

# Charging & Filing



Misdemeanor Unit

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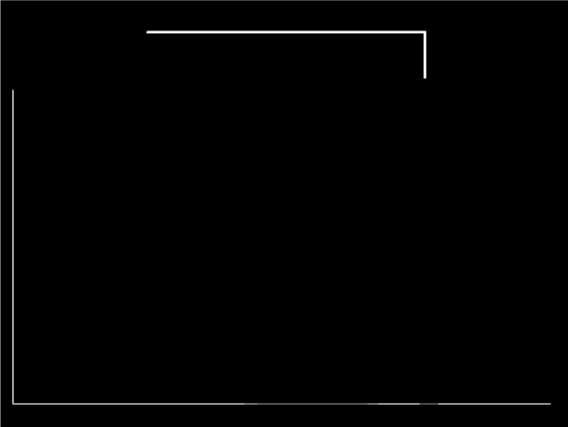
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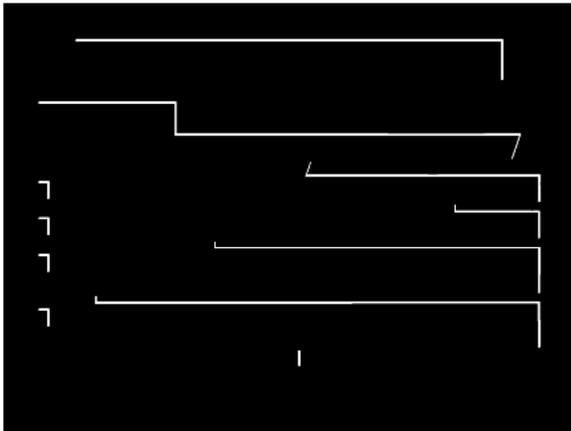
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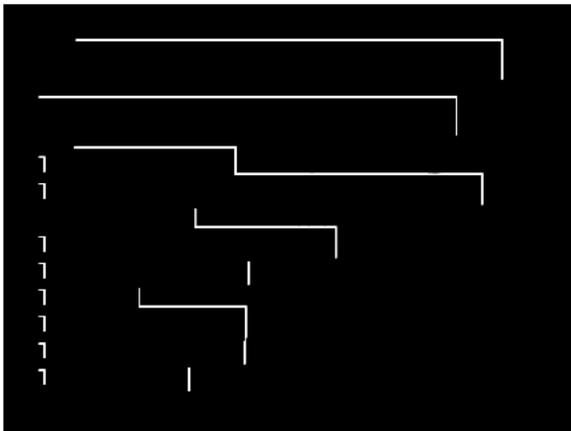
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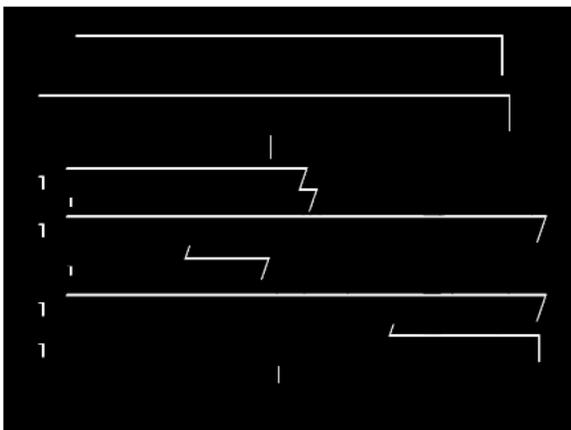
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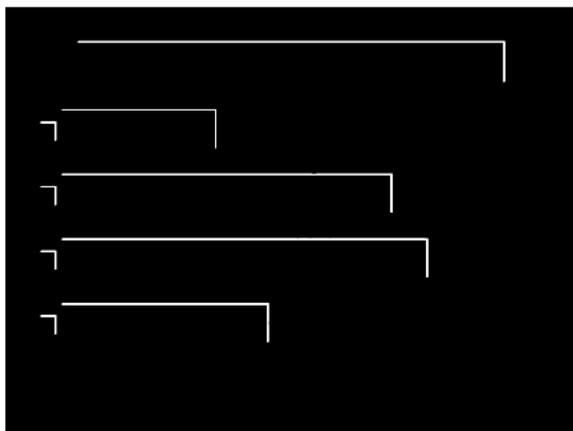
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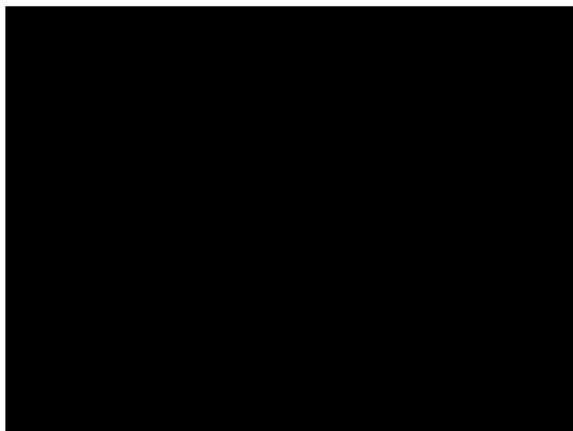
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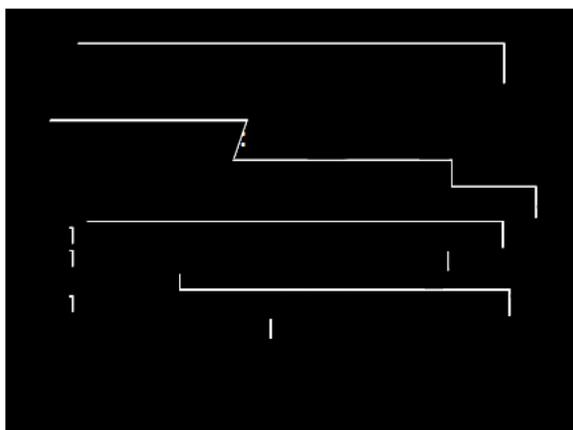




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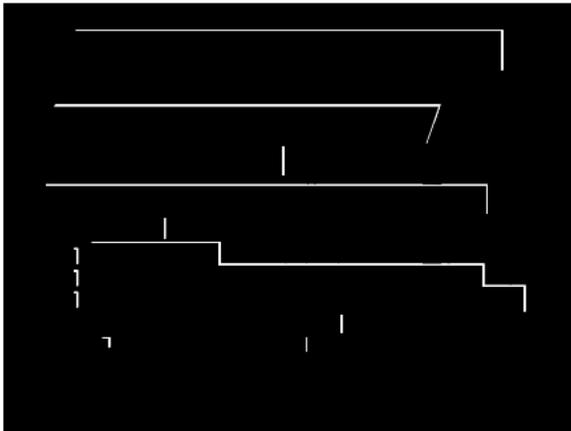


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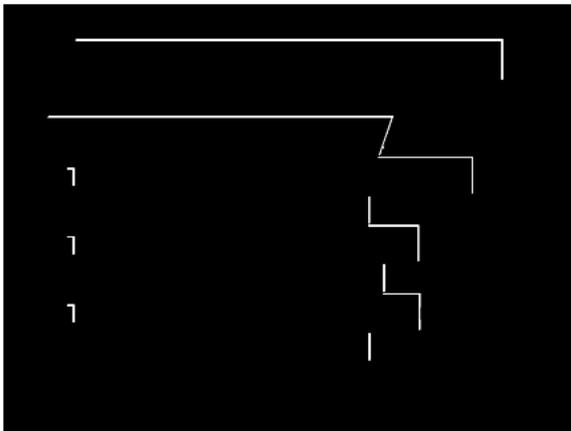


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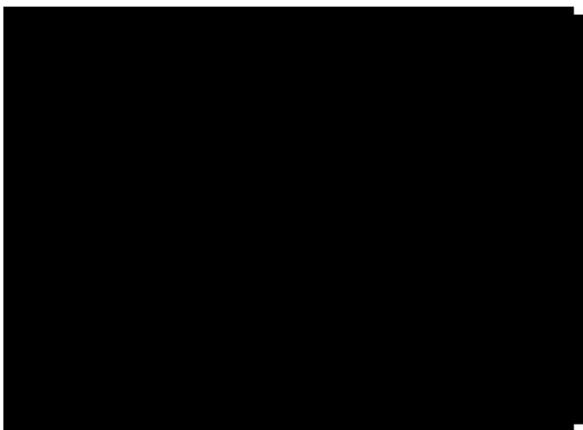




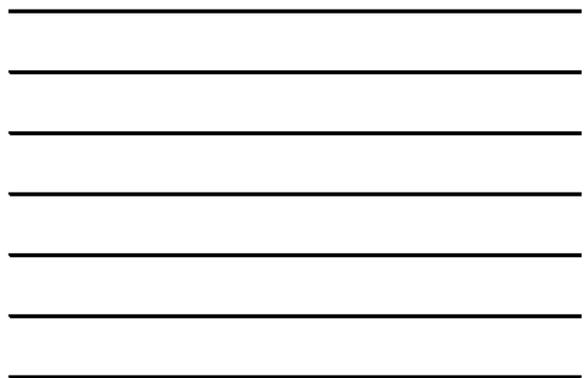
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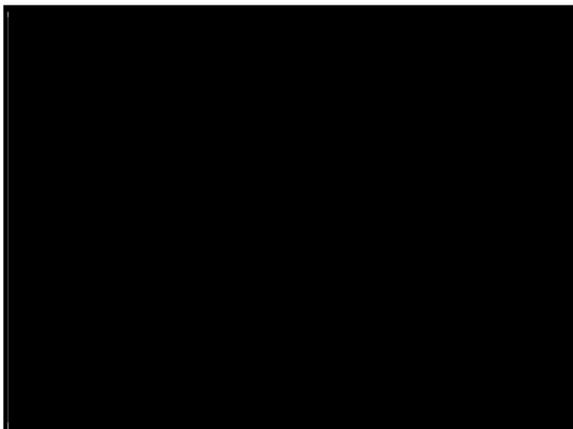


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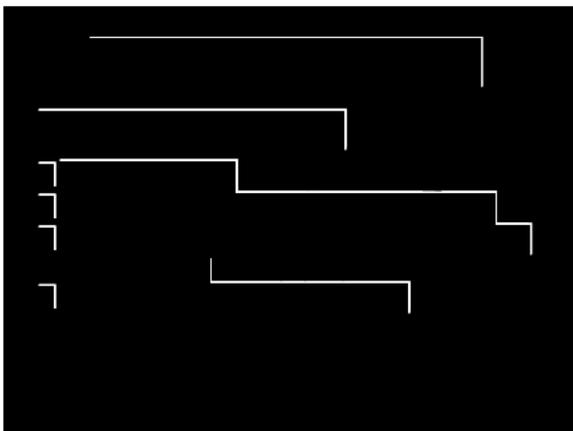
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NCI Turndown Codes	
CN	Case Civil in Nature
DD	Defendant Deceased
FI	Further Investigation
FP	Federal Prosecution
IC	Insufficient Corroborating Evidence
ID	Insufficient evidence of Identity
IE	Insufficient Evidence
IJ	Interest of Justice
IM	Infraction submitted as Misd
IN	Suspect's statement inadmissible
LC	Lack of Corpus
LI	Lack of Intent
MC	Mutual Combat
MP	Mere presence is not a crime
PC	Pled to another charge/case
SB	No added sentence benefit
SD	Self Defense
SJ	Suspect's acts legally justified
SL	Statute of Limitations problem
SP	State Prison on other charge
SS	Search/Seizure problem
VF	Victim failed to appear
VR	Victim Refuses to prosecute
WR	Witness credibility
WR	Witness refuses to testify

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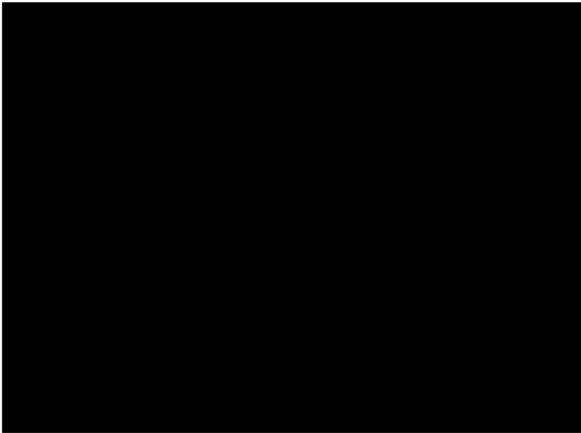
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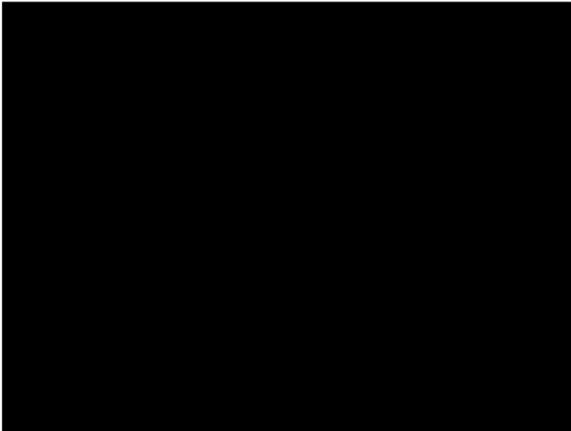
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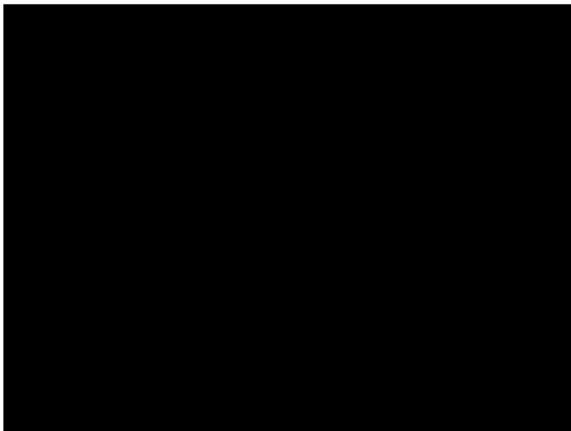
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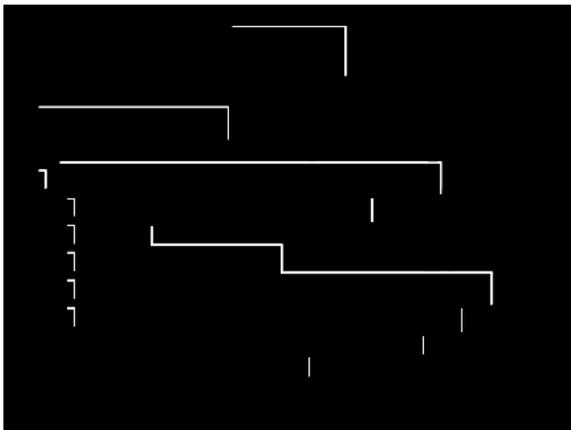
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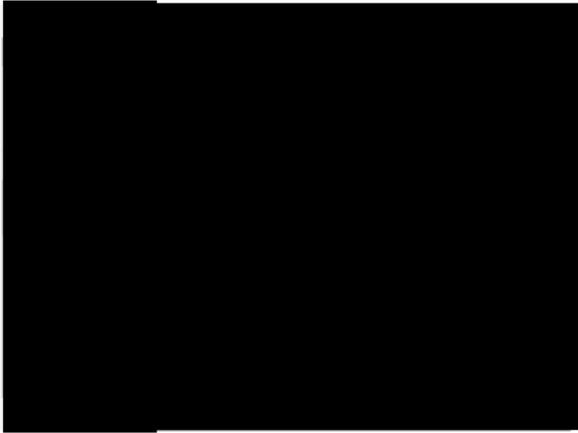
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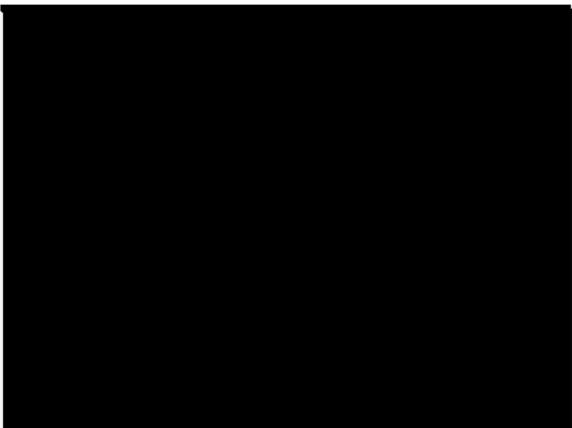
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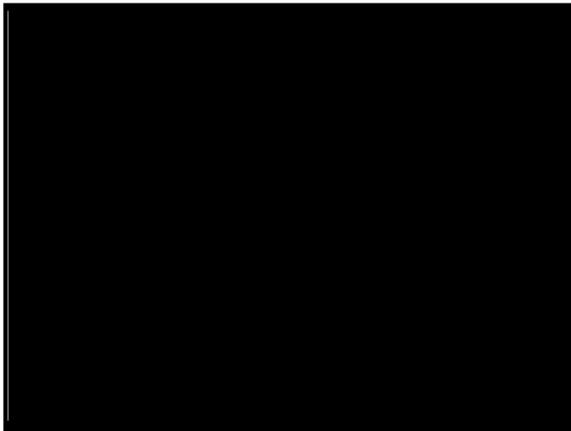
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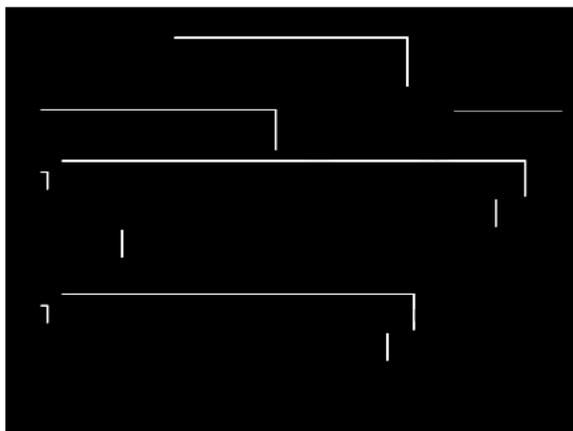
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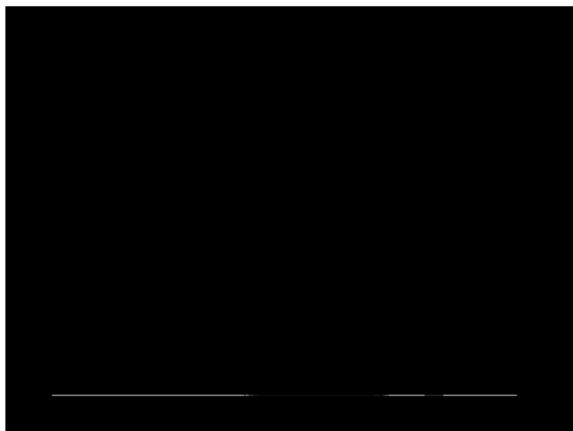
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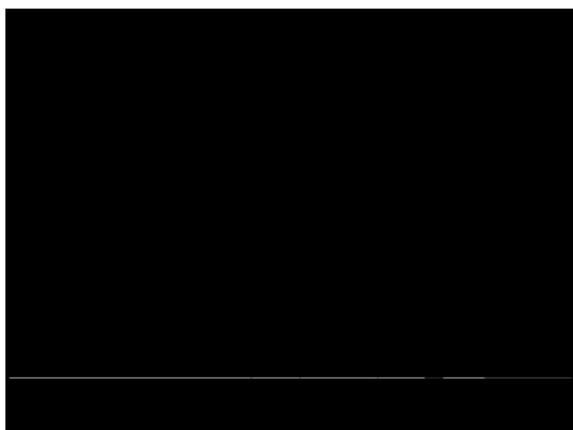
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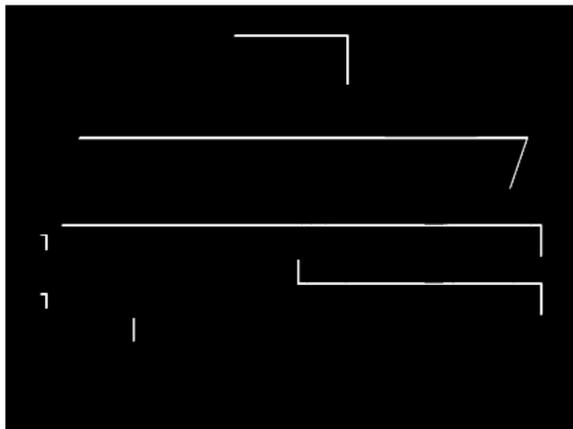
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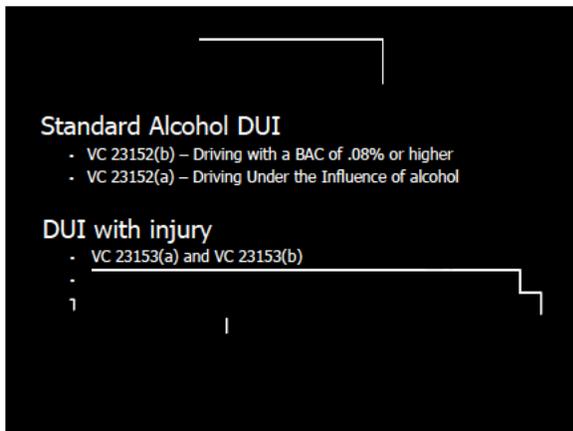
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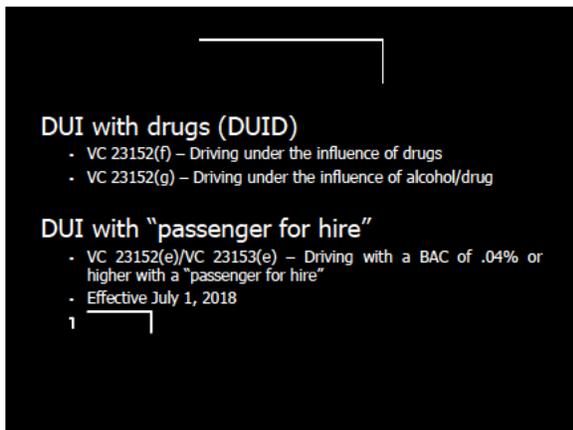
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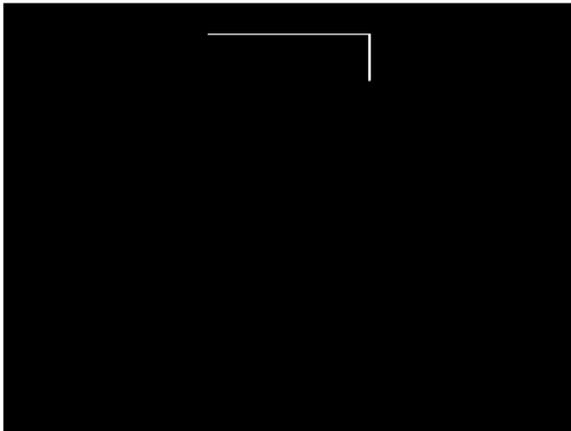
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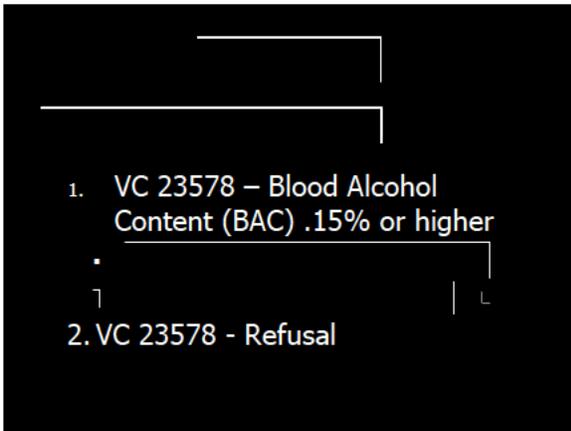
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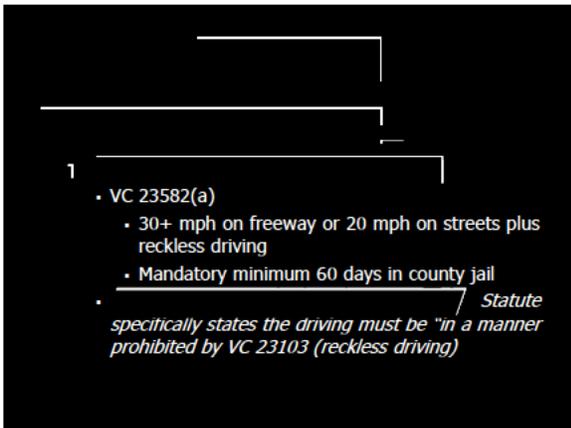
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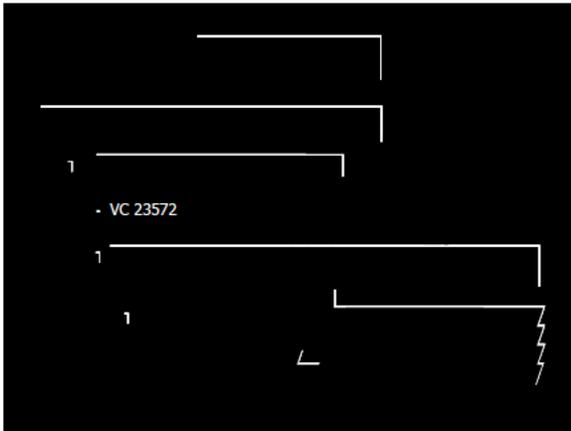
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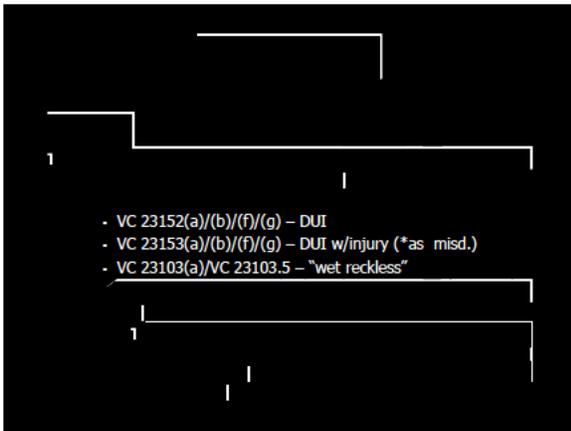
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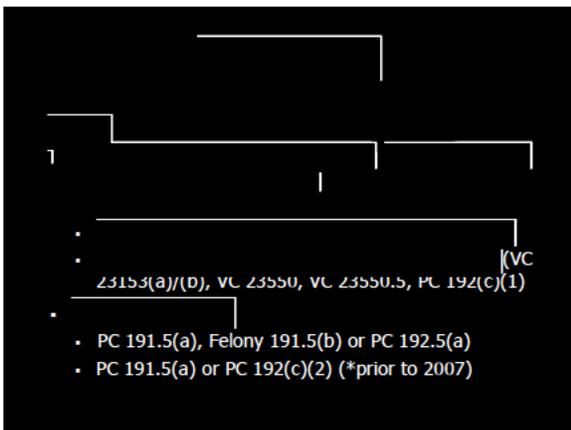
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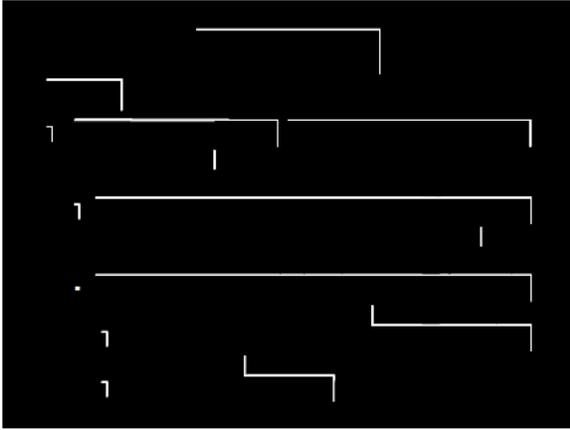
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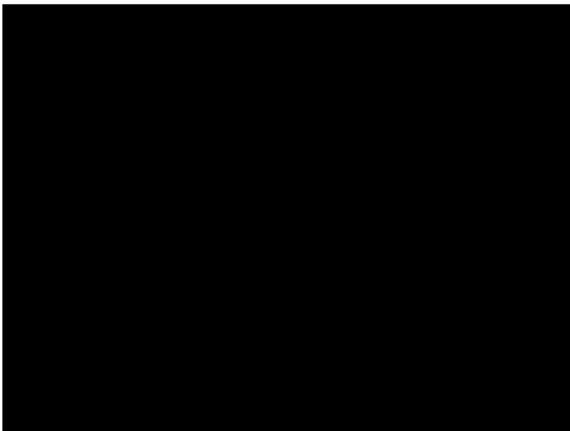
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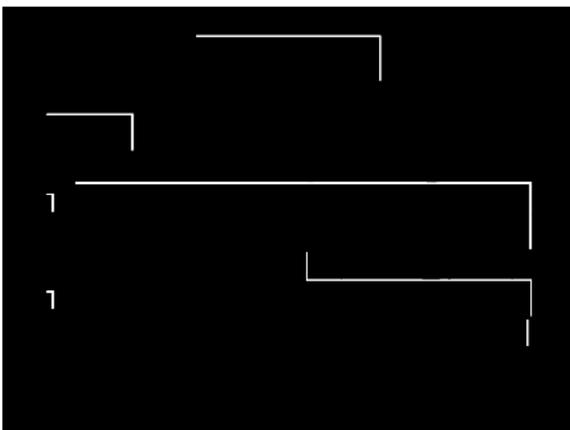
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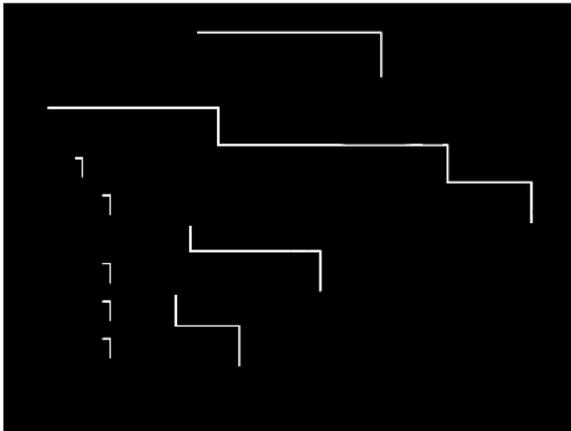


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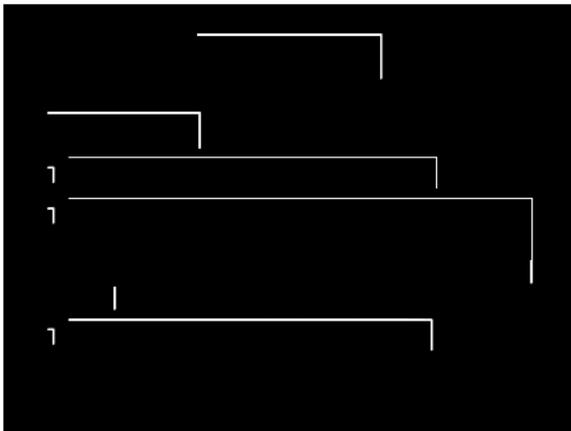
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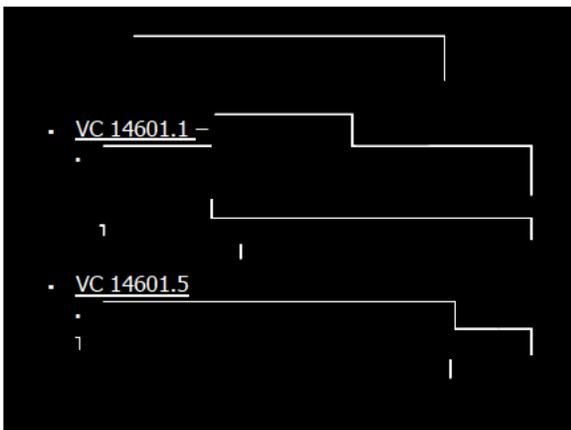
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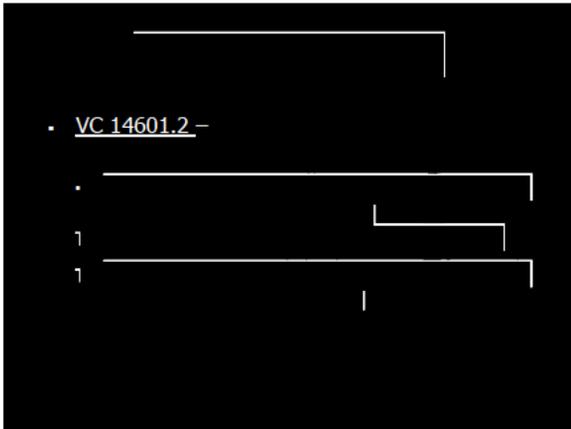
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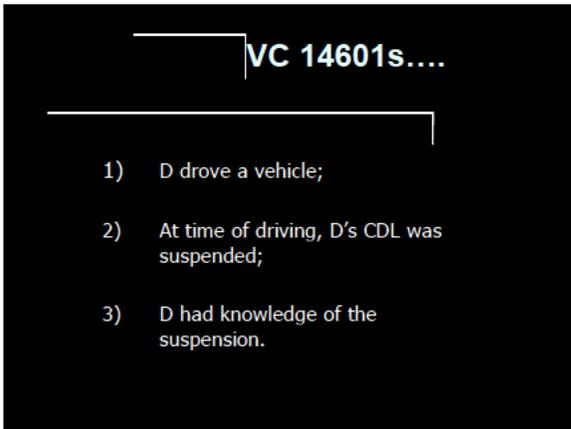
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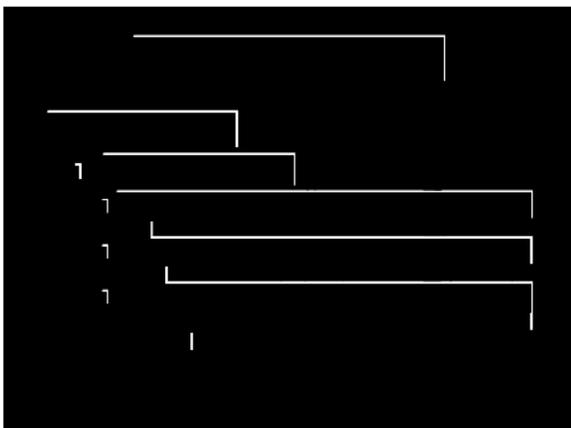
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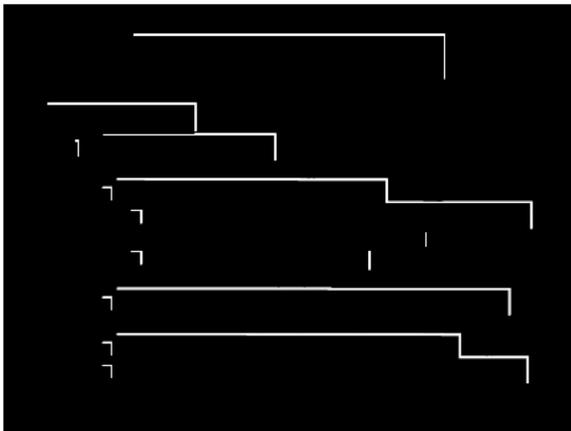
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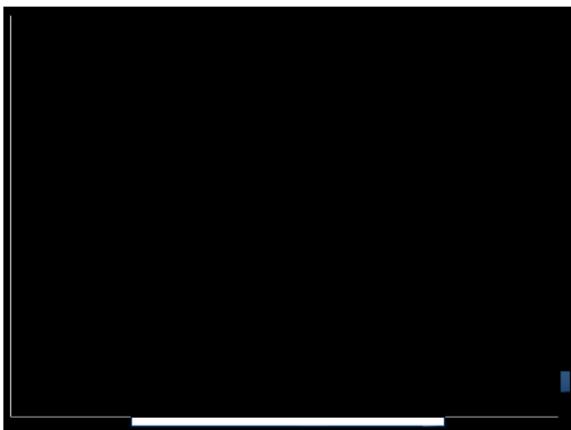
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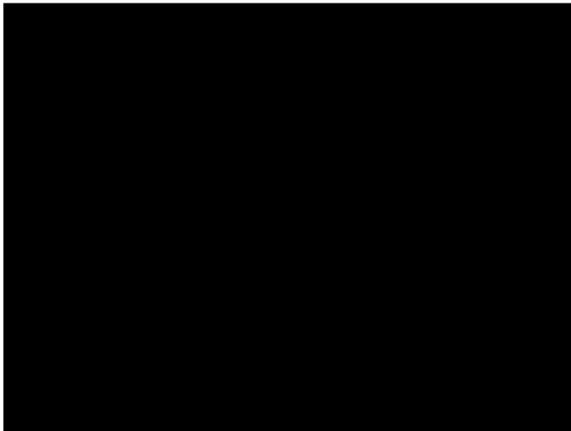


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DV CHARGES

- PC 273.5 – Domestic Violence w/INJURY
  - Spouse, former spouse, dating, previously dated or engaged, cohabitant, fellow parent
  - Requires "traumatic injury" – physical injury, internal or external, serious or minor
- Wobbler: \_\_\_\_\_

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DV CHARGES

- PC 243(e)(1) – Domestic Violence Battery
  - Spouse, former spouse, dating, previously dated or engaged, cohabitant, fellow parent

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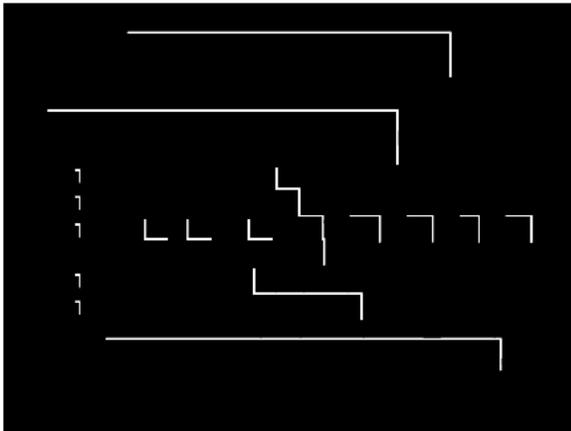
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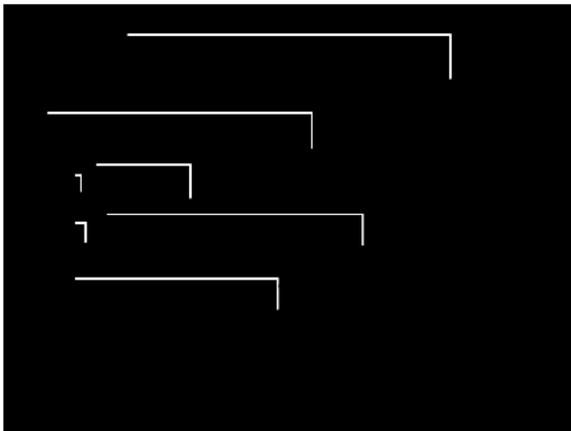
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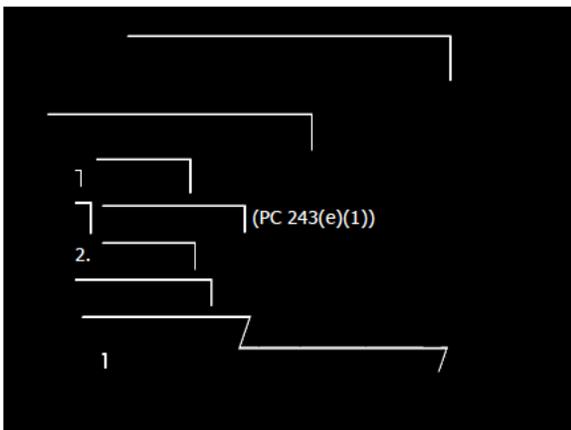
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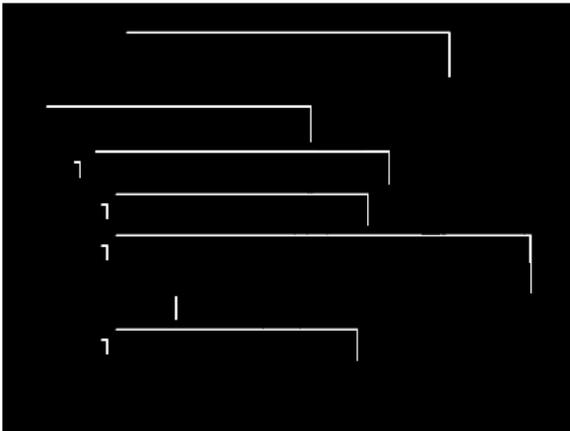
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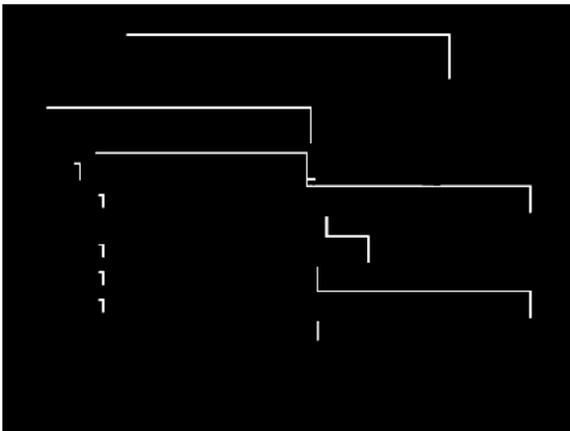
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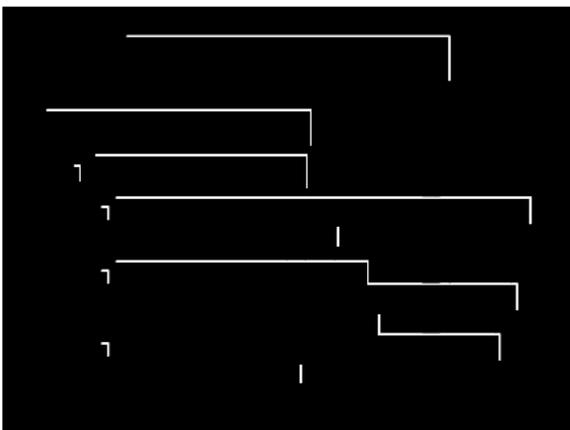
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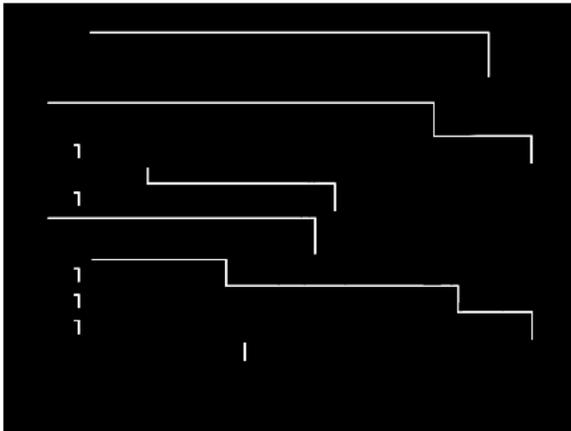
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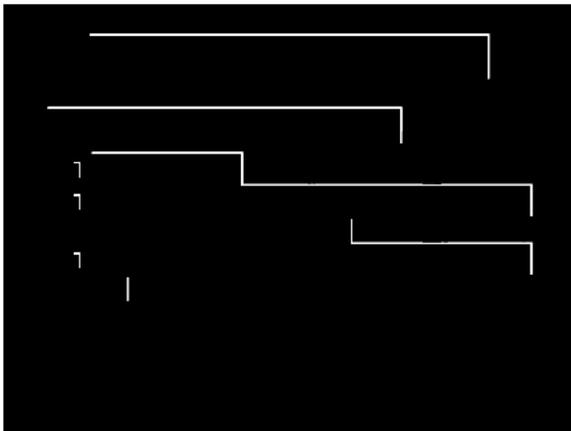
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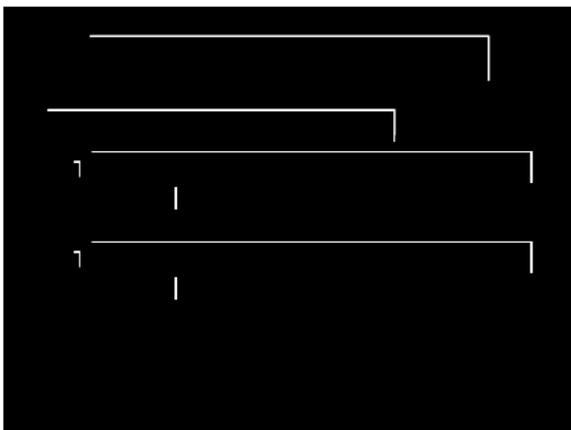




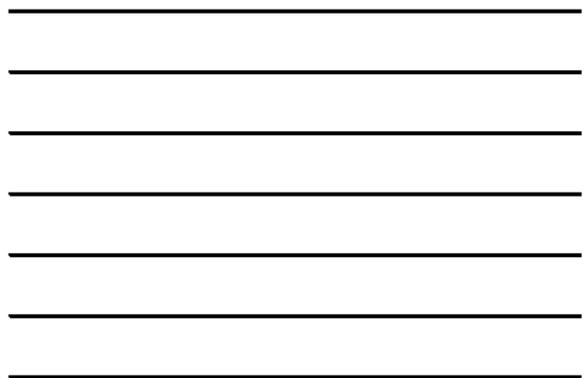
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Protective Order Type	Law	Where Issued & Duration	Type of Order	Charging Violations
Emergency Protective Order "EPO"	FC 6250 & 6250.3	By Officer at the scene with approval from magistrate. Duration: 5 court days or 7 calendar days (whichever shorter)	No Contact	PC 273.6 or 166(c)(1) if issued for stalking behavior **
Temporary Restraining Order "TRO"	PC 6200 et al	Family Court; Divorce, Child Custody or Domestic Violence Prevention Duration: as defined by Court	No Contact or No Negative	PC 273.6 **
Criminal Protective Order "CPO" <i>Pending Trial Order</i>	PC 136.2	Criminal Court at ARRAIGNMENT Duration: usually 3 years	No Contact or No Negative	PC 166(c)(1) **
Criminal Protective Order "CPO" <i>Upon Grant of Probation</i>	PC 1203.097	Criminal Court when Defendant Granted House Arrest or Felony Probation Duration: Term of Probation (usually 3 or 4 years - if child abuse)	No Contact or No Negative	PC 166(c)(1) <b>CAUTION - when probation expires so does CPO</b>
Criminal Protective Order "CPO" <i>Any conviction for crime involving DV per 13700, 261, 261.5, 262 or any 200(c) crime</i>	PC 136.2(i)	Criminal Court at Sentencing Duration: up to 10 years (minimum usually 3 years)	No Contact	PC 166(c)(1) **
Criminal Protective Order "CPO" <i>PC 273.5</i>	PC 273.5(i)	Criminal Court at Sentencing for 273.5 Duration: up to 10 years	No Contact	PC 166(c)(1) **
Criminal Protective Order "CPO" <i>PC 646.9</i>	PC 646.9(a)(1)	Criminal Court at Sentencing for 646.9 Duration: up to 10 years	No Contact	PC 166(c)(1) **Any combo of violations = 646.9(b)

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## Prop 47

- - HS 11377, HS 11350, HS 11357(a)
  - PC 666
  - PC 459.5 under \$950
  - Under \$950
    - PC 487(c) – Person
    - PC 487(d) (auto/firearm)
    - PC 470, 475, 476, 476a (forged checks, money orders, etc)

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## Prop 47 Cont'd

- Prior charges can be "Wobblers" (felony or misd)
  - If suspect is
    - Req'd to register per PC 290
    - Has prior offense under PC 667(e)(2)(c)(iv)
      - PC 261, 262, 264.1, 269, 289, 288, 288a, 288.5, 289, 207, 209, 286, 187-191.5, 653f (solicit to commit 187, 245(d)(3), PC 11418(a)(1)
      - Or any serious/violent felony offense punishable by life imprisonment or death
    - Over \$950 for PC 459.5, 496, 487, 470/475/476, 476a

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Questions ?



The seal of the District Attorney of Fresno County is centered on a blue square background. The seal is a gold-colored five-pointed star with a central circular emblem. The text "DISTRICT ATTORNEY" is written along the top inner edge of the star, and "FRESNO COUNTY" is written along the bottom inner edge. The central emblem depicts a landscape with a sun, mountains, and a river.

