

1 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 IN AND FOR THE COUNTY OF SAN DIEGO
3 DEPARTMENT 65 BEFORE HON. VINCENT P. DI FIGLIA, JUDGE

4	COORDINATION PROCEEDING)	
	SPECIAL TITLE - RULE 1550 (B))	
5)	
)	
6	FIREARM CASES)	JUDICIAL COUNCIL
)	COORDINATION PROCEEDING
7	INCLUDED ACTIONS:)	NO. 4095
)	
8	PEOPLE, ETC.)	SAN FRANCISCO SUPERIOR COURT
	V. ARCADIA MACHINE & TOOL, INC.)	NO. 303 753
9)	
)	
10	PEOPLE, ETC.)	LOS ANGELES SUPERIOR COURT
	V. ARCADIA MACHINE & TOOL)	NO. BC 210 894
11)	
)	
12	PEOPLE, ETC.)	LOS ANGELES SUPERIOR COURT
	V. ARCADIA MACHINE & TOOL)	NO. BC 214 794
13)	

14 REPORTER'S TRANSCRIPT

15 MAY 3, 2002

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REPORTED BY:

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OFFICIAL REPORTER
619-685-6024

28

1 SAN DIEGO, CALIFORNIA, FRIDAY, MAY 3, 2002, 9:06 A.M.

2 THE COURT: OKAY. ON THE CONSOLIDATED GUN CASES WOULD COUN-
3 SEL STEP FORWARD ON THAT.

4 I DIDN'T GO TO THE GYM TODAY, SO I'M GOING TO PRESS THE
5 SEPARATE STATEMENT, AND IF I GET A ROTATOR CUFF INJURY, I'M GOING
6 TO SUE THE DEFENDANTS.

7 MR. MAYBERRY: GOOD MORNING, YOUR HONOR. HOWARD MAYBERRY
8 FOR THE AMERICAN SHOOTING SPORTS COUNCIL, MOVANTS.

9 MR. SAMS: GOOD MORNING, YOUR HONOR. EX KANO SAMS, MILBERG,
10 WEISS, BERSHAD, HYNES & LERACH, FOR PLAINTIFFS.

11 MS. CALDWELL: GOOD MORNING, YOUR HONOR. SUSAN CALDWELL FOR
12 ASSC.

13 THE COURT: COUNSEL, THE FIRST QUESTION IS: CAN WE PAINT
14 WITH BROAD STROKES WITH THIS, OR DO WE REALLY HAVE TO LOOK AT
15 EACH ONE OF THOSE, BECAUSE --

16 MR. MAYBERRY: BROAD STROKES, YOUR HONOR, BY CATEGORY OF
17 WHAT --

18 THE COURT: IN ALL CANDOR, FOLKS, I'VE GOT 620 CASES, AND I
19 CANNOT -- I CANNOT GIVE MORE THAN A LIMITED ANALYSIS TO THIS KIND
20 OF A MOTION, SO, YOU KNOW, IF WE'RE -- IF YOU WANT ALL OF THE I'S
21 DOTTED AND ALL THE T'S CROSSED, I JUST HAVE TO SEND YOU TO A
22 DISCOVERY REFEREE. I CAN'T DO OTHERWISE.

23 MR. MAYBERRY: WE DON'T, YOUR HONOR. I THINK I CAN SPEAK TO
24 THIS MOTION, FIRST OF ALL WHAT THIS MOTION IS NOT ABOUT. WE HAVE
25 NOT NOTICED, TO DATE, A DEPOSITION. THERE IS NO ISSUE ABOUT
26 DEPOSITIONS BEFORE THE COURT TODAY. WHAT IS AT ISSUE TODAY IS
27 THE LACK OF A COMPLETE RESPONSE, GLOBALLY, BY THE PLAINTIFFS TO
28 OUR DISCOVERY.

1 LET ME TAKE THE FIRST CATEGORY, AND THAT WOULD BE
2 INFORMATION, AND OUR REQUEST FOR SPECIFIC INFORMATION HAS BEEN
3 ANSWERED BY WAY OF EXAMPLE AND NOT LIMITATION. THAT IS A REFRAIN
4 IN EACH AND EVERY ANSWER IN THEIR REQUESTS FOR OUR INTERROGATO-
5 RIES. IT'S INADEQUATE; IT'S INCONSISTENT AND CONTRARY TO THE
6 CODE.

7 TWO, THE DOCUMENTS IN TERMS OF DOCUMENTS THAT THEY HAVE
8 IDENTIFIED, THEIR OPPOSITION TO THE DOCUMENT -- I'M SORRY, YOUR
9 HONOR. THE PLAINTIFFS' OPPOSITION TO OUR MOVING PAPERS STATES
10 THEIR ANSWER TO THE DOCUMENT REQUEST, WHICH IS: WE WILL PRODUCE
11 OR HAVE PRODUCED.

12 WELL, WE DON'T WANT TO HAVE TO SPECULATE WHAT HAS BEEN
13 PRODUCED AND WHAT WILL BE PRODUCED. WE WANT TO KNOW TODAY THAT
14 THEY HAVE PRODUCED EVERYTHING THAT THEY ARE REQUIRED TO PRODUCE.

15 IN ADDITION, THEY HAVE HID BEHIND PRIVILEGE, A PRIVACY
16 PRIVILEGE, FOR EXAMPLE, WHICH THIS COURT RULED ON IN DECEMBER ON
17 A MANUFACTURER'S MOTION TO COMPEL, THAT THE PRIVILEGED DOCUMENTS
18 -- THE PRIVACY PRIVILEGE COULD NOT BE HELD -- COULD NOT BE HID
19 BEHIND IN CONNECTION WITH NON-JUVENILE ACCIDENTAL DISCHARGE
20 RECORDS. IT SHOULDN'T BE HID BEHIND IN OUR DISCOVERY, EITHER.

