

Andrews - 191
Firearms Case

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
7 INCLUDED ACTIONS:) COORDINATION PROCEEDING
8 PEOPLE, ETC.) NO. 4095
V. ARCADIA MACHINE & TOOL, INC.)
9)
10 PEOPLE, ETC.) SAN FRANCISCO SUPERIOR COURT
V. ARCADIA MACHINE & TOOL) NO. 303 753
11)
12 PEOPLE, ETC.) LOS ANGELES SUPERIOR COURT
V. ARCADIA MACHINE & TOOL) NO. BC 210 894
13)
14)
15)
16) LOS ANGELES SUPERIOR COURT
17) NO. BC 214 794
18)
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15 REPORTER'S TRANSCRIPT

16 SEPTEMBER 15, 2000

17 APPEARANCES OF COUNSEL:

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7 (ADDITIONAL APPEARANCES ARE REFLECTED ON THE ATTACHED
8 SIGN-IN SHEET.)
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27 REPORTED BY:

28 PATRICIA E. LUX, CSR #3477
OFFICIAL REPORTER
619-685-6024

[illegible]

1 OTHER DEFENDANTS, BECAUSE, AS YOU KNOW, OUR POSITION IS
2 UNIQUE. WE DO NOT HOPE TO GET CAUGHT UP IN THE ISSUES WITH
3 WHICH WE ARE NOT CONNECTED, AND WE FEEL THAT IF YOU ARE TO
4 RESPECT CHRONOLOGY, SEPTEMBER 24TH, 1999, IS WHEN WE WERE
5 GOING TO PRESENT OUR ARGUMENT.

6 MR. CLEMENTS AND I ARE BOTH PREPARED TO GO, AND WE
7 FEEL THAT WE HAVE A RIGHT TO DO SO. THANK YOU.

8 THE COURT: YOU'LL BE HEARD, MR. LEAVITT.

9 MR. LEAVITT: THANK YOU.

10 MR. DORR: THANK YOU, YOUR HONOR.

11 JAMES DORR, FOR THE RECORD, ON BEHALF OF THE
12 DEMURRER WHICH HAS BEEN FILED BY THE MANUFACTURING DEFEND-
13 ANTS AND JOINED IN BY THE DISTRIBUTORS.

14 WE HAVE JUST OBVIOUSLY RECEIVED YOUR HONOR'S
15 TENTATIVE RULING IN THIS CASE, AND I WOULD LIKE TO ADDRESS
16 FOR YOUR HONOR THE REASONS WE BELIEVE THE COMPLAINTS FILED
17 BY THE PLAINTIFFS IN THIS -- IN THESE CASES ARE DEFICIENT
18 AND WHY WE THINK THE DEMURRER OF THE DEFENDANTS SHOULD BE
19 SUSTAINED.

20 IN THESE CASES THERE ARE 34 DEFENDANTS NAMED PLUS
21 NUMEROUS DOES. THOSE DEFENDANTS FALL INTO FOUR DIFFERENT
22 CATEGORIES IN THE COMPLAINT: MANUFACTURERS, WHO MANUFACTURE
23 FIREARMS, DISTRIBUTORS, WHO DISTRIBUTE THEM. THEY ARE SOLD
24 TO THE DISTRIBUTORS BY THE MANUFACTURER; RETAILERS, WHO THEN
25 SELL THE FIREARMS TO THE CONSUMING PUBLIC, AND THE TRADE
26 ASSOCIATIONS.

27 WHEN YOU LOOK AT THE ALLEGATIONS OF THE PLAIN-
28 TIFFS' COMPLAINTS, THEY HAVE INDISCRIMINATELY SUED EACH OF

1 COMPLAINTS AGAINST ANY OF THE DEFENDANTS LINKING THOSE
2 DEFENDANTS TO ANY ACTUAL WRONGDOING OR ANY SPECIFIC CRIMINAL
3 CONDUCT, AND I BELIEVE THEY HAVE DONE THAT IN THESE CASES
4 FOR PARTICULAR REASONS, BECAUSE THEY ARE TRYING TO AVOID THE
5 NECESSITY OF PLEADING AND PROVING SPECIFIC ACTS OF WRONGDO-
6 ING ON BEHALF OF SPECIFIC DEFENDANTS.

7 AND THEY ARE DOING THIS IN AN IMPROPER ATTEMPT TO
8 GET AROUND THE SUBSTANTIVE LAW OF THE STATE OF CALIFORNIA,
9 WHICH QUITE CLEARLY AND SPECIFICALLY PRECLUDES THE IMPOSI-
10 TION OF LIABILITY ON ANY DEFENDANT UNDER ANY THEORY OF
11 CALIFORNIA LAW FOR THE CRIMINAL CONDUCT OF THIRD PARTIES,
12 ABSENT A SPECIAL RELATIONSHIP OR SPECIAL CIRCUMSTANCE, AND
13 THERE IS NO SUCH SPECIAL RELATIONSHIP, NO SUCH SPECIAL
14 CIRCUMSTANCE PLED IN THESE COMPLAINTS.

15 JUST TO GIVE YOU AN EXAMPLE, AND I KNOW YOU'VE
16 SEEN THIS IN THE BRIEF. I REPRESENT STURM, RUGER AND COMPA-
17 NY INDIVIDUALLY IN THIS CASE. THEY ARE THE LARGEST MANUFAC-
18 Turer OF FIREARMS. THEY PROVIDE AND HAVE PROVIDED THE CITY
19 OF SAN DIEGO WITH ITS FIREARMS FOR YEARS, AS WELL AS OTHER
20 ENTITIES IN THE STATE OF CALIFORNIA.

21 STURM, RUGER IS ACCUSED IN THIS COMPLAINT GENERAL-
22 LY OF AN UNLAWFUL ACT UNDER SEVENTEEN-TWO. WHAT UNLAWFUL
23 ACT? WHERE? THERE HAS GOT TO BE SOME SPECIFICITY. THE
24 ONLY SPECIFIC STATUTES CITED THAT DEAL WITH SPECIFIC CONDUCT
25 WHICH IS NECESSARY UNDER SEVENTEEN-TWO TO SUSTAIN THE ALLE-
26 GATION OF UNLAWFUL ARE ROBERTI-ROOS ACT AND SOME SATURDAY
27 NIGHT SPECIAL ORDINANCES OF VARIOUS COMMUNITIES.

28 WITH REGARD TO THOSE ALLEGATIONS, THEY SAY CERTAIN

1 DISTRIBUTION PROCESS. THERE IS EXTENSIVE REGULATION OF IT.

2 YOU HAVE TO BE LICENSED. IF YOU DON'T COMPLY WITH
3 THOSE REGULATIONS YOU'RE SUBJECT TO LOSING YOUR BUSINESS.
4 YOU'RE SUBJECT TO CRIMINAL PENALTY.

