

SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA,)
)
 PLAINTIFF-RESPONDENT,)
)
 VS.) SUPERIOR COURT
) NO. BA075063
)
 REGIS DEON THOMAS,)
)
 DEFENDANT-APPELLANT.)

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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FOR DEFENDANT-APPELLANT: IN PROPRIA PERSONA

VOLUME 5 OF 33
PAGES 389 THROUGH 445, INCLUSIVE

COPY

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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 5

REPORTER'S DAILY TRANSCRIPT

MARCH 17, 1995
PAGES 389 THROUGH 445

FILED
LOS ANGELES SUPERIOR COURT

MAR 20 1995

EDWARD M. KRITZMAN, CLERK

D. Dancer
BY D. DANCER, DEPUTY

APPEARANCES:

FOR THE PLAINTIFF:

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I N D E X

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1 LOS ANGELES, CALIFORNIA; FRIDAY, MARCH 17, 1995

2 10:15 A.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 PROSPECTIVE
9 JURORS:)

10
11 THE COURT: ALL RIGHT. CALL THE CASE OF PEOPLE
12 VERSUS REGIS THOMAS.

13 MR. THOMAS IS PRESENT. RESPECTIVE COUNSEL.
14 THE PROSECUTOR IS PRESENT, AND IS IT DETECTIVE BUMCROT IS
15 HERE TODAY.

16 WE ARE OUT OF THE PRESENCE OF THE PROSPECTIVE
17 JURORS WHO ARE DUE BACK ON THE 20TH.

18 IS THERE ANYTHING -- THE MATTERS THAT WERE
19 PUT TO ME THE OTHER DAY, MR. JAFFE FILED A -- I KNOW IT IS
20 A MOTION TO EXCLUDE THE HABIT EVIDENCE, AND MR. ARNOLD HAS
21 FILED AN OPPOSITION TO THE DEFENDANT'S MOTION TO EXCLUDE
22 THE HABIT EVIDENCE.

23 AND I HAVE READ AND REVIEWED THE MATERIALS,
24 AND MR. ARNOLD HAD CITED TWO CASES TO MY CLERK. AS FAR AS
25 THE THREAT -- LET ME SEE -- THE THREATS OF THE OTHER
26 INDIVIDUALS WAS CONCERNED, AS FAR AS THE DEATHS OF THE
27 OTHER INDIVIDUAL -- THE DEATH OF THE POSSIBLE WITNESSES
28 AND THE EFFECT, I THINK IT WAS MR. BERTRAND DIXON AND

1 MR. -- I THINK IT IS HIS MOTHER WHO WAS KILLED.

2 IS THAT CORRECT? IS IT DIXON'S MOTHER?

3 MR. ARNOLD: YOU ARE VERY CLOSE. ACTUALLY, IT IS
4 CALVIN COOKSEY. CALVIN COOKSEY IS THE WITNESS WHO IS THE
5 FRIEND OF THE DEFENDANT.

6 THE COURT: HIS MOTHER WAS KILLED, BUT THE
7 INVESTIGATION SHOWED THAT IT IN FACT HAD NOTHING TO DO
8 WITH THIS PARTICULAR CASE, BUT IT WOULD GO TO HIS STATE OF
9 MIND AS TO HIS RELUCTANCE OR --

10 MR. ARNOLD: YES.

11 THE COURT: -- HIS DEMEANOR ON THE WITNESS STAND.

12 AS TO BERTRAND DIXON, IT WAS THE DEATH OF
13 ANDRE CHAPPEL OR CHAPPEL THAT HE WAS CONCERNED ABOUT.

14 MR. JAFFE, IS THERE ANYTHING FURTHER YOU WANT
15 TO PRESENT BEFORE I MAKE MY FINDINGS?

16 MR. JAFFE: WELL, WITH RESPECT TO THAT PARTICULAR
17 ISSUE, I DID NOT GET ANY WRITTEN MATERIAL ON THE ISSUE IN
18 RESPECT TO THE THREATS.

19 I KNOW THAT MR. ARNOLD GAVE MS. DOHERTY A
20 COUPLE CASES ON THAT ISSUE.

21 THE COURT: THAT WAS WHAT WAS PROVIDED TO THE COURT
22 WAS THE CASES.

23 MR. JAFFE: ALL RIGHT. I HAVE READ THOSE CASES.
24 THE ONLY THING THAT I CAN SAY ON THAT ISSUE, YOUR HONOR --
25 AND WE ARE REALLY DEALING WITH THE ISSUE OF -- LAST TIME
26 WE APPEARED WE WERE DEALING WITH THE ISSUE OF WHETHER OR
27 NOT THE COURT WOULD ADMONISH THE JURY AND HOW WE WERE
28 GOING TO DEAL WITH THE ISSUE OF BERTRAND DIXON'S

1 RECONTATION. AND MR. ARNOLD WOULD THEN OFFER THAT REGIS
2 THOMAS MADE A STATEMENT TO HIM.

3 I DON'T KNOW WHETHER OR NOT THE PROSECUTION
4 INTENDS TO USE THAT STATEMENT, THAT STATEMENT BEING,
5 "WELL, YOU KNOW WHAT HAPPENED TO ANDRE" OR WHETHER OR NOT
6 THE PROSECUTION IS MERELY GOING TO SEEK TO INTRODUCE
7 EVIDENCE THAT ANDRE CHAPPEL IS DEAD. THAT'S TWO SEPARATE
8 ISSUES.

9 NOW, WITH RESPECT TO THE ISSUE OF WHETHER
10 ANDRE CHAPPEL IS DEAD AND HOW THAT AFFECTS THIS WITNESS'
11 STATE OF MIND, I HAVE READ THE CASES, AND I THINK THE
12 CASES SAY WHAT THE CASES SAY. I CAN'T CHANGE WHAT THOSE
13 CASES SAY.

14 I JUST DO BELIEVE, HOWEVER, THAT IT IS
15 EXTREMELY PREJUDICIAL FOR THE JURY TO HEAR THE FACT THAT A
16 PROSPECTIVE -- OR A PERCIPIENT WITNESS IS IN FACT DEAD.

17 NOW, WITH RESPECT TO CALVIN COOKSEY'S MOTHER,
18 AGAIN, WE HAVE THIS CUMULATIVE EFFECT. IF MR. COOKSEY
19 COMES IN AND SAYS THAT HE IS RELUCTANT TO TESTIFY OR
20 WHATEVER HE MIGHT SAY ON THE WITNESS STAND, I DON'T
21 BELIEVE THAT IS BECAUSE MR. COOKSEY IS AFRAID OF WHAT
22 WOULD HAPPEN TO HIM. AT LEAST THE RECORD HAS NOT SO
23 DEMONSTRATED THAT YET. HE MAY BE ANGRY FOR OTHER REASONS
24 AND MAY BE USING THAT AS AN EXCUSE.

25 SO I THINK THAT THE RECORD IS NOT SUFFICIENT
26 YET FOR THE COURT TO MAKE A FINDING THAT THE COURT SHOULD
27 IN FACT ADMONISH THE JURY ABOUT THE DEATH OF CALVIN
28 COOKSEY'S MOTHER.

1 WE REALLY ARE OPERATING IN A VACUUM IN A WAY,
2 AND THE COURT IS ASKED TO MAKE A FINDING AS TO WHAT THE
3 PROSECUTION CAN OR CANNOT INTRODUCE.

4 I THINK ANY TIME EVEN WITHOUT A HEARING THAT
5 PERHAPS THE COURT WOULD BE JUSTIFIED IN ALLOWING THE
6 PROSECUTION TO ASK A WITNESS IF THEY'RE FEARFUL OR IF THEY
7 APPEAR FEARFUL ON THE WITNESS STAND AND AS A RESULT OF A
8 THREAT TO THEM, I THINK IT'S APPROPRIATE BECAUSE
9 CREDIBILITY OF A WITNESS IS ALWAYS AN ISSUE.

10 BUT I THINK THE COURT HAS TO TREAD REAL
11 CAREFULLY ON THIS PARTICULAR ISSUE BECAUSE WE ARE NOT
12 TALKING ABOUT ONE DEATH. WE ARE TALKING ABOUT TWO DEATHS.
13 AND NOW WE HAVE AT LEAST FIVE DEAD BODIES. AND THE JURY
14 IS ASKED NOT TO CONSIDER THE FACT THAT COOKSEY'S MOTHER
15 WAS KILLED AND ANDRE CHAPPEL WAS KILLED, AND THEY ARE
16 FURTHER TOLD THAT THE DEFENDANT HAD NOTHING TO DO WITH
17 THAT.

18 WELL, EVEN IF YOU GIVE THAT CAUTIONARY
19 INSTRUCTION, IT'S AS IF YOU TELL THE JURY DON'T THINK
20 ABOUT A PINK ELEPHANT. I MEAN THE FIRST THING THEY ARE
21 GOING TO DO IS THINK ABOUT IT.

22 BUT I RECOGNIZE THAT IS THE NATURE OF ANY
23 ADMONITION. I JUST DON'T KNOW IF WE HAVE A CLEAR ENOUGH
24 RECORD FOR THE COURT TO MAKE A RULING, ESPECIALLY AS TO
25 THE COOKSEY ISSUE.

26 THE COURT: WELL, NOT TO CUT YOU OFF, BUT
27 MR. ARNOLD'S REPRESENTATION WAS THAT IT WASN'T HIS
28 INTENTION TO USE THE DEATH OF COOKSEY'S MOTHER UNTIL --

1 DEPENDING ON WHAT HAPPENS ON THE STAND.

2 IF IN FACT MR. COOKSEY -- I THINK THAT HIS
3 REPRESENTATION THE LAST TIME WAS IF MR. COOKSEY COMES IN
4 AND TESTIFIES AND SUBJECT TO CROSS-EXAMINATION AND ANSWERS
5 THE QUESTIONS, THAT'S ONE THING.

6 IF IN FACT HE GETS TO A POINT WHEREIN HE
7 DOESN'T REMEMBER OR WHATEVER, STARTS TO APPEAR TO BE
8 AVOIDING ANSWERING THE QUESTIONS, THEN I THINK
9 MR. ARNOLD'S REPRESENTATION WAS THAT THEN HE FEELS IT
10 WOULD BE RELEVANT AT THAT POINT.

11 GO AHEAD. YOU PUT YOUR FINGER UP. GO AHEAD.

12 MR. ARNOLD: WERE YOU DONE?

13 THE COURT: NOT -- BUT GO AHEAD.

14 MR. ARNOLD: NO, NO, NO. I THOUGHT YOU WERE
15 FINISHED. GO AHEAD.

16 THE COURT: ALL RIGHT. AND THEN THE OTHER WAS AS
17 TO BERTRAND DIXON, THAT WAS A DIFFERENT SITUATION IS I
18 THINK THE REPRESENTATION OF MR. ARNOLD.

19 BUT --

20 MR. JAFFE: I KNOW THAT THAT WAS DIFFERENT. BUT MY
21 IMPRESSION IS THAT MR. COOKSEY IS UPSET WITH THE
22 PROSECUTION BECAUSE HE BELIEVES -- AND I BELIEVE I CAN
23 STATE THIS.

24 IS THERE ANY PROBLEM STATING IT ON THE
25 RECORD?

26 MR. ARNOLD: I DON'T KNOW WHAT YOU ARE GOING TO
27 SAY.

28 THE COURT: WHY DON'T YOU TALK TO EACH OTHER.

1962

1 (DISTRICT ATTORNEY AND DEFENSE COUNSEL CONFER
2 SOTTO VOCE)

3
4 MR. JAFFE: HE WANTED HIS ENTIRE FAMILY TO BE MOVED
5 FOR PURPOSES OF PROTECTION AND AFTER THE DEATH OF HIS
6 MOTHER.

7 AND NOW BECAUSE THE FUNDS ARE NOT AVAILABLE
8 OR BECAUSE THE LAW ENFORCEMENT AGENCIES DON'T BELIEVE IT'S
9 APPROPRIATE FOR ONE REASON OR ANOTHER, THEY ARE NOT GOING
10 TO DO THAT.

11 AND I BELIEVE THAT MR. COOKSEY -- NOW HIS
12 ANGER IS NOT AT THE DEFENSE. HIS ANGER REALLY IS DIRECTED
13 TO LAW ENFORCEMENT BECAUSE HE PERCEIVES, COOKSEY, THAT
14 THEY HAVEN'T TAKEN CARE OF HIS FAMILY.

15 SO IT'S -- IT WOULD BE UNFAIR BECAUSE HE'S
16 ANGRY AT LAW ENFORCEMENT FOR THE PROSECUTION THEN TO USE
17 HIS -- HIS ANGER AND TRY TO INTERPRET THAT AS FEAR.

18 I DON'T KNOW IF I AM BEING CLEAR ON THIS
19 ISSUE.

20 THE COURT: I UNDERSTAND WHAT YOU ARE SAYING. I
21 MAY AGREE OR DISAGREE WITH YOU, BUT I UNDERSTAND WHAT YOU
22 ARE SAYING.

23 MR. JAFFE: ALL RIGHT.

24 THE COURT: ANYTHING ELSE AT THIS POINT?

25 MR. JAFFE: NO.

26 THE COURT: MR. ARNOLD?

27 MR. ARNOLD: LET ME FILL THE COURT AND COUNSEL IN
28 ON WHAT IS GOING ON WITH COOKSEY BECAUSE IT WILL CERTAINLY

1 INVOLVE THE COURT.

2 COOKSEY HAS MOVED OUT OF STATE AS A RESULT OF
3 HIS FEAR THAT HE -- SOMETHING IS GOING TO HAPPEN TO HIM AS
4 A RESULT OF HIS BEING COOPERATIVE IN THIS CASE.

5 HE HAS TOLD ME AS MOST RECENTLY AS LAST
6 FRIDAY WHERE HE CALLED ME COLLECT AND REFUSED TO TELL ME
7 EXACTLY WHERE HE WAS. HE'S ALSO TOLD HIS ATTORNEY WHO
8 HASN'T TOLD ME, AND HE HAS REPORTED TO THE NEWS MEDIA THAT
9 HE IS NOT GOING TO COOPERATE WITH THE PROSECUTION AS A
10 RESULT OF --

11 THE COURT: WHO IS HIS ATTORNEY?

12 MR. ARNOLD: IT'S AN ARIZONA ATTORNEY NAMED BRIAN
13 ANDELIN.

14 THE COURT: SPELL THAT FOR THE REPORTER.

15 MR. ARNOLD: A-N-D-E-L-I-N.

16 THE COURT: ALL RIGHT.

17 MR. ARNOLD: ANDELIN IS HIS ATTORNEY, HIS CIVIL
18 ATTORNEY, WHO IS ASSISTING COOKSEY WITH THE PROSECUTION OF
19 A WRONGFUL DEATH CLAIM FOR \$125 MILLION, AND HE IS NAMING
20 THE COMPTON POLICE DEPARTMENT, THE DISTRICT ATTORNEY'S
21 OFFICE, YOURS TRULY, THE SHERIFF'S DEPARTMENT AS
22 DEFENDANTS.

23 ANDELIN HAS TOLD ME THAT COOKSEY WILL NOT BE
24 COOPERATIVE.

25 IN LIGHT OF THAT, IT WAS NECESSARY FOR ME TO
26 UTILIZE THE INTERSTATE COMPACT UNDER 1334 OF THE PENAL
27 CODE.

28 WITHOUT TELLING THE COURT WHEN I EXPECT

1 COOKSEY TO BE HERE, I DO EXPECT COOKSEY TO BE HERE
2 SIGNIFICANTLY AHEAD OF THE TIME WHEN HE IS GOING TO BE
3 NEEDED ON THE STAND.

