

SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA, )  
 )  
 PLAINTIFF-RESPONDENT, )  
 )  
 VS. )  
 )  
 REGIS DEON THOMAS, )  
 )  
 DEFENDANT-APPELLANT. )

---

SUPERIOR COURT  
NO. BA075063

AUG 31 1995

APPEAL FROM THE SUPERIOR COURT OF LOS ANGELES COUNTY  
HONORABLE EDWARD A. FERNS, JUDGE PRESIDING  
REPORTERS' TRANSCRIPT ON APPEAL

APPEARANCES:

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IN PROPRIA PERSONA

VOLUME 27 OF 33  
PAGES 3970 THROUGH 4054, INCLUSIVE

COPY

MARIANNE BRACCI, CSR #6168  
GEORGE W. SABIA, CSR #3336  
OFFICIAL REPORTERS

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT NO. 106

HON. EDWARD A. FERNS, JUDGE

THE PEOPLE OF THE STATE OF CALIFORNIA, )

PLAINTIFF, )

VS. )

REGIS THOMAS, )

DEFENDANT. )

NO. BA075063

VOL 27

REPORTERS' DAILY TRANSCRIPT

APRIL 27, 1995  
PAGES 3970 THROUGH 4054

**FILED**  
SUPERIOR COURT

MAY 9 1995

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1           LOS ANGELES, CALIFORNIA; THURSDAY, APRIL 27, 1995

2                           10:50 A.M.

3       DEPARTMENT NO. 106

HON. EDWARD A. FERNS, JUDGE

4                           (APPEARANCES AS HERETOFORE NOTED.)

5  
6           THE COURT:   CALLING THE CASE OF REGIS THOMAS.   MR.  
7   THOMAS IS PRESENT.   RESPECTIVE COUNSEL.   WE ARE OUT OF THE  
8   PRESENCE OF THE JURORS AND THE ALTERNATES.

9                        I WENT OVER THE JURY INSTRUCTIONS LAST NIGHT,  
10   AND I JUST WANT TO PUT SOME ITEMS ON THE RECORD BEFORE I  
11   GIVE THEM TO YOU TO LOOK AT.

12                       I ADDED SOME INSTRUCTIONS THAT WERE NOT GIVEN  
13   TO ME IN THE D.A.'S PACKAGE.

14                       AND I ADDED 2.09 WHICH IS EVIDENCE FOR A  
15   LIMITED PURPOSE; 2.22, WHICH IS YOU ARE NOT TO COUNT THE  
16   NUMBER OF WITNESSES ON EITHER SIDE; 2.81 IS LAY OPINION,  
17   IN CASE THERE WAS TESTIMONY ABOUT IF ANYBODY WAS  
18   INTOXICATED OR UNDER THE INFLUENCE.   MR. DICKSON WAS  
19   ASKED --

20           MR. ARNOLD:   RIGHT.

21           THE COURT:   2.90, I USED THE 1994 --

22           MR. ARNOLD:   GOOD.

23           THE COURT:   -- VERSION.

24           MR. ARNOLD:   SO YOU ELIMINATED MORAL CERTAINTY?  
25   GOOD.

26           THE COURT:   RIGHT.   AND THEN 2.91, 2.92, I  
27   INDICATED I WOULD GIVE.

28                        3.31.5 I PUT THAT THE MENTAL STATE IS MALICE.

1                    THEN THERE WAS 17.42 WHICH DOESN'T REALLY  
2 CONCERN THE LAWYERS, BUT -- 17.42 IS THEY ARE NOT TO  
3 CONSIDER PENALTY AND PUNISHMENT AT THIS PHASE OF THE  
4 TRIAL.

5                    THAT'S ALSO IN THE -- THAT'S ALSO IN WITH THE  
6 SPECIAL CIRCUMSTANCE WHEN THEY MAKE THAT FINDING, BUT  
7 SINCE THERE'S MORE TO THIS CASE THAN JUST THE SPECIAL  
8 CIRCUMSTANCE FINDING, THEY ARE NOT TO CONSIDER IT AT THIS  
9 STAGE OF THE TRIAL.

10                  MR. ARNOLD: SO YOU ARE GOING TO GIVE IT TWICE?

11                  THE COURT: RIGHT. 17.43, WHICH IS -- FOR SOME  
12 REASON I CAN'T FIND IT. LET ME LOOK AND SEE WHAT IT WAS.

13                  JURY DELIBERATIONS. IT EXPLAINS TO THEM --  
14 IT'S IN THE POCKET PART, BUT IT EXPLAINS TO THE JURORS  
15 THAT IF THEY HAVE QUESTIONS THEY HAVE TO SUBMIT IT ON A  
16 PIECE OF PAPER, AND WE HAVE TO CONTACT THE LAWYERS AND  
17 WHAT HAVE YOU.

18                  MR. JAFFE: WHAT NUMBER IS THAT?

19                  THE COURT: 17.43. IT'S A 1993 INSTRUCTION.

20                  MR. JAFFE: ALL RIGHT.

21                  THE COURT: IT SAYS: DURING DELIBERATIONS ANY  
22 QUESTION OR REQUEST THE JURY MAY HAVE SHOULD BE ADDRESSED  
23 TO THE COURT ON A FORM THAT WILL BE PROVIDED. PLEASE  
24 UNDERSTAND THAT COUNSEL MUST FIRST BE CONTACTED BEFORE A  
25 RESPONSE CAN BE FORMULATED. IF A READBACK OF TESTIMONY IS  
26 REQUESTED, THE REPORTER WILL DELETE OBJECTIONS, RULINGS,  
27 AND SIDEBAR CONFERENCES SO THAT YOU WILL HEAR ONLY THE  
28 EVIDENCE THAT WAS ACTUALLY PRESENTED. PLEASE UNDERSTAND

1 THAT IT MAY TAKE TIME TO PROVIDE A RESPONSE. CONTINUE  
2 DELIBERATING UNTIL YOU ARE CALLED BACK INTO THE COURTROOM.

3 THEN I ALSO ADDED 17.52 AND 17.53.

4 17.53 IS AN ADMONITION TO THE ALTERNATE  
5 JURORS; THAT IS, THEY ARE NOT TO TALK ABOUT THE CASE OR  
6 DISCUSS IT AMONGST THEMSELVES.

7 17.52 IS THE SEPARATION ADMONITION.

8 NOW, I HAVE DELETED FROM THE PACKAGE -- AND  
9 THEN I WILL HEAR FROM YOU IF THERE IS ANY OBJECTION TO THE  
10 DELETION AND THE REASONS FOR THE OBJECTION.

11 I HAVE DELETED 8.00, WHICH DEFINES HOMICIDE,  
12 AND IT DISCUSSES MANSLAUGHTER.

13 MR. ARNOLD: OKAY.

14 THE COURT: INVOLUNTARY AND VOLUNTARY. AND I DON'T  
15 THINK THEY NEED TO KNOW THAT.

16 I HAVE ALSO DELETED 8.74 FROM THE PACKAGE.

17 8.74 TALKS ABOUT -- JUST ONE SECOND.

18 IT HAS TO DO WITH AGAIN MANSLAUGHTER IS IN  
19 THE --

20 MR. JAFFE: DID YOU --

21 THE COURT: I MEAN I PULLED IT OUT.

22 8.74 SAYS IF THEY ARE UNABLE TO AGREE AS TO  
23 FIRST OR SECOND DEGREE MURDER OR MANSLAUGHTER.

24 THAT DOESN'T APPLY. THERE IS THE OTHER  
25 INSTRUCTION THAT SAYS IF YOU CAN'T -- IF YOU BELIEVE HE'S  
26 GUILTY OF MURDER, IF YOU CAN'T DETERMINE, FIND WHETHER IT  
27 IS FIRST OR SECOND, THEN THE DOUBT IS --

28 MR. JAFFE: YES. THAT IS 8.71.



1 THE COURT: RIGHT. BUT 8.74 DOESN'T APPLY.

2 MR. JAFFE: OKAY.

3 THE COURT: 17.49, MULTIPLE VERDICTS, I DON'T FEEL  
4 APPLIES IN THIS CASE BECAUSE THEY ARE NOT GIVING ANY  
5 LESSERS.

6 SO I HAVE DELETED THAT.

7 I DELETED 8.80 AND USED 8.80.1.

8 8.80, THE USE NOTE SAYS THAT IF THE CRIME  
9 OCCURRED AFTER -- 8.80 SAYS THAT, POCKET PART, 8.80, THE  
10 USE INSTRUCTION SAYS THIS INSTRUCTION SHOULD NOT BE USED  
11 WHERE THE MURDER OCCURRED ON OR AFTER JUNE 6, 1990.  
12 8.80.1 IS THE APPROPRIATE INSTRUCTION.

13 SO I HAVE DELETED IT.

14 DO YOU NEED TO LOOK AT THEM, MR. ARNOLD?

15 MR. ARNOLD: COULD YOU --

16 THE COURT: THEY ARE BOTH -- 8.80 SAYS SPECIAL  
17 CIRCUMSTANCES INTRODUCTORY. 8.80.1 IS SPECIAL  
18 CIRCUMSTANCES INTRODUCTORY.

19 BASICALLY WHEN THE LAW CHANGED, THEY CHANGED  
20 THE INSTRUCTION. BUT I DON'T REALLY THINK IT IS THAT  
21 SIGNIFICANT IN THIS PARTICULAR CASE BECAUSE WE ARE NOT --  
22 THE ALLEGATION IS THAT MR. THOMAS IS THE ACTUAL SHOOTER.

23 THIS ISN'T A SITUATION OF WHETHER YOU NEED  
24 THE INTENT, DON'T NEED THE INTENT BECAUSE IT'S -- THERE'S  
25 ONE PERPETRATOR ACCORDING TO THE PROSECUTION'S THEORY.

26 MR. JAFFE: ARE YOU GOING TO REDACT IT?

27 THE COURT: YES. YOU WILL SEE IT. I AM GOING TO  
28 GIVE YOU -- I YOU AM GOING TO LET YOU LOOK AT THESE BEFORE

1 AND ASK YOU IF THEY ARE SATISFACTORY.

2 MR. JAFFE: IT IS GOING TO HAVE THE SAME EFFECT.

3 THE COURT: RIGHT.

4 MR. JAFFE: SINCE WE ARE NOT TALKING ABOUT AN AIDER  
5 AND ABETTOR.

6 THE COURT: RIGHT. NOW, ON THE INSTRUCTION AS TO  
7 COUNT IV, FELON IN POSSESSION OF A FIREARM, I HAVE  
8 STRICKEN THE LANGUAGE ABOUT IT -- ABOUT THE SAID FIREARM  
9 IS CAPABLE OF BEING CONCEALED UPON THE PERSON.

10 THE USE NOTE IN 12.44 SAYS THAT THE LAW  
11 CHANGED -- I PULLED THE 1993 PENAL CODE.

12 IN 1993 A FELON -- THE WEAPON DOES NOT HAVE  
13 TO BE A CONCEALABLE FIREARM OR BE CAPABLE OF BEING  
14 CONCEALED TO VIOLATE THE LAW. THE USE NOTE SAYS TO STRIKE  
15 IT IF IT WAS AFTER A CERTAIN TIME FRAME.

16 MR. ARNOLD: SO THAT ELEMENT NO LONGER EXISTS.

17 THE COURT: IT NO LONGER EXISTS.

18 MR. ARNOLD: GOOD.

19 THE COURT: THE USE NOTE IN 12.43 -- LET ME GIVE IT  
20 TO YOU. I MEAN -- EXCUSE ME. 12.44.

21 12.44 IS THE INSTRUCTION THAT SAYS IF YOU  
22 HAVE A STIPULATED PRIOR, WHICH WE DON'T HAVE, BUT THE USE  
23 NOTE READS: THE LEGISLATURE IN 1989 DELETED THE PHRASE  
24 "CAPABLE OF BEING CONCEALED UPON THE PERSON" FROM THE  
25 STATUTE.

26 SINCE THE CHANGE IS NOT APPLICABLE TO PRE  
27 1990 CRIMES, THE DELETED PHRASE HAS BEEN PLACED IN  
28 BRACKETS. FOR CRIMES COMMITTED ON OR AFTER JANUARY 1,

1990, THE PHRASE SHOULD BE DELETED.

SO I ~~ARE~~ <sup>HAVE</sup> STRICKEN IT.

NOW, THERE'S ONE OTHER THING, MR. ARNOLD,  
THAT -- AND YOU MIGHT WANT TO TAKE MY BOOKS AND TAKE A  
LOOK AT THIS BECAUSE I DON'T KNOW WHETHER IT WAS A  
DECISION ON YOUR PART, A TACTICAL DECISION ON YOUR PART --

MR. JAFFE: BEFORE -- WELL --

THE COURT: -- OR IT WAS AN OVERSIGHT.

MR. JAFFE: BEFORE THE COURT ADVISES MR. ARNOLD --

THE COURT: I THINK I HAVE AN OBLIGATION.

MR. JAFFE: DO YOU? ALL RIGHT. WELL, OKAY.

THE COURT: ON 8.35. BECAUSE I'M THE ONE WHO IS  
RESPONSIBLE FOR THE INSTRUCTIONS.

IS THAT THE ONE YOU WERE REFERRING TO, MR.  
JAFFE?

MR. JAFFE: YES.

MR. ARNOLD: TO BE HONEST WITH YOU, I HAD ONE OF MY  
COHORTS PULL THESE.

THE COURT: ALL RIGHT.

MR. ARNOLD: SO WHAT IS 8.35?

THE COURT: 8.35 SAYS THAT IF YOU FIND -- IF YOU  
WERE TO FIND THE DEFENDANT GUILTY OF SECOND DEGREE MURDER  
AND YOU FIND THAT IT WAS A MURDER OF A POLICE OFFICER OR A  
PEACE OFFICER DURING THE COMMISSION -- DURING THE  
PERFORMANCE OF HIS DUTIES, THE PENALTY IS THEN 25 TO LIFE  
AS OPPOSED TO 15 TO LIFE ON A SECOND DEGREE MURDER.

BUT IT OBVIOUSLY IS ALLEGED AS A SPECIAL  
CIRCUMSTANCE. IN OTHER WORDS, A SPECIAL CIRCUMSTANCE

1 INSTRUCTION SAYS IF YOU FIND THE DEFENDANT GUILTY OF FIRST  
2 DEGREE MURDER, THEN YOU ARE TO FIND THE SPECIAL  
3 CIRCUMSTANCE -- YOU HAVE TO MAKE A FINDING AS TO THE  
4 SPECIAL CIRCUMSTANCE.

5 8.35 SAYS HAVING FOUND THE DEFENDANT GUILTY  
6 OF MURDER IN THE SECOND DEGREE, YOU MUST MAKE A -- YOU --  
7 LET ME READ YOU WHAT 8.35 SAYS.

8 IT SAYS: IT IS ALLEGED IN COUNT I THAT THE  
9 DEFENDANT MURDERED A PEACE OFFICER ENGAGED IN THE  
10 PERFORMANCE OF HIS DUTIES, AND THE DEFENDANT KNEW OR  
11 SHOULD HAVE KNOWN THE DECEASED WAS A PEACE OFFICER ENGAGED  
12 IN THE PERFORMANCE OF HIS DUTIES.

13 IF YOU FIND THE DEFENDANT GUILTY OF SECOND  
14 DEGREE MURDER, YOU MUST DETERMINE WHETHER OR NOT -- AND  
15 THEN IT RUNS THROUGH THE SAME LANGUAGE FOR THE SPECIAL  
16 CIRCUMSTANCE FOR FIRST DEGREE MURDER.

17 190(B) OF THE PENAL CODE SAYS -- AND IT WAS  
18 IN EFFECT IN 1993, THAT A SECOND DEGREE MURDER OF A PEACE  
19 OFFICER IS 25 TO LIFE.

20 MY QUESTION IS --

21 MR. ARNOLD: YES.

22 THE COURT: MY QUESTION IS WAS IT A TACTICAL  
23 DECISION ON YOUR PART NOT TO PUT IT IN IN LIGHT OF THE  
24 FACT THAT YOUR POSITION IS IT IS A FIRST DEGREE MURDER, OR  
25 WAS IT AN OVERSIGHT AND YOU ARE REQUESTING IT?

26 MR. ARNOLD: IT WOULD HAVE TO BE THE LATTER, AND I  
27 WOULD REQUEST IT.

28 THE COURT: ALL RIGHT.

1 MR. ARNOLD: I WANTED TO --

2 THE COURT: I WANT YOU TO LOOK AT THE MATERIALS. I  
3 AM GOING TO GET OFF THE BENCH A FEW MINUTES, AND I WILL  
4 GIVE YOU THE MATERIALS.

5 GO AHEAD, MR. ARNOLD.

6 MR. ARNOLD: WE HAD TALKED ABOUT THIS IN THE VERY  
7 BEGINNING, AND I LOOKED IN THE PENAL CODE, AND I LOOKED IN  
8 THE JURY INSTRUCTIONS OBVIOUSLY FOR MULTIPLE MURDER, AND  
9 IT SAYS IT RIGHT IN THE INSTRUCTIONS THERE'S GOT TO BE AT  
10 LEAST A ONE CONVICTION FOR FIRST DEGREE MURDER.

11 THE COURT: CAN I TELL YOU WHAT MY INTENTION IS AND  
12 THEN WE CAN DISCUSS THE FORM?

13 GO AHEAD.

14 MR. ARNOLD: ALL RIGHT. FOR THE MURDER -- FOR THE  
15 SPECIAL CIRCUMSTANCE OF MURDER OF A PEACE OFFICER, THE  
16 JURY INSTRUCTION JUST TALKS ABOUT THAT THERE HAS TO BE THE  
17 INTENTIONAL KILLING OF A PEACE OFFICER IN THE PERFORMANCE  
18 OF HIS DUTIES AND THAT THE DEFENDANT KNEW OR SHOULD HAVE  
19 KNOWN THAT HE WAS A PEACE OFFICER.

20 IT DOESN'T SAY ANYTHING IN THERE THAT IT MUST  
21 BE A WILLFUL, DELIBERATE, AND PREMEDITATED MURDER.

22 THE COURT: THAT'S BECAUSE YOU ARE NOT -- BECAUSE  
23 THE THEORY OF IT IS YOU CANNOT FIND THE SPECIAL  
24 CIRCUMSTANCE TO BE TRUE UNLESS IT IS FIRST DEGREE MURDER.

25 MR. ARNOLD: WELL, WHERE DOES IT SAY THAT? I  
26 CANNOT SEE WHERE IT SAYS THAT.

27 MR. JAFFE: IT SAYS THAT IN 190.

28 THE COURT: IT SAYS THAT RIGHT IN THE BEGINNING OF

1 THE INSTRUCTION. IT SAYS -- JUST ONE SECOND. IT SAYS --  
2 8.81.7. LET ME PULL THE CALJIC.

3 MR. ARNOLD: I ALSO --

4 THE COURT: LET ME PUT IT TO YOU THIS WAY: I THINK  
5 THE REALITIES ARE THAT THE SPECIAL CIRCUMSTANCE DOESN'T  
6 APPLY UNLESS IT IS FIRST DEGREE MURDER.

7 FIRST DEGREE MURDER IN THIS PARTICULAR CASE  
8 ISN'T BASED ON A THEORY OF FELONY MURDER.

9 MR. ARNOLD: RIGHT.

10 THE COURT: IT'S WILLFUL, DELIBERATE, AND  
11 PREMEDITATED.

12 MR. ARNOLD: THAT'S WHAT I COULDN'T SEE WHERE THAT  
13 REQUIREMENT APPLIES TO THE PEACE OFFICER MURDER SPECIAL  
14 CIRCUMSTANCE.

15 MR. JAFFE: WELL, IT APPLIES TO ANY --

16 THE COURT: ANY SPECIAL CIRCUMSTANCE.

17 MR. JAFFE: -- SPECIAL CIRCUMSTANCE.

18 THE COURT: IF THEY DON'T FIND -- AS A MATTER OF  
19 FACT, THIS HAPPENED YEARS AGO IN JUDGE KAKITA'S COURT WHEN  
20 HE SAT IN DEPARTMENT 111, I THINK IT INVOLVED THE DEATH OF  
21 SOME HIGHWAY PATROLMEN, WHERE THE JURY FOUND THE DEFENDANT  
22 GUILTY OF SECOND DEGREE MURDER AND FOUND THE SPECIAL  
23 CIRCUMSTANCE TO BE TRUE.