5 THE MANUFACTURER, FOR EXAMPLE, CAN ONLY SELL ITS
6 PRODUCTS TO ANOTHER FEDERALLY LICENSED DISTRIBUTOR OR DEAL-
7 ER. IT'S WHAT THE LAW REQUIRES IT TO DO. MANUFACTURERS
8 DON'T SELL AT RETAIL.

9 THEY CAN'T SELL ACROSS LINES AND SELL IT RETAIL.
10 THEY HAVE TO SELL TO SOMEONE WHO IS FEDERALLY LICENSED.
11 THAT'S A REQUIREMENT OF THE STATUTE AND THE MANY LAWS GOV-
12 ERNING THIS CIRCUMSTANCE. THE MANUFACTURERS SELL TO DIS-
13 TRIBUTORS WHO ARE LICENSED.

14 THE DISTRIBUTORS SELL TO LICENSED RETAILERS, AND
15 IT'S THE RETAIL LEVEL WHERE THE SALE IS MADE TO THE CUSTOM-
16 ER, AND AT THE POINT THE CUSTOMER UNDER FEDERAL LAW HAS TO
17 FILL OUT AN EXTENSIVE FORM CALLED FEDERAL 4473, WHICH RE-
18 QUIRES THAT CUSTOMER TO SAY UNDER OATH, UNDER PENALTY OF
19 PERJURY, UNDER PENALTY OF FELONY, THAT HE'S BUYING THAT
20 FIREARM FOR HIMSELF.

21 NOW, THE PLAINTIFFS COMPLAIN ABOUT STRAW PURCHASES
22 IN THEIR COMPLAINT. THE FACT THAT A STRAW PURCHASE MAY BE
23 MADE BY SOMEONE WHO BUYS A GUN BUT THEN GIVES IT TO SOMEBODY
24 ELSE, THAT'S A FEDERAL FELONY, AND THE PERSON WHO MAKES THAT
25 PURCHASE HAS COMMITTED THIS FELONY AND SHOULD GO TO JAIL.
26 THIS FORM SAYS THAT. IT ADVISES THE PURCHASER OF THAT FACT.
27 IT IS OUT HERE, AND IT'S REQUIRED TO BE FILLED OUT AT THE
28 SAME TIME.

1 IS SIGNIFICANT, BECAUSE IT, AGAIN, INFORMS THE COURT HOW
2 THIS COMPLAINT, AS IT'S PLED, WHETHER IT CAN HAVE SPECIFICI-
3 TY. ITS LACK -- ITS HOMOGENIZATION OF ALLEGATIONS IN THIS
4 COMPLAINT CANNOT POSSIBLY SET FORTH A CAUSE OF ACTION HERE.
5 THEY COMPLAIN ABOUT SECONDARY MARKET. THAT SECONDARY MARKET
6 IS AN ILLEGAL MARKET, HAS NOTHING TO DO WITH ANY OF THESE
7 DEFENDANTS.

8 THE COURT: ISN'T IT THE GRAVAMEN OF THE COMPLAINT THAT
9 BY YOUR PRACTICES, WHATEVER THEY MAY BE, THAT YOU FACILITATE
10 THAT SECONDARY MARKET AND FACILITATE THE DEROGATION OF THESE
11 RULES YOU'VE BEEN TELLING ME ABOUT?

12 MR. DORR: THEY HAVE MADE THE SAME KIND OF CONCLUSORY
13 ALLEGATIONS THAT THEY MADE, THAT THE RETAILER DESIGNS FIRE-
14 ARMS OR THAT A MANUFACTURER SELLS AT RETAIL. THAT IS ALL
15 UNTRUE.

16 THE COURT: MR. DORR, ARE YOU REALLY CONFUSED BY THOSE
17 ALLEGATIONS WITH RESPECT TO THE INDIVIDUALS THAT YOU REPRESENT?
18

19 MR. DORR: ABSOLUTELY, YOUR HONOR.

20 THE COURT: THAT THEY PUT THEM TOGETHER? YOU'RE CONFUSED BY THE FACT THAT A MANUFACTURER -- YOU'RE ALLEGEDLY
21 PUT IN THE SAME BASKET WITH DISTRIBUTORS?
22

23 MR. DORR: I THINK THE COMPLAINT CONFUSES THE LAW AND
24 THE DEFENDANTS WITH REGARD TO TRYING TO GET PAST THIS DEMUR-
25 RER STAGE. LET ME JUST GIVE YOU AN EXAMPLE OF THAT. IS A
26 MANUFACTURER, IN THE DISTRIBUTION PROCESS -- THE ONLY ACT
27 THAT THE MANUFACTURER PERFORMS IS THE ACT THAT IT IS RE-
28 QUIRED TO PERFORM BY THE FEDERAL GOVERNMENT, AND THAT IS

1 A SLIVER OF THEIR THEORY, THEIR MAIN THEORY IS DIRECTED
2 TOWARD CRIMINAL CONDUCT, NOT ACCIDENTS. THEY ARE COMPLAIN-
3 ING ABOUT GUNS BEING ATTRACTIVE TO CRIMINALS OR TOO CONCEAL-
4 ABLE OR TOO SMALL. THAT WAS PRECISELY THE KIND OF ALLEGA-
5 TION THAT THE LEGISLATURE IN THIS STATE SAID YOU CAN'T
6 BRING, AND THEY SAID THAT IN 1714. THAT'S WHY THEY DID NOT
7 BRING A STRICT LIABILITY ACTION, BECAUSE THEY KNOW THE KINDS
8 OF ALLEGATIONS THEY HAVE IN THESE COMPLAINTS DEALING WITH
9 THAT ARE PRECLUDED UNDER 1714, SO THEY ARE TRYING TO SLIP
10 AROUND THE BAR OF 1714 BY BRINGING THEIR ALLEGATIONS IN A
11 DIFFERENT GUISE, AND THE CEL-TECH COURT SAYS YOU CAN'T DO
12 THAT. THE SAFECO COURT SAYS I THINK YOU CAN'T DO THAT.

13 THE COURT HAS TO LOOK BEYOND THE FORM OF THE CAUSE
14 OF ACTION TO THE SUBSTANCE OF WHAT THEY ARE REALLY PLEADING
15 HERE, AND THE SUBSTANCE OF WHAT THEY'RE PLEADING IS PRECLUD-
16 ED, AND THAT'S WHY THEY ARE TRYING TO COME THIS ROUTE, AND
17 WE SUBMIT THE COURT SHOULD NOT PERMIT THAT.