21 IN ADDITION, THEY HAVE HID BEHIND ATTORNEY-CLIENT AND
22 WORK PRODUCT WITHOUT PRODUCING A PRIVILEGE LOG. IF THEY HAVE A
23 PRIVILEGED DOCUMENT, WE WANT TO SEE IT ON A LOG IN ORDER TO
24 DETERMINE WHETHER THAT -- WHETHER THAT IS PROPERLY WITHHELD AS A
25 DOCUMENT, AND IN TERMS OF THE WITNESSES THAT HAVE BEEN IDENTI-
26 FIED, THEY IDENTIFY WITNESSES BY -- I'M SORRY -- PERSONS WITH
27 KNOWLEDGE UNDER FORM ROG 17.1, AS TO SPECIFIC DENIALS TO OUR
28 ADMISSIONS, THEY STATE, "LOOK TO THE PRELIMINARY WITNESS LIST."

1 WELL, THE WITNESS LIST IS, BY DEFINITION, PERSONS WITH KNOWLEDGE
2 -- WITH KNOWLEDGE FAVORABLE TO THE PLAINTIFFS, AND BY DEFINITION
3 IS A LIST OF -- A LIST OF PERSONS -- WITHOUT A LIST OF PERSONS
4 WITH KNOWLEDGE ABOUT EXCULPATORY EVIDENCE.

5 THE COURT: I'M SORRY.

6 HOLD ON, MS. TURNER. MISS TURNER, HOLD ON. WHERE ARE
7 YOU GOING?

8 THIS IS ON ANOTHER CASE. I'M SORRY TO INTERRUPT YOU.
9 I'LL BE -- GIVE ME ONE SECOND HERE. OKAY?

10 NUMBER 16, FRANKS V. DILLERY, IS ASSIGNED TO JUDGE
11 WICKERSHAM, DEPARTMENT 73, TO BEGIN TUESDAY AT 9:00 A.M., SO THAT
12 RESOLVES THAT PROBLEM, AND JUDGE WICKERSHAM WANTS TO SEE YOU
13 RIGHT NOW WITH THE FILE. OKAY? ALL RIGHT.

14 MS. TURNER: I WAS GOING TO MEET HIM UP THERE, SO I CAN
15 CHECK IN WITH JUDGE PRAGER TO TELL HIM WHERE I'M GOING.

16 THE COURT: BUT I HAD TO MAKE THE ASSIGNMENT TO SEE IF THERE
17 WAS A 170.6. I'M SORRY.

18 MR. MAYBERRY: SO, YOUR HONOR, TO GO RIGHT TO THE POINT IN
19 TERMS OF THE SEPARATE STATEMENT, THE RULES REQUIRE IT, AND I'M
20 SURE ABLE COUNSEL WOULD POINT OUT, IF WE HAVEN'T DONE THAT, THERE
21 IS A DEFECT IN THE PLEADINGS, BUT IN TERMS OF THE ACTUAL ABILITY
22 OF THIS COURT TO RULE, WE ARE -- WE'RE ASKING VERY SIMPLE
23 TEXTBOOK, RIGHT-OUT-OF-LAW-SCHOOL STUFF HERE, THAT WHEN THEY
24 RESPOND TO AN INTERROGATORY, IT NEEDS TO BE AN EXHAUSTIVE AND
25 COMPLETE RESPONSE, NOT BY -- NOT ONE THAT IS COUCHED THAT THIS IS
26 BY EXAMPLE, AND NOT LIMITATION.

27 THE COURT: HOW IS "BY EXAMPLE" ANY DIFFERENT THAN
28 "INCLUDING BUT NOT LIMITED TO"? THAT'S WHAT THEY ARE GOING TO BE

1 LIMITED TO AT THE TIME OF TRIAL. I MEAN, THEY CAN SAY "BY EXAM-
2 PLE" OR ANYTHING ELSE. IF THEY SANDBAG YOU AND TRY TO BRING
3 SOMETHING ELSE IN AT THE TIME OF TRIAL, THEY ARE NOT GOING TO GET
4 AWAY WITH THAT.

5 MR. MAYBERRY: YOUR HONOR, IT IS -- IT IS OUR SINCERE DESIRE
6 TO BRING ALL RELEVANT EVIDENCE BEFORE THIS COURT. IT IS GOING TO
7 BE TRIED BEFORE THE COURT, IF NOT TAKEN OUT IN SUMMARY JUDGMENT.
8 THE TIME IS NOW FOR THE PLAINTIFFS TO LET US KNOW WHAT THIS CASE
9 IS ABOUT. WE WANT TO KNOW FACTS AND CIRCUMSTANCES THAT THEY HAVE
10 IN THEIR POSSESSION. WE WANT TO KNOW THE PERSONS WITH KNOWLEDGE.
11 WE WANT TO KNOW WHAT THE DOCUMENTS ARE IN ORDER TO -- IN ORDER TO
12 PROPERLY TRY THE CASE. IT IS A DUE PROCESS RIGHT, PLUS THIS FACT
13 DISCOVERY IS OVER IN AUGUST. WE'RE GOING TO BE GOING INTO EXPERT
14 WITNESS DISCOVERY. HOW ARE WE GOING TO TAKE ON THE WITNESSES
15 WITHOUT HAVING THE FACTUAL BASIS FOR THEIR CASE?