24 IT WAS THEN STRICKEN AS A MATTER OF LAW  
25 BECAUSE IT HAS TO BE A FINDING OF FIRST DEGREE MURDER FOR  
26 THE SPECIAL CIRCUMSTANCE TO APPLY.

27 BASICALLY WHAT -- THAT IS PROBABLY HOW 8.35  
28 CALJIC BECAME -- OR 190(B) OF THE PENAL CODE THEN GOT

1 PASSED WAS IF YOU FIND HIM GUILTY OF SECOND DEGREE MURDER  
2 AND YOU FIND THAT IT IS THE KILLING OF A PEACE OFFICER,  
3 IT'S NOT 15 TO LIFE, IT'S 25 TO LIFE.

4 MR. ARNOLD: WELL, SEE, YOU CAN HAVE A SECOND  
5 DEGREE MURDER, AND IT NOT BE EXPRESS MALICE. YOU CAN HAVE  
6 IT WITH IMPLIED MALICE WHERE THERE IS NO INTENT TO KILL.

7 THE COURT: RIGHT. RIGHT. BUT YOU WOULD NOT HAVE  
8 A SPECIAL CIRCUMSTANCE FINDING.

9 MR. ARNOLD: ALL RIGHT. YOU SAY THAT IN THE ONE OF  
10 THE 8.80 SECTIONS IT TALKS ABOUT THAT.

11 THE COURT: JUST A SECOND.

12 MR. JAFFE: 8.80.1.

13 THE COURT: THAT MUST BE IT.

14 MR. JAFFE: IN THE THIRD --

15 THE COURT: YES. 8.80.1 SAYS: IF YOU FIND THE  
16 DEFENDANT IN THIS CASE GUILTY OF MURDER OF THE FIRST  
17 DEGREE, YOU MUST THEN DETERMINE IF ONE OR MORE OF THE  
18 FOLLOWING SPECIAL CIRCUMSTANCES ARE TRUE OR NOT TRUE.

19 AND I HAVE WRITTEN IN: MULTIPLE MURDER  
20 CONVICTIONS AND MURDER OF PEACE OFFICER.

21 SO THAT TELLS THEM -- THAT'S THE INTRODUCTORY  
22 INSTRUCTION FOR SPECIAL CIRCUMSTANCES.

23 MR. ARNOLD: ALL RIGHT. JUST -- I BELIEVE YOU.  
24 BUT JUST WHERE -- WHERE IN THE PENAL CODE DOES IT SAY  
25 THAT?

26 MR. JAFFE: SHOW HIM.

27 MR. ARNOLD: TO HAVE THE -- ALL RIGHT. I GUESS I'M  
28 GOING TO --

1 THE COURT: IT IS RIGHT AT THE VERY BEGINNING. IT  
2 IS 190.3 I BELIEVE. 190.2.

3 MR. ARNOLD: OKAY.

4 THE COURT: 190.2(A): THE PENALTY FOR A DEFENDANT  
5 FOUND GUILTY OF MURDER IN THE FIRST DEGREE SHALL BE DEATH  
6 OR CONFINEMENT IN STATE PRISON FOR A TERM OF LIFE WITHOUT  
7 THE POSSIBILITY OF PAROLE IN ANY CASE IN WHICH ONE OR MORE  
8 OF THE FOLLOWING SPECIAL CIRCUMSTANCES HAS BEEN CHARGED  
9 AND SPECIALLY FOUND UNDER 190.4 TO BE TRUE.

10 MR. ARNOLD: GOTCHA. OKAY. ALL RIGHT.

11 THE COURT: SO I WANT YOU TO LOOK AT 8.35.

12 MR. ARNOLD: I WANT TO --

13 THE COURT: HERE'S WHAT I INTEND -- OR MY  
14 SUGGESTION IS OR MY INTENTION UNLESS YOU COME UP WITH A  
15 DIFFERENT APPROACH: ON THE VERDICT FORMS IT'S MY  
16 INTENTION TO HAVE COUNT I GUILTY, NOT GUILTY.

17 ON THE GUILTY, IT WILL SAY MURDER, AND THEY  
18 HAVE TO FILL IN FIRST OR SECOND. YOU WILL SEE ALL THIS.  
19 BUT I AM JUST TELLING YOU SO FOR YOUR ARGUMENT WE'LL HAVE  
20 THEM PREPARED BY TOMORROW MORNING.

21 IT WILL THEN SAY THE USE ALLEGATION, USED A  
22 FIREARM.

23 COUNT II WILL SAY GUILTY -- COUNT II WILL BE  
24 THE SAME WAY, USE ALLEGATION.

25 COUNT III, THE USE ALLEGATION, AND THEN I  
26 WILL HAVE A SEPARATE FORM THAT WILL SAY SPECIAL FINDINGS.

27 AND I WILL USE THE LANGUAGE THAT IS SUGGESTED  
28 IN THE INDEX OF -- IT'S APPENDIX A. AND IT SAYS:



1 ALLEGATION: THE DEFENDANT IN THIS CASE HAS BEEN CONVICTED  
2 OF MULTIPLE MURDERS. FINDING: FINDING -- AND THEN IT  
3 SAYS PLACE AN "X" BESIDE THE ANSWER TO WHICH YOU  
4 UNANIMOUSLY AGREE. TRUE OR NOT TRUE.

5 THEN THERE WILL BE THE CRIME OF FIRST DEGREE  
6 MURDER OF WHICH YOU HAVE FOUND THE DEFENDANT GUILTY WAS  
7 THE MURDER OF A PEACE OFFICER FINDING. PLACE AN "X"  
8 BESIDE THE ANSWER TO WHICH YOU UNANIMOUSLY AGREE. TRUE OR  
9 NOT TRUE.

10 THEN IT SAYS IF YOUR ANSWER TO THE ABOVE  
11 QUESTION IS NOT TRUE, DATE, SIGN, AND RETURN THIS VERDICT.

12 IF YOUR ANSWER IS TRUE, ANSWER THE NEXT  
13 QUESTION.

14 THE PERSON MURDERED WAS INTENTIONALLY KILLED  
15 IN -- EXCUSE ME -- WHERE THE PERSON MURDERED WAS  
16 INTENTIONALLY KILLED WHILE ENGAGED IN THE PERFORMANCE OF  
17 HIS DUTIES. YOU PLACE AN "X" TRUE OR NOT TRUE.

18 IT SAYS IF THE ANSWER TO THE ABOVE QUESTION  
19 IS NOT TRUE, DATE, SIGN, AND RETURN THIS VERDICT.

20 IF YOUR ANSWER IS TRUE, ANSWER THE NEXT  
21 QUESTION.

22 THE DEFENDANT KNEW OR SHOULD HAVE KNOWN THAT  
23 THE PERSON KILLED WAS A POLICE OFFICER. PLACE AN "X"  
24 BESIDE THE ANSWER TO WHICH YOU UNANIMOUSLY AGREE. TRUE OR  
25 NOT TRUE.

26 BECAUSE THOSE ARE THE FINDINGS THAT HAVE TO  
27 BE MADE.

28 THEN I WILL PUT -- ACTUALLY I'LL PUT THEM ON

1 SEPARATE PAGES BECAUSE IT SAYS FOR THEM TO DATE AND SIGN.

2 THE ONE WILL SAY THE CRIME OF MURDER IN THE  
3 SECOND DEGREE FOR WHICH YOU HAVE FOUND HIM TO BE TRUE --  
4 OF WHICH YOU HAVE FOUND THE DEFENDANT GUILTY WAS MURDER OF  
5 A PEACE OFFICER, SO THAT IF THEY DON'T FIND IT TO BE FIRST  
6 IT WOULD THEN ANSWER THOSE QUESTIONS AS TO THE SECOND  
7 DEGREE, AND IT WOULD BE AS TO EACH OF THE POLICE OFFICERS.

8 SO THAT WILL BE ON A SPECIAL -- THOSE WILL BE  
9 SPECIAL VERDICT FORMS.

10 SEE, 8.35, IT'S A DUPLICATE OF -- IT'S THE  
11 SAME THING AGAIN, BUT IT ONLY APPLIES TO SECOND DEGREE  
12 MURDER. I DIDN'T KNOW WHETHER THERE WAS A DECISION THAT  
13 YOU HAD MADE OR WHETHER, AS I SAY, IT WAS AN OVERSIGHT.

14 MR. ARNOLD: OVERSIGHT.

15 THE COURT: SO, MR. JAFFE, YOU OBJECT TO 8.3 -- OR  
16 ME BRINGING IT TO HIS ATTENTION?

17 MR. JAFFE: NO.

18 THE COURT: OKAY.

19 MR. JAFFE: NO.

20 THE COURT: ALL RIGHT. I MEAN I FEEL AN OBLIGATION  
21 GOING THROUGH ALL THE INSTRUCTIONS TO GIVE THE APPLICABLE  
22 LAW.

23 MR. JAFFE: YOUR HONOR, IN TERMS OF THE EVIDENCE OF  
24 THE EXHIBITS, THERE'S ONE THAT I OVERLOOKED, AND THAT WAS  
25 PEOPLE'S 69, WHICH WAS CALVIN COOKSEY'S 1538.5 ON THE GUN  
26 CASE. THAT WAS MARKED AS AN EXHIBIT, AND THERE HAD BEEN  
27 TESTIMONY FROM MR. COOKSEY.

28 I DON'T KNOW WHETHER OR NOT THAT THAT IS

1 APPROPRIATE TO GO IN, BUT I WOULD LEAVE IT TO THE  
2 DISCRETION OF THE COURT.

3 THE COURT: ARE YOU SEEKING IT?

4 MR. ARNOLD: YES.

5 THE COURT: ALL RIGHT. I'LL LET IT GO IN.

6 MR. JAFFE: ALL RIGHT.

7 THE COURT: LET ME TELL YOU MY RULINGS ON THE OTHER  
8 PIECES OF EVIDENCE.

9 LL WASN'T DISCUSSED YESTERDAY, BUT THAT IS  
10 NOT GOING INTO EVIDENCE. LL WERE THE TWO PHOTOGRAPHS THAT  
11 YOU HAD MARKED AND THEN WITHDRAWN.

12 MR. JAFFE: RIGHT.

13 THE COURT: BUT I PUT THEM AS PART OF THE RECORD  
14 BECAUSE I MADE A RULING, AND AS A RESULT OF MY RULING YOU  
15 THEN WITHDREW THEM. ALL RIGHT.

16 AS TO -- LET ME FIND MY NOTES HERE.

17 MR. ARNOLD: ARE YOU GOING TO INTRODUCE THE EDITED  
18 COPY OF THAT TAPE?

19 MS. DOHERTY: WE ARE GOING TO WITHDRAW THE TAPE AND  
20 INTRODUCE TRANSCRIPTS.

21 THE COURT: WHICH TAPE?

22 MS. DOHERTY: IT IS TAPE I.

23 THE COURT: ALL RIGHT. IT WOULD NOT GO TO THE  
24 JURY, BUT IT IS GOING TO BE -- OBVIOUSLY IT'S FOR  
25 IDENTIFICATION.

26

27 (WITHDRAWN:= DEFT'S I.)

28

1 THE COURT: I'M SORRY. MR. ARNOLD, DID YOU SAY  
2 ANYTHING?

3 MR. ARNOLD: I'M SORRY, YOUR HONOR?

4 THE COURT: DID YOU SAY SOMETHING?

5 MR. ARNOLD: NO.

6 THE COURT: OKAY. ALL RIGHT.

7 THEN L WHICH WAS THE PHOTOS OF THE TRUCK. I  
8 READ THE TESTIMONY, AND PAGE 1916, LINES 9 THROUGH 11,  
9 MRS. GULLY SAID SHE HAD NEVER SEEN THE PICTURES BEFORE.  
10 PAGE 1935, LINES 5 THROUGH 11, SHE SAID SHE NEVER SELECTED  
11 IT.

12 THAT'S ALL THAT WAS EVER USED FOR.

13 IT WAS THEN THAT M, WHICH WAS THE BIG BOARD  
14 WITH THE PLACARD, WAS THEN USED TO QUESTION DE'MORVEA  
15 POLIDORE.

16 MR. JAFFE: BUT COOKSEY IDENTIFIED THE TRUCK IN L.

17 THE COURT: HE DID?

18 MR. JAFFE: YES. HE SAID THAT IT LOOKED LIKE  
19 REGGIE'S TRUCK WITH HIS BROTHER'S DAYTONS ON IT OR RIMS ON  
20 IT.

21 THE COURT: WAS THAT -- WAS THAT L WAS THE PHOTO  
22 THAT WAS USED?

23 MR. JAFFE: YES, THAT WAS THE BIG --

24 THE COURT: ALL RIGHT. THEN OVER THE DEFENSE --  
25 PROSECUTION'S OBJECTION I WILL PERMIT THAT IN BASED ON  
26 THAT.

27 BB AND CC ARE GOING TO BE RECEIVED. THOSE  
28 ARE COOKSEY'S CONVICTIONS.

1 MR. ARNOLD: THE CERTIFIED COPIES?

2 THE COURT: YES.

3 MR. ARNOLD: WELL, YOU CAN HELP ME IN THE FUTURE.  
4 I THOUGHT THERE WAS SOME AUTHORITY THAT EXTRINSIC EVIDENCE  
5 COULD NOT BE ADMITTED.

6 THE COURT: WELL, YES AND NO.

7 I WILL GIVE YOU MY BASIS FOR PERMITTING IT  
8 WAS THAT THE PERSON ADMITTING THAT HE HAD THE PRIOR  
9 CONVICTIONS WAS MR. COOKSEY. I THINK IT'S DIFFERENT THAN  
10 A DEFENDANT TESTIFYING.

11 WHEN THE DEFENSE IS ARGUING THAT A WITNESS IS  
12 NOT TRUTHFUL, IT PUTS THEM IN A SITUATION OF ARGUING THAT  
13 HE IS TRUTHFUL AS TO THE PRIOR CONVICTIONS, BUT HE'S  
14 UNTRUTHFUL IN EVERYTHING ELSE.

15 SO, THEREFORE, I'M GOING TO PERMIT THAT.  
16 IT'S A DISCRETIONARY CALL.

17 MR. ARNOLD: ALL RIGHT.

18 THE COURT: DEFENDANT'S HH, PAGE 3482 OF THE  
19 TRANSCRIPT, THE WHOLE FIRST PARAGRAPH OF THAT REPORT WAS  
20 READ INTO THE RECORD AT LINES 13 THROUGH 19.

21 SO, THEREFORE, IT'S NOT GOING TO GO TO THE  
22 JURY.

23

24 (REJECTED:= DEFT'S. HH.)

25

26 THE COURT: AND DEFENDANT'S R, DID YOU MAKE AN  
27 EXCISED --

28 MS. DOHERTY: WE DID, YOUR HONOR, AND YOUR CLERK

1 HAS IT.

2 THE COURT: WHAT I WILL DO THEN IS I WILL MARK THE  
3 ORIGINAL AS -- IT HAS BEEN MARKED -- R-1 WILL BE THE  
4 EDITED VERSION.

5 MR. JAFFE: OKAY.

6 THE COURT: AND THAT WILL BE RECEIVED.

7 MR. JAFFE: YOUR HONOR, TWO OF THE VIDEO TAPES THAT  
8 I USED WITH MR. COOKSEY, ONE FROM HIS PRELIMINARY HEARING  
9 AND ONE OF HIS INTERVIEW OF 4-2-93, I JUST USED THOSE  
10 WITHOUT VOLUME AND JUST PLAYED THE BEGINNING PORTION OF IT  
11 TO SHOW WHAT HIS CLOTHING LOOKED LIKE AND WHAT HIS  
12 HAIRSTYLE LOOKED LIKE.

13 I THINK WHAT WE SHOULD DO IS JUST EDIT THOSE  
14 TAPES WITHOUT VOLUME, JUST THE FIRST SEVERAL SECONDS OF  
15 THOSE TAPES. AND IF THE JURY WANTS THEM, THEN THEY CAN  
16 LOOK AT IT, BUT THERE WON'T BE ANY VOLUME ON THE TAPE, AND  
17 THE ONLY PORTION OF THE TAPE THAT WILL BE AVAILABLE WOULD  
18 BE THE PORTION THAT I PLAYED.

19 OR WE CAN COULD DO IT ANOTHER WAY. WE COULD  
20 JUST WITHHOLD THEM FROM THE JURY ROOM. IF THEY WANT TO  
21 SEE IT, THEN WE COULD JUST EDIT IT.

22 THE COURT: ALL RIGHT. I WILL DO IT THAT WAY.

23 MR. JAFFE: ALL RIGHT.

24 THE COURT: AND, MR. ARNOLD, AS FAR AS PEOPLE'S 113  
25 IS CONCERNED, I CAN DO IT THE SAME WAY. I CAN HOLD IT  
26 OUT, OR IF YOU WANT THE TAPE TO GO IN WITH THE PACKAGE, TO  
27 TAKE THE TIME OFF OF IT.

28 MR. ARNOLD: ALL RIGHT. THIS TOOK ME BY SURPRISE.

1 I WAS NOT AWARE THAT THAT PART WOULD HAVE TO BE ELIMINATED  
2 ESPECIALLY BECAUSE IT WAS PLAYED IN FRONT OF THE WITNESS.

3 I WOULD ASK THE COURT, A, TO RECONSIDER  
4 BECAUSE THERE'S A QUESTION BY MR. JAFFE WHICH CERTAINLY  
5 INTIMATES THAT IT IS APPROXIMATELY 2316 HOURS ON THE TOP  
6 OF PAGE 3819.

7 THE QUESTION BY MR. JAFFE TO OFFICER METCALF  
8 IS:

9 "ALL RIGHT. BUT IT IS YOUR TESTIMONY NOW  
10 THAT YOU WERE NOT AT GRANDEE AND 137TH AT 11:15. YOU  
11 WOULD HAVE BEEN DOWN ON ROSECRANS AND WILMINGTON AT ABOUT  
12 THAT TIME BECAUSE YOU GOT TO THE CRIME SCENE IN SEVEN  
13 SECONDS; RIGHT?

14 "CORRECT."

15 I WANT THAT TO GO IN. AND BECAUSE I -- IT  
16 WAS TAKEN -- IT'S -- I AM TAKEN BY SURPRISE THAT THAT PART  
17 HAS TO BE ELIMINATED. AND I AM SOMEWHAT SURPRISED THAT IN  
18 LIGHT OF THE GOOD RELATIONSHIP THAT I HAVE -- WE HAVE HAD  
19 DURING THE CCURSE OF THIS TRIAL, I AM JUST SOMEWHAT  
20 SURPRISED AS TO THE OBJECTION TO IT.

21 THE OFFICER WHOSE VOICE THAT IS, IS AN  
22 INDIVIDUAL NAMED BOB DAVIS. HE LIVES IN LAKE ELSINORE.  
23 HE WILL COME HERE THIS AFTERNOON AND TESTIFY AS TO HOW HE  
24 GOT THE 2316 HOURS.

25 IF YOU WANT AN OFFER OF PROOF. LIKE  
26 YESTERDAY YOU MENTIONED THAT YOU WOULD ADMIT THE BURRELL'S  
27 LOG BECAUSE IF SOMEONE WERE TO COME AND TESTIFY AS TO ITS  
28 PREPARATION, YOU WOULD ALLOW IT. I THEN SAID OKAY, THAT'S

1 NOT NECESSARY.

2 WOULD YOU LISTEN TO THE OFFER OF PROOF?

3 THE COURT: I'LL LISTEN TO IT. BUT IT IS A  
4 DETERMINATION THAT MR. JAFFE HAS TO MAKE WHETHER HE  
5 STIPULATES TO THE FACTS OF WHAT THE OFFICER WOULD SAY, OR  
6 IF HE WANTS THE OFFICER IN.

7 MR. ARNOLD: I'LL MAKE THE OFFER.

8 THE COURT: GIVE ME THE OFFER, AND I WILL TELL YOU  
9 WHAT MY TENTATIVE RULING IS.

10 MR. ARNOLD: I WILL MAKE THE OFFER OF PROOF. BUT I  
11 HOPE MR. JAFFE WILL KEEP IN MIND MY WILLINGNESS TO MAKE  
12 HIM NOT JUMP THROUGH THE HOOPS NOT TO GET SOMEONE FROM  
13 COMPTON PD HERE TO SAY HOW THIS IS PREPARED.