18 ADDITIONALLY, AND MOST FUNDAMENTALLY, THE CALIFOR-
19 NIA COURTS, AS I MENTIONED EARLIER, PRECLUDE THE IMPOSITION
20 OF LIABILITY ON THE PART OF A DEFENDANT FOR THE THIRD-PARTY
21 CRIMINAL ACTS OF SOMEONE ELSE WHOM THEY DON'T CONTROL, WITH
22 WHOM THEY DON'T HAVE ANY SPECIAL RELATIONSHIP, AND WITH WHOM
23 THERE ARE NO SPECIAL CIRCUMSTANCES, AND, AGAIN, THAT IS THE
24 ESSENCE OF THE COMPLAINT, REGARDLESS OF THE THEORY THEY HAVE
25 PLED.

26 THEY ARE TRYING TO HOLD THESE DEFENDANTS, WHO
27 TRULY MAKE AND SELL PRODUCTS, LIABLE FOR THE CRIMINAL ACTS
28 OF THIRD PARTIES. CALIFORNIA LAW PROHIBITS THAT. WHETHER

1 IT'S IN STRICT LIABILITY, WHETHER IT IS IN NEGLIGENCE,
2 WHETHER IT IS IN NUISANCE, AS THE MARTINEZ (PHONETIC) CASE
3 WHICH WE CITED TO THE COURT CLEARLY SETS OUT, AND THE LEGIS-
4 LATURE HAS SAID YOU CAN'T DO THAT, AT LEAST AS A POLICY
5 MATTER, UNDER 1714.

6 CLEARLY, WITH REGARDS TO STRICT LIABILITY, I THINK
7 AS A MATTER OF POLICY THE LEGISLATURE HAS SAID, AS WELL AS
8 THE COURTS, THAT IT'S NOT RIGHT TO HOLD SOMEONE LIABLE FOR
9 THE CRIMINAL CONDUCT OF OTHERS, ABSENT THOSE SPECIAL CIRCUM-
10 STANCES THAT MIGHT GIVE RISE TO LIABILITY, AND THEY ARE NOT
11 HERE.

12 WE BRIEFED THE OTHER REASONS, YOUR HONOR, WHY THE
13 NUISANCE LABEL DOES NOT SUCCEED. THE CITY OF SAN DIEGO CASE
14 SAYS QUITE CLEARLY YOU DON'T -- PUBLIC NUISANCE LABEL IS NOT
15 PERMISSIBLE FOR THE LAWFUL MANUFACTURE AND SALE OF A
16 PRODUCT. I THINK THAT CASE IS ON ALL FOURS WITH THIS CASE.
17 WE REPRODUCED, IN THE COURSE OF THE PROCESS OF PREPARING THE
18 DEMURRER, THE CALIFORNIA CASES, AND IN EACH OF THOSE CASES
19 THE NUISANCE INVOLVED WAS RELATED TO THE LAND OR TO SPECIFIC
20 CRIMINAL CONDUCT BEHIND PUBLIC NUISANCE. EVEN IF YOU LOOK
21 AT THE GALLO CASE, WHICH THE IS BROADEST APPLICATION OF
22 PUBLIC NUISANCE IN CALIFORNIA, BEHIND PUBLIC NUISANCE IS THE
23 IDEA THAT YOU'RE DEALING WITH SOME SPECIFIC LOCALIZED ABATA-
24 BLE CONDUCT. IF SOMEBODY IS MAINTAINING A POLLUTED SITE,
25 YOU CAN GO IN, AND THE COURT CAN ORDER THE SITE BE CLEANED
26 UP.

27 IN GALLO THERE WERE -- THERE WERE DRUG DEALERS IN
28 THE FOUR-BLOCK AREA, AND THE COURT WAS ABLE TO SAY SPECIFI-

1 AREN'T BEING ENACTED LEGISLATIVELY, THESE ARE LEGISLATIVE
2 ISSUES, LEGISLATIVE PROBLEMS, AND I THINK THAT IS WHAT THE
3 COURTS IN CALIFORNIA ARE COMPELLED TO DO AS WELL. I DON'T
4 THINK THERE IS ANY AREA OF CONSIDERATION BY THE LEGISLATURE
5 -- I THINK IT WOULD BE DIFFICULT TO POINT TO AN AREA OF
6 CONSIDERATION BY THE CALIFORNIA LEGISLATURE THAT HAS RE-
7 CEIVED MORE ATTENTION THAN THE AREA OF FIREARMS, VIOLENCE,
8 HOW YOU HANDLE, HOW YOU DEAL WITH GUNS AND FIREARMS IN
9 SOCIETY, WHAT IS RIGHT, AND WHAT IS WRONG, WHO CAN OWN, WHO
10 CANNOT OWN, WHAT PENALTIES ARE GOING TO BE IMPOSED FOR THE
11 VIOLATION OF THOSE LAWS.

12 IT IS EXTENSIVE, SO EXTENSIVE THAT GOVERNOR DAVIS
13 LAST YEAR VETOED SOME NEW LEGISLATION NOT BECAUSE HE DISA-
14 GREED WITH THAT LEGISLATION, BUT BECAUSE HE SAID HE HAD
15 PASSED FIVE PRIOR BILLS DEALING WITH THESE ISSUES EARLIER IN
16 THE YEAR AND DID STATE HE NEEDED TIME TO SORT THIS OUT,
17 NEEDED TIME TO GET THEM, THE ENFORCEMENT MECHANISMS, IN
18 PLACE AND TO DETERMINE THE EFFECTIVENESS OF THOSE BEFORE YOU
19 PROCEED FURTHER.

20 THE EFFECT OF WHAT THE PLAINTIFFS ARE TRYING TO DO
21 IN THIS CASE IS TO ASK THIS COURT TO NOW COME IN AND MAKE
22 DETERMINATIONS ON, FOR EXAMPLE, VERY BASIC ELEMENTS OF THEIR
23 COMPLAINT, SERIAL NUMBERS BEING OBLITERATED. THEY COMPLAIN
24 THAT SERIAL NUMBERS ARE BEING OBLITERATED FROM FIREARMS.

25 THE FEDERAL GOVERNMENT HAS RULES THAT REQUIRE THAT
26 MANUFACTURERS PUT SERIAL NUMBERS ON THEIR FIREARMS THAT ARE,
27 QUOTE, NOT READILY CAPABLE OF OBLITERATION. THE MANUFACTUR-
28 ERS DO THAT. THEY SUBMIT THEM TO THE B.A.T.F. AND SAY,

1 RESTRAINT AS MUCH IF NOT MORE SO IF THE LEGISLATURE HADN'T
2 DONE ANYTHING AT ALL. THERE IS NO AREA IN WHICH THE LEGIS-
3 LATURE HAS BEEN MORE ACTIVE THAN THIS. THE LEGISLATURE
4 GOVERNS MULTIPLE PURCHASES WITHIN THE STATE OF CALIFORNIA,
5 GOVERNS HOW YOU MAKE SALES, GOVERNS THE PENALTY FOR DOING A
6 STRAW SALE OR A STRAW PURCHASE, SO THOSE AREAS ARE AREAS
7 WHERE THE LEGISLATURE HAS SPOKEN, AND IT HAS MADE ITS
8 CHOICES BOTH WAYS.

