

INTAKE FORM

DATE Oct. 29, 1979

CLIENT NO. [REDACTED]

REFERRED BY [REDACTED]

PH: W: X

CLIENT'S NAME [REDACTED] M/F M SEX [REDACTED] TELEPHONE NO. [REDACTED]

ADDRESS [REDACTED] CITY Carlsbad, Cal. STATE Cal. ZIP CODE 92008

PROGRAM: CENTRO, OTAY, BOSTON, SENIOR CO., SENIOR CI., NO. CITY

MARRIED	AMER. IND.	ADULT	INDIV./INCOME	SPECIA GROUP
<u>SINGLE</u>	ANGLO	SENIOR (OVER 55)	\$2970-1	MILITARY
<u>DIVORCED</u>	ASIAN	YOUTH (UNDER 18)	3930-2	MILITARY DEP.
WIDOWED	BLACK	CHILD (UNDER 11)	4890-3	PUBLIC AID
SEPARATED	<u>CHICANO</u>		<u>5850-4</u>	SSI/SSA
	PILIPINO		6810-5	<u>OTHER</u>
	OTHER		7770-6	

HOUSEHOLD COMPOSITION/TOTAL					
NAME/RELATIONSHIP	AGE	SEX	NAME/RELATIONSHIP	AGE	SEX
a. [REDACTED] - son -	18 -	M	d. [REDACTED] daughter	8 -	F
b. [REDACTED] - son -	17 -	M	e.		
c. [REDACTED] - daughter -	8 -	F	f.		

ASSESSMENT OF PROBLEM/NEEDS  
Son was shot and killed.

APPOINTMENT SCHEDULE: PROGRAM \_\_\_\_\_  
DATE: \_\_\_\_\_ TIME: \_\_\_\_\_ SERVICE WKR. Fco. INTAKE WORKER [Signature]

SERVICE PLAN BASED ON ASSESSMENT OF PROBLEM NEEDS:  
ADVOCATE FOR CLIENT SO THAT ALL CIRCUMSTANCES SURROUNDING HER SON'S DEATH ARE CLEARLY UNDERSTOOD.

CLIENT'S NAME 1322

SS# [REDACTED]

DATE	SER		TIME
12-14		MRS. [REDACTED] CAME IN AND GAVE THE CORONER'S REPORT, AUTOPSY, AND DISTRICT ATTORNEYS REPORT. I MADE COPIES AND AS SHE REQUESTED SENT COPIES TO [REDACTED] LA PRENSA.	1/2 hr
2-4-80	V	WENT TO COURT TO HEAR OUTCOME OF TRIAL.	5 hrs.
3/3	S	MET WITH MRS. [REDACTED] [REDACTED]	
		nowny will substitute as attorney on wrongful death suit. we will assist in doing summaries of newspaper articles & reports	2w
3-5-80		MRS. [REDACTED] CALLED TODAY TO STATE THAT SHE IS UNHAPPY WITH THE TREATMENT HER SON [REDACTED] IS RECEIVING FROM POLICE DEPT. THEY ARE QUESTIONING BOY AT SCHOOL, AND MRS. [REDACTED] DOES NOT WANT HIM BOTHERED THERE. I LISTENED TO CLIENT.	1/2 hr.
3/3/80	S	attended meeting with Mrs. [REDACTED] and [REDACTED] - HE AGREED TO SUBSTITUTE as atty in wrongful death suit	2hr
3/20/80	LM2	filled out income tax returns for Mrs. [REDACTED] two sons - [REDACTED]	1hr
4/18/80	15	SPOKE TO [REDACTED] REGARDING CASE. he said Mrs. [REDACTED] STILL NEEDS to pay for deposition and the private investigator. the case is in continuance at the request of [REDACTED] and his atty.	

My final observation, in reference to the appearance of a tow truck to remove a light colored sedan - small car which was parked on the west side of the street. Residence.

Slump to the street.

Next I was aware that my husband was by that time in the street where the action was. Leaving my position at the window I opened the front door, <sup>stepped out into the atrium</sup> & called out, "Shall I call the police?" [redacted] responded, "Call the police," which I did & immediately returned to the window to observe. Within 2 minutes 3 police cars arrived driving south & 1 police car driving north. Shortly afterwards, more vehicles arrived on the scene including paramedics. I observed the paramedics removing clothing from the fallen individual lying in the street. Later, in the paramedics van with inside lights on, I could see that CPR was initiated.

In the meantime, police had placed the second individual in a police vehicle.

Going back to the second individual I was aware that he had appeared on the scene from the west side of the street. The exact direction & time I was not aware of, possibly because my vision had primarily been focused on [redacted] & the fallen individual.

From: Mrs. [REDACTED]  
[REDACTED] (P.O. Box 191 use)  
Carlsbad, Calif. 92008

November 12, 1979

SAN DIEGO COUNTY GRAND JURY  
220 WEST BROADWAY, ROOM 7003  
SAN DIEGO, CALIFORNIA 92101

LADIES AND GENTLEMEN OF SAN DIEGO COUNTY GRAND JURY:

IN THE INTEREST OF JUSTICE WHICH I BELIEVE IS <sup>THE</sup> MAIN PURPOSE AND FUNCTION OF YOUR GRAND JURY I PLEAD WITH YOU TO CONDUCT A FAIR, UNBIASED, HONEST REINVESTIGATION OF THE FATAL SHOOTING OF [REDACTED] BY [REDACTED] OCT. 24, 1979, in Carlsbad, Calif. [REDACTED] SHOT [REDACTED] IN THE BACK PER CORONER'S REPORT, AND INITIAL STATEMENT OF THE CORONER TO DAVID'S MOTHER WHEN SHE WAS INFORMED OF HIS DEATH OCT. 24, 1979.

[REDACTED] to cover up his criminal act of shooting [REDACTED] in the back, told the police that he shot [REDACTED] in self-defense.....WHICH IS A VERY OBVIOUS LIE BECAUSE NO ONE CAN EVER BE SHOT IN THE BACK IN SELF-DEFENSE, THAT, I STRONGLY POINT OUT, IS NOT SELF-DEFENSE, THAT IS MURDER, OR THE LEAST VOLUNTARY MANSLAUGHTER!!!!!!!!!!!!!! MAY I STRESS THAT..... THERE IS NO JUSTIFICATION TO SHOOTING ANYONE IN THE BACK!!!!!!!!!!!!!! I'm sure you will ALL agree with me on that fact!

I, AS A U.S. CITIZEN AND RESIDENT OF CARLSBAD, SAN DIEGO COUNTY, DEMAND THAT IN THE PURSUIT OF JUSTICE WHICH IS THE GRAND JURY'S PURPOSE AND GOAL, THAT AN IMMEDIATE ORDER BE MADE BY YOUR OFFICE TO LAUNCH A REINVESTIGATION OF THIS MURDER ..... WHICH HAS BEEN WHITEWASHED TOTALLY....BY THE SAN DIEGO'S DISTRICT ATTORNEY'S OFFICE, BY THE CARLSBAD POLICE. [REDACTED] IS AN ANGLO, AND RUMORED TO BE A GOOD FRIEND OF A POLICE OFFICER OF HIGH STANDING IN THE CARLSBAD POLICE DEPARTMENT, WHICH SPEAKS FOR ITSELF!!!! THE DISTRICT ATTORNEY I'M SURE WORKED DILIGENTLY TO PRODUCE THE UNTRUE, BIASED, INCORRECT, WHITEWASHED REPORT IT SUBMITTED STATING UNJUSTLY, UNFAIRLY, UNETHICALLY THAT IT WAS JUSTIFIABLE HOMICIDE..... THE REPORT IS FULL OF DISCREPANCIES, EVEN A MISSPELLED WORD, AND CONFLICTING STATEMENTS WHICH MERIT A REINVESTIGATION IMMEDIATELY!!!!!!!!!! I HAVE ALREADY SUBMITTED MY COMPLAINT TO MR. JIMMY CARTER, U.S. PRESIDENT, OUR U.S. ATTORNEY GENERAL IN WASHINGTON, THE STATE ATTORNEY OF CALIFORNIA AND GOVERNOR BROWN VIA A MAILGRAM NOV. 7, 1979. And, in the interest of justice I am sure they will investigate this matter immediately!!

I shall also recommend that the professional comportment of the Carlsbad police dept., and the District Attorney's office be also investigated because this is not the first time that it has been necessary for me to assist our Mexican-American people of the Carlsbad-Oceanside area to get a fair and unprejudiced treatment within the scope of the police depts, and the courts. I'm sick and tired of seeing our people, the Mex.-Amer. be hassled, to put it mildly because they do not speak up for themselves like they should!! I have intervened with Mrs. [REDACTED] permission, who has sought out my help in this matter, because Barney has not told the truth all the way, and all reports have been whitewashed to absolve him of any guilt which has to be impossible when you shoot someone in the BACK!!!

I am enclosing the D.A.'s report which is marked to point out obvious discrepancies WHICH MERIT AN IMMEDIATE REINVESTIGATION OF THIS SHOOTING!!!!!!!!!! I shall give you an informal outline of the obvious discrepancies, not to speak of the FINDINGS which would rebut this incorrect, disgusting whitewash report!!!!!!!!!!!!.....that is, the findings that you will uncover when an objective, out of the D.A.'s office, out-of-the-area investigation is made!

The D.A.'s office even whitewashed the coroner's report to minimize the word "back", they managed to find some medical examiner to whitewash the report!!!!!! All the initial coroner's reports and statements said that [REDACTED] was shot in the back. Even the policeman who came to talk to Mrs. [REDACTED] told her that [REDACTED] had been shot in the back.....but, naturally, to exonerate [REDACTED] a white man, the police dept, and all Carlsbad personnel who had jurisdiction in this matter and the D.A.'s office later toned the story down, to the ultimate, the D.A. whitewashing the coroner's report!!! We demand that an out-of-the-area coroner, med. examiner be brought and reexamine [REDACTED] body, this his mother has voiced she would like to see done!!!

Rebuttal No. 1: MAY I STRESS AND POINT OUT TO YOU THE GRAND JURY <sup>TO</sup> PLEASE HAVE THIS REINVESTIGATED AND YOU WILL FIND THAT IT WAS [REDACTED] AND [REDACTED] ....THE ONES WHO ACTUALLY HAD TO DEFEND THEMSELVES FROM [REDACTED] DEADLY WEAPON, A GUN...THAT LEGALLY HE HAD NO RIGHT TO USE UNDER U.S. LAWS IN PROTECTING PROPERTY!!!! AND [REDACTED], I REPEAT, ...HAD TO DEFEND THEMSELVES AGAINST A DEATHLY FORCE, [REDACTED]!!!! THIS IS MORE LIKE THE TRUTH IN ITS PROPER PERSPECTIVE!!!! [REDACTED] REPORTED TO THE POLICE THAT HE TOLD [REDACTED] "DON'T SHOOT!".....I have witnesses that know that [REDACTED] told this initially to the police, yet, the report incorrectly states differently!!!! If you really want to get the truth just hypnotize [REDACTED] to tell the truth, if he is such a good citizen, he shouldn't object, right?????????

Rebuttal No. 2: In paragraph number 4 of the D.A.'s report it states that [REDACTED] advanced on [REDACTED] with a tire iron in his RIGHT HAND.....please NOTE THAT THIS IS AN OBVIOUS LIE...BECAUSE... [REDACTED] LEFT-HANDED, not right-handed per his mother!!!!!! I'm really curious as to how the D.A. is going to whitewash THIS IMPORTANT FACT WHICH DISCREDITS HIS ALLEGED FAIR INVESTIGATION!!!!!!