14 OFFICER DAVIS WOULD TESTIFY THAT THERE IS A  
15 CONTINUOUSLY RUNNING TAPE THAT IS KEPT OF ALL 911 CALLS  
16 AND ALL RADIO TRAFFIC. AND IT IS TIME SENSITIVE, THAT  
17 WHEN THE TAPE IS BEING PLAYED THROUGH THE MACHINE THAT IS  
18 IN THE DISPATCH OFFICE, IT AUTOMATICALLY REFLECTS THE TIME  
19 IN HOURS, MINUTES, AND SECONDS ON A DIGITAL READOUT.

20 WHEN HE MADE THE COPY OF THE TAPE, OF THE  
21 CASSETTE TAPE, THAT IS HOW HE GOT THE TIME BY PLACING IT  
22 ON THE MACHINE AND SEEING THE DIGITAL READOUT, THE TIME  
23 SENSITIVE TAPE, THE DIGITAL READOUT REFLECTING 2316 HOURS.

24 THE COURT: ALL RIGHT. MR. JAFFE?

25 MR. JAFFE: IF THE COURT -- IF THE COURT --

26 THE COURT: I THINK THAT THAT IS A SUFFICIENT BASIS  
27 FOR SOMEBODY TO COME IN.

28 MR. JAFFE: I DON'T DISAGREE WITH THAT. SO IT CAN



1 GO IN WITH THE TIME. MR. ARNOLD DOES NOT HAVE TO CALL THE  
2 GENTLEMAN FROM LAKE ELSINORE. BUT WE WOULDN'T HAVE HAD TO  
3 GO THROUGH THIS IF YOU WOULD HAVE JUST MERELY ACCEPTED MY  
4 STIPULATION.

5 THE COURT: ALL RIGHT. IT'S RECEIVED.

6 MR. JAFFE: OKAY.

7 THE COURT: AS IT IS MARKED. AND AS IT -- IN ITS  
8 PRESENT STATE.

9

10 (REC'D IN EVD.: = PEO'S. 113.)

11

12 MS. DOHERTY: YOUR HONOR, JUST TO BE CLEAR, DEFENSE  
13 J WAS THE TRANSCRIPT OF THE PORTION OF THE AUDIO TAPE  
14 PLAYED. I CHECKED THE TRANSCRIPT LAST NIGHT.

15 AND PORTIONS 2 AND 3 WERE IN THE RECORD.  
16 PORTION 1 WAS NOT. SO I MADE AN EDITED VERSION OF THE  
17 TRANSCRIPT JUST REFLECTING J-1.

18 THE COURT: ALL RIGHT. AND THAT WILL BE RECEIVED.

19 MR. JAFFE: SO THAT WILL BE CONSISTENT WITH THE  
20 COURT'S RULING THAT IF INDEED THE PORTION HAD BEEN STATED  
21 IN THE RECORD, THAT THE TRANSCRIPT WOULD JUST BE  
22 CUMULATIVE TO WHAT IS IN THE RECORD.

23 THE COURT: CORRECT.

24 MR. JAFFE: SO ONLY THAT PORTION WAS -- JUST THAT  
25 ONE SNIPPET WAS NOT READ.

26 THE COURT: RIGHT. ALL RIGHT.

27 LET ME GIVE YOU THE JURY INSTRUCTIONS. LET  
28 ME JUST GIVE -- 8.35 IS SITTING ON MY DESK. LET ME GET

1 IT, AND THEN I WILL SHOW YOU WHAT I HAVE, AND YOU CAN TELL  
2 ME HOW THEY ARE.

3  
4 (PAUSE IN THE PROCEEDINGS.)

5  
6 THE COURT: ALL RIGHT. I'VE GOT THE INSTRUCTIONS  
7 IN THE EDITED FORM. AND I AM GOING TO GIVE THEM TO YOU,  
8 AND YOU CAN LOOK -- GO THROUGH THEM, AND I'LL COME BACK  
9 OUT AND ON THE RECORD YOU CAN TELL ME IF THERE ARE ANY  
10 OBJECTIONS.

11 MR. JAFFE: I HAD NOT YET SUBMITTED THE VOLUNTARY  
12 AND INVOLUNTARY FORM FOR THE COURT TO WRITE "REFUSED."

13 THE COURT: TO WRITE "REFUSED" ON IT.

14 MR. JAFFE: I DON'T KNOW IF THE COURT HAS AN EXTRA  
15 COPY IN ITS COMPUTER.

16 THE COURT: I'LL GET THEM OUT. DO YOU WANT THE  
17 WHOLE PACKAGE? I MEAN THERE ARE PROBABLY TEN OR TWELVE  
18 INSTRUCTIONS. OR DO YOU JUST WANT FOR PURPOSES OF THE  
19 RECORD THE VOLUNTARY -- DEFINITION OF VOLUNTARY AND  
20 INVOLUNTARY MANSLAUGHTER?

21 MR. JAFFE: WELL, HE WOULDN'T BE ENTITLED TO THE  
22 OTHERS ANYHOW IF THE COURT HAD INDICATED -- SO --

23 THE COURT: ALL RIGHT.

24 MR. ARNOLD: JUDGE, IF YOU HAVE ALREADY RULED THAT  
25 YOU ARE NOT GOING TO GIVE THEM AND THE RECORD IS VERY  
26 CLEAR THAT YOU ARE NOT GOING TO GIVE THEM AND THE REASON  
27 STATED, WHY IS IT NECESSARY TO PULL THEM AND THEN WRITE ON  
28 THERE THAT THEY ARE REFUSED?

1           MR. JAFFE:   BECAUSE THE CLERK'S TRANSCRIPT GOES TO  
2 THE COURT OF APPEAL, AND IT ULTIMATELY COULD GO TO THE  
3 SUPREME COURT.   AND WHEN THEY LOOK AT A DOCUMENT OF JURY  
4 INSTRUCTIONS THEY DON'T WANT TO REVIEW THE TRANSCRIPT OF  
5 THE RECORD.   THEY WANT TO SEE WHAT IS IN FRONT OF THEM  
6 WHICH INSTRUCTIONS WERE GIVEN AND REFUSED.

7           MR. ARNOLD:   I SEE.   OKAY.

8           THE COURT:   MANY THINGS ARE DONE THAT --

9           MR. ARNOLD:   ALL RIGHT.   I UNDERSTAND.

10          MR. JAFFE:   IF THAT WERE TO HAPPEN.

11          THE COURT:   I WOULD PREINSTRUCT AND I STOP -- AND  
12 IF COULD TRY TO KEEP THESE IN ORDER.   I STOP AT 17.31,  
13 WHICH SAYS ALL INSTRUCTIONS ARE NOT NECESSARILY  
14 APPLICABLE.   THAT'S WHERE I STOP.

15                        THEN AFTER YOUR ARGUMENTS, I THEN START WITH  
16 17.30, THE JURY NOT TO TAKE A CUE FROM THE JUDGE.   THERE'S  
17 ABOUT EIGHT CONCLUDING INSTRUCTIONS.

18                        BUT WHAT I WILL DO IS I WILL CLIP THEM, TWO  
19 PACKAGES, AND YOU CAN LOOK THROUGH THEM AND SEE HOW I HAVE  
20 ALTERED THEM.   AND IF YOU HAVE ANY OBJECTION -- I AM GOING  
21 TO COME BACK OUT TO MAKE SURE ON THE RECORD THAT THEY ARE  
22 SATISFACTORY.   BECAUSE THE LAST THING I WANT TO DO IS BE  
23 SITTING UP HERE READING THEM AND SOMEBODY SAYS CAN WE  
24 APPROACH.   AND THEN I HAVE TO TELL THE JURORS I MISSPOKE  
25 AS OPPOSED TO WE JUST DIDN'T HAVE IT RIGHT.

26                        ALL RIGHT.   HERE YOU GO.

27

28                        (RECESS.)

1 THE COURT: ALL RIGHT. RECALL THE CASE OF REGIS  
2 THOMAS. MR. THOMAS IS PRESENT. RESPECTIVE COUNSEL. WE  
3 ARE OUT OF THE PRESENCE OF THE JURORS.

4 MR. ARNOLD, HAVE YOU LOOKED AT THE  
5 INSTRUCTIONS?

6 MR. ARNOLD: YES.

7 THE COURT: OTHER THAN THE OTHER OBJECTIONS THAT  
8 MAY HAVE BEEN POSED, ARE THEY SATISFACTORY IN THE PRESENT  
9 CONDITION?

10 MR. ARNOLD: YES.

11 THE COURT: MR. JAFFE, HAVE YOU LOOKED AT THE  
12 INSTRUCTIONS?

13 MR. JAFFE: YES.

14 THE COURT: OTHER THAN PREVIOUSLY POSED OBJECTIONS,  
15 ARE THEY SATISFACTORY?

16 MR. JAFFE: I DID NOT HEAR THE LAST --

17 THE COURT: ARE THEY SATISFACTORY?

18 MR. JAFFE: THEY ARE SATISFACTORY. I HAVE ONE  
19 COMMENT, HOWEVER.

20 THE COURT: ALL RIGHT.

21 MR. JAFFE: CALJIC 8.81.3.

22 THE COURT: ALL RIGHT.

23 MR. JAFFE: THAT'S THE SPECIAL CIRCUMSTANCE  
24 INSTRUCTION REGARDING MULTIPLE MURDER CONVICTIONS.

25 THE COURT: RIGHT.

26 MR. JAFFE: THE CONCLUDING PARAGRAPH STATES: THE  
27 DEFENDANT HAS IN THIS CASE BEEN CONVICTED OF AT LEAST ONE  
28 CRIME OF MURDER OF THE FIRST DEGREE, AND ONE OR MORE

1 CRIMES OF MURDER OF THE FIRST OR SECOND DEGREE.

2 I WOULD LIKE A MODIFICATION. I WOULD LIKE IT  
3 MODIFIED TO STATE: THE DEFENDANT HAS IN THIS CASE BEEN  
4 CONVICTED OF AT LEAST ONE CRIME OF MURDER OF THE FIRST  
5 DEGREE AND ONE ADDITIONAL COUNT OF MURDER.

6 THE REASON WHY I WOULD LIKE THAT MODIFICATION  
7 IS BECAUSE IF THE JURY SOMEHOW MISREADS THIS PARAGRAPH SO  
8 AS TO BELIEVE THAT IF THEY FIND TWO COUNTS OF SECOND  
9 DEGREE THAT THEY COULD FIND A SPECIAL CIRCUMSTANCE TRUE OF  
10 MULTIPLE MURDERS, THEY WOULD BE WRONG.

11 I DON'T KNOW WHETHER THEY WOULD MISREAD IT,  
12 BUT THEY WOULD HAVE TO READ -- MISREAD THIS PARAGRAPH AND  
13 MISREAD THE OBLIGATION OF FINDING OF FIRST DEGREE MURDER.

14 SO IT WOULD REMOVE ANY POSSIBILITY OF A  
15 MISREADING IF IT IS STATED ONE CRIME OF MURDER OF THE  
16 FIRST DEGREE AND ONE ADDITIONAL COUNT OF MURDER -- AND ONE  
17 OR MORE ADDITIONAL COUNTS OF MURDER.

18 THE COURT: MR. ARNOLD?

19 MR. ARNOLD: THEN -- BUT THEN, YOU KNOW, THEY MIGHT  
20 THINK, WELL, THE ADDITIONAL COUNT OF MURDER. IS THAT  
21 MURDER OF THE FIRST DEGREE OR IS THAT MURDER OF THE SECOND  
22 DEGREE?

23 THE COURT: IT CAN BE EITHER.

24 MR. JAFFE: IT COULD BE EITHER.

25 MR. ARNOLD: BUT IF YOU DON'T SPECIFY THAT IN  
26 THERE, PERHAPS THEY'LL --

27 THE COURT: ALL RIGHT. TELL YOU WHAT. YOUR  
28 PROPOSED -- OR REQUEST FOR THE PROPOSED INSTRUCTION IS

1 DENIED. IF IT BECOMES AN ISSUE -- EXCUSE ME?

2 MR. ARNOLD: YOU CAN GIVE THEM ADVICE.

3 THE COURT: RIGHT. WELL, I'M NOT REAL BIG ON  
4 GIVING JURORS ADVICE, BUT I WILL TRY TO EXPLAIN IT TO THEM  
5 IF IT BECOMES A SITUATION.

6 OTHER THAN THAT, IS THERE ANY --

7 MR. JAFFE: NOTHING OTHER THAN THAT.

8 THE COURT: ALL RIGHT. I THINK THAT THAT IS  
9 SOMETHING THAT EACH OF YOU -- MAYBE YOU NOT SO MUCH, MR.  
10 JAFFE, BUT THE PROSECUTOR WOULD HAVE -- WOULD WANT TO  
11 EXPLAIN IN THEIR ARGUMENT PORTION.

12 MR. JAFFE: NO, I DON'T HAVE -- I'M NOT GOING TO GO  
13 THROUGH THE INSTRUCTIONS ON SPECIAL CIRCUMSTANCES TOO MUCH  
14 IN MY ARGUMENT.

15 THE COURT: ALL RIGHT.

16 MR. JAFFE: THE LAST THING IS, YOUR HONOR,  
17 REGARDING THE RENDERINGS.

18 THE COURT: YES.

19 MR. JAFFE: BEFORE TRIAL I HAD MADE A MOTION TO  
20 EXCLUDE THE RENDERINGS, AND THE COURT DENIED THAT MOTION.

21 THE COURT: CORRECT.

22 MR. JAFFE: TO BE CONSISTENT WITH THE MOTION, I  
23 WOULD OBJECT TO ALL OF THE RENDERINGS COMING IN.

24 IF THE COURT WERE TO OVERRULE -- AND I ASSUME  
25 THAT THE COURT WOULD OVERRULE THAT OBJECTION. IF THE  
26 COURT DOES OVERRULE THAT OBJECTION, THEN I WOULD WANT THE  
27 RENDERINGS COMING IN AS IS.

28 SO I DON'T WANT -- I DON'T WANT THE RECORD TO

1 SUGGEST THAT THERE IS A WAIVER AT THIS POINT IN TIME.

2 THE COURT: WELL, LET ME ARTICULATE IT A DIFFERENT  
3 WAY.

4 MR. JAFFE: ALL RIGHT.

5 THE COURT: YOU HAD INITIALLY OBJECTED TO THE  
6 RENDERINGS BASED ON THAT THEY MAY NOT ACCURATELY DEPICT OR  
7 THAT THEY WERE DEPICTING SOMETHING OTHER THAN -- WELL, YOU  
8 STARTED WITH THAT THEY WERE NOT PICTURES AND YOU DID NOT  
9 THINK THAT SKETCHES WERE APPROPRIATE, AND THEN WE WENT ON  
10 TO WHAT THEY DID OR DID NOT DEPICT.

11 MR. ARNOLD MADE CERTAIN REPRESENTATIONS TO  
12 ME. BASED ON THOSE REPRESENTATIONS I SAID THAT I WOULD  
13 PERMIT THE RENDERINGS.

14 NOW -- AND SOME OF THE RENDERINGS  
15 SPECIFICALLY -- I DON'T KNOW THE NUMBER, BUT THERE'S ONE  
16 WHERE THERE WAS A -- THERE IS A RENDERING, IT DEPICTS THE  
17 OFFICERS WITH THE HANDS ON AN AFRICAN AMERICAN IN WHICH A  
18 LIME JACKET IS WORN.

19 MR. JAFFE: RIGHT.

20 THE COURT: THERE WAS NO EVIDENCE OF A LIME JACKET.  
21 BUT THAT RENDERING WAS SPECIFICALLY -- I MEAN I THINK THE  
22 WITNESS ARTICULATED THAT THAT'S THE POSITIONING THAT THEY  
23 SAW.

24 WHICH NUMBER IS THAT?

25 MR. ARNOLD: 36.

26 THE COURT: 36. SO, THEREFORE, I THINK THAT THAT  
27 IS THE PURPOSE OF THAT RENDERING.

28 MY ONLY CONCERN WAS THE LICENSE PLATE WHEN I

1 LOOKED THROUGH THE EXHIBITS AND READ THE PORTIONS OF  
2 TESTIMONY.

3 I WOULD PERMIT THE RENDERINGS. I WOULD BE  
4 DELETING THE LICENSE PLATE IF I WERE TO PERMIT THE -- IN  
5 PERMITTING THE RENDERINGS IF YOU REQUESTED THAT.

6 HOWEVER, WHAT YOU ARE SAYING IS SINCE I AM  
7 GOING TO PERMIT THE RENDERINGS BECAUSE THEY WERE USED FOR  
8 PURPOSES OF THE POSITIONING OR ILLUSTRATING WHAT THE  
9 WITNESS SAW AS FAR AS THE POSITIONING OF VEHICLES OR WHAT  
10 SIDE OF THE VEHICLE WAS SEEN OR WHAT THE PERSON SAID THEY  
11 SAW IN THAT VEHICLE, YOU ARE THEN NOT OBJECTING TO THE  
12 LICENSE PLATE FOR TACTICAL PURPOSES.

13 MR. JAFFE: THAT'S RIGHT.

14 THE COURT: ALL RIGHT.

15 MR. JAFFE: OKAY.

16 THE COURT: ALL RIGHT. THEN WITH THAT, IF THERE IS  
17 NOTHING ELSE I WILL -- YOU ARE GOING TO RECALL ONE OF THE  
18 DETECTIVES YOU SAID?

19 MR. JAFFE: NO, I'M NOT GOING TO RECALL.

20 MR. ARNOLD WILL ASK I GUESS SOME FURTHER  
21 QUESTIONS OF DETECTIVE BUMCROT, AND THEN I WILL HAVE SOME  
22 FURTHER QUESTIONS ON REDIRECT.

23 THE COURT: OF BUMCROT?

24 MR. JAFFE: AND THAT'S IT.

25 THE COURT: SO YOU ARE GOING TO MOVE THE EXHIBITS  
26 IN.

27 AND JUST SO THAT WE'VE GOT IT CLEAR, THE ONES  
28 THAT WILL NOT BE GOING TO THE JURY ARE A AND B, I.



1 R WILL GO WITH THE MODIFICATION WHICH YOU  
2 HAVE SUBMITTED, THE TRANSCRIPT,

3 JJ WILL NOT GO TO THE JURY.

4 KK, LL, FF DOES NOT GO, GG, AND HH.

5 CORRECT?

6 ALL RIGHT. SO THEN YOU ARE GOING TO MOVE THE  
7 EXHIBITS IN, AND I WILL EXPLAIN TO THE JURORS THAT THEY  
8 ARE GOING TO -- WELL, THEY ARE ALL GOING TO BE RECEIVED  
9 EXCEPT THOSE ONES. AND YOU WILL REST.

10 AND YOU ARE GOING TO RECALL -- AND I WILL  
11 EXPLAIN TO THE JURORS THAT YOU HAD SOME QUESTIONS OF  
12 DETECTIVE BUMCROT WHILE HE WAS ON THE STAND IN YOUR CASE  
13 IN CHIEF, AND I AM GIVING YOU AN OPPORTUNITY TO ASK THOSE  
14 QUESTIONS.

15 REMEMBER BECAUSE MRS. -- I DON'T KNOW WHICH  
16 JUROR IT WAS ASKED WHY BUMCROT WAS NOW OFF THE STAND.

17 MR. JAFFE: THAT WAS MRS. LOPEZ -- WHATEVER NUMBER  
18 SHE IS.

19 MR. ARNOLD: BUT THAT'S NOT IN MY CASE IN CHIEF.

20 THE COURT: NO, IT WAS PART OF THE CROSS -- I WON'T  
21 SAY THE CROSS. IT IS PART OF THE CROSS-EXAMINATION OF  
22 DETECTIVE BUMCROT.

