is my understanding that she can give testimony

that will be cor borative of his.

THE COURT: Let me ask you this. Have you served a subpoena on her?

MR. HINTZ: This is the problem I'm getting to, your Honor. I submit that her identity has been known at all times throughout the office of the public defender of San Francisco, the former attorneys for Mr. Lee. When I took over the case in April of this year, to my knowledge she had never been contacted, never been spoken to, never been interviewed. We have issued a subpoena for her. The representatives of that office represented to Judge Puglia when they were permitted to withdraw that they would assist me, investigation-wise, in order to locate witnesses. It is my understanding she was a student at San Francisco State College. They were to locate her, bring her in and make her available to talk to me. Apparently she has ducked out of sight for reasons probably known by the prosecution authorities in terms of not wanting to be involved. I have an investigator of my own armed with a subpoena for her. We are hot on her trail, so-to-speak. We have been in San Francisco on several occasions and I think but for her I can complete my own case in chief tomorrow. Whether she will turn up or not, I don't know.

MR. LASSART: Your Honor, I can make a representation as to Sandra Oyang. Her real name is Cassandra. We have been looking for her too for almost a week now. The best we have done is found an address for her. She lives with her parents, I believe, in Alameda. We are completely lost. We cannot make any contact with her. So we have been looking for her to subpoena her or at least talk to her. So she is a person we can't find either,

your Honor.

THE COURT: All right, gentlemen. 10:0' o'clock tomorrow morning.

[The evening recess was taken.]

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WEDNESDAY, JUNE 12, 1974

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The matter of the People of the State of California versus Chol Soo Lee, having been continued to this date, was commenced before the Honorable Robert W. Cole, Judge of the Superior Court, Department Number One thereof at 10:00 o'clock a.m.

The People were represented by James A. Lassart, Deputy District Attorney in and for the County of San Francisco.

The defendant was personally present and he was attended and represented by Hamilton L. Hintz, Jr., as his counsel.

The following proceedings were had:

THE COURT: All right, let the record reflect the jurors are all in place, counsel for both sides and defendant present.

You are going to waive opening statement, Mr. Hintz?

MR. HINTZ: Yes, your Honor.

THE COURT: Call your witness, please.

D E F E N S E

---oOo---

MR. HINTZ: Call Arthur Aurich.

ARTHUR AURICH

witness called on behalf of the Defendant.

THE CLERK: What is your name, please?

THE WITNESS: Arthur Aurich, A-U-R-I-C-H.

THE CLERK: A-U-R --

THE WITNESS: -- I-C-H.

THE CLERK: -- A-C-H. All right. Would you raise your right hand. Do you swear to tell the truth, the whole truth and nothing but the truth, so help you God?

THE WITNESS: I do.

THE CLERK: Be seated right up here, please.

DIRECT EXAMINATION of ARTHUR AURICH

By MR. HINTZ:

Q Would you state your name once again for the Court and jury, sir?

A Arthur K. Aurich.

Q Mr. Aurich, you live in Sacramento?

A Yes, sir.

Q Were you formerly employed by the Sacramento Police Department as a detective?

A Yes, sir.

Q And are you presently retired?

A Yes, sir.

Q For the last ten to fifteen years have you done graphic art work for the police department, the district attorney's office and for private counsel in the Sacramento area?

A Yes, sir.

Q I would like to refer your attention to Defendant's Exhibit A, the diagram to my left, and ask you first, generally whether or not you prepared that diagram for the Court's use?

A Yes, sir.

Q Referring generally to Defendant's Exhibit B behind you on wall, did you also prepare that diagram?

A Yes, sir.

Q All right. Would you describe what the diagram to my left in front of the jury, Defendant's Exhibit A, purports to depict?

A That is an enlarged map, not drawn to scale, of the area of Jackson Street to Broadway and from Stockton to Kearny with Columbus Avenue cutting off at an angle of the San Francisco area.

Q Did you personally go to San Francisco on the 20th of May of this year and in my presence take measurements of the area depicted on both Defense Exhibits A and B?

A Yes, sir.

Q And would this be in the general Chinatown area?

A Yes, sir.

Q All right. Would you step down to the board here with me. First with respect to the central portion, centered upon the intersection of Pacific and Grant -- this diagram is not to scale; is that correct?

A Yes.

Q Did you nonetheless take certain measurements from the intersection of Pacific and Grant to Columbus Avenue?

A Yes, sir.

Q All right. Would you indicate to the jury what the distance was from --

A On the north side of Pacific Street from Grant to Columbus measured three hundred and fifty-two feet.

Q What type measuring device did you use to take that measurement?

A It's called a walkometer. It has two wheels on it and each turn of the wheel is measured in inches. It goes up to nine

hundred and ninety-nine feet.

Q Is this the sort of meter traffic investigators use to measure skid marks and the like at the scene of traffic accidents?

A Yes, sir.

Q All right. Now turning to the south side of Grant, did you measure the distance from the southeast corner of Grant and Pacific to the nearest intersection of Beckett Street?

A Yes, from the southeast corner of Grant to the corner of Beckett Street is sixty-eight feet.

Q All right.

A Beckett Street runs north and south two hundred and seventy-eight feet into Jackson Street. At Columbus Avenue there is a cut-off area of seventy-four feet.

Q Thank you. Now turning to the other diagram, Defendant's Exhibit B -- do you need the pointer?

A Yes.

Q -- does Defendant's Exhibit B purport to be a scale drawing?

A Yes, sir.

Q And what scale did you use?

A One-quarter of an inch equals one inch, or there is four foot to each inch.

Q And what does the drawing, Defendant's Exhibit B, depict?

A It shows Pacific Avenue running east and west and shows Grant Avenue running south to north.

Q Okay. With respect to the items that appear on the drawing, would you again at the left-hand top and going from left to right, describe for the jury and the Court what you observed at that intersection?

A Going from here?

Q I'm sorry. Going from the top left of the drawing and working to your right.

A Oh. There is a driveway here that goes into a garage that leads out onto Broadway. Then there is the Royal Pacific Garage here. There is buildings, two and three story buildings, at this area. And there is a three story building on this corner. This blue area running around is the sidewalk area.

Q All right. With respect to the sidewalk in the upper left-hand part of the drawing, what is the setback from the curb line to the building fronts?

A It's a -- I better measure it to make sure. It's a ten-foot sidewalk.

Q Very well. What is the distance across Grant Avenue from the northwest to the northeast corner at the curb line?

A Twenty-four feet.

Q All right. Would you then go on and indicate what you observed there as you moved to the right of the drawing?

A Yes. There is a two story building on this corner, other buildings at these addresses along here with entrances off of Pacific Avenue.

Q All right. Now would you turn to the lower left-hand part of Defendant's Exhibit B and tell the jury and Court what you observed there?

A This is a large seven story apartment building with the entrance up in this area here. In the front of the apartment building is set back here. The building comes to a "U" shape, and in this area there are walkways and planter areas.

Q Would you describe what the symbols appear to be in the lower left-hand in front of the building?

A These here?

Q Yes.

A Those are more or less to indicate that there are planters in that area.

Q Trees and shrubs?

A Trees and shrubs, yes, sir.

Q What is the width of the sidewalk there on the south side of Pacific Avenue?

A That's also a ten-foot sidewalk

Q All right. With respect to that seven story apartment project or building, did you observe any windows that front either onto the street or elsewhere?

A On the front of the building looking out onto Pacific there was three windows at equal intervals all along the side on each story as I went up. On the side of the building there was also windows at equal distances along the side of the building on each story.

Q With your walkometer did you have occasion to measure the width of those windows as they front onto the street and onto the side?

A There wasn't any windows that low to really get an accurate measurement, but it was estimated width of the windows.

Q Do you have an estimate as to the width of those windows?

A Yes. They were approximately four foot windows.

Q Four foot wide?

A Four feet wide, yes, sir, and they did go all the way up, all

seven stories, all seven stories.

Q And did they also appear to go up all seven stories on the side of the building?

A Along the side, yes, sir.

Q All right. What structure did you observe there on the corner, on the southwest corner?

A This area also were two story buildings on the corner.

Q Okay.

A Across the street -- it would be the southeast corner -- was a three story building which covered the area, entire area up to Beckett Street.

Q All right. With respect to the southeast corner of Pacific Avenue and Grant Avenue, would you indicate for the Court and jury what the width of the sidewalk is at the intersection?

A On Grant it is ten feet and on Pacific it is also ten feet.

Q Would you write in the figure "10."

A [Witness marked the diagram.]

Q Now right above where you have just noted on the drawing there is some printed matter. Would you identify what that is?

A The small little mark here, there was a post which was approximately -- was a metal post approximately six-foot high, and then there was -- this red dot is a fire hydrant and chained to the post was two news racks, coin operated.

Q Do you see where there is an initial there at the curb line right at the intersection?

A Right here?

Q Yes. Would you give the Court and jury the distance from this back to the corner of the structure?

A Ten feet.

Q Were there any type canopies or awnings that were protruding outward from that two story building on the southeast corner?

A None on this building, no, sir.

Q All right. Now as you move up to Pacific Avenue would you indicate what else you have there?

A Across Beckett Street -- Beckett Street had two sidewalks on each side, sidewalk continued on down on the west side or east side of Beckett Street. There was a large apartment building, this orange marking here. There was also planters in the front of it, and this was an open area here that went down about ten feet or so.

Q Okay. Now returning to the corner of the intersection of Grant and Pacific for a moment, on the northwest corner there is a series of letters, "SL" and "M"?

A Uh-huh.

Q Would you measure the distance from the figures "SL" and "M" diagonally across the intersection to the area where the other symbol appears at the center of that curb line?

MR. LASSART: Your Honor, I must object to this unless a proper foundation is laid. At the time those symbols were placed it was not a to-scale representation.

THE COURT: You can bring that out.

MR. LASSART: All right, your Honor.

THE COURT: Go ahead.

A Forty-four feet.

Q [MR. HINTZ] All right. Would you put a line or draw a line from -- where those three letters are to the closest point of the

opposite intersection where there is a mark[illegible] figure and write the figure "44."

A [Witness marked the diagram.]

Q Now at my request on the 20th of May when you were down there you physically measured that too; did you not?

A Yes, sir.

Q All right. Just to the left there is a symbol representing a vehicle pointing westbound on Pacific Avenue. Would you draw a line to the closest part of that vehicle -- strike that.

Would you draw a line to the nose of that vehicle where there is the initial "L-1" and extend that line to the southeast corner of the intersection where the other objects are. Do you have a distance for that, sir?

A I measure eighty-four feet.

Q Turning to another symbol representing a vehicle on Grant Avenue wherein there is the letter "M-2" to the left of the vehicle and an arrow extending to the left side of the vehicle, would you draw a line from the point of the arrow back to the same southeast corner and make a measurement on that for us. What distance do you find that to be?

A Fifty-eight feet.

Q Do each of these drawings, Defendant's A and B respectfully, fairly depict the area that you observed on May 20th, 1974?

A Yes.

Q And these measurements were made by you; right?

A Yes, sir.

MR. LASSART: Objection, your Honor. That assumes a fact which is clearly not in evidence because the measurements that are

made on that diagram to those points that he just measured were not in his mind then because they were not put down until he came to this courtroom.

MR. HINTZ: We know that.

MR. LASSART: Then it's incompetent to testify that he measured those exact distances when he was out there.

THE COURT: Overruled. Proceed.

MR. HINTZ: No further questions.

THE COURT: Cross-examine, please.

CROSS-EXAMINATION of ARTHUR AURICH

By MR. LASSART:

Q You can have a seat, sir. Mr. Aurich, in your capacity as a gentleman who works with diagrams, are you also a photographer?

A No, sir.

Q Have you ever used photographic equipment in your business?

A No, sir.

Q Was there a camera man with you the day you went out and examined this intersection?

A No, sir.

Q Was it -- were you there during the daytime?

A Yes, sir.

Q And was it a well-lighted day?

A Yes, sir.

Q Those streets could be described then as being narrow streets?

A Yes, sir.

Q In fact the Chinatown area of San Francisco has very narrow streets in comparison with the regular streets; is that correct?

A That's right.

Q Now when you were there, sir, and you were looking at that intersection, you used your walkometer to determine distances?

A Yes, sir.

Q And at the intersection did you take a measurement from the actual curb line of the northwest corner of Grant and Pacific and follow that curb-line measurement diagonally across the street to the southeast corner of Grant and Pacific?

A Yes, sir.

Q So in other words, you walked diagonally across the intersection?

A Yes, sir.

Q What was the actual measurement from the point of the curb line from one center of the curb line diagonally across the intersection?

A Forty-four feet.

Q Forty-four feet?

A Yes, sir.

Q So the measurement on the diagram indicating forty-four feet is an actual measurement that you measured on that diagram when you were there?

A Yes, sir.

Q That's twenty yards and two feet?

A Yes, sir.

Q Excuse me. I misrepresented that. You convert forty-four feet into yards. It's a little less than fifteen yards?

A It would be less.

Q A little less than the fifteen-yard penalty if you are playing

football so it was a little less than fifteen yards?

A Yes, sir.

Q When you were out there on that street, sir, were you having any difficulty seeing people across the street from you?

A No.

Q You could see who was walking across the street from you; couldn't you?

A Yes, the visibility was good.

Q You could see faces; couldn't you?

A Yes.

Q Now when you were measuring in that intersection with the gentleman, counsel here, did you actually measure the distance from the curb line -- and let me point to it -- right here with this "Y" and "S" measurement to where this car is, did you actually have that measurement?

A No, sir.

Q Because then the measurement you have made here is based upon the letters that are placed on the diagram; is that correct?

A Yes.

Q I see. So the only thing to scale about this particular measurement then is the distance between the letters?

A Yes, sir.

Q And it assumes that the car was in this position; is that right?

A Right.

Q Would you do me a favor, please, and with that pen put -- print right here "Assumes car in position" to indicate that's what the assumption is.

MR. [redacted] would object to that.

THE COURT: Overruled.

A. [Witness marked the diagram.]

Q. [MR. LASSART] Okay, sir, I won't have you stand up. Go ahead and have a seat.

Now this other car that was here, "M-2" on the diagram, and you have drawn a line to that, to a position on the curb line here and the figure "58 feet" and your initials underneath that?

A. Yes.

Q. You put that on the diagram in court this morning?

A. Yes, sir.

Q. Now what direction made you -- at whose direction did you pick the curb line at that point?

A. It should have been at the point with the other line.

Q. In other words, if you moved it over?

A. Moved it over. That's where it belongs.

Q. So that's about, oh, maybe a half-inch from the mark "Y" and "S"; is that correct?

A. Yes.

Q. And that would cover, according to this diagram, how many feet?

A. Well, I measured it from the "Y" and "S", but I just drew the line.

Q. Oh, fine. I understand. In other words, you took the actual measurement from the "Y" and "S" to the car?

A. Yes.

Q. And just moved the line over for clarity sake?

A. Yes.

Q The measurement you took here, did you actually make that measurement the day you were out in the street?

A No, sir.

Q And once again this measurement was made assuming this car at "M-2" was in this position?

A Yes.

Q All right. Would you please write again "Assumes car in this position" on this line. Would you do that, please.

A Witness marked the diagram.

Q Now did you also measure, sir, the distance from the north side -- excuse me -- from the west side of Grant Street to the east side of Grant Street at that intersection?

A Yes, sir.

Q All right. And that would be -- did you measure the distance from the southwest corner to the southeast corner of Grant Street?

A Going -- the other diagonal, you mean, across?

Q Southwest to southeast, directly across?

A Directly across, yes, sir.

Q That would be parallel to Pacific Street?

A Yes. Right.

Q Did you measure that?

A Yes.

Q What was that figure, sir?

A I believe it was twenty-four feet.

Q Okay. Would you put that in there, please.

A [Witness marked the diagram.]

Q Okay. And would you do the same from the northwest corner

of Grant Street to the northeast corner of Grant Street while we have you up at the diagram.

A [Witness marked the diagram.]

Q Let's see if we have all the measurements in. Now, sir, on this -- in other words, that is twenty-eight feet?

A Yes, sir.

Q This is twenty-eight feet and in this direction which, on your diagram -- which is north to the diagram -- on the diagram?

A Top of the diagram.

Q So north to south on Pacific is twenty-eight feet?

A Yes.

Q And east to west on Grant is twenty-four feet?

A Yes.

Q Now is it also twenty-four feet at this inter -- at the northern section of the intersection of Grant Street?

A Yes, Grant Street runs twenty-four feet all the way.

Q All right. Okay. Twelve lanes -- twelve feet per traffic lane?

A Yes.

Q Thank you. That's about four yards per traffic lane; isn't it? I don't know if I'm converting right today.

Now you indicated there are some buildings in that area on the southeast corner of the area? You are familiar with the southeast corner of that particular intersection; is that correct, sir?

A Yes.

Q At that place is a place called the PingYuen Restaurant; is there not?

Q Across the street from that -- by that I mean across Grant Street -- you have another restaurant; is that correct?

A I believe so, yes, sir.

Q Is that Tommy's?

A I believe so, yes.

Q That's how many stories?

A This is a two story building and this is a three story building.

Q Why don't you in the middle of Tommy's, the block that would indicate where Tommy's would be, write the figure "2" and "2" to indicate the height of that building?

A I have it here.

Q You have it there. Would you underline it.

A [Witness marked the diagram.]

Q Very good. The building to the west of the building which is Tommy's is what is known as the Ping Yuen Project; is that correct, large apartment building?

A Yes, it's a --

Q It's about a seven story building?

A Yes, sir.

Q Did you go up into the project area at all, sir? Did you go up into that building?

A Not into the building, no, sir.

Q You looked at the exterior of the building?

A Yes, sir.

Q Now that building has a front -- does the eastern side of the building, the eastern most side of the building fronts or

faces in the direction of Grant Street; is that right?

A Yes, the east side of the building runs down behind these stores along here. This is the east wall of the building.

Q All right. Very good. Let me give you the pointer so you don't have to get so close to that. Would you point out to where the eastern side of that building is?

A This is the eastern side. There is a walk area in between the backs of these buildings and the side of the apartment building.

Q Now also on the eastern side of that building there is a fire escape; isn't there, sir?

A There is a what, sir?

Q There is a fire escape on the eastern side of the building?

A I couldn't say for sure. I don't recall seeing one.

Q Did you go up into any of the rooms in the Ping Yuen Project or that building, six, seven story building to see the visibility of the intersection?

A No, sir.

Q Do you know whether or not certain floors of that Ping Yuan Project are obscured by Tommy's or the restaurant on the corner?

A Standing on the corner here and looking up towards this building you can see from, I believe, about the third story up. The lower stories are hidden by the building.

Q And that's looking up from the corner of Grant and Pacific, southeast corner?

A Yes.

Q And can you see more like the fifth, sixth and seventh floors?

A From the th 1 story up I would say.

Q Okay. Did you go up on the roof of the Ping Yuen Building?

A No, sir.

Q Did you know that you could go up on the roof of that building?

A No, sir, I didn't.

Q On the front of the building that's the side of the Ping Yuen Building that fronts on Pacific, on the side of the building that you would look out in a northern direction?

A Yes.

Q Would you point to that particular portion of the building I'm speaking of?

A That's this area here. The building here comes alone here.

Q Now the portion that protrudes on the Ping Yuen Building, the one that is directly on the sidewalk, would you point that out to the jury.

A Pointing.

Q Did you go up into any of those rooms on any of those floors when you were on the street?

A No, sir.

Q Now the building or portion of the building as the building is recessed along Pacific Street, did you go up into any of those rooms?

A No, sir.

Q Now those are all recessed and there are trees and a walkway between that building and the sidewalk; isn't that correct?

A Yes.

Q And isn't it a fact also that the windows of that building

are even further recessed in the building by balconies that are in front of that?

A Yes, there are balconies that run all along each floor of the building there.

Q Did you go up into those rooms to observe any visibility of the intersection of Grant and Pacific, particularly the southeast corner?

A No, sir.

Q Were you directed to do so?

A No, sir.

Q Are there any other buildings of the sixth or seventh floor variety in the area that you observed of Grant and Pacific?

A The only other large building is the other apartment building down beyond Beckett Street.

Q Down beyond Beckett Alley?

A Yes, sir.

MR. LASSART: All right. I have no further questions, your Honor.

MR. HINTZ: Nothing else.

THE COURT: Thank you, sir. Step down.

Call your next witness, please.

MR. HINTZ: Call Mr. Sullivan, your Honor.

THOMAS M. SULLIVAN

witness called on behalf of the Defendant.

THE COURT: Step forward, please.

THE CLERK: Right up here, please. What is your name?

THE WITNESS: Thomas M. Sullivan.

THE CLERK: S-U-L-L-I-V-A-N?

THE WITNESS: Yes, sir.

THE CLERK: Would you raise your right hand. Do you swear to tell the truth, the whole truth and nothing but the truth, so help you God?

THE WITNESS: I do.

THE CLERK: Be seated right up here, please.

DIRECT EXAMINATION of THOMAS M. SULLIVAN

By MR. HINTZ:

Q Your Honor, I have an original exhibit I would like to have marked and a copy marked the same number with the letter "A" behind it, please.

THE COURT: That will be "C".

MR. HINTZ: Or "1", "C-1".

THE COURT: "C-1", "C-2".

[A document was marked Defendant's Exhibit C-1 and a copy of the same document was marked Defendant's C-2 for identification.]

Q [MR. HINTZ] Your name is Thomas Sullivan, is that correct, sir?

A That's correct.

Q And where do you live, sir?

A I live 4126-26th Street, San Francisco, California.

Q And by whom are you employed?

A San Francisco Adult Probation Department.

Q You are a probation officer?

A That's correct.

Q And how long have you been so employed?

A Since 1968.

Q Calling your attention to the counsel table, do you know the defendant Chol Soo Lee?

A I do.

Q During a period in 1971, '72 and '73, did you have any association with him as a probation officer?

A Yes, I was his probation officer.

Q When, sir, did you first meet Mr. Lee?

A I first met Mr. Lee approximately May 6th of 1971. At that time the case was referred to our department for a pre-sentence report in his case.

Q What was the date again?

A Excuse me. I'm sorry. December 9, 1971.

Q I show you Defendant's Exhibit C dash 1 for identification. I would like to have you examine that.

A Yes.

Q And would you identify first what the document is?

A That is a book sheet that we keep on each probationer in the probation department in San Francisco. Every time a probationer reports or we get some information regarding him, we mark the information on this book sheet. This is a record of his history on probation for this offense.

Q Is Defendant's Exhibit C-1 for identification the original of the record relative to the probationer?

A This is the original, yes.

Q Showing you Defendant's C dash 2 for identification consisting of two pages, would you examine that document?

A That's a photostatic copy of this document.

Q Very well. Your first contact with Mr. Lee, as I understand, sir, was December 1971; is that right?

A Yes, sir.

Q And you were the probation officer assigned to a presentence report on him?

A That's correct.

Q What is a presentence report?

A Presentence report is the history of the background of the probationer prior -- defendant -- at that time before he is granted probation, and it's also a statement of the offense for which he has applied for probation for, and it's a recommendation to the Court as to whether or not we feel that probation -- whether or not we feel probation should be granted. In the event probation is -- we are recommending that probation be granted, we recommend conditions under which probation should be granted.

Q As of December 1971 I take it then Mr. Lee was before the Superior Court of San Francisco County in connection with a criminal offense; is that right?

A That's correct.

Q And was that an offense to which he had entered a plea of guilty to in the --

A That's correct.

Q -- in the Superior Court?

A That is correct.

Q And what offense was that?

A Violation Section 487.2 of the Penal Code.

Q And what is that?

A That is grand theft.

Q Now on or about the 25th day of January 1972, was sentence imposed in Mr. Lee's case?

A Yes, it was.

Q What was that sentence?

A Imposition of sentence was suspended. Defendant was placed on three years probation on the condition that he serve one hundred and eighty days in the county jail.

Q Very well. Did Mr. Lee in fact serve one hundred and eighty days or six months or approximately that much time in the county jail?

A I would say yes, he served approximately that much time. I would say. I can't -- I don't have proof with me of that.

Q Now referring to the entries that appear on Defendant's Exhibit C dash 1 for identification, are all of those entries, with one exception, in your own handwriting?

A That is correct.

Q And what is that one exception?

A One exception is when he reported on May 8, 1973. That is not my handwriting. Another probation officer wrote that down for me at the time. I probably was not in the office at the time that that report was made.

Q From this record can you determine when Mr. Lee was released from the county jail after having served the disciplinary portion of his sentence for grand theft?

A I can't say exactly when he was released from county jail. I can say this, that he was signed on probation on the 6th of May -- excuse me -- the 5th of June 1972. I would assume he was

released from jail immediately prior to that.

Q The entry as to June 5th, 1972, would indicate to you that that was an entry that was contemporaneous with his being released from jail to free society once more?

A That was his first contact with the probation department after he was granted probation.

Q All right. When next after June 5th, 1972, did you personally have any contact with Mr. Lee?

MR. LASSART: Your Honor, just to check, I would ask we have a short side bar conference concerning relevancy and probable ramifications of this line of questioning.

THE COURT: Yes. Come up here, please.

[There was a conference at the bench off the record.]

Q [MR. HINTZ] What was your personal contact with Mr. Lee first after he was released on probation?

A June 14, 1972. At that time he reported.

Q All right.

A Okay.

Q Now between June 14th, 1972, and the date of defendant Lee's arrest for the instant offense of murder, did you have contact with him in a probationer/probation officer-type relationship?

A Yes, I did.

Q Now where did this contact take place? In what manner were those contacts?

MR. LASSART: Objection, your Honor. We are moving into the problem area that we discussed at the bench.

MR. HINTZ: This is a preliminary question, your Honor.

MR. LASSART: Well, a preliminary question is really not

preliminary.

THE COURT: I would ask you go directly to the particular point, counselor.

MR. HIMTZ: All right.

Q [MR. HINTZ] When did you last have contact according to your notes with Mr. Lee?

A June 4th, 1973.

Q All right. Now did you have other contacts with him in that year period of time?

MR. LASSART: Objection, your Honor. It's not relevant.

THE COURT: Sustained.

Q [MR. HINTZ] In contacts that you may have had with Mr. Lee, were those contacts face-to-face or otherwise?

MR. LASSART: Your Honor, I must object. It's not relevant and I do not object -- I wouldn't object on this occasion except to protect the record. If he wants to go into this area, I would be glad to continue with it myself.

THE COURT: I'll sustain your objection.

Q [MR. HINTZ] With respect to the contact you had with Mr. Lee on June 4, 1973, do you know whether that contact was face-to-face or otherwise?

A No, I do not. It could have been either way.

Q Either way. What do you mean?

A It could have been either a telephone call or it could have been face-to-face.

Q There is no notation in your record?

A No, there is not.