4 I DO NOT KNOW WHAT COOKSEY IS GOING TO DO
5 WHEN HE GETS HERE WITH RESPECT TO WHETHER HE IS GOING TO
6 BE COOPERATIVE OR NOT. IF HE STILL INSISTS THAT HE IS NOT
7 GOING TO BE COOPERATIVE, THERE'S A REQUEST THAT I AM GOING
8 TO MAKE TO YOU THAT FALLS UNDER 1332 OF THE PENAL CODE.

9 THE COURT: IS THAT POSTING BOND?

10 MR. ARNOLD: YES. BUT I DON'T KNOW. I DON'T KNOW
11 WHAT IS GOING TO HAPPEN.

12 RELATED TO THAT OR PARENTHETICALLY RELATED TO
13 THAT, SINCE I DON'T KNOW WHAT HE IS GOING TO DO WHEN HE
14 GETS HERE, I, THEREFORE, DON'T KNOW WHAT HE IS GOING TO DO
15 WHEN HE GETS ON THE STAND.

16 IT IS MY INTENTION THAT SHOULD COOKSEY COME
17 IN AND TESTIFY IN A MANNER THAT WAS CONSISTENT WITH THE
18 MANNER HE TESTIFIED AT THE PRELIMINARY HEARING WHERE HE
19 WAS COOPERATIVE, IN MY VIEW WHAT HAS HAPPENED TO HIS
20 MOTHER IS NOT RELEVANT BECAUSE HIS VIEW OF WHAT HAPPENED
21 TO HIS MOTHER WOULD ONLY BECOME RELEVANT AS IMPACTING ON
22 HIS CREDIBILITY AS A WITNESS.

23 IF HE IS COOPERATIVE, WHAT HAPPENED TO HIS
24 MOTHER IS JUST NOT RELEVANT. I DON'T INTEND TO GET INTO
25 THAT.

26 HOWEVER, IF HE IS NOT COOPERATIVE, THEN I
27 THINK IT IS GOING TO REQUIRE A HEARING IN FRONT OF YOU FOR
28 YOU TO MAKE THE DETERMINATION AS TO WHETHER HIS LACK OF

1 COOPERATION IS DUE TO ANGER OR DUE TO FEAR OR WHAT.

2 THE COURT: RIGHT.

3 MR. ARNOLD: THAT ALSO BRINGS UP ANOTHER ISSUE THAT
4 IS EXTREMELY IMPORTANT TO ME THAT MR. JAFFE HAD MENTIONED
5 TO ME THE LAST TIME -- ACTUALLY, IT WAS AFTER THE LAST
6 TIME WE HAD LEFT IN COURT.

7 AS YOU KNOW, YOUR HONOR, UNDER 240 OF THE
8 EVIDENCE CODE IF A WITNESS IS, QUOTE, UNAVAILABLE,
9 UNQUOTE, HIS FORMER TESTIFY CAN BE PRESENTED TO THE JURY
10 UNDER 1291 OF THE EVIDENCE CODE. 1291 OF THE EVIDENCE
11 CODE DEALS WITH THE, YOU KNOW, PRIOR FORMER TESTIMONY FOR
12 AN UNAVAILABLE WITNESS, AS LONG AS THE MOTIVE TO
13 CROSS-EXAMINE WAS SIMILAR BETWEEN THE PREVIOUS HEARING AND
14 NOW AT THE PRESENT HEARING WHERE THE WITNESS IS NO LONGER
15 AVAILABLE.

16 MR. JAFFE ADVISED ME -- AND I WANT TO BRING
17 THIS TO THE COURT'S ATTENTION TODAY BECAUSE IT --
18 MR. JAFFE ADVISED ME THAT SHOULD IT OCCUR THAT COOKSEY IS
19 UNAVAILABLE, EITHER DUE TO OUR ABILITY TO DEMONSTRATE DUE
20 DILIGENCE, WHICH I -- WITHOUT GOING INTO WHAT WE HAVE
21 DONE, I AM CONFIDENT YOU WOULD MAKE A FINDING THAT THERE
22 IS A DUE DILIGENCE HERE OR HE IS UNAVAILABLE BECAUSE HE
23 REFUSES TO TESTIFY.

24 MR. JAFFE HAS INDICATED THAT HE WOULD OBJECT
25 TO THE PLAYING OF THE VIDEO TAPE OF COOKSEY'S TESTIMONY AT
26 THE PRELIMINARY HEARING BECAUSE THE MOTIVE TO
27 CROSS-EXAMINE IS DIFFERENT NOW.

28 AND WHAT MR. JAFFE HAS INDICATED IS DIFFERENT

1 NOW IS THE FACT THAT AT THE TIME OF THE PRELIMINARY
2 HEARING, IT WAS UNKNOWN, BOTH TO MR. JAFFE AND TO MYSELF,
3 THAT THE GUN THAT COOKSEY WAS ARRESTED WITH WAS STOLEN IN
4 THE SAME BURGLARY AS THE GUN THAT WAS USED TO KILL THE
5 OFFICERS AND THE GUN THAT WAS FOUND IN THE POSSESSION OF
6 THE DEFENDANT'S GIRL FRIEND.

7 I -- WERE THE COURT -- WHAT I AM ASKING YOU
8 NOW FOR -- WELL, I'M NOT ASKING YOU FOR IT AT THIS MOMENT,
9 BUT I WANT TO MENTION SOME CASES -- I WANT TO MENTION SOME
10 CASES TO YOU THAT DEAL WITH WHAT IS SIMILAR AND WHAT IS
11 NOT SIMILAR.

12 BECAUSE BEFORE WE GO TO OPENING STATEMENT, I
13 AM -- I AM REALLY GOING TO NEED A FINDING BY THE COURT
14 THAT THE MOTIVE TO CROSS-EXAMINE WAS SIMILAR. BECAUSE IF
15 YOU WERE TO FIND IT WAS NOT SIMILAR, AND THERE IS A REAL
16 POSSIBILITY THAT I EITHER DON'T GET COOKSEY'S TESTIMONY
17 LIVE OR YOU'LL PRECLUDE HIS TESTIMONY ON VIDEO TAPE, THAT
18 SUBSTANTIALLY IMPACTS THE CASE BECAUSE THE CASE REALLY
19 LARGELY IS -- TURNS ON COOKSEY'S TESTIMONY.

20 HE IS THE ONE THAT BROUGHT THE CASE TO LIGHT.
21 HE IS THE ONE THAT TESTIFIES TO THE DEFENDANT'S
22 ADMISSIONS. HE IS THE ONE THAT CONNECTS THE GUN DIRECTLY
23 TO THE DEFENDANT.

24 SO I WOULD ASK THE COURT TO, FIRST OF ALL,
25 LOOK, EXAMINE THE DIRECT AND CROSS-EXAMINATION OF COOKSEY
26 AT THE PRELIMINARY HEARING JUST TO GET A FEELING OF
27 WHETHER HE WAS -- WHETHER DEFENSE COUNSEL, MR. JAFFE, HAD
28 THE OPPORTUNITY TO CONFRONT AND CROSS-EXAMINE THE WITNESS.

1 I BELIEVE IT IS IN VOLUME NUMBER TWO THAT
2 COOKSEY'S TESTIMONY BEGINS. I KNOW THAT IN VOLUME NUMBER
3 TWO, AND I BELIEVE IT THEN CONTINUES OVER TO VOLUME NUMBER
4 3, THE TOTAL DIRECT OF COOKSEY WAS 23 PAGES, THE TOTAL
5 CROSS IS 28 PAGES.

6 AND SPECIFICALLY IN VOLUME NUMBER TWO,
7 BEGINNING WITH PAGE 200, MR. JAFFE DID IN FACT INQUIRE OF
8 COOKSEY ABOUT HIS HAVING A WEAPON IN THE CAR AT THE TIME
9 HE WAS TAKEN INTO CUSTODY BY THE -- BY THE POLICE, WHICH
10 IS -- WHICH WAS THE INCENTIVE FOR COOKSEY TO COME FORWARD
11 IN THE FIRST PLACE.

12 SO I AM ASKING THE COURT TO TAKE A LOOK TO
13 SEE IF THERE WAS THE OPPORTUNITY TO CROSS-EXAMINE, AND
14 THEN I WANT TO MENTION A COUPLE OF CASES FOR THE COURT TO
15 CONSIDER AS TO PRIOR INTERPRETATIONS FROM THE COURTS OF
16 APPEAL AND THE SUPREME -- CALIFORNIA SUPREME COURT AS TO
17 WHAT IS AND WHAT IS NOT SIMILAR MOTIVE.

18 I WANT TO MENTION FOUR CASES, AND I WILL SAY
19 THEM SLOW SO THE COURT REPORTER DOESN'T --

20 THE COURT: SPELL THEM TOO.

21 MR. ARNOLD: YES, I WILL.

22 THE COURT: OKAY.

23 MR. JAFFE: SAY THEM SLOW SO I CAN HEAR THEM
24 BECAUSE I DON'T HEAR VERY WELL.

25 MR. ARNOLD: OKAY. THE FIRST ONE IS PEOPLE
26 VERSUS -- I'M JUST GOING TO SPELL IT BECAUSE I CANNOT
27 PRONOUNCE IT.

28 THE COURT: OKAY.

1 MR. ARNOLD: IT IS Z-A-P-I-E-N. THAT'S AT
2 4 CAL.4TH 929. IT IS A MARCH OF 1993 CASE. AND THE ISSUE
3 OF -- OR THE DISCUSSION REGARDING SIMILARITY OF MOTIVE TO
4 CROSS-EXAMINE IS IN FOOTNOTE 22A. THAT BEGINS ON PAGE
5 974.

6 THE COURT: THAT'S A HEADNOTE AS OPPOSED TO
7 FOOTNOTE?

8 MR. ARNOLD: HEADNOTE. DID I SAY FOOTNOTE?

9 THE COURT: YES.

10 MR. ARNOLD: I'M SORRY. HEADNOTE.

11 ANOTHER CASE IS PEOPLE VERSUS -- I'M GOING TO
12 SPELL IT AGAIN BECAUSE I'M NOT SURE OF THE CORRECT
13 PRONUNCIATION -- O-G-E-N, AND THAT'S AT 168 CAL.APP.3D
14 611. IT'S A MAY OF 1985 CASE. AND THE ISSUE OF WHETHER
15 IN THIS CASE THE VICTIM'S FORMER TESTIMONY WAS PROPERLY
16 ADMITTED, BEGINS WITH HEADNOTE 1A ON PAGE 615.

17 THERE ARE TWO MORE CASES.

18 THE COURT: ALL RIGHT.

19 MR. ARNOLD: PEOPLE VERSUS SUL, S-U-L, 122
20 CAL.APP.3D 355. AND THE ISSUE DEALING WITH -- WHAT WE ARE
21 TALKING ABOUT HERE IS IN FOOTNOTE NUMBER 3 -- I'M SORRY --
22 HEADNOTE NUMBER 3, BEGINNING ON PAGE 367.

23 THE LAST CASE THAT I WOULD LIKE TO BRING TO
24 THE COURT AND COUNSEL'S ATTENTION IS PEOPLE VERSUS
25 VENTURA. IT APPEARS THAT'S THE ONLY ONE I AM ABLE TO
26 PRONOUNCE WITH ANY DEGREE OF CERTAINTY. THAT'S AT 174
27 CAL.APP.3D PAGE 784. IT'S A NOVEMBER OF 1985 CASE. AND
28 THE HEADNOTE THAT IS PERTINENT IS NUMBER 12.

1 AND VENTURA STANDS FOR A SLIGHTLY DIFFERENT
2 PROPOSITION THAN THE OTHER CASES. VENTURA STANDS FOR THE
3 PROPOSITION THAT IN A CRIMINAL CASE -- YOU KNOW, 1291
4 APPLIES TO CIVIL AND CRIMINAL CASES. IN A CRIMINAL CASE
5 WHERE THE TESTIMONY OCCURS AT A PRELIMINARY HEARING AND
6 THE WITNESS IS THEN UNAVAILABLE FOR TRIAL, THERE IS A
7 PRESUMPTION OF SIMILARITY OF MOTIVE.

8 SO THAT'S WHAT I WOULD REQUEST THE COURT TO
9 TAKE A LOOK AT, AND I AM GOING TO RESPECTFULLY REQUEST A
10 RULING FROM THE COURT THAT THERE IS SIMILARITY OF MOTIVE.
11 I AM NOT GOING TO ARGUE ANYTHING MORE NOW UNLESS YOU WANT
12 TO HEAR SOMETHING.

13 THE COURT: NO.

14 MR. ARNOLD: BUT I JUST WANTED TO BRING THAT TO THE
15 COURT'S ATTENTION.

16 MR. JAFFE HAD ALSO MENTIONED THE PRECLUSION
17 OF BERTRAND DIXON'S --

18 MR. JAFFE: BEFORE YOU GO INTO ONE OTHER ISSUE, LET
19 ME JUST MAKE A COMMENT ON THIS.

20 WHAT I TOLD MR. ARNOLD WAS THAT I ANTICIPATED
21 THAT THIS WOULD BECOME A POSSIBLE ISSUE.

22 I RECOGNIZE THAT UNDER 1291, SINCE WE HAD A
23 1291 HEARING IN OUR LAST TRIAL I DID BEFORE YOUR HONOR,
24 THE ISSUE IS WHETHER OR NOT THE OPPORTUNITY AND MOTIVE WAS
25 SIMILAR AT THE PRELIMINARY HEARING.

26 THIS ISSUE REALLY IS, IS THE FACT THAT THERE
27 IS NEWLY DISCOVERED EVIDENCE MEAN THAT YOU DID NOT HAVE A
28 MOTIVE, AN OPPORTUNITY SIMILAR? I DON'T KNOW WHAT THE

1 ANSWER IS TO THAT QUESTION.

2 NEITHER MR. ARNOLD NOR I WERE AWARE OF THE
3 FACT THAT THE GUN THAT I DID INQUIRE ABOUT AT THE
4 PRELIMINARY HEARING WAS IN FACT STOLEN FROM THE SAME
5 BURGLARY THAT THE MURDER WEAPON CAME FROM.

6 SO --

7 THE COURT: JUST ONE CLARIFICATION. I JUST WANT --
8 TWO THINGS WHILE WE ARE ON THE SUBJECT MATTER.

9 ONE IS DO YOU HAVE ANY OBJECTION TO ME
10 READING THE PRELIMINARY HEARING TRANSCRIPT?

11 MR. JAFFE: NO.

12 THE COURT: THE OTHER IS I TAKE IT THAT WHOMEVER
13 CALLS THE WITNESS CAN SUBSTANTIATE THAT THE GUN WAS TAKEN.

14 IN OTHER WORDS, I KNOW THAT ONE OF THE ISSUES
15 I AM GOING TO RULE ON TODAY HAS TO DO WITH THE GUN IN
16 DESHAUNNA CODY'S PURSE.

