

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.

33

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

35

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

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

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?

40

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.

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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

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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

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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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1 Q Okay. Now, I got a couple more things on your
2 conclusions, then I'm not going to ask you any more questions.
3 You say, No. 2, "Testing shows an organic impairment, a
4 brain disfunction that would make him more likely
5 to lose emotional control than a normal person.
6 This would probably make him more vulnerable to
7 intoxicants as well."

8 Probably would, probably wouldn't? You're just
9 saying probably. It's a possibility?

10 A Psychologists and psychotherapists don't really deal
11 too much in certainty, as we well know.

12 Q I'll stipulate to that.

13 MR. ROBINSON: Counsel, will you stipulate?

14 MR. PESTARINO: Sure. Anything the doctor says I
15 will accept.

16 MR. ROBINSON: Figures. Okay.

17 Q (By Mr. Robinson) "Third, the subject shows warmth,
18 empathy, and sensitivity in testing and personal
19 interaction that appears inconsistent with pre-
20 meditated murder. His emotional intensity is such,
21 however, that when out of control, could lead to
22 violence or death. He is essentially in an
23 unconscious state in the sense of without awareness
24 or control."

25 Is that once again a possibility?

26 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

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

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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.

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.

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.

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

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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.

- 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

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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,

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 RE-CROSS-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

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 Columbia. I served an internship and residency in
26 psychiatry at what was known then, known as the Washington

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1 Asylum, which is now called the District of Columbia 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 Columbia. 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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