Q With respect to any type of face-to-face contact, would that

have been in your office or elsewhere?

A. In my office.

Q. And where is your office located?

A. Hall of Justice, 880 Bryant Street, San Francisco, Californi

Q. What other agencies are located in the Hall of Justice?

A. Municipal and Superior Courts are there. District attorney's office is there. Public defender's office is there. Southern police station is there. The city prison is there. The county jail is there and the coroner's office is there.

Q. Your record reflects you had contact with him on June 4th?

A. My record reflects contact with him on June 4th, 1973.

MR. HINTZ: No other questions, your Honor.

THE COURT: Cross-examine, please.

CROSS-EXAMINATION of THOMAS M. SULLIVAN

By MR. LASSART:

Q. Mr. Sullivan, the actual offense Mr. Lee was on probation for was grand theft from the person; isn't that correct?

A. That's correct.

Q. As opposed to just grand theft?

A. Grand theft from the person.

Q. And you are not sure whether or not he reported in person or on telephone on June the 4th?

A. No, I couldn't say.

Q. Is a probationer supposed to have a gun?

A. No, a probationer is not supposed to have a gun.

MR. LASSART: Fine. I have no further questions.

- - - - -

REDIRECT EXAMINATION of THOMAS M. SULLIVAN

By MR. HINTZ:

Q As to the entries that appear on the Exhibit C-1 in front of you, are there any type of indications as to whether a particular contact was telephonic or otherwise?

A Yes.

Q And what type indication is that?

A On June 23rd, 1972, I have it marked "T" slash "C" which would indicate telephone call.

Q Is there any such "T" slash "C" indication for June 4th, 1973?

A No, sir.

MR. HINTZ: Thank you, sir.

RECROSS-EXAMINATION of THOMAS M. SULLIVAN

By MR. LASSART:

Q I'm sorry, does that mean it's not possible that you received a phone call?

A It means it could have gone either way. There is a possibility he could have come in. There is a possibility he could have called. Doesn't definitely say he did call.

Q In other words, you don't always, say, put "T" slash "C" when he calls?

A Well, I should.

Q All right. Fine. We have those days.

I have no further questions. Thank you.

MR. HINTZ: Thank you, Mr. Sullivan.

THE COURT: Call your next witness, please.

MR. HINTZ: I would like to call Harry Sonderson.

Your Honor, I would like to substitute C-1 for C-2 so he could take the original with him.

MR. LASSART: I have no objection to that, your Honor.

THE COURT: That will be the order.

MR. LASSART: Your Honor, I have no objection to the witne being excused.

THE COURT: The witness is excused.

LAWRENCE SONDRESON

witness called on behalf of the Defendant.

THE CLERK: Right up here, please. What is your name?

THE WITNESS: Lawrence Sondreson.

THE CLERK: How do you spell the last name?

THE WITNESS: S-O-N --

THE CLERK: S-O-N --

THE WITNESS: D-R-E-S-O-N.

THE CLERK: All right. Would you raise your right hand. you swear to tell the truth, the whole truth and nothing but th truth, so help you God?

THE WITNESS: So help me God.

THE CLERK: Be seated right up here, please.

DIRECT EXAMINATION

By MR. HINTZ:

Q State your name once again for the record, sir.

A Lawrence Sondreson.

Q Mr. Sondreson, where do you live, sir, please?

A Fargo, North Dakota.

Q Where?

A Fargo, North Dakota.

Q Calling your attention to June 1973, were you in the United States Navy?

A Yes.

Q At that time where were you assigned or stationed?

A Treasure Island in San Francisco.

Q Are you acquainted with a -- were you acquainted last year with a young sailor by the name of John Huey, H-U-E-Y?

A Yes, I was.

Q And what was your connection with Huey?

A He was going to the same school I was on Treasure Island and he was in the same -- what do you want to call it -- company down in San Diego.

Q You were service buddies; is that right?

A Right.

Q On June 3rd, 1973, did the two of you happen to be in San Francisco?

A Yes, we did.

Q What time do you recall that you got off duty that day?

A About noon. Something like that.

Q And about what time did you arrive in San Francisco?

A Shortly thereafter.

Q Were you fellows in civilian clothes or dressed in military uniform?

A Civilian clothes.

Q Did you have occasion to go to the Chinatown district at any

time?

A. Yes, we did.

Q. About what time did you go there?

A. I suppose we got there about 2:00, something like that. 1:30 or 2:00.

THE COURT: Speak a little louder, please.

Q. [MR. HINTZ] Can you speak back to me? Hold your voice up.

A. I think it was about 1:30 or 2:00. It wasn't very late.

Q. Around 7:00 o'clock or thereafter during the early evening hours did you have occasion to be in the vicinity of Columbus Avenue and Pacific Avenue?

A. Yes, I did.

Q. At or about that time had you had a meal of any sort?

A. Yes, we ate in a restaurant on the corner.

Q. And where was that restaurant located?

A. On Columbus, corner of Columbus and Pacific.

Q. Now after leaving that restaurant and while outside on the sidewalk, did you hear any unusual noises or sounds?

A. Something that sounded like firecrackers to start with. I knew it was gunshots.

Q. You say it sounded like firecrackers; but you knew it was gunshots?

A. [Witness nodded head in the affirmative.]

MR. LASSART: For the record he nodded in the affirmative, your Honor.

Q. [MR. HINTZ] How many such sounds or noises did you hear at that time?

A. Four.

Q What?

A Four.

Q Was there any distinct pause between any of those sounds or were they in succession?

A I heard -- I heard one and then it seemed like there was a pause and there was another three pretty close together.

Q Did you say anything to your friend John Huey at the time you heard the sounds?

A Yes, I said that's gunshots.

Q What, if anything, did he say back?

A I believe he said that he thought it was too.

Q Upon hearing these sounds what did you and Mr. Huey do?

A We started moving up the street towards the direction of the sounds.

Q Would you step down to the board, please, Mr. Sondreson. Referring to Defendant's Exhibit A for identification, would you first step to the side of that drawing and with your finger would you point to the location that you were at the time that you heard the sounds that you identified as gunshots.

A I was standing right here at the corner of Columbus and Pacific. We just walked out of the restaurant where we ate and were standing out there on the corner.

THE COURT: Mr. Sondreson, please raise your voice.

A I believe we were standing out there on the sidewalk deciding what way we were going to go.

Q [MR. HINTZ] I would like to have you make a mark, "LS-1", to indicate where you and Mr. Huey were at the time that you first heard the sounds that you identified as gunfire.

A Right in here [indicating]. "LS-1"?

Q "LS-1", yes.

A [Witness marked the diagram.]

Q You are indicating, are you not, the northeast corner of Columbus and Pacific? Is that right?

A Yeah, it would be north. Yeah, northeast corner.

MR. LASSART: Excuse me. I'm sorry?

THE COURT: Have him speak up.

Q [MR. HINTZ] Larry, hold your voice way up; all right?

A Yeah. It would have been the northeast corner.

Q Now when you heard those sounds, what, if anything, did you do?

A We started moving up the street, moving in this direction.

Q Okay.

MR. LASSART: Excuse me, your Honor. For clarity sake, the mark is on the northwest corner. If I'm mistaken, he is saying northeast. Just to clear it up.

THE COURT: Clear it up, Mr. Hintz.

Q [MR. HINTZ] I'm sorry. That was the northwest corner; was it not?

A I'm not quite --

Q In any event, you were on this corner; is that right?

A Right.

Q Okay. Excuse me if I misled you. Now, Mr. Sondreson, you indicate that you moved up the street, up Pacific Avenue; is tha right?

A Yes, sir.

Q All right. With your finger would you just simply trace th

route you took up the street after hearing the shots?

A We were moving in this direction [indicating].

Q All right. On what side of the street were you when you went up Pacific Avenue?

A I believe we were on this side of the street, if I'm not wrong.

Q You are indicating the north side?

A Right.

Q Okay. As you moved up the street, did you run or did you walk?

A I believe we started out walking and I think we ended up running.

Q How far up the street did you and Huay go?

A Oh, we went all the way up to the top, but right about here then we seen this guy start coming down the other side.

Q All right. Would you hold your finger at the spot where you first saw something?

A We were standing right about in here.

Q Okay. Would you put the mark "LS-2" to indicate where you were when you first saw something on the opposite side of the street.

A [Witness marked the diagram.]

Q Okay. From that point, "LS-2", Mr. Sondreson, what was it that you saw?

A We saw a person approaching us from the opposite direction coming down the street.

Q He was across the street from you?

A [Witness nodded head in the affirmative.]

route you took up the street after hearing the shots?

A We were moving in this direction [indicating].

Q All right. On what side of the street were you when you went up Pacific Avenue?

A I believe we were on this side of the street, if I'm not wrong.

Q You are indicating the north side?

A Right.

Q Okay. As you moved up the street, did you run or did you walk?

A I believe we started out walking and I think we ended up running.

Q How far up the street did you and Huey go?

A Oh, we went all the way up to the top, but right about here then we seen this guy start coming down the other side.

Q All right. Would you hold your finger at the spot where you first saw something?

A We were standing right about in here.

Q Okay. Would you put the mark "LS-2" to indicate where you were when you first saw something on the opposite side of the street.

A [Witness marked the diagram.]

Q Okay. From that point, "LS-2", Mr. Sondreson, what was it that you saw?

A We saw a person approaching us from the opposite direction coming down the street.

Q He was across the street from you?

A [Witness nodded head in the affirmative.]

[Court reporter read back the last question and answer.]

Q [MR. HINTZ] I asked you would you put the mark "LS-3" there to indicate where it was that you saw the figure running?

A [Witness nodded head in the affirmative.]

Q And is there a mark "LS-3" -- is that where you saw the figure start?

A Yes, we --

MR. LASSART: Objection, your Honor. Only to the word "we."

THE COURT: Sustained. Just answer what you saw, sir.

A Okay. Yeah, that's where I first saw the person when he first started running down the street.

Q And I think you testified the person ran down and around; is that right?

A Yes.

Q Okay. Did you remain at the scene to discuss what you had observed with any police officers later that evening?

A Yes, we did.

Q Did you describe the appearance of the suspect as you saw him run down the street?

A Yes, we did.

Q Do you recall that description you gave of the suspect at that time?

A Green trousers, I believe it was, form-fitting, and I believe it was a gold jacket.

Q Do you recall anything with respect to the size of the suspect that you gave to the officers that night?

A Yes, he was -- I would say he was about my height, pretty close to it.

Q What hei : is that?

A I'm about five-ten.

Q How about body weight? Would you estimate the body weight of the suspect?

A I would say about a hundred and thirty-five, hundred and forty.

Q Did you observe whether or not the suspect that you saw run had a mustache or not?

A I never did recall a mustache.

Q You never recalled a mustache?

A No.

Q Do you recall anything about the hair of the suspect?

A Yeah, it was -- it was down, I would say, getting close to his collar.

Q Was the hair in any way protruding, if you remember?

A No, I don't recall that.

Q Did you later attend a lineup roughly a week after the time of this event?

A Yes, I did.

Q Do you recall the date of the lineup being the 11th of June 1973?

A Yes.

Q Do you recall the hour of the day?

A I believe it was around 3:30.

Q Did you attend the lineup with anyone else?

A Yes, there was John Huey and I believe there were about two or three other persons.

Q Keep your voice up again, Larry.

A I believe it was about two or three other persons besides John Huey.

Q After the lineup were you given instructions regarding the lineup procedure by the officer who was conducting the lineup?

A Yes.

Q Were you also given a lineup card of some kind to mark?

A Yes, a lineup card with numbers on it and to circle whichever one you thought it was.

Q All right. How many people did you observe in the lineup on June 11th?

A I believe it was six.

Q Were the people in the lineup commanded to go through certain moving procedures or certain procedures?

A Yes.

Q Were your instructions generally to the effect to mark the card at the conclusion of the various commands given to the people in the lineup by the officer?

A Yes, we were told to watch them as to when they moved and so forth and mark the card afterwards.

Q I hand you People's Exhibit Twelve for identification, a front-view photograph, and People's Exhibit Twenty-eight for identification, a side-view profile. Do each of these photographs appear to represent the lineup that you saw on June 11th, 1973?

A Yes.

Q Did you identify anyone at that lineup as the person you saw running down Pacific Avenue on June 3rd?

A Yes, Number Four.

Q Did you mark your card in any way?

A Yes, I circled number four.

Q Would you draw your attention to the person who is shown as number five in each of the photographs, People's Twelve and Twenty-eight respectfully. Do you see number five?

A Yes, I do.

Q Does the man in number five position resemble or look like the suspect that you saw running down the street?

A Well, I didn't -- I didn't recall a mustache on the person I saw running that day, and, as before, he doesn't look as tall as the person I saw running.

Q After the lineup was over was there any conversation outside of the lineup viewing room by the people who saw the lineup, the witnesses who saw the lineup?

A Yes, there was.

Q And can you state what that conversation was?

A They were more or less talking about who --

MR. LASSART: I would object to this hearsay, your Honor.

THE COURT: Sustained unless you can lay a better foundation.

MR. HINTZ: I have no other questions at this time.

CROSS-EXAMINATION of LAWRENCE SONDRESON

By MR. LASSART:

Q Mr. Sondreson, are you sure you were in the position you were standing in when you first heard the shots?

A [Witness nodded head in the affirmative.]

Q Could it have been across the street?

A It could have been across the street, but offhand I don't remember.

Q In other words, it could be either on the northeast or northwest corner; isn't that right?

A Yes, I had a clear view from either side.

Q You have had some emotional strain since this incident occurred; is that right?

A Yes.

Q Is that right?

A What's that?

Q Have you had any emotional strain or ailment which may have impaired your memory of what you really recall of the incidant?

A Yes, I have. I had a drinking problem.

Q All right. You in fact were in the detoxification unit for a while when you were in the Navy; weren't you?

A Yes, sir. I threw myself into it before I got out.

Q Because of your drinking problem?

A Yes.

Q And your memory as to the events are probably somewhat impaired because of that, do you think?

A To a certain extent. More nervous than memory.

Q You're very nervous about this whole incident; is that correct?

A Yes, I am. Not as nervous now as I used to be.

Q You were more nervous then?

A No, after the incident occurred.

Q When you saw the man coming down the street you never got any closer than across that street; is that right? If you don't understand the question, I'll rephrease it.

A Yes, rephrase it.

Q Okay. How close did you get to the man you saw running down the street?

A I would say not less than -- not less than maybe a hundred and sixty to two hundred feet away.

Q And you and Mr. Huey separated -- were separated when you got your best look at that man; isn't that right?

A I don't recall us ever being spread out.

Q Did you stand alongside of Mr. Huey all during the time that you observed the man running?

A To my recollection, yes.

Q Did you see the man turning down Columbus Street, Mr. Sondreson?

A Yes.

Q And did you see him -- and I'll go to the diagram and show you what I mean -- didn't you see the man move in the direction I'm moving my finger, which is east on Pacific, and then turn right down Columbus?

A Yes.

Q And then you followed him for a while; didn't you?

A I don't recollect that.

Q Do you remember telling the police officers that after he turned this corner here he started walking and walked across the street?

A No, I don't recollect that.

Q You don't recall that?

A [Witness shook head in the negative.]

Q All right. You remember separating from Mr. Huey when you were on Pacific Street, sir?

A. No, I don't.

Q. You never left his side all the time that you observed the man running?

A. Not that I remember.

Q. Is it possible that you could have left his side and not remembered?

A. It's been a year. It's possible.

Q. Okay. Would your recollection of the incident as you have related it to the police and to the -- did you refer or recount your actions to the police at the time of the incident?

A. To the best I could.

Q. Okay. Is your memory of the incident at that time when you were talking to the police better than it is right now as you talk about this particular incident on June 3rd, 1973?

A. I suppose. It's been a year.

Q. Only you can tell us, Mr. Sondreson. Was your memory more clear then than it is now?

A. Well, I would say my memory is clearer now than it was then.

Q. Oh, it's gotten clearer than it was then?

MR. HINTZ: I'll object as argumentative.

A. Well, it should have.

THE COURT: Proceed.

Q. [MR. LASSART] Did you ever cross Pacific Street and have the man run within three or four feet of you, the man that ran down the street?

A. I've been trying to remember back on that and I can't seem --

Q. The man that you allegedly picked out of the lineup photograph, number four, you made a mark on your lineup card to that

effect; isn't that right?

A Yes.

Q Did anyone ever tell you that man had been in jail since June 1st, at least since June 1st, throughout the entire month of June 1973?

MR. HINTZ: Object. Assumes facts not in evidence.

MR. LASSART: I'll lay -- it's a foundational question.

THE COURT: Overruled.

Q [MR. LASSART] Did anybody ever tell you that?

A No.

Q If you knew that, would that change your opinion in any way as to whether he was the man involved in the incident?

MR. HINTZ: Object. Speculative type question.

THE COURT: It is. Sustain your objection.

Q [MR. LASSART] From your position, Mr. Sondreson, were you actually close enough, a hundred and twenty, hundred and sixty feet, enough to see a little bush mustache on someone?

A I believe so.

Q You think you could see. Now I want to show you the picture which is People's Number Twelve which is marked in evidence and I want you to take a look at number five and see the type of mustache the man is wearing. Would you describe that as a faint mustache?

A To a degree. I can see it better from the side than from the front.

Q You can see the mustache better from the side than from the front?

A Right.

Q And do you think from your recollection -- did you actually focus on the lip of the man that you saw running down the street?

A More or less generally I saw his whole face.

Q You more or less saw what?

A I more or less generalized his whole face.

Q Did you see generally the full face of the man?

A Witness nodded head in the affirmative.

Q Were you standing on the same side of the street that he was on, running?

A I don't recollect that. I seem to remember something like that, but I just don't --

Q Is it possible you could have been on the same side of the street where the man was running?

MR. HINTZ: Objection. Speculation.

A That is possible.

Q [MR. LASSART] All right. Now did you actually at that time when you observed him concentrate on the man's lip to see whether or not he had a mustache?

A No, I just looked at his face. I mean who picks out an ear or nose or something.

Q You'll have to speak up. I can't understand you.

A I mean who picks out an ear or nose or something. I just looked at his face.

Q Pardon me?

A Who picks out anear or nose. I just looked at his face.

Q Just looked at his face. Now did you get a look at the side of his face?

A Well, sometime between -- sometime down Pacific before he

turned down Columbus. I mean he was turning and going around the corner.

Q Do you remember telling the inspector that the man, the suspect, turned right and indicating Colubus Street, and went down about half a block and turned right again?

A No, I don't recollect that offhand.

Q Are you sure that Mr. Huey was alongside of you all during this or could he have been separated from you?

A I don't recollect us being separated.

Q Well, could he have been?

MR. HINTZ: That's speculative. I would object on that basis.

THE COURT: Sustained.

MR. HINTZ: The question has been asked and answered several times anyway.

Q [MR. LASSART] Now --

A We were both at the body of the victim at the same time.

Q Pardon me?

A We were both at the body of the victim at the same time so I don't recollect us splitting up.

Q Were you there when Mr. Huey tried to revive the victim?

A Yes. And some woman was taking this guy's pulse.

Q A woman was taking his pulse. Okay. And did you arrive at the corner and watch Mr. Huey do these things?

A Yes, I believe we both arrived at the same time.

Q You both arrived at the corner at the same time?

A [Witness nodded head in the affirmative.]

Q You don't recall or do you recall seeing the man turn right at the bottom of Pacific Street and make a right turn?

A Yes, I recall him making a right turn because -- didn't go straight. He didn't make a left turn heading off Columbus Street.

Q Pardon me? Now you have to speak up and tell me what you said again.

A Yes. He turned right because he didn't go straight ahead, and he didn't turn left going on Columbus Street.

Q Do you ever remember seeing the man who was running, that you saw running down the street, slow to a walk?

A I don't recollect that.

Q When you picked the man in the lineup, man number four, were you positive that was the man who you saw on that street?

A Yes, I was.

Q Wasn't any doubt in your mind?

A Not any more doubt than anybody else, I don't believe.

Q In other words, are you sure?

A To me that was the right guy.

Q Were you as sure that man was the right man you saw on that street as you were by the facts that you related in this courtroom?

A I believe that was the correct person.

MR. LASSART: Fine. I have no further questions.

THE COURT: Redirect.

MR. HINTZ: No, your Honor.

THE COURT: May this witness be excused?

MR. LASSART: The witness can be excused, your Honor.

MR. HINTZ: I have no redirect, but he is from North Dakota. I would like to ask the Court to order him to remain around during the balance of the afternoon, should it be necessary to recall him.

THE COURT: Stay here this afternoon. Do you understand?

THE WITNESS: Yes, sir.

THE COURT: All right.

MR. HINTZ: Thank you.

THE COURT: Call your next witness, sir.

MR. HINTZ: Call Inspector Falzon.

FRANK J. FALZON

witness called on behalf of the defendant.

THE CLERK: What is your name, please?

THE WITNESS: Frank Joseph Falzon, F-A-L-Z-O-N.

THE CLERK: Would you raise your right hand, please. Do you swear to tell the truth, the whole truth and nothing but the truth, so help you God?

THE WITNESS: I do.

THE CLERK: Be seated right up here, please.

DIRECT EXAMINATION

By MR. HINTZ:

Q Would you state once again your name for the record, sir?

A Frank Joseph Falzon, F-A-L-Z-O-N.

Q And by whom are you employed?

A City and County of San Francisco.

Q And in what capacity?

A I'm a homicide inspector, police department.

Q How long have you been a police officer, sir?

A Ten years.

Q And how long with the homicide detail?

A Past three years.

Q In connection with the killing of the homicide of Yip Yee Tak on June 3rd, 1973, were you one of the investigators or inspectors assigned to that case?

A I was.

Q In fact were you the head investigator or the head inspector?

A Yes.

Q Chief inspector on the case?

A That's correct.

Q And you have overall knowledge of the case?

A Yes, sir.

Q Were you acting in any type supervisory capacity in relation to other officers who have worked on the case from time-to-time?

A Yes.

Q Would that include Officers who were at the scene as well as officers who did subsequent and follow-up leg work, investigative work?

A That's correct. That is correct.

Q Would this also include a supervisorial capacity of other officers who were involved in the arrest of Mr. Lee on June 7th?

A Yes, sir.

Q And would this also include supervision over the officers who conducted the lineup on June 11th, 1973?

A Yes, sir.

Q You were not present at the time of Mr. Lee's arrest, I understand; right?

A Not at the time he was apprehended. No, sir, I was not.

Q Were you present during the lineup on June 11th, 1973?

A I was out of the state. I was not present.

Q Were you one of the officers who responded to this scene at Pacific and Grant Avenues at about 7:30 on -- in the evening of June 3rd?

A I was.

Q Approximately what time did you arrive there, sir?

A It was sometime after 7:30 in the evening.

Q Were the conditions on the street in the vicinity of Pacific and Grant similar to or customary with the ordinary conditions that appear in Chinatown during the early part of Sunday evening?

A That's speculative only because the incident that occurred -- there was a murder at Grant and Pacific and the crowds had gathered around to view the police and the investigation that was being conducted.

Q You have lived in San Francisco for some time; I take it?

A Yes, sir, all my life.

Q Are you familiar with the area generally of Pacific and Grant?

A Yes, sir.

Q Is it not a fact that that intersection is an intersection where there is a lot of public activity during the early hours of the week and evening such as a Sunday night?

A Sunday nights traffic varies in this intersection. Grant and Pacific is at times a rather busy intersection, yes.

Q With respect to this particular subject night, what time did you arrive? Can you see this all right?

A Yes, sir, I can.

Q What time did you arrive at the scene of this homicide?

A Shortly after 7:30 in the evening.

Q Can you state whether or not there were any vehicles parked on -- strike that.

Is Grant Avenue one way or a two-way street?

A Grant Avenue, to the best of my recollection at this time is one way.

Q And in what direction is it one way, north or south?

A It would be -- I'm not sure.

Q Do you have any recollection as to which way was one way at that time if there has been any change?

A I'm not sure.

Q Do you have any knowledge as to whether Pacific Avenue is a one-way or two-way street?

A Pacific Avenue -- I'm guessing again. I believe it is one way.

Q And do you know whether it would be one way in an easterly direction or conversely one way in a westerly direction?

A I would be guessing again. I know it's one way, but I believe it's west on Pacific.

Q All right. Were there any vehicles parked along the side of Grant Avenue either above or below the intersection of Pacific Avenue at the time of your arrival?

A I don't recall.

Q Were there any vehicles parked along Pacific Avenue between Columbus and Grant on either side at the time of your arrival?

A I don't recall that either.

Q Were any photographs taken at the scene by any police officer or other official to depict traffic conditions along

Grant Avenue or Pacific Avenue as of this morning?

A Yes, sir. If I had a chance to view those photographs I probably could answer your question more properly.

Q Are they -- I'm sorry?

A To finish my answer, I was going to state that numerous photographs were taken of the conditions at the time I arrived at the scene.

Q Were these photographs taken from the intersection up--

Pardon me. I'm sorry.

MR. LASSART: Your Honor, could we have a recess?

THE COURT: We will recess for noon. Adhere to the admonitions heretofore given. We will recess until 1:45. The jury may file out.

[Luncheon recess was taken.]

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AFTERNOON SESSION

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[Court reconvened at 1:45.]

THE COURT: All right, let the record indicate the jurors are all present, counsel for the prosecution is present and the defendant, Mr. Lee, is present. Obviously Mr. Hintz is not present.

Now, ladies and gentlemen, I'm quite sure the situation is going to be worked out, but we are going to have to continue this case until Monday morning at 10:00 o'clock. And again at this time I'm going to admonish you please don't discuss the case with one another or allow anybody else to discuss it with you in any way, shape or form. Keep an open mind on the case until you have heard all the evidence of both sides, argument of counsel and law of the case.

Again if there is any news medium with regard to this case, please disregard it because you are going to hear all the evidence, arguments and the law. If anybody attempts to discuss the matter with you in any way, shape or form, please report it to my bailiff or myself.

I'm sorry this unfortunate situation took place, so just hope for the best.

You are excused until 10:00 o'clock Monday morning. We will remain in session.

You are excused, ladies and gentlemen.

There are, I believe, some witnesses outside. Ask if there are any other witnesses that have been subpoenaed here too.

[Two prospective witnesses entered the courtroom.]

THE COURT: Your name is Katharin McGill; is that correct?

MRS. McGILL: Cynthia

THE COURT: Yes.

And your name again, for the record, please, Mr. Sondreson?

MR. SONDRESON: Sondreson.

THE COURT: We have had an unfortunate thing happen so I'm recognizing both of you to be back in this court without further order at 10:00 o'clock Monday morning which is what?

THE CLERK: June 17.