17 I TAKE IT THAT SOMEBODY CAN ESTABLISH THAT
18 THE WEAPON THAT COOKSEY HAD WAS TAKEN IN THE SAME
19 BURGLARY?

20 MR. JAFFE: THAT CAN BE INDEPENDENTLY ESTABLISHED
21 WITHOUT COOKSEY.

22 THE COURT: ALL RIGHT. OKAY.

23 MR. JAFFE: THE ONLY THING THAT CAN'T BE
24 ESTABLISHED IS THE DIRECT QUESTION OF COOKSEY SHOULD HE
25 NOT BE AVAILABLE, HOW HE OBTAINED IT.

26 THE COURT: I UNDERSTAND.

27 ALL RIGHT. JUST FOR CLARIFICATION,
28 MR. ARNOLD, PROBABLY YOU ARE NOT AWARE OF IT.

1 MR. JAFFE TRIED A CASE I THINK IT WAS LAST --
2 I THINK IT WAS 1994 IN DEPARTMENT 133 WHEN I WAS SITTING
3 THERE, AND RON GOUDY WAS THE PROSECUTOR ON THE CASE, AND
4 IT WAS AN ARSON MURDER, LIFE WITHOUT, SPECIAL CIRCUMSTANCE
5 CASE.

6 AND THE ISSUE CAME UP BOTH FOR THE
7 PROSECUTION AND THE DEFENSE. BOTH OF THEM HAD HEARINGS
8 FOR PARTICULAR WITNESSES ON EITHER SIDE OF THE TABLE AS
9 FAR AS UNAVAILABILITY.

10 MR. ARNOLD: ALL RIGHT. THE -- WELL, AS LONG AS
11 MR. JAFFE HAS AT LEAST BROUGHT IT OUT. HE SAYS HE DOESN'T
12 REALLY KNOW THE ANSWER.

13 IT IS THE PROSECUTION'S POSITION OR IT WILL
14 BE THE PROSECUTION'S POSITION -- I AM JUST GOING TO
15 SUMMARIZE NOW. I AM NOT GOING TO GO INTO ANY GREAT
16 DETAIL -- THAT THE MOTIVE TO CROSS-EXAMINE IS NO DIFFERENT
17 WHETHER IT WAS KNOWN THAT THE GUN WAS STOLEN OR NOT.

18 THE OPPORTUNITY TO CROSS-EXAMINE ABOUT THE
19 GUN WAS -- WAS THERE BECAUSE MR. JAFFE SPECIFICALLY ASKED
20 HIM ABOUT HAVING THE GUN IN HIS CAR. IT CAME OUT THAT HE
21 IS AN EX-FELON.

22 AND I WOULD SUBMIT TO THE COURT THAT IF IT
23 DID COME OUT, HAD MR. JAFFE KNOWN THAT THE GUN WAS STOLEN,
24 WHAT ADDITIONAL QUESTIONS COULD REALISTICALLY BE ASKED AND
25 ANSWERED SUCH THAT THE MOTIVE WOULD BE DIFFERENT?

26 MR. JAFFE: WELL, I THINK THAT'S AN EASY ONE TO
27 ANSWER. AND THAT IS MERELY ASKING WHERE MR. COOKSEY
28 OBTAINED THE WEAPON, HOW HE OBTAINED -- HOW HE CAME INTO

1 POSSESSION OF THE WEAPON.

2 I DID NOT ASK ONE QUESTION ABOUT HOW HE CAME
3 INTO POSSESSION OF THAT WEAPON BECAUSE IT WASN'T IMPORTANT
4 AT THE TIME.

5 THE COURT: OKAY. HOLD ON. LET'S GO ONTO SOME --
6 I DON'T NEED TO HEAR THE ARGUMENT AT THIS POINT.

7 MR. ARNOLD: ANYWAY, THE ISSUE IS ALSO BERTRAND
8 DIXON.

9 THE COURT: RIGHT.

10 MR. ARNOLD: AS I SAID, THAT THE ISSUE OF COOKSEY'S
11 MOTHER DEPENDS ON WHAT COOKSEY IS GOING TO DO ONCE HE GETS
12 HERE.

13 THAT IS NOT THE CASE WITH BERTRAND DIXON.
14 THE STATEMENTS OF THE DEFENDANT IN THE COMPTON COURT
15 LOCKUP -- AND I BELIEVE IT WAS ON SEPTEMBER 21ST OF
16 1992 -- ATTEMPTING TO DISSUADE -- ATTEMPTING TO
17 SUCCESSFULLY DISSUADE BERTRAND DIXON FROM TESTIFYING, THAT
18 IS ADMISSIBLE, AND I WOULD INTEND -- I DID INTEND TO
19 ELICIT THAT FROM BERTRAND DIXON IN MY CASE IN CHIEF.

20 I THINK IT IS ADMISSIBLE FOR THE FOLLOWING
21 REASONS: NUMBER ONE, IT DOES EXPLAIN WHY HE RECANTED HIS
22 TESTIMONY AT THE -- ON SEPTEMBER 21ST, BUT MORE
23 IMPORTANTLY, IT IS AN ADMISSION THAT TENDS TO CONNECT THE
24 DEFENDANT TO THE KILLING OF CARLOS ADKINS BECAUSE IT IS A
25 RECOGNITION OR AN AWARENESS BY THE DEFENDANT THAT HE KNOWS
26 WHAT HAPPENED TO ANDRE CHAPPEL AND THAT ANDRE CHAPPEL WAS
27 PRESENT AT THE TIME THAT CARLOS ADKINS WAS KILLED.

28 THE STATEMENT, "YOU KNOW WHAT HAPPENED TO

1 ANDRE" OR "YOU DON'T WANT WHAT HAPPENED TO ANDRE TO HAPPEN
2 TO YOU," I THINK THAT'S A VERY PERSUASIVE ADMISSION THAT
3 DEMONSTRATES CONSCIOUSNESS OF GUILT.

4 AS A RESULT OF THAT I WOULD ATTEMPT TO ELICIT
5 THAT FROM MR. DIXON.

6 MR. JAFFE: CAN I RESPOND TO THAT BEFORE WE GET
7 INTO OTHER ISSUES?

8 THE COURT: SURE.

9 MR. JAFFE: THE STATEMENT FROM REGIS THOMAS, IF IN
10 FACT IT WERE MADE, I THINK UNDER THE LAW WOULD BE
11 ADMISSIBLE TO EXPLAIN BERTRAND DIXON'S STATE OF MIND IF HE
12 IS FEARFUL. I DON'T THINK THAT I CAN ARGUE OTHERWISE.

13 WHETHER OR NOT THAT STATEMENT COMES IN AS
14 AN -- IT CERTAINLY IS NOT AN ADMISSION BECAUSE IT DOESN'T
15 RELATE TO THE FACTS OF THIS -- WELL, LET ME STAY THIS:

16 I THINK AN ARGUMENT COULD BE MADE THAT IT IS
17 AN ADMISSION. THE PROBLEM WITH THAT IS IF THE COURT IS
18 GOING TO ADMONISH THE JURY THAT ANDRE CHAPPEL'S DEATH
19 HAD -- THAT THE DEFENDANT HAD NOTHING TO DO WITH ANDRE
20 CHAPPEL'S DEATH AND THEN THE PROSECUTION ARGUES THAT THAT
21 STATEMENT IS A CONSCIOUSNESS OF GUILT ON BEHALF OF
22 MR. THOMAS AND THEN URGES THE JURY THAT THE STATEMENT IS
23 RELEVANT BECAUSE REGIS THOMAS SAID TO BERTRAND DIXON, HEY,
24 YOU KNOW WHAT HAPPENED TO ANDRE CHAPPEL, THEN BY INFERENCE
25 THE PROSECUTION IS TELLING THE JURY EXACTLY WHAT YOU ARE
26 TELLING THE JURY NOT TO DO.

27 SO IF IT'S -- IF THE ADMONITION TO THE JURY
28 IS THAT THE STATEMENT IS ADMISSIBLE ONLY TO EXPLAIN THE

1 WITNESS' STATE OF MIND, THAT'S ONE THING.

2 BUT IF THAT STATEMENT COMES IN ON ITS MERITS
3 SUBSTANTIVELY AGAINST REGIS THOMAS AS AN ADMISSION, THEN
4 WHAT'S THE PURPOSE OF THE ADMONITION?

5 THE COURT: OKAY.

6 MR. ARNOLD: MY --

7 THE COURT: DO YOU WANT TO RESPOND?

8 MR. ARNOLD: YES.

9 THE COURT: GO AHEAD.

10 MR. ARNOLD: THE STATEMENT OF THE DEFENDANT THAT --
11 REGARDING WHAT HAPPENED TO ANDRE IS RELEVANT BECAUSE IT
12 DEMONSTRATES AN AWARENESS BY THE DEFENDANT THAT ANDRE
13 CHAPPEL WAS AT THE SCENE OF THE MURDER -- OF THE KILLING
14 OF CARLOS ADKINS.

15 HOW ELSE WOULD THE DEFENDANT KNOW OR WHY
16 WOULD THE DEFENDANT KNOW TO MENTION THE NAME ANDRE
17 CHAPPEL? HE COULD HAVE MENTIONED ANY PERSON THAT HAS BEEN
18 KILLED AS A RESULT OF GIVING INFORMATION TO THE POLICE,
19 BUT HE MENTIONS ANDRE CHAPPEL.

20 THERE WERE ONLY THREE PEOPLE IN THE APARTMENT
21 WHEN CARLOS ADKINS WAS KILLED BESIDES CARLOS ADKINS.
22 THERE WAS BERTRAND DIXON, ANDRE CHAPPEL, AND JANICE
23 CHAPPEL WHO WAS UPSTAIRS.

24 SO OF ALL THE PEOPLE IN THE WORLD TO MENTION,
25 HE MENTIONS SOMEONE THAT JUST SO HAPPENS TO BE PRESENT AT
26 THE TIME OF THE KILLING OF CARLOS ADKINS.

27 HOW WOULD HE KNOW TO SAY THAT?

28 THE REASON HE KNOWS TO SAY THAT IS BECAUSE HE

1 WAS THERE. THE DEFENDANT WAS THERE AT THE TIME OF THE
2 KILLING. AND BY MENTIONING THE NAME ANDRE CHAPPEL, I
3 THINK THAT IS A PROBATIVE AND PERSUASIVE CIRCUMSTANTIAL
4 CONNECTION BETWEEN THIS DEFENDANT AND THAT KILLING.

5 THAT IS WHY I THINK IT IS RELEVANT. YES, IT
6 IS RELEVANT TO BERTRAND DIXON'S STATE OF MIND AS TO WHY HE
7 RECANTED AND WHY HE WOULD NOT -- WAS NOT COOPERATIVE. BUT
8 IT IS ALSO HIGHLY RELEVANT TO THE DEFENDANT'S STATE OF
9 MIND AND HIS CONSCIOUSNESS OF GUILT.

10 MR. JAFFE: YOUR HONOR, THIS PARTICULAR STATEMENT
11 WAS NOT MADE KNOWN TO THE DEFENSE UNTIL WE DISCUSSED THIS
12 ISSUE IN COURT LAST TIME, AND I BELIEVE I BROUGHT THAT TO
13 THE COURT'S ATTENTION IN THE MOTION THAT I FILED TO
14 RECONSIDER THE SEVERANCE.

15 THE COURT: RIGHT.

16 MR. JAFFE: I THINK, AGAIN, IF IN FACT THE
17 STATEMENT WAS MADE, PERHAPS THERE SHOULD BE AN IN LIMINE
18 MOTION TO DETERMINE WHETHER OR NOT THAT STATEMENT ACTUALLY
19 WAS IN FACT MADE.

20 APPARENTLY MR. DIXON TOLD MR. ARNOLD PERHAPS
21 TWO WEEKS AGO DURING A PHONE CONVERSATION THAT THIS
22 STATEMENT WAS MADE. BECAUSE IF THE COURT -- IF THE COURT
23 REMEMBERS, WHEN I URGED THE ORIGINAL ISSUE IN TERMS OF THE
24 SEVERANCE, I WAS UNAWARE OF THAT STATEMENT.

25 MR. ARNOLD: THE --

26 THE COURT: IF YOU WANT TO PUT SOMETHING ELSE ON
27 THE RECORD. I'VE BASICALLY HEARD ENOUGH TO BE HONEST WITH
28 YOU. IF YOU WANT TO MAKE THE RECORD, MAKE THE RECORD.

1 MR. ARNOLD: I DON'T -- I DON'T NEED TO BEAT A DEAD
2 HORSE. IF YOU ARE READY TO RULE OR UNLESS YOU HAVE A
3 QUESTION, THEN I'LL JUST --

4 THE COURT: NO, I DON'T.

5 MR. ARNOLD: -- SIT HERE.

6 THE COURT: OKAY.

7 IS THERE ANYTHING ELSE THAT ANYBODY -- MR.
8 JAFFE, YOU WANT TO PUT ON THE RECORD AS FAR AS ANYONE?

9 MR. JAFFE: NO, MR. ARNOLD IS VERY THOROUGH. IT IS
10 LIKE ASKING HIM THE TIME YOU GET THE HISTORY OF THE CLOCK.

11 THE COURT: WELL, ACTUALLY IT'S BETTER THAT WAY
12 THAN THE OTHER: OH, MY GOD, THERE WAS SOMETHING IN THE
13 MURDER BOOK AND I FORGOT TO TELL YOU.

14 MR. ARNOLD: ONE THING JUST FOR MR. JAFFE'S -- IT
15 WAS NOT A TELEPHONE CONVERSATION THAT I HAD WITH BERTRAND
16 DIXON. IT WAS A FACE-TO-FACE CONVERSATION.

17 AND THE LONGEST THAT ANYBODY HAD QUESTIONED
18 HIM IN THE PAST ABOUT THIS INCIDENT WAS PERHAPS TEN
19 MINUTES. I SPENT ALMOST TWO HOURS WITH HIM.

20 SO I THINK IT IS NATURAL THAT THE LONGER YOU
21 QUESTION SOMEONE ABOUT SOMETHING, YOU ARE GOING TO -- THE
22 ABILITY, THEREFORE, IS TO ELICIT ADDITIONAL INFORMATION.

23 THE COURT: ALL RIGHT. AS FAR AS THE MOTION TO
24 RECONSIDER THE SEVERANCE MOTION, I'VE RECONSIDERED IT.

25 THE MOTION TO SEVER IS DENIED BASED ON THE
26 ADDITIONAL INFORMATION THAT YOU PROVIDED TO ME.

27 AS FAR AS THE TESTIMONY AS TO -- THAT
28 MR. THOMAS USUALLY CARRIES A DARK-COLORED AUTOMATIC --

1 MR. JAFFE: I'M SORRY. I DIDN'T KNOW THE COURT WAS
2 ASKING FOR --

3 THE COURT: OKAY.

4 MR. JAFFE: -- FURTHER ARGUMENT ON THAT ISSUE.

5 THE COURT: ALL RIGHT. GO AHEAD.

6 MR. JAFFE: WE WERE TALKING ABOUT --

7 THE COURT: THAT'S WHAT I MEANT, THE LIST THAT WE
8 WENT THROUGH THE OTHER DAY.

9 MR. JAFFE: WELL, I DID NOT KNOW THE COURT WAS
10 TALKING ABOUT THAT SPECIFIC ISSUE.

11 THE COURT: ALL RIGHT.

12 MR. JAFFE: MY RESPONSE WOULD BE, YOUR HONOR, THAT
13 THE CASES CITED BY THE PEOPLE IN THEIR MOVING PAPERS, ONE,
14 THE HUMPHREYS CASE DEALS WITH A WITNESS WHO IS USING
15 PHENCYCLIDINE, DID NOT DEAL WITH A DEFENDANT, AND THEN THE
16 CABRAL CASE WAS A SITUATION WHERE THE DEFENDANT WAS TRYING
17 TO OFFER HABIT EVIDENCE.

