

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

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

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

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

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APPEARANCES:

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

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1 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

2 IN AND FOR THE COUNTY OF SANTA CLARA

3 COURTROOM NO. 5

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

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6 THE PEOPLE OF THE STATE OF CALIFORNIA,)

7 Plaintiff,)

8 vs.)

) No. 61669

9 DAVID MALEK ISMAIL,)

10 Defendant.)

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12 San Jose, California, March 8, 1976.

13 APPEARANCES:

14 For the Plaintiff:

LOUIS BERGNA, District Attorney
County of Santa Clara
234 East Gish Road
San Jose, California.
By Kenneth Robinson, Deputy
District Attorney.

18 For the Defendant:

PESTARINO, WINNINGHAM, MENARD
& TENENBAUM, ESQS.
777 North First Street
San Jose, California.
By Angelo Pestarino, Esq.

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FIRST DAY

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

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

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

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

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

16 THE COURT: Would you please be seated?

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

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

25 THE CLERK: Yes, Your Honor.

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

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

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

14 (Short recess taken.)

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

17 MR. PESTARINO: Thank you, Your Honor.

18 (Voir dire examination of prospective jurors resumed.)

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

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

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

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

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

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

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1 SECOND DAY

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

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

7 MR. ROBINSON: Good morning, Your Honor.

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

10 MR. ROBINSON: Might we approach the bench?

11 (Discussion off the record.)

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

14 (Voir dire examination of prospective jurors resumed.)

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

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1
2 AFTERNOON SESSION

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

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

8 (Voir dire examination of prospective jurors resumed.)

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

14 (Short recess taken.)

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

18 (Voir dire examination of prospective jurors resumed.)

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

21 (Discussion off the record.)

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

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

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

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THIRD DAY

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

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

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

(Voir Dire examination of prospective jurors resumed.)

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

(Short recess taken.)

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

(Voir Dire examination of prospective jurors resumed.)

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

MR. PESTARINO: The defendant is satisfied.

THE COURT: The People's challenge.

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

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

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

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

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

12 We will draw now for the first alternate juror.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 to repeat this admonition each time?

2 MR. ROBINSON: So stipulated.

3 MR. PESTARINO: Yes.

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

7 MR. ROBINSON: So stipulated.

8 MR. PESTARINO: Yes.

9 MR. ROBINSON: May we approach the bench?

10 (Discussion off the record.)

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

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

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

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

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

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

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

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

21 JUROR NO. 9: Okay. Fine.

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

24 JUROR NO. 1: What about like today?

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

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

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

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

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

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

19 Thank you very much.

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

23 ---oOo---

24
25
26

1 FOURTH DAY

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

3 ---oOo---

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

8 MR. ROBINSON: Thank you, Your Honor.

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

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

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

17 THE COURT: All right, sir.

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

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

22 (Whereupon, the Clerk read the Indictment.)

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

25 MR. PESTARINO: Yes, Your Honor.

26 THE COURT: You may proceed.

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

2 RICHARD THOMAS MASON, M.D.,

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

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

8 MR. PESTARINO: I have no objection.

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

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

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

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

19 DIRECT EXAMINATION

20 BY MR. ROBINSON:

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

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

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

26 MR. ROBINSON: I believe we have a stipulation

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

4 MR. PESTARINO: So stipulated.

5 THE COURT: Thank you, gentlemen.

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

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

9 MR. ROBINSON: Thank you.

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

12 A Yes.

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

14 A Yes.

15 Q Where was this autopsy performed?

16 A Santa Clara Valley Morgue.

17 Q Did you determine the cause of death?

18 A Yes.

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

20 A Gunshot wounds of the chest and abdomen.

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

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

WHOLE
PAGE

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

4 Q When he had fallen? A Yes.

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

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

8 Q Can I see that, please?

9 (Document handed to Mr. Robinson.)

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

12 THE COURT: Yes.

13 MR. PESTARINO: Okay.

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

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

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

19 (Diagram placed on board.)

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

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

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

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

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

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

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

13 A Yes, I did.

14 Q Could you tell us about those gunshot wounds of entrance,
15 if you would, please, where they went in, the angle, things
16 like that? A There was a gunshot wound of entrance
17 over the left upper front chest at a point 12 1/2 inches
18 beneath the top of the head and 2 1/2 inches to the right of
19 midline, represented by this red spot here. There was a
20 second gunshot wound of entrance which was present at 16 1/2
21 inches beneath the top of the head and 1 1/2 inches to the
22 right of midline. The third wound of entrance was just below
23 the rib margin at 19 inches beneath the top of the head and
24 1 1/2 inches to the left of midline. The upper wound
25 penetrated the upper lobe of the right lung and exited through
26 the right back. The second wound penetrated the right lung

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

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

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

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

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

20 A Bent over.

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

22 A Yes.

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

24 A It is approximately 25 degrees downward.

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

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

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

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

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

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

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

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

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

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

1 feet.

2 Q Okay. And why do you say that?

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

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

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

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

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

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

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

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

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

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

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

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

12 Q Did you recover the bullets from the decedent?

13 A Yes.

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

16 THE COURT: Yes.

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

20 MR. ROBINSON: May I approach the witness?

21 THE COURT: Yes.

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

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

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

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

7 THE WITNESS: Yes.

8 MR. PESTARINO: All right.

9 THE COURT: Do you want those admitted?

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

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

13 CROSS-EXAMINATION

14 BY MR. PESTARINO:

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

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

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

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

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

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

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

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

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

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

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

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

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

21 MR. ROBINSON: For the record.

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

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

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

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

3 MR. ROBINSON: I believe we have to.

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

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

6 MR. PESTARINO: Fine.

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

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

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

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

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

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

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

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

21 A There would be.

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

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

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

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

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

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

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

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

19 Q What do you mean by an automatic?

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

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

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

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

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

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

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

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

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

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

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

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

26 A If there was less background noise.

1 Q Okay.

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

3 MR. ROBINSON: I have nothing further.

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

5 (Witness excused.)

6 MR. ROBINSON: The People call Sergeant Parrott.

7 AUBREY RAYMOND PARROTT,

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

10 DIRECT EXAMINATION

11 BY MR. ROBINSON:

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

15 Q Your occupation? A Detective Sergeant.

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

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

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

20 A Yes, I am.

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

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

26 A That is correct.

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

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

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

7 Q And are you familiar with that area?

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

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

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

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

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

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

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

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

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

1 write on the street?

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

3 A (Writing.)

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

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

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

11 A Yes, sir.

12 Q And could you write that in for us?

13 A This is Cottle right here (indicating).

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

16 Q Yeah. Can you do that for us?

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

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

21 A (Writing.)

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

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

25 A I am not familiar where that location is.

26 Q Okay.

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

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

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

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

9 A Yes, sir.

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

11 A I drew it.

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

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

16 A Yes, sir, it is.

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

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

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

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

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

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

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

1 show any signs of forced entry.

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

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

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

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

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

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

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

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

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

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

25 Q Just an X there.

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

1 THE COURT: Beg pardon?

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

3 THE WITNESS: P-1.

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

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

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

16 Q And who directed your attention to that area?

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

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

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

25 Q Showing you --

26 THE CLERK: People's 4.

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

3 A Yes, sir.

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

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

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

9 Q What did you do upon seeing that weapon?

10 A I proceeded to photograph it in place.

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

12 A Yes, sir, I did.

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

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

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

18 A About three and a half years.

19 Q And was there anything inside that weapon?

20 A Yes, sir, there was.

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

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

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

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

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

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

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

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

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

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

12 THE WITNESS: Sure, certainly.

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

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

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

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

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

23 Q Okay. Where do the bullets go?

24 A They go in here (indicating).

25 Q So if --

26 THE COURT: In here for the record indicating through

1 the top.

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

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

8 MR. PESTARINO: Thank you.

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

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

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

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

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

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

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

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

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

1 clip.

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

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

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

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

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

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

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

19 A Yes, sir.

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

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

24 Q In the junipers? A Yes, sir.

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

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

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

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

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

8 MR. ROBINSON: That is correct.

9 THE COURT: How many of them are there?

10 MR. ROBINSON: I believe there are four.

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

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

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

17 A Yes, sir, I am.

18 Q Okay. How are you familiar with that?

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

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

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

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

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

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

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

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

19 Q Is that what was done in this case?

20 A That is correct.

21 Q And were these prints given to anybody?

22 A Yes, sir, they were.

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

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

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

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

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

7 MR. PESTARINO: What are you calling them?

8 THE CLERK: Is it cases?

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

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

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

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

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

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

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

7 THE WITNESS: (Writing.)

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

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

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

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

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

20 Q Okay.

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

24 THE WITNESS: That is correct.

25 MR. PESTARINO: Okay.

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

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

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

3 MR. PESTARINO: You might as well.

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

9 (Short recess taken.)

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

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

15 THE COURT: So ordered.

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

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

21 THE COURT: Surely.

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

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

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

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

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

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

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

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

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

21 A Yes, sir, I did.

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

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

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

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

4 A Yes, sir, I did.

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

6 Q No. 29? A Yes, sir.

7 Q Okay. A Or, correction, 129.

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

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

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

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

19 Q Okay. Did you photograph that room?

20 A Yes, sir, I did.

21 Q And did you remove articles from that room?

22 A Yes, sir, I did.

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

25 Q What articles did you leave in the room?

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

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

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

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

9 Q Okay.

10 MR. ROBINSON: May I approach the witness?

11 THE COURT: Surely.

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

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

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

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

22 A That is correct, up on the stairwell.

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

26 Q Just glance through them briefly, please.

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

3 Q Okay.

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

6 MR. ROBINSON: No objection as to what?

7 MR. PESTARINO: Introducing them into evidence.

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

10 THE COURT: All right.

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

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

16 A That is correct.

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

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

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

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

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

1 looking out.

2 Q Showing you People's 10-Q.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 Q And do you recall what he was wearing?

19 A Yes, sir.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 Q One extra shirt? A I believe so.

1 Q Okay.

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

4 THE COURT: It will be 11.

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

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

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

12 THE WITNESS: Yes, sir.

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

15 THE COURT: They will be No. 12.

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

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

20 MR. PESTARINO: Yes.

21 THE COURT: So ordered.

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

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

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

3 THE COURT: That will be No. 13.

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

5 MR. PESTARINO: I better check.

6 THE COURT: Okay.

7 MR. PESTARINO: Yeah.

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

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

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

15 MR. PESTARINO: So stipulated.

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

18 MR. PESTARINO: Yes, Your Honor.

19 THE COURT: So ordered.

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

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

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

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

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

7 A Yes, sir, it is.

8 Q Okay. Where was that item located?

9 A This was inside of the AWOL bag.

10 Q Okay.

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

14 THE COURT: That will be 16.

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

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

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

22 A This was also inside the AWOL bag.

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

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

1 THE COURT: That will be No. 17.

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

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

7 A Yes, sir, I can.

8 Q Can you tell us where you saw that?

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

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

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

15 MR. ROBINSON: One exhibit, Your Honor.

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

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

22 Q Could you tell us where, please?

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

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

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

2 A Yes, sir.

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

4 A Yes, sir.

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

6 A I believe a couple sentences.

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

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

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

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

13 A A number of them, yes, sir.

14 Q And in your experience as a police officer?

15 A Yes, sir.

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

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

20 Q Okay. Thank you.

21 MR. ROBINSON: I have nothing further.

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

23 MR. PESTARINO: Thank you, Your Honor.

24 CROSS-EXAMINATION

25 BY MR. PESTARINO:

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

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

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

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

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

9 A No, sir, I am not.

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

13 A That is correct.

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

16 A Yes, sir.

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

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

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

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

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

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

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

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

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

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

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

12 Q You went there pursuant to a search warrant?

13 A Yes, sir.

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

16 A Johnny Walker, correct.

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

19 A That is correct.

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

22 A I would guess closer
23 to a fourth.

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

A I don't know whether

he had or not.

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

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

A Yes, sir, that and some other.

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

2 A That is correct.

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

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

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

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

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

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

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

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

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

1 in the entire conversation.

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

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

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

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

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

12 A Los Pinos.

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

14 A I believe there is.

15 Q Streetlights? A Yes, sir.

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

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

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

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

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

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

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

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

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

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

11 Q An Eric Anderson? A That is correct.

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

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

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

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

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

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

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

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

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

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

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

12 A Okay. The overhead porch light.

13 Q That was on? A That was on.

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

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

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

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

4 A No, sir, not upon my arrival.

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

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

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

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

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

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

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

20 A Yes, sir.

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

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

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

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

6 A That is correct.

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

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

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

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

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

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

20 A That is correct.

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

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

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

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

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

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

9 Q And the other prints were found where?

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

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

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

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

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

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

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

9 Q They told you there was? A Yes.

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

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

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

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

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

22 THE COURT: Yes.

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

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

1 MR. PESTARINO: All right. Fine.

2 MR. ROBINSON: I have some witnesses outside.

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

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

7 You can step down.

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

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

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

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

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

22 ---oOo---

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1 AFTERNOON SESSION

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

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

11 CROSS-EXAMINATION (Resumed)

12 BY MR. PESTARINO:

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

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

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

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

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

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

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

6 THE COURT: Those are bullets.

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

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

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

12 A I looked at them briefly is all.

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

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

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

16 A Yes, sir.

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

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

20 REDIRECT EXAMINATION

21 BY MR. ROBINSON:

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

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

1 Q And did Mr. Ismail understand those directions?

2 A Appeared to. He complied.

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

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

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

12 MR. ROBINSON: I have nothing further.

13 RECROSS-EXAMINATION

14 BY MR. PESTARINO:

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

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

19 A Be 15 years in July.

20 Q So you have seen a considerable number?

21 A Yes, sir.

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

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

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

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

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

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

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

12 A Yes, sir.

13 MR. PESTARINO: Okay. That is all.

14 MR. ROBINSON: I have nothing further.

15 THE COURT: Thank you, Officer.

16 THE WITNESS: Thank you, Your Honor.

17 (Witness excused.)

18 MR. ROBINSON: People call Mrs. Damron.

19 CAROL JEAN DAMRON,

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

22 THE CLERK: Take the witness stand, please.

23 DIRECT EXAMINATION

24 BY MR. ROBINSON:

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

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

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

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

4 A 6205 Woosley.

5 Q Is that in San Jose? A Yes.

6 Q And how long have you lived there?

7 A About a year and three months.

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

10 A Yes, sir.

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

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

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

16 Q Did you know his wife? A Yes.

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

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

22 Q All right. That would be Robert Damron?

23 A Yes.

24 Q Do you have any children? A Three.

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

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

4 Q Your husband had just gotten home from work?

5 A Yes.

6 Q At that time did you hear anything unusual?

7 A I heard noises out front.

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

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

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

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

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

17 A The garbage collection was that morning.

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

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

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

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

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

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

3 A Five, six seconds.

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

5 A To my right.

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

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

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

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

11 A My sidewalk, yes.

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

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

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

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

19 Q Very fast? A Yes, sir.

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

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

24 A My right.

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

1 him and then Mrs. Shimun was there instantly.

2 Q You saw Mrs. Shimun? A Yes.

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

5 Q Would you describe her condition?

6 A She was completely hysterical.

7 Q And was Mrs. Shimun saying anything?

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

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

11 Q Okay. Could you describe what he did?

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

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

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

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

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

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

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

1 direction of Cottle? A Yes.

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

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

8 Q Were you screaming loud? A Very loud.

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

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

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

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

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

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

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

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

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

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

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

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

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

7 Q Just before he fell? A Yes.

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

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

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

13 A Yeah.

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

15 A You can't see it at night.

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

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

18 A Yes.

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

20 A It is a big patch of junipers.

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

24 A Yes.

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

26 MR. PESTARINO: I think that is argumentative.

1 THE COURT: Yes. The objection is sustained.

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

3 A Yes, sir.

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

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

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

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

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

15 A Yes.

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

18 Q About the man falling and where he fell?

19 A Yes.

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

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

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

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

26 A That is the Shimuns' residence.

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

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

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

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

9 Q The police car? A No.

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

13 A It looks like it, yes.

14 Q That looks like the clothing that what?

15 A That the man was wearing.

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

17 A Yes.

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

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

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

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

24 A Yes.

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

26 CROSS-EXAMINATION

1 BY MR. PESTARINO:

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

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

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

8 A Never.

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

11 A By hearsay, yes.

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

13 MR. PESTARINO: Okay.

14 THE COURT: The objection is sustained.

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

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

19 A No.

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

22 A No.

23 Q Or going down the street? A No.

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

25 MR. ROBINSON: I have nothing further.

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

(Witness excused.)

MR. ROBINSON: People call Mr. Damron.

ROBERT DAMRON,

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

DIRECT EXAMINATION

BY MR. ROBINSON:

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

Q Your occupation? A Trenching contractor.

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

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

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

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

Q Was your wife with you? A Yes.

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

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

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

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

1 kids that usually knock over the garbage cans.

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

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

6 Q What did you hear her yell and scream?

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

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

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

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

13 A No.

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

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

16 A Yes, I know her.

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

18 Q And when you got outside what happened next?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 Q What street was that? A Los Pinos.

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

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

1 you want me to go ahead?

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

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

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

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

7 A Yes.

8 Q You were driving? A Yes.

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

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

11 A Mm-hmm.

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

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

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

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

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

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

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

1 Q Okay. Indicating the defendant? A Yes, sir.

2 Q Okay. And when you saw him walking down the street was
3 this the first time you had seen this man? A Yes.

4 Q Yourself? A Yes, that is the first time.

5 Q How did you know what sort of person you were looking
6 for? A As we drove by -- I didn't know who I was
7 looking for -- as we drove by I asked David, "Is that the guy
8 you saw running by you?" And he said, "Yes, that's him."

9 Q When you saw this person walking now on Cottle, could you
10 describe how he was walking? A Just, a little at a
11 fast pace. He wasn't running but he wasn't loafing. He
12 was just calmly walking.

13 Q Calmly walking in a fast pace? A Yes.

14 Q Okay. And what did you do after you saw this individual?

15 A Well, I told David we better not stop, let's just drive
16 on by. So we drove on by and we stopped at the phone booth
17 down on the corner.

18 Q What was your reason for not stopping?

19 A We thought he was probably armed because we heard
20 something about a shooting.

21 Q And did you drive on past this individual? A Yes.

22 Q And then what did you do? A We drove down to the
23 Union Station there, and there is a phone, and I stopped and
24 got, went into the phone booth.

25 Q Okay. And when you got to the phone booth did you call
26 somebody? A Yes, I called the police.

1 Q Okay. And what happened next? A I was on the
2 phone telling, there was a lady on the other end, and I
3 believe it was the police department, and she asked me to
4 identify, and at that time he was walking right by the -- he
5 was in the front of the shopping center which was directly
6 across from me, and I described him to her.

7 Q All right. The phone booth that you stopped at by the
8 gas station, was that in the shopping center?

9 A Yes. It is part of the shopping center. It is right
10 behind the gas station.

11 Q Okay. And as you drove past this individual that was
12 walking at a fast pace down Cottle Avenue did he look over
13 at you? A No, I don't think he did.

14 Q As you were in the phone booth making this call did the
15 man look at you? A No.

16 Q Now, did the police arrive at the phone booth?

17 A Just as I come out of the phone booth there was an
18 officer in a car right there, and I waved at him and he
19 pulled up, and I ran over to him, and I said, "I believe he
20 is in one of those stores over there." I didn't know which
21 one.

22 Q Which stores were you indicating? A Either the
23 Lucky Store or pizza parlor.

24 Q And did this officer enter the pizza parlor?

25 A Yes, well, he got, he went ahead in the car and I walked,
26 and he got there before I did. I assume --

1 Q And did you then go over to the pizza parlor?

2 A Yes, I went over to the front of it.

3 Q And did you stand outside the pizza parlor?

4 A Mm-hmm.

5 Q Did you see the officer go into the pizza parlor?

6 A No, they were in, already in there before I got over
7 there.

8 Q Did you see the officer bring somebody out of the pizza
9 parlor? A Yes.

10 Q And the person that he brought out of the pizza parlor,
11 is this the same person you had seen walking at a fast pace
12 down Cottle? A Yes, sir.

13 Q Is that the defendant? A Yes.

14 Q Now, I am going to show you People's 10-CC and 10-DD,
15 are you familiar with that picture? A No, I haven't --

16 Q You never seen it before? A No.

6 17 Q Do those appear to be the clothes that the individual was
18 wearing that you saw? A Yes, sir.

19 Q Okay. Gray suit and dark shirt? A Mm-hmm.

20 Q Okay. Now, Mr. Damron, if I can impose upon you a
21 little bit more besides keeping you down here all day, which
22 I apologize for, can you do us a favor and step to the board?
23 And I will familiarize you a little bit with this diagram.
24 Here is Woosley, here is Los Pinos, and here is Cottle. Okay?

25 A Mm-hmm.

26 Q Could you take, say, a green crayon and put an X on your

1 house where you live? A (Drawing.)

2 Q Okay. And maybe with this red crayon can you draw
3 an X where your van was parked? A (Drawing.)

4 Q Okay. So your van was right next to your house on Los
5 Pinos? A Mm-hmm.

6 Q Can you take that red crayon and trace a line for us in
7 the direction that you traveled that night in your van with
8 Mr. Stuken and Mr. Morgan? A You want me to mark it?

9 Q Yes, go ahead. A Okay. When we got to the
10 corner we went across the street because we saw these two
11 fellows right here (indicating), and we talked to the two
12 fellows and they said, yes, they saw somebody down the street.
13 Backed up and went down this way.

14 Q Could you draw a line to where you stopped your van
15 where the gas station appears to be? A Phone booth is
16 right there. I stopped right there (drawing).

17 Q All right. Now, could you put an X on there, a big red
18 X where it was that you first saw the defendant, Mr. Ismail,
19 walking at a fast pace on Cottle, if you can estimate?

20 A It was right in front of these apartments. I would say
21 it was right there (indicating).

22 Q Can you put a big X in there? A (Drawing.)

23 Q Okay. Thank you. How far away are those apartments
24 where you first saw the defendant, Mr. Ismail, walking at a
25 fast pace from the shopping center? A I'd say it is
26 four or five hundred feet.

1 Q Four or five hundred feet. Okay.

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

3 CROSS-EXAMINATION

4 BY MR. PESTARINO:

5 Q I think you might as well identify the shopping center
6 for us, would you please, on the map? Just put an S there.

7 A (Drawing.)

8 Q That is fine. Thank you. Had you heard any noises
9 outside of what appeared to be garbage cans being tipped over
10 that night? A Before that?

11 Q Yeah. A No, sir.

12 MR. PESTARINO: Okay. I think that is all.

13 MR. ROBINSON: Thank you.

14 THE COURT: Thank you, Mr. Damron. You are excused.
15 (Witness excused.)

16 MR. ROBINSON: People call Mr. Stukan.

17 NICHOLAS STUKAN,

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

20 THE CLERK: Take the witness stand, please.

21 DIRECT EXAMINATION

22 BY MR. ROBINSON:

23 Q Can you state your full name, spelling your last name
24 for the record, please? A S-t-u-k-a-n.

25 Q Okay. And your first name is Nicholas? A Yes.

26 Q Okay. Mr. Stukan, could you tell us where you live?

1 A 6226 Woosley Drive.

2 Q In San Jose? A Yes.

3 Q Okay. And did you live there on November the 6th, 1975?

4 A Yes.

5 Q Okay. And did you live there with your family?

6 A Yes.

7 Q All right. Now, where is your house in relationship to
8 the Patriarch's house, 6217 Woosley Drive?

9 A Is right across the street. Not right -- just a little
10 bit in maybe 10 degree.

11 Q You live on the other side of the street? A Yeah.

12 Q Okay. Now, Mr. Stukan, I am going to direct your
13 attention to November the 6th, 1975, at about 20 to 7:00,
14 quarter to 7:00 in the evening. Okay?

15 A Yeah.

16 Q At that time could you tell us where you were?

17 A We was in dining room.

18 Q You were -- A In my home.

19 Q And when you say "we," who was there?

20 A My wife, my daughter, my two daughter, and my son.

21 Q Okay. And were you eating dinner, something like that?

22 A Yes.

23 Q All right. Now, at that time, Mr. Stukan, did something
24 attract your attention? A We hear scream.

25 Q You heard screams? A Yeah, scream, my daughter
26 open the door, see Mrs. Emama --

1 Q Mrs. Shimun? A Yeah, screaming, said my
2 husband shot.

3 Q Okay. Now, was that the first noise that you had heard
4 that night? A Yes, yes.

5 Q Okay. And when your daughter opened the door -- well,
6 strike that.

7 You heard Mrs. Shimun screaming outside?

8 A Yes.

9 Q Okay. And could you -- you could hear her actually?
10 You could hear her voice outside? A No, not -- just
11 according Mrs. Carol's husband, some couple people --

12 Q Let me back up a minute. I think I confused myself.
13 When you were inside eating dinner with your family you said
14 you could hear her voice screaming, Mrs. Shimun?

15 A Yes.

16 Q You hearing her screaming, that caused you to open the
17 door? A Yes, Mrs. Emama came into my house.

18 Q When she came into your house could you describe her
19 condition? A No. No, nothing, she was screaming,
20 nothing more.

21 Q Was she hysterical? A Yeah.

22 MR. PESTARINO: That is irrelevant, too, if Your
23 Honor please.

24 MR. ROBINSON: It is going to be relevant.

25 MR. PESTARINO: I don't think that it is relevant.
26 Just designed to prejudice the jury.

1 THE COURT: No. Overruled. I think that it is
2 appropriate to describe her demeanor. It may be more
3 relevant later on.

4 MR. PESTARINO: I don't know that. Well, of
5 course, Your Honor has ruled on it. I will abide by the
6 ruling.

7 MR. ROBINSON: Thank you, Your Honor.

8 Q (By Mr. Robinson) Now, Mr. Stukan, after you saw Mrs.
9 Shimun in your house, what did you do?

10 A Run, everybody to help, something. My wife and I go
11 over next.

12 Q Could you speak up? It is hard to hear you.

13 A Yeah. We go to house, my wife and I. In corner, I
14 ask the people what happened, the Carol, said she saw some man
15 come out.

16 Q That is Mrs. Damron? A Yeah.

17 Q The lady who just testified in here? A Yeah.

18 Q Okay. Did Mr. Damron ask you to do anything?

19 A Yeah, took the van. He said, come on, follow him,
20 looking for something.

21 Q And did you get into the truck with Mr. Damron?

22 A Yes.

23 Q And did you drive down Los Pinos? A Yes.

24 Q And did you stop on Los Pinos to pick up someone?

25 A Yeah, we pick up another guy.

26 Q And did he get into the van? A Yes.

1 Q Had you ever seen this other guy before?

2 A No.

3 Q Okay. So now there were three of you in the van?

4 A Yes.

5 Q And did you drive down Los Pinos in the van?

6 A To Cottle Road.

7 Q Cottle Road? A Cottle Road, yeah.

8 Q When you got to Cottle Road did you see the man?

9 A No.

10 Q Okay. What did you do when you got to Cottle Road?

11 A We stop, and there was couple guy across the street, ask
12 them, they said yeah, they saw one man, he go this way,
13 showing there Santa Teresa.

14 Q He was going down Cottle toward Santa Teresa?

15 A Yeah.

16 Q What did you do then? A We saw one man, he was
17 walking in about, by Arbol Verde Apartments.

18 Q Okay. And what did you do next after you saw this man?

19 A We passed the guy, on to shopping center.

20 Q And at the shopping center did Mr. Damron go to the
21 phone booth? A I don't know, he's gone.

22 Q Okay. When you got to the shopping center what
23 happened? A Oh, I go to Thrifty.

24 Q Thrifty Drugs? A Department store, and they call
25 my son.

26 Q Where was your son? A He was my home.

1 Q Okay. What did you tell your son?

2 A I said this guy, suspicious guy in pizza.

3 Q Was in pizza? A Yeah.

4 Q Okay. And what happened next? A Well, come out,
5 the police was outside there.

6 Q And did somebody arrest you? A Yeah, the police,
7 they took me, said --

8 Q Okay. Were you wearing a black shirt that night?

9 A Yeah.

10 Q Okay. And did you tell them that you weren't the guy?

11 A No, I don't say nothing.

12 Q They didn't arrest you though? A No. Told them
13 go away.

14 Q Did you tell them where the guy was? Did you tell them
15 where the guy was that went into the pizza place?

16 A No, I don't think so, I told him. I don't remember.
17 I told him maybe something, because he took me.

18 Q They let you go though, didn't they? A Yeah.

19 Q And when -- did you see a police officer come out of the
20 pizza place with some guy? A Yeah, he was, -- police
21 was couple car.

22 Q And is this the guy that you saw walking down Cottle?

23 A I no see.

24 Q Well, the guy that you saw walking down Cottle.

25 A Yeah. Yeah, I saw where he come.

26 Q Was that the same guy that the police brought out?

1 A Yeah, the same guy.

2 Q Do you see that guy in court today? A I -- you
3 see, I never saw the guy. Well, this was at night. I saw
4 the guy, looking just for the gray, the clothes.

5 Q What sort of clothes was he wearing?

6 A Gray, light gray.

7 Q Suit? A Suit, yeah.

8 Q Okay.

9 MR. ROBINSON: And may I approach the witness, Your
10 Honor?

11 THE COURT: Surely.

12 Q (By Mr. Robinson) Showing you People's 10-CC and 10-Z,
13 does that suit look familiar to you?

14 A I don't know. I just -- this is it, was maybe 15, 20
15 feet when I saw. I can't say exactly it is the same. It
16 was light.

17 Q Light gray? A Light gray suit, yeah.

18 Q Okay.

19 MR. ROBINSON: Thank you, Mr. Stukan. And I have
20 no further questions.

21 CROSS-EXAMINATION

22 BY MR. PESTARINO:

23 Q You could see this light gray suit for 15 or 20 feet?

24 A Yeah, we was passing him the van, it was in the sidewalk.

25 Q Okay. Let me ask you something, Mr. Stukan. And I
26 am referring to this map, People's Exhibit 5 for identification,

1 here in the lower corner of the map is Woosley Drive, huh?

2 A Yes.

3 Q And you live across the street? A Yes.

4 Q At a little angle from the Patriarch?

5 A Yes.

6 Q Is all of this street, does it have lights, streetlights?

7 A Yes.

8 Q Is it pretty light at night? A Yes.

9 Q Pretty light. And when you go down Los Pinos --

10 A Yes.

11 Q -- are there lights all along that street?

12 A I don't remember. I think they get lights.

13 Q They got lights? A Yeah. I don't remember
14 exactly.

15 Q You know where that chain fence is here? About, close
16 to the corner, right almost kitty-corner?

17 A I never walk in this.

18 Q You don't know? Of course, Cottle Avenue is well-
19 lighted? You could see somebody? A Yeah. I saw
20 this guy some place here (indicating), the apartment.

21 Q Okay. All right. You didn't by any chance go over
22 to the Shimuns' place right after the shooting, did you?

23 A No.

24 MR. PESTARINO: All right. I don't have any further
25 questions.

26 REDIRECT EXAMINATION

1 BY MR. ROBINSON:

2 Q Yes. Mr. Stukan, did your wife go over to the Shimuns
3 after the shooting? A Yes.

4 Q Did she help out with the little baby?

5 A Yeah, took baby in my home.

6 MR. PESTARINO: That is irrelevant, too.

7 THE COURT: Well, it is just --

8 MR. PESTARINO: You know what it is designed for,
9 Your Honor.

10 THE COURT: Well, I will admonish the jury they're not
11 to be guided by sympathy.

12 MR. PESTARINO: We have a baby in here now.

13 THE COURT: -- for either party, or prejudice, but
14 it is relevant as to the actions of the various people.

15 MR. ROBINSON: Thank you. Your Honor, perhaps we
16 can also admonish the jury to disregard Mr. Pestarino's
17 comment. We are governed by rules of evidence. The
18 objection was overruled. It was a permissible question.

19 THE COURT: Just a minute. I have previously told
20 the jurors about objections and the Court ruling on them,
21 and the reasons for the Court's ruling, that they were not to
22 speculate as to why the objection is made or what the answer
23 might be if I sustain them, and so forth. I just want to
24 emphasize that anything that counsel says during the trial
25 is not evidence. The evidence comes only from the witnesses.
26 All right. You may proceed.

1 MR. ROBINSON: Thank you. I have no further
2 questions. Thank you, Mr. Stukan.

3 (Witness excused.)

4 MR. ROBINSON: The People call David Morgan, Your
5 Honor.

6 DAVID PHILIP MORGAN,
7 called as a witness on behalf of the People, being first duly
8 sworn, was examined and testified as follows:

9 DIRECT EXAMINATION

10 BY MR. ROBINSON:

11 Q Could you state your full name, spelling your last name
12 for the record, please? A David Philip Morgan,
13 M-o-r-g-a-n.

14 Q Mr. Morgan, where do you reside?

15 A 367 Los Pinos.

16 Q In San Jose? A Right.

17 Q Now, directing your attention to November 6th, 1975,
18 did you live at Los Pinos at that time? A No, I didn't.

19 Q Okay. Were you in the area of 367 Los Pinos on
20 November 6th, 1975? A Yes, I was across the street.

21 Q And were you by yourself or with somebody?

22 A I was with my wife.

23 Q What was your purpose in being there?

24 A We were waiting for the tenant to arrive to give us our
25 keys so we could move in.

26 Q You just purchased that residence and you were going to
move in? A Right.

1 Q Now, at approximately a quarter to seven in the evening
2 on November 6th, 1975, you were parked in your car across
3 the street from 367 Los Pinos? A Right.

4 Q At that time did you hear any noise? A Yes. I
5 heard two or three noises.

6 Q Could you describe these noises for us?

7 A They sounded like backfires.

8 Q Of a car? A Right.

9 Q And what did you do upon hearing these noises?

10 A I got out of the truck and started walking up towards
11 where I heard the noises.

12 Q Why did you do that? A Well, right after that I
13 started hearing screams.

14 Q After you heard the noises you heard the screams?

15 A Right. So I started walking up the street to investi-
16 gate.

17 Q And as you were walking up the street did you observe
18 anything? A I saw a gentleman running down the street
19 towards me.

20 Q He was running towards? A Right.

21 Q And what side of the street were you on as you are on
22 Los Pinos going up towards Woosley, were you on the right-hand
23 or left-hand side? A Left-hand side.

24 Q So you were on the sidewalk? A No, I was on the
25 street.

26 Q You were on the street. Okay. And did you see

1 somebody running towards you? A That is correct.

2 Q And was this person on the street or the sidewalk?

3 A Sidewalk.

4 Q Sidewalk. And did you observe how this person was
5 running? A He was running pretty fast.

6 Q Okay. What do you mean by pretty fast?

7 A He was running fast.

8 Q Okay. And did this person pass you?

9 A Yes, he did.

10 Q Okay. And did you get a good look at him?

11 A Sure did.

12 Q Do you see him in the court today?

13 A Yes, I do.

14 Q Would you point him out, please?

15 A That gentleman right over there (indicating).

16 Q Indicating the defendant.

17 THE COURT: Yes. Let the record so show.

18 Q (By Mr. Robinson) When this person passed you, Mr.
19 Morgan, could you tell us how he was holding his arms?

20 A He was holding his right arm close to his body.

21 Q Okay. Now, after this person passed you did you see
22 what he did? A No. I just saw him run past me and
23 I didn't see where he went. I just kept going up the
24 street.

25 Q And as you kept going up the street did you meet a
26 couple other people? A Yes, I did.

1 Q Who did you meet? A Bob and his neighbor.

2 Q Were they in a car? A They were in a van.

3 Q Did they ask you anything? A Yes, they asked me
4 if I saw somebody running, and I said, "Yes, I did."

5 Q Did you indicate where you saw him running?

6 A I indicated that I saw him running down Los Pinos.

7 Q Did they ask you to do anything? A They asked if
8 I would get in the van with them.

9 Q Did you? A Yes, I did.

10 Q What did you do when you got in the van?

11 A I indicated which direction that I had last seen him
12 running.

13 Q And did you proceed after him in the van?

14 A Yes, we did.

15 Q And did you see him on Los Pinos at all after you got
16 in the van? A No, we didn't.

17 Q Okay. And did you drive from Los Pinos to Cottle?

18 A Yes, we did.

19 Q And upon arriving at the intersection of Los Pinos and
20 Cottle what did you do? A We didn't see him at the
21 time. We asked some people who were going in their house
22 across the street if they saw somebody running and they
23 indicated that they had, and that he was running down Cottle.

24 Q Then what did you do? A Well, we started driving
25 down Cottle.

26 Q Okay. And did you see this person at that time on

1 Cottle? A Yes, we did.

2 Q Okay. And could you describe what the person was
3 doing at this time? A At that time he was walking,
4 but he was walking at a pretty fast pace.

5 Q And did you see where this person went as he walked down
6 Cottle? A Rephrase that, please?

7 Q Yes. What did you do after you saw this person on
8 Cottle? A Well, we just -- we kept going past him
9 and just continued down the street.

10 Q All right. Did you go into the gas station?

11 A Yes, we did.

12 Q Did you see where this person went walking down Cottle?

13 A Yes, he was still coming toward us.

14 Q Did you get a good look at him as he walked towards you?

15 A Yes, I did.

16 Q Did you see where he walked? Did he enter the shopping
17 center area? A He walked down the store fronts in
18 the shopping center.

19 Q Did he enter a store? A No.

20 Q Did he enter an establishment there? A Yes, he
21 did.

22 Q What did he enter? A He entered a pizza parlor.

23 Q Did the police arrive shortly? A Yes, they did.

24 Q Did you see a policeman enter the pizza parlor?

25 A Yes, I did.

26 Q Did you see him bring out an individual?

1 A Yes, I did.

2 Q And the individual you saw him bring out is the same
3 individual that you saw running past you on Los Pinos?

4 A It was.

5 Q Now, Mr. Morgan, as this individual ran past you, and
6 as you saw him walk down Cottle, did you have an opportunity --
7 strike that.

8 From what you saw of this person did you form an
9 opinion as to the state of his sobriety?

10 A I didn't really think about it, but he was not walking
11 in an erratic manner or running in an erratic manner.

12 Q He wasn't stumbling or anything? A No.

13 Q As you saw him go into the parking lot where the shopping
14 center was were there other cars in the parking lot?

15 A Yes.

16 Q Did you see him bump into cars or anything?

17 A No, I did not.

18 Q Did he appear to walk straight when he wanted to go?

19 A Yes, he did.

20 Q Would you describe this person from what you saw of him
21 as being sober or drunk? A I believe he was sober.

22 MR. ROBINSON: I have nothing further.

23 CROSS-EXAMINATION

24 BY MR. PESTARINO:

25 Q Mr. Morgan, you weren't particularly looking at him to
26 see whether he was sober or drunk? All you know is that he

1 was walking straight or running straight? A That is
2 true.

3 Q Okay. So you weren't thinking in terms of how much the
4 man had been drinking or anything like that?

5 A No.

6 Q All you were thinking of was to apprehend this person?

7 A That is correct.

8 Q Okay. Fine. Now, you said you heard two or three
9 noises. First of all, you thought what appeared to be back-
10 fires? A That is correct.

11 Q From the exhaust of a car? Then you heard screams,
12 and then you walked toward the corner of Los Pinos and
13 Woosley; is that right? A That's right.

14 Q And, of course, you heard more screams?

15 A Mm-hmm.

16 Q Did you hear anything else after that?

17 A No, I didn't.

18 Q Did you hear anything that appeared to be a sports car
19 driving off? A No, sir.

20 Q Los Pinos is that well-lit by streetlights?

21 A Yes, sir.

22 Q Are you familiar with that chain-link fence on the corner
23 of Los Pinos and Woosley? A No, sir, I am not.

24 Q Did you do anything else that night but what you
25 testified to here in regard to this case?

26 A I don't believe so, no.

1 MR. PESTARINO: Okay. Thank you. That's all.

2 MR. ROBINSON: Thank you, Mr. Morgan. I have
3 nothing further.

4 THE COURT: Thank you, Mr. Morgan.

5 MR. PESTARINO: Can I ask you, I neglected to ask
6 you just a question or two.

7 Q (By Mr. Pestarino) When you saw the defendant, the
8 person you identified as the defendant running down Los Pinos,
9 first of all, did he have a coat on? A Yes, sir, he did.

10 Q Was it a gray checkered coat? A It was a gray
11 coat.

12 Q And a black shirt? A Yes.

13 Q Okay. And a light tie? A I didn't notice the
14 tie.

15 Q And you indicated that he held his right arm down?

16 A Mm-hmm.

17 Q At what point at Los Pinos did you first see him? Would
18 you look at the map there and maybe put a mark there of M-1?
19 Here, let me. I already asked you this. This is Woosley,
20 and Los Pinos is here (indicating). Now, someone indicated
21 that his travel was along Los Pinos to Cottle, up through here
22 to the shopping center up here. Now, where on Los Pinos
23 did you see him? A All right.

24 Q Will you make a big mark there or some kind of a mark?
25 Put an M there. A (Writing.)

26 Q That's it? Okay. And that is where you first saw him

1 and he was holding his right arm in a peculiar manner?

2 A At that point I didn't see his right arm, no, but as he
3 passed me I saw him holding his arm down to the side.

4 Q Will you indicate for us how you saw him? Will you
5 stand up and show us? A He was holding it in this
6 manner as he was running (indicating).

7 MR. ROBINSON: Indicating straight down, finger
8 pointed towards the floor, for the record.

9 Q (By Mr. Pestarino) He was running with his hand like
10 that? A He wasn't -- he just had his arm down like
11 this (indicating).

12 Q And he was running? A Yes.

13 Q And the other arm was swinging free?

14 A Yes.

15 MR. PESTARINO: All right. Thank you.

16 MR. ROBINSON: I have nothing further. Thank you.
17 Thanks for coming in.

18 (Witness excused.)

19 MR. ROBINSON: The People call Officer Lintern.

20 CHARLES MELVIN LINTERN,

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

23 DIRECT EXAMINATION

24 BY MR. ROBINSON:

25 Q Can you state your full name, spelling your last name,
26 and give us your occupation, for the record, please?

1 A Charles Melvin Lintern, police officer, City of San Jose.

2 Q Okay. Officer Lintern, were you employed in that
3 capacity and on duty on November 6th, 1975?

4 A Yes, sir, I was.

5 Q And at that time did you have an occasion to respond to
6 a homicide at 6217 Woosley in San Jose? A Yes, I did.

7 Q Okay. And did you respond by yourself or were you with
8 a partner? A I was by myself at the time.

9 Q And were you in uniform and in a patrol vehicle?

10 A Yes, I was.

11 Q And in response to that homicide did you have occasion
12 to talk to Carol Damron? A Yes, I did.

13 Q And did she give you the direction of travel in which
14 the man had taken? A Yes, she did.

15 Q And did she state that this man had fallen in a
16 particular area? A Yes, she did.

17 Q Did you respond to that area? A Yes, I did.

18 Q In responding to that area was this by a chain-link
19 fence by some juniper bushes? A Yes, it was.

20 Q Why did you respond to that area? A I responded
21 to that area looking for a weapon.

22 Q Okay. And did you find a weapon in that area?

23 A Yes, I did.

24 Q And is that area well lit or is it dark?

25 A It is dark.

26 Q Did you need your flashlight to see the chain-link fence?

1 A Yes.

2 Q Did you need your flashlight to search through the
3 junipers to find the weapon? A Yes.

4 Q On finding the weapon did you touch it at all?

5 A No, I did not.

6 Q What did you do? A I found the weapon, located
7 it, and waited for the detective crew to respond.

8 Q For Sergeant Parrott? A Sergeant Parrott.

9 Q Okay.

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

11 CROSS-EXAMINATION

12 BY MR. PESTARINO:

13 Q Did you go to the house where the homicide took place or
14 alleged homicide? A Yes, I did.

15 Q And was it you who roped off that area?

16 A No, sir.

17 Q Was there another officer there with you?

18 A Yes, sir, there was.

19 Q When you first responded to this call were you alone
20 or with someone else? A I was by myself.

21 Q But you met another officer there? A Yes.

22 Q By any chance did you have an opportunity to find out
23 or look at the body of the victim? A No, I did not.

24 Q Were the lights on at the residence on Woosley Drive
25 where the homicide -- A Yes, they were.

26 Q And you talked about a chain-link fence. Could you see

1 the posts without a flashlight? A I believe so, yes.

2 Q But you had to look into the bushes with your flashlight
3 for the gun and to find the chain? A For the gun, yes.
4 The chain, I believe so. I don't recall.

5 Q You don't recall whether you could see that without a
6 flashlight or not? A Yes.

7 MR. PESTARINO: Thank you. That's all I have.

8 MR. ROBINSON: Thank you, Officer.

9 (Witness excused.)

10 MR. ROBINSON: Might we approach the bench?

11 THE COURT: Surely.

12 (Discussion off the record.)

13 MR. ROBINSON: People call Ronnie Myers.

14 Your Honor, at this time we'd ask leave of the Court
15 to call this witness out of order. Mr. Myers is going to
16 start a vacation on Monday and he is going to be gone
17 approximately two weeks.

18 MR. PESTARINO: I would have no objection.

19 RONNIE G. MYERS,

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

22 DIRECT EXAMINATION

23 BY MR. ROBINSON:

24 Q Could you state your full name and spell your last name
25 for the record? A My name is Ronnie G. Myers, my last
26 name is M-y-e-r-s.

1 Q And Mr. Myers, where do you reside? The city?

2 A Dublin.

3 Q Dublin, California? A Mm-hmm.

4 Q Mr. Myers, are you of Assyrian descent?

5 A I don't know, understand what you mean by that.

6 Q Yes. What nationality are you? A American.

7 Q Okay. You are not from Assyria? A No.

8 Q Not from Iran or Iraq? A No. I was born in
9 Berkeley, California.

10 Q And Mr. Myers, do you know anything about the Church of
11 the East? A No.

12 Q Did you know anything about Patriarch Mar Shimun?

13 A No.

14 Q Okay. Mr. Myers, do you know anything about the
15 Assyrian Universal Alliance? A Never heard of them.

16 Q Could you tell us what you do for a living?

17 A I am a deisel mechanic.

18 Q And Mr. Myers, did you purchase a gas station in Oakland,
19 California? A I sure did.

20 Q Could you tell us the year in which you purchased that
21 gas station? A I believe it was in January, 1970.

22 Q Okay. And where was that gas station located?

23 A It was on 411 West MacArthur Boulevard, Union 76.

24 Q In Oakland, California? A Yes.

25 Q And from whom did you purchase that gas station?

26 A From a person by the name of Yule Lazar.

1 Q Okay. And how was it that you purchased that gas
2 station from Mr. Lazar? A I was looking for a job in
3 the evenings and I was employed by him for approximately two
4 months previous to the time that I took the station over.

5 Q Okay. And did Mr. Lazar work at that station?

6 A He was the owner.

7 Q He was the owner of the station?

8 A Of the station.

9 Q Did he also work there? A Yes.

10 Q Okay. Are you familiar with Mr. Lazar?

11 A Yes.

12 Q Okay. And after you purchased this gas station from
13 Mr. Lazar did you have occasion to buy a weapon?

14 A Yes.

15 Q And why did you buy the weapon? A Mr. Lazar
16 stated the fact that I should have some protection because
17 this station got robbed several times, you should have some
18 form of protection.

19 Q Okay. And where did you purchase this weapon at?

20 A Siegle's Guns in Oakland on MacArthur Boulevard.

21 Q 508 MacArthur Boulevard? A Yes.

22 Q When did you purchase this gun? A It was
23 approximately --

24 Q If you recall. A -- a week, a week after I took
25 possession of the station.

26 Q Okay. A 1970.

1 Q All right. And this gun, what sort of a gun was it?

2 A It's been a long time ago. It looked like a Luger in
3 a way, a .22, I believe automatic, had a clip in the bottom.

4 Q Okay. A Been a long time since I have seen it
5 though.

6 Q How much did you pay for this gun?

7 A It was -- I don't really remember that. Somewheres in
8 the neighborhood of 169, something like that.

9 Q And how long did you keep this gun for?

10 A One week.

11 Q All right. And what was it that caused you to only keep
12 this gun for a week? A Well, I owed Mr. Yule Lazar
13 money when we had the business transaction from the station,
14 and I really couldn't afford to pay him the payment that he
15 wanted, so I was making a payment to Yule Lazar and he saw
16 the gun.

17 Q Where was this payment being made at?

18 A In the station.

19 Q Okay. Was there anybody else around besides you and
20 Mr. Lazar when this payment went down? A No.

21 Q And when Mr. Lazar saw the gun what did he say?

22 A He was impressed with it, and he asked to see it, and I
23 had a floor safe and it was down in the floor safe, and when
24 I opened the safe to give him the money he saw it, and he
25 asked to see it. I handed it to him. He liked it, and he
26 says I'll give you more money than what you paid for it. He

1 was aware that I had bought it. He is the one that told me
2 I should have some protection.

3 Q Okay. And did you sell it to Mr. Lazar?

4 A Yes, for a considerable amount more than what I paid for
5 it.

6 Q So you made a good deal off of it? A Right.

7 Q Do you remember how much you sold it to Mr. Lazar for?

8 A It was around 210, somewhere in that neighborhood, not --
9 I'm not sure to be exact. I don't have any paperwork on it.

10 Q Were you contacted by a member of the San Jose Police
11 Department, Sergeant Randall, regarding this transaction?

12 A Yes.

13 Q Okay. And at that time were you shown the weapon?

14 A No.

15 Q Were you shown a weapon? A Uh-uh.

16 Q Were you asked to describe a weapon? A No.

17 Q Did he ask you about a weapon that you had purchased at
18 Siegle's Sportsmen Supply, 508 West MacArthur Boulevard?

19 A He asked me if I owned a gun, and I said yes, and have
20 I sold any guns, and I said yes, and he asked when and where,
21 and how many and what.

22 Q How many guns have you sold? A Just one. That
23 was it.

24 Q Is that the one you sold to Mr. Lazar? A Right.

25 Q How many guns have you owned? A I have owned
26 three. I still have the other two.

1 Q You still have the other two. So in your life you
2 have only had three guns? A That is it.

3 Q And you have two of them now. You only sold one, one
4 to Mr. Lazar? A Right.

5 Q And the gun that you sold to Mr. Lazar is the gun you
6 bought at Siegle's in Oakland? A Right.

7 Q Now, after you sold this gun to Mr. Lazar did you ever
8 see it again? A No.

9 Q Did you ever see Mr. Lazar again? A Yes.

10 Q Did he ever indicate to you what he had done with that
11 gun? A No.

12 Q You might not see it again if I can't get this thing
13 out of here (referring to gun).

14 Now, showing you People's Exhibit 4, Mr. Myers, does
15 that look familiar to you?

16 THE COURT: Perhaps we ought to explain the item
17 around the trigger has been placed there by the Court.

18 THE WITNESS: Yeah, right. That looks like it.
19 It could be a replica of it, but it sure looks like it.

20 Q (By Mr. Robinson) That looks like what?

21 A The gun I bought at Siegle's.

22 Q And that you sold to Mr. Lazar? A Yes.

23 Q Is there a serial number on that gun? Is there a
24 number to identify it? A Yes, there is.

25 Q And could you read that? A 30056.

26 Q Okay. When you bought this gun from Siegle's did you

1 fill out some paperwork for it? A Yes, and I had to
2 wait a week before I could get it.

3 Q And that paperwork, when they wrote down, did they write
4 down the serial number of the gun? A Yes, they did.

5 Q Which goes to Alcohol, Tobacco, and Firearms?

6 A Right.

7 Q You waited a week and you got your gun?

8 A Right.

9 MR. ROBINSON: Thank you, Mr. Myers. I have
10 nothing further.

11 MR. PESTARINO: I have a few questions.

12 CROSS-EXAMINATION

13 BY MR. PESTARINO:

14 Q This all took place about five years ago, Mr. Myers, is
15 that right? A More like six.

16 Q Six. Okay. A It was in 1970.

17 Q All right. And how long before you purchased the
18 service station had you known Mr. Lazar? A Two months
19 approximately.

20 Q Have you ever seen him since? A Since when?

21 Q Since you bought the service station? A Yes.

22 Q When? A After I went into the station I seen him
23 various times off and on once a week for about three months.

24 Q Mm-hmm. And did you see him after that?

25 A The last time that I seen him he told me that he was a
26 manager or something or another of a motel.

1 Q All right. A And he went in there, and I
2 haven't seen him since.

3 Q So you knew him about two months before you purchased
4 the service station and because you used to work for him?

5 A Right.

6 Q Is that right? A This is true.

7 Q And when he told you -- when you bought the service
8 station from him he suggested to you that you ought to have
9 a gun because the service station had been burglarized or he
10 had been robbed? A This is true.

11 Q Well, did he have a gun? A Yes, at the time.

12 Q What kind of gun did he have? A He never did let
13 me see it.

14 Q How do you know he had a gun? A He told me he had
15 a gun. But I never did see it.

16 Q Do you know what kind it was, whether it was a rifle or
17 pistol or revolver? A I'm not sure. I never saw it.
18 And he didn't state to the fact what it was. He just said
19 that he had a gun.

20 Q And did he offer to sell you this gun when you purchased
21 the service station? A No.

22 Q No. He told you you better go buy one? A Right.

23 Q And then some time after when you were making payments
24 to him he saw the gun in your floor safe? A Mm-hmm,
25 this is true.

26 Q And he says I want to buy it from you? A Right.

1 Q How much did you pay for the gun? A In the
2 neighborhood of \$169.

3 Q Do you have any papers at all that show that you paid
4 that much for it? A No, I don't. I'm just going back
5 of what I thought I paid, I'm not even really sure if that is
6 what I paid for it.

7 Q Okay. And anyway you sold it to Mr. Lazar for two ten?
8 A Somewheres in the neighborhood. It was a considerable
9 amount more than what I paid for it. He didn't pay me cash
10 for it. He deducted the amount from what I owed him in a
11 business transaction.

12 Q How much did you owe him at that time?

13 A It was around \$600.

14 Q So you gave him the gun and he took off two ten for it,
15 huh? A Right.

16 Q And that is the last you ever saw of the gun?

17 A That's right.

18 Q You remember definitely handing it to Mr. Lazar?

19 A Yes.

20 Q Was Mr. Lazar always fair with you in his dealings with
21 you? A Not exactly.

22 Q Okay. You felt that you got a bum deal?

23 A Not on that deal, no.

24 Q Not on that deal if you sold it considerably more, then
25 you got a pretty good deal, huh? A This is true. But
26 he made up for it in other business transactions, yes.

1 Q He made up for it in other ways so you didn't mind
2 charging him more, is that what you are telling us?

3 A Well, that was, let's see, one week after I went into
4 the station, so I really didn't get a chance to really get
5 gouged yet.

6 Q But you had worked there for about two or three months
7 before? A Two months, right.

8 Q Did you work all day? A No.

9 Q What were your hours? A It was around from seven
10 in the evening until midnight.

11 Q And you were in charge of the money, and so forth, in
12 charge of running the business? A Right.

13 Q He was not around? A He was in and out.

14 Q You knew what the business was doing, the station was
15 doing by way of business at that time, didn't you?

16 A Yes.

17 Q And you had had some experience, I take it, in the
18 operation of service stations? A No.

19 Q This is the first time? A Yes.

20 Q You were a mechanic at that time? A Yes. This
21 is the reason why I took the service station.

22 Q Had a little shop there? A Well, me and Yule done
23 mechanic work together, and he wasn't mechanically inclined
24 at all, and we were making good profits in the mechanical end
25 of it.

26 Q And so you decided you would take over the whole station?

1 A Well, Yule told me one day that he had decided to give
2 the station up.

3 Q And so he made arrangements to sell it to you?

4 A He asked me if I was interested.

5 Q Q Were there any papers drawn up?

6 A On the business transaction?

7 Q Yeah. A From Yule Lazar to me?

8 Q Yeah. A Yes, through Union Oil.

9 Q And I take it you have those papers yet?

10 A No.

11 Q No. Well, was there any kind of a promissory note that
12 you gave to him because you were supposed to make payments to
13 him? A Yes, there was.

14 Q Well, I might as well ask you, what did you pay for the
15 station? A Well, I bought the equipment from him. He
16 didn't own the station.

17 Q I understand that. Union Oil Company owned it?

18 A Right. I bought --

19 Q You bought the business from him, the equipment, and the
20 goodwill that he had accumulated? A This is true.

21 Q Yeah. And how much did you pay for that?

22 A It was around \$600 somewheres.

23 Q For the whole business? A Yes.

24 Q And did you give him a promissory note for that?

25 A We took a piece of paper, it was a simple thing, that I
26 released this equipment to you, and you owe me so much money

1 a month until the balance is paid, just a simple little piece
2 of paper is all it was.

3 Q Yeah. It is a promissory note? A Right. And I
4 signed it.

5 Q Did you pay any cash to him? A Yes.

6 Q How much cash down did you pay? A I think it was
7 about \$100.

8 Q \$100 down and then you took over the management and the
9 responsibility of the business? A That is correct.
10 This is correct.

11 Q When you sold him the gun did you ask for a receipt?

12 A No.

13 Q Well, you sold it for \$210 so I suppose that \$210 was
14 to come off of the \$500 that you owed him?

15 A Well, he didn't write a receipt particularly against the
16 gun, but the little note that he had where I had signed it,
17 he had subtracted that on there, off of the balance of what I
18 owed him.

19 Q He had subtracted that off the balance?

20 A He didn't write down what it was or anything else, he
21 just put payment, two hundred and some odd dollars.

22 Q And did he give you a copy of that? A Yes.

23 Q And you don't have that copy anymore? A I looked
24 for it. I couldn't find it.

25 Q Is there anything that you had or have in your possess-
26 ion now that would indicate this gun transfer? A No.

1 Q Any writing at all? A No.

2 Q Had you had any burglaries there?

3 A At the station?

4 Q Yeah. A Yes.

5 Q At the time you were there? A Yes.

6 Q Did Lazar say why he wanted the gun? Having had one
7 already. A No.

8 Q Did you ask him? A No, I didn't give it a second
9 thought.

10 Q Did you transfer to him any bullets or any clips or
11 magazines? A No.

12 Q You didn't have any clips or magazines, you just had
13 the gun? A Just the gun. I didn't even have any
14 bullets for it.

15 Q What were you going to do with a gun without bullets for
16 it? A Well, I don't want to shoot anybody anyway.
17 Scare somebody I guess.

18 Q Well, just to scare somebody? A Yeah.

19 Q With an empty gun. At no time then did you buy any
20 magazines or bullets for the gun? A I might have, but
21 I don't remember. But I do know that when the gun was in
22 the safe I didn't have any bullets for it.

23 Q You know what a magazine is, don't you?

24 A That is the clip that goes into it?

25 Q Yeah. A Yeah.

26 Q You don't remember buying that? A No, I don't.

1 All I remember is the gun. I might have bought some bullets
2 and a magazine, I don't remember. All I remember is that I
3 bought the gun and that was it.

4 Q And this transfer took place close to six years ago,
5 and you had never seen the gun since? A No.

6 Q How far was this sport shop from your station?

7 A Approximately, let's see, two and a half blocks.

8 Q Within walking distance certainly? A Yes.

9 Q Do you know if Yule Lazar ever went to that sporting
10 store? A Yes, several times.

11 Q And were you with him? A At that time?

12 Q No. On these occasions that he has gone to the --

13 A When I bought the gun?

14 Q No. Before you bought the gun or after?

15 A Yes, we went in there.

16 Q Before? A Yes. When he was telling me that I
17 should have some protection, he took me down there and showed
18 me all of the guns that were reasonable and good buys, and
19 what have you.

20 Q And he knew the price of this gun? A Yes.

21 Q And he knew then that you paid \$169 for -- or that much
22 for it? A Right.

23 Q Do you know whether Mr. Lazar was a citizen or not?

24 A I didn't know that.

25 Q You don't know that. Was there any discussion along
26 these lines when you sold him the gun, "Well, look, Yule, you

1 were with me at the sport shop, I only paid \$169 for it, you
2 can buy one there"? A I did mention that, that he
3 could buy the same gun for the same price, and I was wonder-
4 ing why, that he didn't buy his own gun.

5 Q But you didn't ask him for a receipt or any notations
6 with regard to the gun? A No. Just to subtract it
7 from what I owed him.

8 Q Just to subtract it, and then I take it you kept the
9 station for a short period of time thereafter and sold it,
10 or -- A Eight months.

11 Q Eight months. Did you go broke? A No, I didn't
12 go broke. What happened is my insurance went out of sight,
13 and I called up Union Oil and told them that the insurance
14 was too high, I wasn't about to pay it, and if you want to
15 supply the insurance I will stay here, but I wasn't going to
16 buy fire insurance on their building, and what have you. And
17 they refused, and I told them they could keep their station,
18 and I closed it.

19 Q And you took the equipment? A I took the equip-
20 ment, but it was paid for with Yule Lazar. There was a lot
21 of transactions except for cash, I worked on his car, he got
22 gasoline from me and oil, everything he could get his hands
23 on to collect the \$600.

24 Q Is that because you hadn't been paying him?

25 A No. He would take money or oil or gas. He didn't
26 care as long as he got his money.

1 Q What was the agreement? How often were you to pay him
2 on the \$600? A I think it was going to be \$50 a month,
3 somewheres in that neighborhood. And the initial agreement,
4 he said that it would be strictly money, but then after he
5 went to work for the motel he came back, and he said, "Well,
6 I'll take gas and you can subtract it from the bill, and I
7 will take a case of oil," and what have you. This was
8 after we made our initial agreement.

9 Q So you would subtract it? A Yeah, he would take
10 this little note, he carried it in his pocket all of the
11 time, all of the time he came to see me.

12 Q He was kind of a -- he was -- you knew him to be a book-
13 keeper and accountant, didn't you? A Yes. This is
14 what he explained to me, that he was a TWA pilot. I don't
15 know if he was or not. He was a bookkeeper and a motel
16 manager.

17 Q And he used to be very meticulous about --

18 A Book work.

19 Q -- everything he did was entered into a book?

20 A Yeah, he is good with book work.

21 Q So he never said to you, "I want a receipt for the gun"?

22 A No.

23 MR. PESTARINO: That is all. Thank you.

24 REDIRECT EXAMINATION

25 BY MR. ROBINSON:

26 Q Mr. Lazar would keep constant records?

1 A Constant records, yes. He was very good with book work.

2 Q And is Mr. Lazar the type of person that might destroy
3 his records?

4 MR. PESTARINO: Wait a minute, that is calling for
5 opinion.

6 THE COURT: Well, it is argumentative unless he can
7 tie it in.

8 MR. PESTARINO: Is he the type that would destroy his
9 records, calling for conclusion.

10 THE COURT: The objection is sustained.

11 Q (By Mr. Robinson) Have you ever seen Mr. Lazar destroy
12 any records? A Only if the transaction was finished or
13 something like that.

14 Q Was what? A In other words, if he made a trans-
15 action with a customer, or something, and he would keep the
16 paper work until the job was done and rip it up and throw it
17 away.

18 Q Okay. Now, after your business dealings with Mr. Lazar
19 and after you sold your station, that would be the latter part
20 of 1970, I take it? A Somewheres around in there.

21 Q Did you have any contact between Mr. Lazar and yourself
22 from, say, well, let's even go as far as 1971, from 1971
23 until the present day? A Have I had any contact with
24 him?

25 Q Yeah. A No.

26 Q Okay. Do you have any reason to lie about Mr. Lazar at

1 this trial?

2 MR. PESTARINO: Just a moment --

3 MR. ROBINSON: Goes to his bias, interest, or motive
4 with --

5 MR. PESTARINO: Just a moment, that is an improper
6 question and counsel should know it.

7 MR. ROBINSON: What is the legal objection?

8 MR. PESTARINO: It calls for a conclusion. It is
9 not for the province of this witness or the attorney to ask
10 this witness, it is the province of the jury, he has no
11 reason to lie.

12 THE COURT: The question was what?

13 MR. ROBINSON: The question is, do you have any
14 reason to lie on Mr. Lazar. Counsel has attacked his
15 credibility by asking questions, "Well, you didn't keep a
16 receipt," you didn't do this. His credibility is in issue,
17 and my question is, "Do you have any reason to lie," and he
18 can answer yes or no.

19 MR. PESTARINO: I don't care whether his credibility
20 is in issue or not. The question is calling for his opinion
21 and it is self-serving.

22 THE COURT: The objection is sustained.

23 Q (By Mr. Robinson) Do you like Mr. Lazar?

24 A Not particularly.

25 Q Okay. Would you commit perjury?

26 MR. PESTARINO: Again, before he starts -- well,

1 excuse me. Go ahead with your question. I am going to
2 object.

3 Q (By Mr. Robinson) Would you commit perjury because you
4 didn't like somebody?

5 MR. PESTARINO: Objection, if Your Honor please.

6 THE COURT: He can answer that.

7 THE WITNESS: No.

8 MR. PESTARINO: If Your Honor please, can I approach
9 the bench before you make a ruling on that?

10 THE COURT: All right.

11 (Discussion off the record.)

12 THE COURT: Ladies and gentlemen of the jury, as I
13 indicated prior to our commencing the trial, there are certain
14 legal matters that the Court has to rule on. The question as
15 to whether or not Mr. Myers can answer this question is a
16 matter for the Court to determine. As I indicated to you
17 preliminarily, if I overrule an objection I am merely allowing
18 the witness to give an answer, I am not passing any value
19 judgment as to the weight to be given the answer because you
20 are the ultimate determiners of the facts and of the
21 credibility of the witnesses. So I am going to overrule the
22 objection and allow the witness to indicate his state of mind
23 with regard to the evidence and his attitude toward Mr. Lazar.
24 And the objection of Mr. Pestarino will be noted for the
25 record.

26 MR. PESTARINO: May I make my objection specifically

1 here for the record?

2 THE COURT: Yes, sir.

3 MR. PESTARINO: I would object to the introduction
4 of this evidence on about two or three grounds: One, it calls
5 for the opinion and conclusion of the witness; secondly, it
6 is self-serving; thirdly, it is argumentative; and fourthly,
7 if we are going to get into that then I have the same rights
8 when I bring in or when some other witnesses take the stand
9 to testify, I could ask every witness that takes the stand,
10 would you commit perjury, and --

11 MR. ROBINSON: Certainly.

12 MR. PESTARINO: -- and I think that is an improper
13 question. It is to be decided by somebody else. The Court
14 is going to usurp the province of the jury when it allows
15 that in, and I would like the record to so reflect.

16 THE COURT: Thank you. The record will so reflect.
17 But, again, for the record, as to whether or not the witness
18 is or is not telling the truth is a matter for the jury to
19 determine. You may answer the question.

20 Q (By Mr. Robinson) Mr. Myers, would you commit perjury
21 simply because you don't like Mr. Lazar? A No.

22 Q Okay. Now, this gun that you sold to Mr. Lazar that
23 you say it might be, No. 4, it looks the same and everything?

24 A Mm-hmm.

25 Q Okay. Is the first time since you sold that gun to Mr.
26 Lazar, that you even heard about that gun again, was that on

1 December 1st, 1975, when Sergeant Randall came over to talk
2 to you about it? A This is the first time I have
3 heard of it again, yes.

4 Q Okay. A couple other questions. This sport shop
5 where you bought the gun -- A Yes.

6 Q -- that is a sport shop that Mr. Lazar was familiar with?

7 A Yes.

8 Q And if you buy bullets in a sport shop do they keep
9 records, do you know? A I don't know.

10 MR. ROBINSON: Okay. Thank you. I have nothing
11 further.

12 MR. PESTARINO: That's all.

13 THE COURT: Thank you, sir.

14 (Witness excused.)

15 THE COURT: Ladies and gentlemen, counsel have
16 indicated that we have made a little more progress than
17 anticipated today, so although it is just a little after
18 three there are no other witnesses who are available for
19 today. So we will give you an hour or so off earlier than
20 usual. We will resume Monday morning at 9:45. You are
21 again to keep in mind the admonition I have given you before
22 about not discussing the case, reading anything about it,
23 listening to anything on the radio or television about it,
24 and expressing any opinion about the guilt or innocence of
25 the defendant until the case is submitted to you. Have a
26 good week-end. Be sure and get your parking tickets stamped,

1 and we will see you then on Monday morning. The
2 defendant and witnesses are ordered to return.

3 Do you wish to go in chambers? Or are you satis-
4 fied with the record?

5 MR. PESTARINO: I am satisfied with the record I
6 made.

7 (Whereupon, Court adjourned until Monday, March 15,
8 1976, at 9:45 o'clock a.m.)

9 ---ooo---

1 FIFTH DAY

2 March 15, 1976.

9:45 o'clock a.m.

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

5 THE COURT: Let the record show that the jury is
6 present, defendant and his counsel are present. You may
7 proceed.

8 MR. ROBINSON: Thank you. The People call Mrs.
9 Shimun.

10 THE COURT: Would you come forward, please, ma'am?

11 EMAMA MAR ESHAI SHIMUN,
12 called as a witness on behalf of the People, being first duly
13 sworn, was examined and testified as follows:

14 DIRECT EXAMINATION

15 BY MR. ROBINSON:

16 Q Could you state your full name and spell your last name
17 for the record, please? A Emama Mar Eshai Shimun,
18 E-m-a-m-a M-a-r E-s-h-a-i S-h-i-m-u-n.

19 MR. ROBINSON: Can everybody hear okay?

20 Q (By Mr. Robinson) Mrs. Shimun, can you tell us what
21 nationality you are? A Assyrian.

22 Q Where were you born? A Iraq.

23 Q And how long did you live in Iraq?

24 A Since 1942 until 1969.

25 Q And did you leave Iraq? A Where?

26 Q Did you leave Iraq, go from Iraq to some other place?

1 A I just left Iraq once when we went for a vacation to
2 Iran.

3 Q Okay. And directing your attention to 1969 did you
4 leave Iraq then? A I left Iraq 1968 to Tehran once.
5 Then I left Iraq again to Canada.

6 Q Okay. And when you left Iraq to go to Canada was that
7 to live in Canada? A Yes, I immigrated to Canada.

8 Q And the prior times that you had left Iraq to go to
9 Iran and Tehran, were those just on vacations?

10 A Yes, vacations.

11 Q What did you do for a living in Iraq?

12 A I was an institute teacher for science and chemistry.

13 Q Science and chemistry? A Yes.

14 Q Were you a schoolteacher? A Yes.

15 Q And Mrs. Shimun, when did you -- you left Iraq to go to
16 Canada in 1969? A Yes.

17 Q All right. And where did you live in Canada?

18 A Hamilton, Ontario.

19 Q And did you leave Canada to go to the United States?

20 A I immigrated to the United States in 1971.

21 Q Okay. And when you immigrated to the United States
22 where did you live? A I lived in San Jose, California.

23 Q San Jose? A Yes.

24 Q Okay. Now, directing your attention to 1969 in
25 Canada, that time frame, okay? A Yes.

26 Q Could you tell us who you lived with in Canada?

1 A I lived with my parents, four brothers and my parents.

2 Q Okay. And had your parents also left Iran to go to
3 Canada? A You mean Iraq?

4 Q Iraq, excuse me. A Yes, the whole family.

5 Q You all left together? A Yes.

6 Q Do you have four brothers? A Yes.

7 Q And what do your brothers do? What did they do in
8 Iraq? A In Iraq?

9 Q Yes. A One of them is petroleum engineer in
10 Iraq, and the other one, they were high school graduates,
11 and the youngest one was studying engineering.

12 Q Okay. Now, when you came to Canada in 1969, did you
13 know a Mr. David Ismail? A Yes.

14 Q And did you know his family? A Yes.

15 Q And how was it that you knew the Ismail family?

16 A We know them as -- we know his father and we know the
17 whole family.

18 Q Your family did? A My family did, yes.

19 Q And what about Mr. Ismail's father, can you tell us what
20 his occupation was? A As far as I know he is a general,
21 I think.

22 Q And in what army was he a general?

23 A I really don't know the full history, but back to 1920,
24 I think, he was leading the Assyrian people.

25 Q A general for the Assyrian people?

26 A I think so.

1 Q Okay. A I'm not quite sure of the history.

2 Q Now, when you came to Canada in 1969, did David Ismail

3 visit you? A Yes, they visited my family, and our
4 family visited their family.

5 Q And do you see Mr. Ismail in court today?

6 A Yes.

7 Q Could you point him out for us, please?

8 A Yes, he is sitting (indicating).

9 Q Okay. And when Mr. Ismail came to visit you in Canada --

10 MR. ROBINSON: Your Honor, do we have some water
11 or something for Mrs. Shimun?

12 Mrs. Shimun, would you like a glass of water?

13 THE COURT: Here is a box of Kleenex for you.

14 MR. ROBINSON: Are you okay?

15 THE WITNESS: Yes.

16 Q (By Mr. Robinson) All right. Where did David Ismail
17 live when he came to visit you in 1969 in Canada?

18 A London, Ontario.

19 Q Is that in Canada, also? A Yes.

20 Q Now, when he came to visit you and your family in 1969,
21 did he discuss politics with you? A Yes.

22 Q Okay. And could you tell us what you discussed?

23 A He was describing this organization, organization of
24 what they call it federation or alliance, I don't know
25 exactly what is the name, that they are trying to take our
26 lands from Iraqi government and to go back to our lands, and

1 that the Kurds are trying for the liberty, and so we should
2 do the same, and that we should join the Kurds people.

3 Q The who?

4 THE COURT: The Kurds.

5 MR. ROBINSON: Could you spell that for us?

6 THE WITNESS: K-u-r-d-s.

7 Q (By Mr. Robinson) Okay. A And they are, they
8 occupy the north part of Iran, and they are fighting Iraqi
9 government to take their lands, and that we should do the
10 same and join them against Iraqi government.

11 Q Let me ask you this, Mrs. Shimun, do the Assyrian people,
12 do they have a country of their own? A Now?

13 Q Yes, now. A No.

14 Q Did they in preceding times? A In ancient time?

15 Q Yes, ma'am. A Yes.

16 Q And who now occupies what was formerly Assyria?

17 A The Arabs.

18 Q Okay. And when Mr. Ismail came to talk to you about
19 joining the -- did he ask you to join an organization?

20 A Yes. He said we should all be in this and we should
21 fight for our land and sacrifice our blood for that.

22 Q Sacrifice what? A Sacrifice our blood for one
23 end, that is, to take our land and to liberate from Iraqi
24 government.

25 Q Okay. Now, did Mr. Ismail indicate that he was a
26 member of this organization? A Yes, he did, like we

1 are all in this and we are doing so and so, yes.

2 Q And this organization, was it called the Assyrian
3 Universal Alliance? A I really don't remember exactly
4 the name what he says.

5 Q All right. Now, had you heard at this time in 1969 in
6 Canada of an organization called the Assyrian Universal
7 Alliance? A No.

8 Q Okay. And you had just come from Iraq to Canada in
9 1969? A Yes.

10 Q Okay. When you are in Iraq I take it you hadn't heard
11 of any organization called the Assyrian Universal Alliance?

12 A No.

13 Q Now, did Mr. Ismail say anything about the church in
14 1969 when he talked to you in Canada? A Yes. When he
15 was talking with me about that we have to sacrifice our blood
16 for our end, that is, to take our lands and to liberate our
17 lands from Iraqi government, and I said no, because we had
18 enough there in our country and let us live in peace here,
19 that is why we are immigrating to this country, and we don't
20 want to be involved, and I was against his idea. And he
21 said, "Well, I don't blame you. You are too religious, from
22 a religious family. These churches, once they are destroyed
23 and this idea of hanging on the church is gone then we can
24 draw the attention of the people to the politics and to what
25 we want to do."

26 Q Okay. And this church that you were a member of, would

1 that be the Church of the East? A Yes.

2 Q Who was the Patriarch of the Church of the East in 1969
3 when you were in Canada? A Mar Eshai Shimun, XXIII.

4 Q Did Mr. Ismail say anything else about the church in
5 regard to politics? A This is all what he mentioned
6 that, you are, the people are leaning too much on the church,
7 and that we have to draw their attention to the politics,
8 and this idea of church should be gone and destroyed.

9 Q Okay. Do you know Mr. Ismail's brother, Zaia?

10 A Yes.

11 Q And could you describe his political background?

12 MR. PESTARINO: If Your Honor please, I think we are
13 getting -- first of all, I suppose some of this is hearsay,
14 reputation or hearsay; secondly, I think it is somewhat
15 irrelevant to talk about Zaia's background. Mostly I am
16 concerned about hearsay.

17 MR. ROBINSON: Under 1314 of the Evidence Code there
18 is an exception to the hearsay rule, reputation in the
19 community concerning family history, and I believe that
20 certainly applies in this case.

21 THE COURT: Well, at the moment it is not hearsay
22 because the question was merely asked of her if she knew of
23 his brother. But I guess you are anticipating?

24 MR. PESTARINO: Yeah.

25 THE COURT: So I will overrule the objection.

26 MR. PESTARINO: Already we have had some hearsay

1 statement and I -- well, I'll withdraw my objection that I
2 have towards that. Okay.

3 THE COURT: You may renew them later. All right.

4 Q (By Mr. Robinson) Now, are you familiar with Mr.
5 Ismail's brother, Zaia? A Yes.

6 Q And could you describe his political background?

7 MR. PESTARINO: If Your Honor please, again we are
8 getting into certain things that are irrelevant here.

9 MR. ROBINSON: I beg to differ with counsel. It
10 goes to motive in this case which is highly relevant in all
11 criminal cases.

12 MR. PESTARINO: I don't see that the political back-
13 ground that has anything to do with what happened in this case.

14 MR. ROBINSON: That is counsel's viewpoint.

15 THE COURT: That is a matter of opinion. The
16 question is evidentiary at the moment, and let me just --

17 MR. PESTARINO: All right. I will save some time.
18 I will withdraw my objection. Go ahead, counsel.

19 THE COURT: Thank you.

20 Q (By Mr. Robinson) Could you answer that question,
21 please? A Could you repeat it, please?

22 Q Yes. Are you familiar with Mr. Ismail's brother, Zaia,
23 his political background? A Yes, he has been in
24 politics since ever I know him.

25 Q Okay. And did he support the Assyrian Universal
26 Alliance? A Fully.

1 Q Fully? A Yes, sir.

2 Q And the Federation? A Fully.

3 Q All right. Is the Federation and the Assyrian
4 Universal Alliance the same thing? The same organization?

5 A Yes.

6 Q Okay. Now, did Zaia Ismail visit you at all in Canada
7 in 1969? A No. We visited them. I saw him. I
8 saw him there, I think in David Ismail's house. I don't
9 remember exactly where I saw him, but it was there.

10 Q Okay. And when you had this discussion with Mr. Ismail
11 about joining politics and destroying the foundations of the
12 church, was Zaia Ismail present? A No.

13 Q Just you and the defendant, David Ismail? A Yes.

14 Q Now, what did you tell David Ismail when he asked to
15 join the political organization and destroy the foundations
16 of the church? A I said that is ridiculous.

17 Q Why did you say that? A Because our language and
18 the basis of the Assyrians is based on the churches, and the
19 church is carrying on the language and everything, the
20 history of Assyrians. This is -- the church is the founda-
21 tion of the history of Assyrians.

22 Q Okay. And would you say that the Patriarch, Mar Eshai
23 Shimun, XXIII, was the leader of the Assyrian people?

24 A Yes, he was.

25 Q Now, when did you first meet the Patriarch, Mrs. Shimun?

26 A I heard about him coming to Persia, and my father and

1 the family wanted to visit him, and we all went to see him,
2 to Persia, and that was in 1968.

3 Q Would that be in Tehran? A Yes. We went with
4 group of Assyrian people.

5 Q Okay. And was that your first actual meeting with the
6 Patriarch? A Yes. I just saw him with the, in the
7 public.

8 Q Now, I am going to direct your attention to 1973, if I
9 can, okay? A Okay.

10 Q Did you have any contact with the Patriarch in July of
11 1973? A No. You mean what contact? The marriage?

12 Q Yes. A Yes. We got married in August, 1973.

13 Q And in July of '73 did the Patriarch ask you to marry
14 him? A Yes, he did.

15 Q And what reasons did he give as to why he wanted to get
16 married? A Well, first he explained --

17 MR. PESTARINO: If Your Honor please, I'll -- go
18 ahead. I'll withdraw it. Excuse me. I'll withdraw it.

19 THE COURT: Go ahead.

20 MR. ROBINSON: Thank you.

21 Q (By Mr. Robinson) What reasons did he give, Mrs.
22 Shimun, as to his wanting to get married in July, '73?

23 A He said that he has resigned his office because he was
24 very tired, and he was -- his health, health reasons, and that
25 he wants someone to be with him at home to help him and to
26 take care of him in his old age and to live few years in peace.

1 Q Okay. And did you marry the Patriarch?

2 A Yes, I did.

3 Q Okay. When did you marry the Patriarch?

4 A August 16th, '73.

5 Q Where did you marry him? A Seattle, Washington.

6 Q And from the time you married the Patriarch in August
7 the 16th of 1973, did you live with him?

8 A Pardon me?

9 Q Did you live with the Patriarch? A Yes.

10 Q From August 16th, '73, until he was killed?

11 A Yes, sir.

12 Q Okay. Now, Mrs. Shimun, I'd like to ask you, was
13 there a tradition in the church that the Patriarch wouldn't
14 marry? A There is a tradition, a custom.

15 Q Okay. A Which goes, you know, for long time,
16 but in the case of --

17 Q Well, let me just ask you questions. Okay? And this
18 traditional custom that you said went for a long time of the
19 Patriarch not marrying, could you tell us how long a time
20 this went for? A I really don't know quite well about
21 the history how long it goes, but I think from, about 100,
22 119 I think. I really --

23 Q 119? A I'm not exact, I really don't know.

24 Q Would it be safe to say in excess of four or five
25 hundred years? A Maybe, yes.

26 Q How did the position of Patriarch, how did that occur?

1 How did somebody get to be the Patriarch?

2 A In the ancient time we had large university called
3 Naisiban University, it was on border of Turkey and Persia,
4 and the graduates, the Patriarchs were elected from those
5 graduated people there. Then the persecution came and the
6 people were scattered, so to keep this tradition going on so
7 we won't lose the church and the history of this church, the
8 people elected the Mar Shimun's family, being the most capable
9 family, to elect a Patriarch from that family, and this
10 tradition was in their house transferring from uncle to
11 nephew for about 120 years until now.

12 Q Now, prior to asking you to marry him had the Patriarch
13 resigned from the church? A Yes. He resigned from
14 the church, then the bishops came asking him to hold his
15 office again because they were not prepared to elect another
16 Patriarch. So he resumed his office for six months giving
17 them a chance to get together and elect a new Patriarch so
18 the church wouldn't be scattered and destroyed. So they
19 were not successful in doing that. Then he resigned
20 completely from his office after six months and that is why,
21 that is when he decided to get married.

22 Q Okay. Now, let me ask you this, when you say
23 "resigned from the church," was he still a member of the
24 Church of the East? A Oh, yes, resigning from office
25 doesn't mean resigning from his patriarchal line. He is
26 still a Patriarch, but he is considered a resigned Patriarch.

1 Q And I take it that the Patriarch's uncle was the
2 Patriarch before the Patriarch became Patriarch?

3 A Yes, that is true.

4 Q Okay. And when the Patriarch decided to marry you,
5 would you describe the condition of the church at that time?

6 A When he decided to marry, he accomplished everything,
7 he visited Iraq twice, he raised all of the funds and in
8 United States, and put them under the State of California's
9 law to be used for the education of the schools of the
10 priesthood, prelate school, and he prepared all the thing
11 that, everything that these money should be sent back to the
12 Middle East for the A-Lejican School there, and he brought
13 peace among the church. And he accomplished everything.
14 There was nothing left. So he thought now, it is the time
15 for him to resign and someone else to carry on his duties
16 because he has served this church for 56 years, and that was
17 when he was 12 years old.

18 Q I will move on to that in a second. Now, would you
19 describe the attitude of the people of the church when they
20 found out that the Patriarch was going to marry?

21 A He wrote a special statement about his marriage, and he
22 sent it all over the world to all church that this marriage
23 of the Patriarch means him, would seem kind of strange for
24 the people because this is the first Patriarch in so long
25 time getting married, but he said people will get used to it
26 once they know the fact that it is not a rule in the church,

1 that Jesus selected his Apostles from married men, and it is
2 not a rule in the Church of the East for a Patriarch not to
3 be married, and that he has resigned, and so they will get
4 used to it, you know, by the time.

5 Q All right. Let me ask you this, initially when the
6 people found out that the Patriarch was marrying, the people
7 of the Assyrian, the Assyrian belief, were they upset?

8 A Most of the people, the honest people, they just
9 remained silent until they hear more from the Patriarch, the
10 details, and another statement coming from him. But the
11 unfaithful people they rushed to the banks taking the money
12 and claiming that the Patriarch was stolen all of the money,
13 and all of the money is gone, and they were concerned about
14 the money, they were not concerned about his marriage, and
15 these people who created all of this problem, the unfaithful
16 people.

17 Q Okay. Now, I'd like to go back a little bit if I can
18 to get some information about the Patriarch. Okay?

19 A Yes.

20 Q All right. Now, you told us that the Patriarchy
21 remained in the Shimun family for in excess of how many years?

22 Do you remember? A About 120 years.

23 Q It has been in the family for 120 years?

24 A Yes.

25 Q And when did -- pardon me. A I'm really not sure
26 because what I was reading is for 600 years. I don't know.

1 I think this was 200, 120 Patriarchs, but in their home it
2 has been for 600 years.

3 Q Okay. 600 years? A Yes.

4 Q And the Patriarch before your husband, your husband's
5 uncle, was he killed? A Yes, he was assassinated.

6 Q And where did this occur? A I think in Turkey.

7 Q And your husband became Patriarch in 1920? A Yes.

8 Q All right. And that was when he was how old?

9 A When he was, I'm not sure, 11 or 12. I think 11 years
10 old.

11 Q And could you describe for us your husband's educational
12 background, what sort of education did he have that would
13 enable him to be Patriarch? A Yes. He went to
14 England and he finished his theological school university
15 there in England.

16 Q Would that be Cambridge? A Yes, Cambridge Univer-
17 sity, and then he went back to Iraq, and then he went to
18 Geneva to present the Assyrians' case there. And then he
19 immigrated to United States.

20 Q Okay. And did the Patriarch ever go to the United
21 Nations to present the Assyrians' case? A Yes.

22 Q When did the Patriarch come to the United States?

23 A I'm really not sure of the year. I don't recall.

24 Q Okay. And when he came to the United States, could you
25 tell us where he lived? A First, he lived in Chicago.
26 Then he moved to San Francisco, California.

1 Q Okay. And then he moved to San Jose?

2 A Yes, he moved to San Jose when we get married.

3 Q Okay. Now, tell us a little bit, if you can, about
4 the Church of the East. Could you describe what sort of a
5 religious body that is? A The Church of the East is

6 very ancient church, and we are very minority keeping this
7 ancient church to go ahead. And it is, most of the members
8 are in Iraq and Syria. The few people are here in the
9 United States.

10 Q Okay. Can you tell us how many followers there are
11 members of the Church of the East?

12 A All over the world?

13 Q Yes. A I really don't know exactly. I can't
14 give you a number because I am not sure.

15 Q Okay. Do you have an approximation for us?

16 A Not really. I don't know.

17 Q Okay. And besides the countries of Iran and Iraq,
18 are there members of the Church of the East in Australia?

19 A Yes, there is in Australia, and recently the Patriarch
20 accepted 12,000 people from Italy, and he was accepting
21 another, about a million people from Brazil and from France.

22 Q Okay. Now, you told us that the Patriarch resigned as
23 leader of the Church of the East? A Yes.

24 Q Okay. And the reasons for his resigning were?

25 A The reason were the health and he was very much tired
26 from 56 years of service.

1 Q Okay. And after he resigned he came back once again
2 to become the Patriarch and the leader of the church?

3 A Yes. He resumed his office again when he saw that the
4 bishops are not successful to elect the Patriarch and they
5 are acting against the canon law of the church, so he wanted
6 to resume his office to straighten things up again and put
7 them in order.

8 Q Okay. And on November the 6th, 1975, was the Patriarch
9 the leader of the church? A Yes. He was the
10 Patriarch of the Church of the East.

11 Q Now, since you were married to the Patriarch, from 1973
12 on to November the 6th, 1975, did you further find out about
13 the Assyrian Universal Alliance? A They were very
14 much against the Patriarch because they thought that he is
15 not joining them in their policy.

16 Q Okay. And what sort of a policy did they want the
17 Patriarch to join in on? A They wanted him to go ahead
18 and take the political leadership and forget about spiritual
19 leadership, and then to take their land from Iraqi government.

20 Q And how did the Patriarch feel about making the church
21 a political body? A He felt that this is against the
22 rule of the Church of the East, and that the church should
23 be isolated completely from the politics.

24 Q Separation of church and state? A Yes. The
25 church should be acting as a church, as a spiritual factor.
26 And politics is politics. So he didn't want to be involved

1 at this time in politics.

2 Q And did the Patriarch ever make any speeches to the
3 members of the church or send out any letters regarding what
4 the individual members of the church, what government they
5 should support? A Yes. When he visited Iraq he gave
6 a speech for all of the people there and in other countries
7 that all of the members of the Church of the East, especially,
8 and other Assyrians should be loyal to the government that
9 they are in. He gave an example like he is American citizen,
10 he should be loyal to United States. If they are Iraqi
11 citizens they should be loyal to their government. So every-
12 one should be loyal to the government that he is living in
13 that country.

14 Q Okay. Now, how did the Patriarch feel about the
15 Assyrian Universal Alliance and its members?

16 A He is not against them. He doesn't have any objection.
17 But, for example, when one of their members visited the
18 Patriarch a month ago before his killing asking him to take
19 the political leadership --

20 Q Wait. I will get to that. Okay?

21 A Okay.

22 Q Did the Patriarch want to get involved with the Assyrian
23 Universal Alliance? A No, he didn't. He was tired.
24 He wanted to relax for these years that --

25 Q Did the Patriarch want the Church of the East to be
26 involved with the Assyrian Universal Alliance?

1 A Not at all.

2 Q Okay. Now, you were going to tell us something that
3 happened a month ago. Would this be a month before he was
4 killed? A Yes. About a month.

5 Q So some time in October of 1975? A Yes.

6 Q All right. Did a member from the Assyrian Universal
7 Alliance visit the Patriarch? A Yes. He was an
8 active member from Chicago. He came especially to see the
9 Patriarch and to discuss with him about him taking over the
10 political leadership instead of spiritual leadership. And
11 he said he was very tired, and when he is tired, he mean that
12 he is tired and his health is in, not in a good condition
13 and he wants to relax. He has no objection at all about
14 what Malek Yagoub, his father, has accomplished with the
15 Iraqi government, and especially that person said that he was
16 with him when discussing the land with the Iraqi government,
17 and his brother Zaia was -- David Ismail's brother Zaia was
18 there. And the Patriarch said, "What did the Iraqi govern-
19 ment promise?" He said they promised that they will give us
20 their land, the Assyrians' land. He said, "Okay. Let Zaia
21 go ahead and take those lands as the Iraqi government
22 promised and I will be more than glad to hear that we are
23 having our lands there."

24 Q And did this person -- was this person that visited the
25 Patriarch from Chicago, was he a leader of the Assyrian
26 Universal Alliance? A Was he what?

1 Q A leader? A I really don't know his position,
2 whether he is, but I know that he is an active member there.

3 Q And did he want the Patriarch to go to some other
4 country? A Yes, he asked the Patriarch that he should
5 leave the United States and go and live in Iraq and make our
6 home there, and by that it is easy for him to take over the
7 political leadership. He was mainly concerned about the
8 political part of it.

9 Q Okay. And what did the Patriarch say to this
10 individual? A He said that he has tried before, all
11 his power to take the land. He has presented the case to
12 the United Nations. He has done everything that he could,
13 but he said politics is a strong matter and we are a minority
14 people, we are not strong. We don't have educated people.
15 We don't have enough army to go and fight with it. We don't
16 have ammunition, we don't have anything. We are not capable
17 to take our land from a big government like Iraq, so it is
18 better for us to leave those people who are living in Iraq
19 in peace. By making statements here and there in other
20 countries which are big countries, it is easy here because we
21 don't get punished. But the people in Iraq, he was concerned
22 about the safety of the Iraq, Assyrian people in Iraq.

23 Q So in October, 1975, a month before he was killed would
24 it be fair to say that the Patriarch still believed in a
25 separation between church and state? A Church and what?

26 Q That he didn't want the church, his church to be involved

1 in politics? A. Definitely, yes.

2 Q And at this time did he once again enumerate the policy
3 that he wanted people to be faithful to the country in which
4 they were living? A. Exactly, yes.

5 Q And also to be faithful to the Church of the East?

6 A Yes.

7 Q Now, do you know a man named Kanna who lives in Sidney,
8 Australia? A. Yes.

9 Q And could you describe this person in relation to the
10 Assyrian Universal Alliance? A. He is very active member
11 in the Assyrian Universal Alliance.

12 Q And has he ever written anything or spoken out regarding
13 the Patriarch? A. He was always writing against the
14 Patriarch and speaking in Australia against him and threaten-
15 ing the people who are faithful to the Patriarch that they
16 will get killed if they support the Patriarch.

17 Q Okay. And did he want the Patriarch in office or out
18 of office? A. He wants the Patriarch out of the office.

19 Q Now, I am going to direct your attention to the 19th of
20 November, 1975. Okay? Was there to be a meeting in Seattle?

21 A Yes. There was a meeting between the Patriarch and
22 the bishops.

23 Q Okay. And this was to take place in Seattle, Washington?

24 A Exactly.

25 Q What was the purpose for this meeting?

26 A To settle things which were among the Patriarch and the

1 bishops, and to put the church in order again and in peace,
2 and I presume after that he was going to resign again.

3 Q Now, when you talk about the bishops, could you tell us,
4 are these bishops, are they all in the United States?

5 A No, they are all in the Middle East.

6 Q Okay. And what countries do these bishops live in?

7 A In Iraq, Iran, Syria, Lebanon. We don't have in
8 Australia and Italy.

9 Q And are these bishops, are they clergy in the church?

10 A Yes.

11 Q Now, had this meeting been postponed from November 19th,
12 1975, to a different date? A Yes. A week before his
13 assassination he decided to make it on January 5th.

14 Q January the 5th, 1976? A Yes.

15 Q Okay. Now, Mrs. Shimun, I take it that during the
16 course of your married life to the Patriarch you were very
17 close to him? A After our marriage?

18 Q Yes. A Yes.

19 Q Okay. And did he confide in you about things?

20 A Yes, very much.

21 Q Okay. Now, a couple of months before the killing on
22 November the 6th, 1975, did the Patriarch say anything to you
23 regarding whether or not he felt somebody might harm him?

24 A Yes, he did.

25 Q What did he say? A He said that there is people
26 he thinks that they are working against, cooking something

1 against him, especially that when he heard that Zaia and his
2 cousin are in Iraq.

3 Q That is Zaia Ismail? A Yes.

4 Q Okay. Now, I am going to direct your attention now,
5 Mrs. Shimun, to November the 6th, 1975. Okay?

6 A Okay.

7 Q All right. Could you tell us what time you woke up
8 that day? A About seven o'clock.

9 Q Okay. And could you tell us where you lived on
10 November the 6th, 1975? A 6217 Woosley Drive.

11 Q That is in San Jose? A Yes.

12 Q All right. And who did you live there with?

13 A The Patriarch and my son.

14 Q Okay. How old is your son? A Now he is about
15 19 months.

16 Q Okay. So he was approximately what, 13 months, I guess?

17 A Yes.

18 Q Fourteen months at that time. And what is his name,
19 your son's name? A Yohanan.

20 Q Call him John? A If you wish.

21 Q Now, on November 6th, 1975, was your husband still the
22 leader of the church? A Yes.

23 Q And after you woke up that morning what did you do?

24 A In the morning we came down and I prepared the breakfast,
25 and we had the breakfast together, and he went to his office
26 upstairs.

1 Q All right. Did he have an office in your home on
2 Woosley? A Yes.

3 Q Was that where he ran the church from?

4 A Pardon me?

5 Q Was that where he conducted church business from?

6 A Yes.

7 Q He ran the church from that office?

8 A It is his office. And it is Patriarch of the East, yes.

9 Q And what did he do in his office?

10 A He was busy all of the day preparing for this senate
11 meeting between him and the bishops, and about the rules of
12 the church and what was going to be discussed in the senate.

13 Q And this senate meeting, is this the one that you told
14 us about that was going to occur in Seattle? A Yes.

15 Q What did you do when the Patriarch was in his office
16 working? A When he was working that day I was taking
17 care of my son and doing the housework until 1:30 afternoon.

18 Q Okay. And at 1:30 in the afternoon did you leave the
19 house? A Yes. I told him that I am taking the baby
20 for a walk, as usual, and doing some shopping.

21 Q Okay. Where did you go? A I took the baby out,
22 and I went to the nearest shopping center that we have.

23 Q And that nearest shopping center, that is located on
24 Cottle Avenue? A Yes, on Cottle and Santa Teresa.

25 Q And how far is that shopping center from your house, if
26 you know? A Less than half a mile, I guess.

1 Q Did you walk to the shopping center? A Yes.

2 Q All right. And in walking to the shopping center from
3 your house did you go down Los Pinos? A Yes, I did.

4 Q And do you turn left on Los Pinos? A I turn left,
5 I went Los Pinos, yes, I turned left, yes.

6 Q Okay. And then walked down Cottle? A Down
7 Cottle, no. When you go down Los Pinos then you are on
8 Camino Verde, then coming from -- to the shopping center,
9 this is the way we going for a walk.

10 Q Okay. You just went a different way? A Yes.

11 Q Now, what time did you come home from shopping, Mrs.
12 Shimun? A I came about 3:30 to 4:00, about 3:30.

13 Q All right. And when you came home from shopping did
14 you see your husband, the Patriarch? A Yes. I saw
15 him and he was very tired.

16 Q Okay. Had he been working all day?

17 A (Nods affirmative.)

18 Q What did you do when you came home from shopping?

19 A I prepared the tea because it was tea time. This is
20 kind of habit we have, to have tea at 4:00 o'clock. So we
21 had tea together and then after that we started preparing
22 dinner.

23 Q Okay. And what time did you start preparing dinner?

24 A It was about five o'clock.

25 Q Okay. And when you say "we" started preparing dinner,
26 did the Patriarch help you to prepare dinner? A Yes.

1 Q And was this his custom and habit? A Yes.

2 Q Okay. Just like having the tea at four o'clock was?

3 A Yes.

4 Q Now, you were preparing dinner, were you, in the kitchen
5 area at this time? A Yes.

6 Q All right. And what time did you have dinner, Mrs.
7 Shimun? A About six o'clock.

8 Q Okay. And where did you eat dinner?

9 A In the dining room.

10 Q Okay. And do you always eat dinner in the dining room?

11 A Yes, always.

12 Q And, now, after you ate dinner can you give us an
13 estimate as to what time you finished eating dinner?

14 A I finished eating about, I'm not exact, about 6:30, and
15 I was ahead of him because I wanted to take the baby upstairs,
16 he was crying and he was not comfortable at that day, so I
17 wanted to put him to sleep.

18 Q Okay. And prior to putting the baby asleep were you
19 going to do anything to the baby? A I took him for a
20 bath, yes, that is every day giving him a bath before putting
21 him to sleep.

22 Q That was your habit and custom? A Yes.

23 Q To do that? A Yes.

24 Q Now, did you get up from the dinner table?

25 A Yes, I did.

26 Q And did you pick up your baby? A Yes.

1 Q And go upstairs? A Yes.

2 Q Now, when you got up from the dinner table was the
3 Patriarch still eating dinner? A Yes, he was.

4 Q Were there dishes still on the dinner table?

5 A Yes.

6 Q And food and other items? A Everything, yes.

7 Q Now, did the Patriarch have a custom or habit regarding
8 the dishes on the dinner table? A Yes. When I take
9 the baby for a bath and put him to sleep the Patriarch helps
10 me in picking up the dishes from the table and putting,
11 washing, putting them in the sink ready for putting them
12 in the dishwasher and cleaning the table.

13 Q You mean he would clean the table, put the dishes in
14 and scrape off -- A (Interrupting) Yes.

15 Q -- and wash them, put them in the sink? A Yes.

16 Q Then you would come down and put them in the dishwasher
17 later? A Yes, and he prepares the coffee.

18 Q And he prepares the coffee? A Yes.

19 Q What was your custom regarding having coffee? When
20 would you have that? A After I come down from putting
21 the baby to sleep we sit in the family room, he watches the
22 news and while watching the news we are having the coffee.

23 Q Okay. Now, from the area of the dining room where
24 you have dinner can somebody see the front door from that
25 part of your house? A Yes.

26 Q Okay. And could you describe your front door for us?

1 Is it glass or -- A The upper part is glass and
2 there is sheer drapes on it, and the lower part is wood.

3 Q Okay. And on the side of the front door, do you have
4 glass on the side of the door? A Yes, and in the
5 living room.

6 Q And when you say -- are they also -- do they also have
7 sheer drapes? A Yes.

8 Q Now, if somebody was at your front door without knocking
9 or ringing the bell, could you see out of those sheer drapes
10 to see there was somebody at your door? A Yes, we can
11 see that.

12 Q You can see the figure out there? A The chair
13 where he is sitting, if he is sitting he can. But the
14 corner --

15 Q (Interrupting) I will get to that. Okay?

16 A Yes.

17 Q Just asking you, could you see outside the front door
18 through the sheer drapes to see if there was a figure outside
19 by your front door? A Just the shape, yes.

20 Q Now, where the Patriarch sat at the dining room table,
21 is his back to the front door? A Yes.

22 Q Okay. And I take it where you sat you would be facing
23 the front door? A Exactly, yes.

24 Q When you got up to take the baby upstairs to put the
25 baby, to give the baby a bath, did you notice if there was
26 anybody at your front door? A No, I didn't.

1 Q And in order to clear the table and the dishes from the
2 table, would the Patriarch have to leave from the dining room
3 to the kitchen area? A Yes.

4 Q And in walking between the dining room and the kitchen
5 area would he be facing the front door at any time?

6 A Yes.

7 Q So if in clearing the dishes, walking from the dining
8 room to the kitchen area then, he would have an access view
9 to look out the front door? A Yes, that is true.

10 Q Was your front door that night of November the 6th, 1975,
11 was it open or closed? A It wasn't locked by the, by
12 the chain. But I am not sure whether, because when I
13 entered the house the Patriarch helped me to carry the
14 carriage of the baby, the buggy, and I don't know whether he
15 locked it or not.

16 Q Well, was the door open or shut? A It was shut.

17 Q But you don't know if it was locked or not?

18 A No, I don't.

19 Q Now, I am going to jump ahead a little bit, if I can?
20 Okay? A Yes.

21 Q After the Patriarch was killed, the next day, did you go
22 back to your house? A Yes, I did.

23 Q Okay. And did you go into the area of the dining room?

24 A Yes.

25 Q All right. And were there any dishes from the preceding
26 night on the dining room table? A No. He has taken

1 all of the dishes. They were in the sink. And he has
2 prepared the cups and the coffee.

3 Q Okay. And this would be what he would ordinarily have
4 done? A (Nods affirmative.)

5 Q Okay. Now, when you were upstairs, Mrs. Shimun, with
6 your baby, had you already begun the bath water?

7 A No.

8 Q Okay. A It was prepared before that.

9 Q The bath had already been prepared? A Yes.

10 Q I see. You had let the water cool or something?

11 A Yes.

12 Q And when you were upstairs was there any water running?

13 A No.

14 Q Okay. Did you hear the doorbell ring?

15 A Not at all.

16 Q Did you hear a knock on the door? A No.

17 Q From your position of the bathroom upstairs would you
18 have heard the doorbell ring if it had rang?

19 A Very clearly because we have a bell right in front of
20 the bathroom upstairs.

21 Q On November the 6th, 1975, between, say, 6:30 and 7:00
22 o'clock in the evening you heard the door -- well, you
23 didn't hear it ring? A No.

24 Q And did you hear a knock on the door? A No, I
25 didn't.

26 Q Could you have heard a knock on the door if there was

1 one from your position upstairs in the bathroom?

2 A Yes, very clearly.

3 Q Did your husband, the Patriarch, have any problems with
4 his hearing? A Yes, he has.

5 Q Okay. And could you tell us what problems that he had?

6 A When he is sitting on the table in the dining room and
7 someone is knocking on the door he won't hear him. I'll tell
8 him there is a knocking on the door so he will get up and
9 open the door.

10 Q I am going to direct your attention to approximately
11 a week before this tragedy occurred, some time around October
12 31st, Halloween. Okay? A Yes.

13 Q Are you familiar with Halloween? A Yes, I am.

14 Q On Halloween night did children from your neighborhood
15 come and knock on your door? A Yes.

16 Q Did the Patriarch hear those knocks?

17 A The Patriarch asked me not to open the door for anyone
18 but he will go and open the door for the children. Then he
19 wasn't hearing the knocking and I was always telling him
20 here is a knock on the door, and he says, "Oh, I didn't hear
21 that." Then he goes and opens the door. It happened
22 seven, eight times that I was telling him that there is a
23 knocking on the door.

24 Q Was that on Halloween night? A Yes.

25 Q And the Patriarch didn't want you to open the door?

26 A No.

1 Q Did he ever say why? A Because he said if there
2 is anyone coming, you know, like it is Halloween and everyone
3 is knocking on the door, and someone will come with a gun or
4 something, then he will just scream and I have to take the
5 baby upstairs and lock the door and call for help for the
6 neighbors. That is what he told me.

7 Q Now, Mrs. Shimun, when you were upstairs on November the
8 6th, 1975, with your baby, did you hear anything?

9 A Yes.

10 Q And could you tell us the first thing that you heard?

11 A I heard -- I heard the Patriarch scream very loudly my
12 name twice.

13 Q Well, okay, and prior to hearing the Patriarch scream
14 your name twice very loudly, did you hear anything else?

15 A No, I didn't.

16 Q And how did he scream your name, Mrs. Shimun?

17 A He screamed, "Emama, Emama," very loudly.

18 Q Could you describe his voice when you heard that?

19 A It was very loud, very unusual loud, and it seemed like
20 there is a trouble happening, something happening to him.

21 Q Okay. Now, when he screamed your name, "Emama, Emama,"
22 loudly twice, what did that mean to you? A That means
23 I have to run to the baby and take him and lock myself in a
24 room and call for help.

25 Q Was this a signal that you had worked out with the
26 Patriarch? A Yes.

1 Q And was this a warning that he was giving you?

2 A Yes.

3 Q Okay. Now, after you heard your name loudly being
4 screamed twice, what did you hear next? A Immediately
5 I heard a movement like a chair moving, something. I
6 thought that he was sitting on the chair eating and something
7 happened to him so he is falling from the chair, something
8 like this, movement of the chair.

9 Q After hearing this movement what did you hear next?

10 A Immediately I heard three shots.

11 Q Okay. Now, how soon did this all happen? Was it
12 instantaneously? A Very instant, yes, everything
13 happening one after another.

14 Q So sort of like, "Emama, Emama," shuffling, and bang,
15 three shots? A Yes.

16 Q Now, Mrs. Shimun, after you heard this very fast, did
17 you disregard the Patriarch's order? A Yes.

18 Q Okay. Could you tell us why? A I just forget
19 all about that and I rush downstairs to see what happened to
20 him.

21 Q Okay. And when you rushed down the stairs did you see
22 your husband? A (Nods affirmative.)

23 Q Could you tell us where he was?

24 MR. ROBINSON: Your Honor --

25 (Witness weeping.)

26 THE COURT: Let's take a break then at this time and

1 give her a chance to compose herself.

2 Ladies and gentlemen, we will take our morning
3 recess and you will keep in mind the admonition that I have
4 given you before. You will be ordered to return at eleven
5 o'clock.

6 (Short recess taken.)

7 THE COURT: Let the record show that the jury is
8 present and the defendant is present. You may proceed.

9 MR. ROBINSON: Thank you, Your Honor.

10 Q (By Mr. Robinson) Mrs. Shimun, I am going to show you
11 some pictures and ask you, first of all, showing you People's
12 10-H for identification, do you recognize the car in that
13 photograph? A Yes.

14 Q Whose car is that? A That is our car.

15 Q Was that the way your car was parked that night?

16 A Yes.

17 Q Okay. And I am going to show you People's 10-0 for
18 identification, and ask you if you would for us, please, take
19 this green pen and, perhaps, put an X where your husband's
20 body was when you came down the stairs and saw him that night?

21 A (Witness marks exhibit.)

22 Q Okay. Could you make that a big X, a little bigger?

23 Okay. Thank you.

24 I am, also, going to show you, Mrs. Shimun, People's
25 10-B, and ask you if you could, perhaps, put an X in that
26 picture where your husband's body was located?

1 A (Witness marks exhibit.)

2 Q Okay. Thank you. And the same with 10-Q, please.

3 A (Witness marks exhibit.)

4 Q Okay. And 10-M. A (Witness marks exhibit.)

5 Q Okay. Thank you. Now, Mrs. Shimun, how far away
6 from the front door -- strike that.

7 When you came down the stairs that night and saw
8 your husband's body, what did you do?

9 A Will you repeat the question?

10 Q If you can remember, and I know it is difficult, when
11 you came down the stairs that night and saw your husband
12 laying there on the ground, what did you do?

13 A I just asked him what happened, and then when I saw the
14 blood from on his shirt, and he couldn't talk, so I run to
15 the neighbors.

16 Q Did you run out the front door into the street?

17 A Yes.

18 Q Okay. And was the front door open or closed?

19 A No, it was open.

20 Q You didn't have to open it yourself? A No.

21 Q Now, I am going to show you 10-L and that appears to be
22 a glasses case in 10-L. Are you familiar with that glasses
23 case? A Yes, it is my husband's.

24 Q And where would he ordinarily carry that glasses case?
25 Would he hold it in his hand or wear it on his pocket?

26 A He usually have it in his pocket.

1 Q In his shirt pocket? A Yes.

2 Q All right. Mrs. Shimun, approximately how far away from
3 the front door was your husband's body when you saw it that
4 night, if you can estimate in feet? If you can't tell us,
5 "I don't know." A From the front door?

6 Q From the front door. A I think about 12 feet.

7 Q About 12 feet. Okay.

8 MR. PESTARINO: May I see those pictures?

9 Q (By Mr. Robinson) Now, when you came -- strike that.

10 When you got up in the morning of November the 6th,
11 1975, did the Patriarch indicate to you whether or not he was
12 going to receive any guests that day? A No, not.

13 Q So you weren't expecting any callers? A No.

14 Q Okay. And when you got home from the store at
15 approximately 3:30 in the afternoon on November the 6th, 1975,
16 did the Patriarch indicate to you that you were going to
17 receive some guests that night? A No.

18 Q Were you expecting anybody that night? A No.

19 Q And from the time of your arriving home from the store
20 at 3:30 until the time you heard him scream, "Emama, Emama,"
21 were you expecting guests that night? A No.

22 Q Was it your intention after you had bathed your baby and
23 put your baby to bed you were going to join the Patriarch for
24 coffee? A Yes.

25 Q This was going to be a standard average evening in your
26 home? A Yes. In fact, he has prepared two cups,

1 one for him and one for me, and he was waiting.

2 Q He prepared two cups of coffee? A Yes.

3 Q Didn't prepare three? A No.

4 Q Now, did the Patriarch, was his position as the leader
5 of the Church of the East equivalent to the position of the
6 Pope in the Vatican? A Yes, maybe.

7 Q As the Pope is the leader of the Catholic Church your
8 husband was the leader of the Church of the East?

9 A Exactly, yes.

10 Q And did he have a policy regarding the reception of
11 guests at his home? A Yes.

12 Q And could you tell us what that was, please?

13 A Anyone who visit the Patriarch, he has to make an
14 appointment one week in advance so that he will schedule for
15 it and be ready for that.

16 Q So, in other words, somebody just didn't drop in off the
17 street and wish to see the Patriarch? That didn't occur,
18 huh? A Oh, no. In fact, there was a bishop who came
19 from Vatican without having an appointment. He knocked the
20 door and I just told him because not having an appointment
21 he can't see the Patriarch, and he went back.

22 Q Okay. And did the Patriarch have a policy regarding
23 reception of guests after, say, six o'clock at night?

24 A No, not at all, even after four he won't see anyone.

25 Q After four o'clock? A Yes.

26 Q In the afternoon? A Yes.

1 Q Now, the day before your husband was killed, okay?
2 That would be November the 5th, 1975, did you receive any
3 phone calls at your house? A Yes.

4 Q Okay. And could you describe what occurred on those
5 phone calls? A There was a man calling with accent,
6 our accent, Assyrian accent, and asking for is this number
7 227-45, the last digits were, he was giving them wrong. And
8 we say no. Then again he calls repeating the same thing,
9 and again this last two digits, giving them wrong. So it
10 happened three or four times, my husband was suspecting there
11 is someone calling purposely and he just wanted to make sure
12 that he is home.

13 Q Okay. And this man had an Assyrian accent?

14 A That is what my husband said, yes.

15 Q Now, did you receive a call from -- the same sort of a
16 call from a woman? A Yes.

17 Q Okay. And what did this woman want?

18 A She did the same thing, asking for wrong number, asking
19 if this is Williamson's house. And, in fact, three months
20 ago they were calling asking is this DeBaz, Aphraim DeBaz's
21 office, and we were saying there is not such a person here,
22 and this call was four or five times.

23 Q So what they would basically do is give your right number
24 the first three, then the next two, then the last two would
25 be different than your number? A Yes, that is true.

26 Q Did the Patriarch have an appointment with anybody that

1 evening? A No, not at all.

2 Q Now, did you know that David Ismail was in San Francisco
3 between October the 31st and November the 5th, November the
4 6th, 1975? A No.

5 Q Between October the 31st and November the 6th, 1975,
6 did David Ismail call your house? A Between?

7 Q Between October 31st and November the 6th, 1975, did he
8 call your house? A No, not at all.

9 Q Did you know that David Ismail was in San Jose on
10 November the 6th, 1975? A No.

11 Q Okay. Now, this person that you described as a leader
12 in the Assyrian Universal Alliance who came to visit the
13 Patriarch approximately a month before he was killed --

14 A (Interrupting) Yes.

15 Q -- and wanted the Patriarch to go to Iran, is this
16 person's name "Sargis"? A Yes.

17 Q Do you know his last name? Or is that his last name?

18 A I really don't know. He was always writing. He has
19 two articles written in favor of the Patriarch in the last
20 two issues of Assyrian Star, I think by the name of Sargis
21 Michael. I'm not sure.

22 MR. ROBINSON: Thank you. I have no further
23 questions.

24 CROSS-EXAMINATION

25 BY MR. PESTARINO:

26 Q Mrs. Shimun, I am going to have several questions to ask

1 you, and I want to do it as nicely and easily as I can. So
2 will you forgive me if I -- A (Interrupting) Thank
3 you.

4 Q -- if I talk too much.

5 I am a little confused. You heard a scream before
6 you heard three shots? A Correct.

7 Q Right? A Correct, yes.

8 Q Yeah. And at that time you thought your husband was
9 having a heart attack, didn't you? A I thought maybe
10 is falling from the chair or something happened to him. I
11 don't know. I don't know what came to my mind.

12 Q Well, do you remember testifying in court very briefly
13 on November the 25th in Judge Kanemoto's court?

14 A Yes, I testified.

15 Q Very briefly, I asked you just a few questions, and that
16 was about it, wasn't it? A Yes.

17 Q And Mr. Hoffman asked you the question, the question by
18 Mr. Hoffman was, "Q What did you hear?" Answer, and
19 your answer was, "A I was upstairs, I just took the baby
20 upstairs, and just taking his clothes, putting them
21 in his bath, I heard movement of a chair. I thought
22 he has a heart attack when he screamed very loudly."

23 Do you remember saying that?

24 A Yeah, I remember saying that, but I am not exact in that.

25 Q And further on, Mr. Hoffman questioning you, and he said,

26 "Q You said you heard a scream. Did you recognize

1 who screamed?"

2 And your answer was, "My husband."

3 "Q All right. Did you hear any other sounds?

4 "A Very shortly I heard three bullets, sound, three
5 shots sound.

6 "Q All right. Were the shots before or after
7 the scream?"

8 And the answer was, "They were after."

9 A That is true, but --

10 Q Now -- (interrupting)

11 A Excuse me.

12 Q Excuse me. A I just want to correct one thing
13 there that you read. I heard him scream and then I heard
14 the movement. That is what I heard. I just want to
15 correct what you say.

16 Q You heard a chair move? A I heard him first
17 screaming and then I heard the movement.

18 Q Did you hear a chair being pushed aside?

19 A I said something like movement of the chair, but it was
20 something moving which I heard after he screamed.

21 Q Mm-hmm. Now, nowhere in that preliminary hearing did
22 you say that he called out your name, "Emama, Emama," did you?

23 A Yes.

24 Q You did not say that at that time before Judge Kanemoto?

25 A I'm sorry, I don't?

26 Q All of the questions that were asked you at this time in

1 court on November the 25th -- you remember?

2 A Yes.

3 Q -- you didn't mention anything about him calling, "Emama,
4 Emama," did you?

5 MR. ROBINSON: I am going to object --

6 THE WITNESS: (Interrupting) Yes, he called, "Emama,
7 Emama."

8 MR. ROBINSON: We don't know whether that question
9 was asked or not, what did he say.

10 MR. PESTARINO: I am asking her if she did.

11 THE COURT: She did what, sir? Asking her if she
12 did what?

13 MR. PESTARINO: If she heard her husband call out,
14 "Emama, Emama," at that time.

15 MR. ROBINSON: I believe the proper question is,
16 "Were you asked that question." As His Honor well knows, a
17 preliminary hearing isn't to bring out all of the evidence.

18 THE COURT: Yes. I understand that. The question
19 that I am confused about is whether Mr. Pestarino is asking
20 her if she heard those words or whether she responded to a
21 question that she --

22 MR. PESTARINO: (Interrupting) Well, my question was,
23 did she say anything about her husband calling, "Emama, Emama"
24 at that time.

25 MR. ROBINSON: At the preliminary.

26 THE COURT: And the objection is that no question was

1 asked about any conversation?

2 MR. ROBINSON: Yeah, I think we have to lay a
3 further foundation.

4 THE COURT: I don't have the preliminary.

5 MR. PESTARINO: There was no questions asked her if
6 she heard the words, "Emama, Emama." The questions were
7 just as I read them.

8 MR. ROBINSON: Perhaps, can I take a brief look at
9 that since that ended up without having a preliminary hearing?
10 We had to go to the Grand Jury. All I have is the Grand
11 Jury transcript.

12 MR. PESTARINO: It is still under oath.

13 Q (By Mr. Pestarino) You were sworn under oath at that
14 time? A I don't know what you want to ask me.

15 THE COURT: There is nothing at the moment. If
16 you will just wait a moment.

17 Q (By Mr. Pestarino) Well, let me ask you this, and change
18 the subject --

19 MR. ROBINSON: Could we have --

20 MR. PESTARINO: I will withdraw it for the moment.
21 Don't get excited.

22 Q (By Mr. Pestarino) You thought your husband was
23 having a heart attack when he screamed?

24 A I don't know exactly.

25 Q Well, at the preliminary hearing you testified that he
26 was, you thought he had a heart attack?

1 A I don't know exactly. I don't know what came to my
2 mind.

3 Q All right. Let me change the subject for a moment.
4 Your husband, in effect, was equivalent to the Pope as far as
5 the Assyrian people are concerned? A Mm-hmm.

6 Q Isn't that right? A Yes.

7 Q And as a boy, 12 or 13 years of age, he was elected Pope
8 for the Assyrian people, wasn't he? A Would you please
9 use the term of Patriarch.

10 Q All right. Patriarch, pardon me. I am trying to --
11 all right. Patriarch. He was elected Patriarch when he
12 was 12 or 13 years of age, wasn't he? A Yes.

13 Q And his family had been traditionally elected to the
14 same position for many, many years? A Yes.

15 Q Haven't they? A Yes.

16 Q And so as a boy he was educated, was he not, in England?

17 A Yes.

18 Q And he was educated just for this position, wasn't he,
19 by the Assyrian people? A I really don't know the
20 background of his education.

21 Q You don't? A I'm not sure.

22 Q Well, anyway, you knew him to be an educated man?

23 A Oh, yes.

24 Q You are an educated woman? A Yes.

25 Q Most Assyrian people are uneducated, isn't that right?

26 Generally speaking? A I can't answer that because I

1 don't know.

2 Q You don't know? A I don't know if you are talking,
3 generally speaking, because in this generation most of them,
4 no, they are educated. Most of them are university graduates
5 and high school, at least.

6 Q Nowadays in the United States? A Pardon me?

7 Q In the United States? A No, back in Middle East.

8 Q Middle East, too? A Yes.

9 Q Anyway, for many years your husband, the Patriarch, as
10 history goes back was involved in politics, was he? Pardon
11 me for yelling. I want you to hear me.

12 A Yes, because I can't hear you.

13 Q All right. Fine. Was involved in politics, wasn't he?

14 A When?

15 Q Well, after World War I, in the 1930's?

16 A I can't answer that question because I can't answer
17 something when I am not sure exactly what it is. So this
18 question I don't know exactly.

19 Q Okay. Well, after World War I the Assyrian people were
20 promised a lot of land, or some land, weren't they, as a
21 nation? Do you know that? A Promised by whom?

22 Q By the British government. A To have a land?

23 Q Yeah. A That is true, yes.

24 Q Yes. That is true, isn't it? A Yes.

25 Q And that promise for one reason or another was never
26 kept? A That is true.

1 Q And didn't your husband go to the League of Nations?

2 A Yes.

3 Q And he appeared there and he wanted his land for his
4 people? A That is true.

5 Q And then in 1932 there was a revolution, wasn't there,
6 or a revolt where the Moslem people killed many of the
7 Assyrian people and tortured them? A I wasn't born at
8 that time.

9 Q Well, you know from history? A I can't answer
10 that.

11 Q I am sure you weren't born at that time. You are too
12 young. A Yes, but still I can't say something where
13 I am not exactly sure of it.

14 Q But you know of it from history, don't you?

15 A Well, I have to read it right now so that I will tell
16 you.

17 Q Okay. So you don't know if that is true or not? Any-
18 way, do you know that your husband for many years suffered
19 a great deal, went out in the desert and lived with his people
20 during the course of a revolutionary period in the 1930's?

21 A Yes, he has suffered a lot.

22 Q Huh? A I know he has suffered a lot.

23 Q And all of this time he was great friends with General
24 Ismail, wasn't he? Your husband and David's father were
25 very close friends, weren't they, over the years?

26 A I really don't know whether they are friends but I think

1 my husband loved him very much.

2 Q Yeah. A He was always talking that he is honest
3 and very good man.

4 MR. ROBINSON: This is who?

5 THE WITNESS: His father. I know what he told, but
6 I don't know prior to that because I wasn't with him. I
7 don't know.

8 Q (By Mr. Pestarino) Well, you heard him talk and you
9 heard other people talk, and you know by reputation that
10 David's father and your husband were good friends?

11 A Yes.

12 Q David's father was about 10 years older than your
13 husband, wasn't he? A I really don't know.

14 Q You don't know? A I don't know his age.

15 Q You knew him back in 1969, didn't you?

16 A His father?

17 Q Yes. A Oh, yes.

18 Q Sure. You seen him many times? A Oh, he is
19 very good man, yes.

20 Q And you knew that, that he is older than your husband
21 who when he passed away was 68 years of age, wasn't he?

22 A I think he is older, but I, again, I'm not exactly
23 telling you, 10 years, 9 years.

24 THE COURT: No, I think you misunderstood the
25 question. Your husband's age when he passed away.

26 THE WITNESS: 66.

1 THE COURT: 66.

2 Q (By Mr. Pestarino) 66? A Yes.

3 Q And you heard your husband talk very nicely, very
4 fondly, very affectionately toward General Ismail, hadn't you?

5 A I have heard him telling me that he is honest, he is
6 good man, I love him, he is very religious man.

7 Q Very religious man? A That is what I heard him say.

8 Q You were born in 1942? A 2, yes.

9 Q You had lived in the same general area as the Ismails
10 in Canada, didn't you? You lived close together in the same
11 neighborhood? A No.

12 Q No? A No, we were living in Hamilton. They are
13 living in London, Ontario, which is four hours driving.

14 Q How many? A I think, I'm not sure, I think four
15 hours. He knows much better. I don't know.

16 Q So you and your family would visit the Ismails, and the
17 Ismails and their family would visit you occasionally?

18 A Once a year or twice. Once a year, maybe, on occasions.

19 Q And did Mr. Ismail, the General, David's father, always
20 visit with you? A He visited my family once. I wasn't
21 home. But they told me that he has been there visiting. And
22 my father visited him.

23 Q The General was a very religious man, wasn't he?

24 A That is what I heard from my father or my husband.

25 Q And as part of the religion, the Assyrian people fast a
26 certain period of time at Christmas and Eastertime, like

1 Catholic people do? A Yes, fast.

2 Q Fast. They don't eat meat during that period of time?

3 A Yes. Not all of them now, some of them.

4 Q And do you know anything about David's background, where
5 he was born? A I don't know where he was born.

6 Q You don't know where he was born? A No.

7 Q Did you see him most of the time with his father? Was
8 he always with his father?

9 MR. ROBINSON: I am going to object to that question.
10 It is compound, "most of the time, always," can't be answered
11 yes or no.

12 MR. PESTARINO: Yeah.

13 Q (By Mr. Pestarino) Have you seen David in the company
14 of his father? A I haven't seen him, no.

15 Q You have not seen David in the company of his father?

16 A No.

17 Q You spoke to David on a number of occasions, did you
18 not? A Yes.

19 Q Did he always speak about his father?

20 A I haven't heard him to me speaking about his father, no.

21 Q Did you speak to his brothers about David's relationship
22 with his father? A No, not at all.

23 Q Not at all? A No.

24 Q So you don't know anything about David's relationship
25 with his father? A All what I know, he is his son.

26 Q That is all? A Yes.

1 Q And you don't know anything about David's religious
2 background, do you? A No, I don't know. I think he
3 is not religious, not religious, no. I think he is more
4 politically, has more political idea than religion idea
5 because whenever he comes to our home he started singing,
6 dancing for taking the land, and we have to sacrifice our
7 blood for the generation for taking the land. This is all
8 what I have heard from him, talking about politics.

9 Q Well, don't most of the Assyrian people -- strike that.
10 I don't want to yell at you.

11 A No, it is okay. I can hear you better.

12 Q I just want to be sure you hear me. Can I get up
13 closer because I --

14 THE COURT: Surely.

15 Q (By Mr. Pastarino) The Assyrian people, I think you
16 mentioned it, their nationality really is their religion,
17 isn't it? A Not quite so.

18 Q Well, will you explain what you mean "not quite so"?

19 A Because the Church of the East doesn't have all of the
20 Assyrians in it. There is Assyrians, there is Assyrians'
21 Catholic, Assyrians' Protestant, Presbyterians. There is
22 Assyrians, you know, different religion.

23 Q And the Assyrian Catholics, for example, have really
24 nothing to do with the Patriarch, neither do the Presbyter-
25 ians, is that right?

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

1 THE WITNESS: I don't know.

2 MR. ROBINSON: She doesn't know.

3 THE WITNESS: How do I know?

4 MR. PESTARINO: Well, I don't know how you know.

5 THE WITNESS: Well, then how can you ask me such
6 questions?

7 MR. PESTARINO: Well, excuse me. Could you -- all
8 right.

9 Q (By Mr. Pestarino) The Patriarch doesn't have any
10 control over Catholics, did he? Any jurisdiction, any
11 power over the Catholics? A I don't know.

12 Q And you don't know whether he had any power over the --
13 well, let me ask you this. There were no Catholic bishops
14 under the jurisdiction of the Patriarch, was there?

15 A Yes, there is.

16 Q There is Catholic bishops? A I don't know about
17 these two bishops he accepted from Italy. I don't know
18 their background exactly to tell you what their background
19 was, and how they were accepted to the Church of the East.
20 But we have two from Italy recently.

21 Q So, anyway, getting back to the subject, the Assyrian
22 people were tied together, at least the Assyrians from the
23 Church of the East were bound together mostly by religion,
24 weren't they? A I don't follow. The Church of the
25 East?

26 Q Yeah. You belong to the Church of the East and the

1 Patriarch was the Patriarch of the Church of the East?

2 A That is true.

3 Q And that is different than Catholics? A Yes.

4 Q And Presbyterians? A Yes.

5 Q And so forth, other denominations. So the people from
6 the East, the Church of the East, were bound together mostly
7 by religion? A Not quite so.

8 Q Will you explain that? What do you mean "Not quite so"?

9 A No, not as you put your question.

10 Q Well, were they, did anything else bind them together?

11 A Well, they are Assyrians.

12 Q They are Assyrians. And being Assyrians they are very
13 close, aren't they? Very close people?

14 A I don't know what you mean by that.

15 Q Well, their relationship is kind of like one big family
16 to the extent at least that they are together, they believe
17 in the same things? A They are like any nationalities.

18 Let's take Americans, how do an American feel towards an
19 American? It is the same Assyrian feels towards an Assyrian.
20 I don't know what is the difference. What are you trying
21 to tell me?

22 Q Well, I am trying, they are bound together by religion
23 mostly, aren't they? A No.

24 Q No? A No.

25 Q They are bound together because they are Assyrians?

26 A Yes. Yes, I don't know what you mean "bound together."

1 MR. ROBINSON: I think I am going to have to object
2 to the question. I don't think it can be answered. By
3 "bound together," I think it is vague and ambiguous.

4 THE COURT: It is ambiguous. Perhaps you could
5 clarify your terms, Mr. Pestarino.

6 Q (By Mr. Pestarino) Well, they are united, are they not?
7 The Assyrian people are united by culture, by religion?

8 A You can't say they are united. They are not because
9 there is many groups, different opinions, and every group has
10 one opinion. So you can't --

11 MR. ROBINSON: (Interrupting) Excuse me, Officer.
12 Witnesses have been excluded.

13 THE COURT: Yes.

14 MR. ROBINSON: Sorry, Your Honor.

15 Q (By Mr. Pestarino) Did you learn from your husband or
16 any other source that David's father supported your husband,
17 the Patriarch, during the time that he was in the Middle East
18 and during the time that he was in the United States?

19 A I really don't know.

20 Q You don't know? A Because there is not a special
21 discussion about his father, you know, or about certain
22 person, so I have no idea. I don't know.

23 Q Well, do you know if the Ismail family were religious
24 people or not? A I know their father is very religious.
25 Their father, yes.

26 Q Okay. Did you ever meet his mother?

1 A Pardon me?

2 Q Did you ever meet his mother, David's mother?

3 A No.

4 Q Never met her? A No. I never met her. They are
5 in Syria. They were in Syria and we were in Iraq. So I
6 never visited Syria. I never met the family there.

7 Q So really you don't know anything too much about the
8 background, do you, of David, his father, in relation to what
9 your husband did? A I know his father very well, and
10 I know my father has been talking very serious, very honestly,
11 and very, like he is a very good man, very religious man. He
12 is always, you know, always having good opinion about his
13 father. This is what I have heard from my father, from
14 anybody, that he is very religious.

15 Q And you have heard, also, that David's father did a lot
16 to unite the Assyrian people? Have you heard that?

17 A To unit how?

18 Q To unite them in culture, religious bounds, political
19 bounds? A What do you mean "religious"?

20 Q Well, religion, that he supported your husband, the
21 Patriarch, in many, many ways? A I really can't tell
22 you because I don't know.

23 Q You don't know that? A No.

24 Q Fine. Okay. It is not unusual for Assyrians to get
25 together and discuss politics, is it? A It is not
26 unusual?

1 Q Yeah. Unusual. It is not? It is not unusual? You
2 follow me? A No. Because I don't know.

3 Q When Assyrian people get together -- A Yes.

4 Q -- and they visit one another in their homes --

5 A Yes.

6 Q -- do they talk about politics? A Never. All
7 their talk is singing and dancing.

8 Q Singing and dancing? A Yes.

9 Q Drinking, too? A I don't know. But, you know,
10 happy conversation. And it is not that politics is something
11 very important that when we go to visit we start visiting and
12 doing so, this land is taken so. No, that is not true.

13 Q They never talk? A I can't say never talk, but it
14 is not the main issue to discuss about when we visit someone.
15 We visit someone to have fun, to ask how they are, to visit.

14 16 Q So it is a nice, social visit and you don't talk
17 politics or religion? A I don't know what you are
18 asking, your question.

19 MR. ROBINSON: That question just can't be answered.
20 Is he talking about when Mrs. Shimun visits a friend who is
21 Assyrian, when she visits David Ismail? How can --

22 THE COURT: The objection is sustained in that you
23 are discussing the Assyrian people as a whole which she
24 obviously says, she says she can't talk for the people as a
25 whole.

26 MR. PESTARINO: All right. Thank you, Your Honor.

1 Q (By Mr. Pestarino) Let me ask you this, how long have
2 you known David? A How long?

3 Q Yeah. A Since I came to Canada.

4 Q And that is '69? A Yes.

5 Q And how long did you live in Canada?

6 A Until '71.

7 Q Until 1971? A Yes.

8 Q And you'd see David once or twice a year?

9 A He was -- he visited our family, I think, twice or
10 three times, and stayed over with his wife, and the week-end,
11 I think, Saturday and Sunday.

12 Q Did David drink? A Yes, he drinks.

13 Q Let me ask you this, do you know if your husband, the
14 Patriarch, knew David? A He just heard David call him
15 over the phone, and my husband said, "I have never seen
16 Malek Yagoub's son, David." And he said, "How he looks like?"
17 I said, "I don't know. Like other brothers." He said,
18 "I have met Zaia. I know Zaia." He was talking about Zaia
19 but not about David. He said, "I don't know David. I
20 haven't seen him. I don't know him." But he called him
21 about two months before his assassination, he called him
22 saying that he liked the Patriarch, and he will go to Iran
23 and kill his uncle because he likes, he likes him. And
24 then my husband turned to me, and he said, "He seems like
25 crazy talking. What's this killing matter?" You know,
26 you are not Christian if you are thinking about killing

1 because we don't have this in Christianity. This is what
2 he knows about David.

3 Q What -- A (Interrupting) About from his
4 telephone conversation.

5 Q Just from that, huh? A That is what he said, I
6 think because he haven't seen him, he said, "I don't, I
7 haven't seen this son of Malek Yagoub," but he was remembering
8 Zaia. He has met Zaia and seen him.

9 Q Let me ask you, on the night of November the 6th, do you
10 know whether the front door was closed or not?

11 A Would you please repeat the question?

12 Q On the night of November 6th when your husband was shot --

13 A Yes.

14 Q -- do you know whether or not the front door was closed?

15 MR. ROBINSON: I am going to object. The question
16 is vague and ambiguous. What time? Before or after her
17 husband was shot?

18 Q (By Mr. Pestarino) Before he was shot.

19 A I think I answered that question when my attorney asked
20 me.

21 Q Would you mind answering that? A I wasn't sure.
22 I don't know.

23 Q You don't know whether it was locked or not?

24 A No, because I went first and then the Patriarch came
25 carrying the child. So I don't know.

26 Q Well, you indicated to us that your husband on occasions

1 preceding this terrible thing, that your husband felt that
2 his life was in danger? A Not quite so. No, he
3 didn't feel his life was in danger because he was taking a
4 walk every day from nine to ten at night. And I said, "How
5 about if something happens?" He said, "No one will come
6 and kill." You know, he didn't believe in killing. He
7 said if they will do, they will fight me by writing, you
8 know, like everyone expresses opinion. But not by someone
9 shooting. He didn't believe in shooting.

10 Q Well, he knew that -- he knew that there was a lot of
11 bad feeling against him in Australia from Kanna?

12 A Mm-hmm.

13 Q And other newspapers down in the valley, Modesto, Turlock?

14 A You mean Assyrian organizations' magazines?

15 Q Yes. A Yes. There was articles against him,
16 and at the same time there was articles in favor of him.

17 Q He always told you to be careful, you know, that people
18 might be mad at him and they might transfer that anger to you?

19 A No.

20 Q Did he ever tell you anything like that?

21 A No. No, please don't try to put it in another way. A
22 month ago someone tried to open our door because they opened
23 the door of the neighbor's.

24 Q Wait a minute. Just respond to the question.

25 THE COURT: Just answer his question.

26 THE WITNESS: It is not quite as he puts it.

1 Q (By Mr. Pestarino) Well, had your husband ever been
2 threatened before or been threatened? A No.

3 Q Never been threatened? A No.

4 Q Okay. He never saw people except by appointment; is
5 that right? A Yes.

6 Q And normally you had to call for an appointment
7 sufficiently in advance to see your husband?

8 A Who?

9 Q Anybody. A Oh, yes. Even to call or send a
10 message --

11 Q (Interrupting) Yeah. A -- by certain people that
12 he knows.

13 Q All right. You don't know then immediately before the
14 shooting whether the door was locked or not?

15 A No, I don't know because I entered first, he entered
16 second. But when I went upstairs the door was shut. But I
17 can't tell you it was locked. The chain wasn't on the door,
18 that is for sure, that I know because I saw the chain was
19 hanging, and I know that my husband is taking a walk at nine
20 o'clock. But this is all what I know.

21 Q Is it a practice of yours, or was it a practice of your
22 husband's to lock the front door at night?

23 A When he comes from his walk?

24 Q Yes. Or before his walk. A No.

25 Q Before dinner? A No. Before, no. But after
26 he comes home, he finishes his walk about 9:30 to 10:00, he

1 locks all of the doors, makes sure that the doors are locked.
2 Then we go upstairs. This is what I know.

3 Q All right. Now, at 66 years of age your husband was
4 a very alert man, was he not? Good thinker? Good writer?

5 A Yes.

6 Q Educated? A Mm-hmm.

7 Q Could he hear a conversation like we are speaking now?

8 A No.

9 Q He couldn't hear us? A No.

10 Q I'd have to get much closer to him to talk to him?

11 A Yes, and much louder.

12 Q And how close would I have to get to talk to him? Would
13 you please tell me that? A No, I can't tell you that
14 because I have seen people like sitting where the Judge is
15 sitting, or the person (indicating) and he comes, you know,
16 he bends his (indicating), he tries to make them talk loudly.
17 It depends on how he is hearing. I don't know how much
18 distance. I can't tell you by feet.

19 Q Well, could he sometimes hear a knock on the door?

20 A Not --

21 Q (Interrupting) Sometimes? A Not usually. Mostly
22 I was telling him that there is a knock on the door.

23 Q Did your husband drive a car? A Yes.

24 Q Could he hear a doorbell? A Most of the times I
25 was telling him, even the telephone ringing, I was telling
26 him that the telephone is ringing because he wasn't hearing

1 the noise of the telephone ringing.

2 Q Was that because you are in the house and paying
3 attention? A No.

4 Q To those things? A No. No, he say that when he
5 was traveling between Middle East and United States and
6 France he was using, I don't know what they put in the ear
7 so that the pressure, to prevent them from the pressure of
8 high altitudes, and by using those things he has injured his
9 ears. And this is why he was having this problem. That is
10 what he explained it to me.

11 Q Did your husband wear a hearing aid? You know what I
12 mean? A No.

13 Q He didn't wear -- A (Interrupting) You mean
14 those (indicating)?

15 Q Yeah, one of those? A No.

16 Q Whatever they are. A No.

17 Q You indicated in 1969 you and David had a conversation?

18 A Yes.

19 Q Where did that conversation take place?

20 A I think we visited them. I'm not sure we visited them
21 or they visited us. I think we visited them, yes. Well,
22 all of the time whenever we visited them or they visited us,
23 it doesn't make any difference with David because he starts
24 always talking about politics. This is all what I have
25 heard from him. I have never heard from David talking about
26 church, about religion, about being loyal to his church. I

1 have never heard. I have heard him million of times being
2 loyal for what he believes in joining Kurds and sacrificing
3 his blood to join the war with the Kurds, and this is all what
4 I have heard from him.