THE COURT: June 17. Now, Mr. Sondreson, I understand you have some financial problems, and I can assure you that those will be taken care of. The same rate we discussed, your attorney discussed with me. So you will remain and keep yourself available; do you understand?

MR. SONDRESON: I'll just stay in town then.

THE COURT: Stay in town. And if you have any problems, financial problems, please contact me or your attorney.

MR. LASSART: Your Honor, this is an order without further process? In other words, he won't have to be resubpoenaed? Under the Court's order he has to be here without any further process or subpoena?

THE COURT: That's correct. Do you understand that?

MR. SONDRESON: Yes.

THE COURT: I'm sorry, but these things happen.

DEFENDANT LEE: Your Honor, could I have a Court ordered phone call?

THE COURT: Give him one call.

[The evening recess was taken.]

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MO..DAY, JUNE 17, 1974

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The matter of the People of the State of California versus Chol Soo Lee, having been continued to this date, was commenced before the Honorable Robert W. Cole, Judge of the Superior Court, Department Number One thereof, at 10:00 o'clock in the a.m.

The People were represented by James A. Lassart, Deputy District Attorney in and for the County of San Francisco.

The defendant was personally present and he was attended and represented by Hamilton L. Hintz, Jr., as his counsel.

The following proceedings were had:

THE COURT: Let the record reflect the jurors are all in place, counsel for both sides and defendant present.

Proceed. Call your witness, counsel.

MR. HINTZ: Mr. Falzon to the stand, your Honor.

FRANK J. FALZON

witness called on behalf of the defendant, resumed the stand and testified further as follows:

MR. HINTZ: Your Honor, I have a series of three reports I would like to have marked as Defense exhibit next in order, please, for identification only.

THE COURT: All right. That will be Defendant's D, E and F.

[Three documents were marked Defendant's Exhibits D, E and F for identification.]

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DIRECT EXAMINATION Resumed of FRANK FALZON

By MR. HINTZ:

Q Inspector Falzon, as the chief investigator in this case you were at the scene on the night of June 3rd, '73, were you not?

A Yes, sir, that is correct, I was.

Q And you were thereafter at the police station later on that same evening?

A Central Police Station, sir?

Q Either police station, Central or otherwise?

A Yes, sir, I was.

Q And during the course of your activities at the scene and Central Station, were you engaged in getting statements from persons who purported to be witnesses at some of the events that occurred at the intersection of Pacific and Grant Avenue?

A I did.

Q And specifically did you have occasion to talk to a witness by the name of Andy Mill?

A I did.

Q And Mr. Mill was the first witness who testified for the prosecution in this case, the young skier?

A Yes, sir.

Q And at the time of your conversation with Mr. Mill were you engaged in an effort to obtain from him a description of what he saw as well as a description of the suspect that he had seen fire the shot?

A I believe I was talking to the skier named Dave Lennon. Officer Snider and -- Inspector Ron Snider of the homicide detail

talked to Andy Mill.

Q Did you at all talk to Mr. Mill?

A I did, sir, yes, sir.

Q You talked to Mr. Mill too?

A Yes.

Q Did Mr. Mill describe the suspect who he saw fire the shot from the southeast corner of Pacific and Grant?

A He did to Inspector Snider.

Q Is this in your presence?

A Yes, sir.

Q All right. Do you have a report of that?

A Yes, sir, I do. It's in front of me.

Q In front of you as Defendant's Exhibit D, I believe, for identification. Does that purport to be the report of Inspector Snider?

A Yes, sir. It's Inspector Snider's handwriting. It's a copy of the original statement which I have.

Q All right. Now at the time of this interview do you recall where Inspector Snider, yourself and Mr. Mill were at?

A I believe we were at the Central Police Station at this time.

Q And approximately how long after the event of the shooting did this statement take place?

A Approximately half an hour to forty-five minut-

Q All right. Were either you or Inspect-

of the conversation had with the witne

time?

A Yes, sir.

Q Were you attempting to take down and

ut

ion

h Andy

individual,

every detail of t physical description of e suspect, including clothing, that could be provided by the witness Mill?

A We took -- I'm sure Inspector Snider in my presence was taking down everything that the Witness Mill told him yes.

Q With respect to the physical description that the suspect, the shooter, how did Witness Mill describe him to your officers that night thirty to forty-five minutes after the fact of the shooting?

A Originally Andy Mill described the subject that he saw as an Oriental male, twenty-three to twenty-four, slender built, about five-ten, gold jacket, black medium length -- I believe it's hair.

Q All right. The height given was five-foot-ten inches, approximately?

A Yes, sir.

Q And the jacket was described as a gold jacket; was it not?

A Initially that's what Andy Mill said, yes.

Q Did he ever change that at any time?

A Yes, sir, he did.

Q How did Mr. Mill change the description of the jacket worn by the suspect?

A I'm sorry. The jacket never changed, but the height and age variance definitely changed later.

Q How did the height and age factor change at a later time?

A As the so-called chief investigator of this case I put out a teletype the following morning and I put out the description that was given to me by all witnesses and I conferred with Andy Mill and he wasn't too certain as to the height of the individual,

and it was agreed that the individual was short and the teletype that I put out the following morning noted that I put down five-six to five-eight.

Q So the teletype description changed from what you initially had from Mr. Mill at five-ten from five-six to five-eight?

A Yes, sir, that's what went out the following morning to all police units.

Q Did Mr. Mill actually change the description of the suspect based upon his reconsideration or was it due to reconsideration having been given an opportunity to talk to others regarding the height of the suspect?

A At the homicide detail all witnesses were questioned and the height was agreed that the individual was short and it was estimated somewhere around five-six, possibly to five-eight.

Q Were these witnesses talked to together or were they separated?

A Initially they were all separated. Later for more concise description they were placed together.

Q But in any event the initial physical description of the suspect as given by Andy Mill was that he was approximately five-foot-ten?

A That's correct, sir.

Q Is it also correct that Mr. Mill did not note the presence of a mustache on the face of the suspect?

A It's not listed here; that is correct.

Q All right. Referring to the next exhibit for identification, Defendant's E. Does that purport to be a police report prepared by yourself?

A Yes, sir, this is in my own handwriting, that is correct.

Q And is that a report of a conversation you had with a sailor John Huey on that date?

A Yes.

Q Where did this take place?

A This particular statement was taken at the homicide detail shortly before John Huey reviewed photographs of Oriental suspects that had been arrested in the past.

Q And can you give us the approximate length of time following the alleged shooting at 7:30 that this statement took place?

A I would say this would be approximately forty-five minutes to one hour after the initial shooting.

Q Was Mr. Huey separated from the others at the time he was talked to?

A No, sir, he was present with the last witness for the defense, Mr. Sondreson.

Q Were they talked to together?

A Yes, sir, they were.

Q Were their descriptions given at the same time?

A Basically, yes, Mr. Huey doing the talking for both subjects at that time and then also a statement was taken from Mr. Sondreson.

Q All right. Confining ourselves to the statement of Mr. Huey, were there any other officers present other than yourself when he was talked to, say, forty-five minutes on to an hour after the shooting?

A Inspector Snider was in the detail. Whether or not he was paying any attention to exactly what I was doing, I do not recall. I know that he was with the two skiers and he had pulled out

several books, large books containing Oriental mug shots.

Q Was the questioning of these various witnesses done before any photographs or mug shots were shown to them or contemporaneous with looking through the Chinese mug book?

A No, the statements I took here were done prior to showing of any photographs.

Q With respect to Mr. Huey, what was his physical condition at the time you talked to him?

A I would say very alert.

Q Did he appear to be drinking?

A None whatsoever.

Q All right. With respect to the questions asked and the answers given by Mr. Huey considering the description of the suspect including clothes, did you personally take notes and record what he was saying at the time?

A Yes, sir.

Q Does Exhibit Number E for identification from in front of you purport to be a report of that conversation?

A Yes, sir.

Q And was this report made as a summary, so-to-speak, of the written notes that you had taken at the time?

A As to the -- it was summary phase basically of what John C. Huey was saying to me.

Q All right. With respect to the physical description of the suspect, how did John Huey describe the appearance of the shooter?

A Oriental, five-six to five-eight, hundred and sixty-five pounds, early twenties, wearing a dull green dress slack and a sports jacket, mustard colored.

Q He was clear that the suspect in his opinion was about a hundred and sixty-five pounds?

A This was also an estimate at that time, yes, sir.

Q Yes. All right. And the sports jacket was mustard colored?

A That is correct.

Q All right. Is it true that Mr. Huey also made no reference to a mustache worn on the face or facial hair worn on the face of the suspect?

A That is correct. It is not noted in my report here.

Q And if there had been any reference by any of these witnesses to the fact that the suspect did have a mustache or facial hair, you would have noted --

MR. LASSART: Objection, your Honor. That's speculative.

THE COURT: Sustained.

MR. LASSART: Thank you.

MR. HINTZ: Your training, Mr. Falzon, as a homicide inspector and police officer generally goes to include all facets of the physical description of a suspect, does it not, not just to certain things such as height and weight?

A As to the facts related to me, yes, sir.

Q It would also go to scars or any deformity or things of that nature or facial hair; correct?

MR. LASSART: Your Honor, this is vague.

THE COURT: I'll allow it. Go ahead.

A If there is information told to me it's usually placed in my report, that's correct.

Q In effect you write down what they tell you?

A Basically, yes, sir.

Q Thank you. Now you also talked to a Mr. Lennon, did you not, a David Lance Lennon?

A Yes, sir. He was the individual , I believe, testified as the third witness to the shooting.

Q Mr. Lennon was the manufacturer's representative for Look-Nevada Bindings?

A Yes, from Aspen, Colorado.

Q He was the gentleman who testified lastly in court to the effect that he was at position "L" and later retreated to position "L-1" behind the car; is that the same person?

A Yes, sir, it is.

Q Did Mr. Lennon appear to be in a state of nervous excitement or nervous agitation at the time he talked to you regarding the things that he had seen?

A Mr. Lennon appeared to me to be a very sharp individual. He knew what was happening. He had been, in, I believe it was, Vietnam, and he did not appear to be excited to me. He just appeared to be a very knowledgeable individual.

Q Did not Mr. Lennon state to you or in your presence exclaim that after having seen what he had seen he took his first cigarette in something like seven years?

A I don't recall that, no, sir.

Q Did you make a report, Inspector Falzon, of the conversation you had with Mr. Lennon?

A I did.

Q And did that report -- was that report made at or about the same time the report was made of the conversations with Mr. Huey and Mr. Mill?

A I believe this particular statement was t en at the Central Station where Andy Mill's statement was originally taken.

Q All right. And as to Mr. Lennon, was he separated during the time he gave his statement regarding the events he saw and the description of the suspect, or was he with anyone else?

A He was separated.

Q And was any other officer with you at that time, sir?

A I do not believe so.

Q And once again you were attempting to record what he was telling you concerning what he had seen; is that right?

A The basics, yes, sir.

Q Did Mr. Lennon clearly indicate to you at the time of his statement that as to the first two shots he thought they sounded like firecrackers and he did not see either one?

A The statement says "I heard two shots and saw one."

Q Inclarification, did it appear that what he was saying was that he had seen the third shot but not the first two?

A I cannot state to that fact, sir. I can only tell you what is in my notes here.

Q After seeing the shot that he claimed that he saw, did he further indicate to you that he ran up the street?

A Yes, sir, it says he went up about twenty feet after looking right into the face of the guy that did the shooting.

Q Did he say that he took cover at that point?

A Yes, sir.

Q Did he say that he took cover behind a car?

A It's not so noted in my notes. In my notes here I have that he went over to the phone and called the police after the shooting.

Q Do you have any independent recollection at this time as to whether or not he said that he had taken cover behind the car?

A I do not, sir.

Q Did he indicate to you in his report that if the bullets had not gone into the guy, referring to the suspect on the opposite corner, that they might have or would have hit him?

A Yes, sir.

Q And was that the explanation that he gave as to why he ran the twenty feet to take cover?

A He told me -- I can recall this vividly -- that he heard what sounded like firecrackers. He looked across the street. He looked at the individual that was doing the shooting. He looked right into his face. He then stated he didn't really realize what was happening and he more or less just froze and stared across the street. And then upon realizing that the bullets had not been entering the victim, that they would have been coming right at him, he took off up the street approximately twenty feet.

Q Okay. Did Mr. Lennon describe the physical features and appearance of the suspect?

A He did, sir.

Q And did you note those features?

A I have.

Q And would you tell the jury what Mr. Lennon told you at the time as to what the suspect looked like?

A He stated to me that the suspect was an Oriental male, approximately five-seven, a hundred and forty-five to a hundred and fifty pounds, hair is down to neck, straight behind the ears, gold, rust-colored jacket, solid color windbreaker type, twenty-

two to twenty-five years old.

Q Did he also tell you at the time he observed the face of the suspect firing the shot that the suspect's face appeared to be a little or somewhat distorted?

A Yes, and he explained what he meant by distorted.

Q All right. Did he make any statement or reference to you as to having seen facial hair or a mustache on the face of the suspect, sir?

A Not to me he did not.

Q Were you present when the gun was found in Beckett Alley, Inspector Falzon?

A No, sir, I was not.

Q Did you see the gun at the time of the description?

A I was told, yes, sir, that the gun had been recovered in Beckett Alley upon my arrival at the scene.

Q Showing you this weapon that has been marked Defendant's Seventeen, is it your impression and understanding that that is the murder weapon?

A Yes, sir, it is.

Q Did you have any occasion to see this weapon in the back of a police vehicle somewhere near the vicinity, near Grant and Pacific Avenues?

A I did not, no, sir.

Q In your conversation with Mr. Lennon regarding his account as to what he saw and specifically his comment regarding recognition of the gun, did he indicate to you that he was describing and identifying the gun as he had seen it in the hand of the suspect or later as he had seen the gun in the -- on the

seat in the police car?

A. He told me that the suspect was using the gun and saw a certain type style of holding the gun. This went out in my initial all points bulletin to all units the following day. He said the gun was partially concealed by the suspects hands and appeared to be a snub-nosed revolver.

Q. Did he attempt to identify the gun for you at the scene or later at the police station?

A. He stated to me it sounded like it could be a .38 caliber.

Q. I don't mean --

A. That's all he said regarding the weapon and the fact that it was short nosed.

Q. Did he say anything to you regarding having recognized the gun on sight or visual observation?

A. No, sir.

Q. Did he at any time mention to you the fact that he had seen the gun on the seat of the squad car that he was seated in while waiting for a statement to be taken from him by some police officer?

A. No, he did not indicate that to me at the time.

Q. Referring back to the reports in front of you, I would just like to ask you this. The description of the coat or jacket given by witness Andy Mill, the young skier, was a gold jacket; is that true?

A. That's correct, sir.

Q. The description of the jacket given by the young sailor, John Huey, was that it was a mustard-colored sports jacket; is that true?

A That's also correct.

Q And the description of the coat given by Mr. Lennon was that it was a gold or rust solid-colored jacket; is that true?

A That's also correct, sir.

Q Now did you have any further description regarding this garment, this coat, as to its length, whether it be, say, a windbreaker length to the waist or longer or perhaps three-quarter length to the knee?

A The information I had at the time, the witnesses described it as a windbreaker-type, possibly a dinner-type jacket, similar to the coat you are wearing now, sir.

Q More of a kind of sport coat type?

A Either windbreaker type, they described it, or the very light materialed dinner jacket.

Q Showing you photographs Number Thirty-one and Thirty for identification, in reverse order, Thirty-one is on top and Thirty is below, does that appear to be Room Eight of the Skyway Hotel?

A Yes, sir, it does.

Q And that would be the room in which your investigation has traced Mr. Lee to as of the dates in question?

A Yes, sir.

Q All right. Showing you People's Exhibit Number Thirty-two for identification, does that photograph appear to be the accumulated personal effects of Mr. Lee that were found by other officers outside of his room in the hallway of that hotel?

A As reported to me, that is correct, yes, sir.

Q All right. Is it correct that police officers at the scene inventoried or went through Mr. Lee's room and also the contents

of those several boxes that appear in People's Number Thirty-two?

A They did.

Q Is it true that no coat or jacket similar to the coat or jacket described by the various witnesses, namely a gold-mustard or rust-colored jacket, was found among his personal effects?

A No mustard-colored jacket or gold-type jacket was found in these personal effects.

Q All right. Was, on the other hand, a blue jacket, a blue windbreaker-type jacket found?

A I cannot state. I was not present at that time to indicate that a blue jacket was found in these personal effects. I know a blue jacket was retrieved from this area, but I think at this time it was secreted in some sort of alcove.

Q But it was booked as evidence in this case?

A As possible evidence, yes, sir. Never being linked to this particular case.

Q When -- strike that.

When Mr. Lee, the defendant, was arrested, he was wearing, was he not, military fatigue clothing such as shown in People's Exhibit Number Twelve where he stands as the number five man?

A Yes, sir.

Q All right. Do you know of your own knowledge whether that was the same clothes that he was wearing at the time of his arrest or whether that was something similar that he had changed into?

A I recall the individual being in green army-type fatigue clothes. This could be the same outfit. Possibly a different one.

Q At the time of Mr. Lee's arrest did he have any other clothing, either with him, on his person or in his possession?

A Not at the time of his arrest, no, sir.

Q Did he have any money or any personal property on his person at the time of his arrest?

A I would have to check the police inventory. I do not recall at this time.

Q Did you attend the preliminary hearing in Mr. Lee's case on the 28th of June?

A I was present, yes, sir.

Q At the time of the preliminary hearing was Mr. Lee also dressed in the same military fatigue clothing as shown in the photograph of the lineup in front of you?

A I believe he was. I cannot recall one hundred percent.

Q At the time of the lineup, June 11th, he was the only person so dressed in military fatigue clothing, the rest of the subjects in the lineup had on civilian-type clothing; did they not?

A Yes, sir. They all appeared to have a shirt and pants on, ever what you might describe as civilian clothes.

Q Okay. The four of the six people in the lineup photograph do have a mustache; do they not, sir?

A They could be described as mustaches, yes, sir. Very faint. Very light mustaches.

Q Number three and number five in the lineup are clean shaven; are they not?

A No, sir.

MR. LASSART: I must object, your Honor. Number five, I

believe, is Mr. Lee.

MR. HINTZ: Excuse me. Strike that.

Q [MR. HINTZ] Number two and number four appear to be clean shaven; do they not?

A From the appearance of this photograph, this black and white eight-by-ten in front of me, yes, sir.

Q Were you one of the inspectors or the inspector that participated in showing photographs out of the Chinese mug shot book to the various witnesses on the night of the homicide?

A I was present, yes, sir.

Q And did other officers participate in this too?

A My partner on this that particular evening was Ron Snider and he also participated in this function with me.

Q I take it from your prior testimony that the witnesses had essentially given their statements to the officers, including yourself, regarding what they had seen as to the details of the shooting and also the description of the suspect before they began to look at photographs; is that generally correct?

A That is correct, sir.

Q Now with respect to the process by which the witnesses were permitted to be photographed for mug books, was this done altogether or was it done on a separate basis?

A The two sailors were placed in the back of the homicide detail with a volume, large book, and they were told to go through the book. They were supplied with a piece of paper and pencil and told to write down any particular page number that they might want to either refer back to either my partner or myself. And the three skiers -- there was a third skier, Steven Main -- were

taken to the opposite side of the homicide detail, also given a large volume, supplied with a piece of paper and pencil and also directed the same way that if they spotted an individual that they thought looked close or had some characteristics or features that should be brought to our attention, to jot down the page and when they finished going through the volume individually we would go back and go over these photos.

Q To maintain the integretity of this process of looking at photographs was an officer assigned to either the group of two sailors on one hand or the group of three skiers on the other?

A Inspector Snider remained with the three skiers. I, myself, was with the two sailors.

Q Were either group of individuals given any particular instructions by either Officer Snider or yourself with respect to what if anything they should say if they saw somebody who resembled or looked like the person that they saw fire the shot?

A I gave the instructions to both groups.

Q Would you reveal to the jury what those instructions were?

A I already have, sir.

Q In other words, keep it to themselves; is that it?

A Yes, to jot it down basically on a piece of paper the page number of the individual they would like to refer back to afterward.

Q And were they further instructed not to inform any other prospective witness as to who it was they had picked as a possible?

A Yes, sir.

Q Now growing out of this process I understand that several photographs of what has been referred to in this courtroom as look-

alikes or possibles had been earmarked or delineated for further observation; is that true?

A That was the night of the murder, yes, sir.

Q Yes, sir, the night of the murder. And do these people who were depicted as look-alikes or possible suspects, are they the people whose photographs appear in the folder that is marked People's Exhibit Number Eleven, I think?

A Yes, sir.

Q Yes, People's Eleven.

A I made this up, this look-alike folder, the following morning of the numbers that were supplied to me by the four witnesses.

Q Okay. Now there are five photographs, three on the left-hand side and two on the right-hand side; are there not?

A Yes, sir.

Q Now were those five people designated or selected or were those five photographs designated or selected by the several witnesses, the five witnesses on the night of the homicide as being possibles?

A Having characteristics similar to the man that they saw commit the murder. The picture of the defendant Chol Soo Lee was the best according to Andy Mill and Dave Lennon that they saw in the entire volume.

Q Lee and Mill tended to favor him; is that correct?

A Lennon.

Q I'm sorry. Lennon and Mill tended to favor Lee?

A Yes, they did.

Q So those five photographs were sequestered and later put

into the album that you now have?

A No, sir, the numbers were taken from out of the large book. When I say numbers, I'm referring to the San Francisco booking police number. These photographs were then ordered the following morning by myself from our photo lab. I received them later that morning and placed them in this manila folder.

Q Are those all Oriental males?

A They have oriental --

Q Features?

A -- descendants. They look Oriental to me, yes.

Q Very well. The photograph of Mr. Lee, at the top left there is a notation that that photograph was taken August 2nd, 1969; is that true?

A Yes, sir, this particular photograph of the defendant was August 2nd, '69.

Q Okay. That would have been roughly four years after -- strike that -- four years before the date of June 3rd, '73, the date of the homicide?

A That is correct, sir.

Q Now on the lineup on the 11th day of June 1974, is it correct that of the five persons depicted in People's Number Eleven only Mr. Lee was in that lineup?

A I believe -- and I -- number five is also number four in the lineup, if my memory serves me correct.

Q Do you have a name by number five in People's Number Eleven?

THE COURT: People's Number Eleven would be the lineup photograph, sir?

MR. HINTZ: Yes, sir -- no, sir, People's Number Five in the

spread.

A No, sir, I do not have his name. I would have to check our records in San Francisco.

Q [MR. HINTZ] The person in number five position which is the lower right-hand side of the spread?

A Yes, sir.

Q Your belief is that he also appeared in the lineup?

A If my memory serves me correct, I believe either one or more did serve in the same lineup.

Q Could you tell us which one those were from just visual observation now?

A As I stated, I believe five in this lineup is the same as four in this one.

Q Referring to the photograph in the lower right-hand side of People's Number Eleven in evidence, is this the photograph you believe to be the same man as appears in number four position here?

A Yes, sir, I believe it is. I couldn't say for certain.

Q Would you circle that, Inspector, and put your initials there?

A When you say "circle," you mean the person?

Q Circle the photograph here, if you will, and circle the head of number four there and just to the side put "FF."

A [Witness marked the diagram.]

Q Excluding the photograph of that person who you have just circled and further excluding the photograph of the suspect Charles Lee, is there any other individual who appears in the spread photographs, People's Eleven, who appears to have been in

the lineup?

A No, sir.

Q I would like to shift your attention now to something else. The deceased in this case, what was his true name so far as you know?

A Yip Yee Tak, T-A-K.

Q Did he have any other names that he was known by?

A He was known as Yip Yang, Y-A-N-G.

Q And anything else?

A No, sir, not to my knowledge.

Q Did your investigation reveal his last address or closest of kin?

MR. LASSART: Objection, your Honor. This is irrelevant.

THE COURT: I assume it's preliminary. Go ahead.

A The last address I believe was 1040 Post Street. His next of kin would have been a girlfriend named Lee Fish, F-I-S-H.

Q Was Mr. Yip Yee Tak of Chinese ancestry?

A I believe he was from Hong Kong, yes, sir.

Q Is there a distinct Chinese or Chinatown community within the community of the City of San Francisco?

A Yes, sir.

Q Has there been a number of killings of Chinese persons in the past two or three years in a gang-land type way such as this?

A Yes, sir.

Q In fact was this something like about the seventeenth or eighteenth within a two and a half or three year period?

A Approximate.

Q As the officer in charge of this investigation, Mr. Falzon,

do you have any motive as to why this man was killed? Any knowledge of a motive as to why Mr. Yip Yee Tak was killed?

A Yes, sir, I do.

Q Would you state that for the jury.

A The motive behind this is that the individual Charles Soo Lee was a gun for hire. The information that we have is that he was hired by the Wah Ching Group of San Francisco. It's a gang. He was hired to kill a member of their own gang, Yip Yang. The reason Yip Yang was murdered was because he was building up defense money, approximately ten thousand dollars, to free two of the members of his own gang that were in prison. They went to an attorney who placed a judge in a law firm. They thought by going to this particular attorney that the judge would show a little favoritism towards these two suspects.

The money apparently was raised, close to ten thousand dollars. One of the individuals was out on bail. His name was Anton Wong. While out on bail he was murdered. The ten thousand dollars apparently disappeared. This Yip Yang, what he did do with the money, I don't know, but his own gang put a contract out for him and they went to the Robert Louie Gang. The Robert Louie Gang is part of the gang defendant Chol Soo Lee belongs to. The information that we have is that Chol Lee was hired as a hired gun. There were two members of this particular gang, Phillip Gee and Chol Lee, who were the so-called hired guns and for a price would kill.

Q All right. Now to back off a minute, Anton Wong -- strike that.

You mentioned the name Wah Cheng; is that spelled W-A-H?

THE COURT: Would you approach the bench here, please?

[There was a conference off the record.]

Q [MR. HINTZ] Wah Cheng is a term or --

MR. LASSART: Excuse me, your Honor. May I interrupt? Wah Ching, just for the record to be clear.

Q [MR. HINTZ] All right. Wah Ching is a term that means Chinese youth; does it not?

A Chinese gang. I'm not an expert in Chinatown intelligence, but it does basically mean Chinese youth, Chinese gang, yes.

Q And the Wah Ching or Wah Chung was one of several so-called Chinese youth gangs?

A To my knowledge, yes, sir.

Q And this Antone Wong, A-N-T-O-N, Wong, W-O-N-G, was reputed to be the leader of the Wah Chung?

A Yes, sir.

Q And he was on bail for a serious felony offense sometime prior to his own death; was he not?

A That is correct.

Q And on the 24th day of May, 1973, he was shot and killed on a Chinatown street?

A Approximately, yes.

