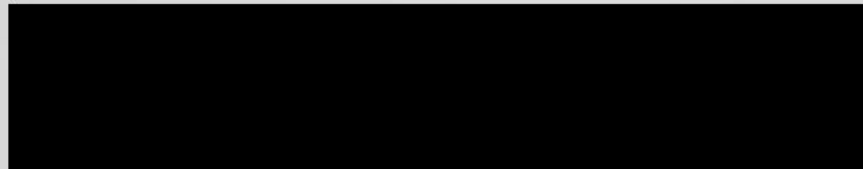
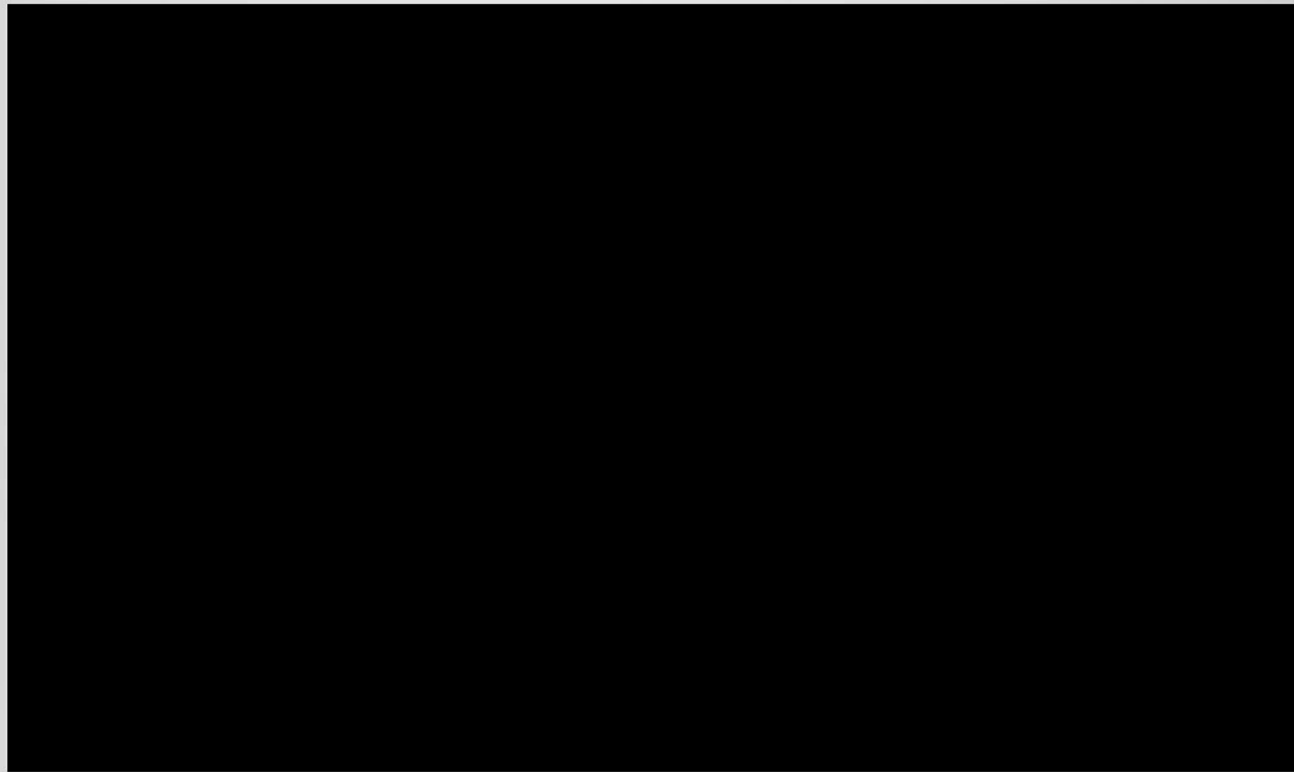

EVIDENTIARY ISSUES AT TRIAL



EVIDENTIARY ISSUES AT TRIAL

- How to admit evidence
- Character Evidence
 - EC 1101
 - EC 1108, EC 1109
- Expert Witnesses (P v. Sanchez)
- EC 356 Rule of completeness
- Aranda/Bruton

IT'S NOT THIS EASY...



BASIC ISSUES



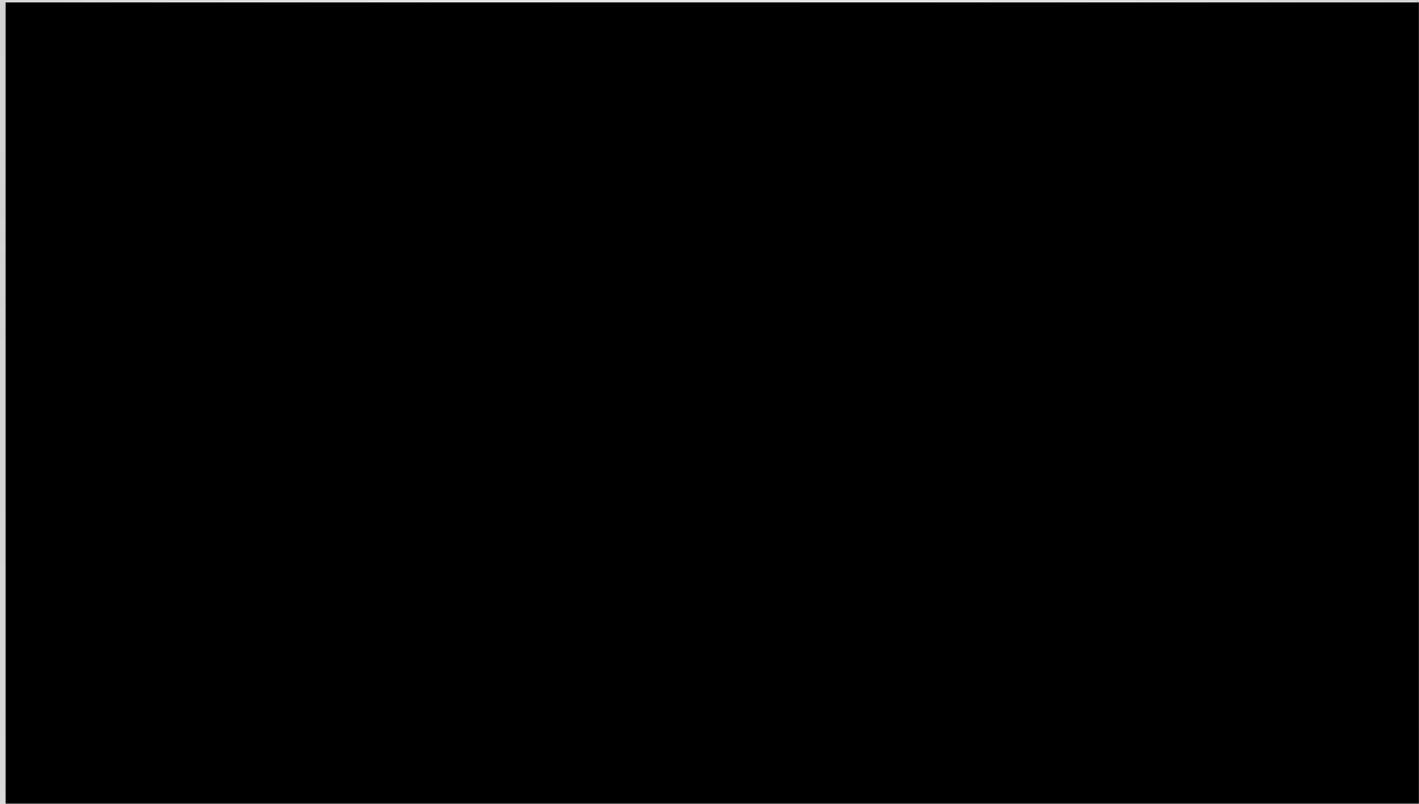
ADVANCED ISSUES



IT'S NOT WHAT YOU KNOW, IT'S
WHAT YOU CAN PROVE.



BEFORE YOU GO TO PRESIDING



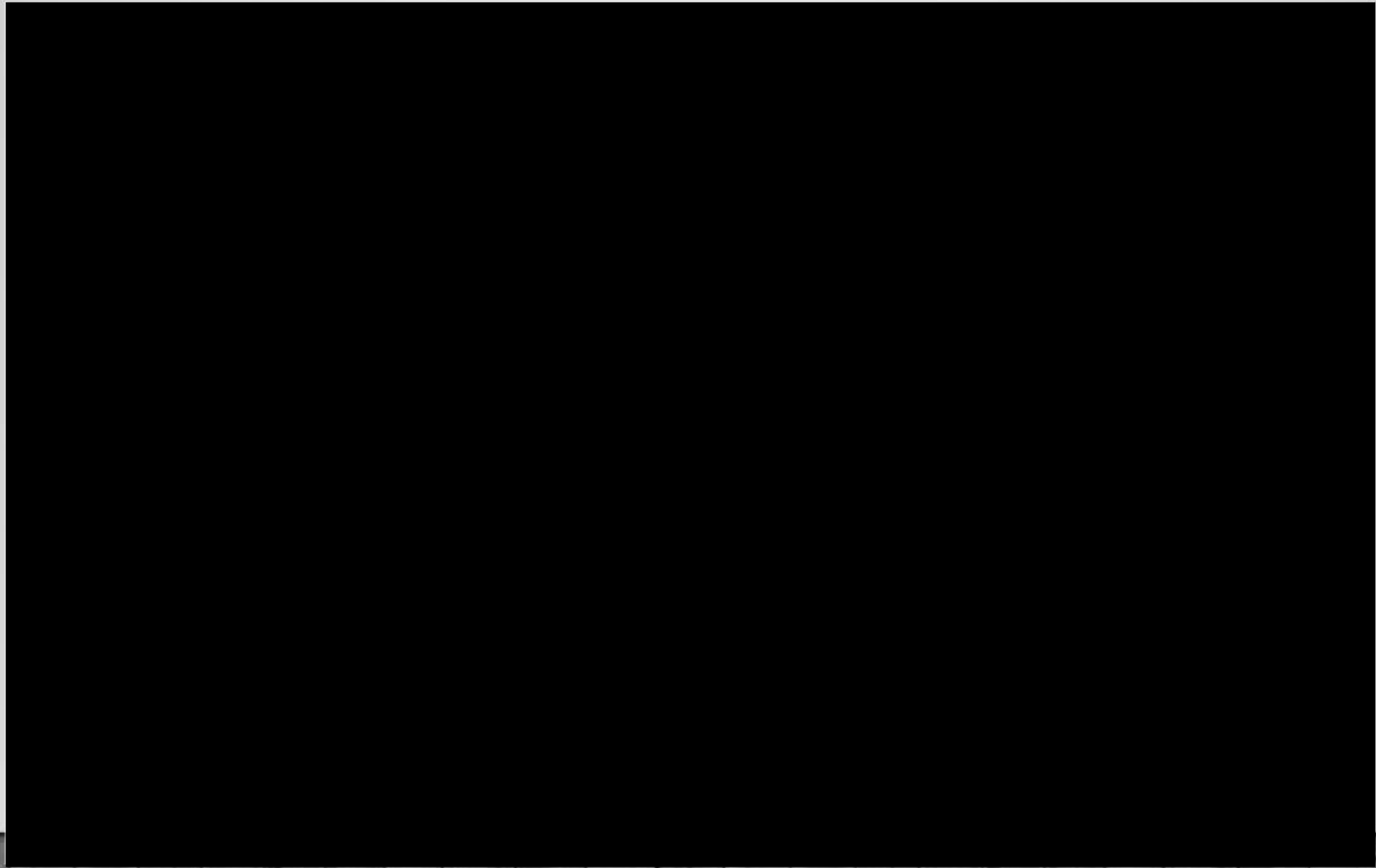
WHO CAN LAY FOUNDATION?



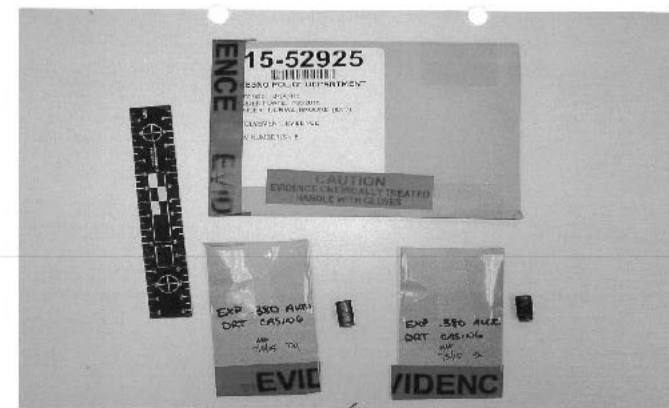
HOW TO ADMIT A PHOTO



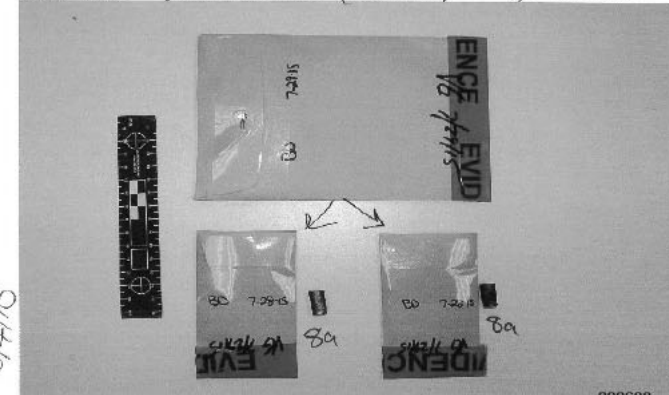
HOW TO ADMIT A PHOTO



HOW TO ADMIT AN OBJECT



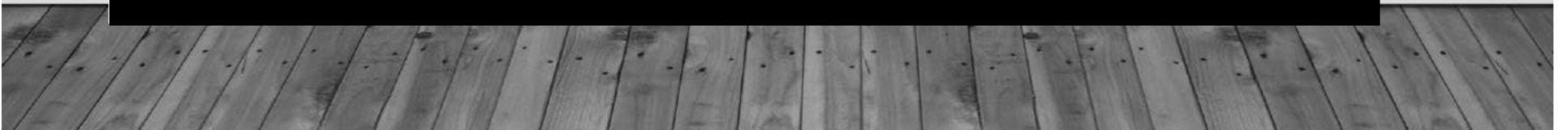
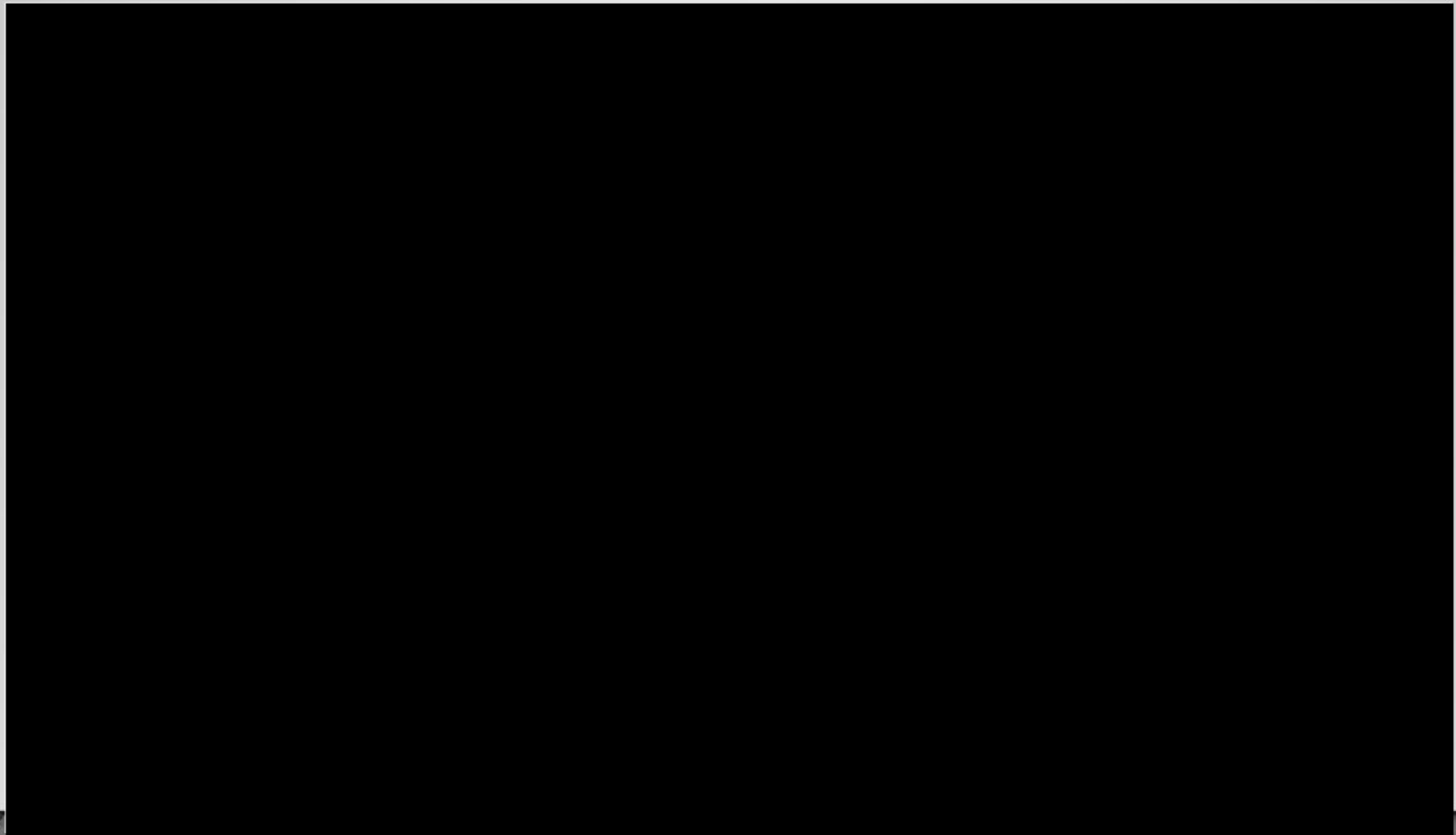
P1215-5132 Item 8 as rec'd (from LE) exp env. PSD