5 Q So he has never really talked about religion at all?

6 A He say that, this idea of running after church and
7 religion, this prevents people from joining. That is why
8 whenever we are through with these churches then we can pay
9 attention to the politics.

10 Q Was his father there when he talked like that?

11 A His father, no.

12 Q No. He never talked in front of his father that way,
13 did he? A I haven't met him with his father. I
14 don't know.

15 Q You never met him together with his father?

16 A It happens that we are in their house, but like his
17 father is talking with my father. I am not sitting there
18 to join the conversation between fathers. We are, you know,
19 in another room. Like, it never happened we are with his
20 father and David is sitting there, we are sitting there. It
21 wasn't like that. Usually my father sits with his father
22 and we are somewhere else. We are not in the same room.

23 Q Well, when this conversation took place was this at
24 David's house or at your house? A At David's house and
25 at my house it is the same because he starts talking the same
26 thing wherever he is, and in our house or in their house.

1 Q And that, it was the same all of the time, wasn't it?

2 A This is what I have heard him.

3 Q Yeah. A Yes.

4 Q You have heard him talk this way every time you visited
5 back and forth? A Yes.

6 Q And who was present on some of these occasions when he
7 talked like this? A Present?

8 Q Who was there? A My brothers are there and my
9 family.

10 Q Was any of David's family there? A His wife and --

11 Q Anybody else? A I really don't remember. There
12 is people there. I don't know their names exactly.

13 Q Do you know Jack Ismail? His brother Jack?

14 A Yes.

15 Q And do you know his brother Zaia? A Yes.

16 Q Were they present at these conversations?

17 A No.

18 Q They were not. Just his wife? A No, Jack is
19 living in, I think, in another place not close to where David
20 is living.

21 Q Was Zaia -- excuse me. A Mm-hmm.

22 Q Did you have anything else? A No.

23 Q All right. Was Zaia ever present during any of these
24 conversations? A I have met Zaia once. I think he
25 was in David's house once. I don't remember that he has
26 visited our family. But just once I met him in Ontario,

1 London, Ontario.

2 Q When David -- when you saw David on these occasions
3 did he always drink? A Did he always?

4 Q Yeah. Take a few drinks?

5 A I don't know if he --

6 Q Okay. Did he appear happy and talkative?

7 A Well, he talks. I don't know how he appears.

8 Q He talks a whole lot, doesn't he, or he did?

9 A I don't know what you mean by that.

10 Q Well, have you ever seen people that drink and they get
11 talkative? A No, I haven't seen.

12 Q You haven't seen anybody like that? A No.

13 Q Okay. A Because I don't know --

14 Q (Interrupting) How long did these -- excuse me. I am
15 interrupting you again. A I'm sorry. I can't, I don't
16 know what you are trying to --

17 MR. ROBINSON: (Interrupting) Just respond to the
18 questions. Wait a minute. Let him ask a question and give
19 the answer.

20 THE WITNESS: Excuse me, because he said have you
21 seen people drinking and talking. I have seen my uncle
22 drinking, and I can't say no, I haven't because like my uncle
23 drinks sometimes. What is wrong with that?

24 MR. PESTARINO: Nothing. I drink sometimes, too.
25 I think even the District Attorney maybe.

26 THE WITNESS: Yes.

1 Q (By Mr. Pestarino) So on these occasions there was
2 just David and his wife and yourself present?

3 A No.

4 Q When these conversations took place? A No, there
5 is many people, all of the people there. It is not just me
6 and his wife and him, no.

7 Q Can you name a few more for me, that is what I am
8 getting at, on some of these occasions? You mentioned your
9 brothers? A I really don't know the names of their
10 family.

11 Q Well, Jack was not there. You know Jack?

12 A Yes, I know Jack.

13 Q He wasn't there? A No.

14 Q And David. And Zaia wasn't there? A Once I met
15 Zaia in their house.

16 Q And was his father present, David's father?

17 A His father was with my father, yes.

18 Q Every time that you visited you visited with your father?

19 A No. Sometimes we -- no, not all of the time my father
20 is with us, no.

21 Q All right. On many occasions your father visited with
22 you at David's father's house? A No.

23 Q No? A No.

24 Q Tell me. A It happened one time he wanted to
25 visit his father, so he came with us because my father, he
26 can't take a car for a long distance driving.

1 Q So mostly they'd come and visit with you?

2 A No, not with me.

3 Q With your folks? With your mother and father?

4 A They come to visit our family.

5 Q Yeah. A I don't know what kind of relations he
6 has with my brothers because I don't know, my brother has
7 been in Canada for six or seven years.

8 Q That is what I am trying to find out, Mrs. Shimun. How
9 many times at least during the years from 1969 until you moved
10 from Canada, how many times would David and his family visit
11 with your family every year?

12 MR. ROBINSON: I am going to object to this, No. 1,
13 I think it's been covered over and over; and No. 2, when
14 counsel uses the term "David and his family" is he including
15 the General? What are we talking about by the term "his
16 family"?

17 THE COURT: I think we are getting into an argument-
18 ative area, or at least an area that the witness --

19 MR. PESTARINO: (Interrupting) I'm not.

20 THE COURT: No, but she is a very precise person in
21 answering.

22 MR. PESTARINO: I understand that. But it is rather
23 vital that I go into these periods of time.

24 THE COURT: Let's do this. Let's take the noon
25 recess and during the noon recess perhaps Mr. Robinson could
26 explain to the witness how to respond to questions.

1 MR. ROBINSON: Well, Your Honor, I don't want to put
2 words in the witness' mouth.

3 THE COURT: No, I don't mean that with regard to
4 what she should say but as to the legal complications of the
5 questions which are being asked. We will resume at 1:30,
6 ladies and gentlemen. You will keep in mind the admonition
7 I have given you before. The defendant and all witnesses
8 will be asked to return. You can come back at 1:30?

9 THE WITNESS: 1:30? I really have two babies at
10 home.

11 THE COURT: Is there anyone to look after them?

12 THE WITNESS: My mother is 60.

13 THE COURT: Excuse me.

14 MR. ROBINSON: I have some other witnesses outside.
15 Could we have them ordered back, also?

16 THE COURT: Yes. All witnesses will be ordered
17 back.

18 Do you drive?

19 THE WITNESS: No, there is a person taking.

20 THE COURT: Somebody can take you home then and
21 bring you back, and you can explain to your mother to get it
22 over with today, then you won't have to come back.

23 THE WITNESS: How long will it take today?

24 THE COURT: I have no idea. Mr. Pestarino, may I
25 ask about how much longer you are going to anticipate?

26 MR. PESTARINO: Fifteen, twenty minutes.

1 THE COURT: How about you?

2 MR. ROBINSON: Ten, five minutes.

3 THE COURT: Maybe another 45 minutes.

4 THE WITNESS: Okay.

5 MR. PESTARINO: I would suggest a little longer
6 knowing the way things go.

7 THE COURT: Let's figure about an hour after you get
8 back. If you are a little late coming back --

9 THE WITNESS: Do you want me to wait here until two?

10 THE COURT: You can do whatever you want during the
11 noon hour.

12 MR. ROBINSON: We have an investigator from our
13 office who can provide Mrs. Shimun --

14 THE WITNESS: When will we start again?

15 THE COURT: About 1:30 or a little after.

16 THE WITNESS: So I will wait here.

17 THE COURT: Would you rather wait here?

18 THE WITNESS: Yes.

19 THE COURT: Ladies and gentlemen, we will see you
20 then at, and all of the witnesses will be ordered back, at
21 1:30.

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

24 ----oOo----

25

26

1 AFTERNOON SESSION

2 March 15, 1976. 1:30 o'clock p.m.

3 (Pursuant to recess, Court convened, and the
4 following proceedings were had:)5 THE COURT: Let the record show that the jury is
6 present, the defendant is present with counsel. You may
7 proceed, Mr. Pestarino.8 EMAMA MAR ESHAI SHIMUN,
9 the witness on the stand at the time of the adjournment,
10 resumed the stand and testified further as follows:

11 CROSS-EXAMINATION (Resumed)

12 BY MR. PESTARINO:

13 Q Before the luncheon recess, Mrs. Shimun, I was asking
14 you about these conversations that took place in 1969 in
15 Canada with David Ismail. Do you recall that?

16 A Yes.

17 Q Okay. Now, how often -- well, starting in 1969 you
18 lived in Canada until about 1970-71? A Until 1971, yes.

19 Q '71? A Yes.

20 Q And you visited once or twice or three times a year
21 between your family and David's family? A Yes.22 Q And these conversations took place about politics almost
23 every time you met? A Yes.

24 Q And there were no religious talks at all?

25 A He was mentioning that once these churches are destroyed
26 we can direct the might of the people to the politics.

1 Q And in any of these conversations did he tell you that he
2 was a member of the Assyrian Universal Alliance?

3 A He was talking about this organization, yes.

4 Q Did he say he was a member? A I don't recall.

5 Q Can you tell me generally who was present at these
6 conversations besides you and David? Who was there when
7 these conversations took place? A When he was talking
8 to me he was talking just to me, but there was many people --

9 Q Uh-huh. A -- at the house.

10 Q So are you saying that you were all maybe in one portion
11 of the house, in the living room or dining room, and you and
12 he were talking? A Like there is many people as we
13 are sitting now, and he sits besides me and talking to me.

14 Q Would anybody else be able to hear your conversation?

15 MR. ROBINSON: Objection, calls for speculation.

16 THE COURT: No, she may -- well, it calls for
17 conjecture.

18 Q (By Mr. Pestarino) Let me ask you, was there anybody
19 nearby, close to you when these conversations were taking
20 place? A As I said, there is many people in the room
21 and he is sitting and talking to me.

22 Q And generally what was the texture or the tone of these
23 conversations? What did David Ismail -- how did they start?

24 A He just started talking politics. Whenever he comes
25 home to visit us and whenever we go there he is always talk-
26 ing about politics and about going back to join the Kurds and

1 be against the Iraqi government, against the Arabs, and this
2 kind of conversation.

3 Q And did he tell you why he wanted to go back there and
4 join the Kurds? A I remember once he mentioned that
5 his cousin is killed there and he said I have to take revenge
6 of my cousin. And, also, he was mentioning that he has to
7 fight, and I don't know what exactly is idea of joining the
8 Kurds and fighting against the Arabs. I presume he wants
9 to liberate the Assyrians there, or that is what he thinks
10 that he will do.

11 Q Now, you didn't marry the Patriarch until 1973?

12 A Yes.

13 Q Did these conversations take place almost continuously
14 from '69 to 1971? A I don't --

15 Q You don't understand? A I don't know exactly
16 what's your question.

17 Q My question was, did these conversations between you and
18 David with regard to politics -- A Yes.

19 Q -- did they take place almost continuously between 1969
20 and 1971?

21 MR. ROBINSON: Well, Your Honor, I am going to
22 object to that. That question is vague and ambiguous,
23 "almost continuously."

24 MR. PESTARINO: Well, this is cross-examination.

25 THE COURT: Well, it is ambiguous, counsel, when
26 you say continuous for two years. It implies constantly.

1 MR. PESTARINO: I think she can explain it though.

2 MR. ROBINSON: It is my understanding of the Evidence
3 Code and rules that we are supposed to be following in this
4 case --

5 MR. PESTARINO: All right.

6 MR. ROBINSON: All right. Mr. Pestarino, I am
7 talking. You want to listen a minute?

8 MR. PESTARINO: I will withdraw my question, Your
9 Honor. There is nothing to say.

10 MR. ROBINSON: All right.

11 MR. PESTARINO: I'm sorry.

12 Q (By Mr. Pestarino) How often did you have these
13 conversations from 1969 to 1971? How often?

14 A Whenever I have seen this person he has been talking
15 always about the politics, always whenever I have met him.
16 Never I have heard anything other than that. And everyone
17 in the family can hear him talking that way.

18 Q Now, my question is, how often did you hear him talk
19 about politics? A I am telling you, whenever I met him,
20 whenever he comes to visit us, whenever we go to visit him,
21 we have never heard him just talking about politics.

22 Q Can you give me some idea, Mrs. Shimun, how many times
23 that would be roughly?

24 MR. ROBINSON: I am going to object. This has been
25 asked and answered on numerous occasions. I am sure that
26 every member of the jury can give the answer, two to three

1 times between 1969 and 1971.

2 THE COURT: No, overruled. You may answer. What
3 he wants to know, how often during a year or the two years
4 did you have these conversations?

5 THE WITNESS: I answered the question already that
6 whenever I met him I have.

7 THE COURT: But he wants to know how many times did
8 you meet him during a year.

9 THE WITNESS: How many times I met him during the year?

10 THE COURT: Yes.

11 THE WITNESS: Two or three times.

12 Q (By Mr. Pestarino) Two or three times a year. Did he
13 ever in any of these conversations say anything about your
14 husband, your husband to be at that time?

15 A I don't remember. All I remember, he says, "I know
16 you're from a religious family, once this idea of religion is
17 destroyed then we can draw the attention of the people to the
18 politics."

19 Q Mm-hmm. But he never mentioned your husband, did he?

20 A I don't remember.

21 Q Okay. When did the Patriarch indicate to the people of
22 his congregation that they should not get involved in politics?
23 In what year?

24 MR. ROBINSON: I am going to object to that. That
25 assumes something not in evidence, Your Honor.

26 MR. PESTARINO: Going back to the history.

1 THE COURT: No, I think she indicated that previously.
2 Do you remember?

3 MR. ROBINSON: Your Honor, I believe what she
4 indicated was, the Patriarch never said, "Don't get involved
5 in politics." The Patriarch said, "You should be faithful
6 to the country in which you live in." But I don't believe
7 there has been testimony in this courtroom that the Patriarch
8 said, "Don't get involved in politics."

9 THE COURT: Well, politics is such a general term,
10 I assume that counsel meant in the politics of the Assyrian
11 group?

12 MR. PESTARINO: Sure.

13 THE COURT: Yes. With regard to the Assyrian
14 liberation group, or whatever you want to call it, counsel
15 wants to know when your husband made that remark about he
16 did not want to get involved with that. If you recall.

17 THE WITNESS: No, I don't recall.

18 THE COURT: Okay.

19 Q (By Mr. Pestarino) You indicated that Zaia, David's
20 brother, had a political background, did you not?

21 A Yes.

22 Q And where did you learn that? A I have heard him
23 talking about politics with me personally.

24 Q With you personally? A Yes.

25 Q Was David present on those occasions?

26 A When Zaia was talking to me, it took very short period,

1 his conversations with me. It was when we visited, I
2 think, David's family.

3 Q So it was in the same time span you had these conversa-
4 tions with Zaia that you had with David? A No, Zaia
5 came from his house to visit us when he learned that we are
6 in David's house, and I saw him for a few minutes.

7 Q And he indicated to you that he supported what?

8 A He indicated that we needed educated people like you,
9 that this organization, this what they call a Federation,
10 that we are working for taking the land for the sake of the
11 Assyrians, and we need educated people like you and your
12 brothers and others.

13 Q Now, in any of these conversations did you have any
14 conversations with Jack Ismail? A I have been to
15 their house, I don't remember once or twice while we were
16 traveling from Canada to Flint, Michigan, and we stopped to
17 their house. Yes, I met him and his family.

18 Q And was he politically oriented?

19 A I haven't heard him anything, it was just ordinary
20 discussion, I haven't heard him talking about politics or
21 anything.

22 Q Do you know David's wife, Peggy? A I know her.
23 She has visited my family many times.

24 Q Do you know whether or not she is religious or whether
25 she is politically oriented? A I have no idea.

26 Q You have no idea. Now, you first met the Patriarch in

1 Tehran; is that right? A Yes.

2 Q And in what year? A I think it was 1968 when he
3 visited Tehran.

4 Q And you married him in 1973, in August?

5 A Yes.

6 Q Do you remember the name of the person that married you?

7 A Name of the person?

8 Q Yeah. A You mean the priest?

9 Q Yes. A Yes. It was Reverend Ninos in San
10 Francisco.

11 Q In San Francisco. And do these names mean anything to
12 you? Mar Youkhannan Philipus. Does that name mean any-
13 thing to you? A Mar Youkhannan Philipus?

14 Q Yeah. A He is bishop.

15 Q And so was Mar Dinkha, huh? A Yeah.

16 Q And Mar Narsai de Baz? A Yes.

17 Q Do you remember your husband, or did he discuss it with
18 you, a communication that was sent to all the people on
19 September the 13th, 1973, in effect asking that your --
20 telling your husband that he was no longer a Patriarch?

21 A Did you say a statement?

22 Q Yeah. Strike that. Let me try over again.

23 Does the 4th Assyrian church council mean anything
24 to you? Does that phrase mean anything to you?

25 A 4th Assyrian council?

26 Q Church council, yeah. A No.

1 Q Well, your husband was asked to resign, wasn't he, in
2 September of 1973, resign his duties as Patriarch by the
3 bishops? A In September -- I'm sorry. I didn't
4 get your answer (sic) exactly.

5 Q Yeah. In September of 1973 didn't the bishops ask
6 your husband to resign? Or didn't they tell him you are
7 no longer the Patriarch? A No, he was resigned by
8 a statement given by himself officially that he is resigning
9 his office, but that doesn't mean that he is not a Patriarch.
10 He is a Patriarch, but he resigned his office, his duties.

11 Q Let me show you this letter that I have, and see if
12 that jogs your memory in any way.

13 MR. ROBINSON: Perhaps we should have something
14 marked, Your Honor, if we are going to be showing it to a
15 witness.

16 MR. PESTARINO: I'll just show it to her.

17 THE COURT: Well, show it and we will mark it.

18 MR. PESTARINO: I tried a few cases. I think I
19 know what I am doing.

20 MR. ROBINSON: Well, I think you know the rules of
21 evidence then.

22 THE COURT: Counsel, let's not quibble.

23 THE WITNESS: I haven't seen this statement.

24 Q (By Mr. Pestarino) You never seen this letter?

25 A No.

26 Q Would you care to read it briefly and see if it means

1 anything to you?

2 THE COURT: The question was: Does that paper mean
3 anything to you?

4 MR. ROBINSON: It can be answered yes or no.

5 THE COURT: Just say yes or no.

6 THE WITNESS: Yes.

7 Q (By Mr. Pestarino) It does mean something to you?

8 A Yes.

9 Q Does that refresh your -- have you ever seen that paper
10 before or one similar to that? A No.

11 Q Have you ever talked about the contents of the letter
12 that you read, about the contents of the letter you just
13 read to your late husband? Did he ever mention that?

14 A The Patriarch has answered that letter and on an
15 official statement of 15 pages and was distributed to all
16 over the world, to all of the parishes and all of the people.

17 Q Yes. But this letter is action taken by the bishops,
18 isn't it?

19 MR. ROBINSON: Your Honor, I think if we are going
20 to be referring to a letter, so that the record is clear,
21 perhaps we should have that marked. There might be other
22 witnesses in this trial who will testify about that.

23 MR. PESTARINO: We will mark it. We don't want --

24 THE COURT: We will mark it as Defendant's Exhibit

25 A.

26 MR. PESTARINO: Mark it.

1 (Whereupon, the above-mentioned document, being a
2 letter, was marked as Defendant's Exhibit A for
3 identification.)

4 Q (By Mr. Pestarino) Referring to Defendant's Exhibit A,
5 the letter that I have just shown you, Mrs. Shimun, that
6 letter is a letter taken by the 4th council of the church,
7 isn't it, in Beirut, Lebanon?

8 MR. ROBINSON: I am going to object. Is counsel
9 going to testify from the contents of that letter? If he
10 is it is hearsay.

11 MR. PESTARINO: It is part of the history, part of
12 the motive, and part of everything that you have let in,
13 Your Honor.

14 THE COURT: Well, I realize that, counsel, except
15 you are asking her opinion about a document which she has
16 never seen before.

17 MR. PESTARINO: She said her husband talked about
18 it and answered it with a 15-page letter.

19 THE COURT: I realize that, counsel, but your
20 statement was that this was adopted in Beirut by a group of
21 bishops.

22 MR. PESTARINO: Let me, I'll --

23 THE COURT: There would be no way she could have
24 knowledge of that.

25 MR. PESTARINO: Unless she talked to her husband.

26 THE COURT: She said she hadn't. However, you may

1 cross-examine.

2 MR. PESTARINO: All right. Thank you, Your Honor.

3 Q (By Mr. Pestarino) Your husband wrote a 15-page letter
4 answering the letter, Defendant's Exhibit A for identifica-
5 tion that you just read? A I don't know if he was
6 answering exactly that letter. I haven't seen that letter
7 from the first place, but he answered the meeting of the
8 bishop, the bishops concerning his marriage, that it was
9 against the canon law of the Church of the East, and he
10 shows the reasons and in that statement.

11 Q In other words, the bishops felt it was against the
12 canon laws of the Church of the East to get married?

13 A No, this was a wrong idea. I don't think they have
14 mentioned it in their letter because it is not a law of the
15 Church of the East, and the Patriarch did not break a law.

16 Q Well, let me ask you this, in the history of the Church
17 of the East do you know either by reading, talking, or any
18 other way whether any Patriarch had ever married before?

19 A Yes, there was Patriarchs who were married until the
20 6th century.

21 Q Until the 6th century? A Yes.

22 Q And in the 6th century -- A Then after that they
23 took, they took people who were in the monasteries from the
24 monastery to be prelates, so it happened that the tradition
25 went, whenever people are in the monasteries to be prelates
26 in the church.

1 Q Wasn't that the time of Nestorinous from whom the name
2 comes? A No, this name --

3 Q (Interrupting) Bishop Nestorinous? A No, this name
4 is a nickname given by the Catholic Church to our church.
5 Our church is Church of the East.

6 Q Well, that is the time when they broke away from the
7 Catholic Church, isn't it? A No. It is not. This is
8 very ancient church. It is not a Catholic church, not
9 broken from the Catholic. It originated right after the
10 Christ, the Jesus Christ came, you know, was in that time.

11 Q Well, anyway, my question, Mrs. Shimun, was that your
12 husband, the Patriarch, felt that there was nothing wrong
13 as far as canon law was concerned with his marriage?

14 A That is true.

15 Q And he based that on the fact that St. Peter had been
16 married? A That is true.

17 Q Didn't he? A Well, he gets all of the history of
18 the church, and the Patriarchs who were married, and
19 according to answer, the bishops I guess.

20 Q But since the 6th century to the present time there has
21 never been a Patriarch that had married, is there?

22 A I really don't know exactly. We have to go back to
23 the history of the church to see what he has written in his
24 statement because he has mentioned that in details and in
25 the statement written. If you want to have a copy of it
26 so that you will know exactly what he has answered about

1 your question.

2 Q Okay. Let me ask you this then, the marriage, your
3 marriage in August the 16th of 1973 created quite a bit of
4 talk among the Assyrian people and in the Church of the East,
5 did it not? A I don't know how much talk because I
6 haven't been in the people.

7 Q Uh-huh. You have heard from friends?

8 A I haven't heard from anyone because I was at home all of
9 the time.

10 Q Well, did you hear from your parents?

11 A My parents just say that we kept quiet until we received
12 the statement of the Patriarch and we know all of the truth
13 and what he explained, and we accepted it, and all of the
14 faithful of the church that did that.

15 Q But anyway, it caused some kind of a split in the
16 thinking among the people of the church?

17 A It caused that some people, they didn't accepted it.
18 Some people, they accepted according to the facts and the
19 law of the church because we have to obey the law of the
20 church. This is the basic thing of our beliefs and our
21 church.

22 Q Well, anyway, on November the 6th, was your husband then,
23 did he resign from the church at that time? Was he resigned?

24 A No. He was the Patriarch.

25 Q He was still the Patriarch? A Yes.

26 Q He had tried to resign? A He had --

1 Q He wanted to retire? A When?

2 Q Earlier. A Oh, yes, he was very tired and for
3 the health reasons he resigned and he mentioned that in
4 official statement, he distributed all that to the bishops
5 and to all over the world, he was asking for a new Patriarch
6 to be elected.

7 Q And he was asking, but then on November the -- they
8 didn't accept that resignation? A No.

9 Q Okay. Now, there was a meeting scheduled for November
10 the 19th, and what was that meeting for?

11 A That meeting was between the Patriarch and the bishops.
12 What it was, going to be discussed in that meeting I don't
13 know. He was preparing for that. I don't recall.

14 Q To your knowledge did the Patriarch ever communicate
15 with David's father after your marriage? A I don't
16 remember.

17 Q You don't know or don't remember?

18 A I don't know. I don't remember anything.

19 Q I thought you indicated that the Patriarch had talked
20 to David Ismail some time ago, two, three, four, five, six
21 months ago? A No, David called our house to talk to
22 the Patriarch. It was, I don't remember exactly, two
23 months before his assassination.

24 Q And do you know what the conversation was at that time?

25 A I didn't talk to him. The Patriarch was talking to him.

26 Q Yeah. But did the Patriarch tell you what they

1 talked about? A Yes. He said he seems to me like
2 crazy person because he said, like, we are very loyal to
3 you, me and my brother Jack, but not Zaia, because we have
4 nothing to do with Zaia, and I am ready to go back to Iraq
5 and kill some people who are against you. This is what --

6 Q So he told the Patriarch he was very loyal to him at
7 that time? A He said that, that we like you, me and
8 Jack, and we don't know about Zaia. But I don't know how
9 much more he said because I wasn't on the phone. But it
10 seems very funny to hear him talking about killing, going
11 back to Iraq and kill some people because they are not loyal,
12 and the Patriarch thought that maybe something wrong, you
13 know, and what he is talking because he is creating this
14 story, he is going and killing someone because he is not
15 loyal. This is against the rule of Christianity. Killing,
16 we don't believe in killing no matter how much we are
17 against a person, but killing is not involved in this matter.

18 Q So as far as you know there was just that one conversa-
19 tion between the Patriarch and David, and that was about two
20 months before November the 6th? A That is what I
21 remember.

22 Q Do you know whether there was any communications back
23 and forth between your husband and the Ismail family during --

24 MR. ROBINSON: Objection.

25 MR. PESTARINO: -- during -- well, wait a minute --
26 during the two or three-month period preceding your husband's

1 death?

2 THE COURT: You may answer.

3 THE WITNESS: What you mean "family"? What's
4 "family"?

5 Q (By Mr. Pestarino) What I am asking you, Mrs. Shimun,
6 was there any written communications, letters or anything
7 that went from your husband to David's family or from David's
8 family to your husband? A No. No.

9 Q Do you know whether or not David's father had been
10 communicating with the Patriarch prior to your marriage?

11 A How do I know?

12 Q Did you talk to your husband about it? Did he talk to
13 you about it? A No, because there was not a special
14 issue about his father to talk about. I don't -- maybe
15 there is, maybe there isn't, I don't know. We haven't
16 really discussed any special person, you know, in special.
17 I don't know, maybe there is, maybe there isn't. I can't
18 tell.

19 Q So you don't know? All right. Anyway, he talked to
20 you about many things, didn't he? A Yes.

21 Q Your husband did. And did you help him with some of
22 his paper work, his book work? A He was reading the
23 letters that he was receiving, most of them, and what he was
24 answering. Mostly his answers, I was reading them, yes.
25 All of his epistles.

26 Q After your marriage -- pardon me -- after your marriage

1 there was some newspaper articles coming from Australia?

2 A Yes.

3 Q Weren't there, with newspaper articles from Chicago,

4 weren't they? A You mean from Assyrian Federation?

5 Q Yeah. A Writing against him?

6 Q Yeah. A Yes. There was articles against him
7 in their magazines.

8 Q There was quite a few articles that were written about
9 your marriage and against the Patriarch for having married

10 you? A In the magazines of Assyrian Alliance, yes.

11 Q Now, tell me this, what is the difference between the
12 Assyrian Federation and the Assyrian Universal Alliance?

13 Is there a difference? A I don't know.

14 Q Anyway, as a result of these criticisms in the newspapers
15 from these various sources did your husband tell you to be
16 careful, don't go out at night, watch out where you are
17 going, did he caution you? A Excuse me, you are
18 talking about articles which appeared in the, what they
19 call themselves Assyrian Federation in Chicago and
20 Australia which is political organization, and it has
21 nothing to do with the Church of the East at all. So they
22 took the marriage as an issue to attack him.

23 Q I understand that. A Yeah.

24 Q But did your husband tell you, "Now, look, these people
25 are attacking me, they may attack you, be careful"?

26 A Me?

1 Q Yeah. You know -- do I make myself clear?

2 A No. I don't know.

3 Q Sometimes a person might be mad at me --

4 A Yes.

5 Q -- and to injure me might injure some member of my family.
6 You see what I mean?

7 A He was concerned about the safety of his son, and without
8 mentioning about the articles written against him or articles
9 in favor of him he told me whenever something happens, any-
10 one entered the house, if the attack is on me and you are
11 not there just take the baby and scream for help. This is
12 what I have heard from him. But, specifically, well, I
13 can't specify exactly.

14 Q Well, let me see if I can help you. Some time shortly
15 before his death didn't you go to the supermarket and meet
16 somebody who asked you if you spoke Assyrian, Turkish, or
17 something else? A Yes.

18 Q And you had never seen this person before?

19 A No, I haven't.

20 Q And you came home and you told your husband about this
21 person, didn't you? A No. No --

22 Q Didn't you tell him that? A No, he was with me.
23 He was behind me.

24 Q Well, anyway, you discussed --

25 A (Interrupting) He listened to what the person was
26 telling me.

1 Q He heard -- A Yes.

2 Q -- the person, and then did you discuss it further when
3 you were at home that night or that day?

4 A Yes, he asked me that it was foolish to answer that
5 person because from the first place, he don't have the
6 right to stop me and ask me such a question and insist on
7 other questions.

8 Q And didn't he tell you to be careful about where you go
9 and who you talk to? A I wasn't going anywhere
10 because whenever I leave home mostly I was with him unless
11 I take the baby out, and I wasn't talking to anybody, there
12 was nothing that, if I meet some people it is an appointment
13 arranged with him and I am sitting in the room with them.
14 So I don't talk to persons really.

15 Q Well, nobody ever came to your home without an appoint-
16 ment, isn't that right, other than maybe your neighbor?

17 A My neighbor didn't come. They don't visit me. Just
18 if I am outside they talk to me, or if they come, even if it
19 is for long, if I am working outside they have this conver-
20 sation, but that is all. But if there is a visiting, yes,
21 it is by appointment.

22 Q It is always by appointment? A Yes, always.

23 Q Okay. Did you hear a chair moving that night?

24 A I heard a movement.

25 Q Of some furniture scraping the floor? A I heard a
26 movement. It sounds like movement of the chair.

1 Q What about this person Sargis, he visited with your
2 husband about a month before? A I think it was about
3 a month. I am not exact because I don't know the date.

4 Q His name is Sargis Michaels? A I think. I know
5 his name is Sargis, but I don't know exactly his last name.
6 I think.

7 Q Was he from Chicago? A Yes.

8 Q And did he write for an appointment? A He asked
9 for appointment by brother-in-law, brother-in-law of my
10 husband.

11 Q And did he come to visit your husband during the day or
12 the night? A No, it was about, he give him appoint-
13 ment, I remember not exactly, about 11:30 in the morning.

14 Q In the morning? A Yes.

15 Q And you indicated that Sargis was from the A.U.A.?

16 A Yes, he was a member in this organization, yes. I don't
17 know exactly A.U.A.

18 Q Well, Assyrian Universal Alliance? A Well, it is
19 that organization in Chicago, yes.

20 Q And he was a member of that? A Yes.

21 Q And he came to see your husband for what reason?

22 A He came asking if my husband would take political
23 leadership and forget about the spiritual leadership.

24 Q And were you present during that conversation?

25 A Yes.

26 Q What did your husband say?

1 A He said, "I'm very tired. I don't want to get
2 involved in politics." And he asked him what, what he
3 means by -- what he wants. He said like Malek Yacoub, the
4 father of David, discussed all of the matter with Iraqi
5 government, and his son Zaia was present there, and himself,
6 and he wants -- they want the Patriarch to take over what
7 the Iraqi government has promised them. And he said, "Well,
8 if Zaia is present there, let him go ahead and do whatever
9 he wants to, and I will be glad one day if I hear that we
10 have land and we are in our country." But to him to get
11 involved, he said, "I'm tired. I can't. I don't want to
12 be involved in anything, in political parties or organiza-
13 tions."

14 Q What they were striving for is to obtain a country of
15 their own, isn't that right? A Pardon me?

16 Q The Universal -- the Assyrian Universal Alliance, the
17 people that belonged to that are trying what, to get a
18 country of their own? A That is what they are
19 claiming.

20 Q They, also, try to help Assyrian people no matter where
21 they are, isn't that right? A I don't know. I am
22 not a member, and I don't know what their intentions are.

23 Q David's father also was trying to gain some rights for
24 the Assyrian people back in Iraq, wasn't he?

25 A When?

26 Q All of the years since 19 -- since World War I?

1 A. Yes.

2 Q So he was talking about politics, too, wasn't he?

3 A. Yes.

4 Q And he was a deeply religious man, too, wasn't he?

5 A. He was religious.

6 MR. PESTARINO: I think that is all.

7 MR. ROBINSON: Yes.

8 REDIRECT EXAMINATION

9 BY MR. ROBINSON:

10 Q Do you know when David's father died?

11 A. Exactly the date I don't know. I think it was a
12 couple of years ago.

13 Q Okay. A couple of years ago. Prior to November the
14 6th, 1975? A. Yes.

15 Q Okay. I just have a couple of quick questions, Mrs.
16 Shimun. You told us that you heard your husband scream,
17 you heard some sort of a scuffling that you think might have
18 been the chair, then you heard the three shots?

19 A. Pardon me, I can't hear.

20 Q I'm sorry. You told us that you heard your husband
21 scream your name twice, you heard some sort of a movement
22 on the floor which you thought might have been a chair, then
23 you heard three shots? A. Yes, exactly.

24 Q And it is in that order that you heard those events?

25 A. Yes, exactly.

26 Q Now, when you ran down the stairs and saw your husband

1 lying on the floor at the position that you have marked for
2 us, did you see a chair in the area? A No. I don't
3 remember.

4 Q Okay. Did you ever see a chair overturned that night?

5 A After I left home, the same day, I didn't come until the
6 next day, and next day I saw the chair. It was way down
7 in the living room.

8 Q Was it in a different place from where you ordinarily
9 kept it? A Yes.

10 MR. ROBINSON: Mr. Clerk, can I see the photographs,
11 please?

12 May I approach the witness, Your Honor?

13 THE COURT: Yes, sir.

14 MR. ROBINSON: Thank you.

15 Q (By Mr. Robinson) Mrs. Shimun, showing you People's
16 Exhibit 10-0 marked for identification, is that the chair
17 that is depicted in that photograph that you are talking
18 about, or was it another chair? A No, it was another
19 chair here.

20 Q And you had another chair that normally belonged in your
21 residence? A Yes.

22 Q Where was that other chair usually kept?

23 A Here in this part (indicating).

24 MR. PESTARINO: Could we mark that? Excuse me.
25 I don't want to tell you how to bring your case, but I would
26 like that marked.

1 MR. ROBINSON: Well, don't tell me because that is
2 what I am doing. I too have tried a lot of cases like
3 yourself.

4 Q (By Mr. Robinson) Mrs. Shimun, would you take this
5 red pen, please, and perhaps draw in maybe a big circle and
6 put a line through it and write "chair" where the chair was
7 normally kept?

8 MR. PESTARINO: Thank you.

9 Q (By Mr. Robinson) Could you write "chair" for us under-
10 neath that, please? A (Marking on exhibit.)

11 Q Okay. A Somewhere here (indicating).

12 Q Okay. All right. And the chair that is normally,
13 is normally kept there isn't depicted in these photographs?
14 This photograph, you don't see it there?

15 A No, I don't.

16 Q Okay. And the chair that is normally kept there, where
17 was it when you came back to your house the next day, do you
18 remember? A It was, it was in the middle, like in
19 the center.

20 Q Of the living room? A Yes.

21 Q Okay. Now, you told us that you were married by the
22 Reverend Ninos in San Francisco. Is that where his parish
23 is? A Yes.

24 Q Where did you get married? A In Seattle,
25 Washington.

26 Q So the Reverend Ninos accompanied you or went up to

1 Seattle and married you? A Not me. He was with the
2 Patriarch.

3 Q And you were married in Seattle? A Yes.

4 MR. ROBINSON: Thank you. I have nothing further,
5 Mrs. Shimun.

6 MR. PESTARINO: That is all I have. Thank you very
7 much.

8 THE WITNESS: Thank you.

9 (Witness excused.)

10 MR. ROBINSON: The People will call Edith Hart, Your
11 Honor.

12 EDITH MAY HART,

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

15 DIRECT EXAMINATION

16 BY MR. ROBINSON:

17 Q Can you state your full name, spelling your last name
18 for the record, please? A Edith May Hart, H-a-r-t.

19 Q And your occupation? A Motel manager.

20 Q And Mrs. Hart, where is your motel located?

21 A It is in San Francisco on Taravel Street right off 19th
22 Avenue.

23 Q Is that right across the street from Zim's?

24 A Yes, it is.

25 Q And the address is 821 Taravel Street?

26 A Right, yes.

1 Q Do you own that hotel? A No, we just manage it.

2 Q When you say "we," is there a Mr. Hart? A Yes,
3 there is.

4 Q And do you live at that motel? A Yes.

5 Q With Mr. Hart? A Yes.

6 Q And you and Mr. Hart manage it? A Mm-hmm.

7 Q How long have you been employed in that occupation?

8 A Nineteen months.

9 Q Now, I am going to direct your attention -- strike that.

10 Did I ask you to bring down some records with you?

11 A Yes, you did.

12 Q Did you bring those down? A Yes.

13 Q May I see those, please? A Certainly. And the
14 other side, too.

15 MR. ROBINSON: Okay. Might we have this registra-
16 tion card marked as People's next in order?

17 THE COURT: It will be No. 19.

18 (Whereupon, the above-mentioned item, being
19 a registration card, was marked as People's Exhibit No. 19
20 for identification.)

21 Q (By Mr. Robinson) Mrs. Hart, showing you People's
22 Exhibit 19, can you tell us what that is?

23 A That is one of our registration cards from the motel.

24 Q Okay. And is that card made in the regular course of
25 business? A Yes, it is by anybody who registers
26 at the motel.

1 Q Can you tell us how the information is obtained on that
2 card? A Well, when they come in and register for
3 the room then they have to make one of these out.

4 Q Okay. And does your motel rely upon those records?

5 A Oh, yes.

6 Q And are they made out in the regular course of your
7 business? A Yes, they are.

8 Q Okay. Now, can you tell us the name of the individual
9 registered on this card? A Mm-hmm. It says "David
10 Benjamin."

11 Q David Benjamin? A Yes.

12 Q And do we have an address for that person?

13 A Yes, it is 1477 21st Avenue in San Francisco.

14 Q And can you tell us when the person identified as Mr.
15 Benjamin registered in that motel? A Yes, it was on
16 Thursday, November 30th. Yeah -- October 30th.

17 Q October 30th? Okay. And how long did --

18 MR. PESTARINO: Excuse me. October 30th?

19 THE WITNESS: Yes. October, the day before Halloween.

20 Q (By Mr. Robinson) How many nights did that individual
21 stay at your motel? A Two. Thursday night and
22 Friday night. He left Saturday night -- well, Saturday,
23 early afternoon.

24 Q Saturday, early afternoon. And was there an individual --
25 strike that.

26 Were you the motel clerk that checked the individual

1 into your motel? A No, I wasn't.

2 Q And who was that? A My daughter.

3 Q Okay. And your daughter is who? A Robin Crowley.

4 Q And is your daughter pregnant now?

5 A Yes, she is.

6 Q Okay. And where does your daughter live?

7 A My daughter lives in Martinez, California.

8 Q Okay. Now, from looking at that card can you tell us
9 when the person checked out how did they pay this bill, by
10 check or by cash? A By cash.

11 Q How can you tell us that? A We have to
12 write down on the bottom of the card how it was paid.

13 Q Did you do that in that case? A Yeah.

14 Q And how much was paid for the motel for two nights?

15 A Well, it was thirty-five forty-seven, but that included
16 a phone call.

17 Q Okay. And this phone call, do you have a list of --
18 strike that.

19 How do you know it included a phone call?

20 A Well, we don't have any phones in our rooms, only the
21 phone in the office, and if a guest from the motel wants to
22 make a phone call then they come to the office, we will get
23 the number for them and then get time and charges.

24 Q Was a phone call made? A Then it is written on
25 the back of their card. Yes, there was.

26 Q Where was the phone call made to?

1 A It was made to Los Angeles.

2 Q When was the phone call made? A That was made
3 the 31st.

4 Q And is there a number on there to which, the person
5 called? A Mm-hmm.

6 Q Could you give us that number? A Yeah, it is a
7 Los Angeles area code, 213, then 386-7534.

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

9 CROSS-EXAMINATION

10 BY MR. PESTARINO:

11 Q May I see that when you are through with it? Thank
12 you.

13 Mrs. Hart, do I understand you correctly, you were
14 not present when this person --

15 A No, I wasn't.

16 Q -- registered? Do you know a person by the name of
17 Kitty Benjamin? A No, I don't.

18 Q All you know is really what is on this card?

19 A Right. We did have a phone call a few days earlier of
20 making the reservation, but I didn't meet them.

21 Q And apparently he paid you whatever the motel fare was?

22 MR. ROBINSON: Objection, assumes facts not in
23 evidence.

24 Q (By Mr. Pestarino) Well, this is kept in the ordinary
25 course of business, is it not?

26 MR. ROBINSON: The witness did not testify that Mr.

1 Ismail paid the bill.

2 MR. PESTARINO: I am asking her.

3 THE COURT: I don't think he has been identified.

4 MR. PESTARINO: Well, I am asking her with regard
5 to this card was the amount paid.

6 THE WITNESS: Okay. According to what I was told --

7 MR. ROBINSON: No. No --

8 THE COURT: Just tell us what you know of your own
9 knowledge.

10 THE WITNESS: I was paid, yes.

11 MR. PESTARINO: Okay. I think that is all I have.
12 Thank you very much.

13 MR. ROBINSON: Thank you.

14 (Witness excused.)

15 MR. ROBINSON: The People will call Mr. Siegle.

16 THE CLERK: Come up and be sworn, please.

17 DAVID KENNETH SIEGLE,

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

20 THE CLERK: Take the witness stand, please.

21 DIRECT EXAMINATION

22 BY MR. ROBINSON:

23 Q Can you state your full name for us, spelling your last
24 name for the record? A Yes, my name is David Kenneth
25 Siegle, S-i-e-g-l-e.

26 Q Okay. And Mr. Siegle, your occupation?

1 A I am part owner of a gun store in Oakland.

2 Q And is your father the other owner?

3 A My father and my brother, yes.

4 Q So there is three of you in it? A Right.

5 Q How long have you been employed like that, Mr. Siegle?

6 A About 12 years altogether.

7 Q And this gun store, is that at 508 West MacArthur
8 Boulevard in Oakland? A Yes, that is correct.

9 Q All right. And Mr. Siegle, did I ask you to bring down
10 some documents with you today? A Yes, you did.

11 Q And did you bring them? A Yes, I did.

12 Q May I see them, please? A Sure.

13 Q Can I see the other one? These are copies here.

14 Okay. Are these the copies?

15 A No, these are the copies. Those are originals.

16 MR. ROBINSON: Your Honor, might I have a few minutes
17 to show counsel the original and copies?

18 THE COURT: Sure.

19 MR. ROBINSON: This is the first time I have seen
20 them. Maybe we can just get the copies in.

21 MR. PESTARINO: I will stipulate these may go into
22 evidence, if Your Honor please.

23 MR. ROBINSON: I believe these need some explanation,
24 Your Honor. Mr. Siegle will be very brief, I'm sure.

25 Your Honor, might we have this set of documents,
26 three documents, marked as People's next in order, please?

1 They can be marked as one exhibit.

2 THE COURT: Yes. No. 20.

3 MR. PESTARINO: What exhibit is that?

4 THE CLERK: 20.

5 (Whereupon, the above-mentioned documents, being a
6 State registration form for a handgun, an invoice, and a
7 Federal recording form, were marked as People's Exhibit No.
8 20 for identification and received into evidence.)

9 Q (By Mr. Robinson) Mr. Siegle, showing you People's
10 Exhibit 20, the copies of the documents that you furnished
11 us, can you tell us what those are? A Well, first of
12 all, this pink form here is a State registration form on a
13 handgun purchase, and this small white copy here is our own
14 invoice we write out, and this larger white document here is
15 the 4473 which is the Federal recording on any firearm.

16 Q And are you required to keep such documents on any
17 handgun that you sell? A Yes, we are.

18 Q Okay. And are those documents made in the regular
19 course of business? A Yes, they are.

20 Q And could you tell us how those documents are obtained?
21 How you get the information on those documents?

22 A We normally would use a driver's license.

23 Q Okay. What other information is contained on those
24 documents? A Well, of course the purchaser and his
25 address, identification, his date of birth, there are certain
26 requirements concerning the purchase of a handgun that have

1 to be answered properly.

2 Q For example, is the make of the handgun contained in
3 those documents? A Yes, it is.

4 Q The serial number of the handgun? A Yes, that is
5 correct.

6 Q The date it is sold? A That is correct.

7 Q The purchase price? A Right.

8 Q And are these kept in the regular course of business?

9 A Yes, they are.

10 Q And are these documents then furnished to say, alcohol,
11 tobacco, and firearms Federal agencies and the local state
12 agencies? A Yes, they go to state --

13 Q Okay. A -- agency.

14 Q Now, I am going to show you People's Exhibit 4 for
15 identification, and can you take a look at that and tell me,
16 are you familiar with that type of weapon?

17 A Yes, I am.

18 Q Could you tell us what kind of a gun that is?

19 A This is a Walther Model PP, and the caliber is .22 long
20 rifle.

21 Q Okay. And does that gun have a serial number?

22 A Yes, it does.

23 Q And could you tell us what the serial number is?

24 A 30056.

25 Q Okay. And directing your attention to your document,
26 on December the 24th, 1969, did you sell that gun to a Mr.

1 Ron E. Myers? A Yes, we did. That is correct.

2 Q Okay. How can you tell us if you sold that gun to Mr.

3 Myers? A Well, according to the documents, the
4 serial number is the same.

5 Q Okay. And is the description of the gun the same?

6 A And the description is the same, yes.

7 Q So what you would have done when you sold this gun to
8 Mr. Myers, you would have taken the serial number and various
9 other information and wrote it down on there?

10 A That is correct.

11 Q And is Mr. Myers' name listed as the purchaser on these
12 documents? A Yes, it is.

13 Q Now, is one of the questions that you are required to
14 fill out, in 1969 or in 1970 when you sold these guns, is
15 one of the questions, "Is purchaser a citizen of the United
16 States of America"? A Yes, it is.

17 Q Okay. And at that time did you have to include this
18 information? A Yes.

19 Q Okay. And can you tell us from looking at your documents
20 how much the weapon was sold for?

21 A The price was \$98 plus tax.

22 Q Okay. So a total of \$103.88? A Right. That is
23 including one box of ammunition.

24 Q One box of ammunition. That includes a box of .22 long
25 rifle ammunition? A Yes, it does.

26 Q And .22 long rifle ammunition would be the type of

1 ammunition that would fit this gun? A That is correct.

2 Q A couple other questions. Mr. Siegle, is this the kind
3 of clip that would ordinarily come with the gun, the clip
4 that is in there? A Yes.

5 Q Okay.

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

7 CROSS-EXAMINATION

8 BY MR. PESTARINO:

9 Q Mr. Siegle, when you sold the gun you sold the clip and
10 the ammunition with it, didn't you? A Yes, sir, mm-hmm.

11 Q It all came as part of the gun? A Oh, yes. No,
12 not the ammunition. The clip.

13 Q No, the clip? A Right.

14 Q Then you buy the ammunition? A The ammo he chose
15 to purchase along with the weapon, yes.

16 Q Now, is there anything on your papers that tell a buyer --
17 for example, if I were to buy a gun from you, suppose I
18 wanted to sell that gun to somebody else?

19 A Mm-hmm.

20 Q Is there anything on those papers that say what you are
21 supposed to do? A No, there isn't.

22 Q Do you ever tell your people what to do if they want to
23 sell it? A I do make recommendation, yes.

24 Q What recommendation do you make? A Well, actually --

25 MR. ROBINSON: I am going to object unless we know
26 that the person who actually sold this gun to Mr. Myers made

1 that recommendation. If that is a company policy we can
2 get into that, but I think there needs to be some foundation
3 to be laid.

4 Q (By Mr. Pestarino) Do you have a company policy to
5 that effect? A No.

6 Q You don't. It is just what you tell people?

7 A Right, whoever actually writes up the sale.

8 Q Now, is your initials anywhere or your name anywhere
9 on that sale slip? A No. No, it isn't.

10 Q So you have no knowledge one way or another who in your
11 firm or your store or your shop made the sale, do you?

12 A Well, I know who did because I not only recognize his
13 handwriting but he has to sign the document.

14 Q So it was somebody, one of your co-owners, your father
15 or your brother? A No, actually it was one of our
16 gunsmiths.

17 Q Okay. And it gives an address of a purchaser. What
18 address is that? A The address indicated here is 1034
19 Ramona Street, Albany.

20 Q Albany. And is that store located a couple of blocks
21 from the service station, a Union station? Is your store
22 located a couple blocks from a Union station?

23 A There is a Union station about two, maybe three blocks
24 away.

25 Q What street is that on? A West MacArthur.

26 Q West MacArthur? A Mm-hmm.

1 Q This gives an address of Albany, doesn't it?

2 A The purchaser address?

3 Q Yeah. A Yes, Albany.

4 Q Now, the gun sold for \$98? A That is correct.

5 Q Okay.

6 MR. PESTARINO: Thank you very much.

7 REDIRECT EXAMINATION

8 BY MR. ROBINSON:

9 Q The purchaser address on here, is that the person's home
10 address that you are looking for? A That would be
11 the permanent address. We ask for a permanent address.

12 Q Where he lives? A Right.

13 Q Not where he works? A No.

14 MR. ROBINSON: Okay. Thank you. I have nothing
15 further.

16 THE COURT: All right. Before the witness leaves,
17 did I understand that you had no objection to a copy?

18 THE CLERK: This is a copy.

19 MR. PESTARINO: I have no objection to them going
20 into evidence, copies or originals, doesn't make any differ-
21 ence.

22 THE COURT: All right.

23 MR. PESTARINO: Thank you.

24 (Witness excused.)

25 MR. ROBINSON: The People call Yule Lazar.

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YULE LAZAR,

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

THE CLERK: Take the witness stand, please.

DIRECT EXAMINATION

BY MR. ROBINSON:

Q Can you state your full name, spelling your last name
for the record, please? A Yule Joseph Lazar, Y-u-l-e,
Joseph, J-o-s-e-p-h, Lazar is L-a-z-a-r.

Q Your occupation? A Controller.

Q Who are you employed by? A PSA Hotel, San
Francisco.

Q Do you work at that hotel? A Right.

Q Now, Mr. Lazar, did I ask you to bring down some records
with you? A Right.

Q Did you bring those down? A Right. I had Mr.
David Ismail's records as a guest of PSA Hotel.

Q Okay.

MR. ROBINSON: Your Honor, might we have these
records marked as a group, perhaps?

THE COURT: 21.

MR. ROBINSON: A, B, C, D, E and F.

THE COURT: All right. A to F, PSA Hotel records.

MR. PESTARINO: Let me see them, will you?

THE CLERK: Sure.

(Whereupon, the above-mentioned documents, being

1 PSA Hotel records, were marked as People's Exhibit Nos. 21-A
2 through 21-F for identification.)

3 Q (By Mr. Robinson) I am going to show you People's 21-B
4 for identification, and ask you, can you identify that for
5 us? A What is that? 21-B?

6 Q Well, it is on the other side, 21-B is over here. I
7 just want to know, not can you identify 21-B. Can you
8 identify what this document represents?

9 A Okay. This document represents four days room and tax,
10 each day is \$10, room tax is 60 cents.

11 Q Okay. And is there a person that stayed at your room,
12 at the room? A Mr. David Ismail stayed in Room 727.

13 Q 727? A Right.

14 Q And did he stay there on November the 1st?

15 A Yes, sir.

16 Q Okay. On November the 2nd? A Yes, sir.

17 Q On November the 3rd? A Yes, sir.

18 Q On November the 4th? A Yes, sir.

19 Q On November the 5th? A I believe the 4th he
20 checked out of the room, of the 5th --

21 Q Refreshing your recollection, when did he check out?

22 A Well, 6th.

23 Q November the 6th. And from looking, are these records,
24 look at all of these records. While I am qualifying the
25 records -- A Have I seen them?

26 Q How are these records made? A These records are

1 made at the front office at the time when the guest is
2 registered.

3 Q How does somebody get the information that is contained
4 on those records? A The night auditor, he runs room
5 and tax on the folder, the guest's folder, the guest
6 account, we call it, and any charges from food and beverage
7 operation goes into this account folder.

8 Q And along with a charge for the room and liquor, and
9 things like that? A Right.

10 Q Okay. Now, are those records made in the regular
11 course of business? A Yes, sir.

12 Q Okay. And does your company, the hotel, rely upon
13 those records? A Right.

14 Q And are those original copies? A Official
15 original copies, right.

16 Q Okay. Good, now, can you tell us how much Mr. Ismail
17 paid for his stay of November the 1st through November the
18 6th? A He checked out on November the 6th, and he
19 paid cash \$114.87.

20 Q Paid cash? A Right.

21 Q Okay. And showing you People's 21-E, can you tell us
22 what that is? A This is the operator number.

23 Q The operator number? A Right.

24 Q What does that mean? A I think that is the overseas
25 operator number.

26 Q Did Mr. Ismail make some long distance calls?

1 A Yes, he did, three long distance calls.

2 Q Showing you -- A Four long distance calls.

3 Q Showing you 21-A marked for identification, can you tell
4 us what that represents? A 21-A again is the
5 operator exchange number.

6 Q And from looking at 21-A can you tell us what room or
7 account number was that charged to? A It is posted
8 here, 727.

9 Q Well, we have to tell the jury, too.

10 A Fine.

11 Q 727, is that Mr. Ismail's room? A Right.

12 Q When was that call made? A This call be made on
13 November the 6th.

14 Q 1975? A 1975.

15 Q Would that be made prior to his checking out?

16 A Yes, sir.

17 Q Okay. And could you tell us where that call is to?

18 A That is for Sidney, Australia.

19 Q Okay. Is there a man's name on that call? Who he
20 called? A Yes, Mr. Ismail, Room 727.

21 Q Who did he call? A I couldn't pronounce the name,
22 CA NNA.

23 Q Canna?

24 MR. PESTARINO: I will stipulate it is Canna.

25 Q (By Mr. Robinson) Is there a telephone number on there?

26 A 6070027.

1 Q And showing you People's 21-C for identification, is
2 that another telephone call that was made on November 6th?

3 A Yeah, this is another telephone call made to Sidney,
4 Australia, 728, telephone, 7732, and being charged to his
5 room, 727.

6 Q Showing you 21-F for identification, can you tell us
7 what that is? A Where is that, sir?

8 Q Can you tell us what that is? A Well, this is
9 the registration. It is also, could be a telephone
10 operator being called in or out, I cannot tell. We'd have
11 to check this.

12 Q On your registration does it indicate what time Mr.
13 Ismail checked into your hotel on November 1st?

14 A Yes, sir.

15 Q What time did he come in? A 8:05 P.M.

16 Q In the evening. And showing you People's 21-D can you
17 tell us what that is? A No. I can check. This
18 is new to me. I haven't seen it.

19 Q Didn't you just explain that, what that was to me out
20 in the hallway? A This one? This is a beverage
21 charge.

22 Q You see, Mr. Lazar, we just marked them for identifica-
23 tion. You don't have to tell us what "21-D" means. Tell
24 us what the other side means. A Because I couldn't
25 have the figure and I don't know about the figure. Okay.
26 This is beverage charge has been made on November the 3rd for

1 \$4.55, apparently is about four drinks and charged to Room
2 727.

3 Q So, how much -- is that what they call the bar bill?

4 A Yes, sir.

5 Q So that would be charged to the room? A Right.

6 Q And between November the 1st when Mr. Ismail checked in
7 and November 6th when he checked out, how much was his
8 bar bill at the hotel? A \$4.85.

9 Q How much drinks at the motel for room service?

10 A It is \$1.25. This is not a room service. This is a
11 bar check.

12 Q So somebody goes down to the bar and they put it on
13 their tab? A Right.

14 Q So how much was his bar bill, actually drinks consumed
15 in the bar? A Sounds to me about four drinks.

16 Q Four drinks in six days? A Right.

17 Q Okay. All right. Now, you told us, didn't you, I
18 think that Mr. Ismail paid cash? A Yes, sir.

19 Q Okay. And is that a pretty cheap hotel to stay at,
20 your hotel? A No, sir. I give him 50 per cent
21 discount.

22 Q How much? A 50.

23 Q 50 per cent. Okay. A Room rate is \$20 for
24 that particular room.

25 Q So you only charged him 10? A Right.

26 Q How come you only charged him \$10 for a \$20 room?

1 A I have this priority to do it.

2 Q Pardon me? A I have this priority to do it. I
3 can give come rooms. I can give any rate I want.

4 Q You can charge any rate for the rooms you want?

5 A Right.

6 Q And nobody checks into that or anything?

7 A Well, I am a part of management.

8 Q Okay. A So I have that kind of privileges to
9 do it.

10 Q Let me ask you this, if I came up to the PSA Hotel in
11 San Francisco and wanted a room would you charge me \$10?

12 A Well, that is pretty tough question. Well, probably
13 I'll give you a come.

14 Q Why did you give Mr. Ismail a discount, Mr. Lazar, of
15 50 per cent? A Well, just actually what I do, I give
16 most Assyrian people 50 per cent off because they are using
17 our facility, they have many parties, many other stuff, so
18 we take care of them.

19 Q How did Mr. Ismail get to the PSA Hotel on November 1st
20 at 8:00 o'clock when he checked in? A Okay. On
21 October 31st I received a call from my brother, Sam Lazar.
22 He say that I have a message from David Ismail, he is in town,
23 and he stated that he didn't have time to see David so
24 probably you could call him and see him. And he say that
25 he is staying at Sunset Motel. I call Sunset Motel, and
26 first of all the operator couldn't tell me whether they have

1 a guest by David Ismail, so I make more explanation that he
2 is from Canada. He say, "Well, we have somebody from
3 Canada by David Benjamin." So I say, "Let me talk to him."
4 She said, "He went to zoo." Then I put the message to call
5 me back. And David, he did. And I wasn't in the office,
6 so I returned his call again. And I talk with David. And
7 I haven't seen David before. I never talking to him. So
8 I, I not -- I invite him for dinner and he came over to the
9 hotel, and we sat and we had dinner.

10 Q How did he get from the Sunset Motel to your hotel?

11 A Okay. That night I was m.o.d., manager on duty. I
12 couldn't get out of the motel. I called my brother Joe, if
13 he has any road test, you know, he could go to Sunset Motel
14 and pick up David. And my brother Joe did. He went to
15 Sunset, pick up David. He came to the hotel and drop him
16 there and my brother left.

17 Q What night was this now? A That was on Friday.

18 Q Friday. So that would be -- do we have a calendar?

19 A October 31st.

20 Q October the 31st? A '75.

21 Q Okay. So -- A Then we have --

22 Q Wait a minute. I have to ask questions. That is the
23 way you have to do here. A Sorry.

24 Q Could you tell us, in November of 1975 did you live at
25 1851 21st Avenue in San Francisco? A Yes.

26 Q And are you familiar with a Kitty Benjamin?

19

1 A Yes, she is my employee.

2 Q And does Kitty Benjamin live at 1477 21st Avenue in San
3 Francisco? A Yes, sir.

4 Q So what, about three blocks from you?

5 A Yeah, about four blocks, yeah.

6 Q Okay. Now, did Kitty Benjamin tell you that David
7 Ismail was coming to town? A No.

8 Q Did you know that David Ismail was coming to town?

9 A No.

10 Q Okay. So the first time you knew about David Ismail
11 was when your brother Sam called you? A Called me,
12 yes, sir.

13 Q And you met David Ismail on Friday, October the 31st?

14 A Right.

15 Q And what time did you meet him? A I believe it
16 was about 7:30 or 8:00 o'clock, in between.

17 Q Okay. In the evening? A In the evening.

18 Q And that was the first time you met him?

19 A Yes, sir.

20 Q Okay. And could you tell us what he was wearing, if
21 you remember? A I think a suit. Or I really couldn't
22 remember.

23 Q Okay. And did you have a dinner with him?

24 A Yes, sir.

25 Q And where did you have the dinner? A In our Pena
26 dining room.

1 Q It is a dining room in your hotel? A (Nods
2 affirmative.)

3 Q And how long were you with him on Friday, October the
4 31st? A On Friday I was until about 10:30, something
5 like that.

6 Q And then how did you part with Mr. Ismail?

7 A Okay. On October the 31st, during the time we had
8 dinner, he said that I came to visit California, San
9 Francisco, and his intentions, he wanted to relocate his
10 living in San Francisco particularly. He wanted to open
11 a business.

12 Q Could you answer my question? How did you part with
13 him? You were with him for dinner until 10:30.

14 A I took him back to Sunset Motel.

15 Q Had you had your car back there? A Beg pardon?

16 Q You had your car at your hotel? A Yes, sir.

17 Q And the Sunset Motel is approximately how far away from
18 where you live in San Francisco? A Not -- from where
19 I live on 21st Avenue?

20 Q Mm-hmm. A It is not that far.

21 Q About two blocks? A No, more than that. It is
22 about five blocks.

23 Q Five blocks away. So he was staying in your general
24 area? A Right.

25 Q Now, you took him back to the Sunset Motel. Did you
26 go in with him? A No.

1 Q Just left him off? A I just drop him and went
2 back.

3 Q Okay. And when was the next time you saw Mr. Ismail?

4 A Okay. During our dinner he liked our hotel very much,
5 and he wasn't satisfied with his Sunset Motel because of the
6 traffic at that area, couldn't sleep.

7 Q Did he say something about it being too noisy?

8 A Yeah.

9 Q Okay. A And he say he would like to, you know,
10 come to our hotel. I said that is fine. So we arranged
11 on Saturday that he will come and check into the hotel.

12 Q Okay. Now, prior to his making this statement about
13 the hotel being too noisy, did you encourage him to come
14 down to the PSA Hotel? A Not really.

15 Q Didn't you say, "Hey, I can give you 50 per cent
16 discount if you will stay down here"? A I may have
17 said to him, "If you want to come over here I will give you
18 50 per cent," but I am not in promotion, put it this way.

19 Q Okay. But you knew Mr. Ismail was an Assyrian, right?

20 A Sure, I know he is Assyrian.

21 Q And you give all Assyrians 50 per cent discount?

22 A Right.

23 Q But you didn't mention the discount to him until after
24 he said he wanted to leave the Sunset Motel?

25 A Right. I don't have to tell them I am giving Assyrian
26 50 per cent, but I do it personally.

1 Q So did you see Mr. Ismail on Saturday morning?

2 A No, sir.

3 Q Okay. When was the next time you saw Mr. Ismail?

4 A Next time I saw Mr. Ismail was 7:30 evening on Saturday.

5 Q Saturday? A Yeah. I brought him and check in
6 hotel. I brought him and checked into the motel -- I
7 mean hotel.

8 Q You went out to the Sunset -- A Motel.

9 Q -- and picked him up? A Right.

10 Q Were you going to have a dinner together or something?

11 A Okay. I invite him on Friday, and he said, "Well, you
12 invite me on Friday, I have to invite you today." So he
13 forced me into it. And this is the Assyrian way. You
14 invite somebody, he invites you again. So we went and had
15 dinner together.

16 Q So when you picked Mr. Ismail up on Saturday night, that
17 would be November the 1st? A November the 1st, right.

18 Q Okay. You had intentions of going out to dinner with
19 him? A Well, when I checked him in he said, "Don't

20 go. We will go for a dinner. I have -- you invited me
21 yesterday, I have to invite you today." So I said, "Fine."

22 Q Now, how were you dressed on Saturday night when you
23 picked Mr. Ismail up? A Saturday night actually I
24 wasn't supposed to check him in, I was trying to go to
25 Turlock for a party --

26 Q Turlock? A -- and I asked David he could check in?

1 I have his registration there and everything will take care.
2 He say, "Where you going Saturday night?" I said, "I'm
3 going to Turlock." He said, "Maybe I'll come with you."
4 But that Saturday I had a call that the party was cancelled.
5 So I went and picked up David, to the motel, and I was
6 dressed --

7 Q Like you are now? A Right.

8 Q You had a coat and tie on? A I have a suit.

9 Q How was Mr. Ismail dressed? A Mr. Ismail was
10 dressed casual, and he stated to me that, "Well, if I knew
11 that you were dressed I would dress." You know, if you
12 wear a dress suit I wear dress suit. I say, "Okay. Don't
13 change your clothes. I'll change. I will go in casual."
14 So I did. We came home and I dressed casual.

15 Q So you went from your house -- you went from the Sunset
16 Motel to your house? A Right.

17 Q About seven blocks away? A Right.

18 Q And then you changed into some casual clothes?

19 A Right.

20 Q What do you mean by casual? Like a sweater and shirt?

21 A Right.

22 Q Not a suit or anything like that? A No, no ties.

23 Q And at that time I take it you checked Mr. Ismail out
24 of the Sunset? A Right.

25 Q Okay. And did you take his bags? A He put them
26 in the trunk.

1 Q Okay. And that was in the trunk of your car?

2 A Right.

3 Q Then you went to your house and changed? A Right.

4 Q Then you drove him from your house down to the PSA Hotel?

5 A In San Francisco, yeah.

6 Q Did you have a dinner that night? A Yeah.

7 Q All right. Where did you have dinner?

8 A He invite me to Elegant Farm at Jack London Square.

9 Q Mr. Ismail paid for this dinner? A Yes.

10 Q How did he pay? A Cash.

11 Q Paid cash. Okay. And let me ask you this, when did
12 you take his clothes -- I mean, his suitcases out of your
13 trunk and bring them up to the PSA? Was that before or
14 after dinner? A No, that is before dinner.

15 Q Did you have a bellboy take them out or did you both
16 pick them up, or what? A I don't remember. I think
17 he pick them up himself, but it wasn't big luggage.

18 Q How many pieces did he have? A I can't remember.

19 Q Well, was it more than one suitcase?

20 A I don't -- I cannot tell. I don't remember. I didn't
21 put my attention to it.

22 Q But at least you can tell us this much, that he had more
23 than one little bag, huh? A I know there was a bag.

24 Q All right. Well, was it big enough bag to put in a
25 separate change of clothes? A I don't know. I
26 haven't seen inside the bag.

1 Q Well, you seen bags before, haven't you?

2 A Yeah, but I cannot tell.

3 Q Well, are you in the habit of taking a little overnight
4 bag and stuffing in a suit and a tie and all of that stuff?

5 MR. PESTARINO: That is irrelevant.

6 THE COURT: Yes, his habits are not in issue. The
7 objection is sustained.

8 Q (By Mr. Robinson) Was it the sort of a bag, this bag
9 that Mr. Ismail had, was it the sort of bag that could fit
10 in other clothes or was it a small bag?

11 A Well, I can't put my suit in a small bag. But if you
12 have a big bag, I don't know what you put in, probably suit
13 coats, whatever.

14 Q Was it a suitcase that he had? Let me ask you that.

15 A I believe was a suitcase. I didn't put much attention.
16 We got thousands of suitcases coming through the hotel and
17 going out. You never know.

18 Q Okay. But you do recall that in your opinion it was
19 bigger than say, a little, you know what -- strike that.

20 Do you know what sort of a bag you use to keep like
21 your shaving gear in, and stuff like that? A little kit?

22 A No, sir.

23 Q You don't know that. Okay. So then you went to the
24 Elegant Farm in Jack London Square, and Mr. Ismail paid for
25 your dinner? A Right.

26 Q Where did you go after that, after Jack London?

1 A We came back. It was about 10:30, I drop him to the
2 hotel and he asked me to do him a favor, to take him to the
3 church on Sunday. And I left home.

4 Q Okay. And what time did you get home that night?

5 A About 11:30, something like that.

6 Q And then on Sunday what did you do? A Sunday I
7 came at 10:30, I pick him up from the hotel. I took him
8 to the church. And I left from the church to --

9 Q Would that be 10:30 in the morning?

10 A 10:30, right.

11 Q Okay. And you took him to church? A Right.

12 Q Now, did you see Mr. Ismail at all that Sunday after you
13 took him to church? A No, I left to soccer game.

14 And he is supposed to meet me at soccer game. And he
15 didn't show up. So I came back home. At 4:00 o'clock
16 Sunday I have radio program. So I sat at home, I made the
17 program, and I went to the studio.

18 Q This radio program that you have, are you the --

19 A I am the program director.

20 Q All right. Besides that, are you the leader of the
21 San Francisco area of the Assyrian Universal Alliance?

22 A I am the secretary.

23 Q And that is the highest office, isn't it --

24 A No.

25 Q -- of the Assyrian Universal Alliance? A This is
26 a division. It is a division. It is a --

1 Q And you are the secretary for the Assyrian Universal
2 Alliance in the San Francisco area? A Right.

3 Q And how long have you held that office?

4 A I think since October, '75.

5 Q Of 1975. Who held that office before you?

6 A My brother Sam Lazar.

7 Q How long did Sam hold the office? A I believe one
8 year.

9 Q And so I can get the data straight in my own mind, is
10 there a president of the Assyrian Universal Alliance in San
11 Francisco? A Well, Universal Alliance, we have one
12 general secretary who is for all of the world.

13 Q Okay. And that is the top office? A That is the
14 top office. And they have --

15 Q That is called general secretary? A Right. And
16 they have --

17 Q Where is he located? A I believe in Cincinnati.

18 Q Cincinnati, Ohio. How else do you break it down?

19 A How is that?

20 Q What is the next office besides the general secretary?

21 A Well, then comes the International World, like Australia,
22 Iraq, Persia, so they have another secretary general over
23 there, and you have in the United States another secretary
24 called America's secretary.

25 Q Is that what you are? A No, I am a divisional,
26 like San Francisco. Turlock has own secretary. Los

1 Angeles has own secretary.

2 Q So is it safe to say -- A Chapter.

3 Q Okay. Are you the head of the chapter in San Francisco?

4 A Right.

5 Q Okay. And your brother was the head of the chapter
6 prior to you? A Right.

7 THE COURT: Counsel, could we take our afternoon
8 break? We will take our afternoon recess, about 15 minutes.
9 You will keep in mind my previous admonition. You will be
10 directed to return, the defendant will be directed to return.
11 You can step down. Resume at 3:25.

12 (Short recess taken.)

13 THE COURT: All right. Let the record show that the
14 jury has now returned to the courtroom. The defendant is
15 present. Everybody is here but his lawyer.

16 MR. PESTARINO: Sorry, Your Honor.

17 THE COURT: It's all right. Let the record show
18 that Mr. Pestarino has returned. You may continue.

19 MR. ROBINSON: Thank you, Your Honor.

20 Excuse me, Your Honor, may I have one minute, please?

21 THE COURT: Surely.

22 MR. ROBINSON: Okay. Thank you, Your Honor.

23 Q (By Mr. Robinson) Mr. Lazar, I believe we left off with
24 your telling us that you took Mr. Ismail to church on Sunday,
25 November 2nd, 1975? A Yes, sir.

26 Q And at that time you didn't see him any more on Sunday?

1 A No.

2 Q And that is because you had a radio program to do?

3 A Right.

4 Q And does that radio program have anything to do with the
5 Assyrian people? A Yes, sir.

6 Q Could you tell us what the radio program is?

7 A The Assyrian Voice radio broadcast is an Assyrian
8 broadcast which its purpose is the Assyrian heritage, history,
9 education.

10 Q Now, on Monday, November 3rd, 1975, did you see Mr.
11 Ismail? A Yes, sir.

12 Q And could you tell us where you saw Mr. Ismail?

13 A Okay. Mr. Ismail called me about 11:00 o'clock in the
14 morning from the coffee shop. And he say, "I am downstairs
15 having a cup of coffee. Would you come and have a cup of
16 coffee with me?" So I came down and had a cup of coffee,
17 and he say he wanted to go and see San Francisco, apparently
18 he wanted to know a street in San Francisco which was Anza
19 Street. And I lead him where he has to go, and I offer my
20 car to go over, you know, and at 3:00 o'clock he came back,
21 and he get my car back to me.

22 Q So Mr. Ismail borrowed your car on November 3rd, 1975?

23 A Right.

24 Q Now, did you see Mr. Ismail Monday night, November the
25 3rd? A I don't recall it.

26 Q Okay. A We had a cup of coffee after he

1 returned back. But at night I haven't been with him.

2 Q And you don't recall if you saw him that Monday night?

3 A No, definitely not.

4 Q November the 4th, 1975, a Tuesday.

5 A That is Tuesday.

6 Q Okay. A Tuesday I haven't seen him.

7 Q Well, I have to ask the questions.

8 A I'm sorry.

9 Q That's okay. Everyone knows what the question is going
10 to be. Did you -- A Well, because I --

11 Q What did you have for breakfast Tuesday?

12 No. Did you see Mr. Ismail Tuesday, November 4th,
13 1975? A I believe I had a cup of coffee in the
14 morning at 10:00 o'clock.

15 Q Okay. And that was -- who initiated that contact,
16 yourself or Mr. Ismail? A No, Mr. Ismail called me
17 in the office. He say, "I'm in the coffee shop having a
18 cup of coffee." He usually called me about 10:30 11:00
19 o'clock, and that is the time he goes for breakfast.

20 Q And you had coffee with him then? A Right.

21 Q After that cup of coffee Tuesday morning at 11:00 o'clock
22 on November the 4th, 1975, did you have any more conversation
23 with Mr. Ismail on Tuesday? A He was talking about
24 going to San Francisco, it is a beautiful town, and he starts
25 talking about Canada, how snow is down there, terrible
26 weather.

1 Q Did you see him again after the 11:00 o'clock coffee
2 meeting on Tuesday? A I don't recall it.

3 Q Did you see him Tuesday night? A No.

4 Q Okay. Wednesday, November the 5th, 1975, did you see
5 Mr. Ismail Wednesday? A Yeah, I did see him. Again,
6 it was 10:30, 11:00 o'clock, for a cup of coffee. That's
7 all. I mean, that is the time he call me to have a cup of
8 coffee, and I ask him how you feel, and how you like the
9 place, and stuff like that. See, I am not that much free
10 man. I got a lot of obligations to do.

11 Q Okay. Wednesday afternoon, did you see Mr. Ismail?

12 A I don't know if I had another cup of coffee with him in
13 the coffee shop. I don't know.

14 Q Wednesday night did you see Mr. Ismail?

15 A That is when we were talking about, the Wednesday.

16 Q November the 5th? A Right.

17 Q Right. A Wednesday night I believe we had a
18 drink or a cup of coffee. I really don't remember that,
19 you know.

20 Q Okay. Let's talk about Thursday.

21 A That was the 5th.

22 Q No, Thursday is the 6th. A Is the 6th.

23 Q Wednesday is the 5th. A That is the time he
24 check out.

25 Q Yeah. Did you see Mr. Ismail on Thursday?

26 A Thursday I saw him again about 12:00 o'clock. He call

1 me, he said he is checking out.

2 Q Okay. And that is 12:00 o'clock in the afternoon?

3 A Right.

4 Q Okay. And when he called you to say that he was
5 checking out did you go up to his room? A No, sir.

6 Q Okay. What did he do next? A He pay his bill.

7 Q All right. When he paid his bill were you there?

8 A Yeah, I was at the front office. I offer if I take him,
9 you know, any place he wants to go. He say no.

10 Q Wait a minute. I have to ask questions. Okay? Now,
11 when he paid his bill how did he pay? In cash?

12 A Cash.

13 Q Okay. And this would be about what time on Tuesday --
14 on Thursday, November the 6th? A Was about, I'm
15 sorry, 1:00 o'clock.

16 Q About 1:00 o'clock. Okay. And I take it he had his
17 bags with him at that time? A I didn't see really
18 anything at that time. I mean, I wasn't looking what he
19 has because he was, when we had a cup of coffee at the
20 coffee shop he said, "I'm checking out," so he went to the
21 front office, he pay his bill, and I say, good-bye, good-bye
22 to him.

23 Q Okay. Let me ask you this, when you first met him on
24 Friday, the 31st, okay, of October, do you remember what he
25 was wearing? A Well, I am not remembering quite well.
26 Probably suit or casual, I don't remember. But I remember

1 Saturday what he was wearing.

2 Q On Saturday? A Yeah.

3 Q That is the first of November? A Right.

4 Q And at that time he was wearing casual clothes?

5 A Casual, right.

6 Q On Sunday, November the 2nd, do you know what he was
7 wearing when you took him to church?

8 A Sunday I remember he was wearing a suit.

9 Q Can you describe the suit for us?

10 A Kind of gray or white.

11 Q All right. On Monday, the 11th (sic), when you had
12 coffee with him and he wanted to know where Anza Street was,
13 and he borrowed your car and he came back and you had
14 coffee with him again, do you know what he was wearing on
15 Monday, the 11th (sic)? A I think he was wearing
16 again a suit.

17 Q On Tuesday, the 4th, do you know what he was wearing?

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1 A. That is pretty tough. Really I don't. It is getting
2 too far, you know.

3 Q. Wednesday, the 5th? A. Not really.

4 Q. Thursday, the 6th, when he checked out?

5 A. When he checked out I believe he was wearing a suit.

6 Q. Okay.

7 MR. ROBINSON: Now, Mr. Clerk, may I see that?

8 Q. (By Mr. Robinson) Showing you People's Exhibit No. 11
9 and Number 12, does this look familiar to you?

10 A. Yeah, I think it is his suit.

11 Q. Okay. Does this appear to be the suit that he was
12 wearing? A. I believe so.

13 Q. And showing you People's Exhibit No. 14, a black shirt,
14 have you ever seen Mr. Ismail in this shirt?

15 A. I believe so.

16 Q. Okay. And when he wore this shirt with that suit, did
17 he wear a tie? A. Yes.

18 Q. Okay. And showing you People's Exhibit No. 13, does
19 that appear to be the tie? A. I believe so.

20 Q. Okay. Now, these casual clothes that you have told us
21 about, can you describe, were they different from what you
22 have already seen, the suit, the shirt, and the tie?

23 A. I believe so.

24 Q. Okay. Now, did you ever see Mr. Ismail that you can
25 recall other than the Saturday that you told us about wearing
26 a different type of a suit or different color suit?

2

1 A. No.

2 Q. Always wearing that same suit?

3 A. Right.

4 Q. Okay. And you remember that now?

5 A. Yes.

6 Q. Okay. What was it that caused you to remember that now
7 when you couldn't a few minutes ago?

8 A. Well, I know he was wearing all of the time one type of
9 suit.

10 Q. Okay. He was always wearing that suit?

11 A. Right.

12 Q. Okay. Except for the time you saw him in the casual
13 clothes?

A. Right.

14 Q. Now, when Mr. Ismail checked out at about 1 o'clock in
15 the afternoon on Thursday, November the 6th, you offered to
16 give him a ride someplace?

A. Right.

17 Q. Where did you offer to give him a ride to?

18 A. I just told him if I want to give you a ride, he say,
19 "No, I'll catch a bus."

20 Q. Well, you weren't going to give him a ride back to
21 Canada, were you?

A. No, I mean, Assyrians'

22 talking is different than, I told him, "May I give you a
23 ride?" He said, "No, I would take a bus."

24 Q. Did Mr. Ismail tell you where he was going?

25 A. Well, suppose he was going to Canada, somebody is
26 checking out, goes to airport, or, you know --

1 Q Did he tell you where he was going?

2 A No.

3 Q Didn't discuss it with you? A No.

4 Q Okay. Didn't say, "I'm checking out now. I'm going
5 to Canada"? A No.

6 Q You didn't say to him when he said, "I'm checking out,"
7 you didn't say, "Are you going home? Have a nice trip home,"
8 anything like that? A I said, "I hope that your stay,"
9 you know, "You were comfortable." And he said, "I'll see
10 you in February."

11 Q See you in February? A Right. So I assume, of
12 course, I guess, leaving, he is going home and he will see
13 me in February. I don't ask him are you going to Canada or
14 Boston, you know.

15 Q Now, during these conversations I take it when you were
16 meeting Mr. Ismail, when you had the two dinners with him,
17 when you drove him from the motel down to the hotel, when you
18 met with him for coffee and everything, lent him your car,
19 that you would talk with him how -- you never met the man
20 before, right? A Right.

21 Q And did you talk about politics? A No.

22 Q Didn't talk about them at all? Okay. Did Mr. Ismail
23 ever mention politics? A I don't recall that.

24 Q Did you talk about the Assyrian Universal Alliance?

25 A Well, I think we talk about Universal Alliance, how many
26 people you have here, and, you know, the Geneva Congress that

1 they had last year.

2 Q Was Mr. Ismail present at the Geneva Congress for the
3 Universal Alliance? A I don't know.

4 Q Now, how did your brother Sam meet Mr. Ismail?

5 A Talking to Sam about this, he say that he was in one of
6 the Assyrian convention back in Chicago and there is where
7 he met Mr. Ismail.

8 Q And was your brother Sam at the convention when he was
9 president, when he was secretary of the San Francisco branch
10 of the Assyrian Universal Alliance? A I don't know.

11 Q Okay. Well, did you discuss how the plan -- strike
12 that.

13 What is the purpose of the Assyrian Universal
14 Alliance?

15 A Well, the purpose of Assyrian Universal Alliance to seek
16 a homeland for Assyrian people, and the heritage, Assyrian
17 heritage, history, educational, and all this as it is a
18 peaceful, political body.

19 Q And has the Assyrian Universal Alliance -- are you
20 familiar with the Kurds? A The Kurds?

21 Q Yeah. A What Kurds?

22 THE COURT: Kurds, K-u-r-d-s.

23 THE WITNESS: (Shakes head negative.)

24 Q (By Mr. Robinson) No? Never heard of them?

25 A (Shakes head negative.) I have been a member of
26 Universal Alliance, I have been member here since '75, and

1 I haven't been much in their meeting --

2 THE COURT: I think maybe he misunderstood. Kurds
3 are people who live in Iraq.

4 THE WITNESS: Oh, the Kurds. The people live in
5 northern Iraq. Yes, I do.

6 Q (By Mr. Robinson) And does the Assyrian Universal
7 Alliance support these people? A No.

8 Q No. Okay. Where is this homeland going to be for the
9 Assyrian, in Iraq or Iran? A In Iraq.

10 Q Did you discuss this with Mr. Ismail? A No.

11 Q Didn't mention it at all? Okay. What about the
12 Patriarch, Mar Shimun, did you discuss him with Mr. Ismail?

13 A Nothing.

14 Q Never mentioned his name at all? A At all.

15 Q Okay. Mr. Ismail never mentioned him? A No.

16 Q Okay. A Actually there is no use to mention
17 because I am a Catholic. I am not, you know --

18 Q Okay. Did you know how the Patriarch thought about the
19 Assyrian Universal Alliance? A Not really.

20 Q You didn't know about that. Okay. Did Mr. Ismail
21 ever mention his brother Zaia? A I asked for Zaia

22 because I know Zaia rather than David, and I asked about --

23 Q How do you know Zaia? A I know Zaia since 1963.
24 I believe he came, he was a congressman in Goma, Syria, and
25 he came to Iraq in 1962 or '63, I don't recall very well,
26 and met, visit all of the Assyrians over there.

1 Q How long have you been in the United States?

2 A About six years.

3 Q And are you a citizen of the United States?

4 A No.

5 Q No? A (Shakes head negative.)

6 Q Okay. What about a Mr. Kanna, Sidney, Australia, do
7 you know that man? A No, sir.

8 Q Do you know he is a main leader of the Assyrian Universal
9 Alliance? A I have very small information on A.U.A.

10 Q You do? A Yes.

11 Q Yet you have a radio program? A I do a lot about
12 the radio program.

13 Q Also you are the secretary of the chapter out here in
14 San Francisco? A For A.U.A.

15 Q But you don't know much about it? A Yeah, it is
16 quiet, we don't have much activity at this point. The most
17 of activity comes from the head themselves, they have the
18 congress in Switzerland, and they just talk, there is no
19 activity in Bay Area or in Los Angeles. It is just members,
20 they pay their dues and that is all.

21 Q What about a Mr. Sargis, Sargis Michaels, does that name
22 ring a bell? A I don't know.

23 Q You don't know whether or not -- A Well, I heard
24 name Sargis Michaels, Michael Sargis. These are Assyrians'
25 family names.

26 Q Have you ever heard that name in connection with the

1 Assyrian Universal Alliance? A No.

2 Q Have you ever met that man? A No.

3 Q Now, when you were with Mr. Ismail on October the 31st,
4 1975, Friday, did you see whether or not he had a gun?

5 A I haven't seen any gun for him.

6 Q Did you ever discuss his having a gun? A No.

7 Q Okay. When you took him to the hotel on Saturday,
8 November the 1st, 1975, did you see a gun at that time?

9 A No, sir.

10 Q Did you go up to the hotel room with him?

11 A No, sir.

12 Q You checked him into the hotel? A Right.

13 Q And you gave him his key? A Well, the front
14 office do the transaction.

15 Q Where did you wait for him? A Downstair.

16 Q And how long was he up in his room? A Not much
17 longer, five, ten minutes.

18 Q And he came back, you went to dinner? A Right.

19 Q And when you went out to dinner you never saw a gun?

20 A No, sir.

21 Q Okay. Sunday, November the 2nd, 1975, did you ever see
22 Mr. Ismail with a gun? A I haven't seen Mr. Ismail
23 with a gun at all.

24 Q You never knew he had a gun? A I haven't seen a
25 gun with Mr. Ismail.

26 Q Did he ever discuss having a gun with you?

1 A No, sir.

2 Q In 1969, Mr. Lazar, did you own a service station, a
3 Union 76 service station at 411 MacArthur Boulevard in
4 Oakland? A Yes, sir.

5 Q Was that one of the first things you bought when you
6 came to the United States? A Right.

7 Q That was your first business? A Right.

8 Q And, of course, did you think at that time that it was
9 illegal for an alien to possess a gun in the United States?

10 A I don't know nothing about that.

11 Q Well, didn't you think that it was illegal for an alien
12 to have a gun? A Well, I didn't discuss with nobody
13 about it, and I don't know nothing about it. I mean, I
14 operate a gas station, not a gun shop.

15 Q Okay. Let me ask you this, Mr. Lazar, did you give a
16 statement on December the 3rd, 1975, to Sergeant Denkowsky
17 and Sergeant Randall of the San Jose Police Department?

18 A Yes, sir.

19 Q Okay. And at that time did they ask you whether or not
20 you felt that it was illegal for an alien to possess a gun?

21 A Well, now I know, you are talking about when the time I
22 came in '69. Now, if you are asking me after a year, after
23 five years, of course I know most of the law here United
24 States.

25 Q So when you came in 1969 nobody told you it was illegal
26 for an alien to have a gun? A I never discuss with

1 nobody.

2 Q And when you talked to Sergeant Denkowsky and Sergeant
3 Randall on December 3rd, 1975, did you tell them that you
4 felt it was illegal for an alien to possess a gun?

5 A At the point right now I know, I believe that it is
6 illegal. I don't know. Probably not, but I -- you know.

7 Q Okay. Now, did you sell that service station, Mr.
8 Lazar? A Yes, sir.

9 Q And how long did you have that service station?

10 A I purchased that service station October 17th, 1969. I
11 sold it February the 6th, 1970.

12 Q And during the course of your owning that service
13 station did you have Mr. Ron Myers in your employ?

14 A He was a part-time temporary employee.

15 Q And what was his job there? A Ron Gale Myers, he
16 starts on December the 9th, '69. He came up to the gas
17 station and he say that he is a Mobil Oil employee, and he
18 wants the job as a part-time, and he is a mechanic, and he
19 say if you have any job. I say, "Yes, I do." So Ron, he
20 work with me for a very short period of time. He start on
21 December the 9th, '69, and his first paycheck was on December
22 13th, '69, wages of thirty-nine ninety-two. Then at this
23 time on December 1st, '69, I gave a notice to Union 76 that
24 I am leaving the station. I have to give them 60 days
25 notice. And Ron Myer he heard about it. He asked me if
26 I would be interested in selling the service station. I

1 referred that he would go to Union 76 and talk to those
2 guys over there.

3 Q Let me ask you some questions. You only owned the
4 service station, you tried to sell it in December of 1969,
5 you told Union you were quitting? A Yes.

6 Q And you bought it in October of 1969? A Right.

7 Q October 17th, right? A Right.

8 Q So you were there about a month and a half, right?

9 A Right. And I decide to quit.

10 Q Why? A Well, it was a bad area.

11 Q Okay. Hadn't you been the victim of robberies in that
12 area? A Yes.

13 Q People came in and robbed money from you, right?

14 A Well, they didn't hold me up. It is just employees
15 weren't honest. I had a lot of shortages in cash, missing
16 merchandise, that's all.

17 Q And nobody ever held up that service station?

18 A No, sir.

19 Q You're sure about that? A I'm sure.

20 Q Okay. So you kept -- A I had -- excuse me --
21 I had a burglary, not hold up.

22 Q A burglary? A Right.

23 Q Tell us about the burglary? A Okay. Some time, I
24 believe was end of November, I got the papers, not with me,
25 but I got report to the police, one of my attendants call me
26 in the morning, he say that your station is open and there

1 is no tires, no oil, nothing. So I came down. And I saw
2 that the station was open by normal keys. Prior to that
3 incident I used to have an employee over there, he was the
4 station manager, and he worked for a week. He was honest.
5 The cash was okay and I did like him. So he came next day
6 and he asked me for a loan of \$200. I pay him \$200 and he
7 disappear next day. So after a week my station was robbed
8 and I reported to the police. The police caught a van full
9 of merchandise. And they caught the guy and they brought
10 the merchandise back, most of it, about 95 per cent of it.

21 Q Okay. A And from then I don't know what the
11 police did with the guy, there was no court, nothing, but
12 the thing is that it happened that one of the police
13 officers was new, he opened the van before locking it up to
14 bring it to the police station and charge the guy on the van,
15 something like that. So after that burglary I decided to
16 quit.
17

18 Q And you sold your station to Mr. Myers? A Yes, sir.

19 Q Okay. After you sold your station to Mr. Myers in
20 February of 1970 did you ever see Mr. Myers again?

21 A Yes, sir.

22 Q Could you tell us when? A I saw Mr. Myers on
23 March the 7th.

24 Q Of what year? A 1970. And I went over there,
25 I cash a check of \$20.

26 Q Okay. And what other time? A The other time I

1 went over there in May, the 9th, 1970. I purchased gas
2 for \$7.60.

3 Q Was that the only time you had seen Mr. Myers?

4 A Yes, sir.

5 Q Okay. Did you know, was Mr. Myers an Assyrian?

6 A I don't believe that, no. I don't think.

7 Q Pardon me? A No, he is American, I believe.

8 Q Was Mr. Myers involved in the Assyrian Universal

9 Alliance? A I don't know Mr. Myers really so good.

10 I just know him, employee a couple days, and he offered to
11 purchase the gas station, and that is it.

12 Q Is there a sporting goods shop, Siegle's, next to your
13 gas station? A I don't know.

14 Q In Oakland? A I don't know.

15 Q You don't know? A No.

16 Q It is a couple of blocks down? A I haven't seen
17 Siegle. I work for about three months in that gas station,
18 and I haven't been out to that gas station so often.

19 Q I am going to show you People's 4 for identification, it
20 is a gun. I'd like you to take a look at it. It is a
21 .22. Would you look at that gun, please?

22 Did you have a good chance to look at it?

23 A Yeah.

24 Q Did you ever obtain this gun from Mr. Myers?

25 A No, sir.

26 Q Have you ever seen this gun before in your life?

1 A No, sir.

2 Q You are positive about that? A A hundred per cent.

3 Q Never seen it before? A Never.

4 Q Okay. Did you ever furnish a weapon to the defendant,
5 Mr. Ismail? A No, sir.

6 Q Now, I take it you know Kitty Benjamin?

7 A Yes, sir.

8 Q And Kitty Benjamin lives a couple blocks from your house?

9 A Yes, sir.

10 Q Kitty Benjamin works down at your motel? A Right.

11 Q You got her the job there, right? A Right.

12 Q Is Kitty Benjamin a member of the Assyrian Universal
13 Alliance? A No, sir.

14 MR. PESTARINO: I didn't --

15 THE COURT: The answer was, "No, sir."

16 Q (By Mr. Robinson) Does Kitty Benjamin support or
17 believe in the Assyrian Universal Alliance?

18 A I haven't talked much with her about A.U.A.

19 Q You never discussed the A.U.A. with Kitty Benjamin?

20 A Not really.

21 Q How often do you see Kitty Benjamin?

22 A Every day, five days a week.

23 Q Do you have coffee with Kitty Benjamin?

24 A Once in awhile when I call them for a meeting or
25 discussion.

26 Q Do you see her socially? A No.

1 Q Never been to any party where she has been there,
2 anything? A Oh, Assyrian parties, I saw her down
3 there as any other Assyrians.

4 Q Now, when you were with Mr. Ismail for the six days
5 did he ever discuss the Assyrian Universal Alliance?

6 A No, sir.

7 Q Okay. When you were with Mr. Ismail for the six days
8 did you ever see him consume any alcohol?

9 A Not to my knowledge, sir.

10 Q You never saw him drink anything?

11 A Probably once we had a cocktail.

12 Q Okay. When you took him out to dinner that night --

13 A I'm sorry, we had some wine at that time.

14 Q And when he took you out to dinner did you have anything
15 to drink? A No, when I took him to dinner we didn't.
16 I don't know, I don't remember, probably yes, we had a drink,
17 but the next time for the Elegant Farm we had wine for sure.

18 Q Okay. Do you know what sort of alcohol Mr. Ismail
19 drinks? A I believe he drinks Scotch.

20 Q Okay. And what kind of Scotch? A I don't
21 remember, Johnny Walker or --

22 Q Okay. Now, would you say that Mr. Ismail drinks a lot
23 or a little? A I don't know, some people they could
24 consume a lot of drink but you never realize they are drunk
25 or not.

26 Q There is no change in them? A I don't know.

1 Q Let me ask you this, did you make the statement to the
2 police on December 3rd, 1975, where you talked to Sergeant
3 Denkowsky and Sergeant Randall that Mr. Ismail, you saw him,
4 he was drinking Scotch, Johnny Walker Red, you noticed no
5 change in his behavior and that he drinks a lot?

6 A Well, I believe he drink but, you know, I mean, put it
7 this way, some people they could drink one shot and they are
8 over; some people they can drink one bottle, you know, and
9 their behavior is still maintaining in a normal way.

10 Q Wait a minute now, did you tell the police what I just
11 read to you? A Yeah, I believe that all Assyrians or
12 most of the Assyrians --

13 Q Could you answer my question yes or no? Did you tell
14 the police that? A Yes, I did.

15 Q Okay. And you told them that Mr. Ismail drinks a lot,
16 didn't you tell them that? A Well, I believe.

17 Q What did you have to base that on, sir?

18 A Well, I could see a person that the way he is drinking
19 his alcohol, you can tell his, he uses a lot of alcohol or
20 not, especially when you are working in a hotel and food and
21 beverage operation you can tell.

22 Q How? A Well, the way of the person drinks the
23 alcohol itself.

24 Q What do you mean by that? I don't understand.

25 A Well, a person that he is drinking alcohol, he drink in
26 different way, you can see that he doesn't like it or he

1 doesn't feel to take it, some people they drinking just like
2 normal thing. That is my opinion.

3 Q And did Mr. Ismail in your opinion drink it just like a
4 normal thing? A Right, a normal drinking, I could
5 feel that the person is, he drinks.

6 Q You also remembered to tell the police exactly what he
7 drinks, Johnny Walker Red, right? A That is what I
8 remember.

9 Q Okay. And that is a pretty good memory, don't you
10 think?

11 MR. PESTARINO: Well, wait a minute, if Your Honor
12 please, it is getting to be argumentative.

13 THE COURT: It is argumentative.

14 MR. ROBINSON: Okay. I'm sorry.

15 Q (By Mr. Robinson) Do you also remember how many bags
16 of luggage Mr. Ismail had? A No, sir, I don't remember
17 that.

18 Q Okay. And the reason you don't remember is because you
19 see so many people with luggage? A Right.

20 Q In your hotel? And I take it you see a lot of people
21 drink in your hotel, too? A Yes, sir.

22 Q How is it that you can remember exactly what he drinks
23 but you can't remember how much luggage he had?

24 A Well, No. 1, if you look on the beverage check here you
25 will see \$2.55 a drink.

26 Q Yeah. A Which that is one of the expensive drink

1 which is Johnny Walker.

2 Q So you knew from just looking at the \$2.55 that was
3 Johnny Walker he ordered? A Right.

4 Q Did you have any other drinks in the bar that cost you
5 \$2.55? A Well, I knew he was drinking Johnny Walker,
6 whether it is red or white or blue, whatever, I can't
7 remember, you know. I am sitting with many people and
8 every person is ordering a drink, but I could -- I am not
9 quite sure whether he is drinking Johnny Walker either.

10 Q You told the police that he was drinking Johnny Walker?

11 A Right. I believe that he is drinking Johnny Walker
12 but I am not quite sure.

13 Q Did you tell the police that when you saw Mr. Ismail
14 drinking there was no change in his behavior?

15 A Well, they asked me how he was when he is drinking, I
16 say he was maintain in good shape.

17 Q Could he still function, understand? A Right.

18 Q Didn't become incoherent or anything like that?

19 A He didn't slap me.

20 Q He knew what he was doing? A Right.

21 Q In other words, if you said pass the salt he knew enough
22 to pick up the salt and pass it to you? A Right.

23 MR. ROBINSON: Thanks. I have nothing further.

24 CROSS-EXAMINATION

25 BY MR. PESTARINO:

26 Q You really haven't seen Mr. Ismail drink, have you,

1 except maybe take one drink? A Right, yes.

2 Q And it would make a difference if he had a half bottle
3 or three-quarters of a bottle, wouldn't it?

4 MR. ROBINSON: I am going to object, calls for
5 speculation.

6 MR. PESTARINO: This whole thing is speculative.

7 THE COURT: When you say "make a difference" that is
8 ambiguous.

9 Q (By Mr. Pestarino) It would make a difference in his
10 sobriety or lack of sobriety? A Right.

11 Q Sure. You only saw him drink once, twice?

12 A Well, if a person is drinking two drinks -- if I drink
13 one drink I will pass out. I cannot stand drink. Some
14 people, they could drink, you know, the way is drinking you
15 can tell he is a man that he likes to drink. And during
16 this period of time he was maintaining his, you know,
17 attitude and all of this type of thing. My general manager
18 drink a lot of booze, but you would never tell whether he
19 is drink or not, you know.

20 Q Do you know how much, how much did David drink? Did
21 you see him drink? A I cannot tell.

22 Q Was it more than one drink, two drinks?

23 A Two drinks, three drinks.

24 Q Okay. A I mean, I don't count people's, how
25 much they are drinking either.

26 Q Okay. Let's go back a little bit. When David

1 registered at your motel, first of all, do you have the
2 registration slips? A Yes, sir.

3 Q You do? A Yes.

4 Q May I see them? And I take it those slips are kept in
5 the regular course of your business and under your direction?

6 MR. ROBINSON: They are in evidence.

7 THE WITNESS: Well, these are originals. I would
8 like to get them back.

9 THE COURT: They are 21-A through E, I believe it was.

10 THE WITNESS: These are official hotel documents.

11 MR. ROBINSON: Perhaps we could have the Clerk maybe
12 photostat copies of those.

13 THE WITNESS: I am sure that you have two copies in
14 your file because I give couple of copies.

15 MR. PESTARINO: Why don't you produce one and we
16 will let him take these back?

17 THE WITNESS: If you do so, you can take them and
18 send these copies to me to my office.

19 MR. ROBINSON: I think we can have them copied.

20 Q (By Mr. Pestarino) Let me ask you a question, the
21 registration there, what is the name on the registration?

22 A David Ismail.

23 Q Did he sign that? A Yes, sir.

24 Q Anywhere in these records do you see the name David
25 Benjamin? A No, sir.

26 Q You talked about the A.U.A., Mr. Lazar, and you described

1 it as an organization that is interested in getting land for
2 the Assyrians? A Right.

3 Q And let me ask you this, is it a peaceful organization?

4 A Yes, sir.

5 Q What does A.U.A., what are some of its beliefs and

6 principles with regard -- A I believe in the
7 principles of A.U.A. as a peaceful organization, so far as
8 I know.

9 Q Do you have any bylaws or -- A Yes, we do.

10 Q Do you have a constitution? A Yes, we do.

11 Q And does that constitution or those bylaws --

12 A Suggested by the United States government.

13 Q What? They are suggested by --

14 A They are registered. They are legal. It is a legal
15 political body.

16 Q It is a legal political body? A Right.

17 Q Could you get a copy of those rules and regulations?

18 A Yes, sir.

19 Q Would you get it for us, please? A Okay.

20 Q And anywhere in those rules and regulations does A.U.A.
21 suggest revolutions or violence? A No way. No way.

22 Q The purpose of A.U.A. then is to influence the govern-
23 ment to give you lands? A Well, if you know about
24 the Assyrian history, our ancient fathers they were in Iraq,
25 in Mesopotamia. It is a wide history. I think everybody
26 knows about Assyrian Empire at the time and Nineveh was our

1 capital, and we believe that we have some rights in Iran to
2 have a piece of that land that our Assyrian people could live
3 in those lands with the Iraqi government or Iraqi people.

4 Q You feel -- and what does the A.U.A. do towards getting
5 those lands in Iraq or Iran? A They have a congress

6 in Geneva last year, and I do have a copy of those minutes
7 that they were at that time. And they discuss about

8 establishing consulars, embassies around all of the world,
9 negotiation with Iraqi government, and we do have a

10 representative in Iraq, Mr. Zaia Ismail. I believe before

11 was his father, great Malek Ismail. And now is his son,

12 and there is a communication in between, all of the Assyrian

13 in the world and their representative in Iraq to the

14 possibility of getting this piece of land and live all

15 Assyrian in peace with Iraqi people.

16 Q And there is no violence or revolution proposed?

17 A Sir, Assyrian doesn't have anything. They don't have

18 any country. They don't have weapons. They don't have

19 nothing. And they don't believe in violence, especially

20 Assyrians because Assyrians are tired from all old ancient

21 times, and they been in wars and stuff like that so they

22 feel today's world is not by war, it is by peaceful talk.

23 Q And is A.U.A. then designed to help individual Assyrians

24 in whatever country they might be? For example, like a

25 labor union might represent an employee, or a member of

26 their union, does the A.U.A. try to represent people in

1 foreign countries that are in trouble or have problems?

2 A No, they help poor people to give them more education
3 if they need it. And I mean, all Assyrians are distributed
4 in the world, United States, Australia, Canada, Belgium,
5 Switzerland, and all over. And few have seen manifesto,
6 Assyrian manifesto, you can read exactly what A.U.A. stands
7 for.

8 Q And you will provide us with some copies of that?

9 A Sure.

10 Q Let me ask you this, Mr. Lazar, you are a Catholic?

11 A Yes, sir.

12 Q Assyrian Catholic? A I am a Roman Catholic.

13 Q All right. A Roman Catholic. But you are an
14 Assyrian? A Right.

15 Q And as far as you are concerned do you have any interest
16 in the Church of the East, either politically or religiously
17 or any other way? A No, sir.

18 Q You gave David a 50 per cent discount on his motel room,
19 and I understand that you have some interest in the manage-
20 ment of that motel or hotel. Why'd you do it?

21 A Well, I give to all Assyrians 50 per cent discount. I
22 do it.

23 Q Doesn't matter who it is if he is an Assyrian he
24 automatically gets it? A Well, it is not, I mean,
25 Assyrian. Typical I give come rooms to all of the organi-
26 zations which they are involved in promotion. I give

1 government people 50 per cent discount, too.

2 Q Let me ask you that, do you still do that and make money?

3 A Yes, sir. That is the only way, if you been involved,
4 we don't have the trade budget in advertisements, so we
5 advertise hotel to getting people in looking at it, you know,
6 then they will go back and talk to their friends, and friends
7 come over.

8 Q You don't know anyone in Australia, do you?

9 A No, sir.

10 Q You never knew the Patriarch or Mrs. Shimun?

11 A I didn't know Mrs. Shimun until the first day I came to
12 the Grand Jury.

13 Q Did you have a conversation with her at the Grand Jury?

14 A Yeah, right.

15 Q And was that about keeping the door closed or something?

16 A No. It is just I say to her, I feel sorry for what
17 happened. She asked me who I am, and I told them my name
18 is Yule Lazar, and she said, "Say from where are you." I
19 say, "I am from --"

20 MR. ROBINSON: I am going to object to this convers-
21 ation between this man and Mrs. Shimun.

22 THE COURT: Yes. It is hearsay and it is also
23 irrelevant.

24 Q (By Mr. Pestarino) Well, did Mrs. Shimun in any
25 conversation with you mention keeping the door locked or
26 locking of a door, or anything of that nature?

1 A She mentioned something that, now she start talking
2 about all Assyrians, they are bad people, yeah, I say to her
3 that --

4 MR. ROBINSON: Wait a minute, I am going to object.

5 MR. PESTARINO: Wait a minute --

6 MR. ROBINSON: Don't tell me to wait a minute. I
7 am going to object.

8 THE COURT: Let him make his objection. Let me
9 rule on it.

10 MR. ROBINSON: I object and make a motion to strike,
11 that is irrelevant.

12 MR. PESTARINO: I lost track of the question and
13 answer.

14 MR. ROBINSON: The answer was non-responsive.

15 THE COURT: The answer was non-responsive.

16 MR. PESTARINO: Let me -- I don't even remember the
17 question. Can we have it read back?

18 (Question read by the Reporter.)

19 MR. ROBINSON: That can be answered yes or no..

20 THE COURT: That is correct. Mr. Lazar, you should
21 answer that yes or no, if you can.

22 Q (By Mr. Pestarino) All right. Did she mention to you
23 being afraid of people? A She is afraid of people?

24 Q Yeah. A That she is afraid of people?

25 Q That she was afraid of people before her husband was
26 killed? A She says something that --

1 MR. ROBINSON: That can be answered yes or no.

2 THE COURT: Yes. Answer that yes or no.

3 THE WITNESS: That she was afraid of Assyrians.

4 Q (By Mr. Pestarino) Yeah. A Well, something to
5 that, she brought it up, she say, "I hate all Assyrians,
6 are bad people." This is the way she put it, you know, to
7 me. And, "They are violent," you know, and I said to her,
8 "Well, you're Assyrian and I am."

9 MR. ROBINSON: I am going to object --

10 THE COURT: Well, we are --

11 MR. PESTARINO: All right.

12 Q (By Mr. Pestarino) Did she mention to you that her
13 husband was afraid of these, some Assyrian people?

14 A She mentioned something, she didn't call my husband, she
15 called him Holy Saint, something like that. And she said
16 that she used always tell him that you have to be careful,
17 you got to get some security, stuff like that, and, "I warn
18 him," that Emama warned the Patriarch to be careful in going
19 out, coming in, and you know.

20 Q Okay. All right. Now, you had seen David how many
21 days? Five, six days? A Four. Four days or five
22 days.

23 Q Yeah. And as I understand it --

24 A Very short period of time with the exception we had
25 dinner on Friday and Saturday.

26 Q You knew his brother, did you, Zaia?

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

5 Q Did you know David's father?

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

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

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

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

15 Q You don't know? A No.

16 Q Now, when you talked with David on these short meetings
17 did you discuss politics or religion at all?

18 A Not really.

19 Q Not really. What do you mean by that, "Not really"?

20 A Well, we didn't say anything, like going into deep
21 conversation or slightly of it, it is just I talk about his
22 father, how he passed away and where he was living in Iraq,
23 and how was the response of the people, and you know, and
24 during the ceremony he talk about them.

25 Q Did he talk then about his father? A Yeah, he did
26 talk about his father.

1 Q And about some of the things that his father had done?

2 A Well, not -- in brief, just like, he was in the process
3 of talking with Iraqi government, what the changes was in Iraq,
4 but different slight revolutions that keep him out of this
5 conversation, at time he was ill, sick, and he passed away,
6 and I asked him about his father in 1933, '32, like, and
7 Assyrian history that has been written in the books, and he
8 told me about his father and all of the generals of Assyrians.
9 It was in general the history of Assyrian at that time from
10 1908 until 1933, '34.

11 Q Let me ask you this, Mr. Lazar, you have this radio
12 program and you are promoting not only the culture of the
13 Assyrian people but you talk about the history and you talk
14 about, you are trying to talk about what the future will be
15 for the Assyrian people, aren't you? Are you putting on
16 a program, is that pretty much what your program is?

17 A No, really, I am alone working for the program, like I
18 am the program director, I am doing the program and putting
19 everything together. Once in awhile I write an editorial,
20 write something about 2,000 years Assyrian Empire, or things
21 like that, and write about educational stuff, like that, but
22 not that great or much, you know.

23 Q What keeps the Assyrian people together?

24 A Well, we are from the same blood and same language, and
25 we are proud of ourself being Assyrian. And I love my
26 people, they are good people. I, of course, everybody does,

1 but as an Assyrian I am proud of it. They are good people,
2 you know.

3 Q And I suppose you people try to help one another, don't
4 you? A They do. I mean, it depends what kind of

5 help, money-wise, job, piece of bread or --

6 Q Are all Assyrian people, so far as you know, interested
7 in politics to that extent, to the extent they want a home-
8 land?

9 MR. ROBINSON: I am going to object. Unless this
10 witness can talk for all Assyrian people I don't see how he
11 can possibly give his opinion on that.

12 MR. PESTARINO: Mrs. Shimun gave all kinds of
13 opinions this morning. All I am asking for is his knowledge,
14 as far as what he knows.

15 THE COURT: Well, he may answer to the best of his
16 knowledge in view of the fact that he runs a radio program,
17 and the history and culture and background of the people,
18 yes. Go ahead.

19 THE WITNESS: Yes, sir.

20 Q (By Mr. Pestarino) Now, did you get the question? Do
21 most of the Assyrian people, as far as you know, are they
22 interested in politics to the extent that they want a home-
23 land? A They are interested to have a homeland.

24 MR. ROBINSON: I am going to object to that question.

25 THE WITNESS: They are interested very much.

26 MR. ROBINSON: As being vague and ambiguous. First

1 the question is, "Are all of the Assyrian people." Now,
2 my objection, "Do most of the Assyrian people." What do
3 we mean by that "most"? Two-quarters, one-quarter?

4 THE COURT: Let's not quibble. I think it is
5 immaterial to the main issue here, and we are trying to get
6 some background information, and I am going to be liberal on
7 that. I don't think that it is prejudicial.

8 MR. ROBINSON: Thank you, Your Honor. That is fair.

9 Q (By Mr. Pestarino) So what I am getting at, just
10 because a person talks about politics and wants a homeland,
11 that doesn't make him a revolutionary in your opinion, does
12 it? A No, sir. Everybody talks in the United

13 States about politics, but it doesn't have to be violent.

14 Q Let me ask you another question. Are most Assyrians
15 religious in one denomination or another as far as you know?

16 A Well, you got Assyrian different religions, you know,
17 but into one body as an Assyrian, they don't care whether I
18 am a Catholic or Protestant or Nestorian, we are one body,
19 we respect each other as an Assyrian.

20 Q Okay. I understand when Mr. Ismail left your motel he
21 paid in cash? A Yes, sir.

22 Q His bill? A Yes, sir.

23 Q Did you mention anything to David Ismail about some kind
24 of a meeting in Turlock before he left?

25 A No, we had a party on Saturday that he was trying to,
26 try and come and check in the hotel, and I say I cannot make

1 it on Saturday because I am leaving to Turlock for this
2 particular party --

3 Q And the party that -- excuse me -- and the party that
4 you had mentioned in Turlock, was that a meeting of the
5 Assyrian people? A Well, in Turlock you have the
6 Civic Center Turlock Club, you Nabate - Naharain (sic)
7 Magazine and you have Nabate - Naharain (sic) radio broadcast.
8 These people, they make a party each month and invite all
9 Assyrians to join the party, and in the party you would have
10 Assyrian dances, western dances, drinking, singing, all fun.

11 Q You indicated that the A.U.A. is registered with the
12 government. What do you mean by that? A I think is
13 an official political body recognized by the United States.

14 Q Counsel mentioned something about the suit and the
15 casual wear. I don't know how important it is --

16 MR. ROBINSON: I am going to object to that. It
17 is for the jury to decide how important it is.

18 THE COURT: That may be stricken. Any statement of
19 counsel made during the trial is not evidence.

20 Q (By Mr. Pestarino) All right. Was your testimony that
21 you saw him on two occasions dressed in a suit similar to
22 that? A Yes, sir.

23 Q And on one occasion a sport outfit? A Right.

24 Q And was that sport outfit different from the suit or do
25 you know? A Really, put it this way, that is long
26 time happen. I cannot tell you exactly I saw him definitely

1 100 per cent, but I could say yes or no to it because, I
2 mean, you can see a person with different suit, different
3 ties, different things, you can't tell exactly whether it is
4 or not, because if I am telling you something here, should
5 be that thing exactly 100 per cent. So I won't put myself
6 in that situation, you know.

7 Q Let me ask you this, Mr. Lazar, you testified you had
8 never seen the gun, People's Exhibit for identification No.

9 22? A Yes, sir.

10 Q You had never seen that gun before? A Right.

11 Q You have seen it at the Grand Jury, hadn't you?

12 A Yes, sir.

13 THE COURT: Excuse me, it is item 4 for the record.
14 You said 22.

15 MR. PESTARINO: Pardon me. Item 4. Of course,
16 that is right, People's 4.

17 Q (By Mr. Pestarino) You seen it at the Grand Jury?

18 A Yes, sir.

19 Q And you testified at the Grand Jury under oath?

20 A You know I have seen it at the Grand Jury, right.

21 Q You testified under oath at the Grand Jury, didn't you?

22 A Right.

23 Q And you told the Grand Jury --

24 MR. ROBINSON: I am going to object. It is
25 irrelevant.

26 MR. PESTARINO: A prior consistent statement.

1 MR. ROBINSON: He hasn't made an inconsistent one
2 yet.

3 MR. PESTARINO: Well, somebody else has.

4 THE COURT: Overruled. He may answer.

5 Q (By Mr. Pestarino) And you testified under oath then
6 that you had never seen this gun? A Right. And I
7 testified now that I haven't seen it, just now, well, besides
8 the Grand Jury, you know.

9 Q I understand. Now, let me go into this gun deal a
10 little bit further. First of all, there is Siegle's Sport
11 Shop located on West MacArthur Boulevard in Oakland?

12 A Right.

13 Q Your testimony was that you have never been there?

14 A No.

15 Q Never at all? A I don't know whether there is
16 a Siegle Shop there or not. I haven't seen it.

17 Q You indicated, also, in your testimony that after you
18 sold the service station you went back there twice, only
19 twice? A Yes, sir.

20 Q And one time to purchase some gasoline?

21 A The first time I cashed \$20 check.

22 Q And the second time? A To purchase gas.

23 Q Do you have those checks? A Yes, sir.

24 MR. PESTARINO: I think I am going to be a bit longer
25 with this witness, and if Your Honor wishes to adjourn now --

26 THE COURT: I have no objection. I assume you will

1 be back tomorrow, Mr. Lazar.

2 THE WITNESS: Sir, I apologize for this because I
3 am really swamped in the hotel. Kitty is one of my
4 employees, I got new employee --

5 THE COURT: Can you come back some other time?

6 MR. PESTARINO: Tomorrow afternoon?

7 THE WITNESS: What time?

8 THE COURT: Well, you name it.

9 MR. PESTARINO: All right, two o'clock?

10 THE WITNESS: How about we will do it day after
11 tomorrow?

12 MR. ROBINSON: Well, Your Honor, I suggest to keep
13 his testimony in order before the jury, to have some
14 continuity to it, I am sure that there are other employees
15 of this hotel could take over.

16 THE COURT: Do you have witnesses available tomorrow
17 morning?

18 MR. ROBINSON: We have a lot of witnesses available
19 outside right now. We have witnesses.

20 THE COURT: Well, it is cross-examination and I am
21 sure that there will be redirect. Do you have enough
22 for tomorrow without Mr. Lazar and call him back Wednesday?
23 Or would you rather have him tomorrow afternoon?

24 MR. ROBINSON: I would rather have him tomorrow.

25 THE COURT: Could you come back tomorrow afternoon?

26 THE WITNESS: Really, if I could do it, I got a

1 statement to pull out, send it to San Diego, I got Kitty
2 Benjamin, she didn't testify yet and she is off the job right
3 now, and I have a new employee at the hotel.

4 MR. PESTARINO: I would agree that he could come
5 back Wednesday.

6 THE WITNESS: That will be perfect.

7 THE COURT: All right, sir, you come back Wednesday
8 morning at 9:45 in the morning.

9 MR. PESTARINO: And before we adjourn, I want it
10 marked for identification.

11 THE COURT: We will mark these two checks as B-1 and
12 B-2 for identification.

13 (Whereupon, the above-mentioned documents, being two
14 checks, were marked as Defendant's Exhibits B-1 and B-2 for
15 identification.)

16 MR. ROBINSON: May Mr. Lazar be given the admonition
17 he is not to discuss his testimony with any of the other
18 witnesses who haven't testified in this proceeding yet?

19 THE COURT: All right.

20 MR. PESTARINO: I would agree.

21 THE COURT: Mr. Lazar, as you know Kitty Benjamin is
22 a potential witness, and I think maybe your brother Sam is a
23 potential witness.

24 THE WITNESS: Right.

25 THE COURT: I am going to instruct you that in view
26 of the fact that you are still on the witness stand that you

1 are not to discuss anything you have said or anything about
2 the case with either of those or any other witness. Do you
3 understand?

4 THE WITNESS: Sure.

5 THE COURT: And if they try to discuss it with you
6 then you are to tell them that that would be in contempt of
7 court, and you would be punished for it.

8 MR. ROBINSON: Excuse me, are we going to leave these
9 here so the Clerk can make copies of them?

10 THE COURT: Yes.

11 MR. ROBINSON: Also, might we have the other witnesses
12 brought in and asked to return tomorrow at 9:30?

13 MR. PESTARINO: I have asked you, one other question,
14 to bring those documents tomorrow.

15 THE WITNESS: Yes, I will do.

16 THE CLERK: Can we give those back to you Wednesday?

17 THE COURT: Yes, we will give those back to you
18 Wednesday.

19 THE WITNESS: Wednesday, 9:30?

20 THE COURT: 9:45. All right. The witnesses who
21 have just entered the courtroom, we are going to recess and
22 adjourn for the day and resume tomorrow morning at 9:45. I
23 will ask you and order you to return at that time. You
24 will not receive any further notice or subpoenas, and I would
25 admonish you not to discuss the case or your testimony with
26 any of the persons who have either testified or who will

1 testify.

2 MR. ROBINSON: With the exception they can, of
3 course, discuss the case with counsel.

4 THE COURT: Yes, you, of course, may talk to the
5 lawyers.

6 MR. PESTARINO: I am not his lawyer.

7 THE COURT: Well, either lawyer, I have no
8 objection.

9 MR. PESTARINO: You can talk to the District
10 Attorney.

11 THE COURT: Ladies and gentlemen, we will take our
12 adjournment and resume tomorrow morning at 9:45. You will
13 keep in mind my prior admonition and we will order the
14 defendant back, also, tomorrow morning.

15 (Whereupon, Court adjourned until March 16, 1976,
16 at 9:45 o'clock a.m.)

17 ---oOo---

1 TO THE COURT OF APPEALS OF THE STATE OF CALIFORNIA
2 FIRST APPELLATE DISTRICT

3 ---oOo---

4
5 THE PEOPLE OF THE STATE OF CALIFORNIA,)

6 Plaintiff & Respondent,)

7 vs.)

8 DAVID MALEK ISMAIL,)

9 Defendant & Appellant.)

) VOLUME II

) Pages 286 - 509

10 ---oOo---

11 REPORTER'S TRANSCRIPT ON APPEAL FROM THE

12 JUDGMENT OF THE SUPERIOR COURT OF THE

13 STATE OF CALIFORNIA, IN AND FOR THE

14 COUNTY OF SANTA CLARA.

15 HONORABLE GEORGE H. BARNETT, JUDGE, AND A JURY.

16 ---oOo---

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SIXTH DAY

March 16, 1976 9:45 o'clock a.m.

(Pursuant to adjournment, Court convened, and the following proceedings were had:)

THE COURT: Good morning. I have information the air conditioning will be off all week so we will open the windows and just hope it will be pleasant.

Let the record show that the jury is present, the defendant is present, counsel are present. You may proceed.

MR. ROBINSON: The People call Monte Beamon.

MONTE BEAMON,

called as a witness on behalf of the People, being first duly sworn, was examined and testified as follows:

THE CLERK: Take the witness stand, please.

DIRECT EXAMINATION

BY MR. ROBINSON:

Q. State your full name spelling your last name for the record.

A. Monte L. Beamon,
B-e-a-m-o-n.

Q. And Mr. Beamon, your occupation?

A. I am a taxicab driver.

Q. And by whom are you employed?

A. Mission
Yellow Cab Company.

Q. Okay. And how long have you been employed by Mission Yellow Cab Company?

A. Oh, approximately
three years.

2 1 Q. Now, Mr. Beamon , I'm going to direct your attention
2 to November 6th, 1975, at approximately six o'clock in the
3 evening give or take a few minutes. Were you directed by
4 your dispatcher to respond to fifty-three forty Monterey
5 Road, Room Number 129, the Oasis Motel?

6 A. Yes, I was.

7 Q. And Mr. Beamon , does your cab -- do you keep records?

8 A. Yes, we maintain a log of time and place we pick up and
9 where we disembark passengers.

10 MR. ROBINSON: May we have this copy of a log
11 marked as People's next in order for identification, Your
12 Honor?

13 THE COURT: Yes. It will be number 22.

14 (Whereupon, the above-mentioned document, being
15 a log, was marked as People's Exhibit No. 22 for
16 identification.)

17 MR. ROBINSON: Thank you. May I approach the
18 witness, Your Honor?

19 THE COURT: Surely.

20 Q. (By Mr. Robinson) Mr. Beamon showing you People's 22
21 marked for identification, could you look at that and tell
22 me if you can identify it?

A. Yes, I do.

23 Q. Okay. And can you tell us what that is?

24 A. Well, it is a Xerox copy of my log of that date that I
25 maintain as I work.

26 Q. Okay. And is that an accurate reproduction of that log?

3
1 A. Yes, it is.

2 Q. Can you tell us how that log is -- strike that.

3 Can you tell us how the information contained on
4 that copy is put there? A. Well, at the time
5 that I pick up a person, then when I deliver them, why, I
6 record in where I picked them up and what time and where I
7 delivered them and at what time.

8 Q. Is that log kept in the regular course of your business?

9 A. Yes.

10 Q. Does your business rely upon that log?

11 A. Yes.

12 Q. Okay. Directing your attention to that log is there
13 any indication on that log as to what day that log is kept
14 for? A. Yes.

15 Q. And what day is that? A. November 6th.

16 Q. 1975? A. Yes.

17 Q. Okay. And is there any indication on that log that you
18 responded to the Oasis Motel at 5340 Monterey Road?

19 A. Yes.

20 Q. Can you tell us what information is contained on that
21 log regarding that response? A. Well, the
22 log says, "One passenger, paid \$2.40," and I received the
23 order in area two oh four, when I received the order to go
24 there. I picked up the passenger at five fifty p.m. I
25 delivered, I finished my trip at 6:00 o'clock, picked him up
26 at 5340 Monterey, Number 129, and he was disembarked at

4
1 Cottle and Santa Theresa, or in that general area.

2 Q. The number 129 at 5340 Monterey, does that represent a
3 room number in a motel? A. That is a room
4 number in the Oasis Motel.

5 Q. The area in which this passenger disembarked, Cottle and
6 Santa Theresa, is that near a shopping center?

7 A. Yes, it was in a shopping center.

8 Q. You dropped the passenger off in a shopping center?

9 A. Yes, sir.

10 Q. Now, when you responded to the Oasis Motel at
11 approximately 6:00 o'clock on November the 6th, 1975, where
12 did you go? A. I drove up directly in

13 front of the room, you can see the numbers from the parking
14 area.

15 Q. That would be Room 129? A. Yes.

16 Q. And after driving your cab in front of Room 129 what did
17 you do? A. I went up and knocked on
18 the door.

19 Q. Did somebody open that door? A. The
20 gentleman came to the door and said, "I'll be with you
21 shortly."

22 Q. After this person indicated that to you, what did you
23 do? A. I went back and stood outside
24 the cab and waited for him.

25 Q. Approximately how long did you wait for the individual
26 in 129 when you stood outside the cab?

5

1 A. It was less than five minutes, I would say.

2 Q. Now, when you approached the door to Room 129 and this
3 individual opened the door, did he open it all of the way,
4 halfway , or part-way?

A. I can't recall.

5 Q. And did you notice any other individual in Room 129?

6 A. No.

7 Q. Okay. Now, did this individual in Room 129 eventually
8 leave that room and come to your cab?

9 A. Yes.

10 Q. Okay. And did he get in your cab?

11 A. Yes.

12 Q. Can you describe this individual for us?

13 A. Well, he was a middle-aged man, as I remember he was
14 wearing a coat and tie, nothing unusual about the person
15 that would make him stand out.

16 Q. Okay. Was he nicely dressed? A. Nicely
17 dressed.

18 Q. Okay. And when this individual got into your cab did
19 he get into the front seat or the back seat?

20 A. He sat in the front seat. I invited him to sit in the
21 front seat with me.

22 Q. Did he sit right next to you? A. Yes.

23 Q. And as you -- when this individual got into the cab,
24 did he say anything? A. I can't recall what
25 was said. There was small talk about the weather, and you
26 know, chit-chat was all. I can't recall the sequence.

6
1 Q. Did he tell you where he wanted to go?

2 A. Yes, he asked me to go to Santa Theresa and Cottle to
3 the pizza restaurant.

4 Q. He told you he wanted to go to a pizza restaurant there?

5 A. Yes.

6 Q. Did you drive him there? A. Yes.

7 Q. Can you estimate how long it took you to get from
8 Monterey Road where you picked him up to the pizza restaurant
9 at Santa Theresa and Cottle? A. Approximately
10 ten minutes.

11 Q. You were with this individual for approximately ten
12 minutes? A. Yes.

13 Q. And during this time you told us you had some small talk
14 with the man? A. Yes.

15 Q. Talked about the weather? A. Yes.

16 Q. Did the individual mention anything about how dark it
17 got early, do you remember that? A. I think
18 this was a part we were talking about, that the days were
19 getting shorter at this time of year. I think, yes, that was
20 part of the conversation.

21 Q. Okay. And when you arrived at the pizza restaurant at
22 Santa Theresa and Cottle did the individual ask you anything?

23 A. Yes, he inquired as to where Woosley Street was
24 located.

25 Q. Okay. And did you tell him that you didn't know where
26 it was? A. I told him I didn't know

7
1 but I would check my map and show him how to get there.

2 Q. Okay. And did you check your map?

3 A. I did.

4 Q. Where is your map located? A. I carry it
5 with me all of the time. It is a County LoCaide System.

6 Q. And is that located in the front seat of the cab?

7 A. Yes, I always carry it there.

8 Q. Did you open your map on the front seat?

9 A. Yes.

10 Q. And did this individual look at the map with you?

11 A. No, as I recall I don't think he did. I think I looked
12 at it and immediately I recognized Woosley which is a very
13 short distance from where we were located.

14 Q. Did you give this person directions as to how to get to
15 Woosley? A. Yes, I told him to walk
16 down to Cottle to Los Pinos and turn right and go a couple
17 blocks and he'd run into Woosley Street.

18 Q. What did he do next? A. He paid his fare
19 and I drove off.

20 Q. Did he pay by cash? A. Yes.

21 Q. And did you see where he went when you drove off?

22 A. No.

23 Q. Okay. Now, this individual, did you smell any alcohol
24 about this person? A. No.

25 Q. Okay. Was this individual, did he appear intoxicated
26 at all to you? A. Not in the least.

8

1 Q. Did he appear under the influence of alcohol?

2 A. No.

3 Q. I take it in your profession, Mr. Beamon, you have had
4 occasion to view people that were under the influence of
5 alcohol?

A. Yes, quite often.

6 Q. In your opinion this person showed no signs of being
7 under the influence?
8 A. No, not in my
9 opinion, no.

9 Q. Was his speech slurred at all?
10 A. Not at
11 all.

11 Q. Did he wobble when he walked?
12 A. Not in
13 the least.

13 Q. Did he appear to understand what he was doing and saying?
14 A. He seemed very intelligent, educated, very pleasant man
15 to talk to .

16 Q. Okay. Now, did this individual, when you talked to him,
17 did he appear worried or upset?
18 A. Not in the
19 least.

19 Q. Did he appear excited at all?
20 A. Not in
21 the least.

21 Q. Would you describe his demeanor as cool and calm?

22 A. Yes, I would.

23 Q. Okay. Now, this person that you drove to the pizza
24 parlor, do you see him in Court today?

25 A. Yes.

26 Q. Would you point him out, please?

1 A. It is this gentleman over to the right (indicating).

2 MR. ROBINSON: Thank you. I have no further
3 questions.

4 THE COURT: All right. The record will show the
5 identification of the defendant.

6 You may cross-examine.

7 CROSS-EXAMINATION

8 BY MR. PESTARINO:

9 Q. Mr. Beamon, how far is the Oasis Motel from the pizza
10 place on Cottle and Santa Theresa?

11 A. I would estimate approximately three miles.

12 Q. And are you generally familiar with that area?

13 A. Yes, sir.

14 Q. Are there any restaurants really between the Oasis
15 Motel and the pizza parlor?

16 A. I think there
17 is one called "The Sherwood Forest" down there. It's
18 probably the only one we passed.

19 Q. The only one? A. That I am familiar
20 with, yes.

21 Q. And that is by a service station, isn't it?

22 A. I think it is, yes.

23 Q. Yes. Okay. Now, this man, Mr. Ismail was the man that
24 you transported from the Oasis Motel to the pizza parlor;

25 is that right? A. I think so. But I meet
26 a lot of people, and it has been some months ago.

Q. Okay. Do you recall how he was dressed? They have an

10

1 exhibit here, he had purportedly --

2 MR. PESTARINO: Let me have the picture. That is
3 fine. Thank you.

4 Q. (By Mr. Pestarino) You indicated that he was dressed
5 neatly and appeared well -- A. Yes.

6 Q. And I will show you People's Exhibit for identification
7 10-B. Does that look like the way he was dressed?

8 A. I can't be sure, sir.

9 Q. Okay. You didn't notice anything unusual about Mr.
10 Ismail, the defendant, at that time? He talked to you?

11 A. Yes.

12 Q. He was pleasant? A. Very pleasant.

13 Q. He didn't appear to be drinking?

14 A. No, not to me, no.

15 Q. You don't know whether or not he was drinking?

16 A. No, I couldn't say.

17 Q. You can't? A. No.

18 Q. No way in the world you can tell that?

19 A. I didn't detect the odor of alcohol.

20 Q. You didn't detect it, but on the other hand you weren't
21 particularly looking for it? A. Or I

22 wasn't that close to him, that is very possible, yes.

23 Q. So he seemed to know where he was going, generally
24 speaking? A. Yes.

25 Q. He talked to you, he was well-dressed, he behaved, and
26 as far as you are concerned he was every bit of a gentleman?

11

1 A. Yes, sir, very pleasant man to be with.

2 Q. Did he appear worried or preoccupied in any way?

3 A. Not in the least.

4 Q. Okay. Thank you.

5 MR. PESTARINO: No further questions.

6 THE COURT: Thank you, Mr. Beamon.

7 MR. ROBINSON: The People call Virginia Adams.

8 Thank you.

9 (Witness excused.)

10 VIRGINIA S. ADAMS,

11 (called as a witness on behalf of the people, being first
12 duly sworn, was examined and testified as follows:)

13 THE CLERK: Take the witness stand, please.

14 DIRECT EXAMINATION

15 BY MR. ROBINSON:

16 Q. Can you state your full name, spelling your last name
17 for the record, please? A. Mrs. Virginia S.

18 Adams, A-d-a-m-s.

19 Q. Your occupation? A. Assistant
20 policewoman, City of San Jose.

21 Q. Mrs. Adams, how long have you been employed in that
22 capacity? A. I have been employed for
23 the San Jose Police Department since 1954.

24 Q. And Mrs. Adams, what are you currently assigned to?

25 A. Latent fingerprints.

26 Q. How long have you worked in the latent fingerprint

12

1 section?

A. I first started working

2 on latent fingerprints in 1963. I was assigned to latent
3 fingerprints as my principle function in 1968.

4 Q. And could you give us your background and training that
5 qualifies you to work in latent fingerprints?

6 A. I have eighty hours of basic training with the FBI back
7 in 1957 through 1960. I have, in 1974, I was appointed by
8 this area to attend the FBI latent fingerprints, Academy for
9 Advanced Latent Fingerprints in Washington. I have studied
10 periodicals as they continue to come out. I have worked with,
11 directly and indirectly with personnel in Sacramento on
12 latent fingerprints. At the present I am secretary-
13 treasurer for the State Association of Identification Officers
14 which is a portion of the national and international
15 association.

16 Q. Mrs. Adams, could you give us an approximation -- I
17 know that you are going to kill me when I ask you this
18 question -- as to how many latent fingerprints you have
19 compared and analyzed in the course of your work?

20 A. Thousands.

21 Q. Have you testified in Court, both Municipal and Superior
22 of this county on numerous occasions?

23 A. Yes.

24 Q. And could you estimate approximately how many occasions?

25 A. Sometimes it is twice a week, sometimes I go for
26 several months.

13

1 Q. And have you qualified as an expert on latent
2 fingerprints in that previous testimony?

3 A. Yes.

4 Q. Okay.

5 MR. ROBINSON: Does counsel have any questions on
6 Voir Dire?

7 MR. PESTARINO: I think she is well-qualified.

8 THE COURT: She has appeared in my Court before.

9 Q. (By Mr. Robinson) Mrs. Adams, did I ask you to prepare
10 some sort of little exhibit for us?

11 A. Yes.

12 Q. All right. Did you do that? A. Yes.

13 Q. Could we see that, please?

14 MR. ROBINSON: Your Honor, might we have this --

15 THE COURT: Yes. That will be 23 for
16 identification.

17 (Whereupon, the above-mentioned document, being
18 a chart, was marked as People's Exhibit No. 23 for
19 identification.)

20 Q. (By Mr. Robinson) Mrs. Adams, showing you People's
21 Exhibit No. 23, could you explain that for us, what inked
22 means and what latent means? Perhaps I can hold it up.

23 THE COURT: Do you want to put that on the board?

24 MR. ROBINSON: Sure.

25 THE COURT: I think you will find a pointer around
26 the corner, also.

14

1 Q. (By Mr. Robinson) Could you briefly describe that for
2 us, what the latent is and what the inked is?

3 A. Latent fingerprint is an unknown, many times not
4 visible fingerprint, that is left by chance. These are
5 developed by the investigating officer by various methods
6 they may use. This particular one was developed by using a
7 powder. The inked fingerprint is an impression, and we say
8 fingerprint, in this particular case it is a palm area, which
9 is still your friction ridges similar to, the same as the
10 one on your fingerprints. The inked impression is a
11 deliberate inked impression that is placed on a surface,
12 usually a fingerprint card, and that is a deliberate
13 impression given by a person where this is a chance
14 impression that is left, and usually it is unknown, this is
15 given by an unknown person.

16 Q. Okay. And when you say, "Given by a known person", the
17 inked print, would that be somebody who is arrested, an
18 officer takes their fingerprints.?

19 A. An inked impression can be anyone that has given. In
20 this particular case, the subject was in custody.

21 Q. Okay. And it could be, also, from say like a driver's
22 license application, an inked print?

23 A. Correct.

24 Q. And the latent print is a print recovered by the officer
25 at the scene? A. Yes.

26 Q. Mrs. Adams, I am going to show you People's Exhibit 8

15

1 marked for identification and ask you to look at those and
2 tell me if you have ever seen those before?

3 A. Yes.

4 Q. Okay. And can you tell us where you saw those?

5 A. These were given to me by the investigating officers.

6 Q. By Sergeant Parrott? A. May I check with
7 my report here?

8 Q. Sure. A. It was submitted by
9 Sergeant Parrott.

10 Q. And the latent print that you have, is that a blowup of
11 one of those fingerprints? A. Yes, it is.

12 Q. Could you tell us which one it is a blowup of?

13 A. The one that I have marked lift A.

14 Q. Was that the fingerprint that was taken from the gun?

15 A. All indications are that it was taken from the gun. I
16 do not have exact knowledge of it. There is a picture of a
17 gun and the number that was given by the officer.

18 Q. That was unfair. Sergeant Parrott already testified to
19 that. I'm sorry. So what you did, you photographed that and
20 blew it up? A. No, I looked at it

21 first, what we refer to as one to one, as is submitted, then
22 we had it blown up.

23 Q. All right.

24 MR. ROBINSON: Your Honor, might we have this set
25 of inked fingerprints containing the name of David Malek
26 Ismail marked as People's next in order, A, B, C, D?

16

1 THE COURT: Yes. They will be 24-A through C.

2 MR. ROBINSON: A through D, Your Honor.

3 THE COURT: I'm sorry.

4 (Whereupon, the above-mentioned items, being a set
5 of inked fingerprints, were marked as People's Exhibits
6 24-A through D for identification.)

7 Q. (By Mr. Robinson) Mrs. Adams, showing you People's 24-A
8 through D, could you look at those, please, and tell me if
9 you have ever seen those before?

10 A. Yes, sir.

11 Q. And were those provided to you by a police officer?

12 A. Yes.

13 Q. Okay. And did you compare 24-A through D with People's
14 Exhibit 8?

A. Yes, I did.

15 Q. Okay. And does 24-A through D, is that indicated on the
16 inked print?
17 A. Yes. And may I
18 make a correction? I said this was a palm area. This is
19 from a thumb.

20 Q. And is that an enlargement of 24-A through D, the ink
21 print?

A. It is an enlargement of
22 a portion of this card.

23 Q. Okay. Thank you. Now, Mrs. Adams, could you tell us
24 how you compare fingerprints and what processes you use, and
25 what you look for?
26 A. In comparing
fingerprints, the first thing to do is to look at the latent
impression to see if there is sufficient characteristics.

17

1 Now, these characteristics are the areas where the ridges
2 are rather than going straight, will give you some type of
3 break in the ridge. It may either be an ending ridge where
4 the ridge travels and stops abruptly, it may be a bifurcation
5 which is a single ridge travelling and then separating, it
6 may be a short ridge, it may be an angle of a ridge. But
7 those are the areas in the pattern or in the ridges that are
8 different and you look for those. And then you go from there
9 and look at the known ridges and try to find the same
10 configurations in the same locations, the same distances
11 apart, the same number of ridges apart without there being
12 a difference showing up on either one of them.

13 Q. Okay. And Mrs. Adams, you always hear it said that, at
14 least if you watch the FBI on television, that no two
15 people have the same set of fingerprints. Is that a correct
16 statement?

17 A. That is definitely
18 correct.

19 Q. And what is it that prohibits people from having the
20 same two sets of fingerprints?

21 A. It is
22 these ridge characteristics. You are, before you are born,
23 the ridges start forming on your fingers and hands and the
24 soles of your feet. And these it is these characteristics
25 in here that do make it different. They may look similar to
26 an untrained eye, but to a trained eye there will be the
differences in each print. As a matter of fact, each
individual, all ten prints that you have, the patterns may

18 1 be similar but they are different due to the characteristics.