Q Okay. And at the time of his death it was believed that the deceased in this case, this Yip Yee Tak, was collecting money for his defense, the defense of Anton Wong?

A That is correct, along with, I believe it is, the Sing Leng Brothers. There is two of them. There was three individuals that were charged and the victim Yip Yang was collecting money for their defense.

Q And after the death of Anton Wong on the 24th day of May apparently this Yip Yee Tak simply took off with the money or misappropriated the money?

A The information that I have, that is correct.

Q And so that his death on June 3rd, 1973, is reputed to have been a contract killing because of the fact that he had misappropriated the money?

A That is correct.

Q Chol Lee is Korean; is he not?

A Yes, sir.

Q Having been born in Korea?

A To my knowledge, that is correct.

Q And isn't it a fact that Koreans mingle with the Japanese and not with the Chinese?

A Not to my knowledge.

MR. HINTZ: No other questions.

CROSS-EXAMINATION of FRANK J. FALZON

By MR. LASSART:

Q Now, Inspector Falzon, to fill in the picture a little bit, there are three basic gangs of Chinese youths in San Francisco; is that correct?

A To my knowledge, that is correct, sir.

Q That is the Wah Ching, which is one gang that up until Anton Wong's death he was the head of; isn't that right?

A Yes, sir.

Q His two chief lieutenants in that gang were Jerry and John Leng; isn't that correct?

A To my knowledge that is also correct.

Q And those two people appear in the lineup photographs with Mr. Lee as number one and number three; isn't that correct also? Jerry Leng being number one and John Leng being number three?

A Yes, sir.

Q Now along with them in that photograph there is one of the Louie brothers which is number two in the lineup; isn't that correct?

A Yes, sir, according to the card that is Mr. Louie, yes.

Q Which one is John Louie or Robert Louie?

A I would have to check the sheet. What I'm looking for, Counsel, is the lineup card that lists the names of all individuals in this particular lineup.

Q Let me help you out. The last time I saw it it was at the bottom of the manila folder in an envelope. The regular business envelope the last time I saw it.

A I can't seen to locate it at this time. It's one of the Louie brothers. Which one, I can't state.

Q Let me have your file for a second. Maybe I can find it.

At this time, your Honor, I would ask that this card be marked People's next in order for identification, please.

THE COURT: People's Thirty-seven for identification.

THE WITNESS: Thank you, counsel.

MR. LASSART: You are welcome.

[A lineup card was marked People's Number Thirty-seven for identification.]

Q [MR.LASSART] At this time, Inspector Falzon, I'm going to show you People's Number Thirty-seven which is marked for

identification. I ask you if this is the card with the appropriate names of the gentlemen who appeared in the lineup on June the 11th of 1973 in the Hall of Justice?

A That's correct, sir, this is the card I was looking for.

Q Now number one, with relation to your records there, is Jerry Leng; isn't that correct?

A Yes, sir.

Q Do you have a felt-tipped marker before you, sir?

A I do not.

Q Okay. Let me give you this. Underneath the photograph of Jerry Leng on People's Number Twelve which is marked in evidence just write "J. Leng."

A I've done it.

Q All right. Number two is Robert Louie; is that correct?

A Yes, sir.

Q All right. Will you write "R. Louie" underneath that.

A I have.

Q And then number three is John Leng; is that correct?

A Yes, sir.

Q Would you write "John Leng" underneath that one?

A I have.

Q Number four is Sing Lee Chan; isn't that correct?

A Yes, sir.

Q Also known as Steven Chan?

A To my knowledge.

Q All right. Would you write "Steven Chan" underneath that?

A It's done, sir.

Q Number five is Chol Soo Lee, the defendant in this case; is

that correct?

A That is correct.

Q That's self-evident. You don't have to write that.

Now number six is a gentleman named Randolph Wong; isn't that correct?

A Yes, sir.

Q Would you write "R. Wong" under that.

A [Witness marked the photograph.]

Q Now, Inspector Falzon, you are familiar with which gang Mr. Lee belonged to at the time of this killing; are you not?

A Yes, sir, I am.

Q He belonged to Robert Louie's gang; is that correct?

A Yes, that's correct.

Q That's also known as the Ski Mask Bandits; is that correct?

A That is correct.

Q Now do you recall who were members of the Ski Mask Bandit gang that appear in that lineup?

A I would have to check my notes again, sir.

Q Let me help you out again. What about John Louie, number two? Isn't he one of the members -- excuse me, Robert Louie. Isn't he not one of the members of the Ski Mask Gang?

A Robert Louie is John Louie's brother, John Louie which was the purported leader of this particular gang.

Q And also number six in the lineup, the man to the left of Mr. Lee, Randolph Wong, he is also a member of the Ski Mask Bandit Gang; isn't that correct?

A To my knowledge. I arrested Randolph Wong two years prior for murder.

Q Have you seen him in the near or recent past?
A Yes, I have.
Q When did you see him last?
A I last saw him shortly prior to this trial starting exiting the bedroom of a young lady named Cynthia McGill.
Q Now on that photograph there we have it labeled Jerry Lang who is number one and John Lang, number three, the lang brothers. They are members of the Wah Ching; isn't that correct?
A To my knowledge they are, yes, sir.
Q And number four is Sing Lee Chan. He is also a member of the Wah Ching Gang; isn't that correct?
A To my knowledge.
Q Now when you were asked a question concerning motive did you have information that you had received from various sources as to how this agreement was reached by which Mr. Lee would kill Mr. Tak?
A Yes, sir. This was apparent agreement in jail between Anton Wong and, I believe it was, Steven Chan was also present. I believe the Leng brothers.
Q And they had agreed with what member of which gang that this should occur?
A One of them. I don't know correctly which. Purported that he would not testify, have a member of his group testify against the Sing Leng brothers if this contract could be worked out.
Q Okay. Now let's put it in perspective. Then the agreement was worked between the Wah Ching and the Ski Mask Bandits -- that is correct? Those two separate gangs?
A With an individual who was the so-called leader of the Ski

Mask Gang or one of the foremost leaders, Ronald Gong.

Q Now Ronald Louie was a member of the Ski Mask Gang?

A Robert Louie, sir.

Q John Louie which is a member of the Ski Mask Gang; isn't that correct?

A Yes.

Q A guy named Ronald Gong is a member of this Ski Mask Gang?

A That's correct.

Q Now the agreement that you have information concerning is that a member of the Ski Mask, Mr. Lee, would kill a member from the Wah Ching; isn't that correct?

A Yes, sir.

Q And that is Mr. Tak; isn't that correct?

A Known as the "Professor With The Doctor" was his street name.

Q Now this, in essence, was a favor to be worked between the two gangs, was it not, Inspector?

A Yes, sir, from the information that I have, the intelligence, yes, sir.

Q Is it also correct that involved in this incident was a man named Wayne Fung; his name was used at the time of this agreement?

A Yes, sir.

Q Now Wayne Fung was a member, was he not, of the Wah Ching?

A Yes, sir.

Q And Wayne Fung being a member of the Wah Ching was going to testify against Robert Louie in a case of assault with a deadly weapon isn't that correct?

A That is the information that we have as to an agreement being worked out.

Q Okay. So Robert Louie and Anton Wong got together and made a deal, didn't they, Inspector?

A Yes, sir.

Q Wayne Fung wouldn't testify against Robert Louie or withdraw his testimony if the professor was killed by a member of Robert Louie's gang; isn't that the basic agreement that you heard about?

A This is the intelligence that I was told, yes.

Q Now subsequent to this agreement the professor or Mr. Tak was killed; was he not?

A Yes, sir.

Q Before he was killed Mr. Anton Wong had been killed; isn't that also correct?

A Approximately a week prior, I believe, yes.

Q But the contract was still carried out; was it not?

A Yes, sir.

Q Subsequent to that time though, Mr. Wayne Fong testified against Robert Louie; isn't that also correct?

A To my knowledge.

Q And Robert Louie was convicted of assault with a deadly weapon?

A He was.

Q And after that testimony of Wayne Fung an incident occurred on 19th and Lincoln Way in San Francisco; didn't it?

A Another Oriental shooting, yes.

Q At that time Wayne Fung was killed?

A Yes, sir.

Q He was assassinated on the street?

A Yes.

Q And it's an unsolved murder?

A At this time.

Q All right.

THE COURT: Counsel, before we go any further I'm going to take the morning recess.

Ladies and gentlemen of the jury, adhere to the admonitions heretofore given. We will take a fifteen minute recess.

[A recess was taken.]

---oOo---

THE COURT: All right, let the record reflect the jurors are all in place, counsel for both sides and defendant present.

Proceed, counselor.

Q [MR. LASSART] Now, Inspector, on the day of the shooting incident you spoke to Mr. Lennon, Mr. Mill, Mr. Huey; is that correct?

A I did, sir.

Q Did you also speak to Mr. Sondreson?

A I did.

Q And you spoke to Mr. Sondreson and Mr. Huey together; is that correct?

A Yes, sir, at the homicide detail.

Q Were you able to observe each of these two men, Mr. Huey and Mr. Sondreson, as they related to you the events that they say they saw?

A Yes, sir.

Q And did you describe -- of the two, can you describe each of their abilities to communicate the facts to you, their ability to describe the incident.

A Mr. John Huey was very cooperative and very helpful. He was an individual that appeared to me to know what he was talking about and it related exactly what he saw. And --

MR. HINTZ: Objection. Calling for conclusion, your Honor.

THE COURT: Sustained.

Q [MR. LASSART]: Were you able to observe the demeanor of Mr. Sondreson as he spoke to you that day?

A Yes, sir.

Q And could you describe his demeanor?

A He was relying mostly on Mr. Huey.

Q Did Mr. Huey -- after the discussion at the homicide detail with all of the men who you were able to ascertain actually saw something pertaining to the events, did you come up with the description for the person who perpetrated the murder?

A Yes, sir. In this description I put out the following morning for an all points bulletin to go up and down the State of California and also a local teletype for the police officers within the City of San Francisco.

Q And what was the height that you placed in this description?

MR. HINTZ: I would object to this, your Honor, as being a composite.

THE COURT: Overruled.

A The teletype I placed out, the height I placed at five-six to five-eight.

Q And the general weight of the suspect?

A A hundred and forty-five pounds.

Q Approximate?

A And I was going to say medium build.

Q. Approximate age?

A. I put eighteen to twenty-three years.

Q. Now in that particular teletype you did or did not place in there the fact or the information concerning any type of a mustache?

A. No, sir, I did not.

Q. Now do you recall seeing Mr. Lee on June 8th, 1973, the day of his arrest?

A. I talked to him, yes, sir.

Q. Was he wearing what you would call a mustache at that time?

A. It's depicted in the picture. It's a very light mustache, kind of more of what I describe a dirty lip.

Q. And did you -- you had an opportunity to observe Mr. Lennon at the time of June 3rd, when he related to you the facts, the incidents as he observed them; is that correct?

A. Yes, sir.

Q. He had a mustache; didn't he?

A. He had a bushy growth on his lip, yes, sir. It was quite evident that it was a mustache.

Q. Now do you know an officer named Joel Harns?

A. I do, sir.

Q. And have you spoken to Joel Harns since this incident pertaining to activities involving this case?

A. I have, sir.

Q. Subsequent to your viewing the scene, inspector, you went first to Central Station; is that correct?

A. Following a slight investigation at the scene we proceeded to Central Police District's Police Station.

Q And you didn't remain there; did you?

A There was a brief time we remained at Central Station so that the officers could get necessary data for their initial report and then we responded to the homicide detail.

Q With regard to that you then went to the homicide detail?

A Yes, sir.

Q Now the Central Station and homicide detail are located in different places in San Francisco; are they not?

A Yes, sir. The Central Police District is near the Chinatown area. The Hall of Justice is south of Market at 850 Bryant Street.

Q And at any time subsequent -- either at the Hall of Justice, after the interview at the Hall of Justice up to the time of trial, did Mr. Huey or Mr. Lennon indicate to you that they recalled this so-called mustache?

A Yes, sir.

Q And when was that?

A I believe it was here in this building. The skier works for Look-Nevada, I believe, ski bindings. Dave Lennon stated that he recalled a slight mustache and the fact that he had told Officer Joel Harns at Central Station.

MR. HINTZ: Object to the last part as hearsay.

THE COURT: Sustained.

MR. HINTZ: Ask it go out.

THE COURT: Be stricken.

Q [MR. LASSART] Mr. Huey -- did he relate that fact to you before he took the stand here in the courtroom?

A Yes, sir, he did.

Q And the fact -- I mean the facts concerning the mustache?

A Yes, sir.

Q Now with regard to some of the testimony concerning the address of Mr. Lee on or about the 7th of June of 1973, the date that Mr. Lee was arrested, were you able to ascertain whether or not Mr. Lee held any other addresses besides 438 Broadway, Apartment Number Eight?

A I know of four locations that the defendant was at.

Q Can you give those addresses?

A The address on Anza Street where he was staying shortly before being arrested, and an address that we found out later where he was staying in some hotel down on Clay Street. He was also staying, I believe it was the 600 block or 1100 block -- I have it in my notes -- on Lagoona Street and also the address where he was staying shortly prior to his arrest at 438 Broadway Street.

Q Were you able to indicate whether or not Mr. Lee had used addresses other than 438 Broadway within say a short period of time before the 7th of June?

A The information that I have --

MR. HINTZ: Object to this as being vague.

THE COURT: Rephrase your question, please.

Q [MR. LASSART] Had Mr. Lee in any way used a different address within, say, a week before June the 3rd or June 3rd of 1973, a different address being different from 438 Broadway?

A Yes, sir, he did.

Q Was that the Lagoona Street address?

A Lagoona Street and also to my knowledge the Anza Street

address.

Q And the Anza Street address is 602 Anza; is that correct? Six hundred block of Anza?

A I'll check my notes here. I believe it is the 600 block, 602 Anza. I could be mistaken. I have it in here somewhere again. I can't seem to locate it. It's 208 Anza, statement taken of Joan Hu where the defendant was staying shortly prior to his arrest.

MR. LASSART: I have no further questions, your Honor.

THE COURT: Counselor?

MR. HINTZ: Just a moment, please.

REDIRECT EXAMINATION of FRANK J. FALZON

By MR. HINTZ:

Q Inspector Falzon, with respect to the Clay Street address do you have a precise number on that?

A I'll give you the Lagoona Street first, 1801-A Lagoona Street. There is a motel -- or I should say a hotel in China-town. It's in the 600 block, I believe, of Clay Street.

Q Broadway is 438 Broadway?

A Yes, sir.

Q Now did you get this information from independent sources or from his probation officer?

A Independent sources.

Q Did these sources reflect that immediately prior to moving to 438 Broadway in late April of 1973 he did live on the 600 block on Clay Street?

A We were unable to ascertain the dates that he lived on Clay

Street in that the books were not kept properly and I can only be shown a registry book of 1974, and when I asked to see the year prior they showed me a book of 1946.

Q You are not trying to suggest to the jury that he had four separate addresses that he maintained all at one time; are you?

A He was staying at two places I know for a fact, the one with Joan Hu on Anza Street and the one on Broadway Street. The address on Lagoona Street, 1801-A Lagoona Street, apparently he was staying there also. There were members of the family or friends of the family and it was -- I was unable to ascertain what date exactly he was there except that he was there prior to being arrested.

Q Specifically is it not your information that from the time that he left his hotel on Broadway after being threatened by the landlady that the police were coming that he was then at the Anza Street address from sometime June 5th until his arrest? Is that not so?

A I don't know this for a fact outside that Joan Hu stated that he was there. He very well could have gone to the address also on Lagoona Street, sir. That's where the friends of the family were.

Q Your information as to the address at 438 Broadway, this Skyway Hotel, was that he was there from late April until June 5th when he left because the landlady had threatened that the police were coming; is that not true?

A According to Florence Etcheveste, yes, sir. She was the manager that testified here earlier.

Q Your address on the Clay Street address is simply incomplete?

A. It was. The investigation, as far as I was concerned, was incomplete as I could not check the registry records.

Q. Did you attempt to talk to any tenant manager, occupants of that building?

A. I did, sir.

Q. Did you get any information from those persons?

A. Vague. He stated he recalled Chol Soo Lee and that was the most I could get from the man.

Q. Did you have a mug shot of the man at the time you made the investigation at the Clay Street Hotel?

A. I did, sir.

Q. Is it not a fact that it could have been a situation that he lived at Clay Street before moving over to Broadway in April?

A. The realm of possibility is that, sir, yes, sir.

Q. And that is a hotel of sorts or motel?

A. It's a hotel-motel. Very cheap rooms. Three dollars per night.

Q. Now who resided at 1801-A Lagoona Street?

A. Friends of the defendant's family. That's how they described themselves.

Q. Do you have names for those people?

A. Talked to a young lady, first name was Chon, C-H-O-N, and I cannot recall her last name. I might have it here in my notes.

Q. When did you speak to this Chon?

A. Chon Hi, H-I, Byun, B-Y-U-N, 1801-A Lagoona Street. I talked to her. It would have been Friday night.

Q. Just this past Friday night?

A. Yes, sir.

Q Now was this 1801-A Lagoona Street a private residence or hotel or some public place?

A It's a set of flats, 1801-A being the upper flat.

Q Did this Miss Chon Hi Byun have records depicting when the various tenants were there during mid-year 1973?

A No, she just stated that she knew Chol, he was a friend of the family.

Q And at some point in time he had stayed there?

A Yes, sir, prior to his arrest.

Q But she didn't say how long before his arrest; did she?

A Did not give specific dates, that's correct.

Q So in attempting to reconstruct this in sequence I take it that your attempt to trace Mr. Lee back would show that sometime, at one time at least, he lived at 1801-A Lagoona Street; is that right, sir?

A Yes.

Q And at some other time he may have lived on the 600 block on Clay; is that right, sir?

A Yes, sir.

Q At the time of the murder he lived and had been living for at least a month at 438 Broadway?

A From records, yes, sir.

Q And also from Mrs. Etcheveste?

A That's what I said, sir, his records.

Q And also from Mrs. Etcheveste he remained at Broadway until at least two days after the murder before running away?

A That's correct.

Q And from talking to someone at 208 Anza he had been there for

a day or so before his arrest?

A Yes.

Q And your records indicate, do they not, that when he was arrested he was returning to the address on Broadway?

A To pick up a welfare check. He was going back to Broadway Street, yes.

Q Referring to the testimony just asked of you regarding witnesses Huey and Lennon, now you told me on direct examination this morning that when these persons were interviewed a year ago neither mentioned seeing a mustache on the face of the suspect; right?

A A year ago they did not mention it to me. Apparently it was mentioned to Officer Harms.

MR. HINTZ: I would ask that go out as being hearsay and nonresponsive, your Honor.

THE COURT: Sustained.

Q [MR. HINTZ] As to these two persons, is it correct to say Mr. Huey has apparently been at all times in the State of Arizona and Mr. Lennon has at all times been in the State of Colorado since one year ago when there was a preliminary hearing in this case?

A I cannot state that.

Q They are not residents of San Francisco in any event?

A They are not.

Q They were not given the lineup or mug shot pictures of Mr. Lee to keep his likeness in mind for the year from the time of his arrest until the time of this trial; were they?

A No, sir.

Q Now of the three witnesses who testified at the trial on the People's case in chief, Mr. Mill, the young skier, was first; Mr. Huey was second and Mr. Lennon was third?

A Yes, sir.

Q Is that correct, sir?

A That is correct.

Q Now an office was provided for you and the deputy district attorney, Mr. Lassart, upstairs on the third floor of this building for you to use during the period of your preparation of this case; was it not?

A Out of the courtesy of the district attorney's office, yes, sir.

Q Right. And you talked to these witnesses before they came to court and testified; is that correct?

A That is correct.

Q And they were given the opportunity to read over their prior testimony and look over their prior statements; were they not?

A They were allowed to read the police statement that I had and also their statement at the preliminary hearing.

Q And they were also allowed to see certain photographs of the suspect, Mr. Lee, were they not too?

A This possibility existed. I don't recall it though, sir, yes, sir.

Q Would those photographs also have included mug shots as well as lineup photographs both head and profile view?

A Possibly, yes, sir.

Q Now going back a year they did see photographs of Mr. Lee the night of the homicide, June 3rd; right?

A. In the large mug book, sir.

Q. They saw a photograph of him in a large mug book; right?

A. Yes, sir, where there were hundreds of photographs they saw a picture of Chol Lee, yes.

Q. They also saw the lineup photograph -- strike that.

They also saw the lineup itself on June the 11th?

A. June 11th, sir.

Q. Yes, excuse me. People's Number Twenty-eight showing a profile view of Mr. Lee at the time of the lineup, they saw that lineup in other words, right?

A. They viewed this person, yes, sir.

Q. They also saw People's Number Twelve which is the head view of the lineup on June 11th?

A. Yes, sir.

Q. They also were present at the lineup itself when -- strike that.

They were also present at the preliminary hearing in San Francisco on June 28th, 1973; were they not, sir?

A. If that's the correct data. They were present at the preliminary hearing, that is correct.

Q. And you, sir, were present and participating in an assisting capacity to the deputy district attorney at the time of the preliminary hearing; were you not?

A. I was.

Q. And at none of those prior times, either June 3rd, June 11th or June 28th, 1973, did either Mr. Huey or Mr. Lennon mention a mustache?

A. No, not to me they didn't.

MR. HINTZ: Nothing else, sir.

RECROSS-EXAMINATION of FRANK J. FALZON

By MR. LASSART:

Q Inspector Falzon, do you remember asking Mr. Huey and Mr. Lennon or Mr. Mill whether or not they had seen a mustache on the man who did the killing?

A I did not ask the question.

Q So you did get an answer but you didn't ask the question; is that correct?

A That's correct.

Q Just one further point on the address. Don't you have a document with you, Inspector, that would indicate that Mr. Lee used the address of 1801-A Lagoona within four days of the shooting?

A I do, sir.

Q What is that?

A At the time of arrest the defendant was in possession of a traffic citation issued May 30th, 1973, which would be approximately three days to four days prior to the murder, and as his residence he listed 1801-A Lagoona Street, City of San Francisco.

Q Would you take that particular citation out of your folder.

At this time, your Honor, I would ask this yellow piece of paper containing thereon a citation, the number is G756556, be marked People's next in order for identification.

THE COURT: People's Thirty-eight.

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[A traffic citation was marked People's Exhibit Thirty-eight for identification.]

Q [MR. LASSART] Inspector Falzon, I show you People's Number Thirty-eight which is marked for identification and ask you if you recognize that as a traffic citation that was taken from the property of Mr. Lee?

A Yes, sir, this is a traffic citation similar to the ones that are issued by the San Francisco Police Department.

Q And is that particular citation the item that brought you to 1801 Lagoona Street to check on that address there?

A That's how I independently came up with the address of 1801-A Lagoona Street.

MR. LASSART: I have no further questions.

MR. HINTZ: I have a couple more on the mustache factor, your Honor.

THE COURT: Go ahead.

REDIRECT EXAMINATION of FRANK J. FALZON

By MR. HINTZ:

Q I appreciate your testimony, Inspector, that you had asked no questions to Mr. Huey or Mr. Lennon regarding a mustache, but do you know whether or not Lennon and Mill came to Sacramento together?

A They did not, sir.

Q They came from different places?

A Yes. David Lennon drove out from, I believe it was, Aspen, Colorado, following a Rugby match and he drove the distance whereas Andy Mill had already testified and left and was flying

back, I believe, to Aspen, Colorado.

Q They were all here during parts of the same day which would have been Wednesday, the 5th, one week ago?

A They were not all here. If my memory serves me correct, I believe Andy Mill was gone by the time Dave Lennon arrived.

Q Was Mr. John Huey here? In fact didn't Mr. Huey succeed Mr. Mill to the stand?

A Yes, he is a sailor. Now we are talking about a different individual and he was here in Sacramento approximately the same time as the first witness, Andy Mill.

Q And he followed Andy Mill to the witness stand; did he not?

A That's correct, sir.

MR. HINTZ: Okay. Nothing else.

MR. LASSART: Just to clarify one thing.

THE COURT: Go ahead.

RECROSS-EXAMINATION of FRANK J. FALZON

By MR. LASSART:

Q I'm sorry. Mr. Lennon drove in 5:00 in the morning the morning he testified; is that correct?

A Yes, sir, he did.

MR. LASSART: I have no further questions.

THE COURT: Step down, sir.

Call your next witness.

MR. HINTZ: Call the defendant, your Honor.

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CHOL SOO LEE

called as a witness.

THE CLERK: What is your name, please?

THE WITNESS: Chol Soo Lee.

THE CLERK: Would you raise your right hand. Do you swear to tell the truth, the whole truth and nothing but the truth, so help you God?

THE WITNESS: I do, sir.

THE CLERK: You can be seated right up here, please.

DIRECT EXAMINATION

By MR. HINTZ:

Q. Would you state your name once again for the Court and jury?

A. Chol Soo Lee.

Q. And would you hold your voice up and speak slowly?

A. Chol Soo Lee.

Q. Mr. Lee, how old are you?

A. Twenty-one, sir.

Q. Where and when were you born?

A. Seoul, Korea, August 15, 1952.

Q. When did you first come to the United States?

A. November 1964.

Q. Sixty-four?

A. Yes, sir.

Q. And where did you live after you came to the United States?

A. Somewhere on Noley Street. I don't know the address.

Q. Where?

A. Noley Street.

Q In what city?
A San Francisco.
Q Have you lived most of your life in the San Francisco Bay Area?
A Yes, sir, since I've been here.
Q Having been born in Seoul, Korea, are you of Korean descent and ancestry?
A Yes, sir.
Q Prior to your arrest for this charge what type employment did you have?
A I was a cook.
Q Where were you employed as a cook?
A Jim's on Columbus, about two blocks away from where I was living.
Q What kind of place is that, a hamburger stand?
A It's more of a hamburgers and breakfast place.
Q What other recent employment have you had aside from being a cook before your arrest?
A Dishwasher.
Q And where were you working as a dishwasher?
A Sims'.
Q Sims'?
A Yes, sir.
Q In more than one location?
A Yes, different locations.
Q All in the San Francisco area?
A Yes, sir.
Q Now were you receiving some type welfare assistance at the

time of your arrest?

A Yes, sir.

Q Where were you living at the time of your arrest?

A 438 Broadway.

Q Is that the so-called Skyway Hotel?

A Yes, sir.

Q What room did you occupy?

A Room Eight.

Q How long before your arrest on June 7th did you live at the Skyway Hotel?

A About two months.

Q Before that where did you live?

A On Clay Street -- no, no, I went to -- I went home to my mother for a while, help her with the -- I left the job as cook to go help my mother. She just started a restaurant and few months before I was arrested and before she moved to San Jose she was living at 1801-A Lagoona Street where I was living at for almost seven years.