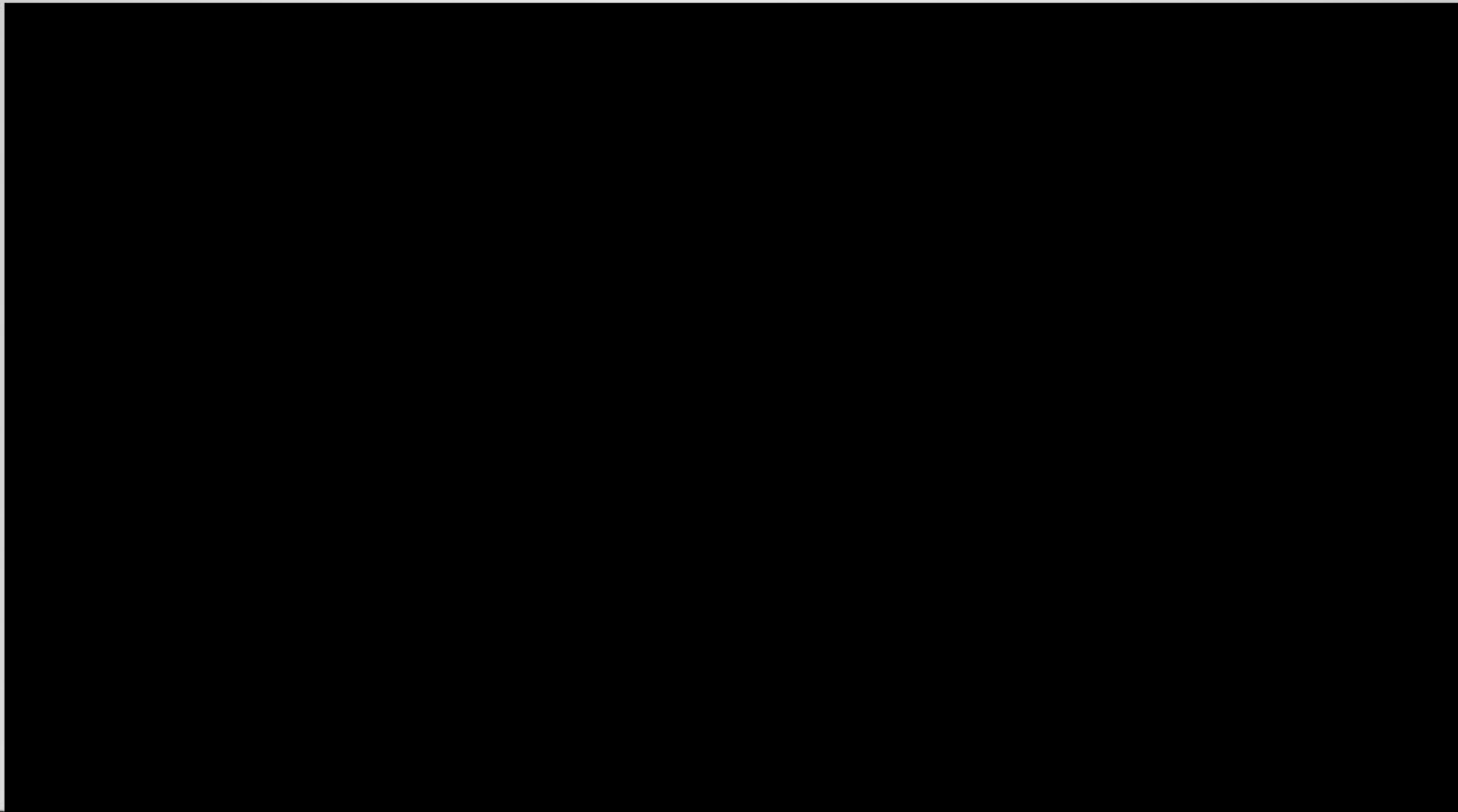
MMB
7/30/15
11

000688

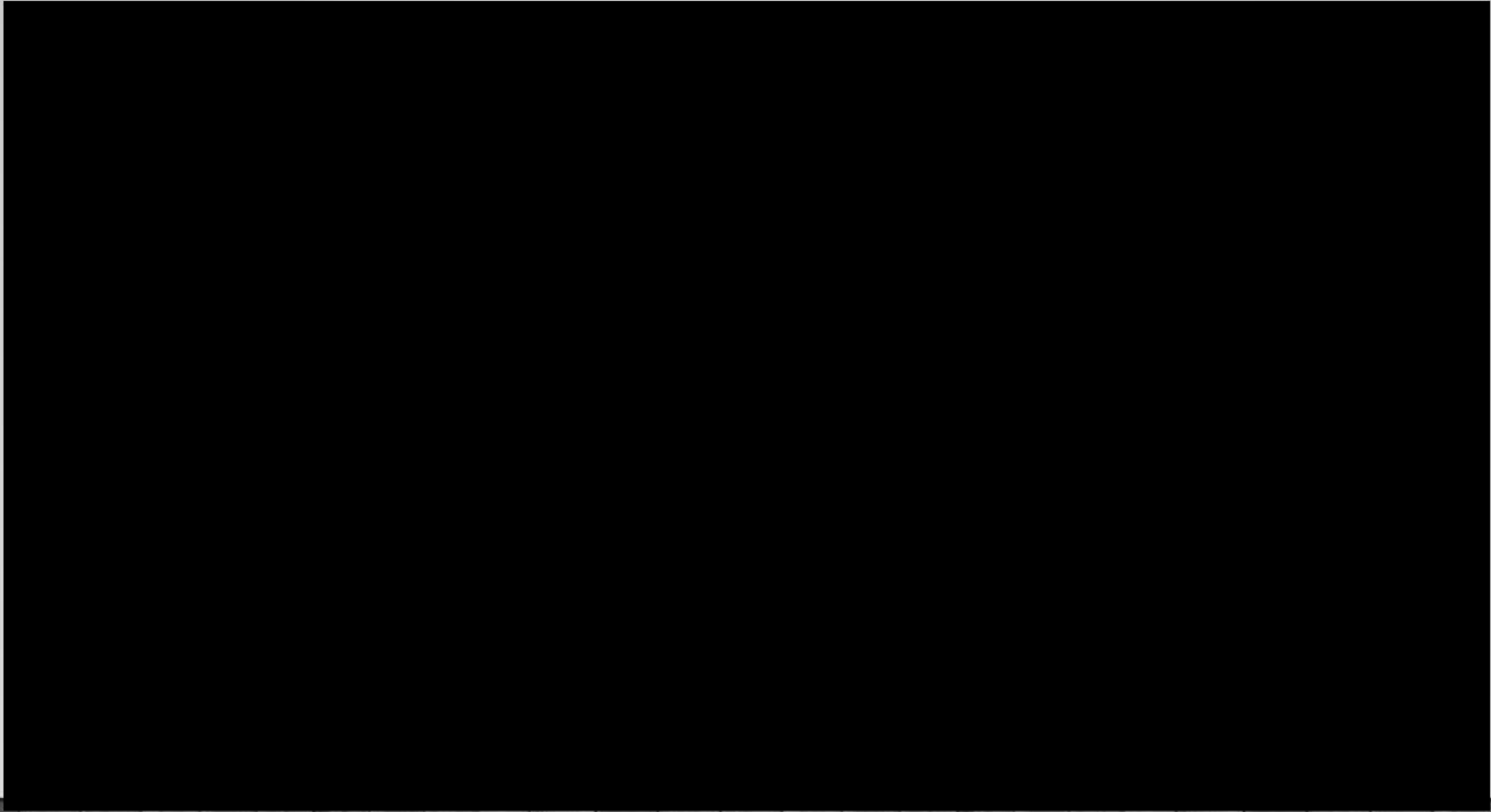
HOW TO ADMIT AN OBJECT



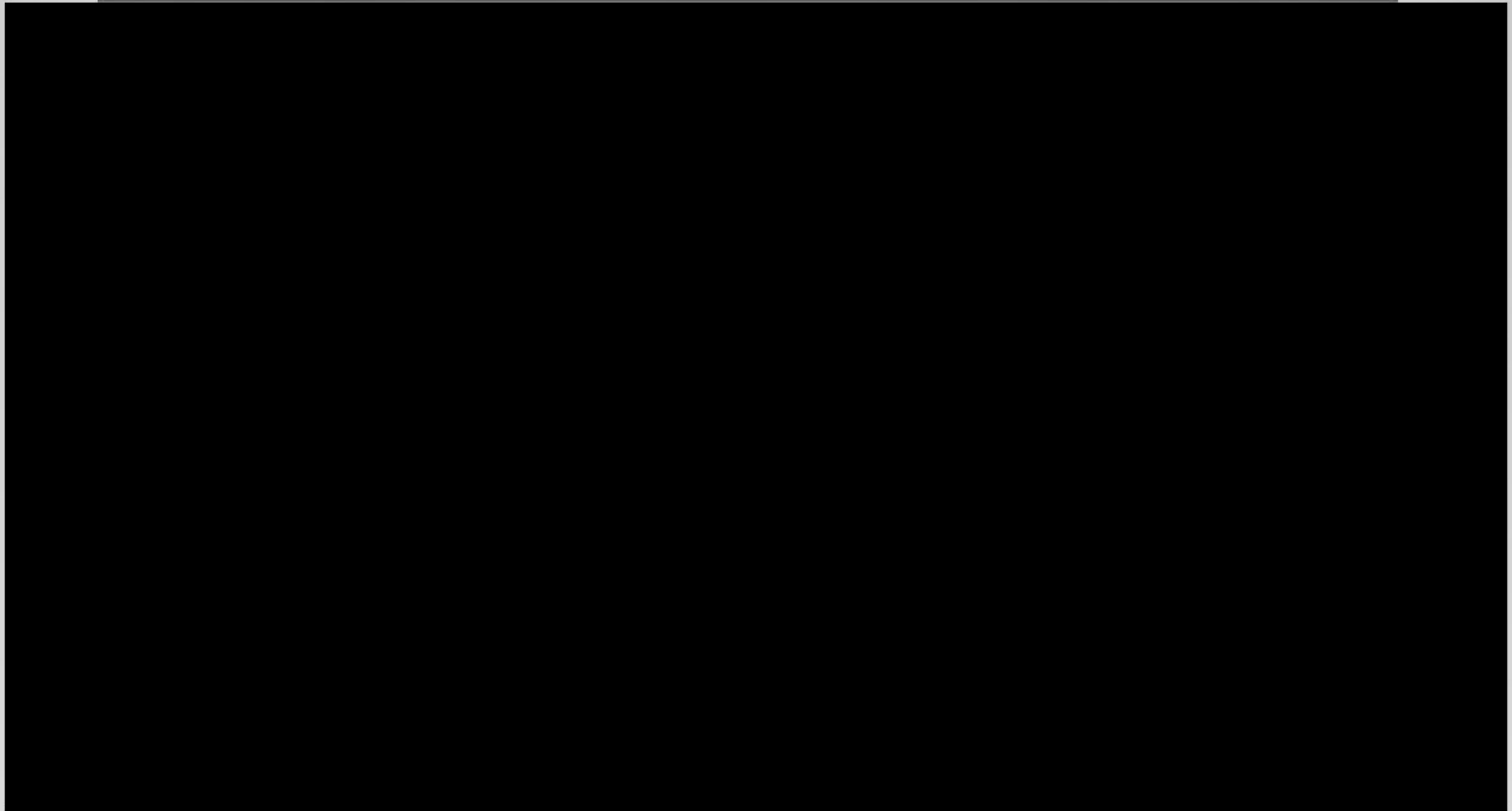
HOW TO ADMIT AN OBJECT



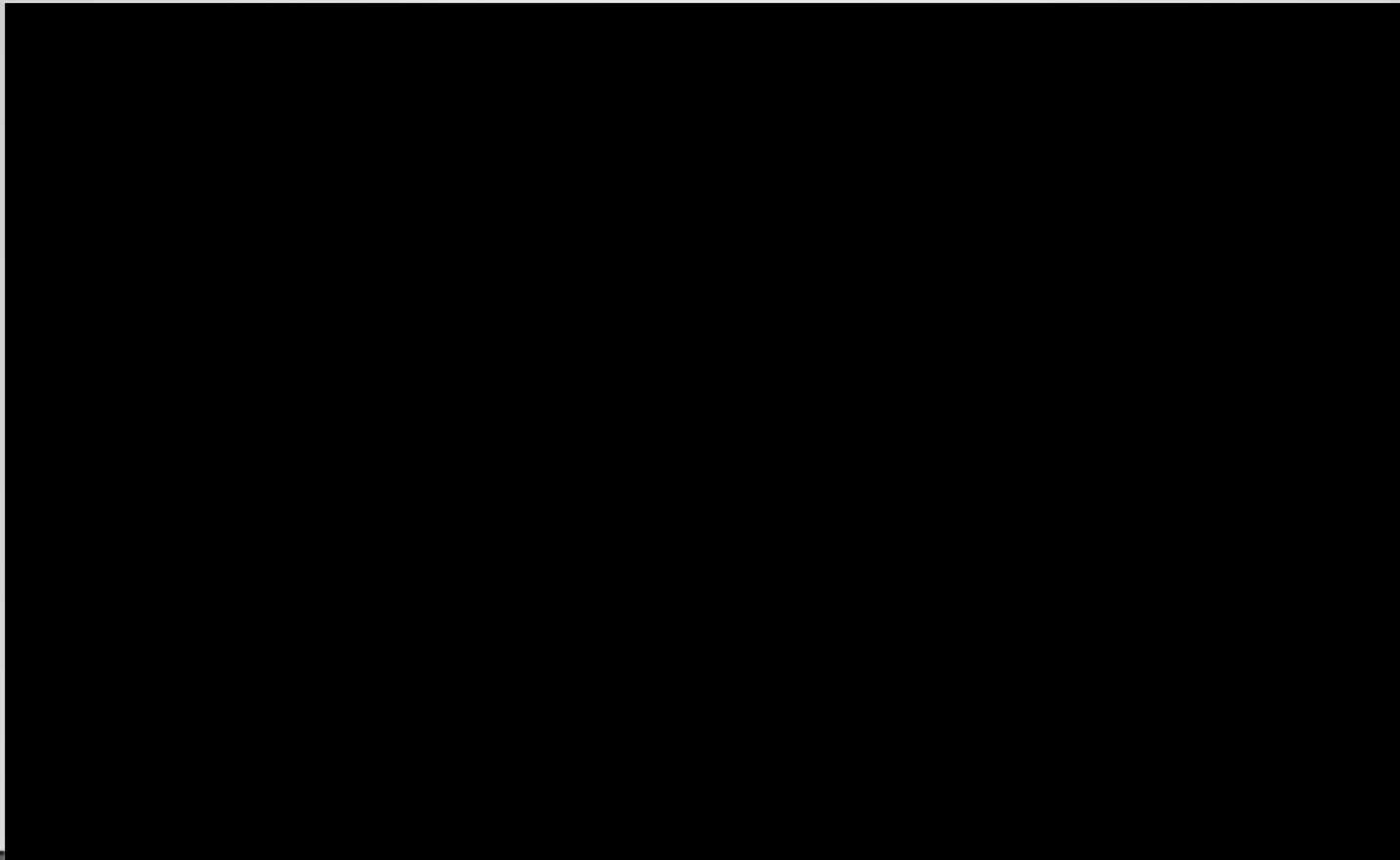
HOW TO ADMIT AN OBJECT (TIPS)



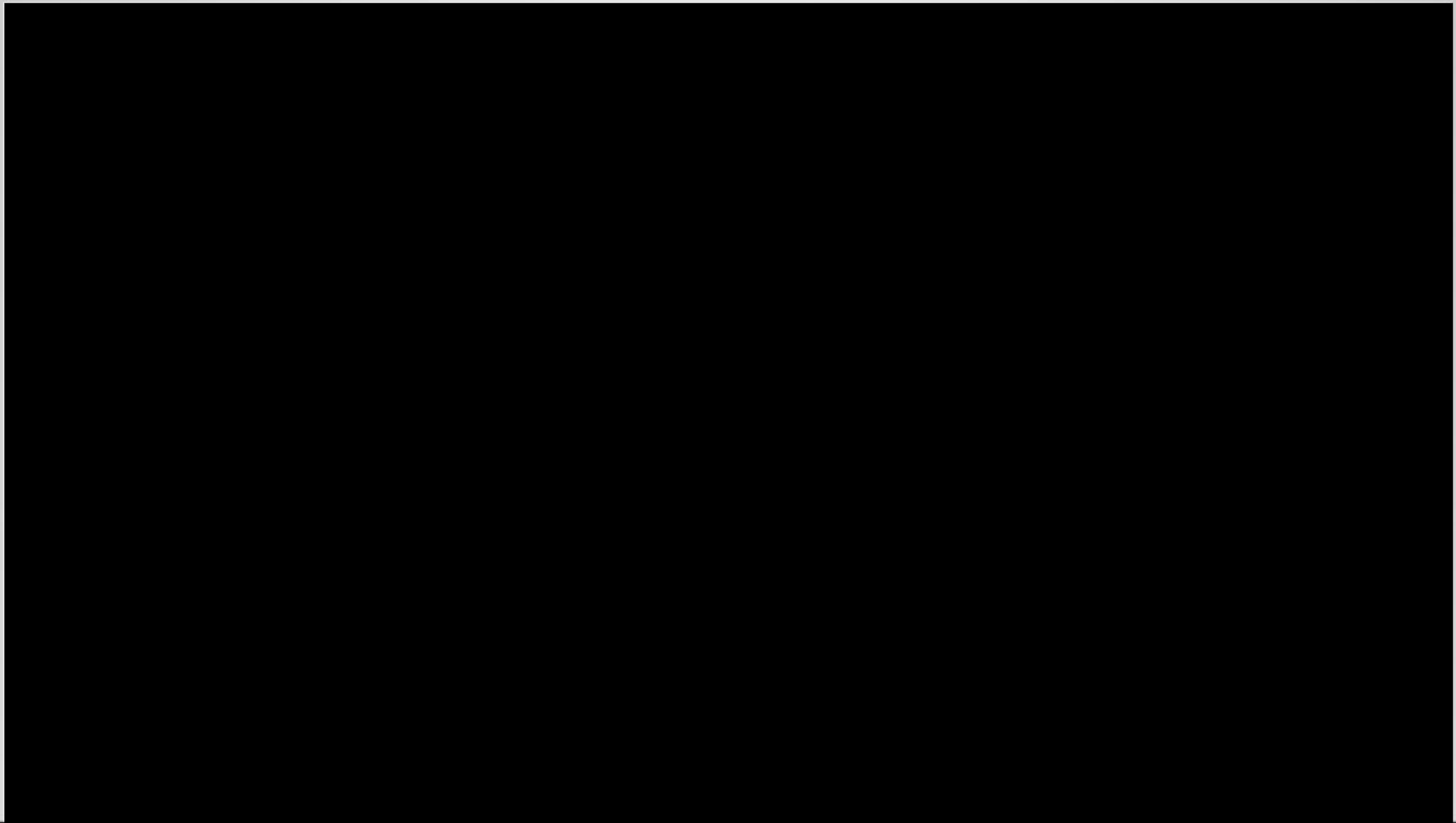
HOW TO ADMIT A RECORDING



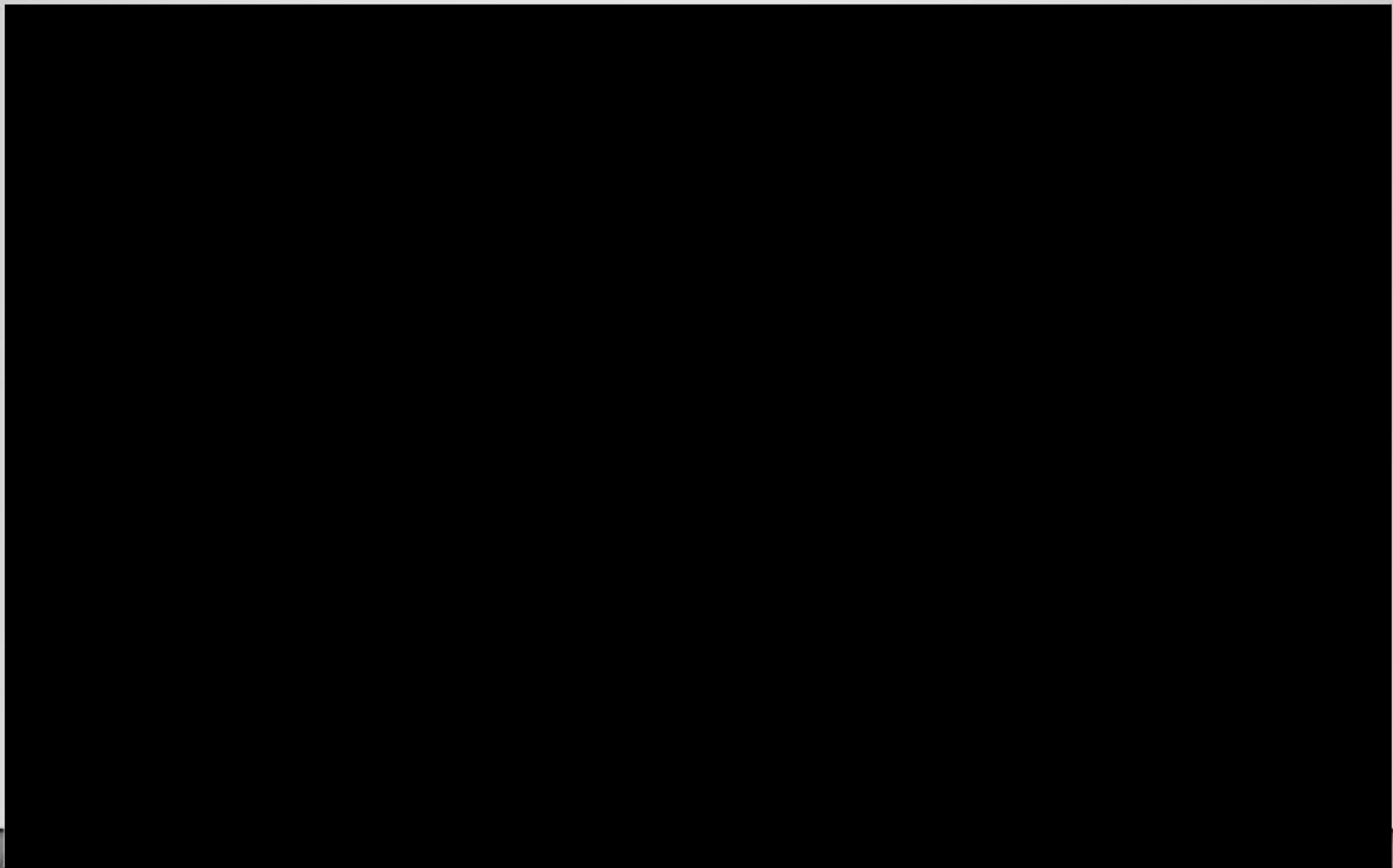
HOW TO ADMIT A RECORDING



HOW TO ADMIT A RECORDING



HOW TO ADMIT A RECORDING



03-24-2016 09:27:58 PM (S)

Camera 02
AIF 6K

HOW TO ADMIT A BUSINESS RECORD

Facebook Business Record		Page 1
Service	Facebook	
Target Account Identifier		
Account Type	User	
Generated Date Range		
NCMEC Cybertips		
Name	First Middle Last	
Registered Email Addresses		
Vanity Name		
Registration Date	2012-10-19 06:43:41 UTC	

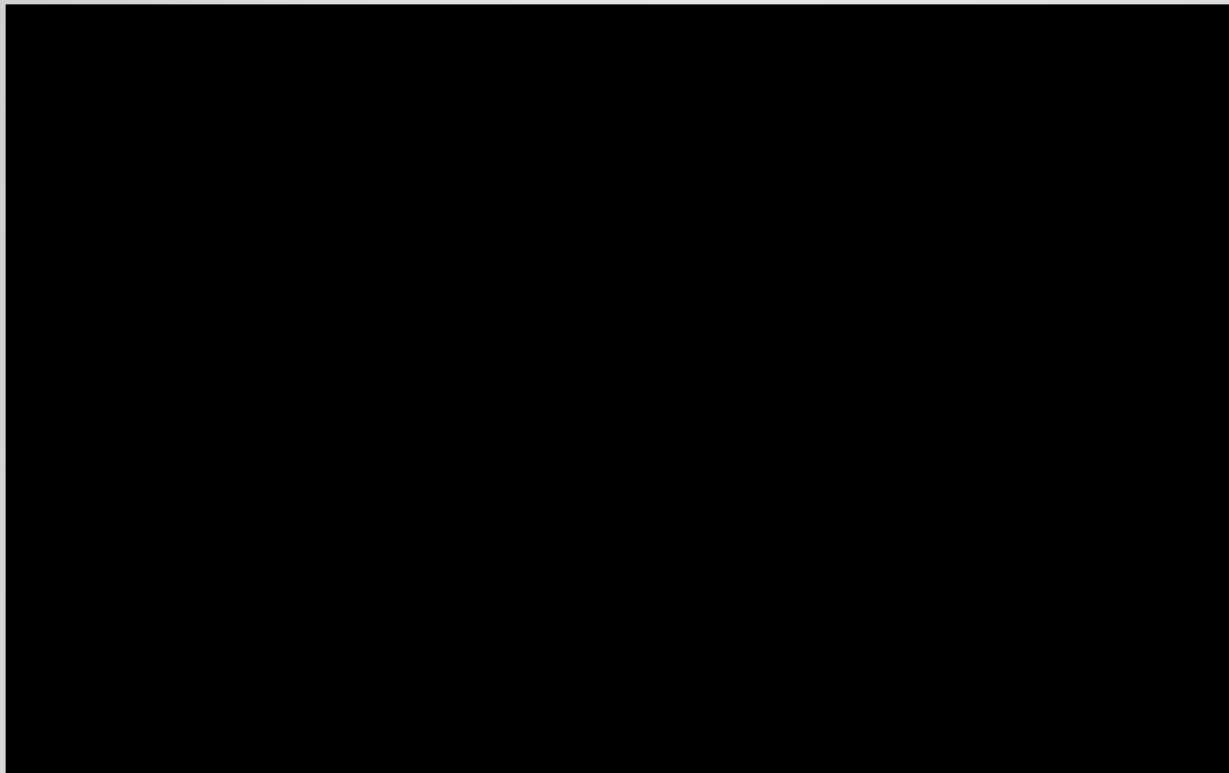
HOW TO ADMIT A BUSINESS RECORD

- Evidence Code Section 1270
- “Business” includes every kind of business, Govt activity, profession, occupation, calling or operation of institutions...