16 I MEAN, IT JUST SORT OF BOOMERANGS AND BOOMERANGS AND
17 BOOMERANGS.

18 I WOULD SUBMIT TO THE COURT A VERY SIMPLE ORDER -- WE'D
19 BE HAPPY TO PREPARE IT AND SUBMIT IT TO THE COURT -- THAT WOULD
20 COMPEL THE DEFENDANTS TO ANSWER THE REQUESTS WHICH WE HAVE IDEN-
21 TIFIED, PAGE ONE, BOTTOM OF THE PAGE, ON OUR MOVING PAPERS, AND
22 THAT THEY COME BACK AND ANSWER COMPLETELY AND IDENTIFY ALL PER-
23 SONS WITH KNOWLEDGE, WHERE THEY HAVE FORM ROG DENIED, ONE OF OUR
24 ADMISSIONS, AND TO GIVE US A PRIVILEGE LOG CONSISTENT WITH THE
25 C.M.O., SO THAT WE KNOW WHAT DOCUMENTS THEY ARE NOT WITHHOLDING
26 -- THEY ARE NOT PRODUCING.

27 YOUR HONOR, I STAND BEFORE YOU TODAY. MY CLIENT --
28 THERE ARE NO MOTIONS TO COMPEL AGAINST AMERICAN SHOOTING SPORTS.

1 THIS COURT HAS NOT SEEN MY CLIENT ON RESPONDENT'S SIDE
2 OF ONE OF THESE MOTIONS. I'VE BEEN TOLD THE PLAINTIFFS ARE
3 SATISFIED WITH OUR DISCOVERY EFFORTS. I HAVE PRODUCED THE --
4 THROUGH EITHER DIRECTLY OR THROUGH CROSS-DESIGNATION, THE VICE-
5 CHAIRMAN OF MY CLIENT, THE PRESIDENT OF MY CLIENT, THE CHIEF
6 OPERATING OFFICER, THE EXECUTIVE DIRECTOR FOR DEPOSITION. WE
7 HAVE PRODUCED OVER 16,000 PAGES OF DOCUMENTS IN RESPONSE TO THEIR
8 SECOND SET OF DISCOVERY IN ADDITION TO THE THOUSANDS UPON
9 THOUSANDS OF PAGES PRODUCED, AS THE COURT IS AWARE, IN
10 JURISDICTIONAL DISCOVERY IN DEPOSITIONS. I MEAN, THEY HAVE
11 EVERYTHING WE HAVE, AND WE BELIEVE, YOUR HONOR, THEY HAVE A RIGHT
12 TO THAT. NOW, IT SHOULD BE A TWO-WAY STREET. THAT'S WHY WE'RE
13 BEFORE THE COURT TODAY. IT IS NOT A COMPLICATED ISSUE. IT IS A
14 SIMPLE ISSUE, AND THAT IS: YOU ARE TO COMPLETELY ANSWER THE DIS-
15 COVERY THAT IS PROPOUNDED, CONSISTENT WITH THE DISCOVERY CODE FOR
16 THE STATE OF CALIFORNIA.

17 THE COURT: WELL, WITH RESPECT TO THE WITNESSES IT WAS MY
18 UNDERSTANDING THAT YOU -- THE THRUST OF THE ARGUMENT THERE WAS
19 THAT IT WAS RATHER EXTRAORDINARY THAT THEY DIDN'T IDENTIFY ANY OF
20 THEIR OWN PEOPLE.

21 MR. MAYBERRY: WITH OPINIONS, WITH KNOWLEDGE. THAT'S
22 CORRECT, YOUR HONOR.

23 THE COURT: ALL RIGHT.

24 IF THEY DON'T HAVE ANY OF THEIR OWN PEOPLE THAT HAVE
25 KNOWLEDGE, DOESN'T THAT MAKE A GREAT FINAL ARGUMENT FOR YOU?

26 MR. MAYBERRY: IT DOES, YOUR HONOR, AND I WOULD AGREE. IN
27 HIDING THE BALL, THERE MAY NOT BE A BALL THAT THE PLAINTIFFS
28 HAVE, AND AT SOME POINT THAT WILL BE BEFORE THE COURT, SOONER

1 RATHER THAN LATER, IN DISPOSITIVE MOTIONS, BUT SHOULD THIS CASE
2 -- AGAIN, IT IS OUR DESIRE TO HAVE ALL OF THE FACTS. WE'VE DONE
3 NOTHING WRONG HERE, AND I'M NOT EVEN SURE WHAT WE DID IN TERMS OF
4 THE ALLEGATIONS OF WRONGDOING, WHICH IS ANOTHER PROBLEM. THE
5 GLOBAL ISSUES OF CONSPIRACY AND NUISANCE AND MISREPRESENTATIONS
6 AND SO FORTH, WHAT ARE THEY TALKING ABOUT? I DON'T HAVE A CLUE,
7 YOUR HONOR.