*not possible under circumstances!!!!*  
Rebuttal No. 3: Now, in paragraph 4 it also states, "At that point, Mr. [REDACTED] returned his weapon to its pouch. Mr. [REDACTED] continued to advance on Mr. [REDACTED] and Mr. [REDACTED] attempted to defend himself by grabbing [REDACTED] arm....."- Now, really.....the D.A. is really insulting everyone's intelligence if he believes that the above statement from [REDACTED] I'm sure, is correct!!!!!! Now, analyze it.....IT IS NOT VERY PROBABLE THAT THE MAN WITH THE GUN, SEEING [REDACTED] ADVANCING ON HIM WITH A TIRE IRON....IT IS NOT IN THE LEAST PROBABLE, THAT ANY MAN WITH A GUN IN HIS HAND, SEEING ANOTHER MAN APPROACHING HIM WITH AN IRON.....IS GOING TO PUT HIS GUN BACK IN HIS POUCH.....IT IS JUST (NOT) A NORMAL REACTION! FOR A MAN IN THE ALLEGED IMMINENT DANGER [REDACTED] WAS SUPPOSED TO HAVE BEEN IN FOR HIM, [REDACTED] TO VERY COOLLY, CALMLY PUT HIS GUN...BACK IN THE POUCH AND GRAB [REDACTED] WITH HIS HAND!!!!!! REALLY, ANYONE WHO ACCEPTS THIS STATEMENT FROM [REDACTED] AS TRUE HAS TO BE VERY NAIVE AND NOT AN ATTORNEY..... I'm sure a man will discard his gun, and grab an alleged assailant with his hand, NOT TRUE AND NOT POSSIBLE, NOR PROBABLE!!!!!! Right?????

So, this statement had to be made by [REDACTED] to the police, well, it is an obvious lie and by logical analyzing, it cannot possibly be true.....HENCE, ANOTHER REASON TO reinvestigate this fatal, illegal shooting of a teenager, yet!!!! May I stress that [REDACTED] is an ex-Marine, who was trained to shoot to kill, no missing, they are accurate and do not make mistakes. [REDACTED] aim at [REDACTED] back was cold and deliberate!!!!!!

10:20 A.M

November 7, 1979

To:

From:

Re:

Mrs. [REDACTED] wants the Chicano Federation to DEMAND a

Grand Jury Investigation into the whitewash report from Miller's Office.

She has sent telegrams to:

President Carter

Governor Brown

U.S. Attorney General

Attorney General of Calif.

Wants co-operation from this office!!!

[REDACTED]

# HIGHWAY PATROL OFFICERS

needed  
*Men & Women*



**IT's More Than Just a Job!**

- 20-31 YEARS OF AGE
- HIGH SCHOOL DIPLOMA OR EQUIVALENT
- GOOD PHYSICAL CONDITION
- CALIFORNIA DRIVER'S LICENSE
- UNCORRECTED VISION NOT LESS THAN 20/40 CORRECTABLE TO 20/20

LAST DAY TO APPLY:  
APRIL 12TH

SALARY \$1259 - \$1572  
PER MONTH



**For more information, call the HIGHWAY PATROL OFFICE today at:  
281-8121 in San Diego**

53698

12:70 53693  
53732

WILLIAM H. KENNEDY  
ASST. DISTRICT ATTORNEY  
RICHARD D. HUFFMAN  
CHIEF DEPUTY DISTRICT ATTORNEY  
WAYNE A. BURGESS  
CHIEF INVESTIGATOR

OFFICE OF  
**THE DISTRICT ATTORNEY**  
COUNTY OF SAN DIEGO  
EDWIN L. MILLER, JR.  
DISTRICT ATTORNEY

COUNTY COURTHOUSE  
SAN DIEGO, CALIFORNIA 92101  
(714) 236-2329

November 5, 1979

Roy J. Kundtz  
Chief of Police  
City of Carlsbad  
1200 Elm Avenue  
Carlsbad, CA 92008

Re: Shooting of [REDACTED] by [REDACTED]  
October 24, 1979  
Carlsbad Police Department Case # [REDACTED]

Dear Chief Kundtz:

Our office has reviewed the reports furnished by your department concerning the shooting death of [REDACTED] on October 24, 1979. We have also conducted independent interviews of the witnesses to the above cited shooting, reviewed medical records and discussed the matter with the medical examiner.

The reports and interviews reflect that at approximately 12:45 a.m. on October 24, 1979, Mr. [REDACTED] of Carlsbad was awakened by noises outside his residence. He decided to investigate the sounds, which he believed to be coming from his garage. He took with him a leather pouch containing a .22 calibre magnum revolver, quietly opened the door to his residence and moved into his front yard. There he confronted a person later identified as [REDACTED] rolling a complete tire and wheel down Mr. [REDACTED] driveway, away from the garage and toward the street. Mr. [REDACTED] states that he then believed that the wheel had been removed from his Mercedes automobile, which was parked in his garage. In fact, the wheel had been removed from another vehicle belonging to Mr. [REDACTED] 19-year old son, [REDACTED]. That vehicle was parked in the driveway.

The records reflect that Mr. [REDACTED] then removed his weapon from its zippered pouch, cocked it, pointed it at Mr. [REDACTED] and ordered Mr. [REDACTED] to freeze, then to lie on his stomach.

Mr. [REDACTED] responded by dropping the tire and wheel assembly, but did not do as Mr. [REDACTED] had ordered. Instead, he advanced on Mr. [REDACTED] raising in his right hand a chromed tire iron which he



held chest high. At that point, Mr. [REDACTED] returned his weapon to its pouch. Mr. [REDACTED] continued to advance on Mr. [REDACTED] and Mr. [REDACTED] attempted to defend himself by grabbing Mr. [REDACTED] arm. A struggle ensued which resulted in both men falling to the ground. During that struggle, Mr. [REDACTED] reports, his head was slightly grazed by the tire iron swung by Mr. [REDACTED]

Mr. [REDACTED] then backed away from the struggle and retreated approximately 39 feet along the roadway as Mr. [REDACTED] continued to advance, tire iron in hand. At this time, a hitherto unseen person later identified as [REDACTED], emerged from behind [REDACTED]'s vehicle. Mr. [REDACTED] held in his hand an S-shaped jack handle. Again a struggle ensued between Mr. [REDACTED] and Mr. [REDACTED] as Mr. [REDACTED] began to approach. Mr. [REDACTED] broke loose and backed up approximately 10 feet. Mr. [REDACTED] began to approach more quickly, with the jack handle raised chest high.

At this point, the interviews indicate, Mr. [REDACTED] took the revolver from its case and pointed it toward Mr. [REDACTED]. Mr. [REDACTED] then made a swinging motion with his arm, moving his gun hand from right to left, away from Mr. [REDACTED] and toward Mr. [REDACTED]. He then fired the weapon. Mr. [REDACTED] reports seeing Mr. [REDACTED] make a motion as if to grab his leg, and [REDACTED] backed up. Mr. [REDACTED] continued to approach Mr. [REDACTED] with the raised tire iron. Mr. [REDACTED] did likewise with the jack handle, until the intervention of a neighbor, [REDACTED] who at that time arrived at the scene. Mr. [REDACTED] commanded Mr. [REDACTED] at gunpoint to drop the jack handle.

As Mr. [REDACTED] reached Mr. [REDACTED] Mr. [REDACTED] collapsed in the street. Paramedics later found the tire iron beneath his body. Twelve lug nuts from [REDACTED] vehicle were found in Mr. [REDACTED] pockets.

[REDACTED] had come out of the [REDACTED] residence by the time the shot was fired and was able to see the relative position of the parties. He states that just prior to his father turning and shooting, Mr. [REDACTED] was standing in a semi-crouched position holding the tire iron in both hands. He described the position as being much like a baseball batter awaiting a pitch. In this position, Mr. [REDACTED] would have had his left shoulder blade area exposed toward Mr. [REDACTED]

Mrs. [REDACTED] who was also in a position to see the shot fired, confirms that it was fired as Mr. [REDACTED] was swinging his arm to the left.

Mr. [REDACTED] who departed his residence upon hearing the shot, states that he observed both Mr. [REDACTED] and Mr. [REDACTED] advancing with objects in their hands, moving toward Mr. [REDACTED] who was backing away from them.

[REDACTED] was interviewed on three occasions. He admits that he and Mr. [REDACTED] were at the [REDACTED] residence for the purpose of stealing tires from [REDACTED] truck. Mr. [REDACTED] states that the idea to steal tires developed earlier in the evening of October 23 while he and Mr. [REDACTED] were returning home from a movie. Mr. [REDACTED] admits that the two then changed clothes and went driving through Carlsbad looking for an appropriate victim.

Mr. [REDACTED] further relates that the two men had removed two tires and were in the process of removing a third from the [REDACTED] vehicle when they were interrupted by Mr. [REDACTED]. Mr. [REDACTED] hid and did not see the initial struggle. He admits being armed with a jack handle and that Mr. [REDACTED] was armed with a tire iron.

The only major inconsistency between Mr. [REDACTED] version of the events and that of other witnesses is that Mr. [REDACTED] claims that prior to the shooting he told Mr. [REDACTED] not to shoot. This allegation was not included in Mr. [REDACTED] original statement to the police. No other witness reports hearing such a statement.

[REDACTED]

The angle of the wound was from left to right, looking toward the decedent's back, and approximately 10 degrees forward and 20 degrees downward. This evidence indicates that Mr. [REDACTED] was shot essentially from the left side and not in the back. A further conversation with Dr. [REDACTED] discloses that the wound displayed a pattern of abrasions which further indicates that Mr. [REDACTED] was shot from the side. These findings are consistent with [REDACTED] description of the "baseball" stance adopted by Mr. [REDACTED] before the shot was fired.

As a result of our examination of all available reports and our interviews with the witnesses involved, as well as a review of applicable provisions of law, we conclude, that Mr. [REDACTED] was authorized to use deadly force in self defense under the facts disclosed in the investigation.

In making that determination, we take no position on whether Mr. [REDACTED] action was proper in other than a legally justifiable sense. As you know, the District Attorney is called upon to decide not questions of morality but questions of whether specific conduct is criminal in nature. The only evidence which would tend to indicate that Mr. [REDACTED] acted in other than self defense is the statement of Mr. [REDACTED]. Mr. [REDACTED] partner in the criminal enterprise, who states that he asked Mr. [REDACTED] not to shoot. Not only must we consider the source of such an allegation, but we must also take into account that Mr. [REDACTED] alleged plea was not reported to the police in his first statement, and that his version of the incident has improved

from his standpoint, with each telling.

This being the case, and the other witnesses to the incident reporting no such pleas either from Mr. [REDACTED] or from Mr. [REDACTED] it is apparent that a criminal charge against Mr. [REDACTED] could not be sustained. Under professional standards relating to the charging function of the District Attorney, it would therefore be improper for me to initiate criminal proceedings against Mr. [REDACTED]

Clearly, a minor theft escalated swiftly into a tragic and deadly encounter. But the facts as disclosed by your investigation, and by our own, demonstrate that the tragic situation was not of Mr. [REDACTED] making. A reasonable person being approached by two men caught in the act of committing a crime and brandishing instruments capable of inflicting great bodily injury or death would reasonably believe that he was in imminent danger.

Whether Mr. [REDACTED] and Mr. [REDACTED] actually intended injury or death to Mr. [REDACTED] is immaterial, since it is clear that they did intend to create the fear of such injury. It also seems clear that they succeeded in creating that fear, and that the death of [REDACTED] was the unfortunate result of their criminal behavior.

Therefore, it is my conclusion that within the meaning of Penal Code sections 196 through 199, the homicide was justifiable.

