

No. S270723

In the Supreme Court of the State of California

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff and Respondent,
v.
ANDRES QUINONEZ REYES,
Defendant and Appellant.

Fourth Appellate District, Division Three, Case No. G059251
Orange County Superior Court, Case No. 04CF2780
The Honorable Richard M. King, Judge

**EXHIBIT B PART 2 OF 3 IN SUPPORT OF RESPONDENT'S
REQUEST FOR JUDICIAL NOTICE**

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1 KNOW.

2 MR. BROT: JUST IN AN ABUNDANCE OF CAUTION.

3 THE COURT: OKAY.

4 (CONFERENCE BETWEEN THE COURT AND
5 COUNSEL WAS HAD OUT OF THE HEARING OF THE
6 REPORTER AND THE JURY:)

7 THE COURT: NINE O'CLOCK TOMORROW MORNING. WE'LL SEE
8 YOU THEN. PLEASE HAVE A GOOD, SAFE EVENING. ENJOY THE DAY.
9 AND MY APOLOGIES AGAIN.

10 (JURY EXCUSED.)

11 (THE FOLLOWING PROCEEDINGS WERE HAD IN
12 OPEN COURT OUT OF THE PRESENCE OF THE JURY:)

13 THE COURT: WE DIDN'T GO BACK ON THE RECORD BEFORE WE
14 CALLED THE JURORS IN, SO I'D LIKE TO MAKE A RECORD THAT WE
15 WERE APPARENTLY UNABLE TO SECURE THE ATTENDANCE OF A
16 VOLUNTEER ATTORNEY UNTIL APPROXIMATELY 2:30 THIS AFTERNOON.
17 IT'S MY EXPECTATION THAT COUNSEL WILL CONFER WITH MR. EADY
18 WHEN HE APPEARS. AND MR. EADY WILL THEN BE GIVEN AN
19 OPPORTUNITY TO CONFER WITH MR. CONTRERAS AND, ONCE THAT
20 TAKES PLACE, WE'LL SWEAR IN MR. CONTRERAS AND DETERMINE
21 WHETHER HE WILL BE EXERCISING HIS FIFTH AMENDMENT RIGHT TO
22 REMAIN SILENT AND NOT TESTIFY IN THIS TRIAL.

23 IT WAS REPRESENTED TO ME WHEN WE WERE OFF THE
24 RECORD THAT THE WITNESS THAT FOLLOWS MR. CONTRERAS HAS THE
25 SAME PROBLEM AS MR. CONTRERAS. IT WAS REPRESENTED TO ME
26 THAT MR. EDDIE REYES, WHO WAS ORDERED BY THE COURT TO BE

1 PRESENT TOMORROW MORNING AT NINE ALSO WILL NEED THE ADVICE
2 OF COUNSEL.

3 DO I UNDERSTAND CORRECTLY THAT EDDIE REYES WAS
4 PRESENT AT THIS EVENT THAT TOOK PLACE IN THE PARK; IS THAT
5 WHY IT'S THE SAME SITUATION AS MICHAEL CONTRERAS, OR, IS IT
6 DIFFERENT?

7 MR. GELLER: EDDIE REYES WAS PRESENT AT THE -- LITTLE
8 BIT DIFFERENT. EDDIE REYES WAS PRESENT AT THE INCIDENT
9 WHERE THE GUN WAS SHOWN TO MR. NIEVES. AND HE WAS AT THE
10 SCENE OF THE CRIME. HE WAS PRESENT AT THREE INCIDENTS.

11 THE COURT: HE WAS PRESENT AT THE MURDER?

12 MR. GELLER: HE WAS.

13 THE COURT: AS WELL AS AT THE PARK WHEN NIEVES WAS
14 CONFRONTED?

15 MR. GELLER: NO. YOUR HONOR, I THINK THE THE COURT IS
16 THINKING THAT MR. NIEVES WAS CONFRONTED AT A PARK. HE WAS
17 CONFRONTED AT THE CORNER OF 10TH AND ENGLISH, AND THEN THAT
18 WENT OVER TO 12TH AND ENGLISH.

19 THE COURT: YOU KNOW, MR. GELLER, I DON'T KNOW WHY I
20 KEEP SAYING "PARK."

21 MR. BROTT: THERE IS A PARK INVOLVED HERE. THAT'S A
22 DIFFERENT INCIDENT.

23 THE COURT: YES, BUT I DIDN'T EVEN HAVE PARK WRITTEN
24 DOWN ON MY NOTES. I MAY HAVE COMPLETELY MADE THAT UP. AND
25 I DO APOLOGIZE FOR THAT.

26 BUT, ALL RIGHT. REYES WAS PRESENT WITH THE

1 F-TROOP MEMBERS AT THE TIME OF THE MURDER. SO HE WAS ONE OF
2 THE PERSONS ON A BICYCLE?

3 MR. GELLER: NO. HE WAS STUFFED INTO THE BACK OF A
4 PICKUP TRUCK IN KIND OF LIKE THE EXTENDED CAB PORTION OF A
5 PICKUP TRUCK THAT HAPPENED TO BE OUT AT THE SCENE AT THE
6 SAME TIME OF THE MURDER.

7 THE COURT: WAS HE CLEARLY A NONPARTICIPANT IN THE
8 MURDER?

9 MR. GELLER: I BELIEVE HE'S CLEARLY A NONPARTICIPANT IN
10 THE MURDER.

11 THE COURT: SO WHAT IS HIS EXPOSURE IN TERMS OF
12 CRIMINAL CULPABILITY?

13 MR. GELLER: HE WAS PRESENT AT THE INCIDENT WITH
14 MR. NIEVES WHEN ANDY REYES HAD THE GUN AND DID WHATEVER HE
15 DID OUT THERE. EDDIE REYES MAY HAVE THROWN A PUNCH OR TWO.
16 SO THERE'S POTENTIALLY, AS MR. BROTT BROUGHT TO THE COURT'S
17 ATTENTION, OTHER THAN A 242, MAYBE HE WOULD BE AIDING AND
18 ABETTING A 245 WITH A GANG ENHANCEMENT.

19 THE COURT: AND TO THE EXTENT THAT I HAVE MADE REPEATED
20 REFERENCES TO THE INCIDENT IN THE PARK, I'M REFERRING TO THE
21 INCIDENT INVOLVING MR. NIEVES THAT APPARENTLY DID NOT TAKE
22 PLACE AT A PARK. I APOLOGIZE FOR MAKING AN INACCURATE
23 RECORD.

24 IN ANY EVENT, IT WOULD BE MY EXPECTATION THAT WE
25 WOULD HAVE COUNSEL FOR MR. REYES HERE TOMORROW MORNING AT
26 NINE. AND BY THEN WE SHOULD BE ABLE TO PROCEED WITH

1 MR. CONTRERAS' TESTIMONY. IF WE CAN'T PROCEED WITH
2 MR. CONTRERAS' TESTIMONY, WE'D AGAIN BE IN A POSITION, SINCE
3 I BROUGHT THE JURORS BACK AT NINE O'CLOCK, OF ANOTHER DELAY
4 TOMORROW MORNING TO DEAL WITH THE REYES MATTER.

5 (DISCUSSION HELD OFF THE RECORD
6 BETWEEN COUNSEL.)

7 YOU WERE CONFERRING WITH ONE ANOTHER.

8 MR. BROT: I JUST WANTED TO KNOW IF HIS POSITION WITH
9 RESPECT TO IMMUNITY WAS THE SAME WITH EDDIE AS IT IS WITH
10 MR. CONTRERAS.

11 THE COURT: AND THAT POSITION WOULD BE?

12 MR. GELLER: I'M GIVING BOTH OF THEM FULL USE IMMUNITY
13 FOR THEIR TESTIMONY HERE TOMORROW. AND I'VE FILED WITH THE
14 COURT THE DOCUMENTS THAT THE COURT ASKED ME TO, WHICH WAS A
15 PETITION FOR AN ORDER COMPELLING THE TESTIMONY. AND I GAVE
16 A BRIEF FACTUAL SUMMARY.

17 AND ALSO, I DON'T KNOW WHAT THEIR POSITIONS ARE
18 GOING TO BE. I'M ASSUMING THEY'RE GOING TO WAIVE ANY
19 HEARING THAT IS NECESSARY, BUT IF THEY DON'T, THEN, WE'LL
20 HAVE TO DEAL WITH THAT WHEN IT COMES UP.

21 THE COURT: I DIDN'T SEE THE DOCUMENTS THAT YOU HAVE
22 FILED. I HAVE IT NOW. ALL RIGHT.

23 WELL, UNTIL MR. EADY ARRIVES AND SPEAKS TO
24 MR. CONTRERAS, I GUESS WE'VE GONE ABOUT AS FAR AS WE CAN GO.

25 ANYTHING ELSE WE NEED TO PUT ON THE RECORD?

26 MR. BROT: YES.

1 MR. GELLER: THERE IS.

2 THE COURT: OKAY.

3 MR. GELLER: YOUR HONOR, OVER THE LUNCH HOUR
4 INVESTIGATOR RONDOU PULLED A NOTICE OF DETERMINATION OR A
5 S.T.E.P. NOTICE WITH RESPECT TO THIS DEFENDANT. IT'S
6 REFERENCED IN OTHER DISCOVERY THAT MR. BROTT HAS CONCERNING
7 THIS. SO, THE PEOPLE'S POSITION IS THERE IS NOT A NOTICE
8 ISSUE. THERE MAY BE A NOTICE ISSUE WITH RESPECT TO THE
9 ACTUAL DOCUMENT, HOWEVER, THE DOCUMENT IS REFERENCED IN
10 DISCOVERY PAGE NO. B219 THAT I KNOW MR. BROTT HAS HAD FOR
11 MANY MONTHS, PROBABLY AS LONG AS HE'S BEEN ON THE CASE. SO,
12 IT'S A PIECE OF EVIDENCE THAT THE DETECTIVE WILL BE RELYING
13 ON AS PART OF THE BASIS OF HIS OPINION. I'LL BE ASKING TO
14 TALK WITH THE DETECTIVE ABOUT IT. AND I THINK MR. BROTT HAS
15 AN OBJECTION.

16 THE COURT: CAN I SEE THE S.T.E.P. NOTICE WE'RE TALKING
17 ABOUT?

18 MR. GELLER: AND THERE'S AN ACCOMPANYING POLICE REPORT.

19 MR. BROTT: I JUST FINALLY GOT IT.

20 THE COURT: IT'S A LONG POLICE REPORT. I'M SURE YOU'VE
21 READ IT.

22 MR. BROTT: NO, I HAVEN'T. I JUST GOT IT 20 MINUTES
23 AGO.

24 THE COURT: SO WE SHOULD BOTH JUST CONTINUE READING.

25 MR. BROTT: WELL, NO. MY OBJECTION IS THAT IT'S NOT
26 TIMELY AND THAT IT'S NOT NOTICED. IT IS REFERENCED, I

1 AGREE. BUT I JUST GOT IT. AND READING IT IS NOT THE SAME
2 AS PREPARING A MEANINGFUL CROSS-EXAMINATION ON IT.

3 THE COURT: THE ONLY RELEVANT PART OF THE REPORT, I'M
4 GUESSING, IS THE S.T.E.P. NOTICE ITSELF AND AT PAGE 9 AN
5 INTERVIEW WITH ANDY REYES. BECAUSE I ASSUME THAT IF YOUR
6 WITNESS TESTIFIES WITH RESPECT TO THIS EVENT, HE'S ONLY
7 GOING TO TESTIFY THAT HIS OPINION IS BASED, IN PART, ON WHAT
8 REYES SAID ON JANUARY 9TH, 2004, AND, THAT A S.T.E.P. NOTICE
9 WAS ISSUED TO HIM.

10 IS THAT FAIR TO SAY?

11 MR. GELLER: WELL, ADDITIONALLY, IT WOULD BE WHO
12 MR. REYES WAS WITH ON THE DATE IN QUESTION, WHICH WOULD BE
13 OTHER F-TROOP MEMBERS, AND THAT WOULD PROVIDE MORE OF A
14 PATTERN OF AN ASSOCIATION WITH F-TROOP GANG MEMBERS, WHICH,
15 AGAIN, WOULD BE A PORTION OF THE BASIS OF DETECTIVE RONDOU'S
16 OPINION THAT HE'S AN ACTIVE PARTICIPANT ON THE DAY OF THE
17 SHOOTING.

18 ADDITIONALLY, THERE'S -- ONE OF THE F-TROOP GANG
19 MEMBERS IS ARMED DURING THIS INCIDENT.

20 THE COURT: MR. BROTT, IF I UNDERSTAND YOU CORRECTLY,
21 YOU'RE OBJECTING TO ANY BASIS FOR THE EXPERT OPINION THAT
22 WOULD INCLUDE THE EVENTS REPORTED IN THIS POLICE REPORT,
23 CASE NUMBER 0401261, AND THE S.T.E.P. NOTICE THAT WAS ISSUED
24 AT THE SAME TIME THE REPORT WAS PREPARED.

25 IS THAT FAIR TO SAY?

26 MR. BROTT: I WOULD OBJECT TO ANY REFERENCE TO IT

1 BEYOND WHAT I'VE ALREADY BEEN GIVEN, AS HE SAYS, MONTHS AGO.
2 AND THAT IS THE F.I. CARD WHICH SAYS THAT HE WAS ARRESTED
3 FOR CURFEW A MONTH AGO WITH SOME F-TROOPERS.

4 THE COURT: I'M SORRY?

5 MR. BROTT: THAT, I DON'T HAVE ANY BASIS TO OBJECT TO.

6 THE COURT: THAT CURFEW ARREST OCCURRED AT A DIFFERENT
7 TIME AND AT A DIFFERENT PLACE?

8 MR. BROTT: NO. THIS IS THE REPORT PREPARED THAT'S
9 REFERENCED IN THE F.I. CARD THAT I HAD.

10 THE COURT: YOU HAVE AN F.I. CARD THAT SAID ON JANUARY
11 9TH YOUR CLIENT WAS ARRESTED FOR A CURFEW VIOLATION.

12 MR. BROTT: THAT'S TRUE.

13 THE COURT: AND THAT'S ALL YOU GOT?

14 MR. BROTT: THAT'S ALL I GOT.

15 THE COURT: NOW YOU GET --

16 MR. BROTT: WITH F-TROOPERS. I GOT THAT.

17 THE COURT: WITH F-TROOPERS.

18 WERE THE OTHER F-TROOPERS IDENTIFIED ON THE
19 F.I. CARD FOR YOU?

20 MR. BROTT: NO.

21 THE COURT: NOW YOU GET A POLICE REPORT CONSISTING OF
22 TEN PAGES, AND SUPPLEMENTAL DOCUMENTATION, AND A
23 S.T.E.P. NOTICE?

24 MR. BROTT: CORRECT.

25 MR. GELLER: IF I MAY, THERE'S ONE OTHER ADDITIONAL
26 PIECE OF INFORMATION ON THE F.I. CARD THAT'S RELEVANT THAT

1 THE OFFICER IS RELYING ON. THE PIECE OF EVIDENCE THAT
2 MR. BROTT ALREADY HAS, AND THAT IS THE ADDRESS, 2100
3 WEST 9TH, WHICH IS IN THE HEART OF F-TROOP TERRITORY.

4 THE COURT: I'M NOT FOLLOWING. 2100 WEST 9TH?

5 MR. GELLER: CORRECT.

6 THE COURT: THIS REPORT SAYS, MORE SPECIFICALLY, 2134
7 WEST 9TH. BUT IT'S ONE IN THE SAME LOCATION.

8 MR. GELLER: 2100 BLOCK OF WEST 9TH.

9 TO GIVE THE COURT SOME GUIDANCE, REGARDLESS OF
10 HOW THE COURT RULES, IT WOULD BE MY HABIT AND CUSTOM, THE
11 WAY I INTENDED TO ELICIT TESTIMONY FROM DETECTIVE RONDOU IS
12 AS WE GO THROUGH THE VARIOUS BACKGROUND PIECES OF
13 INFORMATION WE HAVE ON MR. REYES WE'D BE TALKING, AMONGST
14 OTHER THINGS, ABOUT THIS PARTICULAR F.I. CARD. I'D BE
15 ASKING THE DETECTIVE IF HE'S FAMILIAR WITH, NOT ONLY THIS
16 INCIDENT, BUT THE INCIDENT THAT OCCURRED ONE MONTH EARLIER.
17 AND THE DETECTIVE, I PRESUME, IN TURN, WOULD TALK ABOUT THE
18 INCIDENT THAT THE COURT HAS IN FRONT OF IT NOW. SO THAT'S
19 HOW I WOULD BE ANTICIPATING GETTING THAT PIECE OF EVIDENCE
20 BEFORE THIS JURY.

21 THE COURT: CAN I LOOK AT THE F.I. CARD?

22 MR. BROTT: I HAVE IT.

23 THE COURT: THIS DOESN'T EVEN HAVE THE SAME DATE ON IT.

24 MR. BROTT: THAT'S A DIFFERENT DATE THAN THIS. THIS IS
25 THE -- THAT CARD REFERENCES THIS. A MONTH AGO I DID SUCH
26 AND SUCH. AND THIS IS THE MONTH AGO.

1 THAT RECORD IS REALLY CLEAR, ISN'T IT?

2 THE COURT: YOU MEAN WHEN IT SAYS, "LOCATION: 2100
3 WEST 9TH," AND, "DATE: FEBRUARY 6TH, 2004," IT'S INTENDED
4 TO REFERENCE JANUARY 9TH, 2004, AT 2134 WEST 9TH?

5 MR. BROTT: LOOK ON THE BACK OF THE F.I. CARD. THERE.

6 THE COURT: OKAY. THEN LET ME ASK YOU A QUESTION.
7 HERE IS WHAT IS WRITTEN ON PAGE 2 OF WHAT YOU GAVE ME, BUT,
8 PRESUMABLY, IT WAS THE BACK OF THE F.I. CARD.

9 "17TH/ENGLISH 10TH SUMMIT SCHOOL
10 CURFEW. NO HELMET FOR RIDING BIKE. STATES
11 HE DOES NOT KICKBACK WITH ANY GANGS, BUT WAS
12 ARRESTED FOR CURFEW ONE MONTH AGO FOR
13 HANGING OUT WITH F-TROOP MEMBERS AT 2100
14 WEST 9TH."

15 WOULDN'T THAT REFERENCE TO A PRIOR ARREST ALERT
16 YOU, MR. BROTT, THAT THERE WOULD BE A POLICE REPORT OUT
17 THERE?

18 MR. BROTT: POSSIBLY. BUT I HAVE TO RELY ON THE PEOPLE
19 TO PROVIDE THINGS LIKE THAT IF THEY INTEND TO USE THEM. AND
20 IF THEY DON'T PROVIDE THEM AND DON'T ALERT ME THAT THEY'RE
21 GOING TO USE THEM, THEN, I DON'T ANTICIPATE IT.

22 THE COURT: WELL, YOU'RE ASKING ME AS A SANCTION FOR
23 LATE DISCOVERY TO PRECLUDE MR. GELLER FROM ELICITING ANY
24 TESTIMONY FROM THE EXPERT THAT, IN FORMING HIS OPINION, HE
25 ALSO CONSIDERED THE EVENT OF JANUARY 9TH, 2004.

26 MR. BROTT: I'M ASKING THAT YOU LIMIT HIS OPINION,

1 WHATEVER HE MAY RELY ON, FOR THIS TO THE EXTENT OF WHATEVER
2 IS ON THAT F.I. CARD, RATHER THAN THE MORE DETAIL AND, QUITE
3 FRANKLY, MUCH MORE DETAILED REPORT AND STATEMENT PROVIDED IN
4 AN UNTIMELY FASHION.

5 THE COURT: AND NEITHER OF YOU HAS ANY AUTHORITY FOR ME
6 TO CONSIDER IN RULING ON THIS PROBLEM OR RULING ON YOUR
7 OBJECTION AND REQUEST; FAIR TO SAY?

8 MR. BROTT: FAIR TO SAY. JUST -- FAIR TO SAY, FOR ME.
9 I DON'T SPEAK FOR HIM.

10 MR. GELLER: YOU'RE DOING A FINE JOB.

11 THE COURT: I'M SORRY, DID YOU SAY SOMETHING I SHOULD
12 HAVE HEARD?

13 MR. GELLER: I JUST SAID HE'S DOING A FINE JOB SPEAKING
14 FOR ME.

15 THE COURT: ALL RIGHT. SO, PRESUMABLY, THERE IS NO
16 AUTHORITY THAT EITHER OF YOU HAVE TO GIVE ME. AND WITHOUT
17 IT -- I MEAN, WE HAVE SOME TIME NOW UNTIL MR. EADY'S ARRIVAL
18 TO ADDRESS THE OTHER ISSUE. AND I MAY PERUSE A TREATISE OR
19 TWO AND SEE IF I CAN FIND SOMETHING TO GUIDE ME.

20 BUT AS A KNEE JERK REACTION TO THIS SITUATION,
21 MR. BROTT, IT SEEMS TO ME THAT IN LIGHT OF THE FACT THAT WE
22 HAVE A WHOLE AFTERNOON FOR WHICH YOU COULD READ THIS REPORT,
23 DIGEST THE MATERIAL THAT'S BEING PROVIDED TO YOU, THAT MAYBE
24 A SANCTION OF THE EXTENT YOU'RE REQUESTING WOULD NOT BE
25 APPROPRIATE.

26 I KNOW THAT THERE IS -- CERTAINLY, WE CAN

1 ENTERTAIN A REQUEST FOR A JURY INSTRUCTION UNDER THE
2 SANCTION SECTION OF 1054.

3 MR. BROTT: TRY TO THINK OF SOMETHING.

4 THE COURT: AND I MAY BE WILLING TO ADMONISH THE JURY
5 AT THE TIME THE EVIDENCE IS RECEIVED THAT YOU RECEIVED IT
6 ONLY TODAY, IF THAT'S APPROPRIATE. BUT I'M HAVING -- I'M
7 STRUGGLING. IT SEEMS TO ME YOU'RE ABSOLUTELY RIGHT THEY
8 PROVIDED YOU LATE DISCOVERY, THEY HAVEN'T SHOWN ME ANY
9 JUSTIFICATION FOR IT. BUT HERE WE ARE WITH A WHOLE
10 AFTERNOON OFF FROM THE JURY, AT LEAST TO SOME EXTENT, WHILE
11 WE WRESTLE WITH ANOTHER ISSUE, WHICH SHOULD ALLOW YOU
12 ADEQUATE TIME TO REVIEW THE MATERIAL AND SO THAT YOU CAN
13 CONDUCT AN EFFECTIVE CROSS-EXAMINATION. AND, IN LIGHT OF
14 THE FACT THAT THE F.I. CARD DID REFER TO A PRIOR ARREST, ONE
15 WOULD REASONABLY EXPECT THAT THERE WAS AN ARREST REPORT OUT
16 THERE. THE FACT IS YOU HAVEN'T ASKED FOR IT WHEN YOU WERE
17 GIVEN IT TODAY. SO, YOU KNOW, I JUST DON'T KNOW WHERE ELSE
18 TO GO WITH THIS.

19 MR. BROTT: SUBMIT IT.

20 THE COURT: I'LL TAKE A LOOK. MY INCLINATION WOULD BE
21 TO OVERRULE YOUR OBJECTION AND DENY YOUR REQUESTED SANCTION
22 AT THIS TIME. BUT WE'LL TAKE A FEW MINUTES AND I'LL GO TO
23 THE LIBRARY.

24 LET ME RETURN THE DOCUMENTS TO YOU THAT YOU GAVE
25 ME.

26 (RECESS TAKEN.)

1 (THE FOLLOWING PROCEEDINGS WERE HAD IN
2 OPEN COURT OUT OF THE PRESENCE OF THE JURY:)
3 THE COURT: RESUMING IN PEOPLE VS. REYES, 04CF2780.
4 IT'S FOUR O'CLOCK IN THE AFTERNOON. RECORD SHOULD REFLECT
5 DEFENDANT IS PRESENT WITH HIS COUNSEL, PEOPLE ARE
6 REPRESENTED.

7 YOUR NEXT WITNESS IS TO BE MICHAEL CONTRERAS.

8 MR. CONTRERAS, WANT TO STAND UP. WANT TO STEP
9 FORWARD PLEASE. YOUR MOTHER CAN REMAIN SEATED IN THE
10 AUDIENCE SECTION.

11 YOU WANT TO RAISE YOUR RIGHT HAND AND FACE MY
12 CLERK AND BE SWORN.

13 THE CLERK: DO YOU SOLEMNLY STATE THE EVIDENCE YOU ARE
14 ABOUT TO GIVE IN THE CAUSE NOW PENDING BEFORE THIS COURT
15 SHALL BE THE TRUTH, THE WHOLE TRUTH AND NOTHING BUT THE
16 TRUTH, SO HELP YOU GOD?

17 THE WITNESS: OH, YEAH.

18 THE CLERK: STATE YOUR NAME AND SPELL IT FOR THE
19 RECORD.

20 THE WITNESS: MICHAEL CONTRERAS: M-I-C-H-A-E-L,
21 C-O-N-T-R-E-R-A-S.

22 THE COURT: MR. CONTRERAS YOU, WANT TO COME UP HERE AND
23 HAVE A SEAT.

24 MR. EADY, YOU RESPONDED TO THE COURT'S CALL FOR
25 ASSISTANCE FROM A FRIEND OF THE COURT. MAY I TAKE YOUR
26 APPEARANCE PLEASE.

1 MR. EADY: ERNEST EADY ON BEHALF OF MR. CONTRERAS.

2 THE COURT: "MICHAEL CONTRERAS," IS THAT YOUR TRUE
3 NAME?

4 THE WITNESS: YES.

5 THE COURT: MR. CONTRERAS, YOU'RE GOING TO BE ASKED
6 SOME QUESTIONS HERE THIS AFTERNOON, AND IN ANTICIPATION OF
7 THAT I ASKED MR. EADY, A LAWYER WHO ROUTINELY PRACTICES
8 CRIMINAL LAW IN OUR COUNTY, TO STAND IN AS YOUR LAWYER.

9 HAVE YOU MET MR. EADY?

10 THE WITNESS: YES.

11 MR. EADY: THAT'S ME.

12 THE WITNESS: OH, YES.

13 THE COURT: I ALSO WANTED YOU TO HAVE SOME TIME TO
14 SPEAK WITH MR. EADY. AND I WAS INFORMED THAT YOU HAD SOME
15 TIME TO SPEAK WITH MR. EADY. AND, YOU AND YOUR MOM, IN
16 FACT, SPOKE TO HIM IN THE JURY ROOM HERE; IS THAT TRUE?

17 THE WITNESS: YES.

18 THE COURT: HOW OLD ARE YOU, MR. CONTRERAS?

19 THE WITNESS: FOURTEEN.

20 THE COURT: MR. GELLER, YOU MAY BEGIN YOUR INQUIRY.

21 DIRECT EXAMINATION

22 BY MR. GELLER:

23 Q MR. CONTRERAS, I WANT TO TALK TO YOU ABOUT SOME
24 INDENTS THAT YOU OBSERVED OR YOU WERE A WITNESS TO BACK ON
25 AUGUST 10TH OF 2004. DO YOU UNDERSTAND THAT?

26 A YES.

1 Q I'D LIKE TO TALK TO YOU FIRST ABOUT BEING IN
2 EL SALVADOR PARK, PROBABLY AROUND SIX P.M., ON AUGUST 10TH
3 OF 2004. DO YOU REMEMBER BEING THERE?

4 A NO.

5 Q OKAY. I'D LIKE TO TALK TO YOU ABOUT ANY
6 OBSERVATIONS YOU MADE WITH RESPECT TO THE DEFENDANT,
7 ANDY REYES. DO YOU KNOW WHO I'M TALKING ABOUT?

8 A THAT GUY?

9 Q PERSON SEATED HERE IN COURT IN THE BLUE SHIRT.
10 DO YOU KNOW HIM?

11 A NO.

12 Q YOU DON'T KNOW THAT PERSON?

13 A (WITNESS NODS HEAD IN THE NEGATIVE.)

14 Q HAVE YOU EVER SEEN THAT PERSON BEFORE?

15 A (WITNESS NODS HEAD IN THE NEGATIVE.)

16 THE COURT: LET'S GET AN ANSWER. HE'S JUST SHAKING HIS
17 HEAD. SO, BEFORE YOU GO TO THE NEXT QUESTION, IT WOULD BE
18 GOOD IF THE RECORD SHOWED AN ANSWER.

19 DO YOU KNOW ANDY REYES?

20 THE WITNESS: NO.

21 THE COURT: DO YOU KNOW THE GENTLEMAN OVER THERE IN THE
22 BLUE SHIRT?

23 THE WITNESS: NO.

24 THE COURT: NOW YOU CAN GO AHEAD.

25 BY MR. GELLER:

26 Q DO YOU KNOW ANYBODY BY THE NAME OF EDDIE REYES?

1 A NO.

2 Q DO YOU KNOW WHERE EL SALVADOR PARK IS?

3 A YES.

4 Q WHERE IS EL SALVADOR PARK?

5 A PARK?

6 Q WHERE IS IT?

7 A I DON'T KNOW THE STREETS.

8 Q IS IT OFF OF CIVIC CENTER DRIVE?

9 A I DON'T KNOW THE STREETS.

10 Q HAVE YOU BEEN IN THE PARK BEFORE?

11 A YEAH, PLAYED BASEBALL THERE.

12 Q DO YOU RECALL BEING IN A FIGHT WITH THE PERSON

13 WHO IS SEATED HERE IN COURT IN THE BLUE SHIRT AT ABOUT 7:00

14 P.M. ON AUGUST 10TH OF 2004?

15 A NO.

16 Q DO YOU RECALL SEEING A HANDGUN ON THAT DATE?

17 A NO.

18 Q DO YOU RECALL SPEAKING WITH POLICE ABOUT THIS

19 INCIDENT?

20 A YES.

21 Q WHEN DID YOU TALK TO POLICE OFFICERS ABOUT THIS?

22 A WHEN I WAS 11 YEARS OLD.

23 Q OKAY. WERE THINGS FRESHER IN YOUR MIND BACK THEN

24 THAN THEY ARE AS YOU SIT HERE IN COURT RIGHT NOW?

25 A NO. FORGOT.

26 Q I'M SORRY?

1 A I DON'T REMEMBER.

2 Q SO -- LET ME ASK YOU THIS: WHEN YOU SPOKE WITH
3 THE POLICE OFFICERS ABOUT THIS BACK WHEN YOU WERE 11 YEARS
4 OLD, WERE YOU LYING TO THE POLICE?

5 A I DON'T REMEMBER WHAT I SAID.

6 Q OKAY. WOULD YOU LIKE TO READ A POLICE REPORT TO
7 REFRESH YOUR MEMORY ABOUT ALL OF THIS?

8 A I DON'T KNOW.

9 Q DO YOU THINK THAT MIGHT HELP YOU?

10 A NO.

11 Q THAT'S NOT GOING TO HELP YOU?

12 A BECAUSE I DON'T REMEMBER.

13 MR. GELLER: YOUR HONOR, I COULD PROCEED UNDER PEOPLE
14 V- GREEN AT THIS POINT, IF YOU'D LIKE, BUT I THINK I'M
15 PROBABLY GOING TO GET THERE.

16 THE COURT: I DON'T UNDERSTAND WHAT YOU'RE SAYING.

17 MR. GELLER: WELL, I THINK THE WITNESS IS NOT -- I
18 THINK HE'S FEIGNING A FAILURE OF MEMORY AT THIS POINT IN
19 TIME. AND UNDER GREEN AND ALL OF ITS PROGENY I THINK I CAN
20 GREEN THIS WITNESS AND GET OUT THE PRIOR INCONSISTENT
21 STATEMENTS EITHER WITH HIM OR WITH THE POLICE OFFICER THAT
22 TOOK HIS STATEMENT. I CAN ASK THE COURT TO MAKE A FINDING
23 THAT HE'S NOT BEING TRUTHFUL ABOUT HIM NOT REMEMBERING OR I
24 CAN PROCEED.

25 THE COURT: WELL ARE YOU FINISHED WITH YOUR DIRECT
26 EXAMINATION?

1 MR. GELLER: I CAN GO THROUGH MY WHOLE DIRECT
2 EXAMINATION IF YOU LIKE, BUT I THINK I'M GOING TO GET THE
3 SAME ANSWERS.

4 MR. BROTT: IS THIS A 402?

5 THE COURT: I'M GUESSING IT IS. I DIDN'T EXPECT IT TO
6 PROCEED IN THIS FASHION BASED ON MY CONFERENCE WITH COUNSEL
7 IN CHAMBERS, BUT, APPARENTLY, WE'RE THERE.

8 MR. EADY: PERHAPS I NEED TO TALK TO MY CLIENT.

9 THE COURT: DO YOU WANT TO STATE ON THE RECORD WHAT THE
10 SUBSTANCE OF YOUR PRIOR DISCUSSION WAS.

11 MR. EADY: WELL, I WAS UNDER THE IMPRESSION, BASED ON
12 MY CONVERSATIONS WITH MR. CONTRERAS, THAT IT WAS HIS DESIRE
13 TO EXERCISE HIS FIFTH AMENDMENT PRIVILEGES. BASED ON THE
14 NATURE OF HIS TESTIMONY IN THIS SHORT LITTLE SEQUENCE OF
15 QUESTIONS HERE, I'M STARTING TO WONDER IF MAYBE HE THINKS
16 THAT THIS IS THE WAY TO DO IT OR IF HE HAS CHANGED -- IF
17 THAT'S NOT WHAT IT IS, THEN, HE, APPARENTLY, HAS CHANGED HIS
18 MIND AND I NEED TALK TO HIM.

19 MR. BROTT: BECAUSE THERE'S A DIFFERENCE BETWEEN NOT --
20 REFUSING TO TESTIFY AND NOT REMEMBERING.

21 MR. EADY: THAT'S TRUE.

22 MR. BROTT: THERE'S A BIG DIFFERENCE.

23 THE COURT: I AGREE. AND IT WAS MY IMPRESSION FROM AN
24 INFORMAL DISCUSSION I HAD WITH MR. EADY, MR. BROTT AND
25 MR. GELLER BEFORE WE WENT ON THE RECORD, THAT THE DEFENDANT
26 WAS GOING TO INVOKE HIS RIGHT NOT TO TESTIFY. AND, ONCE

1 GRANTED IMMUNITY, INTENDED TO REFUSE TO TESTIFY EVEN UNDER
2 IMMUNITY, WHICH, OF COURSE, WOULD PUT THE COURT IN THE
3 POSITION OF HAVING TO RESPOND TO A REQUEST THAT HE BE
4 REMANDED INTO CUSTODY AND HELD THERE.

5 INSTEAD, WHEN HE WAS ASKED QUESTIONS, HE ANSWERED
6 THOSE QUESTIONS. HE HAS SAID THAT HE DOESN'T REMEMBER.
7 MR. GELLER BELIEVES, BASED ON I'M NOT SURE WHAT, THAT HE IS
8 BEING DECEITFUL IN ASSERTING HIS FAILURE OF RECOLLECTION AT
9 THIS POINT. SO, CERTAINLY, IT WAS MY INTENTION TO PROCEED
10 WITH THE EXAMINATION AND ALLOW YOU, MR. BROTT, TO
11 CROSS-EXAMINE HIM IF YOU CHOOSE TO DO SO. BUT NOW I HAVE A
12 REQUEST FROM MR. EADY AND, FRANKLY, I'M INCLINED TO GRANT
13 THAT REQUEST.

14 MR. BROTT: WELL, I'D LIKE TO ASK HIM JUST A COUPLE OF
15 QUESTIONS.

16 THE COURT: WHY DON'T YOU GO AHEAD AND DO THAT.

17 CROSS-EXAMINATION

18 BY MR. BROTT:

19 Q YOU HEARD YOUR LAWYER SAY THAT YOU DON'T WANT TO
20 TESTIFY; IS THAT TRUE?

21 A WHAT?

22 Q YOU WANT TO REFUSE TO TESTIFY; IS THAT TRUE?

23 A YES.

24 Q AND IS YOUR SAYING THAT YOU DON'T REMEMBER YOUR
25 IDEA OF REFUSING TO TESTIFY?

26 A (WITNESS NODS HEAD IN THE AFFIRMATIVE.)

1 YES.

2 Q SO, IN ORDER TO REFUSE TO TESTIFY, YOU'RE SAYING
3 YOU DON'T REMEMBER?

4 A YES.

5 Q BUT REALLY WHAT YOU'RE SAYING IS I DON'T WANT TO
6 TESTIFY AT ALL?

7 A UM, I DON'T WANT TO TESTIFY BECAUSE I DON'T
8 REMEMBER WHAT I SAID.

9 Q BUT YOU DON'T WANT TO TESTIFY?

10 A NO.

11 Q AND YOU ARE REFUSING TO TESTIFY?

12 A YES.

13 THE COURT: HE SAID HE DIDN'T WANT TO TESTIFY BECAUSE
14 HE DOESN'T REMEMBER WHAT HE SAID.

15 MR. BROT: HE MAY SAY THAT.

16 Q IN YOUR MIND, IS REFUSING TO TESTIFY AND NOT
17 REMEMBERING THE SAME THING?

18 A YES.

19 Q SO, IN ORDER TO GET OUT OF TESTIFYING, YOU'RE
20 SAYING THAT YOU DON'T REMEMBER; ISN'T THAT TRUE?

21 A YEAH, BECAUSE I DON'T REMEMBER.

22 Q BUT YOU'RE SAYING THAT SO YOU DON'T HAVE TO
23 TESTIFY, RIGHT?

24 A NO.

25 Q NO WHAT?

26 A I'M NOT SAYING THAT BECAUSE -- I DON'T REMEMBER

1 WHAT I SAID.

2 THE COURT: DO YOU REALLY NOT REMEMBER WHAT YOU SAID TO
3 THE POLICE?

4 THE WITNESS: YES, I DON'T REMEMBER.

5 THE COURT: YOU REALLY DON'T REMEMBER?

6 THE WITNESS: (WITNESS NODS HEAD IN THE AFFIRMATIVE.)

7 THE COURT: SAY "YES" OR "NO."

8 THE WITNESS: YES.

9 THE COURT: YES, YOU DON'T?

10 THE WITNESS: YES, I DON'T.

11 THE COURT: SO WHEN YOU SAY, "I DON'T REMEMBER," YOU'RE
12 NOT JUST SAYING THAT BECAUSE YOU THINK THAT WILL GET YOU OUT
13 OF HERE AND YOU WON'T HAVE TO TESTIFY, RIGHT?

14 THE WITNESS: NO. I'M SAYING THAT BECAUSE I DON'T
15 REMEMBER WHAT I SAID.

16 THE COURT: YOU'RE WILLING TO TESTIFY YOU JUST DON'T
17 REMEMBER WHAT YOU TOLD THE POLICE?

18 THE WITNESS: YES.

19 THE COURT: SORRY, MR. BROTT. I'M GOING TO GRANT
20 MR. EADY'S REQUEST TO SPEAK WITH MR. CONTRERAS. WHY DON'T
21 YOU TAKE A MOMENT AND DO THAT.

22 MR. EADY: COULD WE USE YOUR JURY ROOM?

23 THE COURT: CERTAINLY.

24 DO YOU WANT HIS MOTHER WITH YOU?

25 MR. EADY: SURE.

26 (PAUSE IN PROCEEDINGS.)

1 THE COURT: BACK ON THE RECORD.

2 MR. EADY, SHOULD I HEAR FROM YOU?

3 MR. EADY: IF THE COURT PLEASE.

4 BASED ON MY CONVERSATION WITH MR. CONTRERAS, IT
5 WOULD APPEAR TO ME THAT HIS INTENTION FROM THE BEGINNING OF
6 HIS APPEARANCE WAS TO EXERCISE HIS FIFTH AMENDMENT
7 PRIVILEGES. I GUESS, BASED ON THE FACT THAT I DIDN'T
8 EXPLAIN TO HIM THAT IN ORDER TO TAKE THE FIFTH AMENDMENT YOU
9 HAVE TO SAY THAT PHRASE OR YOU HAVE TO USE THAT TERM, I
10 DIDN'T EXPLAIN THAT TO HIM, HE INDICATED TO ME IN THE JURY
11 ROOM JUST NOW THAT WHAT HE WAS TRYING TO DO BY SAYING, "I
12 DON'T REMEMBER," "I DON'T REMEMBER," WAS TO IN FACT EXERCISE
13 HIS PRIVILEGES UNDER THE FIFTH AMENDMENT TO THE
14 CONSTITUTION. OBVIOUSLY, NOT A VERY EFFECTUAL WAY OF DOING
15 IT. HOWEVER, THAT WOULD APPEAR TO BE WHAT HE WAS TRYING TO
16 DO. AND I PROBABLY SHOULD HAVE INTERRUPTED WAY BACK AT THE
17 BEGINNING TO STRAIGHTEN THAT OUT. I FAILED TO DO IT BECAUSE
18 I DIDN'T -- THIS IS NEW TERRITORY FOR ME.

19 THE COURT: ALL RIGHT. MR. GELLER, LET'S TRY THIS
20 AGAIN. BECAUSE I STILL THINK, MR. EADY, THE APPROPRIATE WAY
21 TO PROCEED IS TO INQUIRE OF THE WITNESS OUTSIDE THE PRESENCE
22 OF THE JURY.

23 MR. EADY: I AGREE.

24 THE COURT: GO AHEAD.

25 MR. GELLER: SHOULD I START OVER THEN?

26 THE COURT: YES.

1 MR. EADY: I WILL. FOR THE SAKE OF EVERYONE'S
2 INFORMATION, I DID INFORM HIM THAT THERE ARE SOME BASIC
3 QUESTIONS THAT HE'S NOT ENTITLED TO PLEAD THE FIFTH TO.
4 THINGS THAT DON'T TEND TO INCRIMINATE HIM, SUCH AS HIS NAME
5 AND THINGS LIKE THAT.

6 THE COURT: LET ME START WITH SOME OF THOSE BASIC
7 QUESTIONS.

8 "MICHAEL CONTRERAS," IS THAT YOUR TRUE NAME?

9 THE WITNESS: YES.

10 THE COURT: AND HOW OLD ARE YOU, MICHAEL?

11 THE WITNESS: FOURTEEN.

12 THE COURT: AND WHAT WAS YOUR DATE OF BIRTH?

13 THE WITNESS: 11/7/91.

14 THE COURT: DO YOU GO TO SCHOOL?

15 THE WITNESS: YES.

16 THE COURT: WHAT GRADE ARE YOU IN?

17 THE WITNESS: 8TH.

18 THE COURT: WHAT CLASSES DO YOU TAKE IN THE 8TH GRADE?

19 THE WITNESS: R.S.P.

20 THE COURT: R.S.P.. CAN YOU READ?

21 THE WITNESS: LITTLE BIT.

22 THE COURT: A LITTLE BIT. CAN YOU WRITE?

23 THE WITNESS: YES.

24 THE COURT: CAN YOU WRITE ENGLISH?

25 THE WITNESS: YES.

26 THE COURT: DO YOU SPEAK BOTH ENGLISH AND SPANISH?

1 THE WITNESS: LITTLE BIT OF SPANISH.

2 THE COURT: JUST A LITTLE BIT OF SPANISH.

3 OKAY. MR. GELLER, YOU MAY INQUIRE.

4 DIRECT EXAMINATION

5 BY MR. GELLER:

6 Q START OFF AGAIN. THE PERSON IN THE BLUE SHIRT
7 SEATED HERE IN COURT, DO YOU KNOW THAT PERSON?

8 A NO.

9 Q HAVE YOU EVER SEEN THAT PERSON BEFORE?

10 A NO.

11 Q I'M SORRY?

12 A NO.

13 Q YOU DON'T KNOW HIM, HIS NAME TO BE ANDY REYES?

14 MR. BROTT: I'M OBJECTING TO THIS, YOUR HONOR. THE
15 WITNESS HAS ALREADY SAID HE WANTS TO TAKE THE FIFTH. THIS
16 IS INCRIMINATING. THIS IS POTENTIALLY PERJUROUS TESTIMONY.

17 THE COURT: I AGREE.

18 MICHAEL, QUESTIONS THAT THE PROSECUTOR ARE ASKING
19 YOU HAVE TO DO WITH WHAT HAPPENED IN THIS CASE. AND ANDY
20 REYES SITS OVER AT THAT TABLE CHARGED WITH MURDER.

21 DO YOU UNDERSTAND THAT?

22 THE WITNESS: YES.

23 THE COURT: THE REASON I WANTED AN ATTORNEY TO SPEAK
24 WITH YOU BEFORE YOU TOOK THE OATH AND STARTED TO TESTIFY OR
25 NOT TESTIFY WAS SO THAT YOU WOULD UNDERSTAND YOUR RIGHTS
26 UNDER THE CONSTITUTION OF THE UNITED STATES.

1 DO YOU UNDERSTAND WHAT I JUST SAID?

2 THE WITNESS: YES.

3 THE COURT: HAVE YOU STUDIED THE CONSTITUTION IN
4 SCHOOL?

5 THE WITNESS: NO.

6 THE COURT: NO? YOU DON'T KNOW WHAT IT IS, DO YOU?

7 THE WITNESS: (WITNESS NODS HEAD IN THE NEGATIVE.)

8 THE COURT: NO?

9 THE WITNESS: NO.

10 THE COURT: SO MR. EADY GAVE YOU, I THINK, AN
11 EXPLANATION. AND YOU TOLD MR. EADY THAT YOU DIDN'T WANT TO
12 TESTIFY HERE; THAT'S WHAT MR. EADY TOLD ME.

13 DO YOU UNDERSTAND THAT MUCH?

14 THE WITNESS: YES.

15 THE COURT: IF YOU ANSWER MR. GELLER'S QUESTIONS RIGHT
16 NOW, WHAT YOU'RE DOING -- AND YOU DON'T ANSWER HIM
17 TRUTHFULLY, YOU COULD BE CHARGED WITH A CRIME.

18 DO YOU UNDERSTAND THAT?

19 THE WITNESS: YEAH.

20 THE COURT: BECAUSE IT'S A CRIME TO LIE IN COURT.

21 DO YOU UNDERSTAND?

22 THE WITNESS: YES.

23 THE COURT: ON THE OTHER HAND, IF YOU DON'T WANT TO
24 ANSWER MR. GELLER'S QUESTIONS BECAUSE YOU THINK YOUR ANSWERS
25 COULD INCRIMINATE YOU, WHICH MEANS COULD TELL THE WORLD THAT
26 YOU COMMITTED A CRIME OR PARTICIPATED IN A CRIME, THEN YOU

1 HAVE TO TELL MR. GELLER THAT YOU DON'T WANT TO ANSWER.

2 DO YOU UNDERSTAND THAT?

3 THE WITNESS: YES.

4 THE COURT: IF YOU TELL MR. GELLER YOU DON'T WANT TO
5 ANSWER, THAT'S NOT A CRIME. BUT IF YOU TELL MR. GELLER A
6 LIE, AND IF YOU SAY YOU DON'T KNOW ANDY REYES, AND THAT'S A
7 LIE, THEN YOU COULD HAVE SOME BIG PROBLEMS.

8 DO YOU UNDERSTAND WHAT I SAID?

9 THE WITNESS: YES.

10 THE COURT: OKAY. LET'S TRY AGAIN.

11 BY MR. GELLER:

12 Q DO YOU KNOW THE INDIVIDUAL SEATED HERE IN THE
13 BLUE SHIRT?

14 A NO.

15 MR. EADY: MR. CONTRERAS, IS IT STILL YOUR DESIRE TO
16 EXERCISE YOUR RIGHTS UNDER THE FIFTH AMENDMENT TO THE
17 CONSTITUTION?

18 THE WITNESS: YES.

19 MR. EADY: CAN YOU SAY "FIFTH AMENDMENT"?

20 THE WITNESS: PLEASE, THE FIFTH.

21 MR. EADY: YOU CAN SAY THAT?

22 THE WITNESS: YES.

23 MR. EADY: IS THAT WHAT YOU WANT TO DO?

24 THE WITNESS: YES.

25 MR. EADY: YOU'VE TOLD ME NOW TWICE THAT THAT'S WHAT
26 YOU WANT TO DO; IS THAT CORRECT?

1 THE WITNESS: YES.

2 MR. EADY: ALL RIGHT.

3 MR. GELLER: THEN, IN RESPONSE TO THAT, YOUR HONOR, IF
4 I MAY, UNDER 1324 OF THE PENAL CODE, I'M OFFERING THE
5 WITNESS USE IMMUNITY FOR HIS TESTIMONY, WHICH WOULD RELIEVE
6 ANY FIFTH AMENDMENT BURDEN HE MAY HAVE.

7 THE COURT: DO YOU BELIEVE THE RECORD IS SUFFICIENT TO
8 ESTABLISH THAT THE DEFENDANT -- THAT THE WITNESS IS INVOKING
9 HIS FIFTH AMENDMENT PRIVILEGE?

10 MR. BROTT: I NEED TO HEAR HIM SAY IT.

11 THE COURT: I DO TOO.

12 MR. BROTT: IN RESPONSE TO A QUESTION.

13 THE COURT: I DO TOO.

14 MR. BROTT: SO WE ARE UNEQUIVOCAL.

15 THE COURT: NOW, I KNOW, MICHAEL, THAT YOU'RE ONLY 14.
16 AND I KNOW YOU'RE ONLY IN THE 8TH GRADE. AND I KNOW YOU
17 HAVEN'T BEEN TO LAW SCHOOL. HOWEVER, IF YOU DON'T WANT TO
18 ANSWER MR. GELLER'S QUESTIONS, WHEN HE ASKS YOU A QUESTION
19 YOU HAVE TO TELL HIM, "I DON'T WANT TO ANSWER. I AM
20 EXERCISING MY RIGHT UNDER THE FIFTH AMENDMENT."

21 DO YOU UNDERSTAND WHAT YOUR RIGHT IS AFTER
22 MR. EADY EXPLAINED IT TO YOU?

23 THE WITNESS: YES.

24 THE COURT: SO YOU NEED TO SAY THOSE WORDS. YOU CAN'T
25 JUST ANSWER THE QUESTION. YOU FOLLOW ME?

26 THE WITNESS: YES.

1 THE COURT: GO AHEAD.

2 BY MR. GELLER:

3 Q DO YOU KNOW THE INDIVIDUAL IN THE BLUE SHIRT HERE
4 IN COURT?

5 A MAY I PLEASE THE FIFTH.

6 THE COURT: WANT TO ASK HIM ONE OR TWO MORE? LET'S
7 MAKE SURE.

8 BY MR. GELLER:

9 Q DO YOU KNOW WHO FRANCISCO LOPEZ IS? FRANK LOPEZ?

10 A I DON'T WANT TO TESTIFY.

11 MR. EADY: YOU HAVE TO REFER TO THE FIFTH AMENDMENT,
12 MR. CONTRERAS.

13 THE COURT: LET'S TRY AGAIN. DO YOU KNOW WHO
14 FRANCISCO LOPEZ IS, OR, FRANK LOPEZ?

15 THE WITNESS: PLEASE, THE FIFTH.

16 BY MR. GELLER:

17 Q DO YOU KNOW WHO MR. DE LA RIVA IS?

18 A PLEAD THE FIFTH.

19 MR. GELLER: IN RESPONSE TO THAT, AGAIN, YOUR HONOR,
20 I'M RENEWING MY REQUEST TO OFFER THE WITNESS USE IMMUNITY
21 UNDER 1524.

22 THE COURT: ARE YOU SATISFIED WITH THE RECORD AT THIS
23 POINT, MR. BROTT?

24 MR. BROTT: YES.

25 THE COURT: ALL RIGHT. THE COURT IS IN RECEIPT OF A
26 PETITION FOR AN ORDER COMPELLING TESTIMONY OF A WITNESS.

1 THAT WAS FILED TODAY BY MR. GELLER. I HAVE READ THAT. AND
2 ALSO A WAIVER OF HEARING REGARDING USE IMMUNITY FORM.

3 AND I UNDERSTAND THE COPIES OF THESE DOCUMENTS
4 WERE PROVIDED TO YOU, MR. EADY?

5 MR. EADY: THAT'S CORRECT, YOUR HONOR.

6 THE COURT: NOW, DID YOU EXPLAIN TO MR. CONTRERAS WHAT
7 WOULD HAPPEN AFTER HE REFUSED TO TESTIFY AND THAT HE WOULD
8 BE GRANTED USE IMMUNITY?

9 MR. EADY: I DID. I EXPLAINED TO HIM THAT IF HE
10 EXERCISED HIS FIFTH AMENDMENT PRIVILEGES, IT WAS ANTICIPATED
11 THAT THE PROSECUTOR WOULD OFFER HIM IMMUNITY; THAT THAT
12 MEANT THAT ANYTHING HE SAID AS A WITNESS IN THIS PROCEEDING
13 WOULD NOT BE USED AGAINST HIM IN ANY CRIMINAL PROCEEDING BY
14 THIS PROSECUTOR, OR ANYONE FROM HIS OFFICE FOR THAT MATTER.

15 THE COURT: LET ME EXPLAIN THIS TO YOU, MICHAEL. WHEN
16 YOU TELL US THAT YOU DON'T WANT TO TESTIFY AND YOU ARE
17 EXERCISING YOUR PRIVILEGE UNDER THE FIFTH AMENDMENT, THEN IF
18 THE PROSECUTOR SAYS, YOU KNOW WHAT, JUDGE, I'M NOT GOING TO
19 PROSECUTE HIM FOR ANY CRIME, THEN, I'M DIRECTED BY LAW TO
20 ORDER YOU TO TESTIFY.

21 DO YOU UNDERSTAND WHAT I SAID?

22 THE WITNESS: YES.

23 THE COURT: AND IT WOULD APPEAR, MR. EADY, THAT I HAVE
24 A PETITION FOR AN ORDER COMPELLING TESTIMONY OF A WITNESS
25 THAT IS IN COMPLIANCE WITH PENAL CODE SECTION 1324.

26 WOULD YOU AGREE?

1 MR. EADY: YES.

2 THE COURT: GENERALLY, I WILL GRANT THE PETITION AND
3 ORDER THE WITNESS TO TESTIFY.

4 MR. GELLER, YOU MAY INQUIRE?

5 MR. EADY: YOUR HONOR, IF I MIGHT INTERRUPT. IT'S MY
6 UNDERSTANDING, BASED ON EVERYTHING MR. CONTRERAS HAS TOLD ME
7 THIS AFTERNOON, THAT AT THIS POINT IT'S HIS DESIRE TO
8 CONTINUE TO NOT ANSWER QUESTIONS, EVEN IN THE FACE OF THE
9 IMMUNITY GRANT.

10 THE COURT: YOU REPRESENTED THAT TO ME IN OUR CHAMBERS
11 CONFERENCE BEFORE WE WENT ON THE RECORD. AND I ACCEPT YOUR
12 REPRESENTATION. BUT NOW I'M ORDERING MR. CONTRERAS TO
13 ANSWER MR. GELLER'S QUESTIONS, BECAUSE YOU'RE NOT GOING TO
14 BE PROSECUTED FOR ANYTHING.

15 DO YOU UNDERSTAND?

16 THE WITNESS: YES.

17 THE COURT: GO AHEAD.

18 BY MR. GELLER:

19 Q START OFF WITH THE INDIVIDUAL IN THE BLUE SHIRT.
20 DO YOU KNOW WHO THAT PERSON IS?

21 A I DON'T WANT TO TALK.

22 Q DO YOU KNOW WHO SEVERO DE LA RIVA IS?

23 A I DON'T WANT TO TALK.

24 Q DO YOU KNOW WHO FRANCISCO LOPEZ IS?

25 A I DON'T WANT TO TALK.

26 MR. GELLER: I THINK THE WITNESS IS NOT COMPLYING WITH

1 THE COURT'S ORDER AT THIS POINT, YOUR HONOR.

2 THE COURT: IT WOULD APPEAR SO, MR. EADY. WOULD YOU
3 AGREE?

4 MR. EADY: YES. EVEN I CAN SEE THAT.

5 THE COURT: ALL RIGHT. AND HOW DO YOU WISH TO PROCEED,
6 COUNSEL?

7 MR. GELLER: ME COUNSEL?

8 THE COURT: YOU, COUNSEL.

9 MR. GELLER: I'D ASK THE COURT TO HOLD THE WITNESS IN
10 CONTEMPT AND HOLD HIM IN CONTEMPT UNTIL HE DECIDES TO
11 TESTIFY IN THIS CASE. THIS IS A HOMICIDE TRIAL AND HE'S A
12 MATERIAL WITNESS.

13 THE COURT: MR. BROTT, DO I NEED TO HEAR FROM YOU?

14 MR. BROTT: I OBJECT TO THE GRANTING OF THE IMMUNITY ON
15 THE GROUNDS THAT IT'S CONTRARY TO PUBLIC POLICY. AND I'LL
16 SUBMIT IT. I --

17 THE COURT: GO AHEAD.

18 MR. BROTT: I SUBMIT IT ON THAT ISSUE.

19 SECONDLY, WHAT WE'RE DOING HERE IS, I THINK, AN
20 AMAZING DISPLAY OF THE POWER TO COERCE WITNESSES AND TO
21 SCARE THEM TO DEATH. WE'VE GOT A 14-YEAR-OLD KID WHO, ON
22 ONE HAND, IN ONE SENTENCE FIVE MINUTES AGO, WE TOLD HIM LESS
23 THAN FIVE, YOU HAVE TO SAY YOU DON'T WANT TO TESTIFY IF YOU
24 DON'T WANT TO TESTIFY. AND THEN WE SWITCHED THE HAT AND
25 SAY, WELL, NOW YOU GOT TO TESTIFY. AND THEN WE'RE MYSTIFIED
26 WHY HE DOESN'T UNDERSTAND WHAT WE'RE DOING. AND WE'RE

1 TAKING HIM INTO CUSTODY FOR DOING WHAT WE TOLD HIM LESS THAN
2 THREE MINUTES AGO THAT IT WAS OKAY TO DO. AND I'M SAYING
3 THAT THAT IS INAPPROPRIATE AND THAT HE SHOULD NOT BE HELD IN
4 CONTEMPT OR, AT LEAST, CONFINED.

5 THE COURT: DO I NEED TO HEAR FROM YOU, MR. EADY?

6 MR. EADY: WELL, I WOULD OBJECT TO HIM BEING TAKEN INTO
7 CUSTODY. FOR ONE THING, I DON'T SEE THAT THAT ADDS
8 ANYTHING, DOESN'T HELP ANYBODY. AND IT DOES PROBABLY SERVE
9 TO BE COERCIVE AND I HAVE YET TO HEAR HOW LONG, IF HE WAS
10 TAKEN INTO CUSTODY. IT'S A LITTLE BIT HARD FOR ME TO ADVISE
11 SOMEBODY IN THESE CIRCUMSTANCES WHEN I'M IN THE BACK WITH
12 HIM, THIS 14 YEAR OLD, TRYING TO EXPLAIN THINGS TO HIM ABOUT
13 CONCEPTS THAT ARE BEYOND HIM ANYWAY. AND THEN I CAN'T EVEN
14 TELL HIM HOW LONG HE'S GOING TO BE LOCKED UP FOR RUNNING
15 AFOUL OF THESE CONCEPTS THAT HE DOESN'T UNDERSTAND.

16 I DON'T KNOW. I MEAN, I REALIZE THAT IT'S NOT A
17 DEFENSE TO BE TAKEN INTO CUSTODY THAT I HAVEN'T TOLD HIM HOW
18 LONG IT'S GOING TO BE. BUT IT PLAYS INTO THE SCENARIO QUITE
19 SIGNIFICANTLY BECAUSE OF THE INEXPERIENCE, YOUTH, LACK OF
20 FAMILIARITY OF THE WITNESS WITH THE PROCEEDINGS. I DON'T
21 SEE ANYTHING TO BE GAINED BY PUTTING HIM IN CUSTODY.

22 MR. GELLER: MAY I BE HEARD ON THAT?

23 THE COURT: GO AHEAD.

24 MR. GELLER: WHAT'S TO BE GAINED BY PUTTING HIM IN
25 CUSTODY IS HIM COMPLYING WITH THIS COURT'S ORDER TO TESTIFY.
26 AS AN OFFICER OF THE COURT, I'M REPRESENTING THAT THIS

1 INDIVIDUAL MADE STATEMENTS TO THE SANTA ANA POLICE
2 DEPARTMENT, THE BETTER PART OF TWO YEARS AGO, THAT DIRECTLY
3 IMPACT A GANG HOMICIDE CASE. AND SO IF HE CHOOSES, AS A 14
4 YEAR OLD KID, TO GET UP ON THIS WITNESS STAND HERE AND TELL
5 YOU, YOU KNOW WHAT, JUDGE, I'M NOT GOING TO ANSWER THE
6 QUESTIONS, THEN THERE'S SOME MOTIVATION BEHIND THAT. AND
7 I'M ASKING THE COURT TO TAKE HIM INTO CUSTODY TO MOTIVATE
8 HIM TO TESTIFY AND TELL THE TRUTH.

9 THE COURT: ANYBODY ELSE HAVE ANYTHING YOU WANT TO SAY?

10 MR. BROTT: NO.

11 MR. EADY: NO.

12 THE COURT: MR. CONTRERAS' MOTHER ANGELICA IS IN THE
13 COURTROOM, CORRECT?

14 THE MOTHER: YES.

15 THE COURT: COULD YOU STAND UP AND STEP FORWARD,
16 MISS CONTRERAS.

17 I DON'T THINK SUFFICIENT PLANS WERE MADE FOR
18 TODAY. AND I THINK THAT IF WE HAD KNOWN WHEN YOU WERE LAST
19 IN COURT AND I SPOKE TO YOU ABOUT BRINGING MICHAEL BACK THAT
20 WE WERE GOING TO BE ENCOUNTERING THESE DIFFICULTIES, WE
21 MIGHT HAVE BEEN IN A BETTER POSITION TO SPEND MORE TIME WITH
22 MICHAEL AND MORE TIME WITH YOU. I AM NOT OF A MIND TO TAKE
23 MICHAEL INTO CUSTODY TODAY. HOWEVER, HE IS REFUSING TO
24 COMPLY WITH A VALID COURT ORDER THAT HE TESTIFY IN THIS
25 TRIAL; AND THAT MEANS THAT HE COULD BE FOUND IN CONTEMPT OF
26 COURT AND HE COULD BE CONFINED IN A JUVENILE INSTITUTION.

1 DO YOU UNDERSTAND WHAT I'M SAYING,
2 MISS CONTRERAS?

3 THE MOTHER: I DO.

4 THE COURT: BUT I'M GOING TO SEND HIM HOME WITH YOU
5 TODAY. BREATHE. YOU LOOK LIKE YOU'RE GETTING VERY UPSET.
6 AND I THINK THAT THE REASON YOU'RE BECOMING TEARFUL IS
7 BECAUSE THIS IS AS CONFUSING FOR YOU AS IT MAY BE FOR YOUR
8 SON. IS THAT FAIR TO SAY?

9 THE MOTHER: CORRECT.

10 THE COURT: WHAT WE ATTEMPT TO DO WITH WITNESSES WHO
11 HAVE BEEN PRESENT AT CRIME SCENES OR PERHAPS POTENTIALLY
12 EXPOSED TO CRIMINAL LIABILITY BECAUSE OF THEIR ASSOCIATIONS
13 WITH GANG MEMBERS, FOR INSTANCE, IS WE ATTEMPT TO MAKE SURE
14 THAT THEY UNDERSTAND WHAT COULD HAPPEN AND WHAT THEIR RIGHTS
15 ARE. AND FOR THAT REASON WE ASKED MR. EADY TO INTERRUPT HIS
16 DAY AND VOLUNTEER AND COME HERE TO TRY TO EXPLAIN THAT TO
17 MICHAEL. AND YOU'VE BEEN PRESENT DURING ALL OF THOSE
18 DISCUSSIONS. AND I'M GLAD FOR THAT, BECAUSE MICHAEL IS 14
19 YEARS OLD AND YOU'RE HIS MOM.

20 AT THIS POINT, HOWEVER, WE'RE TELLING MICHAEL
21 THAT THIS IS A SERIOUS CASE, THAT HE IS NOT GOING TO BE
22 PROSECUTED FOR ANYTHING HE MIGHT HAVE DONE, EVEN IF HE DID
23 NOTHING AT ALL BUT BE THERE. AND, THEREFORE, HE HAS AN
24 OBLIGATION UNDER THE LAW TO GIVE TESTIMONY.

25 NOW, IF HE REFUSES TO GIVE TESTIMONY, HAVING BEEN
26 ORDERED BY ME TO GIVE TESTIMONY, HE COULD FACE CONSEQUENCES

1 THAT WOULD PUT HIM IN JUVENILE HALL. I WOULD HATE TO SEE
2 THAT HAPPEN. AND CERTAINLY BEFORE I PROCEEDED TO TAKE HIM
3 INTO CUSTODY I WOULD EXPECT THE PROSECUTOR IN THIS CASE TO
4 FILE AN ORDER TO SHOW CAUSE WHY HE SHOULD BE REMANDED INTO
5 CUSTODY AND TO GIVE ME LEGAL AUTHORITY THAT WOULD SPELL OUT
6 WHAT THE PARAMETERS OF HIS CUSTODIAL STATUS WOULD BE.
7 THAT'S A LONG SENTENCE, AND I DON'T KNOW IF YOU GOT IT.
8 JUST IN CASE YOU DIDN'T, LET ME PUT IT ANOTHER WAY. BEFORE
9 I TAKE HIM IN I WANT MR. GELLER IN WRITING TO TELL ME
10 EXACTLY HOW LONG THE LAW SAYS HE'S GOING TO BE IN. THAT'S
11 THE FIRST THING.

12 BUT I THINK THAT MICHAEL AND YOU NEED THE EVENING
13 TO THINK ABOUT WHAT HE IS DOING. BECAUSE, AS MR. EADY HAS
14 EXPLAINED TO YOU, HE COULD GO INTO JUVENILE HALL FOR
15 REFUSING TO TESTIFY. AND I'M ORDERING HIM TO TESTIFY ONLY
16 BECAUSE I HAVE A PROMISE FROM THE PROSECUTOR THAT NOBODY IS
17 GOING TO FILE ANY CHARGE AGAINST HIM. SO HE'S NOT IN ANY
18 DANGER IF HE TESTIFIES, AND IF HE TESTIFIES TRUTHFULLY. SO
19 IF HE KNOWS MR. REYES, HE'S GOT TO SAY HE KNOWS HIM. IF HE
20 REMEMBERS WHAT HAPPENED ON THAT DAY THAT WE'RE INTERESTED
21 IN, HE'S GOT TO SAY WHAT HE REMEMBERS. AND NOTHING WILL
22 HAPPEN TO HIM IF HE TESTIFIES TRUTHFULLY.

23 DO YOU UNDERSTAND MOST OF WHAT I'M SAYING?

24 THE MOTHER: I DO.

25 THE COURT: DO YOU THINK YOU UNDERSTAND ALL OF IT?

26 THE MOTHER: THREE-QUARTERS OF IT.

1 THE COURT: THREE-QUARTERS OF IT. MR. EADY, BECAUSE
2 HE'S GIVEN SO MUCH TO ME TODAY AS AN FRIEND OF THE COURT, IS
3 GOING TO TAKE TWO OR THREE MORE MINUTES WHEN I RECESS THIS
4 MORNING TO TALK TO YOU AND MICHAEL OUT IN THE HALLWAY. SO
5 IF YOU HAVE ANY QUESTIONS, ASK HIM. HE HAS BEEN DOING THIS
6 FOR A LOT OF YEARS AND I TRUST HIM COMPLETELY, AND THAT'S
7 WHY I WANTED MR. EADY TO TALK TO MICHAEL.

8 BUT I AM GOING TO ORDER YOU TO PRODUCE MICHAEL
9 HERE IN COURT TOMORROW MORNING AT 8:30, BECAUSE WE'RE GOING
10 TO GIVE MICHAEL ANOTHER CHANCE TO TESTIFY NOW THAT HE KNOWS
11 THAT HE WON'T BE PROSECUTED. AND YOU AND HE SHOULD SIT AND
12 DISCUSS THIS, BECAUSE IF --

13 MR. BROTT: WAIT. I KNOW SHE IS HIS MOTHER. AND I
14 KNOW THAT HE'S ONLY 14. BUT I ALSO KNOW THAT ITS IMPROPER
15 AND VERY POSSIBLY ILLEGAL TO INFLUENCE A WITNESS'S
16 TESTIMONY.

17 THE COURT: OKAY.

18 YOU WOULD AGREE WITH THAT?

19 MR. EADY: YES.

20 THE COURT: SO MAYBE I MISSPOKE. BUT TAKE THE EVENING.
21 OKAY. IT IS HIS DECISION. HE'S 14 YEARS OLD. BUT HE IS 14
22 YEARS OLD AND HE CAN MAKE HIS OWN DECISION.

23 THE MOTHER: OKAY.

24 MR. BROTT: SHE NEEDS TO UNDERSTAND THAT IT'S HIS
25 DECISION AND THAT SHE'S NOT TO -- SHE'S NOT TO --

26 THE COURT: TRY TO PERSUADE HIM.

1 MR. BROTT: YES.

2 THE COURT: WE DON'T WANT YOU TO DECIDE FOR HIM. WE
3 WANT HIM TO DECIDE ON HIS OWN. I'M HOPING IF HE TAKES A
4 LITTLE TIME, HE'LL THINK ABOUT IT. AND IF YOU GET ALL YOUR
5 QUESTIONS ANSWERED, THEN HE'LL HAVE A LITTLE MORE
6 INFORMATION.

7 THE MOTHER: OKAY.

8 THE COURT: OKAY. ARE YOU ALL RIGHT WITH THAT?

9 THE MOTHER: YES.

10 THE COURT: BUT YOU NEED TO BE BACK HERE TOMORROW
11 MORNING, BECAUSE WE'RE GOING TO GO THROUGH THIS AGAIN AND
12 SEE WHAT HAPPENS. OKAY?

13 THE MOTHER: OKAY.

14 THE COURT: MICHAEL, GO AHEAD WITH YOUR MOTHER, AND YOU
15 CAN GO.

16 I'D LIKE TO SEE COUNSEL BRIEFLY IN CHAMBERS.

17 (DISCUSSION HELD IN CHAMBERS OFF THE
18 RECORD.)

19

20 (EVENING ADJOURNMENT.)

21 -000-

22

23

24

25

26

844

C H R O N O L O G I C A L		W I T N E S S I N D E X			
WITNESS:		DIRECT	CROSS	REDIRECT	RECROSS VOIR DIRE
<u>MICHAEL CONTRERAS</u>					
BY MR. GELLER	322				
BY MR. BROTT			336		
BY MR. GELLER				344	
<u>RICHARD ASHBY</u>					
BY MR. GELLER	355				
BY MR. BROTT			363		
BY MR. GELLER				372	
BY MR. BROTT					373
BY MR. GELLER				376	
<u>DAVID RONDOU</u>					
BY MR. GELLER	379				
BY MR. BROTT			445		

A L P H A B E T I C A L W I T N E S S I N D E X

WITNESSES:	DIRECT	CROSS	REDIRECT	RECROSS	VOIR DIRE
<u>ASHBY, RICHARD</u>					
BY MR. GELLER	355				
BY MR. BROTT		363			
BY MR. GELLER			372		
BY MR. BROTT				373	
BY MR. GELLER			376		
<u>CONTRERAS, MICHAEL</u>					
BY MR. GELLER	322				
BY MR. BROTT		336			
BY MR. GELLER			344		
<u>RONDOU, DAVID</u>					
BY MR. GELLER	379				
BY MR. BROTT		445			

EXHIBITS

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3	LARGE COLOR CARICATURE OF WILLITS AND SULLIVAN STREETS	104	466
4	8.5X11" COLOR PHOTO: INTERSECTION OF WILLITS AND SULLIVAN SOUTHBOUND DIRECTION AND SHOWING VICTIM'S HONDA CIVIC	107	466
5	8.5X11" COLOR PHOTO: INTERSECTION OF WILLITS AND SULLIVAN NORTHBOUND DIRECTION SHOWING SCHOOL AND STOP SIGN	108	466
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E X H I B I T S

PEOPLE'S:		FOR IDENTIFICATION	IN EVIDENCE
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14A	ENVELOPE CONTAINING BULLET	470	**
14B	ENVELOPE CONTAINING BULLET	470	**
14C	ENVELOPE CONTAINING BULLET	470	**
14D	ENVELOPE CONTAINING BULLET	470	**
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15	EVIDENCE ENVELOPE CONTAINING BULLET FROM AUTOPSY	258	466
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17	12 POLAROID SNAPSHOTS OF VICTIM	266	466
18	SINGLE SHEET PHOTOCOPY WITH 3 BLACK AND WHITE PHOTOS	333	466
19	CERTIFIED COPY OF PREDICATE ACTS CASE #02CF0135	412	466
** INDICATES EXHIBITS THAT WERE NOT RECEIVED INTO EVIDENCE			

1 SANTA ANA, CALIFORNIA - WEDNESDAY, MAY 31, 2006

2 MORNING SESSION

3 -000-

4
5 (THE FOLLOWING PROCEEDINGS WERE HAD IN
6 OPEN COURT OUT OF THE PRESENCE OF THE JURY:)

7 THE COURT: OKAY. WE'RE RESUMING ON THE RECORD IN
8 PEOPLE VS. ANDRES REYES, CASE NUMBER 04CF2780. RECORD
9 SHOULD REFLECT THE DEFENDANT IS PRESENT WITH HIS COUNSEL.
10 THE PEOPLE ARE REPRESENTED. WE'RE OUTSIDE THE PRESENCE OF
11 THE JURY TO CONTINUE OUR PROCEEDING FROM YESTERDAY WITH
12 RESPECT TO THE WITNESS MICHAEL CONTRERAS. AND THE RECORD
13 SHOULD REFLECT THAT MR. EADY HAS RETURNED TO THE COURTROOM
14 AT THE COURT'S INVITATION TO ADDRESS THIS MATTER. AND I SEE
15 MICHAEL IS IN THE COURTROOM TODAY.