23 MR. JAFFE: SO SHOULDN'T WE FINISH THAT BEFORE THE  
24 ITEMS ARE RECEIVED?

25 THE COURT: THAT'S FINE.

26 MR. ARNOLD: I WOULD APPRECIATE IT THAT YOU WOULD  
27 NOT SAY THAT I HAVE SOME ADDITIONAL QUESTIONS BECAUSE IT  
28 WOULD MAKE IT SEEM LIKE THESE ARE SOME ADDITIONAL THINGS I

1 JUST HAPPENED TO THINK UP.

2 THE COURT: WELL, I WILL JUST SAY WE HAVE TO  
3 COMPLETE THE CROSS-EXAMINATION OF DETECTIVE BUMCROT BY  
4 MR. ARNOLD.

5 AND THEN YOU MOVE YOUR EXHIBITS, AND YOU MOVE  
6 113, AND YOU REST. THEN I WILL READ THE INSTRUCTIONS, AND  
7 THEN WE'LL SEND EVERYBODY HOME.

8 WE'LL START TOMORROW AT 9:00.

9 MR. ARNOLD: 9:00? GOOD. OKAY. GREAT.

10 THE COURT: BECAUSE I -- I HAVE GOT TO TELL EACH OF  
11 YOU, I WILL TELL YOU NOW. AT A QUARTER TO 5:00, I HAVE TO  
12 BE OUT THE DOOR TOMORROW. AND I KNOW BOTH OF YOU ARE  
13 GOING TO SAY NO PROBLEM. YOU WILL BE OUT THE DOOR AT  
14 QUARTER TO 5:00. BUT I HAVE TO BE GONE. I HAVE A  
15 COMMITMENT AT 6:00.

16 ALL RIGHT. WE'LL BE IN RECESS.

17

18 (AT 11:50 P.M., THE NOON RECESS WAS TAKEN  
19 UNTIL 1:30 P.M. OF THE SAME DAY.)

20

21

22

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1           LOS ANGELES, CALIFORNIA; THURSDAY, APRIL 27, 1995

2                           1:45 P.M.

3   DEPARTMENT NO. 106

HON. EDWARD A. FERNS, JUDGE

4                           (APPEARANCES AS HERETOFORE NOTED.)

5  
6                           (THE FOLLOWING PROCEEDINGS WERE

7                           HELD IN OPEN COURT OUTSIDE THE

8                           PRESENCE OF THE JURY:)

9  
10           THE COURT:   ALL RIGHT.   THE RECALL THE CASE OF  
11   REGIS THOMAS.   MR. THOMAS IS PRESENT.   RESPECTIVE COUNSEL.  
12   WE ARE OUT OF THE PRESENCE OF THE JURORS.

13                           ARE YOU READY, MR. JAFFE?

14           MR. JAFFE:   YES.

15           THE COURT:   READY, MR. ARNOLD?

16           MR. ARNOLD:   YES, YOUR HONOR.

17           THE COURT:   ALREADY.   DETECTIVE BUMCROT, DO YOU  
18   WANT TO TAKE THE WITNESS STAND AGAIN, PLEASE.

19  
20                           MICHAEL BUMCROT,  
21   THE WITNESS ON THE STAND AT THE TIME OF THE EVENING  
22   ADJOURNMENT, RESUMED THE STAND AND TESTIFIED FURTHER AS  
23   FOLLOWS:

24           THE COURT:   ALL RIGHT.   LET'S BRING THE JURORS OUT.

25  
26  
27  
28

1 (THE JURORS ENTERED THE  
2 COURTROOM AND THE FOLLOWING  
3 PROCEEDINGS WERE HELD:)

4  
5 THE COURT: ALL RIGHT. GOOD AFTERNOON, LADIES AND  
6 GENTLEMEN.

7 THE JURY (COLLECTIVELY): GOOD AFTERNOON.

8 THE COURT: THE RECORD SHOULD REFLECT THAT THE  
9 JURORS AND THE ALTERNATES ARE NOW PRESENT.

10 DETECTIVE BUMCROT HAS RESUMED THE WITNESS  
11 STAND.

12 DETECTIVE BUMCROT, YOU HAVE PREVIOUSLY BEEN  
13 SWORN. I STILL WANT TO REMIND YOU, YOU ARE STILL UNDER  
14 OATH.

15 DO YOU UNDERSTAND THAT?

16 THE DEFENDANT: YES, SIR.

17 THE COURT: GO AHEAD, MR. ARNOLD.

18  
19 RECROSS-EXAMINATION

20 BY MR. ARNOLD:

21 Q. DETECTIVE BUMCROT, WHEN WE RECESSED LAST TIME  
22 DO YOU RECALL YOU WERE BEING QUESTIONED ABOUT PHOTOGRAPHS  
23 YOU SHOWED TO ALICIA JORDAN ON APRIL 20, 1993?

24 A. YES.

25 Q. AND DO YOU RECALL SAYING THAT YOU DID THAT IN  
26 HOLLYWOOD?

27 A. YES.

28 Q. WOULD YOU DESCRIBE HER DEMEANOR ON THAT DAY

1 THAT YOU SHOWED HER THE PHOTOGRAPHS.

2 A. SHE WAS VERY UNCOOPERATIVE.

3 Q. AND DESCRIBE WHAT YOU MEAN.

4 LIKE WHEN YOU SAY, "VERY UNCOOPERATIVE," WHAT  
5 DID SHE DO OR SAY THAT LEADS YOU TO THAT CONCLUSION?

6 A. SHE SAID SHE DID NOT WANT TO TALK TO US.  
7 SHE -- I PLACED SOME PHOTOGRAPHS ON HER LAP. SHE WAS  
8 SITTING ACROSS FROM ME. SHE GLANCED DOWN AND SAID SHE DID  
9 NOT WANT TO LOOK AT THOSE. SHE JUST SAID SHE WAS HAPPY  
10 WHERE SHE WAS AND FOR US TO LEAVE HER ALONE.

11 Q. NOW, THE PHOTOGRAPHS THAT YOU SHOWED HER,  
12 WERE THEY EITHER SOMETHING -- COPIES OF THESE, PEOPLE'S 42  
13 FOR IDENTIFICATION, THE LIVE LINEUP PHOTOS THAT WERE TAKEN  
14 ON APRIL 6TH OF 1993?

15 A. YES, SIR.

16 Q. SO YOU DID NOT SHOW HER WHAT HAS BEEN  
17 CHARACTERIZED DURING THIS TRIAL AS A SIX-PACK --

18 A. NO.

19 Q. -- THE PHOTOGRAPHIC SHOW UP CONTAINING THE  
20 UPPER BODY -- THE UPPER BODIES OF SIX MEN?

21 A. NO, NO, WE DIDN'T.

22 Q. NOW, ALSO WERE YOU IN COURT THE OTHER DAY  
23 WHEN MR. JAFFE AND I ENTERED THE STIPULATION ABOUT A  
24 STATEMENT THAT MS. JORDAN MADE ON JULY 10 OF 1993  
25 REGARDING A STATEMENT OF HER THAT SHE COULD NOT SEE INTO  
26 THE TRUCK THAT WELL BECAUSE THE WINDOWS WERE TINTED.

27 DO YOU RECALL THAT?

28 A. YES.

1 Q. DO YOU KNOW WHAT WAS GOING ON ON JULY 10 OF  
2 1993 AT THE TIME THAT THE -- AT OR ABOUT THE TIME THE  
3 STATEMENTS WERE BEING MADE?

4 A. YES, I DO.

5 Q. WHAT WAS GOING ON?

6 A. WE WERE HAVING -- WE WERE CONDUCTING A  
7 REENACTMENT OF THE SHOOTING.

8 Q. AND WHO WAS THERE?

9 A. MOST OF THE WITNESSES. YOU WERE THERE.  
10 SEVERAL OF THE DETECTIVES.

11 Q. NOW, WAS ALICIA JORDAN THERE?

12 A. YES.

13 Q. CAN YOU DESCRIBE HER DEMEANOR THAT DAY?

14 A. VERY UNCOOPERATIVE.

15 Q. WHAT DO YOU -- DESCRIBE WHAT YOU MEAN.

16 A. SHE SAID SHE DID NOT WANT TO BE THERE. SHE  
17 WOULDN'T EVEN TALK TO ME. SHE JUST WAS -- IT WAS VERY  
18 OBVIOUS THAT SHE DID NOT WANT TO COOPERATE THAT DAY.

19 Q. WHAT DID YOU EITHER DO OR SAY TO GET HER TO  
20 TALK TO YOU SUCH THAT YOU WOULD NOW TESTIFY THAT SHE  
21 DIDN'T WANT TO TALK TO YOU?

22 A. I NEVER DID GET HER TO TALK TO ME THAT DAY.

23 Q. WELL, DID YOU TRY TO?

24 A. YES.

25 Q. WHAT DID YOU DO TO TRY TO?

26 A. I TRIED TO CONVERSE WITH HER. I WALKED UP TO  
27 HER AND BEGAN TO TALK TO HER, AND SHE TOLD ME SHE DID NOT  
28 WANT TO TALK.

1 Q. NOW, BASED ON YOUR INVOLVEMENT IN THIS CASE,  
2 WHEN WAS THE FIRST TIME THAT SHE BECAME COOPERATIVE?

3 A. SHE NEVER BECAME VERY COOPERATIVE UNTIL THE  
4 PRELIMINARY HEARING.

5 Q. AND THAT WOULD BE THE OCTOBER 4, 5, AND 6 OF  
6 1993?

7 A. YES.

8 MR. ARNOLD: I HAVE NOTHING FURTHER.

9 THE COURT: MR. JAFFE.

10 MR. JAFFE: THANK YOU.

11  
12 REDIRECT EXAMINATION

13 BY MR. JAFFE:

14 Q. DETECTIVE BUMCROT, GOOD AFTERNOON.

15 A. GOOD AFTERNOON.

16 Q. ON MARCH 7, 1993, WHICH WOULD HAVE BEEN A  
17 FULL SIX WEEKS BEFORE YOU SPOKE TO ALICIA JORDAN ON APRIL  
18 20TH, DID SHE CALL YOU AND SAY SHE WAS READY TO TALK TO  
19 YOU?

20 A. YES.

21 Q. AND ON THE 20TH WHEN YOU MET WITH HER, YOU  
22 HAD THIS GROUP OF PHOTOGRAPHS; CORRECT?

23 A. THE 20TH OF APRIL?

24 Q. YES.

25 A. YES.

26 Q. AND YOU PLACED THEM DOWN IN AN EFFORT TO HAVE  
27 HER EITHER MAKE AN IDENTIFICATION -- IN AN EFFORT TO  
28 MAKE -- SEE IF SHE COULD MAKE AN IDENTIFICATION; RIGHT?

1 A. YES.

2 Q. NOW, AT THAT TIME LAST WEEK YOU -- WHEN YOU  
3 LAST TESTIFIED, YOU HAD INDICATED THAT ALTHOUGH YOU SHOWED  
4 HER THE PHOTOGRAPHS SHE DID NOT LOOK AT THEM.

5 DO YOU REMEMBER THAT TESTIMONY?

6 A. YES.

7 Q. IS IT TRUE THAT ON THAT DATE SHE COULD NOT  
8 MAKE AN IDENTIFICATION?

9 A. I KNOW SHE DID NOT.

10 Q. DID SHE LOOK AT THE PHOTOGRAPHS?

11 A. SHE GLANCED -- AS I THREW THEM ONTO HER LAP,  
12 SHE GLANCED DOWN AND LOOKED UP AND AWAY AND THEN REFUSED  
13 TO LOOK BACK AT THE PHOTOS.

14 Q. ALL RIGHT. NOW, YOU HAD -- YOU PREPARED A  
15 REPORT IN THIS REGARD?

16 A. YES.

17 Q. REGARDING THIS INCIDENT?

18 A. YES.

19 Q. AND YOU CHECKED YOUR NOTES THIS AFTERNOON?

20 A. YES, I HAVE.

21 Q. ISN'T IT TRUE THAT YOUR NOTES INDICATED THAT  
22 ALICIA JORDAN WAS SHOWN PHOTOGRAPHS OF A LINEUP DEPICTING  
23 SUSPECT REGIS THOMAS IN THE NUMBER 6 POSITION?

24 A. YES.

25 Q. AND FURTHER DID YOU NOT INDICATE THAT THE  
26 WITNESS' ATTITUDE WAS EXTREMELY UNCOOPERATIVE AND SHE HAD  
27 A SURLY MANNER?

28 A. YES.



1 Q. AND FURTHER SHE INDICATED SHE COULD NOT  
2 IDENTIFY ANYONE IN THE LINEUP PHOTOS AS A POSSIBLE  
3 PARTICIPANT IN THE COMPTON POLICE OFFICER MURDERS?

4 A. YES.

5 Q. YOU DID NOT INDICATE THAT SHE WOULD NOT  
6 IDENTIFY ANYONE, BUT YOU WROTE SHE COULD NOT IDENTIFY  
7 ANYONE?

8 A. CORRECT.

9 Q. ON THE 23RD OF MARCH, 1993, YOU SPOKE TO  
10 DE'MORYEA POLIDORE?

11 A. YES, SIR.

12 Q. DID HE TELL YOU -- AND YOU CAN REVIEW YOUR  
13 NOTES. I BELIEVE YOU DID EARLIER TODAY -- THAT HE  
14 WITNESSED THE TRUCK HIT THE CURB?

15 A. I BELIEVE SO, YES.

16 Q. WAS THERE ANY TIME BEFORE THE PRELIMINARY  
17 HEARING, FROM THE TIME THE POLICE OFFICERS WERE KILLED  
18 UNTIL THE PRELIMINARY HEARING, ALMOST EIGHT MONTHS, THAT  
19 ALICIA JORDAN EVER IDENTIFIED REGIS THOMAS FROM A  
20 PHOTOGRAPH?

21 A. NO, SIR.

22 Q. WAS THERE ANY PRIOR IDENTIFICATION AT ALL BY  
23 ALICIA JORDAN, MEANING EITHER IN PERSON OR BY PHOTOGRAPH,  
24 OF REGIS THOMAS BEFORE SHE TESTIFIED AT THE PRELIMINARY  
25 HEARING?

26 A. NO, SIR.

27 MR. JAFFE: I HAVE NO FURTHER QUESTIONS.

28 THE COURT: ANYTHING, MR. ARNOLD?

1 MR. ARNOLD: YES.

2

3 RECROSS-EXAMINATION

4 BY MR. ARNOLD:

5 Q. DETECTIVE BUMCROT, THE FIRST TIME THAT YOU  
6 INTERVIEWED DE'MORYEA POLIDORE THAT WOULD BE ON  
7 FEBRUARY -- WAS THAT ON FEBRUARY 27TH?

8 A. YES, I BELIEVE SO.

9 Q. AND DID DE'MORYEA POLIDORE DISCUSS THE MANNER  
10 IN WHICH THE SUSPECT WAS DRIVING DOWN THE STREET?

11 A. I BELIEVE SO.

12 Q. DO YOU RECALL WHETHER IN THAT FIRST INTERVIEW  
13 HE SAID THAT THE TRUCK HIT THE CURB OR ALMOST HIT THE  
14 CURB?

15 A. I BELIEVE HE SAID IT ALMOST HIT THE CURB.

16 Q. YOU SAY YOU BELIEVE.

17 NOW, WOULD IT REFRESH YOUR RECOLLECTION TO  
18 LOOK AT ANY PARTICULAR DOCUMENTS?

19 A. YES.

20 Q. BY MR. ARNOLD: ALL RIGHT. YOUR HONOR, CAN  
21 WE TAKE A FIVE-MINUTE RECESS? I WAS NOT EXPECTING THIS.

22 MR. JAFFE: I WILL STIPULATE -- I WILL STIPULATE.

23 THE COURT: WHY DON'T YOU TALK TO EACH OTHER ABOUT  
24 THE STIPULATION IF THERE'S GOING TO BE A STIPULATION.

25 MR. JAFFE: I'LL STIPULATE. GO AHEAD AND ASK.

26 MR. ARNOLD: MR. JAFFE, WILL YOU STIPULATE THAT ON  
27 FEBRUARY 27, 1993, THAT WAS THE FIRST TIME THAT DETECTIVE  
28 BUMCROT AND BRANSCOMB INTERVIEWED DE'MORYEA POLIDORE, THAT

1 TWICE DURING THAT INTERVIEW, AND IT WAS A TAPED INTERVIEW,  
2 DE'MORYEA POLIDORE SAID THAT THE TRUCK ALMOST HIT THE  
3 CURB.

4 MR. JAFFE: WELL, YOU CHANGED IT FROM TWICE -- FROM  
5 ONCE TO TWICE, BUT I WILL STIPULATE THAT DE'MORYEA  
6 POLIDORE ON PAGE 9 OF THE TAPED INTERVIEW SAID THE SUSPECT  
7 ALMOST HIT THE CURB AS HE TURNED THE CORNER NEAR ROSECRANS  
8 AND CENTRAL.

9 THE COURT: ALL RIGHT. I GUESS WE ARE GOING TO  
10 TAKE A BREAK, LADIES AND GENTLEMEN.

11 MR. JAFFE: ALL RIGHT. NO, WE DON'T HAVE TO TAKE A  
12 BREAK.

13  
14 (COUNSEL CONFER SOTTO VOCE.)  
15

16 MR. JAFFE: I'LL SO STIPULATE THAT HE SAID IT  
17 TWICE.

18 MR. ARNOLD: TWO TIMES.

19 MR. JAFFE: SO STIPULATED.

20 MR. ARNOLD: THANK YOU.

21 THE COURT: YOU CAN STEP DOWN, SIR.

22 THE WITNESS: THANKS.

23 THE COURT: ANY OTHER WITNESSES, MR. JAFFE?

24 MR. JAFFE: NO, YOUR HONOR.

25 THE COURT: ALL RIGHT. THEN, LADIES AND GENTLEMEN,  
26 WE HAVE PREVIOUSLY DISCUSSED -- THAT'S WHAT WE WERE DOING  
27 YESTERDAY AND THIS MORNING -- THE EXHIBITS.

28 AND, MR. JAFFE, YOU ARE MOVING CERTAIN

1 EXHIBITS INTO EVIDENCE; IS THAT CORRECT?

2 MR. JAFFE: YES, YOUR HONOR.

3 THE COURT: ALL RIGHT. I WOULD INDICATE, LADIES  
4 AND GENTLEMEN, THAT THE -- WELL, I'M GOING TO TELL YOU THE  
5 ONES THAT ARE NOT GOING TO BE RECEIVED INTO EVIDENCE ARE  
6 A, B, I, FF, GG, HH, JJ, KK, AND LL.

7 THE OTHERS WILL BE RECEIVED.

8  
9 (REC'D IN EVD:= ALL REMAINING DEFENSE  
10 EXHIBITS.)

11  
12 THE COURT: WITH THAT, MR. JAFFE?

13 MR. JAFFE: YOUR HONOR, THE DEFENSE RESPECTFULLY  
14 RESTS.

15 THE COURT: MR. ARNOLD, DO YOU HAVE ANYTHING, ANY  
16 OTHER PRESENTATION OF WITNESSES?

17 MR. ARNOLD: NO, SIR.

18 THE COURT: YOU ARE MOVING PEOPLE'S 113 INTO  
19 EVIDENCE?

20 MR. ARNOLD: YES.

21 THE COURT: OKAY. THAT WILL BE RECEIVED.

22 MR. ARNOLD: THANK YOU.

23

24 (REC'D IN EVD.: = PEO'S. 113.)

25

26 THE COURT: DO YOU REST?

27 MR. ARNOLD: YES.

28 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN,

1 THAT'S THE CONCLUSION OF THE PRESENTATION OF THE EVIDENCE  
2 IN THIS PARTICULAR CASE.

3 THE SCHEDULING IS SUCH THAT I AM NOW IN A FEW  
4 MOMENTS GOING TO READ THE JURY INSTRUCTIONS TO YOU. AFTER  
5 I COMPLETE READING THE JURY INSTRUCTIONS, WE ARE GOING TO  
6 EXCUSE YOU FOR THE DAY. THAT WAS THE DISCUSSION ABOUT WHO  
7 MAY OR MAY NOT GET AN ADVANTAGE IF WE STARTED AND PEOPLE  
8 GOT TO THINK ABOUT IT OVERNIGHT.