8 AND WE WANT TO PROPERLY PREPARE OUR DEFENSE. WE WANT
9 TO TRY A GOOD CASE BEFORE THIS COURT.

10 THE COURT: OKAY.

11 MR. SAMS: UNFORTUNATELY, YOUR HONOR, WE CAN LOOK AT THIS IN
12 BROAD STOKES THE WAY THE DEFENDANTS WANT US TO. IF YOU LOOK AT
13 THE ACTUAL QUESTIONS AND LOOK AT OUR RESPONSES, WE BELIEVE, IN
14 FACT, WE DID ADEQUATELY RESPOND. I THINK THEIR MAIN OBJECTION IS
15 THAT THERE ARE FACTS THAT ARE RESPONSIVE TO A NUMBER OF DIFFERENT
16 REQUESTS, AND THERE ARE INDIVIDUALS WHO HAVE -- WHO HAVE
17 KNOWLEDGE REGARDING A NUMBER OF DIFFERENT MATTERS, AND THE FACT
18 THAT PLAINTIFFS IDENTIFY SUCH PEOPLE IN A NUMBER OF DIFFERENT
19 RESPONSES AND INCLUDED SUCH FACTS IN A NUMBER OF DIFFERENT
20 RESPONSES DOESN'T MAKE THE RESPONSES INADEQUATE. THAT IS
21 PLAINTIFF'S POSITION, SO I THINK WE HAVE TO LOOK AT EACH REQUEST
22 INDIVIDUALLY. I DON'T KNOW IF THAT TAKES A REFEREE TO DO, BUT I
23 BELIEVE IN LOOKING AT THIS BROADLY IF THE COURT DOESN'T UNDER-
24 STAND THAT PLAINTIFFS HAVE, INDEED, ADEQUATELY RESPONDED TO THE
25 REQUESTS.

26 THE COURT: WELL, I'M SORRY. GO AHEAD.

27 GO AHEAD.

28 MR. MAYBERRY: MAY I RESPOND TO THAT, YOUR HONOR?

1 THE COURT: YES.

2 MR. MAYBERRY: WHAT I WOULD CALL THE COURT'S ATTENTION TO --
3 OUR REPLY BRIEF, EXHIBIT A, YOUR HONOR.

4 THE COURT: OKAY.

5 I DON'T HAVE -- BRING ME THE FOLDER, WILL YOU?

6 (PAUSE IN PROCEEDINGS.)

7 MR. MAYBERRY: HAS IT GOT EXHIBIT A IN THERE? MAY I
8 APPROACH THE COURT?

9 THE COURT: SHE'S GOING TO -- I BROUGHT OUT THE SEPARATE
10 STATEMENT. I DIDN'T BRING OUT EVERYTHING.

11 MR. MAYBERRY: MAYBE WHILE THAT IS BEING BROUGHT OUT -- AND,
12 AGAIN, THE SEPARATE STATEMENT IS A CREATURE OF STATUTE. I HOPE
13 YOUR HONOR APPRECIATES IT DOESN'T TRIGGER A MASTER OF DISCOVERY,
14 BECAUSE THAT DOESN'T TRIGGER -- WHAT THE NATURE IS IN EXHIBIT A
15 -- YOU'RE GOING TO RECEIVE A REFRAIN THAT IS THE CUT AND PASTED
16 ANSWER TO EACH AND EVERY DISCOVERY REQUEST LISTED IN THE -- IN
17 OUR DISCOVERY.

18 (FILE FOLDER HANDED TO COURT.)

19 MR. MAYBERRY: AND THAT'S EXHIBIT A TO THE REPLY STATEMENT.
20 THEIR INFORMATIONAL RESPONSE, EXHIBIT B, IS WHAT THEY RESPONDED
21 IN TERMS OF DOCUMENT IDENTIFICATION. SPECIFICALLY, THE MOST
22 EGREGIOUS IS IN THE AREA OF 17.1, THE FORM INTERROGATORY, AND C
23 IS IN CONNECTION WITH PERSONS WITH KNOWLEDGE. SO, BY DEFINITION,
24 YOUR HONOR, HOW CAN YOU HAVE ONE -- TO A THREE-PAGE RESPONSE,
25 THAT IS AN ANSWER TO 48? I'VE COUNTED THEM IN THE FOOTNOTE.
26 THERE ARE 48 REQUESTS. SOMETHING IS SERIOUSLY WRONG HERE, YOUR
27 HONOR.

28 IN TERMS OF THE DOCUMENTS, THERE IS LESS -- THEY HAVE

1 IDENTIFIED LESS THAN 100 DOCUMENTS IN RESPONSE TO ALL OF THE
2 REQUESTS LISTED IN TWO, BUT IT'S BY WAY OF EXAMPLE. PLAINTIFF'S
3 CONTENTIONS INCLUDE -- THE DOCUMENTS IN SUPPORT OF PLAINTIFF'S
4 CONTENTIONS INCLUDE BUT ARE NOT LIMITED TO. THIS IS WHAT WE FIND
5 OFFENSIVE IS THEIR LIMITATION. WE DON'T KNOW WHAT THEY HAVE AND
6 WHAT THEY DON'T, AND IN TERMS OF EXHIBIT C THEY HAVE LISTED THE
7 SAME SET OF PERSONS WITH KNOWLEDGE TO 61 OF OUR REQUESTS. HOW
8 CAN THE SAME -- HOW DO WE KNOW WHAT WITNESS HAS KNOWLEDGE ABOUT A
9 SPECIFIC AREA OF INQUIRY IN OUR REQUEST AND WHICH ONE HAS
10 KNOWLEDGE AS TO ANOTHER AREA OF INQUIRY?