18 IT IS CLEAR TO ME THAT -- CALL IT WHAT YOU
19 WANT -- THAT CALVIN COOKSEY I THINK THAT THE RECORD
20 DEMONSTRATED AT THE PRELIMINARY HEARING WAS NOT THAT CLOSE
21 OF A FRIEND WITH REGIS THOMAS WHERE HE COULD ESTABLISH
22 THAT THERE WAS -- THAT REGIS THOMAS CARRIED A GUN EVERYDAY
23 SO THAT IT WOULD BE A HABITUAL TYPE OF BEHAVIOR.

24 AND I THINK THAT YOU HAVE TO LOOK CLEARLY TO
25 THE PRESCRIPTIONS IN 1101(A), AND BECAUSE CARRYING A GUN
26 IS IN FACT A CRIME, IF A PERSON -- IF THE PROSECUTION
27 ELICITS TESTIMONY THAT A PERSON CARRIES A GUN EVERYDAY,
28 ESPECIALLY WHEN THE RECORD IS NOT CLEAR THAT A WITNESS HAS

1 PERSONAL KNOWLEDGE OF THAT FACT, I THINK THAT IT'S -- I
2 THINK THAT IT IS A VIOLATION OF 1101(A) PRESCRIPTIONS.

3 I DON'T BELIEVE THAT THAT IS HABIT EVIDENCE.
4 IT IS LIKE TRYING TO SAY SOMEBODY -- PROVE SOMEBODY WAS
5 DRIVING UNDER THE INFLUENCE AND SAY THAT THEY ARE -- YOU
6 KNOW, THEY DRIVE DRUNK EVERYDAY.

7 THE COURT: DO YOU WANT TO SAY ANYTHING,
8 MR. ARNOLD?

9 MR. ARNOLD: ARE YOU READY TO RULE?

10 THE COURT: YES. WELL, EVERYBODY IS GIVING ME
11 THEIR BEST SHOT I TAKE IT. SO I AM READY TO RULE UNLESS
12 THERE IS SOMETHING ELSE YOU WANT TO SAY.

13 MR. ARNOLD: I WOULD ONLY WANT TO SAY SOMETHING IF
14 YOU ARE AT THIS POINT READY TO RULE IN FAVOR OF THE
15 DEFENSE.

16 THE COURT: THEN GO AHEAD AND SAY IT.

17 MR. ARNOLD: IT IS -- AS I INDICATED, THIS IS NOT
18 IN VIOLATION OF 1101(A). THE EVIDENCE IS NOT BEING
19 OFFERED TO PROVE DISPOSITION OR PROPENSITY, WHICH IS WHAT
20 IS PROHIBITED BY 1101(A). IT IS MERELY TO PROVE THAT HE
21 HAD THE GUN ON THE DATE OF THE KILLING OF THE OFFICERS.

22 HIS GIRL FRIEND SAID HE USUALLY CARRIES THIS
23 GUN. CALVIN COOKSEY TESTIFIED THAT HE ALWAYS SAW THE
24 DEFENDANT WITH A GUN.

25 AND THE INFERENCE TO BE DRAWN FROM THAT IS IF
26 HE CARRIED THE GUN ALL THESE OTHER TIMES, HE HAD A GUN
27 WHEN HE LEFT THE HOUSE ON FEBRUARY 22ND, WHICH IS THE DAY
28 THAT THE OFFICERS WERE KILLED.

1 THAT IS THE IMPORT AND THE RELEVANCE OF THAT
2 TESTIMONY, NOT THAT BECAUSE HE PREVIOUSLY CARRIED A GUN
3 HE, THEREFORE, MURDERED THE OFFICERS. IT IS MERELY TO
4 PROVE THAT HE CARRIED A GUN ON THAT -- ON THE DATE OF THE
5 KILLING OF THE OFFICERS.

6 MR. JAFFE: IT WOULD ONLY BE RELEVANT --

7 THE COURT: ALL RIGHT. BASED ON WHAT I HAVE IN
8 FRONT OF ME -- YOU KNOW, IF IT WAS -- I KNOW I POSED IT
9 THE OTHER DAY. DID SHE SAY THAT SHE SAW HIM WITH A GUN
10 THE DAY BEFORE, OR DID SHE SEE HIM WITH A GUN WITHIN THE
11 WEEK OR WHAT HAVE YOU.

12 BUT BASED ON THE FACT AS IT HAS BEEN PUT TO
13 ME THAT HE USUALLY CARRIES A GUN, I FIND THAT UNDER 1105,
14 IT'S -- IT'S NOT HABIT. IT MORE HAS TO DO -- MY
15 INTERPRETATION OF IT -- THE CHARACTER OF THE DEFENDANT,
16 THAT IS, THAT HE IS DISPOSED OR PREDISPOSED OR KIND OF
17 CARRIES A GUN.

18 HE IS PREDISPOSED TO HAVE A GUN; THEREFORE,
19 YOU SHOULD INFER THAT HE WAS CARRYING A GUN THAT DAY, AND
20 BASED ON THE PROSECUTION'S THEORY HE SHOT THE OFFICERS.

21 SO THE INTERESTING THING WAS I SAID THAT I
22 WAS AWARE OF -- I WOULD LOOK IT UP AGAIN BECAUSE I HAD HAD
23 THIS SITUATION OCCUR. AND IT WAS IN JEFFERSON, AND IT
24 TURNED OUT THAT MR. JAFFE CITED JEFFERSON, 33. 8, DEFINING
25 HABIT IS A PERSON'S REGULAR, CONSISTENT RESPONSE TO A
26 REPEATED SITUATION.

27 SO I AM GOING TO PRECLUDE YOU FROM USING THAT
28 TESTIMONY BASED ON THE EVIDENCE THAT I HAVE.

1 IF IT TURNS OUT FROM INTERVIEWING HER THAT
2 SHE CAN TIE IT DOWN TO SOMETHING ELSE OR CLOSER OR THE
3 OTHER GENTLEMAN CAN, THEN WE CAN HAVE A 402 ON IT.

4 BUT AS FAR AS YOUR OPENING STATEMENT, I AM
5 GOING TO GRANT THE MOTION TO EXCLUDE IT.

6 MR. ARNOLD: ALL RIGHT. I UNDERSTAND WITH RESPECT
7 TO COOKSEY, HIS STATEMENT THAT HE ALWAYS HAD THE GUN.

8 THE COURT: RIGHT.

9 MR. ARNOLD: MY QUESTION REGARDING THE DESHAUNNA
10 CODY --

11 THE COURT: THE GIRL FRIEND.

12 MR. ARNOLD: SHE SAYS THAT SHE HAS SEEN THE
13 DEFENDANT -- THAT HE USUALLY CARRIES A GUN, AND THE
14 DESCRIPTION OF THE GUN THAT SHE GIVES IS CONSISTENT WITH
15 THE GUN THAT WAS USED TO KILL THE OFFICERS.

16 THE COURT: I UNDERSTAND. BUT THAT'S THE SECOND
17 PRONG, THE SECOND PRONG OF THE RELEVANCE OF IT. I AM
18 FINDING IT IS NOT HABIT AND CUSTOM. THAT'S NOT HABIT. IT
19 DOESN'T COME IN UNDER 1105.

20 MR. ARNOLD: ALL RIGHT. WOULD THE COURT THEN FIND
21 THAT IT IS RELEVANT CIRCUMSTANTIALY TO PROVE ACCESS --

22 THE COURT: NO, I THINK THAT'S -- I THINK THAT THAT
23 IS WHAT YOU ARE TRYING TO DO. AND I THINK THAT THAT IS
24 EXACTLY WHAT THE CODE PROVIDES YOU CAN'T DO. SO THAT'S MY
25 RULING ON THAT.

26 AS FAR AS THE SECOND ISSUE AS TO ALICIA
27 JORDAN, A TENTATIVE OR ALMOST POSITIVE OR DIFFERENT OR
28 SIMILAR TO, I AM GOING TO PERMIT THE PROSECUTION TO ELICIT

1 THAT.

2 THE SECOND ONE -- THE THIRD ONE HAD TO DO
3 WITH DESHAUNNA CODY SAYING, "I WAS EXPECTING YOU." MR.
4 ARNOLD SAYS HE IS NOT GOING TO ELICIT THAT.

5 THE VEHICLE PURCHASE FOR CASH, MR. ARNOLD HAS
6 REPRESENTED HE IS NOT GOING TO ELICIT THAT.

7 AS FAR AS CALVIN COOKSEY IS CONCERNED, THE
8 TESTIMONY ABOUT THE DECEASED'S MOTHER, MR. ARNOLD HAS
9 REPRESENTED THAT HE IS NOT GOING TO ELICIT THAT INITIALLY,
10 TO SEE HOW HIS Demeanor OR WHAT HIS PRESENTATION IS ON THE
11 STAND.

12 AND I WOULD FIND THAT IF IN FACT HE DOES
13 APPEAR TO BE RECANTING OR NOT REMEMBERING, THEN IT WOULD
14 BE HIGHLY RELEVANT. AND HOW WE PUT IT TO THE JURY, I WILL
15 TAKE THAT UP AT THAT PARTICULAR TIME.

16 AS FAR AS THE TESTIMONY OF THE DEATH OF ANDRE
17 CHAPPEL, I THINK THAT IT'S RELEVANT AT LEAST UNDER CALJIC
18 2.20, AS FAR AS HIS Demeanor OR HIS BIAS OR WHATEVER AS
19 FAR AS TESTIFYING.

20 UNDER 1220 OF THE EVIDENCE CODE, I KNOW BOTH
21 OF YOU TALKED ABOUT AN ADMISSION. BASICALLY WHAT 1220
22 SAYS IS THAT EVIDENCE -- IT DOESN'T MENTION -- I KNOW THAT
23 THE HEADNOTE SAYS ADMISSION OF A PARTY. I THINK IT IS
24 SECTION 7 OF THE EVIDENCE CODE -- OR 12. LET ME LOOK AT
25 IT.

26 NUMBER 5, EFFECT OF HEADINGS: IN THIS
27 DIVISION, CHAPTER, ARTICLE, AND SECTION HEADINGS DO NOT IN
28 ANY MANNER AFFECT THE SCOPE, MEANING, AND INTENT OF THE

1 PROVISIONS OF THIS CODE.

2 WHEN YOU READ THE LANGUAGE OF 1202 IT SAYS
3 EVIDENCE OF A STATEMENT IS NOT MADE INADMISSIBLE BY THE
4 HEARSAY RULE WHEN OFFERED AGAINST THE DECLARANT IN AN
5 ACTION OF WHICH HE IS A PARTY EITHER IN HIS INDIVIDUAL OR
6 REPRESENTATIVE CAPACITY.

7 IT DOES NOT HAVE TO FALL WITHIN AN ADMISSION,
8 CONFESSION, OR WHAT HAVE YOU.

9 IF THE PROSECUTION WANTS TO ELICIT A
10 STATEMENT THAT THE DEFENDANT HAS GIVEN THAT IS VOLUNTARY
11 AND NOT IN VIOLATION OF ANY OTHER STATUTE OR ANY CODE --
12 EXCUSE ME -- ANY APPELLATE CASE, THEY CAN ELICIT IT.

13 SO I WOULD -- WHAT IT WOULD BE -- HOW IT IS
14 PRESENTED TO THE JURY IS SOMETHING ELSE. I THINK THAT IT
15 CAN BE ELICITED -- TO BE VERY CANDID WITH YOU, MR. ARNOLD,
16 IF IN FACT IT IS A SITUATION WHERE THE THEORY THAT YOU
17 HAVE THAT WHY WOULD HE PICK A NAME OTHER THAN THAT, I
18 AGREE WITH YOU.

19 I THINK THAT THAT IS RELEVANT. I THINK IT IS
20 RELEVANT AS TO HIS DEMEANOR. I THINK IT IS RELEVANT FOR
21 PURPOSES OF HIS KNOWLEDGE OF THE KILLING -- OR THE
22 HOMICIDE.

23 WHEN I SAY "THE HOMICIDE," I AM TALKING ABOUT
24 THE HOMICIDE OF CARLOS ADKINS THAT'S RELEVANT.

25 WHETHER YOU WOULD GET A CONSCIOUSNESS OF
26 GUILT INSTRUCTION, YOU MAY, YOU MAY NOT DOWN THE ROAD. I
27 WOULD JUST HAVE TO LOOK THAT UP AND THINK ABOUT THAT. BUT
28 I THINK THAT IT IS RELEVANT, AND I THINK IT IS ADMISSIBLE,

1 THAT TESTIMONY.

2 MR. ARNOLD: OKAY.

3 THE COURT: AS FAR AS THE -- THAT THE GUN WAS
4 RECOVERED FROM DESHAUNNA CODY'S PURSE, IT WAS TAKEN IN THE
5 SAME BURGLARY IN LAS VEGAS AS THE GUN THAT WAS USED --
6 BALLISTICS SAY WAS USED AT THE SCENE OF THE KILLING OF THE
7 TWO OFFICERS AND THAT APPEARS TO BE -- CAN BE TIED IN BY
8 THE TESTIMONY OF MR. COOKSEY, DEPENDING ON HOW HE
9 TESTIFIES OR NOT TESTIFIES, I FIND THAT THAT IS RELEVANT
10 AND WOULD PERMIT THE PROSECUTION TO USE IT.

11 I THINK IT IS RELEVANT AS FAR AS
12 CIRCUMSTANTIAL EVIDENCE AS FAR AS TO HIS ACCESS TO THE
13 GUN. SO THAT WOULD BE PERMITTED ALSO.

14 SO THOSE ARE MY RULINGS AT THIS TIME AS FAR
15 AS THE MATERIALS THAT WE HAVE TOUCHED UPON.

16 MR. JAFFE: THERE IS ONE OTHER ISSUE WHICH IS KIND
17 OF HANGING OUT THERE NOW, AND THAT IS THE ISSUE REGARDING
18 THIS 1101(B) AND THE INCIDENT OF MAY 23, 1992.

19 SHOULD MR. THOMAS PLEAD GUILTY TO I BELIEVE
20 IT'S COUNT IV AND V, THAT WOULD REMOVE THE MAY 23RD ISSUE
21 FOR THE PROSECUTION TO PROVE ON ITS MERITS BEFORE THE
22 JURY.

23 THE QUESTION THEN WOULD BECOME WHETHER OR NOT
24 THE INCIDENT ON MAY 23RD IS INDEPENDENTLY ADMISSIBLE UNDER
25 1101(B).

26 I HAVE BEEN IN THE LIBRARY QUITE AWHILE
27 LOOKING FOR CASES WHICH TALK ABOUT OPPORTUNITY AS
28 OPPOSED -- YOU WILL FIND A MILLION CASES ON M.O.,

1 IDENTITY, KNOWLEDGE, COMMON PLAN AND SCHEME, BUT WHEN IT
2 COMES TO OPPORTUNITY, THOSE CASES ARE DIFFICULT TO FIND.

3 AND THE LATEST ONE WAS I THOUGHT WAS THE
4 STARK CASE, S-T-A-R-K. HEARINGS HAVE BEEN GRANTED FOR
5 THAT, REHEARINGS WERE GRANTED I GUESS FROM THE COURT OF
6 APPEAL. THE CITES ON THOSE CASES WERE 23 CAL.APP.4TH,
7 1059, AND 4 CAL.APP.4TH, 1407. SO WE DON'T HAVE THE STARK
8 CASE.

