

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA

2 CENTRAL JUSTICE CENTER, COUNTY OF ORANGE

3 IN RE THE PROCEEDINGS OF:

4 THE PEOPLE OF THE STATE OF CALIFORNIA,)

5 PLAINTIFF,)

6 VS.)

7 JOSEPH ANDREW WOLFE,)

8 DEFENDANT.)

NO. 12ZF0148

9

10

11 TRANSCRIPT OF PROCEEDINGS

12 SEPTEMBER 19, 2012

13 VOLUME 1

14

15 APPEARANCES:

16 TONY RACKAUKAS, DISTRICT ATTORNEY
17 JIM TANIZAKI, SENIOR ASSISTANT DISTRICT ATTORNEY
18 KEITH BOGARDUS, ASSISTANT DISTRICT ATTORNEY

18

19

20 ROBERT J. SULLIVAN, CSR #5646
21 OFFICIAL COURT REPORTER

21

22

23 (ROBERT J. SULLIVAN, CERTIFIED SHORTHAND REPORTER,

24 WAS DULY SWORN BY THE FOREPERSON OF THE GRAND JURY, AFTER

25 WHICH THE FOLLOWING PROCEEDINGS WERE HAD:)

26

1 C H R O N O L O G I C A L W I T N E S S L I S T

2 P E O P L E ' S E X A M I N A T I O N

3 S C R U G G S , D A W N 2 0

4 K O B A Y A S H I - T A Y L O R , K A R E N 6 0

5 H U F F M A N , D A N A 7 0

6 N A V A R R O , C E S A R 8 1

7 S I R I N , G A R Y 9 6

8 C H O C E K , M I C H A E L 1 1 1

9 S T A N C Y K , R O N 1 6 5

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

	E X H I B I T I N D E X	
1		
2		
3	GRAND JURY EXHIBITS	FOR I.D.
4	1 - GRAND JURY MEMO	20
5	2 - AERIAL PHOTO	26
6	3 - AERIAL PHOTO	26
7	4 - CLOSEUP AERIAL PHOTO	27
8	5 - PHOTO, HORSESHOE MEDIAN AREA	27
9	6 - PHOTO, SOUTH END OF WEST WALKWAY	27
10	7 - PHOTO, BENCH EAST OF POLECAM	28
11	8 - PHOTO, NORTH BRICK PILLAR DOCK 4	28
12	9 - SCENE DIAGRAM	28
13	10 - PHOTO, BUS LANE LOOKING SOUTH	29
14	11 - PHOTO, BUS LANE LOOKING SOUTHEAST	30
15	12 - PHOTO, BUS LANE LOOKING EAST	31
16	13 - PHOTO, BUS STOP LOOKING NORTHWEST	31
17	14 - PHOTO, BUS LANE LOOKING SOUTH	32
18	15 - PHOTO, WEST WALKWAY LOOKING SOUTHEAST	32
19	16 - PHOTO, APPARENT BLOOD ON GROUND	33
20	17 - PHOTO, APPARENT BLOOD ON GROUND	33
21	18 - PHOTO, APPARENT BLOOD ON GROUND WITH RULER	33
22	19 - PHOTO, LEFT SIDE TASER	34
23	20 - PHOTO, OFFICER WOLFE'S POLICE BATON	35
24	21 - PHOTO, DEFENDANT RAMOS' POLICE BATON	35
25	22 - PHOTO, HOBBLE	36
26	23 - PHOTO, BACKPACK CONTENTS	37

	E X H I B I T I N D E X (CONTINUED)	
1		
2		
3	GRAND JURY EXHIBITS	FOR I.D.
4	24 - PHOTO, OFFICER WOLFE, OVERVIEW	37
5	25 - PHOTO, OFFICER WOLFE, CLOSEUP	38
6	26 - PHOTO, OFFICER WOLFE, LEFT ELBOW	38
7	27 - PHOTO, OFFICER WOLFE, LEFT ELBOW	38
8	28 - PHOTO, OFFICER WOLFE, LEFT FOREARM	39
9	29 - PHOTO, OFFICER WOLFE, LEFT WRIST	39
10	30 - PHOTO, OFFICER WOLFE, LEFT WRIST	39
11	31 - PHOTO, OFFICER WOLFE, LEFT HAND	39
12	32 - PHOTO, OFFICER WOLFE, RIGHT FOREARM	40
13	33 - PHOTO, OFFICER WOLFE, RIGHT FOREARM	40
14	34 - PHOTO, OFFICER WOLFE, LOWER LEGS	40
15	35 - PHOTO, OFFICER WOLFE, BOOTS	40
16	36 - PHOTO, OFFICER WOLFE, LOWER LEFT LEG	41
17	37 - PHOTO, OFFICER WOLFE, LEFT KNEE	41
18	38 - PHOTO, OFFICER WOLFE, LOWER RIGHT LEG	41
19	39 - PHOTO, OFFICER WOLFE, RIGHT KNEE	41
20	40 - PHOTO, OFFICER WOLFE, FOREHEAD	41
21	41 - PHOTO, OFFICER WOLFE, FOREHEAD	42
22	42 - PHOTO, OFFICER WOLFE, FOREHEAD, BACK OF HEAD	42
23	43 - PHOTO, OFFICER WOLFE, FOREHEAD, BACK OF HEAD	42
24	44 - PHOTO, OFFICER WOLFE, RIGHT EAR	42
25	45 - PHOTO, DEFENDANT RAMOS, OVERVIEW	43
26	46 - PHOTO, DEFENDANT RAMOS, CLOSEUP	43

	E X H I B I T I N D E X (CONTINUED)	
1		
2		
3	GRAND JURY EXHIBITS	FOR I.D.
4	47 - PHOTO, DEFENDANT RAMOS, LEFT ELBOW	43
5	48 - PHOTO, DEFENDANT RAMOS, LEFT ELBOW	43
6	49 - PHOTO, DEFENDANT RAMOS, RIGHT LOWER LEG	44
7	50 - PHOTO, DEFENDANT RAMOS, RIGHT KNEE	44
8	51 - PHOTO, DEFENDANT CICINELLI, OVERVIEW	44
9	52 - PHOTO, DEFENDANT CICINELLI, CLOSEUP	44
10	53 - PHOTO, DEFENDANT CICINELLI, RIGHT THUMB	45
11	54 - PHOTO, DEFENDANT CICINELLI, BOOTS	45
12	55 - PHOTO, OFFICER HAMPTON, OVERVIEW	45
13	56 - PHOTO, KELLY THOMAS, RIGHT SIDE OF FACE	47
14	57 - PHOTO, KELLY THOMAS, RIGHT SIDE OF FACE	47
15	58 - PHOTO, KELLY THOMAS, RIGHT SIDE OF FACE	47
16	59 - PHOTO, KELLY THOMAS, RIGHT SIDE OF FACE	48
17	60 - PHOTO, KELLY THOMAS, LEFT SIDE OF FACE	48
18	61 - PHOTO, KELLY THOMAS, UPPER BODY	48
19	62 - PHOTO, KELLY THOMAS, TORSO	48
20	63 - PHOTO, KELLY THOMAS, RIGHT SHOULDER	48
21	64 - PHOTO, KELLY THOMAS, RIGHT SHOULDER	48
22	65 - PHOTO, KELLY THOMAS, LEFT SIDE OF TORSO	49
23	66 - PHOTO, KELLY THOMAS, UPPER BODY	49
24	67 - PHOTO, KELLY THOMAS, BACK	49
25	68 - PHOTO, KELLY THOMAS, LEFT HAND	49
26	69 - PHOTO, KELLY THOMAS, RIGHT HAND	49

	E X H I B I T I N D E X (CONTINUED)	
1		
2		
3	GRAND JURY EXHIBITS	FOR I.D.
4	70 - PHOTO, KELLY THOMAS, LEFT LEG	49
5	71 - PHOTO, KELLY THOMAS, RIGHT LEG	50
6	72 - PHOTO, KELLY THOMAS, RIGHT KNEE	50
7	73 - PHOTO, KELLY THOMAS, LEFT ANKLE	50
8	74 - CERTIFIED NOTICE OF COMPLETION	64
9	75 - D.V.D. OF INCIDENT VIDEO	92
10	76 - PHOTO, FRONT OF OFFICER WOLFE'S D.A.R.	113
11	77 - PHOTO, BACK OF OFFICER WOLFE'S D.A.R.	130
12	78 - TRANSCRIPT OF GRAND JURY EXHIBIT 75	142
13	79 - SCREEN CAPTURE, EXHIBIT 75, DEFENDANT RAMOS	143
14	80 - SCREEN CAPTURE, EXHIBIT 75, OFFICER WOLFE	144
15	81 - SCREEN CAPTURE, EXHIBIT 75, DEFENDANT CICINELLI	144
16	82 - SCREEN CAPTURE, EXHIBIT 75, OFFICER HAMPTON	144
17	83 - SCREEN CAPTURE, EXHIBIT 75, SERGEANT CRAIG	145
18	84 - SCREEN CAPTURE, EXHIBIT 75, OFFICER BLATNEY	145
19	85 - FULLERTON POLICE DEPARTMENT POLICY MANUAL	147
20	112 - GRAND JUROR QUESTIONS	55
21	113 - GRAND JUROR QUESTIONS	93
22	114 - GRAND JUROR QUESTIONS	104
23	115 - GRAND JUROR QUESTIONS	155
24	116 - GRAND JUROR QUESTIONS	183
25		
26		

1 SANTA ANA, CALIFORNIA - SEPTEMBER 19, 2012

2 MORNING SESSION

3

4 (THE FOLLOWING PROCEEDINGS WERE HELD IN THE GRAND
5 JURY ROOM:)

6 THE GRAND JURY FOREPERSON: PLEASE BE SURE ALL YOUR
7 CELL PHONES ARE TURNED OFF.

8 THE HEARING WILL COME TO ORDER.

9 THE COURT REPORTER WILL PLEASE RISE TO BE SWORN.

10 (WHEREUPON THE COURT REPORTER WAS DULY SWORN.)

11 THE GRAND JURY FOREPERSON: THE SECRETARY WILL PLEASE
12 CALL THE ROLL.

13 (WHEREUPON ROLL WAS TAKEN OF THE GRAND JURORS.)

14 THE GRAND JURY SECRETARY: MR. FOREMAN, 16 JURORS ARE
15 PRESENT.

16 THE GRAND JURY FOREPERSON: LET THE RECORD SHOW THAT 16
17 GRAND JURORS ARE PRESENT.

18 MEMBERS OF THE GRAND JURY, THE NATURE OF THE
19 MATTERS TO BE HEARD AND THE NAMES OF THE PERSONS INVOLVED
20 HERE HAVE BEEN GIVEN TO YOU BY THE DISTRICT ATTORNEY.

21 ANY MEMBER OF THE GRAND JURY WHO HAS A STATE OF
22 MIND IN REFERENCE TO THE CASE OR TO THE PERSONS INVOLVED
23 WHICH WILL PREVENT HIM OR HER FROM ACTING IMPARTIALLY AND
24 WITHOUT PREJUDICE TO THE SUBSTANTIAL RIGHTS OF THE PERSONS
25 INVOLVED SHALL RETIRE FROM THIS HEARING.

26 DO ANY OF YOU KNOW SOCIALLY, OR HAVE ANY OF YOU

1 HEARD ANYTHING ABOUT THIS CASE OR ANY OF THE PERSONS NAMED
2 WHICH WOULD CAUSE YOU NOT TO RENDER AN UNBIASED DECISION?

3 (NO AFFIRMATIVE RESPONSE) .

4 THE GRAND JURY FOREPERSON: LET THE RECORD SHOW THAT NO
5 MEMBER OF THE GRAND JURY HAS RETIRED.

6 MR. DISTRICT ATTORNEY, DO YOU HAVE MATTERS TO
7 PRESENT TO THE GRAND JURY?

8 MR. RACKAUCKAS: YES, BUT I WOULD LIKE TO GO OVER THAT
9 STATEMENT THAT YOU JUST MADE.

10 DO ANY OF YOU KNOW SOCIALLY, OR HAVE ANY OF YOU
11 HEARD ANYTHING ABOUT THIS CASE OR ANY OF THE PERSONS NAMED
12 WHICH WOULD CAUSE YOU NOT TO RENDER AN UNBIASED DECISION.

13 I DIDN'T HEAR THE "NOT."

14 THE GRAND JURY FOREPERSON: I SAID IT.

15 MR. RACKAUCKAS: THANK YOU, I JUST WANTED TO MAKE SURE
16 IT WAS RIGHT. AND IT IS.

17 THE GRAND JURY FOREPERSON: OKAY. DO YOU HAVE MATTERS
18 TO PRESENT TO THE GRAND JURY?

19 MR. RACKAUCKAS: YES.

20 THE GRAND JURY FOREPERSON: DO YOU WISH TO MAKE AN
21 OPENING STATEMENT?

22 MR. TANIZAKI: MR. RACKAUCKAS WILL.

23 MR. RACKAUCKAS: I WOULD LIKE TO.

24 THE GRAND JURY FOREPERSON: VERY WELL.

25 MR. RACKAUCKAS: I AM STANDING IN THE WRONG PLACE.

26 THE GRAND JURY FOREPERSON: YOU ARE STANDING IN THE

1 WRONG PLACE, SIR, THAT'S OKAY.

2 MR. RACKAUCKAS: THAT'S WHERE THEY PUT ME BECAUSE OF
3 THE SPACE.

4 THE GRAND JURY FOREPERSON: YES.

5 MR. RACKAUCKAS: LADIES AND GENTLEMEN OF THE GRAND
6 JURY, GOOD MORNING.

7 (RESPONSE.)

8 MR. RACKAUCKAS: I WOULD LIKE TO START BY THANKING YOU
9 FOR YOUR SERVICE. AND I WILL TELL YOU THAT THE OPENING
10 STATEMENT YOU ARE GOING TO HEAR IS VERY BRIEF, AND WILL
11 HARDLY AT ALL EVEN CHARACTERIZE THE EVIDENCE. YOU ARE GOING
12 TO SEE THAT AS WE PROCEED, IT WILL GO RATHER QUICKLY, WE
13 EXPECT TO BE FINISHED WITHIN TWO OR THREE DAYS. SO IT
14 SHOULD GO RATHER WELL.

15 THERE ARE A FEW THINGS THAT I THINK ARE
16 IMPORTANT. YOU GET THE GRAND JURY INSTRUCTIONS GENERALLY
17 AFTER THE EVIDENCE AND AFTER EVERYTHING IS IN, WITH THE
18 ARGUMENTS AND SO FORTH, BUT THERE ARE A COUPLE THAT I THINK
19 WILL BE IMPORTANT TO BRING TO YOUR ATTENTION AT THIS POINT.

20 AND WHAT I WOULD LIKE TO DO IS REFER YOU TO GRAND
21 JURY INSTRUCTION NUMBER 7 TO START WITH. AND IN THIS
22 PARTICULAR CASE IT MAY TEND TO BE MORE IMPORTANT THAN SOME
23 OTHER CASES.

24 GRAND JURY INSTRUCTION NUMBER 7, AND I WILL READ
25 IT:

26 "YOU MUST DECIDE ALL QUESTIONS OF FACT

1 IN THIS CASE FROM THE EVIDENCE RECEIVED IN
2 THIS PROCEEDING AND NOT FROM ANY OTHER
3 SOURCE.

4 "YOU MUST NOT INDEPENDENTLY
5 INVESTIGATE THE FACTS OR THE LAW, OR
6 CONSIDER OR DISCUSS FACTS TO WHICH THERE IS
7 NO EVIDENCE. THIS MEANS, FOR EXAMPLE, THAT
8 YOU MUST NOT ON YOUR OWN VISIT THE SCENE,
9 CONDUCT EXPERIMENTS, OR CONSULT REFERENCE
10 WORKS OR PERSONS FOR ADDITIONAL INFORMATION.

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

16 THIS IS IMPORTANT, BECAUSE ANY OUTSIDE WORKS,
17 REFERENCES, THAT SORT OF THING, CAN CAUSE AN ERROR AND
18 RESULT IN A DISMISSAL OF THE CASE ON A 995 MOTION OR
19 SOMETHING. SO I JUST WANTED TO BRING YOUR ATTENTION TO
20 THAT, AND I KNOW EVERYBODY WILL OBSERVE THAT. BUT LIKE I
21 SAY, IN THIS PARTICULAR CASE IT IS KIND OF EASY TO WANT TO
22 DRIVE BY THE FULLERTON TRANSPORTATION CENTER AND TAKE A LOOK
23 AROUND AND MEASURE THINGS FOR YOURSELF AND THAT SORT OF
24 THING, AND WE ARE ASKING YOU NOT TO DO THAT, AND THE LAW
25 ASKS YOU NOT TO DO THAT.

26 IF IT BECOMES NECESSARY FOR SOME REASON FOR THE

1 GRAND JURY TO GO OUT THERE, THEN IT WOULD BE AS AN ENTIRE
2 BODY.

3 AND THE OTHER INSTRUCTION, GRAND JURY INSTRUCTION
4 NUMBER 8, VERY IMPORTANT AS WELL:

5 "STATEMENTS, COMMENTS, INSTRUCTIONS,
6 INFORMATION OR ADVICE MADE AND GIVEN TO YOU
7 BY THE COURT OR DISTRICT ATTORNEY, EITHER
8 ORALLY OR IN WRITING, ARE NOT EVIDENCE.
9 HOWEVER, YOU MUST FOLLOW THE LEGAL
10 INSTRUCTIONS AND APPLY THEM TO THE FACTS YOU
11 FIND TO BE TRUE."

12 SO TYPICALLY IN A TRIAL, A GRAND JURY PROCEEDING
13 OR ANY OTHER KIND OF HEARING, THE ATTORNEYS MAKE A LOT OF
14 STATEMENTS. AND TALK ABOUT THIS, TALK ABOUT THAT. BUT IT
15 IS THE EVIDENCE THAT YOU ARE SUPPOSED TO CONSIDER HERE, NOT
16 STATEMENTS AND COMMENTS OF THE ATTORNEYS.

17 SO EVEN QUESTIONS ARE NOT EVIDENCE. SO IF AN
18 ATTORNEY ASKS A QUESTION, AND MAYBE IT IS A LEADING QUESTION
19 AND THE ANSWER COMES OUT NOT AS EXPECTED OR SOMETHING, THE
20 QUESTION ISN'T EVIDENCE, IT IS ONLY IMPORTANT WHEN IT GIVES
21 MEANING TO THE ANSWER. SO I JUST THINK IT IS IMPORTANT TO
22 CONSIDER THAT. ALL RIGHT.

23 AND ANOTHER THING THAT IS IMPORTANT HERE IS GRAND
24 JURY INSTRUCTION NUMBER 2, AND THAT'S THE JOHNSON RULE. AND
25 I AM PRETTY SURE YOU ARE ALL FAMILIAR WITH THAT BY NOW. BUT
26 WHAT THAT SAYS BASICALLY, AND WHAT THE JOHNSON CASE AND NOW

1 THE CALIFORNIA LAW SAYS, THAT IT IS PRIMARILY, SINCE IT IS
2 THE PROSECUTION WHO HAS THE ABILITY AT THIS POINT TO DO THE
3 INVESTIGATION AND TO HAVE THE POLICE OUT THERE WORKING AND
4 HAVE ALL THESE RESOURCES, AND THE DEFENSE REALLY DOESN'T
5 HAVE ANY RESOURCE YET, SO THE JOHNSON RULE SAYS THAT IN
6 ORDER TO BE FAIR, IF THERE IS ANYTHING THAT MIGHT BE
7 EXCULPATORY, MIGHT BE BENEFICIAL TO THE DEFENDANT, THEN WE
8 HAVE A DUTY TO MAKE YOU AWARE OF THAT. AND TO PROVIDE IT,
9 AND IF YOU WANT TO HEAR THE WITNESS OR SEE ANY DOCUMENTS,
10 THEN YOU ARE ENTITLED TO DO THAT.

11 IF YOU THINK THAT ANY OF THAT OTHER EVIDENCE THAT
12 IS OUT THERE, AND WE ARE GOING TO MAKE YOU AWARE OF WHATEVER
13 IS THERE, IF YOU THINK THAT ANY OF THAT WOULD TEND TO
14 EXPLAIN AWAY THE CHARGES, THEN, PLEASE, YOU ARE REQUIRED TO
15 THEN ASK FOR THAT EVIDENCE AND TAKE A LOOK AT IT.

16 SO THOSE ARE IMPORTANT THINGS.

17 NOW, THE EVIDENCE IN THIS CASE, I HATE TO SAY IT
18 IS SELF EXPLANATORY, BUT IN A BIG WAY IT IS. AND THE MAJOR
19 PART OF THE EVIDENCE IN THIS CASE IS GOING TO BE THE
20 INCIDENT, THE VIDEO OF THE INCIDENT.

21 WHAT HAPPENED HERE JULY 5TH, 2011, ON THAT
22 EVENING THERE WAS A CALL IN TO THE FULLERTON POLICE
23 DEPARTMENT. AND THAT CALL IN WAS A LADY WHO SAID THAT,
24 WELL, THERE IS THIS GUY IN THE PARKING LOT, APPARENTLY
25 TRYING CAR DOORS. AND SO SHE CALLED THE POLICE, AND THEY
26 COME OUT AND SEE WHAT IS GOING ON. AND SHE DESCRIBED HIM AS

1 SOMEBODY SHIRTLESS WITH A BEARD, I THINK I KNOW THAT PART OF
2 THE DESCRIPTION FOR SURE, MAYBE SHE SAID HE WAS SMALL OR
3 SOMETHING, I DON'T RECALL THAT. BUT CERTAINLY BEARDED WITH
4 NO SHIRT ON.

5 SO THE POLICE, OFFICER RAMOS WAS THE FIRST TO
6 RESPOND, OFFICER WOLFE RESPONDED PRETTY MUCH ABOUT THE SAME
7 TIME AS OFFICER RAMOS, CAME IN SEPARATE CARS, SO THEY ARE
8 NOT -- THEY WERE NOT PARTNERS ON PATROL, BUT THEY WERE BOTH
9 PATROLLING THAT GENERAL AREA, AND THEY ARRIVED THERE IN
10 SEPARATE CARS. AND THEN THIS INCIDENT STARTED.

11 IT IS JUST ONE OF THESE INCIDENTS WHERE THE
12 POLICE ARE TALKING TO THIS INDIVIDUAL TO TRY TO FIND OUT
13 WHAT IS GOING ON, TO SEE WHAT HE IS DOING, AND IT GOES ON
14 FOR SOME TIME. THERE IS DISCUSSION. THERE IS TIT FOR TAT,
15 KIND OF SORT OF A LITTLE BATTLE OF WITS GOING ON. YOU WILL
16 SEE ALL THAT.

17 AND THEN IT JUST ESCALATES. IT STARTS AS JUST AN
18 INFORMAL, PRETTY MUCH KIND OF DETENTION OF THIS PERSON,
19 KELLY THOMAS, AND IT GOES ON FOR, I DON'T KNOW, 18 OR 20
20 MINUTES, WHERE THEY ARE JUST TALKING.

21 AND THEN IT CHANGES. OFFICER WOLFE IS LOOKING
22 THROUGH A BACKPACK THAT KELLY THOMAS HAD HAD ON, THAT HE
23 VOLUNTARILY GAVE UP SO THEY COULD SEARCH, AND FOUND SOME
24 MAIL IN THERE THAT DIDN'T APPARENTLY BELONG TO KELLY THOMAS.
25 AND THEN FIGURED IT WAS STOLEN. AND SO THEN SUGGESTED TO
26 RAMOS, OR STATED TO RAMOS, BOY, I AM THINKING ABOUT 496.

1 496 IS RECEIVING STOLEN PROPERTY. AND SO THEY KIND OF HAD
2 THAT LITTLE DISCUSSION.

3 AND THEN OFFICER RAMOS REAPPROACHED KELLY THOMAS,
4 WHO WAS STILL SITTING WHERE HE HAD BEEN PLACED BASICALLY BY
5 OFFICER RAMOS. AND THE TENOR CHANGED AT THAT POINT. AND
6 OFFICER RAMOS BECAME ANGRY RATHER QUICKLY, AND EVERYTHING
7 ESCALATED. AND IT WENT INTO A VIOLENT CONFRONTATION THAT
8 RESULTED IN THE DEATH OF KELLY THOMAS. AND I DON'T WANT TO
9 TRY TO CHARACTERIZE THE DETAILS OF THAT, YOU ARE GOING TO
10 SEE THOSE AS WE PROCEED.

11 OTHER WITNESSES WILL HAVE TO DO WITH THE
12 FOUNDATION TO ALLOW, TO MAKE THE VIDEO ADMISSIBLE AND THE
13 SOUND ADMISSIBLE.

14 AND BASICALLY WHAT HAPPENS IS, OVER THERE AT THE
15 FULLERTON TRANSPORTATION CENTER WHERE THIS OCCURRED, A
16 DISTANCE AWAY, NOT THAT FAR AWAY, THERE WAS A CAMERA THAT
17 SURVEILLED THAT PARKING LOT AND THAT AREA. AND THAT CAMERA
18 CAN BE CONTROLLED, THE DIRECTION OF IT CAN BE CONTROLLED
19 FROM THE FULLERTON POLICE DEPARTMENT BY THE WATCH COMMANDER
20 AT THE FULLERTON POLICE DEPARTMENT.

21 AND YOU CAN SEE THAT AS THE INCIDENT STARTED THAT
22 THE CAMERA WAS, THE ATTENTION OF THE PERSON WAS CAUGHT, AND
23 THEN THAT PERSON WAS BEING FOLLOWING BASED ON THAT CAMERA.
24 AND YOU CAN KIND OF SEE IT GOING IN LIKE THAT, AND WHEN HE
25 LOSES THE PICTURE, HE GETS IT BACK. YOU CAN SEE MOST OF THE
26 INCIDENT.

1 BUT THERE ARE SOME THINGS YOU CAN'T SEE. THERE
2 IS A TIME WHEN IT GOES BEHIND SOME BUSHES, YOU CAN HEAR
3 EVERYTHING AT THAT POINT, AT LEAST YOU CAN HEAR A LOT, BUT
4 YOU CAN'T SEE EVERYTHING. BUT I THINK YOU WILL SEE ENOUGH
5 TO HAVE A VERY CLEAR PICTURE OF WHAT OCCURRED.

6 NOW, THERE IS SOUND, THE SOUND COMES FROM WHAT
7 ARE CALLED D.A.R.'S OR DIGITAL AUDIO RECORDERS THAT THE
8 POLICE WEAR. AND THE INDIVIDUAL POLICE OFFICERS HAVE THESE
9 DIGITAL AUDIO RECORDERS. AND THEY CAN TURN THOSE ON, THEY
10 CAN TURN THEM OFF. AND GENERALLY THE IDEA IS THEY ARE
11 SUPPOSED TO TURN THEM ON WHEN THERE IS AN INCIDENT OR
12 INTERVIEW, OR WHEN THEY ARE CONDUCTED BUSINESS THEY ARE
13 SUPPOSED TO TURN THESE ON.

14 SO WHAT HAS TAKEN PLACE HERE IS THAT WE HAVE
15 TAKEN THESE D.A.R.'S OR DIGITAL AUDIO RECORDERS OF THE
16 INDIVIDUAL POLICE OFFICERS, AND PUT THOSE TOGETHER WITH THE
17 VIDEO, AND VERY PAINSTAKENLY. SO THAT WAS DONE. WE WILL
18 HAVE TESTIMONY AS TO HOW THAT WAS DONE.

19 AND THERE IS A TRANSCRIPT OF ALL OF THE
20 CONVERSATION THAT TAKES PLACE, AND WE WILL HAVE TESTIMONY AS
21 TO HOW THAT WAS DONE, SO YOU CAN SEE WHAT WAS DONE TO
22 DEVELOP THIS EVIDENCE SO THAT IT COULD BE VIEWED BY YOURSELF
23 OR BY ANOTHER TRIER OF FACT.

24 THE ADDITIONAL EVIDENCE WILL HAVE THEN TO DO WITH
25 THE INJURIES, ALL THE INJURIES THAT HAPPENED TO MR. THOMAS
26 DURING THIS INCIDENT, AND THAT RESULTED IN HIS DEATH.

1 AND SO WE WILL HAVE AN AUTOPSY SURGEON TESTIFY
2 CONCERNING THAT. THE EMERGENCY, THE DOCTOR IN CHARGE OF THE
3 EMERGENCY ROOM AT U.C.I. WILL TESTIFY AS TO WHAT HE HAD WHEN
4 KELLY THOMAS ARRIVED AT U.C.I.

5 AND THE CASE IS GOING TO BE -- AND WE WILL ALSO
6 HAVE AN EXPERT ON POLICE USE OF FORCE. AND THIS IS
7 DR. MCNAMARA. AND YOU WILL SEE FROM HIS CREDENTIALS THAT HE
8 HAS BEEN INVOLVED IN POLICE WORK FOR A VERY LONG TIME. HE
9 WAS A POLICE OFFICER IN NEW YORK, AND A POLICE CHIEF IN
10 KANSAS CITY, A POLICE CHIEF IN SAN JOSE, AND HE IS A PH.D.
11 NOW HE IS CONNECTED AND WORKS WITH THE HOOVER, THE STANFORD
12 HOOVER INSTITUTE.

13 AND HIS TESTIMONY WILL BE OFFERED FOR YOU TO
14 CONSIDER IN REVIEWING THE QUESTIONS ABOUT THE LAWFUL OR
15 UNLAWFUL USE OF FORCE BY POLICE. AND THAT'S WHAT THIS IS
16 ALL ABOUT. THIS IS ALL ABOUT DID THE POLICE, UNDER ALL THE
17 CIRCUMSTANCES IN THIS CASE, USE UNLAWFUL, UNREASONABLE FORCE
18 AGAINST KELLY THOMAS WHICH RESULTED IN HIS DEATH?

19 AND THE STANDARD THAT I WILL TELL YOU, JUST IN
20 GENERAL, WHAT IS UNREASONABLE, UNLAWFUL POLICE FORCE, WHAT
21 IS IT? DO THE POLICE HAVE THE RIGHT TO USE WHATEVER FORCE
22 IN ANY SITUATION? I MEAN THEY DON'T, THERE IS SOME LIMIT TO
23 THE FORCE THAT THE POLICE CAN USE.

24 AND THE LAW REALLY LAYS THAT DOWN PRETTY MUCH IN
25 LAY TERMS. YOU KNOW, IT IS THE FORCE THAT IS REASONABLY
26 NECESSARY FOR THE POLICE TO DO THEIR OFFICIAL DUTY. A

1 POLICE OFFICER ACTING IN HIS OFFICIAL CAPACITY, IS SOMETHING
2 TAKING PLACE THAT REQUIRES HIM TO USE FORCE, AND IF SO, IS
3 THE FORCE THAT HE USES REASONABLE UNDER ALL THE
4 CIRCUMSTANCES?

5 AND SOME OF THE CASE LAW, THE MAJOR CASE IN THAT
6 GIVES CERTAIN STANDARDS TO TAKE A LOOK AT, THIS IS THE
7 GRAHAM CASE, AND IT IS USED PRETTY MUCH UNIVERSALLY IN THIS
8 AREA. BUT IT SAYS THE STANDARDS TO LOOK TO IN MAKING THIS
9 DETERMINATION ARE:

10 THE SEVERITY OF THE SUSPECTED CRIME AT ISSUE.

11 WHAT KIND OF CRIME ARE WE TALKING ABOUT.

12 WHETHER OR NOT THE SUSPECT POSES AN IMMEDIATE
13 THREAT TO THE SAFETY OF THE OFFICERS OR TO OTHERS.

14 WHETHER THE SUSPECT IS ACTIVELY RESISTING ARREST
15 OR ATTEMPTING TO EVADE ARREST BY FLIGHT AT THE TIME.

16 AND THE SUSPECT'S MENTAL ILLNESS, WHEN THAT MIGHT
17 BE APPARENT.

18 BUT THESE ARE JUST ALL KIND OF STANDARDS TO TRY
19 TO HELP A JURY, OR TRY TO HELP A TRIER OF FACT TO SORT OF
20 LOOK AT ALL THE CIRCUMSTANCES OF THE CASE AND JUST MAKE A
21 DETERMINATION, IS THIS A REASONABLE USE OF FORCE, OR IS IT
22 EXCESSIVE FORCE?

23 AND THAT'S REALLY THE BOTTOM LINE, THAT'S WHAT
24 YOU ARE GOING TO HAVE TO DECIDE. AND I WILL BE ASKING YOU
25 NOT TO TRY TO DECIDE IT JUST BASED ON ONE ACT, BUT TO LOOK
26 AT EVERYTHING, THE CUMULATIVE, THE WHOLE SERIES OF ACTS, THE

1 ENTIRE CONSTELLATION OF BEHAVIOR, BECAUSE THAT'S HOW WE HAVE
2 TO LOOK AT THINGS AND VIEW THEM.

3 NOW, WE ARE GOING TO DIVIDE UP THESE WITNESSES A
4 LITTLE BIT IN ORDER TO MAKE THIS PRESENTATION AS WELL
5 ORGANIZED AS WE CAN.

6 AND I WANTED TO TELL YOU ABOUT JOHNSON, JUST TO
7 MAKE SURE THAT YOU HAVE, THAT YOUR ATTENTION IS BROUGHT TO
8 ALL THAT EVIDENCE THAT WE KNOW OF, WE ARE GOING TO HAVE
9 KEITH BOGARDUS, AND I FORGOT TO TELL YOU, GOOD MORNING, TONY
10 RACKAUCKAS FOR THE PEOPLE, AND I AM HERE WITH SENIOR
11 ASSISTANT JIM TANIZAKI AND ASSISTANT KEITH BOGARDUS.

12 MR. TANIZAKI: GOOD MORNING.

13 MR. BOGARDUS: GOOD MORNING, LADIES AND GENTLEMEN.

14 MR. RACKAUCKAS: AND KEITH BOGARDUS AT SOME POINT
15 BEFORE THIS IS OVER, HE IS GOING TO DELINEATE IN DETAIL ALL
16 OF THESE ITEMS THAT WE NEED TO BRING YOUR ATTENTION TO THAT
17 YOU MIGHT WANT TO CONSIDER. THAT MIGHT, MIGHT HAVE SOME
18 TENDENCY TO BENEFIT THE DEFENSE, IF IT WAS PRESENTED TO YOU.
19 SO YOU WILL LOOK AT THAT.

20 SO THE WAY WE ARE DIVIDING THESE WITNESSES UP,
21 THE FIRST WITNESS, DAWN SCRUGGS FROM THE FULLERTON POLICE
22 DEPARTMENT, WILL BE EXAMINED BY JIM TANIZAKI.

23 AND THEN THE NEXT FOUR WITNESSES, THE NEXT TWO,
24 THREE, FOUR, FIVE AND SIX, EXCUSE ME, I CAN'T COUNT, THE
25 NEXT FIVE WITNESSES, AND THOSE WILL BE KAREN KOBAYASHI, DANA
26 HUFFMAN, CESAR NAVARRO, GARY SIRIN, AND MICHAEL CHOCEK,

1 THE GRAND JURY FOREPERSON: MR. DISTRICT ATTORNEY, THE
2 WITNESS IS YOURS.

3 MR. BOGARDUS: JUST INITIALLY FOR PURPOSES OF THE
4 RECORD, WE ARE GOING TO MARK THE FIRST 73 EXHIBITS.

5 (FOR I.D. = GRAND JURY EXHIBIT 1)

6 MR. BOGARDUS: EXHIBIT NUMBER 1 IS THE GRAND JURY MEMO.

7 EXHIBIT NUMBER 2 THROUGH 73 CAN BE DESCRIBED
8 COLLECTIVELY RIGHT NOW AS PHOTOGRAPHS. AND THOSE WILL BE
9 FURTHER DESCRIBED NOW WITH THE TESTIMONY OF MS. SCRUGGS.
10 THANK YOU.

11 EXAMINATION

12 Q. BY MR. TANIZAKI: GOOD MORNING, MS. SCRUGGS.

13 A. GOOD MORNING.

14 Q. BEFORE WE BEGIN I WOULD LIKE TO ADVISE YOU THAT
15 YOU ARE NOW APPEARING BEFORE A DULY CONSTITUTED GRAND JURY
16 THAT IS INVESTIGATING POSSIBLE VIOLATIONS OF STATE CRIMINAL
17 LAW.

18 DO YOU UNDERSTAND THAT?

19 A. YES, SIR.

20 Q. YOU HAVE BEEN PLACED UNDER OATH. THAT MEANS YOUR
21 TESTIMONY HERE TODAY HAS THE SAME FORCE AND EFFECT AS IF YOU
22 WERE IN A COURT OF LAW.

23 DO YOU UNDERSTAND THAT?

24 A. YES, SIR.

25 Q. THAT MEANS THAT YOU HAVE AN OBLIGATION TO TELL
26 THE TRUTH AND NOTHING BUT THE TRUTH IN THIS PROCEEDING, OR

1 YOU COULD SUBJECT YOURSELF TO A POSSIBLE PROSECUTION FOR
2 PERJURY.

3 DO YOU UNDERSTAND THAT?

4 A. YES, SIR.

5 Q. THANK YOU.

6 MS. SCRUGGS, FOR WHOM ARE YOU EMPLOYED?

7 A. EMPLOYED BY FULLERTON POLICE DEPARTMENT.

8 Q. AND HOW LONG HAVE YOU BEEN EMPLOYED BY THE
9 FULLERTON POLICE DEPARTMENT?

10 A. ABOUT 14 YEARS NOW.

11 Q. AND LET'S START WITH WHEN YOU WERE FIRST EMPLOYED
12 WITH FULLERTON POLICE DEPARTMENT 14 YEARS AGO, WHAT WAS YOUR
13 CAPACITY OR ASSIGNMENT?

14 A. I WAS A POLICE DISPATCHER.

15 Q. WHAT ARE THE DUTIES OF A POLICE DISPATCHER?

16 A. I RECEIVE NON-EMERGENCY AND EMERGENCY PHONE CALLS
17 FOR SERVICE, AND WE DISPATCH THE POLICE DEPARTMENT.

18 Q. LET ME GET THE MICROPHONE FOR YOU.

19 A. OKAY.

20 MR. TANIZAKI: DO WE NEED TO GO OVER THAT AGAIN; DID
21 YOU HEAR IT? ME LOUDER?

22 A GRAND JUROR: START OVER.

23 MR. TANIZAKI: OKAY. LET'S START OVER.

24 Q. BY MR. TANIZAKI: FOR WHOM ARE YOU EMPLOYED?

25 A. EMPLOYED BY THE FULLERTON POLICE DEPARTMENT.

26 IT IS LOUDER NOW, LET ME BACK IT UP A LITTLE BIT.

1 Q. AND HOW LONG HAVE YOU BEEN EMPLOYED BY THE
2 FULLERTON POLICE DEPARTMENT?

3 A. I HAVE BEEN WITH THE FULLERTON POLICE DEPARTMENT
4 FOR OVER 14 YEARS.

5 Q. AND WHAT WAS YOUR FIRST ASSIGNMENT WITH THE
6 FULLERTON POLICE DEPARTMENT?

7 A. POLICE DISPATCHER.

8 Q. AND WHAT IS A POLICE DISPATCHER?

9 A. A POLICE DISPATCHER, WE WILL WE ANSWER 911
10 EMERGENCY CALLS AND NON-EMERGENCY CALLS FOR SERVICE, AND WE
11 DISPATCH THE POLICE OFFICERS TO VARIOUS LOCATIONS TO ASSIST
12 CITIZENS.

13 Q. HOW LONG WERE YOU A POLICE DISPATCHER?

14 A. WITH FULLERTON FOR FIVE YEARS, BUT PRIOR TO THAT
15 I WAS A DISPATCHER, FIRE AND POLICE DISPATCHER FOR EIGHT
16 YEARS.

17 Q. NOW, AFTER THE FIVE YEARS OF DISPATCHING FOR THE
18 FULLERTON POLICE DEPARTMENT, DID YOU CHANGE ASSIGNMENTS?

19 A. YES, I DID.

20 Q. AND TO WHAT ASSIGNMENT DID YOU GO TO?

21 A. FORENSIC SPECIALIST.

22 Q. AND WHAT IS A FORENSIC SPECIALIST?

23 A. CRIME SCENE INVESTIGATOR.

24 Q. WHAT IS A CRIME SCENE INVESTIGATOR'S DUTIES?

25 A. AT THE REQUEST OF AN OFFICER, WE RESPOND TO A
26 CRIME SCENE TO DOCUMENT THE SCENE WITH PHOTOGRAPHS OR

1 FINGERPRINTS, VIDEOTAPE, DIAGRAMS, SO OUR JOB IS TO MERELY
2 IDENTIFY EVIDENCE, DOCUMENT IT, AND PRESERVE THE EVIDENCE.

3 Q. AND PLEASE DESCRIBE FOR US YOUR TRAINING WITH
4 RESPECT TO BEING A CRIME SCENE INVESTIGATOR.

5 A. WELL, INITIALLY I WAS SENT TO A TWO-WEEK CRIME
6 SCENE INVESTIGATION FIELD TECHNICIAN COURSE. IT COVERED ALL
7 THE BASIC DUTIES OF CRIME SCENE INVESTIGATORS.

8 I TOOK PHOTOGRAPHY CLASSES AND FINGERPRINT
9 COURSES IN SACRAMENTO WITH THE F.B.I.

10 AND I SPENT SEVERAL YEARS IN COLLEGE LEARNING THE
11 BASICS OF FORENSIC TECHNOLOGY.

12 Q. AND HOW MANY CRIME SCENES HAVE YOU PROCESSED WITH
13 THE CITY OF FULLERTON?

14 A. (NO RESPONSE).

15 Q. APPROXIMATELY?

16 A. SEVERAL THOUSAND.

17 Q. SEVERAL THOUSAND?

18 A. YES, LOTS. I HAVE BEEN THERE FOR NINE YEARS NOW.

19 Q. AND ON JULY 5TH, 2011, WERE YOU DISPATCHED TO 123
20 SOUTH POMONA IN THE CITY OF FULLERTON, THE COUNTY OF ORANGE,
21 WHICH IS REALLY THE FULLERTON TRANSPORTATION CENTER?

22 A. I WAS NOT ORIGINALLY DISPATCHED TO THAT SCENE,
23 BUT I DID RESPOND TO THE SCENE.

24 Q. AND ABOUT WHAT TIME DID YOU ARRIVE AT THE SCENE?

25 A. I ARRIVED AT THE SCENE AT 9:15 P.M.

26 Q. AND UPON ARRIVAL, WHAT DID YOU DO?

1 A. AFTER I ARRIVED TO THE SCENE, I GOT OUT OF MY
2 WORK TRUCK AND WALKED OVER TO THE AREA WHERE MR. THOMAS WAS,
3 AND SEVERAL OFFICERS AND THE FIRE DEPARTMENT. AND JUST
4 STOOD BY UNTIL THEY TRANSPORTED MR. THOMAS TO THE HOSPITAL.
5 AND I BEGAN JUST SPEAKING WITH THE OTHER OFFICERS ABOUT WHAT
6 HAPPENED.

7 Q. ALL RIGHT. NOW, APPROXIMATELY WHAT TIME DID YOU
8 ACTUALLY START YOUR CRIME SCENE INVESTIGATION PROCESSING?

9 A. AT ABOUT 10:30 P.M.

10 Q. AND WHAT WAS TAKING PLACE BETWEEN 9:15 AND 10:30,
11 OTHER THAN TALKING WITH POLICE OFFICERS THAT YOU HAVE
12 DESCRIBED PREVIOUSLY?

13 A. WELL, I STOOD BY SO MY SERGEANT AND THE WATCH
14 COMMANDER AND LIEUTENANTS, OR WHOEVER ELSE WAS INVOLVED,
15 COULD DETERMINE WHO WOULD BE HANDLING THE CRIME SCENE.

16 Q. AND ABOUT WHAT TIME WERE YOU AUTHORIZED TO START
17 THE PROCESSING OF THE CRIME SCENE?

18 A. 10:30 P.M.

19 Q. AND WHAT DID YOU DO FIRST IN THE PROCESSING OF
20 THE CRIME SCENE?

21 A. WELL, I SPOKE WITH THE OFFICERS THAT WERE
22 INVOLVED, OFFICER WOLFE, OFFICER RAMOS, AND HAD THEM WALK ME
23 THROUGH THE SCENE SO I WOULD KNOW WHERE TO BEGIN TO
24 DOCUMENT.

25 Q. OKAY. AND AFTER THAT, WHAT DID YOU DO?

26 A. I BEGAN TAKING PHOTOGRAPHS OF THE --

1 Q. YOU ARE GOING TO BE LOOKING I BELIEVE AT
2 SOMETHING RIGHT NOW TO REFRESH YOUR RECOLLECTION?

3 A. YES, MY POLICE REPORT AND MY NOTES, I JUST WANTED
4 TO BE CORRECT WITH MY ANSWERS.

5 Q. WITH RESPECT TO YOUR NOTES, IS THAT SOMETHING YOU
6 HAD ACTUALLY PREPARED IN ADVANCE OF A POLICE REPORT
7 SPECIFICALLY?

8 A. YES, SIR.

9 Q. PLEASE GO AHEAD.

10 A. (WITNESS COMPLIES).

11 INITIALLY AFTER BEING WALKED THROUGH THE CRIME
12 SCENE, I WAS ASKED TO PHOTOGRAPH A TASER, WHICH I DID.

13 Q. AND THEN AFTER THAT, WHAT DID YOU DO?

14 A. I BEGAN TO PHOTOGRAPH OFFICER WOLFE AND HIS
15 INJURIES.

16 Q. AFTER THAT WHAT DID YOU DO?

17 A. (NO RESPONSE).

18 Q. I AM GOING TO HAVE YOU JUST FOR THE RECORD JUST
19 INDICATE THAT YOU ARE REFRESHING YOUR MEMORY WITH A LOOK AT
20 YOUR POLICE REPORT.

21 A. ABSOLUTELY, YES, I AM REFERRING TO MY NOTES.

22 AND AFTER THAT I BEGAN TAKING PICTURES OF OFFICER
23 RAMOS AND HIS INJURIES AS WELL.

24 Q. AND AFTER YOU TOOK THE PHOTOGRAPHS OF THE
25 INJURIES OF THE OFFICERS, WHAT DID YOU DO NEXT?

26 A. THEN I BEGAN TO TAKE OVERALL AND CLOSEUP PICTURES

1 OF THE ACTUAL CRIME SCENE, BEGINNING FIRST AREA OF CONTACT
2 TO THE FINAL POINT OF REST.

3 MR. TANIZAKI: LET ME HAVE YOU LOOK AT THE MONITOR IN
4 FRONT OF YOU.

5 (FOR I.D. = GRAND JURY EXHIBIT 2)

6 Q. BY MR. TANIZAKI: DO YOU SEE SOMETHING IN FRONT OF
7 YOU ON THE MONITOR WHICH IS MARKED GRAND JURY EXHIBIT NUMBER
8 2.

9 A. YES, SIR.

10 Q. DO YOU RECOGNIZE WHAT IS DEPICTED IN GRAND JURY
11 EXHIBIT NUMBER 2?

12 A. YES, I DO.

13 Q. WHAT IS THAT?

14 A. THIS IS THE BUS DEPOT, THE TRAIN STATION AREA.
15 THIS IS THE AREA WHERE THE INITIAL AND FINAL CONTACT WAS
16 MADE WITH MR. THOMAS.

17 Q. AND DOES THIS EXHIBIT LOOK LIKE IT IS AN AERIAL
18 VIEW OF THAT AREA?

19 A. YES, IT IS.

20 Q. AND EVEN THOUGH THAT APPEARS TO BE A DAYTIME
21 PHOTOGRAPH, DOES THAT ACCURATELY DEPICT THE AREA OF THIS
22 PARTICULAR INCIDENT?

23 A. YES, IT DOES.

24 (FOR I.D. = GRAND JURY EXHIBIT 3)

25 Q. BY MR. TANIZAKI: LET ME SHOW YOU WHAT IS NOW
26 PREVIOUSLY MARKED AS GRAND JURY EXHIBIT NUMBER 3; WHAT IS

1 THAT?

2 A. THIS IS JUST A FURTHER BACK PICTURE OF THE VIEW
3 OF THE TRAIN STATION AND THE BUS DEPOT AND THE BARS.

4 Q. AND THAT ALSO IS A FAIR AND ACCURATE DEPICTION OF
5 THE AREA?

6 A. YES, IT IS.

7 (FOR I.D. = GRAND JURY EXHIBIT 4)

8 Q. BY MR. TANIZAKI: SHOWING YOU GRAND JURY EXHIBIT
9 NUMBER 4; WHAT IS THAT?

10 A. IT IS A CLOSER SHOT OF AN AERIAL VIEW OF THE
11 SCENE.

12 Q. IS THAT ALSO A FAIR AND ACCURATE DEPICTION OF THE
13 SCENE FROM AN AERIAL STANDPOINT?

14 A. YES, IT IS.

15 (FOR I.D. = GRAND JURY EXHIBIT 5)

16 Q. BY MR. TANIZAKI: SHOWING YOU GRAND JURY EXHIBIT
17 NUMBER 5; WHAT IS THAT?

18 A. THAT IS A GROUND LEVEL PHOTOGRAPH FACING IN THE
19 NORTHEAST DEPICTING THE BUS DEPOT.

20 Q. AND IS THAT ALSO REPRESENTED IN A FAIR AND
21 ACCURATE WAY?

22 A. YES, SIR.

23 (FOR I.D. = GRAND JURY EXHIBIT 6)

24 Q. BY MR. TANIZAKI: GRAND JURY NUMBER 6; WHAT IS
25 THAT?

26 A. THIS IS ALSO A GROUND LEVEL PHOTOGRAPH FACING

1 EASTBOUND.

2 Q. IS THAT ALSO A FAIR AND ACCURATE DEPICTION OF THE
3 AREA THAT YOU WALKED THROUGH AND PROCESSED?

4 A. YES, SIR.

5 (FOR I.D. = GRAND JURY EXHIBIT 7)

6 Q. BY MR. TANIZAKI: GRAND JURY EXHIBIT NUMBER 7; WHAT
7 IS THAT?

8 A. THIS IS AN OVERALL GROUND LEVEL VIEW FACING
9 SOUTHBOUND SHOWING THE BUS DEPOT.

10 Q. IS THAT ALSO REPRESENTED IN A FAIR AND ACCURATE
11 WAY?

12 A. YES, SIR.

13 (FOR I.D. = GRAND JURY EXHIBIT 8)

14 Q. BY MR. TANIZAKI: GRAND JURY EXHIBIT NUMBER 8?

15 A. YES.

16 Q. WHAT IS THAT?

17 A. THIS IS A GROUND LEVEL PHOTOGRAPH OF THE BUS
18 DEPOT FACING IN A SOUTHWESTERN DIRECTION.

19 Q. IS THAT ALSO A FAIR AND ACCURATE DEPICTION OF
20 THAT AREA?

21 A. YES, IT IS.

22 (FOR I.D. = GRAND JURY EXHIBIT 9)

23 Q. BY MR. TANIZAKI: GRAND JURY EXHIBIT 9; WHAT IS
24 THAT?

25 A. THIS IS A DIAGRAM THAT I CREATED FROM THE CRIME
26 SCENE THAT NIGHT.

1 Q. AND LET'S TAKE A LOOK AT THE DIAGRAM, AND MORE
2 SPECIFICALLY, DO YOU SEE WHAT IS REPRESENTED, THERE IS A
3 NUMBER 802; WHAT DOES THAT REPRESENT?

4 A. 802 IS A POLICE CAR THAT WAS PARKED IN THE
5 DRIVEWAY OF THE BUS DEPOT, AND IT WAS FACING NORTHBOUND AT
6 THE TIME.

7 Q. AND HOW ABOUT 807?

8 A. THAT IS ANOTHER POLICE CAR PARKED WEST OF 802,
9 AND IT IS FACING SOUTHBOUND.

10 Q. OKAY. YOU HAVE ALSO TRIANGULAR MARKERS ALSO ON
11 THE DIAGRAM; WHAT DO THESE REPRESENT?

12 A. THOSE REPRESENT THE NUMBERS OF THE ITEMS OF
13 EVIDENCE THAT I MARKED.

14 Q. AND THEN THERE ARE OTHER POLICE CARS THAT ARE
15 MARKED WITH OTHER NUMBERS, ARE THOSE PLACED WHERE YOU FOUND
16 THEM, AS FAR AS YOUR CRIME SCENE THAT PARTICULAR NIGHT?

17 A. YES, SIR.

18 Q. AND CAR NUMBER 802 AND 807 WERE ALSO DEPICTED IN
19 THE SAME FASHION?

20 A. YES, SIR.

21 Q. IS THIS DIAGRAM A FAIR AND ACCURATE DEPICTION OF
22 THE CRIME SCENE AND THE ITEMS THAT YOU HAVE PUT ON THE
23 DIAGRAM; IS THAT FAIRLY DEPICTED THERE?

24 A. YES, SIR.

25 (FOR I.D. = GRAND JURY EXHIBIT 10)

26 Q. BY MR. TANIZAKI: GRAND JURY EXHIBIT NUMBER 10; YOU

1 RECOGNIZE THAT?

2 A. YES, I DO.

3 Q. IS THIS A PHOTOGRAPH THAT YOU ACTUALLY TOOK?

4 A. YES, IT IS.

5 Q. AND WHAT DOES THAT DEPICT?

6 A. THIS IS A GROUND LEVEL PICTURE OF AN OVERALL SHOT
7 OF THE SCENE FACING SOUTHBOUND, DOCUMENTING THE POLICE CARS
8 AND THEIR POSITIONS.

9 Q. THIS PHOTOGRAPH WOULD HAVE BEEN ACTUALLY TAKEN
10 SOMETIME AFTER 10:30?

11 A. YES, SIR.

12 Q. AS OPPOSED TO ACTUALLY THE PREVIOUS PHOTOGRAPHS,
13 WERE WHICH TAKEN LATER DURING THE DAYTIME?

14 A. YES, SIR.

15 Q. NOW, WITH RESPECT TO THE TWO POLICE CARS THAT ARE
16 REPRESENTED IN GRAND JURY EXHIBIT NUMBER 10, IS THE POLICE
17 CAR TO YOUR LEFT, IS THAT THE POLICE CAR THAT YOU
18 REPRESENTED AS 802, I BELIEVE, IN YOUR DIAGRAM?

19 A. YES, SIR.

20 Q. AND THE POLICE CAR TO THE RIGHT, IS THAT POLICE
21 CAR DEPICTED AS NUMBER 807?

22 A. YES, SIR.

23 (FOR I.D. = GRAND JURY EXHIBIT 11)

24 Q. BY MR. TANIZAKI: LET ME SHOW YOU WHAT IS MARKED
25 GRAND JURY EXHIBIT NUMBER 11; TELL US IF YOU RECOGNIZE THAT
26 PHOTOGRAPH?

1 A. YES, I DO.

2 Q. WHAT DOES THAT DEPICT?

3 A. THIS WAS AN OVERALL SHOT SHOWING THE CURB AREA
4 WHERE THE INITIAL CONTACT WAS WITH MR. THOMAS.

5 Q. OKAY. AND THAT WAS RELAYED TO YOU BY THE
6 OFFICERS INVOLVED IN THIS PARTICULAR SITUATION, RIGHT?

7 A. YES, SIR.

8 Q. SO YOU JUST TOOK A PHOTOGRAPH OF THAT AREA?

9 A. ABSOLUTELY.

10 Q. AGAIN, THAT AREA, IS THAT FAIRLY AND ACCURATELY
11 DEPICTED BY YOUR PHOTOGRAPH?

12 A. YES.

13 (FOR I.D. = GRAND JURY EXHIBIT 12)

14 Q. BY MR. TANIZAKI: GRAND JURY EXHIBIT NUMBER 12;
15 WHAT IS THAT?

16 A. SAME IDEA, TAKING A PICTURE OF THE AREA WHERE HE
17 WAS INITIALLY CONTACTED, GIVING A DIFFERENT VIEW, AND THAT
18 IS FACING SOUTHEAST.

19 Q. IS THAT FAIRLY AND ACCURATELY DEPICTED IN THAT
20 PHOTOGRAPH?

21 A. YES.

22 Q. HOW IT LOOKED THAT PARTICULAR NIGHT?

23 A. YES, SIR.

24 (FOR I.D. = GRAND JURY EXHIBIT 13)

25 Q. BY MR. TANIZAKI: GRAND JURY EXHIBIT NUMBER 13;
26 WHAT IS THAT?

1 A. THAT IS THE ACTUAL CURB AREA WHERE THE INITIAL
2 CONTACT WAS MADE WITH MR. THOMAS.

3 Q. THE POLICE CAR, IS THAT CAR NUMBER 802 IN YOUR
4 DIAGRAM?

5 A. YES, SIR.

6 Q. DOES THAT PHOTOGRAPH ALSO FAIRLY AND ACCURATELY
7 DEPICT THAT AREA ON THE NIGHT YOU PROCESSED THIS?

8 A. YES, SIR.

9 (FOR I.D. = GRAND JURY EXHIBIT 14)

10 Q. BY MR. TANIZAKI: GRAND JURY EXHIBIT NUMBER 14;
11 WHAT IS THAT?

12 A. THIS IS AN OVERALL VIEW OF THE BLOOD STAIN ON THE
13 GROUND ON THE WEST SIDE OF THE DRIVEWAY.

14 Q. AND THE POLICE CAR THAT HAS THE, WHAT APPEARS TO
15 BE EITHER THE PARKING OR BRIGHT LIGHTS ON, IS THAT THE CAR
16 REPRESENTED 807 IN YOUR DIAGRAM?

17 A. YES, SIR.

18 Q. AND YOU HAD DESCRIBED A BLOOD AREA IN THAT
19 PHOTOGRAPH?

20 A. YES, SIR.

21 Q. OKAY. AND THIS AREA AGAIN FAIRLY AND ACCURATELY
22 DEPICTED WHAT YOU SAW THE NIGHT YOU PROCESSED THE CRIME
23 SCENE?

24 A. YES, SIR.

25 (FOR I.D. = GRAND JURY EXHIBIT 15)

26 Q. BY MR. TANIZAKI: GRAND JURY EXHIBIT NUMBER 15;

1 WHAT IS THAT?

2 A. THAT'S AN OVERALL SHOT, GROUND LEVEL OF THE BLOOD
3 STAINED GROUND NEXT TO UNIT 807.

4 Q. THAT PHOTOGRAPH, IS THAT A FAIR AND ACCURATE
5 DEPICTION OF THAT PARTICULAR AREA OF THE NIGHT THAT YOU SAW
6 IT?

7 A. YES, SIR.

8 (FOR I.D. = GRAND JURY EXHIBIT 16)

9 Q. BY MR. TANIZAKI: GRAND JURY EXHIBIT NUMBER 16;
10 WHAT IS THAT?

11 A. THIS IS A CLOSER SHOT OF THE BLOOD STAINED AREA
12 NEXT TO UNIT 807.

13 Q. IS THAT ALSO A FAIR AND ACCURATE DEPICTION OF
14 THAT AREA AS YOU SAW IT IS THAT NIGHT?

15 A. YES.

16 (FOR I.D. = GRAND JURY EXHIBIT 17)

17 Q. BY MR. TANIZAKI: GRAND JURY EXHIBIT NUMBER 17;
18 WHAT IS THAT?

19 A. A CLOSEUP SHOT OF THE BLOOD STAINED AREA NEXT TO
20 UNIT 807.

21 Q. WHAT DOES THAT REPRESENT?

22 A. THE BLOOD.

23 Q. AND DOES THIS PHOTOGRAPH FAIRLY AND ACCURATELY
24 DEPICT THE BLOOD AREA AS YOU SAW IT THAT PARTICULAR NIGHT?

25 A. YES, SIR.

26 (FOR I.D. = GRAND JURY EXHIBIT 18)

1 Q. BY MR. TANIZAKI: GRAND JURY EXHIBIT NUMBER 18;
2 THAT IS WHAT?

3 A. THIS IS A CLOSER SHOT OF THE BLOOD STAINED AREA,
4 ALONG WITH A MEASURING DEVICE WHICH WE CALL A SCALE. AND
5 THE NUMBER MARKER NUMBER 1, INDICATING THAT THAT IS MARKED
6 AS EVIDENCE ITEM NUMBER 1, A BLOOD SAMPLE THAT I COLLECTED
7 FROM THAT.

8 Q. DOES THAT PHOTOGRAPH FAIRLY AND ACCURATELY DEPICT
9 THE BLOOD STAINED AREA?

10 A. YES.

11 Q. THAT NIGHT?

12 A. YES.

13 (FOR I.D. = GRAND JURY EXHIBIT 19)

14 Q. BY MR. TANIZAKI: GRAND JURY EXHIBIT NUMBER 19;
15 WHAT IS THAT?

16 A. THAT'S A TASER.

17 Q. AND WHERE DID YOU GET THAT PARTICULAR TASER, OR,
18 I AM SORRY, YOU PHOTOGRAPHED THAT PARTICULAR TASER AT WHAT
19 TIME?

20 A. THAT WAS ONE OF MY FIRST PHOTOGRAPHS, SO AROUND
21 10:30 P.M.

22 Q. AND WHOSE TASER DID THAT BELONG TO?

23 A. CORPORAL CICINELLI.

24 Q. AND DOES THIS PHOTOGRAPH FAIRLY AND ACCURATELY
25 DEPICT THE TASER THAT BELONGED TO CORPORAL CICINELLI?

26 A. YES, SIR.

1 Q. AND THE RED AREAS THAT ARE ON THAT PARTICULAR
2 TASER, WHAT WAS THAT ON THE ACTUAL TASER?

3 A. THAT WAS BLOOD.

4 Q. DOES THIS PHOTOGRAPH FAIRLY AND ACCURATELY DEPICT
5 THE TASER AS YOU SAW IT ON THE NIGHT THAT YOU PROCESSED THE
6 CRIME SCENE?

7 A. YES, SIR.

8 (FOR I.D. = GRAND JURY EXHIBIT 20)

9 Q. BY MR. TANIZAKI: GRAND JURY EXHIBIT NUMBER 20; YOU
10 RECOGNIZE THAT PARTICULAR PHOTOGRAPH?

11 A. YES, I DO.

12 Q. AND WHAT DOES THAT REPRESENT?

13 A. THAT IS AN OVERALL VIEW OF OFFICER WOLFE'S BATON,
14 INDICATED WITH A SCALE.

15 Q. AND WHERE IS THIS ACTUALLY LOCATED, THAT BATON
16 RIGHT NOW IN THIS PHOTOGRAPH?

17 A. IT IS SITTING IN THE TRUNK.

18 Q. OF?

19 A. OF THE UNIT, I BELIEVE 807.

20 Q. WOULD THAT BE OFFICER WOLFE'S VEHICLE?

21 A. THAT I'M NOT SURE. IT IS EITHER OFFICER WOLFE'S
22 OR OFFICER RAMOS' CAR.

23 Q. DOES THIS PHOTOGRAPH FAIRLY AND ACCURATELY DEPICT
24 THE BATON OF OFFICER WOLFE THAT PARTICULAR NIGHT?

25 A. YES.

26 (FOR I.D. = GRAND JURY EXHIBIT 21)

1 Q. BY MR. TANIZAKI: GRAND JURY EXHIBIT NUMBER 21; YOU
2 RECOGNIZE THAT?

3 A. YES, SIR.

4 Q. AND WHAT IS THAT?

5 A. THAT IS AN OVERALL PICTURE OF OFFICER RAMOS'
6 BATON, INDICATED WITH A SCALE.

7 Q. AND, AGAIN, THAT IS ALSO SITTING IN THE TRUNK OF
8 ONE OF THE POLICE CARS?

9 A. YES, SIR.

10 Q. DOES THAT PHOTOGRAPH FAIRLY AND ACCURATELY DEPICT
11 THE BATON OF OFFICER RAMOS ON THAT PARTICULAR NIGHT?

12 A. YES, SIR.

13 (FOR I.D. = GRAND JURY EXHIBIT 22)

14 Q. BY MR. TANIZAKI: LET ME SHOW YOU GRAND JURY
15 EXHIBIT NUMBER 22; WHAT DOES THAT REPRESENT?

16 A. THAT IS A HOBBLE.

17 Q. AND WHAT IS A HOBBLE?

18 A. THAT IS A DEVICE USED TO BIND THE HANDS AND THEIR
19 FEET TOGETHER, I THINK ALL IN ONE MOTION. I DON'T USE THAT,
20 BUT THAT'S MY ASSESSMENT.

21 Q. I UNDERSTAND.

22 AND THIS PHOTOGRAPH WAS TAKEN BY YOU?

23 A. YES, IT WAS.

24 Q. AND WAS THIS PHOTOGRAPH TAKEN BECAUSE THIS WAS
25 THE HOBBLE THAT WAS UTILIZED THAT PARTICULAR NIGHT AGAINST
26 MR. THOMAS?

1 A. THIS IS THE HOBBLE THAT WAS PRODUCED TO ME AFTER
2 I RETURNED TO THE STATION AND I TOOK A PHOTOGRAPH OF IT.

3 Q. OKAY.

4 (FOR I.D. = GRAND JURY EXHIBIT 23)

5 Q. BY MR. TANIZAKI: GRAND JURY EXHIBIT NUMBER 23; DO
6 YOU RECOGNIZE THAT?

7 A. YES, I DO.

8 Q. AND WHAT DOES THAT REPRESENT?

9 A. THIS IS MR. THOMAS' BACKPACK, ALONG WITH HIS
10 SHOES, WHICH IS INDICATED NUMBER 5. AND ALL OF THE ITEMS
11 THAT WERE FOUND IN THE BACKPACK ARE ON THE TRUNK OF THE CAR.

12 Q. AND IS THAT A FAIR AND ACCURATE PHOTOGRAPH OF
13 THAT WHICH YOU HAVE JUST REPRESENTED AS TO THE BACKPACK,
14 CONTENTS, AND WHAT APPEARS TO BE SANDALS?

15 A. YES, SIR.

16 (FOR I.D. = GRAND JURY EXHIBIT 24)

17 Q. BY MR. TANIZAKI: GRAND JURY EXHIBIT NUMBER 24; YOU
18 RECOGNIZE THAT PHOTOGRAPH?

19 A. YES, I DO.

20 Q. AND WHO IS DEPICTED IN THAT PARTICULAR
21 PHOTOGRAPH?

22 A. OFFICER JOE WOLFE.

23 Q. AND WHEN DID YOU TAKE THAT PARTICULAR PHOTOGRAPH?

24 A. THAT WAS SHORTLY AFTER 10:30.

25 Q. IN THE EVENING?

26 A. YES, P.M., SORRY.

1 Q. AT THE CRIME SCENE?

2 A. AT THE CRIME SCENE, YES.

3 Q. AND IS THIS A FAIR AND ACCURATE PHOTO OF OFFICER
4 WOLFE THAT PARTICULAR NIGHT?

5 A. YES, SIR.

6 (FOR I.D. = GRAND JURY EXHIBIT 25)

7 Q. BY MR. TANIZAKI: GRAND JURY EXHIBIT NUMBER 25; DO
8 YOU RECOGNIZE THAT?

9 A. YES, I DO.

10 Q. WHAT IS THAT?

11 A. IT IS JUST A PICTURE OF HIS FACE, I ALWAYS TAKE
12 AN OVERALL PICTURE, AND A SHOT OF THE FACE FOR
13 DOCUMENTATION.

14 (FOR I.D. = GRAND JURY EXHIBIT 26)

15 Q. BY MR. TANIZAKI: GRAND JURY EXHIBIT NUMBER 26;
16 WHAT DOES THAT REPRESENT?

17 A. THAT IS AN PICTURE OF AN INJURY ON OFFICER
18 WOLFE'S LEFT ELBOW AND FOREARM AREA.

19 Q. AND IS THAT PARTICULAR PHOTOGRAPH A FAIR AND
20 ACCURATE DEPICTION OF THE INJURIES ON OFFICER WOLFE'S ARM,
21 IT LOOKS LIKE HIS LEFT ARM AND ELBOW?

22 A. YES, SIR.

23 (FOR I.D. = GRAND JURY EXHIBIT 27)

24 Q. BY MR. TANIZAKI: GRAND JURY EXHIBIT NUMBER 27;
25 WHAT IS THAT?

26 A. A CLOSEUP SHOT OF THE SAME PICTURE.

1 Q. ALSO FAIRLY AND ACCURATELY REPRESENTED; IS THAT
2 RIGHT?

3 A. YES, SIR.

4 (FOR I.D. = GRAND JURY EXHIBIT 28)

5 Q. BY MR. TANIZAKI: AND, EXHIBIT NUMBER 28; WHAT IS
6 THAT?

7 A. THAT'S A CLOSEUP OF THE SCRATCHES ON OFFICER
8 WOLFE'S LEFT FOREARM, WITH THE SCALE.

9 (FOR I.D. = GRAND JURY EXHIBIT 29)

10 Q. BY MR. TANIZAKI: LET ME SHOW YOU GRAND JURY
11 EXHIBIT NUMBER 29; WHAT IS THAT?

12 A. THAT IS OFFICER WOLFE'S LEFT FOREARM AND HAND.

13 (FOR I.D. = GRAND JURY EXHIBIT 30)

14 Q. BY MR. TANIZAKI: I THINK WE HAVE A CLOSEUP OF
15 THAT, GRAND JURY EXHIBIT NUMBER 30?

16 A. YES.

17 Q. WHAT IS THAT?

18 A. THAT IS A CLOSEUP OF OFFICER WOLFE'S LEFT WRIST
19 AREA ON HIS FOREARM.

20 Q. WITH WHAT APPEARS TO BE SOME --

21 A. I AM SORRY, AN INJURY, YES.

22 (FOR I.D. = GRAND JURY EXHIBIT 31)

23 Q. BY MR. TANIZAKI: GRAND JURY EXHIBIT NUMBER 31;
24 WHAT IS THAT?

25 A. THAT IS A CLOSEUP SHOT OF THE TOP OF OFFICER
26 WOLFE'S LEFT HAND, AN INJURY THERE, WITH THE SCALE.

1 (FOR I.D. = GRAND JURY EXHIBIT 32)

2 Q. BY MR. TANIZAKI: LET ME SHOW YOU GRAND JURY
3 EXHIBIT NUMBER 32; WHAT IS THAT?

4 A. THAT IS AN OVERALL SHOT OF OFFICER WOLFE'S RIGHT
5 FOREARM.

6 (FOR I.D. = GRAND JURY EXHIBIT 33)

7 Q. BY MR. TANIZAKI: AND GRAND JURY EXHIBIT NUMBER 33;
8 WHAT IS THAT?

9 A. THAT IS A CLOSEUP SHOT OF SOME ABRASIONS ON
10 OFFICER WOLFE'S RIGHT FOREARM.

11 (FOR I.D. = GRAND JURY EXHIBIT 34)

12 Q. BY MR. TANIZAKI: GRAND JURY EXHIBIT NUMBER 34;
13 WHAT IS THAT?

14 A. THAT IS AN OVERALL SHOT OF OFFICER WOLFE'S LEFT
15 AND RIGHT PANT LEG.

16 Q. AND COULD YOU TELL WHAT WAS ON THE PANTS THERE
17 THAT LOOKS TO BE REDDISH ON HIS LEFT LEG?

18 A. IT APPEARS TO BE BLOOD.

19 (FOR I.D. = GRAND JURY EXHIBIT 35)

20 Q. BY MR. TANIZAKI: AND GRAND JURY EXHIBIT NUMBER 35;
21 WHAT DOES THAT REPRESENT?

22 A. THE TOPS OF OFFICER WOLFE'S SHOES. AND APPEARS
23 TO BE A BLOOD STAIN ON THE TOP OF THE LEFT SHOE.

24 Q. AND ALL OF THESE PHOTOGRAPHS OF OFFICER WOLFE
25 WERE TAKEN APPROXIMATELY 10:30 THAT EVENING; IS THAT
26 CORRECT?

1 A. (NO AUDIBLE RESPONSE).

2 Q. GENERALLY?

3 A. YES, YES.

4 (FOR I.D. = GRAND JURY EXHIBIT 36)

5 Q. BY MR. TANIZAKI: EXHIBIT NUMBER 36; WHAT DOES THAT
6 REPRESENT?

7 A. WELL, IF THIS IS STILL ALONG THE LINES OF OFFICER
8 WOLFE, THEN THIS IS OFFICER WOLFE'S, A CLOSEUP SHOT OF HIS
9 LEFT KNEE, AN ABRASION THERE.

10 (FOR I.D. = GRAND JURY EXHIBIT 37)

11 Q. BY MR. TANIZAKI: GRAND JURY NUMBER 37?

12 A. THERE IS A CLOSER SHOT OF OFFICER WOLFE'S LEFT
13 KNEE WITH AN ABRASION.

14 (FOR I.D. = GRAND JURY EXHIBIT 38)

15 Q. BY MR. TANIZAKI: GRAND JURY EXHIBIT NUMBER 38;
16 WHAT IS THAT?

17 A. THAT'S AN OVERALL SHOT OF OFFICER WOLFE'S RIGHT
18 KNEE WITH AN ABRASION.

19 (FOR I.D. = GRAND JURY EXHIBIT 39)

20 Q. BY MR. TANIZAKI: GRAND JURY EXHIBIT NUMBER 39;
21 WHAT IS THAT?

22 A. A CLOSEUP SHOT OF OFFICER WOLFE'S RIGHT KNEE,
23 WITH AN ABRASION.

24 (FOR I.D. = GRAND JURY EXHIBIT 40)

25 Q. BY MR. TANIZAKI: GRAND JURY EXHIBIT NUMBER 40;
26 WHAT DOES THAT REPRESENT?

1 A. THAT IS THE TOP OF OFFICER WOLFE'S HEAD SHOWING
2 AN INJURY, OR SOME TYPE OF AN ABRASION, I THINK THE FLASH IS
3 IN MY WAY.

4 Q. I THINK WE HAVE A CLOSEUP.

5 A. YEAH.

6 (FOR I.D. = GRAND JURY EXHIBIT 41)

7 Q. BY MR. TANIZAKI: EXHIBIT 41; WHAT DOES THAT
8 REPRESENT?

9 A. THERE IS AN ABRASION, SOME REDNESS ON TOP OF
10 OFFICER WOLFE'S HEAD ON THE RIGHT SIDE OF HIS FOREHEAD,
11 SCALP AREA.

12 Q. DOES THAT PHOTOGRAPH AGAIN ACCURATELY DEPICT
13 OFFICER WOLFE'S HEAD ON THE PARTICULAR NIGHT YOU WERE TAKING
14 PHOTOGRAPHS OF HIM?

15 A. YES, SIR.

16 (FOR I.D. = GRAND JURY EXHIBIT 42)

17 Q. BY MR. TANIZAKI: GRAND JURY EXHIBIT NUMBER 42;
18 WHAT DOES THAT REPRESENT?

19 A. IT IS AN INJURY ON THE BACK RIGHT SIDE OF OFFICER
20 WOLFE'S HEAD AND BEHIND OFFICER WOLFE'S RIGHT EAR.

21 (FOR I.D. = GRAND JURY EXHIBIT 43)

22 Q. BY MR. TANIZAKI: GRAND JURY EXHIBIT NUMBER 43;
23 THAT IS WHAT?

24 A. THAT'S A CLOSEUP SHOT OF THE INJURY ON THE TOP
25 RIGHT SIDE OF OFFICER WOLFE'S SCALP AREA.

26 (FOR I.D. = GRAND JURY EXHIBIT 44)

1 Q. BY MR. TANIZAKI: GRAND JURY EXHIBIT NUMBER 44?

2 A. IT'S A CLOSEUP SHOT OF THE INJURY BEHIND AND ON
3 THE RIGHT EAR OF OFFICER WOLFE.

4 (FOR I.D. = GRAND JURY EXHIBIT 45)

5 Q. BY MR. TANIZAKI: OKAY. SWITCH NOW TO EXHIBIT 45;
6 WHO IS DEPICTED IN THIS PARTICULAR PHOTOGRAPH?

7 A. THIS IS OFFICER MANUEL RAMOS.

8 Q. AND WHEN WAS THIS PARTICULAR PHOTOGRAPH TAKEN?

9 A. RIGHT AFTER I COMPLETED THE PHOTOGRAPHS OF
10 OFFICER WOLFE.

11 Q. SO THIS WOULD BE SOMETIME AFTER 10:30 P.M.,
12 RIGHT?

13 A. YES, SIR.

14 (FOR I.D. = GRAND JURY EXHIBIT 46)

15 Q. BY MR. TANIZAKI: GRAND JURY EXHIBIT 46; WHAT DOES
16 THAT REPRESENT?

17 A. A FACIAL SHOT OF OFFICER RAMOS.

18 Q. JUST A LITTLE BIT OF A CLOSER UP?

19 A. YES, SIR.

20 (FOR I.D. = GRAND JURY EXHIBIT 47)

21 Q. BY MR. TANIZAKI: WHAT IS GRAND JURY EXHIBIT NUMBER
22 47?

23 A. THIS IS AN OVERALL SHOT OF OFFICER RAMOS' LEFT
24 ELBOW WITH AN INJURY.

25 (FOR I.D. = GRAND JURY EXHIBIT 48)

26 Q. BY MR. TANIZAKI: GRAND JURY EXHIBIT 48; WHAT IS

1 THAT?

2 A. THAT IS A CLOSEUP SHOT OF OFFICER RAMOS' LEFT
3 ELBOW WITH THE INJURY.

4 (FOR I.D. = GRAND JURY EXHIBIT 49)

5 Q. BY MR. TANIZAKI: GRAND JURY EXHIBIT 49; WHAT IS
6 THAT?

7 A. THAT IS AN OVERALL SHOT OF OFFICER RAMOS' RIGHT
8 LEG.

9 (FOR I.D. = GRAND JURY EXHIBIT 50)

10 Q. BY MR. TANIZAKI: GRAND JURY EXHIBIT 50; WHAT IS
11 THAT?

12 A. A CLOSEUP SHOT OF OFFICER RAMOS' RIGHT KNEE WITH
13 AN ABRASION.

14 (FOR I.D. = GRAND JURY EXHIBIT 51)

15 Q. BY MR. TANIZAKI: GRAND JURY EXHIBIT 51; WHO IS
16 REPRESENTED THERE?

17 A. CORPORAL JAY CICINELLI.

18 Q. IS THIS A FAIR AND ACCURATE PHOTOGRAPH OF HIM ON
19 THAT PARTICULAR NIGHT AS WELL?

20 A. YES, SIR.

21 Q. AGAIN, THIS FOLLOWS AFTER THE PHOTOGRAPHS OF
22 OFFICER RAMOS?

23 A. YES, SIR.

24 (FOR I.D. = GRAND JURY EXHIBIT 52)

25 Q. BY MR. TANIZAKI: GRAND JURY EXHIBIT 52; WHAT DOES
26 THAT REPRESENT?

1 A. JUST A CLOSEUP FACIAL SHOT OF CORPORAL JAY
2 CICINELLI.

3 (FOR I.D. = GRAND JURY EXHIBIT 53)

4 Q. BY MR. TANIZAKI: GRAND JURY EXHIBIT 53; WHAT DOES
5 THAT REPRESENT?

6 A. CORPORAL CICINELLI'S RIGHT THUMB AND INJURY.

7 (FOR I.D. = GRAND JURY EXHIBIT 54)

8 Q. BY MR. TANIZAKI: GRAND JURY EXHIBIT 54; WHAT DOES
9 THAT REPRESENT?

10 A. CORPORAL JAY CICINELLI'S BOOTS, THE DAMAGE TO THE
11 FRONT OF HIS BOOTS.

12 (FOR I.D. = GRAND JURY EXHIBIT 55)

13 Q. BY MR. TANIZAKI: GRAND JURY EXHIBIT 55; WHO DOES
14 THAT REPRESENT?

15 A. THIS IS OFFICER KENTON HAMPTON.

16 Q. OKAY. BEFORE I GET TO THAT PARTICULAR
17 PHOTOGRAPH, THE PHOTOGRAPHS OF THE POLICE OFFICERS, WHAT WAS
18 THE PURPOSE OF TAKING THE PHOTOGRAPHS OF THE POLICE OFFICERS
19 THAT PARTICULAR NIGHT?

20 A. WELL, THE OFFICERS WHO I PHOTOGRAPHED
21 EXTENSIVELY, LIKE OFFICERS RAMOS AND WOLFE, ARE DOCUMENTING
22 THEIR APPEARANCE, THE DAMAGE TO THE UNIFORMS, THE INJURIES
23 ON THEIR BODY. IF I ONLY TOOK AN OVERALL SHOT, IT INDICATES
24 THERE WAS NO INJURY OR DAMAGE TO THAT PARTICULAR OFFICER.

25 Q. THE PHOTOGRAPHS SPECIFIC TO OFFICERS RAMOS AND
26 WOLFE REPRESENTED THE INJURIES THAT THEY WANTED YOU, OR

1 PURPORTED TO YOU, OR ASKED YOU TO TAKE PHOTOGRAPHS AND
2 DOCUMENT THE INJURIES, CORRECT?

3 A. WELL, THEY DON'T ASK, THAT'S MY JOB, THAT'S WHAT
4 I DO, I ASK THEM WHERE THEIR INJURIES ARE, AND I HAVE TO
5 DOCUMENT THEM.

6 Q. YOU DID THE SAME WITH OFFICER CICINELLI TOO?

7 A. ABSOLUTELY.

8 Q. AND OFFICER HAMPTON?

9 A. YES, BUT OFFICER HAMPTON DID NOT HAVE ANY
10 INJURIES.

11 Q. NOW, AFTER YOU TOOK THE PHOTOGRAPHS OF THESE
12 POLICE OFFICERS, AFTER YOU PROCESSED THE CRIME SCENE BY
13 TAKING PHOTOGRAPHS, COLLECTING EVIDENCE, WHAT DID YOU DO
14 AFTER THAT?

15 A. I CLEARED THE CRIME SCENE BY MAKING SURE I HAD
16 ALL THE EVIDENCE COLLECTED, AND THEN I RESPONDED TO U.C.I.
17 MEDICAL CENTER TO CONTACT MR. KELLY THOMAS.

18 Q. AND ABOUT WHAT TIME WAS IT THAT YOU WENT TO THE
19 U.C.I. MEDICAL CENTER?

20 A. I BELIEVE IT WAS ABOUT 1:15 A.M., SOMEWHERE
21 AROUND THERE.

22 Q. THAT WOULD BE APPROXIMATELY FOUR HOURS AFTER YOU
23 HAD FIRST ARRIVED AT THE FULLERTON TRANSPORTATION CENTER?

24 A. YES, SIR.

25 Q. AND WHEN YOU ARRIVED AT THE HOSPITAL, U.C.I.
26 MEDICAL CENTER, ABOUT 1:15 A.M., WHAT WAS THE PURPOSE OF

1 THAT PARTICULAR TRIP?

2 A. SO I CAN PHOTOGRAPH THE INJURIES ON MR. THOMAS,
3 AND COLLECT HIS CLOTHING.

4 (FOR I.D. = GRAND JURY EXHIBIT 56)

5 Q. BY MR. TANIZAKI: NOW, LET ME SHOW YOU WHAT IS
6 MARKED GRAND JURY EXHIBIT 56; WHAT DOES THAT REPRESENT?

7 A. THIS IS A FACIAL SHOT, THE RIGHT SIDE OF KELLY
8 THOMAS.

9 Q. IS THAT A FAIR AND ACCURATE PHOTOGRAPH OF
10 MR. THOMAS' FACE, WHAT APPEARS TO BE THE RIGHT SIDE OF HIS
11 FACE, WHEN YOU TOOK IT AROUND 1:30 A.M.?

12 A. APPROXIMATELY.

13 Q. THAT NIGHT OR MORNING?

14 A. YES.

15 (FOR I.D. = GRAND JURY EXHIBIT 57)

16 Q. BY MR. TANIZAKI: GRAND JURY EXHIBIT 57; WHAT DOES
17 THAT REPRESENT?

18 A. THIS IS JUST ANOTHER SHOT, ANOTHER ANGLE I COULD
19 GET OF MR. THOMAS' FACE, CLOSEUP SHOT.

20 Q. DOES THAT ALSO FAIRLY AND ACCURATE DEPICT THE
21 FACE OF MR. THOMAS AS YOU PHOTOGRAPHED HIM ABOUT 1:30 OR SO
22 A.M.?

23 A. YES, SIR.

24 (FOR I.D. = GRAND JURY EXHIBIT 58)

25 Q. BY MR. TANIZAKI: GRAND JURY EXHIBIT 58; WHAT DOES
26 THAT REPRESENT?

1 A. JUST ANOTHER OF THE SAME SHOT, A CLOSEUP OF KELLY
2 THOMAS' FACIAL AREA.

3 (FOR I.D. = GRAND JURY EXHIBIT 59)

4 Q. BY MR. TANIZAKI: AND HOW ABOUT GRAND JURY EXHIBIT
5 59?

6 A. YES, THAT IS JUST ANOTHER ANGLE OF MR. KELLY
7 THOMAS' FACIAL AREA.

8 (FOR I.D. = GRAND JURY EXHIBIT 60)

9 Q. BY MR. TANIZAKI: GRAND JURY EXHIBIT NUMBER 60?

10 A. THAT'S THE LEFT SIDE OF MR. THOMAS' WHOLE FACE
11 AND HEAD AREA.

12 (FOR I.D. = GRAND JURY EXHIBIT 61)

13 Q. BY MR. TANIZAKI: GRAND JURY EXHIBIT NUMBER 61?

14 A. THAT'S AN OVERALL SHOT OF MR. THOMAS' RIGHT
15 SHOULDER, THAT IS THE AREA I WAS GOING TO FOCUS ON AT THAT
16 POINT.

17 (FOR I.D. = GRAND JURY EXHIBIT 62)

18 Q. BY MR. TANIZAKI: GRAND JURY EXHIBIT NUMBER 62?

19 A. AN OVERALL SHOT OF HIS ABDOMINAL AREA,
20 MR. THOMAS' ABDOMINAL AREA.

21 (FOR I.D. = GRAND JURY EXHIBIT 63)

22 Q. BY MR. TANIZAKI: GRAND JURY EXHIBIT NUMBER 63;
23 WHAT DOES THAT REPRESENT?

24 A. THAT'S A CLOSEUP SHOT OF THE RIGHT SHOULDER AREA,
25 THE INJURY ON THE RIGHT SHOULDER.

26 (FOR I.D. = GRAND JURY EXHIBIT 64)

1 Q. BY MR. TANIZAKI: GRAND JURY EXHIBIT NUMBER 64?

2 A. THAT'S A CLOSEUP SHOT OF THE INJURY ON THE RIGHT
3 SHOULDER OF MR. THOMAS.

4 (FOR I.D. = GRAND JURY EXHIBIT 65)

5 Q. BY MR. TANIZAKI: GRAND JURY EXHIBIT NUMBER 65;
6 WHAT DOES THAT REPRESENT?

7 A. THAT'S JUST AN OVERALL OF MR. THOMAS' RIGHT ARM.

8 (FOR I.D. = GRAND JURY EXHIBIT 66)

9 Q. BY MR. TANIZAKI: GRAND JURY EXHIBIT NUMBER 66;
10 WHAT DOES THAT REPRESENT?

11 A. AN OVERALL SHOT OF THE LEFT SIDE OF THE ABDOMINAL
12 AREA OF MR. THOMAS.

13 (FOR I.D. = GRAND JURY EXHIBIT 67)

14 Q. BY MR. TANIZAKI: GRAND JURY EXHIBIT NUMBER 67?

15 A. AN OVERALL SHOT OF MR. THOMAS' BACK AREA.

16 (FOR I.D. = GRAND JURY EXHIBIT 68)

17 Q. BY MR. TANIZAKI: GRAND JURY EXHIBIT NUMBER 68;
18 WHAT DOES THAT REPRESENT?

19 A. IT IS AN OVERALL SHOT OF MR. THOMAS' LEFT HAND.

20 (FOR I.D. = GRAND JURY EXHIBIT 69)

21 Q. BY MR. TANIZAKI: GRAND JURY EXHIBIT NUMBER 69;
22 WHAT DOES THAT REPRESENT?

23 A. AN OVERALL SHOT OF MR. THOMAS' RIGHT HAND.

24 (FOR I.D. = GRAND JURY EXHIBIT 70)

25 Q. BY MR. TANIZAKI: AND GRAND JURY EXHIBIT NUMBER 70;
26 WHAT DOES THAT REPRESENT?

1 A. IT IS AN OVERALL SHOT OF MR. THOMAS' LEFT LEG,
2 KNEE AREA.

3 (FOR I.D. = GRAND JURY EXHIBIT 71)

4 Q. BY MR. TANIZAKI: GRAND JURY EXHIBIT NUMBER 71;
5 WHAT DOES THAT REPRESENT?

6 A. IT IS AN OVERALL SHOT OF MR. THOMAS' RIGHT LEG
7 AND KNEE AREA.

8 (FOR I.D. = GRAND JURY EXHIBIT 72)

9 Q. BY MR. TANIZAKI: GRAND JURY EXHIBIT NUMBER 72;
10 WHAT DOES THAT REPRESENT?

11 A. IT IS A CLOSEUP SHOT OF MR. THOMAS' RIGHT KNEE,
12 WITH A SCALE.

13 (FOR I.D. = GRAND JURY EXHIBIT 73)

14 Q. BY MR. TANIZAKI: GRAND JURY EXHIBIT NUMBER 73;
15 WHAT DOES THAT REPRESENT?

16 A. IT IS A CLOSEUP SHOT OF MR. THOMAS, OF THE INJURY
17 ON HIS LEFT ANKLE.

18 Q. WHEN YOU -- I AM GOING TO TAKE YOU BACK TO YOUR
19 CONTACT WITH THE POLICE OFFICERS BACK AT THE FULLERTON
20 TRANSPORTATION CENTER --

21 A. YES.

22 Q. -- WHEN YOU TOOK PHOTOGRAPHS OF OFFICER RAMOS AND
23 CONTACTED HIM --

24 A. YES.

25 Q. -- DID HE, WHAT WOULD YOU DESCRIBE AS HIS
26 PARTICULAR Demeanor WHEN YOU CONTACTED HIM AT THAT POINT?

1 A. WHEN I SAW OFFICER RAMOS, HE WAS SITTING ON THE
2 FRONT, ON THE PUSH BARS OF HIS POLICE CAR, SLUMPED OVER IN
3 KIND OF JUST LOOKING DOWN (INDICATING).

4 Q. CAN I STOP YOU RIGHT THERE.

5 A. SURE.

6 Q. AND JUST TRY AND DESCRIBE.

7 IT LOOKS LIKE YOU ARE SHOWING ALMOST LIKE A CHIN,
8 LIKE CRESTFALLEN MAYBE TOWARDS THE CHEST; IS THAT WHAT YOU
9 ARE TRYING TO DESCRIBE?

10 A. YES, SIR.

11 Q. PLEASE CONTINUE.

12 A. SO I WALKED OVER TO HIM, ASKED HIM HOW HE WAS
13 DOING. ARE YOU OKAY? HE SAID, MY RIB CAGE HURTS. MY RIGHT
14 RIB HURTS. AND I TOLD HIM TO SHOW ME WHERE, AND HE POINTED
15 TO HIS RIGHT RIB CAGE AREA. AND I SAID, WHAT HAPPENED?

16 Q. NOW, AFTER -- BEFORE YOU GET TO ANYTHING FURTHER,
17 ANYTHING ELSE ABOUT HIS Demeanor AT THAT TIME?

18 A. HE WAS VERY SHAKEN. HE WAS, HE APPEARED TO BE
19 JUST IN DISBELIEF OF WHAT HAD JUST GONE ON. AND HE APPEARED
20 TO BE IN SHOCK.

21 Q. OKAY. AND THEN HE SAID SOMETHING TO YOU AT THAT
22 TIME?

23 A. YES, SIR.

24 Q. AND WHAT WAS HIS STATEMENT?

25 A. HE TOLD ME HE HAD JUST BEEN IN THE FIGHT OF HIS
26 LIFE, AND THE GUY JUST WOULD NOT STOP FIGHTING HIM. HE

1 WOULD JUST NOT STOP FIGHTING, HE KEPT REPEATING THAT.

2 Q. AND THEN YOU MADE CONTACT WITH, OR YOU HAD
3 CONTACT WITH OFFICER WOLFE?

4 A. YES, SIR.

5 Q. DESCRIBE HIS Demeanor UPON CONTACT.

6 A. WELL, OFFICER WOLFE WAS, I BELIEVE, STANDING AT
7 THE TIME, YOU KNOW, SPEAKING WITH THE SERGEANT, AND BACK AND
8 FORTH WITH OTHER OFFICER. AND WHEN I CONTACTED HIM I ASKED
9 HIM IF HE WAS OKAY, AND TELL ME HOW HE IS FEELING. AND HE
10 TOLD ME --

11 Q. BEFORE WE GET TO WHAT HE TOLD YOU.

12 A. I AM SORRY.

13 Q. CAN YOU DESCRIBE JUST HIS PHYSICAL Demeanor AT
14 THAT TIME.

15 A. HE IS ALSO VERY TIRED AND SHAKEN, AND JUST
16 APPEARED TO BE IN SHOCK, AND HE WAS STILL KIND OF OUT OF
17 BREATH STILL.

18 Q. WAS HE ALSO IN THE AREA OF THE INCIDENT?

19 A. YES, SIR.

20 Q. WHEN YOU MADE CONTACT?

21 A. YES.

22 Q. AND THIS IS, WHAT TIME IS THIS, APPROXIMATELY?

23 A. THIS IS BEFORE I TOOK THE PHOTOGRAPHS, SO IT WAS
24 BEFORE 10:00 P.M.

25 Q. ALL RIGHT. NOW WHEN YOU MADE CONTACT WITH
26 OFFICER WOLFE, HE APPARENTLY TOLD YOU SOMETHING ABOUT THAT

1 PARTICULAR INCIDENT?

2 A. YES, SIR.

3 Q. WHAT WAS IT THAT HE SAID?

4 A. IF I REMEMBER CORRECTLY, HE MENTIONED PRETTY MUCH
5 THE SAME, THAT HE JUST NEVER HAD ANYONE FIGHT HIM LIKE THAT
6 BEFORE.

7 Q. THAT'S BASICALLY WHAT HE TOLD YOU, RIGHT?

8 A. YES.

9 Q. NOW, YOU ALSO MADE CONTACT WITH OFFICER
10 CICINELLI?

11 A. YES, SIR.

12 Q. AND CAN YOU DESCRIBE HIS Demeanor WHEN YOU
13 CONTACTED HIM.

14 A. HE WAS ALSO, YOU KNOW, I HAD HIM COME OVER TO THE
15 STREET, SO I COULD TAKE HIS PHOTOGRAPHS. AND I ASKED HIM IF
16 HE WAS OKAY AS WELL. AND HE WAS TIRED, HE WAS STILL TIRED,
17 HE WAS STILL KIND OF OUT OF BREATH. AND HE WAS JUST IN
18 DISBELIEF. AND HE KIND OF SHOOK HIS HEAD AND HE SAID, MAN,
19 I CAN'T BELIEVE IT. AND I ASKED HIM WHAT HAPPENED, WHEN DID
20 YOU GET THERE, AND HE TOLD ME THAT HE WAS THE THIRD OFFICER
21 THERE.

22 Q. BEFORE WE GET TO THAT, ANYTHING ELSE ABOUT HIS
23 Demeanor?

24 A. WELL, HE WAS SHAKEN AS WELL. HE WAS SHAKEN AS
25 WELL. YOU KNOW, THAT'S PRETTY MUCH ALL I CAN SAY ABOUT HIM.

26 Q. AND AS FAR AS OFFICER CICINELLI'S SPONTANEOUS

1 STATEMENT TO YOU ABOUT WHAT HAPPENED, WHAT DID HE SAY?

2 A. HE JUST SAID HE WAS -- I BELIEVE I ASKED HIM,
3 WELL, WHEN DID YOU GET HERE? HE SAID HE WAS THE THIRD
4 OFFICER THERE, AND THAT HE WAS STILL FIGHTING, AND HE
5 COULDN'T GET HIM UNDER CONTROL.

6 Q. NOW, WHEN YOU MADE CONTACT WITH THESE THREE
7 OFFICERS, DID ANY ONE OF THEM ACTUALLY, WHILE YOU WERE
8 TALKING WITH THEM ABOUT THEIR DEMEANOR AND WHAT HAPPENED,
9 DID ANY OF THOSE THREE OFFICERS EXPRESS TO YOU AT THAT TIME
10 ANY CONCERN ABOUT THE SUBJECT THAT THEY HAD BEEN INVOLVED
11 WITH?

12 A. NO.

13 Q. DO YOU KNOW WHAT A CODE-3 IS?

14 A. YES, I DO.

15 Q. COULD YOU TELL THE GRAND JURY WHAT A CODE-3 IS.

16 A. CODE-3 IS AN EMERGENCY RESPONSE, AN OFFICER'S CRY
17 FOR ASSISTANCE FROM HIS OTHER OFFICERS, AND HE WANTS YOU TO
18 GET THERE WITH LIGHTS AND SIRENS, BECAUSE HE IS INVOLVED IN
19 AN EMERGENCY SITUATION.

20 Q. NOW, ON THAT PARTICULAR NIGHT, DID YOU HEAR
21 CODE-3'S GOING OUT ON THIS PARTICULAR INCIDENT?

22 A. YES, I DID.

23 Q. AND CAN YOU TELL US OR DESCRIBE FOR US THE
24 URGENCY OR LACK THEREOF OF THE CODE-3'S THAT YOU HEARD THAT
25 PARTICULAR NIGHT.

26 A. THE FIRST REQUEST I HEARD FOR CODE-3, YOU COULD

1 TELL THERE WAS URGENCY. AND YOU COULD HEAR A STRUGGLE. AND
2 AT THAT TIME I WAS JUST DRIVING AROUND THE CITY, SO I COULD
3 HEAR THAT, AND I AM THINKING --

4 Q. WE WON'T GET INTO YOUR THOUGHT PROCESS.

5 A. SORRY.

6 Q. TELL US WHAT YOU HEARD.

7 A. I HEARD, PROBABLY NOT VERBATIM HERE, BUT, I AM IN
8 A CODE-3.

9 Q. HOW ABOUT THE SECOND TIME?

10 A. THE SECOND TIME WAS MORE EXIGENCY.

11 Q. HOW ABOUT THE THIRD TIME?

12 A. EVEN WITH MORE EXIGENCY, WITH MORE STRUGGLE.

13 MR. TANIZAKI: ALL RIGHT. COULD I HAVE ONE MINUTE,
14 MR. FOREMAN?

15 THE GRAND JURY FOREPERSON: YES.

16 MR. TANIZAKI: MR. FOREMAN, I DON'T HAVE ANY MORE
17 QUESTIONS FOR MYSELF, BUT I WOULD ASK IF THERE ARE ANY
18 QUESTIONS.