9 IT ISN'T A ONE-WAY STREET. IT ISN'T A ONE-WAY --
10 A ONE-WAY STREET ABOUT RESTRICTING CERTAIN THINGS. IT'S
11 BALANCING OF THE INTERESTS OF THOSE WITH A LEGITIMATE INTER-
12 EST IN OWNING FIREARMS AND CONDUCTING BUSINESS WITHIN THIS
13 STATE AND THE INTERESTS OF THE STATE WITH REGARD TO THE
14 IMPROPER MISUSE OF THOSE PRODUCTS. THE LEGISLATURE MAKES
15 THOSE DETERMINATIONS.

16 THE COURT, IN OUR VIEW, AND WE REQUEST THAT YOU DO
17 SO, SHOULD DEFER TO THE LEGISLATURE ON THOSE ISSUES.

18 THANK YOU.

19 THE COURT: OKAY. MR. LEAVITT.

20 MR. LEAVITT: THANK YOU, YOUR HONOR.

21 YOUR HONOR, IN OVERRULING TRADERS' DEMURRER AND
22 DENYING OUR MOTION TO STRIKE YOU PLACED A GREAT BURDEN ON
23 US, AND, IF I CAN, I'D LIKE TO PUSH THE BURDEN BACK BY
24 MEETING YOUR TENTATIVE RULING WITH A TENTATIVE PLEA.

25 IF I SAID TO YOU RIGHT NOW, YOUR HONOR, "I'M
26 ASHAMED OF WHAT MY CLIENT HAS DONE. IT'S AWFUL. IT'S
27 TERRIBLE. IF YOU JUST TELL ME WHAT HE DID, WE'LL STOP IT.
28 WE'LL CONFESS JUDGMENT, AND YOU CAN IMPOSE PUNISHMENT."

1 PERSON MAY ESCAPE ALL PUNISHMENT WHEN HE SNEERINGLY OBEYS
2 THE LAW."

3 WE THINK WE'VE DONE NOTHING WRONG. WE THINK WE'RE
4 NOT SNEERING, BUT WE DO NOW FACE A QUESTION OF WHETHER FULL
5 OBSERVATION OF EVERY STATUTORY REQUIREMENT CARRIES PENALTIES
6 SIMPLY BECAUSE TRADERS SELLS NOT ONLY FISH HOOKS BUT HAND-
7 GUNS.

8 AND I NOTE, YOUR HONOR, THAT THE EMBLEMS OF YOUR
9 OFFICE ARE THE GAVEL AND ROBE, BUT YOU DEPEND FOR PROTECTION
10 AGAINST A ROOM FULL OF ATTORNEYS ON A SHERIFF'S DEPUTY ARMED
11 WITH THE VERY TYPE OF HANDGUN THAT THE PLAINTIFFS WANT TO
12 ABOLISH. WE THINK HOMEOWNERS DESERVE THE SAME KIND OF
13 PROTECTION, AND UNTIL THE LEGISLATURE SAYS, "STOP SELLING, "
14 WE FEEL THAT THE PLAINTIFFS HAVE NO AUTHORITY TO INVOKE THE
15 POWERS OF THE COURT TO BRING US HERE TO PLEAD FOR A CHANCE
16 TO DO LAWFUL BUSINESS.

17 NOW, I NOTE THAT IF WE ARE ABLE TO USE THE INSIGHT
18 THAT YOU SUGGEST WE HAVE, IN SEGREGATING THE CLAIMS AGAINST
19 EACH OF THE DIFFERENT DEFENDANTS, SO THAT TRADERS IS NOT
20 HELD RESPONSIBLE FOR THE DESIGN OF THE WEAPON OR THE INEF-
21 FECTIVE PLACING OF SERIAL NUMBERS, THE FOCUS, I SUSPECT, AND
22 I THINK PLAINTIFFS WOULD AGREE, IS THAT SOMEHOW TRADERS HAS
23 FAILED TO STOP STRAW MEN FROM GETTING A NUMBER OF GUNS AND
24 PUTTING THEM ON THE STREETS, AND IF THERE IS AN ABILITY, A
25 SCIENTIFIC WAY OF LOOKING AT SOMEBODY -- ANY ONE OF THE
26 PEOPLE HERE MIGHT BE A CUSTOMER IN SAN LEANDRO -- OF LOOKING
27 AND SAYING, "THAT PERSON IS A LIAR AND A CHEAT. I WILL NOT
28 SELL TO HIM."

1 IMPOSED UPON US.

2 NOW, ACCORDING TO THE PLAINTIFFS' PHILOSOPHICAL
3 VIEW OF WHAT HAS GONE ON, THE ENACTED LAWS, THE WRITTEN
4 LAWS, THE LAWS BY WHICH TRADERS AND THE OTHER DEFENDANTS
5 OPERATE ARE INADEQUATE. THEY HAVE SUCH GAPS IN THEM THAT
6 THE JUDICIAL SYSTEM MUST FILL IN THE GAPS WITH SOCIAL ACTIV-
7 ISM, WHICH THE PLAINTIFFS BELIEVE WILL LEAD TO A PERFECT
8 SOCIETY.