9 SO AFTER I COMPLETE READING THE JURY  
10 INSTRUCTIONS TO YOU, WE WILL THEN BREAK. WE ARE GOING TO  
11 RESUME TOMORROW AT 9:00 A.M. BECAUSE -- WE ARE NOT GOING  
12 TO LEAVE YET, BUT SO THAT WE START AT 9:00, THE LAWYERS  
13 WILL HAVE A WHOLE DAY TO PRESENT THEIR ANALYSIS OF THE  
14 FACTS AND THE LAW TO YOU.

15 I DON'T KNOW WHETHER THEY ARE GOING TO USE  
16 IT, BUT I HAVE TOLD THEM AT A QUARTER TO 5:00, I'M WALKING  
17 OUT THE DOOR BECAUSE I HAVE A COMMITMENT TOMORROW NIGHT  
18 WITH MY FAMILY. SO -- BUT I KNOW THAT THEY SAY THAT WON'T  
19 BE A PROBLEM. ALL RIGHT.

20 LET ME JUST SEE COUNSEL AT THE SIDEBAR FOR A  
21 SECOND.

22  
23 (THE FOLLOWING PROCEEDINGS WERE HELD  
24 AT THE BENCH:)

25  
26 THE COURT: DID THE DETECTIVES WANT TO STAY OR DID  
27 THEY WANT TO LEAVE?

28 MR. ARNOLD: HE WANTS TO STAY.

1 THE COURT: THAT'S FINE.

2 MR. ARNOLD: IT'S AMAZING.

3 THE COURT: THAT'S FINE.

4 MR. ARNOLD: THIS IS NOT EXACTLY THE MOST EXCITING  
5 PART OF THE TRIAL. I AM SURE YOU WILL DO A VERY, VERY  
6 GOOD JOB.

7 THE COURT: I WILL TELL THEM -- I JUST WANTED TO  
8 SEE BECAUSE I COULD HAVE SAID, YOU KNOW, THERE'S NO REASON  
9 FOR THEM TO REMAIN IF THEY WANTED TO LEAVE.

10 MR. ARNOLD: NO, THEY SAID THEY ARE --

11 MR. JAFFE: I KNOW YOU RESTED, MR. ARNOLD, BUT DID  
12 YOU CHANGE YOUR MIND?

13

14 (THE FOLLOWING PROCEEDINGS WERE  
15 HELD IN OPEN COURT IN THE PRESENCE  
16 OF THE JURY:)

17

18 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, THESE  
19 INSTRUCTIONS ARE GOING TO TAKE A WHILE TO READ TO YOU.

20 THERE'S NO NEED TO TAKE -- WELL, LET ME PUT  
21 IT ANOTHER WAY: YOU CAN TAKE NOTES, BUT THERE'S NO NEED.  
22 TO TRY TO WRITE THEM DOWN BECAUSE YOU ARE GOING TO GET THE  
23 INSTRUCTIONS IN THE JURY ROOM WHEN YOU DELIBERATE.

24 IF YOU WANT TO TAKE NOTES OR WHATEVER OF  
25 SOMETHING THAT IS SIGNIFICANT, YOU CAN DO THAT OBVIOUSLY.  
26 I AM NOT PRECLUDING YOU FROM DOING THAT.

27 I WOULD ASK YOU TO LISTEN TO THE  
28 INSTRUCTIONS, AND I AM SURE SOME OF YOU ARE SITTING THERE

1 THINKING, WELL, YEAH, WHAT ELSE ARE WE GOING TO DO.

2 WELL, TYPICALLY AS THE INSTRUCTIONS PROGRESS,  
3 JURORS' EYES TEND TO CLOSE OR THEY THEN START TO LOOK LIKE  
4 THE DEAR CAUGHT IN THE HEADLIGHTS OF A CAR, AS IF TRYING  
5 TO KEEP AWAKE.

6 AND IT IS MY INTENTION TO READ THEM TO YOU.  
7 I WILL LOOK UP AND SEE WHETHER YOU ARE AWAKE OR NOT.

8 I TELL JURORS THAT IF YOU ARE THE TYPE OF  
9 PERSON THAT LISTENS WITH YOUR EYES CLOSED, THAT'S FINE,  
10 BUT IF YOU HEAR ME STOP TALKING, OPEN YOUR EYES BECAUSE  
11 THAT MEANS I'VE SEEN THAT YOUR EYES ARE CLOSED. ALL  
12 RIGHT? AND IF YOU DO DOZE OFF, I'LL HAVE THE PERSON NEXT  
13 TO YOU GIVE YOU AN ELBOW TO WAKE YOU UP.

14 I WILL ALSO TAKE A BREAK HALFWAY THROUGH SO  
15 THAT YOU CAN GET UP AND STRETCH OR GET A DRINK OF WATER OR  
16 WHATEVER.

17 ONE TIME I WAS TEMPTED TO GIVE A JUROR A CUP  
18 OF WATER TO HOLD. MY ONLY CONCERN WAS THAT HE WOULD DUMP  
19 IT ON THE PERSON IN FRONT OF HIM WHEN HE FELL ASLEEP  
20 RATHER THAN HIMSELF.

21 SO IF YOU COULD, LISTEN TO THE INSTRUCTIONS.  
22 ALL RIGHT.

23 LADIES AND GENTLEMEN OF THE

24 JURY:

25 YOU HAVE HEARD ALL THE  
26 EVIDENCE, AND NOW IT IS MY DUTY TO  
27 INSTRUCT YOU ON THE LAW THAT APPLIES TO  
28 THIS CASE.

1 THE LAW REQUIRES THAT I READ  
2 THE INSTRUCTIONS TO YOU.

3 YOU WILL HAVE THESE  
4 INSTRUCTIONS IN WRITTEN FORM IN THE JURY  
5 ROOM TO REFER TO DURING YOUR  
6 DELIBERATIONS.

7 YOU MUST BASE YOUR DECISION  
8 ON THE FACTS AND THE LAW.

9 YOU HAVE TWO DUTIES TO  
10 PERFORM. FIRST, YOU MUST DETERMINE THE  
11 FACTS FROM THE EVIDENCE RECEIVED IN THE  
12 TRIAL AND NOT FROM ANY OTHER SOURCE. A  
13 "FACT" IS SOMETHING PROVED DIRECTLY OR  
14 CIRCUMSTANTIALY BY THE EVIDENCE OR BY  
15 STIPULATION. A STIPULATION IS AN  
16 AGREEMENT BETWEEN ATTORNEYS REGARDING THE  
17 FACTS. SECOND, YOU MUST APPLY THE LAW  
18 THAT I STATE TO YOU TO THE FACTS AS YOU  
19 DETERMINE THEM, AND IN THIS WAY ARRIVE AT  
20 YOUR VERDICT AND ANY FINDING YOU ARE  
21 INSTRUCTED TO INCLUDE IN YOUR VERDICT.

22 YOU MUST ACCEPT AND FOLLOW  
23 THE LAW AS I STATE IT TO YOU WHETHER OR  
24 NOT YOU AGREE WITH THE LAW. IF ANYTHING  
25 CONCERNING THE LAW SAID BY THE ATTORNEYS  
26 IN THEIR ARGUMENTS OR AT ANY OTHER TIME  
27 DURING THE TRIAL CONFLICTS WITH MY  
28 INSTRUCTIONS ON THE LAW, YOU MUST FOLLOW



1 MY INSTRUCTIONS.

2 YOU MUST NOT BE INFLUENCED BY  
3 PITY FOR A DEFENDANT OR BY PREJUDICE  
4 AGAINST HIM. YOU MUST NOT BE BIASED  
5 AGAINST THE DEFENDANT BECAUSE HE HAS BEEN  
6 ARRESTED FOR THIS OFFENSE, CHARGED WITH A  
7 CRIME, OR BROUGHT TO TRIAL. NONE OF THESE  
8 CIRCUMSTANCES IS EVIDENCE OF GUILT, AND  
9 YOU MUST NOT INFER OR ASSUME FROM ANY OR  
10 ALL OF THEM THAT HE IS MORE LIKELY TO BE  
11 GUILTY THAN INNOCENT. YOU MUST NOT BE  
12 INFLUENCED BY MERE SENTIMENT, CONJECTURE,  
13 SYMPATHY, PASSION, PREJUDICE, PUBLIC  
14 OPINION, OR PUBLIC FEELING. BOTH THE  
15 PEOPLE AND THE DEFENDANT HAVE A RIGHT TO  
16 EXPECT THAT YOU WILL CONSCIENTIOUSLY  
17 CONSIDER AND WEIGH THE EVIDENCE, APPLY THE  
18 LAW, AND REACH A JUST VERDICT REGARDLESS  
19 OF THE CONSEQUENCES.

20 IF ANY RULE, DIRECTION, OR  
21 IDEA IS REPEATED OR STATED IN DIFFERENT  
22 WAYS IN THESE INSTRUCTIONS, NO EMPHASIS IS  
23 INTENDED, AND YOU MUST NOT DRAW ANY  
24 INFERENCE BECAUSE OF ITS REPETITION. DO  
25 NOT SINGLE OUT ANY PARTICULAR SENTENCE OR  
26 ANY INDIVIDUAL POINT OR INSTRUCTION AND  
27 IGNORE THE OTHERS. CONSIDER THE  
28 INSTRUCTIONS AS A WHOLE AND EACH IN LIGHT

1 OF ALL THE OTHERS.

2 THE ORDER IN WHICH THE  
3 INSTRUCTIONS ARE GIVEN HAS NO SIGNIFICANCE  
4 AS TO THEIR RELATIVE IMPORTANCE.

5 STATEMENTS MADE BY THE  
6 ATTORNEYS DURING THE TRIAL ARE NOT  
7 EVIDENCE, ALTHOUGH IF THE ATTORNEYS HAVE  
8 STIPULATED OR AGREED TO A FACT, YOU MUST  
9 REGARD THAT FACT AS CONCLUSIVELY PROVED.

10 IF AN OBJECTION WAS SUSTAINED  
11 TO A QUESTION, DO NOT GUESS WHAT THE  
12 ANSWER MIGHT HAVE BEEN. DO NOT SPECULATE  
13 AS TO THE REASON FOR THE OBJECTION.

14 DO NOT ASSUME TO BE TRUE ANY  
15 INSINUATION SUGGESTED BY A QUESTION ASKED  
16 A WITNESS. A QUESTION IS NOT EVIDENCE AND  
17 MAY BE CONSIDERED ONLY AS IT ENABLES YOU  
18 TO UNDERSTAND THE ANSWER.

19 DID NOT CONSIDER FOR ANY  
20 PURPOSE ANY OFFER OF EVIDENCE THAT WAS  
21 REJECTED OR ANY EVIDENCE THAT WAS STRICKEN  
22 BY THE COURT. TREAT IT AS THOUGH YOU HAD  
23 NEVER HEARD OF IT.

24 YOU MUST DECIDE ALL QUESTIONS  
25 OF FACT IN THIS CASE FROM THE EVIDENCE  
26 RECEIVED IN THIS TRIAL AND NOT FROM ANY  
27 OTHER SOURCE.

28 YOU MUST NOT MAKE ANY

1 INDEPENDENT INVESTIGATION OF THE FACTS OR  
2 THE LAW OR CONSIDER OR DISCUSS FACTS AS TO  
3 WHICH THERE IS NO EVIDENCE. THIS MEANS,  
4 FOR EXAMPLE, THAT YOU MUST NOT ON YOUR OWN  
5 VISIT THE SCENE, CONDUCT EXPERIMENTS, OR  
6 CONSULT REFERENCE WORKS OR PERSONS FOR  
7 ADDITIONAL INFORMATION.

8 YOU MUST NOT DISCUSS THIS  
9 CASE WITH ANY OTHER PERSON EXCEPT A FELLOW  
10 JUROR, AND YOU MUST NOT DISCUSS THE CASE  
11 WITH A FELLOW JUROR UNTIL THE CASE IS  
12 SUBMITTED TO YOU FOR YOUR DECISION AND  
13 ONLY WHEN ALL JURORS ARE PRESENT IN THE  
14 JURY ROOM.

15 AND I USUALLY DON'T COMMENT ON INSTRUCTIONS  
16 BUT I AM REALLY GOING TO EMPHASIZE THIS ONE ABOUT YOUR  
17 DECISION IS BASED ON WHAT YOU HEARD IN THIS COURTROOM.

18 I HAD ONE MURDER TRIAL WHERE A JUROR WENT OUT  
19 AND LOOKED UP THE DEFINITION OF MALICE IN A 1972 PENAL  
20 CODE AND BROUGHT IT IN. FORTUNATELY HE TOLD ME -- TOLD  
21 THE BAILIFF BEFOREHAND, BEFORE HE SHARED IT WITH EVERYBODY  
22 ELSE.

23 AND ANOTHER SITUATION WHERE JURORS BROUGHT IN  
24 A NEWSPAPER AND USED THAT, AND BASICALLY WE FLUSHED FIVE  
25 WEEKS DOWN THE TOILET BECAUSE OF IT.

26 YOUR DECISION IS BASED ON WHAT HAPPENED, WHAT  
27 YOU HEARD IN THIS COURTROOM. ALL RIGHT.

28 EVIDENCE CONSISTS OF

1 TESTIMONY OF WITNESSES, WRITINGS, MATERIAL  
2 OBJECTS, OR ANYTHING PRESENTED TO THE  
3 SENSES AND OFFERED TO PROVE THE EXISTENCE  
4 OR NONEXISTENCE OF A FACT.

5 EVIDENCE IS EITHER DIRECT OR  
6 CIRCUMSTANTIAL.

7 DIRECT EVIDENCE IS EVIDENCE  
8 THAT DIRECTLY PROVES A FACT WITHOUT THE  
9 NECESSITY OF AN INFERENCE. IT IS EVIDENCE  
10 WHICH BY ITSELF, IF FOUND TO BE TRUE,  
11 ESTABLISHES THAT FACT.

12 CIRCUMSTANTIAL EVIDENCE IS  
13 EVIDENCE THAT, IF FOUND TO BE TRUE, PROVES  
14 A FACT FROM WHICH AN INFERENCE OF THE  
15 EXISTENCE OF ANOTHER FACT MAY BE DRAWN.

16 AN INFERENCE IS A DEDUCTION  
17 OF FACT THAT MAY LOGICALLY AND REASONABLY  
18 BE DRAWN FROM ANOTHER FACT OR GROUP OF  
19 FACTS ESTABLISHED BY THE EVIDENCE.

20 IT IS NOT NECESSARY THAT  
21 FACTS BE PROVED BY DIRECT EVIDENCE. THEY  
22 MAY BE PROVED ALSO BY CIRCUMSTANTIAL  
23 EVIDENCE OR BY A COMBINATION OF DIRECT  
24 EVIDENCE AND CIRCUMSTANTIAL EVIDENCE.

25 BOTH DIRECT EVIDENCE AND  
26 CIRCUMSTANTIAL EVIDENCE ARE ACCEPTABLE AS  
27 A MEANS OF PROOF. NEITHER IS ENTITLED TO  
28 ANY GREATER WEIGHT THAN THE OTHER.

1                   HOWEVER, A FINDING OF GUILT  
2 AS TO ANY CRIME MAY NOT BE BASED ON  
3 CIRCUMSTANTIAL EVIDENCE UNLESS THE PROVED  
4 CIRCUMSTANCES ARE NOT ONLY, ONE,  
5 CONSISTENT WITH THE THEORY THAT THE  
6 DEFENDANT IS GUILTY OF THE CRIME, BUT,  
7 TWO, CANNOT BE RECONCILED WITH ANY OTHER  
8 RATIONAL CONCLUSION.

9                   FURTHER, EACH FACT WHICH IS  
10 ESSENTIAL TO COMPLETE A SET OF  
11 CIRCUMSTANCES NECESSARY TO ESTABLISH THE  
12 DEFENDANT'S GUILT MUST BE PROVED BEYOND A  
13 REASONABLE DOUBT.

14                  IN OTHER WORDS, BEFORE AN  
15 INFERENCE ESSENTIAL TO ESTABLISH GUILT MAY  
16 BE FOUND TO HAVE BEEN PROVED BEYOND A  
17 REASONABLE DOUBT, EACH FACT OR  
18 CIRCUMSTANCE UPON WHICH SUCH INFERENCE  
19 NECESSARILY RESTS, MUST BE PROVED BEYOND A  
20 REASONABLE DOUBT.

21                  ALSO, IF THE CIRCUMSTANTIAL  
22 EVIDENCE AS TO ANY PARTICULAR COUNT IS  
23 SUSCEPTIBLE OF TWO REASONABLE  
24 INTERPRETATIONS, ONE OF WHICH POINTS TO  
25 THE DEFENDANT'S GUILT AND THE OTHER TO HIS  
26 INNOCENCE, YOU MUST ADOPT THAT  
27 INTERPRETATION WHICH POINTS TO THE  
28 DEFENDANT'S INNOCENCE AND REJECT THAT

1 INTERPRETATION WHICH POINTS TO HIS GUILT.

2 IF, ON THE OTHER HAND, ONE  
3 INTERPRETATION OF SUCH EVIDENCE APPEARS TO  
4 YOU TO BE REASONABLE AND THE OTHER  
5 INTERPRETATION TO BE UNREASONABLE, YOU  
6 MUST ACCEPT THE REASONABLE INTERPRETATION  
7 AND REJECT THE UNREASONABLE.

8 THE MENTAL STATE OF WHICH AN  
9 ACT IS DONE MAY BE SHOWN BY THE  
10 CIRCUMSTANCES SURROUNDING THE COMMISSION  
11 OF THE ACT.

12 HOWEVER, YOU MAY NOT FIND THE  
13 DEFENDANT GUILTY OF THE CRIME CHARGED IN  
14 COUNTS I, II, AND III UNLESS THE PROVED  
15 CIRCUMSTANCES ARE NOT ONLY, ONE,  
16 CONSISTENT WITH THE THEORY THAT THE  
17 DEFENDANT HAD THE REQUIRED MENTAL STATE,  
18 BUT, TWO, CANNOT BE RECONCILED WHICH ANY  
19 RATIONAL CONCLUSION.

20 ALSO, IF THE EVIDENCE AS TO  
21 ANY SUCH MENTAL STATE IS SUSCEPTIBLE OF  
22 TWO REASONABLE INTERPRETATIONS, ONE OF  
23 WHICH POINTS TO THE EXISTENCE OF THE  
24 MENTAL STATE AND THE OTHER TO THE ABSENCE  
25 OF THE MENTAL STATE, YOU MUST ADOPT THAT  
26 INTERPRETATION WHICH POINTS TO THE ABSENCE  
27 OF THE MENTAL STATE.

28 IF, ON THE OTHER HAND, ONE

1 INTERPRETATION OF THE EVIDENCE AS TO SUCH  
2 MENTAL STATE APPEARS TO YOU TO BE  
3 REASONABLE AND THE OTHER INTERPRETATION TO  
4 BE UNREASONABLE, YOU MUST ACCEPT THE  
5 REASONABLE INTERPRETATION AND REJECT THE  
6 UNREASONABLE.

7 CERTAIN EVIDENCE WAS ADMITTED  
8 FOR A LIMITED PURPOSE. AT THE TIME THIS  
9 EVIDENCE WAS ADMITTED YOU WERE ADMONISHED  
10 THAT IT COULD NOT BE CONSIDERED BY YOU FOR  
11 ANY PURPOSE OTHER THAN THE LIMITED PURPOSE  
12 FOR WHICH IT WAS ADMITTED.

13 DO NOT CONSIDER SUCH EVIDENCE  
14 FOR ANY PURPOSE EXCEPT THE LIMITED PURPOSE  
15 FOR WHICH IT WAS ADMITTED.

16 NEITHER SIDE IS REQUIRED TO  
17 CALL AS WITNESSES ALL PERSONS WHO MAY HAVE  
18 BEEN PRESENT AT ANY OF THE EVENTS  
19 DISCLOSED BY THE EVIDENCE OR WHO MAY  
20 APPEAR TO HAVE SOME KNOWLEDGE OF THESE  
21 EVENTS OR TO PRODUCE ALL OBJECTS OR  
22 DOCUMENTS MENTIONED OR SUGGESTED BY THE  
23 EVIDENCE.