19 THE GRAND JURY FOREPERSON: ANY QUESTIONS FROM THE
20 GRAND JURY?

21 (AFFIRMATIVE RESPONSES).

22 (FOR I.D. = GRAND JURY EXHIBIT 112)

23 MR. TANIZAKI: HERE IS THE QUESTION, AND WE WILL CALL
24 THIS 112-A.

25 ON GRAND JURY EXHIBIT 21 THERE IS A RED BOX OR
26 SOMETHING LIKE THAT, IT APPEARS TO HAVE A NUMBER 807.

1 A. YES, SIR.

2 Q. I SEE IT, OKAY.

3 DOES THIS NUMBER 807, I ASSUME IT IS THE BOX,
4 REPRESENT THE CAR?

5 A. YES.

6 Q. BELONGING TO THE CAR?

7 A. YES, ABSOLUTELY.

8 Q. THAT'S ONE QUESTION.

9 WE WILL CALL THIS 112-B.

10 CAN YOU TELL US APPROXIMATELY THE WEIGHT OF
11 OFFICER WOLFE?

12 A. BELIEVE IT OR NOT, I THINK I KNOW IT BECAUSE WE
13 DISCUSSED WEIGHT, BECAUSE WE TALKED ABOUT A DIET, BUT HE WAS
14 APPROXIMATELY 160, 170. I WANT TO SAY BETWEEN 160 AND 180.

15 Q. ALL RIGHT.

16 A. BECAUSE WE HAD THAT CONVERSATION, AND I THINK HE
17 WAS ABOUT THAT WEIGHT AT THE TIME. BUT OBVIOUSLY I CAN'T BE
18 CERTAIN.

19 Q. THIS IS GRAND JURY EXHIBIT NUMBER 24
20 (INDICATING), THIS REPRESENTS OFFICER WOLFE; IS THAT RIGHT?

21 A. YES.

22 Q. AND DO YOU HAVE ANY BACKGROUND OR EXPERTISE IN
23 APPROXIMATING PEOPLE'S WEIGHT?

24 A. NO, I CAN JUST TELL YOU THAT WE HAVE HAD
25 DISCUSSIONS ON WEIGHT, AND YOU ALSO HAVE TO REALIZE THIS IS
26 A PHOTOGRAPH THAT MAKES YOU LOOK LARGER THAN YOU ARE, AND HE

1 HAD A VEST ON AND ALL THIS EQUIPMENT ON.

2 Q. OKAY. HOW ABOUT OFFICER RAMOS?

3 A. RAMOS, PROBABLY ABOUT 200 POUNDS, I AM NOT SURE.

4 Q. ROUGHLY 200 POUNDS?

5 A. APPROXIMATELY.

6 Q. AND DO YOU KNOW WHAT THE APPROXIMATE WEIGHT WAS
7 OF KELLY THOMAS?

8 A. I THINK I UNDERSTOOD HIM TO BE ABOUT 160.

9 Q. IF YOU KNOW THIS, OKAY, IF YOU KNOW THIS, DO YOU
10 KNOW WHOSE BLOOD WAS ON THE TASER, IF YOU KNOW?

11 A. I CAN ONLY --

12 Q. YOU ARE GOING TO JUST KIND OF GUESS RIGHT NOW?

13 A. I CAN ONLY ASSUME IT IS MR. THOMAS' BLOOD.

14 Q. BUT THAT'S BASED ON THE INFORMATION THAT YOU
15 RECEIVED ON THAT PARTICULAR NIGHT, RIGHT?

16 A. YES.

17 Q. IT IS NOT OF, LET'S SAY, PERSONAL KNOWLEDGE?

18 A. RIGHT, I DON'T KNOW OF ANY D.N.A. RESULTS THAT
19 WERE FOUND ON THAT TASER.

20 Q. OKAY. LAST QUESTION, DO YOU KNOW WHO SAID AND
21 CALLED FOR THE CODE-3'S, THE PARTICULAR OFFICER ON EACH OF
22 THE CODE-3'S?

23 A. NO, I DON'T, I AM SORRY.

24 MR. TANIZAKI: ARE THERE ANY OTHER QUESTIONS?

25 (NO AFFIRMATIVE RESPONSE).

26 MR. TANIZAKI: I BELIEVE THAT IS IT, MR. FOREMAN.

1 THE GRAND JURY FOREPERSON: WOULD YOU STAND, PLEASE.

2 THE WITNESS: (WITNESS COMPLIES).

3 THE GRAND JURY FOREPERSON: MS. SCRUGGS, YOU ARE
4 ADMONISHED TO NOT DISCUSS OR REPEAT AT ANY TIME OUTSIDE OF
5 THIS COURTROOM THE QUESTIONS YOU HAVE BEEN ASKED OR YOUR
6 ANSWERS, WITH THE UNDERSTANDING THAT SUCH DISCLOSURES ON
7 YOUR PART MAY BE THE BASIS FOR CHARGES AGAINST YOU OF
8 CONTEMPT OF COURT.

9 YOU ARE FREE TO SEEK LEGAL ADVICE FROM YOUR
10 ATTORNEY, OR FROM THE DISTRICT ATTORNEY'S OFFICE.

11 DO YOU UNDERSTAND?

12 THE WITNESS: YES, SIR.

13 THE GRAND JURY FOREPERSON: MS. SCRUGGS, THANK YOU FOR
14 YOUR TESTIMONY, YOU ARE EXCUSED.

15 (WHEREUPON DAWN SCRUGGS EXITED THE GRAND JURY
16 ROOM.)

17 THE GRAND JURY FOREPERSON: WE WILL BE IN RECESS NOW
18 UNTIL 10:25.

19 DURING ANY PERIOD OF THIS RECESS YOU MUST NOT
20 DISCUSS WITH ANYONE, EITHER INSIDE OR OUTSIDE THIS HEARING
21 ROOM, ANY SUBJECT CONNECTED WITH THIS HEARING.

22 (RECESS TAKEN.)

23 (THE FOLLOWING PROCEEDINGS WERE HELD IN THE GRAND
24 JURY ROOM:)

25 THE GRAND JURY FOREPERSON: WE ARE HERE AGAIN IN
26 SESSION IN THE MATTER OF JOSEPH ANDREW WOLFE.

1 LET THE RECORD REFLECT THAT ALL THE SAME 16 GRAND
2 JURORS ARE PRESENT AGAIN.

3 MR. DISTRICT ATTORNEY, YOU MAY CALL YOUR NEXT
4 WITNESS.

5 MR. BOGARDUS: THANK YOU VERY MUCH, MR. FOREMAN, THE
6 PEOPLE WISH TO CALL KAREN KOBAYASHI, PLEASE.

7 (WHEREUPON KAREN KOBAYASHI-TAYLOR ENTERED THE
8 GRAND JURY ROOM.)

9 THE GRAND JURY FOREPERSON: GOOD MORNING.

10 THE WITNESS: GOOD MORNING.

11 THE GRAND JURY FOREPERSON: STAND HERE FOR A SECOND,
12 PLEASE.

13 PLEASE RAISE YOUR RIGHT HAND.

14 KAREN KOBAYASHI-TAYLOR,
15 CALLED AS A WITNESS BEFORE THE GRAND JURY, HAVING BEEN FIRST
16 DULY SWORN, WAS EXAMINED AND TESTIFIED AS FOLLOWS:

17 THE GRAND JURY FOREPERSON: PLEASE STATE YOUR NAME AND
18 SPELL IT OUT FOR THE RECORD.

19 THE WITNESS: KAREN KOBAYASHI-TAYLOR; K-A-R-E-N,
20 K-O-B-A-Y-A-S-H-I-T-A-Y-L-O-R.

21 THE GRAND JURY FOREPERSON: THANK YOU.

22 YOU MAY HAVE A SEAT.

23 THE WITNESS: (WITNESS COMPLIES).

24 THE GRAND JURY FOREPERSON: MR. DISTRICT ATTORNEY, THE
25 WITNESS IS YOURS.

26 MR. BOGARDUS: THANK YOU VERY MUCH, MR. FOREMAN.

1 EXAMINATION

2 Q. BY MR. BOGARDUS: GOOD MORNING, MS. KOBAYASHI.

3 A. GOOD MORNING.

4 Q. HAVE YOU EVER TESTIFIED BEFORE?

5 A. NO.

6 Q. OKAY. THERE ARE A COUPLE OF THINGS BEFORE WE
7 BEGIN.

8 FIRST OF ALL, THE ACOUSTICS IN THIS ROOM AREN'T
9 THE BEST, SO THERE IS A MICROPHONE IN FRONT OF YOU, AND YOU
10 CAN PULL UP AND JUST SPEAK CLEARLY INTO THE MICROPHONE SO WE
11 WILL BE ABLE TO HEAR YOU.

12 A. OKAY.

13 Q. MAKE YOURSELF COMFORTABLE.

14 I AM GOING TO ASK YOU SOME QUESTIONS, BUT BEFORE
15 WE START THERE IS AN ADMONITION I NEED TO READ TO YOU.

16 BEFORE WE BEGIN I WOULD LIKE TO ADVISE YOU THAT
17 YOU ARE NOW APPEARING BEFORE A DULY CONSTITUTED GRAND JURY
18 THAT IS INVESTIGATING POSSIBLE VIOLATIONS OF STATE CRIMINAL
19 LAW.

20 DO YOU UNDERSTAND THAT?

21 A. YES.

22 Q. YOU HAVE BEEN PLACED UNDER OATH. AND THAT MEANS
23 YOUR TESTIMONY HERE TODAY HAS THE SAME FORCE AND EFFECT AS
24 IF YOU WERE IN A COURT OF LAW.

25 DO YOU UNDERSTAND THAT?

26 A. YES.

1 Q. THAT MEANS YOU HAVE AN OBLIGATION TO TELL THE
2 TRUTH AND NOTHING BUT THE TRUTH IN THIS PROCEEDING, OR YOU
3 COULD SUBJECT YOURSELF TO A POSSIBLE PROSECUTION FOR
4 PERJURY.

5 DO YOU UNDERSTAND THAT AS WELL?

6 A. YES.

7 Q. VERY WELL, MA'AM, THANK YOU.

8 I ALSO WILL INTEND TO SHOW YOU A DOCUMENT, AND
9 THAT DOCUMENT WILL APPEAR ON THE SCREEN IN FRONT OF YOU.

10 ARE YOU CURRENTLY EMPLOYED?

11 A. YES.

12 Q. WHAT DO YOU DO FOR A LIVING?

13 A. I WORK FOR THE CITY OF FULLERTON. I AM CURRENTLY
14 IN THE DESIGN SECTION, I AM ALSO ADMINISTERING CONTRACTS
15 WITH THE CITY OF FULLERTON, AND STARTING IN THE DESIGNING
16 SECTION, DESIGNING PROJECTS.

17 Q. DO YOU HAVE A SPECIFIC TITLE WITH THE CITY OF
18 FULLERTON?

19 A. MY TITLE IS ASSISTANT ENGINEER.

20 Q. AND IN A VERY GENERAL SENSE, YOU MIGHT HAVE
21 ALREADY DONE THIS IN A GENERAL SENSE, CAN YOU DESCRIBE WHAT
22 YOU DO AS AN ASSISTANT ENGINEER ON BEHALF OF THE CITY OF
23 FULLERTON.

24 A. ADMINISTER CONTRACTS, WHICH WHEN A CONTRACT IS
25 AWARDED TO A CONTRACTOR, I WOULD HAVE TO WORK WITH THE
26 CONTRACTOR THAT IT WAS AWARDED TO AND OUR INSPECTORS, TO

1 MAKE SURE THE CONTACT IS DEALT PER OUR PLANS AND SPECS THAT
2 WERE DONE BY OUR DESIGN ENGINEER.

3 Q. OKAY. SPEAKING OF PROJECTS THEN, CONSTRUCTION
4 PROJECTS, ARE YOU AWARE OF A CITY OF FULLERTON CONSTRUCTION
5 PROJECT THAT WAS REFERRED TO AS THE DOWNTOWN PUBLIC SAFETY
6 CAMERA SYSTEM, OR DOWNTOWN PUBLIC SAFETY SURVEILLANCE
7 SYSTEM?

8 A. YES.

9 Q. HOW IS IT YOU ARE AWARE OF THIS PARTICULAR
10 CONSTRUCTION PROJECT?

11 A. I WAS THE CONTRACT ADMINISTRATOR ON THAT PROJECT.

12 Q. AND AS THE CONSTRUCTION ADMINISTRATOR, OR THE
13 CONTRACT ADMINISTRATOR ON THAT CONSTRUCTION PROJECT IN
14 PARTICULAR, CAN YOU DESCRIBE IN A GENERAL SENSE WHAT YOUR
15 RESPONSIBILITIES WERE IN REGARD TO THAT GENERAL PROJECT?

16 A. YES, AGAIN, WHEN THE PROJECT WAS AWARDED TO A
17 CONTRACTOR FOR THAT ONE, WE START FROM, WITH THE CONTRACTOR,
18 WE MEET WITH THE CONTRACTOR. GET TOGETHER WITH HIM WITH A
19 SCHEDULE. AND MAKE SURE THAT HE FULFILLS HIS DUTIES, AS FAR
20 AS INSTALLING THE EQUIPMENT AND THE REST OF THE PROJECT AS
21 PER WHAT WAS SPECIFIED IN THE CONTRACT.

22 Q. OKAY. SO WITH RESPECT TO THAT PARTICULAR
23 PROJECT, THE DOWNTOWN PUBLIC SAFETY CAMERA SYSTEM, AND BASED
24 ON YOUR FAMILIARITY AS THE CONTRACT ADMINISTRATOR IN THAT
25 CASE, DID THAT CONSIST OF THE INSTALLATION OF A NUMBER OF
26 SURVEILLANCE CAMERAS IN THE DOWNTOWN AREA IN THE CITY OF

1 FULLERTON, ALONG ALSO WITH SOME CORRESPONDING MONITORS AND
2 RECORDING EQUIPMENT IN THE FULLERTON POLICE DEPARTMENT?

3 A. YES, IT IS.

4 Q. AND DID ONE OR MORE OF THOSE CAMERAS INSTALLED AS
5 PART OF THAT PROJECT GET INSTALLED AT THE FULLERTON
6 TRANSPORTATION CENTER?

7 A. YES.

8 Q. YOU DESCRIBED FOR US WHAT A CONTRACT
9 ADMINISTRATOR DOES, AND ONE OF THOSE DUTIES WOULD BE TO MEET
10 WITH THE CONTRACTOR, SO IN THIS CASE THAT WOULD BE THE
11 CONTRACTOR WHO INSTALLED THE CAMERA SYSTEM?

12 A. UH-HUH.

13 Q. THAT'S A YES, MA'AM?

14 A. YES.

15 Q. AND THEN ALSO TO ENSURE OVER THE COURSE OF THE
16 INSTALLATION OF THAT PROJECT AND COMPLETION OF THAT PROJECT,
17 THAT THE CONTRACTOR FULFILLS THE DUTIES THAT THEY WERE
18 CONTRACTED TO DO; IS THAT TRUE?

19 A. YES.

20 Q. THAT IN THIS CASE WOULD BE INSTALL THE CAMERA
21 SYSTEM AND THE CORRESPONDING MONITORS, AS YOU MENTIONED,
22 CORRECT?

23 A. YES.

24 MR. BOGARDUS: NOW, I WOULD LIKE TO SHOW YOU WHAT WE
25 HAVE PREVIOUSLY MARKED AS GRAND JURY EXHIBIT NUMBER 74. I
26 AM GOING TO PUT IT ON THIS DEVICE HERE, THE ELMO, AND I AM

1 HAPPY TO SHOW IT TO YOU CLOSER.

2 (FOR I.D. = GRAND JURY EXHIBIT 74)

3 Q. BY MR. BOGARDUS: WHAT THIS PURPORTS TO BE IS A
4 NOTICE OF COMPLETION DOCUMENT. CERTIFIED COPY OF A NOTICE
5 OF COMPLETION DOCUMENT.

6 CAN YOU SEE THAT WELL ENOUGH ON THAT MONITOR?

7 A. UH-HUH.

8 Q. YES?

9 A. YES.

10 Q. SURE. NOW, ARE YOU FAMILIAR WITH WHAT THIS
11 DOCUMENT IS?

12 A. YES.

13 Q. CAN YOU EXPLAIN TO US IN GENERAL TERMS WHAT A
14 NOTICE OF COMPLETION IS.

15 A. IN GENERAL IT IS TO SAY THAT THAT PROJECT THAT
16 WAS CONTRACTED IS SUBSTANTIALLY COMPLETE.

17 Q. COMPLETE OR SUBSTANTIALLY COMPLETE?

18 A. YES.

19 Q. AND IS THIS NOTICE OF COMPLETION A DOCUMENT THAT
20 IS EXECUTED BY THE CITY OF FULLERTON IN THE ORDINARY COURSE
21 OF BUSINESS?

22 A. YES.

23 Q. IN OTHER WORDS, WHEN THERE ARE CONTRACTS THAT ARE
24 FULFILLED ON BEHALF OF THE CITY AND THEY ARE SUBSTANTIALLY
25 COMPLETE OR COMPLETE, A NOTICE OF COMPLETION IS EXECUTED?

26 A. IN THE MAJORITY OF CASES, YES.

1 Q. AND IT IS EXECUTED IN PART BY A MEMBER OF THE
2 CITY, OR EMPLOYEE OF THE CITY OF FULLERTON?

3 A. YES.

4 Q. AND IS IT EXECUTED AT OR NEAR THE TIME THAT A
5 DETERMINATION HAS BEEN MADE THAT THE PROJECT IS COMPLETE OR
6 SUBSTANTIALLY COMPLETE?

7 A. YES.

8 Q. OKAY. NOW, IN THIS CASE NUMBER 74, THIS IS A
9 CERTIFIED COPY OF THE NOTICE OF COMPLETION FOR THE
10 INSTALLATION OF A CAMERA SYSTEM KNOWN AS THE DOWNTOWN PUBLIC
11 SAFETY CAMERA SYSTEM; DO YOU RECOGNIZE THIS DOCUMENT AS THE
12 NOTICE OF COMPLETION FOR THAT PROJECT?

13 A. YES.

14 Q. AND HOW IS IT THAT YOU ARE FAMILIAR WITH WHAT THE
15 NOTICE OF COMPLETION DOCUMENT WOULD LOOK LIKE WITH RESPECT
16 TO THAT PARTICULAR PROJECT?

17 A. THE CONTRACT ADMINISTRATOR, WHICH IN MY CASE IS
18 ME, THE CONTRACT ADMINISTRATOR WOULD FULFILL THIS DOCUMENT
19 AND GET THE NECESSARY SIGNATURES TO COMPLETE THIS FORM.

20 Q. OKAY. AT THE BOTTOM OF THIS DOCUMENT THERE IS AN
21 AREA THAT SAYS, VERIFICATION, AND HAS SOME LANGUAGE AND THEN
22 A SIGNATURE?

23 A. UH-HUH.

24 Q. DO YOU SEE THAT, MA'AM?

25 A. YES.

26 Q. AND THE VERIFICATION OF THIS NOTICE OF COMPLETION

1 THEN WAS ON FEBRUARY 9TH, 2009?

2 A. (NO RESPONSE).

3 Q. I DON'T KNOW IF YOU CAN SEE THAT.

4 A. YES.

5 Q. AND IT ALSO BEARS THE SIGNATURE OF AN INDIVIDUAL;

6 DO YOU SEE THAT, MA'AM?

7 A. UH-HUH, YES.

8 Q. ARE YOU FAMILIAR WITH WHO THAT IS?

9 A. YES.

10 Q. WHO IS THAT?

11 A. DONALD HOVEY IS THE DIRECTOR OF ENGINEERING FOR

12 THE CITY OF FULLERTON.

13 Q. SO THIS DOCUMENT DEMONSTRATES THAT THE CONTRACTOR

14 IN THIS CASE, DYNALECTRIC, INSTALLED THE CAMERA SYSTEMS

15 REFERRED TO AS THE DOWNTOWN PUBLIC SAFETY CAMERA SYSTEM; IS

16 THAT CORRECT?

17 A. YES.

18 Q. AND I THINK YOU MENTIONED THIS, THE ORDINARY

19 PRACTICE OF THE CITY OF FULLERTON IS TO EXECUTE A NOTICE OF

20 COMPLETION ONCE THE PROJECT IS COMPLETE?

21 A. YES.

22 Q. OR SUBSTANTIALLY COMPLETE, AS YOU MENTIONED?

23 A. YES.

24 Q. IS PART OF THE COMPLETION OF THE PROJECT AN

25 INSPECTION OF THE PROJECT TO ENSURE THAT IT MEETS THE

26 SPECIFICATIONS OF THE PROJECT, IN OTHER WORDS, TO DETERMINE

1 THE CAMERAS ARE OPERABLE?

2 A. YES.

3 Q. TO YOUR KNOWLEDGE WAS THAT ULTIMATELY DONE IN
4 THIS CASE?

5 A. YES.

6 Q. NOW, ARE YOU FAMILIAR WITH WHAT IS REFERRED TO AS
7 RETENTION?

8 A. YES, UH-HUH.

9 Q. WHAT IS A RETENTION?

10 A. THE RETENTION AT THAT TIME IS THE 10 PERCENT OF
11 EACH PAYMENT THAT IS MADE TO THE CONTRACTOR, WE HOLD 10
12 PERCENT BACK FROM EACH PAYMENT THAT IS MADE.

13 Q. AND WHAT IS A RETENTION RELEASE?

14 A. RETENTION RELEASE IS NORMALLY 35 TO 40 DAYS AFTER
15 THE NOTICE OF COMPLETION HAS BEEN FILED WITH THE COUNTY
16 RECORDER. WE HOLD THE MONEY FOR VARIOUS REASONS, IF THERE
17 IS A STOP NOTICE, WHICH MEANS A SUBCONTRACTOR OR LABORERS
18 HAVE NOT BEEN PAID, AND WE WANT TO MAKE SURE THEY WILL BE
19 PAID ACCORDINGLY, GIVE THAT CONTRACTOR THAT MUCH TIME FOR
20 THE SUBS AND LABORERS TO COME IN AND FILE THOSE DOCUMENTS
21 BEFORE RETENTION IS RELEASED.

22 Q. AND IS ONE OF THE OTHER PURPOSES THE TASKS THAT
23 ARE COMPLETED ORDINARILY BEFORE THERE IS A RETENTION
24 RELEASE, TO ENSURE THE PROJECT HAS BEEN COMPLETED TO
25 SPECIFICATIONS?

26 A. YES.

1 Q. IN OTHER WORDS, IF IT IS A CAMERA SYSTEM, THAT IT
2 IS OPERATING PROPERLY?

3 A. YES.

4 Q. WAS THERE A RETENTION RELEASE IN THIS CASE WITH
5 RESPECT TO THE PUBLIC SAFETY CAMERA SYSTEM?

6 A. YES.

7 Q. WAS THAT COMPLETED BEFORE JULY 5TH, 2011?

8 A. YES.

9 MR. BOGARDUS: I HAVE NO FURTHER QUESTIONS,
10 MR. FOREMAN, IF THERE ARE ANY QUESTIONS FROM THE GRAND JURY.

11 THE GRAND JURY FOREPERSON: ARE THERE ANY QUESTIONS
12 FROM THE GRAND JURY?

13 (NO AFFIRMATIVE RESPONSE).

14 THE GRAND JURY FOREPERSON: WOULD YOU PLEASE STAND.

15 THE WITNESS: (WITNESS COMPLIES).

16 THE GRAND JURY FOREPERSON: MS. KOBAYASHI, YOU ARE
17 ADMONISHED NOT TO DISCUSS OR REPEAT AT ANY TIME OUTSIDE THIS
18 COURTROOM THE QUESTIONS YOU HAVE BEEN ASKED OR YOUR ANSWERS,
19 WITH THE UNDERSTANDING THAT SUCH DISCLOSURES ON YOUR PART
20 MAY BE THE BASIS FOR CHARGES AGAINST YOU OF CONTEMPT OF
21 COURT.

22 YOU ARE FREE TO SEEK LEGAL ADVICE FROM AN
23 ATTORNEY, OR FROM THE DISTRICT ATTORNEY'S OFFICE.

24 DO YOU UNDERSTAND?

25 THE WITNESS: YES.

26 THE GRAND JURY FOREPERSON: THANK YOU, YOU MAY BE

1 EXCUSED.

2 THE WITNESS: OKAY, THANK YOU.

3 (WHEREUPON KAREN KOBAYASHI-TAYLOR EXITED THE
4 GRAND JURY ROOM.)

5 THE GRAND JURY FOREPERSON: MR. DISTRICT ATTORNEY, YOU
6 MAY CALL YOUR NEXT WITNESS.

7 MR. BOGARDUS: THANK YOU VERY MUCH, MR. FOREMAN.

8 DANA HUFFMAN, PLEASE.

9 (WHEREUPON DANA HUFFMAN ENTERED THE GRAND JURY
10 ROOM.)

11 THE GRAND JURY FOREPERSON: GOOD MORNING.

12 THE WITNESS: GOOD MORNING.

13 THE GRAND JURY FOREPERSON: PLEASE RAISE YOUR RIGHT
14 HAND.

15 DANA HUFFMAN,
16 CALLED AS A WITNESS BEFORE THE GRAND JURY, HAVING BEEN FIRST
17 DULY SWORN, WAS EXAMINED AND TESTIFIED AS FOLLOWS:

18 THE GRAND JURY FOREPERSON: PLEASE STATE YOUR NAME AND
19 SPELL IT OUT FOR OUR RECORD.

20 THE WITNESS: DANA HUFFMAN; D-A-N-A, H-U-F-F-M-A-N.

21 THE GRAND JURY FOREPERSON: WOULD YOU PLEASE HAVE A
22 SEAT.

23 THE WITNESS: (WITNESS COMPLIES).

24 THE GRAND JURY FOREPERSON: MR. DISTRICT ATTORNEY, THE
25 WITNESS IS YOURS.

26 MR. BOGARDUS: THANK YOU VERY MUCH, MR. FOREMAN.

1 EXAMINATION

2 Q. BY MR. BOGARDUS: GOOD MORNING, MR. HUFFMAN.

3 A. GOOD MORNING.

4 Q. I WILL GIVE YOU AN OPPORTUNITY TO GET SITUATED.

5 THERE IS A MICROPHONE THERE. IF YOU WOULDN'T
6 MIND SPEAKING DIRECTLY INTO THE MICROPHONE, SO EVERYBODY CAN
7 HEAR YOU.

8 A. OKAY.

9 Q. BEFORE I ASK YOU THE QUESTIONS I ASKED YOU TO
10 COME HERE FOR TODAY, I NEED TO READ YOU SOME ADMONITIONS,
11 MR. HUFFMAN.

12 BEFORE WE BEGIN, I WOULD LIKE TO ADVISE YOU THAT
13 YOU ARE NOW APPEARING BEFORE A DULY CONSTITUTED GRAND JURY
14 THAT IS INVESTIGATING POSSIBLE VIOLATIONS OF STATE CRIMINAL
15 LAW.

16 DO YOU UNDERSTAND THAT?

17 A. YES.

18 Q. YOU HAVE BEEN PLACED UNDER OATH. AND THAT MEANS
19 YOUR TESTIMONY HERE TODAY HAS THE SAME FORCE AND EFFECT AS
20 IF YOU WERE IN A COURT OF LAW.

21 DO YOU UNDERSTAND THAT?

22 A. I DO.

23 Q. THAT MEANS YOU HAVE AN OBLIGATION TO TELL THE
24 TRUTH AND NOTHING BUT THE TRUTH IN THIS PROCEEDING, OR YOU
25 COULD SUBJECT YOURSELF TO A POSSIBLE PROSECUTION FOR
26 PERJURY.

1 DO YOU UNDERSTAND THAT?

2 A. YES.

3 Q. VERY WELL, THANK YOU VERY MUCH, SIR.

4 ARE YOU CURRENTLY EMPLOYED, MR. HUFFMAN?

5 A. I AM, WITH THE CITY OF FULLERTON.

6 Q. WHAT DO YOU DO FOR THE CITY OF FULLERTON?

7 A. BUILDING AND ELECTRICAL SUPERVISOR.

8 Q. IS THAT YOUR TITLE, BUILDING AND ELECTRICAL
9 SUPERVISOR?

10 A. IT IS.

11 Q. HOW LONG HAVE YOU BEEN A BUILDING AND ELECTRICAL
12 SUPERVISOR?

13 A. ACTING SINCE DECEMBER, AND IT IS A PERMANENT
14 POSITION, IT HAS BEEN ABOUT 30 DAYS.

15 Q. OKAY. ACTING SINCE DECEMBER OF 2011?

16 A. CORRECT.

17 Q. AND AS A PERMANENT POSITION, FOR THE LAST 30
18 DAYS?

19 A. YES.

20 Q. IS THAT A PROMOTIONAL POSITION FROM THE POSITION
21 YOU HAD BEFORE?

22 A. IT WAS.

23 Q. CONGRATULATIONS.

24 THE POSITION YOU HAD BEFORE, WHAT WAS THAT?

25 A. IT WAS ELECTRICAL AND H.V.A.C. LEAD WORKER.

26 Q. CAN YOU DESCRIBE TO THE GRAND JURY WHAT YOUR

1 DUTIES CONSISTED OF IN THAT PRIOR POSITION.

2 A. I SUPERVISED ELECTRICIANS AND AIR CONDITION
3 MECHANICS.

4 Q. CAN YOU ALSO DESCRIBE TO US YOUR BACKGROUND, YOUR
5 TRAINING AND EXPERIENCE IN THAT FIELD THAT QUALIFIED YOU TO
6 WORK IN THAT FIELD, AND ALSO TO BE A SUPERVISOR IN THAT
7 FIELD.

8 A. YES, I STARTED OUT, I WAS A JOURNEYMAN
9 ELECTRICIAN. AND I STARTED OUT ACTUALLY AS A MAINTENANCE
10 ELECTRICIAN, AND THEN WENT TO A POSITION OF ELECTRICIAN.
11 AND THEN MOVED TO LEAD WORKER.

12 Q. CAN YOU GIVE US A LITTLE MORE DETAIL WITH RESPECT
13 TO THE TIMELINE; HOW MANY YEARS HAVE YOU BEEN WORKING FOR
14 THE CITY OF FULLERTON?

15 A. 30 YEARS.

16 Q. AND IN THOSE 30 YEARS, HAVE YOU OCCUPIED THOSE
17 POSITIONS THAT YOU JUST DESCRIBED, STARTING OUT AS A
18 JOURNEYMAN, AND WORKING YOUR WAY UP TO YOUR CURRENT
19 POSITION?

20 A. HOW MANY YEARS AT EACH ONE?

21 Q. IF YOU COULD, PLEASE.

22 A. I BELIEVE ABOUT 12 YEARS I WAS A JOURNEYMAN
23 BEFORE I STARTED WITH THE CITY.

24 AND THEN I STARTED AS A MAINTENANCE ELECTRICIAN,
25 AND WORKED THERE IN THAT POSITION FOR ABOUT 12 YEARS.

26 AND THEN I WAS AN ELECTRICIAN FOR EIGHT YEARS.

1 AND THEN 10 YEARS AS A LEAD WORKER.

2 Q. OKAY. SO IT IS FAIR FOR ME TO SAY THEN THAT YOU
3 WERE A JOURNEYMAN ELECTRICIAN PRIOR TO JOINING THE CITY OF
4 FULLERTON?

5 A. YES.

6 Q. AND FOR HOW LONG DID YOU WORK AS A JOURNEYMAN;
7 WERE YOU A JOURNEYMAN ELECTRICIAN BEFORE YOU JOINED THE CITY
8 OF FULLERTON?

9 A. ABOUT FOUR YEARS, MOVED THROUGH THE APPRENTICE
10 FOR FOUR, AND THEN I WAS A JOURNEYMAN FOR FOUR YEARS.

11 Q. WHEN YOU SAY YOU WENT THROUGH THE APPRENTICE, CAN
12 YOU DESCRIBE IN VERY GENERAL TERMS WHAT YOU MEAN BY THAT,
13 WENT THROUGH THE APPRENTICE?

14 A. YES, YOU WORK ON-THE-JOB AND GO TO SCHOOL AT
15 NIGHT STUDYING ELECTRICAL THEORY.

16 Q. IS IT A PARTICULAR COURSE OR PARTICULAR PROGRAM
17 OF COURSES THAT YOU TOOK TO STUDY ELECTRICAL THEORY?

18 A. IT IS A WHOLE PROGRAM OF COURSES.

19 Q. DID THAT PROGRAM CULMINATE OR END IN SOME SORT OF
20 CERTIFICATION?

21 A. IT DID.

22 Q. AND DID YOU OBTAIN A CERTIFICATION FROM THAT
23 PROGRAM?

24 A. I DID.

25 Q. AND WHAT CERTIFICATION DID YOU OBTAIN FROM THAT
26 PROGRAM?

1 A. JOURNEYMAN ELECTRICIAN.

2 Q. AND WHERE DID YOU PURSUE THAT COURSE OF STUDY?

3 A. THAT WAS THROUGH, IT ENDED UP THROUGH COASTLINE
4 COMMUNITY COLLEGE.

5 Q. OKAY. AND AFTER YOU COMPLETED THAT
6 CERTIFICATION, YOU WERE A JOURNEYMAN ELECTRICIAN, DID YOU
7 CONTINUE TO WORK IN THAT FIELD AS A JOURNEYMAN ELECTRICIAN,
8 BEFORE BECOMING A MEMBER OF THE CITY OF FULLERTON OR AN
9 EMPLOYEE MEMBER OF THE CITY OF FULLERTON?

10 A. YES, I WORKED FOR SEVERAL ELECTRICAL CONTRACTORS.

11 Q. AND, GENERALLY SPEAKING, WHAT WAS THE NATURE OF
12 YOUR WORK FOR THOSE ELECTRICAL CONTRACTORS?

13 A. IT VARIED. IT WAS, SOME OF IT, A SMALL AMOUNT
14 WAS RESIDENTIAL, BUT MOST LIKE WAS COMMERCIAL AND
15 INDUSTRIAL.

16 Q. OKAY. SO YOU WOULD WORK AS AN ELECTRICAL
17 CONTRACTOR ON VARIOUS PROJECTS RELATED TO INDUSTRIAL
18 ELECTRICAL, COMMERCIAL ELECTRICAL, AND RESIDENTIAL
19 ELECTRICAL?

20 A. CORRECT.

21 Q. AND THEN YOU BEGAN YOUR EMPLOYMENT WITH THE CITY
22 OF FULLERTON, AND WAS YOUR FIRST POSITION AS A MAINTENANCE
23 ELECTRICIAN?

24 A. IT WAS.

25 Q. AND YOU OCCUPIED THAT POSITION FOR 12 YEARS?

26 A. THAT'S WHAT I SAID, I BELIEVE THAT IT WAS 12

1 YEARS.

2 Q. APPROXIMATELY 12 YEARS?

3 A. APPROXIMATELY 12 YEARS, YES.

4 Q. WHAT DID YOU DO, GENERALLY SPEAKING, AS A
5 MAINTENANCE ELECTRICIAN FOR THE CITY OF FULLERTON FOR THOSE
6 12 YEARS?

7 A. PROBABLY 60 PERCENT OF IT WAS TAKING CARE OF
8 STREET LIGHTING ISSUES. ABOUT THE OTHER 40 PERCENT WAS
9 DOING MAINTENANCE WORK INSIDE THE CITY FACILITIES.

10 Q. OKAY. YOU MOVED FROM A MAINTENANCE ELECTRICIAN
11 TO THEN AN ELECTRICIAN?

12 A. CORRECT.

13 Q. THAT'S A POSITION YOU OCCUPIED FOR APPROXIMATELY
14 EIGHT YEARS?

15 A. YES.

16 Q. GENERALLY SPEAKING, WHAT DID YOUR DUTIES CONSIST
17 OF AS AN ELECTRICIAN?

18 A. IT WAS TAKING CARE OF, LIKE I SAID, ALL THE
19 BUILDINGS IN THE CITY OF FULLERTON, PLUS THE WATER PUMPING
20 STATIONS, THE WELLS, MOTORS, MOTOR CONTROL, THINGS LIKE
21 THAT.

22 Q. OKAY. AND IS AN ELECTRICIAN A PROMOTIONAL
23 POSITION FROM THE MAINTENANCE ELECTRICIAN?

24 A. YES.

25 Q. YOU WENT FROM BEING A ELECTRICIAN TO THEN BEING A
26 LEAD WORKER, WHERE YOU OCCUPIED THAT POSITION FOR

1 APPROXIMATELY 10 YEARS?

2 A. I DID, YES.

3 Q. GENERALLY SPEAKING, WHAT DID YOU DO AS A LEAD
4 WORKER ON BEHALF OF THE CITY OF FULLERTON?

5 A. WELL, SOMETIMES ACTUALLY DOING ELECTRICAL WORK,
6 MANY TIMES WORKING WITH THE ENGINEERING DEPARTMENT, WORKING
7 WITH CONTRACTORS, PLAN CHECKING, AND THEN ALSO THE
8 SUPERVISION OF THE OTHER WORKERS.

9 Q. OKAY. WERE THERE ANY ADDITIONAL CERTIFICATION
10 COURSES, BESIDES THAT WHICH YOU HAVE ALREADY DESCRIBED TO
11 US, THAT YOU COMPLETED AS PART OF YOUR OCCUPATION IN THIS
12 FIELD?

13 A. MOST OF THOSE WERE MANAGEMENT COURSES.

14 Q. OKAY. ARE YOU FAMILIAR WITH THE COLLECTION OF
15 SURVEILLANCE CAMERAS IN THE CITY OF FULLERTON THAT ARE
16 REFERRED TO AS THE DOWNTOWN PUBLIC SAFETY CAMERA SYSTEM?

17 A. I AM.

18 Q. AND HOW IS IT THAT YOU ARE FAMILIAR WITH THAT
19 SYSTEM OF CAMERAS?

20 A. OBVIOUSLY WATCHING THE INSTALLATION WHEN THEY
21 WERE PUT IN, AND THEN FOR THE MOST PART THEY HAVE BEEN
22 TROUBLE FREE, SO WE REALLY HAVEN'T HAD TO DO ANYTHING WITH
23 THEM.

24 Q. NOW, THAT SYSTEM, TO YOUR KNOWLEDGE, THAT IS MADE
25 UP OF MULTIPLE CAMERAS?

26 A. YES.

1 Q. IS IT FAIR FOR ME TO SAY THAT ONE OR MORE OF
2 THOSE CAMERAS ARE LOCATED AT THE FULLERTON TRANSPORTATION
3 CENTER?

4 A. THAT WOULD BE, YES.

5 Q. AND, TO YOUR KNOWLEDGE, ARE THOSE CAMERAS
6 REFERRED TO BY DIFFERENT NAMES, REPRESENTING WHERE THEY ARE
7 LOCATED?

8 A. WE DON'T GIVE THEM THOSE NAMES, I MEAN THE POLICE
9 DEPARTMENT CERTAINLY MAY.

10 Q. OKAY. ARE YOU FAMILIAR WITH ONE OF THE CAMERAS
11 AS PART OF THAT SYSTEM BEING REFERRED TO AS THE BUS DEPOT
12 CAMERA?

13 A. YES.

14 Q. AND, TO YOUR KNOWLEDGE, DOES THAT CAMERA HAVE A
15 CORRESPONDING MONITOR AT THE FULLERTON POLICE DEPARTMENT?

16 A. YES, IT DOES.

17 Q. NOW, IS ONE OF YOUR DUTIES, OR HAS ONE OF YOUR
18 DUTIES ON BEHALF OF THE CITY OF FULLERTON BEEN TO RESPOND TO
19 ANY CALLS FOR SERVICE OR REPAIR TO THAT CAMERA SYSTEM, THE
20 DOWNTOWN PUBLIC SAFETY CAMERA SYSTEM?

21 A. YES, IT WOULD.

22 Q. AND THAT WOULD INCLUDE ALSO, IT WOULD BE YOUR
23 DUTY IF THERE WAS A CALL FOR REPAIR OF SERVICE WITH REGARD
24 TO THE BUS DEPOT CAMERA?

25 A. YES.

26 Q. AT THE FULLERTON TRANSPORTATION CENTER?

1 A. YES.

2 Q. ARE YOU THE ONLY INDIVIDUAL, TO YOUR KNOWLEDGE,
3 THAT WOULD BE CALLED UPON TO SERVICE THAT CAMERA, OR ARE
4 THERE OTHER INDIVIDUALS THAT WOULD ALSO BE CALLED UPON TO
5 SERVICE THAT PARTICULAR CAMERA?

6 A. NO, I WOULD BE THE ONLY ONE.

7 Q. HOW WOULD YOU BE MADE AWARE IF THERE WAS AN ISSUE
8 OF THAT CAMERA NOT FUNCTIONING PROPERLY?

9 A. GARY SIRIN FROM THE POLICE DEPARTMENT LOOKS AT
10 THOSE CAMERAS, AND HE WOULD NOTICE IF THERE WAS NO SCREEN AT
11 ALL, AND WOULD ASK ME TO JUST GO OVER TO THE CAMERA AND
12 RESET THE UNIT. WHICH BASICALLY CONSISTS, THERE IS TWO
13 CIRCUIT BREAKERS INSIDE, I WOULD TURN THOSE OFF, WAIT, OH,
14 MAYBE 10 OR 15 SECONDS, TURN THEM BACK ON, AND THEN CALL
15 GARY AND ASK IF THAT HAD TAKEN CARE OF THE PROBLEM.

16 Q. OKAY. SO THE WAY THAT YOUR ATTENTION WOULD BE
17 DRAWN TO A NEED FOR SERVICE, IF ANY, WOULD BE BY GARY SIRIN
18 AT THE FULLERTON POLICE DEPARTMENT CONTACTING YOU?

19 A. YES.

20 Q. ALL RIGHT. NOW, PRIOR TO JULY 5TH OF 2011, WERE
21 YOU EVER CALLED UPON TO PERFORM ANY SERVICE ON THE BUS DEPOT
22 CAMERA?

23 A. NO, I WASN'T.

24 Q. TO YOUR KNOWLEDGE, WAS THAT CAMERA FUNCTIONING
25 PROPERLY?

26 A. YES.

1 Q. AFTER JULY 5TH OF 2011, WERE YOU EVER CALLED UPON
2 TO SERVICE THE BUS DEPOT CAMERA OR THE FULLERTON
3 TRANSPORTATION CENTER CAMERAS?

4 A. YES, THERE WAS ONE TIME, TO ASK TO DO WHAT I JUST
5 STATED, TO GO IN AND TRY TO RESET IT. WHICH I DID, AND THAT
6 TOOK CARE OF THE PROBLEM.

7 Q. TO YOUR KNOWLEDGE, THAT RESOLVED ANY ISSUE WITH
8 THE CAMERA FUNCTION?

9 A. YES.

10 Q. AND, TO YOUR KNOWLEDGE, IT OTHERWISE WAS
11 FUNCTIONING PROPERLY AFTER JULY OF 2011 AS WELL?

12 A. YES.

13 MR. BOGARDUS: THANK YOU. I HAVE NOTHING FURTHER,
14 MR. FOREMAN.

15 THE GRAND JURY FOREPERSON: ARE THERE ANY QUESTIONS
16 FROM THE GRAND JURY?

17 (NO AFFIRMATIVE RESPONSE).

18 THE GRAND JURY FOREPERSON: MR. HUFFMAN, WOULD YOU
19 PLEASE STAND.

20 THE WITNESS: (WITNESS COMPLIES).

21 THE GRAND JURY FOREPERSON: MR. HUFFMAN, YOU ARE
22 ADMONISHED TO NOT DISCUSS OR REPEAT AT ANY TIME OUTSIDE THIS
23 COURTROOM THE QUESTIONS YOU HAVE BEEN ASKED OR YOUR ANSWERS,
24 WITH THE UNDERSTANDING THAT SUCH DISCLOSURES ON YOUR PART
25 MAY BE THE BASIS FOR CHARGES AGAINST YOU OF CONTEMPT OF
26 COURT.

1 YOU ARE FREE TO SEEK LEGAL ADVICE FROM AN
2 ATTORNEY, OR FROM THE DISTRICT ATTORNEY'S OFFICE.

3 DO YOU UNDERSTAND?

4 THE WITNESS: I DO.

5 THE GRAND JURY FOREPERSON: MR. HUFFMAN, THANK YOU FOR
6 TESTIFYING, YOU ARE EXCUSED FROM THE HEARING.

7 THE WITNESS: OKAY, THANK YOU.

8 MR. BOGARDUS: THANK YOU, SIR.

9 (WHEREUPON DANA HUFFMAN EXITED THE GRAND JURY
10 ROOM.)

11 THE GRAND JURY FOREPERSON: YOU MAY CALL YOUR NEXT
12 WITNESS.

13 MR. BOGARDUS: THANK YOU VERY MUCH.

14 CESAR NAVARRO, PLEASE.

15 (WHEREUPON CESAR NAVARRO ENTERED THE GRAND JURY
16 ROOM.)

17 THE GRAND JURY FOREPERSON: PLEASE RAISE YOUR RIGHT
18 HAND.

19 CESAR NAVARRO,
20 CALLED AS A WITNESS BEFORE THE GRAND JURY, HAVING BEEN FIRST
21 DULY SWORN, WAS EXAMINED AND TESTIFIED AS FOLLOWS:

22 THE GRAND JURY FOREPERSON: PLEASE STATE YOUR NAME, AND
23 SPELL IT OUT FOR OUR RECORD.

24 THE WITNESS: CESAR NAVARRO; C-E-S-A-R, N-A-V-A-R-R-O.

25 THE GRAND JURY FOREPERSON: THANK YOU.

26 PLEASE HAVE A SEAT.

1 THE WITNESS: (WITNESS COMPLIES).

2 THE GRAND JURY FOREPERSON: MR. DISTRICT ATTORNEY, THE
3 WITNESS IS YOURS.

4 MR. BOGARDUS: THANK YOU, MR. FOREMAN.

5 EXAMINATION

6 Q. BY MR. BOGARDUS: GOOD MORNING MR. NAVARRO. THERE
7 IS A MICROPHONE THERE IN FRONT OF YOU, ADJUST THAT SO IT IS
8 COMFORTABLE TO SPEAK INTO THE MICROPHONE SO EVERYONE CAN
9 HEAR YOU. WE APPRECIATE IT.

10 BEFORE WE BEGIN I NEED TO READ YOU AN ADMONITION
11 AND ASK YOU A COUPLE OF QUESTIONS.

12 A. OKAY.

13 Q. BEFORE WE BEGIN I WOULD LIKE TO ADVISE YOU THAT
14 YOU ARE NOW APPEARING BEFORE A DULY CONSTITUTED GRAND JURY
15 THAT IS INVESTIGATING POSSIBLE VIOLATIONS OF STATE CRIMINAL
16 LAW.

17 DO YOU UNDERSTAND THAT?

18 A. YES.

19 Q. YOU HAVE BEEN PLACED UNDER OATH. THAT MEANS THAT
20 YOUR TESTIMONY HERE TODAY HAS THE SAME FORCE AND EFFECT AS
21 IF YOU WERE IN A COURT OF LAW.

22 DO YOU UNDERSTAND THAT?

23 A. YES, SIR.

24 Q. THAT MEANS YOU HAVE AN OBLIGATION TO TELL THE
25 TRUTH AND NOTHING BUT THE TRUTH IN THIS PROCEEDING, OR YOU
26 COULD SUBJECT YOURSELF TO A POSSIBLE PROSECUTION FOR

1 PERJURY.

2 DO YOU UNDERSTAND THAT?

3 A. YES, SIR.

4 Q. THANK YOU.

5 GOOD MORNING. MR. NAVARRO, YOU ARE CURRENTLY
6 EMPLOYED, SIR?

7 A. YES, SIR.

8 Q. WHAT DO YOU DO FOR A LIVING?

9 A. I AM A LEAD DISPATCHER WITH THE FULLERTON POLICE
10 DEPARTMENT.

11 Q. HOW LONG HAVE YOU BEEN A LEAD DISPATCHER FOR THE
12 CITY OF FULLERTON?

13 A. I WAS PROMOTED IN 2007.

14 Q. SO SINCE SOMETIME IN 2007 YOU HAVE BEEN A LEAD
15 DISPATCHER WITH THE CITY OF FULLERTON POLICE DEPARTMENT?

16 A. THAT IS CORRECT.

17 Q. PRIOR TO BECOMING A LEAD DISPATCHER, WHAT DID YOU
18 DO FOR THE CITY OF FULLERTON?

19 A. I WAS A DISPATCHER.

20 Q. HOW LONG WERE YOU A DISPATCHER FOR FULLERTON?

21 A. 2004 IS WHEN I WAS HIRED.

22 Q. CAN YOU EXPLAIN IN GENERAL TERMS TO THE GRAND
23 JURY WHAT ARE THE RESPONSIBILITIES OR DUTIES OF A LEAD
24 DISPATCHER.

25 A. LEAD DISPATCHER IS PRETTY MUCH OVERSEEING THE ON
26 DUTY ACTIVITIES OF THE DISPATCH CENTER. ENSURING CALLS FOR

1 SERVICE ARE PROCESSED. ENSURING RADIO COMMUNICATIONS.

2 ENSURING STAFFING. ANYTHING GENERAL TO THE COMMUNICATIONS
3 CENTER.

4 Q. NOW, I WANT TO TURN YOUR ATTENTION SPECIFICALLY
5 TO JULY 5TH OF 2011, AND ASK YOU, WERE YOU WORKING IN YOUR
6 ROLE AS A LEAD DISPATCHER BACK ON THAT DATE AT APPROXIMATELY
7 8:23 IN THE EVENING?

8 A. YES.

9 Q. AND AT THAT TIME, OR APPROXIMATELY AT THAT TIME
10 DID YOU PERSONALLY RECEIVE A PHONE CALL TO THE FULLERTON
11 POLICE DEPARTMENT THAT YOU HANDLED?

12 A. YES.

13 Q. OKAY. CAN YOU EXPLAIN TO THE MEMBERS OF THE
14 GRAND JURY WHAT THE NATURE OF THAT CALL WAS, OR THE CALL FOR
15 SERVICE I AM REFERRING TO.

16 A. YOU ARE REFERRING TO THE KELLY THOMAS INCIDENT
17 SPECIFICALLY?

18 Q. YES, SIR.

19 A. RECEIVED A CALL FOR SERVICE FROM A FEMALE,
20 ADVISING THAT THERE WAS A MALE SUBJECT AT, ORIGINALLY SHE
21 STATED, I BELIEVE, AT THE SLIDE BAR IN THE PARKING LOT, THAT
22 WAS TRYING DOOR HANDLES. THROUGHOUT THE CONVERSATION LATER
23 DETERMINED IT WAS ACTUALLY MORE AT THE BUS DEPOT OR THE BUS
24 TRANSPORTATION CENTER AT 123 SOUTH POMONA.

25 Q. OKAY. AND YOU MADE A DETERMINATION, BASED ON
26 YOUR CONVERSATION WITH THIS CALLER, THAT THIS CALL FOR

1 SERVICE OR INCIDENT WAS RELATED TO 123 SOUTH POMONA IN THE
2 CITY OF FULLERTON, COUNTY OF ORANGE?

3 A. CORRECT, I CONFIRMED WITH HER, BECAUSE SHE MADE A
4 STATEMENT IN THE CONVERSATION, HE IS OVER BY THE BUS DEPOT,
5 THAT'S WHEN IT CHANGES FROM SLIDE BAR AT 122 COMMONWEALTH TO
6 123 SOUTH POMONA.

7 Q. ARE YOU FAMILIAR WITH THE LOCATION OF 123 SOUTH
8 POMONA, THE FULLERTON TRANSPORTATION CENTER?

9 A. FOR THE MOST PART.

10 Q. OKAY. THE ADDRESS YOU PROVIDED, ARE YOU FAMILIAR
11 WITH THAT BEING THE BUS DEPOT AREA?

12 A. THAT IS CORRECT, THAT'S THE ADDRESS WE HAVE
13 ASSIGNED TO THE BUS DEPOT.

14 Q. NOW, WHAT DID YOU DO, IF ANYTHING, IN RESPONSE TO
15 THAT CALL FOR SERVICE?

16 A. AFTER TAKING THE INFORMATION, PROCESSING IT AND
17 TURNING IT INTO OUR COMPUTER SYSTEM FOR THE CALL TO BE
18 PROCESSED AND DISPATCHED OUT, SINCE WE ALSO HAVE A CAMERA
19 SYSTEM, THAT IS DULY DESIGNATED TOWARDS THE BUS DEPOT, I
20 LEFT MY POSITION AND I WALKED OVER TO THE CAMERA SYSTEM, AND
21 MANEUVERED THE CAMERA ANGLE TO SEE IF I COULD LOCATE THE
22 SUBJECT IN QUESTION THAT THE R.P. OR THE CALLER WAS
23 REFERRING TO.

24 Q. OKAY. I AM GOING TO ASK YOU SOME QUESTIONS ABOUT
25 THAT CAMERA SYSTEM IN JUST A MOMENT. I WOULD LIKE TO BACK
26 UP FOR A SECOND THOUGH.

1 AFTER YOU RECEIVED THAT INFORMATION, DID YOU
2 ENTER THAT CALL FOR SERVICE IN SOME FASHION?

3 A. RIGHT, THE CALL FOR SERVICE GETS ENTERED, ALL THE
4 INFORMATION GETS DOCUMENTED, A BRIEF INFORMATION GETS
5 ENTERED INTO THE SYSTEM. IT GOES IN. EVERYBODY IN THE
6 DISPATCH CENTER GETS TO SEE THAT CALL. WE HAVE A PERSON
7 SPECIFICALLY ASSIGNED TO DISPATCH THAT CALL FOR SERVICE, THE
8 PERSON WORKING RADIO WOULD BE RESPONSIBLE FOR DISPATCHING
9 THAT CALL OUT. ONCE THE CALL COMES UP IN THE CUE, SHE WOULD
10 LOOK AT AVAILABLE UNITS AND DISPATCH WHOEVER WOULD BE
11 AVAILABLE.

12 Q. JUST SO I UNDERSTAND THE SEQUENCE OF EVENTS,
13 AFTER YOU RECEIVE THE PHONE CALL, YOU ENTER THAT CALL IN FOR
14 SERVICE INTO YOUR DISPATCH SYSTEM, OR SYSTEM THAT YOU HAVE
15 THERE AT THE POLICE DEPARTMENT, CORRECT?

16 A. CORRECT.

17 Q. AND THEN THAT WILL ALERT DISPATCHERS OR OTHER
18 INDIVIDUALS WORKING THE DISPATCH CENTER THAT WHEN THAT CALL
19 COMES UP IN THEIR CUE OR LINE OF CALLS, THEY ARE TO ASSIGN A
20 DISPATCHING OFFICER OR OFFICERS OUT TO THAT LOCATION?

21 A. THAT IS CORRECT.

22 Q. YOU DID THE ENTERING CALL FOR SERVICE PORTION OF
23 THAT SEQUENCE OF EVENTS?

24 A. CORRECT.

25 Q. OKAY. AND YOU MENTIONED THE CAMERA SYSTEM ALSO.

26 ARE YOU FAMILIAR WITH THE FACT THAT THERE IS A

1 COLLECTION OF SURVEILLANCE CAMERAS IN THE DOWNTOWN AREA IN
2 THE CITY OF FULLERTON SOMETIMES REFERRED TO AS THE DOWNTOWN
3 PUBLIC SAFETY CAMERA SYSTEM?

4 A. YES.

5 Q. AND HOW IS IT YOU ARE FAMILIAR WITH THAT CAMERA
6 SYSTEM?

7 I THINK YOU BEGAN TELLING US A LITTLE BIT ABOUT
8 THE FACT THAT THE POLICE DEPARTMENT HAS MONITORS; CAN YOU
9 EXPLAIN HOW YOU ARE FAMILIAR WITH THE FACT THIS CAMERA
10 SYSTEM EXISTS?

11 A. WELL, WE HAVE THE MAIN T.V. SCREEN IN OUR
12 COMMUNICATIONS CENTER, IT DISPLAYS THE CAMERAS, DEPENDING ON
13 WHAT VIEW WE WOULD HAVE. SO IT IS IN OUR CENTER, THAT'S HOW
14 WE ARE FAMILIAR WITH IT. WE ALSO HAVE THE JOY STICK THAT
15 CONTROLS THE CAMERAS.

16 Q. OKAY. AND DOES THAT CAMERA SYSTEM CONSIST OF ONE
17 CAMERA OR MULTIPLE CAMERAS?

18 A. MULTIPLE CAMERAS.

19 Q. ARE THEY DESIGNATED BY A PARTICULAR NAME; ARE
20 THOSE SPECIFIC CAMERAS REFERRED TO BY PARTICULAR NAMES OR
21 LOCATION NAMES?

22 A. CORRECT.

23 Q. OKAY. IS ONE OF THE CAMERAS REFERRED TO AS THE
24 BUS DEPOT CAMERA?

25 A. YES, SIR.

26 Q. AND WHAT AREA IS CAPTURED, OR IS IN THE VIEW

1 GENERALLY OF THE BUS DEPOT CAMERA?

2 A. APPROXIMATELY A 360-DEGREE CAMERA VIEW OF THE BUS
3 DEPOT FROM WHERE THE CAMERA IS LOCATED, YOU CAN SEE THE BUS
4 DEPOT, YOU CAN SEE THE SLIDE BAR, YOU CAN SEE THE TRAIN
5 STATION, YOU CAN SEE, I BELIEVE, UP TO EVEN THE SPAGHETTI
6 FACTORY.

7 Q. AND RIGHT NOW YOU ARE NAMING SOME LOCATIONS THAT
8 ARE IN THE AREA OF FULLERTON TRANSPORTATION CENTER?

9 A. RIGHT, PRETTY MUCH A 360-DEGREE VIEW.

10 Q. NOW, YOU ALSO MENTIONED IN THE DISPATCH AREA YOU
11 HAVE THE ABILITY NOT ONLY TO MONITOR THAT CAMERA THAT IS
12 DEPICTED THE BUS DEPOT VIEW, BUT ALSO TO MANIPULATE THE
13 CAMERA?

14 A. THAT IS CORRECT.

15 Q. HOW IS IT YOU ARE ABLE TO MANIPULATE OR MOVE THE
16 CAMERA?

17 A. THERE IS A JOY STICK, WHAT WE REFER TO AS A JOY
18 STICK, IT IS A KEYBOARD COMPONENT AND WE CAN SELECT THE
19 CAMERA THAT WE ARE, THAT WE WOULD LIKE TO GAIN ACCESS OVER,
20 AND BASICALLY JUST USE THE JOY STICK TO CONTROL, WE CAN PAN
21 RIGHT, LEFT, WE CAN ZOOM IN AND OUT.

22 Q. CAN YOU TILT UP AND DOWN?

23 A. TILT UP AND DOWN.

24 Q. OKAY. NOW, PRIOR TO JULY 5TH OF 2011, HAVE YOU
25 USED THIS CAMERA SYSTEM BEFORE?

26 A. YES, SIR.

1 Q. OKAY. AND HAVE YOU MONITORED CONTACTS BETWEEN
2 POLICE OFFICERS AND INDIVIDUALS BY VIRTUE OF THIS CAMERA
3 SYSTEM BEFORE?

4 A. YES, SIR.

5 Q. BEFORE JULY 5TH, 2011?

6 A. YES, SIR.

7 Q. WOULD THAT INCLUDE THE BUS DEPOT CAMERA AS WELL,
8 MONITOR CONTACTS BETWEEN POLICE OFFICERS AND INDIVIDUALS BY
9 VIRTUE OF THE BUS DEPOT?

10 A. I AM SURE.

11 Q. OKAY. DO YOU ALSO HAVE THE ABILITY TO
12 SIMULTANEOUSLY LISTEN TO DISPATCH COMMUNICATIONS BY OFFICERS
13 THAT ARE OUT IN THE FIELD WHEN YOU ARE IN THE DISPATCH
14 COMMUNICATION CENTER?

15 A. THROUGH OUR RADIO SYSTEM, NOT TIED INTO THE
16 CAMERA SYSTEM.

17 Q. OKAY. AND HAVE THERE EVER BEEN OCCASIONS WHERE
18 YOU UTILIZED THIS CAMERA SYSTEM WHILE SIMULTANEOUSLY
19 LISTENING TO DISPATCH COMMUNICATIONS BY POLICE OFFICERS?

20 A. STATE THAT AGAIN.

21 Q. SURE.

22 HAVE THERE BEEN OCCASION WHILE YOU ARE WATCHING
23 POLICE OFFICERS MAKING CONTACT WITH AN INDIVIDUAL OUT IN THE
24 FIELD BY VIRTUE OF THE CAMERA SYSTEM, BUT YOU ARE ALSO ABLE
25 TO HEAR THEIR DISPATCH COMMUNICATIONS THROUGH RADIO?

26 A. OF COURSE, YES.

1 Q. AND HAS WHAT YOU VIEWED ON THE VIDEO BEEN
2 CONSISTENT WITH WHAT YOU ARE HEARING, OR THE DISPATCH
3 COMMUNICATION, I MEAN IT APPEARS TO BE A LIVE FEED?

4 A. YES, THAT IS CORRECT.

5 Q. OKAY. NOW, AT SOME POINT ON JULY 5TH OF 2011, I
6 THINK YOU BEGAN TO TELL US YOU LEARNED THAT AN OFFICER HAD
7 MADE CONTACT WITH AN INDIVIDUAL OUT AT THE BUS DEPOT AREA?

8 A. CORRECT.

9 Q. AND AT THAT POINT IN TIME YOU TOOK CONTROL OF THE
10 CAMERA SYSTEM; IS THAT RIGHT?

11 A. CORRECT.

12 Q. AND SPECIFICALLY THE BUS DEPOT CAMERA?

13 A. YES.

14 Q. CAN YOU TELL US WHAT YOU DID WITH REGARD TO
15 TAKING CONTROL OF THE BUS DEPOT CAMERA?

16 A. I TOOK CONTROL, ORIGINALLY WHEN THE CALL CAME IN,
17 THE FIRST CHANCE I GOT, I BELIEVE IT WAS IMMEDIATELY RIGHT
18 AFTER THE CALL WAS ENTERED, LIKE I SAID, I LEFT MY POSITION,
19 WENT UP TO THE JOY STICK POSITION, MANEUVERED THE CAMERA
20 SYSTEM OVER TO THE BUS DEPOT AREA TO SEE IF I CAN LOCATE THE
21 SUSPECT IN QUESTION. AT THE TIME I REALLY WASN'T ABLE TO
22 LOCATE THAT BASED ON THE ACTUAL DESCRIPTION THE CALLER HAD
23 DESCRIBED, AND I JUST LEFT IT PANNED IN THAT DIRECTION. IT
24 WASN'T UNTIL LATER ON I REALIZED THAT ONE OF THE OFFICERS
25 MENTIONED THAT HE WAS OUT WITH THE SUBJECT THAT I REDIRECTED
26 THE CAMERA.

1 Q. OKAY. DID YOU RECOGNIZE, OR HOW DID YOU LEARN
2 THAT ONE OF THE OFFICERS WAS OUT WITH THE INDIVIDUAL?

3 A. IT WOULD HAVE BEEN THROUGH RADIO CONTACT.

4 Q. DID YOU RECOGNIZE WHO IT WAS THAT IDENTIFIED
5 THEMSELVES AS BEING OUT WITH THE INDIVIDUAL?

6 A. I BELIEVE IT WAS OFFICER RAMOS.

7 Q. AND AFTER YOU HEARD THAT OFFICER RAMOS HAD MADE
8 CONTACT WITH THIS INDIVIDUAL, DID YOU TAKE CONTROL OF THE
9 CAMERA SYSTEM AGAIN IN AN EFFORT TO FOCUS THE CAMERA ON THAT
10 CONTACT BETWEEN OFFICER RAMOS AND THAT INDIVIDUAL?

11 A. RIGHT.

12 Q. WHAT DID YOU DO IN ORDER TO ACHIEVE THAT?

13 A. JUST RE-PAN IT, JUST RETILT IT OR REDIRECT IT TO
14 WHEREVER I COULD LOCATE HIM.

15 Q. OKAY. AND WERE YOU ABLE TO FOCUS THE CAMERA IN
16 ON OFFICER RAMOS AND THIS INDIVIDUAL HE MADE CONTACT WITH?

17 A. YES.

18 Q. AND, GENERALLY SPEAKING, HOW ARE YOU FAMILIAR
19 WITH WHO OFFICER RAMOS IS; HOW WOULD YOU RECOGNIZE HIM
20 ON-SITE?

21 A. WE ATTEND MEETINGS, I KNOW HIM ON A PERSONAL
22 BASIS WORKING WITH HIM, SO I WOULD RECOGNIZE HIM.

23 Q. AFTER YOU FOCUS THE CAMERA ON OFFICER RAMOS AND
24 THIS INDIVIDUAL, WHAT DID YOU DO NEXT?

25 A. ONE MORE TIME?

26 Q. WHAT DID YOU DO AFTER YOU FOCUSED THE CAMERA ON

1 OFFICER RAMOS?

2 A. BACK TO MY DUTIES, BACK TO MY POSITION.

3 Q. AWAY FROM THE CAMERA?

4 A. CORRECT.

5 Q. DID SOMETHING SUBSEQUENTLY HAPPEN THAT DREW YOUR
6 ATTENTION BACK TO THE CAMERA AND THE MONITOR?

7 A. YES.

8 Q. WHAT WAS THAT?

9 A. ONE OF MY PARTNERS MADE MENTION, OH, THAT GUY
10 JUST SPLIT FROM HIM, SHE DREW MY ATTENTION THAT WAY, SHE
11 MADE MENTION THAT THAT GUY JUST SPLIT FROM HIM, SHE MADE A
12 MOTION OR SOME TYPE OF VERBAL AUDITORY SOUND.

13 Q. OKAY.

14 A. AND SO THEN --

15 Q. WHAT DID YOU DO IN RESPONSE TO HEARING THAT FROM
16 YOUR CO-WORKER?

17 A. I GOT UP FROM MY POSITION AND REPOSITIONED THE
18 CAMERA SYSTEM IN AN ATTEMPT TO LOCATE WHERE THE SUBJECT WAS.

19 Q. MEANING YOU WENT BACK TO THE JOY STICK AND MOVED
20 THE CAMERA AGAIN IN AN EFFORT TO LOCATE THE INDIVIDUAL AND
21 SOME ADDITIONAL OFFICERS?

22 A. THAT IS CORRECT.

23 Q. WERE YOU ABLE TO FOCUS THE CAMERA AGAIN ON THAT
24 INDIVIDUAL AND THE OFFICERS?

25 A. TO THE BEST OF MY ABILITY, YES.

26 Q. DID YOU THEN LEAVE THE CAMERA FIXED ON THAT

1 POSITION?

2 A. YES.

3 Q. IS IT CORRECT FOR ME TO SAY, I THINK YOU
4 MENTIONED THIS EARLIER, THAT THAT PARTICULAR CAMERA SYSTEM,
5 IT IS JUST MOVING IMAGES, IT DOESN'T HAVE ANY SOUND?

6 A. THAT IS CORRECT.

7 MR. BOGARDUS: I WOULD LIKE TO SHOW YOU AN EXHIBIT,
8 THIS WILL BE GRAND JURY EXHIBIT NUMBER 75.

9 (FOR I.D. = GRAND JURY EXHIBIT 75)

10 Q. BY MR. BOGARDUS: IT IS A D.V.D.

11 MR. NAVARRO DID I PREVIOUSLY ASK YOU TO VIEW THIS
12 D.V.D.?

13 A. YES, YOU DID.

14 Q. BASED ON YOUR RECOLLECTION OF THE EVENTS AND
15 DESCRIBING WHAT YOU WATCHED ON THE MONITOR, DID EXHIBIT
16 NUMBER 75, THIS D.V.D., CONTAIN A FAIR AND ACCURATE COPY OF
17 THE MOVING IMAGES, NOT THE SOUND, BUT THE MOVING IMAGES THAT
18 YOU WITNESSED ON THE MONITOR ON JULY 5, 2011?

19 A. YES.

20 Q. AND YOU RECOGNIZED THAT AS VIDEO FEED FROM THE
21 BUS DEPOT CAMERA?

22 A. CORRECT.

23 MR. BOGARDUS: I HAVE NO FURTHER QUESTIONS,
24 MR. FOREMAN. THERE MAY BE SOME QUESTIONS FROM MEMBERS OF
25 THE GRAND JURY.

26 THE GRAND JURY FOREPERSON: ANY QUESTIONS FROM THE

1 GRAND JURY?

2 (AFFIRMATIVE RESPONSES).

3 (FOR I.D. = GRAND JURY EXHIBIT 113)

4 Q. BY MR. BOGARDUS: I HAVE TWO QUESTIONS. I AM GOING
5 TO ASK THEY BE MARKED COLLECTIVELY AS GRAND JURY EXHIBIT
6 NUMBER 113.

7 THE FIRST QUESTION READS AS FOLLOWS:

8 DO THE CAMERAS AUTOMATICALLY SCAN, OR DO YOU HAVE
9 TO USE THE JOY STICK TO PAN AN AREA?

10 A. I BELIEVE THE SYSTEM DOES HAVE THE CAPABILITY TO
11 AUTOMATICALLY SCAN. HOWEVER, WE DO NOT HAVE THEM SET TO
12 SCAN. SO WE HAVE TO MANUALLY PAN THEM.

13 Q. OKAY, THANK YOU.

14 THE SECOND QUESTION READS AS FOLLOWS:

15 WAS THE LOCATION OF THE INCIDENT THAT CAME IN ON
16 THE CALL INCORRECT?

17 A. NO.

18 MR. BOGARDUS: THANK YOU.

19 ARE THERE ANY ADDITIONAL QUESTIONS?

20 THE GRAND JURY FOREPERSON: ANY FURTHER QUESTIONS?

21 (NO AFFIRMATIVE RESPONSE).

22 THE GRAND JURY FOREPERSON: MR. NAVARRO, WOULD YOU
23 PLEASE STAND --

24 A GRAND JUROR: EXCUSE ME.

25 THE GRAND JURY FOREPERSON: WE DO HAVE ANOTHER
26 QUESTION.

1 Q. BY MR. BOGARDUS: I HAVE RECEIVED AN ADDITIONAL
2 WRITTEN QUESTION. I ASK THIS BE INCLUDED AS EXHIBIT 113.

3 THE QUESTION IS AS FOLLOWS:

4 WHEN THE 911 CALL CAME IN, DID YOU CONSIDER IT
5 HIGH PRIORITY, LOW PRIORITY, OR SOMETHING ELSE?

6 A. IT DID NOT COME IN AS A 911 CALL, IT CAME IN ON
7 THE OTHER LINE. AND IT IS A SYSTEM THAT SPECIFICALLY THE
8 PRIORITY IS ASSIGNED TO THAT TYPE CODE.

9 Q. OKAY. I AM GOING TO ASK MY OWN FOLLOW-UP
10 QUESTION NOW. WAS THERE A PARTICULAR PRIORITY LEVEL THAT
11 WAS DESIGNATED TO THIS CALL IN LIGHT OF WHAT YOU JUST TOLD
12 US?

13 A. IN THIS CASE IT WAS DESIGNATED PRIORITY 2.

14 Q. CAN YOU EXPLAIN TO THE GRAND JURY WHAT THE
15 SIGNIFICANCE OF THE PRIORITY 2 IS?

16 A. OKAY. WE WOULD START WITH PRIORITY 1, WHICH IS
17 IMMEDIATE LIFE OR DANGER THREAT TO HUMAN.

18 AND PRIORITY 2 WOULD BE JUST ONE BELOW THAT,
19 BASICALLY A CRIME IN PROGRESS. WITH THE POTENTIAL TO INJURE
20 SOMEBODY ELSE.

21 MR. BOGARDUS: I HAVE NO FURTHER QUESTIONS.

22 THE GRAND JURY FOREPERSON: ARE THERE ANY FURTHER
23 QUESTIONS?

24 (NO AFFIRMATIVE RESPONSE).

25 THE GRAND JURY FOREPERSON: MR. NAVARRO, PLEASE STAND.

26 THE WITNESS: (WITNESS COMPLIES).

1 THE GRAND JURY FOREPERSON: MR. NAVARRO, YOU ARE
2 ADMONISHED TO NOT DISCUSS OR REPEAT AT ANY TIME OUTSIDE THIS
3 COURTROOM THE QUESTIONS YOU HAVE BEEN ASKED OR YOUR ANSWERS,
4 WITH THE UNDERSTANDING THAT SUCH DISCLOSURES ON YOUR PART
5 MAY BE THE BASIS FOR CHARGES AGAINST YOU OF CONTEMPT OF
6 COURT.

7 YOU ARE FREE TO SEEK LEGAL ADVICE FROM AN
8 ATTORNEY, OR THE DISTRICT ATTORNEY'S OFFICE.

9 DO YOU UNDERSTAND?

10 THE WITNESS: YES.

11 THE GRAND JURY FOREPERSON: MR. NAVARRO, THANK YOU FOR
12 TESTIFYING, YOU ARE EXCUSED FROM THE HEARING.

13 THE WITNESS: THANK YOU.

14 (WHEREUPON CESAR NAVARRO EXITED THE GRAND JURY
15 ROOM.)

16 THE GRAND JURY FOREPERSON: YOU MAY CALL YOUR NEXT
17 WITNESS.

18 MR. BOGARDUS: THANK YOU, MR. FOREMAN, GARY SIRIN,
19 PLEASE.

20 (WHEREUPON GARY SIRIN ENTERED THE GRAND JURY
21 ROOM.)

22 THE GRAND JURY FOREPERSON: PLEASE RAISE YOUR RIGHT
23 HAND.

24 THE WITNESS: (WITNESS COMPLIES).

25 ///

26 ///

1 A. YES.

2 Q. THAT MEANS YOU HAVE AN OBLIGATION TO TELL THE
3 TRUTH AND NOTHING BUT THE TRUTH IN THIS PROCEEDING, OR YOU
4 COULD SUBJECT YOURSELF TO A POSSIBLE PROSECUTION FOR
5 PERJURY.

6 DO YOU UNDERSTAND THAT?

7 A. ABSOLUTELY.

8 Q. THANK YOU VERY MUCH.

9 ARE YOU CURRENTLY EMPLOYED AS A SWORN PEACE
10 OFFICER ON BEHALF OF THE CITY OF FULLERTON POLICE
11 DEPARTMENT?

12 A. YES.

13 Q. HOW LONG HAVE YOU BEEN A SWORN PEACE OFFICER?

14 A. ALMOST 16 YEARS.

15 Q. AND WHAT IS YOUR CURRENT POSITION OR ASSIGNMENT
16 AT THE FULLERTON POLICE DEPARTMENT?

17 A. I AM ASSIGNED AS A DETECTIVE IN THE HIGH TECH
18 CRIMES UNIT.

19 Q. YOU ARE ASSIGNED AS A DETECTIVE IN THE HIGH TECH
20 CRIMES UNIT?

21 A. YES.

22 Q. GENERALLY SPEAKING, WHAT DO YOUR DUTIES CONSIST
23 OF IN THAT POSITION?

24 A. REALLY ANYTHING TECHNOLOGY RELATED THAT COMES UP
25 WITHIN THE DEPARTMENT, INVESTIGATIONS THAT REQUIRE SEARCH
26 WARRANTS, OTHER TECHNICAL RELATED DUTIES.

1 Q. HOW LONG HAVE YOU BEEN IN THAT PARTICULAR
2 ASSIGNMENT?

3 A. IT HAS BEEN ABOUT FIVE AND A HALF YEARS NOW.

4 Q. NOW, ARE YOU FAMILIAR WITH THE FULLERTON
5 TRANSPORTATION CENTER IN THE AREA OF 123 SOUTH POMONA IN THE
6 CITY OF FULLERTON?

7 A. YES.

8 Q. HOW IS IT YOU ARE FAMILIAR WITH THAT LOCATION?

9 A. WELL, IT IS THE CENTER OF THE CITY, AND I HAVE
10 BEEN WORKING THERE FOR 16 YEARS.

11 Q. FAIR TO SAY YOU HAVE VISITED IT MORE THAN ONCE?

12 A. YES.

13 Q. ARE YOU ALSO FAMILIAR WITH THE FACT THAT THERE
14 ARE ONE OR MORE SURVEILLANCE CAMERAS THAT MONITOR A PORTION
15 OR PORTIONS OF THE FULLERTON TRANSPORTATION CENTER?

16 A. YES.

17 Q. HOW IS IT THAT YOU ARE FAMILIAR WITH THE FACT
18 THAT THERE IS SURVEILLANCE CAMERAS THAT MONITOR A PORTION OR
19 PORTIONS OF THAT CENTER?

20 A. I HAVE BEEN ADMINISTRATOR OF THAT SYSTEM SINCE
21 THEY WERE INSTALLED.

22 Q. OKAY. IS THAT SOMETIMES REFERRED TO AS THE
23 DOWNTOWN PUBLIC SAFETY CAMERA SYSTEM?

24 A. YES.

25 Q. SO YOU HAVE BEEN, ONE OF YOUR DUTIES THEN HAS
26 BEEN THE ADMINISTRATOR; IS THAT WHAT YOU SAID?

1 A. YES.

2 Q. FOR THE DOWNTOWN PUBLIC SAFETY CAMERA SYSTEM?

3 A. CORRECT.

4 Q. WHAT DO YOUR DUTIES CONSIST OF WITH RESPECT TO
5 THAT TASK?

6 A. WHAT I HAVE TO DO IF ONE OF THE CAMERAS STOPS
7 WORKING FOR SOME REASON, I HAVE TO CALL SOMEONE IN, OR TRY
8 TO FIGURE OUT HOW TO REPAIR IT OR GET IT REPAIRED. ALSO IF
9 WE NEED TO HAVE VIDEO EXTRACTED, I DOWNLOAD THE VIDEO OR
10 EXTRACT THE VIDEO FROM THE SYSTEM.

11 Q. AND YOU SAID YOU HAVE HAD THAT ASSIGNMENT SINCE
12 THE CAMERA SYSTEM WAS INSTALLED?

13 A. YES.

14 Q. WAS THAT APPROXIMATELY SINCE 2009 OR SO?

15 A. APPROXIMATELY, YES.

16 Q. SO YOU HAVE BEEN FULFILLING THOSE DUTIES SINCE
17 APPROXIMATELY 2009?

18 A. YES.

19 Q. NOW, ARE THERE CORRESPONDING MONITORS AT THE
20 FULLERTON POLICE DEPARTMENT THAT DEPICT WHAT IS BEING
21 CAPTURED BY THOSE CAMERAS AS PART OF THAT PUBLIC SAFETY
22 CAMERA SYSTEM?

23 A. YES, WE HAVE THREE VIEWING STATIONS.

24 Q. OKAY. AND WHEN YOU SAY, VIEWING STATIONS, CAN
25 YOU DESCRIBE WHAT YOU MEAN BY THAT?

26 A. THE WATCH COMMANDER'S OFFICE AND DISPATCH HAS A

1 VIEWING STATION WITH A REMOTE CONTROL THAT ALLOWS WHOEVER
2 HAPPENS TO BE THERE TO CONTROL EACH OF THE INDIVIDUAL
3 CAMERAS, TO VIEW WHATEVER AREA THAT PARTICULAR CAMERA SHOWS.
4 MY OFFICE HAS AN ADMINISTRATOR'S WORK STATION, WHERE I HAVE,
5 BASICALLY IT IS A COMPUTER WITH A MOUSE, AND I HAVE THE SAME
6 ABILITY TO CONTROL THOSE CAMERAS. AND FROM THAT STATION I
7 AM ALSO ABLE TO DOWNLOAD THE VIDEO AND REVIEW THE VIDEO.

8 Q. OKAY. IS ONE OF THE CAMERAS THAT MAKES UP THIS
9 SYSTEM REFERRED TO AS THE BUS DEPOT CAMERA?

10 A. YES.

11 Q. AND DOES THE BUS DEPOT CAMERA CAPTURE THE BUS
12 DEPOT AREA AT THE FULLERTON TRANSPORTATION CENTER?

13 A. YES.

14 Q. AT LEAST A PORTION OF IT?

15 A. WELL, THAT PARTICULAR CAMERA IS ACTUALLY MOVABLE,
16 IT IS CALLED P.T.Z., WHICH IS PAN, TILT, ZOOM, SO YOU ARE
17 ABLE TO MOVE THE CAMERA AROUND AND ADJUST THE VIEW, SO YOU
18 CAN CAPTURE THAT ENTIRE AREA.

19 Q. BASED ON YOUR FAMILIARITY WITH THE FULLERTON
20 TRANSPORTATION CENTER AND THE BUS DEPOT AREA THERE, DOES THE
21 CAMERA PROVIDE A FAIR AND ACCURATE VIEW OF THE FULLERTON
22 TRANSPORTATION CENTER, THE BUS DEPOT AREA?

23 A. YES.

24 Q. NOW, HAVE YOU HAD OCCASIONS IN THE PAST TO VIEW
25 FOOTAGE FROM THE BUS DEPOT CAMERA IN PARTICULAR?

26 A. SEVERAL, YES.

1 Q. IS THE VIDEO FEED THAT IS DELIVERED FROM THE BUS
2 DEPOT CAMERA TO THE FULLERTON POLICE DEPARTMENT RECORDED IN
3 ANY FASHION, OR ARCHIVED IN ANY FASHION?

4 A. YES.

5 Q. CAN YOU DESCRIBE THAT, PLEASE.

6 A. WELL, WHAT IT ACTUALLY DOES IS IT GOES TO CITY
7 HALL, WHERE IN THE I.T. SERVER ROOM THERE IS A SERVER,
8 COMPUTER SYSTEM THAT RETAINS THAT VIDEO. AND THEN IT
9 TRANSMITS THAT VIDEO TO THE POLICE DEPARTMENT, WHERE WE CAN
10 VIEW IT.

11 Q. AND DO YOU HAVE THE ABILITY TO ACCESS RECORDING
12 VIDEO OF PAST EVENTS?

13 A. YES.

14 Q. SO IT IS NOT JUST A LIVE FEED THAT YOU CAN WATCH,
15 BUT YOU CAN ALSO GO BACK TO AN EVENT THAT HAPPENED IN THE
16 PAST OR SOME PERIOD OF TIME AND VIEW THAT AS WELL?

17 A. YES.

18 Q. YOU ALSO MENTIONED THAT YOU HAD RETRIEVED VIDEO,
19 OR DOWNLOADED VIDEO IN THE PAST FROM THIS SYSTEM?

20 A. YES.

21 Q. CAN YOU DESCRIBE IN GENERAL TERMS YOUR EXPERIENCE
22 IN DOING THAT.

23 A. JUST AS FAR AS COLLECTING THE VIDEO OR?

24 Q. CORRECT.

25 A. JUST I GET A REQUEST FROM A DETECTIVE OR AN
26 OFFICER, IF THERE HAS BEEN A CRIME COMMITTED OR IF THEY NEED

1 A VIDEO FOR AN INCIDENT, AND I USE THE COMPUTER IN MY
2 OFFICE, THERE IS A FEATURE OF THE SOFTWARE THAT IS ON THERE
3 TO BASICALLY JUST DOWNLOAD THE VIDEO TO THAT PARTICULAR
4 COMPUTER.

5 Q. OKAY. I WANT TO TURN YOUR ATTENTION TO THE
6 EVENING OF JULY 5TH, 2011; WERE YOU CALLED UPON ON THAT
7 EVENING TO DO ANYTHING IN PARTICULAR WITH RESPECT TO THE
8 CAMERA SYSTEM --

9 A. YES.

10 Q. -- AND RECORDED VIDEO?
11 WHAT WERE YOU ASKED TO DO?

12 A. I WAS CALLED FROM HOME, IT WAS EXPLAINED THAT
13 THERE WAS A SITUATION THAT HAD OCCURRED AND THEY NEEDED ME
14 TO COME IN IMMEDIATELY AND COLLECT THE SURVEILLANCE VIDEO
15 FROM THAT INCIDENT.

16 Q. OKAY. AND DID YOU IN FACT RESPOND TO THE POLICE
17 DEPARTMENT TO DO THAT?

18 A. YES.

19 Q. WERE YOU ABLE TO ACCESS RECORDED VIDEO FROM THE
20 BUS DEPOT CAMERA ON THAT SYSTEM?

21 A. YES.

22 Q. AND DID YOU VIEW THAT RECORDED VIDEO ON THE
23 SYSTEM ITSELF INITIALLY?

24 A. THE COMPUTER IN MY OFFICE, YES.

25 Q. OKAY. AND CAN YOU DESCRIBE TO US IN GENERAL
26 TERMS WHAT IT IS THAT YOU SAW ON THE VIDEO THAT YOU

1 REVIEWED.

2 A. WELL, I WAS TOLD THAT THERE WAS A CERTAIN TIME
3 FRAME WHERE THIS INCIDENT HAD HAPPENED, BUT TO COLLECT THE
4 VIDEO I HAD TO REVIEW THE VIDEO TO DETERMINE EXACTLY WHAT
5 TIME FRAME I NEEDED TO COLLECT.

6 SO I UNDERSTOOD THAT THERE WAS A CALL AT A
7 PARTICULAR TIME AT THE BUS DEPOT. I WENT AHEAD OF THAT
8 TIME, OR BEFORE THAT TIME, I REVIEWED THE VIDEO UNTIL I SAW
9 THE OFFICERS ARRIVING. AND THEN I FAST FORWARDED THROUGH
10 THE ENTIRE INCIDENT UNTIL AFTER THE ALTERCATION, AND, YOU
11 KNOW, REVIEWED OR ESTABLISHED A TIME TO COLLECT UNTIL. AND
12 DOWNLOADED THAT VIDEO TO THE COMPUTER SYSTEM.

13 Q. OKAY. SO DID YOU THEN PRODUCE A DIGITAL COPY OF
14 THAT VIDEO TO THE COMPUTER SYSTEM?

15 A. YES, I RECORDED THE VIDEO TO A C.D., WHICH I THEN
16 PROVIDED TO CAPTAIN HUGHES, I BELIEVE.

17 Q. OKAY. AND THAT RECORDED VIDEO THAT YOU
18 DOWNLOADED, CORRECT ME IF I AM WRONG, IT STARTS AT SOME
19 POINT BEFORE YOU CAN SEE ON THE VIDEO THE CONTACTS BETWEEN
20 FULLERTON POLICE OFFICERS AND A PARTICULAR SUBJECT, AND IT
21 ENDS AT SOME POINT WHERE, AS YOU HAVE DESCRIBED, THE
22 ALTERCATION ENDS?

23 A. CORRECT.

24 Q. IS THAT A FAIR STATEMENT?

25 A. CORRECT.

26 Q. NOW, DID I PREVIOUSLY SHOW YOU, I HAVE GRAND JURY

1 EXHIBIT NUMBER 75, DID YOU PREVIOUSLY HAVE THE OPPORTUNITY
2 TO VIEW THE D.V.D. THAT MAKES UP THIS PARTICULAR EXHIBIT?

3 A. YES.

4 Q. AND DOES THIS D.V.D. CONTAIN A FAIR AND ACCURATE
5 COPY OF THE MOVING IMAGES, NOT THE SOUND, BUT THE MOVING
6 IMAGES THAT YOU DOWNLOADED OFF THE CAMERA SYSTEM?

7 A. YES.

8 Q. IS IT YOUR UNDERSTANDING THAT THAT CAMERA SYSTEM
9 DOESN'T CAPTURE SOUND, THAT IT ONLY CAPTURES THE VIDEO
10 IMAGES?

11 A. YES.

12 MR. BOGARDUS: MR. FOREMAN, I DON'T HAVE ANY FURTHER
13 QUESTIONS. THERE MAY BE SOME QUESTIONS ON BEHALF OF THE
14 GRAND JURY.

15 THE GRAND JURY FOREPERSON: ARE THERE ANY QUESTIONS
16 FROM THE GRAND JURY?

17 (AFFIRMATIVE RESPONSES).

18 (FOR I.D. = GRAND JURY EXHIBIT 114)

19 Q. BY MR. BOGARDUS: I HAVE RECEIVED SIX QUESTIONS ON
20 BEHALF OF THE MEMBERS OF THE GRAND JURY. I WOULD ASK THEY
21 BE MARKED FOR IDENTIFICATION AS GRAND JURY EXHIBIT NUMBER
22 114 COLLECTIVELY.

23 I AM GOING TO ASK THESE QUESTIONS TO YOU
24 INDIVIDUALLY.

25 A. SURE.

26 Q. THANK YOU. I AM READING THE FIRST ONE:

1 ARE THE FRAMES ON THE ARCHIVED VIDEOS SCANNED OR
2 INDEXED BY DATE AND TIME?

3 A. THE VIDEO HAS DATE AND TIME THAT IS STAMPED ONTO
4 THE VIDEO ITSELF. BUT I DON'T KNOW ABOUT EACH INDIVIDUAL
5 FRAME. I MEAN IT IS PART OF THE VIDEO. SO I GUESS THAT
6 WOULD BE A YES.

7 Q. NEXT QUESTION.

8 WHY IS THE CAMERA SYSTEM NOT ON SCAN?

9 A. THERE IS A WAY TO SET IT TO SCAN, BUT THE
10 DEPARTMENT HAS DECIDED THAT -- AND BY SCAN I ASSUME WHAT IS
11 MEANT IS JUST CONSTANTLY GOING BACK AND FORTH. AND I
12 BELIEVE THE DEPARTMENT HAS DECIDED THEY WILL HAVE IT MOVING,
13 I AM SORRY, NOT MOVING, THEY WILL HAVE IT IN A FIXED
14 LOCATION. IF YOU SET IT TO SCAN AND THEY ARE WATCHING A
15 PARTICULAR CAR OR PARTICULAR INCIDENT, IT WILL AUTOMATICALLY
16 MOVE FROM THAT LOCATION, AND YOU WILL LOSE POTENTIAL
17 EVIDENCE. SO THEY HAVE DECIDED NOT TO HAVE IT SCAN.

18 Q. OKAY. NEXT QUESTION:

19 DID YOU PRODUCE VIDEO PRIOR TO THE SEGMENT OF THE
20 VIDEO YOU PRODUCED OF THE ALTERCATION?

21 A. THERE IS A MOMENT WHERE THE VIDEO IS FOCUSED AT
22 OR LOOKING IN THE DIRECTION OF A COUPLE OF PEOPLE SITTING ON
23 A BENCH PRIOR TO THE INCIDENT. AND THEN FROM THERE YOU CAN
24 SEE THE CAMERA ZOOM OUT, AND THEN MOVE OVER TO WHERE THE
25 RADIO CALL OR THE OFFICERS WERE. AND THEN IT FOCUSES IN ON
26 THOSE OFFICERS, OR IN THAT START OF THE INCIDENT. SO JUST

1 FOR THOSE FEW SECONDS PRIOR TO THE ACTUAL INCIDENT WHERE IT
2 IS FOCUSED ON, THOSE OTHER INDIVIDUALS, THAT WAS COLLECTED.
3 BUT NOT ANY TIME PRIOR TO THAT.

4 Q. OKAY. NEXT QUESTION READS:

5 HOW LONG DO YOU KEEP PAST VIDEO?

6 A. THE SYSTEM RETAINS THE VIDEO FOR ABOUT TWO AND A
7 HALF WEEKS. AND AFTER THAT PERIOD, THE VIDEO IS
8 OVERWRITTEN. IF SOMEONE REQUESTS THE VIDEO FOR A PARTICULAR
9 INCIDENT, THEN THAT VIDEO IS RECORDED, OR DOWNLOADED AND
10 RECORDED TO A C.D., PROVIDED TO THE INVESTIGATOR AND BOOKED
11 IN AS EVIDENCE.

12 Q. OKAY. THE NEXT QUESTION READS AS FOLLOWS:

13 WHAT WAS THE TIME RANGE FROM WHEN OFFICERS
14 ARRIVED UNTIL THE PARAMEDICS ARRIVED?

15 A. I DON'T HAVE THAT OFF THE TOP OF MY HEAD.

16 Q. OKAY. NEXT QUESTION CONSISTS OF FOUR INDIVIDUAL
17 QUESTIONS. THE FIRST PART:

18 WHO CALLED YOU TO COME IN TO THE P.D. OFFICE -- I
19 WILL START OVER, WHO CALLED YOU TO COME TO THE POLICE
20 DEPARTMENT?

21 A. I RECEIVED A CALL FROM CAPTAIN HAMILTON.

22 Q. AT WHAT TIME?

23 A. I DON'T HAVE THE EXACT TIME.

24 Q. NEXT PART OF THE QUESTION IS:

25 WHAT TIME DID YOU GET TO THE FULLERTON POLICE
26 DEPARTMENT?

1 A. I DON'T HAVE THAT TIME EITHER. NOT OFF THE TOP
2 OF MY HEAD.

3 Q. NEXT QUESTION IS:

4 TO WHOM DID YOU REPORT THAT NIGHT ABOUT YOUR
5 OBSERVATIONS?

6 A. I PROVIDED THE VIDEO, THE COPIES OF THE C.D.'S TO
7 CAPTAIN HUGHES.

8 Q. THE NEXT PART OF THE QUESTION READS:

9 WHO HAS ASKED FOR INFO SINCE THAT TIME?

10 A. (NO RESPONSE) .

11 Q. LET ME ASK YOU THIS, DO YOU UNDERSTAND THAT
12 QUESTION?

13 A. I DON'T, I MEAN THERE HAS BEEN SEVERAL REQUESTS
14 FOR COPIES OF THE VIDEO. I DON'T KNOW SPECIFICALLY, I MEAN
15 WHO THEY -- DO THEY WANT TO KNOW WHO HAS REQUESTED VIDEO
16 OVER THE PAST YEAR?

17 Q. YOU WOULD LIKE SOME KIND OF CLARIFICATION ON
18 THAT?

19 A. PLEASE.

20 MR. BOGARDUS: MR. FOREMAN, I HAVE REACHED THE LAST
21 PART OF THAT QUESTION, SO IF THERE IS ANY FOLLOW-UP OR
22 CLARIFICATION WITH RESPECT TO THAT QUESTION, I CAN ASK ANY
23 FURTHER CLARIFICATION.

24 THE GRAND JURY FOREPERSON: ANY FURTHER QUESTIONS OR
25 CLARIFICATION OF THE QUESTION?

26 (NO AFFIRMATIVE RESPONSE) .

1 THE GRAND JURY FOREPERSON: YOU ARE FINISHED?

2 MR. BOGARDUS: I AM, THANK YOU.

3 THE GRAND JURY FOREPERSON: MR. SIRIN, WOULD YOU PLEASE
4 STAND.

5 THE WITNESS: (WITNESS COMPLIES).

6 THE GRAND JURY FOREPERSON: YOU ARE ADMONISHED NOT TO
7 DISCUSS OR REPEAT AT ANY TIME OUTSIDE THIS COURTROOM THE
8 QUESTIONS YOU HAVE BEEN ASKED OR YOUR ANSWERS, WITH THE
9 UNDERSTANDING THAT SUCH DISCLOSURES ON YOUR PART MAY BE THE
10 BASIS FOR CHARGES AGAINST YOU OF CONTEMPT OF COURT.

11 YOU ARE FREE TO SEEK LEGAL ADVICE FROM AN
12 ATTORNEY, OR FROM THE DISTRICT ATTORNEY'S OFFICE.

13 DO YOU UNDERSTAND?

14 THE WITNESS: YES.

15 THE GRAND JURY FOREPERSON: MR. SIRIN, THANK YOU FOR
16 TESTIFYING, YOU ARE EXCUSED FROM THE HEARING.

17 THE WITNESS: THANK YOU, SIR.

18 (WHEREUPON GARY SIRIN EXITED THE GRAND JURY
19 ROOM.)

20 MR. BOGARDUS: MR. FOREMAN, MAY I HAVE JUST A BRIEF
21 MOMENT?

22 THE GRAND JURY FOREPERSON: YES.

23 LADIES AND GENTLEMEN, WE WILL BE IN RECESS FOR
24 LUNCH UNTIL 12:25.

25 DURING ANY PERIOD OF THIS RECESS YOU MUST NOT
26 DISCUSS WITH ANYONE, EITHER INSIDE OR OUTSIDE OF THIS

1 HEARING ROOM, ANY SUBJECT CONNECTED WITH THIS HEARING.

2 THANK YOU.

3 (LUNCH TAKEN.)

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

1 SANTA ANA, CALIFORNIA - SEPTEMBER 19, 2012

2 AFTERNOON SESSION

3

4 (THE FOLLOWING PROCEEDINGS WERE HELD IN THE GRAND
5 JURY ROOM:)

6 THE GRAND JURY FOREPERSON: WE ARE HERE AGAIN IN
7 SESSION IN THE MATTER OF JOSEPH ANDREW WOLFE.

8 LET THE RECORD REFLECT THAT ALL THE SAME 16 GRAND
9 JURY MEMBERS ARE PRESENT.

10 MR. DISTRICT ATTORNEY, YOU MAY CALL YOUR NEXT
11 WITNESS.

12 MR. BOGARDUS: THANK YOU VERY MUCH, MR. FOREMAN, THE
13 PEOPLE WOULD LIKE TO CALL MICHAEL CHOCEK.

14 (WHEREUPON MICHAEL CHOCEK ENTERED THE GRAND JURY
15 ROOM.)

16 THE GRAND JURY FOREPERSON: PLEASE RAISE YOUR RIGHT
17 HAND.

18 MICHAEL CHOCEK,
19 CALLED AS A WITNESS BEFORE THE GRAND JURY, HAVING BEEN FIRST
20 DULY SWORN, WAS EXAMINED AND TESTIFIED AS FOLLOWS:

21 THE GRAND JURY FOREPERSON: PLEASE STATE YOUR NAME AND
22 SPELL IT OUT FOR OUR RECORD.

23 THE WITNESS: MICHAEL CHOCEK; C-H-O-C-E-K.

24 THE GRAND JURY FOREPERSON: THANK YOU.

25 WOULD YOU PLEASE HAVE A SEAT.

26 THE WITNESS: (WITNESS COMPLIES).

1 THE GRAND JURY FOREPERSON: MR. DISTRICT ATTORNEY, THE
2 WITNESS IS YOURS.

3 MR. BOGARDUS: THANK YOU VERY MUCH, MR. FOREMAN.

4 EXAMINATION

5 Q. BY MR. BOGARDUS: GOOD AFTERNOON, MR. CHOCEK.

6 A. GOOD AFTERNOON.

7 Q. BEFORE WE BEGIN I HAVE AN ADMONITION THAT I WOULD
8 LIKE TO READ TO YOU. AND IT GOES AS FOLLOWS:

9 BEFORE WE BEGIN I WOULD LIKE TO ADVISE YOU THAT
10 YOU ARE NOW APPEARING BEFORE A DULY CONSTITUTED GRAND JURY
11 THAT IS INVESTIGATING POSSIBLE VIOLATIONS OF STATE CRIMINAL
12 LAW.