25 2 Q. And briefly, Mrs. Adams -- I'm sorry, could you sit
3 down a few minutes, then I will have you stand again, if you
4 would. Can you tell us how somebody leaves what we call a
5 latent fingerprint? Can you tell us how that is left on
6 the scene or on an object? A. There is pores

7 in your hand that exude moisture, and there are chemicals in
8 that particular moisture, and when you touch something this
9 is left on the surface and it stays for quite a while,
10 depending on the atmospheric conditions, then these are
11 developed either by powders or inhydrate sprays as the
12 investigating officer would do, and occasionally if you have
13 rubbed your hand on your forehead or have had them around an
14 oily substance, then there would also be oil in this. And
15 in the ridges, there are pores in the ridges, and the ridges
16 will stand up. They are just like a mountain and in between
17 each ridge is a valley, and it is the tops of these ridges
18 or the mountains that when pressed on a surface will leave
19 this residue which is developed later.

20 Q. Okay. And Mrs. Adams, do fingerprints go away in time?
21 If I touch, say, this substance over here, would my
22 fingerprint remain on that substance indefinitely or do they
23 go away? Or how does that work?

24 A. There again, it depends on the conditions. There have
25 been articles even written on locating fingerprints from the
26 tombs of Egypt. But it depends on the atmospheric

191

1 conditions, again, and the surface and hand.

2 Q. Does it, also, depend on whether somebody else might
3 touch the same surface and imprint their print over mine?

4 A. That would be an overlay, but of course, they can be
5 removed.

6 Q. And does the type of surface which one touches, is that
7 of any significance in lifting a latent fingerprint?

8 A. Quite often it is. The more porous surfaces, of course,
9 tend to absorb the prints rather than leaving them on the
10 surface to be lifted or developed.

11 Q. And this is for my own information, I have heard lately
12 they have done studies where they can lift fingerprints from
13 human beings, if somebody touches another human being, is
14 that true?

A. That is correct.

15 Q. That is a relatively new development in the field?

16 A. Yes.

17 Q. Mrs. Adams, did you compare the latent print supplied
18 you by Sergeant Parrot with the inked print supplied you by
19 another police officer?

A. Yes.

20 Q. And could you tell us the results of your comparison?

21 A. It was my finding that the latent print impression was
22 made by the right thumb of the subject Ismail.

23 Q. Okay. And is there any doubt in your mind?

24 A. Absolutely no doubt.

25 Q. Okay. And Mrs. Adams, I notice that you put some
26 numbers up here, one through seven, would you mind stepping

20

1 to the board and indicating the significance of those numbers
2 and what they indicate to you? A. These
3 numbers correspond to areas in this known print. This is,
4 of course, your latent, the unknown area (indicating), and
5 these numbers will be marked and they will correspond to the
6 areas that are marked over on this one.

7 Q. And that is your points of characteristics that you
8 talked about? A. Yes.

9 Q. Okay. Now, Mrs. Adams, did you compare the fingerprints
10 that you received from Sergeant Perrott with the fingerprints
11 of the victim, Mar Eshai Shimun, the Patriarch of the Church
12 of the East? A. You mean did I compare
13 the latent print?

14 Q. Yes. A. Yes, I did.

15 Q. Did you find any of Mar Eshai Shimun's fingerprints
16 with -- A. Not with this.

17 Q. -- with the latent? A. No.

18 Q. The only print you found that you were able to identify
19 is that of a subject indicated to you by the card as David
20 Malek Ismail? A. Yes.

21 MR. ROBINSON: Okay. I have nothing further.

22 CROSS-EXAMINATION

23 BY MR. PESTARINO:

24 Q. Mrs. Adams, how many prints did you look at and compare?
25 Was it just the one that you have on the board?

26 A. No, I looked at the whole case print card.

21

1 Q. Is that the only one that you could identify, the thumb?

2 A. Definitely.

3 Q. The others you could not identify?

4 A. That is correct.

5 Q. In your notes or in talking to Sergeant Parrott could
6 you ascertain from what portion of the weapon the latent
7 fingerprint was taken that is identical to Ismail's
8 fingerprint?

9 A. I believe he drew
10 a picture of a weapon on the back of the card and put an X
11 mark there and that was my only information.

12 Q. Do you remember whether that was on the barrel or the
13 butt or on the clip?

14 A. I believe -- I
15 don't remember, I'm not sure -- I believe it was just above
16 the trigger area.

17 Q. Around the trigger area?

18 A. But I'm not
19 sure. I would have to look at the picture.

20 Q. Now, were there, in looking for comparisons, did you
21 find other fingerprints on the gun?

22 A. May I have the prints back?

23 Q. Yeah. Do we have them here? Sure.

24 A. They are, I believe they are laying right there
25 (indicating).

26 Q. Yeah.

A. Lift A was the only one
that was of any value for comparison.

Q. Why weren't the others of any value?

A. They were either smudged or not sufficient

22

1 characteristics.

2 Q. Did you compare the smudged fingerprints with any
3 other fingerprints? For example, does the name Yule Lazar
4 mean anything to you? A. No, it doesn't.

5 I don't have it in my report here.

6 Q. Does the name Ron Meyers mean anything to you?

7 A. No.

8 Q. So in making these comparisons you had obtained the
9 samples from Ismail and you compared all of these, or the
10 series of prints with Ismail's prints?

11 A. And the victim.

12 Q. And the victim? A. Yes.

13 Q. And those are the only two comparisons?

14 A. To my knowledge.

15 Q. To your knowledge? A. Unless they gave
16 them to me at another time.

17 Q. How many prints were there all together that were lifted
18 from that weapon? A. We have four here.

19 Q. Four. And from your recollection or from your notes
20 were there more smudge prints than just the four on the gun,
21 do you know? A. No.

22 Q. You don't know? A. No, I don't know.

23 Q. You don't know. Okay.

24 MR. FESTARINO: Thank you very much.

25 REDIRECT EXAMINATION

26 BY MR. ROBINSON:

23

1 Q. Mrs. Adams, you told us that you received four prints
2 from the gun? A. Four lifts were given to
3 me.

4 Q. Four lifts from the gun and only one of them was of
5 any value? A. That is correct.

6 Q. And when you talk about only one was of any value, what
7 do you mean by the other three? A. They were
8 either smudged or of no value as far as not having
9 characteristics in them.

10 Q. Okay. Let me ask you another question. Regarding
11 fingerprints, is it usual or unusual that you are able to
12 find a latent fingerprint from the scene and identify with an
13 ink print? A. Is it usual or unusual?

14 Q. Yeah. Do they usually, are they usually able to obtain
15 latent fingerprints from the scene of a crime?

16 A. I would say there are a lot of times latent fingerprints
17 but there are very few identifications compared to the
18 number of latent prints that are turned in.

19 Q. What is the reason for that? A. It could
20 be that a lot of them belong to -- of course, most of the
21 cases that I work on are burglaries so many of those prints
22 belong to victims and parties in the home.

23 Q. Many a time isn't it true that the latent print that you
24 recover from the scene is of no value whatsoever? They are
25 smudged, smeared, and not much that you can do with it?

26 A. Yes, that is correct.

24 1 Q. And isn't that the rule rather than the exception?

2 A. Yes, it is.

3 Q. Okay.

4 MR. ROBINSON: Thank you. I have no further
5 questions.

6 MR. PESTARINO: Thank you.

7 THE COURT: Thank you very much.

8 THE WITNESS: May I return to work?

9 MR. ROBINSON: Yes. Thank you very much.

10 (Witness excused.)

11 MR. ROBINSON: The People will call Officer Neal.

12 JAMES MELVIN NEAL,

13 called as a witness on behalf of the People, having been
14 first duly sworn, was examined and testified as follows:

15 THE CLERK: Take the witness stand, please.

16 DIRECT EXAMINATION

17 BY MR. ROBINSON:

18 Q. Can you state your full name spelling your last name for
19 the record, and give us your occupation?

20 A. Yes, sir. James Melvin Neal, N-e-a-l, San Jose Police
21 Department, Patrol Division.

22 Q. Officer Neal, how long have you been employed by the
23 San Jose Police Department? A. Be three
24 years.

25 Q. Okay. And is that three years of full time employment?

26 A. Three years of full time employment, yes.

25

1 Q. Prior to that were you employed by the San Jose Police
2 Department? A. As a reserve officer for

3 three years, also.

4 Q. So you have a total of six years police experience?

5 A. Yes.

6 Q. Officer Neal, directing your attention to November 6th,
7 1975, at 6:53 p.m. in the evening, could you tell us where
8 you were? A. Yes, sir, I was at a call

9 box on Monterey Highway at Cottle.

10 Q. Is that in Santa Clara County? A. Yes, it
11 is.

12 Q. City of San Jose? A. Yes, it is.

13 Q. And when you were at the call box were you in a police
14 car? A. Yes, I was in a marked

15 patrol vehicle.

16 Q. Were you on duty and in uniform? A. Yes,
17 I was.

18 Q. And at that time at 6:53 p.m. were you advised by radio
19 of anything? A. Yes, I was advised

20 that a shooting had taken place.

21 Q. All right. And did you get the address for the shooting?

22 A. They gave the address as next door to 6205 Woosley
23 Drive.

24 Q. And how did this information, how did you receive it?

25 A. Over the police radio.

26 Q. You have a radio in your car? A. Um-hum.

26

1 Q. How do you make contact on that radio? Do you have a
2 dispatcher? A. Yes, we have a dispatcher,

3 have a communications department downtown, telephone call
4 comes in they receive the message and broadcast it to all
5 units in the area.

6 Q. So you were advised of a possible shooting at 6205
7 Woosley, the next-door neighbor's house?

8 A. Yes.

9 Q. And what did you do upon hearing that?

10 A. Got back in my unit, they were asking for any unit to
11 respond as we were short of police units that night, back in
12 my unit and I advised radio I would be responding to the area.

13 Q. And did you start to respond to the area?

14 A. Yes, I did.

15 Q. In responding to the area did you receive another radio
16 broadcast? A. Yes, I did.

17 At that time they advised location again, and, that,
18 they also put out a possible description or a description of
19 a suspect.

20 Q. Okay. And Officer, I notice that you are referring to
21 something in front of you. For the benefit of the jury,
22 could you tell us what that is? A. Yes, it is,
23 this is a supplementary offense report that I wrote shortly
24 after the situation at 6205 Woosley.

25 Q. Does that report accurately reflect the events as you
26 determined them to be that night? A. Yes, in

27

1 chronological order.

2 Q. Is that report of any benefit to you to refresh your
3 recollection as to the events? A. Yes, it is.

4 Q. I take it in your three years as a police officer you
5 have made numerous police reports? A. Yes, I
6 have.

7 Q. Numerous arrests? A. Yes.

8 Q. Is the purpose of the police report to accurately
9 depict the scene and situation as you find it to be?

10 A. That is correct.

11 Q. And help an officer refresh his memory if he has to
12 subsequently testify in Court? A. Yes, sir.

13 Q. Do you have any independent recollection other than
14 reading that police report of the events that happened that
15 night?

16 MR. PESTARINO: I will stipulate that he can read
17 the police report.

18 THE WITNESS: Yes.

19 MR. PESTARINO: Or refresh his recollection.

20 Q. (By Mr. Robinson) You do have an independent
21 recollection? A. Yes, I do.

22 MR. PESTARINO: As far as I am concerned he can
23 use the police report any way he wants.

24 MR. ROBINSON: Of course he can.

25 THE COURT: He can use his own recollection. All
26 right.

28

1 MR. PESTARINO: Yes.

2 MR. ROBINSON: Counsel have anything else he
3 would like to add before I go on?

4 MR. PESTARINO: I didn't want to interrupt you.

5 Q. (By Mr. Robinson) This description, this subsequent
6 description you received by the radio, could you tell us
7 what that was?

8 A. Yes, radio advised it was
9 a white male adult, about forty-five, about five foot nine,
10 wearing a gray suit, had a black shirt, and then they
11 further advised that the party possibly went into a location
12 at Santa Theresa and Cottle.

13 Q. And what did you do, Officer Neal?

14 A. I was listening to the radio and responding to the area,
15 I was on Cottle Road.

16 Q. All right. Did you respond to the area of Santa Theresa
17 and Cottle?

18 A. Yes, I did.

19 Q. And upon responding to the area of Santa Theresa and
20 Cottle what did you do?

21 A. I was approaching
22 the intersection of Santa Theresa on Cottle Road, radio
23 further advised, another broadcast, and I advised radio I
24 was in that location at the time.

25 Q. And this other broadcast, what did that say?

26 A. The broadcast advised there were some citizens or witnesses
had followed a particular party to that location, was at a
phone booth at the seventy-six station at Santa Theresa
and Cottle.

29

1 Q. And did you respond to that phone booth?

2 A. Yes, I did. I advised radio I was at that location at
3 the time and I was being waved down by some citizens.

4 Q. Okay. Some citizens waved you down?

5 A. Yes, they did.

6 Q. Okay. And when these citizens waved you down did they
7 say anything to you? A. They advised me that,

8 they were calling the Police Department, they were on the
9 phone at that time, and another citizen had followed the
10 party from the Woosley Drive address to Thrifty's or the
11 pizza parlor, and they advised me that the party was there
12 at the time.

13 Q. This seventy-six gas station where the phone booth was
14 located, is this in a shopping center?

15 A. In a shopping center parking lot.

16 Q. How far away is this seventy-six gas station with the
17 phone back from the pizza parlor or the Thrifty Drug Store,
18 if you can tell us? A. I would have to

19 estimate at about seventy-five yards.

20 Q. And upon receiving the information, Officer Neal, that
21 the possible suspect either went into the Thrifty or pizza
22 parlor, what did you do? A. I tried to ask

23 or find out or pinpoint exactly where they advised me, they
24 didn't know exactly. However, they felt it was either the
25 Thrifty Drug Store or Shakey's Pizza Parlor or Roundtable.

26 Q. And then what did you do? A. I pulled my

30

1 unit around the cars and parked just to one side of the
2 Thrifty Drug Store and exited my vehicle at that time.

3 Q. Then what happened? A. I responded to the
4 front of the Thrifty Drug Store where I took up a position
5 where I could see through the windows into the Thrifty Drug
6 Store first.

7 Q. Did you see anyone in the drug store?

8 A. I saw an older white male who was talking on the
9 telephone, pay phone. I waited for a moment to be sure that
10 this was the party, the party vaguely matched the description
11 but wasn't perfect, didn't have the coat or gray suit that
12 the radio advised me.

13 Q. Did he have on a black shirt? A. Yes, he
14 did.

15 Q. Okay. A. No tie however.

16 Q. All right. A. I waited a moment,
17 the party hung up the telephone and then started to exit the
18 door.

19 Q. What did you do? A. When he exited the
20 door I advised him right away of my presence, told him to
21 keep his hands where I could see them. At that point the
22 reserve officer that works security at the shopping center
23 responded to my assistance, as I was alone. When the party
24 came out he complied with what I wanted, and I asked the
25 reserve officer to take charge of the party.

26 Q. Okay. A. From there we went

31

1 behind a pylon where we could get out of the way of everybody.
2 That is a column, large column. The reserve officer took
3 charge of him. We quickly patted him down and he right
4 away advised me that he was the citizen that had followed the
5 party to the shopping center.

6 Q. Was that Mr. Stukan? A. I believe it
7 was, yes.

8 Q. Was he sort of nervous and upset?

9 A. He was very nervous and upset.

10 Q. Were you nervous thinking you were apprehending a
11 possible homicide suspect? A. I did, I did

12 exit my vehicle with a shotgun. There was a lot of people
13 around and they were nervous, people scurrying for cover.

14 Q. Did you release Mr. Stukan? A. Yes, I did.
15 He pointed out to me at the time that the suspect was in the
16 pizza parlor. That is what he was doing, trying to get
17 through to the Police Department to tell us.

18 Q. After Mr. Stukan pointed this out to you, Officer Neal,
19 what did you do? A. I responded to the
20 front door of the pizza parlor.

21 Q. Were you still alone at this time?

22 A. Yes, I was. The officer, reserve officer Ardonis was
23 standing behind me and taking care of the gentleman I had
24 just talked to.

25 Q. And prior to entering the pizza parlor did you instruct
26 the citizens to do anything? A. Yes, I did.

1 There were four to five citizens that were standing in the
2 doorway of the pizza parlor and several that were coming
3 toward us to see what was going on. I advised them to
4 please leave the area, and I instructed Officer Ardonis to
5 get the citizens out of the way and to safety.

6 Q. What was your purpose in doing that?

7 A. So that none of them would get injured if in fact
8 shooting took place.

9 Q. Did you enter the pizza parlor?

A. Yes, I

10 did.

11 Q. Could you tell us how you entered?

12 A. I opened the door and entered very carefully through
13 the right-hand side of the pizza parlor against the bar area.

14 Q. Did you have a weapon drawn at that time?

15 A. I had a shotgun.

16 Q. And as you entered the pizza parlor was it dark or light
17 in there?

A. It wasn't real dark. It was

18 light enough to where I could tell who was in there.

19 Q. And could you tell us what you saw, Officer? Well, what
20 did you do immediately upon entering the pizza parlor?

21 A. I stepped in the door and walked four or five steps.

22 As soon as I walked in I looked the crowd over that was

23 sitting directly in front of me, I stepped to my right,

24 positioned myself up against the bar with my back, making

25 myself less of a target. As soon as I entered I observed

26 three tables in front of me, two of which contained citizens

1 and children. The third table contained the suspect. I
2 looked him directly in the face.

3 Q. Okay. Now, as you entered and you observed the three
4 tables would the suspect have been sitting at the closest
5 table, the second one, or third one back?

6 A. I believe the suspect was sitting at the third table.

7 Q. From the door? A. Yes.

8 Q. And you looked at this man? A. Yes, I did.

9 Q. And could you describe what this man was wearing, for
10 us? A. He was wearing a gray suit,
11 sort of small check, a tie, and a black shirt.

12 Q. And did this man fit the description of the suspect that
13 you had? A. Yes, he did.

14 Q. Now, when you observed this person did he look at you?

15 A. Yes, he did.

16 Q. Okay. Could you describe what he did when he looked at
17 you? A. When I first saw him he was
18 holding or he was cupping a beer mug. He looked directly in
19 my eyes and I looked directly in his. I observed him to
20 have a fresh cigarette in his mouth. He looked me in the
21 eyes, then quickly looked back down, then quickly looked back
22 up again, and then quickly looked back down. The third time
23 he looked at me is when I gave him the first order.

24 Q. Okay. Now, could you perhaps demonstrate for us,

25 Officer Neal, how he looked up and down? Was it a quick up

26 and down or what? A. Well, he was sitting

1 in a manner of this nature leaning slightly forward, cupping
2 the beer mug, saw me come in, he looks up, he looked back
3 down at his beer, and looked up this way, looked back down
4 again. When he looked at me he stared right in my face.

5 Q. And it was at this time that you gave him your first
6 order?

7 A. Yes. I was moving closer to
8 him each time very slowly. I gave him my first order.

9 Q. Okay. And what did you tell him to do, Officer Neal?

10 A. I told him to place his hands flat on the table and not
11 to move.

12 Q. Okay. What did he do? A. Uncupped the
13 beer mug and placed his hands this way flat on the table.

14 Q. Did he have any trouble understanding you?

15 A. No. I only stated it one time and he complied the first
16 time.

17 Q. So you told him place your hands flat on the table and
18 don't move, and he did that? A. Yes, he
19 certainly did.

20 Q. So did it appear to you that he could understand what
21 you told him to do? A. Yes.

22 Q. Okay. And after you told him to place his hands on the
23 table and not move, and he did that, what did you tell him
24 to do next? A. I walked, at that point I

25 walked closer to him. My second order was to have him stand
26 very slowly keeping his hands on the table.

Q. Okay. And what did he do? A. He stood

1 very slowly and kept his hands on the table flat.

2 Q. And did it appear to you that he understood what you
3 told him to do?

4 A. Yes. That was my
5 second order. I only said it one time.

6 Q. Did he do exactly what you told him?

7 A. Yes, he did.

8 Q. Did you have another order for him?

9 A. At that point I walked to the suspect and placing the
10 shotgun on his back I pat-searched him for a concealed
11 weapon of any kind.

12 Q. Did you find any weapons on him?

13 A. No, I did not.

14 Q. After you pat-searched the suspect what did you tell
15 him to do?

16 A. He stood there very still.
17 The next order I gave him was to straighten up and interlock
18 his fingers behind his head.

19 Q. Okay. And did he do that?

20 A. Yes, he
21 did.

22 Q. Did he have any difficulty understanding that?

23 A. Again, a third order, I gave it to him one time and he
24 complied.

25 Q. Locked his fingers like that behind his head?

26 A. Yes.

Q. And put them back? You said that he stood up very
still?

A. Well, he stood up very
slowly, straightened up, very still.

1 Q. He wasn't weaving or wobbling around or anything?

2 A. No.

3 Q. Okay. Now, after this occurred, Officer Neal, what did
4 you do? A. I moved the stool he was

5 sitting on with my right foot, still keeping the suspect
6 secured. I advised him to walk behind the table and walk to
7 the door.

8 Q. Okay. Did he do that? A. Yes, he did.

9 Q. Did he indicate that he understood by his actions what
10 you told him to do? A. Yes, again he
11 complied and walked very slowly to the front door area.

12 Q. And during this time, Officer Neal, from the time you
13 first confronted the suspect until you were telling him to
14 walk towards the front door did he say any words or sounds
15 or anything like that? A. No, he did not.

16 He didn't utter any sound, make any noises, state anything
17 to me at all. He did comply with everything.

18 Q. Okay. Now, did you lead him outside the pizza parlor?

19 A. Not right away. No, I led him to the front door. At
20 that point I told him to place his hands against the wall.

21 Q. Did he do that? A. Yes, he did.

22 Q. Seemed to understand what you told him?

23 A. Um-hum.

24 Q. As you led him towards the front door I take it you
25 had an opportunity -- strike that. When you led him
26 towards the front door were you behind him?

1 A. Yes, I was.

2 Q. And I take it your eyes were focused on him?

3 A. Yes.

4 Q. You had an opportunity to see him walk?

5 A. Yes, I did.

6 Q. How far did he have to walk approximately?

7 A. I would say about twenty, twenty feet.

8 Q. And did you notice anything unusual about his walk?

9 A. Very slow.

10 Q. Did you notice that he was wobbling or weaving, anything
11 like that?

A. No, he was not.

12 Q. Any sort of a stagger or anything?

13 A. No, he was not.

14 Q. Would it be a normal slow walk?

15 A. Yes.

16 Q. After you had him -- you told him to place his hands
17 against the wall inside the pizza parlor?

18 A. Yes, he did.

19 Q. He did that for you?

A. He did that.

20 Q. What happened next?

21 A. Officer Ardonis
had come into the --

22 Q. That is the reserve officer?

A. Yes,

23 Reserve Officer Ardonis had come into the pizza parlor and
24 was standing there, and Officer Gromott, a fill officer, was
25 also standing in the door with drawn shotgun. I had the
26 defendant put his hands against the wall at which time he

1 complied. I gave an order to the Reserve Officer Ardonis
2 to place handcuffs on the suspect.

3 Q. And when the officer had to place the handcuffs on the
4 suspect, did he tell the suspect anything?

5 A. No. I gave the orders.

6 Q. You gave the orders. What did you tell the suspect?

7 A. I told him to place one hand behind his back, I believe
8 it was the left hand.

9 Q. Did he do that? A. He did.

10 Q. Did he place his left hand behind his back?

11 A. Yes, he did.

12 Q. He understood the difference between left and right
13 at that time? A. Again, one order.

14 Q. Did you handcuff -- did the reserve officer handcuff
15 his left hand? A. I believe it was his
16 left hand, yes.

17 Q. Then did you give him another order?

18 A. No, the reserve officer then grabbed him by the
19 shoulders, straightened him up, and took his right hand and
20 secured his handcuffs on him.

21 Q. When you say "Grabbed him by the shoulder and
22 straightened him up" had he fallen down or anything?

23 A. No, he still had his right hand on the wall and it is
24 a matter of holding the suspect so they won't fall at the time,
25 so you reach up and grab them by the shoulder and straighten
26 them up.

1 Q. So you have somebody, police procedure is instead of
2 having them straight against the wall you have them at an
3 angle so that they can't make any movement or anything like
4 that? A. Yes.

5 Q. Okay. What did you do next, Officer?

6 A. After the party was handcuffed and secured, he was then
7 taken by me to Officer Gromott's patrol car since Officer
8 Gromott had a caged police vehicle for prisoners and I didn't.
9 I was a canine officer at that time and I had a police dog
10 in the car.

11 Q. You had a police dog in the car? A. Yes.

12 Q. Did you bring your police dog into the restaurant?

13 A. No, I did not.

14 Q. Why not? What is the story on that?

15 A. Well, I would have had to control the dog and carry a
16 shotgun, and it would have been awkward. The sight of the
17 dog in a congested area like that would cause a lot of
18 turmoil.

19 Q. Just for our own -- I am sure that the jury would like
20 to know, what do you use a police dog for? What sort of
21 stuff does he do?

22 A. The police dog offers
23 protection, citizen protection searching for suspects in
buildings, so forth.

24 Q. Does that dog live at your house? A. Yes.
25 He is retired now. He lives with me.

26 Q. He is retired? All right. Now, you took the suspect

1 and placed him in Officer Gromott's vehicle?

2 A. Yes, I did. Right away.

3 Q. Then what happened next? A. I placed him
4 in the rear seat of the police vehicle and secured by locking
5 the rear door. I advised Officer Gromott we were going to
6 return to the scene.

7 Q. Okay. And did you return to the scene?

8 A. Yes, we did. Officer Gromott followed me to, at that
9 time the address corrected to 6217 Woosley, and that is
10 where the two of us responded.

11 Q. Okay. Now, at 6217 Woosley what happened?

12 A. When we arrived I observed two other officers which are
13 our merge officers or SWAT team officers, Officers Terry
14 Madocus and Officer Stangle. At that point I observed them
15 roping off the front door area of the residence at 6217
16 Woosley.

17 Q. And did you then respond over to Officer Gromott's
18 vehicle where the suspect was? A. Officer
19 Gromott was there and he secured the prisoner and stood by.
20 Then I responded to make contact with Officer Madocus.

21 Q. And what did you do next? A. When I
22 arrived and made contact with Officer Madocus he was
23 advising me there was evidence lying on the scene, it was
24 lying near the front door of the residence, and at that
25 point pointed out several empty twenty-two caliber casings.

26 Q. What happened next? A. We roped off

1 the area and I went back to my patrol vehicle and at that
2 point radioed for Detective Technician Crew and detectives
3 to respond to the scene.

4 Q. That would be Sergeant Parrott, Randall, Newkowsky?

5 A. Right. I don't know who exactly, who responded. I
6 left prior to their arrival.

7 Q. What did you do after you radioed in?

8 A. I asked them also for a supervisor, uniformed
9 supervisor to respond, bring a camera, and two other officers
10 arrived, made contact with me, Officer Beckwith and Officer
11 Lintern. They asked at that time if a weapon had been
12 found. I had told them no weapon had been found, and that
13 apparently from witnesses the defendant or the suspect at
14 that time ran on foot away from the residence. I advised
15 Officer Beckwith and Lintern to make a foot-search in the
16 direction the suspect ran in lieu of recovering the weapon.

17 Q. When they asked you if any weapon had been found they
18 asked you because you were the individual that apprehended
19 the individual? A. That is correct.

20 Q. And you meant no weapon had been found on the
21 individual? A. That is correct.

22 Q. Then what happened next? A. The two
23 officers went on their foot-search and I went back to
24 Officer Cromott's patrol car. I was going to take the
25 defendant out of the rear of the car and place him in my
26 patrol car at that time.

1 Q. Okay. And then what happened?

2 A. I went back to Officer Gromott's car and opened the
3 door. Officer Beckwith and Lintern came back and made
4 contact with me and advising me that they had found a weapon
5 at that time.

6 Q. And then what happened? A. Well, I closed
7 the door of the vehicle, again securing the defendant in the
8 patrol vehicle, went back to my own vehicle and radioed for
9 more assistance to come in and recover the weapon.

10 Q. Then what happened? A. They recovered
11 the weapon and I went back again to Officer Gromott's
12 vehicle. At that point I opened the rear door and I read
13 the defendant his rights.

14 Q. All right. Now, when you read the defendant his rights
15 where was he seated? A. Seated in the rear of
16 the patrol vehicle.

17 Q. And where were you in relation to him?

18 A. I was directly out of the door.

19 Q. Okay. And how far away were you from him when you read
20 him his rights? A. Well, I was leaning in,

21 my head was inside the vehicle. I was approximately four to
22 five inches away from his right ear.

23 Q. Inside the vehicle. When you open the door does a light
24 go on? A. A light comes on.

25 Q. Could you see the defendant? A. Yes.

26 Q. You were approximately four or five inches away?

1 A. Yes.

2 Q. What rights did you read him, Officer Neal?

3 A. I read him his constitutional rights from a Miranda
4 card that is supplied by the Police Department.

5 Q. And did you read it right off the card?

6 A. Word for word.

7 Q. Do you have that card with you?

8 A. No, I don't. A recent decision, we are not using them.

9 Q. Pardon me? A. A recent decision, I
10 guess we are not using them very much anymore.

11 Q. Really? Do you know that card by memory?

12 A. Yes, I believe I do.

13 Q. Okay. Could you tell us what you read to the
14 defendant? A. Yes.

15 Q. Excuse me, this individual that we have been talking
16 about, do you see him in Court today?

17 A. Yes, I do.

18 Q. Would you point him out, please?

19 A. Sitting over here (indicating).

20 MR. ROBINSON: Indicating the defendant, Your
21 Honor?

22 THE COURT: Yes. So ordered.

23 Q. (By Mr. Robinson) Officer Neal, would you tell us what
24 you read to the defendant? A. First of all, I
25 advised him verbally I was going to read him his rights, for
26 him to listen very carefully.

1 Q. When you said that what did he say or do?

2 A. He turned his head slightly and was looking at me, and
3 he nodded as though he understood.

4 Q. Okay. A. I advised him that I was
5 going to read him his rights, to listen very carefully, and
6 if he did not understand anything to indicate so and I would
7 explain it to him. He said, his word was, "Okay."

8 Q. Indicating that he had understood what you had told him?

9 A. With a nod, also.

10 Q. All right. A. We were both
11 speaking very softly, and at that point I started and I
12 advised him that he had the right to remain silent.

13 Q. And when you said that did he do or say anything?

14 A. I asked him if he understood after each question, I said,
15 "Do you understand that?" He said, "Yes," with a nod. I
16 said, "You have the right to an attorney present," and I
17 asked him if he understood that. And he said, "Yes." And I
18 advised him that anything that he said could and would be
19 used against him in a Court of Law. I asked him if he
20 understood that. He said, "Yes." I advised him if he didn't
21 have an attorney one would be appointed to represent him in
22 Court, and I asked him if he understood that. He said, "Yes."

23 Q. And when you were reading him these rights could you
24 tell us what he was doing? Was he listening?

25 A. He was handcuffed sitting in the vehicle, and he was
26 looking at me each time, and he nodded his head and said yes.

1 Q. At any time did he indicate that he didn't know what
2 was going on? A. No.

3 Q. Okay. Did it appear to you that he knew what was going
4 on? A. It appeared so.

5 MR. ROBINSON: Might we approach the bench, please?

6 THE COURT: Yes.

7 (Discussion off the record.)

8 THE COURT: Ladies and gentlemen, it has been
9 agreed by counsel that I could advise you of the fact that
10 when the constitutional rights are read, and a person elects
11 not to respond, in other words, to remain silent, you are
12 not to infer anything from that because it is a constitutional
13 right, and that the purpose of eliciting the testimony that
14 the constitutional rights were presented to the defendant in
15 this case are presented only for the purpose of showing the
16 observation of the officer as to the defendant's demeanor,
17 state of mind, et cetera, it has no inference, no
18 implication by the fact that he remained silent that you are
19 to infer anything from that. Do you all understand that?
20 He has a right to remain silent.

21 MR. ROBINSON: Thank you, Your Honor.

22 Q. (By Mr. Robinson) Now, did you ask Mr. Ismail -- after
23 you asked him at the completion of each right did he
24 understand it, did he indicate that he did?

25 A. He said yes, nodding his head.

26 Q. And could you tell us what happened next, Officer?

1 A. I asked him if he wished to waive his right to remain
2 silent.

3 Q. What did he say? A. He responded
4 verbally by stating no.

5 Q. Okay. And what happened next? A. I asked
6 him if we had any questions would he like to talk to us.

7 Q. What did he say? A. Again he verbally
8 stated no.

9 Q. What happened next? A. I then advised
10 him at that point that I had some basic questions to ask him,
11 such as his name, et cetera.

12 Q. Okay. And what did he say then? A. He
13 verbally stated, "That is okay."

14 Q. Okay. Now, when you asked him he -- strike that.

15 When you asked him the question if you had any
16 questions would he like to talk to you about it, did you
17 mention anything regarding the incident regarding the
18 incident, the shooting, or anything like that, or did he
19 say anything about the incident of the shooting?

20 A. I said in regard to the incident.

21 Q. Okay. So what did you say to him regarding that?

22 A. Refer to my report here again --

23 Q. Okay. A. I asked if we had any
24 questions would he talk to us, verbally stated no, in regard
25 to the incident.

26 Q. Okay. And after that, then what did you ask him?

1 A. Again I advised him that I, that I had basic questions
2 to ask, such as his name. He stated verbally that was okay.

3 Q. Then what did you ask him? A. I then
4 asked him for his name.

5 Q. Okay. And did he give it to you?

6 A. Yes. He indicated by turning slightly to me and very
7 slowly and very softly he stated, "David Ismail."

8 Q. And did you ask him more basic questions?

9 A. Well, after he stated his name was David Ismail, he
10 spelled his last name for me.

11 Q. He spelled it? A. Yes. And I was
12 writing it down.

13 Q. Okay. And did you ask him a few more basic questions?

14 A. Yes, I believe only one or two. I asked him if he
15 owned a car, and he stated yes. The last question I asked
16 the, "Did you drive to the shopping center?" And he stated,
17 "No, I walked."

18 Q. Okay. Now, at this time did you ask him any more
19 questions? A. No, I did not.

20 Q. Now, what did you do -- strike that.

21 During this time you were having this brief
22 conversation with Mr. Ismail, Officer Neal, did you notice
23 whether or not he slurred his speech?

24 A. No, he did not.

25 Q. Would slurred speech be an indication that somebody was
26 under the influence of alcohol? A. Yes, it

1 would.

2 Q. And did you notice whether or not he understood what
3 you were asking him to do?

4 A. I felt at that
5 point he did understand. He indicated by nodding his head
6 and also giving me a verbal answer at the same time.

7 Q. Okay. After this took place did you take Mr. Ismail
8 someplace?

9 A. Yes, at that point I asked
10 him no more questions, and I asked him to step out of the
11 patrol vehicle. It is not too easy getting out of the rear
12 seat of a patrol vehicle , so I told him watch your head,
13 and grabbed him by his right arm, placing my hand on his
14 back so as not to injure him when he exited the vehicle, and
15 I had him exit the vehicle and at that time walked him to
16 my patrol car which contained the canine.

17 Q. He was handcuffed getting out of the patrol vehicle?

18 A. Yes.

19 Q. Did he make it out of the vehicle okay?

20 A. Yes, he did.

21 Q. Didn't stumble or hit his head? A. No.

22 As a matter of fact he thanked me, whatever reason.

23 Q. Then did you transport him to the Police Department?

24 A. I walked him to my patrol vehicle. We got to my patrol
25 vehicle I advised Mr. Ismail at that point I had a police
26 dog in the car. I advised him further that the police dog
so responds to any hostility, so that if he became irate or
hostile or upset of any kind that the dog would

1 unfortunately bite him if I couldn't control him. He told me
2 he understood that and looked at the dog, and I opened the
3 door, set him in the patrol vehicle in the front seat with me
4 and secured him with a seat belt. I asked him if he was
5 comfortable and he stated yes, he was, except that the
6 handcuffs were a little tight.

7 Q. Okay. And then what did you do?

8 A. I told him at that time, that point that we would be
9 down, we were going downtown and we'd be down there very
10 shortly and I would take the handcuffs off of him. I
11 secured the door by locking it and securing him in the seat,
12 at that point walked around to the driver's door, I advised
13 the officers on the scene I would be responding to the
14 detective bureau with Mr. Ismail, that is where they could
15 find me.

16 Q. Okay. Officer, did the defendant sit there knowing that
17 this was a police dog in the car without making any sudden
18 moves or things like that?

19 A. Yes, he knew
20 that the dog was there. As a matter of fact, the dog came
21 over and introduced himself, and he looked at the dog, smiled,
22 and was just turning very slowly in the car. My dog turned
23 back around and stuck his head out the window.

24 Q. Okay. You took him down to the detective bureau?

25 A. Yes. I advised radio I was enroute to the detective
26 bureau and to have the detectives stand by.

Q. Did you walk him up to the third floor?

1 A. Pulled to the rear of the building, we went downstairs
2 to where the elevator is to go to the third floor of the
3 Police Department and the detective bureau, we did, we went
4 up to the elevator and through another set of doors.

5 Q. Did you notice anything unusual about his ability to
6 walk during this time? A. No. After we got
7 out of the vehicle and were at the Police Department I no
8 longer held onto Mr. Ismail and allowed him to walk himself.
9 I walked slightly behind him.

10 Q. Okay. And at the detective bureau did you contact a
11 technician to draw blood from Mr. Ismail?

12 A. Yes, as soon as I got into the bureau I put Mr. Ismail
13 into one of the interview rooms, Room B and I went to the
14 telephone, had a radio call for a technician to come and
15 extract blood.

16 THE COURT: Perhaps this would be a good time to
17 take a break.

18 MR. ROBINSON: Fine, Your Honor.

19 THE COURT: Ladies and gentlemen, we will take our
20 morning recess of fifteen minutes, you will keep in mind my
21 admonition not to discuss the case among yourselves or with
22 anyone else or express any opinion about the case or permit
23 anybody to discuss it with you. We will resume at 11:15.
24 The defendant will be ordered to return, also.

25 (Short recess taken.)

26 THE COURT: Let the record show that the jury is

1 present, defendant is present.

2 MR. ROBINSON: Thank you.

3 Q. (By Mr. Robinson) Officer, where we left off, I think
4 you walked Mr. Ismail up to the third floor of the Police
5 Department? A. That is correct.

6 Q. At that time what did you do next?

7 A. Walked into the detective bureau where I placed Mr.
8 Ismail into interview room B, detective bureau.

9 Q. Then you called for a technician?

10 A. Yes, I did.

11 Q. Now, during this time were you having a conversation
12 with Mr. Ismail? A. Basic questions.
13 I kept asking if he was comfortable, there was anything I
14 could do for him.

15 Q. And was he responding to these questions?

16 A. Yes, he was. He indicated the handcuffs were a little
17 tight and I advised him I would be taking them off him
18 shortly.

19 Q. Did you take them off in the interview room?

20 A. Yes, I did.

21 Q. Now, did a technician respond to draw blood from Mr.
22 Ismail? A. Yes, she did.

23 MR. ROBINSON: Might we have these two envelopes
24 marked People's next, A and B?

25 THE COURT: Yes, be 25A and B.

26 (Whereupon, the above-mentioned items, being two

1 envelopes, were marked as People's Exhibits 25A and B for
2 identification.)

3 MR. ROBINSON: May I approach the witness, Your
4 Honor?

5 THE COURT: Surely.

6 Q. (By Mr. Robinson) Showing you the People's Exhibit 25A
7 and B, do you recognize that? A. Yes, I do.

8 Q. Can you tell us what that is? A. It is the
9 data sheet for blood and urine sample from the County lab.

10 Q. Did you fill out any information contained on that?

11 A. Yes, I did, several parts of it.

12 Q. Could you tell us what you put thereon in your writing?

13 A. Yes, number one, submitting agency, I wrote S.J.P.D.
14 indicating the Police Department; number two, the case, I
15 indicated number four, my name, J. Neal, the name of the
16 suspect, I wrote his name in, David M. Ismail, and his age,
17 forty; item seven, the date and time of the incident, 11-6-
18 75, 1900 hours; number nine, the place where the specimen
19 was taken was detective bureau.

20 Q. And did you indicate on there the time that the

21 specimen was taken? A. I did not. However,
22 the technician did.

23 Q. Okay. What time is that? A. 11-6-75,
24 8:32 p.m.

25 Q. 8:32 in the evening? A. Yes.

26 Q. Were you present when the blood sample was drawn from

1 Mr. Ismail?

A. Yes, I was.

2 Q. Did you have any conversation with Mr. Ismail prior to
3 drawing the blood sample?

A. I advised him
4 we were going to take a chemical blood sample from him. He
5 indicated okay. I had him take his coat off and roll up his
6 sleeve.

7 Q. And did Mr. Ismail do that?

A. Yes, he did.

8 Q. As he sat there was he seated in a chair?

9 A. Yes, he was.

10 Q. By a table?

A. Yes.

11 Q. Okay. Could you describe how he was seated, please?
12 Was he weaving back and forth or falling off the chair,

13 anything like that?

A. No, my recollection he
14 sat straight up in the chair, both feet on the floor with his
15 hands in his lap and clasped together.

16 Q. And you were present while a blood sample was withdrawn?

17 A. Yes, I was.

18 Q. What happened to that blood sample?

A. After the blood sample was extracted, the technician
19 had taken it, put the cap on it, placed it into a bottle,
20 put the cap on it, at that point put a little, I guess it
21 would be a white sticker on it indicating, I believe, the
22 time and the case number, and so forth, and then gave it to
23 me for my initials.

24 Q. Did you put your initials on it?

25 A. Yes, I did.
26

1 Q. Then what did you do with the sample?

2 A. I placed it into this envelope here.

3 Q. 25A ? A. Yes.

4 Q. What did you do with the envelope?

5 A. After I placed it in there I sealed the envelope and
6 then kept it.

7 Q. And where did you place the envelope?

8 A. I placed the envelope in the County lab where they have
9 a little box inside there that no one can get in once it
10 goes in.

11 Q. Is it sort of like, a drop-chute to a mailbox?

12 A. Like a drop-chute to a mailbox, yes.

13 Q. And is the seal that you placed on that envelope still
14 on there? A. Yes, it is.

15 Q. Okay. I notice that the envelope is cut at the bottom.
16 Did you cut it -- A. No, I did not.

17 Q. -- open? Now, was Mr. Ismail, did he say anything
18 to you after the blood sample was withdrawn regarding going
19 to the bathroom or anything like that?

20 A. Yes, he did. I believe he asked to go to the bathroom.

21 Q. Okay. And what happened then?

22 A. Well, I advised him that we were going to be taking a
23 urine sample, also, and that I took and I had a urine bottle
24 there for the sample, and I responded to the restroom with
25 him.

26 Q. And is there any means by which you do that? Does

1 somebody have to void their bladder or anything like that?

2 A. Yes, they do.

3 Q. Could you tell us about that, please?

4 A. They have to void the bladder the first time, I believe
5 twenty minutes later or so void for a second time.

6 Q. Okay. And which sample do you take, the first or the
7 second? A. Take them both.

8 Q. You would take them both, huh? A. Yeah.

9 Q. Did Mr. Ismail do that ? A. Yes, he did.

10 Q. And that sample, the urine sample, were those also
11 turned over to the lab? A. Yes, they were.

12 Q. Now, at the detective bureau did you ask Mr. Ismail to
13 do anything regarding any property he had?

14 A. Yes, I advised him to take all of the property that he
15 had out of his pockets, his watches, rings, money, wallets,
16 and place it on the table.

17 Q. Did he do that? A. He complied, yes.

18 Q. And did you identify what property he had and things
19 like that? A. Yes, I did.

20 Q. Okay.

21 MR. ROBINSON: Your Honor, might we have this next
22 exhibit marked as People's next in order, various items
23 contained in a plastic bag?

24 THE COURT: Yes, it will be number 26, defendant's
25 personal items.

26 (Whereupon, the above-mentioned items, being a bag

1 of personal items, were marked as People's Exhibit No. 26 for
2 identification.)

3 Q. (By Mr. Robinson) Showing you People's Exhibit 26 with
4 a tag on the inside, do you know what that tag is?

5 A. Yes, that is what we call a form 13-A, it is an evidence
6 tag that is attached to the evidence which is placed in a
7 plastic bag and secured by wire.

8 Q. Okay. And did Mr. Ismail have any money on him?

9 A. I don't remember.

10 Q. Okay. Showing you, showing you an address book, red on
11 the outside, do you recognize that address book?

12 A. Yes, I do.

13 Q. Okay. How do you recognize that?

14 A. By my initials, badge number, case number that I wrote
15 in there the night of the incident.

16 Q. Is that something Mr. Ismail removed from his property
17 the night you had him at the detective bureau?

18 A. Yes.

19 Q. And showing you this Oasis Motel key, number 129, do
20 you recognize that?

A. Yes, I do.

21 Q. Okay. And did Mr. Ismail have that on his person?

22 A. Yes, he had it in his pocket.

23 Q. And showing you this wallet containing some money and
24 some cards, do you recognize that?

25 A. Yes, I did.

26 Q. Okay. And did Mr. Ismail have that?

1 A. Yes, he did. One of the detectives had taken charge of
2 this.

3 Q. Okay. And also some loose change? Do you recall loose
4 change that night? A. Yes, I do.

5 Q. And did he have that on him? A. Yes.

6 Q. Now, are these the only items that you recovered from
7 Mr. Ismail that night? A. The best of my
8 recollection, yes.

9 Q. Okay. Showing you People's Exhibit 10-BB, does that
10 appear to be the way Mr. Ismail was dressed the night that
11 you apprehended him? A. Yes, it was.

12 Q. Okay. Thank you. Now, Officer, did you form an
13 opinion as to Mr. Ismail's state of sobriety the night in
14 question? A. Yes, I did.

15 Q. And could you tell us if you felt whether or not Mr.
16 Ismail was under the influence of any alcohol?

17 A. I felt no, he was not.

18 Q. Did you feel he was in any way impaired by alcohol?

19 A. No.

20 Q. Okay. Could you smell alcohol on his breath?

21 A. Slightly, yes.

22 Q. And you told us that you came within five inches of him
23 in the patrol vehicle. What sort of alcohol could you smell,
24 if you can tell us that? A. Beer.

25 Q. Smelled beer. Okay. And you saw him drinking a beer
26 or having a beer in his hand in the pizza place?

1 A. Right.

2 Q. Now, Officer, are you trained in observing whether or
3 not an individual that you have arrested, or a suspect that
4 you have taken into custody, is in fact under the influence
5 of any alcohol or narcotics? A. Yes.

6 Q. Okay. And why are you trained to observe this?

7 A. So when you make the arrest it would be a valid arrest
8 on the party, and in lieu of the indications that you have of
9 the party at the time, fits the elements of the crime.

10 Q. And also for possible evidentiary value as to whether
11 or not a person is under the influence of anything?

12 A. That is correct.

13 Q. Now, you talked with Mr. Ismail, you saw him walk, you
14 saw him comply to instructions, you saw him do certain things
15 you asked him to do, you were in the patrol car with him, and
16 it is your opinion that he wasn't impaired in any amount?

17 A. That is correct.

18 Q. Okay.

19 MR. ROBINSON: Thank you. I have nothing further,
20 Officer.

21 CROSS-EXAMINATION

22 BY MR. PESTARINO:

23 Q. Officer, this sounds like a drunk-driving case. Let me
24 ask you this, on patrol you have had occasions to arrest
25 people for driving under the influence of alcohol, have you
26 not? A. Yes.

1 Q. And you probably make many arrests?

2 A. Yes, sir.

3 Q. And sometimes it is difficult to tell whether a person
4 is under the influence, even when you suspect that he is,
5 isn't that right?

6 A. Sometimes. But very
very slight.

7 Q. Sometimes people who have pretty good tolerance for
8 alcohol don't show any visible signs, isn't that right?

9 A. Yes.

10 Q. That is why you use an expert in Court?

11 A. Yes.

12 Q. And you have been in Court, you have listened to expert
13 testimony about the effects and of the amount of alcohol
14 that people have drank, have you? A. Yes, sir,
15 I have.

16 Q. And you know that sometimes with a very little amount
17 people can --

18 MR. ROBINSON: Wait a minute, I am going to object
19 to this. It is hearsay.

20 THE COURT: It is cross-examination, overruled.

21 Q. (By Mr. Pestarino) And you know from your experience
22 and from being in Court that sometimes people that have little
23 to drink show some signs, don't they?

24 MR. ROBINSON: I am going to object to this unless
25 the witness has personally testified as an expert. Counsel
26 is trying to do indirectly what he can't do directly.

1 THE COURT: He has testified he has had training.

2 MR. ROBINSON: Now counsel is saying, "Haven't you
3 sat in Court and listened to expert testimony," and,
4 "Isn't it a fact that experts testify to that"?

5 MR. PESTARINO: That is part of his training,
6 isn't it?

7 THE COURT: If you are going to testify as to what
8 experts testify to then I will sustain the objection. I
9 understand the question to require Officer Neal to answer
10 from his own experience.

11 MR. PESTARINO: From his own experience and what
12 he has testified, because, if Your Honor please, part of his
13 training is being in Court and listening to experts.

14 MR. ROBINSON: No.

15 MR. PESTARINO: Of course.

16 MR. ROBINSON: Why don't you ask him that?

17 THE COURT: He did testify that he had been in
18 Court listening to experts. The question you asked him ,
19 whether or not people who had had a slight amount to drink
20 show effects of it, are you asking whether experts have
21 testified to that or whether he knows?

22 MR. PESTARINO: I asked him if he'd been in
23 Court and he heard that.

24 MR. ROBINSON: That is hearsay.

25 MR. PESTARINO: It is hearsay, but it is part of
26 his opinion as it is part of the history of his training in

1 this particular field.

2 THE COURT: Well, I am going to sustain the
3 objection to that question. However, you may go into his
4 training as to whether or not --

5 MR. ROBINSON: Thank you, Your Honor.

6 MR. PESTARINO: All right.

7 Q. (By Mr. Pestarino:) Officer, you have had sufficient
8 training in this field both in police school as a reserve
9 officer and as an officer? A. I have had some
10 training, yes.

11 Q. And in the ordinary case when you suspect that a person
12 is under the influence of liquor, in the driving - drinking
13 cases I am talking about mostly, you put --

14 MR. ROBINSON: I am going to object to that,
15 drink and driving cases are irrelevant to this particular
16 proceeding. We are talking about alcoholic mental state.

17 THE COURT: Counsel, give him a chance to finish.

18 MR. ROBINSON: Thank you.

19 MR. PESTARINO: Thank you, Your Honor. I don't
20 think that it is irrelevant, Your Honor. I think that this
21 is --

22 MR. ROBINSON: There is no objection before the
23 Court, counsel. Ask your next question.

24 THE COURT: I indicated that you may proceed.
25 This was a preliminary statement and not evidence, and you
26 haven't gotten around to the question yet.

1 MR. ROBINSON: Thank you, Your Honor.

2 Q. (By Mr. Pestarino) Well, you in the ordinary drinking
3 and driving case where you suspected a person has been
4 drinking and driving, and you arrest him or stop him, you
5 put him through certain sobriety tests, don't you?

6 A. Yes, I do.

7 Q. And the reason for those sobriety tests is to enhance
8 or confirm your opinion, isn't it, as to sobriety or not being
9 sober, isn't it? A. That is correct.

10 Q. So sometimes a person even though he is under the
11 influence of liquor can still walk and talk and act?

12 A. Um-hum, that is correct.

13 Q. Again, it goes back to the question of tolerance,
14 doesn't it? A. Tolerance level, yes.

15 Q. Yes.

16 MR. ROBINSON: I am going to object and make a
17 motion to strike. Unless this officer has done empirical
18 study regarding tolerance he can't give an opinion to that.

19 MR. PESTARINO: It is part of his ordinary
20 business to know these things. I can ask him some more
21 preliminary questions.

22 THE COURT: Well, he is certainly not a technical
23 expert, but he can testify as to his own observations. I
24 might admonish the jury that whenever anyone is asked for
25 an opinion, whether an expert or a lay person, and the Court
26 allows that opinion to be given, the fact that I allow the

1 answer to stand, doesn't mean that I am expressing any
2 opinion of my own as to what weight you should give that
3 opinion. You may proceed.

4 Q. (By Mr. Pestarino) So anyway, there was something that
5 prompted you to have not only a blood test taken but a urine
6 sample taken in this particular case, wasn't there, Officer?

7 A. Yes, sir, it is a procedure.

8 Q. And that is basic police procedure you followed in
9 doing this?

A. Yes, sir, on felony cases,

10 yes.

11 Q. Even though you saw no apparent or outward or objective
12 signs or symptoms.

A. That is correct.

13 Q. Why did you take two samples?

14 A. Again, this is a procedure of the police department
15 where you take both samples. I believe one can be proven in
16 alcohol and one in drugs.

17 Q. And you didn't see any symptoms or signs that would
18 lead you to tend to believe that Mr. Ismail was under drugs,
19 did you?

A. No, sir, I did not.

20 Q. And how long in all did you spend with Mr. Ismail that
21 particular night? Just a rough idea.

22 A. A rough idea?

23 Q. Yeah.

A. I believe from about seven
24 p.m. to approximately twelve thirty in the morning.

25 Q. Seven p.m. to twelve thirty in the morning?

26 A. Four, maybe five hours.

1 Q. Now, he gave you some certain basic information when
2 you asked him for his name and his age, and so forth?

3 A. Yes, sir.

4 Q. Did you find out that what he gave you as to his date of
5 birth was incorrect? You want to look at that?

6 A. I don't have this in my notes, sir. I don't remember.
7 The detectives had taken charge of his personal belongings.

8 Q. Later on you found that he was forty years of age,
9 didn't you?

10 A. Yes, I did. I wrote it on
the sheet.

11 Q. Do you remember him giving you the date of birth?

12 A. No, I do not.

13 Q. You don't remember that. And do you remember him
14 spelling his father's name wrong?

15 A. No, I do not.

16 MR. ROBINSON: I am going to object to that, that
17 assumes something not in evidence.

18 MR. PESTARINO: It is cross-examination.

19 THE COURT: It assumes facts not in evidence.
20 However, it may be tied up later. If not, it can be
21 stricken.

22 MR. ROBINSON: Thank you, Your Honor.

23 THE COURT: In any event, the Officer says he
24 doesn't have the information. So it doesn't make any
25 difference.

26 MR. PESTARINO: Doesn't matter, doesn't matter that

1 much.

2 Q. (By Mr. Pestarino) Let me understand, what you did
3 with those samples, you gave them to the technician, or did
4 you take them?

5 A. I took them from the
6 technician.

7 Q. And what did you do with them?

8 A. After marking them with my name, badge number, and
9 securing them into the envelope I took them to the County
10 Jail where they have inside of an alcoholic investigation
11 bureau there, they have the chute or slot where you place
12 the evidence.

13 Q. Now, when you arrested Mr. Ismail what time was that?

14 A. About eighteen fifty-seven hours.

15 Q. Eighteen fifty-seven would be six fifty-seven?

16 A. Yes, sir.

17 Q. What time was it when you went back to the scene?

18 A. Approximately, I'd have to give you an approximate
19 time. I didn't indicate it down. The approximate time
20 was about twenty minutes later .

21 Q. About twenty minutes later? A. About
22 nineteen twenty or seven twenty hours.

23 Q. Did you do anything at the scene except -- excuse me --
24 did you do anything at the scene except help secure the
25 scene?

26 A. At the scene at 6217
Woosley or at the arrest scene?

Q. No, at the scene on Woosley.

1 A. No, I did not.

2 Q. You didn't do anything except secure the --

3 A. Two other officers had taken charge. When we take
4 charge of a scene it is a problem if another officer steps
5 in because he doesn't know what the other officer has done.
6 So, no, I did not.

7 Q. How long did you stay there?

8 A. Approximately fifteen minutes.

9 Q. And the defendant was in the police car all of the time?

10 A. Yes, he was.

11 Q. Alone?

12 A. Yes, he was. He was alone
13 in the police vehicle but there was an officer standing
14 outside.

15 Q. With the dog?

16 A. At which time?

17 Q. At the scene.

18 A. The first time he
19 was in the patrol vehicle he was alone in the car with an
20 officer standing outside. The second time he was there he
21 was with my dog who was keeping him company.

22 Q. And was the -- would you characterize the defendant's
23 behavior that particular night from the time that you saw
24 him at six fifty-seven until you left him almost the next
25 morning, would you characterize his behavior? How would
26 you characterize it?

27 A. His demeanor
28 was very well, excellent. I had no problems with him. He
29 complied with everything I asked him to do. And -- or any
30 of the other officers asked him to do, was very quiet, very

1 cooperative. About the size of it. I couldn't go any
2 farther. I had no problem whatsoever with Mr. Ismail. Very
3 courteous, very kind.

4 Q. But he wouldn't talk about what had happened?

5 A. No.

6 Q. Okay.

7 MR. PEZARINO: Thank you.

8 MR. ROBINSON: Yes.

9 REDIRECT EXAMINATION

10 BY MR. ROBINSON:

11 Q. Officer, you told us that in any felony arrest it is
12 the policy of the San Jose Police Department to take both
13 a blood and urine sample? A. Yes, it is.

14 Q. And a felony arrest, I take it a murder is a felony
15 arrest? A. Yes.

16 Q. Burglary? A. Yes.

17 Q. Robbery? A. Yes.

18 Q. Any sort of a crime involving a felony you automatically
19 take a blood and urine sample from the defendant?

20 A. Yes.

21 Q. Regardless of whether you even smell any alcohol or
22 observe any sign of intoxication or not?

23 A. That is correct.

24 MR. ROBINSON: Thank you. I have nothing further,
25 Officer. Good job.

26 RECROSS-EXAMINATION

1 BY MR. PESTARINO:

2 Q. Does it have on that envelope what the blood alcohol
3 was?

4 MR. ROBINSON: Objection --

5 THE WITNESS: No.

6 MR. PESTARINO: I am just asking.

7 THE COURT: You can ask if it is on the envelope.

8 Answer yes or no. He said no.

9 THE WITNESS: Not that I recall.

10 MR. PESTARINO: Thank you.

11 THE COURT: Thank you, Officer.

12 (Witness excused.)

13 MR. ROBINSON: People call Mrs. Patel.

14 THE COURT: Ranjan Patel.

15 RANJAN PATEL,

16 called as a witness on behalf of the people, being first
17 duly sworn, was examined and testified as follows:

18 DIRECT EXAMINATION

19 BY MR. ROBINSON:

20 Q. Could you state your full name, spelling your last
21 name for the record? A. Patel, Ranjan,

22 P-a-t-e-l.

23 Q. And Mrs. Patel, do you own a business?

24 A. Yes.

25 Q. And what business do you own?

26 A. Motel business.

1 Q. And what is the name of that motel?

2 A. Oasis Motel.

3 Q. Where is that located? A. 5340
4 Monterey Road.

5 Q. Santa Clara County? A. Yes.

6 Q. San Jose? A. Um-hum.

7 Q. And do you own that business with your husband?

8 A. Yeah.

9 Q. Now, Mrs. Patel -- strike that.

10 MR. ROBINSON: Your Honor, could we have this
11 registration card marked as People's next in order?

12 THE COURT: Be number 27, the Oasis Motel
13 registration card.

14 (Whereupon, the above-mentioned item, being a
15 registration card, was marked as People's Exhibit no. 27
16 for identification.)

17 Q. (By Mr. Robinson) Mrs. Patel, I am going to show you
18 People's Exhibit No. 27, okay? Can you tell me, do you
19 recognize that? Do you know what that is?

20 A. Um-hum. It is --

21 Q. Why don't you sit closer to the mike. Can you tell us
22 what that is? A. Yeah, it is my card.

23 Q. What is that card? Is that a registration card?

24 A. Yeah, is registration card.

25 Q. Is that a registration card for your motel?

26 A. Yeah.

1 Q. And can you tell us how the information contained on
2 that registration card is put there?

3 A. I didn't get you.

4 Q. How does that writing get on that card?

5 A. I didn't get you.

6 THE COURT: Who put it on?

7 THE WITNESS: I did this one.

8 Q. (By Mr. Robinson) This information with the name, the
9 address, and everything, who writes that on there?

10 A. There it is mine.

11 MR. PESTARINO: Counsel, I will stipulate that
12 everything is in order here and if you want to lead her go
13 ahead.

14 MR. ROBINSON: Thank you.

15 MR. PESTARINO: Make it easier for you.

16 Q. (By Mr. Robinson) Would you tell us, did you write
17 this information on there in ink?

18 A. No, this one, this, the man is there.

19 Q. The man that registers writes that?

20 A. Yeah.

21 Q. And is that kept in the course of your business? Does
22 your business keep those cards? A. Yeah.

23 Q. Do you rely upon that information?

24 A. Um-hum.

25 Q. Okay. Now, directing your attention to November the
26 6th, 1975, did David Ismail come to your motel?

1 A. Um-hum.

2 Q. And did he register? A. Yeah.

3 Q. Check in for a room? A. Yeah.

4 Q. Okay. And what room did he check into?

5 A. One twenty nine.

6 Q. One twenty nine? A. Um-hum.

7 Q. And how many nights did Mr. Ismail register for?

8 How many days was he going to stay there?

9 A. He just took the room for only one day.

10 Q. One day? A. Yeah.

11 Q. And did he pay for that room?

12 A. Yeah.

13 Q. How did he pay? A. \$20.00.

14 Q. Cash money? A. Yeah. And I give a
15 little thing, just for the room rent is \$11.66, but he give
16 me the twenty dollar bill and I gave him the rest of the
17 money.

18 Q. You gave him change money? A. Yeah.

19 Q. All right. And do you have a policy in your motel
20 about paying in advance for rooms? A. Yeah.

21 Q. Okay. And how many nights did he tell you he was
22 going to stay there? A. He just took
23 the room for one day.

24 Q. One day. So if he said he was going to stay there two
25 days you would have charged him for two days at the start?

26 A. Yeah.

1 Q. So he just stayed there one day, right?

2 A. Yeah.

3 Q. Okay. Now, Mrs. Patel, what time on November the 6th,
4 1975, did Mr. Ismail come to your motel?

5 A. Around about 4:00 o'clock.

6 Q. 4:00 o'clock in the afternoon?

7 A. Yeah.

8 Q. Okay. And how did he arrive? How did he get there?

9 A. I think he came by the cab.

10 Q. By cab? A. Yeah.

11 Q. Okay. And the cab dropped him off in front of the
12 motel? A. Um-hum.

13 Q. And then he came in and registered?

14 A. Yeah.

15 Q. Okay. Told you he would be there for one day, right?

16 A. Yeah.

17 Q. Okay. And did you give, then give him his room key?

18 A. Yeah.

19 Q. And did he go to his room? A. Yeah.

20 Q. Okay. Now, did he talk to you later on that day after
21 he registered? A. Yeah, he just called me
22 for the cab.

23 Q. All right. He came out or called you on the phone?

24 A. No, he came in the office and told me for the cab.

25 Q. Told you to call a cab? A. Yeah.

26 Q. Did you call a cab? A. Yeah.

1 Q. And did you tell the cab where to go?

2 A. Just in room, in his room.

3 Q. One twenty nine? A. One twenty nine.

4 Q. Okay. And is that the last time you saw Mr. Ismail?

5 A. Yeah.

6 Q. All right. Now, besides registering for the room and
7 telling you to call a cab did you have any other conversation
8 with him? A. No.

9 Q. Okay. Did you ask him why he was in the area or what
10 he was going to do, anything like that?

11 A. No, I didn't ask him anything.

12 Q. Okay. Did he tell you anything about why he was down
13 there? A. No.

14 Q. Okay. There was no real conversation?

15 A. No.

16 Q. Okay. Now, did Mr. Ismail have any luggage with him,
17 suitcases, anything like that? A. I don't
18 think so. I didn't see that.

19 Q. You didn't see that? A. No.

20 Q. Did you know -- what was he wearing, do you know?

21 A. He wear the suit.

22 Q. Was wearing a suit? A. Um-hum.

23 Q. With a tie? A. Yeah.

24 Q. And shirt? A. Um-hum.

25 Q. And was his suit, Mrs. Patel, when he checked in, was
26 it buttoned up like this or was it open, do you remember?

1 A. I didn't really look at it.

2 Q. Did you see any gun with Mr. Ismail?

3 A. No.

4 Q. Didn't see a gun? Okay. Had Mr. Ismail ever stayed at
5 your motel before? A. No, I don't think
6 so.

7 MR. ROBINSON: Thank you, Mrs. Patel. I have no
8 further questions.

9 THE WITNESS: Okay. Thank you.

10 THE COURT: Just a moment, please, the attorney may
11 ask you a question.

12 MR. PESTARINO: Yeah, I want to ask you a few
13 questions.

14 CROSS-EXAMINATION

15 BY MR. PESTARINO:

16 Q. I am referring to People's Exhibit for identification
17 number 27, Mrs. Patel, the writing that is on that card, did
18 you put it there or did the person put it there?

19 A. This? All of this?

20 Q. Yeah. A. By this, staying, you
21 know who is staying this motel, this is by himself, and this
22 one, and this one, and this one I did myself (indicating).

23 Q. So the name David Ismail was written by David Ismail?

24 A. Yeah.

25 Q. The address, 1297 Huron Street -- A. Um-hum.

26 Q. -- number 402 was written by David Ismail?

1 A. By person, yeah.

2 Q. And the city, London, Ontario, and the state, Canada,
3 was all written by David Ismail?

4 A. Yeah.

5 Q. Okay. Thank you. I have a few more questions.

6 How did it happen -- strike that. Did you see
7 David Ismail arrive at your motel?

8 A. Yeah.

9 Q. How did he come to your motel?

10 A. By the cab.

11 Q. What kind of a cab?

A. I think it is

12 yellow cab, yeah.

13 Q. Yellow, green, what?
14 think.

A. Yellow cab, I

15 Q. Do you know what time he arrived there?

16 A. Around about 4:00 o'clock.

17 Q. About 4:00 o'clock. Did he have a small suitcase?

18 A. I didn't see the luggage.

19 Q. You didn't see the luggage?

A. Yeah.

20 Q. Okay. Did he come to see you later and ask you about
21 a place to eat?

A. No.

22 Q. He didn't ask you where he could eat?

23 A. No.

24 Q. Did he ask you for a bar or where there was a bar?

25 A. He asked me for the cab.

26 Q. He just asked you for a cab?

A. Yeah.

1 Q. But he didn't ask you for a place to eat?

2 A. No, I don't remember that.

3 Q. You don't remember that. So the only thing you remember
4 is that he asked you for -- A. Yeah.

5 Q. -- to call a cab? A. Yeah.

6 Q. Did you talk to him at all other than just getting the
7 cab for him? A. No, I just called for
8 the cab and I told her, the cabdriver, to go to one twenty
9 nine.

10 Q. Did he tell you where he wanted to go?

11 A. No.

12 Q. Do you know when he called you, he called you on the
13 phone for a cab? He didn't talk to you personally?

14 Face to face? A. Yeah.

15 MR. ROBINSON: Well, I am going to object to that,
16 that question can't be answered.

17 THE COURT: It is ambiguous.

18 Q. (By Mr. Pestarino) Did he talk to you or did he phone
19 you? A. He came in the office and
20 asked for the cab.

21 Q. All right. He came to your office and he asked for a
22 cab? A. Um-hum.

23 Q. Did you smell any liquor on his breath?

24 A. No, because there is a glasses in the office.

25 Q. Okay. All right.

26 MR. PESTARINO: Thank you. That's all.

1 MR. ROBINSON: Thank you. I have nothing further.
2 Thanks for coming in.

3 (Witness excused.)

4 MR. ROBINSON: The People call Mr. Borg.

5 JOSEPH ARTHUR BORG,

6 called as a witness on behalf of the People, being first
7 duly sworn, was examined and testified as follows:

8 THE CLERK: Take the witness stand please.

9 DIRECT EXAMINATION

10 BY MR. ROBINSON:

11 Q. Could you state your full name spelling your last name
12 for the record, please? A. Yes, it is

13 Joseph Arthur Borg, B-o-r-g.

14 Q. And Mr. Borg, your occupation?

15 A. I am a travel consultant.

16 Q. Who do you work for? A. I work for
17 Byron Swazey Travel in the City of London, Ontario.

18 Q. Do you also live in the City of London, Ontario?

19 A. I do.

20 Q. Did you fly in yesterday? A. Yes, I did.

21 Q. How's the weather up there? A. Cooler.

22 MR. PESTARINO: I object --

23 THE COURT: You can't object to the weather.

24 MR. ROBINSON: People complain about the weather
25 all of the time.

26 THE COURT: It's immaterial, if that's what your

1 objection is.

2 MR. PESTARINO: All right. It is not very well
3 taken, I agree. I'm sorry.

4 MR. ROBINSON: Counsel is always apologizing.

5 THE COURT: He's good-natured.

6 Q. (By Mr. Robinson) Mr. Borg, did you bring with you
7 any documents? A. Yes, I did.

8 Q. Could I see those documents, please?

9 A. Yes, sir.

10 (Documents handed to counsel.)

11 MR. ROBINSON: Your Honor, might we have a copy of
12 this document marked as People's next in order?

13 THE COURT: Yes. They will be 28, the travel
14 agency items.

15 (Whereupon, the above-mentioned documents, being
16 travel agency items, were marked for identification as
17 People's Exhibit No. 28.)

18 Q. (By Mr. Robinson) Now, Mr. Borg, showing you People's
19 Exhibit No. 28, is that a photostatic copy of an original
20 document? A. Yes, it is.

21 Q. Okay. And is all of the information contained on
22 People's 28 duplicate information contained on the original?

23 A. Yes, it is.

24 Q. And could you look at People's 28 and tell us how that
25 is prepared? A. Well, on the top

26 right-hand corner you see the date that this thing started,

1 October the 29th.

2 Q. And what do you mean, the date this thing started?

3 A. Well, when this travel arrangement was originated.

Q. Okay.

A. The gentleman came in on October the 29th, and as you can see on the left-hand corner is my name on there as the agent and the agency that looked after it. And we have the gentleman's name, address, and telephone number, and then the reservation is made and the date.

10 Q. And is this kept in the ordinary course of your
11 business? A. Yes.

12 Q. Does your business rely upon these documents?

13 A. We keep them for --

14 Q. Records? A. --- A period of
15 three years.

16 Q. Okay. And these are made at the time this information
17 is given to you? A. Yes.

18 Q. Now, what other information is contained on the big
19 document besides the date, the individual's name, the agent?
20 What about on the left where it says, "Date, October 30th,
21 1975," could you explain that for us?

22 A. Okay. October 30th or in that column there is the date
of travel.

24 Q. Okay. A. So it shows there that
25 the gentleman wanted to travel on October 30th, 1975. Now,
26 the codes there are the airline codes for the cities, and

1 YXU, from YXU, that is the airline city code for London,
2 Ontario, to YYZED, which was the airline city code for
3 Toronto, then the line that the person travels on, in this
4 case was AC, which was Air Canada, flight number 704, in Y
5 class, which is your economy class, departing London twelve
6 fifteen in the afternoon, arriving in Toronto at twelve
7 forty-five. And there he connected from Toronto to SFO
8 which is San Francisco on American Airlines, flight 205,
9 which left at four fifteen and arrived into San Francisco
10 at seven fifty-one p.m.

11 Q. On the 30th of October?

A. On the 30th of

12 October.

13 Q. Okay. Let me write some of that down then.

14 A. Then on the far right column is the status and the fare.
15 If it is a confirmed flight we just put a tick beside it. As
16 you can see, both of those flights were confirmed
17 immediately and then the fare breakdown as to what he paid,
18 or what we charged him for the ticket.

19 Q. Can you tell us about that fare breakdown? I notice
20 there is \$23.00?

A. Well, the

21 \$23.00 is the fare from London, Ontario, to Toronto. The
22 \$168.00 is the fare from Toronto to San Francisco. This is
23 one-way fare, economy class. That totalled \$191.00. Then
24 there was an \$8.00 Canadian departure tax, making a grand
25 total of \$199.00 that he paid our agency for that ticket.

26 Q. You also have two other items listed. Can you tell us

1 what those are?

2 A. Yes, the second item is
3 our cash register receipt which I made up to Mr. Ismail for
4 the money he paid for his ticket, and it just shows on
5 October 29th, 1975, a receipt was made out to Mr. D. Ismail,
6 showing that he paid for an American Airways ticket for a
7 total of \$199.00. And as you can see, we have on the bottom,
8 almost right to the bottom on the left-hand side, October 30th
9 which is for our accounting purposes the date of the travel.
10 There is my initials underneath there and he paid for that in
11 cash because I have the cash section of that ticked off, and
12 it was our cash register receipt 6906.

13 Q. And the final one?

14 A. The final one is
15 a photostatic copy of the actual airline ticket I made out for
16 him. That is an American Airlines ticket. You want me to
17 give the number, also?

18 Q. No. I think that is sort of self-explanatory.

19 A. And it shows on the ticket, from London, Ontario, the
20 fare breakdown, and it has our travel agency stamp on the
21 right-hand corner with the date the ticket was issued.

22 Q. Great. I'll give you back your originals. Thanks for
23 explaining those for us.

24 Now, Mr. Ismail purchased a one-way ticket?

25 A. Yes, sir.

26 Q. Okay. And he paid cash for that ticket?

27 A. Yes.

28 Q. And the total of the cash was \$199.00?

1 A. Yes, sir.

2 Q. Now, can somebody purchase a return ticket from you,
3 too, both ways? A. Yes, sir.

4 Q. Is that the common way of doing it?

5 MR. PESTARINO: Excuse me, if Your Honor please,
6 I think that is calling for the opinion and conclusion, what
7 is common.

8 THE COURT: Well, he is an airline agent.

9 MR. PESTARINO: I don't think that there is any
10 -- all right. I'll withdraw the objection.

11 THE WITNESS: Would you repeat the question?

12 MR. ROBINSON: Yes.

13 Q. (By Mr. Robinson) If somebody wanted to come from
14 Canada -- strike that.

15 If somebody wanted to come from Canada to the
16 United States and then return to Canada could they purchase
17 a both-ways ticket from you?

18 A. A return ticket, yes.

19 Q. Okay. And is there any sort of a discount for
20 purchasing a both-ways ticket from you? Do they save any
21 money by doing that? A. Sometimes they

22 can. It depends on how long they intend to stay in the
23 other country. They have excursion fares which you can use.

24 Q. Okay. And suppose somebody was indefinite about the
25 length of time they intended to stay in the other country,
26 could they still purchase a round trip ticket from you?

1 A. Yes, they could still purchase a round trip ticket and
2 leave the return as an open ticket where they paid for the
3 ticket but no actual return reservations have been made.

4 Q. In your experience, Mr. Borg, in the travel agency
5 business, how long have you been doing it?

6 A. I have been in it as a travel agent for three and a half
7 years.

8 Q. And your experience in dealing with citizens that are
9 leaving Canada to go to another country and then return, do
10 they usually buy a round trip ticket or usually buy a one-
11 way ticket, or can you tell us?

12 A. Well, it is more or less fifty fifty. A lot of people
13 know they are going to come back and they generally
14 purchase the return ticket beforehand, so that is less cash
15 they have to carry with them and something less they have to
16 worry about. But generally, we do have people that don't
17 know how long they are going to be away for and they decide
18 they are not going to be saving any money, they decide to
19 purchase a one-way and purchase a return at their destination.

20 MR. ROBINSON: I have nothing further.

21 CROSS-EXAMINATION

22 BY MR. FESTARINO:

23 Q. So the fact that a one-way ticket was purchased creates
24 no significance in your mind does it, as to what a person is
25 going to do or what he wants to do?

26 A. No, sir.

1 Q. It happens both ways? A. Sure.

2 Q. Sure. Were you subpoenaed to come in here?

3 A. Beg pardon?

4 Q. Were you given a subpoena to appear here in Court?

5 A. No, sir. I was requested to come by the police in
6 London, Ontario.

7 Q. And I take it your fare was paid and everything?

8 A. Yes, sir, it was.

9 Q. Even though you have a travel agency?

10 A. Yes, sir, it was.

11 Q. Thank you. A. It is not my agency.

12 REDIRECT EXAMINATION

13 BY MR. ROBINSON:

14 Q. Mr. Borg, we wouldn't expect you to pay your own fare
15 to come down here and help us out, would we?

16 A. I don't think you would.

17 MR. ROBINSON: Nothing further. Thank you.

18 THE COURT: Thank you, Mr. Borg. I appreciate
19 your coming all this way. Thank you.

20 Ladies and gentlemen, we are going to take the
21 noon recess, and one of the attorneys has an appearance in
22 another Court so we are going to have a little longer lunch-
23 hour, until 2:00 o'clock today. It is a very balmy day and
24 for those of you who haven't had a chance to do anything in
25 downtown San Jose, which is kind of a disaster area in
26 general, there are a few things that are interesting if you

1 got the time and energy. If you walk down Market south you
2 will come to the San Antonio Plaza. It is very pleasant if
3 you walk up about four blocks to that fascinating fountain
4 they have up there. There is the museum of art across from
5 the Wells Fargo Bank at San Fernando which is free. And
6 there is the library. And, of course, there is the Park
7 Central Plaza which you can stroll through. I know it gets
8 a little tedious as to where to have lunch, and if you have
9 been eating downstairs in the coffee shop, there are several
10 little places around downtown, some of them are kind of kinky
11 if you can find them. I think you are perfectly safe almost
12 anyplace you want to go. Those of you who are aficionados
13 of Jack in the Box or McDonalds, if you want to walk down
14 to San Carlos around the college there are two or three of
15 those franchise places, and I frequently go there during the
16 noon-hour to get a little exercise. So I will see you at
17 2:00 o'clock, and you will keep in mind the admonition I
18 have given you before. The defendant will be ordered to
19 return also at 2:00 o'clock.

20 (Whereupon, Court adjourned for the luncheon
21 recess.)

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AFTERNOON SESSION

March 16, 1976. 2:00 o'clock p.m.

(Pursuant to adjournment, Court convened, and the following proceedings were had:)

THE COURT: All right. You have another witness?

MR. ROBINSON: The People call Kitty Benjamin.

THE COURT: All right. Let the record show that the jury is present, the defendant is present.

KITTY BENJAMIN,

called as a witness on behalf of the People, being first duly sworn, was examined and testified as follows:

THE CLERK: Take the witness stand, please.

DIRECT EXAMINATION

BY MR. ROBINSON:

Q Can you state your full name, spelling your last name for the record, please? A Kitty Benjamin, B-e-n-j-a-m-i-n.

Q And your occupation? A I am an accounts receivable clerk with the PSA San Franciscan Hotel.

Q And are you familiar with Mr. Yule Lazar?

A Yes, I am.

Q And how is it that you are familiar with Mr. Lazar?

A Mr. Lazar is my boss.

Q Okay. And where do you live? A I live in San Francisco at 1477 21st Avenue.

Q Okay. And do you know where Mr. Lazar lives?

2
1 A Mr. Lazar lives, I don't know his address, but he is up
2 on 21st Avenue.

3 Q Same street as you? A Same street, about four
4 blocks up.

5 Q Are you familiar with Mr. David Ismail?

6 A Yes, I am.

7 Q Do you see him in court today? A Yes, I do.

8 Q Would you point him out, please? A The gentleman
9 over there (indicating).

10 Q Okay. Now, directing your attention to October the
11 30th, 1975, did you have an occasion to pick up Mr. Ismail?

12 A Yes, I did.

13 Q And where did you pick him up? A San Francisco
14 International Airport.

15 Q And what time did you pick him up?

16 A I don't remember the exact time. It was in the early
17 evening.

18 Q Okay. And did you pick him up in your car?

19 A Yes, I did.

20 Q Okay. Was this a pre-arranged meeting?

21 A Well, I got a phone call from him and he told me that
22 he was coming in, I was very happy, and I picked him up.

23 Q All right. So he was expecting you to pick him up?

24 A Yes.

25 Q Now, when had you met Mr. Ismail? A I met him
26 about eight years ago, I believe.

Q Okay. Where was that?

1 A At a convention, an Assyrian convention.

2 Q What city was that located? A I think it was
3 Fli --

4 Q Does Chicago ring a bell? A Chicago or Hartford,
5 Connecticut. I can't remember.

6 Q And during that period of time from approximately -- what
7 is it, eight years ago? A I would say.

8 Q Okay. From approximately eight years ago, and so we
9 have a reference date can we call it 1967?

10 A Whatever goes back eight years.

11 Q Well, 1975 minus 8 is 1967. Is that fair?

12 A Okay. Fair.

13 Q So from 1967 until October the 30th, 1975, had you ever
14 seen Mr. Ismail? A Yes.

15 Q Okay. Where had you seen him? A I have seen him
16 at other conventions. We have these conventions annually
17 and in varying cities where there are Assyrian communities.

18 Q So is it fair to say you would see him a minimum of
19 once a year? A Perhaps if he made the convention.

20 Q Do you recall how many times he made these conventions
21 in that eight-year period? A I really don't remember.
22 Various times.

23 Q Okay. Now, when had Mr. Ismail called you to let you
24 know that he was coming to San Francisco?

25 A He called me, well, he called me on various occasions,
26 but he called me a week prior to coming.

Q Okay. And what did he say? A That he was coming to San Francisco.

Q Okay. Had he ever come to San Francisco before?

A No, he had not been here.

Q And the day before he arrived in San Francisco did he call you again? A I believe he did, yes, gave me the flight time.

Q And he called you at your residence? A At my home.

Q On 21st Avenue? A That is correct.

Q And at that time did he give you his flight time and what plane he would be arriving on, things like that?

A Mm-hmm.

Q So you knew where to meet him and everything?

A Right.

Q Now, on October the 30th, 1975, when you met Mr. Ismail at the airport could you tell us what you did?

A Well, I picked him up.

Q Okay. And after you picked him up did you go any place?

A I took him to the Sunset Motel.

Q Where is that located? A 19th Avenue and Taravel.

Q How far is the Sunset Motel from your house?

A Five minutes.

Q Five minutes. A By car.

Q You live at 21st? A Mm-hmm.

Q And the Sunset Motel is at 19th? A Mm-hmm.

Q Now, had you arranged for Mr. Ismail to stay at the

5 1 Sunset Motel? A Yes, I did.

2 Q And did you register him at the Sunset Motel?

3 A I registered him, yes, I did.

4 Q When did you register him? A The evening when I
5 was going to pick him up.

6 Q Did you register him before or after you picked him up?

7 A Before.

8 Q So that would be October 30th? A That's right.

9 Q 1975? A That's right.

10 Q And had you told Mr. Ismail that you were going to
11 register him at a motel? A I asked him on the phone
12 because, you know, he is an old friend and a distant relative,
13 if he would like to stay at our home, and he said he would
14 rather not because it was just my mother and myself, and since
15 we had been working he would feel more comfortable, you know,
16 close by. Therefore, I called the Sunset, went in and
17 registered him.

18 Q Were you familiar with the policy of your boss, Mr. Yule
19 Lazar, about giving a 50 per cent discount to all Assyrians?

20 A We do that.

21 Q Was there any particular reason why you didn't give Mr.
22 Ismail the benefit of this discount? A Because he
23 wanted to be near our home. I didn't like him driving down-
24 town every day, back and forth, to go sightseeing. It was
25 closer to my home.

26 Q Now, during this period of time that Mr. Ismail was in

5

1 San Francisco were you working? A Yes.

2 Q And what days did you work? A Five days a week.

3 Q Monday through Friday? A Yes.

4 Q So you had to drive down to the PSA Hotel?

5 A I don't drive to work.

6 Q You had to be downtown there? A Yes.

7 Q Take the bus down? A Yes, I take municipal

8 transportation.

9 Q But you decided to put him in the Sunset Motel?

10 A Yes.

11 Q How did you register Mr. Ismail? A I registered

12 him, I was late, they were closing, and I went in there and

13 instead of writing the whole name out, David Malek Ismail,

14 I said I'll put David Benjamin. I put my address on the

15 slip for no reason, just that we were his hosts and we were

16 paying his bill.

17 Q Okay. That was my next question. Showing you People's

18 Exhibit No. 19, is that your handwriting on there?

19 A That is.

20 Q Okay. Indicating -- can I have it? Indicating David

21 Benjamin, with 1477 21st Avenue in San Francisco?

22 A That's right.

23 Q And that is your address? A That is my address.

24 Q Okay. Now, when you registered Mr. Ismail did you pay

25 for his room the first night? A No.

26 Q You didn't pay for that room? A Not the first

1 night.

2 Q Okay. Prior to registering Mr. Ismail did you have to
3 put down any sort of a deposit on the room? A No.

4 Q Okay. Now, I take it that you took Mr. Ismail from the
5 airport to the Sunset? A Right.

6 Q Okay. And could you tell us what Mr. Ismail was
7 wearing when he got off of the airplane? A I believe
8 he was wearing a suit.

9 Q Okay. Now, you say you believe he was wearing a suit?

10 A Yeah.

11 Q Are you certain about that or are you uncertain?

12 A It's been so long ago, I believe he was dressed very
13 nice.

14 Q Okay. Why don't you think real hard, if you can for
15 a few minutes and try to remember?

16 MR. PESTARINO: I am going to object to this form
17 of question, "Why don't you think real hard."

18 MR. ROBINSON: I would like to give her a chance to
19 remember. If you want to be fair, counsel --

20 THE COURT: Let me hear what the objection is.

21 MR. PESTARINO: I object to the form of the
22 question, it is implying that the witness is unfair.

23 THE COURT: Well, she hasn't indicated she is not
24 able to remember.

25 MR. PESTARINO: Well, I know, but that is an unfair
26 question.

8
1 MR. ROBINSON: That is not a legal objection, Your
2 Honor.

3 THE COURT: Well, I think you ought to rephrase it.
4 Think real hard implies something about the answer.

5 MR. PESTARINO: That's right.

6 Q (By Mr. Robinson) Can you think about it for a few
7 minutes, if you could, and try to remember what he was
8 wearing when he came off the airplane?

9 A I think he was wearing a grayish suit, very neatly
10 dressed.

11 Q Okay. Now, when you met him at the airport did you
12 have a drink at the airport? A No.

13 Q Okay. Did you go down to pick up his luggage?

14 A Yes.

15 Q Okay. And what luggage did he have?

16 A He had a small, blue, like a weekender, and a grip bag,
17 I can't remember the color.

18 Q What about a suitcase? A It was like a weekender,
19 a small.

20 Q How many pieces of luggage did he have?

21 A Two.

22 Q What about a bag where you carry extra clothes in like
23 a suit, or something like that? A No, nothing.

24 Q All right. What about an extra suitcase?

25 A No.

26 Q Okay. And how big was this bag that he had?

1 A. I really don't remember the size, but it was just the
2 regular little --

3 Q. Like a grip? A. Like a, you know, you see a lot of
4 people carrying them.

5 Q. Like if you were going to play basketball or something
6 you would put your shoes in, that sort of sized bag?

7 A. I think it was like this (indicating), small, wasn't
8 large.

9 Q. Okay. The sort of bag that you -- did you pick this
10 up at the baggage part of the airport? A. Mm-hmm.

11 Q. Is this the sort of bag -- well, you have flown,
12 obviously? A. Yes.

13 Q. Is this the short of bag that you can bring with you
14 right into the airplane and stuff it up top?

15 A. You could but he didn't have it with him.

16 Q. Okay. Now, after you picked up Mr. Ismail's luggage
17 you drove him, did you drive straight out to the Sunset Motel?

18 A. Straight to the Sunset Motel.

19 Q. What time did you arrive there? A. I don't
20 remember.

21 Q. All right. And what happened when you arrived there?

22 A. Left his bags off, then I took him home, to my home.

23 Q. When he left his bags off did you already have the key
24 to the motel? A. I had already picked it up because
25 they were closed.

26 Q. And did you accompany him into the motel?

10

1 A Just for a few minutes while we unloaded his stuff.

2 Q When he unloaded his stuff you were in the room?

3 A Just for a few minutes. He hung his clothes up, that's
4 all.

5 Q He did hang his clothes up? A Mm-hmm.

6 Q What clothes did he have to hang up?

7 A His shirts, and I don't know, pair of slacks.

8 Q And where did he take these clothes from?

9 A From his suitcase.

10 Q Okay. A This weekender-sized bag.

11 Q He had extra clothes like shirts and slacks in that
12 little weekender bag? A Mm-hmm.

13 Q And did he take out anything else out of that bag?

14 A No.

15 Q He put all of his clothes away though?

16 A I believe he did.

17 Q Okay. Did you see a gun in that bag? A No.

18 Q Okay. When you were with him in the motel on October
19 30th, 1975, did you see a gun at any time?

20 A Not at all.

21 Q Did he ever talk to you on that day about having a gun?

22 A No.

23 Q Okay. So he basically unloaded his stuff, then you
24 brought him over -- A And I brought him over to my
25 home for dinner.

26 Q You saw his bag was empty? A Yeah.

11 1 Q So there was no gun in the bag? A Not at all.

2 Q So you brought him to your house for dinner?

3 A Mm-hmm.

4 Q And you had some dinner? A Right.

5 Q Okay. And then what happened next?

6 A Then I took him, well, we played records, Assyrian music,

7 you know, folk music, we danced, we sang a little bit. My

8 mother was enjoying visiting with him. And then I took him,

9 I think it was up for a ride out by the Cliff House, up by

10 Twin Peaks because it was late, then I dropped him off back

11 at the motel and went home.

12 Q All right. Now, that would be on Thursday?

13 A Mm-hmm.

14 Q All right. Let's talk about Friday. Did you see Mr.

15 Ismail on Friday? A In the evening.

16 Q Okay. Did you see him Friday morning at all?

17 A No, I went to work.

18 Q Okay. Did you talk to him at all Friday before seeing

19 him? A No, but I told him Thursday evening, you know,

20 to occupy himself, to take a ride out to the zoo.

21 Q Okay. And when was the next time you saw him then on

22 Friday? A After work.

23 Q Okay. What time would that be? A I guess it would

24 be about 6:30, quarter to seven I picked him up and brought

25 him back home, to my home.

26 Q Okay. And what was Mr. Ismail wearing at this time?

- 1 A His suit.
- 2 Q The same suit he was wearing when he came in?
- 3 A Mm-hmm.
- 4 Q Pardon me? A Yes.
- 5 Q Okay. The same suit he was wearing when he got off
- 6 the airplane? A Yes.
- 7 Q Showing you People's Exhibit 10-BB, is this the suit
- 8 that we are describing? A Yes.
- 9 Q Okay. Thank you. Now, when you picked Mr. Ismail up
- 10 on Friday and brought him to your house, did you enter his
- 11 motel room to pick him up? A No.
- 12 Q Or how did that work? A I honked the horn and his
- 13 room was right on the street side, he knew my car and he came
- 14 down.
- 15 Q And you went to your house and had some dinner?
- 16 A Mm-hmm.
- 17 Q That is on Friday, the 31st? A Friday night.
- 18 Q Okay. And when you were at your house, did Mr. Ismail
- 19 take off his suit coat? A Yes.
- 20 Q Okay. And at that time did you see Mr. Ismail with a
- 21 gun? A No.
- 22 Q Okay. Did you hang up his suit coat for him?
- 23 A Yes.
- 24 Q As you hung up his suit coat did you notice anything
- 25 unusually large or bulky in the pockets? A No.
- 26 Q So would it be your opinion that Mr. Ismail didn't have

13 1 a gun on Friday, the 31st? A That is correct.

2 Q Okay. Now, how long did you stay at your house on
3 Friday, the 31st? A I think until about 9:00 o'clock.

4 Q Okay. And then what happened?

5 A Then I took him out to the Hyatt Regency to the Equinox
6 for a drink, see the city.

7 Q Okay. A And we spent quite a bit of time there
8 talking, you know, and visiting.

9 Q All right. How long did you stay there?

31 10 A Oh, I don't remember. It was, maybe, until 12:30.

11 Q Okay. How many drinks did you have there?

12 A Mmm, oh, I'd say four or five.

13 Q Okay. You each had four or five drinks? A Yeah.

14 Q Okay. Both of you were sitting there drinking together?

15 A Of course.

16 Q Okay. Now, do you consider yourself a heavy drinker?

17 A No.

18 MR. PESTARINO: Objection, well --

19 MR. ROBINSON: Okay.

20 Q (By Mr. Robinson) And Mr. Ismail had the same amount
21 of drinks as you? A Right.

22 Q Did you consider Mr. Ismail a heavy drinker?

23 A No.

24 Q Was Mr. Ismail drunk or under the influence of alcohol
25 that night? A Not any more than I was.

26 Q Okay. And you weren't, right? A I was not.

14 1 Q Okay. So, after you left the Hyatt Regency, Miss
2 Benjamin, where did you go?

3 A I drove down by the Embarcadero and around Fisherman's
4 Wharf and around Doyle Drive, up 19th Avenue, made a U-turn
5 around the corner and came back up by the Sunset, dropped
6 him off and went home.

7 Q You remember doing all of that driving?

8 A That is the way I go, down that way, yes.

9 Q You always go that way? A I know my way.

10 Q Okay. And what time did you drop him off?

11 A Oh, I don't know, about one, one-thirty, one-fifteen,
12 somewhere around there.

13 Q Okay. And this would be, well, Saturday morning now?

14 A Mm-hmm.

15 Q Okay. Dropped him off back at the Sunset?

16 A At the Sunset.

17 Q Now, when was the next time that you saw Mr. Ismail?

18 A Saturday morning.

19 Q Okay. And could you tell us about that?

20 A I told him that I was off that day and I could take him
21 around sightseeing to the Cannery and to Ghiradelli, and I
22 tried to take him in the Bay cruise.

23 Q Okay. A So I took him around as long as I could,
24 and I had to leave town in the afternoon, go to Turlock,
25 California.

26 Q And what time did you -- what did you do with Mr. Ismail

15
1 on Saturday after you had taken him sightseeing?

2 A Well, I picked him up, we had been talking the night
3 before, and I told him I worked downtown at the hotel and
4 Yule was there, and he thought he might like to come down and
5 stay in that area because it was more available for sight-
6 seeing and visiting and shopping around the city. So I
7 said okay, you know, you can go there, it is up to you,
8 whatever you want to do. When I picked him up I went up to
9 the office, I paid the bill.

10 Q Okay. A Then we left.

11 Q You paid the bill for the Sunset Motel?

12 A That's right.

13 Q Okay. A I might add, the reason that I did pay
14 it was because our --

15 Q Well, Mrs. Benjamin, my job is to ask questions. Okay?
16 And I am sure that Mr. Pestarino is going to ask you that.

17 A Okay.

18 Q Now, when Mr. Ismail, I take it he checked out of the
19 motel, of the Sunset Motel, that would be on November 1st,
20 Saturday? A Saturday, right.

21 Q That is when you paid the bill? A Right. I
22 checked him out because I went in and I said, "I don't want
23 him to see the bill, or anything. He is our guest and I am
24 taking care of it."

25 Q What did he do with his luggage? A He left it
26 there and picked it up on his way back, or out to the other

16

1 place.

2 Q He left it behind the desk with the manager?

3 A In the office, I believe so.

4 Q And he asked the manager to hold his luggage for him?

5 A Mm-hmm.

6 Q Because he didn't know whether he was going to come
7 back there or not? A That is correct.

8 Q So at that time he hadn't made up his mind whether or not
9 he was going to stay at the Sunset or move to a different
10 motel? A That is correct. Well, he mentioned that
11 he wanted to stay at the PSA and I said it is up to you,
12 whatever you would like to do.

13 Q So what time did you drop him off back at the Sunset on
14 Saturday? A About four.

15 Q And can you recall for us what he was wearing on Saturday?

16 A He had a pair of slacks on and a sport shirt.

17 Q Now, were these slacks that he was wearing, were these
18 part of his suit pants that you had seen him in before or
19 were they different? A No, they were different.

20 Q Okay. And you dropped him off at about 4:00 o'clock
21 and you went somewhere? A I left town.

22 Q Where did you go? A Turlock, California.

23 Q Okay. And was there an Assyrian party down there?

24 A Yes, there was.

25 Q Okay. Was Mr. Yule Lazar invited? A He was going
26 to go.

17

1 Q Did Mr. Lazar attend that party? A No.

2 Q Was that party cancelled? A It was cancelled.

3 Q And you drove all of the way down to Turlock?

4 A I didn't know.

5 Q To find out it was cancelled? A (Nods affirmative.)

6 Q And did -- when did you return back to San Francisco?

7 Yeah, San Francisco? A Sunday evening late.

8 Q Okay. Spend the night in Turlock? A Yes.

9 Q Okay. And when was the next time you saw Mr. Ismail?

10 A Monday, Monday morning.

11 Q I take it you didn't see Mr. Ismail Sunday evening?

12 A No.

13 Q And where did you see him Monday morning?

14 A Very briefly he stopped in our office. I was so

15 surprised, I mean, I didn't really expect to see him there in

16 the office, and he walked in and said hello. He was talking

17 with Yule and went and had coffee, and I had to stay at my

18 desk, and that was it.

19 Q All right. Did you see him at any other time on

20 November the 3rd, Monday? A I really don't remember.

21 Q Okay. What about Monday night, did you see Mr. Ismail

22 Monday night? A I can't remember.

23 Q Okay. What about Tuesday? A Well, I saw him in

24 the morning again, he stopped by and said hello at the office.

25 Q Okay. A And I asked what he is going to do, he

26 said go sightseeing. I said good.

18

1 Q Now, did you see him after -- did you see him Tuesday
2 afternoon? A Yes, I think he returned to the hotel
3 in the afternoon.

4 Q Did you have a cup of coffee with him?
5 A No, I didn't.

6 Q Did you see him Tuesday night? A Yes.
7 Q All right. Where was that? A He came to my home.
8 Q How did he get there? A By taxi.
9 Q Okay. And what happened at your home?
10 A We visited. You know, sat around, then we were talking
11 about businesses and opportunities, and I drove him around to
12 show him some Mama-Papa shops.

13 Q Okay. When you saw him on Monday do you remember what
14 he was wearing in the hotel? A That suit.

15 Q That suit? A Mm-hmm.

16 Q Okay. And what about on Tuesday?
17 A He had the suit on again.

18 Q The same suit? A Mm-hmm.

19 Q Okay. Now, Tuesday night you drove him around looking
20 at various businesses and things? A Yes, gas stations
21 and liquor stores.

22 Q Where did you go? A Down Geary, we have several
23 Assyrians who have stations, and I just drove him, you know,
24 in the area to see what they had and where they are at.

25 Q Okay. And did you do anything else Tuesday night?
26 A No, I took him back.

1 Q Now, what about November the 5th? Took him back to
2 the PSA? A To the hotel, mm-hmm.

3 Q What about November 5th, a Wednesday, did you see Mr.
4 Ismail? A In the morning.

5 Q Okay. And once again, how did you see him? Where?
6 A In the office.

7 Q Okay. And did you have a cup of coffee with him or
8 anything? A No, I didn't.

9 Q And did you see him later on that day, Wednesday?
10 A In the afternoon he came back.

11 Q Okay. This is once again in the hotel?
12 A In the office.

13 Q All right. What about Wednesday evening?

14 A I don't think I saw him but I talked to him on the phone.
15 Q Okay. A I think he was going to visit other people.

16 Q Okay. Do you recall what he was wearing on Wednesday
17 when you saw him? A The sporting attire.

18 Q Okay. And that consisted of what?

19 A Slacks and shirt.

20 Q What about a coat? A No.

21 Q What about a brown leather coat, three-quarter length,
22 hip length? A No.

23 Q Never saw him wearing one of those? A No.

24 Q Okay. What about sort of a European-style shirt, buttons
25 up, close-fitting, did you ever see him wearing one of those?
26 A No.

20
1 Q Now, directing your attention to November the 6th, which
2 is a Thursday, did you see Mr. Ismail that day?

3 A Yes.

4 Q All right. And once again, where and how?

5 A In the office. He came in every morning, greeted us.

6 Q Okay. And did you see him that afternoon?

7 A He mentioned that he would be leaving.

8 Q Okay. A And then at 1:00 o'clock -- pardon me --
9 1:00 o'clock in the afternoon.

10 Q You need a glass of water? A If you don't mind.
11 Thank you.

12 MR. ROBINSON: I don't know how cold it is but --
13 counsel, can I fix you a cup?

14 MR. PESTARINO: Why are you so nice to me?

15 MR. ROBINSON: The County's water.

16 THE WITNESS: Thank you.

17 Q (By Mr. Robinson) Sure. So you saw him Thursday
18 afternoon? A Yes, Yule said as long as he is leaving
19 why don't you go down, have coffee or lunch with him.

20 Q Did you do that? A I did.

21 Q And did you have coffee or lunch or both?

22 A We had coffee.

23 Q Okay. And he indicated to you he was going to be
24 leaving? A Yeah, he was going back.

25 Q Going back where? A Well, going back to Canada.

26 Q Okay. And did he indicate that he had already bought

21 1 his plane fare back or anything like that? A No.

2 Q Okay. And did you just say your good-byes, then he
3 left? A Well, you know, I gave him my regards and
4 salutations to everybody that he knows that I knew.

5 Q Okay. A Right.

6 Q And then he just left? A Well, I walked out to the
7 lobby with him and then I went up to my office and he left.

8 Q Okay. A He was going to the downtown terminal,
9 airline terminal.

10 Q That is what he told you? A To catch the express.

11 Q Okay. Now, what was he wearing that day?

12 A His suit.

13 Q Okay. And when he checked out of the hotel did you see
14 him leave? A No.

15 Q Okay. So you don't know what items of luggage he took?

16 A No, I don't.

17 Q Okay. Now, Mr. Ismail wouldn't have any reason to leave
18 any of his luggage at the hotel, would he?

19 A I don't know.

20 Q Well, did he tell you he was leaving any there?

21 A No.

22 Q Did he leave any at your house? A No.

23 Q Okay. You don't have any of his luggage at your house?

24 A No.

25 Q Now, when you saw Mr. Ismail, I think we have already
26 covered October 30th when he was staying at the Sunset, okay?

2

1 A Mm-hmm.

2 Q And at that time you indicated that he had no weapon

3 upon him? A No weapon.

4 Q You didn't see a gun? A That is correct.

5 Q Saturday, November the 1st, when you were with Mr. Ismail

6 did you see him with a gun? A No.

7 Q Did he tell you he had a gun? A No, he did not.

8 Q Sunday you didn't see him? A No.

9 Q Monday, November the 3rd, when you saw Mr. Ismail did

10 you see a gun? A No.

11 Q Did he tell you he had a gun? A No.

12 Q Tuesday, November the 4th, when you saw Mr. Ismail did

13 he have a gun? A No.

14 Q Did he tell you he had a gun? A No.

15 Q Wednesday, November the 5th, when you saw Mr. Ismail,

16 did he have a gun? A No.

17 Q Did he tell you he had a gun? A No.

18 Q Thursday when you saw Mr. Ismail did he have a gun?

19 A No.

20 Q Did he tell you he had a gun? A No.

21 Q Okay. Now, when Mr. Ismail and you were together both

22 at your house having some drinks and things like that did you

23 talk about politics? A No.

24 Q Didn't talk about politics? A No.

25 Q Okay. Did you talk about the Assyrian Universal Alliance?

26 A The Assyrian Universal Alliance? Well, in general

23

1 conversation.

2 Q Okay. And are you a member of that group?

3 A No, but I am planning to be a member.

4 Q Okay. Do you support it? A I do.

5 Q Okay. Is Mr. Ismail a member? A No.

6 Q Does he support it? A He has nothing to do with
7 politics. That is what he told me.

8 Q He told you that? A Yes.

9 Q When did he tell you that? A At various occasions.

10 Q Then you did talk about politics? A No, we talked
11 about the A.U.A.

12 Q I asked you a question, did Mr. Ismail and yourself talk
13 about politics and you said no. Remember that a few seconds
14 ago? A You were just asking me in regard to the
15 conversation that we had at that time.

16 Q Well -- A At various --

17 Q Mrs. Benjamin, when he was here the last two days in
18 October and the early days of November, I asked you, did you
19 talk about politics? A No.

20 Q Okay. When did he tell you he wasn't interested in
21 politics then? A Various times on the phone.

22 Q On the phone? This was prior? A Prior to his
23 arrival.

24 Q Okay. A Many times.

25 Q Many times he would just phone you up and tell you he
26 wasn't interested in politics? A I would ask him

24
1 something, he would say, "I have nothing to do with politics."

2 Q Did you talk about the Patriarch? A No.

3 Q Never talked about him? A No.

4 Q Did Mr. Ismail tell you he was going down to see the
5 Patriarch? A No. And it is Miss Benjamin.

6 Q I believe that is what I said. If I didn't, I apologize.

7 I'd like to show you this Christmas card.

8 MR. ROBINSON: Might we have this Christmas card
9 marked?

10 MR. PESTARINO: Let me see it first.

11 THE COURT: Yes. It will be marked People's 29
12 for identification.

13 (Whereupon, the above-mentioned item, being a
14 Christmas card, was marked as People's Exhibit No. 29 for
15 identification.)

16 MR. PESTARINO: Thank you.

17 Q (By Mr. Robinson) I'd like to show you this and ask you
18 if you recognize the writing on there? A Mm-hmm, it is
19 mine.

20 Q And who is it addressed to, please?

21 A To David.

22 Q David who? A David Ismail.

23 Q And the address is? A 94 Celia Avenue, London,
24 Ontario, Canada.

25 Q Did you get a chance to look at the card, inside?

26 A No.

25

1 Q Did you send that card to Mr. Ismail?

2 A I did.

3 Q May I see it, please? Now, on the card did you make

4 all of the writing on the card? A I did.

5 Q And is the date on the card December 14, 1973?

6 A May I see it again?

7 (Handed to the witness.)

8 THE WITNESS: Yes.

9 Q (By Mr. Robinson) Okay. And did you write on there,

10 it is printed, "A Merry Christmas and a Happy New Year, Love,

11 Kitty Benjamin, God Bless you, keep the good work up for the

12 A.U.A." Did you write that? A Yes, I did.

13 Q What does A.U.A. mean? A Assyrian Universal

14 Alliance.

15 Q What work had Mr. Ismail been doing for the A.U.A.?

16 I thought he wasn't involved in politics? A He is not.

17 Q And the A.U.A. is not a political group?

18 A It is a political group but, no, it is a peaceful

19 political group.

20 Q And you make a distinction between a peaceful political

21 group and what other type of political group?

22 A All I know, I am not involved in politics, but the A.U.A.

23 is a peaceful organization.

24 Q Okay. We have heard that now. Now, what sort of work

25 was Mr. Ismail doing for the A.U.A., this good work you wanted

26 him to keep up? A At that time they were in a

26

1 project to collect clothing and articles to send to our
2 people who were in need in the northern part of Iraq. And
3 everybody was working, to my knowledge, to support this cause.

4 Q Okay. And I take it that you were involved at that
5 time? A I was involved?

6 Q Yes. A I was not involved directly. Indirectly,
7 I was trying to get everybody to donate clothing or articles,
8 or whatever they could afford to give.

9 Q Now, you told us that you are not a member of the A.U.A.
10 but you wanted to join? A Right.

11 Q And why is it you put off so long to join?

12 A Because I am involved in other organizations and they
13 take up an awful lot of my time.

14 Q I see. Now, are you familiar with Mr. Ismail's brother,
15 Zaia? A Yes, I know him.

16 Q And is he a member of the A.U.A.? A Yes.

17 Q Is he involved in politics? A I believe he is.

18 Q And isn't it the aim of the Assyrian Universal Alliance
19 to get a homeland for the Assyrian people? A Yes, that
20 is one of them.

21 Q Isn't that their primary aim? A That is the
22 primary aim.

23 Q And this homeland is supposed to be given to the Assyrian
24 people by the government of Iraq? A My understanding
25 is that they are trying to establish an autonomous state
26 within the boundaries of the country of Iraq.

1 Q And you are a member of the Church of the East?

2 A No, I am not.

3 Q Are you familiar with the Patriarch? A I knew who
4 he was.

5 Q What is your nationality? A I am an Assyrian
6 American.

7 Q Okay. And is it fair to say that the Patriarch was the
8 religious leader of the Assyrian people? A My under-
9 standing is that he was the religious and political leader
10 of the people, Assyrian people.

11 Q That is your understanding? A Yes.

12 Q Okay. And did the Patriarch support the Assyrian
13 Universal Alliance in terms of their wanting to go to Iraq
14 and get land for the Assyrian people? A I do not know
15 that.

16 Q Now, was Mr. Ismail just on a sightseeing trip in San
17 Francisco? A It was both business, investigative,
18 wanting to see what the business opportunities were, and sight-
19 seeing, too, because he had never been here.

20 Q Well, other than that one night when you drove him around
21 at night and showed him some gas stations, what businesses did
22 he look into? A Well, he was asking about liquor
23 store, grocery store or gas station.

24 Q Who was he asking? A Me.

25 Q You? A And Yule.

26 Q You own a store? A No.

28

1 Q Do you own a grocery store? A No.

2 Q Do you own a gas station? A No.

3 Q Did you take him to any liquor stores?

4 A Well, I took him by a liquor store that is owned by an
5 Assyrian, but we didn't go in.

6 Q Why didn't you go in? A There was no need to go
7 in.

8 Q Well, I thought he wanted to find out?

9 A I wanted to show him the area. Well, he wanted to find
10 out the business. I am not in the business. He could
11 talk to the boys.

12 Q To your knowledge did he talk to the boys?

13 A I don't know.

14 Q Did you ask him when you were with him for the six to
15 eight days, did you say, "Hey, how's it going? You got any
16 business contacts yet?" Anything like that?

17 A I think he wasn't actually -- he was on more of a fact-
18 finding trip as far as business. You know, what it takes to
19 establish yourself in a business. I don't know anything
20 about that. I only work.

21 Q All right. Did you ever call the Patriarch's house?

22 A Me?

23 Q Mm-hmm. A No.

24 Q Now, did you ever discuss the Assyrian Universal Alliance
25 with Yule Lazar? A Yes.

26 Q Okay. And did you ever discuss politics with Mr. Lazar?

29

1 A Not really because I am not that interested in politics.

2 Q Okay. Now, you told us that on October the 31st, 1975,
3 that would be the Friday that you brought Mr. Ismail to your
4 home and you had a dinner with him? A He came to my
5 home.

6 Q And you told us that you had dinner at your house?

7 A Yeah.

8 Q Okay. And he stayed until about 9:00 o'clock, then you
9 went to the Hyatt Regency? A Mm-hmm.

10 Q Did he ever have dinner with Mr. Yule Lazar on Friday,
11 October the 31st, 1975? A Friday, he had dinner with
12 them.

13 Q He had two dinners? A No, he had dinner, I think,
14 with Yule on Friday. He was, either he was busy with some-
15 one for dinner, or he was at my house for dinner. We didn't
16 have any place else to go, and it was most of the time. He
17 did have dinner with Yule.

18 Q Mm-hmm. A I'm sorry, if it was a Friday it was
19 a Friday.

20 Q So you are not sure he had dinner at your house October
21 31st? A I thought it was Friday but I may have made
22 a mistake. I'm sorry.

23 Q Now, when Mr. Ismail left you on Thursday did he ask to
24 borrow any money? A No.

25 Q Now, since Mr. Ismail has been in custody in the jail
26 have you visited him on numerous occasions? A Every

30
1 Sunday.

2 Q Every Sunday? A Mm-hmm.

3 Q Has Mr. Lazar visited? Yule Lazar? A No.

4 Q Never came down with you? A No.

5 Q Okay. Have you contributed any money to his defense
6 fund? A No. I am contributing my share in another
7 way.

8 Q Has Mr. Lazar? A Yule Lazar?

9 Q Mm-hmm. A I don't really know who has
10 contributed money.

11 MR. ROBINSON: Thank you. I have nothing further.

12 CROSS-EXAMINATION

13 BY MR. PESTARINO:

14 Q There hasn't been much money, has there? A No, I
15 really don't know how much there is.

16 MR. ROBINSON: I am going to object to that. What
17 is not much to me, getting paid by the County --

18 MR. PESTARINO: I'll give you an accounting.

19 THE COURT: There is no evidence she knows how much
20 has been contributed.

21 MR. PESTARINO: Well, I think she does. Let me
22 correct a few things. Just a few questions.

23 Q (By Mr. Pestarino) What is the name of the place of
24 your employment? A The PSA San Franciscan Hotel.

25 Q You indicated that you are planning to join the A.U.A.
26 Why are you planning to join the A.U.A.?

31
1 A Because I like what they stand for.

2 Q What do they stand for? A They are a peaceful
3 political group, but they also are concerned with the Assyrian
4 culture and heritage, of which I am very proud and I want to
5 work for this cause.

6 Q Now, in the A.U.A. do you have or do you know if you have
7 people from the Church of the East, Catholic people, and
8 Presbyterians, and other denominations? A Yes.

9 Assyrians from any religion, denomination, or organizations
10 belong to the A.U.A. They belong to more than one organiza-
11 tion, but most of the Assyrians belong to the A.U.A. It is
12 an organization that is uniting our people throughout the
13 world. And every year they hold an annual congress in a
14 country, wherever they vote to have it. This year it is in
15 Sweden.

16 Q So it is a national -- A International.

17 Q -- or international organization? A International
18 organization.

19 Q And besides holding the congress and preserving the
20 culture of the Assyrian people and their heritage --

21 A Yes.

22 Q -- do they do any other things for the Assyrian people?

23 A They are at present working simultaneously with the
24 Assyrian, Assyrian-American National Federation to help the
25 Assyrian people in Lebanon during the civil strife which is
26 going on there. We have many thousands of Assyrians who are

32
1 refugees in Lebanon.

2 Q Is that much like the Israelis people, the Jews here
3 in this country? A I would imagine. We are trying
4 to through the World Council of Churches to help these people
5 through their legal ---

6 Q Representative? A No, through their legal channels
7 where they can be immigrated to other countries and re-
8 establish them.

9 Q In other words, you get the feeling that in certain areas
10 in the Middle East the Assyrian people, because they are
11 Christians, are being persecuted? A That is very right.

12 Q And what you are indicating now is that this organiza-
13 tion is helping these people move to other countries?

14 A Yes, they are.

15 Q Are they shipping arms or money to them?

16 A No. No, they are working through the World Council
17 of Churches to relocate and get them out of these camps that
18 they are stuck in right now. They are helping them with
19 money, some monies, but the World Council of Churches is
20 mainly the organ that is helping to relocate these people.

21 Q Let me ask you, did you have a radio program?

22 A Yes, I did. I had the Assyrian-American Radio Hour
23 about ten years ago in San Francisco.

24 Q And throughout the years following your program have you
25 been in close touch with the Assyrian people?

26 A I am very active in the Assyrian organizations between

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1 San Francisco and Los Angeles. And I support all of them.
2 And I am a member of two of them right now.

3 Q What are those organizations? A The American-
4 Assyrian Association of San Francisco, and the Assyrian
5 Athletic Club, which is a soccer organization.

6 Q Now, had you heard some time ago that the Patriarch of
7 the Church of the East had married? A Yes.

8 Q What was the reaction of the Assyrian people when they
9 heard about his marriage? A The reaction of the
10 Assyrian people was not good. Everyone everywhere were
11 screaming and yelling and cursing him and lost total respect
12 for him. They were shocked, ashamed that after all of these
13 years a holy man would break the rule of the church and take
14 for himself a wife.

15 Q As far as you were aware this is the first time since
16 about the 5th century that a Patriarch had married?

17 A Yes, as far as I know.

18 Q And do you know whether or not he was defrocked?

19 A I understand that he was defrocked. He defrocked
20 himself in Seattle prior to his marriage. I might add, Mr.
21 Pestarino, that everywhere in all of the churches between San
22 Francisco, Turlock, all over the world, it hit the people like,
23 I don't know what the word is to describe it, it was as if
24 their main lifeline had been cut.

25 Q Is that why you say that the Patriarch was the political
26 and the religious leader of the Assyrian people?

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1 A I believe that in the foreign countries where we have
2 Assyrian people they had such high respect and esteem for
3 this man that it is just an unbelievable thing. Even today
4 I am told in Syria the people do not believe he is married.
5 They won't accept it.

6 Q Okay. Let me change the subject for a minute. You
7 have known David Ismail since 1967 or '68? A Yeah.

8 Q And since '67 to the present time how many times have
9 you seen David Ismail? Approximately?

10 A Physically seen him?

11 Q Yeah. A Oh, I am trying to think of all of the
12 conventions. Maybe four times.

13 Q Maybe four times? A Mm-hmm.

14 Q Have you spent much time with him on the other three
15 occasions? A No, other than in the conventions
16 themselves. You mean?

17 Q Physically in his presence? A At the conventions?

18 Q Yeah. A Well, no, except that everybody was
19 in the parties or in the meetings. We hold meetings during
20 the day, and evenings they always have a big function, a dance,
21 dinner dance, and Labor Day they hold a picnic.

22 Q Now, these conventions are what? What are these
23 conventions? A These conventions are held annually by
24 the --

25 Q First of all, what are they? The conventions of A.U.A.?

26 A No.

35
1 Q Or religious people or what? A The Assyrian-
2 American National Federation. It is an organization that is,
3 that is mainly chiefly, mainly concerned with the Assyrians
4 in the United States. We have scattered throughout the
5 United States many affiliates. I believe there are 26,
6 could be 28 affiliates. And every year we gather together
7 and hold a convention. This has been going on for the past
8 30 years maybe.

9 Q Okay. Now, did you know David Ismail's family, his wife,
10 his brothers? A His brothers. I talked to the family
11 on the phone.

12 Q Did you know his father? A I have seen his father.
13 I didn't know him personally but I have heard much about him
14 from everywhere.

15 Q Did David Ismail ever talk to you about his relationship
16 with his father? A Yes.

17 Q And on this recent visit did he talk about his father?

18 A He --

19 Q Be careful. My question is, did David Ismail ever talk
20 to you on this recent visit about his father?

21 A Yes. I mentioned to him that in Turlock, when his father
22 passed away, we were reliving old things, and I told him what
23 a wonderful memorial service they gave for his father in
24 Turlock.

25 Q Were you present there? A Yes, I was. It was a
26 three-and-a-half-hour service. And there were an awful lot

36
1 of people there paying their respects to the man.

2 Q All right. And so did you talk to David about his
3 relationship with his father? A Yes, he mentioned that
4 he missed his father very much.

5 Q Did he say when his father -- well, strike that.

6 Did he say anything more about his father?

7 A That his father was a great man and how much he loved
8 him and missed him, and he tried to be very much like his
9 father. He was close to his father. His father meant a
10 great deal to him.

11 Q Okay. You paid the fare at the Sunset Motel for David?

12 A Yes, I did.

13 Q Why did you do that? A Because my people, the
14 Assyrians, pride themselves on hospitality. And there was no
15 way this man was coming all of the way out here to visit with
16 us that we would let him, you know, being that I had booked
17 him in there, that I would ever let him pay his bill.

18 Q Did you pay his bill at the PSA? A No.

19 Q Why not? A Because I just didn't. I didn't
20 book him in there. I mean, I really didn't have anything to
21 do with that.

22 Q So you felt because you had registered him --

23 A I felt obligated.

24 Q -- under the name of David Benjamin --

25 A I felt obligated, we should pay this bill because of his,
26 you know, background, his father and our hospitality. That

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1 is the least I could do for him as friends.

2 Q At the time he was down here did you -- strike that. He
3 was always dressed neatly, wasn't he?

4 A Very.

5 Q Did you press his clothes or do his washing?

6 A No, nothing of the kind.

7 Q And you have been visiting with him regularly ever since
8 he has been in jail in November? A That's right. Every
9 week-end.

10 Q Is there anything between you people other than the fact
11 that you are Assyrians? A No. Assyrian people somehow
12 unite together through a blood bond. All you have to say
13 anywhere in the world if you run into someone, you are an
14 Assyrian, and immediately there is a brotherly fellowship that
15 comes between you.

16 Q This People's Exhibit for identification, the Christmas
17 card, 29, People's Exhibit No. 29, where you wrote, where you
18 signed that, "God bless you," and so forth, "Love, Kitty,"
19 did love have any particular significance? A No. No.

20 Q Huh? A No. I sign most of my Christmas cards
21 love. I love my people and I just sign it automatically
22 unless, you know, it is a casual acquaintance.

23 Q And there was a footnote to that card, "Keep up the good
24 work for the A.U.A." A Mm-hmm.

25 Q And I think you have explained that, what work.

26 A That was when they were having a special drive to get

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1 clothing and goods for people who were having a very difficult
2 time in Iraq, Assyrian people.

3 Q And what year was that? A I think it was '73.

4 But all over the United States, in Chicago, Turlock, Los
5 Angeles, everywhere they had a drive going. And it was
6 basically the baby of the A.U.A. and everybody was working to
7 help.

8 Q So that is what you meant when you said, "Keep up the
9 good work" -- A That's right.

10 Q -- "with the A.U.A."? A That's right.

11 Q How long have you known Mr. Lazar?

12 A Yule Lazar? I have known him since '75. I mean,
13 close. I saw him in various parties that we have had but I
14 didn't really know him like I know him now.

15 Q When did you start to work for him?

16 A In September of '75.

17 Q And he is a bookkeeper basically or an accountant?

18 A He is the controller.

19 Q What does that mean? A The man in charge of
20 finance of our hotel.

21 Q Does he keep records of everything? A Everything.

22 Q Is he a meticulous record-keeper? A He sure is.

23 Q He has kind of a bookkeeper's mind, has he?

24 A Very, very sharp with figures. Excellent bookkeeper.

25 Q Really, the only relationship you have with Yule Lazar
26 is that you work for him, isn't that right? A I work

39
1 for him, right. I do see him in the Assyrian, you know,
2 community functions. I have been on the radio program with
3 him a few times.

4 Q Do you go out with him socially? A Oh, no, not
5 socially except in the Assyrian, only for the Assyrian parties,
6 but everybody knows everybody. I mean, it is very ethnic.
7 It is a very close ethnic group.

8 MR. PESTARINO: I think that is all. Thank you.

9 MR. ROBINSON: I just have a couple quick questions.

10 REDIRECT EXAMINATION

11 BY MR. ROBINSON:

12 Q You told us that the Assyrian community was shocked when
13 the Patriarch was married, that they didn't feel it was good,
14 they were screaming, cursing, and they lost all respect for
15 him, right? A Yes.

16 Q Okay. So I take it you must have discussed this with
17 Mr. Ismail when he came down here? A No, we didn't
18 discuss it.

19 Q Didn't discuss it at all? A No, not when he came
20 down here.

21 Q But it was being discussed in the Assyrian community?

22 A Not when he was here. This happened, this discussed,
23 the shame came upon my people when he married three years ago,
24 or whenever he married, three years ago.

25 Q So is it safe to say within the last, say, year before
26 the Patriarch was killed that it wasn't an issue in the

1 Assyrian community any more, that they had accepted it?

2 A They had never accepted it. It had just kind of quieted
3 down. The only people that were concerned with this problem
4 were the members of the church.

5 Q He was still the Patriarch, wasn't he?

6 A No.

7 Q When he was killed? A No, not to my knowledge.

8 Q He wasn't Patriarch when he was killed? A No.

9 Q Who was the leader of the church when the Patriarch was
10 killed? A There isn't a leader any more. My under-
11 standing was that the relationship was severed. He defrocked
12 himself and said he was a common man. And the bishops were
13 running the church.

14 Q That is your understanding? A That is my under-
15 standing.

16 Q Now, Sargis Michael, do you know the individual?

17 A Sargis Michael?

18 Q Mm-hmm. A No.

19 Q Never heard that name? A No.

20 Q Yet you attend the Assyrian Universal Alliance functions
21 from here to San Francisco, from here, from San Francisco to
22 Los Angeles? A That's right.

23 Q You are a very close knit community? A Right.

24 Q And you never heard of Sargis Michael? A No.

25 Q What about Mr. Kanna in Sidney, Australia, are you
26 familiar with him? A No.

1 Q Never heard his name? A I heard his name
2 mentioned.

3 Q Okay. Now, was Mr. Kanna a supporter or somebody who
4 disliked greatly the Patriarch? A I really don't know.

5 Q Well, in your experience with this close knit community
6 and being a broadcaster, and discussing this close knit
7 community, surely you must have heard, Miss Benjamin?

8 A Heard what?

9 Q About whether or not Mr. Kanna was an avid supporter or
10 somebody who greatly disliked the Patriarch?

11 A No, I never heard that mentioned.

12 Q Okay. Now, you told us that Mr. Ismail discussed his
13 father, he is very close to his father, right?

14 A He was.

15 Q And that he said he missed his father very much?

16 A Yes.

17 Q How come he didn't attend his father's funeral down in
18 Turlock? A It is a little expensive to come from
19 Canada to go all over for these memorial services.

20 Q Well, he used to go from Canada all over for these
21 Assyrian meetings? A Once a year.

22 Q How many times did his father die?

23 MR. PESTARINO: Excuse me, I think, if I may
24 interrupt, Your Honor, I think we are talking about a funeral
25 as against a memorial service. And I don't know if the
26 witness understands that.

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1 THE COURT: Well, it tends to get argumentative.

2 MR. PESTARINO: I am not even worried about the
3 argumentative. But I don't think that the witness understands.
4 I think counsel has the impression that the funeral was down
5 in Turlock.

6 MR. ROBINSON: That is the impression I had.

7 THE WITNESS: No. I said memorial service.

8 MR. ROBINSON: I understood that to be a funeral.

9 THE WITNESS: A memorial service in the memory of
10 Malek Yagoub.

11 Q (By Mr. Robinson) How many people from the Assyrian
12 community attended? A All of the people in Turlock
13 was there. The hall was just filled to capacity.

14 Q Anybody from outside of Turlock attend?

15 A The people from San Francisco and Los Angeles.

16 Q And that is all? A That is all.

17 Q Nobody from back East came? A No.

18 Q The Reverend DeBaz and those people didn't come out
19 here? A No.

20 Q Now, are you familiar with Mr. Ismail's wife?

21 A I know her.

22 Q Okay. And I take it you have this same common bond
23 because -- strike that.

24 Is she an Assyrian?

25 A Yes, she is.

26 Q And you have this same common bond with her that you do

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1 with Mr. Ismail because they are both Assyrians, right?

2 A Yes.

3 Q How come on the Christmas card you just addressed it to
4 David Ismail, not David Ismail and family or Mr. and Mrs.
5 Ismail? Any reason for that? A No reason. Really

6 it is understood that the man is the head of the household.

7 Q Now, did Mr. Ismail's wife accompany him when he would
8 go to these various meetings? A No.

9 Q Did you know that Mr. Ismail was unemployed?

10 A I don't understand your question. What period?

11 Q When he came down here to San Francisco and was touring
12 around looking for various business opportunities, sightseeing,
13 did you know that he didn't have a job?

14 (Off-the-record discussion between the witness and
15 the Court.)

16 THE COURT: Tell the attorney that.

17 THE WITNESS: When he came to San Francisco he was
18 not employed, that is correct.

19 Q (By Mr. Robinson) And did he tell you for how long he
20 had been out of a job? A No, not directly.

21 Q Okay. A I don't recall.

22 Q Did you discuss money with him? A No.

23 MR. ROBINSON: I have nothing further.

24 MR. PESTARINO: All right. May this witness be
25 excused?

26 MR. ROBINSON: No, this witness can go back to her

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1 job but perhaps she might be needed to testify later on in
2 the trial. So I would like her subject to subpoena.

3 THE COURT: You are excused for now but you may be
4 recalled.

5 (Witness excused.)

6 THE COURT: All right. Ladies and gentlemen, let's
7 take our afternoon recess, and you will keep in mind my
8 previous admonition. The defendant will be ordered to return
9 also. Thank you.

10 (Short recess taken.)

11 THE COURT: Be seated, please. Let the record show
12 that the jury is present, defendant and counsel are present.

13 MR. ROBINSON: Thank you, Your Honor. The People
14 will call Larry Crowley.

15 LARRY JOE CROWLEY,

16 called as a witness on behalf of the People, being first duly
17 sworn, was examined and testified as follows:

18 THE CLERK: Take the witness stand, please.

19 DIRECT EXAMINATION

20 BY MR. ROBINSON:

21 Q Could you state your full name, spelling your last name
22 for the record? A Larry Joe Crowley, C-r-o-w-l-e-y.

23 Q Your occupation? A I am a security agent for
24 Macy's in Sunnyvale, Concord, California.

25 Q And Mr. Crowley, are you familiar with Mrs. Edith Hart?

26 A Yes, that is my mother-in-law.

45

1 Q You married to her daughter? A Yes.

2 Q And are you familiar with the fact that she manages the
3 Sunset Motel in San Francisco? A Yes, sir.

4 Q Okay. Can you tell us where that motel is located?

5 A It is on 19th and Taravel.

6 Q Mr. Crowley, do you and your wife sometimes help out your
7 mother-in-law and father-in-law in managing that motel?

8 A Yes.

9 Q Now, directing your attention to October 30th, 1975,
10 that would be a Thursday, were you helping out and managing
11 the motel at that time? A Yes, sir.

12 Q Okay. Had your in-laws gone some place?

13 A Yes, they had gone to San Diego for my brother-in-law's
14 graduation from naval boot camp.

15 Q So, you and your wife were in the motel?

16 A Yes, sir.

17 Q I am going to show you People's Exhibit No. 19, Mr.
18 Crowley, and ask you if you can look at that and tell me if
19 you recognize it? A Yes, this is the registration card
20 from the Sunset Motel.

21 Q Okay. And the name David Benjamin, does that ring a
22 bell to you? A Yes, sir.

23 Q Okay. Can you tell us how you received this registra-
24 tion card? A That registration card was filled out by
25 a lady that I know by Mrs. Benjamin through meeting her when
26 she came to the motel. She filled it out to speed things up

16
1 so when the person that was coming to the room wouldn't have
2 to stop and sign in.

3 Q And this lady called herself Mrs. Benjamin?

4 A I believe so.

5 Q Now, when did this lady fill out this card, Mr. Crowley?

6 A In the afternoon on Thursday.

7 Q All right. And in filling out this card did she pay
8 for the room? A Yes, sir, she paid one day in advance.

9 Q Okay. And is that cash money? A Yes.

10 Q And why did she have to pay one day in advance, cash
11 money? A This is general procedure, when you rent a

12 room to someone that they give you the advance money to make
13 sure that they are going to occupy the room for that day.

14 Q Now, Thursday, Thursday evening, October the 30th, 1975,
15 were you on duty with your wife? A Yes, sir.

16 Q Okay. And did an individual named, who you know as David
17 Benjamin check into that motel? A Yes, sir.

18 Q Did you see him when he checked in? A Yes, I did.

19 Q Did you see if he had anything with him?

20 A No, I didn't notice at the time.

21 Q Okay. Now, could you tell me what he was wearing?

22 A He was dressed casually, no tie, open shirt, leather
23 jacket, waist length leather jacket, slacks.

24 Q When this individual checked in was he with anybody?

25 A Yes, he was with Mrs. Benjamin.

26 Q And did you direct him to his room or something?

17
1 A No, she already knew where it was. I gave her the key
2 and he went to his room.

3 Q You hadn't given her the key prior? A No, I offered
4 to give it to her earlier because she wasn't too sure as to
5 what time he was going to get in, if it was going to be
6 extremely late, I was willing to give her the key but as it
7 turned out they came to the office for it.

8 Q Do you know about what time? A It was between
9 8:00 and 9:00, or so.

10 Q In the evening? A Yes.

11 Q And this individual that was, that you know as Mr.
12 Benjamin that was wearing the waist-length leather jacket,
13 the slacks, and European-styled tapered shirt, do you see this
14 person in court today? A Yes, sir.

15 Q Would you point him out, please?

16 A The gentleman right here (indicating).

17 Q Now, directing your attention to October the 31st, which
18 would be a Friday, okay? Did you see Mr. Benjamin, the
19 person you know as Mr. Benjamin, did you see him at about
20 8:00 or 9:00 o'clock in the morning? A Yes, sir.

21 Q Okay. Where did you see him? A He was down
22 close to the office, and I was going to give him directions
23 on how to get to the zoo.

24 Q Did he ask you how to get there? A Yes, sir.

25 Q Did you give him the directions? A Yes, sir, I did.

26 Q And when Mr. Benjamin was going -- well, strike that.

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1 Did he leave the motel area?

2 A Yes, he did, sir.

3 Q And is this a small motel? A Yes, it is. There is
4 only 10 units.

5 Q So you can pretty much keep track of what is going on
6 in there? A Right, sir.

7 Q When he left the motel area did he receive a call from
8 anybody? A Yes, he did.

9 Q And do the individual motel rooms in your motel have
10 telephones? A No, sir. All calls for all rooms
11 come through the office.

12 Q Okay. And this call that he received, who called?

13 A Well, the first call was from Mrs. Benjamin asking if
14 he had returned from the zoo yet. And I told her he hadn't.

15 Q And subsequent to that time was there another call?

16 A Yes, sir. There was a call from Los Angeles, gentleman
17 asked for him and he asked for a person that I didn't
18 recognize the name, and I told him, I says, "The only person
19 that checked in the day before was a Mr. Benjamin." And he
20 said that that will be the gentleman in Room 1, and that is
21 who I want to talk to, and I said he is out at the moment.

22 Q This call from Los Angeles, was the name he asked for,
23 does this ring a bell, David Ismail? A Yeah, it sounds
24 something like it, but I am not too sure.

25 Q And you said the only person you had at the motel was a
26 David Benjamin? A Right.

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1 Q And this man said, "That is the person I want, in Room 1"?

2 A Yes, sir.

3 Q How did this person know that Mr. Benjamin was staying

4 in Room 1? A I don't know, sir.

5 Q Okay. Did you tell him he was staying in Room 1?

6 A No, sir.

7 Q Was he staying in Room 1? A Yes, sir.

8 Q What time did this call come in, Mr. Crowley?

9 A This was shortly before noon.

10 Q Okay. Now, did Mr. Ismail, the person you know as Mr.

11 Benjamin, did he return some time on Friday?

12 A Yes, he did.

13 Q Okay. And when he returned did you give him any

14 messages? A Yes, sir. I told him that Mrs. Benjamin

15 had called and also a gentleman from Los Angeles had called.

16 Q And did you take the number of this person from Los

17 Angeles? A No, sir, I didn't.

18 Q Okay. Did Mr. Ismail call anybody? A Yes, sir,

19 he did.

20 Q Where did he place the call from? A He made a

21 long distance phone call to Los Angeles, California.

22 Q Is that located on the reverse side of this card?

23 A Yes, sir, it is.

24 Q And is the telephone number indicated on there?

25 A Yes, sir.

26 Q And were you present when Mr. Ismail made this call?

10
1 A Yes, sir.

2 Q Okay. Where did he make the call from?

3 A From the office right there at the registration desk.

4 Q All right. And did you hear any conversation when he
5 was talking on the phone? A Yes, sir, but I don't
6 recall what they were talking about.

7 Q Did you stay in the room or did you leave the room?

8 A No, sir, we went back to work.

9 Q Now, did Mr. Ismail make any calls in the afternoon,
10 Friday afternoon? A Yes, sir.

11 Q And were they, also, made from the phone in the office?

12 A Yes, sir.

13 Q Were you there when he made these calls?

14 A Yes, sir.

15 Q And could you hear anything he was saying?

16 A He made a couple of local calls, and they were in a
17 foreign language and I didn't understand any of it.

18 Q Okay. Now, later on Friday, in that afternoon, did Mr.
19 Ismail ask you about going to any place in San Francisco?

20 A Yes, sir. He asked me about how to get to an address
21 on Judah Street. I don't remember the address though.

22 Q Did you inform him how to get there? A Yes, sir.

23 Q How did you do that? A I told him it was up 19th
24 Street and it was approximately six blocks from Taravel that
25 he would find Judah.

26 Q And did you show him a map? A Yes, sir.

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1 Q Now, directing your attention to Friday night, October
2 the 31st, 1975, Mr. Ismail was still staying at your motel?

3 A Yes, sir.

4 Q Okay. And where were you staying when your father-in-law
5 and mother-in-law were away? A Okay. We stayed in
6 the apartment which is just above the registration desk and
7 above Room 1.

8 Q And Friday night could you describe the type of bed that
9 you were in? A It was a very hard bed.

10 Q Okay. And did you have problems sleeping?

11 A Sure did.

12 Q Okay. And could you describe the room in which you were
13 in, does it have any sort of a window or anything?

14 A Yes, sir, it has a large plate glass window with a full
15 view of the parking area and units.

16 Q Okay. Now, were you up that Friday night because of
17 the hard bed? A Yes, sir.

18 Q And what were you doing? A I was watching Johnny
19 Carson show.

20 Q Now, some time during that night did you see a government
21 interagency car come into your motel?

22 A Yes, sir, I did.

23 Q Okay. And could you describe this car for us?

24 A It was light in color, either white or a light gray.

25 Q Okay. And did it have any identifying characteristics

26 on it? A Yes, sir. It had U.S. Government Interagency

52 1 Pool Car written on the driver's side of the car on the door.

2 Q And did this car park in a certain area?

3 A Yes, sir, it parked. He pulled into the driveway and
4 straight down and parked right behind the car that was parked
5 directly below unit No. 10.

6 Q Now, why was it that you particularly noticed this car?

7 A Well, it was just kind of strange that a government car
8 would be pulling in between, say, midnight, around midnight.

9 Q That was my next question. What time did this car pull
10 in? A It was between midnight and 1:00 o'clock.

11 Q And it parked directly behind a car that was parked in
12 space 10? A Yes, sir.

13 Q Did this cause you to be apprehensive or anything?

14 A Yes, sir, it did because if the people in Room 10
15 decided to leave, which is not uncommon in the motel business --

16 Q With your TV set. A -- this car may have been
17 obstructing their way out.

18 Q Okay. And so did you watch this car?

19 A Yes, sir.

20 Q Okay. And can you tell us if anybody got out of this
21 car? A Yes, sir, two men.

22 Q Okay. And could you describe what they looked like,
23 what they were wearing, or anything?

24 A They were dressed in what looked to be like uniforms.
25 When I say uniform, like work clothes, khaki pants and shirts
26 to match.

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- 1 Q And what did these two men do?
- 2 A They went up to Room 1, sir.
- 3 Q And is that the room that Mr. David Benjamin was in?
- 4 A Yes, sir.
- 5 Q Did you see them go into Room 1? A Yes, sir.
- 6 Q How long were these men in Room 1? A About 10 or
- 7 15 minutes.
- 8 Q And did you see them leave Room 1? A Yes, sir.
- 9 Q What did they do? A They went out and got into
- 10 their car and drove away.
- 11 Q Now, when these men left Room 1 at about 12:00 o'clock
- 12 in the morning on Friday, October the 31st, or maybe it was
- 13 Saturday morning by that time, November the 1st, was it sort
- 14 of between 12:00 o'clock and 12:15, in that area?
- 15 A Right, yes, sir.
- 16 Q Did David Ismail, did the man that was registered in
- 17 Room 1 go with them? A No, sir. He walked out to the
- 18 car but he did not leave.
- 19 Q And then the car took off? A Yes, sir.
- 20 Q What did Mr. Benjamin do? A He went back to his
- 21 room, sir.
- 22 Q Now, at this time were you still watching the Johnny
- 23 Carson show? A Yes, sir.
- 24 Q After the Johnny Carson show came on did another program
- 25 come on? A Yes, sir.
- 26 Q What was that? A The Tomorrow Show, or something

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1 of that nature.

2 Q And during this period of time was your attention once
3 again directed out again into the parking lot area?

4 A Yes, sir. There was another car pulled in.

5 Q Where did this car park? A It parked underneath
6 unit 5 or unit 6, I can't really remember, but it was under
7 one of those two.

8 Q Did you see anybody get out of that car?

9 A Yes, sir, a gentleman in a suit and got out and went up
10 to unit 1.

11 Q Did this man go into unit 1? A Yes, sir, he did.

12 Q How long did he stay in unit 1? A About 10 or 15
13 minutes.

14 Q And what happened next? A Mr. Benjamin and this
15 gentleman went out and got into his car and left.

16 Q Okay. Now, this would be in the early morning hours
17 of November the 1st? A Yes, sir.

18 Q Saturday? A Yes, sir.

19 Q All right. And how long were they gone?

20 A Oh, about 45 minutes to an hour maybe.

21 Q What time did they return approximately?

22 A I would say between 2:30 and 3:00 or so.

23 Q And were you still awake at that time? A Yes, sir.

24 Q A really hard bed? A That's it.

25 Q And when this car pulled back in was it the same car

26 that had taken Mr. Benjamin out? A Yes, sir, it was.