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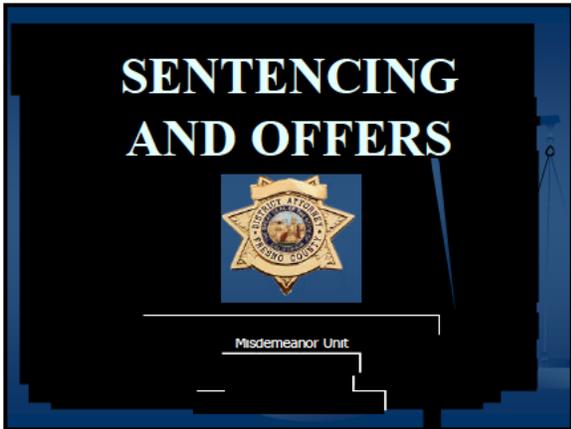
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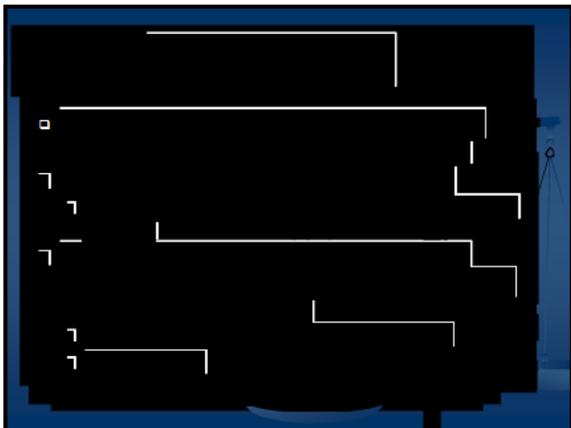
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□ The relationship of the parties (defendant/victim) determines whether the charge requires DV terms/sentencing. (PC 1203.097/FC 6211)

> **Family Code section 6211:** "Domestic abuse" is abuse perpetrated against:

- Spouse / former spouse
- Cohabitant / former cohabitant
- Dating and/or engaged
- Parent of child

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□

- PC 273.5, abuse w/corporal injury
- PC 243(e)(1), domestic battery
- PC 591/591.5, damaging phone lines
- PC 236, false imprisonment
- PC 646.9, stalking
- PC 166(c)(1), CPO viol. / PC 273.6 (EPO/RO viol.)
- PC 422 criminal threats
- PC 415, disturbing the peace
- PC 594, vandalism
- PC 242, simple battery

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### DV Sentencing

□ PC 1203.097 sets forth mandatory terms of DV sentencing:

- Minimum 36 months of (formal) probation
- CPO
- Minimum of book and release
- Minimum \$500 fine
- Successful completion of 52 weeks Batterers Treatment Program
- Specified amount of community service
- Review hearing in DV court w/in 30 days

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□ Sentencing guidelines for child abuse/child endangerment (PC 273a(b), PC 273a(a), PC 273(d)) are located in the respective statute and upon conviction, require:

- Mandatory minimum period of probation of 4 years
- CPO
- 1 year Child Abuser Treatment Class
  - Review hearing in home court to show proof of enrollment w/in 30 days, quarterly hearings for progress thereafter
- Drug/alcohol restrictions and testing if D under influence at time of offense

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### Sentencing – PC 290

Following misdemeanor charges require mandatory PC 290 registration:

- PC 314.1 indecent exposure
- PC 647.6 annoying/molesting child
- PC 243.4, sexual battery

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### Sentencing – DUI

DUI – First Offense

- 3 years informal probation
- Mandatory fines/fees
- No drive with a measurable amount of alcohol (or drugs if applicable)
- Submit to a chemical test on demand of LE
- Do not drive without valid license and insurance
- First offender DMV program (length determined by BAC)
- Add't terms for aggravating factors (High BAC, T/A, dangerous driving, prior convictions outside of 10 years)
- 48 hours incarceration (\*usually rec'v AOWP)

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## Sentencing – DUI

DUI – Second Offense w/in 10 Years

- 3 years informal probation - OAL
- Mandatory fines/fees
- No drive with a measurable amount of alcohol (drugs if applicable)
- Submit to a chemical test on demand of LE
- Do not drive without valid license and insurance
- Multiple DUI Offender Program (SB 38)
- Add't terms for aggravating factors (High BAC, T/A, dangerous driving, prior convictions outside of 10 years)
- 48 hours incarceration (\*usually rec'v AOWP)
- Potentially Ignition Interlock Device

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## Sentencing – DUI

DUI – Third Offense w/in 10 Years

- 4-5 years informal probation - OAL
- Mandatory fines/fees
- No drive with a measurable amount of alcohol (drugs if applicable)
- Submit to a chemical test on demand of LE
- Do not drive without valid license and insurance
- Multiple DUI Offender Program (SB 38)
- Add't terms for aggravating factors (High BAC, T/A, dangerous driving, prior convictions outside of 10 years)
- 120 days IC
- Habitual Traffic Offender
- Ignition Interlock Device

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## Sentencing – DUI

DUI – Wet Reckless

- 1 year informal probation - OAL
- Mandatory fines/fees
- No drive with a measurable amount of alcohol (drugs if applicable)
- Submit to a chemical test on demand of LE
- Do not drive without valid license and insurance
- Wet reckless program

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**AB 1950**

- Misdemeanor Cases
  - Codified in PC 1203a
  - Limited to 1 year of probation
  - Unless otherwise specified within existing statutes
    - I.E. DUI's and DV are 3 years, 273's are 4 years

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## OFFERS: CASELAW

- (PROSECUTOR V. BURNETT) (1977) 424 U.S. 240, 261.
- (MILBY V. ARIZONA) (1971) 401 U.S. 507.
- (P.M. LOOBY V. SUPERIOR COURT) (1984) 36 Cal.3d 273, 278.
- (People v. Rhoden) (1999) 75 Cal.App.4th 1346, 1352.

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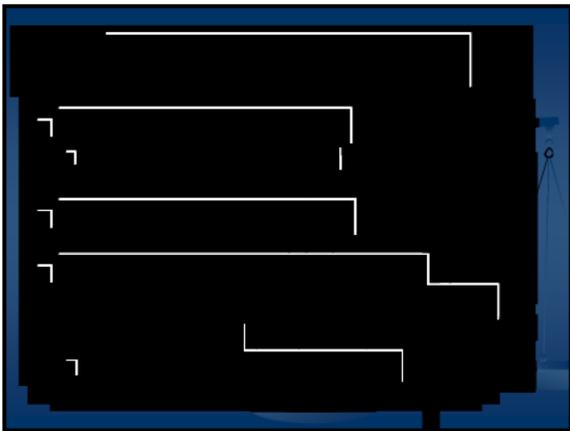
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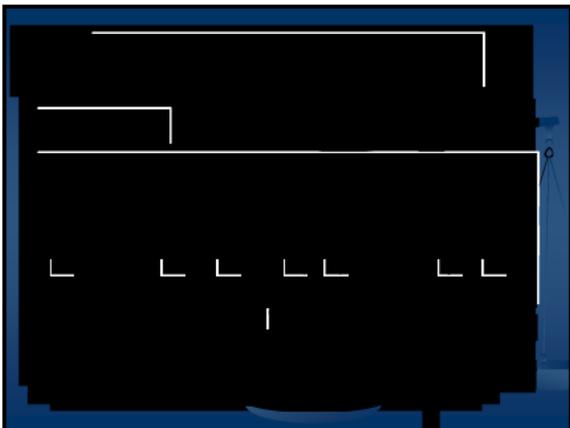
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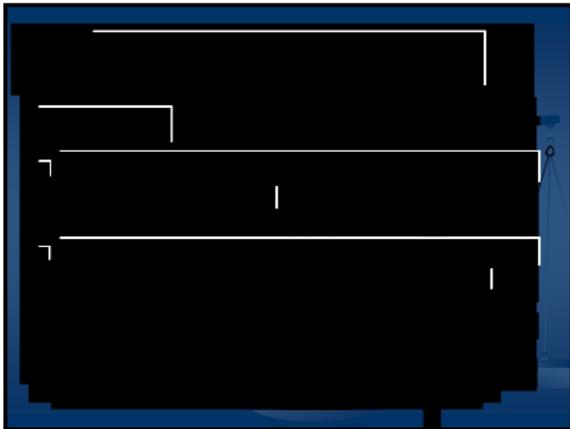
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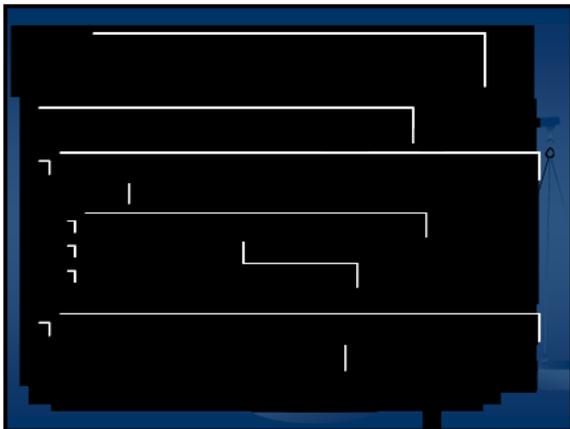
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**OFFERS: DA Diversion**

Eligibility requirements for Diversion:

- Never been convicted of a felony;
- Not currently on grant of probation;
- No probation terminated unsuccessfully;
- Has not been diverted under any program in the last 5 years;
- Did not inflict injury upon a person during commission of crime;
- Did not exhibit criminal sophistication.

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**FRESNO DISTRICT ATTORNEY**  
**MISDEMEANOR DIVERSION VIOLATIONS**

BP 4901 (Poss. controlled sub w/o prescription)  
BP 29658 A (Self, etc., alcohol to minor)  
BP 29661 A (False ID by minor)  
BP 29662 A (Under 21 poss of alcohol)

HS 12677 (Poss of illegal fireworks)  
HS 12677 (Poss of dangerous fireworks w/o permit)  
HS 11364.1 (Poss of crack pipe or syringe)

PC 148 A1 (Resisting arrest - no violence)  
PC 148.9 (False ID to an officer)  
PC 260 (Assault)  
PC 272(a)(1) (Fail to make minor follow jail ct order)  
PC 381(b) (Poss of tools sub to inhale)  
PC 415 (Disrupting the peace)  
PC 404 (Petty Theft < \$1000)  
PC 405 (Petty Theft)  
PC 496 (Receiving stolen property)  
PC 508 (Embezzlement)  
PC 537 (Defrauding hrkeepers)  
PC 567(b) (Trespass on railroad train)  
PC 602 (Trespass - enclosure-(v), (w), (x), (y) and (z))  
PC 594 (Vandalism)  
PC 647(a) (Solicitation)  
PC 647(b) (Prostitution)  
PC 647(c) (Drunk in public)

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**FRESNO DISTRICT ATTORNEY**  
**MISDEMEANOR DIVERSION VIOLATIONS**

PC 655.22 (Loitering w/ intent to commit prostitution)  
PC 22010 (Possession of Illegal Weapon: Air Gauge Knife)  
PC 20410 (Possession of Illegal Weapon: Set Buckle Knife)  
PC 20510 (Possession of Illegal Weapon: Cane Sword)  
PC 20610 (Possession of Illegal Weapon: Lipstick Case Knife)  
PC 20710 (Possession of Illegal Weapon: Shobi-Zue)  
PC 21510 (Possession of a Switchblade)  
PC 23910 (Possession of Illegal Weapon: Writing Pen Knife)  
PC 21810 (Possession of Illegal Weapon: Metal Knuckles)  
PC 22010 (Possession of Illegal Weapon: Nunchaku)  
PC 22210 (Possession of Illegal Weapon: Billy or Blackjack)  
PC 22290 (Possession of Illegal Weapon: Leaded Cane)  
PC 22410 (Possession of Illegal Weapon: Shuriken)

VC 31 (False information to peace officer)  
VC 10852 (Tampering with a vehicle)  
VC 14801.1 (Driving on a Suspended License- non-DUI)  
VC 14804 A  
VC 23103 (Reckless driving)  
VC 23109 (Speed contest on hwy.)  
VC 23222 (MJ or open alcohol container in car)  
VC 4461 (Use of Another's Handicap Placard)  
VC 4462.5 (Avoid compliance registration req.)  
VC 20002 A (Hit and run - non injury)

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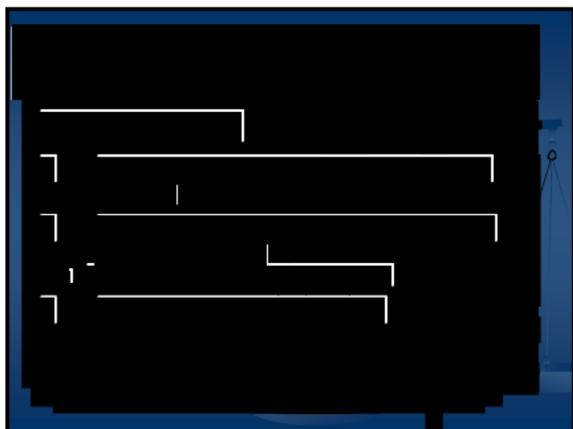
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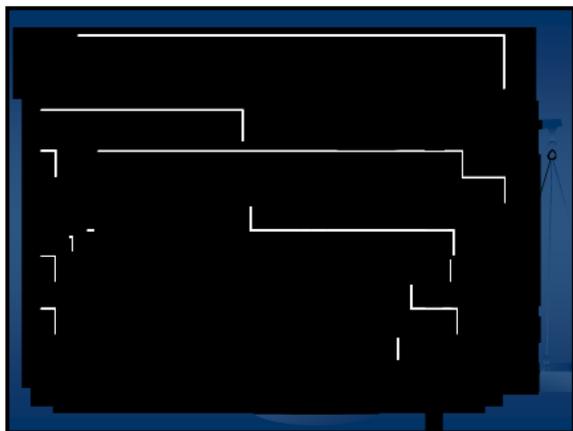
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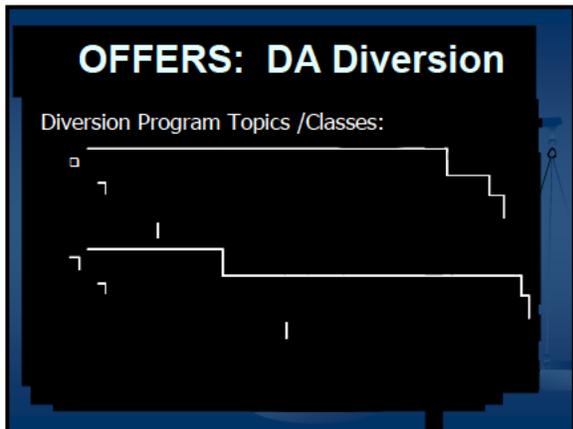
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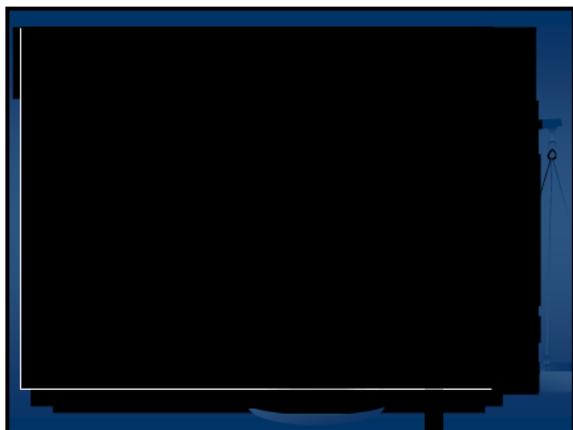
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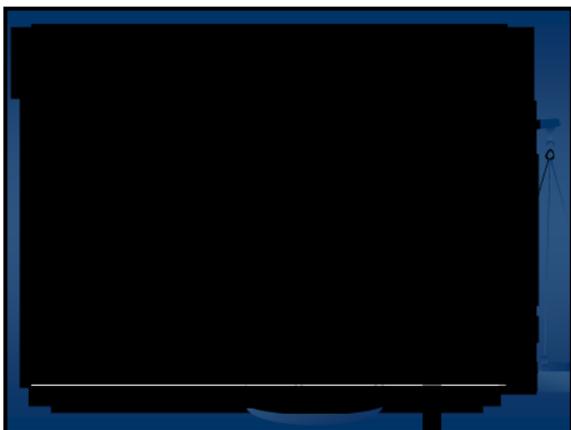
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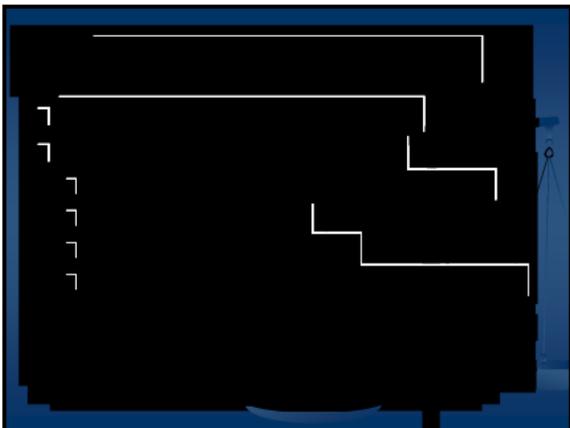
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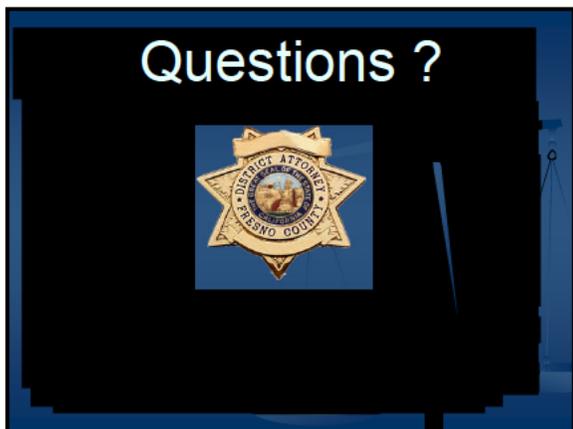
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## How to Read a RAP Sheet



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## What does RAP sheet stand for?

**RECORD OF ARRESTS AND PROSECUTIONS**

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## DOJ RAP Sheets

- PC§ 11105(a)(1). The Department of Justice shall maintain state summary criminal history information. (2) As used in this section "State summary criminal history information" means the master record of information compiled by the Attorney General pertaining to the identification and criminal history of any person, such as name, date of birth, physical description, fingerprints, photographs, dates of arrests, arresting agencies and booking numbers, charges, dispositions, and similar data about the person.

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## Specific Information Required

- PC §13125. All basic information stored in state or local criminal offender record information systems shall be recorded, when applicable and available, in the form of the following standard data elements:

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**Who Reports the Information ?**

- PC §13150. For each arrest made, the reporting agency shall report to the Department of Justice, concerning each arrest, the applicable identification and arrest data described in §13125 and fingerprints, except as otherwise provided by law or as prescribed by the Department of Justice.

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**Who Reports the Information ?**

- PC §13151. The superior court that disposes of a case for which an arrest was required to be reported to the Department of Justice pursuant to §13150 or for which fingerprints were taken and submitted to the Department of Justice by order of the court shall assure that a disposition report of such case containing the applicable data elements enumerated in §13125, or §13151.1 if such disposition is one of dismissal, is furnished to the Department of Justice within 30 days according to the procedures and on a format prescribed by the department. The court shall also furnish a copy of such disposition report to the law enforcement agency having primary jurisdiction to investigate the offense alleged in the complaint or accusation. Whenever a court shall order any action subsequent to the initial disposition of a case, the court shall similarly report such proceedings to the department.

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**Who Can Access the Information?**

- PC 11105(b): The Attorney General shall furnish state summary criminal history information to any of the following, if needed in the course of their duties, provided that when information is furnished to assist an agency, officer, or official of state or local government, a public utility, or any other entity, in fulfilling employment, certification, or licensing duties, Chapter 1321 of the Statutes of 1974 and Section 432.7 of the Labor Code shall apply:

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### Who Can Access the Information?

- (1) The courts of the state; (2) Peace officers of the state...; (3) District attorneys of the state; (4) Prosecuting city attorneys of any city within the state; (5) City attorneys pursuing civil gang injunctions pursuant to §186.22a, or drug abatement actions pursuant to §3479 or 3480 of the Civil Code, or §11571 of the Health and Safety Code; (6) Probation officers of the state; (7) Parole officers of the state...

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### Who Can Access the Information?

- (8) A public defender or attorney of record when representing a person in proceedings upon a petition for a certificate of rehabilitation and pardon pursuant to §4852.08
- (9) A public defender or attorney of record when representing a person in a criminal case, or a parole, mandatory supervision pursuant to paragraph (5) of subdivision (h) of Section 1170, or postrelease community supervision revocation or revocation extension proceeding, and if authorized access by statutory or decisional law.

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### Who Can Access the Information?

- (12) The subject of the state summary criminal history information under procedures established under Article 5 (commencing with §11120).

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## Unauthorized Release

- PC §11142. Any person authorized by law to receive a record or information obtained from a record who knowingly furnishes the record or information to a person who is not authorized by law to receive the record or information is guilty of a misdemeanor.

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## Authorized Release

- PC §11144. (a) It is not a violation of this article to disseminate statistical or research information obtained from a record, provided that the identity of the subject of the record is not disclosed. (b) It is not a violation of this article to disseminate information obtained from a record for the purpose of assisting in the apprehension of a person wanted in connection with the commission of a crime. (c) It is not a violation of this article to include information obtained from a record in (1) a transcript or record of a judicial or administrative proceeding or (2) any other public record when the inclusion of the information in the public record is authorized by a court, statute, or decisional law.

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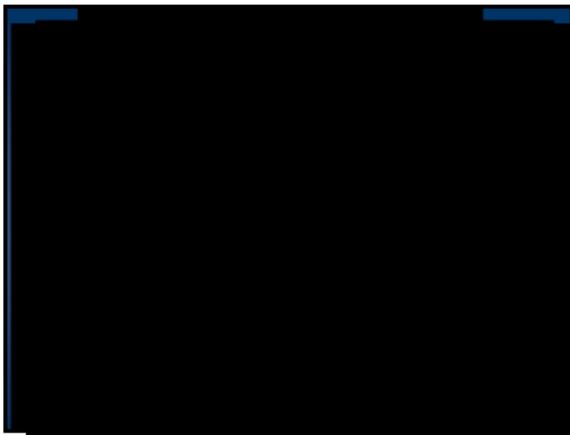
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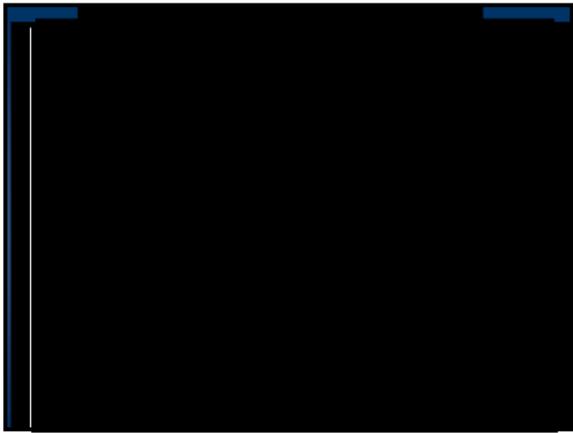
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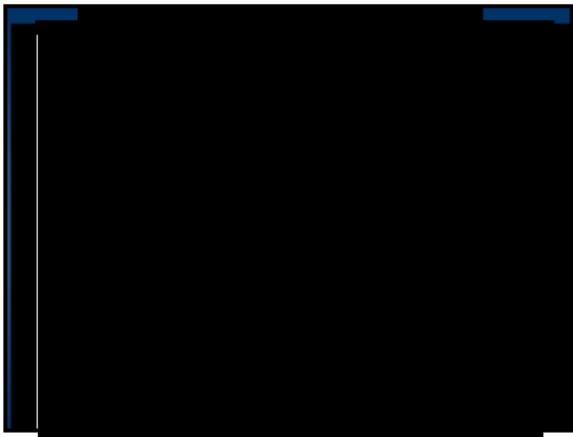
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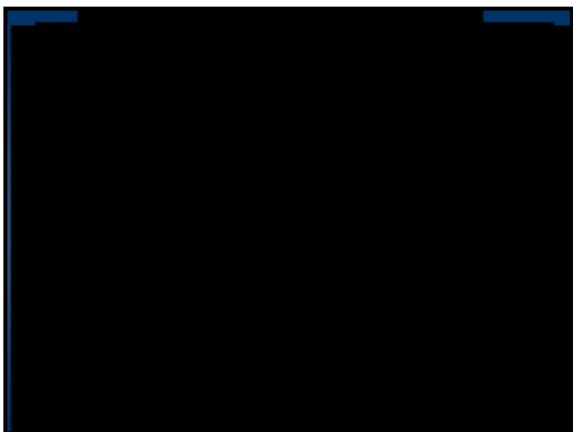
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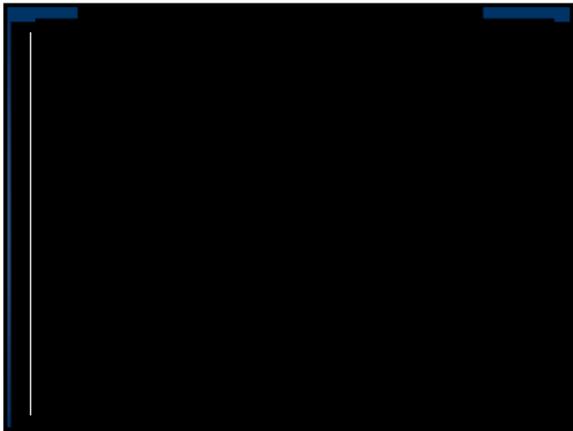
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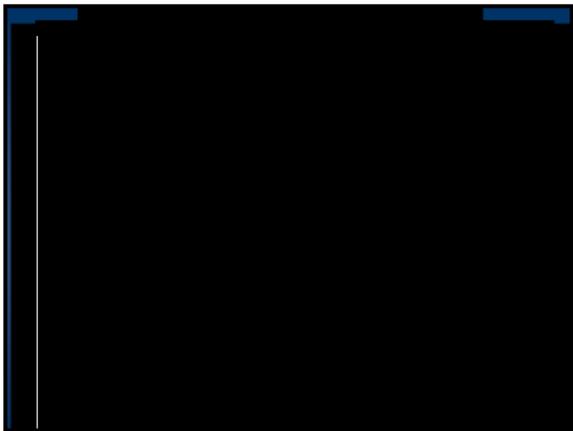
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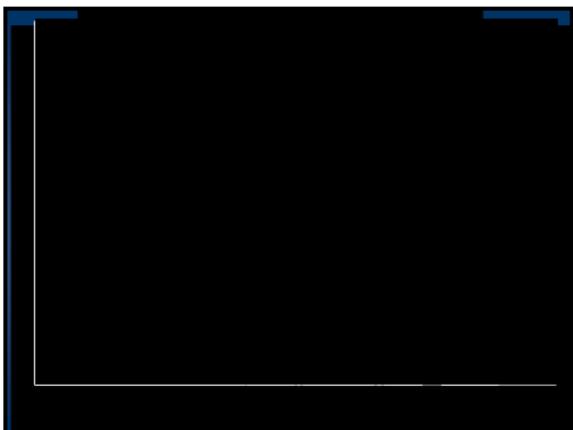
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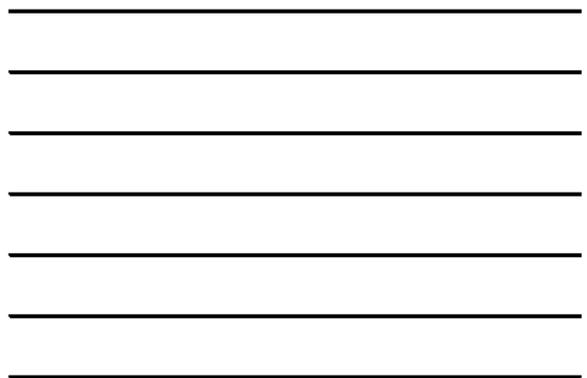
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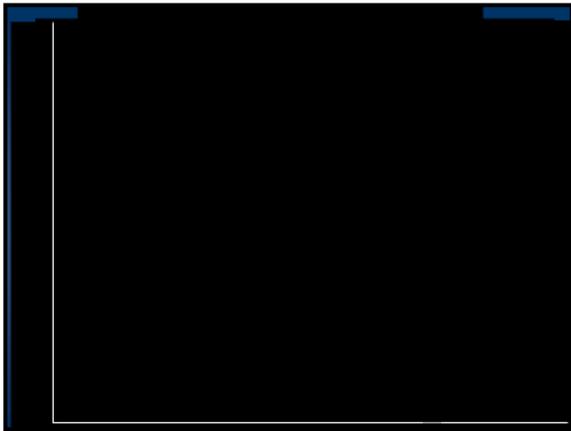


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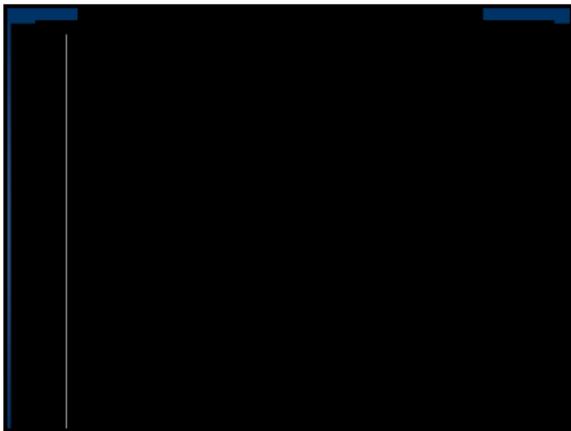
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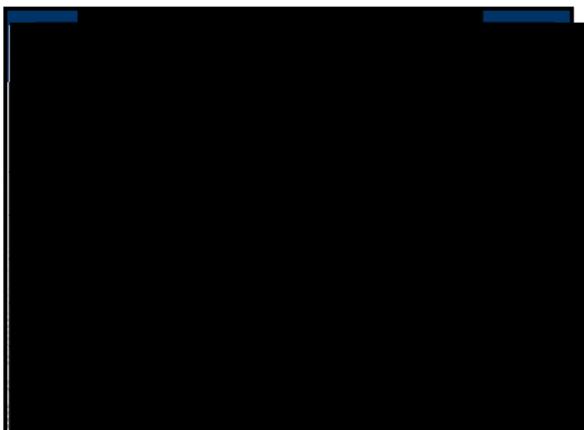
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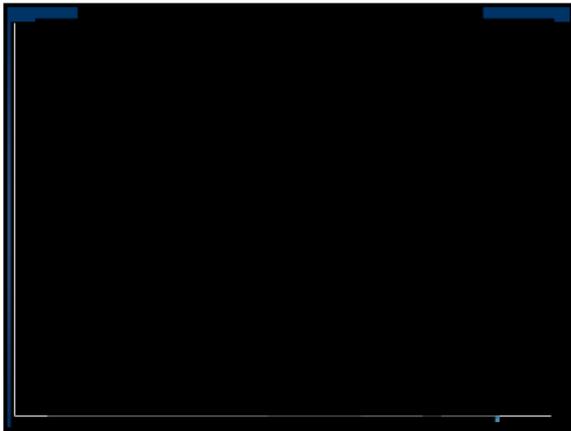
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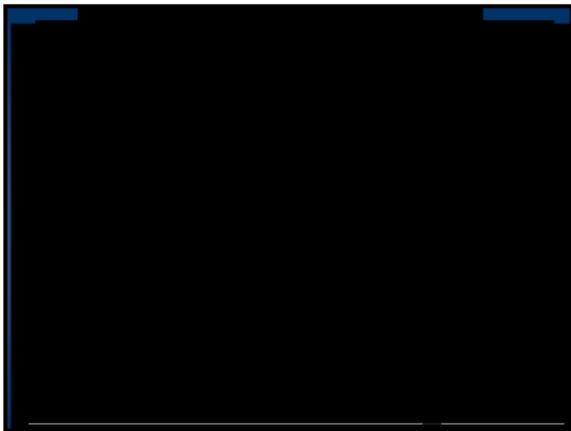
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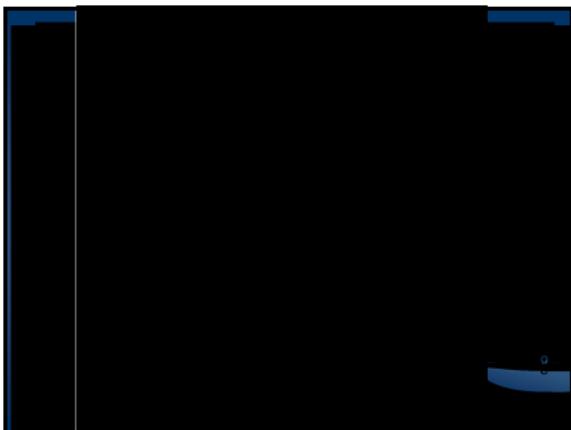
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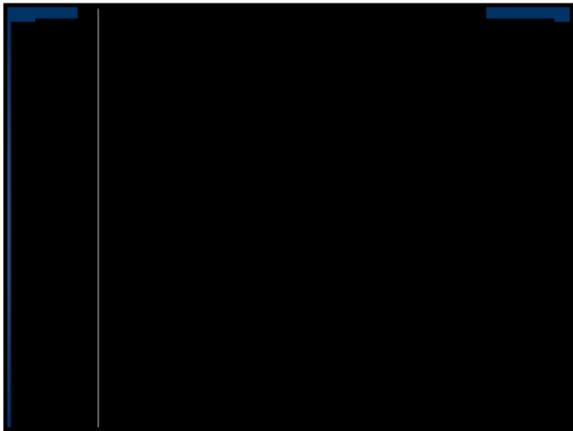
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Juvenile Records  
(WIC 827 & WIC 828  
Petitions)

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What will be covered?

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Welfare and Institutions Code Section  
827

- According to WIC 827(a)(1)(B), a district attorney is authorized to inspect juvenile case files under state law
- Judge should review 827 Petitions 15 calendar days after date of service, if served by fax or personal service and 20 calendar days after date of service if served by mail.

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- The 827 Petition requires the specific name of the document you are seeking as well as the date of the hearing when the document was considered or filed

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What is the PJV-20 form?

- Application to Inspect and/or Copy a Juvenile Case file

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Forms Needed to Obtain Disclosure on Protected Documents

- 827 Petition (6 Judicial Forms):
  - JV-570
  - JV-571
  - JV-572
  - JV-573
  - JV-574
  - JV-545

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WIC 828 – Law Enforcement Reports Re: Minors

- WIC 828(a)(1): "...any information gathered by a law enforcement agency, including the Department of Justice, relating to the taking of a minor into custody may be disclosed to another law enforcement agency..."
- Additionally see WIC 827.9(b)(1).

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WIC 828 – Judicial Forms Needed

Three Forms Total:

- JV-575
- JV-580
- JV-510 (POS)
- JV-575 and JV-580

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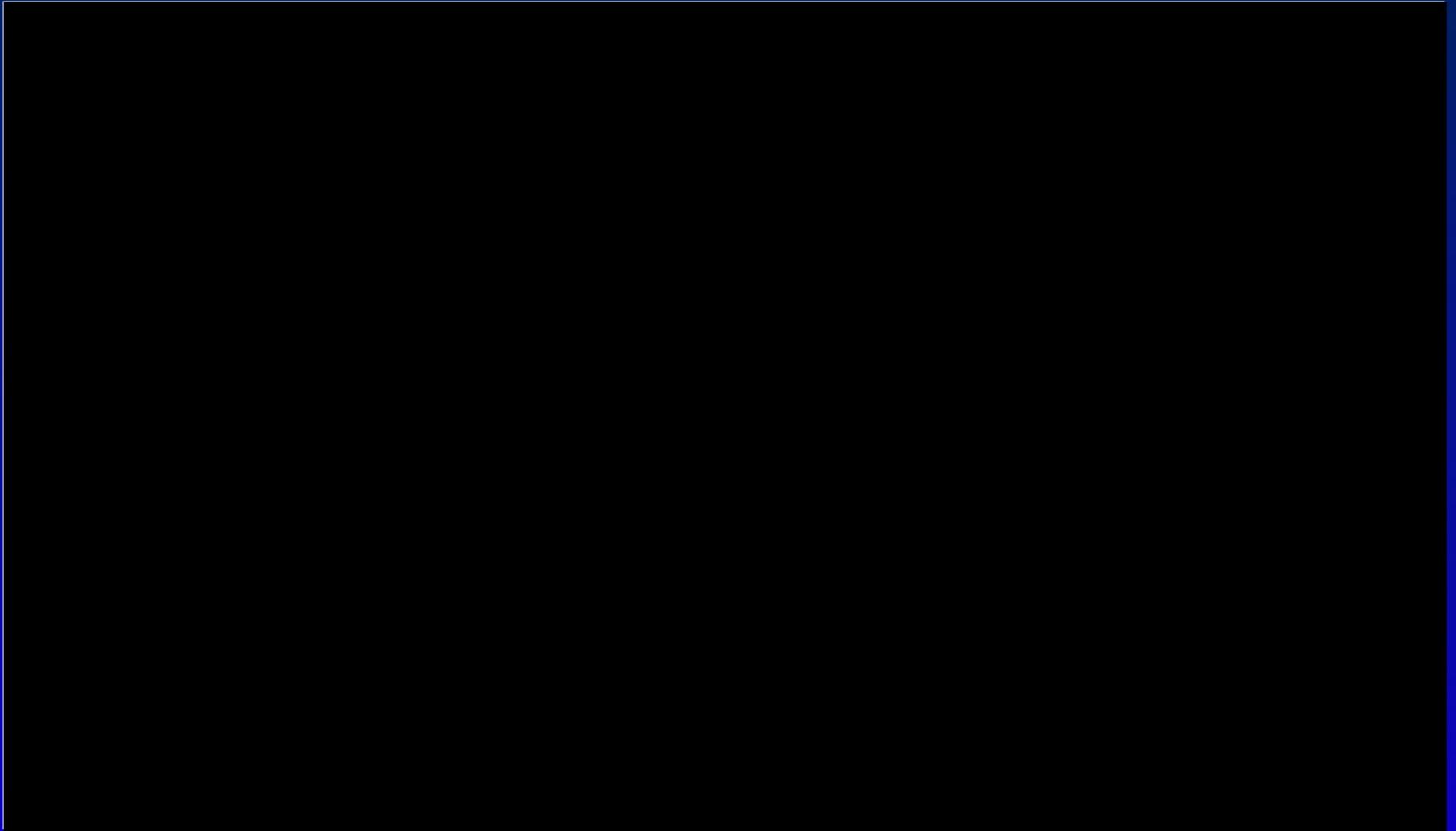
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# DUI PROSECUTION



# SKILLS TEST



# THE CHARGES

## Most common charges:

- 23152(a): driving under the influence of alcohol.
- 23152(b): driving with a blood alcohol level of 0.08% or higher.
- 23152(f): driving under the influence of drugs.
- 23152(g): driving under the influence of a combination of drugs and alcohol.

# THE CHARGES

## Related Charges:

- ▣ 14601.1: driving on suspended license
- ▣ 14601.2: driving on suspended license because of a prior DUI conviction
- ▣ 23140: .05 BAC, driver under 21
- ▣ 23154: .01 BAC by a person on probation for a DUI
- ▣ 20002(a)

# THE CHARGES

## Regarding 14601.2's:

- The charge is not 654 to driving under the influence. (*People v. Martinez* (2007) 156 Cal.App.4th 851.)
- The fact that the suspension is based upon a prior conviction for driving under the influence is an element of the offense. This means no bifurcation. (*People v. Profitt* (2017) 8 Cal.App.5th 1255.)

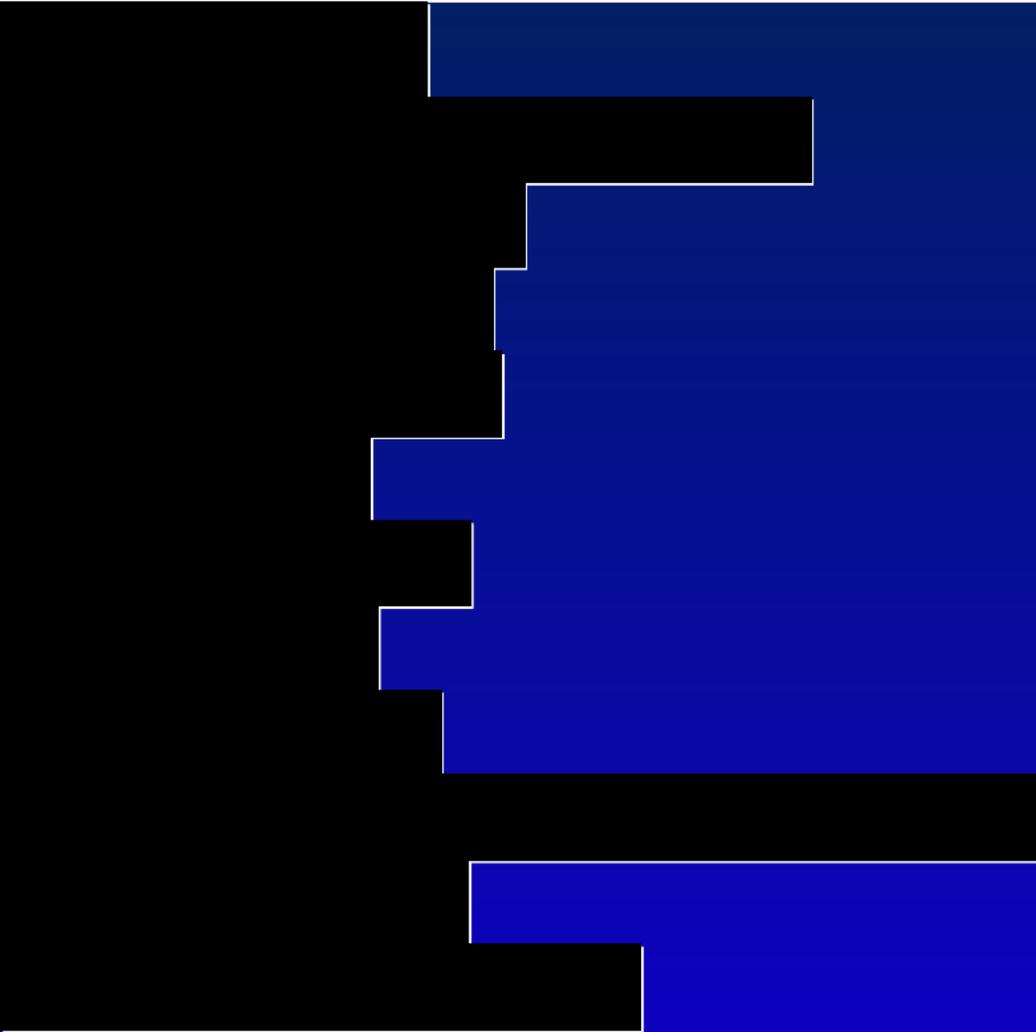
# WHAT TO PROVE?

- Driving
- Under the Influence (and/or a specific BAC level).





# DRIVING



# DRIVING

□

- CALCRIM 2110: The manner in which a person drives is not enough by itself to establish whether the person is or is not under the influence of \_\_\_\_\_. However, it is a factor to be considered, in light of all the surrounding circumstances, in deciding whether the person was under the influence.

[Redacted]



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# UNDER THE INFLUENCE



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# PSYCHOPHYSICAL TESTS

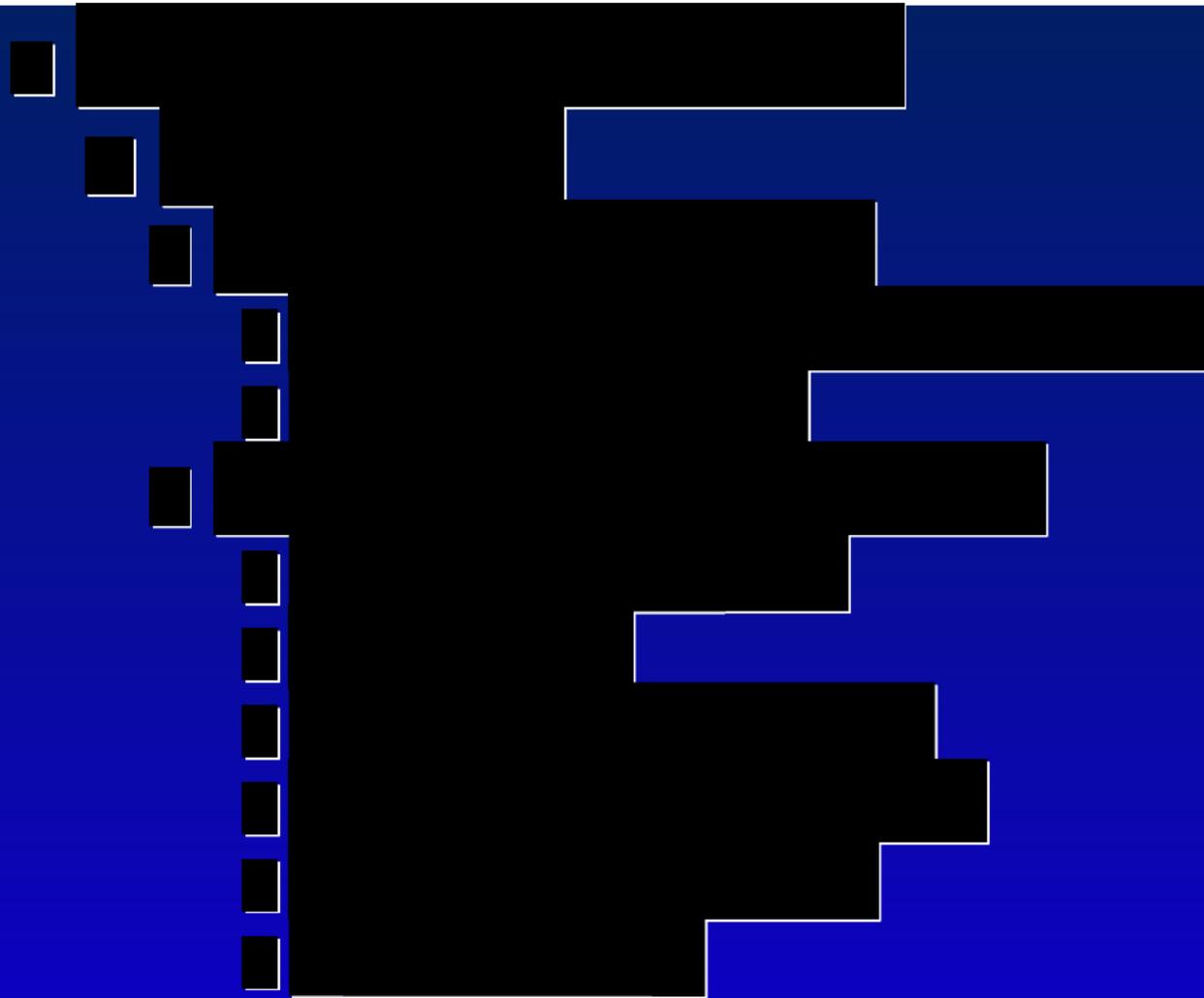
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- Officer trained in HGN can use results of HGN test as basis for opinion on impairment without additional expert testimony. (*People v. Randolph* (2018) 28 Cal.App.5th 602.)