13 DO YOU UNDERSTAND THAT?

14 A. YES, I DO.

15 Q. YOU HAVE BEEN PLACED UNDER OATH. AND THAT MEANS
16 YOUR TESTIMONY HERE TODAY HAS THE SAME FORCE AND EFFECT AS
17 IF YOU WERE IN A COURT OF LAW.

18 DO YOU UNDERSTAND THAT?

19 A. YES, I DO.

20 Q. THAT MEANS THAT YOU HAVE AN OBLIGATION TO TELL
21 THE TRUTH AND NOTHING BUT THE TRUTH IN THIS PROCEEDING, OR
22 YOU COULD SUBJECT YOURSELF TO A POSSIBLE PROSECUTION FOR
23 PERJURY.

24 DO YOU UNDERSTAND THAT?

25 A. YES, I DO.

26 Q. THANK YOU.

1 MR. CHOCEK, ARE YOU CURRENTLY EMPLOYED AS A SWORN
2 PEACE OFFICER WITH THE CITY OF FULLERTON POLICE DEPARTMENT?

3 A. YES, I AM.

4 Q. AND HOW LONG HAVE YOU BEEN A SWORN PEACE OFFICER?

5 A. FOR 19 YEARS.

6 Q. WHAT IS YOUR CURRENT ASSIGNMENT, SIR?

7 A. I AM CURRENTLY THE SUPERVISOR FOR THE CRIMES
8 PERSONS, HOMICIDE AND ROBBERY BUREAU.

9 Q. HOW LONG HAVE YOU OCCUPIED THAT PARTICULAR
10 ASSIGNMENT?

11 A. FOR ABOUT FOUR MONTHS.

12 Q. CAN YOU BRIEFLY DESCRIBE TO THE MEMBERS OF THE
13 GRAND JURY WHAT YOUR PRIOR ASSIGNMENTS HAVE BEEN WITH THE
14 CITY OF FULLERTON AS A SWORN PEACE OFFICER.

15 A. PRIOR TO WORKING THE HOMICIDE BUREAU, I WAS A
16 SERGEANT WORKING IN THE INTERNAL AFFAIRS DIVISION OF THE
17 PROFESSIONAL STANDARDS BUREAU.

18 PRIOR TO THAT I WAS A PATROL SERGEANT.

19 PRIOR TO THAT, I WAS A CORPORAL WORKING PATROL.

20 PRIOR TO THAT, FIVE YEARS OF WORKING AS A
21 DETECTIVE IN THE NARCOTICS BUREAU.

22 PRIOR TO THAT, SIX MONTHS WORKING IN OUR GANG
23 DETAIL.

24 AND FOUR YEARS BEFORE THAT I WAS A PATROL
25 OFFICER.

26 Q. AND FORGIVE ME IF YOU STATED THIS, BUT WITH

1 RESPECT TO YOUR WORK IN THE INTERNAL AFFAIRS BUREAU, HOW
2 LONG DID YOU HAVE AN ASSIGNMENT MEN THAT PARTICULAR BUREAU?

3 A. TWO AND A HALF YEARS.

4 Q. NOW, ARE POLICE OFFICERS IN YOUR DEPARTMENT
5 INDIVIDUALLY ISSUED DIGITAL AUDIO RECORDERS?

6 A. YES, WE ARE.

7 Q. WAS THAT TRUE BACK IN JULY 5TH, 2011, THAT AMONG
8 THE EQUIPMENT THAT A POLICE OFFICER WOULD HAVE AT THE
9 FULLERTON POLICE DEPARTMENT, THEY WOULD HAVE A DIGITAL AUDIO
10 RECORDER?

11 A. YES.

12 (FOR I.D. = GRAND JURY EXHIBIT 76)

13 Q. BY MR. BOGARDUS: I WOULD LIKE TO SHOW YOU, AND I
14 AM GOING TO, THROUGHOUT YOUR TESTIMONY, SHOW YOU SOME
15 DIFFERENT EXHIBITS, MOST OF THE PHOTOGRAPHIC EXHIBITS WILL
16 BE DISPLAYED ON THE MONITOR IN FRONT OF YOU. I AM GOING TO
17 START OFF WHAT I WOULD ASK TO BE MARKED AS GRAND JURY
18 EXHIBIT NUMBER 76, AND THAT SHOULD BE DESCRIBED AS A
19 PHOTOGRAPH OF A DIGITAL AUDIO RECORDER.

20 ARE YOU ABLE TO SEE THAT?

21 A. YES.

22 Q. GREAT.

23 GRAND JURY EXHIBIT NUMBER 76, IS THAT A FAIR AND
24 ACCURATE PHOTOGRAPH OF THE TYPE OF DIGITAL AUDIO RECORDER
25 THAT WOULD BE ISSUED TO A POLICE OFFICER AT YOUR DEPARTMENT
26 BACK IN JULY OF 2011?

1 A. YES, IT IS.

2 Q. DID YOU PERSONALLY HAVE A DIGITAL AUDIO RECORDER
3 ISSUED TO YOU?

4 A. YES.

5 Q. AND FOR HOW LONG DURING THE COURSE OF YOUR
6 CAREER, IF YOU KNOW OR CAN APPROXIMATE, HAVE YOU BEEN
7 ASSIGNED A DIGITAL AUDIO RECORDER?

8 A. SINCE 2004.

9 Q. WAS IT THE SAME TYPE AS DEPICTED IN GRAND JURY
10 EXHIBIT NUMBER 76?

11 A. NO.

12 Q. AT SOME POINT IN TIME IN YOUR CAREER HAVE YOU
13 BEEN ISSUED A DIGITAL AUDIO RECORDER THAT LOOKS LIKE THE ONE
14 THAT IS DEPICTED IN GRAND JURY EXHIBIT NUMBER 76?

15 A. YES.

16 Q. DO YOU HAVE AN IDEA OF HOW LONG IT IS THAT YOU
17 HAVE HAD A DIGITAL AUDIO RECORDER LIKE THE ONE DEPICTED IN
18 76?

19 A. I AM GOING TO GUESS PROBABLY ABOUT THE LAST THREE
20 YEARS.

21 Q. AND HAVE YOU USED THAT DIGITAL AUDIO RECORDER
22 NOW, THE ONE REFERRING TO THE ONE YOU HAD FOR THE LAST THREE
23 YEARS, TO RECORD CONVERSATIONS?

24 A. YES.

25 Q. IS THAT SOMETHING YOU WOULD DO IN THE REGULAR
26 COURSE OF YOUR DUTIES IN ONE OF THE ASSIGNMENTS THAT YOU HAD

1 AS A POLICE OFFICER IN FULLERTON?

2 A. YES.

3 Q. DO YOU HAVE ANY SENSE OF HOW MANY TIMES OR HOW
4 REGULARLY YOU USED THAT TO RECORD CONVERSATIONS?

5 A. WELL, WHEN WE WORK PATROL, WE ARE REQUIRED TO
6 ACTIVATE OUR DIGITAL RECORDERS WITH EVERY PUBLIC CONTACT
7 THAT WE HAVE, AS WELL AS TIME STAMPING IT AND DATE STAMPING
8 IT BEFORE OUR SHIFT AND AT THE END OF SHIFT. I WOULD
9 APPROXIMATE PROBABLY ABOUT 500 OR SO RECORDINGS, BASED ON
10 THE TIME THAT WE HAVE HAD THIS VERSION OF THE D.A.R.

11 Q. OKAY. AND, AGAIN, WHEN WE REFER TO D.A.R., JUST
12 SO IT IS CLEAR, WE ARE REFERRING TO DIGITAL AUDIO RECORDER,
13 AND THAT'S HOW YOU REFER TO IT, AS A D.A.R., CORRECT?

14 A. THAT IS CORRECT.

15 Q. OKAY, GREAT.

16 HAVE YOU ALSO USED IT, THIS PARTICULAR TYPE OF
17 DIGITAL AUDIO RECORDER, TO PLAY BACK RECORDED AUDIO
18 CONVERSATIONS?

19 A. YES.

20 Q. IS THAT SOMETHING YOU HAVE ALSO DONE WITH
21 REGULARITY AS WELL AS PART OF YOUR ASSIGNMENTS?

22 A. IT IS, NOT NECESSARILY AS MUCH PLAYING BACK
23 THROUGH THE ACTUAL RECORDER ITSELF, ALTHOUGH, YES, I HAVE
24 DONE THAT ON NUMEROUS OCCASIONS, BUT MORE I HAVE PLAYED IT
25 BACK THROUGH THE SYSTEM WHERE WE DOWNLOAD THESE RECORDINGS
26 TO.

1 Q. OKAY. AND I WILL WANT TO FOCUS YOUR ATTENTION ON
2 THAT SYSTEM AS WELL IN JUST A MOMENT.

3 BUT WITH RESPECT TO THE DIGITAL AUDIO RECORDER
4 ITSELF, YOU HAVE HAD OCCASION, CORRECT ME IF I AM WRONG, TO
5 PLAY BACK RECORDED AUDIO OFF OF THE DEVICE ITSELF?

6 A. THAT IS CORRECT.

7 Q. WHAT ABOUT WITH REGARD TO OTHER OFFICER'S DIGITAL
8 AUDIO RECORDERS, HAVE YOU ALSO PLAYED BACK AUDIO RECORDINGS
9 OF THOSE OFFICER'S RECORDERS?

10 A. I HAVE.

11 Q. NOW, IS EVERY OFFICER AT THE FULLERTON POLICE
12 DEPARTMENT ISSUED A UNIQUE BADGE NUMBER?

13 A. THEY ARE.

14 Q. AND IS THAT ALSO SOMETIMES REFERRED TO AS A
15 P-NUMBER?

16 A. THAT IS CORRECT.

17 Q. AND IS THAT A MULTIPLE DIGIT NUMBER; CAN YOU
18 DESCRIBE THAT NUMBER TO US IN A LITTLE MORE DETAIL?

19 A. RIGHT NOW WE ARE CURRENTLY USING FOUR DIGITS. I
20 CAN'T TELL YOU HOW IT BEGAN, BUT IT SEEMS TO BE GOING IN
21 NUMERICAL ORDER UP WITH THE PEACE OFFICERS. LIKE MINE IS
22 1080, AND WE ARE UP INTO THE 1400'S NOW.

23 Q. BASED ON YOUR FAMILIARITY WITH THIS TYPE OF
24 DIGITAL AUDIO RECORDED DEPICTED IN NUMBER 76, ARE THE
25 RECORDERS PROGRAMMED WITH THE INDIVIDUAL OFFICER'S BADGE
26 NUMBER OR P-NUMBER?

1 A. YES.

2 Q. THEY ARE PROGRAMMED WITH THAT NUMBER?

3 A. CORRECT.

4 Q. SO, FOR EXAMPLE, WITH RESPECT TO YOUR DIGITAL
5 AUDIO RECORDER, THAT'S PROGRAMMED WITH YOUR 4 DIGIT BADGE
6 NUMBER?

7 A. CORRECT.

8 Q. AND THAT WOULD BE TRUE OF OTHER OFFICERS AS WELL?

9 A. THAT IS CORRECT.

10 Q. THEIR UNIQUE BADGE NUMBER?

11 A. CORRECT.

12 Q. AND WHEN A RECORDING IS MADE ON ONE OF THESE
13 DIGITAL AUDIO RECORDERS, DOES IT CREATE A DIGITAL AUDIO
14 FILE?

15 A. IT DOES.

16 Q. AND DOES THAT DIGITAL AUDIO FILE GET ASSIGNED A
17 NUMBER OR A NAME?

18 A. IT DOES.

19 Q. AND CAN YOU DESCRIBE WHAT THAT NUMBER FOR EACH
20 INDIVIDUAL DIGITAL AUDIO FILE LOOKS LIKE?

21 A. EACH DIGITAL FILE IS EIGHT NUMBERS, THE FIRST
22 FOUR NUMBERS ARE THE BADGE NUMBER OF THAT PARTICULAR
23 OFFICER. AND THE SECOND FOUR NUMBERS ARE THE INDIVIDUAL
24 RECORDING IDENTIFIER.

25 Q. OKAY. SO, TO YOUR KNOWLEDGE, THE DIGITAL AUDIO
26 RECORDER WILL GENERATE A DIGITAL AUDIO FILE WHEN A RECORDING

1 IS MADE AND ASSIGN A PARTICULAR NUMBER. THE FIRST FOUR
2 DIGITS OF THAT NUMBER WILL BE THAT INDIVIDUAL OFFICER'S
3 BADGE NUMBER, AND THE LAST FOUR NUMBERS WILL BE A SEQUENTIAL
4 NUMBER THAT WAS GENERATED BY THE DIGITAL AUDIO RECORDER?

5 A. CORRECT.

6 Q. SO IF WE LOOK AT EXHIBIT NUMBER 76, FOR EXAMPLE,
7 DO YOU SEE ANYWHERE ON THE SCREEN OF THE DIGITAL AUDIO
8 RECORDER AN EXAMPLE OF THE DIGITAL AUDIO FILE NUMBER?

9 A. I DO.

10 Q. CAN YOU DESCRIBE WHERE THAT NUMBER IS?

11 A. IT WOULD BE IN THE LOWER LEFT-HAND CORNER OF THE
12 DISPLAY SCREEN ABOVE THE BATTERY SYMBOL AND THE "Z" INSIDE
13 THE BLACK BOX WHERE IT SAYS 11730411.

14 Q. SO WITH RESPECT TO THE DIGITAL AUDIO FILE THAT IS
15 DISPLAYED ON THIS PARTICULAR RECORDER WHEN THE PHOTOGRAPH IS
16 TAKEN, 1173 REPRESENTS THE UNIQUE BADGE NUMBER FOR THAT
17 OFFICER'S RECORDER; IS THAT RIGHT?

18 A. THAT IS CORRECT.

19 Q. AND THE LAST FOUR DIGITS, 0411, REPRESENTS THAT
20 AUDIO FILE'S NUMBER?

21 A. THAT IS CORRECT.

22 Q. SO WHEN YOU LOOK AT A DIGITAL AUDIO FILE NUMBER,
23 YOU ARE ABLE TO IDENTIFY BY LOOKING AT THE FIRST FOUR DIGITS
24 WHICH OFFICER'S DIGITAL AUDIO RECORDER GENERATED THAT AUDIO
25 FILE?

26 A. YES.

1 Q. DOES THE D.A.R. ALSO ASSIGN A DATE AND TIME, TO
2 YOUR KNOWLEDGE, TO THE AUDIO FILES THAT ARE CREATED?

3 A. YES.

4 Q. NOW, YOU MENTIONED SOMETHING A LITTLE BIT EARLIER
5 ABOUT USING A SYSTEM TO PLAY BACK AUDIO RECORDINGS, OR
6 ACCESS AUDIO RECORDINGS, I WOULD LIKE TO ASK YOU SOME
7 QUESTIONS ABOUT THAT SYSTEM.

8 ARE THE RECORDINGS THAT ARE MADE BY OFFICERS OF
9 YOUR DEPARTMENT ARCHIVED IN ANY FASHION?

10 A. THEY ARE.

11 Q. AND CAN YOU DESCRIBE IN GENERAL HOW IT IS THAT
12 THEY ARE ARCHIVED?

13 A. AT THE END OF AN OFFICER'S SHIFT, OR WHENEVER
14 THEY NEED OR WANT TO DOWNLOAD THEIR DIGITAL AUDIO RECORDER,
15 WE GO TO THE POLICE COMPUTER SYSTEM AND LOG IN WITH OUR
16 UNIQUE BADGE NUMBER AND PASSWORD. ONCE WE ARE INTO THE
17 POLICE SERVER, THERE IS AN ICON THAT WE OPEN UP THAT OPENS
18 UP A SYSTEM CALLED PUMA. AND IT IS THE SYSTEM THAT WE USE
19 TO DOWNLOAD AND TO ALSO RECALL DIGITAL RECORDINGS.

20 ONCE THE SYSTEM IS OPENED UP, YOU AGAIN ENTER IN
21 YOUR UNIQUE IDENTIFIER AND PASSWORD, AND WHEN YOU ARE LOGGED
22 INTO THE PUMA SYSTEM, WHILE YOUR DIGITAL RECORDER IS ON,
23 THERE IS A U.S.B. PORT THAT GOES TO A MINI U.S.B. THAT YOU
24 PLUG INTO A PORT ON THE SIDE OF THE DIGITAL AUDIO RECORDER,
25 AND THEN IT SYNCs WITH OUR PUMA SYSTEM.

26 Q. OKAY. SO THE PUMA SYSTEM, IS THAT THE NAME OF

1 THE PARTICULAR COMPUTER PROGRAM OR SYSTEM THAT IS USED TO
2 ARCHIVE AUDIO FILES?

3 A. CORRECT.

4 Q. I WOULD LIKE TO ASK YOU SOME QUESTIONS ABOUT THAT
5 SYSTEM THEN INITIALLY.

6 HAVE YOU, IN THE COURSE OF YOUR ASSIGNMENTS WITH
7 THE DEPARTMENT, IMPORTED AUDIO FILES FROM THE DIGITAL AUDIO
8 RECORDER INTO THE PUMA SYSTEM?

9 A. YES.

10 Q. WOULD THAT INCLUDE YOUR OWN AUDIO RECORDINGS?

11 A. YES.

12 Q. IS IT PART OF AN OFFICER'S RESPONSIBILITY IN THE
13 ORDINARY COURSE OF EVENTS TO IMPORT THE AUDIO FILES THAT
14 THEY HAVE CREATED DURING THE COURSE OF A SHIFT INTO THE PUMA
15 SYSTEM?

16 A. YES.

17 Q. SO HAVE YOU DONE SO AT THE END OF YOUR SHIFTS THE
18 TIMES THAT YOU HAVE GENERATED AUDIO FILES?

19 A. YES.

20 Q. WHAT ABOUT EXPORTING AUDIO FILES; HAVE YOU EVER
21 EXPORTED, TAKEN AN AUDIO RECORDING OUT OF THE PUMA SYSTEM OR
22 ACCESSED THE PUMA SYSTEM?

23 A. I HAVE.

24 Q. CAN YOU DESCRIBE IN GENERAL THE CIRCUMSTANCES
25 UNDER WHICH YOU HAVE DONE THAT IN THE PAST.

26 A. AS A SUPERVISOR IN PATROL, WHEN WE WERE

1 CONDUCTING INVESTIGATIONS ON OFFICERS, THERE WERE TIMES WHEN
2 I WOULD NEED TO GO BACK INTO THE SYSTEM TO RETRIEVE
3 RECORDINGS FROM INCIDENTS THAT THEY WERE INVOLVED IN.

4 AND THERE IS TWO WAYS TO DO IT.

5 I CAN EITHER OPEN UP THE PUMA SYSTEM AND
6 INDIVIDUALLY LISTEN TO THE FILES, BECAUSE THEY ARE LISTED IN
7 SEQUENTIAL ORDER. AND I CAN JUST CHOOSE WHICH ONE I WANT TO
8 LISTEN TO BY CLICKING ON A SMALL SPEAKER, AND IT WILL
9 ACTUALLY START PLAYING RIGHT THEN.

10 AND THE SECOND PART IS I CAN ALSO SAVE IT FROM
11 THAT PUMA SYSTEM TO A SEPARATE FILE ON MY DESKTOP OR ONTO AN
12 EXTERNAL DRIVE, OR ONTO A C.D. TO BE LISTENED TO FROM A
13 DIFFERENT DEVICE.

14 Q. OKAY. DOES AN OFFICER AT THE FULLERTON POLICE
15 DEPARTMENT HAVE ACCESS TO RETRIEVE THEIR OWN AUDIO FILES,
16 THE AUDIO FILES THAT THEY HAVE GENERATED IN THE COURSE OF
17 THEIR DUTIES THAT ARE IN THE PUMA SYSTEM?

18 A. YES.

19 Q. DO THEY HAVE THE ABILITY TO ACCESS OTHER
20 OFFICER'S AUDIO FILES?

21 A. IT DEPENDS.

22 Q. OKAY. AND WHAT DOES IT DEPEND ON?

23 A. IT DEPENDS ON YOUR CLEARANCE LEVEL. DEPENDING ON
24 YOUR CLEARANCE LEVEL, YOU CAN ONLY LISTEN TO YOUR LEVEL OR
25 BELOW. AND IF I CAN EXPLAIN, LIKE A PATROL OFFICER, WHEN
26 THEY UPLOAD THEIR FILES IN, THEIR CLEARANCE IS A NUMBER 4.

1 MEANING THEY CAN LISTEN TO ALL THE NUMBER 4 FILES.

2 AN INVESTIGATOR IS A NUMBER 5, MEANING THEY CAN,
3 WHEN THEY UPLOAD IT, THEIR CLEARANCE LEVEL IS A 5, THEY CAN
4 LISTEN TO THE 5'S AND THE 4'S. BUT A PATROL OFFICER
5 COULDN'T LISTEN TO SOMETHING THAT AN INVESTIGATOR UPLOADED,
6 OR SOMEBODY WITH A HIGHER CLEARANCE LEVEL UPLOADED.

7 Q. OKAY. SO WITH RESPECT TO A PATROL OFFICER, HE OR
8 SHE WOULD ONLY BE ABLE TO ACCESS, ASSUMING THEY HAVE A LEVEL
9 4 CLEARANCE, HE OR SHE WOULD ONLY BE ABLE TO ACCESS THE
10 RECORDINGS THAT THEY THEMSELVES HAD GENERATED?

11 A. THAT IS CORRECT.

12 Q. IN YOUR ASSIGNMENT IN THE INTERNAL AFFAIRS
13 BUREAU, DO YOU HAVE THE ABILITY OR THE CLEARANCE LEVEL NOT
14 ONLY TO ACCESS YOUR OWN RECORDINGS, BUT TO ACCESS THE
15 RECORDINGS OF OTHER OFFICERS?

16 A. YES.

17 Q. AND HOW IS THAT SYSTEM ACCESSED TO ENABLE YOU TO
18 RETRIEVE OTHER OFFICERS' RECORDINGS; IS IT PASSWORD
19 PROTECTED, OR CAN YOU DESCRIBE HOW IT IS ACCESSED?

20 A. IT IS PASSWORD PROTECTED. AND WHEN I WAS IN
21 INTERNAL AFFAIRS, MY CLEARANCE LEVEL WAS A 9, MEANING I
22 COULD LISTEN TO ANY RECORDING THROUGHOUT THE ENTIRE
23 DEPARTMENT. AND IT IS A UNIQUE LOGIN, AND THEN PASSWORD
24 SPECIFIC TO ME THAT ALLOWS ME TO DO THAT.

25 Q. OKAY. HOW WOULD YOU GO ABOUT RETRIEVING, IN
26 GENERAL TERMS, AN AUDIO RECORDING THAT WAS GENERATED BY

1 ANOTHER OFFICER?

2 A. THE FIRST THING I WOULD HAVE TO IDENTIFY, I WOULD
3 HAVE TO IDENTIFY WHICH OFFICER'S RECORDING THAT I NEEDED TO
4 RETRIEVE, I WOULD NEED TO KNOW WHAT THEIR BADGE NUMBER OR
5 P-NUMBER IS.

6 ONCE I IDENTIFIED THEIR P-NUMBER, I WOULD LOGIN
7 TO THE COMPUTER, OPEN UP PUMA, LOGIN TO PUMA, AND THEN THERE
8 IS A SEARCH MODE WHERE I CAN ENTER IN SEARCH BY P-NUMBER.
9 SO I WOULD PUT THAT OFFICER'S P-NUMBER IN THE SEARCH FIELD,
10 CLICK THE SEARCH BUTTON. I ALSO HAVE THE OPPORTUNITY TO PUT
11 PARAMETERS, DATE PARAMETERS, OR SPECIFIC FILE NAMES, IF THEY
12 NAMED IT, OR CASE NUMBER.

13 I WOULD THEN HIT THE SEARCH, AND IT WOULD GIVE ME
14 A LIST OF ALL OF THE RECORDINGS MADE BY THAT OFFICER MEETING
15 THE SPECIFIC CRITERIA THAT I INPUT.

16 Q. OKAY. SO IN THAT WAY IF YOU WANTED TO ACCESS THE
17 RECORDING THAT WAS GENERATED BY A PARTICULAR OFFICER AND
18 IMPORTED INTO THE PUMA SYSTEM, YOU WOULD BE ABLE TO DO SO?

19 A. CORRECT.

20 Q. AND YOU WOULD BE ABLE TO DETERMINE THAT IF IT WAS
21 A RECORDING THAT WAS GENERATED BY THAT PARTICULAR OFFICER'S
22 D.A.R. BY VIRTUE OF THE BADGE NUMBER, THE FIRST FOUR DIGITS
23 OF THAT AUDIO FILE?

24 A. CORRECT.

25 Q. AND ALSO YOU WOULD KNOW, OR COULD DETERMINE THE
26 DATE AND TIME BASED ON THAT INFORMATION THAT IS IN THE PUMA

1 SYSTEM?

2 A. EXACTLY. WHEN I PULL UP THE PUMA SYSTEM AND I AM
3 LOOKING AT ALL THE RECORDINGS MADE BY A PARTICULAR OFFICER,
4 THERE IS A LOT OF INFORMATION. IT SHOWS ME THE START TIME
5 OF THE RECORDING. IT SHOWS ME THE STOP TIME OF THE
6 RECORDING. THE DATE OF THE RECORDING. THE LENGTH OF THE
7 RECORDING. THERE ARE SEVERAL FIELDS WHEN I OPEN UP THE
8 SCREEN AFTER I HAVE ENTERED THE CRITERIA THAT ARE LAID OUT.

9 Q. OKAY. AND THEN FROM THAT POINT AFTER YOU HAVE
10 IDENTIFIED A PARTICULAR OFFICER'S RECORDING THAT YOU ARE
11 INTERESTED IN RETRIEVING, I THINK YOU BEGAN TELLING US ABOUT
12 THE FACT THAT YOU COULD EXTRACT A COPY OF THAT RECORDING AS
13 WELL?

14 A. THAT IS CORRECT.

15 Q. SO NOT ONLY PLAY IT BACK THROUGH THE PUMA SYSTEM,
16 BUT YOU ARE ACTUALLY ABLE TO MAKE A DIGITAL COPY OF THAT
17 AUDIO RECORDING?

18 A. THAT IS CORRECT.

19 Q. CAN YOU BRIEFLY DESCRIBE HOW YOU WOULD GO ABOUT
20 MAKING A DIGITAL COPY OF THAT AUDIO RECORDING.

21 A. ONCE I HAVE IDENTIFIED WHICH RECORDING I AM
22 INTERESTED IN OR WOULD LIKE TO MAKE A RECORDING OF, THERE IS
23 A FIELD AT THE EXTREME LEFT WHERE I PUT A CHECK MARK IN IT,
24 AND THEN UP AT THE TOP OF THE SCREEN IN THE MENU BAR IS A
25 FIELD WHERE I CAN EXPORT. AND I HAVE OPTIONS OF WHERE I
26 WANT TO EXPORT IT TO. I CAN EXPORT IT TO MY DESKTOP, OR I

1 CAN EXPORT IT TO A C.D. DRIVE OR A THUMB DRIVE OR WHATEVER
2 MANNER, OR WHEREVER I WANT TO PUT IT.

3 Q. I THINK YOU TOLD US THIS AS WELL, YOU HAVE HAD
4 OCCASION TO PLAY BACK AUDIO FILES RIGHT THROUGH THE PUMA
5 SYSTEM ITSELF?

6 A. THAT IS CORRECT.

7 Q. AND YOU HAVE ALSO HAD OCCASION TO EXTRACT AUDIO
8 FILES INTO ANOTHER DIGITAL FORMAT, AS YOU DESCRIBED?

9 A. THAT IS CORRECT.

10 Q. BASED ON YOUR FAMILIARITY WITH DOING THAT, WHEN
11 YOU EXTRACT A COPY OF THAT AUDIO FILE FROM THE PUMA SYSTEM,
12 IS IT A FAIR AND ACCURATE COPY OF WHAT YOU HEARD PLAYING
13 DIRECTLY THROUGH THE PUMA SYSTEM?

14 A. YES.

15 Q. AND SIMILARLY, IF YOU LISTENED TO AN AUDIO FILE
16 THAT WAS GENERATED BY A D.A.R. PLAYING IT BACK RIGHT ON THE
17 D.A.R. ITSELF, HAVE YOU EVER SUBSEQUENTLY ALSO THEN
18 EXTRACTED A COPY FROM THE PUMA SYSTEM?

19 A. I HAVE.

20 Q. AND HAVE YOU ALSO FOUND THAT THE COPY YOU GET
21 FROM THE PUMA SYSTEM IS A FAIR AND ACCURATE COPY THAT WAS
22 ABLE TO BE PLAYED DIRECTLY FROM THE RECORDER ITSELF?

23 A. YES.

24 Q. OKAY. NOW, I WOULD LIKE TO TURN YOUR ATTENTION
25 FOR A MOMENT TO JULY 5TH, 2011, THAT EVENING, AND ASK YOU IF
26 YOU HAD ANY RESPONSIBILITY ON THE PART OF YOUR DEPARTMENT TO

1 RESPOND TO THE AREA OF THE FULLERTON TRANSPORTATION CENTER,
2 WITH REGARD TO AN INVESTIGATION OF AN INCIDENT THAT OCCURRED
3 BETWEEN FULLERTON POLICE OFFICERS AND ONE KELLY THOMAS?

4 A. YES.

5 Q. OKAY. CAN YOU TELL US GENERALLY WHAT WAS THE
6 NATURE OF YOUR RESPONSIBILITY OR ROLE IN THAT INVESTIGATION.

7 A. ON JULY 5TH, 2011, I WAS ASSIGNED TO THE INTERNAL
8 AFFAIRS DIVISION OF THE FULLERTON POLICE DEPARTMENT. AND I
9 WAS CALLED BY THE CAPTAIN OF THE PATROL DIVISION THAT NIGHT
10 AND ASKED TO RESPOND, KNOWING THAT THERE WOULD BE AN
11 INTERNAL INVESTIGATION BASED ON A USE OF FORCE OCCURRING.

12 I WAS CALLED OUT TO GET A GOOD FIRSTHAND VIEW OF
13 THE SCENE, AND TO ENSURE THAT ALL EVIDENCE WAS PRESERVED AND
14 COLLECTED THAT I EVENTUALLY WOULD NEED TO COMPLETE THE
15 INTERNAL INVESTIGATION.

16 Q. SO DID YOU IN FACT RESPOND TO THAT LOCATION?

17 A. I DID.

18 Q. AND THAT LOCATION INCLUDES 123 SOUTH POMONA IN
19 THE CITY OF FULLERTON?

20 A. IT DOES.

21 Q. OKAY. AND WHEN YOU RESPONDED TO THE SCENE, IS IT
22 FAIR FOR ME TO SAY THAT PART OF YOUR ROLE WAS TO ENSURE THAT
23 ANY EVIDENCE THAT WOULD BE NECESSARY FOR YOUR INVESTIGATION
24 WAS COLLECTED FROM THE SCENE?

25 A. YES.

26 Q. WOULD THAT HAVE INCLUDED ANY POTENTIAL DIGITAL

1 AUDIO RECORDERS OR RECORDINGS THAT WERE GENERATED DURING THE
2 COURSE OF THAT INCIDENT?

3 A. YES.

4 Q. WHEN YOU RESPONDED TO THAT LOCATION, DID YOU MAKE
5 ANY EFFORT TO IDENTIFY IF ANY OF THE OFFICERS THAT WERE
6 ALLEGEDLY INVOLVED IN THE INCIDENT HAD GENERATED AUDIO
7 RECORDINGS?

8 A. YES.

9 Q. WHAT DID YOU DO IN ORDER TO DETERMINE IF ANY OF
10 THEM HAD MADE RECORDINGS?

11 A. I SPECIFICALLY ASKED THEM.

12 Q. OKAY. AND WERE YOU ABLE TO IDENTIFY CERTAIN
13 OFFICERS WHO HAD GENERATED RECORDINGS BY DOING THAT?

14 A. YES.

15 Q. DID YOU GIVE THOSE OFFICERS ANY INSTRUCTIONS WITH
16 RESPECT TO THEIR RECORDINGS THAT THEY HAD GENERATED OF
17 EVENTS?

18 A. I DID.

19 Q. WHAT INSTRUCTIONS DID YOU GIVE THEM?

20 A. I INSTRUCTED THEM TO DOWNLOAD THEIR DIGITAL AUDIO
21 RECORDINGS AS SOON AS THEY RETURNED TO THE STATION, IF THEY
22 WERE GOING TO CONTINUE THEIR SHIFT, I DIDN'T WANT THEM TO GO
23 AND HAVE OTHER RECORDINGS AFTER, I ASKED THEM TO
24 SPECIFICALLY RESPOND TO THE P.D., TO OUR POLICE DEPARTMENT,
25 AND TO DOWNLOAD THEIR D.A.R.'S.

26 Q. OKAY. I WOULD LIKE TO ASK YOU IF YOU ARE

1 FAMILIAR WITH A CERTAIN NUMBER OF OFFICERS, AND IF YOU ARE
2 FAMILIAR WITH THE SOUND OF THEIR VOICE; IS THAT FAIR?

3 A. YES.

4 Q. OKAY. AND THE CIRCUMSTANCES UNDER WHICH YOU ARE
5 FAMILIAR WITH THEM.

6 I WANT TO TURN YOUR ATTENTION TO EXHIBIT NUMBER
7 24 OF THE GRAND JURY EXHIBITS, AND ASK YOU IF YOU RECOGNIZE
8 THE INDIVIDUAL DEPICTED THERE?

9 A. I DO.

10 Q. WHO DO YOU RECOGNIZE THAT TO BE?

11 A. JOE WOLFE.

12 Q. AND WHAT ARE THE CIRCUMSTANCES UNDER WHICH YOU
13 RECOGNIZE THE PERSON IN 24 TO BE JOE WOLFE; HOW IS IT THAT
14 YOU KNOW JOE WOLFE?

15 A. HE IS A FULLERTON POLICE OFFICER, AND I HAVE
16 WORKED WITH HIM IN PATROL AND AROUND THE STATION.

17 Q. AND BASED ON WORKING WITH HIM, ARE YOU FAMILIAR
18 WITH THE SOUND OF HIS VOICE?

19 A. YES, I AM.

20 Q. AND IS HE ONE OF THE OFFICERS WHO YOU HAD
21 IDENTIFIED AS HAVING GENERATED AN AUDIO RECORDING OF THIS
22 INCIDENT THAT YOU WERE INVESTIGATING?

23 A. YES.

24 Q. DID YOU HAVE A CONVERSATION WITH JOSEPH WOLFE
25 REGARDING HIS DIGITAL AUDIO RECORDER?

26 A. I DID.

1 Q. AND WHAT IN ESSENCE WAS THAT CONVERSATION?

2 A. WHEN I HAD ASKED JOE ABOUT HIS DIGITAL RECORDING,
3 DID YOU HAVE A RECORDING OF IT, HIS RESPONSE WAS THAT HE
4 DID, BUT THAT DURING THE STRUGGLE HIS RECORDER CAME OUT OF
5 HIS SHIRT POCKET, HIT THE PAVEMENT, AND HAD FROZEN. AND
6 WHEN I SAY FROZEN, TO DESCRIBE IT, BASICALLY IT STOPPED, THE
7 NUMERICAL COUNTING STOPPED, AND THE LIGHT HAD FROZEN IN THE
8 ON POSITION.

9 Q. OKAY. AND IS HE ONE OF THE OFFICERS THAT YOU HAD
10 IDENTIFIED AS HAVING GENERATED AN AUDIO RECORDING OF THAT
11 INCIDENT?

12 A. YES.

13 Q. AND I AM GOING TO TURN YOUR ATTENTION BACK TO
14 EXHIBIT NUMBER 76; WERE YOU DIRECTED AT ALL WHILE YOU WERE
15 AT THE SCENE TO THE LOCATION OF HIS AUDIO RECORDER?

16 A. YES.

17 Q. OKAY. AND DID YOU HAVE AN OPPORTUNITY TO VIEW
18 IT?

19 A. I DID.

20 Q. DID YOU COLLECT IT, OR DID SOMEONE ELSE COLLECT
21 IT, IF YOU RECALL?

22 A. WELL, I ULTIMATELY TOOK IT TO THE POLICE STATION
23 FROM THE SCENE.

24 Q. WITH RESPECT TO EXHIBIT NUMBER 76, DO YOU
25 RECOGNIZE THAT AS A FAIR AND ACCURATE PHOTOGRAPH IN
26 APPEARANCE OF JOSEPH WOLFE'S AUDIO RECORDER?

1 A. YES.

2 Q. AND IF WE LOOK AT THAT AGAIN, IN PARTICULAR THAT
3 EIGHT-DIGIT NUMBER THAT YOU HAD POINTED TO US BEFORE, THE
4 1173, DOES THAT REPRESENT THE BADGE NUMBER OF JOSEPH WOLFE?

5 A. YES.

6 (FOR I.D. = GRAND JURY EXHIBIT 77)

7 Q. BY MR. BOGARDUS: AND NOW GRAND JURY EXHIBIT NUMBER
8 77; DOES THAT APPEAR TO BE A FAIR AND ACCURATE PHOTOGRAPH OF
9 THE REAR OF THE DIGITAL AUDIO RECORDER?

10 A. YES.

11 Q. IT ALSO APPEARS TO BE LABELED WITH THE NAME,
12 WOLFE; IS THAT TYPICAL OF THE DIGITAL AUDIO RECORDERS THAT
13 ARE ISSUED BY YOUR DEPARTMENT, THAT THEY ARE ACTUALLY
14 LABELED WITH THE ASSIGNED OFFICER'S NAME?

15 A. YES.

16 Q. AFTER YOU ULTIMATELY COLLECTED THIS D.A.R.,
17 JOSEPH WOLFE'S D.A.R., WHAT DID YOU DO WITH IT?

18 A. I TOOK IT BACK TO THE FULLERTON POLICE DEPARTMENT
19 AND DOWNLOADED IT INTO THE PUMA SYSTEM.

20 Q. WERE YOU ABLE TO ACCESS AUDIO, OR AN AUDIO
21 RECORDING FOR THAT PARTICULAR DAY AND AT THE TIME THAT THE
22 ALLEGED INCIDENT OCCURRED?

23 A. YES.

24 Q. AND DID YOU LISTEN TO THAT AUDIO RECORDING?

25 A. THAT NIGHT, NOT IN ITS ENTIRETY. EVENTUALLY,
26 YES.

1 Q. AND MAYBE I SHOULD PHRASE THAT DIFFERENTLY.

2 DID YOU LISTEN TO THE AUDIO RECORDING FROM THE
3 RECORDER ITSELF, OR DID YOU LISTEN TO THE AUDIO RECORDING
4 FROM THE PUMA SYSTEM, OR DID YOU DO BOTH?

5 A. ONLY FROM THE PUMA SYSTEM.

6 Q. WERE YOU THE ONE THAT PERSONALLY IMPORTED THE
7 AUDIO FROM THE DIGITAL AUDIO RECORDER OF JOSEPH WOLFE INTO
8 THE PUMA SYSTEM?

9 A. YES.

10 Q. DID YOU DO SO IN THE SAME FASHION THAT YOU HAVE
11 DONE COUNTLESS TIMES IN THE PAST OF IMPORTING AUDIO?

12 A. YES.

13 Q. DID YOU HAVE ANY PROBLEM IMPORTING THE AUDIO FROM
14 THE DIGITAL AUDIO RECORDER INTO THE PUMA SYSTEM, TO YOUR
15 RECOLLECTION?

16 A. NO.

17 Q. WERE YOU ABLE THEN TO EXTRACT AN AUDIO FILE THAT
18 HAD BEEN GENERATED ON THE DATE AND TIME OF THE ALLEGED
19 INCIDENT?

20 A. YES.

21 Q. FROM JOSEPH WOLFE'S AUDIO RECORDER?

22 A. CORRECT.

23 Q. OKAY. I WANT TO SHOW YOU NOW GRAND JURY EXHIBIT
24 NUMBER 45.

25 I WILL ASK YOU IF YOU RECOGNIZE THIS INDIVIDUAL?

26 A. I DO.

1 Q. WHO DO YOU RECOGNIZE THAT TO BE?

2 A. MANNY RAMOS.

3 Q. CAN YOU EXPLAIN TO THE GRAND JURY IN GENERAL
4 TERMS THE CIRCUMSTANCES UNDER WHICH YOU WOULD RECOGNIZE
5 MANNY RAMOS; HOW DO YOU KNOW HIM?

6 A. HE IS A -- HE WAS A FULLERTON POLICE OFFICER. I
7 WORKED WITH HIM FOR SEVERAL YEARS, AND ACTUALLY SUPERVISED
8 HIM FOR A COUPLE OF YEARS.

9 Q. ARE YOU FAMILIAR WITH THE SOUND OF HIS VOICE AS
10 WELL?

11 A. YES, I AM.

12 Q. AND WAS MANUEL RAMOS AT THE FULLERTON
13 TRANSPORTATION CENTER WHEN YOU ARRIVED THERE?

14 A. YES, HE WAS.

15 Q. IS HE ALSO ONE OF THE OFFICERS WHO YOU HAD
16 IDENTIFIED AS HAVING HAD HIS AUDIO RECORDING OPERATING OR
17 RECORDING AT THE TIME OF THIS INCIDENT?

18 A. YES.

19 Q. AT SOME POINT ON THE EVENING OF JULY 5TH, 2011,
20 DID MANUEL RAMOS PROVIDE YOU WITH HIS DIGITAL AUDIO
21 RECORDER?

22 A. HE DID.

23 Q. HOW DID HE PROVIDE YOU; DID HE HAND IT TO YOU, OR
24 DO YOU RECALL HOW IT WAS THAT IT WENT FROM HIS POSSESSION TO
25 YOURS?

26 A. I DO.

1 Q. COULD YOU TELL US.

2 A. WE WERE BACK AT THE STATION, AND I WAS IN THE
3 SERGEANT'S OFFICE. AND OFFICER RAMOS WAS GOING TO BE GOING
4 UP TO THE HOSPITAL. AND HE TOLD ME THAT HE COULDN'T
5 DOWNLOAD HIS D.A.R. AT THAT TIME, I AM ASSUMING HE MADE AN
6 ATTEMPT TO DOWNLOAD IT AND THAT HE COULDN'T.

7 Q. I AM GOING TO INTERRUPT YOU RIGHT THERE, I
8 APOLOGIZE.

9 A. OKAY.

10 Q. WITHOUT TELLING ME ABOUT WHAT MANUEL RAMOS SAID
11 TO YOU IN PARTICULAR --

12 A. SURE.

13 Q. -- DID HE JUST GIVE YOU HIS DIGITAL AUDIO
14 RECORDER?

15 A. HE DID.

16 Q. OKAY. AND THEN DID YOU TAKE THE DIGITAL AUDIO
17 RECORDER AND DO ANYTHING WITH IT TO ACCESS AUDIO OR DOWNLOAD
18 AUDIO?

19 A. I DID.

20 Q. WHAT DID YOU DO?

21 A. I PLUGGED IT INTO THE PUMA SYSTEM AND I
22 DOWNLOADED IT.

23 Q. WERE YOU ABLE TO EXTRACT AN AUDIO FILE OR AUDIO
24 FILES FROM HIS RECORDER?

25 A. I WAS.

26 Q. FOR JULY 5TH, 2011, AGAIN THE TIME FRAME OF THE

1 ALLEGED INCIDENT?

2 A. YES.

3 Q. DID YOU LATER DISCOVER THAT MANUEL RAMOS' AUDIO
4 RECORDER MAY HAVE CONTAINED TWO AUDIO FILES RELATIVE TO THIS
5 INCIDENT?

6 A. YES.

7 Q. AND HOW DID YOU MAKE THAT DISCOVERY, GENERALLY?

8 A. I WAS REVIEWING THE EVIDENCE IN THIS CASE AND
9 WENT BACK AND RELISTENED TO ALL THE PREVIOUS D.A.R.'S, THE
10 DIGITAL RECORDINGS FROM THAT EVENING, AND FOUND THAT THE
11 RECORDING JUST PRIOR TO THE ONE THAT I ORIGINALLY FOUND WAS
12 ALSO A PORTION OF THIS CASE.

13 Q. OKAY. JUST LET ME ASK YOU A COUPLE OF QUESTIONS
14 ABOUT THAT BRIEFLY.

15 BASED ON YOUR KNOWLEDGE OF THE DIGITAL AUDIO
16 RECORDER, EVERY TIME YOU ACTIVATE THE RECORDER DOES IT
17 GENERATE A NEW FILE?

18 A. EVERY TIME YOU STOP THE RECORDER AND THEN PUSH
19 RECORD AGAIN, IT GENERATES A NEW FILE.

20 Q. OKAY. SO IF THERE WAS AN INCIDENT WHERE AN
21 OFFICER WAS CONTACTING SOMEONE AND THEY ACTIVATED THE
22 RECORDER AND THEY STOPPED IT, THAT WOULD GENERATE ONE AUDIO
23 FILE?

24 A. CORRECT.

25 Q. AND THEN IF THEY WANTED TO CONTINUE RECORDING
26 THAT CONTACT AND THEY HIT RECORD AGAIN, PRESSED RECORD

1 AGAIN, THAT WOULD THEN GENERATE A SECOND AUDIO FILE?

2 A. CORRECT.

3 Q. AND BASED ON YOUR FAMILIARITY WITH THE SYSTEM AND
4 ACCESSING THE AUDIO RECORDINGS, MANUEL RAMOS, IS THAT WHAT
5 YOU UNDERSTOOD HAD HAPPENED WITH RESPECT TO HIS AUDIO
6 RECORDER?

7 A. YES.

8 Q. WERE YOU ABLE TO EXTRACT THE AUDIO RECORDINGS
9 FROM MANUEL RAMOS' D.A.R. AS WELL?

10 A. YES.

11 Q. DO YOU KNOW AN INDIVIDUAL BY THE NAME OF KEVIN
12 CRAIG?

13 A. I DO.

14 Q. HOW DO YOU KNOW KEVIN CRAIG?

15 A. I WORK WITH HIM AT THE FULLERTON POLICE
16 DEPARTMENT.

17 Q. HAVE YOU HAD CONVERSATIONS WITH KEVIN CRAIG?

18 A. YES, I HAVE.

19 Q. ARE YOU FAMILIAR WITH THE SOUND OF HIS VOICE?

20 A. I AM.

21 Q. IS HE ALSO AN OFFICER THAT YOU HAD IDENTIFIED AS
22 HAVING HAD HIS DIGITAL AUDIO RECORDER ACTIVE AT LEAST DURING
23 A PORTION OF THIS INCIDENT?

24 A. YES.

25 Q. DID YOU DO ANYTHING TO OBTAIN ANY AUDIO FROM HIS
26 RECORDER RELATIVE TO THIS INCIDENT?

1 A. FROM HIS RECORDER, NO.

2 Q. DID YOU DO ANYTHING TO OBTAIN ANY RECORDINGS THAT
3 HE GENERATED ON HIS RECORDER FROM THIS INCIDENT?

4 A. YES.

5 Q. WHAT DID YOU DO?

6 A. I, KNOWING OFFICER CRAIG OR SERGEANT CRAIG'S
7 BADGE NUMBER, I WENT THROUGH THE SAME PROCESS OF GOING INTO
8 THE PUMA SYSTEM AND PUTTING IN HIS BADGE NUMBER, IDENTIFYING
9 THE RECORDING I WAS LOOKING FOR, AND THEN I EXTRACTED IT
10 FROM THE PUMA SYSTEM.

11 Q. PRIOR TO EXTRACTING IT FROM THE PUMA SYSTEM, HAD
12 YOU LISTENED TO THE AUDIO RECORDING THAT WAS GENERATED BY
13 SERGEANT CRAIG?

14 A. IN THE PUMA SYSTEM, YES.

15 Q. IS THAT TRUE WITH RESPECT TO MANUEL RAMOS'
16 RECORDING AS WELL, YOU LISTENED TO IT IN THE PUMA SYSTEM?

17 A. THAT IS CORRECT.

18 Q. ARE YOU ALSO FAMILIAR WITH AN INDIVIDUAL OFFICER
19 BY THE NAME OF JONATHAN MUNOZ?

20 A. YES.

21 Q. HOW DO YOU KNOW OFFICER MUNOZ?

22 A. HE IS AN OFFICER OF THE FULLERTON POLICE
23 DEPARTMENT, AND I HAVE HAD OCCASION TO SPEAK WITH HIM AND
24 SEE HIM AT WORK.

25 Q. OKAY. ARE YOU FAMILIAR WITH THE SOUND OF HIS
26 VOICE, BASED ON YOUR CONVERSATIONS WITH HIM AND WORKING WITH

1 HIM?

2 A. YES.

3 Q. IS HE ALSO ONE OF THE OFFICERS WHO YOU HAD
4 IDENTIFIED AS HAVING GENERATED A RECORDING OF AT LEAST A
5 PORTION OF THIS INCIDENT?

6 A. YES.

7 Q. AND DID YOU DO ANYTHING TO ACCESS THE RECORDING
8 THAT HE HAD GENERATED?

9 A. I DID.

10 Q. WHAT DID YOU DO?

11 A. THE SAME THING, I WENT INTO THE PUMA SYSTEM, PUT
12 HIS BADGE NUMBER INTO THE SEARCH, LOCATED A RECORDING FROM
13 THAT EVENING BY LISTENING TO IT, AND THEN EXTRACTED IT FROM
14 THE PUMA SYSTEM.

15 Q. OKAY. SO DID YOU ALSO LISTEN ON THE PUMA SYSTEM
16 TO JONATHAN MUNOZ' RECORDING?

17 A. I DID.

18 Q. AND THEN YOU ALSO EXTRACTED A COPY OF JONATHAN
19 MUNOZ' RECORDING?

20 A. THAT IS CORRECT.

21 Q. WITH RESPECT TO THE COPIES YOU MADE OR EXTRACTED
22 OF JONATHAN MUNOZ, KEVIN CRAIG, MANUEL RAMOS AND JOSEPH
23 WOLFE, WERE THOSE COPIES ALL FAIR AND ACCURATE COPIES OF THE
24 AUDIO YOU ALSO HEARD FROM THE PUMA SYSTEM?

25 A. YES.

26 Q. NOW, WE ARE FOCUSING RIGHT NOW ON THOSE FOUR

1 INDIVIDUALS IN PARTICULAR, BUT IN THE COURSE OF YOUR
2 INVESTIGATION INTO THIS INCIDENT, DID YOU ALSO HAVE OCCASION
3 TO ACCESS OTHER AUDIO RECORDINGS OF OTHER OFFICERS WHO MAY
4 HAVE GENERATED RECORDINGS OF THIS INCIDENT?

5 A. YES.

6 Q. DID YOU LISTEN TO THE RECORDINGS OF THOSE
7 INDIVIDUALS AS WELL?

8 A. I DID.

9 Q. DID SOME OF THESE RECORDINGS THAT WERE GENERATED
10 BY THE OFFICERS INVOLVED IN THIS INCIDENT APPEAR TO HAVE
11 BEEN MADE SIMULTANEOUSLY, IN OTHER WORDS, MULTIPLE OFFICERS
12 MAY HAVE THEIR RECORDERS RUNNING AT THE SAME TIME DURING THE
13 COURSE OF THIS INCIDENT?

14 A. DEFINITELY.

15 Q. NOW, AT SOME POINT IN YOUR INVESTIGATION DID YOU
16 LEARN THAT THERE WAS A VIDEO RECORDING THAT PURPORTED TO
17 DEPICT THIS INCIDENT, OR AT LEAST A PORTION OF THIS
18 INCIDENT?

19 A. YES.

20 Q. WERE YOU PROVIDED WITH A COPY OF THAT VIDEO
21 RECORDING?

22 A. YES.

23 Q. I AM SHOWING YOU NOW GRAND JURY EXHIBIT NUMBER
24 75, THAT IS THE D.V.D.; HAVE YOU HAD A PRIOR OPPORTUNITY TO
25 VIEW THIS D.V.D.?

26 A. I HAVE.

1 Q. AND DID IT TO YOU APPEAR TO BE A FAIR AND
2 ACCURATE COPY OF THE SAME VIDEO RECORDING OF THE INCIDENTS
3 THAT YOU HAD BEEN PROVIDED, THE MOVING IMAGES?

4 A. YES.

5 Q. NOW, WHEN YOU WERE PROVIDED A COPY OF THE VIDEO,
6 DID IT HAVE A SOUNDTRACK?

7 A. (NO RESPONSE) .

8 Q. ORIGINALLY?

9 A. ORIGINALLY, NO.

10 Q. TO YOUR KNOWLEDGE DOES THE CAMERA THAT GENERATED
11 THIS VIDEO, IS IT EQUIPPED WITH A MICROPHONE?

12 A. IT IS NOT.

13 Q. DID YOU THEN SET TO THE TASK IN ANY WAY OF
14 CREATING AN AUDIO SOUNDTRACK FOR THE VIDEO THAT YOU HAD BEEN
15 PROVIDED?

16 A. I DID.

17 Q. AND IN VERY GENERAL TERMS, DID YOU UTILIZE THE
18 AUDIO RECORDINGS THAT HAD BEEN GENERATED BY THE OFFICERS
19 DURING THE COURSE OF THIS INCIDENT TO CREATE AN AUDIO TRACK
20 WITH THE DIGITAL?

21 A. I DID.

22 Q. DID YOU USE A COMPUTER PROGRAM TO ACCOMPLISH
23 THAT?

24 A. I DID.

25 Q. AND DID THAT PROGRAM PERMIT YOU TO MANIPULATE
26 WHERE THE AUDIO RECORDINGS WOULD PLAY OR START DURING THE

1 COURSE OF THE VIDEO?

2 A. YES.

3 Q. WHICH OFFICERS' AUDIO RECORDINGS DID YOU USE IN
4 ORDER TO CREATE THE SOUNDTRACK?

5 A. I USED OFFICER RAMOS, OFFICER WOLFE, SERGEANT
6 CRAIG AND OFFICER MUNOZ.

7 Q. WHY IS IT THAT YOU SELECTED THOSE FOUR INDIVIDUAL
8 OFFICERS' AUDIO RECORDINGS OUT OF ALL THE AUDIO RECORDINGS
9 THAT YOU LISTENED TO?

10 A. WHEN I MADE THE D.V.D. I CHOSE THOSE DIGITAL
11 RECORDINGS THAT WERE CLOSEST TO KELLY THOMAS, JUST THEY WERE
12 CLOSEST TO KELLY THOMAS, BECAUSE THERE WERE TIMES WHEN MAYBE
13 AN OFFICER WOULD BE THERE AND THEN WALK AWAY, AND I KEPT THE
14 RECORDING, THE CLEAREST RECORDING THAT WAS CLOSEST TO KELLY
15 THOMAS.

16 Q. SO FAIR FOR ME TO SAY THEN THAT YOU MADE AN
17 EFFORT TO CAPTURE THE RECORDER THAT WAS PHYSICALLY CLOSEST
18 TO THOMAS DURING THE COURSE OF THIS INCIDENT?

19 A. OR THAT WAS THE CLEAREST.

20 Q. OR THAT WAS THE CLEAREST?

21 A. YES.

22 Q. DID YOU SET ABOUT SYNCHRONIZING THE AUDIO
23 RECORDINGS THAT HAD BEEN GENERATED BY THE OFFICERS AT THE
24 SCENE WITH THE VIDEO?

25 A. I DID.

26 Q. HOW IS IT YOU MADE AN EFFORT, OR WHAT DID YOU DO

1 GENERALLY TO SYNCHRONIZE THE AUDIO RECORDINGS WITH THE
2 VIDEO?

3 A. AFTER WATCHING THE VIDEO I FOUND, FOR LACK OF A
4 BETTER TERM, MARKERS, SOMETHING THAT WOULD BE IDENTIFIABLE
5 VISUALLY ON THE VIDEO AND AUDIBLY ON THE RECORDINGS. THE
6 INITIAL POINT THAT I USED WAS A BACKPACK HITTING THE GROUND.
7 AND THAT'S WHERE I STARTED EVERYTHING FROM. AND THEN FOUND
8 OTHER MARKERS DURING THE VIDEO, OTHER SOUNDS, A FOOT MOVING
9 ON THE GROUND OR SOMETHING LIKE THAT. JUST TO SYNC THE
10 AUDIO UP TO THE VIDEO AS BEST AS I COULD.

11 Q. SO ON THE SILENT VIDEO, FOR EXAMPLE, YOU WOULD
12 SEE A BACKPACK HITTING THE GROUND, AND YOU WOULD LISTEN FOR
13 THE AUDIO RECORDINGS, THE SOUND OF A BACKPACK HITTING THE
14 GROUND?

15 A. THAT COMBINED WITH THE CONVERSATION THAT WAS
16 GOING ON AT THE TIME, KNOWING THAT IT IS RIGHT IN THAT AREA.

17 Q. OKAY. THE SAME WOULD BE TRUE WITH RESPECT TO
18 THAT OTHER LANDMARK, FOR EXAMPLE, THE FEET MOVING ON THE
19 GROUND OR SHUFFLING ON THE GROUND, YOU WOULD LOOK FOR THE
20 PORTION OF THE AUDIO RECORDING, OR THE TIME ON THE AUDIO
21 RECORDING WHERE THE FEET WAS MOVING ON THE GROUND OR
22 SHUFFLING ON THE GROUND?

23 A. YEAH, THE FOOT MOVING ON THE GROUND IS WHERE I
24 ACTUALLY GOT IT TO SYNC THE CLOSEST, THE BACKPACK WAS KIND
25 OF MY GENERAL, IT GOT ME IN THE AREA, BUT THE FEET MOVING ON
26 THE GROUND WAS WHERE I REALLY KIND OF HONED IN ON GETTING IT

1 AS CLOSE TO SYNC AS I COULD DO IT.

2 Q. OKAY. AND AT THE END OF THIS PROCESS, WERE YOU
3 ABLE TO PRODUCE A VIDEO FILE, FROM THE VIDEO FILE YOU HAD
4 BEEN PROVIDED ALONG WITH AN AUDIO TRACK, THAT APPEARED TO BE
5 SYNCHRONIZED TO THE BEST OF YOUR ABILITY?

6 A. YES.

7 Q. DOES GRAND JURY EXHIBIT 75 CONSIST OF THAT
8 COMPOSITE, THE SURVEILLANCE VIDEO AND THE VERSIONS AND
9 COPIES OF THE INDIVIDUAL AUDIO RECORDINGS THAT YOU
10 SYNCHRONIZED WITH THE VIDEO?

11 A. YES.

12 Q. WITH RESPECT TO GRAND JURY EXHIBIT NUMBER 75
13 ALSO, DOES IT CONTAIN FAIR AND ACCURATE RECORDINGS OF THE
14 AUDIO GENERATED BY THOSE DIGITAL AUDIO RECORDERS OF THE
15 OFFICERS?

16 A. YES.

17 MR. BOGARDUS: I HAVE WHAT I WOULD ASK TO BE MARKED FOR
18 PURPOSES OF IDENTIFICATION AS GRAND JURY EXHIBIT NUMBER 78,
19 DESCRIBED FOR THE RECORD AS A TRANSCRIPT OF GRAND JURY
20 EXHIBIT NUMBER 75.

21 (FOR I.D. = GRAND JURY EXHIBIT 78)

22 Q. BY MR. BOGARDUS: I WOULD LIKE YOU TO TAKE A LOOK
23 AT THAT AND ASK IF YOU HAVE HAD AN OPPORTUNITY TO REVIEW
24 THAT TRANSCRIPT PRIOR TO TODAY?

25 A. I HAVE.

26 Q. AND DOES THAT APPEAR TO BE A FAIR AND ACCURATE

1 TRANSCRIPTION OF THE AUDIO THAT IS ON GRAND JURY EXHIBIT
2 NUMBER 75?

3 A. YES.

4 (FOR I.D. = GRAND JURY EXHIBIT 79)

5 Q. BY MR. BOGARDUS: I WOULD LIKE TO ASK YOU SOME
6 QUESTIONS ABOUT INDIVIDUALS THAT ARE DEPICTED IN GRAND JURY
7 EXHIBIT NUMBER 75, THE VIDEO. AND IF YOU RECOGNIZE THEM AND
8 WHO THEY ARE.

9 SO FIRST I AM GOING TO START WITH GRAND JURY
10 EXHIBIT NUMBER 75, WHICH IS A SCREEN CAPTURE, DESCRIBED FOR
11 THE RECORD AS A SCREEN CAPTURE FROM PEOPLE'S 75 WITH AN
12 ARROW POINTING TO A UNIFORMED OFFICER.

13 DO YOU RECOGNIZE --

14 MR. TANIZAKI: 79.

15 MR. BOGARDUS: CORRECT, SCREEN CAPTURE FROM 75 THOUGH.

16 MR. TANIZAKI: RIGHT, BUT I THINK YOU SAID -- NEVER
17 MIND.

18 Q. BY MR. BOGARDUS: DO YOU RECOGNIZE THE UNIFORMED
19 OFFICER IN THIS SCREEN CAPTURE, EXHIBIT 79?

20 A. I DO.

21 Q. WHO DO YOU RECOGNIZE THAT TO BE?

22 A. MANNY RAMOS.

23 Q. AND BASED ON YOUR REVIEW OF THE VIDEO RECORDING,
24 GRAND JURY 75, IS THAT THE FIRST UNIFORMED OFFICER THAT
25 APPEARS IN THE VIDEO?

26 A. YES.

1 (FOR I.D. = GRAND JURY EXHIBIT 80)

2 Q. BY MR. BOGARDUS: I NOW WANT TO SHOW YOU GRAND JURY
3 EXHIBIT NUMBER 80, AGAIN A SCREEN CAPTURE FROM 75.

4 DO YOU RECOGNIZE THE UNIFORMED OFFICER THAT THE
5 ARROW IS POINTING TO?

6 A. I DO.

7 Q. WHO DO YOU RECOGNIZE THAT TO BE?

8 A. JOE WOLFE.

9 Q. IS THAT THE SECOND UNIFORMED OFFICER TO APPEAR IN
10 THE VIDEO?

11 A. YES.

12 (FOR I.D. = GRAND JURY EXHIBIT 81)

13 Q. BY MR. BOGARDUS: GRAND JURY EXHIBIT NUMBER 81, A
14 UNIFORMED OFFICER AGAIN DEPICTED, A SCREEN CAPTURE FROM 75;
15 DO YOU RECOGNIZE THAT?

16 A. I DO.

17 Q. WHO IS THAT?

18 A. JAY CICINELLI.

19 Q. BASED ON YOUR REVIEW OF THE VIDEO, IS THIS THE
20 THIRD OFFICER TO APPEAR IN THE VIDEO?

21 A. YES.

22 (FOR I.D. = GRAND JURY EXHIBIT 82)

23 Q. BY MR. BOGARDUS: GRAND JURY EXHIBIT NUMBER 82,
24 AGAIN A SCREEN CAPTURE FROM THE VIDEO; DO YOU RECOGNIZE THE
25 UNIFORMED OFFICER TO WHOM THE ARROW IS POINTING?

26 A. I DO.

1 Q. WHO DO YOU RECOGNIZE THAT TO BE?

2 A. KENTON HAMPTON.

3 Q. IS THAT THE FOURTH OFFICER THAT APPEARS, FOURTH
4 UNIFORMED OFFICER THAT APPEARS IN THE VIDEO?

5 A. YES.

6 (FOR I.D. = GRAND JURY EXHIBIT 83)

7 Q. BY MR. BOGARDUS: NOW SHOWING YOU GRAND JURY
8 EXHIBIT NUMBER 83; DO YOU RECOGNIZE THE INDIVIDUAL TO WHOM
9 THE ARROW IS POINTING HERE?

10 A. I DO.

11 Q. AND WHO DO YOU RECOGNIZE THAT TO BE?

12 A. KEVIN CRAIG.

13 Q. NOW THE FIFTH OFFICER THAT APPEARS IN THE VIDEO?

14 A. YES.

15 (FOR I.D. = GRAND JURY EXHIBIT 84)

16 Q. BY MR. BOGARDUS: NOW I AM SHOWING YOU GRAND JURY
17 EXHIBIT NUMBER 84; DO YOU RECOGNIZE THE OFFICER TO WHOM THE
18 ARROW IS POINTING HERE?

19 A. I DO.

20 Q. WHO DO YOU RECOGNIZE THAT TO BE?

21 A. JIM BLATNEY.

22 Q. AND IS THAT THE SIXTH OFFICER TO APPEAR IN THE
23 VIDEO?

24 A. YES.

25 Q. DO THESE EXHIBITS THAT I HAVE NOW SHOWN YOU, 79,
26 80, 81, 82, 83 AND 84, APPEAR TO BE FAIR AND ACCURATE SCREEN

1 CAPTURES FROM GRAND JURY EXHIBIT 75, WITH THE EXCEPTION OF
2 THE ARROWS?

3 A. YES.

4 Q. HOW IS IT THAT YOU ARE FAMILIAR WITH WHO OFFICER
5 HAMPTON IS, THAT YOU WOULD RECOGNIZE HIM FROM THE VIDEO?

6 A. FROM WORKING WITH HIM AT THE POLICE DEPARTMENT,
7 AND HAVING OCCASION TO WORK WITH HIM AS WELL.

8 Q. AND WHAT ABOUT WITH RESPECT TO OFFICER BLATNEY?

9 A. SAME THING, I HAVE WORKED WITH HIM FOR SEVERAL
10 YEARS. SAME WITH KEVIN CRAIG.

11 Q. DOES THE FULLERTON POLICE DEPARTMENT ALSO
12 MAINTAIN A POLICY MANUAL THAT ALL OFFICERS ARE GOVERNED BY?

13 A. YES.

14 Q. AND IS IT A CONDITION OF EACH OFFICER'S
15 EMPLOYMENT THAT THEY REVIEW THE POLICY MANUAL?

16 A. YES.

17 Q. OR BE FAMILIAR WITH THE POLICY MANUAL?

18 A. YES.

19 Q. TO YOUR KNOWLEDGE, ARE YOUR OFFICERS REQUIRED TO
20 EXECUTE A WRITING OR AN AUTHORIZATION THAT THEY FAMILIARIZED
21 THEMSELVES WITH THE POLICY MANUAL?

22 A. YES.

23 Q. WAS THAT TRUE BACK ON JULY 5TH OF 2011, THAT
24 OFFICERS THAT WERE EMPLOYED AT THAT TIME WOULD HAVE HAD TO
25 EXECUTE AN ACKNOWLEDGEMENT THAT THEY ARE FAMILIAR WITH
26 FULLERTON POLICE DEPARTMENT PROCEDURES?

1 A. YES.

2 MR. BOGARDUS: I HAVE WHAT I WOULD ASK TO BE MARKED FOR
3 THE RECORD AS GRAND JURY EXHIBIT NUMBER 85, DESCRIBED AS A
4 COPY OF THE POLICY OF THE FULLERTON POLICE DEPARTMENT POLICY
5 MANUAL.

6 (FOR I.D. = GRAND JURY EXHIBIT 85)

7 Q. BY MR. BOGARDUS: I WOULD LIKE YOU TO LOOK AT THAT
8 AND LET US KNOW IF YOU HAVE HAD AN OPPORTUNITY TO SEE THAT
9 PARTICULAR EXHIBIT BEFORE, GRAND JURY NUMBER 85?

10 A. YES.

11 Q. DOES THAT APPEAR TO BE A TRUE AND ACCURATE COPY
12 OF FULLERTON POLICE DEPARTMENT'S POLICY MANUAL THAT WOULD
13 HAVE BEEN IN EFFECT BACK IN JULY 5TH OF 2011?

14 A. YES.

15 Q. DOES THE FULLERTON POLICE DEPARTMENT ALSO
16 MAINTAIN RECORDS OF WHEN AN OFFICER IS HIRED?

17 A. YES.

18 Q. AND DOES THE DEPARTMENT ALSO MAINTAIN A RECORD OF
19 THE INDIVIDUAL ASSIGNMENTS THAT OFFICERS ARE GIVEN DURING
20 THE COURSE OF THEIR CAREER WITH YOUR DEPARTMENT?

21 A. YES.

22 Q. AND DOES THAT RECORD ALSO CONTAIN INFORMATION
23 ABOUT THE DATES OF THOSE ASSIGNMENTS?

24 A. YES, IT DOES.

25 Q. IS THAT SOMETHING THAT IS MAINTAINED IN THE
26 REGULAR COURSE OF BUSINESS AT THE FULLERTON POLICE

1 DEPARTMENT?

2 A. YES, IT IS.

3 Q. AND IS THAT INFORMATION DOCUMENTED BY EMPLOYEES
4 OF THE FULLERTON POLICE DEPARTMENT?

5 IN OTHER WORDS, THAT INFORMATION IS RECORDED
6 SOMEWHERE AT THE FULLERTON POLICE DEPARTMENT?

7 A. CORRECT.

8 Q. AND THE PERSON, THE PERSONS WHO PUT THAT
9 INFORMATION IN THE RECORD, FOR EXAMPLE, WHEN AN OFFICER IS
10 HIRED, IS THAT DONE BY FULLERTON POLICE DEPARTMENT
11 EMPLOYEES?

12 A. YES.

13 Q. AND IS THAT TRUE WITH RESPECT TO ALL THE SWORN
14 OFFICERS THAT WORK FOR THE FULLERTON POLICE DEPARTMENT, THAT
15 THERE IS A RECORD OF WHEN THEY WERE HIRED AND THE
16 ASSIGNMENTS THAT THEY HAVE HAD?

17 A. YES.

18 Q. HAVE YOU HAD AN OPPORTUNITY TO REVIEW THE RECORD
19 OF EMPLOYMENT OF JOSEPH WOLFE?

20 A. YES.

21 Q. ARE YOU FAMILIAR WITH WHEN IT WAS THAT JOSEPH
22 WOLFE WAS HIRED ON AS A SWORN PEACE OFFICER WITH YOUR
23 DEPARTMENT?

24 A. I DON'T HAVE THE EXACT DATE IN MY HEAD, BUT I DO
25 HAVE A COPY OF WHAT THAT DATE WOULD BE.

26 Q. OKAY.

1 A. THE INFORMATION.

2 Q. WOULD IT REFRESH YOUR RECOLLECTION TO REFER TO
3 THAT DOCUMENT?

4 A. IF THAT WOULD BE OKAY.

5 Q. OKAY. IT WILL. AND LET US KNOW WHEN YOU HAVE
6 HAD AN OPPORTUNITY TO REVIEW THAT, AND IF YOUR MEMORY IS
7 REFRESHED.

8 A. (WITNESS COMPLIES).

9 I AM SORRY, WAS IT HIS HIRE DATE AS A POLICE
10 OFFICER, OR HIS HIRE DATE WITH THE FULLERTON POLICE
11 DEPARTMENT?

12 Q. LET'S START WITH HIS HIGHER DATE WITH THE
13 FULLERTON POLICE DEPARTMENT.

14 A. YES.

15 Q. OKAY. AND WHAT DATE WAS THAT?

16 A. JUNE 1ST, 1998.

17 Q. AND DO YOU KNOW WHAT HIS ASSIGNMENT WAS WHEN HE
18 WAS FIRST HIRED WITH THE DEPARTMENT?

19 A. HE WAS A POLICE CADET AND A RESERVE POLICE
20 OFFICER.

21 Q. IN GENERAL TERMS, CAN YOU EXPLAIN TO THE GRAND
22 JURY WHAT A POLICE CADET IS AND WHAT A RESERVE POLICE
23 OFFICER IS.

24 A. SURE. A POLICE CADET IS SOMEBODY WHO IS
25 INTERESTED IN LAW ENFORCEMENT AND WORKS FOR THE DEPARTMENT,
26 DOING A LOT OF THE SAME TASKS THAT OFFICERS OR RECORDS

1 CLERKS WOULD TYPICALLY DO. WHETHER IT BE TAKING REPORTS AT
2 THE FRONT DESK, AND I AM TALKING ABOUT MINOR REPORTS, AN
3 AUTO BURGLARY OR SOMETHING, A STOLEN VEHICLE. THEY ENTER
4 TICKETS INTO THE COMPUTER. DO A LOT OF FILING. HANDLE
5 FINGERPRINTING, AND JOBS LIKE THAT.

6 OFTENTIMES YOU WILL FIND SOMEBODY WHO IS
7 INTERESTED IN LAW ENFORCEMENT THAT WILL GET HIRED ON AS A
8 CADET, TO KIND OF LEARN THE WORKINGS OF THE DEPARTMENT, AND
9 JUST DO THE LITTLE JOBS THAT THEY ARE ALLOWED TO DO. AND
10 WHEN I SAY LITTLE JOBS, I JUST MEAN THEY ARE NOT DOING
11 EXACTLY WHAT A PEACE OFFICER WOULD DO.

12 A RESERVE OFFICER IS SOMEBODY WHO VOLUNTEERS
13 THEIR TIME TO GO OUT ON THE STREETS AS A POLICE OFFICER.
14 TYPICALLY THEY GO THROUGH THE SAME TRAINING THAT A FULL TIME
15 OFFICER WOULD GO THROUGH, THEY HAVE A TRAINING OFFICER
16 DURING THEIR FIRST, OR UNTIL THEY FINISH THEIR REQUIRED
17 THREE PHASES THAT WE GO THROUGH TO BECOME A POLICE OFFICER.

18 BUT THEY ARE IN ESSENCE A POLICE OFFICER, WITH
19 THE EXCEPTION THEY ARE NOT BEING PAID, THEY VOLUNTEER THEIR
20 TIME. AND ALSO THE SAME THING, IT'S USUALLY PEOPLE WHO WANT
21 TO GET INTO LAW ENFORCEMENT, AND THIS IS KIND OF A WAY FOR
22 DEPARTMENTS TO SEE HOW THEY WORK. TO SEE IF THEY ARE GOING
23 TO GET HIRED AS FULL TIME.

24 Q. OKAY. AT SOME POINT AFTER -- I AM SORRY, DID YOU
25 STATE THE YEAR, OR DID YOU GIVE US THE MONTH AND DATE OF
26 THAT HIRE?

1 A. JUNE 1ST, 1998.

2 Q. OKAY. AT SOME POINT AFTER JUNE 1ST OF 1998, DID
3 JOSEPH WOLFE'S ASSIGNMENT WITH YOUR DEPARTMENT CHANGE?

4 A. YES.

5 Q. WHEN DID IT CHANGE, AND IN WHAT WAY?

6 A. ON JANUARY 27TH, 1999, JOE WOLFE BECAME A FULL
7 TIME POLICE OFFICER.

8 Q. DID HE HAVE A PARTICULAR ASSIGNMENT WITH YOUR
9 DEPARTMENT AT THAT TIME?

10 A. PATROL.

11 Q. AFTER JUNE, I AM SORRY, JANUARY 27TH OF 1999, DID
12 JOSEPH WOLFE'S ASSIGNMENT CHANGE AGAIN WITH YOUR DEPARTMENT?

13 A. YES.

14 Q. WHEN DID IT CHANGE, AND TO WHAT, PLEASE?

15 A. ON AUGUST 26TH, 2006, JOE MOVED TO OUR COMMUNITY
16 SERVICES BUREAU.

17 Q. WHAT WOULD AN OFFICER'S ASSIGNMENT BE, WHAT
18 DUTIES, GENERALLY SPEAKING, WOULD AN OFFICER FULFILL IN THE
19 COMMUNITY SERVICES BUREAU?

20 A. TYPICALLY IT WOULD BE A D.A.R.E. OFFICER OR A
21 HIGH SCHOOL RESOURCE OFFICER.

22 Q. AT SOME POINT AFTER AUGUST 26TH OF 2006, DID
23 JOSEPH WOLFE'S ASSIGNMENT CHANGE AGAIN WITH YOUR DEPARTMENT?

24 A. YES.

25 Q. WHEN DID IT CHANGE, AND TO WHAT?

26 A. ON JANUARY 9TH, 2010, JOE WAS TRANSFERRED BACK TO

1 OUR PATROL DIVISION FROM COMMUNITY SERVICES.

2 Q. OKAY. WITH RESPECT TO THE RECORD THAT YOU
3 MENTIONED WHERE THIS INFORMATION IS MAINTAINED ABOUT AN
4 OFFICER'S HIRE DATE AND ASSIGNMENTS, I JUST WANT TO ASK YOU
5 A COUPLE OF FOLLOW-UP QUESTIONS ABOUT THAT IF I MAY.

6 A. OKAY.

7 Q. WHERE ARE THESE RECORDS MAINTAINED; ARE THEY
8 MAINTAINED IN THE FULLERTON POLICE DEPARTMENT DIGITALLY, OR
9 ARCHIVED SOMEWHERE?

10 A. BOTH DIGITALLY ON OUR SERVER AND IN THEIR
11 PERSONNEL FILE.

12 Q. WHO HAS ACCESS TO THOSE RECORDS?

13 A. INTERNAL AFFAIRS, THE CAPTAINS, AND THE ADMIN
14 SECRETARIES.

15 Q. WHEN THE CHANGE IN AN OFFICER'S EMPLOYMENT STATUS
16 OCCURS, IS THAT RECORD MADE AT OR NEAR THE TIME OF THAT
17 CHANGE?

18 FOR EXAMPLE, WHEN JOSEPH WOLFE WAS TRANSFERRED
19 FROM PATROL TO COMMUNITY SERVICES, WOULD THAT CHANGE HAVE
20 BEEN REFLECTED IN THIS RECORD AT OR NEAR THE TIME THAT THAT
21 OCCURRED?

22 A. YES.

23 Q. IS THAT TRUE WITH RESPECT TO ALL ASSIGNMENT
24 CHANGES?

25 A. YES.

26 Q. JUST A FEW FINAL QUESTIONS.

1 BASED ON YOUR FAMILIARITY WITH JOSEPH WOLFE, DO
2 YOU HAVE AN ESTIMATE OF HOW MUCH JOSEPH WOLFE WEIGHED BACK
3 IN JULY 5TH, 2011?

4 AND WHEN I ASK YOU THAT, I WOULD LIKE YOUR ANSWER
5 IN TWO PARTS. ONE WITHOUT STANDARD PATROL OFFICER
6 EQUIPMENT, AND THEN, SECONDLY, WITH STANDARD PATROL OFFICER
7 EQUIPMENT.

8 A. WITHOUT PATROL EQUIPMENT, I WOULD SAY THAT JOE
9 WEIGHED APPROXIMATELY 165 TO 170 POUNDS. WITH PATROL
10 EQUIPMENT, AND WE ARE BASICALLY ABOUT 22, 23 POUNDS HEAVIER
11 WITH OUR BELT AND VEST, SO IT WOULD BE ABOUT 183 TO 188
12 POUNDS.

13 Q. AND HAVE YOU HAD OCCASION TO SEE JOSEPH WOLFE
14 WITHOUT PATROLMAN'S EQUIPMENT?

15 A. YES.

16 Q. SO HAVE YOU HAD AN OPPORTUNITY THEN TO ESTIMATE
17 HIS WEIGHT WITHOUT THE EQUIPMENT?

18 A. YES.

19 Q. AND THAT WOULD BE TRUE ABOUT THE TIME OF JULY
20 5TH, 2011?

21 A. YES.

22 Q. WITH RESPECT TO THE EQUIPMENT WEIGHT THAT YOU
23 MENTIONED OF APPROXIMATELY 22 TO 23 POUNDS, CAN YOU BRIEFLY
24 TELL US HOW IT IS YOU ARE FAMILIAR WITH THE ESTIMATED WEIGHT
25 OF A PATROLMAN'S UNIFORM?

26 A. BECAUSE I WEIGHED MYSELF WITH MY GEAR AND WITHOUT

1 MY GEAR BEFORE.

2 Q. AND WITH YOUR GEAR, WHAT SORTS OF THINGS WOULD
3 THAT INCLUDE?

4 A. IT WOULD BE MY HANDGUN. AMMUNITION. HANDCUFFS.
5 MY BATON OR ASP. BOOTS. THE VEST. HANDCUFFS.

6 Q. WITH RESPECT TO MANUEL RAMOS, DO YOU HAVE AN
7 ESTIMATE OF HOW MUCH HE WEIGHED WITHOUT EQUIPMENT BACK ON
8 JULY 5TH, 2011?

9 A. I WOULD SAY ABOUT 180 TO 185 POUNDS.

10 Q. DID YOU HAVE OCCASION TO SEE HIM WITHOUT HIS
11 EQUIPMENT ON?

12 A. YES.

13 Q. AND EQUIPPED, WOULD THAT ALSO ADD THE SAME 22, 23
14 POUNDS?

15 A. APPROXIMATELY, YES.

16 Q. JAY CICINELLI, DO YOU HAVE AN ESTIMATE OF HOW
17 MUCH HE WEIGHED WITHOUT HIS EQUIPMENT?

18 A. 195 TO 200. 202, 203, SOMEWHERE THERE.

19 Q. ARE YOU FAMILIAR WITH WHAT A HOBBLE IS?

20 A. I AM.

21 Q. AND CAN YOU BRIEFLY DESCRIBE WHAT A HOBBLE IS AND
22 WHAT ITS PURPOSE IS TO THE GRAND JURY.

23 A. A HOBBLE IS A LEG RESTRAINT DEVICE THAT IS USED
24 TO RESTRAIN A SUBJECT'S LEGS AFTER THEY HAVE BEEN
25 HANDCUFFED, TO REDUCE THE RISK OF INJURY TO THE SUBJECT
26 BEING RESTRAINED, AS WELL AS THE OFFICERS.

1 MR. BOGARDUS: MR. FOREMAN, I DON'T HAVE ANY FURTHER
2 QUESTIONS. I INVITE ANY QUESTIONS BY THE GRAND JURY.

3 THE GRAND JURY FOREPERSON: ARE THERE ANY QUESTIONS
4 FROM THE GRAND JURY?

5 (AFFIRMATIVE RESPONSES).

6 (FOR I.D. = GRAND JURY EXHIBIT 115)

7 MR. BOGARDUS: IF I CAN JUST HAVE A MOMENT TO SORT
8 THROUGH THESE, MR. FOREMAN, THERE ARE A NUMBER OF QUESTIONS.

9 THE GRAND JURY FOREPERSON: YES.

10 Q. BY MR. BOGARDUS: DETECTIVE CHOCEK, THE MEMBERS OF
11 THE GRAND JURY HAVE THE ABILITY TO POSE QUESTIONS TO YOU AS
12 WELL. SO I HAVE A NUMBER OF QUESTIONS HERE FOR YOU. AND I
13 AM GOING TO ASK THEM TO YOU, AND BASICALLY THE QUESTIONS ARE
14 IF YOU KNOW THE ANSWER TO THEM OR IF YOU UNDERSTAND THE
15 QUESTION, YOU WILL BE ABLE TO ANSWER. IS THAT FAIR?

16 A. THAT'S FAIR.

17 Q. THANK YOU. AND SOME OF THE QUESTIONS THAT WERE
18 POSED HAVE MULTIPLE PARTS, SO I AM GOING TO READ THEM
19 VERBATIM EACH PART, OKAY?

20 A. OKAY.

21 Q. STARTING WITH THE FIRST QUESTION, NUMBER ONE:
22 CAN A FILE ON THE PUMA SYSTEM BE DELETED BY
23 ANYBODY?

24 A. NO.

25 Q. TWO:

26 HOW LONG ARE THE FILES KEPT ON THE PUMA SYSTEM?

1 A. TYPICALLY ABOUT THREE AND A HALF YEARS.

2 Q. NUMBER THREE:

3 WHAT WAS THE TIME DIFFERENCE BETWEEN AUDIO FILE 1
4 AND AUDIO FILE 2 ON OFFICER RAMOS' D.A.R. UNIT?

5 A. IF I UNDERSTAND THE QUESTION CORRECTLY, ARE YOU
6 ASKING, I DON'T KNOW IF I CAN ASK QUESTIONS, BUT FROM WHEN
7 THE FIRST FILE ENDED TO WHEN THE SECOND FILE STARTED?

8 Q. WHAT I WOULD LIKE YOU TO DO, IF YOU DON'T MIND,
9 ANSWER THAT QUESTION, AND IF YOUR ANSWER IS NOT RESPONSIVE
10 TO THIS GRAND JUROR'S QUESTION, THAT GRAND JUROR CAN SUBMIT
11 A FOLLOW-UP QUESTION.

12 A. OKAY. APPROXIMATELY ONE MINUTE FROM THE TIME
13 THAT OFFICER RAMOS' FIRST RECORDING ENDED UNTIL HIS SECOND
14 RECORDING BEGAN.

15 Q. THANK YOU.

16 NEXT QUESTION:

17 CAN AN OFFICER EXIT SLASH DELETE AUDIO RECORDINGS
18 FROM D.A.R.?

19 A. YES, TO DELETING.

20 Q. I AM SORRY?

21 A. THE ANSWER IS, IF I LOOK AT THAT AS TWO
22 QUESTIONS, CAN THEY EDIT IT? NO. CAN THEY DELETE IT FROM
23 THE D.A.R. ITSELF? YES.

24 Q. OKAY, THANK YOU.

25 NEXT QUESTION:

26 DID DAWN SCRUGGS' RECORDER -- LET ME START OVER.

1 DID DAWN SCRUGGS RECORD HER CONVERSATION WITH
2 OFFICER RAMOS AFTER THE CONFRONTATION WITH KELLY THOMAS?

3 A. NOT TO MY KNOWLEDGE.

4 Q. NEXT QUESTION:

5 DID YOU SYNC THE TWO RECORDINGS, AUDIO AND VIDEO,
6 BECAUSE IT WAS JUST STANDARD POLICE INVESTIGATIVE WORK, OR
7 BECAUSE YOU FELT IT WOULD BE NECESSARY TO HAVE IT LATER?

8 A. BOTH.

9 Q. NEXT QUESTION:

10 HOW MANY AUDIO RECORDINGS WERE THERE IN TOTAL OF
11 THE INCIDENT?

12 A. A LOT. OF THE INCIDENT ITSELF, EXCLUDING
13 INTERVIEWS AFTER THE FACT, I THINK THERE WERE AROUND NINE OR
14 10.

15 Q. THE NEXT QUESTION:

16 WHAT IS THE NAMED PRODUCT OR PROGRAM USED TO SYNC
17 THE VIDEO AND AUDIO?

18 A. I-MOVIE.

19 Q. THE NEXT QUESTION HAS THREE PARTS.

20 FIRST PART:

21 ARE V.A.R. FILES EXPECTED -- I AM SORRY, EXPORTED
22 FROM PUMA FILE PROTECTED TO AVOID MODIFICATION?

23 A. NO.

24 Q. NUMBER TWO:

25 ARE PEOPLE INFORMED THEY ARE BEING RECORDED BY A
26 V.A.R.?

1 THE QUESTION READS V.A.R., I ASSUME IT MEANS
2 D.A.R.?

3 A. NO. SOMETIMES, I AM SORRY, TO BE COMPLETELY
4 ACCURATE, THERE ARE TIMES WHEN WE WILL TELL SOMEBODY WE ARE
5 RECORDING THIS CONVERSATION. BUT WE DON'T TYPICALLY START
6 OUR CONVERSATION OFF WITH, YOU ARE BEING RECORDED.

7 Q. NUMBER THREE:

8 DID WOLFE'S V.A.R. OF THIS INCIDENT HAVE MORE
9 THAN ONE FILE?

10 A. NO.

11 Q. NEXT QUESTION, THREE :PARTS.

12 CAN V.A.R. FILES IN THE PUMA SYSTEM BE MODIFIED
13 OR EDITED?

14 A. NO.

15 Q. NUMBER TWO:

16 I AM GOING TO READ THIS QUESTION, BUT I DON'T
17 THINK IT CALLS FOR A RESPONSE. THE QUESTION READS:

18 IF YES, IS THIS FUNCTION CONTROLLED BY CLERICAL
19 LEVEL? YOU ANSWERED NO.

20 PART THREE:

21 IF I EXPORT A V.A.R., CAN I IMPORT THE FILE INTO
22 PUMA AND REPLACE THE EXISTING FILE?

23 A. NO.

24 CAN I ELABORATE ON THAT?

25 Q. PLEASE DO.

26 A. I AM NOT ACTUALLY EXPORTING THE FILE, MAYBE

1 EXPORT IS A POOR TERM TO USE IN SOME RESPECTS, BECAUSE I AM
2 NOT ACTUALLY REMOVING IT FROM THE PUMA SYSTEM AND PLACING IT
3 ONTO A DESKTOP OR ANOTHER STORAGE, I AM ACTUALLY MAKING A
4 COPY OF IT, AND I WAS USING THE TERM EXPORT, BUT IT IS
5 ACTUALLY JUST MAKING A COPY, WE CANNOT DELETE THAT FROM THE
6 PUMA SYSTEM.

7 Q. AND I APOLOGIZE, I THINK EXPORT WAS MY TERM, BUT
8 THANK YOU FOR CLARIFYING THAT.

9 NEXT QUESTION READS:

10 WHAT TYPE OF TRAINING, LIKE A POLICE ACADEMY, DID
11 WOLFE GO THROUGH, IF YOU KNOW?

12 A. I CAN'T, I DON'T KNOW.

13 Q. NEXT QUESTION:

14 ONCE A D.A.R. RECORDING IS UPLOADED INTO THE PUMA
15 SYSTEM, CAN IT BE MANIPULATED, SUCH AS REDACTIONS?

16 A. NO.

17 Q. NEXT QUESTION:

18 DOES A D.A.R. EVER GET FULL TO CAPACITY AND CEASE
19 RECORDING?

20 A. YES. IF YOU DO NOT DOWNLOAD IT, BECAUSE WHEN YOU
21 DOWNLOAD YOUR DIGITAL RECORDER TO THE PUMA SYSTEM, ALL OF
22 THE RECORDINGS ON THE DIGITAL RECORDER ITSELF ARE ERASED.

23 Q. NEXT PART OF THAT QUESTION:

24 WHAT IF AN OFFICER DOES NOT DOWNLOAD AND INSTEAD
25 CHOOSES NOT TO USE D.A.R.?

26 A. THEY WOULD BE IN VIOLATION OF OUR POLICY, AND IF

1 WE KNEW ABOUT IT THEY WOULD BE, THERE WOULD BE AN
2 INVESTIGATION ON IT.

3 Q. NEXT PART:

4 ARE THERE ANY CHECKS OR BALANCES TO ENSURE
5 OFFICER IS USING D.A.R. DURING EVERY SHIFT?

6 A. YES.

7 Q. LAST PART OF THAT QUESTION:

8 CAN OFFICER TURN IT OFF IF DOESN'T WANT TALK TO
9 BE RECORDED?

10 A. YES.

11 Q. I THINK YOU ANSWERED THIS QUESTION, BUT I AM
12 GOING TO READ THIS QUESTION:

13 WHAT WAS THE TIME GAP BETWEEN RAMOS' TWO SEPARATE
14 RECORDINGS?

15 A. FROM THE END OF THE FIRST RECORDING TO THE
16 BEGINNING OF THE SECOND RECORDING WAS APPROXIMATELY ONE
17 MINUTE.

18 Q. NEXT QUESTION, IT HAS THREE PARTS. FIRST PART:
19 WAS OFFICER WOLFE'S RECORDER DAMAGED?

20 A. YES.

21 Q. NEXT PART:

22 WERE THERE ANY ERASURES ON ANY RECORDERS?

23 A. I'M NOT SURE I UNDERSTAND THE QUESTION.

24 Q. OKAY. PERHAPS IF THAT QUESTION IS STILL
25 LINGERING, THERE CAN BE SOME CLARIFICATION.

26 A. THE WAY I INTERPRET IT, IF I MAY, WOULD BE DID I

1 DISCOVER ANY PORTIONS OR ANY RECORDINGS ERASED? AND THE
2 ANSWER TO THAT WOULD BE NO. SINCE EVERY FILE HAS AN
3 INDIVIDUAL NUMBER, I CHECKED FOR ALL THE RECORDINGS THAT DAY
4 TO ENSURE THAT IT WAS SEQUENTIAL IN ORDER.

5 IF AN OFFICER DELETED A RECORDING FROM THEIR
6 DIGITAL RECORDER, WHICH THEY HAVE THE CAPABILITY OF DOING,
7 WHEN THEY START RECORDING THE NEXT TIME IT WILL SKIP TO THE
8 NEXT FILE. ONCE IT IS UPLOADED INTO THE PUMA SYSTEM, I
9 WOULD SEE A GAP, IT WOULD GO 0141, 0142, 0144, AND I WOULD
10 KNOW 0143 WAS MISSING. AND THAT I DID LOOK FOR.

11 Q. THIS IS MY OWN PERSONAL FOLLOW-UP QUESTION:

12 YOU LOOKED FOR THAT WITH REGARD TO THAT DAY, JULY
13 5TH, 2011?

14 A. THAT IS CORRECT.

15 Q. LAST PART OF THAT QUESTION:

16 DID WOLFE REVIEW HIS AUDIO AND/OR ANY VIDEO?

17 A. YES.

18 MR. BOGARDUS: IF I MAY, MR. FOREMAN, JUST HAVE A BRIEF
19 MOMENT?

20 THE GRAND JURY FOREPERSON: YES.

21 MR. BOGARDUS: AND IN THE INTERIM IF THERE ARE ANY
22 ADDITIONAL GRAND JUROR QUESTIONS, THANK YOU.

23 THE GRAND JURY FOREPERSON: ANY ADDITIONAL QUESTIONS
24 FROM THE GRAND JURY?

25 (AFFIRMATIVE RESPONSES).

26 THE GRAND JURY FOREPERSON: ALL RIGHT. WE WILL BE IN

1 RECESS UNTIL, BY THAT CLOCK, 1:55.

2 DURING ANY PERIOD OF THIS RECESS YOU MUST NOT
3 DISCUSS WITH ANYONE, EITHER INSIDE OR OUTSIDE OF THIS
4 HEARING ROOM, ANY SUBJECT CONNECTED WITH THIS HEARING.
5 THANK YOU.

6 (RECESS TAKEN.)

7 (THE FOLLOWING PROCEEDINGS WERE HELD IN THE GRAND
8 JURY ROOM:)

9 THE GRAND JURY FOREPERSON: WE ARE AGAIN IN SESSION ON
10 THE WOLFE HEARING.

11 LET THE RECORD REFLECT THAT ALL THE SAME 16
12 MEMBERS OF THE GRAND JURY ARE AGAIN PRESENT.

13 MR. DISTRICT ATTORNEY, YOU MAY CONTINUE.

14 MR. BOGARDUS: THANK YOU VERY MUCH, MR. FOREMAN.

15 Q. BY MR. BOGARDUS: A COUPLE OF ADDITIONAL QUESTIONS,
16 SERGEANT CHOCEK.

17 WERE YOU IN I.A. AT THE TIME OF THE KELLY THOMAS
18 INCIDENT?

19 A. YES.

20 Q. IF SO, DID YOU CONDUCT ANY INVESTIGATIONS AS A
21 RESULT OF THE INCIDENT?

22 A. NO. AND WHEN I SAY, NO, OBVIOUSLY I STARTED AND
23 BEGAN AS IF I WERE GOING TO CONDUCT THIS ENTIRE
24 INVESTIGATION, GATHERING THE EVIDENCE AND PREPARING, THUS
25 MAKING THE VIDEO, THE D.V.D., THE VIDEO AND AUDIO SYNC'D
26 WITH IT ULTIMATELY, BUT ULTIMATELY I DID NOT DO THE ENTIRE

1 INVESTIGATION.

2 Q. THANK YOU.

3 IN THE PHOTO THE OFFICER HAS BOTH POCKETS
4 BUTTONED. HOW DID HE OR COULD HE LOSE HIS D.A.R. FROM HIS
5 POCKET?

6 A. ON OUR SHIRT POCKETS THE BUTTON IS ACTUALLY SEWN
7 TO THE LAPEL, AND THERE ARE TWO PIECES OF VELCRO ON EITHER
8 SIDE SO THAT WE CAN JUST LIFT THE FLAP UP AND REACH IN, AND
9 GRAB LIKE OUR NOTEBOOK OR BUSINESS CARDS OR ANYTHING THAT WE
10 HAVE IN OUR POCKETS.

11 MR. BOGARDUS: MR. FOREMAN, I HAVE ASKED ALL THE GRAND
12 JUROR QUESTIONS.

13 THE GRAND JURY FOREPERSON: ARE THERE ANY ADDITIONAL
14 QUESTIONS FROM THE GRAND JURY?

15 (AFFIRMATIVE RESPONSE).

16 MR. BOGARDUS: THANK YOU.

17 Q. BY MR. BOGARDUS: IF YOU CAN ANSWER, WHY DID YOU
18 NOT CONDUCT ANY I.A. INVESTIGATIONS?

19 A. IT WAS COMPLETED BY SOMEBODY ELSE.

20 THE GRAND JURY FOREPERSON: ARE THERE ANY ADDITIONAL
21 QUESTIONS?

22 (NO AFFIRMATIVE RESPONSE).

23 THE GRAND JURY FOREPERSON: PLEASE STAND.

24 THE WITNESS: (WITNESS COMPLIES).

25 THE GRAND JURY FOREPERSON: MR. CHOCEK, YOU ARE
26 ADMONISHED NOT TO DISCUSS OR REPEAT AT ANY TIME OUTSIDE THIS

1 COURTROOM THE QUESTIONS THAT HAVE BEEN ASKED OR YOUR
2 ANSWERS, WITH THE UNDERSTANDING THAT SUCH DISCLOSURES ON
3 YOUR PART MAY BE THE BASIS FOR CHARGES AGAINST YOU OF
4 CONTEMPT OF COURT.

5 YOU ARE FREE TO SEEK LEGAL ADVICE FROM AN
6 ATTORNEY, OR FROM THE DISTRICT ATTORNEY'S OFFICE.

7 DO YOU UNDERSTAND?

8 THE WITNESS: I DO.

9 THE GRAND JURY FOREPERSON: MR. CHOCEK, THANK YOU FOR
10 TESTIFYING, YOU ARE EXCUSED FROM THE HEARING.

11 THE WITNESS: THANK YOU.

12 (WHEREUPON MICHAEL CHOCEK EXITED THE GRAND JURY
13 ROOM.)