HOW TO ADMIT A BUSINESS RECORD

- Evidence Code Section 1271
- Evidence of a writing made as a record of an act is not made inadmissible by the hearsay rule when offered to prove the act, condition or event if: The writing was made
 - a) in the regular course of business
 - b) at or near the time of act, condition or event
 - The custodian or other qualified witness testifies to its identity and mode of preparation
 - The source of info, method and time of preparation indicate trustworthiness

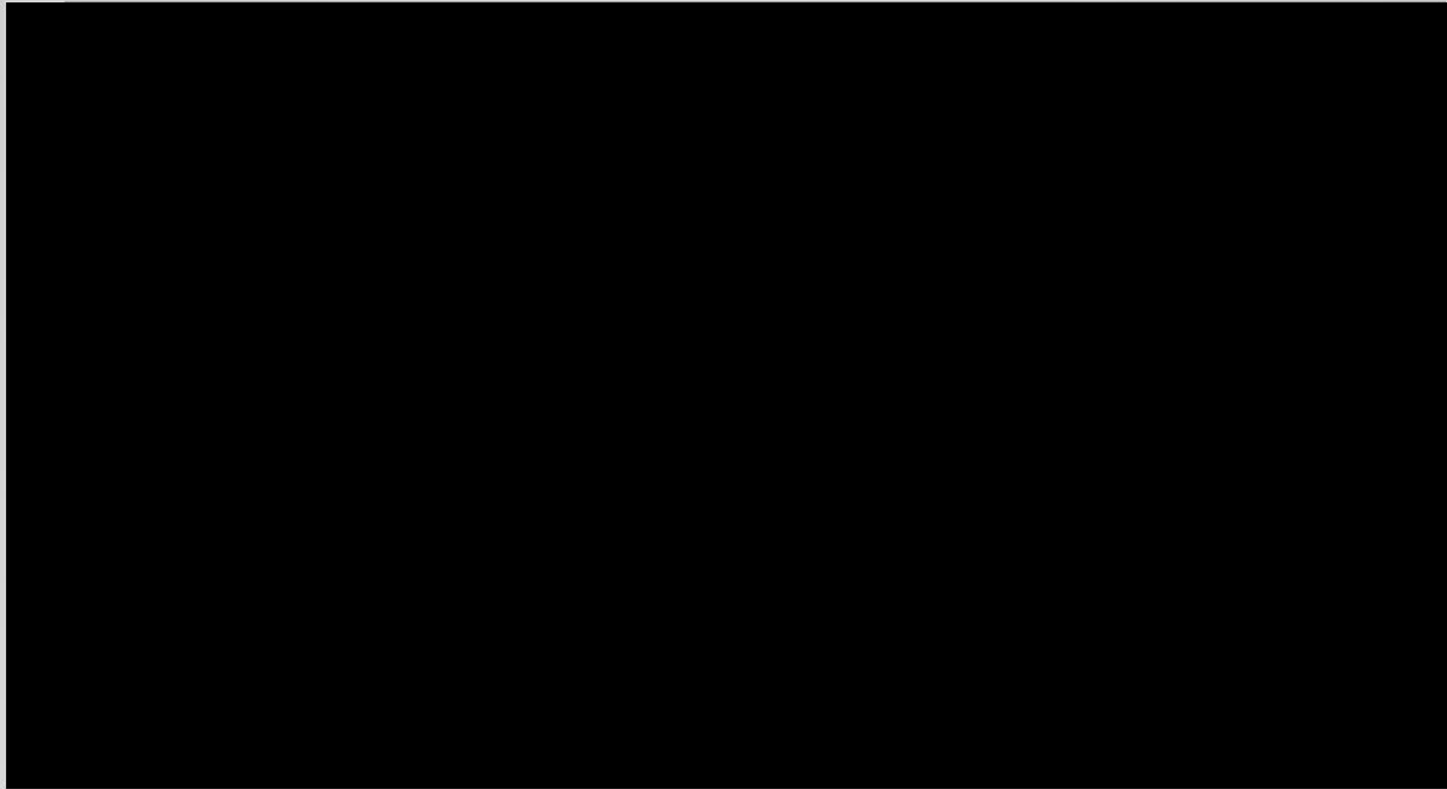
HOW TO ADMIT A BUSINESS RECORD



ADVANCED ISSUES



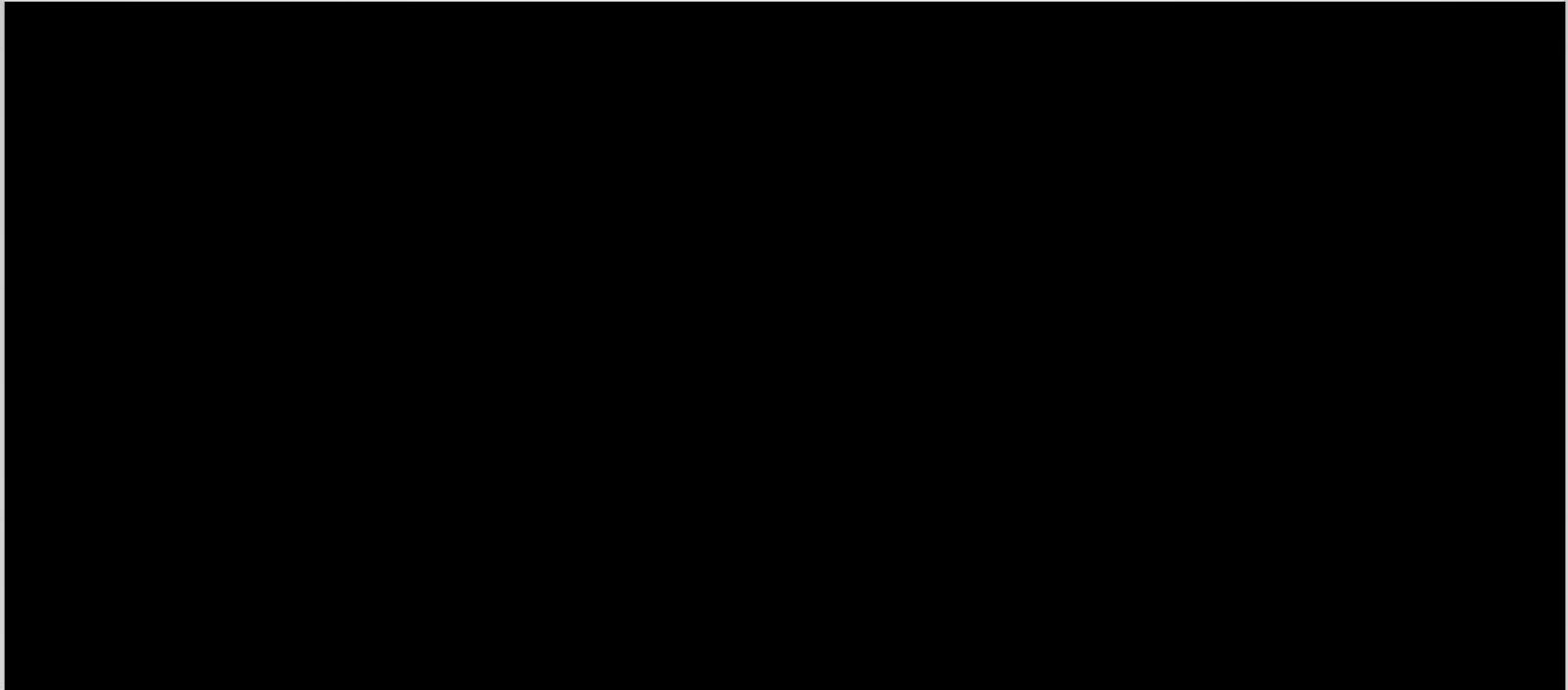
HOW TO ADMIT A BODY CAMERA



HOW TO ADMIT A BODY CAMERA



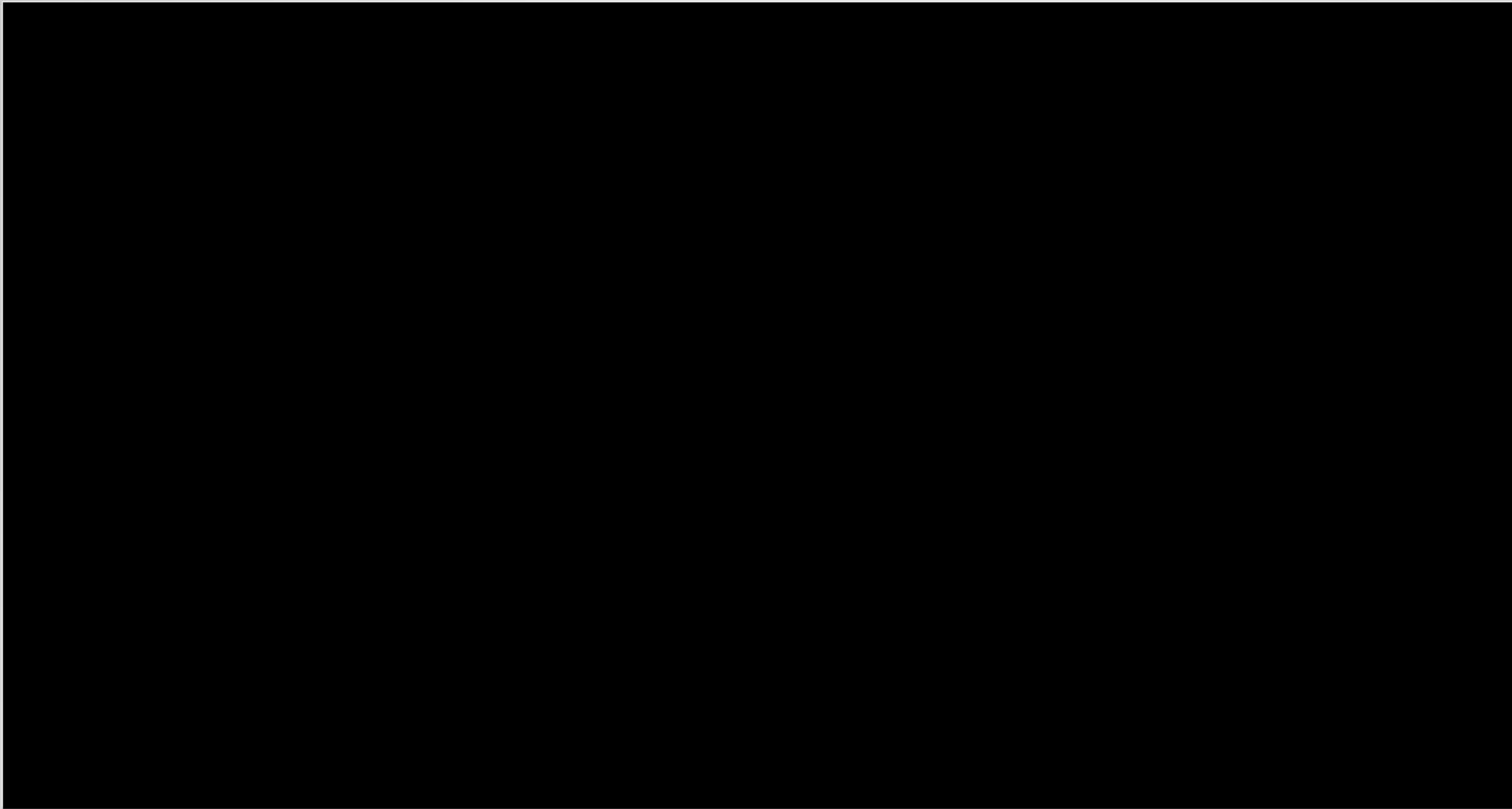
HOW TO ADMIT A BODY CAMERA



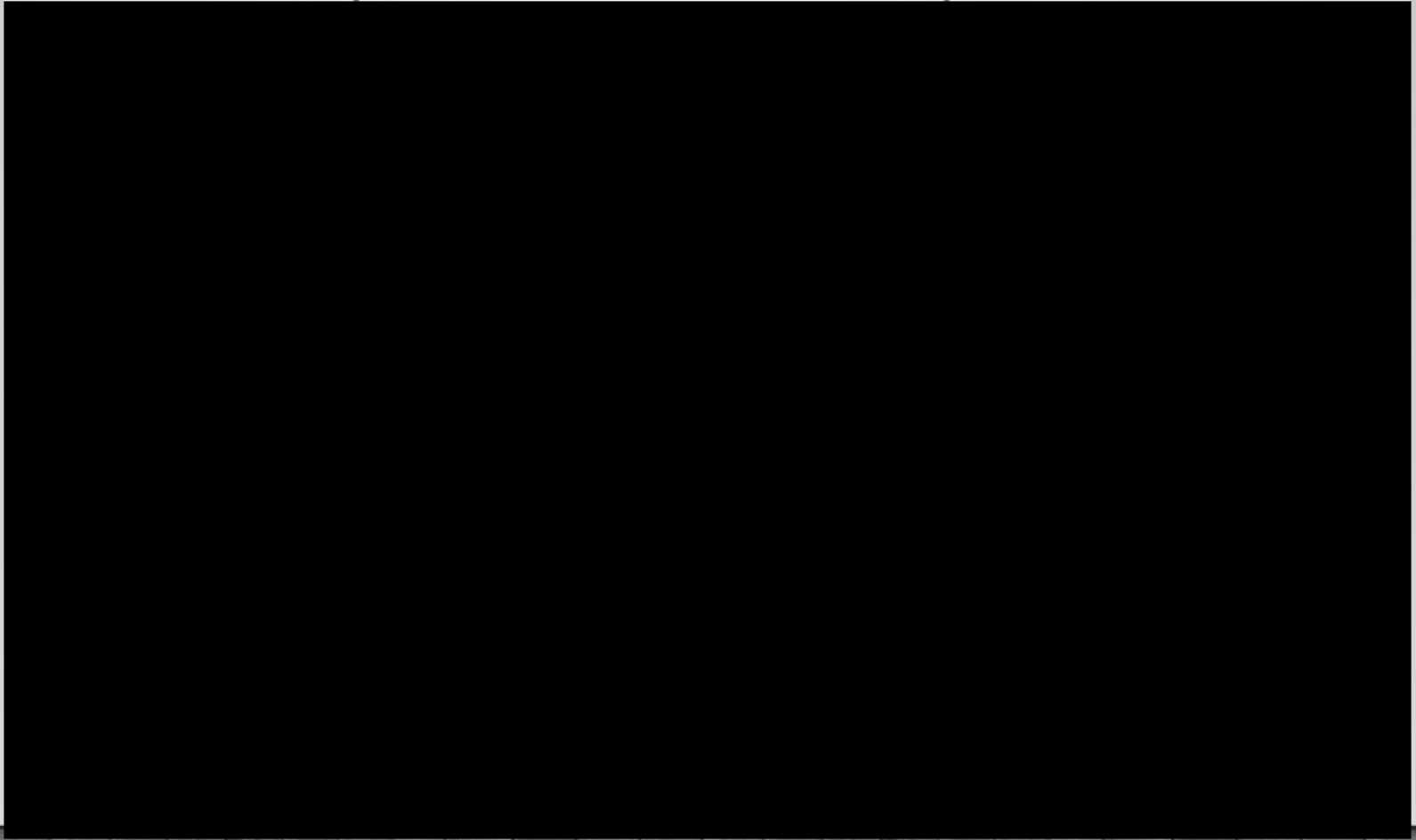
HOW TO ADMIT JAIL PHONE CALLS



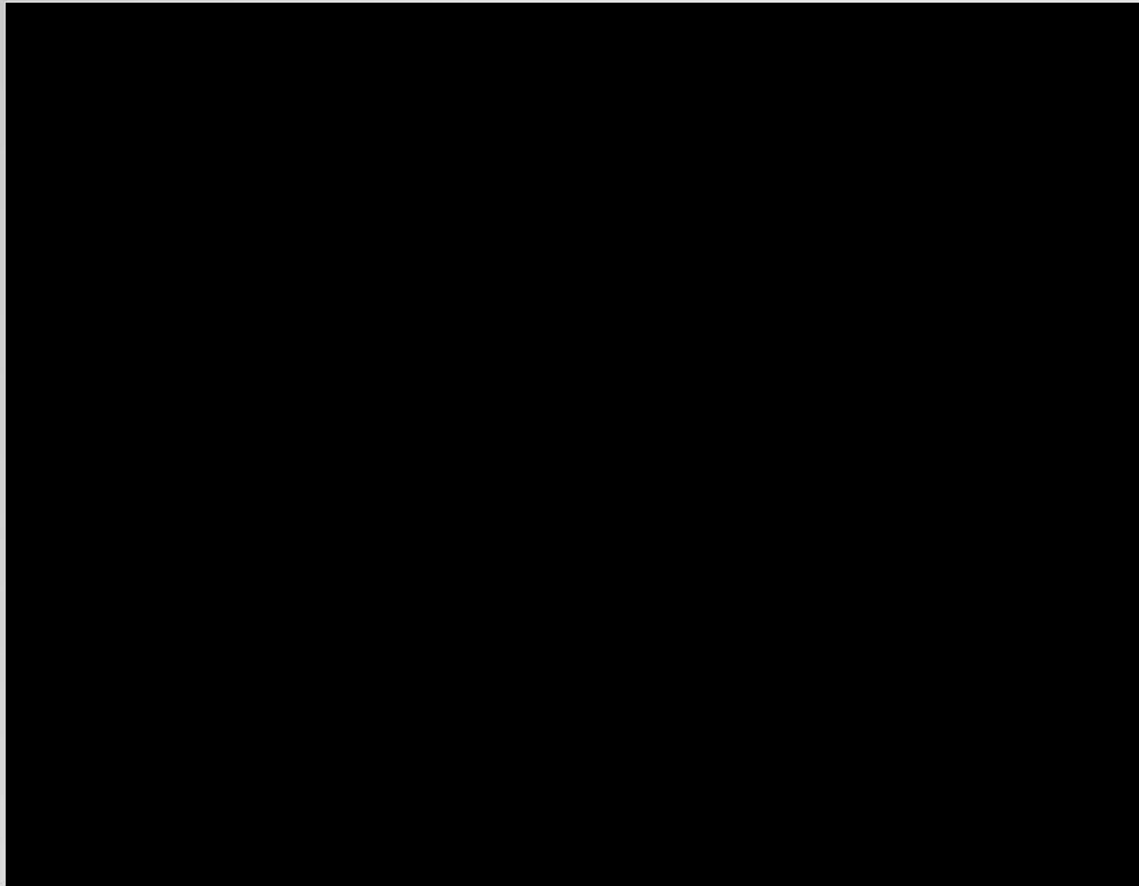
HOW TO ADMIT JAIL PHONE CALLS



HOW TO ADMIT JAIL PHONE CALLS (EASY SITUATION)



HOW TO ADMIT JAIL PHONE CALLS (EASY SITUATION)



HOW TO ADMIT JAIL PHONE CALLS (EASY SITUATION)

LEGACY INMATE COMMUNICATIONS

Fresno County Jail

Call Detail Report



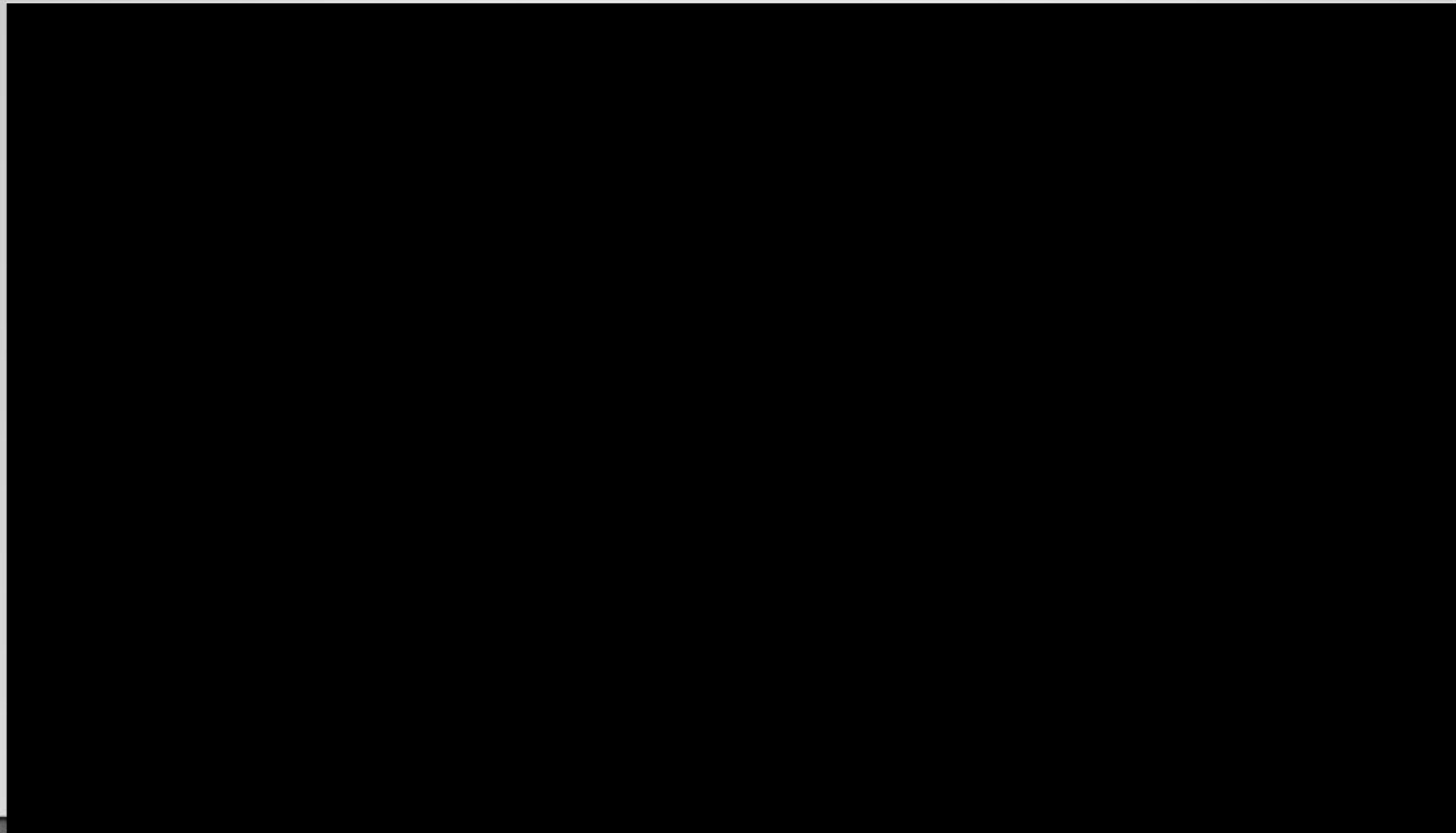
HOW TO ADMIT JAIL PHONE CALLS (EASY SITUATION)



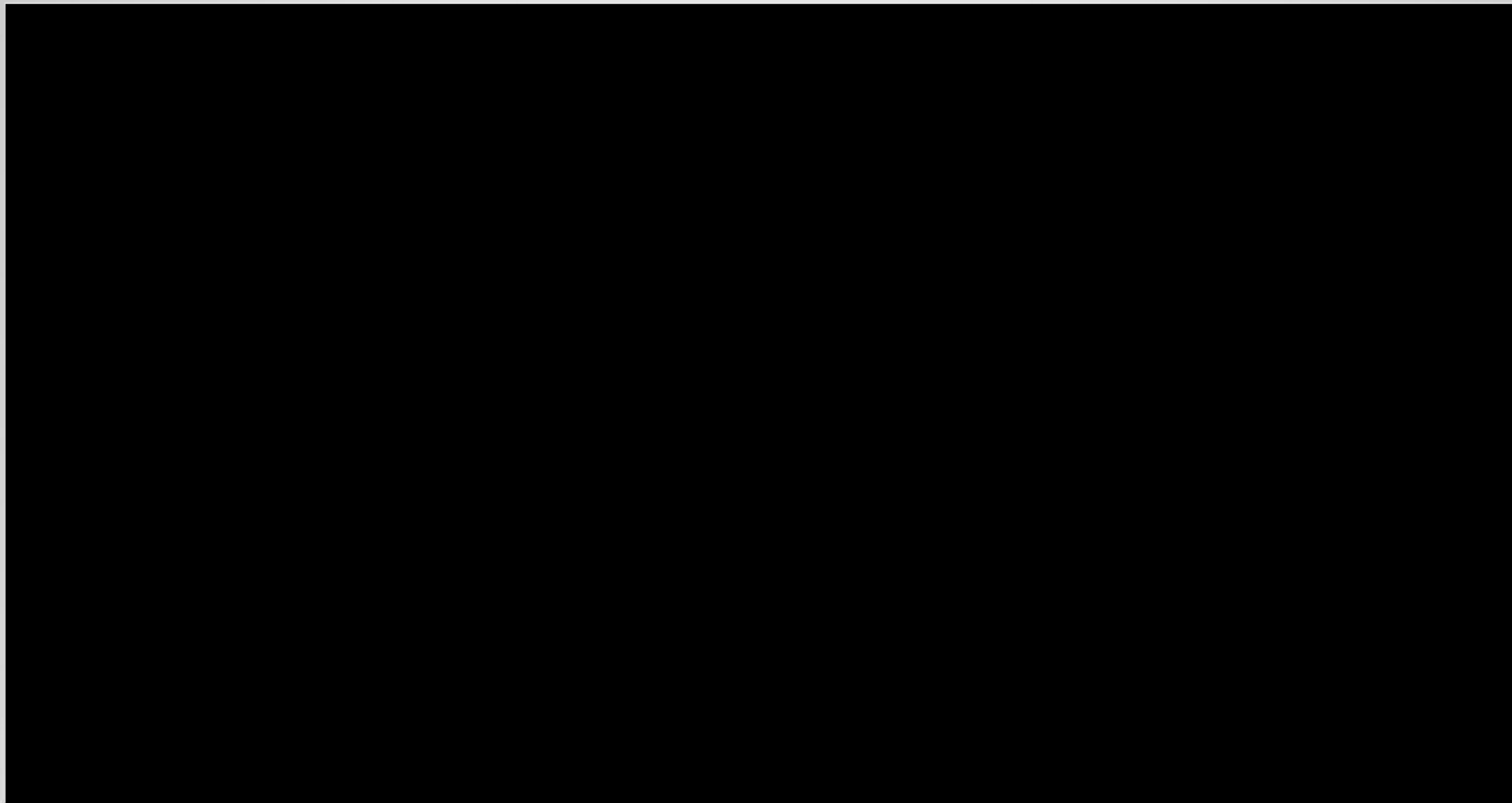
HOW TO ADMIT JAIL PHONE CALLS (EASY SITUATION)