55

1 Q Okay. And when it pulled back in what did you see?

2 A Mr. Benjamin exited the automobile, went back to unit 1,
3 and the fellow left.

4 Q Okay. Now, did you have any contact with Mr. Benjamin
5 on November the 1st, a Saturday, 1975? A Yes, sir, I
6 did.

7 Q All right. Could you tell us about that contact?

8 A Mr. Benjamin came down to the office just prior to check-
9 out time which is 12:00 o'clock noon and asked if he could
10 keep some luggage at the office there because he wasn't too
11 sure whether he was going to stay on longer with us, and I
12 said, "Well, if you are we are going to have to move you to
13 a different room because that room has already been reserved
14 by someone else." So I took his luggage and put it under-
15 neath the stairwell there until he came back.

16 Q And what luggage did Mr. Benjamin have at that time?

17 A As I remember it was two suitcases and a shaving bag and
18 a clothing bag, small clothes bag that would hold maybe
19 couple shirts and suit or something.

20 Q So two suitcases? A Yes, sir.

21 Q And one, like a small attache bag? A Right,
22 shaving bag or something like that.

23 Q And a type of a thing where, what is it, a plastic thing?

24 A It is plastic.

25 Q Hold suits inside? A Clothes Guard, I think most
26 people call them.

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- 1 Q That you don't fold up? A Right.
- 2 Q And did you actually handle this? A Yes, I put it
3 behind the desk.
- 4 Q And you put his luggage behind the desk?
- 5 A Yes, sir.
- 6 Q And he left them there with you? A Yes, sir.
- 7 Q Now, did Mr. Ismail leave the motel between 11:00 and
8 12:00 on November 1st, 1975? A Yes, sir, he did.
- 9 Q And did he leave by himself or with somebody else?
- 10 A Mrs. Benjamin came and picked him up.
- 11 Q And did he return to the motel? A Yes, sir, later
12 on that evening.
- 13 Q Do you know who he returned with? A Mrs. Benjamin,
14 and I think somebody else. I don't remember who the other
15 person was though.
- 16 Q Was it a male or female? A I think it was a male.
- 17 Q Approximately what time did they come back to the motel
18 on November 1st, 1975? A Between 7:00 and 8:00.
- 19 Q Okay. And did they have a car? A I believe so.
- 20 Q All right. And did they pick up Mr. Ismail's equipment?
- 21 A Yes, sir.
- 22 Q His luggage? A He picked up everything that was
23 his and left.
- 24 Q And Mrs. Benjamin was with him? A Yes, sir.
- 25 Q And another man? A Yes, sir.
- 26 Q Was that the last you saw of Mr. Ismail?

1 A Yes, sir. He went out the door and I don't know what
2 kind of car they were in but I assume they were in an
3 automobile. They walked out the driveway.

4 Q Okay. Now, at any time when you saw Mr. Ismail was he
5 wearing a suit? A No, sir.

6 Q What was he wearing? A Very casually dressed
7 European-style clothing and the leather jacket, waist length
8 leather jacket.

9 Q Okay. Showing you People's 10-BB for identification,
10 Mr. Crowley, have you ever seen that suit on Mr. Ismail?

11 A No, sir.

12 Q Okay. Mr. Crowley, are you an Assyrian?

13 A No, sir.

14 Q Are you a member of the Assyrian Universal Alliance?

15 A No, sir.

16 Q Did you ever know Kitty Benjamin before she came in and
17 identified herself as Mrs. Benjamin and registered Mr.

18 Benjamin? A No, sir.

19 Q Did you ever know the defendant over here, Mr. David
20 Ismail? A No, sir.

21 Q Do you know Sam Lazar? A No, sir.

22 Q Okay. Do you know anything about the Patriarch, Mar
23 Shimun? A No, sir.

24 Q Okay.

25 MR. ROBINSON: Thank you. I have nothing
26 further.

CROSS-EXAMINATION

BY MR. PESTARINO:

Q Mr. Crowley, who contacted you?

A Who contacted me, sir?

Q Yeah. A I believe a representative from the District Attorney's Office down here.

Q Did you make a recording of this conversation?

A No, sir.

Q When were you contacted? A I was contacted last night.

Q For the first time? A Yes, sir.

Q Where were you contacted? A My wife was contacted first and she called me at work, and when I came home I was contacted about 11:00 o'clock or so.

Q Last night? A Yes, sir, on the phone.

Q And was there just a representative from the District Attorney's Office there? A No, sir. This was over the phone.

Q Oh. A No one in person.

Q I see. And you were living where? In Los Angeles?

A No, sir, in Martinez.

Q In Martinez? A Yes, sir.

Q And do you remember the name of the person that contacted you? A Yes. Mr. Hess.

Q And how long did you spend talking to him on the phone?

A Maybe 15 or 20 minutes.

1 Q Had you talked to him since that time?

2 A Yes, sir. He picked me up in Martinez at about 11:00
3 o'clock today.

4 Q Today. And did you discuss with him the testimony from
5 Martinez down here? A He asked me if I still had in
6 my mind what I told him last night over the phone, which is
7 basically what I just told this gentleman here.

8 Q So those are the only two times that you talked about
9 this case? A Yes, sir.

10 Q All right. This happened on October the 31st, that Mr.
11 Benjamin -- A Yes, sir. That is what I know the
12 gentleman by.

13 Q And how long had you been at the motel taking care of it
14 for your in-laws prior to that time? A We were there
15 Wednesday, Wednesday evening.

16 Q So you came there Wednesday? A Yes.

17 Q How often had you taken care of that motel in the past?

18 A I would say on an average of about once a month for
19 about, off and on, for about six months.

20 Q For how long a period? A week-end?

21 A Yes, sir, so that they could get out and get away from
22 the motel for awhile.

23 Q I see. And when Mr. Benjamin registered he had some
24 baggage? A I didn't see him come in with any baggage.
25 When he came to the motel I didn't notice if he had any.

26 Q And he came in with a person by the name of Mrs. Benjamin?

1 A Yes, sir.

2 Q There was no registration on anything else, they just
3 walked in? A Yes, sir. He walked in because she had
4 already signed or filled out the registration card because
5 she was under the impression he might be coming in extremely
6 late and wouldn't want to bother with signing in.

7 Q Yeah. Okay. What was Mrs. Benjamin wearing?

8 A The day that I first saw her?

9 Q Yes. A She was dressed in black, I think, black
10 dress.

11 Q Was it a long dress or short?

12 A It was about, about knee length.

13 Q Was she wearing a coat or sweater?

14 A I don't really remember, sir.

15 Q Did she have her hair up or down? A It was up, sir.

16 Q And had you spoken to Miss Benjamin before yourself?

17 A No, sir.

18 Q Did you speak to her on that occasion?

19 A Yes, sir.

20 Q What did you talk about? A We talked about the
21 cost of the room and whether or not she was going to need a
22 key or they were going to be in early enough to pick up a key.

23 Q Did she state how long they would be there or he would be
24 there? A No, sir. She paid for the first day and
25 said he would take care of it from there, from there on out.

26 Q Was she wearing a blouse or coat or sweater, what?

1 A I don't really remember.

2 Q Don't remember. In other words, Mr. Benjamin walked
3 right by you and went directly to his room? A Yes, sir.

4 Q When he came in? A He came into the office,
5 picked up the key and then went to his room.

6 Q Yeah. Just walked right by? A Came in, I handed
7 him the key and he went to the room.

8 Q Had anybody else registered that night at your motel?

9 A I don't really think so. I think Room 1 was the only
10 one we had left vacant.

11 Q How about before Mr. Benjamin registered, were there
12 other people that walked in? A I don't remember, sir.

13 Q You have about 10 rooms there? A Yes, sir, exactly
14 10.

15 Q Was there anything in particular that struck your fancy
16 as far as Mr. Benjamin was concerned? A His accent.

17 Q People walk in there with coats and different attire,
18 don't they? A Yes, sir.

19 Q What made him stand out? A Like I said, his
20 accent, sir.

21 Q His accent made an impression upon you so that you could
22 remember his coat? A Yes, sir.

23 Q What did he speak to you about? A He didn't speak
24 to me about anything. He just said he was there to pick the
25 key up for Room 1, Mr. Benjamin.

26 Q That is all he said? A Right, sir.

1 Q What did the lady say? A I don't recall that she
2 said anything when they came in.

3 Q He did all of the talking? A I believe so, sir.

4 Q And from that conversation you can remember that he had
5 a jacket on? A Well, he had the same jacket on the
6 next morning which impressed me even more. I thought it was
7 a good-looking coat.

8 Q So you were impressed by the -- what color was his
9 jacket? A I believe it was tan.

10 Q And it was full length? A No, sir, waist length.

11 Q Waist length. What else was he wearing?

12 A Well, like I say, European-style clothing. When I say
13 that I mean that the shirt was form-fitting and the slacks
14 fit snug at the waist.

15 Q Did he tell you what his name was?

16 A Yes, sir, he did. He did on two or three occasions but
17 I couldn't understand him, and that is why I keep referring
18 to him as Mr. Benjamin.

19 Q He wasn't trying to hide his name? A No, sir.

20 Q And when he left the motel he picked up some baggage?

21 A Yes, sir.

22 Q Will you describe the two suitcases for me?

23 A I really can't describe the suitcases. They were just
24 two suitcases and a shaving bag and like I said, a plastic
25 Clothes Guard.

26 Q Plastic Clothes Guard. You mean one of those plastic

1 guards that fit over a hangar? A Yes, sir.

2 Q Or have a hangar in them? A You can place a
3 hangar in it and it's got a hole at the top that you can
4 hold your clothing by.

5 Q And you didn't see him come in with that?

6 A No, sir, I don't recall him coming in with anything.

7 Q With anything at all? A No, sir, I don't.

8 Q You don't recall Mrs. Benjamin carrying anything?

9 A No, sir, I don't.

10 Q When he left there he had these two suitcases and this
11 Clothes Guard? A Yes, sir. He brought it to the
12 office when he was checking out close to noon.

13 Q What was in the Clothes Guard? A I don't know, sir.

14 Q Did you look at it at all? A No, sir, I did not
15 look in it.

16 Q Was it plastic? A Yes, sir. But you couldn't
17 see through it.

18 Q How high or how big was it? What were the dimensions?

19 A I would say it was maybe 19 inches wide and maybe 3 feet
20 long.

21 Q Three feet long. And you hung it up behind?

22 A No, sir. I laid it down on top of the, on top of the
23 suitcases, laid it over them.

24 Q How big were the suitcases? A Standard size
25 suitcase about like --

26 Q About like that? A -- (indicating).

1 Q Two of them like that?

2 MR. ROBINSON: Your Honor, could you help us out
3 for the record?

4 THE COURT: Well, he said standard size.

5 MR. ROBINSON: Okay.

6 Q (By Mr. Pestarino) And then the little shaving bag?

7 A Yes, sir, about like this, a little bigger than what I
8 would consider shaving bag (indicating).

9 Q And that is what he left with? A Yes, sir.

10 Q Now, you indicated that you woke up around midnight?

11 A No, sir, I --

12 MR. ROBINSON: Objection, assumes something not in
13 evidence. He never indicated that.

14 MR. PESTARINO: I am asking.

15 THE WITNESS: I didn't wake up. I couldn't go to
16 sleep so I remained up.

17 Q (By Mr. Pestarino) Okay. You were up then. You were
18 up then around midnight, between midnight and 1:00 A.M.?

19 A Yes, sir.

20 Q And, sir, your testimony was that two men drove up in
21 what kind of a car? A A U.S. Government Interagency
22 car.

23 Q Interagency car. A I don't know what it means
24 myself but --

25 Q U.S. Government Interagency car? A Right. That
26 is what is on the side of the car. I have seen other cars

1 like it.

2 Q Was it a sedan? A It was a four-door.

3 Q Was it black? A No, sir. It was light in
4 color. It could have been white or light gray.

5 Q They parked the car right in the driveway?

6 A Yes, sir. They parked it at the bottom of the driveway
7 right behind the vehicle that was parked under unit 10.

8 Q And this was after 12:00 o'clock? A Yes, sir.

9 Q And did they slam the door? A No, sir.

10 Q They were very quiet, secretive? A Orderly, not
11 secretive. Just normal, got out of the car like anybody
12 else would, shut the door.

13 Q Turned the lights out? A Yes, sir.

14 Q And then they went into Room 1? A Yes, sir.

15 Q And you can see Room 1 from where you were?

16 A Yes, sir.

17 Q Now, how long did they stay in Room 1?

18 A About 10 or 15 minutes, sir.

19 Q Tell me, can you describe these men at all?

20 A No, sir, other than just the khaki uniform.

21 Q What kind of a khaki uniform? A Like it would be
22 used in a gas station, delivery person, or something like that,
23 where the khaki pants and khaki shirt to match.

24 Q Was there any writing on those? A No, sir, not
25 that I noticed.

26 Q Khaki shirt and khaki pants to match. They have hats on?

1 A No, sir.

2 Q Were they dark people, dark-complected people or light?

3 A They appeared to be tan.

4 Q Did they have dark hair or black hair?

5 A Dark hair.

6 Q Long hair or short hair? A No, sir, it's about
7 like mine is right now.

8 Q Can you give me something on their age? Approximately?
9 Were they in their twenties, thirties, forties, fifties?

10 A No, sir. I didn't really pay that much attention to
11 their features.

12 Q Did they have work shoes or boots? A I don't
13 really know.

14 Q Anyway, these two men in the khaki uniform walked up to
15 unit 1? A Yes, sir.

16 Q Could you hear or do you know whether they rang? Is
17 there a doorbell on there? A No, sir. You just have
18 to knock. There is a little knocker that you can --

19 Q I see. And could you hear them knock from where you
20 were? A Yes, sir. I had the doors, the windows
21 ajar in the upper area where I was at.

22 Q And did they have to knock for a few minutes or was the
23 door opened right away? A I never heard the door
24 open. I heard them knock but I never heard the door open.

25 Q Was there quite a bit of knocking or was it just a
26 normal knock? A Just a normal knock.

1 Q And did you see them walk into unit 1?

2 A No, sir. I didn't actually see them walk into it.

3 Q You saw them knock and you saw them leave unit 1?

4 A Yes, sir.

5 Q You actually saw them walk out? A Yes, sir, with
6 Mr. Benjamin.

7 Q With Mr. Benjamin. And Mr. Benjamin walked to the car
8 with them? A Yes, sir.

9 Q Now, was Mr. Benjamin dressed in pajamas, clothes or
10 what? A I don't really remember, sir.

11 Q Did he have his jacket on? A He had clothes on.
12 He didn't have the jacket on, I don't think.

13 Q He had clothes on? A Yes, sir. Shirt, pants
14 and shoes.

15 Q And he walked to the car with them? A Yes, sir.

16 Q Now, how long was it before this had this man asked you
17 for a person in unit 1, or talked to you in relation to a
18 person in unit 1, how long before these two men arrived did
19 you receive this phone call from Los Angeles, if you can
20 follow me? A All right. Okay. I think I under-
21 stand what you are talking about.

22 Q I don't. A Okay. The phone call came in on
23 Friday in the morning from Los Angeles, and they were at the
24 motel, the two gentlemen --

25 Q Excuse me, just a minute. November the 1st was a
26 Friday, was it? A November the 1st was Saturday.

1 Q Oh. So the 31st was Friday? A The 31st.

2 Q Now, tell me again what happened? When did they call
3 or he call? A Well, the call came first and the men
4 were there later on that night, and I guess you could say
5 there was about a 12-hour span of time between the phone call
6 and when this car arrived.

7 Q So it was about 12 hours before that somebody called
8 from Los Angeles and asked for, I guess, a David Ismail?

9 A Yes, sir. I guess so. That name just does not stick
10 in my mind.

11 Q Well, he didn't ask for Mr. Benjamin, did he?

12 A No, sir, he did not. And I said I didn't think we had
13 anybody there by that name and said the only person that has
14 checked in recently is Mr. Benjamin, and he is the only one
15 that was checked in. He said that is the man I want. He
16 is in unit -- Room No. 1.

17 Q And when they left, and when Mr. Ismail, allegedly Mr.
18 Benjamin, he went out, he went out to the car with them?

19 A Yes, sir.

20 Q And he talked to them for a few moments at the car?

21 A Yes, sir. Then walked back to his room.

22 Q Then walked back. And then you were still up watching
23 another TV program? A Yes, sir.

24 Q And you had a bad night? A Terrible.

25 Q And another car came out right by unit 5, huh?

26 A Yes, sir. There is only one driveway into that motel.

1 Q I see. And where was unit 5 in relation to unit 1?
2 Was it down a little ways? A Yes, sir, it is down the
3 hall from it a little ways.

4 Q Okay. And what color was this car?
5 A I don't really remember, sir.

6 Q Did it have anything written on it? A No, sir.

7 Q Was it a black car? A I don't really remember
8 the color.

9 Q Don't remember anything about the color except it was
10 a four-door? A It was a two-door.

11 Q Two-door? A Yes, sir.

12 Q You remember that. And what happened after the car
13 stopped? A A gentleman in a suit got out and walked
14 up to Room No. 1.

15 Q A gentleman in a suit? Was it a light suit or dark
16 suit? A Dark suit, I believe.

17 Q A dark suit. And what did he do? A He went into
18 unit No. 1, Room 1.

19 Q He knocked on the door first? A Yes, sir.

20 Q And this was about what time? A This would be
21 approximately between 1:00 and 1:15, 1:30.

22 Q About maybe half hour after the other car had departed?
23 A I'd say about 20 minutes or so.

24 Q Twenty minutes. So he knocked at the door. This man
25 in the dark suit, was he a dark-complected man with dark hair?
26 A I don't really recall, sir.

1 Q Was he a tall man or shorter man?

2 A Medium build.

3 Q You don't recall whether he had dark hair?

4 A No, sir, I don't really.

5 Q And he knocked on the door and then he purportedly went
6 in, you didn't see him go in? A No, sir.

7 Q And what called your attention to the fact that he was
8 leaving? A Well, when I heard somebody talking when
9 they were walking down the hallway, walking down the stairs
10 so I looked out to see who it was. It being such a small
11 motel and such a confined area, it is not uncommon for you
12 to pay attention to who is walking around out there, and I
13 noticed that it was the gentleman that had driven in and Mr.
14 Benjamin leaving the motel.

15 Q They were both leaving? A Yes, sir.

16 Q You heard them talking. Were they speaking in English?

17 A I don't really recall, sir.

18 Q And they both left? A Yes, sir.

19 Q So that was around 1:00, between 1:00, 1:30, 1:20 in
20 the morning? A It was about 1:30 or a quarter to two.

21 Q A quarter to two. And how long were they gone?

22 A About 45 minutes or so.

23 Q And when they came back did they drive up in the same
24 location from which they had departed? A I really
25 don't know, sir. When you pull into the driveway there you
26 can't see from which direction a vehicle has come off of

1 Taravel Street.

2 Q Anyway, what did you see when they drove up?

3 A They pulled in and Mr. Benjamin got out and went up to
4 his room and the gentleman turned his car around and left.

5 Q Did he remain there for a few moments talking to this
6 man? A I don't think so. He just got out of the car
7 and went to his room.

8 Q And he left? A Yes, sir.

9 Q Okay. Now, how was Mr. Benjamin dressed at that time?

10 A I believe he was dressed in his casual clothing again,
11 as best I can remember.

12 Q You think he had the jacket on? A Yes, sir, I
13 think so.

14 Q Did he have a black shirt on? A I don't know
15 what color shirt he had on.

16 Q Did he have light pants? A I don't really
17 remember what kind of pants he had on.

18 Q Was he wearing a hat? A No, sir.

19 Q So you believe that he was dressed casually?

20 A Yes, sir.

21 Q And then he returned. And what time did you see him
22 the next morning? A The next morning, sir? Shortly
23 before check-out time, which would be close to noon.

24 Q That is the first time you seen him the next morning
25 was close to noon? A Yes, sir.

26 Q Do you have a restaurant at your motel or a bar or

1 anything? A No, sir.

2 Q Okay. And at noon then he told you that he was
3 thinking of checking out? A Yes, sir. He said he
4 was ready to check out but there might be a possibility that
5 he would be staying on with us a little longer, but that he
6 wasn't exactly sure.

7 Q And did you talk to him any length of time then?

8 A No, sir.

9 Q Okay. So he left around noon time and he didn't return
10 until about 7:00 or 8:00 or 9:00 o'clock that evening?

11 A Right, somewhere between that period of time, 7:00, 8:00.

12 Q When he returned he was with whom?

13 A Mrs. Benjamin and I believe there was another, a
14 gentleman with him. I'm not exactly sure. But they picked
15 up his things that he had left there and they left.

16 Q Now, can you describe this gentleman that was with him?

17 A No, sir, I can't.

18 Q Can you describe what this gentleman was wearing?

19 A No, sir, I can't.

20 Q Can you tell me whether this gentleman was tall or small?

21 A I really don't remember that much about him.

22 Q Did he have black hair? A I think he had dark hair
23 but they were only there, like I say, a couple of, maybe a
24 minute, a minute and a half, two minutes at the maximum,
25 picked up his things and left.

26 Q Was this gentleman wearing glasses?

1 A I don't know, sir.

2 Q And they picked up their things, his things, and they
3 left? A Yes, sir.

4 Q What was Miss Benjamin wearing at that time?

5 A Dark clothing.

6 Q Still dark clothing? A Yes, sir.

7 Q Long dress or medium? A Medium. The occasions
8 that I saw Mrs. Benjamin she was dressed in dark clothing.

9 Q Have you seen Mrs. Benjamin outside? A Yes, sir.

10 Q She was wearing dark clothing today?

11 A She is wearing a plaid flare-length skirt and her hair
12 is done up.

13 Q She wasn't wearing that that night? A No, sir.

14 I don't think so.

15 Q All completely dark clothing? A Yes, sir.

16 Q And that is about all you know about it? They left and
17 they picked up their luggage, and you never saw them again?

18 A No, sir.

19 MR. PESTARINO: Excuse me for just a minute. I
20 don't think I have any questions but I would like, I don't
21 think that I want to excuse this witness.

22 THE COURT: All right. Do you have any redirect?

23 MR. PESTARINO: I would like him to stand by.

24 MR. ROBINSON: Yes. I do have one question.

25 REDIRECT EXAMINATION

26 BY MR. ROBINSON:

Q Mr. Crowley, you knew that your mother-in-law had been

1 questioned by the police about this? A Yes, sir.

2 Q Okay. And had you discussed this incident with your
3 mother-in-law? A Yes, sir.

4 Q Sort of get together and sort of discuss what you
5 remember and everything? A Yes, sir.

6 MR. ROBINSON: Thank you. I have nothing further.

7 THE COURT: You are excused, Mr. Crowley, but you
8 may be recalled. We will try to give you some advance
9 notice.

10 THE WITNESS: Okay. Thank you.

11 MR. ROBINSON: Thanks for coming down, Mr. Crowley.

12 (Witness excused.)

13 MR. ROBINSON: The People don't have any further
14 witnesses today. We will be ready to go tomorrow. I think
15 we are going to wrap this up a lot sooner than anticipated.
16 I think that we can get our case to the jury by the end of
17 the week easily.

18 THE COURT: You understand that we don't have court
19 Thursday?

20 MR. ROBINSON: That is correct. I am hopeful we
21 can get all of our testimony in tomorrow.

22 MR. PESTARINO: May we approach the bench?

23 THE COURT: Would you, please?

24 (Discussion off the record.)

25 THE COURT: All right. Ladies and gentlemen, we
26 will adjourn then for today. And we will resume tomorrow

1 morning at 9:45. I want to remind you that Thursday we will
2 not have court because of my settlement conference calendar.
3 And I will give you further instructions tomorrow as to any
4 other possible delays. But as counsel has indicated, the
5 case is moving right along and I don't think that you need
6 be concerned about it dragging out beyond what we had
7 originally anticipated. Could I ask you, please --

8 MR. PESTARINO: I may have one more question. I
9 hate to interrupt.

10 THE COURT: That is all right.

11 MR. PESTARINO: Do you want to approach --

12 THE COURT: Just a moment, please.

13 (Discussion off the record.)

14 THE COURT: All right. Ladies and gentlemen, keep
15 in mind the admonition that I have given you before and we
16 will see you tomorrow morning at 9:45. I understand from
17 the Bailiff hopefully we can get the air conditioning on
18 tomorrow afternoon. Maybe it will be cooler tomorrow than
19 today. And I do appreciate your sweltering with us on a
20 rather humid, uncomfortable afternoon. Again, as in every
21 case, problems keep cropping up and questions arise in your
22 mind, and I will just ask you to, please, not do any detective
23 work on your own or try to figure things out. Just wait
24 until all of the evidence comes in and you hear the arguments
25 of the attorneys. I am sure that everything you need to
26 know or can be presented will be presented. But once you

1 leave here just shut it all off until tomorrow morning at
2 9:45. See you then. The defendant will be ordered to
3 return. Also, all witnesses will be ordered to return.

4 (Whereupon, Court adjourned until March 17, 1976,
5 at 9:45 o'clock a.m.)

6 ---OOO---

SEVENTH DAY

March 17, 1976

9:45 o'clock a.m.

(Pursuant to adjournment, Court convened, and the following proceedings were had:)

THE COURT: Good morning, ladies and gentlemen, counsel. Let the record show that the jury is present, the defendant is present, counsel are present.

MR. ROBINSON: Thank you, Your Honor. The People will call briefly Sergeant Parrott.

AUBREY RAYMOND PARROTT,
recalled as a witness on behalf of the People, having been duly sworn, testified further as follows:

THE COURT: Sergeant Parrott, you will recall that you were sworn earlier and you are still under oath?

THE WITNESS: That is correct.

REDIRECT-EXAMINATION

BY MR. ROBINSON:

Q. Sergeant Parrott, I am going to direct your attention to when you went to the Oasis Motel, about the search on

November 7th, A. Yes, sir.

Q. And you told us about this brown bag you seen in the room? A. Yes, sir.

Q. It was your impression that Sergeant Denknowsky had taken that brown bag and given it to the defendant, Mr. Ismail, in the jail? A. No, sir, what I believe

I testified to was that the brown bag itself and the contents

2
1 that weren't considered of evidentiary nature were left in
2 the motel room. At a later time, I don't recall the exact
3 date, however it was the afternoon of the start of the
4 preliminary examination, I went to the motel and picked up
5 the bag and returned it to Sergeant Denkowsky who asked me
6 to do that, and he stated he would take it over and have it
7 put in the property of the defendant.

8 Q. This brown bag, was that the only piece of luggage in
9 the Oasis Motel when you went in that morning with the
10 search warrant?

A. That is correct.

11 MR. ROBINSON: May we have this brown bag with the
12 contents --

13 THE COURT: It will be number 30, it is a brown
14 vinyl leather zippered bag.

15 MR. PESTARINO: May I see that?

16 (Whereupon, the above-mentioned item, being a brown
17 leather bag, was marked as People's Exhibit No. 30 for
18 identification.)

19 Q. (By Mr. Robinson) Sergeant Parrott, showing you People's
20 Exhibit 30 for identification, is this the brown bag that is
21 depicted in the photographs that you took of the Oasis Motel
22 that day?

A. As far as I know it is, yes,
23 sir.

24 Q. And did you bring that bag over from Sergeant
25 Denkowsky's desk this morning?

A. Yes, sir.

26 Q. Okay. And does this brown bag appear to be the brown

3
1 bag that was in the Oasis Motel that you saw that morning?

2 A. Yes, sir.

3 Q. Did you look through the brown bag that morning when
4 you went into the Oasis Motel? A. Yes, sir.

5 Q. But did you look through the brown bag prior to coming
6 in here this morning? A. Yes, sir.

7 Q. Do those contents that are in there now appear to be
8 the same contents that were there at that time?

9 A. I believe they are with the exception of the items we
10 removed.

11 MR. FESTARINO: Leave it there, will you? Save me
12 a trip.

13 MR. ROBINSON: I have nothing further.

14 RECROSS-EXAMINATION

15 BY MR. FESTARINO:

16 Q. Do you recall what is in the brown bag without going
17 through each item? A. Of a general nature,
18 yes, sir.

19 Q. Yeah. That is what I mean. What is in there?

20 A. There is the gold towel you see. There are numerous
21 toiletry articles, deodorants, toothbrush, razor blades,
22 razor. There is a book, I believe it is a red hardback
23 book that is written in some type of foreign language.
24 There is what looks like one of these, it is really a wallet,
25 but a credit card, business card holder type of packet with
26 some photographs and some business cards. And I believe

4
1 there is one other book or something that is written in a
2 foreign language also.

3 Q. Yeah. When I went down to the Police Department to
4 look at some of these exhibits with Mr. Hernandez that brown
5 bag wasn't there, was it? A. No, sir. This
6 has never been looked into property.

7 Q. I see. Okay. All right. Let me ask you this, did the
8 brown bag have a tag on it much like it has now with a name
9 and an address? A. Yes, sir, I believe
10 the -- I don't recall the exhibit number, but there was a
11 travel card I think that was in evidence here the other day
12 that was attached to that.

13 Q. Yeah. And it had the name David Isaac?

14 A. Yes, sir.

15 Q. Yeah. Okay.

16 MR. PESTARINO: That is all. Thank you.

17 MR. ROBINSON: I have nothing further.

18 MR. PESTARINO: Would you bring the brown bag back?

19 THE WITNESS: Sure thing.

20 (witness excused.)

21 MR. ROBINSON: The People call Sandra Haynes.

22 SANDRA LEE HAYNES.

23 called as a witness on behalf of the People, having been
24 first duly sworn, was examined and testified as follows:

25 THE CLERK: Take the witness stand, please.

26 DIRECT EXAMINATION

1 BY MR. ROBINSON:

2 Q. State your full name spelling your last name for the
3 record?

4 A. Sandra Lee Haynes, H-a-y-n-e-s.

5 Q. Is it Miss or Mrs?

6 A. Miss.

7 Q. Miss Haynes, could you tell us your occupation?

8 A. I am a typist-clerk II.

9 Q. Whom are you employed by?

10 A. It is the City of San Jose but I work for the San Jose Police Department.

11 Q. Okay. And in the course of your occupation do you take
12 fingerprints?

13 A. Yes, I do.

14 Q. Were you trained to do that?

15 A. Yes.

16 Q. Okay. And can you tell us how you take a fingerprint?

17 A. Well, first I have the person clean their hands, then
18 I roll, go finger by finger on the ink, and I roll it on the
19 paper.

20 Q. It is a relatively simple procedure?

21 A. Yes.

22 Q. Now, showing you people's Exhibit 24, A through D,
23 could you look at these and tell me if you took these
24 fingerprints?

25 A. Yes, I did.

26 Q. And were those fingerprints taken in the early morning
hours of November 7th?

A. Yes, they were.

Q. 1973?

A. Yes.

Q. And now do you know that you took these priors?

6
1 A. Because I signed the card.

2 Q. And your name is on there? A. Yes, it
3 is.

4 Q. And is there the person's name on these cards from
5 whom you took the prints? A. Yes, it is.

6 Q. And what name is that? A. David Ismail.

7 Q. And who put that name on the card?

8 A. Well, I print his name, then I have him sign it.

9 Q. Did you do that in this case?

10 A. Yes, I did.

11 Q. How did you obtain that person's name?

12 A. The officer.

13 Q. Told you his name? A. Yes.

14 Q. And you put it down? A. Yes, sir.

15 Q. And then the person whose fingerprints appear on that
16 card signed his name? A. Yes. I fill
17 out the card and sign my name, then I have them sign their
18 name.

19 Q. Okay. And do you recognize Mr. Ismail in Court today?

20 A. Yes, I do.

21 Q. Would you point him out, please?

22 A. He is right over there (indicating).

23 MR. ROBINSON: Indicating the defendant, Your
24 Honor.

25 THE COURT: Yes. So ordered.

26 Q. (By Mr. Robinson) Now, did you testify at the Grand

7
1 Jury on December the 2nd , 1975? A. Yes, I did.

2 Q. And was that your first time testifying before the
3 Grand Jury? A. Yes, it was.

4 Q. Were you nervous? A. Yes.

5 Q. Were you shown a photograph of Mr. Ismail on that
6 occasion? A. Yes, I was.

7 Q. Mr. Ismail wasn't present before the Grand Jury, was
8 he? A. No.

9 Q. And were you able to identify Mr. Ismail's photograph
10 as the person you took the prints from?

11 A. I recognized the photograph but I was really nervous so
12 I didn't come right out and say it was him.

13 Q. Is there any doubt in your mind today that is the
14 person you took the prints from? A. No, sir.

15 MR. ROBINSON: Nothing further.

16 MR. PESTARINO: No questions.

17 THE COURT: Thank you.

18 MR. PESTARINO: That was easy, wasn't it?

19 (Witness excused.)

20 MR. ROBINSON: The People call Henry Inami.

21 S. HENRY INAMI,

22 called as a witness on behalf of the People, having been first
23 duly sworn, was examined and testified as follows:

24 DIRECT EXAMINATION

25 BY MR. ROBINSON:

26 Q. Can you state your full name, spelling your last name

8
1 for the record?

A. S. Henry Inami,

2 I-n-a-m-i.

3 Q. And your occupation?

A. I am a criminalist

4 for the County of Santa Clara.

5 Q. And Mr. Inami, could you tell us what a criminalist is?

6 A. A criminalist is a person who is engaged in the
7 investigation of physical evidence, obtaining results on
8 those evidence, interpreting the results for a judicial
9 matter.

10 Q. And could you give us your background and education and
11 work experience that qualifies you for this position?

12 A. I have a bachelors degree in chemistry from San Jose
13 State College. I have a masters degree in chemistry from
14 Stanford University. More recently I have been employed by
15 the laboratory for three and one half years. Previously,
16 between the period of 1952 and 1955 I also was employed by
17 the laboratory.

18 Q. Okay. And do you have any in-service training in the
19 laboratory? A. Yes.

20 Q. And do you discuss your work with other criminalists
21 in the laboratory? A. Correct.

22 Q. Have you attended various conferences, seminars, things
23 like that, read articles relating to criminalistics?

24 A. That is correct.

25 Q. Are you familiar with guns? A. I am.

26 Q. And is that part of your occupation, to be familiar

9
1 with guns?

A. Yes, that is correct.

2 Q. Now, I am going to show you People's Exhibit 4
3 consisting of a gun and two plastic vials, one containing
4 a bullet and the other containing approximately six bullets,
5 and ask you to look at People's Exhibit 4 and tell me if you
6 have ever seen those before?

A. I have.

7 Q. Could you tell when you saw that?

8 A. If I may refer to my notes?

9 Q. Sure.

A. I first saw the
10 evidence before me on November 13th, 1975.

11 Q. Okay. How did you receive that evidence?

12 A. The evidence was submitted to our laboratory by
13 Sergeant Sherman of the San Jose Police Department, and it
14 was logged in by a member of our staff.

15 Q. Okay. And keep this together. I am going to show you
16 People's Exhibit No. 9, consisting of three plastic vials,
17 looks like a .22 caliber bullet expended, a casing, and
18 another casing. And ask you to look at People's Exhibit 9
19 and tell me if you have ever seen that before?

20 A. Yes.

21 Q. And could you tell us when you saw those?

22 A. Again, I saw these, the evidence before me, on
23 November 13th, 1975.

24 Q. Okay. And how did you receive those?

25 A. Again, it was submitted by Sergeant Sherman with the
26 other evidence presented before me.

10

1 Q. And I am going to show you People's Exhibit 2, appearing
2 to be an expended bullet, and ask you if you have ever seen
3 that before, Mr. Inami?

A. Yes, I have.

4 Q. Okay. And once again, can you tell us when you saw it
5 and how you received it?

A. Yes, again

6 Sergeant Sherman submitted the evidence before me on
7 November 12th, 1975.

8 Q. And People's Exhibit 3?

A. Yes, likewise,

9 it was submitted by Sergeant Sherman on November 12th, 1975.

10 I first examined the evidence on November 13th, 1975.

11 Q. Now, what was the purpose of your examination, Mr.

12 Inami?

A. It was to determine

13 whether the projectiles, commonly called bullets, was fired,
14 which was recovered from the victim, was fired from this
15 particular pistol.

16 Q. Okay. And People's 2 and 3, the bullets that are
17 recovered from the victim, did you compare those with
18 bullets fired from People's 4, a pistol?

19 A. I did.

20 Q. Okay. And did you make a determination as to whether
21 or not People's 2 and 3, the bullets recovered from the
22 body of the victim were fired from People's 4, the Walther

23 caliber .22?

A. Yes, they were. The two

24 projectiles recovered from the victim were fired from the
25 pistol which is before me.

26 Q. People's 4?

A. People's 4.

11

Q All right. How did you determine that?

A After examining the weapon for trace evidence, subsequently I test-fired the weapon and recovered the projectile during my test-firing, and I took the test-fired projectile and compared them directly with the projectiles from the victim, and I found that the striations left on the projectile in both cases aligned, and the match was confirmed.

Q Now's with a little bit about striations, if we can. Can you tell us what a striation is?

A Yes. A striation is a line or fine lines, and these striations are caused by markings which is left on the barrel, inside the barrel, during its fabrication. And when a projectile is fired through the barrel these fine imperfections are produced onto the projectile itself.

Q Okay. So what you basically told us is that when you talk about the barrel, are you talking about the barrel of the weapon?

A That is correct.

Q Okay. And would you point to the ladies and gentlemen of the jury what the barrel of the weapon is? Where that is?

A We call this circular cylinder which extends back is the barrel.

Q Okay. And you said that the barrel of the weapon, when this weapon is made had different groovings and things like that?

A That is correct.

Q And would all Walther .22 calibers have the same

1 groovings? A. Many of the Walther's do have.
2 similar groovings and land characteristics, yes.

3 Q. How can you tell me then that the bullets recovered
4 from the victim came from this particular Walther if in fact
5 other Walther's have the same groovings?

6 A. Weapons have what we normally call the class
7 characteristics. These are the large cuts made in the inside
8 of the barrel to which -- correction which will allow the
9 bullet to twist as it goes down the barrel which gives it
10 accuracy. These are cuts by the manufacturer during
11 fabrication. And if you take a Walther PP, many of them
12 will have the similar, what we call large cuttings. However,
13 during the manufacturing of these cuttings, fine imperfections
14 are made due to the tool markings, and these are the markings
15 that we compare.

16 Q. So what you are basically telling us, Mr. Inadi, is that
17 as the tool grinds down to grind this barrel out, naturally
18 the tool every time it is used on a different gun is losing
19 characteristics on the tool, right?

20 A. Yes. That is correct.

21 Q. And because of that loss of characteristics, different
22 characteristics are imprinted in this barrel?

23 A. That is correct.

24 Q. So if you use the same continuous tool, let's use a
25 screwdriver, and if we take a screwdriver and we grind it
26 into this gun, we'd lose part of the screwdriver, the metal

13
1 from the screwdriver?

A. Yes.

2 Q. If we took the same screwdriver and ground it into a
3 different Walther, it would leave different characteristics
4 on the barrel of the Walther because the screwdriver is, in
5 essence, different?

A. Yes. That is correct.

6 Q. Is that what you are basically telling us?

7 A. Yes.

8 Q. Were you also given some cartridge casings?

9 A. Yes.

10 Q. Did you examine those cartridge casings?

11 A. Yes, I did.

12 Q. Can you tell us what a cartridge casing is in relation
13 to a projectile, a bullet? A. Yes. Perhaps
14 for the benefit of the jury members I will explain the
15 components and different phases.

16 Number one, a casing, which is extending up to
17 this, where my thumb fingernail ends, is called the case of
18 the projectile or the cartridge, correction. This is
19 commonly known as a bullet by the layman's language. We
20 call it a cartridge. As you can see, there is a portion
21 extending beyond the case here. Normally that is, again,
22 many people will use the term bullet, but we use the word
23 projectile. So therefore we have cartridge, when it is
24 loaded, ready to be fired, if the cartridge is fired, then
25 the casing portion is called a fired cartridge case. And
26 the projectile, which is recovered or commonly known as a

14
1 bullet, is called a projectile. Therefore, we have three
2 parts to a cartridge, the cartridge itself, a fired
3 cartridge case, and a projectile.

4 THE COURT: I don't know whether all of the jurors
5 can see that. Perhaps he could diagram that out on a sheet
6 of paper?

7 THE WITNESS: Be glad to do that.

8 MR. ROBINSON: All right. You want to do that
9 for us?

10 THE COURT: Perhaps you ought to do it on a piece
11 of paper, Mr. Inami. Then we can preserve it.

12 THE WITNESS: What I have shown here is a
13 cartridge which has the case and the projectile fitted into
14 the casing itself. Here I have a casing by itself which
15 has been fired. We call it fired cartridge case. And in
16 this case I have drawn just a projectile portion, and as you
17 will note I have indicated that this particular projectile,
18 the lead portion here is inserted and forced into this
19 casing some distance.

20 Q. (By Mr. Robinson) Okay. Now, did you examine People's
21 Exhibit No. 9, the cartridge casings?

22 A. Yes, I did.

23 Q. And was the purpose of your examination to determine if
24 People's Exhibit 2 and 3, the bullets from the victim, were
25 ejected from People's Exhibit 9, the two cartridge casings?
26 What I want to know, Mr. Inami, is if People's 2 and 3, the

15

1 bullets from the body of the victim, were the bullets that
2 came from People's Exhibit 9, the expended cartridge cases?

3 A. I was not able to determine whether those two
4 projectiles were actually from the fired casing. I could
5 not determine that.

6 Q. Could you review your lab report, please?

7 A. Yes.

8 Q. And in reviewing your lab report you were given four
9 items, correct? You have four numbers down there?

10 A. Yes, that is correct.

11 Q. Okay. And the first item you were given was a pistol,
12 caliber .22 Walther, right? A. That is correct.

13 Q. Okay. The second item you were given, you have listed
14 as 2A and B, two fired cartridge cases?

15 A. That is correct.

16 Q. Okay. Caliber .22, right? A. (Nods
17 affirmative.)

18 Q. The third item you were given is a projectile, caliber
19 .22, from the scene? A. Yes.

20 Q. This is the projectile that was removed from the wall,
21 right? A. That is correct.

22 Q. Okay. And the fourth item you were given were 4A and B,
23 two projectiles, .22 caliber, removed from the victim?

24 A. That is correct.

25 Q. Okay. Now, you have told us that the pistol, your
26 item one in there and our item four in evidence is the same

16
1 pistol that fired your items 4A and 4B, the projectiles from
2 the victim? A. Correct.

3 Q. Okay. Now, my question is this, do you remember items
4 2A and 2B, the two cartridge cases, could you determine
5 those cartridge cases were the cartridge cases fired from
6 People's Exhibit 4? A. People's Exhibit 4

7 is the pistol? Is that correct?

8 Q. Yes. A. Yes. In that event I say
9 yes.

10 Q. Okay. So what you can tell us is that the two
11 cartridge cases, People's Exhibit 9, right?

12 A. Yes.

13 Q. Okay, People's Exhibit 2 and 3, the bullets from the
14 victim, were both, were all fired from People's Exhibit 4,
15 the gun? A. Yes, that is correct.

16 Q. Okay. Now, how did you determine that People's Exhibit
17 9, the two cartridge casings were fired from People's
18 Exhibit 4, the gun? A. In that event I

19 examined the fired cartridge cases for what is commonly
20 known as markings left by the extractor or the ejector, or
21 the firing pin. And I found that in this particular case
22 the test-fired cartridge case from the pistol had extractor
23 marks which corresponded to the extractor marks left on the
24 two fired cartridge cases recovered at the scene.

25 Q. Okay. Now, I take it that you fired People's Exhibit
26 4, the pistol, over at the laboratory?

17
1 A. Yes.

2 Q. And can you tell us how many times you fired it
3 approximately?

4 A. The first event I fired
5 four cartridges. And I made my testing. And then
6 subsequently I fired ten cartridges.

7 Q. Okay. Now, can you tell us if People's Exhibit 4 is a
8 revolver or an automatic?

9 A. It is commonly
10 known as a pistol, so it is, layman's term, it is an
11 automatic.

12 Q. I am just a layman so let's use something that I can
13 understand. Okay? So it is an automatic?

14 A. Yes.

15 Q. Now, what is the difference between a revolver and an
16 automatic?

17 Perhaps I can have the bailiff remove this for us.
18 It might be easier.

19 Now, can you explain to the ladies and gentlemen
20 of the jury the difference between a revolver and an
21 automatic?

22 A. Yes.

23 Q. Would you do it, please?

24 A. Yes. Can I
25 draw a little diagram on the board?

26 Q. Sure.

27 A. What I have just
28 shown here is a revolver and a revolver has a cylinder which
29 rotates and upon firing the cylinder rotates introducing a
30 new cartridge alignment with the firing pin. In a pistol
31 there is no cylinder which revolves.

18 1 Q. Now, once again, so I can understand it, a revolver is
2 something like you see in the Old West where you take, its
3 got the cylinder that goes around, you put the bullet in and
4 you can see the cylinder revolve everytime you pull the
5 trigger; is that correct? A. That is correct.

6 Q. And does a revolver have a clip that you put into the
7 gun? A. It does not.

8 Q. Okay. Now, let's use the term automatic, if we can.
9 Okay? An automatic is what People's Exhibit 4 is?

10 A. That is correct.

11 Q. People's Exhibit 4 doesn't have a cylinder, does it?

12 A. That is correct.

13 Q. People's Exhibit 4 requires a clip?

36 14 A. That is correct.

15 Q. Okay. Now, this clip -- shows you how much I know.
16 Can you get this clip out for me?

17 A. Yes.

18 Q. Okay. Thank you. That was easy. This clip fits into
19 the butt end of the gun? A. That is correct.

20 Q. Okay. Now, where do the bullets go?

21 A. The cartridges are introduced into the clip or the
22 magazine by the insertion in this manner (indicating.)

23 Q. Okay. And then you put the clip into the gun; is that
24 correct? A. Correct.

25 Q. Then you pull the trigger and the bullet goes up and
26 goes out? A. Yes.

19

1 Q. Okay.

2 THE COURT: Go ahead. Do you want to add something?

3 THE WITNESS: Yes, I do. In the event that, if
4 a cartridge is not introduced into the chamber of the weapon,
5 then by pulling the trigger it will not fire a projectile
6 because there is not one in line with the firing pin.

7 Q. (By Mr. Robinson) I was going to get to that. I will
8 cover that later.

9 Now, in addition to the revolver having a cylinder
10 and the automatic having a clip, when you shoot a revolver
11 do you have any expended cartridge casings?

12 A. Yes, you do have a fired cartridge case, casing, yes.

13 Q. My next question is, does that expended cartridge case
14 stay with the revolver? A. Yes, that is
15 correct.

16 Q. So as the trigger of the revolver is pulled the
17 cylinder goes around, the bullet projectile leaves the
18 cartridge, goes out through the barrel and the cartridge
19 stays in the cylinder? A. That is correct.

20 Q. Now, on an automatic does that happen?

21 A. In an automatic upon firing the fired cartridge case
22 is ejected from the weapon or thrown out.

23 Q. So if I was to fire this gun, People's Exhibit 4,
24 which is an automatic, the cartridge case ejects out, right?

25 A. That is correct.

26 Q. And as the bullet, the projectile leaves the cartridge

20 { 1 case? A. That is correct.

2 Q. So you don't leave a cartridge case in this particular
3 gun in an automatic? A. Upon firing,

4 that is correct.

5 Q. Can you tell us where from the gun the cartridge case
6 ejects? A. Yes. See if I can get

7 this back (referring to gun), when the weapon is fired, the
8 fired cartridge case is ejected from this opening here and
9 is thrown out.

10 Q. Now, how do you shut this?

11 MR. PESTARINO: Give it to the bailiff.

12 MR. ROBINSON: Thank you.

13 Q. (By Mr. Robinson) Now, you fired this particular gun?

14 A. Yes.

15 Q. Okay. And the cartridge cases eject out?

16 A. Yes.

17 Q. How do they eject out of this particular weapon?

18 A. Slightly to the right and to the rear.

19 Q. If I was pointing the gun like this and I fired they
20 would go back over my right shoulder and to the rear?

21 A. Yes.

22 Q. You have seen that happen every time you fired this
23 gun? A. That is correct.

24 Q. And approximately how far back do they eject?

25 A. To the best of my recollection somewhere in the
26 neighborhood of ten feet.

21

1 Q. They eject back ten feet. Okay. Approximately?

2 A. Yes, I didn't actually measure the distance.

3 Q. Okay. Now, can you tell us something about that gun,
4 how it operated, the various safety features on that gun,
5 how you actually put a bullet in that gun to shoot?

6 A. All right. Yes. First of all, one introduces the
7 cartridges into the magazine of the clip by forcing it into
8 this, and is contained inside the chamber or the
9 magazine. The magazine is subsequently introduced into the
10 weapon, and in this manner all cartridges are still in the
11 magazine and you must introduce one into what we commonly
12 call the chamber. And to do that one pulls the slide back,
13 one pulls the slide back and in that manner, if there was a
14 cartridge in the magazine the slide will automatically go
15 forward. It would not stay in this position (indicating).

16 Q. Mr. Inami, perhaps to make this clear to me, can you
17 do this for us, perhaps can I have you go to the board over
18 here and let's write in ways to use gun. Then we will
19 diagram, then one and explain it, two and explain it. Can
20 we do that?

A. Um-hum.

21 Q. Why don't you write up there on that other piece of
22 paper, "Ways to operate gun," or, "Fire gun," something to
23 that effect?

A. (Writing.)

24 Q. All right. Now, what does that mean, "Load magazine"?

25 A. Load magazine means that I will introduce cartridges
26 into the clip or magazine.

1 Q. Okay. A. In this case I would
2 introduce the magazine or clip with the cartridges into the
3 weapon, like that (indicating).

4 Q. Okay. A. The third step is that
5 the magazine is in position, and I can't demonstrate it
6 without a cartridge, so I will do it this way, in doing so
7 when you pull this back in this fashion and as the slide
8 goes forward a cartridge from the magazine is picked up by
9 the forward movement of the slide, and the cartridge is now
10 introduced into the chamber or commonly known as the
11 barrel.

12 Q. So what's one, a person had to do, one of the ways is
13 to take that gun, pull back the slide and let it go forward
14 and that gets a cartridge into the chamber ready to be
15 fired?

A. Yes.

16 Q. Go ahead, please. A. When I have
17 pulled the slide back and allowed the slide to go forward,
18 cartridge is introduced into the chamber of the weapon.
19 All you need to do now is pull the trigger and it fires.

20 Q. Okay. Now, are there any other ways you can fire that
21 gun?

A. Let's see, before I finish
22 may I continue one step further?

23 Q. Sure. A. Number five, when you pull
24 the trigger and the cartridge is fired and the gas generated
25 inside the weapon forces the slide to come back. And I
26 will have to remove this, and in doing so forces the slide

1 back, and then the slide is now allowed to go forward
2 automatically, and this is the term automatic. It introduces
3 a second cartridge into the chamber and it is ready to fire.

4 Q. Okay. So once you pulled that back, slide back, put
5 the bullet in the chamber, fired, the slide goes back
6 automatically, another bullet is automatically injected in
7 the chamber and you can fire again?

8 A. Yes, that is correct.

9 Q. That is why they call it an automatic?

10 A. Yes.

11 Q. Now, does that gun have any safety features on it?

12 A. Yes.

13 Q. Can you explain those for us, please?

14 A. Yes. If in the event that one has a cartridge in the
15 chamber and the hammer is cocked in the cocked position
16 ready to be fired, all you need to do now is pull the trigger.
17 If you wish to carry this weapon with a cartridge in the
18 chamber, then one must put this weapon in the safe position
19 in order to carry it safely and in doing so, as you can see,
20 the hammer is allowed to drop when the safety lever is
21 pushed into safe position. However, there is a bar which
22 comes, rolls up between the firing pin and the hammer when
23 the lever is actuated which prevents the hammer from
24 contacting the firing pin. So in this case one cannot fire
25 this weapon as long as the safety lever is in the safe
26 position. That is one feature, safety feature.

1 Q. Let me interrupt you right there. Then you can go on.
2 So I can get that clear in my mind, suppose somebody wanted
3 to walk around with a loaded gun?

4 A. Yes.

5 Q. And they wanted to have a bullet in the chamber ready
6 to be fired, if they wanted to, okay?

7 A. Yes.

8 Q. But they also wanted to protect themselves like if they
9 had their gun in their coat or pocket, or something like
10 that, so it wouldn't inadvertently go off and blow their leg
11 off. They'd put on that safety feature you talked to us
12 about?

A. Yes.

13 Q. Now, I want to use that gun, I put the bullet in the
14 chamber, I packed it on my person, I have activated the
15 safety feature to protect my own safety, and I want to fire
16 that gun, what step do I have to take to deactivate that
17 safety to fire that weapon?

A. All you need
18 to do now is to put the safety lever in the firing position.
19 That fashion and pull it (indicating).

20 Q. Okay. All right. So you have to take that conscious
21 step to take that safety lever and put it into the firing
22 position?

A. Yes.

23 Q. Or else the gun won't fire?

A. Correct.

24 Q. Now, you were going to proceed on with other safety
25 features.

A. Yes. The second
26 safety feature which is incorporated in the weapon, again

1 let us assume there is a cartridge in the chamber, now one
2 may leave the weapon -- correction, the safety lever in the
3 firing position and you may carry it in your belt because
4 this weapon is so designed that it can only fire when the
5 trigger is pulled or depressed completely (indicating). Now,
6 let me make that clear. In an event that the hammer is in
7 the cocked position, what I have done here, I have pulled the
8 hammer back slightly and depressed the trigger, so that it
9 releases the hammer so now that, the hammer is just being
10 held back by my thumb. If you release the hammer in this
11 fashion (indicating), this weapon will not fire because I
12 have not depressed the trigger. Again, let me demonstrate.
13 Because the weapon is so designed that unless the trigger is
14 depressed there is a small blocking of the hammer so that it
15 would not contact the firing pin if the trigger is not
16 depressed. So the weapon must be fired with the trigger
17 depressed and the hammer allowed to drop on the firing pin.

18 Q. Okay. So, to sum it up, there is basically two ways in
19 which you can fire that weapon and carry it. The first way
20 would be that you don't have a bullet cartridge in the
21 chamber, you remove the weapon, you pull back that to put the
22 bullet in the chamber, then you fire, that is one way
23 (indicating)?

A. Yes.

24 Q. And the second way is that you have a cartridge in the
25 chamber, you have the safety on, you remove the weapon, you
26 deactivate the safety and then you fire?

1 A. Correct.

2 Q. Those are the two ways? A. Yes.

3 Q. Now, could you describe that gun in comparison with
4 other guns, such as a .45, a .38, a .357, all types of
5 weapons in terms of noise when it is fired?

6 A. Yes, the .22 caliber produces less noise, than, of
7 course, a .45. And principally this is because a .45 requires
8 a larger amount of powder, and it generates more gases. And
9 principally it is the generation of the gas which emanates
10 from the weapon causing the noise.

11 Q. Okay. What about a .38? A. Again, a
12 caliber greater than the .22 will make a louder noise than
13 a .22.

14 Q. Okay. So any caliber gun greater than a .22 will make
15 a louder noise? A. Generally speaking that
16 is correct.

17 Q. Okay. Is there a caliber gun less than the .22?

18 A. There are what we commonly know as pellet gun or pistol
19 or what we call BB guns. These are driven by either
20 compressed CO₂, carbon dioxide or by manually operating the
21 weapon so that it compresses gas into the chamber.

22 Q. And what sort of bullets, Mr. Inami, will fit into that
23 particular gun? A. It will take a .22

24 caliber and it may be a short, a long, or a long rifle.

25 Q. Okay. And do you know what sort of bullet those are
26 that were in that gun? A. Yes, these are

1 caliber .22 long rifles.

2 Q. Let's talk about striking power with these different
3 types of bullets, the three different types of bullet that
4 will come in terms of killing power. Okay. What types of
5 bullets are they, a .22 short, a .22 long, and a .22 long
6 rifle?

A. Yes.

7 Q. Okay. What has more force, a .22 short or .22 long
8 rifle?

A. The .22 long rifle.

9 Q. What has more force, a .22 long or .22 long rifle?

10 A. .22 long rifle.

11 Q. So of the three types of bullets that would fit into
12 that gun in order to kill somebody the .22 long rifle is the
13 most powerful?

A. Yes. Secondly, this
14 weapon is principally designed to accommodate a .22 long
15 rifle, although .22 short or .22 long can be used.

16 MR. ROBINSON: Okay. Thank you. I have nothing
17 further.

18 CROSS-EXAMINATION

19 BY MR. PESTARINO:

20 MR. PESTARINO: May I talk to you for just a
21 minute?

22 MR. ROBINSON: What?

23 MR. PESTARINO: May I talk to you for just a
24 minute? Or do you want to approach the bench?

25 MR. ROBINSON: Oh, talk to me? I thought you
26 were talking to the witness.

1 MR. PESTARINO: No.

2 MR. ROBINSON: You can talk to me anytime you want
3 to, Mr. Pestarino.

4 MR. PESTARINO: Thank you. I didn't know.

5 (Discussion off the record.)

6 THE COURT: Ladies and gentlemen, in cross-
7 examination counsel is going to question Mr. Inami with
8 regard to the blood alcohol content of the blood that was
9 taken. You recall the testimony yesterday. It has been
10 stipulated by the district attorney and the defense attorney
11 on that.

12 MR. ROBINSON: No, no. No.

13 THE COURT: No?

14 MR. ROBINSON: I never entered into that
15 stipulation. I am willing to stipulate as to the result of
16 the analysis and the blood was drawn in a medically
17 acceptable manner.

18 THE COURT: Then I misspoke. The stipulation is
19 that Mr. Pestarino may examine Mr. Inami with regard to the
20 blood alcohol.

21 MR. ROBINSON: No.

22 MR. PESTARINO: No.

23 THE COURT: Without stipulating as to what the
24 testimony will be or the answers given. In other words, he
25 doesn't have to be qualified as an expert; is that right?

26 MR. ROBINSON: No.

1 MR. PESTARINO: No, Your Honor.

2 THE COURT: I misunderstood the stipulation.

3 MR. PESTARINO: Here is my offer. I would
4 stipulate or offer to stipulate that if the technician that
5 drew the blood or the technician, that the technician would
6 testify that he drew the blood in a regular acceptable
7 manner, medically approved manner, that both the blood and the
8 urine were taken in a medically accepted manner, that they
9 were analyzed in a scientific manner, and that the results
10 are correct.

11 MR. ROBINSON: Fine.

12 MR. PESTARINO: That if the technician were called
13 that is what he or she would testify to. That would be my
14 stipulation.

15 MR. ROBINSON: Perhaps I can read in the
16 stipulation.

17 THE COURT: Let me explain what the stipulation
18 means, first of all. I will explain that to you when I
19 instruct you at the end of the case. A stipulation means
20 that no evidence needs to be introduced to prove anything.
21 They have agreed, they have stipulated that those facts are
22 true and, therefore, you can accept that as being evidence.

23 MR. ROBINSON: I believe the stipulation will be
24 as follows, Your Honor, that if Jean Thomas from Neuro-Media
25 Laboratory were called to testify she would testify that on
26 November the 6th, 1975, at eight thirty-two p.m. in the

1 evening she responded to the San Jose Police Department and
2 at that time she withdrew a blood sample from the defendant,
3 David Ismail, that the sample was withdrawn in a medically
4 acceptable manner and medically approved manner and Mrs.
5 Thomas is eminently qualified to withdraw such samples, that
6 the sample was then given to Officer Neal who placed it inside
7 this envelope, deposited it in -- well, we have already had
8 testimony as to that -- subsequently the sample was
9 analyzed by a member of the laboratory of criminalistics,
10 technician over there, the blood and urine were analyzed,
11 that the results show a blood alcohol percentage of 0.08
12 percent and a negative report on drugs or other barbiturates.
13 Is that --

14 MR. PESTARINO: So stipulated.

15 THE COURT: Is that the extent of the stipulation?
16 So ordered.

17 MR. PESTARINO: May I have that? I am going to
18 use it.

19 Q. (By Mr. Pestarino) First of all, Mr. Ismail, I want to
20 talk briefly about your testimony now. On that particular
21 weapon, I think it is People's Exhibit 3, is it?

22 MR. ROBINSON: 4.

23 THE COURT: 4.

24 MR. PESTARINO: I missed.

25 Q. (By Mr. Pestarino) People's Exhibit 4. Is there such
26 a thing as a silencer? A. Yes.

1 Q. What is a silencer? A. A silencer is a,
2 any object which will muffle the sound.

3 Q. Is such a thing common to people who know guns? Do
4 they know about silencers?

5 MR. ROBINSON: I am going to object, that calls for
6 speculation.

7 MR. TESTARINO: Well, he is an expert.

8 THE COURT: Well, I will allow him to answer with-
9 in the framework of his ability.

10 THE WITNESS: Yes, if a person is knowledgeable in
11 firearms then a person probably would know something about
12 silencers, yes.

13 Q. (By Mr. Testarino) Can a silencer be adapted to that
14 particular weapon? A. Yes, it is possible.

15 Q. Well, can a silencer be adapted to almost any weapon,
16 a .45, a .38, a rifle? A. Yes, that is
17 possible.

18 Q. What has to be done to put a silencer on that weapon?

19 A. Well, commonly what is known as a silencer, one can use,
20 let's say a pillow.

21 Q. No. No, excuse me. Yeah, I understand you can use a
22 pillow or you can use anything to muffle the sound.

23 A. Yes.

24 Q. What I am talking about is an instrument prepared by a
25 manufacturer that could be placed on that gun, that weapon.

26 A. At this time I am not sure that I am able to answer

1 whether there is a commercially available silencer which
2 will fit the PP.

3 MR. ROBINSON: Maybe I could help Mr. Inami by
4 reading him Section 12520 of the Penal Code which prohibits
5 the sale of silencers in the United States, which prohibits
6 the possession of silencers. It is a felony. And nobody
7 can buy one.

8 MR. PESTARINO: There is all kinds of felonies in
9 the United States and there are all kinds of weapons that
10 are --

11 THE COURT: You can save this for argument. The
12 point is, Mr. Inami is unable to say that he is unable to
13 say that he knows of any.

14 Q. (By Mr. Pesterino) Can you learn that by this afternoon?
15 Can you find that out? I take it that you can?

16 A. Yes.

17 Q. Okay. A. But may I ?

18 THE COURT: Sure.

19 MR. PESTARINO: Sure.

20 THE WITNESS: Yes, it is possible. As I stated,
21 I don't know whether there is a commercial silencer for this
22 particular weapon, although I think one can use some
23 ingenuity and make one.

24 Q. (By Mr. Pesterino) Yeah. What would have to be done
25 to make one? A. What you need to do is

26 get a --

1 Q. Can you point that gun up somewhere?

2 A. Yes.

3 THE COURT: If you are worried about me --

4 MR. PESTARINO: I am not worried about you.

5 THE WITNESS: You can get a piece of pipe which
6 would, all right, this way, again, one can get a piece of
7 pipe which would accomodate around this unit, and then cut
8 holes into that particular pipe and then in some way wire
9 or tape the pipe onto the barrel of the weapon.

10 Q. (By Mr. Pestarino) And that would muffle the sound to
11 a degrees?

12 A. Yes. Well, you'll have to
13 incorporate some holes and then put a muffler around it, put
14 some material around the, it is like an automobile muffler
essentially.

15 Q. Yeah. Something with a sleeve of some kind perforated
16 that is somewhat insulated?

17 A. Yes, that is
correct.

18 Q. All right. Do the .22 caliber long rifles since they
19 have more killing power, so to speak, I suppose they have
20 more powder or more of a charge in them, don't they?

21 A. More than the long or the shorts.

22 Q. Than the shorts?

23 A. Between the long
and the long rifle the powder content is probably
24 comparable.

25 Q. Between the long and the long rifle?

26 A. Yes.

1 Q. Between the long rifle and the shorts, are there more,
2 is there more power, more powder packed in the long rifle
3 than in the short? A. Commonly that is correct.
4 And it also accomodates a long rifle, long rifle accomodates
5 a longer projectile.

6 Q. Sure. So the amount of power, powder compacted in the
7 cap of the cartridge part of the bullet is to send the
8 projectile out at the specified force, isn't it?

9 A. Yes, that is correct.

10 Q. And so it would make a louder noise, wouldn't it?

11 A. Yes, that is correct.

12 Q. Now, I wasn't paying too much attention but is there
13 more than one or two safety features on that weapon? On a
14 .45 I think there is five or six, I've forgotten. Do you
15 have a safety feature on the grip of that weapon?

16 A. No, it does not.

17 Q. Do you have a safety feature by pulling the hammer back
18 half-way on that weapon, People's 4?

19 A. (Indicating).

20 Q. Point it up, will you please?

21 A. (Indicating).

22 Q. There is no half-way? A. No.

23 Q. Do you have to have a safety feature on the muzzle like
24 you do on a .45? If you press a .45 against somebody you
25 can't pull the trigger. A. Yes. This

26 weapon does not have that feature.

1 Q. So you only have that, one safety feature right near
2 the slide? A. Well, it has the safety

3 feature insofar as the safety lever goes. It has where the
4 hammer cannot contact the firing pin unless the trigger is
5 depressed completely.

6 Q. Now, you indicated that you fired that weapon?

7 A. I did.

8 Q. And that shells, I say the shells, the cartridge cases
9 eject about ten feet to the rear? A. Yes, I
10 say approximately because I did not measure the distances.

11 Q. And that would depend whether you had a clear ten feet
12 or whether the cartridge case hit something else?

13 A. Yes, that is correct.

14 Q. So they eject uniformly ten feet? Say they ejected ten
15 feet, do they eject uniformly ten feet every time they
16 eject? A. No, there is

17 variations.

18 Q. Sure. There is variations because sometimes the
19 ejector doesn't grab anoid of the cartridge case rim to
20 properly eject it or it is sluggish in some way?

21 A. That may be one of the reasons.

22 Q. What are the other reasons? A. Depending
23 upon how the velocity in which the slide comes back, can
24 account for some of the random scattering of the distance.

25 Q. All right.

26 MR. DISTRICT: I think that is all of the questions

1 I have on the weapon, Mr. Inami.

2 You are not qualified in the field of blood alcohol,
3 but you have had experience in that field, have you not?

4 THE WITNESS: Yes.

5 MR. ROBINSON: I am going to object to that
6 question as vague and ambiguous. Not qualified in the field
7 of blood alcohol in what respect? Regarding the drinking-
8 driving cases or regarding diminished capacity and blood
9 alcohol effect on somebody's ability to premeditate and
10 deliberate. I think that question is vague and ambiguous.

11 Q. (By Mr. Pestarino) Well, you have had experiences in
12 testifying and analyzing and in studying the effects of
13 alcohol on human beings, haven't you?

14 A. That is correct.

15 Q. And you have had considerable experience in that field?

16 A. Yes.

17 Q. And you have, also, testified in Court in relation to
18 drinking-driving cases, have you not?

19 A. I have.

20 Q. Many times?

A. Yes.

21 Q. And you have analyzed blood samples yourself, I guess?

22 A. I have, yes.

23 Q. And urine samples?

A. That is correct.

24 Q. So to some extent, anyway, you are familiar with the
25 effects that alcohol has upon human beings when they
26 consume it?

A. Yes, that is correct.

1 Q. Would you go to the board and draw on a piece of paper
2 a little chart for me, please? A. Yes.

3 THE COURT: Just turn the other one back there
4 (referring to blackboard).

5 Q. (by Mr. Iencarino) I would suggest to you that you do
6 it any way you want, but I'd like you to start with zero
7 alcohol being consumed and stop at a .08.

8 MR. ROBINSON: I am going to object to this, Your
9 honor. I don't believe that Mr. Inami has indicated that he
10 is qualified as an expert witness to testify on the
11 relationship between alcohol and the ability to form malice
12 aforethought and the specific intent required to kill an
13 individual. I will stipulate that Mr. Inami is qualified to
14 testify about the effects of alcohol relating to somebody's
15 ability to operate a car, and those are the sort of things
16 that he has studied that he has testified for in the
17 Municipal and Superior Court of Santa Clara County, but I
18 think if counsel will ask Mr. Inami if he has ever testified
19 about the results of alcohol and somebody's ability to
20 premeditate and deliberate Mr. Inami will have to indicate
21 that he hasn't because that is not his field of expertise.

22 MR. IENCARINO: I am not arguing that point. I
23 am not arguing premeditation or anything else. I am asking
24 the witness to testify as to what his knowledge is of how
25 alcohol is consumed and how it affects people up to a point
26 zero eight.

1 MR. ROBINSON: Affects people in what respect?
2 we are not talking about, nobody is saying that Mr. Ismail
3 was under the influence of alcohol when he drove a car. There
4 is no testimony.

5 THE COURT: Let's take a recess and let the jury
6 have a break. And we will discuss that matter at the bench
7 after the jury leaves.

8 You will keep in mind, ladies and gentlemen the
9 admonition I have previously given you. You can step down,
10 also, if you would like.

11 Counsel, maybe we better do this in Chambers.

12 (Whereupon, the following proceedings took place
13 in chambers out of the presence of the jury:)

14 THE COURT: Okay. Now, with regard to the
15 question of diminished capacity with regard to the use of
16 alcohol, I don't know what you are going to try to get from
17 Mr. Ismail, Mr. Festerino, other than his opinion as to the
18 effect of a certain quantity of alcohol on a person's ability
19 to do what?

20 MR. FESTERINO: All I want to do is show how
21 alcohol at various points affects various people, whether
22 they are drinking-driving or just sitting. And I think it
23 has some relevancy in this case. And he is qualified, very
24 well qualified to testify what effect drinking has upon the
25 system.

26 THE COURT: Well, CALJIC, 8.77 as revised reads as

1 follows, "If you find from the evidence that at the time
2 that the alleged crime was committed the defendant
3 had substantially reduced mental capacity," I
4 emphasize, "substantially reduced mental capacity whether
5 caused by mental illness, mental defect,
6 intoxication, or any other cause you must consider
7 what effect, if any, this diminished capacity had
8 on the defendant's ability to form any of the
9 specific mental states that are essential to the
10 elements of murder or involuntary manslaughter."
11 So what I am concerned about is getting into his opinion as
12 to reduced mental capacity.

13 MR. PESTARINO: I am not asking his opinion on
14 reduced -- this is just one factor in the case.

15 THE COURT: I understand.

16 MR. PESTARINO: It is only one factor and all I am
17 asking him is, is he familiar with the effects of alcohol
18 at various points. And how? Based on what? Now, I am not
19 asking for his opinion as to whether the man is under the
20 influence, whether his capacity is diminished. And I think
21 to that extent it has some relevancy.

22 THE COURT: Are you going to inquire as to
23 whether or not by virtue of a certain blood alcohol level
24 a man could form a specific intent?

25 MR. PESTARINO: No, I am not, certainly not.

26 THE COURT: Then I see no problem.

1 MR. PESTARINO: Certainly not. Thank you.

2 MR. ROBINSON: I just don't want to establish a
3 procedure in this County where a criminalist from our lab
4 gets into the field of testifying about the relationship
5 between alcohol and mental impairment. They can't do that.

6 MR. PESTARINO: Of course not.

7 (short recess taken.)

8 (whereupon the following proceedings took place in
9 Court in the presence of the jury.)

10 THE COURT: All right. You may continue.

11 MR. ROBINSON: Before we continue I would like to
12 do this, perhaps, could we have your clerk mark Mr. Inami's
13 diagrams and explanation as People's next in order?

14 THE COURT: That will be 31 A and B.

15 (Whereupon, the above-mentioned items, being
16 diagrams, were marked as People's Exhibits 31 A and B for
17 identification.)

18 MR. ROBINSON: Thank you, Your Honor.

19 THE COURT: All right. You may proceed, Mr.
20 Pestarino.

21 MR. PESTARINO: Thank you, Your Honor.

22 Q. (By Mr. Pestarino) Mr. Inami, let me ask you a few
23 preliminary questions and then I will ask you to go to the
24 board.

25 First of all, generally speaking, people get
26 alcohol in their system because they consume it, didn't they?

- 1 They drink it? A. Yes, that is correct.
- 2 Q. All right. Now, what happens to people when they drink
- 3 alcohol? Or what happens to the alcohol that is being
- 4 consumed? A. When one drinks alcohol it
- 5 reaches the stomach, and some portion of the alcohol is
- 6 dissipated through the stomach walls into the bloodstream.
- 7 The major portion -- correction -- the major portion of the
- 8 transmission of the alcohol goes from the small intestine
- 9 into the bloodstream. And it circulates throughout the body
- 10 carried by the body fluid.
- 11 Q. Is alcohol referred to as a depressant?
- 12 A. Yes.
- 13 Q. What do you mean by that? Well, does it depress the
- 14 brain in any way? A. Yes.
- 15 Q. Functioning of the brain? A. Yes, that
- 16 is correct.
- 17 Q. Now, how long does it take normally, if you know, for a
- 18 person to consume alcohol and for that alcohol to circulate
- 19 throughout the bloodstream into the brain?
- 20 A. Normally if one drinks alcohol the first sign of
- 21 alcohol in the bloodstream occurs somewhere in the
- 22 neighborhood of five minutes.
- 23 Q. And is some of the alcohol lost on the way ?
- 24 A. Yes.
- 25 Q. And how is that alcohol lost?
- 26 A. The alcohol is lost from the body through various ways.

1 One is when you expire your breath a small portion is lost
2 through the breath. Some is lost through the urine. Some is,
3 very small amount is lost through sweating, and the major
4 portion the body is able to consume or burn up.

5 Q. And does it make a difference when a person drinks
6 alcohol what his weight is and his physical characteristics?

7 A. Yes. Weight plays some role. When I say plays a role,
8 let us say that a man weighing one hundred and fifty pounds
9 drinks two ounces of one hundred proof whiskey and reaches
10 some level. Now, if a three hundred pound man drank the two
11 ounces again of one hundred proof whiskey he wouldn't reach
12 a blood alcohol level equivalent to that of a one hundred
13 fifty pounder, it would be approximately one half. So what
14 I am saying, the bigger the man he can drink more to reach
15 a certain level compared to a man that weighs less.

16 Q. All right. Would you kindly go to the board and turn
17 it around to where you have a clear sheet of paper?

18 A. Right.

19 Q. Before a person drinks you put a zero zero there, and
20 zero nothing?

A. That is correct.

21 Q. Then down at the bottom will you put point zero eight?

22 A. All right.

23 Q. Now, do that any way you want. All right. What happens
24 along the way between zero zero and point zero eight to a
25 person when he has consumed alcohol?

26 A. Let me put it this way (writing on board.)

1 Q. Before you get too far along, I see the word
2 "subjective impairment." Will you explain that?

3 A. Yes. When the alcohol goes from approximately point
4 zero zero to point zero four percent we use the terminology
5 phase one, and it is subjective impairment phase, and we
6 use the term subjective impairment because the impairment
7 which is noted at this particular -- correction, at these
8 ranges of alcohol contents in a body, one is not able to
9 measure the impairment quantitatively and experimentally
10 in the laboratory. It is very difficult to measure the
11 degree. So we use the word "subjective impairment." One,
12 what are the impairments? One is loss in inhibition. And two
13 is loss in judgment. Difficult to measure, nevertheless
14 they are there.

15 Phase two, we will call this the objective
16 impairment phase. The functional losses which occur in
17 phase two can be measured quantitatively in the laboratory.
18 Now, what are these functional losses? Vision. There is a
19 loss of visual acuity, loss in peripheral vision. That is,
20 how far one can see --

21 THE COURT: Excuse me. Perhaps you can use the
22 microphone. There is so much external noise.

23 THE WITNESS: Losses in vision. Losses in vision,
24 visual acuity. How one can differentiate objects clearly.
25 Peripheral vision. How far can you see to the side without
26 moving your eyes is decreased. Depth perception, how well

1 one can see objects with depth. Reaction time increases.
2 Means that your ability to perform a given function in a
3 given time increases. And your manual dexterity or manual
4 coordination decreases.

5 Q. (By Mr. Testarino) All right. Now, Mr. Inami, the
6 phase two that you have is from point zero four to what?

7 A. Commonly we use, commonly we use point zero five to
8 point one oh percent.

9 Q. All right. Now, how do you know that those things occur
10 in a person from, let's take from point zero four to point
11 zero five. How do you know that the subjective impairments
12 really take place in a person?

13 A. Here (indicating)?

14 Q. Yeah. A. Well, these are
15 observations that many scientists in the field have noted
16 during a study which they conducted. And they have published
17 scientific information in the literature, which is available.

18 Q. Okay. So you know that basically I suppose from
19 reading?

20 A. Yes. Basically that is
correct.

21 Q. And you have read medical journals along that line,
22 have you?

A. Yes.

23 Q. What journals have you read? A. The
24 British Medical Journal, the American Medical Journal are
25 two of the medical journals which publish articles pertaining
26 to this subject.

1 Q. Have you actually done any testing in this field,
2 laboratory or clinical testing in the field?

3 A. Yes. Our laboratory conducts impairment studies
4 from time to time, yes.

5 Q. And when you talk about loss of judgment, what do you
6 mean by that? Let me ask you -- strike that.

7 Let me try again. When alcohol is consumed it
8 makes its way into the system, assimilated into bloodstream
9 and goes to the brain? A. Yes.

10 Q. First of all, there are two parts to the brain basically
11 that we are concerned with here, isn't it, the motor part
12 and the judgment part of the brain?

13 A. Yes.

14 Q. The judgment part is making decisions and weighing them?

15 A. Yes, that is correct.

16 Q. And is that part impaired when you drink?

17 A. Yes.

18 Q. And you have loss of inhibitions. By loss of
19 inhibitions do you mean, for example, people can go to a
20 party and they are very quiet and then they have a few
21 drinks and they start to talk a little bit more and maybe
22 they tell a few jokes, or something like that?

23 A. Yes. That is possible, yes.

24 Q. And does it matter how many drinks you have to reach
25 that position where you have lost your inhibitions or you
26 have lost your judgment to some degree, anyway?

1 A. Yes, it depends. It would depend on the number of
2 drinks one has consumed relative to his weight, yes. But
3 what we are saying here is that, this is the blood alcohol
4 level range (indicating).

5 Q. What that occurs in everybody?

6 A. Yes.

7 Q. And it occurs in greater degree when you get down the
8 line to point zero five, point zero six, point zero seven,
9 point zero eight?

10 A. Yes. The subjective
11 impairment increases with higher content of alcohol, yes.

12 Q. In other words, is this true, that a person can appear
13 perfectly normal and still have lost some inhibitions, lost
14 some judgment along the line up to point zero eight?

15 A. Yes. It would appear outwardly normal, yes.

16 Q. Talk normal, talk normal? A. Yes.

17 Q. And still would have these impairments?

18 A. Yes. That is correct.

19 Q. To what degree would depend on the individual, wouldn't
20 it?

21 A. Yes. That is correct.

22 Q. And his tolerance for alcohol?

23 A. Yes.

24 Q. And his weight? A. Well, not so much his
25 weight, because we are plotting him in the -- it is in the
26 form of percentage.

Q. Weight wouldn't be too much of a factor. Okay. When
you go beyond that point, the point zero eight or even up to

1 that point with some people, the motor parts of their body
2 are affected, isn't that right? A. Yes, that is
3 correct.

4 Q. And again, that depends on the amount of tolerance?

5 A. Yes, that is correct.

6 Q. Okay. And now, let me ask you a question, if I gave you
7 certain times can you tell me approximately what a person had to
8 drink in terms of ordinary bar whiskey, eighty-six proof, I
9 suppose? A. Yes.

10 Q. All right. Suppose a person started drinking at five
11 thirty in the evening and he drank, say, to about six fifteen
12 or six thirty, and his blood alcohol was taken at eight
13 thirty-two p.m. Could you tell me how many drinks of bar
14 whiskey approximately this man had?

15 A. Yes. If I have two additional information.

16 Q. Okay. A. Number one --

17 Q. His weight? A. His weight.

18 Q. One hundred sixty pounds. A. You answered the
19 other question. You say "his." So that is a male person?

20 Q. Yes. A. I need one more
21 additional information. The blood alcohol analysis was?

22 Q. Point zero eight. A. Point zero eight.

23 Yes. If a male person weighing one hundred sixty pounds
24 starts drinking at five thirty in the afternoon and terminated
25 his drinking at six thirty and blood, or a blood sample was
26 drawn and analyzed at eight thirty-two and found to be

1 point zero eight percent, Mr. the question is; how many,
2 approximately how many drinks did that person have? That
3 person had approximately seven ounces of eighty-six proof
4 whiskey.

5 MR. ROBINSON: Thank you. That is all.

6 REDIRECT EXAMINATION

7 BY MR. ROBINSON:

8 Q. Okay. Mr. Mann, the studies that you have put on the
9 board right here, do these relate to the drinking driver?

10 A. Yes. That is correct.

11 Q. Okay. And is there a presumption in California that,
12 it is put in there by the vehicle code, and it is a
13 presumption that affects somebody charged with driving while
14 under the influence as to the percentage in which somebody
15 is presumed to be under the influence of alcohol?

16 A. Yes.

17 Q. And what is that presumption?

18 A. The presumption is that a person with a blood alcohol
19 level of point one zero is presumed to be under the
20 influence of intoxicating liquor.

21 Q. Okay. In terms of being able to drive a car?

22 A. Yes. That is correct.

23 Q. That presumption is in the vehicle code?

24 A. Yes.

25 Q. Okay. Is there any presumption in the penal code as
26 to when a person is presumed to be under the influence of

1 intoxicating liquor?

A. I have no

2 knowledge of that.

3 MR. TROTTEND: I will stipulate there is none.

4 Q. (By Mr. Robinson) Is point zero eight percent greater
5 or lower than point one percent?

6 A. It is less than point one percent.

7 Q. Let's go through phase four, okay? You said that --

8 MR. GILKIFF: Excuse me. You said phase four.

9 MR. ROBINSON: Phase one, point zero four. Excuse
10 me.

11 Q. (By Mr. Robinson) Subjective impairment, loss of
12 inhibition, loss of judgment. Okay. Suppose I take one beer.
13 Is one twelve-ounce beer equivalent to one shot of one hundred
14 proof liquor? A. Yes. That is correct.

15 Q. So one bottle of beer is equivalent in terms of
16 alcoholic content to one shot of one hundred proof of
17 alcoholic liquor? A. Yes.

18 Q. How many beers would it take me to get to point zero
19 four between this range here? A. Depends on
20 your weight.

21 Q. One hundred ninety pounds.

22 A. If I may take it two moments to make my calculations?

23 Q. Sure. A. If you weighed two
24 hundred pounds, a male person weighing two hundred pounds
25 drank beer, in order to reach a point zero four level, I
26 will have to add one thing here, and that is, the person

1 consumed alcoholic intoxicating liquor for a period of one
2 hour, and waits one hour so that he assimilates the alcohol in
3 his stomach into the bloodstream, if he does this, then he
4 will have to drink approximately four bottles of beer.

38 Q. Four beers in an hour? A. Yes, and wait an
6 hour.

7 Q. And wait an hour? A. Yes.

8 Q. Okay. So if I drank between, say, five and six, four
9 beers, one twelve-ounce beer every fifteen minutes, then
10 waited an hour, it is 7:00 o'clock, this is assuming that I
11 stopped drinking at 6:00 o'clock, I would be in that range?
12 I would be at least point zero four?

13 A. Yes, that is correct.

14 Q. Now, and I have loss of inhibition, correct?

15 A. Yes.

16 Q. And I would have loss of judgment?

17 A. Yes.

18 Q. Okay. Would I stand up and take off my clothes in front
19 of a whole bunch of people?

20 MR. PESTAKING: Maybe he would -- excuse me, if
21 Your Honor please. I think this is out of the scope of the
22 direct and I thought, that what we are talking about --

23 THE COURT: Well, you took him on more or less as
24 your witness. Therefore, the subject was opened up. The
25 question, however, is what you would do.

26 MR. ROBINSON: Fine.

1 THE COURT: Since it is subjective -- I might add,
2 I should explain to the jury that -- perhaps Mr. Inami can
3 explain the difference between objective and subjective
4 signs.

5 THE WITNESS: Yes. Objective is that one can
6 actually have some scientific measure of degree. Let's say
7 in this case impairment, one can actually put some measure
8 of the functional losses.

9 Q. (By Mr. Robinson) Let's do this. Why don't we do this,
10 go up and write phase three on the board, please.

11 A. All right. Phase three. The alcoholic content range
12 from point oh seven five to approximately point two four
13 percent.

14 Q. Is it safe to say that phase three overlaps into phase
15 two?

16 A. Yes. And we call this the
17 intoxication phase, and we use the word "Intoxication"
18 because in phase three one shows outward signs of
19 intoxication, such as staggered walk and slurred speech.

20 Q. Okay. Now, these studies that you told us about, do
21 they all relate to the drinking driver?

22 A. Yes.

23 Q. Is that what you have testified to in the past?

24 A. That is correct.

25 Q. Have you ever done any studies relating to alcohol and
26 somebody's ability to form a certain mental intent?

A. I have not.

1 Q. Okay. Have you ever testified in Superior Court as to
2 alcohol and somebody's ability to, say, premeditate,
3 deliberate, or form malice aforethought?

4 A. I have not.

5 Q. Now, you tell us that between phase two, point zero five
6 and point zero eight, these are objective impairment phases?

7 A. Yes.

8 Q. So you say that in all individuals reaction time is
9 impaired? A. Yes.

10 Q. All right. Now, when we talk about impairment, do you
11 mean that if they are in that phase they are not safe
12 people to operate a motor vehicle?

13 A. Yes, that is correct.

14 Q. Okay. They can't take the car wheel and turn it as
15 quickly as they should? A. That is correct.

16 Q. Okay. So if they are driving down the road and an
17 emergency presents itself they can't react like the normal
18 sober person could? Is that correct?

19 A. That is correct.

20 Q. Okay. Can a person in phase two still run fast?

21 A. Yes.

22 Q. Okay. Can he still get up immediately if he falls and
23 run? A. Yes, that is possible.

24 Q. Can he still follow directions?

25 A. Yes.

26 Q. All right. If somebody says, "Stand up," can he stand

1 up? A. Yes.

2 Q. All right. If somebody says, "Put your hands on the
3 table," can he do that? A. Yes.

4 Q. Okay. Now, we talked about vision in phase two,
5 peripheral, visual acuity, depth perception, do those all
6 relate to being safely able to operate a motor vehicle?

7 A. Yes.

8 Q. Depth perception mean how far you can see in front of
9 you? A. Yes, that is correct.

10 Q. And peripheral vision means if you can see things
11 coming from the side of you at intersections, cars on your
12 side, things like that? A. Yes, that is
13 correct.

14 Q. Okay. Manual dexterity, does that mean somebody's
15 ability to put a turn signal, things like that?

16 A. Yes, possible.

17 Q. Okay. Now, we talked about phase three, the
18 intoxication phase, are these objective symptoms where
19 people like you and me, police officers, citizens of the
20 community could view somebody and see something objective
21 and form a determination as to whether or not this person
22 is under the influence of alcohol? A. The
23 interpretation of intoxication phase is a subjective type
24 of thing. And when I say that, one person sees a man who
25 is maybe showing staggered walk. Another person may look
26 at that person and say no, he is not showing any staggered

1 walk. Therefore, in phase three it depends somewhat on who
2 is making the interpretation. So it is a subjective type of
3 interpretation.

4 Q. Well, what I am going to ask you then is, once all
5 relates once again to drinking-driving?

6 A. Yes.

7 Q. This is what your title or expertise is in, right?

8 A. Yes.

9 Q. If somebody has a staggered walk, somebody has been
10 stopped for drinking and driving, they have a staggered walk,
11 would they be in phase three?

12 A. Yes.

13 Q. If somebody has slurred speech, would they be in phase
14 three? A. Yes.

15 Q. If somebody was rambling and incoherent would they be in
16 phase three, assuming these people have all consumed
17 alcohol? A. Rambling incoherently, I
18 am not able to say that person is in phase three or phase
19 two.

20 Q. Just from a rambling and incoherent person, huh? Now,
21 I take it in your studies with the drinking driver and the
22 various professions that you have read, the laboratory studies
23 and things like that, these all relate to ability to be able
24 to safely operate a motor vehicle? A. Yes,
25 that is correct.

26 Q. Okay. Have you ever seen anybody who has been arrested

1 for driving while under the influence?

2 A. Yes.

3 Q. Okay. Have you ever seen any of the drinking-driver
4 investigation sheets they fill out?

5 A. I have.

6 Q. Now, somebody has been arrested for driving while under
7 the influence, can they still form the decision to get into
8 their car? A. Yes.

9 Q. Still form the decision to know where they are going?

10 A. Yes.

11 Q. Okay. Just 'cause somebody is at point oh eight doesn't
12 mean that he can't form a decision to get into his car,
13 does it? A. That is correct.

14 Q. Doesn't mean that he doesn't understand where he is
15 going, does it? A. That is correct.

16 Q. Okay. Just means that if he is in his car he is not
17 a safe driver if he has got point one oh or above?

18 A. Yes, that is correct.

19 Q. Now, getting back to your example that Mr. Pestarino
20 gave you, if a person starts drinking at five thirty, okay?
21 And he drinks to six thirty, and at eight thirty he has a
22 blood alcohol of point zero eight, okay? At, say, between
23 six thirty and 7:00 oclock, all right, would his blood
24 alcohol be greater or less than point zero eight?

25 A. This would depend on the drinking history. I will
26 explain that in a moment. When I say drinking history, if a

1 person consumes, starting at five thirty, and if he drank
2 uniformly, that is one situation. Another situation is that,
3 say, he initiated his drinking at five thirty but drank most
4 of his intoxicating liquor toward the six thirty range so
5 we have some variation insofar as what his blood alcohol
6 level would be at seven.

7 Q. Okay. Now, can you answer my question. If a person,
8 let's use Mr. Pesterino as an example --

9 A. Yes.

10 Q. You told us in my example a guy consumes one glass of
11 beer which is equivalent to one one hundred proof drink,
12 okay?

A. Yes.

13 Q. Now, this person would have to wait, if I drank it at
14 5:00 o'clock, drank one beer between five and six, then I
15 would have to wait until 7:00 o'clock until all of this got
16 into my system for maximum blood alcohol?

17 A. Yes, that is correct.

18 Q. So it takes approximately an hour for the liquor to
19 distribute through your system to reach your maximum blood
20 alcohol?

A. Yes, that is correct.

21 Q. So does it make sense to you if somebody was drinking
22 between five thirty and six thirty --

23 A. Yes.

24 Q. Okay? That their blood alcohol, and at eight thirty
25 their blood alcohol was point zero eight that at 7:00 o'clock
26 their blood alcohol would be lower than point zero eight?

1 A. That is a possible situation, yes.

2 Q. Well, maybe we are not communicating. When you say it
3 is a possible situation --

4 A. Yes.

5 Q. -- and you told us that if a man drinks one beer between
6 five and six --

7 A. Yes.

8 Q. -- okay? You have to wait until seven to get his
9 greatest blood alcohol?

A. That is correct.

10 Q. Okay. Between six and seven it is not going to be
11 greater than it is at seven, right?

12 A. In a situation where you drink one beer between the
13 period of five and -- five thirty and six thirty?

14 Q. Yes. Let's use five and six.

15 A. Okay. Five and six. Let's say one consumes beer
16 between the period of five and six and one consuming that
17 can of beer uniformly, and, therefore, nearly all of the
18 alcohol in the stomach is consumed or absorbed in the
19 bloodstream by 7:00 o'clock approximately. But, now, the
20 hypothetical situation which you have presented to me, or
21 Mr. Postarino has presented to me, drinking at five thirty,
22 stopped at six thirty. The question you asked me is the
23 blood alcohol at 7:00 o'clock higher or lower than at eight
24 thirty two.

25 Q. Yes.

26 A. Yes. Okay. Let us
assume that a person drank all of his liquor at six twenty-

1 five. At 7:00 o'clock he has not totally absorbed all of
2 the alcohol. Therefore he would reach a maximum after
3 7:00 o'clock. If he drank uniformly, started at five thirty,
4 and drank uniformly and stopped drinking at six thirty,
5 chances are he would reach his maximum approximately around
6 7:00 o'clock or --

7 Q. So you can't answer? A. Yes. That is
8 correct.

9 Q. Okay. Let me ask you a couple other questions. This,
10 of course, is related to driving a car and alcohol?

11 A. Yes.

12 Q. Is there any presumption in California as to when
13 somebody is presumed not to be under the influence of
14 alcohol regarding driving a car?

15 A. Yes. Less than point oh five percent.

16 Q. He is presumed to be not under the influence?

17 A. That is correct.

18 Q. That is a presumption by law, right?

19 A. Yes, that is correct.

20 Q. Okay. So although somebody is subjectively impaired,
21 they have loss of inhibition, loss of judgment and possibly
22 some objectively impairment, the law says that they are safe
23 to operate a motor vehicle, they are presumed not to be
24 impaired? A. Yes.

25 Q. From operation of a car? A. That is
26 correct.

1 Q. Between point oh five percent and point one oh percent
2 is there a presumption? A. Yes.

3 Q. What is that? A. Between the point
4 oh five and point one percent it states that a person may
5 or may not be presumed to be under the influence, depending
6 on what evidence is put forth.

7 Q. Okay. And this once again relates to driving a car?

8 A. Yes.

9 Q. Okay. So between point zero zero and point zero five,
10 although the person has according to you subjective
11 impairment the law says that he is presumed not to be under
12 the influence in relationship to his ability to drive a car;
13 is that correct? A. Correct.

14 Q. Between point oh five and below point one oh, point oh
15 five and point one oh, the law says there is no presumption
16 regarding the blood alcohol content in an individual's
17 ability to drive a car, correct?

18 A. Yes.

19 Q. Okay. Unless there is some other objective factors
20 which might indicate to a person that this person is under
21 the influence of alcohol, correct?

22 A. That is correct.

23 Q. Such as slurred speech? A. Yes.

24 Q. Such as loss of balance? A. Yes.

25 Q. Such as staggered walk? A. Yes, that is
26 correct.

1 Q. And then the law goes on and says that from point one
2 on percent and above all people are presumed to be under the
3 influence of alcohol in relationship to their ability to
4 safely operate a motor vehicle, correct?

5 A. Yes.

6 Q. Okay.

7 MR. ROBINSON: Thank you. I don't have any
8 further questions.

9 MR. PESTARINO: I have a few.

10 REDIRECT EXAMINATION

11 BY MR. PESTARINO:

12 Q. Mr. Miami, I have been talking about people who drink,
13 and I am now talking about drinking and driving. We
14 understand one another? A. Yes.

15 MR. ROBINSON: Then I am going to object and make
16 a motion to strike all of his testimony. He has talked
17 about, he is qualified, he is an expert on drinking and
18 driving, and that was the basis of my whole objection to
19 start with.

20 MR. PESTARINO: No. I never talked about driving
21 and drinking.

22 THE COURT: That's right. Your objection is
23 overruled because the witness is testifying as to the effects
24 of alcohol on an individual.

25 MR. PESTARINO: That's right.

26 THE COURT: You may proceed.

1 Q. (By Mr. Pestarino) So we understand one another, what
2 we are talking about, we are not talking about driving.
3 However, these things are true aren't they, when people
4 ingest alcohol certain things happen to them?

5 A. Yes, that is correct.

6 Q. They don't have to be driving a car, do they?

7 A. That is correct.

8 Q. So these things you can measure by testing, can't you?
9 The subjective impairments to some degree?

10 A. Well, when you say to some degree I hesitate to
11 answer because this is the primary principal reason why we
12 use the word subjective because it is difficult to make any
13 quantitative measurement.

14 Q. How do you know that they lose judgment and they lose
15 their inhibitions? A. Because, well, these
16 are what we call observation, when a person has, let's say,
17 two ounces of one hundred proof whiskey, and then you see
18 that person behaving in a manner in which he does not behave
19 when he is sober, loss of inhibition, this type of thing.

20 Very difficult to put a quantitative number on phase one.

21 Q. Is there any question in your mind having studied this
22 particular field that these things do occur after you have
23 drank some alcohol? A. Yes, they do occur.

24 Q. All right. And the objective impairment, the visual
25 acuity, do those things occur? A. Yes.

26 Q. I am not talking about driving, just people.

1 A. Yes.

2 Q. Okay. And sometimes even at point two four people have
3 been able to accept commands? For example, "Put your hands
4 on the table, put your hands up, put your hands behind your
5 back"?

A. Yes. That is possible, yes.

6 Q. So again it is all relative, isn't it, as far as the
7 objective symptoms are concerned? It is all relative with
8 the person, isn't it?

A. Yes.

9 Q. His ability to drink, whether he is feeling good or
10 feeling bad, huh?

A. Yes.

11 Q. So it depends on the individual?

12 A. Yes. Except, I should clarify one point, and that is,
13 the objective impairment which is put forth in phase two,
14 now there, all persons manifest these symptoms when the
15 blood alcohol level reaches point one oh, because these are
16 involuntary muscles which one does not have any control.

17 Q. You can test those? You can see those?

18 A. Yes. You can test those.

19 Q. What you are telling us, but those symptoms still
20 exist, at least the objective symptoms exist sometimes up
21 to point one oh, don't they?

22 A. Yes, that is correct.

23 Q. That is correct. So there can be impairment, there can
24 be loss of inhibitions, there can be loss of visual acuity?

25 A. Yes.

26 Q. There is some loss of judgment?

A. Yes,

1 that is correct.

2 Q. And those occur in everybody, don't they, to one degree
3 or another?

A. Yes. That is correct.

4 Q. And after they have been drinking?

5 A. Yes, that is correct.

6 Q. Okay.

7 MR. PESTARINO: Thank you.

8 MR. ROBINSON: Just one or two questions.

9 REDIRECT EXAMINATION

10 BY MR. ROBINSON:

11 Q. Mr. Inami, let's talk about the vision again and the
12 tests that you participated in. Those tests are conducted
13 over at the crime lab?
14 A. Yes, that is correct.

15 Q. Relating to drinking - driving and alcohol?

16 A. Yes.

17 Q. Okay. And to do those tests you have somebody look
18 through a machine and determine how certain things look, and
19 then you consume a certain amount of alcohol and look
20 through the same machine and determine how it looks again?

21 A. Yes, that is correct.

22 Q. And are part of those tests also to have somebody walk
23 heel-to-toe along a line, consume a certain amount of
24 alcohol, and then once again walk heel-to-toe along a line?

25 A. Yes. We do only a limited amount of --

26 Q. And are part of those tests, also, for manual dexterity,

1 to have somebody take like certain blocks there, blue on the
2 top and red on the bottom, they are all lined up, maybe
3 twenty-four blocks and to turn those blocks over, get all of
4 the blues, making them down, putting reds up, and seeing how
5 they do it before and after they drink?

6 A. Yes, that is correct.

7 Q. All of these things that you told us about relating
8 once again to somebody's ability to safely operate a motor
9 vehicle?

A. Yes, that is correct.

10 MR. ROBINSON: I have nothing further.

11 THE COURT: Thank you, Mr. Inami. You are
12 excused.

13 (Witness excused.)

14 THE COURT: All right, ladies and gentlemen, we
15 will take our noon recess and resume around 1:30. And you
16 will keep in mind the previous admonition I have given you.
17 And the defendant will be ordered to return, also, as well
18 as all witnesses.

19 (Whereupon a recess was taken until 1:30 o'clock
20 p.m., this day.)

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TO THE COURT OF APPEALS OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

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THE PEOPLE OF THE STATE OF CALIFORNIA,)
Plaintiff & Respondent,)
vs.)
DAVID MALEK ISMAIL,)
Defendant & Appellant.)

VOLUME III
Pages 510 - 738

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REPORTER'S TRANSCRIPT ON APPEAL FROM THE
JUDGMENT OF THE SUPERIOR COURT OF THE
STATE OF CALIFORNIA, IN AND FOR THE
COUNTY OF SANTA CLARA.

HONORABLE GEORGE H. BARNETT, JUDGE, AND A JURY.

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AFTERNOON SESSION

March 17, 1976. 1:30 o'clock p.m.

(Pursuant to adjournment, Court convened, and the following proceedings were had:)

THE COURT: Please be seated. Let the record show that the jury is present, defendant and counsel are present.

MR. PESTARINO: I think that the last paper should be put in evidence, if Your Honor please.

THE COURT: Do you want those --

MR. PESTARINO: -- Defendant's or People's, I don't care.

MR. ROBINSON: Counsel has the right to have it marked, Your Honor, like any other exhibit.

THE COURT: All right. They are what? Two sheets, three sheets?

MR. ROBINSON: I believe I marked mine. I don't think counsel marked his.

THE COURT: Yes. You had two of them marked. And you had one marked --

THE CLERK: This one is not marked.

THE COURT: That will be Defendant's C then, the diagram.

(Whereupon, the above-mentioned document, being a diagram, was marked as Defendant's Exhibit C for identification.)

THE COURT: Is that admitted or just for

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1 identification?

2 MR. PESTARINO: I will offer it.

3 MR. ROBINSON: Why don't we mark them all and we
4 will admit them all at one time? I think that is easier.

5 THE COURT: You may proceed with your next witness.

6 MR. ROBINSON: The People call Mr. Kelaita.

7 FREDERICK SAMUEL KELAITA,

8 called as a witness on behalf of the People, being first duly
9 sworn, was examined and testified as follows:

10 THE CLERK: Take the witness stand, please.

11 DIRECT EXAMINATION

12 BY MR. ROBINSON:

13 Q Could you state your name, spelling your last name for
14 the record, please? A My name is Frederick, second name
15 is Samuel, and last name is Kelaita, K-e-l-a-i-t-a.

16 Q And Mr. Kelaita, where do you live?

17 A I live in San Mateo County.

18 Q Do you own a business? A Yes.

19 Q Were you familiar with the late Patriarch, Mar Shimun
20 the XXIII? A Yes.

21 Q How was it that you were familiar with him?

22 A Well, No. 1, because he was Patriarch of our church;
23 No. 2, because I was -- I married to his sister.

24 Q Okay. So he was your brother-in-law? A That's
25 right.

26 Q And are you a member of the Church of the East?

3
1 A That is correct.

2 Q And Mr. Kelaita, what nationality are you?

3 A I am an Assyrian.

4 Q Where were you born? A I was born in Russia.

5 Q When did you come to the United States?

6 A 1949.

7 Q Now, Mr. Kelaita, when did the Patriarch move to
8 California? A He moved in California in 1954, around
9 '54, '55, from Chicago.

10 Q When the Patriarch moved to California, would you des-
11 cribe for us your relationship with the Patriarch?

12 A Well, of course, my relationship with him was as a
13 church layman to a bishop of the church, high bishop of the
14 church, but about the time that he moved to California I
15 married, and, of course, my relationship with him at that
16 point in addition to being the Patriarch of our church was
17 also of being brother-in-law.

18 Q And Mr. Kelaita, as far as his relationship with an
19 individual, who would you say would be the closest person to
20 the Patriarch since he came to California in 1954?

21 MR. PESTARINO: Isn't that calling for an opinion
22 and conclusion?

23 THE COURT: If he knows he may answer.

24 THE WITNESS: Patriarch had no friends as such, the
25 way you and I might have friends.

26 Q (By Mr. Robinson) Could you explain that for us?

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1 A The relationship of people to the Patriarch was, aside
2 from his own family, a relationship of official, as a layman
3 to the bishop of the church. If he had some business with
4 the Patriarch he would make an appointment and go and see
5 him. Otherwise, besides that Patriarch did not have some-
6 body close to him that he would call them, "This is my
7 friend."

8 Q Mr. Kelaita, would you say that you were the closest
9 individual to the Patriarch that he could call a friend?

10 A No. I cannot make that claim to call a friend. He
11 was my Patriarch, and in addition to that he was the high
12 bishop of my church. But I was very close to him, yes.

13 Q Okay. And would it be fair to say that you were closer
14 to him than any other member of the church?

15 A That is correct.

16 Q And would it be fair to say you were as close to him as
17 a member of his own family? A At some instances even
18 closer than that, yes.

19 Q So, I take it you knew the Patriarch very well?

20 A I certainly did.

21 Q Now, what I would like to do, first of all, Mr. Kelaita,
22 is ask you some questions about the background of the Church
23 of the East. Okay? A Fine.

24 Q All right. Could you tell us something about the Church
25 of the East, Mr. Kelaita? A Well, the Church of the
26 East, when we talk about the Church of the East, we talking

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1 about a group of people known as the Assyrian people. And
2 the Assyrian people are the descendants of the old Assyrian
3 Empire which was before the Christ, in the year about,
4 probably a thousand years before the Christ, and were
5 dominant force in the Middle East. And at one time they,
6 of course they were fighting all of the time with the
7 different nationalities and tribes in the Middle East. And
8 at one point of their history they conquered some other
9 people which were also Semitic race, and they were called
10 Arameans, which is not to be mistaken by Armenians, which
11 they come from Arab, and Arameans at that time had developed
12 a language which was more advanced than any language in
13 those days. Since they were closely related to the Assyrian
14 people, the Assyrian people, the language that we speak today,
15 they make the Aramaic language their official language of
16 writing. However, they still maintained the language that
17 they spoke. And this went on for centuries. And at one
18 point in time in the history when the Assyrians took the
19 Israelis to captivity and took them to Babylon, and they
20 stayed there for many, many decades, the Israelis learned to
21 speak the Aramaic language because the language of the
22 Aramaic was the language of commerce and of the learned people.
23 So that we see when the Christ came in many instances you
24 find in the Bible that it says although the Christ was Jew
25 but he did speak to his disciples in Aramaic language.
26 Therefore, at that time the Assyrian Empire had shrunk and,

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1 however, there was a small Assyrian nation which was very
2 close to Palestine, in that area. And the King of Assyria
3 at that time, the story goes that he knew the Christ, he had
4 some correspondence with him which are available in this
5 day and age, and through his disciples, the Christ disciples,
6 he used to communicate with him. And after the death, after
7 the crucifixion this king became Christian, and all of the
8 people with him which were Assyrian people. And at this
9 point the Assyrian people were completely changed. No
10 longer were the Assyrian people the fighters and engage in
11 fighting with different tribes. They started preaching the
12 gospel.

13 And at one time in our history the Church of the
14 East, history of the east in 9th century, the Church of the
15 East was the largest Christian church in the whole world.
16 And then, of course, we read the history of many massacres,
17 of many, of many fights or many other things that happened
18 to our church. And eventually this church shrunk and all
19 of the Assyrian people who belonged to this church, they
20 were confined to an area in the Middle East which is between
21 Iraq, Iran, Turkey and Syria, and that part of the world.

22 Our church is called the Church of the East and,
23 of course, until the 4th century there was only one church,
24 the universal church. But at that time the churches split.
25 The west became known as the Roman Catholic Church, and the
26 east, there were several branches of Christianity which one

1 of them was nicknamed Nestorian, which was Nestorious, a
2 follower, who was the bishop of Constantinople and who adhered
3 to the beliefs of the members of the Church of the East. So
4 it became known as the Nestorians, and we call ourselves
5 Church of the East.

6 Q Okay. Now, Mr. Kelaita, can you give us some background
7 on His Holiness, Mar Shimun the XXIII, regarding how he
8 became Patriarch, when he became Patriarch, and various other
9 items concerning his background? A Well, of course,

10 I wish I could put it all in a brief statement. This is a
11 very long history of the Assyrian people. You must realize
12 that the history of the Assyrian people is a history that,
13 it is mixed with their history of the church. Really there
14 is no time in our history from the time that we accepted and
15 we became Christian that you can separate these two. The
16 Assyrian people throughout the centuries up until 16th or 17th
17 centuries all belonged to the Church of the East. And at
18 that point some missionaries from Europe, from Italy, from
19 France, and other parts of the world went to the Middle East
20 and converted some of these people, some of them to
21 Catholicism, and some of them in late 19th and 20th century,
22 in late 18th and 19th century they became Protestant. But
23 predominantly the Assyrian people were Church of the East.

24 Now, the Patriarch himself comes from a family,
25 which, according to the writings that are available, is the
26 XXIII Patriarch in the same family. And he is 119th

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1 Patriarch in the line of succession. And he came to be
2 Patriarch in 1920, and this is after his uncle passed after
3 a short illness. And his uncle became the Patriarch after
4 his brother who was assassinated by some Kurdish leaders.
5 So when in 1920 the Patriarch became the Patriarch of the
6 Church of the East, was 13 years old then. And then he --
7 this is when the Assyrian people had been taken to Iraq,
8 which at that time wasn't really Iraq, was a remnant of the
9 Ottoman Empire which was under the British domination.

10 Then he was sent to school in England. He studied
11 in England for many years. He came back, I believe in 1928,
12 back to Iraq and resumed his duties as Patriarch of the
13 church. Later on in 1933 there was some problems which
14 mainly were fomented by the British occupation forces in
15 Iraq, and our people and the local people were engaged in
16 a war, and so that the British intervened and exiled the
17 Patriarch out of the country and his whole family numbering
18 about 20, 25 people were exiled to Cyprus. From then on the
19 Patriarch took the Assyrian case to League of Nations in
20 mid-thirties, and all was known that League of Nations,
21 League of Nations in those days was dominated by British
22 and French, and he did not get anywhere. And early in 1940,
23 just before the war started, he immigrated to the United
24 States and became a resident of the United States.

25 Q Okay. A When he came here we had no church in
26 this country. We had a lot of Assyrians scattered all over

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1 this country. He established a church in Chicago; he
2 established a church in Yonkers, New York; he established a
3 church in Flint, Michigan, and New Britain, Connecticut, in
4 Turlock, California, in San Francisco, and in later years we
5 had a, we also had a church in Seattle which was mainly
6 American-speaking people because these people belonged to
7 some other church and they came, joined our church as a group.

8 Q Okay. Now, you have told us that the Patriarch went
9 to the League of Nations in 1940? A No, before that.

10 I think it was in mid-thirties, probably '34, '33-'34.

11 Q Okay. And in 1948 the Patriarch was then in the United
12 States? A That is correct.

13 Q Okay. In 1948 did the Patriarch issue a position
14 regarding how the Assyrian people, the members of the Church
15 of the East should react to the various countries in which
16 they lived in? A Well, the Patriarch's position was,
17 and always ever since he came here, to live in peace, always
18 tell his people in whatever country they lived to try to
19 abide and live by the laws of the land that they were living
20 in. The Patriarch knew that because the Assyrian people
21 very few, that all of the claims over centuries that they had
22 to certain parts of the Middle East were no longer claims that
23 could be fulfilled. No. 1, we are very few. We are
24 probably less than half a million people throughout the whole
25 world. We are scattered. We are maybe about 50,000 in
26 America, and maybe about 50,000 or 100,000 in Syria, less

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1 than that in Lebanon. The bulk of them in Iraq and some in
2 Iran. And very few in Australia, and so we do not have a
3 force or an establishment by which we can go and claim our
4 land. So this is the reason he always told them to live in
5 peace and forget about that.

6 Q Did the Patriarch feel that there was any chance of the
7 government of Iraq giving up part of their territory and
8 turning over to the Assyrian people to live as a country?

9 A No.

10 Q Why didn't he feel that there was any chance of this
11 happening? A Well, because the Iraqi that we know
12 today which has certain geographical area, is a byproduct of
13 the, as I said a little bit before, of the Ottoman Empire
14 which was taken away from them right after World War I. The
15 British came in and they divided it. And they installed
16 certain rulers, which incidentally these rulers were related
17 to each other. The king of Iraq was related to the king of
18 Saudi Arabia, the king of Saudi Arabia was related to the
19 king of Transjordan, and so on. So that politically we
20 were in a position, we were not in a position to be counted
21 because we were very few.

22 Q Did the Patriarch ever express his opinion to you or to
23 others through his writings and teachings that there might be
24 a danger to the Assyrian people who lived in Iraq if, in
25 fact, they should push the Iraqi government to give them a
26 piece of land for Assyria? A He always did. I have

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1 a letter here, if I am permitted by Your Honor I would like
2 to read some excerpts from it.

3 THE COURT: Is it in English?

4 THE WITNESS: It is in English. I wouldn't read
5 it in Assyrian.

6 MR. PESTARINO: I haven't seen it.

7 MR. ROBINSON: I would like to see it, too.

8 THE COURT: Would you show it to counsel?

9 MR. ROBINSON: Perhaps we can look this over
10 together.

11 THE COURT: Could you clarify, when was that letter
12 written?

13 THE WITNESS: I believe it was -- Mr. District
14 Attorney?

15 MR. ROBINSON: September 28th, 1972. It is a
16 letter addressed to Mr. Sargis, president of the Assyrian-
17 American Federation.

18 THE COURT: Just one minute. Let counsel look at
19 the letter.

20 THE WITNESS: Fine.

21 MR. PESTARINO: You don't happen to have another
22 copy?

23 THE WITNESS: I will be glad to give you another
24 copy of it.

25 MR. PESTARINO: That's all right. May I make a
26 suggestion, Your Honor?

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1 THE COURT: Surely.

2 MR. PESTARINO: Perhaps, I don't know Mr. Kelaita's
3 position, if he is willing to wait around or not. Perhaps
4 during the recess we can look it over, you know, make a
5 determination.

6 THE COURT: Determination as to what, sir?

7 MR. PESTARINO: Whether or not I am going to object
8 to it.

9 THE COURT: Oh, not a judicial determination?
10 All right. Let's see what happens when counsel finishes
11 scanning through the letter.

12 MR. PESTARINO: I would like to take a few moments
13 to look it over carefully.

14 MR. ROBINSON: I have no objection to counsel look-
15 ing it over. I have a lot of other questions for Mr.
16 Kelaita.

17 THE COURT: Let's hold the letter for now and we
18 will discuss it later, Mr. Kelaita.

19 THE WITNESS: Fine.

20 THE COURT: Counsel, will you have any objection if
21 I read it in the meantime so I could be familiar with it?

22 MR. PESTARINO: No, of course not.

23 THE COURT: Thank you. Go ahead.

24 MR. ROBINSON: Thank you, Your Honor.

25 Q (By Mr. Robinson) Now, Mr. Kelaita, would it be fair
26 to categorize your role with the Patriarch was, say, his

13 1 secretary, perhaps? A Many times he would ask, send
2 a letter to some person he would ask me to write the letter
3 and tell me what he wanted to say and I would do it. Sure.

4 Q And in addition to that could you be categorized as
5 his appointment secretary? You would arrange appointments
6 for him?

A Well, that came not as a, as something
7 that was given to me. It became -- a lot of Assyrians knew
8 me and knew my relationship with him. And a lot of them
9 didn't want to call him direct so they would call me and ask
10 if I could make an appointment for them, and I would oblige.

11 Q Okay. And so by word of mouth your reputation got
12 out in the community that you were close to the Patriarch?

13 A Yes, sir.

14 Q Okay. And that people that were attempting to see
15 the Patriarch about certain matters would contact you and ask
16 for you to arrange an appointment for them with the Patriarch?

17 A Quite often, yes.

18 Q And did this, this continue to happen throughout your
19 relationship with the late Patriarch? A Until the
20 last day.

41 21 Q Okay. Now, Mr. Kelaita, what sort of people came to
22 see the Patriarch? Could you categorize them into two
23 different types? A Well, of course, the people who

24 came there, as I explained a little bit earlier, were, well,
25 if I can categorize them, the bulk of them, people belonged
26 to our church, they had a problem one way or another and they

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1 would come for his advice and as to what to do. Then there
2 were other people who would come, maybe representative of
3 Bishop of Canterbury would be here in San Francisco, and
4 incidentally he wouldn't call me direct because they knew his
5 number, you know, people like him would call him and go and
6 visit with him or some other representative of some other
7 church.

8 Q So would it be fair to say there were the clergy and the
9 laymen? A That is correct.

10 Q And when the Patriarch was seeing people would he ask
11 you to be present, Mr. Kelaita? A Well, all right,
12 the Patriarch as a rule, he would never see a layman without
13 a third person being present.

14 Q Okay. Wait a second, now. And can you explain why
15 that rule came about and why the Patriarch adopted that rule?

16 A This was his own wish that he did not want anybody to
17 come there and talk to him and go out and say, "I got this
18 from Patriarch," or that. There was always somebody there
19 that would testify to what happened there.

20 Q And when the Patriarch was to see a layman would he
21 contact you? A Many, many times, yes.

22 Q What would he say? A Well, he would say, "Freddy,
23 I would like you to be present on such and such a date,"
24 usually used to be in the evening, sometimes in the afternoon,
25 and Mr. So-and-So is coming to see us. He would call
26 himself always in the third person, you know.

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1 Q And these would be prearranged meetings?

2 A Would definitely be prearranged meetings, yes.

3 Q Would these meetings be arranged through yourself?

4 A As I said, very, very often, yes. I would call him
5 and then he would give certain date, and in that case I knew
6 about it.

7 Q Now, when the Patriarch spoke did he speak in the third
8 person? A Always.

9 Q So instead of saying I'm going to do this he would say
10 we are going to do this? A Always.

11 Q And were you present when there were meetings with
12 lay people and the Patriarch? A Yes.

13 Q And when the clergy would ask to meet with the Patriarch
14 would you be present on those occasions?

15 A No.

16 Q So you were just present when they were lay people?

17 A That's right.

18 Q Now, you told us that the Patriarch had no friends. Was
19 that because he was a hostile person? A No, no.

20 Q Could you explain that for us? A Because his
21 position, his position as such, since the American people are
22 not well acquainted with our church I have to bring an example.
23 You take a Catholic, and assuming that he is very close to the
24 Pope, would you define that closeness as a friendship? You
25 can never develop that kind of friendship with a person like
26 that. It is always, you always reserve. You are always

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1 there. You are always waiting for him to tell you something.
2 And, therefore, this question of friendship could never exist
3 between him and some other person in the sense that we know
4 it.

5 Q Would you say that it was a lonely job?

6 A Very lonely job.

7 Q Okay. Now, prior to the Patriarch being killed was
8 the Patriarch recognized as the leader of the Assyrian people
9 by the government of Iraq? A Yes.

10 Q How do you know that? A Well, for one thing, it
11 was during -- you see, I have to go back, if I have your
12 permission?

13 Q Certainly. A After the Patriarch was exiled by
14 the British, and eventually he came to the United States, for
15 a period of 30 years he could not go back. As a matter of
16 fact, for a period of 37 years he could not go back to Iraq.
17 But this time the Iraqis had gone through several revolutions
18 and several changes in their government, and what not, and
19 late in 1970, '69-'70, around that area, they contacted the
20 Patriarch if he wanted to go and visit with his people to
21 Iraq. And Patriarch took the opportunity and went to Iraq,
22 and he was accepted and given the honors like given to any
23 head of state. And when he got to Iraq, the Iraqi government
24 proclaimed that henceforth Mar Eshai Shimun, Patriarch of the
25 Church of the East, is also recognized as the head of the
26 Assyrians in Iraq. It was a decree issued by the government.

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1 Q Now, are you familiar with the group called the
2 Assyrian Universal Alliance? A Yes.

3 Q Are you a member of that group? A No.

4 Q Can you tell me approximately how many Assyrians are
5 members of that group? A I really cannot answer that
6 question except to say that the Universal Alliance is
7 supposed to be an alliance of certain groups and federations
8 of the Assyrian which are in different parts of the country,
9 in this country and also outside of this country.

10 Q And are you familiar with the purpose and the goals of
11 the Assyrian Universal Alliance? A Well, I personally
12 am not too well versed in that. But I personally don't
13 agree with what they are doing. And Patriarch expressed
14 this thing many, many times, that what these people are doing
15 is detrimental to our cause in the Middle East.

16 Q What are they doing that you don't agree with?

17 A Well, the Assyrian Universal Alliance are talking about
18 restoring the old Assyrian Empire which was before the Christ
19 in the Middle East at the expense of the Iraqi government.

20 Q Could you explain that a little more, please?

21 A What they are asking right now, they are asking to be
22 given an autonomy, the Assyrian people in that part of the
23 country, so they have the complete autonomy over their affairs.
24 But if you look in the history of the Middle East countries,
25 when you grant such an autonomy to a group of people, this is
26 the first step, and the second step is asking for their

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1 independence, complete separation and independence. There
2 were other people who asked for autonomy from the Iraqi
3 government. There were Kurds, for instance. For many,
4 many years Kurds fought the Iraqis. Later on they were
5 given the autonomy, and later on, that did not work, so that
6 the Iraqis had to go out, the Turk -- not the Turks -- I'm
7 sorry, the Kurds, which are also Moslems, and then they had
8 to go and crush them completely and eliminate that problem.
9 I personally feel that if we go that route, if we insist on
10 that, we are going to go the same route that the Kurds did,
11 we going to be crushed. So I rather have my people, wherever
12 they living, to enjoy the life and be good citizens of that
13 country and abide by the laws of that country. And believe
14 you me, today the world is changed. There are no massacres,
15 and there are no dangers that if you are a good citizen
16 anything can happen to you.

17 Q And was that the policy of the Patriarch, also?

18 A Always.

19 Q Now, are you familiar with General Ismail, the defendant's
20 father? A I have seen him, yes.

21 Q Okay. And have you heard about his reputation?

22 A Yes, sir.

23 Q Could you tell us something about him? A About
24 the gentleman? All I have heard about the gentleman, in
25 the true sense of the word a gentleman, and I met him at my
26 in-laws when he came to this country and this, I can be wrong,

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1 but it was '69 or '70. A Christian, a good man.

2 Q And how did the Patriarch feel about General Ismail?

3 A Very, very, very good. Spoke highly of him.

4 Q The Patriarch was very fond and loved General Ismail?

5 A Yes, sir.

6 Q And was General Ismail involved with the Assyrian
7 Universal Alliance? A Well --

8 MR. PESTARINO: You know, excuse me, Your Honor, if
9 Your Honor please, we are asking a lot of questions but I
10 think I would like some foundation for these questions. They
11 are mostly hearsay and, okay, I agree that it is part of the
12 history and he can do that, but I would like some foundation
13 as to when, where, how.

14 MR. ROBINSON: I believe although it is hearsay it
15 comes in under the exception to the hearsay rule, reputation,
16 concerning community history, family history. Certainly Mr.
17 Kelaita is qualified to testify to that because of his back-
18 ground, his being in the Assyrian community, his being
19 intimately involved in that community as evidenced by what he
20 has already told us.

21 MR. PESTARINO: I'm not questioning Mr. Kelaita's
22 background, and I believe he is qualified. I would like
23 some foundation for some of these questions.

24 THE COURT: Foundation as to his opinion as to
25 whether or not, or knowledge as to whether or not Mr. Ismail's
26 father was involved?

1 MR. PESTARINO: Sure.

2 THE COURT: Well, perhaps that foundation should be
3 established and can be by questioning.

4 Q (By Mr. Robinson) I believe my question was, do you
5 know if Mr. Ismail's father, General Ismail, was involved
6 with the Assyrian Universal Alliance?

7 THE COURT: That can be answered yes or no.

8 THE WITNESS: Yes.

9 Q (By Mr. Robinson) You know that he was?

10 A Yes.

11 Q How do you know that? A I know it through the
12 Patriarch.

13 Q The Patriarch knew that? A Yes, sir.

14 Q And even though the Patriarch knew that General Ismail
15 was involved with the Assyrian Universal Alliance, did he
16 still continue to love him and respect him?

17 A Well, when General came here he went to see the Patriarch.

18 Q When was this, Mr. Kelaita? A I believe, I have
19 to check my memory on that, but I believe it was around 1970.

20 Q Okay. A Or so, five or six years ago. He
21 informed the Patriarch that he was taking a trip, and he was
22 going to Iran. Now, at this time we must remember, of
23 course, the history of the Middle East is a very complicated
24 history, and for people who have not been involved in the
25 history of the Middle East, all of these things are very,
26 very difficult to comprehend. But here, in the Middle East,

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1 at this time, 1970, we have two powers, namely, Iranians and
2 the Iraqis, which are at odds over certain things, the oil,
3 the land, I don't know, whatever it is. There are a certain
4 number of Assyrians that are living between the two borders.
5 There are, also, a great deal of Kurds, numbering probably
6 a couple million people who are also sandwiched between these
7 two nations. And the Kurds at this time, they were fighting
8 the Iraqis, and they were getting help from Americans,
9 English, from Russia, I do not know. But they were getting
10 some help. Malek Ismail --

11 Q Is that General Ismail? A No, Malek is in
12 Assyrian is leader of a tribe.

13 Q But is this General Ismail? Malek Yagoub is General
14 Ismail? A Yes, sir. And he was invited by A.U.A.
15 to go to Iran and possibly to gather some Assyrians around
16 him, and through the help that the Iranian government would
17 supply to him, go together with the Kurds, fight and take over
18 the land that they had there. Well, he went to Tehran, and
19 apparently he stayed there for a couple months, and the
20 Iranians did not deliver what they had told him through their
21 representative, which was Assyrian Universal Alliance. So
22 he was disenchanted. He came back and later on he went to
23 the Middle East. Now, at this time, of course, the Iraqis,
24 their eyes are open. They know the reputation of the
25 person. They know that he is well-liked among the Assyrian
26 people. So they invited him to go to Iraq. They gave him

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1 a great big welcome. And this, all they did because they
2 did not want him to get back to the Iranians again. Well, by
3 this time the question of the Kurds was more or less being
4 settled by the Iraqis, and so that the idea that the Iraqis
5 had that they were going to take a group of Assyrian people
6 and put them as a buffer between the Kurds and the rest of
7 the country was no longer a valid argument for them. So
8 they let the matter drop. But they extended him all of the
9 courtesy that they could.

10 Q Okay. Now, you told us that the general visited with
11 the Patriarch in 1970? A Yes.

12 Q And was that matter discussed? A He informed, he
13 did not come to ask Patriarch if he had his permission to go.
14 He came, and the Patriarch expressed to him his unhappiness,
15 and he told the Patriarch that, "This is the last time that
16 I will be involved. This one trip I have to take."

17 Q Okay.

18 THE COURT: May I interrupt, counsel? General
19 Ismail, I don't think it has ever been explained of what he
20 was a general.

21 THE WITNESS: All right. I can explain that one if
22 you give me the permission.

23 THE COURT: Surely.

24 THE WITNESS: Right after World War I the Assyrian
25 people which were between the Iraqis and -- not the Iraqis --
26 were part of the Ottoman Empire, they were broken to pieces

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1 and part of them emigrated to Russia which was close there.
2 And the big bulk of them came south and the British brought
3 them and settled them in today's Iraq. This is in 1917,
4 1918. Now, this part of the world in those days was all in
5 turmoil. There were different tribes, the Arabs, the Kurds,
6 and everybody, so the British, as is their policy, they had
7 Levies, what they call. The Levies were forces that were
8 drafted from the local population. And the officers of these
9 people were British. Now, they were non-commissioned
10 officers. We had three ranks of the officers. We called
11 them Rab Khamshee, this is in Assyrian now, I'll explain,
12 Rab Imma, and Rab Trima, means the head of 50, the head of
13 100, and the head of 200, which means, the closest termino-
14 logy to that to the English is the second lieutenant, the
15 lieutenant, and the captain. Malek Yagoub was Rab Trima,
16 meaning the closest rank to it, although it does not say so,
17 but the closest rank to it is a captain. Now, there were
18 five companies in each regiment, whatever you call it, the
19 head of this regiment was a British colonel. This British
20 colonel had some other British officers under him, a major,
21 and each company numbering maybe 200 people, more or less,
22 they had an Assyrian Rab Trima, which is like a liaison
23 officer, between the people who are serving and the head of
24 this regiment. And so this term of general, with all due
25 respect that I have to late Malek Yagoub, is not a true title
26 because his commander was a colonel, so he could not be a

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1 general.

2 Q (By Mr. Robinson) Okay. Thank you. Now, did the
3 Patriarch express any opinions to you about whether or not
4 the Assyrian Universal Alliance was using General Ismail or
5 misleading him in any way? A Yes.

6 Q Could you tell us what he told you about that?

7 A Well, he told me that he was sure that Malek Yagoub's
8 trips and his involvement in these affairs were brought by
9 his own sons. Now, he would not say who, which one. I
10 realize he has three sons now. But he would not say which
11 one. He always used to say it is by his sons, he knows
12 that that is a fact, that he is being led into it by his sons.

13 Q Okay. Now, are you familiar with the name Zaia Ismail?

14 A Yes, sir.

15 Q And is Zaia Ismail one of the sons of Malek Yagoub?

16 A That is correct.

17 Q And is he the brother of David Ismail? A Yes, sir.

18 Q Are you familiar with whether or not Zaia Ismail is
19 involved in the Assyrian Universal Alliance?

20 A He is involved in it, yes.

21 Q And how do you know that?

22 MR. PESTARINO: Wait a minute. Go ahead, excuse me.

23 THE COURT: Go ahead.

24 THE WITNESS: All right.

25 MR. ROBINSON: Mr. Kelaita, would you like a cup of
26 water? You have been speaking about an hour. Would you

25 1 like some water?

2 THE WITNESS: Well, I certainly would appreciate.
3 Thank you very much.

4 MR. ROBINSON: You're welcome.

5 THE WITNESS: I'm sorry, I forgot the question you
6 want to --

7 Q (By Mr. Robinson) Yes. How do you know that Zaia
8 Ismail is involved in the Assyrian Universal Alliance?

9 A Well, Zaia was involved in many activities. And I
10 believe at one time he was also involved in the political
11 activity in Syria where he used to live. As a matter of fact,
12 one time he was a member of parliament or something there.
13 And anyway, after they left Syria he came to live in differ-
14 ent parts, I don't know where he is living now. And I want
15 to say this, of my own knowledge about him, I have never seen
16 the gentleman. I don't know him. If I saw him now I
17 wouldn't recognize him. But I do know something about him.
18 Some time back when Malek Yagoub was in Iraq, this idea of
19 Malek Yagoub going to Iran did not sit well with the Assyrian
20 Universal Alliance because here all of a sudden this person,
21 who was going to go to Iran, he was going to get some people
22 around him, he was going to fight for the homeland which was
23 at the expense of the Iraqis, all of a sudden he is flirting
24 with the Iraqis government. So the A.U.A. called a meeting,
25 and the meeting was held in Flint, Michigan, and at this
26 meeting he was told he was playing a dual role. As a matter

1 of fact, they accused him of being a spy, and what happened
2 in that meeting I don't know. I wasn't there, but he was,
3 he apparently to the satisfaction of this gathering there
4 explained whatever he and his father were doing was not
5 contrary to what the plans of Assyrian Universal Alliance was.

6 Q And was that meeting published and discussed in the
7 Assyrian Star? A No.

8 Q What is that newspaper that --

9 A Assyrian Star.

10 Q It wasn't in there? A No.

11 Q Okay. Were letters written about that meeting by
12 people involved in the Assyrian Star? A Well, you know
13 how the Assyrians, they have a very small community, every-
14 thing that goes on here the next time they know it in Yonkers,
15 New York, so that is --

16 Q Let me ask you this, Mr. Kelaita, as long as you mention
17 that, is the Assyrian community small and close knit?

18 A Very small and closely knit, yes.

19 Q And people hear things and know what is going on in their
20 community? A Most definitely.

21 Q Okay. Now, do you know a man named Sargis Michael?

22 A Yes.

23 Q Okay. And is his name well known in the Assyrian
24 community? A Fairly well. He writes articles in
25 the Assyrian Star.

26 Q And if somebody was to have -- would a leader, a secretary

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1 of the Assyrian Universal Alliance in San Francisco, would
2 you expect him to be familiar and know the name of Sargis
3 Michael? A I would say if he was not familiar with

4 it, I don't see what kind of secretary he would be really.

5 Q And if this man had a radio broadcast, a radio broadcast
6 in Assyrian on an FM station, would you expect him to know
7 the name of Sargis Michael?

8 MR. PESTARINO: That is certainly calling for his
9 opinion, if he knows.

10 THE COURT: Well, if he knows he can answer. It is
11 a matter of opinion, but the opinion is for the jury to
12 determine.

13 THE WITNESS: I would think so, my opinion.

14 Q (By Mr. Robinson) Okay. Is Sargis Michael a member
15 of the Assyrian Universal Alliance? A As far as I
16 know.

17 Q Were you present with the Patriarch approximately a
18 month before he was assassinated when he met with Sargis
19 Michael? A No, Mr. Sargis, Mr. Michael -- Mr.

20 Sargis called me three or four times in two days. He
21 wanted to set up a meeting with the Patriarch. The

22 Patriarch did not want to see him. And he insisted that he
23 had to see him. And I stuck my neck, many times I called

24 Patriarch. At one point the Patriarch was a little bit

25 unhappy. He says, "Why?" I said, "Because I know this

26 person and I know he is sincere." And I said, "If you grant

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1 him an audience." You know, I requested him if he would.
2 Finally agreed. But I could not make myself attend the
3 meeting because the following day I had to go out of town.
4 I had an engagement out of the town.

5 Q Do you know the content of that meeting?

6 A I cannot say because, like counsel says, it will be a
7 hearsay. I don't know. I did not talk to Patriarch
8 specifically about that meeting except at one point he
9 referred to me that he came there and asked him that if he
10 would take over more active role in the Assyrian Universal
11 Alliance. And, of course, Patriarch's answer to that was
12 categorically no.

13 Q Do you know if the members of the Assyrian Universal
14 Alliance wanted the Patriarch to go to Iran and act as the --
15 Iraq, excuse me -- and act as the representative of the
16 Assyrian community and claim for them their land?

17 A No, I am not aware of this. The Patriarch could not
18 represent anybody. The Patriarch was the recognized head
19 of the Assyrian community in Iraq. And he was, therefore,
20 not in a position to represent some other group of people
21 because here he was already recognized by the government as
22 the head of the Assyrian people.

23 Q Do you know if the Assyrian Universal Alliance wanted
24 the Patriarch as the representative of the Assyrian community?

25 A Oh, I am sure definitely they wanted Patriarch to take
26 a very, very active role in their affairs. Definitely yes.

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1 Q And their affairs were political? A Definitely.

2 Q And they wanted to deal with the Iraqi government?

3 A That's correct.

4 Q And what was the Patriarch's feeling regarding joining
5 the church and the state, church and politics?

6 A Well, Patriarch tried in last 15, 20 years, ever since
7 he came to this country to disassociate the church from the
8 political activity. And, therefore, it was very hard for
9 him at times to do so. Here we have a government which is
10 inviting him to go to their land, which is a government, an
11 all Christian government, the Moslem government, and they not
12 inviting him because he is the head of a church, they are
13 inviting him more because he has the capacity and role to
14 lead a people regardless of their beliefs. But he did not
15 want the Assyrian people to get mixed up in political affairs.

16 Q Now, some time in early 1973 did the Patriarch indicate
17 to you that he was going to retire from the church as being
18 Patriarch? A Yes, sir.

19 Q And can you tell us when that occurred and how that
20 occurred? A Well, this occurred 1973, January, the

21 first week of January, 1973. The Patriarch called, came
22 over to our house one night, and he always used to, for
23 dinner or whatever it was, and he asked me to be present in
24 his residence on a certain day of the week, which used to be
25 around 8:00 o'clock in the evening most of the times. He
26 also told me he had asked his two brothers, Theodore and

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1 Sargon Mar Shimun that they would be there. It was unusual,
2 the request, because the Patriarch used to ask me many times
3 to attend to his place, and he would ask me to bring members
4 of the church or members of the central committee of the
5 church, but seldom the Patriarch would tell me to be present
6 with his two brothers. And his two brothers didn't know
7 about it either because when I talked to them I said, "What's
8 going on?" They said we don't know. So we went there.
9 I was in charge of making tea. I made some tea.

10 Q Let me just ask you one thing. At this time, Mr.
11 Kelaita, did the Patriarch live in San Francisco?

12 A He used to live in Park Merced in San Francisco.

13 Q This was prior to his becoming married?

14 A That is correct.

15 Q Lived by himself? A Lived by himself, yes.

16 Q Go ahead. A So after we had some tea the
17 Patriarch had a stack of papers on his desk, and he told us
18 that these papers, they were all in envelopes ready to go,
19 they were papers of resignation. And some of them, the
20 papers that were supposed to go to the overseas had already
21 been mailed out. I believe the day was on a Wednesday
22 because he told us that the rest of the papers would be
23 mailed the next day, Thursday, because he wanted the priests
24 and the parish to get them on Saturday. And they were
25 resignations. Now, of course, we were stunned. We couldn't
26 believe that the Patriarch -- his brothers were just as

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1 stunned as I was. We could not ask any questions. What
2 we had to ask? There was nothing we could ask. I asked
3 him one question, I still remember, I said, "Your Holiness,
4 has this happened before?" And he laughed, he said, "No,
5 but there is always a first time."

6 Q Let me interrupt right there. You told us there had
7 been approximately how many Patriarchs in the Church of the
8 East since its inception? A 119.

9 Q Of those 119 Patriarchs, in terms of longevity, that
10 means being Patriarch for a certain amount of years, was
11 Mar Shimun the XXIII the third longest Patriarch in the
12 history of the church? A The third longest Patriarch
13 in the church. That is correct.

14 Q He was Patriarch for how many years?

15 A Fifty-three years.

16 Q Go ahead, sir. A Now, so we went out and got
17 into the car. We weren't talking to each other. We were
18 just thinking about it. Now, what does this mean? How can
19 a Patriarch resign? What is going to happen? Well, one
20 thing about resignation I would like to explain. The
21 resignation of the Patriarch, as later on he explained to us,
22 is not a resignation from the ranks of the church. A
23 Patriarch, a bishop is always a bishop regardless whether he
24 is active or inactive. He was becoming inactive. He was
25 resigning from the office, from the administration of the
26 church. Now, but he was still a Patriarch. So after his

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1 resignation, after he informed the parishes and his people,
2 the letters started coming from all over the world, telegrams
3 after telegrams. Sometimes he would come our place and he
4 would have 30, 40 telegrams with him. And he says, "Look,
5 Freddie, look how many telegrams we got." And, you know,
6 we all pleaded with him, maybe you would reconsider. And he
7 says, "No, there is no possibility." And about a month
8 later two bishops and his uncle came from the Middle East.

9 Q Where did they come from? A The bishop of Tehran,
10 Iran, and the bishop of Lebanon, and a representative of the
11 archbishop, which was the second, which was in fact the head
12 of the church after he resigned. They came to see him. They
13 pleaded with him. They asked him to reconsider the
14 resignation. They told him that the Assyrian communities
15 in Iran and Iraq are going to be left without a head. There
16 is no Assyrian living today that he would be acceptable to
17 all of these governments. And so they really persuaded him
18 to reconsider the resignation. But the Patriarch had a
19 habit of saying, whatever he said it was said, and he didn't,
20 he didn't make statements at the spur of the moment. And
21 that was his decision. However, he gave them six months'
22 time during which time he said, if you do the following things,
23 if you promise to do the following things I shall stay for
24 six more months. And among the things that he asked them
25 was to go and find and consecrate some new bishops and some
26 priests for our church in the Middle East. Well, this they

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1 did. And when they went back they had the notion that the
2 Patriarch had in fact changed his mind. And they had very
3 high hopes that eventually he would stay. Well, came
4 January -- I mean came July and August of 1973 he gave up
5 his residence in Park Merced, and he stored his goods and
6 belongings in a place, and he went up to the northwest. And
7 after his trip there he got married. And --

8 Q Okay. A -- that is the end of his resignation.

9 Q All right. So he tried to resign from the administra-
10 tive task of leading the Church of the East in January of

11 1973? A That's right.

12 Q The bishops came with him and persuaded him to stay on
13 as Patriarch of the church? A That is correct.

14 Q He told them that he would stay on for six months until
15 they could elect, appoint more priests, more bishops, and
16 eventually somebody to take over his position?