Q You had relatives of your mother who lived at 1801 Lagoona?

A I did not know who lived at 1801-A.

Q I'm sorry?

A I do not know. I think maybe might be my mother's friend because she told me the person who sold my mother the restaurant moved to the address.

Q I have here two pictures, People's Thirty-one, Thirty for identification. Is that the room you occupied there?

A Yes, sir.

Q And People's Thirty-one. Is that also another view of the

room you occupied?

A. Yes, sir.

Q. There is an object that is circled there on top of the dresser. What is that?

A. A pan.

Q. What kind of pan is that?

A. Cooking pot.

Q. Did you have any type of material or objects to cook with in your own room at the time before your arrest?

A. I had something like this, maybe two, three different size, and hot plate and chop sticks and some other things to eat with.

Q. Charles, you said you are twenty-one years old; right?

A. Yes, sir.

Q. How tall are you?

A. About five-feet-four. 5-4

Q. At the time of your arrest what was your approximate weight?

A. About a hundred and twenty-five. 125

Q. I would like to direct your attention now to the evening of or the day of Sunday, June 3rd, 1973. Do you have any recollection of the events of that day, June 3rd?

A. I was sleeping in. About between 7:00 and 7:30 I received a telephone call from Cassandra Owang.

Q. You were sleeping where?

A. In my room.

Q. You say you received a telephone call?

A. Yes.

Q. Now did you have a telephone in your own room?

A. No, sir.

Q Was your hotel a two-story hotel?
A Yes, sir.
Q Is there a telephone on the wall somewhere out in the hallway outside of your door?
A Yes, sir.
Q Did somebody come for you to tell you that there was a call for you on the phone?
A Yes, sir.
Q And who would that be?
A The person that lived right next to the manager. The person the landlady testified that he had died.
Q Was that a man or woman?
A Man.
Q Of what race was that man?
A Maybe Philippino, maybe Mexican.
Q He came to your room to tell you there was a call for you; is that right?
A Yes, sir.
Q And you estimate the time to be what?
MR. LASSART: Objection, your Honor.
THE WITNESS: Seven, 7:30.
MR. LASSART: Well, I can't see the purpose for it.
THE COURT: Go ahead.
Q [MR. HINTZ] You estimate the time to be about what that night?
A About 7:00 ot 7:30.
Q Who was the person calling you?
A Cassandra Owang.

Q Can you spell her name for the reporter?

A S-A-N-D-Y.

Q Last name?

A O-W-A-N-G.

Q Who was she, Sandy?

A Just the person I was going with, my girlfriend.

Q As a result of this phone call did you make some plans to get together or to meet with her later that night?

MR. LASSART: Objection, your Honor. This is hearsay.

THE COURT: Overruled. Go ahead.

A A couple days before she told me, you know, she's going to come back to San Francisco to go to work, Fairmont Hotel.

Q When she called you that night did you make some plans to meet her or pick her up?

A Yes, sir. She told me she was getting off work late that night, told me to come up and pick her up.

Q Where did Sandy work at that time?

A She was trainee cashier at the Fairmont Hotel.

Q Fairmont Hotel is a big hotel?

A Yes, sir.

Q How far, approximately, is the Fairmont Hotel from your hotel there on Broadway?

A Between about ten, twelve blocks.

Q Was the time fixed for you to meet her that evening?

A I don't understand.

Q Did you set a time when you would come for her?

A No.

Q Do you know what time she got off work?

A. About -- I went there about 10:00 o'clock, 10:30, and she asked the person she was working with that was watching over could she leave and the person told her okay.

Q. Turn to the diagram behind you, Defendant's Exhibit B, the large one that is to scale. Do you know that intersection of Pacific and Grant Avenue?

A. Yes, sir.

Q. Were you on or in or near that intersection around 7:25, 7:30 that evening?

A. No, sir.

Q. Have you ever seen this weapon before? Have you ever seen this weapon before, Defendant's Exhibit Seventeen?

A. No, sir, I've never seen it before.

Q. You've heard the name mentioned in this courtroom, Yip Yee Tak, also Yip Yang, as describing the name and identity of the dead man. Did you know that man?

A. No, sir.

Q. Did you ever see that man before to your knowledge?

A. No, sir.

Q. Did you appear anywhere on the southeast corner of that intersection and shoot that man?

A. No, sir.

Q. At about -- strike that.

Do you own or did you own at that time a coat or jacket that was either gold or mustard or bronze in color?

A. No, sir.

Q. About what time did you go to the Fairmont Hotel that night?

A. I went there about, maybe, 9:30 or 10:00 o'clock.

Q Did you meet with the girlfriend Sandy?

A No, I don't know which department she was working at so I was going around the building trying to find her and when I -- like cashiers, you know, I thought supposed to be in front of a restaurant so I was going in front of the restaurant in the Fairmont Hotel, different ones, and I could not locate so I started asking people that was working there.

Q Did you locate her?

A And somebody told me she worked in one of the restaurants which cashier is in the back of the restaurant at the kitchen.

Q Did you find her?

A Yes, sir.

Q Did you and she leave the Hotel Fairmont together?

A Yes, sir.

Q Do you have any idea as to the approximate time you left there?

A Between 10:00, 10:15.

Q Were you driving or were you on foot?

A I was on foot.

Q Were you on foot going there too?

A Yes, sir.

Q When you left the Fairmont Hotel at 10:00 to 10:30, with Sandy where did you go?

A We walked down to Stockton Street. From Stockton Street I told her, come, walk down Stockton. We turned to go Broadway by Stockton, Broadway, I told her I was going to get something to eat, told her to just go to my house and wait.

Q You say you went from Fairmont to the area of Stockton and

Broadway?

A. Yes, sir.

Q. Was there a restaurant or place of some kind there?

A. Well, I was going to pick up -- to go restaurant at Jackson and Grant Street.

Q. Did you pick up some food there?

A. Yes, sir.

Q. Where did Sandy go when you went to the restaurant?

A. She went to my house or room.

Q. What kind of a friendship or relationship did you have with her at that time?

A. I was going with her for about a year. We had more of like a sleeping relationship.

Q. You had a sleeping-type relationship with her?

A. Yes, sir.

Q. Did you acquire or buy some food in this restaurant?

A. Yes, sir.

Q. And then where did you go?

A. I came up and I saw somebody and me and him talked for a couple minutes and told me to go back downstairs, order, get some poke buns, you know, Chinese buns, buy some more for him and me and after that I went home.

Q. Can you estimate the approximate time that you returned to your home at 438 Broadway?

A. Between 10:30 and 11:00.

Q. Was Sandy there?

A. Yes, sir.

Q. Did you eat there in the room with her?

A. Yes, sir.
Q. Did she spend the night with you?
A. Yes.
Q. And what time -- strike that.
Did you or she leave later that night?
A. None of us.
Q. Did not leave?
A. No.
Q. The following morning which would be Monday, June 4th, did either of you leave together or separately?
A. I think me and her was over to her grandparents' house just not too far away. I'm not sure. Then went to see a movie. I think went to see a movie.
Q. At this time back in June of 1973 were you on probation for any type offense?
A. Yes, sir.
Q. Did you have a probation officer?
A. Yes, sir.
Q. Were you under any type of a routine on reporting to your probation officer?
A. Told me to call him once a month or sometimes I go see him.
Q. What was the name of your probation officer?
A. Thomas Sullivan.
Q. Is he the gentleman that testified last Wednesday in court here?
A. Yes, sir.
Q. On June 4th, 1973, did you have contact with him?
A. Yes, sir.

Q And where was that contact at?

A In his office.

Q And where is his office located?

A Hall of Justice.

Q And is that down on 850 Bryant Street?

A Yes, sir.

Q Is that the same building where the police and jail is?

A Yes, sir.

Q Do you recall approximately what time that day you went to have contact with him?

A Around maybe 12:00, 12:30. Had to wait about a half-hour before seeing him.

Q Did you have anything of particular importance or concern to report to him on that day?

A Yes, sir.

Q What was that?

A A gunshot went off in my room accidentally and the police came to my house and --

Q When did the police come to your house?

A Saturday, June 2nd.

Q You say a gunshot went off in the room?

A Yes, sir.

Q What happened to the bullet?

A It went to the next house, went through the wall, next house.

Q How did the gun discharge on June 2nd?

A During the time I was cleaning the gun up. I don't know. The thing went off. First time handling a firearm. I don't know how to handle it.

Q Pardon me? I'm sorry, I didn't --

THE COURT: Speak a little louder, please.

A This is the first time handling a firearm and I didn't know how to handle it and clean it. I was cleaning it getting the dust off it and it discharged.

Q What kind of gun was that?

A Big gun.

Q Is that the gun that has been here in court?

A Yes, sir.

MR. HINTZ: May we have it?

Q [MR. HINTZ] Is this the gun you referred to?

A Yes, sir.

Q Referring to People's Exhibit Number Thirty-five?

A Yes, sir.

Q That was the gun that discharged in your room on the 2nd of June?

A No, I think the day before that.

Q First of June? 61

A Yes, sir.

Q As a result of that gun discharging did the police come to your room?

A The day after.

Q And that would be the 2nd of June?

A Yes, sir.

Q Did you discuss this incident with the police on the 2nd of June?

A Yes, sir.

Q Did you tell a false story regarding what happened?

A. Yes, sir.

Q. When you went to your probation officer on the 4th of June, the following Monday, was any part of that gun discharge story told to Mr. Sullivan?

A. Yes, sir, I told him what I had been getting in trouble for.

Q. What did you tell him? Just speak very slow and keep your voice up.

A. I told him the gun went off accidentally in my room and -- I can't remember everything, but I told him I shot the gun by accidentally and it went off, would I be in any trouble, if, you know. And he told me no.

Q. Now did you and Sandy return and spend another night which would be the night of June 4th?

A. Yes, sir.

Q. At your room?

A. Yes, sir.

Q. Was Sandy still there the morning of June 5th, Tuesday following?

A. Yes, sir.

Q. Did something happen at or around 11:00 o'clock or 10:00 o'clock that morning between you and she, an argument or rumble of some kind?

A. I think it was much earlier.

Q. What time would you estimate?

A. Between 7:00 and 8:00.

Q. In the morning?

A. Yes, sir.

Q. What was that over?

A She asked to me did she want to leave and she say --
Q What did she say?
A She said she wanted to go and I say where did you want to go and she said just go and I said where do you want to go, I'll take you. And she just wanted to leave and I didn't understand it, you know; too early in the morning for her to go anywhere. And she said she was going over to her grandmother's house. And I said why didn't you rather stay -- early to go over.
Q In essence, she wanted to leave and you did not want her to leave; right?
A Yeah.
Q Did you get into an argument?
A Yeah, kind of argument.
Q Were you yelling at each other?
A Yes, sir.
Q While this argument was in process did Mrs. Etcheveste, the landlady, say or do anything?
A She came to the door, knocked and told me she is going to call the police if the noise doesn't calm down.
Q Did things calm down for a bit?
A Yes, sir.
Q Did they then stir up again, flair up again?
A Yes, sir.
Q What happened next?
A Started arguing with me again and told her to go home, go if you want to.
Q Did the landlady come again the second time?
A Yes, sir.

Q What, if anything, did the landlady say or do on the second time she came to the door?

A She said she called the police.

Q She said she had called the police?

A Yes, sir.

Q What did you do?

A After Sandy had told me, you know, she wanted to leave, go --

Q Say it louder.

A After she leave, you know, if the police come, you know, I had the gun there in my room and I don't want to be found with the gun so I go too.

Q The holster, is that here?

A Yes, sir.

Q Was this the holster for the big gun?

A Yes.

Q Was this in your room?

A Yes, sir.

Q And how about the bullets, referring to Number Thirty-four, been referred to, forty-one rounds of bullets?

A Yes, sir.

Q You took each of these items with you when you left?

A Yes, sir.

Q Why?

A Afraid maybe the police might find them in my room.

Q Had Sandy been with you from Sunday night continuously up until Tuesday morning when the landlady said the police were coming?

A. Yes, sir.

Q. Where did you go when you left your hotel room?

A. I went to Joanie Hu's house after I left.

Q. Who is she?

A. She just more like a close friend. She was ex-girlfriend.

Q. And where did Joan Hu live?

A. Eighteen -- I mean 608 Anza.

Q. Anza?

A. [Witness nodded head in the affirmative.]

Q. Was that one of the addresses that was referred to earlier by the inspector?

A. Yes.

Q. The following day did you call Mrs. Etcheveste and have a conversation with her on the phone?

A. Yes, sir.

Q. What do you remember saying during that conversation with the landlady?

A. I asked about my welfare check. And I apologize and she told me to move out.

Q. She told you you had to move out?

A. Yes.

Q. Was there anything else said to her that you remember?

A. Come clean the room out, take everything.

Q. When you left on the 5th you left in a hurry, I take it?

A. Yes, sir.

Q. And other than the gun holster and bullets, you took nothing else?

A. No, sir.

Q What type clothes or clothing were you wearing when you left there on the 5th of June?

A Same clothes I was arrested with.

Q That was military fatigue outfit?

A Army jacket and gray slacks.

THE COURT: We will take the noon recess. Recess until 1:45. Adhere to the admonitions heretofore given.

[Luncheon recess was taken.]

---oOo---

AFTERNOON SESSION

---oOo---

[Court reconvened at 1:45 p.m.]

THE COURT: All right, let the record reflect the jurors are all in place, counsel for both sides and defendant present.

Proceed, counsel.

MR. HINTZ: Okay. Could we have the last question and answer back, your Honor.

[The reporter read back the last question and answer.]

Q [MR. HINTZ] Mr. Lee, these clothes that you were wearing, at the time of the lineup, shown in People's Exhibit Number Twenty-eight and Exhibit Number Twelve, were these the same clothes you were wearing when you were arrested?

A Yes, sir.

Q They were the same clothes that you were wearing at the time of the lineup?

A Yes, sir.

Q And were they also the same clothes that you were wearing at the time of the preliminary hearing on the 28th of June?

A Yes, sir.

Q Going back for a moment, the address that was referred to earlier on Lagoona Street, 1801 Lagoona Street --

A Yes, sir.

Q -- had your mother at any time ever lived at that address?

A She lived there from 1965 to 1973.

Q To 19 what?

A Sixty-five to '73.

Q Until '73. Did you live with her at that address at any

of time?

A. Yes.

Q. When was the last that you lived at that address on Lagoona Street?

A. I think sometime in maybe August. No, not August. I think August. Around August, September.

Q. Of what year?

A. Nineteen seventy-two. 72

Q. When the police came to your house on the 2nd of June with respect to the gun that was discharged --

A. Yes, sir.

Q. -- that was the large gun that was seen here in evidence?

A. Yes, sir.

Q. Was that gun in the same condition at the time it discharged on June 2nd as it was at the time of your arrest on June 7th?

A. Yes, sir.

Q. Since the 5th of June 1973 when you had this argument with Sandy Owang, have you seen her since then?

A. When I was in city prison she came up to visit me a few times and she was telling me of --

MR. LASSART: Objection to anything further.

THE COURT: Sustained.

MR. LASSART: Thank you, your Honor.

Q. [MR. HINTZ] When was the last you seen her?

A. June last year.

Q. June a year ago?

A. [Witness nodded head in the affirmative.]

Q. When did you first meet me?

-- April 1st or aro[illegible] there or end of Ma[illegible].

Q. You've bee.. in jail continuously since June a year ago?

MR. LASSART: Objection, your Honor. This is irrelevant.

A. Yes, sir.

THE COURT: Sustained.

MR. LASSART: Thank you, your Honor.

Q. [MR. HINTZ] Were you represented by another attorney from the time of your arrest in June a year ago until you met me in April?

A. Yes.

MR. LASSART: Objection, your Honor.

THE COURT: Overruled.

Q. [MR. HINTZ] Do you understand the question?

THE COURT: He answered yes.

Q. [MR. HINTZ] All right. With respect to these Chinese gangs, are you a member of the so-called Wah Ching?

A. No, I'm not.

Q. Do you associate or run with anyone who belongs to the Wah Ching?

A. No, sir.

Q. Are you a member or do you associate with any member of the so-called Ching Chang Yee or Joe Fong Gang?

MR. LASSART: Excuse me, your Honor. That's a misstatement only as to maybe pronunciation. Chung Ching Yee is the proper pronunciation. Chung Ching Yee is the proper pronunciation of that.

Q. [MR. HINTZ] Did you hear what the district attorney said?

A. Yes.

Q. Do you belong to, or do you run with anybody who belongs to that gang?

A. No, sir.

Q. Do you belong to or are you a member of the so-called Ski Mask Gang?

A. No, sir.

Q. Have you ever been arrested in connection with any activity by members of the Ski Mask Gang?

A. Yes, sir.

Q. When?

A. In May 1973.

Q. All right. And were you released on that?

A. Yes, sir.

Q. Did you take a contract to hit or kill the deceased in this case?

A. No, sir.

MR. HINTZ: Nothing else.

THE COURT: Cross.

CROSS-EXAMINATION of CHOL SOO LEE

By MR. LASSART:

Q. Now, Mr. Lee, how long had you known this young girl named Cassandra Owang?

A. About a year, sir.

Q. About a year. And would it have been a year prior to June of 1973?

A. Yes, sir.

A. Yes, sir.

Q. Do you remember on the 8th of June 1973 talking to Inspector Falzon and his partner named Inspector Cleary? Do you remember talking to him?

A. Yes, sir.

Q. Do you remember speaking to them and them asking you a question concerning whether or not you knew a girl named Sandy?

A. Yes, sir.

Q. And do you remember telling them then that you didn't know Sandy's last name?

A. Yes, sir.

Q. That wasn't true; was it?

A. No, sir.

Q. Now you did have a loaded .357 magnum on your person when you were arrested; didn't you?

A. Talking about the big gun?

Q. Pardon me?

A. Are you talking about the big gun?

Q. The big gun.

A. Yes, sir.

Q. And that was -- where did you have that when you were arrested on your person?

A. Right on the waist.

Q. It was tucked in in your pants?

A. Yes, sir.

Q. And your shirt was over the top of that?

A. Yes, sir.

Q. Now that was loaded; wasn't it?

A. Yes, sir.

Q. It had five loaded rounds in it?

A. Yes, sir.

Q. Now you testified just briefly a minute ago that the gun you had on you when you were arrested was in the same condition as it was on June 2nd when it accidentally fired, as you put it, in your room; isn't that right?

A. Yes, sir.

Q. Well, it isn't really -- it wasn't really in the same condition; was it?

A. It is, sir.

Q. Well, how did that empty cartridge get out of the gun?

A. I threw it away.

Q. Oh, so you did take the empty cartridge out of the gun after it was fired on June 2nd?

A. Yes, sir.

Q. And you threw it away?

A. [Witness nodded head in the affirmative.]

Q. Is that right?

A. Yes, sir.

Q. Where did you throw it?

A. I threw it in the waste can.

Q. In your room?

A. Yes, sir.

Q. And what was your purpose for throwing it away?

A. I had no use for it.

Q. How long had you had that .357 magnum in your room?

A. I guess it was there.

Q. Well, how lo[illegible]d you know it was there i[illegible] your room?

A. About a month before.

Q. About a month before. A month before what?

A. I was arrested.

Q. Excuse me. You have to speak up. A month before you were arrested?

A. Yes, sir.

Q. And did you just find it in there?

A. Yes, sir.

Q. And did it always stay in your room after you found it?

A. Yes, sir.

Q. Did you ever take it outside of your room other than before the month of June?

A. No, sir.

Q. Now did you ever take it outside of your room before June 2nd when the shot was fired?

A. No, sir.

Q. Now when the police came on June 2nd to investigate the shot that was fired you told them that a man named Fong, Tony Fong fired the shot; did you not?

A. Yes, sir.

Q. And that there was no such person named Tony Fong?

A. Yes, sir.

Q. Is that right?

A. Yes, sir.

Q. And the police, when you told them that, they didn't arrest you; did they?

A. No, sir.

Q. They didn't search the room for the gun; did they?

A. No, sir.

Q. Where was the gun when you were talking to the police?

A. It was in my drawer.

Q. A drawer, your dresser drawer?

A. Yes, sir.

Q. The police didn't look and try to find a gun; did they?

A. No, sir.

Q. Now had you already thrown away the cartridge when the police got there?

A. Yes, sir.

Q. Did you also put some pebbles into the wall of the building across the way to hide the bullet hole?

A. Yes, sir.

Q. What did you do that for?

A. I just put it there.

Q. You were hiding evidence of the shooting; weren't you?

A. How can you?

Q. Why did you put the pebbles in the hole in the wall?

A. Well, the hole going through so I just put it there. Small pieces of rock you are talking about; right?

Q. Yes, the little rocks on the walkway outside your back window?

A. Uh-huh.

Q. You put those in the hole in the building across the way; isn't that right?

A. Yes, sir.

Q You did that to cover up the evidence, did you, of the shot?

A No.

Q You just wanted to plug the hole?

A Uh-huh.

Q All right. Now on the 5th of June when Mrs. Etcheveste told you or said the police are coming, that was the second time she had talked to you?

A Yes, sir.

Q Is that right?

A [Witness nodded head in the affirmative.]

Q And when she said the police are coming, what did you do?

A Sandra went out and I went my own way too.

Q You went your own way?

A Uh-huh.

Q Did you shut the door?

A Yes, sir.

Q Did you lock the door?

A Yes, sir.

Q Pardon me?

A Yes, sir.

Q Did you put the dresser up behind the door?

A It was knocked down by accidentally.

Q It was knocked down by accident?

A Yes, sir.

Q I see. Who knocked it down?

A I did, sir.

Q How much does it weigh?

A. I don't know.

Q. You just brushed against it with your arm and knocked it over?

A. No.

Q. Did you shove it a little bit with both hands?

A. No.

Q. How did you touch that dresser so that it was knocked down?

A. I don't quite remember. I think I kicked it or something. I'm not sure. I'm not sure. I was after -- after Sandra left I closed the door. I was moving kind of fast and I hit the dresser and just fell over as the door closed.

Q. When you were moving fast did you leave the room immediately as soon as the -- I'll withdraw that.

As you were moving out of the room did you hear the dresser, as you say, fall over before you left the room?

A. No, it was -- it was fall over while I was in the room.

Q. It fell over while you were in the room?

A. [Witness nodded head in the affirmative.]

Q. And you left -- when the dresser fell over were you already going toward the window to leave?

A. No, I was half undressed during the time it was falling over.

Q. You were half undressed?

A. Yes.

Q. You had your pants on or you had your shirt on?

A. I had my pants on.

Q. And then you grabbed, I take it, that fatigue shirt that you say you had on at the time?

A. Yes, sir.

Q. When you did that, what was the next thing that you did after you grabbed your fatigue shirt?

A. Grabbed my shirt, black shirt.

Q. Pardon me?

A. Black shirt, short-length shirt.

Q. You had a black short-length shirt?

A. Yes.

Q. Did you put that on before your fatigue shirt?

A. No.

Q. Over your fatigue shirt?

A. No.

Q. You just took it with you?

A. Uh-huh.

Q. Did you take any other clothes with you?

A. No, sir.

Q. When you did that what was the next thing you did after you grabbed your shirt?

A. I was going to take the gun and bullets with me.

Q. You were going to take the gun and the bullets?

A. Uh-huh.

Q. Now where was the gun when you went to take the gun?

A. The dresser.

Q. It was in the dresser. Did you take the gun out of the dresser before or after it fell over?

A. The one that fell over was contained food. That's not the dresser for clothes.

Q. And did you take the gun with you then?

A. Yes, sir.

Q. [illegible] where did you put the gun when you left it there?

A. Same waistband.

Q. And how about the bullets? What were they contained in when you took them?

A. I don't understand.

Q. Did you pick the bullets up to bring with the gun?

A. Uh-huh.

Q. Where were they?

A. Box.

Q. They were in the box. And did you pick the whole box up?

A. Yes, sir.

Q. And you took that box with you?

A. No, sir.

Q. What did you do with the box?

A. Right in the bag there.

Q. You put it in that plastic bag?

A. No, the bullets.

Q. What did you do with the bullets?

A. I think I threw on top of the dresser or threw in the waste can. I'm not sure. Waste can in my room.

Q. So then you loaded up that purple bag in evidence with bullets?

A. Yes, sir.

Q. And you took that with you?

A. Uh-huh.

Q. You put it in your shirt pocket?

A. Yes, sir.

A. I think so.

Q. All right. And then you went out the back window and over the hill?

A. Yes, sir.

Q. And over the hill?

A. No, sir.

Q. Did you go up the back hill?

A. Yes, sir, but I couldn't climb over.

Q. Pardon?

A. But I couldn't climb over it.

Q. You were in a hurry though?

A. No. I was in a hurry, yeah.

Q. Now there is, from June the 5th to June the 7th, the day of your arrest, you stayed at Joanie Hu's house?

A. Yes, sir.

Q. And that's a house where there are beds in the basement, bed on the first floor; isn't there?

A. No. Beds on the first floor.

Q. Did you ever go down to the basement down there?

A. I went down there, yes, sir. I've been down there before.

Q. And when you went to Joanie Hu's house you had the gun with you; didn't you?

A. Yes, sir.

Q. And did you get there on June 5th?

A. Yes, sir.

Q. And did you stay at Joanie Hu's house the night of the 5th?

A. Yes, sir.

Q. Did you stay there the night of the 6th?

A. Yes, sir.

Q. Did you throw away the gun in that meantime?

A. No, sir.

Q. Did you throw away any of the bullets?

A. No, sir.

Q. Did you know who that gun belonged to?

A. No, sir.

Q. You took the gun with you from the room on the 5th of June; isn't that right?

A. Yes, sir.

Q. Did you know why the police were supposed to be coming to your room on June 5th?

A. The landlord say argument, too much noise.

Q. In other words, just loud yelling; is that right?

A. Yes, sir.

Q. Did you take the gun -- on June 2nd did you run out of the back -- I'll withdraw that and make it more clear for you.

On June 2nd after the gun was accidentally discharged in the room, did you grab it and run out the back window?