If your conclusions are different than those expressed in this letter, please contact me as soon as possible.

Sincerely,

[REDACTED]  
District Attorney

ELM:ktc

11-7-79

JOHN KENNEDY  
DISTRICT ATTORNEY  
AND D. HUFFMAN  
ASSISTANT DISTRICT ATTORNEY  
W. A. BURGESS  
INVESTIGATOR

OFFICE OF  
THE DISTRICT ATTORNEY  
COUNTY OF SAN DIEGO

COUNTY COURTHOUSE  
SAN DIEGO, CALIFORNIA 92101  
(714) 236-2529

EDWIN L. MILLER, JR.  
DISTRICT ATTORNEY

November 5, 1979

Roy J. Kundtz  
Chief of Police  
City of Carlsbad  
1200 Elm Avenue  
Carlsbad, CA 92008

Re: Shooting of [REDACTED]  
October 24, 1979  
Carlsbad Police Department Case # [REDACTED]

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The reports and interviews reflect that at approximately 12:45 a.m. on October 24, 1979, Mr. [REDACTED] of Carlsbad was awakened by noises outside his residence. He decided to investigate the sounds, which he believed to be coming from his garage. He took with him a leather pouch containing a .22 calibre magnum revolver, quietly opened the door to his residence and moved into his front yard. There he confronted a person later identified as [REDACTED] rolling a complete tire and wheel down Mr. [REDACTED]'s driveway, away from the garage and toward the street. Mr. [REDACTED] states that he then believed that the wheel had been removed from his Mercedes automobile, which was parked in his garage. In fact, the wheel had been removed from another vehicle belonging to Mr. [REDACTED]'s 19-year old son, [REDACTED]. That vehicle was parked in the driveway.

The records reflect that Mr. [REDACTED] then removed his weapon from its zippered pouch, cocked it, pointed it at Mr. [REDACTED] and ordered Mr. [REDACTED] to freeze, then to lie on his stomach.

Mr. [REDACTED] responded by dropping the tire and wheel assembly, but did not do as Mr. [REDACTED] had ordered. Instead, he advanced on Mr. [REDACTED] raising in his right hand a chromed tire iron which he

November 5, 1979

held chest high. At that point, Mr. [redacted] returned his weapon to its pouch. Mr. [redacted] continued to advance on Mr. [redacted] and Mr. Barney attempted to defend himself by grabbing Mr. [redacted] arm. A struggle ensued which resulted in both men falling to the ground. During that struggle, Mr. [redacted] reports, his head was slightly grazed by the tire iron swung by Mr. [redacted]

Mr. [redacted] then backed away from the struggle and retreated approximately 39 feet along the roadway as Mr. [redacted] continued to advance, tire iron in hand. At this time, a hitherto unseen person, later identified as [redacted] emerged from behind [redacted] vehicle. Mr. [redacted] held in his hand an S-shaped jack handle. Again a struggle ensued between Mr. [redacted] and Mr. [redacted] as Mr. [redacted] began to approach. Mr. [redacted] broke loose and backed up approximately 10 feet. Mr. [redacted] began to approach more quickly, with the jack handle raised chest high.

At this point, the interviews indicate, Mr. [redacted] took the revolver from its case and pointed it toward Mr. [redacted] (Mr. [redacted] then made a swinging motion with his arm, moving his gun hand from right to left, away from Mr. [redacted] and toward Mr. [redacted] He then fired the weapon) (Mr. [redacted] reports seeing Mr. [redacted] make a motion as if to grab his leg, and [redacted] backed up. Mr. [redacted] continued to approach Mr. [redacted] with the raised tire iron.) Mr. [redacted] did likewise with the jack handle, until the intervention of a neighbor, [redacted] who at that time arrived at the scene. Mr. [redacted] commanded Mr. [redacted] at gunpoint to drop the jack handle.

As Mr. [redacted] reached Mr. [redacted] Mr. [redacted] collapsed in the street. Paramedics later found the tire iron beneath his body. Twelve lug nuts from [redacted] vehicle were found in Mr. [redacted] pockets.

[redacted] had come out of the [redacted] residence by the time the shot was fired and was able to see the relative position of the parties. He states that just prior to his father turning and shooting Mr. [redacted] was standing in a semi-crouched position holding the tire iron in both hands. He described the position as being much like a baseball batter awaiting a pitch. In this position, Mr. [redacted] would have had his left shoulder blade area exposed toward Mr. [redacted]

Mrs. [redacted] who was also in a position to see the shot fired, confirms that it was fired as Mr. [redacted] was swinging his arm to the left.

Mr. [redacted] who departed his residence upon hearing the shot, states that he observed both Mr. [redacted] and Mr. [redacted] advancing with objects in their hands, moving toward Mr. [redacted] who was backing away from them.

*Conflicting  
statement  
saying man  
falls then  
raises  
his hand  
not  
possible!!!*

██████████ was interviewed on three occasions. He admits that he and Mr. ██████████ were at the ██████████ residence for the purpose of stealing tires from ██████████ truck. Mr. ██████████ states that the idea to steal tires developed earlier in the evening of October 23, while he and Mr. ██████████ were returning home from a movie. Mr. ██████████ admits that the two then changed clothes and went driving through Carlsbad looking for an appropriate victim.

Mr. ██████████ further relates that the two men had removed two tires and were in the process of removing a third from the ██████████ vehicle when they were interrupted by Mr. ██████████. Mr. ██████████ did not see the initial struggle. He admits being armed with a jack handle and that Mr. ██████████ was armed with a tire iron.

The only major inconsistency between Mr. ██████████ version of the events and that of other witnesses is that Mr. ██████████ claims that prior to the shooting he told Mr. ██████████ not to shoot. This allegation was not included in Mr. ██████████ original statement to the police. No other witness reports hearing such a statement.

An autopsy was conducted on October 26, 1979 by Pathologist Dr. ██████████. Dr. ██████████ reports that the cause of death was a gunshot wound which entered the decedent's body 3 1/2 inches from the left armpit towards the back, and 2 inches below the armpit. The angle of the wound was from left to right, looking toward the decedent's back, and approximately 10 degrees forward and 20 degrees downward. This evidence indicates that Mr. ██████████ was shot essentially from the left side and not in the back. A further conversation with Dr. ██████████ discloses that the wound displayed a pattern of abrasions which further indicates that Mr. ██████████ was shot from the side. These findings are consistent with ██████████ description of the "baseball" stance adopted by Mr. ██████████ before the shot was fired.

As a result of our examination of all available reports and our interviews with the witnesses involved, as well as a review of applicable provisions of law, we conclude, that Mr. ██████████ was authorized to use deadly force in self defense under the facts disclosed in the investigation.

In making that determination, we take no position on whether Mr. ██████████'s action was proper in other than a legally justifiable sense. As you know, the District Attorney is called upon to decide not questions of morality but questions of whether specific conduct is criminal in nature. The only evidence which would tend to indicate that Mr. ██████████ acted in other than self defense is the statement of Mr. ██████████. Mr. ██████████ partner in the criminal enterprise, who states that he asked Mr. ██████████ not to shoot. Not only must we consider the source of such an allegation, but we must also take into account that Mr. ██████████'s alleged plea was not reported to the police in his first statement, and that his version of the incident has improved

of Kundtz  
Page 4  
November 5, 1979

from his standpoint, with each telling.

This being the case, and the other witnesses to the incident reporting no such pleas either from Mr. [REDACTED] or from Mr. [REDACTED] it is apparent that a criminal charge against Mr. [REDACTED] could not be sustained. Under professional standards relating to the charging function of the District Attorney, it would therefore be improper for me to initiate criminal proceedings against Mr. [REDACTED]

Clearly, a minor theft escalated swiftly into a tragic and deadly encounter. But the facts as disclosed by your investigation, and by our own, demonstrate that the tragic situation was not of Mr. [REDACTED] making. A reasonable person being approached by two men caught in the act of committing a crime and brandishing instruments capable of inflicting great bodily injury or death would reasonably believe that he was in imminent danger.

Whether Mr. [REDACTED] and Mr. [REDACTED] actually intended injury or death to Mr. [REDACTED] is immaterial, since it is clear that they did intend to create the fear of such injury. It also seems clear that they succeeded in creating that fear, and that the death of [REDACTED] was the unfortunate result of their criminal behavior.

Therefore, it is my conclusion that within the meaning of Penal Code sections 196 through 199, the homicide was justifiable.

If your conclusions are different than those expressed in this letter, please contact me as soon as possible.

Sincerely,

[REDACTED]  
District Attorney

ELM:ktc

WILLIAM H. KENNEDY  
ASST. DISTRICT ATTORNEY  
RICHARD D. HUFFMAN  
CHIEF DEPUTY DISTRICT ATTORNEY  
WAYNE A. BURGESS  
CHIEF INVESTIGATOR

OFFICE OF  
**THE DISTRICT ATTORNEY**  
COUNTY OF SAN DIEGO  
EDWIN L. MILLER, JR.  
DISTRICT ATTORNEY

COUNTY COURTHOUSE  
SAN DIEGO, CALIFORNIA 92101  
(714) 236-2329

November 6, 1979

[REDACTED]  
Carlsbad, California 92008

Dear Mrs. [REDACTED]:

During our earlier telephone calls, I promised you that I would let you know as soon as our office reached a determination as to whether to prosecute [REDACTED] [REDACTED] for the shooting death of your son. This morning, before the decision became public knowledge, I tried several times to contact you by telephone, but there was no answer. I am therefore taking this opportunity to personally let you know of our findings. I regret that I was unable to speak with you directly.

Enclosed please find a copy of the letter which the District Attorney had delivered to Carlsbad Police Chief Roy Kundtz this morning. The letter, I believe, is both self-explanatory and complete.

All I can add to the information in that letter is my heartfelt sympathy in your time of grief. In our conversations, you demonstrated a concern that this very tragic loss of your son not become, unnecessarily, a focal point for those who would spread disharmony. I greatly appreciate that attitude, and your recognition that nowhere in the entire investigation did any ethnic consideration play any part whatsoever.

As the letter from Mr. [REDACTED] indicates, this office under the law is not empowered to make moral judgements. Our function is restricted to determining whether, under applicable rules of law, certain behavior is, in fact, criminal in nature. In making a decision as to whether to lodge criminal charges against any individual, we must carefully weigh the facts and the law, and then decide whether that particular case would demonstrate beyond a reasonable doubt to a jury that a crime did take place. We must evaluate any proposed defendant's potential defenses as we make that determination.



██████████  
November 8, 1979

I know that my words, and those in the letter from the District Attorney, must seem somehow cold, sterile, because they are so far removed from the anguish you are feeling. Please try to understand, however, that a great number of concerned and dedicated people were involved in this investigation and in some small way we grieve with you that such an incident could have taken place.

Should you wish to discuss this further, I will be delighted to speak with you.

Best personal regards,

████████████████████

Special Assistant to  
the District Attorney

SC:ktc  
enclosure

... CONTACTED THE SUBJECT WHO ORALLY IDENTIFIED ...  
... IRVIN J. GARNER ...  
... HE HEARD NOISES OUTSIDE ...  
... DISCOVERED A MALE SUBJECT OUT BY HIS PAV ...  
... WHICH WAS PARKED IN THE DRIVEWAY OF HIS RESIDENCE ...  
... SUBJECT GARNER SAID THAT HE CONFRONTED THE SUBJECT AND ...  
... STRUGGLE ENSUED ... SUBJECT GARNER SAID THE STRUGGLE ...  
... WITH THE SUBJECT OUT TO THE EDGE OF THE ROADWAY WHERE ...  
... MORE VIOLENT STRUGGLE ENSUED ... SUBJECT GARNER SAID ...  
... THAT THE SUBJECT MADE AN EFFORT TO STRIKE HIM WITH A ...  
... IRON ... AT THAT POINT SUBJECT GARNER SAID THAT HE ...