9 THE OTHER CASES ARE PEOPLE VERSUS MIRANDA,
10 44 CAL.3D, PAGE 57, AND PEOPLE VERSUS LLAMAS, L-L-A-M-A-S,
11 29 CAL.APP. 4, 768.

12 THOSE ARE THE TWO CLOSEST CASES THAT TALK
13 ABOUT THE ISSUE OF OPPORTUNITY.

14 IT'S THE DEFENSE POSITION, YOUR HONOR, THAT
15 THE INCIDENT OF MAY 23, 1992, DOES NOT SHARE SUFFICIENT
16 SIGNS OF SIMILARITY OR DISTINCTIVENESS TO ALLOW THE
17 PROSECUTION TO USE THAT INCIDENT TO PROVE OPPORTUNITY AND
18 NECESSARILY, THEREFORE, PROVE IDENTITY.

19 IT IS JUST NOT DISTINCTIVE ENOUGH TO PROVE TO
20 USE THAT INCIDENT TO SAY THAT IT'S -- THE DEFENDANT HAD AN
21 OPPORTUNITY. I SUPPOSE PERHAPS ANYONE WHO LIVES IN LOS
22 ANGELES WOULD HAVE THE OPPORTUNITY BECAUSE THE STREETS ARE
23 SO UNSAFE.

24 BUT I DON'T BELIEVE THAT THE SPECIFIC FACTS
25 OF THE MAY 23RD INCIDENT ARE SUCH TO GIVE RISE TO
26 ADMISSIBILITY UNDER 1101(B).

27 NOW, IT MIGHT BE PREMATURE FOR THE COURT TO
28 RULE ON IT BECAUSE MR. THOMAS HAS NOT YET ENTERED A PLEA.

1 SO CERTAINLY THE COURT COULD SAY, LOOK -- THE COURT CAN
2 PLAY HARDBALL AND SAY, LOOK, IT'S NOT BEFORE ME, YOU MAKE
3 A DECISION, AND THEN I'LL RULE.

4 I WILL TELL THE COURT THAT IT WILL BE OUR
5 INTENTION TO ENTER A PLEA OF GUILTY TO THAT CHARGE. I
6 DON'T KNOW IF THE COURT WANTS TO PREVIEW IT OR NOT.

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1 THE COURT: WELL, LET ME DO ONE OTHER THING.

2 ARE YOU WITHDRAWING THE SUPPRESSION MOTION?

3 MR. JAFFE: AT THIS POINT, YOUR HONOR, I AM.

4 I HAD TWO WITNESSES THAT HAD NOT YET COME
5 FORWARD. I UNDERSTAND THAT THAT WOULD BE OBVIOUSLY THE
6 EASIEST WAY TO DEAL WITH THAT ISSUE, BUT I'M SUPPOSED TO
7 MEET WITH THESE WITNESSES ON THE WEEKEND.

8 DEPENDING UPON WHAT THEY HAVE TO SAY WILL
9 IN LARGE PART TELL ME WHETHER OR NOT I'M GOING TO FILE
10 THAT MOTION OR --

11 THE COURT: YOU HAVE FILED IT.

12 MR. JAFFE: I MEAN HAVE THAT MOTION HEARD.

13 THE COURT: I DON'T WANT TO PUT THE CART BEFORE
14 THE HORSE HERE.

15 MR. ARNOLD, AS FAR AS THE SUPPRESSION
16 MOTION, IT'S NOT TIMELY.

17 WHAT IS YOUR POSITION ON IT?

18 MR. ARNOLD: YOU'RE RIGHT. IT'S NOT TIMELY.

19 THERE IS A CASE THAT SAYS A MOTION TO
20 SUPPRESS AT THE TIME OF TRIAL IS NOT TIMELY. IF IT WERE
21 TIMELY -- I ASKED MR. JAFFE -- ACTUALLY QUITE SURPRISED
22 TO GET THIS.

23 I SAID WHAT ARE THE GROUNDS, AND HE SAID HE
24 DOESN'T KNOW.

25 MR. JAFFE: I SAID THE 4TH AMENDMENT.

26 THE COURT: RIGHT.

27 I THINK BASICALLY WHAT IS HAPPENING, I MEAN
28 IF I'M READING INTO THIS WHICH PROBABLY A JUDGE

1 SHOULDN'T DO BECAUSE OF THE CIRCUMSTANCES OF THE TYPE OF
2 CASE THAT IS INVOLVED, THE MOTIONS FILED.

3 IN OTHER WORDS, THE PRELIMINARY, LIKE
4 POLITICIANS SETTING UP A CAMPAIGN FUND. THEY DON'T KNOW
5 WHETHER THEY'RE GOING TO RUN OR NOT.

6 I THINK MR. JAFFE IS FILING IT. HE DOESN'T
7 KNOW WHAT HE'S GOING TO DO, DEPENDING ON WHEN HE TALKS
8 TO THE WITNESSES AND WHAT HE COMES UP WITH.

9 BUT I THINK IT'S A SITUATION AS FAR AS YOUR
10 POSITION, IF YOU ARGUE THAT IT'S UNTIMELY, IT IS
11 UNTIMELY. IF IT'S A SITUATION WHERE YOU WAIVED THE
12 NOTICE, THAT IS SOMETHING ELSE.

13 BUT IT'S ENTIRELY, AND IF YOU WANT TO THINK
14 ABOUT HOW YOU WANT TO HANDLE IT, THAT IS UP TO YOU,
15 ALSO, AND THEN I CAN MAKE A FINDING AS TO WHAT THE
16 SITUATION IS AS FAR AS, ONE IS, IF YOU STATE YOUR BASIS
17 IS UNTIMELY, I'LL FIND IT IS UNTIMELY.

18 IF YOU WANT IT LITIGATED, WE CAN LITIGATE
19 IT. IF IT'S NOT LITIGATED, THEN MR. JAFFE WILL BE PUT
20 IN THIS POSITION THAT HE'S INDICATED THAT I ASSUME --
21 AGAIN I SHOULDN'T ASSUME THINGS, BUT THIS CASE IS AT
22 LEAST TWO YEARS OLD.

23 WE HAVE A SITUATION OF PROBABLY THE MAXIMUM
24 IS THREE YEARS ON THE CASE, AND I DON'T WANT TO SAY
25 THERE IS A DOWN SIDE OR NO DOWN SIDE, BUT FROM MY
26 EXPERIENCES AS A JUDGE AND TRIAL LAWYER, I TAKE THAT TO
27 BE THE BASIS FOR THE PLEA.

28 THE ONE QUESTION I HAVE FOR YOU,

1 MR. ARNOLD, IS WHETHER IF YOU HAVE A LEGAL OBJECTION OR
2 LEGAL BASIS FOR AN OBJECTION TO ENTERING AN OPEN PLEA
3 WITH A FACTUAL BASIS.

4 MR. ARNOLD: I DON'T KNOW. I CAN'T ARTICULATE
5 ONE.

6 THE COURT: I DON'T THINK THERE IS. I'M JUST
7 THROWING IT OUT TO YOU.

8 MR. ARNOLD: NO. I CAN'T THINK OF ONE, AND I
9 CAN'T TRY TO HEM AND HAW AND TRY TO FABRICATE ONE HOPING
10 THAT MY PEARLS OF WISDOM WILL SWAY YOU.

11 THE COURT: I'M NOT AWARE OF ONE, BUT I'M THE
12 FIRST TO CONCEDE THAT I DON'T KNOW ALL THE LAW.

13 MR. ARNOLD: I WOULD SURE LIKE TO KNOW OF ONE.

14 IF THE DEFENDANT WANTS TO PLEAD OPEN TO
15 THESE COUNTS WITH A FACTUAL BASIS, THERE IS NOTHING THAT
16 I CAN DO.

17 THE COURT: MR. JAFFE, I WOULD LET THE D.A.
18 INQUIRE AS TO THE FACTS OF THE CASE. THAT IS TYPICALLY
19 HOW I DO IT. THE PROSECUTOR IS MUCH MORE AWARE OF THE
20 FACTS OF THAT SITUATION THAN I AM. I MAY ASK SOME
21 QUESTIONS.

22 ONE THING THAT YOU SHOULD ALSO BE AWARE OF
23 IS, WHEN I DO THIS, I HAVE BEEN IN SITUATIONS WHERE
24 DEFENSE COUNSEL HAVE OBJECTED TO THE DETAILS THAT I
25 THINK ARE NECESSARY IN A FACTUAL BASIS.

26 THE CASE LAW SAYS THAT I'M THE ONE WHO
27 DETERMINES WHAT IS A FACTUAL BASIS. IT'S A SITUATION OF
28 THROW IT INTO A SIMPLER CASE OF TWO PEOPLE CHARGED WITH

1 A SALE AND ONE WANTS TO GET -- IT'S HIS FIRST OFFENSE
2 AND HE WANTS TO GET OUT FROM UNDER IT.

3 MY FEELING ON THAT IS THAT I'M ENTITLED TO
4 KNOW WHO WAS INVOLVED. WHO ELSE WAS THERE. WHAT THEY
5 DID OR DIDN'T DO. THAT TYPE OF THING.

6 MR. JAFFE: WHAT ABOUT A PEOPLE VERSUS WEST PLEA,
7 THOUGH?

8 MR. ARNOLD: I WOULD OBJECT TO THAT.

9 THE COURT: I DON'T THINK THAT THAT IS A VALID
10 PLEA.

11 I THINK THAT WHEN WE'RE DEALING -- IT'S NOT
12 CASE SETTLEMENT. WHEN WE'RE DEALING WITH A CASE,
13 ALLEGATIONS THAT ARE PENDING IN AN INFORMATION, I THINK
14 THAT IT HAS TO BE A GUILTY PLEA AND A FACTUAL BASIS.

15 MR. JAFFE: I DON'T SEE ANY PROBLEM WITH THAT IF
16 THE FACTUAL BASIS IS, "YES, I HAD A GUN IN THE CAR."

17 THE COURT: "I DON'T KNOW WHETHER ANYBODY ELSE
18 WAS THERE OR NOT."

19 MR. JAFFE: "I HAD A GUN IN THE CAR AND I KNEW
20 THE GUN WAS IN THE CAR."

21 THE COURT: THE TYPE OF GUN OR WHAT HAVE YOU.

22 SO IF YOU WANT ME -- IF YOU WANT TO TALK
23 ABOUT THE SUPPRESSION MOTION, TALK ABOUT IT OR INTERVIEW
24 YOUR WITNESSES BEFORE YOU MAKE A DECISION, AND THEN I
25 CAN MAKE A FINDING AFTER HE PLEADS AS TO WHETHER OR NOT
26 IT'S ADMISSIBLE OR UNDER 1101B AND/OR IMPEACHMENT
27 PURPOSES.

28 MR. ARNOLD: I CAN'T SEE THE FACTS CHANGING.

1 ASSUME THAT THE DEFENDANT IS GOING TO PLEAD
2 GUILTY TO THE CHARGE. SIMPLY STATED THE WAY THE
3 INCIDENT OCCURS IS THERE IS A TRAFFIC STOP FOR A MOVING
4 VIOLATION AND AN EQUIPMENT VIOLATION. THE OFFICER
5 APPROACHES, SMELLS MARIJUANA, GETS THE DEFENDANT OUT OF
6 THE TRUCK.

7 THIS IS VERY SIMPLY STATED. GETS THE
8 DEFENDANT OUT OF THE TRUCK, FINDS MARIJUANA AND ALSO
9 FINDS THE GUN.

10 NOW, UNLESS THESE WITNESSES WERE IN THE
11 TRUCK WITH THE DEFENDANT, THEY CAN'T TESTIFY AS TO
12 WHETHER THE OFFICER DID OR DID NOT SMELL MARIJUANA.

13 THERE IS CERTAINLY CIRCUMSTANTIAL EVIDENCE
14 THAT HE DID SMELL MARIJUANA BECAUSE THEY FOUND
15 MARIJUANA.

16 SO I DON'T KNOW WHAT THESE WITNESSES ARE
17 GOING TO SAY.

18 THE SHORT OF IT IS, WHILE I UNDERSTAND WHY
19 MR. JAFFE WOULD NOTICE THE MOTION, I DON'T THINK IT'S A
20 WELL TAKEN MOTION BECAUSE I CANNOT SEE IN ANY BASIS
21 BASED ON STATUTE OR CASE WHERE THERE IS A 4TH AMENDMENT
22 VIOLATION.

23 IT IS SIMPLY A CASE OF IT'S A PLAIN SIGHT
24 OBSERVATION.

25 THE REASON I'M MENTIONING THAT IS I DO NOT
26 THINK IT'S REALISTIC THAT THE MOTION WOULD GO FORWARD.

27 THAT BEING THE CASE, IT WOULD APPEAR TO ME
28 BASED ON MR. JAFFE'S REPRESENTATIONS AND THE CLIENT

1 CONTROL THAT HE HAS OR THE APPARENT CLIENT CONTROL THAT
2 HE HAS OVER THE DEFENDANT THAT THERE WILL, IN FACT, BE A
3 PLEA TO THESE COUNTS.

4 MY CONCERN IS, AND MY REQUEST TO YOU,
5 THEREFORE, IS THAT YOU GIVE A RULING ON WHETHER THE
6 INCIDENT WOULD BE RELEVANT UNDER 1101B, AND ALSO WHETHER
7 IT WOULD BE ADMISSIBLE AS TO MOTIVE BECAUSE THAT
8 SUBSTANTIALLY AFFECTS THE CASE, AND, OF COURSE, IT
9 SUBSTANTIALLY AFFECTS MY OPENING STATEMENT, AND I DON'T
10 THINK THAT THERE IS ANYTHING MORE THAT WILL ENLIGHTEN
11 YOU AS TO THIS PARTICULAR INCIDENT.

12 I THINK YOU KNOW NOW ALL THERE IS TO KNOW.
13 YOU KNOW WHAT THE PROSECUTION'S POSITION IS WHY IT'S
14 ADMISSIBLE. IT GIVES OPPORTUNITY TO HAVE ACCESS TO
15 OBTAIN A GUN SUCH THAT BOTH OFFICERS COULD BE SHOT SO
16 QUICKLY WHICH NEITHER ONE WAS EVEN ABLE TO UNSNAP THEIR
17 GUNS.

18 IN ADDITION, IT PROVIDES THE MOTIVE WHEREIN
19 THE ONE TIME THE DEFENDANT HAD THE GUN WAS IN HIS TRUCK,
20 WOUND UP GOING TO JAIL, CHARGED WITH A FELONY. THE SAME
21 INCIDENT OCCURS NOW ON FEBRUARY 22ND. DEFENDANT DOESN'T
22 WANT TO GO TO JAIL. MOTIVE AND OPPORTUNITY.

23 I'M ASKING YOU FOR A RULING.

24 THE COURT: ALL RIGHT.

25 MR. ARNOLD: I AM RESPECTFULLY REQUESTING A
26 RULING.

27 THE COURT: I'LL GIVE IT TO YOU.

28 DO YOU WANT TO BE HEARD ANY FURTHER?

1 MR. JAFFE: NO.

2 THE COURT: I FIND THAT UNDER 1101B IT'S
3 INADMISSIBLE.

4 THE CASE LAW, FROM WHAT I HAVE READ, AND
5 THE FACTS THAT WERE REPRESENTED TO ME, IT DOESN'T FALL
6 WITHIN THE CRITERIA.