24 EVIDENCE THAT ON SOME FORMER  
25 OCCASION A WITNESS MADE A STATEMENT OR  
26 STATEMENTS THAT WERE INCONSISTENT OR  
27 CONSISTENT WITH HIS OR HER TESTIMONY IN  
28 THIS TRIAL MAY BE CONSIDERED BY YOU NOT

1 ONLY FOR THE PURPOSE OF TESTING THE  
2 CREDIBILITY OF THE WITNESS, BUT ALSO AS  
3 EVIDENCE OF THE TRUTH OF THE FACTS AS  
4 STATED BY THE WITNESS ON SUCH FORMER  
5 OCCASION.

6 IF YOU DISBELIEVE A WITNESS'  
7 TESTIMONY THAT HE OR SHE NO LONGER  
8 REMEMBERS A CERTAIN EVENT, SUCH TESTIMONY  
9 IS INCONSISTENT WITH THE PRIOR STATEMENT  
10 OR STATEMENTS BY HIM OR HER DESCRIBING  
11 THAT EVENT.

12 EVERY PERSON WHO TESTIFIES  
13 UNDER OATH IS A WITNESS. YOU ARE THE SOLE  
14 JUDGES OF THE BELIEVABILITY OF A WITNESS  
15 AND THE WEIGHT TO BE GIVEN THE TESTIMONY  
16 OF EACH WITNESS.

17 IN DETERMINING THE  
18 BELIEVABILITY OF A WITNESS YOU MAY  
19 CONSIDER ANYTHING THAT HAS A TENDENCY IN  
20 REASON TO PROVE OR DISPROVE THE  
21 TRUTHFULNESS OF THE TESTIMONY OF THE  
22 WITNESS, INCLUDING BUT NOT LIMITED TO ANY  
23 OF THE FOLLOWING:

24 THE EXTENT OF THE OPPORTUNITY  
25 OR THE ABILITY OF THE WITNESS TO SEE OR  
26 HEAR OR OTHERWISE BECOME AWARE OF ANY  
27 MATTER ABOUT WHICH THE WITNESS HAS  
28 TESTIFIED;



1 THE ABILITY OF THE WITNESS TO  
2 REMEMBER OR TO COMMUNICATE ANY MATTER  
3 ABOUT WHICH THE WITNESS HAS TESTIFIED;

4 THE CHARACTER AND QUALITY OF  
5 THAT TESTIMONY;

6 THE Demeanor AND MANNER OF  
7 THE WITNESS WHILE TESTIFYING;

8 THE EXISTENCE OR NONEXISTENCE  
9 OF A BIAS, INTEREST, OR OTHER MOTIVE;

10 EVIDENCE OF THE EXISTENCE OR  
11 NONEXISTENCE OF ANY FACT TESTIFIED TO BY  
12 THE WITNESS;

13 A STATEMENT PREVIOUSLY MADE  
14 BY THE WITNESS THAT IS CONSISTENT OR  
15 INCONSISTENT WITH THE TESTIMONY OF THE  
16 WITNESS;

17 AN ADMISSION BY THE WITNESS  
18 OF UNTRUTHFULNESS;

19 THE WITNESS' PRIOR CONVICTION  
20 OF A FELONY.

21 DISCREPANCIES IN A WITNESS'  
22 TESTIMONY OR BETWEEN HIS OR HER TESTIMONY  
23 AND THAT OF OTHERS, IF THERE WERE ANY, DO  
24 NOT NECESSARILY MEAN THAT THE WITNESS  
25 SHOULD BE DISCREDITED. FAILURE OF  
26 RECOLLECTION IS A COMMON EXPERIENCE AND  
27 INNOCENT MISRECOLLECTION IS NOT UNCOMMON.  
28 IT IS A FACT, ALSO, THAT TWO PERSONS

1 WITNESSING AN INCIDENT OR A TRANSACTION  
2 OFTEN WILL SEE OR HEAR IT DIFFERENTLY.  
3 WHETHER A DISCREPANCY PERTAINS TO A FACT  
4 OF IMPORTANCE OR ONLY TO A TRIVIAL DETAIL  
5 SHOULD BE CONSIDERED IN WEIGHING ITS  
6 SIGNIFICANCE.

7 A WITNESS, WHO IS WILLFULLY  
8 FALSE IN ONE MATERIAL PART OF HIS OR HER  
9 TESTIMONY, IS TO BE DISTRUSTED IN OTHERS.  
10 YOU MAY REJECT THE WHOLE TESTIMONY OF A  
11 WITNESS WHO WILLFULLY HAS TESTIFIED  
12 FALSELY AS TO A MATERIAL POINT UNLESS FROM  
13 ALL THE EVIDENCE YOU BELIEVE THE  
14 PROBABILITY OF TRUTH FAVORS HIS OR HER  
15 TESTIMONY IN OTHER PARTICULARS.

16 THE FACT THAT A WITNESS HAS  
17 BEEN CONVICTED OF A FELONY, IF SUCH BE A  
18 FACT, MAY BE CONSIDERED BY YOU ONLY FOR  
19 THE PURPOSE OF DETERMINING THE  
20 BELIEVABILITY OF THAT WITNESS.

21 THE FACT OF SUCH A CONVICTION  
22 DOES NOT NECESSARILY DESTROY OR IMPAIR A  
23 WITNESS' BELIEVABILITY. IT IS ONE OF THE  
24 CIRCUMSTANCES THAT YOU MAY TAKE INTO  
25 CONSIDERATION IN WEIGHING THE TESTIMONY OF  
26 SUCH A WITNESS.

27 YOU ARE NOT BOUND TO DECIDE  
28 AN ISSUE OF FACT IN ACCORDANCE WITH THE

1 TESTIMONY OF A NUMBER OF WITNESSES WHICH  
2 DOES NOT CONVINCING YOU AS AGAINST THE  
3 TESTIMONY OF A LESSER NUMBER OR OTHER  
4 EVIDENCE WHICH APPEALS TO YOUR MIND WITH  
5 MORE CONVINCING FORCE. YOU MAY NOT  
6 DISREGARD THE TESTIMONY OF THE GREATER  
7 NUMBER OF WITNESSES MERELY FROM CAPRICE,  
8 WHIM, OR PREJUDICE, OR FROM A DESIRE TO  
9 FAVOR ONE SIDE AGAINST THE OTHER. YOU  
10 MUST NOT DECIDE AN ISSUE BY THE SIMPLE  
11 PROCESS OF COUNTING THE NUMBER OF  
12 WITNESSES WHO HAVE TESTIFIED ON THE  
13 OPPOSING SIDES. THE FINAL TEST IS NOT IN  
14 THE RELATIVE NUMBER OF WITNESSES, BUT IN  
15 THE CONVINCING FORCE OF THE EVIDENCE.  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 THE COURT: YOU SHOULD GIVE THE  
2 TESTIMONY OF A SINGLE WITNESS WHATEVER  
3 WEIGHT IT DESERVES.

4 HOWEVER, TESTIMONY BY ONE  
5 WITNESS WHICH YOU BELIEVE CONCERNING ANY  
6 FACT IS SUFFICIENT FOR THE PROOF OF THAT  
7 FACT.

8 YOU SHOULD CAREFULLY REVIEW  
9 ALL THE EVIDENCE UPON WHICH THE PROOF OF  
10 SUCH FACT DEPENDS.

11 MOTIVE IS NOT AN ELEMENT OF  
12 THE CRIME CHARGED AND NEED NOT BE SHOWN.  
13 HOWEVER, YOU MAY CONSIDER MOTIVE OR LACK  
14 OF MOTIVE AS A CIRCUMSTANCE IN THIS CASE.

15 PRESENCE OF MOTIVE MAY TEND  
16 TO ESTABLISH GUILT. ABSENCE OF MOTIVE MAY  
17 TEND TO ESTABLISH INNOCENCE. YOU WILL,  
18 THEREFORE, GIVE ITS PRESENCE OR ABSENCE,  
19 AS THE CASE MAY BE, THE WEIGHT TO WHICH  
20 YOU FIND IT TO BE ENTITLED.

21 A DEFENDANT IN A CRIMINAL  
22 TRIAL HAS A CONSTITUTIONAL RIGHT NOT TO BE  
23 COMPELLED TO TESTIFY. YOU MUST NOT DRAW  
24 ANY INFERENCE FROM THE FACT THAT A  
25 DEFENDANT DOES NOT TESTIFY.

26 FURTHER, YOU MUST NEITHER  
27 DISCUSS THIS MATTER NOR PERMIT IT TO ENTER  
28 INTO YOUR DELIBERATIONS IN ANY WAY.

1                   IN DECIDING WHETHER OR NOT TO  
2 TESTIFY, THE DEFENDANT MAY CHOOSE TO RELY  
3 ON THE STATE OF THE EVIDENCE, AND UPON THE  
4 FAILURE, IF ANY, OF THE PEOPLE TO PROVE  
5 BEYOND A REASONABLE DOUBT EVERY ESSENTIAL  
6 ELEMENT OF THE CHARGE AGAINST HIM. NO  
7 LACK OF TESTIMONY ON DEFENDANT'S PART WILL  
8 MAKE UP FOR A FAILURE OF PROOF BY THE  
9 PEOPLE SO AS TO SUPPORT A FINDING AGAINST  
10 HIM ON ANY SUCH ESSENTIAL ELEMENT.

11                   AN ADMISSION IS A STATEMENT  
12 MADE BY A DEFENDANT OTHER THAN AT HIS  
13 TRIAL WHICH DOES NOT BY ITSELF ACKNOWLEDGE  
14 HIS GUILT OF THE CRIMES FOR WHICH SUCH  
15 DEFENDANT IS ON TRIAL, BUT WHICH STATEMENT  
16 TENDS TO PROVE HIS GUILT WHEN CONSIDERED  
17 WITH THE REST OF THE EVIDENCE.

18                   YOU ARE THE EXCLUSIVE JUDGES  
19 AS TO WHETHER THE DEFENDANT MADE AN  
20 ADMISSION, AND IF SO, WHETHER SUCH  
21 STATEMENT IS TRUE IN WHOLE OR IN PART.

22                   IF YOU SHOULD FIND THAT THE  
23 DEFENDANT DID NOT MAKE THE STATEMENT, YOU  
24 MUST REJECT IT. IF YOU FIND THAT IT IS  
25 TRUE IN WHOLE OR IN PART, YOU MAY CONSIDER  
26 THAT PART WHICH YOU FIND TO BE TRUE.

27                   EVIDENCE OF AN ORAL ADMISSION  
28 OF A DEFENDANT SHOULD BE VIEWED WITH

1 CAUTION.

2 NO PERSON MAY BE CONVICTED OF  
3 A CRIMINAL OFFENSE UNLESS THERE IS SOME  
4 PROOF OF EACH ELEMENT OF THE CRIME  
5 INDEPENDENT OF ANY ADMISSION MADE BY HIM  
6 OUTSIDE OF THIS TRIAL. THE IDENTITY OF  
7 THE PERSON WHO IS ALLEGED TO HAVE  
8 COMMITTED A CRIME IS NOT AN ELEMENT OF THE  
9 CRIME NOR IS THE DEGREE OF THE CRIME.  
10 SUCH IDENTITY OR DEGREE OF THE CRIME MAY  
11 BE ESTABLISHED BY AN ADMISSION.

12 IN DETERMINING THE WEIGHT TO  
13 BE GIVEN TO AN OPINION EXPRESSED BY ANY  
14 WITNESS WHO DID NOT TESTIFY AS AN EXPERT  
15 WITNESS, YOU SHOULD CONSIDER HIS OR HER  
16 CREDIBILITY, THE EXTENT OF HIS OR HER  
17 OPPORTUNITY TO PERCEIVE THE MATTERS UPON  
18 WHICH HIS OR HER OPINION IS BASED AND THE  
19 REASONS, IF ANY, GIVEN FOR IT.

20 YOU ARE NOT REQUIRED TO  
21 ACCEPT SUCH AN OPINION BUT SHOULD GIVE IT  
22 THE WEIGHT, IF ANY, TO WHICH YOU FIND IT  
23 ENTITLED.

24 A PERSON IS QUALIFIED TO  
25 TESTIFY AS AN EXPERT IF HE OR SHE HAS  
26 SPECIAL KNOWLEDGE, SKILL, EXPERIENCE,  
27 TRAINING OR EDUCATION SUFFICIENT TO  
28 QUALIFY HIM OR HER AS AN EXPERT ON THE

1 SUBJECT TO WHICH HIS OR HER TESTIMONY  
2 RELATES.

3 A DULY QUALIFIED EXPERT MAY  
4 GIVE AN OPINION ON QUESTIONS IN  
5 CONTROVERSY AT A TRIAL. TO ASSIST YOU IN  
6 DECIDING SUCH QUESTIONS, YOU MAY CONSIDER  
7 THE OPINION WITH THE REASONS GIVEN FOR IT,  
8 IF ANY, BY THE EXPERT WHO GIVES THE  
9 OPINION.

10 YOU MAY ALSO CONSIDER THE  
11 QUALIFICATIONS AND CREDIBILITY OF THE  
12 EXPERT. YOU ARE NOT BOUND TO ACCEPT AN  
13 EXPERT OPINION AS CONCLUSIVE BUT SHOULD  
14 GIVE TO IT THE WEIGHT TO WHICH YOU FIND IT  
15 TO BE ENTITLED. YOU MAY DISREGARD ANY  
16 SUCH OPINION IF YOU FIND IT TO BE  
17 UNREASONABLE.

18 IN EXAMINING AN EXPERT  
19 WITNESS, COUNSEL MAY PROPOUND TO HIM OR  
20 HER A TYPE OF QUESTION KNOWN IN THE LAW AS  
21 A HYPOTHETICAL QUESTION. BY SUCH A  
22 QUESTION, THE WITNESS IS ASKED TO ASSUME  
23 TO BE TRUE A SET OF FACTS AND TO GIVE AN  
24 OPINION BASED ON THAT ASSUMPTION.

25 IN PERMITTING SUCH A  
26 QUESTION, THE COURT DOES NOT RULE AND IT  
27 DOES NOT NECESSARILY FIND THAT ALL THE  
28 ASSUMED FACTS HAVE BEEN PROVED. IT ONLY

1 DETERMINES THAT THOSE ASSUMED FACTS ARE  
2 WITHIN THE PROBABLE OR POSSIBLE RANGE OF  
3 THE EVIDENCE.

4 IT IS FOR YOU, THE JURY, TO  
5 FIND FROM ALL THE EVIDENCE WHETHER OR NOT  
6 THE FACTS ASSUMED IN A HYPOTHETICAL  
7 QUESTION HAVE BEEN PROVED.

8 IF YOU SHOULD FIND THAT ANY  
9 ASSUMPTION IN SUCH A QUESTION HAS NOT BEEN  
10 PROVED, YOU ARE TO DETERMINE THE EFFECT OF  
11 THAT FAILURE OF PROOF ON THE VALUE AND  
12 WEIGHT OF THE EXPERT OPINION BASED ON THE  
13 ASSUMED FACTS."

14 ALL RIGHT.

15 I'M GOING TO TAKE A LITTLE BREAK HERE. IF  
16 YOU WANT TO STAND UP AND STRETCH, FINE. IF YOU WANT TO  
17 GO IN THE JURY ROOM, USE THE BATHROOM OR GET A DRINK OF  
18 WATER, YOU CAN DO THAT.

19 I'M JUST GOING TO SIT HERE, BUT DON'T FEEL  
20 INTIMIDATED THAT YOU CAN'T STAND UP.

21  
22 (RECESS.)

23  
24 THE COURT: LET ME SEE COUNSEL AT SIDEBAR FOR A  
25 SECOND.

26  
27 (THE FOLLOWING PROCEEDINGS WERE HELD  
28 AT THE BENCH:)



1 THE COURT: I CUT MR. COOKSEY LOOSE YESTERDAY  
2 AFTERNOON AND ORDERED HIM BACK FOR MAY 25TH, AND MY  
3 CLERK CALLED MR. ANDELIN'S OFFICE AROUND 1:00 O'CLOCK  
4 TODAY.

5 SO I HAD FORGOTTEN TO TELL HIM AT 9:00 TO  
6 CALL AND IT WASN'T A PRIORITY.

7 MR. ARNOLD: FUNNY WHEN YOU FORGET THINGS WHEN  
8 YOU HAVE GOT A LOT OF THINGS ON YOUR MIND.

9 THE COURT: MY CLERK CAME OUT. ONE JUROR, SHE  
10 HAD MENTIONED THAT -- I DON'T KNOW WHICH ONE IT IS --  
11 HAS A RETIREMENT PARTY. IT'S HER RETIREMENT FROM HER  
12 JOB FOR YEARS, AND I TOLD HER THAT WE WOULD LET HER OUT  
13 BY 3:00 O'CLOCK.

14 I THINK THAT -- I TELL YOU WHAT. WHY DON'T  
15 WE BRING THEM IN.

16 CAN YOU COME IN AT 8:30?

17 CAN YOU BE HERE AT 8:30?

18 MR. ARNOLD: WHY IS IT NECESSARY TO TAKE AN  
19 HOUR-AND-A-HALF --

20 THE COURT: I'LL CUT THE LUNCH HOUR SHORT.

21 WHY DON'T WE TELL THEM 8:30. I'LL TELL  
22 THEM, ASSUMING TRANSPORTATION, THEY CAN GET MR. THOMAS  
23 HERE, WE'LL START AT 8:30 AND WE WON'T TAKE AN HOUR  
24 LUNCH -- I MEAN AN HOUR-AND-A-HALF LUNCH.

25 MR. JAFFE: I WOULD ASSUME THAT WE CAN GET  
26 MR. THOMAS HERE.

27 THE COURT: THEY KNOW HE'S IN CUSTODY.

28 MR. JAFFE: WE'LL START TOMORROW 8:30.

1                   YOU'RE GOING TO CUT THEM LOOSE NOW?

2           THE COURT:   WHEN I FINISH THE INSTRUCTIONS, YES.

3           MR. JAFFE:   YOU'RE GOING TO CUT THEM LOOSE  
4    ANYWAY.

5           THE COURT:   NO.   TODAY I'M GOING TO CUT THEM  
6    LOOSE.   I WAS GOING TO BRING THEM IN AT 9:00.

7           MR. JAFFE:   DID YOU THINK THAT YOU WERE GOING TO  
8    GO --

9           THE COURT:   NOT TODAY.   WE'RE NOT STARTING  
10   ARGUMENT.   I'M JUST CONCERNED THAT -- I'M NOT SO SURE  
11   THE BODIES WILL GET HERE AT 8:30, BUT WE'LL TRY FOR  
12   8:30.

13           SHE HAS A RETIREMENT PARTY.   SHE HAS GOT TO  
14   BE OUT AT 3:00.   WE WILL BE STOPPING TOMORROW AT 3:00.

15           MR. JAFFE:   YOU DON'T KNOW WHETHER YOU'LL BE DONE  
16   BY 3:00.

17           THE COURT:   TOMORROW?

18           MR. JAFFE:   NO, TODAY.

19           MR. ARNOLD:   TOMORROW IS HER RETIREMENT.   HE'S  
20   TALKING ABOUT TOMORROW.

21           THE COURT:   TOMORROW IS HER RETIREMENT DINNER.

22           MR. JAFFE:   ALL RIGHT.   OKAY.

23           THE COURT:   AND SHE HAD MENTIONED IT TWO WEEKS  
24   AGO, AND I TOLD HER THAT -- I MEAN, LIKE I SAID, IT'S  
25   NOT A RETIREMENT DINNER FOR SOMEBODY.   IT'S FOR HER.

26           MR. ARNOLD:   IF WE GET STARTED AT 8:30, WE'LL  
27   MAKE A-HALF-HOUR THERE.

28           THE COURT:   AND I'LL TAKE A 45 MINUTE LUNCH.

1 MR. ARNOLD: SO THAT IS AN HOUR AND 15 MINUTES  
2 THAT WE LOST. SO WE BREAK EVEN.

3 THE COURT: ALL RIGHT. OKAY.

4  
5 (RECESS.)

6  
7 THE COURT: ALL RIGHT.

8 LET'S BRING THE JURORS IN, PLEASE.

9  
10 (THE FOLLOWING PROCEEDINGS WERE  
11 HELD IN OPEN COURT IN THE PRESENCE  
12 OF THE JURY:)

13  
14 THE COURT: ALL RIGHT.

15 RECALLING THE CASE OF REGIS THOMAS.  
16 MR. THOMAS IS PRESENT WITH RESPECTIVE COUNSEL, THE  
17 DETECTIVES, JURORS AND ALTERNATES.