14 THE GRAND JURY FOREPERSON: MR. DISTRICT ATTORNEY, YOU
15 MAY CALL YOUR NEXT WITNESS.

16 MR. TANIZAKI: RON STANCYK.

17 (WHEREUPON RON STANCYK ENTERED THE GRAND JURY
18 ROOM.)

19 THE GRAND JURY FOREPERSON: PLEASE RAISE YOUR RIGHT
20 HAND.

21 RON STANCYK,
22 CALLED AS A WITNESS BEFORE THE GRAND JURY, HAVING BEEN FIRST
23 DULY SWORN, WAS EXAMINED AND TESTIFIED AS FOLLOWS:

24 THE GRAND JURY FOREPERSON: SIR, WOULD YOU PLEASE STATE
25 YOUR NAME AND SPELL IT OUT FOR OUR RECORD.

26 THE WITNESS: RON STANCYK; S-T-A-N-C-Y-K.

1 THE GRAND JURY FOREPERSON: ALL RIGHT. PLEASE HAVE A
2 SEAT, SIR.

3 MR. DISTRICT ATTORNEY, THE WITNESS IS YOURS.

4 MR. TANIZAKI: THANK YOU.

5 EXAMINATION

6 Q. BY MR. TANIZAKI: OKAY. MR. STANCYK, FIRST THANK
7 YOU FOR YOUR PATIENCE. BEFORE YOU BEGIN TESTIFYING I AM
8 GOING TO GIVE YOU AN ADMONISHMENT.

9 A. OKAY.

10 Q. BEFORE WE BEGIN I WOULD LIKE TO ADVISE YOU THAT
11 YOU ARE NOW APPEARING BEFORE A DULY CONSTITUTED GRAND JURY
12 THAT IS INVESTIGATING POSSIBLE VIOLATIONS OF STATE CRIMINAL
13 LAW.

14 DO YOU UNDERSTAND THAT?

15 A. YES.

16 Q. IS THAT A YES?

17 A. YES.

18 Q. YOU HAVE BEEN PLACED UNDER OATH. AND THAT MEANS
19 YOUR TESTIMONY HERE TODAY HAS THE SAME FORCE AND EFFECT AS
20 IF YOU WERE IN A COURT OF LAW.

21 DO YOU UNDERSTAND THAT?

22 A. YES.

23 Q. THAT MEANS THAT YOU HAVE AN OBLIGATION TO TELL
24 THE TRUTH AND NOTHING BUT THE TRUTH IN THIS PROCEEDING, OR
25 YOU COULD SUBJECT YOURSELF TO A POSSIBLE PROSECUTION FOR
26 PERJURY.

1 DO YOU UNDERSTAND THAT?

2 A. YES.

3 Q. MR. STANCYK, FOR WHOM ARE YOU EMPLOYED RIGHT NOW?

4 A. THE CITY OF FULLERTON.

5 Q. AND IN WHAT CAPACITY ARE YOU EMPLOYED?

6 A. I AM A PARAMEDIC CAPTAIN.

7 Q. HOW LONG HAVE YOU BEEN EMPLOYED BY THE FULLERTON
8 FIRE DEPARTMENT?

9 A. IN JUNE IT WILL BE 28 YEARS.

10 Q. YOU SAY IN JUNE?

11 A. IN JUNE IT WILL BE 28 YEARS, YES, SIR.

12 Q. PLEASE DESCRIBE FOR US YOUR TRAINING, AS FAR AS
13 BEING A FIREFIGHTER AND PARAMEDIC.

14 A. FIREFIGHTER, YOU GO THROUGH AN ACADEMY. AND ONCE
15 YOU HAVE ACHIEVED THAT, YOU TEST. AND THEN YOU APPLY FOR
16 DIFFERENT DEPARTMENTS. THEN YOU GO THROUGH THEIR
17 MINI-ACADEMY. AND ONCE YOU ACCOMPLISH THAT, THEN YOU ARE
18 OUT IN THE FIELD.

19 MR. TANIZAKI: COULD YOU MOVE THE MICROPHONE A LITTLE
20 FORWARD TO YOU.

21 THE GRAND JURY FOREPERSON: PULL IT TOWARDS YOU.

22 THE WITNESS: IS THAT BETTER?

23 AS A PARAMEDIC THERE IS A CLASS AT SADDLEBACK
24 COLLEGE. YOU APPLY FOR THE PROGRAM THERE, AND IT'S ABOUT
25 SEVEN MONTHS OF TRAINING.

26 Q. BY MR. TANIZAKI: WHAT KIND OF TRAINING?

1 A. YOU GET DIDACTIC AND YOU GET HOSPITAL TIME AND
2 THEN YOU HAVE FIELD TIME.

3 Q. HOW LONG WERE YOU A PARAMEDIC WITH FULLERTON FIRE
4 DEPARTMENT?

5 A. OVER 20 YEARS.

6 Q. AND ABOUT HOW MANY CALLS DID YOU RESPOND TO AS A
7 PARAMEDIC?

8 A. LOTS. SEVERAL THOUSAND.

9 Q. SEVERAL THOUSAND?

10 A. YEAH.

11 Q. AND A VARIETY OF MEDICAL SCENARIOS IN THOSE
12 THOUSANDS?

13 A. YES.

14 Q. INCLUDING INDIVIDUALS THAT WERE IN GREAT MEDICAL
15 DISTRESS, WHETHER IT BE CARDIAC ARREST OR OTHER TRAUMAS?

16 A. YES.

17 Q. ON JULY 5TH, 2011, WERE YOU THEN AT THAT TIME A
18 CAPTAIN/PARAMEDIC?

19 A. YES.

20 Q. AND WERE YOU SO ON DUTY ON JULY 5TH, 2011?

21 A. THAT IS CORRECT, YES.

22 Q. AND WHERE IS THE STATION LOCATED IN THE CITY OF
23 FULLERTON WHERE YOU WERE ASSIGNED THAT NIGHT?

24 A. THE STATION I AM AT IS STATION 1, ON THE CORNER
25 OF LEMON AND COMMONWEALTH, PRETTY MUCH THE CENTER OF THE
26 CITY.

1 Q. DID YOU RECEIVE AN ALARM CALL APPROXIMATELY 2059
2 HOURS?

3 A. I BELIEVE THAT IS THE TIME, YES.

4 Q. AND WHAT DID YOU DO AFTER YOU GOT THE ALARM CALL?

5 A. WELL, WE RESPONDED TO THAT LOCATION, WHICH WAS AT
6 THE TRANSPORTATION CENTER, WHICH IS ABOUT THREE BLOCKS FROM
7 OUR STATION.

8 Q. WHEN YOU SAY YOU, OR WE RESPONDED TO IT, WHO
9 RESPONDED IN TERMS OF WAS IT ONE FIRE TRUCK, ONE PARAMEDIC
10 VAN, WHAT WERE THE RESOURCES THAT WENT TO THAT LOCATION?

11 A. WE HAVE AN ENGINE THAT HAS A CAPTAIN, ENGINEER
12 AND TWO FIREFIGHTERS, AND WE HAD ACTUALLY TWO RIDE-ALONGS
13 FOR A TOTAL OF SIX, AND TWO ON THE OTHER UNIT, THE
14 AMBULANCE.

15 Q. WHICH VEHICLE WERE YOU ON?

16 A. I WAS ON THE ENGINE.

17 Q. AND APPROXIMATELY HOW MANY MINUTES DID IT TAKE
18 FOR YOUR PERSONNEL TO ARRIVE AT THE FULLERTON TRANSPORTATION
19 CENTER?

20 A. FROM THE TIME WE GOT THE DISPATCH, YOU HAVE TO
21 GET A RIG TOGETHER, GET ON THE ENGINE AND RESPOND, PROBABLY
22 A MINUTE, MINUTE AND A HALF OR SO.

23 Q. OKAY. AND HOW FAR AWAY IS STATION 1 FROM THE
24 FULLERTON TRANSPORTATION CENTER?

25 A. ABOUT THREE BLOCKS. SHORT OF THREE BLOCKS.

26 Q. WHEN YOUR ENGINE ARRIVED, WHAT DID YOU DO FIRST?

1 A. ONCE WE GOT ON SCENE WE ACTUALLY HAD NO
2 DIRECTIONS WHERE TO GO, SO WE JUST WENT AHEAD AND PULLED IN
3 THE BACK OFF THE STREET, WHICH I BELIEVE WAS SANTA FE, AND
4 STOPPED. THERE WAS AN INFLUX OF POLICE OFFICERS THERE, SO
5 WE ACTUALLY HAD TO PARK SOMEWHERE FROM THE AREA WE ARE GOING
6 TO END UP IN. SO WE STOPPED OUR EQUIPMENT AND STARTED
7 WALKING OVER TOWARDS THE GROUP OF POLICE OFFICERS.

8 Q. ALL RIGHT. AND AS YOU STARTED WALKING TOWARDS
9 THE GROUP OF POLICE OFFICERS, WHAT DID YOU DO NEXT?

10 A. WALKED UP TO THE GROUP AND JUST IDENTIFIED AND
11 SAID, WHAT DO YOU HAVE? WHAT DO YOU HAVE?

12 Q. AND WHAT, IF ANY, INFORMATION DID THE POLICE
13 OFFICERS GIVE YOU AT THAT MOMENT?

14 A. THE POLICE OFFICER WE ENCOUNTERED MADE A
15 STATEMENT AND SAID, I HAVE GOT A COUPLE OF GUYS OVER HERE,
16 ONE THAT HAS GOT SOME SCRATCHES, SOME BRUISES.

17 Q. AND WHAT DID YOU DO AFTER RECEIVING THAT
18 INFORMATION?

19 A. I TRIAGED HIM. I LOOKED AT HIM, HE HAD SOME
20 SCRATCHES ON HIS ARM, I LOOKED TO ONE OF THE E.M.T.'S AND
21 SAID, LET'S GET SOME ANTISEPTIC WIPES, LET'S TAKE CARE OF
22 THAT.

23 Q. ARE YOU A LITTLE NERVOUS?

24 A. I FEEL LIKE I HAVE GOT A LOT OF FEEDBACK.

25 Q. I THINK YOU ARE OKAY.

26 A. IS THAT BETTER? BECAUSE I AM GETTING A LOT OF

1 FEEDBACK.

2 Q. GO AHEAD AND TALK.

3 BUT I WAS GOING TO ASK YOU, WE HAVE A COURT
4 REPORTER ACTUALLY TAKING DOWN YOUR WORDS, SO IF YOU COULD
5 SLOW DOWN JUST A LITTLE BIT TO MAKE SURE HE GOT IT. THANK
6 YOU VERY MUCH.

7 A. SORRY.

8 Q. THANK YOU VERY MUCH.

9 ALL RIGHT. SO YOU DIRECTED, I BELIEVE YOU SAID
10 AN M.T., IS THAT A MEDICAL TECHNICIAN?

11 A. E.M.T.

12 Q. EMERGENCY MEDICAL TECHNICIAN?

13 A. YES.

14 Q. TO HELP ONE OFFICER WITH SOME INJURIES; IS THAT
15 WHAT YOU SAID?

16 A. RIGHT, JUST ADVISED HIM TO GO AND TAKE SOME
17 ANTISEPTIC WIPES AND TAKE CARE OF THAT SCRATCH THAT HE HAD
18 ON HIS ARM.

19 Q. AND THEN WHAT DID YOU DO NEXT?

20 A. I LOOKED OVER TO MY RIGHT AND I SAW AN INDIVIDUAL
21 ON THE GROUND.

22 Q. NOW, HAD ANY OF THE POLICE OFFICERS AT THAT
23 MOMENT BEFORE YOU LOOKED DIRECTED YOU TO ANY INDIVIDUAL ON
24 THE GROUND?

25 A. NO.

26 Q. SO NO ONE HAD ACTUALLY POINTED OUT WHO WAS

1 EVENTUALLY IDENTIFIED TO YOU AS KELLY THOMAS?

2 A. NO.

3 Q. HOW LONG DID YOU ACTUALLY SPEND WITH THE POLICE
4 OFFICERS BEFORE YOU TURNED AND NOTICED SOMEONE ON THE
5 GROUND?

6 A. ABOUT LESS THAN A MINUTE.

7 Q. AND IT IS WITHIN THAT ONE MINUTE OR LESS IS THE
8 PERIOD THAT YOU WERE TALKING AND DEALING WITH THE POLICE
9 OFFICERS, CORRECT?

10 A. RIGHT.

11 Q. AND THEN ON YOUR OWN YOU SAID YOU TURNED TO YOUR
12 RIGHT?

13 A. I LOOKED TO MY RIGHT AND I NOTICED AN INDIVIDUAL
14 DOWN ON THE GROUND.

15 Q. AND CAN YOU TELL US WHAT YOU OBSERVED?

16 A. THE GENTLEMAN WAS ON HIS SIDE, LEANING UP AGAINST
17 A POLICE OFFICER'S LEG. HE HAD NO SHIRT ON. HE HAD HIS
18 HANDS HANDCUFFED IN FRONT OF HIM. HE HAD A LARGE AMOUNT OF
19 BLOOD ON HIS FACE, AND AROUND ON THE ASPHALT AROUND HIM.

20 Q. AND WHAT MEDICAL ATTENTION, IF ANY, WAS BEING
21 PROVIDED TO THAT INDIVIDUAL BY ANYONE AT THAT TIME?

22 A. AT THAT POINT, NOTHING. THE INDIVIDUAL WAS
23 LEANING UP AGAINST THE POLICE OFFICER'S LEG.

24 Q. AND THERE WAS NOBODY ACTUALLY, MEDICALLY
25 SPEAKING, TREATING HIM AT THAT TIME?

26 A. NOBODY, RIGHT.

1 Q. AFTER YOU OBSERVED HIM IN THAT PARTICULAR
2 POSITION AND CONDITION, WHAT DID YOU DO NEXT?

3 A. I WALKED OVER TO HIM AND I USED MY FLASHLIGHT TO
4 LOOK TO SEE, THE AREA WAS POOR LIGHTING, SO I TOOK MY
5 FLASHLIGHT AND I LOOKED AT THE INDIVIDUAL'S FACE. AND YOU
6 COULD SEE THERE WAS SOME TYPE OF ACTIVITY, SOME AGONAL
7 RESPIRATIONS.

8 Q. LET'S STOP RIGHT THERE. YOU SAID THERE WAS SOME
9 ACTIVITY YOU NOTICED ABOUT HIM, AGONAL BREATHING?

10 A. REAL SLOW AND DRAWN OUT BREATHING.

11 Q. IS THAT WHAT YOU WOULD DESCRIBE AS AGONAL
12 BREATHING?

13 A. YES, SLOWING.

14 Q. HOW DOES THAT DIFFER FROM THE NORMAL BREATHING
15 THAT WE ARE PROBABLY ALL DOING RIGHT NOW?

16 A. NORMAL BREATHING COULD BE FROM 15 TO 20 TIMES A
17 MINUTE.

18 Q. AND WHAT DID YOU NOTICE ABOUT THE INDIVIDUAL ON
19 THE GROUND IN TERMS OF HIS BREATHING RATE?

20 A. VERY SHALLOW, VERY SLOW.

21 Q. AND WOULD YOU APPROXIMATE HOW OFTEN HE MIGHT BE
22 BREATHING, LET'S SAY WITHIN THE MINUTE?

23 A. IT WOULD BE HARD, BECAUSE YOU WOULD HAVE TO
24 ASSESS FOR A MINUTE TO GET THAT PROPER.

25 Q. OKAY. AND YOU DIDN'T HAVE TIME FOR THAT?

26 A. NO.

1 Q. WHAT DID YOU DO AFTER YOU LOOKED AND NOTICED THE
2 AGONAL BREATHING; WHAT DID YOU DO NEXT?

3 A. I DIRECTED THE E.M.T. TO GO AHEAD AND TAKE OUR
4 MONITOR, OUR CARDIAC MONITOR, AND PLACE THE LEADS ON THE
5 PATIENT TO SEE IF WE HAD ANY HEART ACTIVITY.

6 Q. AND DID YOU OBSERVE THAT PERSON PUT THE HEART
7 MONITORING PROBES ON THE INDIVIDUAL?

8 A. YES.

9 Q. AND WHAT, IF ANY, RESULT CAME FROM THAT?

10 A. WHEN WE HOOKED KELLY UP TO THE MONITOR, WE
11 NOTICED THAT HE HAD A RATE OF 60.

12 Q. HEART RATE OF 60?

13 A. HEART RATE OF 60 ON THE SCOPE, AND THERE WERE
14 PULSES WITH THAT.

15 Q. AND WAS THE AGONAL BREATHING CONTINUING AS YOU
16 WERE DOING THIS?

17 A. YES.

18 Q. WHAT ELSE DID YOU NOTICE, I AM SORRY, WHAT DID
19 YOU DO NEXT AFTER YOU DID THE HEART RATE CHECK?

20 A. OKAY. AT THAT POINT WE HAVE WHAT WE CONSIDER NOW
21 A VIABLE PATIENT. IF HE DID NOT HAVE RESPIRATIONS, HE
22 WOULDN'T HAVE A HEART RATE. SO I DIRECTED TO GO AHEAD AND
23 LET'S GET HIM ON A C-COLLAR, A BACKBOARD AND A HEADBOARD,
24 BECAUSE NOW WE HAVE TO PROTECT HIS CERVICAL SPINE
25 STABILIZATION.

26 AND WE HAVE A VIABLE PATIENT, AND SUSPECT A HEAD

1 INJURY, WHICH HE HAD, HE HAD A NUMBER OF CONTUSIONS,
2 ABRASIONS, AND LACERATIONS ON HIS FACE. HE IS NOW A VIABLE
3 PATIENT. WE HAVE TO PROTECT THAT CERVICAL SPINE.

4 Q. WHEN YOU DESCRIBE THIS INDIVIDUAL AS VIABLE, WAS
5 HE CONSCIOUS?

6 A. UNCONSCIOUS.

7 Q. WAS HE RESPONSIVE?

8 A. NO.

9 Q. AND SO WERE YOU ABLE TO STABILIZE HIM AND DO THE
10 C-SPINE?

11 A. YES. WE HAD SOMEBODY HOLDING HIS NECK WHILE THEY
12 APPLIED THE C-COLLAR. AND THEN WE TAKE HIM AS A UNIT AND
13 ROLL HIM OVER ON THE BACKBOARD, WHICH IS A HARD BOARD TO
14 KEEP HIM STABILIZED, SO THERE ISN'T ANY MOVEMENT OF THE NECK
15 BACK AND FORTH, ONCE WE MOVE HIM FROM THE FLOOR TO THE
16 GURNEY TO THE AMBULANCE. AND THAT WAS ACCOMPLISHED.

17 Q. WHAT DID YOU DO NEXT?

18 A. WE WENT AHEAD, AND I DIRECTED TO HAVE HIS FACE
19 WIPED OFF, BECAUSE HE HAD LARGE, LOOKED LIKE COAGULATED
20 BLOOD ALL THROUGHOUT HIS BEARD, HIS HAIR AND HIS MUSTACHE.
21 AND I WANTED TO MAKE SURE THAT THAT WAS WIPED OFF BEFORE WE
22 DID ANYTHING TO HIM. SO THAT THAT BLOOD, ONCE WE TURNED HIM
23 OVER ON THE BACK, WOULDN'T FALL INTO THE MOUTH AND NOSE AND
24 CAUSE A PROBLEM LIKE A BLOCKED AIRWAY.

25 Q. AND WHAT DID YOU DO AFTER THAT, AFTER DIRECTING
26 THEM TO WIPE OFF THE BLOOD?

1 A. THEY WENT AHEAD AND WIPED OFF THE BLOOD. WE WENT
2 AHEAD AND STABILIZED HIM ON THE BACKBOARD. AND THEN I
3 STEPPED AWAY AND MY PARTNER, MY PARAMEDIC PARTNER, CAME IN,
4 AND HE WENT AHEAD AND TOOK CONTROL OF THAT AND GOT HIM UP,
5 PUT HIM ON THE GURNEY AND MOVED HIM TO THE AMBULANCE.

6 Q. AND WHILE THEY WERE DOING THAT, WHAT DID YOU DO?

7 A. I WENT BACK TO THE POLICE OFFICERS TO SEE IF I
8 COULD FIND ANY INFORMATION, THE NAME, DATE OF BIRTH, AN AGE,
9 SOMETHING TO LET THE HOSPITAL KNOW WHAT WE HAD.

10 Q. AND THEN HOW LONG DID YOU SPEND WITH THE OFFICERS
11 GATHERING THAT INFORMATION?

12 A. MIGHT HAVE BEEN TWO MINUTES, MINUTE AND A HALF,
13 TWO MINUTES.

14 Q. WAS IT DURING THAT TIME THAT THEY WERE ABLE TO
15 ACTUALLY GET MR. THOMAS ON TO THE AMBULANCE?

16 A. ONCE I STEPPED BACK, THEY WENT AHEAD AND MOVED
17 HIM TO THE GURNEY. THEY PICKED HIM UP AND MOVED HIM TO THE
18 GURNEY, AND THEN WHEELED HIM INTO THE AMBULANCE, YES.

19 Q. AND THEN YOU RETURNED BACK TO THE AMBULANCE?

20 A. I CAME BACK TO THE AMBULANCE. I WALKED OVER TO
21 THE SIDE DOOR, AND THEY WERE ASSISTING KELLY WITH A BAG
22 VALVE MASK.

23 Q. AND WHAT DOES THAT MEAN?

24 A. WE HAVE A DEVICE, IT IS LIKE A BALL, LIKE A BAG,
25 AND IT GOES OVER THE MOUTH AND THE NOSE, AND YOU CAN
26 ACTUALLY APPLY POSITIVE PRESSURE AND MOVE AIR INTO THE LUNGS

1 OF THE INDIVIDUAL THAT YOU ARE ASSISTING.

2 Q. DID THE OTHER PARAMEDIC, I BELIEVE MR. ZILLGITT,
3 THEN TELL YOU AT THAT TIME THAT MR. THOMAS HAD STOPPED
4 BREATHING?

5 A. NO, HE DID NOT. WE DIDN'T EVEN KNOW IF HE DID OR
6 NOT, HIS RESPIRATIONS WERE SO LOW WE WERE GOING TO ASSIST
7 HIM ANYWAY, WE NEEDED TO GET HIM OUT OF THAT AREA, THE
8 LIGHTING WAS POOR, IT WAS CONTAMINATED WITH A LOT OF BLOOD,
9 AND GET HIM INTO AN AREA THAT WE CAN ACTUALLY EVALUATE
10 BETTER. AND WHAT HE ELECTED TO DO WAS TO HAVE THE E.M.T.
11 ASSIST WITH BREATHING WITH AN OROPHARYNGEAL, AND THAT WAS
12 WHAT WAS IN PROCESS WHEN I CAME UP.

13 Q. WHAT HAPPENED NEXT?

14 A. I HAD A READY MADE CONTACT WITH WHAT WE CALL
15 ORANGE COUNTY COMMUNICATIONS THROUGH THEIR FREQUENCY. I
16 MOVED INTO THE AMBULANCE, AND THERE WAS SIX INDIVIDUALS IN
17 THERE ALREADY. SO I STEPPED BACK AND WENT INTO THE FRONT OF
18 THE AMBULANCE, THE FRONT SEAT, AND MADE CONTACT WITH THE
19 HOSPITAL TO LET THEM KNOW WHAT WE HAD. AND THAT WE ARE
20 COMING TO THEIR FACILITY WITH AN E.T.A. OF LESS THAN FIVE.

21 Q. MAY I STOP YOU?

22 A. YES.

23 Q. WHAT DID YOU TELL THE HOSPITAL THAT YOU HAD AS
24 FAR AS THE PERSON?

25 A. A BRIEF SUMMARY OF ALTERCATION WITH POLICE
26 OFFICERS, THAT AT THIS POINT WE WERE ASSISTING HIS

1 BREATHING, WE HAD AN OROPHARYNGEAL IN PLACE, AND WE WERE
2 HEADED TO THEIR FACILITY TO STABILIZE THE PATIENT.

3 Q. WAS SOMEBODY PERFORMING C.P.R. AT THE SAME TIME
4 INSIDE THE AMBULANCE?

5 A. ENROUTE, YES, C.P.R.

6 Q. WHY WAS THAT PERFORMED?

7 A. WHEN WE MOVED KELLY TO THE AMBULANCE, WE WENT
8 AHEAD AND ASSESSED THE PATIENT AGAIN, AND FOUND OUT HIS
9 HEART HAD STOPPED AND THAT REQUIRED C.P.R.

10 Q. THE HEART HAD STOPPED AS HE WAS BEING LOADED UP
11 INTO THE AMBULANCE, IS THAT WHAT YOU WERE TOLD?

12 A. THE NEXT TIME THAT WE ASSESSED KELLY THOMAS WAS
13 WHEN HE WAS MOVED INTO THE AMBULANCE.

14 Q. AND IT IS AT THAT POINT THAT THE HEART RATE HAD
15 STOPPED?

16 A. CORRECT.

17 Q. AND C.P.R. IS THEN PERFORMED BY ONE OF THE
18 INDIVIDUALS?

19 A. E.M.T.'S, YES.

20 Q. SO WHAT HAPPENED NEXT?

21 A. SHORT TRIP TO ST. JUDE, TO LET THEM KNOW WHAT WE
22 HAD, SO THAT WHEN WE COME THROUGH THE DOORS, THEY WOULD HAVE
23 A STAFF, A DOCTOR AND A STAFF ON HAND READY TO TAKE OVER
24 TREATMENT OF KELLY, SO THERE WOULDN'T BE ANY MORE DELAYS.
25 WE ARRIVED AT THE HOSPITAL.

26 Q. BEFORE YOU ARRIVED AT THE HOSPITAL, WAS THERE ANY

1 INDICATION THAT KELLY THOMAS HAD ACTUALLY STOPPED BREATHING
2 ON HIS OWN?

3 A. WE DON'T KNOW THAT BECAUSE WE WERE ASSISTING HIS
4 BREATHING FROM WHEN WE LEFT.

5 Q. DID YOU SEE MR. THOMAS AT ANY POINT BETWEEN THE
6 TIME YOU LEFT THE FULLERTON TRANSPORTATION CENTER BEFORE YOU
7 ARRIVED AT THE FIRST HOSPITAL, IF HE EVER REGAINED
8 CONSCIOUSNESS?

9 A. NO.

10 Q. HOW ABOUT ANY RESPONSIVENESS WHATSOEVER?

11 A. NO RESPONSE.

12 Q. WHICH HOSPITAL DID YOU GO TO?

13 A. WE WENT TO THE NEAREST RECEIVING, WHICH IS
14 ST. JUDE HOSPITAL, WHICH IS OUR BASE HOSPITAL.

15 Q. AND HOW FAR IS THAT FROM THE FULLERTON
16 TRANSPORTATION CENTER?

17 A. LESS THAN FIVE MINUTES.

18 Q. AND WHEN YOU ARRIVED TO ST. JUDE, WHAT HAPPENED?

19 A. WE REMOVED HIM FROM THE AMBULANCE. WE WENT INTO
20 THE EMERGENCY ROOM. THEY DIRECTED US TO ONE OF THE TRAUMA
21 ROOMS. AND THE DOCTOR WAS AT THE HEAD OF THE BED. WE
22 BROUGHT HIM IN, AND THE FACT THAT HE WAS STABILIZED ON THAT
23 PARTICULAR BACKBOARD, HE WAS EASILY PICKED UP AND LAID DOWN
24 ON THE BED. AND THEN THE STAFF OF PROBABLY EIGHT OR NINE
25 NURSES WERE THERE, AND THEY BEGAN TO TREAT KELLY.

26 Q. AND WHAT TYPE OF TREATMENT DID YOU SEE THE NURSES

1 PERFORM AT THAT TIME?

2 A. C.P.R., AND THEY WERE ATTEMPTING I.V.'S, AND THEN
3 THE DOCTOR WENT AHEAD AND INTUBATED THE PATIENT.

4 Q. DID YOU SEE THE DOCTOR INTUBATE KELLY THOMAS?

5 A. I WAS AT THE FEET, AT KELLY THOMAS' FEET AND HE
6 WAS AT THE HEAD AND, YES, I SAW HIM MAKE THE ATTEMPTS TO
7 PLACE THE E.T. TUBE.

8 Q. AND WHAT IS THE -- LET ME ASK THIS.

9 WAS KELLY THOMAS AT THAT TIME STILL HANDCUFFED?

10 A. NO.

11 Q. NO? SOMEBODY HAD TAKEN THAT OFF?

12 A. I BELIEVE ONCE WE MOVED HIM TO THE AMBULANCE, MY
13 PARTNER MADE SOME INQUIRY TO THE POLICE OFFICER THAT WAS
14 WITH US TO REMOVE THE HANDCUFFS.

15 Q. OKAY. WHAT ABOUT THE HOBBLE DEVICE?

16 A. THAT WAS REMOVED ON SCENE, BECAUSE WE COULDN'T
17 GET HIM ON THE BACKBOARD IF HE WAS HOBbled. HE HAD TO HAVE
18 HIS FEET STRAIGHT OUT, BECAUSE THEY WERE ANGLED AND IT
19 WOULDN'T WORK, SO WE HAD TO HAVE THOSE REMOVED ON THE SCENE.

20 Q. LET'S TALK ABOUT THE INTUBATION; WHAT DOES THAT
21 MEAN?

22 A. INTUBATION IS PLACING AN ADVANCED AIRWAY, IT IS
23 CALLED AN ENDOTRACHEAL TUBE, WHICH GOES INTO THE TRACHEA,
24 AND HAS A BALLOON CUFF ON IT, YOU INFLATE THAT AND IT IS A
25 DIRECT LINE INTO THE LUNGS. AND IT IS PLACED, IT IS AN
26 ADVANCED AIRWAY AND PLACED BY US IN THE FIELD, AND ALSO BY

1 STAFF AT THE HOSPITAL.

2 Q. DID YOU NOTICE ANY DIFFICULTY IN THE INTUBATION
3 PROCESS PERFORMED BY THE DOCTOR, EMERGENCY ROOM DOCTOR AT
4 ST. JUDE?

5 A. NO.

6 Q. SO THEN WHAT HAPPENED AFTER THE DOCTOR INTUBATED
7 KELLY THOMAS AT ST. JUDE?

8 A. HE STOOD BY, MONITORED HIS GROUP AS TO WHAT TO
9 DO. I WAS ASSISTING WITH ONE OF THE NURSES TO ATTEMPT AN
10 I.V. WE WERE ABLE TO GET ONE I.V. AND THEY ACTUALLY KIND
11 OF PUSHED ME OUT OF THAT AREA, BECAUSE THERE WAS SO MANY
12 NURSES, THAT I KIND OF STEPPED OUT OF THE ROOM AND THEY
13 CONTINUED TO TREAT KELLY THOMAS.

14 Q. AND THEN HOW LONG WAS KELLY THOMAS AT ST. JUDE?

15 A. 30 MINUTES.

16 Q. AND AT SOME POINT WAS A DECISION MADE TO
17 TRANSPORT KELLY THOMAS FROM ST. JUDE TO U.C.I. MEDICAL
18 CENTER?

19 A. YES.

20 Q. WERE YOU PART OF THE PROCESS IN MOVING MR. THOMAS
21 TO U.C.I.?

22 A. YES.

23 Q. DID YOU IN FACT ACCOMPANY MR. THOMAS IN A
24 AMBULANCE?

25 A. YES.

26 Q. HOW LONG DID IT TAKE FOR YOU TO GO FROM ST. JUDE

1 TO U.C.I. MEDICAL CENTER?

2 A. ABOUT 15 MINUTES.

3 Q. AND AT SOME TIME BETWEEN ST. JUDE AND U.C.I.

4 MEDICAL CENTER DID KELLY THOMAS' CONDITION CHANGE AT ALL?

5 A. FROM WHEN WE PICKED HIM UP FROM THE
6 TRANSPORTATION CORRIDOR TO WHERE WE GOT HIM IN THE HOSPITAL,
7 HE WAS ASYSTOLIC, HIS HEART HAD STOPPED. WHEN WE LEFT ST.
8 JUDE HOSPITAL HE HAD A PULSE, HE HAD A BLOOD PRESSURE, AND
9 HEAD HE HAD AN SPO2 READING, THE PERCENTAGE OF OXYGEN IN HIS
10 SYSTEM, THAT WAS AT 97 PERCENT.

11 Q. WAS HE STILL BASICALLY UNCONSCIOUS BETWEEN ST.
12 JUDE AND U.C.I.?

13 A. HE WAS STILL UNCONSCIOUS, BUT WE WERE ASSISTING
14 HIS BREATHING, YES.

15 Q. UPON ARRIVAL TO U.C.I. WHAT DID YOU DO?

16 A. WE REMOVED KELLY FROM THE AMBULANCE AND WENT INTO
17 ANOTHER TRAUMA ROOM, WHICH NOW THEY HAVE A DOCTOR AND
18 PROBABLY 15 DIFFERENT INDIVIDUALS WAITING WHO ARE GOING TO
19 TREAT KELLY THOMAS. MOVED HIM OVER TO THE BED. PICKED HIM
20 UP AND PUT HIM BACK ON THE BED.

21 AND THEN I GAVE A QUICK PRESENTATION AS TO WHAT
22 HAPPENED IN THE FIELD, TO THE DOCTORS ON HAND. AND THEY
23 TURNED AROUND AND THEY ASSESSED THE PATIENT TO SEE WHAT THEY
24 HAVE, AND THEN THEY MAKE THE APPROPRIATE TREATMENT BASED ON
25 THEIR ASSESSMENT.

26 Q. AND DID YOU, WHEN YOU ARE INFORMING THE DOCTOR

1 WHAT YOU HAD WITH THE PATIENT, DID YOU EVER MENTION TO THEM
2 THAT THERE WAS SOME KIND OF DIFFICULTY IN INTUBATING KELLY
3 THOMAS?

4 A. NO, I DON'T REMEMBER THAT.

5 Q. AND LET'S TALK ABOUT WHEN KELLY THOMAS WAS AT THE
6 FULLERTON TRANSPORTATION CENTER. DID YOU OR ANY OF THE
7 MEDICAL PERSONNEL TRY TO PERFORM AN INTUBATION AT THE SCENE?

8 A. NO.

9 Q. CAN YOU EXPLAIN WHY?

10 A. ANYTIME WE SUSPECT A HEAD INJURY ON A PATIENT, WE
11 HAVE TO PLACE HIM IN CERVICAL SPINE STABILIZATION. OUR
12 PROTOCOL STATES THAT IF YOU HAVE TO INTUBATE A PATIENT WITH
13 AN E.T. TUBE, YOU HAVE TO HYPEREXTEND THE NECK, WHICH CAUSES
14 THE NECK TO KIND OF FLINCH BACK. AND IT COULD CAUSE INJURY
15 OR ADD TO THE INJURY TO THAT NECK WHEN A PERSON HAD HAS A
16 FACIAL TRAUMA. SO IT IS AGAINST OUR PROTOCOLS.

17 Q. SO BOTTOM LINE YOU DID NOT PERFORM THE INTUBATION
18 ON SCENE?

19 A. NO.

20 Q. DID YOU AT SOME POINT GET A CHANCE TO LOOK AT A
21 D.V.D. THAT DEPICTS THE ARRIVAL OF YOUR FIRE PERSONNEL?

22 A. YES.

23 Q. MEDICAL PERSONNEL?

24 A. YES.

25 Q. DOES THAT LOOK LIKE -- AND I AM SHOWING THE
26 WITNESS EXHIBIT NUMBER 75; DOES THAT LOOK LIKE IT?

1 A. YES.

2 Q. AND YOU HAD A CHANCE TO VIEW THAT VIDEO?

3 A. YES.

4 Q. AND THAT WAS IN FACT AT THE END, THE ARRIVAL OF
5 YOUR FIRE PERSONNEL, EMERGENCY PERSONNEL DEPICTED IN THAT
6 VIDEO?

7 A. THAT PORTION, YES.

8 MR. TANIZAKI: I DO NOT HAVE ANY MORE QUESTIONS OF THIS
9 PARTICULAR WITNESS. I WILL BE HAPPY TO TAKE ANY FROM THE
10 GRAND JURY.

11 THE GRAND JURY FOREPERSON: QUESTIONS FROM THE GRAND
12 JURY?

13 (AFFIRMATIVE RESPONSES).

14 (FOR I.D. = GRAND JURY EXHIBIT 116)

15 Q. BY MR. TANIZAKI: I HAVE A SERIES OF QUESTIONS, AND
16 THEY WILL BE MARKED GRAND JURY EXHIBIT 116.

17 CAN YOU CONFIRM THE TIME OF THE ORIGINAL CALL IN
18 TO YOUR DEPARTMENT?

19 DO YOU HAVE -- I HAVE A COPY OF, I BELIEVE, YOUR
20 REPORT IF YOU WOULD LIKE TO REFER TO IT.

21 A. (WITNESS COMPLIES).

22 I BELIEVE THE ALARM TIME NUMBER WAS 2141. THAT'S
23 WHAT IT SAYS HERE, 2141.

24 Q. CAN I HAVE THE REPORT BACK.

25 A. (WITNESS COMPLIES).

26 Q. LET ME MOVE TO THE NEXT QUESTION.

1 WHY DID YOU MOVE HIM TO ST. JUDE?

2 A. ANYTIME THAT WE FEEL THAT THE PATIENT NEEDS
3 ADVANCED AIRWAY, OUR PROTOCOL STATES WE CAN GO TO THE
4 NEAREST HOSPITAL, WHICH IS ST. JUDE, AND BYPASS THE TRAUMA
5 CENTER TO GET HIM TO THE NEAREST HOSPITAL, SO THEY CAN
6 STABILIZE THE PATIENT. AND THEN ONCE HE IS STABILIZED, MOVE
7 HIM TO U.C.I.

8 Q. WHO WERE THE SIX INDIVIDUALS IN THE AMBULANCE?

9 A. MY REGULAR TWO FIREFIGHTERS, AND WE HAD A CADET
10 RIDING, AND THEN WE HAD AN INDIVIDUAL THAT WORKS FOR ONE OF
11 OUR AMBULANCE COMPANY, HE WAS RIDING WITH US THAT NIGHT
12 ALSO.

13 Q. DO YOU KNOW THEIR NAMES?

14 A. OH, GABE, LET'S SEE, IT IS HOOPER, AND CHANELLE.

15 Q. GABE?

16 A. HOOPER, CHANELLE, ZILLGITT AND MYSELF. AND THEN
17 WE HAD ANOTHER RIDE-ALONG, I CAN'T REMEMBER HIS NAME. SO
18 THERE WAS SIX OF US.

19 Q. LET'S SEE, WHEN YOU FIRST ARRIVED AT THE
20 FULLERTON TRANSPORTATION CENTER, DO YOU REMEMBER WHO THE
21 SENIOR -- WAS THERE A SENIOR FULLERTON POLICE OFFICER THERE
22 THAT YOU WERE SPEAKING TO, OR JUST ANYONE?

23 A. IT WAS THE FIRST GROUP WE WALKED UP TO, I DON'T
24 KNOW WHO HE WAS, IT WAS JUST AN INDIVIDUAL POLICE OFFICER.

25 Q. AND YOU DON'T KNOW THE NAME?

26 A. NO.

1 Q. WHAT WERE THE POLICE OFFICERS DOING WHILE THE
2 PARAMEDICS WORKED ON KELLY THOMAS?

3 A. THEY JUST STOOD BACK AND LET US TREAT KELLY
4 THOMAS.

5 Q. NOW, DID ANY OF THE OFFICERS GIVE YOU ANY
6 INFORMATION ABOUT MR. THOMAS AT THAT TIME?

7 A. AT ONE POINT I STEPPED BACK, WE HEARD
8 CONVERSATION ABOUT WHAT HAPPENED, THAT HE WAS VIOLENT. I
9 TRIED TO GET A NAME, AND I GOT A WRONG NAME, FROM MY REPORT
10 YOU CAN SEE THERE IS TWO DIFFERENT NAMES ON THOSE. SO THEY
11 DIDN'T KNOW WHO HE WAS, NAME-WISE. THEY DIDN'T KNOW HOW OLD
12 HE WAS. I DIDN'T GET REAL GOOD INFORMATION FROM THEM.

13 Q. HOW LONG DOES IT TAKE FOR BLOOD TO COAGULATE TO
14 THE POINT WHAT YOU OBSERVED ON KELLY'S HAIR AND FACE?

15 A. I WOULDN'T KNOW.

16 Q. THAT IS BEYOND YOUR MEDICAL EXPERTISE?

17 A. YEAH.

18 Q. AND YOU DON'T EVEN KNOW IF IN FACT, CAN YOU
19 DESCRIBE WHAT IT LOOKED LIKE?

20 A. IT WAS LIKE A THICK PASTY TYPE, AND IT WAS
21 EMBEDDED IN HIS BEARD AND HIS MUSTACHE.

22 Q. DID THE POLICE OFFICERS, WHEN YOU MADE CONTACT
23 WITH THEM, ASK YOU ANY QUESTIONS?

24 A. AS TO?

25 Q. DID THEY ASK YOU ANY QUESTIONS?

26 A. NO.

1 Q. AND OTHER THAN THE INFORMATION THAT YOU JUST
2 RELATED ABOUT MR. THOMAS, HIS IDENTITY, THE INFORMATION YOU
3 RECEIVED FROM THE POLICE, DID THEY HAVE ANY OTHER COMMENTS
4 GIVEN TO YOU OTHER THAN WHAT YOU HAVE ALREADY SAID?

5 A. THERE WAS A COMMENT MADE THAT I HEARD VIOLENT, HE
6 WAS VIOLENT, AND THAT THERE WAS AN ALTERCATION, I THINK I
7 DID HEAR THAT, IN CONVERSATION, NOT DIRECTLY TO ME, BUT JUST
8 OVERALL IN GENERAL CONVERSATION.

9 Q. THE GRAND JURY EXHIBIT 75 THAT I SHOWED YOU
10 EARLIER, THE VIDEO THAT YOU WATCHED OF IT, IS IT A FAIR AND
11 ACCURATE DEPICTION OF WHAT TOOK PLACE AT THE TRANSPORTATION
12 CENTER WHEN YOU ARRIVED?

13 A. YES.

14 Q. AND THIS VIDEO SO DEPICTS IT?

15 A. YES.

16 MR. TANIZAKI: ARE THERE ANY OTHER QUESTIONS?

17 MR. RACKAUCKAS HAS A QUESTION.

18 MR. RACKAUCKAS: I DON'T THINK WE NEED A RECESS, WE
19 WILL JUST TALK RIGHT HERE.

20 (DISCUSSION HELD BETWEEN MR. RACKAUCKAS,
21 MR. TANIZAKI AND MR. BOGARDUS.)

22 MR. TANIZAKI: THANK YOU.

23 ARE THERE ANY OTHER QUESTIONS?

24 (AFFIRMATIVE RESPONSES).

25 Q. BY MR. TANIZAKI: HAD YOU HEARD OF OR SEEN KELLY
26 THOMAS PRIOR TO THIS INCIDENT?

1 A. NEVER MADE CONTACT WITH HIM, NO.

2 Q. WHAT INFORMATION WAS YOUR STATION GIVEN WHEN THE
3 CALL CAME IN?

4 A. THE CALL CAME IN AS A POLICE PURSUIT, PERSON
5 DOWN.

6 Q. I AM SORRY?

7 A. PERSON DOWN.

8 Q. AND THAT WAS PRETTY MUCH IT?

9 A. WELL, WE HAD -- THE INFORMATION WE RECEIVED ON
10 THE DISPATCH, WE HAD NO CLUE WHAT WE WERE GOING INTO.

11 Q. BUT THAT WAS THE SPECIFIC INFORMATION?

12 A. SPECIFIC, I DON'T KNOW, BUT I THINK I JUST
13 REMEMBER IT WAS POLICE PURSUIT, PERSON DOWN.

14 Q. AND DO YOU KNOW HOW LONG THE TIME WAS BETWEEN
15 KELLY THOMAS' INJURIES AND YOUR ARRIVAL?

16 A. NO.

17 MR. TANIZAKI: COULD I TAKE ONE MINUTE?

18 THE GRAND JURY FOREPERSON: SURE.

19 Q. BY MR. TANIZAKI: DO YOU REMEMBER TESTIFYING AT THE
20 PRELIMINARY HEARING?

21 A. YES.

22 Q. AND SPECIFICALLY I ASKED YOU, DO YOU RECALL ME
23 ASKING YOU ABOUT WHAT TIME DID YOU ARRIVE AT THE DOWNTOWN
24 BUS DEPOT; DO YOU REMEMBER ME ASKING YOU THAT QUESTION?

25 A. YOU PROBABLY DID, I DON'T QUITE REMEMBER.

26 Q. AND DO YOU REMEMBER ANSWERING, AROUND 9:00

1 O'CLOCK?

2 A. I DON'T REMEMBER THAT, NO.

3 Q. I AM GOING TO SHOW YOU A PAGE FROM A TRANSCRIPT,
4 IT IS ACTUALLY PAGE 51 OF THE TRANSCRIPT OF YOUR TESTIMONY
5 AT THE PRELIMINARY HEARING. I AM JUST GOING TO HAVE YOU
6 JUST READ THE WHOLE PAGE, JUST TO MAKE SURE IT IS IN
7 CONTEXT, AND TELL ME IF YOU REMEMBER THAT.

8 A. READ THE QUESTION AND ANSWER?

9 Q. NO, JUST TO YOURSELF.

10 A. SORRY.

11 Q. SEE IF THAT REFRESHES YOUR RECOLLECTION AS TO
12 YOUR TESTIMONY.

13 A. (WITNESS COMPLIES).

14 ALL RIGHT.

15 Q. DID THAT REFRESH YOUR RECOLLECTION AS TO --

16 A. YES.

17 Q. -- YOUR ARRIVAL AT THE SCENE?

18 A. YES, IT DID.

19 Q. AND YOU ACTUALLY SAID YOU ARRIVED AT AROUND 9:00
20 O'CLOCK?

21 A. I REALLY DON'T KNOW THE EXACT TIME, BUT I SAID
22 THAT, THAT'S WHAT I SAID.

23 MR. TANIZAKI: OKAY. ANY OTHER QUESTIONS?

24 THE GRAND JURY FOREPERSON: ARE THERE ANY FURTHER
25 QUESTIONS?

26 (NO AFFIRMATIVE RESPONSES).

1 THE GRAND JURY FOREPERSON: WE ARE GOING TO TAKE A
2 FIVE-MINUTE BREAK. A STRETCH BREAK. IF YOU WANT TO STAY IN
3 HERE, YOU CAN IF YOU WISH.

4 (RECESS TAKEN.)

5 (THE FOLLOWING PROCEEDINGS WERE HELD IN THE GRAND
6 JURY ROOM.)

7 THE GRAND JURY FOREPERSON: WE ARE AGAIN IN SESSION ON
8 THE JOSEPH WOLFE HEARING.

9 LET THE RECORD REFLECT THAT ALL THE SAME 16
10 MEMBERS OF THE GRAND JURY ARE AGAIN PRESENT.

11 MR. DISTRICT ATTORNEY.

12 MR. TANIZAKI: THANK YOU.

13 Q. BY MR. TANIZAKI: DURING THE BREAK, MR. STANCYK,
14 YOU HAD A CHANCE TO LOOK AT YOUR PARAMEDIC REPORTS; IS THAT
15 RIGHT?

16 A. YES.

17 Q. AND NOW DID IT REFRESH YOUR RECOLLECTION AS TO
18 THE TIME THAT THE FIRST CALL CAME IN TO YOUR STATION
19 REGARDING THE INCIDENT AT THE FULLERTON TRANSPORTATION
20 CENTER?

21 A. YES.

22 Q. AND WHAT WAS THE TIME OF THAT CALL?

23 A. 2059.

24 Q. SO THAT WOULD BE 8:59 P.M.?

25 A. CORRECT.

26 Q. AND THEN WHAT TIME DID YOU ARRIVE AT THE

1 FULLERTON TRANSPORTATION CENTER?

2 A. 2100.

3 Q. SO THAT IS 9:00 O'CLOCK, 9:00 P.M.?

4 A. RIGHT.

5 Q. AND WHEN YOU REFERENCED THAT TIME OF 2141; DO YOU
6 REMEMBER THAT WHEN YOU TESTIFIED EARLIER?

7 A. THAT WAS WRITTEN ON THE PAPER, YEAH.

8 Q. WHAT WAS THAT; DO YOU KNOW WHAT THAT TIME FRAME
9 WAS?

10 A. I DON'T KNOW.

11 Q. OKAY.

12 A. NO.

13 Q. APPROXIMATELY WHAT TIME DID YOU LEAVE ST. JUDE TO
14 GO TAKE KELLY THOMAS TO U.C.I.?

15 A. WHAT TIME WAS THAT? DO YOU HAVE THAT COPY? IT
16 WAS TWENTY -- WE LEFT THE HOSPITAL, ST. JUDE, AND WENT TO
17 U.C.I. AT 2151.

18 MR. TANIZAKI: 2151 HOURS, THANK YOU.

19 ARE THERE ANY QUESTIONS AFTER THAT?

20 (AFFIRMATIVE RESPONSE).

21 Q. BY MR. TANIZAKI: DO YOU KNOW WHO PLACED THE CALL
22 TO THE FIRE DEPARTMENT?

23 A. NO, I DON'T.

24 THE GRAND JURY FOREPERSON: ARE THERE ANY ADDITIONAL
25 QUESTIONS?

26 (NO AFFIRMATIVE RESPONSE).

1 THE GRAND JURY FOREPERSON: PLEASE STAND.

2 THE WITNESS: (WITNESS COMPLIES).

3 THE GRAND JURY FOREPERSON: MR. STANCYK, YOU ARE
4 ADMONISHED NOT TO DISCUSS OR REPEAT AT ANY TIME OUTSIDE OF
5 THIS COURTROOM THE QUESTIONS YOU HAVE BEEN ASKED OR YOUR
6 ANSWERS, WITH THE UNDERSTANDING THAT SUCH DISCLOSURES ON
7 YOUR PART MAY BE THE BASIS FOR CHARGES AGAINST YOU OF
8 CONTEMPT OF COURT.

9 YOU ARE FREE TO SEEK LEGAL ADVICE FROM AN
10 ATTORNEY, OR THE DISTRICT ATTORNEY'S OFFICE.

11 DO YOU UNDERSTAND?

12 THE WITNESS: YES.

13 THE GRAND JURY FOREPERSON: MR. STANCYK, THANK YOU FOR
14 TESTIFYING, YOU ARE EXCUSED FROM THE HEARING.

15 THE WITNESS: THANK YOU.

16 (WHEREUPON RON STANCYK EXITED THE GRAND JURY
17 ROOM.)

18 THE GRAND JURY FOREPERSON: I UNDERSTAND, MR. DISTRICT
19 ATTORNEY, THERE ARE NO FURTHER WITNESSES FOR TODAY?

20 MR. BOGARDUS: THAT IS CORRECT, MR. FOREMAN.

21 AT THIS TIME, HOWEVER, THE PEOPLE DO WISH TO
22 PRESENT GRAND JURY EXHIBIT NUMBER 75, WHICH IS, AS STATED,
23 THE D.V.D. RECORDING OF THE INCIDENT. THIS RECORDING IS
24 APPROXIMATELY 30 TO 40 MINUTES IN LENGTH.

25 PRIOR TO DOING THAT, HOWEVER, THERE HAS BEEN A
26 TRANSCRIPT PREPARED, WHICH I WOULD LIKE TO PASS OUT.

1 (WHEREUPON GRAND JURY EXHIBIT 78 WAS PASSED OUT
2 TO THE GRAND JURORS.)

3 MR. BOGARDUS: THAT VIDEO RECORDING IS 33 MINUTES 47
4 SECONDS IN LENGTH. SINCE IT IS TRANSCRIBED AND THE
5 TRANSCRIPTION HAS BEEN MARKED AS AN EXHIBIT, I DON'T BELIEVE
6 THAT IT WILL BE NECESSARY FOR THE COURT REPORTER TO
7 TRANSCRIBE PEOPLE'S EXHIBIT NUMBER 75.

8 AND WHEN YOU ARE READY, MR. FOREMAN, I WILL PLAY
9 THAT VIDEO.

10 THE GRAND JURY FOREPERSON: WE ARE READY.

11 MR. BOGARDUS: THANK YOU, SIR.

12 (WHEREUPON GRAND JURY EXHIBIT 75 WAS PLAYED IN
13 THE GRAND JURY ROOM.)

14 MR. BOGARDUS: MR. FOREMAN, THAT WOULD CONCLUDE THE
15 PRESENTATION OF EVIDENCE FOR TODAY.

16 THE GRAND JURY FOREPERSON: THANK YOU.

17 LADIES AND GENTLEMEN, WE WILL BE IN RECESS UNTIL
18 0900 HOURS TOMORROW, SEPTEMBER 19TH.

19 DURING ANY PERIOD OF THIS RECESS YOU MUST NOT
20 DISCUSS WITH ANYONE, EITHER INSIDE OR OUTSIDE THE HEARING
21 ROOM, ANY SUBJECT CONNECTED WITH THIS HEARING.

22 THANK YOU.

23 (ADJOURNMENT.)

24

25

26

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA

2 CENTRAL JUSTICE CENTER, COUNTY OF ORANGE

3 IN RE THE PROCEEDINGS OF:

4 THE PEOPLE OF THE STATE OF CALIFORNIA,)

5 PLAINTIFF,)

6 VS.)

7 JOSEPH ANDREW WOLFE,)

8 DEFENDANT.)

NO. 12ZF0148

9

10

11 TRANSCRIPT OF PROCEEDINGS

12 SEPTEMBER 20, 2012

13 VOLUME 2

14

15 APPEARANCES:

16 TONY RACKAUKAS, DISTRICT ATTORNEY
17 JIM TANIZAKI, SENIOR ASSISTANT DISTRICT ATTORNEY
18 KEITH BOGARDUS, ASSISTANT DISTRICT ATTORNEY

18

19

20 ROBERT J. SULLIVAN, CSR #5646
21 OFFICIAL COURT REPORTER

21

22

23

24 (ROBERT J. SULLIVAN, CERTIFIED SHORTHAND REPORTER,

25 WAS DULY SWORN BY THE FOREPERSON OF THE GRAND JURY, AFTER

26 WHICH THE FOLLOWING PROCEEDINGS WERE HAD:)

1 C H R O N O L O G I C A L W I T N E S S L I S T

2 PEOPLE'S EXAMINATION

3 SINGHANIA, ARUNA 199

4 MCNAMARA, JOSEPH 241

5 LEKAWA, MICHAEL 299

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

	E X H I B I T I N D E X	
1		
2		
3	GRAND JURY EXHIBITS	FOR I.D.
4	86 - KELLY THOMAS AUTOPSY PHOTO, OVERVIEW	206
5	87 - AUTOPSY DIAGRAM	207
6	88 - KELLY THOMAS AUTOPSY PHOTO, HEAD	210
7	89 - KELLY THOMAS AUTOPSY PHOTO, RIGHT EYE	211
8	90 - KELLY THOMAS AUTOPSY PHOTO, LEFT EYE	211
9	91 - KELLY THOMAS AUTOPSY PHOTO, LOWER LIP	211
10	92 - KELLY THOMAS AUTOPSY PHOTO, UPPER LIP	212
11	93 - KELLY THOMAS AUTOPSY PHOTO, OVERVIEW	212
12	94 - KELLY THOMAS AUTOPSY PHOTO, TORSO	213
13	95 - KELLY THOMAS AUTOPSY PHOTO, OVERVIEW	213
14	96 - KELLY THOMAS AUTOPSY PHOTO, OVERVIEW	214
15	97 - KELLY THOMAS AUTOPSY PHOTO, UPPER BODY, BACK	215
16	98 - KELLY THOMAS AUTOPSY PHOTO, RIGHT SHOULDER	216
17	99 - KELLY THOMAS AUTOPSY PHOTO, UPPER, MID-BACK	216
18	100 - KELLY THOMAS AUTOPSY PHOTO, LEFT SHOULDER	216
19	101 - KELLY THOMAS AUTOPSY PHOTO, RIGHT FLANK	217
20	102 - KELLY THOMAS AUTOPSY PHOTO, RIGHT UPPER BACK	217
21	103 - KELLY THOMAS AUTOPSY PHOTO, RIGHT UPPER BACK	218
22	104 - KELLY THOMAS AUTOPSY PHOTO, RIGHT FLANK	218
23	105 - KELLY THOMAS AUTOPSY PHOTO, LEFT UNDERARM	219
24	106 - KELLY THOMAS AUTOPSY PHOTO, LEFT ARM	219
25	107 - KELLY THOMAS AUTOPSY PHOTO, LEFT KNEE	220
26	108 - KELLY THOMAS AUTOPSY PHOTO, LOWER BODY	220

1 E X H I B I T I N D E X (CONTINUED)

2

GRAND JURY EXHIBITS

FOR I.D.

3

109 - CERTIFIED DEATH CERTIFICATE

330

4

117 - GRAND JUROR QUESTIONS

232

5

118 - GRAND JUROR QUESTIONS

290

6

119 - GRAND JUROR QUESTIONS

323

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

1 SANTA ANA, CALIFORNIA - SEPTEMBER 20, 2012

2 MORNING SESSION

3

4 (THE FOLLOWING PROCEEDINGS WERE HELD IN THE GRAND
5 JURY ROOM:)

6 THE GRAND JURY FOREPERSON: THE HEARING WILL COME TO
7 ORDER.

8 MR. COURT REPORTER, YOU ARE REMINDED YOU ARE
9 STILL UNDER OATH.

10 THE REPORTER: YES, SIR.

11 THE GRAND JURY FOREPERSON: THE SECRETARY WILL PLEASE
12 TAKE ROLL.

13 (WHEREUPON ROLL WAS TAKEN OF THE GRAND JURORS.)

14 THE GRAND JURY FOREPERSON: LET THE RECORD SHOW THAT
15 ALL 16 MEMBERS OF THE GRAND JURY ARE PRESENT.

16 I AM GOING TO READ THE ADMONITION AGAIN, SINCE WE
17 HAVE GONE OVER INTO OUR SECOND DAY.

18 MEMBERS OF THE GRAND JURY, THE NATURE OF THE
19 MATTERS TO BE HEARD AND THE NAMES OF THE PERSONS INVOLVED
20 HERE HAVE BEEN GIVEN TO YOU BY THE DISTRICT ATTORNEY.

21 ANY MEMBER OF THE GRAND JURY WHO HAS A STATE OF
22 MIND IN REFERENCE TO THE CASE OR TO THE PERSONS INVOLVED
23 WHICH WILL PREVENT HIM OR HER FROM ACTING IMPARTIALLY AND
24 WITHOUT PREJUDICE TO THE SUBSTANTIAL RIGHTS OF THE PERSONS
25 INVOLVED SHALL RETIRE FROM THIS HEARING.

26 DO ANY OF YOU KNOW SOCIALLY, OR HAVE ANY OF YOU

1 HEARD ANYTHING ABOUT THIS CASE OR ANY OF THE PERSONS NAMED
2 WHICH WOULD CAUSE YOU NOT TO RENDER AN UNBIASED DECISION?

3 (NO AFFIRMATIVE RESPONSE) .

4 THE GRAND JURY FOREPERSON: LET THE RECORD SHOW THAT NO
5 MEMBER OF THE GRAND JURY HAS RETIRED.

6 MR. DISTRICT ATTORNEY, DO YOU WISH TO MAKE AN
7 OPENING STATEMENT?

8 MR. RACKAUKAS: NO, NOT AT THIS TIME, WE WOULD PREFER
9 TO JUST CALL THE NEXT WITNESS.

10 THE GRAND JURY FOREPERSON: OKAY.

11 MR. RACKAUKAS: AND THAT'S DR. SINGHANIA.

12 (WHEREUPON ARUNA SINGHANIA ENTERED THE GRAND JURY
13 ROOM.)

14 THE GRAND JURY FOREPERSON: GOOD MORNING.

15 THE WITNESS: GOOD MORNING.

16 THE GRAND JURY FOREPERSON: PLEASE RAISE YOUR RIGHT
17 HAND.

18 ARUNA SINGHANIA,
19 CALLED AS A WITNESS BEFORE THE GRAND JURY, HAVING BEEN FIRST
20 DULY SWORN, WAS EXAMINED AND TESTIFIED AS FOLLOWS:

21 THE GRAND JURY FOREPERSON: PLEASE STATE YOUR NAME AND
22 SPELL IT OUT FOR THE RECORD.

23 THE WITNESS: MY FIRST NAME ARUNA, A-R-U-N-A, LAST NAME
24 IS SINGHANIA, S-I-N-G-H-A-N-I-A.

25 THE GRAND JURY FOREPERSON: THANK YOU.

26 WOULD YOU PLEASE SIT DOWN.

1 THE WITNESS: (WITNESS COMPLIES).

2 THE GRAND JURY FOREPERSON: YOU CAN MOVE THE MICROPHONE
3 A LITTLE TOWARDS YOU, PLEASE.

4 THE WITNESS: (WITNESS COMPLIES).

5 EXAMINATION

6 Q. BY MR. RACKAUCKAS: GOOD MORNING, DR. SINGHANIA.

7 A. GOOD MORNING.

8 Q. I JUST WANT TO SAY I UNDERSTAND YOU WEREN'T
9 FEELING WELL YESTERDAY?

10 A. I AM STILL NOT FEELING THAT WELL, BUT I AM OKAY.
11 I AM HERE.

12 Q. ALL RIGHT. BUT IF ANYTHING COMES UP, IF YOU NEED
13 A BREAK, JUST LET US KNOW AND I WILL BEG THE GRAND JURY
14 FOREMAN TO LET YOU OUT FOR A MINUTE.

15 A. THANK YOU.

16 Q. BEFORE WE START, I HAVE AN ADMONITION FOR
17 WITNESSES THAT I NEED TO READ YOU. AND IT IS AS FOLLOWS:

18 BEFORE WE BEGIN I WOULD LIKE TO ADVISE YOU THAT
19 YOU ARE NOW APPEARING BEFORE A DULY CONSTITUTED GRAND JURY
20 THAT IS INVESTIGATING POSSIBLE VIOLATIONS OF STATE CRIMINAL
21 LAW.

22 DO YOU UNDERSTAND THAT?

23 A. YES, I DO.

24 Q. AND YOU HAVE BEEN PLACED UNDER OATH. THAT MEANS
25 THAT YOUR TESTIMONY HERE TODAY HAS THE SAME FORCE AND EFFECT
26 AS IF YOU WERE IN A COURT OF LAW.

1 DO YOU UNDERSTAND THAT?

2 A. YES, I DO.

3 Q. AND THAT MEANS THAT YOU HAVE AN OBLIGATION TO
4 TELL THE TRUTH AND NOTHING BUT THE TRUTH IN THIS PROCEEDING,
5 OR YOU COULD SUBJECT YOURSELF TO A POSSIBLE PROSECUTION FOR
6 PERJURY.

7 DO YOU UNDERSTAND THAT?

8 A. YES, I DO.

9 Q. DOCTOR, WOULD YOU TELL THE GRAND JURY WHAT YOUR
10 PRESENT JOB IS.

11 A. I AM A FORENSIC PATHOLOGIST. AND I WORK FOR
12 ORANGE COUNTY CORONER'S OFFICE. AND I DO AUTOPSIES FOR THE
13 ORANGE COUNTY CORONER'S OFFICE.

14 Q. AND DO YOU DO AUTOPSIES, IS IT FOR THE PURPOSE OF
15 TRYING TO DETERMINE THE CAUSE OF DEATH OF THESE VARIOUS
16 CASES?

17 A. THAT IS CORRECT.

18 Q. AND WHAT IS YOUR EDUCATIONAL BACKGROUND THAT
19 QUALIFIES YOU FOR THAT POSITION?

20 A. I DID MY M.D. DEGREE FROM INDIA.

21 IMMIGRATED TO UNITED STATES. AND THEN I TOOK MY
22 QUALIFICATION EXAMINATION TO BE A LICENSED PHYSICIAN FOR THE
23 STATE OF CALIFORNIA. AND THAT I DID IN 1976.

24 THEN I DID FOUR-YEAR RESIDENCY PROGRAM IN THE
25 FIELD OF PATHOLOGY IN LONG BEACH MEMORIAL HOSPITAL, LONG
26 BEACH. THAT STARTED IN 1976.

1 THEN I DID A ONE-YEAR FELLOWSHIP IN U.C.I.
2 MEDICAL CENTER.

3 THEN I JOINED THE GROUP WHICH I AM WORKING, I
4 STARTED WORKING IN ORANGE COUNTY SHERIFF CORONER'S OFFICE IN
5 1982.

6 AND I TOOK MY BOARD CERTIFICATION IN ANATOMIC
7 CLINICAL PATHOLOGY IN 1982. AND I AM BOARD CERTIFIED IN
8 ANATOMIC CLINICAL PATHOLOGY.

9 AND I AM BOARD CERTIFIED IN FORENSIC PATHOLOGY,
10 AND I DID MY BOARD CERTIFICATION IN FORENSIC PATHOLOGY IN
11 1987.

12 SO FOR THE LAST 30 YEARS I HAVE BEEN WORKING IN
13 THE ORANGE COUNTY CORONER'S OFFICE.

14 Q. AND WHAT IS BOARD CERTIFICATION; WHAT DOES THAT
15 MEAN?

16 A. WELL, THAT'S, I GUESS THAT IS LIKE THE BOARD
17 CERTIFIED YOU THAT YOU ARE WELL TRAINED IN THAT FIELD,
18 THAT'S PROBABLY WHAT THE CERTIFICATION MEANS.

19 Q. AND IS THERE A TEST FOR THAT?

20 A. YES.

21 Q. OR IS IT JUST A MATTER OF TIME, ON-THE-JOB
22 TRAINING?

23 A. NO, THERE IS A PRETTY LONG TEST, LIKE FOR
24 ANATOMIC CLINICAL PATHOLOGY I DID THREE-DAY TEST, EIGHT
25 HOURS A DAY. AND FOR FORENSIC PATHOLOGY, EIGHT HOURS A DAY
26 FOR ONE-DAY BOARD.

1 Q. SO BEFORE YOU WERE BOARD CERTIFIED, THEN YOU HAD
2 A RESIDENCY THAT YOU TALKED ABOUT?

3 A. THAT IS CORRECT.

4 Q. WHAT IS A RESIDENCY?

5 A. AGAIN, THAT'S PREPARATORY TRAINING IN THE FIELD.
6 LIKE FIRST I WAS A PHYSICIAN, BUT I WAS NOT A PATHOLOGIST.
7 SO I GET TRAINED TO BE A PATHOLOGIST, THAT'S WHERE YOU DO
8 THE RESIDENCY. SO IT TOOK FOUR YEARS TO GET TRAINED. AND
9 THEN YOU QUALIFY TO TAKE A BOARD EXAMINATION, OTHERWISE YOU
10 CANNOT TAKE YOUR BOARD EXAMINATION.

11 Q. WHAT IS PATHOLOGY?

12 A. PATHOLOGY IS A SPECIALTY IN THE FIELD OF MEDICINE
13 WHICH MAINLY DEALS WITH THE EXAMINATION OF BODY TISSUE AND
14 BODY FLUIDS. THAT MEANS ALL THE BIOPSIES AND ALL THE
15 DIFFERENT CASES OF TUMORS, INFLAMMATION, WE ARE THE ONE WHO
16 EXAMINE THAT.

17 AND ANOTHER PART IS LIKE DOING CYTOLOGY, DOING
18 BLOOD BANKING, INFECTION, LIKE ALL THE INFECTION, WHAT ARE
19 THE INFECTION, WHAT KIND OF BACTERIA.

20 AND THEN ALSO THERE IS A CLINICAL PATHOLOGY, WHAT
21 ARE THE BLOOD CHANGES IN THE BODY.

22 SO THAT ALL IS INCLUDED IN THE FIELD OF
23 PATHOLOGY.

24 Q. AND SO YOU HAVE BEEN A BOARD CERTIFIED
25 PATHOLOGIST FOR 30 YEARS NOW?

26 A. YES, THAT'S CORRECT.

1 Q. AND WHAT POSITIONS HAVE YOU HELD AS A BOARD
2 CERTIFIED PATHOLOGIST?

3 A. I HAVE BEEN HOLDING A POSITION SINCE 1982 IN THE
4 ORANGE COUNTY CORONER'S OFFICE.

5 Q. AND AS A PATHOLOGIST IN THE ORANGE COUNTY
6 CORONER'S OFFICE, WHAT DO YOU GENERALLY DO?

7 A. WELL, AS I SAID, I DO EXAMINATION OF THE BODY.
8 INSIDE AND OUTSIDE. AND EXAMINE IT TO DETERMINE THE CAUSE
9 OF DEATH.

10 Q. OKAY. AND THESE ARE WHAT WE CALL -- THESE ARE
11 THE AUTOPSIES THAT YOU ARE DOING?

12 A. THAT IS CORRECT.

13 Q. AND YOU DO AN AUTOPSY, AND YOU MAKE FINDINGS, AND
14 YOU DO REPORTS?

15 A. THAT'S CORRECT.

16 Q. AND CAN YOU ESTIMATE FOR US HOW MANY AUTOPSIES
17 YOU HAVE DONE NOW AS A PATHOLOGIST FOR THE COUNTY OF ORANGE?

18 A. I HAVE DONE OVER 11,000 AUTOPSIES.

19 Q. AND YOU ARE NOT RETIRING ANYTIME SOON, ARE YOU?

20 A. I SHOULD BE, BUT --

21 Q. JUST A QUESTION.

22 SO BEFORE WE GET INTO THE SPECIFIC CASE, DO YOU
23 HAVE A REGULAR PROTOCOL THAT YOU USE FOR PERFORMING AN
24 AUTOPSY, PRETTY MUCH THE SAME IN EACH CASE?

25 A. THAT'S CORRECT.

26 Q. AND COULD YOU DESCRIBE THAT FOR US.

1 A. WELL, LIKE FIRST IS WE GET A REPORT FROM AN
2 INVESTIGATOR ON THE CASE, WHICH COMES TO THE CORONER'S
3 OFFICE AS A, THEY CALL IT A CORONER INVESTIGATOR REPORT.
4 THAT IS THE ONE THEY TELL YOU THE SCENARIO WHY WE ARE DOING
5 THE AUTOPSY. SO I READ THAT.

6 AND THEN WE HAVE, THEN I EXAMINE THE BODY, I
7 EXAMINE THE BODY EXTERNALLY FIRST. THE PURPOSE OF THE
8 EXTERNAL EXAMINATION IS TO SEE ANYTHING OTHER THAN NORMAL
9 BODY SHOULD HAVE. SO ANY KIND OF CHANGES, THAT INCLUDES
10 HOSPITAL INVASIVE LINES, ANY KIND OF SCARS, ANY KIND OF
11 TRAUMA, ANYTHING UNUSUAL GETS DOCUMENTED IN EXTERNAL
12 EXAMINATION.

13 SO USUALLY I DO THAT FROM HEAD TO TOES. SO I
14 START FROM THE HEAD AND GO TO THE TOES AND BACK. THAT'S HOW
15 I EXAMINE THE BODY IN THE EXTERNAL EXAMINATION.

16 Q. WHILE YOU ARE DOING THAT, ARE YOU DOING ANYTHING
17 TO MEMORIALIZE YOUR EXAMINATION; ARE YOU TAKING NOTES?

18 A. MOST OF THE TIME I HAVE A BODY SKETCH DIAGRAM
19 WITH ME, AND I TRY TO DEPICT THAT ON THAT BODY DIAGRAM, FOR
20 WHAT PURPOSE, BECAUSE I HAVE TO DICTATE THAT LATER IN THE
21 MICROPHONE, AND THEN IT GETS TRANSCRIBED INTO THE REPORT.

22 SO I DO A SKETCH ON THE BODY DIAGRAM.

23 THEN I DICTATE IT SO THAT, YOU KNOW, THAT BECOMES
24 A REPORT.

25 AND THEN I DO AN INTERNAL EXAMINATION.

26 Q. OKAY. AND COULD YOU DESCRIBE THE INTERNAL

1 EXAMINATION THAT YOU DO.

2 A. AGAIN, INTERNAL EXAMINATION IS EXAMINATION OF THE
3 CHEST AND ABDOMINAL ORGAN. WE OPEN THE CHEST BY OPENING THE
4 RIB CAGE. SO THE RIBS GET CUT, AND THE CHEST PLATE GETS
5 REMOVED, SO ALL THE CHEST AND ABDOMINAL ORGANS NOW EXPOSED.

6 AND I DO A SYSTEM BY SYSTEM EXAMINATION, LIKE I
7 DO A CARDIOVASCULAR SYSTEM, THEN I DO A RESPIRATORY, THEN I
8 DO HEPATIC, AND THEN I GO TO A DIFFERENT PART OF THE BODY
9 AND EXAMINE IT. AND, AGAIN, IF THERE IS ANYTHING OTHER THAN
10 NORMAL WHICH IS THERE TO BE DOCUMENTED.

11 AFTER THE HEAD EXAMINATION IS DONE BY A SEPARATE
12 INCISION. SO YOU MAKE A SEPARATE INCISION FOR THE HEAD AND
13 EXPOSE THE SKULL BONE, AND THEN YOU OPEN THE SKULL BONE BY
14 ELECTRICAL SAW AND EXPOSE THE BRAIN. AGAIN, THE BRAIN IS
15 EXAMINED INSIDE AND OUT.

16 AND THEN YOU FINISH YOUR INTERNAL EXAMINATION,
17 YOU COME TO SOME CONCLUSION.

18 Q. AND YOU HAVE DESCRIBED THE ABDOMEN, HEAD, WHAT
19 ABOUT THE EXTREMITIES, ANYTHING ELSE YOU DO, ANYTHING THERE
20 INTERNALLY AT TIMES?

21 A. WELL, THE MAIN PURPOSE OF THE EXAMINATION IS NOT
22 TO DISFIGURE THE BODY, BECAUSE THE REMAINS HAS TO GO TO
23 THEIR LOVED ONE. SO IF WE STARTED CUTTING EVERY PART OF THE
24 BODY, THEN IT WOULD BE VERY HARD FOR THE FAMILY TO ACCEPT.
25 SO WE TRY TO DO MINIMUM ON THE EXTREMITIES.

26 Q. AND THEN COULD YOU TELL US WHAT MICROSCOPICS ARE,

1 WE HEAR ABOUT MICROSCOPICS?

2 A. DURING THE INTERNAL EXAMINATION WHICH I DO, I
3 TAKE A REPRESENTATIVE SECTION OF MOST OF THE INTERNAL BODY
4 PARTS, THAT INCLUDES HEART, LUNG, LIVER, SPLEEN, PANCREAS,
5 KIDNEYS, ADRENAL, THYROID, BRAIN. SO THEY ALL GET SAVED IN
6 A FORMALIN JAR. AND THAT PRESERVES THEM, THE LIQUID
7 CHEMICAL PRESERVES THESE ORGANS.

8 SO THEN I MAKE SMALLER SECTIONS TO BE SECTIONED
9 BY A MICROTOME, TO MAKE IT ON A SLIDE FORM, SO THAT I CAN
10 EXAMINE LATER ON THE WHOLE DIFFERENT BODY PARTS WHICH I
11 EXAMINED, BUT TO SEE WHAT ARE OTHER THINGS OTHER THAN WHAT I
12 COULD NOT SEE ON GROSS, WHICH ARE OBVIOUS ON MY MICROSCOPIC
13 EXAMINATION.

14 Q. ALL RIGHT. AND THEN I AM GOING TO ASK, I THINK
15 IT WAS JULY 11TH, DID YOU DO AN AUTOPSY ON THE BODY OF KELLY
16 THOMAS?

17 A. YES, I DID.

18 (FOR I.D. = GRAND JURY EXHIBIT 86)

19 Q. BY MR. RACKAUCKAS: I AM SHOWING YOU WHAT HAS BEEN
20 MARKED AS GRAND JURY EXHIBIT NUMBER 86.

21 IS THAT THE BODY OF KELLY THOMAS PRIOR TO THE
22 AUTOPSY?

23 A. THAT IS CORRECT.

24 Q. AND CAN YOU TELL US WHERE THAT PICTURE WAS TAKEN?

25 A. IT IS TAKEN IN THE CORONER'S OFFICE.

26 Q. IS THAT WHERE THE AUTOPSY WAS PERFORMED, IN THE

1 CORONER'S OFFICE?

2 A. THAT IS CORRECT.

3 Q. ORANGE COUNTY CORONER'S OFFICE HERE IN SANTA ANA?

4 A. THAT IS CORRECT.

5 (FOR I.D. = GRAND JURY EXHIBIT 87)

6 Q. BY MR. RACKAUCKAS: AND THEN IS THIS A COPY OF THE
7 DIAGRAM, THE BODY DIAGRAM THAT YOU DESCRIBED A LITTLE BIT
8 EARLIER WHERE YOU INDICATE WHAT THE INJURIES ARE?

9 A. THAT IS CORRECT.

10 Q. AND DO YOU NUMBER THE INJURIES?

11 A. I ONLY NUMBER THE FACIAL INJURIES, I DID NOT
12 NUMBER THE REST OF THE BODY INJURIES. BUT FACIAL INJURIES,
13 BECAUSE THEY ARE MULTIPLE AND THE KIND OF SAME LOCATION FOR
14 DESCRIPTION PURPOSES, I HAVE GIVEN IT AN ARBITRARY NUMBER.

15 Q. COULD YOU TELL US WHAT THE INJURIES ARE; WHAT ARE
16 THE FACIAL -- FIRST OF ALL, WHEN YOU DO THIS EXTERNAL
17 EXAMINATION, DO YOU DO THE FRONT FIRST AND THEN THE BACK?

18 A. THAT IS CORRECT.

19 Q. SO THAT'S WHAT YOU DID IN THIS CASE?

20 A. THAT'S CORRECT.

21 Q. AND COULD YOU DESCRIBE THE FACIAL INJURIES THAT
22 YOU FOUND.

23 A. YES, I CAN. ARE WE GOING THROUGH A POINTER, OR I
24 JUST STATE, OR HOW DO YOU WANT TO DO IT?

25 Q. A POINTER WOULD BE BEST, BUT I DON'T HAVE A
26 POINTER.

1 A. OKAY, IF EVERYBODY HAS THE BODY DIAGRAM AND YOU
2 CAN SEE NUMBERING, I DON'T KNOW HOW I CAN SAY, THERE IS A
3 NUMBER 1, 2, 3, CAN EVERYBODY SEE THE NUMBER 1, 2, 3, 4, 5,
4 6 UP TO 7? OKAY.

5 Q. LET'S TALK ABOUT THOSE NUMBERED INJURIES THAT YOU
6 NOTED ON THIS DIAGRAM.

7 A. OKAY. THAT'S CORRECT. SO THERE ARE SEVEN
8 SEPARATE INJURIES WHICH ARE NOTED ON THE FACE. AND I AM
9 GOING TO, IF YOU WANT I CAN GO FURTHER, OR JUST --

10 Q. JUST TELL US WHAT THOSE ARE.

11 A. OKAY. NUMBER 1, WHICH IS ON THE RIGHT SIDE OF
12 THE FOREHEAD, AND WHAT IT IS IS AN ABRASION AND CONTUSION,
13 MEANS SURFACE IS ABRADED, AND THERE IS BLOOD UNDERNEATH IT.
14 CONTUSION IS LIKE A BRUISE. SO IT IS ABRASION AND CONTUSION
15 ON THE RIGHT SIDE OF THE FOREHEAD.

16 THEN GOING FROM RIGHT TO THE MIDDLE, THERE IS
17 ANOTHER SUTURED LACERATION, NUMBER 2 IS A SUTURED
18 LACERATION, WHICH IS JUST ABOVE THE MID FOREHEAD AREA.

19 THEN NUMBER 3 IS ANOTHER CONTUSION ABRASION, THE
20 LEFT SIDE OF THE FOREHEAD BELOW THE HAIRLINE.

21 AND NUMBER 4 IS AGAIN A SUTURED LACERATION ABOVE
22 THE LEFT EYEBROW AREA.

23 AND NUMBER 5 IS A LARGE L-SHAPED SUTURED WOUND ON
24 THE LEFT SIDE OF THE NOSE GOING TO THE LEFT CHEEK AREA.

25 AND NUMBER 6 IS ANOTHER SUTURED WOUND BELOW THE
26 LEFT EYE. BELOW THE LEFT EYE.

1 AND THEN NUMBER 7 IS A BRUISE ON THE LEFT LOWER,
2 OR LACERATION ON THE LEFT LOWER LIP AREA.

3 SO THEY ARE SEPARATE SEVEN WOUNDS WHICH BEING,
4 AGAIN, AS I SAID, THEY ARE BEING INTERVENED BY THE HOSPITAL
5 AND THEY ARE BEING SUTURED.

6 Q. SO THAT'S WHAT ACCOUNTS FOR THE SUTURES IS HIS
7 STAY IN THE HOSPITAL?

8 A. THAT IS CORRECT.

9 Q. ALL RIGHT. AND GOING FROM THE TOP DOWN, YOU JUST
10 DID THE FACE, WHAT IS THE NEXT ONE DOWN, IF YOU MIGHT
11 CONTINUE.

12 A. OKAY, AGAIN, THIS IS JUST THE NUMBERING. THEN
13 YOU LOOK INSIDE THE EYES. AND INSIDE THE EYES WHAT YOU
14 NOTICE IS THERE IS A MARK, ECCHYMOSIS OR HEMORRHAGE AROUND
15 THE EYE. MORE PROMINENT ON THE LEFT THAN THE RIGHT SIDE.
16 AND WHEN YOU OPEN THE LID, THEN YOU CAN SEE THE LEFT EYE HAS
17 A LOT OF HEMORRHAGE INSIDE THE EYE. SO THE LEFT EYE HAS A
18 HEMORRHAGE.

19 THEN IT GOES TO THE NOSE, AND EXAMINE THE NOSE.
20 AND THEN YOU NOTICE THERE IS A FRACTURE OF THE NOSE HERE.

21 THEN YOU GO DOWN BELOW THE NOSE, LOOK AT THE LIPS
22 AND ALL THIS, AND THEN YOU FIND ANOTHER ABRASION CONTUSION
23 IN THE MID, MIDDLE OF THE NOSE AREA AND UPPER LIP REGION.

24 THEN YOU LOOK INSIDE THE LIP, OPEN IT, EXTEND,
25 AND THEN YOU SEE, YEAH, THERE IS A LACERATION WHICH IS
26 HEALING ON THE LIP.

1 THEN YOU EXAMINE THE GUMS, AND YOU SEE THE GUMS
2 AND TEETH ARE STILL INTACT, SO THERE ARE NO BROKEN TEETH OR
3 LOOSE TEETH HERE.

4 THEN YOU EXAMINE THE EXTERNAL EAR, AND YOU FIND
5 ON THE LEFT EXTERNAL EAR THERE IS SOME BRUISE, WHICH IS
6 EXTENDING FROM THE FOREHEAD TO THE LEFT SIDE UP TO THE LEFT
7 EXTERNAL EAR.

8 SO THIS IS, THE FACIAL EXAMINATION IS FINISHED.

9 THEN YOU GO TO THE NECK.

10 THEN YOU GO TO THE CHEST.

11 SHOULDER.

12 AND THAT'S HOW I DO IT.

13 Q. OKAY. THEN CAN YOU DESCRIBE -- I WILL TELL YOU
14 WHAT, LET'S TAKE A LOOK, WE HAVE SOME PICTURES THAT YOU
15 SELECTED TO SHOW US THOSE INJURIES, THE FACIAL INJURIES?

16 A. YES, I DID.

17 (FOR I.D. = GRAND JURY EXHIBIT 88)

18 Q. BY MR. RACKAUCKAS: DOES THIS ONE SHOW SOME OF
19 THOSE SUTURED INJURIES ARE TALKING ABOUT, REFERRING TO
20 EXHIBIT 88?

21 A. THAT IS CORRECT.

22 Q. AND WHAT DO WE SEE HERE?

23 A. AS I SAID, GOING FROM THE HEAD, FROM THE HAIRLINE
24 YOU CAN SEE CONTUSIONS BOTH SIDE OF THE FOREHEAD.

25 AND THEN YOU CAN SEE THE BLACK SUTURES, WHICH ARE
26 THE SUTURED WOUND. ONE IS IN THE MID FOREHEAD, AND THEN THE

1 LEFT SIDE OF THE FOREHEAD AREA.

2 AND THEN YOU SEE THE L-SHAPE ON THE LEFT SIDE OF
3 THE NOSE GOING TO THE CHEEK.

4 THEN IT IS A SUTURED WOUND BELOW THE LEFT EYE.

5 AND YOU SEE A LACERATION ABOVE THE LEFT UPPER
6 LIP.

7 AND YOU CAN SEE THE BRUISING WHICH IS GOING FROM
8 FOREHEAD UP TO THE LEFT EAR. SO YOU CAN SEE ALL THAT.

9 AND THIS IS THE HEMORRHAGE AROUND THE LEFT AND
10 RIGHT EYE.

11 (FOR I.D. = GRAND JURY EXHIBIT 89)

12 Q. BY MR. RACKAUCKAS: ALL RIGHT. AND THEN 89; WHAT
13 DOES THAT SHOW?

14 A. OKAY, THIS IS THE RIGHT EYE. AGAIN WE OPEN THE
15 EYE AND YOU CAN SEE THE CONJUNCTIVAE, IT SHOULD BE CLEAR
16 WHITE AND IT IS YELLOW. SO THE CONJUNCTIVA BECOMES YELLOW,
17 AGAIN, HE IS UNRESUSCITATED FOR FIVE DAYS, SO THE BODY IS
18 FAILING. HE IS DEVELOPING JAUNDICE.

19 Q. SO THAT TAKES A WHILE TO TURN YELLOW LIKE THAT?

20 A. THAT'S RIGHT.

21 (FOR I.D. = GRAND JURY EXHIBIT 90)

22 Q. BY MR. RACKAUCKAS: AND 90?

23 A. THIS IS THE LEFT EYE, AND SHOWING THE HEMORRHAGE,
24 AGAIN, YOU CAN SEE A DARK COLOR, YOU CANNOT EVEN SEE THE
25 PUPIL, IT IS ALL HEMORRHAGE IN THE LEFT EYE.

26 (FOR I.D. = GRAND JURY EXHIBIT 91)

1 Q. BY MR. RACKAUCKAS: 91?

2 A. 91 IS A BIGGER ENLARGEMENT OF THE SAME WOUND,
3 NUMBER 5, WHICH YOU CAN SEE HOW BIG IT IS.

4 AND THEN YOU CAN SEE A SUTURED WOUND BELOW THE
5 LEFT EYE.

6 OBVIOUS BRUISING AND LACERATION OF THE UPPER LIP.
7 AND THE BRUISING YOU CAN SEE BETWEEN NOSE AND UPPER LIP IN
8 THE MIDLINE.

9 AND YOU CAN SEE THE LOWER LIP HERE (INDICATING)
10 AND THE LOWER LIP SHOWING IT INSIDE, AND THERE IS A SMALL
11 CONTUSION ON THE RIGHT SIDE OF THE LOWER LIP.

12 AND, AGAIN, THE UPPER LIP, AS YOU CAN SEE.

13 (FOR I.D. = GRAND JURY EXHIBIT 92)

14 Q. BY MR. RACKAUCKAS: THE NEXT ONE, 92?

15 A. THIS IS THE UPPER LIP, YOU CAN SEE THAT
16 LACERATION FROM THE RIGHT, LEFT UPPER LIP, HOW THIS IS LIKE
17 A HEALING WOUND. SO THIS IS ALL SHOWING THE YELLOW PURULENT
18 MATERIAL COVERING IT, THE WOUND HAS BEEN THERE FOR A WHILE.

19 Q. AND THAT PRETTY MUCH DESCRIBED THE FACIAL
20 INJURIES THAT YOU SAW ON EXTERNAL EXAMINATION?

21 A. THAT'S CORRECT.

22 Q. AND THEN RATHER THAN GO BACK TO THE CHART I AM
23 GOING TO JUST STICK WITH THE PICTURES HERE FOR THE CHEST AND
24 THE ABDOMINAL AREA.

25 A. OKAY, THAT'S FINE.

26 (FOR I.D. = GRAND JURY EXHIBIT 93)

1 Q. BY MR. RACKAUCKAS: AND I WOULD LIKE TO SHOW YOU
2 EXHIBIT 93.

3 DOES THAT DEPICT ANY INJURIES TO THE CHEST AND
4 ABDOMEN?

5 A. YES, IT DOES.

6 Q. AND COULD YOU DESCRIBE THOSE.

7 A. WHAT YOU ARE SEEING HERE IS THIS IS THE LEFT SIDE
8 TOWARDS ME, AND THE RIGHT SIDE IS ON THE OTHER SIDE. AND IN
9 THE CHEST YOU CAN SEE THERE IS A PURPLE COLOR BRUISE, WHICH
10 IS ON THE LEFT CHEST BELOW THE NIPPLE AREA. AND IT GOES TO
11 THE SIDE OF THE LEFT CHEST.

12 AND THEN THERE IS ANOTHER BRUISING IN THE LEFT
13 SIDE OF THE LOWER ABDOMEN. CLOSE TO THE PELVIC REGION.

14 (FOR I.D. = GRAND JURY EXHIBIT 94)

15 Q. BY MR. RACKAUCKAS: AND 94?

16 A. 94 IS, AGAIN, THE ENLARGEMENT OF THE SAME, YOU
17 CAN SEE THE CHEST BRUISE GOING FROM THE FRONT TO THE SIDE OF
18 THE CHEST, AND THE BRUISE ON THE LOWER ABDOMEN AREA
19 (INDICATING).

20 AND, AGAIN, WITH THAT INCISION YOU CAN SEE, AND
21 THOSE ARE FROM THE BACK, SO THEY WILL BE MORE OBVIOUS FROM
22 THE BACK, BUT YOU CAN SEE A PORTION OF THE LEFT UPPER ARM
23 ALSO.

24 (FOR I.D. = GRAND JURY EXHIBIT 95)

25 Q. BY MR. RACKAUCKAS: 95?

26 A. 95 IS THE RIGHT SIDE OF THE BODY. HERE WHAT YOU

1 ARE SEEING IS THE TOP OF THE RIGHT SHOULDER, THERE IS AN
2 ABRASION. YOU SEE THE BROWNISH DISCOLORATION, ENCRUSTED
3 BROWNISH, AND THAT'S AN ABRASION ON THE TOP OF THE RIGHT
4 SHOULDER.

5 THE RIGHT SIDE OF CHEST LOOKS OKAY.

6 AND RIGHT SIDE OF THE ABDOMEN LOOKS OKAY.

7 AGAIN, THERE IS A BRUISING ON THE RIGHT KNEE
8 HERE, WHICH YOU CAN SEE IT IS OBVIOUS.

9 THESE ARE THE INJURIES ON THE RIGHT.

10 Q. OKAY. I WANT TO GO BACK TO 95 HERE, WE ARE
11 LOOKING AT THE RIGHT SIDE, AND JUST ABOVE THE FOREARM, ON
12 ITS SIDE, AND IT SEEMS TO BE A LITTLE BIT OF A DISCOLORATION
13 THERE.

14 A. RIGHT HERE (INDICATING)?

15 IN THE RIGHT LOWER QUADRANT OF THE ABDOMEN?

16 Q. YES.

17 A. OKAY, THAT IS POSTMORTEM BACTERIAL GROWTH THAT
18 SOMETIMES HAPPENS, SO THAT IS A POSTMORTEM CHANGE.

19 (FOR I.D. = GRAND JURY EXHIBIT 96)

20 Q. BY MR. RACKAUCKAS: ALL RIGHT. AND THEN ON HIS
21 BACK, TAKE A LOOK AT THAT.

22 A. OKAY. AGAIN, THIS IS, YOU CAN SEE MORE OBVIOUS
23 THE LEFT SIDE OF THE BACK THAN THE RIGHT SIDE HERE.

24 Q. OKAY.

25 A. ON THE LEFT SIDE GOING FROM THE TOP OF THE
26 SHOULDER, AGAIN ON THE LEFT SHOULDER TOP THERE IS ANOTHER

1 CONTUSION ABRASION ON THE TOP OF THE LEFT SHOULDER.

2 THEN THE LEFT FLANK OF THE ABDOMEN, THERE ARE TWO
3 SEPARATE BRUISES, ONE IS LARGER THAN THE OTHER. AND YOU CAN
4 SEE SMALL ABRASION OF THE SURFACE OF THAT CONTUSION ALSO.
5 SO THERE ARE TWO SEPARATE CONTUSIONS ON THE LEFT LOWER -- I
6 MEAN UPPER AND LOWER BACK AREA.

7 AND THEN YOU SEE ANOTHER CONTUSION BACK OF THE
8 LEFT THIGH.

9 AND CONTUSION, WHICH IS NOT OBVIOUS, IN THE BACK
10 OF THE RIGHT POPLITEAL.

11 MR. RACKAUCKAS: MR. REPORTER, DID YOU GET THAT?

12 THE REPORTER: DOCTOR, COULD YOU REPEAT THAT.

13 THE WITNESS: POPLITEAL.

14 THE REPORTER: THANK YOU.

15 Q. BY MR. RACKAUCKAS: HOW DO YOU SPELL THAT?

16 A. P-O-P-L-I-T-E-A-L.

17 Q. IF NECESSARY WE CAN WRITE ANY OF THOSE WORDS DOWN
18 IF THE COURT REPORTER HAS ANY QUESTIONS ABOUT THEM.

19 A. HE CAN TALK TO ME AFTER IF THERE IS ANY PROBLEM.

20 Q. OKAY. THAT LAST ONE WE WERE DISCUSSING WAS
21 EXHIBIT 96?

22 A. THAT'S RIGHT.

23 (FOR I.D. = GRAND JURY EXHIBIT 97)

24 Q. BY MR. RACKAUCKAS: AND NOW GOING TO EXHIBIT 97;
25 CAN YOU DESCRIBE THAT?

26 A. AGAIN, THIS IS THE SAME AS BEFORE, IT IS A LITTLE

1 BIT MORE ENLARGED, SHOWING THOSE BRUISES ON THE LEFT SIDE OF
2 THE BACK.

3 Q. THERE IS A LOT OF REDNESS THERE, SORT OF IN
4 GENERAL ON THE BACK, IS THAT NECESSARILY AN INJURY OR --

5 A. NO.

6 Q. WHAT IS THAT?

7 A. IT'S NOT AN INJURY, IT IS MORE OF LIVIDITY, THE
8 BODY IS ON THE BACK SO THE BLOOD GETS SETTLED AFTER THE
9 DEATH, AND IT LOOKS LIKE A REDDISH AND PURPLISH IN COLOR, SO
10 THAT'S WHAT THE NORMAL POSTMORTEM CHANGE IS.

11 Q. THAT'S CALLED LIVIDITY, JUST A SETTLING OF THE
12 BLOOD?

13 A. RIGHT.

14 (FOR I.D. = GRAND JURY EXHIBIT 98)

15 Q. BY MR. RACKAUCKAS: AND GOING TO EXHIBIT 98.

16 A. THIS IS SHOWING THE RIGHT SHOULDER, AND THE RIGHT
17 SHOULDER, WHAT YOU SEE IS A CONTUSION, ABRASION. THE BLOODY
18 SMEAR IS HERE. AND THEN YOU SEE TWO LINEAR ABRASIONS ON THE
19 BACK OF THE, I WILL SAY RIGHT SCAPULAR RATHER THAN SHOULDER
20 AREA, WHICH IS MORE IN THE SCAPULAR REGION.

21 (FOR I.D. = GRAND JURY EXHIBIT 99)

22 Q. BY MR. RACKAUCKAS: AND EXHIBIT 99?

23 A. AGAIN, THIS IS THE SAME ENLARGEMENT OF THOSE
24 LINEAR ABRASIONS.

25 (FOR I.D. = GRAND JURY EXHIBIT 100)

26 Q. BY MR. RACKAUCKAS: EXHIBIT 100?

1 A. SAME THING AS SHOWING MORE OF THE RIGHT SHOULDER.

2 (FOR I.D. = GRAND JURY EXHIBIT 101)

3 Q. BY MR. RACKAUCKAS: EXHIBIT 101?

4 A. OKAY, THIS IS SHOWING THE RIGHT SIDE OF THE BACK,

5 AND AGAIN THERE ARE TWO SEPARATE BRUISES, WHICH YOU CAN SEE

6 HERE. ONE IS LARGER THAN THE OTHER ONE, THE OTHER ONE IS

7 HIGHER, SO THERE ARE TWO BRUISES, ONE IS BIGGER AND HIGHER

8 ONE, AND THE SMALLER ON THE LOWER ONE.

9 (FOR I.D. = GRAND JURY EXHIBIT 102)

10 Q. BY MR. RACKAUCKAS: AND EXHIBIT 102?

11 A. OKAY, THERE ARE CERTAIN ROUNDED ABRADED MARKS

12 BECAUSE THIS PERSON, I DON'T KNOW WHAT THEY -- I COULD NOT

13 MAKE THEM A TASER MARK, BECAUSE I DID NOT SEE A DART FROM

14 THE TASER. AND I DID NOT SEE ANY BURN AROUND THOSE TASERS.

15 BUT WHAT I NOTICED, BECAUSE I HAD BEEN TOLD THAT HE HAD BEEN

16 TASED, SO I WAS LOOKING WHAT ARE THE DIFFERENT THINGS I

17 SHOULD BE FINDING FOR THE TASER.

18 SO WHEN I SAW THESE ROUNDED BROWNISH SPOTS, TWO

19 HERE (INDICATING), THESE ARE THE ONLY THING, BUT I CANNOT

20 SAY FOR DEFINITE THEY ARE TASER MARKS.

21 Q. BEFORE YOU STARTED THE AUTOPSY, WHAT HISTORY DID

22 YOU HAVE; WHAT DID YOU KNOW ABOUT WHAT BROUGHT MR. THOMAS TO

23 YOU?

24 A. WELL, THE STORY WAS THAT THE PERSON WAS STEALING

25 OR DOING SOMETHING TO THE CAR OR SOMEBODY'S CAR. AND THEN

26 SOME OFFICERS RESPONDED AT THE SCENE, SOMEBODY CALLED THE

1 OFFICER, AND SO HE RESPONDED TO THE SCENE. AND HE TALKED TO
2 HIM FOR A WHILE. BUT I GUESS OUR VICTIM DID NOT RESPOND THE
3 WAY THE OFFICER WAS ASKING QUESTION. SO THEN THEY STARTED
4 SOME KIND OF A STRUGGLE, AND ONE THING LEADING TO ANOTHER.
5 AND THAT STRUGGLE, AFTER THEY STRUGGLED, OUR VICTIM GOT
6 UNCONSCIOUS AND THEN THEY WENT TO THE HOSPITAL.