7 SO I WILL PRECLUDE YOU FROM GOING INTO IT.

8 MR. ARNOLD: AM I ALLOWED TO PRESENT EVIDENCE
9 THAT THE DEFENDANT WAS IN THE TRUCK THAT DAY?

10 THE COURT: THAT HE WAS IN THE RED TRUCK?

11 MR. ARNOLD: YES.

12 THE COURT: RIGHT. YOU CAN HOOK HIM UP TO THE
13 RED TRUCK. I WOULD PERMIT THAT.

14 I'M PRECLUDING YOU FROM USING IT IN YOUR
15 CASE IN CHIEF. IT MAY BECOME RELEVANT IN REBUTTAL.

16 WHEN I SAY PRECLUDING, PRECLUDING THE GUN
17 IN THE CAR IN YOUR CASE IN CHIEF. IN OTHER WORDS, YOU
18 CAN ELICIT THAT THE OFFICERS SAW THE DEFENDANT IN A CAR
19 THAT DAY OR A DEPUTY SAW HIM IN A RED TRUCK THAT DAY.

20 IF YOU WANT TO ELICIT THAT THEY SPOKE WITH
21 HIM OVER A TRAFFIC VIOLATION OR WHATEVER, I WOULD PERMIT
22 THAT.

23 AS FAR AS USING IT IN YOUR CASE IN CHIEF,
24 YOU'RE PRECLUDED. HOWEVER, IT MAY BECOME RELEVANT IN
25 REBUTTAL, DEPENDING ON WHAT THE DEFENSE PRESENTS. I
26 DON'T KNOW WHAT THE DEFENSE IS GOING TO PRESENT.

27 MR. ARNOLD: YOUR HONOR, BY PRECLUDING ME OF
28 THAT, YOU'RE THEN DEPRIVING ME OF MAKING AN ARGUMENT TO

1 THE JURY AS TO THE MOTIVE AS TO WHY HE WOULD KILL THESE
2 OFFICERS.

3 I, THEREFORE, HAVE TO STAND BEFORE THE JURY
4 AND SAY, "LADIES AND GENTLEMEN. WE DON'T KNOW WHY,"
5 WHEN, IN FACT, IF AN ARGUMENT CAN BE MADE AS TO WHY.

6 THE COURT: WELL, I DISAGREE WITH YOU IN THE
7 SENSE THAT YOU HAD INFORMED -- HE WAS ON PROBATION IN A
8 PARTICULAR TIME. IT'S IN THE MOVING PAPERS. I GUESS
9 MR. JAFFE WAS SOMEWHAT SAYING THAT I HOPE YOU STAND UP
10 AND TELL THEM THAT FEAR OF GOING TO JAIL OR PRISON ON A
11 PROBATION VIOLATION.

12 MR. ARNOLD, I CAN UNDERSTAND THAT YOU FEEL
13 YOU'RE BEING PRECLUDED, BUT ON THE OTHER HAND, I HAVE
14 GOT TO FOLLOW THE EVIDENCE CODE.

15 AND SO BASED ON MY INTERPRETATION OF THE
16 EVIDENCE CODE, I'M PRECLUDING YOU FROM DOING THAT. IN
17 EVERY CASE -- OBVIOUSLY THIS IS A CIRCUMSTANTIAL
18 EVIDENCE CASE IT APPEARS. THERE MAY BE DIRECT EVIDENCE
19 IN THE SENSE THAT THE WITNESSES SAY THAT IT'S SIMILAR TO
20 OR WHAT HAVE YOU AND HE'S NOT DIFFERENT THAN, AND THOSE
21 ARE VERY DIFFICULT CASES FROM THE PROSECUTOR'S
22 PERSPECTIVE.

23 I WAS A PROSECUTOR. I'M WELL AWARE OF
24 THAT, BUT THAT IS MY INTERPRETATION OF THE CODE.

25 MR. ARNOLD: VERY WELL.

26 THE COURT: IS THERE ANYTHING ELSE?

27 MR. JAFFE: YOUR HONOR, I HAD A DOCUMENT WHICH I
28 HAVE ENTITLED, "DEFENSE REQUEST FOR JURY ADMONITION."

1 I HAVE NOT YET SHOWN IT TO MR. ARNOLD. BUT
2 BASICALLY I WANTED THE COURT TO READ THIS TO THE JURY
3 BEFORE WE GO INTO OUR GENERAL VOIR DIRE.

4 YOU CAN DO IT MONDAY. MR. ARNOLD COULD
5 REVIEW THIS.

6 THE COURT: OKAY.

7 MR. JAFFE: AND I ALSO HAVE ANOTHER QUESTION,
8 THAT IS, OBVIOUSLY HAVING GONE THROUGH THESE JURY
9 QUESTIONNAIRES, IT HAS BEEN A REAL TREAT ESPECIALLY
10 WHEN, FOR INSTANCE, YOU ASK THE WITNESS A QUESTION, DO
11 THEY HOLD ANY CERTIFICATIONS, DEGREES OR LICENSE AND
12 THEIR RESPONSE IS, "YES, I HOLD A DRIVER'S LICENSE."

13 IT KIND OF TELLS YOU SOMETHING ABOUT THE
14 JURORS WHO ARE ANSWERING THESE QUESTIONS.

15 NOW, IS THE COURT'S PROCEDURE GOING TO BE
16 THAT WE HAVE THE 12 JURORS, AND THEN SHOULD ONE OF THOSE
17 12 JURORS HAVE ANSWERED QUESTIONS SUCH THAT IT WOULD
18 APPEAR TO THE COURT THAT THEY MAY BE INELIGIBLE TO SERVE
19 BECAUSE THEY WOULD NEVER IMPOSE THE DEATH PENALTY OR
20 THEY WOULD ALWAYS IMPOSE THE DEATH PENALTY, IS THE COURT
21 GOING TO INQUIRE AT THAT TIME OR IS THE COURT GOING TO
22 INQUIRE GENERALLY OF ALL OF THOSE PEOPLE WHO HAVE MADE
23 THAT INDICATION?

24 THE REASON WHY I BRING UP THAT ISSUE IS IF
25 THE COURT WAITS AND THEN QUESTIONS EACH INDIVIDUAL JUROR
26 AS THEY COME UP IN THE BOX, AS THE COURT WOULD INQUIRE
27 FOR CAUSE, THEN WE WILL HAVE PEOPLE IN THE POOL WHO WILL
28 NEVER SERVE ANYHOW BECAUSE THEY HAVE INDICATED THAT

1 THEY'LL ALWAYS VOTE LIFE OR ALWAYS VOTE DEATH.

2 SO WE NOW HAVE A RANDOM POOL OF JURORS WHO
3 WILL NOT NECESSARILY BE LEGALLY ELIGIBLE TO SERVE ON THE
4 DEATH PENALTY CASE.

5 THE COURT: HERE IS WHAT MY INTENTION WAS.

6 MY INTENTION WAS TO PUT 18 IN THE BOX.
7 THAT JURY BOX HOLDS 18. EACH OF YOU KNOW WHAT ORDER
8 THEY'RE COMING UP BECAUSE YOU HAVE BEEN GIVEN THE RANDOM
9 LIST.

10 MY INTENTION WAS -- I MADE NOTES ON MY
11 PHOTOCOPIES -- IS THEN TO BRING YOU UP TO THE SIDEBAR.

12 MR. JAFFE: OKAY.

13 THE COURT: SEEING FROM THE QUESTIONS, THERE IS A
14 STIPULATION TO CAUSE. IF THERE IS NOT A STIPULATION AS
15 TO CAUSE -- I MEAN SOME OF THESE PEOPLE I DON'T THINK
16 YOU CAN REHABILITATE. MAYBE YOU CAN. MAYBE EACH OF YOU
17 HAVE SOME MAGIC THAT YOU CAN REHABILITATE.

18 THERE IS SOME PEOPLE -- WELL, LET ME BACK
19 UP HERE.

20 THE WAY THAT QUESTIONNAIRE WAS PREPARED, IT
21 WAS OBVIOUS FROM REVIEWING IT THAT EACH OF YOU WERE
22 INTERESTED IN THE PERSONAL FEELINGS OF THE PEOPLE
23 WITHOUT TELLING THEM REALLY WHAT THE LAW WAS.

24 THEN AS YOU GO ON TO PAGE, I THINK IT'S 19
25 AND 20, THEN THEY'RE REALLY TOLD WHAT THE LAW IS AND
26 THEY'RE BEING ASKED TO SET ASIDE THEIR PERSONAL VIEWS
27 AND FOLLOW THE LAW.

28 WHEN YOU SEE THOSE QUESTIONS AND THEY ARE

1 CONSISTENT WITH THEIR PERSONAL VIEWS, THAT BEING, "NO, I
2 CAN'T. I COULD NEVER TAKE ANYBODY'S LIFE. I DON'T CARE
3 WHAT THE CIRCUMSTANCES."

4 MR. JAFFE, I JUST DON'T SEE YOU
5 REHABILITATE THAT PERSON.

6 MR. ARNOLD, THERE IS SOME PEOPLE IN THERE,
7 AN EYE FOR AN EYE. YOU KILL SOMEBODY, YOU OUGHT TO DIE.

8 THAT IS THE PROBLEM AND WHY DO WE EVEN HAVE
9 A TRIAL KIND OF ATTITUDE? I DON'T SEE YOU
10 REHABILITATING THAT PERSON.

11 THOSE ARE THE KINDS OF PEOPLE THAT I WOULD
12 ANTICIPATE THERE WOULD BE A STIPULATION TO.

13 THERE ARE THOSE FROM MY READING OF IT, THEY
14 HAVE THEIR PERSONAL VIEWS AND THEN WHEN YOU GET TO THE
15 OTHER QUESTIONS ABOUT COULD THEY SEE THEMSELVES
16 FOLLOWING THE LAW AND SELECTING LIFE WITHOUT AND
17 REJECTING DEATH, YES. COULD THEY FOLLOW THE LAW, AND
18 THEY PUT YES AGAIN, REJECTING THE OTHER SIDE OF THAT
19 QUESTION.

20 TO ME I AM NOT REALLY GOING TO INQUIRE ON
21 THEIR VIEWS ON THE DEATH PENALTY.

22 IF, IN FACT, IN YOUR ALLOTTED TIME YOU WANT
23 TO TAKE THAT ISSUE UP WITH THAT PERSON, TO SHOW THAT, IN
24 FACT, THEY CANNOT FOLLOW THE LAW, THAT IS UP TO YOU.

25 BUT IT'S MY INTENTION TO BRING THEM UP. IF
26 THERE IS A STIPULATION, FINE, WE'LL EXCUSE THEM. WE'LL
27 PUT THE NEXT ONE THAT COMES UP ON THE RANDOM LIST IN
28 THAT SEAT. WE'LL FILL UP THE BOX UNTIL WE HAVE PEOPLE

1 THAT APPEAR THAT ARE NOT AUTOMATIC EXCLUSIONS.

2 I WILL SAY THAT THERE ARE SOME PEOPLE IN
3 THOSE QUESTIONNAIRES THAT APPEAR TO MISUNDERSTAND THE
4 QUESTION IN THAT --

5 MR. JAFFE: I KNOW PAGE 19 BASICALLY WAS DESIGNED
6 TO REHABILITATE THE JURORS.

7 THE COURT: RIGHT.

8 MR. JAFFE: AND THEY DIDN'T UNDERSTAND IT.

9 IF I HAD TO DO THE QUESTIONNAIRE AGAIN OVER
10 WITH MR. ARNOLD, WE WOULD PROBABLY HAVE ~~PARROTED~~ ^{PARRED} IT DOWN
11 GREATLY.

12 THE COURT: RIGHT.

13 MR. JAFFE: THERE IS ANOTHER QUESTION WHICH I
14 DON'T THINK WAS A FAIR QUESTION.

15 . THAT IS SHOULD THE DEFENDANT TESTIFY,
16 SOME OF THE JURORS INTERPRET THAT, SURE, WHY NOT. HE
17 SHOULD BE GIVEN THAT OPPORTUNITY.

18 THE COURT: THEY'RE SAYING WHY CAN'T SOMEBODY
19 PRESENT EVIDENCE? WHY SHOULD THEY BE PRECLUDED FROM IT?

20 AND I UNDERSTAND WHEN I READ THE ANSWERS
21 AND I WAS GOING TO SAY IT'S ON PAGE 16, WHERE YOU ASK
22 ABOUT THEIR FEELINGS ON THE DEATH PENALTY, WHETHER THEY
23 WOULD ALWAYS VOTE FOR DEATH OR IF THEY WOULD ALWAYS VOTE
24 FOR LIFE WITHOUT.

25 THEN YOU GO TO PAGE 19, AND IT HAS BEEN
26 EXPLAINED TO THEM WHAT THE LAW IS AND THEN IT'S
27 BASICALLY THE SAME QUESTIONS.

28 THERE ARE SOME OF THE PEOPLE THAT HAVE

1 CONFUSED THE QUESTION. IN OTHER WORDS, THEY ANSWER THEM
2 CONSISTENTLY BUT IN THE WRONG MANNER, AND I'M NOT
3 INCLINED TO ASK THEM. IT'S ONLY THEY'RE CONSISTENTLY
4 WRONG BECAUSE OF MISINTERPRETING THE NEGATIVE IN IT BUT
5 IT WOULD BE THE PEOPLE THAT ARE INCONSISTENT I WOULD
6 INQUIRE ABOUT.

7 BUT THAT IS THE WAY I INTEND TO PROCEED.

8 IT'S A SITUATION THAT REALLY THE PURPOSE OF
9 GIVING YOU THE RANDOM LIST IS BECAUSE I REALLY DO THINK
10 THAT BOTH OF YOU PROBABLY COULD PROJECT WHO THE 12
11 JURORS ARE GOING TO BE ANTICIPATING CHALLENGES FROM
12 EITHER SIDE, JUST BECAUSE THEY'RE NOT CAUSE CHALLENGES
13 BUT THERE IS SOMETHING THAT THEY HAVE SAID IN THERE THAT
14 YOU DON'T WANT THAT PERSON AS A JUROR.

15 . IT IS MY HOPE THAT THE PROCESS IS SUCH THAT
16 BECAUSE I GAVE YOU AS MUCH TIME AS I DID TO REVIEW THEM,
17 THAT THE PROCESS MOVES.

18 I MEAN I UNDERSTAND TRYING TO REHABILITATE
19 PEOPLE OR TRYING TO GET PEOPLE TO BE EXCUSED FOR CAUSE
20 SO YOU CAN SAVE YOUR PEREMPTORIES, BUT AFTER AWHILE, I
21 WOULD BE IN A SITUATION OF LIMITING THAT QUESTIONING ON
22 THE SECOND OR THIRD TIME THE PERSON SAYS WHAT THEY SAY,
23 THEN I WOULD HAVE YOU MOVE ON.

24 , BUT THAT IS THE INTENTION OF DOING IT THAT
25 WAY IS TO BRING 18 UP, TALK ABOUT CAUSE AT THE SIDEBAR.
26 IF EACH OF YOU CAN STIPULATE, THAT IS FINE. IF YOU
27 CAN'T, THEN WE'LL PUT THEM UP THERE. I'LL TALK TO THEM
28 AND THEN MR. JAFFE AND ^{ARNOLD} § WILL VOIR DIRE.