SEARCHED	INDEXED	SERIALIZED	FILED
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
NOV 11 1979	FBI - MEMPHIS		

# SUPPLEMENT

70. CODE SECTION	71. CRIME	72. CLASSIFICATION		
73. VICTIM'S NAME - LAST, FIRST, MIDDLE (FIRM IF BUS.)		74. ADDRESS	RESIDENCE	BUSINESS
				75. PHONE

ON 10-24-79 AT 0055 HRS, I RESPONDED TO THE [REDACTED] ON A CALL OF A PROWLER THAT HAD BEEN SHOT BY A RESIDENT. UPON MY ARRIVAL, I OBSERVED SGT [REDACTED] AND OFFICER [REDACTED] KNEELING OVER A MALE SUBJECT THAT WAS SUPINE IN THE MIDDLE OF THE ROAD. I ALSO OBSERVED A SUBJECT BEING HANDCUFFED BY OFFICER [REDACTED] FURTHER NORTH OF ME. MY ATTENTION WAS NEXT DRAWN TO AN OLDER WHITE MALE ADULT, WHO WAS STANDING IN HIS UNDERWEAR AND WAS OBSERVED TO BE HOLDING A LEATHER CASE FOR A HANDGUN. I CONTACTED THE SUBJECT WHO ORALLY IDENTIFIED HIMSELF AS [REDACTED]. I ASKED SUBJECT [REDACTED] WHAT HAPPENED TO WHICH HE REPLIED THAT HE HEARD NOISES OUTSIDE HIS RESIDENCE AND UPON CHECKING DISCOVERED A MALE SUBJECT OUT BY HIS P/U TRUCK WHICH WAS PARKED IN THE DRIVEWAY OF HIS RESIDENCE. SUBJECT [REDACTED] SAID THAT HE CONFRONTED THE SUBJECT AND A STRUGGLE ENSUED. SUBJECT [REDACTED] SAID THE STRUGGLE WITH THE SUBJECT GOT TO THE EDGE OF THE ROADWAY WHERE MORE VIOLENT STRUGGLE ENSUED. SUBJECT [REDACTED] SAID THAT THE SUBJECT MADE AN EFFORT TO STRIKE HIM WITH A PIPE IRON. AT THAT POINT SUBJECT [REDACTED] SAID THAT HE

REPORTING OFFICERS		RECORDING OFFICER	TYPED BY	DATE AND TIME	ROUTED BY
FURTHER ACTION <input type="checkbox"/> YES <input type="checkbox"/> NO COPIES TO:		<input type="checkbox"/> DETECTIVE <input type="checkbox"/> JUVENILE <input type="checkbox"/> DIST. ATTY. <input type="checkbox"/> S.O./P.D.	<input type="checkbox"/> CII <input type="checkbox"/> PATROL <input type="checkbox"/> OTHER _____ <input type="checkbox"/> OTHER _____	REVIEWED BY _____ DATE _____	

NON-CONFIDENTIAL

SECTION -	71. CRIME	72. CLASSIFICATION			
73. NAME - LAST, FIRST, MIDDLE (FIRM IF BUS.)		74. ADDRESS	RESIDENCE	BUSINESS	75. PHONE

DROPPED THE GUN HE WAS CARRYING. AT THIS TIME NO FURTHER QUESTIONS WERE ASKED OF SUBJECT [REDACTED]. ANOTHER SUBJECT IDENTIFIED AS [REDACTED] TOLD ME THAT HE HAD WITNESSED THE INCIDENT. AT THIS TIME BOTH SUBJECTS WERE TRANSPORTED TO THE STATION FOR FURTHER QUESTIONING. SEE DETECTIVE [REDACTED]'S SUPPLEMENTAL REPORT FOR DETAILS. PRIOR TO SUBJECT [REDACTED] BEING TAKEN FROM THE SCENE, HE POINTED OUT A TIRE JACK CRANK WHICH HAD BEEN THROWN AWAY PRIOR TO OUR ARRIVAL BY THE SUBJECT TAKEN INTO CUSTODY BY OFFICER [REDACTED]. I PHOTOGRAPHED, RETRIEVED, AND SUBSEQUENTLY TAGGED THE CRANK INTO EVIDENCE (TAG # E02842). AT APPROX. 0230 HRS, I WENT TO TR. CITY HOSPITAL TO [REDACTED] AND BE AVAILABLE FOR ANY STATEMENT FROM THE SUBJECT IN EVENT HE REGAINED CONSCIOUSNESS. AT APPROXIMATELY 0302 HRS, I WAS TOLD BY A MEMBER OF THE HOSPITAL STAFF THAT THE SUBJECT HAD EXPIRED. I STOOD BY WITH THE BODY AT THE HOSPITAL UNTIL THE ARRIVAL OF THE COUNTY CORONER AND AT 0430 HRS ALL THE SUBJECTS PROPERTY WAS INVENTORIED BY THE CORONER. INVENTORIED BY THE CORONER WAS 1 BLUE JACKET W/ 5 CASSETTE.

REPORTING OFFICERS		RECORDING OFFICER	TYPED BY:	DATE AND TIME	ROUTED BY
FURTHER ACTION	YES <input type="checkbox"/>	NO <input type="checkbox"/>	<input type="checkbox"/> DET. CTIVE <input type="checkbox"/> GII <input type="checkbox"/> JUV. FILE <input type="checkbox"/> PATROL <input type="checkbox"/> DIST. ATTNY <input type="checkbox"/> OTHER <input type="checkbox"/> SO. J.P.D. <input type="checkbox"/> OTHER		
REVIEWED BY				DATE	

# SUPPLEMENT

79-471

3

71. SECTION	71. CRIME	72. CLASSIFICATION			
VICTIM'S NAME - LAST, FIRST, MIDDLE (FIRM IF BUS.)		74. ADDRESS	RESIDENCE	BUSINESS	75. PHONE

TAPES IN THE POCKETS, 1 - RED PLAID PENDELTON STYLE SHIRT, AND 1 WHITE LONG JOHN SHIRT. ALL THE PROPERTY WAS RELEASED TO ME BY THE CORONER. ALL THE AFORE-MENTIONED PROPERTY WAS TAGGED INTO EVIDENCE BY ME. ADDITIONALLY, 10 PHOTOGRAPHS OF THE SUBJECTS INNER WOUNDS WERE TAKEN BY ME AT THE HOSPITAL PRIOR TO THE SUBJECTS BODY BEING RELEASED TO THE CORONER THESE PHOTOGRAPHS WERE ALSO TAGGED INTO EVIDENCE.

SEE THE ATTACHED CRIME SCENE DIAGRAM. ALL DIAGRAM MEASUREMENTS WERE TAKEN WITH A ROLATAPE - MODEL 415.

REPORTING OFFICERS		RECORDING OFFICER	TYPED BY	DATE AND TIME	ROUTED BY	
FURTHER ACTION	<input type="checkbox"/> YES <input type="checkbox"/> NO	COPIES TO:	<input type="checkbox"/> DETECTIVE <input type="checkbox"/> JUVENILE <input type="checkbox"/> DIST. ATTY. <input type="checkbox"/> SO. J.R.D.	<input type="checkbox"/> CH <input type="checkbox"/> PATROL <input type="checkbox"/> OTHER	REVIEWED BY	DATE

Atty [REDACTED]

1 of 4

1. CRIME SECTION 4488 / 245 P.C. ATTEMPTED PATRIOTISM / A.D.W.		3. CRIME ATTEMPTED PATRIOTISM / A.D.W.		4. CLASSIFICATION AUTO. PARTS / TIRE IRON		5. REPORT AREA 43	
6. DATE AND TIME OCCURRED - DAY 10/24/79 0045HRS WED		7. DATE AND TIME REPORTED 10/24/79 0055HRS		8. LOCATION OF OCCURRENCE [REDACTED]			
9. VICTIM'S NAME LAST, FIRST, MIDDLE (FIRM IF BUSINESS) [REDACTED]				10. RESIDENCE ADDRESS [REDACTED]		11. RES. PHONE [REDACTED]	
12. OCCUPATION [REDACTED]		13. RACE - SEX [REDACTED]		14. AGE [REDACTED]		15. DOB [REDACTED]	
16. BUSINESS ADDRESS (SCHOOL IF JUVENILE) [REDACTED]				17. BUS. PHONE [REDACTED]			
18. CHECK IF MORE NAMES IN CONTINUATION [REDACTED]							
19. NAME - LAST, FIRST, MIDDLE [REDACTED]				20. CODE V-2		21. RESIDENCE ADDRESS [REDACTED]	
22. RESIDENCE PHONE [REDACTED]		23. RACE - SEX W-M		24. AGE 59		25. DOB [REDACTED]	
26. BUSINESS ADDRESS (SCHOOL IF JUVENILE) SIA				27. BUSINESS PHONE [REDACTED]			
28. BUSINESS PHONE [REDACTED]				29. NAME - LAST, FIRST, MIDDLE [REDACTED]		30. CODE [REDACTED]	
31. RESIDENCE ADDRESS [REDACTED]				32. RESIDENCE PHONE [REDACTED]			
33. OCCUPATION [REDACTED]		34. RACE - SEX [REDACTED]		35. AGE [REDACTED]		36. DOB [REDACTED]	
37. BUSINESS ADDRESS (SCHOOL IF JUVENILE) [REDACTED]				38. BUSINESS PHONE [REDACTED]			

MODUS OPERANDI (SEE INSTRUCTIONS)

DESCRIBE CHARACTERISTICS OF PREMISES AND AREA WHERE OFFENSE OCCURRED  
 DRIVEWAY OF SINGLE FAMILY DWELLING IN MID TO HIGH INCOME RES. AREA

DESCRIBE BRIEFLY HOW OFFENSE WAS COMMITTED  
 1) REMOVE TWO TIRES FROM V-2'S VEHICLE A 72 FORD PICK-UP CALLIC [REDACTED]  
 2) SURPRISES S/S IN DRIVEWAY, BOTH SUSPECTS THEN ASSAULT V-2 WITH TIRE IRONS

DESCRIBE WEAPON, INSTRUMENT, EQUIPMENT, TRICK, DEVICE OR FORCE USED  
 HANDS, JACK, TIRE IRONS

MOTIVE - TYPE OF PROPERTY TAKEN OR OTHER REASON FOR OFFENSE  
 PERSONAL GAIN / ESCAPE

ESTIMATED LOSS VALUE AND/OR EXTENT OF INJURIES - MINOR, MAJOR  
 \$170.00

WHAT DID SUSPECT/S SAY - NOTE PECULIARITIES  
 NONE

VICTIM'S ACTIVITY JUST PRIOR TO AND/OR DURING OFFENSE  
 IN RESIDENCE IN BED / IN DRIVEWAY TO RESIDENCE

TRADEMARK - OTHER DISTINCTIVE ACTION OF SUSPECT/S  
 TAKING TIRES AND WHEELS

VEHICLE USED - LICENSE NO. - ID NO. - YEAR - MAKE - MODEL - COLORS (OTHER IDENTIFYING CHARACTERISTICS)  
 [REDACTED]

49. RACE - SEX M-M		50. AGE 18	51. HT. 5'6"	52. WT. 134	53. HAIR BRN	54. EYES BRN	55. ID NO. OR DOB [REDACTED]	56. ARRESTED YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>
59. RACE - SEX M-M		60. AGE 19	61. HT. 5'6"	62. WT. 135	63. HAIR BRN	64. EYES BRN	65. ID NO. OR DOB [REDACTED]	66. ARRESTED YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>