9 I SUGGEST, YOUR HONOR, THAT THOSE GAPS HAVE A
10 READILY RECOGNIZED NAME. THE NAME IS FREEDOM. THE CONCEPT
11 THAT WE HAVE IS THAT IF ACTIVITY IS NOT EXPRESSLY PROHIBIT-
12 ED, IT'S PERMITTED, AND WHAT WE FEARED IS THAT IF YOU ALLOW
13 A FILLING IN ACCORDING TO WHATEVER JUDGE HAPPENS TO HAVE THE
14 CASE, OF FILLING IN OF THOSE BLANK SPACES, WE ARE INVITING
15 THE TYPE OF HARM WHICH OTHER COUNTRIES HAVE SUFFERED. YET,
16 IN OUR WRITTEN PLEADINGS, AS YOU MAY HAVE NOTICED, WE ACCUSE
17 THE PLAINTIFFS OF FOLLOWING THE STRICTURES OF NAZI GERMANY.
18 DO WE DARE TO SAY THAT AGAIN? YOU BET WE DO, YOUR HONOR,
19 BECAUSE, IF YOU REMEMBER, THE SHORT LESSON IN HISTORY IS
20 THAT IN THE EARLY 1930'S THE NAZI PARTY WAS THE MOST POPULAR
21 PARTY IN GERMANY, A PARTY DEDICATED TO THE PUBLIC GOOD, TO
22 OVERRIDE THE DINOSAUR-LIKE RELICS OF THE OLD WYMAR REPUBLIC,
23 BRED TO ENHANCE THE STABILITY OF THE COMMUNITY, AND BECAUSE
24 THAT PARTY WAS GIVEN SUCH UNLIMITED POWER THE COUNTRY BECAME
25 TOTALITARIAN, AND WE'RE SUGGESTING THAT THE APPROACH, THE
26 SMALL STEP HERE OF ALLOWING YOU, THE COURT SYSTEM, TO FILL
27 IN AS FOUL SOMETHING WHICH NO LEGISLATURE HAS CONDEMNED IS
28 TO SHIFT THE BURDEN OF DEMOCRATIC SOCIETY FROM THE POPULARLY

1 N'T GET INVOLVED IN THIS LAWSUIT BETWEEN THESE PUBLIC PAR-
2 TIES AND THE DEFENDANTS, AND I THINK, YOUR HONOR, THAT WHEN
3 THEY TALK ABOUT COURTS IN OTHER CITIES AND CHICAGO, THEY ARE
4 TALKING ABOUT COURTS IN TERMS OF THE 17200 STATUTE, AND I
5 THINK IT'S IN THE CEL-TECH CASE WHICH THE DEFENDANTS RELY ON
6 SO THOROUGHLY IN THEIR PAPERS. IT'S INTERESTING. THERE IS
7 A SECTION WHERE THE CEL-TECH COURT POINTS OUT THAT HISTORI-
8 CALLY IN CALIFORNIA UNDER 17200 THE LEGISLATURE GIVES BROAD,
9 SWEEPING LANGUAGE ABOUT THE TYPES OF AUTHORITY THAT WAS
10 GOING TO BE ALLOWED TO THE COURT TO CORRECT ONGOING WRONGS,
11 AND, ESSENTIALLY, WHAT THE COURT SAYS IS THAT THEY DIDN'T
12 TRY TO ENUMERATE EVERYTHING THAT WOULD BE AN UNLAWFUL,
13 UNFAIR OR DECEPTIVE PRACTICE, AND THEY SAID THAT WAS BECAUSE
14 THE SCHEMES THAT MAN COULD COME UP WITH WOULD BE JUST INNU-
15 MERABLE, THAT MAN'S MIND WOULD ALWAYS COME UP WITH MORE THAN
16 THE LEGISLATURE COULD THINK OF, AND WHAT THEY SAID WAS,
17 "WE'RE GOING TO LEAVE THIS BROAD SO THAT THE COURTS CAN
18 DECIDE WHAT COMES WITHIN THE PURVIEW OF 17200, WHAT IS
19 UNFAIR, WHAT IS UNLAWFUL, AND WHAT IS DECEPTIVE AND WHAT
20 ISN'T, AND SO CONTRARY TO ANY OTHER STATE," AND I THINK THAT
21 IF THE COURT ACTUALLY LOOKS AT THE PAPERS SUBMITTED BY THE
22 PARTIES, YOU'LL SEE THAT THERE IS ABOUT FOUR COURTS THAT
23 HAVE THROWN THESE CASES OUT AND ABOUT FOUR THAT HAVEN'T, SO
24 RIGHT NOW IT IS SPLIT EVENLY, CONTRARY TO ANY IMPRESSION
25 THAT WAS LEFT EARLIER, BUT THE BOTTOM LINE, YOUR HONOR, IS
26 THAT IN THIS STATE THIS IS A DECISION THAT IS SPECIFICALLY
27 DIRECTED TO THIS COURT.

28 UNDER 17200 THE LEGISLATURE HAS SAID THAT IT'S THE

1 IS A CASE ON BEHALF OF THE PEOPLE, AND I THINK IN THAT TYPE
2 OF CASE, YOUR HONOR, IT'S APPROPRIATE THAT THERE COULD BE
3 DISGORGEMENT.

4 THERE ARE CERTAIN THINGS THAT RUN THROUGH THE
5 CASES. ONE IS THAT DISGORGEMENT IS AVAILABLE UNDER THE
6 STATUTE. IT MAY NOT BE AVAILABLE TO A REPRESENTATIVE PLAIN-
7 TIFF, BUT IT IS AVAILABLE UNDER 17200. THAT IS CLEAR FROM
8 THE CASE.

9 THE COURT: THE ONLY REFERENCE TO PRIVATE VERSUS PUBLIC
10 IS IN FOOTNOTE 10, AND I THINK YOU'RE READING IT MUCH TOO
11 NARROWLY IN TERMS OF THE APPROPRIATE REMEDY AS A CLASS
12 ACTION.

13 MR. DOWD: WELL, YOUR HONOR, WITH ALL DUE RESPECT, I
14 THINK A PUBLIC ENTITY IS SO DIFFERENT FROM A REPRESENTATIVE
15 PLAINTIFF. FOR EXAMPLE, IN THIS CASE, INSTEAD OF INTO A
16 FLUID RECOVERY FUND, COULDN'T A PUBLIC OFFICIAL FORCE THE
17 DEFENDANTS TO DISGORGE THEIR PROFITS, AND THROUGH THAT
18 DISGORGEMENT FUND SOME TYPE OF INJUNCTIVE RELIEF PERHAPS, OR
19 PERHAPS HAVE MONEYS SUBMITTED TO THE STATE? THERE IS A
20 REFERENCE TO THAT UNDER THE CARTWRIGHT ACT IN KRAUS, BUT I
21 THINK THE POINT IS THAT A PUBLIC AUTHORITY -- IT IS CLEAR IN
22 KRAUS THAT THE DEFENDANTS DON'T GET TO KEEP IT, AND THAT IS
23 NOT THE FIRST TIME THAT THE COURTS IN CALIFORNIA HAVE SAID
24 THAT.

25 I MEAN, IF YOU HAVE ILL-GOTTEN GAINS, IF WE ESTAB-
26 LISH THAT THESE DEFENDANTS ARE SELLING TO AN ILLEGITIMATE
27 SECONDARY MARKET, AND WE PROVE THAT, THAT THEY GET PROFITS
28 AND THEY MAKE MONEY FROM SELLING TO THAT SECONDARY MARKET,

1 IN OTHER WORDS, THERE WOULD BE AN ILLEGAL REBATE
2 THAT WOULD RESULT IN DISCRIMINATORY RATES, AND THAT I THINK
3 WAS THE CONCERN OF THE COURT IN THE DAY CASE.