7 Q. SO THAT'S BASICALLY WHAT KNOWLEDGE YOU HAD AT THE
8 TIME YOU WERE DOING THAT AUTOPSY?

9 A. RIGHT, RIGHT.

10 Q. OKAY. SO DID YOU SEE SOMETHING HERE IN EXHIBIT
11 102 THAT LOOKS LIKE IT MIGHT BE A TASER MARK?

12 A. AGAIN, AS I SAID, THERE ARE SOME ROUNDED SMALL
13 AREAS OUT HERE (INDICATING), BUT I AM NOT SURE WHAT THEY
14 ARE.

15 Q. AND YOU CAN'T REALLY TELL?

16 A. YEAH.

17 Q. YOU WERE LOOKING FOR THAT, BECAUSE YOU HAD THAT
18 INFORMATION?

19 A. BECAUSE OF THE STORY PROVIDED TO ME.

20 (FOR I.D. = GRAND JURY EXHIBIT 103)

21 Q. BY MR. RACKAUCKAS: AND 103?

22 A. SAME ENLARGEMENT OF THOSE MARKINGS WHICH WE SAW.

23 Q. ALL RIGHT. AND THOSE ARE MARKS THAT ARE CLOSE TO
24 THE SCALE IN 103?

25 A. THAT'S CORRECT.

26 (FOR I.D. = GRAND JURY EXHIBIT 104)

1 Q. BY MR. RACKAUCKAS: 104?

2 A. AGAIN, THIS IS THE BRUISING ON THE RIGHT SIDE,
3 MORE ENLARGED.

4 Q. AND IS THE SCALE THERE TO GIVE US AN IDEA OF THE
5 SIZE?

6 A. RIGHT.

7 (FOR I.D. = GRAND JURY EXHIBIT 105)

8 Q. BY MR. RACKAUCKAS: AND GOING TO THE EXTREMITIES;
9 105, EXHIBIT 105?

10 A. YES, THIS IS THE LEFT UPPER ARM. AND YOU CAN SEE
11 THERE IS A BRUISE GOING FROM AXILLA DOWN TO THE FOREARM. SO
12 THIS IS A LARGE BRUISE GOING FROM THE AXILLA TO THE FOREARM
13 AREA.

14 Q. WHAT MIGHT CAUSE A BRUISING LIKE THAT; IS THERE
15 SOME GENERAL DESCRIPTION OF WHY THAT KIND OF BRUISING
16 OCCURS?

17 A. AGAIN, BRUISING IS THE RESULT OF BLUNT FORCE
18 INJURY. AND THE BLUNT FORCE COULD BE ANYTHING, THERE ARE
19 MANY THINGS THAT CAN CAUSE IT. SO I CANNOT, IT DOESN'T HAVE
20 ANY PATTERN WHICH I CAN MATCH AND SAY, OH, IT LOOKS LIKE IT
21 MATCH TO THIS. SO IT'S NON-PATTERN BRUISE, WHICH TELLS ME
22 THERE IS SOME KIND OF BLUNT FORCE INJURY HERE.

23 Q. AND IT IS PRETTY GENERALIZED INSIDE THE ARM?

24 A. THE ARM.

25 (FOR I.D. = GRAND JURY EXHIBIT 106)

26 Q. BY MR. RACKAUCKAS: AND COULD YOU DESCRIBE 106.

1 A. THIS IS SHOWING THE LEFT ELBOW. AND YOU CAN SEE
2 THE BRUISING IN THE LEFT ELBOW AREA.

3 Q. IN 106, VERY CLOSE TO THE TABLE, THERE ARE TWO
4 CUTS OR LACERATIONS?

5 A. THEY ARE CUTS.

6 Q. OKAY. CAN YOU TELL US WHAT THOSE ARE?

7 A. THOSE ARE THE CUTS I MADE DURING THE EXAMINATION
8 TO SHOW THEY ARE BRUISES, THERE IS A HEMORRHAGE UNDERLYING
9 THE SKIN SURFACE.

10 Q. BUT THE CUTS THEMSELVES, THOSE ARE NOT
11 PRE-EXISTING INJURIES, THAT'S SOMETHING YOU DID ON THE
12 EXAMINATION?

13 A. THAT'S CORRECT.

14 (FOR I.D. = GRAND JURY EXHIBIT 107)

15 Q. BY MR. RACKAUCKAS: AND 107?

16 A. IS THE LEFT KNEE. AND SHOWING THE BRUISING ON
17 THE LEFT KNEE.

18 (FOR I.D. = GRAND JURY EXHIBIT 108)

19 Q. BY MR. RACKAUCKAS: OKAY. AND 108?

20 A. 108 IS SHOWING BACK OF THE RIGHT KNEE, WHICH IS,
21 I SAID, THE BACK OF THE RIGHT KNEE AREA, WHICH IS POPLITEAL,
22 THERE IS A BRUISE IN THE POPLITEAL AREA, AND THE BRUISE OF
23 THE BACK OF THE LEFT THIGH.

24 Q. AND SO THAT PRETTY MUCH DESCRIBES THE INJURIES
25 THAT YOU SAW UPON EXTERNAL EXAMINATION?

26 A. THAT'S CORRECT.

1 Q. AND THEN DID YOU CONTINUE TO CONDUCT AN
2 EXAMINATION AFTER THAT?

3 A. THAT IS CORRECT.

4 Q. AND WHAT DID YOU DO NEXT?

5 A. WELL, NEXT WE MAKE A Y-INCISION. WHICH IS AN
6 INCISION THAT GOES FROM TOP OF ONE SHOULDER TO THE OTHER,
7 AND MEET IN THE MIDLINE. AND AS YOU EXPOSE THEN INSIDE THE
8 CHEST, AND THEN YOU CUT THE RIB CAGE, TAKE OUT THE CHEST
9 PLATE, AND YOU EXPOSE ALL THE INTERNAL ORGANS.

10 Q. AND SO THEN WHEN YOU DID THIS INTERNAL
11 EXAMINATION, DID YOU MAKE ANY FINDINGS?

12 A. THE MAIN INTERESTING FINDING WAS -- CAN I LOOK AT
13 MY NOTES?

14 Q. WOULD YOU PLEASE; JUST LET US KNOW WHAT IT IS YOU
15 MIGHT BE LOOKING AT.

16 A. YOU KNOW, IN THE END OF MY GROSS DICTATIONS I
17 USUALLY SUMMARIZE ALL THE DIFFERENT THINGS.

18 Q. SO THIS IS IN YOUR REPORT?

19 A. IT'S IN MY REPORT.

20 Q. WOULD IT HELP TO REFRESH YOUR MEMORY TO LOOK AT
21 YOUR REPORT?

22 A. THAT IS CORRECT.

23 Q. CAN YOU TELL US WHAT PAGE YOU ARE GOING TO BE
24 LOOKING AT IN YOUR REPORT?

25 A. PAGE 8.

26 Q. IS THAT THE AUTOPSY REPORT?

1 A. THAT IS CORRECT.

2 Q. OKAY.

3 A. (WITNESS COMPLIES).

4 OKAY. IN THIS I PUT DOWN, LIKE IT SUMMARIZES THE
5 WHOLE BODY EXAM, WHICH AGAIN IS GOING TO GO FROM HEAD TO
6 TOE, SAYS MULTIPLE FACIAL INJURIES, SOME OF THEM ARE
7 SUTURED.

8 THEN I SAID THERE IS A FRACTURE OF THE NASAL
9 BONE.

10 AND THERE ARE MULTIPLE BRUISES, LEFT ARM, LEFT
11 CHEST, LEFT THIGH, RIGHT BACK, LEFT LOWER LEG. I MEAN ALL
12 THE BRUISES WHICH WE NOTICED.

13 THEN IN THE BRAIN I SAW THE BRAIN WAS SWOLLEN,
14 AND IT SHOWS CHANGES OF RESPIRATOR BRAIN, WHICH IS VERY SOFT
15 AND MUSHY. YOU CAN SEPARATE, YOU KNOW, THE BRAIN HAS SULCI,
16 WHICH GOES UP AND DOWN, UP AND DOWN, YOU LOSE IT AND IT
17 BECOMES LIKE A SMOOTH SURFACE. THAT TELLS YOU THE BRAIN IS
18 SWOLLEN. THAT HAPPENS SO MANY TIMES, THE PERSON, WHEN YOU
19 ARE ON A RESPIRATOR. SO THAT'S ENCEPHALOPATHY.

20 AND THEN I NOTICED THE HEART, THE HEART IS
21 ENLARGED. AND BOTH LEFT AND RIGHT, BOTH VENTRICLES WERE
22 HYPERTROPHIC.

23 AND THEN GOES DOWN TO THE LUNGS SHOWING THE LUNGS
24 ARE VERY HEAVY AND THEY HAVE A SIGN OF PNEUMONIA.

25 THEN GOING DOWN TO THE LIVER, THE LIVER WAS ALSO
26 ENLARGED. AND IS SHOWING CHANGES OF INTRAVENOUS CONDITION.

1 THEN AGAIN GOING INSIDE THE ABDOMEN, THEY ALSO
2 FOUND THAT THE MUSCLE WHICH IS INSIDE THE ABDOMEN ALSO HAVE
3 A HEMORRHAGE, WHICH IS ILIO-PSOAS MUSCLE, THERE WAS A
4 HEMORRHAGE IN THE ILIO-PSOAS MUSCLE.

5 AND THESE ARE THE MAIN INTERNAL FINDINGS.

6 Q. ALL RIGHT. AND THEN DID YOU AT SOME POINT TAKE
7 SAMPLES SO THAT YOU COULD DO MICROSCOPIC EXAMINATIONS OF
8 THOSE?

9 A. YES.

10 Q. AND WHAT DID YOU TAKE SAMPLES OF FOR LATER
11 MICROSCOPIC WORK?

12 A. I TOOK A SECTION OF THE VARIOUS BRUISES, WHICH
13 ARE ALL THE SEVEN DIFFERENT INJURIES TO THE FACE.

14 THEN I ALSO TOOK A SECTION OF THE LEFT FLANK OF
15 THE ABDOMEN.

16 AND THEN I TOOK A SECTION OF THE RIGHT SIDE OF
17 THE ABDOMEN.

18 AND I TOOK A SECTION OF THE RIGHT THIGH.

19 AND LEFT AND RIGHT LUMBAR AREA.

20 SO I TOOK A SECTION OF THE BRUISES WHICH WE
21 EXAMINED EXTERNALLY.

22 AND ALSO WE EXAMINED AGAIN, MICROSCOPIC
23 EXAMINATION OF THE HEART, LUNG, LIVER, PANCREAS, SPLEEN,
24 ENDOCRINE SYSTEM, TONGUE, KIDNEY, BRAIN.

25 Q. ALL RIGHT. AND THEN AT SOME POINT DID YOU COME
26 TO AN OPINION ABOUT THE CAUSE OF DEATH?

1 A. YES, I DID.

2 Q. AND WHAT WAS THAT OPINION BASED ON; WHAT WERE THE
3 VARIOUS THINGS THAT YOU TOOK INTO CONSIDERATION IN FORMING
4 YOUR OPINION ABOUT THE CAUSE OF DEATH?

5 A. WELL, FIRST THING IS I HAVE AN ANATOMIC CAUSE,
6 WHICH IS ANOXIC ENCEPHALOPATHY AND BRONCHOPNEUMONIA, THAT IS
7 THE ANATOMIC FINDING.

8 THEN I TOOK A CONSIDERATION OF WHY THESE ARE A
9 CONSEQUENCE OF WHAT. SO THE CONSEQUENCE THAT IS THE MAIN
10 THING IS THE STORY PROVIDED TO ME, AND THE VIDEOTAPE.

11 SO I LOOKED FOR -- AND HOSPITAL RECORD ALSO.

12 Q. WHEN YOU SAY THE VIDEOTAPE, YOU ARE REFERRING TO
13 THE VIDEOTAPE OF THE INCIDENT?

14 A. SURVEILLANCE VIDEO.

15 Q. THE SURVEILLANCE VIDEO.

16 AND DID THAT HAVE SOUND?

17 A. YES, IT DID.

18 SO ALL COMBINING EVERYTHING TOGETHER, THE PERSON
19 WAS FIVE DAYS IN THE HOSPITAL ON RESPIRATOR. THEN THE
20 STORY, THE INCIDENT REPORT WHICH WAS PROVIDED TO ME BY THE
21 INVESTIGATOR. AND THE SURVEILLANCE VIDEO TOGETHER, I MAKE
22 THE UNDERLYING CAUSE FOR DEATH.

23 Q. AND WHAT ABOUT THE MICROSCOPICS; WHEN DID YOU DO
24 THOSE EXAMINATIONS?

25 A. WELL, THE CAUSE OF DEATH WHEN I DETERMINED IS ALL
26 AFTER I FINISHED MY MICROSCOPIC EXAMINATION, AND REVIEWED

1 EVERYTHING.

2 Q. IT TOOK A WHILE TO HAVE AN OPINION ABOUT THE
3 CAUSE OF DEATH IN THIS CASE, DIDN'T IT?

4 A. YEAH, IT DID.

5 Q. FROM THE TIME OF DOING THE AUTOPSY UNTIL THE TIME
6 THAT YOU FELT THAT YOU HAD A SOLID OPINION, HOW LONG WAS
7 THAT?

8 A. IT'S ALMOST LIKE TWO MONTHS, TWO AND A HALF
9 MONTHS.

10 Q. OKAY. AND THAT WAS -- AND WHY DID IT TAKE SO
11 LONG?

12 A. WELL, AGAIN, EVERYTHING IS A STEP BY STEP BY
13 STEP. EVERYTHING HAS TO BE LIKE YOU TAKE THE TISSUE, YOU
14 MAKE THEM, FIX THEM IN FORMALIN FOR A WHILE AND THEN YOU CUT
15 THEM. THE SLICE COMES OUT. AND THEN YOU READ IT.

16 AND ANOTHER THING IS TO GET ALL THE DIFFERENT
17 REPORTS, READ THEM, EVALUATE THEM. THEN YOU GET MORE
18 INFORMATION ON DIFFERENT THINGS.

19 SO EVERYTHING TAKES TIME. TOXICOLOGY TAKES TIME.
20 EVERYTHING TAKES ITS OWN TIME.

21 Q. SOMETIMES IT IS FASTER IF THERE IS TWO OR THREE
22 BULLETS IN THE HEAD, YOU CAN FIGURE IT OUT PRETTY QUICK?

23 A. THEN YOU DON'T HAVE MUCH TO THINK ABOUT IT.

24 Q. ALL RIGHT. CAN YOU TELL US WHAT YOUR OPINION IS
25 AS TO THE CAUSE OF DEATH OF KELLY THOMAS?

26 A. IT IS DUE TO ANOXIC ENCEPHALOPATHY, THAT IS BRAIN

1 DEATH, WITH ACUTE BRONCHOPNEUMONIA, DUE TO MECHANICAL CHEST
2 COMPRESSION, WITH CRANIAL-FACIAL, BLUNT CRANIAL-FACIAL
3 INJURIES SUSTAINED DURING THE PHYSICAL ALTERCATION WITH THE
4 LAW ENFORCEMENT OFFICERS.

5 Q. IS THERE ONE PRIMARY CAUSE OF DEATH HERE, OR WHAT
6 WOULD BE YOUR DESCRIPTION OF HOW KELLY THOMAS DIED?

7 A. IT'S A CONSTELLATION OF ALL INJURIES, NOT ONE
8 THING.

9 Q. WHAT DO YOU MEAN BY THAT?

10 A. I MEAN LIKE ALL THESE COMBINED TOGETHER, YOU
11 CANNOT SEPARATE ONE FROM ANOTHER. SO LIKE WHY THE PERSON IS
12 BRAIN DEAD, WHY YOU DEVELOP PNEUMONIA, THESE ARE THE
13 ANATOMIC CAUSE. BUT WHY THESE ALL HAPPENED IS BECAUSE OF
14 ALL THE INJURIES WHICH WE NOTICED ON EXTERNAL EXAMINATION.
15 AND THEN WE SAW IT IS WHY, THE INJURIES ARE DUE TO THE
16 PHYSICAL ALTERCATION WITH THE LAW ENFORCEMENT OFFICERS.

17 Q. WHAT IS ANOXIC ENCEPHALOPATHY?

18 A. IT'S BRAIN DEATH.

19 Q. AND WHAT DO THESE WORDS MEAN; LACK OF OXYGEN TO
20 THE BRAIN?

21 A. LACK OF OXYGEN TO THE BRAIN.

22 Q. AND YOU MENTION ALSO MECHANICAL COMPRESSION?

23 A. RIGHT.

24 Q. WOULD YOU DESCRIBE WHAT YOU MEAN BY THAT?

25 A. WELL, CHEST GOT COMPRESSED SOMEHOW OR ANOTHER
26 BECAUSE THERE WAS, YOU KNOW, WHEN I SAW THE PARAMEDIC'S --

1 FIRST THING, THE PHYSICAL FINDING THERE WAS A BRUISING ON
2 THE CHEST, THAT'S THE PHYSICAL FINDING. IT IS NOT EVERY
3 COMPRESSION GOING TO LEAVE A BRUISE, BUT THIS IS ONE OF THE
4 FINDINGS IS THERE. SO THERE WAS SOMEHOW OR ANOTHER THIS
5 BRUISE IS RELATED TO A BLUNT FORCE INJURY. AND THAT COULD
6 BE ONE OF THE REASONS THE COMPRESSION IS THERE AFTER
7 REVIEWING THE VIDEO.

8 THEN, AGAIN, AS I SAID, THE PHYSICAL COMPRESSION
9 OF THE CHEST IS BASED ON THE ONE PHYSICAL FINDING, AND BASED
10 ON THE VIDEOTAPE.

11 Q. SO WHAT DOES THE CHEST COMPRESSION CAUSE; HOW
12 DOES THAT CONTRIBUTE TO THE DEATH?

13 A. OKAY. AS EVERYBODY KNOWS, WHEN WE BREATHE IN,
14 THEN THE CHEST EXPANDS. WHEN WE BREATHE OUT, CHEST GOES
15 DOWN. SO EVERY TIME YOU TAKE IN AND OUT, EVERY TIME YOU
16 TAKE A BREATH, THE OXYGEN GOES INSIDE YOUR BODY, AND IT GOES
17 TO THE BLOOD, AND BLOOD GETS CIRCULATED TO THE BODY AND YOU
18 GET OXYGENATED. SO WHEN YOU BREATHE OUT, THEN THIS OXYGEN
19 GETS EXPELLED OUT IN THE FORM OF CARBON DIOXIDE FROM THE
20 BODY.

21 SO EVERY TIME YOU BREATH IN AND OUT, OXYGEN IS
22 TAKEN IN AND CARBON DIOXIDE IS TAKEN OUT. SO OXYGENATED
23 BLOOD GOES IN AND DEOXYGENATED BLOOD GOES OUT.

24 WHEN YOU ARE COMPRESSING, THIS MECHANISM IS NOT
25 GOING TO BE THERE, SO THE BODY IS NOT GOING TO RECEIVE THE
26 OXYGEN, AND THE CHEST IS COMPRESSED, NOW THE AIR CANNOT GO

1 IN. AND THEN THE AIR DOESN'T GO IN, THE BODY DON'T RECEIVE
2 THE OXYGEN. THE BODY DON'T RECEIVE THE OXYGEN, THE BODY
3 STARTED FAILING. AND THAT'S HOW THE COMPRESSION HAPPENS.

4 Q. DOES THIS HAVE TO HAPPEN ALL AT ONCE LIKE ONE BIG
5 COMPRESSION, OR CAN IT TAKE PLACE OVER TIME?

6 A. MOST OF THE TIME IT TAKES A TIME, BECAUSE THERE
7 IS SOME OXYGEN ALWAYS THERE IN THE BODY, IT'S NOT LIKE IT'S
8 GOING TO SPILL OUT ALL AT ONE TIME. SO IT TAKES A WHILE TO
9 GET ALL THE OXYGEN OUT FROM THE BODY TO BECOME A BRAIN DEATH
10 OR ANOXIC ENCEPHALOPATHY.

11 Q. SO IF SOMEBODY IS UNDER COMPRESSION, FOR EXAMPLE,
12 HAVING BODY WEIGHT ON TOP OF THEM ON A STREET, BUT HE CAN
13 STILL BREATHE SOMEWHAT?

14 A. A LITTLE BIT, NOT EFFECTIVE ENOUGH, BUT A LITTLE
15 BIT OF OXYGEN CAN GO, YES.

16 Q. CAN IT HAPPEN THAT THIS PERSON MIGHT STILL BE
17 ABLE TO BREATHE FOR A TIME, BUT NOT SUSTAIN THAT OVER TIME?

18 A. THAT'S CORRECT.

19 Q. AND COULD YOU DESCRIBE THAT.

20 A. AGAIN, AS I SAID, YOU, AS THE BODY STARTED
21 FAILING, YOU KNOW, BECAUSE YOU DON'T GET ENOUGH OXYGEN,
22 SLOWLY START THE HEART RATE AND RESPIRATION IS GOING TO GO
23 DOWN, AND THEN THE BRAIN ACTIVITY WILL STOP TOO.

24 Q. HOW DID WATCHING THE VIDEO FIT IN WITH YOUR
25 DETERMINATION AS TO CAUSE OF DEATH?

26 A. WELL, AS I SAID, JUST BY ANATOMIC EXAMINATION I

1 SAW JUST A BRUISE ON THE CHEST AND I SAW A BRUISE IN THE
2 ARM. THEN I WATCHED THE VIDEO, I CAN SEE HOW THESE, AND
3 THEN I SAW SOME BRUISES IN THE BACK ALSO, YOU KNOW,
4 BILATERAL BRUISES IN THE BACK. SO I COULD NOT CORRELATE
5 THEM UNLESS I SEE THE VIDEO, OKAY, HOW THIS IS HAPPENING.

6 SO I SAW ON THE VIDEO HOW THIS PROCESS, WHY THESE
7 BRUISES WERE, THEY WERE COMBATING HIM AND, YOU KNOW, PUSHING
8 DOWN. SO THAT HE WAS STRUGGLING AND YOU ARE FIGHTING, AND
9 SO THAT'S THE REASON I FELT THAT THE CHEST COMPRESSION,
10 WHICH CAUSED HIM TO HAVE ANOXIC EPISODE.

11 Q. DID YOU SEE ANY INJURIES THAT YOU COULD SAY JUST
12 RULED OUT THIS, THIS DIDN'T CONTRIBUTE TO THE CAUSE OF
13 DEATH?

14 A. NO, I COULD NOT SEPARATE THEM, THAT INJURY DID,
15 THIS DID NOT, BECAUSE, AGAIN, YOU HAVE TO SEE THE TOTALITY
16 OF ALL THE INCIDENT. YOU KNOW, THEY ALL SOMEHOW OR ANOTHER,
17 THEY ALL TOGETHER PLAYED A ROLE.

18 Q. WELL, THERE ARE SOME INJURIES LIKE, FOR EXAMPLE,
19 INJURIES TO THE LIP, BRUISING TO THE EYE, THERE ARE THESE
20 THINGS THAT BY THEMSELVES YOU WOULDN'T NECESSARILY THINK
21 THEY MIGHT CAUSE DEATH, WOULD YOU?

22 A. AGAIN, IF YOU INDIVIDUALIZE THESE INJURIES EACH,
23 THEN THE PERSON SHOULD NOT BE DYING EITHER. SO YOU HAVE TO
24 SEE THESE THINGS HAPPENING SIMULTANEOUSLY. IF I SEE ONLY
25 INJURY TO THE LIP OR INJURY TO THE EYE, YEAH, IT WILL CAUSE
26 A LOT OF PAIN AND ALL, MAY NOT CAUSE THE DEATH, THEN I WON'T

1 HAVE ANY CAUSE OF DEATH EITHER.

2 Q. SO HOW WOULD YOU EXPLAIN THE INJURIES, FOR
3 EXAMPLE, TO THE FACE WOULD CONTRIBUTE TO THE DEATH?

4 A. MULTIPLE INJURY TO THE FACE HAS COMPROMISED HIS
5 BREATHING. HERE THE PERSON IS LACERATED AND THESE WOUNDS
6 ARE BLEEDING. SO SOME OF THE BLOOD GOING TO GO IN
7 RESPIRATORY PASSAGES. AND THEN CAUSING A LOT OF PAIN. IT
8 IS A TRAUMATIC SHOCK CAUSING THERE. SO THERE IS THE BLOOD,
9 AND THE TRAUMA OF THE INJURY OF PAIN, WHICH HE IS SUFFERING,
10 WILL CONTRIBUTE IN COMPROMISING HIS RESPIRATION. AND ON THE
11 TOP HE HAS THE CHEST COMPRESSION, SO ALL TOGETHER WILL CAUSE
12 HIM TO HAVE MUCH FASTER ANOXIC EPISODE.

13 Q. WHAT ABOUT DURING THE STRUGGLE, JUST HITS, LIKE
14 STRIKES WITH THE KNEE OR WITH THE ELBOW, IN YOUR MIND WOULD
15 THOSE CONTRIBUTE TO THE CAUSE OF DEATH AS WELL?

16 A. AGAIN, AS I SAID, THESE ARE, INDIVIDUALIZING THE
17 WOUND IS VERY DIFFICULT FOR ME, BECAUSE FIRST THING IS HOW
18 THE KNEES WERE COMPRESSING, I DON'T KNOW, I WAS NOT THERE.
19 BUT IF THEY ARE, THE KNEES COMPRESSING AND CAUSING HIM
20 DIFFICULTY IN BREATHING, YES, THAT WILL CONTRIBUTE. BUT IF
21 JUST YOU HIT AND DID NOT DO ANYTHING, AND IT'S NOT
22 COMPRESSED IT IS JUST THE TRAUMA OF HITTING, IT MAY NOT
23 CAUSE ANYTHING. SO I CANNOT SEPARATE THEM, THAT HOW THESE
24 TWO OR MULTIPLE BRUISES IN THE BACK OR THIGH CAME BY.

25 Q. I DON'T THINK I AM NOT ASKING YOU TO SEPARATE
26 THEM, I AM JUST ASKING YOU IF IN YOUR VIEW ALL THESE THINGS

1 TEND TO CONTRIBUTE. SO, FOR EXAMPLE, IF WHILE THIS PERSON
2 IS UNDER THIS STRESS, DOES THE STRESS ITSELF MATTER?

3 A. OH, YES, IT CAN.

4 Q. HOW IS THAT?

5 A. WELL, DURING THE STRESS THE PERSON'S HEART RATE
6 IS GOING UP, RESPIRATION IS FASTER, OXYGEN IS GOING TO BE
7 LESS IN THE BRAIN, AND THAT STRESSES CAUSE THE
8 CARDIO-PULMONARY, AND PEOPLE DIE ALL THE TIME IN STRESS.

9 Q. SO BECAUSE OF THE STRESS HE NEEDS MORE OXYGEN?

10 A. RIGHT.

11 Q. AND THEN THE FIGHTING AND RECEIVING BLOWS, WOULD
12 THAT ALL ADD TO THE STRESS?

13 A. THAT IS CORRECT.

14 Q. AND WOULD THAT, IN THIS SITUATION THAT YOU SAW,
15 WOULD THAT CONTRIBUTE TO THE CAUSE OF DEATH?

16 A. THAT IS CORRECT.

17 Q. SO ESSENTIALLY THERE ISN'T ANY PART OF THE
18 STRUGGLE THAT DOESN'T CONTRIBUTE TO THE CAUSE OF DEATH?

19 A. I CANNOT SEPARATE THEM, YES.

20 Q. THAT'S WHAT YOU ARE SAYING?

21 A. RIGHT.

22 Q. YOU CAN'T SEPARATE IT OUT AND CAN'T SAY THIS
23 DOESN'T COUNT?

24 A. RIGHT.

25 Q. SO IF ONE OF THE OFFICERS HITS, I AM GOING TO
26 GIVE YOU A HYPOTHETICAL, IF ONE OF THE OFFICERS AT THE

1 OUTSET IS HITTING KELLY THOMAS WITH A BATON. AND THEN A
2 CHASE ENSUES, AND THEN THEY MEET UP, AND THAT OFFICER HELPS
3 TO TACKLE KELLY THOMAS. AND THEN AT SOME POINT DURING THAT,
4 AND THERE IS A STRUGGLE, KELLY THOMAS IS STRUGGLING TO
5 RESIST BEING DOWN AND BEING HELD DOWN BY THE OFFICERS, AND
6 THEN THAT SAME OFFICER HITS KELLY THOMAS VERY HARD WITH HIS
7 KNEES. JUST STRIKING HIM, MAYBE NOT COMPRESSING OVER TIME,
8 BUT JUST A HARD SHARP STRIKE WITH THE KNEES IN THE KIDNEY
9 AREA. AND THEN GETS ON TOP OF HIM AND PUTS HIS WEIGHT ON
10 HIM, AND CONTINUES TO TRY TO HOLD HIM DOWN. HITS HIM WITH
11 HIS ELBOW (INDICATING).

12 WE CAN'T EVEN TELL NECESSARILY IF IT IS THE FRONT
13 OF THE FACE OR THE BACK OF THE FACE, HE IS HITTING HIM WITH
14 HIS ELBOW, BUT KELLY THOMAS BEING DOWN, AND HE IS HITTING
15 HIM WITH HIS ELBOW, AND CONTINUING TO HOLD HIM DOWN TO
16 MAINTAIN THIS CONTROL.

17 WOULD THAT BE A CONTRIBUTING CAUSE OF THE DEATH,
18 THAT GROUP OF EVENTS, THAT HYPOTHETICAL I GAVE YOU?

19 A. YES, IT WOULD BE.

20 MR. RACKAUKAS: I HAVE NO FURTHER QUESTIONS. MAYBE THE
21 GRAND JURORS DO.

22 THE GRAND JURY FOREPERSON: ARE THERE ANY QUESTIONS
23 FROM THE GRAND JURY?

24 (AFFIRMATIVE RESPONSES).

25 (FOR I.D. = GRAND JURY EXHIBIT 117)

26 MR. RACKAUKAS: I HAVE SIX QUESTIONS, AND WE WILL HAVE

1 THOSE MARKED COLLECTIVELY AS 117.

2 THERE IS ONE THAT I NEGLECTED TO COVER. MAYBE
3 MORE.

4 Q. BY MR. RACKAUCKAS: ALL RIGHT. THIS QUESTION, THE
5 SKETCH SHOWS HIS WEIGHT AS 219 POUNDS. HOW IS THIS
6 VERIFIED?

7 FIRST OF ALL, THE SKETCH SHOWS HIS WEIGHT AS 219
8 POUNDS; HOW IS THAT POSSIBLE?

9 A. WELL, THE THING IS WHEN I AM DOING A SKETCH, IT'S
10 NOT -- THE SKETCH IS NOT THAT HEAVY, WHAT IT IS SHOWING IS
11 THE BODY WHICH I EXAMINED, THEY GET WEIGHED AND MEASURED
12 PRIOR TO AUTOPSY EXAMINATION. PRIOR TO COMING. SO AS SOON
13 AS THE BODY COMES TO THE CORONER'S OFFICE, THERE IS A SCALE
14 YOU PUT THE BODY, WEIGH IT AND MEASURE IT. SO EVERY BODY
15 GETS WEIGHED AND MEASURED. SO THAT IS WHAT IT IS SHOWING,
16 THE BODY IS 219 POUNDS AND 68 INCH LENGTH.

17 Q. BUT THIS PERSON, WE SEE KELLY THOMAS IN THE VIDEO
18 AND HE IS NOT 219 POUNDS WHEN HE IS -- I PROBABLY SHOULDN'T
19 SAY THIS, IT'S A LEADING QUESTION, BUT DOES IT LOOK LIKE HE
20 IS 219 POUNDS WHEN HE IS OUT THERE IN THIS STRUGGLE?

21 A. SEE, I CAN ONLY TELL YOU WHAT IS BEING RECORDED
22 IN THE CORONER'S OFFICE. THAT'S ALL I CAN TALK ABOUT.

23 Q. ALL RIGHT. AND DO YOU HAVE ANY IDEA AS TO, OR DO
24 YOU HAVE AN OPINION AS TO WHY A PERSON MIGHT HAVE MORE
25 WEIGHT WHEN HE IS WEIGHED IN THE CORONER'S OFFICE THAN HE
26 DOES, THAN HE WOULD WHEN HE WAS HEALTHY?

1 A. OKAY. FIRST THING IS WHEN THE BODY COMES, IT
2 COMES IN THE BODY BAG. SO WE DON'T OPEN THE BODY BAG.
3 INSIDE THE BODY BAG, ALL THESE HOSPITAL LINES WITH THE FLUID
4 BAGS AND ALL, THEY ARE THERE TOO. SO EVERY BAG, THE BODY
5 GETS WEIGHED WITH EVERYTHING. SO IT IS A LOT OF WEIGHT
6 BECAUSE OF THE HOSPITAL INTRAVENOUS LINE, THE FLUID BAGS
7 WITHIN THAT BAG. SO THIS IS NOT ACCURATE WEIGHT OF THE
8 BODY.

9 BUT WE DON'T TAKE THE BODY BAG AFTER WE TAKE OUT
10 ALL THE HOSPITAL LINES TO TAKE BACK OUTSIDE AND GET THEM
11 WEIGHED. SO WE USUALLY DON'T DO IT. SO WHATEVER IT CAME IN
12 THAT BUILDING, THAT'S HOW IT GETS WEIGHED.

13 Q. ALL RIGHT. COULD CHEST COMPRESSIONS FROM C.P.R.
14 CAUSE THE CHEST INJURIES?

15 A. OKAY. YOU HAVE TO SEE THE LOCATION. FIRST THING
16 IS C.P.R., C.P.R. CASES SO MANY TIMES, THE LOCATION OF THE
17 C.P.R. BRUISES ARE USUALLY IN MIDLINE, BECAUSE THAT'S WHERE
18 YOU COMPRESS, THE PARAMEDICS, THEY DON'T COMPRESS ON THE
19 LEFT OR RIGHT SIDE, THEY COMPRESS CENTER, SO THEY ARE
20 BREATHING. AND IT SHOULD BE SYMMETRICAL, IT WOULD NOT BE
21 ASYMMETRIC LIKE HERE, IT IS ALL ON THE LEFT SIDE OF THE
22 CHEST, SO IT IS NOT.

23 Q. ALL RIGHT. SO THEN THE INJURIES THAT YOU SAW
24 THAT WERE DESCRIBED HERE EARLIER, COULD THOSE BE ATTRIBUTED
25 TO C.P.R.?

26 A. NO.

1 Q. THERE IS A QUESTION ABOUT THE TOXICOLOGY REPORTS,
2 BUT YOU DIDN'T HAVE ANYTHING TO DO WITH THE TOXICOLOGY
3 REPORTS, DID YOU?

4 A. THAT IS CORRECT.

5 MR. RACKAUKAS: I WILL MAKE SURE WE COVER THAT.

6 Q. BY MR. RACKAUCKAS: AND COULD THE ENLARGED HEART,
7 WELL, THIS IS AS TO THE ENLARGED HEART AND LIVER, BE FROM
8 OTHER CAUSES?

9 BUT LET ME ASK YOU THIS FIRST; WAS THERE AN
10 ENLARGED LIVER?

11 A. YES.

12 Q. SO LET'S TAKE IT, I DON'T KNOW IF WE SHOULD TAKE
13 THEM ONE AT A TIME OR BOTH AT THE SAME TIME, BUT THE
14 QUESTION SAYS, COULD ENLARGED HEART AND LIVER BE FROM OTHER
15 CAUSES BESIDES THE ALTERCATION WITH THE POLICE?

16 A. THAT IS CORRECT.

17 Q. AND COULD YOU -- FIRST OF ALL, THE HEART, CAN YOU
18 DESCRIBE THE ENLARGED HEART, AND WHAT YOU THINK MIGHT BE
19 RESPONSIBLE FOR THAT?

20 A. WELL, FIRST THING IS HE HAS ENLARGED HEART PRIOR
21 TO MY AUTOPSY, I MENTIONED. SO WHY HE HAS IT, I DON'T HAVE
22 ANY INFORMATION, HIS MEDICAL BACKGROUND WHY HE HAS IT, AN
23 ENLARGED HEART. THE ONLY THING IS THAT'S THE FINDING I HAD
24 AT THE TIME OF AUTOPSY EXAMINATION.

25 Q. AND WHAT ARE SOME OF THE POSSIBLE REASONS WHY A
26 PERSON MIGHT HAVE AN ENLARGED HEART?

1 A. OKAY, THERE ARE MULTIPLE, MULTIPLE REASONS FOR
2 THE ENLARGED HEART. FIRST MOST COMMON IS HYPERTENSION.
3 PEOPLE THAT ARE HYPERTENSIVE HAVE ENLARGED HEART.

4 OTHER THING IS LIKE PEOPLE WHO GO IN SOME KIND OF
5 FAILURE, FOR LIKE A VALVULAR DISEASE, CARDIAC VALVE DISEASE
6 OR SOME KIND OF CORONARY DISEASE, THEIR HEART HAS TO WORK
7 MUCH MORE HARDER, AND THEY GET ENLARGED.

8 AND SOME OF THE TIME WE DON'T HAVE ANY OBJECTIVE
9 CAUSE FOR THE ENLARGED HEART, SO WE CALL IT IDIOPATHIC
10 HYPERTROPHY.

11 SO SOMETIMES YOU HAVE A CAUSE AND SOMETIMES YOU
12 DON'T HAVE A CAUSE.

13 Q. IN THIS CASE?

14 A. I DON'T HAVE, AT LEAST I DON'T HAVE ANY CAUSE.

15 Q. ANY OPINION AS TO WHETHER OR NOT ITS CAUSE
16 CONTRIBUTED TO THE CAUSE OF DEATH HERE?

17 A. AGAIN, YOU KNOW, BECAUSE OF ENLARGED HEART HE MAY
18 BE MORE SUSCEPTIBLE TO ANOXIA MUCH MORE FASTER THAN A NORMAL
19 HEALTHY HEART, THAT'S ALL I CAN SAY.

20 Q. AND WHAT ABOUT THE ENLARGED LIVER; CAN YOU
21 DESCRIBE THAT FOR US AND TELL YOU WHAT YOU THINK THAT MIGHT
22 MEAN.

23 A. ENLARGED LIVER IS AGAIN HIS LIFESTYLE. I DON'T
24 KNOW WHAT KIND OF LIFESTYLE HE HAS. THAT HE'S BEING DRUG
25 USER OR ETHANOL ABUSER OR SOME OTHER KIND OF BACKGROUND.
26 AND THAT CAN CAUSE ENLARGED LIVER.

1 Q. OKAY. BUT YOU DIDN'T INDICATE THAT AS A PART OF
2 THE CAUSE OF DEATH HERE?

3 A. THAT IS CORRECT.

4 Q. ANY REASON FOR THAT?

5 A. WELL, BECAUSE LIVER ITSELF DOESN'T CAUSE THE
6 DEATH. ENLARGED LIVER IS NOT GOING TO CAUSE THE DEATH.

7 Q. THE FIRST QUESTION HERE IS, WERE TISSUE SAMPLES
8 SENT FOR A TOXICOLOGY REPORT?

9 A. YES.

10 Q. AND WAS THAT -- WHAT WAS THE RESULT OF THE
11 REPORT; DO YOU HAVE THAT?

12 A. WELL, I COLLECT THE SAMPLES AT THE TIME OF
13 AUTOPSY. AND THEY GET SENT TO THE SHERIFF TOXICOLOGY LAB.
14 GET ANALYZED. AND WE GET A REPORT BACK FROM THEM.

15 Q. DID THAT REPORT ADD TO YOUR OPINION?

16 A. SOMETIMES, NOT IN THIS CASE.

17 Q. NOT IN THIS CASE?

18 A. THAT IS CORRECT.

19 Q. OKAY. SO THEN ANOTHER QUESTION WOULD BE WHETHER
20 OR NOT ANY DRUGS WERE FOUND IN THE TOXICOLOGY REPORT, AND I
21 WOULD JUST ASK YOU PRELIMINARILY, DID YOU CONSIDER THE
22 PRESENCE OR ABSENCE OF ANY DRUGS IN FORMING YOUR OPINION AS
23 TO THE CAUSE OF DEATH?

24 A. THE TOX REPORT WHICH CAME TO US DOESN'T SHOW
25 ANYTHING WHICH IS A CONTRIBUTING CAUSE OF DEATH. SO --

26 Q. IF THERE WERE ANY DRUGS PRESENT, WOULD THAT THEN

1 ADD TO YOUR OPINION AS TO THE CAUSE OF DEATH?

2 A. THAT IS CORRECT.

3 Q. AND SO WHAT YOU ARE SAYING HERE IS THE TOXICOLOGY
4 REPORT SHOWED NO DRUGS?

5 A. THAT IS CORRECT.

6 Q. AND WHAT ABOUT ALCOHOL?

7 A. THERE IS NO ALCOHOL AT THE TIME OF TOXICOLOGY.

8 AS I SAID, ALL THE TOX LAB RESULTS CAME OUT NEGATIVE FOR THE
9 TOXICOLOGY REPORT.

10 Q. OKAY. AND DID YOU DO ANYTHING TO DETERMINE THE
11 AGE OF THE INJURIES THAT CAUSED THE DEATH IN THIS CASE?

12 A. YES, I DID.

13 Q. WHAT DID YOU DO IN THAT REGARD?

14 A. MICROSCOPIC EXAMINATION OF THE INJURIES, I TOOK
15 SECTIONS OF DIFFERENT AREAS AND DETERMINED.

16 Q. WHAT DID YOU LEARN AS A RESULT OF THAT?

17 A. WELL, THEY ALL ARE, FIRST THING IS, ALL THE
18 INJURY HAPPENING AT THE SAME TIME, SO THEY ALL HAD THE SAME
19 AGING FACTOR. SO THEY ALL ARE LIKE A FEW DAYS OLD, THAT'S
20 ALL IT IS SHOWING.

21 Q. BUT THAT REPORT THEN, OR THE MICROSCOPIC
22 EXAMINATION INDICATES TO YOU THAT THE INJURIES ALL HAPPENED
23 AROUND THE SAME TIME?

24 A. THAT IS CORRECT.

25 MR. RACKAUKAS: I HAVE NO FURTHER QUESTIONS.

26 ARE THERE ANY OTHER QUESTIONS?

1 THE GRAND JURY FOREPERSON: ANY OTHER QUESTIONS FROM
2 THE GRAND JURY?

3 (AFFIRMATIVE RESPONSE.)

4 THE GRAND JURY FOREPERSON: WE HAVE ONE.

5 MR. RACKAUKAS: THANK YOU, I HAVE ONE MORE, I WILL PUT
6 IT IN GRAND JURY EXHIBIT 117.

7 Q. BY MR. RACKAUCKAS: THE QUESTION IS, COULD THERE
8 HAVE BEEN ALCOHOL IN HIS SYSTEM AT THE TIME OF THE INCIDENT
9 THAT WOULD BE GONE BY THE TIME OF DEATH?

10 A. THAT IS CORRECT.

11 MR. RACKAUKAS: THAT'S IT.

12 THE GRAND JURY FOREPERSON: NO FURTHER QUESTIONS?

13 (NO AFFIRMATIVE RESPONSE).

14 THE GRAND JURY FOREPERSON: DR. SINGHANIA, WOULD YOU
15 PLEASE STAND.

16 THE WITNESS: (WITNESS COMPLIES).

17 THE GRAND JURY FOREPERSON: DR. SINGHANIA, YOU ARE
18 ADMONISHED TO NOT DISCUSS OR REPEAT AT ANY TIME OUTSIDE THIS
19 COURTROOM THE QUESTIONS YOU HAVE BEEN ASKED OR YOUR ANSWERS,
20 WITH THE UNDERSTANDING THAT SUCH DISCLOSURES ON YOUR PART
21 MAY BE THE BASIS FOR CHARGES AGAINST YOU OF CONTEMPT OF
22 COURT.

23 YOU ARE FREE TO SEEK LEGAL ADVICE FROM AN
24 ATTORNEY, OR FROM THE DISTRICT ATTORNEY'S OFFICE.

25 DO YOU UNDERSTAND?

26 THE WITNESS: I DO.

1 THE GRAND JURY FOREPERSON: DR. SINGHANIA, THANK YOU
2 FOR TESTIFYING, YOU ARE EXCUSED FROM THE HEARING.

3 THE WITNESS: THANK YOU.

4 MR. RACKAUKAS: DOCTOR, THANK YOU SO MUCH, I APPRECIATE
5 IT.

6 THE GRAND JURY FOREPERSON: MR. DISTRICT ATTORNEY, AT
7 THIS TIME I WOULD LIKE TO TAKE A BREAK.

8 WE WILL BE IN RECESS UNTIL 10:25 BY THAT CLOCK.

9 DURING ANY PERIOD OF THIS RECESS YOU MUST NOT
10 DISCUSS WITH ANYONE, EITHER INSIDE OR OUTSIDE OF THIS
11 HEARING ROOM, ANY SUBJECT CONNECTED WITH THIS HEARING.
12 THANK YOU.

13 (RECESS TAKEN.)

14 (THE FOLLOWING PROCEEDINGS WERE HELD IN THE GRAND
15 JURY ROOM:)

16 THE GRAND JURY FOREPERSON: WE ARE HERE AGAIN IN
17 SESSION ON THE JOSEPH ANDREW WOLFE HEARING.

18 LET THE RECORD REFLECT THAT ALL THE SAME 16
19 MEMBERS OF THE GRAND JURY ARE AGAIN PRESENT.

20 MR. DISTRICT ATTORNEY, YOU MAY CALL YOUR NEXT
21 WITNESS.

22 MR. RACKAUKAS: THANK YOU, MR. FOREMAN, THE PEOPLE
23 WOULD CALL DR. MCNAMARA.

24 (WHEREUPON JOSEPH MCNAMARA ENTERED THE GRAND JURY
25 ROOM.)

26 THE GRAND JURY FOREPERSON: PLEASE RAISE YOUR RIGHT

1 HAND.

2

JOSEPH MCNAMARA,

3 CALLED AS A WITNESS BEFORE THE GRAND JURY, HAVING BEEN FIRST
4 DULY SWORN, WAS EXAMINED AND TESTIFIED AS FOLLOWS:

5 THE GRAND JURY FOREPERSON: PLEASE STATE YOUR NAME AND
6 SPELL IT OUT FOR OUR RECORD.

7 THE WITNESS: JOSEPH D. MCNAMARA.

8 THE GRAND JURY FOREPERSON: SPELL IT OUT FOR THE
9 RECORD.

10 THE WITNESS: I AM SORRY. IT IS M-C, CAPITAL,
11 N-A-M-A-R-A.

12 THE GRAND JURY FOREPERSON: HAVE A SEAT, PLEASE.

13 THE WITNESS: (WITNESS COMPLIES).

14 THE GRAND JURY FOREPERSON: MR. DISTRICT ATTORNEY, THE
15 WITNESS IS YOURS.

16 MR. RACKAUKAS: THANK YOU VERY MUCH.

17

EXAMINATION

18 Q. BY MR. RACKAUCKAS: SIR, BEFORE WE START I HAVE AN
19 ADMONITION FROM THE GRAND JURY TO READ TO YOU.

20 AND IT SAYS AS FOLLOWS:

21 BEFORE WE BEGIN I WOULD LIKE TO ADVISE YOU YOU
22 ARE NOW APPEARING BEFORE A DULY CONSTITUTED GRAND JURY THAT
23 IS INVESTIGATING POSSIBLE VIOLATIONS OF STATE CRIMINAL LAW.

24 DO YOU UNDERSTAND THAT?

25 A. YES.

26 Q. YOU HAVE BEEN PLACED UNDER OATH, AND THAT MEANS

1 YOUR TESTIMONY HERE TODAY HAS THE SAME FORCE AND EFFECT AS
2 IF YOU WERE IN A COURT OF LAW.

3 DO YOU UNDERSTAND THAT?

4 A. I DO.

5 Q. THAT MEANS THAT YOU HAVE AN OBLIGATION TO TELL
6 THE TRUTH AND NOTHING BUT THE TRUTH IN THIS PROCEEDING, OR
7 YOU COULD SUBJECT YOURSELF TO A POSSIBLE PROSECUTION FOR
8 PERJURY.

9 DO YOU UNDERSTAND THAT?

10 A. I DO.

11 Q. AND BEFORE -- WELL, WHAT I WOULD LIKE TO START
12 WITH IS IF YOU COULD JUST TELL US IN GENERAL WHAT HAS BEEN
13 YOUR OCCUPATION FOR THE LAST 30 OR 40 YEARS?

14 A. WELL, WHEN I WAS 21 YEARS OLD I BECAME A NEW YORK
15 CITY POLICEMAN. AND I WALKED A BEAT IN HARLEM, WHICH AT THE
16 TIME WAS THE HIGHEST CRIME AREA IN NEW YORK CITY.

17 AND I WORKED MY WAY UP THROUGH THE RANKS AND
18 ATTENDED COLLEGE PART-TIME.

19 WHEN I REACHED THE RANK OF LIEUTENANT, THE
20 N.Y.P.D. SENT ME ON A YEAR'S FELLOWSHIP TO HARVARD LAW
21 SCHOOL, WHERE I STUDIED CRIMINAL JUSTICE ISSUES.

22 I THEN TOOK A TWO-YEAR LEAVE WITHOUT PAY AND
23 ENTERED JOHN F. KENNEDY GRADUATE SCHOOL OF GOVERNMENT, WHERE
24 I EVENTUALLY OBTAINED A DOCTORATE IN PUBLIC ADMINISTRATION.

25 I RETURNED TO THE N.Y.P.D. AND RECEIVED A COUPLE
26 MORE PROMOTIONS.

1 AND THEN WAS APPOINTED POLICE CHIEF OF KANSAS
2 CITY, MISSOURI, WHERE I STAYED FOR THREE YEARS.

3 AND THEN CAME TO SAN JOSE, CALIFORNIA, WHERE I
4 WAS CHIEF FOR 15 YEARS.

5 AND THEN WAS OFFERED A FELLOWSHIP AT THE HOOVER
6 INSTITUTION AT STANFORD UNIVERSITY AS A RESEARCH FELLOW, AND
7 I HAVE BEEN THERE FOR 20 YEARS, STUDYING POLICE AND CRIMINAL
8 JUSTICE ISSUES.

9 Q. WHAT IS A FELLOWSHIP?

10 A. A FELLOWSHIP IS AN APPOINTMENT THAT UNIVERSITIES
11 GIVE, AND IT IS A TITLE AND IT SIGNIFIES THAT YOU ARE A
12 SCHOLAR AND AN EXPERT IN YOUR FIELD, AND CARRIES WITH IT THE
13 OBLIGATION TO DO OBJECTIVE AND IMPARTIAL RESEARCH, AND TO
14 WRITE AND LECTURE AND TEACH ABOUT THE ISSUES THAT ARE WITHIN
15 YOUR AREA OF EXPERTISE.

16 Q. AND DO YOU DO THAT, DO YOU WRITE, LECTURE AND
17 TEACH?

18 A. YES, I DO.

19 Q. AND CAN YOU GIVE US SOME INDICATION OF WHAT YOUR
20 PUBLICATIONS HAVE BEEN?

21 A. I HAVE HAD HUNDREDS OF PUBLICATIONS, BOTH WHILE I
22 WAS, OR SOME OF WHICH WHILE I WAS ON ACTIVE DUTY IN
23 POLICING, AND SOME OF WHICH OCCURRED, THE MAJORITY OF WHICH
24 I SUPPOSE OCCURRED AFTERWARDS, WHEN I JOINED THE UNIVERSITY.

25 BUT I WROTE EXTENSIVELY ON THE POLICE USE OF
26 FORCE. ON THE POLICE ROLE IN A DEMOCRACY. ON THE HISTORY

1 OF POLICING IN DEMOCRATIC SOCIETIES. AND ON THE POLITICAL
2 INTERACTION WITH POLICE. AND ON UNITED STATES DRUG CONTROL
3 POLICIES. AMONG MANY OTHER SUBJECTS INVOLVING POLICE
4 TRAINING, POLICE ADMINISTRATION, POLICE LEADERSHIP.

5 Q. AND WHAT SORT OF TEACHING EXPERIENCE DO YOU HAVE?

6 A. I SHOULD ADD THAT I ALSO WROTE FIVE DETECTIVE
7 FICTION NOVELS, SOME PEOPLE OBSERVED THAT I SNUCK IN MORE
8 TRUTH ABOUT THE INSIDE WORKINGS OF THE CRIMINAL JUSTICE
9 SYSTEM THAN IN SOME OF MY ACADEMIC WRITINGS.

10 Q. SOME OF THE REAL STORIES MAY BE BETTER THAN
11 FICTION?

12 A. THE STORIES ARE WONDERFUL.

13 Q. AND SO TELL US ABOUT YOUR TEACHING EXPERIENCE.

14 A. I WAS, AS A SUPERIOR OFFICER WITH THE N.Y.P.D.,
15 AN INSTRUCTOR IN THE POLICE ACADEMY RECRUIT CLASSES FOR A
16 NUMBER OF YEARS.

17 AND AS A LIEUTENANT, I WAS PUT IN CHARGE OF THE
18 CURRICULUM, TO IMPROVE THE CURRICULUM DURING A YEAR IN WHICH
19 WE HAD SOME ROUGHLY 4,000 POLICE RECRUITS GO THROUGH THE
20 N.Y.P.D. ACADEMY. THAT WAS IN THE DAYS WHEN CITIES HAD
21 MONEY.

22 I ALSO TAUGHT, WHILE I WAS A GRADUATE STUDENT AT
23 HARVARD, I TAUGHT A COURSE AT NORTHEASTERN UNIVERSITY ON
24 POLICE SUPERVISION.

25 AND THEN WHEN I RETURNED TO THE N.Y.P.D. I WAS
26 APPOINTED AN ADJUNCT PROFESSOR AT JOHN JAY COLLEGE OF

1 CRIMINAL JUSTICE, THE COLLEGE FROM WHICH I HAVE MY BACHELORS
2 DEGREE IN POLICE SCIENCE.

3 AND THEN WHEN I WAS CHIEF IN KANSAS CITY, I
4 TAUGHT A COUPLE OF COURSES AT RUTGERS COLLEGE ON ETHICAL
5 DECISION MAKING AND CRIMINAL JUSTICE, AND ON POLICE
6 ADMINISTRATION.

7 AND I HAVE GIVEN MANY LECTURES AT STANFORD AND
8 HARVARD AND YALE, NOT YALE, BUT OTHER UNIVERSITIES.

9 AND I DID TEACH TWO COURSES AT STANFORD, AND
10 THREE OR FOUR AT SAN JOSE STATE, ON VARIOUS ASPECTS OF
11 POLICE ADMINISTRATION AND POLICE OPERATIONS.

12 Q. SO WHAT WOULD BE ONE OF THE COURSES THAT YOU
13 TEACH AT STANFORD?

14 A. OH, WELL, THE FIRST ONE I TAUGHT I MUST SAY WAS
15 POLICE DETECTIVE FICTION. AND THAT WAS BY FAR THE MOST
16 ATTENDED, 200 STUDENTS SIGNED UP. I HAD THOUGHT WE WERE
17 GOING TO HAVE A SEMINAR OF 10 OR 12 PEOPLE THAT LOVED TO
18 READ FICTION AND SIT AROUND AND TALK ABOUT IT, INSTEAD I HAD
19 TO DO LECTURES FOR 10 WEEKS TO 200 PEOPLE.

20 THE OTHER COURSE WAS THE HISTORY OF THE UNITED
21 STATES DRUG ENFORCEMENT FROM 1914, WHEN THE HARRISON ACT
22 CRIMINALIZED OPIUM IN THE UNITED STATES.

23 Q. AND HOW ABOUT SAN JOSE STATE?

24 A. IN SAN JOSE STATE I TAUGHT A POLICE
25 ADMINISTRATION, A POLICE DECISION MAKING, AND A COUPLE OF
26 OTHER COURSES.

1 I SHOULD MENTION ALSO THAT ONE OF THE MOST
2 NOTICEABLE THINGS I DID AT STANFORD WAS TO HOLD NATIONAL
3 CONFERENCES ON DRUG CONTROL POLICY. FOUR CONFERENCES OVER A
4 PERIOD OF EIGHT YEARS THAT WERE VERY DISTINGUISHED, AND HAD
5 VERY WELL KNOWN EXPERTS FROM THROUGHOUT THE COUNTRY, THAT
6 WERE OPEN TO INVITATION TO POLICE CHIEFS AND TO RANKING
7 OFFICERS. AND INDEED TO RANK AND FILE OFFICERS AS WELL.

8 AND THOSE CONFERENCES WERE WELL ATTENDED AND WELL
9 PUBLICIZED.

10 Q. SO WHEN YOU STARTED, GETTING AWAY FROM THE
11 EDUCATION NOW, BACK TO THE PRACTICAL EXPERIENCE, WHEN YOU
12 STARTED AS A POLICE OFFICER IN NEW YORK, WAS N.Y.P.D., WAS
13 THAT YOUR FIRST JOB AS A POLICE OFFICER?

14 A. YES, IT WAS.

15 Q. WHAT YEAR WAS THAT?

16 A. THAT WAS 1956.

17 Q. '56.

18 A. I ALSO, BY THE WAY, MENTIONED THAT UNCLE SAM
19 DESIRED MY SERVICE FOR TWO YEARS, AND I WAS DRAFTED FROM THE
20 HIGHEST CRIME AREA IN NEW YORK CITY AND ASSIGNED TO MAN A
21 TYPEWRITER IN LOS ANGELES.

22 BUT DURING THE TIME I WAS THERE, IT WAS A NIKE
23 MISSILE BATTALION WHICH WAS SET TO PROTECT LOS ANGELES FROM
24 RUSSIAN MISSILES, AND DURING THE YEAR AND A HALF I WAS THERE
25 NOT A SINGLE RUSSIAN MISSILE LANDED IN LOS ANGELES.

26 MR. RACKAUCKAS: SO YOU PROTECTED US, THANK YOU.

1 (LAUGHTER.)

2 Q. BY MR. RACKAUCKAS: SO YOUR FIRST JOB AS A POLICE
3 OFFICER IN NEW YORK, CAN YOU DESCRIBE THAT WORK?

4 A. NEW YORK CITY THEN AND NOW, TO A GREAT EXTENT,
5 RELIES ON FOOT PATROL. IT IS QUITE A LARGE CITY OF 320
6 SQUARE MILES, BUT WE WORKED IN ONE SQUARE MILE. AND THAT
7 ONE SQUARE MILE HAD ABOUT 10 PERCENT OF THE CITY'S HOMICIDES
8 YEAR AFTER YEAR. SO IT WAS THE MOST CRIME RIDDEN, POOREST
9 AREA OF NEW YORK CITY.

10 AND MY FIRST ARREST STICKS IN MY MIND, BECAUSE I
11 ENDED UP APPEARING BEFORE A GRAND JURY WHEN I ARRESTED A MAN
12 THAT I HAD OBSERVED IN A FIGHT, AND HE WAS INDICTED FOR
13 FIRST DEGREE MURDER.

14 AND WE WALKED FOOT PATROL IN THOSE DAYS SOLO,
15 WITHOUT ANY RADIO COMMUNICATION, AND WITHOUT ANY BULLET
16 PROOF VESTS, AND IT WAS A DIFFERENT VIEW OF POLICING. AND
17 MOST OF IT IN HARLEM PUT GREAT RELIANCE ON POLICE OFFICERS,
18 AND IT WAS SORT OF A BADGE OF HONOR TO WORK IN THAT AREA,
19 WHICH HAD SO MANY POOR AND NEEDY PEOPLE THAT WERE SO BADLY
20 VICTIMIZED, THAT WE REALLY FELT THAT WE WERE DOING SOMETHING
21 IMPORTANT. AND I STILL FEEL THE SAME WAY.

22 Q. HOW LONG DID YOU WORK IN THAT SQUARE MILE?

23 A. ALL IN ALL, AS I MENTIONED TO YOU, THIS IS
24 COMPLICATED, BECAUSE SOMETIMES I DON'T REMEMBER THE DETAILS,
25 I DID HAVE TWO YEARS OFF FOR THE UNITED STATES ARMY.

26 Q. 1956 ISN'T ENTIRELY COMPLETELY FRESH IN YOUR

1 MIND?

2 A. '56 WAS POLICE ACADEMY TRAINING, WHICH WAS 18
3 WEEKS, THE MOST ADVANCED TRAINING AT THE TIME OUTSIDE OF THE
4 F.B.I.

5 AND THEN FROM 1958 TO 1960 I WAS IN THE ARMY.

6 AND THEN FROM 1960 TO '64 I WAS A PATROL OFFICER.

7 AND IN 1964 PROMOTED TO A SUPERIOR OFFICER, WHERE
8 I ALTERNATED BETWEEN PATROL AND TEACHING IN THE POLICE
9 ACADEMY. AND THEN COMPLETED MY BACCALAUREATE STUDIES
10 PART-TIME ON MY OWN TIME.

11 Q. AS A PATROL OFFICER, WAS THAT ALL FOOT PATROL?

12 A. WAS IT WHAT?

13 Q. WAS IT ALL ON FOOT?

14 A. NO, ACTUALLY I GOT PROMOTED INTO A RADIO CAR AS A
15 RESULT OF THE HOMICIDE ARREST, AND SPENT PERHAPS THREE OR
16 FOUR YEARS IN A PATROL CAR, WHICH WAS A WONDERFUL EXPERIENCE
17 BECAUSE YOU JUST NEVER STOPPED. THE SAYING WAS IF YOU
18 WANTED TO BE A MEDICAL DOCTOR, THE BEST PLACE TO BE AN
19 INTERN WAS BELLEVUE HOSPITAL, BECAUSE YOU SAW EVERYTHING
20 THAT A DOCTOR WOULD SEE. AND THAT WAS SAID ABOUT THE 28TH
21 PRECINCT WHERE I WORKED. AND THREE OR FOUR YEARS THAT I WAS
22 IN A PATROL CAR, I SAW MORE POLICE WORK THAN ANY OF THE
23 OFFICERS I LATER SUPERVISED AS POLICE CHIEF.

24 Q. WHILE YOU WERE ON FOOT PATROL YOU WERE PATROLLING
25 INDIVIDUAL, ONE OFFICER, NOT A PARTNER?

26 A. YEAH, IN THOSE DAYS THEY DID ONE OFFICER. THEY

1 NOW DO TWO. BUT THAT WAS A CHANGE.

2 Q. AS THIS INDIVIDUAL OFFICER ON FOOT PATROL, DID
3 YOU MAKE ANY ARRESTS?

4 A. YES, I MADE MANY ARRESTS, RANGING FROM, AS I
5 MENTIONED, FIRST DEGREE MURDER ARREST TO SHOOTINGS, TO
6 RAPES, TO ARMED ROBBERIES, KIDNAPPING AND SO ON. AS I
7 MENTIONED, IT WAS, IF YOU DESIGNED A CAREER SO SOMEONE COULD
8 GAIN A LOT OF POLICE EXPERIENCE, THAT WAS THE PLACE TO
9 ASSIGN THEM.

10 Q. AND WHAT ABOUT INCIDENTS SHORT OF ARRESTS, WHERE
11 YOU MIGHT JUST STOP AND TALK TO SOMEBODY, MAYBE ASK THEM A
12 FEW QUESTIONS, THINGS LIKE THAT?

13 A. YES, I MEAN THE FACT WHEN YOU WALK A FOOT BEAT,
14 YOU WERE PART OF THAT COMMUNITY. AND YOU GOT TO KNOW
15 PEOPLE, AND THEY GOT TO KNOW YOU. AND YOU KNEW HOW TO TALK
16 TO PEOPLE, AND HOW TO QUESTION PEOPLE. AND YOU ARE ALWAYS
17 CONSCIOUS OF THE FACT THAT YOU NEEDED FRIENDS.

18 BECAUSE THE COMMUNICATION SYSTEM JUST DID NOT
19 EXIST. AND IF AN OFFICER NEEDED HELP IN THE STREET, WHICH
20 WAS NOT UNCOMMON BECAUSE WE WERE PLAGUED BY VIOLENCE, WHERE
21 OFFICERS WERE SURROUNDED AND ATTACKED, YOU DEPENDED UPON
22 SOME CITIZEN TO, AS THE POLICE LINGO TERMED IT, TO DROP A
23 DIME, TO CALL AND SAY AN OFFICER WAS IN TROUBLE.

24 SO I THINK THERE WAS A CLOSENESS THERE THAT YOU
25 DON'T ALWAYS GET FROM RADIO MOTOR PATROL, EVEN THOUGH, OF
26 COURSE, BOTH ARE NECESSARY.

1 Q. AND WHEN YOU GOT IN THE CAR, IN A PATROL CAR, DID
2 YOU HAVE A PARTNER THEN, OR WERE YOU ALONE IN THE CAR?

3 A. YES, YOU ALWAYS HAD A PARTNER, RULES BACK THEN
4 REQUIRED TWO OFFICERS IN PATROL CARS. AND I WAS FORTUNATE
5 TO HAVE A VERY GOOD PARTNER FOR ABOUT FOUR YEARS. BUT GIVEN
6 THE NATURE OF POLICE WORK, WE WERE FREQUENTLY OFF IN COURT
7 TESTIFYING, OR ON A TRAINING MISSION OR SOMETHING OTHER THAN
8 THAT, SO YOU HAD MANY FILL IN PARTNERS AS WELL.

9 Q. BUT DURING THAT TIME PERIOD WHEN YOU WERE DOING
10 CAR PATROL, DID YOU -- WERE YOU CALLED UPON TO MAKE ARRESTS
11 ON MANY OCCASIONS?

12 A. YES, WE MADE MANY, MANY ARRESTS, AND I AM NOT
13 JUST SINGLING US OUT, BECAUSE I THINK THAT WAS THE
14 ENVIRONMENT, AND THE OFFICERS IN THAT PRECINCT WERE, YOU
15 KNOW, IN GENERAL HIGHLY REGARDED. WE WERE VERY BUSY AND WE
16 MADE A LOT OF ARRESTS.

17 Q. DO YOU HAVE ANY ESTIMATE, ANY ESTIMATE AS TO HOW
18 MANY ARRESTS YOU MADE WHILE YOU WERE BOTH ON FOOT PATROL AND
19 CAR PATROL WITH NEW YORK POLICE DEPARTMENT?

20 A. HUNDREDS, I COULDN'T GO MORE SPECIFIC THAN THAT.

21 Q. WHAT ABOUT TYPES, KINDS OF CRIMES THAT YOU MIGHT
22 HAVE ARRESTED PEOPLE FOR?

23 A. WELL, AS I MENTIONED, MANY OF THE CRIMES WERE
24 PERSON CRIMES, AS WE SAY, CRIMES AGAINST THE PERSON. AND
25 INVOLVED VIOLENCE. AND DANGER.

26 AND THERE WERE MANY OTHER CASES WHERE WE HAD

1 DOMESTIC QUARRELS AND OTHER QUARRELS, WHERE THE THREAT OF
2 VIOLENCE WAS IMMINENT, AND WE, AS WE WOULD PUT IT, WE TALKED
3 IT DOWN, WAS THE PHILOSOPHY OF POLICING THAT WAS VERY MUCH
4 IN EVIDENCE IN THAT PARTICULAR ENVIRONMENT. THAT OFFICERS
5 WHO WERE EXPECTED TO BE SKILLED AT DE-ESCALATING VIOLENCE
6 AND NOT CONTRIBUTING TO IT. BECAUSE WE WOULD GET OCCASIONS
7 WHERE AN OFFICER DIDN'T DO THAT, AND THE WHOLE PRECINCT, IN
8 FACT SOMETIMES THE WHOLE CITY, WAS PLUNGED INTO RIOTS, WHICH
9 PROBABLY SOME OF YOU SAW ON TELEVISION.

10 Q. AND WERE YOU ON PATROLS IN ANY OTHER POLICE
11 DEPARTMENTS, OR WAS IT JUST NEW YORK?

12 A. NEW YORK. THE ONLY TWO OTHER POLICE DEPARTMENTS
13 I WORKED FOR WERE KANSAS CITY AND SAN JOSE, WHERE I WAS
14 CHIEF. BUT, OF COURSE, I DID PATROL OCCASIONALLY AS PART OF
15 MY JOB AS CHIEF.

16 Q. AND AS A POLICE OFFICER, IN WHATEVER RANK YOU
17 MIGHT HAVE BEEN, DID YOU HAVE AN OPPORTUNITY TO TEACH POLICE
18 CONDUCT?

19 A. YES, PART OF YOUR RESPONSIBILITY, NOT JUST IN THE
20 POLICE ACADEMY WORK, WHICH I THOUGHT WAS EXTREMELY IMPORTANT
21 IN MY CAREER AND VERY ENJOYABLE, AS A SUPERIOR OFFICER YOU
22 ARE TEACHING, AND AS POLICE CHIEF YOU ARE TEACHING
23 EXTENSIVELY, BECAUSE YOU ARE THE LEADER OF THE DEPARTMENT,
24 AND YOU ARE SETTING THE TONE.

25 AND IT'S A VERY DIFFICULT TASK SOMETIMES, BECAUSE
26 YOU ARE TORN ON PARTICULAR ISSUES, AND WHILE YOU WANT TO BE

1 LOYAL TO POLICE OFFICERS, AT THE SAME TIME AS POLICE CHIEF
2 FOREMOST IN YOUR JUDGMENT IS THAT, AND YOUR RESPONSIBILITY
3 IS THAT THE FUNDAMENTAL DUTY OF THE POLICE IS TO PROTECT
4 LIFE AND PROPERTY. AND SOMETIMES THE POLICE UNION CHASTISED
5 ME FOR EMPHASIZING THAT MORE THAN OTHER AREAS WHICH THEY
6 WOULD PREFER.

7 BUT I THINK IN SETTING THE TONE, IT'S SO
8 IMPORTANT WHEN I WAS CHIEF IN KANSAS CITY, MISSOURI, I WAS
9 CHIEF FOR ABOUT A WEEK. AND AN OFFICER SHOT AND KILLED RORY
10 LAW, WHO WAS A 14 YEAR OLD BOY WHO WEIGHED 105 POUNDS AND
11 WAS FIVE FEET TALL. AND HE WAS RUNNING AWAY FROM A BREAK-IN
12 OF AN UNOCCUPIED RESIDENCE. AND AN OFFICER JUST RAISED HIS
13 SHOTGUN AND KILLED THIS YOUNGSTER.

14 AND I WAS A BRAND NEW POLICE CHIEF. AND MY TOP
15 ADVISORS, TOP BRASS AND CITY, THE DEPARTMENT ATTORNEY URGED
16 ME TO JUST TAKE NO ACTION, AS THIS HAD REALLY OCCURRED NOT
17 ON MY WATCH, I COULDN'T BE HELD RESPONSIBLE. BUT I THOUGHT
18 THAT WAS TERRIBLY WRONG.

19 SO AS A RESULT OF THAT, I CHANGED THE FIREARMS
20 POLICY, WHICH REDUCED THE POLICE SHOOTINGS IN HALF. OVER
21 TIME, AND THAT HAS BEEN FEATURED IN A COUPLE OF STUDIES OF
22 POLICING IN WHICH CHIEF MCNAMARA'S POLICIES WORK TO REDUCE
23 POLICE HOMICIDES.

24 A KEYNOTE TO THAT, IF I MAY, IS THAT IT IS MY
25 PHILOSOPHY OF POLICING THAT THE POLICE CANNOT PREVENT CRIME
26 AND PROTECT SOCIETY WITHOUT SOCIETY'S COOPERATION, AND THAT

1 REQUIRES A CERTAIN LEVEL OF TRUST. AND TO CREATE A SENSE OF
2 PARTNERSHIP WHERE PEOPLE WILL CALL 911 AND REPORT A CRIME,
3 WHERE PEOPLE WILL COME FORWARD AS A WITNESS, WHERE PEOPLE
4 WHO SIT ON A JURY WILL BELIEVE THE POLICE TESTIMONY,
5 REQUIRES THAT THE POLICE PERFORM IN A WAY THEY CAN BE
6 TRUSTED.

7 SO I FELT WE DIDN'T BECOME POLICEMEN TO KILL
8 CHILDREN, AND I CHANGED THAT POLICY, AND I THINK, FRANKLY,
9 IT WAS THE FINEST THING I EVER DID IN POLICE WORK. BUT AT
10 THE SAME TIME IT REDUCED CRIME, AND I AM CONVINCED THAT THE
11 REASON THAT IT DID IS FOR THE FIRST TIME WE GOT COOPERATION
12 WITH MANY NEIGHBORHOOD GROUPS AND ORGANIZATIONS AND LEADERS,
13 WHO HAD BEEN VERY DISTRUSTFUL OF THE POLICE AND WHO NOW SAW
14 A DIFFERENT ATTITUDE.

15 Q. SO THEN LET ME JUST TAKE YOU, YOU HAVE BEEN
16 INVOLVED IN FORMING, SHAPING, MAKING POLICE POLICY, NOT JUST
17 THAT OCCASION BUT OTHER OCCASIONS AS WELL?

18 A. YES.

19 Q. AND HAVE YOU BEEN INVOLVED IN WRITING POLICE
20 MANUALS?

21 A. YES. AND THE FIRST ARTICLE THAT I WROTE IN FACT
22 WAS A JOINT ARTICLE WITH SEVERAL, WITH THREE OTHER OFFICERS,
23 WHICH WAS PUBLISHED IN THE F.B.I. JOURNAL. AND WE GOT A
24 NICE LETTER OF COMMENDATION FROM J. EDGAR HOOVER, SO THAT
25 WAS KIND OF AN UNUSUAL THING.

26 BUT TO A GREAT EXTENT, THE POLICE LEADER'S JOB IN

1 SOME OF THE AREAS THAT I LATER WORKED WAS IN FORMULATING THE
2 RULES FOR THE POLICE CHIEF, AND THEN LATER AS POLICE CHIEF,
3 OF COURSE, THE BUCK STOPS THERE, YOU ARE THE ONE RESPONSIBLE
4 FOR THE OFFICER'S CONDUCT. AND YOU HAVE A GREAT DEAL OF
5 RESPONSIBILITY TO MAKE SURE THE RULES ARE WHAT THEY SHOULD
6 BE, AND NOT ONLY THAT, BUT THEY ARE FOLLOWED.

7 WHEN I LEFT KANSAS CITY, WITHIN A FEW MONTHS THE
8 SHOOTING RATE WENT RIGHT BACK TO WHERE IT HAD BEEN. AND,
9 YET, YOU KNOW, THE POLICY WAS BASICALLY THE SAME, IT WAS
10 JUST THAT SOME THINGS THERE CHANGED. AND IN TERMS OF THE
11 CHIEF HAS THE RESPONSIBILITY TO ENLIST SUPPORT FROM HIS OWN
12 COMMAND STAFF AND TO MAKE SURE THAT THE DEPARTMENT
13 PHILOSOPHY IS BEING FOLLOWED AT 2:00 IN THE MORNING, WHEN
14 THE CHIEF WILL NOT BE ON THE SCENE.

15 Q. SO WERE YOU RETAINED AS AN EXPERT TO SHARE YOUR
16 OPINIONS WITH US ON THE KELLY THOMAS MATTER?

17 A. YES.

18 Q. AND THAT WAS BY THE D.A.'S OFFICE, BY MYSELF AND
19 THE D.A.'S OFFICE?

20 A. THAT IS CORRECT.

21 Q. AND DID YOU DO THAT BECAUSE YOU LOVE TO HAVE
22 THESE OPINIONS, OR DID YOU ALSO HAVE TO GET PAID?

23 A. I THINK THE KEY FACTOR THAT I CENTERED ON IN
24 ANALYZING THIS INCIDENT --

25 Q. LET'S TALK ABOUT THE MONEY FIRST.

26 A. ABOUT MONEY?

1 Q. THE MONEY, I THINK IT IS IMPORTANT THAT PEOPLE
2 KNOW WHAT WE ARE PAYING YOU.

3 A. YEAH.

4 Q. SO WHAT IS THAT?

5 A. I DO THIS FOR MONEY. I AM NOT CRYING THE BLUES
6 OR ANYTHING LIKE THAT, BUT BECAUSE I WORK FOR THREE
7 DIFFERENT POLICE DEPARTMENTS AND PENSIONS ARE NOT PORTABLE,
8 I DON'T HAVE ANY PENSION FOR THE LAST 18 YEARS OF SERVICE AS
9 CHIEF. SO I DO CHARGE A GOING RATE OF \$420 AN HOUR FOR
10 CONSULTING.

11 Q. OKAY. AND CAN YOU GIVE US AN IDEA OF HOW MANY
12 HOURS YOU WORKED ON THIS CASE SO FAR?

13 A. I CAN ONLY SPECULATE, BECAUSE I AM NOT A
14 BOOKKEEPER, AS IS PROBABLY APPARENT BY NOW. BUT MY GUESS
15 IS --

16 Q. HOW MUCH DO YOU THINK YOU HAVE BEEN PAID, LET'S
17 GO WITH THAT?

18 A. HOW MUCH WHAT?

19 Q. HOW MUCH HAVE YOU BEEN PAID?

20 A. AGAIN, I AM NOT TOTALLY CERTAIN OF THE AMOUNT,
21 BUT I AM SURE YOUR OFFICE IS.

22 Q. LET ME ASK YOU THIS QUESTION.

23 A. ABOUT \$20,000 SO FAR, I THINK.

24 Q. OKAY. I WAS GOING TO BE A LITTLE MORE -- OKAY.

25 SO SOMEWHERE AROUND IN THAT NEIGHBORHOOD, MAYBE A
26 LITTLE LESS THAN 20,000?

1 A. OH, REALLY? I WILL HAVE TO GO BACK OVER MY
2 RECORDS.

3 Q. JUST KIND OF AN IDEA. SO IT'S \$420 AN HOUR IS
4 THE RATE, JUST SO WE KNOW.

5 SO DID I ASK YOU TO FORM AN OPINION AS TO WHETHER
6 OR NOT OFFICER WOLFE USED EXCESSIVE FORCE?

7 A. YES.

8 Q. AND WHAT DID YOU CONSIDER IN -- WELL, DID YOU
9 EVER FORM AN OPINION CONCERNING THAT?

10 A. I DID FORM AN OPINION, AND MY OPINION --

11 Q. BEFORE YOU GET TO THAT, CAN YOU TELL US WHAT THE
12 THINGS ARE THAT YOU CONSIDERED IN FORMING AN OPINION.

13 A. WHAT I CONSIDERED, BASED UPON MY OWN PERSONAL
14 EXPERIENCE IN HAVING TO USE FORCE AS A POLICE OFFICER, AND
15 ALSO ALL OF THOSE YEARS OF TEACHING AND STUDYING, AND THE 18
16 YEARS AS BEING THE BOSS, OF BEING THE POLICE CHIEF WHO WAS
17 RESPONSIBLE FOR TRAINING AND FOR DISCIPLINE AND FOR JUDGING
18 THESE INCIDENTS, AND MAKING SURE THAT THE PUBLIC COULD TRUST
19 THE POLICE DEPARTMENT THAT WE WERE RUNNING, I CONSIDERED
20 WHAT HAS EVOLVED OVER THE YEARS AS POLICE STANDARDS FOR
21 USING FORCE.

22 TO A GREAT EXTENT THAT IS SET BY THE COURT, AND
23 POLICE RULES AND POLICE TRAINING UNITS WORK FROM THE RULES
24 THAT ARE SET FORTH BY JUDGES AS TO WHAT FORCE SHOULD BE.
25 ALSO INFLUENCED BY THE LEGISLATURE THAT PASSES THE PENAL
26 CODE, WHICH SPECIFIES WHAT KIND OF FORCE THE POLICE CAN USE.

1 AND SO IN A GENERAL SENSE, POLICE OFFICERS ARE
2 GIVEN AND HAVE TO BE GIVEN AUTHORITY TO USE FORCE IN THEIR
3 WORK. AND THAT'S RECOGNIZED. BUT AT THE SAME TIME, IT IS
4 RECOGNIZED THAT THAT FORCE MUST BE REASONABLE.

5 AND OVER THE YEARS, THE TERM OF BALANCE HAS COME
6 INTO PLAY THAT THE FORCE USED BY THE POLICE MUST BE BALANCED
7 WITH THE CONSEQUENCES OF THAT FORCE. AND THAT JUDGMENT ON
8 WHETHER THE POLICE OFFICER WAS USING EXCESSIVE FORCE,
9 ILLEGAL FORCE, WILL BE JUDGED UPON WHAT A REASONABLE OFFICER
10 MIGHT BE EXPECTED TO SEE AS REASONABLE IN THIS SPECIFIC
11 CASE.

12 AND SO IT IS A DIFFERENT KIND OF JUDGMENT THAN
13 SAYING WHAT COLOR IS THE LIGHT, IS IT RED OR GREEN AND SO
14 ON, IT REQUIRES SEEING WHAT WAS REASONABLE IN THE MINDS OF
15 THOSE POLICE OFFICERS AS THEY ENTERED AND GOT INVOLVED IN
16 THIS INCIDENT, AND COMPARING THAT TO WHAT WE THINK A
17 REASONABLE OFFICER WOULD DO.

18 Q. AND DID YOU CONSIDER ANY MATERIALS THAT YOU
19 RECEIVED FROM MY OFFICE?

20 A. I CONSIDERED ALL THE MATERIALS FROM YOUR OFFICE,
21 INCLUDING THE VIDEO DISKS AND THE VARIOUS TRANSCRIPTS AND
22 RECORDS THAT YOU FORWARDED TO ME.

23 Q. AND IN GENERAL, CAN YOU TELL US WHAT THOSE ARE,
24 WHAT OTHER RECORDS YOU HAD BESIDES THE VIDEO DISKS?

25 A. WHAT OTHER RECORDS FROM YOUR OFFICE?

26 Q. YES.

1 A. THERE WERE TRANSCRIPTS FROM A NUMBER OF
2 WITNESSES. THERE WERE TRANSCRIPTS FROM THE COMMUNICATIONS
3 DISPATCHER. THERE WERE THE RECORDS OF THE CORONER. AND
4 RULES OF THE FULLERTON POLICE DEPARTMENT.

5 I CONSIDERED SOME OF MY OTHER WORK FROM MY OWN
6 RESEARCH, THE POLICE CODE OF ETHICS, THE VARIOUS
7 PROCLAMATIONS THAT HAVE BEEN SET FORWARD AS BEST PRACTICES
8 IN POLICING, THAT ARE ACKNOWLEDGED TO BE BEST PRACTICES IN
9 POLICING. AND A WHOLE VARIETY OF INFLUENCES THAT HAVE BEEN
10 PART OF MY LIFE SINCE I WAS 21.

11 Q. AND IN VIEWING THE VIDEO, WAS IT POINTED OUT TO
12 YOU WHO THE INDIVIDUAL OFFICERS WERE; WHICH ONE WAS OFFICER
13 RAMOS, WHICH ONE WAS OFFICER WOLFE?

14 A. YES.

15 Q. AND WHAT WAS YOUR OPINION AS TO WHETHER OR NOT
16 OFFICER -- AFTER VIEWING THE VIDEO AND REVIEWING THIS
17 MATERIAL, WHAT WAS YOUR OPINION AS TO WHETHER OR NOT OFFICER
18 WOLFE USED EXCESSIVE FORCE IN THIS INCIDENT WITH KELLY
19 THOMAS?

20 A. MY OPINION WAS THAT OFFICER WOLFE USED EXCESSIVE
21 FORCE, AND IN FACT ACCELERATED MORE THAN, OR AS MUCH AS
22 ANYONE ELSE IN THE TRAGIC RESULT IN THIS FORCE THAT WAS USED
23 AGAINST KELLY THOMAS.

24 Q. SO AT WHAT POINT WOULD YOU SAY, IF YOU CAN
25 PINPOINT ANYTHING, AT WHAT POINT WOULD YOU SAY THE USE OF
26 EXCESSIVE FORCE BY OFFICER WOLFE STARTED TO TAKE PLACE?

1 A. WELL, IN MY MIND THE WAY TO ANALYZE INCIDENTS
2 LIKE THIS IS TO CONSIDER, AS I MENTIONED, THE FULLERTON
3 POLICE DEPARTMENT RULES, THE PENAL CODE, AND WHAT WE CALL IN
4 CALIFORNIA, P.O.S.T., CALIFORNIA PEACE OFFICERS STANDARDS
5 AND TRAINING COMMISSION. TO BE A PEACE OFFICER IN THE STATE
6 OF CALIFORNIA, YOU MUST BE LICENSED, AND YOU MUST HAVE
7 SUCCESSFULLY COMPLETED THE TRAINING IN P.O.S.T.

8 AND SO I LOOKED AT THIS SITUATION IN TERMS OF
9 THOSE RULES WHICH THE OFFICERS ARE OBLIGATED TO KNOW AND TO
10 OBEY, AND JUDGED THEM BASED UPON THAT.

11 AND ONE OF THE FIRST THINGS THAT IS UNDER
12 CONSIDERATION IS THE OFFICERS' MIND FRAME AS THEY ENTER INTO
13 THIS SITUATION. WHAT WERE THEY THINKING OF? WAS IT
14 REASONABLE? WERE THEY INFLUENCED BY ANYTHING IMPROPER? AND
15 SO ON.

16 AND THE OTHER ELEMENTS THAT ARE OUTLINED IN
17 DOCUMENTS AND IN TRAINING, AND THAT THE OFFICERS MUST PASS A
18 TEST TO SHOW THAT THEY UNDERSTAND AND THAT THEY KNOW WHAT
19 THE FACTORS ARE IN USING EXCESSIVE FORCE, AND LAYOUT A WHOLE
20 MAYBE SEVEN OR EIGHT DIFFERENT ASPECTS OF IT.

21 WHAT WAS THE INITIAL CONTACT ABOUT? IN THIS
22 CASE, THE CONTACT --

23 Q. LET ME BREAK IT DOWN A LITTLE BIT.

24 SO CONSIDERING THESE STANDARDS THAT WE ARE
25 TALKING ABOUT, IS THERE LIKE A LIST OF STANDARDS THAT YOU
26 LOOK TO IN DETERMINING THE USE OF EXCESSIVE FORCE, WHETHER

1 IT IS REASONABLE OR EXCESSIVE?

2 A. YES.

3 Q. AND CAN YOU TELL US WHAT THAT IS; CAN YOU LIST
4 THOSE, ARE THERE LIKE FOUR OR FIVE OR SIX THINGS?

5 A. WELL, I CAN JUST SAY THAT THEY ARE LISTED IN THE
6 FULLERTON POLICE DEPARTMENT POLICY MANUAL. AND EACH OF THEM
7 THAT I HAVE REVIEWED, I THOROUGHLY AGREE. AND THEY ARE NOT
8 NUMBERED, BUT THEY RUN "A" THROUGH "K," IN HOW YOU
9 DETERMINE, HOW YOU JUDGE WHETHER THE OFFICER WAS USING
10 EXCESSIVE FORCE OR NOT.

11 Q. WOULD YOU TELL US WHAT THOSE ARE.

12 A. YES. THE FIRST ONE IS THE -- YOU WILL HAVE TO
13 EXCUSE MY GLASSES.

14 Q. YOU WANT TO USE MINE?

15 A. I KNOW SOME OF YOU UNDERSTAND THE GLASSES.

16 AND WHAT IT SAYS IS WHAT SHOULD BE TAKEN INTO
17 CONSIDERATION, FACTORS INCLUDE, BUT ARE NOT LIMITED TO:

18 "A. THE CONDUCT OF THE INDIVIDUAL
19 BEING CONFRONTED AS REASONABLY PERCEIVED BY
20 THE OFFICER AT THE TIME."

21 MR. RACKAUCKAS: CAN EVERYBODY IN THE BACK HEAR?

22 THE WITNESS: I AM SORRY, I WILL MOVE A LITTLE BIT
23 CLOSER. SHOULD I JUST GO THROUGH THE REST?

24 Q. BY MR. RACKAUCKAS: YES.

25 A. "B."

26 Q. WOULD YOU REPEAT "A," SINCE I INTERRUPTED YOU.

1 A. "A" SAID:

2 "YOU SHOULD INCLUDE, BUT ARE NOT
3 LIMITED TO:

4 "A. THE CONDUCT OF THE INDIVIDUAL
5 BEING CONFRONTED AS REASONABLY PERCEIVED BY
6 THE OFFICER AT THE TIME.

7 "B. THE OFFICER'S SUBJECT FACTORS,
8 THE AGE, THE SIZE, THE RELATIVE STRENGTH,
9 SKILL LEVEL, INJURY, EXHAUSTION, NUMBER OF
10 OFFICERS VERSUS SUBJECTS.

11 "C. THE INFLUENCE OF DRUGS OR ALCOHOL
12 OR MENTAL CAPACITY.

13 "D. THE PROXIMITY OF WEAPONS.

14 "E. THE DEGREE TO WHICH THE SUBJECT
15 HAS BEEN EFFECTIVELY RESTRAINED, AND HIS OR
16 HER ABILITY TO RESIST DESPITE BEING
17 RESTRAINED.

18 "F. THE TIME AND CIRCUMSTANCES
19 PERMITTING THE AVAILABILITY OF OTHER
20 OPTIONS. WHAT RESOURCES ARE REASONABLY
21 AVAILABLE TO THE OFFICER.

22 "G. THE SERIOUSNESS OF THE SUSPECTED
23 OFFENSE, OR REASON FOR CONTACT WITH THE
24 INDIVIDUAL.

25 "H. TRAINING AND EXPERIENCE OF THE
26 OFFICER.

1 "I. POTENTIAL FOR INJURY TO CITIZENS,
2 OFFICERS AND SUSPECTS.

3 "J. RISK OF ESCAPE.

4 "K. OTHER EXIGENT CIRCUMSTANCES."

5 AND WHAT I DID IS I MAKE COMMENTS ABOUT EACH ONE
6 OF THOSE THAT AFFECTED MY JUDGMENT, WHICH I CAN GIVE TO THE
7 JURY IF YOU THINK THAT'S APPROPRIATE AT THIS TIME.

8 MR. RACKAUCKAS: I WILL, BUT I THINK, DO WE HAVE THAT
9 PAGE THAT WE CAN PUT ON THE ELMO IN EXHIBIT 85? AND WHAT IS
10 THE PAGE NUMBER?

11 MR. BOGARDUS: 43.

12 MR. RACKAUCKAS: PAGE NUMBER 43.

13 I JUST NOTICED WHILE YOU WERE GIVING THAT ANSWER
14 THAT MR. BOGARDUS WENT HARD TO WORK FINDING THAT PAGE, SO I
15 THOUGHT IT MIGHT BE HELPFUL FOR US TO BE ABLE TO LOOK AT IT.

16 Q. BY MR. RACKAUCKAS: SO WHAT WE ARE LOOKING AT HERE,
17 PAGE 43 OF EXHIBIT 85, IS A PAGE OUT OF THE FULLERTON POLICE
18 DEPARTMENT POLICY MANUAL?

19 A. YES.

20 Q. AND SO YOU LOOKED AT THESE AS SETTING THE
21 STANDARD FOR THE POLICE CONDUCT IN THIS CASE, SINCE IT IS
22 FULLERTON?

23 A. I THINK ASSERTING THE STANDARD AND THE FRAMEWORK
24 FOR JUDGING THE OFFICER'S CONDUCT.

25 Q. AND SO I AM NOT SURE THE BEST WAY TO BREAK THIS
26 UP, BUT I WANTED TO ASK YOU WHEN YOU BELIEVE THAT THERE WAS

1 THE BEGINNING OF EXCESSIVE FORCE BY OFFICER WOLFE?

2 A. MY VIEW, BASED UPON VIEWING THE VIDEO AND AUDIO
3 DISKS, AND VIEWING THE TRANSCRIPTS AS WELL, IS THAT ALMOST
4 IMMEDIATELY BOTH RAMOS AND WOLFE WERE USING EXCESSIVE FORCE
5 AGAINST KELLY THOMAS. AND I BASE THAT ON A NUMBER OF
6 THINGS, IF I CAN DIGRESS AS TO HOW I REACHED THAT?

7 Q. YES, I AM GOING TO ASK HOW YOU REACHED THAT
8 CONCLUSION.

9 A. THAT ELEMENT, THE FULLERTON POLICE DEPARTMENT
10 POLICY MANUAL'S MISSION STATEMENT SAYS:

11 "WE ARE COMMITTED TO THE SAFETY OF OUR
12 COMMUNITY THROUGH PROBLEM SOLVING
13 PARTNERSHIPS EMPHASIZING A PROMPT RESPONSE,
14 A CARING ATTITUDE."

15 AND THAT'S WHAT I FOCUS ON. THE DIALOGUE, THE
16 LANGUAGE USED, THE BODY LANGUAGE OF THOSE TWO OFFICERS
17 TOWARD KELLY THOMAS, A HOMELESS, OBVIOUSLY MENTALLY
18 DISTURBED PERSON, CERTAINLY DOESN'T FIT THE MISSION
19 STATEMENT OF THEIR OWN DEPARTMENT, THAT THEY HAD IN ANY WAY
20 A CARING ATTITUDE.

21 I WANT TO GO BACK TO ANOTHER DOCUMENT, IF YOU
22 BEAR WITH ME, THAT IS GIVEN TO THE NEW OFFICERS PRIOR TO, IN
23 FACT, THEIR MISSION STATEMENT, AND THAT IS THE LAW
24 ENFORCEMENT CODE OF ETHICS, WHICH GOES TO ALL THE POLICE
25 OFFICERS THROUGHOUT THE UNITED STATES. AND IF I MAY CITE
26 JUST A COUPLE OF INSTANCES WHERE I BELIEVE THEY WERE TOTALLY

1 DISREGARDING THEIR OWN CODE OF ETHICS, WHICH THEY SWORE.

2 Q. AT THIS POINT CAN YOU TELL US WHAT DOCUMENT AND
3 WHAT PAGE YOU ARE LOOKING AT?

4 A. THIS IS JUST FROM THE FULLERTON POLICE DEPARTMENT
5 POLICY MANUAL, IT REPRINTS THE LAW ENFORCEMENT CODE OF
6 ETHICS. AND I DON'T HAVE ANY PAGE NUMBER ON IT, BUT IT IS
7 LISTED IN, I BELIEVE IN THE TABLE OF CONTENTS THAT YOU HAVE
8 FORWARDED TO ME.

9 MR. BOGARDUS: IT WOULD BE THE SECOND PAGE, EXHIBIT 85.

10 Q. BY MR. RACKAUCKAS: IT IS THE SECOND PAGE OF
11 EXHIBIT 85.

12 A. I THINK THAT ILLUSTRATES WHEN YOU PUT SOMETHING
13 ON THE SECOND PAGE, THAT'S PRETTY SIGNIFICANT.

14 "AS A LAW ENFORCEMENT OFFICER MY
15 FUNDAMENTAL DUTY IS TO SERVE THE COMMUNITY,
16 TO SAFEGUARD LIVES AND PROPERTY."

17 AND THEN THE FINAL PART OF THAT PARAGRAPH:

18 "AND TO RESPECT THE CONSTITUTIONAL
19 RIGHTS OF ALL THROUGH LIBERTY, EQUALITY AND
20 JUSTICE."

21 THE SECOND PARAGRAPH GOES ON TO SAY:

22 "I WILL MAINTAIN COURAGEOUS CALM IN
23 THE FACE OF DANGER, SCORN OR RIDICULE,
24 DEVELOP SELF RESTRAINT, AND BE CONSTANTLY
25 MINDFUL OF THE WELFARE OF OTHERS."

26 IT GOES ON TO SAY:

1 "I WILL BE EXEMPLARY IN OBEYING THE
2 LAW AND REGULATIONS OF MY DEPARTMENT."

3 AND THEN:

4 "I WILL NEVER ACT OFFICIOUSLY, OR
5 PERMIT PERSONAL FEELINGS, PREJUDICES,
6 POLITICAL BELIEFS, ASPIRATIONS, ANIMOSITY OR
7 FRIENDSHIPS TO INFLUENCE MY DECISION.

8 "WITH NO COMPROMISE FOR CRIME, AND
9 WITH RELENTLESS PROSECUTION OF CRIMINALS, I
10 WILL ENFORCE THE LAW COURTEOUSLY AND
11 APPROPRIATELY WITHOUT FEAR OR FAVOR, MALICE
12 OR ILL WILL, NEVER EMPLOYING UNNECESSARY
13 FORCE OR VIOLENCE."

14 AND THAT IN A NUTSHELL I THINK WAS VIOLATED,
15 THOSE THOUGHTS, BY ALL OF THE ACTIONS OF THOSE OFFICERS
16 RIGHT FROM THE BEGINNING. I CAN DIRECT YOUR ATTENTION TO
17 VARIOUS PARTS OF THE DIALOGUE AS THEY ADDRESSED KELLY THOMAS
18 WITH SCORN, WHICH HE MATCHED, BY THE WAY, AND I AM SURE
19 KELLY THOMAS COULD BE AN ANNOYING PERSON, BUT CLEARLY THE
20 CODE OF ETHICS AND PROFESSIONAL POLICING, AND THE RULES
21 INCLUDED IN THE FULLERTON POLICE DEPARTMENT AND THE PENAL
22 CODE, MANDATE THAT THE OFFICERS NOT ALLOW RIDICULE OR SCORN
23 TO INFLUENCE THEIR JUDGMENT.

24 BUT WHAT OFFICE RAMOS AND WOLFE DID, THREATENING
25 KELLY THOMAS WITH, FUCKING HIM UP WITH SEEING MY FISTS,
26 PUTTING ON THE GLOVES, I HAVE TRIED TO BE NICE TO YOU AND

1 NOW YOU WILL FIND OUT WHAT I AM GOING TO DO, THINK OF THOSE
2 WORDS OF THAT POLICE OFFICER IN TERMS OF WHAT I JUST READ TO
3 YOU IN THE LAW ENFORCEMENT CODE OF ETHICS, AND IN THE
4 MISSION STATEMENT AND THE PHILOSOPHY THAT IS REPEATED A
5 NUMBER OF TIMES BY THE FULLERTON POLICE DEPARTMENT MANUAL.