# PSYCHOPHYSICAL TESTS



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# PSYCHOPHYSICAL TESTS



# PSYCHOPHYSICAL TESTS

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# PSYCHOPHYSICAL TESTS



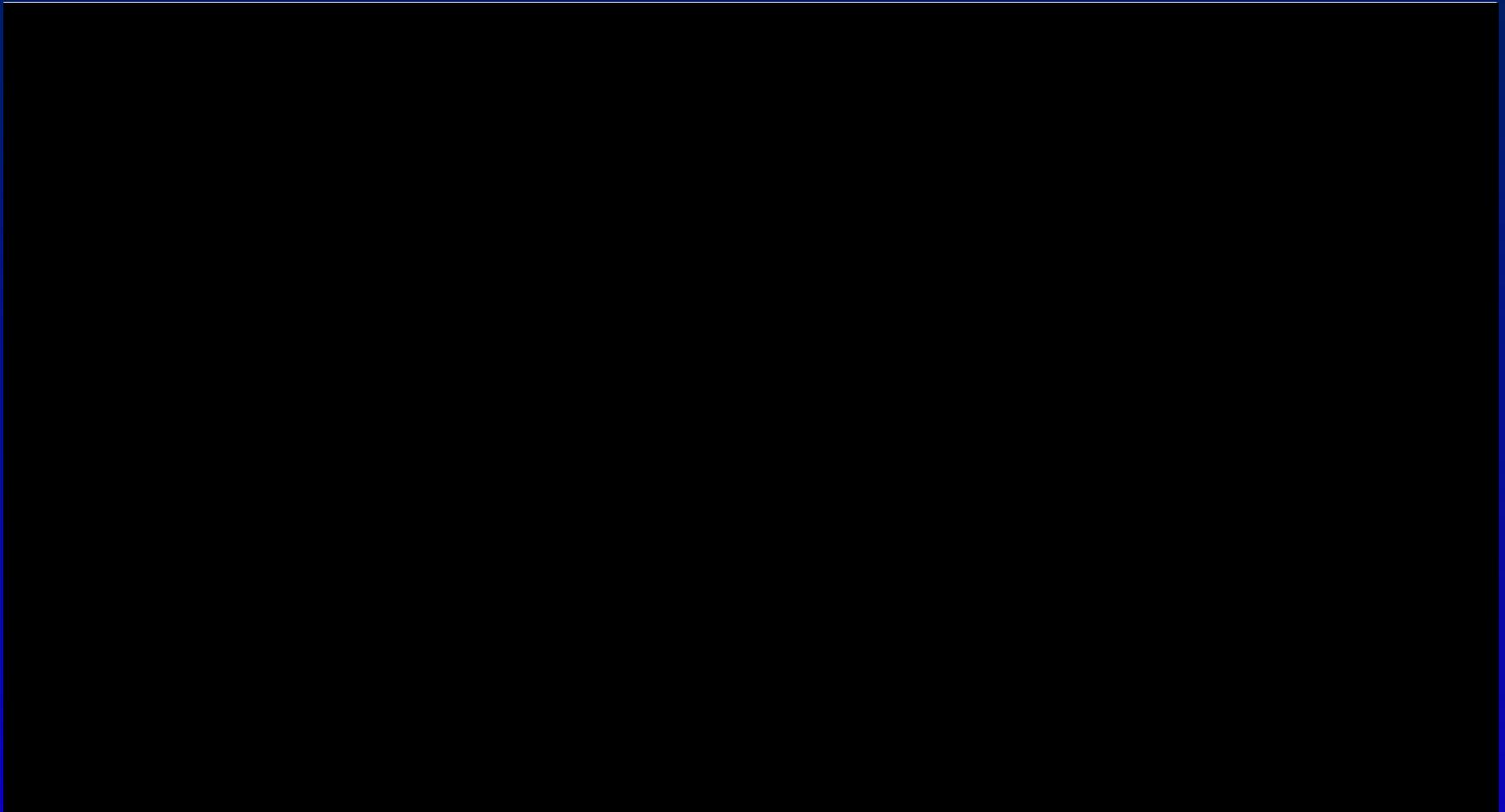
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# DRUGS

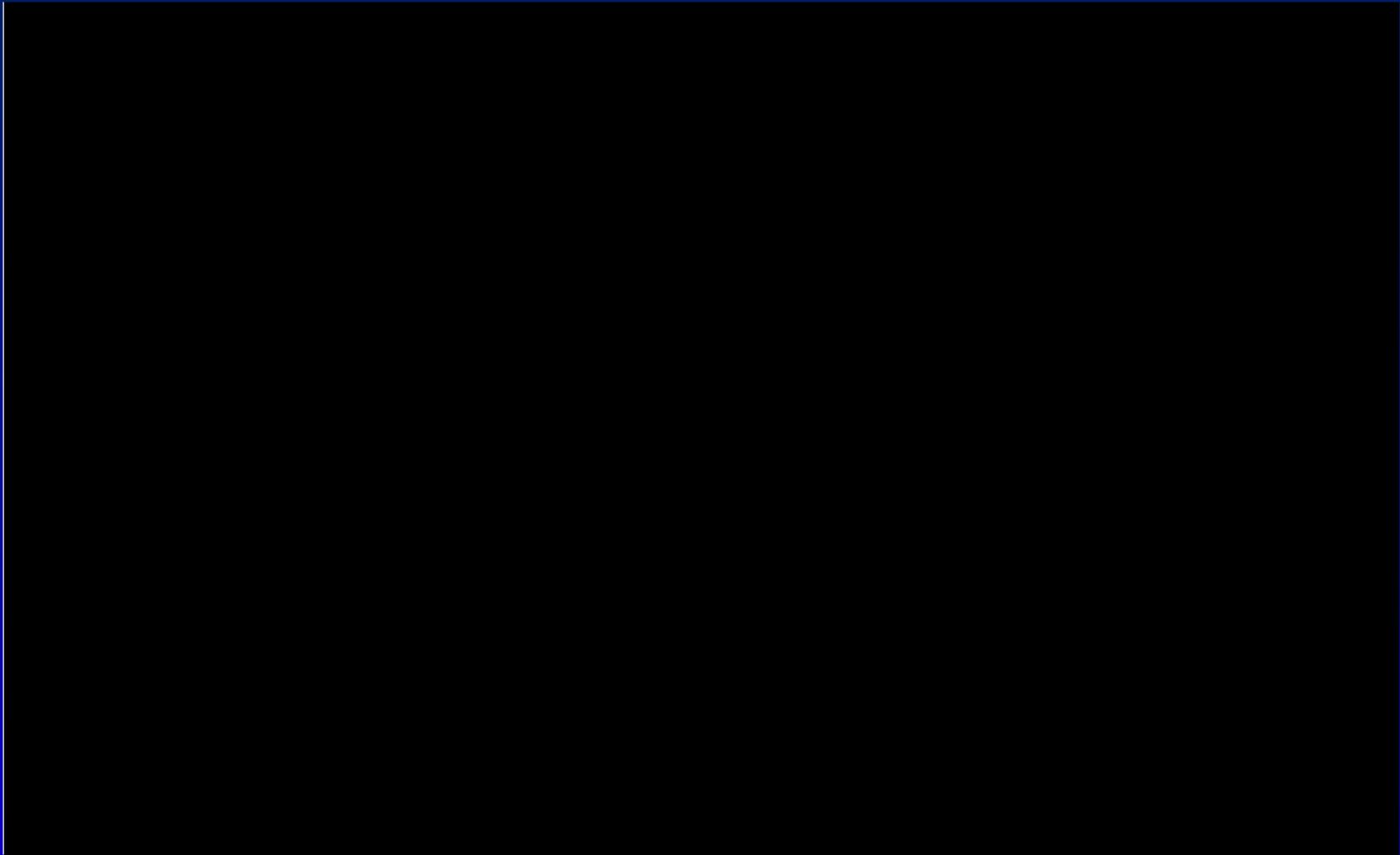
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# EYES



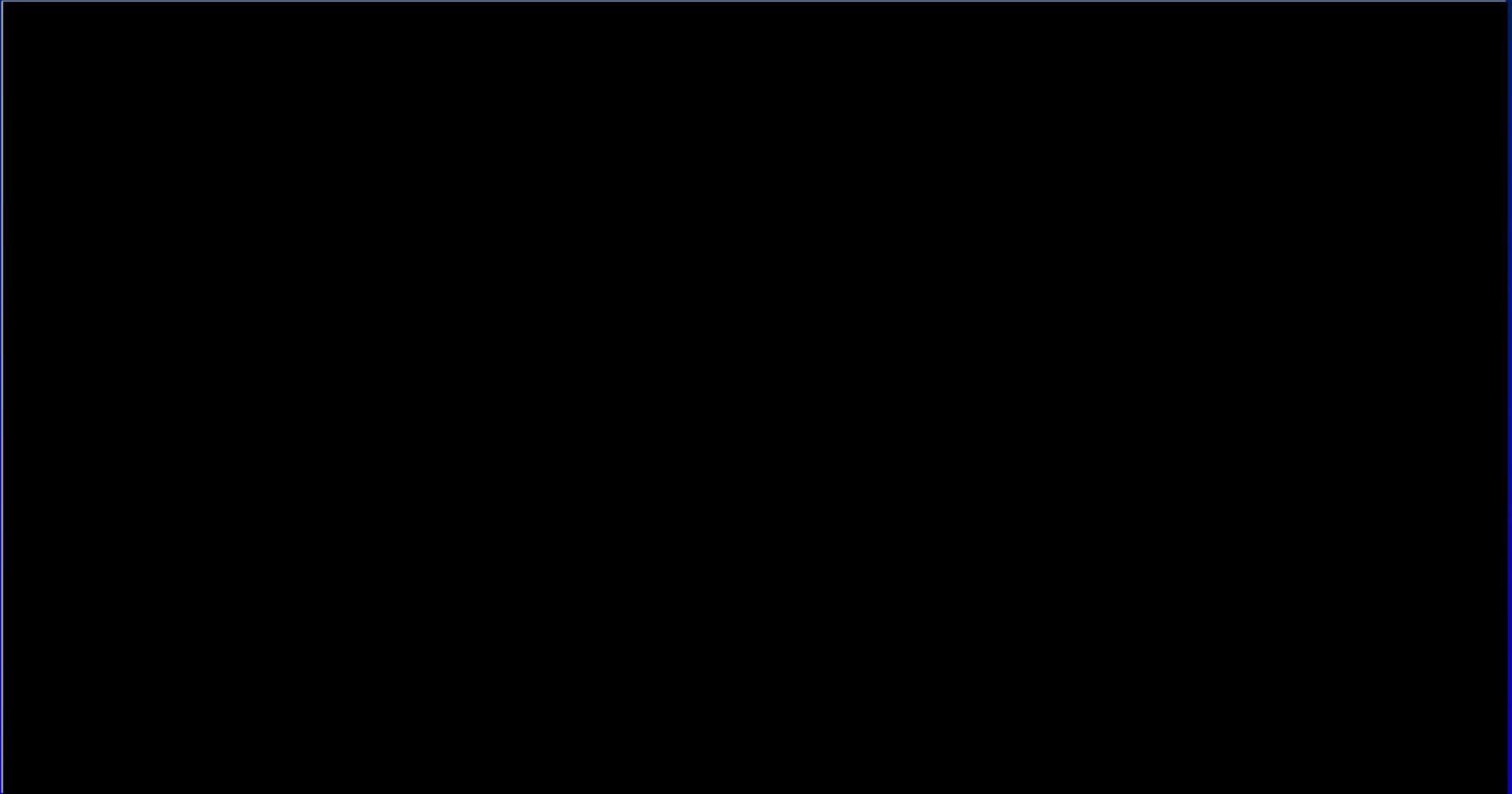
# DRUGS



# MINUTIAE



# COMMON DEFENSES



# COMMON DEFENSES





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- *People v. Patrick* (1981) 126 Cal.App.3d 952, 960:

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- *People v. Slack* (1989) 210 Cal.App.3d 937

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- *United States v. Bailey* (1980) 444 U.S. 394, 410

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# BLOOD DRAWS

□ *People v. Fish* (2018) 29 Cal.App.5th 462



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# IGNITION INTERLOCKS

- Vehicle Code 23575.3
  - Offenses with dates of violation on or after 1/1/19
  - First offense (23152 per 23536):
    - Up to six months IID or
    - Restricted license for 1 year (to/from work, DUI program)
    - Restricted license for 6 months
  - Second offense (23152 per 23540):
    - 12 months IID
  - Third offense (23152 per 23546)
    - 24 months IID
  - Felony offense due to priors (23152 per 23550 or 23550.5)
    - 36 months IID

# IGNITION INTERLOCKS

- Injury Offenses:
  - First offense with injury (23153 per 23554)
    - 12 months IID
  - Offense causing injury with one prior (23153 per 23560)
    - 24 months IID
  - Offense causing injury with two priors (23153 per 23566)
    - 36 months IID
  - Offense causing injury with one felony prior (23153 with prior punishable under 23550.5)
    - 48 months IID
- Term doesn't start until IID is installed
- Not contingent upon probation - mandatory

# CURRENT CASES IN DUI

- *Missouri v. McNealey* (2013) 133 S. Ct. 1552
  - *Birchfield v. North Dakota* (2016) 136 S. Ct. 2160
    - Breath tests without a warrant → search incident to arrest.
- *People v. Vannesse* (2018) 23 Cal. App. 5th 440
- *People v. Gutierrez* (2018) 27 Cal. App. 5th 1155
- *Mitchell v. Wisconsin* (2019) 588 U.S. \_\_\_\_\_
- *People v. Cruz* (2019) 34 Cal.App.5th 764
- *People v. Cooper* (2019) 37 Cal.App.5th 642
- *People v. Lopez* (2020) (3rd DCA C080065 3/11/20)

# IMPLIED CONSENT

- Vehicle Code section 23612



- See the DS 367 form

[REDACTED]

□

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□ “A person who drives . . . is deemed to have given his or her consent to chemical testing of his or her blood or breath . . . if lawfully arrested for [DUI.]” (VC 23612(a)(1)(A).)

□

[REDACTED]

[REDACTED]



# DUI PROSECUTION

**THANK YOU FOR JOINING US!**



**FEEL FREE TO COME AND CHAT CASES WITH US AT ANY TIME!**

ABC's of Making a Record!  
(How to anticipate, make a record, and respond  
to the most common Judicial errors)



Deputy District Attorney [REDACTED]

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### The Process of Appeals

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- Misdemeanor/Infraction -**30 days** (Cal. Rules of Ct. 8.853 Misd., 8.902(a) Inf.)
- Felony -**60 days** (Cal. Rules of Ct. 8.304(b).

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  - Felony Cases pursuant to PC §1238
  - Misdemeanors pursuant to PC §1466(a)
  - Suppression hearings pursuant to PC §1538.5(o) & (j)

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### STANDARD OF REVIEW

- A review of a motion to suppress is a mixed question of fact and law. (People v. Alvarez (1996) 14 Cal.4th 155, 182)
- Reviewing courts defer to the factual findings of the trial court when supported by substantial evidence (People v. Alvarez, supra, at p. 182), but independently determine the relevant legal principles and apply those principles in evaluating the reasonableness of the search or seizure. (People v. Mays (1998) 67 Cal.App.4th 969, 972.)
- "when a trial court's decision rests on an error of law, that decision is an abuse of discretion." (People v. Superior Court (Humberto S.) (2008) 43 Cal.4th 737, 746, see also, People v. Eubanks (1996) 14 Cal.4th 580, 595; People v. Neely (1999) 70 Cal.App.4th 767, 775-776; In re Anthony M. (2007) 156 Cal.App.4th 1010, 1016

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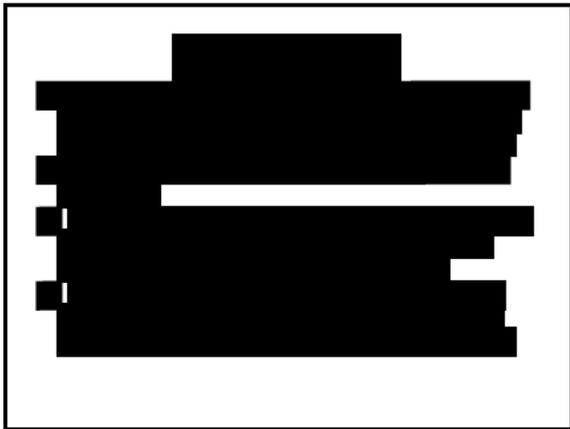
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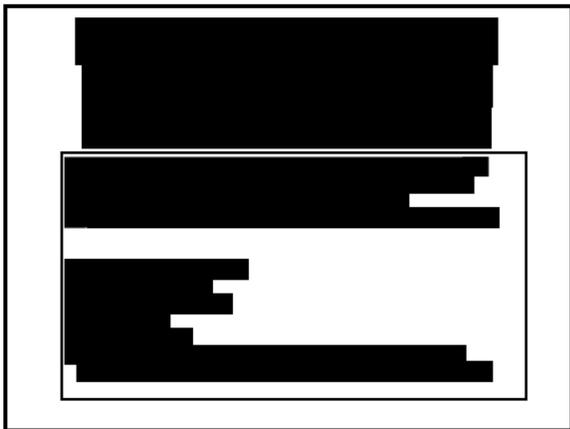
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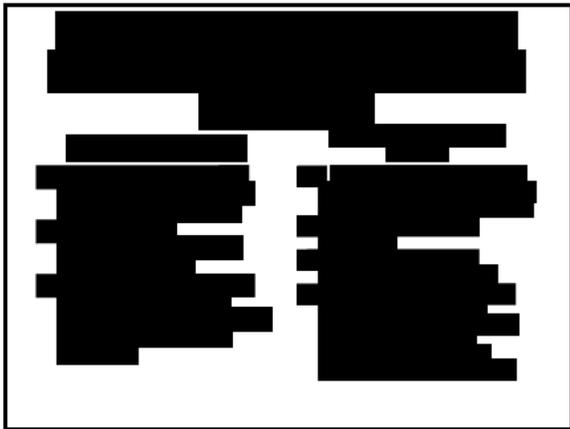
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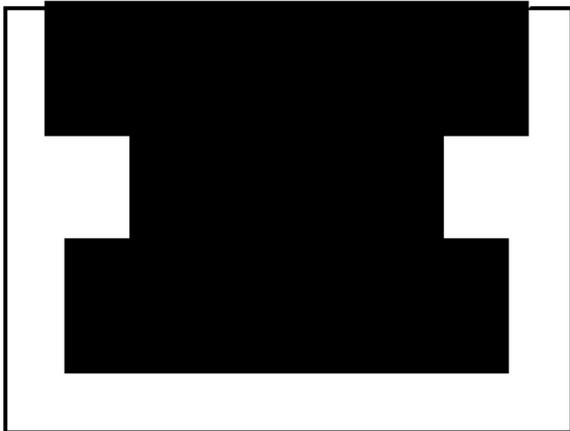
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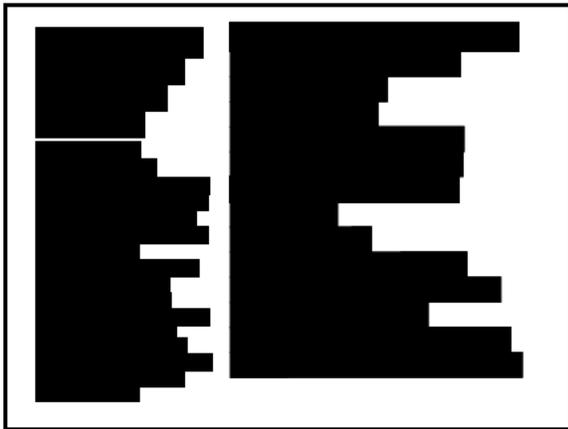
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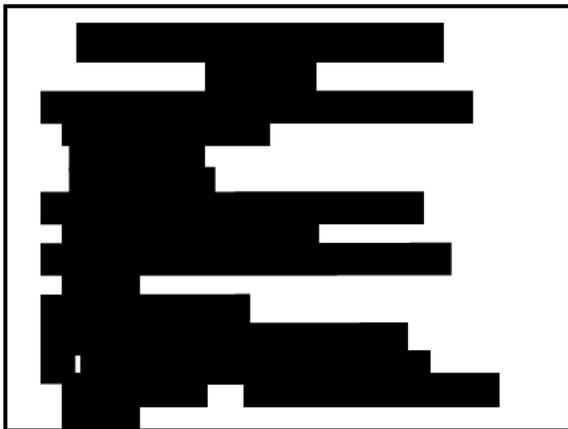
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**Understanding Suppression**  
**Motions: Reasonable Suspicion**

- A police officer may conduct a brief, investigatory stop when there are articulable facts supporting a reasonable suspicion that criminal activity is afoot. (*Terry v. Ohio* (1968) 392 U.S. 1, 30.)
- The standard for a “Terry-stop” is less demanding than probable cause and requires a showing considerably less than a preponderance of the evidence. (*Illinois v. Wardlow* (2000) 528 U.S. 119, 123.)
- Only a “minimal level of objective justification” is necessary. (*United States v. Sokolow* (1989) 490 U.S. 1, 7.)

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- An officer with articulable facts supporting a reasonable suspicion that a motorist may have violated the Vehicle Code may stop the vehicle for investigation. (*Kodani v. Snyder* (1999) 75 Cal.App.4th 471, 476-477 [possible seat belt violation]; *People v. Castellon* (1999) 76 Cal.App.4th 1369, 1373 [possible expired registration]; *People v. Uribe* (1993) 12 Cal.App.4th 1432, 1436 [possible unsafe lane change].)
- A traffic violation constitutes a "public offense" for which an arrest *may* be made. (*People v. Tuck* (1977) 75 Cal.App.3d 639, 644.) A police officer can stop a vehicle when "a violation of the Vehicle Code or other law *may have* taken place . . ." (*People v. Superior Court (Simon)* (1972) 7 Cal.3d 186, 200, emphasis added.)

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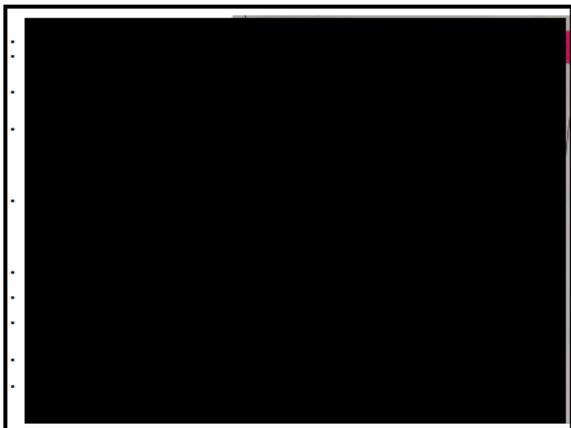
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"A traffic stop is justified at its inception if an officer has . . . a reasonable articulable suspicion that a particular motorist has violated any of the traffic or equipment regulations of the jurisdiction. Thus, the government need not show a violation actually occurred to justify an initial traffic stop. We look only at whether the stop was objectively justified; the officer's subjective motives are irrelevant." (U.S. v. Kitchell (10th Cir. 2011) 653 F.3d 1206, 1216, (emphasis added) internal quotations and citations omitted; see also People v. Bell (1996) 43 Cal.App.4th 754, 761.)

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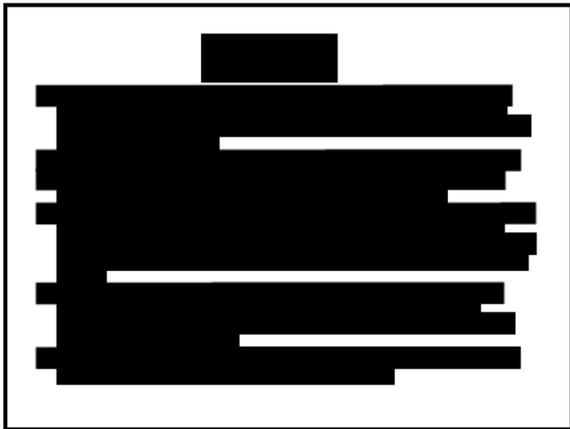
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**PC for the Stop MTS**

- "[T]he constitutionality of a traffic stop does not depend on the subjective motivation or intent of the officers." (*Rodriguez*, *supra*, at p. 920 citing [United States v. Wallace \(2000\)](#), 213 F.3d 1216, 1219 citing *Whren v. U.S.*, (1996) 517 U.S. 806, 813.)
- Accordingly, "[t]he fact that the alleged traffic violation is a pretext for the stop is irrelevant, so long as the objective circumstances justify the stop." *Id.*
- If an officer who executes a valid stop reasonably believes that the driver is involved in criminal activity, "he may detain him for a reasonable period of time." (*United States v. Martinez* (2010), 403 F. App'x 182, 183, citing *Terry v. Ohio* (1968), 392 U.S. 1, 21-23, and *United States v. Chavez-Valenzuela* (2001) 268 F.3d 719, 726, overruled on other grounds by *Muehler v. Mena* (2005), 544 U.S. 93.)
- the subjective motivation, even assuming an intention to use the observed violation as a pretext for a broader investigation, does not render the initial stop constitutionally defective. (*People v. Uribe*, *supra*, 12 Cal.App.4th 1432, 1436.)

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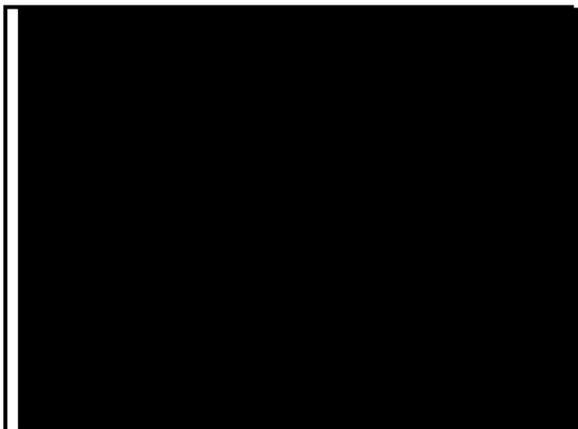
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• Cal Crim 222 Evidence  
• “Nothing that the attorneys say is evidence. In their opening statements and closing arguments, the attorneys discuss the case, but their remarks are not evidence. Their questions are not evidence. Only the witnesses’ answers are evidence. The attorneys’ questions are significant only if they helped you to understand the witnesses’ answers. Do not assume that something is true just because one of the attorneys asked a question that suggested it was true.”

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- Looking at the totality of the circumstances that must be considered in determining if consent is voluntary, shows whether there was evidence of coercion. (*Balov, supra*, 23 Cal.App.5th at p. 702.)

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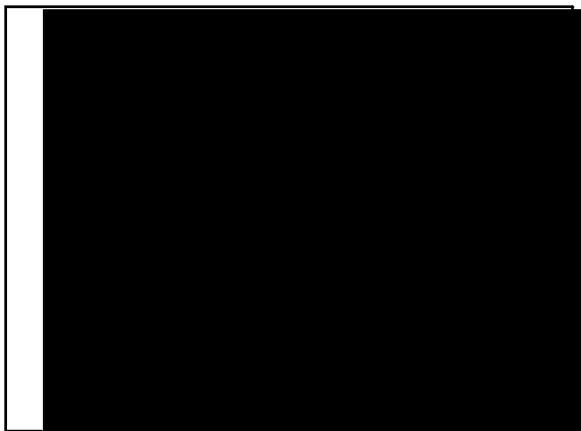
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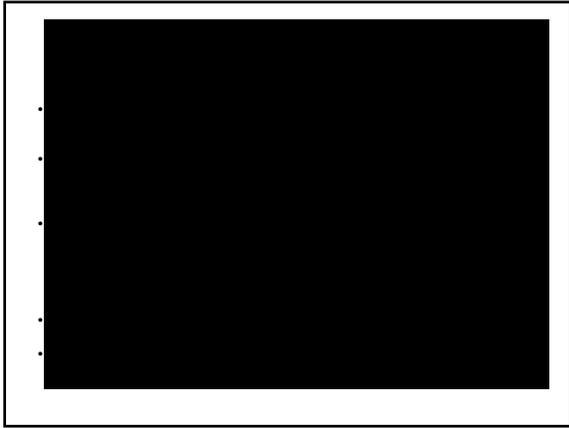
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# EVIDENTIARY ISSUES AT TRIAL

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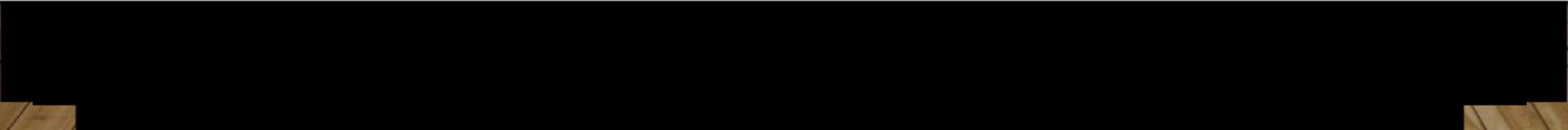
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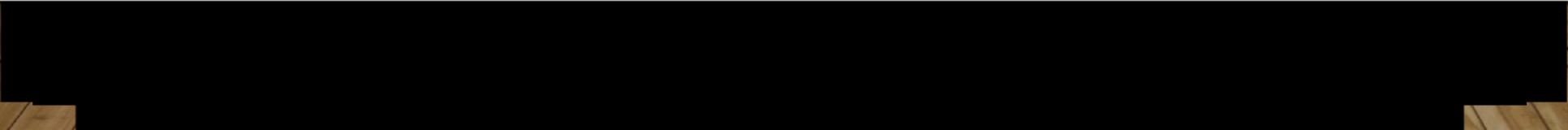
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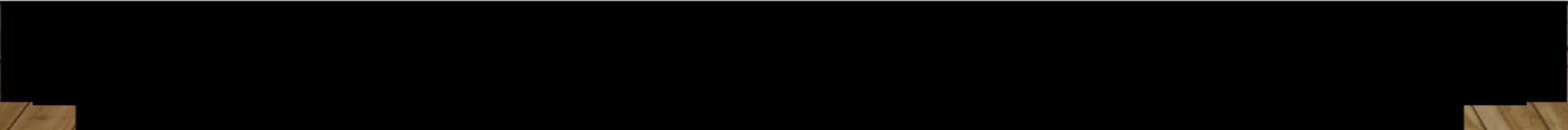
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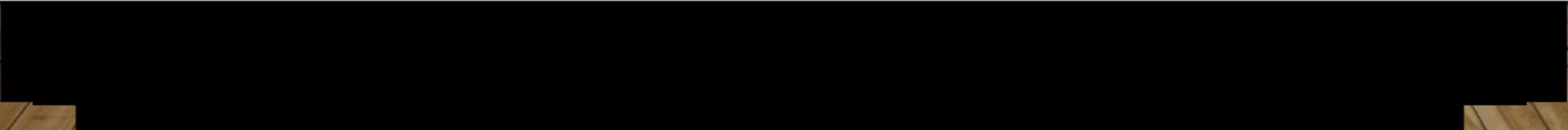
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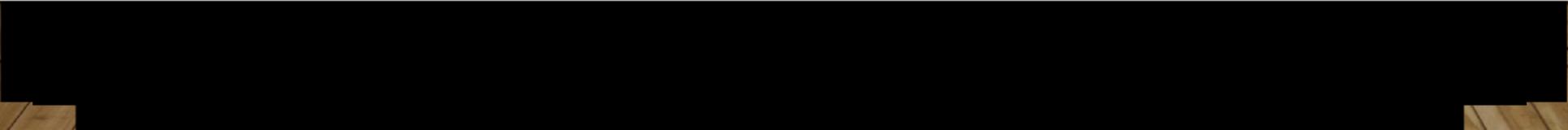
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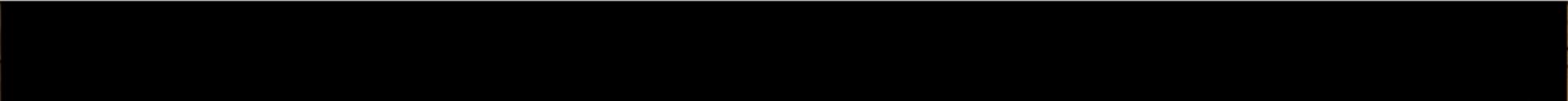
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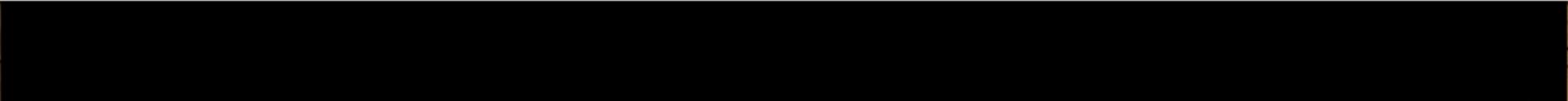
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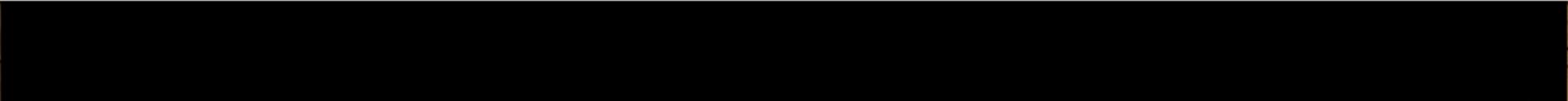
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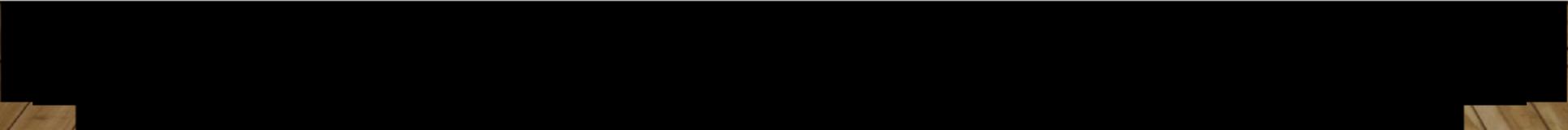
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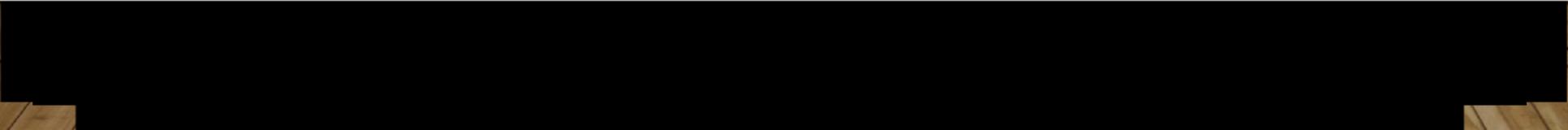
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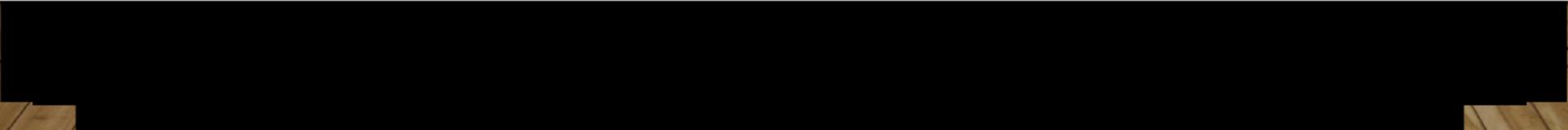
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- Evidence Code Section 1271
- Evidence of a writing made as a record of an act is not made inadmissible by the hearsay rule when offered to prove the act, condition or event if: The writing was made
  - a) in the regular course of business
  - b) at or near the time of act, condition or event

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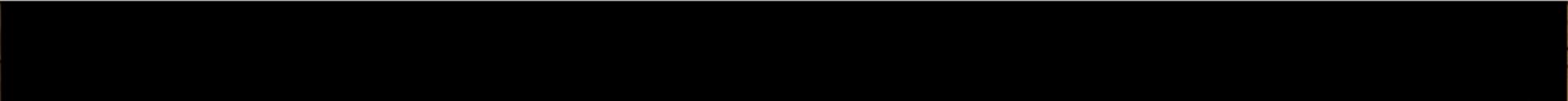
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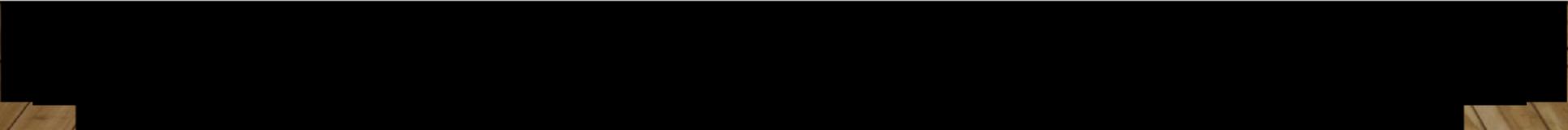
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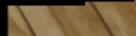
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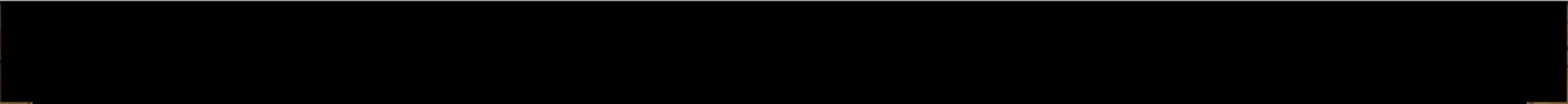


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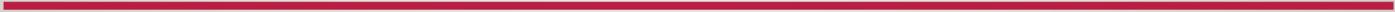


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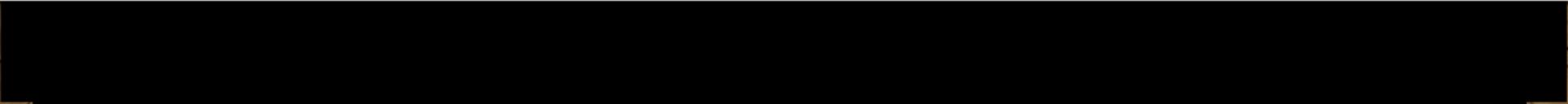


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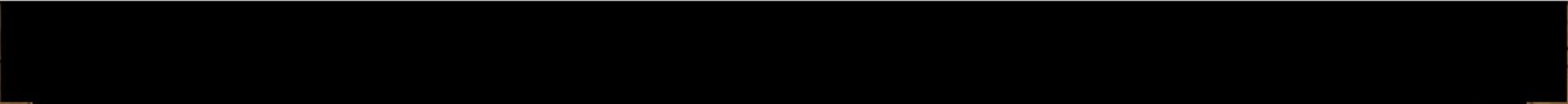


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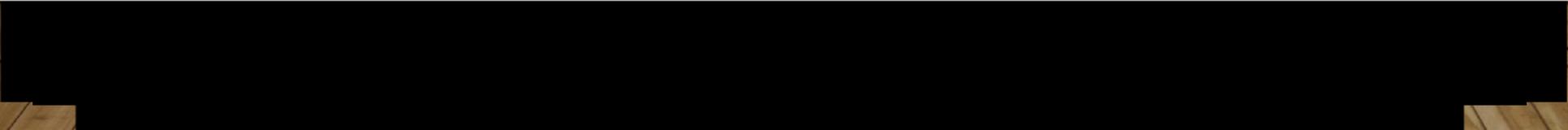
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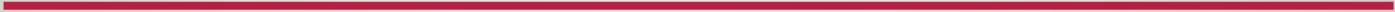
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- Peo v. Lopez (2012) 55 Cal.4<sup>th</sup> 569, 581-582

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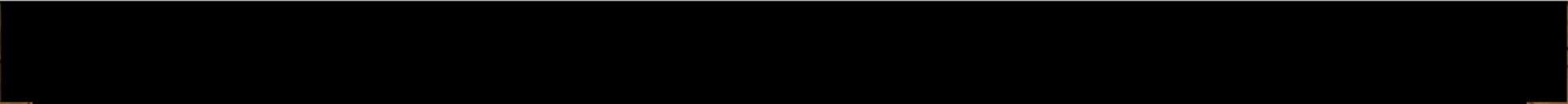
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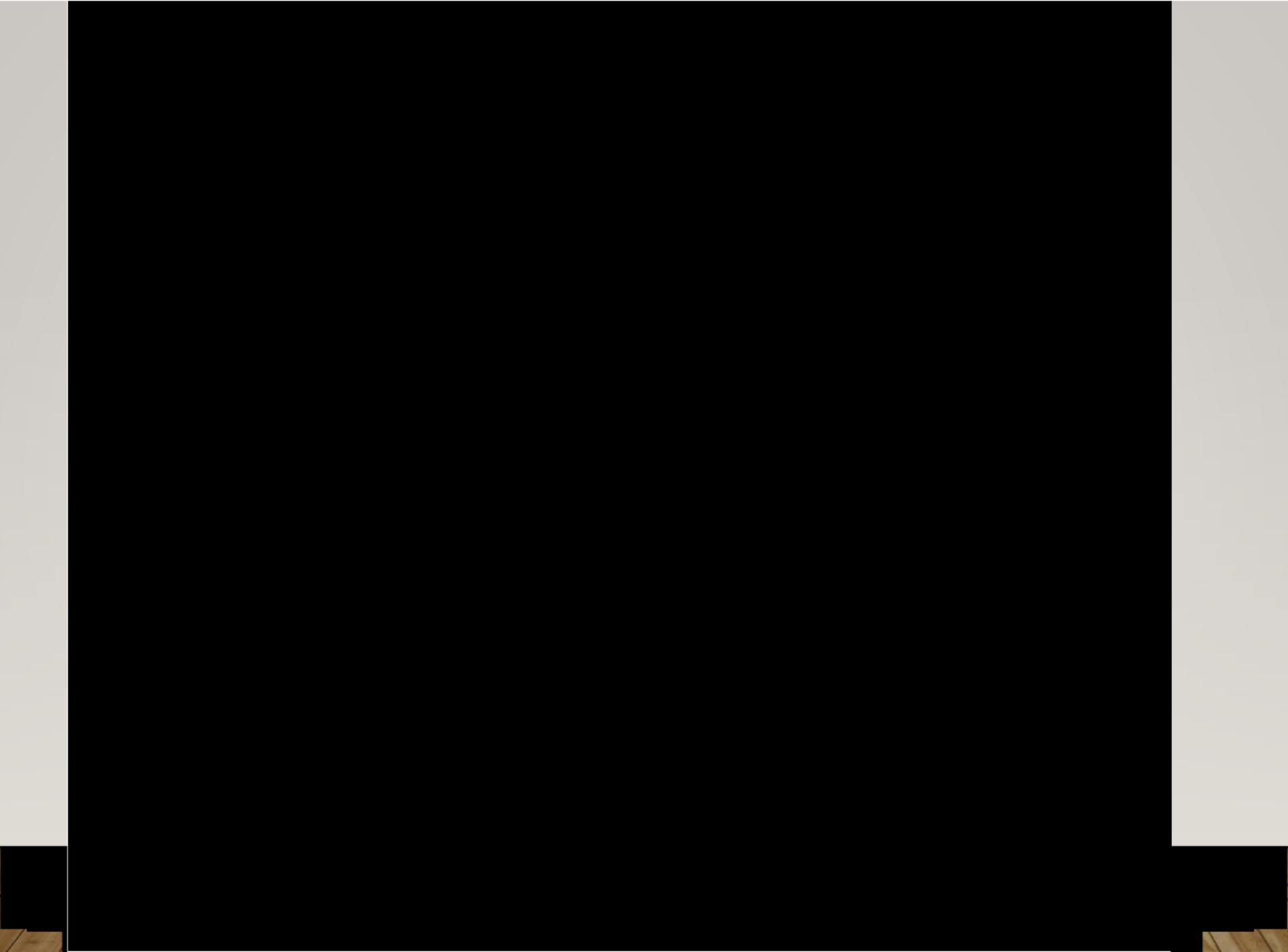
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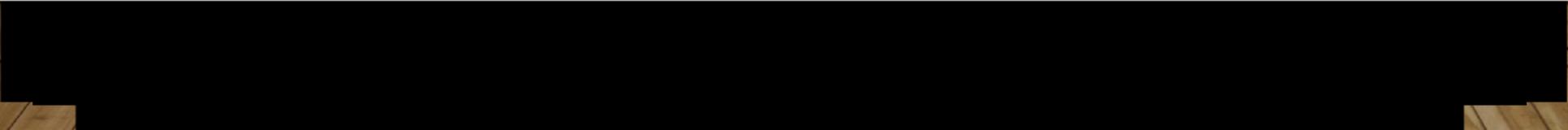


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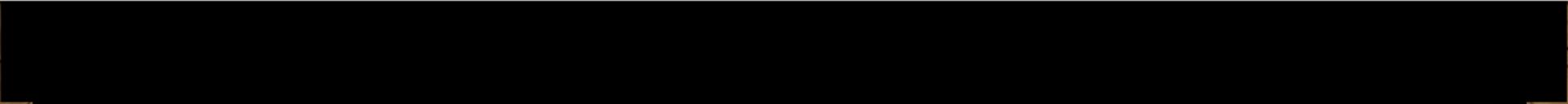
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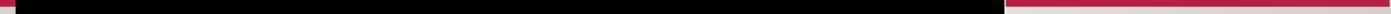
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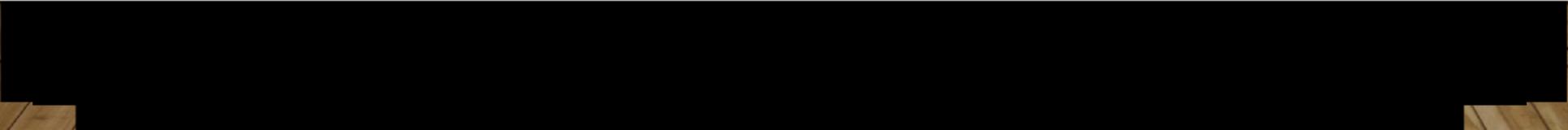
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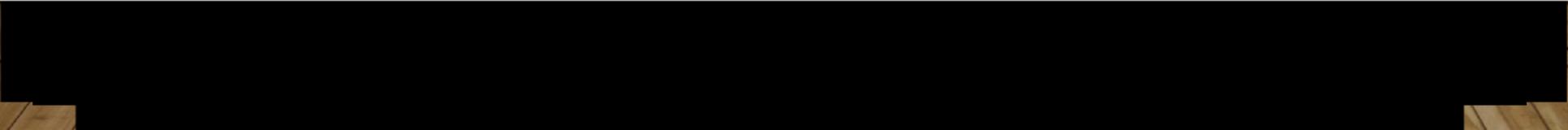


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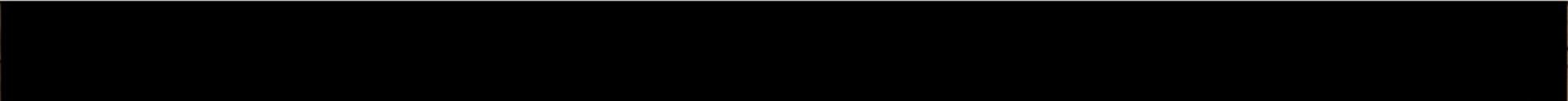
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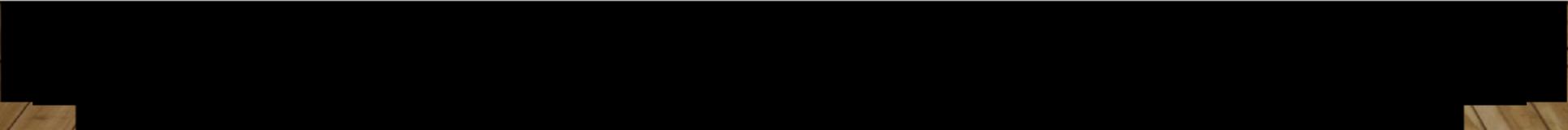


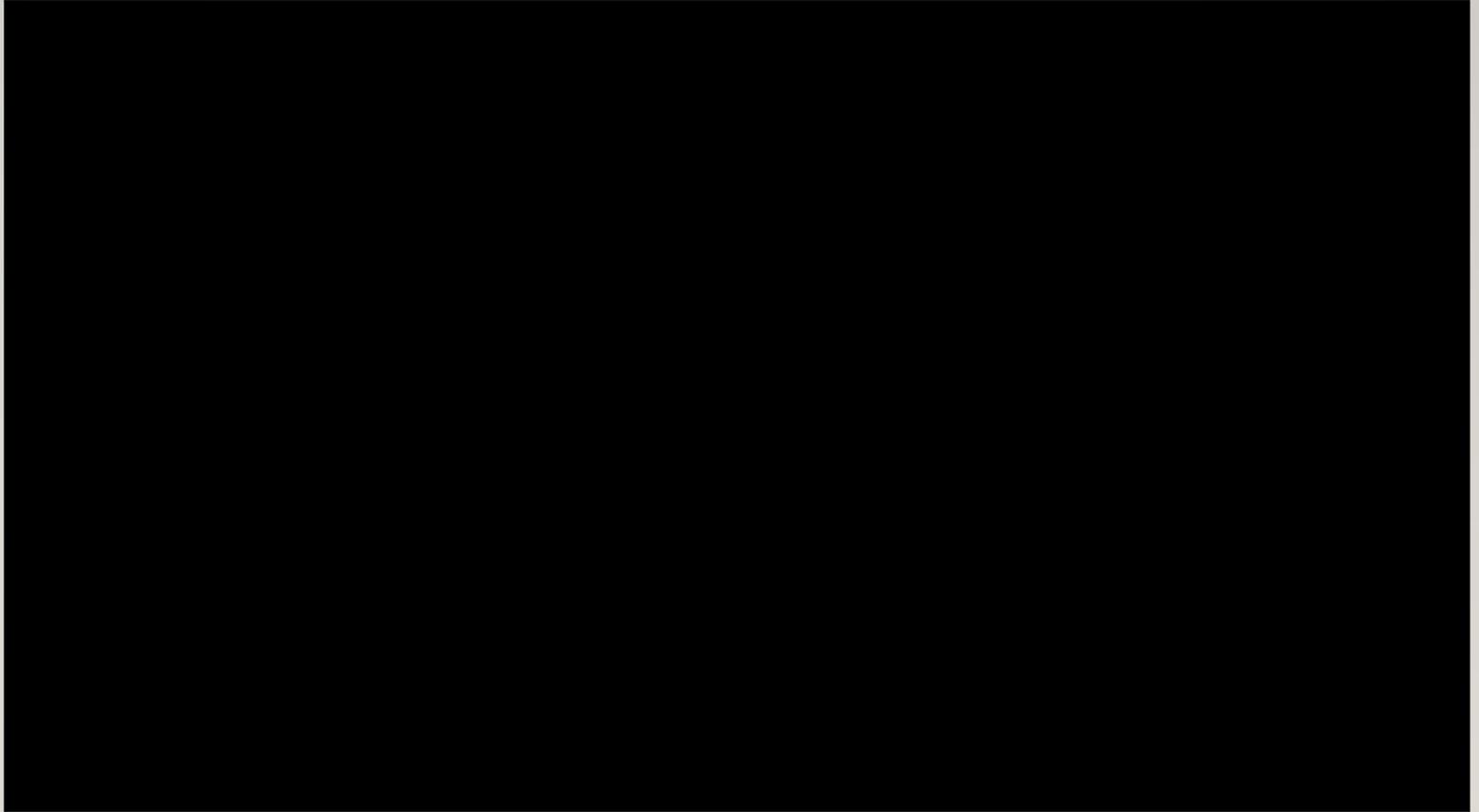
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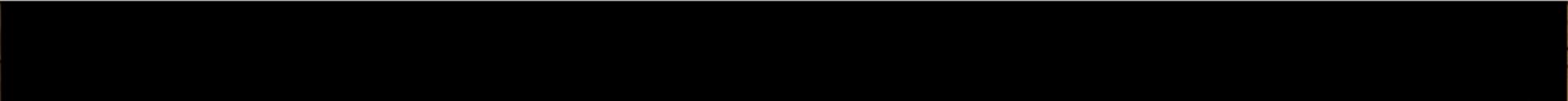
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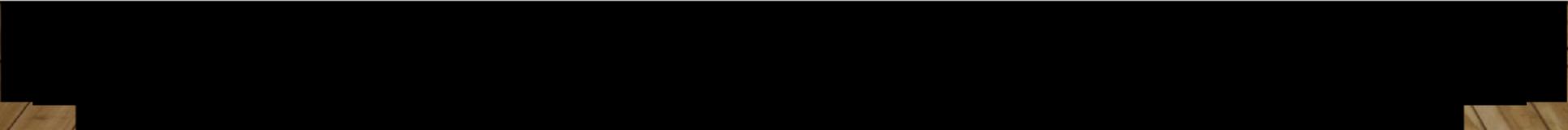
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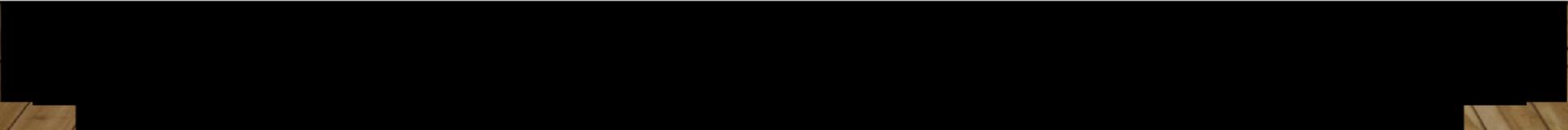
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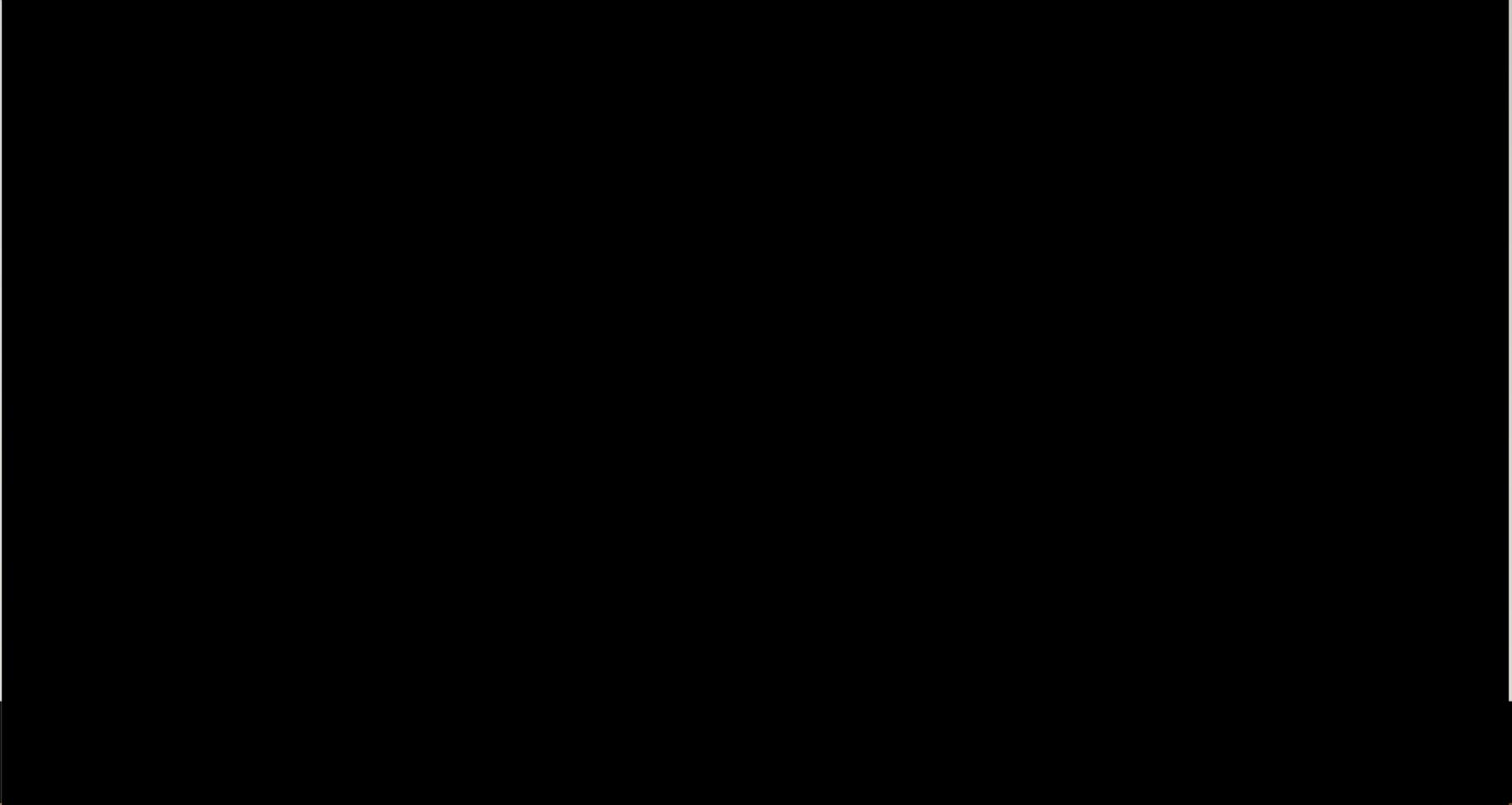