RECORDING OFFICER [REDACTED]		TYPED BY [REDACTED]		DATE AND TIME [REDACTED]		ROUTED BY [REDACTED]	
FURTHER ACTION <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		COPIES TO: <input checked="" type="checkbox"/> DETECTIVE <input type="checkbox"/> JUVENILE <input type="checkbox"/> DIST. ATTY <input type="checkbox"/> SQ./P.D.		<input type="checkbox"/> CII <input type="checkbox"/> PATROL <input type="checkbox"/> OTHER		REVIEW DATE [REDACTED]	

6. CODE SECTION 244/188 & 245 P.C.	71. CRIME ATTEMPTED THEFT - A.D.W	72. CLASSIFICATION AUTO PARTS / TIRE IRONS
73. VICTIM'S NAME - LAST, FIRST, MIDDLE. (FIRM IF BUS.)	74. ADDRESS X RESIDENCE	BUSINESS 75. PHONE

ON 10/24/79 AT 0055 HRS I WAS CALLED TO [REDACTED] TO CHECK ON A SHOOTING THAT HAD JUST OCCURRED. I ARRIVED WITH SGT. J [REDACTED] AND OBSERVED A MM (LATER IDENTIFIED AS [REDACTED] 1/19/60) LAYING ON HIS BACK IN THE MIDDLE OF THE STREET. ANOTHER MM (LATER IDENTIFIED AS [REDACTED]) WAS STANDING NEXT TO [REDACTED] V-2 ([REDACTED]) WAS ALSO STANDING IN THE STREET. SGT. [REDACTED] BRIEFLY CONTACTED V-2 AND DETERMINED THAT [REDACTED] AND [REDACTED] HAD BEEN IN THE PROCESS OF TAKING THE TIRES FROM V-2'S VEHICLE (A 72 FORD PICK UP CALLIC. [REDACTED]). V-2 SURPRISED THE SUSPECTS WHILE THEY WERE WORKING. A FIGHT BROKE OUT BETWEEN V-2 AND THE SUSPECTS. BOTH OF THE SUSPECTS ATTEMPTED TO STRIKE V-2 WITH TIRE IRONS. V-2 APPARENTLY SHOT S-2 ([REDACTED]) DURING THE FIGHT. AFTER OBTAINING THAT INFORMATION, SGT [REDACTED] THEN DIRECTED ME TO TAKE [REDACTED] INTO CUSTODY FOR 245 P.C.

I TOOK [REDACTED] INTO CUSTODY AND TRANSPORTED HIM TO C.P.D. [REDACTED] WAS LATER TRANSPORTED TO VISTA COUNTY JAIL AND BOOKED ON CHARGES OF 245 P.C. AND

REPORTING OFFICER [REDACTED]	RECORDING OFFICER [REDACTED]	TYPED BY [REDACTED]	DATE AND TIME [REDACTED]	ROUTED BY [REDACTED]
FURTHER ACTION <input type="checkbox"/> YES <input type="checkbox"/> NO COPIES TO: <input type="checkbox"/> DETECTIVE <input type="checkbox"/> G11 <input type="checkbox"/> JUVENILE <input type="checkbox"/> PATROL <input type="checkbox"/> DIST. ATTY <input type="checkbox"/> OTHER <input type="checkbox"/> SQ./P.D. <input type="checkbox"/> OTHER		REVIEWED BY		DATE

664/488 P.C. + 245 P.C.	71. CRIME ATTEMPT PETTY THEFT & A.D.W.	72. CLASSIFICATION AUTO PARTS / TIRE IRONS		
73. VICTIM'S NAME - LAST, FIRST, MIDDLE. (FIRM IF BUS.)		74. ADDRESS <input checked="" type="checkbox"/> RESIDENCE	BUSINESS	75. PHONE

664/488 P.C.

TRUCK WAS LEFT AT THE SCENE FOR LATER PROCESSING BY DETECTIVES.

SEE ATTACHED:

SUPPLIMENTS BY: SGT J. [REDACTED] & [REDACTED]

STATEMENTS BY [REDACTED]

S ([REDACTED]) WAS TRANSPORTED TO TRI CITY HOSPITAL BY C.F.D. PARAMEDICS WHERE HE LATER DIED. SEE DETECTIVE FOLLOW-UP BY [REDACTED]

THE WEAPON [REDACTED] USED WAS PLACED INTO EVIDENCE BY [REDACTED] TAG # E02842.

[REDACTED]	RECORDING OFFICER	TYPED BY	DATE AND TIME	ROUTED BY
FURTHER ACTION	COPIES TO:	REVIEWED BY		
<input type="checkbox"/> YES	<input type="checkbox"/> DETECTIVE			
<input type="checkbox"/> NO	<input type="checkbox"/> JUVENILE			
	<input type="checkbox"/> DIST. ATTY			
	<input type="checkbox"/> SO./P.D.			
	<input type="checkbox"/> GII	DATE		
	<input type="checkbox"/> PATROL			
	<input type="checkbox"/> OTHER			
	<input type="checkbox"/> OTHER			

4044

69. CODE SECTION 64/488 + 845 P.C.	71. CRIME ATTEMPT PETTY THEFT - A.D.W.	72. CLASSIFICATION AUTO PARTS / TIRE IRONS
73. VICTIM'S NAME - LAST, FIRST, MIDDLE (FIRM IF BUS.)	74. ADDRESS <input checked="" type="checkbox"/> RESIDENCE	BUSINESS 75. PHONE

TAKEN AND RECOVERED WAS:

TWO "SEAR" RADIAL TIRES (NEAR NEW) EACH MOUNTED ON A CHROME PLATED WHEEL. NO SER. NUMBERS

VALUE APPROX \$170<sup>00</sup>

RECORDING OFFICER	TYPED BY	DATE AND TIME	ROUTED BY
FURTHER ACTION <input type="checkbox"/> YES <input type="checkbox"/> NO COPIES TO: <input type="checkbox"/> DETECTIVE <input type="checkbox"/> GII <input type="checkbox"/> JUVENILE <input type="checkbox"/> PATROL <input type="checkbox"/> DIST. ATTNY <input type="checkbox"/> OTHER <input type="checkbox"/> SO./P.D. <input type="checkbox"/> OTHER		REVIEWED BY	DATE



W 11 A H 11 11 11 11

1 OF 4

70. CODE SECTION 488.245 P.C.	71. CRIME PETTY THEFT A.D.W	72. CLASSIFICATION WHEELS & TIRES / TIRE IRON
73. VICTIM'S NAME - LAST, FIRST, MIDDLE (FIRM IF BUS.) [REDACTED]		74. ADDRESS <input checked="" type="checkbox"/> RESIDENCE <input type="checkbox"/> BUSINESS <input type="checkbox"/> 75. PHONE [REDACTED]

ON 10/24/79 AT 0055 I WAS DISPATCHED TO [REDACTED] DRIVE ON THE REPORT OF A PROWLER WHO HAD JUST BEEN SHOT WHEN I ARRIVED I OBSERVED A SUBJECT LAYING IN THE MIDDLE OF THE OF THE [REDACTED] THIS SUBJECT LATER IDENTIFIED AS [REDACTED] WAS LAYING ON HIS BACK. I SAW A WHITE MALE WEARING WHITE T-SHIRT AND WHITE SHORTS STAND NEARBY [REDACTED] I IMMEDIATELY CHECKED [REDACTED] AND FOUND HIS BREATHING VERY SHALLOW AND PULSE VERY FAINT. WITHIN SECONDS HIS BREATHING AND PULSE STOPPED. MYSELF AND OFFICER [REDACTED] BEGAN C.P.R AND CONTINUED C.P.R UNTIL THE ARRIVAL OF C.F.D PARAMEDICS (APPROX. 3 MINUTES) WHEN THE PARAMEDICS TOOK OVER I TURNED MY ATTENTION TO THE WHITE MALE WEARING THE UNDERCLOTHING. HE IDENTIFIED HIMSELF AS [REDACTED] WAS CARRYING A BROWN LEATHER GUN CASE WHICH HE TURNED OVER TO ME. IT CONTAINED A RUGER .22 CAL REVOLVER WITH ONE UNEXPENDED ROUND AND FIVE (5) LIVE ROUNDS IN THE CYLINDER. [REDACTED] SAID HE HAD FOUND TWO SUBJECTS STEALING THE TIRES & WHEELS OFF HIS TRUCK AND THAT HE HAD FOUGHT WITH [REDACTED] AND A SECOND SUBJECT WHOM HE THEN POINTED OUT STANDING NEARBY. [REDACTED] SAID THAT BOTH SUBJECTS HAD COME AT HIM

REPORTING OFFICER [REDACTED]	RECORDING OFFICER [REDACTED]	TYPED BY [REDACTED]	DATE AND TIME [REDACTED]	RECUTED BY [REDACTED]
FURTHER ACTION <input type="checkbox"/> YES <input type="checkbox"/> NO	COPIES TO: <input checked="" type="checkbox"/> DETECTIVE <input type="checkbox"/> JUVENILE <input type="checkbox"/> DIST. ATTY <input type="checkbox"/> SO./P.D.	<input type="checkbox"/> CII <input type="checkbox"/> PATROL <input type="checkbox"/> OTHER <input type="checkbox"/> OTHER	REVIEWED BY [REDACTED]	DATE [REDACTED]

SECTION	71. CRIME	72. CLASSIFICATION			
VICTIM'S NAME - LAST, FIRST, MIDDLE (FIRM IF BUS.)		74. ADDRESS	RESIDENCE	BUSINESS	75. PHONE

AT SEPARATE TIMES WITH A TIRE IRON OR SOMETHING SIMILAR IN THEIR HAND DURING THE FIGHT. AND THAT HE HAD SHOT [REDACTED] DURING THE FIGHT. AT THIS POINT I TOLD OFFICER G.A. [REDACTED] TO TAKE THIS SECOND SUBJECT INTO CUSTODY FOR SUSPICION OF P.C. 245. I TOLD OFFICER [REDACTED] TO TAKE [REDACTED] ASIDE AND GET ANY NECESSARY INFORMATION FROM HIM.

I TURNED MY ATTENTION BACK TO [REDACTED] WHO WAS STILL LAYING IN THE STREET BEING WORKED UPON BY C.F.D PARAMEDICS. WHEN [REDACTED] WAS LIFTED TO A GURNEY I FOUND A LUG WRENCH BENEATH HIM. THE PARAMEDICS HAD REMOVED HIS SHOES AND PANTS. I EXAMINED THEM AND FOUND TWELVE (12) LUG NUTS IN THE LEFT FRONT POCKET AS WELL AS A POCKET KNIFE. I ALSO FOUND A '77 TOYOTA CA. [REDACTED] PARKED APPROX. 40 YARDS SOUTH OF THE DRIVEWAY OF [REDACTED] THE HOOD WAS WARM INDICATING IT HAD BEEN RECENTLY DRIVEN. THE SUBJECT THAT OFFICER [REDACTED] HAD TAKEN INTO CUSTODY IDENTIFIED HIMSELF AS [REDACTED] [REDACTED] SAID THE TOYOTA WAS HIS. I SUBSEQUENTLY STORED THE CAR PER 20651 (4) V.C.