1 THEN GENERALLY, ALSO, SOME OF THE PEOPLE
2 THAT HAVE -- I BELIEVE THERE IS A WOMAN, I THINK IT'S
3 MS. BOOTH WHO THE THING THAT STRUCK ME INITIALLY WAS,
4 WHAT ARE THE MAJOR CRIME PROBLEMS IN THE CITY? 187,
5 288.

6 WELL, WHERE DOES SHE GET THIS FROM?

7 SHE IS AN EXTRA ON THE SCREEN ACTORS GUILD
8 BUT HER FATHER IS IN THE LAPD 21 YEARS SOUTHEAST, I
9 THINK, AND OBVIOUSLY I'LL INQUIRE ABOUT THAT.

10 MR. ARNOLD: SOUTHWEST.

11 THE COURT: SOUTHWEST, BUT THAT IS SOMETHING
12 ELSE.

13 I DO THE GENERAL VOIR DIRE AND THEN I'LL
14 LET YOU QUESTION. I'LL LET YOU QUESTION, AND IF THERE
15 ARE CHALLENGES FOR CAUSE AT SIDEBAR, IF THEY'RE GRANTED
16 OR NOT, THEN YOU CAN USE YOUR PEREMPTORIES AND THEN
17 WE'LL BRING THE NEXT GROUP UP OR FILL THEM UP AND DO THE
18 CAUSE AGAIN.

19 THAT IS THE WAY I ANTICIPATE DOING IT.

20 MR. JAFFE: THE COURT INDICATED TWO HOURS.

21 THE COURT: FOR EACH OF YOU. THAT IS BASICALLY
22 WHAT I'M GOING TO GIVE YOU.

23 I HAVE TALKED TO OTHER JUDGES. SOME JUDGES
24 THINK I HAVE LOST MY MIND THAT I'M LETTING YOU ASK
25 QUESTIONS. SOME JUDGES THINK I'M OVERLY GENEROUS BY TWO
26 HOURS.

27 BUT I'M JUST GIVING IT TO YOU BECAUSE I
28 THINK EACH OF YOU WILL USE IT IN A PROFESSIONAL MANNER.

1 THAT IS WHY I'M GIVING IT TO YOU AND NOT WASTE TIME, AND
2 I DON'T WANT TO BE ARBITRARY AND SAY FIVE MINUTES FOR
3 EACH GROUP THAT IS UP HERE BECAUSE THE FLOW OF THE
4 JURORS IS OBVIOUSLY DIFFERENT.

5 THERE IS A SECTION OF JURORS ON THESE
6 QUESTIONNAIRES THAT YOU KNOW ARE COMING UP ARE VERY
7 DEFINITE. THEN THERE ARE OTHERS THAT REALLY -- NOT MANY
8 OF THEM -- BUT THERE ARE JURORS THAT I HAVE NO QUESTIONS
9 OF FROM READING THEIR QUESTIONNAIRE.

10 MR. JAFFE: NO QUESTION ABOUT THAT.

11 THE COURT: AND YOU CAN, EACH OF YOU CAN TALK TO
12 THEM ABOUT WHATEVER YOU WANT, BUT I'M NOT GOING TO ASK
13 QUESTIONS JUST TO TALK TO EACH JUROR AND I WILL EXPLAIN
14 THAT TO THEM.

15 I ALSO INTEND WHEN WE BRING THEM IN, I'LL
16 HAVE THE CLERK CALL THE 18 AND WE'LL PUT THEM UP THERE.

17 OBVIOUSLY A LOT OF PEOPLE ARE GOING TO BE
18 STANDING. THERE IS GOING TO BE A LOT OF DISCOMFORT, BUT
19 I WILL TALK TO THEM ABOUT DIRECT AND CIRCUMSTANTIAL
20 EVIDENCE. I'LL REINTRODUCE THE PARTICIPANTS IN THE
21 CASE, THAT TYPE OF THING.

22 I WILL THEN EXPLAIN TO THEM THE DIFFERENT
23 PHASES, BECAUSE SOME OF THE PEOPLE DIDN'T REALLY
24 UNDERSTAND THE PHASES. THERE WAS A COUPLE WHO SAID,
25 CAN'T ANSWER, DON'T UNDERSTAND THE QUESTION, AND GO
26 THROUGH THAT AGAIN WITH THEM.

27 SOME ARE WORRIED ABOUT BEING SEQUESTERED ON
28 THIS CASE. I'M GOING TO TALK TO THEM ABOUT THAT.

1 THERE IS ONE JUROR THAT -- THERE IS SOME
2 THAT ARE CONCERNED ABOUT THE TIME STILL AND THEY FELT
3 THAT THAT WOULD AFFECT THEM.

4 I'M NOT GOING TO ELIMINATE THEM UNTIL THEIR
5 NAME COMES UP OR THEIR NUMBER COMES UP. I WAS GOING TO
6 GET INTO THE ANONYMOUS SITUATION BUT GO AHEAD.

7 MR. ARNOLD: ONE OTHER THING THAT I WANTED TO
8 BOUNCE OFF OF YOU AND PERHAPS ELICIT INPUT FROM
9 MS. DOHERTY AND MR. JAFFE WHICH IS THE O.J. CASE IS SO
10 MUCH IN THE MEDIA AND A LOT OF THESE JURORS HAVE WATCHED
11 IT.

12 THE COURT: RIGHT.

13 MR. ARNOLD: AND A LOT OF THESE JURORS I HAVE
14 NOTICED HAVE NEVER HAD JURY SERVICE BEFORE.

15 SO THE ONLY EXPOSURE A LOT OF THESE
16 PROSPECTIVE JURORS HAVE IS WHAT THEY SEE THAT GOES ON IN
17 DEPARTMENT 103, AND I THINK THE COURT WOULD AGREE AND
18 MR. JAFFE WOULD AGREE THAT THE LEVEL OF ACRIMONY AND THE
19 LEVEL OF CONTENTIOUSNESS IN THAT CASE IS THE EXCEPTION
20 RATHER THAN THE RULE, AND I WOULD WONDER IF IT WOULD BE
21 APPROPRIATE FOR YOU TO AT LEAST ADVISE THE JURY THAT
22 SOMETHING TO THE EFFECT THAT THAT LEVEL OF ACRIMONY,
23 WHILE WE ARE ADVOCATES AND WE EACH HAVE A POSITION TO
24 ADVANCE, THE LEVEL OF ACRIMONY THAT EXISTS IN THE O.J.
25 CASE IS THE EXCEPTION RATHER THAN THE RULE AND DO NOT
26 THINK IF THEY DON'T SEE MR. JAFFE AND I CLAWING AT EACH
27 OTHER'S JUGULAR VEINS, THAT DOES NOT MEAN THAT I'M NOT
28 DOING MY JOB AND HE'S NOT DOING HIS JOB.

1 THE COURT: ONE OF THE GENERAL THINGS I TELL THE
2 JURORS, THEY ARE NOT TO TALK TO LAWYERS. HOWEVER, YOU
3 MAY SEE LAWYERS TALKING TO EACH OTHER. THAT MAY BE AT
4 MY DIRECTION OR IT MAY BE THAT THEY'RE TALKING ABOUT
5 SOMETHING THAT HAS NOTHING TO DO WITH THE CASE.

6 THE FACT THAT THEY TALK TO EACH OTHER DOES
7 NOT MEAN THAT HE OR SHE IS NOT DOING THEIR JOB AS AN
8 ADVOCATE FOR THEIR POSITION.

9 I USED TO SAY TO JURORS THAT TYPICALLY WHAT
10 YOU SEE ON TV OR IN THE MOVIES YOU'LL NEVER SEE IN THIS
11 COURTROOM BECAUSE TV SHOWS AND MOVIES ARE MADE FOR
12 ENTERTAINMENT, THEY'RE MADE TO MAKE MONEY. PROBABLY 90
13 PERCENT OF WHAT HAPPENS IN A COURTROOM WOULD END UP ON
14 THE FLOOR OF THE EDITING ROOM.

15 UNFORTUNATELY FROM MY PERSPECTIVE, THIS
16 IS -- THE SIMPSON CASE IS NOW A LIVE MEDIA EVENT AND THE
17 MEDIA PUTS SPINS ON IT AND WHAT HAVE YOU.

18 BUT I WILL EXPLAIN TO THEM -- I'M GOING TO
19 TRY TO BE DIPLOMATIC BECAUSE I DON'T WANT TO OFFEND
20 ANYBODY IN 103, THAT TRULY AT TIMES WHEN YOU HAVE LIVE
21 COVERAGE ON A DAILY BASIS, LAWYERS -- SOME LAWYERS TRY
22 THE CASE NOT NECESSARILY FOR THE JURY BUT ALSO FOR
23 BENEFIT OF THE VIEWING PUBLIC.

24 ON THIS PARTICULAR CASE, I EXPECT THE
25 LAWYERS TO FOCUS ON THE FACTS OF THIS PARTICULAR CASE
26 AND TO PRESENT THEIR CASE IN A PROFESSIONAL MANNER, AND
27 I WILL EXPLAIN TO THEM FROM MY PAST DEALINGS WITH EACH
28 OF YOU, THAT THAT IS THE PARTICULAR STYLES OF THE TWO OF

1 YOU, SOMETHING TO THAT EFFECT.

2 BUT I'LL TOUCH ON IT, BUT OBVIOUSLY IT'S
3 VERY DIFFICULT, YOU KNOW. I REALLY DON'T WANT TO GIVE
4 MY PERSONAL VIEWS, BUT AFTER THE MELENDEZ TRIAL AND WHAT
5 HAVE YOU, THERE ARE CERTAIN STYLES OF LAWYERS, AND IT
6 DOESN'T APPEAR EITHER OF YOU HAVE THOSE STYLES.

7 SOME OF THE LAWYERS IN THOSE CASES HAVE
8 CERTAIN AGGRESSIVE STYLES, TO BE DIPLOMATIC ABOUT IT.
9 WHEN I SAY "AGGRESSIVE STYLES" AND USE MY DIPLOMACY, I
10 THINK BOTH OF YOU ARE AGGRESSIVE ADVOCATES FOR YOUR
11 POSITIONS BUT YET YOU ACCEPT THE RULINGS AND GO ON.

12 THAT IS NOT NECESSARILY WHAT IS GOING ON
13 DOWN THE HALL.

14 MR. ARNOLD: SO I THINK WHAT YOU'RE SAYING IS,
15 YOU'RE REPLACING THE -- YOU'RE PUTTING IN THE ADJECTIVE
16 "AGGRESSIVE" AND TAKING OUT THE ADJECTIVES OF PERHAPS
17 "OBNOXIOUS" AND "ARGUMENTATIVE."

18 THE COURT: WELL, I'M GOING TO PROBABLY INDICATE
19 THAT I THINK THAT THEY'RE BEYOND THE BOUNDS DOWN THE
20 HALL AT TIMES WHEN THEY'RE YELLING AT EACH OTHER AND
21 CALLING EACH OTHER NAMES. THAT WE'RE NOT GOING TO HAVE
22 APOLOGIES IN THIS COURTROOM BECAUSE WE'LL NEVER GET TO
23 THAT STAGE. THERE IS NO NEED OF HAVING APOLOGIES.

24 MR. ARNOLD: I AGREE WITH YOU.

25 I MUST SAY THAT AT LEAST SO FAR, THE LEVEL
26 OF COOPERATION THAT I THINK I HAVE EXPERIENCED WITH
27 MR. JAFFE AND MS. DOHERTY IS AS GOOD AS ANY CASE I HAVE
28 HAD AND THAT INCLUDES NOT ONLY 13 YEARS AS A DEPUTY

1 SHERIFF BUT TEN YEARS AS A D.A.

2 SO I HAVE NO REASON TO DISBELIEVE THAT THAT
3 WILL NOT CONTINUE.

4 THE COURT: YES, AND OBVIOUSLY SINCE THIS IS THE
5 TYPE OF CASE IT IS, EVERYTHING IS ON THE RECORD.

6 I UNDERSTAND THAT IN ARGUMENTS, CERTAIN
7 THINGS ARE SAID FOR TACTICAL PURPOSES, BUT THAT IS WHERE
8 IT SHOULD BE SAID, IN ARGUMENT, IN FRONT OF THE JURY AT
9 THE APPROPRIATE TIME, NOT ON A DAY-TO-DAY BASIS OF WHO
10 WINS THE HORSE RACE THAT PARTICULAR DAY AND I THINK THAT
11 IS WHAT THE MEDIA HAS CREATED IN THE CASE DOWN THE HALL.

12 MR. ARNOLD: WHO WON THAT DAY WHICH IS
13 RIDICULOUS.

14 THE COURT: RIGHT.

15 IS IT STILL YOUR DESIRE TO USE NUMBERS OF
16 JURORS?

17 MR. ARNOLD: YES, IN LIGHT OF WHAT MY OFFER OF
18 PROOF WAS THE OTHER DAY.

19 AS YOU KNOW, THIS IS GOING TO BE A FAIRLY
20 LENGTHY, FAIRLY INVOLVED TRIAL AND I WOULD LIKE TO ONLY
21 HAVE TO DO IT ONCE.

22 I WOULD ALSO LIKE TO AT LEAST --

23 THE COURT: ONE OTHER THING, WHILE I HAVE GOT IT
24 ON MY MIND.

25 MS. GARCIA -- I DON'T REMEMBER HER FIRST
26 NAME AT THIS TIME, BUT I HAD MY CLERK PULL IT OUT. SHE
27 DIDN'T SIGN IT.

28 SO I'M GOING TO HAVE MY CLERK GIVE HER THE

1 ORIGINAL, AND WHAT NUMBER IS SHE?

2 THE CLERK: 43.

3 THE COURT: SHE IS NUMBER 43. I'M GOING TO HAVE
4 MY CLERK GIVE HER THE ORIGINAL AND SIGN IT.

5 THERE ARE A COUPLE OF QUESTIONNAIRES YOU
6 CAN'T READ THE ANSWERS, AND THEN THERE IS ONE THAT
7 SOMEONE ANSWERED ON THE BACK.

8 AND IF YOU WANT TO REVIEW THOSE, THE
9 ORIGINAL, MY CLERK WILL TRY TO FIND IT FOR YOU, BUT
10 MR. JAFFE, DO YOU HAVE ANY OBJECTION OF DOING IT BY
11 NUMBERS?

12 MR. JAFFE: YES. I STILL WANTED THE NAMES AND
13 NOT NUMBERS, AND I DON'T BELIEVE THE RECORD SUPPORTS
14 DOING ANYTHING, HAVING AN ANONYMOUS JURY.

15 THE INFORMATION THAT I WAS PROVIDED BY
16 MR. ARNOLD WAS THAT SOMEONE HAD CALLED, I BELIEVE IT WAS
17 MARGARITA GULLEY --

18 THE COURT: RIGHT. HE ARTICULATED IT THE LAST
19 TIME.

20 MR. JAFFE: -- IN THE EARLY MORNING BUT THE
21 INFORMATION THAT I RECEIVED IN WRITTEN FORM WAS THAT
22 SOMEBODY BASICALLY BRIBED HER NOT TO TESTIFY. I DON'T
23 BELIEVE THAT IT ROSE TO THE LEVEL OF A THREAT. I
24 SUPPOSE THAT ONE MIGHT ARGUE THAT IMPLICIT IN A BRIBE IS
25 A THREAT.