16 WOULD YOU COME FORWARD, MICHAEL, PLEASE.

17 RECORD SHOULD ALSO REFLECT THE COURT IS OBSERVING
18 THAT HIS MOTHER IS PRESENT AS WELL.

19 MICHAEL, COULD YOU COME BACK UP AND TAKE YOUR
20 PLACE ON THE WITNESS STAND.

21 ALL RIGHT. I'LL DEFER TO YOU, MR. EADY.

22 MR. EADY: WELL, I'VE HAD CONVERSATIONS WITH
23 MR. CONTRERAS THIS MORNING. AND IT'S MY BELIEF, BASED ON
24 THOSE CONVERSATIONS, THAT HE IS WILLING AT THIS POINT TO
25 ATTEMPT TO ANSWER QUESTIONS ASKED OF HIM BY THE PROSECUTION.
26 HE DIDN'T TELL ME THIS, BUT I'M ASSUMING THIS IS ALL BASED

LYNN O. PETERSON, OFFICIAL COURT REPORTER

1 ON THE IMMUNITY GRANT FROM YESTERDAY. HE DIDN'T MENTION
2 THAT TO ME THIS MORNING, BUT I JUST DIDN'T WANT TO LOSE
3 SIGHT OF THAT. SO I THINK WHAT HE'S GOING TO DO IS TRY TO
4 ANSWER THE QUESTIONS THAT ARE ASKED OF HIM.

5 THE COURT: OKAY. MICHAEL, YESTERDAY YOU RAISED YOUR
6 RIGHT HAND, FACED MY CLERK, AND YOU TOOK AN OATH TO TELL THE
7 TRUTH.

8 DO YOU REMEMBER THAT?

9 THE WITNESS: YEAH.

10 THE COURT: THAT OATH STILL APPLIES RIGHT NOW.

11 DO YOU UNDERSTAND?

12 THE WITNESS: YES.

13 THE COURT: YOU NEED TO ANSWER AUDIBLY AND LOUD ENOUGH
14 FOR MY COURT REPORTER TO HEAR. AND SHE ACTUALLY LIKES TO
15 LOOK AT YOUR FACE WHEN YOU SPEAK A LITTLE BIT SO SHE CAN
16 MAKE SURE THAT SHE'S HEARING WHAT YOU'RE SAYING.

17 NOW YESTERDAY YOU TOLD US THAT YOU WERE CLAIMING
18 YOUR FIFTH AMENDMENT PRIVILEGE AGAINST SELF-INCRIMINATION
19 AND YOU WOULD NOT TESTIFY.

20 DO YOU REMEMBER DOING THAT?

21 THE WITNESS: YES.

22 THE COURT: AND THEN I TOLD YOU THAT THE DISTRICT
23 ATTORNEY WAS AGREEING NOT TO PROSECUTE YOU FOR ANYTHING THAT
24 YOU SAID. DO YOU REMEMBER THAT?

25 THE WITNESS: YES.

26 THE COURT: AND DID YOU UNDERSTAND WHAT I SAID WHEN I

1 SAID THAT?

2 THE WITNESS: YES.

3 THE COURT: OKAY. AND EVEN AFTER I PROMISED YOU THAT
4 THE DISTRICT ATTORNEY WAS NOT GOING TO PROSECUTE YOU FOR
5 ANYTHING, WHEN WE ASKED YOU QUESTIONS AGAIN, AND I HAD
6 ORDERED YOU TO TESTIFY, YOU STILL SAID YOU WANTED TO CLAIM
7 THE PRIVILEGE.

8 DO YOU REMEMBER DOING THAT?

9 THE WITNESS: YES.

10 THE COURT: OKAY. AND WE HAVE PROVIDED MR. EADY HERE
11 TO TALK TO YOU AND ANSWER ANY QUESTIONS YOU HAVE ABOUT THIS
12 PROCEEDING.

13 HAVE YOU HAD AN OPPORTUNITY TO SPEAK WITH HIM?

14 THE WITNESS: YES.

15 THE COURT: HAVE YOU ASKED HIM EVERYTHING YOU WANT TO
16 ASK HIM?

17 THE WITNESS: YEAH.

18 THE COURT: DO YOU HAVE ANY OTHER QUESTIONS YOU WANT TO
19 ASK HIM?

20 THE WITNESS: NO.

21 THE COURT: WELL, HE TOLD US THIS MORNING THAT YOU ARE
22 WILLING TO ANSWER THE QUESTIONS TODAY; IS THAT TRUE?

23 THE WITNESS: YES.

24 THE COURT: I DEFER TO YOU, MR. BROTT. IS ANY
25 ADDITIONAL INQUIRY NECESSARY FROM THE COURT THAT YOU CAN SEE
26 AT THIS POINT?

1 MR. BROTT: MICHAEL --

2 MR. GELLER: YOUR HONOR, I OBJECT TO THE DEFENSE
3 COUNSEL ASKING THE WITNESS ANY QUESTIONS AT THIS POINT IN
4 TIME. THE WITNESS HAS MADE A VERY CLEAR STATEMENT OF HIS
5 INTENTIONS.

6 THE COURT: DO YOU THINK ANY FURTHER STATEMENT FROM THE
7 WITNESS IS NECESSARY? YOU CAN DIRECT BACK TO THE COURT.

8 MR. BROTT: I'D LIKE TO KNOW WHAT -- IF IT WAS A THREAT
9 THAT CHANGED HIS MIND, IF IT WAS HIS MOTHER HELPING HIM WITH
10 HIS TESTIMONY. I THINK WE SHOULD INQUIRE AS TO WHERE THIS
11 PROFOUND CHANGE OF MIND CAME FROM.

12 MR. GELLER: I OBJECT TO THAT, YOUR HONOR. THAT'S
13 SUBJECT FOR CROSS-EXAMINATION. WE CAN HANDLE THAT LATER.
14 THAT IS NOT AN APPROPRIATE AREA OF INQUIRY AT THIS STAGE OF
15 THE GAME. THE WITNESS DIRECTLY ANSWERED THE COURT'S
16 QUESTION.

17 THE COURT: MR. EADY, CAN I HEAR FROM YOU ON THIS
18 POINT.

19 MR. EADY: WELL, CLEARLY HE TOOK ONE POSITION YESTERDAY
20 AND HE'S TAKEN ANOTHER POSITION THIS MORNING. AND I BELIEVE
21 IF THERE WERE SOME PATENTLY ILLEGAL BASIS FOR THAT CHANGE,
22 IT PROBABLY SHOULD, MY GUT FEELING IS, IT PROBABLY SHOULD
23 COME OUT IN THE OPEN PRIOR TO CROSS-EXAMINATION. BUT I
24 DON'T HAVE ANY AUTHORITY FOR THAT. THAT'S JUST A GUT
25 FEELING.

26 THE COURT: WELL, HERE IS THE DIFFICULTY I'M HAVING:

1 MR. GELLER, WE'RE IN A PROCEEDING OUTSIDE THE
2 PRESENCE THE JURY. AND YOU'RE SUGGESTING TO ME THAT IT
3 WOULD BE RELEVANT FOR ONE SIDE OR THE OTHER TO ASK THIS
4 WITNESS IN FRONT OF THE JURY WHETHER HE HAD PREVIOUSLY SAID
5 HE WOULDN'T TESTIFY AND CHANGED HIS MIND. AND I DON'T THINK
6 THAT THAT WOULD BE APPROPRIATE. I DON'T THINK IT'S RELEVANT
7 TO HIS TESTIMONY THAT WOULD BE FORTHCOMING ABOUT THE EVENTS
8 ON THE DAY IN QUESTION.

9 NOW, TO THE EXTENT THAT THERE MAY HAVE BEEN SOME
10 PRESSURE PLACED UPON HIM, I DON'T KNOW THAT THAT WOULD BE
11 RELEVANT EITHER TO THE COURT'S DETERMINATION ABOUT
12 PROCEEDING IN FRONT OF THE JURY AT THIS POINT, MR. BROTT,
13 BECAUSE THE ISSUE, IT SEEMS TO ME, IS WHETHER DEFENDANT IS
14 GOING TO ANSWER QUESTIONS OR INVOKE. AND HE HAS STATED THAT
15 HE IS GOING TO ANSWER QUESTIONS AND NO LONGER GOING TO
16 INVOKE IN FRONT OF THE JURY. THAT'S WHAT WE'RE HERE TO
17 DETERMINE. SO, EVEN THOUGH I DO NOT AGREE WITH MR. GELLER'S
18 GROUNDS FOR OBJECTION, FRANKLY, I DON'T UNDERSTAND WHAT THEY
19 ARE, I WOULD SUGGEST THAT YOUR INQUIRY AT THIS STAGE ON THIS
20 ISSUE MAY BE IRRELEVANT TO THIS ISSUE.

21 MR. BROTT: IS THE COURT DIRECTING ME ON MY
22 CROSS-EXAMINATION NOT TO ASK ABOUT THIS?

23 THE COURT: I DON'T THINK IT'S RELEVANT. I DON'T THINK
24 IT'S RELEVANT, HIS DECISION TO TESTIFY AND THE REASON HE
25 DECIDED TO TESTIFY.

26 WHAT WOULD BE RELEVANT, I SUPPOSE, IS ANOTHER

1 AREA THAT WE COULD DISCUSS OUTSIDE HIS PRESENCE.

2 MR. BROTT: AS LONG AS I KNOW WHAT THE GROUND RULES ARE
3 AND IF THE COURT HAS MADE A RECORD THAT I CAN'T GO INTO IT,
4 THEN, I WON'T GO INTO IT.

5 THE COURT: DO I NEED TO HEAR ANYTHING ELSE FROM
6 ANYONE?

7 MR. GELLER: NO.

8 THE COURT: MR. EADY?

9 MR. EADY: WELL, I HAVE MY OWN OPINION, BUT, THAT'S --

10 THE COURT: WE'VE ASKED YOU TO REPRESENT --

11 MR. EADY: I'M NOT A PARTY TO THIS.

12 THE COURT: WE'VE ASKED YOU TO REPRESENT MR. CONTRERAS,
13 AND I'M CONCERNED ABOUT PROTECTING HIM.

14 MR. BROTT: I'LL JUST REGISTER MY OBJECTION.

15 MR. EADY: THE THING I DON'T UNDERSTAND, I GUESS, AND I
16 DON'T KNOW THAT IT MATTERS, ARE WE TALKING ABOUT QUESTIONING
17 HIM REGARDING THE CHANGE RIGHT NOW OR ARE WE TALKING ABOUT
18 DOING IT IN FRONT OF THE JURY? THAT'S WHAT I DON'T
19 UNDERSTAND.

20 THE COURT: BECAUSE --

21 MR. EADY: WELL, ARE WE SAYING THAT MR. BROTT CAN'T ASK
22 HIM IN FRONT OF THE JURY QUESTIONS ALONG THE LINE OF AT ONE
23 TIME YOU DIDN'T EVEN WANT TO BE HERE AND TESTIFY AND NOW YOU
24 ARE TESTIFYING, WHAT HAPPENED TO CHANGE YOU?

25 THE COURT: WELL, IT'S SOMETHING I'M CONSIDERING. BUT,
26 AT THIS MOMENT, I'M NOT SURE I SEE ANY RELEVANCE UNLESS YOU

1 CAN TIE IT UP WITH SOMETHING ELSE.

2 MR. BROTT: I'M JUST -- IF I CHOOSE, FOR TACTICAL
3 REASONS, TO INQUIRE INTO THAT AREA AND I DON'T GET TO DO SO,
4 I NEED TO MAKE A RECORD THAT I'M PREVENTED FROM CONFRONTING
5 AND CROSS-EXAMINING THE WITNESSES AGAINST MY CLIENT. AND I
6 OBJECT. AND I SUBMIT IT. I'VE MADE MY RECORD.

7 THE COURT: OKAY.

8 THE COURT: MICHAEL, I WONDER IF YOU'D STEP INTO THE
9 JURY ROOM WITH MR. EADY FOR A MOMENT.

10 (PAUSE IN PROCEEDINGS.)

11 THE COURT: FRANKLY, MR. BROTT, I DIDN'T GET ENOUGH
12 FROM MR. CONTRERAS YESTERDAY, OR, MICHAEL CONTRERAS
13 YESTERDAY TO DETERMINE WHETHER THERE WAS SOME LEVEL OF
14 APPREHENSION OR FEAR IN GIVING TESTIMONY. AND I DON'T KNOW
15 WHAT THE REASONS WERE FOR HIS DECISION YESTERDAY. I DON'T
16 KNOW WHAT THE REASONS ARE FOR HIS DECISION TODAY. BUT HIS
17 CLAIM OF PRIVILEGE REALLY WAS NOT WARRANTED ON THE BASIS
18 THAT HE WAS PROMISED IMMUNITY FROM PROSECUTION. SO WHAT HIS
19 CHANGE IN POSITION, IT SEEMS TO ME, IS FROM, OR NOT FROM,
20 DOESN'T REALLY APPEAR RELEVANT TO HIS CHANGE IN POSITION
21 NOW.

22 I DON'T THINK THAT THIS COURT'S RULING IS A
23 PRECLUSION TO YOU FROM EFFECTING A FULL AND FAIR
24 CROSS-EXAMINATION OF THE WITNESS. BUT TO TIE THAT INTO HIS
25 STATEMENTS IN AND OUTSIDE THE PRESENCE OF THE JURY
26 PROCEEDING WOULD SEEM TO ME TO BE IRRELEVANT.

1 ARE YOU FOLLOWING WHAT I'M TRYING TO SAY?

2 MR. BROTT: I HEAR VERY CLEARLY WHAT YOU SAID.

3 THE COURT: SO, UNLESS WE ARE DEALING WITH WHAT WE WERE
4 DEALING WITH YESTERDAY, WHICH WAS THE DISTRICT ATTORNEY'S
5 DEMAND OR REQUEST THAT THE COURT FIND THE WITNESS IN
6 CONTEMPT AND INCARCERATE HIM AS A RESULT, I DON'T KNOW THAT
7 THE ISSUE OF WHY HE CHANGED HIS MIND IS RELEVANT AT THIS
8 STAGE IN THIS PROCEEDING OUTSIDE THE PRESENCE OF THE JURY.
9 AND THAT'S THE LIMITATION OF MY RULING.

10 NOW, JUST SO I HAVE A CLEAR RECORD, AND I DID
11 CONFER WITH ALL THREE COUNSEL THIS MORNING BEFORE WE WENT ON
12 THE RECORD, BECAUSE I WANTED TO KNOW WHAT WAS GOING TO
13 HAPPEN THIS MORNING, MR. GELLER AT THAT TIME INDICATED TO ME
14 THAT HE WAS WITHDRAWING HIS REQUEST THAT I FIND THE WITNESS
15 IN CONTEMPT OF COURT AND REMAND HIM TO JUVENILE HALL OR ANY
16 OTHER JAIL FACILITY.

17 IS THAT CORRECT?

18 MR. GELLER: THAT IS CORRECT.

19 THE COURT: SO, GIVEN THAT STATE OF AFFAIRS, I DON'T
20 HAVE BEFORE ME THE ISSUE OF HIS WILLFULNESS IN REFUSAL TO
21 TESTIFY. HAD I FELT WHEN I TOOK THE BENCH THAT I STILL HAD
22 THAT ISSUE, I WOULD HAVE ASKED MICHAEL SOME MORE QUESTIONS
23 ABOUT SCHOOL AND HOW HE DOES IN SCHOOL AND WHAT HE DOES IN
24 SCHOOL TO TRY TO ASCERTAIN WHETHER HE REALLY UNDERSTOOD WHAT
25 HE WAS DOING YESTERDAY. BUT THAT'S THE BEST I CAN DO WITH
26 THIS, BECAUSE THIS MORNING I HAVE NO MORE AUTHORITY REALLY

1 THAN I HAD YESTERDAY ON HOW TO PROCEED ON THIS PARTICULAR
2 ISSUE. I HAVE SOME MATERIALS ON CONTEMPT THAT I HAVE
3 INADVERTENTLY LEFT AT HOME. THE RULING DOES NOT, IN MY
4 VIEW, COMPROMISE YOUR ABILITY TO CONDUCT A FULL AND FAIR
5 CROSS-EXAMINATION. AND I WOULD EXPECT THAT FROM YOU.

6 IS THERE ANYTHING ELSE YOU WANT TO SAY ON THIS
7 RECORD?

8 MR. BROTT: NO.

9 THE COURT: IS THERE ANYTHING ELSE YOU WANT TO SAY ON
10 THIS RECORD?

11 MR. GELLER: NO.

12 THE COURT: OKAY. LET'S SEE IF WE HAVE OUR JURORS.

13 (THE FOLLOWING PROCEEDINGS WERE HAD IN
14 OPEN COURT IN THE PRESENCE OF THE JURY:)

15 THE COURT: GOOD MORNING. AND THANK YOU AGAIN FOR YOUR
16 PATIENCE THIS MORNING. I KNOW WE HAD ANOTHER DELAY AND I
17 JUST WANT YOU TO KNOW THAT WHEN WE DO EXPERIENCE THESE
18 DELAYS, ALTHOUGH THEY CAN SOMETIMES BE LONG, THEY'RE
19 ABSOLUTELY NECESSARY. WE WOULDN'T KEEP YOU WAITING UNLESS
20 WE REALLY HAD TO. SO I DO APOLOGIZE AGAIN AND THANK YOU
21 ONCE AGAIN FOR YOUR PATIENCE.

22 WE'RE RESUMING WITH THE JURY IN PEOPLE VS.
23 ANDRES QUINONEZ REYES, CASE NUMBER 04CF2780. RECORD SHOULD
24 REFLECT THAT THE DEFENDANT, MR. REYES, IS PRESENT WITH HIS
25 COUNSEL, MR. BROTT. THE PEOPLE ARE REPRESENTED BY
26 MR. GELLER. AND FIFTEEN JURORS HAVE RETURNED TO THE

1 COURTROOM AT THIS HOUR.

2 WHEN WE RECESSED WITH YOU LAST EVENING MR. GELLER
3 WAS STILL IN THE PEOPLE'S CASE-IN-CHIEF.

4 AND WHENEVER YOU'RE READY, MR. GELLER, YOU MAY
5 CALL YOUR NEXT WITNESS.

6 MR. GELLER: THANK YOU. WITH THE COURT'S PERMISSION,
7 THE PEOPLE CALL MICHAEL CONTRERAS, PLEASE.

8 THE BAILIFF: STEP FORWARD. STAND NEXT TO THE TABLE
9 RIGHT THERE, SIR. THAT'S FINE. FACE THE CLERK ON YOUR LEFT
10 AND RAISE YOUR RIGHT HAND TO BE SWORN.

11 THE CLERK: DO YOU SOLEMNLY STATE THE EVIDENCE YOU ARE
12 ABOUT TO GIVE IN THE CAUSE NOW PENDING BEFORE THIS COURT
13 SHALL BE THE TRUTH, THE WHOLE TRUTH AND NOTHING BUT THE
14 TRUTH, SO HELP YOU GOD?

15 THE WITNESS: YES.

16 THE CLERK: STATE YOUR NAME, PLEASE.

17 THE WITNESS: MICHAEL CONTRERAS.

18 THE CLERK: PLEASE SPELL YOUR LAST NAME FOR THE RECORD.

19 THE WITNESS: C-O-N-T-R-E-R-A-S.

20 THE CLERK: THANK YOU, MICHAEL. YOU CAN TAKE THE
21 STAND.

22 THE COURT: WHENEVER YOU'RE READY, MR. GELLER.

23 MR. GELLER: THANK YOU.

24 MICHAEL CONTRERAS,
25 CALLED AS A WITNESS, HAVING BEEN FIRST DULY SWORN, WAS
26 EXAMINED AND TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

1
2 BY MR. GELLER:

3 Q GOOD MORNING, MR. CONTRERAS.

4 A MORNING.

5 Q HOW OLD ARE YOU?

6 A FOURTEEN.

7 Q DO YOU GO TO SCHOOL?

8 A YES.

9 Q WHAT GRADE ARE YOU IN?

10 A EIGHTH.

11 Q WHAT I'D LIKE TO TALK TO YOU ABOUT IS SOMETHING
12 THAT OCCURRED IN YOUR LIFE ALMOST TWO YEARS AGO BACK IN
13 AUGUST, SPECIFICALLY AUGUST 10TH OF 2004, OKAY?

14 A OKAY.

15 Q YOU'RE DOING A REAL NICE JOB OF KEEPING YOUR
16 VOICE UP. CONTINUE TO DO THAT BECAUSE EVERYBODY IN THIS
17 COURTROOM NEEDS TO HEAR WHAT YOU HAVE TO SAY, OKAY?

18 A OKAY.

19 Q I'D LIKE TO TALK TO YOU FIRST ABOUT EL SALVADOR
20 PARK. DO YOU KNOW WHERE THAT IS?

21 A YES.

22 Q WHERE IS THAT?

23 A I DON'T KNOW THE STREETS.

24 Q IS IT OVER ON CIVIC CENTER, JUST DOWN THE STREET
25 FROM THIS COURTHOUSE?

26 A I THINK SO.

1 Q OKAY. AND HOW DO YOU KNOW ABOUT EL SALVADOR
2 PARK? IS THAT A PARK YOU'VE BEEN IN BEFORE?

3 A WE USED TO PLAY BASEBALL.

4 Q OKAY. WHAT I'D LIKE TO TALK TO YOU ABOUT
5 SPECIFICALLY IS YOU BEING IN EL SALVADOR PARK IN THE
6 AFTERNOON HOURS OF AUGUST 10TH OF 2004, OKAY?

7 WERE YOU IN THE PARK?

8 A I WAS -- WHEN?

9 Q WERE YOU IN THE PARK THAT DAY?

10 A NO. I WAS PLAYING HANDBALL.

11 Q WHERE IS THE HANDBALL COURTS?

12 A IN THE MIDDLE OF THE PARK, LIKE, ON THE END.

13 Q SO YOU WERE IN THE PARK; YOU WERE JUST PLAYING
14 HANDBALL?

15 A YEAH.

16 Q WHO WAS WITH YOU AT THAT TIME?

17 A ME AND MY BROTHER.

18 Q WHAT'S YOUR BROTHER'S NAME?

19 A JOSEPH.

20 Q JOSEPH CONTRERAS?

21 A YES.

22 Q HOW OLD IS YOUR BROTHER?

23 A I DON'T KNOW.

24 Q IS HE YOUNGER THAN YOU OR OLDER THAN YOU?

25 A OLDER.

26 Q WERE YOU IN THE PARK WITH ANYBODY ELSE THAT

1 AFTERNOON?

2 A PEOPLE THAT JUST PLAY HANDBALL.

3 Q WERE YOU AT THE HANDBALL COURTS WITH ANYBODY ELSE
4 THAT AFTERNOON?

5 A YEAH, BUT I DON'T KNOW THE PEOPLE THOUGH.

6 Q OKAY. I'D LIKE TO ASK YOU A FEW NAMES AND ASK
7 YOU IF YOU KNOW THESE PEOPLE.

8 DO YOU KNOW WHO FRANCISCO LOPEZ IS, OR,
9 FRANK LOPEZ.

10 A YES.

11 Q WHO IS FRANK LOPEZ?

12 A MY COUSIN.

13 Q WHAT ABOUT SEVERO DE LA RIVA, DO YOU KNOW THAT
14 PERSON?

15 A YES.

16 Q WHO IS HE?

17 A COUSIN.

18 Q DID YOU SEE FRANK LOPEZ IN THE PARK THAT
19 AFTERNOON?

20 A YES.

21 Q WHERE DID YOU SEE FRANK LOPEZ?

22 A I DON'T REMEMBER.

23 Q WAS IT AT THE HANDBALL COURTS OR AT A DIFFERENT
24 AREA OF THE PARK?

25 A I DON'T REMEMBER WHERE I SEEN HIM.

26 Q WHAT ABOUT SEVERO DE LA RIVA, WAS HE IN THE PARK

1 THAT AFTERNOON?

2 A YES.

3 Q DO YOU REMEMBER WHERE YOU SAW HIM?

4 A NO.

5 Q BY THE WAY, YOUR COUSINS, DO THEY HAVE NICKNAMES
6 THAT YOU'RE AWARE OF?

7 A NO, I DON'T.

8 Q DO YOU KNOW FRANK LOPEZ AS SOMEBODY BY THE NAME
9 OF LITTLE SPEEDY?

10 A I DON'T REMEMBER.

11 Q HOW LONG HAVE YOU KNOWN YOUR COUSIN FRANK?

12 A SINCE I WAS BORN.

13 Q YOU EVER REFER TO HIM AS LITTLE SPEEDY BEFORE?

14 A NO.

15 Q WHAT ABOUT SEVERO DE LA RIVA, YOU EVER REFER TO
16 HIM BY ANY NICKNAME?

17 A I DON'T REMEMBER.

18 Q YOU HEARD OF A GROUP CALLED F-TROOP?

19 A YES.

20 Q DO YOU KNOW THEM TO BE A GANG?

21 A I HEARD THEY'RE A GANG.

22 Q HOW LONG HAVE YOU KNOWN OF F-TROOP?

23 A I DON'T REMEMBER.

24 Q WELL, HAS IT BEEN A FEW YEARS OR A FEW MONTHS, DO
25 YOU KNOW?

26 A PROBABLY A FEW MONTHS.

1 Q DO YOU HAVE ANY FRIENDS OF YOURS WHO ARE IN
2 F-TROOP?

3 A NO.

4 Q NONE OF YOUR FRIENDS HAVE EVER TOLD YOU THEY'RE
5 IN F-TROOP?

6 A NO.

7 Q WHAT ABOUT THE DEFENDANT OVER HERE IN THE BLUE
8 SHIRT, DO YOU KNOW THAT PERSON?

9 A YES.

10 Q WHO IS THAT?

11 A I CAN'T REMEMBER HIS NAME.

12 Q DO YOU KNOW HIM BY A NICKNAME OR ANYTHING?

13 A NO.

14 Q HOW LONG HAVE YOU KNOWN THE PERSON?

15 A I HARDLY TALK TO HIM. I - HE USED TO LIVE AROUND
16 THE AREA.

17 Q I'M SORRY?

18 A HE USED TO LIVE AROUND THE AREA SO, LIKE, HI,
19 BYE.

20 Q I WANT TO TAKE YOU BACK TWO YEARS BACK, IN YOUR
21 MIND TWO YEARS NOW, BACK IN AUGUST OF 2004. DO YOU REMEMBER
22 HOW LONG IT WAS THAT YOU KNEW THE DEFENDANT?

23 A I DON'T REMEMBER.

24 Q MAYBE A COUPLE MONTHS, A YEAR, DO YOU RECALL?

25 A I HAD KNOWN HIM. I JUST SAID, LIKE, HI, BYE.

26 Q DO YOU REMEMBER WHERE YOU MET HIM?

1 A HUH-UH.

2 Q IS THAT A NO?

3 A I DON'T REMEMBER.

4 Q YOU DON'T CLAIM F-TROOP; IS THAT TRUE?

5 A NO.

6 Q DO YOU BELONG TO ANY GANG?

7 A NO.

8 Q ON AUGUST 10TH OF 2004, DID YOU SEE A GUN IN
9 EL SALVADOR PARK?

10 A I DON'T REMEMBER.

11 Q DID YOU SEE YOUR COUSIN FRANK WITH A GUN IN
12 EL SALVADOR PARK?

13 A I DON'T REMEMBER.

14 Q DID YOU SEE YOUR COUSIN FRANK SHOWING A GUN TO
15 ANYBODY IN EL SALVADOR PARK?

16 A I DON'T REMEMBER.

17 Q DID YOU SEE YOUR COUSIN FRANK SHOWING A GUN TO
18 YOUR OTHER COUSIN SEVERO DE LA RIVA IN EL SALVADOR PARK?

19 A I DON'T REMEMBER.

20 Q DID YOU SEE YOUR COUSIN FRANK SHOWING A GUN TO
21 THE PERSON IN THE BLUE SHIRT HERE WHOSE NAME YOU DON'T KNOW?

22 A I DON'T REMEMBER.

23 Q THE PERSON IN THE BLUE SHIRT, I'M JUST GOING TO
24 REFER TO HIM AS MR. REYES AT THIS POINT IN TIME. WAS
25 MR. REYES A FRIEND OF YOURS BACK THEN?

26 A NO. I JUST, LIKE, HI, BYE. THEY'RE -- JUST SEE

1 HIM.

2 Q IS HE A FRIEND OF YOURS NOW?

3 A NO.

4 Q DO YOU KNOW HIS LITTLE BROTHER EDDIE?

5 A I MET HIM JUST, LIKE, HI, BYE. HE WOULD JUST GO
6 HIS OWN WAY.

7 Q HOW MANY TIMES DO YOU THINK YOU'VE DONE THIS HI,
8 BYE THING WITH THE PERSON SEATED HERE IN COURT?

9 A LIKE, TWO OR THREE TIMES.

10 Q WHAT ABOUT HIS LITTLE BROTHER EDDIE?

11 A ABOUT THE SAME.

12 Q ARE YOU CERTAIN THAT YOU DON'T REMEMBER SEEING A
13 GUN IN THE PARK THAT DAY?

14 A YES, I DON'T REMEMBER.

15 Q DO YOU REMEMBER TALKING TO THE SANTA ANA POLICE
16 DEPARTMENT ABOUT A GUN IN THE PARK?

17 A I REMEMBER TALKING TO THEM, BUT I DON'T REMEMBER
18 WHAT I SAID.

19 Q YOU REMEMBER TALKING TO THEM.

20 DO YOU REMEMBER WHO YOU SPOKE WITH?

21 A NO.

22 Q DO YOU REMEMBER WHERE THAT CONVERSATION TOOK
23 PLACE?

24 A IN THE SCHOOL.

25 Q AT WHICH SCHOOL WAS THAT?

26 A I THINK WILLARD.

1 Q AND AT THE TIME THAT YOU WERE SPEAKING WITH THE
2 POLICE OFFICERS WERE YOU BEING TRUTHFUL WITH THEM?

3 A I DON'T REMEMBER WHAT I SAID.

4 Q I UNDERSTAND YOU DON'T REMEMBER RIGHT NOW WHAT
5 YOU SAID. BUT WERE YOU BEING TRUTHFUL WITH THE POLICE WHEN
6 YOU WERE TALKING WITH THEM?

7 A I DON'T KNOW.

8 Q DID YOU HAVE A REASON TO LIE TO THEM?

9 A NO.

10 Q WERE YOU TRYING TO PROTECT ANYBODY AT THAT POINT
11 IN TIME?

12 A NO.

13 Q ARE YOU TRYING TO PROTECT ANYBODY RIGHT NOW?

14 A NO.

15 Q SO AT THE TIME THAT YOU WERE SPEAKING TO THE
16 POLICE OFFICERS AT YOUR SCHOOL, DO YOU KNOW WHETHER YOU WERE
17 LYING TO THEM?

18 A I DON'T KNOW.

19 Q THE DEFENDANT, WHO I TOLD YOU HIS NAME WAS
20 MR. REYES, WAS HE IN THE PARK WITH YOU ON AUGUST 10TH OF
21 2004?

22 A I DON'T REMEMBER.

23 Q DO YOU REMEMBER DESCRIBING FOR THE POLICE
24 OFFICERS A PARTICULAR GUN THAT YOU SAW THAT DAY IN THE PARK?

25 A I DON'T REMEMBER.

26 Q DO YOU REMEMBER GIVING A SPECIFIC DESCRIPTION

1 ABOUT THAT GUN?

2 A NO, I DON'T REMEMBER.

3 Q DO YOU REMEMBER SEEING YOUR COUSIN FRANK ON A
4 BICYCLE IN THE PARK THAT DAY?

5 A NO. IT'S BEEN A WHILE BACK. I DON'T REMEMBER.

6 Q DO YOU REMEMBER SEEING A COUSIN SEVERO DE LA RIVA
7 ON A BICYCLE IN THE PARK THAT DAY?

8 A I DON'T REMEMBER.

9 Q DO YOU REMEMBER SEEING MR. REYES?

10 A I DON'T REMEMBER.

11 Q DO YOU REMEMBER SEEING HIM ON A BICYCLE?

12 A NO.

13 Q LET'S JUMP FORWARD AT THIS POINT IN TIME.

14 DO YOU REMEMBER MEETING UP WITH MR. REYES AND HIS
15 LITTLE BROTHER EDDIE OVER ON 12TH AND ENGLISH LATER ON THAT
16 AFTERNOON?

17 A I CAN'T REMEMBER.

18 Q THIS IS NOT IN THE PARK. IT'S NEAR THE PARK, BUT
19 IT'S NOT IN THE PARK. DO YOU KNOW WHERE 12TH AND ENGLISH
20 IS?

21 A I THINK I KNOW.

22 Q OKAY. DO YOU RECALL GETTING INTO A FIGHT WITH
23 ANYBODY?

24 A I DON'T REMEMBER.

25 Q DO YOU GET INTO A LOT OF FIGHTS?

26 A NO.

1 Q HAVE YOU EVER GOTTEN INTO A FIGHT?

2 A I DON'T -- NO, JUST AN ARGUMENT.

3 Q NEVER GOT INTO A FIST FIGHT?

4 A (WITNESS NODS HEAD IN THE NEGATIVE.)

5 Q NEVER HIT ANYBODY WITH YOUR FISTS OR ANYTHING
6 LIKE THAT?

7 A (WITNESS NODS HEAD IN THE NEGATIVE.)

8 THE COURT: I NEED AN ANSWER. WAS THAT A NO?

9 THE WITNESS: YEAH. NO.

10 MR. BROTT: I HAVE AN OBJECTION; IT'S IRRELEVANT.

11 THE COURT: WELL, THE LAST QUESTION THAT HE'S NEVER HIT
12 ANYONE; IS THAT --

13 MR. BROTT: THE WHOLE LINE OF QUESTIONING ABOUT
14 PREVIOUS FIGHTS.

15 THE COURT: OVERRULED.

16 BY MR. GELLER:

17 Q AND WHAT I WANT TO TALK TO YOU AGAIN ABOUT IS
18 SOMETHING THAT YOU MAY OR MAY NOT REMEMBER HAPPENED ON 12TH
19 AND ENGLISH. DO YOU REMEMBER SEEING MR. REYES AND HIS
20 BROTHER ON BICYCLES THAT AFTERNOON?

21 A I DON'T REMEMBER.

22 Q DO YOU REMEMBER SEEING MR. REYES APPROACH
23 SOMEBODY OUT ON THE STREET?

24 A NO.

25 Q DO YOU REMEMBER HEARING MR. REYES SAY SOMETHING
26 TO SOMEBODY HE APPROACHED OUT ON THE STREET?

1 A NO.

2 Q DO YOU REMEMBER CHASING THAT PERSON?

3 A NO.

4 Q DO YOU REMEMBER SEEING MR. REYES CHASE THAT
5 PERSON?

6 A NO.

7 Q DO YOU KNOW WHAT A HIT-UP IS?

8 A WHAT?

9 Q DO YOU KNOW WHAT A HIT-UP IS?

10 A HIT-UP?

11 Q YEAH, A HIT-UP.

12 A HIT-UP?

13 Q A HIT-UP. DO YOU KNOW WHAT A HIT-UP IS?

14 A WHAT DO YOU MEAN BY "HIT-UP."

15 Q HAVE YOU EVER HEARD ANYBODY SAY, "WHERE ARE YOU
16 FROM?"

17 A NO.

18 Q NEVER HEARD THOSE WORDS?

19 A IN MOVIES.

20 Q I'M SORRY?

21 A ON MOVIES.

22 Q HAVE YOU EVER HEARD ANYBODY SAY, "WHAT GANG DO
23 YOU CLAIM?"

24 A NO, ONLY ON MOVIES.

25 Q "WHAT BARRIO ARE YOU FROM?" YOU EVER HEARD THAT?

26 A NO.

1 Q DO YOU REMEMBER SEEING MR. REYES WITH A GUN AT
2 12TH AND ENGLISH THAT AFTERNOON?

3 A I DON'T REMEMBER.

4 Q DO YOU REMEMBER SEEING HIM POINT A GUN AT
5 SOMEBODY THAT AFTERNOON?

6 A I DON'T REMEMBER.

7 Q DO YOU REMEMBER RUNNING AWAY FROM THAT FIGHT?

8 A I DON'T REMEMBER.

9 MR. GELLER: I JUST NEED A MOMENT, YOUR HONOR.

10 THE COURT: ALL RIGHT.

11 (PAUSE IN PROCEEDINGS.)

12 MR. GELLER: YOUR HONOR, I'D ASK THAT THIS NEXT EXHIBIT
13 BE MARKED AS PEOPLE'S NEXT IN ORDER.

14 THE COURT: I'M SHOWING 17.

15 THE CLERK: 18, YOUR HONOR.

16 THE COURT: MY CLERK SAYS IT'S 18. WE'LL TAKE HER WORD
17 FOR IT.

18 (WHEREUPON, EXHIBIT NO. 18 IS MARKED
19 FOR IDENTIFICATION.)

20 BY MR. GELLER:

21 Q MR. CONTRERAS, I'D LIKE TO SHOW YOU -- THIS IS
22 JUST A PHOTOCOPY OF SOME PEOPLE. TAKE A LOOK AT IT.
23 THERE'S THREE PHOTOS. THEY'RE KIND OF SMALL. THEY'RE
24 PROBABLY TWO INCHES BY TWO INCHES. I REALIZE IT'S NOT VERY
25 GOOD QUALITY.

26 WE'LL START WITH THE BOTTOM ONE. DO YOU

1 RECOGNIZE WHO IS IN THAT PHOTOGRAPH THERE ON THE BOTTOM OF
2 THAT PAGE?

3 A HUH-UH.

4 Q YOU DON'T?

5 A (WITNESS NODS HEAD IN THE NEGATIVE.)

6 Q DO YOU SEE WHERE IT SAYS, KIND OF GOING FROM THE
7 BOTTOM TO THE TOP OF THE PAGE, IT SAYS THE WORD "FRANK;" DO
8 YOU SEE THAT?

9 A UH-HUH.

10 Q YES?

11 A YES.

12 Q OKAY. DID YOU WRITE THAT?

13 A I DON'T REMEMBER.

14 Q DOES THAT LOOK LIKE YOUR HANDWRITING, SIR?

15 A NO, IT DOESN'T LOOK LIKE IT.

16 Q YOU DIDN'T WRITE THAT AT THE SANTA ANA POLICE
17 DEPARTMENT -- OR, ACTUALLY, THAT WOULD BE AT WILLARD
18 ELEMENTARY. WILLARD MIDDLE SCHOOL. YOU DIDN'T WRITE THAT?

19 A I DON'T REMEMBER.

20 Q OKAY. THERE'S A PICTURE IN THE MIDDLE HERE, DO
21 YOU SEE THAT PICTURE, THE PERSON IN THAT PICTURE?

22 A UH-HUH.

23 Q I REALIZE THAT'S NOT THE GREATEST QUALITY AGAIN,
24 BUT DO YOU KNOW WHO THAT PERSON IS?

25 A CAN'T REALLY SEE, LIKE, TELL.

26 Q ISN'T THAT YOUR COUSIN SEVERO DE LA RIVA?

1 A CAN'T REALLY TELL. IT'S A FADED PICTURE.

2 Q YOU SEE WHERE IT SAYS "SEVERO" RIGHT THERE NEXT
3 TO THE PHOTOGRAPH?

4 A UH-HUH.

5 Q DID YOU WRITE THAT, SIR?

6 A I DON'T REMEMBER.

7 Q OKAY. AND THEN AT THE VERY TOP HERE THERE'S A
8 PHOTOGRAPH. YOU SEE THAT PHOTO THERE?

9 A (NO AUDIBLE RESPONSE.)

10 Q IS THAT YES?

11 A YES.

12 Q DO YOU KNOW WHO THAT PERSON IS?

13 A HUH-UH.

14 Q DOES THAT PERSON LOOK LIKE THE PERSON WHO IS
15 SEATED OVER THERE AT COUNSEL TABLE IN THE BLUE SHIRT?

16 A DON'T LOOK LIKE HIM.

17 Q DID YOU WRITE "ANDY" NEXT TO THAT? IS THAT YOUR
18 WRITING?

19 A I DON'T REMEMBER.

20 Q OKAY. YOU TESTIFIED ALREADY THAT YOU KIND OF
21 HAVE A RELATIONSHIP WITH THE GUY IN THE BLUE SHIRT HERE, THE
22 DEFENDANT, KIND OF A HI/BYE RELATIONSHIP. YOU'VE SEEN HIM
23 MAYBE A COUPLE TIMES BEFORE. IS THAT ACCURATE?

24 A YEAH.

25 Q YOU DON'T CONSIDER HIM A FRIEND?

26 A NO.

1 Q HAVE YOU EVER HUNG OUT WITH HIM BEFORE?

2 A NO.

3 Q NEVER DONE ANYTHING WITH HIM, NEVER JUST DONE ANY
4 THINGS THAT FRIENDS DO?

5 A NO.

6 MR. GELLER: I HAVE NOTHING FURTHER AT THIS TIME,
7 YOUR HONOR.

8 THE COURT: CROSS-EXAMINATION.

9 CROSS-EXAMINATION

10 BY MR. BROTT:

11 Q MR. CONTRERAS, WHEN YOU WERE TALKING TO THE
12 POLICE -- YOU REMEMBER TALKING TO THE POLICE THOUGH, DON'T
13 YOU?

14 A I REMEMBER TALKING TO THEM.

15 Q YOU WERE 12 YEARS OLD, WEREN'T YOU?

16 A I DON'T REMEMBER HOW OLD I WAS.

17 Q WELL, WHAT'S YOUR BIRTHDAY?

18 A 11/7/91.

19 Q 11/7/91. SO DO YOU KNOW HOW OLD YOU WERE ON THE
20 13TH OF AUGUST, 2004?

21 A I THINK I WAS 12.

22 Q ALL RIGHT. SO IF YOU WERE 12 YEARS OLD, WHAT
23 GRADE WERE YOU IN THEN?

24 A I THINK 6TH GRADE.

25 Q OKAY. AND DO YOU TAKE SPECIAL CLASSES?

26 A YES.

1 Q WHAT KIND OF SPECIAL CLASSES DO YOU TAKE?

2 A R.S.P.

3 Q DO YOU KNOW WHAT R.S.P. STANDS FOR?

4 A NO.

5 Q HAVE YOU EVER HEARD ANYBODY SAY "RESOURCE
6 SPECIALIST"?

7 A HUH-UH.

8 Q OR DO YOUR TEACHERS SOMETIMES CALL YOU REALLY
9 SPECIAL PEOPLE?

10 A (NO AUDIBLE RESPONSE.)

11 Q NO?

12 A I HEARD OF RETARDED STUPID PEOPLE.

13 Q HEARD OF WHAT?

14 A RETARDED STUPID PEOPLE.

15 Q IS THAT LIKE A JOKE?

16 A I DON'T KNOW. THEY JUST SAY IT.

17 Q BECAUSE YOU'RE IN R.S.P.?

18 A YEAH.

19 Q DO YOU HAVE TROUBLE IN SCHOOL?

20 A YEAH.

21 Q SO THEY PUT YOU IN THESE SPECIAL CLASSES?

22 A YEAH.

23 Q AND DO YOU HAVE TROUBLE WITH YOUR SCHOOL WORK?

24 A YES, SOMETIMES.

25 Q AND DO YOU HAVE TROUBLE REMEMBERING STUFF THAT
26 YOU'RE SUPPOSED TO REMEMBER WHEN YOU COME TO SCHOOL?

1 A YES.

2 Q AND YOUR GRADES ARE NOT SO GOOD BECAUSE YOU CAN'T
3 REMEMBER SO GOOD; IS THAT TRUE?

4 A WELL, I HAVE GOOD GRADES.

5 Q YOU HAVE GOOD GRADES?

6 A (WITNESS NODS HEAD IN THE AFFIRMATIVE.)

7 Q BUT YOU'RE IN SPECIAL CLASSES BECAUSE YOU HAVE
8 PROBLEMS WITH YOUR STUDIES?

9 A YES.

10 Q AND YOU HAVE PROBLEMS WITH YOUR MEMORY?

11 A YES.

12 Q AND WERE YOU IN THOSE SPECIAL CLASSES BACK WHEN
13 YOU WERE 12?

14 A YES.

15 Q HOW LONG HAVE YOU BEEN IN THE SPECIAL CLASSES FOR
16 YOUR LEARNING PROBLEMS?

17 A I THINK, LIKE, SINCE 1ST GRADE.

18 Q DO YOU REMEMBER WHEN WERE YOU DOWN AT THE POLICE
19 DEPARTMENT, DO YOU REMEMBER DURING THE INTERVIEW THAT YOU
20 WERE CRYING?

21 A I DON'T REMEMBER.

22 Q YOU DON'T REMEMBER THAT THE POLICEMAN MADE YOU
23 CRY OR SOMETHING?

24 A NO.

25 Q OR SOMETHING MADE YOU CRY?

26 A I DON'T REMEMBER.

1 Q WERE YOU SCARED WHEN YOU WERE AT THE POLICE
2 DEPARTMENT -- EXCUSE ME. YOU WEREN'T AT THE POLICE
3 DEPARTMENT. WERE YOU SCARED WHEN YOU WERE INTERVIEWING WITH
4 THE POLICE?

5 A I CAN'T REMEMBER.

6 Q ARE YOU SCARED NOW?

7 A A LITTLE BIT.

8 Q WHAT ARE YOU SCARED OF?

9 A JUST NERVOUS.

10 MR. BROTT: YOUR HONOR, I THINK WE NEED TO HAVE A
11 QUICK, VERY QUICK SIDEBAR.

12 THE COURT: WITH OR WITHOUT THE REPORTER?

13 MR. BROTT: WITH.

14 (THE FOLLOWING PROCEEDINGS WERE HAD AT
15 SIDEBAR OUT OF THE HEARING OF THE JURY:)

16 MR. BROTT: WE'RE OUT OF THE PRESENCE OF THE JURY.

17 YOUR HONOR, JUST SO I MAKE SURE THAT I DON'T GO
18 INTO TERRITORIES THAT THE COURT HAS ORDERED ME NOT TO GO
19 INTO, AND I DON'T REALLY KNOW HOW WE DEAL WITH A SITUATION
20 LIKE THIS WHERE HE'S SAYING HE DOESN'T REMEMBER BUT HE IS
21 TESTIFYING UNDER A GRANT OF IMMUNITY. AND I THINK THAT IF I
22 CHOSE TO ASK THE WITNESS ABOUT THAT, THAT THAT'S SOMETHING
23 THAT THE JURY WOULD BE ENTITLED TO KNOW.

24 THE COURT: I AGREE.

25 MR. GELLER: I AGREE TOO.

26 THE COURT: I HOPE -- I'M TRYING TO MAKE MYSELF AS

1 CLEAR AS I POSSIBLY CAN, THAT THE ISSUE OF WHY HE CHANGED
2 HIS MIND REGARDING TESTIFYING WAS IRRELEVANT AT THIS POINT
3 IN TIME OUTSIDE THE PRESENCE OF THE JURY BECAUSE I WASN'T
4 DEALING WITH A REQUEST THAT I HOLD HIM IN CONTEMPT. AND I
5 DON'T BELIEVE THAT WHAT HAPPENED IN THE PROCEEDING WE HAD
6 YESTERDAY AND EARLY THIS MORNING OUTSIDE THE PRESENCE OF THE
7 JURY IS RELEVANT TO ANY ISSUE ABOUT WHICH HE WOULD TESTIFY.
8 BUT I CERTAINLY DON'T INTEND TO PRECLUDE YOUR INQUIRY INTO
9 ANY AREA THAT COULD ESTABLISH BIAS IN THE TESTIMONY HE'S
10 GIVING NOW.

11 MR. BROTT: OKAY.

12 THE COURT: AND I'M SORRY IF I WAS MISUNDERSTOOD.

13 MR. BROTT: I WANT TO MAKE SURE THAT I DON'T GO INTO
14 UNCHARTERED WATERS.

15 MR. GELLER: I JUST WANT TO MAKE SURE THAT I'M ON THE
16 SAME PAGE WITH THE COURT. MY NEXT WITNESS, WHEN MR. BROTT
17 IS DONE, IS GOING TO BE DETECTIVE ASHBY TO GO OVER THE
18 INTERVIEW.

19 THE COURT: THAT'S FINE. THAT WILL GIVE US MORE TIME
20 WITH YOUR OTHER WITNESS FROM WHOM YOU ANTICIPATE THE SAME
21 PROBLEMS.

22 MR. GELLER: I'M NOT GOING TO CALL EDDIE REYES.

23 THE COURT: WELL, WE HAVE MR. HALL.

24 THE CLERK: MR. HALL MIGHT EVEN BE OUT FRONT, JUDGE.

25 MR. GELLER: OKAY. I HAVE DECIDED, AFTER LISTENING TO
26 THIS AND GETTING OUT WHAT I'LL GET OUT THROUGH

1 INVESTIGATOR ASHBY, THAT I'M COMFORTABLE WHERE I AM. I
2 DON'T NEED TO PUT ON EDDIE REYES.

3 MR. BROTT: WELL, THEN WE NEED TO DEAL WITH THE PEOPLE
4 VS. GREEN ISSUE THAT WE'RE GOING TO OBVIOUSLY HAVE TO
5 CONFRONT. WE CAN DO IT NOW OR DO IT LATER. I THINK THE
6 COURT, IF I'M NOT MISTAKEN, WOULD HAVE TO MAKE A FINDING,
7 BEFORE HE CAN BRING ALL THIS STUFF IN AT THE INTERVIEW, THAT
8 THIS WITNESS IS FEIGNING HIS MEMORY LOSS.

9 MR. GELLER: I AGREE WITH THAT. AND I THINK IT'S
10 CRYSTAL CLEAR HE'S LOOKING AT DOCUMENTS WITH HIS WRITING ON
11 IT WHEN HE LOOKED AT PHOTOGRAPHS OF HIS OWN COUSINS AND HE'S
12 SAYING, I DON'T REMEMBER. I DON'T KNOW. HE DOESN'T
13 REMEMBER -- I'VE GOT A NUMBER OF INCIDENTS WHERE HE IS WITH
14 ANDY REYES AND WE CAN'T ATTRIBUTE THAT TO THE FACT THAT A
15 YEAR AND EIGHT MONTHS OR NINE MONTHS HAS PASSED. THAT IS A
16 WITNESS WHO IS FEIGNING "I DON'T REMEMBER." THIS IS CLASSIC
17 FEIGNING.

18 MR. BROTT: YEAR AND EIGHT MONTHS, A 12 YEAR OLD WHO
19 THE OTHER KIDS AT SCHOOL CALL "RETARD" AND WHO IS IN SPECIAL
20 CLASSES FOR HIS OWN PROBLEMS WITH MEMORY. AND I THINK THAT
21 THAT WOULD BE AN EQUALLY LIKELY REASON WHY HE DOESN'T
22 REMEMBER. AND I'M ASKING THE COURT TO PREVENT THEM FROM
23 BRINGING IN THE OTHER INTERVIEW UNDER PEOPLE VS. GREEN.

24 THE COURT: I WANT TO CONSIDER EVERYTHING THAT YOU HAVE
25 TO SAY. BUT WE PROMISED THE JURY A SHORT SIDEBAR. WHAT I'D
26 LIKE TO DO NOW IS RESUME YOUR CROSS-EXAMINATION, AND I'D

1 ALSO LIKE TO HAVE MY CLERK GO IN THE HALLWAY AND TRY TO
2 RELEASE MR. HALL, BECAUSE NOW IT APPEARS WE HAVE NO NEED FOR
3 HIM TO ADVISE MR. EDDIE REYES. THAT BEING SAID, I WANT TO
4 GO BACK ON THE RECORD WITH THE JURY. AND WHEN THEY RECESS
5 IN ABOUT A HALF-HOUR, I'LL GIVE THEM A HALF AN HOUR SO WE
6 CAN ADDRESS THIS ISSUE.

7 MR. BROTT: WELL, HIS NEXT WITNESS IS ASHBY.

8 MR. GELLER: MY NEXT WITNESS IS ASHBY. AND THEN AFTER
9 THAT IT'S RONDOU WITH THE GANG STUFF, AND I'M DONE.

10 THE COURT: WE'LL GIVE THE JURY A RECESS WHEN YOU'RE
11 DONE WITH YOUR ENTIRE EXAMINATION, BOTH OF YOU, OF
12 MICHAEL CONTRERAS.

13 MR. BROTT: THAT'S NOT MUCH LONGER.

14 THE COURT: SERIOUSLY?

15 MR. BROTT: HE DIDN'T SAY ANYTHING.

16 THE COURT: OKAY. LET'S FINISH THAT.

17 (END OF SIDEBAR DISCUSSION.)

18 (THE FOLLOWING PROCEEDINGS WERE HAD IN
19 OPEN COURT IN THE PRESENCE OF THE JURY:)

20 THE COURT: GO AHEAD.

21 BY MR. BROTT:

22 Q MICHAEL, YOU'RE TESTIFYING HERE TODAY UNDER
23 SOMETHING CALLED A GRANT OF IMMUNITY, AREN'T YOU?

24 A I DON'T KNOW WHAT THAT IS.

25 Q YOU DON'T KNOW WHAT THAT IS. DID SOMEBODY TELL
26 YOU THAT NO MATTER WHAT YOU SAID YOU WEREN'T GOING TO BE

1 PROSECUTED?

2 A WHAT'S PROSECUTE?

3 Q YOU'LL BE CHARGED WITH ANY CRIMES.

4 A NO.

5 Q DID ANYBODY EVER THREATEN TO CHARGE YOU WITH ANY
6 CRIMES IF YOU DIDN'T COME AND TALK?

7 A NO.

8 Q NOBODY EVER DID THAT?

9 A (WITNESS NODS HEAD IN THE NEGATIVE.)

10 Q SO YOU DON'T KNOW IF YOU ARE HERE UNDER A GRANT
11 OF IMMUNITY OR NOT?

12 A I DON'T KNOW.

13 Q DO YOU UNDERSTAND WHAT THAT MEANS?

14 A NOT REALLY.

15 Q DID YOUR COUSIN FRANK EVER TALK ABOUT A GUN THAT
16 HE HAD BACK THEN?

17 A I DON'T REMEMBER.

18 Q DID YOU EVER SEE -- STRIKE THAT.

19 ARE YOU SAYING THAT YOU DON'T REMEMBER ANY OF THE
20 STUFF -- ANYTHING INVOLVING A FIGHT OVER AT 12TH AND
21 ENGLISH?

22 A IT'S BEEN A WHILE BACK.

23 Q IS THAT BECAUSE IT'S BEEN SO LONG OR IS IT
24 BECAUSE YOU HAVE PROBLEMS WITH YOUR MEMORY?

25 A PROBLEMS WITH MY MEMORY.

26 Q DO YOU THINK THAT'S THE REASON?

1 A (WITNESS NODS HEAD IN THE AFFIRMATIVE.)

2 Q YES?

3 A YES.

4 MR. BROTT: I HAVE NOTHING FURTHER.

5 THE COURT: REDIRECT?

6 REDIRECT EXAMINATION

7 BY MR. GELLER:

8 Q MR. CONTRERAS, DID YOU UNDERSTAND WHAT MR. BROTT
9 WAS TALKING ABOUT, ABOUT THIS IMMUNITY?

10 A SOME OF IT.

11 Q DO YOU REMEMBER YOU HAD A LAWYER APPOINTED FOR
12 YOU AND IT WAS MADE CLEAR TO YOU, EITHER BY THE COURT OR BY
13 THE LAWYER, THAT ANYTHING YOU SAID HERE ON THE WITNESS STAND
14 COULDN'T BE USED AGAINST YOU IN ANY PROSECUTION FOR ANY
15 INVOLVEMENT IN THE INCIDENT THAT HAPPENED ON 12TH AND
16 ENGLISH? DID YOU UNDERSTAND THAT, SIR?

17 A YES.

18 Q OKAY. WHEN YOU WERE SPEAKING WITH THE POLICE
19 OFFICERS ABOUT THE INCIDENT -- I REALIZE THAT WAS ONLY ABOUT
20 A MONTH AFTER IT OCCURRED -- DID YOU SHARE WITH THEM AT THAT
21 POINT IN TIME THAT YOU HAD ANY DIFFICULTY REMEMBERING
22 THINGS?

23 A I DON'T REMEMBER.

24 Q ARE YOU CONCERNED ABOUT TESTIFYING HERE IN A GANG
25 HOMICIDE?

26 A EXCUSE ME?

1 Q ARE YOU CONCERNED ABOUT YOUR SAFETY TESTIFYING
2 HERE IN A GANG HOMICIDE TRIAL, A GANG MURDER TRIAL?

3 A I DON'T GET IT.

4 Q ARE YOU WORRIED ABOUT SOMEBODY DOING ANYTHING TO
5 YOU?

6 A NO.

7 Q ARE YOU WORRIED -- DO YOU KNOW WHAT THE TERM
8 "SNITCH" OR "RAT" IS?

9 A I HEARD OF IT.

10 Q WHAT DOES THAT MEAN TO YOU?

11 A WHEN PEOPLE TELL.

12 Q OKAY. WHAT HAPPENS TO PEOPLE WHO TELL IN YOUR
13 MIND?

14 A I DON'T KNOW.

15 Q DO BAD THINGS HAPPEN TO PEOPLE WHO TELL?

16 A I HAVE NO CLUE.

17 Q WELL, HOW LONG HAVE YOU KNOWN ABOUT F-TROOP GANG?

18 A I TOLD YOU, LIKE A COUPLE MONTHS.

19 Q A COUPLE MONTHS FROM RIGHT NOW?

20 A YEAH.

21 Q SO BACK IN AUGUST OF 2004, ALMOST TWO YEARS AGO,
22 YOU HAD NEVER EVEN HEARD OF F-TROOP?

23 A I HEARD OF IT LIKE ONCE OR TWICE.

24 Q JUST ONCE OR TWICE.

25 YOU DIDN'T KNOW YOUR COUSIN FRANK WAS AN F-TROOP
26 GANG MEMBER?

1 A NO.

2 Q YOU DIDN'T KNOW YOUR COUSIN SEVERO WAS A
3 5TH STREET GANG MEMBER?

4 A HUH-UH.

5 Q YOU DIDN'T KNOW YOUR COUSIN SEVERO'S DAD RUNS
6 CHINO PRISON?

7 MR. BROT: OBJECTION; IT'S ARGUMENTATIVE AND ASSUMES
8 FACTS NOT IN EVIDENCE. AND IT'S LEADING.

9 THE COURT: SUSTAINED.

10 MR. GELLER: MAYBE I CAN --

11 MR. BROT: MOVE TO STRIKE IT.

12 MR. GELLER: ON WHICH GROUNDS, YOUR HONOR?

13 THE COURT: BOTH.

14 BY MR. GELLER:

15 Q ARE YOU, AS YOU SIT HERE IN COURT TODAY, WORRIED
16 THAT ANYBODY FROM F-TROOP IS GOING TO TRY TO HURT YOU FOR
17 COMING INTO COURT AND TESTIFYING AGAINST ANDY REYES?

18 A NO.

19 Q IS THAT THE REASON THAT YOU'RE NOT REMEMBERING
20 THINGS?

21 A NO. I DON'T REMEMBER BECAUSE I DON'T REMEMBER.

22 MR. GELLER: I HAVE NOTHING FURTHER.

23 MR. BROT: NOTHING.

24 THE COURT: MAY THE WITNESS BE EXCUSED?

25 MR. GELLER: YES. SUBJECT TO RECALL, PLEASE.

26 THE COURT: OKAY. I'M GOING TO EXPLAIN THAT TO

1 MR. CONTRERAS AFTER THE JURY LEAVES FOR 30 MINUTES. WE NEED
2 TO ADDRESS A MATTER OUTSIDE YOUR PRESENCE. SO, PLEASE DON'T
3 TALK ABOUT THE CASE. HAVE A VERY LONG COFFEE BREAK. TWO
4 CUPS. AND RETURN TO US AT 10:30.

5 (JURY EXCUSED.)

6 (THE FOLLOWING PROCEEDINGS WERE HAD IN
7 OPEN COURT OUT OF THE PRESENCE OF THE JURY:)

8 THE COURT: MICHAEL, I'M TAKING A BREAK TO WORK WITH
9 THE LAWYERS ON SOMETHING, AND I'M GOING TO ASK THAT WHILE
10 WE'RE WORKING ON THIS THAT YOU REMAIN IN THE HALLWAY. BUT
11 THEN I'M PROBABLY GOING TO SEND THE BAILIFF OUT TO TELL YOU
12 AND YOUR MOM THAT YOU CAN GO.

13 AND I NEED YOU TO UNDERSTAND AND I NEED YOUR MOM
14 TO UNDERSTAND, AND I KNOW SHE'S SITTING THERE LISTENING TO
15 ME, THAT IF WE NEED YOU TO COME BACK TO COURT TO TESTIFY,
16 YOU'RE GOING TO GET A CALL, A TELEPHONE CALL FROM MR. GELLER
17 OR MR. BROTT, OR WHOEVER WORKS FOR THEM, TO COME BACK. AND
18 YOU'LL NEED TO RESPOND TO THE TELEPHONE CALL WITHOUT A NEW
19 SUBPOENA. DO YOU UNDERSTAND WHAT I JUST SAID, MICHAEL?

20 THE WITNESS: YES.

21 THE COURT: DO YOU UNDERSTAND, MRS. CONTRERAS?

22 THE MOTHER: YES.

23 THE COURT: WOULD YOU MIND STEPPING INTO THE HALLWAY
24 AND WAITING FOR THE BAILIFF TO TELL YOU WHEN YOU CAN LEAVE
25 FOR THE MORNING.

26 THE MOTHER: SURE.

1 THE COURT: THANK YOU.

2 (PAUSE IN PROCEEDINGS.)

3 THE COURT: THE REASON THAT I WANTED THEM TO WAIT IS
4 BECAUSE I DIDN'T KNOW IF THERE WAS ANY OTHER TESTIMONY THAT
5 EITHER ONE OF YOU WANTED TO ELICIT FROM THEM ON THIS
6 QUESTION OF WHETHER THE PEOPLE CAN PROCEED TO INTRODUCE THE
7 PRIOR INCONSISTENT STATEMENTS THROUGH DETECTIVE ASHBY.

8 ALSO, I THINK IT WOULD BE HELPFUL TO MY
9 DETERMINATION TO KNOW AT LEAST THE SUBSTANCE OF WHAT WAS
10 SAID TO DETECTIVE ASHBY. I WONDER IF WE CAN DO THAT BY
11 PROFFER.

12 MR. GELLER: I CAN DO THAT.

13 THE COURT: WOULD YOU AGREE TO THAT?

14 MR. BROTT: THAT'S FINE.

15 MR. GELLER: I BELIEVE THAT DETECTIVE ASHBY WILL
16 TESTIFY THAT HE DID IN FACT INTERVIEW MR. CONTRERAS ABOUT A
17 MONTH AFTER THE SHOOTING. THEY FIRST SPOKE ABOUT THE
18 INCIDENT AT ENGLISH AND 12TH, WHICH WOULD BE THE INCIDENT
19 WITH MR. NIEVES, JUST SO THE COURT UNDERSTANDS, NOT THE
20 INCIDENT -- NOT ABOUT THE PARK AT THAT POINT, THAT WAS JUST
21 THE 245 WITH THE GUN. THEN THEY SPOKE ABOUT EVERYBODY IN
22 THE PARK PRIOR TO THAT.

23 MR. CONTRERAS SAYS HE DOESN'T CLAIM F-TROOP. HE
24 WAS PLAYING HANDBALL IN THE PARK WITH HIS BROTHER AND WITH
25 HIS COUSINS SEVERO DE LA RIVA AND FRANK LOPEZ AND
26 ANDY REYES. HE KNOWS HIS COUSIN SEVERO WAS FROM 5TH STREET,

1 NOT F-TROOP, AND GOES BY THE NAME OF BOUNCER. WHILE THERE,
2 HE CONSIDERED ANDY REYES, THE DEFENDANT IN THIS CASE, A
3 FRIEND. HE SAW FRANK LOPEZ WITH A HANDGUN. HE DESCRIBED
4 THE GUN WAS A REVOLVER WITH A BROWN HANDLE, DARK-COLORED,
5 ABOUT EIGHT TO NINE INCHES LONG. HE SAID THAT FRANK LOPEZ
6 WAS SHOWING EVERYONE THE GUN AND THEY WERE ALL KIND OF
7 GROUPED TOGETHER AND FRANK WAS SHOWING OFF THE GUN. HE SAW
8 FRANK, ANDY AND SEVERO ALL LEAVE THE PARK ON THEIR BIKES.
9 HE DID NOT GO WITH THEM TO SULLIVAN AND WILLITS.

10 HE MET UP WITH ANDY AND HIS YOUNGER BROTHER EDDIE
11 LATER; THAT'S RIGHT BEFORE THE 12TH STREET INCIDENT
12 HAPPENED. THE THREE OF THEM WERE RIDING THEIR BIKES. HE
13 HEARD ANDY HIT-UP THE KID. THE KID SAID, "FUCK YOU," AND
14 WALKED AWAY FROM ANDY. THEN ANDY YELLED SOME BAD WORDS AT
15 THE KID AND THE KID STARTED RUNNING FOR NO REASON. ANDY
16 YELLED, "GET HIM." "GET HIM." HE RAN AFTER THE KID BECAUSE
17 ANDY TOLD HIM TO. HE SAW ANDY AND THE KID FIGHTING WITH
18 EACH OTHER.

19 HE INITIALLY THOUGHT THAT THE KID HAD A KNIFE.
20 WHEN CONFRONTED BY THE POLICE OFFICERS WITH THE FACT THAT
21 THEY HAD ALREADY INTERVIEWED ANDY AND EDDIE WITH RESPECT TO
22 THAT INCIDENT, HE BACKED OFF ON THE KNIFE STORY AND
23 BASICALLY WASN'T CERTAIN THAT THERE WAS ANY KNIVES THERE.
24 FIGHT ENDED AND EVERYBODY RAN AWAY. HE SAW ANDY DROP THE
25 GUN, IS WHAT HE SAID, DURING THE FIGHT.

26 THAT'S THE SUM AND SUBSTANCE OF WHAT HIS

1 TESTIMONY WOULD BE. THERE MAY BE FURTHER DETAILS, BUT THAT
2 IS ESSENTIALLY IT. I'D ALSO -- I HAVE OTHER BACKGROUND
3 INFORMATION WITH RESPECT TO MICHAEL CONTRERAS. BUT AS FAR
4 AS -- AND HIS ASSOCIATION WITH F-TROOP. BUT AS FAR AS
5 PROFFER OF WHAT I WOULD ANTICIPATE GETTING FROM
6 INVESTIGATOR ASHBY, THAT'S WHAT I'M GOING TO GET.

7 ADDITIONALLY, FROM INVESTIGATOR RONDOU I WOULD
8 HAVE HIM AUTHENTICATE PEOPLE'S 18, WHICH WERE THE THREE
9 PHOTOGRAPHS OF ANDY REYES, SEVERO DE LA RIVA AND
10 FRANK LOPEZ. AND THE WITNESS DID WRITE HIS NAME NEXT TO
11 EACH ONE OF THE PHOTOGRAPHS, IDENTIFYING THE THREE
12 INDIVIDUALS.

13 THE COURT: WITH RESPECT TO THE REPRESENTATIONS YOU'RE
14 MAKING CONCERNING THE WITNESS'S BACKGROUND, WHEN HE
15 TESTIFIED HE WAS NOT A GANG MEMBER WAS THAT TRUTHFUL
16 TESTIMONY, MR. GELLER, BASED ON INFORMATION YOU HAVE?

17 MR. GELLER: I WOULD DEEM THAT TO BE TRUE, THAT HE'S
18 NOT AN ACTIVE PARTICIPANT IN THE F-TROOP GANG. I BELIEVE HE
19 ASSOCIATES WITH F-TROOP GANG AND HE'S BEEN AROUND THEM WHEN
20 CRIMES HAVE BEEN COMMITTED ON BEHALF OF THE F-TROOP GANG
21 WITH OTHER F-TROOP GANG MEMBERS.

22 THE COURT: ALL RIGHT. MR. BROTT, YOU OBJECT TO ANY
23 TESTIMONY BY OFFICER ASHBY CONCERNING THE PRIOR STATEMENTS
24 MADE BY MICHAEL CONTRERAS; FAIR TO SAY?

25 MR. BROTT: YES.

26 THE COURT: AND YOU DID BEGIN YOUR ARGUMENT IN

1 CHAMBERS. AND WE'RE ON THE RECORD IN OPEN COURT NOW, SO
2 LET'S HEAR FROM YOU.

3 MR. BROTT: YES, YOUR HONOR. I THINK, IN ORDER TO MAKE
4 A FINDING THAT THIS COMES IN THAT THE WITNESS IS FEIGNING
5 THIS INFORMATION, IT'S OUR POSITION THAT HE'S 12 AT THE
6 TIME. IT'S BEEN TWO YEARS. HE'S IN SPECIAL CLASSES. HE
7 HAS MEMORY PROBLEMS. HE'S CLEARLY GOT SOME MENTAL HEALTH
8 ISSUES, I THINK. AND HIS LACK OF MEMORY IS NOT FEIGNED AND,
9 THEREFORE, IT'S EQUALLY AS LIKELY THAT HE'S BEING TRUTHFUL
10 ABOUT HIS FEIGNED MEMORY LOSS -- I MEAN, HIS ACTUAL MEMORY
11 LOSS, IT'S LIKELY TO BE TRUE. AND, THEREFORE, THE COURT
12 SHOULD MAKE A FINDING THAT IT IS BASED ON HIS INABILITY TO
13 REMEMBER BECAUSE OF THIS PASSAGE OF TIME AND HIS MENTAL
14 STATE AND THAT THE COURT SHOULD NOT ALLOW ANY IMPEACHMENT OF
15 HIS TESTIMONY THROUGH ASHBY -- OR HERTER? ASHBY.

16 SUBMIT IT.

17 THE COURT: FROM YOU, MR. GELLER?

18 MR. GELLER: I WOULD ALSO ASK THE COURT, INVITE THE
19 COURT TO CONSIDER THE EVIDENCE THAT THIS COURT HEARD
20 YESTERDAY WITH RESPECT TO HIS CONDUCT AND HIS ATTITUDE
21 TOWARDS THIS CASE. AND WITH RESPECT TO THE FACT THAT HE
22 ESSENTIALLY WAS WILLING TO BE REMANDED INTO CUSTODY OR CAME
23 VERY CLOSE TO THAT. I REALIZE THE COURT DIDN'T DO THAT
24 YESTERDAY. BUT THAT'S EVIDENCE, THAT IS EXTRINSIC EVIDENCE
25 THIS COURT CAN USE TO DETERMINE THE MOTIVATION BEHIND THE
26 WITNESS SAYING A LITANY OF "I DON'T REMEMBERS," INCLUDING

1 NOT EVEN LOOKING AT PHOTOGRAPHS OF HIS COUSINS AND SAYING
2 THOSE ARE HIS COUSINS. I THINK IT IS CRYSTAL CLEAR,
3 YOUR HONOR.

4 THE COURT: COULD I SEE PEOPLE'S 18?

5 MR. GELLER: ADDITIONALLY, YOUR HONOR, YESTERDAY HE
6 SAID HE DIDN'T EVEN KNOW THE DEFENDANT. SO NOW WE HAVE AT
7 LEAST ONE LIE THAT HE TOLD. ONE LIE UNDER OATH.

8 MR. BROT: NOT IN FRONT OF THE JURY.

9 MR. GELLER: BUT THAT'S A FACTOR THE COURT CAN
10 CONSIDER.

11 THE COURT: MICHAEL CONTRERAS CLEARLY HAS SOME
12 INTELLECTUAL CHALLENGES. WHEN I EXAMINED HIM BRIEFLY ABOUT
13 HIS EDUCATION AND I ASKED HIM IF HE CAN READ HE SAID, "A
14 LITTLE." HE ACKNOWLEDGES HE'S IN RSP. HE DOESN'T KNOW WHAT
15 IT MEANS EXCEPT, I SUPPOSE, WHAT THE KIDS SAY, "RETARDED"
16 "STUPID" OR WORDS TO THAT EFFECT. HE SAYS HE GETS GOOD
17 GRADES, BUT HE ACKNOWLEDGES THAT HE'S PLACED IN A SPECIAL
18 CLASS BECAUSE HE HAS PROBLEMS IN SCHOOL. HE'S 14 YEARS OLD
19 AND HE'S PROBABLY A LESS-SOPHISTICATED 14 YEAR OLD THAN I
20 WOULD DARE SAY THAT HE'S LESS-SOPHISTICATED THAN THE AVERAGE
21 14 YEARLY OLD. BUT, HE KNOWS THESE GUYS. AND WHEN I SAY
22 "THESE GUYS," I'M TALKING ABOUT THE DEFENDANT, WHO YESTERDAY
23 HE SAID HE DID NOT KNOW AND TODAY HE SAID HE DID. AND THE
24 PERSONS DEPICTED ON PEOPLE'S 18.