HOW TO ADMIT JAIL PHONE CALLS (HARD SITUATION)



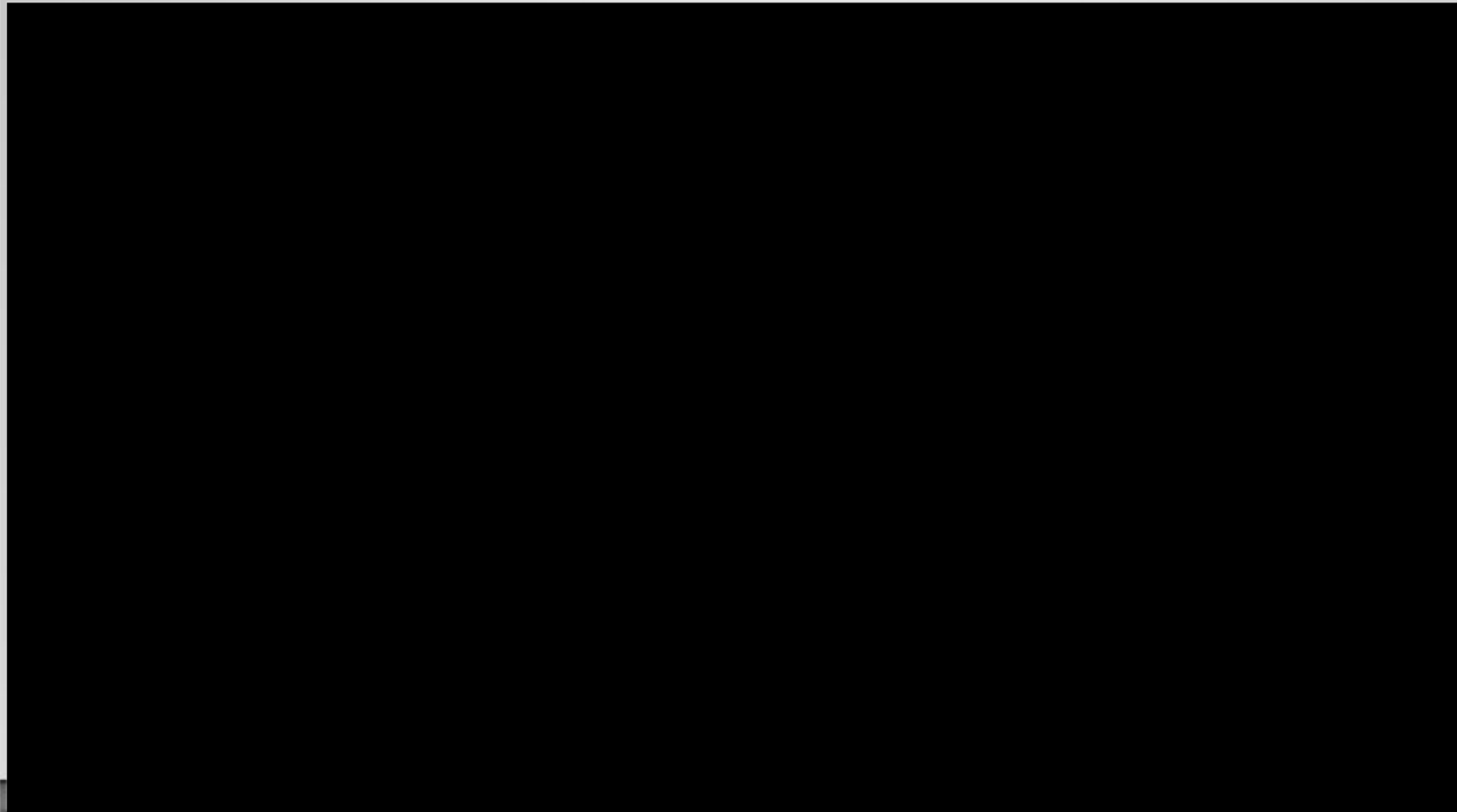
HOW TO ADMIT JAIL PHONE CALLS (HARDER SITUATION)



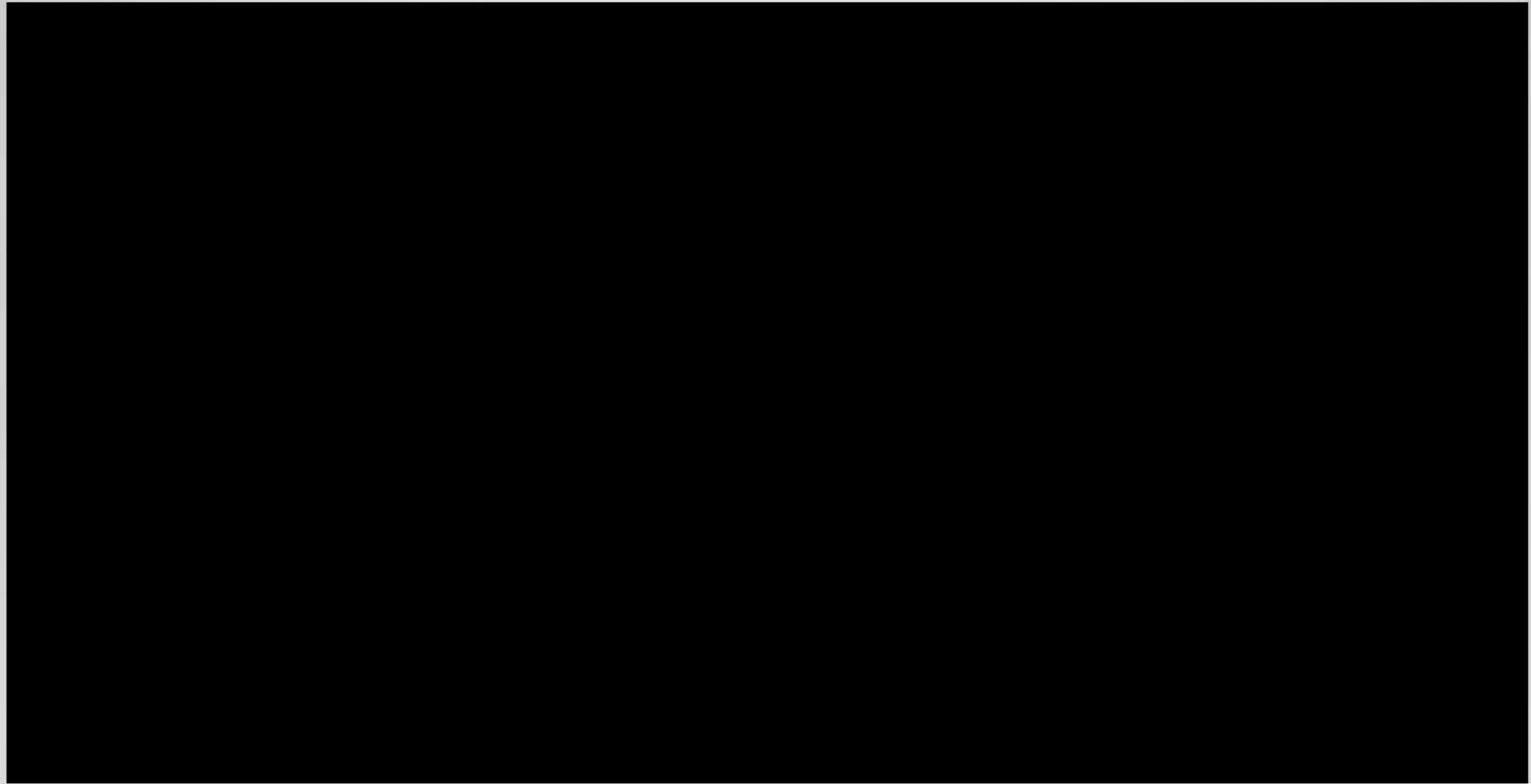
HOW TO ADMIT JAIL PHONE CALLS (HARDEST SITUATION)



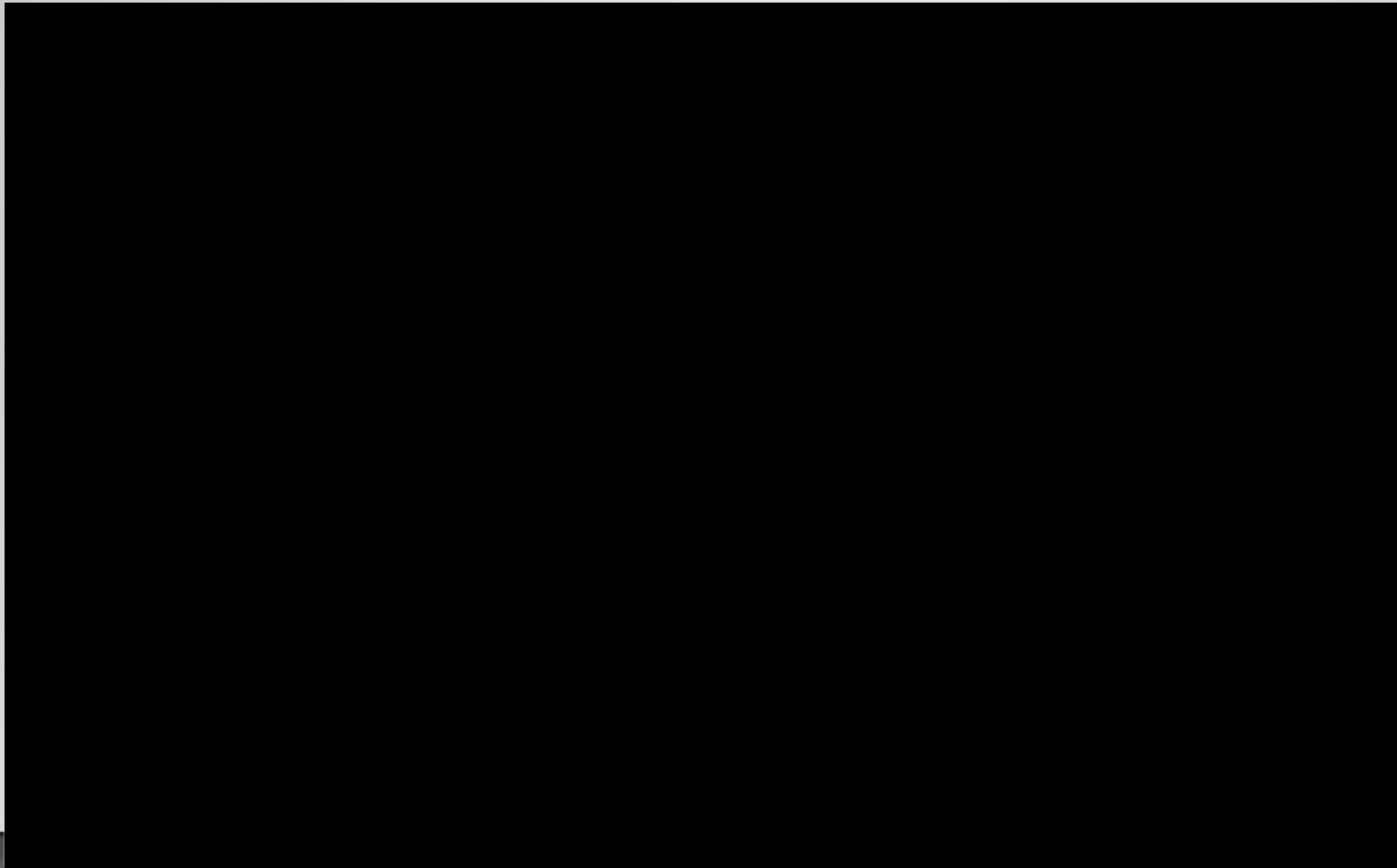
HOW TO ADMIT 911 CALLS



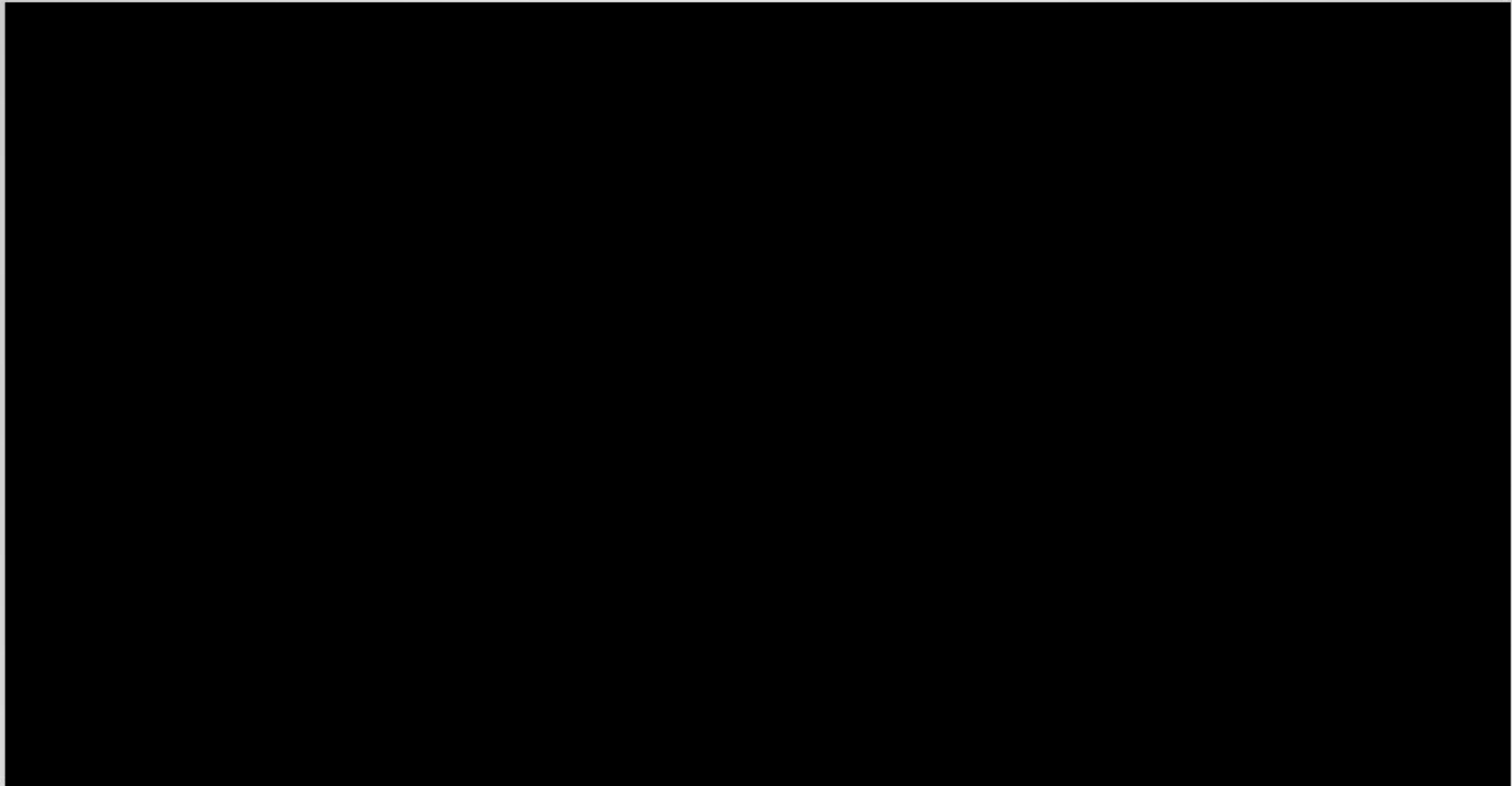
HOW TO ADMIT 911 CALLS



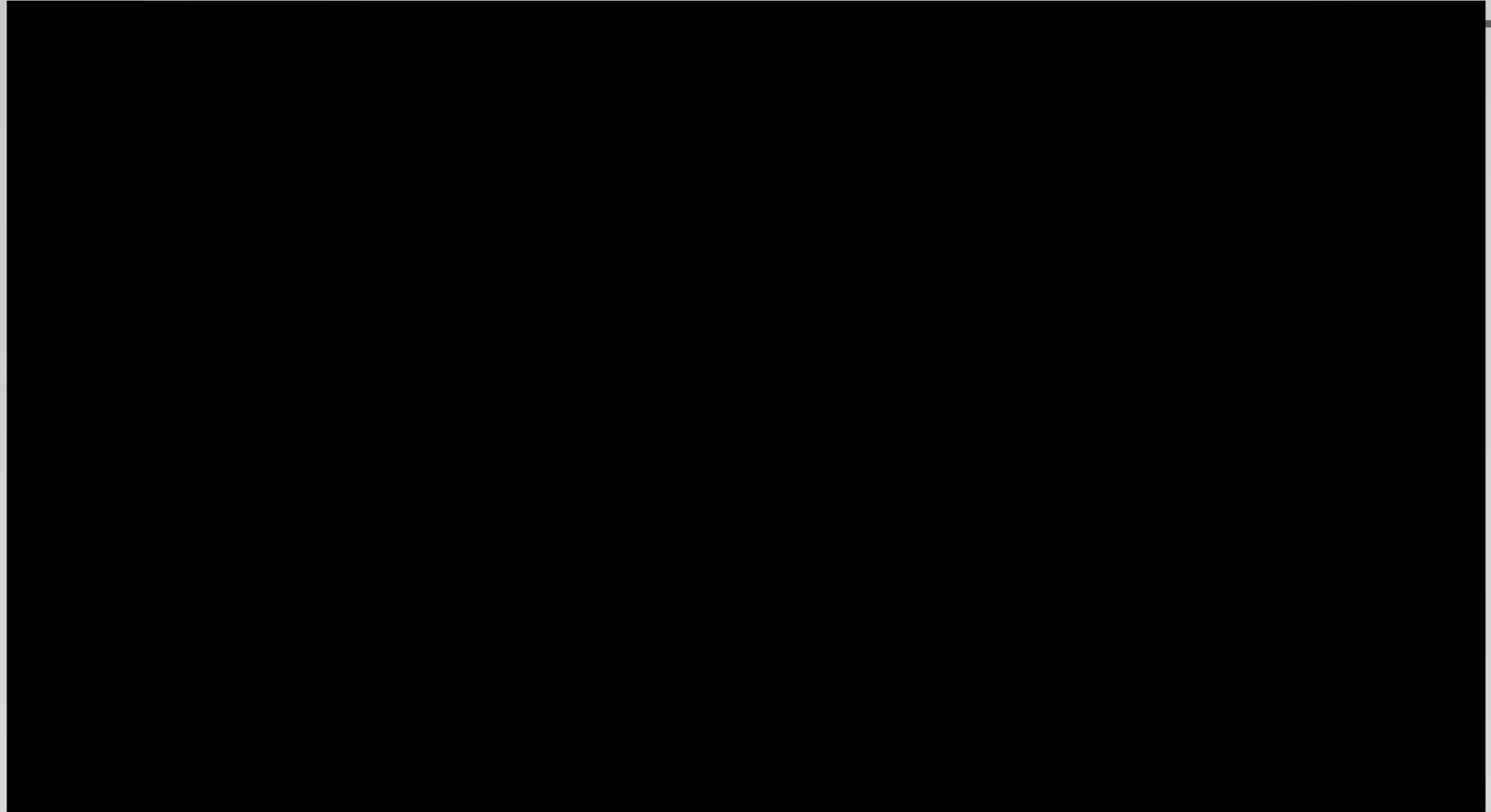
HOW TO ADMIT TOX RESULTS BLOOD AND BREATH



HOW TO ADMIT TOX RESULTS BREATH



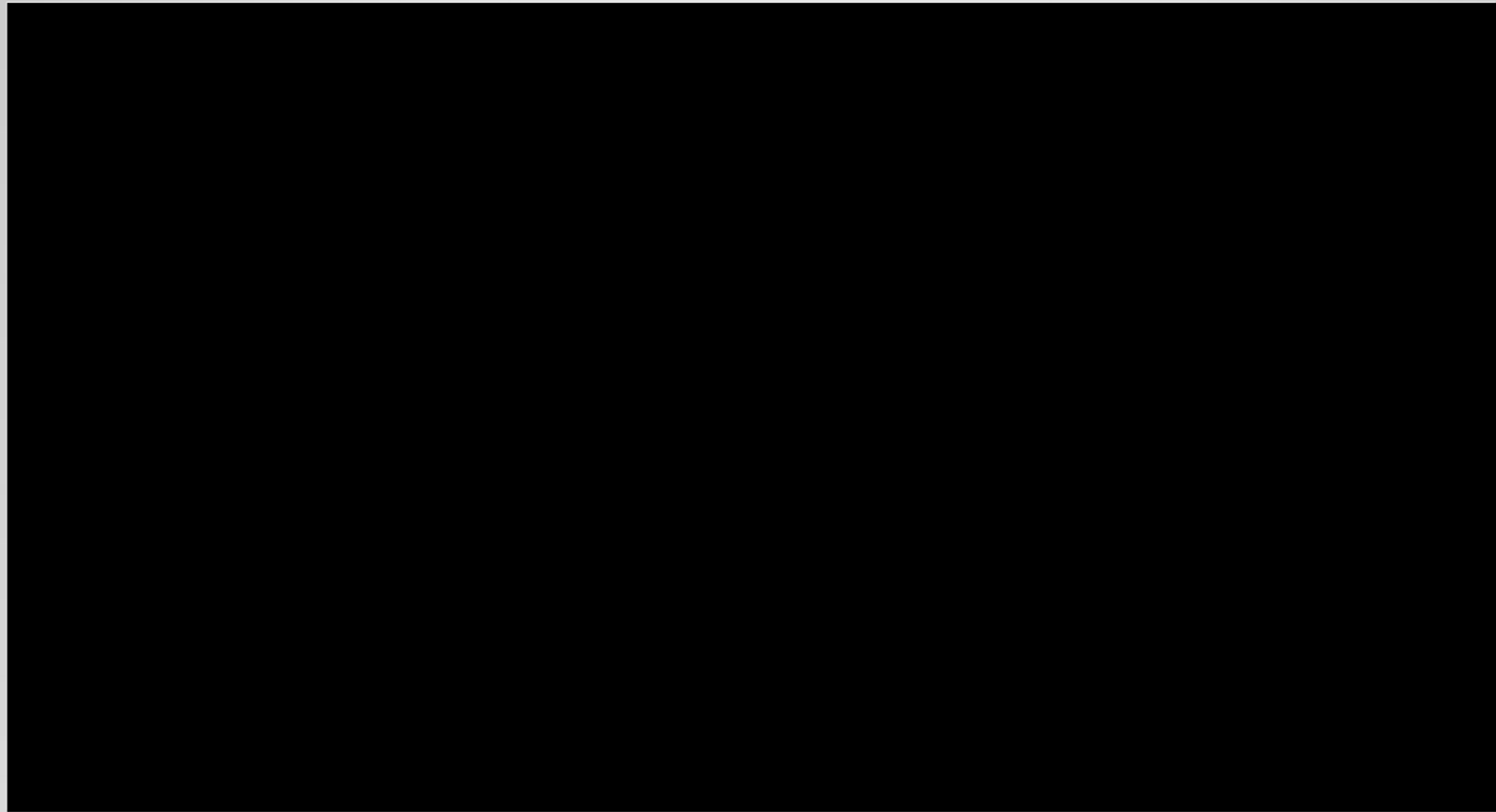
HOW TO ADMIT TOX RESULTS BLOOD



HOW TO ADMIT TOX RESULTS BLOOD

- Peo v. Lopez (2012) 55 Cal.4th 569, 581-582
 - Court found that results were “Non-Testimonial” (I will get to that) under *Crawford*.
 - Because it is “data generated by a gas chromatography machine”
 - You can’t cross a machine therefore it did not implicated 6th amendment Right to Confrontation
 - Once the Judge is on board you call your Toxicologist who lays the foundation for the Business Record

HOW TO ADMIT SOCIAL MEDIA RECORDS



Google LLC
1600 Amphitheatre Parkway

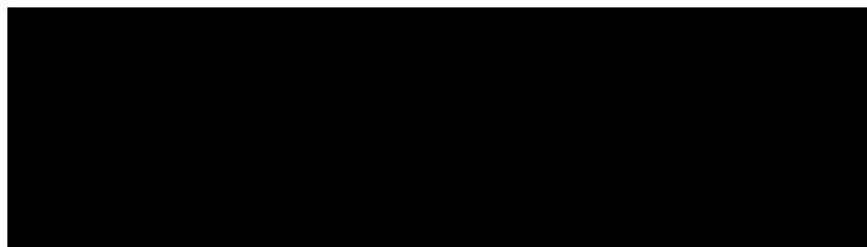


USLawEnforcement@google.com
Mountain View, California 94043

CERTIFICATE OF AUTHENTICITY

I hereby certify:

1. I am employed by Google LLC ("Google"), located in Mountain View, California. I am authorized to submit this affidavit on behalf of Google. I have personal knowledge of the following facts, except as noted, and could testify competently thereto if called as a witness.
2. I am qualified to authenticate the records because I am familiar with how the records were created, managed, stored and retrieved.
3. Google provides Internet-based services.
4. Attached is a true and correct copy of records pertaining to the Google account-holder(s) identified with account(s) [REDACTED] with Google Ref. No. [REDACTED] ("Document"). Accompanying this Certificate of Authenticity as Attachment A is a list of hash values corresponding to each file produced in response to the Search Warrant.
5. The Document is a record made and retained by Google. Google servers record this data automatically at the time, or reasonably soon after, it is entered or transmitted by the user, and this data is kept in the course of this regularly conducted activity and was made by regularly conducted activity as a regular practice of Google.
6. The Document is a true duplicate of original records that were generated by Google's electronic process or system that produces an accurate result. The accuracy of Google's electronic process and system is regularly verified by Google.
7. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.