6 AND IN TERMS OF THEIR TREATMENT OF KELLY THOMAS,
7 THESE ARE EXPERIENCED POLICE OFFICERS. THEY HAVE BEEN
8 TRAINED NOT TO TREAT ANYONE THAT WAY, BUT ESPECIALLY NOT TO
9 TREAT PEOPLE WHO ARE EXHIBITING MENTAL ILLNESS. AND CLEARLY
10 KELLY THOMAS WAS. NOT ONLY THAT, THE DISPATCHER INFORMED
11 THEM THAT HE HAD SOME RECORD OF MENTAL ILLNESS. AND RAMOS
12 KNEW HIM. AND THE COMMENT WAS MADE BY ANOTHER OFFICER THAT
13 THEY KNEW KELLY THOMAS, AND HE HAD NEVER BEEN VIOLENT
14 BEFORE.

15 SO WHEN YOU TAKE A LOOK AT THE BEHAVIOR OF WHAT
16 WAS GOING ON THERE, THE WAY THEY COERCED AND TREATED HIM
17 BEHIND THE POWER OF THEIR UNIFORM, THEIR CLUBS AND THEIR
18 BADGE AND THEIR GUNS WITH TOTAL DISRESPECT, THIS IS NOT
19 CONDUCT THAT OFFICERS FIND REASONABLE, THAT ANOTHER OFFICER
20 WHO RESPONDED WOULD HAVE SAID, IT IS REASONABLE TO TREAT
21 KELLY THOMAS THAT WAY.

22 AND I WILL GO THROUGH ALTERNATIVES TO WHAT THEY
23 COULD HAVE DONE AND SHOULD HAVE DONE A LITTLE LATER. BUT I
24 JUST WANTED TO POINT OUT THE STARKNESS OF THE OFFICERS' MIND
25 SET, WHICH VIOLATED THESE INTENTS OF THESE STATEMENTS OF
26 WHAT LAW ENFORCEMENT IS ALL ABOUT. THAT LAW ENFORCEMENT, AS

1 I MENTIONED, NEEDS TO WIN THE RESPECT AND TRUST OF THE
2 PUBLIC, IF THE PUBLIC IS TO BE PARTNERS WITH THE POLICE IN
3 ENFORCING THE LAW, YOU DON'T TREAT PEOPLE THE WAY THEY
4 TREATED KELLY THOMAS, AND THEIR ACTIONS ACCELERATED THIS
5 INCIDENT TO A FATAL TRAGEDY.

6 Q. SO THEN AT THIS POINT YOU ARE NOT EVEN TALKING
7 ABOUT ANY VIOLENT CONFRONTATION?

8 A. THAT IS CORRECT.

9 Q. YOU ARE NOT UP TO THE POINT WHERE THERE WAS ANY
10 TOUCHING OR PUSHING THE SHOULDER OF KELLY THOMAS?

11 A. RIGHT.

12 Q. THIS IS ALL PRECEDING THAT?

13 A. WHAT I AM LOOKING AT AS AN EXPERIENCED OFFICER,
14 IS THAT THESE TWO OFFICERS HAD SOME, I CAN'T SAY PRECISELY,
15 BUT SOME 20 MINUTES OR SO TO UNCOVER EVIDENCE OF A CRIME.
16 THEY WANTED TO ARREST THIS MAN, I MEAN I THINK THAT IS GIVEN
17 WHEN YOU LOOK AT THEIR BEHAVIOR AND THEIR LANGUAGE.

18 THEY COULD NOT FIND EVIDENCE OF A CRIME, A BROKEN
19 WINDOW ON A CAR, ANOTHER WITNESS THAT SAW HIM ACTUALLY
20 TRYING TO GET INTO A CAR, OR POSSESSION OF STOLEN PROPERTY
21 IN HIS KNAPSACK, WHICH TURNED OUT NOT TO BE HIS KNAPSACK, I
22 GUESS.

23 BUT INSTEAD OF THAT, THEY WERE USING THIS
24 PHYSICAL COERCION, TRYING TO COERCE A CONFESSION OUT OF HIM.
25 AND KELLY THOMAS MAY HAVE BEEN MENTALLY DISTURBED IN A
26 NUMBER OF WAYS, BUT HE WASN'T STUPID. IF YOU LOOK AT THE

1 LANGUAGE, HE HIMSELF USES THE WORD THAT HE IS, THE PHRASE
2 THAT HE IS ENGAGING IN TRASH TALKING, ALTHOUGH HE DOESN'T
3 SAY TRASH TALKING, BUT IN ROUGH TALKING WITH THE OFFICERS,
4 THAT THEY ARE DOING IT TO HIM, AND HE IS DOING IT BACK TO
5 THEM. AND THIS IS INFURIATING THEM, THERE IS LITTLE DOUBT
6 ABOUT IT.

7 BUT I WANTED TO THEN MOVE ON TO THE POINT I MADE,
8 THAT THEY KNEW THIS MAN HAD MENTAL PROBLEMS. AND THAT IS
9 IMPORTANT, BECAUSE FOR SOMEWHERE BETWEEN THE LAST FIVE AND
10 SEVEN YEARS, IT HAS BEEN EMPHASIZED IN P.O.S.T. TRAINING
11 DOCUMENTS, AND THE FULLERTON MANUAL PICKS UP ON IT, AND LAW
12 ENFORCEMENT CIRCLES, THAT MENTALLY ILL PEOPLE SHOULD NOT BE
13 TREATED GENERALLY THE SAME WAY THE POLICE TREAT OTHER
14 PEOPLE, SAY IN A DOMESTIC QUARREL OR --

15 Q. DO YOU SEE ANYTHING IN THAT 20 MINUTES OR SO, OF
16 ANYTHING THAT WOULD BE EVIDENT TO OFFICER WOLFE THAT THIS
17 PERSON HAD ANY KIND OF MENTAL DEFICIENCY OR DEFECT?

18 A. YES. THE DISPATCHER COMMUNICATION WHERE THEY ARE
19 TRYING TO FIND OUT WHO KELLY THOMAS IS. AND THEY FINALLY DO
20 FIND OUT WHO HE IS. IT IS OFFICER RAMOS THAT SAYS:

21 "CAN YOU TRY A KELLY THOMAS, HE IS
22 ABOUT 40 AND HE HAS AN A.K.A. IN PLACENTIA."

23 RAMOS KNEW HIM FROM PAST ENCOUNTERS.

24 AND THE DISPATCHER SAYS:

25 "CONFIRM ON THOMAS, KELLY. IN R.M.S.

26 APRIL 5TH OF SEVEN-FOUR SHOWS GRANDMA LIVES

1 IN PLACENTIA AND HE IS HOMELESS. AND LISTED
2 AS MENTALLY UNSTABLE AND SEVERAL CONTACTS."

3 WELL, IN POLICE JARGON, WHAT THAT MEANS IS KELLY
4 THOMAS DOES NOT HAVE A SERIOUS CRIMINAL RECORD, AND HE IS
5 HOMELESS AND MENTALLY AFFECTED, WHICH THESE OFFICERS KNEW
6 WITHIN TWO MINUTES OR ONE MINUTE OF TALKING TO KELLY THOMAS.

7 THE OTHER FACTOR IS HE IS DESCRIBED AS, ON THE
8 ORIGINAL CALL AS A TRANSIENT PROBLEM. A MALE TRANSIENT WITH
9 NO SHIRT, BACKPACK, BLUE JEANS IN THE PARKING LOT TRYING
10 DOOR HANDLES. SO THEY KNOW THIS IS NOT A CRIME AGAINST A
11 PERSON. THEY KNOW THIS IS NOT A SERIOUS CRIME.

12 THE SERIOUSNESS, REMEMBER, THE SERIOUSNESS OF THE
13 OFFENSE IS A KEY CONSIDERATION IN HOW MUCH FORCE OFFICERS
14 WILL USE. IN OTHER WORDS, THE STANDARDS WE APPLY TO THE
15 POLICE ARE THAT YOU DON'T SHOOT SOMEONE DEAD WHO RUNS
16 THROUGH A RED LIGHT, EVEN THOUGH IT WAS ILLEGAL. THAT IS
17 NOT WHAT A REASONABLE OFFICER IS EXPECTED TO DO.

18 AND THEY WERE PUT ON NOTICE WHAT THEY ALREADY
19 KNEW, IN MY OPINION.

20 AND THEN I WANTED TO MENTION ONE OTHER THING
21 BECAUSE YOU MIGHT SAY, WELL, RAMOS SAID THAT, WOLFE SAID
22 SOMETHING SIMILAR, BUT A LITTLE BIT DIFFERENT. BUT THE
23 FULLERTON MANUAL MAKES SURE THAT THE OFFICERS KNOW WHAT THE
24 PENAL CODE SAYS. AND IT SAYS:

25 "300.1.2, DUTY TO INTERCEDE.

26 "ANY OFFICER PRESENT OBSERVING ANOTHER

1 OFFICER USING FORCE THAT IS CLEARLY BEYOND
2 THAT WHICH IS OBJECTIVELY REASONABLE UNDER
3 THE CIRCUMSTANCES SHALL, WHEN IN POSITION TO
4 DO SO, INTERCEDE TO PREVENT THE USE OF SUCH
5 EXCESSIVE FORCE."

6 NOW, WHEN RAMOS PUTS ON HIS GLOVES AND SAYS, SEE
7 THESE GLOVES, SEE THESE HANDS, AND I AM GOING TO PUNCH YOU,
8 AND SO ON, THAT IS EXCESSIVE FORCE. EVEN THOUGH HE DOESN'T,
9 AND KELLY SAYS TO HIM, BY THE WAY, START PUNCHING DUDE, OR
10 SOMETHING LIKE THAT. AND AT THIS POINT IN TIME WOLFE IS NOT
11 A SPECTATOR. THIS IS HIS PARTNER. HE IS A PARTICIPANT IN
12 THIS USE OF EXCESSIVE FORCE. THERE IS NOWHERE IN
13 PROFESSIONAL POLICING THAT RAMOS' CONDUCT AND WORDS ARE
14 JUSTIFIED. AND THEY ARE VERY MUCH THE PART OF WOLFE'S
15 BEHAVIOR.

16 SO IF I CAN GO BACK TO WHERE WE WERE, AND THAT
17 WAS IN AN ANSWER TO YOUR QUESTION, WHEN DID IT START. IT
18 STARTED PRETTY SOON, BECAUSE THIS IS UNDER COLOR OF LAW,
19 UNDER COLOR OF AUTHORITY, THAT POLICE UNIFORM THAT WE DEMAND
20 CITIZENS PAY SOME ATTENTION TO UNDER THE LAW, IS BEING USED
21 FOR A KIND OF ILLEGAL USE OF FORCE AND THREATS AGAINST KELLY
22 THOMAS.

23 Q. NOW --

24 A. AND THIS IS AFTER THEIR PERCEPTION IS HE MAY HAVE
25 BEEN BREAKING INTO SOME CARS, WHICH WOULD BE A VERY ANNOYING
26 CRIME, BUT IT IS CERTAINLY NOT A DANGER TO SOCIETY.

1 Q. BY THE WAY YOU SAY, OR YOU SAID, THAT THEY HAD 20
2 MINUTES OR SO AND THEY COULDN'T FIND ANY CRIME, BUT THEY DID
3 FIND IN THE BACKPACK PROPERTY THAT CLEARLY THE POLICE
4 OFFICER, LOOKING AT THAT BACKPACK, COULD SEE THAT WAS NOT
5 KELLY THOMAS' PROPERTY, AND HE MENTIONED 496, RECEIVING
6 STOLEN PROPERTY?

7 A. YES, THE FACT IS THAT THEY QUESTIONED KELLY
8 THOMAS EXTENSIVELY ON THE FACT THAT THIS BACKPACK, WHICH WAS
9 IN HIS POSSESSION CLEARLY, HAS THE NAME OF AN ATTORNEY ON
10 IT. AND PROBABLY SOME OTHER MATERIAL THAT DOES NOT BELONG
11 TO KELLY THOMAS.

12 NOW, THAT IS VERY REASONABLE FOR THE POLICE TO
13 ASK THAT QUESTION, NO DISPUTE OVER THAT.

14 HOWEVER, IT'S QUITE WITHIN KELLY THOMAS' RIGHTS
15 NOT TO ANSWER THAT. AND WHEN A PERSON, IT COULD BE YOU OR
16 SOMEONE YOU ARE RELATED TO, OR ANYONE, DOESN'T CAVE IN,
17 CONFESS AND SAY, WELL, YEAH, I GUESS I HAVE TO ADMIT I STOLE
18 THAT, IF THAT STATEMENT IS COERCED UNDER THREAT OF A
19 BEATING, THEN THAT'S IMPROPER. THAT IS NOT EVIDENCE, AND
20 THAT WOULD BE EXCLUDED UNDER THE EXCLUSIONARY RULE ACCORDING
21 TO THE SUPREME COURT.

22 AND KELLY THOMAS NEVER DOES SAY THAT, IT IS JUST,
23 I DON'T KNOW, DUDE, OR SOMETHING LIKE THAT. HE NEVER
24 INCRIMINATES HIMSELF ON ANYTHING. AS I WENT THROUGH THOSE
25 TRANSCRIPTS A NUMBER OF TIMES, I CANNOT SEE ONE STATEMENT OF
26 KELLY THOMAS THAT AMOUNTS TO REASONABLE CAUSE TO BELIEVE HE

1 HAS COMMITTED A CRIME. HE DOESN'T ACKNOWLEDGE WHERE HE GOT
2 THE KNAPSACK FROM. AND WE AS CITIZENS MAY SAY, WELL, HE
3 SHOULD, YOU KNOW, HE SHOULD TELL THE COPS, BUT HE DOESN'T
4 HAVE TO. THAT IS A CONSTITUTIONAL RIGHT THOSE OFFICERS
5 SWORE TO UPHOLD.

6 Q. LET'S STOP FOR A SECOND.

7 WHAT I WOULD LIKE YOU TO DO THOUGH IS
8 HYPOTHETICALLY ASSUME THAT WHAT THE POLICE OFFICERS SAW
9 THERE WAS EVIDENCE OF A CRIME, RECEIVING STOLEN PROPERTY.

10 A. WELL, IT IS HARD FOR ME TO ASSUME IT, BECAUSE IT
11 IS NOT REASONABLE.

12 Q. YOU HAVE GOT TO MAKE THAT ASSUMPTION.

13 A. OR I DON'T GET PAID?

14 (LAUGHTER.)

15 THE WITNESS: I AM JOKING.

16 Q. BY MR. RACKAUCKAS: YES.

17 I WOULD JUST LIKE YOU TO MAKE THAT ASSUMPTION IN
18 ORDER TO PROCEED FURTHER.

19 A. OKAY. NOW, IF KELLY THOMAS HAD IN FACT BEEN
20 CAUGHT RED HANDED AND GUILTY, HE DIDN'T DESERVE TO BE BEATEN
21 TO DEATH. SO IN A SENSE, MAYBE I AM PUTTING TOO MUCH
22 EMPHASIZE ON THIS, BUT IT WAS IN ANSWER TO THE QUESTION,
23 WHEN DID THEY BEGIN TO USE EXCESSIVE FORCE. WELL, THEY DID
24 IT RIGHT FROM THE START. THESE WERE NOT GOOD POLICE
25 OFFICERS WHO WERE DEDICATED TO DUTY, YOU DON'T TALK TO
26 PEOPLE LIKE THAT.

1 Q. SO THEN AT THE POINT THAT THIS, WHERE KELLY
2 THOMAS IS SITTING ON THIS LITTLE BRICK PLACE THAT HE IS
3 SITTING, AND OFFICER RAMOS IS OVER BY HIS CAR AND -- NOT
4 RAMOS, BUT OFFICER WOLFE IS OVER BY THE CAR, BACK AT THE
5 CAR, AND OFFICER RAMOS HAS ALREADY MADE HIS STATEMENT, BUT
6 HE PUTS HIS HAND, HE PUTS HIS ARM OR HAND ON THE SHOULDER OF
7 KELLY THOMAS, AND THEN IT STARTS TO ESCALATE INTO A VIOLENT
8 EPISODE, DO YOU SEE ANY -- WHAT DO YOU SEE IN TERMS OF
9 JUSTIFICATION FOR OFFICER WOLFE TO COME OVER WITH HIS BATON
10 AT THAT POINT?

11 A. THE JUSTIFICATION FOR THE USE OF FORCE ALSO
12 MENTIONS IF A POLICE OFFICER NEEDS TO USE FORCE TO DEFEND
13 HIS OWN SAFETY.

14 Q. IN ANSWER TO THIS QUESTION --

15 A. THERE IS NO --

16 Q. WAIT A MINUTE.

17 IN ANSWER TO THIS QUESTION, I WANT YOU TO ALSO
18 ASSUME THAT THE POLICE OFFICER, WOLFE, KNOWS FOR CERTAIN
19 THAT THIS IS STOLEN PROPERTY IN KELLY THOMAS' POSSESSION.

20 A. IF WOLFE KNEW THAT THIS WAS STOLEN PROPERTY IN
21 KELLY THOMAS' POSSESSION, THOSE OFFICERS ARE STILL OBLIGATED
22 TO USE ONLY NECESSARY FORCE TO ARREST THIS PERSON.

23 AND FOR 20 MINUTES OR SO, OR SOMEWHERE MAYBE
24 BETWEEN 10 AND 20, KELLY THOMAS HAS COMPLIED WITH EVERYTHING
25 THEY ASKED. HE IS SASSING THEM A LITTLE BIT APPARENTLY, BUT
26 HE IS TOLD TO SIT DOWN, HE SITS DOWN. PUT YOUR HANDS ON

1 YOUR KNEE, HE PUTS HIS HAND ON HIS KNEE. AT NO POINT IN
2 TIME DOES HE MAKE ANY THREATENING GESTURE, OR DOES HE
3 ATTEMPT TO RUN AWAY OR DO ANYTHING. SO THERE IS NO CALL FOR
4 FORCE AT THIS POINT IN TIME.

5 AND UNDER WHAT WE CALL THE CONTINUATION OF FORCE
6 DOCTRINE IN POLICING, YOU START AT THE LOW LEVEL. IF WOLFE
7 THOUGHT THAT THAT CONSTITUTED A CRIME, WOLFE WOULD HAVE
8 SAID, YOU ARE UNDER ARREST, PUT YOUR HANDS BEHIND YOU, WE
9 HAVE TO HANDCUFF YOU. HE DOESN'T DO THAT.

10 AND RAMOS SAID, I AM NOT READY TO ARREST YOU YET.
11 SO WOLFE DOESN'T THINK, WELL, I AM NOT ARRESTING HIM BUT
12 RAMOS IS, AND THEREFORE I HAVE TO HELP MY PARTNER MAKE THIS
13 ARREST. BECAUSE IT IS CLEAR THAT, AND THOMAS HIMSELF, AS
14 MENTALLY DISTURBED AS HE IS, HE SAYS, I HAVE HAD ENOUGH OF
15 THIS, I WANT TO GO, OR TAKE ME TO JAIL. PLEASE TAKE ME TO
16 JAIL, HE SAYS AT ONE POINT.

17 I THINK KELLY THOMAS SAID, PLEASE TAKE ME TO
18 JAIL, BECAUSE KELLY THOMAS KNEW HE WAS ABOUT TO GET A
19 BEATING AND HE SAID, I WANT TO GO TO JAIL, THEY WON'T BEAT
20 ME UP LIKE THESE TWO GUYS ARE GOING TO DO. THEY ARE GETTING
21 MORE AND MORE EXCITED ABOUT EVERYTHING. AND I AM NOT, HE IS
22 NOT FIGHTING THEM IN ANY WAY.

23 AND I WANT TO SAY IN TERMS OF THE OTHER FACTORS
24 THAT THE OFFICERS REASONABLY SHOULD BE CONSIDERING IS THIS
25 GUY IS A HOMELESS PERSON. THESE ARE TWO BIG, BULKY, STRONG
26 POLICE OFFICERS WHO ARE VERY WELL ARMED WITH BATONS AND GUNS

1 AND OTHER WEAPONS. AND HE IS A GUY THAT IT WOULD NOT BE
2 REASONABLE FOR ANY OFFICER TO THINK MY LIFE IS IN DANGER
3 FROM THIS GUY KELLY THOMAS. HE IS UNARMED, CLEARLY, HE HAS
4 NO SHIRT ON.

5 THEY HAD EVERY RIGHT TO FRISK HIM UNDER THE LAW
6 AND A CASE CALLED TERRY VS. OHIO, THE SUPREME COURT SAID
7 POLICE OFFICERS COULD FRISK PEOPLE IF THEY THOUGHT SOMEONE
8 THEY WERE QUESTIONING HAD A WEAPON. THEY DIDN'T, AS FAR AS
9 WE KNOW, THEY DIDN'T FRISK HIM, AND THEY WERE VERY CASUAL
10 WITH THE WAY THEY TREATED HIM ON THE VIDEO.

11 RAMOS SITS ON THE FENDER OF A CAR. IF YOU THINK
12 YOU ARE IN DANGER FROM A SUSPECT, AND YOU ARE A POLICE
13 OFFICER, YOU DON'T SIT ON THE FENDER OF A CAR OFF BALANCE.
14 YOU GET THE SUSPECT TO GO OFF BALANCE BY PUTTING HIS HANDS
15 ON A WALL OR SOMETHING. YOU HAVE ALL SEEN THAT ON
16 TELEVISION. WELL, THERE IS A REASON FOR THAT. WHEN YOU
17 WANT A SUSPECT TO HAVE LITTLE ABILITY TO HURT YOU, YOU GET
18 THEM TO STAND IN A WAY SO THEY ARE OFF BALANCE ON THE TIPS
19 OF THEIR TOES AND LEANING ON A WALL, AND YOU CAN QUICKLY
20 CIRCUMVENT ANY ATTEMPT ON THEIR PART TO HURT YOU.

21 BUT RAMOS IS SITTING ON THE CAR AT THIS POINT.
22 AND WOLFE, DURING THE PERIOD, WANDERS BACK AND FORTH. THERE
23 IS NO POINT THAT I SEE THAT THESE TWO OFFICERS WERE REALLY
24 CONCERNED THAT THIS GUY KELLY THOMAS WAS A DANGEROUS HOMBRE
25 AND WE BETTER BE READY TO TAKE HIM ON.

26 IT'S JUST NOT FAIR. AND IF YOU LOOK AT HIM, HE

1 IS KIND OF A THIN GUY. AND THESE TWO OFFICERS ALSO KNOW
2 THAT THERE ARE OTHER OFFICERS RESPONDING. THAT'S ANOTHER
3 FACTOR. HOW MANY OFFICERS DO YOU HAVE? YOU ALREADY HAVE
4 TWO, AND ALMOST IMMEDIATELY YOU ARE GETTING MORE, AND THEY
5 KNOW THAT MORE ARE COMING. SO THAT'S NOT A CONCERN THAT
6 SHOULD HAVE AFFECTED THEM IN TERMS OF BEGINNING TO IMPLEMENT
7 THE FORCE.

8 I THINK THAT BLOW BY WOLFE SHOWS THAT HE WAS
9 FURIOUS. THAT THIS WAS KNOWN AS A CONTEMPT OF COP, IN THE
10 JARGON OF THE POLICE, WHERE THE POLICE ARE ANGRY NOT BECAUSE
11 OF SOME CRIME THAT SOMEONE HAS COMMITTED, BUT BECAUSE
12 SOMEONE IS DEFYING THEIR AUTHORITY AS POLICE OFFICERS. AND
13 THEY ARE TRAINED OVER AND OVER, AND DISCIPLINED OVER AND
14 OVER, THAT YOU CAN'T ALLOW THOSE PERSONAL EMOTIONS TO AFFECT
15 YOUR DECISIONS AS A LAW ENFORCEMENT OFFICER. YOU TAKE AN
16 OATH THAT YOU ARE NOT GOING TO DO THAT.

17 SO I DON'T THINK THAT THIS HOMELESS PERSON, WHO
18 THEY KNOW HAS NOT BEEN VIOLENT IN THE PAST, CONSTITUTED A
19 THREAT, OR THAT IT WAS REASONABLE, A REASONABLE OFFICER
20 WOULD HAVE THOUGHT THAT WE BETTER USE THIS LEVEL OF FORCE
21 BEFORE THIS GUY KILLS ONE OF US.

22 Q. THEN THERE AFTER THE FIRST BLOWS WITH THE BATON,
23 KELLY RUNS, AND IT GOES OFF THE CAMERA FOR A BIT. AND THEN
24 THEY RE-ENGAGE. AND I WANT YOU TO ASSUME, BECAUSE THERE IS
25 EVIDENCE, I WANT YOU TO ASSUME THAT WHEN OFFICER WOLFE
26 ENGAGED WITH KELLY THOMAS THERE OFF THE VIDEO, THAT KELLY

1 THOMAS SLUGGED HIM, HE SLUGGED OFFICER WOLFE WITH HIS FIST,
2 HITTING HIM SOMEWHERE IN THE HEAD. AT LEAST ONCE, MAYBE
3 TWICE.

4 A. YOU WANT ME TO ASSUME THAT HE DID THAT?

5 Q. YES.

6 A. OKAY, IF HE DID THAT, THAT WOULD PROBABLY AMOUNT
7 TO A FELONY ASSAULT ON A POLICE OFFICER. I PERSONALLY DON'T
8 BELIEVE HE DID THAT. THERE IS NO INDICATION UP UNTIL THEN
9 THAT HE WAS DOING ANYTHING BUT FLAILING AROUND TRYING TO
10 AVOID GETTING HIT ON THE HEAD WITH THE BATON.

11 AND IF HE DID, IT CERTAINLY DIDN'T AFFECT WOLFE
12 VERY MUCH, BECAUSE HE CONTINUES TO WAIL AWAY AND TO KNEE
13 KELLY THOMAS, AND TO PUSH HIM INTO THE GROUND.

14 BUT IF INDEED IT DID OCCUR, THE FACT THAT HE GOT
15 PUNCHED IN THE HEAD DOESN'T JUSTIFY WOLFE USING ALL THAT
16 FORCE. THE LAW IS PRETTY CLEAR, THE POLICE TRAINING IS
17 PRETTY CLEAR, YOU ARE ONLY ALLOWED TO USE ENOUGH FORCE TO
18 OVERCOME RESISTANCE, NOT TO PUNISH. AND WHAT HAPPENED AFTER
19 THAT WAS IN EXCESS.

20 I MEAN, I DON'T RECALL ANYWHERE THAT OFFICER
21 WOLFE CLAIMED INJURY AFTERWARDS, AND I AM NOT AN EXPERT ON
22 THE MEDICAL REPORT, BUT I LOOKED AT THE CORONER'S
23 PHOTOGRAPHS, AND I DON'T SEE ANY EVIDENCE IN THE CORONER'S
24 REPORT THAT KELLY THOMAS HAD BROKEN KNUCKLES THAT WOULD HAVE
25 INDICATED THAT HE REALLY SOCKED THAT COP.

26 AND DON'T FORGET, IF IT DID OCCUR, IT OCCURRED

1 AFTER WOLFE HAD ACCELERATED THE INCIDENT UP TO USING VERY
2 SERIOUS FORCE WITH A BATON.

3 Q. SO EVEN ASSUMING TWO THINGS, ASSUMING THAT KELLY
4 THOMAS HIT OFFICER WOLFE, AND THAT KELLY THOMAS HAD NO RIGHT
5 TO HIT OFFICER WOLFE, JUST MAKE THAT ASSUMPTION, THEN YOU
6 STILL SAY THAT OFFICER WOLFE USED EXCESSIVE FORCE AFTER?

7 A. YES, I STILL DO. I THINK THERE WERE ALL KINDS OF
8 ALTERNATIVES THERE TO DOING THAT, AND THE FACT IS THAT EVERY
9 EXPERIENCED POLICE OFFICER ENGAGES IN WRESTLING MATCHES AND
10 GETS THEIR HATS KNOCKED OFF AND GETS PUSHED AROUND A LITTLE
11 BIT, AND IT IS SOMETHING THAT GOES WITH YOUR JOB. IT IS
12 WRONG, PEOPLE SHOULDN'T DO THAT, BUT KELLY THOMAS HAS
13 ALREADY BEEN WHACKED AROUND PRETTY GOOD.

14 SO I AM NOT SURE IF HE DID, THAT HE IS EVEN
15 CAPABLE OF THROWING A SERIOUS PUNCH AT AN OFFICER, BUT IT IS
16 PRETTY FUTILE. EVEN IF HE INTENTIONALLY DID IT, HE IS NOT
17 THE GUY THAT IS GOING TO WIN THIS FIGHT. THERE IS TWO COPS
18 THERE AND A BUNCH MORE ON THE WAY. YOU CAN HEAR SIRENS.

19 I JUST FIND IT STRETCHING BELIEF BEYOND THE FACT,
20 BUT ASSUMING YOUR HYPOTHETICAL, THE FACT IS THAT IF SOMEONE
21 HITS YOU, YOU DON'T HAVE AN UNLIMITED RIGHT TO PUNISH THEM
22 FOR DOING SO. YOUR RIGHT BEGINS AND STOPS WITH HOW MUCH
23 FORCE IS NECESSARY TO ARREST THIS PERSON.

24 Q. AND THEN AS THE SCENE WENT OUT OF VIEW, YOU COULD
25 STILL HEAR, AND EVENTUALLY IT CAME BACK INTO VIEW, AND DID
26 YOU SEE OFFICER WOLFE CONTINUING TO USE EXCESSIVE FORCE FOR

1 THE REMAINDER OF THE TIME?

2 A. YEAH, THERE ARE SEVERAL THINGS THAT OFFICER WOLFE
3 DOES THAT WERE HIGHLY DANGEROUS, AND THAT HE KNEW WERE
4 DANGEROUS. HE KNOWS THEY ARE DANGEROUS, BECAUSE IN THEIR
5 OWN TRAINING, THE POLICE OFFICERS ARE WARNED THAT THESE ARE
6 DANGER AREAS FOR YOU. AND YOU HAVE TO BE ON GUARD AGAINST
7 SOMEONE KNEEING YOU IN THE KIDNEYS, SOMEONE CHOKING YOU TO
8 DEATH, OR FRACTURING YOUR WINDPIPE, OR SOME WAY INTERFERING
9 WITH YOUR ABILITY TO BREATHE. AND YOUR HEAD IS ANOTHER VERY
10 VULNERABLE AREA.

11 HOW DO I KNOW THAT PEACE OFFICERS ARE TRAINED
12 THAT WAY? BECAUSE P.O.S.T. TRAINING ACTUALLY HAS DIAGRAMS
13 IN THEIR TRAINING MATERIAL.

14 Q. WHAT IS P.O.S.T.?

15 A. PARDON?

16 Q. WHAT IS P.O.S.T.?

17 A. P.O.S.T., AS I MENTIONED, IS THE CALIFORNIA PEACE
18 OFFICERS STANDARD AND TRAINING COMMISSION, THAT EVERY
19 OFFICER HAS TO PASS A CERTIFIED COURSE. AND ALSO EVERY
20 OFFICER GOES THROUGH MANDATORY TRAINING OF SO MANY HOURS
21 EVERY YEAR, INCLUDING SOME ON HANDLING DISTURBED PEOPLE, AND
22 SOME ON THE USE OF FORCE.

23 AND IN THAT TRAINING MATERIAL THAT THEY GET,
24 POSSIBLY IN THE ACADEMY OR IN THEIR ANNUAL TRAINING THAT IS
25 MANDATED, THERE ARE DIAGRAMS OF THE POINTS THAT ARE HIGHLY
26 VULNERABLE IN THE HUMAN BODY. THEY ARE, FIRST OF ALL,

1 WARNING OFFICERS TO BE ON GUARD AGAINST SOMEONE STRIKING YOU
2 THERE, BUT ALSO REPEATING THAT YOU CAN'T USE FORCE AGAINST
3 THAT.

4 THERE IS ANOTHER WHOLE SECTION OF TRAINING THAT
5 IS VERY EXTENSIVE ON CAROTID ARTERY HOLDS, IN THAT IT IS
6 HIGHLY DANGEROUS FOR PEOPLE TO USE THOSE HOLDS AND CUT OFF
7 AIR, BECAUSE YOU DIE IF YOU CAN'T BREATHE.

8 AND THE CORONER, AFTER ALL, DID SAY KELLY THOMAS
9 DIED FROM THIS POLICE ACTION. WHEN YOU SEE KELLY THOMAS,
10 ECCENTRIC AS HE MAY BE, IN THE OPENING MOMENTS OF THE TAPE,
11 THE GUY DOESN'T LOOK LIKE SOMEONE WHO IS ABOUT TO DIE FIVE
12 DAYS LATER FROM SOME HIDDEN DISEASE OR ANYTHING. THIS IS A
13 HEALTHY MALE, TO THE EXTENT THAT HE IS ABLE TO WALK AND MOVE
14 AND TALK AND SO ON. AND HE DIED BECAUSE HE WAS BEATEN TO
15 DEATH.

16 SO, YOU ARE NOT ENTITLED TO USE THAT LEVEL OF
17 FORCE, EXCEPT UNDER THE MOST EXTREME CIRCUMSTANCES WHERE
18 MAYBE SOMEONE'S LIFE IS HANGING IN THE BALANCE, OR SUCH A
19 HORRIBLE CRIME HAS BEEN COMMITTED THAT PUBLIC SAFETY IS AT
20 STAKE.

21 Q. WHAT COULD THEY HAVE DONE, JUST LET HIM GO?

22 A. WELL, THAT WOULD BE THE EXTREME TO SAY, ALL
23 RIGHT, GET OUT OF HERE. BELIEVE ME, I HAVE DONE THAT MANY
24 MORE TIMES THAN I HAVE SAID, YOU ARE UNDER ARREST. AND
25 EVERY COP HAS.

26 THEY DIDN'T DO IT IN THIS CASE, BUT WHAT THEY

1 COULD HAVE DONE AT THIS POINT IN TIME, AND WHAT THEY SHOULD
2 HAVE DONE EARLIER IS, REMEMBER, YOU HAVE GOT A SUBJECT, A
3 SUSPECT HERE THAT HAS BEEN COMPLIANT. GO SIT THERE, AND
4 KELLY THOMAS KIND OF DOESN'T WANT TO DO THAT, BUT WHEN THEY
5 PUSH IT, HE GOES AND HE SITS THERE. PUT YOUR HANDS HERE.
6 AND HE DOES THAT. AND PUT YOUR HANDS THERE, I CAN'T DO BOTH
7 AT THE SAME TIME.

8 THIS DIALOGUE IS GOING ON, AND IN THE END KELLY
9 THOMAS IS COMPLIANT. HE IS ANSWERING THEIR QUESTIONS. THEY
10 DON'T LIKE THE ANSWERS, BUT HE IS ANSWERING THEM WHEN HE
11 DOESN'T HAVE TO. HE IS SITTING DOWN, WHEN LEGALLY THERE IS
12 A REAL QUESTION OF WHETHER HE HAS TO.

13 WHY DIDN'T THEY SAY TO HIM, ALL RIGHT, KELLY, YOU
14 ARE UNDER ARREST, AND WE ARE REQUIRED TO PUT HANDCUFFS ON
15 YOU. NOW, THERE IS NO CHOICE IN THIS, THIS IS POLICY. I
16 THINK HE WOULD HAVE DONE IT. BECAUSE I LOOKED BACK AT THE
17 DISK AND I SAW WHERE HIS HANDS WERE WHEN WOLFE TOOK THE
18 KNAPSACK OFF. THEY WERE RIGHT BACK WAITING TO HANDCUFF HIM.
19 IF WOLFE HAD PUT THE HANDCUFFS ON HIM, THEN I DON'T THINK
20 KELLY THOMAS WOULD HAVE DONE ANYTHING. AND GIVEN HIS
21 HISTORY OF COMPLIANCE, THERE IS NO EVIDENCE THAT HE WANTED
22 TO GET INTO A FIGHT WITH THESE GUYS. HE WAS PRETTY
23 DETERMINED NOT TO.

24 AND THAT'S WHY HE KEPT TALKING, EVEN THOUGH HE
25 WANTED TO GO AWAY. HE WAS KIND OF BEING PRESSURED AND THEY
26 KEPT FALSELY PROMISING HIM, YOU CAN GO ON YOUR WAY, JUST

1 TELL US YOUR NAME, JUST DO THIS AND YOU CAN BE ON YOUR WAY.
2 AND I THINK IT SUDDENLY BECOMES APPARENT TO HIM THESE GUYS
3 ARE FRIGHTENING. AND IT SHOULD HAVE BEEN. I WOULD BE
4 FRIGHTENED IF I HAD TWO COPS TREATING ME LIKE THAT.

5 AND KELLY THOMAS HAD BEEN AROUND THE BLOCK A FEW
6 TIMES WITH COPS LIKE THAT. SO I JUST DON'T SEE ANY
7 NECESSITY FOR THAT.

8 BECAUSE LET'S GO TO THE OTHER EXTREME THAT THEY
9 JUST SAY, ALL RIGHT, GET OUT OF HERE, AND WE BETTER NOT SEE
10 YOU HERE ANYMORE THIS WEEK. THIS GUY HAS BEEN AROUND. THAT
11 CAME OUT IN THE DIALOGUE. NOW, WHAT IS THE DAMAGE TO
12 SOCIETY? IS HE GOING TO GO OUT AND KILL SOMEONE IN THE NEXT
13 COUPLE OF DAYS? HE HAS NO RECORD, NO ARREST RECORD TO SPEAK
14 OF. THEY CHECKED HIM OUT. THEY HAVE NO EVIDENCE OF A
15 CRIME. SUPPOSE HOURS LATER, OR THE NEXT DAY THEY FIND, HEY,
16 LOOK WHAT THIS GUY DID, HE DID BREAK INTO THIS CAR. THEY
17 KNOW WHO HE IS. THEY CAN ARREST HIM. IT HAPPENS ALL THE
18 TIME, LADIES AND GENTLEMEN, WE ARREST PEOPLE DAYS AND WEEKS
19 AFTER THE CRIME.

20 NOW, THIS GUY WASN'T A MASTER CRIMINAL WITH A
21 PASSPORT TO BRAZIL IN HIS POCKET THAT WAS READY TO FLEE TO
22 BRAZIL. HE IS KIND OF A SAD, HOMELESS PERSON THAT IS NO
23 DANGER PHYSICALLY TO ANYONE. HE MAY BE AN ANNOYING PERSON.
24 BUT HE CERTAINLY DIDN'T DESERVE TO PAY THE DEATH PENALTY FOR
25 IT.

26 AND IF YOU TAKE THE OPTION, TO BE HORRIFIED YOU

1 MIGHT LET A CRIMINAL GO LOOSE, WELL, THERE WAS NO CRIME.
2 HAD THERE BEEN EVIDENCE OF A CRIME, THOSE COPS WOULD HAVE
3 ARRESTED HIM. NO DOUBT IN MY MIND THEY WOULD HAVE SAID, YOU
4 ARE UNDER ARREST. THEY NEVER USED THOSE WORDS. HE SAYS,
5 PLEASE ARREST ME. THEY DON'T SAY, YOU ARE UNDER ARREST.
6 THEY DID NOT FEEL THAT THEY HAD GROUNDS FOR AN ARREST, OR
7 THEY WOULD HAVE ARRESTED HIM.

8 SO I DON'T SEE THAT IT IS A GREAT DANGER TO
9 SOCIETY WHEN YOU BALANCE WHAT HAPPENED, WHICH WAS FAIRLY
10 PREDICTABLE THAT THERE WAS GOING TO BE MAYBE NOT A DEATH,
11 BUT THERE CERTAINLY WAS GOING TO BE EXCESSIVE INJURY TO
12 SOMEONE IN THIS CONFRONTATION, OF LETTING THIS GUY WALK
13 AWAY, AND IN FACT IF WITHIN A FEW MINUTES THEY FOUND
14 EVIDENCE OF A CRIME, THEY COULD HAVE CAUGHT UP WITH THE GUY,
15 THE HOMELESS GUY WITH NO SHIRT ON WANDERING AROUND. IT
16 WASN'T THE END OF THE WORLD.

17 Q. SO WHAT ABOUT THEN, LET'S ASSUME THAT THE OFFICER
18 LEARNS WHILE HE IS AT THE BACK OF HIS CAR, OFFICER WOLFE
19 LEARNS THAT KELLY THOMAS IS INDEED IN POSSESSION OF STOLEN
20 PROPERTY; WHAT SHOULD HAPPEN AT THAT POINT?

21 A. WHAT SHOULD HAPPEN?

22 Q. YES.

23 A. IF THE OFFICER DECIDES KELLY THOMAS IS INDEED IN
24 POSSESSION OF STOLEN PROPERTY, HE MAY OR HE MAY NOT MAKE AN
25 ARREST. THERE IS SOME DEGREE OF DISCRETION THERE. AND THE
26 SUPERVISOR WAS ON HIS WAY TO THE SCENE, HE MIGHT HAVE TOLD

1 THE OFFICERS WHAT TO DO, THAT'S WHAT THE SUPERVISORS ARE
2 FOR.

3 BECAUSE IF THERE IS QUESTIONS ABOUT WHETHER THE
4 EVIDENCE IS ADMISSIBLE, WHETHER THE DEFENDANT'S RIGHTS WERE
5 VIOLATED, AS IN THIS PARTICULAR CASE IT IS DOUBTFUL TO SEE
6 IF THEY COULD HAVE GOTTEN ANY KIND OF A CRIMINAL CONVICTION.

7 BUT WHAT WAS SO VALUABLE ABOUT CONVICTING THIS
8 GUY, SAY OF BURGLARY FROM A PARKED CAR, THAT YOU RISK
9 KILLING HIM, OR RISK EVEN GETTING AN OFFICER HURT IN THE
10 CONFLICT?

11 SO I THINK THEY COULD HAVE SAID TO KELLY THOMAS,
12 AS THEY SHOULD HAVE, BY THE WAY, EVERY OFFICER IN CALIFORNIA
13 IS EQUIPPED WITH INFORMATION, OR SHOULD BE, OF HOW TO TELL
14 PEOPLE LIKE KELLY THOMAS WHERE TO GO TO GET ASSISTANCE.
15 BELIEVE IT OR NOT, WE HAVE PROGRAMS, WE HAVE ORGANIZATIONS
16 THAT EXIST IN COMMUNITIES, WHERE THEY CAN GO GET COUNSELING
17 AND GET CLEANED UP AND GET SOME MEDICAL ATTENTION. AND THE
18 OFFICERS HAVE THIS INFORMATION TO REFER THEM TO PLACES.

19 SO THERE WERE A WHOLE RANGE OF OPTIONS THERE, IT
20 WASN'T A QUESTION OF ARREST, AND WHY WERE THEY SO DETERMINED
21 TO DO THIS? WELL, THEY PROBABLY FELT HE WAS GUILTY OF DOING
22 SOME CRIME, BUT THEY ARE NOT ALLOWED TO MAKE THESE KIND OF
23 DECISIONS ON A HUNCH, AND I THINK WHAT IT WAS IS THERE WAS
24 KIND OF ANGER, IN THAT THIS GUY WAS TALKING BACK TO THEM,
25 AND WASN'T TELLING THEM, AND WASN'T CONFESSING. AND AS I
26 MENTIONED, IF YOU COERCE A CONFESSION UNDER THREAT OF

1 PHYSICAL FORCE, YOU ARE THE ONE WHO COMMITS A CRIME.

2 Q. WHAT I WOULD LIKE TO DO, AND I THINK WE ARE
3 RUNNING SHORT ON TIME, I THINK WE ARE OVER TIME AND WE
4 USUALLY TAKE THE NOON RECESS, WHAT I WOULD LIKE TO DO IS
5 TAKE A FEW MINUTES, IF WE CAN, AND GO BACK OVER THOSE
6 STANDARDS, AND SEE WHERE YOU THINK IF ANY OF THOSE STANDARDS
7 WERE MET BY THE POLICE.

8 A. OKAY.

9 Q. AND PARTICULARLY BY OFFICER WOLFE.

10 A. WHERE I LEFT OFF, I THINK WAS ON ITEM "B." SO
11 MOVING QUICKLY AHEAD TO ITEM "C," INFLUENCE OF DRUGS OR
12 ALCOHOL. APPARENTLY HE WASN'T. HE DID SAY SOMETHING ABOUT
13 HAVING ONE BEER. BUT IT DOES SAY MENTAL CAPACITY. AND AS I
14 HAVE GONE OVER THAT, SAYING THEY KNEW HE WAS MENTALLY
15 DISTURBED, HIS BEHAVIOR INDICATED IT AS WELL.

16 THE PROXIMITY OF WEAPONS. THEY DIDN'T FEEL HE
17 HAD A WEAPON. THEY DIDN'T FRISK HIM. AND, INDEED, WHERE
18 WOULD THE WEAPON BE WHEN HE HAD NO SHIRT ON, AND HE HAD
19 GIVEN UP THE KNAPSACK? THERE WAS NO AREA WHERE HE WOULD
20 HAVE CONCEALED THE WEAPON.

21 "E," WHICH IS THE DEGREE TO WHICH THE SUBJECT HAD
22 BEEN EFFECTIVELY RESTRAINED, AND HIS OR HER ABILITY TO
23 RESIST DESPITE BEING RESTRAINED.

24 WELL, RESIST WHAT? RESIST GETTING BEATEN UP OR
25 RESIST ARREST? IF HE IS NOT TOLD HE IS UNDER ARREST, I
26 THINK IT IS FAIR TO SAY THAT HE PROBABLY THOUGHT HE COULD

1 WALK AWAY WHEN HE STOOD UP LIKE THAT AND SAID, I HAVE HAD
2 ENOUGH. HE ASKED THEM, PLEASE ARREST ME. THEY DIDN'T SAY,
3 YOU ARE UNDER ARREST. AT ONE POINT RAMOS SAID, I AM NOT
4 READY TO ARREST YOU OR NOT. AND WOLFE IS THERE. WOLFE IS
5 PART OF THIS OPERATION.

6 THE TIME AND CIRCUMSTANCES, "F" IS THE TIME AND
7 CIRCUMSTANCES PERMITTING THE AVAILABILITY OF OTHER OPTIONS.
8 I MENTIONED THAT. THERE ARE PLENTY OF OPTIONS OPENED TO
9 OFFICERS TO REFER PEOPLE LIKE THIS. THEY HAVE NO EVIDENCE
10 THAT THIS GUY COMMITTED A CRIME THAT THEY FEEL THEY CAN
11 ARREST FOR. IF THEY DID, THEY WOULD HAVE ARRESTED HIM.

12 AND IF THEY HAD SAID, LOOK, YOU ARE UNDER ARREST,
13 AND WHEN WE ARREST PEOPLE, IT IS NOT PERSONAL, WE HAVE TO
14 HANDCUFF YOU. IT WORKS. I HAVE DONE IT. SOME PEOPLE
15 TALKING ABOUT GIVING YOU A GOOD FIGHT, WHEN YOU TAKE 10, 15
16 MINUTES, AND YOU TALK AND YOU TALK, KNOWING THAT THE
17 ALTERNATIVE WILL BE TO FIGHT AND FIGHT, THEY SAY, OKAY, GO
18 AHEAD.

19 Q. LET ME STOP YOU FOR A MINUTE THERE.

20 I KNOW YOU DON'T LIKE MAKING THESE ASSUMPTIONS,
21 BUT I AM GOING TO ASK YOU TO MAKE IT.

22 ASSUME THAT THERE WAS A GOOD REASON TO ARREST, OR
23 PROBABLE CAUSE TO ARREST KELLY THOMAS. AND ALSO WE KNOW
24 THAT THE LAW SAYS THAT IF YOU CAN, YOU SHOULD ADVISE
25 SOMEBODY THAT THEY ARE UNDER ARREST. BUT IF THERE ARE
26 EXIGENT CIRCUMSTANCES, YOU DON'T HAVE TO, YOU CAN JUST TAKE

1 THEM INTO CUSTODY.

2 WHAT DO YOU THINK ABOUT THAT?

3 A. WELL, WHAT ARE THE EXIGENT CIRCUMSTANCES IN THIS
4 CASE? THE GUY IS NOT GOING TO FLEE TO BRAZIL, AS I
5 MENTIONED. HE IS NOT GOING TO ESCAPE THE JURISDICTION. HE
6 IS NOT GOING TO GO OUT AND MASSACRE A BUNCH OF SCHOOL
7 CHILDREN. IT IS HARD TO SEE ANY EXIGENT CIRCUMSTANCES.

8 BUT THE OTHER FACTOR IS THAT THE FORCE THEY USE
9 AFTER THIS IS UNJUSTIFIED. DESPITE THE FACT THAT HE
10 COMMITTED EVEN A TERRIBLE CRIME DOESN'T JUSTIFY THEM
11 SMOTHERING THIS GUY SO HE CAN'T BREATHE. HE KEEPS SAYING, I
12 CAN'T BREATHE, I CAN'T BREATHE. AT THIS POINT THEY, AS
13 POLICE OFFICERS, HAVE AN OBLIGATION TO GIVE HIM FIRST AID.

14 THEY ARE EXTENSIVELY TRAINED IN C.P.R. YOU KNOW
15 WHY? BECAUSE YOU CAN DIE VERY QUICKLY IF YOU CAN'T BREATHE.
16 YOU CAN SUFFER BRAIN DAMAGE WITHIN A MINUTE OR TWO IF YOU
17 CAN'T BREATHE. AND SO THIS IS SOMETHING THESE EXPERIENCED
18 OFFICERS KNEW. AND WHAT YOU HEAR WOLFE SAYING IS, RELAX,
19 RELAX, RELAX. WELL, YOU KNOW, WOULD YOU RELAX IF YOU
20 COULDN'T BREATHE AND SOMEONE IS PRESSING DOWN ON YOUR CHEST?

21 AND THEY COULD HAVE SAID TO HIM, LOOK, KELLY, WE
22 ARE GOING TO GIVE YOU ANOTHER CHANCE, WE ARE GOING TO GET
23 OFF YOU SO YOU CAN BREATHE, BUT YOU HAVE TO PROMISE TO LET
24 US HANDCUFF YOU, WE ARE NOT GOING TO HURT YOU, AND SO ON.
25 THEY SHOULD HAVE DONE THAT.

26 NOW, I HAVE TO SAY IN HONESTY THAT KELLY WOULD

1 HAVE BEEN NUTS IF HE BELIEVED THEM AFTER WHAT THEY HAD
2 ALREADY DONE TO HIM AND THE THREATS THEY MADE, BUT,
3 NEVERTHELESS, IF THESE WERE OFFICERS IN GOOD FAITH, THEY
4 WOULD HAVE DONE THAT. HOW COULD THEY NOT? YOU LISTEN TO
5 THAT MAN'S AGONY AND HIS SCREAMS AND HIS CRIES, CONSISTENTLY
6 SAYING, I CAN'T BREATHE, HOW COULD THEY CONTINUE TO DO WHAT
7 THEY DID? IT JUST DOESN'T MAKE SENSE IN TERMS OF WHAT A
8 REASONABLE POLICE OFFICER WOULD DO.

9 IF THIS WAS REASONABLE POLICE CONDUCT, LADIES AND
10 GENTLEMEN, YOU WOULD HAVE HUNDREDS OF GRAND JURIES ALL
11 ACROSS THIS COUNTRY SITTING THERE CONSIDERING CASES LIKE
12 THIS. COPS DON'T THINK REASONABLY LIKE THIS, THAT THIS IS
13 OKAY TO DO THIS. THAT THIS WAS UNDERSTANDABLE. I MEAN THEY
14 MIGHT SAY THAT AS PART OF BROTHERHOOD, BUT THE FACT IS THAT
15 PRIVATELY THEY DON'T DO IT THEMSELVES, WHICH IS THE REAL
16 TEST OF HOW, OR WHETHER IT IS REASONABLE OR NOT.

17 SO THE RISK OF ESCAPE I MENTIONED IS NONE. THE
18 POTENTIAL OF INJURY TO CITIZENS DOESN'T EXIST. TO OFFICERS,
19 DOESN'T EXIST. I MEAN, LOOK AT HOW MANY OF THEM THERE WERE.
20 AND THE SKINNY GUY IS GOING TO INJURE THEM? AND THE
21 TRAINING AND EXPERIENCE OF THE OFFICERS, THEY HAVE HAD THE
22 TRAINING, IT'S THERE, THEY GET ANNUAL TRAINING EVERY YEAR.
23 THEY COULDN'T HAVE GOTTEN THE CERTIFICATION TO EVEN BE
24 POLICE OFFICERS IF THEY HADN'T HAD THAT TRAINING.

25 SO IT SAYS VARIOUS DEGREES OF FORCE EXIST, AND
26 EACH OFFICER IS EXPECTED TO USE ONLY THAT DEGREE OF

1 REASONABLE, UNDER THE CIRCUMSTANCES, FORCE, SUCCESSFULLY
2 USED TO ACCOMPLISH THE LEGITIMATE LAW ENFORCEMENT PURPOSE.

3 WHAT WAS THE LEGITIMATE LAW ENFORCEMENT PURPOSE?
4 TO MAKE SURE THIS POSSIBLE CAR BOOSTER GOES TO PRISON? EVEN
5 IF HE WAS CONVICTED, PRETTY UNLIKELY THAT HE WOULD DO ANY
6 JAIL TIME. SO HOW CAN YOU RISK KILLING HIM?

7 NOW, THAT BALANCE EXISTS TO EVERYTHING, EVEN WHEN
8 YOU HAVE A TERRIBLE CRIME, POLICE ARE NOT JUSTIFIED SHOOTING
9 INTO A CROWD OF PEOPLE IN CHURCH BECAUSE THERE IS A FELON
10 THERE THAT NEEDS TO BE ARRESTED. EVEN ONE WHO MAY HAVE
11 MURDERED SOMEONE. THEY CAN'T SAY, YEAH, WE KILLED A COUPLE
12 OF OTHER PEOPLE, BECAUSE THAT'S COLLATERAL DAMAGE.

13 THE POLICE IN OUR COUNTRY ARE NOT PART OF THE
14 MILITARY, AND COLLATERAL DAMAGE, HURTING INNOCENT PEOPLE, IS
15 NOT AN OPTION. THEY ARE NOT ALLOWED TO CHASE PEOPLE AT 100
16 MILES AN HOUR THROUGH THE STREETS ON A TRAFFIC VIOLATION
17 BECAUSE SOMEONE WILL GET AWAY. THEY ARE NOT ALLOWED TO TAKE
18 THOSE KIND OF RISKS WITH INNOCENT LIVES. AND THE LAW IS
19 PRETTY PLAIN, IT SAYS, NOT JUST INNOCENT PEOPLE, BUT EVEN
20 THE GUILTY PEOPLE HAVE RIGHTS TO THE PROTECTION OF LIFE.

21 SO THE END THOUGHT OF THIS IS IT MUST BE
22 NONETHELESS OBJECTIVELY REASONABLE, AND UTILIZED ONLY TO THE
23 DEGREE REASONABLY NECESSARY TO ACCOMPLISH A LEGITIMATE LAW
24 ENFORCEMENT PURPOSE. AND THAT IS NOT JUST MY OPINION, THAT
25 IS THE RULES THAT THESE OFFICERS ARE OBLIGED TO OBEY OF
26 THEIR OWN DEPARTMENT. AND IT IS THE LAW ENFORCEMENT CODE OF

1 ETHICS. AND IT IS THE PENAL CODE AS WELL.

2 MR. RACKAUKAS: THANK YOU. I DON'T HAVE ANY ADDITIONAL
3 QUESTIONS.

4 THE GRAND JURY FOREPERSON: ARE THERE QUESTIONS FROM
5 THE GRAND JURY?

6 (AFFIRMATIVE RESPONSES).

7 (FOR I.D. = GRAND JURY EXHIBIT 118)

8 MR. RACKAUKAS: WE HAVE NINE QUESTIONS, I AM GOING TO
9 ASK TO HAVE THOSE MARKED.

10 THE GRAND JURY SECRETARY: 118.

11 MR. RACKAUKAS: 118 FOR THE GRAND JURY.

12 THE GRAND JURY FOREPERSON: ALL RIGHT. WE WILL TAKE A
13 RECESS. WE WILL BE IN RECESS UNTIL 12:10 BY THIS CLOCK.

14 DURING ANY PERIOD OF THIS RECESS YOU MUST NOT
15 DISCUSS WITH ANYONE, EITHER INSIDE OR OUTSIDE OF THIS
16 HEARING ROOM, ANY SUBJECT CONNECTED WITH THIS HEARING.

17 (RECESS TAKEN.)

18 (THE FOLLOWING PROCEEDINGS WERE HELD IN THE GRAND
19 JURY ROOM:)

20 THE GRAND JURY FOREPERSON: LADIES AND GENTLEMEN, WE
21 ARE AGAIN IN SESSION ON THE JOSEPH ANDREW WOLFE HEARING.

22 LET THE RECORD REFLECT THAT ALL THE SAME 16
23 MEMBERS OF THE GRAND JURY ARE PRESENT.

24 MR. DISTRICT ATTORNEY, YOU MAY CONTINUE.

25 MR. RACKAUKAS: THANK YOU.

26 THERE WERE NINE QUESTIONS FROM THE GRAND JURORS,

1 AND THEY WILL BE MARKED COLLECTIVELY AS EXHIBIT 118.

2 AND THERE ARE THREE OF THEM THAT I AM NOT GOING
3 TO ASK THE WITNESS, BECAUSE THEY BASICALLY CALL FOR LEGAL
4 CONCLUSIONS, AND ONE BECAUSE IT IS, I THINK, INAPPROPRIATE
5 FOR THIS PARTICULAR HEARING. IF YOU WOULD LIKE ME TO SHOW
6 YOU THOSE, WE WILL KEEP THOSE AS 118.

7 SHOULD I MARK THE ONES THAT I AM NOT ASKING?

8 THE GRAND JURY SECRETARY: YES.

9 MR. RACKAUKAS: THANK YOU.

10 THAT'S NOT MEANT AS AN INSULT TO ANYONE WHO MIGHT
11 HAVE ASKED THAT QUESTION, I JUST DON'T THINK FOR THE PURPOSE
12 OF THIS HEARING IT IS THE RIGHT THING TO DO.

13 Q. BY MR. RACKAUCKAS: BUT THIS QUESTION:

14 DID KELLY THOMAS HAVE ANY CULPABILITY IN THIS
15 INCIDENT?

16 A. I THINK AS A CITIZEN, I WOULD SAY KELLY THOMAS
17 HAD SOME CULPABILITY. IN TERMS OF THE WAY I WOULD VIEW HIM,
18 IF I HAD BEEN ONE OF THE POLICE OFFICERS RESPONDING IN THIS
19 SITUATION, I DON'T SEE ANY CRIMINAL CULPABILITY THAT WOULD
20 HAVE JUSTIFIED HIS ARREST OR USING OF FORCE AGAINST HIM.

21 Q. WHEN YOU VIEWED THE VIDEO, DID YOU SEE ANY OF THE
22 OFFICERS ON THE SCENE THAT ATTEMPTED TO MANAGE THE
23 SITUATION, OR STOP THE ESCALATING, OR THE ESCALATION OF THE
24 VIOLENCE?

25 A. I CAN'T SAY THAT I SAW CLEARLY THAT THAT WAS A
26 MOTIVE FOR ANY OF THE OFFICERS. I THINK WHAT WAS OCCURRING

1 THERE IS WHAT WE REFER TO AS KIND OF A CONTAGION WITHIN
2 THESE CASES, WHERE THE ACTION JUST ESCALATES, AND IT IS VERY
3 HARD FOR INDIVIDUAL OFFICERS WHO GET CAUGHT UP IN THAT TO
4 DE-ESCALATE WHAT IS GOING ON, ESPECIALLY IN THE CASE OF
5 OFFICERS WHO RESPOND AND ARE UNAWARE OF WHAT HAS OCCURRED
6 PREVIOUSLY.

7 SO I DON'T SEE ANY SITUATION THERE WHERE ANY OF
8 THOSE OFFICERS WHO WERE INVOLVED WERE CONCERNED, EVEN
9 EXPRESSED A CONCERN ABOUT KELLY THOMAS' INABILITY TO
10 BREATHE, OR THAT THEY WERE HURTING HIM. ALL OF THE CONCERN
11 SEEMED TO BE THAT THEY COULDN'T GET HIM TO STAY STILL.

12 MR. RACKAUCKAS: THERE IS ONE OTHER THAT I AM NOT GOING
13 TO ASK, AND I WILL TELL YOU, THIS IS ABOUT KELLY THOMAS'
14 RIGHT TO SELF DEFENSE, AND THAT'S A LEGAL QUESTION THAT I AM
15 NOT GOING TO ASK THIS WITNESS ABOUT.

16 Q. BY MR. RACKAUCKAS: I DON'T KNOW IF YOU HAVE IN
17 YOUR PAPERWORK, BUT THE QUESTION IS, WHEN WERE YOU HIRED BY
18 THE D.A.'S OFFICE TO BE A CONSULTANT IN OFFICER JOE WOLFE'S
19 CASE?

20 A. WHY WAS I HIRED?

21 Q. WHEN.

22 A. OH, WHEN.

23 I THINK I MIGHT BE ABLE TO ANSWER THAT IF I MAY
24 LOOK THROUGH MY NOTES?

25 Q. YES.

26 A. (WITNESS COMPLIES).

1 I THINK THE BEST I CAN DO IS SAY IT WAS PROBABLY
2 SOMETIME BACK IN JUNE.

3 Q. OF?

4 A. DOES THAT MAKE SENSE?

5 Q. OF THIS YEAR?

6 A. YEAH. PERHAPS EARLIER THAN THAT. I THOUGHT I
7 HAD AN E-MAIL FROM YOUR OFFICE, BUT.

8 Q. YOU KNOW WHAT, WE CAN GET THAT DATE.

9 A. I DO HAVE AN E-MAIL HERE DATED JUNE 19TH, WHICH
10 INDICATES THAT I WAS HIRED SOMETIME PREVIOUS TO THAT.
11 THAT'S THE BEST I CAN GET.

12 Q. ALL RIGHT. I WILL GET THAT AND WE WILL MAKE SURE
13 THAT THAT BECOMES CLEAR.

14 BUT THE NEXT QUESTION ON THAT IS, DID YOU ASSIST
15 THE D.A.'S OFFICE IN THE OFFICER RAMOS CASE?

16 A. DID I WHAT?

17 Q. DID YOU ASSIST THE D.A.'S OFFICE IN THE
18 INVESTIGATION OF OFFICER RAMOS?

19 A. I WOULDN'T USE THE WORD ASSIST, BUT I DISCUSSED
20 IT WITH THEM. AND SO I DON'T KNOW, I THINK PROBABLY YOUR
21 OFFICE HAS TO ANSWER WHETHER MY CONVERSATION ASSISTED OR
22 DETRACTED.

23 Q. ALL RIGHT. BUT YOU WERE RETAINED BY MY OFFICE
24 AFTER THE PRELIMINARY HEARING IN OFFICER RAMOS' CASE?

25 A. YES.

26 Q. NOW, YOU CALLED OFFICER WOLFE A PARTNER WITH

1 OFFICER RAMOS. YOU SAID, WELL, IT WAS HIS PARTNER AND THEY
2 WERE OVER THERE. UNDERSTANDING THAT IF I TELL YOU THAT THEY
3 ARRIVED IN DIFFERENT CARS, AND THEY WERE NOT IN THE SAME
4 CAR.

5 A. YES, I KNOW THAT.

6 Q. HOW DO YOU MEAN, OR WHAT DO YOU MEAN BY PARTNER?

7 A. WELL, WHETHER THEY ARE IN THE SAME CAR OR NOT,
8 THEY ARE, IN THIS PARTICULAR INCIDENT THEY ARE PARTNERS IN
9 THE INCIDENT, AND RESPONDING WITH EACH OTHER TO THIS
10 PARTICULAR INCIDENT, THEY ARE PARTNERING UP IN TERMS OF
11 POLICE LINGO, AND SO TO THAT EXTENT THE TWO OF THEM, AS FAR
12 AS THIS INCIDENT IS CONCERNED, WERE PARTNERS. WHAT THEIR
13 ORDINARY WORKING RELATIONSHIP IS, I DON'T KNOW.

14 Q. OKAY. HOW DO YOU GO ABOUT JUDGING A PERSONAL,
15 QUOTE, MIND FRAME DURING AN INCIDENT?

16 A. HOW DID I GO ABOUT GETTING THE OFFICER'S PERSONAL
17 MIND FRAME DURING THIS INCIDENT? I DID THAT BY CONSIDERING
18 THE VIDEOTAPES. AND ALSO STUDYING THE DIALOGUE, THE
19 TRANSCRIPTS OF THE DIALOGUE. AND ALSO REVIEWING THE RULES
20 OF THE DEPARTMENT AND THE OTHER MATERIAL, AND I MENTIONED
21 LIKE THE ETHICS, LAW ENFORCEMENT ETHICS, AND THE P.O.S.T.
22 TRAINING, THE CALIFORNIA PEACE OFFICERS STANDARD TRAINING
23 MATERIAL TO WHICH THEY WERE EXPOSED. AND CONSIDERING ALL OF
24 THOSE FACTORS TOGETHER TO SAY, WHAT WAS THEIR FRAMEWORK, AND
25 ALSO THE DISPATCHING LANGUAGE AS WELL.

26 MR. RACKAUKAS: ALL RIGHT. ARE THERE ANY ADDITIONAL

1 QUESTIONS?

2 (AFFIRMATIVE RESPONSES).

3 THE GRAND JURY FOREPERSON: WE HAVE A QUESTION IN THE
4 CORNER.

5 MR. RACKAUKAS: THANK YOU.

6 Q. BY MR. RACKAUCKAS: WELL, THE QUESTION IS, HAVE YOU
7 BEEN INVOLVED IN THIS CASE WITH ANY OF THE OTHER OFFICERS
8 THAT WERE CHARGED BESIDES RAMOS?

9 A. (NO RESPONSE).

10 Q. THERE IS A CERTAIN AMBIGUITY TO THAT QUESTION, SO
11 LET ME BREAK IT UP A LITTLE BIT, AND ASK YOU THIS.

12 A. ALL RIGHT.

13 Q. HAVE I CONSULTED YOU REGARDING THIS ENTIRE
14 INCIDENT, OR JUST OFFICER WOLFE; HOW WOULD YOU DESCRIBE IT?

15 A. WELL, IT IS A VERY DIFFICULT QUESTION, I THINK,
16 IN THOSE TERMS, BECAUSE I THINK, AS MY RECOLLECTION IS THAT
17 YOUR MAIN CONCERN WAS TO HAVE ME FOCUS ON OFFICER WOLFE.
18 BUT, ON THE OTHER HAND, TO DO THAT I REALLY HAD TO CONSIDER
19 THE CASE AS A WHOLE.

20 MR. RACKAUKAS: I THINK THAT ANSWERS IT.

21 THE GRAND JURY FOREPERSON: ARE THERE ANY MORE
22 QUESTIONS?

23 (NO AFFIRMATIVE RESPONSE).

24 THE GRAND JURY FOREPERSON: WE ARE DONE.

25 PLEASE STAND.

26 THE WITNESS: (WITNESS COMPLIES).

1 THE GRAND JURY FOREPERSON: ALL RIGHT. MR. MCNAMARA,
2 YOU ARE ADMONISHED TO NOT DISCUSS OR REPEAT AT ANY TIME
3 OUTSIDE OF THIS COURTROOM THE QUESTIONS YOU HAVE BEEN ASKED
4 OR YOUR ANSWERS, WITH THE UNDERSTANDING THAT SUCH
5 DISCLOSURES ON YOUR PART MAY BE THE BASIS FOR CHARGES
6 AGAINST YOU OF CONTEMPT OF COURT.

7 YOU ARE FREE TO SEEK LEGAL ADVICE FROM AN
8 ATTORNEY, OR FROM THE DISTRICT ATTORNEY'S OFFICE.

9 DO YOU UNDERSTAND?

10 THE WITNESS: YES.

11 THE GRAND JURY FOREPERSON: MR. MCNAMARA, THANK YOU FOR
12 TESTIFYING, YOU ARE EXCUSED FROM THIS HEARING.

13 THE WITNESS: THANK YOU.

14 MR. RACKAUKAS: THANK YOU SO MUCH, SIR, I APPRECIATE
15 IT.

16 (WHEREUPON JOSEPH MCNAMARA EXITED THE GRAND JURY
17 ROOM.)

18 MR. RACKAUCKAS: MAY I HAVE A MOMENT?

19 THE GRAND JURY FOREPERSON: YES.

20 MR. RACKAUCKAS: THANK YOU.

21 THE GRAND JURY FOREPERSON: ALL RIGHT. LADIES AND
22 GENTLEMEN, WE ARE GOING TO TAKE OUR LUNCH BREAK, WE WILL BE
23 IN RECESS UNTIL 1:20.

24 DURING ANY PERIOD OF THIS RECESS YOU MUST NOT
25 DISCUSS WITH ANYONE, EITHER INSIDE OR OUTSIDE OF THIS
26 HEARING ROOM, ANY SUBJECT CONNECTED WITH THIS HEARING.

1 THANK YOU.

2 (LUNCH TAKEN.)

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

1 SANTA ANA, CALIFORNIA - SEPTEMBER 20, 2012

2 AFTERNOON SESSION

3

4 (THE FOLLOWING PROCEEDINGS WERE HELD IN THE GRAND
5 JURY ROOM:)

6 THE GRAND JURY FOREPERSON: WE ARE HERE AGAIN IN
7 SESSION ON THE JOSEPH ANDREW WOLFE HEARING.

8 LET THE RECORD REFLECT ALL THE SAME 16 MEMBERS OF
9 THE GRAND JURY ARE AGAIN PRESENT.

10 MR. DISTRICT ATTORNEY, YOU MAY CALL YOUR NEXT
11 WITNESS.

12 MR. TANIZAKI: DR. MICHAEL LEKAWA.

13 (WHEREUPON MICHAEL LEKAWA ENTERED THE GRAND JURY
14 ROOM.)

15 THE GRAND JURY FOREPERSON: PLEASE RAISE YOUR RIGHT
16 HAND.

17 MICHAEL LEKAWA,
18 CALLED AS A WITNESS BEFORE THE GRAND JURY, HAVING BEEN FIRST
19 DULY SWORN, WAS EXAMINED AND TESTIFIED AS FOLLOWS:

20 THE GRAND JURY FOREPERSON: PLEASE STATE YOUR NAME, AND
21 SPELL IT OUT FOR THE RECORD.

22 THE WITNESS: MICHAEL EDWARD LEKAWA, L-E-K-A-W-A.

23 THE GRAND JURY FOREPERSON: HAVE A SEAT, PLEASE.

24 THE WITNESS: (WITNESS COMPLIES).

25 THE GRAND JURY FOREPERSON: MR. DISTRICT ATTORNEY.

26 MR. TANIZAKI: THANK YOU.

1 EXAMINATION

2 Q. BY MR. TANIZAKI: DR. LEKAWA, BEFORE WE BEGIN I
3 WOULD LIKE TO ADVISE YOU YOU ARE NOW APPEARING BEFORE A DULY
4 CONSTITUTED GRAND JURY WHICH IS INVESTIGATING POSSIBLE
5 VIOLATIONS OF STATE CRIMINAL LAW.

6 DO YOU UNDERSTAND THAT?

7 A. YES, SIR.

8 Q. YOU HAVE BEEN PLACED UNDER OATH. AND THAT MEANS
9 YOUR TESTIMONY HERE TODAY HAS THE SAME FORCE AND EFFECT AS
10 IF YOU WERE IN A COURT OF LAW.

11 DO YOU UNDERSTAND THAT?

12 A. YES.

13 Q. THAT MEANS THAT YOU HAVE AN OBLIGATION TO TELL
14 THE TRUTH AND NOTHING BUT THE TRUTH IN THIS PROCEEDING, OR
15 YOU COULD SUBJECT YOURSELF TO A POSSIBLE PROSECUTION FOR
16 PERJURY.

17 DO YOU UNDERSTAND THAT?

18 A. YES.

19 Q. DR. LEKAWA, WHAT IS YOUR EDUCATIONAL BACKGROUND?

20 A. AFTER HIGH SCHOOL I ATTENDED THE UNIVERSITY OF
21 CALIFORNIA RIVERSIDE, AND GRADUATED WITH A BACHELORS OF
22 SCIENCE IN BIOCHEMISTRY.

23 I THEN ATTENDED JEFFERSON MEDICAL COLLEGE IN
24 PHILADELPHIA FOR AN M.D.

25 I THEN WENT TO CEDARS SINAI MEDICAL CENTER FOR MY
26 FIVE YEARS SURGICAL RESIDENCY.

1 I THEN CAME TO U.C. IRVINE FOR A YEAR OF SURGICAL
2 CRITICAL CARE AND TRAUMA FELLOWSHIP.

3 Q. AND -- I AM SORRY, GO AHEAD.

4 A. SO, I AM CURRENTLY BOARD CERTIFIED IN BOTH
5 SURGERY AND SURGICAL CRITICAL CARE TRAUMA.

6 Q. WELL, LET'S REVIEW, PLEASE DESCRIBE FOR US YOUR
7 WORK EXPERIENCE THEN.

8 A. SINCE COMPLETING MY FELLOWSHIP IN 1996 I HAVE
9 STAYED ON AT U.C. IRVINE MEDICAL CENTER.

10 I HAVE PROGRESSED THROUGH THE PROFESSORIAL RANKS
11 AND AM NOW A FULL PROFESSOR OF SURGERY, AND CHIEF OF THE
12 DIVISION OF TRAUMA AND CRITICAL CARE. I AM ALSO THE MEDICAL
13 DIRECTOR OF THE TRAUMA CENTER AT U.C. IRVINE.

14 Q. WHAT ARE YOUR DUTIES AS MEDICAL DIRECTOR OF THE
15 TRAUMA CENTER?

16 A. I AM RESPONSIBLE FOR THE OVERSIGHT OF ALL THE
17 CARE THAT IS DELIVERED. ALL THE ADMINISTRATIVE,
18 ORGANIZATIONAL RESPONSIBILITIES OF THE TRAUMA CENTER. ALL
19 THE STANDARDS OF CARE. ALL THE STANDARDS FOR ALL OF THE
20 OTHER PHYSICIANS THAT I BRING IN TO MANAGE PATIENTS.

21 Q. AND HOW LONG HAVE YOU BEEN THE MEDICAL DIRECTOR
22 THERE?

23 A. SINCE 1997.

24 Q. ALL RIGHT. ON JULY 5TH, 2011, WERE YOU WORKING
25 AT THE U.C.I. MEDICAL CENTER?

26 A. YES, I WAS THE ATTENDING SURGEON ON CALL FOR

1 TRAUMA.

2 Q. AND ABOUT 10:00 P.M. THAT NIGHT, ROUGHLY 10:00
3 P.M. THAT NIGHT, DID YOUR HOSPITAL RECEIVE AN ADMITTEE BY
4 THE NAME OF KELLY THOMAS?

5 A. YES.

6 Q. PLEASE TELL US WHAT KIND OF CONDITION HE ARRIVED
7 IN AT THAT TIME?

8 A. HE ARRIVED GLOBALLY IN WHAT WE WOULD CALL
9 CRITICAL CONDITION. HE WAS ALREADY INTUBATED, WHICH MEANS
10 HE HAD A BREATHING TUBE PLACED THROUGH THE MOUTH AND DOWN
11 THE TRACHEA SO THAT HE COULD BE VENTILATED ON A VENTILATOR.
12 HIS BLOOD PRESSURE WAS LOW. AND HE HAD PHYSICAL SIGNS OF
13 EXTERNAL FACIAL TRAUMA AND SUCH. NEUROLOGICALLY, HE WAS
14 COMATOSE.

15 Q. AND UPON ARRIVAL, DID YOU OR MEMBERS OF YOUR
16 STAFF ENGAGE IN A CONVERSATION WITH PARAMEDICS ABOUT HIS
17 CONDITION?

18 A. YES.

19 Q. AND WHAT DID THAT ENTAIL?

20 A. WELL, ROUTINELY EVERY PATIENT THAT IS BROUGHT IN
21 AS A TRAUMA IS NORMALLY BROUGHT IN BY A PARAMEDIC OR BY A
22 GROUP OF PARAMEDICS, AND ONE OF OUR PRIORITIES WHILE WE ARE
23 DOING THE TRANSFER OF THE PATIENT ONTO OUR GURNEY AND ALL,
24 THE PARAMEDIC GIVES A REPORT AS TO WHAT HAPPENED. WE GET AS
25 MUCH INFORMATION AS WE CAN FROM THE PARAMEDIC, AS BEST THEY
26 KNOW IT, AND THEN WE TRANSCRIBE THAT ONTO OUR OWN PAPERWORK.

1 AND THEN AS SOON AS THAT IS DONE, AND WE TRY TO MAKE IT
2 QUICK AND TO THE POINT SO WE CAN FOCUS OUR ATTENTION ON THE
3 PATIENT THEMSELVES.

4 Q. AND WHAT INFORMATION DID YOU RECEIVE FROM THE
5 PARAMEDICS WHEN THEY BROUGHT MR. THOMAS IN?

6 A. THAT HE HAD BEEN INVOLVED IN AN ALTERCATION WITH
7 POLICE. THAT HE WAS KNOWN TO THE HOSPITAL PERSONNEL TO HAVE
8 SOME PSYCHIATRIC DISORDERS. WE WERE TOLD, I BELIEVE, THAT
9 HE WAS HOMELESS AT THAT TIME.

10 THAT HE HAD HAD AN ARREST IN THE FIELD, MEANING
11 HE WAS NOT BREATHING, AND WAS THEREFORE TAKEN DIRECTLY TO A
12 NON-TRAUMA CENTER, WHICH IS ST. JUDE'S HOSPITAL. WHERE HE
13 HAD A CODE PERFORMED, MEANING CHEST COMPRESSIONS, HAD SOME
14 PERIOD OF ASYSTOLE, WHICH IS WHEN THE HEART IS NOT MOVING.
15 HAD A BREATHING TUBE PUT IN. IT WAS REPORTED TO US AS A
16 DIFFICULT AIRWAY, MEANING THEY HAD A HARD TIME GETTING THE
17 AIRWAY IN.

18 AT SOME POINT THE STORY RELATED TO THAT THE TUBE
19 WAS PUT IN AND THEN REPLACED LATER ON, THAT WAS THE INITIAL
20 STORY THAT WAS TOLD TO US. BUT THE PARAMEDIC THERE THAT
21 DELIVERED HIM TO US I DON'T BELIEVE WAS THE SAME PARAMEDIC
22 THAT DELIVERED HIM TO ST. JUDE'S. AND ONCE THEY HAD AN
23 AIRWAY AND THE BLOOD PRESSURE BACK, THEY RE-TRIAGED THE
24 PATIENT ACCORDING TO ORANGE COUNTY E.M.S. GUIDELINES, AND HE
25 WAS RE-TRIAGED TO U.C.I.

26 Q. LET'S TALK ABOUT THE INTUBATION INFORMATION YOU

1 RECEIVED BY ONE OF THE PARAMEDICS, THEY CALLED IT A
2 DIFFICULT INTUBATION, NOW, DID YOU GET A CHANCE TO REVIEW
3 THE MEDICAL RECORDS AT ST. JUDE WHERE THE INTUBATION TOOK
4 PLACE?

5 A. YES, I DID.

6 Q. AND DID YOU SEE ANY INDICATION IN THE MEDICAL
7 RECORDS THAT THERE WAS ANY KIND OF DIFFICULTY IN THE
8 INTUBATION PROCESS AT ST. JUDE MEDICAL CENTER?

9 A. NO, BOTH THE NURSING, AND ALL THE NURSING NOTES
10 AND ALL WERE VERY CLEAR THAT IT WAS, THE CODE WAS RUN IN A
11 NORMAL MANNER, AND THE AIRWAY WAS PLACED WITHOUT ANY
12 DIFFICULTY.

13 Q. WHEN YOU EXAMINED, OR YOUR STAFF EXAMINED KELLY
14 THOMAS, WAS THERE ANY EVIDENCE PHYSICALLY THAT WOULD
15 INDICATE THAT THERE WAS SOME KIND OF DIFFICULTY IN THE
16 INTUBATION PROCESS?

17 A. NO, WE DIDN'T FIND ANY EVIDENCE OF THAT, AND WE
18 DID CONFIRM THAT IN FACT THE ENDOTRACHEAL TUBE THAT HE HAD
19 IN HIM WAS PLACED CORRECTLY IN THE TRACHEA.

20 Q. WHAT WOULD BE THE FIRST THING THAT YOU WOULD DO
21 WITH KELLY THOMAS IN TERMS OF TREATMENT?

22 A. ASSESSING HIS AIRWAY WOULD BE THE VERY FIRST
23 PRIORITY.

24 Q. AND WHAT DID YOU FIND ABOUT THAT?

25 A. THAT WHILE WE EVALUATED THE ENDOTRACHEAL TUBE,
26 QUICKLY LOOKING AT IT TO MAKE SURE IT IS IN THE TRACHEA.

1 AND THEN WE ALSO MEASURE THE CARBON DIOXIDE THAT IS BEING
2 RELEASED FROM IT, THAT CONFIRMS IT IS IN THE LUNGS. AND IT
3 DID CONFIRM CARBON DIOXIDE LEVELS THAT WERE APPROPRIATE FOR
4 IT BEING IN THE LUNGS.

5 Q. WHAT DID YOU DO NEXT?

6 A. THEN WE LOOK AT BREATHING, TO EVALUATE THE CHEST.
7 IT IS AN AIRWAY, BREATHING, WE LISTEN TO THE LUNGS, WE
8 MEASURE OXYGEN LEVELS AND ALL. AND THEN YOU MOVE THROUGH
9 AND LOOK AT CIRCULATION. WHAT WE CALL THE A, B, C'S OF
10 TRAUMA, AIRWAY, BREATHING AND CIRCULATION.

11 Q. AND WHAT DID YOU FIND ABOUT KELLY THOMAS'
12 A.B.C.'S?

13 A. WELL, THAT HE HAD BREATH SOUNDS BILATERALLY.
14 WE GET A CHEST X-RAY TO MAKE SURE THAT EVERYTHING
15 LOOKS OKAY AND THERE IS NO COLLAPSED LUNGS OR ANY PROBLEM
16 THERE.

17 AND WE GET A BLOOD GASES OBTAINED, TO MAKE SURE
18 AT THAT POINT HE IS OXYGENATING ADEQUATELY AT THAT POINT,
19 AND THAT HIS CARBON DIOXIDE LEVELS ARE OKAY. AND PART OF
20 THAT BLOOD GAS, AND THEN AS YOU MOVE ON TO CIRCULATION, THE
21 BLOOD GAS WOULD ALSO GIVE YOU AN INDICATION OF HOW WELL HE
22 WAS PROFUSING HIS ORGANS WITH OXYGEN AND BLOOD. AND THAT
23 MEASURES NOT ONLY THE OXYGEN LEVELS AND ALL, BUT THE PH, OR
24 THE ACID LEVEL OF THE BLOOD.

25 Q. AND WE WILL GET TO THOSE RESULTS IN A MINUTE, BUT
26 DID YOU ALSO DO CAT SCANS OR OTHER STUDIES AT THAT TIME?

1 A. YES, ULTIMATELY AFTER ABOUT AN HOUR OF
2 STABILIZATION, WE THEN HAD HIM GO FOR CAT SCANS, WHICH WAS
3 TO LOOK BASICALLY AT THE INTERNAL ORGANS, INCLUDING THE
4 HEAD, THE SPINE, THE CHEST AND THE ABDOMEN.

5 Q. AND AFTER THE CAT SCANS WERE DONE, WHAT DID YOU
6 SEE IN TERMS OF THE RESULTS OF THOSE CAT SCANS?

7 A. WELL, WE DID NOT SEE BRAIN BLEEDING INDICATIVE OF
8 A MAJOR HEAD INJURY. THE BRAIN APPEARED TO BE, I THINK, A
9 LITTLE BIT TIGHT, A LITTLE EDEMATOUS PER SE, I BELIEVE THAT
10 WAS THE READING, BUT NOT PER SE TRAUMATIZED. THERE WERE
11 FACIAL FRACTURES, MAXILLARY FRACTURES AND SUCH IN THE FACE.

12 Q. CAN I STOP YOU RIGHT THERE.

13 A. YES.

14 Q. WHAT DO YOU MEAN BY THE MAXILLARY AREA?

15 A. THE FACE, BELOW THE EYE, ABOVE THE MANDIBLE OR
16 THE JAWBONE, HAD FRACTURES ASSOCIATED WITH IT.

17 Q. AND WHAT ELSE DID YOU SEE IN TERMS OF THE, I
18 GUESS THE TRAUMA THAT WAS DISCOVERED FROM THE CAT SCANS?

19 A. HE HAD A COUPLE OF RIB FRACTURES AND A COUPLE OF
20 BRUISES ON THE LUNG, AND POSSIBLE SIGNS OF AN ASPIRATION,
21 THERE WAS SOME FLUID OR MATERIAL WITHIN THE LUNG PARENCHYMA
22 OR THE LUNG TISSUE, THAT APPEARED TO BE MORE CONSISTENT WITH
23 AN ASPIRATION.

24 Q. DID YOU FIND ANY KIND OF A TRAUMATIC INJURY PER
25 SE THAT WOULD ACCOUNT FOR HIS CONDITION AT THAT TIME?

26 A. NO, HIS COMATOSE CONDITION AND HIS LOW BLOOD

1 PRESSURE, I DID NOT HAVE AN ANATOMIC CAUSE FOR THAT. I
2 MEAN, THERE WAS NO LARGE BLOOD CLOT IN THE BRAIN. THERE WAS
3 NO RUPTURED SPLEEN OR SOURCE OF BLEEDING PER SE THAT WE
4 COULD FIND. THERE WERE THESE --

5 Q. OR LIKE A BULLET WOUND OR A STAB WOUND?

6 A. CORRECT, WE DID NOT FIND A TRAUMATIC INJURY THAT
7 WOULD PER SE ACCOUNT FOR HIS COMATOSE STATE AND HIS
8 HYPOTENSION.

9 Q. AND AT THAT POINT IN TIME WHAT WAS MR. THOMAS'
10 OVERALL PHYSICAL CONDITION?

11 A. WELL, WE WERE ABLE TO RESTORE HIS BLOOD PRESSURE,
12 AND WITH A VENTILATOR WE WERE ABLE TO GET HIM BREATHING
13 OKAY, SO HIS LUNGS AND ALL WERE WORKING REASONABLY WELL. SO
14 HE WAS STABLE ENOUGH TO PUT IN THE I.C.U., BUT HIS
15 NEUROLOGIC STATUS DID NOT IMPROVE.

16 Q. LET'S TALK ABOUT, IS THERE SUCH A SCALE AS THE
17 GLASGOW COMA SCALE?

18 A. YES.

19 Q. CAN YOU EXPLAIN WHAT THAT IS?

20 A. THE GLASGOW COMA SCALE IS A MEASUREMENT OF YOUR
21 LEVEL OF CONSCIOUSNESS. IT RANGES FROM 3 TO 15. IT IS
22 REALLY A TOOL THAT IS USED TO ASSESS WHAT LEVEL OF AWAKENESS
23 A PERSON HAS.

24 AND SO 15 IS WHAT NORMALLY WE WOULD ALL HAVE HERE
25 IN THIS ROOM, WHICH WOULD BE NORMAL. IT IS BASED ON WHETHER
26 YOU FOLLOW INSTRUCTIONS IN YOUR MOVEMENTS, WHETHER YOU CAN

1 SPEAK COHERENTLY, AND WHETHER YOUR EYES ARE OPEN.

2 THE LOWEST YOU CAN GET, IF YOU HAVE NO NEUROLOGIC
3 FUNCTION, IS 3.

4 Q. AND WHAT DID MR. THOMAS SCORE?

5 A. I AM GOING TO HAVE TO LOOK, I BELIEVE HE WAS A 4,
6 BUT I WOULD HAVE TO DOUBLE CHECK TO BE SURE WHEN HE CAME IN.
7 BUT HE ULTIMATELY BECAME A 3.

8 Q. WOULD YOU LIKE TO REFER TO SOME OF THE HOSPITAL
9 RECORDS?

10 A. THESE ARE THE HOSPITAL RECORDS, I CAN QUICKLY
11 GIVE YOU AN ANSWER THERE.

12 Q. ALL RIGHT.

13 A. (WITNESS COMPLIES).

14 THE INITIAL GLASGOW COMA SCORE BY THE NURSES WHEN
15 HE FIRST CAME IN WAS 3. AND ASCENDED TO A 6. AND THEN
16 DESCENDED -- I AM SORRY, WENT FROM A 3 TO 6. AND BY MY
17 MEASUREMENT, OR BY THE PHYSICIAN MEASUREMENT IT WAS A 6.
18 WHEN HE FIRST CAME IN IT WAS A 3, AND AFTER RESUSCITATION HE
19 BECAME A 6, BECAUSE HIS EYES WERE OPEN. THAT WAS, HE WASN'T
20 DOING ANYTHING ELSE, BUT HIS EYES WERE OPENED, ALTHOUGH HIS
21 GAZE WAS DYSCONJUGATE, HIS EYES WERE LOOKING IN DIFFERENT
22 DIRECTIONS, AND THE PUPILS WERE NOT EQUAL. BUT SOMETIMES IT
23 IS A SOMEWHAT FLAWED SYSTEM, HIS EYES COULD BE OPEN FOR
24 ANOTHER REASON OTHER THAN CONSCIOUSNESS, SO THAT GAVE HIM AN
25 ARTIFICIALLY HIGH GLASGOW COMA SCORE.

26 Q. AND WHAT IS A PH SCORE?

1 A. IT IS A LEVEL OF, A MEASUREMENT OF THE PH OR THE
2 ACIDITY OF THE BLOOD. AND IT IS A MEASUREMENT BASED ON
3 ARTERIAL BLOOD GAS, SO WE TAKE A SPECIMEN OF BLOOD FROM THE
4 ARTERY.

5 NORMALLY YOUR BODY HAS A BALANCE BETWEEN THE
6 BASES AND ACIDS THAT IT MAKES, AND THE NORMAL PH WOULD BE A
7 7.4. IF YOU ARE USING A LOT OF MUSCLES, OR YOU ARE NOT
8 GETTING ENOUGH BLOOD OR OXYGEN TO YOUR MUSCLES, THEY WILL,
9 IN ORDER TO CREATE ENERGY, THEY WILL SECRETE ACIDS, AND
10 THOSE ACIDS POOL UP AND YOU BECOME MORE AND MORE ACIDOTIC,
11 MEANING YOUR PH FALLS AND BECOMES LOWER.

12 Q. DID YOU DETERMINE THE PH SCORE OF KELLY THOMAS AT
13 THIS TIME?

14 A. YES, WE DID.

15 Q. AND WHAT WAS THAT?

16 A. IT WAS IN THE MID 6'S, A 6.49.

17 Q. AND WHAT DOES 6.49 MEAN?

18 A. IT RELATES, CORRELATES TO HAVING A TREMENDOUS
19 AMOUNT OF ACID. AND IN TERMS OF, YOU KNOW, THE GOAL OF A
20 7.4 WOULD BE NORMAL. WHEN YOU GET BELOW A 7.25, THAT'S A
21 CRITICAL VALUE, AND IS SOMETHING THAT NEEDS TO BE EMERGENTLY
22 TAKEN CARE OF. AND IN HIS CASE ONCE YOU FALL BELOW 7, IT IS
23 USUALLY FATAL. AND ONCE YOU GET SIGNIFICANTLY BELOW 7, IT
24 IS ESSENTIALLY UNIFORMLY FATAL. OCCASIONALLY PEOPLE WILL
25 SURVIVE, DEPENDING ON THE CAUSE OF THE ACIDOSIS, BUT THOSE
26 ARE SO RARE THEY END UP ON, OR OCCASIONALLY IN THE

1 LITERATURE.

2 Q. THESE SCORES AS DETERMINED BY YOUR HOSPITAL ARE
3 WITHIN THE FIRST FEW HOURS OF HIS ARRIVAL?

4 A. YES, THE BLOOD GAS THAT WAS DONE WAS DONE SHORTLY
5 AFTER HE ARRIVED.

6 Q. IN TERMS OF THE PH SCORE, THE LOW PH SCORE, COULD
7 YOU TELL US AND EXPLAIN TO US WHAT CAUSES SUCH A LOW SCORE.

8 A. WELL, NORMALLY WHEN WE ARE, WHEN YOU HAVE MUSCLES
9 THAT ARE WORKING HARD, OR ANY ORGAN IN YOUR BODY, THE BRAIN,
10 LIVER, IT NEEDS ENERGY TO DO THAT. AND IT REQUIRES OXYGEN
11 TO FUEL THAT ENERGY. SO THE BLOOD CARRIES OXYGEN TO YOUR
12 ORGANS. YOUR BODY CREATES, WILL USE THAT UP.

13 NOW, IF IT DOESN'T HAVE OXYGEN, IT WILL THEN
14 CREATE AN ACID CALLED LACTATE. SO IF YOU DON'T HAVE ENOUGH
15 OXYGEN BEING DELIVERED, THE LACTATE THAT IS SECRETED FROM
16 THE CELLS THEN IS DUMPED BACK INTO THE BLOOD, AND THAT
17 LOWERS THE PH. HIS LACTATE LEVEL WAS VERY, VERY LOW, IT WAS
18 GREATER THAN 11, WHICH I DON'T THINK WE MEASURE BEYOND THAT.

19 Q. NOW, FOLLOWING YOUR INITIAL PROGNOSIS, DIAGNOSIS,
20 WHAT KIND OF TREATMENT DID YOUR HOSPITAL UNDERTAKE TO HELP
21 KELLY THOMAS?

22 A. WELL, HE WAS TRANSFERRED TO THE I.C.U. WE GAVE
23 HIM SUPPORTIVE CARE ON A VENTILATOR. HE REQUIRED A
24 VENTILATOR TO BREATHE, BECAUSE HE WOULD NOT BREATHE
25 ADEQUATELY ON HIS OWN. WE GIVE HIM I.V. FLUIDS. WE HAD A
26 NEUROSURGEON AND A FACIAL SURGEON CONSULTED. WE TRIED TO

1 GIVE HIM VARIOUS THINGS TO LOWER THE AMOUNT OF SWELLING HE
2 MAY HAVE IN HIS BRAIN. AND ULTIMATELY WE FOLLOWED HIM UP
3 WITH FOLLOW-UP STUDIES.

4 BUT IT IS MOSTLY JUST SUPPORTIVE, BECAUSE IF
5 THERE IS NOT AN ANATOMIC INJURY TO GO OVER, YOU JUST MAKE
6 SURE YOU SUPPORT HIS ORGANS.

7 Q. AND I BELIEVE FOR THE NEXT SEVERAL DAYS, WAS THAT
8 BASICALLY YOUR ATTEMPT, TO JUST SUPPORT HIM, KEEP HIM ALIVE?

9 A. YES, WE SUPPORTED HIM AND ALLOWED HIS BRAIN TO,
10 OR HIS NEUROLOGIC STATUS TO DETERMINE HIS OUTCOME. HE HAD
11 SOME OTHER, YOU KNOW, HIS KIDNEYS ENDED UP FAILING ON HIM.
12 HIS LUNGS ENDED UP HAVING PROBLEMS. SO WE HAVE TO ADJUST
13 THE VENTILATOR, AND YOU HAVE TO ADJUST WHAT MEDICATIONS HE
14 IS GETTING, BUT ULTIMATELY HIS NEUROLOGIC STATUS DECLINED,
15 SO THERE IS NO ACTUAL INTERVENTION TO FIX THAT.

16 Q. SO HE BASICALLY STAYED COMATOSE THROUGHOUT HIS
17 STAY AT U.C.I.?

18 A. YES.

19 Q. AT WHAT POINT DID MR. THOMAS DIE?

20 A. (NO RESPONSE).

21 Q. DO YOU REMEMBER?

22 A. WELL, WE DID A BLOOD FLOW STUDY ON THE, I
23 BELIEVE, THE 8TH OF JULY. AND IT'S A STUDY WHERE WE
24 ACTUALLY MEASURE TO SEE IF ANY BLOOD IS GETTING TO THE
25 BRAIN. AND THEN WE CAN ACTUALLY LOOK AT THE BRAIN
26 PROFUSION, AND WE DETERMINED THERE WAS NO PROFUSION TO THE

1 BRAIN.

2 OF COURSE, IF THERE IS NO BLOOD GOING TO THE
3 BRAIN, THE BRAIN IS DEAD. SO WE DECLARED HIM BRAIN DEAD.

4 IN THE STATE OF CALIFORNIA, OR ANYWHERE, THERE IS
5 TWO WAYS TO DIE. YOU EITHER DIE BECAUSE YOUR HEART STOPS,
6 WHICH MOST OF US ARE FAMILIAR WITH, OR YOU ARE CONSIDERED
7 DEAD WHEN YOUR BRAIN STOPS FUNCTIONING. WHEN I SAY STOPS
8 FUNCTIONING, WHEN IT IRREVERSIBLY STOPS FUNCTIONING.

9 Q. THEREFORE AM I CORRECT IN STATING THAT ON JULY
10 10TH, MR. THOMAS WAS DECLARED BASICALLY BRAIN DEAD?

11 A. I WOULD HAVE TO LOOK. LET'S SEE, IT WAS --
12 ACTUALLY I SAID THE 8TH AND 9TH, IT WAS THE 9TH THAT HE HAD
13 THE TEST DONE, AND IT WAS ON THE 10TH THAT HE WAS DECLARED
14 BRAIN DEAD HERE, YES.

15 Q. WHAT IS AN ANOXIC BRAIN INJURY?

16 A. WELL, A PERIOD OF TIME WHERE THERE IS INADEQUATE
17 OXYGEN BEING DELIVERED TO THE BRAIN IS CALLED AN ANOXIC
18 PERIOD. SO AN ANOXIC BRAIN INJURY WOULD BE IF THE HEART
19 STOPS BEATING AND NO BLOOD IS FLOWING, THEREFORE IT IS NOT
20 CARRYING ANY OXYGEN, THE BRAIN THEN HAS A LIMITED CAPACITY
21 TO GET PASSED THAT. AND THEN WHAT HAPPENS IS THERE IS
22 DAMAGE TO THE CELLS OF THE BRAIN, WHICH EVEN THOUGH YOU CAN
23 RESTORE BLOOD FLOW AFTERWARDS, THE BRAIN HAS AN INJURY, AND
24 IF IT IS A SEVERE ENOUGH ANOXIC BRAIN INJURY, IT BECOMES
25 IRRECOVERABLE.