17 A That is correct.

18 Q And they asked him to do that and he consented to do
19 that? A That's right.

20 Q During this period between July, '73, and August, '73,
21 did they attempt to appoint a new Patriarch or anything like
22 that? A No. 1, they could not find any, none of the
23 bishops would come forward and volunteer for the job. Besides,
24 we have bishops in Iran, we have bishops in Syria, in
25 Lebanon, we have several bishops in Iraq. And the Iranians
26 would probably not settle on a bishop that was elected from

34 1 Iraq. The Syrians probably would do the same. The
2 Iranians would not be happy with a bishop elected from the
3 other parts. So there was an impasse here, so no Patriarch
4 even today. They are unable to get together to elect a
5 Patriarch.

6 Q Now, when you say that the Iranians would be unhappy,
7 or the Iraqi people would be unhappy, is that the Assyrian
8 people living in Iran and Iraq, or is that the Iranian
9 government? A The government I am talking.

10 Q Pardon me? A I am talking about the government.

11 Q Okay. A Because whoever is the Patriarch of
12 the Church of the East, as such, he is also a leader of
13 Assyrian community and he might have a great deal of influence
14 on what these people in different countries might do to their
15 respective countries.

16 Q Okay. And the Patriarch's influence over his church
17 and his people were that, the members of the Assyrian commun-
18 ity, Assyrians, who were members of the Church of the East
19 should remain faithful to the country in which they lived,
20 to that government? A That's right.

21 Q Now, the Patriarch gets married? A Yes, sir.

22 Q When did he get married, Mr. Kelaita? A In August,
23 1973.

24 Q Okay. And when did you hear about this? Could you
25 tell us how that happened and how you heard about it?

26 A Yes.

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Q Would you like some more water? A No. I have plenty, thank you. I was at home one evening around August 14th or 15th, 1973. And as a matter of fact I was ready to go the airport to pick up my brother. He was coming from Los Angeles. And the phone rang, and there was the Patriarch on the phone. And he used to call quite often, ask for any mail or any other things, you know, and he asked me if I was upstairs, or downstairs where I have an office. I said, "No, I am upstairs." He says, "I would like you to go downstairs. I have something to tell you." I went downstairs. I detected something probably unusual. And so I closed the door. And he went into some explanation to me as to how lately, and I knew about it, he was sick, he had problem with, sometimes in the middle of the night he would get up and fall off the bed due to tensions, and all that, how the life, 53 years Patriarch of the Church of the East, what has done to him, and here I am listening to all of this, and I don't know why Patriarch is explaining these things to me on a long distance telephone call. And so finally he said that he has decided to get married. The word "get married," in Assyrian he did not say it like I am translating it in English. It was a special word that he used that at the beginning I thought what he meant that he was going to have a woman that would be taking care of him. But when he later during telephone conversation, he explained to me that Reverend Ninos Michael from San Francisco and Reverend

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1 Michael Birnie of Seattle parish going to perform the
2 ceremonies, it was then that I realized what was he telling
3 me. Well, again, if the first time when he told me about
4 his resignation I was stunned, this time I was completely
5 at a loss. I didn't know what to tell him or what questions
6 to ask him. The only thing I said, I said, "Your Holiness,
7 whatever you are doing the best of luck. I don't know what
8 else to tell you."

9 Q Okay. Did the Patriarch get married?

10 A The following day he did.

11 Q Okay. And when he got married would you describe the
12 feelings in the Assyrian community? A Well, it was a
13 complete shock. Astonishment, unbelief. And it was the
14 greatest talk from one end of the earth to the other between
15 the Assyrian people. The very same day that the news broke
16 the telephones were hot between here and Sidney, Australia,
17 Iraq, Syria, and all over the world. This was the hottest
18 issue on that day.

19 Q Okay. And would you describe the feelings of the
20 Assyrian community regarding the Patriarch's getting married?
21 Were they mad, outraged, happy with it?

22 A I can't say they were happy with it. No, we were not
23 happy with it. None of us were happy with it. Of course,
24 we were not. For one thing, this custom of celibacy in the
25 Church of the East was there for centuries. No Patriarch
26 of the church had been married since the 8th century. Some

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1 say 5th, but there are some writings that says one of them
2 was married in the 8th century. And for the layman, we
3 didn't realize what had happened. All of us thought that
4 here we have a Patriarch who went and broke the rules of the
5 Church of the East, the canon laws of the church and he got
6 married. This was our belief, our initial belief.

7 Q All right. Now, that is initially after he got married?

8 A Initially, right.

9 Q Now, in September of 1973, approximately one month

10 after the Patriarch got married, was there a gathering of

11 certain bishops in Lebanon? A There was a gathering of

12 all of the bishops except two bishops, the bishop of India,

13 and one of the bishops in Iraq.

14 Q Okay. And as a result of this gathering of the

15 bishops in Lebanon, what happened? A Well, the bishops

16 gathered in Lebanon, and in this meeting, which was really

17 under some kind of hysteria or very, very unusual circum-

18 stances, they decided to defrock the Patriarch from his rank.

19 Now, they lived to regret this because later on they found

20 out that they had no jurisdiction, none whatsoever, to defrock

21 a Patriarch, although that Patriarch is or was at that time

22 resigned. And with the Court's permission, I would like

23 to read you a passage from the canon laws of our church which

24 is very explicit about this thing, if you will allow me.

25 MR. PESTARINO: Well, it is another consideration,

26 Your Honor. I think I better look at it.

1 THE COURT: Yes. Would you wait until after the
2 recess? We will take one in about 15 minutes.

3 THE WITNESS: I will be more than happy to.

4 Q (By Mr. Robinson) Now, Mr. Kelaita, when -- after the
5 Patriarch got married did he come to San Jose to live?

6 A No. He came to Bay area. I help him out. They
7 found a place in Sunnyvale, an apartment. And they lived
8 there for about three or four months.

9 Q Okay. And after their house in, their apartment in
10 Sunnyvale did they eventually move to Woosley?

11 A That's right. They moved to Woosley Drive.

12 Q Now, at this time was the Patriarch still the leader of
13 the Church of the East? A Well, we just going to have
14 to go back, and if the counsel again allows me, or has no
15 objections to it, there are certain correspondence that went
16 between the Patriarch and the bishops.

17 Q Okay. That is what I will get to. Maybe we can
18 read the correspondence later. But to sort of sum it up, did
19 the Patriarch sort of say, "All right. If this is the
20 kind of game they want to play let me put my side before the
21 people, and let the people choose," or what happened regard-
22 ing that after the bishops met in Lebanon?

23 A After the bishops met in Lebanon I talked to him on the
24 phone. The bishops, they did this act, of course, prior to
25 his coming to the Bay area. He came about two months after.
26 He had been gone for two months. And I still, I still

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1 remember what he told me when I told him that there is a
2 letter to this effect against you, and he had not gotten the
3 letter because he was in the northwest or some place there,
4 and he said, "Freddie, we will answer them in due time."

5 Q Okay. And this letter addressed to the Patriarch --
6 and I take it this letter was distributed throughout the
7 Assyrian community? A Yes, sir. I have a copy of
8 the letter right here.

9 Q And from the meeting in Lebanon? A That's right.

10 Q Was the letter that defrocked the Patriarch?

11 A That's right.

12 Q Said because he got married he was no longer Patriarch?

13 A That's right, he was a layman.

14 Q The Patriarch when he received the letter about two
15 months later, you told him about the letter?

16 A That's right.

17 Q He said we will answer this in due time?

18 A In due time he did.

19 Q Did the Patriarch answer the letter? A Most
20 eloquently.

21 Q And when did he answer the letter, Mr. Kelaita?

22 A I have a date here, I will tell you when. On September
23 23rd.

24 Q Of what year? A Of 1973.

25 Q Okay. And in his answer what did he say?

26 A In his answer he came forth, he brought, he explained

1 canonical laws of the Church of the East. He proved that
2 the celibacy was not a law, not a canonical law, rather a
3 custom. And a canonical law, he explained to us laymen
4 that we didn't know anything about the whole thing at that
5 time, was this, that a canonical law is a law when a sitting
6 Patriarch gathers all of his bishops and this becomes a
7 senate, and they pass a law, and that law becomes the law
8 of the church. And then there is another law, which is an
9 edict by a Patriarch. A Patriarch may issue an edict, and
10 this edict is binding as long as that Patriarch has not
11 changed it or so long as next Patriarch has not changed that
12 edict. Now, there was an edict one time to the question of
13 celibacy. But there was no canonical laws forbidding the
14 bishops from marrying.

15 Q Okay. And did the Patriarch distribute this letter
16 throughout the Assyrian community? A All over.

17 Q Okay. And did he distribute the letter to the bishops?

18 A He did. It was addressed to the bishops, yes.

19 Q And as a result of this letter of the Patriarch in 1973,
20 did the community, the Church of the East and the Assyrian
21 community take a different attitude once they heard the
22 Patriarch's side of the story, so to speak?

23 A Well, certainly a lot of them did. A lot of them were
24 not quite satisfied with the explanations. But this created
25 a great deal of talk between the Assyrian people. And some
26 of it naturally accepted it as facts because he brought, he

1 cited facts, passages from the canonical laws of the church,
2 and everything that he said there it was confirmed. And it
3 was referred to a certain book, certain time, or a certain
4 statement.

5 Q Okay. And did the people of the Church of the East,
6 members of the Church of the East in the Assyrian community
7 start to question what the bishops had done in their meeting
8 in Lebanon? A Well, yes, of course they did.

9 Q Okay. A And the bishops got together again and
10 realized their error of judgment and reversed themselves on
11 the question of defrocking a Patriarch.

12 Q That was my next question. Did the bishops then get
13 together after the Patriarch presented his point of view and
14 reverse themselves, say, "We were wrong about that"?

15 A They reversed themselves, yes.

16 Q Then did they ask the Patriarch -- well, I take it he
17 was still Patriarch? A He was still Patriarch.

18 Q There was no more talk about defrocking him, removing
19 him as leader of the church? A Yes, but there is one
20 point I should mention, by reversing their decisions that he
21 no longer is a layman, that he is a Patriarch and he should be
22 accorded all of the courtesies of a Patriarch, they still
23 reserved the right to themselves as to whether or not he is
24 the administrator of the Church of the East.

25 Q Okay. And when did this take place, this reversal of
26 position? A This took place over a long period of time.

1 There were meetings held with him, the bishops came here,
2 and I don't know why I was always involved in these affairs,
3 but the bishop of Tehran called me from Lebanon one early
4 morning, 4:00 o'clock our time, and asked me to request the
5 Patriarch to grant him an audience. He was coming to see
6 him. And I called Patriarch in the morning, I said, "You
7 got a bishop coming to see you." And he said, "Who?" I
8 said, "The bishop of Tehran." And he said, "What for?"
9 And I explained what he wanted. There was correspondence.
10 There is, everything is on paper. And I said, "He wants to
11 come and see you over this question of the administration of
12 the church because now that they have reversed themselves
13 they want you to come back and head the church again." And
14 therefore, he said, he says, "Send them a telegram," which I
15 did, and which if I am allowed I can read it, a few lines,
16 "Bishop Mar Dinkha, Brittania Hotel, Beirut, Lebanon. Have
17 conveyed your message of this date to Patriarch
18 Mar Eshai Shimun and I confirm again what I told you
19 by telephone this morning, namely, he is willing to
20 see you on condition that you bear an official
21 letter signed by the bishops stating that whatever
22 agreement is reached by you with His Holiness is
23 binding and irrevokable. Signed, Fred Kelaita,
24 date 5-22-74."

25 Q Did this meeting take place? A Yes.

26 Q Now, Mr. Kelaita, I am almost through. General Ismail,

1 a well-known name in the Assyrian community, correct?

2 A Malek Ismail, yes, that's the grandfather of -- that's
3 the father of Malek Yagoub, yes.

4 Q The defendant's father, well-known name in the Assyrian
5 community? A Yes, sir.

6 Q High position in the Assyrian community?

7 A Yes, sir.

8 Q Zaia Ismail, well-known name in the Assyrian community?

9 A Relatively.

10 Q Had been in congress? A I believe he was in
11 congress of Syria for one or two years.

12 Q David Ismail, know anything about him?

13 A No, not very much, no.

14 Q It was well accepted in the Assyrian community and well
15 known that in order to get an appointment with the Patriarch,
16 to see him you were the person to contact?

17 A I would say, yes. A lot of people would come to me.

18 Q Did David Ismail ever contact you between -- well, did
19 he ever contact you at all? A No, sir.

20 Q Did you know he was in San Francisco? A No, sir.

21 Q Did you know he was in San Jose? A No, sir.

22 Q Did the Patriarch have a custom regarding somebody
23 dropping in off the street to see him? A Never.

24 Whoever came at his door he had to go back he had no appoint-
25 ment.

26 MR. ROBINSON: Thank you. I have nothing further.

1 THE COURT: All right. Ladies and gentlemen, let's
2 take a recess at this time and we will probably give you a
3 little longer because counsel will have to read the papers.
4 Let's give you until 3:20 or thereabouts, so you won't have
5 to rush. And you will keep in mind the admonition I have
6 given you before. And you can also step down.

7 (Short recess taken.)

8 THE COURT: Let the record show that the jury is
9 present, defendant and counsel are present.

10 MR. PESTARINO: Do you have anything further?

11 MR. ROBINSON: I have no further questions.

12 CROSS-EXAMINATION

13 BY MR. PESTARINO:

14 Q Just as a point of information, Mr. Kelaita, how did the
15 Patriarch live financially? Did the church support him, did
16 he support himself, did he have an independent income, or
17 what? A The church, the parishes used to send him
18 once a year a certain assessment that had been levied against
19 them. The parish of Chicago about three or four thousand
20 dollars a year, the parish of Yonkers, depending on the size
21 of the parish, each parish would contribute so much to his
22 living expenses.

23 Q Was there a certain budget submitted to the bishops or
24 the parishes? A No. No.

25 Q So any money that he accumulated over and above what he
26 needed for living expenses he used on the church, or did he

1 use it for himself? A No, it was his own money, person-
2 al money.

3 Q His own money? A That's right.

4 Q And he left an estate, did he not?

5 A He did.

6 Q Of about 400,000? A No.

7 Q 300,000? A Less than that. You tell me
8 specifically and I'll tell you.

9 Q I don't know. A Well, I don't know either.

10 Q But he did leave a sizeable estate?

11 A What is a sizeable estate?

12 Q 250,000. A About.

13 Q All right. Okay. You don't know David Ismail?

14 A No, sir.

15 Q You knew his father slightly? A Yes.

16 Q He had been over your house one time?

17 A Not my house, my in-laws' house.

18 Q Once when you were there? A When I was there, yes.

19 Q That is the only time you have ever seen him?

20 A That's right.

21 Q After the Patriarch's marriage, as you indicated there
22 was quite a bit of consternation among the Assyrian people of
23 the Church of the East, was there not? A That's right.

24 Q And I suppose in some instances there were threats
25 against the Patriarch, weren't there? Threats?

26 A I am not aware of --

1 Q You are not aware of any threats? A No, sir.

2 Q You are aware of a lot of newspaper articles against the
3 marriage, against the Patriarch? A Which newspapers
4 are you referring to, sir?

5 Q Ones in Turlock? A There is no newspaper in
6 Turlock.

7 Q Modesto? A They have a small magazine in Modesto,
8 yes.

9 Q And is there a newspaper in San Francisco?

10 A No.

11 Q No. Anyway, was there publicity against the Patriarch
12 in either the radios, newspapers, televisions or whatever
13 source? A As I explained a little while ago, we are
14 a small number of people. We really don't need a paper. We
15 can -- we know what is going on. Everybody is involved.

16 Q Well, anyway, did he receive any bad publicity? Did he
17 receive any bad publicity? A Initially.

18 Q Yeah. What was his practice? Did he always keep his
19 doors closed or did he leave them open? A No, he never
20 left his door open.

21 Q Did he always lock them? A The door is always
22 closed.

23 Q Locked? A Possibly, yes.

24 Q Probably? A I would say, I would say locked. You
25 can go from the outside, go in.

26 Q Did the Patriarch ever tell you that he knew the Ismail

1 family, not only the general but his sons?

2 A Yes.

3 Q Did he ever speak of David Ismail? A No, not to
4 me.

5 Q So you don't know whether he knew David or not?

6 A Oh, I'm sure he knew of David. He knew Malek Yagoub
7 well. As a matter of fact, sir, you may know it, he may
8 have told you or not, the brother of Malek Yagoub is married
9 to the uncle of Patriarch -- I'm sorry, to the aunt of the
10 Patriarch. That is better.

11 MR. PESTARINO: I didn't quite -- it didn't quite go
12 through.

13 A I'm sorry.

14 Q I knew there was something wrong. A And the other
15 brother, the other brother of Malek Yagoub is married to
16 Patriarch's aunt on the mother's side. So not only they
17 know of each other, they are related through marriage.

18 Q So they are one big happy family? A Well, I --

19 MR. ROBINSON: I am going to object to that --

20 THE COURT: Go ahead. You may answer.

21 THE WITNESS: I would not say one big family, they
22 are relations.

23 Q (By Mr. Pestarino) Did you know that the Patriarch
24 received a telephone call from David Ismail, maybe a month,
25 two or three months before his death?

26 A I did not know before he was killed. I knew of the

1 phone after.

2 Q Afterwards? A Right, from his wife.

3 Q Were all phone calls referred to you, or did the
4 Patriarch accept some? A What do you mean, sir,
5 referred to me? I did not have -- he did not have a switch-
6 board. I did not have one. So anybody calling me would
7 naturally call me, and anybody calling him would call him.

8 Q Well, I see. So he didn't say, "Well, call my brother-
9 in-law or Frederick," whatever he called you, "and make your
10 appointment through him"? A No, sir. No.

11 Q So he received independent phone calls and he received
12 mail himself? A He did. The mail he received
13 himself.

14 Q And you never censored or opened the mail?

15 A I did not have anything to do with his mail.

16 Q And you don't know anything about his telephone calls or
17 all of his appointments either, do you? A Well, I
18 did not claim, sir, that I was in charge of all of his
19 appointments. There were other people who might call him.

20 Q I'm just asking you. I am not trying to contradict
21 you. A All right.

22 Q I am asking you. Now, you didn't learn about the
23 Patriarch's marriage until the day before he married?

24 A That is correct.

25 Q And then you were shocked as anybody else?

26 A That is correct.

1 Q And you were shocked because in the history of the
2 church, at least from the 5th century before Christ, until
3 the present time, there has never been a marriage?

4 A Correction, sir, when you state "before Christ," we
5 ought to say "after Christ." There was no church before
6 the Christ.

7 Q I thought there was an Assyrian church in -- or pardon
8 me. That's right. There was no church. There was the
9 Assyrian people? A That's right. From the 5th
10 century A.D.

11 Q But the Assyrian people were united in a religious way,
12 weren't they, before the 5th century? A The Assyrian
13 people were converted to Christianity right after the Christ,
14 the 1st century. It was not a church as organized as it is,
15 you see it today.

16 Q I understand that. A But this is how far back
17 they go.

18 Q I see. But even before that time, like the Israelites,
19 they believed in God and they took their orders from God?

20 A I would say they believed in gods, not in God as Israelis
21 do, you see.

22 Q And they were like the chosen people, weren't they, the
23 Israelites? A I don't know what really you mean by
24 "chosen people." They were warriors. They were fighters.
25 They would fight with all kinds of people. Their empire at
26 one time was the largest empire in the Middle East, from

1 Egypt all of the way to Persia. Gradually they contracted.
2 And then about 600 years before the Christ the Persians came
3 and they, in a way, disseminated them to the point that they
4 no longer could come back and retain their old empire.

5 Q Anyway, you get back to the subject -- to get back to
6 the subject, the Patriarch to your knowledge never discussed
7 his marriage with anyone except maybe his wife?

8 A That's right.

9 Q He certainly didn't talk to the bishops, did he?

10 A No, sir.

11 Q The only time he spoke to the bishops is when he
12 received the letter from the 4th council of bishops that
13 defrocked him? Then he answered that letter?

14 A Not true, sir.

15 Q No? A No.

44 16 Q What is true? A He, upon when he decided to marry
17 he wrote an epistle, a long letter, and he informed the
18 bishops of what he had done, that he was getting married, and
19 so that they knew about it. And, as a matter of fact, he
20 mailed the letter to the bishops about a week before his
21 marriage so that by the time they would get the letter,
22 because it takes a week or so to get letters to the Middle
23 East. It would not be second-hand news to them.

24 Q In other words, when they received the letters in the
25 Middle East he would have been married? A About, about
26 that time, yes.

1 Q And in that letter he didn't ask permission from anyone
2 to marry, did he? A No, sir, he did not. He proved
3 that he did not have to ask for their permission.

4 Q And the reason historically or according to ecclesiasti-
5 cal law was that he was the Patriarch, he was the supreme --

6 A No, sir.

7 Q -- ruler of the church? A No, sir.

8 Q No? What was the reason? A Patriarch has to
9 abide like anybody else by the canonical laws of the church,
10 the laws that are on the books. Patriarch cannot break a
11 law which is written by the senate of the bishops. If the
12 Patriarch wants to change a law he has to call the bishops,
13 they have to have a meeting, they have to change a certain
14 law that they call canonical law. Patriarch by himself
15 cannot break that law. There were no laws in canonical laws
16 forbidding a bishop or Patriarch from marrying.

17 Q Well, let me ask you this, in some churches they have
18 canon lawyers? A Yes, sir.

19 Q Do they have such people in the church?

20 A We don't have that kind of luxury.

21 Q You don't have. Who interprets the law?

22 A The bishops and the Patriarch.

23 Q And he didn't talk to the bishops about the interpretation
24 of this particular non-existent law, so to speak?

25 A Non-existent, sir? What are you talking about?

26 Q Well, it is not in the canons of the Church of the East?

1 A That's right, it is not.

2 Q So that is why he married? A That is right.

3 Q Then he explained it to the bishops afterwards, "Look,
4 I am married but there is no law against it"?

5 A In essence you are true, yes.

6 Q Kind of crudely put. A He told them he was
7 married. Whether he cited that or not I do not recall. I
8 can look into it and see if he cited it.

9 Q Of your own knowledge, Mr. Kelaita, are you familiar
10 with the constitution or if there is such a thing, or bylaws,
11 especially in the United States here of the A.U.A.?

12 A I have never been a member of A.U.A. and I want to
13 emphasize, sir, one point, that I do not as of the --

14 MR. PESTARINO: I'm sorry.

15 MR. ROBINSON: You didn't have to emphasize it that
16 strongly.

17 THE WITNESS: Thank you.

18 THE COURT: Let the record show that the window blew
19 shut.

20 THE WITNESS: I do not condemn categorically Assyrian
21 Universal Alliance. There is certain things about it that I,
22 as a free person living in this country, do not approve. I
23 don't go about talking to people and doing a lot of noise
24 about it. I got nothing to do with them. As far as I am
25 concerned they can do whatever they want. To my estimation
26 they are doing wrong, whatever they are doing.

1 Q (By Mr. Pestarino) And they feel that they are doing
2 right? A Of course they do.

3 Q And you are not familiar with their constitution or
4 bylaws as to what they believe in, what they hope to obtain,
5 or how they hope to attain it? A I know what they
6 want to obtain, and I can tell you what they want to attain
7 through, what.

8 Q Please tell me. A May I have the letter that you
9 have? Or it is here.

10 Q Can you tell me in a word or two without reading the
11 letter? A I am not going to read you a long letter.
12 If you permit I would like to show you this picture, this
13 picture is of the Patriarch Mar Youkhannan (sic) which is
14 the 21st Patriarch of the Church of the East and is an uncle
15 of the late Patriarch.

16 Q Fine. A There was an article in the Assyrian
17 Star, July, 1972, about the Patriarch, and under disguise of
18 this article the following statement was made, and I will
19 read it to you from the Assyrian Star. It says, "An ungodly
20 nation," referring to the people in the Middle East,
21 to the governments of the Middle East, the Islam, "An ungodly
22 nation still remains like an unbroken wreck in the
23 giant body of the wild beast of Islam while a
24 Christian nation of numberless martyrs barely
25 retains its national existence. There is but one
26 solution, and only one, it is not the present

1 possession that counts but rather the everlasting
2 armies of the redeemed gathered and prepared for the
3 glorious and certainly not distant day when the
4 rightful owner of the earth shall descend with his
5 saints to challenge the authority of Satan, bind the
6 great enemy of God and mankind and transform a
7 paradise lost into paradise regained."

8 Q Sounds like Milton. A Sounds very poetic. And
9 very damaging. And here we have a group of probably no more
10 than half a million people living in the middle of Islam,
11 and here from the sanctuary of the United States these people
12 are writing these things.

13 Q Let me ask you this, Christians, people from the Church
14 of the East are still being persecuted in some of the Middle
15 Eastern countries, aren't they? A I am not aware of
16 that word "persecuted" in a true sense of it, no, I would not
17 say now, but under close observation I would say.

18 Q For instance, in Lebanon now isn't the fighting between
19 the Christians and the Moslems? A No, sir.

20 Q No? A This is a very, very bad mistake thanks to
21 our papers in this country.

22 Q Okay. A The fight in Lebanon is between the haves
23 and non-haves, the people who have and the people who don't
24 have. Now, we constantly seem to hear in this country that
25 the Moslems and the Christians are fighting. But if you
26 look at the picture as a whole you will see that there are

1 Moslems and Christians on one side. Maybe, although maybe
2 in numbers they are not equal that are fighting the Moslems
3 and Christians on the other side. It is more a political
4 question than a religious question.

5 Q And let me ask you this, Mr. Kelaita, there are under-
6 privileged people in the Middle East that are members of the
7 Church of the East, the Assyrians, aren't they?

8 A Sure.

9 Q And they are struggling, aren't they?

10 A That's right.

11 Q What leadership do they have? A Right now?

12 Q Well, at the time the Patriarch was alive.

13 A The leadership that they had, the Patriarch unfortunately
14 had to live in this country, although he was requested many
15 times by Iraqis government, by Iranian government to move and
16 live there, but he wanted to play a neutral role and live in
17 the United States and keep them quiet.

18 Q I understand that. But who fought for them politically?

19 A At what point in time, sir?

20 Q From the time that the Patriarch lived in the United
21 States and wanted to live peacefully, who fought for the
22 Assyrians in the Middle East? A There were no fights
23 after 1933.

24 Q Excuse me. I don't mean fights in the sense of doing
25 battle or combat. I mean who was their leader?

26 A The Patriarch.

1 Q And what did he do for them? A He could not do
2 much here, after all, we must remember the Patriarch did not
3 have an army to go there. The Patriarch could only work
4 through persuasion, through meetings. He had a meeting
5 with the Shah of Iran in 1948 when he came here, it was their
6 first meeting, in New York. After that the relations between
7 the Iranian and our people in Iran became very well.
8 Eventually he met with the Lebanese authorities. He met with
9 the Syrian authorities and lastly he met with the Iraqi
10 authorities and everything was very, very peaceful between
11 our people and the governments in the Middle East.

12 Q So your people in the Middle East didn't need a leader
13 then? The Patriarch was their leader? A Yes.

14 Q And he would communicate with the heads of states in the
15 Middle East? A Yes, sir.

16 Q And things would be all right for them?

17 A Well, at least that was the purpose, yes.

18 Q Well, did anybody represent your people in the Middle
19 East personally by being over there, by talking to the heads
20 of government, by being in congress, or whatever?

21 A No. You see, each country in the Middle East has a
22 minority. There, our people, our people are like any other
23 minority, and they have certain countries they may even have
24 one or two representative in congress of that country, or
25 Ma-dres (phonetic spelling), whatever they call it, and they
26 are the subjects of that country. They abide by the laws of

1 that country. They do not go and represent a Patriarch who
2 is a non-citizen of that country and speak for him. That
3 would be out of line completely.

4 Q What did General Malek Ismail do?

5 A We have to go back, sir, to 1933.

6 Q Well, without going back --

7 MR. ROBINSON: Let him answer the question.

8 THE WITNESS: You are asking me a question. I would
9 like --

10 MR. PESTARINO: Excuse me --

11 MR. ROBINSON: Excuse me.

12 MR. PESTARINO: Without going back to 1933, suppose
13 you take it in the last 10 years.

14 THE WITNESS: Mm-hmm.

15 Q (By Mr. Pestarino) What did Malek, General Malek Ismail
16 do for the Assyrian people? A He was a retired gentle-
17 man.

18 Q Did he do anything for the people? A I am not aware
19 of that, sir, no.

20 Q How about in the last 20 years, what did he do?

21 A The last time he did was 1933.

22 Q That was the last time he did anything for the Assyrian
23 people? A That's right.

24 Q Did he help the Patriarch with the Assyrian people?

25 A Certainly, in 1933.

26 Q What was the nature of his help? What did it consist

1 of? A Well, in 1933 when the problem between the
2 Assyrian people and the Iraqis, I stress it again, was
3 fomented by the British, this is all history, we don't want
4 to go into that --

5 Q I understand that. A -- the British came and said
6 they were going to disband the Levies, which at that time
7 numbered several thousand people. The Levies were the
8 Assyrian people who were like National Guard, working for
9 British, protecting their certain installation in the Middle
10 East. Well, it was the only livelihood these people had,
11 and most of these people were not happy with it. So Malek
12 Yagoub took a group of people with him, and of course they
13 were not happy with the situation, and they went to Syria,
14 and when the Syrian found about it, they crossed the river
15 there and went into Syria, and when the Syrian found out
16 about this, they talked to the British, and the British made
17 the French -- of course, at that time Syria was under the
18 French mandate -- so the French told them to vacate the place,
19 and while they were crossing, the armies, they were crossing
20 the river back to Iraq under leadership of Malek Yagoub, there
21 was a great big war between the Assyrians and Iraqis, and
22 many people were killed.

23 Q Did the general help the Patriarch in matters of the
24 Church of the Middle East? A Not the management of
25 the church, no, sir.

26 Q I don't mean the management. I mean helping the people

1 in gaining support for the Patriarch. A Sir, through-
2 out our history the people who have helped the Patriarch are
3 like Malek. Malek Yagoub is one of the Maleks, which means
4 the head of a tribe.

5 Q And his whole family before him were, what do you call
6 it, were faithful? A Always faithful, of course.

7 Q And supported him? A Of course.

8 Q Sure. Okay. Now, the A.U.A. is a political organi-
9 zation? A That's right.

10 Q And they have memberships in the United States and other
11 countries? It is kind of an international organization, is
12 it not? A It is kind of an international organization,
13 a little bit, just a little bit, if you allow me to state,
14 a little bit blown out of proportion, yes.

15 Q And don't they help the Assyrian people in times of
16 crises like when they need clothing or food or help?

17 A Sir, the only help they have done through the American-
18 Assyrian Federation, we have several thousand people in
19 Beirut now caught in that war that we just talked about it,
20 and they claim to be a universal, Assyrian Universal Alliance,
21 and what they have done so far, they have sent \$4,000 to the
22 World Council of Churches to help the Assyrian in Lebanon.
23 Four thousand dollars is the cost of a family to come to the
24 United States. And here, with all of this great big talk,
25 when the Federation and when the Association can go out and
26 collect thousands of dollars, like the United Jewish Appeal

1 have done, they collect four thousand lousy dollars and they
2 write four pages in the Assyrian Star about it. I have it
3 here. There are four pages written about \$4,000 that they
4 have given to Assyrian people in Lebanon.

5 Q Give any clothing? A The clothing, I believe
6 they, some people have sent, but the Middle Eastern countries
7 don't like to get used clothing.

8 Q And food? A I am not aware of any food going
9 there.

10 Q Well, you have never been a member of the A.U.A.?

11 A I don't intend to be either.

12 Q And you don't intend to be? A No, sir.

13 Q And all you know about it is what you heard?

14 A Of course, yes.

15 Q And a good deal of this, of your testimony here today
16 has been what the Patriarch told you? A That's right.

17 Q Isn't that right? A That's right.

18 Q And these were, I take it were private conversations
19 between you and he? A We had many, many, many, many
20 hours of private conversations, sir.

21 Q Okay. Would you excuse me for just a second, please?

22 Talking about the marriage of the Patriarch, you
23 knew his mother and father, did you not?

24 A Of course.

25 Q They were unhappy with this marriage, weren't they?

26 A Of course.

1 Q And they didn't see the Patriarch after his marriage,
2 did they? A No.

3 MR. PESTARINO: Thank you. That is all.

4 MR. ROBINSON: I have nothing further.

5 THE COURT: Thank you very, very much.

6 MR. ROBINSON: Thank you, Mr. Kelaita. Thank you
7 very much.

8 THE WITNESS: You are welcome, sir.

9 (Witness excused.)

10 MR. ROBINSON: I believe counsel had Mr. Lazar on
11 cross-examination, had some questions he wanted to ask him.

12 MR. PESTARINO: That is correct.

13 THE COURT: Would you ask Mr. Lazar to come in,
14 please?

15 YULE LAZAR,

16 recalled as a witness on behalf of the People, having been
17 previously duly sworn, testified further as follows:

18 THE COURT: Mr. Lazar, would you just take the
19 witness stand? And you are reminded that you are still under
20 oath from the other day.

21 THE WITNESS: Yes, sir.

22 CROSS-EXAMINATION (Resumed)

23 BY MR. PESTARINO:

24 Q Mr. Lazar -- A Yes, sir.

25 Q -- the other day I took two cancelled checks from your
26 possession and they were marked for identification as

1 Defendant's -- A Right.

2 Q -- exhibit. And I think at that time, if I remember
3 correctly, I am trying to find my notes, you indicated that
4 you went back to the service station on MacArthur Boulevard
5 on two occasions only? A Yes, sir.

6 Q And that those cancelled checks show the occasions on
7 which you appeared there? A Yes, sir.

8 Q Now, would you tell us again why you went there?

9 A Okay. I was going on my way to San Francisco, and I
10 dropped by to cash a check. And I saw Ron down there and he
11 cashed me a check of \$20, and I purchased some gas, too.

12 Q And you purchased some gas, too. Then you went back
13 another time? A And I went, the second time was May
14 the 9th. And I purchased gas for \$7.60.

15 Q Now, tell me, when did you first meet Mr. Myers?

16 A Mr. Myers, I met him on December the 9th, '69.

17 Q December the 9th, 1969. How do you --

18 MR. ROBINSON: Excuse me, it appears -- is the
19 witness reading from something? If he is I would like to
20 see what he is refreshing his memory from.

21 THE WITNESS: Well, this is the wages of Ron Myers,
22 the cancelled checks that I have. I made them from cancelled
23 checks.

24 THE COURT: You may proceed.

25 Q (By Mr. Pestarino) Well, you are reading from what?

26 A Well, I wrote the cancelled checks on a piece of paper,

1 the check number and the amount of the check.

2 Q Do you keep pretty good records of everything you do?

3 A Yes, sir.

4 Q And that is because you are a controller?

5 A Well, any accountant, keeps his books, be accurate as
6 much as possible.

7 Q So you met the Patriarch -- I mean, you met -- excuse
8 me, you met Ron Myers on December the 9th -- A Right.

9 Q -- 19 -- A -- '69.

10 Q '69? A Right.

11 Q And where did you meet him? A He came over to
12 the gas station looking for a job. And at the time he was
13 working at the Mobil Oil Company in the morning, and he asked
14 me if I would hire him as a part-time employee. And I did.
15 And he said, "I will work just a couple hours every day."
16 And from December the 9th he started working, until December
17 13th, and he made total wages of \$39.92.

18 Q And you have a record of that, too? A Right.

19 Q That is in the form of a cancelled check?

20 A Cancelled check and also I have unemployment -- I mean
21 Federal tax records.

22 Q All right. So from December 9th to the 13th you paid
23 him for that period of time? A December 13th, right.

24 Q Yeah. Then did he continue to work for you?

25 A Okay. During this period of time he said that, "I hear
26 you are selling your station?" I say, yes, I do. And he

1 say, "How much you want for it?" I say, "Go back to Union
2 76 and make deal with them."

3 Q Wait a minute. I didn't quite get you. You told him
4 to go back to Union -- A 76, to make deal with them.

5 Q To make the deal with them. I thought you owned the
6 service station? A I do, but I cannot accept him as a
7 dealer unless Union accepts him as a dealer.

8 Q Okay. A That is the contract between me and
9 Union.

10 Q So you sent him to Union 76 to see what they had to say
11 about a sale? A Right.

12 Q And what happened after that? A Well, they
13 agreed to have him as a dealer, and on the 1st of January --
14 right, 1st of January, or the 2nd of January, 1970, he went
15 to a dealer training school for one month.

16 Q So, I take it he came back in February?

17 A No, sir. On January the 24th he came back. And he
18 worked for a couple of hours, about four hours or five hours.
19 I don't know how many hours he worked. He made total wages
20 of \$17.84. At the same time he repair a car, which he has
21 a commission of 50 per cent, which was \$15.25.

22 Q All right. Now, tell me this, Mr. Lazar, when was the
23 sale consummated? A On February the 6th.

24 Q February the 6th? A Right.

25 Q And were you involved in that sale at all?

26 A No. Well, I wasn't directly involved. The Union rep

1 with another person and Ron Dale Myers, they came in the
2 morning about 8:00 or 9:00 o'clock on February the 6th, and
3 they closed the doors and they went into the old inventories.
4 And they took up the inventory, and after that they helped
5 calculate it and they gave me the figure and --

6 Q Now, just a minute, they gave you the figure?

7 A I mean the figure of the total inventory that they have,
8 which was tires, batteries, to the toilet papers, everything.

9 Q What was the total inventory? A \$4,410.30.

10 Q Now, what was done after they took the inventory?

11 A Okay. After the inventory they took, about 12:00
12 o'clock, I had to draw my cash out of the station, and I have
13 some pennies, quarters, and so on, amounting \$42.13. Ron
14 Myers, he asked me that he wanted to purchase these dimes and
15 nickels, and he gave me papers.

16 Q Of \$42? A Forty-two thirteen. And there was
17 some bulbs and flashers amounting to thirty-two sixty-five
18 which were bulbs, flashers, \$10 for the bulbs, \$3.90 for the
19 flashers, \$2 for the windshield bottle filler, one oil filter,
20 \$1, one battery used \$1.25, padlocks, \$10, keyholder, \$4.50,
21 total of thirty-two sixty-five. Ron Myer paid me \$74.78.

22 Q Thirty-two sixty-five plus the --

23 A Forty-two thirteen plus thirty-two sixty-five, and he
24 paid me in cash. I say good-bye and I left.

25 Q And the only two times you saw him thereafter is when
26 you went to his station? A Right after he took over.

1 Q Now, who did all of the paperwork on the sale of this
2 service station? A The paperwork has been done by

3 Union rep, by name of Bob Bola, B-o-l-a.

4 Q Was an escrow opened? Do you follow me?

5 A Okay. I didn't know whether the escrow was involved
6 in it or not because when I purchased it, I have an escrow.
7 But sounds to me like Union purchase my inventory and handed
8 it over to Ron Myer with the same value.

9 Q So did you receive a check then from Union?

10 A Right.

11 Q How much? A Well, we did not receive -- I did
12 not receive a check from Union because I have an account,
13 revolving charge with the Union what I owed them, what they
14 owe me.

15 Q All right. But anyway that account --

16 A That \$4,410.30 was settled between me and Union.

17 Q How much did you receive from Union in one settlement or
18 another? A Well, I did not receive, actually the

19 settlement was like this, the Union say that they want from
20 me about a thousand dollars to pay back to them, and I say
21 that you have to pay me back a thousand dollars. But the
22 thing is, that I purchased gas on the 1st of February on
23 credit, so until the 6th I consumed three-quarters of that
24 gas, it was about 8,000 gallons. And I have paid Union
25 before a thousand dollars when I purchased the station.

26 Q So they gave you a credit? A So towards my,

1 towards my bookkeeping, my account I was assuming that I
2 would have to have a check from Union for a thousand dollars.
3 But their type of bookkeeping, which is a computerized type
4 of bookkeeping, they have some mistakes and still I am
5 working with them to settle down the figures.

6 Q Now, did you deal directly with Ron Myers other than on
7 the two -- A No.

8 Q -- matters? The matter of the change and batteries and
9 miscellaneous? Other than that did you make any notes or
10 any papers or anything? A No, sir.

11 Q You didn't have any dealings? A Nothing.

12 Q With Ron Myers? A Nothing. The deal was closed
13 on February the 6th.

14 Q And other than Ron Myers paying you that amount of
15 money, the \$74, or \$72 -- A Seventy-four seventy-eight.
16 That is the only cash he pay me for the flashers and the cash
17 exchange.

18 Q You didn't sell the station to him for \$600, did you?

19 A No, sir.

20 Q Huh? A No, sir.

21 Q He didn't make any note to you, did he, for \$600?

22 A How you can buy a gas station for \$600? I got the
23 inventory is \$4,410, and I cannot sell it to Ron directly
24 because 75, 80 per cent of the merchandise are belong to 76.

25 Q I see. So you didn't -- you didn't deduct anything
26 from Ron, from the sale here to Ron Myers? For example,

1 \$210 for a gun? A I didn't purchase any guns from Ron
2 Myer.

3 Q Was Ron Myers angry with you for some reason or another?

4 A I don't know why he should be angry. I wasn't bad to
5 him. There was nothing involved with the gas station. I
6 told him, go back to Union 76, and he voluntarily went and
7 made deal with the Union 76, and I told Ron Myer, he made good
8 in that station because on the day I returned back was March
9 the 7th, 1970, when I was cashing the \$20, I asked him how
10 he's doing, he say, "I'm doing very well. I bought a new
11 car and a piece of property." He said, "The only problem
12 that I have is that my wife doesn't agree with my job because
13 it is too long hours."

14 Q So as far as you were and he were concerned nothing
15 happened? A Nothing happened. I lose money; he gain
16 money.

17 Q Did somebody in San Jose handle that sale? Some agent?

18 A No, sir. The company that I deal with for the purchase
19 and handing over is Union 76 in Oakland. Only Bob Bola is
20 the rep of the Union, he is transferred to San Jose area.

21 Q Listen, you have a -- just to change the subject a minute,
22 let me finish up here. First of all, I think I asked you
23 this, you are a Catholic, aren't you? A Yes, sir.

24 Q And what the Church of the Middle East does or does not
25 do doesn't bother you too much, does it? A No.

26 Q Huh? A No. It is God, same God whether it is

1 Catholic or any church, people goes for prayer, that's all.

2 Q You have two brothers, Sam and Joe, don't you?

3 A Yes.

4 Q And they run service stations? A Yes, sir.

5 Q Do they dress in khaki pants and uniforms?

6 A Well, Joe, most of the time, you see him on the shirt,
7 you know, with the blue, blue pants.

8 Q You ever see him with khaki pants? A No. No.

9 Joe usually doesn't, you know, wear gas station, you know,
10 dresses.

11 Q How about Sam? A Sam doesn't wear, doesn't work.

12 Q Doesn't work? A Sam, he keep the service station
13 accounts. He just collect the money.

14 Q Just collects the money? A Right.

15 Q And Joe does all of the work? Do they have government
16 cars at one of those service stations? A Yes, sir, we
17 do.

18 Q What kind of a car is it? A It is the California
19 government cars. They call them G.C.A. or G.C.I.

20 Q What do they look like? A Well, they have
21 different shape and type, you know, fire department, police
22 department, F.B.I.'s, Federal investigators.

23 Q And how do they keep those cars, do you know?

24 A They bring down the cars and they repair them and they
25 return them back unless if a car, they don't find any spare
26 parts for it or don't have any spare parts they keep it

1 overnight and they repair it next night, next day.

2 Q Did you tell either Sam or Joe or both of them to
3 contact David Ismail at the Sunset Motel when he first
4 arrived? A No, sir. I called Joe because I didn't
5 know, when I called David that I am coming to pick you up at
6 seven o'clock, I didn't realize that I was manager on duty
7 that evening. So when I found myself, I couldn't get out of
8 the hotel, then I called Joe if it is possible if he has any
9 road test to go over Sunset and pick up David Ismail.

10 Q What do you mean if he had any road test?

11 A When he repair a car he has to take it out for a road
12 test, testing the car if it is repaired, you know, because
13 on the government cars he have to check every single item in
14 them, the brakes, the heater, everything.

15 Q All right. And so -- A -- so I called Joe. I
16 asked him if he has a road test and if he could pick up David
17 Ismail, and Joe he say, "Well, I'm still working here, and if
18 I find the time I will do it." So I wait until 7:30. I
19 didn't see David coming so I called Joe again. I was a
20 little bit upset on him. He say, "Okay. I'm going to
21 finish after five, ten minutes, and I will go." So after
22 five or ten minutes I believe Joe left with another gas
23 station attendant who works also on the cars. But I don't
24 know what car they came or they brought David with.

25 Q I see. A So when I was in the lobby I saw
26 David coming in, and that is it.

1 Q All right. Now, this is while David Ismail was at the
2 Sunset Motel? A Yes, sir.

3 Q And did you have occasion to see him at the Sunset Motel
4 yourself? A No, sir.

5 Q Did you go out to dinner with him or take him out one
6 night? A On Friday, the first night when he was with
7 me having dinner, I took him back to Sunset Motel, and that
8 was my private car.

9 Q And that was what time? A Was about 10:30, 11:00
10 o'clock, in this area. And I returned him back again to the
11 hotel.

12 Q You watch the Johnny Carson show? A No, sir. I
13 don't have time for that.

14 Q You are quite sure about the time? A Because I
15 have to be in the hotel, and why I am figuring the time
16 because the dining room is closed quarter to eleven, so we
17 were, you know, about 10:00 o'clock we finished the dinner
18 and everything. And so that is why I am figuring 10:30 to
19 11:00 o'clock because I just dropping the Sunset Motel and
20 return back to the hotel. I cannot leave hotel without --

21 Q Anyway, on Sunday you testified that you took David to
22 church about 10:30? A Yes, sir.

23 Q What church did you take him to?

24 A Church of the East, 3939 Lawton Avenue.

25 Q You indicated to me the last time you were here in court
26 that you were going to get copies of the constitution and

1 bylaws of the A.U.A.? A Yes. I wrote to the
2 general secretary of the A.U.A. to send me copies of the
3 bylaws and manifesto.

4 Q And you will submit them to us? A And I will send
5 them to you.

6 Q Did the A.U.A., besides being interested in politics,
7 do they do a lot of good for Assyrian people?

8 A To help Assyrian people, in other words?

9 Q Yeah. A Well, they help them educationally, if
10 somebody needs money or help to update his studies or some-
11 thing like that. One time I understand that they gathered
12 some clothes and sent them back to Middle East for poor people,
13 northern Iraq.

14 Q And as far as you know, in Iraq or Iran there is a
15 representative of the A.U.A. to help the Assyrian people
16 with their government? A I believe in each country,
17 Iraq, Iran, all over Europe they have representative for each
18 country and for '76 I think in Iraq is a doctor, but I don't
19 remember his name.

20 Q You indicated that there was a burglary that occurred
21 in your store just shortly before you sold it?

22 A That was end of November, in that area, November 6th,
23 '68 -- '69.

24 Q Did you ever tell Ron Myers to buy a gun?

25 A No, sir.

26 Q Did you ever own a gun? A No, sir. I own a dog,

1 a German shepherd.

2 Q Did you have him at the service station?

3 A Yes, sir.

4 Q After the burglary or before? A After the
5 burglary.

6 Q The papers that you have before you, may I see them,
7 please?

8 MR. PESTARINO: Did you see this?

9 MR. ROBINSON: No.

10 THE WITNESS: This is my purchase.

11 Q (By Mr. Pestarino) This is the purchase of your
12 service station? Tell me what they represent so that we
13 know.

14 MR. ROBINSON: Well, can I see them?

15 MR. PESTARINO: Sure.

16 THE WITNESS: This is, I bought the station for
17 thirty-nine sixty-nine twenty-nine. I paid down payment a
18 thousand dollars. And there was a loan from Union 76 for
19 \$2,969.29.

20 Q Anything else that pertains to the service station?

21 A This was NorCal Escrow Company for that particular --

22 Q What does that represent, NorCal Escrow Company? That
23 is when you purchased the station? A Right. That is
24 the purchase of the station, when I purchase it.

25 Q On October 17th, '69? A This is the man that I
26 purchased from, Jules R. Moore, through the Union 76.

1 Q All right. A These are the inventories that consist
2 of \$3900.

3 Q When you sold the station, or when the Shell --

4 A When I purchased the service station, 76.

5 Q When you purchased it. A And those are when I
6 sold out.

7 Q And those copies there are what (indicating)?

8 A This is the inventory I sold to Union 76 and they handed
9 over to Ron Myers.

10 Q Well, I see you have two papers here, one is --

11 A That is the note of 29 --

12 Q That is the note of 29 --

13 MR. PESTARINO: Anyway, I would ask that all of
14 these be marked for identification as one exhibit, A, B, C,
15 so forth, as Defendant's next in order.

16 THE COURT: They will be Defendant's D-A, et cetera.

17 THE CLERK: D-1, D-2.

18 (Whereupon, the above-mentioned documents, being
19 papers pertaining to gas station, were marked as Defendant's
20 Exhibit D-1 and D-2 for identification.)

21 THE WITNESS: I do have cancelled checks of Ron
22 Myers' wages. Do you --

23 MR. PESTARINO: Yes. We might as well have them,
24 too.

25 THE COURT: Those will be D-1 instead of D-A.

26 MR. PESTARINO: Do you have a piece of handwritten

1 paper there?

2 THE WITNESS: This is the nickels, and this is the
3 flasher, and these are the meter readings on February 6th.

4 THE COURT: All right. All of those can be marked
5 as E, one exhibit, the salary, the papers, et cetera.

6 (Whereupon, the above-mentioned items described
7 above, were marked as Defendant's Exhibit E for identification.)

8 MR. PESTARINO: I think that is all I have.

9 MR. ROBINSON: Yes.

10 REDIRECT EXAMINATION

11 BY MR. ROBINSON:

12 Q Mr. Lazar, you brought all of these papers with you when
13 you came down here the day before yesterday, didn't you?

14 A Yes, sir.

15 Q Okay. And you'd gone through and picked up all of these
16 papers from your files? A Well, I changed so many
17 places, and I didn't know where I had put these papers, six
18 or seven years, so it took me about three days to work six
19 hours to pull things and to find those papers.

20 Q So, is it safe to say that prior to your coming down
21 here to testify the other day that you started searching about
22 three days before that for these papers? A Well, I
23 have been searching on these papers about a week, something
24 like that.

25 Q Why? A Because I wanted to have evidence of
26 everything I do, be questioned.

1 Q Everything regarding a purchase of business and
2 everything? A Everything.

3 Q Okay. And these are all of the documents that you have?

4 A Right.

5 Q Who asked you to bring down all of these papers?

6 A I brought them voluntarily.

7 Q I take it then you don't know Mr. Hernandez, Mr.

8 Pestarino's investigator? A Beg pardon?

9 Q Do you know Mr. Hernandez, Mr. Pestarino's investigator?

10 A Well, I know Joe is investigator.

11 Q Okay. And have you spoken with Joe about this?

12 A Well, one time I told him that I should have some papers
13 of the inventories and all of the stuff, but I am going to
14 get them one day. I cannot find them at the present time.

15 Q When did you speak with him about this?

16 A About these papers?

17 Q Yes, sir. A Probably a week.

18 Q When? A A week or four days or five days.

19 Q Before your coming down here to testify? A Right.

20 Q Now, let me ask you something, you said you sold the
21 station at a loss. You lost money on it? A Right.

22 Q Okay. And yet Mr. Myers was making money?

23 A Well, this is what I understand from Ron Myers, that he
24 said, "I am doing very well. I bought the car and I bought
25 a piece of land."

26 Q And you went out and bought yourself a German shepherd

1 dog, right? A Well, the German shepherd dog --

2 Q Could you answer the question yes or no? Then if you
3 want to explain you are entitled to explain. Did you buy
4 yourself a German shepherd dog? A Yes.

5 Q And the reason that you bought yourself the German
6 shepherd dog, your station wasn't in a good area?

7 A No, it wasn't that purpose actually.

8 Q Why did you buy the German shepherd dog?

9 A I like dogs, first of all, and I brought the German
10 shepherd to my house, and he is a watchdog, and I like dogs.

11 Q Had your house been burglarized? A No.

12 Q And did you all of a sudden start liking German
13 shepherd dogs after your service station got burglarized?

14 A So I had dogs from before, I had four or five dogs in
15 my life.

16 Q And in answer to Mr. Pestarino's question about a gun,
17 you told us that you went out and bought a German shepherd
18 dog? A I didn't buy from outside a German shepherd.

19 The manager of the station, the guy took from me \$200 and he
20 disappeared next day, I bought this dog from him for \$25 and
21 I have a receipt for that.

22 Q Okay. And then you had the dog all of the time at the
23 station? A Well, I bought it some time end of
24 November, early December, and I have it until 1974.

25 Q Okay. Now, let's talk about the area in which your
26 station was in. Was it in a good area or in a bad area?

1 A Well, medium. I didn't have much problem.

2 Q Okay. And it is your testimony that you have never
3 owned a gun in your life? A No, sir.

4 Q Okay. And have you ever purchased any ammunition for
5 a weapon? A No, sir.

6 Q Do you know where Siegle's Sportsman's Supply is?

7 A No, sir.

8 Q Your station was located at 411 West MacArthur Boulevard
9 in Oakland? A Yes, sir.

10 Q How close is 508 West MacArthur Boulevard in Oakland?

11 A 508 or 580?

12 Q 508. It is right next door, isn't it?

13 A You mean the numbers, 411 to 508?

14 Q Yes, sir. A Oh, I see. Well, it could be a
15 block and a half.

16 Q On the same side of the street as your station, right?
17 And I take it that you drove to your station every day when
18 you worked there? A Yeah, but I used to come differ-
19 ent way.

20 Q You were familiar with the area though?

21 A Well, I haven't seen on Telegraph any shops that relating
22 to what you are telling me.

23 Q You have never seen Siegle's Sporting Supply?

24 A Yesterday I went and saw it.

25 Q That was the first time? A Yes, sir. Curiosity.

26 Q Just curiosity? Pardon? A Right.

1 Q Did you go inside? A No.

2 Q Just drove by? A Just drove by to see where
3 Siegle's shop is.

4 Q Now, when you sold the service station did you make any
5 profit for the good name or the time you had put in on the
6 station? A Not really.

7 Q Nothing? Okay. What about any accounts receivable
8 that you had, people that had charged things?

9 A I didn't have that. We don't have. In the service
10 station we don't have that.

11 Q Nothing about somebody coming in --

12 A Well, bad credit cards, yes.

13 Q Did you have any credit extended? A No. Credit
14 cards, bad credit cards.

15 Q Nobody paid on time, paid you \$20 a month for maybe a
16 lube job? Something like that? A Excuse me. The
17 credit cards, we send into the bank but sometimes the credit
18 cards are expired and the bank return back to us. Or some-
19 times they will not honor the credit cards.

20 Q Okay. So you are telling us that at no time did Mr.
21 Myers ever execute a promissory note to you?

22 A No, sir.

23 Q Okay. Now, you have two brothers, that is Joe and Sam?

24 A Yes.

25 Q Okay. And Sam works for Kaiser? A Yes, sir.

26 Q Sam doesn't work in a gas station, does he?

1 A No. He keep the accounts.

2 Q Keeps the accounts for the gas station?

3 A Right.

4 Q All right. And Joe works in a gas station?

5 A Yes, sir.

6 Q And the gas station is where?

7 A Oh, 6th and Harrison.

8 Q In San Francisco? A San Francisco.

9 Q How far is 6th and Harrison from the Sunset Motel at
10 19th and Taravel? A If you take the highway will be
11 about six minutes.

12 Q Six minutes? A Six, seven minutes.

13 Q Now, Mr. Lazar, isn't it about 15 to 20 miles away?

14 A Well, I figure it out, six or seven minutes. I don't
15 know how many miles it is. I never count how many minutes
16 is it, but I, approximately could be six or seven minutes.
17 It's about seven miles.

18 Q All right. And then I take it, have you ever driven from
19 the gas station down at 6th and Harrison to the Sunset Motel?

20 A No.

21 Q Then how do you know it is only six or seven minutes?

22 A Well, it is not far away from my house. If you are
23 coming up from the 280 going, I believe, west, so you will
24 come up first Sunset Motel and then my house.

25 Q You live how close to the Sunset Motel?

26 A About four blocks, I believe.

1 Q Now, on the phone slips that we showed you the other
2 day from the phone calls that Mr. Ismail made on November the
3 6th, before he checked out of your hotel, one of them had
4 the name written on them to Kanna, the one to Australia. Did
5 you write that on there? A No, sir. That has been
6 written by the telephone operator.

7 Q Why would that name be written on there?

8 A Just for the reference.

9 Q Pardon me? A If, like for example, David didn't
10 pay for the phone we could go back and charge for the phone
11 in Australia to the particular person. This information
12 needed by Pacific Telephone Company.

13 Q Now, there is no name written on the other phone call.
14 Can you explain that? A The one to Kanna, right.

15 Q No. The other one to Australia.

16 A I don't know. I have to check into that.

17 Q Okay. Now, you told us the other day that the Assyrian
18 people like to help each other out? A Sure, right.

19 Q Somebody comes into town, if they want to start a
20 business in here you take them around, introduce them to
21 people and things like that? A Well, to a certain
22 extent.

23 Q Okay. And did Mr. Ismail indicate to you that he
24 wanted to start a business in this area? A Yes, sir.

25 Q And did you take him around and introduce him to various
26 people that had businesses? A No, because he say that,

1 "I'll be back in February, by that time if there is anything
2 like a grocery or a liquor or something, just put it on your
3 mind and let me know about it."

4 Q Would it be fair to say then he didn't come to San
5 Francisco for the purpose of looking into opening a business?

6 A That is the way he say it. He wanted to open a
7 business.

8 Q Did he do anything to establish the fact that he wanted
9 to open a business? Did he say, "Hey, can you put me in
10 contact with someone, can you bring me over here, do you know
11 anybody that I can talk to?" Or did he just say, "I'll be
12 back in February"? A Actually when, he say to me

13 he likes the weather very much, and he would like to open a
14 business or relocate himself in San Francisco or California.

15 Q That is all he said? A Right. And I asked him,
16 "What kind of business you want to go in?" And he say,
17 "Any kind of business, you know, liquor store, food market,
18 anything."

19 Q Okay. And did he indicate to you how he was going to
20 pay for this business? A No. I just say that a
21 business like that size needs so much money.

22 Q Did he indicate to you that only his wife was working
23 and that he didn't have a job? A Well, I don't ask
24 people, "How much money you have?"

25 Q Did you discuss how much money it would take to get into
26 one of these businesses? A No, I told him, the business

1 for such a size gross sales will cost you fifty, sixty,
2 one hundred, one hundred twenty. But I didn't ask him if
3 you have money or not. That is not my business.

4 Q You are aware, of course, of the defense fund set up for
5 Mr. Ismail? A No, sir, I don't know about that.

6 Q You are not aware of that? A I don't know about
7 that.

8 Q You have never been contacted to contribute any money?
9 A No, sir.

10 Q Kitty Benjamin has never asked you about that or asked
11 you to pay any money? A No, sir.

12 Q Now, you also told us that when you picked up Mr. Ismail
13 at the motel, the Sunset Motel, that he was dressed in a sport
14 outfit and that he was dressed casual and you were dressed
15 in a suit? A I was dressed in a suit. He was
16 dressed in casual.

17 Q And that you then went back to your house and you changed?
18 A Right.

19 Q Before you went out? A Right.

20 Q Okay. And that you moved him into the motel, your hotel,
21 the PSA Hotel? A Right. Yes, sir.

22 Q Transported him in your car, right? A Right.

23 Q I'm going to show you People's Exhibit No. 30. Does
24 that look familiar to you? A I really don't remember,
25 but it was a small piece of luggage. And I was driving a
26 Pinto, and has a small trunk. I imagine if it will be a big

1 large luggage then wouldn't fit in that trunk.

2 Q Okay. And you put his luggage in the trunk?

3 A No, I just opened the trunk and he put the luggage.

4 Q Why was there a necessity to open the trunk when this
5 was the only piece of luggage that he had?

6 A Well, the Pinto car is too small, and it is one-door
7 car, I came and opened the trunk. It was more, more easy
8 or more comfort to sit in a car without luggage.

9 Q Isn't it a fact that he had two suitcases and an over-
10 night bag where, that bag, and a bag, a plastic bag where he
11 hung suits in? A Sir, I don't remember.

12 Q You don't remember? A Yes.

13 Q Okay. Well, if he had those items do you have any idea
14 where they could be now? A I don't know, sir.

15 Q They are not down at your hotel, are they?

16 A No, sir.

17 Q They are not at your house? A We don't keep
18 luggage at hotel.

19 Q What about your house? A You can search my house,
20 too.

21 MR. ROBINSON: I have no further questions.

22 MR. PESTARINO: That is all I have.

23 THE COURT: Thank you, Mr. Lazar.

24 THE WITNESS: You are welcome.

25 MR. PESTARINO: May this witness be excused?

26 THE COURT: We will excuse you subject to recall and

1 give you plenty of notice if we should call you again.

2 (Witness excused.)

3 MR. ROBINSON: Your Honor, at this time the People
4 would move to introduce all of the People's items of evidence
5 that have been marked for identification in this trial.

6 MR. PESTARINO: Your Honor, can we defer that? Give
7 me an opportunity to go through them again? I think they
8 are all all right.

9 THE COURT: All right. I will give you an
10 opportunity to examine them and object to any of them. They
11 will be admitted subject to any motion to strike or to remove
12 them as an exhibit.

13 MR. PESTARINO: Thank you.

14 MR. ROBINSON: In that case then the People would
15 rest their case subject to reopening their case if any
16 problem should arise regarding the admissibility of any of
17 the items of evidence.

18 THE COURT: All right. The People rest subject to
19 admission of exhibits.

20 All right. Ladies and gentlemen, the People have
21 rested in the case and it now becomes the responsibility of
22 the defense to place his case on. As you know, tomorrow is --

23 MR. ROBINSON: Your Honor, might we approach the
24 bench?

25 (Discussion off the record.)

26 THE COURT: Yes. It is not their responsibility,

1 it is their option to put a defense on, which has been
2 indicated to me that they intend to do. They don't have to
3 prove anything if they don't want to. You understand that?
4 Tomorrow, of course, we have settlement conferences and we
5 will not normally meet. I have had a request to allow Mr.
6 Pestarino Friday to prepare his side of the case. And I
7 have granted that request on the ground that it will help
8 expedite the matter in the long run. So we will not meet
9 either tomorrow or Friday, which will give you, in essence,
10 some time to catch up on your housework, laundry, and other
11 things that you have been delaying, and go back to work for
12 a day or two if you have to, and we will resume Monday
13 morning at 9:45. And I would again admonish you, as I have
14 before, not to speculate, make any announcement about your
15 opinion on the case, discuss it with anyone, or read anything
16 about it, as I previously indicated. We will see you then
17 on Monday, 9:45. The defendant will be ordered to return,
18 any witnesses under subpoena will be ordered to return.

19 MR. PESTARINO: Judge, may we approach the bench
20 again?

21 THE COURT: Sure.

22 (Discussion off the record.)

23 (Whereupon, Court adjourned until Monday, March 22,
24 1976, at 9:45 o'clock a.m.)

25 ---oOo---

EIGHTH DAY

March 22, 1976

9:45 a.m.

(Pursuant to adjournment, Court convened, and the following proceedings were had:)

THE COURT: Please be seated. Good morning, ladies and gentlemen. Let the record show that the jury is present, defendant is present with counsel. Do you wish to make an opening statement?

MR. PESTARINO: I believe there is a motion to admit the evidence which has been under submission.

THE COURT: That's right. You were going to check it over.

MR. PESTARINO: Yes, I have no objection.

THE COURT: All right. All of the People's Exhibits 1 through 31 will be admitted then.

(Whereupon, the above-mentioned items, being People's Exhibits No. 1 through 31 previously marked for identification were received into evidence.)

MR. ROBINSON: Thank you, Your Honor.

MR. PESTARINO: If Your Honor please, the defense will waive their opening statement and call the defendant.

THE COURT: All right.

MR. PESTARINO: Mr. Ismail.

THE COURT: Take the stand, Mr. Ismail.

DAVID MALEK ISMAIL,

called as a witness on his own behalf, being first duly sworn,

1 was examined and testified as follows:

2 DIRECT EXAMINATION

3 BY MR. PESTARINO:

4 Q. Mr. Ismail, will you state your name, please? Your
5 full name for the record, and spell it for us.

6 A. My name is David Malek Ismail, M-a-l-e-k, I-s-m-a-i-l.

7 Q. And where had you been living, Mr. Ismail?

8 A. London, Ontario, Canada.

9 Q. And the address? What is the address?

10 A. 1497 Huron Street Apartment 402.

11 Q. And were you employed? A. Ford Motor
12 Company.

13 Q. At one time? A. Yes.

14 Q. Recently you have been unemployed, haven't you, for
15 a number of months? A. Yes.

16 Q. Okay. Are you married? A. Yes, I am.

17 Q. The name of your wife? A. Peggy
18 Ismail, Peggy Benjamin Ismail.

19 Q. Is there some significance to the word "Benjamin"?
20 It keeps cropping up all of the time. Do you know?

21 A. Her nation.

22 Q. Nation? A. My wife's nation,
23 Benjamin.

24 Q. Is it called Benjamin? A. Yeah.

25 Q. The tribe from which she came or the nation from which
26 she came? A. Yeah.

1 Q. Now, do you have any children?

2 A. I have a boy.

3 Q. How old? A. Twelve.

4 Q. And is he an adopted boy? A. Yes, he
5 is.

6 Q. Okay. Now, how long have you lived in Canada?

7 A. Over ten years.

8 Q. And during those ten years you worked for the Ford
9 Motor Company most of them?

10 A. I did work for Hexon and Lang Suppliers for a year
11 and a half and then I worked for Ford Motor Company.

12 Q. When is the last time you worked at the Ford Plant?

13 A. November the 8th, '74 .

14 Q. November the 8th, '74 . And were you hurt in the
15 plant? A. Yes, I did.

16 Q. You hurt your hand? A. Yes.

17 Q. From November until the present time -- excuse me,
18 strike that.

19 I suppose your wife Peggy is working, isn't she?

20 A. Yes, she is.

21 Q. Okay. And where is she employed?

22 A. Wilco, W-i-l-c-o.

23 Q. Wilco. And what does she do?

24 A. Machine operator.

25 Q. Okay. Now, from November of 1975 until recently
26 how did you live?

1 MR. ROBINSON: I am going to object, that misstates
2 the evidence. November '75 or November '74?

3 MR. FESTARINO: November, '74. Whatever he said.

4 Q. (By Mr. Pestarino) Did you say 1974 is the last time
5 you worked? A. November, '74.

6 Q. Yeah. All right. Excuse me. From November, 1974,
7 until November 6th, 1975, how did you live financially?

8 A. Well, I work hard for ten years in Canada, and I used
9 to have a big house, big house, beautiful, and I sold it.

10 Q. And you lived off of the proceeds of this sale, is that
11 right? A. Right.

12 Q. Now, you lived for ten years in Canada. By the way,
13 how old are you? A. Exactly July the
14 5th I should be forty-one years old.

15 Q. And so roughly you moved to Canada when you were thirty?

16 A. Yeah.

17 Q. Okay. Now, where were you born?

18 A. Syria.

19 Q. Syria. In what year? A. Exactly 1935.

20 Q. And in Syria, did you stay in Syria or did you move
21 throughout the Middle East as a youngster?

22 A. I moved lot.

23 Q. You moved lot. Why did you move so much?

24 A. Was going with my father wherever he go.

25 Q. Is it correct to say that you wereraised by your
26 father? A. Yes, I am.

1 Q. And was your father in the military?

2 A. He was.

3 Q. And did he reach the rank of a general?

4 A. He wasn't general.

5 Q. He was not a general? A. No.

6 Q. What was he? What was his rank?

7 A. I'd say something like colonel.

8 Q. Like colonel? A. Yeah.

9 Q. Was he called a general? A. No.

10 Q. Did the people call him general?

11 A. The Assyrian people, they call him general, but he is
12 not general.

13 Q. Now, your father, was he a religious man?

14 A. Yes, he was.

15 Q. Did he belong to the Church of the East?

16 A. Yes.

17 Q. How would you characterize him as a religious man?
18 Very religious? Or simply just religious, or what?

19 A. I'd say very religious because when I was ten or eleven
20 years old he used to wake me up 3:00 o'clock in the morning
21 to go to church.

22 Q. Well, your father belonged to the Church of the East,
23 and I suppose you were baptized in the Church of the East?

24 A. Yes.

25 Q. And did you go to church with him regularly from eleven
26 years old on? A. All of the time.

1 Q. All of the time. Tell me a little bit about your
2 religious habits, his religious habits? Every morning you
3 went to church at 3:30 or 3:00 o'clock?

4 A. Well, he was waking me up every morning between 3:00
5 and 3:30, and walk to, three block to go to church with my
6 uncle and aunt, my uncle's boy, too. Until 4:00 o'clock or
7 after four, and come back and sleep and wake up early morning,
8 around 8:00 o'clock, 9:00 o'clock, before we have breakfast.

9 Q. And did you go to church at other times during the day?

10 A. In afternoon.

11 Q. In afternoon what time? A. 4:30, 4:30 -
12 5:00.

13 Q. And then at night did you pray?

14 A. Before go to bed.

15 Q. Before going to bed? A. We have to.

16 Q. And when you were a young boy did you and your father
17 do this together all of the time?

18 A. Yeah, he teach me how to pray.

19 Q. Okay. Now, in your religion do you fast at various
20 times? A. Yes, we do.

21 Q. You know what I mean by fast? A. Yes, we
22 do.

23 Q. When do you fast? A. We usually fast
24 fifty days for Easter and twenty-five days for Christmas --
25 and Christmas. And nineteen -- I don't know exactly,
26 sixty-four or six -- between sixty-two to sixty-four, I don't

1 know exactly, we had permission from Patriarch to cancel
2 the fifty days, just one week for Easter and three days for
3 Christmas.

4 Q. How long really in terms of your age, how long did you
5 spend with your father in this religious training?

6 A. I would say most of my life.

7 Q. Now, did you travel throughout the Middle East with
8 your father? A. Yes.

9 Q. Where did you go? What countries?

10 A. We went to Iraq, for, I don't remember exactly, eight
11 years or seven years.

12 Q. How old were you when you went to Iraq?

13 A. I was eight.

14 Q. And you stayed there for about eight years?

15 A. Around eight years, yeah.

16 Q. And I take it you went to school there?

17 A. Yeah.

18 Q. Okay. And then where did you go?

19 A. Went to Lebanon for a year.

20 Q. And then where? A. Went for six months
21 to Egypt.

22 Q. All right. Now, during all of this time you attended
23 various schools in Iraq, and Lebanon, did you?

24 A. Not in Egypt.

25 Q. Not in Egypt. Okay. Now, let me talk for a moment
26 about this, you knew the Mar Shimun, did you?

1 A. Sure I did.

2 Q. And you knew him for how long?

3 A. I heard about him since I was eight or ten years old.
4 I know him, I see him first time '62.

5 Q. In 1962. Were you married then?

6 A. Yes, I was.

7 Q. And was your wife Peggy with you when you saw him?

8 A. Yes.

9 Q. And where did you see him? A. We see
10 him at Damascus.

11 Q. In Damascus? A. Yeah. I was married
12 1956 to 1962, we don't have no children, so we believe that
13 Patriarch, so I took my wife and we went to see him in
14 Damascus. And my cousin was his cousin asked him to pry
15 (pray) for my wife, and he did pry (pray) for her to have
16 children.

17 Q. You say "pry." You mean really pray?

18 A. Yeah, pray.

19 Q. Pray. Okay.

20 THE COURT: Excuse me, counsel, that parchment
21 document will be marked F for identification.

22 (Whereupon, the above-mentioned item, being a
23 photograph, was marked as Defendant's Exhibit F for
24 identification.)

25 MR. PESTARINO: Thank you.

26 Q. (By Mr. Pestarino) Let me show you Defendant's F for

1 identification and ask you, is this your picture?

2 A. Yeah, that is mine. That is my wife and that is Mar
3 Shimun.

4 Q. Will you speak into the mike, please?

5 A. Me and my wife and Mar Shimun.

6 Q. Okay. And that was taken in Damascus?

7 A. '62.

8 Q. In '62? A. Yes.

9 Q. So you have known the Patriarch for a long time, have
10 you not? A. Yes.

11 Q. And your father knew him a long time, didn't he?

12 A. Yes, he know.

13 Q. Now, was your father a leader of the Assyrian people?

14 A. Our family was leader for one tribe, Assyrian tribe.
15 And 1970 or '71 I think the Assyrian, they call my father as
16 a leader for Assyrian, I don't know why.

17 Q. Well, your family knew the Patriarch and his family,
18 didn't -- A. Yes.

19 Q. -- you? And before, your family in generations
20 preceding you, your family supported the Patriarch, always,
21 didn't they? A. Yes, they did.

22 Q. And your father supported him?

23 A. Yes.

24 Q. Tell me a little bit about the support. Were there
25 some people opposed to the Patriarch or against the
26 Patriarch? A. In 19 --

1 MR. ROBINSON: I am going to object, no
2 foundation. At what time?

3 MR. PESTARINO: During this time, the time he was
4 growing up.

5 MR. ROBINSON: The same objection, no foundation.
6 We don't know whether he means 1975, 1936, 1945 --

7 THE COURT: I believe it is ambiguous.

8 Q. (By Mr. Pestarino) During the time that you lived in
9 the Middle East with your father up to say, 1930, was it?

10 A. I born 1935.

11 Q. Pardon me. You were born in 1935, and you left there
12 when?

A. Left to Canada you mean?

13 Q. Yeah.

A. '65.

14 Q. '65. And you were married when?

15 A. '56.

16 Q. '56. Now, up to the time you were married did you live
17 with your father?

A. Oh, yes.

18 Q. And was your relationship very close with your father?

19 A. Very close.

20 Q. And was his family supporting the Patriarch all of the
21 time?

A. All of the time, all of the
22 way.

23 Q. All the way. And was his family before him supporting
24 the other Patriarch?

A. Yes.

25 Q. And I take it that your family knew the Patriarch and
26 his family, didn't you?

A. Yeah, they

1 great family, Assyrian people, Patriarch greater family we
2 had in Assyrian people.

3 Q. I notice in this photograph that was taken in
4 Damascus and in 1962 of you, your wife, and the Patriarch,
5 that you and your wife were kneeling. You know what I mean,
6 kneeling down when your picture was taken?

7 A. Yes.

8 Q. Did you show a great deal of respect for the Patriarch?

9 A. We have to kneel. We can't stand beside the Patriarch
10 and take picture.

11 Q. You can't ?

12 A. No. That is what
we feel, that is the way we feeled.

13 Q. Now, during this period of time that you lived with
14 your father in the Middle East, did you have, were there
15 some people that would not support the Patriarch that would
16 come and talk to your father?

17 A. There was, there was people against Patriarch.

18 Q. What was your father's attitude toward those people?

19 A. Well, some people, my father, he throw them out of
20 the village, throw them out of the village. They have a
21 village there. And they fight with them, have a -- have
22 argument with them. And some of them they just left the
23 place we lived, and they left and went to another place.
24 Because they know we are support the Patriarch, we believe
25 him and we support a great family and --

26 Q. All right. Tell me, the Patriarch's wife, Emama

1 Shimun -- A. Um-hum.

2 Q. Had you known her and her family?

3 A. Yes.

4 Q. And how long have you known Emama?

5 A. I think '69 year.

6 Q. Since '69? A. Yeah.

7 Q. And did you visit back and forth between her house
8 and your house and your family and her family?

9 A. Yeah.

10 MR. ROBINSON: I'm going to object to this now
11 as being leading questions. This is counsel's own witness.
12 He can ask the witness how he knew her, what their
13 relationship was. These are leading questions. I haven't
14 objected now, but I think in deference to the client I
15 represent I have to object .

16 MR. PESTARINO: We have a little bit of a
17 language barrier here.

18 MR. ROBINSON: I don't think that is evident.

19 THE COURT: Well, technically the objection is
20 sustained.

21 MR. PESTARINO: All right.

22 Q. (By Mr. Pestarino) You indicated that you knew Emama.
23 Did you visit with her? A. Yes, we did. We
24 went to her parents' place, and they came to our place.

25 Q. Where did her parents live?

26 A. At Hamilton, Ontario.

1 Q. And how far is that from your place?

2 A. I believe ninety-five mile.

3 Q. And how often would you visit, generally speaking?

4 A. Maybe one or twice a year, and maybe we get together
5 every year in early November to go to Flint, Michigan, to
6 visit the Patriarch, because he is --

7 Q. He was living in Flint, Michigan?

8 A. No, he was coming to Flint, Michigan, once a year,
9 early November.

10 Q. Now, tell me, on these occasions, did you talk to Mrs.
11 Shimun or Emama about politics or religion when you visited
12 with her and sometime she would visit with you?

13 A. I don't know exactly.

14 Q. You could have? A. Could have.
15 Could be.

16 Q. Were you interested in politics at that time?

17 A. No, not at all, not at the time.

18 Q. What was your interest at that time mostly besides
19 making a living? A. Well, I was, as I

20 said, making good living, teaching my boy religion.

21 Q. By the way, how old is your boy now?

22 A. Twelve.

23 Q. What did you teach him? A. I teach him
24 our language, read and write, which, like my father had four
25 boys and brother had three boys, they don't even speak very
26 well our language, but my boy do speak and read and write

1 and pray in our language, too.

2 Q. And does he fast like you fast?

3 A. No. We don't let him until he gets fifteen.

4 Q. Let me ask you this, Mr. Ismail, your father was in
5 the military; is that right? A. Yes.

6 Q. And he's been in the military how long?

7 A. I believe since 1920.

8 Q. Were you supposed to go into the military at one time?

9 A. I love to.

10 Q. Huh? A. I love to go in Assyrian
11 Military, and they didn't take me.

12 Q. They didn't take you? A. No.

13 Q. And that -- why didn't they take you?

14 A. Well, I had an accident 194 -- 1943. And I lost my
15 hearing in right ear.

16 Q. What type of an accident was that ?

17 A. It was four or five boys playing and I was running
18 and I hit my head on telephone post or something like that,
19 and I fell down. And my father take me to the hospital, and
20 I was in hospital for two weeks, two or three weeks, I don't
21 know exactly.

22 Q. All right. Did you have an ear operation recently?

23 A. My ear?

24 Q. Yes. A. Yes, I do.

25 Q. What year was that? 1972, '73?

26 A. I think '72, '73, sometime in year '72, '73.

- 1 Q. That was in Canada? A. Was in Canada,
2 was bothering me too much.
- 3 Q. Now, since you talked about the accident, what other
4 accidents did you have? A. I had a car
5 accident in 1960.
- 6 Q. Um-hum. And were you hurt there, in that accident?
7 A. I hurt, yeah, and I lost my, I lost my memory for six
8 months, seven months.
- 9 Q. How old were you then? A. I was, I
10 believe, twenty-five.
- 11 Q. How old were you when you ran into the pole and hurt
12 your head? A. Well, I born '35, think
13 happen '43, eight years old.
- 14 Q. Eight years old. Now, when you were twenty-five you
15 were in this car accident? A. Yes.
- 16 Q. And tell me about your injuries, how were you hurt?
17 Where? A. Hit my neck (indicating), yeah.
- 18 Q. Yeah. A. I hurt my back. I don't
19 know how long I was in the hospital, but I believe was month
20 and a half.
- 21 Q. A month and a half. A. In the
22 hospital, yeah.
- 23 Q. In what country? A. In Syria.
- 24 Q. In Syria? A. Yes.
- 25 Q. And you indicated that you lost your memory?
26 A. Yes.

1 Q. What do you mean by that?

2 A. Well, when I get out of the hospital I don't, I don't
3 know when I get out of the hospital, and I was talking to
4 my family, to my father, going to church, but I don't know
5 what I am doing. I read the whole, what my father write is,
6 he was writing every day what is going on about me.

7 Q. He kept -- do you know what a diary is?

8 A. No.

9 Q. He kept a history of everything that went on?

10 A. Right.

11 Q. Every day? A. Right. Diary, yeah.

12 Q. As far as your hospitalization is concerned, is that
13 what you are saying? A. Yeah. That is what
14 I'm saying.

15 Q. And you talked to your father about that?

16 A. Talked to my father and to my wife, and she was
17 laughing at me, and she said you would say so-and-so and
18 something, doesn't make sense, and I don't know, I don't
19 remember nothing, what happened.

20 Q. Was it a complete loss of memory? Complete? You know,
21 total, all of your memory? Did you lose all of your memory
22 or was it a loss of memory just in certain areas? Do you
23 follow what I mean? A. Yeah. Sometime I

24 was just like a dreaming, come back just like a dream.

25 Q. Now, did you have any other accidents or injuries?

26 A. I don't remember.

1 Q. All right. Were you ever ill, sick, when you were a
2 boy? A. Yes.

3 Q. Did you ever have a fever? You know what I mean,
4 fever?

5 MR. ROBINSON: Well, Your Honor, they have carried
6 this far enough. I am going to have to object. This is
7 totally irrelevant whether he had a fever when he was a boy.

8 MR. PESTARINO: It may be relevant.

9 THE COURT: Well, as to whether he had a fever --

10 MR. PESTARINO: If Your Honor please, I propose
11 to tie this in.

12 THE COURT: All right. You may answer then
13 subject to a motion to strike.

14 MR. PESTARINO: Sure.

15 Q. (By Mr. Pestarino) Did you ever have a fever?

16 A. Yes.

17 Q. How old were you when you had a fever?

18 A. I believe around fifteen years old.

19 Q. Fifteen? A. Fifteen.

20 Q. Did that fever affect you in any way that would affect --
21 well, how did it affect you? How did the fever affect you
22 after you got well? Or did it?

23 A. I don't remember exactly.

24 Q. Okay. All right. Now, I take it you were going to
25 school at the time that you were -- at the time that you
26 hit your head on the pole you were going to school, weren't

you? A. Yeah, I was grade three. I was going to grade four.

Q. Before the accident how did you do in school? Were your grades good?

A. Well, I start grade, as grade four for two or three weeks. They take me back to grade one.

Q. You mean after the accident?

A. Yeah, after the accident.

Q. What did you notice about yourself at that time?

A. Well, I started school, grade one and two to three I was doing very well. And my father, I remember he told me when I was reading the Bable, Bible, and I was doing all right. And after the accident they take me back to grade one because I don't know nothing. And when I read the Bable, Bible at that time I know what it says , but in little while I just forget what was.

Q. Okay. Now, how old were you when you were going into the military?

A. I believe twenty.

Q. Twenty? A. Yeah.

Q. And was it your desire to go in the army?

A. I love to be in the army. I love the army.

Q. And your father was still in the military at that time, wasn't he? A. No.

Q. What happened at that time as far as your father?
What was he doing? A. He was leader our
tribe.

1 Q. He had retired from the military?

2 A. Yeah.

3 Q. All right. Now, before that time, when your father
4 was in the military, did you go with him to different army
5 posts like they do in the United States? You know what I
6 mean, army post? Army camps? Army bases?

7 A. I believe in Iraq, yes.

8 Q. You travelled, did you, from one army post to another?

9 A. Summertime.

10 Q. Summertime. When you were a boy before you went to
11 apply for the army or before the army was going to take you,
12 did you know anything about guns?

13 A. Yeah, I know very well.

14 MR. ROBINSON: Pardon me?

15 THE WITNESS: I know very well.

16 Q. (By Mr. Pestarino) Where did you learn about guns?

17 A. My father teach me when I was, I was, I'd say ten years
18 old when I started shooting, teaching me how to shoot.

19 Q. What kind of guns did he teach you to shoot?

20 A. Different kinds.

21 Q. And what was your -- did you follow any practice
22 throughout the years?

23 A. Every year, I would
24 say, every week, and for first time, I believe until it was
25 forty-five, forty-three, something, that we went to, he
26 wants to see how I do gun, pistol, so he shot three shots
and I shot three, and I made two and he made one.

1 Q. So did you do that every year or every week or --

2 A. Every week. Every week.

3 Q. For how many years? A. Well, all of my
4 life. Even in Canada.

5 Q. Even in Canada? A. Yeah.

6 Q. And in the Middle East did you own some guns?

7 A. Yes, I own different guns.

8 Q. And tell me, what kind of guns did you own? Rifles,
9 pistols, revolvers, or what? A. I don't use
10 rifles too much. But I do pistol, different kind of pistol,
11 nine millimeter or seven, or eight, six.

12 Q. In the Middle East they are all calibrated by
13 millimeters, aren't they? A. Yeah.

14 Q. Over here we say caliber .22, .38, .45; is that right?

15 A. That is what I heard.

16 Q. Okay. Have you ever fired a weapon like People's
17 Exhibit 4 ? This is called, as you know now, a .22 caliber
18 pistol. Have you ever fired anything similar to that when
19 you were in the Middle East? A. I did
20 thousands.

21 Q. Huh? A. Thousands.

22 Q. And when you were in the Middle East did you carry a
23 weapon like that with you? A. All of the time.

24 Q. All of the time? A. Yes.

25 Q. Will you explain that a little bit more?

26 A. Well, I raise with my father, as I say, and with all

1 kind of gun as soon as I was ten, twelve years old. And
2 most of the people over there, they do that, too. Not all
3 of them, most of them, especially in the tribes, you know.
4 And I carry gun all of the time wherever I go.

5 Q. Even if you were dressed up with a suit of clothes on?

6 A. Yeah, doesn't mean nothing. Just like sunglass. Put
7 in your pocket, that's all.

8 Q. Suppose --

9 A. Just don't load it
up, that's all.

10 Q. Suppose you went to visit somebody, would you have a
11 gun with you?

12 A. Doesn't mean
nothing, but just don't load it. That's all.

13 Q. Suppose you came to visit somebody. What would you
14 do with your gun?

15 MR. ROBINSON: Objection, calling for
16 speculation. Strike that.

17 Q. (By Mr. Pestarino) What would you do with your gun?

18 A. Well, if it is my friend it, it doesn't matter. But
19 if it is high officials, you shouldn't go in with that gun.
20 You should give it to somebody over there.

21 Q. You should give it to somebody over there. What do
22 you mean by that?

23 A. I mean, if anybody,
like security guard or service man there, you should give it
24 to him and then enter through the door.

25 Q. Suppose you went over to a friend's house for dinner
26 at night, what would you do with your gun?

1 A. My friend?

2 Q. Yeah. A. I just keep in my pocket.

3 Q. That is what you did for how many years?

4 A. All my life.

5 Q. You say it's all right provided you don't keep it
6 loaded?

7 A. That's right. You hurt
8 yourself.

9 Q. Now, when you went -- when you went to Canada did you
10 own guns in Canada?

11 A. Yes, I do. Do have
12 three different guns. I have six and seven and nine.

13 Q. Six, seven, and nine millimeter?

14 A. Yeah. Nine, it is not automatic.

15 Q. It is a revolver? A. Revolver. It is
16 little big. It is not small.

17 Q. Bigger caliber? A. Seven white silver
18 gun, too. Six --

19 Q. Now, in Canada, did you carry guns with you?

20 A. Yeah. Sometime my pocket. All of the time it's in
21 my car. Sometime I come in my pocket, sometime beneath the
22 cushion.

23 Q. Why do you carry a gun? A. That's what
24 -- that's what I was brought up. I don't know why.

25 Q. Nobody has ever threatened your life?

26 A. No.

Q. So you 'd carry guns in Canada?

A. Yeah.

1 Q. The same way you did in the Middle East?

2 A. Yes.

3 Q. When you went to work did you carry guns?

4 A. To work, yeah, it was my car.

5 Q. It was in your car? A. Um-hum.

6 Q. You made some trips to the United States, didn't you,
7 to Flint, Michigan, and Chicago? A. Yes.

8 Q. Those trips were for what? Yeah, for what purpose
9 were those trips?

10 MR. ROBINSON: Once again I think we need, for
11 the benefit of myself and the jury, some foundation as to
12 what time the trips were made.

13 MR. PESTARINO: All right.

14 Q. (By Mr. Pestarino) During the time you moved to
15 Canada until November the 6th, 1975.

16 A. Well, I went many time. My sister got married in
17 Chicago.

18 Q. Your sister? A. My sister-in-law.

19 Q. I see. A. And many time to Flint,
20 Michigan. Once a year, '66, '67 to '71, I believe '72 ,
21 because Patriarch was coming every year there once a year.
22 And the last time it was last summer when I went to Chicago
23 to, I had a, three big stone, old stone, I want to take
24 them to museum to see what it is and how old it is.

25 Q. Stones? A. Yeah.

26 Q. All right. So you went to Chicago then?

1 A. Yeah. Summertime I believe two time.

2 Q. Well, quite often you came to the United States then
3 during the time you lived in Canada?

4 A. That's right.

5 Q. Yeah. Did you carry your gun in the United States?

6 A. All of the time.

7 Q. All of the time? A. Yes.

8 Q. Anybody ever see you with a gun?

9 A. They have what?

10 Q. Did anybody ever see you with a gun, any of your
11 friends?

12 A. All my friends they see me
13 with, most of my friends.

14 Q. Did they ever say anything to you about the gun?

15 A. The last time, last summer some friend told me that
16 you're not allowed to carry gun in the United States.

17 MR. ROBINSON: I'm going to object. That is
18 hearsay. Make a motion to strike.

19 MR. PESTARINO: Well, it is not offered -- I'll
20 withdraw the question.

21 THE COURT: The answer may be stricken then.

22 Q. (By Mr. Pestarino) All right. Let's talk about
23 something else for a moment. You drink, don't you?

24 A. Yes, I do.

25 Q. Tell me a little bit about your drinking habits. When
26 did they start?

A. Well, I used to drink
regular like if I go to some wedding or Christmas or some

1 party. But I start drinking habit since '73.

2 Q. In 1973?

A. Yeah.

3 Q. And from 1973 until your -- the date of your arrest,
4 were you drinking more than usual?

5 A. I --

6 MR. ROBINSON: I'm going to object. What's more
7 than usual mean?

8 THE COURT: The objection is sustained. No
9 foundation.

10 Q. (By Mr. Pestarino) Tell me about your drinking.

11 A. I drink every day since 1973. I can't go to bed with-
12 out two or three shots, Johnny Walk.

13 Q. Always drink Johnny Walker?

A. Most of

14 the time, yes.

15 Q. And how does a drink affect you when you drink? Do
16 you get mean? Do you get wild? Do you get happy or what?

17 A. Well, when I drink, if I get in argument, I get mad.
18 And I get very mad, very opsit (upset), and very nervous.
19 But if I didn't get in argument I be all right.

20 Q. Do you think when you get in an argument something
21 happens to you when you are drinking?

22 A. Well, if I get in argument, even if I have one shot of
23 Johnny Walker, I just like I had one or two bottle.

24 Q. Have you had that problem for a long time?

25 A. Not that I know of. Since '73.

26 Q. And did your father ever talk to you about your

1 drinking?

A. I believe he did.

2 Q. Okay. Did you ever have any problems at home when you
3 drank and somebody said something, and you didn't remember?

4 A. Well, I heard in 19, early '62, '61, early, I guess
5 when my father left Syria to Canada, and I wasn't drinking
6 too much at that time, but I had couple of drink, had a
7 little argument with my wife, I want to go see my father,
8 you know, and she said, "You better wait for next year," or
9 something like that, you know, and I get mad and it is a
10 shame but I say, I broke all of my dish. And I don't know
11 what happened until the next day I see the pile in the
12 corner.

13 Q. And you don't remember doing that?

14 A. No.

15 Q. Did you have another argument where you didn't
16 remember?

A. I had, '73 -- 2.

17 MR. ROBINSON: Your Honor, I would like to
18 voir dire briefly, if I may on this 1961 - '62 dish
19 breaking incident? If Mr. Ismail doesn't remember doing it
20 how can he testify about it today? The only other way is
21 if somebody told him what happened and it is hearsay.

22 MR. PESTARINO : Why don't you voir dire? I have
23 no objection.

24 EXAMINATION ON VOIR DIRE

25 BY MR. ROBINSON:

26 Q. Mr. Ismail, you told us that you don't remember doing

1 that in 1961 or 1962? A. No, I don't.

2 Q. Okay. And you don't remember the incident?

3 A. What's "incident"?

4 Q. Well, the incident you just told us about.

5 MR. PESTARINO: He doesn't understand the
6 word "incident."

7 THE WITNESS: I don't --

8 Q. (By Mr. Robinson) Do you understand the word
9 "incident"? You know what "incident" means?

10 A. No, I don't.

11 Q. Okay. This argument that you had with your wife.

12 A. Oh, I see.

13 Q. Okay? A. Yeah.

14 Q. And the argument was about you wanted to go see your
15 father? A. Yeah.

16 Q. And you had a couple drinks? A. Yeah.

17 Q. Okay. And then you told us that you remember the next
18 day all of the dishes were broken?

19 A. Yeah.

20 Q. You don't remember breaking the dishes?

21 A. No, I don't.

22 Q. How do you know they were all broken?

23 A. My wife, she pile it there, she don't take it. She
24 told me what happened last night.

25 Q. Your wife told you what happened?

26 A. Yeah.

1 MR. ROBINSON: Then I make a motion to strike as
2 hearsay.

3 MR. PESTARINO: I don't think that it is hearsay.
4 It is showing state of mind.

5 THE COURT: Well, you can't show a state of mind
6 if he has none. The only question is --

7 MR. ROBINSON: As His Honor well knows, the People
8 cannot call his wife to testify because there is the
9 privilege. So, therefore, it is hearsay because we can't
10 refute this.

11 MR. PESTARINO: I'll tie it in. His wife will be
12 here.

13 MR. ROBINSON: It is still hearsay.

14 THE COURT: It may be stricken subject to renewal
15 later on with opportunity to recall him.

16 MR. PESTARINO: All right.

17 MR. ROBINSON: Thank you.

18 THE COURT: The jury will be asked to disregard
19 the statement as to that event based upon the fact that it
20 was told to him by his wife as to what the facts were.

21 DIRECT EXAMINATION (Resumed)

22 BY MR. PESTARINO:

23 Q. Now let me ask you this, you remember drinking, you
24 remember getting mad, don't you; is that right? When you
25 had this argument with your wife?

26 A. Yeah.

1 Q. And you remember the next day seeing a lot of broken
2 dishes, didn't you? A. Yeah, she --

3 Q. Wait a minute. Where did you see those broken dishes?

4 A. Huh?

5 Q. Where did you see the broken dishes?

6 A. Right in the dining room in the corner. She left it
7 there.

8 Q. Yeah. And you looked at the broken dishes, did you?

9 A. Yeah.

10 Q. Did you talk to your wife about the broken dishes?

11 Just answer my question. A. She asked me --

12 THE COURT: Just answer yes or no.

13 THE WITNESS: Yes.

14 Q. (By Mr. Pestarino) Did you talk to your wife about
15 the broken dishes? A. Yes.

16 Q. Okay. And what did you do after that?

17 A. Buy new dish.

18 Q. Okay. You bought new dishes. All right. Now, did
19 you have any argument later on when you had been drinking
20 and your memory went back on you, so to speak?

21 A. I believe in Chicago in 1972 that, the Assyrian club
22 in Chicago, they have a party for my father, they invite my
23 father.

24 Q. Can you give us a little bit more definite, 1972, and
25 what time of the year? Was it the summer, fall?

26 A. I'll say September.

1 Q. September. They had a party for your father?

2 A. Yeah. They invite my father and all our family we
3 went there.

4 Q. Excuse me. All of your family, and you say you went
5 there. Was your brother there, Zaia?

6 A. Yeah.

7 Q. And your brother Jack?

A. Yes.

8 Q. Okay. What happened then? Were you drinking?

9 A. Was drinking and dancing, I had a good time and then
10 around 12:00 o'clock we left to my friend's house and some
11 more guys they came with us. And one person by name Skharia.

12 Q. How do you spell that? A. S-k-h-a-r-i-a,
13 I believe. We sit down drinking at my friend's house, and
14 singing and have a good time, and he start talking about
15 Mar Shimun, which bother me, and I jump on him. We have a
16 little fight, but he didn't fight, he just keep quiet. He
17 was six, six two, six three, probably could beat me. But
18 he didn't say nothing. He just keep quiet and he get out
19 that place.

20 Q. All right. A. I don't know nothing
21 about that next day.

22 Q. The next day? A. Yeah.

23 Q. How did you find out about it the next day?

24 A. Well, my brother told me and my sister-in-law, my
25 friends told me, everybody told me.

26 Q. You don't remember? A. No.

1 Q. Were you drinking very much at that time? Well,
2 let me strike that.

3 Were you drinking more than three or four or five
4 whiskeys? A. Yeah.

5 Q. Okay. And did you have another such occasion as this
6 where you didn't remember? A. Yeah, in
7 Canada around, was --

8 Q. What year? A. '73, September. We
9 have an argument, too. And I believe was there me and my
10 wife and was a person by the name Edward Younan, Y-o-u-n-a-n.
11 And that is after we heard Patriarch is married, he get
12 married. And just we was talking about that thing, and I
13 get very upset, very mad. And we was ready to eat dinner,
14 so everything on the table so I sweep whole thing on the floor.

15 Q. Do you remember doing that? A. No.

16 Q. Did you have any other such lapse of memories that you
17 can recall? A. Don't remember.

18 Q. All right.

19 MR. PESTARINO: Now -- maybe, Your Honor, this
20 would be a good time to take the morning recess because I am
21 going into another phase.

22 THE COURT: All right. Ladies and gentlemen we
23 will take fifteen minutes, as our usual custom, and you will
24 keep in mind the admonition I have given you before. We
25 will resume at five after eleven. And you will keep in mind
26 your obligation not to discuss the case. You may step down.

1 You can step down, also, Mr. Ismail.

2 (Short recess taken.)

3 THE COURT: Please be seated. Let the record
4 show that the jury is present, the defendant is present with
5 counsel. You may proceed.

6 Q. (By Mr. Pestarino) Mr. Ismail, before coming, well,
7 had you received any communications from the Mar Shimun?

8 A. Yes, I do.

9 Q. Had your father received any communications?

10 MR. ROBINSON: Objection, no foundation. What
11 time?

12 THE COURT: Yes.

13 MR. PESTARINO: Will you mark these, please?

14 THE COURT: Yes. They will be Defendant's G.
15 Are they one exhibit?

16 (Whereupon, the above-mentioned document, being
17 a letter, was marked as Defendant's Exhibit G for
18 identification.)

19 MR. PESTARINO: Yes. That is G. And I would
20 like -- I don't think that you can read them or I would show
21 them to you.

22 MR. ROBINSON: You'd be surprised what I can read.

23 MR. PESTARINO: Here. Take a shot at it
24 (documents handed to Mr. Robinson).

25 MR. ROBINSON: I can read dates.

26 MR. PESTARINO: And mark these as another exhibit.

1 THE COURT: These are what, sir? Papers?

2 MR. PESTARINO: Yeah, these are letters.

3 THE COURT: All right. They will be H.

4 (Whereupon, the above-mentioned documents, being
5 letters, were marked as Defendant's Exhibit H for
6 identification.)

7 MR. PESTARINO: And G is the same sort of thing.

8 Q. (By Mr. Pestarino) Let me ask you this, while we are
9 waiting, when did your father pass away?

10 A. January 25th, '74.

11 Q. '74. And when did the Patriarch -- did the Patriarch
12 get married? I guess I should ask you that. Did the
13 Patriarch get married? A. Yeah.

14 Q. When did he get married? A. I believe
15 August the 16th.

16 Q. August the 16th what year? A. '73.

17 Q. '73. I'll show you a couple of letters here and ask
18 you if you have seen those letters before. They are marked
19 Defendant's G for identification. There is two letters.
20 Would you look at those? My question, Mr. Ismail, is, do you
21 ever remember seeing those letters before?

22 A. Yes, I do.

23 Q. And what are those letters? A. That is from
24 my father to Mar Eshai Shimun.

25 Q. Dated when? A. September the 15th, 1972.
26 It says --

1 Q. No, I don't want what it says. From your father to
2 the Mar Shimun? A. Yes.

3 Q. The Patriarch? A. Yes.

4 Q. That is dated what date? A. September
5 15th, 1972.

6 Q. What is the other letter? Strike that.

7 Was there a reply from the Patriarch to your
8 father's letter? Did he answer it?

9 A. This letter is, Mar Shimun give permission to my
10 father don't fast because he had a problem in his chest.

11 Q. Your father at that time was suffering from a heart
12 condition, wasn't he? A. Yes, he was.

13 Q. And your father, did your father write to the Mar
14 Shimun? A. I believe he write it.

15 Q. And that is an answer from the Mar Shimun to your
16 father? A. Yes. Give him
17 permission don't fasting.

18 Q. Don't fast. Okay. Now, would you -- well, I guess it
19 is marked. Yeah, I'll show you Defendant's H for
20 identification, and tell me what those letters are.

21 A. That is the -- I got this letter from Mar Shimun.

22 Q. You received it yourself? A. Yes, I did.

23 Q. From the Patriarch? A. Yes, I did.

24 Q. What is the date of that letter?

25 A. February the 20th, 1975.

26 Q. 1975. February the 20th? A. Yes.

1 Q. Does it have his signature on there?

2 A. Yes, it did.

3 Q. All right. And what does that letter say?

4 MR. ROBINSON: I'll object. The letter speaks for
5 itself.

6 THE COURT: Well --

7 MR. PESTARINO: I don't think that it speaks for
8 itself.

9 THE COURT: It is in a foreign language.

10 MR. ROBINSON: Is it in a foreign language? The
11 letter counsel showed me , said, you can read this one.
12 It was in English.

13 MR. PESTARINO: No. That is in a foreign
14 language. Take a look at it.

15 MR. ROBINSON: What does that letter say?

16 THE COURT: Perhaps we could have the defendant
17 translate the letter, then later on you could have somebody
18 else.

19 MR. PESTARINO: I'll have a translation of it or
20 bring in a translator.

21 Q. (By Mr. Pestarino) But basically what does it say,
22 Mr. Ismail? A. Well --

23 Q. The letter, not the night letter. Just the letter.
24 The letter from the Patriarch to you dated February the 20th.
25 What does it say just generally?

26 A. It says, "We received your letter," and it was about

1 my cousin. Mar Shimun, he wants my cousin to be president
2 in Flint, Michigan, take over in Flint, Michigan, and I ask
3 him, and he said, "I can't take it because I don't have
4 enough education and I have five children." So, I answered
5 that letter and --

6 Q. Is your answer there? A. And he answers
7 me. He says let your cousin to write to me by himself, and
8 he mention about this telegram sended to Middle East against
9 him by Aprim De Baz and some friends of him, and there is
10 signature of Sha-Ma-Sha (sic) Dinkha, that is my uncle. And
11 your signature, too. Like my signature. I don't know if
12 your people know about it. He don't know that we don't know
13 about it. So --

14 Q. I'm sorry. I didn't get the -- I don't understand
15 completely what you are testifying to. You are talking about
16 the letter, Defendant's H for identification, and this is a
17 letter, what is the date of that letter?

18 A. February the 20th, 1975.

19 Q. February the 20th. And that is from the Patriarch to
20 you?

A. Yeah.

21 Q. And what does that letter say generally speaking?

22 A. He wants to know if we send a telegram against him to
23 the Middle East.

24 Q. He wants to know in that letter if you had sent the
25 telegram to the Middle East?

A. Or any
26 member of our family, or any member in our family. And we

1 say no.

2 Q. Why did he want to know that?

3 A. He wants, he wants support.

4 Q. So is it correct to say that he sent you this letter
5 asking you if your family is still supporting him?

6 A. Yeah.

7 MR. ROBINSON: Well, wait a minute, Your Honor,
8 perhaps we should have Mr. Ismail read the letter to us. Is
9 that what Mr. Ismail's opinion is? Or is that what the
10 letter says? I am going to make a motion to strike, that
11 hasn't any foundation.

12 THE COURT: Yes. The answer will be stricken.
13 And you may start again.

14 Q. (By Mr. Pestarino) Will you translate that letter,
15 please?
16 A. It is hard for me to
17 translate.

18 Q. Well --
19 A. It is in English, too.

20 Q. There is a translation? Do you know who made that
21 translation?
22 A. No, I don't.

23 Q. All right. Well, can you read that letter and
24 translate it the best way you can?

25 A. It says, " I receive your letter date February the 2,
26 '75, about Hormis De Malik Ismail. As I told you
in the telephone should Hormis write himself to
me. There is telegraph from Chicago against me,
and there is your uncle's name and your cousin's

1 name and your brother's name. Send it to bishop,
2 high bishop in the Middle East. And we are so
3 glad that we know that nobody, no any member in
4 your family knows about that letter, that
5 telegram sended from Chicago. Could you sent,
6 could you send telegram against that telegram that
7 support us? Send to Middle East to the bishop
8 that we accept the Patriarch. And I send you a
9 copy of telegram, " this one(indicating) because
10 I told him, I said, "I can't write in English, and it is hard
11 to me," so he told me by telephone I'll send you
12 how you, how should be the telegram to send to Middle East.

13 Q. Wait a minute. Have you finished translating the
14 letter as best you could? The letter of February the 20th?
15 Have you finished your translation of that?

16 A. "And when you send the telegraph send me copy of
17 that."

18 Q. Now -- A. And there is another
19 reverend by the name of Athanasius Yousip, he send telegram,
20 too. That's all.

21 Q. Now, when you received that letter did you phone the
22 Patriarch or did he phone you? A. I believe I
23 phoned him to ask, it was sometime in January when his father-
24 in-law came to my place.

25 Q. I don't think that you -- I don't think you understood
26 my question. That letter is dated what, February the 20th?

1 A. 20th, yes.

2 Q. Yes. 1975? A. Yeah.

3 Q. And after February when you received that letter did
4 you phone the Patriarch or did the Patriarch phone you?

5 A. I speak to him but I don't remember exactly I phoned
6 him or he phoned me. I don't know exactly.

7 Q. You don't remember? Do you remember speaking to him
8 on the telephone? A. Yes.

9 Q. And do you remember what month that was?

10 A. First month was January when his father came to my
11 place, his father-in-law, and he talk about Mar Shimun.
12 And he asked me to, if I don't mind, he could use the
13 telephone to phone him from London, Ontario, to San Francisco,
14 to telephone him. I say, "Okay. Go ahead." And he phone.
15 And for first time I don't know what he talk to him. I
16 wasn't listening. But he ask me to talk to him.

17 Q. And you talked to him? A. And I did,
18 yeah.

19 Q. What did you talk about then?

20 A. He asked me if we know, if we signed any telegram
21 against him, any letter against him. And I say --

22 Q. What did you say? A. I said, "We
23 didn't sign nothing against you."

24 Q. Okay. And then did you talk to him afterwards on the
25 telephone later? A. Yeah. I called

26 next time, it was in January, I guess, again, when he asked

1 me to, to send telegram to Middle East, and when he asked me
2 to see how is Assyrian in Canada. And if I had any letter
3 from Middle East, Syria or Iraq. So I call him in January it
4 was, I believe.

5 Q. Did you call him after that?

6 A. The third time.

7 Q. February, March, April, May, June?

8 A. I know I had three time a week we talk, but I don't
9 remember exactly the last time I called him or he called me.

10 Q. Well, anyway, you see the night letter there in People's
11 -- or Defendant's Exhibit H for identification? Is there a
12 night letter? A. This one?

13 Q. Yeah. A. Yeah.

14 Q. Is there a date on that? A. No, that is --
15 he just sent it to me to --

16 Q. There is an envelope in which that came, is there?

17 A. A date?

18 Q. Yeah. No postmark on the envelope?

19 A. Yeah, there is , February the 20th, '75.

20 Q. All right. Did you receive that night letter with that
21 other letter on February the -- dated February the 20th, 1975?

22 A. I think so.

23 Q. Okay. A. Yeah.

24 Q. Now, what does that night letter say? Read it. No
25 -- excuse me, it is written in English, isn't it?

26 A. Yes.

1 Q. Will you read it out loud?
2 pretty hard to me.

A. It is

3 MR. ROBINSON: I'm going to object. It speaks for
4 itself if it is in English.

5 THE COURT: Well, he can read it.

6 THE WITNESS: Well --

7 THE COURT: Go ahead.

8 THE WITNESS: The telegraph says to bishop, to
9 archbishop in Iraq, and we denied that somebody put our
10 signature. And we support the Patriarch.

11 THE COURT: He wants you to read that exactly.

12 THE WITNESS: I can't read it.

13 Q. (By Mr. Pestarino) You can't read?

14 A. I cannot read it.

15 Q. You can't read any of this, the English?

16 A. Not very much .

17 Q. Well, do the best that you can with it, but read it word
18 for word.

A. 'We have been horrified

19 to learn that Messrs. Aprim De Baz, Ninos Andrews,
20 Ashor Solomon, and Mike Rashu have sent a
21 telegram -- telegraph resolution to you and to
22 other bishop on February 8th against His Holiness
23 Mar Eshai Shimun 23rd, Patriarch Catholicos of
24 the East in the name of many purported member of
25 the Church in Chicago and Canada including the
26 names of several members of the house of Malik

1 Ismail. We denied the d-e-c-e-i-p-t-f --"

2 Q. Spell that again?

3 MR. ROBINSON: Well, the letter speaks for
4 itself.

5 THE COURT: Well, counsel, if you like I could
6 read it.

7 MR. PESTARINO: Why don't you read it.

8 THE COURT: The jury doesn't know what it says,
9 and, you can't cross-examine.

10 MR. PESTARINO: I will stipulate that Your Honor
11 may read it.

12 THE COURT: The only reason for the Defendant's
13 reading it, of course, is to go to his knowledge of the
14 English language and the contents of the letter.

15 MR. PESTARINO: Well, also something further, but
16 --

17 THE COURT: All right.

18 MR. PESTARINO: Thank you.

19 THE COURT: I don't know about my pronunciation
20 of the various names , but it is headed, "Night letter,"
21 in capital letters. 'Mar Yosip," Y-o-s-i-p, 'Metropolitan,
22 care of Mar Aprim Khamis house number 10B/4 Karradeh,"
23 K-a-r-r-a-d-e-h, "Al Mariam, Baghdad, Iraq. We have been
24 horrified to learn that Messrs Aprim De Baz, Ninos
25 Andrews, Ashor Solomon, and Mike Rashu have sent
26 a telegraphic resolution to you and other bishops

1 on February 8th, against His Holiness Mar Eshai
2 Shimun the 23rd, Catholicos Patriarch of the East
3 in the name of many purported members of the
4 church in Chicago and Canada including the names
5 of several members of the house of Malik Ismail.
6 We denounce the deceitful action of these men
7 who have written our names without our knowledge
8 or permission." Underneath that are the names
9 of, "Dinka Malik Ismail and David Malik Ismail." And it
10 say, "Copy to His Holiness the Patriarch."

11 MR. ROBINSON: Thank you, Your Honor.

12 MR. PESTARINO: Thank you.

13 Q. (By Mr. Pestarino) Now, after receiving that night
14 letter what did you do with it? Did you sign it? Did you
15 mail it? Did you do anything? A. No, I didn't.

16 Q. You just kept it? A. Just kept just
17 sometime to see him.

18 Q. So you planned to see him sometime about this letter?

19 A. A lot of thing, too.

20 Q. And other things? A. Yeah.

21 Q. Now, were you that friendly with the Patriarch that
22 you could see him? A. I believe we are very
23 close to this great family.

24 MR. ROBINSON: I am going to make a motion to
25 strike, Your Honor. Counsel didn't ask him what his family
26 relationship was with the Patriarch. It was, was he close

1 enough with the Patriarch. That can be answered yes or no
2 with explanation.

3 THE COURT: Yes. The answer will be stricken.
4 The jury will be ordered to disregard it.

5 The question was: Were you yourself that familiar
6 with him? You can answer that yes or no.

7 THE WITNESS: Yes.

8 THE COURT: Now you can explain.

9 Q. (By Mr. Pestarino) You wanted to explain your answer?

10 A. Yeah. I could explain it. I know him very well
11 through my father. And my great -- what he did for our
12 church, he served our church for over fifty years. So this
13 great family and we are very close.

14 Q. So is it your testimony then that you kept this night
15 letter and were going to talk to him about it sometime?

16 A. Right.

17 Q. And did you have any particular time in mind when you
18 were going to talk to him about it?

19 A. Not really.

20 Q. No. By the way, what was the feeling among the
21 Assyrian people, particularly your father and yourself when
22 the Patriarch got married on August the 16th, 1973?

23 A. Was very bad.

24 Q. You want to explain that? A. Well, we all
25 shake when we heard that, and all very opsit (upset).

26 THE COURT: Very upset.

1 THE WITNESS: I called my father in Beirut. He was
2 in Beirut at time, and he told me to go see him. And I wasn't
3 work that time, I just, I didn't quit the job but I just
4 couldn't work. And he sent me money so I fly there and I
5 see him. And I told him: If he heard about? He said yeah,
6 he did. And I asked him, "What you think about that?"

7 THE COURT: I'm a little confused. Where did you
8 fly?

9 THE WITNESS: I fly to Beirut, Lebanon.

10 THE COURT: All right.

11 THE WITNESS: And I asked him, "What do you think
12 about that?" And he just couldn't answer me. He said, "Don't
13 mention about that. Let the god take care of that." And he
14 was very upset but he didn't explain it to me. I could see
15 it in his face.

16 Q. Now, did this marriage of the Patriarch affect you
17 personally? A. Very much.

18 Q. In what way? A. Well, the way I
19 felt, you know, I heard since I born the Patriarch shouldn't
20 be married, and the religion, and the way we believe just
21 like Jesus Christ on Earth, and that is the way we are, you
22 know, I can't help it.

23 Q. In what way did it affect you?

24 A. It affect me, I couldn't look after my house no more,
25 I couldn't go to work. He get married summer of '73. I
26 quit my job 1974, November the 8th. That is over a year, I

1 guess, but I didn't work maybe three months, two or three
2 months that time, period of time. What I saved, all, I
3 spended. I just couldn't work at the time thinking.

4 Q. Were you thinking about your religion and your people?

5 A. About my religion first of all, and the people second.

6 Q. When you were on your job could you concentrate on your
7 job, concentrate, think about your work?

8 A. Well, I was on the job, doing the job, but I don't know,
9 I wasn't there. I was someplace else, thinking, you know.
10 I hurt my hand, and I take off maybe three months.

11 Actually I shouldn't. I should take maybe two or three weeks,
12 but I couldn't get back on job again. Just stayed home.

13 Q. All right. How did it affect your father? Did you
14 see any change in your father? A. He was very
15 changed.

16 Q. Very changed? A. Very changed.

17 Especially the people, he was against them because they was
18 against the Patriarch, and many of them they told him, "See,
19 we told you he wasn't good, and he was against us." And it
20 bother him too much that.

21 Q. How old was your father when he died?

22 A. Seventy-eight.

23 Q. Had he had a heart condition previous to that?

24 A. Well, he used to have, he had a heart problem, maybe
25 1960 or '62, I don't remember exactly. But in 1963 was very
26 bad when he was visiting Mar Shimun's father and the family,

1 and they take care of my father very very well for over four
2 or five months. I don't know exactly. And he was very good
3 at that time. Came to Canada again, and since that he was very
4 good until summer 1973, September, October, started again
5 very bad.

6 Q. Did you notice this change after the Patriarch had
7 married?

8 A. Yeah, because in Iraq there
9 was -- our church is split already before he get married.
10 There was some problem in the church, and he was talking to
11 other side to get again back.

12 Q. Unite them? A. Unite them, yeah.

13 Q. Is that why your father went back to Iraq?

14 A. No, he went back, Iraq government they invite him for,
15 for they want his support against the Kurdish, north of Iraq,
16 Assyrian support against the Kurdish in northern Iraq. And
17 the period he talked to the people, there was a split from
18 our church, to come back again. And the Mar Shimun, he sent
19 his resignation sometime in late '72, I believe. And my
20 father, he sent him telegraph from Canada to come back again,
21 please.

22 Q. So your father was telling the Patriarch, continue to
23 lead the church? A. Yes.

24 Q. And did you talk to your father about how he felt about
25 it? A. After he get married?

26 Q. Yeah. A. He don't let me. He
said, "Don't mention about that no more. Just let the god

1 take care of that."

2 Q. Now, what were your own feelings toward the Patriarch
3 when he got married or when you received word that he had
4 married? How did you feel?

5 A. That day I
6 heard I got letter from, I believe from Chicago, some friend
7 or my sister-in-law, I don't remember exactly, it shake me.
8 I couldn't believe it, you know, something never happened,
9 can't be happening, you know. And they start calling all
10 over to find out. And it was true. And I don't know what
11 happened to me. I just hate to work, hate to stay home
12 sometime, I want to be alone all of the time.

13 Q. Did you drink more?

14 A. I drink very
15 very heavy.

16 Q. All right. Did you at any time tell the Patriarch that
17 you were not going to support him or that you would support
18 him?

19 A. He asked on telephone for
20 support.

21 Q. When was that?

22 A. Sometime in January,
23 I guess, '75 or February, early February, but I didn't, I
24 didn't say, "No, we don't support you." And I was, I always
25 believe that we should go along with him.

26 Q. Why?

27 A. In case going to happen
28 another, another split in our church, and split another time.
29 So I just, that is my opinion, I was thinking that. But how,
30 I don't know. And I didn't tell him that we are against you,
31 no. I didn't say nothing on telephone. And he talk lot. I

1 didn't answer very well, I just write him letter. I didn't
2 say in the letter, I believe I didn't say that we are going
3 to support you. But I believe I said that we love the Mar
4 Shimun, and something like that, you know.

5 Q. All right. Up to this point did you have a great deal
6 of respect for the Mar Shimun or the Patriarch?

7 MR. ROBINSON: Up to what point? Talking about
8 January or February, '75?

9 MR. PESTARINO: January or February.

10 MR. ROBINSON: Or up to the point he got married?

11 MR. PESTARINO: January, February.

12 THE WITNESS: Say that again, please?

13 Q. (By Mr. Pestarino) Did you have a great deal of
14 respect for the Mar Shimun up to January or February of
15 1975?

16 A. You mean accept him, to
come back?

17 Q. I mean always. No. Let me try again. Strike that.

18 The picture of you and your wife, Peggy, with
19 the Mar Shimun was taken in 1962?

20 A. Yeah.

21 Q. In Beirut?

A. Yeah.

22 Q. Huh?

A. No, in Damascus.

23 Q. And from that time forward did you see the Patriarch
24 any times?

25 A. Yes, sir. We see him 1966,
26 early November, and '67, same time in Flint, Michigan, and
'68, '69, '70, and we miss one year, I don't remember

1 exactly, I miss '71 or '70. I didn't go. I was working a
2 weekend.

3 Q. All right. When you saw him did you have an audience
4 with him? Were you able to talk to him? Were you able to
5 talk to him on these occasions? You know what I mean? It is
6 one thing to see somebody. It is another thing to talk to
7 them.

8 A. I don't talk very much to
9 him. I was listening to him and my father was talking about.
10 But I remember one time, all children, they came to kiss his
11 hand. And I teach my boy how to go to him to kiss his hand.
12 He have to kneel and then kiss his hand. So he did it. But
13 the rest of the boy, like my brother's boy, the rest of them
14 they just go like that (indicating) and kiss his hand. So
15 he ask, "Who's that boy?" I said, "It is mine." And I
16 asked him to pry (pray) for him, and he did.

17 Q. Now, on these occasions that you saw the Patriarch,
18 were you close to him? Did he see you? Did you see him
19 personally?

20 A. Oh, yeah.

21 Q. Was your family there? A. Yeah, my
22 father, most of the time him and my father was sitting alone,
23 and I get in and just listen to them, what they says.

24 Q. So that you'd be very close to them?

25 A. Yeah.

26 Q. On all of these occasions? A. Yeah.

Q. And he was a well-respected man, wasn't he? Well
respected? He was like Jesus Christ walking on earth, wasn't

1 A. That's right.

2 Q. And do the people bring the sick people to him?

3 A. They do, bring in Damascus lots of them, lots of sick
4 people. And we take, me and my wife, we take some water to
5 him and he pry (pray) in that water, and we take him back
6 home six hundred mile to keep in home.

7 Q. So you respected him very much?

8 A. Sure we are.

9 Q. Now, when he got married how did you feel about the
10 Patriarch?

 A. Well, feel very bad.

11 Q. Well, did you decide not to support him anymore after
12 he got married?

 A. First of all, yeah.

13 Q. First of all you did? A. First '73, when
14 I heard.

15 Q. When did that feeling change?

16 A. Well, in '74, '75, you know, I was thinking that the
17 world is changing, we should change. You know, I know it
18 is very hard, that is the way our blood is, but we should be
19 changed, too.

20 Q. All right. So then you thought in order to preserve
21 the unity of the church --

22 MR. ROBINSON: Objection, leading question.

23 MR. PESTARINO: He has already testified.

24 MR. ROBINSON: Asked and answered then.

25 MR. PESTARINO: Well --

26 THE COURT: Let's not quibble. Rephrase the

1 question.

2 MR. ROBINSON: Thank you, Your Honor.

3 Q. (By Mr. Pestarino) Did you ever tell the Patriarch
4 about your feelings for him? A. No, not that.

5 Q. Did you ever tell him in any other way, write to him
6 or anything? A. No, I was thinking if I see
7 him out loud I say, it depends what to do is the best.

8 Q. Now, did you have any more communications with the
9 Patriarch before November the 6th other than the
10 communications that you have mentioned there in those letters
11 dated February the 20th, 1975, either by phone, writing, or
12 any other way? A. No.

13 Q. During this period of time were you friendly with his
14 mother and father? A. Very much, yeah.

15 Q. Did you visit the Patriarch's mother and father, or
16 did they visit you? A. Yeah, I visit at
17 some, at Christmas, 1974, I went to my brother's place for
18 Christmas dinner and --

19 Q. Where does your brother live?

20 A. He lived in Mississagi, Ontario.

21 Q. That is what brother? A. Jack.

22 Q. Jack. A. And the next day we left
23 for Niagara Fall, me and my wife and my boy. We came from
24 Niagara Fall to go back to London, and we went to Hamilton,
25 and I asked my wife we should go and see them because he
26 came to my place one time when my father died. So he came

1 to me, him and his both, both son. So she said okay, so we
2 went there. And we had a nice dinner. They asked us to
3 drink and we did. Then he don't let us go back home because
4 he said, he told me that you had many, many a drink, you
5 shouldn't drive. So you have to stay here tomorrow morning
6 and go back home.

7 Q. So you spent the night there? A. Yes.

8 MR. ROBINSON: So we are not confused, who are
9 we talking about? The Patriarch's mother and father or the
10 Patriarch?

11 THE COURT: I think we are talking about the
12 Patriarch's mother and father, as I understand it. Is that
13 correct, sir?

14 MR. PESTARINO: Yes.

15 THE WITNESS: Yes.

16 THE COURT: That is where? Hamilton, Ontario?

17 THE WITNESS: Yes.

18 Q. (By Mr. Pestarino) That was in January of 1974?

19 A. I believe in January, December or January, early
20 January or late December.

21 Q. All right. And on that -- did you see them anymore
22 after that? Did you visit with them after that?

23 A. Yeah, they come to my place again.

24 Q. When? A. In January.

25 Q. Same year? A. Yes, '75.

26 Q. Oh, '75? A. Yeah.

1 Q. And that is -- is that the only two times you seen his
2 mother and father, after his marriage, anyway?

3 A. I think after I see them three times. I don't know
4 exactly. I know between Christmas and New Years one, and
5 early January one, and third time I think it is January,
6 late too, again.

7 Q. Did the Patriarch's mother and father ask you to
8 support or your family to support the Patriarch?

9 MR. ROBINSON: Objection, no foundation. At what
10 time?

11 MR. PESTARINO: During any of these conversations
12 of 1974, '75?

13 THE WITNESS: Yes, they did.

14 Q. (By Mr. Pestarino) What did you tell them?

15 A. I told them that, how is Assyrian people in the Middle
16 East, how they are feel, and it's very bad, and here. His
17 father said, "Yeah, it's very bad but as you know, we don't
18 have no person, any person in Assyrian people that can be
19 Patriarch because he hasn't had enough education, enough
20 experience, enough so-and-so. So I was believe him, one
21 side.

22 Q. So you decided then somewhere after these conversations

23 -- A. Yes.

24 Q. -- to support the Patriarch? A. Yeah, they
25 talked to me a lot.

26 Q. Did they ever ask you to talk to the Patriarch himself?

1 A. Yes, they did.

2 Q. Did you do anything? Did you talk to the Patriarch?

3 A. I talked to Patriarch telephone but we couldn't say
4 nothing.

5 MR. ROBINSON: Once again, what time?

6 THE WITNESS: In January.

7 MR. ROBINSON: What year?

8 THE WITNESS: '75.

9 Q. (By Mr. Pestarino) Is that the only time you talked
10 to him?

A. Three time.

11 Q. On the telephone?

A. Yeah.

12 MR. PESTARINO: It might be a good time to stop.

13 THE COURT: All right. Ladies and gentlemen, we
14 will take our noon recess and resume at 1:30. You will keep
15 in mind my previous admonition about not discussing the case
16 among yourself or with any other person. Mr. Ismail, you may
17 step down. You will be ordered back at 1:30, also. Any
18 witnesses under subpoena will be ordered back, also.

19 (Whereupon, Court adjourned for the luncheon
20 recess until 1:30 o'clock p.m., this day.)

21
22 ---o0o---
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26

1 AFTERNOON SESSION

2 March 22, 1976. 1:30 o'clock p.m.

3 (Pursuant to adjournment, Court convened, and the
4 following proceedings were had:)5 THE COURT: Please be seated. Let the record show
6 that the jury is present, defendant and counsel are present.
7 You may continue, Mr. Pestarino.

8 MR. PESTARINO: Thank you, Your Honor.

9 DAVID MALEK ISMAIL,
10 the witness on the stand at the time of the adjournment,
11 resumed the stand and testified further as follows:

12 DIRECT EXAMINATION (Resumed)

13 BY MR. PESTARINO:

14 Q Mr. Ismail, before noon I asked you a question if you
15 had a conversation with the Patriarch's family, his father
16 and his mother. Did you understand the question correctly?

17 A No.

18 Q Did you ever talk to the Patriarch's mother and father?

19 A No.

20 Q It was his -- A I did by telephone, I believe
21 '69 or '70.22 Q Yeah. Okay. A Just for Christmas when my
23 father talked to them.24 Q All right. These conversations that you testified to
25 before lunch, were they conversations that you had with Mrs.
26 Shimun's mother and father? A Yes.

2
1 Q Okay. All right. Now, in your conversations with
2 the Patriarch when your father was present, your son, did he
3 show any signs of not being able to hear you properly?

4 A No.

5 Q As far as you are concerned his hearing was all right?

6 MR. ROBINSON: Objection, leading question.

7 THE COURT: It is leading.

8 THE WITNESS: It was not --

9 THE COURT: Just a minute.

10 MR. PESTARINO: Let me rephrase the question.

11 Q (By Mr. Pestarino) You talked to the Patriarch, and
12 your father talked to the Patriarch, didn't he?

13 A Yes.

14 Q Did the Patriarch understand or did he have to ask him
15 to repeat the questions or anything? A No, no.

16 Q All right. So around the end of October you decided
17 to come to San Francisco, isn't that right? A Yeah.

18 Q And you bought air fare one way? A Yes, I did.

19 MR. ROBINSON: Objection, leading question again.

20 MR. PESTARINO: It has all been testified to. My
21 gosh --

22 MR. ROBINSON: Counsel knows the rules. If
23 counsel wants to testify let's put him on the stand and let
24 me cross-examine him under oath. We want to hear what the
25 witness said. That is the purpose for the leading question.

26 THE COURT: It is a leading question, Mr. Robinson.

3
1 The objection is sustained.

2 MR. PESTARINO: I'm sorry.

3 Q (By Mr. Pestarino) You came to San Francisco, did you
4 buy a round-trip ticket? A No, one-way ticket.

5 Q Why did you take a one-way ticket?

6 A I was thinking going to Denver, Colorado, by bus, and
7 then Chicago, stay a couple days and then my sister-in-law
8 and then go back home.

9 Q What was your purpose in coming to San Francisco?

10 A Well, visiting San Francisco and we planned to move from
11 London, Ontario. It's very cold.

12 Q Planned to move to San Francisco? A San Francisco
13 or British Colombia, or some place.

14 Q Did you intend to open up some kind of a business or go
15 into business? A Well, I was thinking, I was thinking
16 of a small business.

17 Q A small business? A Yeah.

18 Q You testified earlier that you had sold your home --

19 A Yes.

20 Q -- in Canada? And did you have any money left?

21 A Well, we have 1500 acre --

22 Q No, excuse me. You better answer my question. Did you
23 have any money left from the sale of your house?

24 A No.

25 Q How were you going to pay for a small business in San
26 Francisco or anywhere? A Well, we have, as I said,

1 1500 acre back home.

2 Q Back home? A Syria, and we have big farm which
3 65 acre, all kind of fruit, apples, pears, and we called my
4 cousin there, me and my brother, and he put it on sale last,
5 I believe, September.

6 Q Which brother? A Zaia. That's belong to me and
7 Zaia, not Jack, older brother. I had two-thirds and Zaia
8 had one-third.

9 Q How did you get that property? A How could I get?

10 Q How were you going to get it or how did you get it?

11 A That's my father property.

12 Q I see. So anyway, you decided to come to San Francisco
13 on a one-way ticket? A Yeah.

14 Q And did you get into the International Airport here in
15 San Francisco? A I don't know what airport. I get
16 some airport. I don't know how many airport in here, but I
17 believe, I arrived at airport, and I think International
18 Airport.

19 Q What day did you arrive? A I think it was
20 Thursday.

21 Q Thursday? A Yeah.

22 Q October the 30th? A I believe the 30th.

23 Q Do you know a person by the name of Kitty Benjamin?

24 A Yeah. She pick me up from airport.

25 Q Did you call her before she picked you up? A Yes.

26 Q Where did you call her from? A From London, Ontario.

1 Q London, Ontario? A Yes.

2 Q And what time did she pick you up?

3 A I don't know exactly. I don't know, 7:00, 8:00 o'clock,
4 something like that. I think 7:00 o'clock.

5 Q And where did you go after, as she picked you up?

6 A Went to motel, Sunset Motel, I guess. I don't know the
7 motel and --

8 Q All right. Now, before you went to the motel did you
9 take any luggage with you when Kitty picked you up?

10 A Well, I take the key, and she was waiting, and I take
11 the luggage.

12 Q What luggage did you take? A I have a small --
13 that one there (indicating), for shaving and towels and some
14 books in it and suitcase, which not too big, regular size.

15 Q And did you have something to hang your clothes in?

16 A I had a, yeah, that thing to hang my suit on it, yeah.

17 Q What did it look like? A It's block (black).

18 Q It's a block? A It's dark, very block (black).

19 Q Oh, black, pardon me. And you can hang a suit in it,
20 can you? A Yeah, just for hanging a suit, that's all.

21 Q So that is what you had when you left the airport?

22 A Yes.

23 Q And you went to the Sunset Motel? A Yes.

24 Q Did you register on the registration card at the Sunset
25 Motel? A No, I didn't see nobody there. She said

26 I got a key for you, and I don't know how she get key for

6
1 me, and I just put my luggage inside. I don't know I hang
2 them or not, and went to her place, mother's place.

3 Q In other words, all right, you just went into your room,
4 hung your luggage and walked out? A Yeah.

5 Q And then where did you go? A Went to her mother's
6 place.

7 Q And did you have dinner there? A Yes.

8 Q Did you come back to the motel after that?

9 A We come back a little late, maybe 11:00 or 11:30,
10 something like that.

11 Q Now, the next day did you go anywhere?

12 A The next day --

13 Q That is Friday. A Yes, I did. I went to the
14 office, was person in the office, motel, and I asked him if
15 I could have a phone call. He said yeah. I phoned a person
16 by name Sam Lazar, which I see in, I don't remember, last '72
17 or '73, some place, in Chicago or Flint, Michigan, in some
18 convention. And I talked to him. He was busy. And he
19 said I'll talk to my brother to take care of you and show you
20 all San Francisco.

21 Q Okay. Now, when you went back to the Sunset Motel was
22 there a man, a clerk at the desk? A When?

23 Q Thursday. A Thursday I didn't see nobody.

24 Q You didn't see anybody Thursday all day?

25 A No. It was Thursday night I came there.

26 Q Thursday night you came to the Sunset -- A Yeah.

7

1 Q -- Motel? A Yeah.

2 Q Well, you slept the night before, didn't you?

3 A No. Thursday I arrive from San Francisco, 7:00 o'clock

4 I think. And we went to motel, I didn't see nobody, no man.

5 Next day, Friday, I did.

6 Q Yeah. That is what I am talking about, Friday. Did

7 you see a man? A Yes, sir.

8 Q At the Sunset Motel? A Yes, I did.

9 Q Was that man Mr. Crowley, the man that was here?

10 A It looked like him.

11 Q Looked like him? A Yes.

12 Q When did you first see Mr. Crowley? A Mr. who?

13 Q Crowley. Crowley. I think that was his name, Crowley,

14 C-r-o-w-l-e-y, Crowley. A The person who was in office

15 you mean?

16 Q Yes. A I see him Friday and I ask him for --

17 Q You saw him Friday when? What time?

18 A I believe noon.

19 Q All right. And did you have a conversation with him?

20 A Yeah. He -- when I, first I get in, told him, "Hi."

21 And he said, "Hi, Mr. Benjamin." I said, "My name is not

22 Mr. Benjamin. My name is David Ismail. Where you get that

23 name?" He said, "Well, you register here by this name."

24 I said, "You better change that, that is not my name." He

25 said, "That's all right. No problem." And I just asked

26 him, "Where is zoo?" And he show me where to go to zoo, take

1 the bus.

2 Q Did you go by bus or by car? A No, by bus.

3 Q Then did you see Mr. Crowley later on that evening?

4 A Friday night, yes, I did. Yule Lazar, he invite me for
5 dinner. And he said 7:00 o'clock. So I went 7:00 o'clock
6 to the motel office, and I wait for him to 10 after. Nobody
7 show. So I asked the man if I could phone. He said,
8 "Yeah, okay." Was talking like that, and later on two man
9 they came in there, I don't know them, and they look at
10 person and they look at me, and says, "Are you Assyrian?" I
11 said, "Yeah, I am. How do you know?" They says, "You look
12 like Assyrian." And he says, "I am Yule's brother. He
13 phoned me to pick you up. He is busy. If you are ready
14 we will go." I said, "Yeah, I'm ready. Just give me minute."
15 So I went back to room and I take some cigarettes with me.
16 I remember I give him one pack of cigarette, the person that
17 take me out. And he was with station, I don't know, I don't
18 remember what color station.

19 Q Station? What do you mean? What was the station?

20 A The car was big car, station wagon.

21 Q Oh, station wagon? A Yeah, looked station wagon.

22 Q Did it have any writing on it, on the door?

23 A I don't know, some writing on it, but I don't know what
24 it was. I don't pay attention.

25 Q What car was it, do you know? Was it a light or a black?

26 A I don't know exactly. Can't say.

1 Q And how were -- did you say two men came in there?

2 A Yes.

3 Q How were they dressed? Do you remember?

4 A Just work dress.

5 Q Work clothes? A Work clothes, yeah.

6 Q Okay. And what time is this? A Some time between
7 7:00, 7:30. I don't know exactly.

8 Q And where did you go? A They take me to motel,
9 San Franciscan Motel.

10 Q The San Franciscan Motel? A Yeah.

11 Q Where is that located? Or do you know?

12 A I don't know. Downtown somewhere.

13 Q Is that where Kitty works? A Yeah.

14 Q And is that where Mr. Lazar works? A Yeah.

15 Q And you went there? A Yes.

16 Q Now, later on, what did you do when you got there?

17 A We went inside and Yule's brother, he came with me
18 because I don't know Yule. And we get in and Yule, he was
19 talking to some person, so he finished talking. He came
20 back and his brother said, "Here is David Malek Ismail. This
21 is my brother, Yule." So I meet him there.

22 Q Is that the first time you met Yule? A Yeah.

23 Q Did you have any luggage with you? A No.

24 Q Did you leave your luggage back at the Sunset?

25 A The motel, yeah.

26 Q All right. Did you and Yule go anywhere or did you

10

1 stay there? A No, we stayed there in the dining room.
2 They take me dining room, have a dinner.

3 Q Did you have anything to drink? A We have some-
4 thing for drink. I don't know how many shots.

5 Q And did Yule take you home afterwards?

6 A Yes, he did take me home, some time between 10:00, 10:30,
7 11:00. I don't remember exactly.

8 Q Did he come in your apartment or in the motel when he
9 took you home? A Did he what?

10 Q Did he come inside? Did you invite him into your room
11 or did he come into the motel? A Yeah, I believe he
12 was have a Pinto, a small car, he drive me right in.

13 Q He didn't get out of the car? A No. He just
14 drive right in.

15 Q And you said good-night to him? A And I left him.

16 Q Now, when you are at the Sunset Motel did you receive a
17 phone call by someone? A No. I receive -- the guy
18 told me that you had a phone call from Yule that day, a Fri-
19 day, and I think just Yule. But I did make some phone call,
20 as I said, to Lazar and I make phone call to Los Angeles,
21 that is my brother -- brother-in-law's brother.

22 Q Did you make that phone call from the Sunset Motel?

23 A I think so.

24 Q And did you speak to anybody in Los Angeles?

25 A No, wasn't there.

26 Q Is that the only -- those are the only two phone calls

11

1 that you made? A Yes, sir.

2 Q At the Sunset Motel? A Yeah.

3 Q Okay. Now, where was your luggage when you returned?

4 Was it in your room? A In my room.

5 Q Okay. Now, that same night before you, these two men

6 came to see you, the men dressed in working clothes, where

7 were you? A You mean before 7:00 o'clock?

8 Q Yeah. Let me help you a little bit. Does the word

9 "Zim's" mean anything to you? A Yeah, I was in a bar.

10 Q Where is that bar? A I think somewhere close to

11 19th.

12 Q Is there -- is Zim's Restaurant -- A Yeah.

13 Q -- close to the Sunset? A Yeah. I had breakfast

14 there. It's close to Zim's Restaurant.

15 Q And you were in this bar? A Yes. I went to the

16 bar about 5:00 o'clock. I want to spend couple hours there

17 before Yule come pick me up.

18 Q And you went there alone? A Yes.

19 Q All right. Did you do any drinking then?

20 A Yeah. I was drinking Johnny Walker by myself. There

21 was couple guys sitting there, too, a little far from me.

22 Q You already looked at the gun, People's Exhibit No. 4?

23 A Yes.

24 Q The .22 caliber pistol? A Yeah.

25 Q Did you see that gun that night? A I believe

26 that that is the gun, yeah.

12

1 Q All right. Tell me, where did you get it and under
2 what circumstances? A This gun?

3 Q Yeah. A First time?

4 Q Yeah. A I was sitting drinking, as I said, and
5 there was two guys sitting drinking there, too. One of them
6 is left, and another one, he take his beer, he was drinking
7 by the bottle, he take his bottle and he came to me, said,
8 "Can I enjoy your company?" I said, "Yeah." He start
9 talking, he was between 40 to 45, I don't know exactly. And
10 I remember he wasn't shaving, maybe couple two or three days,
11 and there is some burning, looked like, on face over here
12 left side (indicating), and he was talking about his wife,
13 and she left him, I don't know, he was a little drunk. And
14 he look at me, said, "What kind of cigarette is that?" I
15 said, "That's Canadian cigarette." He said, "Are you
16 Canadian?" I said, "Yeah, I am." "Where from?" I
17 told him. And he start talking more to me, and his beer is
18 finished, he asked me to buy him beer. So I did buy one
19 bottle beer for him. And later on, he was drinking too
20 fast, and he finish his beer, he asked me another beer to buy.
21 So I said, "I'm sorry, I don't have enough money, you know."
22 And he turned to me, the seat was moving, he just turned like
23 that (indicating), and he said, "You want to buy a gun?"
24 I said, "No, I don't need a gun." And he didn't ask me more
25 than that, he just try to pull it out. So I turned myself
26 face of him in case he wants to do something, and he pulled

13 1 the gun, it was wrapped some white rag, and I told him, "I
2 don't want a gun." But he said, "Listen," he was looking
3 left and right, all of the time he was looking left and right,
4 and he told me, he said, "I'll give you that for \$20." Well,
5 I did buy it. I thought it was good buy. And I pay him
6 \$20. I take the gun. I put it underneath my shirt. Was
7 with two clips, put one in each pocket, pants, and at that
8 time I was having a double Johnny Walker, a second one, and
9 I left. And he asked me, "Where are you going?" I said,
10 "I'll be back in a minute." So I left my cigarette there
11 with some change, and my glass of whiskey in case he give me
12 trouble, or something like that. So I just left there, went
13 back to motel.