11 YOUR HONOR, I THINK THAT -- THAT THERE IS A TEACHING
12 HERE FROM THE RIFKIND CASE. IT'S DEFENDANT'S CASE, AND IN IT THE
13 COURT OF APPEALS STATES AT 22 CALIFORNIA APPELLATE 4TH AT 1262 AN
14 UNDERLYING POLICY, AND THIS IS WHAT WE HAVE ATTEMPTED TO DO IS
15 IDENTIFY LEGAL CONTENTIONS, AND THOSE ARE TO IDENTIFY EACH AND
16 EVERY INSTANCE AND EACH AND EVERY DOCUMENT AND EACH AND EVERY
17 PERSON WITH KNOWLEDGE, AND OUR COURT OF APPEAL STATES THAT THIS
18 IS EXACTLY THE TYPE OF DISCOVERY FOR WRITTEN DISCOVERY, BECAUSE
19 IT CAN -- THE CLIENT CAN PREPARE IT WITH THE BENEFIT OF COUNSEL,
20 AND ONCE YOU HAVE THAT IN WRITTEN FORM WE WOULD BE IN A POSITION
21 TO TAKE THE DEPOSITION, WHERE APPROPRIATE, IN ORDER TO FLESH OUT
22 THE FACTUAL INFORMATION, SO, FOR EXAMPLE, YOUR HONOR, IF PLAIN-
23 TIFFS CONTENTED THAT A CRUISE BOAT IN THE BAY CONSTITUTED A
24 NUISANCE, AND THEY HAVE IDENTIFIED THAT, WE WOULD HAVE A RIGHT --
25 AND IF WE WERE THE DEFENDANT IN THAT CASE, WE WOULD HAVE A RIGHT
26 TO KNOW THROUGH WRITTEN DISCOVERY EACH AND EVERY PERSON WITH
27 KNOWLEDGE IN RESPONSE TO THEIR CONTENTIONS AND FACTS AND CIRCUM-
28 STANCES SUPPORTING THEIR CONTENTIONS IN THE DOCUMENTS, AND IN THE

1 COURSE OF THAT, THAT WOULD BE IN WRITTEN DISCOVERY.

2 NOW, IF THERE IS A PERSON DOWN AT THE ANTHONY'S GROTTA
3 THAT OBSERVED THE CRUISE BOAT THAT WAS IDENTIFIED IN THE WRITTEN
4 DISCOVERY, THEN WE'RE GOING TO WANT TO TAKE THE DEPOSITION OF
5 THAT PERSON, NOT ON THE LEGAL CONTENTIONS, WHICH IS APPROPRIATE,
6 A LA RIFKIND V. LOS ANGELES, IN THE WRITTEN DISCOVERY, BUT WE'RE
7 GOING TO WANT TO ASK THEM THE FACTUAL BASIS FOR THEIR OBSERVA-
8 TIONS. WHEN WERE YOU THERE? WHAT DID YOU SEE? WAS IT A FOGGY
9 DAY? WAS IT A BRIGHT DAY? WHERE WERE YOU STANDING? HAVE YOU
10 BEEN THERE BEFORE? AND THAT'S THE DISTINCTION BETWEEN LEGAL
11 CONTENTIONS, WHICH THE CODE REQUIRES THEM TO ANSWER, AND THEN THE
12 ABILITY TO GO TO THE FACTUAL CONTENTIONS IN DEPOSITION. IT IS
13 VERY HARD. THEY HAVE ALREADY SAID THEY ARE NOT GOING TO GIVE US
14 ANY DEPOSITION WITNESSES. THEY HAVEN'T EVEN SEEN THE NOTICE. IN
15 TERMS OF THE TOPICAL AREAS OF INQUIRY, WE'D LIKE TO HAVE A FACTU-
16 AL BASIS TO ASSESS WHETHER WE NEED DEPOSITIONS, AND, IF WE DO, IN
17 WHAT AREA, A LA CRUISE BOAT MODEL. THE CODE REQUIRES IT.

18 IT'S A VERY SIMPLE CASE BEFORE THE COURT, IF YOU VIEW
19 IT THAT YOU CANNOT, CONSISTENT WITH RIFKIND, IN THE CODE OF DIS-
20 COVERY, YOUR HONOR, HIDE THE BALL AND ANSWER SELECTIVELY OUR
21 REQUESTS FOR DISCOVERY.

22 MR. SAMS: WELL, YOUR HONOR, WE'RE NOT TRYING TO HIDE THE
23 BALL. WITH RESPECT TO DEPOSITIONS THIS COURT HAS ALREADY RULED
24 ON THAT WITH RESPECT TO BERETTA, AND WE BELIEVE THAT THE COURT
25 HAS INDICATED THAT ITS RULINGS APPLY TO NOT JUST ONE DEFENDANT
26 BUT SEVERAL DEFENDANTS, SO THE ISSUE REGARDING DEPOSITIONS WITH
27 RESPECT TO CONTENTIONS AND THE ALLEGATIONS OF THE COMPLAINT HAS
28 ALREADY BEEN DECIDED BY THIS COURT. WE HAVE PRODUCED THOUSANDS

1 OF DOCUMENTS TO DEFENDANTS. WE ARE CONTINUING TO PRODUCE
2 DOCUMENTS TO DEFENDANTS. WE HAVE DOCUMENT PRODUCTION ONGOING TO
3 THE DEFENDANTS. WE ARE RECEIVING DOCUMENTS FROM THE DEFENDANTS.
4 SO DISCOVERY IS STILL ONGOING. THAT IS THE REASON WHY WE CAN'T
5 STATE AT THIS POINT IN TIME THAT THESE ARE THE ONLY DOCUMENTS ON
6 WHICH WE WILL RELY. THERE ARE SOME DOCUMENTS THAT WILL COME IN
7 THAT WE MAY USE AT TRIAL, SO IT'S AN ONGOING PROCESS, AND WE
8 OBVIOUSLY CAN'T LIMIT OURSELVES TO DOCUMENTS IN OUR POSSESSION AT
9 A CERTAIN POINT IN TIME.