26 Q. WAS THAT YOUR OPINION AS TO MR. THOMAS' DEATH,

1 THE ANOXIC BRAIN INJURY?

2 A. YES.

3 Q. OR THE LACK OF OXYGEN TO THE BRAIN BASICALLY?

4 A. YES.

5 Q. NOW, AT THE TIME THAT KELLY THOMAS WAS AT U.C.I.

6 RECEIVING TREATMENT, HAD YOU SEEN THE VIDEOTAPE OF THE

7 INCIDENT INVOLVING KELLY THOMAS AND THE POLICE OFFICERS?

8 A. NO.

9 Q. HAVE YOU HAD A CHANCE AFTER THAT TO REVIEW THE
10 VIDEOTAPE?

11 A. YES.

12 Q. NOW, WAS THAT OPPORTUNITY GIVEN TO YOU, I
13 BELIEVE, IN AUGUST WHEN WE VISITED YOUR OFFICE?

14 A. YES.

15 Q. AND YOU HAD A CHANCE TO LOOK AT THAT VIDEOTAPE,
16 AND DID YOU FORM AN OPINION AFTER WATCHING THE VIDEOTAPE AS
17 TO WHAT EXPRESSLY CAUSED THE DEATH OF KELLY THOMAS?

18 A. I DID, ALTHOUGH I WOULD WANT TO STATE IN TERMS OF
19 WHAT MONTH THAT WAS, I AM GOING TO TAKE -- I CAN'T REMEMBER
20 THE DATE YOU CAME, BUT WHEN YOU VISITED THE MEDICAL CENTER
21 WAS THE FIRST TIME I HAD SEEN THAT TAPE.

22 Q. AND THAT WAS WITH MR. RACKAUCKAS?

23 A. YES, SIR.

24 Q. NOW, HAVING SAID THAT, DID YOU FORM AN OPINION AS
25 TO THE CAUSE OF DEATH OF KELLY THOMAS?

26 A. YES, I DID.

1 Q. AND WHAT IS THAT OPINION?

2 A. I BELIEVE, MY OPINION IS THAT DURING THE
3 ALTERCATION HE WAS AWAKE, STARTED OFF AWAKE AND CONSCIOUS,
4 AND ULTIMATELY BY THE END OF THE ALTERCATION HE WAS
5 UNCONSCIOUS. AND HE ARRESTED AT SOME POINT BETWEEN THERE
6 AND WHEN THEY NOTED HE ARRESTED, WHICH WAS WHAT CAUSED HIM
7 TO THEN BE TAKEN TO ST. JUDE'S.

8 HE WAS, ACTUALLY THE PROGRESSION OF IT WAS
9 INITIALLY HE WAS SPEAKING NORMALLY, AND IN FACT WORKING TO
10 FREE HIMSELF. AND ULTIMATELY STARTED MOANING WORDS, AND THE
11 WORDS BECAME LESS AND LESS COHERENT. AND ULTIMATELY HE FELL
12 SILENT AND STOPPED MOVING. SO HE WAS UNCONSCIOUS.

13 WHAT HAPPENS THEN, WHAT HE WAS COMPLAINING ABOUT
14 THROUGHOUT THAT WHOLE TIME WAS THAT HE COULDN'T BREATHE AND
15 HE COULDN'T BREATHE. AND HE OBVIOUSLY SOUNDED AS IF HE WAS
16 IN -- HE SOUNDED TO BE IN RESPIRATORY DISTRESS. HE WAS
17 BREATHING VERY QUICKLY. HE WAS GASPING FOR BREATH. HE WAS
18 STATING THAT HE COULDN'T BREATHE.

19 AND THEN HE ENDED UP HAVING AN ALTERED MENTAL
20 STATUS AND BECOMING UNCONSCIOUS. WAS NOTED TO BE CYANOTIC,
21 WHICH WHEN YOU ARE LOOKING AND YOU SEE THAT PEOPLES' FACE
22 AND LIPS ARE TURNING BLUE. AND THAT WAS WHEN HE WAS LYING
23 ON THE GROUND AFTER THE ALTERCATION. SO THEN HE ULTIMATELY
24 WAS FOUND TO HAVE NO BLOOD PRESSURE, AND WAS TAKEN TO ST.
25 JUDE'S.

26 SO DURING THAT TIME THERE WOULD BE AN INADEQUATE

1 AMOUNT OF OXYGEN IN THE BLOOD, WHICH THEN CAUSES THE HEART
2 TO SLOW DOWN AND INADEQUATE FLOW PROFUSING, SO YOU HAVE A
3 HEART THAT IS NOT PUSHING BLOOD, AND YOU HAVE BLOOD THAT
4 DOESN'T HAVE ENOUGH OXYGEN IN IT ANYWAY. AND THAT THEN
5 CAUSES THE HEART TO HAVE AN ARRHYTHMIA, SO IT DOESN'T WORK
6 AT ALL. SO NOW THE PROBLEM HAS BEEN COMPOUNDED. AND DURING
7 ALL THIS TIME THERE IS INADEQUATE OR NO BLOOD MAKING ITS
8 WAY, OR NO BLOOD AND OXYGEN MAKING ITS WAY TO THE BRAIN.

9 Q. BASED ON YOUR VIEW OF THE VIDEOTAPE, DID YOU
10 BELIEVE THAT THERE WAS SOME KIND OF MECHANICAL COMPRESSION
11 ON KELLY THOMAS THAT PREVENTED HIM TO BREATHE IN A WAY THAT
12 HE COULD SURVIVE?

13 A. YES.

14 Q. AND WHEN YOU LOOKED AT THAT VIDEOTAPE, DID YOU
15 SEE A POINT AT WHEN YOU COULD SEE THE COMPRESSION, OR WAS IT
16 OVER A PERIOD OF TIME?

17 A. IT WAS OVER A PERIOD OF TIME.

18 Q. WHAT HAPPENS TO A PERSON WHEN THERE IS A
19 MECHANICAL COMPRESSION IN AREAS, LET'S SAY IN THE CHEST OR
20 TORSO AREA THAT PREVENTS THEM FROM BREATHING NORMALLY?

21 A. WELL, WHEN YOU ARE UNABLE TO BREATHE ADEQUATELY
22 FROM COMPRESSION ON THE CHEST, YOU DON'T VENTILATE, MEANING
23 YOU ARE NOT MOVING ENOUGH AIR IN AND OUT. THAT'S WHAT IS
24 REQUIRED TO GET RID OF CARBON DIOXIDE. SO CARBON DIOXIDE,
25 WE ALL PRODUCE IT, AND WHEN WE BREATHE IN WE ARE BREATHING
26 IN AIR THAT IS LOW IN CARBON DIOXIDE, AND WHEN WE BREATHE

1 OUT IT IS HIGH IN CARBON DIOXIDE.

2 IF YOU DO NOT BREATHE ENOUGH, THE CARBON DIOXIDE
3 BUILD UPS IN YOUR BODY, WHICH CAUSES YOUR BLOOD TO BECOME
4 ACIDOTIC AND HAVE AN ALTERED LEVEL OF CONSCIOUSNESS. AND IT
5 CAN CAUSE YOUR HEART TO HAVE AN ARRHYTHMIA, WHERE IT WON'T
6 BEAT WELL. IT ALSO CAN CAUSE YOU TO NOT BE ABLE TO GET
7 ENOUGH OXYGEN IN YOUR BLOOD AS WELL, AND THEREFORE THERE IS
8 NO OXYGEN, OR INADEQUATE OXYGEN BEING DELIVERED TO YOUR
9 BRAIN TO KEEP YOU AWAKE, OR TO THE REST OF YOUR BODY'S
10 ORGANS.

11 Q. ARE THERE OTHER SYMPTOMS THAT YOU WOULD NOTICE
12 FROM A PERSON SUFFERING FROM MECHANICAL COMPRESSION THAT IS
13 INHIBITING THEIR BREATHING?

14 A. WELL, RESPIRATORY DISTRESS IS THE SYMPTOM YOU
15 WOULD SEE. SO THE BREATHING RATE WOULD GO UP AS FAST AS
16 THEY COULD, SINCE THEY CAN'T TAKE IN DEEP BREATHS, THEY ARE
17 GOING TO BREATHE AS FAST AS THEY COULD. THEY BECOME VERY
18 ANXIOUS. YOUR BODY'S DEFENSE MECHANISMS WOULD HAVE YOU DO
19 EVERYTHING POSSIBLE TO ALLEVIATE THE COMPRESSION.

20 SO IF THE COMPRESSION WAS, SAY SOMETHING WAS ON
21 TOP OF YOU LIKE A CAR, YOU WOULD DO EVERYTHING YOU COULD TO
22 TRY TO LIFT THE CAR UP, EVEN IF IT WOULDN'T MOVE, YOU WOULD
23 TRY. SO THE ANXIETY, THE EFFORT TO FREE YOURSELF, THE RAPID
24 RESPIRATORY RATE, AND ULTIMATELY THEN AN ALTERED MENTAL
25 STATUS, AND EVENTUALLY BECOME UNCONSCIOUS.

26 Q. WHEN YOU TALK ABOUT ALTERED MENTAL STATUS, WHAT

1 DO YOU MEAN BY THAT?

2 A. MORE AND MORE CONFUSION. SO IN HIS CASE, I COULD
3 TELL HIS WORDS WERE CHANGING, THEY WERE SLOWING DOWN AND
4 SLURRING, AND EVENTUALLY LEAD TO UNCONSCIOUSNESS. AN
5 ALTERED MENTAL STATUS IS WHEN YOU ARE JUST NOT THINKING
6 CLEARLY.

7 Q. WHEN YOU LOOKED AT THE VIDEO, DID YOU FORM AN
8 OPINION AS TO WHEN THE COMPRESSION ON KELLY THOMAS REALLY
9 CAUSED THE ANOXIA?

10 A. WELL --

11 Q. LET ME SAY THIS AS A PREAMBLE TO THAT, YOU KNOW,
12 YOU SAID THE COMPRESSION WAS OVER A PERIOD OF TIME, BUT DID
13 YOU NOTICE A POINT WHERE IT APPEARS TO YOU THAT HYPOXIA OR
14 THE SHORTAGE OF OXYGEN TO HIS BRAIN IS REALLY NOTICEABLE?

15 A. YES.

16 Q. WHEN IS THAT?

17 A. WELL, AFTER A PERIOD OF DISTRESS WHERE HE WAS
18 STATING HE WAS SHORT OF BREATH AND SUCH, EVENTUALLY WHEN HE
19 STARTED MOANING, STARTED SAYING INDIVIDUAL WORDS AND MOANING
20 WORDS, AND THEN THOSE WORDS BECAME LONGER AND LONGER, SO
21 INSTEAD OF SAYING A SENTENCE SUCH AS, YOU KNOW, HELP, I
22 CAN'T BREATHE, I CAN'T BREATHE, WHICH IS ALREADY HYPOXIA AND
23 DISTRESS, TO WHEN HE ONLY USED SINGLE WORDS, I THINK HE WAS
24 CALLING OUT DAD OR SOMETHING. AND EVENTUALLY THEY BECAME
25 INCOHERENT WORDS, HE DID NOT HAVE THE MENTAL STATUS TO
26 ACTUALLY PUT TOGETHER A SENTENCE OR WORDS. AND THAT IS WHEN

1 YOU WERE AT A CRITICAL LEVEL OF HYPOXIA.

2 ULTIMATELY WHEN HE STOPS SPEAKING AND WENT
3 UNCONSCIOUS, HE WAS, AT THAT POINT WOULD NEED AN
4 INTERVENTION OR SOMETHING TO GET HIM TO START BREATHING
5 ADEQUATELY.

6 Q. AND HOW DOES ALL THE PHYSICAL ACTIVITY THAT
7 PRECEDES THE ULTIMATE STATE OF HYPOXIA, HOW DOES THAT RELATE
8 IN TERMS OF WHAT YOU SAW IN THE VIDEO, YOU SAW A VERY
9 PHYSICAL STRUGGLE TAKE PLACE, HOW DOES THAT ALL RELATE TO
10 HYPOXIA?

11 A. WELL, THE AMOUNT OF OXYGEN WE HAVE IN OUR BLOOD
12 IS BASED ON TWO THINGS. HOW MUCH IS COMING IN THROUGH THE
13 LUNGS, AND HOW MUCH IS BEING USED BY YOUR BODY. WHEN YOU
14 ARE USING, INTENTIONALLY USING YOUR MUSCLES, YOU ARE
15 ESSENTIALLY USING UP ALL THE AVAILABLE OXYGEN. AND SO IT
16 WOULD DIMINISH THE AMOUNT OF TIME THAT COMPRESSION WOULD
17 HAVE TO TAKE PLACE TO CAUSE A PERSON TO BECOME UNCONSCIOUS,
18 OR TO REACH A CRITICAL THRESHOLD OF NOT HAVING ENOUGH
19 OXYGEN.

20 SO CERTAINLY THE PHYSICAL DURESS THAT HE WAS
21 UNDER, OR THAT HE WAS USING HIS MUSCLES TO TRY TO DO IN THE
22 ALTERCATION, WOULD HAVE MADE ALL OF THIS WORSE.

23 Q. SO BASICALLY NOT ONLY HIS ACTIVITY, BUT LET'S SAY
24 THE PHYSICAL FORCE, THE BLOWS, THE TASERING, ALL OF THAT
25 WOULD CONTRIBUTE TO THIS HYPOXIA?

26 A. WELL, IN A FEW DIFFERENT WAYS. SO THE PHYSICAL

1 FORCE, IF THERE IS BLUNT PHYSICAL FORCE TO THE HEAD OR THE
2 FACE, THAT WOULD CAUSE YOU TO NOT BE THINKING CLEARLY, AND
3 YOUR ABILITY TO COMPENSATE OR TO TRY TO MANIPULATE YOURSELF
4 TO BREATHE BETTER WOULD BE DIMINISHED. SO THE LOWER YOUR
5 MENTAL STATUS, THE LESS ABLE YOU ARE TO PROTECT YOUR AIRWAY
6 AND BREATHE EFFECTIVELY.

7 ALSO WITH ALL OF THE FRACTURES, IF THERE IS
8 BRUISING OF THE LUNGS, WHICH WAS ULTIMATELY FOUND, IF THERE
9 IS FACIAL FRACTURES WITH BLEEDING, AND IF THAT BLOOD IS
10 ASPIRATED, MEANING THAT YOU BREATHE THAT BLOOD INTO THE
11 LUNGS, THAT BLOOD GETS INTO THE LUNGS AND INTERFERES WITH
12 OXYGEN MOVING INTO YOUR OWN BODY, SO IT WOULD ACTUALLY
13 DIMINISH YOUR BODY'S ABILITY TO ABSORB OXYGEN.

14 Q. NOW, AS THE MEDICAL TRAUMA DIRECTOR AT U.C.I.,
15 ARE YOU FAMILIAR WITH BLOOD TESTS AND URINE TESTS OF
16 INDIVIDUALS THAT COME INTO YOUR HOSPITAL?

17 A. YES.

18 Q. AND ARE YOU FAMILIAR WITH THE PROCESS IN WHICH
19 THE BLOOD OR URINE IS TAKEN, TESTED, AND THEN RECORDED,
20 LET'S SAY, IN A REPORT?

21 A. YES.

22 Q. CAN YOU JUST BASICALLY GENERALLY DESCRIBE THAT
23 PROCESS TO US, TO HELP US UNDERSTAND HOW A REPORT OR RESULT
24 IS GENERATED.

25 A. SURE. WHEN A TRAUMA PATIENT COMES IN, THEY WILL
26 HAVE STANDARD BLOOD TESTS TAKEN. SO WE WILL TAKE BLOOD

1 SPECIMENS FROM THEM AS QUICK AS WE CAN.

2 WE WILL ALSO TAKE A URINE SPECIMEN FROM THEM. WE
3 PUT A CATHETER INTO THE BLADDER AND EXTRACT SOME FLUID, SOME
4 URINE, EXCUSE ME.

5 AND THAT GETS RECORDED AND SENT TO THE LAB. A
6 REPORT IS GENERATED. THE NURSES WILL WRITE THE TIME THE
7 SPECIMEN WAS OBTAINED ON THE CONTAINER, AND THEN SEND IT TO
8 THE LAB. AND THE LAB WILL GIVE US A REPORT WITH THE
9 RESULTS.

10 STANDARD TESTS HERE WOULD INCLUDE A URINALYSIS,
11 SO AN EVALUATION OF THE URINE, A TOXICOLOGY SCREEN, USUALLY
12 AN ALCOHOL SCREEN, COMPLETE BLOOD COUNT AND ELECTROLYTES.

13 Q. LET'S TAKE A URINE SAMPLE, FOR EXAMPLE, ONCE A
14 URINE SAMPLE, OR WHAT HAPPENS TO IT AFTER THE SAMPLE IS
15 TAKEN?

16 A. IT IS TAKEN. IT IS LABELED THEN WITH THE
17 PATIENT'S STICKER, AND THEN THAT WOULD BE DONE BY THE NURSE.
18 AND THEN IT IS TAKEN DOWN TO THE LABORATORY. AND THEN THEY
19 WILL THEN TAKE IT, PUT IT INTO THE MACHINES, RUN THE TESTS,
20 BUT THEY WILL HAVE TRANSCRIBED THE INFORMATION FROM THE
21 LABELS ON TO THEIR INFORMATION.

22 WE WOULD HAVE PUT IN A COMPUTER ORDER TO MATCH
23 WHAT WE WANTED. SO THE SPECIMENS ARE SENT DOWN WITH A
24 LABEL, WE WILL HAVE INPUT IN OUR ORDERING COMPUTER WHAT IT
25 IS WE WANT, AND THEY LOOK AT THE ORDER ON THE COMPUTER, THEY
26 HAVE THE SPECIMEN, AND MATCH IT UP AND THEN THEY RUN IT.

1 Q. IS THIS LAB ACTUALLY INSIDE THE U.C.I. MEDICAL
2 CENTER?

3 A. YES.

4 Q. HAVE YOU ACTUALLY OVERSEEN OR WATCHED THAT
5 PROCESS UNFOLD THROUGHOUT THE TIME YOU HAVE BEEN A DIRECTOR
6 THERE?

7 A. YES.

8 Q. ACTUALLY IF THERE IS ONE ORGANIZATION THAT MUST
9 RELY ON, I GUESS, THE RELIABILITY OF THE HANDLING, THE
10 TESTING, IT WOULD BE A HOSPITAL, OBVIOUSLY?

11 A. I WOULD THINK SO.

12 Q. YOU WOULDN'T WANT TO HAVE THE WRONG RESULT, WRONG
13 TESTS PERFORMED, RIGHT?

14 A. CORRECT.

15 Q. NOW, WITH RESPECT TO MR. THOMAS' URINE TEST, WHAT
16 WAS THAT SPECIFICALLY DESIGNED TO TEST?

17 A. WELL, THERE IS TWO THINGS. THERE IS THE STANDARD
18 URINALYSIS, WHICH LOOKS AT RED BLOOD CELLS, WHITE BLOOD
19 CELLS, PROTEIN, SUGARS, THE CHEMISTRY OF IT. AND THEN THE
20 OTHER TEST THAT IS DONE IS A TOXICOLOGY SCREENING TEST.

21 Q. WHAT IS A TOXICOLOGY SCREENING TEST, OR WHAT DOES
22 IT LOOK FOR?

23 A. IT IS LOOKING FOR SIGNS OF VARIOUS DRUGS SUCH AS
24 NARCOTICS OR METHAMPHETAMINES, AMPHETAMINES, IT TELLS US IF
25 THERE IS THINGS LIKE MARIJUANA BEING USED, OR COCAINE IS
26 BEING USED, THINGS LIKE THAT. AND IT IS A QUALITATIVE TEST,

1 IT DOESN'T TELL US HOW MUCH THEY ARE ON, EITHER THEY ARE ON
2 IT OR THEY ARE NOT.

3 Q. THERE IS PRESENCE OF IT OR NOT?

4 A. CORRECT.

5 Q. AND WHAT WAS FOUND IN MR. THOMAS' URINALYSIS
6 REGARDING HIS TOXICOLOGY RESULT?

7 A. IT WAS NEGATIVE.

8 Q. MEANING THERE WAS NO TRACE OF ANY OF THAT?

9 A. THERE WAS NO TRACE OF ANY DRUGS THAT WE MEASURE
10 FOR.

11 Q. WHAT ABOUT FOR THE BLOOD SCREEN, WHAT WOULD THAT
12 BE LOOKING FOR?

13 A. THERE IS A C.B.C., WHICH IS A COMPLETE BLOOD
14 COUNT. IT TELLS US THE WHITE BLOOD CELLS, THE PLATELETS,
15 THE RED BLOOD CELLS, ET CETERA. IT WILL LOOK AT
16 ELECTROLYTES LIKE SODIUM AND POTASSIUM AND THINGS LIKE THAT.
17 AND THEN WE WOULD ALSO SEND SOMETHING TO CROSS MATCH FOR
18 BLOOD. AND WE WOULD SEND AN ALCOHOL LEVEL.

19 Q. AND WAS THERE ANY NOTE AS TO THE PRESENCE OF
20 ALCOHOL IN MR. THOMAS' BLOOD?

21 A. (NO RESPONSE).

22 Q. RIGHT NOW YOU ARE JUST LOOKING THROUGH THE
23 HOSPITAL RECORDS.

24 A. YES, THIS IS THE HOSPITAL RECORD HERE.

25 Q. ALL RIGHT.

26 A. (WITNESS COMPLIES).

1 THIS MAY TAKE ONE SECOND.

2 HIS ALCOHOL WAS NEGATIVE.

3 Q. AT THE PRELIMINARY HEARING YOU WERE ASKED, I
4 BELIEVE, THE SUBJECT OF WHETHER OR NOT MR. THOMAS HAD A
5 CARDIAC PATHOLOGY, AND WHETHER OR NOT THAT CONTRIBUTED TO
6 HIS DEATH. DO YOU REMEMBER BEING ASKED THAT QUESTION?

7 A. YES.

8 Q. AND WHAT IS A CARDIAC PATHOLOGY?

9 A. WELL, PATHOLOGY MEANS ABNORMALITY OF THE HEART.
10 IT CAN BE CORONARY ARTERY DISEASE, WHICH IS SIGNS OF
11 NARROWING OF THE BLOOD VESSELS THAT SUPPLY THE HEART. IT
12 COULD BE CHRONIC CHANGES TO THE HEART ITSELF, MEANING THAT
13 IT IS DILATED OR IT IS THICKENED. SO THAT WOULD BE CARDIAC
14 PATHOLOGY.

15 Q. AND I THINK THE QUESTION WAS WHETHER OR NOT THERE
16 WAS CARDIAC PATHOLOGY THAT WOULD SUPPORT A CONCLUSION THAT
17 KELLY THOMAS DIED NATURALLY IN THIS CASE; DO YOU REMEMBER
18 THAT?

19 A. YES.

20 Q. WHAT IS YOUR OPINION ABOUT THAT?

21 A. THAT THIS IS NOT A NATURAL DEATH, THERE WAS
22 NOTHING THERE THAT WOULD ACCOUNT FOR A NATURAL DEATH, AND
23 THERE WAS NOTHING IN THIS HISTORY AT ALL THAT SUPPORTS A
24 NATURAL DEATH.

25 Q. AND IT IS STILL YOUR OPINION THAT WHAT YOU SAW ON
26 THE VIDEO, THE STRUGGLE, THE BLOWS, AND THE EVENTUAL

1 COMPRESSION, WAS THE OVERALL ACTS THAT CAUSED THE DEATH OF
2 KELLY THOMAS?

3 A. CORRECT.

4 MR. TANIZAKI: I THINK THAT'S IT.

5 I WILL TAKE SOME QUESTIONS THEN FROM THE GRAND
6 JURY.

7 THE GRAND JURY FOREPERSON: ARE THERE QUESTIONS FROM
8 THE GRAND JURY?

9 (AFFIRMATIVE RESPONSES).

10 MR. TANIZAKI: THERE ARE EIGHT QUESTIONS, AND THESE
11 WILL BE COLLECTIVELY MARKED GRAND JURY EXHIBIT 119. THERE
12 IS EIGHT QUESTIONS, AND PROBABLY ONE THAT WILL NOT BE ASKED
13 OF THIS PARTICULAR WITNESS.

14 (FOR I.D. = GRAND JURY EXHIBIT 119)

15 Q. BY MR. TANIZAKI: LET'S START WITH, IF THE SODIUM
16 LEVEL IS LOW, CAN IT BE A REASON FOR KELLY'S UNCONSCIOUS
17 STATE?

18 A. (NO RESPONSE).

19 Q. DO YOU UNDERSTAND THAT QUESTION?

20 A. A PROFOUNDLY LOW SODIUM CAN AFFECT YOUR MENTAL
21 STATUS. HIS SODIUM LEVEL WAS ACTUALLY 146, WHICH IS A
22 LITTLE ABOVE NORMAL. SO A LOW SODIUM LEVEL WOULD NOT BE
23 CONTRIBUTORY TO HIS MENTAL STATUS.

24 Q. OKAY. IN THE TOXICOLOGY SCREEN, THE URINE
25 SCREEN, DO YOU MEASURE FOR P.C.P.?

26 A. YES.

1 Q. AND THAT WAS ALSO NEGATIVE?

2 A. YES.

3 Q. WHEN MR. THOMAS BECAME UNCONSCIOUS, DID THAT MEAN
4 HIS BRAIN HAD ALREADY BEEN DAMAGED?

5 A. IT COULD BE. I SHOULD SAY THIS, CLEARLY, YES.
6 NOT NECESSARILY IRREVERSIBLY DAMAGED AT THAT POINT WITHOUT
7 INTERVENTION, SO YOU CAN BE UNCONSCIOUS FROM LACK OF BLOOD
8 FLOW TO THE BRAIN, AND IF YOU IMMEDIATELY RESTORE FLOW TO
9 THE BRAIN IT IS POSSIBLE THAT YOU COULD RECOVER, NOT
10 NECESSARILY NORMALLY, BUT THAT YOU MIGHT BE ABLE TO NOT BE
11 BRAIN DEAD. THE LONGER YOU HAVE AN INADEQUATE FLOW TO THE
12 BRAIN, THE MORE LIKELY IT BECOMES IRREVERSIBLE. AND AT SOME
13 POINT IT BECOMES IRREVERSIBLE, AND IN HIS CASE IT WAS
14 IRREVERSIBLE.

15 Q. I BELIEVE GOING I AM GOING TO ASK THIS QUESTION,
16 IT IS NOT A QUESTION FROM THE GRAND JURY, BUT I WILL ASK A
17 FOLLOW-UP QUESTION TO WHAT YOU JUST SAID.

18 SO IT WAS EXTREMELY CRITICAL FOR KELLY THOMAS TO
19 RECEIVE MEDICAL INTERVENTION AS SOON AS THERE WAS ANY
20 INDICATION OF EITHER ALTERED CONSCIOUSNESS OR
21 UNCONSCIOUSNESS; WOULD THAT BE CORRECT?

22 A. YES.

23 Q. HOW MANY FRACTURES WERE THERE ON HIS HEAD?

24 A. I CAN ACTUALLY FIND THE ACTUAL REPORT TO REMEMBER
25 THAT CLEARLY. IT WAS FACIAL FRACTURES, SO WHEN YOU SAY THE
26 HEAD, ANYTHING ABOVE THE NECK.

1 MR. BOGARDUS: I BELIEVE ON 1140.

2 THE WITNESS: 1140, OKAY.

3 HE HAD A C.T. OF THE FACE WHICH REVEALED FACIAL
4 FRACTURES, INCLUDING THE LEFT ZYGOMA, WHICH IS THE AREA OF
5 ESSENTIALLY THE LEFT CHEEK HERE JUST BELOW THE EYE.

6 BILATERAL NASAL FRACTURES, SO BONES THAT MAKE UP YOUR NOSE
7 WERE FRACTURED. RIGHT MAXILLARY SINUS FRACTURE, WHICH IS
8 THE SINUS AROUND THE EYE THAT ACTUALLY HAS A FRACTURE LINE
9 TO IT. THAT IS ALL VERY CLOSE, OBVIOUSLY, TO THE BRAIN.

10 THOSE WERE THE FACIAL FRACTURES THAT WERE
11 IDENTIFIED.

12 Q. BY MR. TANIZAKI: THANK YOU.

13 NEXT QUESTION, THE VIDEO SHOWS A WHOLE LOT OF
14 BLOOD AT THE INCIDENT. DID MR. THOMAS NEED A BLOOD
15 TRANSFUSION IN THE HOSPITAL?

16 I ASSUME YOU ARE GOING TO GO BACK TO THE HOSPITAL
17 RECORD.

18 A. YES, I AM GOING TO GO BACK TO THE RECORD FROM THE
19 EMERGENCY DEPARTMENT.

20 I AM LOOKING AT PAGE 1084, WHICH IS THE NURSING
21 FLOW SHEET. AND IT DOES REFLECT THAT THE PATIENT RECEIVED
22 PACKED RED BLOOD CELLS, WHERE IT SAYS P.R.B.C. I SEE IN THE
23 EMERGENCY DEPARTMENT TWO UNITS OF PACKED RED BLOOD CELLS
24 WERE GIVEN, AND THREE UNITS OF PLASMA WERE GIVEN.

25 I CAN GO ON TO SEE WHAT WAS GIVEN AFTER WE WERE
26 IN THE I.C.U., BUT THAT'S A PRETTY SUBSTANTIAL AMOUNT. WE

1 ALL HAVE ABOUT FIVE UNITS IN OUR WHOLE SYSTEM RIGHT NOW, SO
2 THAT'S A PRETTY SIGNIFICANT AMOUNT OF BLOOD THAT WAS
3 RETURNED.

4 Q. THANK YOU.

5 WHAT CAUSED THE BLOOD TO STOP GOING TO KELLY
6 THOMAS' BRAIN ON JULY 9TH?

7 A. BLOOD PROFUSING TO THE BRAIN HAS TO DO WITH THE
8 HEART THAT IS CONTRACTING, YOU HAVE TO HAVE ENOUGH BLOOD IN
9 THE HEART, SO IF YOU BLEED TOO MUCH, YOU HAVE LESS BLOOD IN
10 YOUR SYSTEM.

11 AND THEN YOUR HEART HAS TO BE BEATING WITH A GOOD
12 NORMAL FAST RHYTHM, AND IT HAS TO BE BEATING COMPLETELY.

13 SO THREE THINGS CAN AFFECT THAT. IF THERE IS NOT
14 ENOUGH OXYGEN GETTING TO THE HEART, THE HEART ITSELF WILL
15 NOT BEAT, IT WILL NOT SQUEEZE FULLY, SO IT DOESN'T PUSH
16 BLOOD.

17 AND IF IT ISN'T BEATING QUICK ENOUGH, IT WON'T
18 PUSH ENOUGH BLOOD. OBVIOUSLY THE FASTER IT BEATS, THE MORE
19 BLOOD IT PUSHES, AND IF THERE IS NOT ENOUGH BLOOD IN THE
20 HEART, IT WON'T HAVE AS MUCH TO PUSH ANYWAY.

21 AND, LASTLY, EVEN THOUGH IT IS A LITTLE BEYOND
22 THE QUESTION, BLOOD IS ONLY GOOD IF THERE IS OXYGEN IN IT.
23 THE INADEQUATE BLOOD THAT IS PUSHING, IF IT DOESN'T HAVE
24 OXYGEN, THEN IT ISN'T DELIVERING THE OXYGEN TO THE BRAIN,
25 WHICH IS WHAT IT NEEDS.

26 AND, OF COURSE, IF THE HEART STOPS, WHICH

1 EVENTUALLY IT DOES, THEN NOTHING IS GETTING PUSHED TO THE
2 BRAIN.

3 Q. NOW, WHY COULDN'T -- THE NEXT QUESTION, WHY
4 COULDN'T KELLY THOMAS BREATHE ON HIS OWN, WHY DID HE NEED TO
5 BE ON A VENTILATOR?

6 A. ULTIMATELY YOU NEED A CERTAIN AMOUNT OF
7 NEUROLOGIC FUNCTION TO BREATHE. IT IS OUR MOST BASIC DRIVE,
8 IT IS A BRAIN STEM DRIVE. IN HIS CASE HE BECAME, HE
9 ULTIMATELY BECAME BRAIN DEAD, MEANING HE HAD NO BRAIN
10 FUNCTION, INCLUDING THE BRAIN STEM. SO THE MORE NEUROLOGIC
11 DERANGEMENT YOU HAVE, THE LESS NORMAL YOUR BREATHING WILL
12 BE.

13 NOW ALSO BECAUSE HE WAS SO UNCONSCIOUS, WE ALL
14 PREVENT OURSELVES FROM ASPIRATING RIGHT NOW BECAUSE WE ARE
15 AWAKE, AND YOU CLEAR YOUR THROAT, YOU COUGH, BUT IF YOU WERE
16 TO BE PARALYZED AND NOT MOVE AT ALL, ULTIMATELY SECRETIONS
17 AND FLUID WOULD GO INTO YOUR LUNG.

18 SO WHEN SOMEBODY HAS A BAD NEUROLOGIC INJURY, WE
19 HAVE TO PUT A BREATHING TUBE IN. ONCE YOU HAVE A BREATHING
20 TUBE IN, YOU HAVE TO BE ON A VENTILATOR ANYWAY, OTHERWISE IT
21 WOULD BE LIKE BREATHING THROUGH A STRAW, IT IS A VERY HARD
22 THING TO DO.

23 SO IF YOU HAVE SOME NEUROLOGIC FUNCTION, YOU NEED
24 A VENTILATOR TO BREATHE FOR YOU, BECAUSE YOU HAVE A TUBE IN.
25 AND IF YOU HAVE NO NEUROLOGIC FUNCTION, AS HE ULTIMATELY
26 HAD, YOUR BRAIN WILL ULTIMATELY SEND NO SIGNAL TO YOUR BODY

1 TO BREATHE.

2 Q. THIS IS THE LAST QUESTION, WOULD C.P.R. AT THE
3 SCENE OF THE INCIDENT HAVE MADE A SIGNIFICANT DIFFERENCE IN
4 HIS CONDITION?

5 A. WELL, IT COULD HAVE MADE A DIFFERENCE. HE
6 ULTIMATELY RECEIVED C.P.R., AND HE ULTIMATELY REGAINED THE
7 CARDIAC FUNCTION, AND HAD THAT BEEN RESTORED SOONER, HE MAY
8 HAVE HAD A BETTER OUTCOME. WE CAN'T KNOW WHAT THAT OUTCOME
9 WILL BE, BECAUSE IT IS DIFFERENT FOR EVERYBODY. AND PEOPLE
10 CAN HAVE A VERY SHORT ARREST AND THEN RECOVER, AND PEOPLE
11 CAN HAVE -- I AM SORRY, PEOPLE MAY HAVE A SHORT ARREST AND
12 RECOVER TO NORMAL. SO THE ANSWER IS IT WOULD HAVE BEEN
13 BETTER FOR HIM TO HAVE GOT IMMEDIATE AIRWAY AND IMMEDIATE
14 MEDICAL CARE. YOU KNOW, IN THE FILM, HE WAS LEFT FACE DOWN
15 AND NOTED TO BE CYANOTIC, SO HE WASN'T -- AT THAT POINT AN
16 INTERVENTION MAY HAVE MADE SOME DIFFERENCE.

17 MR. TANIZAKI: ANY OTHERS?

18 (AFFIRMATIVE RESPONSE).

19 Q. BY MR. TANIZAKI: WHEN PARAMEDICS ARRIVED ON THE
20 SCENE, THEY WERE NOT IMMEDIATELY TAKEN TO KELLY THOMAS, BUT
21 TO -- LET ME READ THIS, I AM SORRY.

22 WHEN PARAMEDICS ARRIVED ON SCENE THEY WERE NOT
23 IMMEDIATELY TAKEN TO KELLY THOMAS, BUT TO OFFICERS WITH
24 SCRATCHES AND SCRAPES. COULD THIS DELAY IN GETTING
25 TREATMENT HAVE HASTENED HIS EVENTUAL BRAIN DEATH?

26 A. WELL, I MEAN I DON'T KNOW THE CIRCUMSTANCES OF

1 WHERE THE PARAMEDICS WENT TO, BUT THE LONGER THE DELAY IN
2 HIM GETTING CARE OF AN AIRWAY THAT IS POSITIONED OPEN, HE
3 WAS LEFT DOWN, IF HIS AIRWAY HAD BEEN LEFT OPEN, IF HE HAD
4 BEEN GIVEN MEDICAL CARE WITH SAY A BAG MASK, WHERE WE PUT A
5 MASK ON WITH OXYGEN AND TRY TO DELIVER OXYGEN TO HIM, AND IF
6 HE NEEDED C.P.R. THEY COULD HAVE GIVEN HIM THAT, OR I.V.
7 FLUIDS, HE VERY WELL MAY HAVE HAD A BETTER OUTCOME THAN HE
8 DID.

9 MR. TANIZAKI: ANY OTHER QUESTIONS?

10 (NO AFFIRMATIVE RESPONSE).

11 THE GRAND JURY FOREPERSON: PLEASE STAND.

12 THE WITNESS: (WITNESS COMPLIES).

13 THE GRAND JURY FOREPERSON: DR. LEKAWA, YOU ARE
14 ADMONISHED TO NOT DISCUSS OR REPEAT AT ANY TIME OUTSIDE THIS
15 COURTROOM THE QUESTIONS YOU HAVE BEEN ASKED OR YOUR ANSWERS,
16 WITH THE UNDERSTANDING THAT SUCH DISCLOSURES ON YOUR PART
17 MAY BE THE BASIS FOR CHARGES AGAINST YOU OF CONTEMPT OF
18 COURT.

19 YOU ARE FREE TO SEEK LEGAL ADVICE FROM AN
20 ATTORNEY, OR FROM THE DISTRICT ATTORNEY'S OFFICE.

21 DO YOU UNDERSTAND?

22 THE WITNESS: YES, SIR.

23 THE GRAND JURY FOREPERSON: DR. LEKAWA, THANK YOU FOR
24 TESTIFYING, YOU ARE EXCUSED FROM THE HEARING.

25 THE WITNESS: THANK YOU.

26 (WHEREUPON MICHAEL LEKAWA EXITED THE GRAND JURY

1 ROOM.)

2 MR. TANIZAKI: WE HAVE ONE SMALL MATTER TO DO.

3 THE GRAND JURY FOREPERSON: OKAY, FINE.

4 MR. TANIZAKI: WE ARE STILL ON THE RECORD.

5 THE GRAND JURY FOREPERSON: STILL ON THE RECORD.

6 MR. TANIZAKI: WE HAVE ONE FINAL EVIDENTIARY MATTER TO
7 ADDRESS, AND THAT'S SIMPLY THE IDENTIFICATION OF GRAND JURY
8 EXHIBIT NUMBER 109, WHICH IS A CERTIFIED COPY OF THE DEATH
9 CERTIFICATE OF KELLY JAMES THOMAS.

10 (FOR I.D. = GRAND JURY EXHIBIT 109)

11 MR. TANIZAKI: AND THAT'S ALL THE EVIDENCE THAT WE HAVE
12 TO PRESENT TODAY, MR. FOREMAN.

13 THE GRAND JURY FOREPERSON: SO WE ARE FINISHED FOR THE
14 DAY?

15 MR. TANIZAKI: YES.

16 THE GRAND JURY FOREPERSON: ALL RIGHT.

17 LADIES AND GENTLEMEN, WE WILL BE IN RECESS UNTIL
18 TOMORROW, FRIDAY, SEPTEMBER 21ST, AT 9:00 A.M.

19 DURING ANY PERIOD OF THIS RECESS YOU MUST NOT
20 DISCUSS WITH ANYONE, EITHER INSIDE OR OUTSIDE OF THIS
21 HEARING ROOM, ANY SUBJECT CONNECTED WITH THIS HEARING.
22 THANK YOU.

23 (ADJOURNMENT.)

24

25

26

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA

2 CENTRAL JUSTICE CENTER, COUNTY OF ORANGE

3 IN RE THE PROCEEDINGS OF:

4 THE PEOPLE OF THE STATE OF CALIFORNIA,)

5 PLAINTIFF,)

6 VS.)

7 JOSEPH ANDREW WOLFE,)

8 DEFENDANT.)

NO. 12ZF0148

9

10

11 TRANSCRIPT OF PROCEEDINGS

12 SEPTEMBER 21, 2012

13 VOLUME 3

14

15 APPEARANCES:

16 TONY RACKAUKAS, DISTRICT ATTORNEY
17 JIM TANIZAKI, SENIOR ASSISTANT DISTRICT ATTORNEY
18 KEITH BOGARDUS, ASSISTANT DISTRICT ATTORNEY

18

19

20 ROBERT J. SULLIVAN, CSR #5646
21 OFFICIAL COURT REPORTER

21

22

23

24 (ROBERT J. SULLIVAN, CERTIFIED SHORTHAND REPORTER,
25 WAS DULY SWORN BY THE FOREPERSON OF THE GRAND JURY, AFTER
26 WHICH THE FOLLOWING PROCEEDINGS WERE HAD:)

1 C H R O N O L O G I C A L W I T N E S S L I S T

2 PEOPLE'S EXAMINATION

3 (NONE CALLED)

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

E X H I B I T I N D E X

GRAND JURY EXHIBITS	FOR I.D.
1-B - ADDITIONAL GRAND JURY INSTRUCTIONS	336
110 - GRAND JURY INSTRUCTIONS	336
111 - BINDER OF MATERIALS (P.C. 939.71)	338
120 - GRAND JUROR LEGAL QUESTIONS	386

1 SANTA ANA, CALIFORNIA - SEPTEMBER 21, 2012

2 MORNING SESSION

3

4 (THE FOLLOWING PROCEEDINGS WERE HELD IN THE GRAND
5 JURY ROOM:)

6 THE GRAND JURY FOREPERSON: THE HEARING WILL COME TO
7 ORDER.

8 I WILL REMIND THE COURT REPORTER HE IS STILL
9 UNDER OATH.

10 THE REPORTER: YES, SIR.

11 THE GRAND JURY FOREPERSON: THE SECRETARY WILL CALL THE
12 ROLL.

13 (WHEREUPON ROLL WAS TAKEN OF THE GRAND JURORS.)

14 THE GRAND JURY SECRETARY: MR. FOREMAN, THAT IS 16
15 GRAND JURORS.

16 THE GRAND JURY FOREPERSON: THANK YOU.

17 LET THE RECORD SHOW THAT 16 GRAND JURORS ARE
18 PRESENT. THIS IS OUR THIRD DAY.

19 MEMBERS OF THE GRAND JURY, THE NATURE OF THE
20 MATTER TO BE HEARD AND THE NAMES OF THE PERSONS INVOLVED
21 HAVE BEEN GIVEN TO YOU BY THE DISTRICT ATTORNEY.

22 ANY MEMBER OF THE GRAND JURY WHO HAS A STATE OF
23 MIND IN REFERENCE TO THE CASE OR TO THE PERSONS INVOLVED
24 WHICH WILL PREVENT HIM OR HER FROM ACTING IMPARTIALLY AND
25 WITHOUT PREJUDICE TO THE SUBSTANTIAL RIGHTS OF THE PERSONS
26 INVOLVED SHALL RETIRE FROM THIS HEARING.

1 DO ANY OF YOU KNOW SOCIALLY, OR HAVE ANY OF YOU
2 HEARD ANYTHING ABOUT THIS CASE OR ANY OF THE PERSONS NAMED
3 WHICH WOULD CAUSE YOU NOT TO RENDER AN UNBIASED DECISION?

4 (NO AFFIRMATIVE RESPONSE).

5 THE GRAND JURY FOREPERSON: LET THE RECORD SHOW THAT NO
6 MEMBER OF THE GRAND JURY HAS RETIRED.

7 MR. DISTRICT ATTORNEY.

8 MR. RACKAUCKAS: THANK YOU.

9 WE ARE GOING TO HAVE MR. BOGARDUS HANDLE A COUPLE
10 OF MATTERS FIRST, SOME GRAND JURY INSTRUCTIONS THAT HE WANTS
11 TO MARK AND PUT INTO EVIDENCE, AS WELL AS SOME JOHNSON
12 MATERIAL TO MAKE EVERYBODY AWARE, AND I WILL DO THE FINAL.

13 THE GRAND JURY FOREPERSON: MR. BOGARDUS.

14 MR. BOGARDUS: YES, THANK YOU, MR. FOREMAN.

15 GOOD MORNING, LADIES AND GENTLEMEN. WE HAVE
16 REACHED THE CONCLUSION OF OUR PRESENTATION OF EVIDENCE AT
17 THIS TIME. SO WHAT I WOULD LIKE TO DO NOW IS ADDRESS A
18 COUPLE OF MATTERS WITH RESPECT TO THE INSTRUCTIONS, AND ALSO
19 WITH RESPECT TO JOHNSON MATERIAL.

20 FIRST, WITH RESPECT TO THE INSTRUCTIONS, IN LIGHT
21 OF THE TOTALITY OF THE EVIDENCE THAT YOU HAVE HEARD, WE ARE
22 NOW AMENDING OUR MEMORANDUM THAT WE INITIALLY SUBMITTED AS
23 EXHIBIT NUMBER 1 WITH SOME ADDITIONAL APPROPRIATE
24 INSTRUCTIONS.

25 SO AT THIS TIME I AM MARKING EXHIBIT 1-B, WHICH
26 WILL BE AN ADDENDUM TO OUR MEMO, WHICH ADDS FOUR ADDITIONAL

1 GRAND JURY INSTRUCTIONS WHICH ARE APPROPRIATE FOR YOUR
2 CONSIDERATION.

3 (FOR I.D. = GRAND JURY EXHIBIT 1-B)

4 MR. BOGARDUS: AND I HAVE ASKED A COPY OF THAT ADDENDUM
5 BE PROVIDED TO EACH ONE OF YOU INDIVIDUALLY. SO THERE WILL
6 BE THE EXHIBIT 1-B, AND EACH OF YOU SHOULD HAVE A COPY OF
7 THAT ADDENDUM.

8 ADDITIONALLY, I ALSO HAVE WHAT SHOULD BE MARKED
9 AS GRAND JURY EXHIBIT NUMBER 110.

10 (FOR I.D. = GRAND JURY EXHIBIT 110)

11 MR. BOGARDUS: THIS IS THE GRAND JURY INSTRUCTION
12 PACKET THAT YOU ALSO RECEIVED, AND NOW WITH THE INSTRUCTIONS
13 THAT WERE INITIALLY PROVIDED IN 1, AND THAT YOU WERE
14 PROVIDED THIS MORNING IN 1-B, THAT IS THE TOTALITY OF
15 INSTRUCTIONS THAT ARE ALSO REFLECTED IN EXHIBIT 110.

16 ALSO THIS MORNING I WOULD LIKE TO TAKE A FEW
17 MOMENTS TO ADDRESS A RULE OF LAW THAT WE SOMETIMES COMMONLY
18 REFER TO AS THE JOHNSON RULE, AND HOW THAT FITS INTO THE
19 CONTEXT OF THIS CASE. AND IN DOING SO, I WANT TO BE
20 ABSOLUTELY ACCURATE WITH WHAT I SAY AND WHAT THE LAW IS IN
21 THIS REGARD. AND SO AT TIMES, WHAT I AM GOING TO DO IS I AM
22 ACTUALLY GOING TO READ SO I AM ACCURATE WITH THE LANGUAGE OF
23 THE LAW, AS OPPOSED TO SPEAKING EXTEMPORANEOUSLY. SO I
24 WOULD APPRECIATE IT IF YOU JUST BEAR WITH ME IN THAT REGARD.

25 ALSO, I AM GOING TO BE DISCUSSING A PARTICULAR
26 GRAND JURY INSTRUCTION THAT YOU WILL RECEIVE AND HAVE

1 RECEIVED, GRAND JURY INSTRUCTION NUMBER 2, WHICH PERTAINS TO
2 THE JOHNSON RULE.

3 IN DOING SO, I AM NOT EXCLUDING, AND I AM
4 ABSOLUTELY NOT EXCLUDING FROM YOUR CONSIDERATION ALL THE
5 INSTRUCTIONS, IT IS ABSOLUTELY IMPORTANT THAT YOU READ AND
6 FAMILIARIZE YOURSELF WITH ALL THE INSTRUCTIONS THAT HAVE
7 BEEN PROVIDED TO YOU THAT APPLY TO THE CASE, I AM ONLY
8 HIGHLIGHTING THIS INSTRUCTION AS IT APPLIES TO THE JOHNSON
9 RULE.

10 SO ONE OF THE DUTIES AS A PROSECUTOR BEFORE THE
11 GRAND JURY IS SET FORTH IN PENAL CODE SECTION 939.71. AND
12 WHAT THAT INSTRUCTION, OR WHAT THAT STATUTE STATES IS IF A
13 PROSECUTOR IS AWARE OF EXCULPATORY EVIDENCE, THE PROSECUTOR
14 SHALL INFORM THE GRAND JURY OF ITS NATURE AND EXISTENCE.
15 AND ONCE THE PROSECUTOR HAS INFORMED THE GRAND JURY OF
16 EXCULPATORY EVIDENCE, THE PROSECUTOR SHALL INFORM THE GRAND
17 JURY OF ITS DUTIES UNDER 939.7. THIS IS THE JOHNSON RULE WE
18 ARE TALKING ABOUT.

19 SO WHAT I AM GOING TO DO NOW IS INFORM YOU OF THE
20 NATURE AND EXISTENCE OF EVIDENCE THAT MAY BE CHARACTERIZED
21 OR CONSIDERED EXCULPATORY. AND AFTER I AM DONE DOING THAT,
22 I AM GOING TO DO JUST WHAT THE STATUTE COMMANDS ME TO DO, I
23 AM GOING TO DIRECT YOU TO YOUR DUTY IN 939.7, WHICH IS ALSO
24 GRAND JURY EXHIBIT NUMBER 2.

25 SO TWO STEPS, I AM GOING TO LET YOU KNOW ABOUT
26 THE NATURE AND EXISTENCE OF SOME ITEMS THAT CAN BE

1 CHARACTERIZED OR CONSIDERED EXCULPATORY, AND THEN TALK ABOUT
2 YOUR DUTY UNDER THAT RULE.

3 WHAT I AM GOING TO DO NOW IN TELLING YOU ABOUT
4 THE NATURE AND EXISTENCE OF POTENTIAL EVIDENCE THAT MAY BE
5 OF AN EXCULPATORY VALUE, IS THE ITEMS YOU ARE NOT TO
6 CONSIDER FOR PURPOSES OF DETERMINING IF PROBABLE CAUSE
7 EXISTS. YOU ARE NOT TO CONSIDER THESE ITEMS IN SUPPORT OF A
8 PROBABLE CAUSE DETERMINATION. IT IS MY DUTY TO MAKE YOU
9 AWARE OF THE NATURE AND EXISTENCE OF THESE ITEMS, IT IS THEN
10 UP TO YOU, AS YOU SEE FIT, TO ASK FOR THOSE ITEMS TO BE
11 PRODUCED BEFORE YOU FOR EVIDENCE TO BE TAKEN, OR EXHIBITS TO
12 BE INTRODUCED, FOR THOSE ITEMS TO THEN BE CONSIDERED.

13 SO WHAT I AM TALKING ABOUT, AND WHAT I AM GOING
14 TO POINT TO YOU NOW IS NOT TO BE USED IN SUPPORT OF YOUR
15 PROBABLE CAUSE DETERMINATION, SIMPLY MAKING YOU AWARE OF THE
16 NATURE AND EXISTENCE OF SOME ITEMS OF EVIDENCE THAT MAY BE
17 CHARACTERIZED OR CONSIDERED AS EXCULPATORY. IF YOU WANT
18 THAT EVIDENCE TO BE FURTHER PRESENTED TO YOU IN THIS
19 HEARING, YOU JUST NEED TO DIRECT US TO DO SO.

20 (FOR I.D. = GRAND JURY EXHIBIT 111)

21 MR. BOGARDUS: I HAVE WHAT I HAVE MARKED NOW AS GRAND
22 JURY EXHIBIT NUMBER 111. IT IS A BINDER, AND I HAVE
23 DESCRIBED IT AS A BINDER OF MATERIALS, PENAL CODE SECTION
24 939.71, A BINDER OF JOHNSON MATERIALS. THIS IS THE EXHIBIT
25 THAT I AM GOING TO ASK TO BE MADE PART OF THE RECORD.

26 HOWEVER, I HAVE ALSO MADE COPIES FOR EACH

1 INDIVIDUAL GRAND JUROR, SO YOU ARE NOT ALL SHARING ONE
2 BINDER. SO THOSE ARE OVER THERE IN THE CORNER. I WOULD
3 APPRECIATE THE SERGEANT OF ARMS PASSING THOSE OUT WITH SOME
4 ASSISTANCE NOW. I WILL TAKE A MOMENT FOR THAT TO BE PASSED
5 OUT.

6 WHAT I AM GOING TO DO IS EXPLAIN THE CONTENTS OF
7 THIS BINDER TO YOU IN SUMMARY FASHION, AND THEN MOVE ON TO
8 SOME ITEMS THAT ARE NOT CONTAINED IN THE BINDER.

9 THANK YOU VERY MUCH.

10 WHAT YOU HAVE NOW, AND ALL OF YOU SHOULD HAVE A
11 COPY OF THIS BINDER NOW, IS A DUPLICATIVE COPY OF WHAT IS
12 GRAND JURY EXHIBIT NUMBER 111. AND I JUST WANT TO TAKE A
13 MOMENT OUT TO EXPLAIN TO YOU, FIRST, THE CONTENTS OF THIS
14 BINDER, THE CONTENTS OF EXHIBIT 111. AND, AGAIN, AS I
15 STATED, THE CONTENTS OF THIS BINDER IS NOT EVIDENCE TO BE
16 CONSIDERED IN SUPPORT OF THE DETERMINATION OF PROBABLE
17 CAUSE. THIS IS MAKING YOU AWARE OF THE NATURE AND EXISTENCE
18 OF ITEMS.

19 SO LET ME JUST GO THROUGH THIS INITIALLY BY
20 EXPLAINING TO YOU WHAT EACH OF THESE TABS ARE, AND WHAT THE
21 CONTENTS IS WITHIN EACH OF THESE TABS.

22 THE FIRST TAB, WHICH IS CORRESPONDENCE WITH
23 COUNSEL, THE FIRST PART OF THE BINDER CONSISTS OF
24 CORRESPONDENCE BETWEEN THE OFFICE OF THE DISTRICT ATTORNEY
25 AND JOSEPH WOLFE'S ATTORNEY'S OFFICE, INVITING THAT ATTORNEY
26 TO MAKE US AWARE OF ANY MATERIALS SHE THINKS WOULD BE

1 CONSIDERED OR SHOULD BE CONSIDERED BY THIS GRAND JURY.

2 SO WE MADE THAT INVITATION TO JOSEPH WOLFE'S
3 ATTORNEY, AND WE HAVE DONE THAT IN WRITING, AND JOSEPH
4 WOLFE'S ATTORNEY HAS RESPONDED TO US IN WRITING.

5 SO OUR INVITATION TO THEM AND THEIR RESPONSES ARE
6 CONTAINED WITHIN THAT CORRESPONDENCE OF COUNSEL.

7 YOU WILL SEE THERE ARE TWO LETTERS THAT WERE
8 WRITTEN BY THE ATTORNEY FOR JOSEPH WOLFE, BOTH DATED
9 SEPTEMBER 18TH OF THIS YEAR, DELINEATING OR IDENTIFYING
10 ITEMS THAT SHE BELIEVES THIS GRAND JURY SHOULD BE MADE AWARE
11 OF. SO THOSE ARE THERE FOR YOUR REVIEW, AND THERE ARE SOME
12 ASPECTS OF THESE LETTERS AND INFORMATION THAT SHE REFERS TO
13 THAT I WOULD LIKE TO MENTION NOW.

14 SO, FOR EXAMPLE, ONE OF THE FIRST REQUESTS THAT
15 THIS ATTORNEY MAKES, AND THIS ATTORNEY'S NAMED IS VICKI
16 PODBERESKY, IS FOR YOU TO BE MADE AWARE OF SOME OF THE
17 PRELIMINARY HEARING TESTIMONY OF ONE OF THE WITNESSES WHO
18 ALSO APPEARED BEFORE YOU, DAWN SCRUGGS.

19 FIVE WITNESSES WHO APPEARED BEFORE YOU IN THIS
20 PROCEEDING ALSO TESTIFIED IN A RELATED PROCEEDING REGARDING
21 THESE EVENTS. THOSE INDIVIDUALS ARE DAWN SCRUGGS, MICHAEL
22 CHOCEK, RON STANCYK, MICHAEL LEKAWA, AND ARUNA SINGHANIA.
23 AND DURING THAT PROCEEDING, THESE WITNESSES WERE SUBJECT TO
24 BOTH DIRECT EXAMINATION AND TO CROSS-EXAMINATION REGARDING
25 EVENTS THAT THEY HAVE ALSO TESTIFIED TO IN THIS PROCEEDING.

26 SO COUNSEL FOR MR. WOLFE HAS ASKED THAT THIS

1 GRAND JURY BE PROVIDED WITH CERTAIN STATEMENTS THAT DAWN
2 SCRUGGS MADE DURING THAT EARLIER RELATED PROCEEDING, AND
3 THAT WAS A PRELIMINARY HEARING PROCEEDING.

4 WHAT WE HAVE DONE IS WE HAVE PROVIDED YOU WITH
5 THE TOTALITY OF THE TESTIMONY OF EACH ONE OF THOSE
6 WITNESSES, NOT JUST INDIVIDUAL ITEMS OR PASSAGES, BUT THE
7 ENTIRE DIRECT EXAMINATION AND CROSS-EXAMINATION, AS IS
8 APPROPRIATE, OF EACH OF THESE FIVE INDIVIDUAL WITNESSES,
9 DAWN SCRUGGS, MICHAEL CHOCEK, RON STANCYK, MICHAEL LEKAWA
10 AND ARUNA SINGHANIA. AND YOU WILL FIND THAT IN THE BINDER
11 AT THE NEXT TO THE LAST -- WELL, AT THE END, I SHOULD SAY,
12 ENTITLED, PRELIMINARY HEARING TRANSCRIPT.

13 SO THAT'S PROVIDED TO YOU FOR YOUR REVIEW, AND IN
14 THE EVENT THAT TESTIMONY WAS GIVEN AT THAT PRIOR PROCEEDING,
15 AT THAT PRELIMINARY HEARING THAT YOU WISH TO INQUIRE ABOUT
16 HERE, SOMETHING WAS ASKED ON CROSS-EXAMINATION, OR SOMETHING
17 WAS DISCUSSED ON DIRECT EXAMINATION THAT YOU FEEL IS
18 APPROPRIATE FOR YOU TO CONSIDER AND ASK ABOUT IN THIS
19 PROCEEDING, IN DISCHARGING YOUR DUTY UNDER PENAL CODE
20 SECTION 939.7, ALL YOU NEED TO DO IS ASK, AND WE WILL RECALL
21 THOSE WITNESS AND PRESENT THEM FOR YOU, SO THOSE QUESTIONS
22 MAY BE POSED TO THEM.

23 AND, AGAIN, THEIR TESTIMONY AT THE PRELIMINARY
24 HEARING IN THE CONTEXT OF THIS TRANSCRIPT THAT I AM
25 PROVIDING IS NOT TO BE CONSIDERED AS PART OF THE PROBABLE
26 CAUSE DETERMINATION, IT IS TO MAKE YOU AWARE OF PRIOR

1 STATEMENTS THAT THESE WITNESSES MADE AT THAT RELATED
2 PROCEEDING.

3 IN DEFENSE COUNSEL'S MOTION, I AM SORRY, LETTER,
4 ALSO SHE POINTS YOU TO PARTICULAR PAGE NUMBERS IN THE
5 TESTIMONY OF DAWN SCRUGGS, AND YOU WILL FIND THOSE PAGE
6 NUMBERS, THEY CORRESPOND TO WHAT I AM PROVIDING YOU, BUT,
7 AGAIN, I AM PROVIDING YOU WITH THE TOTALITY OF MS. SCRUGGS'
8 TESTIMONY, ALONG WITH THOSE OTHER WITNESSES.

9 I WANT TO POINT OUT SOMETHING ELSE WITH RESPECT
10 TO THAT INITIAL REQUEST THAT WAS MADE BY MS. PODBERESKY.
11 COUNSEL FOR MR. WOLFE HAS ASKED THAT YOU BE MADE AWARE OF
12 THE FACT THAT OFFICERS INVOLVED IN THIS INCIDENT PUT OUT
13 MULTIPLE CODE 3 CALLS. AND ESSENTIALLY THAT'S ALL THAT SHE
14 REQUESTED IN THAT REGARD, BUT YOU CAN SEE HER SPECIFIC
15 LANGUAGE IN HER LETTER, RATHER THAN ME CHARACTERIZING IT.

16 I WANT TO TELL YOU THAT IN THE TRANSCRIPT, PAGE
17 47, JUST TO POINT YOU TO WHERE THAT INFORMATION IS FOR HER
18 BENEFIT AND MR. WOLFE'S BENEFIT, DAWN SCRUGGS TESTIFIED SHE
19 HAD HEARD THREE SUCH CALLS, THREE CODE 3 CALLS. AND THAT'S
20 CAPTURED ON PAGE 47 OF THE TRANSCRIPT OF HER TESTIMONY.
21 ALSO SHE TESTIFIED ABOUT THOSE THREE CALLS HERE BEFORE YOU.

22 AND THERE IS ALSO TRANSCRIBED TESTIMONY OF
23 MICHAEL CHOCEK FROM THAT PREVIOUS PROCEEDING REGARDING HE
24 HEARD THREE CALLS.

25 RETURNING NOW TO THE SECOND TAB IN GRAND JURY
26 EXHIBIT NUMBER 111, COUNSEL FOR MR. WOLFE REQUESTED THAT

1 CERTAIN PHOTOGRAPHS BE MADE AVAILABLE TO YOU DEPICTING
2 MR. WOLFE. AND WHAT COUNSEL DID IS IDENTIFY PRELIMINARY
3 HEARING EXHIBIT NUMBERS, ASKING THAT THESE PHOTOGRAPHS BE
4 PROVIDED TO YOU.

5 IN BINDER EXHIBIT 111, WE ARE PROVIDING YOU, AND
6 WITH THE BINDERS THAT YOU HAVE, EVERY SINGLE PHOTOGRAPH THAT
7 COUNSEL FOR MR. WOLFE HAS REQUESTED. SO EVERY SINGLE ONE
8 THAT HAS BEEN IDENTIFIED IN HER LETTER IS BEING GIVEN TO
9 YOU. YOU WILL NOTE THAT SOME OF THEM ARE DUPLICATIVE OF
10 WHAT WE HAVE ALREADY PUT INTO EVIDENCE, HOWEVER, TO BE
11 COMPREHENSIVE, I WANTED TO GIVE YOU IN ONE LOCATION EVERY
12 SINGLE PHOTOGRAPH THAT SHE REQUESTED.

13 TURNING NOW TO THE THIRD TAB IN GRAND JURY
14 EXHIBIT 111, COUNSEL FOR MR. WOLFE REQUESTED THAT YOU BE
15 PROVIDED WITH THE STATEMENTS OF PARTICULAR WITNESSES, AND IN
16 DOING SO, SHE REFERENCED, YOU WILL SEE IN HER LETTER,
17 PARENTHETICALLY BATES NUMBERS, AND REFERRED TO WHAT WE
18 CHARACTERIZE AS DISCOVERY PAGE NUMBERS.

19 SO, IN OTHER WORDS, THE REPORTS THAT WE GENERATE
20 IN THE COURSE OF THE INVESTIGATION ARE PAGINATED, THOSE
21 PAGINATIONS ARE SOMETIMES REFERRED TO AS DISCOVERY PAGE
22 NUMBERS OR BATES NUMBERS, SO HER LETTER IS REFERRING YOU TO
23 SPECIFIC PAGES OF INVESTIGATIVE REPORTS THAT CAPTURE OR
24 RECITE STATEMENTS OF OTHER WITNESSES.

25 WHAT WE HAVE DONE IS PROVIDED YOU WITH EVERY
26 SINGLE REPORT THAT WAS REQUESTED BY MR. WOLFE'S ATTORNEY,

1 THE SPECIFIC PAGE NUMBERS, AND THEN SOME.

2 WHAT WE HAVE DONE IS I HAVE INCLUDED THOSE
3 REPORTS THAT WERE REQUESTED, HOWEVER, WHERE AVAILABLE,
4 SOMETIMES THOSE REPORTS RECITE INTERVIEWS THAT WERE
5 CONDUCTED OF WITNESSES. AND THOSE WITNESSES WERE ALSO
6 INCIDENTALY AUDIO RECORDED. SO WHERE A TRANSCRIPT IS
7 AVAILABLE WITH THE ACTUAL WORDS OF THAT ACTUAL CONVERSATION
8 BETWEEN THAT WITNESS AND THE INVESTIGATOR, I PROVIDED YOU
9 NOT ONLY WITH THE REPORT THAT WAS REQUESTED BY MR. WOLFE'S
10 ATTORNEY, BUT ALSO WITH A TRANSCRIPT OF THAT CONVERSATION.
11 SO YOU WILL HAVE BOTH.

12 YOU WILL FIND THAT WITH RESPECT TO EVERY SINGLE
13 WITNESS THAT WAS REQUESTED BY MR. WOLFE'S ATTORNEY IN THE
14 TAB THAT IS ENTITLED, WITNESS STATEMENTS.

15 AND JUST TO MAKE NOTE, THE REQUEST OF OUR OFFICE
16 TO PROVIDE YOU WITH INFORMATION ABOUT OTHER WITNESS'
17 STATEMENTS IS REFLECTED IN BOTH LETTERS BY MS. PODBERESKY.
18 SO IN THE FIRST LETTER, ITEMS 1 THROUGH, I AM SORRY, ITEMS 3
19 THROUGH 8, MS. PODBERESKY LISTS A NUMBER OF WITNESSES, AND
20 THEN IN HER SECOND LETTER OF THE SAME DATE SHE POINTS OUT A
21 COUPLE OF ADDITIONAL WITNESSES OR WITNESS THAT SHE WOULD
22 LIKE YOU TO CONSIDER THE STATEMENTS OF. AGAIN, ALL
23 CONTAINED WITHIN GRAND JURY EXHIBIT 111.

24 YOU WILL ALSO SEE IN OUR CORRESPONDENCES WITH
25 COUNSEL FOR MR. WOLFE, WE OFFERED TO PROVIDE YOU MEMBERS OF
26 THE GRAND JURY WITH A COPY OF THE POLICE REPORT THAT WAS

1 AUTHORED BY JOSEPH WOLFE REGARDING THESE EVENTS.

2 SHE HAS REQUESTED THAT WE GO AHEAD AND DO SO, SHE
3 HAS TAKEN US UP ON THAT OFFER, SO THAT HAS ALSO BEEN
4 INCLUDED. YOU WILL SEE THAT UNDER THE JOSEPH WOLFE REPORT
5 TAB. IT IS A TWO-PAGE REPORT THAT WAS AUTHORED BY JOSEPH
6 WOLFE REGARDING THESE EVENTS.

7 IN THE SECOND LETTER THAT WAS AUTHORED BY
8 MS. PODBERESKY, SHE ALSO REQUESTED THAT SOME ADDITIONAL
9 MATERIAL BE PROVIDED TO YOU, INCLUDING A VARIETY OF TYPES OF
10 INFORMATION REGARDING PRIOR POLICE CONTACTS, PRIOR LAW
11 ENFORCEMENT CONTACTS, BETWEEN MR. THOMAS AND POLICE
12 AGENCIES.

13 AND SO WHAT WE HAVE DONE IS, AND THAT REQUEST AND
14 THE SPECIFICS OF THAT REQUEST IS FURTHER DESCRIBED BY
15 MS. PODBERESKY IN HER LETTER, HER SECOND LETTER OF SEPTEMBER
16 18TH, WHAT WE ARE DOING IS PROVIDING YOU WITH THE ENTIRETY
17 OF THAT INFORMATION, PRIOR LAW ENFORCEMENT CONTACTS DETAILED
18 BY MS. PODBERESKY IN HER LETTER, AND WE ARE DOING SO IN A
19 DIGITAL FORMAT. YOU WILL FIND IN EXHIBIT 111, AND ALSO AT
20 THE END OF YOUR BINDERS, THERE IS A C.D. AND THAT C.D.
21 CONTAINS P.D.F.'S, OR I SHOULD SAY DIGITAL DOCUMENT FILES
22 THAT CONTAIN THAT INFORMATION THAT WAS REQUESTED.

23 IN ESSENCE, THAT'S THE NATURE AND EXISTENCE OF
24 EXCULPATORY EVIDENCE OR EVIDENCE THAT MAY BE CHARACTERIZED
25 AS EXCULPATORY, OR ITEMS THAT WERE REQUESTED BY
26 MS. PODBERESKY ON BEHALF OF MR. WOLFE THAT IS CONTAINED IN

1 GRAND JURY EXHIBIT NUMBER 111.

2 WHAT I WOULD LIKE TO DO NOW IS MAKE YOU AWARE OF
3 SOME ADDITIONAL INFORMATION ORALLY, THAT MAY BE
4 CHARACTERIZED AS THE NATURE AND EXISTENCE OF SOME ADDITIONAL
5 POTENTIALLY EXCULPATORY EVIDENCE.

6 SO IN ADDITION TO THE INFORMATION SPECIFICALLY
7 REQUESTED BY DEFENSE COUNSEL, THERE IS NOW SOME FURTHER
8 INFORMATION I WOULD LIKE TO MAKE YOU AWARE OF, THROUGH AN
9 ORAL RECITATION OF THAT INFORMATION.

10 ON AUGUST 22ND OF 2011, ORANGE COUNTY DISTRICT
11 ATTORNEY INVESTIGATOR ANDREW ROSS INTERVIEWED A WITNESS BY
12 THE NAME OF JACOB OSOGO. JACOB OSOGO STATED THAT HE WAS AT
13 THE FULLERTON TRANSPORTATION CENTER ON THE EVENING OF JULY
14 5TH, 2011, WORKING IS AS A TAXICAB DRIVER. HE TOLD
15 INVESTIGATOR ROSS THAT HE WAS AT THAT LOCATION, AND HE TOLD
16 THAT INVESTIGATOR WHAT HE HAD WITNESSED OF THE INCIDENT
17 BETWEEN KELLY THOMAS AND FULLERTON POLICE OFFICERS.

18 AND WITH REGARD TO THE NATURE AND EXISTENCE OF
19 POTENTIALLY EXCULPATORY EVIDENCE, MR. OSOGO TOLD
20 INVESTIGATOR ROSS THAT AFTER ONE OF THE OFFICERS STRUCK
21 THOMAS WITH A BATON, THOMAS TOOK THREE TO FIVE STRIDES AWAY.
22 THE SAME OFFICER CAUGHT UP TO THOMAS AND PUNCHED THOMAS. AS
23 SOON AS THE OFFICER PUNCHED THOMAS, THOMAS IMMEDIATELY
24 PUNCHED THE OFFICER BACK TWICE ON THE CHEEK. THOMAS WAS
25 SUBSEQUENTLY TACKLED.

26 ON JULY 5TH, 2011, THE SAME INDIVIDUAL, JACOB

1 OSOGO WAS INTERVIEWED BY FULLERTON POLICE DEPARTMENT OFFICER
2 DAVID MCSHANE, WHEN HE STATED THAT AGAIN HE HAD BEEN
3 STANDING NEXT TO HIS TAXI, HE SAID APPROXIMATELY 100 FEET
4 FROM WHERE THE OFFICERS HAD CONTACTED THOMAS WHEN HE
5 WITNESSED THEIR INTERACTION. AND MR. OSOGO SIMILARLY TOLD
6 THE FULLERTON POLICE ON THAT OCCASION AFTER THOMAS RAN
7 AROUND ONE OF THE PATROL CARS, THE OFFICERS AND THOMAS
8 PUNCHED EACH OTHER, THAT THOMAS PUNCHED ONE OF THE OFFICERS
9 BACK BEFORE THOMAS WAS WRESTLED TO THE GRAND.

10 ON JULY 14TH OF 2011, ORANGE COUNTY DISTRICT
11 ATTORNEY INVESTIGATOR TOM CONKLIN INTERVIEWED A WITNESS BY
12 THE NAME OF CYNTHIA HERNANDEZ. MS. HERNANDEZ STATED THAT
13 SHE WAS AT THE FULLERTON TRANSPORTATION CENTER ON JULY 5TH,
14 2011, AT APPROXIMATELY 8:30 P.M. WAITING FOR A BUS WITH HER
15 HUSBAND, JASON RAGONANAN. SHE TOLD INVESTIGATOR CONKLIN
16 THAT SHE WAS AT THE BUS MEDIAN, AND SHE TOLD HIM ABOUT WHAT
17 SHE HAD WITNESSED REGARDING THE INCIDENTS BETWEEN KELLY
18 THOMAS AND THE FULLERTON POLICE OFFICERS.

19 AND WITH REGARD TO THE NATURE AND EXISTENCE OF
20 POTENTIALLY EXCULPATORY EVIDENCE, MS. HERNANDEZ TOLD
21 INVESTIGATOR CONKLIN THAT AFTER THOMAS RAN AROUND ONE OF THE
22 PATROL CARS, BUT BEFORE HE WAS TACKLED TO THE GROUND BY BOTH
23 OFFICERS, HE TOOK A SWING AT THE CHEST OF ONE OFFICER FROM A
24 DISTANCE OF APPROXIMATELY TWO FEET, BUT HE DID NOT CONNECT.

25 ON JULY 26, 2011, ORANGE COUNTY DISTRICT ATTORNEY
26 INVESTIGATOR STAN BERRY INTERVIEWED A WITNESS BY THE NAME OF

1 RICHARD FRITSCHÉ, I WILL SPELL THAT FOR THE RECORD,
2 F-R-I-T-S-C-H-E, AND MY APOLOGIES, I NEGLECTED TO SPELL
3 RAGONANAN, AND THAT MIGHT HELP, R-A-G-O-N-A-N-A-N.

4 WITH REGARD TO MR. FRITSCHÉ THEN, MR. FRITSCHÉ
5 TOLD INVESTIGATOR BERRY THAT HE WAS AT THE AREA OF THE
6 FULLERTON TRANSPORTATION CENTER ON JULY 5TH, 2011, AT
7 APPROXIMATELY 8:00 OR 8:30 IN THE EVENING. MR. FRITSCHÉ
8 TOLD INVESTIGATOR BERRY WHAT HE WITNESSED OF THE INCIDENTS
9 BETWEEN KELLY THOMAS AND FULLERTON POLICE OFFICERS, FROM
10 WHAT HE ESTIMATED WAS A DISTANCE OF 10 YARDS NORTH OF WHERE
11 THE OFFICERS FIRST CONTACTED THOMAS.

12 WITH REGARD TO THE NATURE AND EXISTENCE OF
13 POTENTIALLY EXCULPATORY EVIDENCE, MR. FRITSCHÉ TOLD
14 INVESTIGATOR BERRY THAT WHEN THOMAS WAS TACKLED TO THE
15 GROUND, THOMAS HIT HIS HEAD ON A POLE NEAR THE LIGHT POST.
16 MR. FRITSCHÉ ALSO STATED THAT WHILE THOMAS WAS ON THE GROUND
17 WHEN THE FIRST TWO OFFICERS WERE WITH HIM, THOMAS REACHED UP
18 AND HIT THE COP. AND MR. FRITSCHÉ SAW THE COP'S ARM GOING
19 DOWN ON THE CURB, AND IT LOOKED LIKE HE WAS REALLY HURT.

20 OFFICER JAY CICINELLI AUTHORED A REPORT REGARDING
21 THE EVENTS IN THIS INCIDENT AS WELL. OFFICER CICINELLI
22 STATED IN HIS REPORT, AND I WILL QUOTE:

23 "THAT AS I WAS PREPARING TO PUT MY
24 TASER BACK IN ITS HOLSTER, THOMAS REACHED IN
25 MY DIRECTION AND GRABBED MY TASER FROM MY
26 HAND. HE PULLED IT TOWARD HIS BODY AND IT

1 BEGAN SLIPPING FROM MY HAND DUE TO MY HAND
2 BEING VERY SWEATY. I WAS ABLE TO PULL BACK
3 IN MY DIRECTION AND GAIN TOTAL CONTROL OVER
4 MY TASER."

5 HE ALSO STATED THAT HE:

6 "APPLIED MULTIPLE STRIKES TO THE FACE
7 AND LEFT SIDE OF THOMAS' HEAD WHILE HOLDING
8 HIS TASER."

9 AND THAT FOLLOWING THESE STRIKES HE:

10 "SAW BLOOD BEGAN TO RUN FROM THOMAS'
11 FACE AREA AND THAT THOMAS BEGAN SLOWLY
12 RESISTING."

13 AND JUST SO I MENTION, WE HAVE ALREADY PUT INTO
14 EVIDENCE GRAND JURY EXHIBIT NUMBER 75, THE VIDEO RECORDING
15 OF THIS INCIDENT, THAT YOU WILL HAVE ALSO TO REVIEW AND
16 CONSIDER AND TO EVALUATE FOR YOURSELF ABOUT WHAT CONDUCT
17 OCCURRED ON THAT VIDEO.

18 NOW THAT I HAVE TOLD YOU ABOUT THE NATURE OF THE
19 EXCULPATORY EVIDENCE BOTH ORALLY AND PROVIDING GRAND EXHIBIT
20 NUMBER 111, I WANT TO READ TO YOU AN INSTRUCTION THAT YOU
21 ARE GOING TO BE PROVIDED, GRAND JURY INSTRUCTION NUMBER 2.
22 AND IT IS MY DUTY TO NOT ONLY TELL YOU ABOUT THIS STUFF, BUT
23 ALSO THEN TO DIRECT YOU TO YOUR DUTY IN THAT INSTRUCTION.

24 SO GRAND JURY INSTRUCTION NUMBER 2 DEFINES ONE OF
25 THE DUTIES OF A GRAND JURY. IT IS DESCRIBED TO YOU AS THE
26 JOHNSON RULE, IT IS ENTITLED, THE JOHNSON RULE. WHAT IT

1 STATES IS:

2 "THE GRAND JURY IS NOT REQUIRED TO
3 HEAR EVIDENCE FOR THE DEFENDANT, BUT IT
4 SHALL WEIGH ALL EVIDENCE SUBMITTED TO IT,
5 AND WHEN IT HAS REASON TO BELIEVE THAT OTHER
6 EVIDENCE WITHIN ITS REACH WILL EXPLAIN AWAY
7 THE CHARGE, IT SHALL ORDER THE EVIDENCE TO
8 BE PRODUCED, AND FOR THAT PURPOSE MAY
9 REQUIRE THE DISTRICT ATTORNEY TO ISSUE
10 PROCESS FOR THE WITNESS."

11 THAT'S PRECISELY WHAT WE WILL DO IF YOU DEEM IT
12 IS APPROPRIATE.

13 AND WITH THAT I HAVE NO FURTHER EXHIBITS TO MARK
14 OR DESCRIBE, AND THAT WOULD CONCLUDE MY EXPLANATION OF THE
15 NATURE AND EXISTENCE OF POTENTIAL EXCULPATORY EVIDENCE.

16 THANK YOU.

17 MR. RACKAUCKAS: MAY I PROCEED WITH MY SUMMATION?

18 THE GRAND JURY FOREPERSON: YES.

19 MR. RACKAUCKAS: LADIES AND GENTLEMEN OF THE GRAND
20 JURY, YOU KNOW PUBLIC SAFETY IS, OF COURSE, TERRIBLY
21 IMPORTANT, AND IT REQUIRES, ABSOLUTELY REQUIRES THAT WE HAVE
22 AN EFFECTIVE POLICE FORCE. IF WE DON'T HAVE AN EFFECTIVE
23 POLICE FORCE, JUST GIVEN HUMAN NATURE, THE STREETS WOULD BE
24 UNSAFE. WE WOULD NOT BE ABLE TO BE A COMMUNITY. IT JUST
25 WOULDN'T WORK OUT. SO WE MUST HAVE THAT.

26 SO WHAT WE DO IS WE GIVE PEOPLE THE AUTHORITY AND

1 THE POWER TO BE POLICE OFFICERS. AND, YOU KNOW, WE GIVE
2 THEM UNIFORMS, POLICE CARS, BADGES, ALL OF THE ACCOUTERMENT
3 OF A POLICE OFFICER, ALL THE THINGS THAT IDENTIFY SOMEBODY
4 AS A POLICE OFFICER.

5 AND THOSE OF US WHO ARE CITIZENS HERE, WE KNOW
6 THAT WHEN WE TALK TO A POLICE OFFICER, THAT THAT PERSON IS
7 SOMEBODY IN AUTHORITY, AND THAT WE HAVE A DUTY TO SUBMIT TO
8 THAT AUTHORITY, AND TO COOPERATE, AND DO ALL THAT WE CAN TO
9 MAKE SURE THAT THE POLICE OFFICER IS ABLE TO PERFORM HIS
10 DUTY OR HER DUTY IN A LAWFUL MANNER, AND TO GET THINGS DONE.

11 WE GIVE THEM POWER AS WELL. NOT JUST AUTHORITY,
12 BUT WITH AUTHORITY YOU NEED TO HAVE THE POWER TO ENFORCE THE
13 AUTHORITY, IF NECESSARY. AND BY THAT, THEY ARE ARMED WITH
14 GUNS. BATONS. TASERS. REALLY PRETTY MUCH WHATEVER OUR
15 SOCIETY OR OUR POLICE FORCE THINKS THAT THE INDIVIDUALS NEED
16 IN ORDER TO PROTECT THEMSELVES, TO PROTECT SOCIETY, TO MAKE
17 SURE THAT IF THEY HAVE TO USE FORCE, THAT THEY HAVE THE
18 ABILITY TO USE FORCE.

19 SO THE THING IS THAT THE FORCE THAT THEY ARE
20 ENTITLED TO USE, IT CAN'T BE JUST UNFETTERED FORCE. IT
21 CAN'T BE ANY FORCE THEY DECIDE.

22 THIS IS A MATTER FOR SOCIETY TO PAY SOME
23 ATTENTION TO, BECAUSE IN ORDER TO HAVE A LAWFUL POLICE
24 FORCE, THERE NEED TO BE LIMITS. AND SO THE POLICE ARE
25 CERTAINLY ABLE TO USE FORCE AS REQUIRED, AS NECESSARY, BUT
26 IT NEEDS TO BE LAWFUL FORCE. IT NEEDS TO BE THE FORCE

1 NECESSARY TO DO THEIR LAWFUL DUTY. AND SO WE NEED TO
2 DETERMINE, I MEAN THEY CAN EVEN USE DEADLY FORCE IF THEY
3 HAVE TO, BUT WE NEED TO DETERMINE WHAT IS LAWFUL AND WHAT IS
4 NOT LAWFUL.

5 AND THIS CASE IS ONE THAT ASKS THAT QUESTION.
6 THIS CASE SPECIFICALLY, THAT'S THE MAIN QUESTION OF THIS
7 CASE.

8 AND THERE ARE A NUMBER OF THINGS HERE, THERE ARE
9 SOME THINGS THAT YOU WILL BE ASKED TO DECIDE AS A GRAND JURY
10 AT THIS STAGE OF THE PROCEEDINGS, BUT I TELL YOU THAT THE
11 IMPORTANT THING, THE CRUX OF THIS IS THIS QUESTION OF EITHER
12 REASONABLE OR EXCESSIVE FORCE. AND I THINK IT IS GOOD AND
13 IT IS PROPER THAT IT IS A GRAND JURY SPEAKING AS A VOICE AND
14 AS A CONSCIENCE OF THE COMMUNITY, MAKING SUCH A DECISION.
15 THIS IS HOW WE PROCEED IN A LAWFUL MANNER.

16 BY THE WAY, SINCE I AM TALKING, LET ME JUST
17 ADMONISH YOU THAT COMMENTS THAT ARE MADE BY ATTORNEYS,
18 STATEMENTS THAT I MAKE, ARE NOT EVIDENCE IN THE CASE. SO
19 YOU ARE TO DECIDE WHAT THE EVIDENCE PROVES AND WHAT IT
20 DOESN'T PROVE. I AM HERE TO TRY TO KIND OF LAY THIS OUT,
21 AND HOPEFULLY PUT SOME LOGICAL REASONING TO IT. IT WILL BE
22 FOR YOU TO DECIDE IF YOU DISAGREE WITH ANYTHING I HAVE TO
23 SAY. CERTAINLY YOUR VIEW OF THE EVIDENCE IS WHAT IS
24 IMPORTANT.

25 BUT THE QUESTION, AND THE BASIC QUESTION THAT IS
26 GOING TO HAVE TO BE DECIDED HERE IS THIS, VIEWING ALL THE

1 FACTS AND CIRCUMSTANCES OF THE ENTIRE MATTER, AS A
2 REASONABLE POLICE OFFICER IN THE POSITION OF OFFICER WOLFE,
3 WAS THE FORCE HE USED UPON THE PERSON OF KELLY THOMAS
4 REASONABLE AND NECESSARY? OR, WAS IT UNREASONABLE AND
5 EXCESSIVE? THAT'S THE CENTRAL QUESTION.

6 AND IT IS REALLY A QUESTION FOR SOCIETY TO
7 DETERMINE, IT IS A QUESTION TO BE DETERMINED BY JURORS. NOT
8 REALLY SUCH A QUESTION FOR EXPERTS, MORE OF A QUESTION FOR
9 WHAT DO WE CONSIDER REASONABLE IN THIS COUNTRY OF OURS?
10 WHAT ARE THE EXPECTATIONS WE HAVE OF THE POLICE? HOW DO WE
11 EXPECT THEM TO PERFORM? HOW DO WE EXPECT THEM TO USE THEIR
12 FORCE AND THEIR AUTHORITY IN ANY GIVEN SITUATION?

13 SO BASICALLY WE ARE GOING TO BE TELLING THE
14 POLICE HERE, THIS WAS THE LAWFUL USE OF AUTHORITY, OR THIS
15 WAS NOT THE LAWFUL USE OF AUTHORITY AND FORCE.

16 YOU KNOW, THERE IS NO WAY TO CONSIDER, BY THE
17 WAY, THERE WILL BE OTHER QUESTIONS THAT HAVE TO BE ANSWERED,
18 FOR EXAMPLE, ARE ALL THE ELEMENTS MET OF CAUSATION AND SO
19 FORTH, BUT THAT'S THE IMPORTANT QUESTION.

20 AND I WILL TELL YOU THE NEXT BIG QUESTION IS
21 WHETHER OR NOT, MAKING AN ASSUMPTION HERE, ASSUMING THAT IT
22 WAS DECIDED THAT IT WAS EXCESSIVE FORCE, IS THERE A
23 VIOLATION OF SECTION 149?

24 CAN YOU PUT SECTION 149 UP FOR THE ELEMENTS.

25 MR. BOGARDUS: (COMPLIES).

26 MR. RACKAUCKAS: BY THE WAY, MR. BOGARDUS IS GOING TO

1 BE HELPING ME WITH THIS THROUGHOUT. HE IS SO GOOD AT IT.

2 I THINK THE NEXT VERY IMPORTANT QUESTION WAS
3 WHETHER OR NOT THERE WAS AN ASSAULT OR BATTERY BY A PUBLIC
4 OFFICER ON THE PERSON OF KELLY THOMAS. AND YOU CAN SEE IF
5 YOU ANSWER THE FIRST QUESTION, THAT THERE WAS EXCESSIVE
6 FORCE, THEN THAT QUESTION IS GOING TO BE ANSWERED, THE
7 QUESTION ABOUT WHETHER OR NOT THERE WAS A BATTERY OR ASSAULT
8 AND BATTERY BY THE OFFICER ON KELLY THOMAS. THAT WILL BE
9 ANSWERED.

10 THE ELEMENTS ARE RIGHT HERE.

11 THAT THE DEFENDANT, OFFICER WOLFE, WAS A PEACE
12 OFFICER AT THE TIME OF THE CONDUCT.

13 THAT THE DEFENDANT WAS ACTING UNDER COLOR OF
14 AUTHORITY. CERTAINLY NO QUESTION ABOUT THAT.

15 THAT THE DEFENDANT ASSAULTED OR BEAT ANOTHER
16 PERSON. AS WE GO THROUGH THIS, THERE ISN'T GOING TO BE ANY
17 QUESTION ABOUT THAT.

18 THAT THE DEFENDANT ACTED WITHOUT LEGAL NECESSITY.
19 SO WE ARE GOING TO BE TALKING ABOUT WHETHER HE ACTED WITH
20 LEGAL NECESSITY OR WITHOUT IT, AGAIN, THAT IS THE CRUX OF
21 THE WHOLE MATTER.

22 SO I AM GOING TO ASK MR. BOGARDUS TO START THE
23 VIDEO, AND WE ARE GOING TO GO THROUGH THAT A LITTLE BIT.
24 AND I AM NOT NECESSARILY WANTING TO GO THROUGH THIS VIDEO
25 OVER AND OVER AGAIN, BUT I THINK IT IS NECESSARY TO LOOK AT
26 IT HERE, JUST FROM THE BEGINNING.

1 (WHEREUPON GRAND JURY EXHIBIT NUMBER 75 WAS
2 PLAYED IN THE GRAND JURY ROOM.)

3 MR. RACKAUCKAS: NOW, I AM GOING TO SUGGEST TO YOU AT
4 THIS POINT NOT TO BE TOO CONCERNED ABOUT THE TRANSCRIPT.
5 YOU CAN LOOK AT THE TRANSCRIPT, YOU WILL HAVE AN OPPORTUNITY
6 TO DO THAT, JUST KEEP AN EYE ON THE VIDEO FOR NOW. I AM NOT
7 SAYING DON'T LOOK AT THE TRANSCRIPT, I JUST THINK DON'T BE
8 DISTRACTED BY IT.

9 GO AHEAD.

10 (WHEREUPON THE PLAYING OF GRAND JURY EXHIBIT
11 NUMBER 75 WAS RESUMED.)

12 MR. RACKAUCKAS: ALL RIGHT. THIS IS PRETTY MUCH THE
13 EARLY STAGE OF THE CONTACT, INITIAL CONTACT, AND, YOU KNOW,
14 WE SPEAK IN WORDS AND BODY LANGUAGE, RIGHT. AND I THINK
15 THAT IT IS FAIR TO SAY AT LEAST HALF, OR MAYBE MORE THAN
16 HALF OF WHAT WE SAY IS BODY LANGUAGE.

17 YOU KNOW, WHAT IS GOING ON HERE? AND I MEAN YOU
18 SEE THESE TWO PEOPLE, AND YOU SEE THIS PERSON HERE, YOU
19 KNOW, WHO IS KELLY THOMAS, FITTING THE DESCRIPTION OF
20 SOMEBODY WHO IS ALLEGED TO BE TRYING SOME DOOR HANDLES, CAR
21 DOOR HANDLES IN THE PARKING LOT.

22 BUT HOW IS THIS APPROACH MADE BY OFFICER RAMOS?
23 AND IT IS MADE IN A WAY, OFFICER RAMOS IS FACING HIM, HE IS
24 SWINGING HIS BATON AND ADDRESSING HIM. AND I THINK
25 THROUGHOUT, I THINK WE CAN SAY THAT HE IS ADDRESSING HIM IN
26 A LESS THAN DISCOURTEOUS MANNER, I MEAN HE IS ADDRESSING HIM

1 IN A VERY -- IN A WAY HE IS TALKING DOWN TO HIM. AND HE IS,
2 WE WILL SEE, BUT HE IS JUST PLAYING WORD GAMES WITH HIM,
3 RATHER THAN A PROFESSIONAL QUESTION AND ANSWER, IT IS MORE
4 LIKE A GAMESMANSHIP SORT OF THING.

5 GO AHEAD AND PLAY IT.

6 (WHEREUPON THE PLAYING OF GRAND JURY EXHIBIT
7 NUMBER 75 WAS RESUMED.)

8 MR. RACKAUCKAS: WHEN OFFICER RAMOS SAYS, WERE YOU
9 TRYING DOOR HANDLES ON CARS, AND THEN OFFICER -- AND THEN
10 KELLY THOMAS SAYS, WELL, I DON'T KNOW WHAT YOU ARE TALKING
11 ABOUT, I WOULD SUGGEST TO YOU THAT, I DON'T KNOW WHAT YOU
12 ARE TALKING ABOUT, HAS VERY CLEAR MEANING. IT MEANS, WHAT
13 DO YOU MEAN TRYING DOOR HANDLES, I DON'T KNOW WHAT YOU ARE
14 TALKING ABOUT? TRYING DOOR HANDLES ON CARS. BUT THEN THE
15 RESPONSE IS, WHAT DOES THAT MEAN? IT IS CLEAR WHAT IT
16 MEANS.

17 GO AHEAD.

18 (WHEREUPON THE PLAYING OF GRAND JURY EXHIBIT
19 NUMBER 75 WAS RESUMED.)

20 MR. RACKAUCKAS: ALL RIGHT. AND AS WE GO THROUGH THIS
21 WHOLE VERBAL SPARRING ABOUT HOW MANY LANGUAGES DO YOU SPEAK,
22 I THINK EVERYBODY WOULD AGREE THAT IS ENTIRELY UNNECESSARY
23 OF A POLICE OFFICER TALKING TO A CITIZEN AND THEY ARE
24 SPEAKING ENGLISH. AND, CLEARLY, KELLY THOMAS IS, YOU KNOW,
25 PLAYING SOME GAME HERE, HE IS SAYING, WELL, I DON'T SPEAK
26 ENGLISH, BUT HE IS SPEAKING IN ENGLISH. SO IT WOULD BE

1 REASONABLE TO JUST CONTINUE THE CONVERSATION WITH KELLY
2 THOMAS, INSTEAD OF GOING THROUGH A WHOLE VERBAL SPARRING
3 MATCH ABOUT HOW MANY LANGUAGES HE SPEAKS.

4 GO AHEAD.

5 (WHEREUPON THE PLAYING OF GRAND JURY EXHIBIT
6 NUMBER 75 WAS RESUMED.)

7 MR. RACKAUCKAS: WE CAN SEE OFFICER WOLFE IN THE VIDEO
8 NOW. HIS ARM IS THERE. HE HAS BEEN STANDING THERE. AND SO
9 HE HAS BEEN THERE FOR THIS CONVERSATION. AT LEAST FOR A
10 TIME.

11 THIS IS THE FIRST TIME, LIKE I SAY, WE SEE HIM IN
12 THE VIDEO, BUT HE WAS REFERRED TO JUST A FEW SECONDS AGO,
13 AND KELLY THOMAS LOOKED AROUND AND SAID SOMETHING ABOUT, I
14 DON'T SEE ANYBODY, OR SOMETHING. BUT HE IS RIGHT THERE. SO
15 IN SUCH CLOSE PROXIMITY THAT HE IS A PART OF THIS
16 CONVERSATION.

17 GO AHEAD.

18 (WHEREUPON THE PLAYING OF GRAND JURY EXHIBIT
19 NUMBER 75 WAS RESUMED.)

20 MR. RACKAUCKAS: IT SEEMS LIKE EVERY DAY WE HAVE TO
21 TALK TO YOU ABOUT SOMETHING.

22 NOW, NOTICE HOW CASUAL THESE OFFICERS ARE WITH
23 KELLY THOMAS. AND THAT CONTINUES. THIS CASUAL KIND OF A
24 WAY THAT THE OFFICERS BEHAVE. THAT MAKES IT VERY CLEAR THAT
25 KELLY THOMAS, THAT THEY DO NOT CONSIDER THEMSELVES TO BE
26 THREATENED IN ANY WAY BY KELLY THOMAS.

1 AND AS WE PROCEED, YOU CAN SEE EVEN MORE THAT
2 THERE ARE TIMES WHEN OFFICER RAMOS IS STANDING NEXT TO KELLY
3 THOMAS WITH HIS GUN EXPOSED. KELLY THOMAS COULD REACH UP
4 AND GRAB A GUN. THAT IS VERY CASUAL ON THE PART OF A POLICE
5 OFFICER OBVIOUSLY, AND SHOWS, WITHOUT ANY QUESTION, THAT
6 THOSE OFFICERS FEEL NO THREAT, NO PHYSICAL THREAT FROM KELLY
7 THOMAS.

8 GO AHEAD.

9 (WHEREUPON THE PLAYING OF GRAND JURY EXHIBIT 75
10 WAS RESUMED.)

11 MR. RACKAUCKAS: JUST IN CASE IT WAS UNNOTICED, THEY
12 JUST REPEATED THAT HIS NAME WAS KELLY THOMAS AT LEAST TWICE.

13 GO AHEAD.

14 (WHEREUPON THE PLAYING OF GRAND JURY EXHIBIT 75
15 WAS RESUMED.)

16 MR. RACKAUCKAS: THAT WAS OFFICER WOLFE THAT SAID
17 SOMETHING ABOUT THE BACKPACK AND KELLY THOMAS JUST SAID,
18 HEY, IF YOU WANT TO LOOK AT IT, VOLUNTARILY JUST DROPPED THE
19 BACKPACK SO OFFICER WOLFE CAN TAKE A LOOK.

20 SO THAT'S PURELY CONSENSUAL ON THE PART OF KELLY
21 THOMAS. AND CERTAINLY NOBODY WOULD SUGGEST THAT OFFICER
22 WOLFE OR OFFICER RAMOS DON'T HAVE A RIGHT TO TAKE A LOOK IN
23 THE BACKPACK, BUT JUST TO SHOW YOU THAT THIS IS CONSENSUAL,
24 IN GENERAL THAT KELLY THOMAS WAS COOPERATING WITH THE
25 REQUESTS OF THE POLICE AT THIS TIME.

26 GO AHEAD.

1 (WHEREUPON THE PLAYING OF GRAND JURY EXHIBIT 75
2 WAS RESUMED.)

3 MR. RACKAUCKAS: NOW, WHAT YOU SEE IS THAT KELLY THOMAS
4 IS NOT COMPLETELY COOPERATIVE WITH THE POLICE, HE IS SLOW TO
5 GO OVER THERE AND SIT DOWN LIKE HE IS TOLD. BASICALLY HE
6 DOES IT WHEN OFFICER RAMOS SORT OF APPROACHES HIM AND SAYS,
7 YOU WANT TO FORCE MY HAND, DON'T FORCE OUR HAND, OR
8 SOMETHING LIKE THAT. SO HE DOES HAVE THAT, HE DOES SIT
9 DOWN.