14 Q And you had the gun with you? A Yeah.

15 Q All right. When you got back to the motel what did you
16 do with the gun? A Put it in that suitcase, that
17 small one (indicating).

18 Q And then you went out with Yule Lazar or his brother?

19 A Yeah.

20 Q Okay. Now, the next day was November the 1st, a
21 Saturday? A Yeah.

22 Q Did you move to the Franciscan? A Yeah. That,
23 the Friday night before I asked Yule, I said, "They don't
24 have a bath shower in here. I don't like that motel. They
25 don't have a bath shower, a bath and no shower, no nothing,
26 you know. Could you get me room in your hotel?" He said,

1 "Yeah, sure. Get you, and will give you discount, too."

2 Q Now, who took you over to his motel?

3 A Who take me to what?

4 Q To the Franciscan? Who took you from the Sunset to
5 the Franciscan, or how did you get there?

6 A I get, Yule take me.

7 Q Yule took you? A Yeah.

8 Q Who paid the bill at the Franciscan -- or at the Sunset?

9 A I went Saturday to pay the bill, and the person he was
10 there said already get paid. I thought Yule paid, and I
11 found out later on it wasn't he paid. It was Kitty paid.

12 Q Now, on Saturday what did you do? You checked into
13 the Franciscan? What did you do that day?

14 A Well, Kitty, she came, picked me up. Yule, he was busy.
15 And she take me to some museum over there. I have some
16 stone to show, stones, you know, and she show me San Francis-
17 co from 1:30, 2:00 o'clock we came back again.

18 Q All right. And on Sunday did you go to church?

19 A Yeah. Saturday night I invite Yule for dinner because
20 he invite me day before. So Saturday night I invite him.
21 He take me some place, I don't know what it is called. And
22 I ask him if he go early tonight, I was thinking next day of
23 going to church, "Could you take me?" He say, "Sure, I
24 take you tomorrow to church."

25 Q Now, what did you do during the time that you were in
26 San Francisco with the gun? A I carry gun most of the

15

1 time.

2 Q Most of the time? A Yeah.

3 Q How were you dressed most of the time?

4 A I had two suits with me, and I had a blue jacket, and I
5 had another sport jacket, light brown, and two pants, and I
6 had, I believe, four shirts. I was dressed different, you
7 know.

8 Q Well, for the most part did you dress with a suit or did
9 you wear sports clothes? A Sport, I believe.

10 Q And you testified that most of the time you carried the
11 gun? A Yeah, say --

12 Q Did you carry the gun when you went to church on Sunday?

13 A No.

14 Q Mm? A No.

15 Q Where was the gun? A It was in that small bag.

16 Q All right. Now, when did you decide to leave San
17 Francisco? A I think Wednesday night I said, "I
18 going to move tomorrow. I got to get back."

19 Q All right. Wednesday night. Now, when you were at
20 the Franciscan Motel did you make any phone calls?

21 A Yes, I did. I phoned first day, I believe it was
22 Sunday night, and I phoned my wife in Canada. And in my
23 room was friend of mine by the name of Eshaia De Mar Shimun.
24 And he talked to my wife, too.

25 Q Who was that? A Eshaia De Mar Shimun.

26 Q In your room? A Yes.

1 Q Where did he come from? A Well, Sunday I went to
2 church. I meet him there. And I meet his mother and
3 sisters, and they take me home, and I stay there until 5:00
4 or 6:00 o'clock.

5 Q Where did he live? A Anza, something like that.
6 I had his address.

7 Q Anyway, he was in your room? A Yes.

8 Q And you made some phone calls while he was there?

9 A Yeah. I phoned Canada. I phoned my wife.

10 Q Did you phone Australia? A I did -- not on
11 Sunday. But I don't know, Monday or Tuesday, or I don't
12 know exactly. I phoned my niece in Australia.

13 Q What's her name? A Huh?

14 Q What's her name? A Werdia.

15 Q How do you spell that? A W-e-r, I guess, d-i-a.

16 Q What's her last name? A Shimun.

17 Q Shimun? A Yeah.

18 Q And you phoned her? A I phoned her house. And
19 the person by the name, I think William, he answer me. And
20 I asked, "Where is Werdia?" And he said, "They moved
21 thousand mile from here for one year." And I asked him,
22 where did they move? He told me the name of city. I said,
23 "Well, do you have any, her phone number or address?" He
24 said, "No, I don't have it." I talked to him for maybe two
25 or three minutes, that's all.

26 Q Did you make another phone call after that?

1 A Yeah. Right after that I make another phone call to
2 Yule Kanna.

3 Q Kanna? A Kanna, in Australia, Sidney.

4 Q Who is Mr. Kanna? A Well, the person I know, Mr.
5 Kanna, 1972, he's came to visit my father. He give us his
6 address and phone number and everything, so I asked him, him
7 and Werdia's husband very close friends. I asked him if he
8 knows Werdia's phone number or why they moved. He said,
9 "I don't know the phone number, but maybe this week some time
10 they can send it to me, the address and phone number, and I
11 would send it to you."

12 Q So you never spoke to your niece? A No. I don't
13 have any chances to talk to her.

14 Q Those are the only two phone calls you made to Australia?

15 A Yes.

16 Q Did you make any other phone calls anywhere else? You
17 already testified you called your wife and you made two phone
18 calls to Canada? A Yeah.

19 Q Any other phone calls? A I don't remember, no.

20 Q Now, what did you do with your luggage?

21 A My luggage with me.

22 Q Did you still have the same luggage that you had when
23 you came from the airport? A I still have them, until
24 last two weeks ago Joe says no, he don't have. You have one.
25 I believe I, when I left San Francisco I had a suit on me,
26 and I think I hang suit, I just roll and put in my suitcase

1 with another suit.

2 Q Well, let's get to that. You left San Francisco when?

3 A Thursday.

4 Q Thursday. About what time? A About 2:00 o'clock.

5 Q And where did you leave San Francisco from?

6 A From bus depot.

7 Q How did you get to the bus depot? A Well, walk.

8 Q And did you buy a ticket? A Yeah.

9 Q To where? A To St. Joe's.

10 Q San Jose? Yeah, okay. And did you take the bus to
11 San Jose? A Yeah.

12 Q All right. Now, before taking the bus to San Jose, did
13 you stop anywhere to buy anything? A I had couple drink
14 in, in a bar. It's close to, to bus depot.

15 Q Yeah. Did you buy anything? A I bought half a
16 bottle Johnny Walker Red.

17 Q Okay. I'll show you People's Exhibit 10-B. You see
18 that? A I think that --

19 Q Is that the bottle? A Look like my bottle.

20 Q Yeah. Your bottle. Anyway, you had this bottle and
21 you did what with it? You didn't drink it on the bus, did
22 you? A No.

23 Q What did you do with it? When you bought it what did you
24 do with the bottle? A I believe I put it in my shaving
25 suitcase.

26 Q Okay. And was that a pint bottle? A What's a

1 pint?

2 Q What do you call it? A Fifty.

3 Q Fifty what? A Half a bottle.

4 Q How much did you pay for it? A Well, I don't
5 remember exactly. I pay \$4, whether he give me some change
6 or I give him some change I don't know exactly.

7 Q Around \$4 is what you paid for it? A Yeah. He
8 give me some change or I give him some change. There was
9 change between us. So I don't know whether I gave or he gave
10 it.

11 Q So you put this into your small shaving bag?

12 A Yeah.

13 Q And you took the bus and came to San Jose?

14 A Yeah.

15 Q All right. Now, you got to San Jose, what did you do?

16 A I get my suitcase, and the small one, and I was waiting
17 for a taxi to come. Somebody says he phoned a taxi. And
18 taxi didn't show, 10, 15, 20 minutes. So I walked the
19 street and I seen taxi, so I get in taxi.

20 Q Now, all right, how were you dressed? In the gray suit?

21 A Yeah.

22 Q Black shirt? A Yeah.

23 Q And light-colored tie? A Right.

24 Q And where was the gun? A My pocket.

25 Q Where was the clips, the magazines?

26 A Was one in this side pocket and another one in the other

1 pocket.

2 Q Okay. And you got a taxi? A Yeah.

3 Q What kind was it? A Yellow Cab or black cab?

4 A I believe yellow.

5 Q Okay. Now, tell me, what did you tell the taxi driver?

6 Where did you tell him to take you? A I said, "Could
7 you take me to motel close to south San Jose and Cottle?"
8 And he said, "Yeah."

9 Q Cottle? A Cottle Street, yeah.

10 Q And what did he say? A He said, "Yeah." And he
11 drive me long way, I don't know where he take me, and he
12 stop in front of big plaza. He said, "There is no motel
13 from here. We have to go back." I said, "Well, go back
14 to motel."

15 Q Did you later go to that plaza? A Hmm?

16 Q Did you later go to that plaza? A Yes.

17 Q Where was that plaza? A He call it Cottle and
18 Santa Teresa, something like that.

19 Q And in that plaza did they have a lot of shops?

20 A Yes.

21 Q Restaurants? A I believe they have a lot of shops.

22 Q Was there a pizza place? A A lot of cars there.

23 Q Was there a pizza place there? A Yes. I seen it,
24 I was in taxicab.

25 Q So then he stopped by the plaza the first time and said
26 there were no motels around here? A Right.

1 Q What did you tell him to do? A I said, "I want
2 to go to motel." So he make U-turn there, after he pass the
3 light he make a U-turn.

4 Q Okay. A And went back again.

5 Q And where did he go? A And he take me to some
6 motel, just block far from Cottle, I guess, block or two
7 block, and called Oasis, something like that.

8 Q All right. And did you pay the man? A Yes, I did.

9 Q How much did you pay him? A I don't know exactly.

10 Q Well, more or less? A Eight-fifty or nine dollars,
11 I think.

12 Q From San Jose out to the Oasis Motel? Eight-fifty?

13 Nine dollars? A Yeah, something like that. Was more
14 than eight, I believe, but I don't know exactly how much was.

15 Q Now, he took you to the Oasis Motel? I take it he drove
16 you right up to the office or the --

17 A No, he stopped in front office.

18 Q Yeah. And you got out? A Yeah.

19 Q You paid the man? A Right.

20 Q and you took your luggage? A I believe I took the
21 luggage.

22 Q Well, did you? A I believe I take my luggage,
23 this one (indicating), and my suitcase, too.

24 Q So you believe that you got out of the taxi and you had
25 two suitcases, the small one here that is in evidence, and
26 the larger one? A Not two, one suitcase and this one.

1 Q What happened to the clothes that was --

2 A I roll them, and when I take my suit I roll this one and
3 put it in my suitcase.

4 Q You rolled the plas -- was it plastic?

5 A Yeah, was, the thin plastic, you can roll it, you know.

6 Q Roll it? A Yeah.

7 Q And you put that in your suitcase? A Yeah.

8 Q So then you went in the motel with one suitcase, the
9 small one? A I believe, I thought were two, not one.

10 Q You thought you had two? A Last two weeks ago Joe
11 told me what you have. I told him --

12 Q Never mind what Joe told you.

13 MR. PESTARINO: Joe, incidentally, is our investiga-
14 tor.

15 Q (By Mr. Pestarino) Joe Hernandez is the person you are
16 referring to? You are talking about Joe Hernandez?

17 A Yeah.

18 Q Never mind what he told you because you can't say that.

19 A Mm-hmm.

20 Q So you thought you had two suitcases? A Yeah.

21 Q Well, anyway, you went to register, didn't you?

22 A Yes, I did.

23 Q You used your right name to register?

24 A Yeah.

25 Q Gave your address and everything on the card?

26 A Yeah. I print it.

1 Q And I take it that -- what did you do with the bottle
2 of Johnny Red that you had bought in San Francisco?

3 A When I get to room I was very hungry. I called the
4 lady. I said, "Is there any restaurant around here?" She
5 said, "Yeah, there is, just half a block from here behind
6 gas station there is restaurant." Call it, "Stick Barn,"
7 (Steak), or something like that, I don't know.

8 Q Steak Barn? A Something like that. Steak
9 something. So I walked there. So I get in and I asked them
10 for something to eat. And the waiter was -- wasn't female,
11 was male, he told me that we're sorry, we're closed, no more
12 meal from, from 4:00 o'clock after or 5:00 o'clock after, I
13 don't remember exactly. So I sit down there and asked for
14 double shot Johnny Walker. He brought it to me. And he
15 asked me to -- he said, "Help yourself." There was cheese
16 and crackers there. And I did. I had one or two time
17 cheese and crackers.

18 Q And did you go back to the motel? A Yeah, after
19 that shot I went back to motel.

20 Q This Johnny Red was full when you bought it, was it not?

21 A Yes, sir.

22 Q How did it get in that condition? A Well, I was in
23 room, and I phoned the lady, I said, "I need taxi," and I
24 opened it. I say I am going to have one shot, you know,
25 going to have something to eat, have first shot. And taxi
26 didn't come. And I said I'm going to have another shot. So

1 by the time taxi come I have it almost to here (indicating).

2 Q Did you mix that with water or did you drink it straight?

3 A A little water.

4 Q How much? A Not much. Very little.

5 Q And the taxi came then, didn't it? A Yes.

6 Q Did you finish all of your drinks that you had poured
7 or was there any left? A I don't know exactly.

8 Q Okay. So, anyway, a taxi came and what did you tell the
9 taxicab driver? A I said, "Take me to Cottle and Santa
10 Teresa."

11 Q To Cottle and Santa Teresa. Why did you want to go to
12 Cottle and Santa Teresa? A I asked the lady if any
13 plaza close to motel. She said, "No. There is, little far
14 from here." So I thought that is the closest one.

15 Q Okay... So he took you there? A Yes, he did.

16 Q And how much did you pay him? A Between two to
17 three dollars. I don't know exactly.

18 Q Did you ask him where Woosley Street was?

19 A I don't remember. Probably I did. But I don't
20 remember exactly.

21 Q Did you see him take out a map and show you some place?

22 A Probably he did. I don't remember exactly. Not clear.

23 Q Well, had you heard the name "Woosley" before?

24 A Yes, I did.

25 Q Where did you hear that? A Well, I get, I sent
26 the mail to Mar Shimun, and he answered me and we -- I phoned

1 him and his father-in-law had phoned him, too, from my place
2 and that time, and the last time I was talking I said, "Maybe
3 in summertime I going to go," I said, "we going to move
4 from London, Ontario, but we don't know where we are going
5 but probably we going to come to San Francisco some place,
6 and California." And he said, "If you come through
7 California, come on over." And he told me what Cottle, get
8 Cottle, it's not too far from my place.

9 Q And did you remember the name Cottle?

10 A Cottle, that is the only name I remember.

11 Q And so you don't quite remember telling the taxi driver
12 or asking the taxi driver where Woosley Street was?

13 A Probably I did but I don't remember clearly.

14 Q Well, anyway, you stopped at the pizza place, didn't you,
15 on -- A Yes, I did.

16 Q -- on Cottle? And what did you do there?

17 A I asked for small pizza, and I had a beer. They don't
18 have the liquor there. So I wait to pizza be cooked. I
19 finish the beer and asked them for another beer. And the
20 pizza at that time was ready almost, and I eat little pizza,
21 and I couldn't, I felt like I can't eat, like throw -- sick,
22 so I get out of that place. I get out and have a, some fresh
23 air.

24 Q All right. Now, where did you go? A At that time
25 I thought I must have, see him tonight, go to Mar Shimun's
26 place tonight. Then I be free, free Saturday and Sunday if

1 I am going home.

2 Q Were you intending to go there another day?

3 A Yeah, probably supposed to be Friday, phone him before
4 noon some time and then go there.

5 Q So instead of phoning him the next day you decided to
6 go there that night? A Yeah.

7 Q And how did you know where he lived?

8 A That is why, I said probably I asked the taxi driver,
9 maybe.

10 Q Mm-hmm. And how did you get there? A I believe
11 walk.

12 Q And do you know what time this was about?

13 A No.

14 Q All right. You walked. And did you have any trouble
15 finding the house that he lived in? A I believe it
16 take me a long time to get to the house.

17 Q You didn't find it right away? A No.

18 Q How were you feeling about this time? Did the alcohol
19 have any effect upon you? A Yeah, it was.

20 Q How did you feel? A I was feeling a little, not
21 drunk I thought, but I was feeling like, like I could talk
22 and if he asks me that by phone, I told him everything was
23 going on.

24 Q All right. But I mean, how did you feel? You know,
25 when people drink sometimes they feel drunk, sometimes they
26 don't feel drunk, but they feel happy. How did you feel that

1 night when you drank whatever you drank out of that bottle
2 of Johnny Red and with the two beers and the pizza, how did
3 you feel? A I was feel haby (heavy), but I had for
4 around 10, 15, 20 minutes I get sick, a little bit, I think
5 because I mixed the beer with that Johnny Walker.

6 Q Anyway, you found this house on Woosley Avenue?

7 A Yeah.

8 Q When you got to the house what did you do?

9 A I don't remember exactly, I ring the bell or knock the
10 door, but I remember I see Mar Shimun.

11 Q Where did you see him? A I seen him, he opened the
12 door for me.

13 Q Is there a window on the door? A Yeah, I see one
14 head looking from a window. I don't know who it was.

15 Q All right. So he opened the door? A Yeah.

16 Q When he opened the door what did you do and what did he
17 do? Did he greet you? A Well, yeah, I kneel and I
18 kiss his hand. And he smiled and he brought me in.

19 Q In what? A He brought me inside the house. I
20 get inside the house. And I remember he told me, "I hear
21 that you are here for a week." I said, "Yes, Kessy, I was
22 here for a week."

23 Q What did you call him? A Kessy.

24 Q What's that mean? A Holiness.

25 Q Holiness? A I think Holiness in English.

26 Q And so what happened? A So I get inside, and he

1 was talking to me, and he was happy, the way I see him, and
2 I thought I, I can explain what's going on, what he asked me,
3 how is Assyrian in Canada and Iraq and in Syria, and so I
4 told him, "Kessy, you get married and most of the people I
5 don't think they accept you." And as a family I was
6 talking. I don't know, as a member of family I was thinking
7 that I --

8 THE REPORTER: Member of what?

9 THE WITNESS: -- am there, just member of his family,
10 that is why I was talking.

11 Q (By Mr. Pestarino) Well, did you tell him at any time
12 about, did you speak about his resignation and coming back
13 into the church? Was that -- A No.

14 Q -- a topic of conversation? A I said, "Kessy,
15 don't come back again because the most of the people they
16 don't like the Patriarch get married, and you are retired
17 now," and these things I told him, you know.

18 Q How did you feel when you were talking to him like that?

19 A I was --

20 Q Nervous, scared? A I was feeling very nervous
21 and shaking because you can't say that words for a Patriarch,
22 you know.

23 Q And what did he do? A Well, he get very mad, he
24 get very upset, and I remember he call me some bad thing,
25 first of all, and he get -- he asked me to get out of the house.
26 And he slapped me for, he hit me with his hand.

1 MR. ROBINSON: He what?

2 MR. PESTARINO: Yeah.

3 THE WITNESS: By right hand and then left, and I
4 tried to get out of the house. And he still has hand over
5 here on my left shoulder, and he knocked by his knee, I
6 believe, I fell down, I believe that.

7 Q (By Mr. Pestarino) Was there a chair there, or any
8 furniture? A I don't know.

9 Q Do you remember hitting anything? A I don't know.

10 Q Do you remember anything scraping on the floor?

11 A I don't know exactly. I can't say.

12 Q All right. Then what happened? A Then I find
13 myself having shower in some place.

14 Q Well, no. Before you get to the shower, what he --
15 you testified that he kicked you, did he? A Yeah.

16 Q First he slapped you, then he kicked you? First he
17 yelled at you? A Yeah. He yelled at me, and he hit
18 me with his knee, and I was trying to get out when I, I
19 believe fell down. He gave some bad word to my father, and
20 he spit in my face, too.

21 Q He what? A Spit in my face and some bad word,
22 two bad words for my father.

23 Q What happened then? A I was down, I just -- I
24 don't know.

25 Q What do you mean, "You don't know"? A I really --

26 Q Don't you remember anything? A I really am

1 telling the truth, I don't remember nothing when I heard
2 that words about my father.

3 MR. ROBINSON: Well, I think that we can leave out
4 the opinion by the witness that he is telling the truth. As
5 far as whether he is telling the truth that is for, something
6 for the jury.

7 MR. PESTARINO: Of course it is.

8 THE COURT: You may answer the question as to what
9 happened.

10 Q (By Mr. Pestarino) What happened? A I don't
11 know.

12 Q You don't remember anything happening after that?

13 A I don't remember nothing what happened.

14 Q Do you remember getting the gun? A Yes.

15 Q You remember that? A I remember I had a gun.

16 Q Yeah. A Yeah.

17 Q You remember getting the gun? A I can't clear it.

18 Q Do you remember anything about the ammunition?

19 A No.

20 Q Was the gun loaded when you went over there?

21 A No, I never carry gun loaded.

22 Q Never? A Never.

23 Q You didn't that night? A No. Wasn't loaded.

24 Q And you remember shooting that gun? A No, sir,
25 because if I remember anything happen to him probably I going
26 to kill myself right there, a hundred per cent, I would

1 shoot myself.

2 Q Well, you sat through the trial here and you heard all
3 of the evidence so far, don't you feel that you killed him?

4 A Well, after I read the newspaper the next day, third
5 day I see what happened, look like, you know, I did it. And
6 I feel sorry. Sure, I feel sorry. He serve our church
7 for over 50 years, is great family, my cousin, probably I
8 could not see my cousin which is his cousins and his mother
9 and father, I can't see anymore. I going to feel ashamed
10 all of my life, rest of my life.

11 Q Shame or sorry? A Sorry and shame.

12 Q Did you hate this man? A I don't know.

13 Q Did you have any bad feeling against this man when you
14 went over there, the Patriarch? A No. No. I
15 shouldn't go that night. Go next day.

16 Q Well, then what happened after that? Do you remember
17 running? A No.

18 Q Do you remember falling across a chain-link fence?

19 A No.

20 Q Do you remember anything before you got to the pizza
21 parlor? A I remember as a dream, I see, I see one
22 officer and that is all.

23 Q That's all? A Yeah.

24 Q Do you remember this officer telling you to put your
25 hands behind your head? A No.

26 Q What do you remember about the officer?

1 A I think my hands on the wall, some wall some place.

2 Q Do you remember your hands on the wall? A Yeah.

3 Q Do you remember anything else about the officer?

4 A No. That is all.

5 Q Do you remember seeing a dog? A No.

6 Q Do you remember giving some extended statements to the
7 police at the police department? A No. I remember
8 see one lady, and she said something about my suit. I don't
9 know what she said. I wasn't paying attention. I don't
10 know what she was doing. That's all.

11 Q You don't remember talking to the police?

12 A No, sir.

13 Q Don't you remember being arrested, putting the handcuffs
14 on in back of you? A No.

15 Q Do you remember the officer telling you to put your
16 hands on the table? A That time I thought there is
17 something happened, but what, I wasn't clear what happened.

18 Q You don't remember putting your hands on the table?

19 MR. ROBINSON: Objection, asked and answered.

20 THE WITNESS: No. No, no.

21 THE COURT: I don't believe he answered that
22 question.

23 He did now.

24 Q (By Mr. Pestarino) Do you remember anything else,
25 holding your hands up or anything? A Put my hands
26 on the wall.

55

1 Q That is all you remember? A Yeah, before that I
2 remember I sitting, beer in the front of me. I don't know
3 where about. But I think it is same place, be the pizza
4 place, and I don't know why, how I get there or why I sit
5 down drinking. I was thinking that I went there, I am going
6 there, you know, I was just like a dreaming.

7 Q And you don't remember anything at all about the police
8 department? A No, sir.

9 Q What is the next thing that you remember?

10 A Have a shower and one police officer, he was there, and
11 he take my suit, that suit, and another two officers they
12 take me some place upstairs, third floor, second floor, I
13 don't remember.

14 Q How much to drink did you have that night, Mr. Ismail,
15 altogether from, you indicated that you had, I think you said
16 you had a double shot in San Francisco at the bus station
17 or place next to the bus station? A Yeah, that was 1:00
18 o'clock at noon.

19 Q And then you indicated that when you went to the Oasis
20 Motel you stopped at the bar where the restaurant was, a
21 steak bar or something? A Yeah.

22 Q And you had a double shot of Johnny Red?

23 A I believe I had a, I think two double shot there, I
24 don't know exactly.

25 Q And then you came back to the motel and you had the
26 whiskey that was, that you consumed out of this bottle?

1 A Yeah.

2 Q And that bottle was full? A Yes, was full, I
3 opened up.

4 Q And then you had two beers at the pizza --

5 A Yes.

6 Q -- parlor? And a pizza? A I didn't eat too much
7 pizza.

8 Q Now, when you got into San Jose what time did you start
9 drinking? What time did you have these, this shot, double
10 shot or two double shots at the restaurant near the motel?
11 Well, let me help you a little bit. What time did you
12 arrive at the motel? A Around 5:00 o'clock.

13 Q Around 5:00 o'clock? A I think so.

14 Q So was it somewhere between maybe 5:00 and 5:30, or
15 5:00, 6:00? A When I went to the restaurant?

16 Q Yeah. A Right after.

17 Q Right after? A Right after.

18 Q So shortly after 5:00 o'clock? A I asked the lady
19 for restaurant and she told me and I went.

20 Q That is where you had -- A Double.

21 Q -- double shot or two double shots? A Two double
22 shots.

23 Q You're not sure? A I'm not sure.

24 Q And how long does that take? A I say 20 minute,
25 I was hungry, I want to go back to find some others.

26 Q Twenty minutes? A About.

1 Q And then when you got back is that when you asked the
2 lady to get you a taxi? A Yes, I believe I went from
3 restaurant to the office. I told her, so I went back to my
4 room, she said, "I going to phone taxi," so I went to my room
5 and I open it. I said I going to have one shot, and I have
6 first shot. And next shot, and there is no taxi, so I
7 phoned her again. I said, "Where is the taxi?" She said,
8 "Be there in a minute." So take maybe 30, 35, 40 minutes,
9 taxi to get there, over, maybe 45 minutes.

10 Q And so that is when you did most of your drinking?

11 A Yes.

12 Q During that period of time? A Yes.

13 Q And then a little later at the pizza parlor two beers?

14 A Mm-hmm.

15 Q Now, how did all of that, the liquor that you consumed,
16 how did that affect you? How were you feeling?

17 A I was feeling haby (heavy), I wasn't feeling very bad
18 at that time until I ate the pizza, and I had, had a beer.

19 Q Are you a member of the A.U.A.? Do you know what that
20 is? A I don't know what A.U.A. mean until last

21 October. I know in Assyrian what it means but not
22 Universal Alliance, I don't know what it means there until
23 October.

24 Q Were you a member of that at any time?

25 A Some time in October, between 10, 20th of October, I
26 sign that I like to be a member, but I don't know whether they

1 accept me or not yet.

2 Q Did you study what the A.U.A. was? A No.

3 Q Before? A No, I don't know yet what they are.

4 I know what I heard is, they want to get all Assyrian together
5 and love and something, I didn't read what they do and what
6 they had.

7 Q Did you shoot the Patriarch thinking about it?

8 A No, sir.

9 Q Planning it? A No, sir.

10 Q With malice?

11 MR. ROBINSON: Objection --

12 THE COURT: The objection is sustained. That
13 calls for a legal conclusion.

14 MR. PESTARINO: All right.

15 Q (By Mr. Pestarino) What do you think caused you to do
16 this?

17 MR. ROBINSON: Objection, he says he didn't do
18 anything. This calls for speculation as to what he thought
19 he didn't do.

20 THE COURT: No. Overruled. If he is implying or
21 if he is admitting that he committed an act, then I think
22 that it is certainly permission to indicate a state of mind
23 at the time.

24 MR. ROBINSON: He says he didn't do it. He says
25 he doesn't remember doing it, so how can he give us his
26 opinion as to why he did something when he says he doesn't

1 remember doing it?

2 THE COURT: His counsel asked him the question.

3 Overruled.

4 Q (By Mr. Pestarino) Why do you think this happened?

5 A What I think? Could you repeat it, please?

6 Q Well, let me ask you another way. Your father and you
7 were very close? A Very close, yeah.

8 Q You testified that the Patriarch called your father a
9 vile name?

10 MR. ROBINSON: Objection, asked and answered.

11 THE WITNESS: Very bad name.

12 THE COURT: Overruled.

13 MR. ROBINSON: Thank you, Your Honor.

14 Q (By Mr. Pestarino) A very bad name? A Mm-hmm.

15 Q And after he called that bad name what happened to you?

16 A I wouldn't accept that.

17 THE COURT: He would not accept that.

18 Q (By Mr. Pestarino) What happened to you?

19 A I just, I just got upset. I don't know what happened
20 to me, what, I lost everything that I had.

21 Q At any time were you angry at the Patriarch personally?

22 A No, sir.

23 Q Were you angry at his wife or his family?

24 A No, sir.

25 Q Were you angry at his parents? A No.

26 Q Or her parents? A No.

1 Q Did anybody pay you to do this? A No, sir.

2 Q Anybody ask you to do it? A No. Nobody could
3 ask me that. If anybody asked me that --

4 MR. PESTARINO: I think that is all I have.

5 THE COURT: Let's take the recess then, counsel,
6 before we have cross-examination.

7 Ladies and gentlemen, we will take our afternoon
8 recess, about 15 minutes, and resume roughly around 3:00
9 o'clock. You will keep in mind my previous admonition.
10 You can step down also, Mr. Ismail.

11 (Short recess taken.)

12 THE COURT: Let the record show that the jury is
13 present and defendant and counsel are present. You may
14 proceed.

15 MR. ROBINSON: Thank you.

16 CROSS-EXAMINATION

17 BY MR. ROBINSON:

18 Q Mr. Ismail, to be fair to yourself and to be fair to me,
19 if I ask you a question and you don't understand it, okay?
20 Stop me. Tell me you don't understand it and I will rephrase
21 it to make sure that you are answering the questions that I
22 am asking. Okay? A Okay.

23 Q Is that fair? A That's good.

24 Q Okay. Now, you told us on direct examination that the
25 last time you talked to the Patriarch was in February of
26 1975? A Something like that.

1 Q Okay. And that was your last communication with the
2 Patriarch? A I believe so.

3 Q Okay. And that communication consisted of a telephone
4 call or letter, which? A I believe the letter.

5 Q Okay. And the letter is the letter that you previously
6 identified as Defendant's Exhibit H?

7 MR. ROBINSON: May I approach the witness, Your
8 Honor?

9 THE COURT: Sure.

10 Q (By Mr. Robinson) Is that the letter we are talking
11 about, sir? A Yeah.

12 Q Okay. And you told us that it was your intention to
13 discuss this letter with the Patriarch, come down and see
14 him sometime? A I would like to see him sometime.

15 Q All right. Well, regarding that letter and Defendant's
16 Exhibit H, you told us a few minutes ago on direct examination
17 this morning that you kept this letter, "And I was going to
18 talk to him about it sometime," do you remember making that
19 statement? A I remember, yeah.

20 Q Okay. And was that a truthful statement, what you told
21 us this morning under oath? A Yeah.

22 Q And did you bring this letter with you when you came
23 down to San Jose? A I don't think so.

24 Q All right. And did you memorize the contents of that
25 letter? A Yeah.

26 Q All right. And you had trouble reading it this morning

1 for us from the witness stand, didn't you?

2 A That's right.

3 Q Okay. But you had memorized the contents of it?

4 A I know what's in it but I can't explain in English.

5 Q And so you didn't feel any need to bring this letter
6 down to discuss it with the Patriarch, you just memorized
7 the contents of it, right? A Yeah.

8 Q Okay. Now, let's talk about the gun for a minute.

9 Okay? You told us that you got the gun up in San Francisco?

10 A Right. Yes.

11 Q And you got the gun Friday and about 5:00 o'clock right
12 before you met Yule Lazar? A Something, between 5:00
13 to 7:00.

14 Q And at this time you were in a bar in San Francisco,
15 right? A Yeah.

16 Q Right down by Zim's, 19th Avenue? A Yeah.

17 Q Okay. And there were two guys drinking in the bar?

18 A Right.

19 Q One guy got up and left? A Mm-hmm.

20 Q Okay. And the other fellow started a conversation with
21 you? A Mm-hmm.

22 Q All right. Now, were you seated at the bar? Were you
23 seated back at a table? Where were you seated?

24 A At the bar.

25 Q And were there any other people in this bar besides
26 yourself, the individual you had the conversation with, and

1 the bartender? A There was some people, was very far,
2 and bartender, and big man, six two, six three, and heavy.

3 Q And you bought this man a bottle of beer?

4 A Yes, I did.

5 Q Because he asked you to buy him a bottle of beer?

6 A Yes.

7 Q And then he asked you to buy him another bottle of beer?

8 A Yes.

9 Q And you told him that you didn't have any more money?

10 A Mm-hmm.

11 Q So after you told him that you didn't have any more
12 money the guy said that he would sell you a gun for \$20?

13 A Right that time he told me that, yeah.

14 Q Where were you supposed to get the money to purchase
15 this gun after you just told the man you didn't have any more
16 money?

A I didn't tell him I don't have no money.

17 Q I see. What did you tell him? A I said I don't
18 have enough money. I need the money.

19 Q All right. You don't have enough money to buy a bottle
20 of beer but you have enough money to buy a gun?

21 A Well, \$20, it's worth it to buy that gun.

22 Q Wait a minute. How much did the bottle of beer cost?

23 A I don't remember exactly.

24 Q Well -- A It was change on the table, he take
25 from the change.

26 Q Was it a dollar, two dollars? A I don't know

1 exactly.

2 Q Well, it wasn't any more than \$2, was it?

3 A I don't believe it.

4 Q And you told this man that you didn't have enough money
5 to buy him another bottle of beer and then he said, "Well,
6 how about buying a gun"? A Yeah.

7 Q Okay. Well, was the gun, did the gun cost less than a
8 bottle of beer? A No, cheaper than bottle of beer.

9 Q It was cheaper than a bottle of beer? A For me it's
10 cheaper. It's worth it, more than \$20.

11 Q Okay. So you bought this gun from the man, right?

12 A Yeah.

13 Q Okay. And although you really didn't need a gun?

14 A No, I don't need. I have three gun.

15 Q And they are at home? A Yes, sir.

16 Q And you keep one in your car? A When I drive it.

17 Q Okay. And how many cars do you have?

18 A I have one.

19 Q And I take it then if the Canadian authorities
20 immediately after this happened went to your car and searched
21 it they would have found a gun? A It wasn't in my car.

22 Q It wasn't in your car. Where was it?

23 A It was in home.

24 Q You took it out of your car and put it in your home?

25 A Sure, yeah.

26 Q Now, immediately after you bought this gun, did you think

1 it was sort of odd that a guy, a stranger approaches you in
2 the bar and asks you to buy a gun, you think that was unusual?

3 A Say that again, please?

4 Q Do you think that it is unusual -- A Mm-hmm.

5 Q -- did you feel that it was unusual that a stranger who
6 you don't even know asked you to buy a gun in a bar?

7 A He thought that I am a stranger?

8 Q Well, did you think that it was unusual that this man
9 asked you to buy a gun in the bar? A I think at that
10 time, yeah.

11 Q Okay. Sort of strikes you as odd, right?

12 A Mm-hmm.

13 Q Okay. And this has never happened to you before, has
14 it, a stranger comes up in a bar and asks you to buy a gun?

15 A Never happened before.

16 Q So that would be something out of the ordinary, unusual,
17 right? A It never happened to me so I don't know.

18 Q Then when you saw Mr. Lazar a few minutes later, you, I
19 take it, you told him about that? You said, "Hey, Yule,
20 let me tell you what happened when I came to the United
21 States. I'm sitting in a bar and some guy comes up and says
22 'Hey, you want to buy a gun for \$20?'" I'm sure that you

23 would have told him that, huh? A I'm not --

24 Q You didn't tell him that? A No, sir.

25 Q You were out with him that night? A Yeah.

26 Q Had dinner with him? A I don't know him.

1 Q You don't know him? You just didn't mention it to him?

2 A No, sir.

3 Q Was there any special reason you didn't mention it to
4 him? A I don't know him very well.

5 Q Well, you didn't know the man in the bar very well, did
6 you? A Yeah, he -- no need to tell him nothing why,
7 there is no reason for it.

8 Q Okay. And this man also sold you two clips for the gun?

9 A Yeah.

10 Q Okay. Now, you are familiar with guns, aren't you?

11 A Yeah.

12 Q You told us that you were? A Mm-hmm.

13 Q You thought \$20 was a good price for that gun?

14 A Yeah.

15 Q How much do you think that gun is worth?

16 A Seventy-five.

17 Q Seventy-five? A Eighty, something like that.

18 Q And the man said he would give it to you for twenty?

19 A Yeah.

20 Q And you paid him cash for it? A Cash money in
21 my pocket. I just got one bill of twenty and gave it to him.
22 I didn't bring all of my money out.

23 Q And you put this gun in your small suitcase when you
24 went back to your motel? A Yes.

25 Q Okay. Why did you do that? A I just put it in
26 there. I don't know why.

1 Q Well, you took it -- what were you wearing when you went
2 into the bar on Friday? A I was wearing something
3 sport, wasn't my suit.

4 Q It wasn't your suit? A Wasn't my suit.

5 Q You were wearing your sport clothes? A I guess so.

6 Q And then did you put on some different clothes when you
7 went out to dinner with Mr. Lazar? A I wear another
8 suit, I guess. I have another suit.

9 Q Can you describe that suit for us?

10 A It is light brown, very light brown.

11 Q Does it look anything like -- does it look anything like
12 the suit that you are wearing in People's 10-CC for
13 identification? Your other suit? A It is a little
14 close to this one. Yeah, close to that one.

15 Q Close to which one? A But different material.
16 It's a little close to that but different material.

17 Q The suit in 10-CC is the gray suit?

18 A This one, yeah.

19 Q And the other one you have was a brown suit?

20 A Mm-hmm.

21 Q And when you wore the brown suit did you wear the black
22 shirt with it? A No.

23 Q Wear a different colored shirt? A Yeah.

24 Q And wear a different tie with it? A I don't know
25 if I have a tie on me or not that night.

26 Q And that was the suit that you wore, the brown suit, when

1 you went out to dinner with Mr. Lazar? A Mm-hmm.

2 Q Now, eventually, you took the gun out of your small suit-
3 case, right? A I put in my suitcase, yeah.

4 Q And then you told us that you took it out because you
5 carried it around San Francisco with you? A Sometime,
6 yeah.

7 Q Why did you do that? A I don't know why.

8 Q Well, do you always do things without knowing why?

9 A Well, I like a gun, and I used to carry the gun when I
10 was 10 years old, 12 years old.

11 Q Yeah. A As soon as that.

12 Q Yeah. So you just started carrying it around?

13 A Yeah.

14 Q What do you carry it for? Protection?

15 A I just carry it.

16 Q Well, you carry an umbrella when it rains, right?

17 A What's that?

18 Q When it rains you carry an umbrella because you are going
19 to have to use it, right? A I don't know what you mean
20 by that.

21 Q Well, my question is, you mean you just always carry a
22 gun around with you and you don't have any reason to carry it?

23 A I love the gun. And I carry it, that's all.

24 Q And what pocket did you carry it in?

25 A Sometime in this pocket (indicating), sometime I put him
26 underneath my shirt.

1 Q Was that while you were in San Francisco? A Yeah.

2 Q Well, why did you carry the clips around in your two
3 separate pockets like you told us? Do you love clips, too,
4 like you love guns? A Well, it's part of a gun.

5 Q Why didn't you hook it up with the gun if it is part of
6 the gun? A No, when I carry the gun it is not loaded.

7 Q Pardon me? A I don't load the gun when I carry it,
8 so have to be careful with, you deal with a gun.

9 Q Well, you're familiar with guns, aren't you?

10 A Yeah.

11 Q You fired guns, you told us, since you were 10 years old?

12 A That's right.

13 Q Very familiar with guns? A Yeah.

14 Q Then you know that gun has a safety feature on it that
15 you can carry it around loaded and it is perfectly safe?

16 A Yeah.

17 Q Why didn't you load it and carry it around?

18 A No need to load it.

19 Q Okay. Now, you told us that you were once employed at
20 the Ford Motor Company? A Yes.

21 Q And was your occupation there a janitor? A Yes.

22 Q Okay. You swept the floors, cleaned up? A Yeah.

23 Q Okay. And how long did you do that for?

24 A Not very long because I was check receiver before that.

25 Q You went from the check receiver to the janitor?

26 A Yeah.

1 Q All at Ford Motor Company? A Yeah.

2 Q And you were employed there for seven years?

3 A Something like that.

4 Q Now, you told us that you quit your job?

5 A Yeah.

6 Q And the reason that you quit your job is because you
7 were so upset about the Patriarch getting married, couldn't
8 think? A Just I couldn't work.

9 Q Couldn't work? A Mm-hmm.

10 Q Now, the Patriarch got married in August of 1973?

11 A Right.

12 Q And when did you quit your job? A November the 8th.

13 Q Of what year? A '74.

14 Q So you quit your job approximately a year and three
15 months after the Patriarch got married? A Yeah, but
16 at that time I don't work more than two or three months, at
17 the most four months.

18 Q At the most four months? A At the most four
19 months.

20 Q And during this time is this when you decided to get
21 involved with the Assyrian Universal Alliance?

22 A That period of time, you mean between 1974 to 1975?

23 Q From the period of time when the Patriarch got married
24 until you quit your job, is this when you decided to get
25 involved with the Assyrian Universal Alliance?

26 A No.

1 Q When did you decide to get involved with the Assyrian
2 Universal Alliance? A Last October.

3 Q October, '75? A Right.

4 Q Okay. And then all of a sudden after you decide to
5 get involved with the Assyrian Universal Alliance you decide
6 to make a trip down to San Jose? A Yeah.

7 Q Okay. Was there any relationship between your involve-
8 ment in the Assyrian Universal Alliance and this trip to
9 San Jose? A No, I don't know they accept me or not yet.

10 Q You were a prospective member? A I don't know
11 whether they accept me or not.

12 Q What requirements are there to get in, sir?

13 A Huh?

14 Q What requirements are there to get in?

15 A Well, as Assyrian get in.

16 Q Well, you are an Assyrian, aren't you? A Yeah,
17 I'm Assyrian.

18 Q And your family is well known? A Mm-hmm.

19 Q Okay. So they didn't immediately accept you?

20 A No, they should let me know.

21 Q Who is going to let you know? A I don't know
22 really.

23 Q Did you have to do something, some sort of initiation
24 before you could get into the Assyrian Universal Alliance,
25 show your loyalty or anything? A I don't think so.
26 Just you have to pay monthly or yearly.

1 Q Okay. Kitty Benjamin, she sent you a Christmas card in
2 1973 and on the Christmas card it said, "Dear David, Keep up
3 the good work for the A.U.A." What work were you doing for
4 the A.U.A. in December, 1973? A Well, I don't know

5 because I seen her the first time '68, the last time '75.
6 So when my father and my brother went to Iraq, the U.A.W. or
7 whatever it is, I think they was behind them.

8 Q Well, the U.A.W. is the United Auto Workers. Are you
9 talking about the Assyrian Universal Alliance, the A.U.A.?

10 A Yeah, that's A.U.A. So she thought maybe I am in that
11 thing, too, and I know what's going on, too, probably that is
12 why, because she never seen me then.

13 Q You told us that you sold your house in November, '74?

14 A No, my house, I think, sold summer of '75.

15 Q Summer of '75? A Yeah.

16 Q Okay. And how did you live between the time when you
17 quit your job at the Ford plant until summer of '75 when you
18 sold your house? A Was having some little money.

19 Q Some what? A Little money and employment --
20 unemployment office gave me.

21 Q Can you receive unemployment in Canada if you voluntarily
22 quit your job? A Six week after, yeah.

23 Q Six weeks after you quit a job, not laid off or anything
24 like that? A No.

25 Q You just quit, you can receive unemployment?

26 A After six week. If you are laid off, first week.

1 Q Okay. Now, you told us that you, your father was a
2 very religious man? A Yes.

3 Q And that every morning when you are in the Middle East
4 you would get up at 3:00 to 3:30 with your father and go to
5 church? A Yes.

6 Q Then in the afternoon between 4:30 and 5:00 o'clock you
7 would once again go to church? A Yes.

8 Q Then in the evening you would pray, right?

9 A What's that?

10 Q Then in the evening you would pray, too?

11 A Before go to bed.

12 Q Was this every day? A Every single day.

13 Q Now, you told us that you went to church in San Francisco,
14 would be November the 1st, I believe, that would be the
15 Sunday, or November the 2nd, November the 1st when you are in
16 San Francisco, do you remember telling us that?

17 A Mm-hmm.

18 Q You didn't go for the services, did you, sir?

19 A I was thinking of going to service. When we went
20 there service was over.

21 Q So you just arrived for the breakfast?

22 A No, I didn't even have breakfast. I didn't eat
23 breakfast.

24 Q You never made it to the church services, did you?

25 A I couldn't make it, no. Yule was working at the time.
26 He dropped me there. It was late.

1 Q Now, we sort of have a gap in your life here as you
2 have outlined it for us on direct. I was wondering if you
3 could fill in some information for us. Okay?

4 A Say that again, please?

5 Q Yeah. There has been a gap in your life. You said
6 until you were seven to eight years old you were in Iraq?

7 A Yeah.

8 Q Okay. So you left Iraq when you were eight years old?

9 A I left Iraq when I was seven years old? No. No, I
10 born in Syria but I was going with my father back to Syria.

11 Q Okay. You were born in Syria. When did you leave

12 Syria? A When I leave Syria? First time it was four--
13 I believe '43.

14 Q How old were you? A Eight.

15 Q Okay. And then you went to Iraq? A Yeah.

16 Q And you were there for seven or eight years?

17 A Something like that.

18 Q So you left Iraq when you were approximately fifteen?

19 A Fourteen.

20 Q Okay. Then you went to Lebanon? A Yes, I did.

21 Q Okay. And you left Lebanon when you were how old?

22 A I don't know exactly. It was 19 -- I think between
23 '47 and '48.

24 Q Well, you told us you were there for about a year?

25 A Yeah.

26 Q So you left when you were about fifteen years old,

1 Lebanon? A Something like that.

2 Q Okay. Then you spent six months in Egypt?

3 A Yeah.

4 Q Okay. A Not quite.

5 Q And you left Egypt when you were about what, fifteen-and-
6 a-half, sixteen? A Yeah.

7 Q Okay. Where did you go next? A We went to Persia,
8 1950.

9 Q Persia? And how old were you when you went to Persia?
10 Is that Iran now? A Yeah, call Iran.

11 Q How old were you when you got to Persia?

12 A I don't know. 1950.

13 Q All right. And how long did you stay in Persia?

14 A Not very long, about three weeks or four weeks.

15 Q Okay. Then where did you go? A No place.

16 Q Pardon me? A That's all.

17 Q You stayed in Persia until you came --

18 A No, we stayed just couple weeks, three weeks or four
19 weeks in Persia, we came back home.

20 Q Came back home to where? A To Syria.

21 Q Syria. And did you stay in Syria until you went to
22 Canada? A Yeah.

23 Q Now, the first time you saw the Patriarch was in
24 Damascus in 1962? A I believe.

25 MR. ROBINSON: May I see Defendant's F, please?

26 Q (By Mr. Robinson) And this picture depicts yourself,

1 the Patriarch, and your wife? A Yeah.

2 Q Okay. And you were both down on one knee, correct?

3 A Yeah.

4 Q Okay. And you are posing for a photograph?

5 A Mm-hmm.

6 Q Okay. Now, had the Patriarch helped you out of any
7 sort of trouble you had gotten into in 1960 to 1962?

8 A 1962 he help me, pry (pray) for my wife to have children,
9 but she didn't have any children.

10 Q Well, that's what you told us. Did you go there to
11 thank the Patriarch for something he had done for you?

12 A No, just is our Patriarch. He couldn't come to our
13 village. He came to Damascus. Everybody went there.

14 Q You were in Damascus in 1962? A No, I was in
15 the village, far, 600 mile.

16 Q Where is Damascus in relation to Syria?

17 A It is capital of Syria. It is close to Lebanon.

18 Q And the Patriarch came to Damascus in 1962?

19 A I believe so.

20 Q You went there to see him? A Mm-hmm.

21 Q Now, that was the first time you had seen him?

22 A Yeah.

23 Q Now, did you go there with your father?

24 A Yeah, my father, he was on his way to Canada.

25 Q Okay. And why was your father going to Canada?

26 A Something to do with the politics, Arabian politics, they

1 don't like what he do so he left for Canada.

2 Q Your father left the country? A Yeah.

3 Q And when did you leave the country? A Late '65,
4 first '66.

5 Q 1966? A January, '66.

6 Q And where did you go? A Canada.

7 Q Now, did you see the Patriarch in 1963?

8 A I don't think so.

9 Q 1964? A No.

10 Q 1965? A No.

11 Q Okay. You arrived in Canada then in 1966?

12 A January the 6th.

13 Q And did you take up residence with your father? Did
14 you live with your father in Canada? A Yes.

15 Q And who else arrived in Canada in 1966 besides you and
16 your wife? Anybody else? A Me and my wife and my
17 father and my brother Jack and his wife.

18 Q Where was Zaia? A Syria.

19 Q He was in Syria. When did Zaia leave Syria?

20 A I believe '68.

21 Q Okay. And why did Zaia leave Syria?

22 A I don't know.

23 Q You don't know? A Uh-uh.

24 Q Did you ever discuss it with Zaia why he left Syria?

25 A He wants to come and live with his father and brothers.

26 Q That is the reason why he left? A I believe so.

1 I don't know exactly.

2 Q Was Zaia in trouble with the government in Syria?

3 A I don't know. Maybe.

4 Q Well, what do you mean by "Maybe"? A I don't know.
5 I didn't ask for. Maybe he was.

6 Q Well, when Zaia came to see you in Canada, did you ask
7 him why he left? A No, I didn't ask.

8 Q Okay. Now, when you saw the Patriarch in 1962 in
9 Damascus, I take it you had a gun at that time, right?

10 A Yes, I do.

11 Q You always carried a gun? A Yeah.

12 Q And just like you carry your eyeglass case you told us?

13 A Yeah.

14 Q And your eyeglass case is visible in this picture?

15 A I don't know.

16 Q Is that your eyeglass case (indicating)?

17 A I think so.

18 Q Okay. Where was the gun? A I don't know exactly
19 in hotel or in my pocket. I don't know, '62. Now I don't
20 know.

21 Q So the gun was either in the hotel or in your pocket?

22 A I don't believe it was in my pocket.

23 Q You can't see the gun in there, can you (indicating)?

24 A I don't believe I carried the gun that day.

25 Q Why not? A If I carry the gun that day probably
26 I give it to somebody before I get in.

1 Q You would give the gun to somebody before you went in?

2 A Probably.

3 Q Okay. And that is because you told us a few hours ago
4 on direct examination that if you were going to see somebody
5 important you wouldn't bring the gun in, but if you were
6 going to see friends you would keep the gun?

7 A Friends, yeah.

8 Q And somebody important like the Patriarch you wouldn't
9 carry the gun in, right? A No.

10 Q What do you mean, "No"? You would or wouldn't?

11 A I wouldn't.

12 Q Why did you bring the gun down to the Patriarch's house
13 November 6th, 1975, Mr. Ismail? A I wasn't going that
14 night.

15 Q You weren't going to the Patriarch's house that night?

16 A I wasn't going that night.

17 Q You weren't going that night? A I wasn't thinking
18 going that night.

19 Q When did you decide to go to his house?

20 A After I had it, the dinner.

21 Q Why did you ask the cab driver for directions to Woosley
22 before you had dinner? A For next day to come
23 there.

24 Q The next day, how were you going to get to the Patriarch's
25 house the next day? A How? Taxi.

26 Q What? A By taxi.

1 Q And you were going to have them call you -- you were
2 going to call a taxi at the motel? A Yeah.

3 Q You were going to get into the cab and say, "Take me
4 to Woosley Avenue," right? A Yeah. I wanted to know
5 where it is because I don't want to take another taxi, paying
6 \$8 like first taxi. He could charge me \$5 but he turned
7 me around maybe 10 or 15 block for nothing.

8 Q So you decided at that time that you had to worry about
9 your expenses? A No, I was just asking him, that's all.
10 Probably, I don't know.

11 Q Just making conversation? A Mm-hmm.

12 Q And he pulled out a map and showed you how to get there,
13 didn't he? A I don't know, clear about, probably,
14 maybe.

15 Q So when you went into the pizza parlor your purpose in
16 going to that shopping center was to get something to eat?

17 A That's right.

18 Q Okay. And then you started feeling sick?

19 A Mm-hmm.

20 Q Why didn't you go home? A I don't know. I
21 should have.

22 Q Okay. So, now you are feeling sick and you make a
23 decision to go to the Patriarch's house? A Mm-hmm.

24 Q Did you remember the directions to the Patriarch's house?

25 A I walked for, maybe half an hour.

26 Q Walked for a half hour? A Probably for half hour.

1 I don't know exactly.

2 Q How did you find his house? A I needed to ask.

3 Q Pardon me? A I did ask couple guys close to that
4 house.

5 Q You asked a couple guys what?

6 A To direction.

7 Q To where? A To Woosley.

8 Q To Woosley? A Mm-hmm.

9 Q And this is after you had already asked the cab driver?

10 A Mm-hmm.

11 Q Well, hadn't the cab driver told you all you have to do
12 is go right down Cottle and hang a right on Los Pinos and
13 then hang another left and you are right there on Woosley?

14 A Yeah, probably told me.

15 Q You couldn't understand that or remember it?

16 A I don't know.

17 Q Okay. But you did remember, didn't you, according to
18 your testimony that when the Patriarch talked to you in
19 February of 1975 he told you he lived by Cottle, right?

20 A Cottle, yeah.

21 Q And you remembered that? A Yeah, I remembered
22 Cottle.

23 Q You didn't write that down anywhere, did you?

24 A Probably. I don't know.

25 Q Well, what do you mean, "Probably"? Was it in your
26 address book, "Cottle"? A I don't know exactly.

1 Q Well, you want to look at your address book and see if
2 it is in there? A I don't know if I did or some place
3 else. I don't know.

4 Q Well, if you didn't write it down that means you keep
5 it in your mind from February, '75, until November of '75,
6 where he lived, right? Cottle? A Mm-hmm.

7 Q Now, you asked the Patriarch, you told the Patriarch you
8 were going to come down and pay him a visit in February of
9 '75 and he told you, "I live by Cottle"?

10 A No, I say, "Maybe we going to move and probably going
11 to go to British Colombia or California, I don't know exactly."

12 Q And the reason you were going to move is because you
13 didn't like the weather in Canada? A Yeah.

14 Q You lived up there seven years, ten years, hadn't you?

15 A Yeah.

16 Q Did you all of a sudden decide you didn't like the
17 weather? A Well, after my father passed I don't
18 like to stay there.

19 Q Okay. And when did your father pass?

20 A January, '74, I believe. 25th of January.

21 Q '74? A Mm-hmm.

22 Q Okay. And you decided to move, you thought you would
23 move in February, '75? A Mm-hmm.

24 Q Okay. And so the Patriarch told you what? How did he
25 tell you to get to his house? A He didn't told me
26 that. He just says, "We live south San Jose and just take

1 Cottle," and that's all, something like that.

2 Q Didn't he give you his address? A I had his
3 address.

4 Q You had his address? A Yeah.

5 Q How did you get that? A I got, I don't know. He
6 sent it to me or his father-in-law gave it to me.

7 Q Did you have his phone number? A Yeah.

8 Q Where was his phone number? A I think in my
9 address book.

10 Q May I see the address book, please?

11 THE COURT: 16, I believe. 15 and 16, notebook and
12 address book.

13 Q (By Mr. Robinson) Showing you this address book that
14 you had in your possession the night you were arrested,
15 Officer Neal testified to, is the Patriarch's name in there?

16 A Yeah.

17 Q Is his address in there? A Yeah.

18 Q Is his telephone number in there? A Yeah.

19 Q Where? A (Indicating.)

20 Q That is his telephone number? A Yeah.

21 Q What is the 1-408 in front of that?

22 A I think area code.

23 Q 1-408? A I think so. I don't know.

24 Q Okay. And there is some Assyrian writing over that?

25 A Yeah.

26 Q Okay. What does that say? A This one?

1 Q Yeah. A Mar Shimun.

2 Q That says Mar Shimun? A Yeah.

3 Q In both Assyrian and English? A Yeah, that is
4 Mar Shimun.

5 Q Okay. I apologize. I didn't know that. So you
6 had the Patriarch's telephone number. Did you call him
7 when you were in San Francisco? A No.

8 Q Why not? A I just don't call him.

9 Q Well, how did you know he would be home?

10 A I don't know.

11 Q Came all of the way down here from Canada on the spur of
12 the moment thinking that you might find him home?

13 A Well, I don't come especially for that purpose. I said
14 I would phone him first Friday, but that day I went without
15 phoning him.

16 Q Let me ask you this, I take it you were very devoted to
17 the Patriarch? A What's "devoted"?

18 Q You loved the Patriarch? A I used to.

19 Q When did you stop loving him? A Well, when he get
20 married a little bit, upset me.

21 Q That upset you? A Very much.

22 Q Okay. And then you told us that you talked to his mother
23 and father-in-law and they sort of convinced you to still
24 support him? A Mm-hmm.

25 Q And did you still support him? A I was thinking
26 about, everything is changed now. It's not like 100 years

1 ago.

2 Q Okay. Well, how would you describe your feelings
3 toward the Patriarch in, say, the first week of November,
4 1975? A Just not very mad.

5 Q Pardon me? A I wasn't very mad at that week. And
6 I just have to see him.

7 Q Were you excited about going to see him?

8 A I was thinking go see him --

9 THE COURT: You were going to add something else,
10 Mr. Ismail?

11 MR. PESTARINO: Was that it?

12 THE WITNESS: I wasn't very mad that week. And I
13 would like to see him and talk to him when I came over here.
14 I must go and see him.

15 Q (By Mr. Robinson) Were you excited about it?

16 A Hmm?

17 Q Were you excited about it? A What's "excited"?
18 You mean mad?

19 Q No, not mad. Sort of like, you know, you're going to go
20 on a vacation and you sort of get excited, you get happy that
21 you are going to go on a vacation? A Yeah.

22 Q Looking forward to doing something. Did you feel that
23 way about it? A Yeah.

24 Q Was it a big thing in your life, you were going to see
25 the Patriarch? A Yeah.

26 Q Okay. Had you ever seen him by yourself before, just

1 you and the Patriarch talking? A I seen in Flint,
2 Michigan.

3 Q In Flint, Michigan? A Yeah.

4 Q Where did you see him by yourself in Flint, Michigan?

5 A I see him, I think, twice, when I take him some grapes
6 and apples and something, he was alone in his room.

7 Q Okay. And did he live in Michigan at that time?

8 A No, he was visiting.

9 Q He was visiting and you came down to take him apples
10 and grapes? A No, I came down to have communion from
11 him and see him.

12 Q Did you have an appointment to see him? A No.

13 Q Just walked in and brought him apples and grapes?

14 A Yeah.

15 Q Was this a church service you saw him at?

16 A Well, I was just service.

17 Q Just a service? Okay. Well, had you ever seen him
18 by yourself in his house? A No.

19 Q Okay. Now, I take it if you were -- do you know what
20 the word "excited" means now? Looking forward to seeing him?

21 A Yeah.

22 Q I take it that you told Kitty Benjamin that you were
23 going to go see the Patriarch, that was a big deal in your
24 life? A No, I didn't tell nobody and even I see his
25 cousin Sunday, Monday, Tuesday, and Wednesday, and I didn't
26 tell him nothing about him.

1 Q You didn't tell Yule Lazar either? A I didn't tell
2 nobody.

3 Q Why not? A Well, I didn't tell them because,
4 I don't know why. I hear that not too many people they
5 like him, so I don't want to say nothing. I'll see him and
6 see what, what he have to say.

7 Q Well, when you were with Kitty Benjamin did you ever
8 discuss the Patriarch? A No, sir.

9 Q Did you ever discuss religion? A No, I don't
10 believe.

11 Q You don't what? A I don't believe I ever mention-
12 ed anything about that.

13 Q Did you ever discuss politics? A Never.

14 Q What did you talk about? A She take me home and
15 she have very, very old song, Assyrian song, and she asked me
16 what my father, he did in Iraq and something.

17 Q When you were with Yule Lazar did you ever discuss the
18 Patriarch? A No, he was discussing whether he wants
19 to get married, and he don't know, he couldn't find yet the
20 right broad, and he was looking for a girl.

21 Q Did you ever discuss politics with Yule Lazar?

22 A Never.

23 Q Did you know that Yule Lazar was a member of the -- was
24 the head of the Universal Alliance in San Francisco?

25 A I don't know until he say it in here.

26 Q You didn't know that? A No, sir.

1 Q Did Kitty Benjamin ever tell you that?

2 A No.

3 Q Did you ever discuss the Assyrian Universal Alliance
4 with Kitty Benjamin? A No, sir.

5 Q Well, did you ever ask Kitty Benjamin, "Hey, what's the
6 story on this Christmas card here with this 'Keep up the
7 good work for the A.U.A.'"? Did you ever ask her about that?

8 A No.

9 Q Okay. Now, you told us that you knew the Patriarch's
10 wife, Emama, since 1969; is that correct? A Yeah.

11 Q And that is when she came to Canada, right?

12 A I believe so.

13 Q Okay. Did you ever discuss politics with her in
14 Canada? A I don't remember. Maybe.

15 Q Pardon me? A Probably, but I don't remember
16 exactly.

17 Q Okay. Did you ever discuss religion with her in
18 Canada? A I don't think so. I don't remember.

19 Q Well, maybe this will refresh your memory. Did you
20 ever talk to her about what we have to do is get the people
21 away from the church, and once we get rid of the church they
22 will turn to politics, did you ever discuss that?

23 A No, sir. I don't believe I say that. But I don't
24 remember what I said. I don't believe I say that.

25 Q Your father was very interested in politics, wasn't he?

26 A He was, yeah.

1 Q And you told us you were very close to your father,
2 right? A Mm-hmm.

3 Q And your father wanted to get a homeland for the
4 Assyrian people, didn't he? A I think so, but he is
5 with the Iraqi government.

6 Q Right. Your father wanted the Iraqi government to,
7 for the government to give them a piece of their land and
8 designate that Assyria for the Assyrian people, right?

9 A Just a state.

10 Q He wanted a state? A That's what I heard.

11 Q Well, I take it you discussed this with your father?

12 A No, sir. He don't want -- he don't want me to talk
13 about politics.

14 Q Pardon me? A He wasn't like me to talk about
15 politics because he knows that I am not that type.

16 Q Okay. And your brother Zaia, did you know that your
17 brother Zaia was very active in the Assyrian Universal
18 Alliance? A I don't know that.

19 Q You don't know that? A No.

20 Q Did you know that your brother Zaia was very active in
21 politics? A I know he is in politics, but what he do
22 and what's going on I don't know.

23 Q You don't know anything about that? A No.

24 Q Now, have you had any problems hearing anything I have
25 asked you today in court? A Could you repeat, please?

26 Q Yeah. Have you had any problems hearing me speak in

1 court today? A I don't think so.

2 Q Okay. Well, what about your ear? You lost the
3 hearing in your right ear. When did you regain that?

4 A '43, I think.

5 Q Okay. So you lost it and you both regained it in 1943?

6 A Both what?

7 Q You told us that you had an accident in 1943, you lost
8 your hearing in your right ear and so the military didn't
9 take you. Remember telling us that? A Yeah.

10 Q When did you recover the hearing in your right ear?

11 A I still don't hear.

12 Q Pardon me? A I still -- it's still, I don't hear
13 it.

14 Q You still don't hear in your right ear? A No.

15 Q Everything you hear comes from your left ear?

16 A Yes, sir.

17 Q You told us that you had an ear operation in Canada in
18 1972-73. Was that operation a failure? A No, the
19 doctor, he check out and he said better have operation and
20 clean it up in case in future it gives you trouble in your
21 head.

22 Q He -- I'm sorry? A He said in case doesn't give
23 you trouble in the future in your head, so you should have
24 an operation and clean it up.

25 Q Clean it out? A That's what I heard, yeah.

26 Q Did he do that? A Yes.

1 Q Has it been giving you any trouble, your ear?

2 A Yeah, same thing.

3 Q What kind of trouble does it give you?

4 A Headache to one side.

5 Q Okay. And how often do you get these headaches?

6 A Sometime two, three time a month, sometime one, some-
7 time none.

8 Q Okay. On November the 6th, 1975, did you have one of
9 these headaches? A No, I had first day I arrive in
10 San Francisco.

11 Q First day you got in San Francisco? A Yeah.

12 Q But on the night that the Patriarch was killed you
13 didn't have one of these headaches, did you?

14 A I don't believe, no.

15 Q Now, let me ask you something, Mr. Ismail. How were
16 you planning to get the gun from the United States back into
17 Canada? A How I take it to Canada?

18 Q Yes, sir. A Just put it in pocket, that's all.

19 Q Doesn't Canada have very strict gun control?

20 A I don't think so.

21 Q You don't know anything about gun control in Canada?

22 A No.

23 Q Isn't it a fact that they are one of the strictest
24 countries in the world regarding gun control, what sort of
25 guns go out and what sort of guns go in? A I hear that,
26 gun control, I don't know when.

1 Q Now, why didn't you bring one of your own guns that
2 you tell us that you have down here from Canada when you took
3 this trip? A I was flying, so --

4 Q You were what? A I was flying, so you can't
5 carry gun when you are flying, but when you going by bus you
6 could do it.

7 Q I see. Can't you put a gun into a suitcase and check
8 your suitcase into the plane, you can carry it that way,
9 can't you? A I don't think so.

10 Q Did you check that out? A Yeah.

11 Q What did they tell you? A Oh, they checked my
12 suitcase would have nothing, so they let me come.

13 Q Now, you told us that you carry a gun with you all of
14 the time in Canada? A Yeah.

15 Q Is your wife familiar with the fact you have a gun?

16 A She don't like it. She knows, but --

17 Q She knows. So if someone were to ask her, "Do you
18 own any guns," if she was telling the truth she would have
19 said, "Yeah," and told that? A Probably.

20 Q Your wife has no reason to cover up for you, does she?

21 A I don't know.

22 Q Pardon me? A I don't know.

23 Q Okay. And you always carry this gun with you on your
24 person in Canada? A In my pocket.

25 Q In your pocket? A In my car sometimes.

26 Q In your car sometimes. Would people at the Ford Motor

1 Company have seen this gun on you where you work?

2 A Some of them, I guess.

3 Q Can you give me some names? A Tom, I don't know
4 the last name. I can't remember the last name.

5 Q Now, when you would go from Canada to the various
6 conventions in Flint, Michigan or Chicago, how would you get
7 there? A How I get there?

8 Q Yes. Drive your car, fly a plane? A By car.

9 Q Always by car? A Mm-hmm.

10 Q Okay. And it is at this time that you would always
11 bring the guns with you? A Yes.

12 Q And a lot of people have seen you with guns?

13 A Friends.

14 Q Friends have seen you with guns? A Yeah.

15 Q Now, you told us that, talking about your drinking
16 habits, you used to drink if you went to a wedding, Christmas
17 party, something like that? A Mm-hmm.

18 Q And that since 1973 you have had a habit of drinking?

19 A Yeah.

20 Q Okay. And what caused you to start drinking in 1973?

21 A What's that?

22 Q Any special reason you started drinking heavily in 1973?

23 A I just get very opset (upset).

24 Q Pardon me? A I get very opset (upset).

25 Q Pardon me?

26 THE COURT: Upset.

1 Q (By Mr. Robinson) Anything that caused you to be very
2 upset in 1973? A Mar Shimun get married.

3 Q So Mar Shimun got married in 1973 and that made you very
4 upset and made you start drinking? A Mm-hmm.

5 Q Now, you told us if you get into an argument, if you
6 just have one shot of Johnny Walker in you, it is like you
7 have had a whole bottle? A That's right.

8 Q And you sort of lose your head? A Yeah, lose my
9 mind.

10 Q You told us that your father talked to you about your
11 drinking? A He heard in 1973 when I visit him in
12 Lebanon.

13 Q In Lebanon? A Yeah.

14 Q And when did you visit him? What month did you visit
15 him in Lebanon? A Some time late September, I guess,
16 early November, something like that.

17 Q What was the purpose of that visit?

18 A Well, when we heard that, and I get so opset (upset) and
19 I talked on telephone to him, and he said, "I want you to
20 come over here," so I went there to see him.

21 Q Okay. And he paid your way? A Yes, he did.

22 Q Because you didn't have enough money?

23 A Well, he sent me \$1500, so I don't know why.

24 Q Where was your brother Zaia at this time?

25 A I think in Iraq.

26 Q In Iraq? A I think so.

1 Q Okay. And was he working to obtain a separate state
2 from Iraq for the Assyrian people? A I think he was
3 just with my father, but my father doing what he was, too, I
4 guess.

5 Q Now, you told us in 1962-1961 you weren't drinking too
6 much at that time. You had a couple drinks, you had an
7 argument with your wife and you broke all the dishes in your
8 house? A Mm-hmm.

9 Q Okay. Now, at that time I take it it is your opinion
10 that the alcohol caused you to do this? A No, I missed
11 my father very much that time, a lot, coming to Canada for
12 visit for couple months, and she said, "Wait until next year,"
13 and I just got mad.

14 Q Okay. So the drinking had nothing to do with it?

15 A Yeah, because I had a drink, too. That is why I --

16 Q That is why you what? A That is why, what happen-
17 ed.

18 Q How many drinks did you have in 1961-62?

19 A I don't remember. I don't know how much I drink that
20 time. I wasn't drink that much that time but --

21 Q And then in Chicago in 1972 you got into a fight with a
22 guy named Sklaria? A Skharia.

23 Q And the reason you did that is because you were drinking?

24 A Well, I was drinking and having good time but when he
25 mention about Mar Shimun I get very mad.

26 Q Very mad? A Yeah.

1 Q Okay. Because at this time you were very close to the
2 Patriarch, right? A That's right.

3 Q And was your father present when this man made the
4 comment about Mar Shimun? A No.

5 Q But you got real upset? A Mm-hmm.

6 Q Because this man had said something bad about somebody
7 who you loved at that time? A That's right.

8 Q And you had been drinking? A Mm-hmm.

9 Q And you had your gun with you? A I think so.

58 10 Q You didn't shoot him? A No, my brother, he
11 picked me up, pulled me out.

12 Q Did you draw your gun on this man? A I don't
13 believe it. The next day they told me we get in argument
14 with that man and I wanted to jump to him, and my brother and
15 other guy they take me out of the hotel.

16 Q Did you pull your gun and attempt to shoot this man?

17 A I don't remember. I don't think so. I don't know.

18 Q Now, this time with Edward Younan in September of 1973,
19 where you swept all of the dishes off the table, remember
20 that? A Yeah.

21 Q You were very mad at this time, too, right?

22 A Right.

23 Q You had been drinking, right? A Yeah.

24 Q Did you pull your gun and attempt to shoot Edward Younan?

25 A I don't mad at him.

26 Q What? A I didn't mad at Edward Younan.

1 Q Who were you mad at? A We was arguing, I want to
2 go to Iraq to see my father, and my wife said, "Wait until
3 summertime to get better," you know, and we had wine there,
4 and we started drinking wine for Easter, and I just get mad.

5 Q Wait a minute. You told us in 1961-1962 you wanted to
6 go see your father? A Yeah.

7 Q And your wife said no, and you got mad at that time?

8 A Yeah.

9 Q Now, is that a separate incident from the September --

10 A Separate.

11 Q -- 1973 issue? A That's right.

12 Q There were two separate times? A Yeah.

13 Q So both times you got mad because your wife said, "You
14 can't go see your father"? A Because she said, "Wait
15 for summer," so I just remember my father, and I get perhaps
16 upset.

17 Q Now, when the Patriarch wrote you the letter asking if
18 you had signed your name to that telegram you told him no,
19 you hadn't, right? A I tell him what?

20 Q You told him that you hadn't signed your name to that
21 telegram? A I told him I received the telegram, but
22 I don't tell him that I send it, or I told him if I send it
23 I going to send you copy.

24 Q And at that time you didn't know if you were going to
25 support the Patriarch or not, correct? This is in February
26 of 1975. A Yeah.

1 Q Okay. Did you ever call the Patriarch on the phone
2 back in February of 1975 and indicate to him that you were
3 supporting him and that there were some people talking
4 against him over in the Middle East, and you would go over
5 there and kill them? A No.

6 Q Never said any of that? A No.

7 Q Now, you bought a one-way ticket in Canada?

8 A Yeah.

9 Q By the way, did your wife know you were coming to the
10 United States, Mr. Ismail? A She knows I was traveling.

11 Q Let me ask you this, when you left Canada did your wife
12 know you were coming to the United States?

13 A I think so.

14 Q Well, you think so? A Mm-hmm.

15 Q Did you tell her you were coming to the United States or
16 didn't you? A I think I told her.

17 Q Well, Mr. Ismail, if your wife were to have told the
18 Canadian police officer she didn't know where you were, she
19 didn't know you were coming to the United States, would she
20 have told a lie?

21 MR. PESTARINO: I object. It is argumentative, if
22 she told him.

23 THE COURT: Yes. The objection --

24 MR. ROBINSON: Counsel has indicated that the wife
25 is going to testify. Since I can't call her and counsel has
26 indicated, this would be a prior inconsistent statement.

1 THE COURT: He wouldn't know what she told the
2 Canadian police, so therefore it would be hearsay.

3 MR. ROBINSON: Okay. We will wait until Mrs.
4 Ismail comes.

5 MR. PESTARINO: I don't know if I am going to call
6 her.

7 THE COURT: Well, we will see.

8 Q (By Mr. Robinson) Did your wife know you were coming to
9 San Francisco? A I don't know. Maybe.

10 Q Well, let me ask you this, Mr. Ismail, what did you do,
11 you just -- how did you get the money?

12 A We had money at home, spending money.

13 Q How much money did you take with you on this trip?

14 A I have in my pocket around \$400.

15 Q \$400 cash money? A Yeah, plus \$80 which was in my
16 suitcase, 80 Canadian dollar.

17 Q So this is when you left now? A Mm-hmm.

18 Q Right? A Yeah.

19 Q Okay. So you buy yourself a one-way ticket from Canada
20 to San Francisco? A Yeah.

21 Q And the reason you buy the one-way ticket is because you
22 are thinking of going home by way of Denver, Colorado, and
23 Chicago? A My cousin, I visit her in Denver, Colorado,
24 yeah.

25 Q And how were you going to get from San Jose to Denver,
26 Colorado? A By bus.

1 Q By bus? A Mm-hmm.

2 Q Have you ever -- you know how long that would take you?

3 A I don't know. Probably one day, or day and a half,
4 something like that.

5 Q Okay. And then you were going to go from Denver,
6 Colorado, to Chicago? A Yeah.

7 Q And how were you going to get there? A Same thing.

8 Q By bus? A Mm-hmm.

9 Q Okay. And then you were going to go from Chicago to
10 Canada? A Yeah.

11 Q And how were you going to get there? A By bus.

12 Q By bus. Okay. Now, did your wife expect you home
13 at any certain time? A No, but I call her once -- once
14 a week or twice a week.

15 Q Well, how many times did you call her when you were down
16 here, Mr. Ismail? A I call her Sunday.

17 Q Sunday. And that would be from the hotel, the San
18 Franciscan Hotel? A I believe so.

19 Q And that is, I take it, a long distance call?

20 A Yeah.

21 Q All right. Did you reverse the charges or did you pay
22 for that call, put it on your tab? A I think I pay for
23 it.

24 Q Okay. Do you know why that isn't indicated on your
25 telephone tabs from the hotel? A I think I pay for it.

26 Q Okay. And when you called your wife on Sunday, what

1 did you tell her? A I said, "I'm in San Francisco."

2 Q What did she say? A She don't believe it until
3 Eshaya De Mar Shimun talk to her.

4 Q Who is Eshaya De Mar Shimun? A It is Mar Shimun's
5 cousin.

6 Q And how did he feel about the Patriarch getting married?

7 A I don't know.

8 Q Didn't you discuss that with him? A No.

9 Q Did you discuss the Patriarch with him? A No.

10 Q Now, the purpose of your coming to San Francisco was what?

11 A Visiting and looking how San Francisco is if we move to
12 it, something like that.

13 Q Well, where did you visit, what do you mean?

14 A Where did I visit?

15 Q Yeah. Were you looking for a place to live? Were you
16 looking for a business? Did you just want to see how the
17 weather was? A See how the weather is, how California

18 is, if we move what kind of business there are.

19 Q Okay. And I take it you knew Kitty Benjamin lived in
20 San Francisco? A Yeah.

21 Q Did you ever think about calling her on the phone and
22 saving yourself a lot of money and saying, "Hey, Kitty, how's
23 the weather down there in San Francisco?"

24 A Yeah, well, if you want to move some place you have to
25 see it by yourself. You don't want to ask anybody else.

26 Q So you came down here to see the weather by yourself?

1 A Yeah.

2 Q What did you do about opening up a small business?

3 Who did you talk to? A I don't know, probably I talk
4 to somebody but --

5 Q Well, who? A Maybe I told Yule about it. I don't
6 know.

7 Q Well -- A When we were drinking, when we were
8 sitting drinking maybe I told him that.

9 Q Did you go out and visit any people that had small
10 businesses and say, "How much does it cost to get in here?
11 How much am I going to need to get a bank loan? How's the
12 business? Good? Bad? Good location"? Did you do any
13 of that stuff? A No, I was waiting until my cousin,
14 ask him if we had any money back home or not.

15 Q Okay. And at this time you told us that you didn't
16 have any money left from the sale of the house, right?

17 A Not too much, no.

18 Q Now, you went out to dinner with Yule Lazar Friday night?

19 A Yeah.

20 Q Okay. And you told us that you had dinner down at his
21 hotel? A Yeah.

22 Q Dining room, right? A Yeah.

23 Q Okay. And you had a shot of whiskey?

24 A I don't know how many shot of whiskey I had. I believe
25 I had some whiskey.

26 Q How much did you have? A I don't know. I believe

1 I had some whiskey but I didn't count how many.

2 Q Were you drunk? A No.

3 Q Didn't affect you at all? A No.

4 Q Okay. Did you have more whiskey on that particular
5 night when you were having dinner with Yule Lazar than on
6 November 6th, 1975? A No, I didn't have too much that
7 night with dinner when he invite me. Even when I invite
8 him we don't have too much. We have a wine next day with
9 meal, that's all.

10 Q And you went out with Kitty Benjamin and did the sights
11 of San Francisco one night? A Some place, I don't know
12 where it is.

13 Q And were you drinking when you were with her?

14 A Mm-hmm.

15 Q Okay. How much did you have to drink then?

16 A I don't know exactly, three or four shots. I don't
17 know exactly.

18 Q Were you drinking doubles? You always drink doubles?

19 A Yeah.

20 Q And did you get drunk that night? Did you feel the
21 effects at all? A I doubt it.

22 Q Did you have more to drink that night than you did on
23 November the 6th, 1975? A No.

24 Q Okay. Is there any special reason that you drank all
25 of this alcohol on November 6th, 1975? A I think
26 reason was I was alone over there. I don't know how to spend

1 the day. I think that was the reason, that's all.

2 Q You were alone over there? A Mm-hmm.

3 Q I take it you were alone a lot of the time when you were
4 in San Francisco, weren't you? A Not -- no.

5 Q No? A No.

6 Q Well, when Kitty Benjamin and Yule Lazar were working
7 during the day who were you with? A I was, I think
8 Monday I take the car, I borrow Yule's car, so I went to
9 Eshaya's place. He was working and his sister, what I said
10 was, his mother until 6:00 o'clock and next day and Wednesday,
11 too.

12 Q You went to Eshaya's place Monday, Tuesday, Wednesday?

13 A Mm-hmm.

14 Q Now, isn't it true that Eshaya doesn't like his cousin,
15 the Patriarch? A I don't know.

16 Q You never discussed that with him? A No.

17 Q Okay. Let me ask you this, Mr. Ismail, why didn't you
18 buy yourself a bottle and drink it at the Sunset Motel?

19 A I did.

20 Q You did? A Sure.

21 Q Okay. And when did you drink that at the Sunset Motel?

22 A I didn't drink it all there. I took it to San Francisco
23 Motel.

24 Q You took it to the San Franciscan Motel? A Yeah.

25 Q What kind of liquor did you buy at the Sunset Motel?

26 A Johnny Walker.

1 Q Johnny Walker. Because you didn't finish it there,
2 you brought it down to the other hotel? A Right.

3 Q And did you finish it off down at the San Franciscan?

4 A Yeah, I finished. Sunday, I guess, and Monday Eshaya
5 had couple of drink.

6 Q Eshaya was in your room Monday, too? A For 10, 15
7 minutes, something like that.

8 Q Was that Monday afternoon or Monday night?

9 A Monday night.

10 Q And then did you go out and buy yourself another bottle?

11 A No, it was big bottle.

12 Q It was a big bottle? A Mm-hmm.

13 Q And when you finished it off Monday, did you go out and
14 buy yourself another bottle? A No, I didn't finish
15 until Wednesday night.

16 Q I thought you just told us that you finished it on
17 Monday? A No. No, it was big bottle.

18 Q So you didn't finish it until Wednesday?

19 A Wednesday night.

20 Q Okay. So then on Thursday afternoon you went out and
21 bought yourself another bottle? A Yeah.

22 Q And you bought a little bottle this time? A Yeah.

23 Q How come? A I just bought a small bottle.

24 Q Any reason the first time you bought a big bottle, this
25 time you bought a little bottle? A Wasn't the first
26 time bottle, buy a small bottle, it wasn't the first time buy

1 a big bottle.

2 Q I'm sorry. I missed that. Any special reason?

3 A There is no special reason, no.

4 Q Now, did you tell Kitty Benjamin about the gun you
5 purchased? A No.

6 Q Tell her about how you got it? A (Shakes head
7 negative.)

8 Q Huh? A No.

9 Q When you ate dinner over her house did you take off
10 your coat? A I don't know what I was wearing that
11 night, but I doubt if I had a gun with me every day.

12 Q You doubt if you had a gun with you every day?

13 A Yeah.

14 Q And you just take it on some days and not others?

15 A Yeah, sometimes carry, sometimes, yeah.

16 Q Well, is there any special reason that you carried it
17 on the night of November 6th, 1975, when you went to the pizza
18 parlor? A No.

19 Q It just happened to be one of the days, one of your gun
20 days? A Yeah.

21 Q All right. Now, you told us that you thought Yule Lazar
22 paid the bill at the Sunset Motel? A Mm-hmm.

23 Q Why did you think that? A Because he picked me up
24 so I thought he paid for it. I asked the guy, he said all
25 paid for.

26 Q So you thought Yule had paid for it? A Yeah.

1 Q Now, when he picked you up, you put your luggage into
2 the trunk of his car? A No, he came over there and I
3 said, "Wait for a few minutes, I have luggage." So he went
4 in that car and I take my luggage over there, and trunk was
5 open, so I put one suitcase back, closed, then I kept this
6 one with me.

7 Q So you had that little grip with you in the front seat?
8 A Yeah, I put it.

9 Q No reason to put that in the trunk, you could put it
10 right there in your lap? A I think so. I could carry
11 this one with me.

12 Q And you put your suitcase and the bag with the suits in
13 it in the trunk? A No, I was wearing another suit and
14 this suit it was right in that box, suitcase.

15 Q Okay. What time did Mr. Lazar pick you up to move
16 your stuff Saturday from the hotel down to -- from the motel
17 to the hotel? A I don't know exactly. I would say
18 between 5:00, 6:00, 7:00, some time. I don't know exactly.

19 Q And you had stored your stuff behind the desk, right, of
20 the motel? A Right.

21 Q Okay. Given it to Mr. Crowley and asked him to hold it
22 back there? A Mm-hmm.

23 Q And Kitty Benjamin came with you to pick you up that
24 night, came with Yule Lazar? A No.

25 Q No? A Just Yule Lazar.

26 Q Okay. You're sure about that? A I think so.

1 Q Now, when you left San Francisco on Wednesday afternoon,
2 did you tell Kitty Benjamin where you were going?

3 A No.

4 Q Did you tell Yule Lazar? A No.

5 Q Did you tell them you were going home?

6 A They asked me, "Where you going?" I said, "Maybe I'm
7 going to Canada." They said, "We have a party in Turlock."
8 I don't know where it is. I said, "Okay. I'll be there,"
9 just kidding them, that's all.

10 Q Did you tell them you were going to take a bus up to
11 Denver and see your relatives? A They didn't ask me
12 whether I am going to Denver or not.

13 Q Of course they didn't ask you whether you were going to
14 Denver. They asked you where you were going?

15 A I said, "I'm going home."

16 Q You didn't tell them you were going to Denver first and
17 then by bus from Denver to Chicago? A No.

18 Q Why not? A I don't know why not.

19 Q You didn't tell them you were going down to see the
20 Patriarch? A No.

21 Q Why not? A I didn't tell them.

22 Q By the way, this fellow that sold you the gun, you saw
23 Ronnie Myers come in and testify, didn't you? A Yeah.

24 Q That wasn't the fellow that sold you the gun in the bar,
25 was it? A No. No.

26 Q Now, how come all of a sudden the day before, the day

1 that you leave, check out of the hotel in San Francisco, you
2 called a number in Australia, you told us that you wanted to
3 talk to your niece, I think? A My niece, that's right.

4 Q When was the last time you talked to her?

5 A I believe some time at, September.

6 Q Of 1975? A August or September, I don't remember
7 exactly.

8 Q Of 1975? A '75, yeah.

9 Q Okay. And when you talked to her at that time was she
10 at her number at her house? A Yeah.

11 Q Okay. And did she tell you she was going to be leaving
12 for a year? A She said, company, they want to send
13 her husband out for couple months maybe, if not longer than
14 two months she won't go, but if it is more than three months
15 she would go with him.

16 Q Okay. Why all of a sudden did you decide to call her
17 on November 6th, 1975? A Maybe I was drunk, that's why.
18 I don't know.

19 Q Maybe you were drunk? A Maybe I was a little
20 drunk, happy.

21 Q Now, wait a minute, now, you hadn't started drinking yet
22 when you called from the hotel on November 6th, 1975?

23 A What's that?

24 Q Yeah. You told us that on November the 6th, 1975, next
25 to the bus station in the bar you had a double shot at about
26 1:00 o'clock? A Yeah.

1 Q Okay. And then you had some more drinks down at San
2 Jose? A Mm-hmm.

3 Q Then you had some more drinks at the pizza parlor?
4 A Yeah.

5 Q Well, you called Australia --
6 A Mm-hmm.

7 Q -- before you ever got to the bus station, didn't you?
8 A That's day before.

9 Q No, you called on November 6th, huh? A No.

10 Q You called the day before? You called on November 5th?

11 A I think day before, or maybe 5th or 4th.

12 Q The 5th or the 4th you called? A I don't remember
13 exactly, 5th or 4th.

14 Q And you think that the reason that you called is because
15 you might have been a little drunk? A I don't know
16 what's the reason. I just called and talked to her, that's
17 all.

18 Q And this person, Mr. Kanna, that you called --

19 A Yes.

20 Q -- okay, did you know that he was coming out very strongly
21 against the Patriarch? A I don't know.

22 Q You didn't know that? A No. I see him in 1972.
23 I see him in 1972.

24 Q You saw him in 1972? Where did you see him?

25 A When he came to visit my father.

26 Q He came to visit your father? A Yeah.

1 Q Isn't it a fact that he was writing very derogatory
2 articles about the Patriarch? A I don't know that.

3 Q That he wanted the Patriarch out? A I never read
4 any article.

5 Q Isn't it a fact that he is a big member of the Assyrian
6 Universal Alliance, Mr. Kanna is? A I don't know that.

7 Q Why did you call him, sir? A I call him to find
8 out about my niece.

9 Q And the last time you talked to him was in 1972?

10 A Yeah, I guess so.

11 Q And he is the only one in Australia that can tell you
12 about your niece? A He is very close to her husband.

13 Q Very close to her husband? A Mm-hmm.

14 THE COURT: Counsel, would this be a good time to
15 take a break or do you want to go for a little while?

16 MR. PESTARINO: Can we approach the bench?

17 (Discussion off the record.)

18 THE COURT: All right, ladies and gentlemen, we
19 will take our adjournment for tonight and we will resume
20 tomorrow morning at 9:45. You will keep in mind the admoni-
21 tion I have previously given you about not letting anybody
22 discuss the case with you or in your presence or having you
23 express any opinion about the case either among yourselves or
24 with any other person. You can step down and you will be
25 ordered to return tomorrow morning, also, at 9:45. Any
26 witnesses under subpoena will be ordered to return. Have a
good evening. See you tomorrow.

(Whereupon, Court adjourned until 9:45 o'clock a.m.,
March 23, 1976.)

TO THE COURT OF APPEALS OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

---oCo---

THE PEOPLE OF THE STATE OF CALIFORNIA,)

Plaintiff & Respondent,)

vs.)

DAVID MALEX ISMAIL,)

Defendant & Appellant.)

VOLUME IV

) Pages 739 - 1025

---oCo---

REPORTER'S TRANSCRIPT ON APPEAL FROM THE
JUDGMENT OF THE SUPERIOR COURT OF THE
STATE OF CALIFORNIA, IN AND FOR THE
COUNTY OF SANTA CLARA.

HONORABLE GEORGE H. BARNETT, JUDGE, AND A JURY.

---oCo---

59

NINTH DAY

March 23, 1976

9:45 o'clock a.m.

THE COURT: Good morning ladies and gentlemen, counsel. Let the record show that the jury is present, defendant is present with counsel. You may proceed.

MR. ROBINSON: Thank you, Your Honor.

DAVID MALEK ISMAIL,

the witness on the stand at the time of the adjournment, resumed the stand and testified further as follows:

CROSS-EXAMINATION

(Resumed)

BY MR. ROBINSON:

Q. Mr. Ismail, I'd like to ask you some questions about the night of the killing, okay? A. Yeah.

Q. That is November 6th, 1975, a Thursday?

A. Yeah.

Q. Okay. Now, you told us that when you went to the pizza parlor you didn't have any intention of going to the Patriarch's house that night? A. No.

Q. That you were going to -- your original intention was to go the following Friday or Saturday?

A. Say that again, please?

Q. Yes. Your original intention when you arrived in San Jose was to go to the Patriarch's house on either the following Friday, November the 7th, or Saturday, November the 8th? A. Friday.

Q. You were going to go Friday? A. Yeah.

1 Q. You knew that for sure? A. Yeah.
2 Q. And you made up your mind to go there on Friday?
3 A. Yeah.
4 Q. Now, what time were you going to go there on Friday?
5 A. I just phoned before noon, anytime before noon, I don't
6 know.
7 Q. You were going to phone before noon?
8 A. Yeah.
9 Q. And you had made up your mind to call him on Friday?
10 A. Yeah.
11 Q. Right. Okay. Now, were you going to see him -- were
12 you going to try and arrange an appointment on Friday?
13 A. Just call him and ask him, "I'm here in San Josey --
14 San Jose, and I come and see you?"
15 Q. Okay. And you're going to ask him then if he would
16 see you? A. Yeah.
17 Q. Okay. Were you going to try to arrange an appointment
18 for Friday morning or Friday afternoon or Friday night?
19 A. Friday morning.
20 Q. Friday morning? A. Yeah.
21 Q. Okay. And where were you going to call him from?
22 A. Motel.
23 Q. From the motel? A. Yeah.
24 Q. Okay. That would be the Oasis Motel?
25 A. The motel I was in, yeah.
26 Q. Okay. Now, you wore a suit to the pizza parlor?

1 A. Yeah.

2 Q. Can you tell us why you did that?

3 A. I just wake up that morning and I wear it, that suit.

4 Q. All right. Was there any special reason why you wore
5 a suit on Thursday when you left --

6 Q. -- the hotel in San Francisco? A. No.

7 Q. You had usually worn sport clothes, right? A. No.

8 A. Yeah.

9 Q. And can you tell us why you put on the suit then as
10 opposed to your sport clothes? A. There's no
11 reason. Next day I take another suit, too.

12 Q. So when you went to the pizza parlor you got there via
13 the taxicab? A. Yeah.

14 Q. Okay. And you got off and you went inside the pizza
15 parlor? A. Yeah.

16 Q. You ordered yourself a beer? A. Yeah.

17 Q. All right. Now, and then ordered yourself a pizza?

18 A. Right.

19 Q. Okay. Now, when you ordered yourself that beer you
20 were waiting for your pizza to be made?

21 A. I don't know. I just want to drink beer.

22 Q. You just wanted to drink a beer?

23 Q. Okay. Was there some reason why you just wanted to
24 drink a beer? Were you thirsty? A. Yeah.

25 A. There is
26 no reason. I was alone, and I thought that I have a few
drink, beer, that's all.

1 Q. And as you sat there, how long did it take you for the
2 pizza to be made? A. I don't know

3 exactly. I would say thirty minutes, something like that.
4 I don't know exactly.

5 Q. Thirty minutes. Okay. Was it busy that night in the
6 pizza parlor, a lot of people in there?

7 A. Wasn't too many people, was busy but not too many
8 people.

9 Q. Okay. Now, how many beers did you drink before you
10 received your pizza? A. I don't know exactly.
11 I would say two, maybe.

12 Q. Okay. And then how did they announce that your pizza
13 was ready? Did they come over and tell you, did they call
14 your name, give you a number, anything like that?

15 A. I think they give me piece of paper. I don't know what
16 was on it. And I think they call me twice, the number, or
17 they ask me for ticket.

18 Q. They called the number? A. I think so.

19 Q. All right. And when they called the number did you
20 look at your ticket and see that that was your number?

21 A. Well, I wasn't pay attention for that piece of paper,
22 they give it to me I don't know what it was.

23 Q. How did you get your pizza then?

24 A. Somebody came I think to my table and say, "Your pizza
25 is ready," look at paper, I guess, I don't know.

26 Q. You weren't paying attention to see what your -- did

1 you know what that number was for, the ticket?

2 A. No.

3 Q. You had never ordered -- they don't have those sort of
4 things in Canada, pizza parlors? A. That have
5 pizza but they don't have a number, as you said.

6 Q. You just wait at the counter for a pizza?

7 A. Yeah.

8 Q. Okay. So somebody came and said that your pizza is
9 ready? A. Yeah.

10 Q. And then what did you do? A. I think I
11 went to pick up pizza.

12 Q. Okay. Did they tell you how much it would cost?

13 A. He told me.

14 Q. Let me ask you this, did you pay for your pizza right
15 when you ordered it or did you pay for it when you picked it
16 up? A. I don't remember exactly.

17 Q. Okay. And when you were having these two beers in this
18 thirty minute period where you were waiting for your pizza,
19 what were you thinking about? A. I don't
20 know what was thinking about. I don't remember exactly what
21 I was thinking about at that time.

22 Q. Well, were you thinking about when you were going to
23 see the Patriarch and what you were going to tell him?

24 A. Probably, I don't know.

25 Q. All right. Were you thinking about how you were going
26 to go home? A. I thought that day

1 before, how to go home.

2 Q. You thought about that on Wednesday?

3 A. Yeah.

4 Q. Okay. And was that the first time you had thought
5 about that?

6 A. No.

7 Q. When was the first time you had thought about how you
8 were going to go home?

9 A. Before I get to
10 California, I guess.

11 Q. Okay. And so you knew that before you arrived in
12 California that you were going to take the bus from San Jose
13 to Denver?

14 A. Yeah.

15 Q. And then from Denver to Chicago? A. Right.

16 Q. Now, had you contacted any of your relatives in
17 Denver and told them that you were coming?

18 A. No. Before I leave I have to.

19 Q. Pardon me? A. Before I leave
20 San Jose I have to call them, before.

21 Q. Did you call them? A. No.

22 Q. Okay. You were going to call them but you didn't?

23 A. I'm going to call them before leaving.

24 Q. So then your pizza came, and you started to eat a
25 little bit of your pizza?

26 A. Yeah.

Q. Okay. And the reason that you wanted to order a
pizza was because you were hungry?

A. Yeah.

Q. Okay. And how much of your pizza did you eat?

A. I believe I don't eat. I couldn't too much.

- 1 Q. Well, what do you mean too much, sir?
- 2 A. I couldn't eat too much, that's all.
- 3 Q. Well, one piece, two pieces, three pieces?
- 4 A. I don't remember how many piece but I know more than
- 5 half I left.
- 6 Q. You left more than half? A. I think so.
- 7 Q. Okay. And the reason that you couldn't eat too much?
- 8 A. I don't know. Maybe mixed beer and whiskey, or I don't
- 9 know why.
- 10 Q. Okay. Just you didn't feel like pizza anymore?
- 11 A. I was hungry but that time I feel like sick, and I
- 12 couldn't eat.
- 13 Q. Okay. So then when you felt like you couldn't eat
- 14 anymore, what did you do? A. I was feeling
- 15 like sick, I went outside.
- 16 Q. Okay. Did you feel like you were going to throw up,
- 17 get sick to your stomach? A. Something like
- 18 that, yeah.
- 19 Q. Okay. Did you go to the bathroom to throw up or
- 20 anything like that in the pizza parlor?
- 21 A. I went to bath but I didn't throw up.
- 22 Q. You didn't throw up? A. No.
- 23 Q. And in the bathroom, did you go to the bathroom at
- 24 all. A. No.
- 25 Q. Wash your hands? A. No, just wash
- 26 my face.

1 Q. Wash your face. Okay. Freshen yourself up a little
2 bit? A. Yeah.

3 Q. Okay. And then you left the pizza parlor, went outside?

4 A. Yeah.

5 Q. Okay. And when you went outside?

6 A. I don't know what I was thinking about outside.

7 Q. Okay. Well, when did you decide to go to the

8 Patriarch's house that night? A. When I went
9 outside, I think.

10 Q. When you went outside. Okay. And originally you had
11 decided you were going to go there the next day, on Friday?

12 A. Yeah.

13 Q. And when you went outside you thought about going to
14 the Patriarch's house that night, Thursday night?

15 A. Yeah, I think.

16 Q. Okay. And you decided, you said, 'Well, should I go
17 there Friday, tomorrow, or should I go there tonight?'

18 You decided on going there tonight, Thursday?

19 A. Yeah.

20 Q. Okay. And the reason that you decided to go there that
21 night, your reason was because then you would have a free
22 day on Friday? A. Um-hum.

23 Q. Okay. So you made the conscious decision to go there
24 on Thursday night? A. Probably that is

25 what I thought.

26 Q. Okay. So then you, after you made this conscious

1 decision to go to the Patriarch's house Thursday night as
2 opposed to Friday, you started to go towards his house?

3 A. I think so.

4 Q. Well, you think so. What did you do?

5 A. I don't remember it clearly, but I think so. I walked
6 there.

7 Q. All right. And you walked in the direction of the
8 Patriarch's house? A. I walked for a
9 little while, and I don't how many.

10 Q. You told us you walked for about a half hour?

11 A. I think about a half hour. I don't know.

12 Q. When you were out there walking in this half hour
13 period was it getting dark outside?

14 A. Yeah, I guess.

15 Q. Okay. And was fresh air refreshing you at all? Did
16 you still feel sick? A. I don't think so.

17 Q. Okay. Didn't feel any effects of the alcohol and the
18 scotch when you were walking there for the half hour?

19 A. I don't think so.

20 Q. Now, you end up at the Patriarch's house, right?

21 A. Yeah.

22 Q. Okay. And when you approached the Patriarch's house
23 did you see anybody out in front of his house?

24 A. No, before I get there I see couple of people, couple
25 of guys and ask where is Woosley.

26 Q. And how far from the Patriarch's house was this when

1 you asked these people? A. Just around the
2 block.

3 Q. Around the block? A. I think so.

4 Q. So you would have been on Los Pinos?

5 A. I don't know that.

6 Q. And they told you it was just around the corner?

7 A. Yeah.

8 Q. All right. And did you go to the Patriarch's house?

9 A. I believe so.

10 Q. Okay. Now, when you got out in front of the Patriarch's
11 house were there any kids out in front playing ball or
12 anything like that? A. I don't remember.

13 Q. Okay. There was nobody out in front of the house,
14 was there? A. I don't see, I think

15 nobody.

16 Q. Didn't see anybody? A. I don't think so.

17 Q. Now, when you saw the Patriarch's house, how, on
18 Woosley Street, you knew the Patriarch's house address, 6217?

19 A. Yeah.

20 Q. And how did you know that the second house from the
21 corner was the Patriarch's house?

22 A. I don't know. I think that the number was on it, I
23 guess.

24 Q. The number was on the house? A. I think
25 so.

26 Q. All right. And you could see the number on the house?

1 A. I guess so.

2 Q. And you knew enough in your mind at that time that his
3 address was 6217 and there was 6217 on the house, right?

4 A. I guess so.

5 Q. So you formed the opinion at that time that that in
6 fact was the Patriarch's house? A. Um-hum.

7 Q. Okay. And so when you knew that that was the
8 Patriarch's house, what did you do?

9 A. I went to the house.

10 Q. Okay. How did you approach the house? How did you
11 go to the house? A. I don't remember
12 exactly. I knocked the door or bell, I don't remember
13 exactly.

14 Q. Okay. Is it possible that you didn't knock on the
15 door? A. No.

16 Q. All right. A. I did something.
17 I don't know what.

18 Q. You don't remember if you rang the bell or if you
19 knocked on the door? A. No.

20 Q. Okay. Now, did the Patriarch come to open -- did the
21 Patriarch come to the door? A. I see a head
22 behind the window but I don't know was him.

23 Q. You saw a head behind the window?

24 A. Yeah.

25 Q. Could you tell -- and this window is a window that is
26 right by the front door that you can look out from?

1 A. Yeah.

2 Q. Okay. And could you tell if it was a man or a woman
3 whose head you saw? A. I don't know.

4 Q. You couldn't tell? A. I don't know.

5 Q. Okay. And how long did this head stay at the front
6 door, at the window as you were at the front door?

7 A. I don't know exactly.

8 Q. Couple seconds, a minute? A. Maybe
9 couple second, I don't know exactly.

10 Q. After you saw this head what happened to the front
11 door? A. It opened.

12 Q. It opened. Okay. Now, this person, did it appear to
13 you that the person that you saw at the window was the
14 person that opened the front door? A. I think
15 so.

16 Q. Okay. It was a relatively short period of time from
17 seeing the person at the window until the door was opened?

18 A. I think so.

19 Q. Now, when the door was opened did you recognize the
20 person that opened the door? A. Yeah.

21 Q. Okay. And who was that person?

22 A. Mar Shimun.

23 Q. And how was Mar Shimun dressed?

24 A. He was -- have pants on and shirt, and pants that's
25 all.

26 Q. And would those be what we would call casual clothes?

- 1 A. I don't know what they call.
- 2 Q. Well, on your prior times that you had seen Mar Shimun
- 3 how was he dressed? A. Just like in
- 4 picture.
- 5 Q. Just like in the picture? A. Yeah.
- 6 Q. So every time you saw Mar Shimun he was dressed in his
- 7 patriarchal clothes? Right? A. Not every
- 8 time. Couple times see him in suit in a motel.
- 9 Q. In a suit in motel? A. Yeah, in Flint,
- 10 Michigan.
- 11 Q. In Flint, Michigan, you saw him in a suit in a motel?
- 12 A. Yes, sir.
- 13 Q. And the other times you saw him he was dressed in his
- 14 patriarchal clothes? A. Yeah.
- 15 Q. Now, when did you see him in a suit in a motel in
- 16 Flint, Michigan? A. Two time, I don't
- 17 remember exactly, '69, '70 or '71.
- 18 Q. And when you saw the Patriarch in a suit in a motel in
- 19 Flint, Michigan, were you with anybody?
- 20 A. I was with my father.
- 21 Q. With your father. Okay. And anybody else?
- 22 A. Well, we went out, in and outside, after half hour,
- 23 and there was people, they want to get in and see him again,
- 24 so I don't know who there are.
- 25 Q. Okay. Were these members of the church?
- 26 A. Yeah.

1 Q. Okay. And was he receiving people that were members
2 of his church? A. I think so.

3 Q. Okay. Now, when the Patriarch opened the door, what
4 was the first thing that was said?

5 A. He opened the door, I said, I don't remember, I said
6 good evening.

7 Q. Okay. And what did the Patriarch say?

8 A. He smiled, I say, "Good evening," and I kissed his
9 hand, and I kneel, get up, and he smile in my face, and he
10 take me in.

11 Q. When you kissed his hand how did you do that?

12 A. I just kneel and kiss hand.

13 Q. You kneeled down? A. Yeah.

14 Q. Okay. And did he extend his hand for you to kiss, or
15 how did you get his hand? A. I think so.

16 Q. Well, how did you get his hand?

17 A. I don't remember exactly how I get his hand. But I
18 remember I kiss his hand is all I know.

19 Q. And at this time you said, "Good evening," you were
20 kneeling down? A. Yeah.

21 Q. On one knee or two knees? A. I don't
22 remember exactly.

23 Q. Well, how did you -- did you kneel down when you met
24 the Patriarch on other occasions?

25 A. Other occasions one knee.

26 Q. Pardon me? A. Other occasions one

1 knee.

2 Q. And would you always kneel down when you met the
3 Patriarch?

A. Yeah.

4 Q. When you were with your father?

A. Yeah.

5 Q. And that was the way that you greeted the Patriarch?

6 A. Right.

7 Q. To show your respect for him?

A. Um-hum.

8 Q. Because he was the leader of the church?

9 A. Right.

10 Q. And was that a custom in the church? When one was
11 greeting the Patriarch, they would kneel down on one knee?

12 A. Somebody they do, somebody they don't.

13 Q. Okay. And what about the kissing of the hand, was that
14 also a custom in the church?

A. I don't know.

15 We do it. I don't know it is custom.

16 Q. Had you seen other people do it?

17 A. I seen my father do it, all relative.

18 Q. And the Patriarch smiled at you?

19 A. Yeah.

20 Q. Okay. Did he recognize you?

21 A. Yeah.

22 Q. What did he say to you?

A. He say,

23 "I heard -- we heard that you're in California for a week,"
24 California or San Francisco, he say something about that.

25 I said, "Yes, Kessy."

26 Q. Did he tell you how he heard that?

1 A. No.

2 Q. Did you ask him? A. No.

3 Q. Okay. Were you curious as to how he knew you were in
4 California?

5 A. No.

6 Q. You weren't curious at all? A. No.

7 Q. Okay. And so -- let me ask you this, Mr. Ismail, did
8 the Patriarch express any sort of surprise that you were at
9 his door at 7:00 o'clock at night or 6:50 at night?

10 A. I don't remember exactly.

11 Q. Well, did he look surprised to see you?

12 A. He smiled.

13 Q. Did he say, "What are you doing here without an
14 appointment?"

A. He didn't mention that.

15 Q. He didn't say that at all?

16 A. No.

17 Q. And so then the Patriarch invited you into his house?

18 A. Yeah.

19 Q. All right. Where did he invite you?

20 A. Right in, right in the house.

21 Q. Okay. And what part of the house?

22 A. First part of the house, I don't know, front of the
23 house. Living room or what?

24 Q. When you went into the house where did you go with
25 the Patriarch, to the left, to the right, straight back?

26 A. No, he was front.

Q. Pardon me?

A. He was in the front of

1 me.

2 Q. You followed him? A. Yeah.

3 Q. And did you shut the door? A. I don't
4 remember.

5 Q. Did the Patriarch shut the door?

6 A. I don't know exactly.

7 Q. Did anybody shut the door? A. I don't
8 know.

9 Q. Okay. So as far as you know then the door remained
10 open? A. Maybe.

11 Q. Okay. Now, when you followed the Patriarch into the
12 house where did you follow him to?

13 A. He turn at me, ten, fifteen feet, I don't remember
14 exactly, was talking to something, he was talking to me , I
15 don't know what about.

16 Q. Wait a minute. He was talking to you?

17 A. He was trying to talk to me, something, I don't know
18 what.

19 Q. Were you having trouble understanding him?

20 A. No. No, he just wants to start to talk about something,
21 I don't know what.

22 Q. You didn't know what then, or you don't know what now?

23 A. I don't know what then or now.

24 Q. You didn't understand what he was saying? ay nothing,

25 A. He didn't start it.

26 Q. Pardon me? A. He didn't say nothing,

1 he was going to say something.

2 Q. How did you know he was going to say something?

3 A. Because he turned to me, smiled and looked like he
4 wants to talk to me, say something.

5 Q. So I can get the sequence right, he invites you into
6 his house, did he turn his back on you and you were
7 following him?

8 A. No, not his back. He was
in the front of me.

9 Q. He was in the front of you? A. Yeah, a
10 little on the left side, my left side.

11 Q. In front of you on your left side?

12 A. Yeah.

13 Q. And you told us that -- well, was he facing you or did
14 he have his back toward you? A. He was beside
15 me but little front and ahead me.

16 Q. Ahead of you? A. A little bit, yeah.

17 Q. When you say, "Ahead of you," do you mean closest to
18 the door or closest to the inside of the house?

19 A. Inside the house.

20 Q. Okay. And so, let's just imagine, if we can, that this
21 is the front door, the jury railing?

22 A. Yeah.

23 Q. Then it would be you here and the Patriarch facing you,
24 right?

A. I don't know. Probably.

25 Q. Well, try and remember. Do you remember?

26 A. Not clearly.

1 Q. Well, give us your best estimate then, Mr. Ismail.

2 A. I don't remember clearly.

3 Q. Okay. And so, in any event, you told us a few minutes
4 ago that the Patriarch invited you into the house?

5 A. Yes, he did.

6 Q. And that he turned around as if -- and you were
7 following him into the house, right?

8 A. Yeah.

9 Q. Okay. And he turned around as if to say something to
10 you?

A. Yeah.

11 Q. Well, he must have turned his back to you then and
12 started to lead you into the house, right? In other words
13 he didn't invite you into the house and he wasn't walking
14 back like this talking to you, was he (indicating)?

15 A. I don't know. I don't think so.

16 Q. So he turned his back to you, right, according to your
17 story and said, "Come on in"? A. No, he
18 grabbed me, first of all.

19 Q. I see. Okay. When did he grab you, Mr. Ismail?

20 A. When I kneel first.

21 Q. When you kneel first?

A. After kissing.

22 Q. Where did he grab you?

A. Over here

23 (indicating).

24 Q. On the arm?

A. Umhum.

25 Q. And did he grab you hard?

A. No.

26 Q. Did he grab you soft?

A. Yeah.

1 Q. All right. And after he grabbed you did he say why
2 he grabbed you? A. I don't remember why.

3 Q. What did you think when he grabbed you?

4 A. Just he was happy to see me, I guess.

5 Q. So he reached down and grabbed you?

6 A. That is looked to me.

7 Q. I'm sorry? A. That is looked to me.

8 MR. FESTARINO: Looked to him like that.

9 Q. (By Mr. Robinson) Looked to you like he grabbed you?

10 A. Yeah, he was happy.

11 Q. Okay. Now, let's answer my question. When he invited
12 you into the house did he turn his back to you and start to
13 walk in? A. He didn't turn his back.

14 He was beside me, a little bit in front of me, a little bit.

15 Q. All right. Well, anyway he says, "Let's go into the
16 house"? A. Yeah.

17 Q. And you go into the house with him?

18 A. Yeah.

19 Q. All right. Okay. And where did you go in the house?

20 What part of the house? A. I guess was
21 living room. I don't know.

22 Q. Well, describe the area that you went into, Mr. Ismail.

23 A. Couldn't describe it.

24 Q. Well, do you know the color of the rugs that were in
25 there that you say you went into? A. No.

26 Q. Okay. Do you know if there was a dining room table in

1 there?

A. No.

2 Q. All right. Do you know if there was a sofa in there?

3 A. I don't know.

4 Q. Do you know if they had any chairs in there?

5 A. I don't know.

6 Q. All right. Well, this area of the house that he
7 invited you into that you can't describe for us now, did you
8 sit down in there?

A. No.

9 Q. Just he invited you into the house and he didn't say,
10 "Have a seat," or anything like that?

11 A. No, not yet.

12 Q. Not yet?

A. No.

13 Q. Did he ever ask you to sit down and have a seat?

14 A. No.

15 Q. Did he say anything like, "Hey, I just put some coffee
16 on, I got some coffee, my wife's upstairs, why don't you
17 have a cup of coffee with us?" Did he ever ask anything like
18 that?

A. I don't remember.

19 Q. You don't remember? Okay. So you are in this area
20 of the house, did you ever sit down in the house?

21 A. I don't think so.

22 Q. Well, now, you know, try and remember, Mr. Ismail.
23 There is a lot of things that -- strike that.

24 Try and remember. Did you sit down in the house
25 or did you stand up all of the time when you were in there?

26 A. I believe I didn't sit down.

1 Q. You didn't sit down? A. I don't think so.

2 Q. Okay. And did the Patriarch sit down?

3 A. No. I don't think so.

4 Q. All right. Now, when you were in this area of the
5 house that you can't describe for us, what happened when you
6 got in there?

7 A. He turned to me, he wants
8 to say something and I told him that, would I come in here,
9 why I come and --

10 Q. Well, -- A. -- Assyrian thinking,
11 and I start saying what I want to say.

12 Q. All right. The Patriarch turned to you and started to
13 say something, right? A. Yeah.

14 Q. Okay. And I take it that you respect the Patriarch,
15 correct? A. What's "respect"?

16 Q. You honor the Patriarch? A. Yeah.

17 Q. You just knelt down and kissed his hand, according to
18 your story, right? A. Yeah, right.

19 Q. Okay. He is a leader of the church, right?

20 A. Yeah.

21 Q. And the leader of the church goes to say something to
22 you and you interrupt him? A. No.

23 Q. Well, Mr. Ismail, now you just told us that he started
24 to say something and you said, "I'm telling you why I'm here,"
25 do you remember telling us that?

26 A. He turned to me, he wants to say, looked to me like
he wanted to say something.

1 Q. All right. And did you wait for him to say something?

2 A. I don't remember exactly I wait for him or not.

3 Q. Well, did he say anything to you?

4 A. Not until I say.

5 Q. What did you say to him? A. I told him that
6 Assyrian, they don't like to be, Patriarch to be back because
7 you are married. Assyrian they don't like him to be back as
8 a Patriarch, and he is married.

9 Q. That was the first thing you said to him?

10 MR. PESTARINO: Let him finish.

11 THE COURT: I didn't quite understand.

12 (Record read by the reporter.)

13 THE WITNESS: Right.

14 Q. (By Mr. Robinson) All right. That is -- is that the
15 first thing you said to him? A. Yes.

16 Q. You didn't say anything else about, "How's it going?
17 How you have been," anything like that?

18 A. No, just following these words, I told him that I don't
19 mind myself, but I can't send that telegraph you give it to
20 me. So I couldn't finish the words, he gets so upset.

21 Q. Okay. Now, why did you feel that you had to see the
22 Patriarch in person to deliver this message?

23 A. I don't know why.

24 Q. Well, could you have called him and told him?

25 A. No.

26 Q. Could you have given him a letter and told him?

1 A. No, just I decided to talk to him, maybe I will come in
2 the summertime to visit California probably.

3 Q. All right. And so you waited, let's see, he asked you
4 according to your testimony, to send the letter in February,
5 you waited until November to come down and see him in person
6 and tell him that you weren't going to send the letter, the
7 telegram?

8 A. Wasn't special to see him
that visit to California.

9 Q. It wasn't ? A. It wasn't special to
10 visit him, no.

11 Q. Now, after you told him that you couldn't send the
12 telegram, that the people didn't want him to be Patriarch
13 anymore, what happened next?

14 A. Well, he just
turned very upset.

15 Q. What did he do? A. He didn't say
16 nothing, first of all.

17 Q. How did you know he was upset? A. I
18 could see by his his -- he slapped me first. He hit me left
19 hand.

20 Q. Pardon me? By what? A. By left or
21 right hand, and he asked me to get out.

22 Q. Let me stop you there. Now, he turned very upset, but
23 he didn't say anything? A. First of all, no.

24 Q. Then did he grab you at all? A. After
25 he hit me twice he grabbed me here (indicating).

26 Q. No. No, wait. Maybe we are not communicating. What

1 I want to do is get the exact sequence of events, the things
2 that happened in order. Okay? A. Um-hum.

3 Q. One, two, three. You told him that you weren't going
4 to send the telegram, that the Assyrian people didn't want
5 him to be Patriarch anymore. Okay? A. Yeah.

6 Q. Then you told us that he didn't say anything right?

7 A. Um-hum.

8 Q. But it appeared to you that he was getting very upset,
9 right? A. Yeah.

10 Q. Okay. Now, what happened next?

11 A. Next he just hit me.

12 Q. Okay. He hit you. That was the next thing?

13 A. Yeah.

14 Q. Where did he hit you? A. In my face
15 someplace. I don't remember exactly.

16 Q. All right. Did he hit you with a fist or with an open
17 hand? A. Open hand.

18 Q. Open hand? A. I guess.

19 Q. And how close were you to the Patriarch when you were
20 standing in this room and this occurred?

21 A. Pretty close.

22 Q. Very close? A. I think so.

23 Q. Did he have to take any steps to come toward you to hit
24 you? A. I remember he had some step,
25 he step and he grabbed me here (indicating).

26 Q. Was that before or after he hit you?

1 A. After.

2 Q. After. All right. Now, I want to know, when he hit
3 you the first time, according to your story, did he have to
4 take any steps to hit you? Or could he just reach out and
5 hit you from where you were standing?

6 A. I think so.

7 Q. You think what? That he had to take steps or he didn't
8 have to take steps? A. No, I don't think he
9 had to take any steps.

10 Q. So there were the two of you in his living room
11 standing within arms distance of each other just standing
12 there, right? A. Yeah.

13 Q. Okay. And then he became very upset and he slapped you
14 in the face? A. Yeah.

15 Q. All right. And then he slapped you in the face with his
16 other hand? A. Yeah.

17 Q. Got you quick, two times right in the face, huh?

18 A. Yeah.

19 Q. Now, what did you do when he slapped you in the face
20 twice? A. I can't do nothing. I
21 just try to get out. He grabbed me from here (indicating).

22 Q. All right. Now, when he slapped you in the face, you
23 were facing him, right? A. Yeah.

24 Q. Did he knock you down when he slapped you?

25 A. I believe when he grabbed me here, he knocked me --

26 Q. No. No, we will get to that. I am going in order.

1 Remember that. When he slapped you in the face the first
2 time did he knock you down? A. No.

3 Q. When he slapped you in the face the second time did he
4 knock you down? A. I don't remember,
5 no.

6 Q. When he slapped you in the face did your eyes start to
7 water? A. I don't know what you say.

8 Q. Did your eyes, did you get tears in your eyes?
9 A. I don't remember.

10 Q. Did it hurt? A. No, I just felt
11 ashamed, that's all.

12 Q. You felt ashamed? A. Yeah.

13 Q. Why did you feel ashamed? A. I don't know
14 why.

15 Q. All right. And so then after he slapped you in the
16 face two times were you mad at the Patriarch?

17 A. No, I mad at myself why I come.

18 Q. All right. Mad at yourself. A. Well, I
19 think I thought shouldn't come.

20 Q. So then you decided to leave? A. Yeah.

21 Q. When the Patriarch slapped you in the face two times,
22 did he say anything to you? A. No.

23 Q. When did he tell you to get out?

24 A. When he grabbed me.

25 Q. When he grabbed you. Okay. And how did he say get
26 out? Did he scream it or did he say it very softly, "Get

1 out"?

A. Oh, scream it.

2 Q. Screaming and yelling at you? A. Yeah.

3 Q. Get out, get out? A. Well, something --

4 Q. Was he saying it in English or in Assyrian?

5 A. In Assyrian.

6 Q. And this is a very loud yell? A. Yeah.

7 Q. Okay. And did you say anything to him?

8 A. No.

9 Q. No. Okay. So after he slapped you twice and was
10 screaming loud at you in Assyrian to get out, what happened
11 next? A. I believe he hit me by his

12 knee.

13 Q. Hit you by his knee. Where did he hit you by his knee?
14 You indicated -- A. Someplace in
15 here (indicating).

16 Q. In the front? A. Yeah.

17 Q. Indicating around the rib and stomach area right in
18 here? A. I don't remember exactly.

19 Q. Somewhere on the front of your body?

20 A. Yeah.

21 Q. Okay. And how did he hit you by his knee? Did he
22 raise it up like that? A. Yeah, he was
23 grabbing, like that.

24 Q. He slapped you twice, then he grabbed you first, and
25 then he grabbed you before he hit you with the knee?

26 A. Yeah.

1 Q. And where did he grab you? A. Left shoulder.

2 Q. On your left shoulder. And did he grab you with one
3 hand or two hands? A. I don't remember one
4 hand or two hands.

5 Q. When he grabbed you on the left shoulder, did he grab
6 you hard or did he grab you soft?

7 A. I don't remember exactly.

8 Q. Was it the same sort of grab that you told us about
9 when he put his hand on your left shoulder when you knelt
10 down to kiss his hand? A. I don't remember
11 exactly.

12 Q. Okay. So then after he grabs you on the left shoulder,
13 he knees you, uses his knee to hit you?

14 A. Right.

15 Q. And he hit you somewhere in the front?

16 A. Yeah.

17 Q. How tall is the Patriarch? A. I don't know
18 how tall he is.

19 Q. Well he is smaller than you, isn't he ?

20 A. I don't think so.

21 Q. How tall are you, Mr. Ismail? A. I
22 believe five nine.

23 Q. Five nine. And wasn't the Patriarch five five, five
24 six? A. I don't know.

25 Q. Okay. And so this knee, he raises his knee up and
26 hits you, right? A. Yeah.

1 Q. When he hits you what happens to you? What do you do?

2 A. Well, when he grabbed me, first of all here, I was like
3 that (indicating).

4 Q. You were like what?

5 THE COURT: Bent over.

6 Q. (By Mr. Robinson) You were bent over?

7 A. Yeah.

8 Q. How come? A. Because I want to get
9 out and he grabbed me over here, then he knocked me by his
10 knee.

11 Q. Then he knocked you by his knee?

12 A. Yeah.

13 Q. So he slaps you twice (clapping hands), like that?

14 A. Um-hum.

15 Q. Then you want to get out, so you're bent over, right?

16 A. Yeah.

17 Q. How were you going to run out? Are you going to run
18 out low in a crouch? A. I don't know how. He
19 grabbed me, and I bent a little bit like that in front
20 him. I don't know what to say, what to do.

21 Q. Then the knee came? A. Yeah.

22 Q. Then he hit you with the knee? A. Yeah.

23 Q. After he hit you with the knee what happened to you?

24 A. I believe I fell down. I don't know why.

25 Q. Okay. And at this time you were still in the original
26 area where you were talking to the Patriarch?

1 A. We was moving, I guess.

2 Q. Was he chasing you? A. I don't know
3 exactly.

4 MR. FESTARINO: Excuse me, let him finish.

5 THE WITNESS: We was moving. I don't know
6 exactly from the door or to the wall or someplace, I don't
7 know. I know we was moving, but I don't know where.

8 Q. (By Mr. Robinson) Was he chasing you?

9 A. Well, yeah.

10 Q. He was. Okay. And you fell down?

11 A. Yeah.

12 Q. Right. Okay. A. I'm not too sure, I
13 can't clear that, but I just think that I fell down after the
14 knee.

15 Q. Now, when he grabbed you by the jacket did it rip your
16 jacket? A. I don't know. You could
17 look at.

18 Q. Well, your jacket ripped, didn't it, when you fell in
19 the bushes running? A. I don't know.

20 Q. Okay. Now, after he kneed you --

21 A. Um-hum.

22 Q. Then what happened? A. Then he spit in
23 my face and he gave two bad words to my father.

24 Q. Now, he kneed you, you fell down, right?

25 A. Yeah.

26 Q. Okay. And did you fall down on your stomach or on your

1 back?

2 A. I don't know. I think on
my knees.

3 Q. Your knees?

4 A. I think so,
yeah.

5 Q. Okay, and then did he come over at you and spit right
6 in your face or did he have to bend down to spit in your
7 face?

8 A. I don't know exactly. I
know he spit in my face.

9 Q. Spit in your face?
10 two bad words my father.

A. Yeah, and used

11 Q. Then he called your father a couple bad words?
12 A. Yeah.

13 Q. And what did he call your father?

14 A. Call bad words in Assyrian.

15 Q. What did he say?

16 A. I don't want to say.
I could write it for you, but I don't want to say it.

17 Q. Well, you are going to have to say it. What did he
18 say?

19 MR. FESTARINO: Well, if Your Honor please --

20 THE WITNESS: I don't want to say these words
21 again. I just don't want to say it. If you want me I could
22 write it for you but I don't want to say it.

23 MR. ROBINSON: That is not acceptable.

24 THE COURT: Pardon me, may I intervene? Why don't
25 you want to say it?

26 THE WITNESS: It's very bad word, and it was for

1 my father, so I don't want to mention again these words. I
2 could write it but I don't want to say it by myself. He
3 should say it that's all right, but I don't want to say it.

4 THE COURT: The reason you don't want to say it
5 is because you don't want to say words against your father
6 or because --

7 THE WITNESS: Yeah, because it was against my
8 father. I hear these words against my father, so I don't
9 want to say it.

10 THE COURT: In other words, you don't want to say
11 the same words against your father?

12 THE WITNESS: That's right.

13 THE COURT: Okay. All right.

14 MR. ROBINSON: Well, he is not saying it, Your
15 Honor, according to him it is the Patriarch saying it.

16 THE COURT: That is why -- if you will give me a
17 chance -- what the lawyer is asking you is to tell everybody
18 what the Patriarch said, see? So even if you repeat what
19 the Patriarch said you are not saying it of your own words.
20 You are telling us what he said. You understand?

21 THE WITNESS: I understand, Your Honor.

22 THE COURT: All right. So why can't you say the
23 words?

24 THE WITNESS: Well --

25 THE COURT: You will not offend the jury or any
26 of us by use of the words whatever they are.

1 THE WITNESS: Yeah. Well, after he spit in my
2 face said two bad words to my father, which says, "Razel
3 brona drazel kopa brona dkopa."

4 THE REPORTER: Could he spell it now?

5 THE COURT: Well, did you get it phonetically at
6 all?

7 THE REPORTER: Would you say it once more?

8 THE WITNESS: No, I don't.

9 MR. FESTARINO: We'll have him write it out.

10 THE COURT: Could you write it out?

11 MR. FESTARINO: I'll have him do that.

12 THE COURT: Can you write it in English?

13 THE WITNESS: I can write it. I don't know makes
14 sense or not.

15 THE COURT: Write it first in Assyrian. Can you
16 write that? And then can you write that in English, the
17 best you can.

18 THE WITNESS: (Writing.)

19 THE COURT: And we will mark this as an exhibit
20 for the prosecution. Be number 32. Thank you.

21 MR. ROBINSON: Okay.

22 (Whereupon, the above-mentioned document, being
23 a writing by the witness, was marked as Plaintiff's Exhibit
24 No. 32 for identification and entered into evidence.)

25 THE COURT: Could you perhaps translate those,
26 also?

1 THE WITNESS: No, it is hard for me to translate.

2 THE COURT: He has written, for the record, in
3 Aramaic or -- what's the language?

4 THE WITNESS: Assyrian.

5 THE COURT: Then the translation or the phonetic
6 spelling is, "Razel brona drazel kopa brona dkopa," is that
7 right?

8 THE WITNESS: Yeah.

9 Q. (By Mr. Robinson) Okay. And you remember that is
10 what the Patriarch said?

A. Yeah.

11 Q. No doubt in your mind?

A. No.

12 Q. So your memory is good up to that point?

13 A. Yeah.

14 Q. What happened next?

A. I don't know.

15 Q. Well, you mean all of a sudden you don't remember
16 anything after that point?

17 A. Well, what
18 do you want me to say? I'll say it. Just tell me what you
19 want me to say, I'll say it. But I don't remember what
20 happened exactly. When I heard these words I don't know
21 what happened. You want me to say something, just tell me,
22 I will.

23 Q. Well, sir, I don't want you to say anything. I just
24 want to get to the truth of this matter. You understand
25 I have a client to represent in the proceeding, too, don't
26 you?

MR. PESTARINO : Excuse me --

1 THE WITNESS: I don't know.

2 MR. PESTARINO: I don't think we ought to argue.
3 I think the witness ought to be instructed to answer the
4 questions and counsel ask the question.

5 THE COURT: All right. Mr. Ismail, if Mr.
6 Robinson is going too fast or if you don't understand what he
7 is asking, just say so. He does not want you to say anything
8 that isn't true. He wants you to tell what you remember in
9 the way he is asking the questions. Then your attorney will
10 have a chance to ask other questions.

11 THE WITNESS: Okay.

12 Q. (By Mr. Robinson) After he said these words about your
13 father you don't remember anything that happened?

14 A. No.

15 Q. Okay. And the next time you remember something is in
16 the pizza parlor?

A. I don't know was in
17 pizza parlor or someplace else, my hands on the wall.

18 Q. And at the time that the Patriarch, according to your
19 testimony, uttered these words against your father, this was
20 after he spit in your face?

A. Yeah.

21 Q. And at this time were you still down on the ground?

22 A. I don't -- I don't remember exactly I went down the
23 ground or not. I can't clear that.

24 Q. Now, you don't remember if you went down on the ground
25 or not?

A. Not clearly.

26 THE COURT: Excuse me, I think there may be a lack

1 of communication. You say, "Down on the ground" I don't
2 know whether you mean completely on the floor or, as he has
3 said, on one knee down. Maybe that ought to be clarified.

4 Q. (By Mr. Robinson) Any time I say down on the ground,
5 I mean down on one knee. A. Okay.

6 Q. I didn't mean to confuse you. I'm sorry.

7 When you were down on one knee did the Patriarch
8 spit in your face? A. I believe so, when
9 I was down I think so.

10 Q. And when you were down on one knee is this when he
11 uttered those words against your father?

12 A. Yeah.

13 Q. Now, when -- did you ask the Patriarch when you went
14 to his house how his wife was? A. No, I don't
15 think so.

16 Q. Did you hear his wife in the house? Did you know she
17 was there? A. I don't know.

18 Q. All right. Did the Patriarch say anything like, "
19 Kamaa, look who's here, it's David Ismail from Chicago --
20 from Canada. Come down and see him," anything like that?

21 A. I don't think so. I don't know exactly. I don't
22 think so.

23 Q. Mr. Ismail, isn't it a fact that you went to the
24 Patriarch's house with the intention to kill the Patriarch?

25 A. What's that?

26 Q. Isn't it a fact, sir, that you went to the Patriarch's

1 house that Thursday night with the gun with the intention to
2 kill the Patriarch? A. What's a fact?

3 Q. Isn't that what happened? A. You mean I
4 went there for kill him?

5 Q. Yes, sir. A. No.

6 Q. Isn't it a fact, sir, that the minute he opened the
7 door you had that gun there, you pointed it at him, he
8 screamed for his wife, two times, "Emama, Emama, " and you
9 shot him? A. No.

10 Q. That didn't happen? A. No, sir.

11 MR. ROBINSON: I have no further questions.

12 REDIRECT EXAMINATION

13 BY MR. PESTARINO:

14 Q. Let me ask you this, Mr. Ismail, a little while ago
15 you testified that you felt ashamed ?

16 A. Yeah.

17 Q. Do you want to explain that a little bit more?

18 A. I can't remember very clearly, but I remember just I
19 want to get out of, feel very ashamed. I don't want, maybe
20 somebody in the house could have seen him, you know, slap
21 me, and I wasn't thinking that he was do that for me, I was
22 thinking just as a member of the family, not a stranger from
23 him. So I was thinking, think, I was very ashamed, I should
24 get out early, his wife come in or somebody else there.

25 Q. When you went into the house or went up to the house
26 did you feel nervous, upset, kind of frightened?

1 A. I don't remember exactly but I remember I was a little
2 upset, a little bit to see the, you know, I didn't call him,
3 I should call him something like that.

4 Q. So you felt kind of shameful? A. I don't
5 know how I was feeling at that time, but --

6 Q. Do you think, do you think that the amount of liquor
7 that you had to drink had anything to do with the way you
8 felt?

9 A. I believe one thing, I'm
10 sure if I was having no any drink, not even, I can handle
11 it.

12 THE COURT: Would you read that answer back?

13 (Answer read by the reporter.)

14 Q. (By Mr. Pestarino) You mean if you hadn't had anything
15 to drink and he did these things --

16 A. I just handle it, and get out quick as I can.

17 Q. Quick as you can?

A. I believe so.

18 Q. Were you trying to get out of there that night?

19 A. I was trying to, but I got very upset when I heard
20 these words against my father, which was just like his
21 brother, you know, he was.

22 Q. You mean your father and the Patriarch were very close?

A. Very very close.

23 Q. And you knew that?

24 A. Yeah, I
know that.

25 Q. And was it going through your mind that, the things
26 that your father had done for the Patriarch?

1 MR. ROBINSON: Objection, leading question.

2 THE WITNESS: Very much.

3 THE COURT: Just a moment. The objection is
4 sustained.

5 Q. (By Mr. Pestarino) You testified before that your
6 father was very disappointed when the Patriarch got
7 married? A. Yeah.

8 Q. And there was certain people in Iran or Iraq --

9 A. Um-hum.

10 Q. -- That before the Patriarch got married were against
11 the Patriarch?

12 MR. ROBINSON: I'm going to object, once again,

13 --

14 THE WITNESS: Yeah.

15 MR. ROBINSON: -- if counsel wants to testify
16 let's put him on the stand. These are leading questions.

17 MR. PESTARINO: I'm reviewing.

18 THE COURT: Yes. He is reviewing and it is
19 preliminary. It is nothing new.

20 Q. (By Mr. Pestarino) Did you testify to that?

21 A. Yeah.

22 Q. And were you aware of a lot of things that your
23 father had done as far as the Patriarch is concerned?

24 A. Well, I know my father he did a lot of thing for, for
25 Patriarch. He was very close to him. Otherwise he have,
26 too, I guess.

1 Q. And did your father do a lot of things for you, too?

2 A. Yes, he did.

3 Q. Were some of these things going through your mind when
4 the Patriarch said these words about your father?

5 MR. ROBINSON: Objection, leading question.

6 The proper question is, "What was going through your mind."

7 THE COURT: The objection is sustained.

8 THE WITNESS: Well, when he said these --

9 Q. (By Mr. Pestarino) What was going through your mind?

10 A. I don't know exactly what was going my mind, but when
11 I heard these and I know how my father be, he was close to
12 him, and I know what he did for him for years and years and
13 years, and I was just, I don't know, I don't know what to say,
14 I don't know what to do at that time. I just --

15 Q. Let me ask you this, to spit in someone's face even,
16 you work with people that are not Assyrians?

17 A. Um-hum.

18 Q. Huh?

A. Yeah.

19 Q. Did you ever see anybody spit in somebody's face
20 before?

21 A. Well, it is very bad.
22 It look very bad, Assyrian, if somebody spit in another
23 person's face.

24 MR. ROBINSON: I'm going to make a motion to
25 strike as nonresponsive. The question was, "Did you ever
26 see anybody spit in anybody's face?"

MR. PESTARINO: I agree.

1 THE COURT: It may be stricken.

2 Q. (By Mr. Pestarino) Did you ever see anybody spit in
3 somebody's face? A. Not very often.

4 Q. Not very often? A. No.

5 Q. Do you feel or did you feel -- what did you feel when
6 the Patriarch spit in your face? What were your feelings?

7 A. I feel that time, I don't remember, I can't clear it
8 exactly, but I was feeling, I think, very ashamed and I want
9 to get out of there, and why I didn't call him, I should
10 call him or I should come next day early morning, or early
11 in the noon, and that's all that I can clear to, and what
12 I heard says about my father.

13 Q. Now, let me ask you this, had you yourself ever seen
14 an Assyrian, as the Patriarch, spit in somebody's face?

15 A. No.

16 Q. Had you ever seen, heard him scream at somebody?

17 A. I didn't see him. I heard but I didn't see him.

18 Q. I don't understand your answer. You said that you
19 heard but you don't, you didn't see him?

20 A. Yeah, I heard that he is nervous.

21 MR. ROBINSON: I'm going to object.

22 THE COURT: Excuse me. Just a moment, Mr. Ismail,
23 it appears what he is saying, that it is hearsay that he
24 heard.

25 MR. PESTARINO: I'm not asking him for the
26 conversation. I am asking him if he heard him scream.

1 THE COURT: Did you understand that? Were you
2 ever present when the Patriarch screamed or yelled at
3 somebody?

4 THE WITNESS: No.

5 MR. PESTARINO: All right. Fine.

6 Q. (By Mr. Pestarino) You indicated that you had, or the
7 District Attorney indicated that you had made a conscious
8 decision --

9 MR. ROBINSON: I'm going to object. I didn't
10 indicate that. I asked him the question and he agreed.

11 MR. PESTARINO: I think if you can go back to the
12 record the District Attorney paraphrased his words by saying
13 that you made a conscious --

14 MR. ROBINSON: That was my question.

15 THE COURT: What is your question?

16 MR. PESTARINO: Well, this is just preliminary.

17 THE COURT: Well, I can't make any ruling until
18 the question is asked.

19 MR. PESTARINO: All I'm asking is that the
20 District Attorney indicated to you that you had made a
21 conscious decision to go to see the Patriarch.

22 THE COURT: All right. The objection is overruled
23 to this point. Now, let's hear the rest of the question.

24 MR. PESTARINO: It's preliminary.

25 Q. (By Mr. Pestarino) Now, you indicated too, that you
26 had been, you made that decision when you went outside the

1 pizza parlor when you were feeling somewhat ill?

2 MR. ROBINSON: I'm going to object to this. If
3 counsel wants to testify, boy, let me have a shot at him on
4 cross-examination.

5 THE COURT: Let's not quibble.

6 MR. ROBINSON: He is trying to put words in the
7 witness' mouth. It is plain as day. That is the purpose
8 for no leading questions to your own witness.

9 THE COURT: I understand and it is leading.

10 MR. PESTARINO: May I be heard on that?

11 THE COURT: What you are doing is by restating
12 the testimony setting up the answer which, in essence, is
13 leading, because a leading question suggests.

14 MR. PESTARINO: I'm just trying to bring him back
15 to a time and a place where he made a decision, that's all,
16 by a question. And I don't see anything leading about that,
17 or suggestive or anything wrong with it.

18 MR. ROBINSON: Perhaps I could provide counsel a
19 copy of my evidence code which defines leading questions,
20 Your Honor?

21 MR. PESTARINO: I know what a leading question is.

22 THE COURT: It is a leading question the way it
23 is phrased. Now, you may rephrase it.

24 MR. PESTARINO: All right.

25 Q. (By Mr. Pestarino) When did you make a conscious
26 decision to go to the Patriarch's house, when you were in

1 the pizza parlor or outside the pizza parlor?

2 A. I don't know exactly. I have that pizza, I went out-
3 side for fresh air, and I think I was feeling okay, and I
4 just walked there or taxi, or I don't know, I think I walked
5 there, I guess, and decide, I don't remember why or how I
6 made that decision, but I was thinking Friday, Saturday, go.