10 WE BELIEVE THAT THESE QUESTIONS ARE IN MANY RESPECTS
11 REPETITIVE. THAT'S THE REASON WHY THE SAME FACTS ARE RESPONSIVE
12 TO A NUMBER OF DIFFERENT REQUESTS. FOR EXAMPLE, ROBERT DELFAY
13 (PHONETIC), WHO IS THE PRESIDENT OF ALL THREE TRADE ORGANIZA-
14 TIONS, OBVIOUSLY HAS KNOWLEDGE WITH RESPECT TO A NUMBER OF DIF-
15 FERENT REQUESTS, SO PLAINTIFFS BELIEVE THAT HE IS PROPERLY IDEN-
16 TIFIED AS A PERSON WITH KNOWLEDGE REGARDING THESE REQUESTS. HE
17 HAS INFORMATION THAT SATISFIES THESE REQUESTS, SO IF YOU WERE TO
18 LOOK AT EACH REQUEST INDIVIDUALLY, THERE WAS A BELIEF THAT WE
19 HAVE, INDEED, RESPONDED PROPERLY.

20 THE COURT: WELL --

21 MR. MAYBERRY: YOUR HONOR, WE HAVE A RIGHT FOR REPRISÉ,
22 DON'T WE, THAT THEY PRODUCE EVERYTHING AS OF TODAY? IF THEY GET
23 ADDITIONAL INFORMATION IN THE FUTURE, LET THEM SUPPLEMENT. I
24 HAVE NO PROBLEM WITH THAT. THAT'S NOT EVEN WHAT WE'RE ASKING THE
25 COURT, BUT AS OF TODAY WE HAVE A RIGHT TO KNOW WHAT THEY HAVE
26 GIVEN US AND WHAT THEY HAVEN'T, AND WHY ISN'T THERE A PRIVILEGE
27 LOG, YOUR HONOR? THE COURT ORDERED IT WITH THE C.M.O.

28 THE COURT: WELL, WITH RESPECT TO THAT ISSUE, I THINK THAT

1 THE DEFENSE'S POSITION IS WELL TAKEN, AND I'M GOING TO ORDER THAT
2 ON OR BEFORE MAY 10TH PLAINTIFFS SHALL PROVIDE A PRIVILEGE LOG IN
3 COMPLIANCE WITH THE CODE, SPECIFICALLY SECTION 2031(G)(3),
4 REFERENCING ANY RESPONSIVE DOCUMENT WITHHELD PURSUANT TO
5 PRIVILEGE, AND TO PRODUCE ALL RESPONSIVE NON-PRIVILEGED DOCUMENTS
6 -- AM I GOING TOO FAST FOR YOU? -- AND SUPPLEMENT THEIR RESPONSE
7 TO REQUESTS FOR PRODUCTION TO INDICATE THAT ALL RESPONSIVE NON-
8 PRIVILEGED DOCUMENTS HAVE BEEN PRODUCED. AN AFFIRMATIVE STATEMENT
9 ONE WAY OR ANOTHER, AS A FACT.

10 WITH RESPECT TO THE -- FOR EXAMPLE OR FOR INSTANCE,
11 COUNSEL, ALL I'D SAY IN THAT REGARD IS WHAT I HAVE REPLICATED. I
12 DON'T SEE THAT AS ANY DIFFERENT THAN THE "INCLUDED BUT NOT -- NOT
13 LIMITED TO," AND THEY HAVE TO GIVE YOU THE INFORMATION THAT IS
14 CURRENTLY IN THEIR KNOWLEDGE WITH RESPECT TO THAT.

15 MR. MAYBERRY: YOUR HONOR, THAT IS NOT THEIR ANSWER. THEIR
16 ANSWER TO THE DOCUMENT REQUEST IS, "WE WILL PRODUCE OR HAVE
17 PRODUCED," NOT BY EXAMPLE.

18 THE COURT: WELL, THE RESPONSES HAVE TO BE -- AND WITH
19 RESPECT TO THE WITNESSES, NOT, YOU KNOW, "SEE PREVIOUS RE-
20 SPONSES." YOU'VE GOT TO RESPOND TO EACH ONE INDIVIDUALLY WITH
21 RESPECT TO WHO THE WITNESSES ARE OR WHAT THE EXHIBITS ARE. I
22 KNOW IT'S DIFFICULT, BUT IT'S THE SAME BURDEN THAT WAS PLACED
23 UPON THE DEFENDANTS IN THIS CASE, AND I SEE NO REASON WHY IT
24 SHOULD BE ANY DIFFERENT FOR THE PLAINTIFFS.

25 MR. MAYBERRY: FOR CLARITY, THEY WOULD HAVE THAT OBLIGATION
26 THE COURT HAS JUST ARTICULATED AS TO THE DOCUMENTS AND AS TO THE
27 SPECIFIC INFORMATION BY REQUEST OF INTERROGATORY AND ALSO THE
28 LIST OF PERSONS WITH KNOWLEDGE?

1 THE COURT: YES, YOU CAN'T REFERENCE: "WE HAVE TOLD YOU WHO
2 THE WITNESSES ARE." HIS POINT IS WELL TAKEN: AS TO EACH SPECIFIC
3 FACT THAT IS ALLEGED, THAT HE WANTS THE CONTENTION; WHO IS THE
4 PERSON THAT HAS KNOWLEDGE ABOUT THAT PARTICULAR INTERROGATORY? I
5 THINK HE'S ENTITLED TO THAT.