URL

https://attachment.fbsbx.com/messaging_attachment.php?aid=467073193800282&mid=mid.%24cAAAAOIFx5sHo3E7I7UgvuQnI2&uid=100004487234497&accid=100004487234497&preview=0&hash=AQAs7seHSbo5Idl6OslOYYwn9gMaL06kM464BmNU4Z6LHw

Author [REDACTED]
Sent 2018-09-18 14:46:15 UTC
Call Record
Type phone
Missed true
Duration 0

Author
Sent
Body

Author
Sent
Body

Author
Sent
Body

Author
Sent
Body

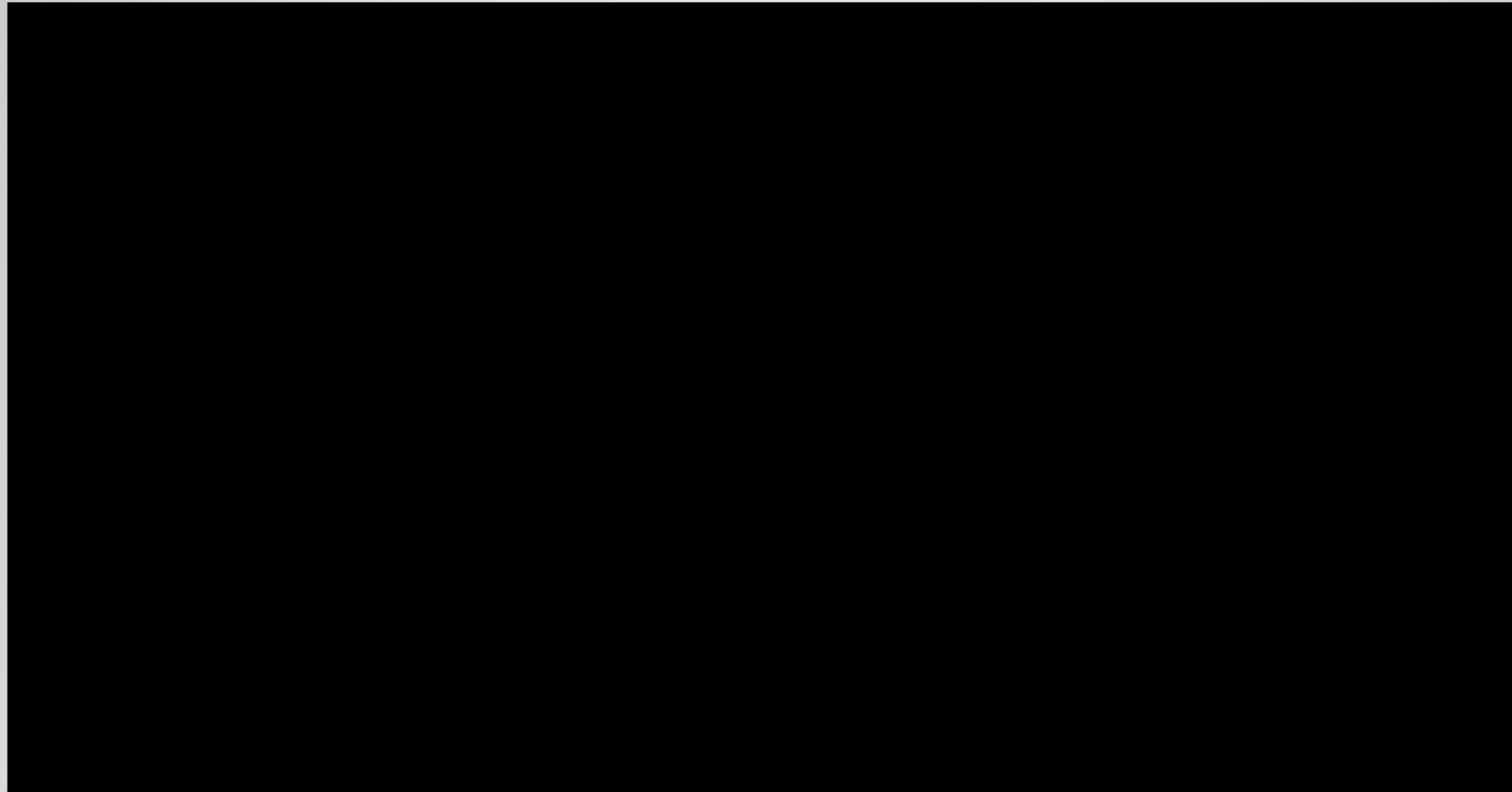
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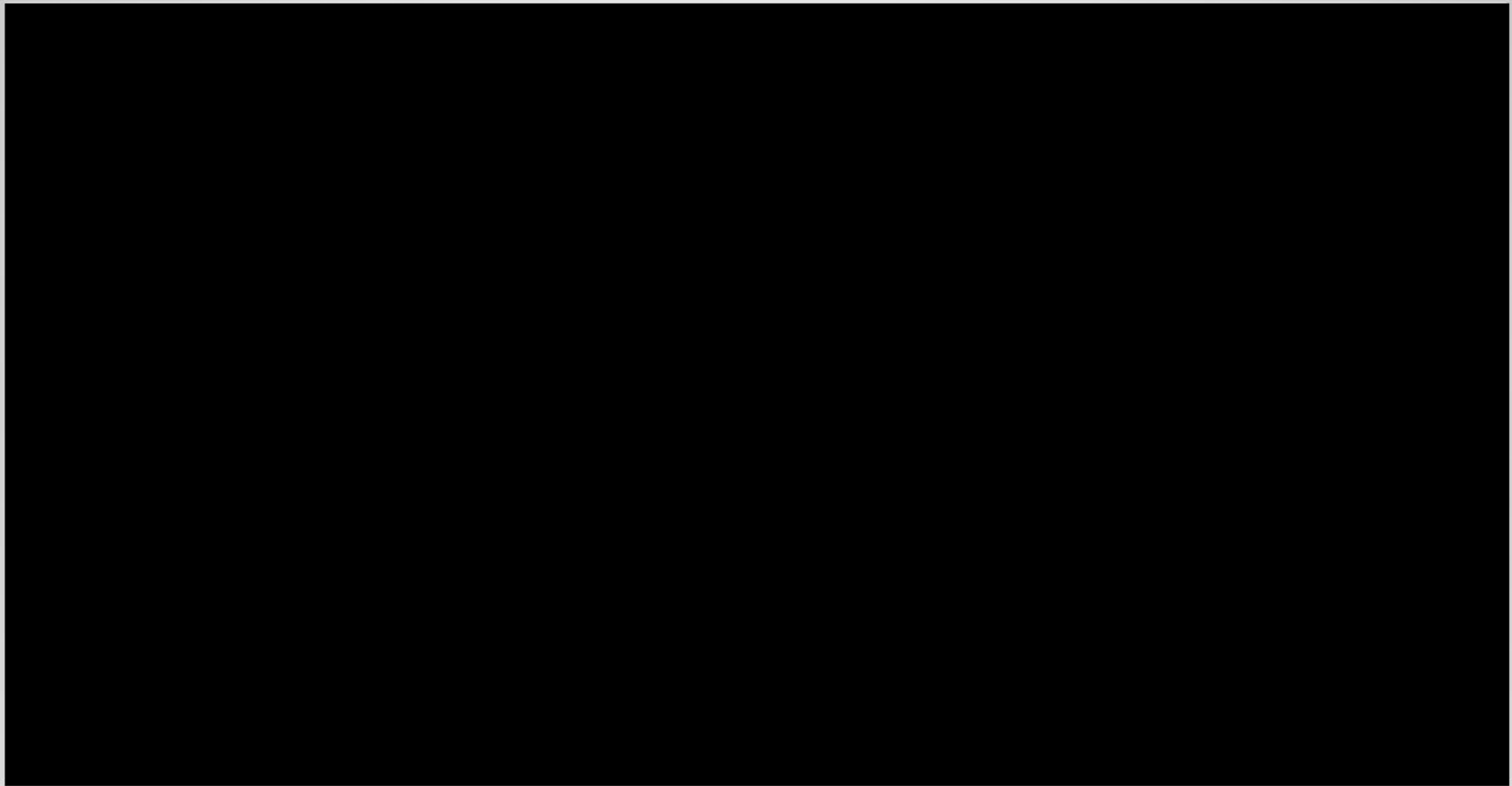
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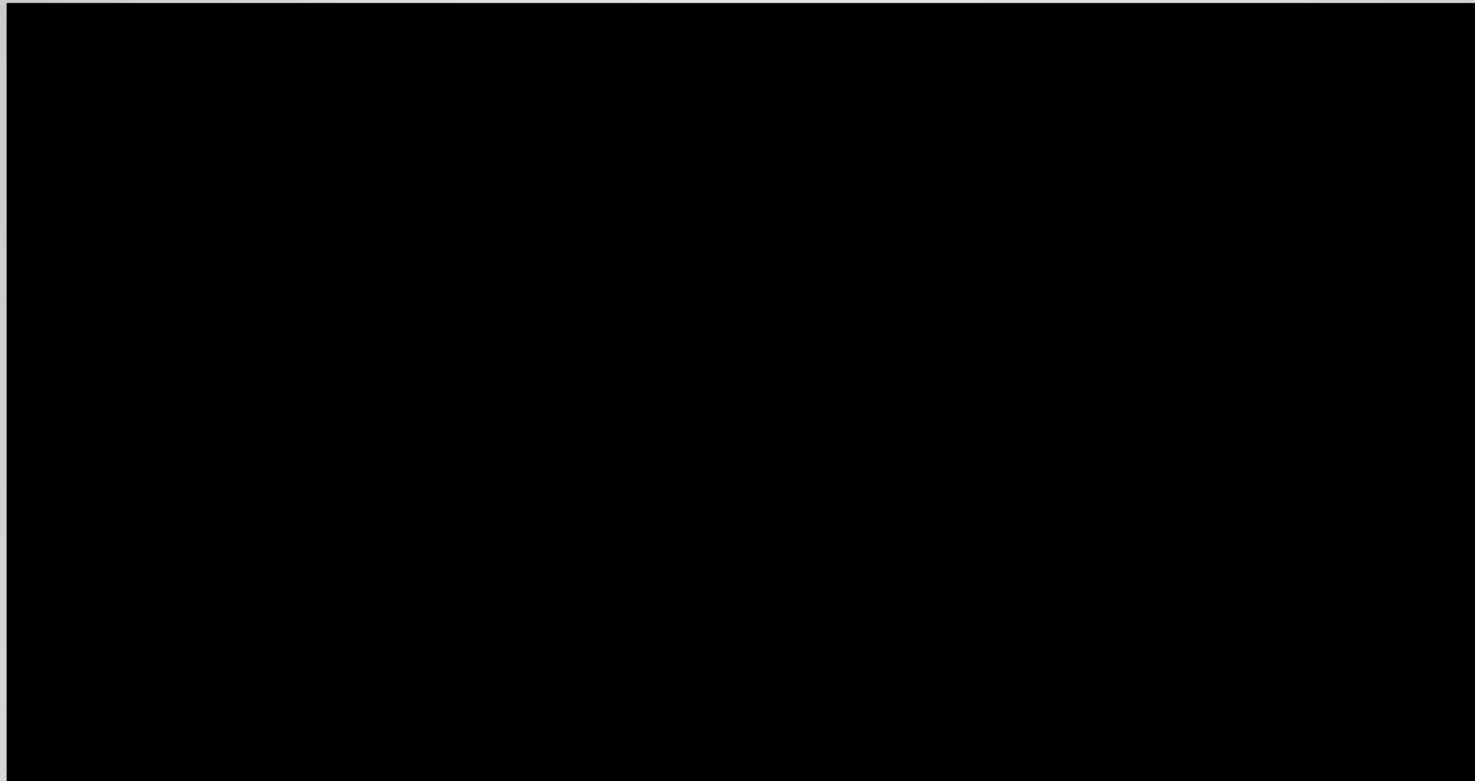
HOW TO ADMIT SOCIAL MEDIA RECORDS



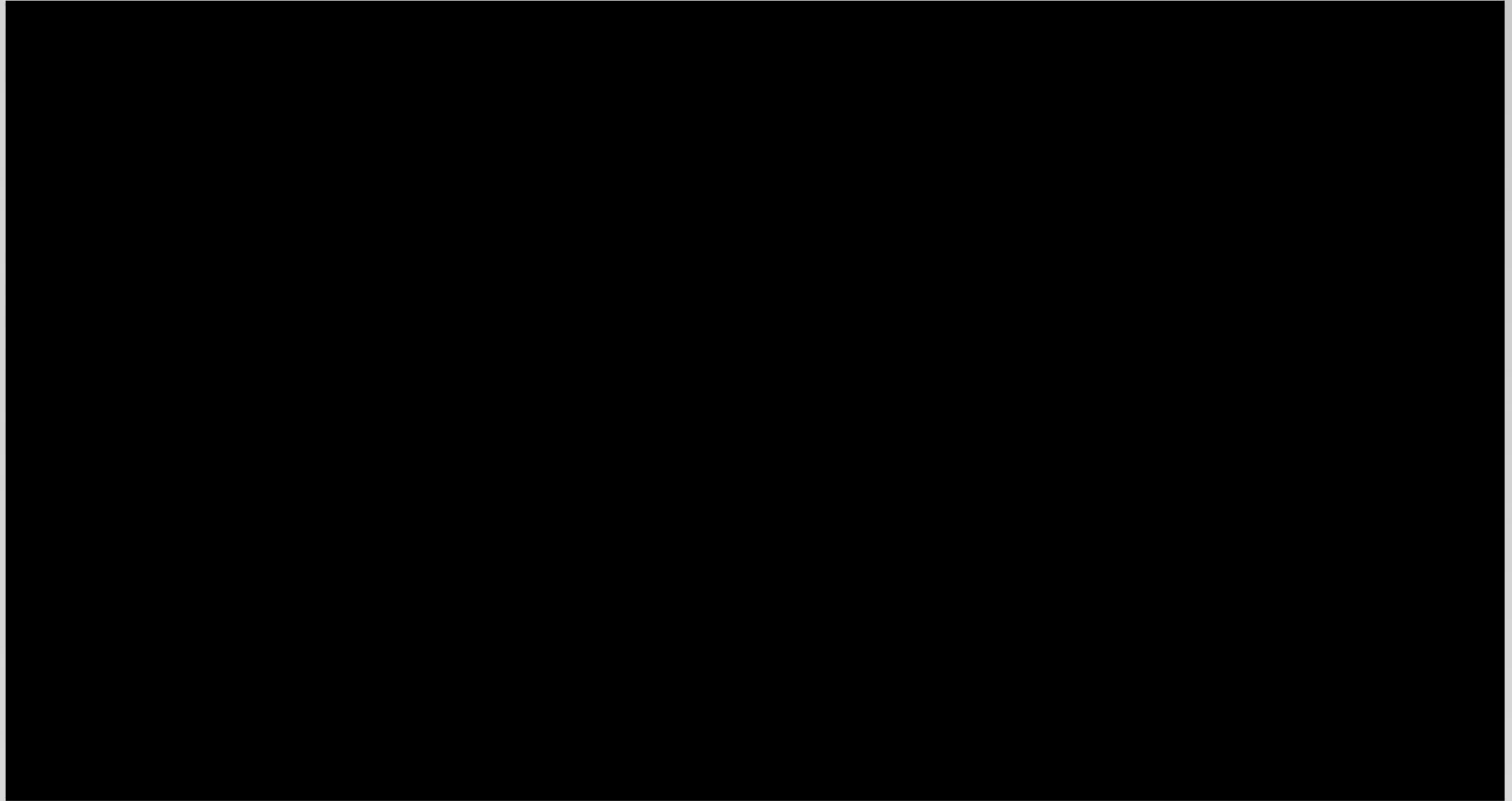
HOW TO ADMIT SOCIAL MEDIA RECORDS



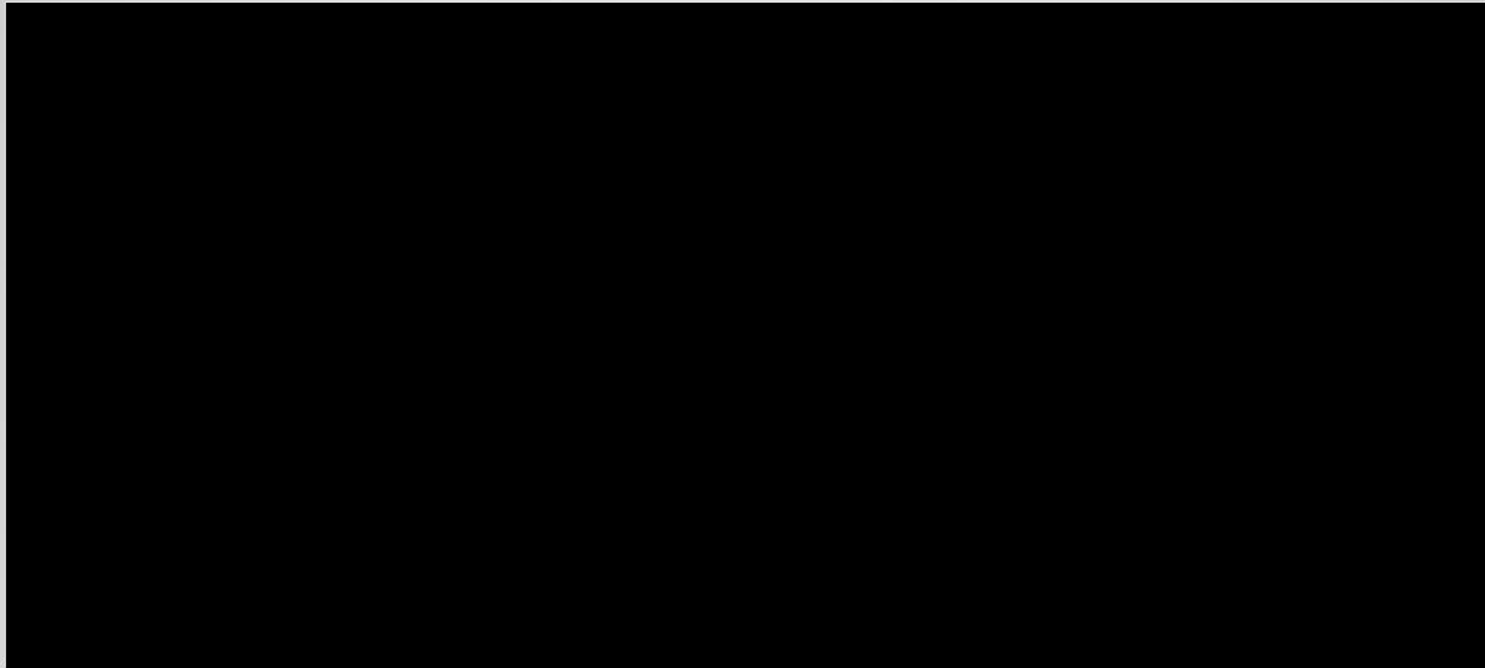
HOW TO ADMIT SOCIAL MEDIA RECORDS



CHARACTER EVIDENCE



CHARACTER EVIDENCE: METHOD OF PROOF



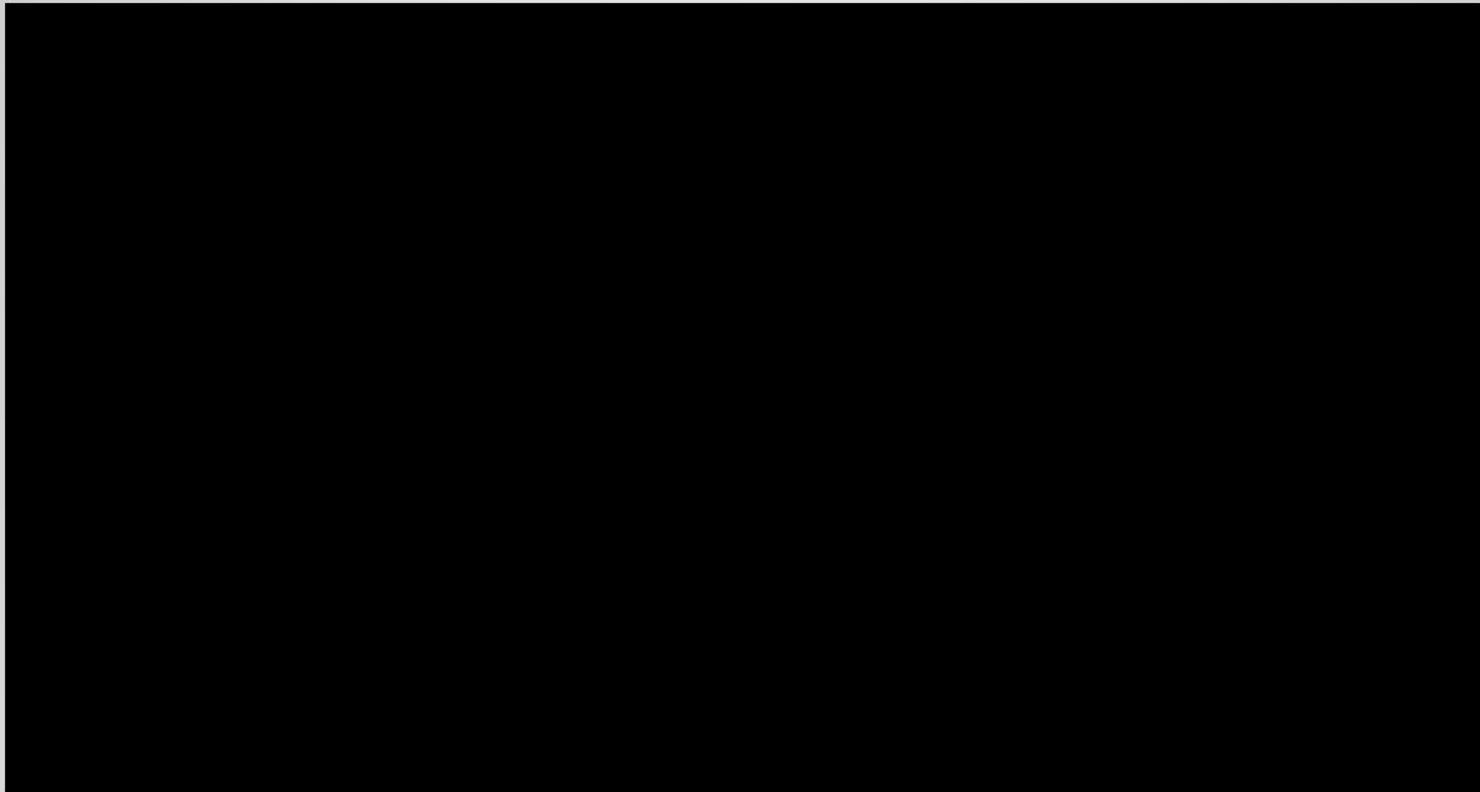
EVIDENCE CODE SECTION 1101

- Generally speaking, evidence of a person's character is **INADMISSIBLE** when offered to prove conduct on a specific occasion
- **HOWEVER**, evidence of specific uncharged acts (bad acts) is admissible when relevant to prove some fact other than “propensity” to commit the criminal act