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*PEOPLE V. SANCHEZ* (2016) 63  
CAL.4<sup>TH</sup> 665

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# PEOPLE V. SANCHEZ (2016) 63 CAL.4<sup>TH</sup> 665

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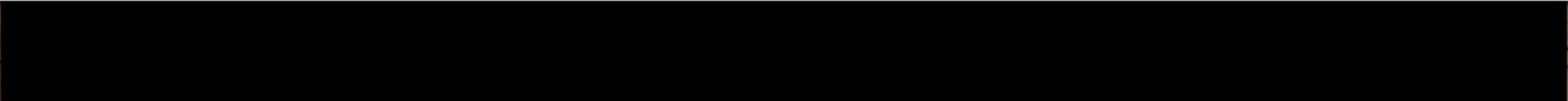
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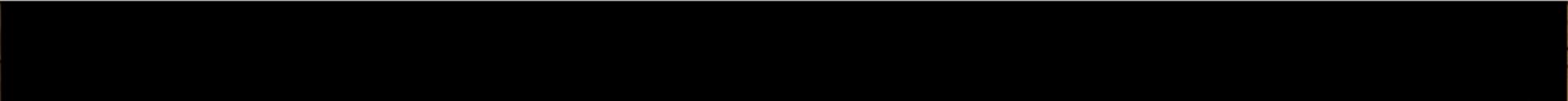
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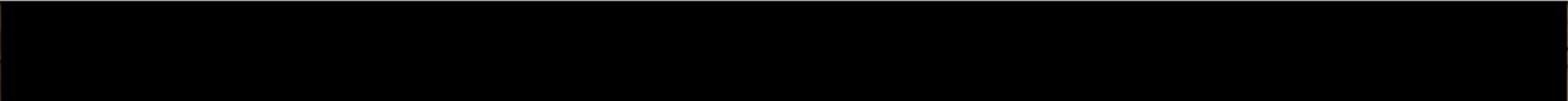
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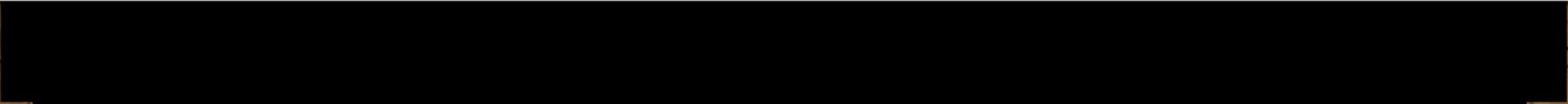
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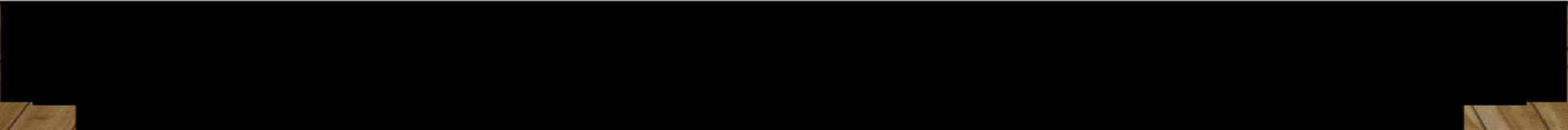
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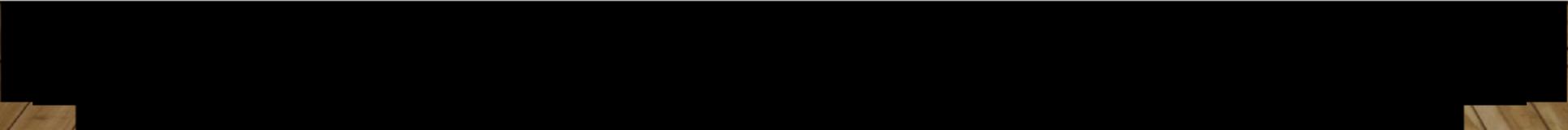
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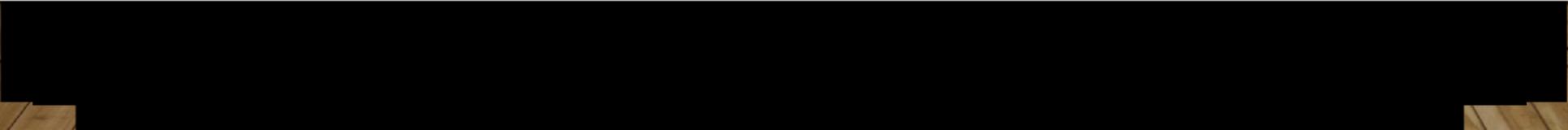
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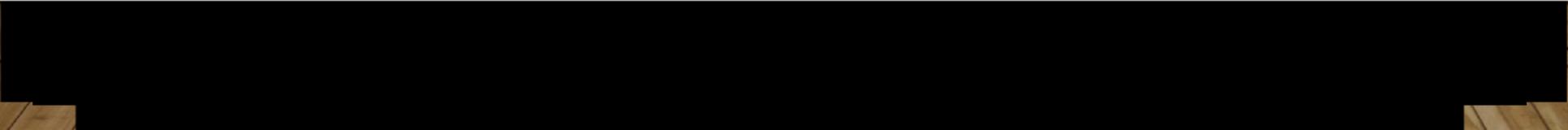
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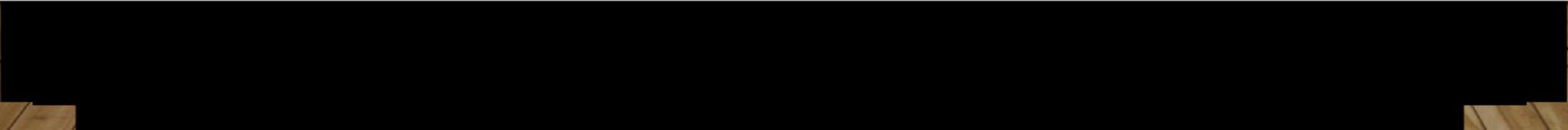
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## Misdemeanor Domestic Violence Training

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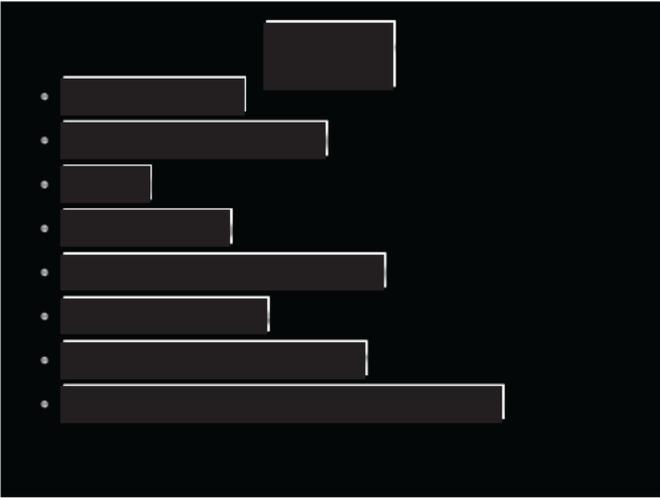
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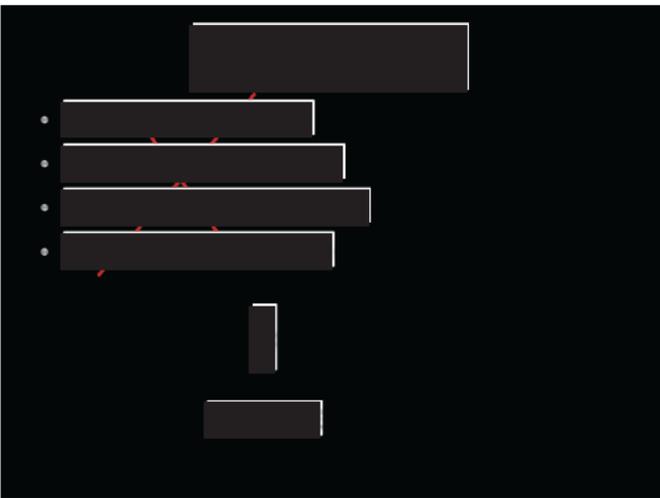
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### Penal Code 166(c)(1)

- An order pursuant to PC 136.2
  - A Criminal Protective Order
- An order as a condition of probation per PC 1203.097
  - A Criminal Protective Order
- An order issued pursuant to Family Code 6320
  - An Emergency Protective Order
- An order excluding on party from the family dwelling or from the dwelling of another.
- An order enjoining a party from specified behavior that the court determined was necessary to effectuate the order.

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### Penal Code 273.6

- An order issued pursuant to Code of Civil Procedure 527.6, 527.8 or 527.85.
  - Civil Restraining Orders
- An order issued pursuant to Family Code 6320
  - An Emergency Protective Order
- An order excluding on party from the family dwelling or from the dwelling of another.
- An order enjoining a party from specified behavior that the court determined was necessary to effectuate the order.

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## Issuing Criminal Protective Orders

- PC 136.2(a)(1)(G)(ii)(I) ORDERS PENDING TRIAL

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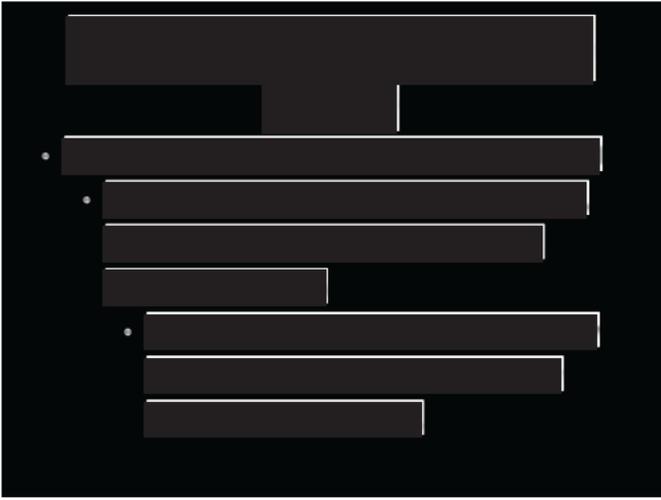
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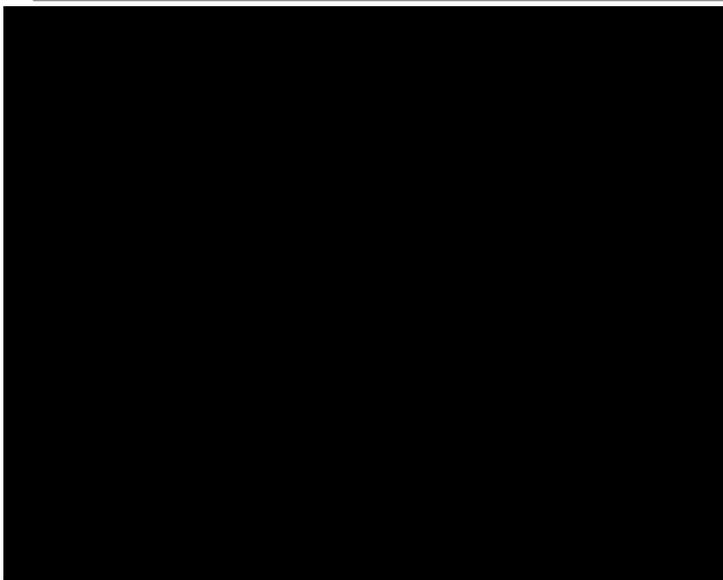
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## Consequences of the Plea

PC 1203.097: "If a person is granted probation for a crime in which the victim is a person defined in Section 6211 of the Family Code, there terms of probation SHALL include..."

- Minimum 36 months of probation
- Criminal Protective Order
- Minimum of book and release
- Minimum \$500 fine
- Successful completion of BTP
- Defendant to complete a specified amount of community service (20 hours standard for misdemeanor)

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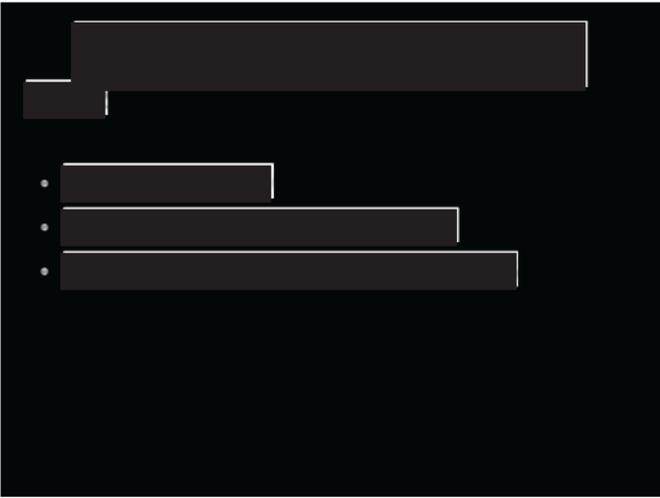
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- Code of Civil Procedure Section 1219
  - (a) Except as provided in subdivisions (b) and (c), if the contempt consists of the commission to perform an act which is yet in the power of the person to perform, he or she may be imprisoned until he or she has performed it, and in that case the act shall be specified in the warrant of commitment.
  - (b) Notwithstanding any other law, a court shall not imprison or otherwise confine or place in custody the victim of a sexual assault or domestic violence crime for contempt if the contempt consists of refusing to testify concerning that sexual assault or domestic violence crime. Before finding a victim of a domestic violence crime in contempt as described in this section, the court may refer the victim for consultation with a domestic violence counselor...

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### Evidence Code Section 1109

- ... in a criminal action in which the defendant is accused of an offense involving domestic violence, evidence of defendant's commission of other domestic violence is not inadmissible by Section 1101 if the evidence is not inadmissible pursuant to Section 352.
- Evidence of acts occurring more than 10 years before the charged offense is inadmissible under this section, unless the court determines that the admission of this evidence is in the interest of justice.

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### “Interest of Justice”

- “Thus the ‘interest of justice’ exception is met where the trial court engages in a balancing of factors for and against admission under section 352 and concludes... that the evidence was ‘more probative than prejudicial.’”
- *People v. Johnson* (2010) 185 Cal.App.4th 520.
  - [Redacted]

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- Certified Priors
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- *People v. Wesson* (2006) 138 Cal.App.4th 959, 970
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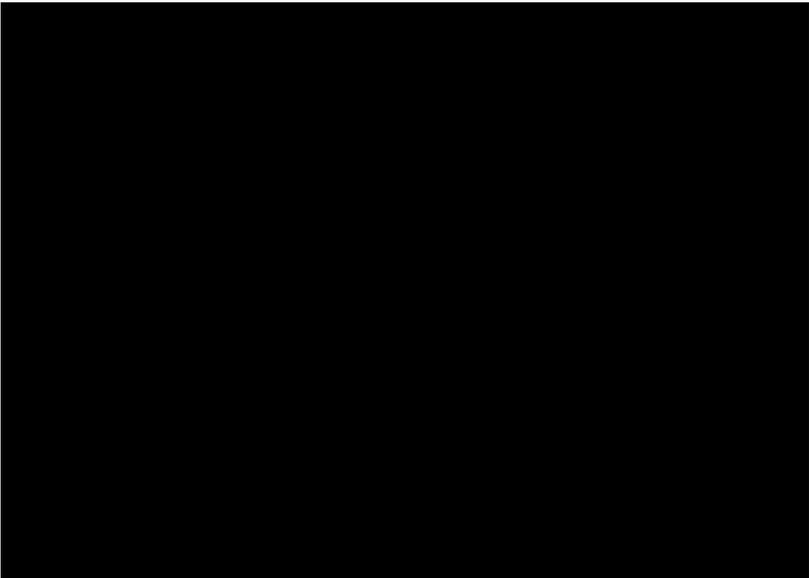
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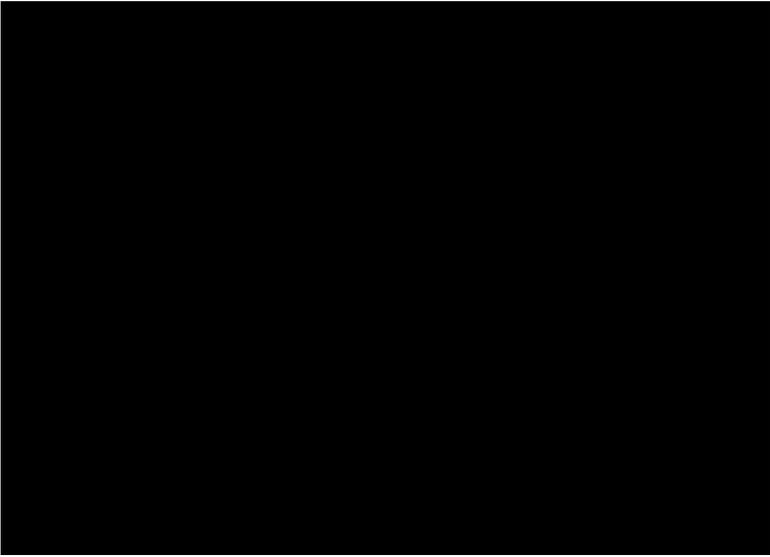
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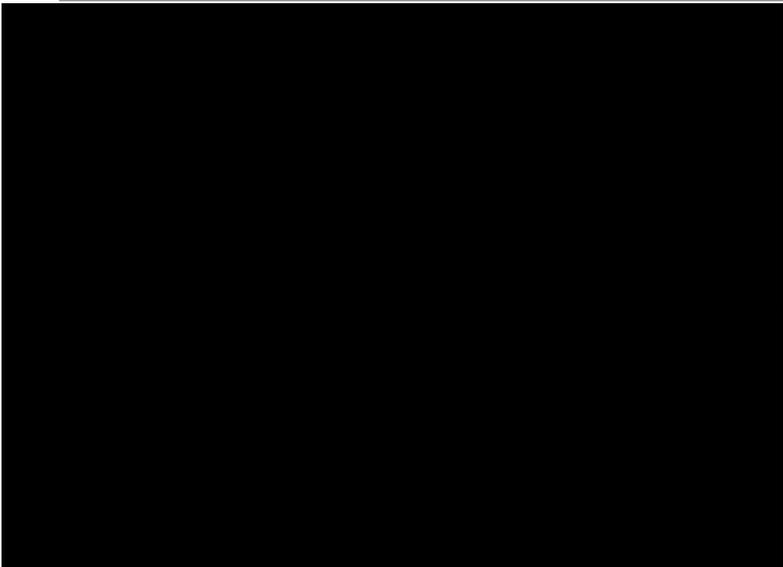
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# Fresno County DA's Office Bureau of Investigation



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## What is a DA Investigator

- Defined under PC 830.1

**830.1.**  
(a) Any sheriff, undersheriff, or deputy sheriff, employed in that capacity, of a county, any chief of police of a city or chief, director, or chief executive officer of a consolidated municipal public safety agency that performs police functions, any police officer, employed in that capacity and appointed by the chief of police or chief, director, or chief executive of a public safety agency, of a city, any chief of police, or police officer of a district, including police officers of the San Diego Unified Port District Harbor Police, authorized by statute to maintain a police department, any marshal or deputy marshal of a superior court or county, any port warden or port police officer of the Harbor Department of the City of Los Angeles, or any inspector or investigator employed in that capacity in the office of a district attorney, is a peace officer.

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## What that means to you

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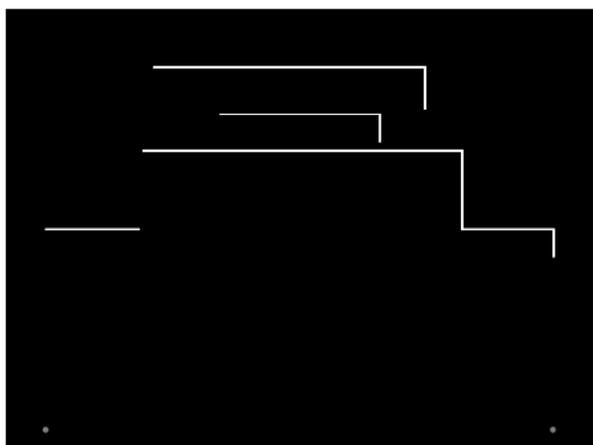
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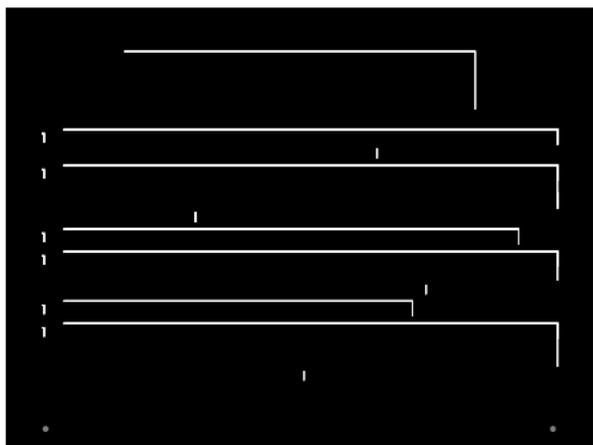
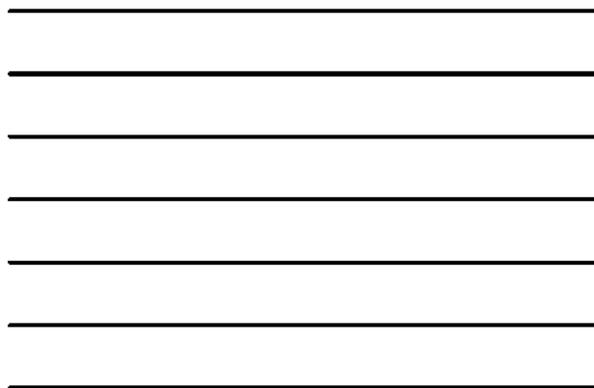
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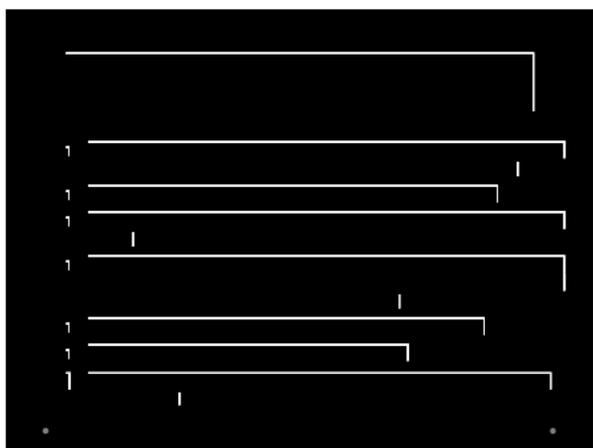
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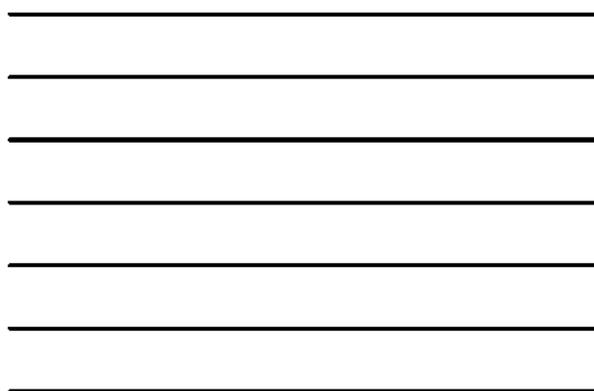
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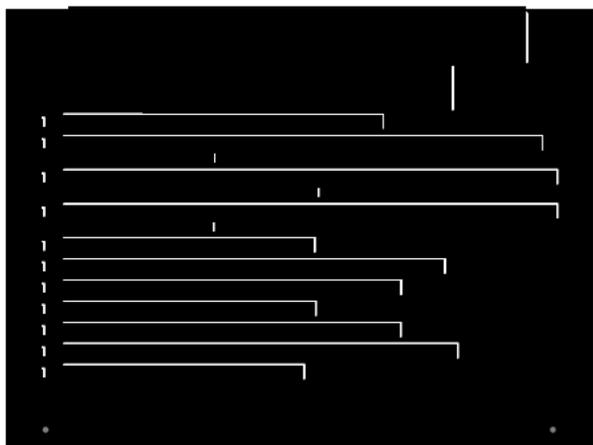


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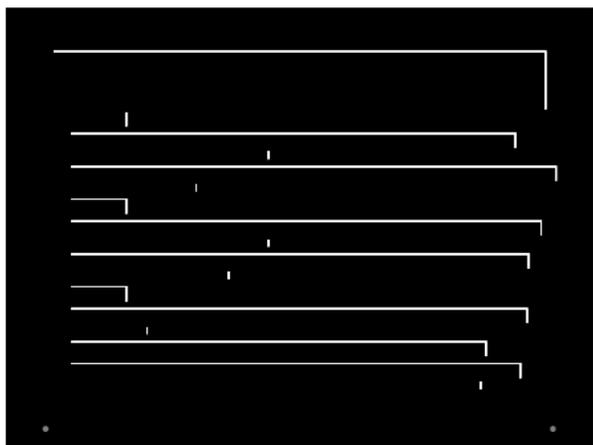
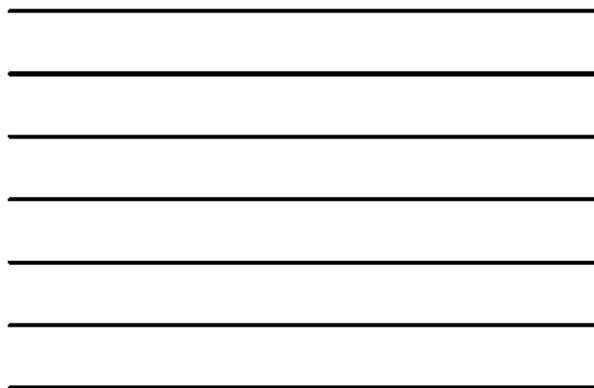


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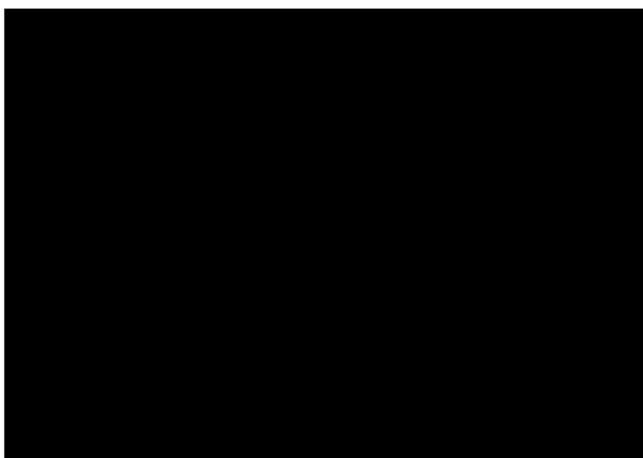




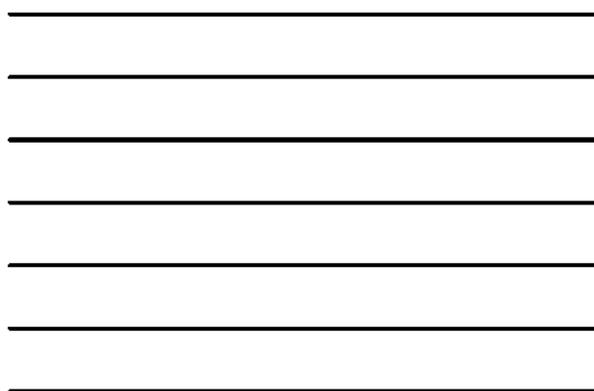
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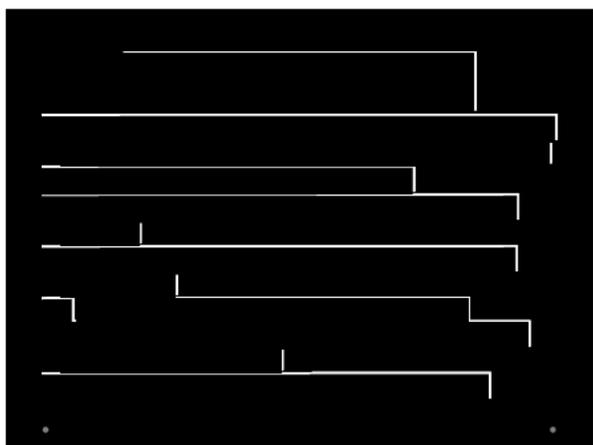


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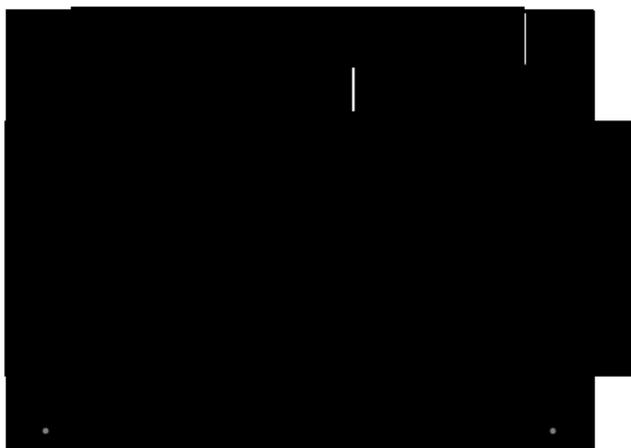
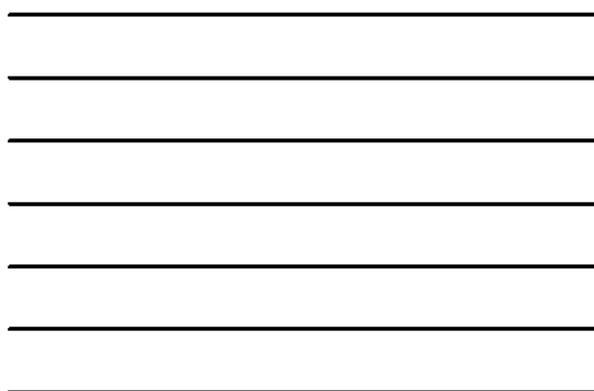




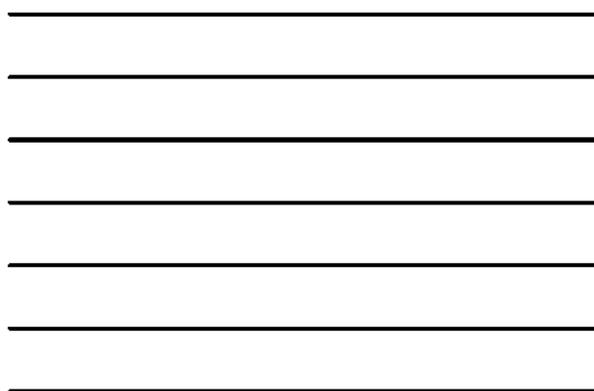
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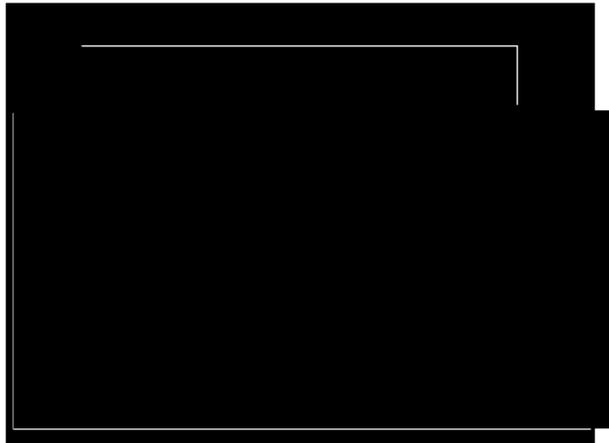


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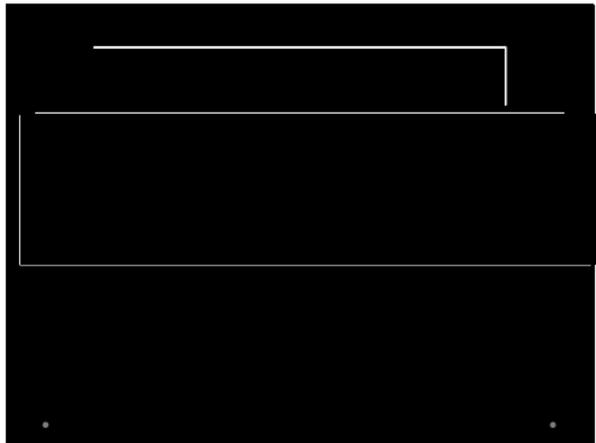
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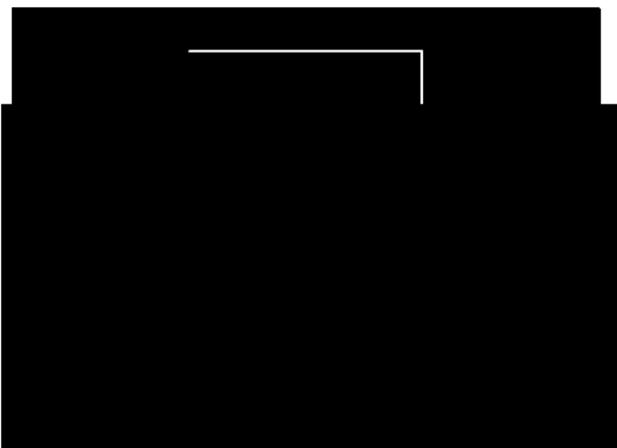
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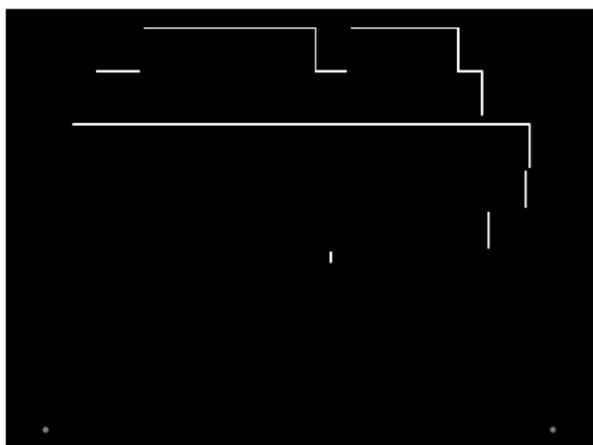
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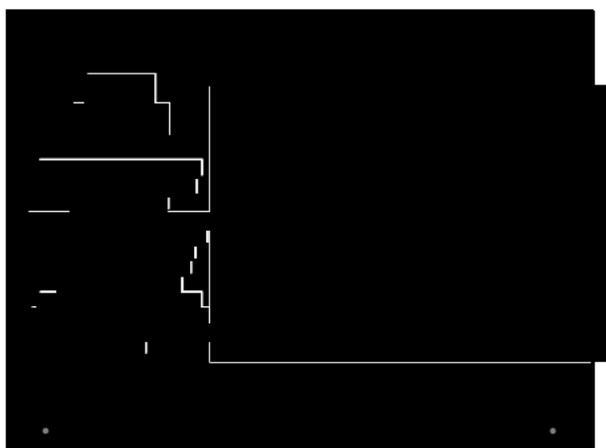
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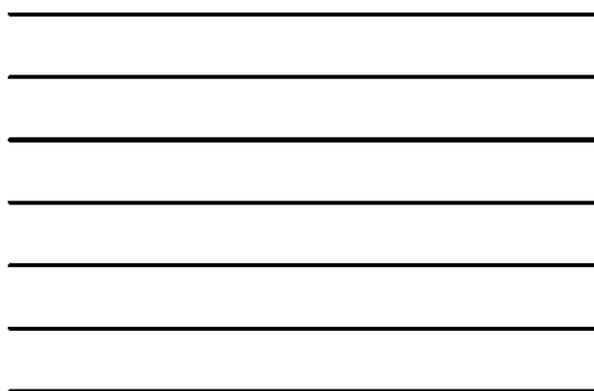
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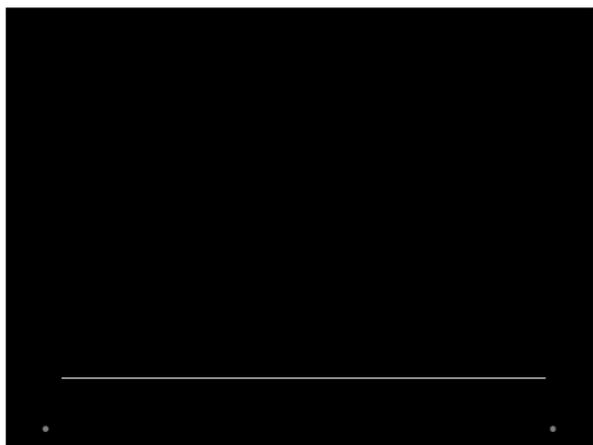


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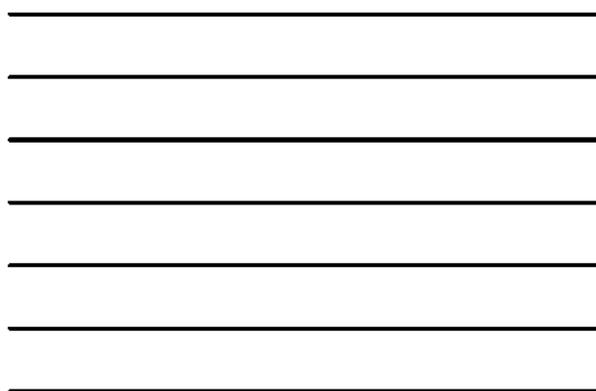
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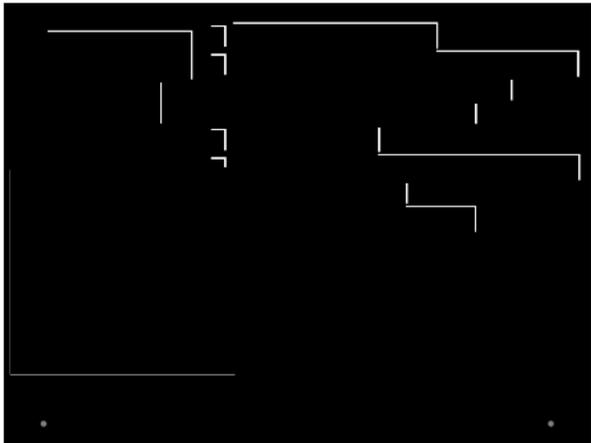


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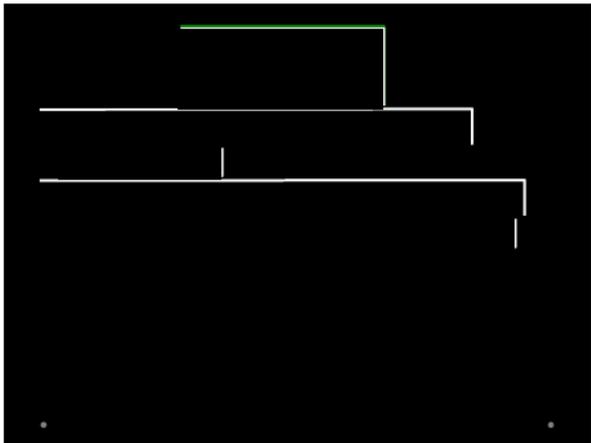
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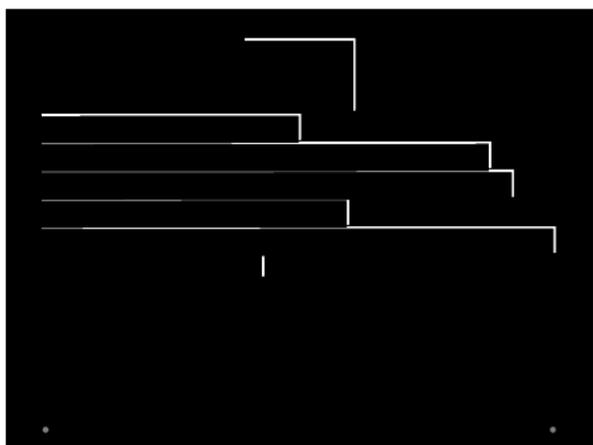
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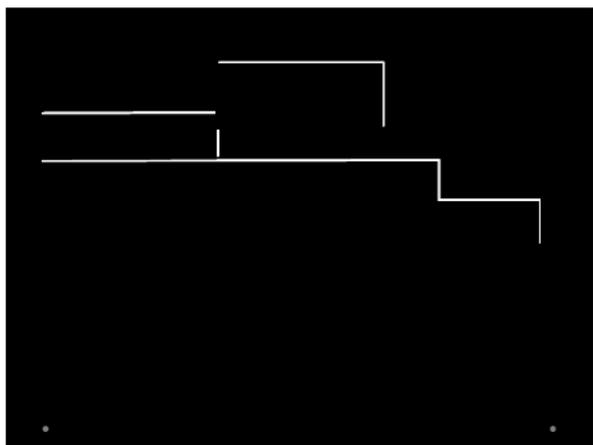
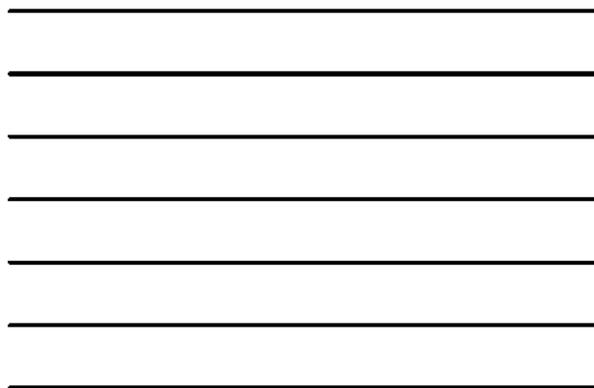
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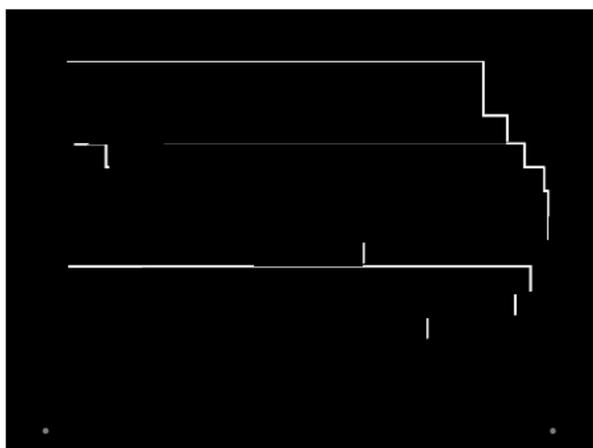
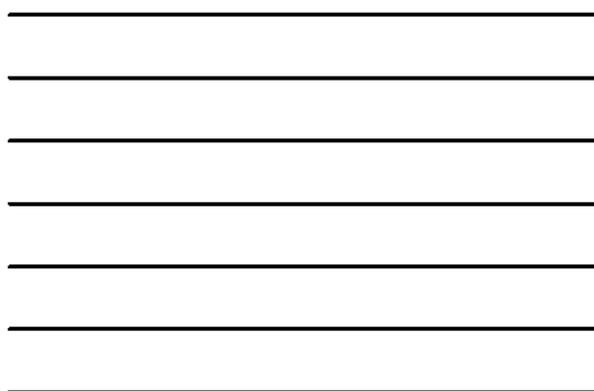
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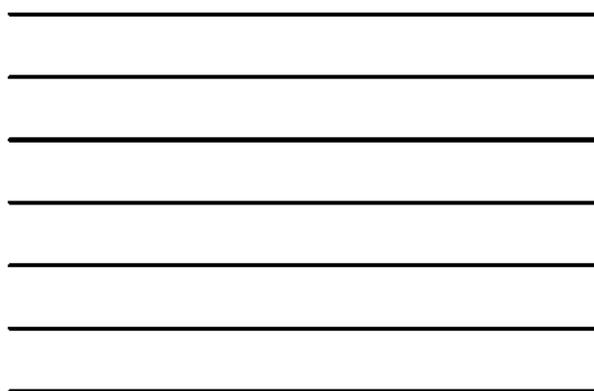
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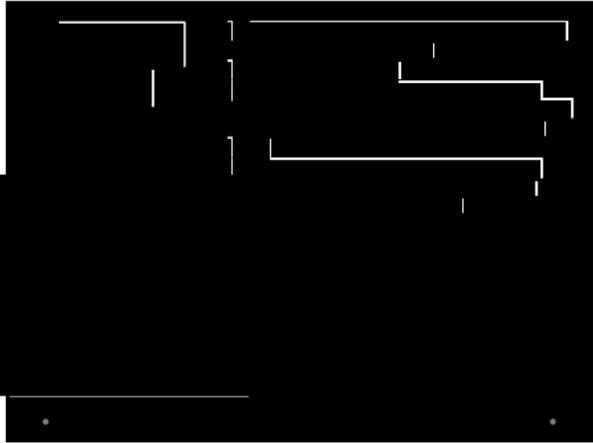


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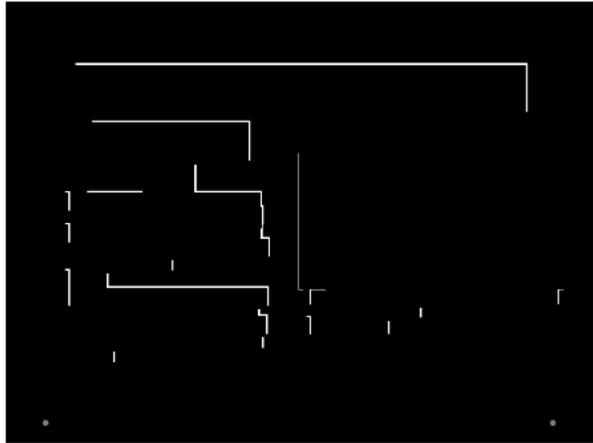


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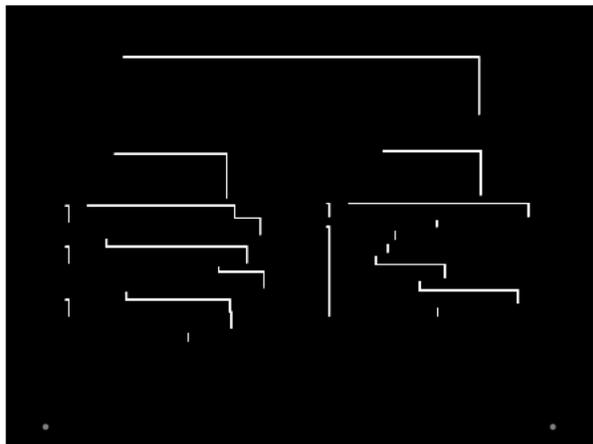




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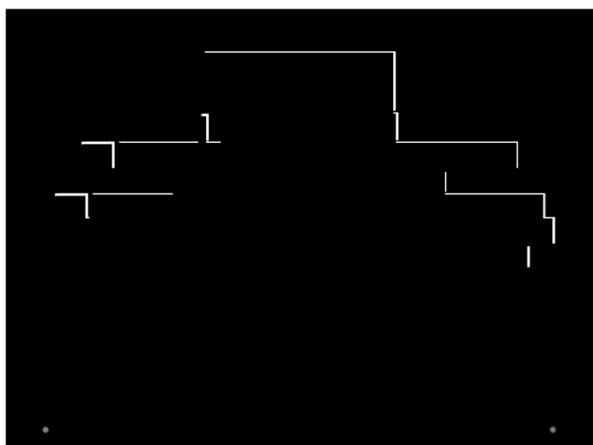


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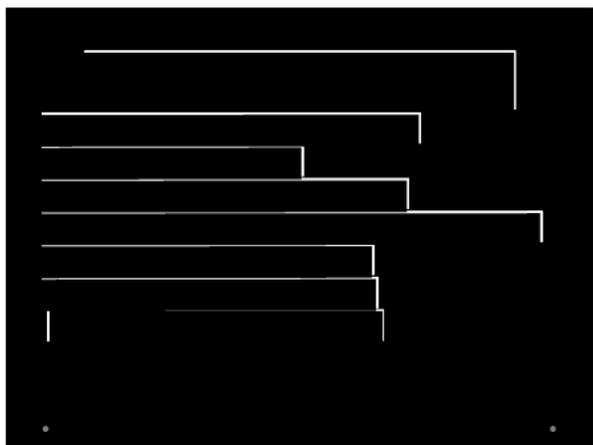
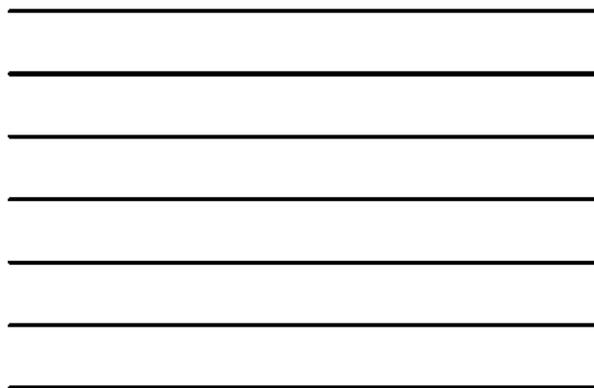


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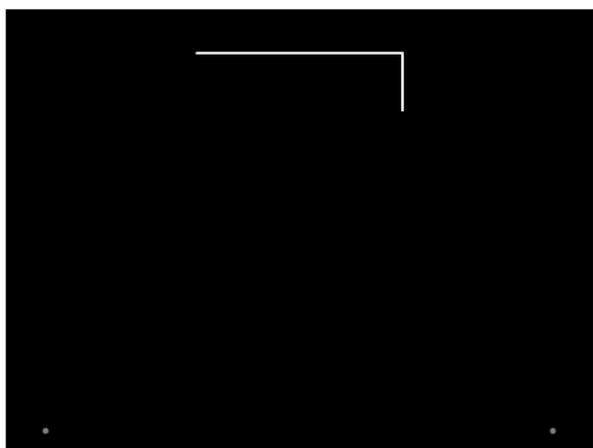
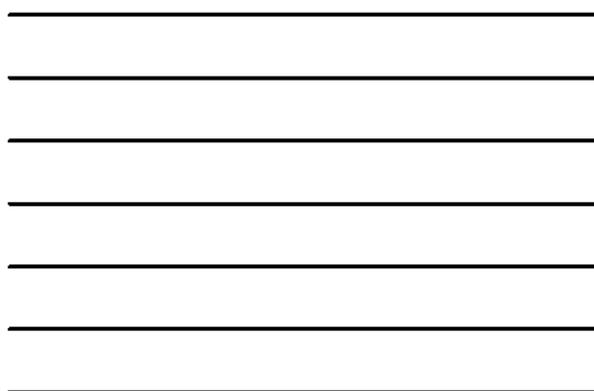




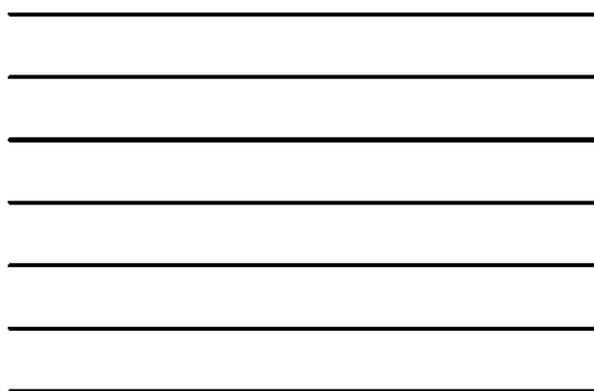
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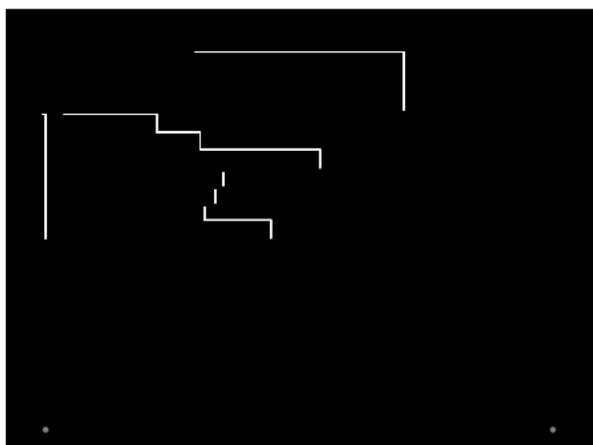


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## Impeachment

- See *People v. Spain* (1984) 154 Cal.App.3d 845 at 853
  - "The rule is thus long established that permitting the use of leading questions on direct examination when the prosecution is faced with a hostile witness is a special circumstance" within the meaning of Evidence Code Section 767.