A. No, sir.

Q. That's June 2nd, the day before this man was killed, Mr. Tak?

A. Yes, sir.

Q. You didn't run away with the gun on that day; did you?

A. No, sir.

Q. Didn't pack the bullets up into that bag there and run out the window when the police came?

A. No, sir.

Q. Just left the [illegible] in the dresser?

A. Yes, sir.

Q. Did you take your holster with you?

A. No, sir.

Q. Just left that in the room too on June the 5th?

A. Yes, sir.

Q. Now have you had an opportunity to take a look at the photograph of the people in the lineup with you?

A. Yes, sir.

Q. Of course you were there at the lineup; weren't you?

A. Yes, sir.

Q. You know number two, the gentleman in that -- you know Robert Louie; don't you?

A. I met him in the county jail.

Q. You didn't know him before that?

A. No, sir.

Q. Didn't know John Louie before that?

A. No, sir.

Q. Did you know Ronald Gong before that?

A. Yes, sir.

Q. Ronald Gong is a member of the Ski Mask Gang; isn't he?

A. I don't know, sir.

Q. Didn't you see Ronald Gong in San Francisco's County Jail?

A. Yes, sir. Not the county, city, city prison.

Q. City prison. And you saw him in there when he was awaiting trial for the bank robberies that he was arrested for?

A. I didn't get a chance to talk to him at all most of the time I was there.

Q. Well, you and he were arrested together in Reno; weren't you?
A. Yes, sir.
Q. And Phillip Gee?
A. Yes, sir.
Q. He was there with you; wasn't he?
A. Yes, sir.
Q. And when you were arrested there you were in the same -- you came to Reno with him in the same car; didn't you?
A. Yes, sir.
Q. It's the car they took the guns out of the trunk; isn't it?
A. Yes, sir.
Q. And you had a marked ten-dollar bill on you that was bait money from the bank?
A. How do I know?
Q. That's what you told the FBI; isn't that right?
A. I tell you now I don't know.
Q. And they cut you loose from that; you never got prosecuted on that?
A. Because someone told me two of the persons that was doing the bank robbery testified against the people that was involved with them. So they know I was not involved, so they released me.
Q. Okay. You are familiar with the Chinatown area of San Francisco; are you not?
A. Some of it. Most of it.
Q. And you used to work at Jim's Hamburger Stand; didn't you?
A. Yes, sir.
Q. Maybe I could use the diagram. Excuse me. Now I want you to look at the diagram I have placed out here and let me get the

proper number for th for the record. That's ple's Number Five which is in evidence. Do you recognize what this diagram shows, the area it shows?

A. Yes, sir.

Q. You have sat here during the trial when the other witnesses testified concerning this?

A. Yes, sir.

Q. And they have testified an incident occurred at Grant and Pacific where Mr. Tak was killed there?

A. Yes, sir.

Q. And you are familiar with this area of Kearny and Pacific; are you not?

A. Yes, sir.

Q. All right. Now in looking at this diagram, can you tell what the address of Jim's Hamburger Stand is?

A. I do not know.

Q. Where you used to work?

A. I don't remember.

Q. Would it help you to refresh your memory if we were to show you a picture of Jim's Hamburger Stand?

A. Well, I know already, but I don't know the address.

Q. You don't know the address. It's on Kearny; isn't it?

A. Kearny and Columbus right in the corner.

Q. About a block away from the corner, a block or two away from the corner of Kearny and Pacific; isn't it?

A. Yes.

Q. And where you lived with relation to this diagram, 438 Broadway Street, that's, what, about a block down from Kearny down

toward the on-ramp?

A. Block up.

Q. Block up toward the freeway?

A. Toward Broadway.

Q. That's right. So Pacific and Grant is about within four blocks of where you lived on June 3rd; isn't that correct? Four or five blocks?

A. Yes.

Q. And it's within three or four blocks of where you worked until April of 1973?

A. During the time I was working there I was living on Clay Street.

Q. You were living on Clay Street?

A. Yes.

Q. Didn't you, when you filled out -- you are correct. I'll withdraw that.

Do you remember whether or not you saw anybody in person on June the 3rd of 1973, say, after 5:00 o'clock that evening?

A. Yes, sir.

Q. And who was that?

A. I seen the person who came knock on my door. After I left I went to the pinball machine place on Broadway Street to waste some time.

Q. Who was that?

A. I don't remember the people who owns the store.

Q. Somebody saw you on June 3rd?

A. Yes, sir.

Q. You don't remember his name. Is it a man?

A. Yes, sir.

Q. Have you seen him before?

A. No, sir.

Q. You had never met him before?

A. No.

Q. Just knocked on your door and asked you if you wanted to play pinballs with him?

A. No, no, no.

Q. What do you mean?

A. I was in my house. I was sleeping. A knock came to my door and said there was a phone call for me. So I go out in the hallway to receive the phone call and it was Sandra Owang and she was on the telephone. So after she told me she wanted to come over, pick up at work, I say okay. After that I went back to my room, got dressed, got washed up and everything and then I went from there. I left and went down to Broadway Street about block and a half from where I lived. There is a store on Broadway, cigar store, book store. They have had some pinball machines in back. I had some time to fool around before going to where my girlfriend was.

Q. Okay. That's fine. Who is this person you say you saw there?

A. He was the person who lived there.

Q. Lived where?

A. In Skyway Hotel.

Q. What room?

A. I don't know. Right next to the manager.

Q. Right next to the manager. Uh-huh. Was he the person you

testified or that -)s he the person that Mrs)tcheveste referred to when she said he was dead?

A. I do not know.

Q. What did the man look like?

A. He was older person, kind of black hair, about your height and your face. More Philippino or Mexican.

Q. Oriental gentleman?

A. Maybe mixed.

Q. About my height?

A. I'm not sure he is Oriental or not. Maybe half-and-half.

Q. Have you ever seen him before?

A. No, sir.

Q. How did you know he lived in the hotel?

A. Because after I answered the phone he was standing by the doorway.

Q. All right. Had you ever seen who lived in that room before that day?

A. No, sir. He told me the reason he answered the phone when he come to get me was because the manager was out that day.

Q. All right. Do you remember when you spoke to the inspectors, Inspector Falzon and Inspector Cleary, and they asked you whether or not you had ever left your apartment at 438 Broadway, Number Eight on June 3rd, Sunday? Do you remember when they asked you that question?

A. I think so.

Q. When they talked to you was June the 8th of 1973. That's five days after the killing of Mr. Tak. Isn't that when they talked to you?

A. I do not know, I don't know the exact date.

Q. They talked to you the day you were arrested?

A. Yes, sir.

Q. And do you remember you telling them when they asked you this question: "Do you recall leaving the house at all on Sunday -- this would have been last Sunday, June the 3rd?

"Answer: I can't remember."

A. Yes, sir.

Q. When did your memory get better?

A. Well, if you was in same position I'm in --

Q. I asked you a question, Mr. Lee. When did your memory get better?

A. When I was talking to my lawyer.

MR. HINTZ: Object.

THE COURT: Sustained. Proceed.

Q. [MR. LASSART] When did you begin to recall for the first time that you had gone out on June 3rd?

A. When I was in city prison.

Q. Now you knew on the day of your arrest that you no longer had a room at 438 Broadway Street?

A. Yes, sir.

Q. And you went back there to pick up what, your clothing?

A. Yes, sir. No, I went there to pick up the check.

Q. Had you taken your clothing with you?

A. No. First I got to find a place before I could take the clothes.

Q. And when you went back there that was, what, about 11:00 o'clock at night?

A. Somewhere around there I guess. I don't know.

Q. And when you went back there you brought the gun with you?

A. Yes, sir.

Q. You were going to put it back in your room?

A. Yes, sir.

Q. You were going to put it back where you found it?

A. Yes, sir.

Q. And where were you going to put it in that room?

A. Under the mattress.

Q. Go ahead.

A. There is a hole in the mattress. It was covered. A lot of newspapers and things.

Q. And you were just going to leave it in that room, in the room that you had been thrown out or asked not to return to?

A. Well, wouldn't cause me no more trouble, I would.

Q. Now when you were carrying it back just to leave it in your room after you had had it for two days, you knew, of course, it was loaded?

A. Yes, sir.

Q. And you didn't stop in those two days to unload the gun; did you?

A. Not that I remember, no, sir.

Q. After you left on June 5th what did you do with the gun when you got to Joan Hu's house?

A. Kept it on me.

Q. Kept it on your person all the time?

A. No, sir.

Q. Well, where did you keep it?

A. In a little small box.

Q. Just put it in a little box?

A. Uh-huh.

Q. Did you keep it near where you were sleeping at Joan Hu's house?

A. Not too far.

Q. Did you leave Joan Hu's house at all after you arrived there on the 5th of June?

A. What do you mean?

Q. Did you ever leave the house, Joan Hu's house, after you arrived on the 5th of June until the time that you went back to 438 Broadway?

A. Me and Joanie sometimes went out for a walk.

Q. When you did that did you take the gun with you?

A. No, sir.

Q. Also, Mr. Lee, with regard to your involvement with Ronald Gong and matters of the Ski Mask Gang --

A. There is no involvement, sir.

Q. You are not involved with them at all?

A. No, sir.

Q. You were keeping the newspaper clippings of your arrest in your room; weren't you?

A. I was just keeping them, yes, sir. What does that have to do with this?

Q. Did you have any way of getting in touch with Cassandra Owang after you were arrested? I mean did you know a phone number and address?

A. No, but she came up and seen me.

Q. Well, did you ever know her phone number or where she normally lived?

A. I think she was living back with her parents during the time.

Q. And where was that?

A. Over in Alameda.

Q. And did you know her phone number over there?

A. I got it written down, but I don't remember.

Q. You had her phone number written down on some piece of paper?

A. Yes, sir.

Q. Do you remember telling the police officers when they were talking to you the day of your arrest that you do not know where she lives?

A. Yes, sir.

Q. You did know where she was living; didn't you?

A. Not the exact address, no, sir.

Q. You knew where the house was; you just didn't have the number? You knew she lived in Alameda; you just didn't have the number?

A. No, I don't know where. I've been to her house one time.

Q. Did you know where she lived -- she was going to San Francisco State, wasn't she, to school?

A. Yes, sir.

Q. Did you know where she lived when she was going to San Francisco State?

A. Yes, sir.

Q. Where was that?

A. I don't remember, but it was around Diamond Heights or

Mission Street, way at the end, go around, around Diamond Heights almost.

Q. And you told her -- you didn't tell the police that she had lived at that address; did you?

A. It's on Chanery Street.

Q. Monterey Heights, Chanery Street area?

A. Yes, sir.

Q. You knew she lived there; didn't you?

A. I was living with her for a while and I moved out and she moved out too.

Q. So you lived with her for a while on Chanery Street?

A. I don't know, sir.

Q. How long did you live with her there?

A. About four or five months.

Q. And then do you recall when she quit living at that place?

A. Yes, sir.

Q. When?

A. After I moved away and she moved away, about a month and a half later or maybe a month later.

Q. Do you remember what month that was?

A. No, sir.

Q. Was it before you were arrested in Reno or after?

A. Before.

MR. LASSART: No further questions, your Honor.

REDIRECT EXAMINATION of CHOL SOO LEE

By MR. HINTZ:

Q. Mr. Lee, you indicated that one of the reasons you went back

to your hotel on Br[illegible]way was to pick up your [illegible]lfare check?

A. Yes, sir.

Q. Were you on some form of general assistance at that time?

A. Yes, sir.

Q. How much money were you getting monthly from the county?

A. I don't know. It was the first time.

Q. It would have been the first check?

A. Yes, sir. Other times I had to go to the main office and pick it up.

Q. When you talked to the inspectors the night of your arrest you mentioned the fact that you were with a girl named Sandy but you did not give them her last name; is that true?

A. Yes, sir.

Q. Why did you withhold her last name?

A. Because I -- you know, I don't want to get her in, you know, the police go question her and things because -- well, her parents, you know, does not know too much about me and the relationship and I don't think her parents was approve of me.

MR. HINTZ: I have no other questions, your Honor.

THE COURT: Anything further?

RECROSS-EXAMINATION of CHOL-SOO-LEE

By MR. LASSART:

Q. You knew you were arrested for murder when you were arrested?

A. When they told me, yes, sir.

Q. And you still didn't give the police her last name?

A. No, sir.

MR. LASSART: I have no further questions.

THE COURT: Step down.

THE WITNESS: May I say something, your Honor?

THE COURT: No, there is no question before you.

MR. HINTZ: I have a matter I would like to discuss with the Court and I have one of three ways to take it up. I would like to have this discussion with the Court outside the presence of the jury, if I may.

THE COURT: We will take the afternoon recess, ladies and gentlemen of the jury. Adhere to the admonition heretofore given.

We will stay in session.

MR. HINTZ: Thank you, your Honor.

[The jury left the courtroom.]

THE COURT: All right, let the record reflect the jurors are not present, counsel for both sides and defendant are present.

MR. HINTZ: If the Court please, I have a matter I would like to get on the record in front of this jury. I have one of three proposed ways to do this and I'm asking the Court for the Court's guidance as to which of the three ways would be the more appropriate way, or if the Court deems it inappropriate, I would like to have some type ruling to that effect.

As the Court can see, the defendant's testimony touches upon the fact that he was with the witness Sandra Owang from the night in question, the 3rd of June, through the next day until the morning of the 5th of June. Secondly, thereafter he was with a Joanie Hu, H-U, from approximately sometime during the 5th of June until the 7th of June when he was arrested. Now as the Court knows, Mr. Lee was arrested for this offense in San Francisco.

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He was charged in San Francisco. He was appointed a public defender in San Francisco and at all times he was represented by counsel from the public defender's office in San Francisco County. That representation was a continuing one up until April 2nd this year, some ten months after the crime, at which point they were relieved and I was appointed. I would submit to the Court that by way of representation that the name of Sandra Cwang and the name of Joanie Hu were known to the public defender's office since the outset of this investigation, certain support information by way of either addresses or telephone numbers by which and through which they could have been contacted, subpoenaed and brought in as witnesses on his behalf.

In connection with the withdrawal of the public defender and my appointment, representation by Mr. Lee's former counsel in chambers to Judge Puglia to the effect that support assistance in the nature of investigative assistance would be made available through their office to me should private counsel in Sacramento be appointed to take on this case.

Two weeks following my appointment or during the early part of the third week of April I first obtained the police reports in the case. It was clear to me at all times that the only real issue in the case was one of identification, not diminished capacity, not something else, but one of identification.

THE COURT: Okay.

MR. HINTZ: The public defender's office was asked by me to do follow-up work, to locate these two girls, put them under subpoena, to bring them to their office so I could interview them. I would represent to this Court that that office dragged its feet

up to and continuing through the 20th of May, which time I had a personal conversation with Mr. Mancuso who is the public defender of the county, at which time I told Mr. Mancuso in so many words either give me the help that I have asked for that you have represented would be forthcoming or else get the blank out of the case and give me a letter I could take back to Judge Puglia and show that you are too busy to be of any help. At that time they detailed a young Chinese attorney by the name of Mr. Lee, who was assigned to the juvenile court. Lee, on the 20th of May, was to -- not this Lee --

THE COURT: I understand.

MR. HINTZ: He was dispatched to go to San Francisco State College and do follow-up information on Mrs. Owang. Mr. Lee, by reason of the fact that some of these Chinatown youth people were known to him when he was doing legal aid work before Mr. Lee went to San Francisco State College, he verified and confirmed the fact that Sandra Owang was a student there, that the registration record reflected the fact that her parents address was the address that she was using. He never made contact or attempted to make contact with her on campus. He attempted to do so at the parents' address at which time he consistently got dead ends.

Judge Puglia authorized me to employ an investigator of my own on the Friday preceding the commencement of this trial, a Miss Charlene Fowler. Miss Fowler has attempted to do follow-up work on the location of the witness Sandra Owang. She has had at all times a subpoena in her possession for Sandra Owang. She has made numerous phone calls to the last telephone number given, has been given repeated stories as to the whereabouts of

Mrs. Owang. The necessity of Mrs. Owang's appearance has been stated to these people, but Mrs. Owang, for reasons of her own, is ducking the subpoena.

Number two, Joanie Hu, who is the girl with whom the defendant has apparently been staying or was staying from the date of June 5th until his arrest, again, the public defender's office did nothing with respect to location of her, follow-up with her, interview with her or attempt to determine and evaluate what light she might shed on the issues in this case. Miss Fowler has determined within the past week that Joanie Hu is in the Far East on a two-year tour of the Orient and at the present time is someplace in Japan.

Now obviously the dilemma is this: I appreciate the fact that we can't continue a trial of this nature indefinitely, but I would like to get before this jury at least the fact that efforts were made to contact and locate these material witnesses at a time that was consistent with the earliest time that I had to become involved in the case. Now I don't know what effort the district attorney has made to locate the same witnesses, but I understand they too were trying to find the Owang girl. Obviously she could either confirm or repudiate the fact that she was with the defendant on the night of the killing, and I think this is highly important to the testimony he has given in the presence of this jury. I think, and I say this for the record only, your Honor, that I think he has had inadequate representation at most all stages of the proceedings by his former counsel in the preparation and the investigation of this case.

THE COURT: All right. I had nothing to do with that.

Counselor?

MR. LASSART: Yes, your Honor, I would like to make the record very clear with regard to Miss Sandra Owang. I was informed by officials in San Francisco State University that an investigator was hunting for Sandy Owang. Sandy Owang's name had come up earlier in the case with regard to a statement that was furnished to the defense pertaining to the statement made by Joan Hu. At the bottom of that statement Sandy Owang's name is mentioned as an ex-girlfriend of the defendant. Since that time we have run Sandy Owang through the Department of Motor Vehicles registration check, driver's license check, CII, FBI, and a local rap sheet, San Francisco rap sheet. We get no record of her in any of those places. We have attempted to check her at her home address and get no cooperation. But I would like to make the record very clear, your Honor, this is not uncommon in any case involving Chinese youth gangs. We have witnesses who constantly duck our subpoenas also, don't want to talk to us, avoid our inquiries. No matter how hard you strive for some of these people, they will not come forward.

As to Joan Hu, we have not attempted to locate her because we feel that her testimony in any way will not affect the rights of the defendant. That's why we haven't located her either to furnish evidence which is exculpatory or inculpatory. As a matter of fact, her statement contradicts what the defendant said on the stand because she indicated that the first contact she had with Mr. Lee was June the 6th.

I understand the dilemma of counsel. Counsel has been introduced to a Chinese case involving gangs in San Francisco, and

it's a rude introduction that we all go through. Witnesses just don't want to testify.

As the Court knows, the three eye witnesses in this case, your Honor, are people from out of the State of California.

THE COURT: I know that. All right. We will think it over. Take a fifteen minute recess.

[A recess was taken.]

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THE COURT: All right, let the record reflect the jurors are not in place, counsel for both sides and defendant are present.

Mr. Hintz?

MR. HINTZ: Yes, your Honor. I think that Mr. Lassart and I can enter into a stipulation as follows: That if I was sworn as a witness before the Court I would testify substantially in accordance with the following statement: that I am an attorney licensed to practice law in the State of California and having been such and appeared before this Court on numerous occasions in the past, that during the last week of March 1974 I was contacted by Judge Puglia for the Superior Court inquiring whether or not I would be interested and willing to accept appointment on a case that was to be transferred from San Francisco County to Sacramento County; namely, the instant case;

That based upon those conversations with Judge Puglia it was represented to me by the Judge that the San Francisco Public Defender's Office had previously been involved as counsel for Mr. Lee;

That in making a motion to withdraw they would provide investigative assistance to support the private attorney to be

appointed by this Court;

That based upon those representations I did accept the appointment and that on April 2nd, 1974, I first appeared in Department Two of this Court before Judge Puglia, was formally appointed, at which time the public defender formally withdrew;

That at that time on April 2nd, 1974, the date was set for trial on this matter to go on June 3rd, 1974;

That in connection with the acceptance of this appointment additional representations were made to me by Mr. Gould, Clifford Gould, G-O-U-L-D, who had been the former counsel of Mr. Lee, whose office would provide investigative assistance to me due to the fact that we were talking about an incident that occurred nearly a year ago in San Francisco with which his office was purportedly familiar;

I would further state to this Court that at the time of the change of the guard on April 2nd, 1974, Mr. Gould did not have his file with him; that a week passed, the file still was not forthcoming and I made several telephone calls to the public defender's office in San Francisco requesting a hurry-up and a getting of the file to me; that it was approximately two full weeks after the appointment was made before the file arrived;

The file, when it did arrive, was in such state that it took a substantial period of time to unravel it and arrange it;

That in connection with the review of the Lee file as the file had been maintained by the public defender's office there was numerous police reports, there were numerous reports, numerous background material involving his past, going back to 1964 or '65 into juvenile court, but there was virtually next to nothing

pertaining to the defense of Mr. Lee on the instant charge. I refer specifically to the fact that at all times as stated to me Mr. Lee has denied responsibility for the shooting, that at all times it has been my understanding that he gave a version to his former counsel and to his investigator of his whereabouts on the date of June 3rd in questions he provided names, he provided telephone numbers and/or addresses to the best of his ability to do so. Included in among those papers was the name of Joanie Hu who has been referred to previously in the name of Sandra Owang, and when I accepted this file from the public defender's office there was not, your Honor, even a resume or statement concerning what this defendant would testify to. There was a series of three or four pages of garbled notes and doodlings and things of that nature;

That upon getting into this file I appreciated the fact at the outset that the defense herein to Mr. Lee was one of identification;

That I maintained contact with the public defender's office and asked for assistance in terms of the recruitment of the various persons whose names appeared in the police report and who had not been subjected to detective follow-up by either the police or the public defender's staff. I did this on more than one occasion with no success;

On the 20th day of May 1974 which was a Monday -- in fact it was two Mondays before this trial commenced -- I was in San Francisco. I obtained follow-up discovery from Mr. Lassart. I thereafter went to the public defender's office and attempted to get them with it insofar as doing the follow-up work that had

been originally requested. Various reasons were given including the death of the chief investigator, firing of another investigator, the fact that the staff was overworked, as to reasons why they could not provide the assistance necessary in the case;

At that time I felt that it was critical that several people be contacted and talked to and interviewed. The critical person of which was this Cassandra Owang. A Mr. Dennis Lee who is a young Chinese attorney with the public defender's office who had been previously assigned to juvenile court was dispatched to assist me. Arrangements were made on that particular day where he agreed to go to San Francisco State College and attempt to get run-down information on this Cassandra Owang who, according to her parents, was a registered student. He evidently went there, confirmed the fact that she was a student, that the address and telephone number on the registration of the college were in fact her parents' and not reflective of a current address. So as far as I know he made no attemot to contact her on campus to serve her with a subpoena on campus where she could be readily found;

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On the 30th I believe, or 31st of May, Judge Puglia authorized me funds to employ an investigator of my own by reason of the fact as to what had not been done by the public defender's office there. By the time that Charlene Fowler began to pursue this Owang information the school term had been completed, the students had been dispersed, Miss Owang's whereabouts were not known. Numerous contacts were made to her family who had a liquor store over in the Oakland side of the bay. Other contacts were made to the last address and phone number we had for her. I know that Miss Fowler has talked to a brother and the father and the

[illegible] is one of a continuous type or put-off.

Now we have [illegible] avored to the best of our [illegible]bility to locate this material witness to put her under subpoena, to interview her, to evaluate what, if anything, she might say that would tend to corroborate Mr. Lee's testimony in court. And we are at a loggerhead on that.

Secondly, the other witness whose name is Joan Hu, I might say again this was in the public defender's file when it was taken over by me to indicate she had been talked to and if so what she might add to the case, but we did know from talking with the defendant that she had been with the defendant several days subsequent to the shooting.

My information as given to me by Miss Fowler was to the effect that when she did locate the last residence of Miss Hu, she talked with persons there that provided information that she was on a two-year tour of the Orient. At the present time she is somewhere in the Far East.

The same situation prevailed with respect to the witness Lawrence Sondreson who was one of the young men who saw certain events on the street, that once again there was no follow-up by the public defender with respect to him, even though at the time of the lineup he identified somebody other than the suspect, and it was through the courtesy of the district attorney that I was provided with a North Dakota telephone number and through that telephone number made arrangements to have him here and testify in court.

THE COURT: Counselor?

MR. LASSART: Your Honor, the People would agree to

stipulate as to the truth of the facts as stated by Mr. Hintz. Stipulation is entered only to the extent that this is to be utilized as a portion of the record and not material to be presented to the jury, that the arguments concerning the unavailability of witnesses would be handled through argument in the close of the case.

The People would once again wish to stress the fact that we too have been looking for Cassandra Owang. One item that I have neglected to represent to the Court with regard to our search for her is that we have developed the name of Owang which is involved in some activities in Berkeley with regard to a shooting incident. I'm not sure if it's a relative of her's, but it perhaps may explain her want or need or desire to keep from contact. I'm not positive, but that's one of the things we have turned up. We cannot find Cassandra Owang.

As far as Joan Hu, I have stated before we have taken a statement from her which we have given to the defense. We feel her testimony is negligible, and we have made no attempt to locate her. If she is out of the country for two years, there is nothing that could be done at any rate, your Honor.

Nothing further.

THE COURT: Is that what is agreed upon now?

MR. HINTZ: Yes.

THE COURT: All right. Call in the jury, please.

MR. HINTZ: Do you want to make a ruling on the evidence before the jury comes in?

THE COURT: I'll rule that the evidence is obviously there are -- what these witnesses would testify to, I have no idea, and

at this time I'm going to rule that the testimony is not admissible in front of the jury. For the purposes of the record I will let you make yourself perfectly clear.

MR. HINTZ: Thank you, your Honor.

THE COURT: Call in the jury, please.

[The jury returned to the courtroom.]

MR. HINTZ: May the record show Miss Fowler is here, your Honor?

THE COURT: All right. Let the record reflect the jurors are all in place, counsel for both sides and defendant are present.

Counselor?

MR. HINTZ: Yes, your Honor, at this time I would offer into evidence Defendant's Exhibit A and B, the two drawings for all purposes.

THE COURT: Be admitted.

[Defendant's Exhibits A and B were received in evidence.]

MR. HINTZ: Defendant's Exhibit C is withdrawn.

THE COURT: Withdrawn. C-2?

MR. HINTZ: C-2 is a copy of the probation officer's report.

THE COURT: Be admitted.

[Defendant's Exhibit C-2 was received in evidence.]

MR. LASSART: Your Honor, we would object to that particular report in its total content. It covers a long period of time. The testimony of the officer clearly -- the probation officer clearly covers --

THE COURT: I will reserve my ruling on that one. I'll take a look at it.

What is D and E?

MR. HINTZ: We will offer, your Honor, for all purposes, Defendant's Exhibit D, E and F respectfully, which are the summaries of the police reports reflecting statements given by Mr. Mill, Mr. Huey and Mr. Lennon respectfully as testified to by Officer Falzon on the stand this morning.

MR. LASSART: We would object to those, your Honor, as hearsay.

THE COURT: I will reserve my ruling.

MR. HINTZ: The defense rests.

THE COURT: Any rebuttal, counsel?

MR. LASSART: Yes, your Honor, we will call Inspector Falzon to the stand, please.

R E B U T T A L

---oOo---

FRANK J. FALZON

witness called on behalf of the People, resumed the witness stand and testified further as follows:

DIRECT EXAMINATION

By MR. LASSART:

Q Inspector Falzon, in your capacity as an investigating officer in this case, did you have an occasion to have a conver-

sation with Mr. Lee pertaining to the incident that you are responsible for investigating?