6 MR. SAMS: I THINK THAT'S WHAT WE'VE DONE, YOUR HONOR, IN
7 OUR RESPONSES. WE'VE LISTED THE NAMES IN RESPONSES. WE HAVEN'T
8 SAID, "LOOK AT OUR PREVIOUS RESPONSES." IN EACH RESPONSE WE HAVE
9 PUT THE NAMES IN THERE.

10 THE COURT: WELL, YOU DO CROSS-REFERENCE THOSE RESPONSES, DO
11 YOU NOT? I'M LOOKING AT THIS EXHIBIT, TO OTHER INTERROGATORIES.

12 MR. MAYBERRY: IN EXHIBIT C THEY HAVE CUT AND PASTED. THEY
13 HAVE DONE -- IN THE OLD DAYS YOU HAD TO TYPE IT UP. IN THE
14 MODERN ERA THEY JUST CUT AND PASTE THEIR RESPONSES AS AN EASY WAY
15 OUT, AND SO SURE, THAT'S EXACTLY WHAT THEY DID, AND THAT IS SHOWN
16 ON EXHIBIT C TO OUR REPLY, PLUS A LISTING OF A WITNESS LIST FOR
17 PERSONS WITH KNOWLEDGE, WHICH IS ABSOLUTELY CONTRARY TO THE
18 CALIFORNIA CODE.

19 THAT'S THEIR WITNESSES. WHAT ABOUT THE PERSONS THAT
20 HAVE KNOWLEDGE, THAT HAVE EXCULPATORY EVIDENCE? WE WANT TO KNOW
21 WHO THOSE ARE, TOO.

22 MR. SAMS: I BELIEVE FOR MOST OF THE RESPONSES WE DID
23 INCLUDE FULL RESPONSES THAT INDICATED THAT, THE DOCUMENTS AND
24 WITNESSES AND FACTS. THERE MAY BE A FEW, AS I THINK BACK UPON
25 IT, WHERE WE REFERENCED PREVIOUS RESPONSES, AND IN THOSE IN-
26 STANCES PLAINTIFFS ARE WILLING TO GO BACK AND INCLUDE FULL RE-
27 SPONSES FOR THOSE.

28 THE COURT: WELL, I THINK THAT THE RESPONSES HAVE TO BE

1 SPECIFIC. AS FAR AS THE CUT AND PASTED IS CONCERNED, IF HE
2 INDICATES THE SAME ANSWER, SAME PEOPLE TO INTERROGATORY 68 AS TO
3 INTERROGATORY 92, BUT THAT 92 IS SEPARATELY ANSWERED, THAT IS
4 SUFFICIENT.

5 MR. MAYBERRY: AGREED, ASSUMING THERE IS SOME -- SOME RA-
6 TIONAL TIE. FOR EXAMPLE, THEY USE IN TERMS OF OUR REQUEST NUMBER
7 8, IN TERMS OF PERSONS WHO HAVE KNOWLEDGE THAT A.S.S.C. HAS
8 DISCOURAGED THE DEVELOPMENT OF SAFETY FEATURES, IN TERMS OF THEIR
9 DENIAL OF THAT AND THE PERSONS THEY LIST AS KNOWLEDGEABLE, YOU
10 HAVE THESE COMMUNITY ACTIVISTS WHO CAN TESTIFY UNDER THE WITNESS
11 LIST AS TO THE IMPACTS. IT DOESN'T EVEN TIE UP TO THE REQUESTS,
12 SO THAT THE -- SURE, IF THERE ARE WITNESSES THAT HAVE KNOWLEDGE
13 ABOUT A SPECIFIC CONTENTION, YEAH, THEY COULD REPEAT THOSE, BUT
14 WHAT THEY HAVE DONE IN EXHIBIT C -- AND I WOULD CALL THE COURT'S
15 ATTENTION TO FOOTNOTE 6 -- HOW CAN YOU HAVE, IF I'VE COUNTED
16 THESE RIGHT, 60 -- THEY HAVE USED THE SAME WITNESS LIST. THEY
17 HAVE USED THEIR WITNESS LIST, WHICH IS, BY DEFINITION, PERSONS
18 WITH KNOWLEDGE FAVORABLE TO THEIR CASE BUT NOT WITNESSES --
19 PERSONS WITH KNOWLEDGE FAVORABLE TO OUR CASE, WITH EXCULPATORY
20 EVIDENCE, FOR 61 REQUESTS, AS LISTED IN 6. YOUR HONOR, WE WERE
21 NOT GIVEN THE SAME 61 REQUESTS, I CAN ASSURE THE COURT. BY
22 DEFINITION, THE COURT SHOULD SEE -- BE ABLE TO SEE -- I'M NOT
23 GOING TO USE THE WORD "FRAUDULENT." I'M JUST GOING TO SAY IT'S
24 NONRESPONSIVE, INCONSISTENT WITH THE DISCOVERY CODE.

25 THE COURT: I DON'T SEE THAT. THESE ARE THE PEOPLE THEY
26 HAVE IDENTIFIED. THESE ARE THE PEOPLE THAT THEY ARE REFERRING TO.

27 MR. MAYBERRY: YOUR HONOR, JUST TO NAIL THIS DOWN, THE USE
28 OF A WITNESS LIST, WHEN THE REQUEST CALLS FOR PERSONS WITH

1 SPECIFIC KNOWLEDGE OF A SPECIFIC CONTENTION IS, BY DEFINITION --
2 DOESN'T -- I DON'T SEE HOW IT CAN LINE UP, BECAUSE THE PURPOSE OF
3 THE WITNESS LIST IS DIFFERENT THAN THE RESPONSE TO A DISCOVERY --

4 THE COURT: I DON'T THINK THAT THAT NECESSARILY FOLLOWS.
5 THE READING OF THE RESPONSE HAS GOT TO BE WITH RESPECT TO THIS
6 ISSUE THAT YOU HAVE PROPOUNDED. THESE ARE THE PEOPLE WHO HAVE
7 KNOWLEDGE WITH RESPECT TO THAT.