25 AND, ASSUMING THAT INVESTIGATOR ASHBY OR
26 INVESTIGATOR RONDOU OR SOMEONE IS GOING TO TESTIFY THAT HE

1 WAS PRESENT WHEN MICHAEL CONTRERAS PUT THE NOTATIONS ON
2 PEOPLE'S 18 AND HE DENIED THAT AND CLAIMED FAILURE OF
3 RECOLLECTION AS TO THAT, THAT'S COMPELLING EVIDENCE, I
4 THINK, FOR THE COURT THAT HE WAS BEING UNTRUTHFUL WITH
5 RESPECT TO HIS ACQUAINTANCESHIP OF THESE INDIVIDUALS, OR
6 RECOGNITION OF THEM ON A XEROX PAPER.

7 I REALLY DON'T THINK HE UNDERSTOOD THE WORD
8 "IMMUNITY," MR. BROTT. THAT WENT THROUGH HIM. BUT I THINK
9 THAT HE DID KNOW AND DID REMEMBER WHAT TRANSPIRED YESTERDAY,
10 JUST HAD DIFFICULTY COMMUNICATING EFFECTIVELY ON THAT POINT.

11 I THINK THAT WHILE HE MAY HAVE SOME FAILURES OF
12 RECOLLECTION BY VIRTUE OF THE FACT THAT TWO YEARS HAVE
13 PASSED AND HE IS AN INTELLECTUALLY-CHALLENGED 14 YEAR OLD
14 WHO WAS THEN 12, ON THE IMPORTANT POINTS OF WHAT HE SAW AND
15 WHO HE WAS WITH AND WHO HE KNOWS, IT WOULD APPEAR TO THE
16 COURT THAT HE IS MINIMIZING AND DECEIVING. AND,
17 CONSEQUENTLY, I SO FIND.

18 ANYTHING FURTHER REQUIRED UNDER THE LAW,
19 MR. GELLER?

20 MR. GELLER: NO. AS LONG AS THE COURT IS -- I THINK
21 COURT MADE IT CLEAR THAT THE COURT FEELS THAT THE "I DON'T
22 REMEMBERS" AND THE SLEW OF "I DON'T KNOWS" ARE FEIGNED. IF
23 THE COURT IS MAKING THAT FINDING, THEN THAT IS SATISFACTORY
24 FOUNDATION.

25 THE COURT: IT APPEARS TO THE COURT THAT THE REPEATED
26 RESPONSES OF FAILURE TO REMEMBER ARE FEIGNED, FEIGNED IN

1 LIGHT OF THE CONCLUSIONS THAT I HAVE JUST ENUNCIATED.

2 ANYTHING FURTHER REQUIRED, MR. BROTT?

3 MR. BROTT: NO.

4 THE COURT: OKAY. LET ME POINT OUT TOO THAT YESTERDAY
5 MR. GELLER FILED A DOCUMENT -- A PETITION FOR AN ORDER
6 COMPELLING TESTIMONY OF A WITNESS USE IMMUNITY. HE SIGNED
7 IT. AND WE FILED IT. HE ALSO SUBMITTED A WAIVER OF HEARING
8 USE IMMUNITY THAT CALLED FOR MICHAEL CONTRERAS'S SIGNATURE.
9 I NEVER SOUGHT TO OBTAIN HIS SIGNATURE. I DON'T THINK THAT
10 MICHAEL CONTRERAS COULD UNDERSTAND WHAT WAS WRITTEN THERE,
11 EVEN THOUGH WE HAVE MR. EADY HERE TO EXPLAIN IT TO HIM.

12 BUT, IN ANY EVENT, IF YOU'RE LOOKING FOR A
13 STIPULATION AS TO THE IMMUNITY GRANT, YOU MIGHT FIND WHAT
14 YOU NEED IN THE DOCUMENT THAT WAS FILED YESTERDAY.

15 DO WE NEED ANYTHING ELSE BEFORE WE GIVE THE
16 REPORTER A BREAK?

17 MR. GELLER: NO. I JUST WOULD LIKE TO NOTE THAT THE
18 COURT INDICATED THAT MR. CONTRERAS COULD LEAVE. AND THAT IS
19 FINE. I DON'T INTEND TO RECALL HIM. BUT 77 OF THE EVIDENCE
20 CODE REQUIRES HIM TO REMAIN ON-CALL, SUBJECT TO RECALL,
21 ESSENTIALLY. SO, I DON'T MIND HIM LEAVING THE COURTROOM.

22 THE COURT: I DID INDICATE TO HIM AND HIS MOTHER THAT
23 THEY'RE ON-CALL AND THAT THEY'LL GET A CALL TO RETURN IF
24 THEY NEED TO RETURN. BUT I WANTED TO KEEP HIM IN THE
25 HALLWAY WHILE WE ARGUED THIS MATTER JUST IN CASE ADDITIONAL
26 TESTIMONY WAS REQUIRED. SO I DON'T THINK WE NEED TO DO

1 ANYTHING MORE ON THAT.

2 MR. GELLER: VERY WELL. THANK YOU.

3 THE COURT: OKAY. WE'RE IN RECESS.

4 (THE FOLLOWING PROCEEDINGS WERE HAD IN
5 OPEN COURT IN THE PRESENCE OF THE JURY:)

6 THE COURT: I WANT TO APOLOGIZE FOR STARTING ON TIME.
7 THANK YOU FOR BEING HERE. WE'RE ALL TOGETHER ONCE AGAIN.

8 MR. GELLER, YOUR NEXT WITNESS.

9 MR. GELLER: I'D LIKE TO RECALL DETECTIVE ASHBY.

10 THE COURT: YOU NEED TO BE RE-SWORN.

11 THE CLERK: DO YOU SOLEMNLY STATE THE EVIDENCE YOU ARE
12 ABOUT TO GIVE IN THE CAUSE NOW PENDING BEFORE THIS COURT
13 SHALL BE THE TRUTH, THE WHOLE TRUTH AND NOTHING BUT THE
14 TRUTH, SO HELP YOU GOD?

15 THE WITNESS: YES.

16 THE CLERK: STATE YOUR NAME, PLEASE.

17 THE WITNESS: RICHARD A. ASHBY: A-S-H-B-Y.

18 THE COURT: YOU MAY INQUIRE.

19 MR. GELLER: THANK YOU.

20 RICHARD A. ASHBY,

21 CALLED AS A WITNESS, HAVING BEEN FIRST DULY SWORN, WAS
22 EXAMINED AND TESTIFIED AS FOLLOWS:

23 DIRECT EXAMINATION

24 BY MR. GELLER:

25 Q DETECTIVE ASHBY, THANKS AGAIN FOR COMING BACK TO
26 COURT. I'D LIKE TO TALK TO YOU ABOUT YOUR INTERVIEW WITH

1 MICHAEL CONTRERAS, OKAY?

2 A SURE.

3 Q ON FRIDAY, SEPTEMBER 10TH OF 2004, SHORTLY BEFORE
4 TEN IN THE MORNING DID YOU INTERVIEW MICHAEL CONTRERAS?

5 A YES.

6 Q AND THAT WAS AT HIS SCHOOL?

7 A YES.

8 Q AND DID YOU SPEAK WITH MICHAEL CONTRERAS ABOUT
9 BOTH WHAT HAPPENED IN EL SALVADOR PARK PRIOR TO THE HOMICIDE
10 AND THEN ALSO THE INCIDENT AT ENGLISH AND 12TH STREET?

11 A YES, WE DID.

12 Q AND DID MR. CONTRERAS HAVE ANY DIFFICULTY
13 REMEMBERING BOTH OF THOSE TWO INCIDENTS?

14 A NO.

15 Q WAS MR. CONTRERAS RESPONSIVE TO YOUR QUESTIONS?

16 A YES, HE WAS.

17 Q DID HE SEEM TO UNDERSTAND WHAT YOU WERE SAYING TO
18 HIM BASED UPON HIS RESPONSES?

19 A YES.

20 Q WAS MR. CONTRERAS AT THAT POINT IN TIME IN FEAR
21 THAT YOU COULD TELL?

22 A UM, I DON'T KNOW. KIDS THAT AGE ARE ALWAYS A
23 LITTLE APPREHENSIVE TO TALK TO THE POLICE. I'M SURE HE WAS
24 A LITTLE APPREHENSIVE.

25 Q ALL RIGHT. FAIR ENOUGH.

26 BY THE WAY, THAT INTERVIEW WAS TAPE RECORDED; IS

1 THAT CORRECT.

2 A YES, IT WAS.

3 Q I'D LIKE TO FIRST START OUT TALKING ABOUT THE
4 PARK INCIDENT. DID YOU SPEAK WITH HIM ABOUT HIM BEING IN
5 EL SALVADOR PARK PRIOR TO THE HOMICIDE?

6 A YES.

7 Q AND DID HE TELL YOU WHAT HE WAS DOING IN THE
8 PARK?

9 A HE SAID HE WAS IN THE PARK WITH HIS BROTHER. I
10 BELIEVE HIS NAME IS JOSEPH. AND THAT HIS COUSIN,
11 SEVERO DE LA RIVA, WAS DOING COMMUNITY SERVICE AT
12 EL SALVADOR PARK THAT DAY AND GOT OFF AROUND 18 -- EXCUSE
13 ME, SIX IN THE EVENING, 6:30 IN THE EVENING, AND THAT THEY
14 WERE PLAYING HANDBALL.

15 Q DID MR. CONTRERAS USE ANY OTHER NAME TO TALK
16 ABOUT HIS COUSIN SEVERO DE LA RIVA?

17 A YES.

18 Q WHAT DID HE TELL YOU?

19 A HE TOLD US THAT SEVERO WAS A GANG MEMBER FROM
20 5TH STREET IN THE CITY OF SANTA ANA AND THAT HIS -- HE'S
21 KNOWN BY A MONIKER OF BOUNCER.

22 Q DID MR. CONTRERAS AT THAT POINT IN TIME HAVE ANY
23 DIFFICULTY IN YOUR MIND REMEMBERING WHO SEVERO DE LA RIVA
24 HIS COUSIN WAS?

25 A NO.

26 Q YOU WEREN'T SHOWING HIM ANY PHOTOGRAPHS AT THAT

1 POINT IN TIME; IS THAT CORRECT?

2 A NO, I DON'T BELIEVE SO.

3 Q OKAY. DID YOU TALK ABOUT FRANCISCO OR
4 FRANK LOPEZ WITH MR. CONTRERAS?

5 A YES.

6 Q AND WHAT DID YOU TALK TO MR. CONTRERAS ABOUT
7 MR. LOPEZ?

8 A HE TOLD US THAT FRANCISCO LOPEZ, WHO HE
9 IDENTIFIED ALSO AS A COUSIN OF HIS AND GOES BY THE MONIKER
10 OF LITTLE SPEEDY FROM F-TROOP, WAS ALSO AT THE PARK WITH
11 HIM, ALONG WITH ANDY REYES. AND THAT MR. LOPEZ HAD IN HIS
12 POSSESSION A REVOLVER THAT HE DESCRIBED AS BEING DARK IN
13 COLOR, WITH A BROWN HANDLE, AND APPROXIMATELY EIGHT TO NINE
14 INCHES IN LENGTH.

15 Q DID MR. CONTRERAS HAVE ANY DIFFICULTY DESCRIBING
16 THE SPECIFICS OF THAT GUN TO YOU?

17 A NO.

18 Q DID HE HAVE ANY DIFFICULTY DESCRIBING WHO WAS
19 PRESENT WHEN FRANK LOPEZ WAS DISPLAYING THE GUN?

20 A NO, HE DID NOT.

21 Q WHO DID HE TELL YOU WAS PRESENT WHEN FRANK LOPEZ
22 WAS DISPLAYING THE GUN?

23 A WELL, THE INDIVIDUALS THAT I JUST NAMED, HIS
24 COUSIN SEVERO DE LA RIVA, HIS BROTHER JOSEPH, HIS BROTHER
25 FRANCISCO LOPEZ, WHO HE SAID HAD THE GUN, ANDY REYES AND
26 HIMSELF.

1 Q DID YOU ASK MICHAEL CONTRERAS ABOUT PEOPLE BY THE
2 NAME OF CHEWY AND BAM BAM?

3 A YES, WE DID.

4 Q AND WHAT DID HE TELL YOU ABOUT THEM?

5 A I BELIEVE HE TOLD US THAT FIRST HE DIDN'T KNOW
6 THEM. AND THEN, I BELIEVE, THAT HE LATER RECANTED THAT AND
7 ADMITTED THAT HE KNEW THEM BECAUSE THEY'RE -- HIS FATHER
8 KNEW THEIR FATHER.

9 Q I'D LIKE TO TALK TO YOU ABOUT -- WELL, DID
10 MICHAEL CONTRERAS INDICATE TO YOU THAT DAY THAT HE CLAIMED A
11 PARTICULAR GANG?

12 A NO, HE DID NOT.

13 Q DID YOU TALK TO HIM AT ALL ABOUT THE F-TROOP
14 GANG?

15 A YES, A LITTLE BIT.

16 Q WHAT DID YOU TALK TO HIM ABOUT?

17 A WE ASKED HIM IF HE WAS CLAIMING F-TROOP. HE SAID
18 NO. WE HAD MENTIONED THAT WE HAD FOUND IN A SEARCH OF HIS
19 RESIDENCE SOME ITEMS THAT APPEARED TO BE ASSOCIATED WITH THE
20 F-TROOP GANG. AND HE STATED THAT THOSE ITEMS PROBABLY
21 BELONG TO HIS BROTHER JOSEPH.

22 Q WAS THERE ANYTHING ELSE THAT YOU SPOKE WITH HIM
23 ABOUT CONCERNING THE PARK AND THE PEOPLE THAT WERE PRESENT
24 AT THE PARK?

25 A OTHER THAN HE SAID THAT MR. LOPEZ SHOWED THE GUN
26 TO EVERYBODY PRIOR TO SEVERO, MR. FRANK LOPEZ AND ANDY REYES

1 LEAVING THE PARK ON THEIR BICYCLES.

2 Q YOU ALSO SPOKE WITH HIM ABOUT THE INCIDENT THAT
3 OCCURRED AT 10TH, 12TH AND ENGLISH AREA; IS THAT CORRECT?

4 A YES.

5 Q WHAT DID HE TELL YOU ABOUT HIS INVOLVEMENT IN
6 THAT INCIDENT?

7 A HE TOLD US THAT HE, ANDY REYES AND EDDIE REYES
8 WERE ON THEIR BICYCLES ON ENGLISH AND THEY SAW THIS
9 INDIVIDUAL COMING DOWN ENGLISH AT WHICH TIME ANDY REYES WENT
10 OVER TO THE INDIVIDUAL TO TALK TO HIM. HE TOLD US THAT
11 ANDY -- HE HEARD ANDY REYES HIT THIS INDIVIDUAL UP, ASKING
12 HIM --

13 Q LET ME INTERRUPT YOU. I'M SORRY. DID YOU
14 ELABORATE ON THE WORDS "HIT-UP" WITH MR. CONTRERAS OR DID
15 YOU JUST ACCEPT -- DID HE USE THOSE WORDS, "HIT-UP"?

16 A I BELIEVE HE DID, YES.

17 Q OKAY. DID YOU ASK HIM WHAT HE MEANT BY A HIT-UP
18 OR DID YOU NOT GO INTO THAT WITH HIM?

19 A YES.

20 Q WHAT DID HE TELL YOU?

21 A HE TOLD US THAT ANDY REYES ASKED THE INDIVIDUAL
22 WHERE HE WAS FROM. THAT THE INDIVIDUAL RESPONDED BY TELLING
23 MR. REYES TO "F" OFF. AND THEN HE SAID MR. REYES YELLED
24 SOME OBSCENITIES AT THE INDIVIDUAL AND THAT THE SUBJECT RAN
25 OFF, AT WHICH TIME MR. REYES YELLED TO HIM, MR. CONTRERAS
26 AND EDDIE REYES, TO "GET HIM." HE SAID AT THAT TIME THEY

1 STARTED CHASING THIS INDIVIDUAL BECAUSE MR. -- BECAUSE
2 ANDY REYES TOLD THEM TO AND THAT WHEN HE ROUNDED THE CORNER
3 AT 12TH STREET AND ENGLISH HE SAW ANDY REYES ENGAGED IN A
4 FIGHT WITH THIS SUBJECT AND SAW THE INDIVIDUAL PUSH ANDY
5 REYES TO THE GROUND. AT FIRST HE SAID THAT THIS SUBJECT HAD
6 A KNIFE AND HAD SCRATCHED MR. REYES WITH THE KNIFE TRYING TO
7 STAB HIM. AND WHEN WE TOLD MR. CONTRERAS THAT WE HAD
8 ALREADY SPOKEN TO ANDY REYES AND EDDIE REYES ABOUT THE
9 INCIDENT, THAT THEY --

10 MR. BROTT: OBJECTION, YOUR HONOR; THIS IS HEARSAY
11 RIGHT HERE.

12 THE COURT: YES, IT WOULD APPEAR SO.

13 MR. BROTT: MOVE TO STRIKE. NONRESPONSIVE.

14 THE COURT: ANYTHING THAT -- JUST GIVE ME A MINUTE.

15 JUST THAT LAST STATEMENT, "WHEN WE TOLD
16 MR. CONTRERAS WE HAD ALREADY SPOKEN TO ANDY REYES AND
17 EDDIE REYES," THAT'S STRICKEN.

18 NEXT QUESTION.

19 BY MR. GELLER:

20 Q YOU WON'T BE ABLE TO REPEAT ANYTHING THAT
21 EDDIE REYES SAID TO YOU.

22 A I UNDERSTAND.

23 Q BUT I'D LIKE YOU TO TELL US WHAT, IF ANYTHING,
24 MR. CONTRERAS DID WHEN YOU CONFRONTED HIM WITH THE KNIFE IN
25 REFERENCE TO CONVERSATIONS YOU HAD WITH EDDIE REYES?

26 A WE TOLD HIM THAT WE KNEW THAT THAT WASN'T TRUE,

1 THE INDIVIDUAL DID NOT HAVE A KNIFE AND THEN HE ADMITTED
2 THAT HE DID NOT SEE A KNIFE. HE SAID DURING THE STRUGGLE
3 ANDY REYES DROPPED THE HANDGUN THAT HE DESCRIBED AS THE SAME
4 GUN HE SAW FRANK LOPEZ SHOWING EVERYBODY AT THE PARK PRIOR
5 TO THIS INCIDENT EARLIER THAT EVENING. HE SAID THE GUN --

6 MR. BROTT: THIS IS NONRESPONSIVE AT THIS POINT.

7 THE COURT: YOU WANT ME TO STOP THE ANSWER AND INVITE
8 ANOTHER QUESTION?

9 MR. BROTT: YES.

10 THE COURT: OKAY.

11 BY MR. GELLER:

12 Q WHAT DID MR. CONTRERAS SAY NEXT?

13 A FROM WHAT POINT?

14 Q AT THE POINT YOU LEFT OFF.

15 A SAID MR. REYES, ANDY REYES, DROPPED A GUN DURING
16 THE FIGHT AND THAT THE SUBJECT THEY WERE FIGHTING WITH
17 PICKED THE GUN UP AND THAT THE THREE OF THEM RAN OFF.

18 Q DID YOU GO INTO MR. CONTRERAS' RELATIONSHIP WITH
19 ANDY REYES AT ALL DURING THE COURSE OF YOUR INTERVIEW?

20 A OTHER THAN THEY WERE FRIENDS.

21 Q OKAY. SO DID MR. CONTRERAS REFER TO ANDY REYES
22 AS A FRIEND OF HIS?

23 A YES.

24 Q DID HE GET ANY MORE SPECIFIC ABOUT THAT
25 FRIENDSHIP WITH YOU?

26 A I DON'T RECALL THAT.

1 Q OKAY.

2 MR. GELLER: MAY I HAVE JUST A MOMENT?

3 (PAUSE IN PROCEEDINGS.)

4 I HAVE NOTHING FURTHER. THANK YOU.

5 THE COURT: CROSS-EXAMINATION?

6 MR. BROTT: YES.

7 CROSS-EXAMINATION

8 BY MR. BROTT:

9 Q DETECTIVE ASHBY, YOU SAID THAT WHEN YOU WERE
10 INTERVIEWING MR. CONTRERAS THAT HE DIDN'T HAVE ANY TROUBLE
11 REMEMBERING WHAT WAS GOING ON; IS THAT YOUR TESTIMONY?

12 A YES.

13 Q AND THAT HE WAS JUST A LITTLE APPREHENSIVE; IS
14 THAT TRUE?

15 A WELL, LIKE I SAID, ANYBODY HIS AGE IS USUALLY
16 APPREHENSIVE. I DON'T RECALL SPECIFICALLY, SO I CAN'T SAY
17 WHETHER HE WAS FEARFUL OR NOT. I'M ASSUMING THAT HE
18 PROBABLY WAS A LITTLE APPREHENSIVE TALKING TO US.

19 Q OKAY. A LITTLE APPREHENSIVE. BUT YOU VIEW THAT,
20 IN RETROSPECT, AS JUST THE NATURAL -- THE NATURAL FEAR
21 FACTOR OF A YOUNGSTER TALKING TO A POLICE OFFICER?

22 A YES.

23 Q OKAY. WAS HE EVASIVE?

24 A AT SOME TIMES, YES.

25 Q AND WOULD YOU -- HOW WOULD YOU CHARACTERIZE HIS
26 DEMEANOR, LET'S SAY, DURING THE FIRST 20 MINUTES OF THE

1 INTERVIEW? WAS HE HAPPY?

2 A I DON'T THINK HE WAS HAPPY TO BE THERE TALKING TO
3 US, NO.

4 Q DIDN'T HE START TO CRY?

5 A I BELIEVE HE DID.

6 Q AND WHEN DID HE START CRYING?

7 A I DON'T RECALL AT WHAT POINT.

8 Q DO YOU REMEMBER WHY HE STARTED CRYING?

9 A NO, I DO NOT.

10 Q ISN'T IT TRUE THAT YOU AND -- WAS IT MR. HERTER?

11 A YES.

12 Q DIDN'T YOU REPEATEDLY TELL HIM THAT YOU DIDN'T
13 THINK HE WAS TELLING YOU THE TRUTH?

14 A YES, THAT'S PROBABLY TRUE.

15 Q AND THAT ALMOST EVERY TIME AFTER YOU TOLD HIM
16 THAT, HE TOLD YOU SOMETHING DIFFERENT; ISN'T THAT TRUE?

17 A THAT'S PROBABLY TRUE TOO.

18 Q AND HE WAS CRYING WHEN HE WAS CHANGING HIS STORY
19 REPEATEDLY, WASN'T HE?

20 A UM, THAT'S PROBABLY TRUE.

21 Q SO IT WASN'T JUST A SMOOTH INTERVIEW WHERE
22 EVERYTHING CAME TUMBLING OUT; IS THAT TRUE?

23 A THAT'S TRUE.

24 Q HE EVENTUALLY TALKED ABOUT WHAT HE HAD SEEN OVER
25 AT THE PARK, TRUE?

26 A YES.

1 Q BUT HE INITIALLY DENIED KNOWING VERY MUCH ABOUT
2 THAT, TRUE?

3 A TRUE.

4 Q AND YOU TOLD HIM THAT YOU TALKED TO OTHER PEOPLE
5 AND THAT YOU KNEW WHAT THE TRUTH WAS AND THAT YOU WANTED HIM
6 TO TELL YOU THAT TRUTH; IS THAT TRUE?

7 A THAT'S PROBABLY TRUE TOO.

8 Q AND, EVENTUALLY, HE TOLD YOU WHAT YOU HAD TOLD
9 HIM YOU BELIEVED TO BE THE TRUTH WAS; ISN'T THAT TRUE?

10 MR. GELLER: OBJECTION; THAT'S VAGUE.

11 THE COURT: I'M GOING TO SUSTAIN THAT. I'M NOT SURE I
12 UNDERSTAND.

13 BY MR. BROTT:

14 Q HE EVENTUALLY TOLD YOU WHAT YOU TOLD HIM YOU
15 BELIEVED THE TRUTH WAS; IS THAT TRUE?

16 A I DON'T QUITE UNDERSTAND THAT QUESTION.

17 Q WELL, HE DIDN'T INITIALLY JUST BLURT OUT
18 EVERYTHING ABOUT WHAT HAPPENED AT THE PARK, DID HE?

19 A NO.

20 Q YOU TOLD HIM YOU KNEW WHAT HAPPENED AT THE PARK,
21 DIDN'T YOU?

22 A YES, PROBABLY.

23 Q AND YOU TOLD HIM WHAT YOU KNEW OR WHAT YOU
24 THOUGHT HAPPENED THERE?

25 A NO, THAT'S NOT TRUE.

26 Q DIDN'T YOU SAY YOU TALKED TO THE OTHER PEOPLE AT

1 THE PARK?

2 A THERE'S A DIFFERENCE BETWEEN SAYING, I TALKED TO
3 THE OTHER PEOPLE, AND TELLING HIM WHAT THEY TOLD US.

4 Q WELL WHEN HE WOULD SAY HE DIDN'T KNOW SOMETHING
5 OR HE WOULD GIVE AN ANSWER THAT YOU THOUGHT WAS EVASIVE, YOU
6 WOULD SAY, "I'VE TALKED TO EVERYBODY ELSE AND I KNOW THAT'S
7 NOT TRUE."

8 A YES, THAT'S TRUE.

9 Q AND THEN HE WOULD CHANGE HIS STORY TO SAY
10 SOMETHING ELSE, EVENTUALLY, CORRECT?

11 A YES.

12 Q AND WHAT HE CHANGED IT TO WAS WHAT YOU HAD
13 INDICATED TO HIM WAS THE TRUTH IN YOUR MIND, CORRECT?

14 MR. GELLER: OBJECTION; THAT'S VAGUE AGAIN.

15 THE COURT: I'M GOING TO OVERRULE.

16 THE WITNESS: YOU'RE GOING TO HAVE TO ASK THE QUESTION
17 AGAIN. I DON'T UNDERSTAND IT.

18 THE COURT: LET ME REPEAT --

19 MR. BROTT: I'LL MOVE ON.

20 THE COURT: OKAY.

21 Q WHAT HE SAID HE SAW AT THE PARK WAS A DISCUSSION
22 OF SOME KIND BETWEEN FRANK, ANDY, SEVERO AND HIMSELF; IS
23 THAT TRUE?

24 A AND HIS BROTHER JOSEPH.

25 Q HIS BROTHER JOSEPH.

26 AND WHERE WERE THEY IN THE PARK WHEN THAT

1 HAPPENED.

2 A HANDBALL COURTS, I BELIEVE, IS WHAT HE INDICATED.

3 Q THEY WERE JUST SITTING AROUND TALKING?

4 A I DIDN'T ASK HIM THAT.

5 Q WELL DID YOU ASK HIM WHAT CONTEXT THE SUBJECT OF
6 THE GUN CAME UP?

7 A NO, I DID NOT.

8 Q DID YOU ASK HIM IF ANDY EVER HAD THE GUN --

9 A NO, I DID NOT.

10 Q -- AT THE PARK?

11 A NO, I DID NOT.

12 Q ALL HE SAID WAS THAT FRANK HAD A GUN, CORRECT?

13 A I BELIEVE SO, YES.

14 Q FRANK AND ONLY FRANK HAD A GUN?

15 A I BELIEVE SO, YES.

16 Q AND THAT NO ONE ELSE AT THE PARK HAD A GUN,
17 CORRECT?

18 A HE -- FRANK IS THE ONLY ONE HE SAID THAT HAD A
19 GUN.

20 Q AND THERE WAS NO DISCUSSION OF WHAT FRANK WAS
21 GOING TO DO WITH THAT GUN, WAS THERE?

22 A THAT'S CORRECT.

23 Q AND THERE WAS NO DISCUSSION ABOUT GOING AND
24 SHOOTING SOMEBODY WITH THAT GUN, WAS THERE?

25 A THAT'S CORRECT.

26 Q AND THERE WAS NO DISCUSSION ABOUT GOING AND

1 HITTING UP ANYBODY WITH THAT GUN, WAS THERE?

2 A HE DIDN'T TELL US THAT THERE WAS, NO.

3 Q WHEN HE USED THE WORDS "HIT-UP," WERE THOSE WORDS
4 HIS OR DO YOU RECALL?

5 A I BELIEVE THEY WERE HIS.

6 Q HE DIDN'T SAY, WHERE YOU FROM, BUT HE USED THE
7 WORD "HIT-UP"?

8 A I BELIEVE HE USED THOSE WORDS WHEN WE WENT TO
9 CLARIFY WHAT HE MEANT BY HIT-UP.

10 Q IN YOUR POLICE REPORT DID YOU NOT PUT IN THE
11 WORDS, QUOTE, "WHERE YOU FROM?" WHEN HE SAID THAT MICHAEL --
12 THAT ANDY -- YOU SAID, ANDY HIT HIM UP SAYING, "WHERE YOU
13 FROM?" WITH QUOTES AROUND WHERE YOU FROM?

14 A WELL, DETECTIVE HERTER PUT IN HIS REPORT,
15 "MICHAEL CONTRERAS STATED THAT ANDY TURNED TOWARDS THE KID
16 AND WENT TO TALK WITH HIM. MICHAEL CONTRERAS HEARD ANDY HIT
17 HIM UP STATING, 'WHERE YOU FROM?' TO THIS KID."

18 Q BUT THE ONLY WORDS IN THAT SENTENCE THAT ARE IN
19 QUOTES ARE "WHERE YOU FROM."

20 A THAT'S CORRECT. I'M PROBABLY MISTAKEN.

21 Q SO IT'S JUST AS LIKELY THAT THE WORDS "HIT-UP"
22 MIGHT HAVE COME FROM DETECTIVE HERTER IN HIS NARRATIVE
23 DESCRIPTION OF THE EVENT?

24 A THAT'S TRUE.

25 Q LET'S GO BACK TO THE PARK. SORRY I SKIPPED
26 AROUND A LITTLE BIT THERE.

1 A THAT'S ALL RIGHT.

2 Q DID MR. CONTRERAS TELL YOU THAT THERE WAS ANY
3 DISCUSSION ABOUT WHERE THEY WERE GOING WHEN THEY LEFT?

4 A NO, DID HE NOT.

5 Q DID HE TELL THAT YOU THERE WAS ANY DISCUSSION
6 ABOUT WHAT THEY WERE GOING TO DO WHEN THEY LEFT?

7 A NO, HE DID NOT.

8 Q DID HE TELL YOU THEY WERE GOING TO GO VISIT A
9 FRIEND, OR THEY WERE GOING TO GO TO RIVAL TERRITORY, OR DID
10 HE TELL YOU ANYTHING ABOUT THAT?

11 A I DON'T THINK HE DID, NO.

12 Q DID HE TELL YOU WHEN IN RELATIONSHIP TO WHEN HE
13 LEFT THE PARK THAT THEY LEFT THE PARK?

14 A IT WAS PRIOR TO HIM LEAVING THE PARK, I BELIEVE.

15 Q THEY LEFT THE PARK -- "THEY" MEANING ANDY AND
16 FRANK AND HIS COUSIN -- THEY LEFT THE PARK BEFORE MICHAEL
17 DID?

18 A YES.

19 Q AND DID HE TELL YOU IF HE LEFT WITH HIS BROTHER
20 JOE OR IF JOE WENT ALONG?

21 A I DON'T RECALL HIM SAYING WHEN HE LEFT THE PARK.

22 Q DID HE TELL YOU ANYTHING THAT YOU HAVEN'T TOLD US
23 ABOUT WHAT WENT ON AT THE PARK?

24 A NOT THAT I CAN RECALL, NO.

25 Q DID HE TELL YOU THAT FRANK HID THE GUN AFTER THE
26 EVENT?

1 A HE TOLD US THAT FRANK TOLD HIM HE HID THE GUN,
2 YES.

3 Q WHERE DID FRANK HIDE THE GUN?

4 A HE TOLD US --

5 MR. GELLER: OBJECTION; THAT CALLS FOR HEARSAY AND
6 SPECULATION.

7 THE COURT: SUSTAINED ON HEARSAY.

8 BY MR. BROTT:

9 Q DID HE TELL YOU WHETHER OR NOT FRANK DISCUSSED
10 THE SHOOTING WITH HIM?

11 A YES.

12 Q WHAT DID HE SAY?

13 A HE SAID --

14 MR. GELLER: OBJECTION; THAT CALLS FOR HEARSAY.

15 THE COURT: SUSTAINED.

16 BY MR. BROTT:

17 Q WHEN HE WAS LATER WITH ANDY, WHEN ANDY SAYS TO A
18 PERSON, WHERE ARE YOU FROM, DID HE TELL YOU WHAT THE
19 RESPONSE OF THE PERSON WAS?

20 A YES.

21 Q WHAT WAS IT?

22 A SAID THE PERSON TOLD MR. REYES, "F" YOU.

23 Q "FUCK YOU"?

24 A YES.

25 Q AND THEY HAD WORDS?

26 A SAID ANDY YELLED SOME OBSCENITIES AT THE

1 INDIVIDUAL AND AT THAT POINT THE GUY TOOK OFF RUNNING.

2 Q AND THEY WENT AFTER HIM AND THE FIGHT --

3 A AND THEY CHASED HIM.

4 Q -- WAS ON?

5 A YES.

6 Q AND HE SAW THAT ANDY HAD BEEN INJURED IN THIS
7 INCIDENT, CORRECT?

8 A SAID THAT HE HAD BEEN SCRATCHED ON THE STOMACH, I
9 BELIEVE, IS WHAT HE SAID.

10 Q AND THAT HE THOUGHT THAT THAT SCRATCH HAD COME
11 FROM A KNIFE?

12 A YES.

13 Q AND THAT HE WAS PERSISTENT WHEN QUESTIONED THAT
14 HE THOUGHT THAT THERE WAS A KNIFE INVOLVED, THAT THE OTHER
15 FELLOW HAD A KNIFE?

16 A THAT HE WAS PERSISTENT?

17 Q YES, THAT MIKE WAS.

18 MIKE CONTRERAS SAID SEVERAL TIMES THE OTHER GUY
19 HAD A KNIFE, DID HE NOT?

20 A I DON'T RECALL HOW MANY TIMES HE SAID IT, BUT,
21 YES, HE DID SAY THAT.

22 Q AND THEN IN ANOTHER INSTANCE OF YOU TELLING HIM
23 THAT YOU TALKED TO SOMEBODY ELSE, YOU TOLD HIM THAT YOU
24 DIDN'T BELIEVE THERE WAS A KNIFE; IS THAT TRUE?

25 A YES, THAT'S TRUE.

26 Q AND HE GOT AS FAR AS SAYING, WELL, I'M NOT SURE

1 ABOUT THE KNIFE; ISN'T THAT WHAT HE SAID?

2 A I DON'T RECALL EXACTLY WHAT HE SAID, NO.

3 MR. BROTT: NOTHING FURTHER.

4 THE COURT: REDIRECT?

5 REDIRECT EXAMINATION

6 BY MR. GELLER:

7 Q ON CROSS-EXAMINATION MR. BROTT ASKED YOU WHETHER
8 OR NOT MR. CONTRERAS CHANGED PARTICULAR PARTS OF HIS STORY.

9 DO YOU REMEMBER WHEN HE WAS ASKING YOU THAT?

10 A YES.

11 Q OKAY. AND ARE THERE SPECIFIC AREAS THAT
12 MR. CONTRERAS CHANGED WITH RESPECT TO HIS STORY IN RESPONSE
13 TO YOUR QUESTIONING HIM?

14 A YES.

15 Q I MEAN, WE JUST TALKED ABOUT THE KNIFE?

16 A YES.

17 Q THAT'S ONE EXAMPLE; IS THAT CORRECT?

18 A YES.

19 Q CAN YOU THINK OF OTHER AREAS?

20 A NOT SPECIFICALLY, BUT I KNOW -- I REMEMBER IN THE
21 INTERVIEW THAT, YES, HE CHANGED HIS STORY.

22 Q WAS THIS A SITUATION WHERE YOU WERE SIMPLY FORCE
23 FEEDING MR. CONTRERAS A BUNCH OF FACTS AND ASKING IF HE
24 AGREED WITH THOSE FACTS?

25 A NO, WE DON'T DO THAT.

26 Q WHY NOT?

1 A BECAUSE IT'S NOT THE WAY YOU INVESTIGATE A CASE.

2 Q HOW DID YOU DO IT IN THIS INSTANCE?

3 A WE LET HIM KNOW WE KNOW IT'S NOT TRUE WHAT
4 THEY'RE SAYING. AND WHEN THE INDIVIDUAL TELLS US WHAT WE
5 KNOW TO BE TRUE, THEN WE KNOW IT'S TRUE. THE TRUTH NEVER
6 CHANGES. SO WHEN YOU -- YOU BASE WHAT THEY'RE SAYING ON THE
7 EVIDENCE THAT IS BEFORE YOU THAT YOU KNOW TO BE TRUE FROM
8 OTHER EVIDENCE THAT YOU'VE GATHERED IN THE CASE.

9 WHEN A PERSON THAT YOU'RE TALKING TO SAYS THE
10 TRUTH, THEN, YOU KNOW IT'S TRUE. WE DON'T TELL THE PERSON,
11 WE KNOW THAT'S NOT TRUE. THIS IS WHAT THEY TOLD US TO BE
12 TRUE. AND THEN FEED THAT PERSON THE INFORMATION. YOU'RE
13 NOT GOING TO GET AN ACCURATE STATEMENT OUT OF THAT PERSON IF
14 YOU DO IT THAT WAY.

15 Q SO, FOR INSTANCE, DID MR. CONTRERAS EVER PUT THE
16 GUN IN ANYBODY ELSE'S HANDS OTHER THAN FRANK LOPEZ WHEN
17 FRANK LOPEZ WAS SHOWING IT TO EVERYBODY AT THE PARK?

18 A ONLY WHEN HE SAID THAT ANDY REYES DROPPED THE GUN
19 IN THE FIGHT UP ON 12TH STREET.

20 MR. GELLER: OKAY. THAT CLEARS IT UP. THANK YOU.

21 THE COURT: RECROSS.

22 RECROSS-EXAMINATION

23 BY MR. BROTT:

24 Q YOU SAY THAT YOU CONFRONTED HIM WITH WHAT YOU
25 KNEW TO BE TRUE -- OR IS THAT A GENERAL STATEMENT, THAT YOU
26 CONFRONT -- YOU CONFRONT SUSPECTS IN GENERAL WITH WHAT YOU

1 KNOW TO BE TRUE? WHICH IS IT?

2 A WELL, WHEN WE KNOW SOMEBODY IS NOT BEING
3 TRUTHFUL, THEN WE TELL THEM, THAT'S NOT TRUE. WE KNOW
4 THAT'S NOT TRUE. WE DON'T CONFRONT THEM WITH WHAT WE KNOW
5 IS THE TRUTH, IF THAT'S WHAT YOU'RE ASKING.

6 IF YOU'RE ASKING IF SOMEBODY LIES TO ME AND I
7 SAY, THAT'S NOT TRUE BECAUSE I KNOW THIS IS THE WAY IT IS,
8 WE DON'T DO IT THAT WAY. I'VE NEVER DONE IT THAT WAY.

9 Q WELL I GUESS MAYBE WHAT I WANT TO KNOW IS HOW DO
10 YOU KNOW SOMETHING TO BE TRUE IF YOU DIDN'T WITNESS IT?

11 A WELL, IT'S CORROBORATED BY THE OTHER EVIDENCE
12 THAT YOU'RE GATHERING IN THE CASE.

13 Q WELL IN THIS INSTANCE, LET'S SAY, WHEN YOU
14 CONFRONTED HIM ABOUT WHAT HAPPENED AT THE PARK AND HE WAS
15 EVASIVE AND YOU SAID YOU KNEW WHAT HAPPENED THERE, DID YOU
16 DO THAT?

17 A SOMETIMES WE DON'T KNOW. SOMETIMES IT'S A ROUST.
18 AND SOMETIMES WE TELL THEM THAT WE KNOW WHEN WE DON'T.

19 Q SO SOMETIMES -- SOMETIMES -- WELL LET'S TALK
20 ABOUT HIM. LET'S NOT TALK ABOUT SOMETIMES. LET'S TALK
21 ABOUT HIM.

22 WHEN YOU TOLD MR. -- YOU TELL MR. CONTRERAS THAT
23 YOU KNEW WHAT HAPPENED AT THE PARK AND THAT HE WAS LYING.

24 A YES.

25 Q DID YOU KNOW WHAT HAPPENED AT THE PARK?

26 A NO, I DON'T BELIEVE WE DID.

1 Q AND SO WHEN YOU SAID TO HIM THAT YOU KNEW WHAT --
2 KNEW IT TO BE TRUE, IT WASN'T TRUE; YOU DIDN'T KNOW WHAT WAS
3 TRUE OR NOT IN THAT INSTANCE, DID YOU?

4 A YOU CONFUSED ME WITH THAT FIRST QUESTION.

5 Q IT'S CONFUSING. IT'S A BAD QUESTION. I CONFUSE
6 MYSELF.

7 A I'M EASILY CONFUSED.

8 Q WELL, I'M GLAD WE ALL FEEL THE SAME WAY.

9 WHEN YOU SAY SOMETHING -- I'M JUST TRYING TO GET
10 BACK TO, WE SAY WHAT WE KNOW TO BE TRUE AND WE CONFRONT THE
11 SUSPECT WITH IT. DID YOU SAY THAT?

12 A WHEN YOU SAY, "WE SAY WHAT WE KNOW TO BE TRUE,"
13 TO ME, THAT'S TELLING THE PERSON WHAT WE KNOW. WE DON'T DO
14 THAT. IF WE KNOW SOMETHING IS NOT TRUE OR WE BELIEVE IT'S
15 NOT TRUE, THEN WE TELL THEM, THAT'S NOT TRUE. WE DON'T SAY
16 WHAT IT IS THAT WE KNOW TO BE TRUE. THAT WOULD BE FEEDING
17 THE PERSON INFORMATION.

18 Q WELL, IN THIS INSTANCE THE INFORMATION THAT YOU
19 HAD CAME FROM WHAT YOU WOULD SAY WERE RELIABLE SOURCES?

20 A THE INFORMATION WE HAD CAME FROM OTHER PEOPLE
21 INVOLVED IN THE CASE.

22 Q AND SOMETIMES PEOPLE LIKE THAT DON'T TELL THE
23 TRUTH?

24 A THAT'S TRUE. SOME PEOPLE DON'T.

25 Q AND GANG MEMBERS ARE IN FACT NOTORIOUS FOR NOT
26 TELLING THE TRUTH?

1 A WELL, THAT'S A GENERALIZATION. I DON'T THINK
2 GANG MEMBERS ARE THE ONLY PEOPLE THAT ARE NOTORIOUS FOR NOT
3 TELLING THE TRUTH. A LOT OF PEOPLE DON'T TELL THE TRUTH.

4 Q I GUESS WHAT I'M GETTING AT IS THAT WHEN
5 MICHAEL CONTRERAS CHANGED HIS STORY AFTER YOU TOLD HIM HE
6 WAS LYING, YOU LED HIM TO BELIEVE THAT YOU KNEW THE TRUTH
7 AND THAT, THEREFORE, HE NEEDED TO CONFORM HIS STORY TO WHAT
8 YOU KNEW TO BE TRUE IN ORDER TO AVOID BEING ACCUSED OF
9 LYING?

10 A I WOULDN'T CHARACTERIZE IT THAT WAY.

11 Q HOW WOULD YOU CHARACTERIZE IT?

12 A I WOULD CHARACTERIZE IT THAT IF HE SAID SOMETHING
13 WE DIDN'T BELIEVE TO BE TRUE, THAT HE NEEDED TO TELL THE
14 TRUTH. NOT CONFORM HIS STATEMENT TO WHAT WE WANTED HIM TO
15 SAY.

16 Q BUT ULTIMATELY AND REPEATEDLY HE DID CHANGE HIS
17 STORY?

18 A THAT'S TRUE.

19 MR. BROTT: NOTHING FURTHER.

20 THE COURT: REDIRECT?

21 MR. GELLER: BRIEFLY.

22 REDIRECT EXAMINATION

23 BY MR. GELLER:

24 Q AS IT RELATES TO JUST, SAY, THE PARK INCIDENT,
25 LET'S NOT TALK ABOUT 12TH AND ENGLISH. LET'S JUST TALK
26 ABOUT MICHAEL CONTRERAS' INTERVIEW WHEN YOU WERE TALKING TO

1 HIM ABOUT FRANK LOPEZ AND THE GUN AT THE PARK. I WANT YOU
2 TO FOCUS ON THAT PORTION OF YOUR INTERVIEW AT THIS POINT,
3 ALL RIGHT?

4 A OKAY.

5 Q OKAY. YOU HAD OTHER INFORMATION PRIOR TO
6 INTERVIEWING MICHAEL CONTRERAS ON SEPTEMBER 10TH, SO A WHOLE
7 MONTH HAD PASSED SINCE THE HOMICIDE THAT YOU WERE IN
8 POSSESSION OF THAT YOU DID NOT SHARE WITH MICHAEL CONTRERAS
9 DURING THAT INTERVIEW; IS THAT ACCURATE?

10 A THAT'S ACCURATE.

11 Q YOU HAD WITNESS STATEMENTS FROM OTHER PEOPLE
12 INVOLVED WHO GAVE YOU WHAT HAPPENED AT THE PARK; IS THAT
13 TRUE?

14 A WELL, WE HAVE WITNESS STATEMENTS FROM OTHER
15 PEOPLE THAT TOLD US THAT THE SUBJECTS INVOLVED IN THIS CASE
16 WERE AT THE PARK PRIOR TO THE MURDER AT WILLITS AND
17 SULLIVAN. I DON'T BELIEVE --

18 MR. BROT: OBJECTION; THIS IS NONRESPONSIVE AT THIS
19 POINT.

20 THE COURT: AS TO WHAT THE OFFICER BELIEVES. I'LL STOP
21 THE ANSWER AND INVITE ANOTHER QUESTION.

22 BY MR. GELLER:

23 Q AT THAT POINT IN TIME DID YOU HAVE INFORMATION
24 THAT FRANK LOPEZ WAS SHOWING THE GUN OFF TO ANDY REYES AND
25 SEVERO DE LA RIVA AND MICHAEL CONTRERAS; WAS THIS THE FIRST
26 YOU HAD HEARD OF THAT?

1 A WE HAD INFORMATION THAT THEY HAD BEEN AT THE PARK
2 PRIOR TO THE SHOOTING. THAT'S WHY WE WENT TO TALK TO
3 MICHAEL CONTRERAS. I DON'T RECALL IF WE HAD INFORMATION
4 SPECIFICALLY THAT MR. LOPEZ WAS SHOWING THE GUN TO THESE
5 INDIVIDUALS PRIOR TO TALKING TO MR. CONTRERAS.

6 Q SO THAT MAY HAVE BEEN THE FIRST TIME YOU HEARD OF
7 IT; IT MAY NOT HAVE BEEN THE FIRST TIME YOU HEARD OF?

8 A IT MAY HAVE BEEN THE FIRST TIME I HEARD OF IT.

9 Q OKAY. VERY WELL. THANK YOU.

10 MR. BROTT: NOTHING FURTHER.

11 THE COURT: MAY THE WITNESS BE EXCUSED AGAIN?

12 MR. GELLER: YES.

13 MR. BROTT: YES.

14 THE COURT: THANK YOU VERY MUCH, DETECTIVE ASHBY. YOU
15 ARE EXCUSED.

16 THE WITNESS: THANK YOU.

17 THE COURT: MR. GELLER?

18 MR. GELLER: THANK YOU.

19 WE'D LIKE TO RECALL DETECTIVE RONDOU. I'M NOT
20 CERTAIN IF HE WAS EVER EXCUSED OR NOT.

21 THE COURT: HE WAS NOT.

22 THAT MEANS YOU'RE STILL SWORN.

23 THE WITNESS: YES, MA'AM.

24 THE COURT: OKAY. GO AHEAD.

25 MR. GELLER: THANK YOU.

26 /////

1 DAVID RONDOU,
2 CALLED AS A WITNESS, HAVING BEEN PREVIOUSLY DULY SWORN, WAS
3 EXAMINED AND TESTIFIED AS FOLLOWS:

4 DIRECT EXAMINATION

5 BY MR. GELLER:

6 Q WHAT I'D LIKE TO START OUT WITH HAS BEEN MARKED
7 AS PEOPLE'S 18 FOR IDENTIFICATION. I'D LIKE TO TALK TO YOU
8 ABOUT THIS, AND I'D LIKE TO TALK TO YOU BRIEFLY ABOUT YOUR
9 INTERVIEW WITH MICHAEL CONTRERAS. OKAY?

10 A OKAY.

11 Q WHEN DID THAT TAKE PLACE?

12 A I BELIEVE IT WAS SEPTEMBER 17TH, ABOUT A WEEK
13 AFTER DETECTIVE ASHBY AND HERTER TALKED TO MICHAEL THE FIRST
14 TIME.

15 Q AND DID YOU KIND OF RE-GO OVER THE FACTS WITH HIM
16 OR WAS THE PURPOSE OF THAT INTERVIEW SIMPLY TO SHOW HIM THE
17 PHOTOGRAPHS AND MAKE SURE WE'RE TALKING ABOUT THE RIGHT
18 PEOPLE?

19 A INITIALLY DETECTIVE HERTER TOLD HIM, REMEMBER WE
20 TALKED LAST WEEK WHEN ME AND DETECTIVE ASHBY WERE HERE ABOUT
21 WHEN YOU WERE IN THE PARK AND 12TH STREET. KIND OF REFRESH
22 HIM FOR WHAT WE WERE THERE FOR.

23 HE SAID, YEAH.

24 Q AND THEN YOU HAD AN OPPORTUNITY TO SHOW HIM SOME
25 PHOTOGRAPHS?

26 A CORRECT.

1 Q AND THE PHOTOGRAPHS THAT YOU SHOWED HIM ARE
2 DEPICTED ON PEOPLE'S 18?

3 A CORRECT.

4 Q AND THE TOP ONE THERE IS A PHOTOGRAPH OF
5 ANDY REYES; IS THAT CORRECT?

6 A THAT'S CORRECT.

7 Q AND ANDY REYES IS THE DEFENDANT WHO IS SEATED
8 HERE IN COURT RIGHT NOW?

9 A THAT'S CORRECT.

10 Q AND WHAT DID MICHAEL CONTRERAS TELL YOU ABOUT
11 ANDY REYES WHEN HE VIEWED THAT PHOTOGRAPH?

12 A THIS IS THE ANDY THAT HE WAS REFERRING TO THAT
13 WAS IN EL SALVADOR PARK OVER AT THE HANDBALL COURTS WHEN
14 FRANK LOPEZ WAS SHOWING OFF THE HANDGUN AND THEN THEY ALL
15 GOT ON THEIR BIKES AND LEFT.

16 Q AND THERE'S SOME MARKINGS?

17 A CORRECT.

18 Q I REALIZE THIS IS A PHOTOCOPY, AND IT'S A PRETTY
19 POOR PHOTOCOPY AT THAT, BUT THERE'S SOME MARKINGS ON
20 EXHIBIT 18 NEXT TO THE PHOTO THAT SAYS, "ANDY." WHO WROTE
21 THAT?

22 A MICHAEL CONTRERAS DID. HE WROTE ANDY'S NAME. HE
23 PUT HIS INITIALS, HIM BEING MICHAEL CONTRERAS' INITIALS,
24 WHICH IS "MC" AND THE DATE. HE DID THAT TO ALL THREE
25 PHOTOGRAPHS, ANDY REYES' PHOTO. SEVERO DE LA RIVA, WHICH IS
26 HIS COUSIN, HE WROTE "SEVERO" AND THE DATE AND HIS INITIALS.

1 "FRANK LOPEZ" NEXT TO FRANK LOPEZ, HIS INITIALS,
2 MICHAEL CONTRERAS' INITIALS, AND THE DATE.

3 Q DID MR. CONTRERAS HAVE ANY DIFFICULTY WHATSOEVER
4 IN IDENTIFYING THESE THREE INDIVIDUALS FROM THESE
5 PHOTOGRAPHS THAT DAY?

6 A NO.

7 Q COUPLE OF HOUSEKEEPING MATTERS.

8 THE HOMICIDE WAS GIVEN A SANTA ANA POLICE
9 DEPARTMENT CASE NUMBER; THAT'S CORRECT?

10 A YES.

11 Q WHAT'S THAT CASE NUMBER?

12 A 0434206.

13 Q AND THE INCIDENT ON 12TH AND ENGLISH WAS ALSO
14 GIVEN A POLICE DEPARTMENT CASE ANY; IS THAT CORRECT?

15 A A SEPARATE CASE NUMBER.

16 Q WHAT'S THAT CASE NUMBER?

17 A 0434210.

18 Q BRIEFLY, WHY DO YOU GIVE THESE THINGS DIFFERENT
19 CASE NUMBERS?

20 A WELL, AT THE TIME OF THE 12TH STREET INCIDENT WE
21 DIDN'T KNOW IT WAS -- THE OFFICERS THAT RESPONDED THERE
22 DIDN'T KNOW IT HAD ANY RELATIONSHIP TO THE MURDER. AS FAR
23 AS THEY WERE CONCERNED, THAT WAS A SEPARATE CASE. THEY
24 PULLED A SEPARATE CASE NUMBER. AND EVERY INCIDENT THAT THE
25 POLICE RESPOND TO HAS A CASE NUMBER ASSIGNED TO IT THAT
26 KEEPS THE INTEGRITY OF THE CASE, LIKE WE TALKED ABOUT BEFORE

1 WITH ANY SORT OF EVIDENCE, POLICE REPORTS, IT'S ALL
2 DOCUMENTED UNDER ONE CASE NUMBER.

3 Q SO PRESUMABLY IN AUGUST, MIDDLE OF AUGUST OF
4 2004, THIS WOULD BE THE 24,206TH POLICE REPORT GENERATED AND
5 24,210 POLICE REPORT GENERATED; IS THAT HOW THAT NUMBERING
6 SYSTEM WORKS?

7 A THAT'S CORRECT.

8 Q AND IT STARTS OVER EACH YEAR; IS THAT CORRECT?

9 A THEN 05. WHEN 05 COMES, IT WILL BE 0500001 FOR
10 THE FIRST INCIDENT.

11 Q LET'S TALK ABOUT FRANK LOPEZ. FRANK LOPEZ'S
12 PHYSICAL DESCRIPTION IS WHAT?

13 A UM --

14 Q AT LEAST, WAS BACK THEN.

15 A I THINK HE'S PROBABLY ABOUT 6'2" OR SO, THIN,
16 MAYBE 160.

17 Q AND IN THE COURSE OF YOUR INVESTIGATION, AND
18 WE'RE GOING TO GET INTO THE GANG BACKGROUND SHORTLY, BUT IN
19 THE COURSE OF YOUR INVESTIGATION YOU DID BACKGROUND CHECKS
20 ON JUST A NUMBER OF PEOPLE ASSOCIATED WITH THIS CASE; IS
21 THAT CORRECT?

22 A YES.

23 Q AND THAT INCLUDED PEOPLE LIKE ISRAEL LOPEZ?

24 A YES.

25 Q AND SEVERO DE LA RIVA?

26 A YES.

1 Q AND LEWIS PEREZ?

2 A LOUIS PEREZ.

3 Q LOUIS PEREZ?

4 A CORRECT.

5 Q JESUS LOPEZ?

6 A CORRECT.

7 Q OBVIOUSLY, THE DEFENDANT?

8 A THAT'S CORRECT.

9 Q AND FRANK LOPEZ?

10 A CORRECT.

11 Q AND NOW MICHAEL CONTRERAS TOO; IS THAT CORRECT?

12 A YES.

13 Q BRIEFLY ANYWAY?

14 A BRIEFLY ON MICHAEL. NOT AS IN-DEPTH REGARDING

15 MICHAEL AS THE OTHERS.

16 Q OKAY. LET'S JUST JUMP RIGHT INTO YOUR EXPERTISE.

17 HOW LONG, AGAIN, HAVE YOU BEEN A POLICE OFFICER?

18 A COMING ON 13 YEARS.

19 Q AND YOU STARTED OFF WITH THE LOS ANGELES POLICE

20 DEPARTMENT?

21 A THAT'S CORRECT.

22 Q YOU ATTENDED A POLICE ACADEMY BEFORE THAT?

23 A NOT BEFORE THAT, DURING THAT.

24 Q WHILE YOU WERE WITH L.A.P.D.?

25 A THAT'S CORRECT.

26 Q HOW LONG WAS THAT POLICE ACADEMY?

1 A I THINK IT WAS SIX MONTHS.

2 Q AND WHERE DID YOU FIRST GET INTRODUCED TO THIS
3 WHOLE CONCEPT OF CRIMINAL STREET GANGS?

4 A NOT LONG AFTER I BECAME A PATROL OFFICER I FOUND
5 AN INTEREST IN GANGS, AND IN L.A. THERE'S AN ABUNDANCE OF
6 THEM. AND I WAS CHOSEN TO WORK IN A GANG INVESTIGATIVE UNIT
7 RIGHT IN ABOUT 1995. AND SINCE 1995 UNTIL NOW, I'VE
8 INVESTIGATED THOUSANDS OF GANG-RELATED CASES RANGING FROM
9 NARCOTIC SALES, GRAFFITI, ALL THE WAY UP TO HOMICIDES, THE
10 LAST FOUR YEARS WORKING STRICTLY GANG-RELATED MURDERS.

11 DURING MY EDUCATIONAL PART IN THE LAST TEN YEARS
12 OF WORKING IN A GANG UNIT I'VE ATTENDED HUNDREDS OF HOURS OF
13 FORMAL TRAINING GOING TO GANG SEMINARS, GANG SCHOOLS,
14 UPDATING MYSELF ON GANG TRENDS, NOT ONLY IN ORANGE COUNTY
15 BUT OTHER STATES AND ACROSS THE COUNTRY. WITH THE GANG
16 EPIDEMIC IT'S SPREAD TO OTHER COUNTRIES, SO I CONTINUALLY
17 ATTEND A NUMBER OF SCHOOLS AND UPDATE MY TRAINING.

18 ON AN EVERYDAY BASIS I INVESTIGATE GANG-RELATED
19 CRIMES, I MEET WITH OTHER DETECTIVES THAT WORK WITHIN THE
20 SANTA ANA POLICE DEPARTMENT THAT THEIR DAILY JOB IS TO
21 INVESTIGATE GANG-RELATED CRIMES. I ALSO MEET WITH
22 DETECTIVES OUTSIDE OF ORANGE COUNTY AND SHARE INFORMATION,
23 BECAUSE GANG MEMBERS MOVE. THEY GO TO OTHER CITIES AND
24 COMMIT CRIMES, SO SPECIFICALLY BORDERING CRIMES OF
25 SANTA ANA, GARDEN GROVE, ANAHEIM, THINGS -- WE MEET ON AN
26 ONGOING BASIS AND EXCHANGE INFORMATION AND UPDATE OURSELVES.

1 I'VE TESTIFIED A NUMBER OF TIMES AS A GANG EXPERT
2 IN BOTH ORANGE COUNTY AND L.A. COUNTY. I'VE WRITTEN OR
3 HELPED WRITE AND SERVED IN EXCESS OF 100 GANG SEARCH
4 WARRANTS REGARDING GANG-RELATED CRIMES FROM ANYWHERE FROM
5 HOMICIDES DOWN TO, LIKE I SAID, NARCOTICS SALES. I'VE
6 SPOKEN TO, IN EXCESS, PROBABLY CONSERVATIVE NUMBER, WOULD BE
7 2000 GANG MEMBERS IN THE LAST TEN YEARS REGARDING GANG
8 TRENDS, GANG CRIMES, HOW THEY GET IN AND OUT OF GANGS, THE
9 IMPORTANCE OF GUNS WITHIN THE GANG, THE ISSUE OF RESPECT,
10 WHICH I'M SURE WE'LL COVER IN A LITTLE MORE DEPTH LATER,
11 WHAT RESPECT MEANS TO GANG MEMBERS, THE TRUST THAT IT TAKES
12 TO BECOME A GANG MEMBER. AND ONCE YOU BECOME A MEMBER WHAT
13 YOU'RE ENTRUSTED WITH REGARDING, NOT ONLY YOUR PERSONAL
14 RESPECT, BUT THE RESPECT OF THE GANG AS A WHOLE.

15 Q THESE GANG MEMBERS, DO THEY JUST TALK TO YOU
16 ABOUT ALL THIS STUFF?

17 A YES. I'VE TALKED TO GANG MEMBERS OUT ON THE
18 STREET JUST, HEY, HOW ARE YOU DOING? I'VE TALKED TO GANG
19 MEMBERS IN CUSTODY AND ARRESTED FOR MURDER. FOR SOME
20 REASON, A LOT OF THE TIMES, THEY LIKE ME AND THEY TALK TO
21 ME.

22 Q WOULD YOU SAY THAT THE BULK -- WOULD YOU SAY THAT
23 THE BULK OF WHAT YOU RELY ON WHEN YOU'RE OFFERING YOUR
24 OPINIONS HERE IN COURT IS BASED UPON YOUR CONVERSATIONS WITH
25 THESE GANG MEMBERS OR IS IT MOSTLY COME FROM YOUR
26 CLASSROOM-TYPE TRAINING?

1 A NO, THE MAJORITY OF IT IS WHAT GANG MEMBERS AND
2 THEMSELVES TELL ME.

3 Q LET'S JUMP INTO SOME OF THE SPECIFICS HERE. YOU
4 HAD MENTIONED ABOUT GETTING INTO A CRIMINAL STREET GANG.
5 BASED UPON YOUR EXPERIENCE, HOW DO PEOPLE GET INTO THESE
6 GANGS?

7 A WELL THERE'S THREE TYPICAL WAYS THAT GANG MEMBERS
8 JOIN A GANG. THE FIRST AND FOREMOST IS A JUMPING IN. THEY
9 CALL IT GETTING "JUMPED IN." AND, BASICALLY, THAT IS JUST
10 TAKING A BEATING, WHETHER IT BE TWO, THREE, FOUR, FIVE
11 MEMBERS OF THE GANG THAT ARE ACTIVE MEMBERS TAKE THE NEW
12 MEMBER AND BEAT HIM UP. THEY SPEND, DEPENDING UPON HOW MUCH
13 TIME THEY CHOOSE. AND THE BEATING IS BASICALLY TO SHOW AN
14 ALLEGIANCE TO THE GANG, SHOW THEY'RE NOT GOING TO RUN AWAY;
15 THEY'LL STAND UP FOR WHAT THE GANG MEANS AND THEY'LL STAND
16 THERE AND FIGHT FOR THE GANG.

17 THE SECOND IS A "CRIME IN," WHICH IS BASICALLY,
18 ALL RIGHT, YOU'VE BEEN HANGING OUT WITH US, WE TRUST YOU, WE
19 LIKE YOU, COMMIT A CRIME FOR OUR GANG, BE IT GO DO A
20 DRIVE-BY SHOOTING ON A RIVAL GANG OR GO ROB THIS LIQUOR
21 STORE AND BRING BACK HALF THE MONEY, WHATEVER IT MAY BE.
22 SOME SORT OF CRIME THAT WILL BENEFIT OUR CRIME AND THE
23 REPUTATION OF OUR GANG. YOU GO DO THAT, COME BACK AND
24 YOU'RE IN.

25 AND THEN THE THIRD ONE, AND IT'S COMMON IN
26 HISPANIC GANGS, TRADITIONAL HISPANIC GANGS, IS A "WALK IN,"

1 AND THAT'S BASICALLY YOU'VE GOT AN OLDER BROTHER, A FAMILY
2 MEMBER, A COUSIN, SOMEBODY THAT'S ESTABLISHED WITHIN THAT
3 GANG THAT WILL VOUCH FOR YOU. AND THEIR RESPECT LEVEL IN
4 THAT GANG WILL ALLOW THE REST OF THE GANG TO AGREE TO LET,
5 SAY, LITTLE BROTHER, WALK IN WITHOUT HAVING TO EITHER GET
6 JUMPED IN OR CRIME IN. AND IT'S CALLED A WALK IN. YOU GET
7 A FREE WALK.

8 THOSE ARE THE THREE MOST COMMON.

9 Q BEFORE WE GO FURTHER, LET'S GO AHEAD AND
10 DEFINE -- MAKE SURE OUR TERMS ARE THE SAME. YOUR DEFINITION
11 OF A CRIMINAL STREET GANG IS WHAT?

12 A CRIMINAL STREET GANG IS BASICALLY THREE OR MORE
13 MEMBERS WITH A COMMON NAME, SIGN OR SYMBOL, THAT MEET ON AN
14 ONGOING BASIS AND ENGAGE IN CRIMINAL ACTIVITY.

15 Q HOW ABOUT GETTING OUT OF A GANG, HOW DO YOU DO
16 THAT?

17 A AGAIN, YOUR MOST COMMON IS A "JUMP OUT." AND
18 THAT'S, WE'RE GOING TO GIVE YOU A BEATING AND SEND YOU ON
19 YOUR WAY. THAT WAS MORE COMMON IN THE MID TO LATE NINETIES.
20 NOWADAYS MOST OF THE GUYS THAT LEAVE A GANG JUST PICK UP AND
21 MOVE AND GET OUT OF THE AREA, GET OUT OF THE STATE TO WHERE
22 THEY'RE NOT SEEING THEIR FELLOW GANG MEMBERS ANYMORE,
23 BECAUSE THEY'RE NOT GOING TO BE WELCOME THERE FOR THE MOST
24 PART. SO MOST OF THE TIME A GUY THAT LEAVES A GANG HAS GOT
25 TO BE OUT OF SIGHT, OUT OF MIND.

26 Q THE VAST MAJORITY OF THE GANGS THAT YOU DEAL WITH

1 REGULARLY IN YOUR JOB AT SANTA ANA, THEY ARE, I BELIEVE,
2 REFERRED TO AS TRADITIONAL HISPANIC STREET GANGS; IS THAT
3 CORRECT?

4 A YES.

5 Q WHAT DOES THAT MEAN?

6 A BASICALLY, THEY'RE TURF ORIENTED. THEY'VE
7 ESTABLISHED THEMSELVES IN A CERTAIN AREA OR HAVE A TURF, A
8 BOUNDARY THEY PROTECT. THEY'RE TRADITION -- TRADITIONAL.
9 THEY'VE BEEN AROUND FOR A LITTLE BIT. THEY CLAIM A CERTAIN
10 SIGN OR SYMBOL. THEY MAY DRESS A CERTAIN WAY, CLAIM A
11 COLOR, THINGS OF THAT NATURE.

12 Q IS THIS CONCEPT OF TURF VERY IMPORTANT TO THEM?

13 A EXTREMELY.

14 Q WHY?

15 A WELL, THAT'S THEIR AREA THAT THEY PROTECT. AND
16 FOR THE GANG'S REPUTATION, IF THEIR TURF IS NOT A PROTECTED
17 ASSET OR A VALUE TO THEM AND OTHER GANGS, RIVAL GANGS CAN
18 COME IN AND PUSH THEM AROUND. THE RESPECT LEVEL OF THAT
19 GANG GETS DIMINISHED AND THEY CAN BE -- THEY WILL BE OVERRAN
20 BY OTHER GANGS, SO THEY PROTECT THEIR TURF VIGOROUSLY.

21 Q HOW DO THEY PROTECT THEIR TURF?

22 A THROUGH VIOLENCE.

23 Q HOW MANY GANGS ARE WE TALKING ABOUT IN SANTA ANA?

24 A GOSH, I THINK THERE'S ROUGHLY SOMEWHERE BETWEEN
25 80 AND 100 WITH ROUGHLY ABOUT 6-, 7,000 MEMBERS.

26 Q THESE ARE GANGS THAT ARE ALL ON YOUR RADAR AS FAR

1 AS THE SANTA ANA POLICE DEPARTMENT IS CONCERNED, THE GANG
2 UNIT?

3 A YES. NOT MY PERSONAL RADAR, I CAN'T KEEP TRACK
4 OF THAT, BUT.

5 Q GOTCHA.

6 CONCEPT OF ALLIES. I GUESS -- MAYBE WE SHOULD
7 START WITH RIVALS. I MEAN, YOU'VE GOT THESE TRADITIONAL
8 HISPANIC STREET GANGS. THEY'RE TURF ORIENTED. HOW DOES THE
9 CONCEPT OF RIVAL GANGS GET INTO ALL OF THIS?

10 A WELL, RIVALS IS JUST THAT, A RIVALRY. TYPICALLY,
11 IT'S AN ONGOING THING. MOST OF THE RIVALRIES HAVE HAD YEARS
12 AND YEARS OF FESTATION. THEY'VE GONE ON FOR A LONG TIME.
13 RIVAL GANGS, WHEN THEY COME ACROSS EACH OTHER, WE CAN
14 TYPICALLY SEE SOME SORT OF VIOLENT ENCOUNTER. AND IT'S
15 USUALLY NOT A GOOD ONE.

16 Q ARE THERE THINGS LIKE ALLIED GANGS, GANGS THAT
17 ALIGN THEMSELVES WITH ONE ANOTHER?

18 A THAT IS CORRECT.

19 Q HOW DOES THAT WORK?

20 A BASICALLY, THERE'S TWO GANGS THAT HAVE GOTTEN
21 ALONG. THEY DON'T HAVE ANY PROBLEMS WITH EACH OTHER. MAYBE
22 SOME OF THE OLDER GUYS IN THE GANG WANT TO MAKE SOME MONEY
23 WITH EACH OTHER, WHETHER IT BE NARCOTICS SALES. IN
24 SANTA ANA THERE'S A HANDFUL OF GANGS, INCLUDING F-TROOP,
25 THAT HAVE ALIGNED -- THEY'RE ALIGNED WITH 5TH STREET. WHEN
26 WE'RE REFERRING TO F-TROOP, BECAUSE OF FAMILY TIES. THERE'S

1 COUSINS AND BROTHERS THAT ARE IN ONE GANG, UNCLES THAT ARE
2 IN, SAY, 5TH STREET, AND THEIR COUSINS ARE IN F-TROOP. AND
3 5TH STREET AND F-TROOP HAVE GOTTEN ALONG AND HAVE BEEN
4 ALIGNED FOR YEARS.

5 Q AND AS A RESULT OF THAT, WE'LL TALK ABOUT THIS A
6 LITTLE LATER, BUT THEY'LL BACK EACH OTHER UP WHEN IT COMES
7 TO CRIMINAL CONDUCT; IS THAT CORRECT?

8 A CORRECT. AND THEY'LL COMMIT CRIMES WITH EACH
9 OTHER BECAUSE THEY TRUST EACH OTHER. THEY'RE AN ALIGNED
10 GANG.

11 Q LET'S TALK ABOUT GUNS OR WEAPONS IN GENERAL,
12 WHICH EVER YOU PREFER. HOW DO THOSE FACTOR INTO THE WHOLE
13 GANG MENTALITY?

14 A GUNS ARE HUGE IN THE GANG CULTURE, SUBCULTURE
15 BASICALLY, BECAUSE THAT'S HOW THEY GET THINGS DONE. IF THEY
16 DON'T HAVE GUNS DEFENSIVELY TO PROTECT THAT TURF WE JUST
17 TALKED ABOUT, RIVAL GANGS THAT DO HAVE GUNS WILL COME IN,
18 SHOOT THEM ALL, TAKE OVER THEIR AREA, TAKE OVER THE DRUG
19 TRADE, WHATEVER IT BE THEY NEED TO DO WITH THOSE GUNS.

20 OFFENSIVELY, THE GANG HAS TO GO OUT AND COMMIT
21 THOSE CRIMES TO KEEP THE REPUTATION AND THE FEAR OF THAT
22 GANG WITHIN THE COMMUNITIES AND THEY'LL USE THE GUNS
23 OFFENSIVELY TO GO OUT, DO DRIVE-BY SHOOTINGS, COMMIT
24 ROBBERIES, WHATEVER IT BE THAT THEY USE WITH THAT GUN.

25 SO, GUNS ARE A PRIZE, PRIZE POSSESSION WITHIN THE
26 GANGS, AND THEY ARE A SOUGHT-AFTER COMMODITY, AND THEY'RE

1 TYPICALLY USED TO COMMIT SOME SORT OF VIOLENT ACT.

2 Q HOW HAVE YOU LEARNED ALL THESE CONCEPT ABOUT,
3 SAY, FOR INSTANCE, ABOUT GUNS? I MEAN, HOW DO YOU ATTEST TO
4 WHAT YOU JUST TESTIFIED TO?