A. I did.

Q. And did that conversation occur over the period of time of the 7th and 8th of June? By that, I mean over the midnight hour?

A. It was shortly after his arrest, yes, sir.

Q. And at that time did you have occasion to be in a room also with Inspector Cleary when you spoke with Mr. Lee?

A. I was.

Q. And Mr. Lee was advised of his rights pertaining to the Miranda decision; was he not?

A. He was.

Q. Now at the time of your conversation with Mr. Lee do you recall whether or not you spoke to him regarding this particular subject? And by that do you recall whether or not you asked him how long he had -- or how long before the date of his arrest had he discovered the weapon in his room?

A. Yes, sir, I did.

Q. And did you ask this question in particular: "Well, approximately how long did you discover this weapon? Approximately how long ago did you discover this weapon?" Do you recall asking him that question?

A. Yes, sir.

Q. And did he give you this answer: "About a week ago, week and a half"? Is that correct?

A. Yes, it is.

Q. Now you are referring to some notes which are before you; is that correct?

A. Yes, I am.

Q. Does that refresh your memory?

A. Yes, sir.

Q. Now those notes are a transcription of a tape recording; are they not?

A. They are.

Q. And you have listened to the tape and read the notes in conjunction with the tape?

A. That's correct.

Q. And do those notes accurately reflect Mr. Lee's answers to your questions then?

A. Yes, sir.

Q. Do you recall whether or not you asked Mr. Lee if on June the 3rd of 1973 he left his apartment at 438 Broadway, Apartment Number Eight? I refer you not to page 12 and 13 of your transcribed notes.

A. I recall asking him "Do you recall where you were Sunday, June the 3rd, anytime of the day so we can help relate that to different times." Is that correct, counsel?

Q. That's correct. Do you recall his answer to that question?

A. Yes, I do.

Q. What was his answer?

A. He stated "I believe I was at home."

Q. Do you recall asking him any further questions concerning him being at home?

A. Yes, sir, I continued from there. I stated "You believe you were at home?" He stated "Yes." I then asked, "Do you recall leaving the house at all on Sunday, June the 3rd?" His

answer was, "I cannot remember."

Q. And I want to call your attention now to page 13 of your transcribed notes about four or five questions down that page. Maybe almost half the way down the page. Do you recall asking Mr. Lee this particular question: "Do you recall leaving the house at all on Sunday?" This would have been just the last Sunday, June the 3rd. Do you recall asking him that question?

A. I did ask that question.

Q. What did Mr. Lee say with regard to that particular question?

A. His answer was "I can't remember."

MR. LASSART: All right. At this time, your Honor, I would ask that this photograph be marked People's next in order for identification.

THE COURT: People's Thirty-nine.

[A large photograph was marked People's Exhibit Thirty-nine for identification.]

Q. [MR. LASSART] Now, Inspector, I'm going to show you People's Number Thirty-nine which is an aerial photograph of the particular area of Chinatown in San Francisco and I ask you if this is a fair and accurate representation of how the streets and buildings are in that particular area of San Francisco?

A. Yes, sir, this is exactly how the buildings are in the City of San Francisco in this specific area.

Q. Now in that photograph, Inspector, as you look at the photograph in perspective, the bottom of the photograph would be north; is that correct?

A. Yes, the direction north would be at the bottom of the page as I hold it.

Q All right. Why don't you put an "N" at the bottom of the photograph and the proper letter around the various sides.

A [Witness marked the photograph.]

Q And could you mark east and west on the photograph at the various sides?

A [Witness marked the photograph.]

Q How have you marked the diagram, Inspector -- or the photograph?

A I've marked the diagram south in this direction, north going down. I have marked it east in this direction going left and west going out.

Q Have you used the letters "N", "S", "E" and "W" to depict the various directions?

A Yes, sir, with an arrow pointing in the direction I have indicated.

Q Now as you are looking at that photograph can you find the street which has been referred to as Pacific Street?

A Yes, sir, I can.

Q Can you write the word "Pacific" on the street which would be Pacific Street?

A [Witness marked the photograph.]

Q Can you find the street which has been designated as Grant Street?

A Yes, sir, I can.

Q Would you please, in your pen, write Grant on that particular street.

A [Witness marked the photograph.]

Q Can you find the Beckett Alley area that has been referred to

in this case?

A. Yes, sir.

Q. Can you write "Beckett Alley" on that, please?

A. [Witness marked the photograph.]

Q. Now can you locate Columbus Avenue on that particular photograph?

A. I have, sir.

Q. Can you label it as such, please?

A. [Witness marked the photograph.]

Q. Now one further street. Can you locate Kearny Street in that particular photograph?

A. Yes, sir.

Q. And will you label that street, please.

A. [Witness marked the photograph.]

Q. Now subsequent to -- or I'll withdraw that.

Subsequent to your arrival on the scene you located the area of where the body was on the corner, southeast corner of Grant and Pacific; isn't that correct?

A. Yes, sir.

Q. Can you find that particular area on the photograph?

A. I see it.

Q. Would you please put "victim" at that location.

A. The word "victim"?

Q. Indicating where, approximately, the body had been laying when you arrived.

A. Yes, sir. [Witness marked the photograph.]

Q. Now from that area, after you got to the scene and began your investigation you spoke with Mr. Sondreson who is in the

Navy; isn't that correct?

A. I have.

Q. And you spoke with Mr. Huey also --

A. Yes, sir.

Q. -- at the same time? Now did they indicate to you where they were located when they first heard the shots?

A. Yes, sir.

Q. And do you know the address of where that would be?

A. Yes, sir, I do.

Q. And what is that address?

A. 214 Columbus Avenue.

Q. Can you place the numbers "214 Columbus Avenue" at the location of where those two men were standing when they first heard the shot, where they told you they were standing?

A. [Witness marked the photograph.] I have.

Q. 214 Columbus Avenue is on the northeast corner of Columbus and Pacific; isn't that correct?

A. Yes, sir.

Q. Now Mr. Sondreson testified in this court that when he heard the shots he was on the northwest corner. You heard him testify to that, Inspector?

A. He did.

Q. On June the 3rd he indicated he was on the northeast corner?

A. He did.

Q. And have you marked that area with the 214 designation?

A. I have.

Q. Now from there, from that location, do you recall what area Mr. Sondreson stated he went to?

A. Yes, sir, I do.

Q. And can you please put the letter "S" number "1" to indicate where Mr. Sondreson said he went after he heard the shots?

A. [Witness marked the photograph.] I have drawn a line from 214. I have extended it across the street to the opposite corner and I am placing an "S" on the diagram.

Q. In what corner of Columbus and Pacific is that?

A. That would be the northwest corner.

Q. Now Mr. Huey also indicated to you he went to a certain area after he heard the shots. Can you see approximately where that area is on that photograph?

A. Yes, sir, I can.

Q. And can you place the letter "H" number "1" to indicate approximately where Mr. Huey indicated he went after the shots?

A. Extending a line from 214 Columbus, I'm going across to the -- it would be the northwest corner where Mr. Sondreson was and Mr. Huey proceeded up the street and crossed over onto the -- it would be the southeast -- I'm sorry, it would be the southwest corner.

Q. And can you indicate whether or not Mr. Huey remained on the southwest corner, he told you he remained on the southwest corner or moved up the street?

A. He went mid block at which time the suspect ran past him approximately three to four feet away from him and then he proceeded up to where the victim was located and he gave aid to the victim.

Q. Can you indicate on the diagram approximately where Mr. Huey was when Mr. Lee ran by him on the street?

A. That's where I saw the line to, sir. It's already indicated.

Q. Now did Mr. Huey and Mr. Sondreson say they stayed together after they heard the shot?

A. No, sir, it was virtually impossible from the two statements that I obtained that these individuals could have been together.

Q. Did they say they stayed together?

A. They did not stay together.

Q. Now did Mr. Sondreson tell you he saw the man turn the corner of Kearny -- of Pacific and Columbus and then begin to walk?

A. Yes, sir. In fact I went out and I teletyped the following morning also that the suspect ran down to and past Jim's Hamburger Stand and then walked nonchalantly back up Jackson Street toward Chinatown area.

Q. Who relayed that information to you?

A. It was Mr. Sondreson.

Q. Did Mr. Huey ever make reference to that walk after the turn of the corner of Pacific and Columbus?

A. He did when he was talking in behalf of Mr. Sondreson, relating the entire story as to what he knew.

Q. Now can you see the place which is known as Jim's Hamburger Stand on that photograph?

A. Yes, sir.

Q. And can you please place a circle around that to indicate where Jim's Hamburger Stand is located?

A. It's directly underneath the letter "E" representing east, and I'm placing a circle on the corner.

Q. Now you have been out on Pacific Street since this incident; have you not?

A. Yes, sir, I ha[illegible]

Q. And as a matter of fact you were out there this last Friday evening, I believe; is that correct?

A. Yes, sir, in the afternoon.

Q. Friday afternoon. When you went out there did you try to locate yourself in the approximate area where Mr. Huey indicated to you he was standing when he saw the man turn the corner?

A. I did.

Q. And by the "corner," I mean the corner of Pacific and Columbus?

A. Yes, sir.

Q. Now could you look down in that area yourself, Inspector?

A. I did.

Q. Where Mr. Huey was standing on Pacific Street when he indicated the man ran by him, could you see first of all to the right around the corner of Pacific and Columbus?

A. No, sir. All Mr. Huey could have seen is that the suspect made a right turn onto Columbus Avenue and that would have been all he could see from that point.

Q. Now from where Mr. Sondreson indicated he was standing when he observed the man coming down the street and turned the corner, could he see the activities of the man after he turned right down Columbus off of Pacific?

A. Most definitely. The position Mr. Sondreson indicated to me he remained never getting any closer -- I believe he stated a hundred and twenty feet -- to the suspect, he had clear vision to watch the actions of the defendant as he ran past Jim's Hamburger Stand and then nonchalantly walked back up Jackson Street

to the Chinatown area.

Q Can you find on that photograph the location of where the man would have had to turn right off Pacific down Columbus with regard to the testimony of the two people?

A Yes, sir, I can see that point.

Q Would you write the word "suspect" on that corner to indicate the corner that these two men were referring to and can you put a directional arrow or line from that particular word "suspect" to describe the direction of travel of the suspect as Mr. Sondreson related it to you on June 3rd?

A [Witness marked the photograph.] I've drawn a series of arrows from the word "suspect" which is at the corner of Columbus and Pacific, and the series or arrows lead down past Jim's Hamburger Stand which has been circled and down to Jackson Street which is not indicated at this time on this diagram and then a right turn onto Jackson back up toward Kearny.

MR. LASSART: I have no further questions of this witness, your Honor.

THE COURT: Cross-examine.

CROSS-EXAMINATION of FRANK J. FALZON

By MR. HINTZ:

Q When were those aerial photographs taken, Mr. Falzon?

A They were taken at my instruction from the helicopter unit photo lab.

Q Do you know the date these were taken?

A No, it was prior to the start of this trial though.

Q Do you know the time of day?

A. Daylight hours. Exact time, I was not in the helicopter.

Q. Do you know whether it was taken on a weekday or weekend?

A. No, sir, I do not.

Q. How long before the trial was it taken?

A. Oh, approximately maybe two, three months prior to the Superior Court trial.

Q. And let's try red.

Judge, do you have a red pen?

Would you make a circle depicting the intersection of Grant and Pacific -- circle the intersection of Grant and Pacific, will you?

MR. HINTZ: You have another photograph there. May I use that?

MR. LASSART: Sure.

MR. HINTZ: May this be marked, your Honor?

THE COURT: Defendant's next in order.

THE CLERK: "G", yes.

[A photograph was marked Defendant's Exhibit G for identification.]

Q. [MR. HINTZ] Sir, does Defendant's Exhibit G depict the same area but from a different location or different direction?

A. Yes, sir, north is indicated on this diagram as being at the top of the page whereas on the first one here it was at the bottom of the page. But it's the same, portrays the same area.

Q. Okay. Would you put a directional -- you have that on already I see.

A. Yes, sir.

Q. Would you again circle the intersection of Pacific and Grant?

A. Yes, sir.

Q. Okay. The first building on the northwest corner of Pacific and Grant, does that correspond with the three-story building that is located here?

A. Apparently so, yes, sir.

Q. Okay. And do the other photographs, do the other buildings to the left of that building depict two other structures and then a garage?

A. This would be on Pacific Avenue, yes, sir.

Q. Okay. And with respect to this first building on the northwest corner, is there some type overhead or canopy division that surrounds this three-story building that extends out over the sidewalk?

A. Yes, sir.

Q. Is there any type similar canopy device that extends out over the sidewalk on the southeast corner?

A. Not that is reflected from this aerial shot.

Q. Let's try the other one then.

A. There is several small awnings. Nothing that stands out as much as the opposite corner.

MR. HINTZ: Your Honor, I would like to have those two photographs received into evidence and circulated at this time, if I may.

THE COURT: All right. Be admitted.

[People's Exhibit Thirty-nine, a photograph, was received in evidence.]

[Defendant's Exhibit G, a photograph, was received in evidence.]

THE COURT: Start one at one end and the other at the other end.

MR. HINTZ: Yes, your Honor.

[The photographs were circulated among the jurors.]

THE COURT: Just generally familiarize yourselves with them now, ladies and gentlemen. You will see them in the jury room.

Q. [MR. HINTZ] Inspector Falzon, your conversation with Mr. Lee occurred at or around midnight or shortly thereafter on the 8th of June 1973; did it not?

A. Yes, sir.

Q. And that was at the Hall of Justice?

A. Homicide detail, that's correct.

Q. Persons present included yourself and also your partner, Inspector Cleary?

A. Yes, sir.

Q. And was anyone else there?

A. The defendant Chol Soo Lee.

Q. I understand he was in custody and under arrest for murder at that point in time?

A. He was under arrest, yes, sir.

Q. And did you advise him of his constitutional rights?

A. I did, sir.

Q. Including the right to remain silent and the right to have an attorney present and so on?

A. I did.

Q. And he gave up those rights and agreed to make a statement to you?

A. Yes, sir.

Q At the time of this conversation there was some tape recording device used to record word-by-word the questions you asked and the answers he gave?

A That's correct.

Q And was that a cassette or some other type similar type device?

A Cassette, yes, sir.

Q And thereafter, after the conversation was had and while the events of the conversation were still current in your mind and that of your partner was the transcript of the -- rather was the tape of the cassette later transcribed to a written or manuscript form?

A Yes, sir.

Q Do you have a copy of that transcribed portion in your presence?

A I do.

MR. HINTZ: At this time, your Honor, I would like to have the statement in its entirety read to the jury. There has been excerpts read on direct examination and I think the jury should be entitled to hear the statement in its entirety.

MR. LASSART: Your Honor --

THE COURT: Proper rebuttal.

MR. LASSART: No, your Honor, that's my objection. It's beyond the scope of rebuttal, first of all, and second of all it contains matters which are totally irrelevant to this particular hearing.

MR. HINTZ: The statement has been brought up, the extra-judicial statement is brought up in rebuttal at the outset that

certain questions are asked and certain answers have been given. The context is not clear unless the statement in its entirety is known to the jury. I think it would be proper rebuttal or surrebuttal for the jury to hear the entire statement.

MR. LASSART: I would ask for an offer of proof, your Honor, how under 356 of the Evidence Code counsel expects to read the total statement to explain three small excerpts, especially when the statement contains over twenty pages. If it is clear that the context of certain statements were admitted, then I would ask that only -- that any portion around that would properly explain the statement be allowed. No objection to that, but the reading of the total statement is irrelevant.

THE COURT: I think I would have to read the whole statement myself before I could make the ruling on that. I'll reserve my ruling on that, on your motion.

MR. HINTZ: Very well. That would conclude my cross-examination of this witness other than to have him read in the statement in its entirety full perspective and scope so it may be known to the jury.

THE COURT: I will have to find out. I certainly don't know what's in the statement. I'll read it.

You may step down at this time.

MR. LASSART: Your Honor, may I -- just one further matter?

THE COURT: Yes.

REDIRECT EXAMINATION of FRANK FALZON

By MR. LASSART:

Q I want to show you People's Number Eight which has been

marked for identification, Inspector, and I ask you to take a look at People's Number Eight which is a photograph and I ask you if that is a fair and accurate representation of the scene as it lay on June 3rd, 1973, the day of the incident as you would be standing in the street looking toward the southeast corner where the victim was laying?

A Yes, sir, it just about depicts where the witnesses -- the three skiers, Mill, Main and Lennon, were standing looking across the street. The area where the victim fell is depicted by a dark -- what appears to be a black outline on the sidewalk separated by two motorcycles, two police motorcycles. The area is also cordoned off by a radio car, and, as I have also mentioned, the two motorcycles protecting the scene.

Q You just said the area where the man fell and the sidewalk. Is that a correct statement; is that where the dark circular area is on the street?

A I said sidewalk. It's obvious in this picture it's on the street. It was a mistake on my part.

MR. LASSART: No further questions, your Honor.

THE COURT: Cross.

MR. HINTZ: I have no further cross-examination other than to reiterate the request for permission to have the statement in its entirety read to the jury, and absent that to further cross-examine tomorrow.

THE COURT: All right. Do you have any further rebuttal evidence?

MR. LASSART: I have other rebuttal evidence tomorrow, but it would not -- the witness wouldn't be present until tomorrow.

I'm having a problem.

THE COURT: All right. At this time, ladies and gentlemen, I'm going to admonish you please don't discuss the case with one another or allow anybody to discuss it with you in any way, shape or form. Keep an open mind on the case until you have heard all the evidence, arguments of counsel and law of the case. If there is any news medium with regard to the case, please disregard it.

We will adjourn until 10:00 o'clock tomorrow morning.

[The jury left the courtroom.]

THE COURT: Let the record reflect the jurors are not in place, counsel for both sides and defendant are.

MR. HINTZ: I would like to hand the Court a copy of this statement in question consisting of twenty-three pages.

THE COURT: All right. We will adjourn and I'll read it in chambers.

[The evening recess was taken.]

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TUESDAY, JUNE 18, 1974

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The matter of the People of the State of California versus Chol Soo Lee, having been continued to this date, was commenced before the Honorable Robert W. Cole, Judge of the Superior Court, Department Number One thereof, at 10:00 o'clock a.m.

The People were represented by James A. Lassart, Deputy District Attorney in and for the County of San Francisco.

The defendant was personally present and he was attended and represented by Hamilton L. Hintz, Jr., as his counsel.

The following proceedings were had, to wit:

THE COURT: Let the record reflect the jurors are not present, counsel for both sides and defendant are present.

Yesterday at the end of the proceedings counsel for the defense requested that the entire statement taken by Inspector Falzon be offered in evidence. The objection was made and I hereby sustain the objection. At this time are there any further matters to be taken up outside the presence of the jury?

MR. HINTZ: Could we just briefly go over the instructions because I assume we will be beginning argument momentarily.

MR. LASSART: There are a couple items I would ask to be placed into evidence at this time.

THE COURT: Before that, anything else outside the presence of the jury?

MR. LASSART: And also I believe counsel and myself have entered into a stipulation pertaining to testimony that would have been given this morning, that number four in the lineup, Sing Lee Chan, was in custody during a certain period of time.

THE COURT: Do you join in that stipulation?

MR. HINTZ: I'll join in that stipulation.

THE COURT: Any further evidence, rebuttal evidence?

MR. LASSART: Nothing further after that, your Honor.

MR. HINTZ: I have a few further cross-examination questions of Inspector Falzon in light of the Court's ruling that the entire statement may not come in. Based upon that statement I have a couple instructions that I would object to.

THE COURT: All right. Let's go through the instructions. What do you object to in the instructions?

MR. HINTZ: 203.

THE COURT: The objection is noted. Overruled.

MR. HINTZ: The Court has noted the prior objection regarding evidence of the .357 pistol, and for the record I would simply object to the specialized instruction regarding the possession of the weapon at the time of arrest. Now under 220 I don't think Mr. Lassart asked the question whether or not he has been convicted of a felony. I brought this out in my voir dire examination that he has been convicted of grand theft, but I don't --

THE COURT: No, it was not.

MR. HINTZ: But I don't think he was impeached on a showing that he has a prior felony conviction.

MR. LASSART: Your Honor, the probation officer was questioned concerning that particular -- the fact that he was on probation for 457.2 of the Penal Code.

MR. HINTZ: Of course that's a wobbler.

THE COURT: That's a wobbler and it could be either way.

The objection will be sustained to that.

MR. HINTZ: The last sentence of 220?

THE COURT: Yes.

MR. LASSART: Your Honor, I would ask then to place into evidence a certified copy of the conviction of Mr. Lee on the 457.2 which will then specify he is not a wobbler. We know he was convicted of 457.2 and we will place into evidence a certified copy to show that it was not a misdemeanor 457.2.

THE COURT: All right. I'll allow that.

MR. LASSART: All right. Thank you, your Honor.

THE COURT: Any other specialized instructions?

MR. HINTZ: I'm just seeing them for the first time, going over them right now, your Honor.

THE COURT: Mr. Hintz, you offered me two instructions.

MR. HINTZ: I offered you one on motive and also --

THE COURT: What did I do with them?

MR. HINTZ: Took them back. I offered the 201, circumstantial evidence.

THE COURT: That will be received. What about the motive?

MR. HINTZ: That's included in these instructions.

THE COURT: Let me have that, the one on the circumstantial evidence, if you will, please.

MR. HINTZ: Could I be heard briefly on that, on the applicability of that instruction?

THE COURT: Sure.

MR. HINTZ: Although this is a so-called eye witness-type case, the opportunity of the eye witness to view was very limited in nature and much of the testimony is dependent upon physical

description given as it may compare with the physical description of the suspect. By the same token the corroborative evidence that would go to support that identification is based upon the possession of the defendant of a certain caliber ammunition which is consistent with the caliber ammunition used to kill the deceased and the weapon found. By the same token I am sure the prosecutor will argue flight showing consciousness of guilt, I'm sure, the magnum, as another circumstance tending to show consciousness of guilt. I think on balance this is a case where there is a mixture of both direct and circumstantial evidence against Mr. Lee, and I think 201 would be appropriate to allow me to argue to the jury as to the appropriateness of a conviction acceptability as one pointing to his innocence and one pointing to his guilt.

THE COURT: Your offer is noted and the instruction will be rejected. I heard the case and the case rested basically and substantially on eye-witness identification, direct evidence.

Anything further?

MR. HINTZ: I'm going through these right now, your Honor.

I note there is no instruction offered on voluntary manslaughter as a lesser included offense within the crime of murder, and there is totally no facts before the jury to indicate what could have or may have precipitated the flight, chase, overtaking and acts of shooting.

THE COURT: I see absolutely no evidence in this case of voluntary manslaughter or involuntary manslaughter.

MR. HINTZ: Very well.

THE COURT: Do you have certain exhibits you want to intro-

fuse into evidence?

MR. LASSART: Yes, your Honor, the People would ask People's Eight be placed in evidence, and that is the black and white photograph of the southeast corner.

THE COURT: What is that?

MR. LASSART: People's Eight, southeast corner at the time of the incident or shortly thereafter.

THE COURT: Be admitted.

[[People's Exhibit Eight, a photograph, was received in evidence.]

MR. LASSART: That's the only exhibit the People wish to offer, your Honor.

THE COURT: What about these photographs?

MR. LASSART: They went in yesterday on Mr. Hintz' motion.

MR. HINTZ: And before the Court is still the ruling on Defendant's D, E and F, which were the police reports of the statements given by witnesses concerning visual observations and description of suspect.

THE COURT: All those were used for was to aid the witness in refreshing his memory; were they not?

MR. HINTZ: Yes.

THE COURT: They will be refused.

THE CLERK: And C-2.

THE COURT: What is that?

THE CLERK: Probation officer's record.

MR. LASSART: That's a photostatic copy of C-1 which is --

THE COURT: I'll admit it into evidence.

MR. LASSART: Your Honor, may I be heard on that for a

moment? There are indications on that probation report of other reporting times of Mr. Lee where he had seen his probation officer. I believe that the only purpose for that probation report or the evidence of the probation report on June 4th that was before the officer when he testified was to refresh his memory that Mr. Lee did report.

THE COURT: The fact of the matter was it did not refresh his memory, if you remember correctly, and he stated he didn't remember and couldn't remember whether Mr. Lee reported physically or by phone. And he indicated that he had reported in one way or another.

MR. LASSART: That's correct, and then, your Honor, it would have been used as past recollection reported, and when he read from that into the record the past recollection that is recorded as part of the record, the adverse party, which is me, your Honor, under 1237(b) did not move the total documents into evidence, and I think it is clearly before the jury the purpose that the document was used for and therefore the remainder of that document is surplusage and hearsay.

THE COURT: Your objection is noted and overruled. Be admitted into evidence.

Anything else?

MR. HINTZ: I would just have a couple questions.

THE COURT: I mean outside the presence of the jury?

MR. HINTZ: No.

THE COURT: Call the jury in, please.

MR. LASSART: Your Honor, perhaps just to briefly go over the stipulation we entered into before we get the jury so it can

be read to the jury.

THE COURT: Specify the stipulation.

MR. LASSART: Your Honor, the People would request that Mr. Hintz, for the defense, stipulate to the following information.

That if Mr. Sergeant James Purcell were allowed to testify, he would state that he is an appropriate custodian of records for the San Francisco County Jail and has testified so in that capacity, and he would testify that number four in the lineup, who is identified as Sing Lee Chan, was in custody from the 29th of May 1973 and including the 18th of September of 1973.

THE COURT: So stipulate, counsel?

MR. HINTZ: Yes. May I have his name again for the record?

MR. LASSART: James Purcell, P-U-R-C-E-L-L.

MR. HINTZ: I'll join in that, your Honor.

THE COURT: Are you going to offer any certified copy of prior conviction?

MR. LASSART: Yes, your Honor, I'm going to do that.

THE COURT: Call the jury in, please.

[The jury returned to the courtroom.]

THE COURT: All right, let the record reflect the jurors are all in place, counsel for both sides and defendant are present.

Proceed, counsel.

MR. HINTZ: I would like to recall Inspector Falzon to the stand, your Honor.

THE COURT: Inspector.

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FRANK J. FALZON

recalled as a witness on behalf of the Defendant.

DIRECT EXAMINATION

By MR. HINTZ:

Q Referring back to yesterday, Inspector, you tape recorded a conversation of Mr. Lee at or around midnight of June 8, 1973; did you not?

A. Yes, sir, that is correct.

Q And that tape recorded statement was reduced to a transcribed form of some sort?

A. Yes, sir.

Q And do you have a copy of that before you?

A. I have a page, sir, yes. I don't have the entire copy.

Q Did the statement consist of twenty-three pages?