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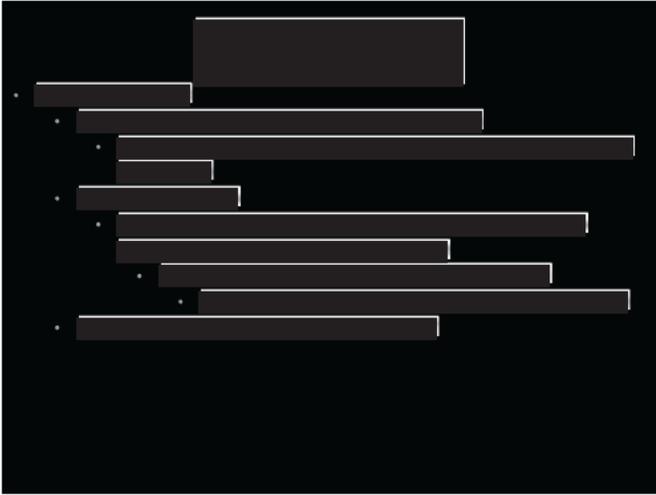
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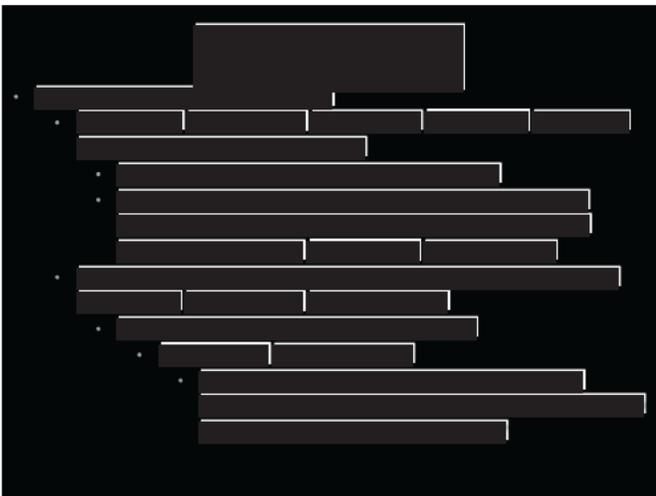
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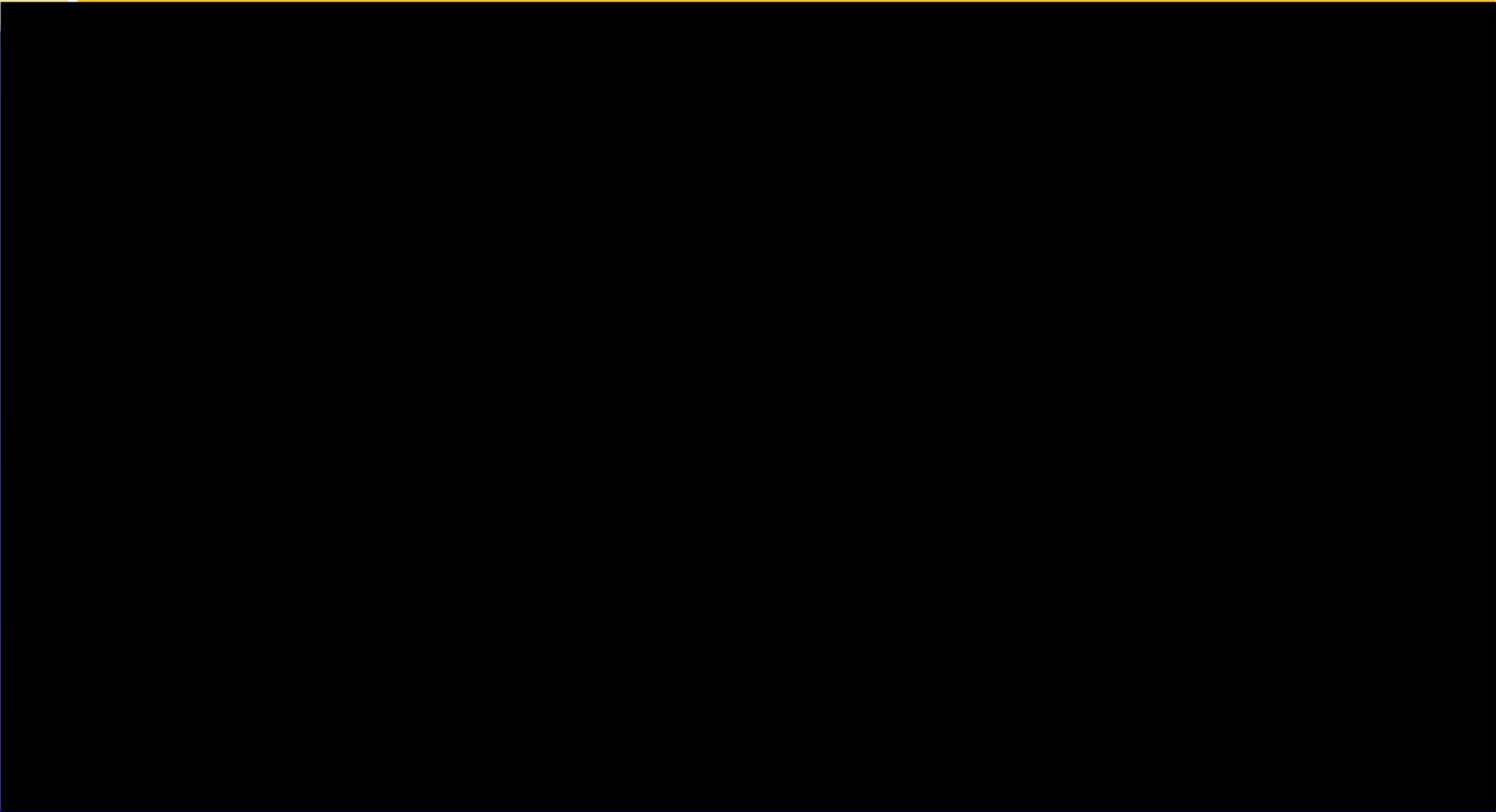
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# DUI PROSECUTION



[REDACTED]  
DEPUTY DISTRICT ATTORNEY



# THE CHARGES

- 23152(a): driving under the influence of alcohol.
- 23152(b): driving with a blood alcohol level of 0.08% or higher.
- 23152(f): driving under the influence of drugs.
- 23152(g): driving under the influence of a combination of drugs and alcohol.

# THE CHARGES

## Related Charges:

- ▣ 14601.1: driving on suspended license
- ▣ 14601.2: driving on suspended license because of a prior DUI conviction
- ▣ 23140: .05 BAC, driver under 21
- ▣ 23154: .01 BAC by a person on probation for a DUI
- ▣ 20002(a)

# THE CHARGES

## Regarding 14601.2's:

- The charge is not 654 to driving under the influence. (*People v. Martinez* (2007) 156 Cal.App.4th 851.)
- The fact that the suspension is based upon a prior conviction for driving under the influence is an element of the offense. This means no bifurcation. (*People v. Profitt* (2017) 8 Cal.App.5th 1255.)

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# PSYCHOPHYSICAL TESTS

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- Officer trained in HGN can use results of HGN test as basis for opinion on impairment without additional expert testimony. (*People v. Randolph* (2018) 28 Cal.App.5th 602.)

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# COMMON DEFENSES

## □ Necessity

- *People v. Patrick* (1981) 126 Cal.App.3d 952, 960:
  - “The commission of a crime cannot be countenanced where there exists the possibility of some alternate means to alleviate the threatened greater harm.”
- *People v. Slack* (1989) 210 Cal.App.3d 937
  - Dine and dash from Mexico, angry bouncers, US Customs stops him at border entry – no necessity
- *United States v. Bailey* (1980) 444 U.S. 394, 410
  - Whether identified as necessity or duress, “[under] any definition of these defenses one principle remains constant: if there was a reasonable, legal alternative to violating the law . . . the defenses will fail.”



# BLOOD DRAWS

- *People v. Fish* (2018) 29 Cal.App.5th 462
  - Valid arrest for DUI
  - Defendant refused to submit to testing, officer got a blood warrant
  - Draw performed at a hospital where officer observed (no testimony regarding manner)
  - Court relies on official duty presumption (Evid. Code 664) and presumption of validity
  - Burden of proving unconstitutional blood draw rested upon the defendant under these facts

# IGNITION INTERLOCKS

- Vehicle Code 23575.3
  - Offenses with dates of violation on or after 1/1/19
  - First offense (23152 per 23536):
    - Up to six months IID or
    - Restricted license for 1 year (to/from work, DUI program)
    - Restricted license for 6 months
  - Second offense (23152 per 23540):
    - 12 months IID
  - Third offense (23152 per 23546)
    - 24 months IID
  - Felony offense due to priors (23152 per 23550 or 23550.5)
    - 36 months IID

# IGNITION INTERLOCKS

- Injury Offenses:
  - First offense with injury (23153 per 23554)
    - 12 months IID
  - Offense causing injury with one prior (23153 per 23560)
    - 24 months IID
  - Offense causing injury with two priors (23153 per 23566)
    - 36 months IID
  - Offense causing injury with one felony prior (23153 with prior punishable under 23550.5)
    - 48 months IID



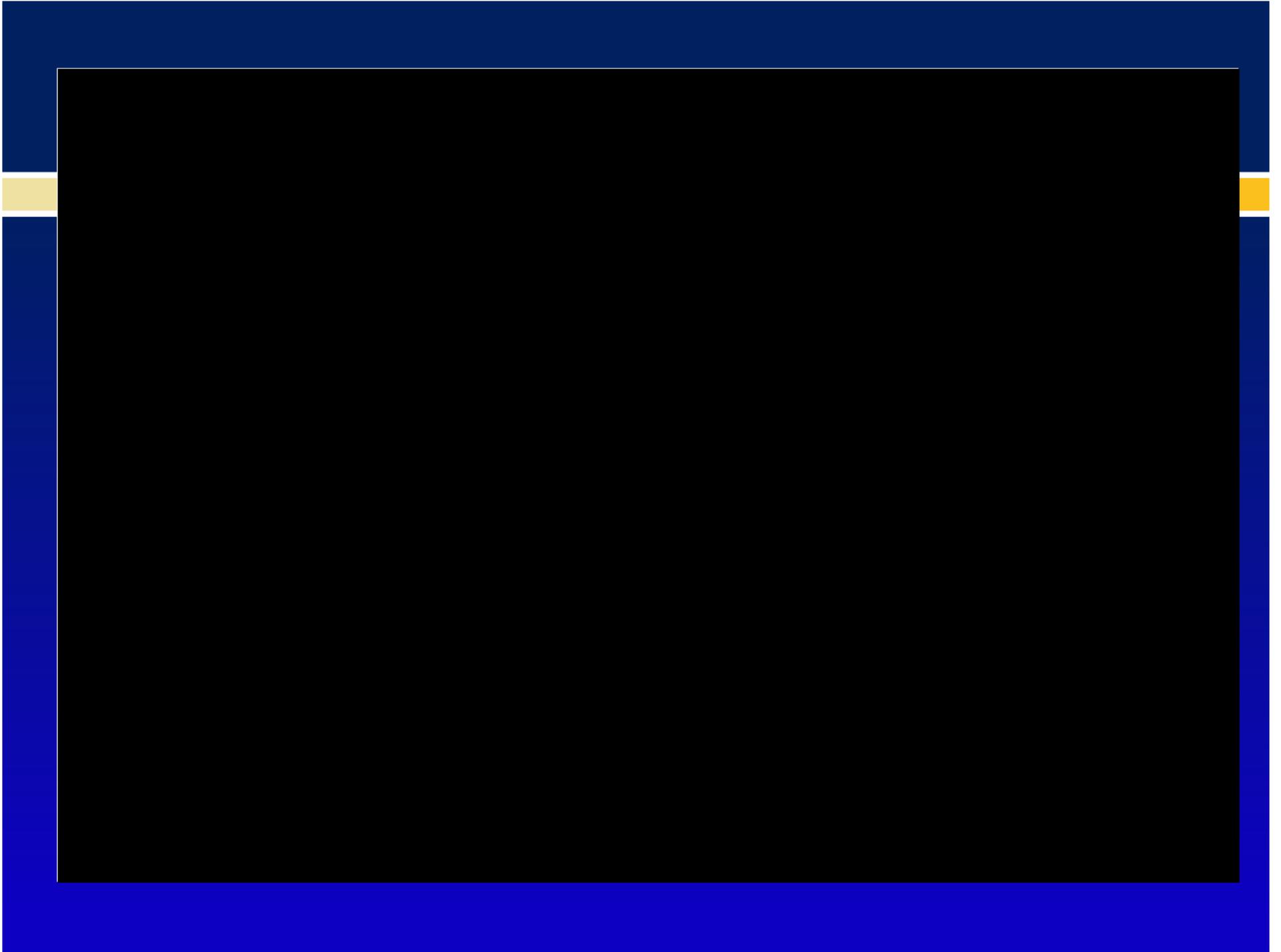
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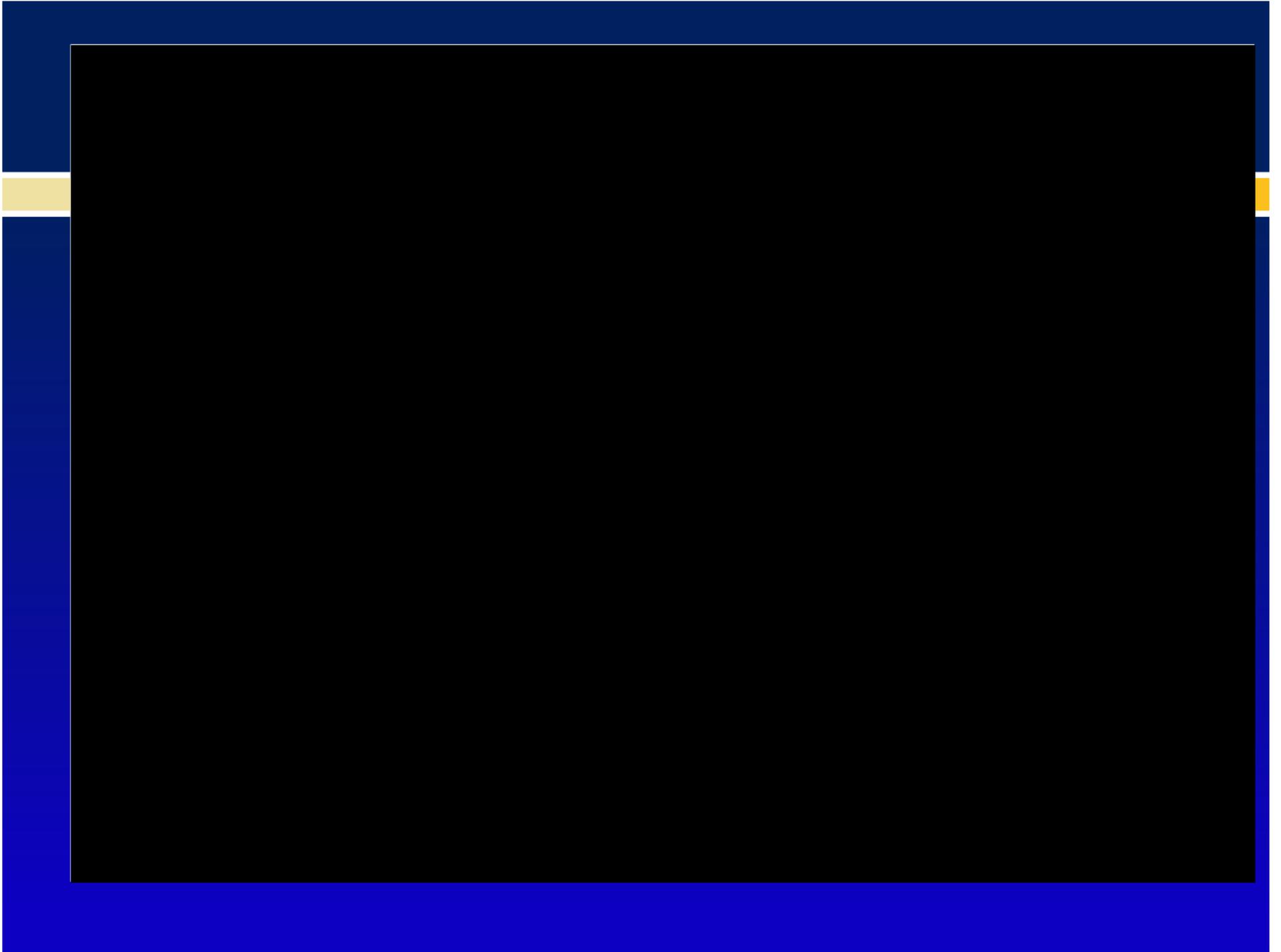


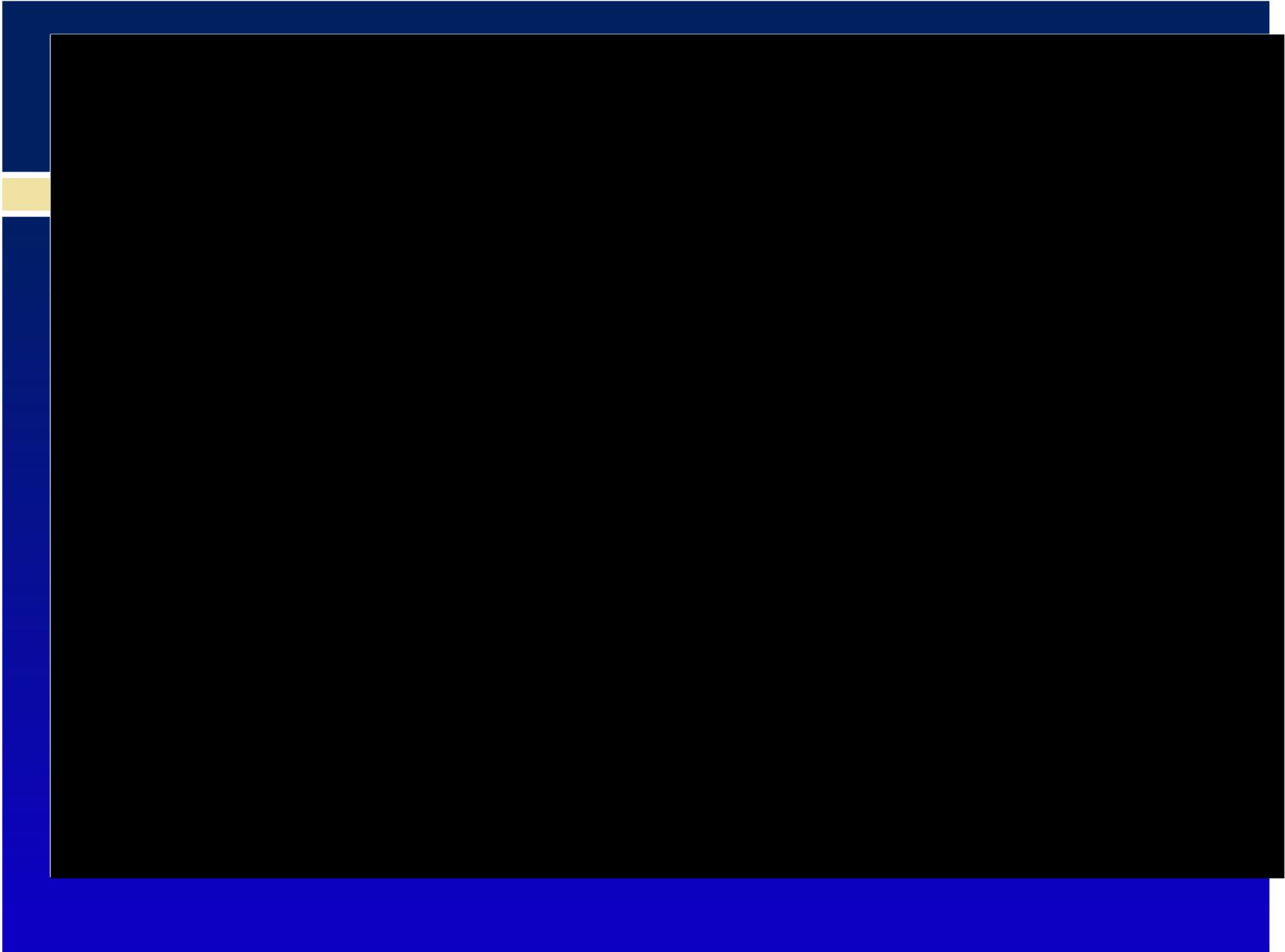
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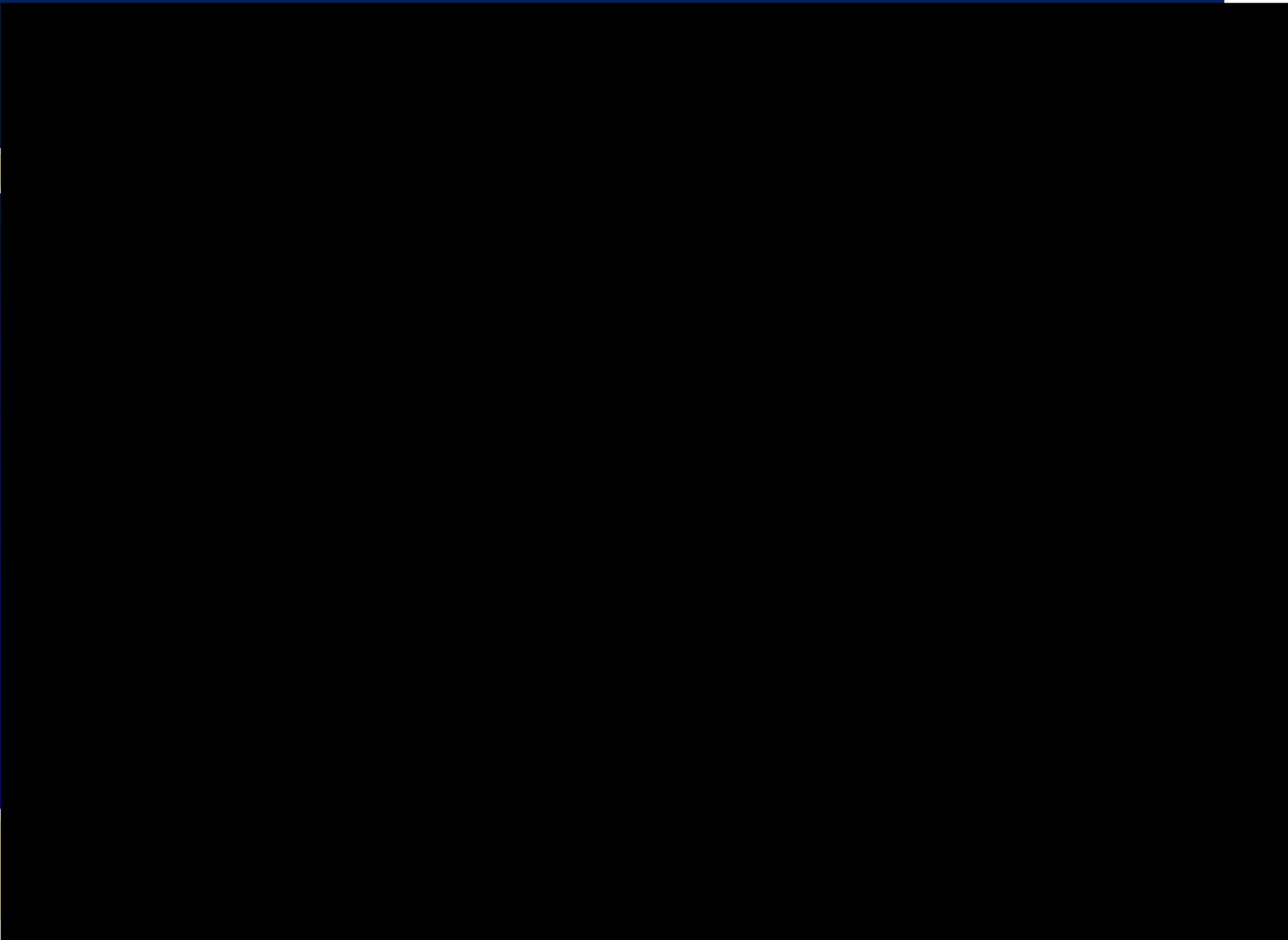
# CURRENT CASES IN DUI

- *Missouri v. McNealey* (2013) 133 S. Ct. 1552
  - *Birchfield v. North Dakota* (2016) 136 S. Ct. 2160
    - Breath tests without a warrant → search incident to arrest.
- *People v. Vannesse* (2018) 23 Cal. App. 5th 440
- *People v. Gutierrez* (2018) 27 Cal. App. 5th 1155
- *Mitchell v. Wisconsin* (2019) 588 U.S. \_\_\_\_\_
- *People v. Cruz* (2019) 34 Cal.App.5th 764
- *People v. Cooper* (2019) 37 Cal.App.5th 642
- *People v. Lopez* (2020) (3rd DCA C080065 3/11/20)











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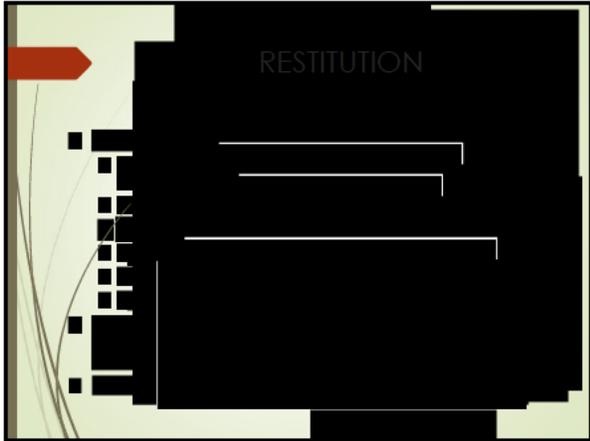
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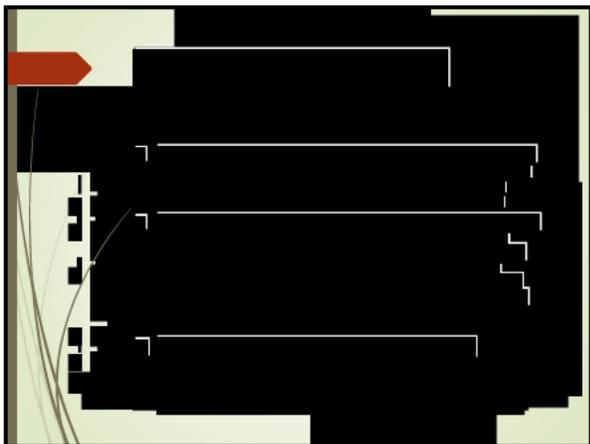
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Penal Code

- § 1202.4(a)(1): It is the intent of the Legislature that a victim of crime who incurs any economic loss as a result of the commission of a crime shall receive restitution directly from any defendant convicted of that crime.

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Penal Code

- § 1202.46: If the restitution amount is unknown at the time of sentencing, the court must retain jurisdiction over the defendant for purposes of imposing restitution until such time as the victim's losses may be determined.

See  
*People v. Butford* [2007] 146 CA4th 966, 969-972, 53 CR3d 273

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Welfare & Institutions Code

- § 730.6(a)(1): It is the intent of the Legislature that a victim of conduct for which a minor is found to be a person described in Section 602 who incurs any economic loss as a result of the minor's conduct shall receive restitution directly from that minor.

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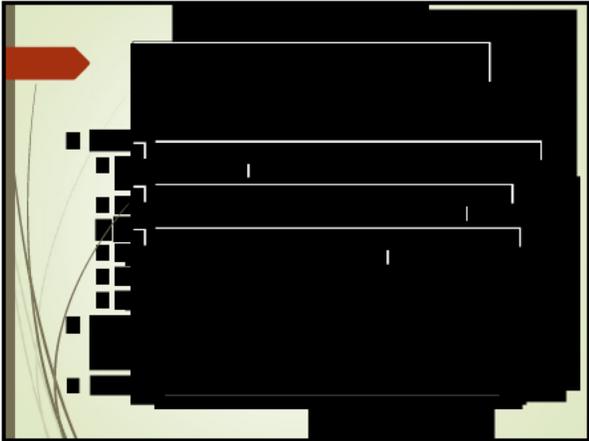
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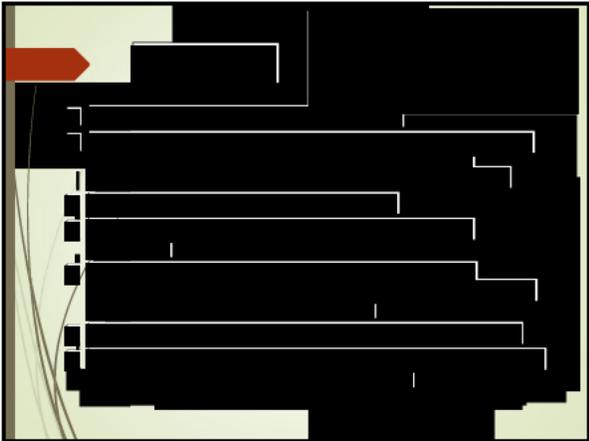
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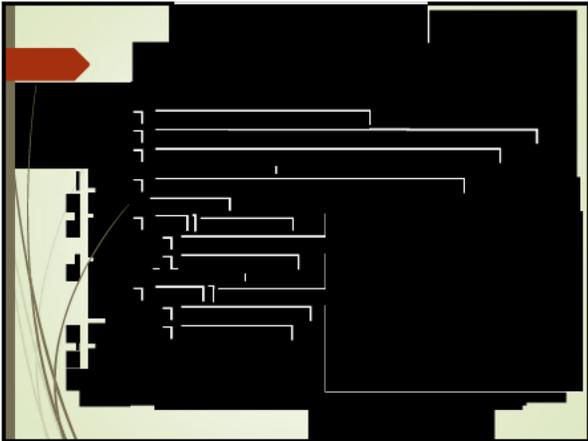
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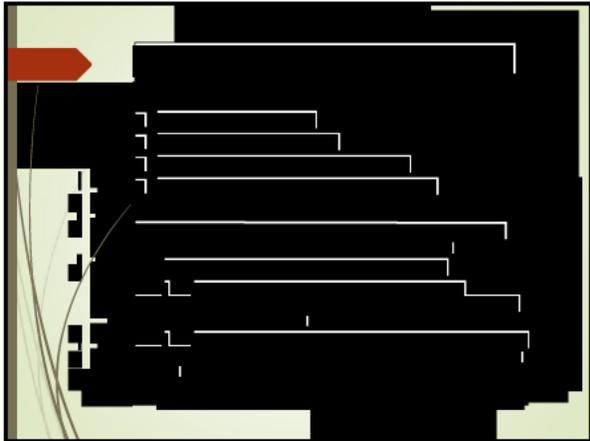
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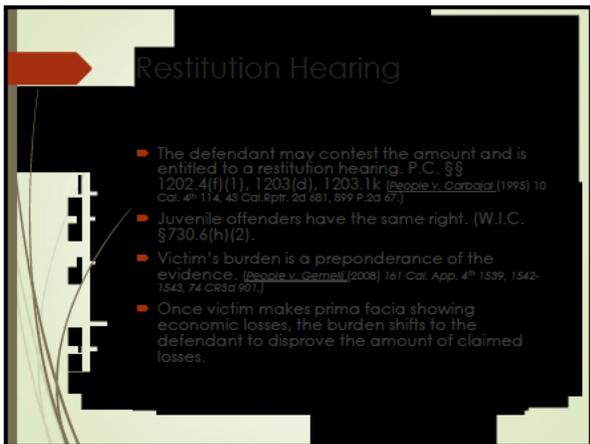
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Restitution Hearing (Continued)

- The hearing does not have the formality of a trial. Hearsay is admissible. (*People v. Hartley*, 163 Cal.App.3d 126 (1984) 209 Cal. Rptr. 131)
- Defendant may not confront witnesses or cross-examine witnesses, including the P.O. who prepared the probation report. (*People v. Cain*, (2000) 82 Cal.App.4th 81, 86-88)

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Restitution Hearing (Continued)

- Prosecutor **MUST** be present. (*People v. Dehle*)

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Restitution Hearing (Continued)

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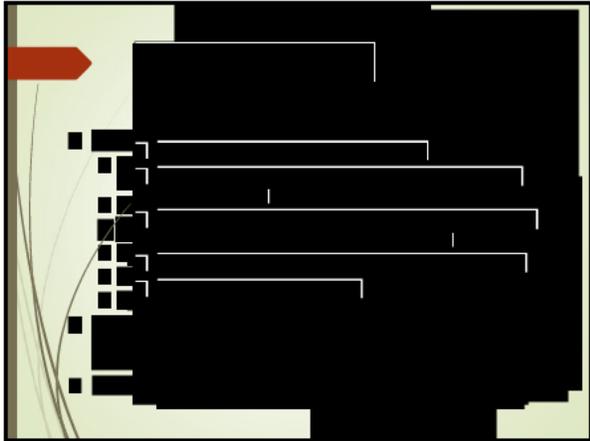
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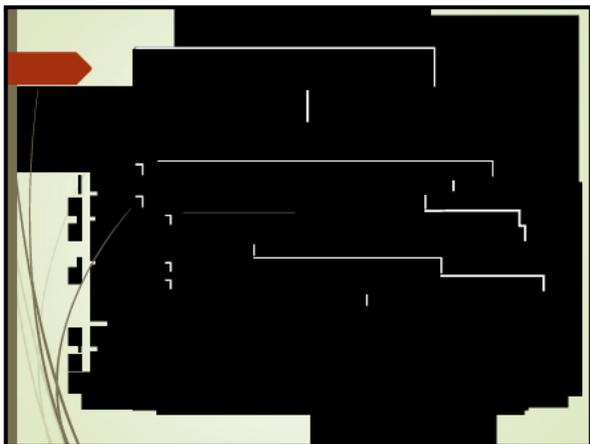
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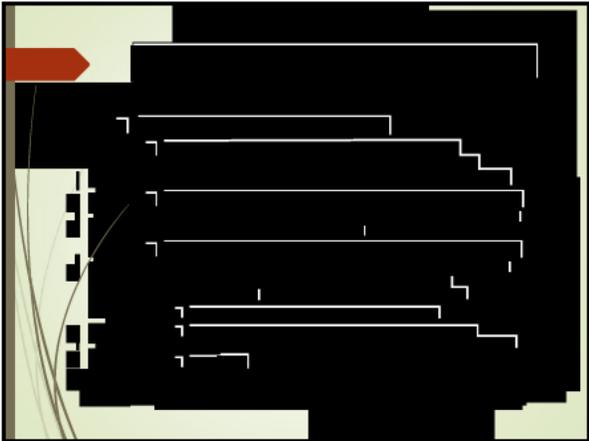
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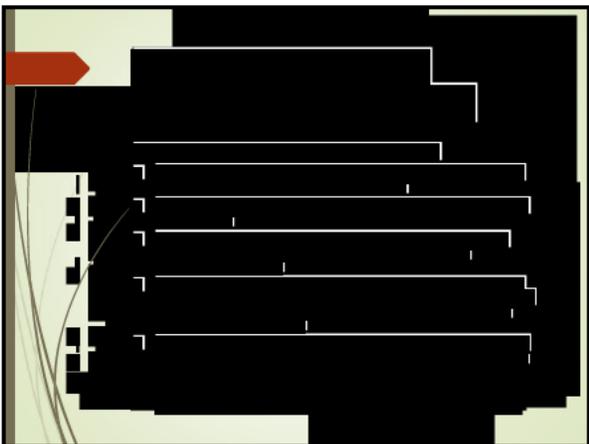
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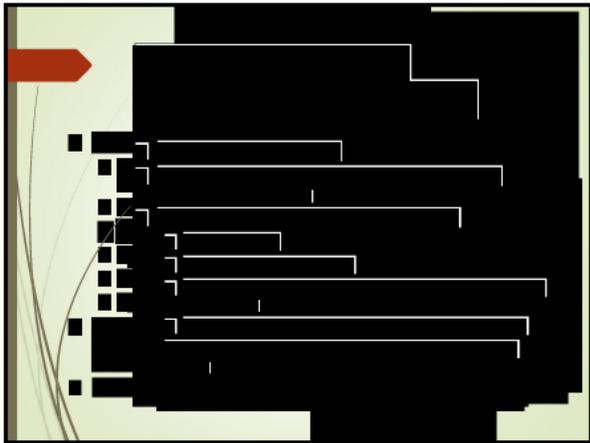
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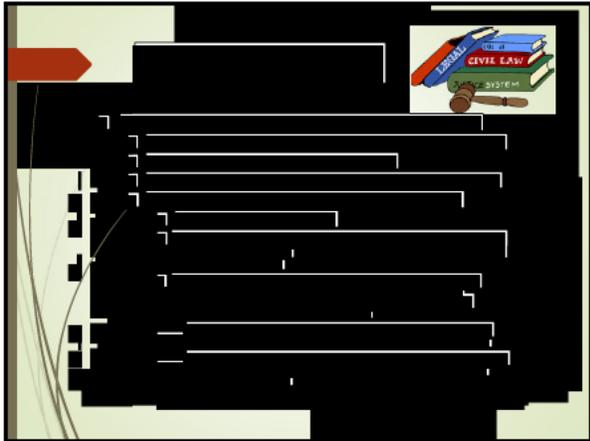
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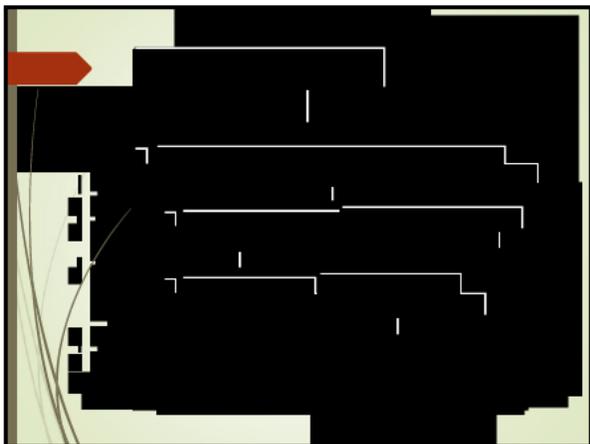
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## Insurance Companies

- **Victim's Insurance:**
  - A victim is entitled to restitution regardless of whether the victim has submitted an insurance claim or have partially or fully reimbursed by his or her insurer. *People v. Brent* (1999) 21 Cal.4th 729, 745-747, 87 Cal.2d 252. The amount that the victim has paid as a deductible under his insurance contract is not the measure of restitution. Rather, the full amount of the loss, including the total amount that the victim's insurance company paid out plus the victim's deductible payments and any other amounts not covered by the victim's insurance. In re *Billy L.* (2002) 99 Cal.App. 4th 1381, 1386-1390, 132 Cal.App.3d 374.
  - Does not offset restitution.
  - Victims may be required to pay their insurance companies back if they receive restitution payments.
- **Defendant's Insurance:**
  - The only time a defendant is entitled to an offset is when the defendant's insurance company has made a payment to the victim. *People v. Benor* (2002) 101 Cal.App. 4th 155.
- **Rights of Insurance Companies:**
  - Insurance companies are **not victims** entitled to restitution for monies paid out pursuant to a victim's insurance policy. *In Brent of 240*. A victim's insurance company is not a direct victim, a victim's or person or entity who is the subject of a crime.
- **Third-party rights:**
  - Third-party indemnification or subrogation rights do not affect the amount of restitution that is to be ordered. *People v. Hove* (1999) 75 Cal.App. 4th 1048, 127-1273, 91 Cal.App.3d 1162.

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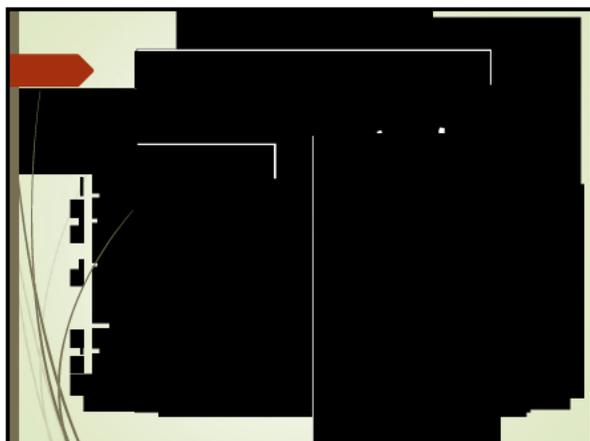
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# Harvey Madden



# What is Harvey Madden?

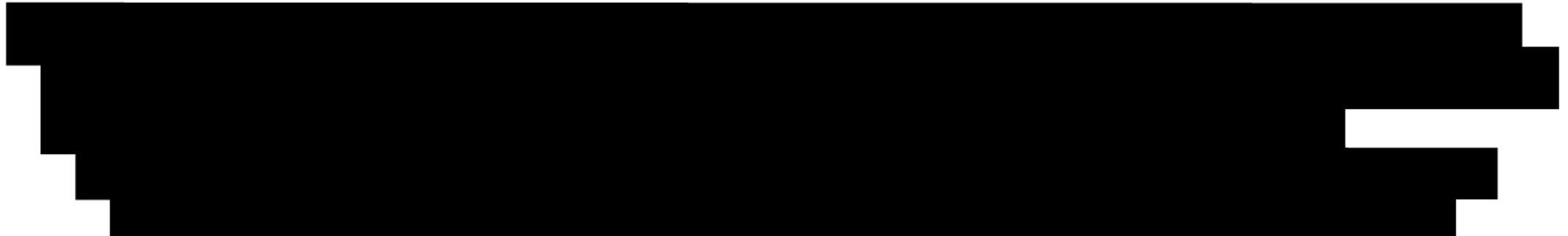
- The leading *Harvey-Madden* cases, *People v. Harvey* (1958) 156 Cal.App.2d 516, *People v. Madden* (1970) 2 Cal.3d 1017, and *People v. Remers* (1970) 2 Cal.3d 659, all involve probable cause arrests made by officers **who relied upon information** received through official channels by other officers whose original source for obtaining this information was not shown.
- The appellate courts held that **while the arresting officer's reliance on such hearsay was a proper basis for the arrest**, “the People must prove that **the source of the information is something other than the imagination of an officer** who does not become a witness.” (*People v. Remers* (1970) 2 Cal.3d 659 at p. 666; see also *In re Eskiel S.* (1993) 15 Cal.App.4th 1638, 1643.)
- The whole point is to negate the possibility that the facts which validate the conduct of **the officers in the field are made up inside of the police department** by somebody who is trying to frame a person whom he wants investigated. (*People v. Orozco* (1981) 114 Cal.App.3d 435, 444.)

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- “The reasons for the rule do not apply where the information furnished the arresting officer by another officer related ‘ “specific and articulable facts” ’ observed by the latter, is not hearsay based on hearsay, and is not a conclusory statement based on unknown sources. Such a situation does not involve the **‘phantom informer.’**” (*People v. Poehner* (1971) 16 Cal.App.3d 481, 487, citations omitted; see also *People v. Gomez* (2004) 117 Cal.App.4th 531, 540-541 [probable cause based on collective knowledge gathered by testifying and non-testifying officers].)

[REDACTED]

# *People v. Gomez:*

- RULING: “[W]hen police officers work together to build ‘collective knowledge’ of probable cause, **the important question is not what each officer knew about probable cause, but how valid and reasonable the probable cause was that developed in the officers' collective knowledge.**” (People v. Ramirez, supra, 59 Cal.App.4th at p. 1555, 70 Cal.Rptr.2d 341.) **There is no requirement that the officer whose personal observations were relied upon for purposes of the probable cause determination actually testify to his or her observations.** To the contrary, the Harvey/Madden rule merely precludes the prosecution from relying on hearsay information communicated to the arresting officer that is not sufficiently specific and fact based to be considered reliable. Here, because the prosecution adequately demonstrated the reliability of the information derived from the wiretap investigation and related surveillance, the court properly overruled defendant's objections.





[REDACTED]

[REDACTED]

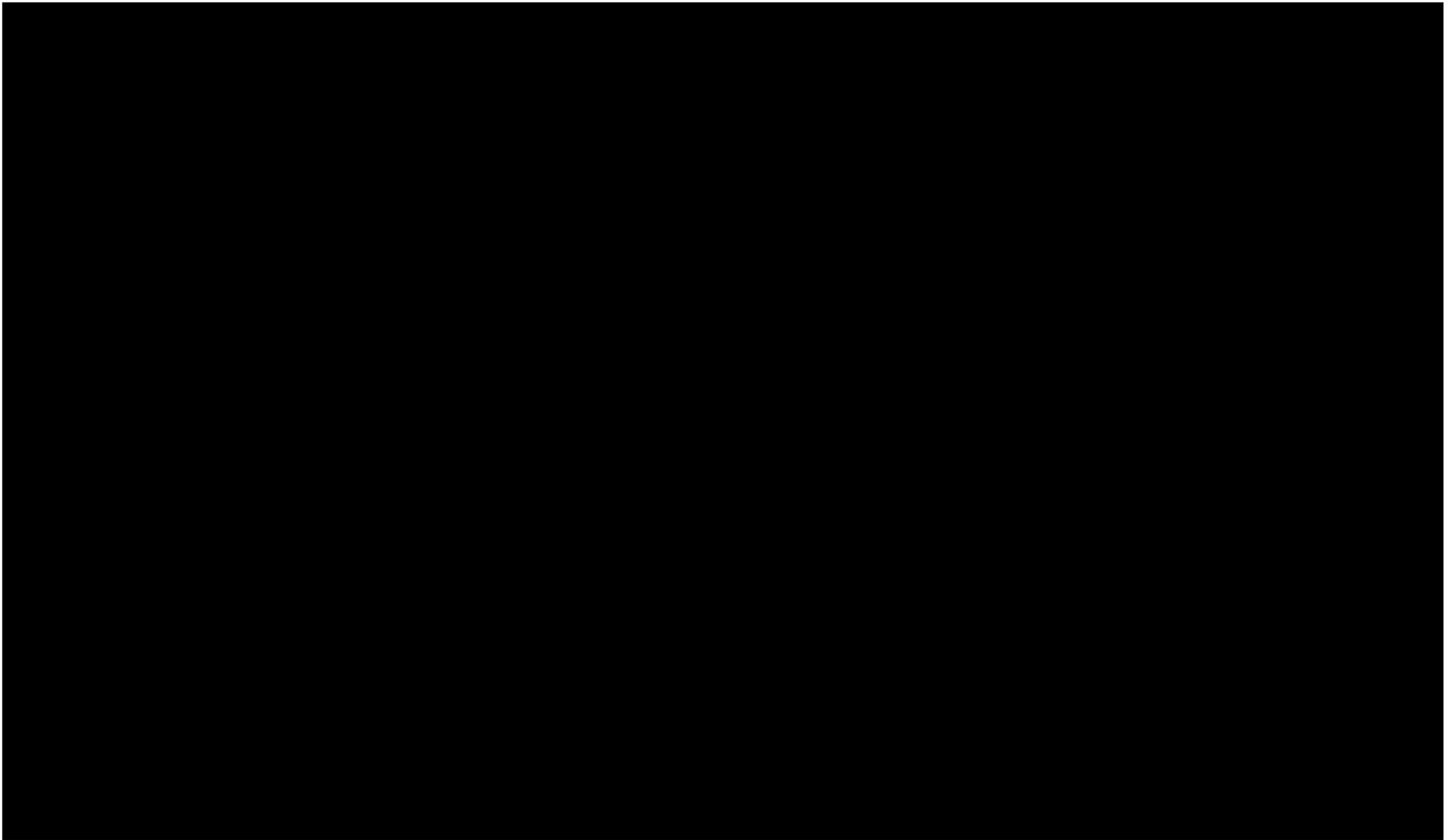
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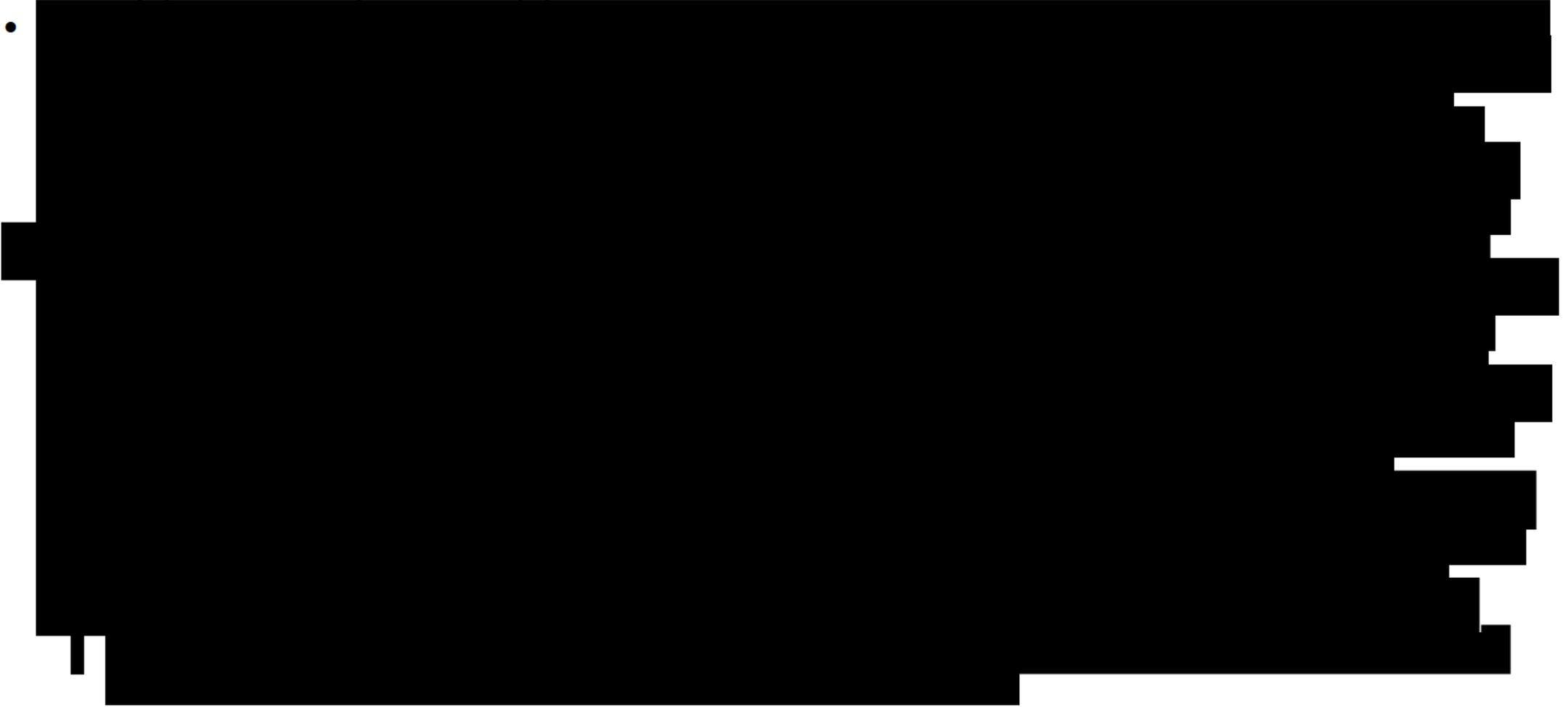
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## 2. The First Officer who received the Information

- *Example needing Officer who received Info: Restani v. Superior Court (1970)*  
13 Cal.App.3d 189 (Restani).