4 IN THIS CASE, FOR EXAMPLE, YOUR HONOR, OR IF WE
5 WERE TO THINK OF A -- ANOTHER PRODUCT CASE, FOR EXAMPLE,
6 WHERE THE DEFENDANTS' PRODUCT DIDN'T LIVE UP TO ITS LABEL,
7 WHATEVER IT WOULD BE -- I MEAN, SITTING HERE NOW, AS I READ
8 THE COURT ORDER, I THOUGHT OF SOMETHING LIKE AIR RESTORATION
9 PRODUCTS, AND IF WE WERE ABLE TO DEMONSTRATE, AS PUBLIC
10 OFFICIALS OR A PRIVATE PLAINTIFF, THAT IT DIDN'T WORK OR
11 THAT THE PRODUCT WAS -- THAT THE CLAIMS ARE DECEPTIVE AND
12 THAT PEOPLE BOUGHT IT FOR THE WRONG REASONS, YOU WOULD BE
13 ABLE TO LET THOSE VICTIMS GET THEIR MONEY BACK UNDER SOME
14 SORT OF RESTITUTION ORDERS. SIMILARLY HERE, YOUR HONOR, IF
15 IT TURNS OUT THAT THERE IS EVIDENCE PRESENTED IN THIS CASE
16 DOWN THE LINE THAT CERTAIN PEOPLE BOUGHT GUNS, OR THE DE-
17 FENDANTS' PRACTICES WERE INDEED DECEPTIVE, AND PEOPLE BOUGHT
18 GUNS PURSUANT TO THOSE DECEPTIVE ADVERTISEMENTS OR STATE-
19 MENTS, COULD IT BE POSSIBLE THAT THIS COURT MAY WANT TO
20 ENTER AN ORDER SOMEDAY WHERE THERE IS RESTITUTION TO SOME
21 CLASS OF PEOPLE LIKE THAT?

22 THE COURT: THROUGH THE SALE? WHAT?

23 MR. DOWD: MONEYS PAID FOR GUNS. RETURN OF THE GUN,
24 AND YOU GET SOME SORT OF A BUY-BACK PROGRAM, WHERE PEOPLE
25 CAN BRING THE GUN BACK, GIVE IT TO THE MANUFACTURER, BECAUSE
26 THEY BOUGHT IT UNDER THESE DECEPTIVE TERMS, AND THEY GET
27 THEIR MONEY BACK.

28 I MEAN, I JUST THINK WHAT I'M ASKING THE COURT TO

1 THE NUISANCE AND SAY THERE IS DIFFERENT SHOOTINGS AND THING
2 LIKE THAT. OUR ALLEGATIONS ARE THAT THESE DEFENDANTS AND
3 THEIR CONDUCT HAS ESSENTIALLY RESULTED IN AN ILLEGITIMATE
4 SECONDARY MARKET FOR THEIR WEAPONS, AND, CONTRARY TO THEIR
5 CLAIMS ABOUT, YOU KNOW, LIVING WITHIN THE SCOPE OF THE LAW,
6 I MEAN, OUR ARGUMENT IS THAT THE DEFENDANTS HAVE KNOWINGLY
7 OR DELIBERATELY OR WITH WILLFUL IGNORANCE THEY HAVE CREATED
8 THE SECONDARY MARKET. THEY HAVE CREATED A PUBLIC NUISANCE
9 THAT INTERFERES WITH PUBLIC RIGHTS OF PEOPLE IN CALIFORNIA
10 THROUGH THEIR TRADE PRACTICES, AND THOSE TRADE PRACTICES ARE
11 LISTED ACROSS 29 PAGES OF THE COMPLAINT, YOUR HONOR, EXACTLY
12 WHAT THEY DID, THEIR FAILURE TO TRAIN PEOPLE, THEIR -- YOU
13 KNOW, THE DEFENDANTS' FAILURE TO CONTROL THEIR DISTRIBUTION
14 CHANNELS, THE DEFENDANTS' -- IT GOES ON AND ON FOR PAGE
15 AFTER PAGE OF HOW THE DEFENDANTS HAVE ESSENTIALLY CREATED
16 THIS ILLEGAL SECONDARY MARKET, AND I THINK WE HAVE PLED
17 THERE IS AN ILLEGAL SECONDARY MARKET.

18 THERE IS STATISTICAL EVIDENCE THROUGHOUT THE
19 COMPLAINT THAT DEALS WITH THE FACT THAT, FOR EXAMPLE, SOME-
20 THING LIKE 11 PERCENT OF ALL CRIME GUNS THAT ARE SEIZED,
21 ACCORDING TO A.T.F., ARE IN THE HANDS OF MINORS. OVER 40
22 PERCENT OF CRIME GUNS THAT ARE SEIZED IN THE MANY CRIMES ARE
23 SEIZED FROM CRIMINALS. THOSE ARE THE PEOPLE THAT THE CALI-
24 FORNIA LEGISLATURE AND THE FEDERAL GOVERNMENT DON'T WANT TO
25 HAVE GUNS. I MEAN, THAT IS THE MARKET THAT THESE DEFENDANTS
26 ARE NOT SUPPOSED TO REACH.

27 WE'VE ALSO PLED FACTS THAT SHOW THAT THOSE GUNS,
28 CRIME GUNS, TURN UP WITHIN THREE YEARS OVER 40 PERCENT OF

1 UNFAIR WRONG OF 17200 WAS ADDRESSED BY THE LEGISLATURE SO
2 THAT WHEN PEOPLE, YOU KNOW, WALKED UP TO THAT EDGE OF WHERE
3 THE LAW WAS, AND TOOK ACTION TO UNDERMINE THE PURPOSES OF
4 THE LAW, THERE WOULD BE A REMEDY, AND THAT REMEDY IS PARTIC-
5 ULARLY APPROPRIATELY BROUGHT BY PUBLIC PROSECUTORS IN A CASE
6 SUCH AS THIS. THAT REALLY IS THE HEART OF THIS CASE.

7 MR. LEAVITT USES AN EXAMPLE OF: WHAT ARE WE SUP-
8 POSED TO DO IF SOMEONE COMES INTO OUR STORE TO BUY A GUN?
9 HOW DO WE KNOW THAT THERE IS A STRAW PURCHASE GOING ON?
10 THAT WOULD DEPEND ON THE CIRCUMSTANCES, OF COURSE, BUT IN
11 MANY CASES IT IS VERY BLATANT. YOU MIGHT HAVE ONE PERSON
12 COME IN, PICK OUT THE GUN, SAY, "YEAH, THAT'S THE GUN I
13 WANT," GIVE MONEY TO ANOTHER PERSON, WHO BUYS THE WEAPON.