18 MY CLERK WENT BACK AND REMINDED ME THAT I  
19 MADE A COMMITMENT TO ONE OF YOU THROUGH HIM. I HAD MADE  
20 A COMMITMENT. SOMEBODY HAS A RETIREMENT DINNER, AND  
21 WE'RE GOING TO STOP AT 3:00 TOMORROW, AND I'M GOING TO  
22 HOLD TO THAT.

23 WHAT WE'RE GOING TO DO IS, WE'RE GOING TO  
24 START 8:30 TOMORROW, AND WE'RE ONLY GOING TO TAKE A 45  
25 MINUTE LUNCH. THAT WAY IT WILL GIVE THE LAWYERS THE  
26 SAME AMOUNT OF TIME TO TALK TO YOU AND THAT WAY I'LL  
27 STAND BY MY COMMITMENT.

28 ALL RIGHT.

1 LET ME CONTINUE READING THE INSTRUCTIONS.

2 "A DEFENDANT IN A CRIMINAL  
3 ACTION IS PRESUMED TO BE INNOCENT UNTIL  
4 THE CONTRARY IS PROVED, AND IN CASE OF A  
5 REASONABLE DOUBT WHETHER HIS GUILT IS  
6 SATISFACTORILY SHOWN, HE IS ENTITLED TO A  
7 VERDICT OF NOT GUILTY. THIS PRESUMPTION  
8 PLACES UPON THE PEOPLE THE BURDEN OF  
9 PROVING HIM GUILTY BEYOND A REASONABLE  
10 DOUBT.

11 REASONABLE DOUBT IS DEFINED  
12 AS FOLLOWS: IT IS NOT A MERE POSSIBLE  
13 DOUBT BECAUSE EVERYTHING RELATING TO HUMAN  
14 AFFAIRS IS OPEN TO SOME POSSIBLE OR  
15 IMAGINARY DOUBT. IT IS THAT STATE OF THE  
16 CASE WHICH, AFTER THE ENTIRE COMPARISON  
17 AND CONSIDERATION OF ALL THE EVIDENCE  
18 LEAVES THE MIND OF THE JURORS IN THAT  
19 CONDITION THAT THEY CANNOT SAY THEY FEEL  
20 AN ABIDING CONVICTION OF THE TRUTH OF THE  
21 CHARGE.

22 THE BURDENS IS ON THE PEOPLE  
23 TO PROVE BEYOND A REASONABLE DOUBT THAT  
24 THE DEFENDANT IS THE PERSON WHO COMMITTED  
25 THE CRIME WITH WHICH HE IS CHARGED.

26 IF AFTER CONSIDERING THE  
27 CIRCUMSTANCES OF THE IDENTIFICATION AND  
28 ANY OTHER EVIDENCE IN THIS CASE, YOU HAVE

1 A REASONABLE DOUBT WHETHER THE DEFENDANT  
2 WAS THE PERSON WHO COMMITTED THE CRIME,  
3 YOU MUST GIVE THE DEFENDANT THE BENEFIT OF  
4 THAT DOUBT AND FIND HIM NOT GUILTY.

5 EYEWITNESS TESTIMONY HAS BEEN  
6 RECEIVED IN THIS TRIAL FOR THE PURPOSE OF  
7 IDENTIFYING THE DEFENDANT AS THE  
8 PERPETRATOR OF THE CRIMES CHARGED.

9 IN DETERMINING THE WEIGHT TO  
10 BE GIVEN EYEWITNESS IDENTIFICATION  
11 TESTIMONY, YOU SHOULD CONSIDER THE  
12 BELIEVABILITY OF THE EYEWITNESS AS WELL AS  
13 OTHER FACTORS WHICH BEAR UPON THE ACCURACY  
14 OF THE WITNESS'S IDENTIFICATION OF THE  
15 DEFENDANT, INCLUDING, BUT NOT LIMITED, TO  
16 ANY OF THE FOLLOWING:

17 THE OPPORTUNITY OF THE  
18 WITNESS TO OBSERVE THE ALLEGED CRIMINAL  
19 ACT AND THE PERPETRATOR OF THE ACT.

20 THE STRESS, IF ANY, TO WHICH  
21 THE WITNESS WAS SUBJECTED AT THE TIME OF  
22 THE OBSERVATION.

23 THE WITNESS'S ABILITY  
24 FOLLOWING THE OBSERVATION TO PROVIDE A  
25 DESCRIPTION OF THE PERPETRATOR OF THE ACT.

26 THE EXTENT TO WHICH THE  
27 DEFENDANT EITHER FITS OR DOES NOT FIT THE  
28 DESCRIPTION OF THE PERPETRATOR PREVIOUSLY

1 GIVEN BY THE WITNESS.

2 THE CROSS-RACIAL OR ETHNIC  
3 NATURE OF THE IDENTIFICATION.

4 THE WITNESS'S CAPACITY TO  
5 MAKE AN IDENTIFICATION.

6 WHETHER THE WITNESS WAS ABLE  
7 TO IDENTIFY THE ALLEGED PERPETRATOR IN A  
8 PHOTOGRAPHIC OR PHYSICAL LINEUP.

9 THE PERIOD OF TIME BETWEEN  
10 THE ALLEGED CRIMINAL ACT AND THE WITNESS'S  
11 IDENTIFICATION.

12 WHETHER THE WITNESS HAD PRIOR  
13 CONTACTS WITH THE ALLEGED PERPETRATOR.

14 THE EXTENT TO WHICH THE  
15 WITNESS IS EITHER CERTAIN OR UNCERTAIN OF  
16 THE IDENTIFICATION.

17 WHETHER THE WITNESS'S  
18 IDENTIFICATION IS, IN FACT, THE PRODUCT OF  
19 HIS OR HER OWN RECOLLECTION. ANY OTHER  
20 EVIDENCE RELATING TO THE WITNESS'S ABILITY  
21 TO MAKE AN IDENTIFICATION.

22 IN THE CRIMES CHARGED IN  
23 COUNTS 1, 2 AND 3, THERE MUST EXIST A  
24 UNION OR JOINT OPERATION OF ACT OR CONDUCT  
25 AND A CERTAIN MENTAL STATE IN THE MIND OF  
26 THE PERPETRATOR. UNLESS SUCH MENTAL STATE  
27 EXISTS, THE CRIME TO WHICH IT RELATES IS  
28 NOT COMMITTED.

1                   IN THE CRIME OF MURDER, THE  
2                   NECESSARY MENTAL STATE IS MALICE.

3                   IN THE CRIME CHARGED IN COUNT  
4                   4, NAMELY, POSSESSION OF A FIREARM BY A  
5                   FELON, THERE MUST EXIST A UNION OR JOINT  
6                   OPERATION OF ACT OR CONDUCT AND GENERAL  
7                   CRIMINAL INTENT.

8                   TO CONSTITUTE GENERAL  
9                   CRIMINAL INTENT, IT IS NOT NECESSARY THAT  
10                  THERE SHOULD EXIST AN INTENT TO VIOLATE  
11                  THE LAW. WHEN A PERSON INTENTIONALLY DOES  
12                  THAT WHICH THE LAW DECLARES TO BE A CRIME,  
13                  HE IS ACTING WITH GENERAL CRIMINAL INTENT,  
14                  EVEN THOUGH HE MAY NOT KNOW THAT HIS ACT  
15                  OR CONDUCT IS UNLAWFUL."

16                  NOW WE'RE GOING TO GET INTO  
17                  DEFINITIONS OF THE CRIMES.

18                  "DEFENDANT IS ACCUSED IN  
19                  COUNTS 1, 2 AND 3 OF THE INFORMATION OF  
20                  HAVING COMMITTED THE CRIME OF MURDER, A  
21                  VIOLATION OF PENAL CODE SECTION 187.

22                  EVERY PERSON WHO UNLAWFULLY  
23                  KILLS A HUMAN BEING WITH MALICE  
24                  AFORETHOUGHT IS GUILTY OF THE CRIME OF  
25                  MURDER, IN VIOLATION OF SECTION 187 OF THE  
26                  PENAL CODE.

27                  IN ORDER TO PROVE SUCH CRIME,  
28                  EACH OF THE FOLLOWING ELEMENTS MUST BE

PROVED:

ONE, A HUMAN BEING WAS  
KILLED; TWO, THE KILLING WAS UNLAWFUL; AND  
THREE, THE KILLING WAS DONE WITH MALICE  
AFORETHOUGHT.

MALICE MAY BE EITHER EXPRESS  
OR IMPLIED.

MALICE IS EXPRESS WHEN THERE  
IS MANIFESTED AN INTENTION UNLAWFULLY TO  
KILL A HUMAN BEING.

MALICE IS IMPLIED WHEN, ONE, THE KILLING RESULTED FROM AN INTENTIONAL ACT; TWO, THE NATURAL CONSEQUENCES OF THE ACT ARE DANGERS TO HUMAN LIFE; AND THREE, THE ACT WAS DELIBERATELY PERFORMED WITH KNOWLEDGE OF THE DANGER TO AND WITH CONSCIOUS DISREGARD FOR HUMAN LIFE.

WHEN IT IS SHOWN THAT A  
KILLING RESULTED FROM THE INTENTIONAL  
DOING OF AN ACT WITH EXPRESS OR IMPLIED  
MALICE, NO OTHER MENTAL STATE NEED BE  
SHOWN TO ESTABLISH THE MENTAL STATE OF  
MALICE AFORETHOUGHT.

THE MENTAL STATE CONSTITUTING  
MALICE AFORETHOUGHT DOES NOT NECESSARILY  
REQUIRE ANY ILL WILL OR HATRED OF THE  
PERSON KILLED.

THE WORD 'AFORETHOUGHT' DOES



1 NOT IMPLY DELIBERATION OR THE LAPSE OF  
2 CONSIDERABLE TIME. IT ONLY MEANS THAT THE  
3 REQUIRED MENTAL STATE MUST PRECEDE RATHER  
4 THAN FOLLOW THE ACT.

5 ALL MURDER WHICH IS  
6 PERPETRATED BY ANY KIND OF WILLFUL,  
7 DELIBERATE AND PREMEDITATED KILLING WITH  
8 EXPRESS MALICE AFORETHOUGHT IS MURDER OF  
9 THE FIRST DEGREE.

10 THE WORD 'WILLFUL' AS USED IN  
11 THIS INSTRUCTION MEANS INTENTIONAL. THE  
12 WORD 'DELIBERATE' MEANS FORMED OR ARRIVED  
13 AT OR DETERMINED UPON AS A RESULT OF  
14 CAREFUL THOUGHT AND WEIGHING OF  
15 CONSIDERATIONS FOR AND AGAINST THE  
16 PROPOSED COURSE OF ACTION.

17 THE WORD 'PREMEDITATED' MEANS  
18 CONSIDERED BEFOREHAND.

19 IF YOU FIND THAT THE KILLING  
20 WAS PRECEDED AND ACCOMPANIED BY A CLEAR,  
21 DELIBERATE INTENT ON THE PART OF THE  
22 DEFENDANT TO KILL WHICH WAS THE RESULT OF  
23 DELIBERATION AND PREMEDITATION SO THAT IT  
24 MUST HAVE BEEN FORMED UPON PREEXISTING  
25 REFLECTION AND NOT UNDER SOME HEAT OF  
26 PASSION OR OTHER CONDITION PRECLUDING THE  
27 IDEA OF DELIBERATION, IT IS MURDER OF THE  
28 FIRST DEGREE.

1 THE LAW DOES NOT UNDERTAKE TO  
2 MEASURE IN UNITS OF TIME THE LENGTH OF THE  
3 PERIOD DURING WHICH THE THOUGHT MUST BE  
4 PONDERED BEFORE IT CAN RIPEN INTO AN  
5 INTENT TO KILL WHICH IS TRULY DELIBERATE  
6 AND PREMEDITATED. THE TIME WILL VARY WITH  
7 DIFFERENT INDIVIDUALS AND UNDER VARYING  
8 CIRCUMSTANCES.

9 THE TRUE TEST IS NOT THE  
10 DURATION OF TIME BUT RATHER THE EXTENT OF  
11 THE REFLECTION. A COLD, CALCULATED  
12 JUDGMENT AND DECISION MAY BE ARRIVED AT IN  
13 A SHORT PERIOD OF TIME BUT A MERE  
14 UNCONSIDERED AND RASH IMPULSE, EVEN THOUGH  
15 IT INCLUDED AN INTENT TO KILL, IS NOT SUCH  
16 DELIBERATION AND PREMEDITATION AS WILL FIX  
17 AN UNLAWFUL KILLING AS MURDER OF THE FIRST  
18 DEGREE.

19 TO CONSTITUTE A DELIBERATE  
20 AND PREMEDITATED KILLING, THE SLAYER MUST  
21 WEIGH AND CONSIDER THE QUESTION OF KILLING  
22 AND THE REASONS FOR AND AGAINST SUCH A  
23 CHOICE, AND HAVING IN MIND THE  
24 CONSEQUENCES, HE DECIDES TO AND DOES KILL.

25 MURDER OF THE SECOND DEGREE  
26 IS ALSO THE UNLAWFUL KILLING OF A HUMAN  
27 BEING WITH MALICE AFORETHOUGHT WHEN THERE  
28 IS MANIFESTED AN INTENTION UNLAWFULLY TO

1 KILL A HUMAN BEING, BUT THE EVIDENCE IS  
2 INSUFFICIENT TO ESTABLISH DELIBERATION AND  
3 PREMEDITATION.

4 MURDER IS CLASSIFIED INTO TWO  
5 DEGREES, AND IF YOU SHOULD FIND THE  
6 DEFENDANT GUILTY OF MURDER, YOU MUST  
7 DETERMINE AND STATE IN YOUR VERDICT  
8 WHETHER YOU FIND THE MURDER TO BE OF THE  
9 FIRST OR SECOND DEGREE.

10 IF YOU ARE CONVINCED BEYOND A  
11 REASONABLE DOUBT THAT THE CRIME OF MURDER  
12 HAS BEEN COMMITTED BY A DEFENDANT BUT YOU  
13 HAVE A REASONABLE DOUBT WHETHER SUCH  
14 MURDER WAS OF THE FIRST OR OF THE SECOND  
15 DEGREE, YOU MUST GIVE THE DEFENDANT THE  
16 BENEFIT OF THAT DOUBT AND RETURN A VERDICT  
17 FIXING THE MURDER AS OF THE SECOND DEGREE.

18 IF YOU FIND THE DEFENDANT IN  
19 THIS CASE GUILTY OF MURDER OF THE FIRST  
20 DEGREE, YOU MUST THEN DETERMINE IF ONE OR  
21 MORE OF THE FOLLOWING SPECIAL  
22 CIRCUMSTANCES ARE TRUE OR NOT TRUE. THAT  
23 IS MULTIPLE MURDER CONVICTIONS AND MURDER  
24 OF A PEACE OFFICER.

25 THE PEOPLE HAVE THE BURDEN OF  
26 PROVING THE TRUTH OF A SPECIAL  
27 CIRCUMSTANCE. IF YOU HAVE A REASONABLE  
28 DOUBT AS TO WHETHER A SPECIAL CIRCUMSTANCE

1 IS TRUE, YOU MUST FIND IT TO BE NOT TRUE.

2 YOU MUST DECIDE SEPARATELY  
3 EACH SPECIAL CIRCUMSTANCE ALLEGED IN THIS  
4 CASE. IF YOU CANNOT AGREE AS TO ALL OF  
5 THE SPECIAL CIRCUMSTANCES BUT CAN AGREE AS  
6 TO ONE OR MORE OF THEM, YOU MUST MAKE YOUR  
7 FINDING AS TO THE ONE OR MORE UPON WHICH  
8 YOU DO AGREE.

9 IN ORDER TO FIND THE SPECIAL  
10 ALLEGED IN THIS CASE TO BE TRUE OR UNTRUE,  
11 YOU MUST AGREE UNANIMOUSLY. YOU WILL  
12 STATE YOUR SPECIAL FINDING AS TO WHETHER  
13 SUCH SPECIAL CIRCUMSTANCE IS OR IS NOT  
14 TRUE ON THE FORM THAT WILL BE SUPPLIED.

15 TO FIND A SPECIAL  
16 CIRCUMSTANCE REFERRED TO IN THESE  
17 INSTRUCTIONS AS MULTIPLE MURDER  
18 CONVICTIONS AS TRUE, IT MUST BE PROVED THE  
19 DEFENDANT HAS IN THIS CASE BEEN CONVICTED  
20 OF AT LEAST ONE CRIME OF MURDER OF THE  
21 FIRST DEGREE AND ONE OR MORE CRIMES OF  
22 MURDER OF THE FIRST OR SECOND DEGREE.

23 TO FIND THE SPECIAL  
24 CIRCUMSTANCE REFERRED TO IN THESE  
25 INSTRUCTIONS AS MURDER OF A PEACE OFFICER  
26 AS TRUE, EACH OF THE FOLLOWING FACTS MUST  
27 BE PROVED.

28 ONE, THE PERSON MURDERED WAS

1 A PEACE OFFICER, AND TWO, THE PERSON  
2 MURDERED WAS INTENTIONALLY KILLED WHILE  
3 ENGAGED IN THE PERFORMANCE OF HIS DUTIES,  
4 AND THREE, THE DEFENDANT KNEW OR  
5 REASONABLY SHOULD HAVE KNOWN THAT THE  
6 PERSON KILLED WAS A PEACE OFFICER ENGAGED  
7 IN THE PERFORMANCE OF HIS DUTIES.

8 FOR THE PURPOSES OF THESE  
9 INSTRUCTIONS, A REGULAR CITY OF COMPTON  
10 POLICE OFFICER AND A RESERVE CITY OF  
11 COMPTON POLICE OFFICER ARE PEACE  
12 OFFICERS."

13  
14 LET ME SEE COUNSEL AT SIDEBAR FOR A SECOND,  
15 PLEASE.

16  
17 (THE FOLLOWING PROCEEDINGS WERE HELD  
18 AT THE BENCH:)

19  
20 THE COURT: WHAT I INTEND TO DO, IF THERE IS NO  
21 OBJECTION IS, AFTER READING THAT, I'M GOING TO READ  
22 8.83.

23 IN OTHER WORDS, I'M GOING TO SKIP RIGHT NOW  
24 THE PERFORMANCE OF OFFICIAL DUTIES DEFINED. I'M GOING  
25 TO READ 8.83 WHICH IS CIRCUMSTANTIAL EVIDENCE GENERALLY,  
26 8.83.1, SPECIAL CIRCUMSTANTIAL EVIDENCE AS TO MENTAL  
27 STATE, 8.83.2, THEN 8.35.

28 THEN I WILL DEFINE PERFORMANCE OF THE

1 DUTIES.

2 MR. ARNOLD: ALL RIGHT.

3 MR. JAFFE: ALL RIGHT.

4

5

(THE FOLLOWING PROCEEDINGS WERE

6

HELD IN OPEN COURT IN THE PRESENCE

7

OF THE JURY:)

8

9

10

THE COURT: "YOU ARE NOT PERMITTED  
TO FIND A SPECIAL CIRCUMSTANCE ALLEGED IN

11

THIS CASE TO BE TRUE BASED ON

12

CIRCUMSTANTIAL EVIDENCE UNLESS THE PROVED

13

CIRCUMSTANCE IS NOT ONLY, ONE, CONSISTENT

14

WITH THE THEORY THAT A SPECIAL

15

CIRCUMSTANCE IS TRUE, BUT, TWO, CANNOT BE

16

RECONCILED WITH ANY OTHER RATIONAL

17

CONCLUSION.

18

FURTHER, EACH FACT WHICH IS

19

ESSENTIAL TO COMPLETE A SET OF

20

CIRCUMSTANCES NECESSARY TO ESTABLISH THE

21

TRUTH OF A SPECIAL CIRCUMSTANCE MUST BE

22

PROVED BEYOND A REASONABLE DOUBT.