10 THEN THERE IS THIS EXCHANGE ABOUT THESE
11 DIRECTIONS, ABOUT PUT YOUR FEET OUT IN FRONT OF YOU AND PUT
12 YOUR HANDS ON YOUR KNEES, AND THERE IS SOME CONFUSION THERE.
13 OR IT'S HARD TO SAY, IS IT CONFUSION OR LIKE A KID NOT BEING
14 ENTIRELY COOPERATIVE. BUT HE DOES DO WHAT HE IS SUPPOSED TO
15 DO, KIND OF RELUCTANTLY. HE PUTS HIS FEET OUT. HE WINDS UP
16 CROSSING HIS ANKLES, LIKE HE IS TOLD TO DO. GETS HIS HANDS
17 ON HIS KNEES, LIKE HE IS SUPPOSED TO. AND THEN MOVES HIS
18 HANDS AGAIN AND THEN OFFICER RAMOS TELLS HIM, NO, PUT HIS
19 HANDS BACK ON HIS KNEES. BUT NOW HE MOVES HIS HANDS AGAIN
20 BEHIND HIM, AND OFFICER RAMOS SEEMS TO ACCEPT THAT OKAY.

21 GO AHEAD.

22 (WHEREUPON THE PLAYING OF GRAND JURY EXHIBIT 75
23 WAS RESUMED.)

24 MR. RACKAUCKAS: I WANT YOU TO TAKE A LOOK AT THIS, AND
25 JUST CONSIDER THIS A LITTLE BIT. HOW CASUAL IS THIS
26 OFFICER? HOW CASUAL IS HE WITH KELLY THOMAS? HE IS NOT --

1 THIS IS NOT A CIRCUMSTANCE WHERE THIS OFFICER HAS ANY VIEW
2 OR ANY FEELING, AND, BY THE WAY, OFFICER WOLFE IS RIGHT
3 THERE, HE IS RIGHT BEHIND THE CAR. AND YOU WILL SEE THAT IN
4 A MINUTE WHERE OFFICER RAMOS HAS TO WALK AND TALKS TO
5 OFFICER WOLFE RIGHT IN THAT VICINITY. PEOPLE ARE GOING BY,
6 WALKING BY. YOU SAW SOMEBODY ON A BICYCLE JUST GO BY. NO
7 ATTEMPT TO SECURE THIS AREA OR SCENE IN SOME WAY SUCH AS TO
8 PROTECT THE OFFICERS OR PROTECT CITIZENS, OR TO HAVE ANY
9 CONCERN LIKE THAT.

10 AND RIGHT NOW WE ARE GOING TO BACK UP A LITTLE
11 BIT AND GO OVER THIS, TO WHERE WE ARE AGAIN.

12 (WHEREUPON THE PLAYING OF GRAND JURY EXHIBIT 75
13 WAS RESUMED.)

14 MR. RACKAUCKAS: WE ARE AT A POINT HERE, AND THIS
15 HAPPENS AT LEAST THREE TIMES DURING THIS CONVERSATION, WE
16 HAVE GOT SOMEBODY WHO COMES IN NAMED LEE, WHO COMES IN AND
17 JUST ENGAGES OFFICER RAMOS IN AN INFORMAL CONVERSATION
18 DURING THIS STOP.

19 AND OFFICER RAMOS IS STANDING NEXT RIGHT NEXT TO
20 KELLY THOMAS, AND HIS GUN IS RIGHT NEXT TO KELLY THOMAS.
21 AND NOW HIS HAND IS UP HERE (INDICATING). SO HE IS NOT EVEN
22 PROTECTING, HE IS IN A POSITION WHERE SOMEBODY COULD GRAB
23 HIS GUN.

24 NO OFFICER WHO HAS ANY CONCERN ABOUT HIS OR
25 ANYONE ELSE'S WELFARE IS GOING TO LET HIM GO IN THAT
26 POSITION.

1 GO AHEAD.

2 (WHEREUPON THE PLAYING OF GRAND JURY EXHIBIT 75
3 WAS RESUMED.)

4 MR. RACKAUCKAS: AND HERE I POSE THE QUESTION, HOW
5 SERIOUS IS OFFICER RAMOS REALLY ABOUT KELLY THOMAS FOLLOWING
6 THOSE INSTRUCTIONS? I MEAN KELLY THOMAS WAS SITTING THERE
7 WITH HIS LEGS OUT, ANKLES NOT CROSSED, HANDS NOT ON HIS
8 KNEES BUT BEHIND HIM FOR SOME TIME DURING THIS LAST COUPLE
9 OF MINUTES HERE.

10 AND THEN WHEN THIS LEE PERSON GOES AWAY, I THINK
11 HIS NAME IS LEE, WHEN THIS LEE PERSON WALKS AWAY, KELLY
12 THOMAS REACHES ALL THE WAY FORWARD, PICKS UP HIS SHOES, PUT
13 THEM ON, AND NOW HE IS SITTING LIKE THIS TALKING TO OFFICER
14 RAMOS, WHO DOESN'T SEEM TO OBJECT TO THAT AT THIS POINT.

15 GO AHEAD.

16 (WHEREUPON THE PLAYING OF GRAND JURY EXHIBIT 75
17 WAS RESUMED.)

18 MR. RACKAUCKAS: ALL RIGHT. THERE ARE A FEW THINGS
19 THAT I THINK ARE IMPORTANT TO KEEP IN MIND AT THIS POINT.

20 FIRST, WHEN OFFICER RAMOS LEFT AND WALKED AWAY
21 FROM KELLY THOMAS, HE JUST TURNED HIS BACK TO KELLY THOMAS
22 AND JUST CASUALLY WALKED OVER TO THE POLICE CAR AND BEGAN
23 TALKING TO OFFICER WOLFE. AGAIN, NO CONCERN ABOUT KELLY
24 THOMAS, OR ANY THEFT OR ANYTHING LIKE THAT.

25 THERE ARE A FEW THINGS I WANT TO SAY, AND IT IS
26 BECAUSE, WELL, FOR ONE THING WE HAD AN EXPERT WITNESS,

1 DR. MCNAMARA, AND YOU CAN SEE, I MEAN HE IS SOMEBODY WHO HAS
2 BEEN A STREET COP, HE HAS BEEN A POLICE CHIEF, HE IS AN
3 ACADEMIC, SO HE IS QUITE A COMBINATION OF THESE DIFFERENT
4 THINGS, AND OF EXPERIENCE.

5 BUT HE SAID A FEW THINGS WHILE HE WAS TESTIFYING
6 THAT MAY BE A LITTLE BIT OFF, OUT OF THE PALE, TO BE HONEST
7 WITH YOU. JUST SOME THINGS THAT YOU SHOULD NOT CONSIDER AS
8 PROOF. AND UNDERSTAND THAT HE TESTIFIED AS AN EXPERT
9 WITNESS OFFERING AN OPINION, AND YOU WILL BE GETTING AN
10 INSTRUCTION, OR YOU HAVE AN INSTRUCTION ABOUT EXPERT
11 TESTIMONY AND THEIR OPINIONS, AND WHETHER OR NOT THE FACTS
12 RELIED UPON BY THE EXPERTS HAVE BEEN PROVEN.

13 AND SO LET ME JUST GO THROUGH A COUPLE OF THINGS
14 HERE.

15 FIRST, I WANT TO SAY THIS, THAT OFFICER RAMOS AND
16 OFFICER WOLFE'S INITIAL DETENTION OF THOMAS WAS LAWFUL. I
17 DON'T THINK THAT IT WAS EVER SUGGESTED THAT IT WAS UNLAWFUL,
18 BUT ASSUME, PLEASE, IT IS A LAWFUL DETENTION. THEY HAVE
19 EVERY REASON TO GO TALK TO HIM, TO DETAIN HIM AND TO DISCUSS
20 THESE MATTERS WITH HIM, AND FIND OUT WHAT HE IS DOING, AND
21 WHETHER OR NOT HE IS DOING ANYTHING QUESTIONABLE IN THAT
22 PARKING LOT.

23 THE QUESTIONING OF THOMAS WAS LAWFUL. DID NOT
24 VIOLATE ANY MIRANDA RIGHTS. THEY DIDN'T VIOLATE HIS RIGHTS,
25 AS FAR AS THE QUESTIONING IS CONCERNED.

26 NOW, THIS WHOLE VERBAL SPARRING AND EVERYTHING,

1 NOT THAT VERY PROFESSIONAL, I DON'T THINK WHAT YOU WOULD
2 CONSIDER TO BE REALLY GREAT CONDUCT ON THE PART OF THE
3 POLICE OFFICER, BUT IT DOESN'T VIOLATE ANY LAWS. WHEN HE IS
4 ASKING HIM THINGS ABOUT WERE YOU OUT HERE TRYING DOORS,
5 THAT'S GENERAL KIND OF INVESTIGATION, AND IT DOESN'T
6 IMPLICATE MIRANDA OR ANY OF THAT, SO DON'T BE CONCERNED
7 ABOUT THAT.

8 AS FAR AS THE STATEMENTS THAT THOMAS WAS MAKING,
9 KELLY THOMAS WAS MAKING, HE DIDN'T MAKE ANY COERCED
10 STATEMENTS, HE WAS NOT COERCED INTO MAKING ANY CONFESSION OR
11 ANYTHING LIKE THAT, SO HE DIDN'T SAY ANYTHING UNVOLUNTARILY
12 THAT WOULD HAVE MADE ANY LEGAL PROBLEM. HE GAVE LAWFUL
13 CONSENT TO SEARCH THE BACKPACK. WE DON'T HAVE ANY QUESTION
14 THERE. THERE IS NO APPLICATION OF ANY EXCLUSIONARY RULE OF
15 EVIDENCE TO ANY OF THESE STATEMENTS.

16 AND AT THIS TIME THAT WE ARE LOOKING AT RIGHT
17 NOW, I THINK IT IS ONLY FAIR FOR US TO ASSUME THAT OFFICERS
18 RAMOS AND WOLFE BELIEVE THEY HAD REASONABLE CAUSE TO MAKE AN
19 ARREST OF KELLY THOMAS FOR RECEIVING STOLEN PROPERTY.

20 I AM NOT GOING TO SAY -- I JUST DON'T THINK WE
21 SHOULD SPECULATE AS TO IS IT A STRONG CASE, IS IT A WEAK
22 CASE. THEY ARE LOOKING THROUGH THIS BACKPACK AND THEY ARE
23 SEEING IT DOESN'T BELONG, AT LEAST THE THINGS IN IT DON'T
24 SEEM TO BELONG TO KELLY THOMAS, AND THEY BELIEVE THAT THEY
25 HAVE A RIGHT TO MAKE AN ARREST HERE FOR PROBABLE CAUSE FOR
26 RECEIVING STOLEN PROPERTY.

1 WHETHER OR NOT HE MIGHT HAVE BEEN CONVICTED OF
2 THAT ULTIMATELY IS NOT EVEN AN APPROPRIATE QUESTION TO BE
3 CONCERNED ABOUT.

4 I THINK THOUGH THAT THE REASON THAT DR. MCNAMARA
5 WAS BRINGING THAT UP IS HE IS BASICALLY SAYING, AND THIS IS
6 SOMETHING FOR YOU TO CONSIDER, HE IS BASICALLY SAYING THIS
7 IS NOT A SERIOUS CASE. THIS IS NOT A CASE OF VIOLENCE.
8 THIS IS NOT A CASE WHERE WE HAVE TO BE CONCERNED ABOUT SOME
9 HEAVYWEIGHT CRIMINAL OR SOMETHING OF THAT NATURE. THAT'S
10 THE POINT THAT HE WAS MAKING.

11 ALL RIGHT. GO AHEAD.

12 (WHEREUPON THE PLAYING OF GRAND JURY EXHIBIT 75
13 WAS RESUMED.)

14 MR. RACKAUCKAS: ALL RIGHT. THIS IS INAPPROPRIATE
15 CONDUCT OF A VERY BAD KIND BY THIS OFFICER RAMOS AT THIS
16 POINT. THERE IS SIMPLY NO QUESTION ABOUT THAT.

17 AND I DON'T WANT TO BE THROWING THIS WORD AROUND
18 A LOT, BUT I THINK WE ALL KNOW WHAT IS MEANT BY IT, WE ALL
19 KNOW WHAT IS MEANT BY THIS. HE COULD HAVE SAID, SEE THESE
20 FISTS, YOU KNOW, THEY ARE GETTING READY TO BEAT YOU UP. HE
21 COULD HAVE SAID THAT. BUT TO BE HONEST WITH YOU, "FUCK YOU
22 UP," HAS A GOOD DEAL MORE POWER THAN, "BEAT YOU UP." IT
23 MEANS REALLY BEAT YOU UP. IT MEANS WE ARE GETTING READY TO
24 HURT YOU REALLY BAD.

25 NOW, IT IS IMPORTANT TO MAKE THIS POINT, THAT THE
26 EVIDENCE DOES NOT SHOW THAT OFFICER WOLFE HEARD THAT

1 STATEMENT. AND SINCE THE EVIDENCE DOESN'T REALLY SHOW
2 OFFICER WOLFE HEARING THAT STATEMENT, RAMOS IS STANDING
3 RIGHT THERE, CLEARLY MENACING OVER KELLY THOMAS WHILE HE IS
4 SAYING THAT, BUT HE SAYS IT IN, I THINK, A PRETTY LOW TONE.
5 I DON'T THINK HE IS SAYING IT VERY LOUDLY LIKE A LOT OF THE
6 OTHER CONVERSATIONS. SO WE ARE JUST NOT ABLE TO SAY THAT
7 OFFICER WOLFE HEARD THIS AND TOOK PART, WAS A PART OF THAT
8 CONVERSATION, TOOK PART IN THAT PARTICULAR STATEMENT BEING
9 MADE AND JOINED IN. IT WOULD BE UNFAIR TO OFFICER WOLFE TO
10 MAKE THAT DETERMINATION, I BELIEVE.

11 BUT NOW I WANT TO THROW UP SOME LAW HERE, AND THE
12 QUESTION CAME UP WHILE IT WAS BEING -- OR DURING THE
13 TESTIMONY, SO I THINK IT IS APPROPRIATE, I KNOW IT IS
14 APPROPRIATE, THE SELF DEFENSE. BECAUSE THIS IS GOING TO BE
15 COMING IN TO FOCUS AS WE PROCEED.

16 IF A PERSON KNOWS OR REASONABLY SHOULD KNOW THAT
17 A PEACE OFFICER IS ARRESTING OR DETAINING HIM, THAT PERSON
18 MUST NOT USE FORCE OR ANY WEAPON TO RESIST AN OFFICER'S USE
19 OF REASONABLE FORCE.

20 IN OTHER WORDS, IF AN OFFICER IS ACTING WITHIN
21 THE LEGAL SCOPE OF HIS DUTIES AND HE IS USING REASONABLE
22 FORCE TO DETAIN OR ARREST SOMEBODY, THE CITIZEN MUST SUBMIT.

23 HOWEVER, IF A PEACE OFFICER USES UNREASONABLE OR
24 EXCESSIVE FORCE WHILE ARRESTING OR ATTEMPTING TO ARREST, OR
25 DETAINING OR ATTEMPTING TO DETAIN A PERSON, THAT PERSON MAY
26 LAWFULLY USE REASONABLE FORCE TO DEFEND HIMSELF.

1 THAT PERSON MAY LAWFULLY USE REASONABLE FORCE TO
2 DEFEND HIMSELF.

3 A PERSON BEING ARRESTED USES REASONABLE FORCE
4 WHEN HE USES THAT, AND IT JUST KIND OF FLIPS AROUND NOW, HE
5 USES THAT DEGREE OF FORCE THAT HE OR SHE ACTUALLY BELIEVES
6 IS NECESSARY TO PROTECT HIMSELF FROM THE OFFICER'S USE OF
7 UNREASONABLE OR EXCESSIVE FORCE.

8 HE USES NO MORE FORCE THAN A REASONABLE PERSON IN
9 THE SAME SITUATION WOULD BELIEVE IS NECESSARY FOR HIS
10 PROTECTION.

11 NOW, A PERSON HAS A RIGHT TO SELF DEFENSE. WE
12 CONSIDER THAT A NATIONAL RIGHT. THE RIGHT TO SELF DEFENSE.
13 AGAINST EXCESSIVE FORCE, UNREASONABLE FORCE, EVEN BY THE
14 POLICE. SO THAT QUESTION WAS ASKED, AND THE ANSWER IS, YES,
15 HE DOES HAVE A RIGHT TO USE SELF DEFENSE.

16 LET'S GO BACK TO THE VIDEO.

17 (WHEREUPON THE PLAYING OF GRAND JURY EXHIBIT 75
18 WAS RESUMED.)

19 MR. RACKAUCKAS: NOW, WE JUST SAID, OR I JUST SAID THAT
20 OFFICER RAMOS HAS REASONABLE CAUSE TO MAKE AN ARREST HERE.
21 OFFICER WOLFE, OFFICER RAMOS HAVE REASONABLE CAUSE, OR IT IS
22 REASONABLE FOR THEM TO BELIEVE THEY CAN MAKE AN ARREST FOR
23 RECEIVING STOLEN PROPERTY.

24 BUT WHAT IS THIS? WHAT IS THIS? IS THIS AN
25 ARREST? AND OFFICER RAMOS DOES A FEW THINGS HERE THAT ARE
26 CERTAINLY IMPORTANT IN SETTING UP THE BEGINNING OF THIS

1 VIOLENT CONDUCT.

2 AFTER TALKING TO OFFICER WOLFE, HIS ATTITUDE
3 CHANGES. HE IS NOT SO CASUAL ANYMORE. HE TELLS HIM HE IS
4 DONE MESSING AROUND. YOU KNOW, I AM DONE FUCKING WITH YOU,
5 OR SOMETHING LIKE THAT. MENACING. PUTS THE GLOVES ON IN
6 FRONT OF KELLY THOMAS WHO IS SITTING THERE. COMES OVER,
7 PUTS HIS FIST IN HIS FACE AND TELLS HIM THAT HE IS BASICALLY
8 READY TO BEAT THE LIVING DAYLIGHTS OUT OF HIM. AND THEN NOT
9 SAYING, YOU ARE UNDER ARREST, NOT SAYING, WE ARE TAKING YOU
10 IN FOR RECEIVING STOLEN PROPERTY, NONE OF THAT.

11 BACK UP ABOUT 30 SECONDS.

12 (WHEREUPON THE PLAYING OF GRAND JURY EXHIBIT 75
13 WAS RESUMED.)

14 MR. RACKAUCKAS: HE JUST STARTS MANHANDLING HIM AFTER
15 HE THREATENS HIM. AND SO THERE IS NO CHANCE THAT SOMEBODY
16 IN THE POSITION OF KELLY THOMAS WOULD BELIEVE ANYTHING OTHER
17 THAN HE IS ABOUT TO GET BEAT UP BY THE POLICE. WE DON'T
18 KNOW WHAT'S IN THE MIND OF THE OFFICER AT THAT POINT, BUT
19 YOU CAN LOOK AT THIS AND THERE IS NO WAY TO SUGGEST THAT
20 KELLY THOMAS THOUGHT ANYTHING ELSE.

21 NOW, AS SOON AS HE STANDS UP, LOOK AT THE
22 POSITION HE IS IN, HE IS NOT AGGRESSIVE TOWARDS THE POLICE,
23 HE IS NOT MOVING TOWARDS THEM, HE IS MOVING AWAY, HIS HANDS
24 UP IN LIKE A BACKING UP POSTURE. NO SOONER DOES HE STAND UP
25 THAN OFFICER RAMOS HAS HIS BATON OUT.

26 THE GRAND JURY FOREPERSON: EXCUSE ME.

1 MR. RACKAUCKAS: THIS IS A REALLY GOOD PLACE TO TAKE A
2 BREAK.

3 THE GRAND JURY FOREPERSON: WE WILL BE IN RECESS UNTIL
4 LET'S SAY 10:30.

5 DURING ANY PERIOD OF THIS RECESS YOU SHOULD NOT
6 DISCUSS WITH ANYONE, EITHER INSIDE OR OUTSIDE THIS HEARING
7 ROOM, ANY SUBJECT CONNECTED WITH THIS HEARING. THANK YOU.

8 (RECESS TAKEN.)

9 (THE FOLLOWING PROCEEDINGS WERE HELD IN THE GRAND
10 JURY ROOM:)

11 THE GRAND JURY FOREPERSON: WE ARE HERE AGAIN IN
12 SESSION ON THE JOSEPH ANDREW WOLFE HEARING.

13 LET THE RECORD REFLECT ALL THE SAME 16 MEMBERS OF
14 THE GRAND JURY ARE PRESENT.

15 MR. DISTRICT ATTORNEY, YOU MAY PROCEED.

16 MR. RACKAUCKAS: ALL RIGHT, THANK YOU.

17 I WOULD LIKE TO BACK UP ON THIS MAYBE LESS THAN A
18 MINUTE, 30 SECONDS.

19 (WHEREUPON THE PLAYING OF GRAND JURY EXHIBIT 75
20 WAS RESUMED.)

21 MR. RACKAUCKAS: RIGHT THERE.

22 SO WE ARE GOING TO PLAY THIS PART OVER AGAIN, BUT
23 WHAT I WOULD ASK YOU TO NOTICE, OF COURSE THE THREAT AND SO
24 FORTH, BUT I THINK THE NEXT THING IS TO CONSIDER HOW QUICKLY
25 THIS HAPPENS.

26 OFFICER RAMOS STARTS THIS PUSHING OF KELLY

1 THOMAS' SHOULDER. KELLY THOMAS STANDS UP AND HE IS BACKING
2 AWAY, AND I DON'T THINK I AM MISCHARACTERIZING THAT, BUT
3 THAT'S FOR YOU TO DECIDE. HE IS BACKING AWAY. OFFICER
4 RAMOS' BATON IS OUT. AND VERY FAST. VERY FAST, YOU KNOW,
5 IT IS LESS THAN A SECOND. BUT SEE HOW QUICKLY, OFFICER
6 WOLFE WASN'T VERY FAR AWAY, BECAUSE HE IS ON THAT SCENE
7 ALMOST SIMULTANEOUSLY WITH KELLY THOMAS STANDING UP.

8 GO AHEAD.

9 (WHEREUPON THE PLAYING OF GRAND JURY EXHIBIT 75
10 WAS RESUMED.)

11 MR. RACKAUCKAS: SO YOU WILL BE ASKED TO DECIDE, WAS
12 THAT REASONABLE FORCE? WAS THAT REASONABLE FORCE UNDER ALL
13 THE CIRCUMSTANCES OF THE CASE? WHEN KELLY THOMAS STANDS UP,
14 HE IS BACKING AWAY, AND THE OFFICERS START STRIKING HIM WITH
15 THE BATON.

16 GO AHEAD.

17 (WHEREUPON THE PLAYING OF GRAND JURY EXHIBIT 75
18 WAS RESUMED.)

19 MR. RACKAUCKAS: SO WHAT IS KELLY THOMAS SAYING? HE IS
20 SAYING, I AM SORRY. I AM SORRY, DUDE, I AM SORRY.

21 WHY IS HE SAYING, I AM SORRY? NOT BECAUSE HE IS
22 THINKING THAT HE IS BEING ARRESTED BY THE POLICE. BUT
23 BECAUSE HE IS THINKING THAT HE IS BEING BEATEN BY THE
24 POLICE. HE IS SORRY, MAYBE THIS WILL HELP, I AM SORRY, YOU
25 GUYS, PLEASE.

26 GO AHEAD.

1 (WHEREUPON THE PLAYING OF GRAND JURY EXHIBIT 75
2 WAS RESUMED.)

3 MR. RACKAUCKAS: ALL RIGHT. WE HAVE STOPPED NOW, THIS
4 IS OFFICER WOLFE WHO IS OVER KELLY THOMAS, AND HE HAS KELLY
5 THOMAS' LEFT HAND, LEFT ARM, AND HE IS PUSHING IT UP HIS
6 BACK. HE IS PUSHING IT UP HIS BACK. NOT IN A POSITION TO
7 PUT HANDCUFFS, BUT IN A POSITION TO CAUSE PAIN. AND I AM
8 PRETTY SURE THAT PRETTY MUCH EVERYONE HERE CAN UNDERSTAND
9 WHAT IT FEELS LIKE TO HAVE YOUR HANDS BEHIND YOUR BACK AND
10 YOUR ARM SHOVED UP YOUR BACK IN THAT MANNER.

11 GO AHEAD.

12 (WHEREUPON THE PLAYING OF GRAND JURY EXHIBIT 75
13 WAS RESUMED.)

14 MR. RACKAUCKAS: NOW, AS THIS GOES ON, I JUST ASK YOU
15 TO THINK ABOUT, IS HE EVEN ABLE TO COOPERATE? DOES HE HAVE
16 THE ABILITY TO DO WHAT THESE POLICE OFFICERS ARE TELLING HIM
17 TO DO? HE IS BEING -- HE IS FACE DOWN ON THE GROUND, HIS
18 ARM IS SHOVED UP HIS BACK IN THE MOST PAINFUL POSITION, AND
19 HE IS BEING TOLD TO DO SOMETHING ELSE, PUT HIS OTHER ARM
20 BEHIND HIS BACK.

21 GO AHEAD.

22 (WHEREUPON THE PLAYING OF GRAND JURY EXHIBIT 75
23 WAS RESUMED.)

24 MR. RACKAUCKAS: NOW, YOU CAN SEE WHERE, AND THAT WAS
25 OFFICER WOLFE -- BACK UP AND SHOW THOSE TWO KNEE KICKS
26 AGAIN.

1 (WHEREUPON THE PLAYING OF GRAND JURY EXHIBIT 75
2 WAS RESUMED.)

3 MR. RACKAUCKAS: IF ANYBODY HAS ANY QUESTION ABOUT IT,
4 THOSE KNEE KICKS ARE HARD. THOSE KNEE KICKS BY OFFICER
5 WOLFE ARE HARD.

6 IF YOU NEED TO WATCH IT AGAIN, YOU WILL HAVE AN
7 OPPORTUNITY, BUT HE GETS HIS LEG WAY UP SO HE CAN GET THE
8 MAXIMUM FORCE INTO THOSE KNEE KICKS. AND HE IS KICKING
9 KELLY THOMAS SOMEWHERE IN THE SIDE. THEY LOOK LIKE KIDNEY
10 KICKS, IS IT THE KIDNEY OR IS IT A LITTLE BIT HIGHER THAN
11 THAT, MAYBE THE RIBS, BUT THOSE ARE HARD PAINFUL BLOWS.

12 GO AHEAD.

13 (WHEREUPON THE PLAYING OF GRAND JURY EXHIBIT 75
14 WAS RESUMED.)

15 MR. RACKAUCKAS: THIS IS OFFICER CICINELLI WHO JUST RAN
16 FROM THE CAR TO THE SCENE, HE WAS THE THIRD OFFICER ON THE
17 SCENE. THAT'S OFFICER CICINELLI.

18 AND THE OTHER OFFICER WHO CAME FROM THE LEFT ONTO
19 THE SCENE WAS OFFICER HAMPTON.

20 GO AHEAD.

21 (WHEREUPON THE PLAYING OF GRAND JURY EXHIBIT 75
22 WAS RESUMED.)

23 MR. RACKAUCKAS: ALL RIGHT. THIS IS OFFICER CICINELLI
24 AT THE FEET WITH THE TASER.

25 AND OFFICER HAMPTON ABOVE KELLY THOMAS IN A
26 CROUCHED POSITION.

1 ON TOP OF KELLY THOMAS IS OFFICER WOLFE. NOW
2 KEEP AN EYE ON WHAT OFFICER WOLFE DOES. HE PUTS HIS ENTIRE
3 WEIGHT ON KELLY THOMAS AT THIS POINT, AND THEN DELIVERS SOME
4 ELBOW OR FOREARM BLOWS.

5 GO AHEAD.

6 (WHEREUPON THE PLAYING OF GRAND JURY EXHIBIT 75
7 WAS RESUMED.)

8 MR. RACKAUCKAS: THOSE THINGS AREN'T ALL THAT EASY TO
9 SEE, BUT KELLY THOMAS, JUST A BIT AGO HIS TOES WERE POINTED
10 DOWN. SO HIS FACE IS TOWARD THE CONCRETE. AND OFFICER
11 WOLFE'S ENTIRE WEIGHT IS ON TOP OF KELLY THOMAS, WHO HAS
12 BEEN SAYING HE CAN'T BREATHE. HE HAS BEEN BEGGING AND
13 PLEADING AND SAYING HE CAN'T BREATHE.

14 AND THEN WE HAVE THE DELIVERY OF THESE FOREARM
15 BLOWS OR THESE ELBOW BLOWS APPARENTLY TO THE BACK OF KELLY
16 THOMAS' HEAD, AND WHAT WOULD THAT DO? YOUR FACE IS ON THE
17 CONCRETE, AND THIS OFFICER JUST THROWS THESE BLOWS TO THE
18 BACK OF YOUR HEAD FORCING YOUR FACE INTO THE CONCRETE.

19 GO AHEAD.

20 (WHEREUPON THE PLAYING OF GRAND JURY EXHIBIT 75
21 WAS RESUMED.)

22 MR. RACKAUCKAS: NOW, YOU SEE THIS MAKES ONE UNSURE, TO
23 BE HONEST WITH YOU, IF KELLY THOMAS AT THE TIME OF THOSE
24 FOREARM OR ELBOW BLOWS, IF HE WAS ON HIS STOMACH OR HE WAS
25 ON HIS BACK, BECAUSE WHEN OFFICER CICINELLI STARTS HITTING
26 HIM WITH THE TASER, HE IS HITTING HIM IN THE FACE. SO THIS

1 IS ALL HAPPENING VERY QUICKLY.

2 YOU CAN LOOK AT IT, BUT AS A PRACTICAL MATTER, IT
3 IS NOT GOING TO MATTER IF HE WAS ON HIS BACK OR IF HE WAS ON
4 HIS STOMACH. IF HE IS ON HIS STOMACH, HE IS GETTING HIS
5 FACE PUSHED INTO THE CONCRETE. IF HE IS ON HIS BACK, HE IS
6 GETTING HIT IN THE FACE. EITHER WAY IT IS NOT GOING TO MAKE
7 ANY SERIOUS DIFFERENCE IN TERMS OF WHAT THE DECISION OUGHT
8 TO BE IN THIS CASE.

9 GO AHEAD.

10 (WHEREUPON THE PLAYING OF GRAND JURY EXHIBIT 75
11 WAS RESUMED.)

12 MR. RACKAUCKAS: HE IS CALLING FOR HIS DAD. OFFICER
13 WOLFE IS MAINTAINING HIS ENTIRE WEIGHT ON TOP OF KELLY
14 THOMAS.

15 GO AHEAD.

16 (WHEREUPON THE PLAYING OF GRAND JURY EXHIBIT 75
17 WAS RESUMED.)

18 MR. RACKAUCKAS: THAT'S OFFICER CICINELLI LEANING ON
19 THE CAR, AND SORT OF A SITTING POSITION OVER KELLY THOMAS.

20 AND THEN THIS IS OFFICER HAMPTON A LITTLE BIT IN
21 THE FOREGROUND, LOOKS LIKE HE IS TRYING TO PUT THIS HOBBLE
22 ON KELLY THOMAS.

23 AND OFFICER WOLFE IS ON THE OTHER SIDE OF OFFICER
24 HAMPTON, AND HE IS STILL HOLDING HIM DOWN WITH HIS ARMS AND
25 WITH HIS BODY WEIGHT. AND YOU CAN SEE HIS LEG LEANING OUT
26 TO STEADY HIMSELF OVER KELLY THOMAS, TO HOLD HIMSELF ON TOP

1 OF KELLY THOMAS.

2 GO AHEAD.

3 (WHEREUPON THE PLAYING OF GRAND JURY EXHIBIT 75
4 WAS RESUMED.)

5 MR. RACKAUCKAS: NOW, THIS ISN'T OVER YET, BUT YOU CAN
6 SEE THE BLOOD. YOU CAN SEE THE BLOOD IN THIS VIDEO. THE
7 SHINY MATERIAL BY OFFICER WOLFE'S FOOT, YOU CAN SEE IT THERE
8 STARTING TO POOL UP.

9 (WHEREUPON THE PLAYING OF GRAND JURY EXHIBIT 75
10 WAS RESUMED.)

11 MR. RACKAUCKAS: I DON'T KNOW IF YOU HEARD THAT. "THEY
12 ARE KILLING ME, DAD." HE KNOWS. HE KNOWS HE IS IN HIS LAST
13 MINUTES.

14 GO AHEAD.

15 (WHEREUPON THE PLAYING OF GRAND JURY EXHIBIT 75
16 WAS RESUMED.)

17 MR. RACKAUCKAS: DO YOU HEAR THOSE LAST MOANINGS IN
18 AGONY? AND OFFICER WOLFE IS STILL ON TOP OF HIM WITH HIS
19 BODY WEIGHT, NOT LETTING HIM BREATHE.

20 GO AHEAD.

21 (WHEREUPON THE PLAYING OF GRAND JURY EXHIBIT 75
22 WAS RESUMED.)

23 MR. RACKAUCKAS: ALL RIGHT. WE ARE NOT GOING TO GO
24 THROUGH THE REST OF IT. I WOULD JUST SAY TO YOU, I THINK
25 THAT, AND CERTAINLY YOU MAY GO THROUGH THE REST OF IT AS
26 WELL, THERE IS A COUPLE OF MINUTES LEFT HERE, BUT WHAT IS

1 REMARKABLE ABOUT THE REST OF THIS VIDEO IS, THE ONLY THING
2 THAT IS REMARKABLE ABOUT IT IS THE LACK OF CARING. THE LACK
3 OF AN EMERGENCY ON THE PART OF THE POLICE. THE CASUAL WAY
4 THAT THEY HANDLE THIS FROM HERE ON OUT. THEY DON'T SEEM TO
5 RECOGNIZE ANY EMERGENCY HERE. ANY DISTRESS. THEY JUST
6 START TALKING, THEY JUST CLEAN THEIR THINGS UP AND SO FORTH.

7 ALL RIGHT. I AM SORRY THAT YOU HAVE TO GO
8 THROUGH THIS, YOU KNOW, THIS PAINFUL THING. AND THERE IS
9 REALLY JUST NO OTHER WAY TO LOOK AT IT, BECAUSE I MEAN WE
10 ARE WATCHING SOMEBODY DIE ON A VIDEO. AND NOT AN ACTING
11 OUT, BUT THE REAL THING. AND HE IS JUST BEGGING FOR HIS
12 DAD, AND BEGGING FOR SOME MERCY TO BE ABLE TO BREATHE.

13 AND SO, OF COURSE, THIS CASE IS JUST WITH RESPECT
14 TO OFFICER WOLFE AT THIS POINT. AND WHETHER OR NOT OFFICER
15 WOLFE IS GUILTY OF EXCESSIVE FORCE, AND WHETHER OR NOT
16 OFFICER WOLFE SHOULD BE INDICTED FOR INVOLUNTARY
17 MANSLAUGHTER. AND NOT THE OTHER OFFICERS.

18 SO JUST WHAT THE OTHER OFFICERS DO, WHAT IS
19 HAPPENING IN THE ENTIRE SCENE IS IMPORTANT, BECAUSE THAT'S
20 WHERE OFFICER WOLFE WAS, AND THAT'S WHAT HE WAS, THAT'S WHAT
21 WAS GOING ON. AND DID HE HAVE TO DO WHAT HE DID, WAS IT
22 REASONABLE AND NECESSARY, COULD HE HAVE STOPPED IT, SHOULD
23 HE HAVE STOPPED IT, WHEN THE BLOOD WAS POURING OUT ON THE
24 CONCRETE SHOULD HE HAVE SAID, THIS IS TOO MUCH NOW?

25 IT WOULD NOT BE FAIR TO TRY TO ISOLATE THIS EVENT
26 IN ONE PART, ONE SMALL PART, BECAUSE THIS IS A WHOLE EVENT

1 THAT TAKES PLACE OVER TIME. AND, CLEARLY, THE NATURE OF THE
2 EVENT IS SUCH THAT THE CULPABILITY OF THE POLICE GROWS AS
3 THIS CONTINUES TO GO THROUGH IN TIME, UNTIL THE DEATH OF
4 KELLY THOMAS.

5 NOW, I KNOW THAT KELLY THOMAS DIED A FEW DAYS
6 LATER IN THE HOSPITAL, BUT FOR ALL INTENTS AND PURPOSES,
7 THAT WAS IT. HE WAS OUT, NEVER TO REGAIN CONSCIOUSNESS, AND
8 DIES IN THE HOSPITAL.

9 SO AS FAR AS ALL THE FACTS AND CIRCUMSTANCES,
10 THERE ARE A COUPLE MORE THINGS THAT I THINK I SHOULD BRING
11 TO YOUR ATTENTION. AND BASICALLY THIS IS CONCERNING THE
12 TESTIMONY OF DR. MCNAMARA.

13 I LEFT OFF SAYING THAT THE EVIDENCE DOESN'T SHOW
14 THAT OFFICER WOLFE HEARD THE THREAT BY KELLY THOMAS. AND
15 ALSO THERE IS SOME ADDITIONAL EVIDENCE, AND THAT HAD BEEN
16 POINTED OUT TO YOU, THAT AFTER THOMAS WAS STRUCK BY WOLFE
17 WITH THE BATON, AND AS THE TWO OFFICERS WERE ABOUT TO TACKLE
18 THOMAS, THIS IS OUTSIDE OF THE VIDEO, THAT THOMAS STRUCK
19 WOLFE AT LEAST ONCE WITH HIS FIST.

20 THERE WAS SOME MENTION BY DR. MCNAMARA ABOUT WHAT
21 THE DISPATCHER SENT, THE INFORMATION THAT THE DISPATCHER
22 SENT TO THE OFFICERS, BUT YOU SHOULD DISREGARD THAT. THERE
23 IS NO -- THE EVIDENCE DOESN'T REALLY DEMONSTRATE THAT THE
24 OFFICERS RECEIVED INFORMATION FROM THE DISPATCHER ABOUT
25 KELLY THOMAS' BACKGROUND.

26 SO LET'S ASSUME THAT, AND I THINK IT IS ONLY FAIR

1 TO ASSUME, THAT THE OFFICERS HAD REASONABLE CAUSE TO MAKE AN
2 ARREST. AND THAT IS BECAUSE THEY BELIEVED THAT THERE WAS A
3 REASONABLE CAUSE TO MAKE AN ARREST OF RECEIVING STOLEN
4 PROPERTY.

5 THE MANNER IN WHICH THAT WAS APPARENTLY ATTEMPTED
6 IS WITHOUT QUESTION THE MOST UNPROFESSIONAL KIND OF ARREST
7 YOU WILL PROBABLY EVER SEE. AND OFFICER WOLFE BEING THERE,
8 HE HAS BEEN THERE FOR THE LAST 20 MINUTES. HE HAS BEEN,
9 MAYBE HE DIDN'T HEAR THAT PART OF THE CONVERSATION ABOUT,
10 SEE MY FIST, BUT HE HAS BEEN THERE. HE HAS SEEN THE WHOLE
11 THING. HE IS SEEING HOW CASUAL IT ALL IS. PEOPLE WALKING
12 AROUND. THAT KELLY THOMAS IS NO THREAT TO ANYBODY. AND
13 THAT HE IMMEDIATELY HAS THE BATON OUT. IMMEDIATELY. AND HE
14 IMMEDIATELY BEGINS STRIKING KELLY THOMAS WITH HIS BATON.

15 AND YOU CAN WATCH THIS OVER AND OVER AGAIN. BUT
16 KELLY THOMAS IS NOT BEING AGGRESSIVE TOWARDS THOSE POLICE.
17 SO THIS IS NOT A SITUATION WHERE THE POLICE HAVE A NECESSITY
18 TO BE CONCERNED ABOUT THEIR OWN PERSONAL SAFETY OR THE
19 SAFETY OF OTHERS WITH THIS PERSON, AND THE WAY THIS WHOLE
20 THING IS TAKING PLACE.

21 SO I WOULD SAY, I DO SAY, THAT THAT'S AN
22 EXCESSIVE USE OF FORCE RIGHT THERE. RIGHT THERE AT THE
23 OUTSET, AT THE TIME THAT KELLY THOMAS STANDS UP AND HE IS
24 TRYING TO BACK AWAY, AND HE STARTS GETTING HIT WITH THESE
25 BATONS. JUST TRYING TO FIND A REASON FOR THAT IS NOT SO
26 EASY. AND TRYING TO FIND THAT THAT'S REASONABLE, REASONABLE

1 USE OF FORCE BY OUR PROFESSIONAL POLICE DEPARTMENT, IS JUST
2 NOT THE CASE.

3 NOW, IF WE ASSUME THAT THIS IS UNREASONABLE
4 FORCE, THEN KELLY THOMAS HAS A RIGHT TO RESIST. HE HAS A
5 RIGHT TO DEFEND HIMSELF. HE HAS A RIGHT TO RESIST
6 UNREASONABLE FORCE.

7 NOW, WE HAVE A SITUATION HERE WHERE THE POLICE,
8 YOU CAN ASSUME IT EITHER WAY, KELLY THOMAS HAS A RIGHT TO
9 RESIST, OR ASSUME HE DOESN'T HAVE A RIGHT TO RESIST. IF HE
10 HAS A RIGHT TO RESIST, THEN THIS IS UNREASONABLE FORCE AT
11 THE OUTSET, AND THEY ARE OVERWHELMING HIS RIGHT TO SELF
12 DEFENSE. AND THAT IS ENTIRELY UNLAWFUL BY THE POLICE.

13 IF HE IS NOT ABLE TO ACT IN SELF DEFENSE, LET'S
14 SAY WE CAN THINK OF A REASON WHY, WELL, THIS IS LAWFUL
15 CONDUCT ON THE PART OF OFFICER WOLFE, AND KELLY TOM HAS NO
16 RIGHT TO RESIST OFFICER WOLFE, THEN WHAT IS OFFICER WOLFE
17 DOING, WHY IS HE USING ALL THIS FORCE TO ARREST SOMEBODY FOR
18 A MINOR PROPERTY CRIME? A PERSON WHO SEEMS TO BE AFFECTED
19 IN HIS MENTAL ABILITIES. A HOMELESS PERSON WHO JUST HANGS
20 AROUND THAT AREA. WHAT IS SO IMPORTANT? WHY IS IT OVERCOME
21 HIS RESISTANCE AT ALL COST, EVEN IF IT MEANS KILLING HIM?

22 IS THERE ANY POINT YOU DRAW THE LINE AND SAY,
23 WAIT A MINUTE, WAIT A MINUTE, UNDER THE CIRCUMSTANCES HERE
24 THIS IS JUST TOO MUCH FORCE FOR THIS?

25 DO WE LIVE IN A PLACE WHERE THE POLICE CAN USE
26 ANY FORCE, NO MATTER WHAT THE CIRCUMSTANCES, TO OVERCOME

1 WHATEVER RESISTANCE MIGHT BE PUT UP? I DON'T THINK SO. I
2 THINK WE HAVE TO LOOK AT ALL THE FACTS AND CIRCUMSTANCES,
3 AND HERE THIS JUST ISN'T THAT KIND OF SITUATION. THERE IS
4 NO DANGER TO THE POLICE. THERE IS NO DANGER TO ANYONE. AND
5 WE FIND A CIRCUMSTANCE HERE WHERE IT JUST LOOKS LIKE NO
6 MATTER WHAT, NO MATTER WHAT, THIS GUY IS GOING TO SUBMIT.
7 THIS GUY IS GOING TO DO WHAT WE TELL HIM, IF WE HAVE TO KILL
8 HIM. AND, OF COURSE, THAT'S WHAT HAPPENS.

9 SO IS THERE AN UNLAWFUL ACT? I THINK, I DON'T
10 THINK YOU CAN HELP BUT TO ANSWER THAT QUESTION IN THE
11 AFFIRMATIVE, THAT THERE IS. THAT THIS IS AN UNLAWFUL USE OF
12 FORCE, EXCESSIVE FORCE UNDER COLOR OF AUTHORITY, WHETHER
13 KELLY THOMAS HAS A RIGHT TO USE SELF DEFENSE OR NOT. IT IS
14 STILL EXCESSIVE FORCE. WHEN YOU GET TO THE POINT OF THE
15 KNEE STRIKES, THE KNEE STRIKES, ALL THE WEIGHT ON KELLY
16 THOMAS, THE ARM, THE FOREARM AND ELBOW STRIKES, OF COURSE IT
17 IS EXCESSIVE FORCE.

18 SO WE KNOW THAT IT IS A VIOLATION OF SECTION 149,
19 ASSAULT AND BATTERY BY A POLICE OFFICER UNDER COLOR OF
20 AUTHORITY.

21 AND THE NEXT QUESTION IS, IS THAT ALL IT IS? OR
22 IS IT ALSO AN INVOLUNTARY MANSLAUGHTER?

23 AND IN OUR PROPOSED INDICTMENT, WE HAVE COUNT 1
24 IS INVOLUNTARY MANSLAUGHTER, COUNT 2, ASSAULT AND BATTERY BY
25 A PUBLIC OFFICER.

26 IN ORDER FOR THERE TO BE AN INVOLUNTARY

1 MANSLAUGHTER, THE ELEMENTS ARE:

2 ONE. THE DEFENDANT COMMITTED A CRIME OR A LAWFUL
3 ACT IN AN UNLAWFUL MANNER.

4 TWO -- AND THE DEFENDANT BEING OFFICER WOLFE.

5 TWO. THE DEFENDANT COMMITTED THE CRIME OR ACT
6 WITH CRIMINAL NEGLIGENCE.

7 AND, THREE. THE DEFENDANT'S ACTS CAUSED THE
8 DEATH OF ANOTHER PERSON.

9 ALL THREE OF THOSE ELEMENTS HAVE TO BE SATISFIED.

10 SO THE FIRST ELEMENT IS WHETHER OR NOT THE
11 DEFENDANT COMMITTED A CRIME OR A LAWFUL ACT IN AN UNLAWFUL
12 MANNER. SO IT GIVES YOU TWO WAYS TO LOOK AT THAT.

13 SO ONE WAY IS IF THERE IS A CRIME. NOW, I HAVE
14 ALREADY DISCUSSED THE CRIME OF ASSAULT AND BATTERY BY A
15 POLICE OFFICER UNDER COLOR OF AUTHORITY. AND THAT CERTAINLY
16 IS PRESENT. BUT I DON'T THINK WE NEED TO GO TO THE QUESTION
17 OF WHETHER OR NOT THERE IS A LAWFUL ACT IN AN UNLAWFUL
18 MANNER. THERE IS A CLEAR CRIME HERE.

19 WAS IT DONE WITHOUT LEGAL NECESSITY? DID HE USE
20 MORE FORCE THAN WAS NECESSARY UNDER THE CIRCUMSTANCES? I
21 THINK THAT IS WELL-ESTABLISHED.

22 HERE ARE SOME OF THE -- PAGE 9, SOME OF THE
23 THINGS WE LOOK AT TO TRY TO DECIDE THE STANDARD OF WHETHER
24 THE FORCE WAS UNREASONABLE.

25 THE SEVERITY OF THE CRIME.

26 WHETHER THE SUSPECT POSES AN IMMEDIATE THREAT TO

1 THE SAFETY OF THE OFFICERS OR OTHERS.

2 WHETHER THE SUSPECT IS ACTIVELY RESISTING ARREST
3 OR ATTEMPTING TO EVADE ARREST BY FLIGHT.

4 SUSPECT'S MENTAL ILLNESS, WHEN APPARENT.

5 WITH RESPECT TO THAT LAST ONE, HIS MENTAL
6 ILLNESS, WHEN APPARENT, I THINK THAT THE QUESTION IS, WAS IT
7 APPARENT TO THE POLICE OFFICERS? THE QUESTION IS NOT IS HE
8 MENTALLY ILL, OR DOES HE HAVE SOME DIAGNOSED ILLNESS OF SOME
9 SORT, IT IS, HOW DID IT APPEAR TO THE POLICE OFFICERS AT THE
10 SCENE?

11 AND I THINK YOU CAN SEE, YOU CAN SEE THE
12 CHARACTER OF KELLY THOMAS AND HOW HE LOOKED. AND, YOU KNOW,
13 HOW HE ACTED. AND HOW HE CONDUCTED HIMSELF, HIS APPARENT
14 CONFUSION. HIS SORT OF COMBATIVENESS. AND ALL OF THAT THAT
15 GOES WITH IT.

16 I DON'T KNOW, WAS THAT MENTAL ILLNESS OR WHAT?
17 AND I THINK THAT'S KIND OF TOUGH TO SAY. BUT I THINK
18 CERTAINLY IT IS A PERSON WHO WAS A HOMELESS PERSON WHO IS
19 AFFECTED. HE IS NOT, HE DOESN'T HAVE THE SAME FUNCTIONING
20 THAT, YOU KNOW, THAT A BUSINESS GUY DOES, OR THAT SOMEBODY
21 ELSE WHO IS GOING ABOUT LIFE IN THE MORE REGULAR FASHION.
22 AND HE SAYS HE IS LIVING IN TRASH CANS, AND YOU CAN SEE HE'S
23 OUT THERE WITH NO SHIRT ON AND SO ON, SO THIS IS CLEARLY
24 SOMEBODY WHO NEEDS TO BE THOUGHT OF AS ONE OF THE CASES THAT
25 YOU NEED TO TAKE SOME CARE WITH.

26 I NOTE THE NEXT ELEMENT FOR INVOLUNTARY

1 MANSLAUGHTER IS THAT THE DEFENDANT COMMITTED THE CRIME OR
2 ACT WITH CRIMINAL NEGLIGENCE.

3 SO WHAT IS CRIMINAL NEGLIGENCE? THAT IS AN
4 ELEMENT WE HAVE TO CONSIDER. THE PERSON ACTS WITH CRIMINAL
5 NEGLIGENCE WHEN HE OR SHE ACTS IN A RECKLESS WAY THAT
6 CREATES A HIGH RISK OF DEATH OR GREAT BODILY INJURY.

7 RECKLESSLY CREATING A HIGH RISK OF DEATH OR GREAT
8 BODILY INJURY.

9 AND A PERSON WOULD HAVE KNOWN THAT ACTING IN THAT
10 WAY WOULD CREATE SUCH A RISK.

11 WELL, IS OFFICER WOLFE NEGLIGENT HERE? DID HE
12 COMMIT THIS SERIES OF BATTERIES ON KELLY THOMAS RECKLESSLY,
13 CREATING A HIGH RISK OF DEATH AND GREAT BODILY INJURY? THE
14 ONLY WAY TO ANSWER THAT IS IN THE AFFIRMATIVE, OF COURSE.

15 I MEAN, ESCALATING VIOLENCE CAN ONLY DO THAT IN A
16 SITUATION WHERE THE POLICE ARE INVOLVED, AND THE POLICE ARE
17 USING WEAPONS, AND MORE POLICE ARE COMING TO THE SCENE, AND
18 WE ARE PUTTING SOMEBODY IN A HOBBLE, AND DOING ALL OF THESE
19 THINGS. OF COURSE. OF COURSE. AT THE VERY LEAST IT IS A
20 HIGH RISK OF GREAT BODILY INJURY, AND CERTAINLY A RISK OF
21 DEATH. JUST LOOK AT THE CIRCUMSTANCES, THERE IS NO OTHER
22 WAY TO ANSWER THAT. SO THAT CRIMINAL NEGLIGENCE IS
23 DEFINITELY PRESENT.

24 THE LAST ELEMENT IS THAT THE DEFENDANT'S ACTS
25 CAUSED THE DEATH OF ANOTHER PERSON. SO THIS IS WHAT WE CALL
26 PROXIMATE CAUSE, OR THIS IS THE CAUSAL REQUIREMENT.

1 SOMEBODY COULD COMMIT VARIOUS ACTS AND BRING VIOLENCE ON
2 ANOTHER, BUT IF THE DEATH WAS CAUSED BY SOME COMPLETELY
3 INDEPENDENT MEANS, THEN THAT PERSON WHO DID THOSE ACTS
4 WOULDN'T BE GUILTY OR RESPONSIBLE FOR THE DEATH OF THAT
5 INDIVIDUAL.

6 BUT THE CAUSE THAT WE ARE LOOKING AT HERE, WHAT
7 IS THE CAUSE, IS AN ACT CAUSES DEATH IF IT IS THE DIRECT,
8 NATURAL AND PROBABLE CONSEQUENCES OF THE ACT. AND THE DEATH
9 WOULD NOT HAVE OCCURRED WITHOUT THE ACT. NATURAL AND
10 PROBABLE CONSEQUENCE IS ONE THAT A REASONABLE PERSON WOULD
11 KNOW IS LIKELY TO HAPPEN IF NOTHING UNUSUAL INTERVENES. IN
12 DECIDING WHETHER A CONSEQUENCE IS NATURAL AND PROBABLE,
13 CONSIDER ALL THE CIRCUMSTANCES ESTABLISHED BY THE EVIDENCE.

14 NOW, THIS LAST PARAGRAPH IS VERY IMPORTANT.
15 THERE MAY BE MORE THAN ONE CAUSE OF DEATH. AN ACT CAUSES
16 DEATH ONLY IF IT IS A SUBSTANTIAL FACTOR IN CAUSING THE
17 DEATH. A SUBSTANTIAL FACTOR IS MORE THAN A TRIVIAL OR
18 REMOTE FACTOR, HOWEVER, IT DOES NOT NEED TO BE THE ONLY
19 FACTOR THAT CAUSES THE DEATH.

20 SO THE QUESTION IS WHETHER OR NOT OFFICER WOLFE'S
21 CONDUCT HERE WAS A SUBSTANTIAL FACTOR, NOT THE ONLY FACTOR,
22 BUT WAS IT A SUBSTANTIAL FACTOR IN CAUSING THE DEATH OF
23 KELLY THOMAS? DID IT CONTRIBUTE IN A WAY THAT WAS MORE THAN
24 TRIVIAL? THAT WAS MORE THAN REMOTE?

25 LOOK AT THE TESTIMONY OF THE TWO WITNESSES WHO
26 TESTIFIED ABOUT THAT, DR. SINGHANIA AND DR. LEKAWA, AND OF

1 COURSE CONSIDER THE TESTIMONY OF THE PARAMEDICS WHERE THEY
2 PICKED UP, THEY BASICALLY PICKED UP KELLY THOMAS FROM THE
3 SCENE, PUT HIM ON A BOARD, PUT HIM -- OR BED OR WHATEVER
4 THAT IS, PUT HIM IN THE AMBULANCE AND TOOK HIM TO THE
5 HOSPITAL, AND HE NEVER REVIVED AFTER THAT. THEY DID
6 EVERYTHING THEY COULD, BUT HE JUST COULDN'T SURVIVE.

7 AS EXPLAINED BY DR. SINGHANIA, AND I THINK ADDED
8 TO BY DR. LEKAWA, THERE WASN'T ONE CAUSE OF DEATH HERE. IT
9 WAS THE ENTIRE CONSTELLATION OF EVENTS THAT CAUSED THIS
10 DEATH. IT WAS HIS INABILITY TO GET ENOUGH OXYGEN TO SUSTAIN
11 LIFE. TO GET ENOUGH OXYGEN TO HAVE THAT CIRCULATE TO THE
12 BRAIN TO SUSTAIN HIS LIFE. AND HE DIED OF A LACK OF OXYGEN
13 TO THE BRAIN. YOU KNOW, THE WORD ENCEPHALOPATHY, THAT'S
14 ALL, IT JUST REFERS TO THE BRAIN, NO OXYGEN IN THE BRAIN, SO
15 HE COULDN'T SURVIVE.

16 BUT IT ALL GOES INTO IT. THE EXCITEMENT, THE
17 STRUGGLE, ALL CREATING A GREATER NEED FOR CIRCULATION. HIS
18 LACK OF ABILITY TO BREATHE. HIS BEING BEATEN TO THE POINT
19 WHERE THERE IS BLOOD ALL OVER, MAYBE GOING INTO -- MAYBE
20 GETTING IN HIS FACE AND CAUSING GREATER DISTRESS. THE
21 PAINFUL NATURE OF THE INJURIES THAT HE IS SUFFERING DURING
22 THIS EVENT. ALL OF THIS. ALL OF IT GOES INTO CAUSING HIS
23 DEATH. BECAUSE IT ALL CONTRIBUTES, IT ALL GOES TOGETHER,
24 AND IT ALL MOUNTS UNTIL THE END WHERE HE JUST HAS NOTHING
25 LEFT. AND YOU CAN HEAR EVERYTHING CHANGE, THERE IS JUST
26 NOTHING LEFT THERE, AND HE JUST DIES OUT THERE ON THE

1 STREET.

2 LITERALLY, I MEAN HE STILL GOES TO THE HOSPITAL,
3 THEY STILL TRY TO HELP HIM RECOVER, BUT THAT'S JUST TOO
4 LATE.

5 ALL RIGHT. LADIES AND GENTLEMEN, WITH THAT, JUST
6 A COUPLE MORE THINGS THAT I WANT TO SAY.

7 ONE, THESE ARE IMPORTANT QUESTIONS, AND I DON'T
8 WANT ANYBODY TO FEEL RUSHED. DON'T FEEL PUSHED INTO MAKING
9 A DECISION FASTER THAN YOU WANT TO MAKE IT. IF THERE IS
10 ANYTHING ELSE THAT YOU WANT TO HEAR, ANYTHING IN THE
11 EVIDENCE, ANYTHING THAT HAS BEEN SUGGESTED OR PRESENTED AS A
12 POSSIBLE PART OF THIS JOHNSON MATERIAL THAT YOU THINK MIGHT
13 HELP EXPLAIN SOMETHING IN FAVOR OF OFFICER WOLFE, DON'T BE
14 AFRAID TO ASK. WE ARE HERE TO HANDLE THOSE THINGS. SO I
15 JUST WANT YOU TO HAVE THAT ADMONITION.

16 AND IT IS UP TO YOU. YOU ARE THE DECISION MAKER
17 HERE TO DECIDE, DOES THIS BODY SAY, DOES THE GRAND JURY OF
18 ORANGE COUNTY SAY, THIS IS JUST TOO MUCH FOR US UNDER THE
19 CIRCUMSTANCES.

20 THANK YOU.

21 THE GRAND JURY FOREPERSON: MR. DISTRICT ATTORNEY, MY
22 UNDERSTANDING IS YOU PRESENTED THE ORAL AND WRITTEN
23 EXCULPATORY EVIDENCE; IS THAT THE EXTENT OF IT?

24 MR. BOGARDUS: YES.

25 MR. RACKAUCKAS: WE NEED TO CLARIFY THAT. WHAT HE
26 PRESENTED WAS NOT THE EVIDENCE, IF THE GRAND JURY WANTS TO

1 ASK FOR ANY OF THIS TO BE PRESENTED AS EVIDENCE, THEY CAN DO
2 THAT.

3 THE GRAND JURY FOREPERSON: OKAY.

4 MR. RACKAUCKAS: YOU SEE WHAT I AM SAYING?

5 THE GRAND JURY FOREPERSON: YES.

6 MR. RACKAUCKAS: OKAY.

7 THE GRAND JURY FOREPERSON: ARE THERE ANY LEGAL
8 QUESTIONS?

9 (AFFIRMATIVE RESPONSES).

10 OKAY. WE DO HAVE SOME LEGAL QUESTIONS.

11 (FOR I.D. = GRAND JURY EXHIBIT 120)

12 MR. RACKAUCKAS: ALL RIGHT. WE HAVE SEVEN QUESTIONS
13 THAT WOULD BE MARKED COLLECTIVELY AS EXHIBIT NUMBER 120.

14 LEGALLY ARE PEACE OFFICERS HELD TO A HIGHER
15 STANDARD?

16 THE STANDARD IS A REASONABLE POLICE OFFICER UNDER
17 THE CIRCUMSTANCES. WHAT WOULD A REASONABLE POLICE OFFICER,
18 OR HOW WOULD A REASONABLE POLICE OFFICER VIEW IT UNDER THE
19 CIRCUMSTANCES THAT HE FINDS HIMSELF IN? THAT'S THE
20 STANDARD. IT IS NOT A HIGHER STANDARD.

21 LET'S TALK ABOUT A CITIZEN USING SELF DEFENSE.
22 THE STANDARD THERE IS WHAT WOULD A REASONABLE PERSON IN THE
23 POSITION OF THAT CITIZEN DO? HOW WOULD A REASONABLE PERSON
24 ACT UNDER ALL THE CIRCUMSTANCES?

25 SO WHAT WE HAVE HERE, WE HAVE A REASONABLENESS
26 STANDARD. AND THAT'S WHAT IT IS. AND I WOULDN'T, IT IS NOT

1 A PERFECT STANDARD, THAT A POLICE OFFICER DOESN'T HAVE TO
2 ACT PERFECTLY PROFESSIONAL, CERTAINLY PEOPLE HAVE THEIR
3 FLAWS, BUT IT IS WHAT IS REASONABLE UNDER ALL THE FACTS AND
4 CIRCUMSTANCES THAT YOU SEE, THAT A POLICE OFFICER WOULD SEE
5 IN THIS PARTICULAR SITUATION.

6 WELL, IS THERE AN INSTANCE WHEN POLICE OFFICERS
7 ARE ENTITLED TO SHOW A BLATANT DISREGARD FOR HUMAN LIFE?

8 WELL, NO. NO. I MEAN A BLATANT DISREGARD FOR
9 HUMAN LIFE, OF COURSE NOT. I MEAN EVEN IF A POLICE OFFICER
10 IS UNDER THREAT OF DEATH HIMSELF, AND IS REQUIRED TO USE
11 DEADLY FORCE TO RESPOND TO THAT THREAT, OR TO STOP THAT
12 THREAT, IT IS NOT WITH A BLATANT DISREGARD FOR HUMAN LIFE
13 THAT WE ENTITLE OUR POLICE OFFICERS TO BEHAVE. THEIR USE OF
14 AUTHORITY IS TO BE PROFESSIONAL AND WITH REGARD TO HUMAN
15 LIFE. AND THE KIND OF REGARD FOR HUMAN LIFE THAT WE HAVE IS
16 OUR HIGHEST VALUE. SO I WILL HAVE TO ANSWER NO TO THAT
17 PARTICULAR QUESTION.

18 WHY INVOLUNTARY MANSLAUGHTER? HOW WERE WOLFE'S
19 ACTIONS INVOLUNTARY?

20 GOOD QUESTION. WHILE THE ACTIONS ARE NOT
21 INVOLUNTARY, WHAT THE VOLUNTARINESS REFERS TO IS, WAS THERE
22 AN INTENTION TO KILL? DID OFFICER WOLFE INTEND TO KILL
23 KELLY THOMAS? OR WAS THE DEATH OF KELLY THOMAS INVOLUNTARY
24 ON THE PART OF OFFICER WOLFE?

25 AND LOOKING AT THE FACTS AND THE CIRCUMSTANCES OF
26 THIS CASE, I WILL JUST TELL YOU THAT WE IN THE DISTRICT

1 ATTORNEY'S OFFICE LOOKING AT IT, DO NOT BELIEVE THAT THERE
2 WAS ANY INTENT BY OFFICER WOLFE TO KILL KELLY THOMAS. BUT
3 THAT EVEN THOUGH OFFICER WOLFE'S CONDUCT WAS SERIOUS, WAS
4 OVERZEALOUS, YOU MIGHT SAY, THAT THE FORCE WAS TREMENDOUSLY
5 EXCESSIVE, NONETHELESS, WE DON'T FEEL THAT THE INTENTION TO
6 KILL WAS SHOWN.

7 BUT NOW LET ME SAY THIS, SINCE THAT QUESTION CAME
8 UP, I THINK YOU NEED AN EXPLANATION OF WHAT IS INVOLUNTARY
9 MANSLAUGHTER, WHAT IS SECOND DEGREE MURDER. UNDERSTAND THAT
10 INVOLUNTARY MANSLAUGHTER, I TOLD YOU THE DEFINITION, OF
11 DOING A CRIMINAL ACT WITH NEGLIGENCE. NEGLIGENCE BEING A
12 HIGH DEGREE OF RISK THAT THE CONDUCT CAN CAUSE THE DEATH OR
13 SERIOUS BODILY INJURY.

14 NOW, FOR MURDER, THE QUESTION OF MURDER IS, DID A
15 PERSON KILL ANOTHER WITH MALICE AFORETHOUGHT? WITH MALICE
16 AFORETHOUGHT. AND WE CAN USE, AFORETHOUGHT JUST MEANS THAT
17 THE STATE OF MIND OF HAVING MALICE CAME PRIOR TO THE DEATH,
18 NOT AN AFTERTHOUGHT, IT WAS AFORETHOUGHT.

19 MALICE IS A LITTLE BIT DIFFERENT. YOU CAN HAVE
20 MALICE IN TWO WAYS. TWO WAYS.

21 ONE IS EXPRESS MALICE, AND THE OTHER IS IMPLIED
22 MALICE.

23 EXPRESS MALICE IS INTENDING TO KILL. DID THE
24 PERSON KILL ANOTHER PERSON INTENTIONALLY? IF IT IS AN
25 INTENTIONAL KILLING, WE HAVE EXPRESS MALICE. ASSUMING THAT
26 THERE AREN'T ANY DEFENSES TO IT, LIKE SELF DEFENSE OR

1 JUSTIFIABLE HOMICIDE.

2 IF IT IS NOT INTENTIONAL, THERE COULD STILL BE
3 IMPLIED MALICE. IMPLIED MALICE WOULD HAVE TO BE WHERE THE
4 CONDUCT OF THE INDIVIDUAL, IN THIS CASE THE OFFICER, WAS SO
5 EGREGIOUS THAT IT WAS DONE IN RECKLESS DISREGARD FOR THE
6 LIFE OF ANOTHER, OR WANTON DISREGARD FOR THE LIFE OF
7 ANOTHER.

8 SO WE WOULD THEN BE SAYING THAT THE CONDUCT WAS
9 SO SERIOUS THAT IT SHOWS THAT IT WAS DONE WHERE THERE WAS A
10 LIKELIHOOD THAT IT WOULD CAUSE DEATH, AND IT WAS DONE WITH
11 AN AWARENESS OF THAT LIKELIHOOD, AND GOING THROUGH AND
12 COMMITTING THE ACTS, DISREGARDING WHETHER OR NOT IT MIGHT
13 RESULT IN THE DEATH OF THE INDIVIDUAL.

14 NOW, IF YOU WANT TO BE INSTRUCTED FURTHER, IF YOU
15 WANT THE INSTRUCTIONS FOR SECOND DEGREE MURDER, YOU CAN ASK
16 FOR THEM, WE WILL GIVE THEM TO YOU. IF YOU THINK THAT'S
17 WHERE IT GOES, THAT WOULD BE MY DIRECTION AS FAR AS, I MEAN,
18 I WOULD TAKE THAT. I WOULD CONSIDER THAT'S THE VOICE OF THE
19 GRAND JURY, AND THAT'S THE WAY WE WOULD PROCEED. YOU HAVE
20 OUR JUDGMENT AT THIS POINT THAT IT IS INVOLUNTARY
21 MANSLAUGHTER. BUT I DON'T WANT YOU TO THINK THAT IS A
22 CLOSED QUESTION, IF YOU WANT TO HEAR THOSE INSTRUCTIONS, WE
23 WILL GIVE THEM TO YOU.

24 AFTER KELLY THOMAS WAS RESTRAINED AND WAS LAYING
25 STILL, NONE OF THE OFFICERS ON THE SCENE PROVIDED EMERGENCY
26 MEDICAL CARE. DIDN'T THIS CONTRIBUTE TO THE DYING?

1 WELL, THESE ARE GOOD QUESTIONS, AND I MEAN THESE
2 ARE THE KIND OF QUESTIONS THAT CERTAINLY DESERVE BEING ASKED
3 AND ANSWERED. I THINK WE HAVE TO LOOK AT IT FROM EACH
4 DIFFERENT POLICE OFFICER'S POINT OF VIEW. EACH POLICE
5 OFFICER'S PERSPECTIVE. AND AS EACH ONE CAME TO THE SCENE,
6 WHAT DID THEY SEE?

7 SO WE SEE, WE HAVE GOT OFFICER WOLFE AND RAMOS
8 RIGHT THERE THROUGHOUT THE WHOLE THING.

9 WHEN OFFICER CICINELLI GETS THERE, YOU KNOW, WHAT
10 DOES HE SEE? HE HAS BEEN HEARING A CODE 3, HE KNOWS THERE
11 IS AN EMERGENCY GOING ON, AND HE SEES A STRUGGLE HAPPENING.
12 AND HE SEES SOMEBODY, THE TWO POLICE OFFICERS AND THIS
13 STRUGGLE, THIS VIOLENT STRUGGLE BETWEEN THESE TWO POLICE
14 OFFICERS AND KELLY THOMAS.

15 AND I WANT TO SAY VIOLENT STRUGGLE IN A SENSE NOT
16 THAT KELLY THOMAS IS ASSAULTING THE POLICE OFFICERS, BUT IN
17 THE SENSE THAT HE IS TRYING TO RESIST BEING CONTROLLED BY
18 THE POLICE OFFICERS, FOR SURE. OR NOT. SEE, IT STARTS
19 GETTING HARD TO TELL IF HE IS EVEN ABLE TO COMPLY WITH THE
20 POLICE OFFICERS' ORDERS AT THAT POINT.

21 BUT CERTAINLY WHEN OFFICER CICINELLI ARRIVES AT
22 THE SCENE, YOU CAN SEE HIS VISION IS DIFFERENT THAN WHAT
23 RAMOS AND WOLFE WOULD HAVE HAD. SO HE SHOULD BE ENTITLED TO
24 BELIEVE THIS IS A LAWFUL ARREST. THAT THIS PERSON IS
25 RESISTING ARREST. AND THAT HE DOESN'T KNOW IF HE REPRESENTS
26 ANY -- YOU KNOW, WHAT HE MIGHT REPRESENT.

1 I THINK HE GETS THERE, AND THEN IN OUR VIEW HIS
2 USE OF THE TASER, REPEATED USE OF THE TASER, AND THE BLOWS
3 THAT HE DELIVERED TO THE FACE OF KELLY THOMAS, AND JUST THE
4 BLOODY FACE AT THAT POINT, HARD TO SEE THAT AS BEING
5 REASONABLE AND NECESSARY. AND CERTAINLY THAT CONTRIBUTES TO
6 KELLY THOMAS' DEATH. SO WE FILED AN INVOLUNTARY
7 MANSLAUGHTER AGAINST OFFICER CICINELLI.

8 OFFICER HAMPTON, HE GETS TO THE SCENE, AND WHEN
9 HE GETS THERE, IT HAS BEEN GOING FOR A WHILE. HE GETS THERE
10 JUST SHORTLY AFTER OFFICER CICINELLI. HE DOESN'T JUMP ON
11 THE PILE. HE DOESN'T HIT. HE DOESN'T STRIKE VIOLENT BLOWS
12 AGAINST KELLY THOMAS. BUT WHAT HE DOES DO IS TRYING TO GET,
13 PUTTING ON THIS HOBBLE. AND HELP MOVING HIM AROUND TO TRY
14 TO PUT THE HOBBLE ON.

15 AND SO WE DIDN'T THINK OF THAT CONDUCT AS
16 CRIMINAL ON THE PART OF OFFICER HAMPTON. BECAUSE IT DIDN'T
17 SEEM TO RISE TO THE LEVEL OF OFFICER HAMPTON USING
18 UNREASONABLE FORCE.

19 THE SAME WITH ANY OTHER OFFICER AT THE SCENE.

20 BUT NOW YOU RAISE A LITTLE BIT OF A DIFFERENT
21 QUESTION THAT HAS BEEN RAISED IN THE PAST, IS THAT WEREN'T
22 THEY NEGLIGENT IN NOT HELPING, NOT GETTING MEDICAL CARE FOR
23 KELLY THOMAS? IT'S NOT AFFIRMATIVE ACTION ON THE PART OF
24 THESE OFFICERS THAT WE WOULD BE PROSECUTING, IT IS SAYING,
25 WELL, NOW THESE OFFICERS HAVE SOME AFFIRMATIVE DUTY TO HELP
26 THIS GUY, TO DO WHATEVER THEY CAN TO GET THE OTHER OFFICERS

1 OFF OF HIM, TO STOP WHAT IS TAKING PLACE. AND THAT, BY THE
2 WAY, YOU HAD THAT READ TO YOU, THERE IS SOMETHING IN THE
3 FULLERTON POLICE DEPARTMENT MANUAL TO THAT EFFECT.

4 FRANKLY, WE DIDN'T THINK WE COULD HOLD THE POLICE
5 OFFICERS RESPONSIBLE FOR CRIMES, AND GET CONVICTIONS OF
6 CRIMES UNDER THE CIRCUMSTANCES OF HOW LATE THEY ARRIVED, AND
7 WHAT THEY SAW AND DID, AND WHAT THEY DIDN'T DO. SO WHILE I
8 THINK IT COULD BE CHARGED, I DON'T THINK IT SHOULD BE,
9 BECAUSE I DON'T THINK WE ARE AT A PLACE WHERE THAT INACTION
10 WOULD CAUSE THE POLICE TO BE CONVICTED, OR THOSE POLICE
11 OFFICERS TO BE CONVICTED OF CRIMINAL CONDUCT.

12 WHETHER OR NOT WE INTEND TO TAKE LEGAL ACTION
13 AGAINST THE OTHER OFFICERS, AND I THINK I HAVE ANSWERED
14 THAT, THE QUESTION WAS, WHETHER OR NOT THERE IS A CONSPIRACY
15 HERE.

16 WELL, I HAVEN'T SEEN A CONSPIRACY IN THE SENSE OF
17 A -- A CONSPIRACY IS AN AGREEMENT WHERE TWO OR MORE PEOPLE
18 AGREE TO COMMIT AN UNLAWFUL ACT, AND THEN DO SOMETHING IN
19 FURTHERANCE OF THAT UNLAWFUL ACT. AND I DON'T SEE EVIDENCE
20 OF A CONSPIRACY, WHERE WE HAVE AN AGREEMENT TO DO SOMETHING
21 UNLAWFUL TO KELLY THOMAS. IT JUST IS MORE OF A SITUATION
22 THAT ESCALATED AND DEVELOPED, BUT I DON'T THINK IT IS
23 CONSPIRATORIAL IN NATURE. SO WE HAVEN'T TAKEN OR DECIDED TO
24 CHARGE ANY CONSPIRACY HERE.

25 IS IT APPROPRIATE TO ASK WHY WOLFE ISN'T CHARGED
26 WITH SECOND DEGREE MURDER?

1 I THINK I HAVE DEALT WITH THAT QUESTION ALREADY.
2 AND, YOU KNOW, LET US KNOW IF THAT'S WHAT YOU DECIDE, OR IF
3 THAT'S WHAT YOU WANT.

4 AND WHAT ARE THE CHARGES AGAINST THE OTHER TWO
5 OFFICERS?

6 WE HAVE A SECOND DEGREE MURDER CHARGE AGAINST
7 OFFICER RAMOS, AND INVOLUNTARY MANSLAUGHTER CHARGE AGAINST
8 OFFICER CICINELLI.

9 THANK YOU.

10 THE GRAND JURY FOREPERSON: ARE THERE ANY OTHER LEGAL
11 QUESTIONS OF THE GRAND JURORS?

12 (AFFIRMATIVE RESPONSES).

13 MR. RACKAUCKAS: CAN WE TAKE A MINUTE BEFORE WE
14 CONCLUDE SO WE CAN DISCUSS THIS?

15 WELL, WE HAVE ANOTHER QUESTION.

16 THE GRAND JURY FOREPERSON: WE HAVE TWO QUESTIONS.

17 MR. RACKAUCKAS: ALL RIGHT. IT APPEARED THIS IS THE
18 SECOND OF THE SIX OFFICERS DIRECTLY INVOLVED IN KELLY
19 THOMAS' BEATING, WERE THEIR SUPERIOR OFFICERS, DO WE HAVE A
20 COPY OF THEIR REPORTS?

21 I THINK THERE WAS, I THINK THERE WAS A SERGEANT
22 THERE, BUT AS I RECALL, HE WAS LOOKING, I DON'T THINK HE
23 ACTIVELY PARTICIPATED IN THIS. OF COURSE, HE DIDN'T CONTROL
24 THE SCENE, BUT I DON'T THINK HE ACTIVELY PARTICIPATED IN
25 DOING SOMETHING TO KELLY THOMAS.

26 WAS THERE A CORPORAL THERE?

1 MR. BOGARDUS: YES, BLATNEY.

2 MR. TANIZAKI: SERGEANT CRAIG WAS THE SERGEANT.

3 MR. RACKAUCKAS: SERGEANT CRAIG WAS THE SERGEANT, AND
4 ALSO A CORPORAL BLATNEY.

5 THE QUESTION IS, DO WE HAVE A COPY OF THEIR
6 REPORTS?

7 MR. TANIZAKI: WE HAVE THEM.

8 MR. RACKAUCKAS: WE HAVE THEM. ALL RIGHT.

9 WE ARE GOING TO HAVE TO HAVE A DISCUSSION BEFORE
10 WE RESPOND -- BY THE WAY, I JUST POINT OUT THE OTHER
11 QUESTION IS NOT A QUESTION, IT SAYS:

12 PLEASE PROVIDE THE INSTRUCTIONS FOR SECOND DEGREE
13 MURDER.

14 (BREAK TAKEN IN PROCEEDINGS.)

15 (THE FOLLOWING PROCEEDINGS WERE HELD IN THE GRAND
16 JURY ROOM:)

17 MR. RACKAUCKAS: WAS THERE ANOTHER QUESTION?

18 THE GRAND JURY FOREPERSON: YES.

19 MR. RACKAUCKAS: THE QUESTION IS:

20 WHY WAS OFFICER WOLFE NOT CHARGED WITH THE OTHER
21 OFFICERS?

22 WELL, IT WAS MY CALL WHETHER OR NOT TO CHARGE ANY
23 OFFICERS, WHETHER OR NOT TO CHARGE OFFICER WOLFE, AND MY
24 VIEW AT THE TIME WAS THAT THE PRIMARY ACT THAT STARTED THIS
25 WHOLE THING WAS OFFICER RAMOS. AND OFFICER RAMOS' GETTING
26 INTO KELLY THOMAS' FACE AS HE DID, AND THREATENING HIM THE

1 WAY HE DID, AND CREATING THE ENTIRE INCIDENT. AND KNOWING
2 THAT HE IS GOING TO BE, IF NECESSARY, BRINGING IN DEADLY
3 FORCE, OR WHATEVER FORCE, HE IS GOING TO HAVE HELP FROM THE
4 POLICE, AND IS THERE A FORESEEABLE CERTAINLY TO OFFICER
5 WOLFE THAT THERE IS GOING TO BE QUITE AS BAD A SITUATION
6 DEVELOP IF KELLY THOMAS RESISTS.

7 SO I FELT THAT THE EVIDENCE DIDN'T SHOW US THAT
8 OFFICER WOLFE HEARD THAT THREAT. AND THE EVIDENCE OF
9 OFFICER WOLFE GETTING HIT BY KELLY THOMAS WHEN HE CAME
10 AROUND TO MAKE THAT TACKLE AFTER KELLY THOMAS WAS RUNNING
11 AWAY, WAS OF CONCERN CERTAINLY. BECAUSE WHAT DID OFFICER
12 WOLFE SEE AND HEAR AT THE TIME, AND THEN WHEN KELLY THOMAS
13 WAS ACTUALLY SHOWING RESISTANCE AND COMBATIVENESS WITH
14 OFFICER WOLFE, AND WHILE KELLY THOMAS, IN MY VIEW, CERTAINLY
15 HAD A RIGHT TO SELF DEFENSE, DID HE HAVE SUCH A RIGHT
16 AGAINST OFFICER WOLFE? FRANKLY, THAT WAS THE QUESTION MARK.

17 AND SO I DON'T CARE TO CHARGE SOMEBODY WITH A
18 CRIME AND HAVE THEM STAND TRIAL IF I AM NOT PERSONALLY WELL
19 CONVINCED, NOT ONLY DO I NOT PERSONALLY CARE TO, I THINK I
20 HAVE A DUTY NOT TO, IF I AM NOT CONVINCED THAT THE PERSON IS
21 GUILTY OF THE CRIME THAT HE IS BEING CHARGED WITH.

22 BUT AFTER REVIEWING THE EVIDENCE, AND NOT JUST
23 REVIEWING THE EVIDENCE, BUT EXTENDED CONSULTATION WITH SOME
24 EXPERTS IN THE FIELD, IN PARTICULAR DR. MCNAMARA, WHO BASED
25 ON HIS CREDENTIALS APPEARS TO ME TO BE QUITE A SUBSTANTIAL
26 EXPERT, I FELT AND FEEL VERY CONFIDENT THAT OFFICER WOLFE IS

1 IN FACT GUILTY OF WHAT WE ARE CHARGING HIM WITH.

2 BUT IT TOOK SOME TIME TO GET TO THAT PLACE.

3 SO THAT WAS THE LAST QUESTION.

4 THE GRAND JURY FOREPERSON: WE HAVE ONE MORE QUESTION,
5 SIR. TWO QUESTIONS.

6 MR. RACKAUCKAS: CAN WE CONVICT ON BOTH INVOLUNTARY
7 MANSLAUGHTER AND SECOND DEGREE MURDER?

8 WELL, IT IS A QUESTION OF WHETHER YOU CAN INDICT.
9 AND THE ANSWER TO THAT IS THAT WHILE THE STRAIGHTFORWARD
10 ANSWER IS YES, BUT I WILL SAY THAT THE LAW WILL BE, NOT WILL
11 BE, IS, THE LAW IS THAT THE INVOLUNTARY MANSLAUGHTER WOULD
12 BE WHAT WE CALL A LESSER-INCLUDED WITHIN SECOND DEGREE
13 MURDER. A LESSER-INCLUDED CRIME OF SECOND DEGREE MURDER.
14 AND SO A PUNISHMENT COULD NOT BE GIVEN FOR BOTH, OUT OF THE
15 SAME ACTS.

16 IF THERE WAS A CONVICTION OF SECOND DEGREE
17 MURDER, INVOLUNTARY MANSLAUGHTER WOULD BE INCLUDED WITHIN
18 THAT, AND THE PUNISHMENT WOULD BE FOR SECOND DEGREE MURDER.

19 CAN WE TAKE THE EXCULPATORY EVIDENCE HOME AND
20 STUDY IF THE CONFIDENTIALITY IS MAINTAINED?

21 I THINK THAT'S PROBABLY NOT A GOOD IDEA. BUT
22 MAYBE WE NEED TO DISCUSS THAT. IN GENERAL, FIRST, LET ME
23 SAY SOMETHING HERE. WHAT YOU HAVE BEEN GIVEN, AND THIS WAS
24 PART OF THE INSTRUCTION THAT MR. BOGARDUS GAVE YOU, BUT WHAT
25 YOU HAVE BEEN GIVEN ABOUT EXCULPATORY MATERIAL, AND
26 EXCULPATORY, LET'S TALK ABOUT THE WORD EXCULPATORY, IS

1 ANYTHING THAT MIGHT TEND TO BE BENEFICIAL FOR, IN THIS CASE,
2 OFFICER WOLFE.

3 AND THAT COULD BE SOMETHING THAT MIGHT SHOW, PUT
4 A DIFFERENT LIGHT MORE FAVORABLE TO HIM ON THE
5 CIRCUMSTANCES, OR SOMETHING THAT MIGHT TEND TO EXPLAIN AWAY
6 THE CHARGES. OR SOMETHING THAT WOULD ATTACK THE CREDIBILITY
7 OF A WITNESS WHO TESTIFIED CAN ALSO BE CONSIDERED
8 EXCULPATORY.

9 SO WHAT WE HAVE DONE, WE HAVE SAID THAT THESE ARE
10 AREAS THAT SHOULD BE BROUGHT TO YOUR ATTENTION, WHERE THERE
11 MIGHT EXIST SOME EXCULPATORY MATERIAL. AND IT IS UP TO YOU
12 TO DECIDE IF YOU WANT TO FURTHER CONSIDER THAT EVIDENCE.

13 NOW, WHAT WE HAVE GIVEN YOU REALLY SHOULDN'T BE
14 CONSIDERED AS EVIDENCE IN THE CASE, WHAT WE HAVE GIVEN YOU
15 SHOULD BE CONSIDERED MORE AS NOTICE THAT THIS EVIDENCE IS
16 AVAILABLE. SO IF YOU WANT TO HEAR A PART, ANY OR A PART OF
17 THAT EVIDENCE, YOU CAN REQUEST THAT, AND YOU HAVE THE RIGHT,
18 WE CAN BRING THE WITNESS, WE CAN BRING THE OFFICIAL
19 DOCUMENTATION AS REQUIRED BY THE RULES OF EVIDENCE.

20 AND BEFORE WE TALK ABOUT THIS TAKING MATERIAL
21 HOME, LET ME SAY A COUPLE OF THINGS HERE.

22 THERE WAS A QUESTION, CAN AN OFFICER SHOW A
23 BLATANT DISREGARD FOR HUMAN LIFE?

24 AND I DISCUSSED THAT. BUT REGARDING THAT, I
25 THINK IT IS IMPORTANT TO FURTHER SAY THAT A PEACE OFFICER
26 MAY USE DEADLY FORCE UNDER LIMITED CIRCUMSTANCES. AND UNDER

1 THESE CIRCUMSTANCES, A KILLING IS NOT HOMICIDE, NOT
2 MANSLAUGHTER. THE QUALIFYING CIRCUMSTANCES ARE SET FORTH IN
3 GRAND JURY INSTRUCTION NUMBER 12.

4 THERE WERE QUESTIONS ABOUT THE CHARGES AGAINST
5 THE OTHER OFFICERS. AND IT IS IMPORTANT TO ADMONISH YOU
6 THAT THIS, THE QUESTION HERE IN THIS HEARING IS LIMITED TO
7 THE QUESTION OF THE CULPABILITY OF OFFICER WOLFE. AND WHAT
8 OTHER OFFICERS ARE CHARGED WITH SHOULD NOT PLAY A ROLE IN
9 THAT, SHOULDN'T BE CONSIDERED IN MAKING THAT DECISION.

10 AND NOW WE HAVE GOT ONE MORE THING THAT WE HAVE
11 TO DISCUSS BRIEFLY.

12 (BREAK TAKEN IN PROCEEDINGS.)

13 (THE FOLLOWING PROCEEDINGS WERE HELD IN THE GRAND
14 JURY ROOM:)

15 MR. RACKAUCKAS: ALL RIGHT. LADIES AND GENTLEMEN,
16 THERE ARE TWO THINGS, TWO COMMENTS THAT I NEED TO MAKE.

17 ONE IS THE QUESTION OF WHETHER OR NOT YOU CAN
18 TAKE ANY OF THIS EVIDENCE HOME OR THE EXCULPATORY EVIDENCE
19 HOME AND STUDY IT. WE WOULD ASK YOU NOT TO DO THAT. WE ASK
20 YOU NOT TO DO THAT. PLEASE KEEP IT HERE, AND THEN THERE IS
21 NO QUESTION ABOUT WHETHER IT WAS MISPLACED OR USED IN SOME
22 MANNER THAT ISN'T PROVIDED FOR. SO THE ANSWER TO THAT IS
23 NO.

24 AND THEN THE NEXT THING IS THAT WE HAVE BEEN
25 ASKED BY ONE JUROR, MAYBE MORE THAN ONE, TO PROVIDE
26 INSTRUCTIONS FOR SECOND DEGREE MURDER. AND I AM WILLING TO

1 DO THAT, OF COURSE, WE ARE GOING TO PROVIDE THOSE
2 INSTRUCTIONS. BUT I WOULD ASK YOU NOT TO START DELIBERATING
3 UNTIL WE HAVE PROVIDED THOSE. AND WE CAN PROVIDE THOSE
4 WITHIN AN HOUR.

5 THE GRAND JURY FOREPERSON: THAT'S AFTER LUNCH.

6 MR. RACKAUCKAS: ALL RIGHT.

7 THANK YOU VERY MUCH.

8 THE GRAND JURY FOREPERSON: WITH THAT, LADIES AND
9 GENTLEMEN, BEFORE WE GO INTO DELIBERATIONS WE ARE GOING TO
10 BREAK FOR LUNCH, SO WE WILL BE IN RECESS UNTIL 1:50.

11 DURING ANY PERIOD OF THIS RECESS YOU MUST NOT
12 DISCUSS WITH ANYONE, EITHER INSIDE OR OUTSIDE THIS HEARING
13 ROOM, ANY SUBJECT CONNECTED WITH THIS HEARING.

14 A GRAND JUROR: HOW ABOUT 12:50.

15 THE GRAND JURY FOREPERSON: I AM SORRY, 12:50, YES. I
16 AM SORRY, THANK YOU.

17 (LUNCH TAKEN.)

18

19

20

21

22

23

24

25

26

1 SANTA ANA, CALIFORNIA - SEPTEMBER 21, 2012

2 AFTERNOON SESSION

3

4 (THE FOLLOWING PROCEEDINGS WERE HELD IN THE GRAND
5 JURY ROOM:)

6 THE GRAND JURY FOREPERSON: WE ARE AGAIN IN SESSION IN
7 THE JOSEPH ANDREW WOLFE HEARING.

8 LET THE RECORD REFLECT THAT ALL THE SAME 16
9 MEMBERS OF THE GRAND JURY ARE AGAIN PRESENT.

10 MR. DISTRICT ATTORNEY, I UNDERSTAND THAT YOU
11 WANTED TO MAKE SOME COMMENTS.

12 MR. BOGARDUS: THANK YOU, MR. FOREMAN.

13 BEFORE WE CONCLUDE I JUST HAVE A REMARKABLY BRIEF
14 STATEMENT TO MAKE. IN ANSWER TO SOME LEGAL QUESTIONS THAT
15 WERE POSED THIS MORNING, WE ARE PROVIDING YOU WITH ONE
16 ADDITIONAL INSTRUCTION. THAT INSTRUCTION WILL BE MARKED
17 GRAND JURY EXHIBIT 110-B, AND THAT IS THE LEGAL INSTRUCTION
18 THAT DEFINES THE CRIME OF MURDER.

19 THANK YOU.

20 THE GRAND JURY FOREPERSON: ALL RIGHT. AT THIS POINT
21 WE ARE GOING TO RECESS FOR DELIBERATIONS.

22 (RECESS TAKEN.)

23 (ADJOURNMENT.)

24

25

26

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA

2 CENTRAL JUSTICE CENTER, COUNTY OF ORANGE

3 IN RE THE PROCEEDINGS OF:

4 THE PEOPLE OF THE STATE OF CALIFORNIA,)

5 PLAINTIFF,)

6 VS.)

7 JOSEPH ANDREW WOLFE,)

8 DEFENDANT.)

NO. 12ZF0148

9

10

11 TRANSCRIPT OF PROCEEDINGS

12 SEPTEMBER 24, 2012

13 VOLUME 4

14

15 APPEARANCES:

16 TONY RACKAUKAS, DISTRICT ATTORNEY
17 JIM TANIZAKI, SENIOR ASSISTANT DISTRICT ATTORNEY
18 KEITH BOGARDUS, ASSISTANT DISTRICT ATTORNEY

18

19

20 ROBERT J. SULLIVAN, CSR #5646
21 OFFICIAL COURT REPORTER

21

22

23 (ROBERT J. SULLIVAN, CERTIFIED SHORTHAND REPORTER,
24

25 WAS DULY SWORN BY THE FOREPERSON OF THE GRAND JURY, AFTER

26 WHICH THE FOLLOWING PROCEEDINGS WERE HAD:)

1 C H R O N O L O G I C A L W I T N E S S L I S T

2 PEOPLE'S EXAMINATION

3 (NONE CALLED)

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

1 SANTA ANA, CALIFORNIA - SEPTEMBER 24, 2012

2 AFTERNOON SESSION

3

4 (THE FOLLOWING PROCEEDINGS WERE HELD IN THE GRAND
5 JURY ROOM:)

6 THE GRAND JURY FOREPERSON: THE HEARING WILL COME TO
7 ORDER.

8 THE COURT: I UNDERSTAND THAT THE GRAND JURY DESIRES TO
9 PRESENT AN INDICTMENT?

10 THE GRAND JURY FOREPERSON: YES, YOUR HONOR.

11 THE COURT: WERE ALL THE GRAND JURORS PRESENT DURING
12 THE PRESENTATION OF THIS CASE?

13 THE GRAND JURY FOREPERSON: NO, YOUR HONOR. GRAND
14 JUROR NUMBER TWELVE, GRAND JUROR NUMBER SEVEN, AND GRAND
15 JUROR NUMBER FIFTEEN WERE ABSENT, FOR A TOTAL OF 16.

16 THE COURT: DID ALL THE GRAND JURORS VOTING ON THE
17 INDICTMENT HEAR ALL OF THE EVIDENCE?

18 THE GRAND JURY FOREPERSON: YES, SIR.

19 THE COURT: I WILL FIND THAT AT LEAST 12 GRAND JURORS
20 WHO HEARD ALL THE EVIDENCE VOTED FOR THE RETURN OF THE
21 INDICTMENT.

22 THE GRAND JURY FOREPERSON: YOUR HONOR, IF IT PLEASE
23 THE COURT, THE GRAND JURY OF ORANGE COUNTY IN ITS
24 DELIBERATIONS HAS RETURNED AN INDICTMENT IN THE MATTER OF
25 THE PEOPLE OF THE STATE OF CALIFORNIA VERSUS JOSEPH ANDREW
26 WOLFE, AND ON BEHALF OF THE GRAND JURY I PRESENT THIS

1 INDICTMENT.

2 THE CLERK: WHERE IS IT?

3 THE COURT: I THINK I HAVE TO SEE IT FIRST.

4 THE CLERK: WOULD YOU SIGN THIS, MR. RACKAUCKAS.

5 MR. RACKAUCKAS: (COMPLIES).

6 THE GRAND JURY FOREPERSON: AND I WILL SIGN IT.

7 THE COURT: THANK YOU.

8 I NOTE THE NAMES OF THE WITNESSES EXAMINED AT THE
9 END OF THE INDICTMENT; DID ALL OF THESE WITNESSES TESTIFY
10 DURING THIS INDICTMENT?

11 THE GRAND JURY FOREPERSON: YES, YOUR HONOR, THEY DID.

12 THE COURT: DID ANY OTHER WITNESSES TESTIFY DURING THIS
13 INDICTMENT?

14 THE GRAND JURY FOREPERSON: NO, YOUR HONOR.

15 THE COURT: MR. RACKAUCKAS AND DEPUTIES, I INTEND TO
16 ASK ONE ADDITIONAL QUESTION, AND THAT'S A 939 QUESTION IN
17 LIGHT OF THE INFORMATION I HAVE READ; ANY OBJECTION TO ME
18 ASKING THAT QUESTION?

19 MR. RACKAUCKAS: NO, YOUR HONOR.

20 THE COURT: DID THE GRAND JURY REQUEST ANY ADDITIONAL
21 EVIDENCE OUTSIDE OF WHAT WAS PRESENTED BY THE PROSECUTOR'S
22 OFFICE?

23 THE GRAND JURY FOREPERSON: NO, YOUR HONOR.

24 THE COURT: THEN THE COURT FINDS THE INDICTMENT TO BE A
25 TRUE BILL.

26 MADAM CLERK, WHAT CASE NUMBER SHALL BE ASSIGNED

1 TO THIS CASE?

2 THE CLERK: 12ZF0148.

3 THE COURT: IS THE DEFENDANT IN CUSTODY?

4 MR. TANIZAKI: HE IS NOT.

5 THE COURT: ARE YOU REQUESTING BAIL?

6 MR. TANIZAKI: YES.

7 THE COURT: WHAT BAIL AMOUNT ARE YOU REQUESTING?

8 MR. TANIZAKI: STATUTORY 25,000.

9 THE COURT: THE COURT WILL GRANT THE PEOPLE'S REQUEST
10 AND SET BAIL IN THE AMOUNT OF \$25,000.

11 BECAUSE THE DEFENDANT IS NOT IN CUSTODY, I WILL
12 SEAL THE INDICTMENT UNTIL THE DEFENDANT IS ARRESTED AND IN
13 CUSTODY.

14 MR. RACKAUKAS: YOUR HONOR, WE ARE ASKING THE DEFENDANT
15 BE ABLE TO APPEAR ON THE 27TH, WHICH IS THURSDAY, AT 1:30,
16 IF THAT WOULD BE POSSIBLE.

17 THE COURT: THE COURT THEN WILL HOLD THAT WARRANT UNTIL
18 THURSDAY AT 1:30 IN DEPARTMENT C-5.

19 HOW DO YOU ANTICIPATE PROVIDING NOTICE TO THE
20 DEFENDANT, THROUGH COUNSEL?

21 MR. TANIZAKI: THROUGH COUNSEL.

22 THE COURT: AND WHAT DISPOSITION IS BEING MADE IN
23 REGARDS TO THE EXHIBITS, OR WERE THERE EXHIBITS, I GUESS I
24 SHOULD ASK THAT FIRST?

25 MR. RACKAUKAS: YES, YOUR HONOR, THERE WERE.

26 MR. BOGARDUS: THERE IS ONE BOX OF DOCUMENTARY

1 EVIDENCE, IF THEY CAN REMAIN IN THE COURT'S CUSTODY.

2 THE COURT: THE COURT WILL MAINTAIN CUSTODY OF THAT.
3 AND THEY WILL BE SURRENDERED TO THE CLERK OF THE COURT AND
4 WE WILL TAKE CUSTODY OF IT AT THIS TIME.

5 ANYTHING FURTHER ON BEHALF OF THE PROSECUTION?

6 MR. RACKAUKAS: NO, YOUR HONOR.

7 THE COURT: ANYTHING FURTHER ON BEHALF OF THE GRAND
8 JURY?

9 THE GRAND JURY FOREPERSON: NO, YOUR HONOR.

10 THE COURT: THANK YOU VERY MUCH. THANK YOU FOLKS FOR
11 YOUR HARD WORK.

12 AND THE INDICTMENT IS SEALED AT THIS TIME.

13 (ADJOURNMENT.)

14

15

16

17

18

19

20

21

22

23

24

25

26

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

REPORTER'S CERTIFICATE

I, ROBERT J. SULLIVAN, CSR NO. 5646, OFFICIAL
COURT REPORTER, DO HEREBY CERTIFY THAT THE FOREGOING
REPORTER'S TRANSCRIPT IN THE CASE OF THE PEOPLE OF THE STATE
OF CALIFORNIA, PLAINTIFF, VS. JOSEPH ANDREW WOLFE,
DEFENDANT, CASE NO. 12ZF0148, CONSISTING OF PAGES 1 THROUGH
407, INCLUSIVE, IS A FULL, TRUE AND CORRECT TRANSCRIPTION OF
MY SHORTHAND NOTES THEREOF, AND A FULL, TRUE AND CORRECT
STATEMENT OF THE PROCEEDINGS HAD IN SAID CAUSE.

DATED AT SANTA ANA, CALIFORNIA, THIS 29TH DAY OF
SEPTEMBER, 2012.

ROBERT J. SULLIVAN, CSR NO. 5646
OFFICIAL COURT REPORTER