5 A LIKE I SAID, 90 PERCENT OF IT IS TALKING TO THE
6 GANG MEMBERS THEMSELVES OVER THE YEARS AND THEY TELL ME THIS
7 STUFF.

8 Q EVEN WHEN THEY'VE BEEN ARRESTED FOR EVEN
9 SOMETHING AS SIMPLE AS POSSESSION OF FIREARM, THEY'RE
10 SITTING THERE BRAGGING TO YOU ABOUT THE GUN AND HOW THEY GOT
11 IT, WHERE IT COMES FROM?

12 A GANG MEMBERS CAN'T STAND NOT TO BRAG ABOUT IT.
13 THAT'S PART OF HOW THEIR REPUTATION IS ENHANCED. IF THEY'RE
14 OUT THERE DOING THE DRIVE-BY SHOOTING, THEY GO AND COMMIT A
15 MURDER ON A RIVAL GANG, IF THEY DON'T TELL PEOPLE THEY DID
16 IT, THEY DON'T GET CREDIT FOR IT. SO THEIR PERSONAL
17 REPUTATION WITHIN THE GANG DOESN'T GET HEIGHTENED TO WHERE
18 THEY'RE DOWN FOR THEIR NEIGHBORHOOD OR WHAT IT HAVE BE. AND
19 THE GANG ITSELF, GANGS FUNCTION BY INSTILLING FEAR AND
20 INTIMIDATION, NOT ONLY BY COMMUNITY PEOPLE, BUT BY OTHER
21 GANGS. IF OTHER GANGS FEAR THEM, THEY'LL BACK OFF AND NOT
22 WANT TO HAVE PROBLEMS WITH THAT GANG. SO, THE MORE VIOLENT
23 THE GANG, THE MORE FEAR THAT'S INSTILLED AND THE REPUTATION
24 IS THEN HEIGHTENED.

25 Q I IMAGINE WITH THESE IMPORTANT ROLE OF GUNS GOES
26 THE ROLE OF VIOLENCE; IS THAT RIGHT?

1 A VIOLENCE COMES WITH GUNS, IN TERMS OF GANGS.

2 Q VIOLENT CRIME IS AN IMPORTANT CONCEPT IN THIS
3 GANG SUBCULTURE?

4 A YES.

5 Q HOW SO?

6 A WELL THE MORE VIOLENT THE CRIME -- IF THEY GO OUT
7 THERE AND -- GANG MEMBER GOES OUT AND KILLS A RIVAL GANG
8 MEMBER, I MEAN, THAT'S AS VIOLENT AS YOU CAN GET, FOR THE
9 MOST PART. AND THAT GANG MEMBER'S STATUS WITHIN THAT GANG
10 IS GOING TO BE HEIGHTENED GREATLY. HE PROVED HIS ALLEGIANCE
11 TO THE GANG. HE'S GOING TO TAKE OUT A RIVAL GANG MEMBER.
12 AND THE GANG ITSELF'S REPUTATION GETS HEIGHTENED, NOT ONLY
13 WITHIN THE GANGS, BUT THE PEOPLE THAT LIVE AROUND THERE. I
14 MEAN, THEY KNOW WHO COMES IN AND SHOTS AT WHO AND THEY SEE
15 THIS STUFF, THE COMMUNITY PEOPLE. SO THAT FEAR THAT'S
16 INSTILLED IN THE COMMUNITY MAKES THE GOOD FOLKS THAT LIVE
17 THERE NOT WANT TO CALL THE POLICE WHEN THAT DRIVE-BY
18 SHOOTING IS HAPPENING BECAUSE, YOU KNOW WHAT, I'M NOT
19 GETTING INVOLVED. THEY MAY COME GET ME.

20 MR. BROT: OBJECTION; I'M GOING TO MOVE TO STRIKE THAT
21 AS WITHOUT FOUNDATION AND -- YES.

22 THE COURT: I'M SORRY?

23 MR. BROT: THE PART --

24 THE COURT: ABOUT THE FEAR IN THE COMMUNITY?

25 MR. BROT: YES. AND WHAT PEOPLE IN THE COMMUNITY ARE
26 THINKING AND DOING.

1 THE COURT: ALL RIGHT. I'LL SUSTAIN THE OBJECTION AND
2 GRANT THE MOTION TO STRIKE. THE LAST STATEMENT THAT THE
3 INVESTIGATOR MADE WILL BE STRICKEN.

4 NEXT QUESTION.

5 BY MR. GELLER:

6 Q LET'S TALK ABOUT YOUR CONVERSATION WITH THE
7 MEMBER OF THE COMMUNITY, THE PEOPLE THAT DON'T BREAK THE
8 LAW. THE VAST MAJORITY ARE LAW-ABIDING CITIZENS?

9 A IN THE COMMUNITY?

10 Q YES.

11 A YES.

12 Q HAVE YOU SPOKEN WITH HOW VIOLENT GANG CRIME HAS
13 HAD AN IMPACT ON THESE FOLKS?

14 A NUMEROUS TIMES.

15 Q HOW MANY TIMES? GIVE US A NUMBER. HUNDREDS?
16 THOUSANDS?

17 A AT LEAST. AT LEAST.

18 Q FOR EVERY CRIME YOU INVESTIGATE, GENERALLY, ANY
19 SORT OF VIOLENT CRIME, OTHER THAN A DRUG-RELATED OFFENSE,
20 THERE'S A VICTIM, THERE'S A WITNESS, THINGS OF THAT NATURE?

21 A MORE OFTEN THAN NOT.

22 Q HAVE YOU BEEN ABLE TO, WITH YOUR HUNDREDS OF
23 THOUSANDS OF CONVERSATIONS WITH THESE CITIZENS, BEEN ABLE TO
24 DEVELOP ANY COMMON THEMES WITH RESPECT TO HOW GANG VIOLENCE
25 HAS IMPACTED THEIR LIVES?

26 A YES.

1 Q WHAT HAVE YOU LEARNED?

2 A THAT THEY ARE SCARED TO DEATH TO TALK TO US, FOR
3 THE MOST PART. THE FEAR OF RETALIATION FROM THE GANGS KEEPS
4 THEM FROM EITHER NOT CALLING THE POLICE OR IT'S CONSTANT --
5 SPECIFICALLY WITH THE MURDERS, HEY, ALL RIGHT. YOU KNOW, I
6 WAS THERE, BUT DON'T WRITE MY NAME DOWN. DON'T WRITE MY
7 ADDRESS. AND, I'LL JUST TELL YOU WHAT I SAW BUT DON'T EVER
8 COME TO MY HOUSE. CAN WE MEET SOMEWHERE ELSE? THINGS OF
9 THAT NATURE. THE COMMON THEME IS THEY DON'T WANT ANY PART
10 OF IT.

11 Q DOES THAT INCLUDE, LIKE, RELATIVES IN SOME OF
12 THESE VICTIMS?

13 A YES.

14 Q EVEN THE VICTIMS THEMSELVES, NOT OBVIOUSLY THE
15 PEOPLE WHO ARE KILLED, BUT MAYBE PEOPLE THAT WERE ONLY SHOT
16 AND INJURED, HAVE YOU DEVELOPED ANY COMMON THEMES WITH
17 RESPECT TO THOSE?

18 A VERY COMMON TO NOT COOPERATE WITH POLICE
19 REGARDING BEING SHOT AND WHO WAS INVOLVED.

20 Q I WANT TO BACK UP ONE MOMENT. WE TALKED ABOUT
21 DOING, YOU KNOW, DRIVE-BY SHOOTINGS AND HOW THAT RAISES
22 ONE'S REPUTATION AMONGST THE GANG. DOES THAT ONLY GO FOR
23 THE PERSON THAT ACTUALLY PULLED THE TRIGGER?

24 A NO.

25 Q LET'S SAY THERE'S A NUMBER OF GANG MEMBERS THAT
26 GO OUT AND DO THIS DRIVE-BY SHOOTING. WHAT'S THE IMPACT OF

1 THE OTHER PEOPLE WHO ARE PRESENT AT THE TIME?

2 A EVERYBODY THAT GOES AND PARTICIPATES IS GOING TO
3 GET THE SAME AMOUNT OF RESPECT AND STATUS AS THE GUY THAT
4 PULLED THE TRIGGER. THEY MIGHT AS WELL HAVE PULLED THE
5 TRIGGER TOO. THEY'RE THERE FOR BACKUP. THEY'RE THERE TO
6 SUPPORT WHAT'S GOING ON THERE. THEY'RE THERE TO HELP
7 WHOEVER HAS THE GUN, IF THERE'S ONLY ONE GUN THERE. THEY'RE
8 THERE TO MAKE SURE THAT PERSON -- THEY'RE THERE TO SUPPORT
9 THAT PERSON. THEY'RE THERE TO BACK THEM UP IN ANY INCIDENT.
10 THEY'RE TRUSTED TO BE THERE. THEY'RE TRUSTED WITHIN THE
11 GANG THAT IF THE PERSON NEEDS HELP OR BACKUP THEY ARE THERE
12 FIRST AND FOREMOST. SO THEIR STATUS IS THE SAME AS ALL FOR
13 ONE AND ONE FOR ALL, AS FAR AS THAT GOES.

14 MR. BROTT: MOVE TO STRIKE THAT ENTIRE ANSWER ON THE
15 GROUNDS THAT IT MAKES AN ULTIMATE FINDING OF FACT THAT THE
16 JURY CAN ONLY MAKE IN THIS CASE.

17 THE COURT: JUST A MOMENT.

18 MR. GELLER: I'M SORRY?

19 THE COURT: JUST A MOMENT.

20 I'M NOT SEEING IT. CAN I SEE YOU AT THE SIDEBAR.

21 (CONFERENCE BETWEEN THE COURT AND
22 COUNSEL WAS HAD OUT OF THE HEARING OF THE
23 REPORTER AND THE JURY:)

24 THE COURT: OBJECTION IS OVERRULED. MOTION TO STRIKE
25 IS DENIED.

26 NEXT QUESTION.

1 BY MR. GELLER:

2 Q AND WHEN YOU'RE TALKING ABOUT THIS CONCEPT OF
3 BACK UP, THE CONCEPT OF RESPECT, CONCEPT OF ONE FOR ALL, ALL
4 FOR ONE, THE KUDOS THAT THESE NON-SHOOTERS RECEIVE, IS THIS
5 BASED UPON CONVERSATIONS YOU'VE HAD WITH SPECIFIC GANG
6 MEMBERS INVOLVED IN SPECIFIC SCENARIOS?

7 A WELL, IT'S FROM TALKING TO GANG MEMBERS OVER THE
8 YEARS, YES.

9 Q I'M NOT ASKING YOU TO RECOUNT ANY SPECIFIC
10 SCENARIOS.

11 A I WAS ABOUT TO REGISTER ONE, BUT OKAY. YES.

12 Q IS THERE SOMETHING?

13 A NO, I'M OKAY.

14 Q OKAY. YOU'VE USED THIS WORD "RESPECT" A LOT SO
15 FAR. WHAT DOES RESPECT MEAN IN A GANG CONTEXT?

16 A WELL, EVERYBODY WANTS TO BE RESPECTED. BUT WHEN
17 WE'RE TALKING IN A GANG CONTEXT, A GANG MEMBER'S IDEA OF
18 RESPECT IS FEAR. IF PEOPLE, OTHER GANG MEMBERS, REGULAR
19 CITIZENS FEAR THEM, THAT, TO THEM, IN THEIR MIND IS WHERE
20 THEIR RESPECT COMES FROM. AND THEY'LL DO WHATEVER IT TAKES
21 TO EARN THE RESPECT THEY FEEL THEY NEED. AND ANY SORT OF
22 DISRESPECT IS A HUGE PROBLEM FOR THEM AND IT'S TYPICALLY
23 ANSWERED WITH SOME SORT OF VIOLENT ACT.

24 Q WHAT DO YOU MEAN BY A DISRESPECT?

25 A WELL, IF A GANG MEMBER FEELS DISRESPECTED,
26 SOMEONE STARING AT THEM HARD, SOMEBODY CHALLENGING THEM IN

1 ANY WAY, STARING AT HIS GIRLFRIEND, WHATEVER IT BE, IF HE
2 FEELS LIKE SOMEONE ISN'T GIVING THEM THE RESPECT THAT THEY
3 DESERVE, TYPICALLY, THERE'S GOING TO BE SOME SORT OF
4 CHALLENGE OR A VIOLENT ACT.

5 Q SO THAT COULD BE SOMETHING AS SIMPLE AS, "WHERE
6 YOU FROM?" AND THAT PERSON REPLIES, "FUCK YOU"?

7 A YES. ABSOLUTELY.

8 Q THAT'S A DISRESPECT BY THE PERSON WHO IS CURSING
9 AT THE GANG MEMBER WHO IS HITTING HIM UP AND ASKING WHERE
10 HE'S FROM?

11 A THAT'S CORRECT.

12 Q AND IN RESPONSE TO THAT, TO SATISFY, I GUESS, HIS
13 EGO, HE'S GOING TO COMMIT A VIOLENT ACT AT TIMES?

14 A AT TIMES.

15 Q OTHER TIMES HE MIGHT DO NOTHING?

16 A NOTHING IS 100 PERCENT. BUT MORE OFTEN THAN NOT
17 WHEN A GANG MEMBER FEELS DISRESPECTED THERE'S GOING TO BE
18 SOME SORT OF ACTION GOING ON.

19 Q AND IF HE DOESN'T RESPOND BY SOME SORT OF ACTION
20 AFTER HE'S BEING DISRESPECTED, THEN, ACTUALLY ISN'T IT TRUE
21 THAT HIS STATUS WITHIN HIS OWN GANG WOULD DROP BECAUSE NOW
22 HE'S SHOWING THAT HE'S NOT WILLING TO STAND UP FOR THAT
23 DISRESPECT?

24 A THAT'S CORRECT.

25 Q WHAT TYPES OF CRIMES DO GANG MEMBERS COMMIT?

26 A GANG MEMBERS OR F-TROOP GANG MEMBERS?

1 Q WE'LL START WITH GANG MEMBERS IN GENERAL.

2 A THERE'S 30 THAT ARE LISTED IN THE PENAL CODE
3 SECTION, RANGING FROM NARCOTIC SALES, YOUR VARIOUS ASSAULTS
4 WITH FIREARMS, YOU'RE ATTEMPTED MURDERS, YOUR SHOOTINGS INTO
5 INHABITED DWELLINGS OR VEHICLES, MURDER, ATTEMPTED MURDER,
6 ROBBERY, CARJACKINGS, GRAFFITI, THINGS OF THAT NATURE.

7 Q IT'S FELONY VANDALISM, CORRECT?

8 A CORRECT.

9 Q YOU HAVE EXPERIENCE IN INVESTIGATING ALL OF THOSE
10 TYPES OF CRIMES IN THE COURSE OF YOUR CAREER; IS THAT
11 CORRECT?

12 A CORRECT.

13 Q YOU'RE A HOMICIDE INVESTIGATOR NOW AND YOU DEAL
14 EXCLUSIVELY HOMICIDES, BUT BEFORE YOU WERE A HOMICIDE
15 INVESTIGATOR YOU DEALT WITH LESSER CRIMES?

16 A CORRECT.

17 Q COLORS, IS THAT SOMETHING THAT'S ONLY IN THE
18 MOVIES OR IS THAT IMPORTANT FOR GANGS?

19 A IT IS IN THE MOVIES. COLORS WERE A LITTLE BIT
20 BIGGER, IF THAT'S -- I CAN'T THINK OF A BETTER WORD THAN
21 BIGGER -- IN THE MID TO EARLY NINETIES, LATE EIGHTIES WHEN
22 THE MOVIE "COLORS" CAME OUT. THAT WAS BIG.

23 A LOT OF GANGS, TRADITIONAL HISPANIC GANGS IN
24 SANTA ANA, WILL ADOPT A COLOR. SPECIFICALLY, F-TROOP;
25 THEY'VE ADOPTED THE COLOR BROWN. AND THEY'VE HAD THAT FOR A
26 NUMBER OF YEARS. AND IT'S VERY COMMON TO SEE F-TROOP GANG

1 MEMBERS WEARING A BROWN T-SHIRT, A BROWN HAT, CARRYING A
2 BROWN BANDANNA, THINGS OF THAT NATURE.

3 Q TATTOOS IMPORTANT?

4 A TATTOOS ARE IMPORTANT.

5 Q HOW SO?

6 A WELL, WHEN A GANG MEMBER PUTS -- TATTOOS, IN
7 GENERAL, AREN'T IMPORTANT. IF YOU'RE TALKING GANG-SPECIFIC
8 TATTOOS, LIKE IF A GANG MEMBER WAS TO PUT "F-TROOP" ON HIS
9 BODY, THAT IS IMPORTANT; THAT SHOWS ALLEGIANCE TO THE GANG.
10 IT SHOWS HE KNOWS THAT TATTOO IS FOR LIFE AND HE'S DOWN FOR
11 LIFE WITH THAT GANG.

12 Q AND YOU BASE THAT STATEMENT UPON YOUR
13 CONVERSATIONS WITH GANG MEMBERS ABOUT THE TATTOOS ON THEIR
14 BODY?

15 A CORRECT.

16 Q ANDY REYES HAVE ANY TATTOOS?

17 A HE DOES.

18 Q WHAT DOES HE GOT?

19 A HE'S GOT "SP" FOR SALVADOR PARK AND "FT" FOR
20 F-TROOP TATTOOED ON HIM.

21 Q THOSE ARE TATTOOS YOU'VE SEEN ON OTHER F-TROOP
22 GANG MEMBERS?

23 A YES.

24 Q LET'S EXPLORE BACKUP A LITTLE FURTHER.

25 A I DIDN'T HEAR YOU.

26 Q LET'S EXPLORE BACKUP A LITTLE FURTHER.

1 WHAT IS BACKUP?

2 A AGAIN, BACKUP IS -- SAFETY IN NUMBERS IS A GOOD
3 TERM. BACKUP IS TAKING OTHER MEMBERS OF THAT GANG OR
4 ENTRUSTED MEMBERS OF THAT GANG WITH YOU TO COMMIT SOME SORT
5 OF CRIME IN CASE YOU NEED HELP. THEY'RE THERE TO SUPPORT
6 WHATEVER YOU'RE DOING. AND IF YOU NEED SOMETHING, WHETHER
7 IT BE FIGHTING, GETTING THE GUN AND SHOOTING, WHATEVER NEED
8 BE FOR THE INCIDENT YOU'RE INVOLVED IN, THOSE GUYS THAT ARE
9 THERE FOR BACKUP ARE THERE TO SUPPORT WHATEVER YOU'RE DOING.

10 Q HAS IT BEEN YOUR EXPERIENCE THAT GANG MEMBERS
11 TEND TO TAKE WITNESSES ALONG WITH THEM WHEN THEY COMMIT
12 THEIR CRIMES?

13 A WITNESSES?

14 Q WITNESSES.

15 A WELL, THEY GO WITH EACH OTHER, BUT NOT, AVERAGE
16 JOE CITIZEN, HEY, COME WITH US.

17 Q YEAH?

18 A NO.

19 Q DO THEY TEND TO TAKE PEOPLE ALONG WITH THEM WHO
20 THEY CAN TRUST?

21 A IT'S MORE OFTEN THAN NOT SOMEONE THEY TRUST THAT,
22 AGAIN, IS GOING TO ACT IN A BACKUP ROLE AND NOT RAT THEM OFF
23 OR TELL ON THEM IF THEY GET CAUGHT. IT'S GOING TO BE
24 SOMEONE THEY TRUST, MORE OFTEN THAN NOT.

25 Q AND YOU USED THE TERM, NOT RAT THEM OFF. WHAT
26 DOES THAT MEAN?

1 A RAT OR A SNITCH. IT'S A DEROGATORY TERM WITHIN
2 GANGS AND IT'S SOMEONE THAT COOPERATES WITH POLICE, THAT
3 TELL ON WHAT THEY'RE DOING.

4 Q YOU'VE HEARD OF SOMETHING CALLED A GANG GUN,
5 RIGHT?

6 A YES.

7 Q WHAT'S A GANG GUN?

8 A A GANG GUN IS A GUN THAT CAN BE USED BY THE
9 VARIOUS MEMBERS OF THAT GANG AND PASSED AROUND TO THE
10 ENTRUSTED MEMBERS OF THAT GANG TO, WHETHER, AGAIN, BE
11 OFFENSIVELY GO OUT AND COMMIT A CRIME FOR THE GANG OR MAYBE
12 THEY'RE STANDING AROUND AND PROTECTING THEIR NEIGHBORHOOD
13 AND WHATEVER THEY'RE DOING. SO IT'S A GUN THAT CAN BE USED
14 BY THE VARIOUS MEMBERS AND PASSED AROUND.

15 Q AND THE PEOPLE -- HOW DO I PHRASE THIS?

16 ARE GANG GUNS AVAILABLE FOR EACH AND EVERY MEMBER
17 OF THAT PARTICULAR GANG TO USE?

18 A THE MEMBERS?

19 Q YES.

20 A YES, FOR THE MOST PART.

21 Q I MEAN, THERE'S A LEVEL OF GANG MEMBERSHIP
22 ASSOCIATED WITH GANGS; IS THAT RIGHT?

23 A YES.

24 Q I MEAN, YOU HAVE PEOPLE WHO, I GUESS IT STARTS
25 OUT WITH MAYBE WANNABES OR MAYBE YOU CAN GIVE US MAYBE A
26 PYRAMID OF HOW THEY GET -- I MEAN, YOU'VE GOT PEOPLE WHO

1 ASSOCIATE WITH GANGS. YOU HAVE PEOPLE WHO ARE ACTIVE
2 PARTICIPANTS IN GANGS. YOU'VE GOT PEOPLE WHO MAYBE ARE
3 WANNABE GANG MEMBERS. WHAT DOES THAT ALL MEAN?

4 A I GOT TO TELL YOU I HAVEN'T HEARD THE TERM
5 WANNABE IN A LOT OF YEARS. THERE'S GANG ASSOCIATES. AND
6 THESE ARE TYPICALLY GUYS THAT AREN'T ACTIVE MEMBERS THAT
7 MAYBE LIVE IN THE AREA, ARE COMING UP, SPENDING A LITTLE BIT
8 OF TIME WITH THE GANG MEMBERS, BUT NOT GOING OUT AND
9 COMMITTING THE CRIMES WITH THEM. THAT'S MORE OF AN
10 ASSOCIATE TYPE OF LABEL. AND THEN YOUR MEMBERS THEMSELVES
11 ARE THE ACTUAL MEMBERS. SO, I HAVEN'T HEARD THE TERM
12 WANNABE IN A LONG TIME.

13 Q THAT'S FINE. ASSOCIATES. HAS IT BEEN YOUR
14 EXPERIENCE THAT THEY'RE GENERALLY TRUSTED WITH THESE GANG
15 GUNS?

16 A TYPICALLY NOT. IT'S GOING TO BE YOUR MEMBERS
17 THAT ARE TRUSTED. LIKE I SAID, NOTHING IS 100 PERCENT, BUT
18 FOR MORE OFTEN THAN NOT THE PERSON THAT'S TRUSTED IS A
19 MEMBER, AND THAT MEMBER WILL BE ALLOWED TO HAVE THAT GANG
20 GUN.

21 Q WHAT ABOUT A HIT-UP, WHAT'S A HIT-UP?

22 A A HIT-UP IS BASICALLY A CHALLENGE. WHEN ANOTHER
23 GANG -- WHEN A GANG MEMBER SAYS, "WHERE ARE YOU FROM?" TO
24 SOMEBODY, IT'S A COUPLE PRONG THERE: A, IT'S A CHALLENGE.
25 IF THEY PERCEIVE THIS PERSON TO BE A RIVAL GANG MEMBER,
26 "WHERE ARE YOU FROM?" IS WAITING FOR A RESPONSE OF A RIVAL

1 GANG OUT OF THAT PERSON, WHICH MORE OFTEN THAN NOT WILL LEAD
2 TO SOME SORT OF VIOLENT CONFRONTATION.

3 IT'S ALSO TALKING TO GUYS OVER THE YEARS, IT'S TO
4 MAKE SURE THEY KNOW WHO THEY'RE TALKING TO. YOU KNOW, A LOT
5 OF THESE GUYS MAY NOT KNOW ALL THE MEMBERS OF AN ALIGNED
6 GANG. AND, SAY, AN F-TROOPER GOES AND HITS A GUY UP, HE'S
7 MAYBE NOT SURE WHERE HE'S FROM, WELL, IF THIS GUY IS FROM
8 5TH STREET AND THEY'RE AN ALIGNED GANG AND HE SHOOTS THIS
9 GUY, THAT'S GOING TO BE A PROBLEM FOR THAT MEMBER THAT SHOT
10 HIM. SO IT'S USED AS A CHALLENGE AND IT'S ALSO USED TO FIND
11 OUT EXACTLY WHO I'M TALKING TO.

12 Q SO IT'S NOT REALLY QUESTION, IS IT?

13 A NO, IT'S NOT A QUESTION. IT'S WAITING FOR A
14 RESPONSE.

15 Q AND I IMAGINE IT COMES IN VARIOUS DIFFERENT
16 FORMS. IT COULD COME IN THE FORM IN ENGLISH, "WHERE ARE YOU
17 FROM?" HAVE YOU HEARD HIT-UPS TERMED OTHER WAYS, THE ACTUAL
18 WORDS OF THE HIT-UP?

19 A THE MAJORITY OF THE TIME IT'S WHERE YOU'RE FROM.
20 WHERE ARE YOU FROM?

21 Q SO IF SOMEBODY RESPONDS TO A HIT-UP -- WE JUST
22 COVERED THIS, BUT I WANT TO GO OVER IT AGAIN.

23 IF SOMEBODY RESPONDS TO THAT HIT-UP AND SAYS,
24 "FUCK YOU," TO THAT GANG MEMBER WHO DOES THE HIT-UP TO HIM,
25 THAT'S A PERCEIVED DISRESPECT TO THAT GANG MEMBER; IS THAT
26 CORRECT?

1 A THAT'S CORRECT.

2 Q AND WITH THAT WOULD COME -- YOU WOULD EXPECT A
3 VIOLENT RESPONSE?

4 A MORE OFTEN THAN NOT WHEN A GANG MEMBER FEELS
5 DISRESPECTED THERE'S GOING TO BE SOME SORT OF ACTION TAKEN.

6 Q WHAT IF SOMEBODY SAYS THEY'RE FROM NOWHERE,
7 THAT'S A COMMON RESPONSE?

8 A THEN, YOU KNOW, I'VE BEEN ON BOTH ENDS OF THAT.
9 I'VE HANDLED CASES WHERE SOMEBODY SAID, "WHERE ARE YOU
10 FROM?" AND THE PERSON SAID, "NOWHERE," AND THEY SHOT HIM
11 ANYWAYS. I'VE HANDLED CASES WHERE THEY WERE HIT-UP, SOMEONE
12 SAID, "WHERE ARE YOU FROM?" AND THE PERSON SAY, "NOWHERE,"
13 AND THE GANG MEMBERS LEFT THEM ALONE.

14 SO, I DON'T KNOW IF ONE HAPPENS MORE OFTEN THAN
15 NOT THAN THE OTHER, BECAUSE I'M GUESSING THERE'S HUNDREDS OF
16 TIMES WHEN SOMEBODY GETS HIT-UP AND THEY SAY, NOWHERE, FROM
17 NOWHERE, AND NOTHING HAPPENS, THE POLICE NEVER GET INVOLVED.
18 SO I DON'T KNOW HOW MANY TIMES THAT HAPPENS A DAY, BUT I
19 KNOW BOTH GO ON.

20 Q WELL, IF NOTHING HAPPENS I GUESS THE POLICE DON'T
21 GET CALLED AND YOU'RE NOT EVEN AWARE OF IT?

22 A THEN I NEVER EVEN HEAR OF IT. I COULDN'T SAY
23 WHICH ONE GOES ON MORE OFTEN THAN NOT, BUT THEY BOTH GO ON.

24 Q YOU AS A POLICE OFFICER YOU'RE MADE AWARE WHEN
25 SOMETHING GOES WRONG?

26 A CORRECT.

1 Q GOING BACK TO THE CONCEPT OF A GANG GUN, BECAUSE
2 YOU HAD TESTIFIED THAT GUNS ARE IMPORTANT TO GANG MEMBERS.
3 IS THAT SOMETHING THAT THEY KEEP SECRET WHEN THEY'RE WITH
4 OTHER GANG MEMBERS, IF YOU FOLLOW MY QUESTION?

5 A I FOLLOW YOU. AND, NO, IT'S NOT SOMETHING THEY
6 KEEP SECRET.

7 Q WHY IS THAT?

8 A WELL, WHEN THEY HAVE A GUN, THEY WANT TO SHOW
9 THAT THEY'RE WILLING TO CARRY IT. THAT'S PART OF THE
10 RESPECT WITHIN THE GANG. HEY, I'VE GOT IT AND I'M WILLING
11 TO USE IT. AND THEY SHOW EVEN OTHER GUNS WHEN THEY'VE GOT
12 THEM.

13 THERE'S ANOTHER PRONG TO THAT, TALKING TO GUYS
14 OVER THE YEARS, IS THERE MAY BE A PERSON THERE THAT CAN'T BE
15 AROUND A GUN, MAYBE A GUY THAT'S OUT ON PAROLE OR AN OLDER
16 GANG MEMBER THAT CAN'T BE AROUND GUNS AT THAT POINT. AND
17 IT'S A FORM OF RESPECT OR IT COULD BE DISRESPECT FOR NOT
18 TELLING HIM ABOUT THE GUN. SO WHEN THEY HAVE A GUN, THEY
19 SHARE THAT INFORMATION WITH EACH OTHER NOT ONLY TO BRAG
20 ABOUT HAVING IT, BUT TO LET EVERYBODY KNOW, HEY, I GOT IT IN
21 CASE YOU CAN'T BE AROUND.

22 AND ANOTHER PRONG TO THAT IS I'VE GOT IT IN CASE
23 YOU NEED IT. IF I CAN'T GET TO IT AND RIVALS DRIVE IN AND
24 CHAOS BREAKS OUT, I'VE GOT IT IF ANYBODY NEEDS IT.

25 SO, THERE'S A FEW REASONS FOR THAT, BUT THEY
26 SHARE WHEN THEY HAVE GUNS. THEY LET EACH OTHER KNOW.

1 Q KIND OF TALKING ABOUT ALL THIS GANG VIOLENCE IN A
2 VERY SEPTIC TYPE OF WAY, ALMOST LIKE IT'S ACADEMIC HERE IN
3 COURT. IS THIS STUFF REALLY HAPPENING OUT ON THE STREETS OF
4 SANTA ANA ON A REGULAR BASIS?

5 A EVERY DAY.

6 Q GANG DRIVE-BY SHOOTINGS?

7 A WELL, THERE'S NOT A DRIVE-BY SHOOTING EVERY
8 SINGLE DAY, BUT IT'S -- THERE'S GANG VIOLENCE, I WOULD SAY,
9 ON A DAILY BASIS.

10 Q LET'S TALK ABOUT F-TROOP. YOU ARE FAMILIAR WITH
11 F-TROOP. HOW HAVE YOU BECOME FAMILIAR WITH F-TROOP?

12 A I'VE DONE -- I'VE TESTIFIED AS AN EXPERT
13 REGARDING THE F-TROOP GANG. I'VE INVESTIGATED CRIMES
14 INVOLVING THE F-TROOP GANG ON BOTH THE VICTIM'S SIDE AS WELL
15 AS THE SUSPECT'S SIDE.

16 Q SO THERE'S BEEN TIMES WHEN F-TROOP HAS BEEN A
17 VICTIM OF A CRIME?

18 A OF HOMICIDES.

19 Q HOW LONG HAS F-TROOP BEEN AROUND?

20 A F-TROOP IS ONE OF YOUR OLDER, EXTREMELY
21 ESTABLISHED GANGS IN SANTA ANA AND ORANGE COUNTY. IT
22 STARTED ROUGHLY IN THE 60'S. THEY STARTED OUT AS A CAR CLUB
23 KNOWN AS UNITED BROWNS. IN THE 70'S THEY EVOLVED INTO
24 F-TROOP. THROUGH THE LATE 70'S AND VAST MAJORITY OF 80'S,
25 UP UNTIL THE LATE 80'S, A VAST MAJORITY OF GANGS IN
26 SANTA ANA WERE PART OF F-TROOP. THEY HAD -- FOR EXAMPLE,

1 6TH STREET WAS A GANG AND PART OF F-TROOP, SO THEY WERE
2 CALLED 6TH STREET F-TROOP. AND THERE WAS A LOT OF GANGS.
3 THEY HAD THOUSANDS OF MEMBERS UNDER THE F-TROOP BRANCH WITH
4 THEIR OWN NAME, HIGHLAND STREET F-TROOP, SOUTH SIDE F-TROOP.

5 WELL, IN THE LATE EIGHTIES, EARLY NINETYISH, A
6 LOT OF THESE GANGS WANTED TO JUST CALL THEMSELVES BY THEIR
7 OWN NAME AND DROP THE F-TROOP LABEL OFF OF IT. AND MOST, A
8 VAST MAJORITY OF THEM, DID THAT, LESS 5TH STREET.
9 5TH STREET HUNG AROUND AND STAYED ALIGNED. AND THESE GANGS
10 BECAME THEIR OWN GANG. AND F-TROOP ENDED UP WITH TWO
11 FACTIONS, THAT BEING EL SALVADOR PARK F-TROOP AND ARTESIA
12 F-TROOP.

13 Q AND AT LEAST BACK IN AUGUST OF 2004 DID IT HAVE
14 THREE OR MORE MEMBERS?

15 A YES.

16 Q CAN YOU VENTURE TO SAY HOW MANY MEMBERS IT DID
17 HAVE BACK THEN?

18 A I THINK EXTREMELY CONSERVATIVE WOULD BE A COUPLE
19 HUNDRED.

20 Q AND IT WAS AN ONGOING ORGANIZATION AT THAT POINT?

21 A THAT'S CORRECT.

22 Q YOU SAID 5TH STREET WAS AN ALLIED GANG. WHO ARE
23 THEIR RIVALS?

24 A PRETTY MUCH ANYBODY EXCEPT F-TROOP. F-TROOP AND
25 5TH STREET ARE ALIGNED. AND, LIKE I SAID, WHEN A LOT OF
26 THESE GANGS DROPPED OFF THE F-TROOP INSIGNIA FROM THEIR GANG

1 THEY BECAME BITTER RIVALS. AND, BASICALLY, F-TROOP JUST
2 GETS ALONG WITH 5TH STREET FOR THE MOST PART.

3 Q YOU'VE HEARD OF WEST MYRTLE STREET?

4 A WEST MYRTLE.

5 Q WEST MYRTLE IS A GANG; IS THAT CORRECT?

6 A THAT'S CORRECT.

7 Q RIVAL GANG TO F-TROOP?

8 A THAT'S CORRECT.

9 Q ALSO A TURF-ORIENTED GANG?

10 A THAT'S CORRECT.

11 Q LET'S LOOK AT THE MAP HERE. MAYBE YOU CAN SHOW

12 US, IF IT'S ON HERE. YOU SAID THERE'S TWO FACTIONS OF

13 F-TROOP THERE'S SALVADOR PARK AND ARTESIA; IS THAT CORRECT?

14 A THAT'S CORRECT.

15 Q WE'RE TALKING ABOUT EL SALVADOR PARK IN THIS

16 CASE?

17 A CORRECT.

18 Q WHERE DOES F-TROOP CLAIM?

19 A F-TROOP WILL COVER OVER ON THE EAST PORTION OF

20 F-TROOP, BUT IT'S ON THE WEST SIDE THAT HAS THE "W" FOR

21 YOU -- HERE, LET ME SHOW YOU BECAUSE THAT DIDN'T MAKE ANY

22 SENSE.

23 BRISTOL WILL BE ABOUT THEIR EASTERN BORDER, OVER

24 TO ABOUT FAIRVIEW. RIGHT HERE IS THEIR WESTERN BORDER.

25 THERE'S A HANDFUL OF F-TROOPERS THAT LIVE ON THIS SIDE OF

26 FAIRVIEW, BUT THIS IS GOING TO BE THEIR CORE AREA. DOWN

1 SOUTH THEY'LL GO TO ABOUT FIRST STREET. AND UP NORTH,
2 ANYWHERE FROM 17TH TO MEMORY, SOMEWHERE IN THAT AREA, WITH
3 THIS BEING THEIR CORE AREA, AS FAR AS EL SALVADOR PARK GOES.

4 THE ARTESIA FACTION IS DOWN IN THIS AREA, THOUGH
5 THEY'RE ALL F-TROOP, THEY'RE SEPARATE. THEY CALL THEM
6 CLIQUES. THEY'RE SEPARATE CLIQUES, BUT THEY'RE ONE, FOR THE
7 MOST PART, AND THEY'RE DOWN IN THIS AREA. (INDICATING.)

8 Q THAT, FOR THE RECORD --

9 A WAS FROM 5TH TO 1ST, RAITT OVER TO -- IS IT
10 DAISY? I THINK IT'S DAISY. DAISY. (INDICATING.)

11 Q AND WE'RE REFERRING TO PEOPLE'S 1, FOR THE
12 RECORD, HERE. OKAY.

13 AND WHAT ABOUT WEST MYRTLE, WHERE ARE THEIR
14 HANGOUTS?

15 A THEY'RE DOWN -- WEST MYRTLE WILL BE FROM ABOUT
16 SULLIVAN ON THE WEST, TO RAITT STREET ON THE EAST, ABOUT
17 1ST, TO WILLITS. THEY'LL COVER ABOUT THAT AREA, WITH THEIR
18 CORE AREA BEING OFF OF MYRTLE AND -- I DON'T SEE MYRTLE.
19 OH, RIGHT HERE. THEIR CORE AREA -- THIS ENDS IN A DEAD-END.
20 THIS IS LINED WITH APARTMENTS BETWEEN DAISY AND SHELLEY. IT
21 DEAD-ENDS INTO HERE. WEST MYRTLE USED TO CALL THEMSELVES
22 THE DEAD-END BOYS OR THE DEAD-END GANG, BECAUSE THIS KIND OF
23 DEAD-ENDS AND IT'S LINED WITH APARTMENTS. THIS IS THEIR
24 CORE AREA RIGHT ABOUT THERE. (INDICATING.)

25 Q SO WILLITS AND SULLIVAN WHERE THE HOMICIDE
26 OCCURRED IN THIS CASE, THAT'S BASICALLY RIGHT ON THE EDGE OF

1 WEST MYRTLE TERRITORY; IS THAT CORRECT?

2 A RIGHT ON THE FRINGE.

3 Q OKAY. CERTAINLY AN AREA THAT THEY WOULD CLAIM?

4 A I'M SURE THEY BELIEVE IT'S THEIRS, SURE.

5 Q OKAY. I MEAN, YOU'VE TALKED TO WEST MYRTLE GANG
6 MEMBERS ABOUT TURF, RIGHT?

7 A I HAVE.

8 Q F-TROOP IS A NAME. ARE THERE OTHER PARTICULAR
9 SIGNS AND SYMBOLS THAT F-TROOP ASSOCIATES THEMSELVES WITH?

10 A YES.

11 Q WHAT?

12 A WHAT ARE THEY?

13 Q YEAH.

14 A THERE'S A COUPLE. SIGNS OR SYMBOLS, YOU'LL SEE
15 TYPICALLY "FT" FOR F-TROOP.

16 "FXT." THEY'LL PUT AN "X" IN THE CENTER OF THE
17 "T".

18 "TROOPER" IS A COMMON NAME YOU'LL SEE ON TATTOOS
19 OR TAGGED ON THE WALLS.

20 IN SPANISH, "LA TROPA;" YOU'LL SEE THAT TATTOOED
21 ON ITS VARIOUS MEMBERS AND TAGGED ON THE WALL, THINGS OF
22 THAT NATURE.

23 Q AND YOU SAID ANDY REYES, THE DEFENDANT HERE, HAS
24 "SP" -- "S" AS IN SAM, "P" AS IN PAUL -- ON HIS BODY?

25 A AND "FT."

26 Q SO "SP" IS SALVADOR PARK?

1 A CORRECT.

2 Q THAT'S PROBABLY YOU'VE SEEN IN BOTH HIS TATTOOS
3 AND HIS GRAFFITI?

4 A THAT'S CORRECT.

5 Q IS GRAFFITI SOMETHING YOU SEE ASSOCIATED WITH
6 THESE CRIMINAL STREET GANGS?

7 A CONSTANTLY.

8 Q HOW SO?

9 A IT'S TATTOOED -- SPRAY PAINTED AND WRITTEN ALL
10 OVER THE WALLS.

11 Q DO THEY TAG THEIR TURF OR OTHER PEOPLE'S TURF OR
12 HOW DOES THAT WORK?

13 A THEY'LL DO BOTH. TAG THEIR TURF TO LET EVERYBODY
14 KNOW WHERE THEY'RE AT. THIS IS OUR NEIGHBORHOOD. THIS IS
15 OUR TERRITORY. WHEN WE GO BACK TO THE DISRESPECT OF RIVAL
16 GANGS, A GANG WILL GO INTO A RIVAL GANG'S NEIGHBORHOOD AND
17 SPRAY PAINT OR TAG GRAFFITI IN THAT RIVAL GANG'S
18 NEIGHBORHOOD AS A SHOW OF DISRESPECT.

19 Q THE PRIMARY ACTIVITIES OF F-TROOP, BASED UPON THE
20 CRIMES THAT YOU'VE INVESTIGATED AND THE CONVERSATIONS YOU'VE
21 HAD WITH YOUR COLLEAGUE OFFICERS -- AND I'D LIKE TO FOCUS
22 NOW TO 2004. I DON'T KNOW IF THEY'VE CHANGED FROM KNOW, BUT
23 WE NEED TO FOCUS BACK ON THE DATE OF THIS VIOLATION -- WHAT
24 WERE THEIR PRIMARY ACTIVITIES?

25 A LIKE I SAID, F-TROOP HAS BEEN AROUND A LONG TIME.
26 ONE OF THE LARGEST, MOST-ESTABLISHED VIOLENT GANGS IN

1 SANTA ANA.

2 MR. BROTT: OBJECTION; THIS IS NOT RESPONSIVE.

3 THE COURT: SUSTAINED.

4 MR. BROTT: MOVE TO STRIKE IT.

5 THE COURT: ANSWER IS STRICKEN. THE QUESTION HAD A
6 LONG PREAMBLE AND, THEN, "WHAT WERE THEIR PRIMARY
7 ACTIVITIES?"

8 THE WITNESS: I WOULD SAY THE PRIMARY ACTIVITIES IS
9 YOUR VARIOUS ASSAULTS WITH FIREARMS, NARCOTICS SALES, THINGS
10 OF THAT NATURE.

11 BY MR. GELLER:

12 Q ASSAULTS WITH FIREARMS, GOING ANYWHERE FROM
13 PENAL CODE 245'S, ALL THE WAY UP TO MURDER?

14 A CORRECT.

15 Q OKAY. WITH RESPECT TO PREDICATE ACTS, I'D ASK
16 THAT THIS EXHIBIT BE MARKED AS MY NEXT IN ORDER. I THINK
17 IT'S 19 NOW.

18 THE COURT: ALL RIGHT.

19 (WHEREUPON, EXHIBIT NO. 19 IS MARKED
20 FOR IDENTIFICATION.)

21 MR. GELLER: I'LL PUT A "19" ON THE BACK. IT IS, FOR
22 THE RECORD, CERTIFIED COURT DOCUMENTS. IT IS 23 PAGES. THE
23 COURT CASE NUMBER IS 02CF0135. THE DEFENDANT'S NAME IN THIS
24 CASE WAS FRANCISCO MELGOZA. DATE OF VIOLATION IS JANUARY
25 13TH, 2002.

26 AND MR. MELGOZA WENT TO JURY TRIAL AND WAS

1 CONVICTED OF ATTEMPTED VOLUNTARY MANSLAUGHTER AND PERSONAL
2 USE OF A FIREARM AND ACTIVE PARTICIPATION IN A CRIMINAL
3 STREET GANG. THE COURT DOCUMENTS HERE INCLUDE, AGAIN, A
4 COPY OF THE COMPLAINT AND THE INFORMATION, VERDICT FORMS,
5 THE COURT'S MINUTES. I'M NOT FINDING AN ABSTRACT. THEY'RE
6 USUALLY IN HERE, BUT THAT'S ALL I HAVE IN THIS RIGHT HERE.

7 Q DETECTIVE RONDOU, ARE YOU FAMILIAR WITH THIS
8 CASE, THIS MELGOZA CASE?

9 A I AM.

10 Q HOW ARE YOU FAMILIAR WITH IT?

11 A I WAS PART OF THE INVESTIGATION INVOLVING THE
12 SHOOTING.

13 Q OKAY. WHY DON'T YOU TELL US JUST BRIEFLY THE
14 FACTUAL SCENARIO.

15 A IN A NUTSHELL, FRANK, FRANCISCO MELGOZA, IS AN
16 F-TROOP GANG MEMBER. HE'S DOWN ON WALNUT STREET. HE GETS
17 INTO A CONFRONTATION WITH A COUPLE OF WALNUT STREET GANG
18 MEMBERS. FRANK MELGOZA PULLS A GUN OUT OF EITHER HIS PANTS
19 OR HIS WAIST, I DON'T REMEMBER NOW. AND, AS HE'S PULLING
20 THE GUN OUT, HE SHOOTS HIMSELF IN THE LEG ACCIDENTALLY. ONE
21 OF THE WALNUT STREET GANG MEMBERS STARTS LAUGHING AT HIM SO
22 HE SHOOTS THE WALNUT STREETER THAT'S LAUGHING AT HIM AND
23 HOBBLER HIMSELF HOME.

24 Q AND BASED UPON YOUR INVESTIGATION IN THAT CASE,
25 BASED UPON YOUR REVIEW OF THE DOCUMENTS, IF YOU NEED TO
26 REVIEW THEM IN FRONT OF YOU, DO YOU HAVE AN OPINION WHETHER

1 OR NOT FRANCISCO MELGOZA BACK ON THE DATE OF THAT VIOLATION
2 WAS AN ACTIVE F-TROOP GANG MEMBER?

3 A HE WAS.

4 MR. GELLER: WE'RE GOING TO TALK ABOUT THE DEFENDANT
5 AND ALL THE PARTIES INVOLVED IN THIS CASE. THIS MAY BE A
6 GOOD TIME TO TAKE A BREAK UNLESS YOU WANT ME TO GO RIGHT TO
7 NOON, YOUR HONOR?

8 THE COURT: THAT'S ALL RIGHT. WE'VE RUN A LONG SESSION
9 TO MAKE UP SOME OF THAT LITTLE LOST TIME WE HAD.

10 LADIES AND GENTLEMEN, WE'LL BREAK FOR LUNCH UNTIL
11 1:30. PLEASE, DURING THIS PERIOD OF RECESS, DO NOT CONVERSE
12 AMONG YOURSELVES OR WITH ANYONE ELSE ON ANY SUBJECT
13 CONNECTED WITH THE TRIAL. PLEASE DON'T FORM OR EXPRESS AN
14 OPINION ON THE CASE. PLEASE COME BACK TO US AT 1:30 THIS
15 AFTERNOON. I REALLY PLAN TO START ON TIME AGAIN.

16

17

18 (NOON RECESS TAKEN.)

19 -000-

20

21

22

23

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26

1 SANTA ANA, CALIFORNIA - WEDNESDAY, MAY 31, 2006

2 AFTERNOON SESSION

3 -000-

4
5 (THE FOLLOWING PROCEEDINGS WERE HAD IN
6 OPEN COURT IN THE PRESENCE OF THE JURY:)

7 THE COURT: WE ARE RESUMING IN PEOPLE VS. REYES, CASE
8 NUMBER 04CF2780. RECORD SHOULD REFLECT DEFENDANT IS PRESENT
9 WITH COUNSEL, AND THE PEOPLE ARE REPRESENTED.

10 DETECTIVE RONDOU HAS RESUMED HIS PLACE ON THE WITNESS STAND
11 AND ALL OF OUR JURORS ARE PRESENT.

12 AND, MR. GELLER, YOU MAY CONTINUE YOUR DIRECT
13 EXAMINATION.

14 MR. GELLER: THANK YOU, YOUR HONOR.

15 Q DETECTIVE RONDOU, WHEN WE LEFT OFF WE WERE JUST
16 ABOUT READY TO TALK SPECIFICALLY ABOUT THE PEOPLE WHO ARE
17 INVOLVED IN THIS CASE, ALL RIGHT?

18 A CORRECT.

19 Q IN PREPARING FOR YOUR TESTIMONY HERE IN COURT
20 TODAY, TELL US WHAT TYPES OF DOCUMENTS YOU REVIEWED THAT ARE
21 PROBABLY STORED AND CONTAINED AT THE SANTA ANA POLICE
22 DEPARTMENT TO ASSIST YOU IN DETERMINING WHETHER SOMEBODY IS
23 ASSOCIATED WITH A CRIMINAL STREET GANG.

24 A WELL, THERE'S THREE MAIN DOCUMENTS. THERE'S
25 POLICE REPORTS, GENERATED POLICE REPORTS, WHICH ARE SOME
26 SORT OF INCIDENT WHERE THE POLICE CAME OUT AND TOOK SOME

LYNN O. PETERSON, OFFICIAL COURT REPORTER

1 SORT OF CRIME REPORT OR SOMETHING OF THAT NATURE.

2 THERE'S FIELD INTERVIEW CARDS OR F.I. CARDS; AND
3 THAT IS SIMPLY A CARD FILLED OUT WHEN THE POLICE COME IN
4 CONTACT WITH SOMEBODY. IT COULD BE A CONCENTUAL, HEY, CAN I
5 TALK TO YOU FOR A MINUTE, VERSUS THE PERSON BEING ARRESTED,
6 AND ANYWHERE IN BETWEEN WHERE THERE'S INFORMATION TAKEN FROM
7 THE PERSON.

8 AND 186'S; IT'S A NOTICE OF DETERMINATION
9 REGARDING GANG MEMBERSHIP.

10 THOSE ARE THE THREE MAIN DOCUMENTS AS FAR AS
11 PULLING HISTORY INVOLVING GANG MEMBERS.

12 Q IN ALL THE RECORDS, THE POLICE REPORTS, THE
13 F.I. CARDS, THE GANG NOTIFICATIONS, THOSE ARE RECORDS THAT
14 ARE KEPT AT THE SANTA ANA POLICE DEPARTMENT?

15 A CORRECT.

16 Q AND IT'S PART OF THE NORMAL COURSE OF BUSINESS
17 FOR YOU FOLKS TO KEEP THOSE TYPES OF RECORDS?

18 A CORRECT.

19 Q AND THE INFORMATION CONTAINED ON THOSE RECORDS,
20 GENERALLY, LIKE A GANG NOTIFICATION, A S.T.E.P. NOTICE, A
21 186 NOTICE, CALLED KIND OF THE SAME THING, THAT'S FILLED OUT
22 BY A POLICE OFFICER EITHER IN THE STATION OR OUT IN THE
23 FIELD AND THE INFORMATION THAT'S CONTAINED ON THAT DOCUMENT
24 IS PUT ON THE DOCUMENT WHILE THE OFFICER IS HAVING AN
25 INTERACTION WITH THAT SUSPECTED GANG MEMBER; IS THAT RIGHT?

26 A CORRECT.

1 Q AND, SPECIFICALLY, WITH THIS GANG NOTIFICATION
2 FORM, THAT'S A TWO-PART DOCUMENT; IS THAT ACCURATE?

3 A TRUE.

4 Q ONE OF THE PARTS OF THAT DOCUMENT IS ACTUALLY
5 GIVEN TO THE SUSPECTED GANG MEMBER, IT KIND OF PLACES HIM ON
6 NOTICE THAT THE GROUP HE'S ASSOCIATING WITH HAS BEEN
7 IDENTIFIED AS A CRIMINAL STREET GANG AND THAT IF HE
8 CONTINUES TO COMMIT CRIMES IN ASSOCIATION WITH THAT GANG HE
9 COULD BE SUBJECTED TO ADDITIONAL PUNISHMENTS?

10 A CORRECT.

11 Q OKAY. JUST KIND OF PUTS HIM ON NOTICE; IS THAT
12 ACCURATE?

13 A THAT'S WHY IT'S CALLED, "NOTICE OF
14 DETERMINATION."

15 Q AND THE F.I. CARDS ARE NOT NEARLY AS DETAILED AS
16 THE GANG NOTICES, RIGHT?

17 A I WOULD AGREE WITH THAT. THEY ARE A USEFUL TOOL
18 AND THERE'S A LOT OF GOOD INFORMATION THAT IS PUT ON AN
19 F.I., BUT IT'S NOT -- AN F.I. CARD IS NOT GANG SPECIFIC.
20 THE POLICE COULD GO TO A DOMESTIC VIOLENCE CALL AND GO TO A
21 HOUSE WHERE MAYBE THERE WAS AN ARGUMENT AND THEY'LL DO AN
22 F.I. CARDS ON THE TWO PEOPLE INVOLVED, AND IT MAY JUST BE AS
23 SIMPLE AS THAT. SO F.I.'S AREN'T GANG SPECIFIC, THOUGH THEY
24 DO, IF A POLICE OFFICER COMES IN CONTACT WITH A GANG MEMBER,
25 WILL LIST SOME GANG INFORMATION ON THOSE.

26 Q VERY WELL.

1 LET'S TALK SPECIFICALLY ABOUT THE DEFENDANT
2 ANDY REYES IN THIS CASE. WHAT INFORMATION HAVE YOU OBTAINED
3 AND THAT YOU'RE RELYING ON TO SUPPORT ANY OPINIONS THAT
4 YOU'LL BE MAKING HERE IN COURT TODAY?

5 A WELL, IN RESPECT TO NOTICES OF DETERMINATION OR
6 GANG NOTICES, ANDY REYES WAS SERVED A GANG NOTICE IN JANUARY
7 OF '04 REGARDING AN ARREST INCIDENT. AND, IN A NUTSHELL,
8 ANDY WAS WITH FOUR OR FIVE OTHER GUYS, TWO OF THEM
9 SELF-ADMITTED F-TROOP GANG MEMBERS. ONE OF THEM WAS IN
10 POSSESSION OF A HANDGUN, ANOTHER WAS IN POSSESSION OF
11 MARIJUANA FOR SALES. AND ONE OF THE GANG DETECTIVES WAS OUT
12 DOING SUPPRESSION, CAME ACROSS THESE GUYS, A GUN WAS
13 DROPPED. ANDY AND THE, I THINK, THREE OTHERS WERE
14 ULTIMATELY ARRESTED. AND DURING THAT CONTACT HE WAS ASKED
15 ABOUT HIS GANG AFFILIATION. HE WAS EVASIVE ABOUT WHAT GANG
16 HE BELONGED TO, BUT WAS WEARING A BROWN SHIRT. TOLD THE
17 DETECTIVE THAT THE BROWN SHIRT REPRESENTED THE F-TROOP GANG
18 AND HE WORE IT SO PEOPLE WOULD LEAVE HIM ALONE BECAUSE HE'S
19 REPRESENTING F-TROOP, IN A NUTSHELL.

20 THE COURT: ALL RIGHT. I NEED A SIDEBAR.

21 (CONFERENCE BETWEEN THE COURT AND
22 COUNSEL WAS HAD OUT OF THE HEARING OF THE
23 REPORTER AND THE JURY:)

24 THE COURT: SORRY TO KEEP YOU WAITING.

25 LADIES AND GENTLEMEN, INVESTIGATOR RONDOU HAS
26 JUST TESTIFIED CONCERNING AN EVENT THAT IS NOT DIRECTLY

1 RELATED TO THIS PARTICULAR TRIAL. AND HE IS GOING TO BE
2 TESTIFYING ABOUT MATTERS THAT HE CONSIDERED IN FORMING HIS
3 OPINION, HIS EXPERT OPINION THAT HE WILL BE ASKED TO PROVIDE
4 TO US ABOUT GANGS.

5 YOU MAY CONSIDER WHAT HE SAYS ABOUT WHAT
6 ANDY REYES PREVIOUSLY SAID IN SOME OTHER VENUE OR CONTEXT,
7 ONLY BECAUSE IT'S OFFERED TO YOU TO EXPLAIN THE OPINION.
8 YOU CANNOT ACCEPT WHAT INVESTIGATOR RONDOU SAYS AS TRUE, AS
9 A TRUE RECITATION OF WHAT ACTUALLY HAPPENED. THIS
10 INVESTIGATOR WASN'T THERE TO HEAR WHAT ANDY REYES SAID AT
11 THAT PARTICULAR TIME. HE CONSIDERED A REPORT OF THIS EVENT
12 IN REACHING HIS OPINION. AND YOU MAY ONLY CONSIDER IT FOR
13 THAT PURPOSE.

14 DIFFICULT TO LIMIT YOU IN THIS REGARD, BUT WHEN
15 YOU HEAR THE INVESTIGATOR TALK ABOUT OTHER THINGS THAT THIS
16 DEFENDANT MAY HAVE SAID OR MAY HAVE DONE AT SOME OTHER PLACE
17 AND/OR TIME, YOU MAY CONSIDER IT ONLY AS IT'S OFFERED, WHICH
18 IS AS A BASIS TO SUPPORT THE ULTIMATE OPINION OF THE WITNESS
19 WHO IS TESTIFYING.

20 GO AHEAD, MR. GELLER.

21 MR. GELLER: THANK YOU.

22 Q AND TO CLARIFY, DETECTIVE RONDOU, THE INFORMATION
23 THAT YOU'RE RELYING ON, F.I. CARDS, 186 NOTICES, PRIOR
24 POLICE REPORTS, YOU'VE ALREADY TESTIFIED THAT YOU HAVE
25 QUALIFIED AS AN EXPERT IN MANY CASES IN THE PAST. THOSE
26 ITEMS, ARE THOSE THINGS THAT YOU USE ON A REGULAR BASIS WHEN

1 YOU'RE OFFERING YOUR EXPERT OPINION?

2 A THAT'S CORRECT.

3 Q OKAY. I GUESS THESE ARE ALL SORT OF OFFICIAL
4 DOCUMENTS OF THE SANTA ANA POLICE DEPARTMENT; IS THAT
5 ACCURATE?

6 A NOT SORT OF. THEY ARE OFFICIAL DOCUMENTS.

7 Q OKAY. VERY WELL.

8 SO WE TALKED ABOUT A JANUARY '04 INCIDENT
9 INVOLVING THE DEFENDANT.

10 IS IT IMPORTANT FOR YOU, IN YOUR OPINION, TO
11 CONSIDER WHO A GANG -- A SUSPECTED GANG MEMBER IS PRESENT
12 WITH AT THE TIME A PARTICULAR CRIME TAKES PLACE.

13 A THAT'S CORRECT.

14 Q HOW SO?

15 A WELL, IF HE'S CONTACTED BY POLICE CONTINUOUSLY
16 WITH MEMBERS OF THAT GANG, THAT'S SHOWING WHO HE'S HANGING
17 OUT WITH, WHO HE'S SPENDING TIME WITH, THAT'S WHO HE'S
18 ASSOCIATING WITH, SO THAT'S A GOOD INDICATOR. IN MY
19 EXPERIENCE OVER THE YEARS, GANG MEMBERS TYPICALLY DON'T HANG
20 OUT WITH NON-GANG MEMBERS. THEY MAY GO TO FAMILY FUNCTIONS
21 AND STUFF, BUT WHEN IT'S OUT ON THE STREET, HANGING OUT IN A
22 CERTAIN GANG NEIGHBORHOOD, IT'S TYPICALLY WITH THEIR
23 HOMEBOYS, GUYS THEY TRUST THAT ARE THERE IN THE SAME
24 MIND-SET.

25 Q AND TO DIGRESS A LITTLE MORE, HOMEY, HOMEBOY,
26 WHAT IS THAT?

1 A HOMEBOY IS LIKE A FRIEND, A GUY I HANG OUT WITH,
2 A GUY FROM THE GANG.

3 Q WHAT ELSE ARE YOU RELYING ON WITH RESPECT TO
4 MR. REYES?

5 A THAT WAS THE 186. AND THAT NOTICE OF
6 DETERMINATION WAS SERVED ON ANDY -- A POLICE REPORT WAS
7 GENERATED AND A 186 NOTICE WAS SERVED TO ANDY REYES ON THAT
8 DAY, PUTTING HIM ON NOTICE REGARDING HIS MEMBERSHIP AND
9 AFFILIATION WITH THE F-TROOP GANG.

10 ON AUGUST 12TH, REGARDING THE MURDER THAT WE'RE
11 HERE ON, DETECTIVE ASHBY SERVED ANDY WITH ANOTHER NOTICE OF
12 DETERMINATION. ON THAT ONE ANDY STATED THAT HE GAVE A
13 STATEMENT TO DETECTIVE ASHBY THAT HE'S BEEN CLAIMING F-TROOP
14 FOR APPROXIMATELY SIX MONTHS; THAT HE HADN'T BEEN JUMPED IN
15 YET BECAUSE HE HAS TO PUT MORE WORK IN.

16 Q ANY OTHER NOTICES OF DETERMINATION SPECIFICALLY?

17 A NO.

18 Q WHAT ABOUT F.I. CARDS?

19 A F.I. CARDS. I LOCATED TWO F.I. CARDS REGARDING
20 ANY SORT OF GANG MEMBERSHIP AND ANDY REYES. THE FIRST ONE
21 WAS IN FEBRUARY -- I'M SORRY, JANUARY OF '04. HE WAS
22 CONTACTED BY POLICE AT TENTH IN ENGLISH, WHICH IS IN F-TROOP
23 TERRITORY. HE TOLD THE OFFICER THERE THAT HE WAS GOING TO
24 CLAIM THE F-TROOP GANG, BUT THAT HE HAD GOTTEN BUSTED OR
25 GOTTEN IN TROUBLE. AND HE TOLD THE OFFICER THAT HE HANGS
26 AROUND WITH F-TROOP ON 9TH STREET. AND THAT, AGAIN, WAS IN

1 JANUARY OF '04.

2 IN FEBRUARY OF '04 HE WAS CONTACTED, A FIELD
3 INTERVIEW CARD WAS GENERATED AT 2100 WEST 9TH, IN THE HEART
4 OF F-TROOP. HE DIDN'T CLAIM ANY GANG MEMBERSHIP AT THAT
5 POINT, BUT SAID HE WAS ARRESTED A MONTH PRIOR FOR HANGING
6 OUT WITH F-TROOPERS AT 2100 WEST 9TH. THAT F.I. CARD IS
7 REFERENCING THE GUN INCIDENT I HAD TALKED ABOUT PRIOR.

8 Q AND THEN OTHER POLICE REPORTS, POLICE CONTACTS
9 THAT YOU'RE RELYING ON AS THE BASIS OF YOUR OPINION?

10 A YES.

11 Q WHAT ARE THOSE?

12 A AGAIN, THE JANUARY OF '04, WHERE HE WAS ARRESTED
13 WITH THE OTHER F-TROOPERS WITH GUN AND NARCOTICS. THERE WAS
14 A POLICE REPORT GENERATED THEN, AND I RELIED ON THAT.

15 AS WELL AS AUGUST 2ND OF '04, WHICH IS ROUGHLY A
16 WEEK BEFORE THIS HOMICIDE TOOK PLACE. ANDY WAS WITH
17 APPROXIMATELY 12 OTHER JUVENILES, INCLUDING
18 MICHAEL CONTRERAS WHO HAD TESTIFIED HERE EARLIER TODAY,
19 BASICALLY, TERRORIZING SOME CITIZENS IN AN APARTMENT COMPLEX
20 CLAIMING THIS IS F-TROOP --

21 MR. BROT: OBJECTION, YOUR HONOR, TO THE WORDS
22 "BASICALLY TERRORIZING." I BELIEVE THAT NO DOCUMENT THAT HE
23 WOULD HAVE RELIED ON WOULD HAVE USED THAT TERMINOLOGY.

24 THE COURT: I WOULD TEND TO AGREE. I WILL SUSTAIN THE
25 OBJECTION AND STRIKE THE CHARACTERIZATION AS "BASICALLY
26 TERRORIZING" FROM THE RECORD. THE JURY WILL DISREGARD IT.

1 SORRY WE INTERRUPTED YOUR ANSWER, HOWEVER. SO
2 I'M JUST GOING TO STOP IT THERE AND INVITE ANOTHER QUESTION
3 FROM MR. GELLER.

4 MR. GELLER: OKAY.

5 Q THIS WAS AN AUGUST 2ND INCIDENT WHICH WOULD BE
6 EIGHT DAYS BEFORE THE HOMICIDE?

7 A YES.

8 Q OKAY. WHY DON'T YOU TELL US THE CONDUCT
9 ASSOCIATED WITH THAT, WHO HE WAS WITH AND WHAT HAPPENED
10 THERE AND WE CAN AVOID THE "BASICALLY TERRORIZING."

11 A OKAY. THERE WAS TWO POLICE-GENERATED REPORTS
12 THAT DAY. THERE WAS ONE EARLIER WHERE THE MANAGER OF THE
13 COMPLEX TOLD POLICE THAT SOME KIDS CAME RUNNING INTO THE
14 MANAGER'S OFFICE SAYING THAT THEY'RE BEING CHASED BY F-TROOP
15 GANG MEMBERS AND THAT THEY'RE CLAIMING THIS IS F-TROOP.
16 NOBODY'S SEEN THEN, AND A POLICE REPORT IS GENERATED.

17 ANOTHER CALL COMES IN A LITTLE BIT LATER THAT
18 DAY. POLICE GET THERE. THE MANAGER OF THE COMPLEX SAYS THE
19 SAME KIDS, I THINK, CAME BACK AGAIN AND WERE DOING BASICALLY
20 THE SAME SORT OF CONDUCT.

21 ANDY REYES, ALONG WITH MICHAEL CONTRERAS AND A
22 HANDFUL OF OTHERS, ARE FOUND AT A PARK NOT TOO FAR AWAY BY
23 THE POLICE. WHEN TALKED TO, BASICALLY THE GROUP SAYS,
24 ANDY'S GROUP SAYS, THAT, YEAH, WE WERE AT THE APARTMENT
25 COMPLEX; WE WERE LOOKING FOR A GUY THAT HAD FOUGHT WITH ONE
26 OF OUR FRIENDS; AND WE WERE ALL THERE TO MAKE SURE THAT

1 NOBODY INTERFERED WITH THE -- BASICALLY, THEY WERE GOING TO
2 GO OVER THERE AND FIGHT WITH THIS KID AGAIN, AND, ALMOST IN
3 A BACKUP ROLE.

4 Q ANY OTHER POLICE CONTACTS THAT YOU'RE RELYING ON?

5 A OTHER THAN THIS INSTANT CASE, NO.

6 Q OKAY. WE'LL TALK ABOUT THE INSTANT CASE IN A
7 LITTLE BIT?

8 THE COURT: CAN I INTERRUPT YOU FOR A MOMENT THEN. IF
9 WE'RE FINISHED IN THIS PARTICULAR LINE OF QUESTIONING,
10 BECAUSE, LADIES AND GENTLEMEN, WHEN WE HAD THAT LAST SIDEBAR
11 WE WERE SEARCHING FOR A SPECIFIC INSTRUCTION WITH RESPECT TO
12 HOW YOU'RE TO CONSIDER THE EXPERT TESTIMONY. AND IF YOU HAD
13 BEEN WATCHING US YOU WOULD HAVE SEEN JOHN FORD'S PRODUCTION
14 OF THE "SEARCHERS" BACK THERE. WE COULDN'T FIND IT SO I
15 CAME OUT AND IMPROVISED. I HAVE FOUND THE INSTRUCTION.

16 AND THE REASON WE HAD SOME DIFFICULTY IS I --
17 BECAUSE WE HAVE BRAND NEW INSTRUCTIONS THIS TIME FOR THE
18 VERY FIRST TIME IN THE HISTORY OF CALIFORNIA, SO IT TAKES A
19 LITTLE EXTRA EFFORT ON OUR PART. LET ME JUST MODIFY THIS
20 INSTRUCTION AND GIVE IT TO YOU BECAUSE I WANT THE RECORD TO
21 BE CLEAR.

22 INVESTIGATOR RONDOU HAS TESTIFIED THAT IN
23 REACHING HIS CONCLUSIONS AS AN EXPERT WITNESS HE CONSIDERED
24 STATEMENTS MADE BY OTHER OFFICERS IN POLICE REPORTS, AND I
25 AM REFERRING TO STATEMENTS MADE BY OFFICERS IN NOTICE OF
26 DETERMINATION NOTICES OR OTHER POLICE REPORTS. YOU MAY

1 CONSIDER THOSE STATEMENTS ONLY TO EVALUATE THE EXPERT'S
2 OPINION. DO NOT CONSIDER THOSE STATEMENTS AS PROOF THAT THE
3 INFORMATION CONTAINED IN THE STATEMENTS IS TRUE.

4 THANK YOU.

5 SORRY TO INTERRUPT, MR. GELLER. YOU CAN PROCEED.
6 BY MR. GELLER:

7 Q THERE WAS ALSO SOME SUBSEQUENT CONDUCT AFTER THE
8 DEFENDANT WAS ARRESTED IN THIS CASE WHEN HE WAS BEING HOUSED
9 IN THE JUVENILE HALL; IS THAT CORRECT?

10 A THAT'S CORRECT.

11 Q ARE YOU RELYING ON ANY OF THAT INFORMATION?

12 A I AM.

13 Q WHY DON'T WE TALK ABOUT THAT THEN?

14 MR. BROTT: OBJECTION, YOUR HONOR; IT'S IRRELEVANT.
15 IT'S POST-CRIME. IT'S COMPLETELY IRRELEVANT.

16 THE COURT: I WOULD TEND TO AGREE. IF YOU WANT TO BE
17 HEARD, I'LL HAVE TO HEAR YOU AT THE SIDEBAR.

18 MR. GELLER: ABSOLUTELY.

19 THE COURT: WITH THE REPORTER, PLEASE.

20 (THE FOLLOWING PROCEEDINGS WERE HAD AT
21 SIDEBAR OUT OF THE HEARING OF THE JURY:)

22 THE COURT: BEFORE WE START THIS TOPIC, LET ME JUST
23 INFORM YOU IT WAS CALCRIM 360 THAT I MODIFIED AS I WAS
24 READING IT.

25 YOU'RE NOW GOING TO OFFER AS BASIS FOR THE
26 EXPERT'S OPINION, WHAT EXACTLY?

1 MR. GELLER: ABOUT TWO TO THREE MONTHS AFTER THE CRIME,
2 THIS HOMICIDE OCCURRED, THE DEFENDANT WAS BEING HOUSED IN

3 JUVENILE HALL. MR. BROTT HAS REPORTS.

4 MR. BROTT: I HAVE ALL THESE REPORTS.

5 MR. GELLER: THERE WERE, I BELIEVE, THREE SPECIFIC

6 INCIDENTS THAT ARE GANG-RELATED: ONE WHERE HE'S CALLING

7 OUT HIS GANG NAME DURING KIND OF A GANG ROLE CALL; ANOTHER

8 ONE WHERE HE GETS INTO A FIGHT ON BEHALF OF HIS GANG; AND

9 ANOTHER ONE WHERE HE'S TAGGING HIS GANG IN THE -- IN HIS

10 CELL, OR, HE'S TAGGED HIS GANG IN THE CELL. I THINK THAT'S

11 EXTREMELY RELEVANT EVIDENCE TO ESTABLISH THAT HE WAS AN

12 ACTIVE PARTICIPANT IN THE GANG TWO MONTHS OR THREE MONTHS

13 EARLIER AND NOT JUST THAT HE WAS AN ACTIVE PARTICIPANT IN

14 OCTOBER OR NOVEMBER WHENEVER THESE INCIDENTS OCCURRED. I

15 MEAN, IF HE WAS A GANG MEMBER.

16 HE'S ALREADY TESTIFIED HE'S GOT TATTOOS ON HIS

17 BODY. THAT IS AN ULTIMATE ISSUE, WHETHER HE WAS AN ACTIVE

18 PARTICIPANT TWO MONTHS EARLIER. WE SEE HIM TAGGING ALL THIS

19 STUFF AND DOING ALL THESE GANG-RELATED OFFENSES, THAT IS, OF

20 COURSE, RELEVANT. I THINK IT'S SUBJECT TO A 352 ANALYSIS,

21 BUT IT'S CERTAINLY RELEVANT. IT'S SUBSEQUENT CONDUCT, BUT

22 IT'S RELEVANT.

23 THE COURT: FIRST, I NEEDED TO KNOW WHERE WE WERE GOING

24 IN ORDER TO INVITE THE OBJECTION AND HEAR THE GROUNDS. BUT

25 ARE YOU SUGGESTING IN ELICITING THIS TESTIMONY THAT THE

26 EXPERT NEEDS TO HAVE CONSIDERED THAT IN ORDER TO REACH HIS

1 CONCLUSION?

2 MR. GELLER: I WON'T SAY THAT HE NEEDS ANY ONE PIECE OF
3 EVIDENCE. IT'S KIND OF A TOTALITY-OF-THE-CIRCUMSTANCES
4 ANALYSIS BY DETECTIVE RONDOU. BUT IT IS CERTAINLY A STRONG
5 PIECE OF EVIDENCE, THAT HE'S REACHING OUT TO THE WORLD AND
6 CLAIMING F-TROOP IN THESE THREE DIFFERENT FASHIONS A MERE
7 MONTH, A COUPLE MONTHS AFTER THE CRIME. I MEAN, THAT IS
8 CERTAINLY RELEVANT AND PROBATIVE EVIDENCE.