3 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



[REDACTED]

[REDACTED]

[REDACTED] (*People v. Armstrong*, supra, 232 Cal.App.4th at p. 245)

- [REDACTED]

[REDACTED] *People v. Johnson* (1987) 189 Cal.App.3d 1315, 1319; *People v. Orozco* (1981) 114 Cal.App.3d 435, 444.)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- **Thus, the veracity of the dispatcher's statement that he received a call was circumstantially proved.** (Johnson, supra, 189 Cal.App.3d at pp. 1319-1320, quoting Orozco, supra, 114 Cal.App.3d at pp. 444-445.)

- [REDACTED]

## 5. Corroboration/Circumstantial Evidence

- *In re Richard G.* (2009) 173 Cal.App.4th 1252, 1259, is also on point. That case observed:
- Here there was no “manufacture” of information. **The information received by the police dispatcher was radioed to multiple officers in multiple patrol cars and it provided detailed descriptions of the two suspects.**
  - 
- Where, as here, the evidence and the reasonable inferences flowing from it show that the police dispatcher actually received a telephone report creating a reasonable suspicion of criminal wrongdoing, it is not necessary to require strict compliance with the “Harvey-Madden” rule. (Ibid.)

[REDACTED]

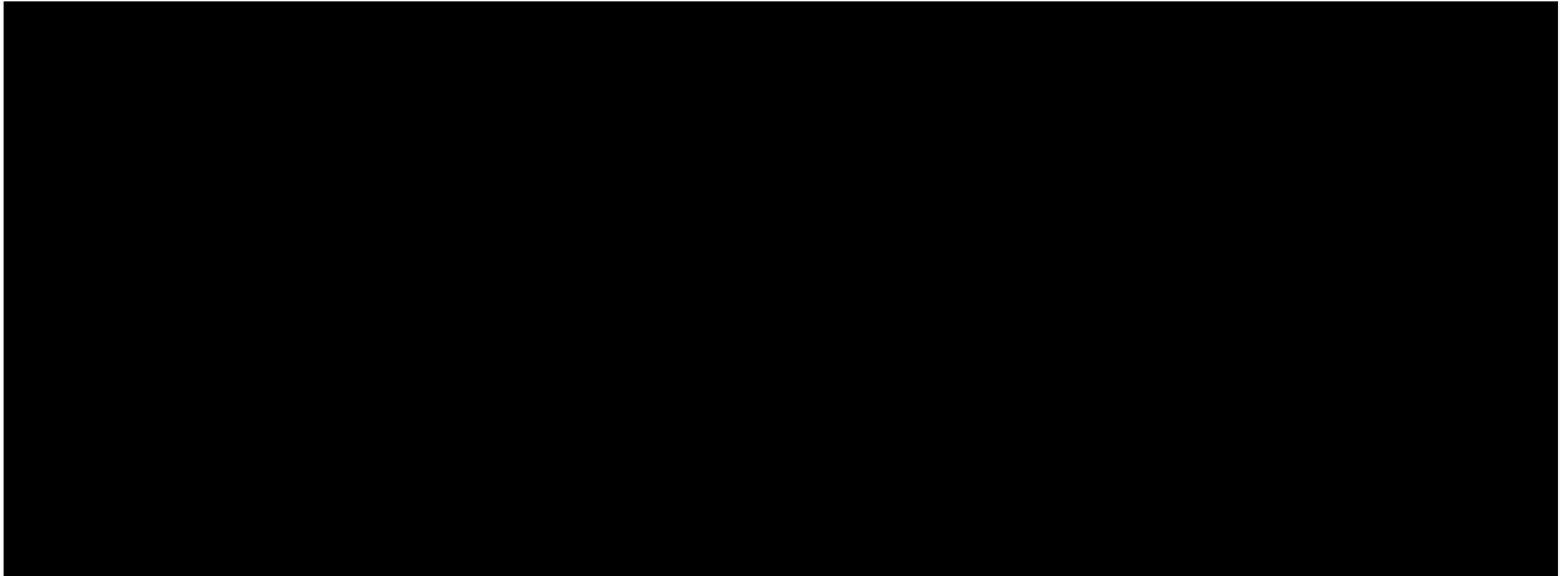
# CAD LOGS

- [REDACTED] (*Kramer v. Barnes* (1963) 212 Cal. App. 2d 440, 446 [police reports]; *People v. Hernandez* (1997) 55 Cal.App.4th 225, 239–240 [search result from database containing information derived from police reports]; *People v. Campos* (1995) 32 Cal.App.4th 304, 309–310 [probation report]; *Alvarez v. Jacmar Pacific Pizza Corp.* (2002) 100 Cal.App.4th 1190, 1203–1207 [911 dispatch log] (Alvarez).)

- However, “[w]hen multiple hearsay is offered, an exception for each level of hearsay must be found in order for the evidence to be admissible. (Evid. Code, § 1201.)” (Alvarez, supra, 100 Cal.App.4th at p. 1205.)

# CAD LOGS

- In *Alvarez*, the court explained that the custodian of records could lay a foundation sufficient to prove that the 911 calls had been placed but found the 911 logs were inadmissible because they were being offered for the truth of the matter asserted. (Alvarez, supra, 100 Cal.App.4th at p. 1205.)



# CAD LOGS

- In *Alvarez*, the court discussed that “the analytical flaw in plaintiffs' contention that the trial court erred in disallowing the records is its failure to recognize and address the fact that the records were multiple hearsay.

- [REDACTED]

- The second is that a particular action or crime was taking place at the restaurant as reflected in the statements made to the 911 operator by the individual(s) who placed the phone calls.” (*Alvarez, supra*, 100 Cal.App.4th at p. 1204-1205.)

[REDACTED]

- [REDACTED]

[REDACTED]

(See, e.g., *People v. Hernandez* (1997) 55 Cal.App.4th 225, 240, emphasis added [**business records exception inapplicable to police reports based upon observations of victims or witnesses who have no official duty to observe and report the relevant facts**].)” (Alvarez, supra, 100 Cal.App.4th at p. 1205.)

- [REDACTED]



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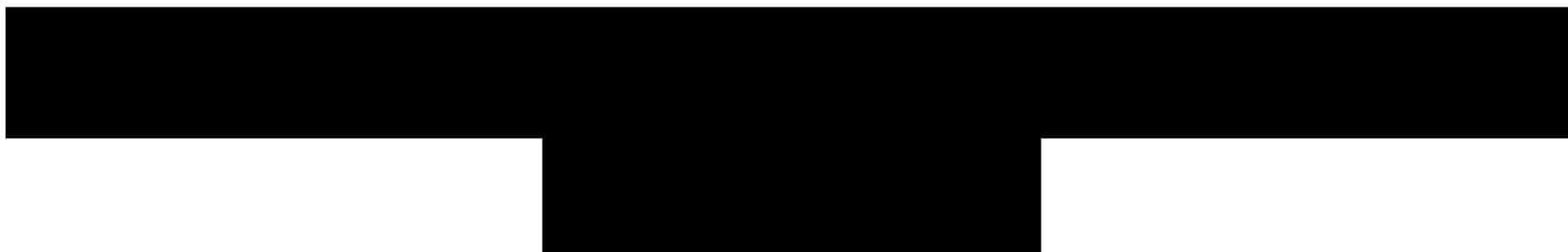
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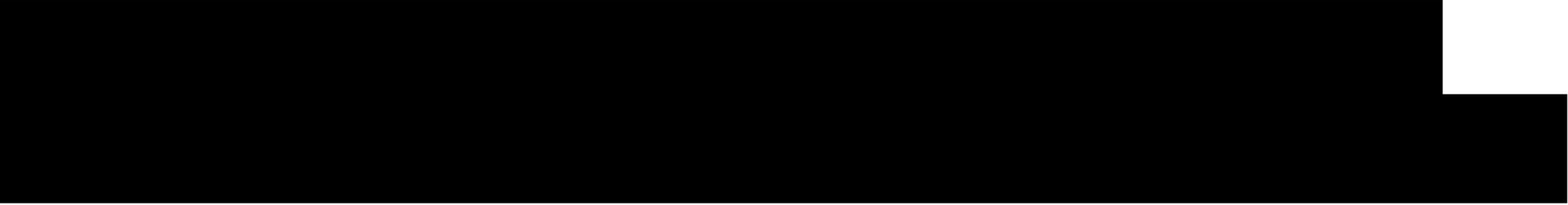
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- “A detention is reasonable under the Fourth Amendment when the detaining officer can point to specific, articulable facts that, considered in light of the totality of the circumstances provide some objective manifestation that the person detained may be involved in criminal activity.” (People v. Souza (1994) 9 Cal.4th 224,231.)
  - “[T]he circumstances known or apparent to the officer must include specific and articulable facts causing him to suspect that (1) some activity relating to crime has taken place or is occurring or about to occur, and (2) the person he intends to stop or detain is involved in that activity.” (In re Tony C. (1978) 21 Cal.3d 888, 893.)
  - “The possibility of an innocent explanation does not deprive the officer of the capacity to entertain a reasonable suspicion of criminal conduct. [Citation]” (Souza, supra, at p. 233.)
  - Reasonable suspicion may be based on information that is less incriminating and less reliable than information needed to establish probable cause. (Alabama v. White (1990) 496 U.S. 325, 330; People v. Harris (1975) 15 Cal.3d 384, 388-389.) The degree of suspicion required is “considerably less” than a preponderance of the evidence. (United States v. Sokolow (1989) 490 U.S. 1, 7.)

- [REDACTED]
- [REDACTED]
- [REDACTED]
- Hearsay is “evidence of a statement that was made other than by a witness while testifying at the hearing and that is offered to prove the truth of the matter stated.” (Evid. Code, § 1200, subd. (a).) **“In contrast, “[o]ut-of-court statements that are not offered for their truth are not hearsay under California law [citations], nor do they run afoul of the confrontation clause. (See Crawford v. Washington (2004) 541 U.S. 36, 60, fn. 9.)” (People v. Ervine (2009) 47 Cal.4th 745, 775-776 [crime report admissible to establish officer’s state of mind and that he was acting in the performance of his duties]; see also People v. Mayfield (1997) 14 Cal.4th 668, 751 [witness’s out-of-court statement to officer that the defendant possessed a gun “was not admissible to prove that defendant in fact possessed a gun” but “was admissible for the no hearsay purpose of establishing [the officer’s] state of mind and the appropriateness of his ensuing conduct” to rebut a charge of excessive force].)**
- [REDACTED]
- [REDACTED]

[REDACTED]

- A police officer may stop and detain a person if the officer knows of “specific and articulable facts causing him to suspect that (1) some activity relating to crime has taken place or is occurring or about to occur, and (2) the person he intends to stop or detain is involved in that activity.” (In re Tony C. (1978) 21 Cal.3d 888, 893, 148 Cal.Rptr. 366, 582 P.2d 957.) The officer must have a “reasonable suspicion” that the person to be detained has violated the law. (*People v. Dolly* (2007) 40 Cal.4th 458, 463, 53 Cal.Rptr.3d 803, 150 P.3d 693.)

[REDACTED]

- [REDACTED]

pheld the driver's detention, reasoning that officers properly acted on the anonymous report because it described “a grave and immediate risk not only to the caller but also to anyone nearby.” (Id. at p. 465, 53 Cal.Rptr.3d 803, 150 P.3d 693.) The court found this report **more reliable** than the one described in *Florida v. J.L.*, because it was **“a firsthand, contemporaneous description of the crime as well as an accurate and complete description of the perpetrator and his location, the details of which were confirmed within minutes by the police when they arrived.”** (*People v. Dolly, supra*, 40 Cal.4th at p. 468, 53 Cal.Rptr.3d 803, 150 P.3d 693.)

[REDACTED]

- *People v. [REDACTED]* and an anonymous 911 call sufficiently reliable to support the traffic stop of a car. (*People v. Brown* (2015) 61 Cal.4th 968, 981 [190 Cal.Rptr.3d 583, 594, 353 P.3d 305, 314–315].)

1. First, a caller's personal knowledge "lends significant support to the tip's reliability." (*Navarette, supra*, — U.S. at p. —, 134 S.Ct. at p. 1689; accord, *People v. Dolly* (2007) 40 Cal.4th 458, 467, 53 Cal.Rptr.3d 803, 150 P.3d 693 (*Dolly*); *Wells, supra*, 38 Cal.4th at p. 1087, 45 Cal.Rptr.3d 8, 136 P.3d 810.) The caller in *Brown* reported he was witnessing a fight in the alley outside of his home. He said at least four people, who lived two doors away from him, were involved. He heard one person claim to have a loaded gun.
2. Second, the caller's report was contemporaneous, a factor that "has long been treated as especially reliable." *Navarette, supra*, — U.S. at p. —, 134 S.Ct. at p. 1689; accord, *Dolly, supra*, 40 Cal.4th at p. 467, 53 Cal.Rptr.3d 803, 150 P.3d 693; *Wells, supra*, 38 Cal.4th at p. 1087, 45 Cal.Rptr.3d 8, 136 P.3d 810.) Indeed, the dispatcher confirmed she could hear people screaming in the background of the call, further corroborating the caller's account. The caller also told the dispatcher that he could hear the siren and see the lights of the responding patrol car.

- [REDACTED]
1. “Another indicator of veracity is the caller's use of the 911 emergency system,” which “has some features that allow for identifying and tracing callers, and thus provide[s] some safeguards against making false reports with immunity.” (Navarette, supra, — U.S. at p. —, 134 S.Ct. at p. 1689; accord, Dolly, supra, 40 Cal.4th at p. 467, 53 Cal.Rptr.3d 803, 150 P.3d 693.) This 911 call was recorded, and the caller confirmed his address with the dispatcher. (Navarette, at p. —, 134 S.Ct. at p. 1690; Dolly, at p. 467 & fn. 2, 53 Cal.Rptr.3d 803, 150 P.3d 693.)
    - Get this information out! The automatically updated info as part of the computer system
  2. Finally, as this court has observed, private citizens who report criminal activity generally have no bias or motive other than good citizenship, and therefore tend to be reliable. (*People v. Ramey* (1976) 16 Cal.3d 263, 268–269, 127 Cal.Rptr. 629, 545 P.2d 1333; *People v. Brueckner* (1990) 223 Cal.App.3d 1500, 1504, 273 Cal.Rptr. 292; see *Illinois v. Gates* (1983) 462 U.S. 213, 233–234, 103 S.Ct. 2317, 76 L.Ed.2d 52

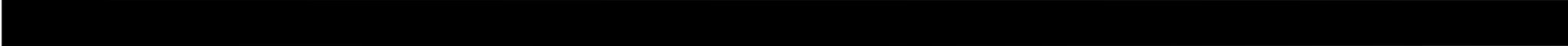
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- **An officer may arrest or detain a suspect “based on information received through ‘official channels.’ ”** (*People v. Madden* (1970) 2 Cal.3d 1017, 1021, 88 Cal.Rptr. 171, 471 P.2d 971; see *United States v. Hensley* (1985) 469 U.S. 221, 230–233, 105 S.Ct. 675, 83 L.Ed.2d 604 (Hensley ).) **If a 911 call “has sufficient indicia of reliability ... a dispatcher may alert other officers by radio, who may then rely on the report, [citation], even though they cannot vouch for it.”** (*U.S. v. Cutchin* (D.C.Cir.1992) 956 F.2d 1216, 1217–1218; accord, *U.S. v. Torres* (3d Cir.2008) 534 F.3d 207, 210.)
  - **However, upon proper objection (People v. Rogers (1978) 21 Cal.3d 542, 547–548, 146 Cal.Rptr. 732, 579 P.2d 1048), “ ‘ “the People must prove that the source of the information is something other than the imagination of the officer who does not become a witness.” ’ ”** (*Madden*, at p. 1021, 88 Cal.Rptr. 171, 471 P.2d 971, quoting *Remers v. Superior Court* (1970) 2 Cal.3d 659, 666, 87 Cal.Rptr. 202, 470 P.2d 11; accord, *People v. Harvey* (1958) 156 Cal.App.2d 516, 523–524, 319 P.2d 689 (conc. opn. of Dooling & Draper, JJ.).)

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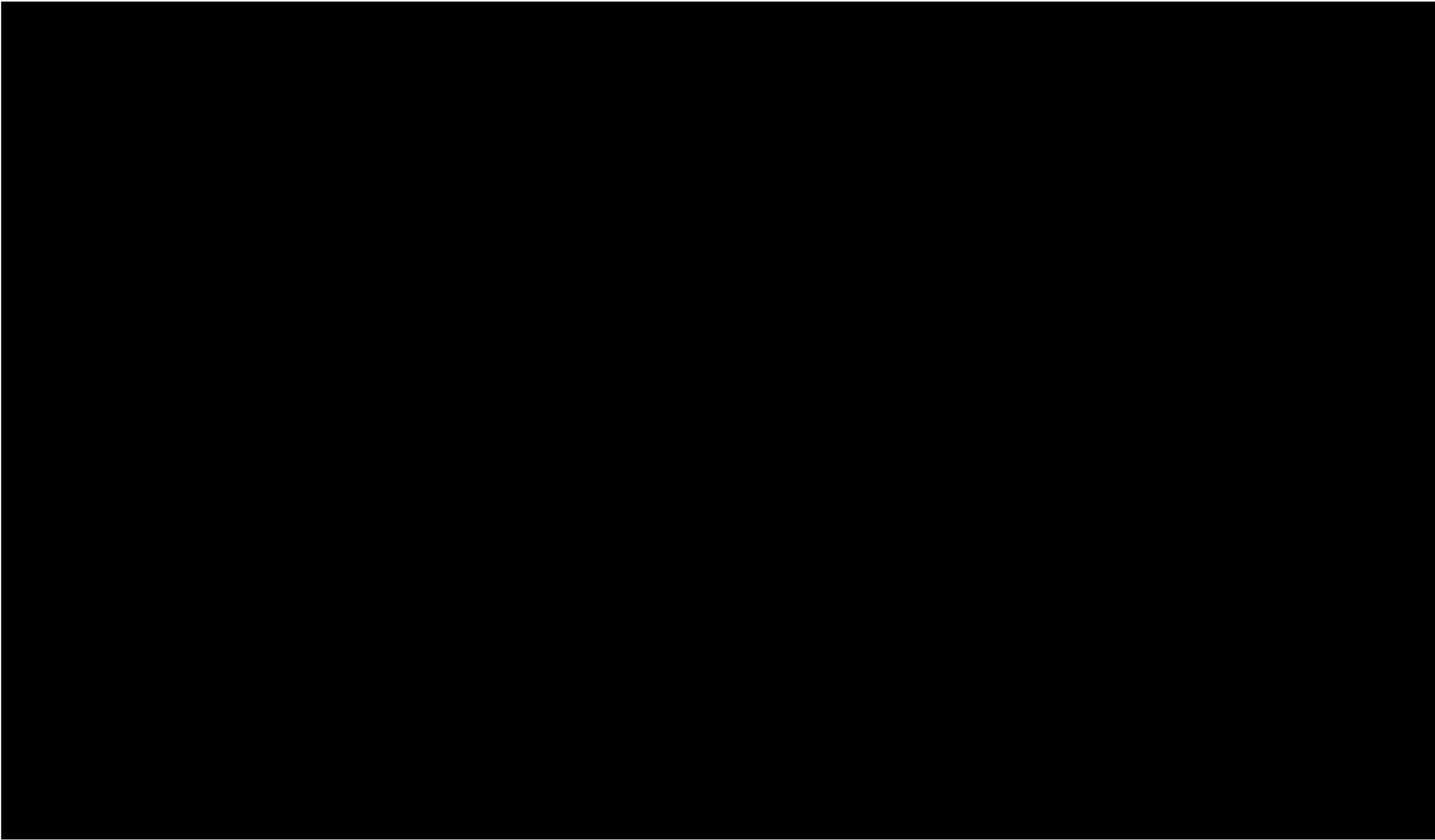
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- *People v. Wells* (2006) 38 Cal.4th 1078 is on point. In *Wells*, the officers received an anonymous phone call reporting a driver weaving across the road and possibly drunk. (Id. at p. 1080.) The caller identified the vehicle as “an '80's model blue van traveling northbound on Highway 99 at Airport Drive.” (Ibid.) **The police spotted the van a few miles north of that location on the highway and pulled it over, without having observed any signs of impaired driving.** (Ibid.)

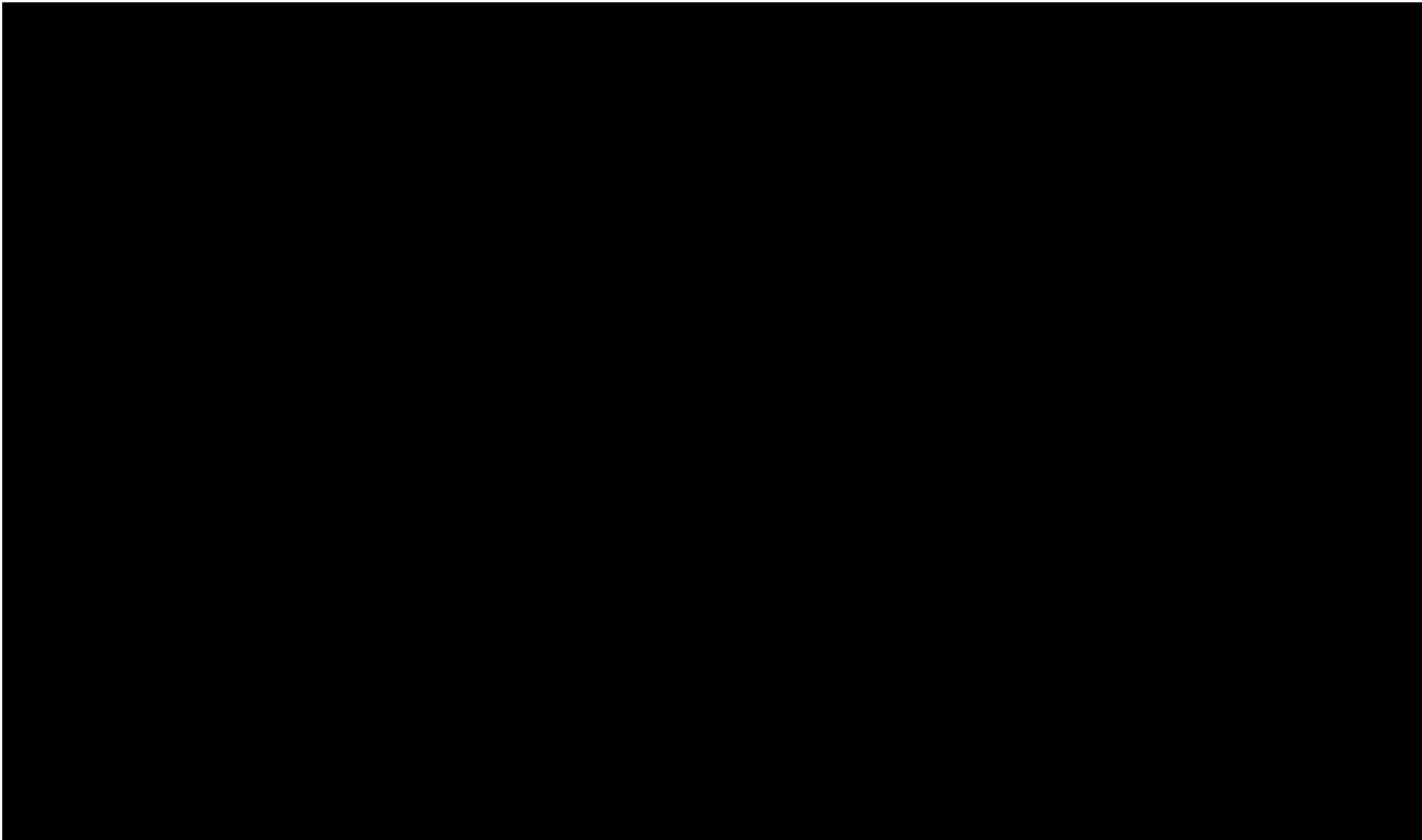
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- Wells concluded **that the anonymous tip corroborated by the observation of the matching vehicle was sufficient to constitute reasonable suspicion under the circumstances.** Wells noted, “California cases indicate that **a citizen's tip may itself create a reasonable suspicion sufficient to justify a temporary vehicle stop or detention, especially if the circumstances are deemed exigent by reason of possible reckless driving or similar threats to public safety.** (Lowry v. Gutierrez (2005) 129 Cal.App.4th 926[phoned-in tip of erratic driving]; *People v. Rios* (1983) 140 Cal.App.3d 616 [car illegally parked and traffic hazard]; *People v. Superior Court (Meyer)* (1981) 118 Cal.App.3d 579 [reckless driving, driver pointing gun].)” (*People v. Wells*, supra, 38 Cal.4th at p. 1083.)
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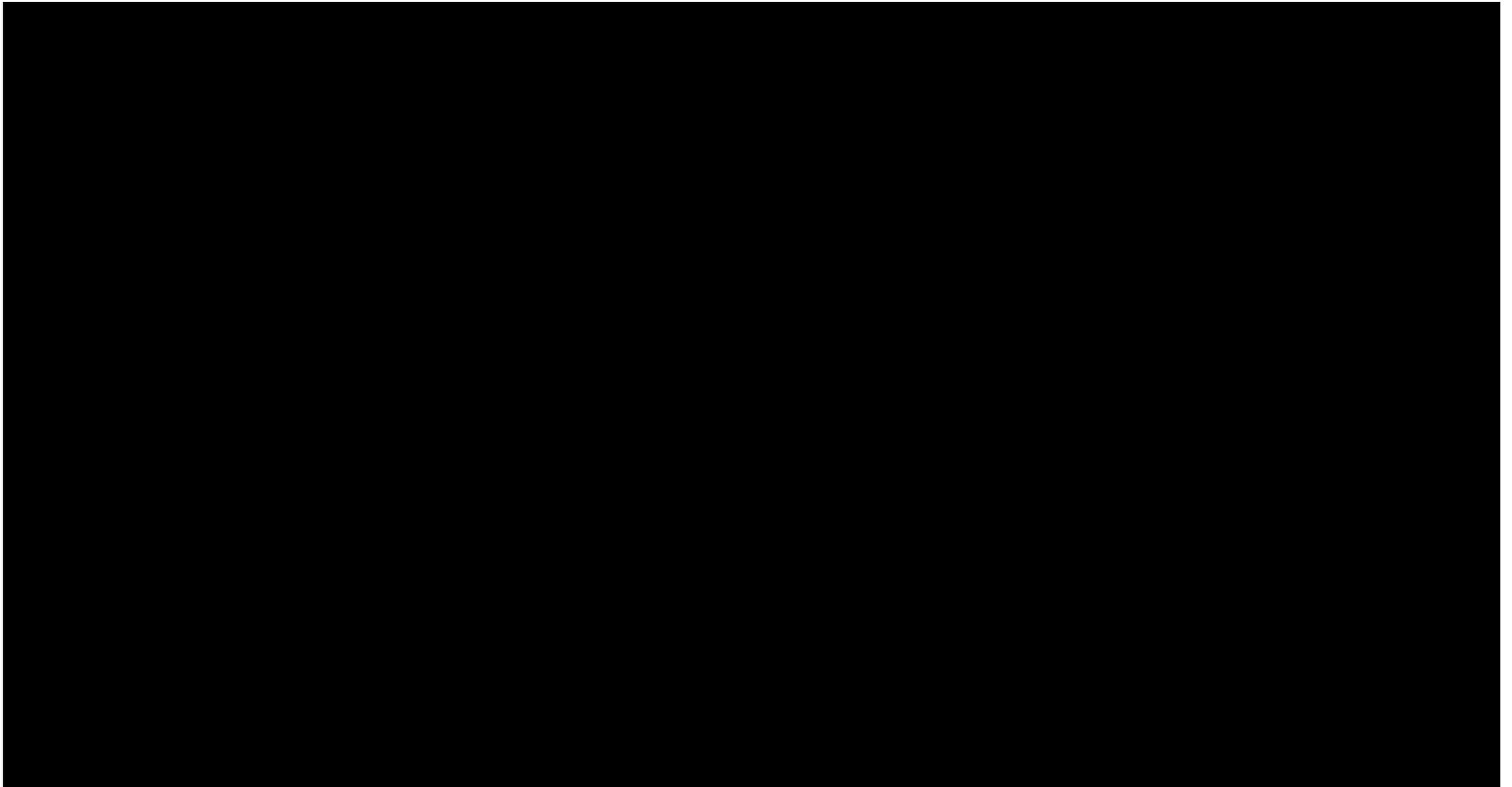


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- Media and Ethics -

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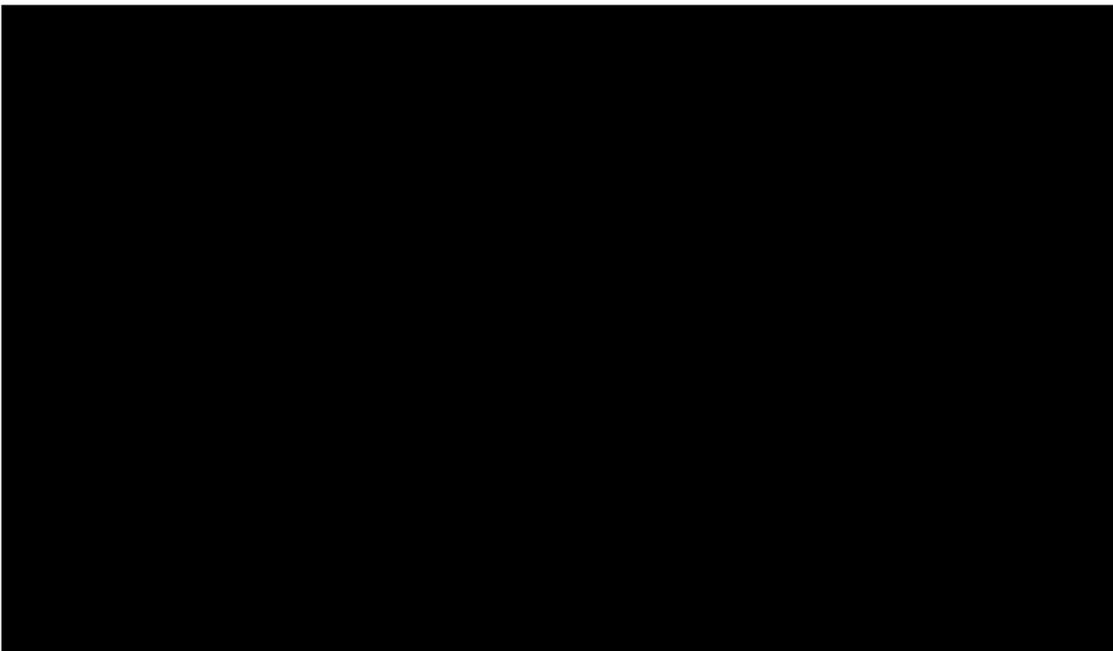


October 2021

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## I. Media

California Rules of Professional Responsibility

Rule 3.6 – Trial Publicity  
(2018)

A lawyer who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that the lawyer knows or reasonably should know will (i) be disseminated by means of public communication and (ii) have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter.

4

## I. Media

Based on the California Rules of Professional Conduct (Rule 3.6), the American Bar Association Model Code of Professional Conduct (Rules 3.6 and 3.8), National Prosecution Standards (Rules 2-14.2 to 2-14.8), and common sense, the following information should not be divulged directly to the media during the pendency of a criminal matter:

- (a.) The statement that has a "substantial likelihood of materially prejudicing an adjudicative proceeding in the matter";
- (b.) The subject of any gag order;
- (c.) A confession or admission of a suspect or defendant (may taint the jury);

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## I. Media

- (d.) A statement regarding the suspect's or defendant's refusal to make a statement (Doyle error);
- (e.) The prior criminal history of the suspect or defendant unless it is part of the criminal pleading or crime under investigation (confidential);
- (f.) The prosecutor's personal belief in the guilt of the suspect or defendant;
- (g.) The identity of a sexual assault victim, domestic violence victim, confidential informant, or any at risk person involved in the criminal matter;
- (h.) The results of examinations or the defendant's refusal to submit to certain examinations (e.g., lineup, polygraph, blood-alcohol, DNA, or voice sample);

6

## I. Media

- (i.) The pendency of a search warrant;
- (j.) The events of a closed courtroom session or secret grand jury proceeding.

[REDACTED]

[REDACTED]

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## I. Media

[REDACTED]

. . . if the information does not have a "substantial likelihood of materially prejudicing an adjudicative proceeding in the matter." (Rule 3.6)

1. The claim, offense or defense involved and, except when prohibited by law, the identity of the persons involved;
2. Information contained in a public record;
3. That an investigation of the matter is in progress;
4. The scheduling or result of any step in litigation;
5. A request for assistance in obtaining evidence and information necessary thereto;

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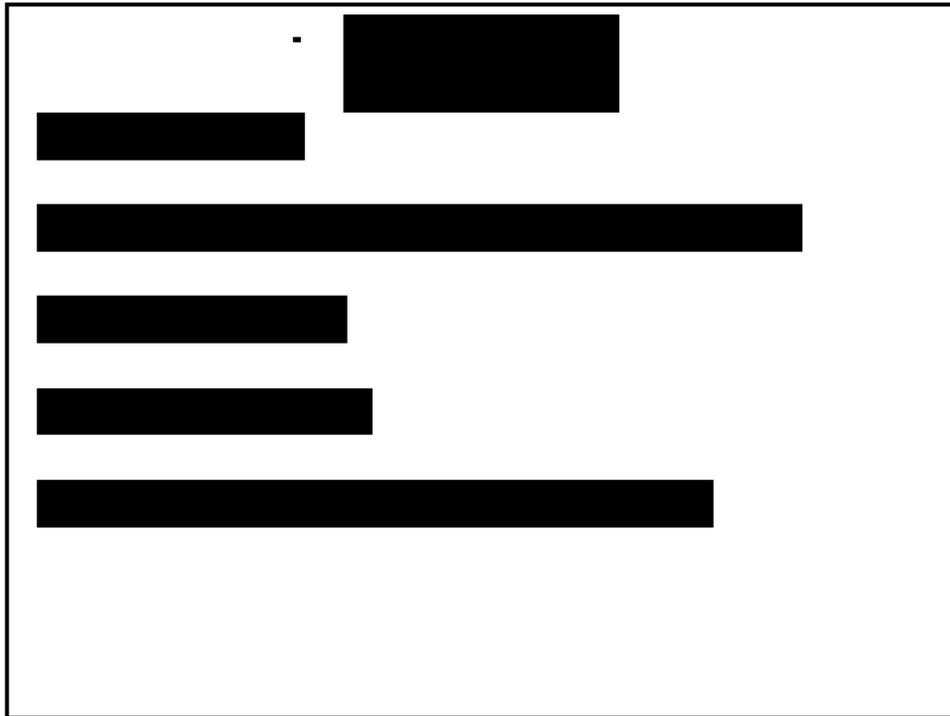
# I. Media

- 6. A warning of danger concerning the behavior of a person involved, when there is reason to believe that there exists the likelihood of substantial harm to an individual or the public but only to the extent that dissemination by public communication is reasonably necessary to protect the individual or the public; and
- 7. In a criminal case:
  - (i.) The identity, general area of residence, and occupation of the accused;
  - (ii.) If the accused has not been apprehended, the information necessary to aid in apprehension of that person;
  - (iii.) The fact, time, and place of arrest; and
  - (iv.) The identity of investigating and arresting officers or agencies and the length of the investigation.

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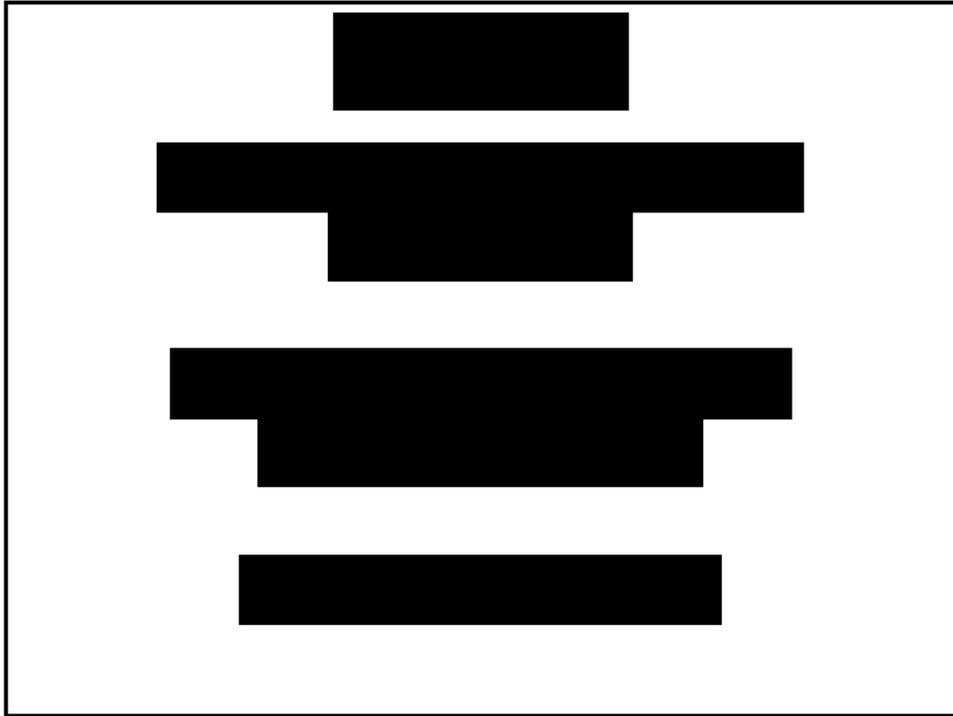
## I. Media

### General Reminders (contd.)

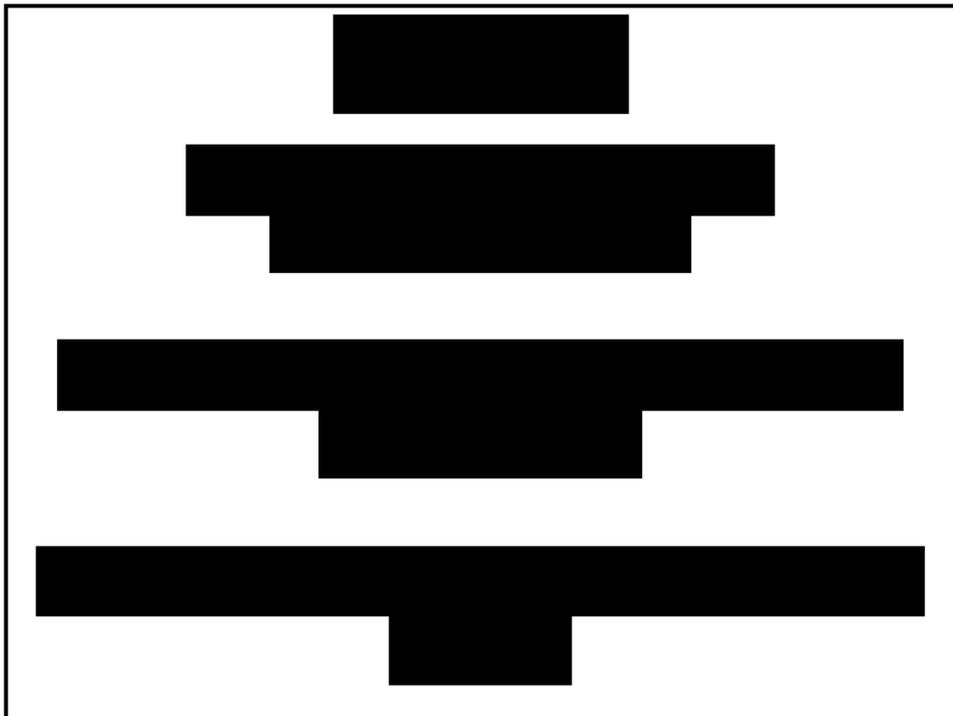
#### 6.11 SIGNIFICANT CASES

An attorney's immediate supervisor must be apprised of any "significant" cases or any case involving a "significant" defendant that is being handled by the office. Significant cases include, but are not limited to, cases with a significant victim impact, cases which have received or can be expected to receive media attention, three strike cases, cases which may substantially impact a significant portion of the community, cases with unusually large amounts of drugs or weapons, cases involving well-known members of the community, cases involving local officials, cases involving law enforcement agency employees and/or family members, and/or cases involving employees and/or family members of employees of the D.A.'s Office, etc.

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## II. Ethics

The prosecutor must be completely and consistently professional because he or she is required to meet standards of candor and impartiality not demanded of other attorneys. (People v. Hill (1998) 17 Cal.4<sup>th</sup> 800.)

15

## II. Ethics



Prosecutors have a special obligation to promote justice and the ascertainment of truth. (People v. Kasim (1997) 56 Cal.App.4<sup>th</sup> 1360.)

16

## II. Ethics

“The prosecutor speaks not solely for the victim, or the police, or those who support them, but for all the People. That body of ‘The People’ includes the defendant and his family and those who care about him. It also includes the vast majority of citizens who know nothing about a particular case, but who give over to the prosecutor the authority to seek a just result in their name.” (On Prosecutorial Ethics (1986).)

17

## II. Ethics

“The [prosecutor] is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. As such, he [or she] is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that guilt shall not escape or innocence suffer. He [or she] may prosecute with earnestness and vigor – indeed, [the prosecutor] should do so. But, while [the prosecutor] may strike hard blows, he [or she] is not at liberty to strike foul ones. It is as much [the prosecutor’s] duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one.” (Berger v. United States (1935) 295 U.S. 78, 88 [55 S.Ct. 629, 633, 79 L.Ed. 1314, 1321].)

18

## II. Ethics

California Rules of Professional Responsibility

### Rule 3.8 – Special Responsibilities of a Prosecutor (2020)

The prosecutor in a criminal case shall:

- (a) not institute or continue to prosecute a charge that the prosecutor knows is not supported by probable cause;
- (b) make reasonable efforts to assure that the accused has been advised of the right to, and the procedure for obtaining, counsel and has been given reasonable opportunity to obtain counsel;

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## II. Ethics

- (c) not seek to obtain from an unrepresented accused a waiver of important pretrial rights unless the tribunal has approved the appearance of the accused in propria persona;
- (d) make timely disclosure to the defense of all evidence or information known to the prosecutor that the prosecutor knows or reasonably should know tends to negate the guilt of the accused, mitigate the offense, or mitigate the sentence, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal; and

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## II. Ethics

- (e) exercise reasonable care to prevent persons under the supervision or direction of the prosecutor, including investigators, law enforcement personnel, employees or other persons assisting or associated with the prosecutor in a criminal case from making an extrajudicial statement that the prosecutor would be prohibited from making under rule 3.6.

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## II. Ethics

- (f) When a prosecutor knows of new, credible and material evidence creating a reasonable likelihood that a convicted defendant did not commit an offense of which the defendant was convicted, the prosecutor shall:
  - (1) promptly disclose that evidence to an appropriate court or authority, and
  - (2) if the conviction was obtained in the prosecutor's jurisdiction,
    - (i) promptly disclose that evidence to the defendant unless a court authorizes delay, and
    - (ii) undertake further investigation, or make reasonable efforts to cause an investigation, to determine whether the defendant was convicted of an offense that the defendant did not commit.

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## II. Ethics

(g) When a prosecutor knows of clear and convincing evidence establishing that a defendant in the prosecutor's jurisdiction was convicted of an offense that the defendant did not commit, the prosecutor shall seek to remedy the conviction.

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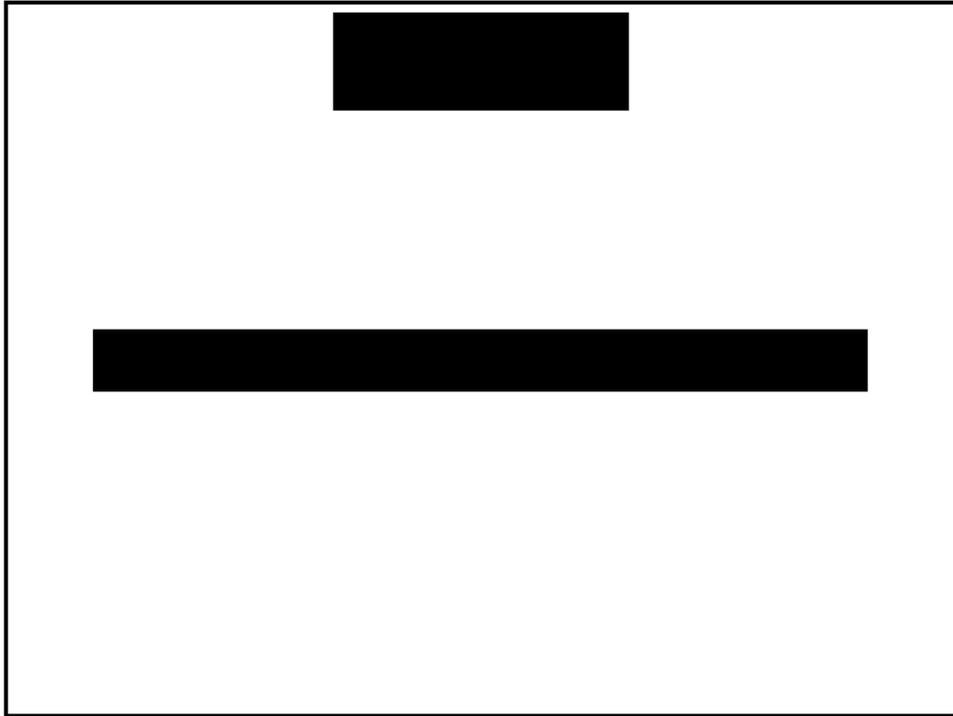
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### Penal Code Section 141

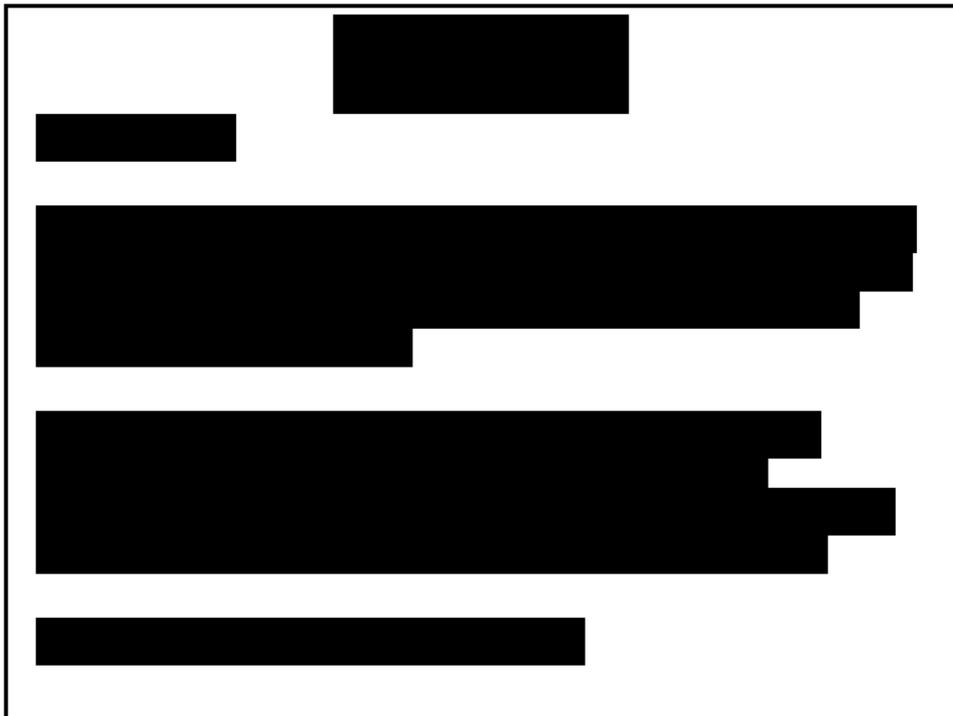
(2016)

(c) A prosecuting attorney who intentionally and in bad faith alters, modifies, or withholds any physical matter, digital image, video recording, or relevant exculpatory material or information, knowing that it is relevant and material to the outcome of the case, with the specific intent that the physical matter, digital image, video recording, or relevant exculpatory material or information will be concealed or destroyed, or fraudulently represented as the original evidence upon a trial, proceeding, or inquiry, is guilty of a felony punishable by imprisonment pursuant to subdivision (h) of Section 1170 for 16 months, or two or three years.

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## II. Ethics

### Filing/Maintaining

#### **ABA Crime Charging and Maintaining Prosecutions**

- (a.) A prosecutor should seek or file criminal charges only if the prosecutor reasonably believes that the charges are supported by probable cause, that admissible evidence will be sufficient to support conviction beyond a reasonable doubt, and that the decision to charge is in the interests of justice.
- (b.) After criminal charges are filed, a prosecutor should maintain them only if the prosecutor continues to reasonably believe that probable cause exists and that admissible evidence will be sufficient to support conviction beyond a reasonable doubt.