[REDACTED] WAS TRANSPORTED TO TRI-CITY HOSPITAL BY PARAMEDICS. [REDACTED] AND IS SON [REDACTED] WERE TAKEN TO C.P.D AND INTERVIEWED BY DETECTIVE [REDACTED]

REPORTING OFFICER	RECORDING OFFICER	TYPED BY	DATE AND TIME	ROUTED BY
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
FURTHER ACTION	COPIES TO:	REVIEWED BY		
<input type="checkbox"/> YES	<input checked="" type="checkbox"/> DETECTIVE	DATE		
<input type="checkbox"/> NO	<input type="checkbox"/> JUVENILE	[REDACTED]		
	<input type="checkbox"/> DIST. ATTY.	[REDACTED]		
	<input type="checkbox"/> S.O./P.D.	[REDACTED]		
	<input type="checkbox"/> CII	[REDACTED]		
	<input type="checkbox"/> PATROL	[REDACTED]		
	<input type="checkbox"/> OTHER	[REDACTED]		
	<input type="checkbox"/> OTHER	[REDACTED]		

70. CODE SECTION	71. CRIME	72. CLASSIFICATION			
73. VICTIM'S NAME - LAST, FIRST, MIDDLE (FIRM IF BUS.)		74. ADDRESS	RESIDENCE	BUSINESS	75. PHONE

WHILE AT THE SCENE I MADE CONTACT WITH [REDACTED] AND HIS WIFE [REDACTED]

BOTH STATED THEY HAD WITNESSED PART OF THE INCIDENT AFTER THE SHOOTING. I ADVISED THEM THEY WOULD BE CONTACTED BY C.P.D. INVESTIGATORS REFERENCE WHAT THEY HAD SEEN.

[REDACTED] RECORDING OFFICER		TYPED BY	DATE AND TIME	ROUTED BY	
FURTHER ACTION	COPIES	REVIEWED BY			
<input type="checkbox"/> YES	<input type="checkbox"/> DETECTIVE				<input type="checkbox"/> CII
<input type="checkbox"/> NO	<input type="checkbox"/> JUVENILE				<input type="checkbox"/> PATROL
	<input type="checkbox"/> DIST. ATTY.				<input type="checkbox"/> OTHER
	<input type="checkbox"/> SO./P.D.				<input type="checkbox"/> OTHER
			DATE		

# SUPPLEMENT

4 OF 4

70. CODE SECTION	71. CRIME	72. CLASSIFICATION			
VICTIM'S NAME - LAST, FIRST, MIDDLE (FIRM IF BUS.)		74. ADDRESS	RESIDENCE	BUSINESS	75. PHONE

## REFERENCES:

PROPERTY TAGS E02836, E02837, E02838, E02839

VEHICLE STORAGE FORM 180

CRIME REPORT T9-4991

ARREST REPORT T9-4991

SUPPLEMENTS FROM [REDACTED]

[REDACTED]		RECORDING OFFICER	TYPED BY	DATE AND TIME	ROUTED BY
FURTHER ACTION	<input type="checkbox"/> YES <input type="checkbox"/> NO	COPIES TO:			
		<input type="checkbox"/> DETECTIVE	<input type="checkbox"/> CII		
		<input type="checkbox"/> JUVENILE	<input type="checkbox"/> PATROL		
		<input type="checkbox"/> DIST. ATTNY	<input type="checkbox"/> OTHER		
		<input type="checkbox"/> SO. P.D.	<input type="checkbox"/> OTHER		
REVIEWED BY				DATE	

SUPPLEMENTAL

Case 79-1091

On 10-24-79, at approximately 0100 hours, the undersigned investigator was called out to investigate an incident at [REDACTED] in which a prowler had been shot.

While enroute to the crime scene, I was directed to Tri-City Hospital by Sgt. [REDACTED] due to the suspect's injuries; at 0120 hours the undersigned arrived at Tri-City Hospital, where I was informed by a member of the hospital staff that I would be unable to interview the subject due to his being unconscious; he was receiving emergency treatment.

At approximately 0230 hours, Officer [REDACTED] relieved me at the hospital and was available for any statement from the subject in the event that he regained consciousness.

At approximately 0300 hours the undersigned arrived at the station where I was informed by Sgt. [REDACTED] of the circumstances. Sgt. [REDACTED] stated the following: At approximately 0055 hours, Sgt. [REDACTED] and Officer [REDACTED] were dispatched to the [REDACTED] address on a report of a prowler, reportedly shot by a citizen. Upon arrival, Sgt. [REDACTED] observed a subject lying in the middle of the street, in the [REDACTED]. This subject was later identified as [REDACTED] ez. Subject was lying on his back. Sgt. [REDACTED] checked [REDACTED] and found his breathing very shallow and pulse very faint. Within seconds his breathing; pulse stopped.

Sgt. [REDACTED] and Officer [REDACTED] began CPR (Cardio-pulmonary Resuscitation) and continued until arrival of the paramedics.

Sgt. [REDACTED] while at the scene, observed a white male adult, wearing only a white tee-shirt and white shorts standing by [REDACTED]. This male identified himself as [REDACTED] Mr. [REDACTED] was carrying a brown leather gun case which he turned over to Sgt. [REDACTED]. The case contained a Ruger .22 caliber revolver with one expended round and five live rounds in the cylinder.

Mr. [REDACTED] related to Sgt. [REDACTED] that he had found two subjects stealing the tires and wheels off his truck, and that he had fought with [REDACTED] and a second subject, who he pointed out standing nearby, who was later identified as [REDACTED]. Mr. [REDACTED] stated that both subjects had come at him at separate times with a tire iron, or with something similar, in their hands. During the fight he shot [REDACTED]

Subject [REDACTED] was taken into custody and arrested by Officer [REDACTED] Badge # [REDACTED] for 245 PC Assault With a Deadly Weapon, and 664/438 PC Attempted Petty Theft, and was transported to the station for investigation.

Sgt. [REDACTED] stated when subject [REDACTED] was removed from the scene and placed in the ambulance Sgt. [REDACTED] found a lug wrench beneath him. While the paramedics were administering medical treatment, they removed [REDACTED] shoes and pants. Sgt. [REDACTED] examined the articles of clothing, and found twelve lug nuts in the left front pocket of the pants. He also found, parked near the scene, a 1976 Toyota sedan, bearing California license [REDACTED] found to be registered to [REDACTED] Jr., of Carlsbad. The vehicle was parked approximately forty yards south of the driveway of [REDACTED]

Sgt. [REDACTED] stated that subject [REDACTED] and his son, [REDACTED] were transported to the station for investigation. The scene was photographed by Officer [REDACTED]. The following items were placed into evidence by Sgt. [REDACTED] under property tag numbers: E02836, E02837, E02838 and E02839.

1. Ruger .22 caliber single six revolver, Serial # [REDACTED] blued with wooden grips.
2. One tire iron/lug wrench, chrome in color.
3. One pair of denim trousers.
4. Twelve (12) lug nuts.
5. One pair of leather work boots.
6. One pocket knife.

At approximately 0306 hours the undersigned interviewed subject [REDACTED] [REDACTED] Date of Birth: [REDACTED] [REDACTED] Carlsbad. Subject [REDACTED] was advised of his rights to which he stated that he understood them and waived them, (see attached Admonishment of Rights Form.) Subject [REDACTED] stated the following:

At approximately 0045 hours, he was awakened by what he thought to be a vehicle door being closed. The subject got up and went to the bathroom window where he looked out to the driveway area, where his son's truck was parked. He didn't see anything. He went to the linen closet where he removed his .22 caliber Ruger in the case. He then went to the back door of his residence. He heard metallic type noises which sounded as if it were coming from the garage. He quietly opened the back door and confronted a person rolling a complete tire and wheel, which he thought had been removed from his Mercedes, (parked in the garage).

removed the revolver from its case and cocked the gun, yelling, "Froebel Get on your belly." The person confronted, dropped the tire and wheel, raised up and Mr. saw that this person had a chrome type instrument in his hand raised chest high, and was advancing toward him. At this time, Mr. uncocked the revolver, placed it back in the case. The subject continued advancing toward him; subject tried to defend himself by grabbing the person's arm and a minor scuffle ensued.

They both fell to the ground by the driveway, on the south side. After breaking away, backed up approximately thirty-nine (39) feet south of the driveway alongside the roadway on the west side. The person later identified as advanced toward him holding the metal instrument chest high. At this time, a second person, (Garcia), appeared on's right side. also was carrying a large chrome instrument in his hand at chest height. At this time and the same person he scuffled with before, began a second scuffle for a very short period of time. then broke away, backing up approximately ten (10) feet. At this time noticed advancing more quickly toward him with the instrument in his hand, still raised chest high.

then removed the revolver from the case, cocked it and made a swinging motion from right to left, firing the gun in the direction of. saw grab his leg and thought that he had possibly shot him in the leg. then backed up slowly at an approximately 45° angle as stood up and slowly continued to move toward, still holding the instrument in his hand chest high. was also still advancing toward holding an instrument in his hand chest high.

was detained by a neighbor of approximately fifteen (15) to twenty (20) feet from. continued toward him until collapsing approximately two (2) feet from falling on his back.

s wife notified the police, who arrived approximately three (3) minutes later. was unable to provide any other further information. At 0400 hours interview ended. Subject provided a written statement, see attached.

At 0305 hours Toxicologist was called into the station to take a blood sample from subject. At 0314 hours this was completed and sample was ID'd under Toxicologist Miller's tag X-925 and was placed into refrigerated evidence by the undersigned.

BY

RMC/NE

At 0320 hours the undersigned was notified by phone by Officer [REDACTED] that subject [REDACTED] had expired. Officer [REDACTED] viewed the deceased and the wound. According to the attending physician, Dr. [REDACTED] the entry of the bullet was in the back area, toward the left shoulder blade.

Officer [REDACTED] stood by with the body until the arrival of the County Coroner, at 0430 hours. At that time the subject's property was inventoried by the Coroner. Ten (10) photographs of the subject's inner wounds were taken by Officer [REDACTED] at the hospital prior to the subject's body being removed by the Coroner. Photographs and property were tagged and placed into evidence by Officer [REDACTED]. See attached. (Crime scene diagram and supplement by Officer [REDACTED])



At 0415 hours, the undersigned interviewed subject [REDACTED] dob. 11-21-59, 3401 Highland Drive, Carlsbad. Subject [REDACTED] was advised of his rights to which he stated that he understood them and waived them. (See attached Admonishment of Rights Form).

Subject [REDACTED] stated the following at approximately 0045 hours, he was awakened by his mother who stated to him, "Your father has someone cornered outside, go help him."

[REDACTED] ran outside, using the front door and toward the driveway where he observed his father on the southside of the driveway, pushing and scuffling with subject [REDACTED]. Subject [REDACTED] had, according to [REDACTED] a tire iron in his hand. [REDACTED]'s father, then breaking away from subject [REDACTED] backed up approximately thirty-six (36) feet south of the driveway, alongside the roadway on the left side. [REDACTED] then advanced toward his father to assist him, when he observed a second subject appear to his right, coming from the driveway where the truck was parked. The second subject was advancing toward his father, with no visible weapon in his possession.

[REDACTED] observed a second scuffle between [REDACTED] and his father for a short period of time. His father then pushed [REDACTED] away. He then noticed the second subject, [REDACTED] advancing toward his father, swinging an instrument that he was holding. He then observed his father make a sweeping motion from right to left and heard a shot. He then observed [REDACTED] fall. Subject [REDACTED] advanced toward his father, at which time his father shouted, "Drop your weapon." Subject [REDACTED] complied by tossing the instrument on the side of the road. Subject [REDACTED] began chanting, "Why did you shoot him?" At this time [REDACTED] got up and advanced toward his father with a chrome instrument, chest high. He walked toward [REDACTED]'s father, (who had his hands raised about chest height in a defensive pushing posture), at which time [REDACTED] collapsed right at his father's feet.