9 THE COURT: WELL, YOU DIDN'T REALLY ANSWER MY QUESTION.
10 WOULD YOUR EXPERT BE ABLE TO OPINE THAT HE'S A GANG MEMBER
11 IF HE ELIMINATED THESE FACTORS FROM HIS CONSIDERATION?

12 MR. GELLER: I'M CERTAIN HE WOULD STILL BE OF THAT
13 OPINION.

14 THE COURT: OKAY. AND YOUR OBJECTION?

15 MR. BROTT: THE OBJECTION IS THAT IT'S IRRELEVANT.
16 IT'S POST-CRIME. IT ADDS NOTHING BUT AN ABILITY TO SMEAR
17 THE DEFENDANT WITH STUFF THAT HE IS NOT CHARGED WITH. AND
18 THE 352 ANALYSIS CERTAINLY COMES INTO PLAY WHEN YOU'RE GOING
19 TO BE TELLING THE JURY THAT HE'S IN CUSTODY, AND HE'S BEEN
20 IN CUSTODY, AND WE'RE GOING THROUGH THIS EFFORT TO HAVE HIM
21 DRESSED OUT AND SITTING AT THE TABLE TO, I GUESS, PREVENT
22 THE JURY FROM BEING PREJUDICED AGAINST HIM BECAUSE HE'S IN
23 CUSTODY. AND THEN NOW WE'RE GOING TO TELL THE JURY THAT
24 HE'S IN CUSTODY, WHICH KIND OF BELIES ALL OF OUR EFFORTS IN
25 THAT REGARD. AND IT'S AKIN TO SAYING, I'M CHARGED WITH A
26 DUI, AND THE JURY GETS TO CONSIDER THE FACT THAT I PICKED UP

1 TWO MORE AFTER I GOT ARRESTED FOR THIS ONE.

2 MR. GELLER: BUT THE DISTINCTION IS WE'RE NOT CHARGING
3 HIM WITH BEING A DRUNK. IF THAT WAS THE CRIME, BEING A
4 DRUNK, THEN, TWO SUBSEQUENT DUI'S WOULD BE RELEVANT IN THAT
5 ANALYSIS. WHAT WE'RE CHARGING HIM WITH IS --

6 THE COURT: NO, I WOULD SUGGEST TO YOU THAT IT WOULD
7 NOT BE RELEVANT. BUT IT'S A BAD ANALOGY, MR. BROTT.

8 MR. BROTT: ONLY ONE I COULD THINK OF RIGHT OFF THE TOP
9 OF MY HEAD.

10 THE COURT: I KNOW. IT'S JUST BAD, SO WE'RE GOING TO
11 MOVE ON FROM THAT.

12 HERE IS THE DIFFICULTY. I THINK YOUR POINT IS
13 WELL TAKEN, THAT IT CLUES THE JURY IN THAT HE HAS BEEN IN
14 CUSTODY CONTINUOUSLY. THOUGH, I DON'T KNOW THAT THAT IS
15 MORE PREJUDICIAL THAN PROBATIVE OF ANY ISSUE IN THIS TRIAL.
16 HOWEVER, IT CERTAINLY SEEMS TO ME IF THE JURY KNOWS THAT
17 AFTER HE WAS ARRESTED IN THIS CASE OR AFTER THIS MURDER
18 OCCURRED HE WAS STILL COMMITTING OFFENSES BY FIGHTING IN
19 CUSTODY, BY TAGGING PROPERTY IN CUSTODY, AND THE ONLY THING
20 THAT SEEMS TO ME PERHAPS POSSIBLY MORE PROBATIVE ON THE
21 ISSUE OF GANG MEMBERSHIP THAN PREJUDICIAL TO THE DEFENDANT
22 IS THAT HE WAS CALLING OUT HIS GANG NAME. BUT, AGAIN, IF I
23 AGREE THAT THAT IS MORE PROBATIVE THAN PREJUDICIAL, WE HAVE
24 TO GO BACK TO THE SCENARIO OF IT HAVING OCCURRED IN
25 CUSTODIAL STATUS.

26 SO, I TEND TO THINK THAT IT IS MORE PREJUDICIAL

1 TO THE DEFENDANT THAN PROBATIVE ON THE ISSUE OF HIS GANG
2 MEMBERSHIP, PARTICULARLY IN LIGHT OF MR. GELLER'S
3 REPRESENTATION THAT THE EXPERT CAN FORM HIS OPINION WITHOUT
4 THAT ADDITIONAL INDICIA.

5 AND I'M A LITTLE CONCERNED. IT'S HARD TO UNRING
6 THE BELL. I WISH I HAD BEEN GIVEN AN OPPORTUNITY TO ADDRESS
7 THIS BEFORE THE QUESTION WAS ASKED, BUT THAT'S WHERE WE
8 STAND. I'M GOING TO SUSTAIN THE OBJECTION AND TELL THE JURY
9 TO DISREGARD THE INQUIRY.

10 MR. GELLER: SO I CAN'T EVEN SANITIZE IT BY ASKING IF
11 HE'S GOT ANY FURTHER EVIDENCE AFTER THIS HOMICIDE WHERE THE
12 DEFENDANT HAS SELF-PROCLAIMED F-TROOP, SELF-PROCLAIMED
13 HIMSELF AS F-TROOP?

14 THE COURT: YOU WENT STRAIGHT TO HIS CUSTODIAL STATUS;
15 THAT'S IN YOUR QUESTION. AND THAT SUGGESTION IS OUT THERE,
16 WHICH IS ANOTHER REASON WHY I WISH WE COULD HAVE ADDRESSED
17 THIS BEFORE THE QUESTION WAS ASKED. BUT I DON'T THINK YOU
18 CAN UNRING THAT BELL. AND, SO, YES, MY RULING IS TO SUSTAIN
19 THE OBJECTION AND TO STRIKE THE QUESTION, TO TELL THE JURY
20 TO DISREGARD IT, AND WE'RE GOING TO NOT ADDRESS WHAT
21 HAPPENED WHILE HE WAS IN CUSTODY.

22 MR. GELLER: I HAD MENTIONED IT IN MY OPENING
23 STATEMENT, BY THE WAY.

24 THE COURT: DID YOU?

25 MR. GELLER: I SURE DID.

26 MR. BROTT: I DON'T RECALL THAT.

1 THE COURT: I DON'T EITHER. YOU SAID IN YOUR OPENING
2 STATEMENT THAT THE EVIDENCE WOULD SHOW WHEN HE WAS IN
3 CUSTODY HE WAS STILL ENGAGING IN GANG ACTIVITY?

4 MR. GELLER: WORDS TO THAT EFFECT, YES.

5 MR. BROTT: WE DIDN'T 402 THAT PART.

6 THE COURT: AND THERE WAS NO OBJECTION TO ANYTHING HE
7 SAID IN OPENING STATEMENT.

8 MR. BROTT: WELL, I DON'T REMEMBER HIM SAYING IT.

9 MR. GELLER: WELL, AND THERE WAS ALSO, AGAIN, NO NOTICE
10 ISSUE HERE. IF THIS IS SOMETHING THAT -- I THINK IT WOULD
11 HAVE BEEN INCUMBENT UPON THE DEFENSE IN THIS CASE TO RAISE
12 THIS AS A 402 ISSUE.

13 THE COURT: HOW WOULD HE KNOW THAT YOU WERE GOING TO
14 ASK THIS QUESTION?

15 MR. GELLER: HE'S GOT THE DISCOVERY. IT'S A VERY
16 PROBATIVE PIECE OF EVIDENCE WHEN THE DEFENDANT IS YELLING
17 OUT F-TROOP TWO MONTHS AFTER THIS CRIME OCCURS. IT SHOWS
18 THAT WHEN HE'S DOING IT, THEN, IT'S MORE LIKELY THAN NOT
19 THAT HE WAS F-TROOP TWO MONTHS EARLIER.

20 THE COURT: DID HE HAVE ANY REASON TO EXPECT THAT THE
21 INVESTIGATOR WAS GOING TO OFFER THIS AS A BASIS FOR HIS
22 OPINION?

23 MR. GELLER: WELL, SURE. I MEAN, IT'S NOT LIKE WE HAVE
24 A HUGE PACKET ON ANDY REYES. WE'VE GOT CERTAIN PIECES OF
25 EVIDENCE. THESE ARE IMPORTANT THINGS. HE HAS -- HE, BEING
26 THE DEFENSE, HAS, I DON'T KNOW, PROBABLY 20 PAGES FROM THE

1 PROBATION DEPARTMENT DEALING WITH THESE INCIDENTS IN HIS
2 BACKGROUND PACKET. IT'S NOT JUST, LIKE, THROWN INTO ONE
3 DOCUMENT.

4 THE COURT: ANYTHING YOU WANT TO SAY?

5 MR. BROTT: I HAVE THAT STUFF. THERE'S NO QUESTION
6 THAT I DO HAVE THAT STUFF.

7 MR. GELLER: I MEAN, I'M NOT TRYING TO -- THIS IS
8 IMPORTANT STUFF. THIS ISN'T JUST ICING ON THE CAKE.

9 THE COURT: I DON'T KNOW WHAT TO DO WITH THIS,
10 MR. BROTT, IF INDEED IT WAS REPRESENTED IN OPENING STATEMENT
11 THAT THIS WAS GOING TO BE THE EVIDENCE AND THERE WAS NO
12 OBJECTION HERETOFORE. BUT I DON'T HAVE ANY RECOLLECTION
13 THAT IT WAS SAID. I WOULD SUGGEST THAT IF I DID HEAR IT, I
14 PROBABLY WOULD REMEMBER IT, BUT THAT'S NOT NECESSARILY TRUE
15 THESE DAYS EITHER.

16 MR. BROTT: I FEEL THE SAME WAY, BUT I CAN'T TELL YOU
17 THAT I HEARD IT.

18 THE COURT: AND WE COULD RECESS WITH THE JURY AGAIN FOR
19 THE AFTERNOON WHILE WE SEARCH THE RECORD, BUT THAT DOESN'T
20 SEEM PRUDENT TO ME.

21 MR. GELLER: I HAVE IT IN MY NOTES AND IT'S SOMETHING
22 THAT I DEFINITELY WOULD HAVE SAID. AND I DO BELIEVE I DID
23 SAY IT. I'M OFFERING THIS AS A GOOD FAITH BELIEF THAT I DID
24 TALK ABOUT THIS IN MY OPENING STATEMENT. I CAN SHOW YOU
25 MY -- THE OUTLINE OF MY OPENING STATEMENT, AND THAT IS
26 CERTAINLY PART OF IT.

1 THE COURT: ONLY SAFE ROAD APPEARS TO ME TO BE A MIDDLE
2 GROUND AT THIS POINT IN TIME. I'M GOING TO STRIKE THE
3 QUESTION. I'M GOING TO ASK THE JURY TO DISREGARD THE
4 QUESTION, EVEN THOUGH NO ANSWER WAS GIVEN. AND I WILL
5 PERMIT MR. GELLER TO INQUIRE ABOUT WHETHER HE USED THE NAME
6 OF HIS GANG ACCORDING TO A REPORT SUBSEQUENT TO THE MURDER.
7 BUT AS TO TAGGING A JUVENILE DETENTION FACILITY AND HAVING A
8 FIGHT IN CUSTODY, I JUST -- I THINK IT IS MORE PREJUDICIAL
9 TO THE DEFENDANT THAN PROBATIVE, ESPECIALLY BASED ON THE
10 REPRESENTATION THAT THE EXPERT CAN CONCLUDE GANG MEMBERSHIP
11 WITHOUT IT.

12 MR. GELLER: OKAY. SO I'D LIKE TO DO THIS IN A LEADING
13 FASHION SO THAT I DON'T GET DETECTIVE RONDOU -- BECAUSE HE'S
14 NOT PRIVY TO OUR CONVERSATION RIGHT NOW. SO I CAN EITHER
15 APPROACH HIM AND TELL HIM HOW WE DO IT, OR I CAN JUST STATE
16 IT IN A LEADING FASHION, SOMETHING TO THE EFFECT OF: DO YOU
17 HAVE INFORMATION, YES OR NO, WHETHER OR NOT THE DEFENDANT ON
18 A SUBSEQUENT OCCASION TO THIS HOMICIDE WAS CALLING OUT HIS
19 GANG NAME F-TROOP?

20 MR. BROTT: THAT'S AGREEABLE, BASED ON THE COURT'S
21 RULING. THAT WOULD BE MY PREFERENCE.

22 THE COURT: ALL RIGHT. LET'S GO BACK OUT THERE.

23 (END OF SIDEBAR DISCUSSION.)

24 (THE FOLLOWING PROCEEDINGS WERE HAD IN
25 OPEN COURT IN THE PRESENCE OF THE JURY:)

26 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, I'M GOING

1 TO SUSTAIN AN OBJECTION TO THE QUESTIONS THAT BEGAN WITH AN
2 INQUIRY FROM MR. GELLER ABOUT WHAT HAPPENED AFTER THE
3 DEFENDANT WAS ARRESTED AND WAS HOUSED IN JUVENILE HALL. I'M
4 GOING TO STRIKE THAT QUESTION AND ANSWER AND THE SUBSEQUENT
5 QUESTIONS AND ANSWER. YOU ARE NOT TO CONSIDER THAT.

6 AND THAT BEING SAID, MR. GELLER, YOU CAN PROCEED.

7 MR. GELLER: OKAY.

8 Q DETECTIVE RONDOU, I NEED YOU TO ANSWER YES OR NO
9 TO THIS FOLLOWING QUESTION:

10 ARE YOU ALSO RELYING ON INFORMATION THAT YOU'VE
11 OBTAINED DEALING WITH THE DEFENDANT ANDY REYES AND HIM
12 CALLING OUT F-TROOP, HIS GANG NAME, AFTER HE WAS ARRESTED ON
13 THIS CASE?

14 A YES.

15 Q OKAY.

16 A AND ALSO --

17 THE COURT: NO MORE.

18 THE WITNESS: NOTHING TO DO WITH THAT, YOUR HONOR. I
19 MISSPOKE. THERE'S ONE MORE POLICE REPORT I DIDN'T REFERENCE
20 THAT I USED AS PART OF MY OPINION THAT I DIDN'T REFERENCE
21 DURING THE TESTIMONY.

22 THE COURT: WELL, I'M SURE MR. GELLER WILL WORK OUT
23 WHAT YOU'RE TALKING ABOUT, BUT WE'RE GOING TO MOVE ON.

24 THE WITNESS: OKAY.

25 MR. GELLER: MAY I APPROACH THE WITNESS REAL QUICK?

26 THE COURT: SURE.

1 THE WITNESS: MR. BROTT HAS IT.

2 (DISCUSSION HELD OFF THE RECORD
3 BETWEEN COUNSEL AND THE WITNESS.)

4 BY MR. GELLER:

5 Q ADDITIONALLY, DETECTIVE RONDOU, THERE'S ANOTHER
6 INCIDENT THAT YOU'RE RELYING ON AS THE BASIS OF YOUR
7 OPINION?

8 A CORRECT.

9 Q TELL US ABOUT THAT ONE, PLEASE.

10 A IN MARCH OF '04 ANDY REYES IS OBSERVED AND
11 ULTIMATELY ARRESTED FOR DOING F-TROOP GRAFFITI OVER IN
12 EL SALVADOR PARK. HE'S TALKED TO. WHEN THE POLICE TALK TO
13 HIM ABOUT IT, OFFICERS THAT RESPONDED, HE ADMITTED TO
14 TAGGING F-TROOP GRAFFITI ON THE PARK BENCHES.

15 Q OKAY. SO BASED UPON EVERYTHING YOU'VE TESTIFIED
16 TO HERE IN COURT TODAY, I PRESUME WHAT WE'VE TALKED ABOUT IS
17 WHAT YOU'RE RELYING ON; IS THAT ACCURATE?

18 A OUTSIDE THE CONDUCT OF THE HOMICIDE AND THE 12TH
19 STREET INCIDENT FOLLOWING THE MURDER.

20 Q RIGHT. LET'S BRING THAT UP NOW AT THIS POINT IN
21 TIME. WHAT IS IT ABOUT THE HOMICIDE THAT YOU ARE RELYING ON
22 TO INDICATE WHETHER OR NOT YOU BELIEVE ANDY REYES WAS AN
23 ACTIVE PARTICIPANT IN F-TROOP CRIMINAL STREET GANG AUGUST
24 10TH OF '04?

25 A WELL, THERE'S A NUMBER OF FACTORS:

26 THE FACT THAT HE'S IN EL SALVADOR PARK PRIOR TO

1 THE MURDER WITH OTHER F-TROOP GANG MEMBERS.

2 HE'S ENTRUSTED TO BE SHOWN A HANDGUN FROM AN
3 F-TROOP GANG MEMBER.

4 HE PEDALS DOWN ON A BIKE WITH OTHER F-TROOP GANG
5 MEMBERS ARMED GOING THROUGH RIVAL GANG TERRITORY.

6 THE FACT THAT HE'S AT THIS HOMICIDE WHEN THE
7 HOMICIDE TAKES PLACE. HE'S IN THE GROUP, ACTING AS ONE.

8 HE COMES BACK FROM THE HOMICIDE AND ENDS UP WITH
9 THE HOMICIDE WEAPON 39 MINUTES LATER, COMMITTING ANOTHER
10 VIOLENT FELONY, INCLUDING HITTING THE PERSON UP, ASKING HIM
11 WHAT GANG THEY WERE FROM PRIOR TO THAT VIOLENT ENCOUNTER.

12 Q BASED UPON THOSE TWO INCIDENTS, BASED UPON
13 EVERYTHING ELSE YOU'VE TESTIFIED TO, DO YOU HAVE AN OPINION
14 THAT THE DEFENDANT ANDY REYES WAS AN ACTIVE PARTICIPANT IN
15 THE F-TROOP STREET GANG ON AUGUST 10TH OF 2004?

16 A I DO.

17 Q AND THAT IS?

18 A THAT HE WAS IN FACT AN ACTIVE MEMBER OF THE
19 F-TROOP GANG.

20 Q LET'S TALK ABOUT -- THIS WE'LL DO BRIEFLY, BUT
21 LET'S TALK ABOUT THE OTHER PARTICIPANTS IN THIS CASE.

22 DO YOU HAVE A PREFERENCE WHO WE START WITH?

23 A NO.

24 Q LET'S JUST TALK ABOUT FRANK LOPEZ THEN. I DON'T
25 WANT TO GO THROUGH IT PIECE BY PIECE, BUT ARE THERE
26 DOCUMENTS THAT YOU'RE RELYING ON AS THE BASIS FOR YOUR

1 OPINION WITH RESPECT TO FRANK LOPEZ?

2 A YES.

3 Q AND BRIEFLY TELL US WHAT YOU'RE RELYING ON.

4 A THE SAME THINGS AS FAR AS BACKGROUND THAT WE
5 TALKED ABOUT WITH ANDY REYES; FIELD INTERVIEW CARDS, POLICE
6 REPORTS, TALKING TO OTHER PEOPLE, FAMILY MEMBERS WHO HAVE
7 IDENTIFIED HIM AS AN F-TROOP GANG MEMBER. THE TOTALITY OF
8 THAT, ALONG WITH THE HOMICIDE ITSELF, THE CONDUCT INVOLVING
9 THE MURDER.

10 Q OKAY. AND, IN YOUR OPINION, WAS FRANK LOPEZ AN
11 ACTIVE F-TROOP GANG MEMBER OR PARTICIPANT ON THE DATE OF
12 THIS OFFENSE?

13 A I DO.

14 Q OKAY. WHO IS NEXT? YOU WANT TO TALK ABOUT
15 SEVERO DE LA RIVA?

16 A SURE.

17 Q WHAT ABOUT MR. DE LA RIVA?

18 A SAME BACKGROUND CONDUCTED, AS WELL AS THE FACTS
19 BEHIND THIS CASE. THE DIFFERENCE WITH SEVERO DE LA RIVA IS
20 THAT HE'S A 5TH STREET GANG MEMBER NOT AN F-TROOP GANG
21 MEMBER.

22 Q DOES THAT MATTER?

23 A NO.

24 Q 5TH STREET BEING ALIGNED WITH F-TROOP AGAIN?

25 A THAT'S CORRECT.

26 Q AND IN YOUR OPINION ABOUT MR. DE LA RIVA, WAS HE

1 AN ACTIVE 5TH STREETER ON THE DATE OF THIS OFFENSE?

2 A YES.

3 Q HOW ABOUT JESUS LOPEZ?

4 A YES.

5 Q TELL US ABOUT JESUS LOPEZ.

6 A SAME BACKGROUND. I'M FAMILIAR WITH JESUS LOPEZ.

7 I'VE TALKED TO HIM IN THE PAST. I KNOW ABOUT JESUS LOPEZ

8 AND HIS BACKGROUND, COUPLED WITH HIS CONDUCT ON THIS DATE.

9 I WOULD SAY THAT HE WAS AN ACTIVE F-TROOP GANG MEMBER ON THE
10 DAY OF THE HOMICIDE.

11 Q ISRAEL LOPEZ.

12 A ISRAEL LOPEZ IS JESUS'S BROTHER. I'M ALSO VERY
13 FAMILIAR WITH HIM. I KNOW HIS BACKGROUND. AND HIS
14 BACKGROUND, COUPLED WITH HIS CONDUCT ON THIS DATE, WHO HE
15 WAS WITH, MY OPINION WOULD BE THAT ISRAEL LOPEZ WAS ALSO AN
16 ACTIVE F-TROOP GANG MEMBER ON THE DATE OF THE MURDER.

17 Q LOUIS PEREZ.

18 A MY HISTORY WITH LOUIS PEREZ IS I KNEW MR. PEREZ
19 BEFORE THE HOMICIDE AS WELL. HIS BACKGROUND, COUPLED WITH
20 HIS CONDUCT, WHO HE WAS WITH AND THE FACTS OF THE MURDER, MY
21 OPINION WOULD BE THAT LOUIS PEREZ WAS ALSO AN ACTIVE F-TROOP
22 GANG MEMBER ON THE DATE OF THE HOMICIDE.

23 Q LET'S DISTINGUISH NOW BETWEEN THESE INDIVIDUALS
24 WE'VE JUST SPOKEN ABOUT AND MICHAEL CONTRERAS, IF WE CAN.
25 YOU KNOW WHO MICHAEL CONTRERAS IS?

26 A I DO.

1 Q YOU MET HIM PRIOR TO HIM COMING INTO COURT?

2 A ONE TIME.

3 Q WAS THAT JUST WHEN YOU WERE SHOWING HIM THE
4 PHOTOGRAPHS OR --

5 A FIRST AND ONLY TIME I EVER MET HIM. THAT I KNOW
6 OF.

7 Q YOU DID -- NEED TO SPEND A LITTLE MORE DETAIL ON
8 THIS, BUT YOU DID A LITTLE MORE -- YOU LOOKED INTO HIS
9 BACKGROUND WITH RESPECT TO ASSOCIATION WITH F-TROOP, DID YOU
10 NOT?

11 A A LITTLE BIT.

12 Q OKAY. TELL US WHAT YOU FOUND.

13 A WELL, I KNOW HE WAS PRESENT WITH ANDY REYES
14 DURING THE INCIDENT OVER AT THE APARTMENT COMPLEX WHEN THEY
15 WERE OVER THERE CLAIMING TO BE F-TROOPERS AND THAT WAS THEIR
16 NEIGHBORHOOD AND THEY WERE LOOKING TO BEAT A KID UP.

17 Q THAT WAS A WEEK BEFORE THE MURDER?

18 A THAT'S CORRECT.

19 Q OKAY.

20 A WHO HE WAS HANGING OUT WITH IN THE PARK, HIS
21 FAMILY HAS GANG TIES, HIS COUSINS ARE BOTH GANG MEMBERS.
22 COUPLED WITH THAT, I COULDN'T SIT HERE AND TELL YOU THAT
23 MICHAEL CONTRERAS WAS AN ACTIVE F-TROOP GANG MEMBER AT THE
24 TIME OF THIS HOMICIDE. I THINK HE WAS PROBABLY WELL ON HIS
25 WAY TO BEING AN F-TROOP GANG MEMBER, BASED ON WHO HE'S
26 ASSOCIATING WITH AND SPENDING TIME WITH. AND I WOULD

1 PROBABLY LABEL HIM AN F-TROOP ASSOCIATE AT THAT POINT.

2 Q OKAY. GOING BACK TO THE FACTS OF THIS CASE, ARE
3 YOU RELYING ON STATEMENTS YOU'VE OBTAINED WITH RESPECT TO
4 F-TROOP GOING OVER TO WEST MYRTLE TERRITORY AND WHETHER OR
5 NOT THAT WOULD BE A GOOD IDEA TO DO?

6 A YES.

7 Q WHY DON'T YOU ELABORATE ON THAT, PLEASE.

8 A WELL, I'VE TALKED TO, LIKE I SAID, A NUMBER OF
9 GANG MEMBERS OVER THE YEARS THAT TELL ME IF THEY PLAN ON
10 GOING INTO RIVAL TERRITORY, THEY'RE GOING TO ARM THEMSELVES
11 OR THEY'RE NOT GOING TO GO -- BECAUSE THEY KNOW WHAT THEY'RE
12 GOING TO ENCOUNTER OR VERY WELL COULD ENCOUNTER. DURING
13 THIS INVESTIGATION I TALKED TO ONE OF THE CO-DEFENDANTS,
14 ISRAEL LOPEZ, WHO TOLD ME HE WOULD NEVER GO DOWN TO
15 WEST MYRTLE TERRITORY WITHOUT BEING ARMED.

16 Q WE'LL DO THIS IN THE FORM OF A HYPOTHETICAL AT
17 THIS POINT IN TIME.

18 DETECTIVE, WHAT YOU'VE GOT IS YOU'VE GOT FIVE
19 F-TROOP GANG MEMBERS WITH ONE 5TH STREET GANG MEMBER. ONE
20 OF THEM IS ARMED, AT LEAST ONE OF THEM IS CIRCUMSTANTIALLY
21 ARMED. THEY ARE TRAVELING FROM EL SALVADOR PARK OVER TO
22 WEST MYRTLE TERRITORY, SPECIFICALLY THE INTERSECTION OF
23 WILLITS AND SULLIVAN, OR A LITTLE BEYOND THAT AREA,
24 ACTUALLY. THEY'RE ON BICYCLE.

25 WHILE THEY'RE RETURNING FROM THAT AREA HEADING
26 NORTHBOUND ON SULLIVAN STREET, YOU'VE GOT A SITUATION WHERE

1 THE GROUP MAY BE SPLIT UP A LITTLE BIT AND ONE OF THE GROUP
2 IS YELLING AT ANOTHER OF THE GROUP TO -- LET ME GET THIS
3 SPECIFICALLY RIGHT -- PART OF THE GROUP IS YELLING AT
4 ANOTHER PART OF THE GROUP TO STOP, STOP, A PARTICULAR CAR.
5 AGAIN, THEY'RE RIDING BICYCLES ON THE SIDEWALK OF SULLIVAN
6 STREET NORTHBOUND. THERE'S EVIDENCE TO SUGGEST THAT AT
7 LEAST ONE OF THEM SAYS, "HEY, STOP. WE WANT TO TALK TO
8 YOU."

9 AN INDIVIDUAL IS DRIVING, AGAIN, NORTHBOUND ON
10 SULLIVAN STREET. THAT MAY OR MAY NOT BE THE INDIVIDUAL WHO
11 IS ULTIMATELY SHOT IN THIS CASE. SHORTLY AFTER THIS
12 INTERACTION BETWEEN THAT VEHICLE, THE CAR HEADING SOUTHBOUND
13 ON SULLIVAN STREET, OCCUPIED BY ONE PERSON, HE'S DRIVING,
14 AND HE'S SHOT IN THE BACK OF THE HEAD BY ONE OF THESE
15 F-TROOP GANG MEMBERS. THERE'S EVIDENCE THAT ALL OF THEM
16 WERE AT THAT INTERSECTION AT THAT POINT IN TIME. THEY ALL
17 SCATTER AFTER THE SHOOTING.

18 THIRTY-NINE MINUTES LATER ONE OF THE F-TROOP GANG
19 MEMBERS IS PRESENT BACK UP IN HIS HOME TERRITORY, UP BY
20 EL SALVADOR PARK, UP BY 10TH AND ENGLISH. HE DOES A HIT-UP
21 ON AN INDIVIDUAL. THERE'S A FIGHT. HE ASKS THE PEOPLE THAT
22 HE'S WITH TO FOLLOW HIM, AND HE ENDS UP GETTING INTO A FIGHT
23 WITH THAT INDIVIDUAL. IN THE COURSE OF THAT FIGHT, HE TAKES
24 OUT THE GUN. THE GUN IS POINTED AT THE NECK OF THAT VICTIM.
25 THE VICTIM KNOCKS THE GUN FREE, TAKES THE GUN AWAY, AND THAT
26 F-TROOP GANG MEMBER AND THE PEOPLE HE WAS WITH RUN AWAY FROM

1 THE SCENE.

2 HAVE I GIVEN YOU ENOUGH FACTS AT THIS POINT IN
3 TIME TO OFFER YOUR OPINION WHETHER THE CRIME, SPECIFICALLY,
4 THE HOMICIDE, WAS DONE FOR THE BENEFIT OF, OR IN ASSOCIATION
5 WITH THE F-TROOP GANG?

6 A YES.

7 Q WHAT IS YOUR OPINION, SIR?

8 A THAT IT WOULD BE FOR THE BENEFIT OF AND IN
9 ASSOCIATION WITH F-TROOP.

10 Q WHY IS THAT?

11 A BASED ON THE FACTS YOU GAVE. YOU'VE GOT MULTIPLE
12 F-TROOP GANG MEMBERS THERE, SO YOU'RE IN ASSOCIATION WITH.
13 THERE'S MULTIPLE GUYS THERE. AND LIKE WE DISCUSSED EARLIER,
14 THE SHOOTING OF A RIVAL GANG MEMBER IN RIVAL TERRITORY IS A
15 BIG PRIZE. AND NOT ONLY ARE THE REPUTATIONS OF THE GUYS
16 INVOLVED IN THIS, ALL OF THEM INVOLVED IN THIS ARE GOING TO
17 BE HEIGHTENED, BUT THE F-TROOP GANG ITSELF FOR GOING OVER
18 THERE AND KILLING A RIVAL, THEIR REPUTATION AS WELL IS GOING
19 TO BE HEIGHTENED.

20 Q DOES IT MATTER WHETHER THAT PERSON ACTUALLY IS A
21 RIVAL OR AT LEAST THE PERCEPTION THAT HE'S A RIVAL GANG
22 MEMBER?

23 A I THINK IF THE PERCEPTION IS THERE THAT HE IS,
24 PERCEPTION IS REALITY A LOT OF TIMES. AND IT'S NOT GOING TO
25 MATTER ONE WAY OR THE OTHER.

26 Q OKAY. SAME SET OF FACTS ON THE FIRST

1 HYPOTHETICAL. WOULD YOU HAVE AN OPINION WHETHER THAT CRIME
2 WAS DONE, THE HOMICIDE WAS DONE, TO PROMOTE, FURTHER, OR
3 ASSIST CRIMINAL CONDUCT ON BEHALF OF THAT GANG?

4 A YES.

5 Q HOW SO?

6 A BASED ON WHAT I JUST SAID, THAT'S GOING TO
7 PROMOTE, FURTHER, AND ASSIST THE GANG, NOT ONLY THE
8 INDIVIDUAL MEMBERS, BUT THE GANG ITSELF. IT'S -- THE
9 ULTIMATE PRIZE IS TO KILL A RIVAL GANG MEMBER.

10 Q PEDRO ROSARIO, YOU'VE SEEN THESE PHOTOGRAPHS THAT
11 HAVE BEEN MARKED COLLECTIVELY AS PEOPLE'S 17A THROUGH L; IS
12 THAT CORRECT?

13 A THAT'S CORRECT.

14 Q YOU DID A BRIEF BACKGROUND INVESTIGATION ON .
15 MR. ROSARIO?

16 A BRIEF.

17 Q OKAY. IN YOUR OPINION, BASED UPON THAT
18 BACKGROUND INVESTIGATION, WAS HE AN ACTIVE WEST MYRTLE GANG
19 MEMBER?

20 A I COULDN'T SAY THAT, NO.

21 Q I'D LIKE YOU TO TAKE A LOOK AT SOME OF THESE
22 PHOTOGRAPHS, HOWEVER. I'M GOING TO GIVE YOU A FEW,
23 SPECIFICALLY 17J, 17K, AND 17L.

24 YOU'RE FAMILIAR WITH THE WEST MYRTLE HAND SIGN?

25 A YES.

26 Q AND WHAT'S A HAND SIGN?

1 A IT'S BASICALLY A NONVERBAL WAY GANG MEMBERS
2 COMMUNICATE. THEY'LL THROW UP A HAND SIGN FROM WHEREVER
3 THEIR GANG IS FROM. TROOPERS WILL USUALLY THROW AN "F" OR
4 SOMETHING TO THAT EFFECT. JUST, IT'S A NONVERBAL
5 COMMUNICATION BETWEEN GANG MEMBERS. IF THEY'RE TOO FAR AWAY
6 ON A HIT-UP, THEY MAY BE ACROSS THE STREET FROM EACH OTHER
7 DRIVING IN CARS, THEY'LL THROW A HAND SIGN IDENTIFYING
8 THEMSELVES WITH A CERTAIN GANG, WAITING FOR A RESPONSE.

9 Q YOU SEE THE PHOTOGRAPHS THAT I'VE SHOWN YOU
10 THERE?

11 A YES.

12 Q DOES IT APPEAR THAT MR. ROSARIO IS THROWING A
13 WEST MYRTLE GANG HAND SIGN?

14 A YES.

15 Q AND WHY DO YOU SAY THAT?

16 A BECAUSE HE'S THROWING A WM.

17 Q STANDING FOR WEST MYRTLE?

18 A THAT'S WHAT IT APPEARS TO BE.

19 Q OKAY. ALL RIGHT.

20 I THINK I MAY BE JUST ABOUT DONE. IF I MAY HAVE
21 A MOMENT.

22 (PAUSE IN PROCEEDINGS.)

23 ONE MORE AREA. WHAT ABOUT THE PROPOSITION THAT
24 ANDY REYES, WHO APPEARS NOT TO HAVE BEEN THE SHOOTER DOWN ON
25 SULLIVAN AND WILLITS, IS IN POSSESSION AND USING THE GUN,
26 THE MURDER WEAPON, 39 MINUTES LATER? HOW DOES THAT FACTOR

1 INTO THE EQUATION AS FAR AS YOU CONCERNING, FIRST, HIS
2 ACTIVE PARTICIPATION AND, SECONDLY, HOW THE HOMICIDE WAS
3 DONE TO PROMOTE HIS STATUS WITHIN THE GANG?

4 MR. BROTT: YOUR HONOR, I OBJECT TO THE QUESTION, NOT
5 ONLY IT'S COMPOUND, VAGUE, BUT IT'S ALSO -- WELL, IT'S VAGUE
6 ON THE ISSUE OF, IS HE TRYING TO GET THE BASIS OF AN OPINION
7 OR FACTORS INTO WHAT EQUATION?

8 THE COURT: SUSTAINED.

9 BY MR. GELLER:

10 Q WE'VE HAD EVIDENCE THAT ANDY REYES HAD THE MURDER
11 WEAPON 39 MINUTES LATER AND WAS USING IT IN ANOTHER VIOLENT
12 FELONY; IS THAT ACCURATE?

13 A CORRECT.

14 Q IS THAT A FACT THAT YOU ARE USING TO SUPPORT YOUR
15 OPINIONS HERE TODAY?

16 A ONE OF THE MANY.

17 Q OKAY. WHAT DOES THAT -- HOW DO YOU INTERPRET
18 THAT FACT? HOW DOES THAT HELP YOU, SIR?

19 A HE'S -- AS FAR AS HAVING THE GUN 39 MINUTES
20 LATER, HE'S OBVIOUSLY AT THE HOMICIDE. HE'S ENTRUSTED WITH
21 THAT GUN, REGARDLESS OF HOW HE GOT IT. PASSED OFF FROM
22 FRANK LOPEZ OR HOWEVER HE GOT IT, HE WAS ENTRUSTED WITH THAT
23 GUN, JUST LIKE A FELLOW GANG MEMBER WOULD BE. AND THAT
24 LEADS TO MY OPINION ON HIS ACTIVE MEMBERSHIP. HE'S
25 ENTRUSTED TO HAVE THAT GUN, EVEN THOUGH IT WAS JUST USED IN
26 A MURDER. AND GANG MEMBERS DON'T ENTRUST NON-GANG MEMBERS

1 WITH GUNS, SPECIFICALLY ONES THAT ARE BURNED, FOR THE LACK
2 OF A BETTER TERM, THAT WERE USED IN A CRIME.

3 MR. GELLER: OKAY. THANK YOU.

4 I HAVE NOTHING FURTHER.

5 THE COURT: ALL RIGHT.

6 LADIES AND GENTLEMEN, I DEFINITELY WANT TO GIVE
7 THE REPORTER A 15-MINUTE BREAK BEFORE MR. BROTT
8 CROSS-EXAMINES THE WITNESS. SO PLEASE DON'T TALK ABOUT THE
9 CASE. ASSEMBLE OUTSIDE THE COURTROOMS DOORS AT 20 MINUTES
10 TO 3:00, THAT'S A LITTLE MORE THAN 15 MINUTES FROM NOW, AND
11 WE'LL RESUME AT THAT TIME.

12 (RECESS TAKEN.)

13 THE COURT: WE'RE ALL TOGETHER ONCE AGAIN.

14 MR. BROTT, YOU MAY INQUIRE.

15 MR. BROTT: SIGHT LINE OKAY THERE, DETECTIVE?

16 THE WITNESS: I CAN SEE YOU GREAT, SIR.

17 CROSS-EXAMINATION

18 BY MR. BROTT:

19 Q IF I UNDERSTAND YOUR TESTIMONY CORRECTLY, YOU'RE
20 BASING THESE OPINIONS YOU'VE GIVEN US 90 PERCENT ON WHAT
21 GANG MEMBERS HAVE TOLD YOU; DID I MISINTERPRET YOUR
22 TESTIMONY?

23 A WELL, YOU TWISTED IT UP A LITTLE BIT. WHAT I
24 SAID WAS A LOT OF MY EXPERIENCE, PROBABLY 90 PERCENT OF MY
25 EXPERIENCE, IS INVOLVING TALKING TO AND INVESTIGATING
26 GANG-RELATED CRIMES AND TALKING TO GANG MEMBERS THEMSELVES.

1 Q BUT YOU ALSO AT ONE POINT SAID A LARGE MAJORITY
2 OR A VAST MAJORITY OF MY OPINIONS ARE BASED ON WHAT GANG
3 MEMBERS HAVE TOLD ME?

4 A YES.

5 Q IS THAT A FAIR CHARACTERIZATION?

6 A IT IS.

7 Q NOW, YOU'VE ALSO TOLD US THAT GANG MEMBERS BY
8 DEFINITION ARE CRIMINALS; IS THAT TRUE?

9 A IT'S TRUE.

10 Q AND THEY ARE MURDERERS, THIEVES, DOPE SELLERS,
11 GRAFFITI ARTISTS, TRUE?

12 A ALL OF THE ABOVE.

13 Q AND THEY'RE LIARS TOO, AREN'T THEY?

14 A THEY ARE.

15 Q AND YOU'RE TELLING -- THE THINGS YOU'VE TOLD THIS
16 JURY THEN, IF I AM NOT MISCONSTRUING IT, IS THAT THE VAST
17 MAJORITY OF YOUR OPINIONS ARE BASED ON WHAT PEOPLE LIKE THAT
18 HAVE TOLD YOU?

19 A THAT'S CORRECT.

20 Q AND THEY TELL YOU THESE THINGS BECAUSE THEY LIKE
21 ME AND THEY TELL ME THINGS, THAT'S WHAT I WROTE DOWN.

22 A I BELIEVE THAT'S WHAT I SAID, YEAH.

23 Q AND IS EVERYTHING THAT THEY'VE TOLD YOU OVER THE
24 YEARS TRUE?

25 A NO.

26 MR. GELLER: OBJECTION; THAT CALLS FOR SPECULATION.

1 THE COURT: OVERRULED. THE ANSWER WAS NO. NEXT
2 QUESTION.

3 BY MR. BROTT:

4 Q SO YOU FOUND OUT LATER OR EVEN WHEN THEY WERE
5 TELLING YOU SOMETHING THAT THEY WERE LYING TO YOU?

6 A CORRECT.

7 Q AND LYING IS A VERY BIG PART OF THE GANG CULTURE,
8 IS IT NOT?

9 A I DON'T KNOW IF I WOULD SAY THAT, BUT THEY DO
10 LIE. AND SOME TELL THE TRUTH.

11 Q SO YOUR JOB IS TO SORT IT OUT AND FIGURE OUT WHO
12 IS TELLING THE TRUTH AND WHO ISN'T?

13 A CORRECT.

14 Q BUT SOMETIMES YOU JUST DON'T KNOW?

15 A CORRECT.

16 Q SO WOULD YOU SAY THEN THAT AT LEAST SOME OR
17 PERHAPS THE MAJORITY OF WHAT YOU'VE BEEN TOLD IS NOT TRUE?

18 A NO, I WOULD DISAGREE WITH THAT.

19 Q WELL, YOUR OPINIONS HERE ARE BASED ON CERTAINLY
20 SOME THINGS THAT YOU'VE TOLD US -- STRIKE THAT.

21 SOME OF YOUR OPINIONS HERE ARE BASED ON UNTRUE
22 INFORMATION; ISN'T THAT TRUE?

23 A I DON'T LIKE THE WORDING OF THAT, SO, NO, I'M NOT
24 GOING TO SAY THAT'S TRUE. I WOULD SAY THAT HAVE GANG
25 MEMBERS LIED TO ME IN THE PAST? YES. BUT OVER THE LAST TEN
26 YEARS IN WORKING IN GANG UNITS AND TALKING TO GANG MEMBERS

1 UP AND DOWN THE STATE AND GOING TO PRISONS AND THOUSANDS OF
2 INVESTIGATIONS, WHEN YOU CONSISTENTLY ON A DAILY BASIS HEAR
3 THE SAME SORTS OF THINGS FROM GANG MEMBERS THAT NEVER MET
4 EACH OTHER, DON'T KNOW EACH OTHER, COULD BE FROM DIFFERENT
5 PARTS OF THE STATE, AND THE BASICS OF THE OPERATION -- THE
6 WAY THEY OPERATE AND THE WAY THE GANG MENTALITY IS IS THE
7 SAME, IT STARTS TO MAKE SENSE.

8 Q HAVE YOU EVER TESTIFIED -- HAVE YOU EVER
9 TESTIFIED AS A GANG EXPERT THAT THE CRIME INVOLVED WAS NOT A
10 GANG CRIME?

11 A I'M CONSISTENTLY ASKED TO REVIEW CASES AND I
12 WOULDN'T GET HERE IF I DIDN'T THINK THE CRIME WAS A GANG
13 CRIME, SO. I'D REJECT A CASE BEFORE IT EVER WOULD GET TO
14 HERE.

15 Q THAT'S NOT MY QUESTION. HAVE YOU EVER
16 TESTIFIED --

17 A NO.

18 Q -- THAT A CRIME WAS NOT A GANG CRIME?

19 A NO.

20 Q HAVE YOU EVER TESTIFIED FOR THE DEFENSE?

21 A I'VE BEEN CALLED BY DEFENSE ATTORNEYS, SO, I
22 DON'T KNOW.

23 Q AS A GANG EXPERT?

24 A NOT, NOT -- NO.

25 Q YOU'VE NEVER EXPRESSED AN OPINION ON BEHALF OF
26 THE DEFENSE, HAVE YOU?

1 A ONCE I GET HERE?

2 Q AS A GANG EXPERT?

3 A ONCE I GET HERE?

4 Q YES.

5 A NO.

6 THE COURT: LET'S GET ONE VOICE.

7 MR. BROTT: WE'RE USED TO TALKING NEXT DOOR TO EACH
8 OTHER FOR THE LAST COUPLE OF WEEKS. WE'RE CHATTY.

9 THE COURT: I KNOW. BUT MAKE AN EFFORT.

10 MR. BROTT: ALL RIGHT.

11 Q HAS THE -- I THINK YOU SAID THAT BEFORE THAT DAY
12 THAT YOU TRANSPORTED ANDY AFTER HIS ARREST YOU HAD NEVER MET
13 HIM BEFORE; IS THAT TRUE?

14 A THAT IS TRUE.

15 Q AND AS HE SITS THERE NOW, DO YOU KNOW WHAT HE'S
16 THINKING?

17 A NO.

18 Q DO YOU KNOW WHAT HE WAS THINKING ON THE 10TH
19 OR -- YEAH, THE 10TH OF AUGUST ON 2004 --

20 A NO.

21 Q -- DURING THIS HOMICIDE?

22 A NO.

23 Q DO YOU KNOW WHAT FRANK LOPEZ WAS THINKING ABOUT
24 ON THE 10TH DURING THIS HOMICIDE?

25 A NO.

26 Q DO YOU KNOW IF FRANK LOPEZ HAD ANY PRIOR

1 CONVERSATIONS WITH THE VICTIM IN THIS CASE?

2 A DO I KNOW IF THEY EXCHANGED WORDS BEFORE THE
3 SHOOTING?

4 Q NO, THAT'S A BAD QUESTION. IF THEY KNEW EACH
5 OTHER?

6 A OH, I DON'T KNOW IF THEY KNEW EACH OTHER.

7 Q AND MAYBE HAD A FIGHT OVER A GIRL OR SOMETHING
8 THAT HAD NOTHING TO DO WITH THE GANG, DO YOU KNOW IF THOSE
9 FACTS EXIST?

10 A I HAVE NO IDEA.

11 Q SO WOULD YOU SAY THAT IT'S POSSIBLE THAT THIS
12 SHOOTING COULD HAVE TAKEN PLACE FOR A DIFFERENT REASON OTHER
13 THAN A GANG-RELATED REASON?

14 A THAT WOULDN'T BE MY OPINION BASED ON THE FACTS
15 THAT I HAVE. I CAN ONLY BASE IT ON WHAT I KNOW. I CAN'T
16 BASE IT ON MAYBE SOMETHING COULD HAVE.

17 Q SO WOULD IT BE YOUR TESTIMONY THEN THAT IT IS
18 IMPOSSIBLE THAT THIS CASE -- THIS SHOOTING COULD HAVE TAKEN
19 PLACE IN ANYTHING BUT A GANG CONTEXT?

20 A NO, THAT WOULD NOT BE MY TESTIMONY.

21 Q THEN IT IS POSSIBLE THAT IT COULD HAVE BEEN
22 ANOTHER REASON FOR THIS SHOOTING OTHER THAN A GANG SHOOTING?

23 A YES.

24 Q ARE ONLY F-TROOPERS ALLOWED IN EL SALVADOR PARK?

25 A WELL, NO, THERE'S LOTS OF PEOPLE THAT GO PLAY
26 BASEBALL AND -- ARE YOU TALKING RIVAL GANG MEMBERS OR JUST

1 COMMUNITY PEOPLE?

2 Q ANYBODY. ANYBODY.

3 A YEAH.

4 Q ANYBODY COULD GO TO EL SALVADOR PARK, RIGHT?

5 A I DON'T KNOW IF ANYBODY COULD GO TO EL SALVADOR
6 PARK. I THINK IF RIVAL GANG MEMBERS WENT IN THERE, THERE
7 WOULD BE A BIG PROBLEM. BUT IF YOU'RE TALKING ABOUT
8 COMMUNITY PEOPLE SURE, THEY PLAY BASEBALL AND SOCCER AND
9 DIFFERENT ACTIVITIES IN THERE.

10 Q WELL, WHILE WE'RE ON THE SUBJECT OF TERRITORY,
11 WHAT IS WEST F-TROOP?

12 A WEST F-TROOP IS AN AREA OFF OF MARK, MONTA VISTA
13 AREA, WHICH WOULD BE SOUTH OF WHERE THE HOMICIDE -- SOUTH OF
14 WHERE THE HOMICIDE TOOK PLACE, ABOUT RIGHT IN HERE.

15 IF YOU KEPT GOING DOWN SULLIVAN, YOU'LL RUN INTO
16 MARK AND MONTA VISTA. THERE'S A HANDFUL OF F-TROOPERS OVER
17 THERE. RAUNEL AND RUBEN SALGADO AND CHAVEZ AND THE VILLA
18 BROTHERS, THEY LIVE OVER THERE. THEY'RE PART OF EL SALVADOR
19 PARK F-TROOP, BUT THEY CALL IT WEST F-TROOP IN THIS AREA.
20 (INDICATING.)

21 Q FOR THE RECORD, I THINK WE BETTER MAKE IT CLEAR
22 THE JURY, I HOPE, UNDERSTANDS THAT WE'RE POINTING TO
23 SOMETHING THAT'S OFF OF THE CHART, BUT --

24 A SOUTH OF WILLITS.

25 Q -- BUT, FOR THE RECORD, IT'S AN AREA THAT WOULD
26 APPEAR TO BE SOUTH -- SORT OF SOUTHWEST OF THE MAIN F-TROOP

1 AREA THAT YOU'VE DELINEATED ON PEOPLE'S --

2 THE COURT: 1.

3 MR. BROTT: -- 1.

4 THE WITNESS: I WOULD AGREE.

5 BY MR. BROTT:

6 Q OKAY. AND, WELL, LET'S NOT GO AWAY.

7 NOW, YOU ALSO SAID THAT WEST MYRTLE TERRITORY IS
8 SOMEWHERE IN THIS VICINITY, MEANING THE SOUTHEAST PORTION OF
9 THIS CHART; IS THAT CORRECT? (INDICATING.)

10 A WELL, NOT REALLY. THEY STOP AT ABOUT RAITT AND
11 THEY'RE IN THIS AREA. THEY'RE IN HERE. (INDICATING.)

12 Q OH, OKAY. SO THEY'D BE MORE IN THE MIDDLE OF THE
13 CHART RATHER THAN THE SOUTHEAST PART? (INDICATING.)

14 A CORRECT.

15 Q AND YOU SAID, IF I UNDERSTOOD YOUR TESTIMONY
16 CORRECTLY, THAT THIS SHOOTING TOOK PLACE ON THE FRINGES,
17 QUOTE, UNQUOTE, OF WEST MYRTLE TERRITORY?

18 A THAT'S CORRECT.

19 Q AND THAT -- TRYING TO GET YOUR WORDS ---AND THAT
20 YOU'RE SURE THAT WEST MYRTLE -- SOME PEOPLE IN WEST MYRTLE
21 CLAIM THAT TERRITORY?

22 A NO. WHAT I SAID WAS I'M SURE WEST MYRTLE WOULD
23 PROBABLY CLAIM THAT CORNER, BUT IT'S RIGHT ON THE FRINGE OF
24 WHERE THEY CLAIM THEIR TERRITORY. AND WHEN I GIVE YOU
25 CLAIMS OF BOUNDARIES, I'M NOT GIVING YOU EXACT BLOCK TO
26 BLOCK. IT'S A ROUGH GENERALIZATION AREA. AND, LIKE I SAID,

1 WITH THE CORE BEING RIGHT THERE ON MYRTLE.

2 SO I THINK IF YOU WENT AND TALKED TO WEST MYRTLE
3 GUYS, AND I CAN'T SIT HERE AND TELL YOU I'VE EVER ASKED THEM
4 SPECIFICALLY IF THEY CLAIM THAT CORNER, BUT I THINK THE VAST
5 MAJORITY OF THEM WOULD SAY, YEAH, THAT'S OUR AREA.

6 Q WHAT ABOUT THE F-TROOPERS, WOULD THEY SAY THAT'S
7 ON THE FRINGES OF OUR TERRITORY TOO?

8 A NO, I DON'T THINK SO.

9 Q WHY NOT?

10 A BECAUSE IT'S NOWHERE NEAR THEIR TERRITORY.

11 Q WELL, DON'T THEY HAVE TO CROSS THAT AREA TO GET
12 DOWN TO THEIR OTHER TERRITORY WEST F-TROOP?

13 A YES, AND THEY KNOW THAT.

14 Q AND IS IT A LIKELY SCENARIO THAT F-TROOPERS FROM
15 EL SALVADOR OR ARTESIA WOULD WANT TO GO DOWN TO VISIT THEIR
16 COHORTS IN WEST F-TROOP AREA AND IS IT POSSIBLE THAT THEY DO
17 THAT?

18 A SURE.

19 Q AND THAT THEY HAVE TO GO THROUGH A FRINGE AREA TO
20 GET THERE?

21 A YES.

22 Q AND THAT'S A POSSIBLE, EVEN LIKELY SCENARIO IN
23 THIS INSTANCE, IS IT NOT?

24 A HENCE, WHY THEY ARM THEMSELVES BEFORE THEY GO
25 DOWN THERE.

26 Q WELL, IF THE -- IF THE WEST MYRTLE PEOPLE -- YOU

1 SAY IT MIGHT BE A FRINGE, CORRECT?

2 A YES.

3 Q AND --

4 A I DON'T KNOW IF YOU'RE STUCK ON THE "FRINGE"
5 WORD. IT'S ROUGHLY THEIR AREA. THAT WOULD BE AT THE FAR
6 WESTERN PORTION OF -- BECAUSE THAT CORNER BASICALLY IS -- A
7 SCHOOL IS RIGHT THERE. SO THERE'S NO HOUSES ON THAT CORNER,
8 SO THAT WOULD ENCOMPASS ROUGHLY THEIR AREA. (INDICATING.)

9 Q SO THEN, IF I UNDERSTAND YOUR OPINION, IT IS
10 ABSOLUTELY RIVAL GANG TERRITORY FOR F-TROOPERS TO GO FROM --
11 TO GO IN THAT AREA?

12 A IF THEY WERE TO GO STRAIGHT DOWN SULLIVAN, IS
13 THAT WHAT YOU'RE ASKING?

14 Q SULLIVAN AND WILLITS, THAT'S WHERE WE'RE TALKING
15 ABOUT.

16 A RIGHT. IT'S RIGHT ON THE FRINGE OF THE
17 WEST MYRTLE'S TERRITORY.

18 Q SO IT'S A FRINGE AREA?

19 A IT IS A FRINGE AREA.

20 Q IT'S A GRAY AREA?

21 A IT IS.

22 Q OKAY. SO IT'S NOT HARD-CORE RIVAL GANG
23 TERRITORY, IS IT?

24 A NO, I WOULDN'T SAY THAT.

25 Q ALL RIGHT. ARE ALL CRIMES COMMITTED BY GANG
26 MEMBERS GANG CRIMES?

1 A NO.

2 Q CAN YOU THINK OF AN INSTANCE WHERE A CRIME IS
3 COMMITTED BY A GANG MEMBER AND YOUR OPINION IS IT WOULD NOT
4 BE A GANG CRIME?

5 A WELL, A CRIME THAT A GANG MEMBER WOULD COMMIT
6 THAT WOULDN'T BENEFIT OR FURTHER THE GANG WOULD BE A CRIME
7 THAT WOULDN'T BE A GANG CRIME. DID THAT MAKE SENSE?

8 Q A GANG MEMBER COMMITS A CRIME AND OTHER GANG
9 MEMBERS ARE PRESENT, ARE THEY ALL PART OF THAT CRIME?

10 A DEPENDING UPON WHAT IT IS.

11 Q ANY CRIME?

12 A YOU'D HAVE TO GIVE ME A SET OF FACTS AND I WOULD
13 GIVE YOU AN OPINION ON THAT.

14 Q IS THERE A HIERARCHY IN THE GANG, IN F-TROOP?

15 A YES.

16 Q AND DOES AGE PLAY A FACTOR IN THE HIERARCHY?

17 A MOST OFTEN THAN NOT IT DOES. BUT IT'S NOT
18 UNCOMMON FOR A YOUNGER GUY TO BE PRETTY HARD-CORE AND BE
19 WELL RESPECTED.

20 Q WELL, ANDY WAS 15 AT THE TIME OF THIS INCIDENT.
21 IS THAT CONSIDERED YOUNG?

22 A I THINK THE AVERAGE -- GOSH, YOU KNOW WHAT, I
23 JUST SAW THOSE STATS. I WANT TO SAY THE AVERAGE AGE -- I'M
24 NOT EVEN GOING TO GUESS THE NUMBER. I WOULD SAY 15 IS
25 PROBABLY ON THE YOUNGER SIDE, YES.

26 Q AND FRANK LOPEZ IS AN OLDER, MORE EXPERIENCED

1 GANG MEMBER; WOULD YOU SAY THAT IS PART OF YOUR OPINION?

2 A I WOULD SAY HE'S OLDER. I DON'T KNOW IF I WOULD
3 AGREE WITH MORE EXPERIENCED.

4 Q WELL, DIDN'T ANDY TELL YOU OR DIDN'T YOU TESTIFY
5 ON DIRECT -- NOT TELL YOU, DIDN'T YOU TESTIFY ON DIRECT THAT
6 ANDY TOLD SOMEONE THAT HE HADN'T BEEN JUMPED IN?

7 A YES.

8 Q AND THAT HE WASN'T READY FOR GANG MEMBERSHIP?

9 A NO, THAT'S NOT WHAT I SAID.

10 Q WHAT DID YOU SAY?

11 A HE HADN'T BEEN JUMPED IN IS WHAT HE TOLD THE
12 POLICE. I HAVEN'T BEEN JUMPED IN YET BECAUSE I STILL HAVE
13 TO PUT SOME WORK IN. "WORK" BEING COMMITTING CRIMES FOR THE
14 GANG.

15 Q THAT'S YOUR INTERPRETATION?

16 A THAT'S WHAT GANG MEMBERS HAVE TOLD ME OVER THE
17 YEARS THAT THAT'S WHAT THAT MEANS.

18 Q WELL, HE DIDN'T TELL YOU THAT?

19 A I WASN'T THERE FOR THAT. I WAS BASING THAT OFF A
20 POLICE REPORT.

21 Q SO WOULDN'T THAT SUGGEST THAT, BASED ON THAT
22 INTERVIEW AND THAT INTERVIEW ALONE, THAT HE WAS NOT PART OF
23 THE HIGH ECHELONS OF F-TROOP?

24 A I WOULD AGREE WITH THAT.

25 Q TELL US A LITTLE BIT ABOUT THIS MELGOZA
26 PREDICATE. IF I UNDERSTAND CORRECTLY, THE PREDICATE CRIME

1. IS AN ATTEMPTED VOLUNTARY MANSLAUGHTER WITH A PERSONAL USE
2 AND A GANG ALLEGATION FINDING BY A JURY?

3 A CORRECT.

4 Q AND THE FACTS OF THAT WERE, IF I UNDERSTAND THEM
5 CORRECTLY, THAT AN F-TROOP GANG MEMBER TAKES OUT A GUN,
6 SHOTS HIMSELF ACCIDENTALLY, BECOMES ANGRY, AND THEN SHOTS
7 SOMEBODY ELSE?

8 A FOR DISRESPECTING HIM. THEY LAUGHED AT HIM FOR
9 SHOOTING HIMSELF.

10 Q AND BASED ON THAT, THE JURY FELT THAT THAT WAS AN
11 ATTEMPTED VOLUNTARY MANSLAUGHTER?

12 MR. GELLER: OBJECTION; THAT CALLS FOR SPECULATION WHAT
13 THE JURY FELT.

14 MR. BROTT: I'LL REPHRASE IT.

15 Q THE JURY RENDERED A VERDICT THAT THAT WAS
16 ATTEMPTED VOLUNTARY MANSLAUGHTER?

17 A YES.

18 Q THOSE 186.22 CARDS, THOSE NOTICE OF
19 DETERMINATIONS --

20 A YES, SIR.

21 Q -- THE GANG MEMBERS, THEY DON'T FILL THOSE OUT,
22 DO THEY?

23 A THEIR FINGERPRINT IS PUT ON THEM, BUT AS FAR AS
24 THEM WRITING ANYTHING, NO.

25 Q THAT'S THE DEPARTMENT'S DETERMINATION THAT WE'VE
26 DECIDED YOU'RE A MEMBER OF A GANG AND WE'RE GOING TO PUT YOU

1 ON NOTICE?

2 A YES.

3 Q THE GANG MEMBERS DON'T HAVE A CHOICE ABOUT
4 GETTING SERVED WITH THOSE NOTICES?

5 A WELL, THEY HAVE A CHOICE NOT TO BE IN A GANG,
6 THEREFORE, NEVER GETTING SERVED.

7 Q THAT WASN'T MY QUESTION.

8 A OH, I'M SORRY.

9 Q THEY DON'T HAVE A CHOICE ABOUT GETTING SERVED
10 WITH ONE OF THOSE?

11 A NO.

12 Q AND ONCE THEY GET SERVED AT THE DISCRETION OF THE
13 POLICE DEPARTMENT, THAT GOES IN THE COMPUTER?

14 A CORRECT.

15 Q AND THAT BECOMES PART OF THEIR GANG JACKET?

16 A CORRECT.

17 Q AND IT'S THE DETERMINATION OF THE DEPARTMENT THAT
18 THAT DOCUMENT GOES INTO THE GANG JACKET, RIGHT?

19 A YES.

20 Q YOU GAVE ME, I THINK IT WAS YESTERDAY -- WAS IT
21 YESTERDAY? -- A POLICE REPORT ABOUT THE PARK INCIDENT WHERE
22 MR. REYES WAS ARRESTED WITH OTHER GANG MEMBERS.

23 A ARE YOU TALKING ABOUT THE GRAFFITI INCIDENT?

24 Q NO, I'M TALKING ABOUT THE CURFEW INCIDENT.

25 A THE GUN AND NARCOTICS?

26 Q YES.

1 A THAT WASN'T AT EL SALVADOR PARK.

2 Q I DIDN'T SAY EL SALVADOR. I DIDN'T THINK I DID.
3 WHERE WAS THAT?

4 A THAT WAS AT 2100 -- I BELIEVE THE EXACT ADDRESS
5 WAS 2134 WEST 9TH, THE 2100 BLOCK OF WEST 9TH STREET.

6 Q AND YOU JUST GAVE THAT TO ME YESTERDAY?

7 A I DID.

8 Q AND THAT INFORMATION HAD NOT BEEN SHARED WITH THE
9 DEFENSE PRIOR TO YESTERDAY; IS THAT TRUE?

10 A WELL, I --

11 Q THAT SPECIFIC REPORT.

12 A IT WAS REFERENCED --

13 Q TRUE?

14 A -- IN ANOTHER REPORT. BUT THAT SPECIFIC REPORT
15 YOU GOT YESTERDAY.

16 Q AND I ASKED YOU IN THAT -- IF MR. REYES'
17 STATEMENT HAD BEEN TAPE RECORDED IN THAT INCIDENT, DID I
18 NOT?

19 A CORRECT.

20 Q AND ACCORDING TO THE REPORT, IT WAS TAPE
21 RECORDED?

22 A YES, IT WAS.

23 Q AND I ASKED YOU TO PRODUCE A COPY OF THAT TAPE
24 RECORDING FOR ME, DIDN'T I?

25 A YOU DID.

26 Q AND WHAT HAPPENED?

1 A THE TAPE -- THE CASE WAS ADJUDICATED. IT HAD
2 ALREADY GONE THROUGH COURT. AND ONCE THE CASES ARE
3 ADJUDICATED IN COURT AND FINISHED, IN CASES LIKE THAT, THE
4 EVIDENCE IS DESTROYED. SO THE TAPE WAS NO LONGER AVAILABLE.

5 Q WELL, JUST SO THERE'S NO MISUNDERSTANDING, THAT
6 INCIDENT, MR. REYES WAS NOT ARRESTED OR CHARGED FOR THE
7 MARIJUANA OR THE GUN OR THE GANG AFFILIATIONS, CORRECT?

8 A CORRECT.

9 Q HE WAS ARRESTED FOR CURFEW?

10 A CORRECT.

11 Q NOW, YOU SAID THAT -- HAVE YOU INVESTIGATED ANY
12 F-TROOP VERSUS WEST MYRTLE STREET INCIDENTS?

13 A I'M SURE I HAVE. I KNOW OF INSTANCES THAT I'VE
14 EITHER TAKEN PART OF. IF I WAS THE LEAD INVESTIGATOR, I
15 CAN'T REMEMBER IF I HAVE OR NOT. LIKE I SAID, A LOT OF GANG
16 MEMBERS, A LOT OF GANGS.

17 Q YOU DON'T KNOW, IN FACT, YOU CANNOT MAKE AN
18 OPINION THAT THE VICTIM IN THIS CASE WAS A WEST MYRTLE GANG
19 MEMBER, CAN YOU?

20 A JUST BASED ON WHAT I HAVE, NO.

21 Q AND THE PICTURES THAT YOU RELIED UPON WERE
22 PICTURES THAT WERE NOT AVAILABLE TO THE PEOPLE RIDING THEIR
23 BIKES IN THAT NEIGHBORHOOD THAT DAY; WOULD THAT BE FAIR TO
24 SAY?

25 A DID ANDY SEE THE PHOTOS; IS THAT WHAT YOU'RE
26 SAYING?

1 Q RIGHT.

2 A I DON'T BELIEVE SO.

3 Q IN FACT, ALMOST CERTAINLY NONE OF THE PEOPLE ON
4 THE BICYCLES ON THAT DAY SAW THOSE PICTURES BEFORE THIS
5 INCIDENT?

6 A I WOULD SAY THAT'S A SAFE BET.

7 Q NOW, THE PEOPLE THAT YOU RESEARCHED, FRANK LOPEZ,
8 SEVERO DE LA RIVA, JESUS LOPEZ, ISRAEL LOPEZ AND LOUIS PEREZ
9 YOU SAY ARE ALL F-TROOP MEMBERS; IS THAT CORRECT?

10 A SEVERO IS A 5TH STREETER AND THE OTHER GUYS ARE
11 TROOPERS.

12 Q THAT'S TRUE.

13 WOULD YOU SAY THAT FRANK LOPEZ PHYSICALLY, THAT
14 IS, HEIGHT, WEIGHT, ALMOST IDENTICALLY MATCHES THE
15 INDIVIDUAL THAT DETECTIVE SELINSKE IDENTIFIED AS HAVING THE
16 GUN?

17 A BASED ON HEIGHT AND WEIGHT?

18 Q YES.

19 A YES.

20 Q MUCH MORE SO THAN ANY OF THE OTHERS?

21 A HEIGHT. SEVERO IS A BIG GUY. BUT HE'S HUSKY.

22 Q NOT SKINNY, LIKE ME?

23 A HE'S NOT SKINNY LIKE YOU. SO, BASED ON JUST
24 HEIGHT AND WEIGHT, NOBODY IS THE SAME AS HIM, NO.

25 Q DO I LOOK LIKE I'M 6'4"?

26 A I WOULDN'T HAVE GIVEN YOU 6'4", NO.

1 Q TOO BAD. I LOST MY TRAIN OF THOUGHT.

2 MR. GELLER: YOU WERE 6'4".

3 MR. BROTT: SKINNY.

4 Q LET'S STICK WITH WHAT SELINSKE IS TELLING US.

5 SELINSKE SAYS THAT HE'S COMING DOWN SULLIVAN
6 SOUTHBOUND AND, IN HIS MIND, THAT CAR IS THE ONLY ONE IN
7 FRONT OF HIM AND NO OTHER CARS. DO YOU REMEMBER HEARING
8 THAT TESTIMONY?

9 A I DO.

10 Q AND, THAT THERE WERE NO OTHER PEOPLE AROUND THAT
11 CAR SHOUTING GANG SIGNS, HEY, WHERE YOU FROM? HITTING THAT
12 GUY UP, AS FAR AS HE COULD SEE. DID YOU HEAR THAT
13 TESTIMONY?

14 A I BELIEVE SO.

15 Q OKAY. WELL, IF THE CAR THAT STEVE GARCIA, THE
16 KID THAT HIS MOM WAS SELLING TACOS, IF THAT CAR WAS NOT THE
17 CAR THAT CONTAINED THE VICTIM, WOULD THAT CHANGE YOUR
18 OPINION?

19 A NO.

20 Q WHY NOT?

21 A IT DOESN'T CHANGE THE CONDUCT. SO, WHETHER
22 THEY'RE YELLING AT ONE CAR TO STOP OR MULTIPLE CARS TO STOP,
23 THE CONDUCT IS THE SAME.

24 Q BUT WOULDN'T IT THEN GO FROM SHOOTING A
25 POTENTIALLY RIVAL GANG MEMBER TO JUST SOMEBODY GETTING SHOT
26 FOR WHAT COULD BE ANY REASON?

1 A WELL, YOU ASKED ME THAT EARLIER, IF IT COULD HAVE
2 BEEN ANY REASON. BUT IT DOESN'T CHANGE THE FACT, WHETHER
3 THEY WERE YELLING AT ONE CAR OR TWO CARS, DOESN'T CHANGE THE
4 FACTS OF THE CASE OR THE CONDUCT. IF ANYTHING, YELLING AT
5 TWO CARS PROBABLY GIVES IT MORE OF A -- THEY'RE REALLY
6 RUNNING A MUCK OUT THERE, TRYING TO STOP ANY CAR THEY CAN.

7 Q BUT WE DON'T HAVE ANY EVIDENCE THAT THEY WERE
8 YELLING AT TWO CARS.

9 A I THOUGHT THAT'S WHAT YOU WERE ASKING ME.

10 Q NO. THERE WAS NO YELLING AT THE OTHER CAR.
11 THERE WAS NO HIT-UPS. THERE WAS NO -- AS FAR AS THE OFFICER
12 WAS CONCERNED, HE DIDN'T SEE ANY PRIOR CONDUCT WITH ANYBODY
13 PRIOR TO THE SHOOTING VIS-A-VIS THAT CAR.

14 A THAT'S WHAT HE SAID.

15 Q AND THAT -- THAT DOES NOT AFFECT YOUR OPINION?

16 A NO, NOT IN THE LEAST.

17 Q YOU'VE QUALIFIED AS AN EXPERT ON F-TROOP BEFORE?

18 A YES.

19 Q AND BEEN CROSS-EXAMINED BY GUYS LIKE ME?

20 A NOT AS THIN AS YOU, BUT GUYS LIKE YOU.

21 Q HAVE YOU EVER CHANGED YOUR OPINION AFTER BEING
22 CROSS-EXAMINED BY A DEFENSE LAWYER?

23 A NO.

24 MR. BROTT: NOTHING FURTHER.

25 THE COURT: REDIRECT?

26 MR. GELLER: NO.

1 THE COURT: NO? OKAY. THANK YOU VERY MUCH.

2 MR. GELLER: SUBJECT TO THE ADMISSION OF MY EXHIBITS, I
3 HAVE NO MORE TESTIMONIAL WITNESSES. I WOULD REST.

4 THE COURT: MR. BROTT?

5 MR. BROTT: 1118.1.

6 THE COURT: I UNDERSTAND.

7 MR. BROTT: AND OTHER THAN THAT, THE DEFENSE CHOOSES TO
8 RELY ON THE STATE OF THE EVIDENCE, AND WE REST.

9 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, IT
10 APPEARS AT THIS POINT THAT YOU'VE HEARD ALL THE EVIDENCE
11 YOU'RE GOING TO HEAR IN THIS PARTICULAR CASE. WE'RE AT THAT
12 STAGE OF THE TRIAL WHERE I NOW NEED TO WORK WITH THE
13 ATTORNEYS TO CLEAN UP A FEW THINGS. AND WE'RE AT THAT STAGE
14 OF THE TRIAL WHERE I HAVE TO WORK WITH THE LAWYERS TO
15 FORMULATE THE INSTRUCTIONS THAT WILL BE GIVEN TO YOU BEFORE
16 WE MOVE INTO FINAL ARGUMENT. WE'RE GOING TO USE THE REST OF
17 THIS AFTERNOON TO DO SOME OF THE WORK THAT WE HAVE TO DO.
18 AND IT WOULD APPEAR THAT WE'RE GOING TO NEED THE MORNING ON
19 MONDAY TO WORK ON THE INSTRUCTIONS, BECAUSE WE'RE NOT GOING
20 TO BE WORKING TOGETHER ON THIS TRIAL TOMORROW. AND YOU, AS
21 I TOLD YOU, WOULD NOT BE HERE TOMORROW.

22 SO, I'M GOING TO BRING YOU BACK TO COURT MONDAY
23 AFTERNOON AT 1:30. MONDAY IS, MY GOODNESS, JUNE 5TH, 2006.
24 1:30 IN THE AFTERNOON.