14 NOW, TRADERS WOULD SAY, "WE DIDN'T VIOLATE ANY
15 LAW. THE PERSON WHO BOUGHT THE WEAPON IS NOT A FELON, DID
16 NOT HAVE ANY DISABILITY FROM BUYING UNDER THE LAW," BUT THAT
17 CLEARLY IS AN UNFAIR TRADE PRACTICE. IT IS CLEARLY WINKING
18 AT THE LETTER OF THE LAW AND IGNORING ITS SPIRIT, AND THAT
19 IS THE TYPE OF PRACTICE THAT THIS LAWSUIT IS SEEKING TO END
20 THROUGH INJUNCTION AND OTHER RELIEF.

21 NOW, MR. LEAVITT SAID, "WELL, WHAT CAN WE DO ABOUT
22 IT? HOW CAN WE PUT A STOP TO IT? WE DON'T UNDERSTAND WHAT
23 IS ALLEGED." WELL, WITHOUT -- NOT PARTICULARLY RELEVANT TO
24 THE DEMURRER, BUT I THINK THE SMITH AND WESSON DEMURRER,
25 WHICH YOUR HONOR DIDN'T PUT SOME CONSIDERATION FOR, MR.
26 LEAVITT CAN READ SMITH AND WESSON'S AGREEMENT, AND HE CAN
27 SEE A NUMBER OF THINGS THAT HIS COMPANY AND THESE OTHER
28 DEFENDANTS CAN DO THAT WILL HELP END THESE UNFAIR AND SOME-

1 IN DAY IN PARTICULAR IT DOES STATE THAT IN ORDER
2 TO GET RESTITUTION THERE SHOULD BE MEASURABLE AMOUNTS TO
3 IDENTIFIABLE VICTIMS, BUT THAT IS IN DISCUSSION OF WHAT THE
4 ULTIMATE REMEDY IS, SO THAT'S IN A DISCUSSION DOWN THE LINE
5 AFTER TRIAL. AFTER THE COURT HAS SAID WHAT THE VIOLATION
6 IS, THEN THAT WOULD BE TESTED, WOULD BE RELEVANT, BUT IT
7 GOES ON TO TALK ABOUT IN A CASE AT THE DEMURRER STAGE IT IS
8 APPROPRIATE NOT TO ALLOW THE REMEDY, AND I'D QUOTE BRIEFLY
9 FROM THE OPINION AT PAGE 339, AND, AGAIN, IT'S IN REFERENCE
10 TO THE FILED RATE DOCTRINE MR. DOWD TALKED ABOUT.

11 "THE FILED TARIFFS ALLOW THE PRACTICE OF ROUNDING
12 UP," CHARGING FOR THE NEXT MINUTE OF A PHONE CALL THAT LASTS
13 FOR HALF A MINUTE, "SO THAT A CARD LASTS ONLY AS LONG AS THE
14 NUMBER OF FULL MINUTE UNITS DEBITED, REGARDLESS OF ACTUAL
15 TALK TIME.' THIS APPELLANTS DO NOT DISPUTE. THEY MAKE
16 CLEAR, IN FACT, THAT THEY ARE NOT ATTACKING THE PRACTICE OF
17 ROUNDING UP, AS TO DO SO WOULD TRIGGER THE APPLICATION OF
18 THE FILED RATE DOCTRINE." THAT SAID, THERE ARE NO ILL-GOTTEN
19 PROFITS TO RESTORE." THAT WAS THE CASE BECAUSE OF THE VERY
20 UNIQUE APPLICATION OF THE FILED RATE DOCTRINE. AS A MATTER
21 OF LAW, THERE WAS NO ABILITY TO GET A RESTITUTION REMEDY.
22 THAT IS NOT THE TYPICAL CASE. IT IS CERTAINLY NOT THIS
23 CASE.

24 ON KRAUS, YOUR HONOR'S TENTATIVE STATES THAT
25 "ABSENT CLASS CERTIFICATION, DISGORGEMENT INTO A FLUID
26 RECOVERY FUND IS NOT PERMITTED," AND CITES TO KRAUS, AND
27 THAT IS CERTAINLY SOME LANGUAGE FROM THAT OPINION, ALTHOUGH
28 IT GOES ON TO SAY, "IN A PRIVATE REPRESENTATIVE ACTION," NOT

1 PLAINTIFFS IS THAT THEY CAN JUST COME IN AND MAKE GENERAL-
2 IZED ALLEGATIONS AND BASICALLY PUT THE DEFENDANTS TO THE
3 BURDEN OF SORTING THROUGH WHAT IT IS THEY ARE CLAIMING ABOUT
4 UNLAWFUL PRACTICE. WHERE? WHAT UNFAIR PRACTICE? WHERE?
5 WHEN? THEY HAVE NOT DONE THAT.

6 IT IS THEIR BURDEN TO COME IN AND STATE A CAUSE
7 OF ACTION UNDER CALIFORNIA LAW AGAINST THE DEFENDANTS THAT
8 THEY HAVE NAMED, AND THEY HAVE NOT DONE THAT, EITHER INDI-
9 VIDUALLY OR BY CATEGORY OF DEFENDANT, OR IN ANY OTHER WAY.
10 MR. CLEMENTS JUST SAID THERE ARE PRACTICES WHICH MAY BE
11 UNLAWFUL. THEY HAVE ALLEGED THEY ARE UNLAWFUL. WHERE? BUT
12 -- AND THEY MAKE THAT CONCLUSORY ALLEGATION, BUT THEY DON'T
13 SAY WHAT, AND IT'S NOT PROPER OR PERMISSIBLE OR SHOULD NOT
14 BE PERMITTED, WE SUBMIT, YOUR HONOR, TO ALLOW CLAIMS OF THIS
15 TYPE TO BE BROUGHT WITHOUT MEETING THE BURDEN THAT IS THEIR
16 OBLIGATION, TO COME IN AND DELINEATE WHAT IT IS THAT THE
17 PARTIES HAVE DONE WRONG.

18 WE ALL KNOW THAT MINORS GET AHOLD OF ALCOHOL. WE
19 ALL KNOW THAT PEOPLE ABUSE ALCOHOL. WE KNOW MANUFACTURERS
20 OF ALCOHOLIC BEVERAGES HAVE GENERALIZED KNOWLEDGE SOME KIDS
21 WILL GO INTO STORES AND BUY ALCOHOL AND WILL ABUSE IT.

22 DOES THAT GENERALIZED KNOWLEDGE, THAT GENERALIZED
23 UNDERSTANDING LEAD TO A CLAIM AGAINST ALCOHOLIC BEVERAGE
24 MANUFACTURERS, DISTRIBUTORS, RETAILERS?