23

IN OTHER WORDS, BEFORE AN

24

INFERENCE ESSENTIAL TO ESTABLISH A SPECIAL

25

CIRCUMSTANCE MAY BE FOUND TO HAVE BEEN

26

PROVED BEYOND A REASONABLE DOUBT, EACH

27

FACT OR CIRCUMSTANCE UPON WHICH SUCH

28

INFERENCE NECESSARILY RESTS MUST BE PROVED

1 BEYOND A REASONABLE DOUBT.

2 ALSO, IF THE CIRCUMSTANTIAL  
3 EVIDENCE IS SUSCEPTIBLE OF TWO REASONABLE  
4 INTERPRETATIONS, ONE OF WHICH POINTS TO  
5 THE TRUTH OF A SPECIAL CIRCUMSTANCE AND  
6 THE OTHER TO ITS UNTRUTH, YOU MUST ADOPT  
7 THE INTERPRETATION WHICH POINTS TO ITS  
8 UNTRUTH AND REJECT THE INTERPRETATION  
9 WHICH POINTS TO ITS TRUTH.

10 IF, ON THE OTHER HAND, ONE  
11 INTERPRETATION OF SUCH EVIDENCE APPEARS TO  
12 YOU TO BE REASONABLE AND THE OTHER  
13 INTERPRETATION TO BE UNREASONABLE, YOU  
14 MUST ACCEPT THE REASONABLE INTERPRETATION  
15 AND REJECT THE UNREASONABLE.

16 THE SPECIFIC INTENT WITH  
17 WHICH AN ACT IS DONE MAY BE SHOWN BY THE  
18 CIRCUMSTANCES SURROUNDING ITS COMMISSION.  
19 BUT YOU MAY NOT FIND A SPECIAL  
20 CIRCUMSTANCE ALLEGED IN THIS CASE TO BE  
21 TRUE UNLESS THE PROVED SURROUNDING  
22 CIRCUMSTANCES ARE NOT ONLY, ONE,  
23 CONSISTENT WITH THE THEORY THAT THE  
24 DEFENDANT HAD THE REQUIRED SPECIFIC INTENT  
25 BUT, TWO, CANNOT BE RECONCILED WITH ANY  
26 OTHER RATIONAL CONCLUSION.

27 ALSO, IF THE EVIDENCE AS TO  
28 ANY SPECIFIC INTENT IS SUSCEPTIBLE OF TWO

1 REASONABLE INTERPRETATIONS, ONE OF WHICH  
2 POINTS TO THE EXISTENCE OF THE SPECIFIC  
3 INTENT AND THE OTHER TO THE ABSENCE OF THE  
4 SPECIFIC INTENT, YOU MUST ADOPT THAT  
5 INTERPRETATION WHICH POINTS TO THE ABSENCE  
6 OF THE SPECIFIC INTENT.

7 IF, ON THE OTHER HAND, ONE  
8 INTERPRETATION OF THE EVIDENCE AS TO SUCH  
9 SPECIFIC INTENT APPEARS TO YOU TO BE  
10 REASONABLE AND THE OTHER INTERPRETATION TO  
11 BE UNREASONABLE, YOU MUST ACCEPT THE  
12 REASONABLE INTERPRETATION AND REJECT THE  
13 UNREASONABLE.

14 <sup>IN</sup>  
~~IF~~ YOUR DELIBERATIONS THE  
15 SUBJECT OF PENALTY OR PUNISHMENT IS NOT TO  
16 BE DISCUSSED OR CONSIDERED BY YOU. THIS  
17 IS A MATTER WHICH MUST NOT IN ANY WAY  
18 AFFECT YOUR VERDICT OR AFFECT YOUR FINDING  
19 AS TO THE SPECIAL CIRCUMSTANCES ALLEGED IN  
20 THIS CASE.

21 IT IS ALLEGED IN COUNT 2 AND  
22 3 THAT THE DEFENDANT MURDERED A PEACE  
23 OFFICER ENGAGED IN THE PERFORMANCE OF HIS  
24 DUTIES AND THE DEFENDANT KNEW OR SHOULD  
25 HAVE KNOWN THE DECEASED WAS A PEACE  
26 OFFICER ENGAGED IN THE PERFORMANCE OF HIS  
27 DUTIES.

28 IF YOU FIND DEFENDANT GUILTY



1 OF SECOND DEGREE MURDER, YOU MUST  
2 DETERMINE WHETHER OR NOT, ONE, THE PERSON  
3 MURDERED WAS A PEACE OFFICER, TWO, HE WAS  
4 KILLED WHILE ENGAGED IN THE PERFORMANCE OF  
5 HIS DUTIES, AND THREE, THE DEFENDANT KNEW  
6 OR REASONABLY SHOULD HAVE KNOWN THAT THE  
7 PERSON KILLED WAS A PEACE OFFICER ENGAGED  
8 IN THE PERFORMANCE OF HIS DUTIES.

9 THE PEOPLE HAVE THE BURDEN OF  
10 PROVING THE TRUTH OF THIS ALLEGATION. IF  
11 YOU HAVE A REASONABLE DOUBT THAT IT IS  
12 TRUE, YOU MUST FIND IT TO BE NOT TRUE.

13 FOR THE PURPOSES OF THESE  
14 INSTRUCTIONS, A RESERVE AND REGULAR CITY  
15 OF COMPTON POLICE OFFICER IS A PEACE  
16 OFFICER.

17 YOU WILL INCLUDE A SPECIAL  
18 FINDING ON THIS ALLEGATION IN YOUR VERDICT  
19 USING A FORM THAT WILL BE SUPPLIED FOR  
20 THAT PURPOSE.

21 THE PHRASE 'IN THE  
22 PERFORMANCE OF HIS DUTIES' AS USED IN  
23 THESE INSTRUCTIONS MEANS ANY LAWFUL ACT OR  
24 CONDUCT WHILE ENGAGED IN THE MAINTENANCE  
25 OF THE PEACE AND SECURITY OF THE COMMUNITY  
26 OR IN THE INVESTIGATION OR PREVENTION OF  
27 CRIME INCLUDING MAKING A TRAFFIC STOP OR  
28 MAKING OR ATTEMPTING TO MAKE A LAWFUL

1 ARREST OR" -- EXCUSE ME ONE SECOND.

2 LET ME SEE YOU AT THE SIDEBAR  
3 FOR A SECOND.

4  
5 (THE FOLLOWING PROCEEDINGS WERE HELD  
6 AT THE BENCH:)

7  
8 THE COURT: IT LOOKS TO ME, AND I THINK THE LAW  
9 IS THAT THOSE ARE IN THE ALTERNATIVE, THE BRACKETS.

10 IN OTHER WORDS, IT MEANS ANY LAWFUL OR  
11 MAKING OR ATTEMPTING A LAWFUL ARREST OR LAWFULLY  
12 DETAINING.

13 SO I'M GOING TO WRITE IN THE WORDS OR SINCE  
14 THEY ARE IN THE ALTERNATIVE.

15 MR. ARNOLD: BOY, YOU ARE SHARP. GOLLY. FINE.

16  
17 (THE FOLLOWING PROCEEDINGS WERE  
18 HELD IN OPEN COURT IN THE PRESENCE  
19 OF THE JURY:)

20  
21 THE COURT: ALL RIGHT. LET ME START READING THAT  
22 ONE AGAIN TO YOU, LADIES AND GENTLEMEN.

23 "THE PHRASE 'IN THE  
24 PERFORMANCE OF HIS DUTIES' AS USED IN  
25 THESE INSTRUCTIONS MEANS ANY LAWFUL ACT OR  
26 CONDUCT WHILE ENGAGED IN THE MAINTENANCE  
27 OF THE PEACE AND SECURITY OF THE COMMUNITY  
28 OR IN THE INVESTIGATION OR PREVENTION OF

1 THE CRIME INCLUDING MAKING A TRAFFIC STOP  
2 OR MAKING OR ATTEMPTING TO MAKE A LAWFUL  
3 ARREST, OR LAWFULLY DETAINING OR  
4 ATTEMPTING TO DETAIN A PERSON FOR  
5 QUESTIONING OR INVESTIGATION.

6 A LAWFUL ARREST MAY BE MADE  
7 BY A PEACE OFFICER, ONE, WITHOUT A WARRANT  
8 OF ARREST IF THE PERSON ARRESTED HAS, IN  
9 FACT, COMMITTED A FELONY ALTHOUGH ITS  
10 COMMISSION WAS NOT IN THE PRESENCE OF THE  
11 OFFICER.

12 TWO, WITHOUT A WARRANT OF  
13 ARREST WHENEVER THE OFFICER HAS REASONABLE  
14 CAUSE TO BELIEVE THAT THE PERSON ARRESTED  
15 HAS COMMITTED AN INFRACTION OR A  
16 MISDEMEANOR OR A FELONY IN THE OFFICER'S  
17 PRESENCE.

18 THREE, WITHOUT A WARRANT OF  
19 ARREST WHENEVER THE OFFICER HAS REASONABLE  
20 CAUSE TO BELIEVE THAT THE PERSON ARRESTED  
21 HAS COMMITTED A FELONY, WHETHER OR NOT A  
22 FELONY HAS, IN FACT, BEEN COMMITTED.

23 THE TERM REASONABLE CAUSE AS  
24 DEFINED IN THIS INSTRUCTION MEANS SUCH A  
25 STATE OF FACTS OR CIRCUMSTANCES  
26 CONFRONTING THE OFFICER AT THE TIME OF THE  
27 ARREST AS WOULD LEAD A PERSON OF ORDINARY  
28 CAUTION OR PRUDENCE TO BELIEVE AND

1 CONSCIENTIOUSLY ENTERTAIN A STRONG  
2 SUSPICION THAT THE PERSON ARRESTED AND  
3 COMMITTED AN INFRACTION OR A MISDEMEANOR  
4 OR A FELONY.

5 A PEACE OFFICER MAY LAWFULLY  
6 DETAIN AND QUESTION A PERSON WHEN THE  
7 CIRCUMSTANCES ARE SUCH AS WOULD INDICATE  
8 TO A REASONABLE PERSON IN A LIKE POSITION  
9 THAT SUCH A COURSE OF CONDUCT IS WITHIN  
10 THE PROPER DISCHARGE OF HIS DUTIES.

11 TEMPORARY DETENTION FOR  
12 QUESTIONING PERMITS REASONABLE  
13 INVESTIGATION WITHOUT THE NECESSITY OF  
14 MAKING AN ARREST.

15 ALTHOUGH PEACE OFFICERS HAVE  
16 THE POWER TO DETAIN AND QUESTION, THERE  
17 MUST BE REASONABLE CAUSE TO DETAIN.

18 PROBABLE OR REASONABLE CAUSE  
19 TO DETAIN REQUIRES THAT THERE BE SOME  
20 UNUSUAL OR SUSPICIOUS CIRCUMSTANCE OR  
21 OTHER DEMONSTRABLE REASON WARRANTING THE  
22 INVESTIGATION. TIME, LOCATION, NUMBER OF  
23 PEOPLE Demeanor AND CONDUCT OF A SUSPECT,  
24 A RECENTLY REPORTED CRIME AND THE GRAVITY  
25 OF THE CRIME ARE AMONG THE FACTORS THAT  
26 YOU MAY CONSIDER.

27 IN ORDER FOR A PEACE OFFICER  
28 TO HAVE REASONABLE CAUSE TO DETAIN:

1 ONE, THERE MUST BE A RATIONAL  
2 SUSPICION BY THE PEACE OFFICER THAT SOME  
3 ACTIVITY OUT OF THE ORDINARY IS TAKING  
4 PLACE, IS OCCURRING OR IS ABOUT TO OCCUR.

5 TWO, SOME INDICATION MUST  
6 EXIST TO CONNECT THE PERSON UNDER  
7 SUSPICION WITH THAT ACTIVITY.

8 AND THREE, THERE MUST BE SOME  
9 SUGGESTION THAT THE ACTIVITY IS RELATED TO  
10 A CRIME.

11 IT IS ALLEGED IN COUNTS 1, 2  
12 AND 3 THAT THE DEFENDANT PERSONALLY USED A  
13 FIREARM DURING THE COMMISSION OF THE  
14 CRIMES CHARGED.

15 IF YOU FIND THE DEFENDANT  
16 GUILTY OF ONE OR MORE OF THE CRIMES  
17 CHARGED, YOU MUST DETERMINE WHETHER THE  
18 DEFENDANT PERSONALLY USED A FIREARM IN THE  
19 COMMISSION OF SUCH FELONIES.

20 THE WORD 'FIREARM' INCLUDES A  
21 HANDGUN OR ANY DEVICE DESIGNED TO BE USED  
22 AS A WEAPON FROM WHICH IS EXPELLED THROUGH  
23 A BARREL A PROJECTILE BY THE FORCE OF ANY  
24 EXPLOSION OR OTHER FORM OF COMBUSTION.  
25 THE FIREARM NEED NOT BE OPERABLE.

26 THE TERM 'USED A FIREARM' AS  
27 USED IN THIS INSTRUCTION MEANS TO DISPLAY  
28 A FIREARM IN A MENACING MANNER,

1 INTENTIONALLY TO FIRE IT OR INTENTIONALLY  
2 TO STRIKE OR HIT A HUMAN BEING WITH IT.

3 THE PEOPLE HAVE THE BURDEN OF  
4 PROVING THE TRUTH OF THIS ALLEGATION. IF  
5 YOU HAVE A REASONABLE DOUBT THAT IT IS  
6 TRUE, YOU MUST FIND IT TO BE NOT TRUE.

7 YOU WILL INCLUDE A SPECIAL  
8 FINDING ON THAT QUESTION IN YOUR VERDICT  
9 USING A FORM THAT WILL BE SUPPLIED FOR  
10 THAT PURPOSE.

11 THE DEFENDANT IS ACCUSED IN  
12 COUNT 4 OF HAVING VIOLATED SECTION 12021A  
13 OF THE PENAL CODE, A CRIME.

14 EVERY PERSON WHO HAS BEEN  
15 CONVICTED OF A FELONY AND WHO OWNS OR HAS  
16 IN HIS POSSESSION OR UNDER HIS CUSTODY OR  
17 CONTROL ANY PISTOL, REVOLVER OR OTHER  
18 FIREARM IS GUILTY OF VIOLATION OF SECTION  
19 12021A OF THE PENAL CODE, A CRIME.

20 THE CONVICTION OF THE CRIME  
21 OF PERJURY IN CALIFORNIA IS THE CONVICTION  
22 OF A FELONY.

23 IN ORDER TO PROVE SUCH CRIME,  
24 EACH OF THE FOLLOWING ELEMENTS MUST BE  
25 PROVED:

26 ONE, A PERSON PREVIOUSLY HAS  
27 BEEN CONVICTED OF A FELONY.

28 TWO, SUCH PERSON OWNED OR HAD

1 IN HIS POSSESSION OR UNDER HIS CUSTODY OR  
2 CONTROL A NINE MILLIMETER HANDGUN.

3 THREE, SUCH PERSON HAD  
4 KNOWLEDGE OF THE PRESENCE OF SAID FIREARM.

5 THE LAW RECOGNIZES TWO KINDS  
6 OF POSSESSION, ACTUAL POSSESSION AND  
7 CONSTRUCTIVE POSSESSION.

8 ACTUAL POSSESSION REQUIRES  
9 THAT A PERSON EXERCISED DIRECT PHYSICAL  
10 CONTROL OVER A THING.

11 CONSTRUCTIVE POSSESSION DOES  
12 NOT REQUIRE ACTUAL POSSESSION BUT DOES  
13 REQUIRE A PERSON KNOWINGLY EXERCISE  
14 CONTROL OR A RIGHT TO CONTROL THE THING  
15 EITHER DIRECTLY OR THROUGH ANOTHER PERSON  
16 OR PERSONS.

17 THE LAW RECOGNIZES THAT ONE  
18 PERSON MAY HAVE POSSESSION ALONE OR THAT  
19 TWO OR MORE PERSONS TOGETHER MAY SHARE  
20 ACTUAL OR CONSTRUCTIVE POSSESSION.

21 EACH COUNT CHARGES A DISTINCT  
22 CRIME. YOU MUST DECIDE EACH COUNT  
23 SEPARATELY. THE DEFENDANT MAY BE FOUND  
24 GUILTY OR NOT GUILTY OF ANY OR ALL OF THE  
25 CRIMES CHARGED. YOUR FINDING AS TO EACH  
26 COUNT MUST BE STATED IN A SEPARATE  
27 VERDICT.

28 IN YOUR DELIBERATIONS, DO NOT

1 DISCUSS OR CONSIDER THE SUBJECT OF PENALTY  
2 OR PUNISHMENT. THAT SUBJECT MUST NOT IN  
3 ANY WAY AFFECT YOUR VERDICT."

4 HERE IS THE LAST INSTRUCTION  
5 THAT I'M GOING TO READ YOU TODAY.

6 "THE PURPOSE OF THE COURT'S  
7 INSTRUCTIONS IS TO PROVIDE YOU WITH THE  
8 APPLICABLE LAW SO THAT YOU MAY ARRIVE AT A  
9 JUST AND LAWFUL VERDICT. WHETHER SOME  
10 INSTRUCTIONS APPLY WILL DEPEND UPON WHAT  
11 YOU FIND TO BE THE FACTS. DISREGARD ANY  
12 INSTRUCTION WHICH APPLIES TO FACTS  
13 DETERMINED BY YOU NOT TO EXIST. DO NOT  
14 CONCLUDE THAT BECAUSE AN INSTRUCTION HAS  
15 BEEN GIVEN THAT I AM EXPRESSING AN OPINION  
16 AS TO THE FACTS."

17 ALL RIGHT, LADIES AND GENTLEMEN.

18 THIS IS WHERE I'M GOING TO STOP.

19 AFTER THE LAWYERS SPEAK TO YOU, I HAVE  
20 ABOUT SEVEN MINUTES WORTH OF INSTRUCTIONS I READ TO YOU,  
21 AND DEPENDING ON THE TIMING TOMORROW, YOU'LL EITHER HEAR  
22 THEM WHEN THEY FINISH OR YOU WILL HEAR THEM FIRST THING  
23 MONDAY MORNING.

24 SO AS I SAID, WE'LL MOVE IT UP TO AN 8:30  
25 STARTING TIME.

26 IF YOU'RE NOT USED TO COMING DOWNTOWN, I  
27 KNOW IT'S FRIDAY AND A LOT OF BUSINESSES WORK THE FOUR,  
28 TEN PLAN OR 980, SO PEOPLE AREN'T ON THE ROADS ON



1 FRIDAY.

2 BUT IF YOU AREN'T USED TO COMING DOWN, GIVE  
3 YOURSELF TIME SO YOU CAN GET HERE AND WE'RE NOT WAITING  
4 FOR YOU, AND THEN YOU'RE FLUSTERED WHEN YOU GET HERE AND  
5 YOU'RE NOT LISTENING TO THE LAWYERS AND THAT TYPE OF  
6 THING.

7 SO DON'T TALK ABOUT THE CASE OR FORM OR  
8 EXPRESS ANY OPINION ABOUT THE CASE. WE'LL BEGIN WITH  
9 MR. ARNOLD TOMORROW AT 8:30. HAVE A PLEASANT EVENING  
10 AND A SAFE DRIVE HOME.

11 THANK YOU.

12  
13 (THE FOLLOWING PROCEEDINGS WERE  
14 HELD IN OPEN COURT OUTSIDE THE  
15 PRESENCE OF THE JURY:)

16  
17 THE COURT: ALL RIGHT.

18 IS THERE ANYTHING ELSE? THE JURORS AND  
19 ALTERNATES HAVE LEFT THE COURTROOM.

20 ANYTHING?

21 MR. ARNOLD: DETECTIVE BUMCROT WANTED TO GO INTO  
22 YOUR CHAMBERS TO SEE WHAT RODS ARE NEEDED, THE EXTENT OF  
23 THE DAMAGE.

24 THE COURT: ALL RIGHT.

25 BASICALLY YOU'RE GOING TO HAVE TO GET NEW  
26 RODS. YOU CAN COME IN AND TAKE A LOOK.

27 ANYTHING, MR. JAFFE, BEFORE WE RECESS?

28 MR. JAFFE: NO.

1 THE COURT: ALL RIGHT.

2 WE'LL BE IN RECESS UNTIL 8:30 TOMORROW  
3 MORNING.

4  
5 (AT 3:00 P.M., AN ADJOURNMENT WAS TAKEN  
6 UNTIL FRIDAY, APRIL 28, 1995 AT 8:30 A.M.)  
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