A. Yes, sir, I believe it did.

Q All right. Directing your attention to page 16, do you have that page before you?

A. Yes, sir, I do.

Q Were these questions asked and were these answers given by Mr. Lee at that time, beginning on line 3:

"Question: Did anybody see you in the hotel at 7:00 -- 7:00 o'clock, 7:30, 6:00 o'clock that night?

"Answer: I don't know.

"Question: You don't recall. Have you been living with a girl there recently?

"Answer: No. There is my girl, sometime she

comes up now and then.

"Question: Your girl sometimes comes up now and then. Could you give her name, please?

"Answer: I don't want to get her involved in this.

"Question: Well, there is no way she is going to be involved if she is not involved. We would appreciate if you would give --

"Answer: Sandy.

"Question: Sandy. And Sandy's last name, please?

"Answer: I don't know.

"Question: Well, could I help you? Sandy Wong?

"Answer: No.

"Question: Do you know a girl by the name of Cindy?

"Answer: No.

"Question: You don't recall Sandy's last name?

"Answer: No.

"Question: Do you know where she lives?

"Answer: No.

"Question: How does she get in touch with you?

"Answer: She calls me sometimes."

Were those the questions asked by yourself and the answers given by Mr. Lee on the occasion of this conversation?

A. Yes, sir.

MR. HINTZ: Okay. Nothing else.

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CROSS-EXAMINATION of FRANK J. FALZON

By MR. LASSART:

Q At any time did Mr. Lee ever give you Sandy's last name?

A No, sir.

Q Inspector, just one further question. Was it ever public knowledge before Mr. Lee's arrest who the suspect was in the killing of Mr. Tak? I mean before Mr. Lee's arrest.

A There was none made public until that day shortly before. That's when a teletype was put out for his being wanted for this murder.

A And that was on what?

A The 7th of June, 1973.

MR. LASSART: I have no further questions.

THE COURT: Anything further, counsel?

MR. HINTZ: No.

THE COURT: Step down, sir.

MR. HINTZ: No further questions.

THE COURT: Any further evidence?

MR. LASSART: Yes, your Honor. At this time the People would ask that a certified copy of Mr. Lee's prior felony conviction in the Superior Court of the State of California in and for the County of San Francisco, that action number being 81230, the felony being grand theft from the person, 487.2 of the Penal Code, be placed in evidence.

MR. HINTZ: May I see it, please?

MR. LASSART: Sure.

THE COURT: Be admitted.

[A certified copy of a pridr conviction was marked People's Exhibit

THE COURT: That's People's what?

MR. LASSART: Forty.

THE CLERK: Forty, your Honor.

THE COURT: All right. Any further evidence, counselor?

MR. LASSART: Yes, your Honor. The People would ask at this time permission to read to the jury a stipulation which counsel for defense and myself have previously entered into.

THE COURT: Please do.

MR. LASSART: Thank you.

At this time the People would ask the defense once again to enter into this following stipulation:

That if James Purcell, Sergeant James Purcell, who is a Sergeant in the San Francisco Police Department, were here and in court to testify he would state that he is one of the appropriate officials designated as a custodian of records for the county jail and as such he has checked the record with regard to a man named Sing Lee Chan who has been identified as number four in the lineup photograph and that his search of the records shows that Mr. Sing Lee Chan was in custody in the county jail from the 29th of May of 1973, 29th of May 1973, through and including the 18th of September of 1973.

MR. HINTZ: I'll join in that.

THE COURT: All right. You will accept that stipulation as if the officer were called and testified to that fact.

Rest?

MR. LASSART: The People rest at this time, your Honor.

MR. HINTZ: No rebuttal.

THE COURT: Argue, counsel.

[Mr. Lassart thereupon presented an opening argument on behalf of the People. A recess was taken. Mr. Hintz thereupon presented a closing argument on behalf of the defendant.]

THE COURT: Ladies and gentlemen of the jury, we are going to adjourn for lunch now. Again I'm going to admonish you please don't discuss the case with one another or allow anybody else to discuss it with you in any way, shape or form. Wait until you have heard all the argument of counsel and law of the particular case. If anybody attempts to discuss the matter with you, please don't hesitate to contact one of my bailiffs or myself.

We will recess until 1:45.

[Luncheon recess was taken.]

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AFTERNOON SESSION

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[Court reconvened at 1:45 p.m.]

THE COURT: All right, let the record reflect all necessary parties are again present in court.

Proceed with your final argument, Mr. Lassart.

[Mr. Lassart thereupon presented a closing argument on behalf of the People. There Court thereupon instructed the jury. A bailiff was sworn to take charge of the jury. At 2:52 p.m. the jury left the courtroom in the company of the bailiff to begin deliberation, and returned into court at 5:10 p.m.]

THE COURT: Let the record reflect the jurors are all in place. Ladies and gentlemen, it has been a long day. I am going to send the jury home at this time to report back tomorrow morning at 10:00 o'clock. Again I'm going to admonish you please don't discuss the case with one another or allow anybody to discuss it with you except in that jury room right over there. If there is any news medium with relation to the case, please disregard it because you have heard all the evidence. Don't make any independent investigations of your own, and again, if anybody attempts to discuss the matter with you, please contact myself or one of my bailiffs.

Good evening. See you tomorrow morning at 10:00 o'clock. Same admonition applies to the alternate jurors.

[The evening recess was taken.]

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WEDNESDAY, JUNE 19, 1974

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The matter of the People of the State of California versus Chol Soo Lee, having been continued to this date, was commenced before the Honorable Robert W. Cole, Judge of the Superior Court, Department Number One thereof at 10:00 o'clock a.m.

The People were represented by James A. Lassart, Deputy District Attorney in and for the County of San Francisco.

The defendant was personally present and he was attended and represented by Hamilton L. Hintz, Jr., as his counsel.

The following proceedings were had, to wit:

[The jury all being present retired to the jury room at 10:00 a.m. for further deliberations and returned into the court again at 3:05 p.m.]

THE COURT: Let the record reflect the jurors and alternate jurors and counsel for both sides and defendant are present.

May I inquire who the foreman is?

THE FOREMAN: I am, your Honor.

THE COURT: And Mr. Foreman, you have handed my bailiff a request of certain testimony be re-read and also certain instructions; is that correct?

THE FOREMAN: Right.

THE COURT: And the note sent out by yourself, "We want the testimony of the defendant. We want the testimony of the probation officer, I believe his name is Sullivan, and instructions on reasonable doubt;" is that correct?

THE FOREMAN: That's correct.

THE COURT: Now, gentlemen, will you stipulate that the

court reporter can go into the jury room with the alternate jurors and the bailiff and have the testimony re-read in there?

MR. LASSART: Yes, your Honor.

MR. HINTZ: So stipulated, your Honor.

THE COURT: And, Mr. Foreman, I want to advise you at this time while the alternate jurors are in there there is to be no discussion while the court reporter is reading the testimony. Do you understand?

THE FOREMAN: Yes, your Honor.

THE COURT: As soon as you have that testimony re-read to you that you want, the alternate jurors will come back outside and you will continue to deliberate. Do you understand?

THE FOREMAN: Yes.

THE COURT: I will read you the instructions on reasonable doubt.

[The Court thereupon instructed the jury.]

THE COURT: Now that's the instructions you wanted; is that right?

THE FOREMAN: That's correct.

THE COURT: All right. The jury may retire, and, Mr. Court Reporter, you are going to have to get your notes, I assume, so the jury can retire and the alternate jurors will remain outside and as soon as the court reporter returns you will go inside with the bailiff and the alternate jurors.

[The jury retired to hear further testimony read at 3:06 p.m. and returned to the courtroom at 4:54 p.m. before the Honorable William A. Gallagher:]

THE COURT: All right, the record will reflect all parties

are returned to the court, all the jurors are present, the defendant is before the Court with his counsel.

Let the record reflect I am substituting for Judge Cole -- he had to go to a medical appointment -- only for the purpose of taking the verdict if there was to be a verdict this evening or to continue the matter until tomorrow in the event that verdict had not been arrived at.

Who is the foreman?

THE FOREMAN: I am.

THE COURT: What is your name, sir?

THE FOREMAN: Ronald Dumas.

THE COURT: Mr. Dumas, has the jury reached a verdict?

THE FOREMAN: We have, your Honor.

THE COURT: Would you pass the verdict to the clerk, please.

THE FOREMAN: They are all there.

THE COURT: Mr. Clerk, will you read the verdict, please?

THE CLERK: The People of the State of California versus Chol Soo Lee, verdict, Case Number 44362, Department One. We the jury in the above-entitled cause find the defendant Chol Soo Lee guilty of the crime of murder as charged in the Information in the first degree. Dated June 19, 1974, signed Ronald M. Dumas, Foreman.

Ladies and gentlemen of the jury, is this your verdict?

[All indicate in the affirmative.]

THE CLERK: So say they all, your Honor.

THE COURT: Poll the jury.

[The clerk thereupon polled the jury.]

THE CLERK: So say they all, your Honor

THE COURT: Record the verdict.

THE CLERK: The verdict is recorded, your Honor.

THE COURT: Read the second verdict.

THE CLERK: The People of the State of California versus Chol Soo Lee, Case Number 44263, Department Number One. We the jury in the above-entitled cause find that during the commission of the offense charged in the Information, Defendant Chol Soo Lee used a firearm, to wit, a .38-caliber revolver, in violation of Section 12022.5 of the Penal Code of the State of California. Dated June 19, 1974. Signed Ronald M. Dumas, Foreman.

Ladies and gentlemen of the jury, is this your verdict?

[All indicate in the affirmative.]

THE CLERK: So say they all, your Honor.

THE COURT: Poll the jury.

[The clerk thereupon polled the jury.]

THE CLERK: So say they all, your Honor.

THE COURT: Record the verdict.

THE CLERK: The verdict is recorded.

THE COURT: This completes your service. Thank you for the time and attention you have given to this particular case. I note Norman Root, Cecil Martinez, Paul Lefevre, Jack Gebauer, William Smith, Hilda Schleining and Sally Muranaka have completed your period of service, and thank you for the time you have given to the system. You are all excused until further notice or otherwise.

Good night.

[The jury left the courtroom.]

[The defendant stood and spit towards the deputy district

attorney.]

DEFENDANT LEE: You mother fucker.

THE COURT: Continue the matter until tomorrow. Remove him.

MR. LASSART: Your Honor, may I --

THE COURT: Let the record reflect that just shortly after the jury filed out the defendant began to spit on the district attorney, I guess, yes, from San Francisco.

MR. LASSART: Yes, your Honor.

THE COURT: And I haven't been here before, didn't know who was here. And he began to yell profanities after him and became uncontrollable and had to be restrained and because of that, his physical threatening condition, he was removed from the courtroom.

Is there anything that you want to say in that regard at this time, Mr. Hintz?

MR. HINTZ: It is true.

MR. LASSART: Your Honor, correctly describing the demeanor of the defendant, I could add nothing more than the facts the Court has already stated.

THE COURT: Did you intend to be in town overnight?

MR. LASSART: I will be in town overnight, yes.

THE COURT: Would you think I should continue it until tomorrow morning for motions and referral to the probation office?

MR. HINTZ: He is in state prison already, your Honor, for another offense.

THE COURT: He is serving time?

MR. HINTZ: Serving time for grand theft from the person. He is presently in D.V.I. at Tracy.

THE COURT: I would think that
Court for a formal referral. n't it?
MR. LASSART: Yes, your H
Court that he could at leas inappropriate
holding cell, the Court c n already.
to make, he can make them. degree
THE COURT: The only problem ess to the
with the case. I would rather he be .
and couldn't obviously -- hould
MR. LASSART: I'm just now trying to rec..
formality that needs to be done on the day the ve.
rendered that cannot be put over until tomorrow. Tha
thing I'm trying to recall. I don't think there is.
THE COURT: His emotions might be subsided somewhat by
tomorrow morning.
MR. HINTZ: That's doubtful.
THE COURT: It is?
MR. LASSART: This is a situation that will come up every time the man comes out of the holding cell.
THE COURT: Do you have any kind of restraining jacket to place on him?
THE BAILIFF: He is cuffed now. I will just stand him by the door, if you want to.
MR. HINTZ: You would not impose sentence anyway.
THE COURT: What do you mean, stand by the door?
THE BAILIFF: Just bring him right here until you continue it until J and S day.
MR. LASSART: I would say, your Honor, that would be a good

idea.

THE COURT: That would be July 10th; wouldn't it?

THE CLERK: Yes, your Honor, July 10th.

MR. HINTZ: The probation reference is really inappropriate in this case in view of the fact that he is in prison already. He is not eligible for probation because of the first degree conviction. I would have certain legal motions to address to the trial judge, Judge Cole, in connection with sentencing.

THE COURT: I would really think in light of that I should calendar it until a time Judge Cole is here.

MR. LASSART: Yes, your Honor.

MR. HINTZ: I would agree.

THE COURT: You make --

MR. LASSART: I would just suggest to the Court that if the man could be brought to the holding cell, the Court can set the presentencing date twenty-one days from today and any date counsel --

THE COURT: July 10th. I'm willing to do that.

MR. LASSART: And that would cover us until --

THE COURT: And all appropriate motions.

[There was a discussion off the record. The defendant was brought to the door of the holding cell and the courtroom.]

THE COURT: All right, recalling the matter of Chol Soo Lee, the record will reflect you are back in court, Mr. Lee. Try to restrain yourself.

DEFENDANT LEE: Restrain for what, sir?

THE COURT: You will be given a chance --

DEFENDANT LEE: What chance will I be given for something I

didn't do?

THE COURT: I'm going to continue the matter until another date when Judge Cole will be back here. I will refer the matter to probation for the report and recommendation at that time and that can be read at that time and all motions on your behalf can be made at that time and he will return at that time. I'm not familiar with the case. I don't know anything about it.

So the matter will be continued until July 10th for all kinds of motions that you want to make at that time.

DEFENDANT LEE: What motions do I have? I've already been found guilty, your Honor.

THE COURT: I don't know because I'm not familiar with it. Your attorney will have to give a lot of thought to that. I'm not familiar with the case. I don't know anything about it.

The matter will be continued until July 10th. He will be back at that time.

THE CLERK: Nine a.m.

[Court adjourned.]

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WEDNESDAY, JULY 10, 1974

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The matter of the People of the State of California versus Chol Soo Lee, having been continued to this date, was commenced before the Honorable Robert W. Cole, Judge of the Superior Court, Department Number One thereof, at 9:00 o'clock a.m.

The People were represented by James A. Lassart, Deputy District Attorney in and for the County of San Francisco.

The defendant was personally present and he was attanded and represented by Hamilton L. Hintz, Jr., as his counsel.

The following proceedings were had, to wit:

THE CLERK: 44362, Chol Soo Lee.

THE COURT: Chol Soo Lee, that is your true name?

DEFENDANT LEE: Yes.

Mr. Hintz, you represent Mr. Lee?

MR. HINTZ: Yes, your Honor.

THE COURT: Heretofore in this Court you were found guilty by a jury of your own choosing of the crime of murder of the first degree as charged in San Francisco County, Amended Information Number 86219. The jury also found you guilty of violation of Section 12022.5 of the Penal Code as charged in the Amended Information. The defendant previously admitted a prior conviction as charged in the Amended Information. The matter was referred to the Sacramento County Probation Office for report. The Court has received the same; it is ordered filed. I ask at this time any legal cause why judgment and sentence should not be pronounced, sir?

MR. HINTZ: Yes, your Honor. At this time I would like to

file motion for new trial. I hand a copy to the clerk.

MR. LASSART: Your Honor, may I also advise the Court that Mr. Lee had also admitted a 30.24 allegation.

MR. HINTZ: Essentially the motion for new trial goes to three points, your Honor. First, the Court's misdirection to the jury in not giving CALJIC 201, the circumstantial evidence instruction, regarding the admission before the jury of the loaded .357 revolver on the ground this was clearly not the murder weapon. And secondly, as to the inadequacy of his former counsel, and in that regard Mr. Lee was arrested on June 7, 1973, in San Francisco and thereafter was appointed the public defender's office of that county from the outset of the case. It is my understanding that he made statements to his appointed counsel advising them as to activities and whereabouts concerning that period between, roughly, June 3rd, the night of the murder, and June 7th, the night of his arrest. He provided the names; he provided the addresses and/or telephone numbers of at least two witnesses, a Sandra Owang and Joanie Hu, who could in part verify and corroborate his account of his whereabouts during that critical period of time. In fact the Court will recall Mr. Lee's own testimony that he had spent the night of the murder at his hotel on Broadway with Sandy Owang. Those names were known to the public defender's office, known to the attorney representing Mr. Lee, known to the investigator who was assigned to investigate this case, and for a period of ten months nothing was done with respect to an attempt to contact and locate these people to determine whether or not they were if in fact able to corroborate any portion of his story.

THE COURT: Were you ever able to contact them, counsel? I know you tried?

MR. HINTZ: No. I can bring the Court up to date in that respect. On approximately March 31st two public defenders from San Francisco County came to Judge Puglia, indicated the case had been transferred for publicity purposes to this county. They were asking in effect this Court's permission to withdraw as attorneys of record so that a local attorney may be appointed to represent Mr. Lee. After certain conversations with Judge Puglia I agreed to accept the case.

It was two weeks after that before he transferred the file to me. At all times I was aware of the fact his defense was not based upon diminished capacity or the areas into which they had appeared to have been looking for the period of ten months preceding, but prior offenses, misinformation or alibi. They represented -- they, referring to Mr. Gould, the attorney of record, and a Mr. -- the other fellow's name escapes me -- they had written letters to Judge Puglia that their office would provide adequate investigative assistance to appointed counsel in Sacramento. I made numerous attempts both telephonically and directly to solicite their cooperation in running down and locating these particular witnesses. On May 20th, the day I visited Mr. Lassart in his office and met him for the first time in San Francisco, roughly ten days before trial, to that point they had done nothing.

I had a conversation with Mr. Mancuso who is the public defender of their county, and told him to either fish or cut bait and get onto their investigator to give me a letter so I can give

it back to Judge Puglia to show that their own staff is so burdened with one death and somebody else being fired and so on that these witnesses simply could not be located. Well, they attempted at that point to offer some assistance which was superficial only. The girl was located in San Francisco State College, the Owang girl, but she was not contacted or interviewed for some reason. Finally I had Charlene Fowler appointed. I would submit to the Court her affidavit wherein she was briefed by me relative to the nature of the case, the necessity of locating these two very indispensable witnesses, I thought, and what I have handed to the Court is Miss Fowler's statement under penalty of perjury to the extent of what activities she made in an attempt to locate the witness. By the time Charlene got to the case she found that Miss Hu had left for the Orient on a two-year tour. Miss Owang was apparently ducking the subpoena. The attached reports to Miss Fowler's affidavit reflect the entire so-called defense file that was turned over to me.

Now when I took over the case I received the usual and typical autopsy report, police reports, the materials from the prosecution that one would expect to get by way of discovery in a murder case, but what was totally lacking was anything at all from the defense to show that they had done anything on behalf of this man for a period of ten months. All they had done was move to change venue, and when they succeeded in that they got out.

THE COURT: All right. Counselor?

MR. LASSART: Yes, your Honor, I would like to make some representation to the Court with regard to the prosecution's

activities in this case both before the trial and actually subsequently to that time. By the time the People found that Miss Cassandra Owang came before this -- or we began looking for her as a witness, this was before trial, a matter before the Department of Motor Vehicles ran a check. She does not have a driver's license. We checked with CI&I. He can't locate a record on her. We finally, through the same means as the defense, went through the San Francisco State College University and got a home address for her in Alameda, California. We were unsuccessful because they were uncooperative before trial to contact anyone at that address, and by that I mean the parents. Subsequent to the trial we did contact Miss Owang's parents. We found out that she does not know or have an address for her daughter. Her daughter lives somewhere in San Francisco and she is not a frequent visitor of the home and is looked upon as sort of the wayward child in the family. We have continued to look for Miss Owang and have found an address in San Francisco which in all essence could be considered a crash pad with a number of people living in that area known as the Hayes Valley area of San Francisco. We have been to that -- not myself, but Investigator Castagnetto from the district attorney's office has been there approximately eight times. Twice he has talked to people. Three times he has been refused admittance and other times no one answered the door. They said she stays there at times. That's all we can do, your Honor.

The defense in this case has not shown either that the evidence that would -- that she would have produced at trial would have been other than cumulative. The fact that the

defense did not request a continuance during the trial to locate her, which the Court may or may not have granted, depending on the showing, would indicate that all efforts have taken place to locate this young lady. She is an uncooperative and unwilling witness. She is some -- if she is a witness. And in that regard I would like to add one further thing, that we have also gone to the extent of checking the Fairmont Hotel where the defendant testified he met the young lady that night. In checking with the Fairmont Hotel we could find no work record of a Cassandra Owang at the Fairmont Hotel. We have also attempted to locate a young lady named Joanie Hu. Now I think the young lady who Mrs. Fowler -- who made that affidavit before the Court, is mistaken or forgot something in that there is a small statement from Joanie Hu that was turned over in discovery. She was located on Anza Street if the Court will recall the testimony, shortly after the incident by inspectors. She did not corroborate what the defendant said on the stand. In other words, she did not see the defendant until two days after the incident.

The People would oppose the motion for new trial first of all with regard to the ground of the adequacy of the investigation. I think that this case has been as adequately investigated as you could investigate a case when the witnesses during the confrontation with any authorities either for the prosecution or defense.

And one other thing I should add, your Honor, that subsequent to the trial, based upon the defendant's representation that Miss Owang visited him in city prison and county jail, I have had Mr. Castagnetto from our office check that and there is

no record in the book of listing of visitors of Miss Owang ever visiting Mr. Lee subsequent to his arrest on June 8th. Maybe she used another name. That would be a possible explanation, but we can't find any record of her visit to him.

We would oppose a motion for new trial first of all because the investigation has been as adequate as it could be. Secondly, with regard to the introduction into evidence of the weapon in that that was the -- the jury received the proper admonition in that it went to the indication of flight, and we would submit the matter, your Honor.

MR. HINTZ: Your Honor, if I may be heard in rebuttal?

THE COURT: Go ahead.

MR. HINTZ: The testimony of this defendant was essentially to the effect that on the night of the homicide he was in his room where a telephone call was received by an elderly man who lived next door who is since deceased. The defendant took the call, testified that it was a girlfriend, and arrangements were made to meet her later.

Now what happened in that interim period of time, we know only from what the defendant himself testified to, but we do know as to actual fact to the sworn testimony of Mrs. Etcheveste, the landlady, that two mornings later that girl was in his room when an argument developed. The girl's name was either Cindy or Sandy, she testified, and she heard this horrible argument and either saw or heard sufficient sound to make it apparent to her that the girl was leaving which was consistent with his testimony that he had been with this girl for a period of two days and two nights.

In between there was a testimony of probation officer,

San Francisco County, to the effect that there had been a contact, whether it be personal or telephonic he did not know, but the Court, as a former attorney also, can recognize the fact that coming into a case of this nature ten months later with the defense of alibi certainly behooves those persons acting in behalf of the defendant, if the defense is alibi, you get out; you don't sit back and -- you act on it. And I think clearly the omission to make any contact, have any face-to-face conversation with either of these two witnesses, attempt to verify or refute what it is that the defendant says they might have said at trial is grossly inadequate representation.

THE COURT: Anything further, gentlemen?

MR. LASSART: Just one other matter, your Honor. Just briefly. There was a witness that the public defender's office did turn up for the defendant in this case. Her name was Cynthia McGill. She was in the courtroom. I would just indicate that for the record to indicate they had found other witnesses pertaining to the case. It was a lady that was not called.

THE COURT: She was here in court. In fact she was recognized by the Court. And she did not testify.

MR. LASSART: That is a matter of tactics for counsel, but I wanted the Court, the record, to reflect that there was a witness here that was present.

THE COURT: I understand. All right. Any further legal cause, counselor?

MR. LASSART: Nothing further, your Honor.

MR. HINTZ: No further legal cause. I would ask the Court nonetheless, in pronouncing judgment and sentence, to impose

sentence pursuant t[illegible]action 1202(b) of the Pe[illegible]. Code by virtue of the fact that Mr. Lee is presently of the age of twenty-one. At the time of this offense he was of the age of twenty years; and, secondly, the Court to make the commitment on this sentence concurrent with the prior term presently serving. That would be grand theft person.

THE COURT: All right. Motion for new trial is hereby denied.

In this case the evidence was overwhelming. It is the judgment and sentence of this Court for the crime of murder of the first degree Chol Soo Lee be confined in the State Prison of the State of California for the term prescribed by law. He is also remanded to the custody of the Sheriff of Sacramento County to be by him delivered to the Superintendent of the California Medical Facility located in Vacaville, California.

It is also found that 1202.5 of the Penal Code -- he was also found responsible for that. And he admitted the prior conviction. He also admitted that at the time of his arrest he was armed with a dangerous and deadly weapon, to wit, a .357 caliber. The defendant is remanded to the custody of the Sheriff of Sacramento County.

Mr. Lee, it is my duty to inform you of your rights, your right to appeal. It is my duty to advise you of the right to appeal to the appellate courts from the judgment of this Court in imposing sentence upon you and also the appellate court will review the order of this Court in denying your motion for new trial.

If you want to file an appeal, there is a sixty-day time limit within which you must act by filing a written Notice of

Appeal. This st[illegible]s to run from today.

Do you have a Notice of Appeal?

MR. HINTZ: I have it here, your Honor.

THE COURT: Will you file it, please.

And the Court will order the court reporter to prepare a transcript according to the California Rules of Court.

If you appeal and you don't have the money to hire a lawyer, the appellate court will hire a lawyer to represent you on appeal. It is your obligation to keep the appellate court advised of your current mailing address. They then will be in touch with you to see if you have a right to a free lawyer after you have filed the Notice of Appeal.

Do you understand these rights of appeal, sir?

DEFENDANT LEE: Yes.

THE COURT: Are you going to take the appeal for him, Mr. Hintz?

MR. HINTZ: I probably will.

THE COURT: All right. That's the order. The defendant is remanded.

MR. HINTZ: Your Honor, he asks that he be remanded back to Tracy at D.V.I. where he was confined prior.

THE COURT: That's up to the Department of Corrections. I'm sending him to Vacaville. They, in all probability, will send him to D.V.I.

MR. HINTZ: All right. Will the Court reserve jurisdicition under 1268 for sentencing under 1202(b) concurrency?

THE COURT: No. Those motions will be denied.

MR. LASSART: Will the Court make a finding that Mr. Lee is

not eligible under 1202(b) and/or CRC?

THE COURT: He is not. That will be the order.

MR. HINTZ: The Court is making no commitment or finding now relative to the concurrency or consecutive?

THE COURT: That's right.

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