

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. Inaad 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. PASTERINO: 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. Inaad is unable to say that he is unable to  
13 say that he knows of any.

14 Q. (By Mr. Pasterino) 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 why I ?

18 THE COURT: Sure.

19 MR. PASTERINO: 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. Pasterino) 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? A. Yes, that is  
17 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? A. Between the long  
23 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 and hold 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. Insull  
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 admission 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. Insull, 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, don'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?

5 A. When one drinks alcohol it  
6 reaches the stomach, and some portion of the alcohol is  
7 dissipated through the stomach walls into the bloodstream.  
8 The major portion -- correction -- the major portion of the  
9 transmission of the alcohol goes from the small intestine  
10 into the bloodstream. And it circulates throughout the body  
11 carried by the body fluid.

12 Q. Is alcohol referred to as a depressant?

13 A. Yes.

14 Q. What do you mean by that? Well, does it depress the  
15 brain in any way?

A. Yes.

16 Q. Functioning of the brain? A. Yes, that  
17 is correct.

18 Q. Now, how long does it take normally, if you know, for a  
19 person to consume alcohol and for that alcohol to circulate  
20 throughout the bloodstream into the brain?

21 A. Normally if one drinks alcohol the first sign of  
22 alcohol in the bloodstream occurs somewhere in the  
23 neighborhood of five minutes.

24 Q. And is some of the alcohol lost on the way?

25 A. Yes.

26 Q. And how is that alcohol lost?

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?

A. Yes. Basically that is  
20 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? A. Yes. The subjective

10 impairment increases with higher content of alcohol, yes.

11 Q. In other words, is this true, that a person can appear  
12 perfectly normal and still have lost some inhibitions, lost  
13 some judgment along the line up to point zero eight?

14 A. Yes. It would appear outwardly normal, yes.

15 Q. Talk normal, talk normal? A. Yes.

16 Q. And still would have these impairments?

17 A. Yes. That is correct.

18 Q. To what degree would depend on the individual, wouldn't  
19 it? A. Yes. That is correct.

20 Q. And his tolerance for alcohol?

21 A. Yes.

22 Q. And his weight? A. Well, not so much his  
23 weight, because we are presenting him in the -- it is in the  
24 form of percentage.

25 Q. Weight wouldn't be too much of a factor. Okay. When  
26 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 one-ounce of eighty-six proof  
4 whiskey.

5 MR. KOBILINSKI: Thank you. That is all.

6 REDIRECT EXAMINATION

7 BY MR. KOBILINSKI:

8 Q. Okay. Mr. Inami, 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           intentioning liquor?                            A.       I have no  
2           knowledge of that.

3                       MR. TROBRINE: 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                       THE CLERK: 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.       Now 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.       The hundred ninety pounds.

22          A.       If I may take it two hundred to make my calculations?

23          Q.       Okay.                            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 5 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. FESTARINO: 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. As it said 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, does all  
5 relate once again to drinking-driving?

6 A. Yes.

7 Q. This is what your field of 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, and 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 o'clock, 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?

16 A. Because, well, these  
17 are what we call observation, when a person has, let's say,  
18 two ounces of one hundred proof whiskey, and then you see  
19 that person behaving in a manner in which he does not behave  
20 when he is sober, loss of inhibition, this type of thing.

21 Very difficult to put a quantitative number on phase one.

22 Q. Is there any question in your mind having studied this  
23 particular field that these things do occur after you have  
24 drunk some alcohol?

25 A. Yes, they do occur.

26 Q. All right. And the objective impairment, the visual  
27 acuity, do those things occur?

28 A. Yes.

29 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? A. Yes, that is  
14 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

2  
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?

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

5

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,

6  
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

8  
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?

12 A Well, because the Iraqi that we know  
13 today which has certain geographical area, is a byproduct of  
14 the, as I said a little bit before, of the Ottoman Empire  
15 which was taken away from them right after World War I. The  
16 British came in and they divided it. And they installed  
17 certain rulers, which incidentally these rulers were related  
18 to each other. The king of Iraq was related to the king of  
19 Saudi Arabia, the king of Saudi Arabia was related to the  
20 king of Transjordan, and so on. So that politically we  
21 were in a position, we were not in a position to be counted  
22 because we were very few.

23 Q Did the Patriarch ever express his opinion to you or to  
24 others through his writings and teachings that there might be  
25 a danger to the Assyrian people who lived in Iraq if, in  
26 fact, they should push the Iraqi government to give them a  
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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THE COURT: Surely.

MR. PESTARINO: Perhaps, I don't know Mr. Kelaita's position, if he is willing to wait around or not. Perhaps during the recess we can look it over, you know, make a determination.

THE COURT: Determination as to what, sir?

MR. PESTARINO: Whether or not I am going to object to it.

THE COURT: Oh, not a judicial determination? All right. Let's see what happens when counsel finishes scanning through the letter.

MR. PESTARINO: I would like to take a few moments to look it over carefully.

MR. ROBINSON: I have no objection to counsel looking it over. I have a lot of other questions for Mr. Kelaita.

THE COURT: Let's hold the letter for now and we will discuss it later, Mr. Kelaita.

THE WITNESS: Fine.

THE COURT: Counsel, will you have any objection if I read it in the meantime so I could be familiar with it?

MR. PESTARINO: No, of course not.

THE COURT: Thank you. Go ahead.

MR. ROBINSON: Thank you, Your Honor.

Q (By Mr. Robinson) Now, Mr. Kelaita, would it be fair 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.

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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.

15

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

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

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



27  
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

28  
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.

29

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

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

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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 commu-  
18 nity, 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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1 Q Would you like some more water? A No. I have  
2 plenty, thank you. I was at home one evening around August  
3 14th or 15th, 1973. And as a matter of fact I was ready to  
4 go the airport to pick up my brother. He was coming from  
5 Los Angeles. And the phone rang, and there was the Patriarch  
6 on the phone. And he used to call quite often, ask for  
7 any mail or any other things, you know, and he asked me if I  
8 was upstairs, or downstairs where I have an office. I said,  
9 "No, I am upstairs." He says, "I would like you to go  
10 downstairs. I have something to tell you." I went down-  
11 stairs. I detected something probably unusual. And so I  
12 closed the door. And he went into some explanation to me as  
13 to how lately, and I knew about it, he was sick, he had  
14 problem with, sometimes in the middle of the night he would  
15 get up and fall off the bed due to tensions, and all that,  
16 how the life, 53 years Patriarch of the Church of the East,  
17 what has done to him, and here I am listening to all of this,  
18 and I don't know why Patriarch is explaining these things to  
19 me on a long distance telephone call. And so finally he said  
20 that he has decided to get married. The word "get married,"  
21 in Assyrian he did not say it like I am translating it in  
22 English. It was a special word that he used that at the  
23 beginning I thought what he meant that he was going to have a  
24 woman that would be taking care of him. But when he later  
25 during telephone conversation, he explained to me that  
26 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, Britannia 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,