7 Q. Let me ask you this, you were thinking, did the
8 alcohol have any effect on you at that time?

9 A. Well, I don't know. Probably.

10 Q. You don't know?

A. I don't know.

11 Q. You indicated yesterday how much you had had to drink?

12 A. Yes, sir.

13 Q. Yes?

A. Yes.

14 Q. And did you feel any of the effects, any effects of
15 what you drank?

A. I don't know exactly.

16 Q. Let me ask you this, did five or six drinks, or four
17 or five drinks within the period that you testified to --

18 A. Um-hum.

19 Q. -- didn't you feel those drinks at all?

20 A. I could feel them myself, I was haby (heavy), but --

21 Q. Huh?

A. I was feeling myself I
22 was a little haby (heavy).

23 Q. A little happy?

A. Haby (heavy),
24 you know, like a little drunk.

25 Q. Sorry, I didn't hear that. A little heavy?

26 A. Um-hum.

1 Q. A little, in other words, thick?

2 A. Yeah, you know, but I wasn't think there was, I was
3 drunk.

4 Q. Okay. A. I don't think so.

5 Q. Was it at that time that you were feeling a little
6 heavy? A. Um-hum.

7 Q. That you decided to visit the Patriarch?

8 A. I guess so.

9 Q. And was that after you ate the pizza?

10 A. Yeah.

11 Q. Was that after you felt sick? A. Yes.

12 THE COURT: Counsel, let's take our morning
13 recess at this time. We will take our fifteen minute break,
14 ladies and gentlemen. You will keep in mind the admonition
15 I have previously given to you. We will resume at 11:10.
16 And you can step down, also, Mr. Ismail. You are ordered to
17 return at that time.

18 (Short recess taken.)

19 (Whereupon, the following proceedings took place
20 in Chambers out of the presence of the jury:)

21 THE COURT: During the recess the bailiff told me
22 that he had been approached by three members of the jury.

23 THE BAILIFF: Three of the male members, the men.

24 THE COURT: Would you explain to counsel what
25 they stated.

26 THE BAILIFF: They stated they are minorities and

1 they know how hard it is to testify in another language, and
2 they would request, if possible, to have the defendant
3 testify in his language with an interpreter to explain what
4 he is trying to say since they know how hard it is to
5 testify in another language when you are not familiar with
6 it.

7 MR. PESTARINO: Well --

8 THE COURT: My feeling is that inasmuch as he
9 seems to comprehend and understand basic English, and that
10 it has been only a few times where his accent was the
11 problem, that he is perfectly capable of comprehending and
12 testifying. On the other hand, if there are things that he
13 cannot completely explain in response to questions posed in
14 English, I would have no objection to an interpreter if one
15 is available and suitable to both sides.

16 MR. PESTARINO: We are faced with this situation,
17 we are practically both through with the examination of the
18 witness, and I think we ought to consider that.

19 THE COURT: Would you have any objection?

20 MR. PESTARINO: I was just going to suggest that
21 you talk to David Ismail yourself and see what his feelings
22 are because he has expressed, sometimes he says, "I don't
23 understand what you mean." And like during the recess he
24 says, "I really don't understand what you mean," when I
25 asked him a question about how did he feel and he says
26 heavy.

1 THE COURT: All right. Let's ask Mr. Ismail if
2 he would like an interpreter for the remaining portion or to
3 go over any portion of further examination. And in the event
4 that he wouldn't want one or is satisfied, then I thought
5 that I would explain to the jury that he was willing to
6 testify in English and seemed to be at this point able to
7 communicate with his attorney, and an interpreter was
8 available or is available to him.

9 MR. PESTARINO: Well, I'm going to have one of the
10 doctors testify that his language is a barrier as far as
11 some examination is concerned because, something to the effect
12 that there is not precise language for some examinations.

13 Now, I don't know what bearing that will have with
14 these jurors, but that is probably what the doctor will
15 testify to.

16 THE COURT: I was going to explain to them
17 because we have run into this in other cases where we have
18 had interpreters, where the interpreter would say, "There is
19 no precise English word for this, and, therefore, the
20 nearest is such and such." How do you feel about it?

21 MR. ROBINSON: I agree with Your Honor's
22 explanation to the jury that Mr. Pestarino obviously felt
23 that this man was able to communicate and understand
24 English, that the police officer who interviewed Mr. Ismail
25 felt that same way. There has been nobody that has testified
26 in this whole proceeding that Mr. Ismail doesn't understand

1 English. He has been in Canada where he speaks English
2 since 1960, '68 or '60, he appears to be able to
3 communicate on the witness stand.
4

5 MR. PESTARINO: I can shortcut the whole thing.
6 Why don't you have him come in here, I think he will tell
7 you that. Maybe that will resolve the whole problem. I
8 don't want another fiery cross-examination.

9 MR. ROBINSON: I'm not going to ask any questions.

10 THE COURT: I'll do the examining of Mr. Ismail.

11 (Whereupon, the defendant, David Malek Ismail,
12 was brought into Chambers and the following proceedings
13 took place in his presence:)

14 THE COURT: Please sit down, Mr. Ismail.

15 Mr. Ismail, you have been answering questions
16 which have been asked of you in English, and you have been
17 answering in English although sometimes you have had a little
18 difficulty understanding; is that right?

19 THE DEFENDANT: Yeah.

20 THE COURT: All right. Now, in order to be
21 absolutely fair to you we would like to know whether or not
22 you would want an interpreter so that you could speak in
23 Assyrian and have the interpreter translate what you want
24 to say into English for the benefit of the jury? Or whether
25 you feel that you are getting along well enough with your
26 attorney and with the people who are helping him so that you
don't need an interpreter? How do you feel about that?

1 A. I be glad if anybody, anybody else could speak English
2 and Assyrian.

3 THE COURT: The question is this, Mr. Ismail, I
4 feel that you have been able to express and state, you know,
5 what has happened, and what you did, what conversation you
6 had, but if there is something that you feel you cannot
7 express yourself in English --

8 THE DEFENDANT: What's "express"?

9 THE COURT: Well, talk or explain, like, for
10 example, the statement about your father that you did not
11 want to say in English. Now, I don't know whether that was
12 because of a personal feeling of yourself or because of the
13 fact that there was no English translation of that.

14 THE DEFENDANT: I don't know if there is an
15 English translate but it is personal feeling.

16 THE COURT: Personal. All right. Mr. Robinson
17 has indicated that -- both he and Mr. Pestarino have
18 indicated that, both of them are almost through with the
19 questioning of you.

20 THE DEFENDANT: Yeah.

21 THE COURT: Do you feel that you would be happier
22 if there was somebody that you could answer questions in
23 Assyrian and, in other words, if they could be put to you in
24 Assyrian and you could answer them in Assyrian?

25 THE DEFENDANT: Be better. Be better for me.

26 THE COURT: It would be?

1 THE DEFENDANT: Yeah. I could explain more.

2 MR. PESTARINO: Could I say something? You're
3 finished; I'm finished. Do you have any recross?

4 MR. ROBINSON: No.

5 THE COURT: Could I ask you what areas, Mr. Ismail,
6 what parts of your testimony you would like to have explained
7 in Assyrian?

8 THE DEFENDANT: Well, if they have more questions?

9 THE COURT: No, they have no more, apparently.

10 THE DEFENDANT: Well --

11 THE COURT: Then you are satisfied?

12 THE DEFENDANT: Yeah.

13 THE COURT: All right. Okay. Are you both
14 through then?

15 MR. PESTARINO: I'm through. You're through?

16 MR. ROBINSON: Yeah.

17 THE COURT: Also with regard to what other
18 people say, other witnesses who have testified, have you
19 been able to understand what they have said or has Mr.
20 Pestarino and his investigator explained to you what other
21 people have said on the witness stand?

22 THE DEFENDANT: You mean?

23 THE COURT: Other witnesses.

24 THE DEFENDANT: Other witnesses, last week, week
25 before?

26 THE COURT: Yes.

1 THE DEFENDANT: I think I understand them.

2 THE COURT: That is the main thing I want to
3 make sure, that you do understand what other people have
4 testified.

5 THE DEFENDANT: I understand that.

6 THE COURT: Thank you. Then I see no need for a
7 translator or interpreter. I was just going to say, with
8 regard to the statement which he has written, it would not
9 be of any meaning to the jury unless it was translated.
10 So, perhaps, you could have someone --

11 MR. PESTARINO: I intend to have, hope to have a
12 translator, if we can get copies of those letters.

13 THE CLERK: I gave them to your investigator
14 yesterday.

15 THE COURT: Also the statement that he wrote in
16 his own handwriting.

17 MR. PESTARINO: Can you make a copy of that?

18 THE COURT: Sure. We can make a Xerox.

19 MR. PESTARINO: We will try to qualify an
20 interpreter.

21 THE COURT: Well, maybe you can stipulate.

22 MR. PESTARINO: I'll bring the interpreter in and
23 ask him.

24 MR. ROBINSON: I think perhaps we should, also,
25 give the benefit of our collective thinking back to the
26 jury and indicate to them that Mr. Ismail feels, and along

1 with counsel, myself, and the Court, that he understands
2 everything, that he is able to answer the questions.

3 THE COURT: We will do that.

4 MR. PESTARINO: Can you give us a few more
5 minutes now? I had to spend this in conference.

6 THE COURT: We will start about 11:30.

7 MR. PESTARINO: I only have one witness. I am
8 going to run out of witnesses for this morning.

9 THE COURT: Is your witness here?

10 (Off the record discussion.)

11 (Whereupon, pursuant to the recess, Court
12 convened in the presence of the jury and the following
13 proceedings were had:)

14 THE COURT: Please be seated. I am sorry for
15 the long delay, ladies and gentlemen, but for the record a
16 few of the jurors had indicated to the bailiff some concern
17 over the fact that Mr. Ismail was not able to express
18 himself fluently in English and perhaps an interpreter
19 should be used. We had Mr. Ismail in chambers with counsel,
20 and we asked him those questions as to whether or not he
21 felt an interpreter was necessary. It was brought out that
22 Mr. Ismail had lived in Canada for a number of years where
23 he spoke English, and that, as you heard from the stand here,
24 he apparently communicated well in English, and although
25 he had some difficulty with some words and an accent, he
26 indicated that he comprehended what other witnesses had

1 testified to. Also, Mr. Pestarino, his attorney, stated
2 that he had the services of an interpreter available during
3 the pretrial and trial period. And possibly an interpreter
4 would be here to read the letters which were written in
5 Assyrian and the item which was written by Mr. Ismail this
6 morning. So Mr. Ismail felt as long as there was to be no
7 more questions, and that is what counsel had indicated of
8 him that he didn't require an interpreter. So I just want
9 you to know that.

10 MR. ROBINSON: Might the record indicate that
11 His Honor, along with Mr. Pestarino and myself, agree that
12 Mr. Ismail understands the questions that were asked him and
13 responded understanding those questions? That is an
14 agreement?

15 MR. PESTARINO: As Your Honor indicated, the
16 trouble with lawyers is they always talk. As Your Honor
17 indicated, there are certain words that he doesn't understand.
18 I think the jury gets the import of that as well as we do
19 because when he doesn't understand a word he says, "What does
20 that mean? What do you mean?" I am satisfied that he
21 understands.

22 THE COURT: Yes. Mr. Pestarino just has indicated
23 he is satisfied; and Mr. Ismail is satisfied that he
24 understood the things that were not clear, he would ask
25 about, and we would rephrase or restate, and he comprehends
26 all that is going on. He is through as a witness and ,

1 therefore, there is no need for an interpreter unless
2 something else develops. But one is available. You may
3 proceed.

4 MR. PESTARINO: I have no further questions of
5 Mr. Ismail.

6 THE COURT: All right.

7 MR. ROBINSON: I have no further questions.

8 (Witness excused.)

9 MR. PESTARINO: I would like to call Robert Vola,
10 V-o-l-a.

11 THE COURT: You want to come forward, sir, and
12 raise your right hand.

13 ROBERT VOLA.

14 called as a witness on behalf of the defendant, being first
15 duly sworn, was examined and testified as follows:

16 DIRECT EXAMINATION

17 BY MR. PESTARINO:

18 Q. Mr. Vola, would you be good enough to state your name,
19 give your address and your occupation?

20 A. My name is Robert Vola, address is 1951 Emerald Street
21 in Concord, and I am employed by Union Oil Company as
22 resident manager in our San Jose sales office.

23 Q. At one time did you work for Union Oil?

24 A. I still do.

25 Q. You still do?

26 A. Yes, I am the
resident manager with Union Oil here in San Jose.

1 Q. I wasn't paying attention. That's the problem. He
2 speaks well enough.

3 You don't need an interpreter, do you?

4 A. I hope not.

5 Q. Did you know a person by the name of Lazar?

6 A. Yes, I did.

7 Q. Do you know a person by the name of Meyers?

8 A. Yes.

9 Q. Did you know of a service station in Oakland on Mac
10 Arthur Boulevard that belonged to Union Oil?

11 A. Yes.

12 Q. Were you a representative of that at that time dealing
13 with individual sales or leases for Union Oil?

14 A. Yes, I was what they call a retail representative at
15 the time, and my area covered from Broadway and MacArthur in
16 Oakland to Cutting Boulevard in Richmond.

17 Q. Now, you do commercial work? A. Yes, sir.

18 Q. Now, did you handle a sale that involved these two
19 people? A. Yes, I did.

20 Q. Tell me a little bit about what your capacity was in
21 arranging a sale? You were a representative? What did you
22 have to do with sales? A. Well, at the

23 time I was the representative of the company. It was my
24 responsibility to maintain a number of units, that particular
25 time I believe it was twenty-three units in the field, and
26 as a representative you are responsible for the entire

1 operation of the units and any dealer changes. If you lose
2 a dealer you go out and recruit to try and find another
3 dealer to replace the lost one, and you just handle everything
4 that has to do with those twenty-three units.

5 Q. All right. Now, let me show you some of these exhibits
6 maybe to refresh your recollection. You have no records --

7 A. No.

8 Q. -- on this sale, do you? A. No.

9 Q. And the records are where? A. Well, they
10 could be in any of four different places because we have had
11 some reorganization in the company since the time of this
12 transaction, which was back in 1970, and our records have
13 been transferred, I mean, so I actually don't know exactly
14 where they are at.

15 Q. So what you are doing now is testifying from memory as
16 best you can? A. That is correct.

17 Q. All right. Let me show you Defendant's Exhibit No. D-4
18 and I have here D-5 and D-6, and ask you to look at those for
19 just a moment and see if that will help you.

20 Can I ask you a question, first, did Union Oil
21 sell this station to a person by the name of Yule Lazar?

22 A. We don't sell a service station in that manner. We
23 lease a service station. The property and buildings remain
24 the property of the company, and we work a lease where we
25 lease the business and the individual becomes a private
26 independent businessman leasing those facilities from the

1 company. But there is no sale of the building or property
2 involved.

3 Q. But you do sell the inventory?

4 A. That is correct.

5 Q. And that includes gas and the underground tanks?

6 A. Well, at that time the gasoline is on what we call a
7 purchase and storage agreement, so there was actually no
8 cash transaction involving the sale of the fuel because the
9 dealer does not pay for this fuel until at such time it has
10 been sold.

11 Q. Okay. Now, you leased this piece of property on
12 MacArthur Boulevard to a Yule Lazar, did you not?

13 A. That is correct.

14 Q. In relation to the papers you have then, can you kind
15 of give us some idea of what date this transaction took
16 place?

17 A. Well, we leased this unit
18 to Mr. Lazar on October 17th, according to the papers in
19 front of me, and it was done through an escrow with Nor Cal
20 Escrow Company in which he purchased the unit through escrow,
21 the former dealer, Mr. Jules Moore.

22 Q. Now, later on did Yle Lazar contact you and tell you
23 he wanted to sell, or sell his interest, whatever it is or
24 what it was in the service station?

25 A. Um-hum, that is correct.

26 Q. Can you give us some idea when he contacted you?

A. Well, not by the exact day, but the normal procedure

1 when any service station dealer wishes to break his lease
2 with the Union Oil Company he merely gives us a letter in
3 writing stating that he would like ninety days to be on
4 notice, that ninety days from that point in time he wishes
5 to terminate his lease with Union Oil Company, and this is,
6 I believe, from memory what Mr. Lazar had done at that time.

7 Q. All right. Now, how did you first meet with Ron
8 Meyers? Do you remember?

9 the exact date --

A. If you mean

10 Q. No, not the exact date. Approximately?

11 A. Well, at the time Mr. Lazar gave ninety days notice,
12 normally we ran an ad in the paper and we let other dealers
13 in the area know I am going to have a unit come up for
14 lease and that I am interested in finding a new prospect, and
15 if my memory serves me correct I believe I received a phone
16 call, several phone calls, which one of them was Mr. Ron
17 Meyers.

18 Q. Did you meet with Ron Meyers?

A. Yes.

19 Yes, several times.

20 Q. Did you meet at his home?

A. Yes.

21 Q. Did you meet with he and his wife?

22 A. Yes.

23 Q. And did you talk then about the service station?

24 A. Um-hum, definitely. We go through the -- what I try
25 and what I did anyway at the time as a rep is that you try
26 to brief the individual thoroughly as possible because dealer

1 changes are expensive. They are not profitable to the
2 company. They are not profitable to the independent
3 businessman. You are trying to find someone that is going to
4 match that business, that is going to be able to grow, make
5 a good living for himself, and so that you don't have to
6 continue making dealer changes all of the time. And the only
7 way to do this, you try and go through the complete operation
8 of a unit with a dealer. If he is married you certainly try
9 to involve his wife to let her know what he is going to be
10 up against and it is time consuming, and what the demand is
11 that is going to be placed upon their relationship involved
12 in going into any business, in particular a service station.

13 Q. So is it true then that Ron Meyers contacted you?

14 A. To the best of my memory, let's put it that way,
15 yes. Most of my dealer prospects eventually call me
16 because, like I said, I put the word out, put ads in the
17 papers, and I would go to other people and ask them, and
18 they in turn would either contact individuals or individuals
19 would read the ad and they would phone in. And then we
20 screen the applicant and pick which one we felt was the best
21 to operate the unit.

22 Q. Did Mr. Meyers have any experience in running service
23 stations at that time?

24 A. I don't believe
25 he was ever a manager of a unit. I know he drove truck for
26 Mobil Oil Company at the time. He had experience with oil
companies. He had mentioned to me, if I am not mistaken,

1 that he had worked, you know, as a mechanic, or part-time
2 in service stations. I don't believe he was ever a
3 manager or had leased one before.

4 Q. All right. And so, is there a school that you have to
5 send people to before they take over one of these leases?

6 A. Yes, that is correct. The company requires, here again,
7 as part of the training and background. In fact, we pay the
8 individual to attend a four-week dealer training school.

9 Q. And so Ron Meyers did attend a four-week training
10 school at your request?

A. That is correct.

11 Q. And then did the sale take place or the transfer take
12 place? I keep calling it a sale, but the sale of an
13 inventory? A. Yes. We get a little
14 bit different situation here. Under the circumstances there
15 was no escrow. Back during those times there was two ways
16 that you could do a dealer change. You either put it in an
17 escrow through an escrow company or in a case where a dealer
18 gave you a ninety day notice in some instances we would take
19 what we call the till, which is a term in limited
20 settlement, and we merely purchased back, Union Oil Company
21 purchased back the entire inventory of which this
22 documentation is in front of me.

23 Q. Would you read the note on the back of it, Defendant's
24 Exhibit what? A. This is number
25 61669, exchange number. D-4.

26 Q. D-4. That is what I am talking about. Okay. Thank

1 you. That D-4 represents what?

2 A. D-4 represents a till, and it states right on the front
3 of it, this was service station number 3538, dated 2-6-1970
4 from Yule Lazar, 411 West MacArthur, as the seller. The forms
5 were all prepared by me. They are all in my handwriting
6 except for the peoples' signatures, and it was sold to Union
7 Oil Company, San Francisco.

8 Q. By Yule Lazar? A. It was sold from
9 Yule Lazar to Union Oil Company.

10 Q. And not to Ron Meyers? A. No, sir.

11 Q. Then how did Ron Meyers get in the picture here?

12 A. Well, the day this change was done, the three of us
13 were together all day long, Mr. Lazar, Mr. Meyers, and myself,
14 and two separate inventories were taken, one transferring all
15 of this back to Union Oil Company, another one transferring it
16 from Union Oil Company back to Mr. Ron Meyers.

17 Q. And is Ron Meyers' name on any of those documents?

18 A. No, sir. Not these copies here. These was all Mr.
19 Lazar's copy. They are all signed and initialed by Mr.
20 Lazar, noting sale back to Union Oil Company of service
21 station inventory.

22 Q. And your testimony is that Union Oil then sold the
23 inventory to Ron Meyers? A. That is correct.

24 Q. What did he pay for it? A. Well, now
25 here I am going to go off my memory again, I believe at the
26 time Mr. Meyers was not financially able to purchase the

1 entire amount of this inventory, which was \$4400, and we had
2 two ways at this time of doing a change where the dealer did
3 not have the entire amount in actual cash to take over the
4 inventory. And I believe in this particular case we put the
5 oil in what we call a thirty-day account, which was
6 approximately \$179, and the remainder of the merchandise,
7 which was what we classified as TBA, then that refers to
8 tires, batteries, and accessory items and equipment was put
9 on a note, and normal procedure on a note is that the
10 incoming party pays twenty percent down plus the tax.
11 And then the balance is put on a thirty-six month note,
12 thirty-six equal monthly payments.

13 Q. All right. So any note that would be made out for
14 the inventory or anything regarding the service station
15 would be done by you people, wouldn't it?

16 A. Yes, that is correct.

17 Q. And do you recall what kind of a down payment --
18 first of all, what was the selling price, the total selling
19 price was what?

20 A. Now, here again I
21 have Mr. Lazar's copy in front of me here, going from this,
22 the total price was forty-four ten thirty. That included
23 equipment, tires, batteries, lube oil and loose items.

24 Q. And let me ask you this, to sell that inventory for
25 \$600, what would that be in your mind?

26 A. What? This inventory?

Q. Yeah.

A. You couldn't sell

1 this inventory for \$600. It is forty-four ten thirty.

2 Q. Okay. So you made out a promissory note for Ron
3 Meyers or your company?

4 A. Well, the
5 company, yes. Like I said, if my memory serves me
6 correctly, could have been done either that way or in
7 another manner. The TBA could have been put on what we call
8 the revolving account and within thirty days one third of
9 it would have been due. However, I doubt if we did it that
10 way at the time because the question was money to start with.
11 As far as one third of \$4400, would have been a lot larger
12 than the twenty percent down payment plus the tax, then the
13 thirty - six equal monthly payments. This gave him reserve
14 cash to operate that station rather than draining all of
15 his cash off, you know, and then not having cash flow for
16 the running of the unit.

17 Q. Anyway, he made a substantial down payment?

18 A. That is correct.

19 Q. More than \$600? A. Well, twenty
20 percent of this particular inventory here plus the taxes
21 would have probably come close to about a thousand dollars.

22 Q. All right. Now you were the representative of Union
23 Oil that took the inventory? A. That is
24 correct.

25 Q. And you did that, first of all, with both people
26 present? A. Yes.

Q. And did you cover every item of inventory?

1 A. To my knowledge we inventoried the whole station.

2 Q. Okay. A. There may have
3 been a couple small items which was left to the dealers'
4 option. I'm not, I just, this would have been the bulk of
5 it.

6 Q. Let me ask you again, both parties were present when
7 you took the inventory? A. That is correct.

8 Q. One signed off, did they? A. Um-hum.

9 Q. The other one signed on? A. Right,
10 separate papers.

11 Q. With you? A. That's right.

12 Q. And was this deal fair? A. Absolutely.

13 It was the same prices essentially that was originally
14 purchased from Mr. Moore by Mr. Lazar. We never try and sell
15 a station as far as the merchandise in it. We will sell it
16 at exact same price from each dealer because it, it would be
17 against fair trade practice. You can't make a profit on
18 inventory when you are merely selling out your inventory to
19 an incoming dealer because he is going to take that
20 merchandise and resell it.

21 Q. Did Ron Meyers express any dissatisfaction at this time
22 with either you or Yule Lazar? A. Not to my
23 recollection, no.

24 Q. And let me ask you another question, how long did Ron
25 Meyers have the service station? A. I believe
26 it was about, I'm going to guess because we are going back

1 seven years, but it was a short time, around four months, I
2 would say, four, maybe five.

3 Q. Did you get the service station back?

4 A. Yes, sir. It was a little unusual circumstances. One
5 of my dealers phoned me up and told me that the unit was
6 closed one day, and I went down and I couldn't find Mr. Meyers
7 and we have what we call an abandonment clause, if a unit is
8 left abandoned for forty-eight hours the company can regain
9 the unit back. And the unit was definitely left unattended,
10 locked up for a period of two days or more, and eventually
11 I was finally able to reach Mr. Meyers, and we did eventually
12 sign a mutual cancellation agreement. But at the time I had
13 taken steps to get the unit back on an abandonment clause
14 because it had been left closed for longer than forty-eight
15 hours.

16 Q. Now, to your knowledge had that service station been
17 burglarized during the time that Ron Meyers had it?

18 A. It is possible because the unit had been burglarized,
19 breaking and entering, that I can remember, I don't remember,
20 I can't remember how many times, but it had been broken and
21 entered into more than once. And it is very possible that,
22 well, I'm almost positive that it had been broken into. In
23 fact, when both gentlemen had operated it, it had been
24 broken into at least once under both operators.

25 Q. You are pretty familiar with the Oakland area, are you
26 not?

A. Well, yes sir, I was

1 raised in Richmond. I went to High School in Berkeley.
2 And I grew up in the Bay Area. Then I worked there for Union
3 Oil for two and a half years in that field, went through there,
4 so I'm pretty familiar with the entire Bay Area.

5 Q. Do you know a gun store, a sport shop by the name of
6 Siegle's?

7 A. Yes, sir it is
8 located on the corner of San Pablo and MacArthur Boulevard in
9 Oakland.

10 Q. How far is that from the service station?

11 A. About a mile, I would say. The station is located up
12 about one block from Kaiser Hospital on the corner of
13 Broadway and MacArthur.

14 Q. Okay.

15 MR. PESTARINO: I think that is all that I have.
16 Thank you very much.

17 MR. ROBINSON: I just have a couple quick questions.

18 CROSS-EXAMINATION

19 BY MR. ROBINSON:

20 Q. Mr. Vola, is there anything in the transaction of this
21 service station that you told us about that would prohibit
22 Ron Meyers from making a promissory note to Yule Lazar such
23 as for good name of the business and things like that?

24 A. There is nothing in here that would prohibit that, no.

25 Q. Secondly, when did Mr. Lazar buy that station, lease
26 it?

A. According to the records
right here in front of me it would have been October 17th,

1 1969.

2 Q. Okay. And I take it that Mr. Lazar was screened by
3 your people to see if he could run a service station?

4 A. Well, that is correct, by me.

5 Q. Okay. And Mr. Lazar was also given this four weeks of
6 training?

A. That is correct.

7 Q. Okay. And Mr. Lazar then gave you ninety days notice?

8 A. That is correct.

9 Q. Okay. When did he sell the station?

10 A. February 6th.

11 Q. Of 19 --

A. ' 70

12 Q. Okay. So how long was Mr. Lazar in the station?

13 A. Let's see, November, December, four months.

14 Q. Same amount of time as Mr. Meyers?

15 A. That is correct.

16 Q. Now, did Mr. Lazar lose a lot of money selling this
17 station?

A. No, he didn't.

18 Q. Okay.

A. To my knowledge.

19 Q. Okay. What about things like, do the attendants in
20 the Union 76 station, do they wear uniforms?

21 A. Yes, sir.

22 Q. Who pays for those?

A. Well, the

23 dealer.

24 Q. The dealer?

A. Unless the dealer

25 has -- each dealer has a different option on that. Some of
26 the dealers charge the employees, some of the dealers pick

1 up half of it, some of the dealers pick up all of it.

2 Q. It is up to the individual dealer?

3 A. Right.

4 Q. And that individual dealer contracts out, I take it,
5 with various cleaning services to clean the uniforms?

6 A. That is correct .

7 Q. You don't have anything to do with that?

8 A. No.

9 Q. What about things like, oh, say coke machines, vending
10 machines in the service station area, is that up to the
11 individual dealer, also?

A. Here again
12 that depends. In most cases they are leased by the dealer
13 from the particular coke company, whatever it may be. And in
14 some cases the coke machine is owned by a dealer in which
15 case he might keep it or he might sell it as part of the
16 inventory.

17 Q. Okay. Sell it to the person who is buying his station?

18 A. That's right.

19 Q. Okay. I just want to get one thing clear in my mind.

20 This service station that we are talking about is located
21 at 411 MacArthur Boulevard?

A. Yes, that's
22 right, West MacArthur.

23 Q. And Siegle's Sportsman Supply is it 508 West
24 MacArthur Boulevard?

A. I'm not sure of
25 the exact address. I know it is on the corner, just off the
26 corner of Cutting and San Pablo -- excuse me, MacArthur

1 Boulevard and San Pablo.

2 Q. Okay. And if the owner of Siegle's were to testify
3 that it was at 508 West MacArthur, would you believe that?

4 A. Certainly.

5 Q. Okay.

6 MR. ROBINSON: Thank you. I have nothing
7 further.

8 REDIRECT EXAMINATION

9 BY MR. FESTARINO

10 Q. Is 508 right next to the service station?

11 A. No.

12 Q. Still a mile away? A. I would say yes.

13 Q. Let me ask you this, you took the inventory of that
14 service station, was there a coke machine there at that time?

15 A. May I look at the --

16 Q. Of course you can. A. There was
17 a coke machine at the service station, but I don't see it
18 on this inventory list.

19 Q. What does that mean, you don't see it?

20 A. Well, that could be that the machine is owned by the
21 particular company, Coca Cola Company, and I am not sure that,
22 I cannot remember. May I check this other list to see if it
23 was on there?

24 It isn't listed on the equipment here. So I don't
25 know who the ownership of the coke machine belonged to.

26 Q. Okay. Let me ask you this, the good name of the

1 business, if a man ran that for a month, would he have a
2 good name to sell?

3 MR. ROBINSON: Objection, calls for speculation.

4 THE COURT: The objection is sustained. It calls
5 for an opinion.

6 Q. (By Mr. Pestarino) All right. Does it take a while
7 to build up good name or what we call goodwill?

8 MR. ROBINSON: Objection, calls for speculation.

9 MR. PESTARINO: He is a representative. He is an
10 expert in the field.

11 MR. ROBINSON: Some people can build it up over-
12 night by giving free gas.

13 THE COURT: No. Overruled. You can answer that
14 Mr. Vola, if you can.

15 THE WITNESS: Would you repeat the question?

16 MR. PESTARINO: Yes.

17 Q. (By Mr. Pestarino) Can you build up the good name ,
18 does it take some time to build up the good name or goodwill
19 of a business, service station?

20 MR. ROBINSON: Objection, the question is vague
21 and ambiguous, "some time."

22 Q. (By Mr. Pestarino) What period of time does it take
23 generally to build goodwill or good name in a service
24 station? A. Well, I don't know, to
25 build a good name, I would say, it is hard to put a time
26 limit on it. A person has to meet the public, he has to

1 get to know his customers. He has to get the trust and
2 confidence of his customers, and he has to get the repeat
3 business.

4 Q. Let me ask you this, did Lazar do that?

5 A. I believe he attempted to do that.

6 Q. Did he?

7 A. Well, he wasn't there
8 long enough.

9 Q. Well, tell us a little bit about his business, how
10 he ran his business?

11 A. Mr. Lazar?

12 MR. ROBINSON: I'm going to object. This is
13 beyond the scope of cross-examination.

14 MR. PESTARINO: The reasons for his opinion.

15 MR. ROBINSON: Still beyond the scope of cross.

16 THE COURT: No, overruled.

17 THE WITNESS: Well, Mr. Lazar, if I remember
18 correctly, was an accountant by trade, very neat gentleman,
19 very presentable. I believe he put in a good effort at
20 attempting to do this, and normally we look for someone who
21 has a good business background. And at the time I figured
22 that Mr. Lazar would be ideal for this unit because of his
23 accounting knowledge. And you, also, look for a good
24 manager. You try to find a manager. It takes more than a
25 mechanic to run a unit. And part of the problem though I
26 believe was the language barrier and the sense of knowing
the customs and knowing the people. I don't believe Mr.
Lazar had been here long enough, and I believe he had

1 trouble with trying to lead the people working for him, and
2 I think this was one of his biggest problems, and probably
3 a little bit in general with the public, too, understanding
4 people, in that sense. And I think this was the greatest
5 thing that eventually he came and said, "I want out. It is
6 not my cup of tea."

7 Q. So what is your opinion about his good name, as far as
8 the service station was concerned? Did he have it?

9 A. Oh, I think that the people that came in there
10 probably liked him. I just don't think that he ever, he just
11 didn't give it enough time or he couldn't give it enough
12 time, let me put it that way.

13 Q. Okay.

14 MR. PESTARINO: Thank you very much.

15 MR. ROBINSON: I just have one other question
16 now, one other question.

17 RECROSS-EXAMINATION

18 BY MR. ROBINSON:

19 Q. Would you say that Mr. Lazar was a shrewd businessman?

20 A. He was a shrewd businessman? What do you mean by
21 that term?

22 Q. What I am trying to say is, do you think that Mr.
23 Lazar is going to go into something and end up taking a
24 huge loss on it?

25 A. Well, nobody intends to
26 do that. Anybody that goes into business doesn't intend
doing that, no.

1 Q. Let me ask you this, in terms of -- I take it the same
2 things that you have told us about Mr. Lazar apply to Mr.
3 Meyers, too, look for the same qualities?

4 A. That is correct.

5 Q. And as to the type of, the type of businessman they
6 were, as far as, oh, being able to get money out of a
7 business directly and indirectly, would you put them both
8 in the same plane or would you put one ahead of the other in
9 terms of background and things like that?

10 A. All right. In terms of educational background, is that
11 what you are referring? I would say Mr. Lazar had a better
12 educational background than Mr. Meyers, but Mr. Meyers had
13 the willingness to learn and he had the aptitude to learn.

14 MR. ROBINSON: Thank you. I have nothing further.

15 THE COURT: May I ask you just one question for
16 clarification? When you mentioned the word "inventory,"
17 does that embrace only gas, oil and things of that sort, or
18 does it include, also, such things as hand tools, tire
19 changing tools, the usual accouterments of a gas station?

20 A. Yes, sir. In the particular case, Page 1 lists the
21 equipment, and if I may, the equipment, for instance, was the
22 gear oil, visatrum, chassis air lube, swing spouts, gas
23 hoses, air and water hoses, signal bells, impact guns,
24 rotor stamp machine, battery charger, battery tester, and all
25 of the equipment of that nature. Probably the only thing it
26 would not involve would be hand tools. Most dealers either

1 take their hand tools with them or, perhaps, they sell them
2 off.

3 THE COURT: Thank you, sir.

4 THE WITNESS: You are welcome.

5 THE COURT: Any other questions?

6 You are excused.

7 (Witness excused.)

8 THE COURT: All right, ladies and gentlemen,
9 we will take our noon recess at this time. Due to a
10 witness scheduling we will not resume until 2:00 o'clock.
11 So that will give you an extra half hour to wander around
12 and do some things on your own. We will see you at
13 2:00 o'clock. You will keep in mind the admonition I have
14 given you before. The defendant will be ordered to return
15 at that time, also.

16 (Whereupon, Court adjourned for the luncheon
17 recess.)

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AFTERNOON SESSION

March 23, 1976. 2:00 o'clock p.m.

(Pursuant to recess, Court convened, and the following proceedings were had:)

THE COURT: Please be seated, ladies and gentlemen. Let the record show that the jury is present, defendant and counsel are present. All right, sir.

MR. PESTARINO: Thank you, sir. Call Dr. Nidever. I know I mispronounced that name. That is Nidever.

JACK NIDEVER.

called as a witness on behalf of the Defendant, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. PESTARINO:

Q Would you kindly state your name and spell your last name?

A My name is Jack Nidever, last name is N-i-d-e-v-e-r.

Q And your address, Doctor? A 160 Saratoga, Suite 38, Santa Clara.

Q And what is your occupation? A I am a clinical psychologist.

Q Do you have to be licensed to be a clinical psychologist?

A Yes, I do.

Q By whom? A State of California, Board of Medical Examiners.

Q Are you licensed? A Yes.

Q Will you tell us what your qualifications are, starting

1 with your university training, all of the way up to the
2 present time? A Started in Fresno State College, went
3 there a couple of years.

4 Q What year? A 19 -- right after the war, right
5 after World War II, '46 to '48. Then went to Pomona College
6 where I graduated with a Bachelor's. Then I went to the
7 University of Pennsylvania in Philadelphia from 1950 to '52.

8 Q Psychologists are not afraid of mikes? (Referring to
9 microphone.) A Well, I'll try not to be. I had a
10 Master's Degree then from the University of Pennsylvania.

11 Q What year was that? A That is 1952. I then
12 transferred to the University of California at Los Angeles,
13 and took a Ph.D. there, working while I was doing it, so it
14 was rather extended. I got my degree in 1959. Then I went
15 out and worked for awhile and went to an analytical institute
16 in Zurich, Switzerland, in 1962 and graduated there in 1965.

17 Q What kind of an institute did you graduate from?

18 A This is an institute of analytical psychology. It is
19 the work of Carl Jung, of Jung, Freud, and Adler.

20 Q And you have been in private practice since?

21 A About ten years.

22 Q Ten years. Well, let me ask you this, do you belong to
23 any particular boards? A I have been active in the
24 State Association for a number of years. I am not right now.
25 I have edited a newsletter, was on the Board of Directors of
26 the State Association and their division in clinical

1 psychology and was on the Board of Directors of California
2 Psychological Health Plan, prepaid mental health plan for two
3 years.

4 Q Now, are you a Diplomate -- A Yes.

5 Q -- of any institutions? A I am a Boarded
6 psychologist, American Board of Professional Psychology.

7 Q What does that mean? What do you have to do to become
8 a Diplomate? A After you have five years of practice

9 you can be examined to see if you qualify as a Boarded
10 psychologist. It was a matter of two days of examinations,
11 much of it in an oral base, and what I really did was to go
12 down to Los Angeles and interview some patients there and
13 report on my diagnosis, and things that I saw in these people.
14 And then the people who examined me then said that they were
15 happy to have me as a member of the American Board.

16 Q Do you belong to any professional associations?

17 A Currently the American Psychological Association.

18 Q And had you done any teaching in this particular field?

19 A I have done a little bit of teaching at Sonoma State
20 College, at the California School of Professional Psychology
21 in San Francisco, and some extension work for the University
22 of California, Berkeley.

23 Q Would you tell us what a psychologist is, and then maybe
24 what a clinical psychologist is? A Well, a psychologist
25 is, there are about 40 divisions of psychology ranging from
26 the study of development in children through the aging process

4
1 through very rigorous --.

2 Q Let's not get into the aging process.

3 A I have that problem, too.

4 Q All right. A Psychologists are trained
5 essentially to do research. Their training is aimed at
6 producing new information, finding different ways of under-
7 standing people, behavior, explaining the way your senses
8 work, how the aging process proceeds, how the developmental
9 picture comes along, how it truly develops. The clinical
10 psychologist is, he is more inclined to do the clinical work
11 which is to attempt to apply a lot of these findings so he has
12 to be qualified in research, and then he is attempting to do
13 psychotherapy, diagnoses.

14 Q What is psychotherapy? A What is psychotherapy?

15 Q Yeah. Psychotherapy diagnosis?

16 A Diagnosis is separate from psychotherapy. Psychotherapy
17 is a variety of means of trying to make a person, allow a
18 person to become aware of what they are doing because most of
19 us are far less aware of what happens to us and what we do
20 than we truly, we ever truly know.

21 Q Well, in a general sense, Doctor, are you -- it is really
22 a study of human behavior, isn't it? Generally speaking or
23 generically speaking? A All of psychology could be
24 sub-assumed under that, yes.

25 Q What does a clinical psychologist do?

26 A Practical matter he sees clients in an office frequently

5
1 or in an institution.

2 MR. PESTARINO: Well, anyway, are there any
3 questions about his qualifications?

4 MR. ROBINSON: Your Honor, I am going to reserve
5 any questions I have of the doctor since Mr. Pestarino didn't
6 tell me which witness he is going to call. I am unfamiliar
7 with this particular doctor, so I am going to reserve these
8 questions, if I might.

9 THE COURT: But at the moment with regard to
10 qualifications do you have any questions?

11 MR. ROBINSON: No questions at the moment subject to,
12 of course, later on.

13 THE COURT: Sure.

14 Q (By Mr. Pestarino) Now, Doctor, you know David Ismail,
15 the defendant here? A Yes, I met David.

16 Q And at my request you went to see him?

17 A Yes, I did.

18 Q When did you see him? A Is it all right if I look
19 at my report here?

20 THE COURT: Sure. You may look at your notes.

21 MR. PESTARINO: The D.A. wants to look at your notes.

22 THE WITNESS: Anybody is welcome to look at them.

23 THE COURT: All right. You look at them and if
24 counsel needs to --

25 THE WITNESS: Okay. Let's see, I went to see David
26 at the jail on the 11th of March, the 13th of March, and the

1 14th of March.

2 Q (By Mr. Pestarino) And did you go to see him alone?

3 A The first two times I went alone. The third time I took
4 an interpreter who could speak Arabic.

5 Q And what was the purpose of your seeing Mr. Ismail?

6 A My purpose, as I understood it, was to evaluate him, to
7 offer any explanations or information that I could about what
8 led to his actions.

9 Q Okay. And a total of how many hours did you spend with
10 him? Can you give me some rough idea?

11 A About seven-and-a-half hours, somewhat short of eight
12 hours, somewhere between seven and eight.

13 Q At the jail? A At the jail.

14 Q And on these dates tell us chronologically what you did?

15 A The first day I simply spent a session with him talking.
16 I mean, I wanted to see, I wanted to be able to relate to him
17 and not bring a lot of strange things in on him right away.
18 So we sat and talked about 45 minutes about what had happened
19 to him. When I came the next time I brought a fair selection
20 of tests, and we started to work and we worked about three
21 hours going through as many tests as we could at that time.
22 We got to a kind of block place where I was having difficulty
23 going ahead because we had a language barrier between us.
24 And so I asked someone that I have known in the school system
25 who speaks Arabic very well to come with me and help me
26 interpret what David was saying. So we were speaking, they

7
1 were speaking in Arabic part of the time, and were kind of
2 exchanging, so it was English and Arabic.

3 Q All right. Now, did you administer any tests or give
4 any tests to David Ismail? A Yes, I did.

5 Q And how many tests did you give him?

6 A About 12.

7 Q About 12 tests? A Yes.

8 Q Tell me, are the tests that you gave him, are they
9 reliable tests? A Our psychologists think so. They
10 are standard tests.

11 Q And are they given throughout the country or the
12 countries by psychologists? A Well, the tests that I
13 am using here, not all of them are used abroad. Some of
14 them are. Some of them are developed abroad. Most of them
15 are tests that are used throughout the United States.

16 Q And I ask you, are those tests reliable?

17 A As reliable as we can make them.

18 Q So, can you tell us briefly what these tests were that
19 you gave him? And maybe you ought to describe a little bit.
20 First of all, maybe you ought to describe a little bit what
21 preparations you make to give these tests? Do you have any
22 particular paraphernalia, equipment, or what, in order to
23 give these tests? A I brought a boxful with me.

24 Q A what? A I brought two brief bags full, two
25 briefcases full when I came to test him. My preparation,
26 in part I went out and read something about the Assyrian

1 church, which wasn't too hard to find, and I made, I took a
2 look at the kind of language that he was accustomed to speak
3 in the course of my testing him.

4 Q In other words, Doctor, excuse me for interrupting you --

5 A Yes.

6 Q -- but I, if I don't speak now I will forget maybe.

7 But did you obtain a history of what happened from the

8 defendant, David Ismail? A I started by asking him to

9 tell me everything that he could remember about what had

10 happened to him, yes.

11 Q And did you talk to somebody else about what had happen-

12 ed? A I talked to Dr. Rappaport, Dr. Walter Rappaport.

13 We talked on the telephone for about 25 minutes.

14 Q Did you ever talk to me about what had happened?

15 A I can't remember talking to you very much about it.

16 Q Okay. All right. So you obtained a history as best

17 you could from David Ismail and from Dr. Rappaport?

18 A Yes. Your investigator, Mr. Hernandez, gave me a few

19 bits of information as well.

20 Q Fine. And then the next thing you did was to administer

21 some tests? A Yes.

22 Q All right. Now, tell us about the tests?

23 A All right. The first --

24 Q It might simplify things if you can, just write on the

25 blackboard or piece of paper the test. Wouldn't that be

26 agreeable?

9
1 THE COURT: No objection.

2 THE WITNESS: Whatever is convenient. I am just
3 as happy to talk it.

4 MR. PESTARINO: Whatever is easier for you and to
5 help us understand.

6 MR. ROBINSON: Perhaps we could have the doctor step
7 to the board and diagram his tests for us. I have no
8 objection to that.

9 MR. PESTARINO: All right.

10 THE COURT: I assume some of these are written tests,
11 oral tests?

12 THE WITNESS: I didn't --

13 THE COURT: Multiphasic?

14 THE WITNESS: I didn't use the multiphasic. About
15 all I can do really is put up there the names of the tests
16 that I used and the general kind of level of finding.

17 MR. PESTARINO: That is fine.

18 THE COURT: Perhaps you could do that.

19 MR. PESTARINO: Then we can talk about it more.

20 THE COURT: There is a microphone if you can hold it
21 and read at the same time.

22 MR. PESTARINO: You don't write like all doctors,
23 do you?

24 THE WITNESS: Is it all right if I print?

25 I think I will put these down the way that, the way
26 that I wrote them up rather than in the order that I gave them.

10

1 That is the structure that I have.

2 MR. PESTARINO: All right.

3 THE WITNESS: Actually maybe I better put the first
4 one up here. The first thing that disturbed me was, I gave
5 David what is called -- is that going to be readable?

6 MR. PESTARINO: No, not for me. I am blind. Can't
7 you use a black crayon? That is better.

8 THE WITNESS: The first thing I gave him is called
9 a full range vocabulary test. It is a vocabulary test, and
10 in talking to him I recognized that if I weren't very careful
11 we got a block and we didn't understand each other. So I
12 have had some experience with foreign language, so I started
13 trying to do the best I could to understand him. But I
14 thought I better scale him -- that is not right.

15 So this scale that says equal to or less than I.Q. of
16 40, this is no disrespect to David, this is just a scale
17 where I show a variety of pictures, there are 16 plates with
18 4 pictures each on them, and you give the person a word and
19 you say, "Pick me a plate. Pick me a picture." And you
20 start at rather straightforward level and maybe you have a
21 picture of a pair of, some athletes doing something, and 2
22 people sitting in a corner, and they look as if they might be,
23 as if they might be a woman, and the question might be, "Can
24 you pick which word is 'condolence'?"

25 MR. ROBINSON: Excuse me, Your Honor, I have had
26 psychologists before and I think it is beneficial to the jury,

11 1 and perhaps easier for the doctor, perhaps he would mark
2 those pictures that he showed the defendant and we can intro-
3 duce those into evidence so the jury can see the sort of
4 pictures we are talking about.

5 THE COURT: I would have no objection.

6 THE WITNESS: Be fine, except I didn't bring them.

7 MR. ROBINSON: We will get them.

8 THE COURT: That can be taken care of later.

9 THE WITNESS: Okay. Well, in any case, the problem
10 was at the base level with the least load on him in terms of
11 his language, how could I find out what his level of language
12 usage was? So I started using these simple pictures which
13 we can use on anybody from a 2-year-old to an adult, because
14 they don't require very much language. You start saying the
15 word and go up the scale in difficulty of the words, and you
16 keep asking the person which of the 4 pictures looks most like
17 that particular word. Now, David talks pretty well. There
18 isn't anything wrong with his general level of intelligence.
19 It may not be extraordinarily high, but he is not retarded in
20 any general sense that I can understand. But in using these
21 cards I discovered that his language usage is about between
22 an 8 and a 12-year-old child if it is English. He speaks
23 Arabic, and I can't touch Arabic, and that is his second
24 language, and that is the language that the interpreter and
25 he spoke. It was the second language for each of them. He
26 happened to be an Egyptian Greek. As far as I could see they

12

1 spoke very well in this language, and I was following them
2 as closely as I could with the hand motions and all that goes
3 with it and asking very short and precise questions. I
4 think we ought to bear in mind when you put down an I.Q. of
5 40 for someone on this kind of simple skill, and the normal
6 I.Q. is around 100, that we see David works through quite a
7 barrier when he tries to understand the language which we
8 are prone to use rather quickly, and as I say, any of us
9 would be hopelessly lost if we tried to talk Acadian, or if
10 we tried to talk Arabic because we can't, or at least I can't.
11 Anyway, that is a pretty low score, and when I looked at
12 that score I said to the attorney that it seemed to me that
13 it would be very important to use an interpreter, and I
14 thought perhaps he needed an interpreter in the courtroom
15 because one of the things that people that don't have
16 tremendous language usually do, those of you who speak more
17 than one language, you talk to someone who is trying to learn
18 the language, they listen better than they can speak it, and
19 they will kind of fake you out, and they'll go along like they
20 understand, and then you catch them and you realize they
21 don't know what you said. David was trying to tell me
22 something about a night flyer, and I couldn't understand that.
23 When we got the interpreter it turned out that a night flyer
24 was a bat.

25 Q (By Mr. Pestarino) A what? A A bat. That was
26 my problem. But the ease with which you can get confused in

13

1 language, and I see some of you nodding your heads, that is
2 the way it goes. So I tried to learn German and I remember
3 every so often they'd catch me when I thought I was being
4 clever. Then, of course, I didn't understand them at all.
5 This is one scale.

6 Now, by contrast I'll use here, "W.A.I.S.," to use
7 the Wexler Adult Intelligence Scale, and what I did here is,
8 I used the performance items which don't require too much
9 language. Then I can get another I.Q. And for this one
10 I got 91, which is, it is pretty close to within the normal
11 range.

65

12 Now, on this scale where there are things that you
13 are asked to do that don't require too much language usage,
14 ordinarily you would expect a person who has a lot of quick-
15 ness of mind to show it here, at least on one of the scales.
16 David didn't really do this, but then he was also under the
17 stress of and he was trying to do it as well as he could.
18 As far as I could see he was also under some stress. But as
19 I began to get these numbers, I began to feel that probably
20 David's basic ability level, as far as we would measure
21 aptitude in comparison to people of the same age, that it
22 was around average. There was nothing, he was not carrying
23 a very great aptitude to do scholastic or abstract thinking.

24 Now, I went on and I took the Wide Range Achievement
25 Test, and I checked his reading level and discovered that, of
26 course, that was pretty good. It is still about the same

14 1 level here. It is approximately equivalent to an I.Q. of
2 90, and it is about, it is somewhere in the 6th grade level,
3 which for an adult gives about that range of I.Q. In arith-
4 metic I am still trying to establish some of his ability
5 levels because it is important, his resources, intellectually
6 important to whatever is happening. Here he was less
7 capable. He dropped down to about 80, and here we are
8 working around 5th grade level. Now, when I checked his
9 reading level with this test I just used single words. So I
10 wanted to see what would happen if I gave him a real para-
11 graph to read and try to understand. So I gave him Grey's
12 Oral Reading, which doesn't require too much in the way of
13 comprehension, but you experience the person trying to
14 actually handle the language in a chunk instead of just single
15 words. Here he dropped down to an equivalent I.Q. of around
16 70. So however else we see David, he has got some problems
17 with the English language, that he just does.

18 I asked him if he read newspapers at home in Canada
19 because that is, of course, pretty good check. If you can
20 read a newspaper with the language of the day, that means that
21 you probably have pretty good language usage. And I got the
22 impression he reads part of the newspaper, but he didn't read
23 them through. Now, I may have misunderstood him. But that
24 is what I gathered from him. Because I wanted to use some
25 other scales that involve color, and I was concerned about the
26 possibility that he might have some brain damage from

15

1 something Dr. Rappaport had said, I did what is called, I
2 used the Devorin Pseudo-isochromatic Blocks, which just check
3 you for color blindness. And he is not color blind.

4 You can't read that, but you are going to remember
5 what I said maybe (referring to blackboard). So this is
6 color. And there is no problem with color. I then wanted
7 to know about sequencing activity. There was a lot of stuff
8 here about memory. So I started out with something called
9 the Knox Cube Test. It is something that was used at Ellis
10 Island in the early part of the century to screen people who
11 could not speak English. Here he did quite well. An equi-
12 valent mental age of around 16. And this is, simply there
13 are five essential blocks pinned to a board. And with a
14 pencil, both of you having pencils, Dave takes a pencil and
15 he tries to follow the pattern I trace, and I start out going,
16 "Do, do, do," and he can do that. When you get up to where
17 you are doing it 6 times it gets sort of complicated. But
18 it is a great screen in terms of how quickly or how well you
19 can remember sequence material. He did pretty well with
20 that, and a mental age of 16 in terms of kind of aptitude
21 things isn't too far from the adult range.

22 Now, I have now two or three other scales here that
23 have to do with David's ability to handle memory. One is a
24 simple memory for design. In this he did essentially all
25 right. So these two are essentially the norm. Then I did
26 a Bender-Gestalt. Now, the Bender-Gestalt was developed in

16

1 Europe. It's had a lot of progress since then. It is
2 non-geometric design, and the request is simply that you
3 copy them. And you can copy them while you look at them.
4 In this scale you look at 15 designs, but you only get to
5 look at them for 5 seconds, then you have to redraw them.
6 So you look at cards and the designs get more and more
7 complex. And then the question is, how good does your
8 memory work. His visual equipment works pretty well. So
9 he gets a norm here. With the Bender-Gestalt where you look
10 at the design and copy it you can always see possible brain
11 damage problems. We have another procedure we use here now, it
12 is called background interference. What we do, what we do
13 to make this scale more difficult, is on the page where you
14 are to do the design we simply put many, many wiggly lines
15 through it, and this is like noise, and then the request is,
16 now, you please copy these designs just as you did the first
17 time on a blank piece of paper. Now, copy them and try to
18 ignore these wiggly lines. What we have discovered in
19 psychology is, this is one of the most sensitive devices to
20 expose brain damage, brain disfunction. Central disfunction
21 tends to appear here more quickly, more reliable than it does
22 with almost any of our other scales. On this scale he did
23 indeed get a score which put him in the mild organic impair-
24 ment class, which means that, as he told me, that he had an
25 injury as a child.

26 Gee, I don't write very good.

17

1 And I'm going to say that his mild organic damage,
2 David told me that when he was 7 or 8 he ran into a telephone
3 pole full tilt, and he lost the hearing in one ear, and after
4 that time he didn't do very well in school and eventually he
5 dropped out. That is a long time ago. David is now, as I
6 recall, 40. He has had a lot of time to try to compensate
7 for whatever disturbance, whatever damage he experienced then.
8 You can't recover your hearing, but you can try to recover a
9 lot of other things. But nonetheless, this background inter-
10 ference procedure which we call, "BIP," it shows that he sure
11 enough has some organic damage in his head. He really,
12 really does.

13 The next scale is called Hooper Visual Organization.
14 This is another scale aimed at, aimed at exposing any problems,
15 any central nervous system problems. They are fragmented
16 objects, they are common objects. Anyone who would live 10
17 years in Canada would know all of these objects. They would
18 know them if they lived in Europe, whether it is a sailboat
19 or teapot. But you show a picture in which there are frag-
20 ments, but they all fit together like a jigsaw. They are
21 like a jigsaw puzzle except you don't have the pieces to fit
22 together. You must do it in your head. And the question
23 is, "What object is it?" And that is really the only
24 response necessary to give. Again, David falls at a level
25 of organic damage here. Now, this isn't a terribly severe
26 organic damage. He is functional. I had somewhat similar

18

1 thing happen to me as a child. I have some sympathy for
2 it. I had a skull fracture, after that I just couldn't hit
3 a baseball. I just couldn't hit a baseball. I used to hit
4 them over left field. I never could understand what had
5 happened. After awhile I realized I had lost my depth
6 perception. I didn't have the depth perception I had before.
7 These kind of things happen. He, David, might have got a
8 stouter hit than I did, or lesser one. I don't really know.

9 I then went on to what are projective scales. I
10 think I will just enumerate them and I can talk about them
11 better sitting down. One is the house-tree-person drawing;
12 another is the Rorschach, and this is a series of 10 ink blots,
13 developed in Europe, in Switzerland. Then the Thematic
14 Apperception Scale which I will abbreviate TAT, and these are
15 projective scales. They are aimed at personality dimensions.
16 And this one was developed in the United States by a man
17 named Murray, back in an eastern university. Is that
18 sufficient as an outline?

19 MR. PESTARINO: Yeah. Thank you.

20 MR. ROBINSON: Could you just, TAT, what does that
21 stand for?

22 THE WITNESS: Thematic, like theme, Thematic,
23 Thematic Apperception Test.

24 MR. PESTARINO: Apperception?

25 THE WITNESS: A-p-p-e-r.

26 Q (By Mr. Pestarino) Why don't you sit down, Doctor?

19

1 Now --

2 A I have three other tests I haven't talked about. I
3 can now or later.

4 Q Finish your tests. A The HTP Drawing, the
5 house-tree-person drawings, the request is simply that you
6 draw me a tree, and then that you draw me a house, then a
7 person. If you draw a person who is male, then I ask that
8 you draw a person who is female. And you can see a good
9 deal in an individual in terms of how they do these simple
10 things. Because they kind of say things about the human
11 being, their absorption with the home, house, will come
12 through in how they draw the picture of the house, the sense
13 of their own life energy seems to come out in a tree. If
14 you give a person a piece of paper and ask him to sketch you
15 a tree, and they draw you a tree with all broken off limbs,
16 and it looks like it's about ready to die, you are really
17 concerned because the sense is that that person perceives
18 themselves as not having much energy to go and do anything.
19 These things all psychologists kind of agree on. But we ac-
20 knowledge now this is an area in which we do a lot of inter-
21 pretation in terms of what we think it means. With the
22 figures drawings there is the same sort of thing, like a
23 person draws a figure and each of the fingers are as sharp as
24 daggers, you might conclude that there is hostility in that
25 person. You don't have to stretch very far to consider that
26 there is a sharpness in the way they see other people and

20
1 themselves. Well, we did this. I also gave him the 10
2 Rorschach blots, and I gave him the Thematic Apperception Test.
3 The last two I did with the assistance of the interpreter
4 because it was too difficult, we couldn't do it without, just
5 between the two of us.

6 Q Let me ask you, Doctor --

7 A It's not very good on David for me to talk about him
8 like he were a skeleton.

9 Q All right. That's all right. Is it possible, you know,
10 sometimes -- let me put it this way, sometimes lawyers handle
11 whiplash cases where somebody injures their cervical muscle --

12 A Cervical disk, yeah.

13 Q Yeah, or the disk, mostly the muscles where it doesn't
14 show particularly with X-rays. And sometimes people can
15 fake this kind of a condition because nothing shows on X-rays?

16 A Mm-hmm.

17 Q In giving these tests is there a possibility or a
18 probability, whichever, that David Ismail could fake these
19 tests in any way and get a result that is consistent with
20 his history?

21 A Well, I wouldn't want to say that I
22 have never been fooled but I think it is rather difficult.
23 I think it is almost impossible. Usually a person taking a
24 psychological test, it is so hard to understand what the
25 person wants from you, you give them a strange task to do,
26 and they may be insulted, they may think it is a child's
task, and they shouldn't have to do it. I just don't know

21

1 in the ordinary run of population, I rarely see anybody who
2 I think is really capable of outmaneuvering, somebody who is
3 using these very-carefully-thought-out procedures.

4 Q It always has disturbed me a little, Doctor, that
5 psychologists can give a Rorschach Test, which I understand
6 to be an ink-blot test, does that make any sense, you make
7 any sense out of ink blots? A Well, it is like putting
8 a vacuum cleaner to somebody's head.

9 Q A what? A Well, I say, it is somewhat like
10 putting a vacuum cleaner to somebody's head, they don't know
11 what it is that you are asking them to see. It is
12 unstructured. I give you an ink blot, and I say to you,
13 "Will you tell me what it can look like?" Well, remember,
14 there might be some things that you would hold back a little
15 bit or be a little sensitive about. You might not say
16 something about something that looks sexual to you, but in
17 the main the people get occupied with the things they see in
18 the blots, then kind of without realizing it they have given
19 you the pieces that are kind of arranged uppermost in their
20 mind and kind of at different levels. They just kind of
21 exposed a structure to you of where their emotions, their
22 feelings, their images, their goals are in terms of their
23 responses.

24 Q Well, I suppose that I was trying to ask you, isn't it
25 ridiculous to give a test involving ink blots? Can you learn
26 anything from that? A You're putting me on.

66

22

1 Q Well, all right. That's what I'm doing.

2 A It seems to me it is a very valuable tool. I have used
3 it a great deal and I get a lot out of it. And it seems to
4 be effective. From what I -- my follow-ups, they seem to
5 show that it is rather accurate, what you perceive.

6 Q Now, was there anything else you did besides take the
7 history of David Ismail as it relates to this case, his
8 religion, and so forth, and give him these tests? Was
9 there anything else you did that we should know about?

10 A I don't think so.

11 Q All right. Now, what conclusions did you reach from
12 all of these tests? What findings?

13 A Working through all of the material I just could not see
14 David as a cold, premeditated murderer. It does not fit
15 any of my findings.

16 Q Why do you say that? A Well, in the projective
17 material and in all of the interactions between me and the
18 interpreter I saw a tremendous human sensitivity, a great
19 deal of empathy, a kind of a dignity. There were so many
20 interpersonal qualities that I found in my tests and in my
21 interactions with David that for me to imagine him to coldly
22 sit down and kill somebody, it would seem to me it would be
23 the same thing as he killed himself. It just does not fit
24 the material I obtained from him. But that is, of course,
25 an opinion. It is a professional opinion, but it is an
26 opinion.

23

1 Q This -- A I did, also, I did also consider --
2 perhaps I shouldn't interrupt you though?

3 Q Go ahead. A I was just going to say, the other
4 additional point that I thought was rather important, is that
5 if we consider that he has some central nervous system
6 disfunction, that means that he has less emotional control
7 than an ordinary individual. That is one of the character-
8 istics of having a kind of degraded nervous system. It is
9 not that controllable. It fires unexpectedly.

10 Q Did you find that condition with David Ismail?

11 A Well, I certainly found the organic impairment.

12 Q Which would be consistent? A Which is consistent
13 with that kind of behavior.

14 Q And you found that through the testing?

15 A I found that through the testing.

16 Q And you base that not only on the testings but do you
17 base it on the history given? A Well, we also know
18 that if you truly drink, and understand he had a point 0.8
19 alcohol content in his blood, if you drink you also are
20 degrading, you know, your impulse control. And when you put
21 those two pieces together, the impulse control being degraded
22 by the drinking and by the organic impairment, it means that
23 you really, it is not a very controllable system. It does
24 not compare with a normal human being in any way. I mean,
25 the actions then are not very predictable.

26 Q Did he indicate to you anything in the history that you

1 had taken from him that he was very close to his father?

2 A Well, he certainly did talk very much about him, yes.

3 It was clear that he had a very deep involvement in his
4 father, and a particular church which is combined with a
5 sense of his identity as a person, as an Assyrian. He had
6 very strong, had a very strong, a piece here, three pieces
7 that kind of fit together, the race, the church, and his
8 father. They just seem to have become one.

9 Q The race, his church, and his father. Did he tell you
10 that some words were used to describe or -- strike that.

11 Did he tell you that the Patriarch had used some
12 vile words with reference to his father?

13 A Yes, he did say so.

14 Q Would that alone be sufficient for a man like David, as
15 you know him through the tests, to become impulsive, so to
16 speak? A I think the rage resulting from that kind of
17 thing is predictably very large, yes, not control.

18 Q Okay. Is your opinion -- you talked about memory, and
19 memory for design, that test shows that David Ismail was
20 normal; is that right? A Yes, he is within normal
21 limits.

22 Q Did David Ismail tell you that at some time or another
23 after the Patriarch had said something about his father that
24 he didn't remember what happened for quite some time afterwards?

25 A He said to me that he really didn't clearly remember
26 anything until he was taking a shower in the jail, from that

25

1 time, from the words of the Patriarch until he was in the
2 jail in the shower, that is the first time he came back to
3 full awareness.

4 Q Suppose I told you this, that he could remember pretty
5 clearly, I think, everything that happened up to a certain
6 point, and then when the Patriarch said something about his
7 father he indicates that he could not remember very much of
8 what happened until he took a shower. A Mm-hmm.

9 Q Is that consistent with your diagnosis?

10 A Well, it is certainly not inconsistent.

11 Q Well, could -- is that likely to happen with a man such
12 as you know him here, involved in all of these tests?

13 A There is, I have seen, and I have observed, other people
14 have observed that under a particular emotional load there is
15 a thing called a fugue that occasionally occurs in which --

16 Q What is a fugue? A Well, it is a term to
17 describe a type of hysteria.

18 Q Is it something like somnambulism? Sleepwalking?

19 A Similar to, except that to the outward person, to the
20 outward observer it would appear that the person is awake,
21 not asleep.

22 Q Now, you started to say that it appeared what?

23 A Well, the person appears essentially normal, that is,
24 you can talk and they will respond. It is like being in a
25 hypnotic state. It is like I attempt to induce a hypnotic
26 state in someone, and then I get them to a nice level where

26 1 they are accepting me, and they will now accept the reality
2 as I provide it. Which is like, to help them stop smoking,
3 or, you know, lose some weight or remove some, rather, get
4 through some kind of painful experience that is bothering
5 them. At that time the person can talk to you, but sometime
6 later when they are awakened they have no memory of what has
7 happened. You usually facilitate this by suggesting that
8 they not remember, but it is a very common event, and when it
9 occurs spontaneously we call it a fugue. And in this fugue
10 state it is like you almost pop into another personality.
11 You have got integrated behavior, you may function but you
12 simply have no recall of what has happened. One of the
13 simplest things that you can experience that is contemporary,
14 you are driving down the freeway and you are thinking about
15 something, and five minutes later you wonder where you are
16 because you just come back to wakefulness. Now, that isn't
17 altogether a fugue, but it is very similar to it. You just
18 simply did not have your attention there. There is no great
19 stress in that situation. Perhaps I am confusing the Court.

20 Q And to reach that fugue state does the mild brain
21 impairment, does the alcohol, does the religion, does the
22 paternal instinct in his case, so to speak, do all of those
23 factors or circumstances combine? A All those factors
24 make it, do indeed make it possible and probable that he
25 could be pushed out of the pain of being where he is and in
26 the identity he is in, just kind of pushed out, you know, and

27

1 momentarily not be aware of anything, not really be aware of
2 what he is doing. There is that possibility.

3 Q Are you telling us then, Doctor, that all your testing,
4 the history that you have taken from David Ismail, and the
5 results of your testing, make him out this peculiar person,
6 is that what you are saying? A I am not trying to make
7 him peculiar. I am trying to say that he can be more
8 vulnerable to this kind of an event. You know, I have only
9 his own report but he has told me of two previous instances
10 in which he had essentially a blackout, and he didn't remem-
11 ber anything for the course of several hours, and the next day
12 couldn't, didn't know all of these things that had happened
13 which he had done, one of which was to break half the crockery
14 in the house.

15 Q So is it your opinion then that this particular person,
16 David Ismail -- what is your opinion as far as the events that
17 transpired on the night of November the 6th as he had given
18 them to you? A Well, I don't think that I am really
19 in the position to try to interpret whatever the total meaning
20 of that scene is. Like, that is a task for --

21 Q But give me your opinion as to whether or not it is
22 consistent with a person that could (snapping fingers) act
23 spontaneously, No. 1; No. 2, could act and forget or not
24 remember, and act like he remembered? A My sense of
25 this man in my examination of him is that he did get pushed
26 out of his ordinary consciousness and does not remember

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1 because he was just in a different state.

2 MR. PESTARINO: Okay. Thank you. That's all.

3 THE COURT: Do you want to recess?

4 MR. ROBINSON: No. I'm just going to have a few
5 questions for the Doctor, then I am going to ask him to come
6 back tomorrow, Your Honor, with the Court's permission.

7 THE COURT: Can you do that?

8 THE WITNESS: If you ask me to, I'll have to.

9 CROSS-EXAMINATION

10 BY MR. ROBINSON:

11 Q All of these various tests that you administered to the
12 defendant, I take it you brought them with you today so we
13 could look at them? A No, I didn't bring them.

14 Q Can you bring them so we can all see what they are
15 tomorrow? A Sure.

16 Q What I would like you to do is bring every test that you
17 put on the board. Okay? A If you wish.

18 Q Okay. Just a couple other quick questions now.

19 Have you testified as an expert witness in psychology
20 in the Superior Courts of the County of Santa Clara on prior
21 occasions? A Several times.

22 Q Okay. And how many would that be?

23 A I think I might have been in the Superior Court, maybe
24 with this, three times, maybe four times.

25 Q Maybe four times. And how long have you been
26 practicing in this area? A Ten years.

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1 Q And do you recall the names of the cases in which you
2 testified in the Superior Court these three or four times?

3 A One was a man named Valdez.

4 Q Valdez. Okay. Do you recall his first name?

5 A Ricardo, I think.

6 Q Okay. And what sort of a case was that? The charge?

7 A The man had been in a holdup in a 7-Eleven.

8 Q Okay. What other cases? A Well, I realize that
9 another one, I didn't testify, just simply did some work for
10 Mr. Adams who is with La Casa.

11 Q Mike Adams, the defense attorney? A Mm-hmm.

12 Q Did some work for him? A For another person,
13 name of Valardas.

14 Q But he never called you to testify? A No, he did
15 not.

16 Q And did the D.A. ever call you to testify in that case?

17 A No.

18 Q What other cases? A Well, it isn't in the
19 Superior Court, but in the Federal Court some several, about
20 four or five years ago I was asked to evaluate a man who had
21 been involved in robberies of banks, and he was sentenced to
22 five years, and there seemed to have been some problem in the
23 sense that my evaluation was somehow not given to the judge.
24 And he discovered this, and I then testified in the Federal
25 Court not too long ago, about last year, and they decided to
26 essentially, I think, put him on probation at that time and

10
1 they ended his time at McNeill because he had made a rather
2 fine, he had become a counselor at McNeill Island.

3 Q So you never testified before a jury trial in the
4 Federal Court then as to guilt or innocence, you simply did
5 work like if somebody is convicted they go to the probation
6 department, they get psychiatric help, psychiatric counseling,
7 that is the sort of work you did then? A No, I
8 testified in the court. The judge called me to ask me to
9 testify.

10 Q Was this in front of a jury? A No, it was in front
11 of a judge.

12 Q Just in front of a judge? And this was after the man
13 had already been convicted? A Five years later.

14 Q Five years later. Okay. What other cases?

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15 A I think that is about it.

16 Q Okay.

17 MR. ROBINSON: Your Honor -- I hate to do this to
18 you, Doctor, but it is important in terms of bringing in your
19 material so that we could all review it together -- I would
20 request that I can reserve my cross-examination of the doctor
21 until tomorrow morning. If counsel had told me that he was
22 going to call this doctor I could have been ready for him.
23 He indicated that he was just calling Dr. Rappaport. He
24 hadn't told me any of the witnesses that he is calling.

25 THE COURT: Well, let's approach the bench for a
26 moment.

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(Discussion off the record.)

THE COURT: Can you come back tomorrow morning, Doctor?

THE WITNESS: What time do you want me to come back?

THE COURT: How about 9:30 or a quarter to ten, and try to get you out before noon?

THE WITNESS: All right.

THE COURT: Which would be better for you?

THE WITNESS: What are the choices? Mine?

THE COURT: 9:30 or a quarter to ten.

MR. PESTARINO: Maybe we can work him in in the afternoon?

THE COURT: Would you rather go in the afternoon?

THE WITNESS: I am going to have to juggle my schedule. It doesn't matter too much, as I recall, which way I juggle it.

THE COURT: I think counsel would prefer to have you in the morning.

MR. ROBINSON: That is correct, while the testimony is fresh in the jurors' minds.

THE COURT: Ladies and gentlemen, in view of the fact that this witness has testified and given an opinion, and the District Attorney has not had an opportunity to examine the basis for the opinion, I am granting him the right to a reservation of cross-examination until tomorrow morning.

MR. ROBINSON: Your Honor, might I also obtain a copy

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1 of the doctor's report which I haven't been given up until
2 this time?

3 MR. PESTARINO: I'll give you one.

4 THE COURT: We'll see that you get a copy or a copy
5 can be duplicated.

6 THE WITNESS: Is there a duplicating machine here?

7 THE COURT: There is one in the building.

8 MR. PESTARINO: I'll give him one.

9 THE COURT: All right. Now, ladies and gentlemen,
10 it is three o'clock, and because of the fact that it was
11 expected that Dr. Nidevere would be here all afternoon no
12 other witnesses were scheduled. So we are going to have to
13 give you the rest of the afternoon off, which I am sure is
14 going to make you very unhappy. I have been talking to
15 counsel about the time of the trial, and as I indicated to
16 you earlier when we first were questioning you about being a
17 prospective juror, we estimated the time about three to four
18 weeks. My record shows this is the 9th day, tomorrow will
19 be the 10th day. Friday will be the 11th, and we should be
20 finished next week, I would think somewhere towards the
21 middle of the next week. You will recall that you will have
22 Thursday off, but we will probably go to work Friday of this
23 week. Okay. You will keep in mind the admonition I have
24 given you before and we will see you tomorrow morning at 9:30,
25 and I will try to get through with my law and motion calendar
26 in time. And Doctor, you will be asked to return. And so

1 will the defendant, Mr. Ismail will be ordered back. Okay.
2 See you tomorrow.

3 (Whereupon, Court adjourned until 9:30 o'clock a.m.,
4 March 24, 1976.)

5 ---oOo---

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TENTH DAY

March 24, 1976

9:30 o'clock a.m.

(Pursuant to adjournment, Court convened, and the following proceedings were had:)

THE COURT: Good morning, ladies and gentlemen. Please be seated. Let the record show the defendant is present, defendant and counsel are present, the jury is present.

Do you want Dr. Nidever back on the stand?

MR. PESTARINO: Yes, Your Honor, I think so.

THE COURT: Doctor.

MR. PESTARINO: Come forward, please.

DR. JACK NIDEVER,

the witness on the stand at the time of the adjournment, resumed the stand and testified further as follows:

THE COURT: I believe you are on cross-examination. You are reminded that you are still under oath from yesterday.

MR. ROBINSON: Good morning.

THE WITNESS: Good morning.

CROSS-EXAMINATION

(Resumed)

BY MR. ROBINSON:

Q. What I would like to do, first of all, is ask you about some of your qualifications to give this opinion that you have given. Okay?

You have to answer out loud.

1 A. Surely, go ahead.

2 Q. You told us about your educational background?

3 A. Yes.

4 Q. And you told us about your work experience?

5 A. No, I didn't really tell you about my work experience.

6 Q. Okay. I will get into that. Now, in addition to your
7 educational background and your work experience I take it
8 you have read literature in the field of psychology?

9 A. Well, I hope so, yes.

10 Q. So do I. You are the only one that can tell me that.

11 A. I have certainly read some of the literature in
12 psychology.

13 Q. Then I take it you have read scientific journals?

14 A. Certainly.

15 Q. And have you published any articles?

16 A. Oh, a few.

17 Q. What articles have you published?

18 A. Well, my doctoral dissertation was on muscular
19 tension.

20 Q. What did that deal with? A. It was an
21 attempt to lay the groundwork for using a physical method
22 to assess subjective tension and anxiety.

23 Q. Can you explain that for us? A. Well,
24 the surface muscles of the body can be measured electrically,
25 and what I did was I measured about twenty-four muscle
26 groups and connected that with some autonomic nervous

1 system measurements and a variety of other measurements, in-
2 cluding the time of day and the ambient temperature and one
3 thing and another, with the hope of showing with factor
4 analytic procedures, these are fancy statistical procedures
5 to show that things go together. And my attempt was to
6 demonstrate that there was a factor of muscular tension,
7 which I did, which could be useful in the field of clinical
8 psychology.

9 Q. Were you successful in that attempt?

10 A. Yes, I was.

11 Q. And does everybody who receives their doctorate in
12 psychology have to do a doctoral dissertation?

13 A. That is the general principle, yes.

14 Q. Now, in addition to your doctoral dissertation have
15 you published any other articles in the field?

16 A. I did some work when I worked for IBM. I did about a
17 half dozen research studies, only one of which was published
18 for the corporation. The one that was published had to do
19 with the efficiency of a human being using codes and eye-
20 hand coding versus machine coding.

21 Q. Okay. And one of those was published?

22 A. Um-hum.

23 Q. And where was it published?

24 A. It was published in the IBM Journal.

25 Q. Okay. And that is a journal of people that work for
26 IBM?

A. It is a rather fancy

1 journal, yes.

2 Q. Is the IBM Journal read throughout the community of
3 psychologists?

4 A. Well, the items
5 that I worked on were essentially confidential so this was
6 circulated throughout the IBM Corporation.

7 Q. And what other articles have you published?

8 A. I published an article on police work. I have been a
9 consultant to the Sheriff's Department here for seven or
10 eight years. And I work with the Sheriff's Department in
11 developing ways to let their deputies relate better to
12 different ethnic groups in the community and minority groups,
13 including colored students. So in the California State
14 Psychologist I published an article about riots and police
15 work.

16 Q. Okay. And any other articles?

17 A. No. I published a piece on -- didn't really publish
18 it but developed a thesis that you could learn extrasensory
19 perception, and I did that in Zurich. It was an
20 experimental piece.

21 Q. And that was not published? A. It is in
22 the archives of the Zurich Institute, but it is not
23 published otherwise.

24 Q. Any other published articles? A. There may
25 be a couple but they are not all that important.

26 Q. Have you written any books? A. No, I
haven't written any books.

1 Q. Now, you told us that you have read scientific
2 journals. And have you read any psychological journals?

3 A. It would stand to reason that I have, yes.

4 Q. Okay. And what psychological and scientific journals
5 have you read? A. Well, you want me to
6 give you a full list of the, you know, of all of the journals
7 in psychology?

8 Q. Why don't I ask you specific ones?

9 A. Sure. I have read in all of them.

10 Q. Have you read the Journal of Abnormal Psychology?
11 And you are familiar with that journal?

12 A. I certainly have read articles in the journal, yes.

13 Q. What about the Journal of Psychology and the Law?

14 A. No, I haven't really read that.

15 Q. You haven't read that. Is there any special reason why
16 you haven't read that? A. I presume it is

17 a psychiatric journal. I don't read all of the psychiatric
18 journals.

19 Q. It has to do with psychiatry and courtroom testimony?

20 A. I am not a psychiatrist. I am a psychologist.

21 Q. Have you read a Journal of Nervous and Mental Disease?

22 A. I certainly have read articles in there.

23 Q. And what about the American Psychologist?

24 A. Well, that is the standard publication.

25 Q. That is the standard publication?

26 A. For the American Psychological Association.

1 Q. And you would have read that?

2 A. I have read articles there.

3 Q. What about books that you have read? What about the
4 Clinical Interaction by S. P. Sarason? Have you read that?

5 A. No, I haven't.

6 Q. Okay. Is that a rather well-known book in the field
7 of clinical interaction? A. Not to my
8 knowledge, no.

9 Q. Never heard of it? A. Well, Sarason
10 is an author I have read, but I haven't read that particular
11 book.

12 Q. You are familiar with what Sarason has to say?

13 A. I know something about Sarason.

14 Q. What about Psychological Testing by Anastasi?

15 A. Well, that book came out after I graduated from
16 school. Myself, I have looked at it, I didn't purchase it.

17 Q. And that book has come out in more than one edition,
18 hasn't it? A. Probably.

19 Q. What about Fifth Mental Measurement Yearbook by Oscar
20 K. Burroughs? A. That is a reference
21 text.

22 Q. Are you familiar with that? A. Um-hum.

23 Q. And what about the Sixth Mental Measurement Yearbook
24 by Mr. Burroughs? A. I have used it.

25 Q. And Seventh? A. I don't recall that
26 there is a seventh.

1 Q. Well, there is. Would you accept -- if I told you
2 there was would you accept that?

3 A. It is simply a reference volume, sure.

4 Q. And this reference volume by Mr. Burroughs on Mental
5 Measurement Yearbook includes the most important source of
6 information regarding psychological tests, doesn't it?

7 A. He attempted to be comprehensive.

8 Q. He gets all of the important psychological tests that
9 come out every year and he gives data regarding those tests,
10 doesn't he?

11 A. He gives a very brief
12 review of each test he has in that particular year and
13 indicates, you know, he indicates some bibliography you can
14 read to read further about the item.

15 Q. And I take it in your field it would be incumbent upon
16 you to keep up with the latest psychological testing devices,
17 wouldn't it?

18 A. Well, it seems that
19 would be required, yes.

20 Q. And do you do that? A. Sure.

21 Q. And the book by Mr. Burroughs covers up to the present
22 edition all available psychological tests and gives a brief
23 critique on how they are used, how they should be used and
24 various data regarding them?

25 A. He doesn't
26 include all of the tests, as I recall. Some tests may be
in previous years and may not be reviewed, you may be
referenced back to the original journal or original year in
which this review appeared.

1 Q. Sure. So at the time he writes the book, first of all,
2 the Fifth Mental Measurement Yearbook, he includes all of the
3 tests at that time; the Sixth he encompasses new tests, and
4 in the Seventh newer tests?

5 A. Sure.

6 Q. Did you rely to some extent on the named journals and
7 books that I have previously mentioned in reaching your
8 opinion and conclusion in this courtroom today?

9 A. No, I don't think so.

10 Q. You didn't rely on any of those?

11 A. Well, I have been ten years in the field so I rely on
12 my own experience, too.

13 Q. Well, okay. You rely on your own experience. And what
14 else do you rely on?

15 A. Well, I use all
16 of the material that seems to me to be significant in terms
17 of my reading and psychological meetings that I go to, and
18 my colleagues who are, also, on the staff of local
universities.

19 Q. Okay. Well, is the book by Mr. Burroughs a
20 significant book?

A. Sure.

21 Q. In your field?

22 A. It costs so much
money I don't happen to have it.

23 Q. That leads me to another question. How much are you
24 getting paid to testify in this Court?

25 A. My regular fee.

26 Q. Well, how much is that?

A. I charge

1 \$60 an hour.

2 Q. Okay. And how much have you received to testify?

3 A. Well, up to this point I'm not sure, I sent Mr.
4 Pestarino a bill for somewhat over \$600 including a fee for
5 my interpreter.

6 MR. PESTARINO: Did you get paid?

7 THE WITNESS: It's probably, it's about to come.

8 Q. (By Mr. Robinson) Okay. So right now so far you have
9 billed for services rendered to Mr. Pestarino \$600?

10 A. Six hundred and forty, I think, including the
11 interpreter.

12 Q. Now, you told us that you rely a lot on your experience.
13 What sort of experience -- well, strike that.

14 You told us yesterday that you have experience
15 testifying in Courts, you have testified as an expert
16 witness in Courts approximately three to four times?

17 A. You asked me if I had testified in the Superior Court,
18 and I said to my knowledge three or four times. Then when
19 we went over it it seemed to me it was maybe two or three
20 times.

21 Q. And have you ever testified before a jury regarding a
22 criminal matter in Superior Court?

23 A. No. No, I haven't.

24 Q. You told us that you testified one time in Federal
25 Court?

A. Um-hum.

26 Q. And this testimony was after a man had been convicted

1 of bank robbery?

A. Um-hum.

2 Q. This man was incarcerated in Federal institution?

3 A. That's right.

4 Q. Had been incarcerated there for approximately five
5 years?

A. Um-hum.

6 Q. Okay. And then you did an interview with this man in
7 the Federal institution?

8 A. No. No, before
9 the man was tried originally I did an evaluation for, at
10 the request of his attorney and a referring psychiatrist.
11 They used some of the information from my evaluation, but at
12 the time that the man was to be sentenced, as I recall, they
13 didn't consider that he might require further psychiatric or
14 psychological evaluation, so this point was missed. He was
15 then sentenced. After he was in jail he corresponded with
16 me, and I provided him with a letter which was essentially
17 a summary of my report. And the judge who had tried the
18 case in reviewing this decided to review the matter once again
19 in Court, and at that time I did testify, and the judge felt
20 that there had been some abuse of the rights the man should
21 have had. And because he had made such a good effort to
22 become, as I said, a counselor and has now gone out to work
23 with people who leave the prison, they, at that time, I
24 believe put him on, they would have put him on parole at
25 that time, I assume, but he had left McNeill at that time
26 and he did not return.

Q. And he was in McNeill approximately five years?

1 A. I believe so.

2 Q. For the bank robbery? Now, do you know the standard
3 time that somebody serves in a Federal institution for bank
4 robbery?

5 MR. PESTARINO: This is irrelevant it seems to
6 me unless counsel is going to connect it up.

7 MR. ROBINSON: It goes to his qualifications and
8 experience, Your Honor.

9 MR. PESTARINO: How does that --

10 THE COURT: Well, it seems a little far-fetched
11 except that --

12 MR. PESTARINO: I'll withdraw the objection.
13 If you want to ask him go ahead.

14 Q. (By Mr. Robinson) Do you know?

15 A. Do I know what?

16 Q. The standard amount of time that somebody serves in
17 a Federal institution for bank robbery if they are convicted?

18 A. My recollection was this man could have served --

19 Q. Well, "could have," that is maximum. The standard
20 that they serve, the average?

21 A. I'm not
familiar with the average they serve.

22 Q. Okay. And although you did do an interview with this
23 person, you did some test on this person at the request of
24 his attorney, you didn't testify in Court regarding the
25 guilt phase of the trial, did you?

26 A. The man
had confessed to the charges.

1 Q. He confessed to the charges?

2 A. Yes.

3 Q. Okay. And you told us that you also did some work
4 with Ricardo Valdez? A. That is true.

5 Q. Did you testify in Court regarding that work?

6 A. Yes, I did.

7 Q. When was that done? A. Within the
8 last six months.

9 Q. Okay. And that was in Santa Clara County?

10 A. Yes, it was.

11 Q. Okay. And was that testimony given before a jury on
12 whether or not Mr. Valdez was guilty of robbing the seven
13 eleven?

14 MR. PESTARINO: Wait a minute. That is assuming

15 --

70 16 MR. ROBINSON: He told us yesterday Mr. Valdez
17 was a robber of seven eleven. Are those the facts of the
18 case?

19 THE COURT: Just a minute. What is the objection?

20 MR. PESTARINO: I may be wrong. Isn't that
21 assuming something not in evidence, or was that the
22 testimony yesterday?

23 THE COURT: I have a recollection that the
24 doctor testified that he was involved with a robbery. Now,
25 whether he actually confessed or did it --

26 MR. PESTARINO: -- or seven eleven?

1 THE COURT: I think he mentioned the seven
2 eleven.

3 MR. PESTARINO: Then I'll withdraw my objection.

4 Q. (By Mr. Robinson) Did the facts of the Valdez case
5 involve a robbery of a seven eleven?

6 A. Yeah, I believe so.

7 Q. And did you testify regarding -- did you testify in
8 front of a jury in that case?

9 A. No, I don't believe so.

10 Q. Okay. Once again you came into Court and gave your
11 opinion after a man was convicted?

12 MR. PESTARINO: Wait a minute --

13 THE WITNESS: No, I am not an ex --

14 MR. PESTARINO: Excuse me --

15 MR. ROBINSON: He wants to answer he is not an
16 expert. Let him.

17 MR. PESTARINO: Can I make an objection?

18 THE COURT: Certainly.

19 MR. PESTARINO: I don't recall anything about a
20 conviction. Isn't that assuming something not in evidence?

21 THE COURT: Well, it is cross-examination.

22 MR. PESTARINO: Yes. But counsel is assuming
23 that this man was convicted. Unless the witness testified
24 to that, and I don't recall that.

25 THE COURT: Well, we haven't given him an
26 opportunity. But it assumes facts not in evidence in this

1 case. But if it is for the purpose of qualification or
2 determining the doctor's ability or credibility in giving
3 an opinion, I think counsel should be given great leeway.
4 In the event that the man was not convicted it should come
5 out or --

6 MR. PESTARINO: Why don't he ask the question if
7 the man was convicted.

8 THE COURT: Well, my feeling is this, Mr. Pestarino,
9 that inasmuch as I gather from the doctor he didn't testify
10 during the guilt phase of the trial, we are going to a
11 different aspect of it. So --

12 MR. PESTARINO: I'm not even sure there are two
13 phases of the trial.

14 THE COURT: Why don't we let --

15 MR. PESTARINO: Why don't we ask the witness those
16 questions, they lay the foundation?

17 THE COURT: All right. Rephrase it.

18 Q. (By Mr. Robinson) Was Mr. Valdez when you interviewed
19 him, had he been found guilty of robbery of a seven eleven?

20 A. Well, now that - -

21 Q. Yes or no.

22 A. Now that you
23 prompt my memory I believe I remember the conditions there,
24 he had been sent to Vacaville for an evaluation.

24 Q. Can you answer my question? Is somebody sent to
25 Vacaville if they are acquitted of seven eleven robbery?

26 A. I assumed that the man had been convicted at that time.

1 yes.

2 Q. Because he was sent to prison, right?

3 A. Well, I understood that he was at Vacaville for
4 evaluation, and I don't -- I assumed that he had been
5 convicted but the matter was to be decided in terms of what
6 then happened to him.

7 Q. Do you know what Vacaville is?

8 A. Well, I'm sure it has more than one function. It has
9 a medical facility there. And it is also a holding area
10 for, I think, newly convicted people.

11 Q. Do you know what Vacaville is?

12 A. I just said what I thought it was.

13 Q. Do you know it to be a prison?

14 A. I believe it is part of the prison system, yes.

15 Q. And do you know that anybody convicted of any felony
16 in the State of California that is sent to prison first goes
17 to Vacaville where they give them tests, then they decide
18 what penal institution to send the man to? Do you know
19 that?

20 A. I don't know these things for
21 a fact.

22 Q. You don't know that. Okay. Now, you told us that you
23 have been practicing in this area for approximately ten
24 years?

25 A. That's right.

26 Q. Okay. And what type of practice do you have?

A. It is a clinical practice.

Q. All right. And what sort of people do you see?

1 A. Most all types.

2 Q. Well, how much contact have you had with clients

3 accused of crimes?

4 A. Maybe a dozen cases.

5 Q. A dozen cases. So probably on the average of once a
6 year?

7 A. Seems like I have had
8 more in the last five years than I did the first five.

9 Q. And how many clients have you examined that have been
10 accused of murder?

11 A. I haven't .

12 Q. Never have? A. No.

13 Well, in the state -- in the state hospitals where I
14 have worked I have done some evaluation of people who have
15 been there by reason of insanity and they had committed
16 murder, but that isn't to testify in a Court.

17 Q. Okay. So you have never testified in Court regarding
18 a murder?

19 A. No. No, I haven't.

20 Q. Now, you told us yesterday your conclusion based upon
21 your test was that you can't see David as a cold premeditated
22 murderer?

23 A. That's right.

24 Q. He doesn't fit any of your findings?

25 A. No, he doesn't.

26 Q. How many cold premeditated murderers have you
examined?

A. Well, it's a good question.
To my knowledge I really haven't examined any cold blooded
murderers.

Q. All right. How many books have you read regarding

1 cold blooded murderers, as you put it?

2 A. I have looked into some of them. I have really, it is
3 not an interest of mine to examine cold blooded murderers.

4 Q. Okay. Now, can you define murder for me, the legal
5 definition.

6 A. Well, if some act of
7 yours results in the death of another person, I would assume
8 that falls in the class of murder.

9 Q. So if I am driving down the freeway and I have a heart
10 attack and my car crashes into a pedestrian under your
11 definition that would be murder? And kills the pedestrian.

12 A. You certainly have cost somebody their life.

13 Q. And under your definition that would be murder?

14 A. Well, I am not a legal expert, if that is what you are
15 trying to establish.

16 Q. Well, I'll stipulate to that.

17 A. Well, then why are we doing this?

18 Q. Counsel called you, sir.

19 Okay. The definition of murder is the unlawful
20 killing of another human being with malice aforethought.

21 Now, it is your understanding of malice
22 aforethought that it requires the defendant to have some
23 ill will or hatred toward the person he kills?

24 A. It sounds like he would wish the person dead, yes.

25 Q. Okay. So he must have some ill will or hatred toward
26 him, right?

A. From your definition,
yes.

1 Q. Sir, if I was to tell you that the law says that
2 malice aforethought requires no ill will or hatred toward the
3 person killed -- strike that.

4 We will get to that when we instruct the jury.
5 Okay.

6 You said that Mr. Ismail wasn't a cold premeditated
7 murderer. Describe the legal definition of premeditate.

8 A. Well, to premeditate is to think out ahead of time
9 that you are going to do something.

10 Q. Consider beforehand, right? A. Yes.

11 Q. Okay. Was Mr. Ismail capable of considering something
12 beforehand? A. He certainly is capable
13 of planning ahead, yes.

14 Q. Okay. Now, assume, although there is no factual basis
15 before this jury, assume that Mr. Ismail had killed five
16 people before he had come into contact with you. Okay.
17 Would your opinion regarding him change?

18 A. I guess it would depend how he killed the people.

19 Q. How he killed the people? A. Um-hum.

20 Q. Now, let's talk about the field of psychology and
21 data collection and observation. I take it that is part of
22 your clinical training, correct?

23 A. Um-hum.

24 Q. Okay. How do you define the term, "reliability"?

25 A. Reliability refers to the possibility of reproducing
26 the same result given the same stimulant under the same

1 condition.

2 Q. I differ with you on one ground. Is it the possibility
3 or probability of producing the same result given the same
4 stimulus?

5 A. Well, possibility is just a subclass of probability.

6 Q. Well, if you want to say something is reliable, sir,
7 do you say it is possible or probable?

8 A. You establish a probability figure. You know, it is
9 highly probable or it is less probable.

10 Q. And so is it fair to say reliability, using my working
11 definition, is the probability of the existence of a fact?
12 Is that one fair way to do it?

13 A. It doesn't have much meaning to me.

14 Q. Okay. What about this, "reliability is, given the same
15 circumstances, the observer who perceives the
16 fact will perceive it again"?

17 A. That sounds closer.

18 Q. So for an example of reliability for myself to
19 understand, because I am not a psychologist, for example,
20 suppose we had an intelligence test administered to a ten-
21 year old boy at 9:00 o'clock in the morning, okay?

22 A. Um-hum.

23 Q. And this was on Monday morning, okay? All right.
24 So we have intelligence test, ten-year old boy, administered
25 9:00 o'clock on Monday morning, and this boy achieves an
26 I.Q. on that test of one hundred ten. Then if we gave him

1 the same test at 10:00 o'clock in the morning on Tuesday
2 morning, if the test is reliable at all, the I.Q. test that
3 was given him on Monday or Tuesday, he should receive a score
4 of one hundred ten on his I.Q., right?

5 A. Well, I don't think so. If I give somebody the same
6 test on two days I would expect them to have learned quite a
7 little bit how to take that test in the meantime. I would
8 expect them to score higher.

9 Q. You would? A. Sure.

10 Q. If you gave somebody a test on Monday, an I.Q. test,
11 and he gave you answers, right?

12 A. Um-hum.

13 Q. Then if you gave him the same test on Tuesday, and
14 he gave you answers, you would expect him to score higher on
15 Tuesday than on Monday? A. Yes, I think so.

16 Q. All right. Without having given him the answers on
17 Monday? A. Um-hum.

18 Q. Why do you say that? A. Well,
19 because he gets all of that time in between to subconsciously
20 think through the questions. He has much more, therefore
21 much more computing time to kind of arrive at an answer
22 without you having given him a whole lot of information.
23 Then he always does get some information from the examiner,
24 whether it is in the expression of the face or whatever,
25 there is an interaction going on there. For this reason we
26 develop alternate forms of tests if we are going to check

1 reliability and we are going to test across short intervals
2 of time.

3 Q. So then if this same individual was given this test
4 on Wednesday, what would you expect?

5 A. Well, it is still too short an interval to avoid the
6 learning that has taken place.

7 Q. Let me ask you this, suppose this individual was given
8 the test on Monday, a ten-year old boy given the test, okay?
9 And he received a score of one hundred ten, was given the
10 same test on Tuesday, and he received a score of seventy-
11 two, same test on Wednesday and he received a score of one
12 hundred eighty, same test on Thursday, and he received a score
13 of one hundred forty-three, would you say this was a reliable
14 test or unreliable test? A. The test
15 sounds unrelated to his behavior.

16 Q. Can you answer the question, please?

17 MR. PESTARINO: He has answered it.

18 THE WITNESS: I just answered it. It has
19 nothing to do with reliability. Reliability is not done on
20 single individuals. It is done on groups of people.

21 Q. (By Mr. Robinson) Reliability isn't done on single
22 individuals? A. No, it is not.

23 In order to check out something like that you take a group
24 of people and you do them, you do different things with them,
25 then you see which proportion of them do thus, and so, then
26 you establish a probability figure in terms of reliability

1 of the test.

2 Q. So it is impossible to do a reliability, have
3 reliability based upon one individual?

4 A. Ordinarily one does not use one individual.

5 Q. How many Assyrians who live in Canada who are charged
6 with murder have you ever interviewed?

7 A. I think I have interviewed one Assyrian living in
8 Canada accused of murder.

9 Q. And that was Mr. Ismail? A. I believe
10 so.

11 Q. How many Assyrians living in Canada have you ever given
12 tests to, I.Q. tests? A. I have given one.

13 Q. To who? A. To Mr. Ismail.

14 Q. Would you say that the tests you gave to Mr. Ismail
15 were reliable? A. Sure.

16 Q. Now, let's talk about reliability in terms of
17 courtroom testimony, okay? If a witness tells three
18 different stories on three different occasions would he be
19 reliable? A. He doesn't sound too
20 reliable.

21 Q. And once again, our definition of reliability, that we
22 will get back to is: Given the same circumstances the
23 observer who perceives the fact will perceive it again?

24 A. It is also a subject of the heads that are listening
25 to the information.

26 Q. I see. So the person who elicits this information

1 from the person plays a big factor?

2 A. I think that is clearly true.

3 Q. So, all right. Let's talk about validity.. Are you
4 familiar with that term? A. It is a term

5 I am familiar with.

6 Q. And it is a psychological term used in your
7 profession? A. It is a term used in
8 psychology.

9 Q. What is your definition of validity?

10 A. Validity implies that you are measuring what you think
11 that you are measuring.

12 Q. Put in basic English, it means that if you have X you
13 can assume Y? A. That doesn't mean
14 anything to me. What I just said is meaningful to me.

15 Q. It might not be meaningful to us, sir. Is validity
16 the relationship between one factor, one variable to
17 another? A. Well, if you make one

18 variable and measure, and you say that you want to establish
19 that you can measure the other variable then that is
20 validity.

21 Q. Validity means what a fact means, huh? If somebody
22 says, you know, I have an I.Q. of one hundred ten, okay?
23 And assuming for the purposes of this discussion that that is
24 reliable, validity means what's that one hundred ten I.Q.
25 mean, right? A. No, validity means am

26 I measuring intelligence because that is what I am assuming.

Validity is like, if I have a ruler here, I have a valid measure of length, you know, I can demonstrate by using it that I really measure length.

Q. Okay. All right. So, in other words, you have that ruler, right, and suppose it measures twelve inches?

A. Um-hum.

Q. Okay. And you know that that ruler is twelve inches, it's reliable, okay? You have checked it out with other rulers and you can show that is a twelve-inch ruler ?

A. It is reliable if it doesn't stretch. Well, that is the concept of reliability.

Q. That is the concept of reliability. Okay. Let me ask you this, let's go back to my example of the boy with the I.Q. test, okay? In terms of validity?

A. Um-hum.

Q. Okay. If somebody has an I.Q. of one hundred and ten

.. A. Um-hum.

Q. Okay? This is somewhat above average, correct?

A. Yes.

Q. Okay. Would you expect his intellectual achievements to be somewhere above average?

A. Well, in some degrees, yes.

Q. So let me give you this example, we have somebody with an I.Q. of one hundred and ten, somewhat above average, you would expect his intellectual achievements to be somewhat above average, so in order to find this out, to find the

1 validity of this expectation you would study his intellectual
2 level in relation to his achievements in school, if he was
3 a school child? Right? A. That is one
4 of the frustrations about intelligence testing. We find it
5 has about fifty percent correlation with grades. We think
6 we are really measuring aptitude, and if in fact we are --

7 MR. ROBINSON: Well --

8 MR. PESTARINO: Excuse me, let him finish.

9 THE WITNESS: It simply means what you are trying
10 to measure is an aptitude. The school grades are an
11 achievement and they have quite a motivation base.

12 Achievement is more based on motivation than it is ability.
13 You may find a bright child with one hundred forty I.Q. and
14 he is into Marijuana and drugs, he flunks out of school.

15 Q. What you are saying then, I.Q. tests only have about a
16 fifty percent chance of being accurate in terms of predicting
17 future behavior?

18 A. Well No, they measure
19 potential and given this potential. The original I.Q.
20 tests were developed by Binet, a Frenchman, and what he
21 wanted to do was to sort school children to see which one
22 had the greatest probability of achievement.

23 Q. The Stanford-Binet Test, right?

24 A. It lead to Stanford-Binet later, but Binet developed
25 it much earlier.

26 Q. Now, suppose you have one hundred witnesses in a trial,
okay?

A. Um-hum.

1 Q. So what we are looking for, psychologists would be
2 looking for is the relationship between a person having blue
3 eyes and killing somebody, correct?

4 A. Well, I don't know what your example leads to. But
5 all right.

6 Q. Well, to show validity. If you have X, somebody with
7 blue eyes, you have Y? A. Well, it just
8 is not the kind of logic that I guess I want to use. But if
9 you will go further maybe I will understand what you are
10 trying to say.

11 Q. Well, I'm trying to say, you told about validity as the
12 relationship between one factor variable to another,
13 correct? That is your definition of validity?

14 A. No, that was your definition.

15 Q. What is your definition?

16 A. Validity is a scale which measures what I think it
17 measures. If I think I am measuring length and I am really
18 measuring length, the scale is valid.

19 Q. Can you give me another definition because I am not
20 comprehending that at all.

21 A. If I want to measure what I call intelligence, I do
22 have to relate it to something. All right? To
23 demonstrate.

24 Q. To make it valid? A. To be sure that I
25 am measuring what I think I am measuring.

26 Q. Okay. A. And that is about

1 as good as I can do. What else could I say? Let's see --
2 if I want to develop a scale about violence --

3 Q. Um-hum.

4 A. -- and I seek out those people who are most prone to
5 violence, and maybe I am working with a children's group,
6 so I would then, I would develop the items that I want to
7 use to try to predict or evaluate that a person has a
8 tendency to violence, and then I might have four or five
9 different groups of children. One group, let's say one of
10 my criteria might be that the children are conforming, and I
11 might use their attendance in school as being conforming.
12 That would be a little bit off to the side, but it might be
13 useful. I might, maybe the simplest thing I could do would
14 be to use the teacher rating. The teachers who know these
15 children best and observe them a great deal, they could
16 classify their children in groups of say, five, in a scale of
17 one to five. These children have the most tendency to hit
18 somebody else, these have the least tendency to hit somebody
19 else.

20 Q. Let me stop you right there. In terms of conforming,
21 what you want to do is you want to show what is the
22 relationship between violence and children in school,
23 right?

24 A. I want to be able
25 to, if I am going to do this, what I would like to do is
26 measure children before they have to go through the agony
of conflicting with the system where they are not going to

1 work, maybe I want to group them in a different way, and so
2 I want to anticipate their tendency to violence, so I go to
3 the school situation where I truly know, you know, that we
4 have the behavior demonstrated. I ask the people who know
5 these children best to tell me which are the most violent.
6 I get a scale.

7 Q. Now, the people that you ask that know these children
8 best would give you a subjective opinion?

9 A. They would give me a rating. They would compare all
10 children with all other children.

11 Q. Is that a subjective opinion?

12 A. All things are subjective.

13 Q. Now, let's talk about base rates?

14 A. Base?

15 Q. Base rates. Are you familiar with that term?

16 A. No. Better tell me what you mean.

17 Q. Isn't base rates a common term in psychology?

18 A. If it is I haven't heard it.

19 Q. All right. Base rates in psychological matters refers
20 to the extent to which a behavioral propensity characteristic
21 or other psychological phenomena exists in the general
22 population, or if relevant in a particular sub-population.

23 A. You are talking about some base level for a particular
24 behavior; is that correct?

25 Q. Correct. Base rates.
26 right. A base level?

A. Well, all

1 Q. Okay. A. You say rate, then you
2 have to tell me, rate of what?

3 Q. It is just a term, base rate.

4 A. Rate refers to frequency?

5 Q. Frequency, right. It has to do with events in time.

6 A. Well, events over what period of time? See, if you
7 say basil level, we are just talking about a concept that
8 says this is a kind of norm for a population.

9 Q. The norm for population, right.

10 A. All right.

11 Q. So are base rates vitally important in determining
12 the significance or meaning attached to a particular

13 phenomena or behavior? A. The norms are the
14 things that we do refer to as psychologists to compare
15 people to see whether they vary or not.

16 Q. I got you. So, for example, if you wanted to attach
17 some significance to a person, say, packing a gun, okay?
18 Let's assume that.

19 A. Um-hum.

20 Q. What you would do is , you'd see what the base rate is,
21 what the norm in the community is for packing a gun before
22 before you could establish any significance on this person
23 packing a gun, right?

24 A. Well, assuming
25 you didn't do it on frontier day in Nevada City, yeah.

26 Q. So you would look at the society and you would say --
suppose nobody in society packed a gun, only this individual

1 did, then you could say there was something unusual because
2 it didn't conform to the norm or base rate, correct?

3 A. If it is unusual for the person to be doing it, it
4 varies from the norm, yeah.

5 Q. Okay. And if in contrast one hundred percent of the
6 society packed a gun, okay? Then what the individual is
7 doing didn't differ from the norm? He didn't do anything
8 unusual?

A. It is not unusual, yes.

9 Q. Okay. So is it a fair statement to say without base
10 rates, without knowing what the base rate or norm is, I'll
11 use your term, we have no way of knowing what an individual's
12 behavior signifies? You have to know the norm first?

13 A. It is good to know the norm, yes.

14 Q. Well, it's good to know the norm, you have to know the
15 norm, don't you?

16 A. There are some things
17 about people, about people that don't refer to norms. We
18 have a nethanomathetic procedure to refer to norms, and it
19 is a very good procedure. We have an idiosyncratic
20 procedure in which we try to make sense out of the individual
21 just in himself. We don't try to compare everything with
22 everybody else because we figure people are unique as well
23 as they are, also -- they have a quality of being similar to
24 others and they have a personal uniqueness.

25 Q. Let me ask you this, what is the norm in the Assyrian
26 community regarding their religion?

A. The
norm of what?

1 Q. The norm of how these people --

2 A. Whether they believe --

3 Q. Whether they are religious, non religious, what is the
4 norm, the base rate, what is the average?

5 A. Well, I haven't studied Assyrians in the flesh so I
6 don't know what the one point seven million Assyrians really
7 feel about the church.

8 Q. What is the base rate, the norm in the Assyrian
9 community about how the individuals feel about their father?

10 A. Well, they come from a history of a sacred king, so
11 I'd assume that they are a fairly paternalistic society.

12 Q. So if somebody else was fairly paternalistic and he
13 was from Syria that wouldn't violate the norm, wouldn't
14 violate the base rate?

15 A. That would seem
16 to be consistent with the history depending on what sub-
17 group they happened to be in.

18 Q. What about the Barnum effect, tell me a little bit
19 about that?

A. The Barnum effect?

20 Q. Um-hum.
21 what you mean?

A. Would you tell me

22 Q. Okay. The Barnum effect is basically a failure of
23 the psychologist to take into account base rates or norms.
24 In other words, it consists of essentially of making
25 statements about an individual that would be true of large
26 numbers of the people for the purpose of demonstrating that
one understands and, therefore, can describe salient aspects

1 of the individual. Does that make sense to you?

2 A. No.

3 Q. No? Okay. Let me give you another example of the
4 Barnum effect, sir. You ever go to a carnival and see a
5 handwriting analysis person at a carnival?

6 A. Yes, I have.

7 Q. And this person stands in a booth and without knowing
8 anybody, anything about the person, he has the person, the
9 prospective client write out something, write out something
10 and he is going to analyze his handwriting and tell him about
11 himself?

A. Yes.

12 Q. Do you think that this handwriting person is some sort
13 of mystic that knows what is going on inside that person's
14 mind?

15 A. Are you asking me whether
16 he can read the writing and make something out of it? Or are
17 you asking me if he is psychic?

18 Q. Yeah, I am asking you if he is psychic.

19 A. Well, I don't know. There is a science of Graphology
20 and in Europe it is used extensively. Here it is not.

21 Q. Let me give you an example of what I mean by the
22 Barnum effect. It is things that are common to all of us.
23 For example, this handwriting person might look at the person
24 who wrote out his handwriting and want to know something
25 about himself, and make a statement, something like this,
26 "Sometime s you get angry about things you realize afterwards

1 were unimportant. " Okay? Is that true of all of us?

2 A. Well, it sounds like a rather general statement, yes.

3 Q. Okay. That is what I mean by the Barnum effect. A
4 general statement that applies to everybody. Okay?

5 A. All right.

6 Q. All right. So, for example, somebody did something
7 because they loved their father. Okay? Is it a general
8 statement that applies to most of the population that
9 people love their fathers? A. Not the
10 people who come to see me.

11 Q. Not the people that come to see you. They don't love
12 their fathers? A. Well, they seem to
13 have a reverse feeling mostly.

14 Q. They hate their fathers? A. Often.

15 Q. Okay. A. Maybe I should say
16 love - hate, both.

17 Q. Let's talk a little bit about your clinical exam, if
18 we might. Okay? You are a clinical psychologist?

19 A. True.

20 Q. Okay. And what does the clinical exam consist of?

21 A. "A" clinical exam? You know --

22 Q. Your clinical exam. A. My
23 clinical exam?

24 Q. Yes, sir. A. For what? You know,
25 there is no standard clinical exam that I know of.

26 Q. There is no standard? A. Well, you

1 tell me your objective and --

2 A. Go ahead, tell -- A. No.

3 Q. -- tell me your objective and what?

4 A. Whatever the objective of the examination is one
5 tailors the work more or less to it.

6 Q. And what was your objective, of your examination with
7 Mr. Ismail? A. It was to attempt to

8 understand him as much as possible. The work of psychology
9 and psychotherapy is essentially a search for truth. Truth
10 is very hard to come by. So that is what we are after, so
11 we use all of the procedures we can.

12 Q. You are after truth, correct? A. As basic
13 a truth as possible.

14 Q. Have you taken any courses in school about learning
15 how to, how you can decide if somebody is telling you the
16 truth or not? A. Well, I haven't been

17 in school for ten years.

18 Q. Did you take any? A. Not that I can
19 recall.

20 Q. All right. Have you done any work experience in
21 determining whether or not somebody tells you something they
22 are telling you the truth or not? A. No, the

23 whole work of clinical psychology and psychotherapy and
24 psychiatry is to attempt to get around what is the most
25 common thing of all, which is self-deception.

26 Q. Self-deception? A. Yes. In a

1 sense we find that over and over, that most everybody
2 deceives himself or herself about what the truth of their
3 situation is. One of the words used for this is
4 "rationalization." We find all kinds of explanations to
5 explain away our responsibility or our guilt or that we
6 could have in any way been wrong, so anybody who practices
7 in my field is accustomed to having people come and wanting,
8 you know, they want you to believe it the way they say it.

9 Q. Sure. And I take it when somebody comes in and you
10 know that from your experience that they want to believe
11 the way they say it, you sort of look at what they say with
12 a jaundiced eye, would that be fair to say?

13 A. Well, I think what I tend to do, first I try to hear
14 completely what the person is saying.

15 Q. And then is it safe to say that you can't rely upon
16 what the person tells you, that you have to do other
17 outside work to find out what the other side of the story
18 is?

19 A. Well, we do that, and we
20 continue to talk.

21 Q. Okay. Fine. What outside work did you do in this
22 case?

23 A. What outside work did I do
24 in this case about what?

25 Q. You are down here on a murder case. You know that?

26 A. I think it is a very serious matter, sir, I do.

Q. That wasn't apparent from the way you were laughing
yesterday.

1 MR. PESTARINO: That is argumentative.

2 MR. ROBINSON: Okay.

3 Q. (By Mr. Robinson) Did you read the police reports in
4 this case? A. They have not been
5 given to me.

6 Q. Did you ask for them? A. No, I did not
7 ask for them.

8 Q. Why not? A. Well, I originally asked
9 of the defense staff that they provide me with all of the
10 information that was available. They didn't give me very
11 much information. And I just assumed that what they wanted
12 me to do was to give as objective an evaluation as I could
13 without being too much influenced by, too much by whatever
14 else had taken place. So that is what I did.

15 Q. You made -- so what information did you base, or what
16 information did you use to form your opinion that you gave
17 us yesterday that Mr. Ismail isn't a cold premeditated
18 murderer? A. I used ten years

19 experience as a clinical psychologist. I used twenty-four
20 years experience as a psychologist and my intelligence and
21 my skills in trying to evaluate another human being.

22 Q. And you told us before that you had never testified
23 and never evaluated before in your ten years experience a
24 cold premeditated murderer? A. I have

25 examined people that have killed other people.

26 Q. That were insane? A. Well, they were

1 in state institutions.

2 Q. You told us that you always have to sort of look with
3 a jaundiced eye as to what the individual tells you because
4 he tries to minimize his involvement, rationalize it, things
5 like that?

6 A. No, jaundiced is not my word.
7 What I say is, I am aware that people want to deceive
8 themselves and others, and so I am always looking to see
9 what the nature of the information is that they are giving
10 me.

11 Q. Did you ever contact the District Attorney's office
12 and ask to be provided with the police reports?

13 A. I did not. If the time had not been so short I might
14 have attempted that.

15 Q. And if you had been, would you like to -- strike that.

16 Would it have aided you in your opinions and your
17 examination of Mr. Ismail if you did have the police reports?

18 A. Well, I don't know that it would have.

19 Q. Then why did you want the police reports?

20 A. I use all information that I can obtain.

21 Q. And in this case you didn't use all of the information
22 that was available?

23 A. Well, I felt my
24 primary problem was to evaluate Mr. Ismail, not what some-
25 body else said about him.

26 Q. Did you ask Mr. Ismail -- well -- did you question
Mr. Ismail regarding what had happened?

A. Yes. I asked him to tell me everything that he

1 remembered.

2 Q. And did Mr. Hernandez, Mr. Pestarino's investigator
3 provide you with what happened?

4 A. No.

5 Q. What did he tell you? A. Well, when
6 I mentioned that he had given me a few little bits of
7 information he had, they were not, they did not have to do
8 with whatever had happened with regard to the person being
9 dead.

10 Q. Okay. And so, did you ask Mr. Ismail where he got the
11 gun? A. He told me where he got the
12 gun.

13 Q. Where did he tell you that he got it?

14 A. He told me he bought it.

15 Q. Okay. And did he tell you where he bought it?

16 A. Um-hum.

17 Q. Where? A. I think that is all
18 a matter of record. He told me he bought it in a bar.

19 Q. And did you believe him? A. I didn't
20 disbelieve him. I didn't find any reason to disbelieve him.
21 I didn't try to protest that particular segment.

22 Q. Did you feel that was significant as to where he got
23 the gun and how he got it? A. Well, there is
24 so many variables in terms of where you get a gun, you know,
25 it seems significant to me where he got the gun, I didn't
26 figure that I had the tools with which to really define where

1 he got the gun, so I accepted more or less what he had said
2 for the time being.

3 Q. All right. You feel it wasn't significant in forming
4 the opinion you have told us about that Mr. Ismail wasn't
5 a cold premeditated murderer as to where he got the gun?

6 A. Well, if you could demonstrate to me that Mr. Ismail
7 had gone and gotten this gun with the intent to shoot
8 somebody, of course that would be a different matter. It is
9 just that there are so many different ways that a gun can
10 come to one's hands and one is not supposed to carry a gun,
11 so the possibilities of Mr. Ismail protecting somebody else
12 had occurred to me, so I didn't push him in his explanation
13 of where he got the gun. What he told me seemed to hold
14 together. It was a little odd. But then that wasn't my
15 place to try to define where the gun came from. My place,
16 as I saw it, was to try to evaluate Mr. Ismail.

17 Q. Evaluate him in respect to what?

18 A. In respect to what kind of a person he is.

19 Q. What kind of a person he is now or what kind of a
20 person he was on November the 6th, 1975?

21 A. What kind of a person he is now and probably was then.

22 Q. So if you were trying to evaluate him as to what kind
23 of a person he probably was on November 6th, 1975, you'd
24 want to know if he had lied to you about anything, wouldn't
25 you?

26 A. Well, I didn't examine him,
you know, drunk either. So I wasn't examining him exactly

1 the way I understand he was on that day. As a matter of
2 fact, that might have been a little helpful, but I didn't
3 feel that I had the freedom to suggest that.

4 Q. Is it your understanding he was drunk on the night of
5 November 6th? A. That is one piece of
6 information I have accepted and haven't really checked out.
7 I understand he had a point zero eight blood alcohol when
8 he was in the jail.

9 Q. Does that indicate to you that somebody is drunk?

10 A. It indicates to me that somebody has been drinking.

11 Q. You just told us that he was drunk. Does that point
12 zero eight indicate to you that somebody is drunk?

13 A. It is not the legal classification for drunk driving,
14 but it is getting close to it.

15 Q. Is there a legal classification for drunk driving?

16 A. My understanding is that blood level above a certain
17 point is, and maybe that it is, that point zero eight is
18 above it, I don't really remember that exactly. I did a
19 study not too long ago with a Mr. Belardas in which we
20 deliberately attempted to produce a certain blood alcohol
21 level, and we got to that blood alcohol level in the course
22 of several hours by having the man ingest a pint of whiskey.
23 And I watched him do it, and I participated in the
24 evaluation of him while this was going on. At the end of
25 that period of time my recollection is that he had gotten
26 to a one three level, so I have some notion of where a point

1 zero eight falls. In terms of the exact legal definition
2 of driving intoxicated, I am not acquainted, am not really
3 sure of that. But I have a real notion of what that means.

4 Q. You saw one individual at a point thirteen blood
5 alcohol? A. Um-hum.

6 Q. Okay. Was this individual able to think?

7 A. He was pretty woozy. He could think some.

8 Q. Could he premeditate? A. I don't
9 think so.

10 Q. You don't think he could? A. No.

11 Q. What do you base that opinion on?

12 A. My testing of that man at that time.

13 Q. What sort of test did you give him regarding
14 premeditation, ability to premeditate?

15 A. Well, ability to premeditate requires a certain
16 intellectual control, and his intellectual control had
17 loosened considerably at that time, Mr. Belardas, and I
18 just wouldn't have felt he could plan to do very much of
19 anything. He was just a kind of person that was kind of
20 rolling, and anything that would happen he would respond to
21 it.

22 Q. That is Mr. Belardas? A. Mr. Belardas.

23 Q. He was an experienced drinker?

24 A. He sure was.

25 Q. And he was at point thirteen rolling wherever he'd go?

26 A. He could be led emotionally or intellectually almost

1 anywhere.

2 Q. Now, the clinical interview that you conducted, okay?

3 A. The interview that I conducted, yes.

4 Q. Well, that is a clinical interview, isn't it?

5 A. Well, it wasn't in a clinic, but it is an interview.

6 Q. Give me the definition of a clinical interview.

7 A. Well, in a clinical interview you are dealing with
8 somebody who has known psychopathology and you are doing a
9 clinical job, it is in a clinic. That is where the word
10 comes from. I don't like to use that word so much about
11 people that I talked to, so if I talk to somebody I have an
12 interview with a person. I don't see a patient. I don't
13 see somebody who is sick. I see somebody who is like
14 everybody else, as much as possible.

15 Q. Now, are there any drawbacks to the interview process
16 that you conduct? A. Interviews are
17 known to be difficult, you know, in the sense that they
18 have less reliability than other procedures, and so much on
19 the interviewer.

20 Q. Depends a lot on the interviewer?

21 A. Yes.

22 Q. And does it also depend a lot on the interpretation
23 of the interview by the interviewer?

24 A. I think like all interviews, surely.

25 Q. Okay. And does it depend a lot on the place where the
26 interview is conducted? A. Certainly that

1 has an effect.

2 Q. Okay. Does that have a substantial effect on the
3 interview?

4 A. I guess it depends
5 on your objective. The police use interviews very
6 effectively in jail. I was in a jail. Maybe my interview
7 was as effective as theirs. I'm not sure.

8 Q. But you have come on and you have testified to a
9 certain mental state that the police can't do, so you are
10 obviously more qualified to interview people than the
11 police. You have a different objective when you interview?

12 A. I'm sure that I respond to different cues but we are
13 both in search of truth.

14 Q. Have you ever known a police officer that interviews
15 a prospective defendant without reviewing the police report?

16 A. I haven't talked to police officers too much about how
17 they interview.

18 Q. Okay. Now, did you videotape this interview with Mr.
19 Ismail?

20 A. I think you know I did not.

21 Q. Okay. Did you taperecord it ?

22 A. No, I did not.

23 Q. Okay. Any special reason why not?

24 A. I rarely tape-record.

25 Q. Any special reason?

26 A. I find it
intimidating to the people I am talking to. I want them to
feel as free and open as they possibly can. If I walk around
with a videotape or a taping device I am immediately leading

1 the person to feel guarded.

2 Q. Okay. Are you familiar with various tape recording
3 devices that can be secreted or hidden?

4 A. The thing about a clinical psychologist is he tries to
5 be honest. He tries to be up straight so he is not going
6 to try to conceal anything and fool you.

7 Q. Okay. So when -- but you are searching for the truth,
8 too?

9 A. That is a function of two
10 people, yeah, trying to get it together.

11 Q. Okay. Now, when you write down your information in
12 the interview, Okay?

13 A. Um-hum.

14 Q. Do you pick out certain things that you write down
15 and purposely leave out other things, other responses, or do
16 you write everything down?

17 A. Well, it is
18 impossible for me to write everything down. Even if I could
19 take shorthand I wouldn't because then I wouldn't have
20 anything left to think with, all of my attention would be on
21 copying the material.

22 Q. So wouldn't it be better if you tape-recorded
23 something so that would be permanently recorded and your
24 attention could be focused on the individual and how he
25 responds to questions?

26 A. I don't find
that tape-recording is useful to me. I don't like to do it.

Q. Now, the place of the interview is certainly
significant on your interpretation of the interview,
correct?

A. Well, it has some effect.

1 Q. Okay. It has some effect on the data that you
2 receive as a result of the interview?

3 A. It has some effect on the mood and emotion of the
4 individual which then, you know, is a little bit annoyed,
5 a variance in terms of my interpreting what is happening
6 to him.

7 Q. So would it be fair to say that the results of an
8 interview, if you had interviewed Mr. Ismail in your office
9 as opposed to the jail, it might have been different?

10 A. It is possible it might have been.

11 Q. Okay. And is it fair to say that the results of the
12 interview, if you had interviewed Mr. Ismail as a regular
13 client as opposed to somebody charged with murder, might
14 have been different? A. Of course it is
15 possible.

16 Q. Okay. Well, isn't it probable?

17 A. No, I wouldn't think so.

18 Q. Isn't there a substantial amount of authority in the
19 field that says that the place of the interview is very
20 significant on the results that you obtain from the
21 interview?

22 A. Well, there are so many
23 authorities that I find that I view them with the same care
24 that I do any other piece of information. I don't think
25 there is anybody who is authoritative enough to tell you
26 how to relate to another human being. That is a skill you
learn. Nobody can tell you how to do that. You can have

1 rapport and be close together in a lifeboat when you are
2 going to be dead in five minutes, or any other place.

3 It is what happens between the two people that is
4 significant. So there is no way for an authority to really
5 tell you what to do. There is no way to learn by somebody
6 telling you what to do in my field.

7 Q. Is there a substantial amount of authority in your
8 field that says that the place of the interview is crucial
9 regarding the data that you obtain from the interview?

10 A. Not in my opinion.

11 Q. Not in your opinion? A. No. You see,
12 I function out of my own experience. Now, all of the
13 authorities are there to tell you what you should and
14 shouldn't do. It is like learning to fly an airplane. You
15 know, your instructor can tell you what you should and
16 shouldn't do, but you learn to fly the airplane after he
17 has guided you to a certain point. It is fine to accept
18 authority when you know nothing. After you begin to learn
19 how to fly, you fly the airplane. After you learn how to
20 be a clinical psychologist you become a clinical psychologist.

21 Q. How did you learn how to examine people charged with
22 murder? A. I learned how to examine
23 people charged with murder the same way I learned how to
24 examine every other person with every other crime attached
25 to them. Whether they happen to be legal items or whether
26 they have been cited into Court or not. We all commit crime

1 after crime. That is the nature of a human being.

2 Q. So you would examine someone charged with murder the
3 same way you would examine somebody in your office that
4 wasn't charged with any crime?

A. When I
5 talk to people day in and day out, some of whom can kill
6 themselves or somebody else, I have a certain fair feeling
7 about, what people are like in terms of other people.

8 Q. You talk to people in your office that aren't charged
9 with crimes that you say can kill themselves or somebody
10 else?

A. That is correct.

11 Q. And you are able to diagnose this, that somebody can
12 kill somebody else?

A. I can certainly see the
13 possibility.

14 Q. Possibility all right. Anything is possible, right?

A. My judgments are usually based on some --

16 Q. Excuse me, can you answer my question and then explain?

A. If you want me to agree with you that everything is
17 possible or anything is possible, surely anything is possible
18 in this world, including that you should rise up off of that
19 seat, you know, levitate. It's possible.

21 Q. And you are telling us that some people you interview
22 in your office, you say there is a possibility they will go
23 out and commit a murder?

A. I have talked
24 to police officers who have killed people, aside from the
25 kind -- in my office as clients, aside from the kind of
26 people that I have talked to who want to do it, and aren't

1 sure whether they will or won't , which is a very difficult
2 place for a clinical psychologist to be in, or any
3 psychotherapist, you know, when you talk to somebody who
4 are ready to do somebody in, that is kind of an uncomfortable
5 place.

6 Q. Can you accurately predict, based upon your experience,
7 based upon your study, that somebody is the sort of person
8 who will commit murder?

9 A. So far I have
10 been fortunate, nobody has killed themselves with me nor
11 anyone else. Some of my friends in Berkeley, not so
12 fortunate.

13 Q. Can you accurately predict --

14 A. Apparently I have been accurate.

15 Q. Okay. And your friends in Berkeley, did that involve
16 the case of the Regents of the University of California?

17 A. Yes, it did.

18 Q. Okay. And are you familiar with the brief that was
19 filed in that case?

20 A. Some time ago
21 I read it.

22 Q. And in that case some psychiatrists and some
23 psychologists were sued by the victim, by the parents of a
24 victim, correct?

25 A. The suit, I believe,
26 was against the head of the clinic and the University.

Q. Okay. And basically the facts of that case were that
a man went in, okay? And he gave some information, and
he said he was going to kill somebody?

1 A. Um-hum.

2 Q. Named a specific person? A. Um-hum.

3 Q. And then went out and killed that person, right?

4 A. Subsequently.

5 Q. And the psychologist and psychiatrists didn't warn
6 that person that this man was going to kill him?

7 A. They attempted to, one psychologist and one
8 psychiatrist attempted to stop the man. The head of the
9 clinic apparently decided that that was not to be, and he
10 reversed these two people who were closest to the man who
11 actually did the killing.

12 Q. And you told us that you are familiar with the brief
13 filed in that case? A. I am not totally
14 familiar with it. I simply have read it at one time.

15 Q. Let me ask you this, if this rings a bell, a brief
16 filed by the American Psychiatric Association, "Study after
17 study has shown that the psychiatrist is ill-
18 equipped to undertake the prediction of his
19 patient's potential dangerousness. The Court's
20 formulation of the duty to warn fundamentally
21 misconceives the skills of the psychotherapist
22 in its assumption that mental health professionals
23 are in some way more qualified than the general
24 public to predict future violent behavior of their
25 patients. Unfortunately study after study has
26 shown that this fond hope of the capability

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1 accurately to predict violence in advance is
2 simply not fulfilled. Neither psychiatrists nor
3 anyone else have reliably demonstrated an
4 ability to predict future violence or dangerous-
5 ness. Neither has any psychiatric expertise in
6 this area been established. Indeed, if the
7 Court is intent upon finding a duty to warn of
8 a potential aggressive act, this duty should more
9 properly attach to members of professions such
10 as correctional officers, actuaries or members of
11 the general public who have proved more able to
12 make such predictions."

13 Are you familiar with that language?

14 MR. PESTARINO: Objection.

15 THE COURT: What is the objection?

16 MR. PESTARINO: The objection is hearsay. There
17 is no foundation laid that the witness based his opinion on
18 these.

19 THE COURT: Well, that is what counsel is asking
20 him, whether he was familiar with that, and also --

21 MR. PESTARINO: You ask him if you are familiar
22 with the journal. You don't read the whole thing.

23 THE COURT: Well, otherwise he could not --

24 MR. PESTARINO: Let him read it to himself.

25 THE COURT: Well, it has already been read.

26 MR. PESTARINO: I know it has. I will withdraw

1 the objection. Go ahead.

2 Do you understand the question?

3 THE WITNESS: I don't know whether I understand
4 the question.

5 THE COURT: The question is: Are you familiar
6 with that statement?

7 THE WITNESS: I have never -- yeah, I think I
8 have read it briefly before, and I can give you a response
9 to it, if you wish. It is a very self-serving document by
10 a group who does not want to be attacked as responsible to
11 prevent crimes that they possibly could. They are concerned
12 about a breach of confidentiality, and they are fighting
13 like crazy to reverse the Supreme Court's judgment in this
14 state which says they will be responsible in case somebody
15 gets killed and they could have prevented it. And there are
16 certain safeguards the Court did request which I think are
17 very substantial and important and I consider it almost
18 unethical of the American Psychiatric Association to put
19 that brief together. And I disagree with it totally. And I
20 think it is in very bad taste, and I see that it has no
21 particular -- I just don't respond to it very graciously.

22 Q. (By Mr. Robinson) But the American Psychiatric
23 Association that is -- can you tell us a little bit about
24 that group?

25 A. That is the group that
26 fought the institution of health programs.

Q. Well, what I want to know, what does it represent?

1 A. It represents a very fixed conservative position
2 forensic and academic psychiatry. And I am a psychologist.
3 I am a mental health professional.

4 Q. Do you agree with the contentions in this brief that
5 was filed in the Supreme Court of the State of California
6 --

A. One of the problems --

7 Q. -- that psychiatrists and psychologists cannot
8 accurately predict future violence?

9 A. They didn't say psychologists.

10 Q. Psychotherapists? Aren't you a psychotherapist?

11 A. I think they said mental health professionals.

12 Q. Skills of the psychotherapist.

13 A. All right.

14 Q. "It is an assumption that mental health professionals
15 are in some way more qualified than the general public."

16 A. Well, I happen to think they are.

17 Q. And you are a psychotherapist? A. Well,
18 I am a psychotherapist in the sense that I am a
19 psychologist and psychotherapist.

20 Q. Now, in terms of the place where the interview takes
21 place, okay?

A. All right.

22 Q. You are saying that because of your experience it
23 doesn't effect you at all or the interview or the results
24 of the interview if it is conducted in the jail as opposed
25 to your office? A. I think it is less
26 easy to work with a person in a jail. But I have done it

1 some, and I am not offended by the jail at this point, so my
2 sense is that I am not prejudiced by being in the jail.
3 Therefore, the only problem I have to work against is the
4 mood of the individual. You know, his mood is a function of
5 being.

6 Q. And in making your conclusions you have to base, you
7 have to base your conclusions on information that you
8 received in this interview, correct?

9 A. I tested the man for over six hours and I interviewed
10 him for forty-five minutes.

11 Q. So in making your conclusions you have to base it, you
12 have to base your conclusion on some sort of data, correct?

13 A. That is what I am doing, yeah.

14 Q. Hopefully that is what we are doing. You get some
15 data and you base a conclusion on it, right?

16 A. That is correct.

17 Q. And the data that you receive consisted of what?

18 A. Six hours of testing and forty-five minutes of
19 interview.

20 Q. Now, is it safe to say that your conclusion is only as
21 good as the data on which you base it?

22 A. Well, I will have to be subject to my data which come
23 from my perception. Right? I mean, I am there and I am
24 viewing the person in the situation, and I am collecting
25 observations. That is what I base my conclusions on.

26 Q. Is it safe to say then that your conclusion is only as

1 valid as the data on which you base it on?

2 A. Your question makes no sense to me. I am there as a
3 collector of information.

4 Q. Okay. All right. And this information -- okay --

5 A. Yeah.

6 Q. -- you collect it, and you make a conclusion based
7 upon that information?

8 A. Upon my
observations, yes.

9 Q. And if that information is wrong would it therefore
10 follow that your conclusion is wrong?

11 A. I would be terribly wrong if my observations are
12 wrong. I will obviously come to the wrong conclusion.

13 Q. And if that information was incomplete -- okay -- there
14 was a lot more information to be had, would it follow,
15 therefore, your conclusions might be wrong?

16 A. My conclusions based on my standard procedures in
17 light of what I am to do. Your question is very good, you
18 know, like am I not looking at the whole world of data I
19 could have of Assyrians and Mr. Ismail. I don't happen to
20 have the capacity to have all of that, so I cannot do a
21 detailed history of Mr. Ismail and write a seven-fold
22 volume on him. But I can do some observations and come to
23 a conclusion about him.

24 Q. Are there any psychological tests that were designed
25 for the purpose of measuring or assessing a legal issue?

26 A. What legal issue?

1 Q. Any legal -- A. Well, a test
2 that I am going to measure, I am going to use to measure a
3 person with regard to a legal issue?

4 Q. What I am asking you -- A. The
5 intelligence test does that. It divides, you know,
6 prescribes a set of diagnoses which are important to the law
7 in terms of mental capacity.

8 Q. And those psychological tests were designed -- listen
9 to my question, okay? A. Okay.

10 Q. Were there any psychological tests that were designed
11 for the purpose of measuring or assessing a legal issue?

12 A. I don't know of any. I don't understand your question,
13 perhaps.

14 Q. Yeah. You want to find out something -- okay?

15 A. Okay.

16 Q. All right. -- so you design a test to find out about
17 this thing, right? A. Um-hum.

18 Q. Okay. My question is, were there any psychological
19 tests designed for the purpose of finding out about a legal
20 issue?

21 A. Well, I think that I am
22 falling on "a legal issue." I have no idea what you mean.

23 Q. Well, you don't know anything about legal issues, do
24 you?

25 MR. PESTARINO: Well, do --

26 Q. (By Mr. Robinson) Do you?

A. I am not here as an attorney.

1 Q. You are here as somebody who gave us an opinion that a
2 man couldn't cold bloodedly deliberate and kill. That is a
3 legal issue. Now, what do you know about it?

4 A. I am here to define that issue as well as I can as a
5 professional psychologist.

6 Q. You have to know about something before you can define
7 it, don't you?

8 MR. PESTARINO: Excuse me, the witness has been
9 interrupted and I would like him to finish.

10 THE COURT: The witness may finish. And, counsel,
11 I would admonish you to lower your voice.

12 MR. ROBINSON: Sorry, Your Honor. But I feel
13 stuff like this --

14 THE COURT: However you feel there is no reason
15 to shout at the witness.

16 THE WITNESS: My understanding is that I am here
17 as a professional psychologist, not as a legal expert.

18 Q. (By Mr. Robinson) Sir, you gave us an opinion,
19 right?

A. I certainly did.

20 Q. Your opinion was that this man is not the type of
21 person who could be a cold premeditated killer?

22 A. That is my opinion.

23 Q. And you didn't know the definition of murder, did you,
24 when you came in here? A. Apparently I
25 didn't from your questions.

26 Q. You thought that in order to have malice aforethought

1 you had to have some hatred or ill-will toward the victim,
2 didn't you? A. I believe you lead me
3 to that conclusion.

4 Q. I asked you a question, sir, and you are an experienced
5 person. A. I am just a professional
6 psychologist. You can lead me wherever you want.

7 Q. Did the defendant lead you wherever he wanted to?

8 A. I hope not. But he didn't have me under quite as much
9 stress as you do.

10 Q. You are under stress now? A. Well, you
11 are shouting at me.

12 Q. Does that make you nervous? A. Well, it
13 is not pleasant.

14 Q. Now, give us the reasons for your opinion that Mr.
15 Ismail isn't a cold premeditated killer.

16 A. Well, based on both the evaluation of his intelligence,
17 which is modest and my evaluation through the projective
18 tests, what seemed to be his motive, his structure, his
19 feeling of sensitivity to other people, the structure of his
20 responses to the Rorschach Ink Blot, I found almost no
21 taste of violence anywhere in any of this material. What I
22 found was a tremendous amount of social sensitivity which
23 he also expressed throughout the interaction with him over
24 the course of seven hours. I saw a great deal of dignity
25 and compassion and concern, and identification with children
26 and family and church; and he just did not feel to me like

1 a person who would kill somebody in a deliberate fashion.

2 Q. Okay. So you are saying that Mr. Ismail isn't a
3 violent person, too?

4 A. He did not
impress me as a violent person.

5 Q. What about if I was to tell you that Mr. Ismail
6 spent two years in jail over in Iran for beating up a
7 government official violently, would that affect your
8 opinion?

9 MR. PESTARINO: Wait a minute --

10 THE COURT: Is there an objection?

11 MR. PESTARINO: I think this is something we
12 ought to take up, I don't know, seems to me we ought to go
13 in Chambers.

14 MR. ROBINSON: He is putting his character in
15 issue.

16 THE COURT: Well, there is no evidence on that
17 so far in the case.

18 MR. PESTARINO: It is a hypothetical question and
19 it may be legitimate, I don't know.

20 THE COURT: Let's do this, let's take our
21 morning recess. And I will ask the jury to disregard the
22 last question until I make a ruling on it. I would like, also,
23 to admonish the jury, as I will instruct you at the end of
24 the case, that questions are not evidence. Only the answers
25 are evidence. And you will keep in mind the admonition I
26 have given you before about not discussing the case. You may

1 step down. We will resume at 11:10, approximately. And the
2 defendant will be ordered to return.

3 (Whereupon the following proceedings took place
4 in Chambers out of the presence of the jury with counsel
5 and the defendant present:)

6 MR. PESTARINO: Would you ask Joe Hernandez to
7 come in, too, if you don't mind.

8 THE COURT: Let the record show that we are in
9 Chambers. The defendant is present with counsel, and the
10 district attorney is present. Mr. Hernandez is present.
11 Yes.

12 MR. PESTARINO: The last question that was asked
13 would it change your opinion if you knew that Mr. Ismail
14 spent some time in prison in Lebanon if the district
15 attorney has some information to that effect that can be
16 verified I would have no objection to the question. But if
17 the district attorney has used that question when he can't
18 prove the answer, then I have an objection. I think it is
19 highly prejudicial. And I think that the jury ought to be
20 reinstructed about it to disregard everything that was said
21 with regard to that question.

22 Now, as I understand it, and I am only the
23 attorney here, my client tells me and Mr. Hernandez has
24 checked it out, there has never been any record of my client
25 being in prison or having beaten anybody or harmed anybody
26 in his life.

1 MR. ROBINSON: My information comes from the
2 relatives of the Patriarch who are outside, indicating to
3 me in 1960 to 1962 Mr. Ismail was in prison in, it wasn't in
4 Lebanon, excuse me, it was Syria, and the reason for being
5 in prison is that he had beaten up a government official who
6 had clashed with his father.

7 THE COURT: Do you intend to call anybody to
8 establish that fact?

9 MR. ROBINSON: I intend to call the defendant
10 back on the witness stand and ask him about that fact. I
11 just discovered it yesterday afternoon.