26 AGAIN, I THINK THAT TO CONDUCT THE TRIAL,
27 HAVING THE JURORS REFERRED TO BY NUMBERS IS NOT
28 SUFFICIENT GOOD CAUSE, AND I DON'T BELIEVE THAT THE CODE

1 PROVIDES FOR IT.

2 I BELIEVE THE PERTINENT SECTIONS OF THE
3 CODE OF CIVIL PROCEDURE 206 AND 237, AND AGAIN, I WOULD
4 SUBMIT. I JUST DON'T THINK IT'S APPROPRIATE IN THIS
5 CASE.

6 THE COURT: OKAY.

7 AS TO EACH OF YOU, I'M GOING TO PUT THIS ON
8 THE RECORD.

9 EACH OF YOU HAVE THE QUESTIONNAIRES WITH
10 THE NAMES OF THE JURORS. IT'S NOT A SITUATION WHEREIN I
11 HAVE JUST GIVEN YOU NUMBERS AND IT'S COMPLETELY
12 ANONYMOUS.

13 THEREFORE, OUT OF AN ABUNDANCE OF CAUTION
14 OR BASED ON THE REPRESENTATIONS OF MR. ARNOLD, I'M GOING
15 TO FIND THAT THERE IS JUSTIFICATION FOR USING NUMBERS
16 SEATING THE JURORS.

17 WHAT MY INTENTION IS, YOU HAVE -- I BELIEVE
18 MY CLERK ON THE RANDOM LIST THAT HE GAVE YOU NUMBERED
19 EACH JUROR.

20 IT IS MY INTENTION ON MONDAY FOR HIM TO
21 HAND OUT -- HE HAS GOT THE NAME AND NUMBER ON A PIECE OF
22 PAPER FOR EACH JUROR AND GIVE IT TO THEM WHEN THEY COME
23 IN.

24 I'M NOT GOING TO SAY TO THEM THAT IT HAS TO
25 DO WITH SAFETY OR WHATEVER. I'M JUST GOING TO SAY, "THE
26 PROCESS WE'RE GOING TO USE IS A NUMBERING PROCESS. YOU
27 HAVE BEEN GIVEN THAT NUMBER. WHEN YOU HEAR THAT NUMBER,
28 JUST COME UP AND FILL IN THE VACANT SEAT AND MY CLERK

1 HAS GONE THROUGH THE ORIGINALS AND PUT THE NUMBERS NEXT
2 TO THE NAMES SO THAT IT'S COMPLETE IN THE RECORD AS FAR
3 AS WHAT NUMBER THEY WERE GIVEN UNDER THE ORIGINAL
4 QUESTIONNAIRE."

5 SO I WILL PERMIT THAT.

6 THE SETUP HERE, JUST SO THAT YOU'RE AWARE,
7 ONE THROUGH SIX, SEVEN THROUGH 12, AND THEN I PUT 13, 14
8 AND 15 IN THE BACK, 16, 17 AND 18 IN THE FRONT AS FAR AS
9 THE SIX-PACK IS CONCERNED AND THEN AS WE EXCUSE
10 SOMEBODY, THE NEXT ONE WILL TAKE THAT SEAT.

11 MR. JAFFE: SORRY FOR INTERRUPTING.

12 THE COURT: I WAS GOING TO SAY IT MAY BE A LITTLE
13 CONFUSING AT FIRST WHEN I SAY, "NUMBER 10, CAN YOU MOVE
14 DOWN TO CHAIR NUMBER TWO."

15 MR. JAFFE: I KNOW SOME OF THE QUESTIONNAIRES,
16 THERE WAS A FEW JURORS WHO INDICATED THAT THEY HAD SOME
17 FEAR ABOUT SITTING AS A JUROR IN THIS CASE.

18 THE COURT: RIGHT.

19 MR. JAFFE: JUST BY VIRTUE OF THE NATURE OF THE
20 CASE AND THAT WAS ONE OF THE ADDITIONAL REASONS WHY I
21 HAD THOUGHT OF OBJECTING TO THIS ANONYMOUS NUMBERING
22 SYSTEM.

23 I'M WONDERING WHETHER OR NOT THE COURT,
24 AGAIN, IF YOU TELL THEM TOO MUCH, THEN THEY START TO
25 WONDER.

26 THE COURT: WELL, ON THOSE PARTICULAR PEOPLE IF
27 WE HIT SOMEBODY AND I ASK YOU, "IS THERE ANYTHING YOU
28 WANT TO BE HEARD AT THE SIDEBAR?"

1 IF IT'S ONE OF THOSE PEOPLE THAT YOU'RE
2 CONCERNED ABOUT, ASK TO APPROACH THE SIDEBAR AND I'LL
3 BRING THAT JUROR UP. WE TALK TO THEM ABOUT THAT.

4 SOME HAVE PUT ON THERE THEY PREFER NOT TO
5 BE JURORS BECAUSE OF THE TYPE OF CASE. I DON'T KNOW IF
6 ANYBODY SPECIFICALLY SAID, "I COULD NOT BE FAIR BECAUSE
7 OF THE CIRCUMSTANCES."

8 BUT OBVIOUSLY THAT IS WHAT I WOULD ELICIT
9 AND FIND OUT AT THE SIDEBAR AND I'LL DO IT AT THE
10 SIDEBAR SO THAT IT DOESN'T AFFECT THE OTHER JURORS.

11 MR. JAFFE: I'M WONDERING IF THE COURT WANTS TO
12 MAKE A STATEMENT TO THE JURY, "THE REASON WE'RE GOING TO
13 USE THE NUMBERING SYSTEM IS THERE IS A LOT OF MEDIA AND
14 IT'S JUST FOR YOUR PRIVACY."

15 THE COURT: I'LL DO THAT.

16 DO YOU HAVE ANY OBJECTION TO THAT,
17 MR. ARNOLD, BECAUSE OF THE POTENTIAL, I'LL JUST SAY
18 POTENTIAL OF MEDIA COVERAGE, AND I WILL ALSO TELL THE
19 JURORS THAT IF, IN FACT, THERE IS A CAMERA IN HERE AND
20 THEY REMAIN AS JURORS, MY ORDER WILL BE THAT THE JURORS
21 ARE NOT PHOTOGRAPHED OR DEPICTED IN ANY WAY.

22 I THOUGHT ONE WOMAN WAS RATHER HUMOROUS IN
23 THAT SHE SAYS SHE DOESN'T PHOTOGRAPH WELL. THAT IS WHY
24 SHE WAS A LITTLE CONCERNED ABOUT THE PRESENCE OF
25 CAMERAS.

26 BUT I WILL TELL THEM THAT, ALSO.

27 ALL RIGHT.

28 MR. ARNOLD.

1 MR. ARNOLD: JUST A CLARIFICATION, SOMETHING YOU
2 DID MENTION BEFORE, BUT I WAS EITHER THINKING AHEAD OR
3 DIDN'T REALLY PAY THAT CLOSE ATTENTION TO YOU.

4 WITH RESPECT TO THE LENNOX TRAFFIC STOP, I
5 UNDERSTAND THAT WE CAN'T USE, WELL, THE FACT THAT HE HAD
6 A GUN IN THE TRUCK.

7 THE COURT: RIGHT, ASSUMING HE PLEADS.

8 MR. ARNOLD: I WOULD FULLY EXPECT WITH YOUR
9 RULING NOW HE WILL PLEAD, BUT I BELIEVE YOU SAID THAT
10 CAN BE USED FOR IMPEACHMENT PURPOSES.

11 THE COURT: YES. THAT IS THE STATE OF THE LAW IS
12 MY UNDERSTANDING, THE PRIOR CONVICTION, EVEN IF IT'S
13 POST INCIDENT BUT PRE HIM TAKING THE STAND, IT'S A
14 CONVICTION OF A FELONY.

15 MR. ARNOLD: PEOPLE VERSUS HALSEY, 21 CAL.APP.
16 4TH, 325.

17 THE COURT: FINE.

18 MR. ARNOLD: I UNDERSTAND YOUR RULING. THANK
19 YOU.

20 THE COURT: ANYTHING ELSE BEFORE WE BREAK AND
21 TAKE UP MONDAY WITH EVERYBODY?

22 MR. JAFFE: LET ME JUST THINK IF THERE IS
23 ANYTHING ELSE.

24 THE COURT: NOW, WHAT, MR. JAFFE, I'M GOING TO
25 ORDER, ASSUMING YOU CAN BE HERE, YOU DON'T HAVE ANOTHER
26 COURT COMMITMENT, 9:15. THE JURORS ARE COMING AT 10:00,
27 SO YOU CAN TELL ME WHAT THE SITUATION IS WITH YOUR
28 CLIENT, WHETHER HE'S ENTERING THE PLEA, AND WE'LL TAKE

1 THE PLEA, SO THAT WHEN I READ THE INFORMATION, IT WILL
2 NOT BE IN THE INFORMATION.

3 IF HE'S NOT GOING TO ENTER THE PLEA, THEN
4 I'LL READ OFF THE CHARGES.

5 MR. JAFFE: MAY I HAVE A MOMENT, PLEASE?

6 THE COURT: YES.

7 MR. JAFFE: I ANTICIPATE THERE WILL BE.

8 THE COURT: ALL RIGHT.

9 YOU CAN TALK WITH HIM ABOUT IT.

10 MR. ARNOLD: I THINK YOU OUGHT TO MACHO IT OUT
11 AND NOT PLEAD TO IT.

12 MR. JAFFE: I DIDN'T HEAR THAT.

13 MR. ARNOLD: I SAID I THINK YOU OUGHT TO MACHO IT
14 OUT AND NOT PLEAD TO IT.

15 MR. JAFFE: THERE IS NOTHING FURTHER THAT I HAVE
16 TO PUT ON THE RECORD TODAY.

17 THE COURT: ALL RIGHT.

18 MY CLERK HAS RETURNED THE PHOTOGRAPHS TO
19 YOU AND THE SKETCHES.

20 MR. ARNOLD: THANK YOU, YOUR HONOR.

21 THE COURT: SO THAT YOU'LL BOTH HAVE ACCESS TO
22 THEM, AND JUST -- I KNOW THAT IT'S A CRYSTAL BALL, BUT
23 ANY IDEA FROM LOOKING AT THE QUESTIONNAIRES HOW LONG
24 THAT IT WILL TAKE TO PICK THE JURY, MR. JAFFE?

25 MR. JAFFE: WELL, SINCE WE'RE NOT DOING THE
26 HOVEY, I THINK, AND WE HAVE TWO HOURS EACH, I WOULD
27 SUPPOSE IT WOULD GO PRETTY QUICK.

28 THE COURT: THAT IS WHAT I WOULD EXPECT.

1 MR. JAFFE: I DON'T SEE THAT WE'RE GOING TO BE
2 DOING ALTERNATE PEREMPTORIES, SO I DON'T SEE HOW IT CAN
3 GO THAT LONG.

4 THE COURT: ALL RIGHT.

5 AND I WILL TELL YOU OBVIOUSLY THERE ARE, I
6 THINK IT'S 111 OR 112 JURORS. I THINK THAT THERE IS
7 ENOUGH, EVEN IF YOU USED ALL YOUR CHALLENGES, EACH OF
8 YOU.

9 I WILL SAY, THOUGH, IT'S MY EXPECTATION TO
10 USE SIX ALTERNATES. IF PUSH COMES TO SHOVE, THOUGH,
11 WHERE SIX ALTERNATES, EACH OF YOU GET SIX CHALLENGES
12 WHICH IS 12 MORE PEREMPTORIES, THAT IT APPEARS THAT
13 USING SIX ALTERNATES IS GOING TO INVOLVE BRINGING
14 ANOTHER PANEL DOWN OR SOME MORE JURORS DOWN, I WOULD
15 PROBABLY GO WITH FOUR ALTERNATES, JUST SO THAT YOU KNOW
16 THE SITUATION.

17 MR. ARNOLD: I THINK THERE IS ENOUGH JURORS.

18 THE COURT: I DO, TOO.

19 MR. JAFFE: ASSUMING THAT WE'RE NOT GOING TO PRE
20 SCREEN, WHAT I WILL CALL THE FIVES AND ONES, THE DEATH
21 AND THE LIFE JURORS, THEN I CAN'T SEE HOW WE COULD EVEN
22 GET TO MUCH MORE THAN INTO THE SIXTIES OR THE SEVENTIES.

23 I MEAN ASSUMING SOME GO FOR CAUSE, LET'S
24 SAY 15 OR 20, I JUST CAN'T SEE HOW WE CAN EVEN GET THAT
25 FAR DOWN THE LIST.

26 THE COURT: WELL, IT APPEARS THAT EACH OF YOU ARE
27 ON THE SAME WAVE LENGTH AND I'M ON THE SAME ONE THAT YOU
28 ARE.

1 I'M JUST TRYING TO GET A FEEL FOR WHERE WE
2 ARE, THAT IS ALL, AND I'M JUST THROWING THAT OUT SO WE
3 DON'T END UP, AND I WILL SAY I DON'T THINK IT'S ANYTHING
4 UNUSUAL BECAUSE EACH OF YOU KNOW THE RANDOM LIST, BUT I
5 WILL SAY THAT IT MAY BE UNFORTUNATE THAT SOME OF THE
6 PEOPLE WHO CAME UP AT THE END OF THE LIST AREN'T AT THE
7 BEGINNING OF THE LIST BECAUSE WE WOULD PROBABLY HAVE A
8 JURY A LOT QUICKER.

9 THERE WAS A GROUP THERE THAT I HAD NO
10 QUESTIONS OF. I DON'T THINK IT WAS BECAUSE I WAS
11 GETTING TIRED OF READING, EITHER.

12 MR. JAFFE: SINCE THEY'RE NOT BEING PRESCREENED
13 AND WE EACH HAVE 20. THAT IS 40, AND THERE IS 16. THAT
14 IS 56.

15 THE COURT: PLUS 18, THE SITTING ONES. I KNOW
16 WHAT YOU MEAN. THE NUMBER THAT I NEED, THOUGH --

17 MR. JAFFE: ALL RIGHT.

18 THE COURT: IS THERE ANYTHING ELSE, MR. JAFFE?

19 MR. JAFFE: I MEANT 18, NOT 16.

20 THE COURT: ANYTHING ELSE?

21 MR. JAFFE: NO.

22 THE COURT: ANYTHING ELSE, MR. ARNOLD?

23 MR. ARNOLD: NO.

24 THE COURT: ALL RIGHT. MONDAY AT 9:15.

25 THE ONE THING THAT I WANTED TO TELL EACH OF
26 YOU, I HAVE POSTED THAT ORDER HERE. I'M GOING TO HAVE
27 MY BAILIFF POST THE ORDER AS THEY COME IN FOR THE MEDIA.
28 THEY HAVE BEEN CALLING.

1 I DON'T KNOW WHO "THEY" ARE, WANTING TO
2 KNOW WHEN THE OPENING STATEMENT IS GOING TO OCCUR.

3 MY CLERK TOLD THEM TO CALL EVERY DAY. WE
4 DON'T KNOW.

5 SO I ANTICIPATE THAT IS WHEN SOMEBODY IS
6 GOING TO SHOW UP.

7 ALL RIGHT.

8 WE'LL BE IN RECESS.

9
10 (AT 11:37 A.M., AN ADJOURNMENT WAS TAKEN
11 UNTIL MONDAY, MARCH 20, 1995 AT 9:15 A.M.)
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