[REDACTED] then noticed that a neighbor, [REDACTED] was detaining [REDACTED] approximately fifteen (15) feet from where his father and [REDACTED] were. At this time, Carlsbad Police Department officers arrived. At 0440 hours this interview ended. Subject [REDACTED] was unable to furnish any further information. Subject [REDACTED] provided a written statement, see attached.

At 0442 hours the undersigned interviewed suspect [REDACTED] dob. [REDACTED] Carlsbad. Suspect [REDACTED] was advised of his rights to which he stated that he understood them and waived them. (See attached Admonishment of Rights Form).

██████████ stated the following: On 10-23-79 at approximately 1930 hours he and ██████████ had gone to the drive-in movie in Oceanside and had consumed three (3) beers each which someone had bought for them. After the movie they went home to change clothes and then went riding at approximately 2345-2400 hours. At approximately 2400 hours they observed some tires that ██████████ wanted for his truck. They then began to remove the tires. ██████████ was on the opposite side of the truck from ██████████. He then heard a man say something to ██████████ ██████████ stayed down behind the truck when he heard a scuffle, then he looked up and saw ██████████ and ██████████ struggling and ██████████ trying to get away. ██████████ then began to run when he heard a shot. He came out to see if ██████████ was alright, when ██████████ pointed a gun at him and told him to get on his stomach. He then threw the instrument he had been carrying on the side of the road. At this time the police arrived.

The undersigned asked suspect ██████████ if he had felt the effects of the alcohol he had consumed during the incident or during his interview. He stated, "No, " to both questions.

The undersigned repeatedly asked suspect ██████████ if he had any more to add to his statement, he answered, "no". Interview ended. Suspect ██████████ provided a written statement, see attached.

At approximately 0615 hours the undersigned called Oceanside Police Department, speaking to Lt. ██████████. I requested assistance from the Crime Lab Technician. At approximately 0700 hours ██████████ ██████████ arrived. The undersigned informed him of the circumstances and requested photographs of the scene. The undersigned and ██████████ proceeded to the crime scene. Upon reviewing the scene, ██████████ and undersigned found that Officer ██████████ had heavily marked the pertinent areas of the scene with yellow crayon. ██████████ then took pictures of the scene, giving the negatives to the undersigned. I then turned them over to Sgt. ██████████ for developing.

While at the crime scene the undersigned observed a scissors jack under the left front section of the truck in the driveway at the ██████████ residence. The undersigned removed the jack, taking it as evidence, and tagging it.

While at the scene, undersigned made contact with ██████████ ██████████ ██████████ at ██████████ ██████████ and requested an interview. He stated that he was unable to give an interview, but that at 0115 hours he would come to the station for the interview.

At 1315 hours [redacted] was interviewed by the undersigned. He informed the undersigned that he hadn't actually seen the shooting but related the following.

At approximately 0050 hours his wife came into the t.v. room stating that she had heard a shot. Looking out the livingroom window she said, "[redacted] is in trouble." He then ran out the front door to the front of his house. Under the street light he saw subject [redacted] backing down the street. Two persons were heading toward him with what appeared to be pipes in their hands. [redacted] then went back to his house to get a hand gun. Returning to the street he saw one person on his knees, rolling over on his side and then on his back. The second person carrying an instrument was advancing on [redacted] yelling, "You shot my cousin." [redacted] then pushed him back saying, "Put down the tire iron." The second person then started toward [redacted] not attacking him, but obviously upset. [redacted] then yelled at him to put down the pipe or he would blow his head off. He [redacted] then threw the jack handle into the ice plant.

[redacted] then advised him to take care of his buddy; which he did. The subject repeatedly said, "You shot my cousin, get a doctor." [redacted] informed the subject that help was on the way.

The police and paramedics arrived approximately three (3) minutes later. [redacted] further stated that when the wounded man was rolled over by the paramedics, a tire iron was found underneath him. Interview ended. See attached written statement by Mr. [redacted]

Attached are reports and photographs from Detective [redacted] and Detective [redacted] relating to the autopsy.

B [redacted]  
RMC/NE

WE, THE PEOPLE OF CARLSBAD HEREBY DEMAND THAT THE DISTRICT ATTORNEY OF VISTA COURTS WITH  
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NAME

ADDRESS

P & R  
Carlsbad, CA



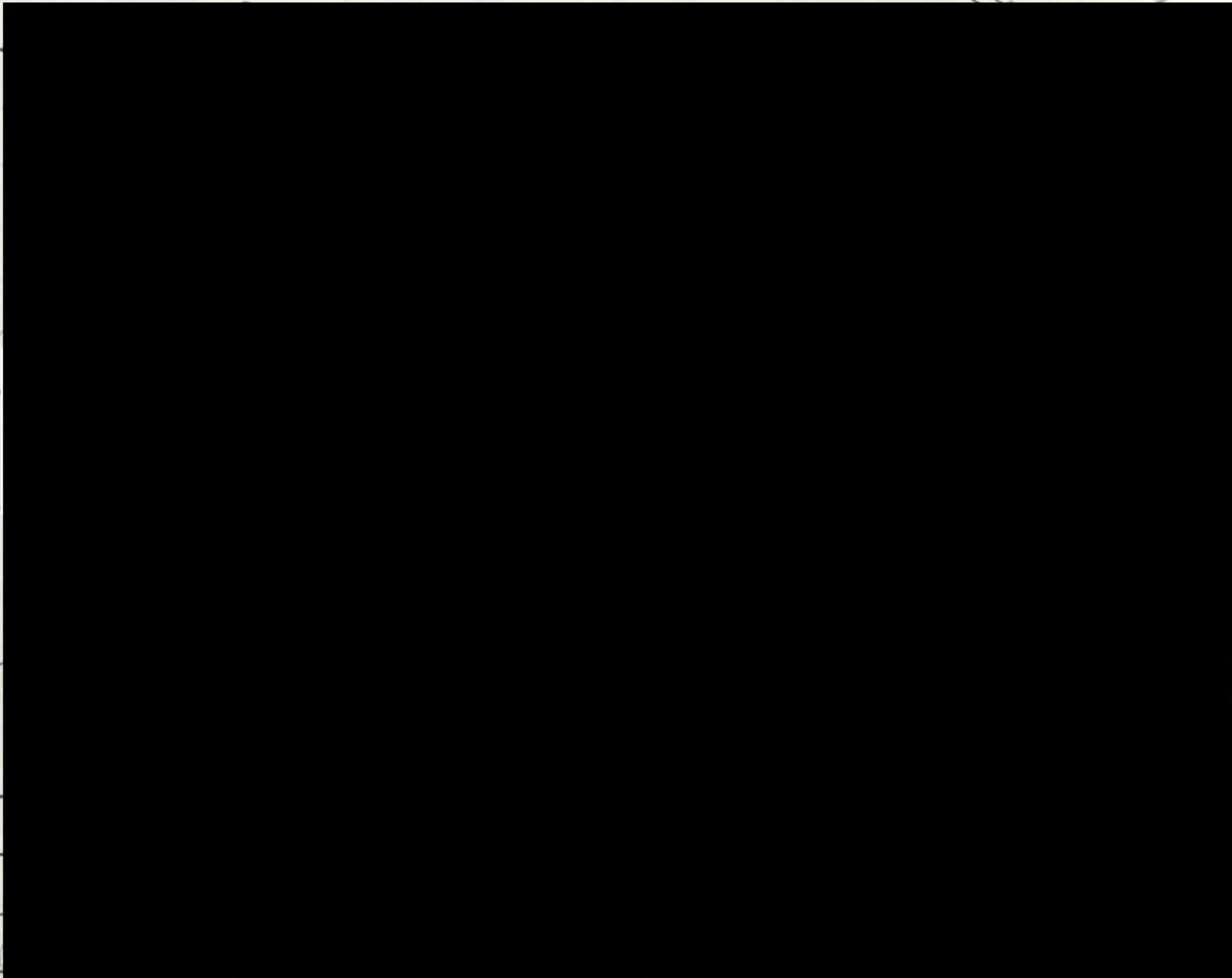
PETITION

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*(Carlsbad)*



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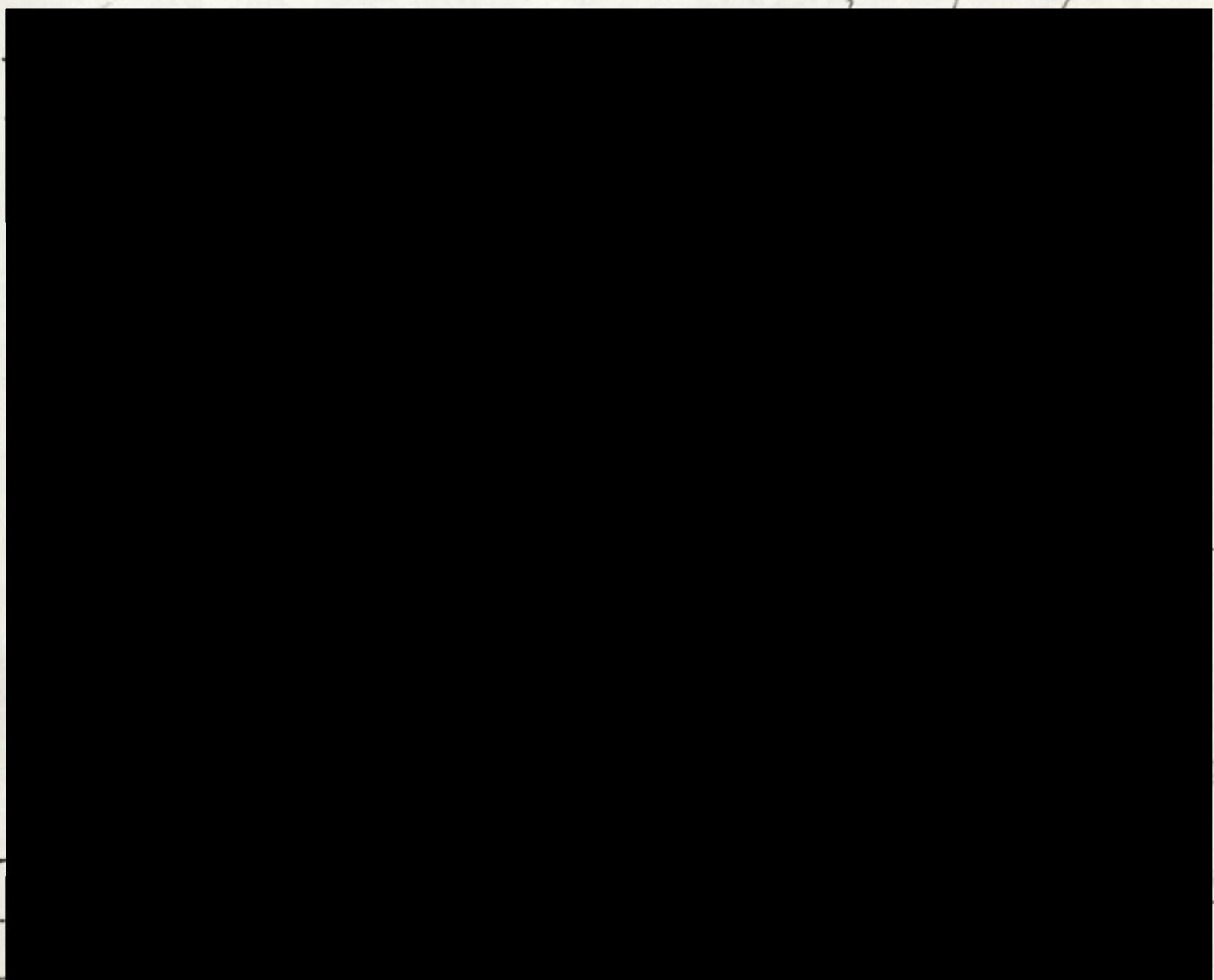
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[REDACTED]