12 MR. PESTARINO: Well, I think then this remark
13 would be highly prejudicial coming from a witness who may
14 have, maybe might have heard some rumor.

15 THE COURT: Well, if it is hearsay, of course,
16 then it would not be admissible. If they know of their own
17 knowledge by either having been present or having visited
18 him, or something like that, then it would be admissible.
19 I have asked the jury to disregard the question before the
20 recess. I should, also, point out that the way the question
21 was framed, it was not in the form of a hypothetical
22 question but as a statement of fact. And if it is formed
23 in the -- if it is framed, rather, in the form of a
24 hypothetical question, then the instruction, which I assume
25 you will ask me to read, indicates that if a fact upon which
26 the hypothetical question is based has not been established,

1 then the answer is to be considered in that light. So that
2 if you are unable to establish this fact then there is no
3 prejudice. Now, I don't know what the facts are, and I don't
4 know how you are going to get it in or if it is true.

5 MR. PESTARINO: If he can establish that
6 somebody saw, saw this incident, then I would like to put
7 David back on the stand, probably in Chambers, and ask him
8 that question.

9 THE COURT: Well, we could do that now. There is
10 another --

11 MR. PESTARINO: The only trouble is I am running
12 out of time. I got Dr. Rappaport coming in here.

13 THE COURT: Another way, of course, to approach
14 this would be to inquire of the clinical psychologist in
15 taking the history whether anything like this was ever
16 stated to him, any action of previous violence. Then again
17 you would have the question of his opinion based upon the
18 facts given to him.

19 MR. ROBINSON: Right.

20 THE COURT: All right. Now, I have one other
21 thing. As long as Mr. Ismail is here and we are out of the
22 presence of the jury, I have been thinking that although
23 you have had an Assyrian interpreter and Doctor Nidever
24 testified that he had an interpreter present at part of his
25 examination, in view of the question of the jurors and the
26 statement made by Mr. Ismail on the stand yesterday, I

1 wonder if it would not be wise, if you are going to recall
2 him, to have an interpreter to handle that part of it so
3 there is no question that he fully comprehends the questions
4 and the answers.

5 MR. PESTARINO: I don't think that it is
6 necessary really. Maybe it is necessary for a psychologist
7 to have an interpreter because they have to be awfully
8 specific in the things that they talk about. I don't know.

9 THE COURT: Well, my only concern is this, Mr.
10 Pestarino, should he be convicted by this jury there is an
11 automatic appeal, as you know.

12 MR. PESTARINO: No, there isn't.

13 THE COURT: On first degree?

14 MR. PESTARINO: No, it is only when you have the
15 death penalty.

16 THE COURT: Well, should there be an appeal --

17 MR. PESTARINO: Probably will be. I won't handle
18 it.

19 THE COURT: That is the point exactly. A lawyer
20 probably would be appointed or one hired, and in looking for
21 something on which to hang a reversal, one of the grounds
22 might be that the defendant was not afforded complete due
23 process in that he did not totally comprehend questions of
24 the English language, or whatever. And I want to make
25 absolutely certain that --

26 MR. PESTARINO: What are you proposing, Your

1 Honor? That we have an interpreter to ask him if he has
2 ever been in any trouble in Lebanon or whatever?

3 THE COURT: No, not necessarily, because I think
4 Mr. Ismail understands English generally and is able to
5 express himself. But he said yesterday on the stand that he
6 did not understand certain words or perhaps connotations,
7 and I just wanted to know whether or not he felt, and I will
8 ask him directly: Mr. Ismail, would you like someone who
9 speaks Assyrian to translate and interpret what you are
10 saying in Assyrian to the jury in English so that you can
11 have everything that you have wanted to say come out?

12 DEFENDANT ISMAIL: I be glad.

13 THE COURT: You would like that?

14 DEFENDANT ISMAIL: Yes.

15 THE COURT: I think you ought to have an interpreter
16 then and put him back on the stand.

17 MR. PESTARINO: You mean go over the testimony
18 again?

19 THE COURT: Not necessarily all of the
20 testimony. It seemed to me that he was, the crucial part of
21 the testimony that he was unable to go into were the events
22 that occurred at the home of the Patriarch. I think up to
23 that time there didn't appear to be any question of his
24 ability to understand and comprehend. Is that right, Mr.
25 Ismail?

26 DEFENDANT ISMAIL: What's that again?

1 THE COURT: That up to the time that you went to
2 the home of the Patriarch you were able to explain to the
3 attorneys and the jury what you thought, what you did?

4 DEFENDANT ISMAIL: Yeah.

5 THE COURT: And so forth; is that right?

6 DEFENDANT ISMAIL: Yeah.

7 THE COURT: All right. But that what happened
8 at the home of the Patriarch you seem to have some
9 difficulty in expressing in English?

10 DEFENDANT ISMAIL: Just when he said on the
11 floor.

12 THE COURT: Would you like an interpreter to
13 translate that into English, to interpret that into
14 English?

15 DEFENDANT ISMAIL: I don't think that, no.

16 MR. PESTARINO: Let me talk to him a minute.

17 You understand all of the things that happened,
18 when you went to the door, and after that, when you
19 testified that you went in and all of the things that
20 happened after that, you remember you understood the
21 questions and you gave the answers didn't you?

22 DEFENDANT ISMAIL: Yeah. The problem was on the
23 floor, but he explained for me. When I say "floor" it
24 wasn't like you kneel or something.

25 MR. PESTARINO: Kneel down or when the judge
26 explained.

1 THE COURT: Just the one question, when you were
2 on the floor, meaning flat on the floor?

3 DEFENDANT ISMAIL: I understand when he explain
4 for me.

5 THE COURT: So you dont feel that you need an
6 interpreter now?

7 DEFENDANT ISMAIL: No.

8 THE COURT: I just want that clear.

9 MR. PESTARINO: I was convinced of it myself,
10 Your Honor, because I dealt with this man for - -

11 THE COURT: I never ran into this problem before
12 and I just want to make certain.

13 MR. ROBINSON: Thank you, Your Honor.

14 (Short recess taken.)

15 (Whereupon, Court convened in the presence of
16 the jury and the following proceedings were had:)

17 THE COURT: Please be seated. Let the record
18 show that the jury is present in the courtroom. Defendant
19 and counsel are present. I am sorry that we took so long
20 but we had a matter to discuss.

21 CROSS-EXAMINATION (Resumed)

22 BY MR. ROBINSON:

23 Q. Now, Doctor, are there different schools of thought
24 in psychology? A. Sure, many.

25 Q. Okay. And can you give us some of the schools of
26 thought, please? A. In learning theory

1 there are probably half a dozen schools. In the field in
2 the practice of psychotherapy there is behavior modification,
3 primal therapy, Jeungian therapy, Freudian psychoanalysis,
4 Rogerian, non-direct counseling.

5 Q. So would it be fair to say that psychologists'
6 opinion regarding certain data might vary from the different
7 schools of thought that they belong to?

8 A. Mostly what they would do with the data, yeah.

9 Q. And in terms of the schools of thought which one do
10 you belong to?

11 A. I am a Jeungian
analyst.

12 Q. I'm sorry?
13 A. I am a Jeungian
analyst, Karl Jeung.

14 Q. Was his school of thought, did that branch off from
15 the school of thought of Sigmund Freud?

16 A. Yes, it did.

17 Q. And he developed his own school of thought?

18 A. Yes.

19 Q. And have there been branches of Mr. Jeung's school
20 of thought that have branched off, too?

21 A. There have been some splinters but mostly it is one
22 piece.

23 Q. So we have Mr. Sigmund Freud and then Mr. Karl Jeung.
24 What other schools of thought do we have in psychology?

25 A. In psychotherapy, you mean? Psychology is very broad.
26 There are so many different things in psychology.

1 Q. Let's talk about psychotherapy then. What other
2 schools?

3 A. In psychotherapy the
4 depth analysts, besides Jeung and Freud included Adler and
Wrong and Wright.

5 Q. And all of these people are intelligent people to get
6 where they got, I take it?

7 A. They
certainly were creative, yes.

8 Q. And they all had their followers?

9 A. Of course.

10 Q. And their interpretation of data might be different,
11 might vary from, depending on the school of thought they
12 belonged to, correct?

A. Surely.

13 Q. Now, getting back to the examination of Mr. Ismail --

14 A. Um-hum.

15 Q. -- this was conducted on March the 11th, March the 13th,
16 and March the 14th?

A. That is correct.

17 Q. Okay. And this examination was conducted in the
18 county jail?

A. Um-hum.

19 Q. Now, did you know when the trial of the case of the
20 People vs. David Ismail started?

21 A. My understanding was that it had begun just before I
22 made my first examination.

23 Q. Okay. It started on March the 8th, correct? Or would
24 you know that?
25 A. I didn't know the
exact date.

26 Q. But you know that the trial had begun prior to your

1 examining Mr. Ismail?

A. I think I was
2 contacted when the jury had been selected.

3 Q. That was my next question. When were you contacted?

4 A. Well, I don't know the exact day from memory. I
5 believe it was the 9th of March.

6 Q. Okay.

7 MR. ROBINSON: And, Your Honor, would the Court
8 take judicial notice that this trial started on March the
9 8th?

10 THE COURT: Yes. So ordered.

11 Q. (By Mr. Robinson) Who contacted you?

12 A. Mr. Hernandez.

13 Q. Had you ever met Mr. Hernandez before?

14 A. No, I hadn't.

15 Q. Had you ever done any work with Mr. Hernandez before?

16 A. No, I had not.

17 Q. And when Mr. Hernandez contacted you he asked you to
18 interview David Ismail? A. He asked me if
19 I would evaluate David Ismail, yes.

20 Q. And asked you to evaluate him regarding what?

21 A. I don't know that I can reconstruct the exact
22 conversation. I had been referred to him by Dr. Clausen.
23 He asked me if I had ever worked in any criminal cases. I
24 said I had in a couple. He said would I evaluate Mr. Ismail.
25 He gave me no instructions. He indicated that Dr. Rapaport,
26 Walter Rapaport, had done an evaluation and had requested a

1 psychologist to do an examination of Mr. Ismail.

2 Q. And did you contact Dr. Rapaport?

3 A. I spoke to him on the phone.

4 Q. Was that prior to conducting your interview with Mr.
5 Ismail?

6 A. I think it was before the
7 first interview, yes.

8 Q. And did you discuss Dr. Rapaport's findings prior to
9 your interviewing Mr. Ismail?

10 A. Dr.
11 Rapaport told me his impressions and asked that I go ahead
12 and evaluate the man, see what I thought.

13 Q. Now, do you think that the findings that you have
14 given us, do they relate or correspond in any manner to your
15 personal feelings and opinions?

16 A. I can't
17 divorce myself from the situation.

18 Q. We are all human beings, right?

19 A. Yes.

20 Q. And although we try and be as objective as possible,
21 hopefully a lot of subjectivity goes in an interview such as
22 this?

23 A. As I say, I think the
24 process is totally subjective in a sense.

25 Q. Okay.
26 A. You try to use all of the
27 resources that you can so as not to simply be unrelated to
28 reality.

29 Q. And along that same vein if another psychologist were
30 to interview Mr. Ismail he might come up with totally
31 different data; is that correct?

32 A. Or the

1 same, sure.

2 Q. We don't know? A. We'd have to have
3 another psychologist do it.

4 Q. Okay. And have you followed the leading trials lately,
5 the Patty Hearst case, for example?

6 A. I have read something about the Patty Hearst case,
7 yes.

8 Q. And the case of William Kemper?

9 A. Yes.

10 Q. Okay. The case of Sirhan Sirhan?

11 A. I don't recall I followed that very closely.

12 Q. But in most of those cases what you basically had was
13 psychiatrists interviewing the man, saying one thing, and
14 psychologists; and psychiatrists and psychologists inter-
15 viewing the man and saying something entirely different?

16 A. Psychologists and psychologists differ.

17 Q. Have you ever heard the expression used in hospitals
18 and clinics that some staff members soon become easily
19 identifiable as health see-ers and some sick see-ers?

20 A. It is not something that I am accustomed to.

21 Q. Would that be a fair statement?

22 A. Say the words again, please.

23 Q. Yes. Some people that work in the hospital,
24 psychiatrists, psychologists, look at somebody and they
25 become identified as a health see-er, say, "Hey, I see that
26 person, I recognize the healthy qualities about him."

1 Whereas another group see the same person and say, "I
2 recognize the sickly qualities about him." Just depends how
3 you view it?

4 A. That is something I
5 haven't heard before. We have kind of an AB psychotherapist,
6 one psychotherapist tends to tell the client what to do and
7 it is authoritative and manages the person as a patient.
8 The other classification is one who tries to create an
9 understanding, and the work then is a function of the two
10 of them. And it is felt that the second type that I
11 mentioned is more successful in particular with psychotic
12 people.

13 Q. But once again we get back to the basic premise that
14 is an individual type opinion? A. What is
15 an individual type opinion?

16 Q. The opinion of the psychologist, for example?

17 A. You have lost me. I am not trying to evade you.

18 Q. Is it a subjective type opinion?

19 A. Is what a subjective type opinion?

20 Q. How the psychologist views data or how a psychologist
21 views an individual? A. Inevitably. I
22 think in all professions.

23 Q. So, for example, like if we were dealing with --
24 would you call psychology a science?

25 A. It is both scientific and it is an art form and
26 science.

Q. It is not a pure science, is it? A. Well,

1 it is hard to say about that. Is an atomic physicist a
2 scientist? I am not really trying to evade your point.
3 There are such funny things that go together, like people who
4 are nuclear physicists and psychotherapists tend to be
5 closely allied in that the nuclear physicist is one of the
6 highest type thinkers and yet he pushes out the boundaries
7 of understanding to a point where he gets in close sympathy
8 to psychotherapists who is also pushing out boundaries for
9 understanding.

10 Q. Let me ask you this, isn't it true in the pure form
11 of science, no matter what school of science you belong to,
12 if you had two and then you had plus two, that would always
13 equal four no matter how the individual viewed that? It
14 would be two and two equals four?

15 A. I think your point is well taken. There are people who
16 respond only to facts. But other scientists are very
17 intuitive and they leap through facts to great discoveries.

18 Q. My question is, -- see, you have to answer yes or no
19 for the record, they you can explain. Okay?

20 A. All right.

21 Q. All right. So in the pure science such as
22 engineering or mathematics, something like that, no matter
23 what the data is -- okay -- if the data remains the same
24 like two plus two equals four, no matter what school of
25 thought you belong to, you are always going to get four,
26 correct?

A. Well, two plus two should

1 equal four unless it is in a different number system.

2 Mathematics -- look, I just can't answer your question
3 because it doesn't make sense. For example, mathematics is
4 not a science.

5 Q. Mathematics is not a science?

6 A. No, it is not a science. A science is, usually that
7 is a term we reserve to investigation, to empirical work,
8 to research. Scientists are people who check out their
9 idea by doing experiments.

10 Q. They check out their ideas? A. By doing
11 experiments. A mathematician might be such a pure
12 mathematician that he would never do that, he would simply
13 do high level logic.

14 Q. The reason that scientists check out their ideas by
15 doing experiments is to see if their ideas are valid?

16 A. Yes, sure.

17 Q. If they are reliable? A. Sure.

18 Q. So once again we get back into validity and reliability?

19 A. The scientific method, yes, is basic to all
20 scientists.

21 Q. Is psychotherapy -- psychology, is that a scientific
22 method? A. Yes.

23 Q. So you get your reliable data?

24 A. We collect data and attempt to verify it, yes.

25 Q. And in order to verify it you check out validity?

26 A. We start hopefully with validity, then check out the

1 reliability.

2 Q. You start with validity and then check out
3 reliability?

4 A. Yes. You have to be able
5 to measure something if you are going to do -- this work
6 requires that you first have a valid measure, something that
7 really does measure what you think it measures. Then
8 having arrived at that you try to establish whether the
9 ruler, the measure that you are using is elastic or not, or
10 whether it always measures the same thing. If it always
11 measures the same thing it is reliable.

12 Q. So, for example, getting back to something that I can
13 understand, if A equals B -- okay -- the ruler is always
14 twelve inches long, right? A. All right.

15 Q. Okay. That would be, you start out with that and
16 you'd say that is valid, then you would want to check back
17 to see if it is reliable, if A always equals B, if the ruler
18 is always twelve inches long, or whether it can stretch or
19 bend, or something like that, is that fair?

20 A. That is fair.

21 Q. Now, you told us that you were familiar with Sarason?

22 A. I have read him sometime in the past.

23 Q. Okay. And have you read his book The Clinical
24 Interaction?

25 A. No, I think I said I
26 hadn't.

27 Q. Okay. Would this be a fair statement? Sarason --

28 MR. PESTARINO: Excuse me, if he hasn't read the

1 book and if his opinion is not based upon that, whether it
2 is a fair statement or not would be irrelevant.

3 THE COURT: Well, if it is attributed to the
4 author and he is not familiar with it, then it would be an
5 improper question. Ask him whether he agrees with or
6 disagrees with it.

7 MR. ROBINSON: Right. That is what I am going to
8 do.

9 Q. (By Mr. Robinson) Is this a fair statement with which
10 you can agree or disagree with? Sarason cites abundant
11 research evidence that the following have an effect, and he
12 is talking about the type of examination, the clinican
13 examination, 'The nature of the instructions given to the
14 subject.'

A. Okay.

15 Q. Would that have an effect? A. Certainly.

16 Q. 'The actual purpose of, the actual purposes of the
17 clinical interaction.'

A. Um-hum.

18 Q. 'What the examiner is there for and what sort of
19 information he wishes to elicit from the examinee,'
20 correct?

A. Yeah, you need to talk
21 about both sides.

22 Q. For example, if you are there to find out about a
23 murder or if you are there to find out how somebody gets
24 along with his wife, that is important, isn't it, in the
25 data that you receive?

A. Sure. Sure, the
26 rapport between the two people is what is significant.

1 Q. "The purposes of the interaction as perceived by the
2 subject"?

A. Yes, absolutely.

3 Q. Okay. So if the subject thinks that, the subject
4 being the examinee, thinks that he can say something that is
5 going to help him out, that would be relevant in terms of
6 data that comes out, correct?

A. Sure.

7 Q. If on the other hand he is going to say something that
8 is going to hurt him, that would also be relevant in terms
9 of data?

A. Surely.

10 Q. "The place of the examination"?

11 A. I quibble with that some, but, of course, it has some
12 effect.

13 Q. "The time of the examination"?

14 A. Yeah, within limits.

15 Q. Okay. And "The race, social class and sex of the
16 examiner"?

A. Certainly has an effect.

17 Q. All of those things do?

A. Always.

18 Q. Sure. Okay. Now, these things are subject, because
19 they all have different effects on different people, they
20 are all subject to different variations, correct?

21 A. They are all subject to different variations.

22 Q. Because of the way that you gather your data you
23 cannot scientifically say that A always equals B because of
24 these different variations? You are not always going to
25 get the ruler that is twelve inches long, you are going to
26 get the one that bends and flexes and stretches, correct?

1 A. You always have to be aware of that.

2 Q. Now, you told us that you were familiar with the
3 Stanford-Binet I.Q. variations?

4 A. Talking about the Stanford-Binet I.Q. test?

5 Q. Yes, sir. A. Yes.

6 Q. Are you familiar with the research that has been done
7 in the field regarding that test?

8 A. I haven't paid much attention to it for some time. I
9 don't use it.

10 Q. You don't use it? A. No.

11 Q. Had you used it in the past? A. When I
12 was in graduate school.

13 Q. Okay. And has it been your experience with that test
14 that the results of the I.Q. test depends on who is giving
15 the examination and how he interprets it?

16 A. The result of any test always depends on the skill of
17 the examiner.

18 Q. And the interpretation of the examiner on the test?

19 A. Sure.

20 Q. And that in the Stanford-Binet test sometimes the
21 differences because of the different examiners testing the
22 same individual in terms of I.Q. are as large as thirty to
23 forty points; is that correct? A. I don't
24 know that for a fact. That is a pretty large difference.

25 Q. Well, does it seem reasonable to you?

26 A. No.

1 Q. That doesn't seem reasonable?

2 A. No, that is too much.

3 Q. Have you ever read the article by Catel on Society In
4 School dealing with the Stanford-Binet variations?

5 A. No, I haven't. You understand that some of those
6 examinations are given person to person as I do it and some
7 of them are paper and pencil when they are done in a group.
8 There is much more variation when they are done in a group.

9 Q. Let me ask you this, is there any way of knowing whether
10 you have received valid data from the person that you interview?

11 A. I think that is a combination of all of your experience
12 and skills, you know, it is your aim.

13 Q. And did you believe what Mr. Ismail told you when you
14 interviewed him?

15 A. My interview was not
16 so substantial to my evaluation of the man as my
17 examination. So to ask a man directly, you know, where are
18 you, is helpful in terms of all of the moods and tone, and
19 the flavor of the personality. Just as my teacher Karl
20 Jeung was the first to develop the lie-detector test, which
21 I am quite familiar with or was familiar with once, it is
22 important to try to detect differences in the tone of voice,
23 the manner of response, blocking, the time it takes for a
24 response. There are a lot of cues you look for just in the
25 verbal back and forth, but we really try to look for tests.

26 Q. You are looking for the truth?

A. That is correct.

1 Q. And is there any way for you to tell whether or not
2 Mr. Ismail told you the truth about his involvement with the
3 Patriarch that night? A. Only my clinical
4 judgment.

5 Q. And your clinical judgment was what, that he told you
6 the truth? A. When he told me that
7 he didn't remember anything from the time of an insult from
8 the Patriarch to roughly, really until he was in the jail,
9 I think I believed that, yes.

10 Q. And you, also, believed him as to how he acquired the
11 gun? A. I accepted what he told me. I
12 had no basis to really argue with him about that.

13 Q. And you accepted what he told you about not
14 remembering anything from the time the Patriarch called his
15 father a name until he ended up in jail?

16 A. That was important to me.

17 Q. And you accepted his explanation as to why he came
18 down here from Canada? A. I work at
19 different levels. Consciously I accept what he says that
20 his conscious intention was to come down to visit, to look
21 for the possibility of employment. You know, these things
22 I can accept at a conscious level. I am sure that he
23 believed them. That he might have some other motivation as
24 well that he didn't know about, that would be something I
25 would also believe.

26 Q. So it is just as believable that he came down here to

1 kill the Patriarch as he came down here to look for
2 employment?

3 A. I don't think so. But I
4 suppose that it is possible that somewhere at a deeper level
5 he might have had that intention. I think I am more
6 inclined to believe that he came down and danced around the
7 need to confront the Patriarch, which I think was really
8 probably the basic underlying purpose in his coming.

9 Q. Danced around the need to confront the Patriarch?

10 A. Well, it is -- to say to a spiritual leader that you
11 do not wish to support him is a very heavy thing. And I
12 believe in my understanding of Mr. Ismail that was pretty
13 basic to his coming down here.

14 Q. Did you ask him why he didn't call the Patriarch or
15 write him a letter?

16 A. I believe he had
17 talked to him on the telephone.

18 Q. And when did he talk to him on the telephone?

19 A. I don't know the exact date. Sometime in the last
20 two years.

21 Q. Okay. And did you ask him why he couldn't talk to him
22 on the telephone again and tell him of his decision not to
23 support him?

24 A. As I say, it was not my
25 intention to try to really interrogate Mr. Ismail. I
26 wanted to get a feeling for everything that he remembered and
experienced as clearly as I could and try to make an
evaluation of how, how truthfully I thought he was giving
me this information. But more fundamental to my work with

1 Mr. Ismail was to attempt to evaluate him through tests
2 because I, as you, am aware that just interviewing is just
3 not all that substantial. One requires something more.

4 Q. So you are saying if in fact you hadn't given Mr. Ismail
5 any tests you couldn't have had a valid basis to form an
6 opinion just on an interview?

7 A. I think my basis for opinion would have been somewhat
8 worthwhile, but I would have been far less satisfied with it.

9 Q. Let me question you on that, if I might. If you had
10 not given Mr. Ismail any test you told us that your basis
11 for opinion would be somewhat worthwhile, okay?

12 A. Um-hum.

13 Q. And the only thing then that you would have to base
14 your opinion on would be the statement of Mr. Ismail,
15 correct?

16 A. No, my impression of Mr.
17 Ismail and all of the other variables that I described to
18 you, just as I talked to you, I looked at everything you say
19 and do, how you move, what the tone of your voice is, what
20 your eyes are doing, what your mouth is doing, what all of
21 the muscles in your body are doing. And I look at all of
22 this data all of the time.

23 Q. And you have seen me, without giving me any tests, I
24 take it for longer than you saw Mr. Ismail, if you exclude
25 all of the tests, correct? A. I don't
26 understand you.

Q. Yeah. You told us that you saw Mr. Ismail for, well,

1 only spoke to him regarding personal background, reasons
2 regarding the crime, things like that for about forty-five
3 minutes?

A. Maybe an hour all told.

4 Q. And the rest of the time was involved with tests?

5 A. Correct.

6 Q. Now, you just told us that you could have given this
7 opinion, given us an opinion, could give us a clear idea if
8 you hadn't given him any tests?

9 A. Well, I could give you an opinion if I had an hours
10 interview.

11 Q. Okay. And let's, if I might, for the purposes of a
12 hypothetical question, exclude those tests, okay? So now
13 all I am asking you to do is to give us your opinion on
14 whether or not -- strike that -- to give your opinion on
15 Mr. Ismail excluding those tests. And what is it?

16 A. Well, I guess I can't really do that because I did
17 do seven hours of work with him and I can't go back and sort
18 out one little piece and say this is the way it would be.

19 Q. Is it a fair statement to say if you hadn't given
20 those tests you couldn't give an opinion on him?

21 A. No, that isn't so.

22 Q. You just told me that you are always analyzing people,
23 watching how they talk, move, how their eyes are, everything.
24 You have had a chance to look at myself. Am I a cold
25 premeditated killer?

26 MR. PESTARINO: I don't know if I ought to object,

1 but I think I ought to say something. I don't think, first
2 of all, he didn't pay the expert and to get an opinion from
3 him, that's wrong. And secondly, we are not talking about
4 Mr. Robinson. We are talking about Mr. Ismail.

5 THE COURT: No, I think I'd better sustain the
6 objection because of the fact that it would require --

7 MR. ROBINSON: It goes to his credibility.

8 THE COURT: Well, he hasn't interviewed you as
9 such.

10 THE WITNESS: No, I haven't.

11 THE COURT: And also I am afraid that --

12 THE WITNESS: I would like the opportunity.

13 THE COURT: I think you are treading in dangerous
14 water. The objection will be sustained.

15 MR. ROBINSON: Thank you, Your Honor.

16 Q. (By Mr. Robinson) So you have to say then that you
17 based your opinion on the combination of the tests and the
18 interview? A. Yes, I do.

19 Q. Okay. Without referring to any police reports or
20 contacting any victims or eyewitnesses in the case?

21 A. I didn't think that was my function. That I was --

22 Q. Well, I guess maybe this is where we are hung up,
23 Doctor. Your function you told us is to determine truth?

24 A. Um-hum.

25 Q. Okay. And how do you determine truth without looking
26 at both sides of the question? A. Well, I

1 readily acknowledge that if I had every piece of data about
2 David Ismail throughout his life and every circumstance
3 here in the recent weeks or months, I probably could be more
4 exact in my description of him. But it does not follow that
5 I have no exactness because I do not know everything about
6 him.

7 Q. So what you are saying is, you gave us your best shot
8 based upon the evidence that you had before you?

9 A. Based on seven hours contact.

10 Q. And would a jury be in a position to give their
11 opinion as to whether or not Mr. Ismail is the type of
12 person that could commit this crime hearing all of the
13 evidence in the case?

14 MR. PESTARINO: Objection, if Your Honor please.

15 THE COURT: What is the basis of the
16 objection?

17 MR. PESTARINO: Calling for the opinion of what
18 a jury would be able to do and what it can't do is a matter
19 of law for the ultimate finder of fact, and it is an
20 improper question to ask for that type of opinion. The
21 jury hasn't been examined. There is no foundation.

22 MR. ROBINSON: I haven't heard a legal objection
23 yet.

24 THE COURT: The ultimate decision, of course,
25 will be that of the jury. The question asked of the doctor
26 is whether or not in his opinion a jury could make a

1 similar decision?

2 MR. ROBINSON: Having heard all of the evidence.

3 THE COURT: Well, it isn't that --

4 MR. ROBINSON: Strike that. I'll save that for
5 argument.

6 THE COURT: It is obvious that is their obli-
7 gation.

8 MR. ROBINSON: I wanted to know what the doctor
9 felt about that.

10 MR. PESTARINO: Go ahead and ask him.

11 THE WITNESS: I'll answer it if you want.

12 Q. (By Mr. Robinson) You used the term cold premeditated
13 killer? A. Yes.

14 Q. All right. Where did you come up with the word
15 "cold"? A. To me it is the antithesis
16 of empathic kind of warmth, and identification with another
17 person. Cold to me means behavior in which you consider
18 only your own feelings and wishes and do not identify with
19 the person you are interacting with. So to be cold is to
20 use another person and not care. The warmer empathic type
21 human being would be hurt if he hurt another person. If
22 I really deliberately hurt you and I am really empathic, I
23 will feel your pain quite vividly. Just as if a client comes
24 into my office I can frequently sense their symptomatology,
25 even like if they have an upset stomach, and they feel
26 nauseous I may suddenly ask them, because I feel this in me,

1 "Do you feel nauseous?"

2 Q. Let me ask you this, is it your opinion that all
3 people who commit murder are cold people?

4 A. No, I don't think that is true because some people
5 kill out of passion, out of wild emotion.

6 Q. So you are saying that if you don't kill out of
7 passion then you would be a cold person?

8 A. I think if your passionlessness fits a situation
9 where you are in a thinking frame, and you arrange to dispose
10 of somebody without identifying with that human being or
11 what you were doing, I would consider that cold.

12 Q. And I take it you have done and read numerous things
13 in the field that deals with this particular concept?

14 A. I spent three years in Zurich going over these kind
15 of concepts.

16 Q. Cold killers? A. No, coldness
17 versus empathy.

18 Q. How many years have you spent going over the murder
19 and coldness regarding murders, the different personalities
20 of murderers. Have you spent any time at all?

21 A. I haven't made a study of the personality of murderers.

22 Q. Well, there hasn't ever been a study made, has there?

23 A. There have been some studies of individual cases.

24 Q. Sure. Because the reason there has never been a
25 general study made is because you can't classify people like
26 that, isn't that the truth? A. It is difficult

1 to classify people. Psychologists continually try to do it.

2 Q. Just like you have tried to do in this case?

3 A. Surely.

4 Q. Okay. Now, was the Wexler Adult Intelligence scale,
5 that is one of the tests that you gave Mr. Ismail?

6 A. Yes.

7 Q. Was that test designed -- well, I'll ask you this,
8 why was that test designed?

9 A. It is a general test of -- a test of general
10 intelligence.

11 Q. Was it primarily designed to decide legal issues in
12 the courtroom? A. I can't understand
13 your question.

14 Q. Was the purpose of the person who designed that test,
15 was his purpose in designing the test to decide legal issues
16 in the courtroom? A. No, they designed a
17 test of general intelligence.

18 Q. The full range vocabulary Form A test, was this test
19 primarily, was its purpose to decide legal issues in the
20 courtroom? A. No.

21 Q. It was designed for another purpose?

22 A. Again, a form of intelligence.

23 Q. The wide range achievement test, "RAT," was this
24 test primarily designed in its purpose to decide legal
25 issues in the courtroom? A. No, it wasn't.

26 Q. Grays Oral Reading Test, was this test primarily

1 designed in its purpose to decide legal issues in the
2 courtroom?

A. No. No, it wasn't.

3 Q. I'm having trouble with this one.

4 A. Dvorine.

5 Q. Dvorine Iso-chromatic Plates, was this, and I'm using
6 the word test, I'm going to substitute for the word
7 technique, is that a fair substitution?

8 A. I think you better stick with test.

9 Q. What is the difference between a test and technique?

10 A. Well, a technique has got no necessary reliability or
11 validity demonstrated. It is like something I can do.

12 Q. And do these tests have any necessary reliability and
13 validity in compared to legal issues in a courtroom?

14 A. They have all been tested, they have all been used to
15 establish validity and reliability for their purposes.

16 Q. In a courtroom for legal purposes?

17 A. For their purposes, you know, whatever their purposes
18 were.

19 Q. And what about the Knox Cue Test, was this test
20 primarily designed in its purpose to establish legal issues
21 in a courtroom?

A. That is closer to
22 legal issues because it had to do with immigration, but not
23 specifically to Court.

24 Q. The Knox Cue Test is a memory test?

25 A. It is essentially a scale of intelligence using
26 memory.

1 Q. Memory for design, this test, was its purpose and
2 reason it was designed to decide legal issues in a
3 courtroom?

4 A. Again we are
5 getting a little closer. This is a scale that is frequently
6 used to determine the degree of mental impairment or
7 organic impairment if it was really a serious organic
8 impairment so the person needed a conservator you might use
9 it in a courtroom. Its essential use is to try to define
10 whether there is organic impairment.

11 Q. Your answer would be no? A. It is not
12 primarily designed for a courtroom.

13 Q. Its purpose wasn't for use in a courtroom when it was
14 designed? A. No.

15 Q. Bender-Gestalt background interference procedure, was
16 the purpose for this test and the reason it was designed to
17 be used in a courtroom? A. No. No.

18 Q. Hooper visual organization? A. No.

19 Q. House tree person drawings? A. No.

20 Q. Rorschach ink blots? A. This test is
21 frequently used in Courts to establish fantasy.

22 Q. Was its purpose when it was designed to be used in
23 a courtroom? A. No. No, it is not
24 specifically designed for courtroom.

25 Q. Thematic apperception test? A. No.

26 Q. Are there any tests that psychologists have designed
whose purpose and design was to be used in a courtroom?

1 A. Not to my knowledge.

2 Q. Now, does that tell you something? Strike that.

3 Okay. Now you told us that when you interviewed
4 Mr. Ismail you did some reading on the church, the Assyrian
5 people, right? A. That is correct.

6 Q. Okay. You did some outside reading on this. You
7 didn't rely on Mr. Ismail for this information?

8 A. I just looked it up in the Encyclopedia Britanica.

9 Q. And you included that in your report, right, that
10 information you looked up? A. Sure.

11 Q. Why? A. I thought it was
12 substantial.

13 Q. Well, you had to go to an outside source to get this
14 information. Why didn't you ask Mr. Ismail about it?

15 A. We did talk about the church. He had difficulty
16 explaining it to me. We had a language barrier.

17 Q. I see. He had difficulty explaining the church to you
18 at that time? A. Well, his term for it
19 isn't the same term as is frequently used in English.

20 Q. So you went to an outside source?

21 A. I went to the encyclopedia, yes.

22 Q. Did Mr. Ismail have difficulty explaining to you what
23 happened the night of the killing?

24 A. He told me what he remembered, yes.

25 Q. And did you have difficulty understanding that?

26 A. Some difficulty, yes.

1 Q. Did you go to an outside source for that?

2 A. I asked an Arabic interpreter to come with me.

3 Q. Could you answer my question, please. Did you go to
4 an outside source?

5 A. I am not trying to
6 avoid your question. How can I go to an outside source ?

7 Q. Did you go to police reports and contact the district
8 attorney?

9 A. The only thing I did was
10 look up the newspaper article which originally described his
11 arrest.

12 Q. So you went to the newspaper ? A. Yes.

13 Q. Do you consider the newspaper a reliable source of
14 information?

15 A. In the main, yes.

16 Q. Do you believe everything that you read in the news-
17 paper?

18 A. No, I don't believe
19 everything that I read in the newspaper.

20 Q. Did you believe what you read in the newspaper

21 regarding Mr. Ismail's arrest? A. I really
22 went to the newspaper article for background.

23 Q. Can you answer my question? A. I guess
24 not. I just simply read something and I put a probability
25 figure alongside of it. I don't say yes or no. I say
26 maybe.

Q. Let's talk about, you deal with, you talked about
reliability and validity, right?

A. Um-hum.

THE COURT: Excuse me, counsel, I know we are
not going to get through and counsel will also want to

1 reexamine. Perhaps you ought to approach the bench for
2 just a moment.

3 (Discussion off the record.)

4 THE COURT: All right. We will take the recess
5 over the noon hour and we will resume a little after one
6 thirty. And you will keep in mind the admonition I have
7 given you before and not discuss the case among yourselves
8 or with any other person. We will see you around that time.
9 The defendant will be ordered to return, also, as well as
10 any subpoenaed witnesses.

11 (Whereupon, Court adjourned for the luncheon
12 recess.)

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AFTERNOON SESSION

March 24, 1976. 1:30 o'clock p.m.

(Pursuant to adjournment, Court convened, and the following proceedings were had:)

THE COURT: Please be seated. Let the record show that the jury is present, the defendant is present with counsel. You may proceed.

MR. ROBINSON: Good afternoon, Doctor.

THE WITNESS: Good afternoon.

JACK NIDEVER,

the witness on the stand at the time of the adjournment, resumed the stand and testified further as follows:

CROSS-EXAMINATION (Resumed)

BY MR. ROBINSON:

Q Doctor, I have a few more questions for you, if I might.

Okay? A Go ahead.

Q Thank you. Now, we were talking about your examination of Mr. Ismail in the jail. A True.

Q Okay. And would one of the factors that might invalidate your data be the fact that Mr. Ismail was upset or worried at the time he gave this examination?

A Well, I think that is part of the thing we wanted to explore. I don't see that was invalidating the examination.

Q Well, if somebody is given a battery of tests --

A Yes.

Q -- and he has other things on his mind would that affect

2
1 the results of those tests? A Sure. You have to get
2 their attention.

3 Q And there is substantial literature in the field of
4 psychology to support that proposition, isn't there?

5 A You surely have to establish rapport.

6 Q Could you answer my question? A I am agreeing with
7 you, yes, it is a difficulty and you recognize it and you
8 attempt to overcome it.

9 Q And then there is some substantial literature in the
10 field that supports the position that various outside
11 influences might affect an individual on his testing?

12 A Sure.

13 Q Okay. And would some of those outside influences be
14 concern over standing trial for murder? A Surely.

15 Q Concern over the outcome of the trial? A Yes.

16 Q The fact that a man is in custody in jail?

17 A All of these things are factors.

18 Q All of these things are factors that can influence the
19 outcome of the test and the results? A They can
20 influence the tests.

21 Q As a matter of fact, are you familiar with the studies
22 that have been done that test children in, say, grammar school
23 and the studies that have shown that various factors, such as
24 weather, a child is used to sitting at a desk with an arm on
25 it as opposed to a desk without an arm on it, might affect
26 that person's ability on an I.Q. test and how he does?

3
1 A I haven't read that study. It is interesting.

2 Q Would you agree with that study that that factor could
3 influence the child and his ability on the I.Q. test?

4 A Sure. Many factors affect testing.

5 Q Okay. That's fair. Also, you also told us that you
6 rely to some extent on your experience in making these
7 evaluations; is that correct? A Yes.

8 Q And concerning your experience doesn't the weight of
9 scientific research show that more experienced examiners,
10 psychiatrists and psychologists, are not appreciably more
11 accurate in their evaluations than the less experienced
12 examiners? A Less experienced psychiatrists are

13 not any better than more experienced psychiatrists?

14 Q That is correct. Doesn't the weight of research show
15 that? A I am not familiar with research that shows

16 that. I imagine it could be so, young psychiatrists are
17 often better than older ones about some things.

18 Q So experience in and of itself, the fact that you have
19 been in the business 10 years really doesn't tell us much?

20 A I hope it does.

21 Q Isn't there substantial research and writing in the
22 field to the effect that experience plays, is no factor
23 whatsoever in somebody's ability to give an opinion to
24 diagnose a case? A I just can't accept that.

25 Q Are you familiar with the study done by Plott, Erica &
26 Cromwell entitled The Ability Of Clinical Psychologists To

4
1 Discriminate Between Drawings By Deteriorated Schizophrenics
2 And Normal Subjects In Psychological Reports?

3 A I think I have heard the title but I haven't read it.

4 Q And are you familiar, would you agree with this proposi-
5 tion, that it was found that college students and non-
6 clinical faculty members were approximately as good as
7 experienced psychologists in discriminating drawings by
8 deteriorated schizophrenics and normal subjects?

9 A I don't accept it.

10 Q You don't accept it? A No.

11 Q Okay. Are you familiar with the article by Goldberg,
12 The Effectiveness of Clinicians' Judgments in the Journal of
13 Consultant Psychology? A Well, I don't remember
14 that title. I haven't read it.

15 Q Would you accept -- are you familiar with Goldberg?

16 A Well, there are many Goldbergs.

17 Q Okay. With L. R. Goldberg? A No, I don't
18 think that I know him.

19 Q Isn't he an authority in the field?

20 A I don't think that just everybody who publishes is an
21 authority.

22 Q Okay. Would you agree with what Goldberg has to say,
23 where he says in his experiments Goldberg had experienced
24 psychologists, psychological trainees and non-psychologists,
25 for example, hospital secretaries use the Bender-Gestalt test
26 in the attempt to distinguish 14 brain damaged psychiatric

1 patients. There were no differences among any of the groups
2 with the staff psychologists ranging from 60 to 70 per cent,
3 the trainees from 60-77 per cent, and the secretaries from
4 57 to 73 per cent. A And what are you asking me?

5 Q I am asking you if you agree with that.

6 A Well, it is a finding. I can't disagree with the
7 finding. Whether it is true in general and outside of that
8 particular small facility I don't know.

9 Q Are you familiar with the article by Walker & Linden in
10 the Journal of Clinical Psychology, entitled Varying Degrees
11 Of Psychological Sophistication In the Interpretation Of
12 Sentence Completion Data? A No, I don't know the
13 article.

14 Q Okay. In that article Walker & Linden found no
15 practical difference between experienced psychologists,
16 undergraduate psychology students and undergraduate engineer-
17 ing students in making assessments from sentence completion
18 data. Would you disagree with that? A I would like
19 to comment on it if you would care to listen to me. There
20 is a very strong movement in academic psychology to discredit
21 clinical psychology. There have been a number of studies
22 that establish that housewives or almost anybody can do
23 psychotherapy, that psychotherapists do nothing, whether they
24 are psychiatrists, social workers, housewives or psychologists.
25 The backbone of experimental psychology is dismayed by our
26 use of idiosyncratic methods instead of the nomothetic methods,

1 and they continue to attack us and many of the articles you
2 are citing there could come from this position. And I am not
3 very interested in them.

4 Q Now, let's, if we can, progress to the tests that you
5 gave Mr. Ismail? A Sure.

6 Q Okay. And once again, I believe, so it is clear in my
7 own mind, we have established that none of these tests that
8 you gave Mr. Ismail were designed for the purpose of deciding
9 the legal issue in court; is that correct?

10 A I don't believe any of them were designed for courtroom,
11 no.

12 Q Okay. Now, let's talk about the Wexler Adult Intelli-
13 gence Scale. Did you bring that test with you?

14 A Wexler?

15 Q Wexler. A Wexler.

16 MR. PESTARINO: Can we use the board?

17 THE COURT: Yes. Do you want to open it?

18 Q (By Mr. Robinson) First of all, Doctor, I would like
19 for you, if you would, please, to give us -- you saw the
20 defendant, Mr. Ismail, on March 11th which was a Thursday?

21 A Mm-hmm.

22 Q March 13th, which was a Saturday? A Yes.

23 Q And March the 14th which was a Sunday?

24 A That is correct.

25 Q And you told us that there are various factors, any little
26 thing can influence the outcome of a particular test?

7
1 A No, I didn't say that. You did. I agreed that many
2 factors influence tests. I didn't say little factors can
3 alter the outcome of tests. I really did agree with you that
4 there are many factors that influence the outcome of tests.

5 Q Okay. Are you familiar with what the busiest days in
6 the jail are? A I have no awareness of that.

7 Q You told us that you were familiar with the jail.

8 A I have been in and out of the jail. I haven't made a
9 study of frequency there.

10 Q Do you know when they have visiting days in the jail?

11 A I presume it is on the week-ends.

12 Q And using your common sense, on the week-end, if some-
13 body was to receive a visitor would they be more excited
14 than they would normally when they weren't to receive a
15 visitor during the week? A If you are talking about
16 any subject who is in the jail, sure, if he is expecting
17 company he might be more excited.

18 Q Would this excitement, would this be one of the factors
19 that could influence the outcome of the test?

20 A I don't believe so.

21 Q Excitement has nothing to do with the outcome of a test?

22 A You are asking me to generalize as from anybody in the
23 jail expecting a visitor and me having made an arrangement
24 to visit Mr. Ismail on these two days, we had planned it to
25 be at the lowest activity level within the jail between the
26 hours of 12:00 and something, and he was expecting me at that

8
1 time.

2 Q You had planned it to be at the lowest activity level
3 within the jail? A Well, in the sense of the internal
4 affairs of the jail, that is, after lunch and before dinner.

5 Q Okay. But my question is, do factors like excitement,
6 anxiety affect the outcome of the test? A Surely
7 anxiety is one of the things that we like to measure with
8 our test, so we are looking for these kind of factors. Are
9 you asking does it degrade the outcome of a test? Potentially,
10 if you don't pay any attention to it.

11 Q Okay. And the tests that you gave were on the Saturday
12 and the Sunday, the 13th, the 14th, and 11th, which was a
13 Thursday? A I gave the tests on the 13th and
14 the 14th, Saturday and Sunday.

15 Q Okay. You gave the tests on the 13th and the 14th?

16 A That is correct.

17 Q Now, let's talk about -- what did you do on the 11th
18 when you first met with Mr. Ismail? A I talked to Mr.
19 Ismail.

20 Q Okay. And how long did you meet with him at that time?

21 A I think around 45 minutes.

22 Q And what did you discuss? A First I had to get
23 Mr. Ismail to be willing to talk to me. And as a matter of
24 fact I suppose my preliminary visit was to assure that when I
25 did ask him on Saturday and Sunday we could go ahead with the
26 testing and we wouldn't have an impasse in terms of whether

9
1 he would be willing to work with me. So my visit on
2 Thursday was to see whether in fact we could function together
3 emotionally and linguistically.

4 Q And that is an important consideration?

5 A It certainly is.

6 Q Because the emotions, the stability, the mental condition
7 of both the examinee and examiner are critical in the outcome
8 of the tests, aren't they? A They are very important
9 on some tests, less important on others, but they certainly
10 are significant, yes.

11 Q Now, when you talked with Mr. Ismail on the 11th, which
12 was the Thursday, did you have any trouble understanding him?

13 A I had some difficulty, yes.

14 Q Okay. And what sort of difficulty did you have?

15 A I think it was in his use of words. He would be trying
16 to explain something to me and I find it somewhat hard to
17 follow his track of thinking. We would keep going over it,
18 and eventually I would get a kind of a pretty, somewhat hazy,
19 but pretty clear perception of what he was trying to tell me.
20 And he had more emotion on that day than he did on Saturday
21 and Sunday. It was easier to understand him on Saturday.

22 Q He was more emotional on the 11th? A I was a
23 stranger, yes, he had to decide whether I was trustworthy or
24 who I was, what I was there for.

25 Q So do you feel that when somebody in Mr. Ismail's
26 position meets with a stranger he tends to be more emotional

10 1 than if he knew the person? A He is going to be more
2 defensive initially, sure.

3 Q And if you had administered any tests on the 11th that
4 emotional instability would have affected the outcome of the
5 test? A I think it would have showed itself, yes.

6 Q Now, I take it no tests were administered on the 11th?

7 A That is correct.

8 Q Now, on the 13th, the Saturday -- A Mm-hmm.

9 Q -- you met with Mr. Ismail in the jail? A Yes.

10 Q And at this time you administered some tests?

11 A Yes.

12 Q Could you tell us which test you administered first?

13 Do you have the order? A I don't remember the exact
14 order. I think I started with a full-range picture vocabulary.

15 Q Let me interrupt just for a second, if I might, please.

16 Did you take notes when you interviewed Mr. Ismail on the 13th?

17 A I don't believe I did. I didn't want to appear as if
18 I were writing down all kind of things about him. I wanted
19 to relate to him so we could feel like we could try to do
20 what I set out to do.

21 Q Did you take any notes on the 11th when you interviewed
22 him? A Perhaps a few notes in the periphery of my
23 test material.

24 Q On the 11th you were trying to relate to him more so
25 than the 13th? A On the 11th I was trying to give him
26 the feeling that he could trust me enough to allow me to

11

1 evaluate him.

2 Q Okay. So you took notes on the 11th but not on the
3 13th? A I did not really take notes on the 11th.

4 Q Okay. So everything that is contained in your report
5 regarding what he said you had memorized, then subsequently
6 put it on the report? A I took some notes on the 13th
7 and 14th and, of course --

8 Q I'm sorry, I thought you just told us you didn't take
9 notes on the 13th? A I said I took some notes. You
10 know, it was not my thinking to be writing down all kind of
11 words that he was saying. I was giving him tests, while I
12 was giving him a test I might write down a little note here
13 or there in one of the test corners, but primarily was testing
14 him on Saturday.

15 Q And you didn't write down the order in which you gave
16 the tests? A Not that I recollect, no.

17 Q Does that have any significance? A Not to me.

18 Q So you can give these tests in any order you want?

19 A I give the order as a function of the person I am with.
20 As a matter of fact, I don't think that I started with full
21 range picture. What I usually start with as an ice breaker
22 are things like the Bender-Gestalt which is pretty simple and
23 non-verbal, and you just have to copy some design. Those
24 are pretty non-threatening. Then we get going; after I get
25 him opened up, I'll try something else.

26 Q Do you recall what you did in this particular case or are

12

1 you testifying from what you usually do?

2 A I think I'm testifying from what I usually do. The
3 order of the testing is not usually so significant to me
4 because I am not absolutely sure of which test I am going to
5 use. This develops as I go along.

6 Q I see. Sort of a take-it-as-you-can sort of thing,
7 whatever you feel you need? A No, you see what you
8 discover and if you come to a point here, and you go that way
9 you give one set of tests, and another way you give another
10 test. You can see the performance on any individual test
11 kind of determines how you go.

12 Q Do you usually go in to meet someone with a preconceived
13 idea of what sort of test you are going to administer him or
14 go in without any preconceived idea? A I take in a
15 range of tests that I think will cover the situation.

16 Q Now, why don't you tell us as best you can recall what
17 tests you did give him on the 13th? A On the 13th I
18 gave him the Bender-Gestalt twice. The second time with a
19 background interference procedure. I gave him the house-tree-
20 person drawings; the Devorine Colorblindness Test, the Knox
21 Cube Test, the Memory For Designs Test, the Hooper Vision
22 Organization Test, the wide-range achievement test, reading
23 and arithmetic, Grey's Oral Reading, and the Wexler Performance
24 Scale.

25 Q So you gave him approximately 10 tests on that day?

26 A If that is what it counts.

13

1 Q Okay. Now, is that usual or unusual to give that many
2 tests in a limited time period? A A little more than
3 usual, not too much.

4 Q A little more than usual or unusual?

5 A A little more than I would usually do. I generally
6 test in about a 2-hour sequence. This was a 3-hour sequence.

B

7 Q Does mental fatigue have anything to do with the
8 subject's ability to perform on these tests?

9 A Well, we keep checking on it, sure, if he got exhausted
10 it would not be efficient. I kept checking with Mr. Ismail.
11 We moved around a little bit. We were in the dining hall
12 doing the testing. We had a lot of room.

13 Q How did you check to see he was tired mentally?

14 A The first place, I asked him. I looked at him, speed
15 of response, and in general he seemed to be functioning all
16 right. And then I have myself, I am there, I have to do
17 the same thing he does. So if I am making it, maybe he is,
18 too.

19 Q When you say you have to do the same thing he does,
20 could you explain that for us? A Well, we are both
21 working, we are both active. I am trying to examine him and
22 he is being examined. If I become exhausted then it occurs
23 to me inasmuch as, you know, I don't have an infinite amount
24 of energy, what I am trying to say, I begin to get tired I
25 can assume he is getting tired. I may break for myself, not
26 just for him.

14

1 Q Okay. That is fair. And on the 14th what test did
2 you give Mr. Ismail? A We did the Rorschach and TAT.

3 Q All right.

4 MR. ROBINSON: Let me have this marked as People's
5 next in order for identification, Your Honor.

6 THE COURT: It will be 33. What is it, please?

7 MR. ROBINSON: It is a letter from this witness to
8 Judge Duvaras.

9 (Whereupon, the above-mentioned document, being a
10 letter, was marked as People's Exhibit No. 33 for identifica-
11 tion.)

12 MR. PESTARINO: May I see it?

13 MR. ROBINSON: Certainly.

14 MR. PESTARINO: Thank you.

15 MR. ROBINSON: May I approach the witness?

16 THE COURT: Surely.

17 Q (By Mr. Robinson) Sir, showing you this letter, do you
18 recognize that? A Sure.

19 Q Okay. Is that your signature? A Surely is.

20 Q Your letter? A My letter. May I hold it just
21 for a second more? Okay.

22 Q Now, did you become more experienced interviewing people
23 in jail from July 15th, 1975, until you interviewed Mr.

24 Ismail on March of 1976? A Perhaps some. I have been
25 in and out of the jail, yes.

26 Q In this letter did you indicate to the judge, this is

15

1 regarding Mr. Ricardo Valdez who we already talked about?

2 A Mm-hmm.

3 Q "I would, also, like to test him in my office because I
4 believe my testing here will be substantially more
5 reliable and accurate than at the jail."

6 A Mm-hmm.

7 Q "I have worked with the Sheriff's Department for some
8 years as a consultant and I am familiar with the
9 jail's atmosphere."

10 A Mm-hmm.

11 Q Okay. So is it fair to say that your test that you gave
12 Mr. Ismail would be substantially more reliable if you had
13 given his test at the office as opposed to the jail?

14 A I would have preferred to test at my office.

15 Q For the reasons they would be substantially more reliable?

16 A There is one condition that is different there, if you
17 will. With Mr. Valdez I had to work in a room about as big
18 as Your Honor's space there. With Mr. Ismail I had the
19 golden opportunity of getting out into the dining room where
20 it was a much better atmosphere.

21 Q And you couldn't have brought Mr. Valdez out into the
22 dining room? A I was not permitted.

23 Q So it is the size of the room rather than the place
24 where the test is administered that would make it substantially
25 less or substantially more reliable? A I think it is
26 quite a factor to be closed into a little tiny room where it

16

1 is very hot with dirty chairs and little table versus rather
2 nice dining room with decorated murals and more comfort and
3 feeling, with people moving around. It is a totally differ-
4 ent scene.

5 Q Were there other inmates in that dining room when you
6 were giving that test? A No, but there were people
7 moving in the hallways and two sheriff's deputies there. It
8 was just a different scene. I don't want to wriggle out of
9 what I said in the letter. I would have preferred to test
10 Mr. Ismail in my place for one particular reason, I have one
11 test that involves racks of miniatures, a whole wall is full
12 of miniature figures, people, animals, vehicles, and I also
13 have a sand tray there. There is no way that I can trans-
14 port that particular system to a jail. Now, this is one of
15 the better projective devices that I have, and I would very
16 much have liked to use it with Mr. Ismail just as I would
17 with Mr. Valdez. In neither case was I permitted to use it.
18 I never even asked for Mr. Ismail because I had already been
19 denied with Mr. Valdez. I assume inasmuch as Mr. Ismail had
20 a more serious charge there was no possibility of me taking
21 him to my office.

22 Q Okay. But although Mr. Ismail had a more serious charge
23 you were able to bring him out into the dining room, but you
24 couldn't do that with Mr. Valdez? A Well, it is very
25 curious --

26 Q Yes, it is. A I can tell you something that has

17

1 happened in between time, if you will, and it makes all of
2 the difference in the world, and you can judge it as you will.
3 Captain Tam who runs the jail happens to be a personal friend
4 with whom I have worked for 7 or 8 years. At the time I
5 worked with Mr. Valdez Mr. Tam was a lieutenant and he was
6 not in charge of the jail. And I was blocked several times
7 even though the attorney had arranged for my examination.
8 There were all kinds of snafus until I said the magic word,
9 "Would you please ask Captain Tam," and at that moment every-
10 thing changed and I think since I got such an open opportu-
11 nity with Mr. Ismail, Captain Tam backed me and said, "Let
12 Dr. Nidever do what he will."

13 Q Let's talk about some of these tests, if I can. Did
14 you bring, did you bring your originals, the ones that you
15 gave Mr. Ismail? A Yes, surely.

16 Q And can we look at your Wexler Adult Intelligence Test
17 for a minute?

18 MR. ROBINSON: Perhaps we can mark that, Your Honor?

19 THE COURT: People's Exhibit?

20 MR. ROBINSON: People's Exhibit will be fine.

21 THE COURT: It will be 34. It is a Wexler?

22 MR. ROBINSON: That is correct, Your Honor.

23 THE CLERK: Could I mark it, please?

24 (Whereupon, the above-mentioned document, being a
25 Wexler Adult Intelligence Test, was marked as People's Exhibit
26 No. 34 for identification.)

18

1 Q (By Mr. Robinson) Now, isn't there something more?

2 A That is the Wexler.

3 Q Where is -- these are just the answers, huh? Where is
4 the pictures and everything?

5 A Well, they are in my test kit.

6 Q Okay. Where is your test kit? A In my briefcase.
7 I mean, do you want that entered into evidence as well?

8 Q Sure. I want to see it. Sure. If you would, please?

9 A This is out of order (referring to test). If I can
10 have just a minute I would like to put them back in order.

11 Q Sure. No problem. A Okay. You have the raw
12 tests there from the Wexler.

13 Q Yes, sir. A And the items which are included
14 there are these. There, I think I have everything I use.

15 No, I didn't use those (indicating). That is it.

16 Q Okay. And could you, perhaps --

17 MR. ROBINSON: Is there any way that the doctor can
18 step down here so that the ladies and gentlemen of the jury
19 can see these test items, Your Honor?

20 THE COURT: Well, I'm sure that he could.

21 MR. ROBINSON: Would that inconvenience you at all,
22 Doctor?

23 THE COURT: I just wonder, counsel, are we going to
24 go through every question?

25 MR. ROBINSON: No, I just think that it is beneficial
26 to see the test items. I know I have never seen them before

19

1 and I am certain that a lot of people on the jury haven't.
2 It might be informative.

3 THE WITNESS: I'm happy to do whatever you wish.

4 THE COURT: Do you want to take the microphone along
5 with you or not?

6 THE WITNESS: I just as soon skip it.

7 These items are for the Wexler Performance
8 (indicating).

9 MR. ROBINSON: Could you show what they are?

10 THE WITNESS: The first one is, goes like this. It
11 is essentially a clerical task and you have the number here.

12 MR. PESTARINO: I want to see this, too. I haven't
13 seen it before.

14 THE WITNESS: Here are some numbers on the top row,
15 they run from 1 to 0 and below. There are different kinds
16 of secret signs, so it is kind of like a code, and you have
17 the person practice on the first 10 to see that he can code
18 these numbers with his particular sign. Then you go ahead
19 and give him a minute and a half, and you ask him to continue
20 sequentially and do as much as he can and call out the digit
21 symbol.

22 Q (By Mr. Robinson) And during this minute and a half that
23 the individual is doing this test, what are you doing?

24 A Keeping time.

25 Q Okay. You are watching your watch? A I have a
26 stop watch.

20

1 Q Okay. And you are not observing how he performs the
2 test? You are just keeping time, not observing his manner-
3 isms or anything like that? A Well, I am not trying
4 to press him by peering down his eyeballs. I want him to
5 feel like he is doing it on his own.

6 Q Do you feel that it makes an individual sort of nervous
7 if you sit there and keep looking at your watch, say, "You
8 have a minute and a half," then keep looking at your watch?

9 A I don't do that.

10 Q I thought you told us that you were keeping time?

11 A I keep time but I don't have to look at it every minute.

12 Q Okay. Can we see some of these things that you showed
13 him and what he did? A Well, now, this is another set
14 of tests. It simply is a series of pictures, 20 pictures in
15 which one object is missing. The first one here, the door-
16 knob is missing. And you flip over them and they get more
17 difficult. The second one is a pig, and he has no tail.
18 You get up here to about the last picture or close to the last
19 one, you are looking at a picture and a statement is, "What
20 is missing there?" And then, it is easy to overlook what
21 is missing, and you can tell me what you see missing.

22 A JUROR: Horn.

23 THE WITNESS: Many people don't see that.

24 Q (By Mr. Robinson) That is one of the tests? That was
25 the most difficult and the easiest was the doorknob, is that
26 the way it ran? A The doorknob is easiest and the last

21

1 one, which is considered the most difficult, is a woman's
2 head has something missing. Anybody see it? It is a long
3 ways from you, I appreciate.

4 A JUROR: Eyebrow.

5 THE WITNESS: That is correct. But it is not too
6 easy to see.

7 MR. PESTARINO: I didn't hear the answer. What was
8 missing?

9 THE WITNESS: It was supposed to be an eyebrow.

10 Q (By Mr. Robinson) A person has a minute and a half to
11 complete that? A No, this is a second scale and there
12 is no great time limit on this, unless a person just simply
13 kind of blocks and can't do it, then you go on.

14 Q Has as much time as he wants? A Not totally,
15 but there is no pressure on how much time to do it.

16 Q Okay. That basically along with other items like that
17 in the box would conclude the Wexler Test? A We have
18 two more subject tests here.

19 Q Why don't you show us? A The next subject test
20 is, I have some blocks here, children's blocks but you can
21 do kind of cute things with them. These blocks have red on
22 one side, white on the other, diagonal. What the person is
23 asked to do is create a design. Like here is a design with
24 a picture. It doesn't really show any lines so you demon-
25 strate to the subject that you want them to see if they can
26 do that. And that is pretty good. Then you go to the next

22

1 one, and it is a little more complicated. And at this
2 point you again demonstrate it to have them do it. Here you
3 have to use the diagonal, and so then here we have a picture.

4 Q Okay. A Now, I would just like to show the
5 last one here so that we can get it out completely. We go
6 through this one like this, and then we get to one like this,
7 and they are complicated and the last one looks like that.

8 Q Okay. Thank you. I don't believe I will ask any more
9 questions on that. That was just for my own experience. I
10 have never seen that. Thank you. I appreciate it.

11 What I would like to ask you though is --

12 MR. PESTARINO: May he resume his seat?

13 MR. ROBINSON: Sure.

14 THE WITNESS: Do you want this (referring to exhibit)?

15 THE CLERK: Unless the DA is going to use it.

16 Q (By Mr. Robinson) We talked earlier this morning about
17 base rates and we called it norms, okay? A Mm-hmm.

18 Q Is there any base rate or norm between, that you know
19 about in the field of psychology or any other literature or
20 anything that you ever heard or read about, about somebody's
21 ability to premeditate and deliberate and somebody's ability
22 to perform the Wexler Intelligence Test? A There is

23 no direct relationship I have never seen stated or studied.

24 Q Thank you. Now, you indicated on the Wexler Adult
25 Intelligence Test Mr. Ismail had an I.Q. of 91?

26 A Mm-hmm.

23

1 Q You said that was pretty close to normal, within normal
2 range? A It is, yeah, it is low normal.

3 Q Could you go to the board, please, and draw us this
4 range that we are talking about? A Surely.

5 THE COURT: You will find a clean sheet, turn one
6 more (referring to blackboard).

7 THE WITNESS: Looks like I have a blackboard.

8 MR. PESTARINO: I wonder, can't we number those 1, 2,
9 and 3?

10 THE COURT: We will do that later, counsel.

11 THE WITNESS: Okay. We have here what we call a
12 normal curve, something like that. That is about 100. Well,
13 let's see, we have what we call one standard deviation, and
14 this is 85. And then this is 70. This is 115, and this is
15 130. And if this is I.Q. down here on the bottom, and this
16 is frequency on the side. So that we go up we have more
17 and more people, you see that most people tend to get an I.Q.
18 of 100.

19 Q Let me ask you about that, Doctor, the United States
20 average is 100, correct? The average people?

21 A That is what is accepted to be the norm for the American
22 population.

23 Q Isn't it true between 85 and 100 and 100 and 115, that
24 can be broken down into 34 per cent on one side and 34 per
25 cent on the other side? A That is correct. It is 34
26 per cent of the population here and 34 per cent of the

24

1 population here (indicating).

2 Q So would it be safe to say 68 per cent of the people that
3 live in the United States, including us, would fall between
4 85 and 115? A That is correct.

5 Q And the defendant had 91? A The defendant had 91.
6 Like so (referring to graph).

7 Q Thank you. That is all I have on that.

8 Now, you told that as far as reading, you asked Mr.
9 Ismail to read English, I take it to get his reading ability?

10 A That is correct.

11 Q Okay. And you told us that he had a 6th grade ability
12 in reading? A Yes.

13 Q And a 5th grade ability in math? A That is correct.

14 Q Now, did you ask Mr. Ismail if when he went to school
15 that was as high as his grades went up to at that time?

16 A He told me that he stopped school relatively early.

17 Q Are you familiar with the fact that when Mr. Ismail was
18 in school that they only had up to the 5th or 6th grade, and
19 that was it, they didn't have any higher grades?

20 A Actually this level is not so much a function of what
21 grade school level you went to, it is a function of how much
22 you have learned. And you learn in school, but you also
23 learn outside of school.

24 Q My question was, did you ask Mr. Ismail?

25 A I asked him about his schooling. He told me after he
26 had injured his head at age 7 or 8 he attempted to continue

15
1 in school and was really unable to do so and eventually
2 stopped.

3 Q And you had no knowledge that at that time when he went
4 to school all children stopped at the 5th or 6th grade?

5 A He told me his father wanted him to go to the university
6 but it was not possible.

7 Q Okay. Now -- A I believe I would like to
8 correct that. My understanding was that it was a military
9 school.

10 Q Different from the university? A It is a
11 university but with a particular purpose.

12 Q Well, it was the army? A Well, West Point is the
13 army, too, but it is also a university.

14 Q Okay. Touche. Now, has there ever been any studies
15 done, base rate norms -- okay? A Norm?

16 Q That is what we have to compare things on, right?

17 A Yes.

18 Q -- to see if there is any significance between somebody
19 with an ability of a 6th grade reading and 5th grade math to
20 be able to form the intent to kill somebody?

21 A There are no known scientific studies. I am not aware
22 of any in this line.

23 Q Now, the Knox Test is what? The blocks, the cubes?

24 A Yes. Looks like this (indicating).

25 Q Okay. All right. And what you do is, you take your
26 pen or whatever you use and hit on them and he follows?

26

1 A Yeah. He is doing it from the other side and he just
2 tries to duplicate the pattern that you make.

3 Q And he did quite well on that? A Yeah, he did
4 pretty well on that.

5 Q And are there any known studies done between the ability
6 to either perform or not perform the Knox Cube Test and
7 somebody's ability to premeditate and deliberate and commit
8 murder? A No, none that I know of now.

9 Q Now, the Rorschach Test -- A Rorschach.

10 Q Rorschach? A Rorschach, yeah.

11 Q Those are the ink blots? A That is true.

12 Q And when you administered the Rorschach Test to Mr.

13 Ismail you had an interpreter there? A Yes. I took
14 his initial impressions in English, and the interpreter helped
15 me with what we call the inquiry. We go back and review every-
16 thing that has been seen.

17 Q And if you feel that -- did Mr. Ismail know this inter-
18 preter before he was introduced? A No, he did not.

19 Q Did you feel that this bringing in an outsider would
20 create any sort of apprehension on the part of Mr. Ismail so
21 the test results might not be valid? A I had asked him
22 before if it would be all right if I brought somebody that
23 could speak another language. I asked him French, Arabic,
24 we arrived at a language that he could use because it was a
25 second language for him. I knew somebody, very personable
26 individual who had grown up in Egypt, so I had him come.

17
1 Q And the presence of a third person in your opinion didn't
2 affect the outcome of this test at all?

3 A My sense was that he was so relieved from the frustration
4 of trying to get to me in English his facility in going
5 through Arabic helped the whole situation.

6 Q You felt that he was frustrated on the 13th in trying
7 to relate to you in English? A Yes.

8 Q Would this frustration in somebody's mind influence the
9 outcome of the test on the 13th? A Mostly I was giving
10 him non-verbal test on the 13th.

11 Q You did give him a verbal test? A Well, I take it
12 back. They don't require much interaction. You see, I am
13 trying to use as much things as don't require much language
14 from him. If I give him a sheet and he has to read off a
15 sequence of words, the instruction is to read off a sequence
16 of words, pretty easy. There is no confusion there. If I
17 ask him to read a paragraph for me, again, there is a low level
18 of confusion. But I start going back and forth with him in
19 material where I want content and feelings, and this sort of
20 thing, we immediately get blocked.

21 Q I guess the thing that is confusing me, I thought you
22 told me the other day it is easier to speak in a foreign
23 language than it is easier to read in a foreign language?

24 A It is easiest, it depends on your experience. I think
25 it comes easiest to listen, then to read. It is hardest to
26 write.

28

1 Q And you had him read in a foreign language on the 13th?

2 A That is correct.

3 Q Okay. And that was more difficult for him than speaking
4 to him? A Well, with Mr. Ismail I don't think that is

5 really so. He is deaf in one ear and I think that actually
6 from the testing he has more skill in reading in English than
7 he does in speaking. He can recognize more words visually
8 than he can by using his ears.

9 Q Okay. Now, could we see these ink blots, please? Show
10 us how you do that test. A You realize that these are
11 secrets of the trade?

12 MR. PESTARINO: I'm paying for them.

13 THE WITNESS: They are priceless. Here are the --

14 MR. PESTARINO: Charge the District Attorney.

15 MR. ROBINSON: Okay. Can we have, just for the
16 purposes of the record, well, I'll just do them in numerical
17 order.

18 Q (By Mr. Robinson) They are numbered on the back?

19 A Yeah, there are 10.

20 Q Here is No. 1. Okay? A Yes.

21 Q I will show No. 1 to the jury. A Mm-hmm.

22 Q What did you do with these? A The instructions are:
23 Please look at this, see if it reminds you of anything. Is
24 there anything you see in it? Could it look like anything?
25 Tell me all that you see.

26 Q What did Mr. Ismail do in relation to this one?

29

1 A He tried to communicate to me in English that it was a
2 bat. At first he used the words "night flight," and I
3 thought he was trying to tell me that it had to do with look-
4 ing outside an airplane while flying at night, because I was
5 looking at the light spaces there and assuming that he was
6 seeing those as windows. So I asked him about that.

7 Q Wait a minute. He told you something, you looked at it
8 and made an assumption? A I questioned him in trying
9 to clarify what it was that he meant.

10 Q Okay. And then did he explain it to you?

11 A We required the services of the interpreter to establish
12 that it was indeed a bat.

13 Q And what does that look like to you?

14 THE WITNESS: Is this something that is required of
15 me, Judge?

16 THE COURT: Well, I am afraid that we are getting
17 into the area of interpretation of Rorschach which is a whole
18 field of study itself, and what it is like to the doctor or
19 you or --

20 MR. ROBINSON: Exactly my point.

21 THE COURT: -- requires professional interpretation.

22 MR. ROBINSON: Exactly my point. One thing to one
23 individual and another to another.

24 THE COURT: I think you are invading the doctor's
25 privacy.

26 MR. ROBINSON: I wouldn't want to do that. Excuse

1 me.

2 THE WITNESS: I'll match you card for card.

3 MR. ROBINSON: Well, I don't know, Judge, it seems
4 to me if I was getting \$650, Judge, I'd put my privacy on the
5 line, too.

6 Q (By Mr. Robinson) Doctor, showing you No. 2, what did
7 Mr. Ismail say about No. 2? A He looked at it and said
8 it was a child's top.

9 Q A what? A A child's top, something that you spin.
10 If you turn it upside down and look at the wide space, the
11 inside wide space looks something like a child's top that you
12 would spin with a string.

13 Q Can an individual when he looks at these things, can he
14 turn it any way he wants? A He can indeed.

15 Q No. 3? A He saw two children picking up water at
16 a river.

17 Q Sound reasonable, huh? Okay. No. 4?

18 A He saw a fat person from the back, an X-ray picture.

19 MR. PESTARINO: Let me see it, too, will you, counsel?

20 Q (By Mr. Robinson) No. 5. A Mm-hmm. He saw
21 a butterfly flying from flower to flower.

22 Q No. 6? A Mm-hmm, that is a violin that has been
23 run over by a truck.

24 Q Let me ask you one thing, too, I have been showing these
25 to the members of the jury face on, not upside down or
26 anything, is that the way Mr. Ismail was viewing these?

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1 A They are always presented right side up.

2 Q And you didn't turn them around or anything like that?

3 A No.

4 Q No. 6 is what now? A It is a violin that has
5 been run over.

6 Q By a truck? A Or a vehicle. I have forgotten
7 whether it is a truck.

8 Q No. 7? A No. 7 is two stuffed animals. They
9 are made in the shape of puppies. They are something that
10 children would play with and one of them is a girl and one
11 of them is a boy.

12 Q No. 8? A No. 8 is two bears climbing up fruit
13 trees.

14 Q No. 9? A No. 9 is another X-ray. It is a person
15 who is large, and the X-ray is taken from the front.

16 Q Okay. And finally No. 10? A No. 10 is the
17 pieces of a guitar somewhat scattered. A heavy weight fell
18 on the guitar.

19 Q A heavy weight? A (Nods affirmative.) Something
20 heavy fell on the guitar.

21 Q Now, when you are showing the individual these things
22 you told us before that on the night flight of the bat you
23 questioned him on that. Do you just show it to him and he
24 gives you his immediate response? Or do you question him
25 on those responses? A Ordinarily I would just simply
26 ask and then wait to hear what was said.

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1 Q What did you do in this case? A And write it
2 down. Well, it worked fine so long as I could understand
3 what he said. Of course, I did have an interpreter to help
4 me afterwards. On the one where I asked him about the night
5 flyer I couldn't understand what he was telling me, so we
6 didn't essentially clarify that until the inquiry.

7 Q Let's go back to my term base rates, your term norm,
8 okay? Is there any studies in the field, any opinions that
9 you have read or anything that relates the base rates or the
10 norms, the Rorschach test to somebody's ability to premeditate
11 and deliberate and commit murder? A In this case I
12 think there probably are but I'm not familiar with these
13 studies.

14 Q You're not familiar with them? A I think there
15 is such an extensive literature on Rorschach tests I am sure
16 that somebody has made a study of people who have killed
17 other people.

18 MR. ROBINSON: Then I'm going to make a motion to
19 strike that as something that the doctor doesn't know anything
20 about.

21 MR. PESTARINO: Wait a minute, if Your Honor please --

22 MR. ROBINSON: "I'm sure that there exists."

23 THE COURT: Strike what?

24 MR. ROBINSON: To strike his statement, "I'm sure
25 that there are studies but I don't know about them."

26 THE COURT: That is his answer.

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1 MR. ROBINSON: How can he say he is sure there are
2 studies when he doesn't know about them?

3 THE COURT: Do you want to clarify that, Doctor?

4 THE WITNESS: The literature on the Rorschach
5 probably runs to 10,000 pieces, you know. I would guess
6 that is maybe even a conservative estimate. Or maybe it is
7 an overestimate. My sense is that inasmuch as there are so
8 many psychologists in so many different areas, in corrections,
9 hospitals, other places, somebody probably has done some
10 looking at the Roraschach responses of people who have
11 committed crimes, including murder. I didn't have time to
12 run out to the literature and try to clarify all of this. I
13 used my general procedure in evaluating people.

14 Q My question was, Doctor, have there been any studies
15 done using the Rorschach on somebody's ability to premeditate
16 and deliberate and commit murder, not on somebody that is
17 caught after the fact as to whether or not he did it.

18 A If you are asking me before the case, then I think the
19 answer is, of course no.

20 Q Okay. So by looking at the Rorschach test you can't
21 give us an opinion as to what was going on in somebody's mind
22 whether or not he could premeditate and deliberate to commit
23 murder six months before you gave the test, could you?

24 A I didn't say that. You asked me if anybody had done a
25 study on the Rorschach prior to the commission of a crime
26 and, you know, was there a study which showed that certain

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1 qualities in the Rorschach led to a premeditated killing.

2 Now, that is true, I don't think anybody has done that.

3 Q My question is this, okay, we are dealing with -- you
4 appreciate this, don't you -- that we are dealing with whether
5 or not Mr. Ismail on November the 6th, 1975, had the ability,
6 okay, to premeditate and deliberate and commit murder. You
7 understand that is what the issue is, don't you?

8 A I kind of had the feeling that the assumption was that
9 Mr. Ismail had probably killed this person and the question
10 was: Was it really premeditated or did it happen out of a
11 spurt of emotion? And that is what I have been responding
12 to, with the assumption that the death was probably caused by
13 Mr. Ismail.

14 Q But, wait a minute, so if you thought that was the issue,
15 you would want to look into some research to see if there
16 were any studies done on how somebody responded to the
17 Rorschach, okay? And whether or not those studies went
18 back to seek the person's mental frame, his ability to
19 premeditate and meditate at the time of the commission of
20 the crime? A This is an impossibility. Nobody

21 tests people before they commit crimes to see whether they
22 are going to commit them or not, and I don't know of any
23 great longitudinal studies which have been done to track on
24 children since infancy which would be required. We have
25 done some longitudinal studies but not to that extent I don't
26 believe.

D

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1 Q And there are no, also no studies which have been done
2 on the Rorschach which show that somebody six months before
3 they were given the Rorschach had the ability to premeditate
4 and deliberate to commit murder, are there?

5 A I would be perfectly willing if the judge so desired
6 to search the literature and see what we can discover in that
7 area.

8 Q You were paid six hundred and how many dollars to testi-
9 fy in this case? A I was paid a certain sum to do an
10 evaluation.

11 Q You realized this evaluation would lead to courtroom
12 testimony?

13 MR. PESTARINO: What? I didn't hear the question.

14 Q (By Mr. Robinson) Did you realize that this evaluation
15 would lead to courtroom testimony? A I felt it was a
16 possibility. There was no certainty it would at all.

17 Q And you are searching for the truth?

18 A That is true.

19 Q Okay. So if there was some evidence that you could --
20 you gave the man a Rorschach test? A Yes.

21 Q Gave it to him for a reason? A Yes.

22 Q Okay. And if there was some literature in the field,
23 I take it you are familiar with libraries and how to obtain
24 literature? A Are you asking me that as a question?

25 Q Yes, sir. A Yes, I have been in a library.

26 Q Okay. And you are familiar with how to use the index

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1 in the library? A Absolutely.

2 Q And yet you didn't do it in this case?

3 A Well, I believe that you understood me to say that I was
4 called to do this testing, did it on a week-end after a very
5 short notice and provided a report, my best opinion, you know,
6 with that information, and still think that it is a pretty
7 good opinion, and I am simply saying to you that we can go
8 and study the literature further, you know, if that is
9 desired by the Court.

10 Q Okay. A At this date it is only just a few days
11 since I evaluated this man and this kind of study could take
12 some piece of time. I could maybe spend two or three weeks
13 really exhaustively surveying the literature, which I would
14 be very happy to do.

15 Q What I would like to ask you, also, is, do you do follow-
16 up work on your cases, on the opinions you have rendered to
17 see if, in fact, you are accurate when you rendered the
18 opinion? A Sure. Whenever possible.

19 Q Okay. And that is a desirable practice, right?

20 A Surely.

21 Q Okay. And what are your normal -- your normal cases
22 obviously aren't criminal cases because you have only had
23 a dozen, you said, in 10 years. What are your normal kind
24 of cases? A Would you like to be more specific?

25 Q Well, yeah, what sort of people come in to see you?
26 People with emotional problems that aren't involved with

17
1 crimes, or involved with crimes, or non-criminal? Do you
2 treat them on a continuing basis? What sort of treatment
3 do you normally give?

4 MR. PESTARINO: That sounds like it is compound.

5 THE WITNESS: I'm happy to answer you, if you so wish.
6 A large chunk of my practice has been to do evaluation, and
7 it has been increasing because it seems my results are very
8 much appreciated, and they help people solve problems.
9 Surgeons, oh, like neurosurgeons refer to me head injury cases,
10 pain syndrome cases. I do a fair amount of action with the
11 local medical community doing this kind of evaluation. Or
12 I may work for other psychiatrists who are attempting to
13 testify in a legal matter, and they will ask me to do some
14 kind of evaluation. And that is how I came to do this one
15 because one of the psychiatrists, the man that referred to
16 me is somebody I worked for before.

17 Q So in the other type cases you do follow-up to see if
18 your opinions and conclusions are accurate? A I follow
19 them as long as I can. Some cases I have worked up, like the
20 man that went to McNeill Island, we followed him for five
21 years. Other cases I have worked on in terms of brain
22 injury I have followed for four or five years. And it would
23 appear that my evaluations have been very helpful and pretty
24 accurate in terms of growth and change and all those kind of
25 things.

26 Q (By Mr. Robinson) And it is important to do these

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1 follow-ups to see if you are right or wrong?

2 A It certainly is. A private practitioner has not as
3 much room to do that as a university person.

4 Q Is it sort of hard to be forced to interview somebody
5 in a 3-day span and make a definite conclusion?

6 A The only difficulty is in finding the time. I mean,
7 you know, that you need a certain amount of time to really
8 get enough information to make an evaluation. It takes
9 contact time. If I had done Mr. Ismail over the space of
10 two or three weeks I would have searched the literature
11 some more and might give a more studied opinion. But it
12 would probably be the same one that I arrived at.

13 Q And if you had access to other information such as police
14 reports and things like that, that would --

15 A If it hadn't been on a Saturday or Sunday I would have
16 requested a police report. Inasmuch as I accepted the fact
17 that the man had probably been instrumental in the death of
18 the other person I saw no particular person in that.

19 Q Instead of going to the police reports you went to the
20 newspaper? A I didn't feel privileged to go ask the
21 people on duty there to let me see the records of somebody
22 even though I was seeing him. And I checked the newspaper
23 simply to find out what the reports were at that time to the
24 press, and I checked two newspapers, that's all.

25 Q What I would like to do, I'm almost done, I think you
26 will be glad to hear that, is go through your report a little

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1 bit. A Surely.

2 Q You indicate in your report Mr. Ismail's father died of
3 a heart attack in January, 1974, some month after learning
4 that Patriarch had at age 62 married a 38-year-old Assyrian
5 woman in violation of the -- that is obviously a typographi-
6 cal error -- vows of celibacy? A Yes.

7 Q You got that information from Mr. Ismail?

8 A He told me the age at which the man had married. It
9 was, also, cited in the Chronicle.

10 Q And did you make that conclusion? Did you make a
11 conclusion that the reason his father died of the heart
12 attack is because the Patriarch had married?

13 A Mr. Ismail told me that he felt that the Patriarch's
14 action had something to do with his father's death. And he
15 explained to me that he felt this way because his father had
16 been in Iraq and was in pretty good condition, and then gone
17 to Lebanon, and it was there that Mr. Ismail visited him
18 shortly after this announcement, and his father looked to be
19 in pretty horrible condition.

20 Q So would that provide somebody, if he felt that an
21 individual was responsible for his father's death, would that
22 provide somebody with a motive to kill?

23 A It certainly would produce a lot of anger. Whether it
24 would produce a motive to kill I am not sure.

25 Q And Mr. Ismail felt that the Patriarch's getting
26 married was responsible for his father's death?

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1 A I think he felt that there was some relationship, yes.

2 Q Okay. Now, Mr. Ismail, also, told you that after the
3 Patriarch got married he couldn't work any more?

4 A He said that for a period of time he really was not able
5 to work, about two years.

6 Q About two years? A Yes.

7 Q Okay. And that the reason he couldn't work any more
8 is because the Patriarch got married? A Well, what he
9 said to me was that his thoughts were constantly on this issue.

10 Q On the issue of the Patriarch getting married?

11 A Yes, and the effect on the church.

12 Q And this so affected him that he couldn't work any more?

13 A He said he had an accident because he was so distracted,
14 and he cut his arm rather severely, and at that point he left
15 his job at Ford Motor Company.

16 Q Never went back? A He worked only a few months
17 after that.

18 Q Did Mr. Ismail attribute this, his cutting his arm,
19 having an accident and leaving his job with Ford Motor
20 Company to the fact that, the fact that the Patriarch had
21 married? A He did, indeed. He felt that it was
22 related.

23 Q And as a matter of fact Mr. Ismail made a statement to
24 you that he saw the Patriarch's actions as contributing to
25 his father's death? A Yeah, that is what he said.

26 Q Okay. Now, Mr. Ismail -- strike that.

41 1 Mr. Ismail told you that he flew to San Francisco
2 to look for a small business? A Yes.

3 Q Okay. Did you ever think that maybe he flew to San
4 Francisco to take revenge on the Patriarch because he had
5 lost his job, he thought he had lost his job as a result of
6 the Patriarch, he thought his father died as a result of the
7 Patriarch? Did you ever consider that?

8 A I didn't ask him if he had flown to San Francisco to
9 kill the Patriarch.

10 Q I'm asking you, did you consider it? Does it seem
11 logical and reasonable in light of what you know?

12 A Well, his father had said to him, "Leave the Patriarch
13 to God. Leave him alone." And my understanding of Mr.
14 Ismail is that he really heard his father, and so I did not
15 really think that he had consciously flown to San Francisco
16 to take revenge on his father, no.

17 Q He told you that he visited with Assyrian friends in
18 San Francisco? A Yeah, the Patriarch's family.

19 Q All right. And did you ask him what members of the
20 Patriarch's family? A He told me. I didn't write it
21 down.

22 Q Did you ask him if it was Eshaya Shimun, the Patriarch's
23 cousin? A No, I did not.

24 Q Did you ask him how this member of the Patriarch's
25 family felt about the Patriarch? A No, I did not.

26 Q Would it be relevant, Doctor? Wouldn't you like to

42 1 know? Suppose this member of the Patriarch's family hated
2 the Patriarch, would that be interesting? Would you like to
3 know that? A It is certainly possible. He told me
4 he planned to visit the Patriarch's father and mother. I
5 didn't think they would hate the Patriarch, and so I didn't
6 think to ask him whether the family members hated the
7 Patriarch.

8 Q He told you he planned to visit the Patriarch's father
9 and mother? A That is what he told me. They had
10 visited him in Canada.

11 Q Isn't it true that, I think you just made a mistake here,
12 isn't it true that he told you he had visited the Patriarch's
13 father-in-law and mother-in-law in Canada, not his father and
14 mother? A Well, this may be a communication barrier.
15 I understood him to say father and mother.

16 Q Okay. And if you found out now that the member of the
17 Patriarch's family that he visited was a person who didn't
18 like the Patriarch, okay, coupled with the fact that, you
19 know, that Mr. Ismail didn't like the Patriarch, blamed the
20 Patriarch for his father's death, for him losing his job and
21 everything, those three factors now, would that maybe cause
22 you to change your opinion? A It is not my under-
23 standing that Mr. Ismail hated the Patriarch. He identified
24 him as a spiritual leader, and all he told me in the jail
25 over and over was the shame he felt that the Patriarch was
26 dead.

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1 Q Let me ask you this, is it a common feeling to feel shame
2 when you are on trial for murder? A I think it is a
3 common feeling to feel shame if you really feel guilt and
4 horrible because you have been part of something that you
5 wish you hadn't been part of.

6 Q What about because you have been caught and you are on
7 trial for murder, wouldn't you be ashamed about that, being
8 in jail? A If I were planning to be revengeful I don't
9 think I would show such great remorse. I think it would be
10 consistent to expect from any human being if they really,
11 really had revenge in their heart, this is what you would see.

12 Q Doctor, you have testified that you never examined any
13 people who have been on trial for murder?

14 A That's correct.

15 Q You have never read any books about those sort of things,
16 murder? A I said I have looked at the books.

17 Q Looked at some books. Isn't it a fact that most of the
18 time when you catch murderers and you bring them down to the
19 jail they break down and how sorry they are, how sorry they
20 are they did it, don't you know about that?

21 A I don't accept that as a fact. I have been in and out
22 of the jail a bit. While I may not have studied murderers
23 I have certainly talked to them in the jail to some degree.
24 I don't have the feeling that you are describing that the
25 killer just comes in and falls apart. That is not my
26 picture of the people in the jail.

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1 Q These murderers that you talked to in the jail, when did
2 this occur? A I have been in and out of the jail for
3 the past two or three, four years, and there are certain
4 restricted sections of the jail which I have been exposed to.
5 I was once involved in trying to help change the mood of the
6 jail, make it less probable there would be riots.

7 Q These murderers that you talked to, where and how long
8 did you talk to them in the jail? A Well, it certainly
9 was a brief period, and I am not trying to qualify myself as
10 a big expert on people who kill people. I have talked to
11 people who killed people.

12 Q Say, "Hi, how are you? How's the conditions in here?"
13 You didn't talk to them about their cases, did you?

14 A They certainly -- I can't remember entering any extended
15 discussion with any of them, you know, about their cases.

16 Q All right. Now, Mr. Ismail told you that he planned to
17 go to Modesto to see other members of the Patriarch's family?

18 A That is what I understood him to say.

19 Q Okay. Did he ever tell you that he was going to go to
20 Denver to visit members of his family when he left San Jose?

21 A I don't recall him saying that.

22 Q Did he tell you he was going to Chicago? A No.

23 Q Did you ask him how he was going to get home from San
24 Jose? A Yes.

25 Q How did he tell you he was going to get home?

26 A Going to go home by train.

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1 Q By train? A That is what he said.

2 Q Have you ever taken a train from San Jose to Canada?

3 A Not for a long time. Took one, you know.

4 Q Did you question about that, sort of say, "Well, geez,
5 you flew down here, why are you going home by train"?

6 A Yes, I did ask him that, and he said he wanted to stop
7 and visit people along the way and he was going to take the
8 train.

9 Q Okay. A I mean as we know, in Canada, in Europe, the
10 train is a much more popular way of transportation than the
11 U.S. At least I believe that is true.

12 Q Now, he told you that he felt he must go see the
13 Patriarch in San Jose and tell him that he could not respond
14 to his requests for support? A That is what he told me.

15 Q Okay. And you believed him? A Considering the
16 depth of feeling that he expressed about his church, yes, I
17 do believe he wanted to do that or he felt that he had to.

18 Q Now, at the pizza parlor he had some beer and when he
19 tried to eat the pizza felt ill, he then decided to get his
20 visit over with and went to the Patriarch's home and then you
21 have "parenthesis by taxi close parenthesis"?

22 A Yes, I believe that is what he told me.

23 Q Okay. What do you mean "decided to get his visit over"?
24 Was it a pain for him to do this? Was it hard on him to do
25 this? A He said it was a very difficult kind of
26 feeling to have to confront the man and tell him he did not

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1 wish to support his wish to return as Patriarch of the church.

2 Q Did you ask him why he felt he had to confront the man
3 personally, eye to eye? A It sounded like it was, in
4 a sense it was somewhat a requirement of honor to tell him
5 face to face.

6 Q I asked you not what did it sound like. I asked you
7 did you ask him that question. A I didn't ask him why
8 he couldn't do that by telephone.

9 Q Okay. Now, you told us, also, in your psychological
10 report where it says review of results, "He supplemented his
11 English in testing by speaking Arabic through an
12 interpreter brought for this purpose. In doing so
13 he had a certain presence, an empathy, a spon --"

14 I can't read that.

15 A Responsivity.

16 Q "Responsivity that carried one to Biblical times, i.e.,
17 when religion was the main pursuit of a wakeful
18 mind."

19 Could you elaborate on that for us?

20 A Maybe I wax a little too poetic in my reports. What
21 I'm trying to say, he came alive when he had somebody to talk
22 to that, that he was kind of, like to me, means he couldn't
23 get through to me, when the man came to speak Arabic, and he
24 had seemed to grow, he had more pride, more sense of being
25 there, wasn't so pushed down.

26 Q You say, "One feels there may be some sacrificial

47 1 qualities in the incident in which he is involved."

2 Would you explain that for us, please?

3 A Let's see, are you on Page 9?

4 Q Yes, sir. A What I feel is that David somehow
5 feels manipulated, as if somehow time and events and his own
6 feelings have kind of pushed him like he were hypnotized into
7 a scene where he did something and was thus kind of like a
8 sacrificial goat on which you would load your sins and cast
9 it out of the community. It is kind of the sense I feel
10 about him, as if he were moved and there were no way to stop
11 it. It just kind of rolled through, somehow the events
12 produced the action and he had no control over them.

13 Q Would it, also, be consistent with your sacrificial
14 quality of the incident in which he is involved to somebody
15 saying, "Hey, other people pushed me into this thing. Other
16 people provided me with the means to kill this person. Other
17 people had more to gain than I did but here I am in jail and
18 the other people are out free." Would that be consistent?

19 A It wasn't in my mind. It could be consistent.

20 Q Now, you told Mr. Pestarino that Mr. Ismail should have
21 an interpreter in court? A I felt it would be very
22 helpful.

23 Q And Mr. Pestarino hired you for your professional
24 opinion? A He seemed to.

25 Q And he disregarded that? A That is Mr.
26 Pestarino's choice. It is not mine.

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Q Okay. Now, I got a couple more things on your conclusions, then I'm not going to ask you any more questions. You say, No. 2, "Testing shows an organic impairment, a brain disfunction that would make him more likely to lose emotional control than a normal person. This would probably make him more vulnerable to intoxicants as well."

Probably would, probably wouldn't? You're just saying probably. It's a possibility?

A. Psychologists and psychotherapists don't really deal too much in certainty, as we well know.

Q I'll stipulate to that.

MR. ROBINSON: Counsel, will you stipulate?

MR. PESTARINO: Sure. Anything the doctor says I will accept.

MR. ROBINSON: Figures. Okay.

Q (By Mr. Robinson) "Third, the subject shows warmth, empathy, and sensitivity in testing and personal interaction that appears inconsistent with pre-meditated murder. His emotional intensity is such, however, that when out of control, could lead to violence or death. He is essentially in an unconscious state in the sense of without awareness or control."

Is that once again a possibility?

A. This is indeed a possibility, maybe a high probability.

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1 Q A high probability? A My perception of the man
2 is that he tries to hold his feelings back very tight, and if
3 you break that control it is like breaking a dam. It just
4 goes out.

5 Q Now, "The emotional loading in the discrediting of a
6 sacred kingship, the Patriarchy, and the subsequent
7 death of his father coupled with reportedly extended
8 and excessive drinking could have left this man in
9 an essentially fugue-like somnambulistic state for
10 extended period."

11 Could have? Possibility?

12 A Mm-hmm, indeed.

13 Q "The impression given by the test and interviews is that
14 the subject could have entered such a fugue state
15 during his encounter with the Patriarch and, if so,
16 would not have been fully conscious of his actions
17 and other consequences."

18 Could have?

19 A Correct.

20 Q If you believe his story? A And my evaluation.

21 MR. ROBINSON: Thank you. Nothing further.

22 MR. PESTARINO: I have no questions. Thank you very
23 much.

24 THE COURT: Thank you, Doctor.

25 (Witness excused.)

26 THE COURT: Could we have that one exhibit that is

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1 marked?

2 THE CLERK: No. 34.

3 MR. ROBINSON: That is mine, Your Honor.

4 THE COURT: I just wanted to make sure.

5 THE CLERK: If you don't want the Wexler Intelli-
6 gence Test?

7 MR. ROBINSON: No.

8 THE COURT: Counsel, do you want to approach the
9 bench? Do we want to mark the exhibit on the wall?

10 MR. PESTARINO: Defendant's.

11 THE COURT: I, J and K, Defendant's next in order.

12 (Whereupon, the above-mentioned items were marked
13 as Defendant's Exhibits I, J and K for identification.)

14 THE COURT: All right. Ladies and gentlemen, we
15 will take a short recess. You have been sitting about an
16 hour and a half now. And you will keep in mind the previous
17 admonition. And we will resume at 10 after 3:00, or maybe
18 a little later if we get hung up in chambers. And the
19 defendant will be ordered back, also.

20 MR. PESTARINO: If Your Honor please, excuse me
21 just a minute. Is there a possibility maybe we can go a
22 little later tonight? I have a witness that maybe we can
23 finish.

24 THE COURT: We will see what happens.

25 (Short recess taken.)

26 THE COURT: Let the record show that the jury has

51 1 returned to the courtroom, defendant and counsel are present.
2 You may call your next witness.

3 MR. PESTARINO: I would like to call out of order
4 a witness that I think would be short.

5 Would you call Reverend Ninos Michael.

6 NINOS MICHAEL,
7 called as a witness on behalf of the Defendant, being first
8 duly sworn, was examined and testified as follows:

9 THE CLERK: Take the witness stand, please.

10 DIRECT EXAMINATION

11 BY MR. PESTARINO:

12 Q Reverend, would you state your name and give your address,
13 please? A Archdeacon Ninos Michael, 1623 45th Avenue,
14 San Francisco.

15 Q Would you spell your last name?

16 A M-i-c-h-a-e-l.

17 Q And will you pull that mike towards you a little bit?

18 Reverend Michael, did you know the Patriarch during
19 his lifetime? A Yeah.

20 Q Were you at one time his secretary?

21 A Yes, I was.

22 Q Did you go on a trip with him some time in the early
23 part of August, 1973? A Yes, I did.

24 Q Was that at his request? A Yeah, he asked me. He
25 didn't tell me what was all the trip about. And I accepted
26 to go with him.

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1 Q All right. Where did you go? A We went to
2 Seattle, Washington.

3 Q And did you drive to the airport in Seattle? Did you
4 drive to the airport? A He drove me to the airport.

5 Q He did all of the driving? A Yeah.

6 Q And who did you pick up at the airport?

7 A We picked Emama, his wife.

8 Q Was that the first time that you learned that the
9 Patriarch was going to get married? A Well, it was on
10 Monday, the third day of the trip. And he called me to his
11 room, and he told me that he was getting married. And so he
12 say that --

13 MR. ROBINSON: I'm going to object. I think we
14 should proceed by question and answer rather than narrative.

15 Q (By Mr. Pestarino) Let me ask you this then, you got a --
16 you went to the airport, he drove; is that right?

17 A Right.

18 Q And you took back with you Emama? A Right.

19 Q And where did you stay after Emama? A We stayed in
20 a motel in Seattle.

21 Q All right. And in Seattle did you have occasion to use
22 the telephone? A Yeah, once I called my wife.

23 Q Why did you want to call your wife? A Well,
24 because she was alone and it was the first time I was leaving
25 my wife, so I just wanted to tell her that, to see if every-
26 thing is all right. And that I might be late, two more days,

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1 something like that.

2 Q Did the Patriarch say anything to you? What did the
3 Patriarch do?

4 MR. ROBINSON: What did he do or what did he say?

5 Q (By Mr. Pestarino) Well, first of all, was the Patriarch
6 there when you called your wife? A No, he wasn't. But --

7 MR. ROBINSON: Well, the question has been asked and
8 answered.

9 THE COURT: All right. Counsel, let's take it step
10 by step.

11 MR. ROBINSON: Thank you.

12 MR. PESTARINO: I'm taking it step by step, Your
13 Honor.

14 Q (By Mr. Pestarino) The Patriarch was not there when you
15 got on the telephone? A No.

16 Q Did he later come in? A Yeah.

17 Q And what manner did he come in? Did he knock on the
18 door, shove the door open? A No, he just open the door
19 and he was very mad at me. He knew that I called my wife.

20 MR. ROBINSON: I'm going to object and move to
21 strike that as calling for speculation on the part of the
22 witness, as to what was in somebody's mind.

23 MR. PESTARINO: All right. Strike it.

24 Q (By Mr. Pestarino) He came into the room, he didn't
25 knock? A No.

26 Q He just -- how did he come in? A Just opened the

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1 door and he began yelling at me.

2 Q He began yelling at you? A Yeah.

3 Q How close did he get to you? A Very close, just
4 like this distance (indicating).

5 THE COURT: About three, for the record about three
6 feet.

7 Q (By Mr. Pestarino) What did he do? A Well, he
8 say that you told her. He asked me, did you tell your wife,
9 that he was getting married. And I say to him no, I didn't
10 tell her. And he insulted me with two words.

11 Q With two words? A Two words. Yeah, I still
12 remember them.

13 Q Were they bad words? A Oh, yeah, very bad. I
14 couldn't imagine that the Patriarch would insult his priest
15 with such words.

16 Q What was his demeanor, his attitude while he was yelling
17 at you? Was he -- did he appear calm, mad?

18 A Yeah, even he was shaking his hand, his finger like this
19 in my face (indicating). And he mentioned that if I had
20 told my wife, then he knew what he was going to do with me.
21 That is the exact words he mentioned, the phrase.

22 Q Was he yelling all of this time? A Yeah, he was
23 yelling.

24 Q And what did you do? What did you say to him?

25 A Well, I told him, I told him I didn't, I didn't tell my
26 wife, you know, believe me, and still he was yelling at me.

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1 And then I swear, and I say to him by God, I swear by God I
2 didn't tell her. And then he calmed down.

3 Q All right. Now, did he have occasion to yell or scream
4 at you another time? A Yeah. I remember once more.

5 Q When was that? A That was before his marriage.

6 Q Before his marriage? A Yeah.

7 Q And what were the circumstances at that time? Where
8 was it? A Well, it was at his family's house, he called
9 me one day and I went there, and then he took me to the room,
10 and he had learned that I had told, I had told the chairman
11 of the committee of the church in Chicago that our bishop,
12 Mar Aprim Hormis, would be staying in Chicago. And he
13 mentioned to me that whatever we say and the Patriarch should
14 be sacred, it should be confidential, and you have told the
15 chairman of the committee when Mar Aprim Hormis would be
16 coming to this country he would be staying in Chicago, and
17 he was again mad at me.

18 Q Was he yelling or -- A Oh, yeah.

19 Q You say, "Oh, yeah." What do you mean?

20 A He was yelling, I mean very angry.

21 Q Okay. Now, was there another time when Emama was
22 cooking in the motel that he yelled at you?

23 A Yeah, that was when he, I mentioned that when he calmed
24 down then we went to have dinner in the other room, and
25 Emama asked me if I give the phone number of that motel to
26 my wife, and I said, "Yes, I did." And when he heard it,

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1 that I have given the phone number, he was again mad at me.

2 Q You say, "mad at you." How did he look? What did he
3 do? What did he say? A Well, then later I mentioned
4 to him, well, I told him, "Your Holiness, I'll go to the
5 phone and I'll call my wife again and I will tell her that
6 we are moving from this motel to another motel and disregard
7 the phone number." And he came with me and he stood above
8 me, and while I was calling my wife he was just listening to
9 what I say. And at that time he knew that I was talking with
10 my wife. And I mentioned that we are leaving the motel so
11 just ignore that phone number.

12 Q By the way, did you learn that the Patriarch was
13 getting married? A No, I learned on Monday.

14 Q You learned -- A Just three days before his
15 marriage.

16 Q Did you marry him? A Yes, I did.

17 Q How did you feel about this? A Well, I felt
18 terrible the day I married him. And I refused all of the
19 way. But what -- of course, at that time I wasn't familiar
20 with the canons of the church. And I was very faithful to
21 him. And I used to think whatever he says it is true. And
22 what he mentioned about that, the canon of the church, he
23 say that in the 6th century the Patriarch, the Patriarch by
24 the name of Mar Abba ordered or commanded the prelates not
25 to marry. "And I am a Patriarch like him and I can just
26 abolish that law," or is, you know.

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1 Q And so did he order you to marry him? A Yeah.

2 Well, he told me that I am an archdeacon and I have to obey
3 what he has to tell me.

4 Q And you did it? A Yes, but still I was to the
5 last minute protesting, you know, and telling him that I
6 didn't do it willingly.

7 MR. PESTARINO: Thank you. That is all I have.

8 CROSS-EXAMINATION

9 BY MR. ROBINSON:

10 Q Yes. Reverend Michael, how long have you been in the
11 church in San Francisco?

12 MR. PESTARINO: Excuse me, counsel, may I have one
13 more question.

14 One more question. Were you able to talk to the
15 Patriarch in a conversational voice? In other words, could
16 he hear you?

17 THE WITNESS: Oh, sure.

18 MR. PESTARINO: Any problem with his hearing? Did
19 he ever express it?

20 THE WITNESS: Not to my knowledge.

21 MR. PESTARINO: And how long have you known him?

22 THE WITNESS: Since December, '72.

23 MR. PESTARINO: Thank you.

24 BY MR. ROBINSON:

25 Q Now, how long have you been in San Francisco?

26 A Since December, '72.

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1 Q I am going to ask you if you know some people, okay?

2 Do you know Mr. Yule Lazar? A No.

3 Q Okay. Kitty Benjamin? A No.

4 Q Okay. You look -- A What you mean by knowing
5 them? I know too many people, you know.

6 THE COURT: You know who they are?

7 THE WITNESS: Who they are? No, I know just people
8 by their names. I have known Kitty as Kitty, I mean, with-
9 out anything else, you know, because I have seen her at
10 church once or twice and one of the dinners, something like
11 that.

12 Q (By Mr. Robinson) You know her to talk to her?

13 A I have talked with her maybe just, I have talked with
14 her on the phone when she knew about the marriage. She just
15 called me and she was surprised, you know, about the marriage,
16 and I can remember that, you know.

17 Q And when did this take place? A That was just
18 after his marriage.

19 Q This in Seattle? A No, in San Francisco.

20 Q When you returned to San Francisco. Okay. Would you
21 say that when the Patriarch got married he was getting old?

22 A When he got -- I didn't catch your question.

23 Q Yes. Had the Patriarch, was he pretty old when he
24 got married? A He was pretty old?

25 Q Yes, sir. A He was 65 years old.

26 Q And prior to his getting married he lived where?

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1 A He lived in, on Arballo Drive in San Francisco.

2 Q When did he live in Park Merced? A I don't know.

3 When I came to San Francisco he used to live in that area on
4 Arballo Drive.

5 Q Did you know that he had moved to Park Merced?

6 A When he moved?

7 Q Yes. A Sure.

8 Q When did he move to Park Merced? A He moved
9 there, the last day was when he packed up, and I was helping
10 him with the packing, and I didn't know that he was leaving
11 to San Jose. But I know he was, that was the last day, you
12 know.

13 Q So you helped him move from where? Park Merced or
14 Arballo Drive? A No, I mean, we were just, were
15 helping him, not myself but even his brothers, we were
16 helping getting the things arranged and put them in boxes.

17 Q Yeah. My question is, Reverend, from what address?
18 From Park Merced or from Arballo Drive? A Arballo
19 Drive. I am talking Arballo Drive.

20 THE COURT: Is it Arballo or Arballa?

21 THE WITNESS: A-r-b-a-l-l-o.

22 Q (By Mr. Robinson) And that is in Park Merced, isn't it?
23 Do you know Park Merced? A I think it is in that
24 area.

25 Q Okay. And he lived there by himself? A Yes.

26 Q Okay. And how long did he live in Park Merced by

60 1 himself? Do you know? A I don't exactly, how many
2 years.

3 Q Well, in any event, when you came to San Francisco in
4 1972 was he living there? A Was living on that address,
5 yeah, 554 Arballo Drive.

6 Q And is that a series of apartments, little townhouses
7 all connected together? A Yeah, they are connected
8 together. It's like --

9 Q It's like a community sort of living? A Yeah,
10 something like that.

11 Q Big apartment complex? A Like apartment, yeah.

12 Q Now, how is it that you came to San Francisco?

13 A Well, I was ordained a deacon in Chicago, and then this
14 last visit when I was in Chicago he asked me if I am going
15 to be a priest, you know, and so I accepted that, and then I
16 came on that date, December 7th, I was consecrated as priest
17 in San Francisco.

18 Q Okay. And were you the only priest in San Francisco?

19 A Yes.

20 Q Of the Church of the East? A Yes.

21 Q Now, when you were in Chicago how long were you there?

22 A I was there from March, '71, until the day I moved on
23 December.

24 Q And are you familiar with the person named Sargis
25 Michael? A Sargis Michael, no.

26 Q That is no relation to you? A No.

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1 Q Okay. Are you familiar with the Patriarch's cousin
2 Eshaya? A Yes.

3 Q And isn't it true that after the Patriarch got married
4 his cousin Eshaya didn't like him any more? A Yes.

5 Q How did you know that? A Well, he gave his
6 opinion in the church committee.

7 Q That is Eshaya? A Yeah.

8 Q How did you feel about the Patriarch after he got
9 married? A Of course I didn't approve that.

10 Q Okay. Do you approve of it now? A No.

11 Q Okay. Is it fair to say that you are hostile toward
12 the late Patriarch? A Well, I didn't, I didn't hate
13 him, but I hated the thing he did because he actually divided
14 the church.

15 Q Okay. Now, are you familiar with the group called the
16 Assyrian Universal Alliance? A No.

17 Q Never heard of it? A I have heard about Assyrian
18 Alliance, but I don't know what are they or what they want.

19 Q Okay. When the Patriarch -- let's see, he yelled at
20 you up in Seattle? A Yes.

21 Q All right. And this was right before or right after
22 he got married? A That is before he got married.

23 Q Do you think he was a little nervous? A Yes.

24 MR. PESTARINO: Well, that is -- all right. Pardon
25 me. Go ahead.

26 THE COURT: Go ahead.

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1 Q (By Mr. Robinson) Nervous? A Yeah, he was upset.

2 Q Okay. Were you a little nervous before you got
3 married? A I was nervous?

4 Q Sure. A No.

5 Q Not apprehensive at all? A No.

6 Q Okay. When he yelled at you up in Seattle did he hit
7 you? A No.

8 Q Did he kick you? A No.

9 Q How big a man was the Patriarch? A How big?

10 Q Yes, sir. Was he a strong man? Was he an older man?

11 A No, well, to my knowledge as I have seen him, he was
12 strong man, I would say.

13 Q A strong man? A Yeah.

14 Q Okay. For being 66 years old? A Yes, I guess
15 he was up to date, I mean, he was took exercises.

82 16 Q Did the Patriarch spit in your face? A No.

17 Q Now, I take it that the Patriarch had told you not to
18 tell anyone he was getting married? A Yes, he did.

19 Q And when he saw you on the phone he thought you were
20 telling somebody? A Yes.

21 Q That he was getting married? A Yes.

22 Q Now, the next time he yelled at you you were at his
23 family's house? A Yes.

24 Q All right. And where did his family live?

25 A They live in Daly City.

26 Q Daly City? A Mm-hmm.

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1 Q Okay. And the reason that he yelled at you this time
2 was what? A Well, I mentioned that too, I mentioned
3 that before.

4 Q Well, can you just tell me? A Well, he knew from
5 the priest of Chicago that I have told the chairman of the
6 committee that Mar Aprim Hormis, the bishop is going stay in
7 Chicago, his place is going to be in Chicago, and for this
8 reason he say that anything we say should be confidential,
9 you shouldn't have told.

10 Q Where was Bishop Hormis coming from? A From Bagdad.

11 Q And was that to be his permanent church in Chicago?

12 A Yes.

13 Q Okay. And had the Patriarch given him orders to go to
14 Chicago? A Well, in his epistle he had mentioned that
15 he would like Bishop Mar Hormis to be the bishop over the
16 United States Diocese.

17 Q And had anybody criticized him for that?

18 A Not to my knowledge.

19 Q Who was the bishop in Chicago before Aprim Hormis took
20 over? A We didn't have any bishop.

21 Q And did the Patriarch think that perhaps you were
22 letting, so to speak, the cat out of the bag before he had
23 announced this to the church about Aprim Hormis going to
24 Chicago? A Maybe, probably. I don't know.

25 Q Now, when he yelled at you this time, how mad was he?

26 A Well, he just, he was very angry and upset.

1 Q Because he felt that you had let out a church secret?

2 A Well, I wouldn't consider that secret.

3 Q But he did? A Yeah. I don't know.

4 Q And he was the leader of the church? A Yes.

5 Q Okay. Did he spit in your face this time?

6 A No.

7 Q Did he hit you? A No.

8 Q Did he kick you? A No.

9 Q Would it be fair to say that you in -- a term, I don't
10 know if we can use this term -- in the clergy worked for the
11 Patriarch or were his subordinates? In other words, he was
12 the boss and you were down below him? A Yes.

13 Q Okay. Now, you told us that when you married the
14 Patriarch you felt terrible? A Yes. To the point I
15 was going to resign.

16 Q Okay. Was there another clergyman who also performed
17 the marriage in Seattle? A Well, only the -- I was the
18 only one who performed the marriage. But we have a priest
19 there, an American priest in Seattle, too.

20 Q What is his name? A Michael Birnie.

21 Q And is he an ordained priest in your church?

22 A Yes.

23 Q Could he have performed the marriage? A Yes.

24 Q And did he participate in the marriage, Michael Birnie?

25 A No, he was just best man.

26 Q He was the best man. Okay. Now, you told us that at

65

1 the time the Patriarch was married, you said, "Of course, at
2 that time I wasn't familiar with the canons of the church"?

3 A Mm-hmm.

4 Q It sort of shocked you, I take it, when the Patriarch
5 said he was going to get married? A I was shocked.

6 Q Then once you became familiar with the canons of the
7 church did you realize that it wasn't against the law for the
8 Patriarch to marry? A Well, this question I can't
9 answer you exactly because, well, some bishops think -- I
10 haven't seen myself the canons -- what I have heard I have
11 heard from the bishops, and there are opinions of the bishops,
12 you know, some they think that it is a law.

13 Q Okay. Let me ask you this, Reverend Michael, did the
14 Patriarch resign as Patriarch from the church prior to his
15 getting married? A Yes, he did.

16 Q Okay. And do you know why he resigned?

17 A Well, the reason he gave to everybody that he was tired,
18 you know.

19 Q Okay. He had served long enough? A Yeah.

20 Q And when the Patriarch resigned did various bishops from
21 other countries and bishops from this country and priests
22 convince him to stay on as leader of the church?

23 A Yeah, they asked him not to resign.

24 Q And that was because he was doing a good job?

25 A I don't know about that. But they didn't, what they
26 mentioned, that they haven't the right one to take, there

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1 isn't anybody to take his place right now.

2 Q And so the Patriarch indicated that he would stay on for
3 about six months until they could find somebody to replace
4 him? A Yeah. Well, he say six months, you know.

5 Q When the Patriarch resigned were you in favor of that?

6 A No.

7 Q You didn't want him to resign? A No.

8 Q Did you talk to him about staying on? A Yes, I
9 did.

10 Q And you convinced him to stay on, also?

11 A Well, the Patriarch, once he used to make up his mind
12 that is it. You know, he wouldn't listen to anybody.

13 Q All right. But he did listen to the bishops because
14 he said, "I'll stay on," right? A Well, there were
15 too many things, you know. Even the government, you know,
16 of Iraq and Iran, they asked him to stay.

17 Q All right. Everybody wanted him to stay?

18 A Yeah, it was not only --

19 Q Now, when he resigned initially you wanted him to stay,
20 so the fact that he had yelled at you that one time didn't
21 influence you at all? A No.

22 Q Just something like a guy yelling at somebody else
23 because he is mad for a split second because he felt the guy
24 did something wrong? A Right, I wasn't --

25 Q No big deal. All right. Now, after the Patriarch
26 got married I take it there was a great outrage in the

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1 Assyrian community? A Yes.

2 Q Okay. And did the Patriarch at that time publish a,
3 I think the word is encyclical? A Epistle.

4 Q Epistle. Thank you. Outlining his position as to why
5 he could get married and there was no law against it?

6 A Yes, he did.

7 Q Okay. And did the people eventually accept that?

8 A No.

9 Q Did the bishops accept that? A Not all of the
10 bishops.

11 Q All right. Did the bishops who had any say in the
12 church accept that?

13 That is a bad question. Excuse me. Did some
14 bishops come from Lebanon and the Middle East and meet with
15 the Patriarch and say, "All right. Even though you are
16 married we still want you to stay on as leader of the church"?

17 A Yeah.

18 Q Okay. Now, you were very close to the Patriarch, I
19 take it? A What do you mean? How close?

20 Q Well, that is what I am asking. How close were you?

21 A Well, it was just relation between priest and Patriarch.
22 I would see him when he wants me to see him.

23 Q Do you know Mr. Fred Kelaita? A Yes.

24 Q Would you say that you were closer to the Patriarch than
25 Mr. Kelaita? A No, I think he was more close.

26 Q Okay. November the 19th, 1975, did that day have any

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1 special significance to you? A 19th?

2 Q Yes, sir, of November. A Yeah. I heard that
3 there would be a meeting in Seattle, I guess.

4 Q All right. And this meeting was to be with the
5 Patriarch and the bishops? A Yeah.

6 Q Were you invited to that meeting? A No.

7 MR. ROBINSON: Thanks, Reverend. I don't have
8 any further questions.

9 MR. PESTARINO: One more question, or two.

10 REDIRECT EXAMINATION

11 BY MR. PESTARINO:

12 When you were in Seattle and he came in while you were
13 on the telephone, and you testified that he gave you two bad
14 words, didn't you? A Yes.

15 Q Have you ever heard him speak like that before?

16 A No.

17 Q Were those words very bad? A Yes.

18 Q How did you feel? A I just couldn't imagine that
19 the Patriarch would tell a priest such words.

20 MR. PESTARINO: That's all. Thank you.

21 MR. ROBINSON: I'm sorry, but I am going to have to
22 ask the \$64,000 question.

23 RECROSS-EXAMINATION

24 BY MR. ROBINSON:

25 Q And Reverend, I think you have dispensation --

26 MR. ROBINSON: Doesn't he, Your Honor, if he is on

1 the witness stand?

2 Q (By Mr. Robinson) -- can you tell us what those words
3 were? Maybe say it. Did he say in English or Assyrian?

4 A No, Assyrian.

5 Q Assyrian. Could you tell us what the words were?

6 A Yeah, it was, one it was donkey.

7 Q Called you a donkey? A Yeah. And bull.

8 Q And a bull? A (Nods affirmative.)

9 Q Okay. Did you ever hear the Patriarch, did you ever
10 hear the Patriarch speak Turkish? A No.

11 MR. ROBINSON: Thank you. I have nothing further.

12 REDIRECT EXAMINATION

13 BY MR. PESTARINO:

14 Q The words donkey and bull, to you, an Assyrian priest,
15 what significance does that have to you as a priest?

16 A I say that something unbelievable, that the Patriarch
17 could say such things, such words, especially for a priest.

18 Q And did he yell those words?

19 A Yeah, he was, he was going even to hit me maybe.

20 MR. ROBINSON: I'm going to object and make a motion
21 to strike that.

22 MR. PESTARINO: Wait a minute --

23 THE COURT: No. Overruled. You can go into that.
24 You went into it on direct.

25 Q (By Mr. Pestarino) You say he was going to hit you

26 maybe? A That's what I thought because he was so mad,

70 1 you know, he just came as if he is going to hit me, and when
2 I swear he calm down.

3 THE COURT: When you took the oath that you had not
4 said that?

5 THE WITNESS: Pardon me?

6 THE COURT: You mean when you took the oath that you
7 had not told your wife?

8 THE WITNESS: Yeah, then he calm down.

9 MR. PESTARINO: That's all.

10 RECROSS-EXAMINATION

11 BY MR. ROBINSON:

12 Q Did he swing his fist at you? A Yeah, he was just
13 like this (indicating).

14 Q With his finger. Okay. And I am just trying to guess,
15 but did he say something like, "You're as stupid as a donkey
16 and stubborn as a bull"? Would that be a fair translation?

17 A No. Well, in Assyrian it's very hard to accept such
18 words, you know.

19 MR. ROBINSON: Okay. I have no further questions.

20 MR. PESTARINO: Thank you very much.

21 THE COURT: Thank you very much, Reverend. You
22 are excused.

23 MR. ROBINSON: I'm sorry, Reverend. Can I ask you
24 just a couple more?

25 Q (By Mr. Robinson) Reverend, did you ever have any
26 correspondence with David Ismail? A No.

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1 Q Did David Ismail see you at all when he was in San
2 Francisco? A Well, he came to the church, and I just
3 say hello to him, that's it.

4 Q Do you know who he was? A Well, yes, I have seen
5 him in Chicago, but not I mean talk to him, from the people
6 that they had mentioned that he is David, you know, that's it.

7 Q And when you saw him at the church were you surprised?

8 A No, I thought he was in San Francisco for a visit,
9 something like that.

10 Q You knew he lived in Canada? A Exactly, no, I
11 didn't know that he lives in Canada.

12 Q Did you ask him what -- had you ever seen him at the
13 church before? A Where? In San Francisco?

14 Q Yes, sir. A No.

15 Q Okay. Did you ask him, "Hey, what are you doing down
16 here"? Anything like that?

17 A No, formal something, "Hello," that's it.

18 Q Was that at the breakfast? A Yeah, in the basement
19 of the church.

20 Q And did you see who he was with at that time? Was he
21 with Eshaya? A With Eshaya?

22 Q Yes. A No, he was with his mother.

23 Q With his mother? A He was talking with his mother
24 when I said hello.

25 Q With whose mother? A Eshaya's mother.

26 MR. ROBINSON: Thank you. I don't have anything

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1 further.

2 MR. PESTARINO: That's all. Thank you very much.

3 (Witness excused.)

4 MR. PESTARINO: Call Dr. Rapaport.

5 WALTER RAPAPORT,

6 called as a witness on behalf of the Defendant, being first
7 duly sworn, was examined and testified as follows:

8 DIRECT EXAMINATION

9 BY MR. PESTARINO:

10 Q Doctor, I'm just going to ask you a few preliminary
11 questions. First of all, will you state your name, please,
12 and give your address? A Walter Rapaport, R-a-p-a-p-o-r-t.

13 My office address is 460 34th Street, Oakland, California.

14 Q And you are a licensed medical doctor in the State of
15 California, are you not? A Yes, I am.

16 Q And you specialize in psychiatry? A Yes, sir.

17 Q Now, will you take about a half hour and tell us your
18 qualifications? A Well, after receiving a Bachelor of
19 Science Degree from Georgetown University, I received my
20 Doctor of Medicine Degree from the same school in 1919. In
21 the meanwhile I had quit school to join the Army in the first
22 World War, and the Army turned around and sent me back to
23 school, so I returned to Georgetown. I lost about three
24 months. I am licensed to practice medicine in the District
25 of Colombia. I served an internship and residency in
26 psychiatry at what was known then, known as the Washington

3
1 Asylum, which is now called the District of Colombia Hospital,
2 and which is equivalent to our county hospitals, the District
3 having no counties. While I was there I qualified as a
4 so-called expert in psychiatry before the Federal courts of
5 the District of Colombia. And I practiced there for a little
6 while, and I had been commissioned in the Reserve Corps of
7 the United States Public Health Service, and pursuant to that
8 commission I was sent to a hospital in Maywood, Illinois,
9 where my mission was to help establish a department for
10 treatment of psychiatric disabilities in the military service
11 of World War I. I was supposed to stay a year; I stayed
12 68 months. While there I took the examination to practice
13 medicine in Illinois. I was licensed. My license is still
14 alive. In 1926, the summer, I was appointed to the teaching
15 staff of the Northwestern University Medical School in the
16 Department of Psychiatry. And I taught there the school
17 years of '26-'27 and '27-'28. I resigned my commission in
18 what was then the U.S. Veteran's Bureau effective November
19 the 15th, 1927. I continued my teaching at Northwestern,
20 was appointed to what was called the Lunacy Commission of
21 Cook County, Illinois, which is similar to the commission of
22 doctors appointed by our courts here in California for the
23 purpose of advising in the cases of alcoholism, drug addiction,
24 sexual psychopathies, mental illness or absence, commitment
25 to hospitals, and so on. I served on that commission until
26 June, 1928, when in response to an invitation from the State

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1 of California I came to California. I was appointed a
2 member of the psychiatric staff of the Mendocino State
3 Hospital, which is the State hospital for the care, treatment
4 of mentally ill, nervous cases, drug addiction, so-called
5 criminals, so-called insane criminals. And I accepted that
6 job and, of course, quit my teaching appointment at North-
7 western, also, at the end of the school year, 1928. I took
8 the examination to practice medicine in California at that
9 time. I passed it and I was licensed, and the license is
10 still alive and valid. At the end of 1929 I left my position
11 at Mendocino, came to Oakland, California, opened an office,
12 and I practiced medicine here January 1st or 2nd of 1930 until
13 the spring of 1934, restricting my work to psychiatry. I
14 returned to Mendocino and served at Napa, and in 1939 I was
15 appointed superintendent and medical director of the Mendo-
16 cino State Hospital.

17 Around the middle of December, 1941, I, like a lot
18 of other people in our State, received a letter from the
19 military telling me there was a war on, and I had four days
20 to get on active duty. And on December the 17th, 1941, I
21 entered active duty, United States Navy. I served until
22 January, 1946, I think it was the 21st, and had attained the
23 grade of captain, United States Navy. I was returned to
24 inactive duty, returned to my superintendency at Mendocino,
25 and I asked to be transferred to Agnews. I was transferred
26 to Agnews and assumed duties here October the 1st, 1947.

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1 In November or December of 1953 the Governor asked
2 me to assume the directorship of the Department of Mental
3 Hygiene for the State of California, and I accepted the
4 appointment and took office on December the 1st, 1953. I
5 served in that capacity until I resigned my office and
6 returned to Agnews as of September the 1st, 1957. I remained
7 at Agnews until I was retired, having reached the statutory
8 age of retirement at the end of August, 1965. I returned to
9 my office in Oakland and resumed practice as a consultant
10 in psychiatry. And that is what I am doing now.

11 Now, at the hospital, in Federal and State, as a
12 staff member I did whatever other staff members did. I
13 examined patients. I treated them. I attended staff
14 meetings, discussed matters of interest to us as physicians,
15 psychiatrists. As superintendent of the State hospital in
16 addition to continuing my active interest in the patients I
17 saw visitors, I attended meetings with the other superinten-
18 dents, I attended meetings of a psychiatric nature throughout
19 the country, and I attended staff meetings at my hospital as
20 well as the other hospitals. As director of mental hygiene
21 I had cognizance of all of the State hospitals in the State
22 of California to the mentally ill and the mentally retarded,
23 and the out-patient clinics in California, and had jurisdic-
24 tion at the University of California Medical School, what was
25 then called the Langley-Porter Clinic and the psychiatric
26 clinic at U.C.L.A. The University and I, as director, had

1 half jurisdiction. In all of the cases where I have
2 practiced since I have been a physician I have kept up my
3 interest and work as well as I could, my knowledge of the
4 practice of medicine, especially as it relates to psychiatry.
5 In the Navy, in addition to doing active duty, always of a
6 psychiatric nature for 18 months, as an additional duty I
7 was ordered to assist the Judge Advocate in matters which had
8 to do with psychiatric problems, responsibility, competency,
9 drug addiction, sexual offenses, mental illness, nervous
10 illness, so on.

11 I am certified as a specialist by the American
12 Board of Psychiatry and Neurology. And when that Board
13 meets in California I serve on the examining board. I have
14 qualified as an expert in over half of the counties in
15 California, including this County. My work, as a rule,
16 went down to Ventura County, but I have also been in, I guess,
17 Inyo County and Los Angeles County, and in the Federal courts,
18 the Second District of California, which is in Los Angeles,
19 and the district in San Francisco, and in the District of
20 Sacramento in cases in which I was appointed to examine and
21 to testify. And, also, I have been called as an expert,
22 qualified in the States of Alaska, Texas, New York, Illinois,
23 Idaho, Nevada, and I guess that is it. And I still go to
24 Nevada, still come to courts in California. And most of my
25 cases, I am called by the Court, the Federal as well as State.
26 The remaining cases I am called about 50 per cent by the

77 1 People and by the defense. I examine for anybody. But
2 whether I testify or not, of course, depends on counsel. And
3 that extends over a period of over 50 years, probably around
4 55.

5 I think that about covers my experience and training
6 in the field of psychiatry.

7 Q Let me ask you a few preliminary questions, Doctor. In
8 your vast experience as a psychiatrist have you treated
9 people who had drinking problems? A What?

10 Q Drinking problems, alcoholic problems?

11 A Yes, sir.

12 Q Many of them? A I would say they'd run into the
13 hundreds, probably in the thousands.

14 Q And have you treated people who had epilepsy or some
15 brain damage? A Yes, sir.

16 Q Now, at my request, Doctor, I believe you examined the
17 defendant here, David Ismail? A Yes, sir.

18 Q Did you not? A Yes.

19 Q And you might have to look in your little black book.

20 Can you give me some dates? A I examined Mr. Ismail

21 first on January the 22nd, 1976, and the second time on

22 January the 23rd, 1976. Both times I saw him in the County
23 Jail situated here in San Jose.

24 Q And at that time I had briefed you on some facts, did I
25 not, concerning his arrest? A You told me certain
26 things, and I respectfully listened to you. And frankly, it

1 didn't persuade me one way or another as to what my opinion
2 should be.

3 Q Okay. What kind of a history did you take from David
4 Ismail? A I took a history relating to his life, his
5 experiences, injuries, his relationships to his mother and
6 father, hospitalizations, education, hopes and desires,
7 dreams of what he wanted to make of himself and the life he
8 wanted, of his religious tendencies, devotions. And I think
9 I pretty well covered his life.

10 Q Okay. Did he at one point tell you that for the most
11 part he was raised or reared by his father? A Yes, sir,
12 he did.

13 Q And what did he say about his father?

14 A His father was, I think, the top general of the armies
15 in the country in which he lived. And frankly, I think it
16 was either Iran or Iraq, but it was a foreign country. And
17 he told me that he lived almost exclusively with his father
18 up until the time he came to Canada which is a few years ago.
19 He had married in the meanwhile. His life ambition, he told
20 me, was to go in the army and follow in the footsteps of his
21 father to whom he was devoted, and also devoted to his
22 religion. He used to get up, he told me his father awakened
23 him every morning 3:30 and they went to church. I tried to
24 find, did that irritate him, displease him. Most of us
25 would not too well accept that. No, he was -- father said
26 so, that's the rule. And he went. Read the Bible every

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1 day, and he became a very devout member of the church to which
2 he belonged.

3 Q Now, Doctor, talking to him did you gather that his
4 relationship with his father was very close?

5 A His relationship to his father was very, very close.
6 He said he loved his mother, also, but he spent very little
7 time with his mother, only because he was with his father
8 who was traveling around the different military missions and
9 he liked that because that is what he wanted to be himself.

10 Q Did he talk to you about guns? A He told me that
11 he was, became very familiar with guns. He had a number of
12 them in his home. Of course, around him in the military
13 camps there were a lot of guns, and he got to know them
14 pretty well. And he showed what I would say would be a
15 normal interest of a person who was in or planned to be in
16 the Line Department of a military organization, and that was
17 his hope.

18 Q And did he tell you that that interest in guns carried
19 over when he moved to Canada? A He told me he brought
20 some guns over with him, that he had them in his home in
21 Canada, that he was interested in them. He liked to have
22 them about him.

23 Q What do you mean "have them about him"?

24 A In the house, around where he was. I questioned him
25 very carefully on that point to see if he ever had any intent
26 to utilize the guns in a wrongful or illegal or a way that

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1 would be damaging to somebody whom he thought had done him
2 a wrong or had done anyone else a wrong, and he said no, no,
3 that never occurred to him. I asked him if he brought a gun
4 with him when he came down to California this last time. He
5 said no, he did not bring a gun with him, he had no use for
6 it.

7 Q Did he tell you that he carried guns on his person various
8 times? A On what?

9 Q On his person. A Yes, he did. He did a lot of
10 target shooting. That is what he told me. And he did a
11 lot of hunting. I don't know what for, but not for human
12 beings. He was never in the -- yes, he was, he was in the
13 military for about a year and a half as a compulsory military
14 service which was part of the law of the country in which he
15 lived for every male citizen.

16 Q Well, did he tell you that the army had rejected him as
17 a -- A He did so.

18 Q -- soldier? A This, of course, was very terrify-
19 ing and humiliating to him and very disappointing to him
20 because that is all he looked forward to, was being in the
21 army. Now he is told that he is not acceptable. He was
22 ashamed to begin with because his friends were all in the
23 army, and it was known generally that is what he wanted. And
24 now he couldn't have it. And this, I think, was the first
25 great disappointment, at least that I could uncover, in his
26 life.

Q All right. Now, did he tell you, also, that he had

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1 certain illnesses or accidents? A Yes, he did.

2 Q Would you tell us what he told you? A He told me
3 at a very young age he was out playing with the other children
4 and he ran into a telegraph pole. He was rendered
5 unconscious and believes that he was unconscious for maybe
6 an hour or so. Some of the other children, I think, told
7 his father, and he was taken to the hospital. He remained
8 in the hospital a few weeks and then went home. And after
9 coming home and becoming apparently rehabilitated from the
10 acute injury he returned to school. And he found that his
11 memory was impaired. He wouldn't remember the next day what
12 the teachers have told him the day before. He wouldn't
13 remember the prayer which he read which is, he read every day.
14 He couldn't remember it. And finally he had to quit school.
15 And he also told me that he had several periods of unconscious-
16 ness later in his life.

17 Q Did he tell you about a car accident in, some time in
18 the, well, some time when he was in his twenties or thirties?

19 A He told me he was injured and again he had a period of
20 confusion.

21 Q All right. Also did he talk to you about any fevers
22 that he had or illnesses? A He had several illnesses
23 which were characterized by fevers and confusion.

24 Q Okay. A Throughout his life after the injury.
25 I think his history was pretty negative before that early
26 injury when he ran into the telegraph pole.

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1 Q Now, I suppose he told you about his marriage?

2 A Yes, sir.

3 Q And did he tell you about working at the Ford plant?

4 A He said he came to Canada and obtained the position at
5 the Ford plant. He liked his new home. He liked his work.
6 He had only one incident in which there was some difference
7 between a foreman and himself in which he was laid off for
8 a few days. And he went to the foreman and he apologized,
9 he said, and explained to him that it was not an intent, he
10 didn't intend to do what apparently he had done. And the
11 foreman put him back to work immediately. And as far as I
12 can understand, as far as I could uncover he had no other
13 difficulties at work until the Patriarch was married.

14 Q Yeah. I was going to get to that. You talked to him
15 about the marriage of the Patriarch then, didn't you?

16 A Yes, sir.

17 Q And what impact did this marriage have upon David Ismail
18 personally? A Well, as I think I said before, he was a
19 very devoted person to his church, and he told me any number
20 of other members of the church were very upset, and he was
21 especially upset by the Patriarch, and he said against the
22 rules of the church, which he compared to the Roman Catholic
23 Church, was a sin for him to get married. And this upset
24 him very much because the Patriarch was placed in office and
25 kept in office largely because of the intercession of his
26 father, the general, in the behalf of the Patriarch on

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1 occasions when the general membership didn't approve of him,
2 didn't want him and wanted to kick him out. And this made
3 an impression upon him, the fact that the Patriarch had
4 violated what he called one of the most sacred rules of the
5 church. And in addition to that, I think his father died
6 within a year or two after that, and he developed the idea
7 that his father's death was in some way forced earlier than
8 it should have been by what he called the sin of the Patriarch
9 because the father was the one that kept him in office.

10 Q Okay. A And so he had two things: One, his own
11 impression that the head of his church had committed an
12 unpardonable sin; and because he felt that his father's
13 death was hastened by that experience, not his experience
14 but the father's experience of the Patriarch doing this thing.

15 Q Now -- A And I also might say that he had a
16 habit, also, of drinking too much. This he volunteered.
17 He said, I think he drank some kind of whiskey. I'm not
18 sure.

19 Q Johnny Red? A Probably. And also beer. But he
20 drank occasionally too much, at least too much for him, and
21 he admitted that, he didn't deny that and I had to drag it
22 out of him.

23 MR. ROBINSON: Did you say you had to drag it out
24 of him?

25 THE WITNESS: No, didn't have.

26 Q (By Mr. Pestarino) Now, did he tell you that his

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1 drinking commenced after the marriage of the Patriarch?

2 A No, he said his excessive drinking started before that.
3 He drank, I think, maybe a period of years, I don't know, but
4 not to excess. It was not at a problem stage. But after
5 he learned that the Patriarch had married he quit his job.
6 He hasn't worked a day since. He couldn't sleep well. He
7 was depressed. He had periods in which he apparently lost
8 his temper and destroyed some furniture, but never did any
9 personal harm to anyone, to a human being. And he felt that
10 to a large extent that was due to his drinking, but the
11 drinking, excessive drinking, started after he learned that
12 the Patriarch had been married and after he quit his work.

13 Q Did he tell you about his trip to San Francisco?

14 A Yes, he did.

15 Q What did he tell you about that? A He told me
16 that he received a letter or communication from the Patriarch.
17 The implications of what he told me was that the Patriarch
18 was interested in having him come down here, and in a friendly
19 gesture, because he was having problems and his father had
20 always helped him, he knew that his father, that he was
21 devoted to his father and his father was devoted to keeping
22 the Patriarch in office, so that the letter implied to him
23 to come down and visit him and they would talk things over,
24 and true or false he believed that the Patriarch was going to
25 ask him for his help because he was a son of the general.
26 And he told me that he came here, I think it was on a Saturday

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1 or Sunday, I don't remember.

2 Q Did he mention to you that he was interested in a, buying
3 a small business or looking at a small business?

4 A No, he mentioned to me about buying the pistol but not
5 that he was interested in buying it.

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6 Q The pistol? A Handgun.

7 Q No, I'm talking about business, grocery store or liquor
8 store. A I do not recall anything of that nature.

9 Q Did he tell you why he came to San Francisco essentially?

10 A Why he came here?

11 Q Yeah. A To visit the Patriarch at the invitation
12 of the Patriarch.

13 Q Did he tell you why he didn't go down there immediately
14 upon arriving at San Francisco? A Well, he didn't tell
15 me as a cause for that action, but he told me they had, he
16 had church members living around the Bay Area and he visited
17 them, and he went to the church, and he planned to visit the
18 Patriarch on the following Saturday.

19 Q Okay. A That was his plans.

20 Q Well, let me ask you this, did he talk, did he tell you
21 that in San Francisco he did some drinking? A Told me
22 he was drinking in San Francisco, and I think he drank in
23 San Jose, too. I know he drank in Canada.

24 Q Okay. A At least I know he told me he did.

25 MR. PESTARINO: Do you want to stop?

26 MR. ROBINSON: Go ahead. I take it Dr. Rapaport

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1 made his usual excellent report, and I was wondering if I
2 could have a copy of it to look it over?

3 MR. PESTARINO: You could if I had one.

4 THE WITNESS: I did not make a report. I did
5 furnish counsel with a recording on tape, but I never
6 furnished a written report to counsel because he didn't ask
7 for it.

8 MR. ROBINSON: Me? Not me.

9 THE WITNESS: Sir?

10 MR. ROBINSON: You mean Mr. Pestarino?

11 THE WITNESS: Well, excuse me, you are counsel, too.
12 That's right.

13 THE COURT: Doctor, the recording was your report,
14 in essence, or was it a recording of your interview?

15 THE WITNESS: No, I didn't take a recording of my
16 interview with the defendant.

17 THE COURT: Yes.

18 THE WITNESS: No, it was just a report to counsel.

19 MR. ROBINSON: I would ask that I be given an oppor-
20 tunity to hear that. As Mr. Pestarino knows I am entitled
21 to it.

22 MR. PESTARINO: This is not a report to me.

23 THE COURT: It is a report of the doctor.

24 MR. PESTARINO: I will furnish it if I have it.

25 THE COURT: I want to clarify one or two things.
26 Doctor, tomorrow is Thursday, and I am stuck with a calendar

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1 every week. Could you come back Friday? Has that been
2 explained to you?

3 THE WITNESS: At the pleasure of the Court.

4 THE COURT: Well, I have known you many years. I
5 would be glad to see you Friday morning, at 9:45. You
6 will drive down from Oakland?

7 THE WITNESS: I will be here at the time you tell
8 me to be here.

9 THE COURT: 9:45 Friday morning.

10 Ladies and gentlemen, we will adjourn then until
11 Friday morning at 9:45. You will keep in mind my previous
12 admonition. The defendant is ordered to return and any
13 other subpoenaed witnesses. Thank you very much.

14 (Whereupon, Court adjourned until Friday, March
15 26, 1976, at 9:45 o'clock a.m.)

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