25 YES, YOU CAN WRITE THAT DOWN AND TAKE WITH YOU,
26 BECAUSE IT'S ABOUT FIVE DAYS AWAY.

1 DURING THIS PERIOD OF RECESS, ONCE AGAIN, YOU'LL
2 BE WITH FAMILY AND FRIENDS. YOU'VE HEARD ALL THE EVIDENCE.
3 YOU MAY FEEL A TEMPTATION TO DISCUSS THIS CASE. PLEASE
4 REFRAIN FROM DOING SO. DO NOT CONVERSE AMONG YOURSELVES OR
5 WITH ANYONE ELSE ON ANY SUBJECT CONNECTED WITH THE TRIAL.
6 PLEASE DON'T FORM OR EXPRESS AN OPINION ON THE CASE.

7 WHEN YOU COME BACK MONDAY AFTERNOON I WILL BE
8 INSTRUCTING YOU ON THE LAW THAT APPLIES TO THIS CASE. AND
9 THEN THE ATTORNEYS WILL BE ALLOWED TO DELIVER THEIR FINAL
10 ARGUMENTS. AND, HOPEFULLY, THOSE ARGUMENTS WILL CERTAINLY
11 REFRESH YOUR RECOLLECTION AS TO WHAT THE EVIDENCE HAS BEEN.

12 HAVE A VERY GOOD, SAFE WEEKEND. AND I'LL SEE YOU
13 BACK HERE MONDAY AFTERNOON AT 1:30.

14 (JURY EXCUSED.)

15 (THE FOLLOWING PROCEEDINGS WERE HAD IN
16 OPEN COURT OUT OF THE PRESENCE OF THE JURY:)

17 THE COURT: MR. BROTT, THE OPENING STATEMENT THAT YOU
18 PREVIOUSLY RESERVED IS NOW WAIVED.

19 MR. BROTT: YES.

20 THE COURT: AND, MR. GELLER, YOU'RE MOVING INTO
21 EVIDENCE PEOPLE'S 1 THROUGH 19, EXCLUSIVE OF 11 AND 12,
22 WHICH HAVE ALREADY BEEN RECEIVED?

23 MR. GELLER: YES, I AM.

24 THE COURT: DO YOU WANT ME TO GO OVER THOSE ITEMS ONE
25 AT A TIME, MR. BROTT OR --

26 MR. BROTT: I HAVE JUST BEEN HANDED A LIST. CAN I DO

1 THAT SILENTLY AND VERY QUICKLY?

2 THE COURT: OKAY.

3 MR. BROTT: I'VE HAD TIME TO REVIEW THEM.

4 THE COURT: ANY OBJECTION?

5 MR. BROTT: NO.

6 THE COURT: ALL RIGHT. ALL ITEMS NOT HERETOFORE
7 RECEIVED ARE NOW RECEIVED INTO EVIDENCE WITHOUT OBJECTION.

8 (WHEREUPON, PEOPLE'S EXHIBIT NO.S 1
9 THROUGH 10 AND 13 THROUGH 19 ARE RECEIVED
10 INTO EVIDENCE.)

11 YOU HAD AN 1118.1?

12 MR. BROTT: MOTION TO DISMISS DUE TO INSUFFICIENCY OF
13 THE EVIDENCE OF FIRST DEGREE MURDER. CERTAINLY, WITH
14 RESPECT TO THE AIDING AND ABETTING THEORY, WHICH I THINK THE
15 WILL OR HAVE EXPOUNDED OR ARE EXPOUNDING, THE EVIDENCE FAILS
16 IN THAT REGARD BECAUSE IT WOULD TAKE A KNOWLEDGE THAT A
17 CRIME WAS ABOUT TO BE COMMITTED AND A SHARED INTENT. I
18 DON'T BELIEVE THAT ANY EVIDENCE THAT WE HAVE, EVEN WITH THE
19 EXPERT OPINION, WOULD STRETCH TO THE LEVEL OF A PREMEDITATED
20 DELIBERATE MURDER. AND I BELIEVE THAT AT LEAST AS TO THE
21 FIRST DEGREE MURDER ON AN AIDING AND ABETTING THEORY, IT
22 DOESN'T -- IT'S NOT THERE.

23 JUST AS A CAUTION, I WILL ARGUE THAT NO HOMICIDE
24 OR ILLEGAL ACT IS SHOWN WITH RESPECT TO ANY THEORY. AND
25 THAT WOULD BE MY 1118.1 MOTION.

26 THE COURT: MR. GELLER?

1 MR. GELLER: DOES THE COURT NEED ME TO COMMENT ON THIS?

2 THE COURT: WELL, I THINK WHAT'S IMPORTANT IS WHAT YOU
3 REPRESENTED TO ME IN CHAMBERS WHEN WE SPOKE INFORMALLY SOME
4 TIME TODAY; THAT YOU WERE PROCEEDING ON A THEORY OF NATURAL
5 AND PROBABLE CONSEQUENCES IN A 415 OR 242 SITUATION.

6 FAIR TO SAY?

7 MR. GELLER: FAIR TO SAY, IN ADDITION TO A CONSPIRACY
8 TO COMMIT THOSE TARGET CRIMES. AND I'M ALSO PROFFERING TO
9 THIS JURY A THEORY ON AIDING AND ABETTING THAT THE DEFENDANT
10 IS INDEED BACKING UP FELLOW GANG MEMBERS AT THE TIME THIS
11 CRIME ACTUALLY IS COMMITTED. QUITE FRANKLY, THAT'S FROM THE
12 POINT WHERE HE'S BEING SHOWN THE FIREARM BACK AT EL SALVADOR
13 PARK. I THINK THAT'S WHERE THE P AND D COMES IN. I MEAN,
14 YOU'VE GOT THE GANG BACKGROUND WITH RESPECT TO HIM, WITH
15 RESPECT TO THE KNOWLEDGE ISSUES CONCERNING FIREARMS AND HOW
16 IMPORTANT THEY ARE TO GANG MEMBERS. AND THEY'RE ALL
17 TREKKING DOWN TO WILLITS AND SULLIVAN WHERE THIS HOMICIDE
18 OCCURS. THERE'S AMPLE P AND D, CERTAINLY, TO GO TO THE
19 JURY.

20 THE COURT: SUBMITTED?

21 MR. BROTT: SUBMITTED.

22 THE COURT: ANOTHER QUESTION FOR THE COURT ON A MOTION
23 PURSUANT TO PENAL CODE SECTION 1118.1 IS WHETHER THERE IS
24 SUFFICIENT EVIDENCE TO SUSTAIN A CONVICTION FOR THE OFFENSE.
25 AND THE OFFENSE CHARGED IS MURDER. AND THE COURT IS
26 CONSIDERING ALL OF THE CIRCUMSTANTIAL EVIDENCE IN

1 DETERMINING WHETHER THERE WOULD BE SUFFICIENT EVIDENCE TO
2 SUSTAIN A CONVICTION FOR MURDER IN THE FIRST DEGREE. THE
3 ACTIVITY BEFORE AND SUBSEQUENT TO THE HOMICIDE. ALSO, THE
4 FACT THAT THERE WERE A NUMBER OF GANG MEMBERS INVOLVED.
5 AND, THIS WAS AT AN APPARENT, FROM THE CIRCUMSTANTIAL
6 EVIDENCE, HIT-UP ON THE ULTIMATE VICTIM OF THE CRIME. I
7 THINK ALL OF THAT IS SUFFICIENT TO SUSTAIN A CONVICTION, IF
8 THERE IS ONE. AND, CONSEQUENTLY, YOUR MOTION IS DENIED.

9 DO WE NEED TO DO ANYTHING ELSE ON THE RECORD AT
10 THIS POINT?

11 MR. BROTT: NO.

12 MR. GELLER: NO. I'LL GO BACK TO MY OFFICE AND PULL A
13 GENERIC SET OF JURY INSTRUCTIONS. I CAN GIVE THE COURT A
14 COPY EITHER TOMORROW OR FRIDAY. I COULD PROBABLY DO THAT
15 TOMORROW AT SOME POINT IN TIME. AND I'LL GIVE MR. BROTT A
16 COPY. AND BETWEEN NOW AND MONDAY I'LL GO AHEAD AND FILL IN
17 SPECIFICALLY THE GANG INSTRUCTIONS, THE PRIMARY ACTIVITIES
18 AND THE PREDICATE OFFENSES, AND THINGS OF THAT NATURE. AND
19 I THINK WE COULD PROBABLY FORMALIZE IT IN CERTAINLY A FEW
20 HOURS ON MONDAY MORNING.

21 THE COURT: ALL RIGHT. ONE MOMENT, PLEASE.

22 (PAUSE IN PROCEEDINGS.)

23 THE COURT: I HAVE A QUESTION FROM THE CLERK THAT'S
24 REASONABLE. CAN WE SEE THE FIREARM IN PEOPLE'S 14, PLEASE?

25 MY CLERK TELLS ME, AND SHE'S CORRECT, THAT INSIDE
26 THE BOX THAT CONTAINS THE FIREARM, WHICH HAS BEEN LOCKED,

1 PRESUMABLY, BY MY BAILIFF, AND CHECKED, ALSO PRESUMABLY BY
2 MY BAILIFF, THERE ARE FIVE SEPARATE ENVELOPES THAT
3 PURPORTEDLY CONTAIN ROUNDS. WE DON'T BELIEVE THAT THESE
4 WERE ADDRESSED DURING THE TRIAL. AND, CONSEQUENTLY, SHE IS
5 ASKING ME WHETHER THESE SHOULD BE REMOVED FROM THE GUN BOX
6 AND WITHHELD FROM THE JURY BECAUSE SHE'S CONCERNED,
7 RIGHTFULLY SO, ABOUT THE FOUNDATION FOR THESE ITEMS.

8 MR. GELLER: YOU KNOW, THE JURY HAS A PHOTOGRAPH OF THE
9 GUN SHOWING THE AMMUNITION IN THE CHAMBER OF THE FIREARM, SO
10 I DON'T HAVE A PROBLEM TAKING THOSE BACK. IT WAS ALL PART
11 OF ONE EXHIBIT AND I DIDN'T LAY THE FOUNDATION FOR BULLETS,
12 PER SE. SO I WOULDN'T MIND TAKING THOSE BACK AND GIVING
13 THEM TO DETECTIVE RONDOU, AND WE CAN JUST SAFE KEEP THEM
14 THAT WAY.

15 THE COURT: ANY OBJECTION TO THAT?

16 MR. BROTT: I HAVE NO OBJECTION. NO, I'M FINE.

17 THE COURT: OKAY.

18 MR. GELLER: YOUR HONOR, MAY I MAKE A SUGGESTION.
19 BECAUSE THERE'S GOING TO BE ADDITIONAL TRIALS IN THIS CASE,
20 CAN WE KEEP THEM IN THE BOX THAT THEY'RE DESIGNED TO GO IN
21 AND PRIOR TO -- OR MAYBE JUST GIVE THEM TO THE BAILIFF IN A
22 DIFFERENT ENVELOPE. WHEN THE CASE IS DONE, THE COURT IS NOT
23 GOING TO KEEP THE GUN ANYWAYS. WE'RE GOING TO KEEP A
24 PHOTOGRAPH OF THE GUN IN EVIDENCE. THAT WAY THINGS DON'T
25 GET SPLIT UP. AND THAT WAY I'VE GOT SORT OF A CONTINUITY OF
26 CHAIN OF EVIDENCE WITH RESPECT TO SUBSEQUENT TRIALS.

1 THE CLERK: MAY I MAKE A SUGGESTION, JUDGE. GO AHEAD
2 AND MARK THE BULLETS IN THE ENVELOPES AS, LIKE, 14A, B, C
3 AND D, JUST FOR IDENTIFICATION, WHICH KEEPS IT TOGETHER BUT
4 NOT IN TO THIS JURY.

5 MR. GELLER: THAT'S PERFECT.

6 MR. BROTT: FINE WITH ME.

7 THE COURT: ALL RIGHT. THE CLERK WILL SEPARATELY MARK
8 THE ENVELOPES PURPORTEDLY CONTAINING BULLETS AS 14A, B, C,
9 D, AND E. THE EXHIBITS HERETOFORE RECEIVED INTO EVIDENCE
10 SPECIFICALLY WILL BE DEEMED TO HAVE EXCLUDED A, B, C, D, AND
11 E. AND THOSE WILL BE RETAINED BY THE CLERK UNTIL THE END OF
12 THE TRIAL.

13 MR. BROTT: ALL RIGHT.

14 (WHEREUPON EXHIBIT NO.S 14A THROUGH
15 14E WERE MARKED FOR IDENTIFICATION.)

16 MR. GELLER: AND I PRESUME, SO THAT IT'S VERY CLEAR ON
17 THE RECORD, BECAUSE I DON'T WANT ANY ISSUES ON APPEAL, IF
18 THERE IS ONE, THAT WHEN THE BAILIFF -- IF THE JURY WANTS TO
19 SEE THE GUN THAT ALWAYS GOES IN WITH THE BAILIFF, THE
20 BAILIFF SHOWS THEM THE GUN, THE COURT COULD INSTRUCT THE
21 BAILIFF NOT TO BRING THE BULLETS IN BECAUSE THEY'RE NOT
22 EVIDENCE.

23 THE COURT: WE'LL WORK THAT OUT. WE'LL MAKE SURE OF
24 THAT.

25 MR. BROTT, I REALLY THINK WE NEED TO BE TOGETHER
26 MOST OF THE MORNING ON MONDAY. I KNOW YOU HAVE ANOTHER

1 APPEARANCE IN WEST COURT.

2 MR. BROTT: I'LL GET SOMEBODY TO COVER IT.

3 THE COURT: BUT I WOULD JUST AS SOON START AS EARLY AS
4 POSSIBLE HERE ON JURY INSTRUCTIONS. I MAY HAVE TO INTERRUPT
5 MYSELF TO GO ON THE RECORD ONCE OR TWICE. BUT IF YOU COULD
6 BE HERE AT NINE O'CLOCK, I WOULD PREFER THAT.

7 WOULD YOU LIKE ME TO MAKE AN ORDER THAT YOU BE
8 HERE?

9 MR. BROTT: PLEASE.

10 THE COURT: YOU'RE ORDERED TO BE HERE AT NINE A.M.

11 MR. GELLER, YOU'RE ORDERED AS WELL.

12 MR. GELLER: THANK YOU.

13 THE COURT: ANYTHING ELSE?

14 MR. BROTT: NO.

15 THE COURT: ANYTHING ELSE?

16 MR. GELLER: NO. WOULD YOU LIKE AN ACTUAL PACKET OR
17 JUST THE LIST OF MY INSTRUCTIONS?

18 THE COURT: OH, NO, I WANT THE INSTRUCTIONS AND THE
19 LIST.

20 MR. GELLER: OKAY.

21 THE COURT: OFF THE RECORD.

22 (OFF THE RECORD.)

23

24 (EVENING RECESS.)

25 -000-

26

COURT OF APPEAL - STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT - DIVISION III

COPY

THE PEOPLE OF THE STATE OF CALIFORNIA,

PLAINTIFF AND RESPONDENT,

VS.

ANDRES QUINONEZ REYES,

DEFENDANT AND APPELLANT.

APPEAL FROM THE SUPERIOR COURT OF ORANGE COUNTY
HONORABLE CARLA M. SINGER, JUDGE PRESIDING
REPORTER'S TRANSCRIPTS ON APPEAL

JUNE 5, 6 AND 7, 2006
JULY 25, 2006

A P P E A R A N C E S

FOR PLAINTIFF & RESPONDENT:

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110 WEST "A" STREET, #1100
SAN DIEGO, CALIFORNIA 92101

FOR DEFENDANT & APPELLANT:

APPELLATE DEFENDERS, INC.
555 W. BEECH STREET, #300
SAN DIEGO, CA 92101

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LYNN PETERSON, CSR NO. 7706
OFFICIAL COURT REPORTER

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<u>FELIX J. NIEVES</u>				1
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3	LARGE COLOR CARICATURE OF WILLITS AND SULLIVAN STREETS	104/1	466/2
4	8.5X11" COLOR PHOTO: INTERSECTION OF WILLITS AND SULLIVAN SOUTHBOUND DIRECTION AND SHOWING VICTIM'S HONDA CIVIC	107/1	466/2
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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE - CENTRAL JUSTICE CENTER
DEPARTMENT C-36

THE PEOPLE OF THE STATE
OF CALIFORNIA,

PLAINTIFF,

VS.

ANDRES QUINONEZ REYES,
DEFENDANT.

)
)
)
)
)
) CASE NO. 04CF2780
)
) TRANSCRIPT OF
) JURY INSTRUCTIONS
) AND
) CLOSING ARGUMENTS

HONORABLE CARLA M. SINGER, JUDGE PRESIDING

REPORTER'S TRANSCRIPT

JUNE 5, 2006

APPEARANCES OF COUNSEL:

FOR THE PEOPLE:

TONY RACKAUCKAS
DISTRICT ATTORNEY
BY: MARK GELLER, DEPUTY

FOR THE DEFENDANT:

JAMES BROTT
CONFLICT ATTORNEY

LYNN O. PETERSON, CSR #7706
OFFICIAL COURT REPORTER

LYNN O. PETERSON, OFFICIAL COURT REPORTER

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1 SANTA ANA, CALIFORNIA - MONDAY, JUNE 5, 2006

2 MORNING SESSION

3 -000-

4
5 (THE FOLLOWING PROCEEDINGS WERE HAD IN
6 OPEN COURT OUT OF THE PRESENCE OF THE JURY:)

7 THE COURT: WE'RE RETURNING TO PEOPLE VERSUS
8 ANDRES REYES, CASE NO. 04CF2780. DEFENDANT IS PRESENT WITH
9 COUNSEL. THE PEOPLE ARE REPRESENTED. WE'RE OUTSIDE THE
10 PRESENCE OF THE JURY FOR THE PURPOSES OF THESE PROCEEDINGS
11 CONCERNING JURY INSTRUCTIONS.

12 THE COURT HAS MET WITH COUNSEL IN CHAMBERS. THE
13 PEOPLE DID SUBMIT A LIST OF INSTRUCTIONS AND, FROM AMONG
14 THOSE INSTRUCTIONS, THEY HAVE ONLY AT THIS POINT WITHDRAWN
15 3500, WHICH WAS THE UNANIMITY INSTRUCTION. AND, IN
16 ADDITION, THEY'RE GOING TO BE WITHDRAWING THE TWO
17 INSTRUCTIONS RELATING TO PLACEMENT OF THE ALTERNATE JURORS.

18 I'M SORRY, JUST A MOMENT.

19 (PAUSE IN PROCEEDINGS.)

20 I'M SORRY, JUST ONE INSTRUCTION, 3575, THAT THE
21 COURT IS GOING TO DEEM WITHDRAWN, BECAUSE WE'RE NOT
22 SUBSTITUTING AN ALTERNATE AT THIS POINT IN TIME. CALCRIM
23 3575. AND AS TO THE OTHER, 3577, THE COURT WILL MODIFY THAT
24 TO ADDRESS ALTERNATE JURORS NO. 1, 2 AND 3 AND GIVE IT.

25 THE DEFENSE MADE A REQUEST FOR TWO INSTRUCTIONS,
26 CALCRIM 224 AND CALCRIM 306, AS MODIFIED. AND, MR. BROTT,

LYNN O. PETERSON, OFFICIAL COURT REPORTER

1 I'LL HEAR FROM YOU ON 224, BECAUSE I BELIEVE THE PEOPLE ARE
2 OBJECTING TO 224 ON THE BASIS THAT THE USE NOTE DIRECTS US
3 TO GIVE ONLY 225 IN A SPECIFIC INTENT CASE.

4 MR. BROTT: WELL, I THINK THERE'S -- IN ANY GIVEN CASE
5 YOU CAN FIND SOME AREA WHERE THERE IS CIRCUMSTANTIAL
6 EVIDENCE THE INTERPRETATIONS OF WHICH CAN BE VIEWED IN
7 DIFFERENT MANNERS. I THINK THIS IS ONE OF THOSE CASES. I
8 HAVE GIVEN THIS -- WE HAVE -- I HAVE HAD IT GIVEN UNDER THE
9 OLD RULES WHEN IT WAS, I BELIEVE, 2.01 AND 2.20. THIS ONE
10 WAS 2.01, I THINK. BUT I DON'T THINK THEY ARE INCONSISTENT
11 BECAUSE ONE IS SPECIFICALLY TARGETED TO INTENT AND THE OTHER
12 IS GENERALLY CIRCUMSTANTIAL EVIDENCE IN HOW IT'S
13 INTERPRETED. I THINK THAT WE SHOULD GIVE BOTH OF THEM.

14 THE COURT: CAN YOU GIVE ANY MORE SPECIFICITY TO ME AS
15 TO WHERE THERE WOULD BE AN AREA WHERE WE'RE TALKING ABOUT
16 GENERAL INTENT, RELIANCE ON CIRCUMSTANTIAL EVIDENCE IN THIS
17 CASE?

18 MR. BROTT: WELL, THERE'S -- WELL, I THINK IT CAN BE
19 INTERPRETED BOTH WAYS. MY CLIENT IS RIDING HIS BICYCLE DOWN
20 A SIDEWALK, WHETHER THAT IS AN ACT IN FURTHERANCE OF A
21 CONSPIRACY OR IT CAN BE INTERPRETED AS A SPECIFIC INTENT.
22 BUT I ALSO THINK IT'S CIRCUMSTANTIAL EVIDENCE THAT HE WAS
23 GOING SOMEWHERE ELSE; THAT HE WASN'T GOING THERE TO DO A
24 GANG CRIME, AND; THAT HE HAD THE GENERAL INTENT TO RIDE THE
25 BICYCLE, NOT THE SPECIFIC INTENT TO PROMOTE A GANG OR COMMIT
26 A MURDER.

1 THE COURT: ALL RIGHT. ANYTHING YOU WANT TO SAY,
2 MR. GELLER, PLEASE SAY IT QUICKLY.

3 MR. GELLER: YOUR HONOR, THE USE NOTE ON 224 MAKES IT
4 VERY CLEAR. IT READS, "IF INTENT IS THE ONLY ELEMENT PROVED
5 BY CIRCUMSTANTIAL EVIDENCE, DO NOT GIVE THIS INSTRUCTION."
6 IT CITES A CALIFORNIA SUPREME COURT CASE. I THINK WHAT
7 MR. BROTT JUST ARTICULATED FOR THE COURT ALL DEALS WITH THE
8 DEFENDANT'S INTENT, HOW THEY'RE TO INTERPRET -- "THEY" BEING
9 THE JURY -- ARE TO INTERPRET THE DEFENDANT'S CONDUCT AS
10 RELATES TO HIS MENTAL STATE. ALL OF THE CRIMES IN THIS CASE
11 ARE SPECIFIC INTENT CRIMES. I THINK THE USE NOTES ON 224
12 AND 225 VERY EXPRESSLY STATE YOU GIVE 225 UNDER THIS TYPE OF
13 CIRCUMSTANCE AND NOT 224.

14 THE COURT: WELL, USE NOTES DO TELL US IF INTENT IS THE
15 ONLY ELEMENT PROVED BY CIRCUMSTANTIAL EVIDENCE DO NOT GIVE
16 THIS INSTRUCTION. I, FRANKLY, DON'T THINK IT'S NECESSARY TO
17 GIVE 224. BUT IF YOU WANT TO WAIVE ANY ALLEGATION OF ERROR
18 IN THE GIVING OF 224 AND YOU FEEL THAT 224 DOES ADDRESS, AS
19 YOU SAY IT DOES, CERTAIN CONDUCT ON THE PART OF YOUR CLIENT
20 THAT SHOULD NOT BE INTERPRETED TO BE CRIMINAL, THEN I WILL
21 GIVE IT.

22 MR. BROTT: I'LL WAIVE THE ERROR.

23 THE COURT: BECAUSE WE'RE OVER-INSTRUCTING IS WHAT
24 WE'RE DOING HERE, MR. BROTT. AND --

25 MR. BROTT: I'M MAKING A TACTICAL DECISION TO REQUEST
26 IT.

1 THE COURT: OKAY. YOUR CLIENT UNDERSTANDS WHAT YOU'RE
2 DOING, RIGHT?

3 (DISCUSSION HELD OFF THE RECORD.)

4 MR. BROTT: I'M JUST EXPLAINING IT TO HIM RIGHT NOW,
5 YOUR HONOR.

6 THE COURT: OKAY.

7 (DISCUSSION HELD OFF THE RECORD.)

8 MR. BROTT: I'VE EXPLAINED IT TO HIM.

9 IS THAT OKAY WITH YOU, MR. REYES, THAT I'M GOING
10 TO REQUEST THIS INSTRUCTION? IF WE GIVE IT AND THE
11 APPELLATE COURT SAYS, HEY, YOU MADE A MISTAKE, WE CAN'T
12 CLAIM IT'S A MISTAKE.

13 THE DEFENDANT: YES.

14 THE COURT: THAT'S OKAY WITH YOU?

15 THE DEFENDANT: YES.

16 THE COURT: AND YOU UNDERSTAND ALL OF THIS?

17 THE DEFENDANT: YES.

18 THE COURT: I'LL ACCEPT THAT WAIVER. AND I WILL GIVE
19 THEN 224, AS SOON AS I CAN FIGURE OUT WHERE I PUT IT.

20 MR. GELLER: YOU DON'T HAVE IT.

21 THE COURT: I DID PRINT OUT A COPY FROM MY PROGRAM.
22 IT'S NOT THE SAME AS YOUR PROGRAM, BUT I DO HAVE IT.

23 YOU'RE ALSO REQUESTING 306, UNTIMELY DISCLOSURE
24 OF EVIDENCE. WE WORKED ON MODIFYING IT. WE HAD SOME
25 DISCUSSION ABOUT IT. I INDICATED TO YOU THAT I'M NOT
26 CERTAIN THIS INSTRUCTION SHOULD BE GIVEN, IN LIGHT OF THE

1 FACT THAT THE POLICE REPORT THAT YOU DID NOT RECEIVE FROM
2 THE PEOPLE, AND CLEARLY YOU DID NOT, RELATED TO ONE OF THE
3 FACTORS CONSIDERED BY THE EXPERT IN FORMING HIS CONCLUSION
4 AND DID NOT DIRECTLY RELATE TO THE ISSUES IN THE TRIAL. BUT
5 I'LL HEAR FROM YOU ON THE GIVING OF 306.

6 MR. BROTT: WELL, I WOULD DISAGREE THAT IT DIDN'T FORM
7 THE BASIS OF THE EXPERT'S CONCLUSIONS OR HIS OPINION. IT'S
8 ONE OF THE FACTORS THAT HE USED THAT THE REPORT CONCERNED,
9 MORE SPECIFIC, A S.T.E.P. NOTICE AND A DISCUSSION BY THE
10 EXPERT THAT MY CLIENT MADE CERTAIN ADMISSIONS REGARDING THE
11 WEARING OF BROWN, AND WHAT BROWN MEANS TO F-TROOP, AND WHY
12 HE WORE BROWN, AND THE FACT THAT HE WAS WITH OTHER GANG
13 MEMBERS, AND THERE WAS A GUN INVOLVED. I THINK THAT THOSE
14 WERE QUITE SPECIFICALLY USED TO -- BY THAT EXPERT TO RELY ON
15 HIS OPINION AND, THEREFORE, I THINK THAT WE LEFT IT
16 DANGLING. WE TOLD THE JURY THAT HE WAS -- I WAS NOT GIVEN
17 IT TIMELY. I'M NOT SURE EXACTLY HOW MUCH THERE CAN BE MADE
18 OF IT. BUT WE'VE TOLD THE JURY THAT THIS IS HAPPENING. I
19 THINK WE SHOULD FOLLOW IT UP WITH AN INSTRUCTION.

20 THE COURT: ANYTHING YOU WANT TO SAY, MR. GELLER?

21 MR. GELLER: WELL, I THINK THE COURT HAS GREAT DEAL OF
22 DISCRETION WHETHER IT GIVES WHAT, EFFECTIVELY, IS A PUNITIVE
23 JURY INSTRUCTION TO THE JURY ON BEHALF OF THE PEOPLE'S
24 CONDUCT HERE. AND I WOULD ASK THE COURT TO EXERCISE
25 DISCRETION AND NOT GIVE THE INSTRUCTION.

26 THE COURT: ALL RIGHT. IT WAS CLEAR AND IT WAS -- WAS

1 CLEAR TO THE COURT AND THE JURY WAS INFORMED THAT YOU DID
2 NOT GET THAT POLICE REPORT THAT TALKED ABOUT YOUR CLIENT'S
3 2004 ARREST FOR A CURFEW VIOLATION IN A TIMELY FASHION.
4 AND, CONSEQUENTLY, I THINK THAT IT MAY BE GIVEN. I'M GOING
5 TO GRANT YOUR REQUEST TO GIVE THAT INSTRUCTION, MR. BROTT.

6 NOW THERE IS ONE AREA THAT I DID NOT HAVE TIME TO
7 DISCUSS WITH YOU IN CHAMBERS BUT I INTEND TO DISCUSS WITH
8 YOU NOW. IN YOUR ABSENCE, SINCE YOU ASKED FOR A DAY OFF
9 LAST THURSDAY, THE COURT TOOK THE OPPORTUNITY TO READ
10 MR. GELLER'S OPENING STATEMENT. MR. BROTT, YOU WOULD HAVE
11 HAD TO HAVE BEEN CLAIRVOYANT TO CONCLUDE THAT MR. GELLER HAD
12 GIVEN YOU AN INDICATION THAT HE INTENDED TO INTRODUCE
13 EVIDENCE OF YOUR CLIENT'S CUSTODIAL STATUS AND EVIDENCE OF
14 OTHER CRIMES BECAUSE THERE WAS ABSOLUTELY NOTHING THEREIN
15 THAT WOULD HAVE ALERTED YOU TO THAT FACT. SO WHEN YOU
16 INDICATED ON THE RECORD IN MY CHAMBERS THAT YOU DIDN'T
17 REMEMBER IT, AND I ALSO DIDN'T REMEMBER IT, IT APPEARS WE
18 WERE CORRECT, THERE WAS NOTHING TO REMEMBER.

19 IN LIGHT OF THAT, AND CONSIDERING MR. GELLER'S
20 MISREPRESENTATION ABOUT THE CONTENT OF HIS OPENING
21 STATEMENT, THE COURT FEELS CERTAIN THAT HE DELIBERATELY
22 INTENDED TO PLACE BEFORE THE JURY INFORMATION CONCERNING THE
23 DEFENDANT'S CUSTODIAL STATUS AND OTHER CRIMES EVIDENCE. NOW
24 WE PRECLUDED ANY TESTIMONY ABOUT THE OTHER CRIMES AND, AS
25 YOU KNOW, THE COURT LIMITED TESTIMONY OF THE EXPERT
26 INVESTIGATOR TO THE QUESTION OF WHETHER THE DEFENDANT HAD,

1 SUBSEQUENT TO HIS ARREST, CLAIMED HIS GANG OR IDENTIFIED
2 HIMSELF IN CONNECTION WITH HIS GANG. AND THE COURT EXCLUDED
3 ANY EVIDENCE OF OTHER CRIMES IN CUSTODY AS MORE PREJUDICIAL
4 TO THE DEFENDANT THAN PROBATIVE ON ANY ISSUE HERE. BUT OUT
5 OF GREAT CONCERN, IN LIGHT OF ALL OF THIS, THE COURT DID
6 PREPARE AN ADDITIONAL INSTRUCTION WHICH, IF YOU WOULD LIKE,
7 MR. BROTT, THE COURT WILL GIVE. AND I HAVE WRITTEN IT OUT
8 AND WILL GIVE YOU A COPY OF IT NOW. I HAVE COPIES FOR BOTH
9 OF YOU.

10 I'M ALSO GOING TO READ IT INTO THE RECORD. AND
11 IF WOULD YOU LIKE IT MODIFIED IN SOME WAY, I'LL ENTERTAIN
12 THAT REQUEST. THE INSTRUCTION THE COURT INTENDS TO GIVE AND
13 INTENDS TO GIVE AFTER INSTRUCTION NO. 222 IS AS FOLLOWS:

14 "IN HIS EXAMINATION OF DETECTIVE
15 RONDOU, MR. GELLER ASKED A QUESTION THAT MAY
16 HAVE SUGGESTED THE DEFENDANT WAS OR HAS BEEN
17 IN CUSTODY. AFTER A SIDEBAR CONFERENCE THE
18 COURT STRUCK THE QUESTION AND ANSWER AND
19 SOME ADDITIONAL TESTIMONY AND DIRECTED YOU
20 TO DISREGARD THAT MATERIAL. YOU HAVE JUST
21 BEEN INSTRUCTED THE ATTORNEYS' QUESTIONS ARE
22 NOT EVIDENCE, AND YOU ARE NOT TO ASSUME THAT
23 SOMETHING IS TRUE BECAUSE ONE OF THE
24 ATTORNEYS ASKED A QUESTION THAT SUGGESTED IT
25 WAS TRUE. HOWEVER, OUT OF AN ABUNDANCE OF
26 CAUTION, I FURTHER INSTRUCT YOU NOW THAT A

1 DEFENDANT'S PAST OR PRESENT CUSTODIAL STATUS
2 MAY NOT BE CONSIDERED BY YOU FOR ANY REASON
3 AT ALL. DO NOT DISCUSS THAT MATTER OR LET
4 IT INFLUENCE YOUR DECISION IN ANY WAY."

5 WHAT WOULD YOU LIKE TO DO?

6 MR. BROT: THAT'S FINE. I THINK FOR THE RECORD I NEED
7 TO STATE MY OBJECTION TO THE FACT -- THOSE FACTS WHICH YOU
8 HAVE JUST PUT ON THE RECORD AND MR. GELLER'S REPRESENTATIONS
9 CONCERNING WHAT HE SAID IN HIS OPENING STATEMENT, BECAUSE I
10 QUITE FRANKLY DIDN'T THINK THAT HE HAD MENTIONED THAT. SO,
11 FOR THE RECORD, I'M OBJECTING TO THAT AND I AM IN AGREEMENT
12 WITH THE COURT'S DECISION TO GIVE THIS INSTRUCTION.

13 THE COURT: TO ASSIST ME IN READING THE OPENING
14 STATEMENT I ASKED THE REPORTER TO PROVIDE THE COURT WITH A
15 ROUGH DRAFT COPY OF THE STATEMENT SO THAT I WOULDN'T HAVE TO
16 READ IT ON THE SCREEN. SHE DID SO. BECAUSE IT IS ROUGH
17 DRAFT WORK, IT IS NOT AVAILABLE FOR DISSEMINATION. HOWEVER,
18 I DO HAVE IT HERE, AND IF EITHER OF YOU WOULD CARE TO LOOK
19 IT OVER DURING THE LUNCH HOUR, YOU MAY DO SO.

20 OKAY. WE HAVE A PACKET. THE CLERK WILL HAVE
21 COPIES OF THE PACKET FOR YOU AT 1:30. AND, HOPEFULLY, IF
22 IT'S CORRECT, YOU'LL BE ABLE TO FOLLOW ALONG.

23 I'LL SEE YOU THEN.

24 MR. BROT: THANK YOU.

25 (NOON RECESS TAKEN.)

26 -O00-

1 SANTA ANA, CALIFORNIA - MONDAY, JUNE 5, 2006

2 AFTERNOON SESSION

3 -000-

4
5 (THE FOLLOWING PROCEEDINGS WERE HAD IN
6 OPEN COURT IN THE PRESENCE OF THE JURY:)

7 THE COURT: GOOD AFTERNOON. IT'S SO NICE TO SEE YOU
8 ALL HERE. WE ARE RESUMING IN PEOPLE VS. ANDRES QUINONEZ
9 REYES, CASE NUMBER 04CF2780. THE RECORD SHOULD REFLECT THAT
10 THE DEFENDANT, MR. REYES, IS PRESENT WITH HIS COUNSEL,
11 MR. BROTT. THE PEOPLE ARE REPRESENTED ONCE AGAIN BY
12 MR. GELLER. AND OUR FIFTEEN JURORS HAVE RETURNED TO THE
13 COURTROOM AT THIS TIME.

14 MEMBERS OF THE JURY, I SHALL NOW INSTRUCT YOU ON
15 THE LAW THAT APPLIES TO THIS CASE. I WILL GIVE YOU A COPY
16 OF THE INSTRUCTIONS TO USE IN THE JURY ROOM.

17 YOU MUST DECIDE WHAT THE FACTS ARE. IT IS UP TO
18 YOU, EXCLUSIVELY, TO DECIDE WHAT HAPPENED, BASED ONLY ON THE
19 EVIDENCE THAT HAS BEEN PRESENTED TO YOU IN THIS TRIAL.

20 DO NOT LET BIAS, SYMPATHY, PREJUDICE OR PUBLIC
21 OPINION INFLUENCE YOUR DECISION.

22 YOU MUST REACH YOUR VERDICT WITHOUT ANY
23 CONSIDERATION OF PUNISHMENT.

24 YOU MUST FOLLOW THE LAW AS I EXPLAIN IT TO YOU,
25 EVEN IF YOU DISAGREE WITH IT. IF YOU BELIEVE THAT THE
26 ATTORNEY'S COMMENTS ON THE LAW CONFLICT WITH MY

LYNN O. PETERSON, OFFICIAL COURT REPORTER

1 INSTRUCTIONS, YOU MUST FOLLOW MY INSTRUCTIONS.

2 PAY CAREFUL ATTENTION TO ALL OF THESE
3 INSTRUCTIONS AND CONSIDER THEM TOGETHER. IF I REPEAT ANY
4 INSTRUCTION OR IDEA, DO NOT CONCLUDE THAT IT IS MORE
5 IMPORTANT THAN ANY OTHER INSTRUCTION OR IDEA JUST BECAUSE I
6 REPEATED IT.

7 SOME WORDS OR PHRASES USED DURING THIS TRIAL HAVE
8 LEGAL MEANINGS THAT ARE DIFFERENT FROM THEIR MEANINGS IN
9 EVERYDAY USE. THESE WORDS AND PHRASES WILL BE SPECIFICALLY
10 DEFINED IN THESE INSTRUCTIONS. PLEASE BE SURE TO LISTEN
11 CAREFULLY AND FOLLOW THE DEFINITIONS THAT I GIVE YOU. WORDS
12 AND PHRASES NOT SPECIFICALLY DEFINED IN THESE INSTRUCTIONS
13 ARE TO BE APPLIED USING THEIR ORDINARY, EVERYDAY MEANINGS.

14 SOME OF THESE INSTRUCTIONS MAY NOT APPLY,
15 DEPENDING UPON YOUR FINDINGS ABOUT THE FACTS OF THE CASE.
16 DO NOT ASSUME JUST BECAUSE I GIVE A PARTICULAR INSTRUCTION
17 THAT I AM SUGGESTING ANYTHING ABOUT THE FACTS. AFTER YOU
18 HAVE DECIDED WHAT THE FACTS ARE, FOLLOW THE INSTRUCTIONS
19 THAT DO APPLY TO THE FACTS AS YOU FIND THEM.

20 DO NOT DO ANY RESEARCH ON YOUR OWN OR AS A GROUP.
21 DO NOT USE A DICTIONARY OR OTHER REFERENCE MATERIALS,
22 INVESTIGATE THE FACTS OR LAW, CONDUCT ANY EXPERIMENTS, OR
23 VISIT ANY -- VISIT THE SCENE OF ANY EVENT INVOLVED IN THIS
24 CASE. IF YOU HAPPEN TO PASS BY THE SCENE, DO NOT STOP OR
25 INVESTIGATE.

26 YOU HAVE BEEN GIVEN NOTEBOOKS AND MAY HAVE TAKEN

1 NOTES DURING THE TRIAL. PLEASE DO NOT REMOVE YOUR NOTES
2 FROM THE JURY ROOM. YOU MAY USE YOUR NOTES DURING
3 DELIBERATIONS ONLY TO REMIND YOURSELF OF WHAT HAPPENED
4 DURING THE TRIAL. BUT REMEMBER, YOUR NOTES MAY BE
5 INACCURATE OR INCOMPLETE. IF THERE IS A DISAGREEMENT ABOUT
6 WHAT ACTUALLY HAPPENED AT TRIAL, YOU MAY ASK THE COURT
7 REPORTER TO READ BACK THE RELEVANT PARTS OF THE TESTIMONY TO
8 ASSIST YOU. IT IS THE TESTIMONY THAT MUST GUIDE YOUR
9 DELIBERATIONS, NOT YOUR NOTES.

10 THE FACT THAT A CRIMINAL CHARGE HAS BEEN FILED
11 AGAINST THE DEFENDANT IS NOT EVIDENCE THAT THE CHARGE IS
12 TRUE. YOU MUST NOT BE BIASED AGAINST THE DEFENDANT JUST
13 BECAUSE HE HAS BEEN ARRESTED, CHARGED WITH A CRIME, OR
14 BROUGHT TO TRIAL.

15 A DEFENDANT IN A CRIMINAL CASE IS PRESUMED TO BE
16 INNOCENT. THIS PRESUMPTION REQUIRES THAT THE PEOPLE PROVE
17 EACH ELEMENT OF A CRIME AND SPECIAL ALLEGATION BEYOND A
18 REASONABLE DOUBT. WHENEVER I TELL YOU THE PEOPLE MUST PROVE
19 SOMETHING, I MEAN THEY MUST PROVE IT BEYOND A REASONABLE
20 DOUBT UNLESS I SPECIFICALLY TELL YOU OTHERWISE.

21 PROOF BEYOND A REASONABLE DOUBT IS PROOF THAT
22 LEAVES YOU WITH AN ABIDING CONVICTION THAT THE CHARGE IS
23 TRUE. THE EVIDENCE NEED NOT ELIMINATE ALL POSSIBLE DOUBT
24 BECAUSE EVERYTHING IN LIFE IS OPEN TO SOME POSSIBLE OR
25 IMAGINARY DOUBT.

26 IN DECIDING WHETHER THE PEOPLE HAVE PROVED THEIR

1 CASE BEYOND A REASONABLE DOUBT, YOU MUST IMPARTIALLY COMPARE
2 AND CONSIDER ALL THE EVIDENCE THAT WAS RECEIVED THROUGHOUT
3 THE ENTIRE TRIAL. UNLESS THE EVIDENCE PROVES THE DEFENDANT
4 GUILTY BEYOND A REASONABLE DOUBT, HE IS ENTITLED TO AN
5 ACQUITTAL AND YOU MUST FIND HIM NOT GUILTY.

6 YOU MUST DECIDE WHAT THE FACTS ARE IN THIS CASE.
7 YOU MUST USE ONLY THE EVIDENCE THAT WAS PRESENTED IN THIS
8 COURTROOM -- STRIKE THAT. I'M GOING TO START THAT ONE
9 AGAIN.

10 YOU MUST DECIDE WHAT THE FACTS ARE IN THIS CASE.
11 YOU MUST USE ONLY THE EVIDENCE THAT WAS PRESENTED IN THIS
12 COURTROOM. EVIDENCE IS THE SWORN TESTIMONY OF WITNESSES,
13 THE EXHIBITS ADMITTED INTO EVIDENCE, AND ANYTHING ELSE I
14 TOLD YOU TO CONSIDER AS EVIDENCE.

15 NOTHING THAT THE ATTORNEYS SAY IS EVIDENCE. IN
16 THEIR OPENING STATEMENTS AND CLOSING ARGUMENTS THE ATTORNEYS
17 DISCUSS THE CASE, BUT THEIR REMARKS ARE NOT EVIDENCE. THEIR
18 QUESTIONS ARE NOT EVIDENCE. ONLY THE WITNESSES' ANSWERS ARE
19 EVIDENCE. THE ATTORNEYS QUESTIONS ARE SIGNIFICANT ONLY IF
20 THEY HELPED YOU TO UNDERSTAND THE WITNESSES'S ANSWERS. DO
21 NOT ASSUME THAT SOMETHING IS TRUE JUST BECAUSE ONE OF THE
22 ATTORNEYS ASKED A QUESTION THAT SUGGESTED IT WAS TRUE.

23 DURING THE TRIAL, THE ATTORNEYS MAY HAVE OBJECTED
24 TO QUESTIONS OR MOVED TO STRIKE ANSWERS GIVEN BY THE
25 WITNESSES. I RULED ON THE OBJECTIONS ACCORDING TO THE LAW.
26 IF I SUSTAINED AN OBJECTION, YOU MUST IGNORE THE QUESTION.

1 IF THE WITNESS WAS NOT PERMITTED TO ANSWER, DO NOT GUESS
2 WHAT THE ANSWER MIGHT HAVE BEEN OR WHY I RULED AS I DID. IF
3 I ORDERED TESTIMONY STRICKEN FROM THE RECORD, YOU MUST
4 DISREGARD IT AND MUST NOT CONSIDER THAT TESTIMONY FOR ANY
5 PURPOSE.

6 YOU MUST DISREGARD ANYTHING YOU SAW OR HEARD WHEN
7 THE COURT WAS NOT IN SESSION, EVEN IF IT WAS DONE OR SAID BY
8 ONE OF THE PARTIES OR WITNESSES.

9 THE COURT REPORTER HAS MADE A RECORD OF
10 EVERYTHING THAT WAS SAID DURING THE TRIAL. IF YOU DECIDE
11 THAT IT IS NECESSARY, YOU MAY ASK THAT THE COURT REPORTER'S
12 NOTES BE READ TO YOU. YOU MUST ACCEPT THE COURT REPORTER'S
13 NOTES AS ACCURATE.

14 DURING THE TRIAL YOU WERE TOLD THAT THE PEOPLE
15 AND THE DEFENSE AGREED OR STIPULATED TO CERTAIN FACTS. THIS
16 MEANS THAT THEY BOTH ACCEPT THOSE FACTS. BECAUSE THERE IS
17 NO DISPUTE ABOUT THOSE FACTS, YOU MUST ACCEPT THEM AS TRUE.

18 IN HIS EXAMINATION OF DETECTIVE RONDOU,
19 MR. GELLER ASKED A QUESTION THAT MAY HAVE SUGGESTED THE
20 DEFENDANT WAS OR HAS BEEN IN CUSTODY. AFTER THE SIDEBAR
21 CONFERENCE, THE COURT STRUCK THE QUESTION AND ANSWER, AND
22 SOME ADDITIONAL TESTIMONY, AND DIRECTED YOU TO DISREGARD
23 THAT MATERIAL. YOU HAVE JUST BEEN INSTRUCTED THE ATTORNEYS'
24 QUESTIONS ARE NOT EVIDENCE AND YOU'RE NOT TO ASSUME THAT
25 SOMETHING IS TRUE BECAUSE ONE OF THE ATTORNEYS ASKED A
26 QUESTION THAT SUGGESTED IT WAS TRUE. HOWEVER, OUT OF AN

1 ABUNDANCE OF CAUTION, I FURTHER INSTRUCT YOU NOW, THAT A
2 DEFENDANT'S PAST OR PRESENT CUSTODIAL STATUS MAY NOT BE
3 CONSIDERED BY YOU FOR ANY REASON AT ALL. DO NOT DISCUSS
4 THAT MATTER OR LET IT INFLUENCE YOUR DECISION IN ANY WAY.

5 FACTS MAY BE PROVED BY DIRECT OR CIRCUMSTANTIAL
6 EVIDENCE OR BY A COMBINATION OF BOTH. DIRECT EVIDENCE CAN
7 PROVE A FACT BY ITSELF. FOR EXAMPLE, IF A WITNESS TESTIFIES
8 HE SAW IT RAINING OUTSIDE BEFORE HE CAME INTO THE
9 COURTHOUSE, THAT TESTIMONY IS DIRECT EVIDENCE THAT IT WAS
10 RAINING. CIRCUMSTANTIAL EVIDENCE ALSO MAY BE CALLED
11 INDIRECT EVIDENCE. CIRCUMSTANTIAL EVIDENCE DOES NOT
12 DIRECTLY PROVE THE FACT TO BE DECIDED, BUT IS EVIDENCE OF
13 ANOTHER FACT OR GROUP OF FACTS FROM WHICH YOU MAY CONCLUDE
14 THE TRUTH OF THE FACT IN QUESTION. FOR EXAMPLE, IF A
15 WITNESS TESTIFIES THAT HE SAW SOMEONE COME INSIDE WEARING A
16 RAIN COAT, COVERED WITH DROPS OF WATER, THAT TESTIMONY
17 SUBPOENA CIRCUMSTANTIAL EVIDENCE BECAUSE IT MAY SUPPORT A
18 CONCLUSION THAT IT WAS RAINING OUTSIDE.

19 BOTH DIRECT AND CIRCUMSTANTIAL EVIDENCE ARE
20 ACCEPTABLE TYPES OF EVIDENCE TO PROVE OR DISPROVE THE
21 ELEMENTS OF A CHARGE, INCLUDING INTENT AND MENTAL STATE AND
22 ACTS NECESSARY TO A CONVICTION, AND NEITHER IS NECESSARILY
23 MORE RELIABLE THAN THE OTHER. NEITHER IS ENTITLED TO ANY
24 GREATER WEIGHT THAN THE OTHER. YOU MUST DECIDE WHETHER A
25 FACT IN ISSUE HAS BEEN PROVED BASED ON ALL THE EVIDENCE.

26 BEFORE YOU MAY RELY ON CIRCUMSTANTIAL EVIDENCE TO

1 CONCLUDE THAT A FACT NECESSARY TO FIND THE DEFENDANT GUILTY
2 HAS BEEN PROVED, YOU MUST BE CONVINCED THAT THE PEOPLE HAVE
3 PROVED EACH FACT ESSENTIAL TO THAT CONCLUSION BEYOND A
4 REASONABLE DOUBT.

5 ALSO, BEFORE YOU MAY RELY ON CIRCUMSTANTIAL
6 EVIDENCE TO FIND THE DEFENDANT GUILTY, YOU MUST BE CONVINCED
7 THAT THE ONLY REASONABLE CONCLUSION SUPPORTED BY THE
8 CIRCUMSTANTIAL EVIDENCE IS THAT THE DEFENDANT IS GUILTY. IF
9 YOU CAN DRAW TWO OR MORE REASONABLE CONCLUSIONS FROM THE
10 CIRCUMSTANTIAL EVIDENCE, AND ONE OF THOSE REASONABLE
11 CONCLUSIONS POINTS TO INNOCENCE AND THE OTHER TO GUILT, YOU
12 MUST ACCEPT THE ONE THAT POINTS TO INNOCENCE. HOWEVER, WHEN
13 CONSIDERING CIRCUMSTANTIAL EVIDENCE, YOU MUST ACCEPT ONLY
14 REASONABLE CONCLUSIONS AND REJECT ANY THAT ARE UNREASONABLE.

15 THE PEOPLE MUST PROVE NOT ONLY THAT THE DEFENDANT
16 DID THE ACTS CHARGED, BUT ALSO THAT HE ACTED WITH A
17 PARTICULAR INTENT OR MENTAL STATE. THE INSTRUCTIONS FOR
18 EACH CRIME EXPLAIN THE INTENT OR MENTAL STATE REQUIRED.

19 AN INTENT OR MENTAL STATE MAY BE PROVED BY
20 CIRCUMSTANTIAL EVIDENCE.

21 BEFORE YOU MAY RELY ON CIRCUMSTANTIAL EVIDENCE TO
22 CONCLUDE THAT A FACT NECESSARY TO FIND THE DEFENDANT GUILTY
23 HAS BEEN PROVED, YOU MUST BE CONVINCED THAT THE PEOPLE HAVE
24 PROVED EACH FACT ESSENTIAL TO THAT CONCLUSION BEYOND A
25 REASONABLE DOUBT.

26 ALSO, BEFORE YOU MAY RELY ON CIRCUMSTANTIAL

1 EVIDENCE TO CONCLUDE THAT THE DEFENDANT HAD THE REQUIRED
2 INTENT OR MENTAL STATE, YOU MUST BE CONVINCED THAT THE ONLY
3 REASONABLE CONCLUSION SUPPORTED BY THE CIRCUMSTANTIAL
4 EVIDENCE IS THAT THE DEFENDANT HAD THE REQUIRED INTENT OR
5 MENTAL STATE. IF YOU CAN DRAW TWO OR MORE REASONABLE
6 CONCLUSIONS FROM THE CIRCUMSTANTIAL EVIDENCE, AND ONE OF
7 THOSE REASONABLE CONCLUSIONS SUPPORTS A FINDING THAT THE
8 DEFENDANT DID HAVE THE REQUIRED INTENT OR MENTAL STATE AND
9 ANOTHER REASONABLE CONCLUSION SUPPORTS A FINDING THAT THE
10 DEFENDANT DID NOT, YOU MUST CONCLUDE THAT THE REQUIRED
11 INTENT OR MENTAL STATE WAS NOT PROVED BY THE CIRCUMSTANTIAL
12 EVIDENCE. HOWEVER, WHEN CONSIDERING CIRCUMSTANTIAL
13 EVIDENCE, YOU MUST ACCEPT ONLY REASONABLE CONCLUSIONS AND
14 REJECT ANY THAT ARE UNREASONABLE.

15 YOU ALONE MUST JUDGE THE CREDIBILITY OR
16 BELIEVABILITY OF THE WITNESSES. IN DECIDING WHETHER
17 TESTIMONY IS TRUE AND ACCURATE, USE YOUR COMMON SENSE AND
18 EXPERIENCE. THE TESTIMONY OF EACH WITNESS MUST BE JUDGED BY
19 THE SAME STANDARD. YOU MUST SET ASIDE ANY BIAS OR PREJUDICE
20 YOU MAY HAVE, INCLUDING ANY BASED ON THE WITNESS'S GENDER,
21 RACE, RELIGION, OR NATIONAL ORIGIN. YOU MAY BELIEVE ALL,
22 PART, OR NONE OF ANY WITNESS'S TESTIMONY. CONSIDER THE
23 TESTIMONY OF EACH WITNESS AND DECIDE HOW MUCH OF IT YOU
24 BELIEVE.

25 IN EVALUATING A WITNESS'S TESTIMONY, YOU MAY
26 CONSIDER ANYTHING THAT REASONABLY TENDS TO PROVE OR DISPROVE

1 THE TRUTH OR ACCURACY OF THAT TESTIMONY. AMONG THE FACTORS
2 THAT YOU MAY CONSIDER ARE:

3 HOW WELL COULD THE WITNESS SEE, HEAR, OR
4 OTHERWISE PERCEIVE THE THINGS ABOUT WHICH THE WITNESS
5 TESTIFIED?

6 HOW WELL WAS THE WITNESS ABLE TO REMEMBER AND
7 DESCRIBE WHAT HAPPENED?

8 WHAT WAS THE WITNESS'S BEHAVIOR WHILE TESTIFYING?

9 DID THE WITNESS UNDERSTAND THE QUESTIONS AND
10 ANSWER THEM DIRECTLY?

11 WAS THE WITNESS'S TESTIMONY INFLUENCED BY A
12 FACTOR, SUCH AS BIAS OR PREJUDICE, A PERSONAL RELATIONSHIP
13 WITH SOMEONE INVOLVED IN THE CASE, OR A PERSONAL INTEREST IN
14 HOW THE CASE IS DECIDED?

15 WHAT WAS THE WITNESS'S ATTITUDE ABOUT THE CASE OR
16 ABOUT TESTIFYING?

17 DID THE WITNESS MAKE A STATEMENT IN THE PAST THAT
18 IS CONSISTENT OR INCONSISTENT WITH HIS OR HER TESTIMONY?

19 HOW REASONABLE IS THE TESTIMONY WHEN YOU CONSIDER
20 ALL THE OTHER EVIDENCE IN THE CASE?

21 DID OTHER EVIDENCE PROVE OR DISPROVE ANY FACT
22 ABOUT WHICH THE WITNESS TESTIFIED?

23 WAS THE WITNESS PROMISED IMMUNITY OR LENIENCY IN
24 EXCHANGE FOR HIS OR HER TESTIMONY?

25 DO NOT AUTOMATICALLY REJECT TESTIMONY JUST
26 BECAUSE OF INCONSISTENCIES OR CONFLICTS. CONSIDER WHETHER

1 THE DIFFERENCES ARE IMPORTANT OR NOT. PEOPLE SOMETIMES
2 HONESTLY FORGET THINGS OR MAKE MISTAKES ABOUT WHAT THEY
3 REMEMBER. ALSO, TWO PEOPLE MAY WITNESS THE SAME EVENT YET
4 SEE OR HEAR IT DIFFERENTLY.

5 IF YOU DO NOT BELIEVE A WITNESS'S TESTIMONY THAT
6 HE OR SHE NO LONGER REMEMBERS SOMETHING, THAT TESTIMONY IS
7 INCONSISTENT WITH THE WITNESS'S EARLIER STATEMENT ON THAT
8 SUBJECT.

9 IF YOU DECIDE THAT A WITNESS DELIBERATELY LIED
10 ABOUT SOMETHING SIGNIFICANT IN THIS CASE, YOU SHOULD
11 CONSIDER NOT BELIEVING ANYTHING THAT WITNESS SAYS. OR IF
12 YOU THINK THE WITNESS LIED ABOUT SOME THINGS BUT TOLD THE
13 TRUTH ABOUT OTHERS, YOU MAY SIMPLY ACCEPT THE PART THAT YOU
14 THINK IS TRUE AND IGNORE THE REST.

15 EVERY CRIME OR OTHER ALLEGATION CHARGED IN THIS
16 CASE REQUIRES PROOF OF THE UNION, OR JOINT OPERATION, OF ACT
17 AND WRONGFUL INTENT. IN ORDER TO BE GUILTY OF THE CRIME --
18 JUST A MINUTE. I'LL START THAT AGAIN.

19 EVERY CRIME OR ALLEGATION CHARGED IN THIS CASE
20 REQUIRES PROOF OF THE UNION, OR JOINT OPERATION, OF ACT AND
21 WRONGFUL INTENT. IN ORDER TO BE GUILTY OF THE CRIMES
22 CHARGED OR THE ALLEGATIONS ALLEGED, A PERSON MUST NOT ONLY
23 INTENTIONALLY COMMIT THE PROHIBITED ACT OR INTENTIONALLY
24 FAIL TO DO THE REQUIRED ACT, BUT MUST DO SO WITH A SPECIFIC
25 INTENT OR MENTAL STATE.

26 I'M SORRY. I MISREAD THIS. I'LL STRIKE THAT AND

1 START ALL OVER. I SEE WHERE I WENT WRONG.

2 EVERY CRIME OR OTHER ALLEGATION CHARGED IN THIS
3 CASE REQUIRES PROOF OF THE UNION, OR JOINT OPERATION, OF ACT
4 AND WRONGFUL INTENT. IN ORDER TO BE GUILTY OF THE CRIMES OF
5 MURDER AND ACTIVE PARTICIPATION IN A CRIMINAL STREET GANG,
6 OR THE ALLEGATIONS OF FELONY COMMITTED FOR THE BENEFIT OF,
7 AT THE DIRECTION OF, AND/OR IN ASSOCIATION WITH A CRIMINAL
8 STREET GANG, AND VICARIOUS DISCHARGE OF A FIREARM CAUSING
9 DEATH WITH INTENT TO PROMOTE, FURTHER AND ASSIST IN CRIMINAL
10 CONDUCT BY GANG MEMBERS, A PERSON MUST NOT ONLY
11 INTENTIONALLY COMMIT THE PROHIBITED ACT OR INTENTIONALLY
12 FAIL TO DO THE REQUIRED ACT, BUT MUST DO SO WITH A SPECIFIC
13 INTENT OR MENTAL STATE. THE ACT AND THE INTENT OR MENTAL
14 STATE REQUIRED ARE EXPLAINED IN THE INSTRUCTION FOR EVERY
15 CRIME OR ALLEGATION.

16 NEITHER SIDE IS REQUIRED TO CALL ALL WITNESSES
17 WHO MAY HAVE INFORMATION ABOUT THE CASE OR TO PRODUCE ALL
18 PHYSICAL EVIDENCE THAT MIGHT BE RELEVANT.

19 THE TESTIMONY OF ONLY ONE WITNESS CAN PROVE ANY
20 FACT. BEFORE YOU CONCLUDE THAT THE TESTIMONY OF ONE WITNESS
21 PROVES A FACT, YOU SHOULD CAREFULLY REVIEW ALL THE EVIDENCE.

22 IF YOU DETERMINE THERE IS A CONFLICT IN THE
23 EVIDENCE, YOU MUST DECIDE WHAT EVIDENCE, IF ANY, TO BELIEVE.
24 DO NOT SIMPLY COUNT THE NUMBER OF WITNESSES WHO AGREE OR
25 DISAGREE ON A POINT AND ACCEPT THE TESTIMONY OF THE GREATER
26 NUMBER OF WITNESSES. ON THE OTHER HAND, DO NOT DISREGARD

1 THE TESTIMONY OF THE GREATER NUMBER OF WITNESSES, OR ANY
2 WITNESS, WITHOUT A REASON OR BECAUSE OF PREJUDICE OR A
3 DESIRE TO FAVOR ONE SIDE OR THE OTHER. WHAT IS IMPORTANT IS
4 WHETHER THE TESTIMONY OR ANY OTHER EVIDENCE CONVINCES YOU,
5 NOT JUST THE NUMBER OF WITNESSES WHO TESTIFY ABOUT A CERTAIN
6 POINT.

7 DURING THE TRIAL, CERTAIN EVIDENCE WAS ADMITTED
8 FOR A LIMITED PURPOSE. YOU MAY CONSIDER THAT EVIDENCE ONLY
9 FOR THAT PURPOSE AND FOR NO OTHER.

10 BOTH THE PEOPLE AND THE DEFENSE MUST DISCLOSE
11 THEIR EVIDENCE TO THE OTHER SIDE BEFORE TRIAL WITHIN THE
12 TIME LIMITS SET BY LAW. FAILURE TO FOLLOW THIS RULE MAY
13 DENY THE OTHER SIDE A CHANCE TO PRODUCE ALL RELEVANT
14 EVIDENCE, TO COUNTER OPPOSING EVIDENCE, OR TO RECEIVE A FAIR
15 TRIAL.

16 AN ATTORNEY FOR THE PEOPLE FAILED TO DISCLOSE A
17 POLICE REPORT RELATED TO THE DEFENDANT'S 2004 ARREST FOR A
18 CURFEW VIOLATION WITHIN THE LEGAL TIME PERIOD.

19 IN EVALUATING THE WEIGHT AND SIGNIFICANCE OF THAT
20 EVIDENCE, YOU MAY CONSIDER THE EFFECT, IF ANY, OF THAT LATE
21 DISCLOSURE.

22 YOU HAVE HEARD EVIDENCE OF STATEMENTS THAT A
23 WITNESS MADE BEFORE THE TRIAL. IF YOU DECIDE THE WITNESS
24 MADE THOSE STATEMENTS, YOU MAY USE THOSE STATEMENTS IN TWO
25 WAYS:

26 1. TO EVALUATE WHETHER THE WITNESS'S TESTIMONY

1 IN COURT IS BELIEVABLE; AND

2 2. AS EVIDENCE THAT THE INFORMATION IN THOSE
3 EARLIER STATEMENTS IS TRUE.

4 A WITNESS WAS ALLOWED TO TESTIFY AS AN EXPERT AND
5 TO GIVE OPINIONS. YOU MUST CONSIDER THE OPINIONS, BUT
6 YOU'RE NOT REQUIRED TO ACCEPT THEM AS TRUE OR CORRECT. THE
7 MEANING AND IMPORTANCE OF ANY OPINION ARE FOR YOU TO DECIDE.
8 IN EVALUATING BELIEVABILITY OF AN EXPERT WITNESS, FOLLOW THE
9 INSTRUCTIONS ABOUT THE BELIEVABILITY OF WITNESSES GENERALLY.
10 IN ADDITION, CONSIDER THE EXPERT'S KNOWLEDGE, SKILL,
11 EXPERIENCE, TRAINING AND EDUCATION, THE REASONS THE EXPERT
12 GAVE FOR ANY OPINION, AND THE FACTS OR INFORMATION ON WHICH
13 THE EXPERT RELIED IN REACHING THAT OPINION. YOU MUST DECIDE
14 WHETHER INFORMATION ON WHICH THE EXPERT RELIED WAS TRUE AND
15 ACCURATE. YOU MAY DISREGARD ANY OPINION THAT YOU FIND
16 UNBELIEVABLE, UNREASONABLE, OR UNSUPPORTED BY THE EVIDENCE.

17 AN EXPERT WITNESS MAY BE ASKED A HYPOTHETICAL
18 QUESTION. A HYPOTHETICAL QUESTION ASKS THE WITNESS TO
19 ASSUME CERTAIN FACTS ARE TRUE AND TO GIVE AN OPINION BASED
20 ON THE ASSUMED FACTS. IT IS UP TO YOU TO DECIDE WHETHER AN
21 ASSUMED FACT HAS BEEN PROVED. IF YOU CONCLUDE THAT AN
22 ASSUMED FACT IS NOT TRUE, CONSIDER THE EFFECT OF THE
23 EXPERT'S RELIANCE ON THAT FACT IN EVALUATING THE EXPERT'S
24 OPINION. IF THE EXPERT -- THE LAST STATEMENT IN THAT
25 INSTRUCTION IS: IF YOU CONCLUDE THAT AN ASSUMED FACT IS NOT
26 TRUE, CONSIDER THE EFFECT OF THE EXPERT'S RELIANCE ON THAT

1 FACT IN EVALUATING THE EXPERT'S OPINION.

2 WITNESSES WHO WERE NOT TESTIFYING AS EXPERTS GAVE
3 THEIR OPINIONS DURING THE TRIAL. YOU MAY BUT ARE NOT
4 REQUIRED TO ACCEPT THOSE OPINIONS AS TRUE OR CORRECT. YOU
5 MAY GIVE THE OPINIONS WHATEVER WEIGHT YOU THINK APPROPRIATE.
6 CONSIDER THE EXTENT OF THE WITNESS'S OPPORTUNITY TO PERCEIVE
7 THE MATTERS ON WHICH HIS OR HER OPINION IS BASED, THE
8 REASONS THE WITNESS GAVE FOR ANY OPINION, AND THE FACTS OR
9 INFORMATION ON WHICH THE WITNESS RELIED IN FORMING THAT
10 OPINION. YOU MUST DECIDE WHETHER INFORMATION ON WHICH THE
11 WITNESS RELIED WAS TRUE AND ACCURATE. YOU MAY DISREGARD ALL
12 OR ANY PART OF AN OPINION THAT YOU FIND UNBELIEVABLE,
13 UNREASONABLE, OR UNSUPPORTED BY THE EVIDENCE.

14 A DEFENDANT HAS AN ABSOLUTE CONSTITUTIONAL RIGHT
15 NOT TO TESTIFY. HE MAY RELY ON THE STATE OF THE EVIDENCE
16 AND ARGUE THAT THE PEOPLE HAVE FAILED TO PROVE THE CHARGES
17 BEYOND A REASONABLE DOUBT. DO NOT CONSIDER FOR ANY REASON
18 AT ALL THE FACT THAT THE DEFENDANT DID NOT TESTIFY. DO NOT
19 DISCUSS THAT FACT DURING YOUR DELIBERATIONS OR LET IT
20 INFLUENCE YOUR DECISION IN ANY WAY.

21 YOU HAVE HEARD EVIDENCE THAT THE DEFENDANT MADE
22 AN ORAL STATEMENT BEFORE THE TRIAL. YOU MUST DECIDE WHETHER
23 OR NOT THE DEFENDANT MADE ANY SUCH STATEMENT IN WHOLE OR IN
24 PART. IF YOU DECIDE THAT THE DEFENDANT MADE SUCH A
25 STATEMENT, CONSIDER THE STATEMENT, ALONG WITH ALL THE OTHER
26 EVIDENCE IN REACHING YOUR VERDICT. IT IS UP TO YOU TO

1 DECIDE HOW MUCH IMPORTANCE TO GIVE TO SUCH A STATEMENT.

2 YOU MUST CONSIDER WITH CAUTION EVIDENCE OF A
3 DEFENDANT'S ORAL STATEMENT, UNLESS IT WAS RECORDED.

4 THE DEFENDANT MAY NOT BE CONVICTED OF ANY CRIME
5 BASED ON HIS OUT-OF-COURT STATEMENT ALONE. UNLESS YOU
6 CONCLUDE THAT OTHER EVIDENCE SHOWS SOMEONE COMMITTED THE
7 CHARGED CRIME, YOU MAY NOT RELY ON ANY OUT-OF-COURT
8 STATEMENT BY THE DEFENDANT TO CONVICT HIM OF THAT CRIME.

9 THE OTHER EVIDENCE MAY BE SLIGHT AND NEED ONLY BE
10 ENOUGH TO SUPPORT A REASONABLE INFERENCE THAT SOMEONE'S
11 CRIMINAL CONDUCT CAUSED AN INJURY, LOSS, OR HARM. THE OTHER
12 EVIDENCE DOES NOT HAVE TO PROVE BEYOND A REASONABLE DOUBT
13 THAT THE CHARGED CRIME ACTUALLY WAS COMMITTED.

14 THE IDENTITY OF THE PERSON WHO COMMITTED THE
15 CRIME AND THE DEGREE OF THE CRIME MAY BE PROVED BY THE
16 DEFENDANT'S STATEMENT ALONE.

17 YOU MAY NOT CONVICT THE DEFENDANT UNLESS THE
18 PEOPLE HAVE PROVED HIS GUILT BEYOND A REASONABLE DOUBT.

19 THE PEOPLE ARE NOT REQUIRED TO PROVE THAT THE
20 DEFENDANT HAD A MOTIVE TO COMMIT ANY OF THE CRIMES CHARGED.
21 IN REACHING YOUR VERDICT YOU MAY HOWEVER CONSIDER WHETHER
22 THE DEFENDANT HAD A MOTIVE.

23 HAVING A MOTIVE MAY BE A FACTOR TENDING TO SHOW
24 THAT THE DEFENDANT IS GUILTY. NOT HAVING A MOTIVE MAY BE A
25 FACTOR TENDING TO SHOW THE DEFENDANT IS NOT GUILTY.

26 THE EVIDENCE SHOWS THAT OTHER PERSONS MAY HAVE

1 BEEN INVOLVED IN THE COMMISSION OF THE CRIMES CHARGED
2 AGAINST THE DEFENDANT. THERE MAY BE MANY REASONS WHY
3 SOMEONE WHO APPEARS TO HAVE BEEN INVOLVED MIGHT NOT BE A
4 CO-DEFENDANT IN THIS PARTICULAR TRIAL. YOU MUST NOT
5 SPECULATE ABOUT WHETHER THOSE PERSONS HAVE BEEN OR WILL BE
6 PROSECUTED. YOUR DUTY IS TO DECIDE WHETHER THE DEFENDANT ON
7 TRIAL HERE COMMITTED THE CRIMES CHARGED.

8 A PERSON MAY BE GUILTY OF A CRIME IN TWO WAYS.
9 ONE, HE MAY HAVE DIRECTLY COMMITTED THE CRIME. TWO, HE MAY
10 HAVE AIDED AND ABETTED SOMEONE ELSE WHO COMMITTED THE CRIME.
11 IN THESE INSTRUCTIONS, I WILL CALL THAT OTHER PERSON THE,
12 "PERPETRATOR." A PERSON IS EQUALLY GUILTY OF THE CRIME
13 WHETHER HE COMMITTED IT PERSONALLY OR AID AND ABETTED THE
14 PERPETRATOR WHO COMMITTED IT.

15 UNDER SOME SPECIFIC CIRCUMSTANCES, IF THE
16 EVIDENCE ESTABLISHES AIDING AND ABETTING OF ONE CRIME, A
17 PERSON MAY ALSO BE FOUND GUILTY OF OTHER CRIMES THAT
18 OCCURRED DURING THE COMMISSION OF THE FIRST CRIME.

19 TO PROVE THAT THE DEFENDANT IS GUILTY OF A CRIME
20 BASED ON AIDING AND ABETTING THAT CRIME, THE PEOPLE MUST
21 PROVE THAT:

22 1. THE PERPETRATOR COMMITTED THE CRIME;

23 2. THE DEFENDANT KNEW THAT THE PERPETRATOR
24 INTENDED TO COMMIT THE CRIME;

25 3. BEFORE OR DURING THE COMMISSION OF THE CRIME
26 THE DEFENDANT INTENDED TO AID AND ABET THE PERPETRATOR IN

1 COMMITTING THE CRIME; AND

2 4. THE DEFENDANT'S WORDS OR CONDUCT DID IN FACT
3 AID AND ABET THE PERPETRATOR'S COMMISSION OF THE CRIME.

4 SOMEONE AIDS AND ABETS A CRIME IF HE KNOWS OF THE
5 PERPETRATOR'S UNLAWFUL PURPOSE AND HE SPECIFICALLY INTENDS
6 TO AND DOES IN FACT AID, FACILITATE, PROMOTE, ENCOURAGE OR
7 INSTIGATE THE PERPETRATOR'S COMMISSION OF THAT CRIME.

8 IF ALL OF THESE REQUIREMENTS ARE PROVED, THE
9 DEFENDANT DOES NOT NEED TO ACTUALLY HAVE BEEN PRESENT WHEN
10 THE CRIME WAS COMMITTED TO BE GUILTY AS AN AIDER AND
11 ABETTER.

12 IF YOU CONCLUDE THAT DEFENDANT WAS PRESENT AT THE
13 SCENE OF THE CRIME OR FAILED TO PREVENT THE CRIME, YOU MAY
14 CONSIDER THAT FACT IN DETERMINING WHETHER THE DEFENDANT WAS
15 AN AIDER AND ABETTER.