25 THE COURT: MR. DORR, ISN'T IT A QUESTION OF PROOF?
26 MR. DOWD HAS INDICATED BASICALLY WHAT THIS CASE IS ABOUT.
27 THIS CASE IS CLAIMING THAT YOU'VE CREATED A SECONDARY MARKET
28 IN WHICH ALL OF THESE LAWS THAT YOU CLAIM YOU'RE FOLLOWING

1 PRECISELY WHY THEY SHOULD NOT GET AWAY WITH WHAT THEY'RE
2 DOING IN THE CASE.

3 IF YOUR HONOR WOULD LIKE TO HEAR FROM MR. HEALEY
4 ON THE REMEDIES ISSUE --

5 THE COURT: NO, I REALLY DON'T NEED TO HEAR ANYTHING
6 MORE IN THAT REGARD.

7 MR. LEAVITT: YOUR HONOR, IF I MAY, MR. CLEMENTS GAVE
8 ONE EXAMPLE AFFECTING TRADERS, AN EXAMPLE OF POSSIBLE MIS-
9 CONDUCT WHICH NOWHERE APPEARS IN THE 29-PAGE COMPLAINT. THE
10 EXAMPLE THAT MR. CLEMENTS GAVE WAS THAT TRADERS WOULD BE AT
11 FAULT IF TWO PEOPLE CAME INTO A STORE, ONE OF WHOM WAS
12 ELIGIBLE TO BUY A WEAPON, THE OTHER OF WHOM WAS INELIGIBLE,
13 AND THE INELIGIBLE PERSON MADE ENOUGH OVERT REFERENCES SO
14 ANY REASONABLE PERSON OR ANY FOOL WOULD KNOW THAT THE GUN
15 WAS BEING BOUGHT FOR THE INELIGIBLE PERSON. WE CAN ACCEPT
16 THAT AS A VIOLATION OF SOMETHING FOR THE SAKE OF ARGUMENT.
17 HOWEVER, THERE IS NOTHING ALLEGED IN THE COMPLAINT THAT
18 TRADERS HAS EVER CONDUCTED A SALE THAT MEETS THE STANDARD,
19 OR WHAT THAT STANDARD IS, SO THAT TRADERS IN THE FUTURE CAN
20 AVOID SUCH SALES, AND, BECAUSE OF THAT, WE CONTEND THAT THE
21 COMPARISON BETWEEN MR. CLEMENTS' COURTROOM EXAMPLE AND THE
22 VAGARIES OF THE COMPLAINT SHOULD PERSUADE YOUR HONOR THAT
23 THE COMPLAINT OUGHT TO BE REWRITTEN, AND IF TRADERS HAS DONE
24 SOMETHING IN THE PAST, TO CLARIFY WHETHER IT WAS A SINGLE
25 INCIDENT, A PATTERN WHICH JUSTIFIES BROAD CONDEMNATION OR A
26 HYPOTHETICAL THAT TRADERS SHOULD AVOID. LACKING THAT, WE
27 DON'T HAVE ENOUGH INFORMATION TO FAIRLY DEFEND OURSELVES.

28 THANK YOU, YOUR HONOR.

1 THE THRUST OF THE PLAINTIFFS' ALLEGATIONS ARE IN THIS CASE.
2 WHETHER THEY CAN PROVE THAT OR NOT I DON'T KNOW, AND THE
3 MORE TIME I SPEND IN THIS CASE, I THINK THEY HAVE A TREMEN-
4 DOUS, TREMENDOUS BURDEN AHEAD OF THEM IN PROVING, BUT AS FAR
5 AS THE ISSUES THAT THE COURT HAS TO FACE ON A DEMURRER, I
6 THINK THAT THE COMPLAINT PASSES MUSTER.

7 WITH RESPECT TO THE ISSUES OF RESTITUTION AND
8 DISGORGEMENT I THINK THE MOTION TO STRIKE IS APPROPRIATE.

9 I WOULD NOTE THAT WE DO HAVE THE 172006 REMEDY,
10 WHICH IS STILL VERY MUCH A VIABLE PORTION OF THIS CASE, AND
11 THAT PROVIDES FOR -- I BELIEVE IT'S TWENTY-FIVE HUNDRED
12 DOLLARS FOR EACH ALLEGED VIOLATION, SO THAT COULD COME TO
13 QUITE A BIT OF MONEY, IF MONEY IS EVER INVOLVED IN THIS
14 CASE.

15 I DON'T BELIEVE THE COURT -- AND THIS WAS ANOTHER
16 ALLEGATION I THINK WAS PRESENTED IN THE WHITE CASE, AND THIS
17 IS ANOTHER MATTER THAT HAS BEEN THROWN AT THE COURT, IF I'M
18 LEGISLATING. I'M NOT LEGISLATING. I'M PRESIDING OVER A
19 LAWSUIT, AS WAS INDICATED IN THE OPINION, AND I DON'T THINK
20 THAT WE'RE PREEMPTING THE LEGISLATURE IN ANY FASHION.

21 THE TENTATIVE RULING WILL BE THE RULING OF THE
22 COURT. I'LL ASK MR. DOWD TO PLEASE PREPARE THE ORDER VERBA-
23 TIM FROM THE TENTATIVE, SO THAT I WILL BE HOISTED ON MY OWN
24 LANGUAGE, IF THAT HAPPENS, IN THE FIRST DISTRICT COURT OF
25 APPEAL.

26 MR. LEAVITT: YOUR HONOR, A PROCEDURAL QUESTION, IF I
27 MAY.

28 THE COURT: YES.

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

3

4 I, PATRICIA E. LUX, C.S.R. NO. 3477, AN OFFICIAL
5 REPORTER OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA,
6 IN AND FOR THE COUNTY OF SAN DIEGO, HEREBY CERTIFY THAT I
7 REPORTED IN MACHINE SHORTHAND THE PROCEEDINGS HAD IN THE
8 WITHIN CASE, AND THAT THE FOREGOING TRANSCRIPT IS A FULL,
9 TRUE, AND CORRECT TRANSCRIPT OF THE SAID PROCEEDINGS.

10

11 DATED AT SAN DIEGO, CALIFORNIA, THIS 18TH DAY OF
12 SEPTEMBER, 2000.

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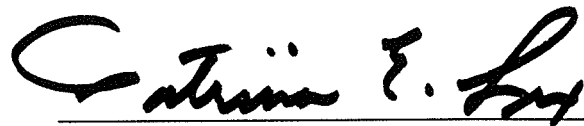
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PATRICIA E. LUX
C.S.R. 3477
OFFICIAL REPORTER