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## II. Ethics

- (c.) If a prosecutor has significant doubt about the guilt of the accused or the quality, truthfulness, or sufficiency of the evidence in any criminal case assigned to the prosecutor, the prosecutor should disclose those doubts to supervisory staff. The prosecutor's office should then determine whether it is appropriate to proceed with the case.
- (d.) A prosecutor's office should not file or maintain charges if it believes the defendant is innocent, no matter what the state of the evidence. (Standard 3-4.3—Minimum Requirements for Filing and Maintaining Criminal Charges, ABA Criminal Justice Standards for the Prosecution Function (4th Edition, 2017), See also Standard 3-4.4.)

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## II. Ethics

### IMPROPER FILING CRITERIA

Prosecutors must avoid improper bases for charging. It is improper, and a violation of the law, if any or all of the following factors are the only reasons for charging:

1. Race, religion, nationality, gender, occupation, economic class, or political association or position of the victim, witnesses, or the accused;
2. The mere fact of a request to charge by a police agency, private citizen, or a public official;
3. Public or journalistic pressure to charge;
4. The facilitation of an investigation, including obtaining a statement from the accused; and

31

## II. Ethics

5. To intentionally resist or impede the efforts of any public official, candidate, or prospective candidate for elective or appointed public office.

Additionally, a prosecutor should not attempt to dissuade a witness from testifying or attempt to affect a witness' testimony by threatening to file charges if the witness testifies for the defendant or in a particular manner.

A prosecutor does not represent the victim of a crime, and it is an abuse of prosecutorial discretion to threaten criminal prosecution or to institute criminal proceedings in order to redress a victim's personal or financial loss.

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## II. Ethics

### Discovery

Penal Code § 1054.1 – witnesses, statements, evidence

Brady v. Maryland – exculpatory evidence

[REDACTED]

[REDACTED]

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## II. Ethics

### Victim's Rights

Penal Code § 679.02 – statutory rights (1986)

Victims' Bill of Rights Act of 2008 – Marsy's Law

California Constitution, Article I, § 28(b)

Penal Code § 679.026 – codified above

[REDACTED]

[REDACTED]

[REDACTED]

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## II. Ethics

### Trials/Verdicts

The prosecutor should respectfully accept acquittals. While the prosecutor may publicly express respectful disagreement and an intention to pursue lawful options for review, the prosecutor should refrain from public criticism of any participant. Public comments after a verdict or ruling should be respectful of the legal system and process.

The prosecutor may publicly praise a verdict. The prosecutor should not publicly gloat.

(ABA Standard 3-6.10)

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## II. Ethics

### 8.14 GIFTS

Fresno County Administrative Policy Number 1 states that employees should "ACCEPT no money, commissions or thing of value of any kind in exchange for or as quid pro quo for County services other than the regular County salary."

Consistent with the countywide policy, employees of the District Attorney's Office shall not, without the written consent of the District Attorney, accept any fee, compensation, gift, payment of expense, or any other thing of monetary value, other than authorized salary and approved job-related reimbursements, presented and/or given in connection with an employee's service, duties, and employment with the District Attorney's Office.

If a perishable item (such as flowers, food, candy, etc.) is delivered or dropped off at the office, the item should be placed in a common area to be enjoyed by all. However, please use your common sense and keep in mind the safety of all.

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## II. Ethics

### Do Not Misuse Official Position

#### 8.10 BADGES AND IDENTIFICATION CARDS

Prosecutors are not peace officers, and should keep in mind that displaying a badge or other identification with the intent to convey the impression that he or she is a peace officer is a misdemeanor. (Penal Code §538d.)

Specific prohibitions on the use of these items include the following:

1. Using any District Attorney identification method outside the scope of employment in a manner that may result in intimidation.

37

## II. Ethics

2. Placing the card or badge in a wallet or purse so that it becomes observable by law enforcement officers upon demand for inspection of driver's license or other identification documents.
3. Using the card or badge to gain personal financial advantage or benefits not otherwise equally available to all county employees on a group rate basis, and seeking preferential treatment, either expressly or implied, by other agencies in the criminal justice system.
4. Using the card or badge as a means of gaining entry to any location which one is not otherwise authorized to enter.

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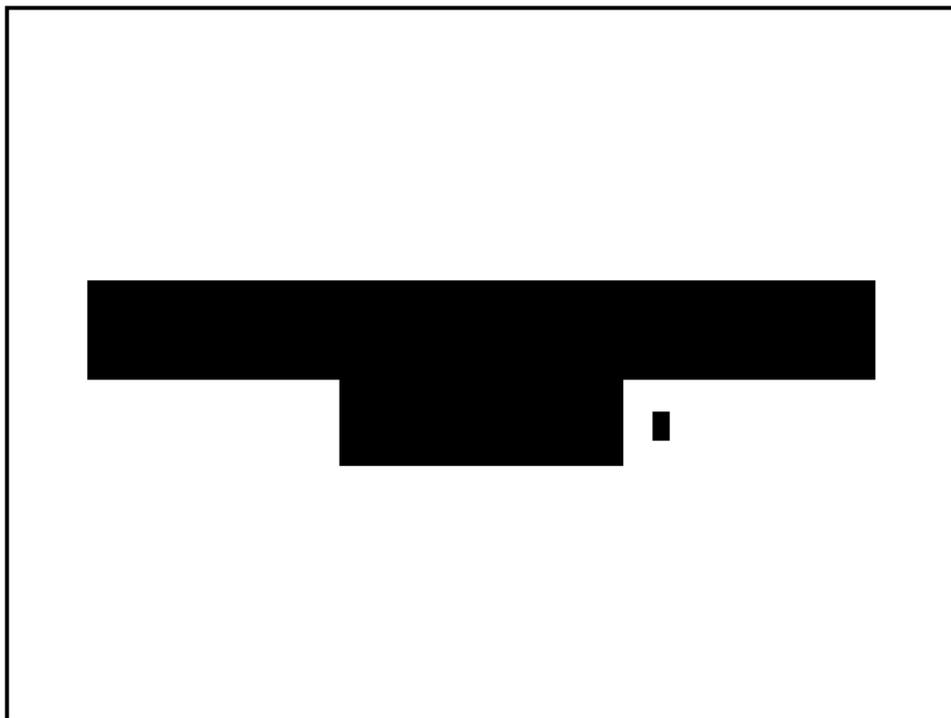
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A prosecutor should conduct himself or herself with a high level of dignity and integrity in all professional relationships, both in and out of court. (Rule 1-2.1, NDAA National Prosecution Standards)

A lawyer's conduct should conform to the requirements of the law, both in professional service to clients and in the lawyer's business and personal affairs. (Section [5], ABA Model Rules of Professional Conduct: Preamble and Scope)

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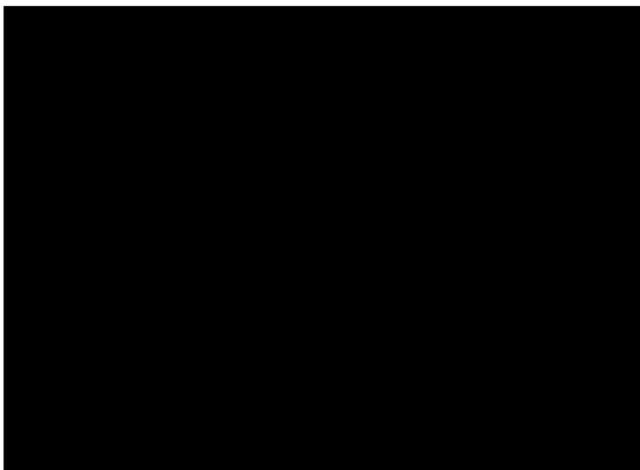
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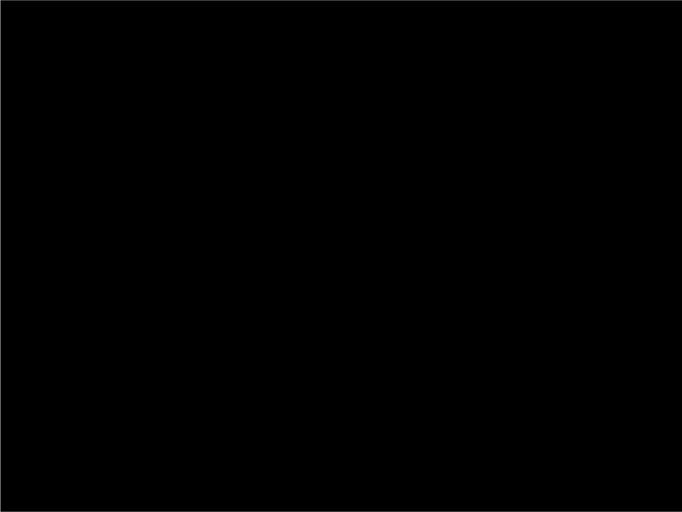
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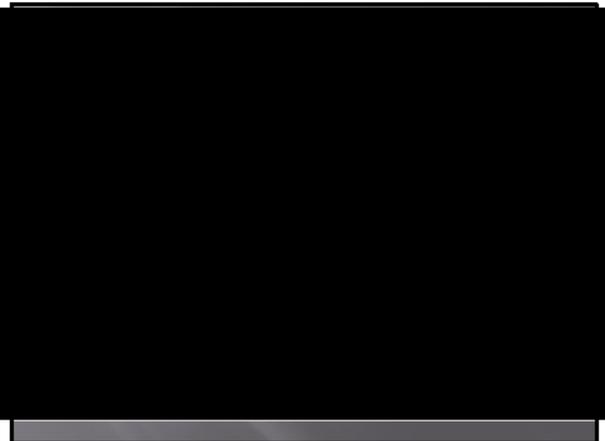
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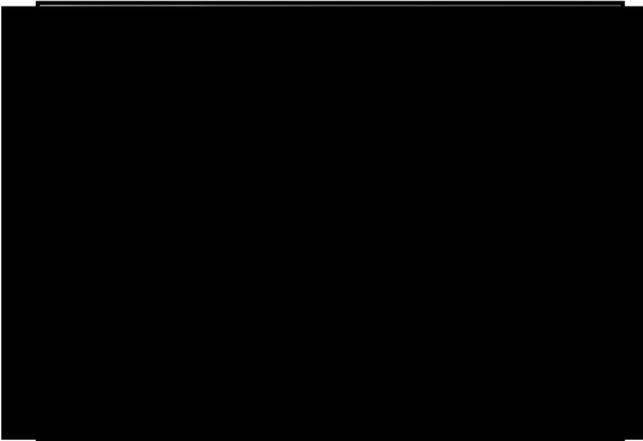
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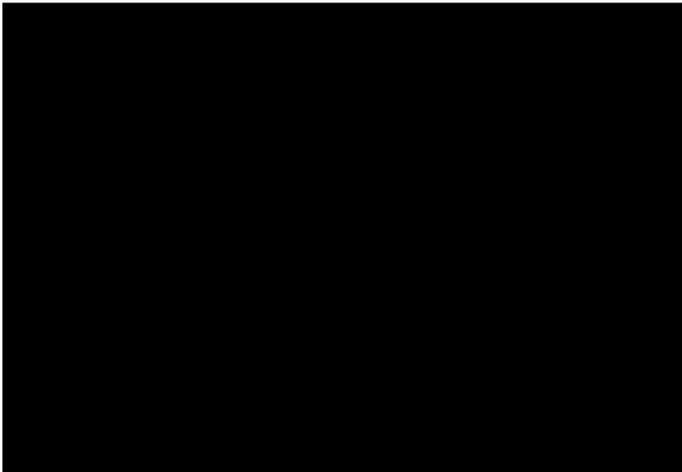
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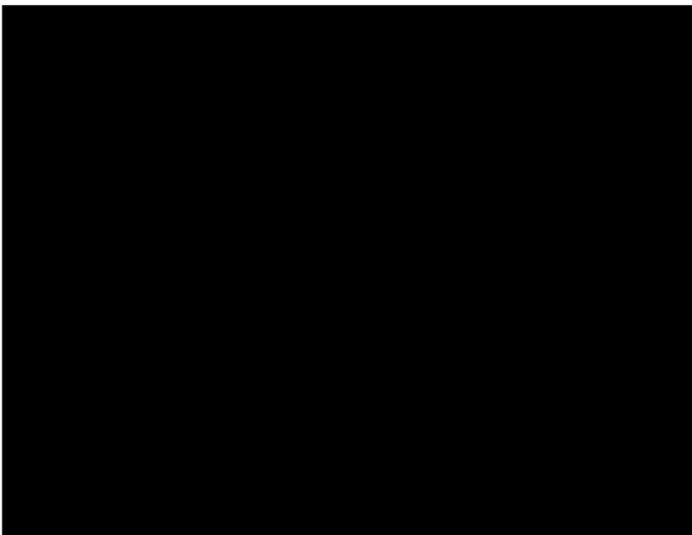
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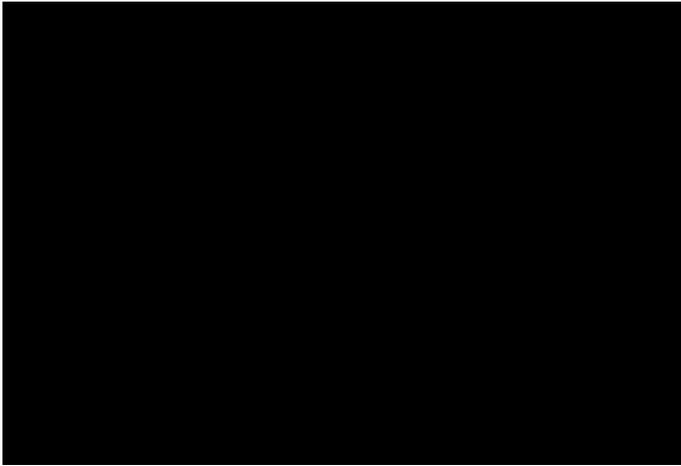
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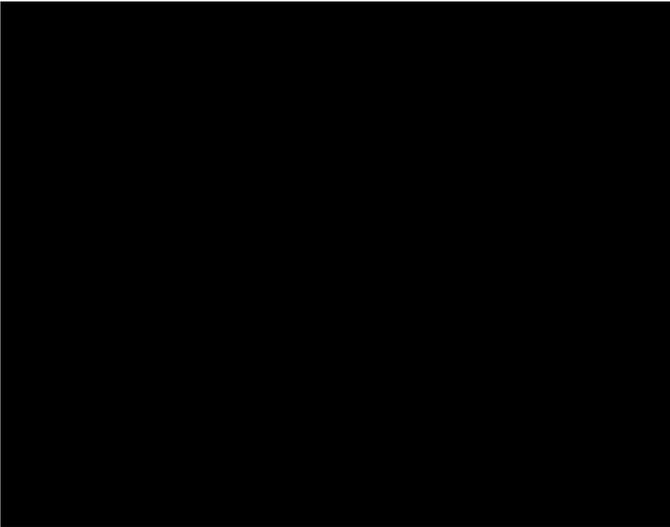
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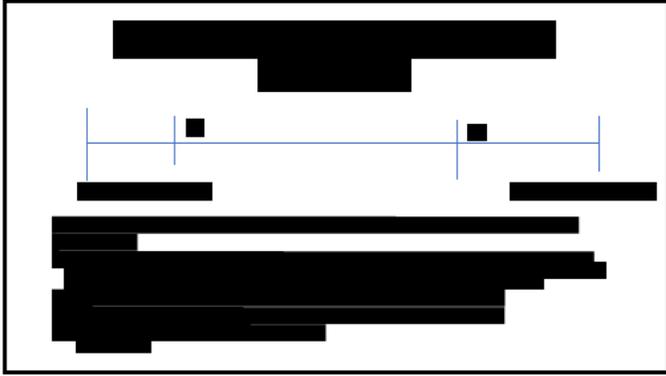
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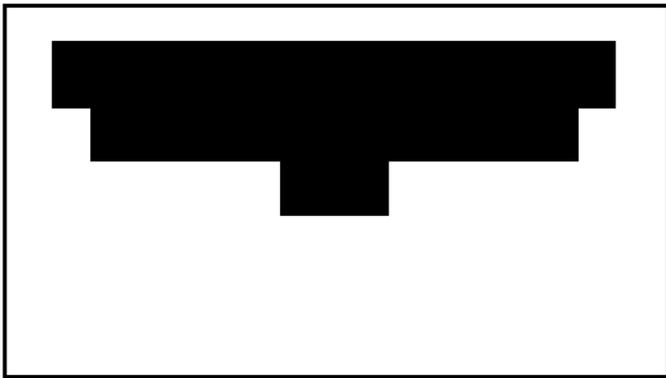
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[REDACTED]

- A defendant charged with a misdemeanor who was **in custody** when arraigned (enters a not guilty plea) must be brought to trial **within 30 calendar days** after arraignment (Penal Code Section 1382(a)(3)).
- A defendant charged with a misdemeanor that is **not in custody** must be brought to trial within **45 calendar days** after the date of arraignment (Penal Code Section 1382(a)(3)).
- But, the defendant can waive the deadline for trial to begin either by entering a **general time waiver** (Penal Code Section 1382(a)(2)(A)) or by requesting or consenting to a trial date beyond the statutory deadline (sometimes called "**limited**" or "**specific**" time waivers) (Penal Code Section 1382(a)(2)(B)).
- When a defendant has entered into a general waiver then, after notice and in open court, withdraws that waiver, the defendant must be brought into court within 30 days on a misdemeanor case. (Penal Code Section 1382(a)(2)(A)).

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[REDACTED]

- Dismissal is required only if a defendant is not brought to trial within statutory time limits without good cause. (Penal Code Section 1382(a)). What constitutes good cause for delay depends on the circumstances of each case. (People v. Johnson (1980) 26 C3d 557, 570; Jensen v. Superior Court (2008) 160 CA4th 266, 274.
- In considering a motion to dismiss based on lack of good cause for a continuance beyond the statutory time limits, the court may consider all relevant information that is timely presented by the parties. (Mendez v. Superior Court (2008) 162 CA4th 827, 836.)

[REDACTED]

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### No Good Cause, but inside time out

- Penal Code 1050 does not authorize the court to dismiss an action when the prosecution fails to show good cause for a continuance if the delay would not exceed statutory time limits. (People v. Hernandez (2004) 115 CA4th 922, 934; Penal Code Section 1050(i) ("this section is directory only and does not mandate dismissal.")
- In Henderson, the reviewing court upheld the trial court's conclusion that the prosecutor had failed to establish good cause for the delay of the preliminary hearing under Penal Code 1050, but reversed the order of dismissal. It concluded that neither Penal Code 1050 nor 1050.5 (sanctions court may impose violation of 1050) authorized dismissal and that no other statutory provision authorized dismissal when the delay would not have continued the case beyond the time permitted under Penal Code Section 859b and the defendant had shown no detriment from the delay. (115 CA4th at 936.)
- Thus, trial courts "must postpone the hearing to another date within the statutory period," although not necessarily the date the prosecutor has requested (115 CA4th at 940.) See also People v Rubaum (1980) 110 CA3d 930 (court has no power to deny prosecution's unjustified motion to continue trial unless delay would exceed Penal Code Section 1382 time limits

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### Good Cause:

- **Unavailable witness:** Counsel requesting a continuance to secure a witness. (This is covered in depth in the next section because it is most applicable in our cases.)
  - Penal Code Section 1050 provides guidelines for courts to use when ruling on motions to continue.
- Defense Counsel and Defendant: Delays attributed to the defendant or counsel, and that are not attributable to the state can constitute good cause. (People v. Lomax (2010) 49 C4th 530, 556)
- Peremptory Challenge against Judge (Bryant v. Superior Court (1986) 186 CA3d 483, 501.)
- Absence of Judge (Lewis v. Superior Court (1981) 122 CA3d 494.)
- Court Congestion (People v. Engream (2010) 50 C4th 1131.)
- Geographical Circumstances (People v. Hajjaj (2010) 50 C4th 1184.)

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### Penal Code Section 1050

- [REDACTED]
- If the court finds that a party has not shown good cause for a continuance, the court must deny the motion to continue (Penal Code Section 1050(e).)
- If the prosecution delays trial beyond statutory time limits without good cause and over defendant's objection, the court must grant a timely motion to dismiss. (Penal Code Section 1382.)

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### Remedy Available if 1382 Violation

- A violation of the deadlines of Penal Code Section 1382 entitles the defendant to a dismissal if the prosecution cannot show good cause for the delay. (Sykes v. Superior Court (1973) 9 C3d 83, 88.)
- To invoke the right to a dismissal under section 1382 the defendant must
  - (1) first object to a continuance beyond the applicable statutory period and
  - (2) thereafter must move to dismiss under 1382. Counsel should not move to dismiss until after statutory time limits have expired, but should do so as soon therefore as possible.
- A motion to dismiss made before expiration of the statutory time period, even if made on the day the statutory time limit expires, is premature, and the granting of the motion at that time could be reversed even if the case would have been delayed had the motion not been made. (People v Martinez (1956) 145 CA2d 361; People v Wilson (1963) 60 C2d 139, 146.)
- In misdemeanor cases, the only remedy following dismissal on statutory speedy trial grounds is appeal (Penal Code Section 1466(a)), because no recharging is allowed after one dismissal. (Penal Code Section 1387; Marler v. Municipal Court (1980) 110 CA3d 155, 162.)

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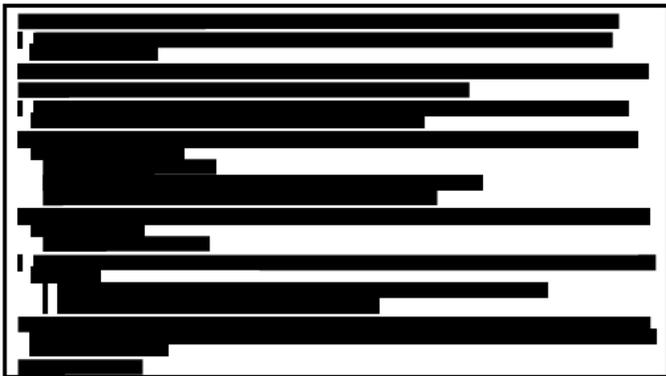
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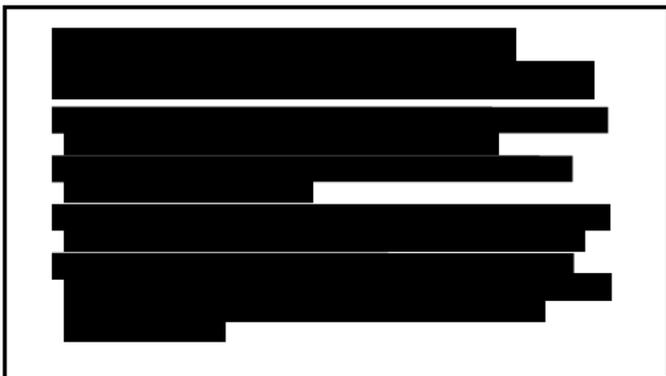
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### 1050 – Trying to establish Good Cause

- Penal Code section 1050 permits a continuance of a jury trial at the request of either the defense or prosecution upon a showing of "good cause." (Cal. Pen. Code § 1050(e).)
- "When deciding whether or not good cause for a continuance has been shown, the court shall consider the general convenience and prior commitments of all witnesses, including peace officers." (Pen. Code, § 1050, subd. (g)(1).)
- Owens v. Superior Court (1980) 28 Cal.3d 238, set forth the legal criteria of good cause:
  1. "That the movant has exercised **due diligence** in an attempt to secure the attendance of the witness at the trial by legal means;
  2. that the expected testimony is material;
  3. that it is not merely cumulative;
  4. that it can be obtained within a reasonable time; and
  5. that the facts to which the witness will testify cannot otherwise be proven." (Id. at p. 251.)

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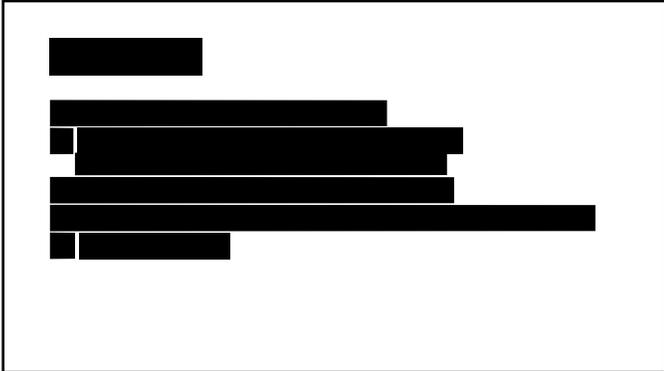
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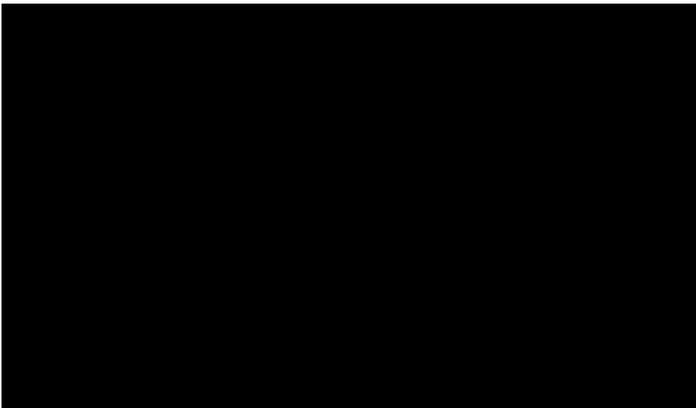
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### Good Cause due to Witness Unavailability

- To establish good cause for a continuance because of the unavailability of a witness, a party must show, among other factors, that he or she "exercised due diligence to secure the witness's attendance" (Jensen v. Superior Court (2008) 160 Cal.App.4th 266, 270, internal citations omitted.)
- "Cases concerning continuances sought because a material witness is unavailable fall generally into two categories: cases in which the witness was subpoenaed and cases in which the witness was not subpoenaed.
- When a witness was served with a subpoena but fails to appear as commanded, there is usually good cause for a continuance.
- To penalize and dismiss the case of a litigant who has no advance knowledge of a witness' default is unreasonable and unwarranted. We think a subpoenaed material witness' failure to appear for trial may constitute good cause under section 1382 for the continuance of a trial beyond its statutory period. When a witness is not under subpoena, his or her absence generally does not constitute good cause for the continuance of a trial. (Jensen, supra, 160 Cal.App. 4th at p. 271, internal citations omitted.)

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- "This distinction between subpoenaed witnesses and unsubpoenaed witnesses rests on the question of due diligence. A prosecutor who issues subpoenas is exercising the requisite due diligence in securing the attendance of witnesses at trial, while a prosecutor who does not issue subpoenas has not made sufficient effort to ensure their presence." (Id. at pp. 271-272, internal citations omitted;
- see Baustert, supra, 129 Cal.App. 4th at pp. 1277- 1278 [no due diligence where prosecution withdrew subpoena a when she learned officer would be on vacation at time of trial and issued new subpoena for a date after the statutory time-out date]; Cunningham v. Municipal Court (1976) 62 Cal.App. 3d 153, 155-156 [no due diligence where prosecutor knew of officer 's planned vacation and failed to subpoena officer]; Pickett v. Municipal Court (1970) 12 Cal.App. 3d 1158, 1162 [no due diligence here prosecutor failed to subpoena witnesses with no showing that he would be unable to do so because witnesses would be out of state] .)

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- In Jensen, supra, 160 Cal.App.4th 266, the Court of Appeal found that service of a subpoena on the officer 's immediate superior or agent pursuant to Penal Code section 1328, subdivision (c) was sufficient to show due diligence to obtain the witness 's appearance at trial. (Id. at p. 272.) This was true even though the superior or agent failed to deliver the subpoena to the officer and the officer never received the subpoena. (Id. at pp. 272-273. )
- "Indeed, to hold otherwise would prevent attorneys from relying on the subpoenas they issue, require them to supervise internal police department procedures over which they have no legal control, or 'demand that prosecutors [and other counsel] become clairvoyants.' In order to establish due diligence, attorneys would be required to personally contact every police officer served with a subpoena pursuant to section 1328, subdivision (c) and confirm his or her actual receipt of the served subpoena.
- The Court of Appeal has declined to impose additional due diligence requirements on counsel beyond serving subpoenas to compel witnesses' attendance at trial. Service of the subpoena is the responsibility of the attorney, and once service was effected, counsel is 'not required to employ any additional mode of process, either formal or informal' to ensure the witness's availability or attendance." (Id. at p. 273, internal citations omitted; see also Mendez v. Superior Court, supra , 162 Cal. App.4th 827, 836 [due diligence found where prosecutor had subpoenaed the officer; the officer had not been released from subpoena, but officer nonetheless took his vacation outside the court 's jurisdiction] .)

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- In the present case, the Fresno county prosecutor clarified at the dismissal hearing that the subpoena was served by his office by electronic delivery to the immediate supervisor of the officer, and that the subpoena was accepted. This type of service is allowed under Penal Code section 1328, subdivision (C).
- Also, Jensen expressly finds that such service is sufficient to demonstrate due diligence in procuring an officer's appearance at trial. (Jensen, supra, at pp. 272-273.)
- The Judge in the present case (as your judges sometimes do) believed that the Baustert decision required a showing of something more than just the officer being on vacation in order to show unavailability of the witness.
- However, Baustert was decided in a situation where the prosecutor failed to keep the officer under subpoena after learning that he was going on vacation. (Baustert, supra, 129 Cal.App. 4th at pp. 1277-1278.) Under these circumstances, the court found it was also relevant to consider whether the officer was truly unavailable because he was out of the jurisdiction.

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- Here, on the other hand, there is no evidence that the prosecutor withdrew the subpoena after it was served, or that the officer's superior agent refused to accept service of the subpoena on behalf of the officer.
- Therefore, service of the subpoena on the officer was sufficient to establish due diligence by the prosecutor in ensuring the officer's attendance at the trial. The prosecutor could not have anticipated at the time of service that the officer would go on vacation and be unavailable for trial.
- 
- Other factors, such as where the officer had gone on vacation and whether he was truly unable to return in time for the trial, would only have been relevant if the prosecutor had failed to serve him with a subpoena, or had later withdrawn the subpoena and allowed the officer to leave.

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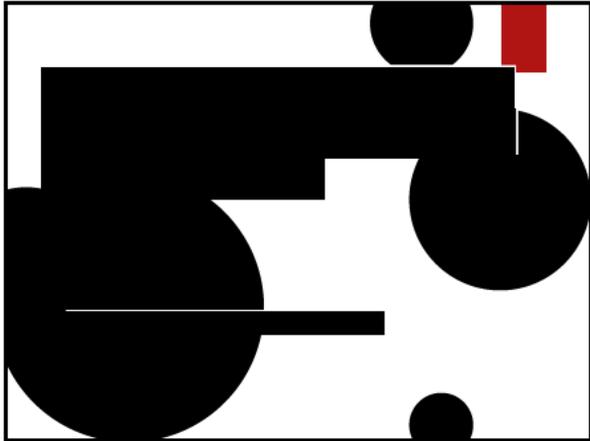
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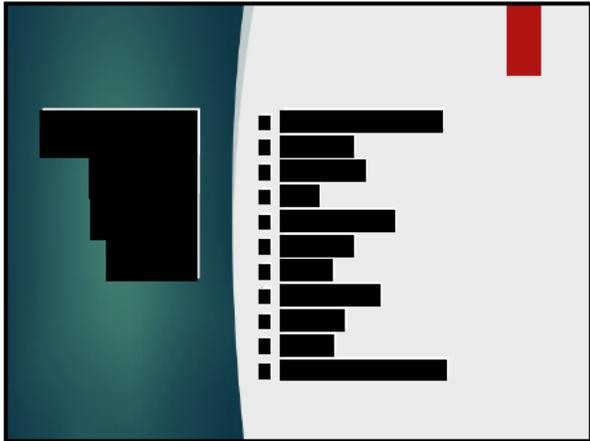
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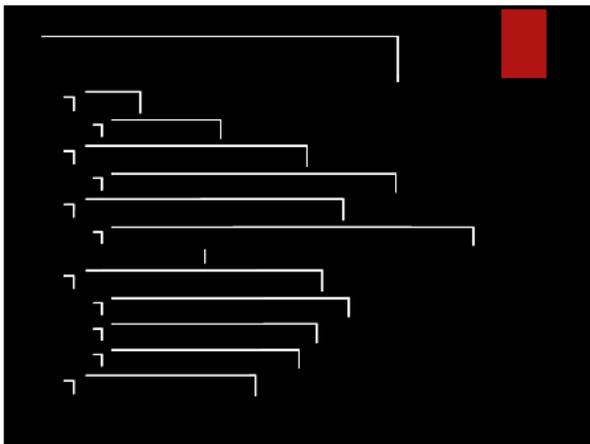
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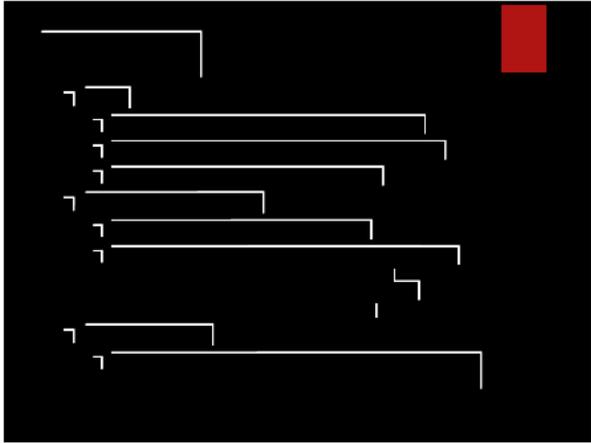
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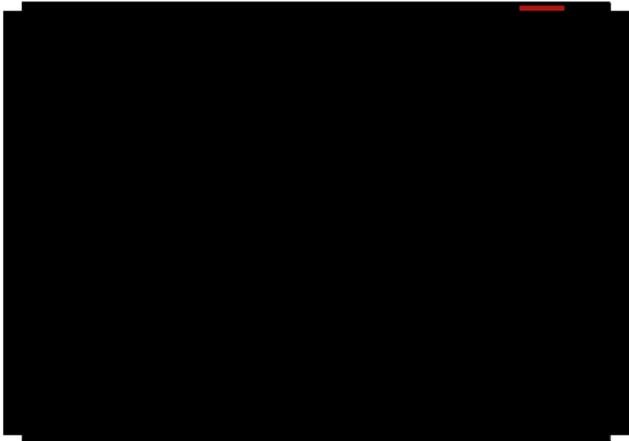
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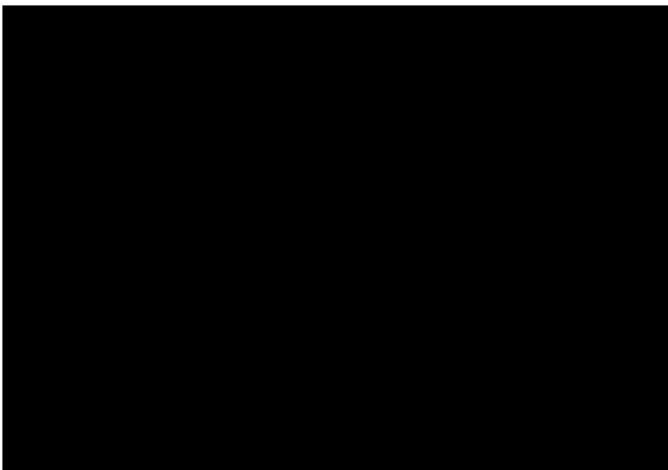
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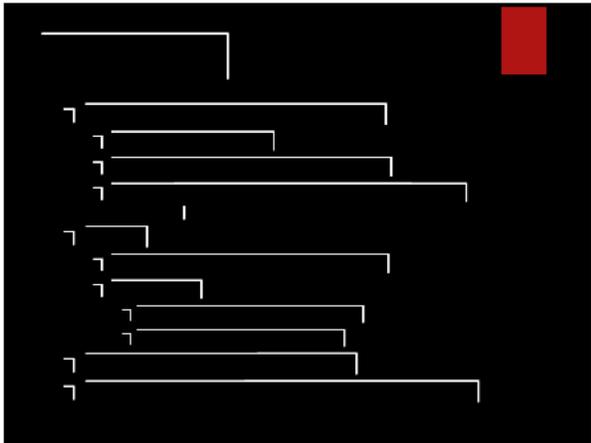
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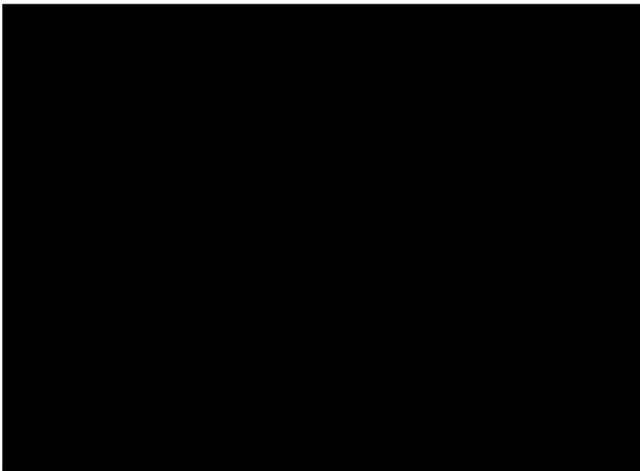
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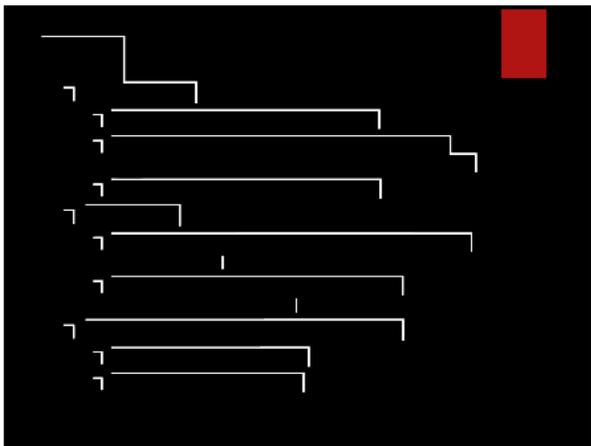
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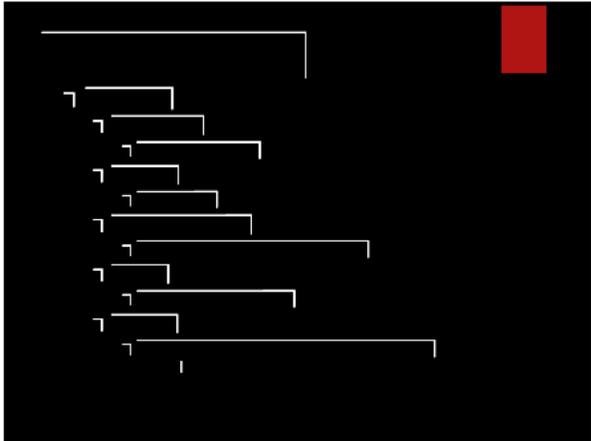
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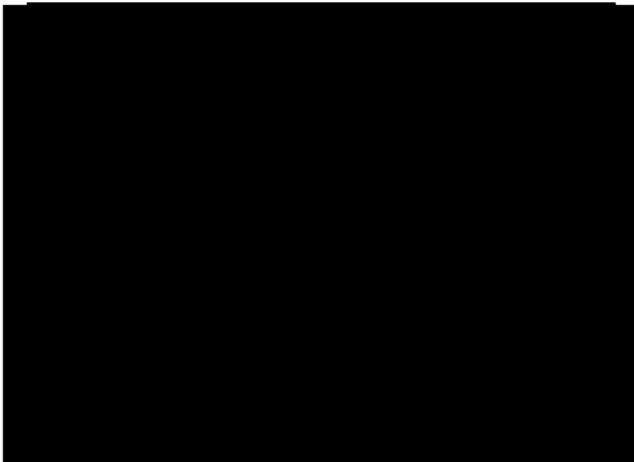
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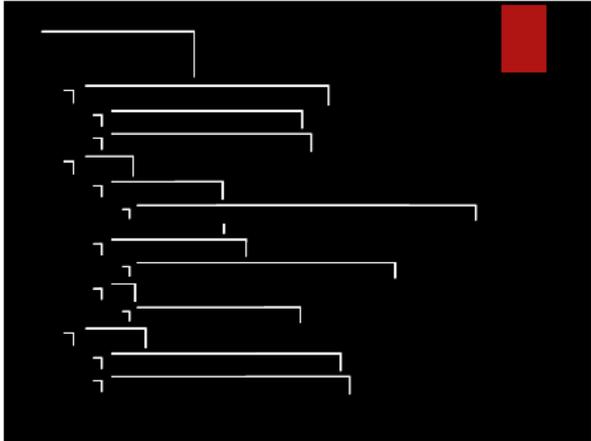
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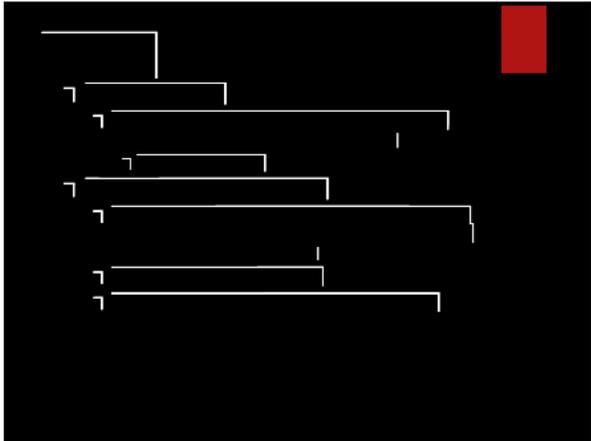
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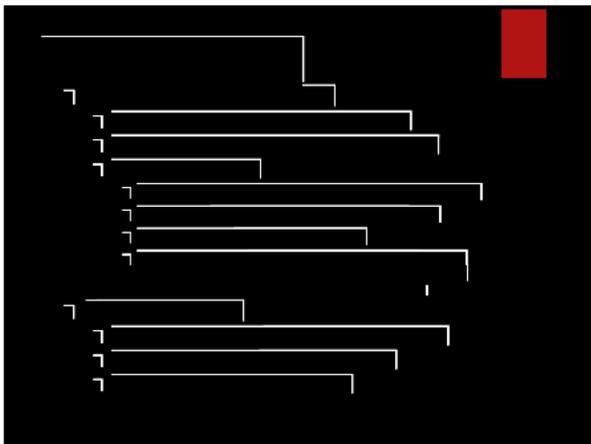
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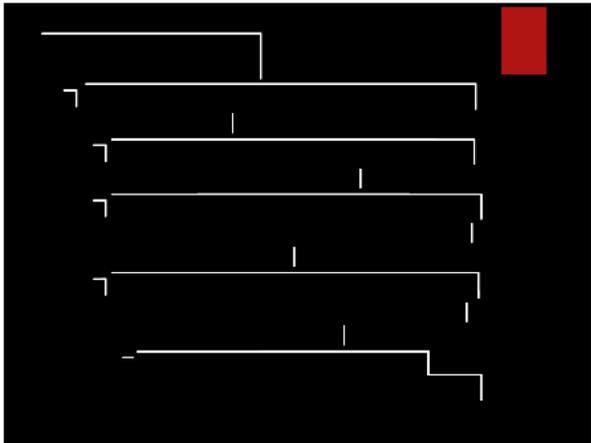
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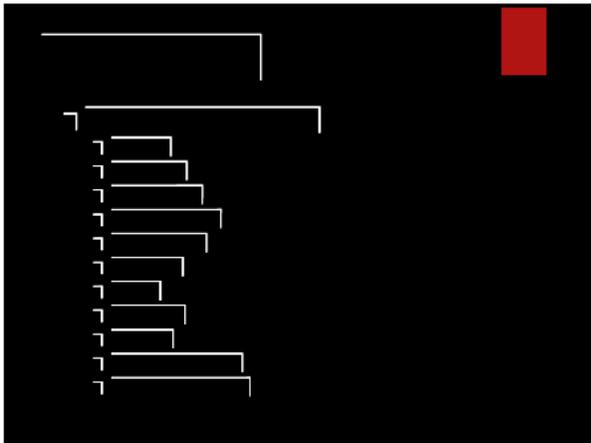
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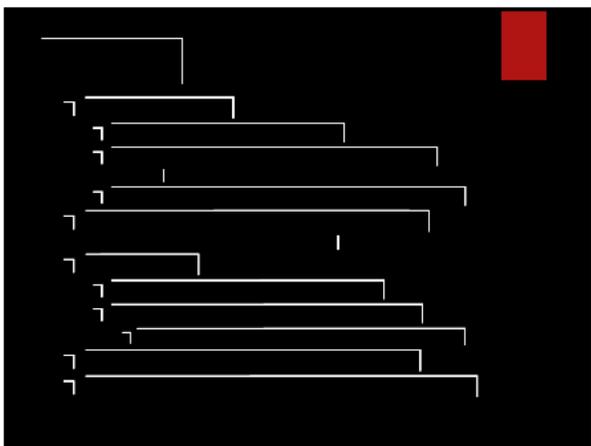
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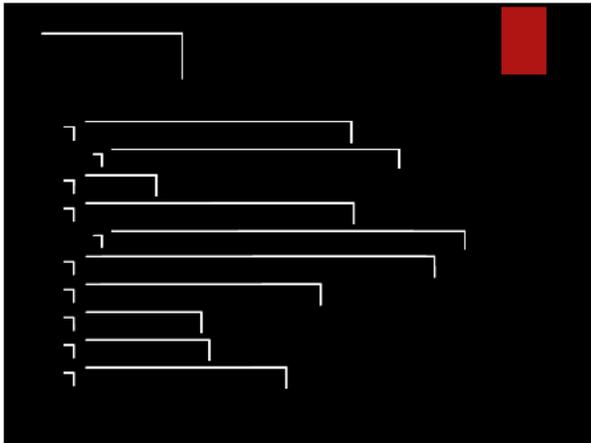
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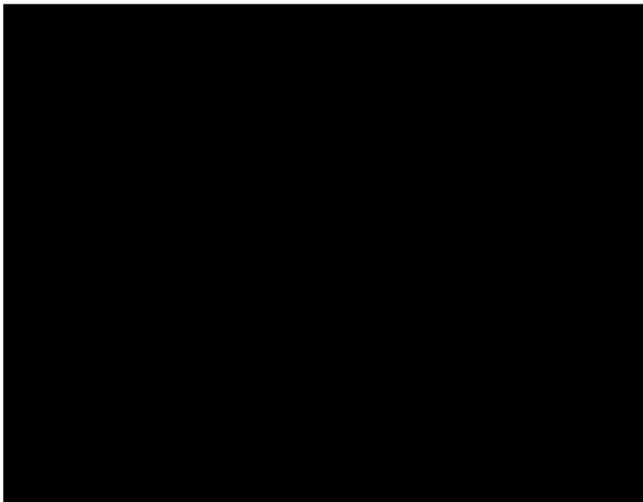
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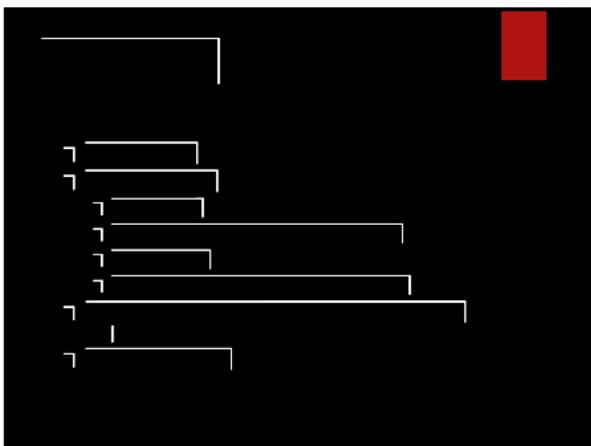
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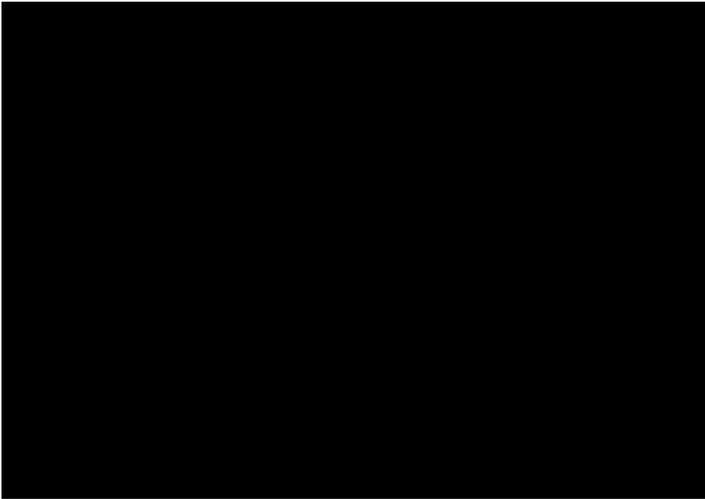
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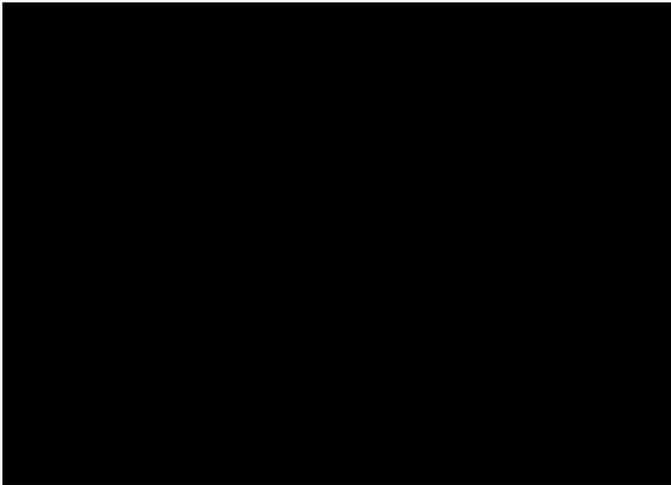
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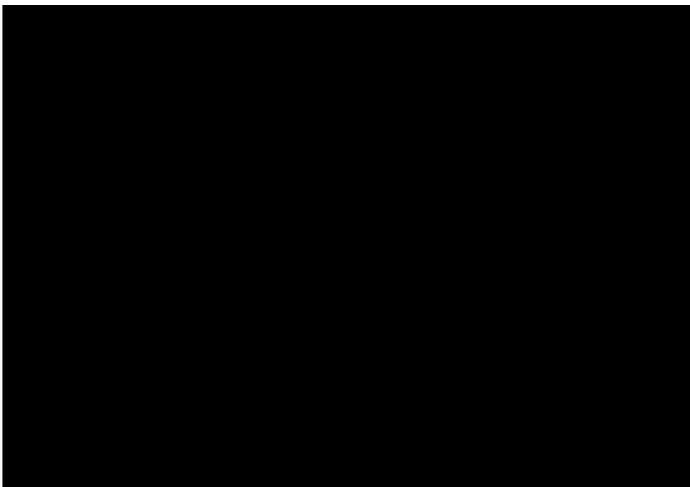
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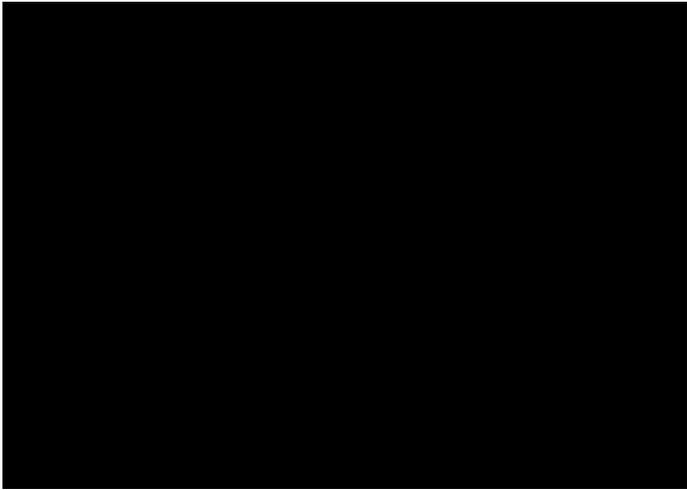
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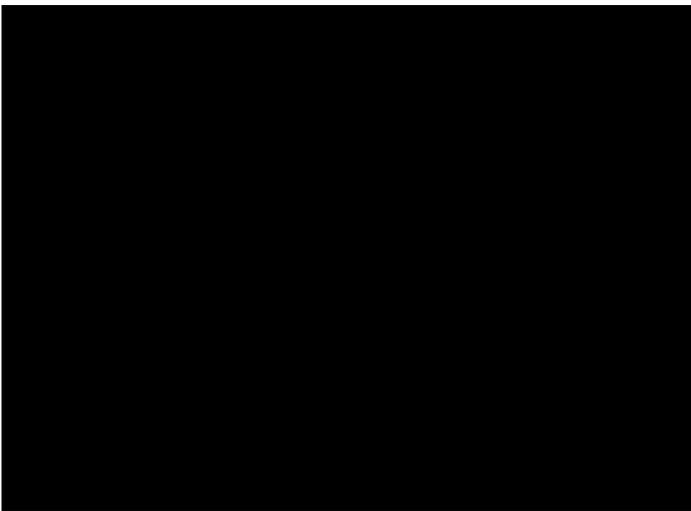
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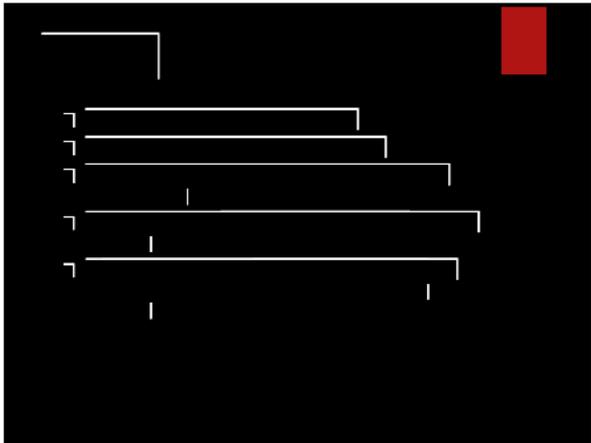
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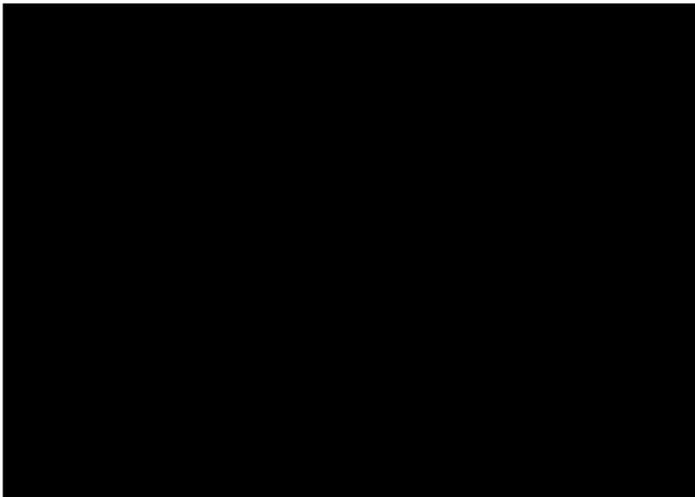
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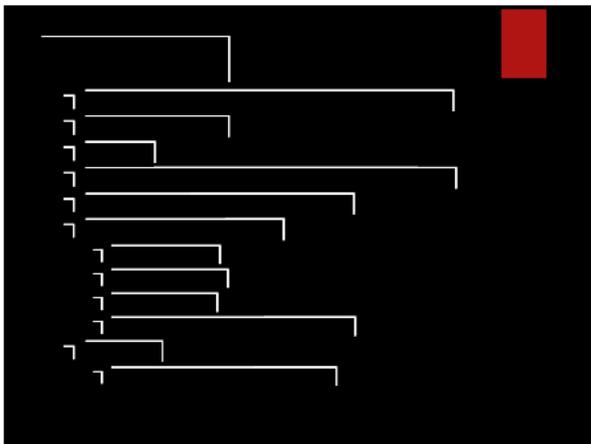
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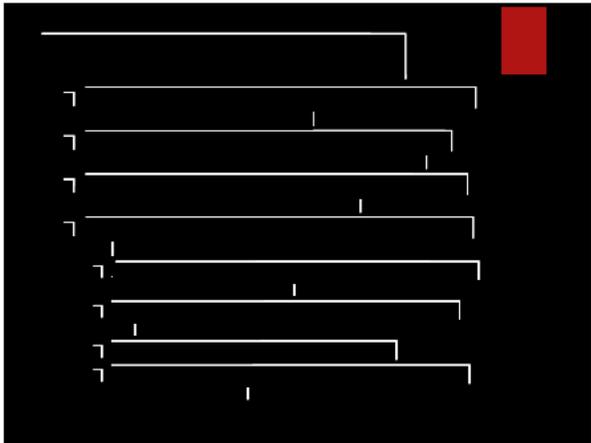
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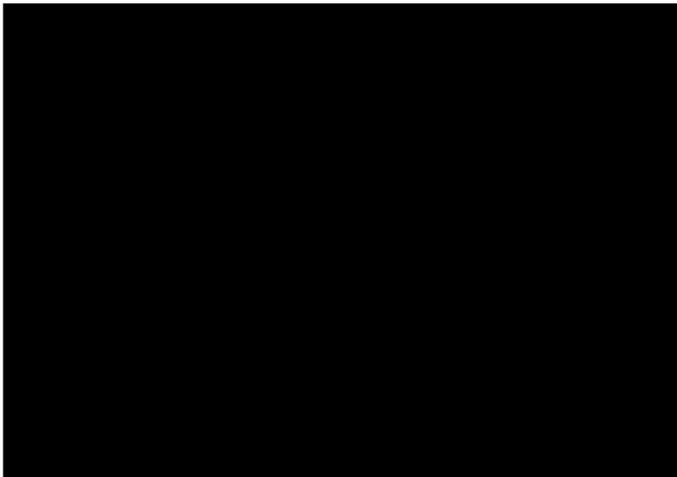
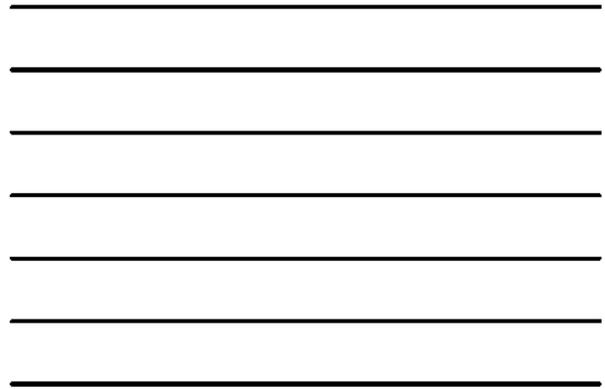
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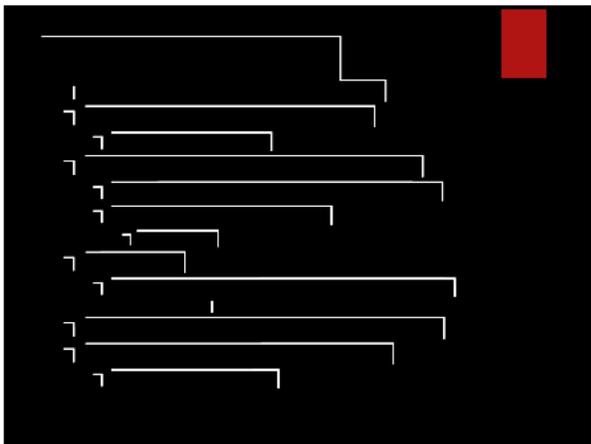
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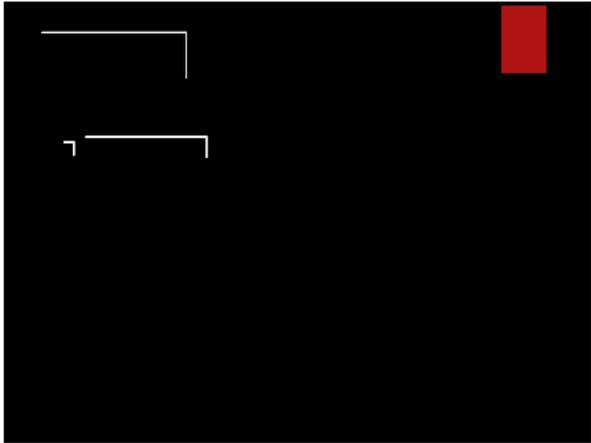
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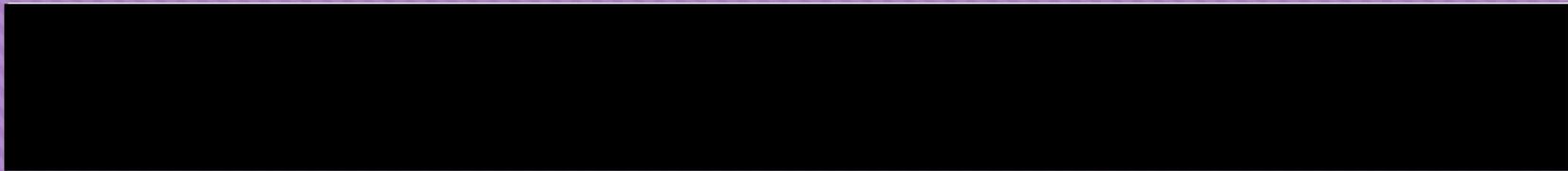
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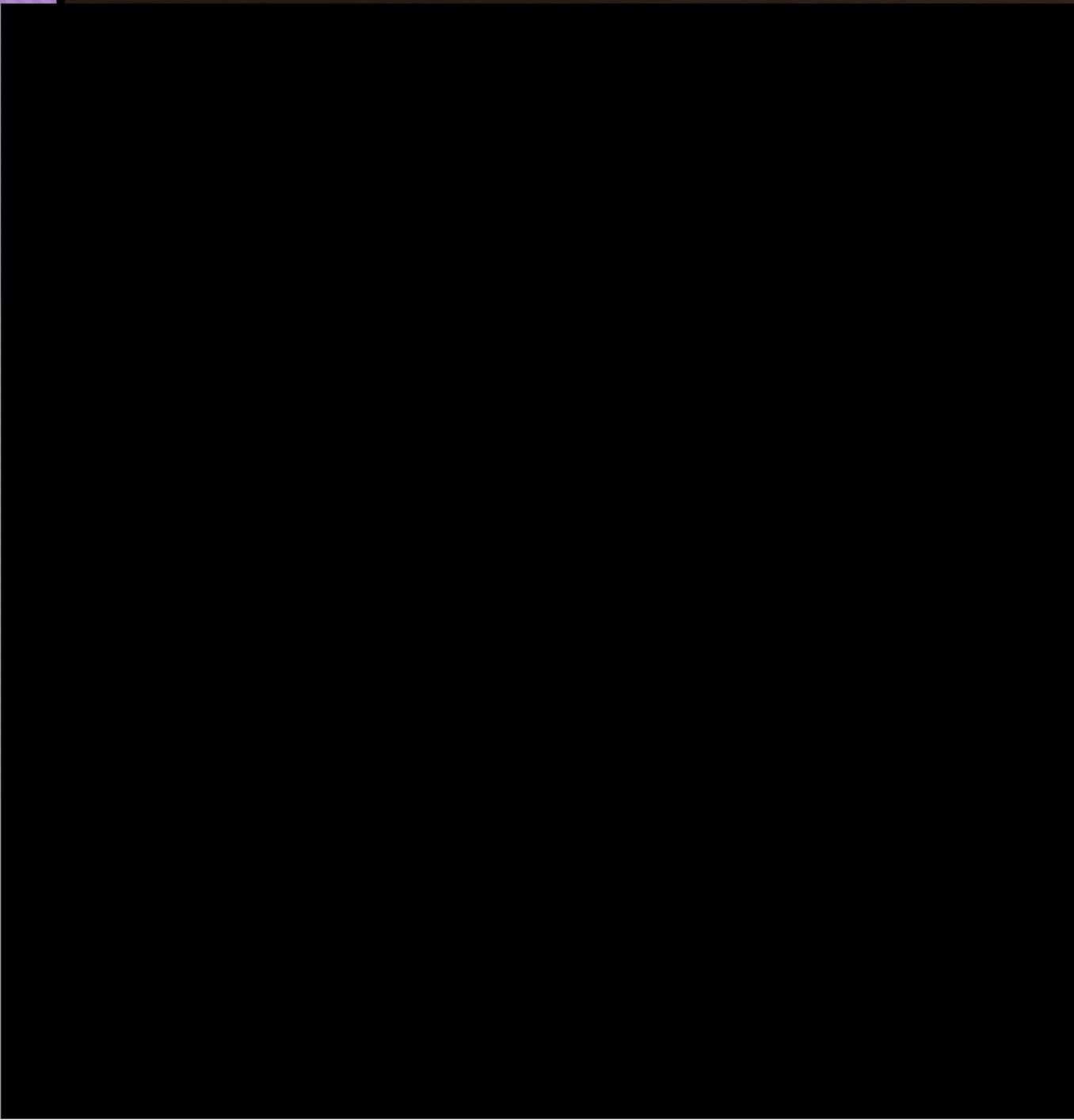
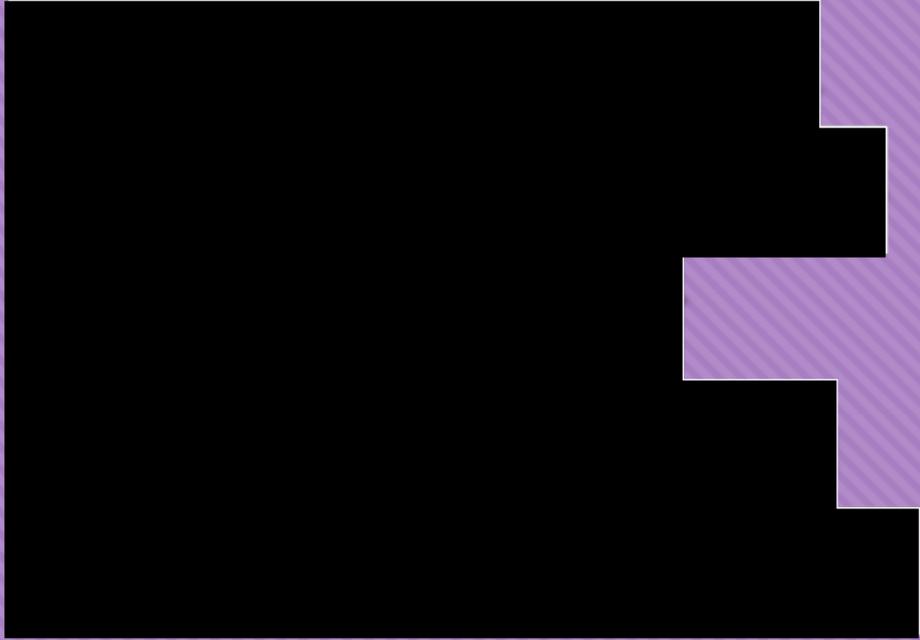
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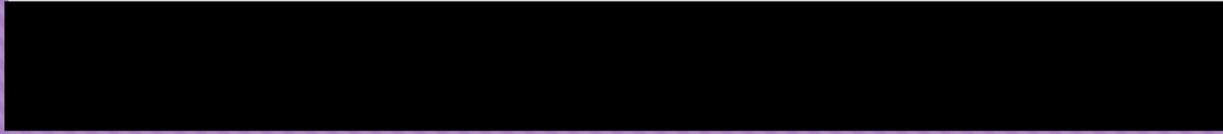
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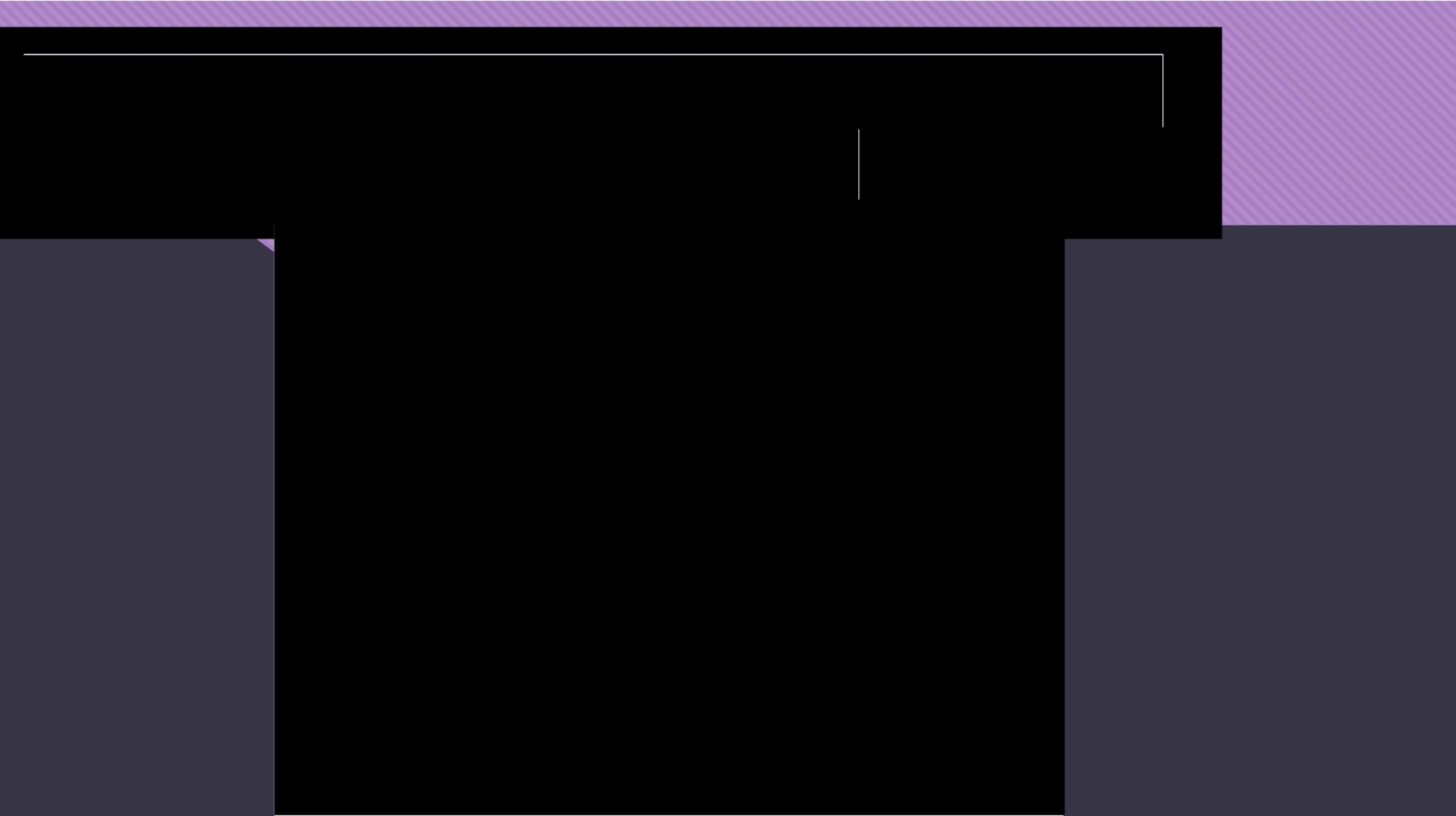
# **Opening, Closing, Courtroom Presence, & Common Objections**