16 HOWEVER, THE FACT THAT A PERSON IS PRESENT AT THE
17 SCENE OF THE CRIME OR FAILS TO PREVENT THE CRIME DOES NOT BY
18 ITSELF MAKE HIM AN AIDER AND ABETTER.

19 A PERSON WHO AIDS AND ABETS A CRIME IS NOT GUILTY
20 OF THAT CRIME IF HE WITHDRAWS BEFORE THE CRIME IS COMMITTED.
21 TO WITHDRAW, A PERSON MUST DO TWO THINGS:

22 1. HE MUST NOTIFY EVERYONE ELSE HE KNOWS IS
23 INVOLVED IN THE COMMISSION OF THE CRIME THAT HE IS NO LONGER
24 PARTICIPATING. THE NOTIFICATION MUST BE MADE EARLY ENOUGH
25 TO PREVENT THE COMMISSION OF THE CRIME; AND

26 2. HE MUST DO EVERYTHING REASONABLY WITHIN HIS

1 POWER TO COMMIT THE CRIME FROM BEING COMMITTED. HE DOES NOT
2 HAVE TO BE -- HE DOES NOT HAVE TO ACTUALLY PREVENT THE
3 CRIME.

4 THE PEOPLE HAVE THE BURDEN OF PROVING BEYOND A
5 REASONABLE DOUBT THAT THE DEFENDANT DID NOT WITHDRAW. IF
6 THE PEOPLE HAVE NOT MET THIS BURDEN, YOU MAY NOT FIND THE
7 DEFENDANT GUILTY UNDER AN AIDING AN ABETTING THEORY.

8 HOMICIDE IS THE KILLING OF ONE HUMAN BEING BY
9 ANOTHER. MURDER IS A TYPE OF HOMICIDE. THE DEFENDANT IS
10 CHARGED WITH MURDER.

11 A HOMICIDE CAN BE LAWFUL OR UNLAWFUL. IF A
12 PERSON KILLS WITH A LEGALLY VALID EXCUSE OR JUSTIFICATION,
13 THE KILLING IS LAWFUL AND HE HAS NOT COMMITTED A CRIME. IF
14 THERE IS NO LEGALLY VALID EXCUSE OR JUSTIFICATION, THE
15 KILLING IS UNLAWFUL AND, DEPENDING UPON THE CIRCUMSTANCES,
16 THE PERSON IS GUILTY OF EITHER FIRST OR SECOND DEGREE
17 MURDER. YOU MUST DECIDE WHETHER THE KILLING IN THIS CASE
18 WAS UNLAWFUL AND, IF SO, WHAT SPECIFIC CRIME WAS COMMITTED.
19 I WILL NOW INSTRUCT YOU IN MORE DETAIL ON WHAT IS A LEGALLY
20 PERMISSIBLE EXCUSE OR JUSTIFICATION FOR HOMICIDE. I WILL
21 ALSO INSTRUCT YOU ON THE DIFFERENT TYPES OF MURDER.

22 THE DEFENDANT IS CHARGED IN COUNT 1 WITH MURDER.
23 TO PROVE THAT THE DEFENDANT IS GUILTY OF THIS
24 CRIME, THE PEOPLE MUST PROVE THAT:

25 1. THE DEFENDANT COMMITTED AN ACT THAT CAUSED
26 THE DEATH OF ANOTHER PERSON AND;

1 2. WHEN THE DEFENDANT ACTED HE HAD A STATE OF
2 MIND CALLED MALICE AFORETHOUGHT.

3 THERE ARE TWO KINDS OF MALICE AFORETHOUGHT,
4 EXPRESS MALICE AND IMPLIED MALICE. PROOF OF EITHER IS
5 SUFFICIENT TO ESTABLISH THE STATE OF MIND REQUIRED FOR
6 MURDER.

7 THE DEFENDANT ACTED WITH EXPRESS MALICE IF HE
8 UNLAWFULLY INTENDED TO KILL.

9 THE DEFENDANT ACTED WITH IMPLIED MALICE IF HE
10 INTENTIONALLY COMMITTED AN ACT -- START THAT AGAIN.

11 THE DEFENDANT ACTED WITH IMPLIED MALICE IF:

12 1. HE INTENTIONALLY COMMITTED AN ACT;

13 2. THE NATURAL CONSEQUENCES OF THE ACT WERE
14 DANGEROUS TO HUMAN LIFE;

15 3. AT THE TIME HE ACTED, HE KNEW HIS ACT WAS
16 DANGEROUS TO HUMAN LIFE; AND

17 4. HE DELIBERATELY ACTED WITH CONSCIOUS
18 DISREGARD FOR HUMAN LIFE.

19 MALICE AFORETHOUGHT DOES NOT REQUIRE HATRED OR
20 ILL WILL TOWARD THE VICTIM. IT IS A MENTAL STATE THAT MUST
21 BE FORMED BEFORE THE ACT THAT CAUSES DEATH IS COMMITTED. IT
22 DOES NOT REQUIRE DELIBERATION OR THE PASSAGE OF ANY
23 PARTICULAR PERIOD OF TIME.

24 AN ACT CAUSES DEATH IF DEATH IS THE DIRECT,
25 NATURAL AND PROBABLE CONSEQUENCES OF THE ACT AND THE DEATH
26 WOULD NOT HAVE HAPPENED WITHOUT THE ACT. A NATURAL AND

1 PROBABLE CONSEQUENCE IS ONE THAT A REASONABLE PERSON WOULD
2 KNOW IS LIKELY TO HAPPEN IF NOTHING UNUSUAL INTERVENES. IN
3 DECIDING WHETHER A CONSEQUENCE IS NATURAL AND PROBABLE,
4 CONSIDER ALL OF THE CIRCUMSTANCES ESTABLISHED BY THE
5 EVIDENCE.

6 IF YOU DECIDE THAT THE DEFENDANT COMMITTED
7 MURDER, YOU MUST DECIDE WHETHER IT IS MURDER OF THE FIRST OR
8 SECOND DEGREE.

9 THE DEFENDANT IS GUILTY OF FIRST DEGREE MURDER IF
10 THE PEOPLE HAVE PROVED THAT HE ACTED WILLFULLY, DELIBERATELY
11 AND WITH PREMEDITATION. THE DEFENDANT ACTED WILLFULLY IF HE
12 INTENDED TO KILL. THE DEFENDANT ACTED DELIBERATELY IF HE
13 CAREFULLY WEIGHED THE CONSEQUENCES FOR AND AGAINST HIS
14 CHOICE AND, KNOWING THE CONSEQUENCES, DECIDED TO KILL. THE
15 DEFENDANT ACTED WITH PREMEDITATION IF HE DECIDED TO KILL
16 BEFORE COMMITTING THE ACT THAT CAUSED DEATH.

17 THE LENGTH OF TIME THE PERSON SPENDS CONSIDERING
18 WHETHER TO KILL DOES NOT ALONE DETERMINE WHETHER THE KILLING
19 IS DELIBERATE AND PREMEDITATED. THE AMOUNT OF TIME REQUIRED
20 FOR DELIBERATION AND PREMEDITATION MAY VARY FROM PERSON TO
21 PERSON AND ACCORDING TO THE CIRCUMSTANCES. A DECISION TO
22 KILL MADE RASHLY, IMPULSIVELY, OR WITHOUT CAREFULLY
23 CONSIDERATION IS NOT DELIBERATE AND PREMEDITATED. ON THE
24 OTHER HAND, A COLD, CALCULATED DECISION TO KILL CAN BE
25 REACHED QUICKLY. THE TEST IS THE EXTENT OF THE REFLECTION,
26 NOT THE LENGTH OF TIME.

1 ALL OTHER MURDERS ARE OF THE SECOND DEGREE.

2 THE PEOPLE HAVE THE BURDEN OF PROVING BEYOND A
3 REASONABLE DOUBT THAT THE KILLING WAS FIRST DEGREE MURDER
4 RATHER THAN A LESSER CRIME. IF THE PEOPLE HAVE NOT MET THIS
5 BURDEN, YOU MUST FIND THE DEFENDANT NOT GUILTY OF FIRST
6 DEGREE MURDER.

7 YOU HAVE BEEN GIVEN SEVERAL VERDICT FORMS FOR
8 MURDER.

9 IN CONNECTION WITH COUNT 1, I HAVE GIVEN YOU FOUR
10 SEPARATE VERDICT FORMS. THESE ARE: GUILTY/NOT GUILTY OF
11 FIRST DEGREE MURDER AND SECOND DEGREE MURDER.

12 YOU MAY CONSIDER THESE DIFFERENT KINDS OF
13 HOMICIDE IN WHATEVER ORDER YOU WISH. I AM GOING TO EXPLAIN
14 HOW TO COMPLETE THE VERDICT FORMS USING ONE ORDER, BUT YOU
15 MAY CHOOSE THE ORDER TO CHOOSE. AS WITH ALL THE CHARGES
16 IN THIS CASE, TO RETURN A VERDICT OF GUILTY OR NOT GUILTY ON
17 A COUNT, YOU MUST ALL AGREE ON THAT DECISION.

18 IF YOU ALL AGREE THE PEOPLE HAVE NOT PROVED THE
19 DEFENDANT COMMITTED AN UNLAWFUL KILLING, THEN YOU MUST
20 COMPLETE EACH VERDICT FORM STATING THAT HE IS NOT GUILTY.

21 IF YOU ALL AGREE THE PEOPLE HAVE PROVED THE
22 DEFENDANT KILLED UNLAWFULLY, YOU MUST DECIDE WHAT DEGREE OF
23 UNLAWFUL KILLING THE PEOPLE HAVE PROVED.

24 IF YOU ALL AGREE THAT THE PEOPLE HAVE PROVED THAT
25 THE UNLAWFUL KILLING WAS FIRST DEGREE MURDER, COMPLETE THE
26 VERDICT FORM STATING THAT THE DEFENDANT IS GUILTY OF FIRST

1 DEGREE MURDER. DO NOT COMPLETE THE OTHER VERDICT FORMS FOR
2 THIS COUNT.

3 IF YOU ALL AGREE THAT THE DEFENDANT IS NOT GUILTY
4 OF FIRST DEGREE MURDER, BUT YOU AGREE THE PEOPLE HAVE PROVED
5 THE KILLING WAS SECOND DEGREE MURDER, YOU MUST DO TWO
6 THINGS. FIRST, COMPLETE THE VERDICT FORMS STATING THAT THE
7 DEFENDANT IS NOT GUILTY OF FIRST DEGREE MURDER. THEN,
8 COMPLETE THE VERDICT FORM STATING THAT THE DEFENDANT IS
9 GUILTY OF SECOND DEGREE MURDER. DO NOT COMPLETE THE VERDICT
10 FORM STATING THE DEFENDANT IS GUILTY OF SECOND DEGREE MURDER
11 UNLESS YOU ALL AGREE THE DEFENDANT IS NOT GUILTY OF FIRST
12 DEGREE MURDER. DO NOT COMPLETE THE OTHER VERDICT FORMS FOR
13 THIS COUNT.

14 IF YOU ALL AGREE THE PEOPLE HAVE PROVED THE
15 DEFENDANT COMMITTED MURDER, BUT YOU CANNOT ALL AGREE ON
16 WHICH DEGREE THEY HAVE PROVED, DO NOT COMPLETE ANY VERDICT
17 FORMS. INSTEAD, THE FOREPERSON SHOULD SEND A NOTE REPORTING
18 THAT YOU CANNOT ALL AGREE ON THE DEGREE OF MURDER THAT HAS
19 BEEN PROVED.

20 IF YOU ALL AGREE THAT THE DEFENDANT IS NOT GUILTY
21 OF FIRST DEGREE MURDER, BUT YOU CANNOT ALL AGREE ON WHETHER
22 OR NOT THE PEOPLE HAVE PROVED THE DEFENDANT COMMITTED SECOND
23 DEGREE MURDER, THEN YOU MUST DO TWO THINGS. FIRST, COMPLETE
24 THE VERDICT FORM STATING THE DEFENDANT IS NOT GUILTY OF
25 FIRST DEGREE MURDER. SECOND, THE FOREPERSON SHOULD SEND A
26 NOTE REPORTING THAT YOU CANNOT ALL AGREE THAT SECOND DEGREE

1 MURDER HAS BEEN PROVED. DO NOT COMPLETE ANY OTHER VERDICT
2 FORMS FOR THIS COUNT.

3 THE PEOPLE HAVE THE BURDEN OF PROVING THAT THE
4 DEFENDANT COMMITTED FIRST DEGREE MURDER RATHER THAN A LESSER
5 OFFENSE. IF THE PEOPLE HAVE NOT MET THIS BURDEN, YOU MUST
6 FIND THE DEFENDANT NOT GUILTY OF FIRST DEGREE MURDER.

7 TO PROVE DISTURBING THE PEACE, THE PEOPLE MUST
8 PROVE THAT:

9 1. A PERSON WILLFULLY AND UNLAWFULLY FOUGHT OR
10 CHALLENGED SOMEONE ELSE TO FIGHT; AND

11 2. THE PERSON AND ANOTHER PERSON WERE IN A
12 PUBLIC FIGHT WHEN THE FIGHT OR CHALLENGE WAS MADE.

13 SOMEONE COMMITS AN ACT WILLFULLY WHEN HE DOES IT
14 WILLINGLY OR ON PURPOSE.

15 TO PROVE AN ASSAULT, THE PEOPLE MUST PROVE THAT:

16 1. A PERSON DID AN ACT THAT BY ITS NATURE WOULD
17 DIRECTLY AND PROBABLY RESULT IN THE APPLICATION OF FORCE TO
18 ANOTHER PERSON;

19 2. THE PERSON DID THAT ACT WILLFULLY;

20 3. WHEN THE PERSON ACTED, HE WAS AWARE OF FACTS
21 THAT WOULD LEAD A REASONABLE PERSON TO REALIZE THAT HIS ACT
22 BY ITS NATURE WOULD DIRECTLY AND PROBABLY RESULT IN THE
23 APPLICATION OF FORCE TO SOMEONE; AND

24 4. WHEN THE PERSON ACTED HE HAD THE PRESENT
25 ABILITY TO APPLY FORCE TO ANOTHER PERSON.

26 SOMEONE COMMITS AN ACT WILLFULLY WHEN HE DOES IT

1 WILLINGLY OR ON PURPOSE. IT IS NOT REQUIRED THAT HE INTEND
2 TO BREAK THE LAW, HURT SOMEONE ELSE, OR GAIN ANY ADVANTAGE.

3 THE TERMS "APPLICATION OF FORCE" AND "APPLY
4 FORCE" MEAN TO TOUCH IN A HARMFUL OR OFFENSIVE MANNER. THE
5 SLIGHTEST TOUCHING CAN BE ENOUGH IF IT IS DONE IN A RUDE OR
6 ANGRY WAY. MAKING CONTACT WITH ANOTHER PERSON, INCLUDING
7 THROUGH HIS OR HER CLOTHING, IS ENOUGH. THE TOUCHING DOES
8 NOT HAVE TO CAUSE PAIN OR INJURY OF ANY KIND.

9 THE TOUCHING CAN BE DONE INDIRECTLY BY CAUSING AN
10 OBJECT OR SOMEONE ELSE TO TOUCH THE OTHER PERSON.

11 THE PEOPLE ARE NOT REQUIRED TO PROVE THAT THE
12 PERSON ACTUALLY TOUCHED SOMEONE.

13 THE PEOPLE ARE NOT REQUIRED TO PROVE THAT THE
14 PERSON ACTUALLY INTENDED TO USE FORCE AGAINST SOMEONE WHEN
15 HE ACTED.

16 NO ONE NEEDS TO ACTUALLY HAVE BEEN INJURED BY THE
17 PERSON'S ACT.

18 BEFORE YOU MAY DECIDE WHETHER THE DEFENDANT IS
19 GUILTY OF MURDER, YOU MUST DECIDE WHETHER HE IS GUILTY OF
20 DISTURBING THE PEACE OR CONSPIRACY TO COMMIT EITHER
21 DISTURBING THE PEACE OR ASSAULT, VIOLATIONS OF PENAL CODE
22 SECTIONS 415 AND 240, RESPECTIVELY.

23 TO PROVE THAT THE DEFENDANT IS GUILTY OF MURDER,
24 THE PEOPLE MUST PROVE THAT:

25 1. THE DEFENDANT IS GUILTY OF DISTURBING THE
26 PEACE OR CONSPIRACY TO COMMIT EITHER DISTURBING THE PEACE OR

1 ASSAULT;

2 2. DURING THE COMMISSION OF DISTURBING THE PEACE
3 OR CONSPIRACY TO COMMIT EITHER DISTURBING THE PEACE, OR
4 ASSAULT, THE CRIME OF MURDER WAS COMMITTED; AND

5 3. UNDER ALL OF THE CIRCUMSTANCES, A REASONABLE
6 PERSON IN THE DEFENDANT'S POSITION WOULD HAVE KNOWN THAT THE
7 COMMISSION OF THE MURDER WAS A NATURAL AND PROBABLE
8 CONSEQUENCE OF DISTURBING THE PEACE OR THE CONSPIRACY TO
9 COMMIT EITHER DISTURBING THE PEACE OR ASSAULT.

10 A NATURAL AND PROBABLE CONSEQUENCE IS ONE THAT A
11 REASONABLE PERSON WOULD KNOW IS LIKELY TO HAPPEN IF NOTHING
12 UNUSUAL INTERVENES. IN DECIDING WHETHER A CONSEQUENCE IS
13 NATURAL AND PROBABLE, CONSIDER ALL OF THE CIRCUMSTANCES
14 ESTABLISHED BY THE EVIDENCE. IF THE MURDER WAS COMMITTED
15 FOR A REASON INDEPENDENT OF THE COMMON PLAN TO DISTURB THE
16 PEACE OR CONSPIRACY TO COMMIT EITHER DISTURBING THE PEACE OR
17 ASSAULT, THEN THE COMMISSION OF MURDER WAS NOT A NATURAL AND
18 PROBABLE CONSEQUENCE OF DISTURBING THE PEACE OR CONSPIRACY
19 TO COMMIT EITHER DISTURBING THE PEACE OR ASSAULT.

20 TO DECIDE WHETHER THE CRIME OF MURDER WAS
21 COMMITTED, PLEASE REFER TO THE SEPARATE INSTRUCTIONS THAT I
22 HAVE GIVEN YOU ON THAT CRIME.

23 THE PEOPLE ARE ALLEGING THAT THE DEFENDANT
24 ORIGINALLY DISTURBED THE PEACE OR CONSPIRED TO COMMIT EITHER
25 DISTURBING THE PEACE OR ASSAULT, VIOLATIONS OF PENAL CODE
26 SECTION 415 AND 240, RESPECTIVELY.

1 THE DEFENDANT IS GUILTY OF MURDER IF YOU DECIDE
2 THAT THE DEFENDANT DISTURBED THE PEACE OR CONSPIRED TO
3 COMMIT DISTURBING THE PEACE OR ASSAULT AND THAT MURDER WAS A
4 NATURAL AND PROBABLE RESULT OF ONE OF THESE CRIMES.
5 HOWEVER, YOU DO NOT NEED TO AGREE ABOUT WHICH OF THESE
6 CRIMES THE DEFENDANT COMMITTED OR CONSPIRED TO COMMIT.

7 THE PEOPLE HAVE PRESENTED EVIDENCE OF A
8 CONSPIRACY. A MEMBER OF A CONSPIRACY IS CRIMINALLY
9 RESPONSIBLE FOR THE ACTS OR STATEMENTS OF ANY OTHER MEMBER
10 OF THE CONSPIRACY DONE TO HELP ACCOMPLISH THE GOAL OF THE
11 CONSPIRACY.

12 TO PROVE THAT THE DEFENDANT WAS A MEMBER OF A
13 CONSPIRACY IN THIS CASE, THE PEOPLE MUST PROVE THAT:

14 1. THE DEFENDANT INTENDED TO AGREE AND DID AGREE
15 WITH ONE OR MORE OF FRANK LOPEZ, ISRAEL LOPEZ,
16 SEVERO DE LA RIVA, LOUIS PEREZ, AND JESUS PEREZ TO COMMIT
17 DISTURBING THE PEACE OR ASSAULT;

18 2. AT THE TIME OF THE AGREEMENT THE DEFENDANT
19 AND ONE OR MORE OF THE OTHER ALLEGED MEMBERS OF THE
20 CONSPIRACY INTENDED THAT ONE OR MORE OF THEM WOULD COMMIT
21 DISTURBING THE PEACE OR ASSAULT;

22 3. DEFENDANT OR FRANK LOPEZ, ISRAEL LOPEZ,
23 SEVERO DE LA RIVA, LOUIS PEREZ AND JESUS LOPEZ COMMITTED AT
24 LEAST ONE OVERT ACT TO ACCOMPLISH DISTURBING THE PEACE OR
25 ASSAULT; AND

26 4. AT LEAST ONE OVERT ACT WAS COMMITTED IN

1 CALIFORNIA.

2 TO DECIDE WHETHER THE DEFENDANT AND ONE OR MORE
3 OF THE OTHER ALLEGED MEMBERS OF THE CONSPIRACY INTENDED TO
4 COMMIT DISTURBING THE PEACE OR ASSAULT, PLEASE REFER TO THE
5 SEPARATE INSTRUCTIONS THAT I HAVE GIVEN YOU ON THOSE CRIMES.

6 THE PEOPLE MUST PROVE THAT THE MEMBERS OF THE
7 ALLEGED CONSPIRACY HAD AN AGREEMENT AND INTENT TO COMMIT
8 DISTURBING THE PEACE OR ASSAULT. THE PEOPLE DO NOT HAVE TO
9 PROVE THAT ANY OF THE MEMBERS OF THE ALLEGED CONSPIRACY
10 ACTUALLY MET OR CAME TO A DETAILED OR FORMAL AGREEMENT TO
11 COMMIT ONE OR MORE OF THOSE CRIMES. AN AGREEMENT MAY BE
12 INFERRED FROM CONDUCT IF YOU CONCLUDE THAT MEMBERS OF THE
13 ALLEGED CONSPIRACY ACTED WITH A COMMON PURPOSE TO COMMIT THE
14 CRIME.

15 AN OVERT ACT IS AN ACT BY ONE OR MORE MEMBERS OF
16 THE CONSPIRACY THAT IS DONE TO HELP ACCOMPLISH THE
17 AGREED-UPON CRIME. THE OVERT ACT MUST HAPPEN AFTER THE
18 DEFENDANT HAS AGREED TO COMMIT THE CRIME. THE OVERT ACT
19 MUST BE MORE THAN THE ACT OF AGREEING OR PLANNING TO COMMIT
20 THE CRIME, BUT IT DOES NOT HAVE TO BE A CRIMINAL ACT ITSELF.

21 YOU MUST ALL AGREE THAT AT LEAST ONE OVERT ACT
22 WAS COMMITTED IN CALIFORNIA BY AT LEAST ONE ALLEGED MEMBER
23 OF THE CONSPIRACY, BUT YOU DO NOT HAVE TO ALL AGREE ON WHICH
24 SPECIFIC OVERT ACT OR ACTS WERE COMMITTED OR WHO COMMITTED
25 THE OVERT ACT OR ACTS.

26 THE PEOPLE CONTEND THAT THE DEFENDANT CONSPIRED

1 TO COMMIT ONE OF THE FOLLOWING CRIMES: DISTURBING THE PEACE
2 OR ASSAULT. YOU MAY NOT FIND THE DEFENDANT GUILTY UNDER A
3 CONSPIRACY THEORY UNLESS ALL OF YOU AGREE THAT THE PEOPLE
4 HAVE PROVED THAT THE DEFENDANT CONSPIRED TO COMMIT AT LEAST
5 ONE OF THESE CRIMES AND YOU ALL AGREE WHICH CRIME HE
6 CONSPIRED TO COMMIT.

7 A MEMBER OF A CONSPIRACY DOES NOT HAVE TO
8 PERSONALLY KNOW THE IDENTITY OR ROLES OF ALL THE OTHER
9 MEMBERS.

10 SOMEONE WHO MERELY ACCOMPANIES OR ASSOCIATES WITH
11 MEMBERS OF CONSPIRACY, BUT WHO DOES NOT INTEND TO COMMIT THE
12 CRIME, IS NOT A MEMBER OF THE CONSPIRACY.

13 EVIDENCE THAT A PERSON DID AN ACT OR MADE A
14 STATEMENT THAT HELPED ACCOMPLISH THE GOAL OF THE CONSPIRACY
15 IS NOT ENOUGH BY ITSELF TO PROVE THAT THE PERSON WAS A
16 MEMBER OF THE CONSPIRACY.

17 A MEMBER OF A CONSPIRACY IS CRIMINALLY
18 RESPONSIBLE FOR THE CRIMES THAT HE CONSPIRES TO COMMIT, NO
19 MATTER WHICH MEMBER OF THE CONSPIRACY COMMITS THE CRIME.

20 A MEMBER OF A CONSPIRACY IS ALSO CRIMINALLY
21 RESPONSIBLE FOR ANY ACT OF ANY MEMBER OF THE CONSPIRACY IF
22 THAT ACT IS DONE TO FURTHER THE CONSPIRACY AND THAT ACT IS A
23 NATURAL AND PROBABLE CONSEQUENCE OF THE COMMON PLAN OR
24 DESIGN OF THE CONSPIRACY. THIS RULE APPLIES EVEN IF THE ACT
25 WAS NOT INTENDED AS PART OF THE ORIGINAL PLAN. UNDER THIS
26 RULE, A DEFENDANT WHO IS A MEMBER OF THE CONSPIRACY DOES NOT

1 NEED TO BE PRESENT AT THE TIME OF THE ACT.

2 "A NATURAL AND PROBABLE CONSEQUENCE" IS ONE THAT
3 A REASONABLE PERSON WOULD KNOW IS LIKELY TO HAPPEN IF
4 NOTHING UNUSUAL INTERVENES. IN DECIDING WHETHER A
5 CONSEQUENCE IS NATURAL AND PROBABLE, CONSIDER ALL OF THE
6 CIRCUMSTANCES ESTABLISHED BY THE EVIDENCE.

7 A MEMBER OF A CONSPIRACY IS NOT CRIMINALLY
8 RESPONSIBLE FOR THE ACT OF ANOTHER MEMBER IF THAT ACT DOES
9 NOT FURTHER THE COMMON PLAN OR IS NOT A NATURAL AND PROBABLE
10 CONSEQUENCE OF THE COMMON PLAN.

11 TO PROVE THAT THE DEFENDANT IS GUILTY OF THE
12 CRIME CHARGED IN COUNT 1, THE PEOPLE MUST PROVE THAT:

13 1. THE DEFENDANT CONSPIRED TO COMMIT ONE OF THE
14 FOLLOWING CRIMES: DISTURBING THE PEACE OR ASSAULT;

15 2. A MEMBER OF THE CONSPIRACY COMMITTED MURDER
16 TO FURTHER THE CONSPIRACY; AND

17 3. MURDER WAS A NATURAL AND PROBABLE CONSEQUENCE
18 OF THE COMMON PLAN OR DESIGN OF THE CRIME THAT THE DEFENDANT
19 CONSPIRED TO COMMIT.

20 THE DEFENDANT IS NOT RESPONSIBLE FOR THE ACTS OF
21 ANOTHER PERSON WHO WAS NOT A MEMBER OF THE CONSPIRACY EVEN
22 IF THE ACTS OF THE OTHER PERSON HELPED ACCOMPLISH THE GOAL
23 OF THE CONSPIRACY.

24 A CONSPIRACY MEMBER IS NOT RESPONSIBLE FOR THE
25 ACTS OF OTHER CONSPIRACY MEMBERS THAT ARE DONE AFTER THE
26 GOAL OF THE CONSPIRACY HAS BEEN -- HAD BEEN ACCOMPLISHED.

1 IN DECIDING WHETHER THE PEOPLE HAVE PROVED THAT
2 THE DEFENDANT COMMITTED ANY OF THE CRIMES CHARGED, YOU MAY
3 NOT CONSIDER ANY STATEMENT MADE OUT OF COURT BY FRANK LOPEZ,
4 ISRAEL LOPEZ, SEVERO DE LA RIVA, LOUIS PEREZ AND JESUS LOPEZ
5 UNLESS THE PEOPLE HAVE PROVED BY A PREPONDERANCE OF THE
6 EVIDENCE THAT:

7 1. SOME EVIDENCE OTHER THAN THE STATEMENT ITSELF
8 ESTABLISHES THE CONSPIRACY TO COMMIT A CRIME EXISTED WHEN
9 THE STATEMENT WAS MADE;

10 2. FRANK LOPEZ, ISRAEL LOPEZ, SEVERO DE LA RIVA,
11 LOUIS PEREZ AND JESUS LOPEZ AND ANDRES REYES WERE MEMBERS OF
12 AND PARTICIPATING IN THE CONSPIRACY WHEN THEY MADE THE
13 STATEMENT;

14 3. FRANK LOPEZ, ISRAEL LOPEZ, SEVERO DE LA RIVA,
15 LOUIS PEREZ, JESUS LOPEZ AND ANDRES REYES MADE THE STATEMENT
16 IN ORDER TO FURTHER THE GOAL OF THE CONSPIRACY;

17 4. THE STATEMENT WAS MADE BEFORE OR DURING THE
18 TIME THAT THE DEFENDANT WAS PARTICIPATING IN A CONSPIRACY.

19 A "STATEMENT" MEANS AN ORAL OR WRITTEN EXPRESSION
20 OR NONVERBAL CONDUCT INTENDED TO BE A SUBSTITUTE FOR WRITTEN
21 OR ORAL EXPRESSION.

22 ' PROOF BY A PREPONDERANCE OF THE EVIDENCE IS A
23 DIFFERENT STANDARD OF PROOF THAN PROOF BEYOND A REASONABLE
24 DOUBT. A FACT IS PROVED BY A PREPONDERANCE OF THE EVIDENCE
25 IF YOU CONCLUDE THAT IT IS MORE LIKELY THAN NOT THAT THE
26 FACT IS TRUE.

1 YOU MAY NOT CONSIDER STATEMENTS MADE BY A PERSON
2 WHO WAS NOT A MEMBER OF THE CONSPIRACY EVEN IF THE
3 STATEMENTS HELP ACCOMPLISH THE GOAL OF THE CONSPIRACY.

4 YOU MAY NOT CONSIDER STATEMENTS MADE AFTER THE
5 GOAL OF THE CONSPIRACY HAD BEEN ACCOMPLISHED.

6 THE DEFENDANT IS CHARGED IN COUNT 2 WITH
7 PARTICIPATING IN A CRIMINAL STREET GANG.

8 TO PROVE THAT THE DEFENDANT IS GUILTY OF THIS
9 CRIME, THE PEOPLE MUST PROVE THAT:

10 1. THE DEFENDANT ACTIVELY PARTICIPATED IN A
11 CRIMINAL STREET GANG;

12 2. WHEN THE DEFENDANT PARTICIPATED IN THE GANG
13 HE KNEW THAT MEMBERS OF THE GANG ENGAGED IN OR HAVE ENGAGED
14 IN A PATTERN OF CRIMINAL GANG ACTIVITY; AND

15 3. THE DEFENDANT WILLFULLY ASSISTED, FURTHERED
16 OR PROMOTED THE FELONIOUS CONDUCT BY MEMBERS OF THE GANG.

17 "ACTIVE PARTICIPATION" MEANS INVOLVEMENT WITH A
18 CRIMINAL STREET GANG IN A WAY THAT IS MORE THAN PASSIVE OR
19 IN NAME ONLY.

20 THE PEOPLE DO NOT HAVE TO PROVE THAT THE
21 DEFENDANT DEVOTED ALL OR A SUBSTANTIAL PART OF HIS TIME OR
22 EFFORTS TO THE GANG OR THAT HE WAS AN ACTUAL MEMBER OF THE
23 GANG.

24 A CRIMINAL STREET GANG IS ANY ONGOING
25 ORGANIZATION, ASSOCIATION OR GROUP OF THREE OR MORE PERSONS,
26 WHETHER FORMAL OR INFORMAL:

1 1. THAT HAS A COMMON NAME OR COMMON IDENTIFYING
2 SIGN OR SYMBOL;

3 2. THAT HAS, ONE OR MORE OF ITS PRIMARY
4 ACTIVITIES, THE COMMISSION OF MURDER, ASSAULT WITH FIREARMS,
5 POSSESSION OF NARCOTICS FOR SALE; AND

6 3. WHOSE MEMBERS, WHETHER ACTING ALONE OR
7 TOGETHER, ENGAGE IN OR HAVE ENGAGED IN A PATTERN OF CRIMINAL
8 GANG ACTIVITY.

9 IN ORDER TO QUALIFY AS A PRIMARY ACTIVITY, THE
10 CRIME MUST BE ONE OF THE GROUP'S CHIEF OR PRINCIPAL
11 ACTIVITIES RATHER THAN AN OCCASIONAL ACT COMMITTED BY ONE OR
12 MORE PERSONS WHO HAPPEN TO BE MEMBERS OF THE GROUP.

13 "A PATTERN OF CRIMINAL GANG ACTIVITY," AS USED
14 HERE, MEANS:

15 1. THE COMMISSION OF, OR ATTEMPTED COMMISSION
16 OF, OR CONVICTION OF, OR ANY COMBINATION OF TWO OR MORE OF
17 THE FOLLOWING CRIMES: MURDER AND ATTEMPTED VOLUNTARY
18 MANSLAUGHTER;

19 2. AT LEAST ONE OF THOSE CRIMES WAS COMMITTED
20 AFTER SEPTEMBER 26TH, 1988;

21 3. THE MOST RECENT CRIME OCCURRED WITHIN THREE
22 YEARS OF ONE OF THE EARLIER CRIMES; AND

23 4. THE CRIMES WERE COMMITTED ON SEPARATE
24 OCCASIONS OR WERE PERSONALLY COMMITTED BY TWO OR MORE
25 PERSONS.

26 THE PEOPLE NEED NOT PROVE THAT EVERY PERPETRATOR

1 INVOLVED IN THE PATTERN OF CRIMINAL GANG ACTIVITY, IF ANY,
2 WAS A MEMBER OF THE ALLEGED CRIMINAL STREET GANG AT THE TIME
3 WHEN SUCH ACTIVITY WAS TAKING PLACE.

4 THE CRIMES, IF ANY, THAT ESTABLISH A PATTERN OF
5 CRIMINAL GANG ACTIVITY NEED NOT BE GANG RELATED.

6 IF YOU FIND THE DEFENDANT GUILTY OF A CRIME IN
7 THIS CASE, YOU MAY CONSIDER THAT CRIME IN DECIDING WHETHER
8 ONE OF THE GROUP'S PRIMARY ACTIVITIES WAS COMMISSION OF THAT
9 CRIME AND WHETHER A PATTERN OF CRIMINAL GANG ACTIVITY HAS
10 BEEN PROVED.

11 YOU MAY NOT FIND THAT THERE WAS A PATTERN OF
12 CRIMINAL GANG ACTIVITY UNLESS ALL OF YOU AGREE THAT TWO OR
13 MORE CRIMES THAT SATISFY THESE REQUIREMENTS WERE COMMITTED,
14 BUT YOU DO NOT HAVE TO ALL AGREE ON WHICH CRIMES WERE
15 COMMITTED.

16 AS THE TERM IS USED HERE, A "WILLFULLY ACT" IS
17 ONE DONE WILLINGLY OR ON PURPOSE.

18 "FELONIOUS CRIMINAL CONDUCT" MEANS COMMITTING OR
19 ATTEMPTING TO COMMIT ANY OF THE FOLLOWING CRIMES: MURDER.

20 TO DECIDE WHETHER A MEMBER OF THE GANG OR THE
21 DEFENDANT COMMITTED MURDER, PLEASE REFER TO THE SEPARATE
22 INSTRUCTIONS THAT I HAVE GIVEN YOU ON THAT CRIME.

23 TO PROVE THAT THE DEFENDANT WILLFULLY ASSISTED,
24 FURTHERED, OR PROMOTED A CRIME, THE PEOPLE MUST PROVE THAT:

- 25 1. A MEMBER OF THE GANG COMMITTED THE CRIME;
26 2. DEFENDANT KNEW THAT THE GANG MEMBER INTENDED

1 TO COMMIT THE CRIME;

2 3. BEFORE OR DURING THE COMMISSION OF THE CRIME
3 THE DEFENDANT INTENDED TO AID AND ABET THE GANG MEMBER IN
4 COMMITTING THE CRIME; AND

5 4. THE DEFENDANT'S WORDS OR CONDUCT DID IN FACT
6 AID AND ABET THE COMMISSION OF THE CRIME.

7 SOMEONE AIDS AND ABETS A CRIME IF HE OR SHE KNOWS
8 OF THE PERPETRATOR'S UNLAWFUL PURPOSE AND HE OR SHE
9 SPECIFICALLY INTENDS TO, AND DOES IN FACT, AID, FACILITATE,
10 PROMOTE, ENCOURAGE OR INSTIGATE THE PERPETRATOR'S COMMISSION
11 OF THAT CRIME.

12 IF YOU CONCLUDE THAT DEFENDANT WAS PRESENT AT THE
13 SCENE OF THE CRIME OR FAILED TO PREVENT THE CRIME, YOU MAY
14 CONSIDER THAT FACT IN DETERMINING WHETHER THE DEFENDANT WAS
15 AN AIDER AND ABETTER. HOWEVER, THE FACT THAT A PERSON IS
16 PRESENT AT THE SCENE OF THE CRIME OR FAILS TO PREVENT THE
17 CRIME DOES NOT BY ITSELF MAKE HIM OR HER AN AIDER AND
18 ABETTER.

19 A PERSON OR AIDS AND ABETS A CRIME IS NOT GUILTY
20 OF THAT CRIME IF HE OR SHE WITHDRAWS BEFORE THE CRIME IS
21 COMMITTED. TO WITHDRAW, A PERSON MUST DO TWO THINGS:

22 1. HE OR SHE MUST NOTIFY EVERYONE ELSE HE OR SHE
23 KNOWS IS INVOLVED IN THE COMMISSION OF THE CRIME THAT HE OR
24 SHE NO LONGER IS PARTICIPATING. THE NOTIFICATION MUST BE
25 MADE EARLY ENOUGH TO PREVENT THE COMMISSION OF THE CRIME;
26 AND

1 2. HE OR SHE MUST DO EVERYTHING REASONABLY
2 WITHIN HIS OR HER POWER TO COMMIT THE CRIME FROM BEING
3 COMMITTED. HE OR SHE DOES NOT HAVE TO ACTUALLY PREVENT THE
4 CRIME.

5 THE PEOPLE HAVE THE BURDEN OF PROVING BEYOND A
6 REASONABLE DOUBT THAT THE DEFENDANT DID NOT WITHDRAW. IF
7 THE PEOPLE HAVE NOT MET THIS BURDEN, YOU MAY NOT FIND THE
8 DEFENDANT GUILTY UNDER AN AIDING AND ABETTING THEORY.

9 IF YOU FIND THE DEFENDANT GUILTY OF THE CRIME
10 CHARGED IN COUNT 1, YOU MUST THEN DECIDE WHETHER THE PEOPLE
11 HAVE PROVED THE ADDITIONAL ALLEGATION THAT THE DEFENDANT
12 COMMITTED THAT CRIME FOR THE BENEFIT OF, AT THE DIRECTION
13 OF, OR IN ASSOCIATION WITH A CRIMINAL STREET GANG. YOU MUST
14 DECIDE WHETHER THE PEOPLE HAVE PROVED THIS ALLEGATION AND
15 RETURN A FINDING.

16 TO PROVE THIS ALLEGATION, THE PEOPLE MUST PROVE
17 THAT:

18 1. THE DEFENDANT COMMITTED THE CRIME FOR THE
19 BENEFIT OF, AT THE DIRECTION OF, OR IN ASSOCIATION WITH A
20 CRIMINAL STREET GANG; AND

21 2. THE DEFENDANT INTENDED TO ASSIST, FURTHER, OR
22 PROMOTE CRIMINAL CONDUCT BY GANG MEMBERS.

23 A CRIMINAL STREET GANG IS DEFINED IN ANOTHER
24 INSTRUCTION TO WHICH YOU SHOULD REFER.

25 THE PEOPLE NEED NOT PROVE THE DEFENDANT IS AN
26 ACTIVE OR CURRENT MEMBER OF THE ALLEGED CRIMINAL STREET

1 GANG.

2 IF YOU FIND THE DEFENDANT GUILTY OF A CRIME IN
3 THIS CASE, YOU MAY CONSIDER THAT CRIME IN DECIDING WHETHER
4 ONE OF THE GROUP'S PRIMARY ACTIVITIES WAS COMMISSION OF THAT
5 CRIME AND WHETHER A PATTERN OF CRIMINAL GANG ACTIVITY HAS
6 BEEN PROVED.

7 YOU MAY NOT FIND THAT THERE WAS A PATTERN OF
8 CRIMINAL GANG ACTIVITY UNLESS ALL OF YOU AGREE THAT TWO OR
9 MORE CRIMES THAT SATISFY THESE REQUIREMENTS WERE COMMITTED,
10 BUT IF YOU DO NOT HAVE TO -- BUT YOU DO NOT HAVE TO ALL
11 AGREE ON WHICH CRIMES WERE COMMITTED.

12 TO DECIDE WHETHER A MEMBER OF THE GANG OR THE
13 DEFENDANT COMMITTED MURDER, PLEASE REFER TO THE SEPARATE
14 INSTRUCTIONS THAT I HAVE GIVEN YOU ON THAT CRIME.

15 THE PEOPLE HAVE THE BURDEN OF PROVING EACH
16 ALLEGATION BEYOND A REASONABLE DOUBT. IF THE PEOPLE HAVE
17 NOT MET THIS BURDEN, YOU MUST FIND THAT THE ALLEGATION HAS
18 NOT BEEN PROVED.

19 IF YOU FIND THE DEFENDANT GUILTY OF THE CRIME
20 CHARGED IN COUNT 1, AND YOU FIND THAT THE DEFENDANT
21 COMMITTED THAT CRIME FOR THE BENEFIT OF, AT THE DIRECTION
22 OF, OR IN ASSOCIATION WITH A CRIMINAL STREET GANG WITH THE
23 INTENT TO PROMOTE, FURTHER, OR ASSIST IN ANY CRIMINAL
24 CONDUCT BY GANG MEMBERS, YOU MUST THEN DECIDE WHETHER THE
25 PEOPLE HAVE PROVED THE ADDITIONAL ALLEGATION THAT ONE OF THE
26 PRINCIPALS PERSONALLY AND INTENTIONALLY DISCHARGED A FIREARM

1 DURING THIS CRIME AND CAUSED DEATH. YOU MUST DECIDE WHETHER
2 THE PEOPLE HAVE PROVED THIS ALLEGATION AND RETURN A FINDING.

3 TO PROVE THIS ALLEGATION, THE PEOPLE MUST PROVE
4 THAT:

5 1. SOMEONE WHO WAS A PRINCIPAL IN THE CRIME
6 PERSONALLY DISCHARGED A FIREARM DURING THE COMMISSION OR
7 ATTEMPTED COMMISSION OF THE CRIME; AND

8 2. THAT PERSON INTENDED TO DISCHARGE THE
9 FIREARM; AND

10 3. THAT PERSON'S ACT CAUSED THE DEATH OF ANOTHER
11 PERSON WHO WAS NOT AN ACCOMPLICE TO THE CRIME.

12 A PERSON IS A PRINCIPAL IN A CRIME IF HE DIRECTLY
13 COMMITS OR ATTEMPTS TO COMMIT THE CRIME OR IF HE AIDS AND
14 ABETS SOMEONE WHO COMMITS OR ATTEMPTS TO COMMIT THE CRIME.

15 A FIREARM IS ANY DEVICE DESIGNED TO BE USED AS A
16 WEAPON FROM WHICH A PROJECTILE IS DISCHARGED OR EXPELLED
17 THROUGH A BARREL BY THE FORCE OF AN EXPLOSION OR OTHER FORM
18 OF COMBUSTION.

19 A PRINCIPAL PERSONALLY USES A FIREARM IF HE OR
20 SHE INTENTIONALLY DOES ANY OF THE FOLLOWING:

21 1. DISPLAYS THE FIREARM IN A MENACING MANNER.

22 2. HITS SOMEONE WITH THE FIREARM.

23 OR

24 3. FIRES THE FIREARM.

25 AN ACT CAUSES DEATH IF THE DEATH IS THE DIRECT,
26 NATURAL AND PROBABLE CONSEQUENCE OF THE ACT AND THE DEATH

1 WOULD NOT HAVE HAPPENED WITHOUT THE ACT. A NATURAL AND
2 PROBABLE CONSEQUENCE IS ONE THAT A REASONABLE PERSON WOULD
3 KNOW IS LIKELY TO HAPPEN IF NOTHING UNUSUAL INTERVENES. IN
4 DECIDING WHETHER A CONSEQUENCE IS NATURAL AND PROBABLE,
5 CONSIDER ALL THE CIRCUMSTANCES ESTABLISHED BY THE EVIDENCE.

6 A PERSON IS AN ACCOMPLICE IF HE OR SHE IS SUBJECT
7 TO PROSECUTION FOR THE IDENTICAL CRIME CHARGED AGAINST THE
8 DEFENDANT. A PERSON IS SUBJECT TO PROSECUTION IF HE OR SHE
9 COMMITTED THE CRIME OR IF:

10 1. HE OR SHE KNEW OF THE CRIMINAL PURPOSE OF THE
11 PERSON WHO COMMITTED THE CRIME; AND

12 2. HE OR SHE INTENDED TO AND DID IN FACT AID,
13 FACILITATE, PROMOTE, ENCOURAGE, OR INSTIGATE THE COMMISSION
14 OF THE CRIME OR PARTICIPATE IN A CRIMINAL CONSPIRACY TO
15 COMMIT THE CRIME.

16 THE PEOPLE HAVE THE BURDEN OF PROVING EACH
17 ALLEGATION BEYOND A REASONABLE DOUBT. IF THE PEOPLE HAVE
18 NOT MET THIS BURDEN, YOU MUST FIND THAT THE ALLEGATION HAS
19 NOT BEEN PROVED.

20 YOU MAY CONSIDER EVIDENCE OF GANG ACTIVITY ONLY
21 FOR THE LIMITED PURPOSE OF DECIDING WHETHER:

22 THE DEFENDANT ACTED WITH THE INTENT, PURPOSE, AND
23 KNOWLEDGE THAT ARE REQUIRED TO PROVE THE GANG-RELATED CRIMES
24 AND ENHANCEMENTS CHARGED;

25 OR

26 THE DEFENDANT HAD A MOTIVE TO COMMIT THE CRIMES

1 CHARGED.

2 YOU MAY ALSO CONSIDER THIS EVIDENCE WHEN YOU
3 EVALUATE THE CREDIBILITY OR BELIEVABILITY OF A WITNESS AND
4 WHEN YOU CONSIDER THE FACTS AND INFORMATION RELIED ON BY AN
5 EXPERT WITNESS IN REACHING HIS OPINION.

6 YOU MAY NOT CONSIDER THIS EVIDENCE FOR ANY OTHER
7 PURPOSE. YOU MAY NOT CONCLUDE FROM THIS EVIDENCE THAT THE
8 DEFENDANT IS A PERSON OF BAD CHARACTER OR THAT HE HAS A
9 DISPOSITION TO COMMIT CRIME.

10 I HESITATED IN SOME OF MY READING OF THESE
11 INSTRUCTIONS IN PART BECAUSE THEY'RE NEW TO US.

12 HOW MANY OF YOU WERE ON A CRIMINAL JURY BEFORE?
13 ANYBODY?

14 ONE OR TWO.

15 I DON'T KNOW IF YOU NOTICED A SUBSTANTIAL
16 DIFFERENCE IN THE INSTRUCTIONS OR NOT, BUT AFTER ABOUT EIGHT
17 YEARS OF WORK BY A BLUE RIBBON PANEL OF THE VERY BEST AND
18 BRIGHTEST LAWYERS AND JUDGES IN THIS STATE, THEY HAVE
19 CHANGED ALL OF THE JURY INSTRUCTIONS. THE INTENT WAS TO
20 SIMPLIFY THE INSTRUCTIONS. AND IN MANY RESPECTS THEY DID
21 SIMPLIFY THE INSTRUCTIONS.

22 I'LL HAVE TO GIVE SOME CONSIDERABLE THOUGHT AS TO
23 WHETHER THEY'VE SIMPLIFIED THE INSTRUCTIONS IN A MURDER
24 CASE. AND SO YOU KNOW, AFTER 15 YEARS OF BEING ON THE BENCH
25 I HAD THE OTHER INSTRUCTIONS PRETTY MUCH COMMITTED TO MEMORY
26 AND I WOULD ORDINARILY SPEAK A LITTLE MORE CLEARLY AND A

1 LITTLE MORE FLUIDLY, AND I'D BE LOOKING AT YOU TO SEE IF YOU
2 WERE ACTUALLY LOOKING AT ME DURING THE GIVING THE
3 INSTRUCTIONS. BUT I DO KNOW THAT I HESITATED. AND I DO
4 NEED TO TALK TO THE ATTORNEYS ABOUT SOME OF THESE
5 INSTRUCTIONS AT THIS RECESS THAT WE'RE GOING TO TAKE.

6 AND INSTRUCTIONS ARE THE MOST DIFFICULT PART FOR
7 A COURT REPORTER, SO I WANT TO FACTOR IN A BREAK FOR LYNN.

8 WHEN YOU COME BACK AT THREE O'CLOCK, HOPEFULLY
9 WE'LL BE READY TO START THE FINAL ARGUMENTS THAT THE
10 ATTORNEYS WILL DELIVER IN THIS CASE.

11 DURING THIS RECESS, PLEASE DO NOT TALK ABOUT THE
12 CASE, FORM OR EXPRESS ANY OPINION ON IT.

13 GIVE US UNTIL THREE O'CLOCK THIS AFTERNOON AND
14 WE'LL START BACK WITH YOU THEN.

15 (JURY EXCUSED.)

16 (THE FOLLOWING PROCEEDINGS WERE HAD IN
17 OPEN COURT OUT OF THE PRESENCE OF THE JURY:)

18 THE COURT: I THINK WE'RE MISSING SOMETHING BECAUSE
19 THERE'S NOTHING IN HERE DIRECTING JURORS TO ACCEPT THE
20 ENGLISH LANGUAGE TRANSLATION OF A WITNESS WHO TESTIFIES IN
21 SPANISH. SO I THINK WE MIGHT BE MISSING A GENERAL
22 INSTRUCTION. I'D APPRECIATE ANY HELP YOU CAN GIVE ME ON
23 THAT POINT.

24 AND THE OTHER THING THAT CONCERNED ME HAD TO DO
25 WITH CALCRIM 1400. IT SEEMED TO BE REPETITIOUS OF ANOTHER
26 INSTRUCTION, SO I'M CHECKING THAT NOW TO SEE IF I MIGHT HAVE

1 INSERTED INCORRECT PAGES.

2 DID YOU SEE ANY PROBLEM WITH 1400 AS IT WAS READ?

3 MR. BROTT: ME?

4 THE COURT: YEAH.

5 MR. BROTT: NO. IT IS REPETITIOUS IN THE SENSE THAT
6 THE AIDING -- THE DEFENDANT'S LIABILITY IS DERIVATIVE AS AN
7 AIDER AND ABETTER. AND YOU DEFINED IT BOTH IN THE AIDING
8 AND ABETTING AND IN 1400. THAT WAS REPETITIOUS TO THAT
9 EXTENT.

10 THE COURT: I DIDN'T HAVE ANY PAGES OUT OF ORDER OR
11 ANYTHING LIKE THAT?

12 MR. BROTT: THERE WAS ONE OTHER MINOR ISSUE.

13 THE COURT: HANG ON ONE SECOND.

14 THE COURT: THE REFERENCE TO ACCEPTING THE ENGLISH
15 TRANSLATION OF EVIDENCE GIVEN IN SPANISH OR IN ANOTHER
16 LANGUAGE MAY NOT BE IN THE 200 SERIES BECAUSE IT MAY BE IN
17 THE 100 SERIES. I SEEM TO RECALL EITHER GIVING A DIRECTION
18 IN THAT REGARD TO THE JURY PREVIOUSLY WHEN I PRE-INSTRUCTED
19 THEM OR AT LEAST DISCUSSING IT DURING VOIR DIRE.

20 MR. BROTT: I'M CERTAIN THAT YOU TOLD THEM WHEN THE
21 WITNESS TESTIFIED BEFORE HE TESTIFIED IN SPANISH. I KNOW I
22 HEARD YOU TELL THE JURY AT SOME POINT THAT THEY MUST BELIEVE
23 THE TRANSLATION AND NOT THE --

24 THE COURT: I JUST DON'T REMEMBER IT. BUT IT CERTAINLY
25 IS NOT IN THESE INSTRUCTIONS.

26 WHAT'S THE OTHER ISSUE?

1 MR. BROTT: VERY MINOR, AND PROBABLY NOT GOING TO MAKE
2 ANY DIFFERENCE. BUT YOU DID TELL THEM YOU WERE GOING TO
3 INSTRUCT THEM AS TO WHAT A JUSTIFIABLE HOMICIDE WAS.

4 THE COURT: AND IT WASN'T THERE.

5 MR. BROTT: IT WASN'T.

6 THE COURT: WHICH MEANS THAT WE NEGLECTED TO DELETE IT.

7 IN WHAT INSTRUCTION DOES IT APPEAR?

8 MR. BROTT: IT WOULD BE THE 500, I THINK.

9 YES, 500. NEXT TO THE LAST SENTENCE.

10 THE COURT: WELL, I CAN REREAD THE INSTRUCTION -- I CAN
11 MODIFY THE INSTRUCTION AND REREAD IT AS MODIFIED, WHICH
12 DELETES THE REFERENCE TO PERMISSIBLE EXCUSE OR
13 JUSTIFICATION.

14 MR. BROTT: MY REQUEST WOULD BE JUST DELETE THE "I WILL
15 NOW INSTRUCT," THAT PART. JUST CROSS IT OUT. DON'T READ IT
16 AGAIN.

17 THE COURT: AND DON'T READ IT AGAIN?

18 MR. BROTT: YOU'RE GOING TO SEND THESE IN ANYWAYS.

19 THE COURT: YES.

20 MR. BROTT: I DON'T KNOW WHAT MR. GELLER WOULD LIKE.

21 MR. GELLER: IF MR. BROTT IS COMFORTABLE WITH THAT,
22 THEN I'M COMFORTABLE WITH THAT.

23 YOU READ 121, I BELIEVE, PRE-TRIAL. YOU CAN ASK,
24 I SUPPOSE, THE REPORTER TO CHECK FOR YOU ON THAT. AND 121
25 TALKS ABOUT TRANSLATING ENGLISH TO SPANISH OR VARIOUS
26 LANGUAGES.

1 THE COURT: OKAY. I'LL ASK MY CLERK TO DOUBLE CHECK
2 AND MAKE SURE THAT SHE'S GOT 121 AS HAVING BEEN READ IN
3 PRE-INSTRUCTION.

4 BUT AS TO JUST DELETING IT FROM THE PACKET, SINCE
5 IT WAS READ I'M A LITTLE UNCOMFORTABLE WITH IT.

6 MR. BROTT: I DON'T REALLY CARE STRONGLY ABOUT IT ONE
7 WAY OR THE OTHER. IF THE COURT WANTS TO REREAD IT, THAT'S
8 FINE TOO. AS LONG AS IT'S DELETED IN THE FINAL PACKET.

9 MR. GELLER: THAT WOULD BE MY PREFERENCE.

10 THE COURT: I'M SORRY, I DIDN'T HEAR YOU.

11 MR. GELLER: THAT WOULD BE MY PREFERENCE ALSO, TO
12 REREAD IT WITHOUT IT.

13 THE COURT: ALL RIGHT. I WILL, WHEN THEY RETURN,
14 INDICATE TO THEM THAT WE HAD NEGLECTED TO DELETE SOME
15 MATERIAL FROM A PARTICULAR INSTRUCTION; THAT I'M READING THE
16 INSTRUCTION AGAIN AS IT IS MODIFIED. AND IF ANYBODY
17 REMEMBERS "EXCUSE OR JUSTIFICATION" AND SENDS OUT A QUESTION
18 SAYING, WAIT A MINUTE, JUDGE, WHAT ABOUT EXCUSE OR
19 JUSTIFICATION? WE'LL DEAL WITH IT THEN.

20 AND YOU'RE NOT REQUESTING ANY FURTHER
21 INSTRUCTIONS WITH RESPECT TO THE REQUIREMENT THAT THEY
22 ACCEPT THE ENGLISH TRANSLATION FROM THE INTERPRETER, RIGHT,
23 MR. BROTT?

24 MR. BROTT: CORRECT.

25 THE COURT: OKAY. MY CLERK HAS INDEED CONFIRMED NOW
26 THAT I DID DIRECT THEM PURSUANT TO CALCRIM 121 AS A

1 PRE-INSTRUCTION.

2 WE'LL BE IN RECESS.

3 (THE FOLLOWING PROCEEDINGS WERE HAD IN
4 OPEN COURT IN THE PRESENCE OF THE JURY:)

5 THE COURT: ALL RIGHT. WE'RE ALL TOGETHER ONCE AGAIN.

6 LADIES AND GENTLEMEN, DURING THE BREAK I
7 CONFERRED WITH THE ATTORNEYS, AND WE DISCOVERED THAT THERE
8 WAS AN INSTRUCTION THAT WAS READ TO YOU THAT HAD SOMETHING
9 IN IT IT SHOULD NOT HAVE HAD. SO I THINK I SHOULD READ THEM
10 ALL AGAIN.

11 MR. BROTT: OBJECTION; NOT THERE.

12 THE COURT: I'M JUST KIDDING ABOUT THAT. I THINK I
13 NEED TO REREAD THE ONE INSTRUCTION. AND THE ONE INSTRUCTION
14 ABOUT WHICH WE WERE CONCERNED WAS THE INSTRUCTION THAT
15 DEFINES HOMICIDE FOR YOU. SO LET ME READ THAT ONE AGAIN.

16 HOMICIDE IS THE KILLING OF ONE HUMAN BEING BY
17 ANOTHER.

18 MURDER IS A TYPE OF HOMICIDE.

19 THE DEFENDANT IS CHARGED WITH MURDER.

20 A HOMICIDE CAN BE LAWFUL OR UNLAWFUL.

21 IF A PERSON KILLS WITH A LEGALLY VALID EXCUSE OR
22 JUSTIFICATION, THE KILLING IS LAWFUL AND HE HAS NOT
23 COMMITTED A CRIME.

24 IF THERE IS NO LEGALLY VALID EXCUSE OR
25 JUSTIFICATION, THE KILLING IS UNLAWFUL AND, DEPENDING UPON
26 THE CIRCUMSTANCES, THE PERSON IS GUILTY OF EITHER FIRST OR

1 SECOND DEGREE MURDER.

2 YOU MUST DECIDE WHETHER THE KILLING IN THIS CASE
3 WAS UNLAWFUL AND, IF SO, WHAT SPECIFIC CRIME WAS COMMITTED.

4 I WILL ALSO INSTRUCT YOU ON THE DIFFERENT TYPES
5 OF MURDER.

6 COUNSEL, THAT WAS THE ONLY MODIFICATION THAT YOU
7 REQUESTED, RIGHT?

8 MR. BROTT: RIGHT.

9 THE COURT: OKAY.

10 JUST AS AN INTERESTING LITTLE FACT FOR YOU, AS I
11 INDICATED THEY WERE WORKING ABOUT EIGHT YEARS ON THESE
12 INSTRUCTIONS. AND IT REALLY WAS A REMARKABLE COMMITTEE AND
13 THEY DID REALLY OUTSTANDING, VERY DIFFICULT WORK. AND THE
14 HEAD OF THE COMMITTEE TO RE-WRITE THE JURY INSTRUCTIONS IN
15 THE STATE OF CALIFORNIA WAS A JUSTICE FROM THE COURT OF
16 APPEAL NAMED CAROL CORRIGAN. AND JUSTICE CORRIGAN WAS
17 RECENTLY APPOINTED BY GOVERNOR ARNOLD SCHWARZENEGGER TO THE
18 CALIFORNIA SUPREME COURT. WITH THE EXCEPTION OF HER
19 COMPETITORS, I THINK I CAN SAFELY SAY, THAT WE IN THE
20 JUDICIARY, ALL OF US, ARE REALLY THRILLED AND DELIGHTED THAT
21 SHE'S GOING TO BE ON OUR SUPREME COURT. SHE IS AN
22 OUTSTANDING, OUTSTANDING JURIST AND WE ALL HAVE A LOT OF
23 CONFIDENCE IN HER. AND SHE WANTS US TO USE THESE NEW
24 INSTRUCTIONS.

25 SO, MR. GELLER, WHENEVER YOU'RE READY, YOU MAY
26 PROCEED WITH YOUR ARGUMENT.

1 MR. GELLER: THANK YOU.

2 GOOD AFTERNOON.

3 I'VE GOT SOME VISUAL AIDS. I'VE GOT SOME
4 EVIDENCE WE'RE GOING TO LOOK AT.

5 LET ME GET THIS OUT OF THE WAY SO EVERYBODY CAN
6 SEE IT HERE.

7 I'M GOING TO READ MOST OF WHAT IS ON THESE CHARTS
8 HERE, SO IF YOU CAN'T SEE IT FROM WHERE YOU ARE, I APOLOGIZE
9 TO YOU NOW.

10 I DO WANT TO THANK ALL OF YOU FOR YOUR TIME.
11 KIND OF HAD A DISJOINTED TRIAL HERE, WE HAD TWO DAYS ONE
12 WEEK AND TWO DAYS ANOTHER WEEK. ACTUALLY, RELATIVELY QUICK
13 CASE FOR A MURDER, YOU KNOW. I THINK YOU WERE HERE FOR
14 MAYBE FIVE OR SIX DAYS ALL SAID AND DONE. AND THE
15 DELIBERATION IS UP TO YOU FOLKS. BUT I JUST WANT TO THANK
16 YOU, ON BEHALF OF THE DISTRICT ATTORNEY'S OFFICE, FOR
17 SPENDING YOUR TIME SITTING HERE IN COURT LISTENING TO THE
18 EVIDENCE AND GIVING US A FAIR TRIAL HERE.

19 I OFTEN TRY TO DEVELOP A THEME WHEN I ARGUE A
20 CASE TO A JURY. AND, QUITE FRANKLY, THE THEME THAT IS VERY,
21 VERY OBVIOUS IN THIS CASE IS BACKUP. IT'S BACKUP.

22 ALSO, I CAN'T THINK OF EVER STARTING AN ARGUMENT
23 SPECIFICALLY ON A HOMICIDE CASE USING THIS CHART. BUT IT'S
24 VERY IMPORTANT AND IT'S VERY CONSISTENT WITH THE THEME OF MY
25 CASE. AND IT DEALS WITH MICHAEL CONTRERAS.

26 AND YOU SAW MICHAEL CONTRERAS. YOU SAW HIM COME

1 IN HERE. AND HE WAS 14 YEARS OLD AND HE LOOKED LIKE A
2 PRETTY DECENT LITTLE BOY, REALLY. HE WAS YOUNG. HE WAS 12
3 WHEN THIS ALL OCCURRED. MICHAEL CONTRERAS TOOK AN OATH AND
4 TESTIFIED TO A WHOLE BUNCH OF THINGS THAT HE DIDN'T
5 REMEMBER, TO A WHOLE BUNCH OF THINGS THAT HE DIDN'T
6 REMEMBER. SEEMED TO ME HE BARELY EVEN REMEMBERED THE
7 DEFENDANT HERE, HIS FRIEND, HIS COHORT ANDY REYES. HE
8 DIDN'T REMEMBER IDENTIFYING ANDY REYES OR SEVERO DE LA RIVA
9 OR FRANK LOPEZ ON PEOPLE'S EXHIBIT 18 WITH HIS INITIALS AND
10 HIS DATE.

11 WHAT YOU HAD HERE, FOLKS, WAS MICHAEL CONTRERAS
12 LYING TO YOU. MICHAEL CONTRERAS DOING WHAT HE COULD TO HELP
13 A HOMEY.

14 DETECTIVE RONDOU TOLD YOU MICHAEL CONTRERAS WAS
15 NOT AN ACTIVE PARTICIPANT. THAT HE WAS ASSOCIATING WITH THE
16 F-TROOP GANG, BUT HE COULDN'T CALL HIM AN ACTUAL GANG
17 MEMBER. BUT THE LAW THAT THE JUDGE JUST READ TO YOU GIVES
18 YOU SOME GUIDANCE AS TO HOW TO EVALUATE PEOPLE WHO LIE IN
19 COURT. PEOPLE WHO GET ON THE STAND, SWEAR TO TELL THE TRUTH
20 AND DON'T TELL THE TRUTH. AND THOSE LIES CAN COME IN THE
21 FORM OF JUST STATING SOMETHING DIFFERENTLY OR FEIGNING LACK
22 OF MEMORY. AND THAT'S EXACTLY WHAT HE DID HERE.

23 YOU HAVE HEARD EVIDENCE OF A STATEMENT THAT A
24 WITNESS MADE BEFORE THE TRIAL. IF YOU DECIDE THAT THE
25 WITNESS MADE THAT STATEMENT, YOU MAY USE THE STATEMENT IN
26 TWO WAYS. THE STATEMENT, THE TRUTH, THE GOSPEL, SHALL WE

1 SAY, IS WHAT DETECTIVE ASHBY CAME IN HERE AND TOLD YOU
2 MICHAEL CONTRERAS TOLD US WHEN HE WAS INTERVIEWED BACK IN
3 2004 ABOUT THIS INCIDENT. WHAT MICHAEL CONTRERAS TOLD US
4 ABOUT ANDY REYES' ROLE IN THE INCIDENT THAT OCCURRED UP ON
5 ENGLISH AND 12TH AND ANDY REYES SEEING FRANK LOPEZ WITH THE
6 GUN IN EL SALVADOR PARK. TWO VERY DAMAGING PIECES OF
7 EVIDENCE AGAINST THE DEFENDANT IN THIS CASE.

8 WITH RESPECT TO THE INCIDENT UP AT ENGLISH AND
9 12TH, IT ABSOLUTELY, IT ABSOLUTELY CORROBORATED WHAT THE
10 WITNESS OR THE VICTIM OF THAT CASE, MR. NIEVES, CAME IN TO
11 COURT AND TOLD YOU. IT WAS ENTIRELY CONSISTENT. THE TWO
12 PEOPLE WHO ARE, ESSENTIALLY, ADVERSARIES IN THAT BECAUSE
13 MICHAEL CONTRERAS, AS WE FOUND OUT, PLAYED A ROLE. HE WAS
14 THERE. MAYBE AS BACKUP. MAYBE HE THREW A FEW PUNCHES, BUT
15 HE WAS PRESENT. HAD TO GIVE HIM IMMUNITY TO TESTIFY BECAUSE
16 OTHERWISE HE'D HAVE FIFTH AMENDMENT RIGHTS WITH RESPECT TO
17 TALKING ABOUT THAT INCIDENT.

18 AND AS A RESULT OF THAT, AS A RESULT OF THAT,
19 WHAT WE HAVE IS, THROUGH DETECTIVE ASHBY, FRANK LOPEZ
20 SHOWING OFF THE GUN IN THE PARK BEFORE THE MURDER, GIVING
21 HIM KNOWLEDGE THAT FRANK LOPEZ WAS ARMED. WE'RE GOING TO
22 TALK MORE ABOUT THE GANG EVIDENCE, BUT DETECTIVE RONDOU TOLD
23 YOU THAT GANG MEMBERS DON'T HIDE THE FACT THAT ONE OR THE
24 OTHER IS ARMED. IT'S AN IMPORTANT PIECE OF KNOWLEDGE AND
25 INFORMATION THAT EACH OF THEM SHARE WITH EACH OTHER FOR A
26 HOST OF REASONS BEFORE THEY GO OUT AND COMMIT CRIMES LIKE

1 THE MURDER HERE.

2 SO THAT'S IT. MICHAEL CONTRERAS CAME IN HERE,
3 FOLKS, AND TRIED TO BACKUP HIS HOMEY.

4 THIS IS A GANG CASE. THE GANG EVIDENCE IS
5 STRONG. THE GANG EVIDENCE IS PERVASIVE THROUGHOUT THIS
6 CASE.

7 WE'RE TALKING ABOUT F-TROOP. F-TROOP IS THE
8 BIGGEST GANG IN SANTA ANA. IT'S BEEN AROUND FOR A LONG,
9 LONG TIME. THEY ARE A VERY VIOLENT GANG. AND THIS
10 VIOLENCE, THIS MAY HAVE BEEN AN EDUCATION FOR ALL OF YOU.
11 WE ALL READ THE NEWSPAPER AND WE ALL HEAR ABOUT GANG
12 DRIVE-BY SHOOTINGS, GANG HOMICIDES. THERE'S A LOT OF THINGS
13 WE DON'T HEAR ABOUT IN THE NEWSPAPER. THEY'RE JUST NOT
14 DEEMED NEWSWORTHY.

15 BUT DETECTIVE RONDOU TOLD YOU THAT GANG VIOLENCE
16 HAPPENS EVERY DAY IN SANTA ANA. AND YOU GOT A TASTE OF IT
17 ON AUGUST 10TH OF 2004. SENSELESS GANG VIOLENCE. FOR
18 ABSOLUTELY NO REASON, THIS YOUNG MAN IS DEAD. SHOT, WHILE
19 SEAT BELTED IN HIS CAR BY A BUNCH OF F-TROOP GANG MEMBERS.

20 WEST MYRTLE IS A RIVAL GANG. THEY WERE IN
21 WEST MYRTLE TERRITORY. DETECTIVE RONDOU TOLD YOU THAT
22 WHETHER IT IS OR ISN'T, IF YOU ASK A WEST MYRTLE GANG
23 MEMBER, THEY'RE GOING TO TELL YOU THEY CLAIM WILLITS AND
24 SULLIVAN. IT'S KIND OF ON THE FRINGE OF THEIR TERRITORY.
25 BUT IF YOU ASK A WEST MYRTLE GANG MEMBER, THEY'D TELL YOU
26 THEY CLAIM THAT. AND THAT'S IMPORTANT, BECAUSE TURF IS VERY

1 IMPORTANT. THESE GANG MEMBERS DO STUPID THINGS OVER TURF.
2 THEY KILL PEOPLE OVER TURF, OVER LAYING CLAIM TO A
3 PARTICULAR AREA.

4 "GUNS ARE HUGE." THAT WAS A QUOTE. "GUNS ARE
5 HUGE TO GANG MEMBERS." IT EQUALS POWER. IT GIVES THEM THAT
6 RESPECT THAT THEY DESIRE, THAT THEY NEED, THAT THEY WANT.

7 GANG MEMBERS INSTILL FEAR IN THE COMMUNITY AND
8 THEY INTIMIDATE OTHER GANGS. F-TROOP IS ALREADY THE
9 BIGGEST. AND THEY'RE OUTGOING IN BROAD DAYLIGHT. YOU'VE
10 GOT THE EVIDENCE HERE. YOU CAN SEE THE LIGHTING CONDITIONS
11 AFTER THE CRIME. BROAD DAYLIGHT, CROWDED INTERSECTION,
12 ACROSS THE STREET FROM AN ELEMENTARY SCHOOL AND THEY'RE
13 KILLING PEOPLE. THEY'RE ON BICYCLES AND THEY'RE KILLING
14 PEOPLE DRIVING THEIR CARS.

15 THE PEOPLE IN THE COMMUNITY KNOW OF THIS. THEY
16 HAVE TO. THEY SEE THE YELLOW POLICE TAPE. THE INTERSECTION
17 IS BLOCKED OFF. THIS IS HOW THEY GET THEIR POWER, TO MAKE
18 SURE THE PEOPLE IN THE FUTURE DON'T TESTIFY AGAINST THEM,
19 THEY DON'T REPORT CRIMES THAT THEY MAY BE VICTIMS OR
20 WITNESSES TO. VIOLENCE EQUALS RESPECT. THE MORE VIOLENCE,
21 THE MORE RESPECT.

22 BACKUP. THE THEME OF THIS CASE. BACKUP. I
23 THINK IT'S EVIDENCE. AND WE'LL TALK FURTHER ABOUT THIS,
24 THAT ANDY REYES WAS NOT THE SHOOTER IN THIS CASE.
25 FRANK LOPEZ WAS. HE MATCHES THE PHYSICAL DESCRIPTION. BUT
26 ANDY REYES, IT WAS NOT AN ACCIDENT. IT WAS NOT BY CHANCE

1 THAT HE WAS DOWN AT SULLIVAN AND WILLITS THAT DAY. AND IT'S
2 NOT BY CHANCE THAT 39 MINUTES LATER HE'S USING THE MURDER
3 WEAPON IN ANOTHER GANG-RELATED VIOLENT FELONY.

4 YOU DIDN'T HEAR THE TESTIMONY, BUT IT'S BEEN
5 STIPULATED, THEREFORE, YOU'VE GOT TO ACCEPT IT AS TRUE, THAT
6 THIS GUN THAT ANDY REYES POINTED AT THE NECK OF FELIX NIEVES
7 DURING THE INCIDENT ON 12TH AND ENGLISH WAS THE GUN THAT WAS
8 USED TO KILL PEDRO ROSARIO. THIS GUN.