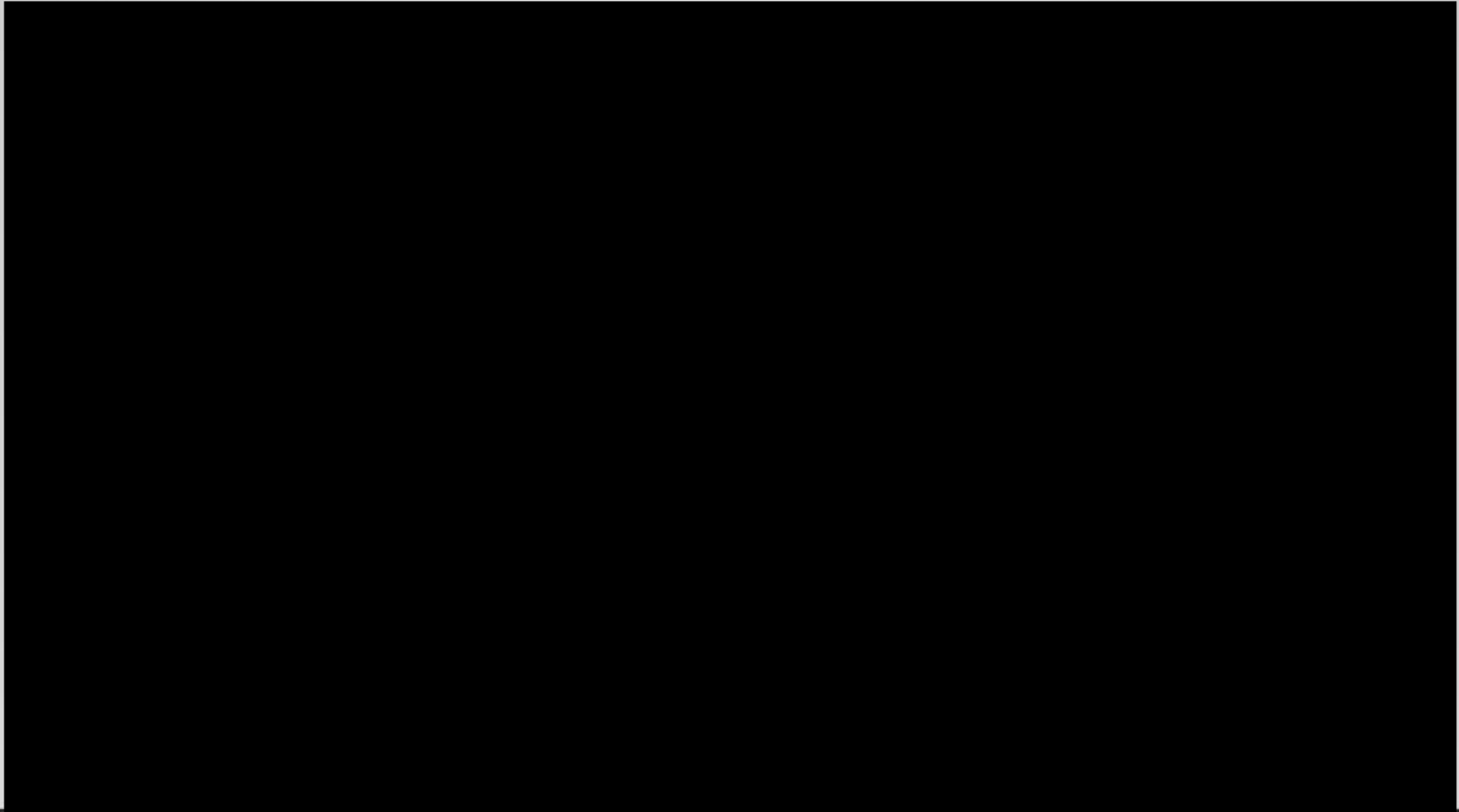
EVIDENCE CODE SECTION 1101(B)

- Things you CAN use other bad acts to prove:
 - Intent
 - Identity
 - Common Plan or design
 - Knowledge
 - Motive
 - State of Mind
 - Lack of Accident

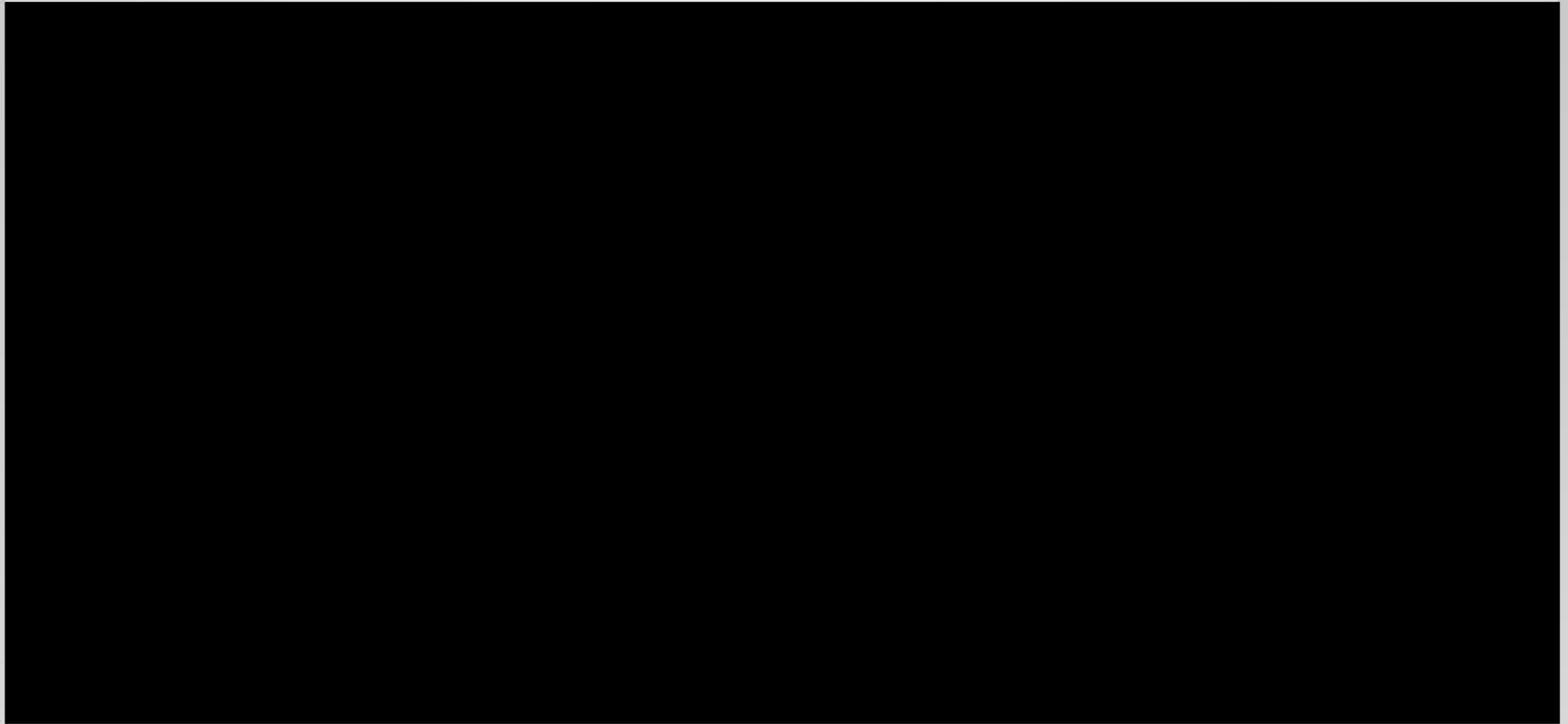
INTENT



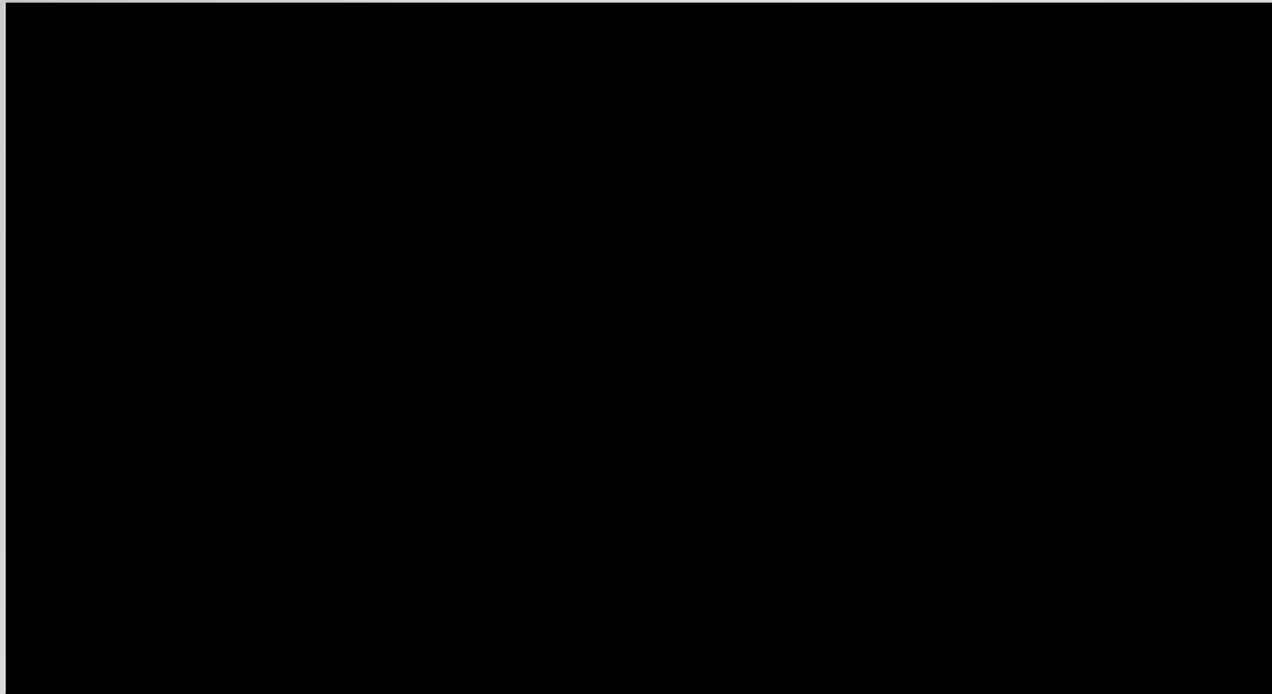
IDENTITY



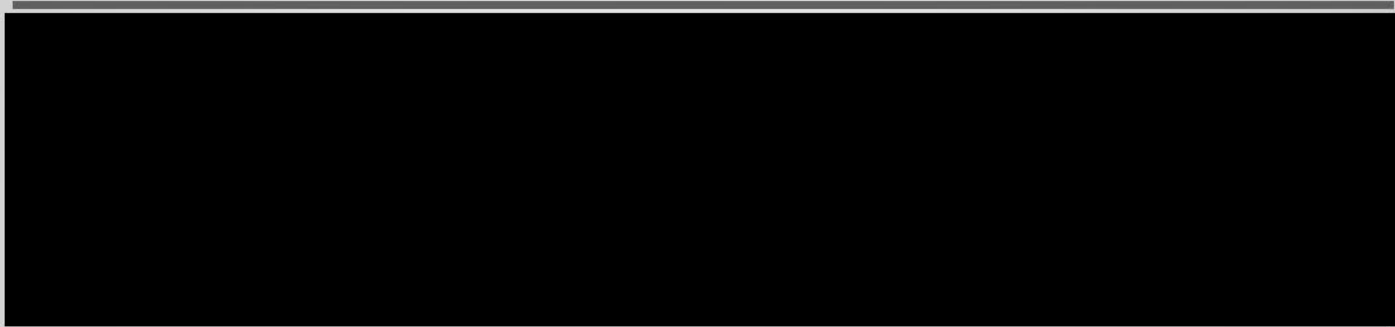
KNOWLEDGE



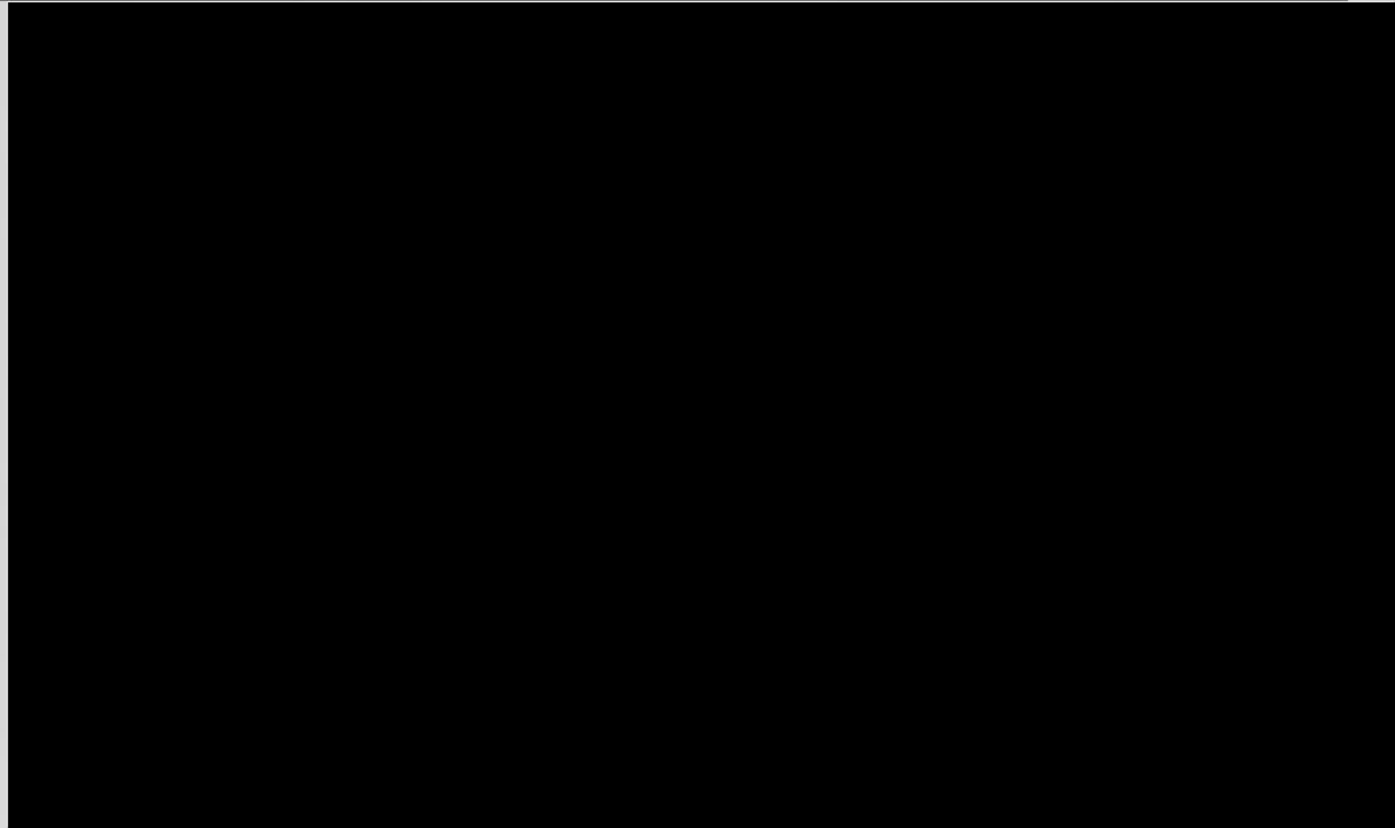
“KNOWINGLY”



MOTIVE



MOTIVE



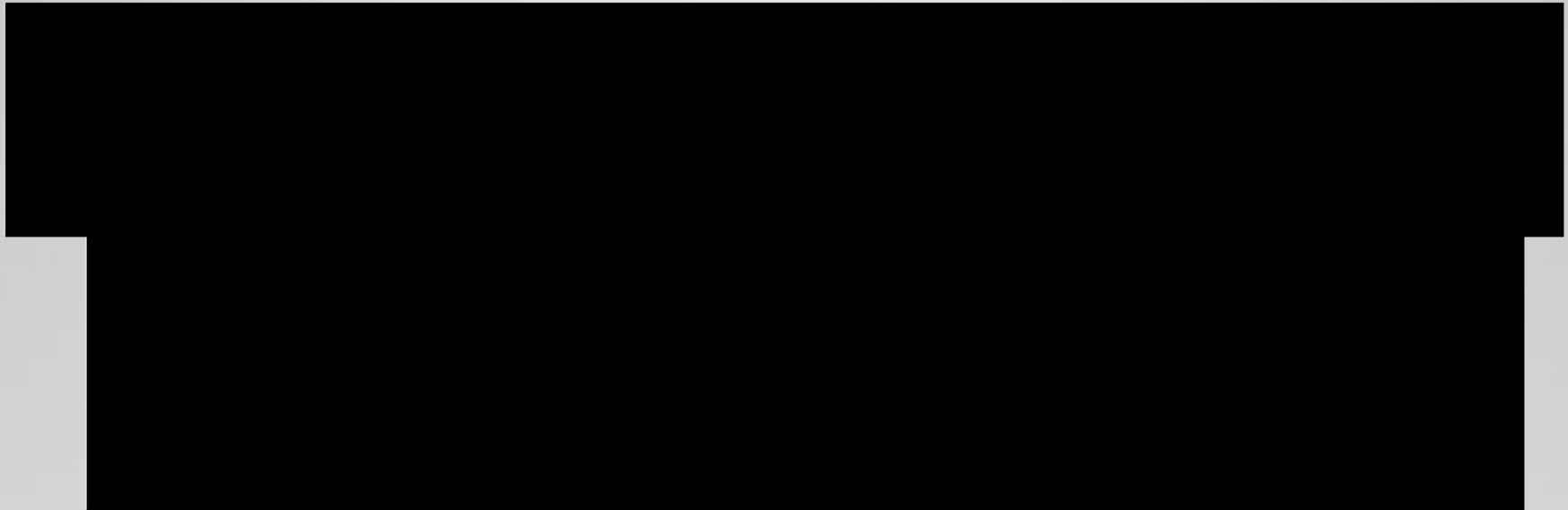
STATE OF MIND



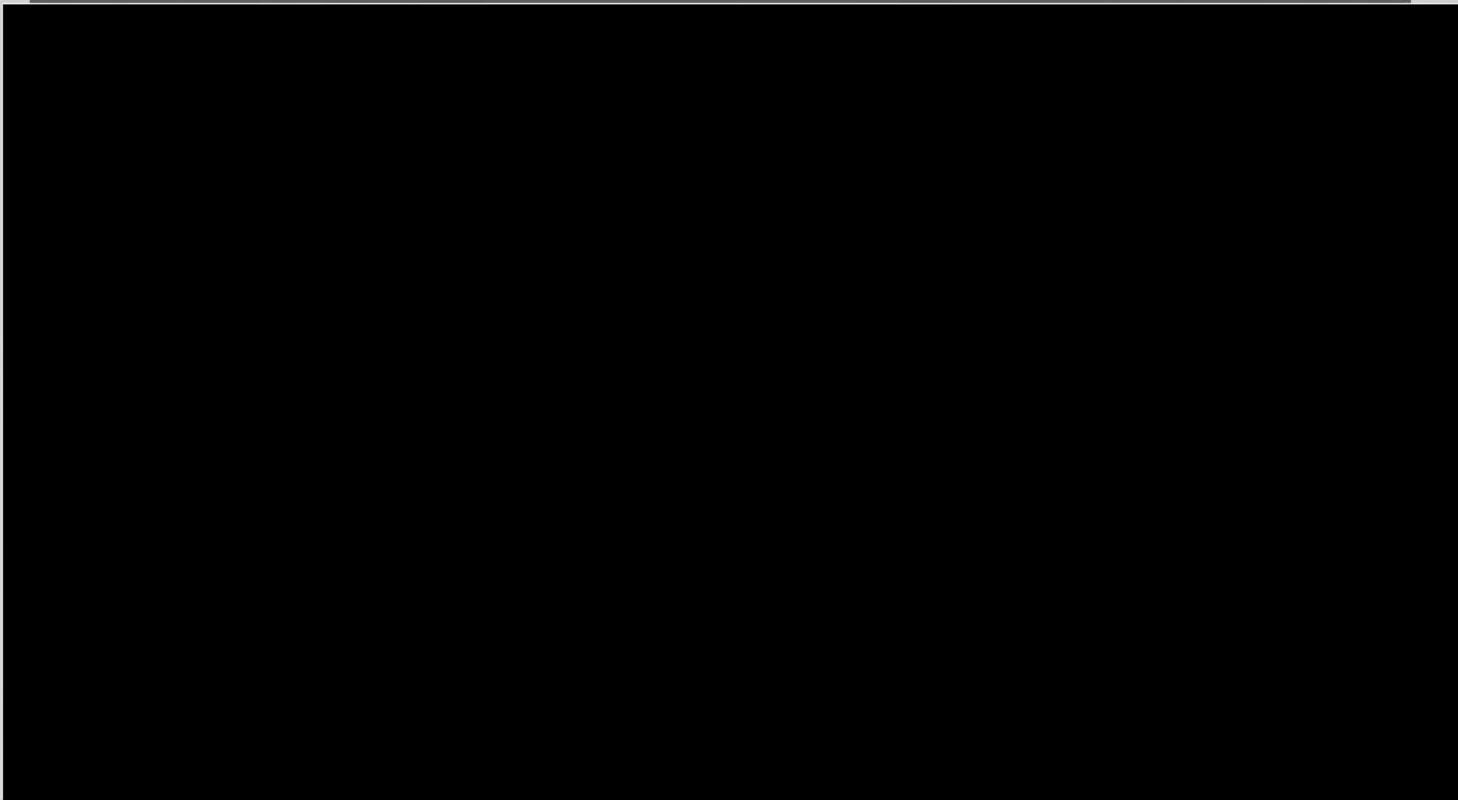
DON'T FORGET



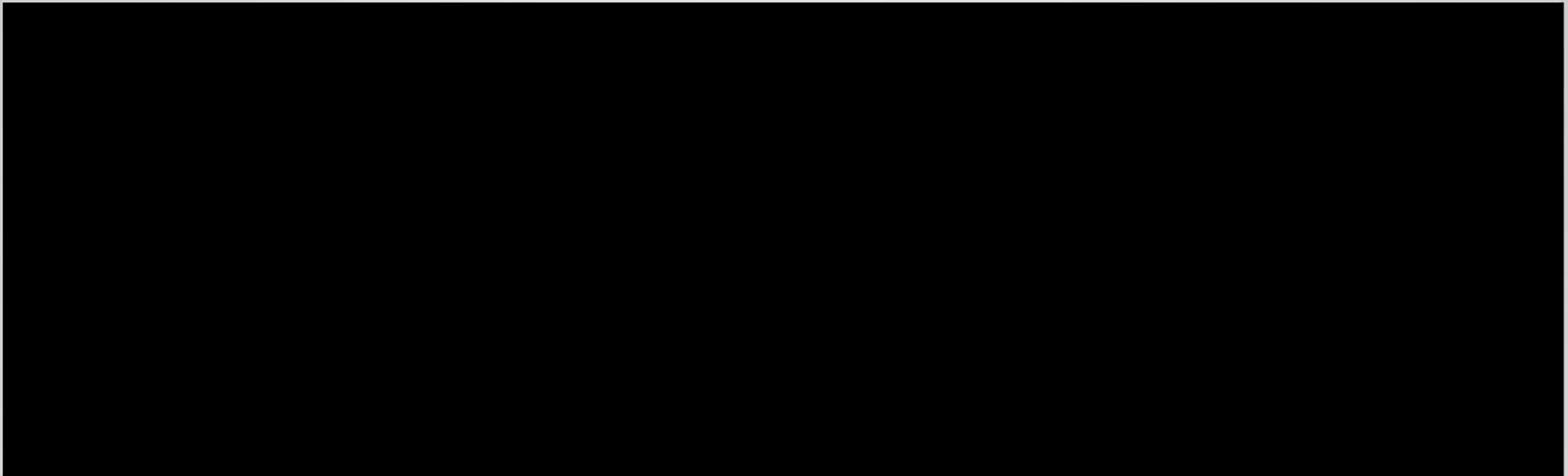
EVIDENCE CODE SECTIONS 1108 AND 1109: “PROPENSITY” EVIDENCE



HOWEVER... STILL SUBJECT TO 352



THINGS TO REMEMBER:



EXPERT WITNESSES

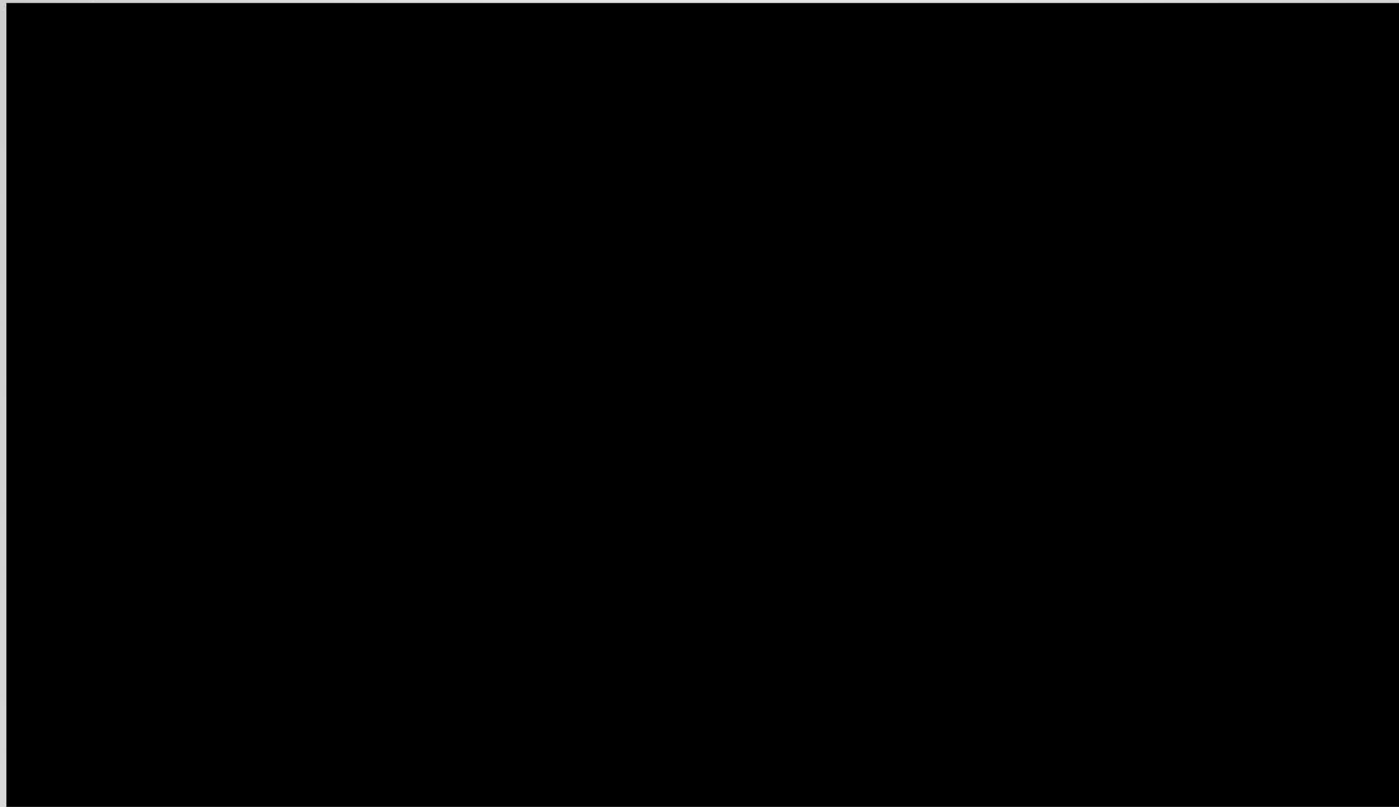
If a witness is testifying as an expert, his testimony in the form of an opinion is limited to such an opinion as is:

- (a)** Related to a subject that is sufficiently beyond common experience that the opinion of an expert would assist the trier of fact; and
- (b)** Based on matter (including his special knowledge, skill, experience, training, and education) perceived by or personally known to the witness...

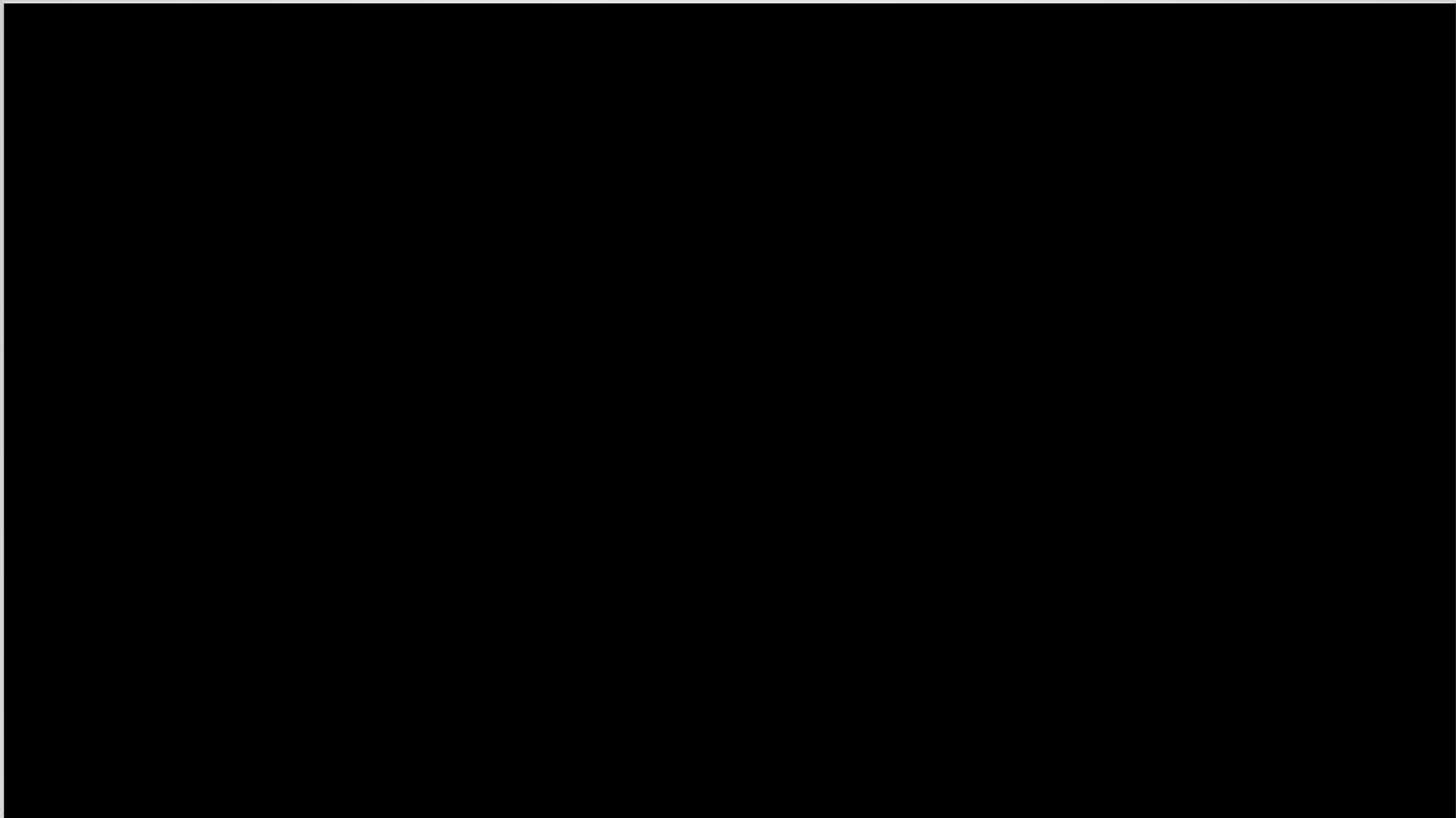
WHO ARE EXPERT WITNESSES



DISCOVERY REQUIREMENTS

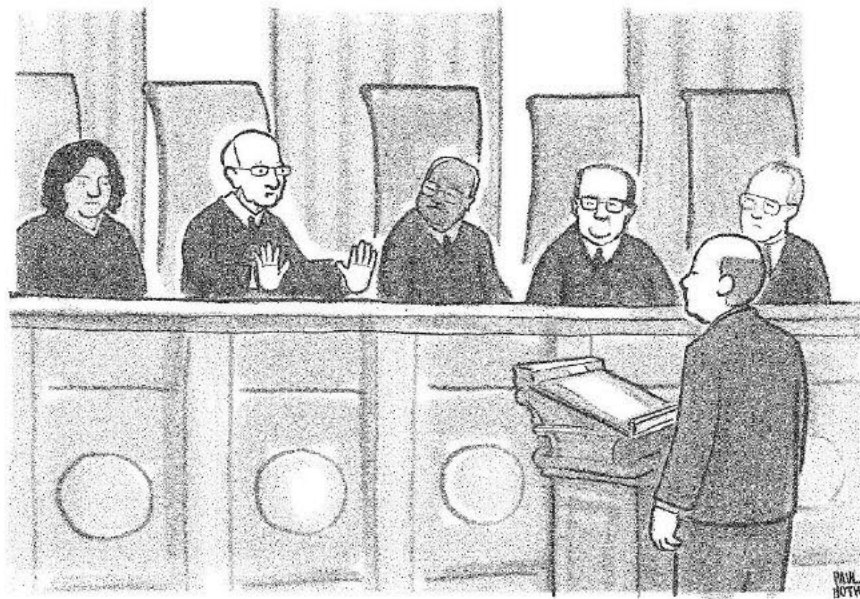


EXPERT TESTIMONY



PEOPLE V. SANCHEZ (2016) 63 CAL.4TH 665

THE NEW YORKER

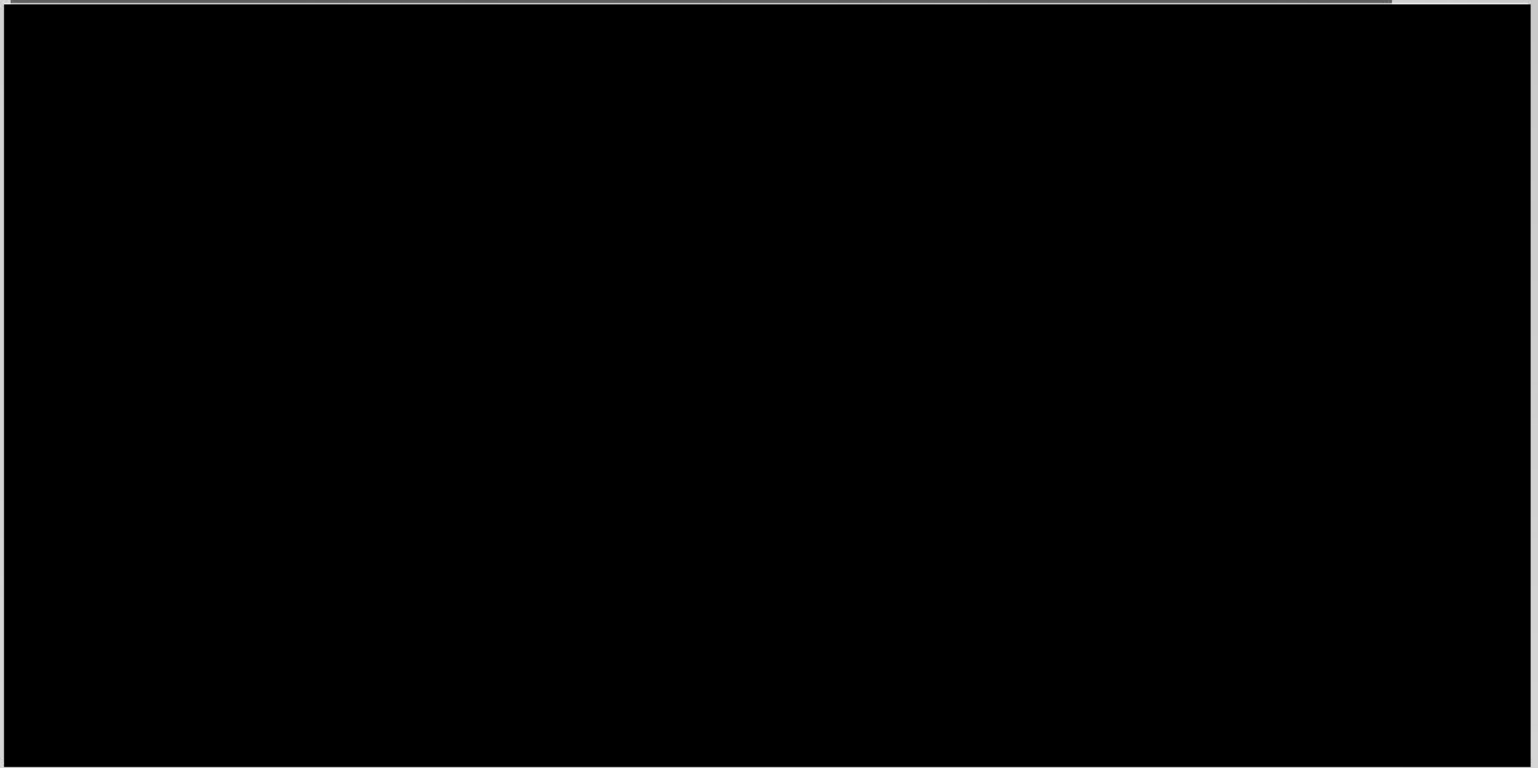


"Whoa, don't ask constitutional questions you don't want to know the answers to."

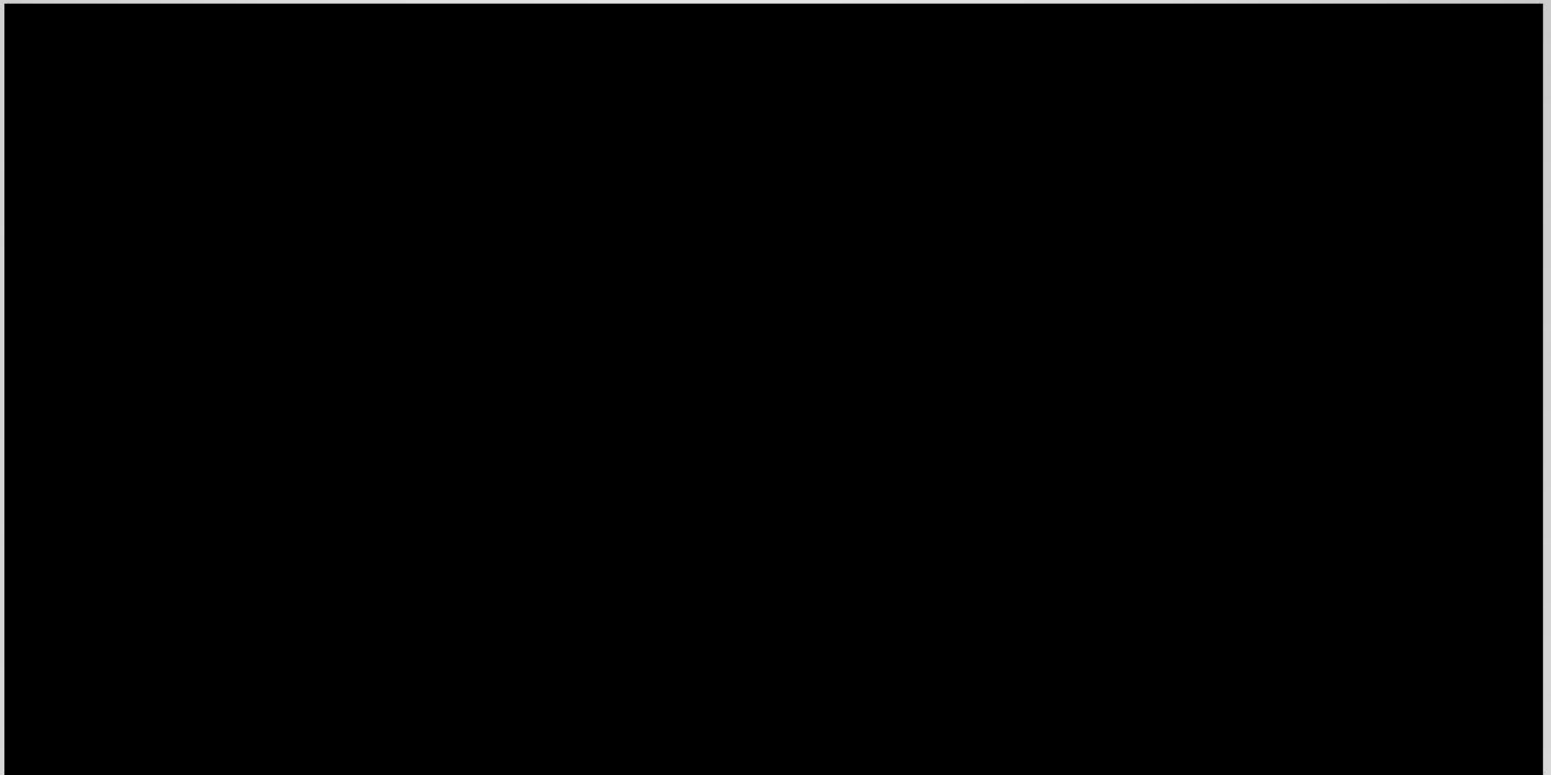
PEOPLE V. SANCHEZ (2016) 63 CAL.4TH 665

- An expert is precluded from relating case-specific facts about which the expert has no independent knowledge.
- Must first establish case specific facts from witness testimony or through the expert if he/she has personal knowledge of case specific facts
- An expert may then testify about more generalized information to help jurors understand the significance of those case-specific facts.
- An expert is also allowed to give an opinion about what those facts may mean.