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[REDACTED]

920/4

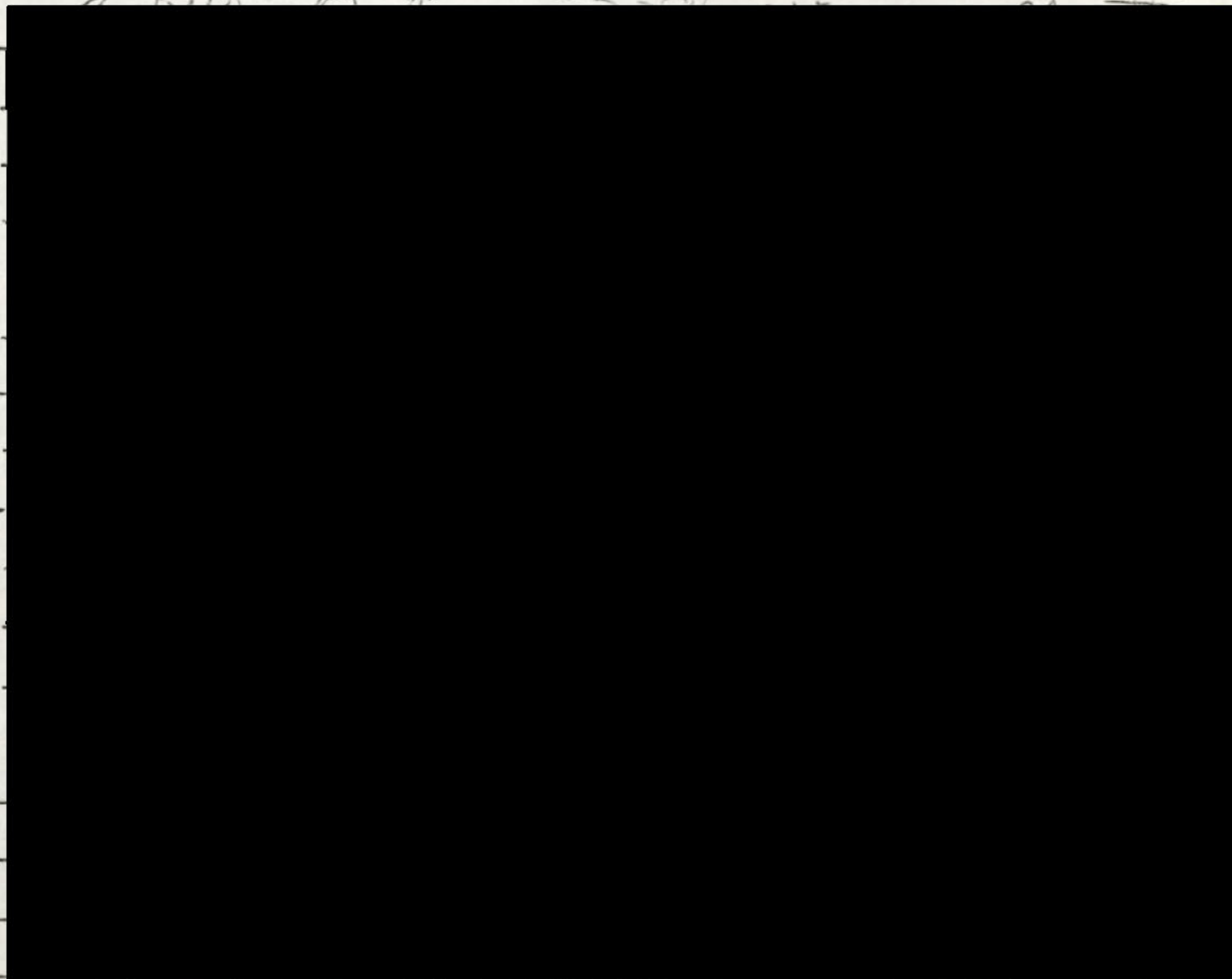


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*How*

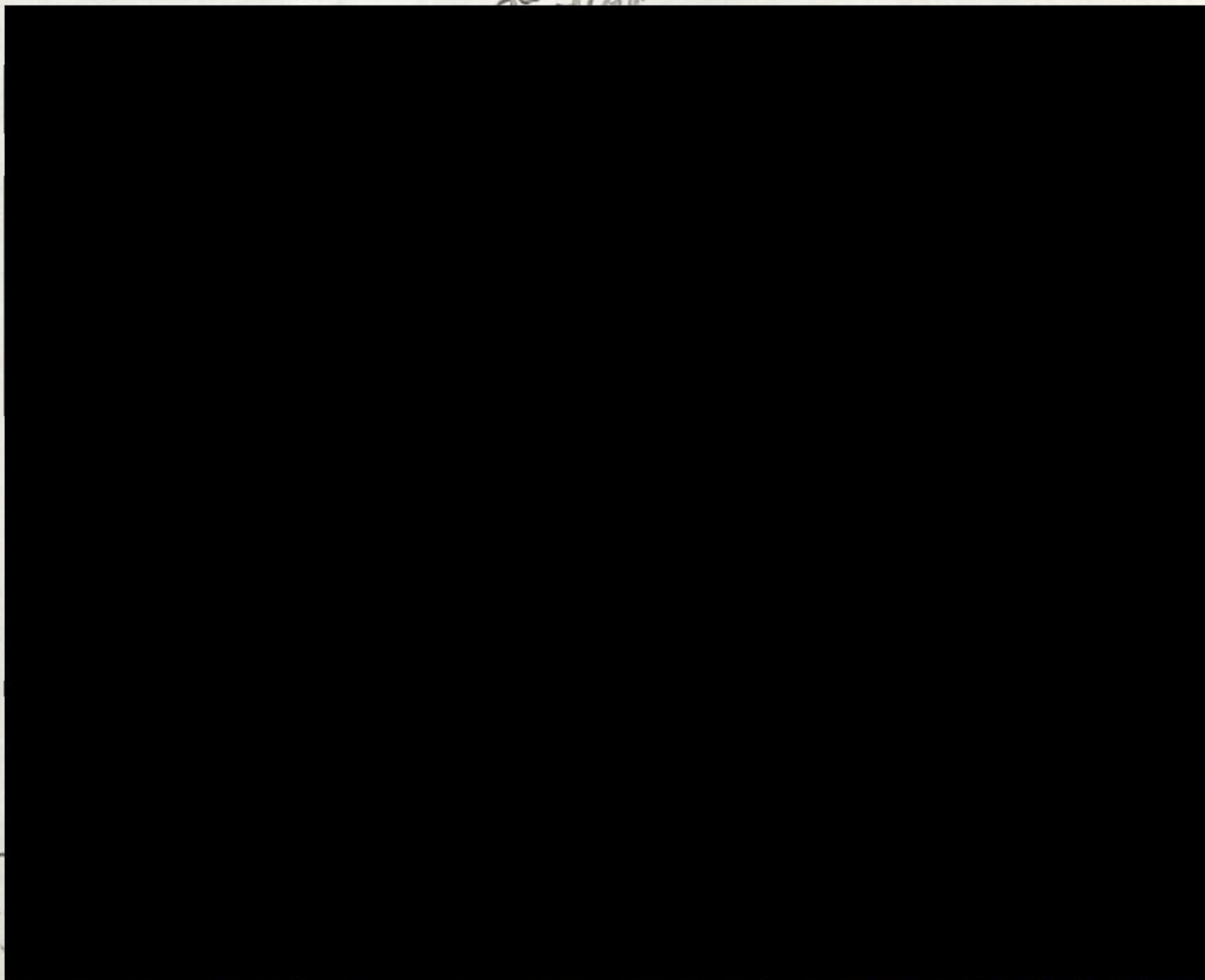


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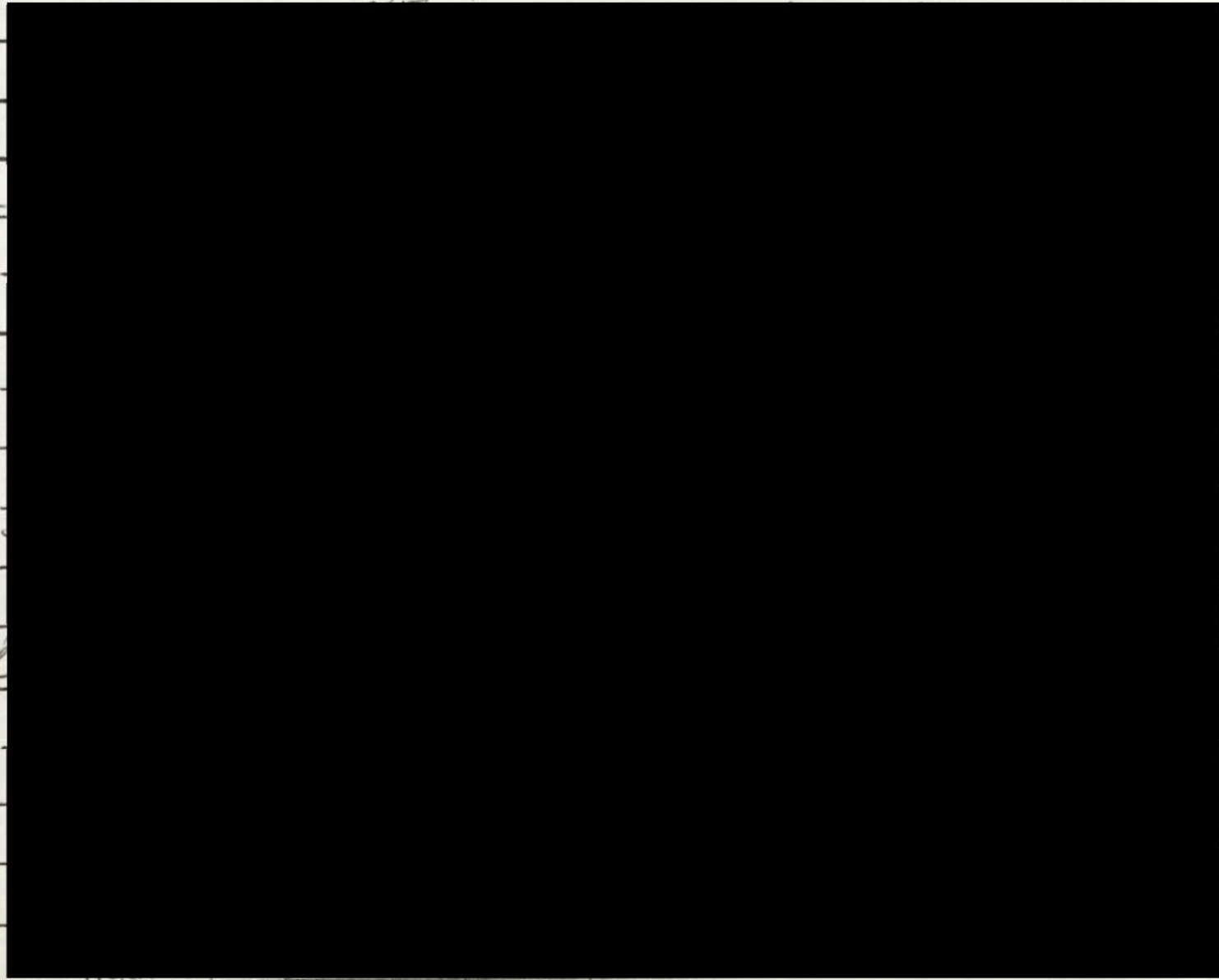


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[REDACTED]