8 MR. MAYBERRY: WE WOULD BE HAPPY TO HAVE THAT INFORMATION
9 FROM THE PLAINTIFFS.

10 THE COURT: I THINK THEY HAVE GIVEN THAT INFORMATION,
11 HAVEN'T THEY, EXCEPT IN THOSE INSTANCES WHERE THEY HAVE
12 INCORPORATED?

13 MR. MAYBERRY: IT'S SUSPECT THAT A COMMUNITY, A PERSON WHO
14 CAN TESTIFY ON THE IMPACT OF CERTAIN TYPES OF VIOLENCE IN SAN
15 FRANCISCO COUNTY IS SOMEHOW AT ALL RELEVANT TO A CONTENTION IN
16 CONNECTION WITH PERSONS THAT HAVE KNOWLEDGE ABOUT A.S.S.C.
17 DISCOURAGING DEVELOPMENT OF FIREARM SAFETY. I DON'T SEE, YOU
18 KNOW --

19 THE COURT: IT MAY SOUND SUSPECT, BUT THAT IS THE ANSWER.
20 THE ANSWER IS GIVEN UNDER OATH, AND AS YOU PROCEED WITH THE
21 DEPOSITIONS IN DISCOVERY YOU WILL FIND OUT WHETHER IT IS SUSPECT
22 OR NOT.

23 MR. MAYBERRY: THANK YOU, YOUR HONOR. WE LOOK FORWARD TO
24 PROCEEDING WITH THE DEPOSITIONS ONCE WE HAVE THE -- WE HAVE
25 RESPONSE TO THE ORDER, AND IF THE COURT COULD GIVE A REASONABLE
26 AMOUNT OF TIME, BUT ALSO TO TRY TO KEEP IT ON THE -- IN A VERY
27 REASONABLE TIME, BECAUSE WE ARE FACING A CUTOFF ON FACT DISCOVERY
28 IN EARLY AUGUST.

1 THE COURT: WELL, AS I INDICATED, THE PRIVILEGE LOG SHALL BE
2 PROVIDED BY MAY 10 AND REFERENCE ANY RESPONSIVE DOCUMENT WITHHELD
3 PURSUANT TO THE PRIVILEGE, AND PRODUCE ALL RESPONSIVE NON-
4 PRIVILEGED DOCUMENTS AND SUPPLEMENTAL RESPONSES TO REQUESTS FOR
5 PRODUCTION; INDICATE THAT ALL NON-PRIVILEGED DOCUMENTS WERE
6 PROVIDED. THAT IS MAY 10.

7 MR. SAMS: FOR THE RECORD, YOUR HONOR, PLAINTIFFS HAVE NEVER
8 OBJECTED TO PROVIDING A PRIVILEGE LOG. IN OUR MEET-AND-CONFER
9 DISCUSSION I AGREED TO GIVE MR. MAYBERRY A PRIVILEGE LOG, BUT,
10 FRANKLY, IN THE INTERIM WE HAVE HAD TO DEAL WITH FOUR HUNDRED
11 INTERROGATORIES AND THEIR MOTIONS, BUT -- SO I HAVEN'T HAD A
12 CHANCE TO PREPARE IT, BUT PLAINTIFFS ARE WILLING TO PREPARE THAT
13 FOR THEM.

14 MR. MAYBERRY: THANK YOU, YOUR HONOR.

15 IT WASN'T 400. A.S.S.C. STANDS HERE TODAY WITH A
16 FRACTION OF THAT AMOUNT ON SECOND PRODUCTIONS. I DON'T KNOW WHY
17 PLAINTIFF IS RECASTING.

18 THE COURT: PLAINTIFFS KNEW WHAT THEY WERE GETTING INTO WHEN
19 THEY FILED THIS LITIGATION. IT IS A MONUMENTAL PIECE OF
20 LITIGATION, COUNSEL, AND YOU CAN'T SAY AT THIS POINT, "GEE WHIZ,
21 HAD WE EVER KNOWN." OFF THE RECORD.

22 (OFF-THE-RECORD PROCEEDINGS, AFTER WHICH THE FOLLOWING
23 PROCEEDINGS WERE HAD:)

24 THE COURT: ALL RIGHT, GENTLEMEN.

25 MR. MAYBERRY: THANK YOU, YOUR HONOR.

26 MR. SAMS: THANK YOU, YOUR HONOR.

27 (PROCEEDINGS CONCLUDED AT 9:35 A.M.)

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1 STATE OF CALIFORNIA)
2 COUNTY OF SAN DIEGO) SS.

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I, PATRICIA E. LUX, C.S.R. NO. 3477, AN OFFICIAL RE-
PORTER OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND
FOR THE COUNTY OF SAN DIEGO, HEREBY CERTIFY THAT I REPORTED IN
MACHINE SHORTHAND THE PROCEEDINGS HAD IN THE WITHIN CASE, AND
THAT THE FOREGOING TRANSCRIPT IS A FULL, TRUE, AND CORRECT TRAN-
SCRIPT OF THE SAID PROCEEDINGS.

DATED AT SAN DIEGO, CALIFORNIA, THIS 3RD DAY OF MAY,
2002.



PATRICIA E. LUX
C.S.R. 3477
OFFICIAL REPORTER