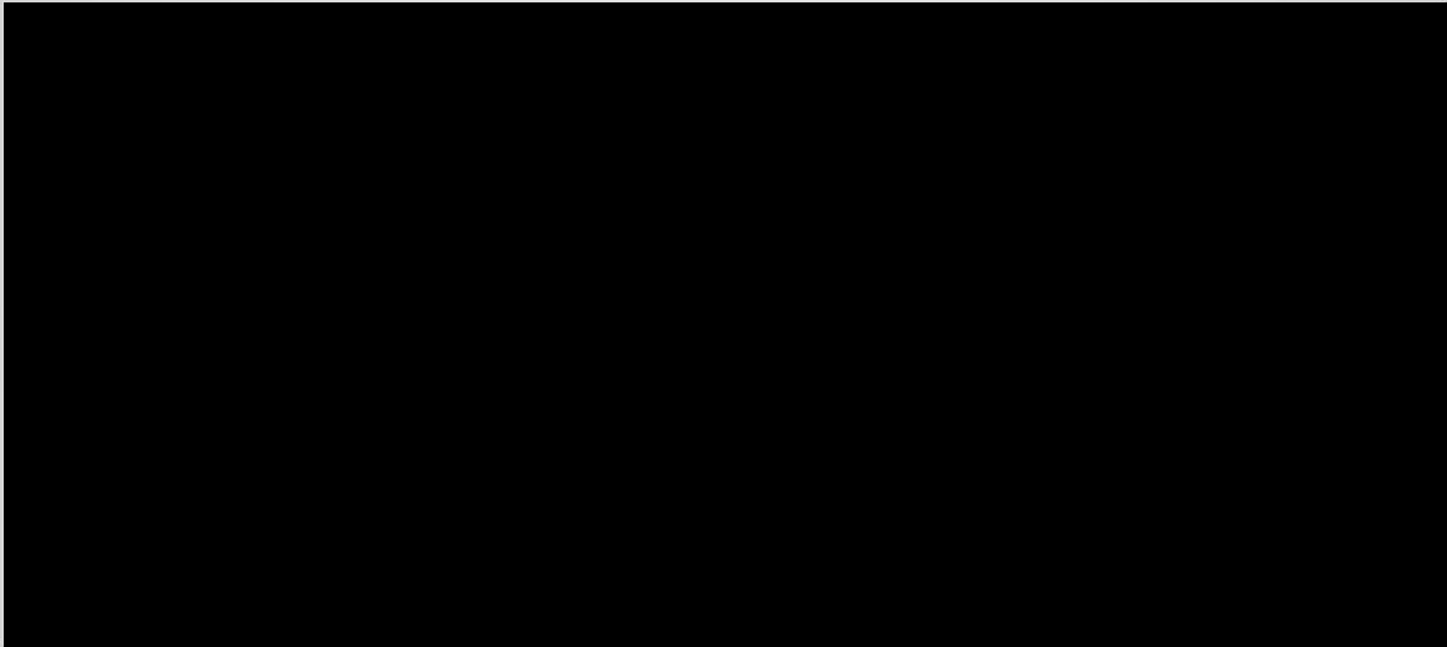
EXAMPLE I



EXAMPLE 2



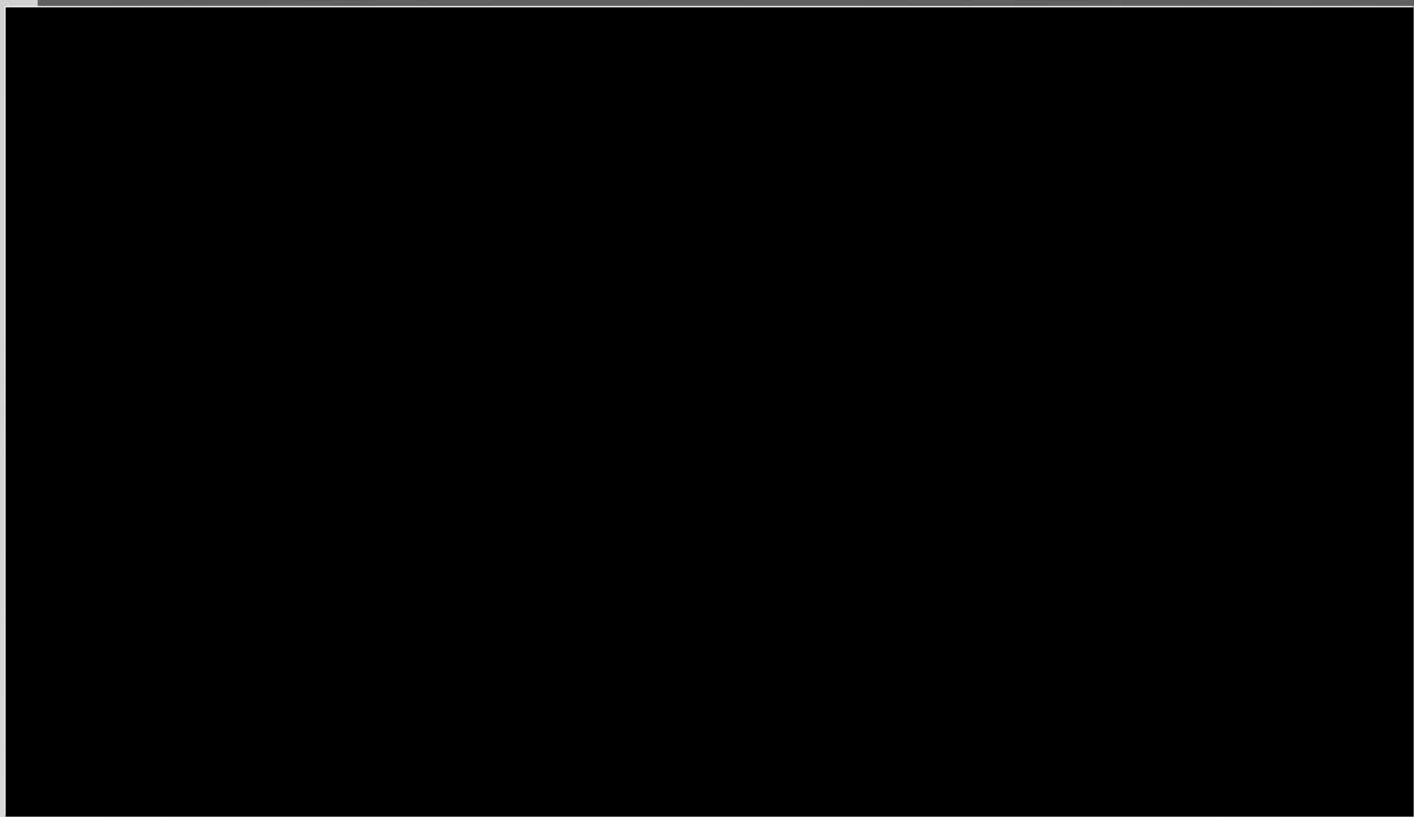
PRACTICAL APPLICATIONS



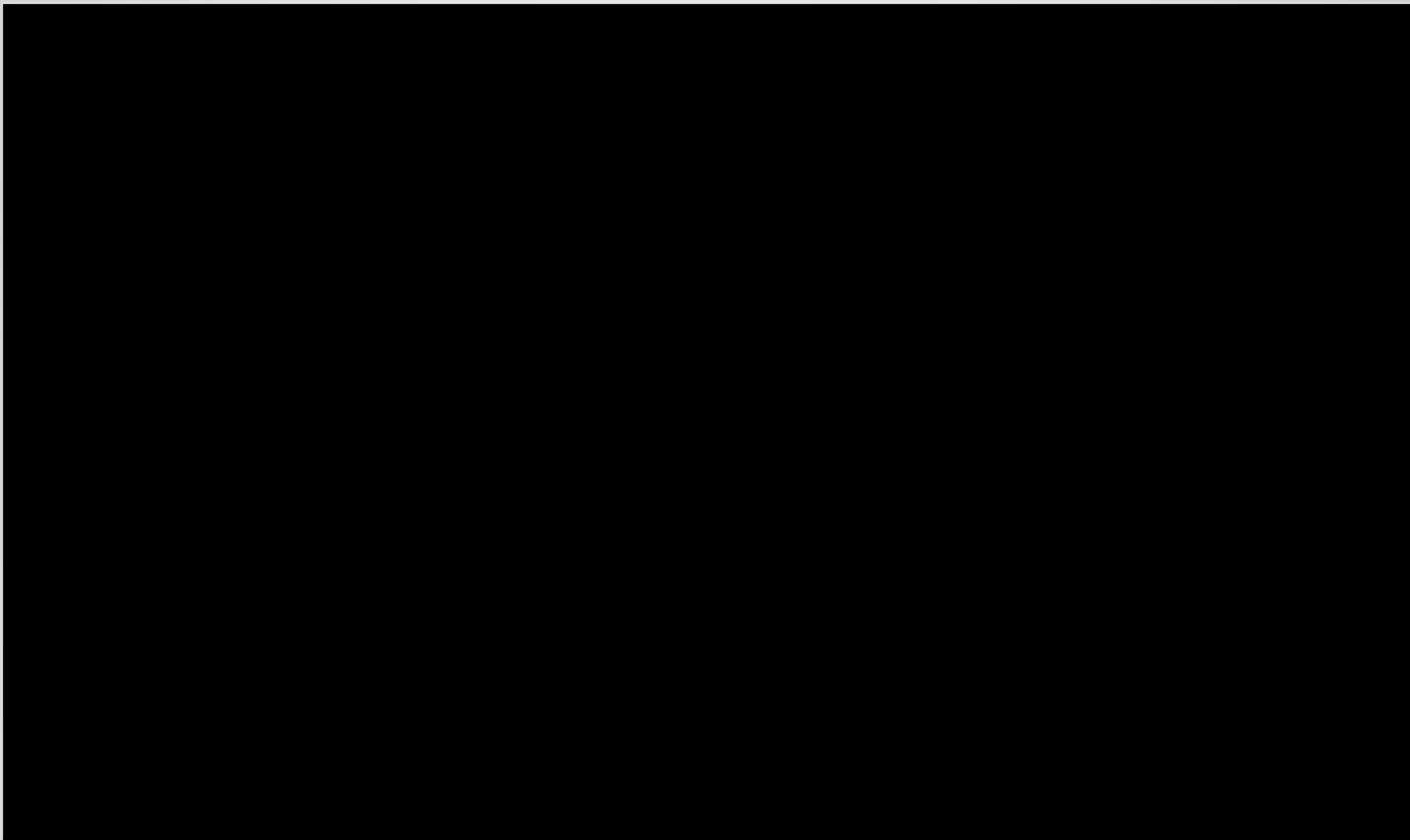
RULE OF COMPLETENESS EC 356

- Evidence Code section 356 provides, “Where part of an act, declaration, conversation, or writing is given in evidence by one party, the whole on the same subject may be inquired into by an adverse party...”
- Rule is available to both prosecution and defense

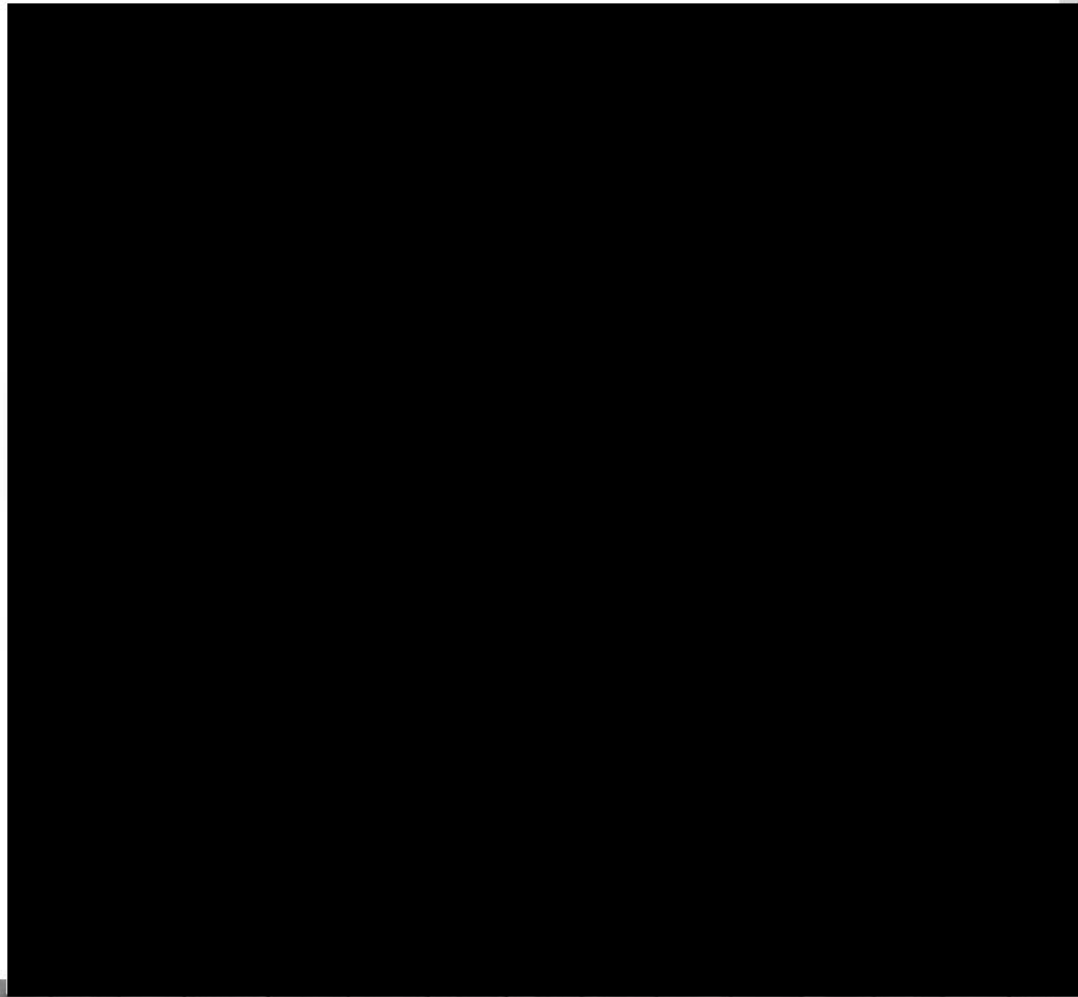
RULE OF COMPLETENESS EC 356



RULE OF COMPLETENESS EC 356



ARANDA-BRUTON



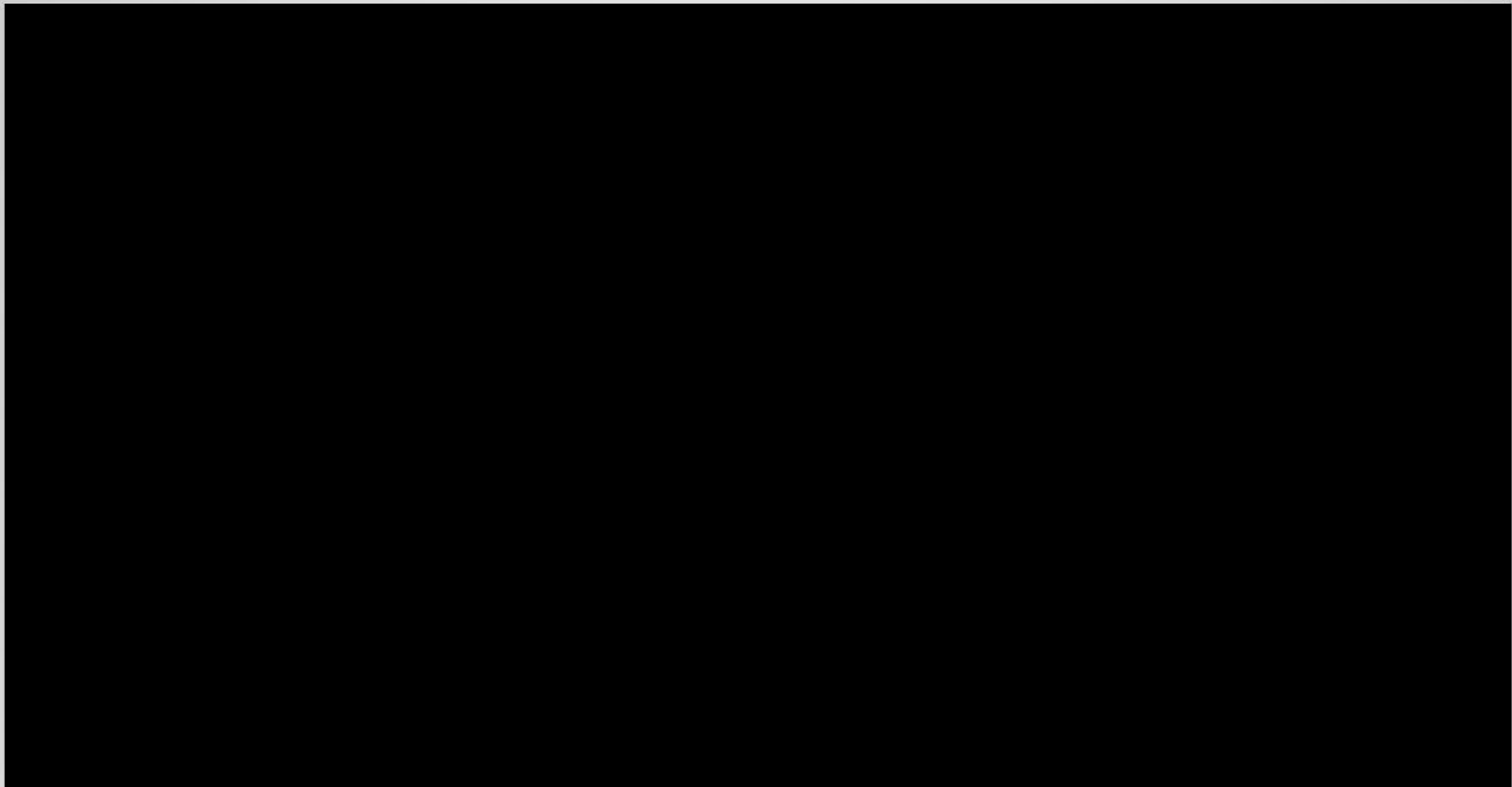
THE RULE

- Only applicable in co-defendant trials
- A defendant's 6th Amendment right to confront and cross-examine witnesses is violated when the testimonial statement of a codefendant that facially and/or powerfully implicates the defendant is admitted in their joint trial regardless of whether the jury is instructed it can only use and consider the codefendant's statement against the codefendant

TESTIMONIAL

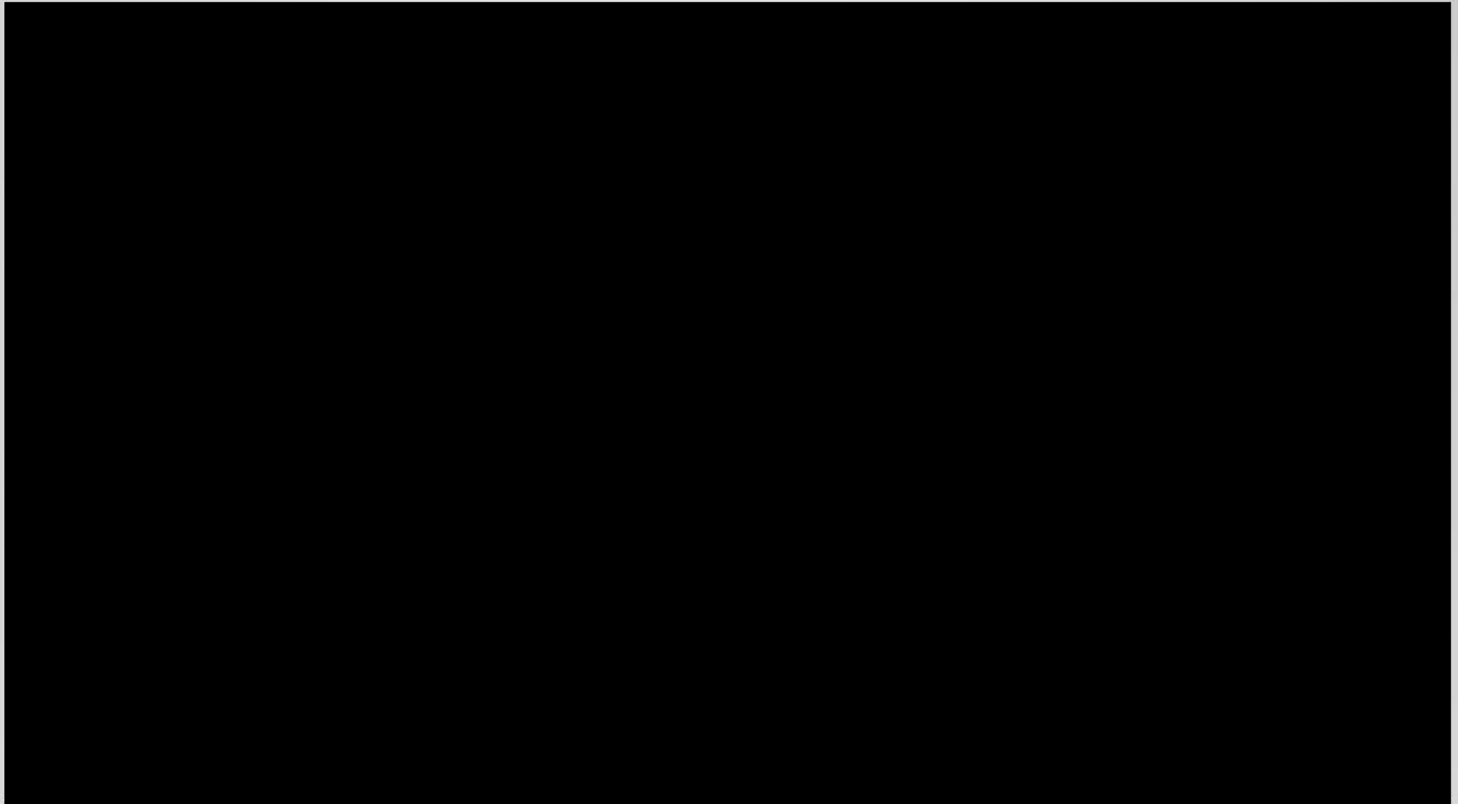


NOW WHAT?

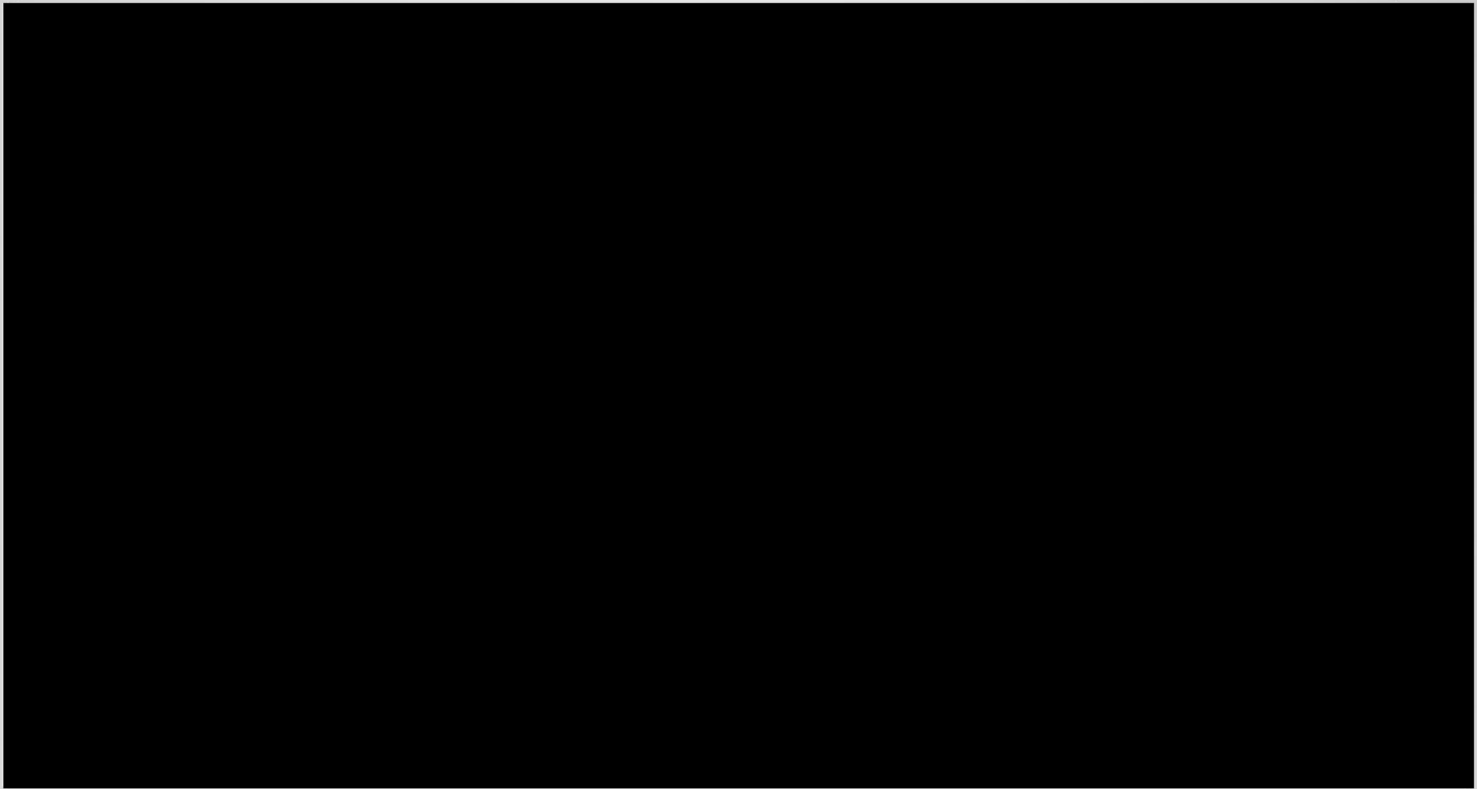


**Why is all this
important?**

YOU DON'T WANT TO HEAR
THIS...



YOU WANT TO HEAR THIS...



QUESTIONS?