9 ALL FOR ONE, ONE FOR ALL. THAT IS THEIR
10 MENTALITY. THAT IS WHY THEY TAKE EACH OTHER ALONG WHEN THEY
11 GO COMMIT CRIMES. THAT'S WHAT THEY'RE ALL ABOUT, AS IF THE
12 GUN ISN'T POWERFUL ENOUGH, AS IF FRANK LOPEZ COULDN'T HAVE
13 GONE DOWN TO SULLIVAN AND WILLITS AND WEST MYRTLE LOOKING TO
14 HUNT, LOOKING TO KILL A RIVAL GANG MEMBER ALL BY HIMSELF.
15 NO. HE'S GOT TO BRING HIS BACKUP. HE'S GOT TO BRING HIS
16 HOMIES WITH HIM TO GO COMMIT A HEINOUS ACT LIKE THIS. A
17 SENSELESS, HEINOUS ACT ALL IN THE NAME OF PROVING THEIR
18 REPUTATION.

19 THERE'S NO EVIDENCE PEDRO ROSARIO DID ANYTHING TO
20 DESERVE THIS, EVEN KNEW THE DEFENDANTS -- THE DEFENDANT OR
21 THE OTHERS IN THIS CASE, NOTHING.

22 I THINK MR. BROTT, I CAN'T ANTICIPATE WHAT HE'S
23 GOING TO SHARE WITH YOU, FOLKS, IN HIS ARGUMENT, BUT I CAN'T
24 IMAGINE HE'S GOING TO SPEND ANY TIME TALKING ABOUT
25 ANDRES REYES AND WHETHER OR NOT HE'S AN F-TROOPER. BECAUSE
26 THERE'S NO QUESTION ANDY REYES IS AN F-TROOPER.

1 YOU MAY HAVE LOOKED AT HIM THROUGHOUT THE COURSE
2 OF THIS TRIAL, LOOKED AT HIM BEFORE YOU HEARD THE EVIDENCE,
3 HEARD HE WAS 15 AT THE TIME OF THE CRIME, LOOKED LIKE A
4 SMALL, YOUNG GUY. ANDY REYES IS A HARD-CORE GANG MEMBER.
5 THERE IS NO QUESTION ABOUT IT. THAT IS WHAT HE DOES.

6 JUST IN '04 ALONE -- THIS CRIME OCCURRED IN
7 AUGUST -- JUST IN '04 ALONE, WHEN HE'S 15 YEARS OLD, IN
8 JANUARY, HE'S TAGGING F-TROOP; HE'S ASSOCIATING WITH OTHER
9 GANGSTERS WHO HAVE A GUN; TERRORIZING AN APARTMENT COMPLEX
10 WITH OTHER GANGSTERS ONE WEEK BEFORE THE CRIME. ONE WEEK.
11 AND ONE OF THOSE OTHER GUYS WAS MICHAEL CONTRERAS THAT HE
12 WAS WITH. SO THAT NICE, YOUNG MAN MICHAEL CONTRERAS WAS OUT
13 TERRORIZING PEOPLE, LAW ABIDING CITIZENS, WHO LIVE IN
14 APARTMENTS IN THE F-TROOP TERRITORY.

15 THE DEFENDANT HAS TAKEN THE ADDITIONAL STEP OF
16 TATTOOING "FT" AND "SP" ON HIS BODY. F-TROOP AND SALVADOR
17 PARK. NO CLEAR INDICATION THAT HE IS DOWN FOR F-TROOP.

18 THESE ARE HIS HOMIES. THIS IS HIS GANG. HE
19 BACKS THEM UP.

20 ANOTHER CLEAR INDICATION: FOUR OTHER F-TROOPERS
21 AND ONE ALIGNED 5TH STREETER ARE AT THE MURDER. THERE'S SIX
22 OF THEM THERE THAT WE KNOW OF. 39 MINUTES LATER, NO CLEARER
23 INDICATION OF ANDY REYES' ALLEGIANCE TO F-TROOP, HE IS
24 TAKING THE MURDER WEAPON AND HITTING SOMEBODY UP. "WHERE
25 YOU FROM?" HE ASKS FELIX NIEVES, AS HE'S DONE TIME AND TIME
26 AGAIN. MR. NIEVES THOUGHT IT MIGHT HAVE BEEN FIVE, MAYBE

1 SEVEN TIMES BEFORE HE'S BEEN HIT-UP BY ANDY REYES. AND
2 REMEMBER, IT'S NOT A QUESTION. IT'S A CHALLENGE. IT'S A
3 CHALLENGE. IT'S A WAY FOR 15-YEAR-OLD ANDY REYES TO SHOW
4 THAT HE'S BETTER, THAT HE'S MORE IMPORTANT, THAT HE SHOULD
5 BE FEARED. HIM AND HIS GANG SHOULD BE FEARED BECAUSE WE'RE
6 LA TROPA. AND HE'S STICKING IT IN THIS GUY'S NECK. HE'S
7 CHASING HIM DOWN. HE ASKS HIS BUDDIES TO COME WITH HIM TO
8 HELP HIM. HE'S CHASING HIM DOWN. HE RUNS HIM DOWN AND HE
9 STICKS A GUN IN HIS NECK.

10 YOU HAVE TO DRAW REASONABLE INFERENCES FROM THE
11 EVIDENCE THAT IS PRESENTED TO YOU AND REJECT UNREASONABLE
12 INFERENCES. ONE OF THE REASONABLE INFERENCES YOU CAN DRAW
13 IS THAT ANDY REYES -- OR WE MAY HAVE HAD A SECOND MURDER
14 THAT NIGHT WITH THAT MURDER WEAPON. WE COULD HAVE BEEN THAT
15 CLOSE, HAD FELIX NIEVES NOT KNOCKED THAT GUN AWAY. WHAT
16 THAT SHOWS IS HE IS DOWN FOR HIS GANG. HE IS WILLING TO
17 STEP UP AND COMMIT MORE VIOLENT CRIMES WITH THAT MURDER
18 WEAPON.

19 AND, FOLKS, ADDITIONALLY, AFTER HE WAS ARRESTED
20 IN THIS CASE, YOU HEARD EVIDENCE HE CALLED OUT "F-TROOP."
21 SO, WITH THIS FRAMEWORK, WITH THIS GROUND WORK LAID, LET'S
22 TALK ABOUT THE CRIME.

23 AND THE JUDGE READ A LOT OF INSTRUCTIONS TO YOU.
24 I'M GOING TO TRY TO MAKE THEM AS SIMPLE AS POSSIBLE.

25 SOME OF YOU MAY BE ASKING YOURSELF, WHY ARE WE
26 HOLDING HIM RESPONSIBLE IF HE DIDN'T SHOOT THE GUN? THERE'S

1 A NUMBER OF THEORIES THAT WE'RE BASING HIS LIABILITY ON.
2 BUT WHAT I'D LIKE YOU TO DO NOW IS FOCUS ON THE CRIME, THE
3 CRIMINAL ACT OF SHOOTING SOMEBODY IN THE BACK OF THE HEAD
4 WHILE THEY'RE DRIVING A CAR.

5 WE NEED TO ESTABLISH THERE WAS A MURDER BEFORE WE
6 CAN DETERMINE HIS ROLE IN THAT MURDER. THERE'S TWO
7 ELEMENTS. SOMEONE COMMITTED AN ACT THAT CAUSED THE DEATH OF
8 ANOTHER PERSON. AND WHEN THAT PERSON ACTED, HE HAD A STATE
9 OF MIND CALLED, "MALICE AFORETHOUGHT." IT'S A LEGAL TERM.

10 THERE'S TWO WAYS TO GET THERE. EXPRESS MALICE IS
11 INTENT TO KILL. IMPLIED MALICE HAS FOUR ELEMENTS.

12 I WOULD SUBMIT TO YOU, FOLKS, WHETHER FRANK LOPEZ
13 AT THE TIME HE SHOT THE GUN WAS TRYING TO KILL SOMEBODY HE
14 PERCEIVED TO BE A RIVAL GANG MEMBER, PEDRO ROSARIO, FLASHING
15 GANG SIGNS -- MAYBE PEDRO ROSARIO THREW A GANG SIGN OUT OF
16 THE WINDOW OF HIS CAR RIGHT BEFORE HE WAS SHOT. SOMETHING
17 CAUSED FRANK LOPEZ TO SHOOT AND KILL THIS INDIVIDUAL.

18 REGARDING IMPLIED MALICE, WHETHER HE HAD INTENT
19 TO KILL OR WHETHER HE -- BY MERELY SHOOTING AT A VEHICLE,
20 SHOOTING AT A CAR, ALL OF THESE ELEMENTS ARE MET. YOU
21 INTENTIONALLY COMMITTED AN ACT. PULLING THE TRIGGER IS
22 COMMITTING THE ACT.

23 THE NATURAL CONSEQUENCES WERE DANGEROUS TO HUMAN
24 LIFE. SHOOTING AT SOMEBODY, AT A CAR IS DANGEROUS TO HUMAN
25 LIFE.

26 KNEW THE ACT WAS DANGEROUS TO HUMAN LIFE.

1 EVERYBODY KNOWS SHOOTING AT A CAR IS AN ACT DANGEROUS TO
2 LIFE.

3 DELIBERATELY ACTED WITH CONSCIOUS DISREGARD TO
4 HUMAN LIFE. SAME THING THERE. WHEN YOU SHOOT AT A CAR,
5 YOU'RE ACTING WITH IMPLIED MALICE. WE'RE NOT GOING TO LET
6 YOU GET AWAY WITH MURDERING SOMEBODY BY SAYING, WELL, I
7 DIDN'T HAVE THE INTENT TO KILL. BECAUSE WHEN YOU DO
8 SOMETHING THAT IS SO INHERENTLY DANGEROUS TO HUMAN LIFE AND
9 YOU RECOGNIZE THAT, YOU'RE GUILTY OF IMPLIED MALICE MURDER,
10 WHICH WOULD BE SECOND DEGREE MURDER.

11 HERE IS A LITTLE FLOW CHART. THIS ILLUSTRATES
12 IT. YOU JUST FOLLOW THE RED.

13 A HUMAN BEING IS KILLED. THERE'S NO EXCUSE.
14 THERE'S NO JUSTIFICATION. THERE'S NO SELF-DEFENSE HERE. HE
15 WAS SEAT BELTED IN HIS CAR. NO WEAPONS WERE FOUND. NOTHING
16 TO SUGGEST AN ACCIDENT, SO, IT'S A HOMICIDE. NOTHING TO
17 JUSTIFY IT.

18 WE HAVE ATTACHED CRIMINAL LIABILITY. IT
19 WASN'T -- THERE'S NOT A HEAT OF PASSION OR IMPERFECT
20 SELF-DEFENSE. THAT'S NOT BEFORE YOU. YOU HAVEN'T BEEN
21 INSTRUCTED ON THAT. SO ONCE YOU DETERMINE THAT WE'RE DOWN
22 THE LEFT SIDE OF THIS CHART HERE, YOU REALLY ONLY HAVE ONE
23 DECISION TO MAKE: FIRST DEGREE MURDER OR SECOND DEGREE
24 MURDER.

25 FIRST DEGREE MURDER IS AN INTENT TO KILL WITH
26 PREMEDITATION AND DELIBERATION. THAT'S GOING TO BE MY NEXT

1 CHART AS I FLIP IT OVER. IF YOU FIND OUT THAT THERE WAS NO
2 INTENT TO KILL, IF YOU FIND OUT FRANK LOPEZ WAS JUST FIRING
3 A GUN AT THE CAR, MAYBE WANTING TO SCARE SOMEBODY, MAYBE
4 THINKING THAT, YOU KNOW, JUST I'M GOING TO BE COOL AND FIRE
5 THE GUN, DARN GOOD SHOT. SHOT THE GUY RIGHT IN THE BACK OF
6 THE HEAD. ONE SHOT. THEN, IT'S A SECOND.

7 I THINK THE EVIDENCE IS CRYSTAL CLEAR, HOWEVER,
8 WHAT YOU HAVE IS AN INTENT TO KILL. EXPRESS MALICE. AND
9 WHEN YOU HAVE EXPRESS MALICE YOU NEED TO DETERMINE WHETHER
10 YOU HAVE PREMEDITATION AND DELIBERATION. BECAUSE IF YOU DO,
11 IT'S A FIRST DEGREE MURDER. IF YOU DON'T, AND YOU JUST HAVE
12 AN INTENT TO KILL OR THE IMPLIED MALICE THEORY, IT'S SECOND
13 DEGREE MURDER.

14 AND THIS IS WHAT YOU NEED: WILLFUL, DELIBERATE
15 AND PREMEDITATION.

16 AND, FOLKS, THE TEST IS NOT HOW LONG IT TOOK FOR
17 SOMEBODY TO MAKE UP THEIR MIND THAT THEY WERE GOING TO KILL
18 SOMEBODY. AND I'M GOING TO GIVE YOU AN EXAMPLE. IT'S NOT
19 SOMETHING THAT I CAME UP WITH. IT'S A COLLEAGUE OF MINE.

20 WHEN TRYING TO DETERMINE WHETHER SOMEBODY IS
21 ACTING WITH DELIBERATE DELIBERATION AND PREMEDITATION, THINK
22 ABOUT THIS. YOU'RE DRIVING YOUR CAR. LET'S SAY YOU LIVE IN
23 A HILLY AREA AND YOU HAVE A HOUSING TRACT THAT YOU LIVE IN.
24 AT THE BOTTOM OF THE HILL THERE'S A STOPLIGHT. AND BECAUSE
25 IT'S COMING OUT OF A TRACT, THE CROSS-TRAFFIC THERE, IT'S A
26 MAJOR INTERSECTION, SO YOU GENERALLY DON'T GET VERY GOOD

1 LIGHT CONTROL. IF YOU MISS THAT LIGHT, IT MIGHT TAKE A
2 MINUTE AND A HALF FOR IT TO CYCLE THROUGH. YOU MIGHT BE
3 LATE FOR WORK ON A PARTICULAR DAY.

4 YOU'RE COMING DOWN AND YOU'RE AT THE POINT WHERE
5 YOU NEED MAKE A DECISION. YOU KNOW, YOU'RE AT THAT POINT.
6 WE'VE ALL BEEN THERE. DO I PUNCH IT? OR DO I STEP ON THE
7 BRAKES? AND, YOU'RE ARMED WITH A LITTLE BIT OF KNOWLEDGE.
8 YOU KNOW THAT, MAYBE YOU'VE SEEN POLICE OFFICERS AT THAT
9 INTERSECTION IN THE PAST. MAYBE THERE'S AN ELEMENTARY
10 SCHOOL. MAYBE THERE'S KIDS THAT WALK IN THAT AREA. SO YOU
11 HAVE SOME KNOWLEDGE ABOUT THE SURROUNDING CIRCUMSTANCES.
12 BUT IN THAT SECOND OR TWO YOU HAVE MADE A DECISION. YOU'VE
13 DONE IT WILLFULLY. YOU'VE WEIGHED THE CONSIDERATIONS FOR
14 AND AGAINST THAT CHOICE. AND YOU'VE DECIDED TO DO THAT.
15 THAT IS P AND D. THAT'S PREMEDITATION AND DELIBERATION
16 RIGHT THERE.

17 I'M NOT SAYING IN THE CONTEXT OF MURDER.

18 WHAT YOU'VE DONE IS YOU'VE PREMEDITATE AND
19 DELIBERATED YOUR DECISION WHETHER TO GO THROUGH THAT
20 INTERSECTION ON THE YELLOW. IT CAN BE THAT SIMPLE. AND IT
21 CAN BE THAT QUICK.

22 FRANK LOPEZ HAD A WHOLE BUNCH OF DIFFERENT
23 FACTORS THAT HE COULD RELY ON THAT YOU SHOULD RELY ON TO
24 DECIDE PREMEDITATION AND DELIBERATION.

25 HE ARMED HIMSELF. HE ARMED HIMSELF UP HERE IN
26 EL SALVADOR PARK.

1 SULLIVAN AND WILLITS IS DOWN HERE. THIS IS ON
2 PEOPLE'S 1. MILE-AND-A-HALF AWAY. (INDICATING.)

3 MICHAEL CONTRERAS SAYS HE'S SHOWING THE GUN,
4 BRAGGING ABOUT THE GUN TO THE HOMIES IN THE PARK. LOOK WHAT
5 I GOT. LOOK WHAT I GOT. LOOK WHAT I CAN USE.

6 SIX GANG MEMBERS RIDE THROUGH RIVAL TERRITORY,
7 WEST MYRTLE TERRITORY. THEY'RE YELLING AT, AT LEAST ONE
8 PASSING CAR, AND MAYBE OTHERS.

9 AND, HE SHOT AN UNARMED VICTIM IN THE HEAD AS HE
10 DROVE PAST HIM.

11 ALL OF THOSE ARE FACTORS TO SUPPORT PREMEDITATION
12 AND DELIBERATION. FOCUS ON THE CHOICES THAT FRANK LOPEZ
13 MADE PRIOR TO THE SHOOTING. AND WHEN YOU COMBINE THOSE
14 CHOICES WITH THE GANG MENTALITY, BECAUSE FRANK LOPEZ, LIKE
15 ANDY REYES, IS AN F-TROOPER, YOU'VE GOT P AND D. YOU'VE GOT
16 FIRST DEGREE MURDER.

17 NOW WE COME TO THE PART WHERE WE'RE GOING TO
18 DECIDE: ARE WE ONLY HOLDING FRANK LOPEZ RESPONSIBLE FOR
19 THIS MURDER? OR ARE WE HOLDING THE OTHER GANG MEMBERS THAT
20 WERE OUT THERE RESPONSIBLE FOR THIS MURDER? LEGALLY
21 RESPONSIBLE, STANDING IN THE SHOES OF THE SHOOTER. THAT'S
22 THE WAY YOU LOOK AT IT.

23 ARE WE GOING TO SIMPLY SAY, YOU KNOW WHAT? YOU
24 DIDN'T PULL THE TRIGGER. WE'RE NOT GOING TO HOLD YOU
25 RESPONSIBLE.

26 AND I SUBMIT TO YOU, FOLKS, ABSOLUTELY NOT. THE

1 LAW DOESN'T PERMIT THAT. IF YOU FIND ELEMENTS OF NATURAL
2 AND PROBABLE CONSEQUENCES OR AIDING AND ABETTING, AS I'M
3 ABOUT TO SHARE WITH YOU, THEN HE ABSOLUTELY -- HE BEING ANDY
4 REYES -- STANDS IN THE SHOES OF FRANK LOPEZ.

5 FIRST WE LOOK FOR WHAT THE INTENDED CRIMES WERE:

6 DID THEY GO DOWN THERE TO JUST GET INTO A FIGHT
7 WITH WEST MYRTLE GANG MEMBERS?

8 DID THEY GO DOWN THERE TO DISTURB THE PEACE?

9 DID THEY ACTUALLY DISTURB THE PEACE WHEN THEY
10 WERE YELLING AT PASSING MOTORISTS? HEY, STOP THAT GUY.

11 OR DID THEY JUST HAVE THIS AGREEMENT AMONGST
12 THEMSELVES WHEN THEY LEFT EL SALVADOR PARK, ARMED, RIDING
13 INTO RIVAL TERRITORY IN BROAD DAYLIGHT, THAT THEY WERE JUST
14 GOING TO GO DO SOMETHING DOWN THERE?

15 THEY WERE GOING HUNTING.

16 THEY COULD HAVE LEFT THAT PARK WITH THE ABSOLUTE
17 INTENT TO GO KILL SOMEBODY. BUT YOU DON'T EVEN HAVE TO GET
18 THERE. THE LAW DOESN'T REQUIRE ME TO SHOW THAT THEY LEFT
19 THE PARK THAT DAY WITH THE INTENT TO GO KILL SOMEBODY.

20 DOESN'T EVEN REQUIRE ME TO SHOW THAT THEY LEFT THE PARK WITH
21 ANY INTENT. AS LONG AS RIGHT BEFORE THE MURDER THEY WERE IN
22 AGREEMENT, AN EXPRESS OR IMPLIED AGREEMENT, THEY DON'T EVEN
23 HAVE TO TALK ABOUT IT, YOU CAN INFER FROM THEIR ACTIONS THAT
24 THEY WERE GOING TO GO GET INTO A FIGHT OR DISTURB THE PEACE.

25 THEN YOU ASK YOURSELF: WAS THE MURDER THE
26 NATURAL AND PROBABLE CONSEQUENCES OF THAT INITIAL CRIME?

1 AND WE HAVE TO LOOK AT THIS IN CONTEXT. WE HAVE
2 TO LOOK AT THIS USING THE P AND D FACTORS ON MY LAST CHART,
3 PREMEDITATION AND DELIBERATION FACTORS. YOU HAVE TO LOOK AT
4 THIS IN THE GANG CONTEXT. YOU HAVE TO LOOK AT SIX
5 F-TROOPERS OR FIVE F-TROOPERS AND A 5TH STREETER GOING INTO
6 RIVAL TERRITORY, ARMED, WITH AT LEAST ONE GUN THAT WE KNOW
7 OF.

8 WOULD A REASONABLE PERSON IN THE DEFENDANT'S
9 POSITION HAVE KNOWN THAT MURDER WAS A FORESEEABLE
10 CONSEQUENCE? F-TROOP IS ALL ABOUT VIOLENT CRIME.
11 DETECTIVE RONDOU TOLD YOU FOLKS THAT. THEY KNOW EACH OTHER.
12 AND THEY KNOW THAT WHENEVER SOMEBODY HAS BEEN GIVEN A
13 S.T.E.P. NOTIFICATION, A 186 NOTICE BY THE POLICE, SAYING,
14 IF YOU GO AHEAD AND COMMIT THESE TYPES OF CRIMES YOU'RE
15 GOING TO BE SUBJECT TO FURTHER PUNISHMENT. THEY'RE GIVEN
16 NOTICE OF THAT. AND ONE OF THE CRIMES IS MURDER. ONE OF
17 THE CRIMES THAT F-TROOP COMMITS IS MURDER. AND ASSAULTS
18 WITH FIREARMS.

19 SO HE CAN'T PLAY DUMB. HE CAN'T PLAY DUMB HERE
20 AND PRETEND HE HAD NO IDEA THAT FRANK LOPEZ WAS GOING DOWN
21 THERE TO SHOOT SOMEBODY.

22 AND THESE ARE JUST SOME OF THE FACTS. IT'S NOT
23 AN EXHAUSTIVE LIST.

24 HISTORY BETWEEN THESE TWO GANGS.

25 YELLING AT THE PASSING CARS.

26 SHOOTING AT THE CAR.

1 CAN ANYBODY BE SURPRISED? THAT'S REALLY THE WAY
2 YOU LOOK AT THIS IN YOUR HEAD.

3 ARE YOU SURPRISED A MURDER OCCURRED?

4 ARE YOU SURPRISED, WHEN YOU LOOK AT ALL THE FACTS
5 HERE, ALL THE FACTS OF THIS CASE AND WHO THE PLAYERS WERE,
6 IS ANYBODY SHOCKED THAT A MURDER OCCURRED?

7 MURDER IS THE NATURAL AND PROBABLE CONSEQUENCES
8 OF GANGSTERS WHO AGREE TO GET INTO A FIGHT OR DISTURB THE
9 PEACE IN RIVAL TERRITORY. AND, IF THAT'S THE CASE, THEN
10 HE'S EQUALLY RESPONSIBLE. HE STANDS IN THE SHOES OF THE
11 SHOOTER.

12 AIDING AND ABETTING DEALS WITH BACKUP. DEALS
13 WITH BACKUP. IT'S GOT SPECIFIC ELEMENTS.

14 YOU NEED TO SHOW: A MURDER WAS COMMITTED;
15 DEFENDANT KNEW THE SHOOTER INTENDED TO COMMIT THE CRIME;
16 BEFORE OR DURING THE COMMISSION OF THE CRIME HE INTENDED TO
17 AID AND ABET THE SHOOTER IN THE COMMITTING THE CRIME; THE
18 DEFENDANT'S WORDS OR CONDUCT DID IN FACT AID AND ABET THE
19 SHOOTER'S COMMISSION OF THE CRIME.

20 YOU DON'T HAVE TO HAVE AN EXPRESS AGREEMENT. WE
21 CAN INFER FROM THE SURROUNDING FACTS. BACKUP. THAT IS WHAT
22 BACKUP IS ALL ABOUT. THAT IS WHY GANG MEMBERS TAKE FELLOW
23 GANG MEMBERS WITH THEM TO COMMIT VIOLENT CRIME, BECAUSE
24 THEY'RE UNCERTAIN WHEN THEY GO INTO RIVAL TERRITORY WHAT IT
25 IS EXACTLY THAT THEY'RE GOING TO ENCOUNTER, WHETHER THEY'RE
26 ALSO GOING TO ENCOUNTER A ROVING BAND OF WEST MYRTLE GANG

1 MEMBERS OR THEY'RE JUST GOING TO ENCOUNTER PEDRO ROSARIO,
2 WHICH IS CONSISTENT WITH THE WHOLE GANG MENTALITY OF PICKING
3 ON THE WEEK, PICKING ON AN UNARMED GUY WHO MAY HAVE TOSSED A
4 GANG SIGN OUT THE WINDOW OR SOMETHING THAT GOT HIMSELF SHOT
5 THAT DAY, WHILE HE'S SEAT BELTED IN HIS CAR. THAT'S WHY THE
6 BRING BACKUP. THEY DON'T DO THIS ALONE. AS IF THE GUN
7 ISN'T ENOUGH, THEY BACK EACH OTHER UP.

8 SOME OF THE FACTORS. AGAIN, NOT AN EXHAUSTIVE
9 LIST, BUT SOME OF THE THINGS I THINK YOU ALL SHOULD
10 CERTAINLY CONSIDER WHEN DETERMINING WHETHER OR NOT
11 ANDY REYES WAS JUST A WITNESS, WAS JUST PRESENT AT THE SCENE
12 OF THE CRIME.

13 HIS PRESENCE. DON'T EVEN HAVE TO ACTUALLY BE
14 THERE.

15 DIFFERENT FACTUAL SCENARIO. LET'S SAY ANDY REYES
16 SUPPLIED THE GUN BACK AT EL SALVADOR AND STAYED AT THE PARK
17 THE WHOLE TIME. HE'D BE AIDING AND ABETTING AT THAT POINT
18 BECAUSE HE SUPPLIED THE MURDER WEAPON THAT WAS USED TO GO
19 AND KILL PEDRO ROSARIO. HE IS A MILE AND A HALF AWAY, HE'D
20 BE AIDING AND ABETTING. BUT HIS PRESENCE, A FACT THAT YOU
21 CAN USE.

22 THE COMPANIONSHIP WITH A PERPETRATOR. THE FACT
23 THAT THEY'RE HOMIES. THE FACT THAT THEY KNOW EACH OTHER.
24 THE FACT THAT THEY'RE WITH EACH OTHER IN THE PARK, WITH THE
25 GUN.

26 HIS FLIGHT FROM THE SCENE. IT'S NOT LIKE HE

1 STAYS THERE FOR THE POLICE, FOR SELINSKE TO COME BACK AND
2 SAY, HEY, MY GOD. THERE WAS JUST A MURDER RIGHT HERE. THIS
3 GUY JUST OUT OF THE BLUE SHOT THIS GUY. BECAUSE FLIGHT
4 ESTABLISHES A COUPLE THINGS: IT SHOWS A CONSCIOUSNESS OF
5 GUILT. HE'S GOT SOMETHING TO RUN FROM. BECAUSE AN INNOCENT
6 PERSON DOESN'T HAVE TO RUN AWAY. A GUY WHO HAD NOTHING TO
7 DO WITH THIS DOESN'T RUN AWAY. AND NOT ONLY IS HE NOT
8 DISASSOCIATING HIMSELF WITH THE OTHER PERPETRATORS, HE'S
9 GRABBING THE MURDER WEAPON. HE GETS THE MURDER WEAPON.

10 YOU LOOK AT HIS CONDUCT BEFORE AND AFTER. HIS
11 CONDUCT IN THE PARK. HIS CONDUCT NEAR THE PARK, WHERE HE'S
12 STICKING THAT GUN IN FELIX NIEVES' NECK RIGHT AFTER HE HITS
13 HIM UP AND HE CHASES HIM DOWN. IS THAT THE CONDUCT OF A
14 WITNESS?

15 IS THAT THE CONDUCT OF SOMEBODY WHO IS MERELY
16 PRESENT? ENTIRELY INCONSISTENT WITH MERE PRESENCE.

17 SO WHEN MR. BROTT GETS UP, WHICH HE'S GOING TO DO
18 IN JUST A COUPLE MINUTES HERE, KEEP THIS IN MIND WHEN HE
19 GETS UP AND ARGUES A DOZEN DIFFERENT WAYS HOW HIS CLIENT WAS
20 JUST PRESENT AT THE SCENE OF THE CRIME, THAT HE HAD NOTHING
21 TO DO WITH THIS. KEEP THOSE FACTORS IN MIND. SEE HOW HE
22 EXPLAINS ALL OF THIS TO YOU IN ASKING YOU FOLKS TO BELIEVE
23 THAT HIS CLIENT HAD NOTHING TO DO WITH THIS:

24 HIS ACTIVE PARTICIPATION IN F-TROOP.

25 HIS SEEING THE GUN IN THE PARK BEFORE THE MURDER.

26 PEDDLING OVER TO RIVAL TERRITORY.

1 GOING WITH FIVE ALLIED GANG MEMBERS.

2 THE GROUP IS YELLING AT PASSING CARS.

3 AT LEAST ONE THEY TRIED TO STOP.

4 DETECTIVE SELINSKE, LO AND BEHOLD, IS ACTUALLY,
5 WHETHER HE'S RIGHT, WHETHER HE'S WRONG, WE'LL NEVER KNOW,
6 NONE OF US WERE OUT THERE, BUT DETECTIVE SELINSKE BELIEVES,
7 BASED ON SEEING A SIX-PACK LINEUP, WHERE YOU'RE ONLY LOOKING
8 AT A PHOTO OF THE CHEST AREA. YOU DON'T HAVE ANY VISUAL
9 REFERENCES WITH RESPECT TO HEIGHT OR ANYTHING LIKE THAT.
10 WHAT HE DID WAS SELINSKE LOOKS AT THE SIX-PACK AND BELIEVES
11 THAT HE SAW ANDY REYES OUT AT THE SCENE SHOVING A GUN IN HIS
12 WAISTBAND. AND, LO AND BEHOLD, FELIX NIEVES, 39 MINUTES
13 LATER, AFTER HE'S BEING HIT UP, SEES ANDY REYES REACH FOR
14 HIS WAISTBAND OF ALL PLACES. AND THAT'S WHERE THE GUN COMES
15 OUT OF, THAT HE'S USING IN THIS VIOLENT ASSAULT RIGHT AWAY.

16 I MEAN, IS ANDY REYES' CONDUCT -- IT'S SO
17 TELLING. IT'S SO TELLING.

18 IS HIS CONDUCT THE CONDUCT OF AN INNOCENT WITNESS
19 WHO HAS NOTHING TO DO WITH THIS GANG HOMICIDE WHEN HE'S
20 HITTING UP NIEVES 39 MINUTES LATER? YELLING, "LA TROPA."

21 AND AS DETECTIVE RONDOU AND DETECTIVE ZEPEDA ARE
22 TAKING HIM FROM THE POLICE DEPARTMENT TO JUVI THAT DAY HE
23 ASKS WHAT HE'S BEING BOOKED FOR. RONDOU SAYS, "PROBATION
24 VIOLATION, BASED ON THE PAPERWORK." REYES SAYS, NO, NO, NO.
25 THEY GOT ME WITH FIVE OF MY HOMIES AT THE MURDER, FROM HIS
26 OWN WORDS.

1 THAT'S MY CASE. I DON'T THINK THERE'S A LOT OF
2 DISPUTES AS TO THE FACTS.

3 MR. BROTT IS GOING TO ASK YOU TO INTERPRET THEM A
4 LITTLE DIFFERENTLY THAN I DID. HE'S GUILTY OF MURDER. YOUR
5 DECISION COULD BE WHETHER IT'S FIRST OR SECOND.

6 HE'S A GANGSTER.

7 THERE'S NO QUESTION THIS IS A GANG-MOTIVATED
8 CRIME.

9 THERE'S NO QUESTION THAT HE'S VICARIOUSLY ARMED.
10 DIDN'T PULL THE TRIGGER THAT DAY, BUT HE STANDS IN THE SHOES
11 OF THE SHOOTER.

12 I'M ASKING YOU TO FIND HIM GUILTY OF MURDER. THE
13 DEGREE IS UP TO YOU. I'VE LAID OUT THE FACTS FOR AND
14 AGAINST EACH ARGUMENT.

15 HE'S DEFINITELY GUILTY OF COUNT 2, ACTIVE
16 PARTICIPATION IN A CRIMINAL STREET GANG. HE'S DEFINITELY
17 GUILTY OF DOING THE CRIME FOR THE BENEFIT OF, OR IN
18 ASSOCIATION WITH F-TROOP.

19 AND HE WAS VICARIOUSLY ARMED.

20 THANK YOU VERY MUCH.

21 THE COURT: WHENEVER YOU'RE READY, MR. BROTT.

22 MR. BROTT: THANK YOU.

23 THIS IS MY FIRST AND ONLY CHANCE TO ADDRESS YOU
24 ABOUT OUR VIEW OF THE CASE. NOW MR. GELLER GETS TO STAND UP
25 AFTER I'M DONE AND REBUT WHAT I HAVE TO SAY. I'M SURE HE'LL
26 DO THAT. BUT THIS IS MY ONE AND ONLY CHANCE.

1 I'M NOT GOING TO TALK A LONG TIME. IT'S BEEN A
2 LONG DAY. AT LEAST, A LONG AFTERNOON. LISTENING TO THOSE
3 JURY INSTRUCTIONS IS PUNISHMENT ENOUGH.

4 BUT I FIND THAT I'M ALMOST ALWAYS SITTING DURING
5 THE CLOSING, I MEAN, THE REBUTTAL OF THE D.A., SAYING, OH,
6 YEAH. WELL, I'D LIKE TO TELL YOU THAT I DISAGREE WITH THAT.
7 OR MAYBE EVEN AFTER I SIT DOWN HERE OR TONIGHT WHEN I'M
8 HAVING DINNER I THINK, OH, GOSH, I WISH I HAD JUST SAID
9 SOMETHING ELSE. THERE'S ALWAYS SOMETHING THAT I MIGHT HAVE
10 SAID, THAT I WOULD HAVE LIKED TO HAVE SAID.

11 AND, FOR THAT MATTER, YOU KNOW, IT'S BEEN A LONG
12 TIME I'VE BEEN DOING THIS. AND IT'S THE SAME IN EVERY CASE.
13 BUT I MUST SAY THAT THE WORDS "BEYOND A REASONABLE DOUBT"
14 ARE THE MOST IMPORTANT. THAT'S THE THEME OF MY ARGUMENT.
15 IT'S NOT BACKUP. BEYOND A REASONABLE DOUBT IS THE THEME OF
16 MY ARGUMENT BECAUSE I DON'T KNOW THAT I HEARD ANY EVIDENCE
17 THAT PROVES BEYOND A REASONABLE DOUBT AS TO EXACTLY WHAT
18 HAPPENED OUT THERE.

19 I WOULD AGREE WITH HIS CHARACTERIZATION THAT
20 SOMEONE WHO IS BUILT LIKE FRANK LOPEZ SHOT AT THAT CAR. AND
21 SOMEBODY DIED AS A RESULT OF IT. BUT I DIDN'T HEAR ANY
22 EVIDENCE THAT FRANK LOPEZ OR ANYBODY ELSE KILLED THIS
23 PERSON. OKAY.

24 WHAT YOU HAVE IS SOMEBODY SAYING, THEY WERE AT
25 THE PARK WITH THE GUN. NO EVIDENCE WHATSOEVER AS TO WHAT
26 THEY WERE TALKING ABOUT, OR WHAT THEY WERE AGREEING TO, OR

1 WHERE THEY WERE GOING. NO EVIDENCE. I ASKED THAT
2 SPECIFICALLY. WAS THERE ANY TALK ABOUT THAT? NO. WE'RE
3 SUPPOSED TO ASSUME THAT THEY WERE GOING TO DO THESE VARIOUS
4 CRIMINAL ACTS. ON WHAT? I GUESS ON DETECTIVE RONDOU'S
5 OPINION THAT THAT'S WHAT THEY WERE GOING TO DO.

6 AND WHAT THE PROSECUTION IS DOING HERE, FOLKS, IS
7 TAKING A VERY THIN SET OF FACTS AND FILLING IN THE HOLES,
8 THE BIG GAPING HOLES WITH AN OPINION FROM AN EXPERT WHO
9 SAYS, WELL, THIS IS WHAT HAPPENED. I KNOW THIS IS WHAT
10 HAPPENED.

11 BUT IF YOU TAKE AWAY THE OPINION EVIDENCE, IF YOU
12 TAKE AWAY THE EXPERT'S TESTIMONY AS TO WHAT HIS EXPLANATION
13 OF ALL THIS WAS, WHAT HAVE YOU GOT? YOU'VE GOT SOME KIDS IN
14 A PARK AND ONE OF THEM HAS GOT A GUN. AND YOU'VE GOT
15 SOMEBODY OUT AT THE SCENE EITHER YELLING AT A CAR -- WE
16 DON'T EVEN KNOW IF IT'S THE SAME CAR. AND THEN YOU HAVE
17 SOMEBODY GETTING SHOT.

18 HE SAYS THE JUDGE INSTRUCTS YOU THAT CERTAIN
19 PEOPLE WERE THERE AND THAT CERTAIN PEOPLE COMMITTED THESE
20 CRIMES, THAT THIS IS THE BASIS OF THE PROSECUTION, THE
21 CONSPIRACY.

22 ASK YOURSELF WHEN YOU'RE DELIBERATING AND WHEN
23 YOU GO HOME AT THE END OF THIS CASE:

24 WHO WERE THE GUYS ON THE BICYCLES?

25 WHAT WERE THEIR NAMES?

26 WHAT DID THEY DO?

1 WHERE WERE THEY?

2 WHERE WERE THEY AT THE TIME THE SHOOTING
3 HAPPENED?

4 WHAT WERE THEY SAYING?

5 WHAT WERE THEY DOING?

6 WHAT WERE THEIR NAMES?

7 DO YOU KNOW ANY OF THAT?

8 DO YOU HAVE ANY EVIDENCE OF THAT?

9 YOU HAVE WHAT THE PROSECUTION THINKS HAPPENED.

10 YOU HAVE AN OPINION FROM AN EXPERT WHO SAYS, WELL, THIS IS
11 WHAT I THINK HAPPENED. BUT THE PEOPLE ARE REQUIRED TO PROVE
12 BEYOND A REASONABLE DOUBT. AND THAT'S NOT JUST A LITTLE BIT
13 OF PROOF. THAT'S BEYOND A DOUBT THAT NO OTHER REASONABLE
14 INTERPRETATION CAN BE OFFERED. THAT THIS COULDN'T BE
15 ANYTHING OTHER REASONABLY THAN WHAT THEY SAY IT IS.

16 WELL, MAYBE THEIR INTERPRETATION IS REASONABLE.
17 BUT THERE'S A THOUSAND OTHER REASONABLE INTERPRETATIONS THAT
18 -- WE DON'T KNOW WHY THEY LEFT THAT PARK.

19 THE EXPERT HIMSELF SAYS THAT WEST MYRTLE, THIS
20 SUPPOSEDLY RIVAL GANG TERRITORY, HE KEEPS USING THIS "RIVAL
21 GANG TERRITORY," GETS A FRINGE ELEMENT OF A RIVAL GANG
22 TERRITORY. AND MAYBE. I DON'T THINK THERE'S EVEN ANY
23 CONSENSUS ABOUT WHO CLAIMS THAT AREA OR EVEN IF WEST MYRTLE
24 HAS ANYTHING TO DO WITH THAT. IT'S HIS OPINION THAT IT'S A
25 FRINGE ELEMENT. BUT BEYOND A REASONABLE DOUBT REQUIRES THAT
26 THERE IS NO OTHER REASONABLE INTERPRETATION OF THEM RIDING

1 THEIR BIKES DOWN THE STREET THAN WHAT THEY SAY IT IS.

2 THEY ALSO MAKE A LOT OF THIS, THIS BEHAVIOR AFTER
3 THE SHOOTING. AND I'LL ADMIT TO YOU THAT IT'S NOT GOOD
4 BEHAVIOR. HE HAS THE GUN. HE PROBABLY USES IT
5 INAPPROPRIATELY. HE PROBABLY DOES THIS ASSAULT ON
6 MR. NIEVES. AND IF HE WAS BEING PROSECUTED FOR THAT, I
7 WOULD PROBABLY HAVE TO STAND HERE AND SAY, OKAY, GOT US.

8 BUT HE'S NOT CHARGED WITH THAT. I MEAN, THAT'S
9 NOT UP TO ME TO CHARGE. IT'S UP TO THEM TO CHARGE. THEY
10 DIDN'T CHARGE HIM WITH THAT.

11 BUT THE SHOOTING IS OVER WHEN ALL THAT HAPPENS.
12 THE SHOOTING IS FINISHED. AND FOR HIM TO SAY THAT THAT'S
13 EVIDENCE THAT HE PARTICIPATED IN THE SHOOTING, OR THAT HE
14 CONSPIRED, OR THAT HE AIDED AND ABETTED THE SHOOTING WITHOUT
15 ANY EVIDENCE WHATSOEVER, I THINK, IS STRETCHING IT.

16 NOW DURING THE VOIR DIRE OR THE JURY QUESTIONING
17 I ASKED SEVERAL OF YOU IF YOU THOUGHT IT WAS POSSIBLE THAT
18 SOMEONE COULD BE MISTAKEN UNDER OATH. WELL, I THINK WE HAVE
19 TWO INSTANCES IN THIS CASE WHERE SOMEONE WAS MISTAKEN UNDER
20 OATH. AND I THINK THE D.A. WOULD EVEN HAVE TO CONCEDE IT.
21 WELL, MAYBE HE WOULDN'T.

22 BUT MR. GARCIA TESTIFIES THAT HE SEES A CAR GOING
23 UP THE STREET, NORTHBOUND UP THE STREET. AND, THAT THERE
24 ARE SOME GUYS ON BIKES YELLING, HEY, WAIT UP. WE WANT TO
25 TALK TO YOU. OR, HEY, WAIT UP. I ASKED HIM, HOW DO YOU
26 KNOW THEY WERE TALKING TO THE CAR? HE SAYS, WELL, THAT'S

1 WHAT I THOUGHT.

2 BUT THE GROUPS WERE SEPARATED. AND IS IT JUST
3 POSSIBLE THAT A REASONABLE INTERPRETATION WOULD BE THAT THEY
4 WERE CALLING TO THEIR FRIENDS? HEY, WAIT UP. WAIT UP.

5 AND HE SAYS THEY'RE GOING UP THE STREET AND
6 SUDDENLY WOULD HAVE HAD TO MAKE A U-TURN. IT WOULD HAVE HAD
7 TO MAKE A U-TURN IN ORDER TO GET INTO POSITION WHERE IT
8 ENDED UP AFTER THE SHOOTING. BUT SELINSKE SAYS, WELL, THERE
9 WAS NO OTHER CAR IN FRONT. THERE WAS NOBODY BETWEEN ME AND
10 THAT CAR THAT ULTIMATELY GOT SHOT AT. THERE WAS NOBODY
11 YELLING AT THAT CAR. THERE WAS NOBODY HITTING HIM UP.
12 THERE WAS NOBODY YELLING GANG SLOGANS OR THROWING GANG
13 SIGNS. I DIDN'T HEAR ANY OF THAT.

14 SO IF THESE PEOPLE ON THESE BICYCLES, WHO MAY OR
15 MAY NOT HAVE BEEN TALKING TO THAT CAR, WERE TALKING TO THE
16 WRONG CAR, WHAT'S THE IMPORTANCE OF THAT EVIDENCE? I GUESS
17 IT'S BECAUSE THEY SAY IT SHOWS GANG ACTIVITY IN THE
18 NEIGHBORHOOD, IN THE FRINGE AREA OF A RIVAL GANG TERRITORY.

19 NOW SELINSKE, HERE IS ANOTHER WITNESS THAT IS
20 CLEARLY MISTAKEN UNDER OATH. EVEN THE PROSECUTION IN HIS
21 OPENING STATEMENT SAYS, WELL, FRANK LOPEZ IS THE SHOOTER.
22 HE SAYS IN HIS CHARGING DOCUMENT THAT MY CLIENT IS NOT
23 PERSONALLY ARMED IN THIS THING. HE IS VICARIOUSLY ARMED.

24 FOR THOSE OF YOU WHO ARE NOT FAMILIAR WITH THE
25 TERM "VICARIOUS," GENERALLY MEANS THAT SECOND HAND. I MEAN,
26 HE'S NOT PERSONALLY ARMED BUT SOMEBODY ELSE WAS.

1 AND YOU'RE GOING TO HAVE TO MAKE A FINDING ABOUT
2 WHETHER OR NOT THAT HAPPENED. BUT I'M GOING TO, I THINK,
3 GET TO THE POINT IN ARGUMENT WHERE WE'RE GOING TO FIND OUT
4 IT REALLY DOESN'T MAKE ANY DIFFERENCE BECAUSE HE DOESN'T
5 HAVE ANY LIABILITY HERE. SO WHETHER OR NOT SOMEBODY WAS
6 ARMED OR NOT IN THE COURSE OF THE ACTIVITY DOESN'T REALLY
7 AFFECT HIM.

8 NOW DETECTIVE SELINSKE SAYS THAT THE PERSON WAS
9 6'2" TO 6'3." AND THAT FITS THE PHYSICAL DESCRIPTION OF
10 FRANK LOPEZ. BUT THAT'S THE ONLY EVIDENCE, OTHER THAN THAT
11 FRANK WAS SHOWING A GUN AROUND THE PARK AT SOME TIME BEFORE
12 THE SHOOTING, THAT YOU HAVE THAT HE'S THE ONE THAT DID THE
13 SHOOTING OR THAT ANY F-TROOP GANG MEMBER IS THE ONE THAT DID
14 THE SHOOTING.

15 WHO DID THE SHOOTING?

16 I'M 5'11." HE SAYS I'M 6'4," 6'5." I MEAN, I
17 DON'T KNOW IF THAT WAS A JOKE OR IF HE WAS JUST -- IT WAS A
18 TRANSPARENT ATTEMPT TO JUSTIFY THAT HE CAN'T TELL HOW TALL
19 PEOPLE ARE. BUT IT DOES SHOW THAT EYEWITNESS
20 IDENTIFICATION, EVEN FROM A BAILIFF, POLICE OFFICER, SHOULD
21 BE VIEWED WITH CAUTION. AND THAT, YES, WITNESSES CAN BE
22 MISTAKEN UNDER OATH.

23 IF THERE'S NO ACTIVITY WITH RESPECT TO THAT CAR
24 COMING DOWN THE ROAD, THAT BLOWS THE WHOLE THEORY FOR THE
25 PROSECUTION THAT THIS WAS A GANG HIT-UP AND A GANG SHOOTING.
26 BECAUSE DETECTIVE SELINSKE DIDN'T SEE ANY OF IT, DIDN'T HEAR

1 ANY OF IT. AND HE'S RIGHT BEHIND THE CAR.

2 DETECTIVE RONDOU TELLS YOU THAT MY CLIENT
3 SPONTANEOUSLY STATED IN THE CAR, "I WAS THERE WITH MY FIVE
4 HOMIES," AND THAT IS THE ONLY THING THAT PUTS HIM AT THE
5 SCENE OF THIS CRIME. IT'S THE ONLY THING THAT PUTS HIM
6 THERE. THE PROSECUTION HAS HUNG THEIR ENTIRE
7 HE'S-AT-THE-SCENE-OF-THE-CRIME ON THAT ONE SPONTANEOUS
8 STATEMENT IN THE CAR.

9 WELL, THE JUDGE IS GOING TO READ, HAS ALREADY
10 READ TO YOU, THE JURY INSTRUCTION THAT EVIDENCE OF PRE-TRIAL
11 ADMISSIONS OR EVIDENCE OF STATEMENTS, ADMISSIONS BY
12 DEFENDANTS SHOULD BE VIEWED WITH CAUTION WHEN NOT RECORDED.
13 AND I URGE YOU TO DO THAT.

14 MR. NIEVES TESTIFIED. AND I HAVE TO SAY, AS I'VE
15 ALREADY TOLD YOU, THAT THAT ACTIVITY, ALTHOUGH REPREHENSIBLE
16 BY THE DEFENDANT, IS NOT RELATED TO THE SHOOTING. IT
17 HAPPENED AFTER THE SHOOTING. I SUBMIT TO YOU THAT THAT IS
18 NOT EVIDENCE THAT HE PARTICIPATED IN THIS CRIME.

19 NOW MR. CONTRERAS CAME AND TESTIFIED. AND HE'S A
20 SPECIAL ED. STUDENT. HE'S 12 YEARS OLD, BEING QUESTIONED BY
21 DETECTIVE RONDOU -- I MEAN DETECTIVE ASHBY, AN EXPERIENCED
22 OFFICER. HE SAYS HE CAN'T REMEMBER. MAYBE HE COULD. MAYBE
23 HE COULDN'T. BUT IN THE STATEMENT THAT HE GAVE ORIGINALLY,
24 THE STATEMENT THAT THEY IMPEACHED HIM WITH, THE STATEMENT
25 THAT'S BROUGHT IN HERE, DETECTIVE ASHBY ADMITTED THAT IT WAS
26 NOT JUST GUSHING OUT; THAT HE HAD TO WORK TO GET THAT

1 INFORMATION FROM THE WITNESS.

2 AND I SUBMIT TO YOU THAT HE ADMITTED THAT HE TOLD
3 THE DEFENDANT, OH, WELL, WE KNOW WHAT HAPPENED. WE KNOW
4 WHAT THE TRUTH IS. AND, YEP, SURE ENOUGH, THAT'S WHAT HE
5 ENDED UP TELLING HIM.

6 AND I'D SUGGEST TO YOU THAT IF THERE'S A BATTLE
7 OF WITS BETWEEN A 12-YEAR-OLD-SPECIAL-ED. STUDENT AND A
8 DETECTIVE LIKE ASHBY, ASHBY IS GOING TO WIN EVERY TIME. AND
9 THE STATEMENT IN THIS CASE FROM CONTRERAS CAME OUT TO BE
10 EXACTLY WHAT ASHBY AND HIS PARTNER WANTED TO HEAR.

11 DETECTIVE RONDOU IS THE LINCHPIN. HE IS THE
12 BASIS OF THE PEOPLE'S CASE. THE PROSECUTOR, QUITE
13 ACCURATELY, SAID THAT THE GANG EVIDENCE IN THIS CASE IS
14 PERVASIVE. IT'S PERVASIVE BECAUSE THEY'VE INTRODUCED IT AND
15 BECAUSE IT'S BASICALLY THE ONLY EVIDENCE THEY HAVE. AND
16 WITHOUT THAT OPINION EVIDENCE, THEY DON'T HAVE A CASE.

17 THE INSTRUCTION ON WHETHER OR NOT THE DEFENDANT
18 IS A GANG MEMBER OR IS NOT A GANG MEMBER SHOULD NOT BE USED
19 TO DETERMINE -- YOU SHOULD NOT JUST ASSUME FROM THE FACT
20 THAT HE IS OR IS NOT A GANG MEMBER OR IS A GANG MEMBER THAT
21 HE'S A BAD PERSON OR THAT HE IS LIKELY TO COMMIT CRIMES.
22 AND I FIND THAT THIS TYPE OF EVIDENCE IS -- IT'S INSIDIOUS
23 IN THE SENSE THAT IT ALLOWS THE PROSECUTION TO GET UP AND
24 TELL YOU THAT, WELL, HE'S GUILTY BECAUSE WE SAY HE'S GUILTY.

25 AND HERE IS A POLICEMAN WHO WILL TELL YOU WE
26 DON'T HAVE ANY REAL EVIDENCE AS TO WHO SHOT WHO, OR WHO WAS

1 WHERE ON THE BICYCLES, OR WHO WAS ON WHICH SIDE AND WHO WAS
2 HITTING UP SOMEBODY AND WHICH CAR IT WAS. WE'RE A LITTLE
3 CONFUSED ABOUT THAT PART. BUT WHAT WE GOT IS AN OFFICER WHO
4 WILL GET IN THERE AND CONNECT ALL THESE DOTS FOR YOU SO THAT
5 WE HAVE A THEORY, A THEORY. AND THAT'S REALLY WHAT THEY
6 HAVE HERE. THEY HAVE A THEORY WITHOUT A LOT OF FACTS.

7 IT'S KIND OF LIKE SAYING THAT IF SOME GUYS ARE
8 PLAYING BASKETBALL, AND THERE'S FIVE GUYS ON EACH TEAM, AND
9 ONE OF THE CENTERS ON ONE OF THE TEAMS THROWS AN ELBOW AND
10 THE OTHER GUY DOESN'T LIKE IT, AND HE THROWS AN ELBOW, AND
11 THEN THE CENTER GOES OVER AND PULLS OUT A KNIFE AND STABS
12 THE OTHER GUY, THAT EVERY MEMBER OF THE TEAM, EVERY MEMBER
13 OF THE BASKETBALL TEAM IS GUILTY OF MURDER. NOW THAT JUST
14 DOESN'T MAKE ANY SENSE. IT RELIEVES THE PROSECUTION OF
15 PROVING THE CASE. AND WHAT IT DOES IS IT SAYS, ONCE YOU
16 SIGN UP -- THE GENERAL THEORY IS ONCE YOU SIGN UP FOR A
17 GANG, YOU'RE RESPONSIBLE FOR EVERYTHING THAT EVERYBODY DOES
18 IF YOU'RE ANYWHERE IN THE VICINITY.

19 AND, FOLKS, THE INSTRUCTIONS ARE GIVEN TO YOU AS
20 GUIDELINES. THE JUDGE IS NOT TELLING YOU WHAT TO FIND. THE
21 JUDGE IS TELLING YOU HOW TO APPLY THE FACTS TO THE LAW. AND
22 WHEN YOU DON'T HAVE ENOUGH FACTS, YOU HAVE TO RETURN A NOT
23 GUILTY VERDICT.

24 NOW HE'S RIGHT ALSO ABOUT ONE THING, ABOUT THE
25 TWO WAYS YOU GET TO A MURDER IN THIS CASE. THERE'S TWO
26 WAYS, TWO AVENUES. AVENUE NO. 1, AIDING AND ABETTING; THAT

1 MY CLIENT AIDED AND ABETTED FRANK LOPEZ IN DOING THIS
2 MURDER. NOW, IN ORDER TO AID AND ABET A CRIME, BE HELD
3 RESPONSIBLE FOR IT, HE HAS TO KNOW THAT THE CRIME IS GOING
4 TO BE COMMITTED, AND HE HAS TO INTEND THE SAME INTENT AS THE
5 PERSON WHO COMMITTED THE CRIME. HE HAS TO BE EXACTLY OF THE
6 SAME MIND-SET AS THE PERSON WHO COMMITTED THE CRIME. HE HAS
7 TO DO AN ACT OR DO SOMETHING THAT HELPS THAT PERSON COMMIT
8 THE CRIME.

9 NOW WHAT EVIDENCE DO WE HAVE HERE THAT HE KNEW
10 THAT THIS CRIME WAS GOING TO BE COMMITTED, BY SOMEONE WHO
11 HAS A BUILD LIKE FRANK LOPEZ'S, WHO MIGHT BE AN F-TROOP GANG
12 MEMBER?

13 WELL, HE KNEW OF THE GUN. IF YOU BELIEVE
14 CONTRERAS, HE KNEW OF THE GUN.

15 IS THAT THE SAME THING AS KNOWING THAT HE'S GOING
16 TO COMMIT A CRIME WITH IT IN A FEW MINUTES, IN JUST A FEW
17 MINUTES?

18 DID THEY EVER TALK ABOUT IT OR DISCUSS IT?

19 DID HE HAVE KNOWLEDGE BEYOND A REASONABLE DOUBT
20 THAT THE PERSON WHO IS BUILT LIKE FRANK LOPEZ WAS GOING TO
21 COMMIT A CRIME?

22 IN ORDER TO PROVE HIM OF AIDING AND ABETTING, YOU
23 HAVE TO MAKE THAT FINDING.

24 HOW CAN YOU POSSIBLY MAKE THAT FINDING ON THE
25 BASIS OF THIS EVIDENCE?

26 AND ALSO, THAT HE INTENDED THAT SOMEBODY DIE. HE

1 INTENDED THAT THIS CRIME, THIS SHOOTING WAS GOING TO BE
2 COMMITTED, AND HE KNEW ABOUT IT, AND HE WANTED TO HELP.
3 AND, HE WAS THERE AS BACKUP.

4 WHAT DID HE DO?

5 FOLKS, WHAT DID HE DO?

6 HE RODE HIS BIKE DOWN THE STREET.

7 WELL, THE COURT IS GOING TO INSTRUCT, HAS
8 INSTRUCTED YOU, THAT IF YOU CONCLUDE THE DEFENDANT WAS
9 PRESENT AT THE SCENE OF THE CRIME OR FAILED TO PREVENT THE
10 CRIME YOU MUST CONSIDER THAT FACT IN DETERMINING WHETHER HE
11 WAS AN AIDER AND ABETTER. HOWEVER, THE FACT THAT A PERSON
12 IS PRESENT AT THE SCENE OR FAILS TO PREVENT IT IS NOT IN AND
13 OF ITSELF MAKING HIM AN AIDER AND ABETTER.

14 YOU'D LIKE TO HAVE SOME EVIDENCE, I SUPPOSE, AS
15 TO WHAT HE DID AT THE SCENE, HOW HE GOT THE KNOWLEDGE THEY
16 WERE GOING TO COMMIT THIS MURDER, AND WHAT HE DID TO HELP
17 BACKUP.

18 WHERE DO WE GET THE WORD BACKUP? AGAIN, FROM THE
19 OPINION OF THE OFFICER. WE HEAR FROM HIM THAT, IN MY
20 OPINION, HE WAS THERE AS BACKUP. AND THERE'S NO OTHER
21 REASONABLE INTERPRETATION THAT COULD BE DRAWN FROM HIM
22 RIDING HIS BIKE DOWN THERE IN THAT AREA.

23 NOW THE OTHER -- STARTING TO LOSE MY VOICE. NOW
24 THE OTHER THEORY, THE OTHER WAY THAT GETS THE PROSECUTION
25 INTO THE END-ZONE ON A MURDER IS THE NATURAL AND PROBABLE
26 CONSEQUENCES THEORY. NOW, THE NATURAL AND PROBABLE

1 CONSEQUENCES HAVE GOT TO BE -- THERE'S A TARGET CRIME, AND,
2 THEN, A NATURAL AND PROBABLE CONSEQUENCES THAT DERIVE
3 THEREFROM. AND THERE'S BUMPS ALONG THE ROAD THERE, I SUBMIT
4 TO YOU.

5 HE HAS GOT TO PROVE TO YOU BEYOND A REASONABLE
6 DOUBT THAT THE TARGET CRIMES OF ASSAULT OR TRYING TO START A
7 FIGHT, DISTURBING THE PEACE, OR CONSPIRACY TO COMMIT A
8 DISTURBING THE PEACE, THAT THOSE CRIMES WERE COMMITTED AND
9 THAT, THEN, THE NATURAL AND PROBABLE CONSEQUENCES OF THOSE
10 CRIMES IS MURDER. AND, THAT NO OTHER REASONABLE
11 INTERPRETATION CAN BE DRAWN FROM THAT. THAT A REASONABLE
12 PERSON MUST HAVE KNOWN THAT IF YOU COMMIT THOSE CRIMES,
13 SOMEBODY WAS GOING TO DIE. SOMEBODY WAS GOING TO GET
14 KILLED.

15 WELL, I DIDN'T HEAR ANY EVIDENCE ABOUT ANY
16 SPECIFIC EVIDENCE ABOUT THAT THEY WERE GOING TO GO AND PICK
17 A FIGHT OR GO AND CONSPIRE TO COMMIT A 415. I DIDN'T HEAR
18 ANY EVIDENCE OF THAT AT ALL.

19 IF THE MURDER WAS COMMITTED FOR A REASON
20 INDEPENDENT OF THE COMMON PLAN TO COMMIT A CONSPIRACY TO
21 DISTURB THE PEACE, OR EITHER TO DISTURB THE PEACE OR TO
22 COMMIT AN ASSAULT, THEN THE COMMISSION WAS NOT THE NATURAL
23 AND PROBABLE CONSEQUENCES OF CONSPIRACY TO COMMIT DISTURBING
24 THE PEACE, ASSAULT, OR DISTURBING THE PEACE.

25 I SUBMIT TO YOU, LADIES AND GENTLEMEN, THAT WE
26 DON'T KNOW. THE PEOPLE HAVEN'T PROVED TO YOU WHAT THEY WERE

1 CONSPIRING TO DO. THEY HAVEN'T EVEN PROVED TO YOU WHO THEY
2 WERE, MUCH LESS WHAT THEY WERE CONSPIRING TO DO. IT COULD
3 BE JUST FIVE KIDS RIDING THEIR BIKE DOWN THE STREET AND SOME
4 IDIOT TAKES OUT A GUN AND STARTS SHOOTING. IT COULD BE
5 THAT.

6 THE DEFENDANT IS ALSO CHARGED WITH 186.22 (A),
7 THAT'S COUNT 2, BEING A GANG MEMBER. WELL, WHATEVER
8 CREDIBILITY I MAY HAVE WITH YOU WOULD PROBABLY BE LOST IF I
9 STOOD HERE AND TOLD YOU THAT MY CLIENT IS NOT ASSOCIATED
10 WITH A GANG. HE'S GOT IT TATTOOED ON HIS BODY, AND JUST
11 ABOUT ALL OF HIS ACTIVITIES WOULD SUGGEST THAT HE IS
12 INVOLVED IN A GANG. BUT IF YOU DON'T FIND ANY CRIMINAL
13 LIABILITY, IF YOU DON'T FIND THAT HE DID SOMETHING THAT
14 WOULD WARRANT A CONVICTION FOR MURDER, THEN, WHETHER OR NOT
15 HE'S IN A GANG IS IRRELEVANT. BECAUSE THE WAY THE LAW READS
16 AND THE WAY HE'S CHARGED IS THAT THAT GANG MEMBERSHIP HAS TO
17 LEAD TO FELONIOUS CONDUCT. AND THE ONLY FELONIOUS CONDUCT
18 HE'S CHARGED WITH IS A MURDER. SO IF YOU DON'T FIND HIM
19 GUILTY OF THE MURDER, EITHER MURDER 1 OR MURDER 2, THEN
20 COUNT 2 IS A NOT GUILTY, BECAUSE HE DIDN'T COMMIT ANY
21 FELONIOUS CONDUCT.

22 COUNT 3, I MEAN, EXCUSE ME, THE OFFICER
23 TESTIFIED, AND THE ONLY EVIDENCE WE HAVE IS, ON THE
24 ENHANCEMENT, IS THAT THE 186.22 (B), THAT'S DONE FOR THE
25 BENEFIT OF THE GANG, THE ONLY THING WHATSOEVER IS THE
26 OFFICER'S OPINION AFTER A HYPOTHETICAL THAT THAT'S WHAT IT

1 WAS DONE FOR. IF YOU BELIEVE THAT, THAT IT CAN ONLY BE DONE
2 FOR THAT PURPOSE, THEN, I SUPPOSE THAT YOU CAN CONVICT HIM
3 OF THAT OR FIND IT TO BE TRUE. BUT YOU KNOW, HE NEVER
4 TESTIFIES ANY OTHER WAY. HE ALWAYS SAYS THAT. I MEAN,
5 THAT'S HIS JOB. HE COMES IN AND HE SAYS THAT IT'S FOR THE
6 BENEFIT OF THE GANG. HE'S NEVER TESTIFIED FOR THE DEFENSE.
7 HE'S NEVER TESTIFIED EVER, NOT EVEN ONCE, THAT THE CRIME WAS
8 NOT DONE FOR THE BENEFIT OF THE GANG. SO I SUGGEST TO YOU
9 THAT THAT OPINION IS BUILT ON SAND. IT'S BUILT ON A WEAK
10 FOUNDATION.

11 I'M GOING TO TALK TO YOU A LITTLE BIT ABOUT FIRST
12 VERSUS SECOND DEGREE MURDER. THE JUDGE HAS INSTRUCTED YOU
13 ON BOTH. AND THE PROSECUTION HAS GIVEN YOU THEORIES AS TO
14 HOW YOU CAN GET TO FIRST OR SECOND DEGREE MURDER. IT'S A
15 LITTLE BIT LIKE DANCING WITH THE DEVIL FOR ME TO STAND UP
16 HERE AND TALK TO YOU ABOUT THAT SORT OF THING, BECAUSE ON
17 THE ONE HAND I'M TELLING YOU HE'S NOT GUILTY OF ANYTHING.
18 AND I'M TELLING YOU THAT AS STRONGLY AS I CAN TELL ANYBODY
19 ANYTHING. BUT I DON'T KNOW WHAT YOU'RE THINKING. AND IF
20 YOU'RE TRYING TO DECIDE WHETHER IT'S FIRST OR SECOND, THE
21 GUIDELINES, AND I HAVE TO EXPLAIN THOSE, AND I THINK IT'S MY
22 LEGAL OBLIGATION TO SHOW, THE GUIDELINES ARE THAT THERE'S
23 ONLY ONE DIFFERENCE. AND HE'S TOLD YOU THIS IN ANOTHER WAY;
24 THAT IT'S A SECOND DEGREE MURDER IF THERE'S NO PREMEDITATION
25 AND DELIBERATION. IT'S A FIRST DEGREE MURDER IF IT'S DONE
26 WITH MALICE AND IF IT'S DONE WITH PREMEDITATION AND

1 DELIBERATION.

2 NOW, WHETHER OR NOT IT'S A MURDER OR NOT, I WILL
3 CONCEDE THAT SOMEBODY WHO IS BUILT LIKE FRANK LOPEZ
4 COMMITTED A HOMICIDE. OKAY. THAT'S AS FAR AS IT GOES. BUT
5 THE INSTRUCTION READS:

6 "A DECISION TO KILL MADE RASHLY,
7 IMPULSIVELY, OR WITHOUT CAREFUL
8 CONSIDERATION IS NOT PREMEDITATE AND
9 DELIBERATE."

10 IN OTHER WORDS, IF YOU FIND THAT THE PERSON WHO
11 LOOKS -- THE PERSON WHO IS BUILT LIKE FRANK LOPEZ DID NOT
12 THINK PAST -- THINK CLEARLY THROUGH THIS, JUST DID IT AS A
13 RASH ACT, THEN, IT'S A SECOND. IF NOT, I SUPPOSE IT WOULD
14 BE PREMEDITATION AND DELIBERATION BASED ON HIS ARGUMENT.
15 BUT, AGAIN, I DON'T CONCEDE THAT.

16 YOU KNOW, DURING HIS VOIR DIRE, HIS JURY
17 SELECTION, MR. GELLER USED THE ANALYSIS THAT, HAVE YOU SEEN
18 THE MOVIE "OCEAN'S 11" WHERE WE HOLD THEM ALL RESPONSIBLE
19 JUST BECAUSE THEY'RE ALL PART OF THE CONSPIRACY?

20 WELL, INTERESTINGLY ENOUGH, THAT "OCEAN'S 11" WAS
21 ON LAST NIGHT ON CHANNEL 2. I DON'T KNOW HOW MANY OF YOU
22 HAVE SEEN THAT MOVIE OR NOT. BUT IN THAT MOVIE -- I WATCHED
23 PART OF IT -- IT'S TRUE, EACH PERSON HAD A PART IN THAT
24 CRIME. YOU KNOW, ONE OF THEM WAS PICKING THE LOCK. AND ONE
25 OF THEM WAS ON THIS VIDEO SURVEILLANCE. AND ONE OF THEM WAS
26 BLOWING UP THE UNDERGROUND SO THE ELECTRICITY WENT OUT.

1 THEY ALL HAD A JOB. OKAY.

2 WELL, WHAT WAS HIS JOB? RIDING HIS BIKE?

3 UNDER HIS THEORY, RIDING THE BIKE IN THE PARKING
4 LOT OF THAT LAS VEGAS HOTEL AT "OCEAN'S 11" WOULD HAVE
5 CONVICTED HIM OF THE ROBBERY. SO, YOU'RE JUST LEFT WITH THE
6 QUESTION OF WHETHER OR NOT, YOU KNOW, THERE'S EVIDENCE HERE
7 BEYOND A REASONABLE DOUBT TO HANG A MURDER CONVICTION ON A
8 15-YEAR-OLD RIDING HIS BIKE DOWN THE STREET REALLY.

9 I ASK YOU TO FIND HIM NOT GUILTY ON ALL CHARGES
10 AND FIND IT NOT TO BE TRUE ON ALL THE ENHANCEMENTS.

11 THANK YOU.

12 THE COURT: SIDEBAR, PLEASE.

13 (CONFERENCE BETWEEN THE COURT AND
14 COUNSEL WAS HAD OUT OF THE HEARING OF THE
15 REPORTER AND THE JURY:)

16 THE COURT: LADIES AND GENTLEMEN, EVEN IF I HAD THE
17 HEART TO WORK UNTIL 4:30, EVEN THOUGH SHE SAYS SHE'S WILLING
18 AND ABLE, SHE'S PROBABLY NOT ALL THERE. IT DOESN'T APPEAR
19 THAT WE COULD FINISH WHAT WE NEED TO DO TO GET YOU TO
20 DELIBERATIONS THIS AFTERNOON. SO I'M GOING TO JUST RECESS
21 FOR THIS EVENING AND BRING YOU BACK AT NINE O'CLOCK TOMORROW
22 MORNING.

23 ALTERNATE NO. 3 HAS A QUESTION FOR ME.

24 ALTERNATE JUROR #3: I HAVE A FRIEND THAT DIED SUDDENLY
25 AND UNEXPECTEDLY LAST THURSDAY MORNING. HIS FUNERAL IS
26 TOMORROW AT NOON IN THE CITY OF CORONA. AND I DIDN'T KNOW

1 WHETHER I WOULD BE ABLE TO ATTEND THAT FUNERAL OR NOT.

2 THE COURT: I'LL ASK YOU TO WAIT JUST A MINUTE AFTER
3 EVERYBODY LEAVES. WOULD YOU DO THAT FOR ME?

4 I'M GOING RELEASE ALL OF YOU UNTIL NINE O'CLOCK.
5 WHEN WE COME BACK AT NINE O'CLOCK I EXPECT THAT MR. GELLER
6 WILL MAKE HIS CLOSING ARGUMENT. HE HAS THE BURDEN OF PROOF,
7 THAT'S WHY HE ARGUES LAST. THEN I HAVE SOME OTHER
8 INSTRUCTIONS FOR YOU, MUCH BRIEFER THAN WHAT YOU HEARD
9 TODAY. THEN YOU WOULD BEGIN YOUR DELIBERATION. SO, I'M
10 GUESSING THAT WE'LL GET THE CASE TO YOU, IF WE START ON
11 TIME, AT APPROXIMATELY TEN A.M. TOMORROW. BUT I DO NEED ALL
12 OF YOU BACK.

13 SO, PLEASE, DURING THIS RECESS, DURING THIS
14 PERIOD OF RECESS, PLEASE DO NOT CONVERSE WITH ANYONE ON THIS
15 SUBJECT. DO NOT CONVERSE AMONG YOURSELVES OR WITH ANYONE
16 ELSE ON ANYTHING CONNECTED WITH THE CASE.

17 PLEASE HAVE A SAFE EVENING.

18 AND, ALTERNATE #3, PLEASE WAIT.

19 HAVE A GOOD EVENING.

20 (JURY EXCUSED.)

21 (THE FOLLOWING PROCEEDINGS WERE HAD IN

22 OPEN COURT OUT OF THE PRESENCE OF THE JURY:)

23 THE COURT: OKAY. ALTERNATE #3, WE WOULD HATE TO LOSE
24 YOU AT THIS POINT IN THE TRIAL AFTER YOU'VE GIVEN IT SO MUCH
25 OF YOUR TIME ALREADY. AND ALSO, BECAUSE WE HAVE NO WAY OF
26 KNOWING WHETHER WE WOULD NEED TO PUT AN ALTERNATE IN DURING

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **PEOPLE v.
REYES**

Case Number: **S270723**

Lower Court Case Number: **G059251**

1. At the time of service I was at least 18 years of age and not a party to this legal action.
2. My email address used to e-serve: **Jennifer.Truong@doj.ca.gov**
3. I served by email a copy of the following document(s) indicated below:

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EXHIBITS	Exhibit A _Part 2 of 2
EXHIBITS	Exhibit B _Part 1 of 3
EXHIBITS	Exhibit B _Part 2 of 3
EXHIBITS	Exhibit B _Part 3 of 3

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

4/7/2022

Date

/s/Liza Nickolas

Signature

Truong, Jennifer (285868)

Last Name, First Name (PNum)

Department of Justice, Office of the Attorney General-San Diego

Law Firm