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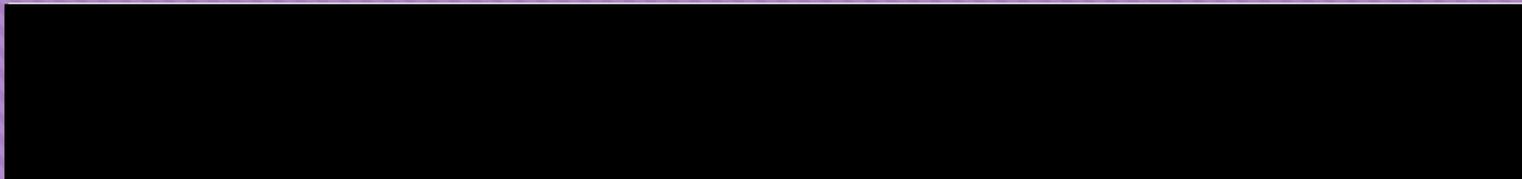


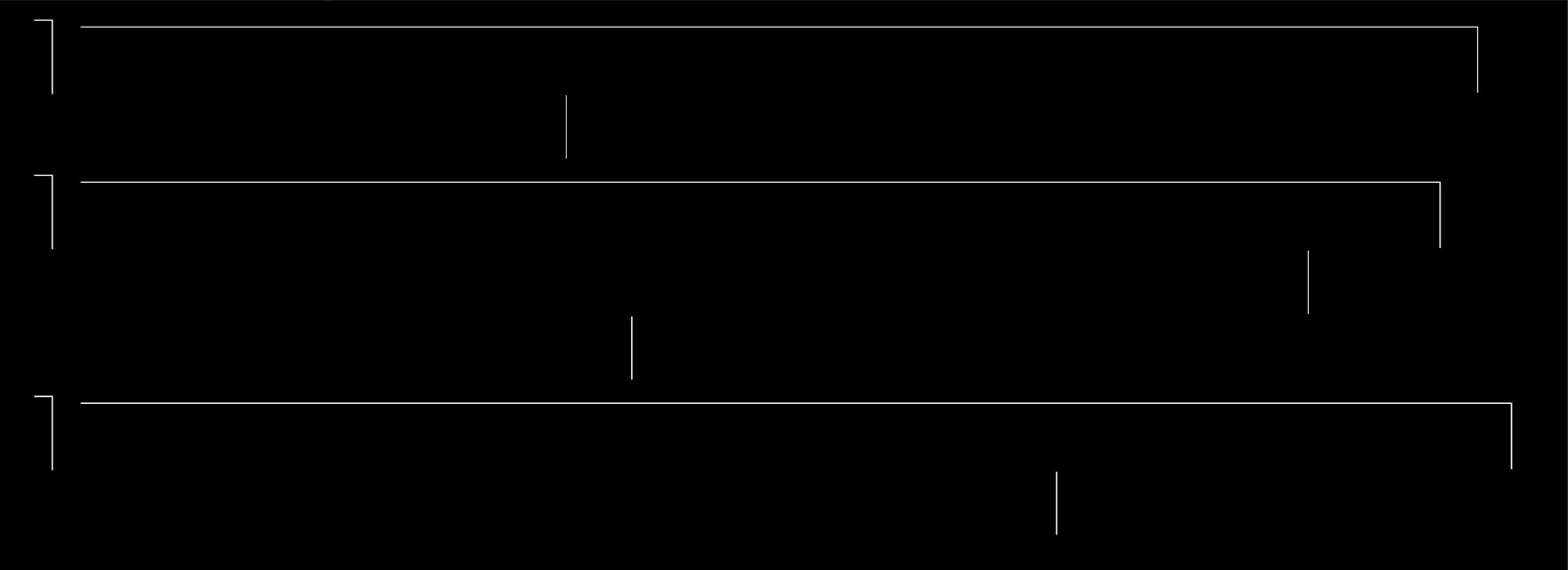


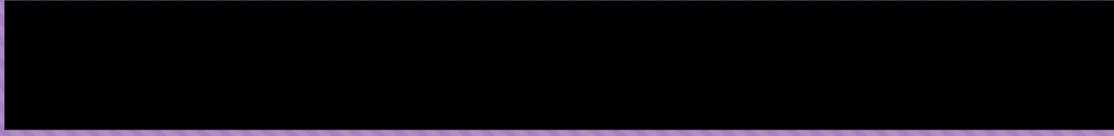
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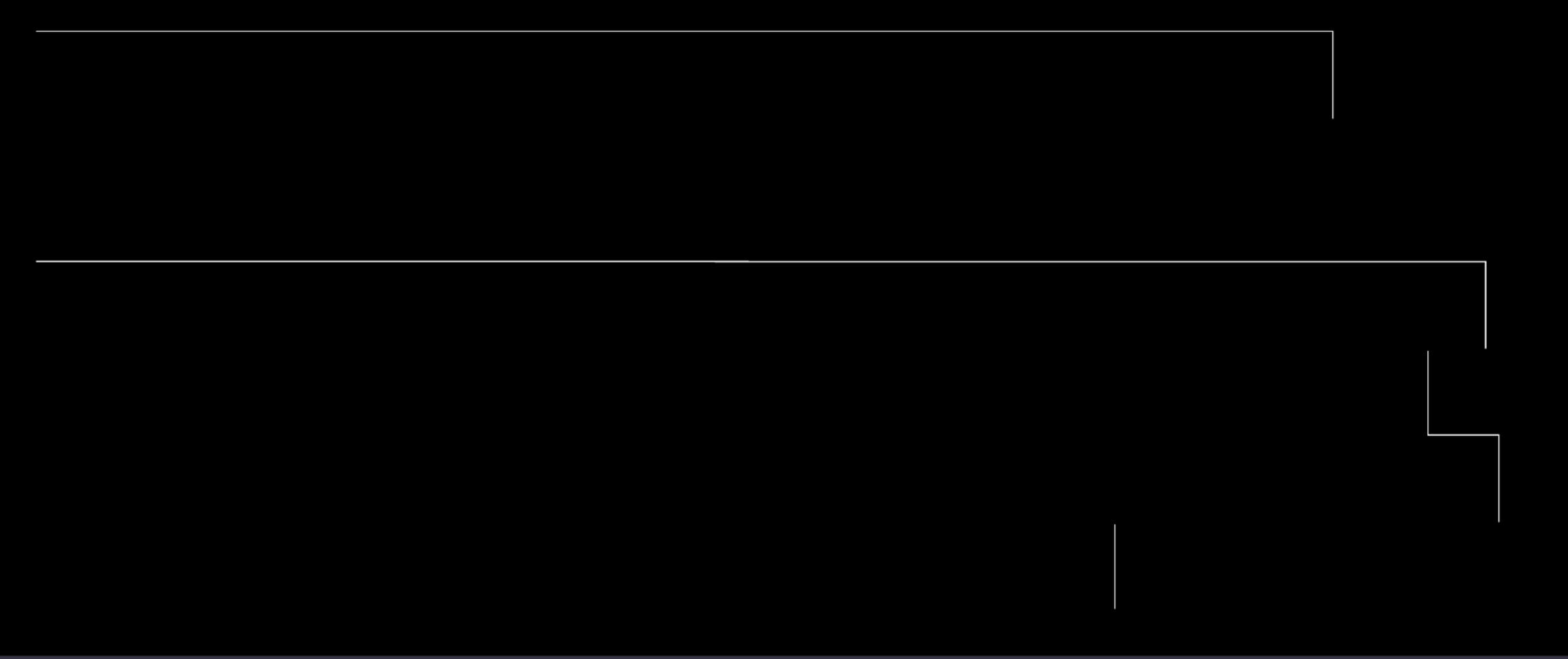
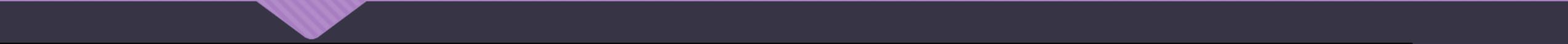




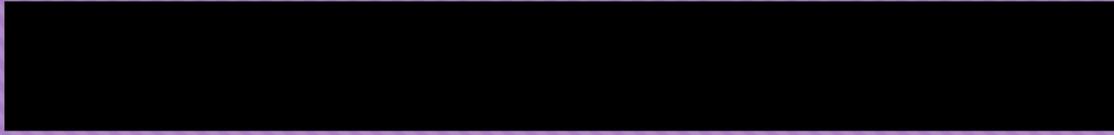


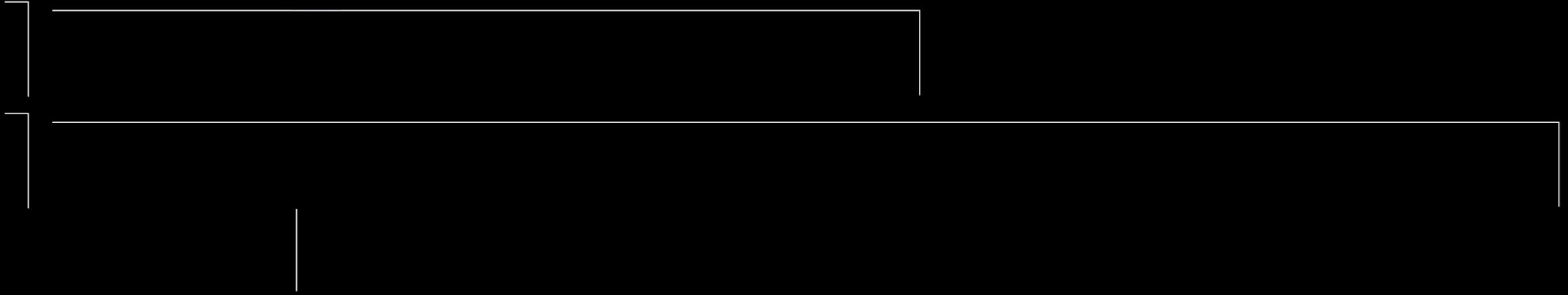


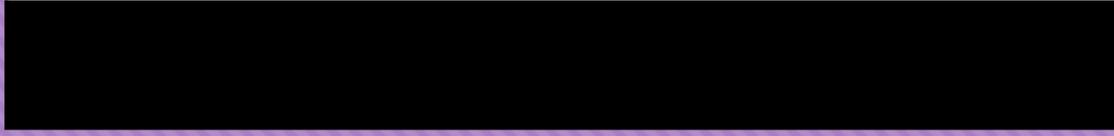
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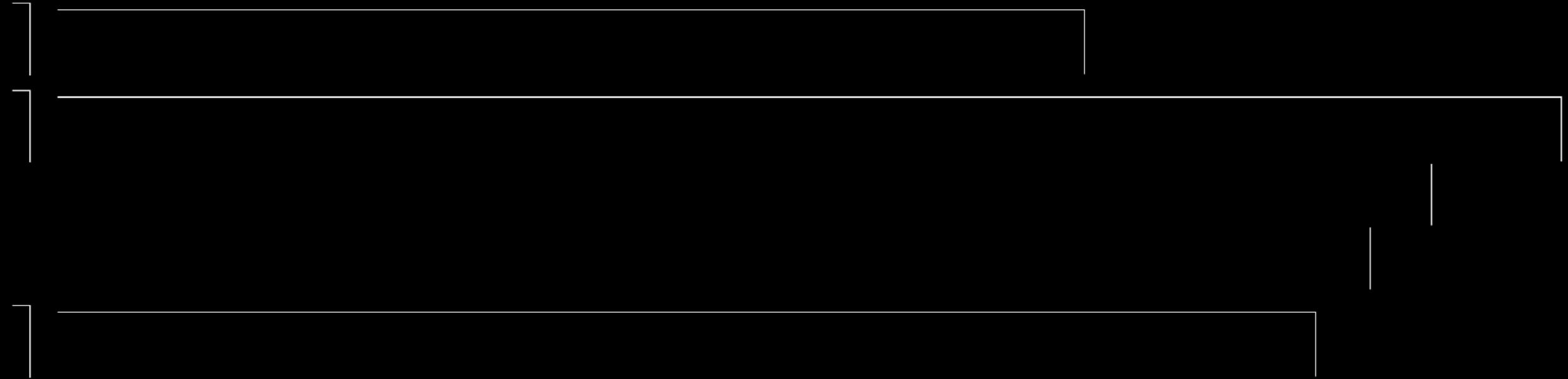


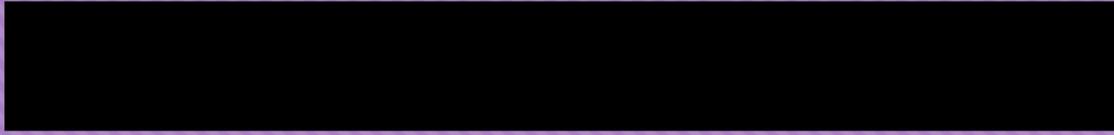






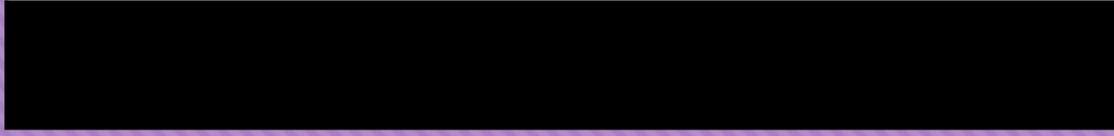


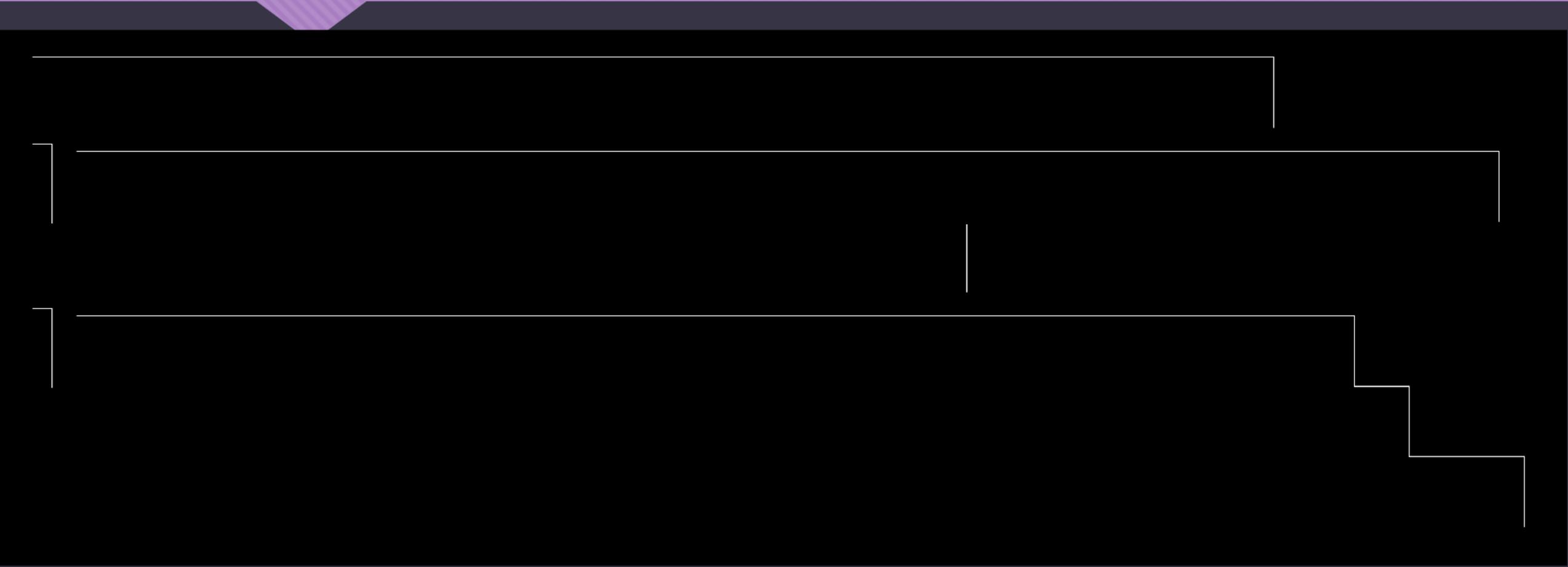




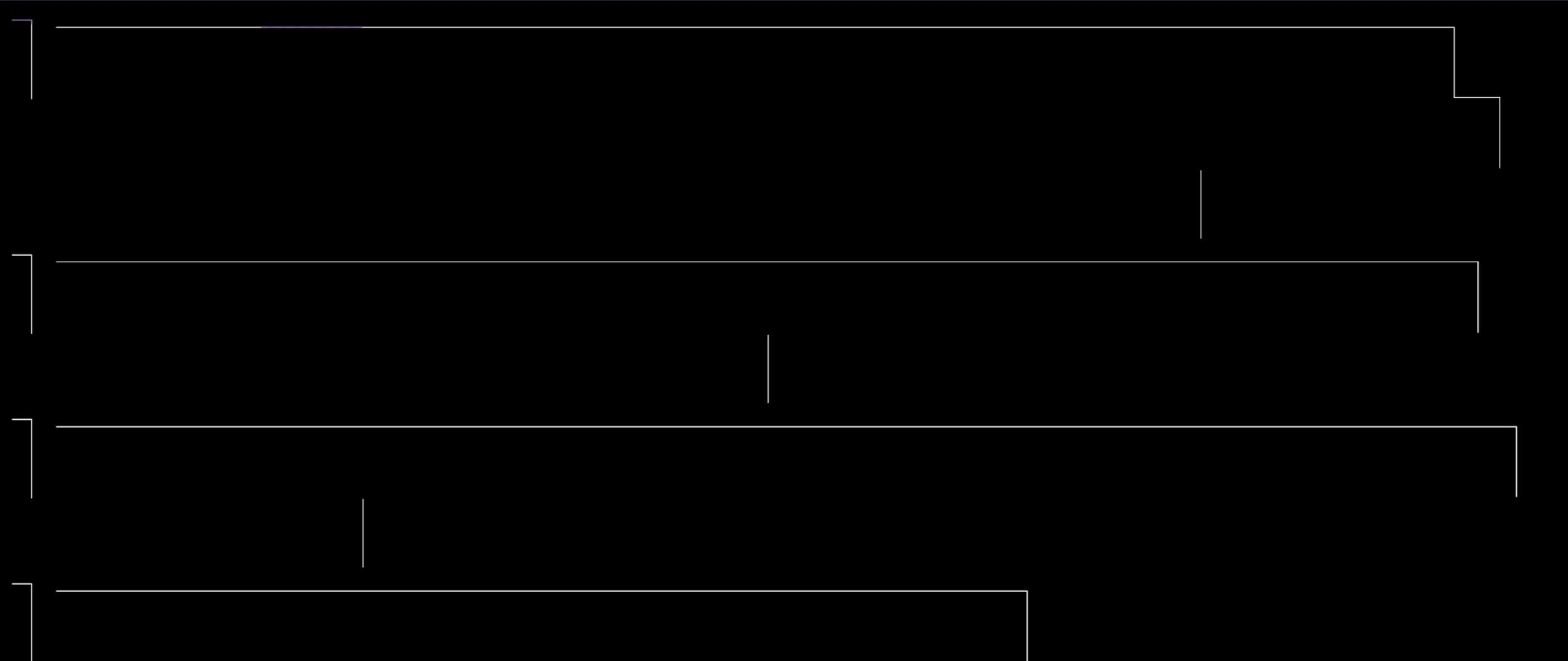
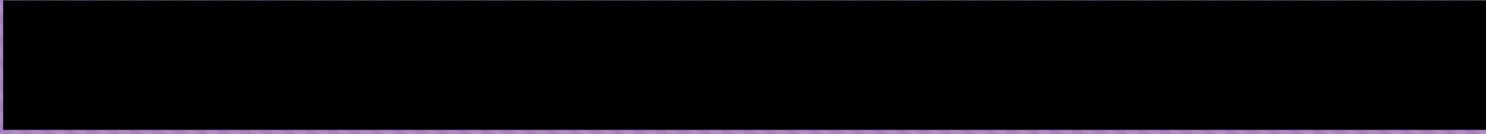












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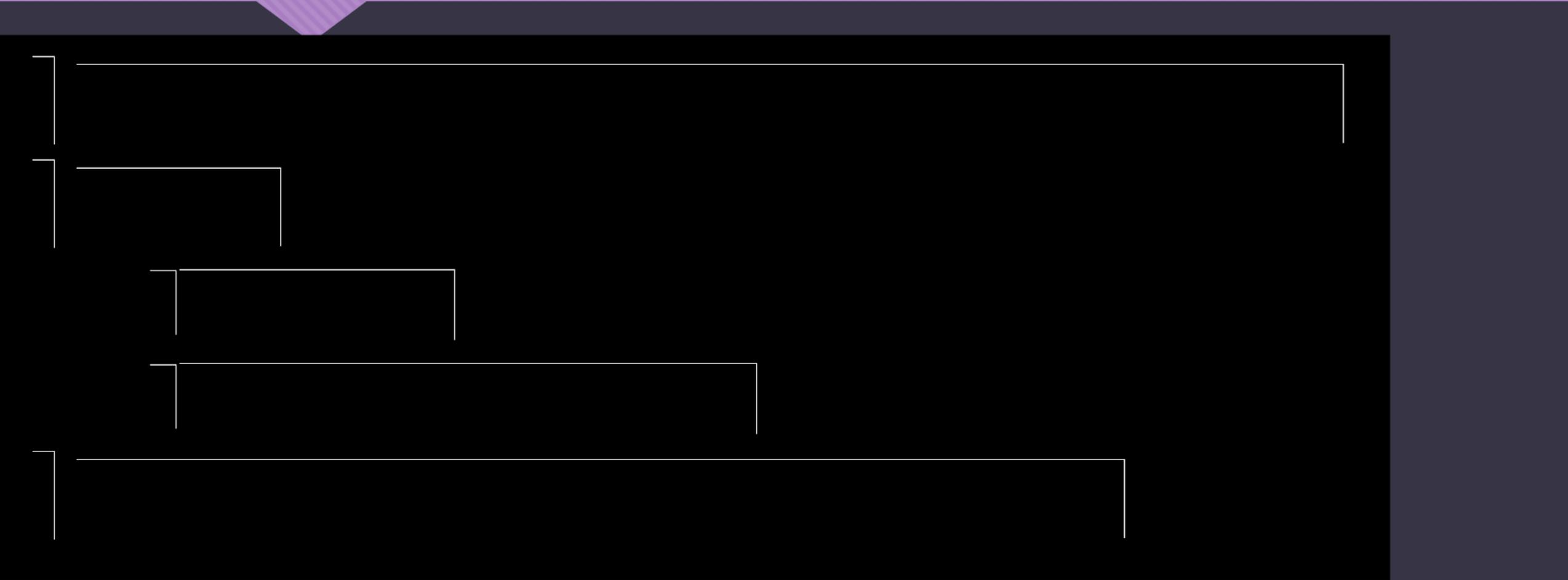
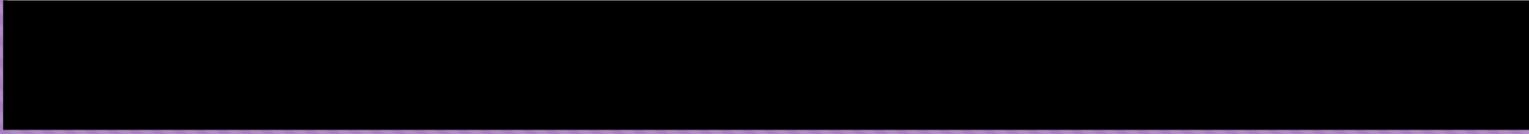
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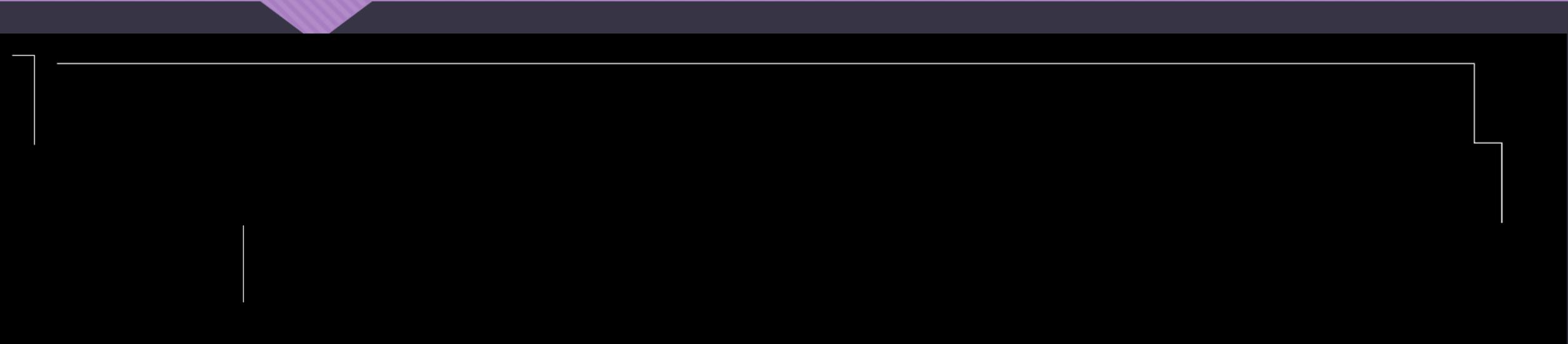
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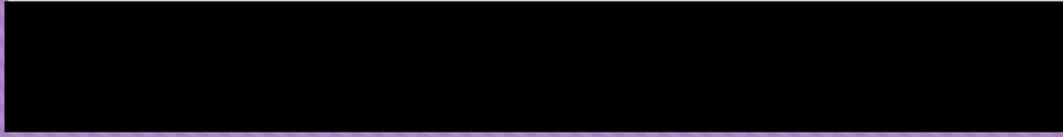
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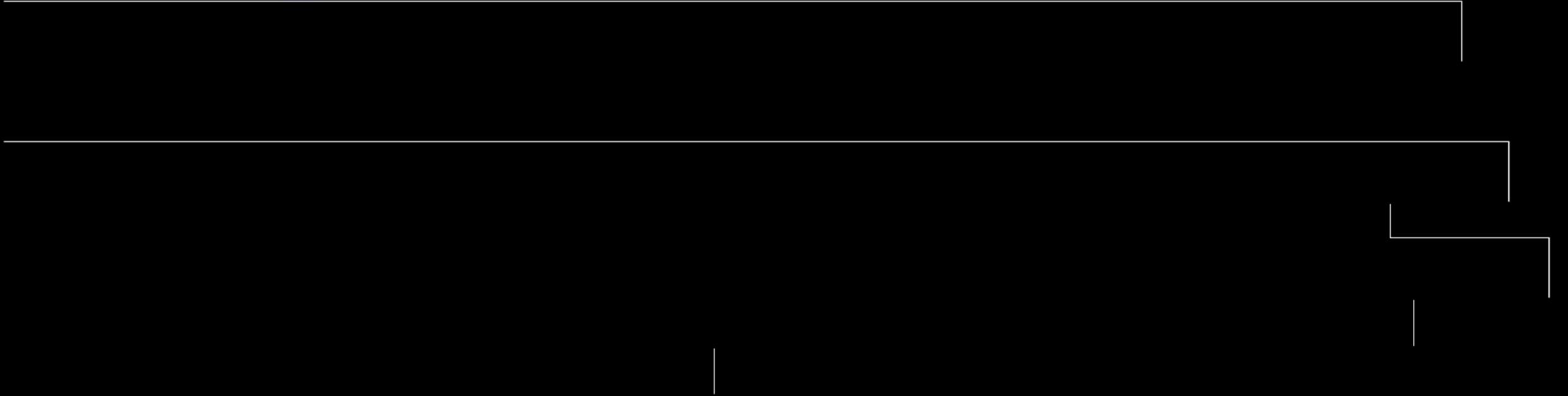
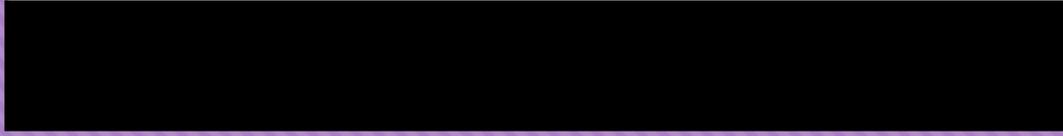
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## **CALCRIM 2111**

- 1. The defendant drove a vehicle; AND**
- 2. When (he/she) drove, the defendant's blood alcohol level was 0.08 percent or more by weight**

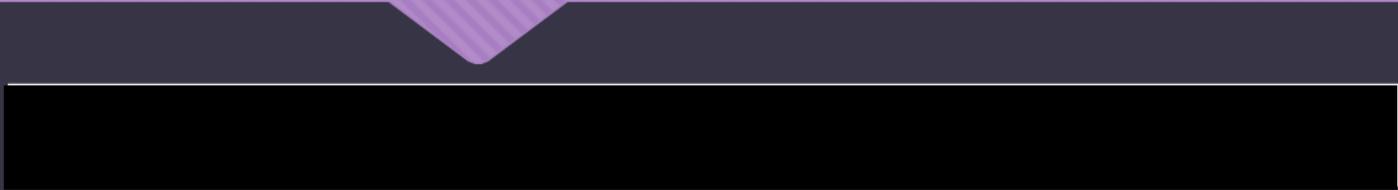




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**Prosecuting attorneys are government officials and clothed with the dignity and prestige of their office. What they say to the jury is necessarily weighted with that prestige. It is their duty to see to it that those accused of crime are afforded a fair trial.**

***People v. Talle* (1952) 111 Cal.App.2d. 650**

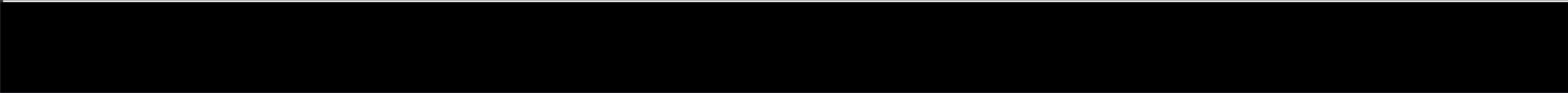
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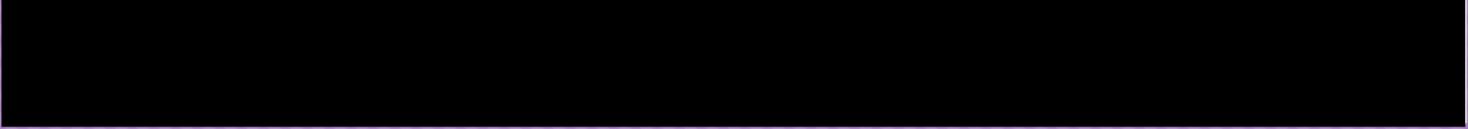
- [REDACTED]
- **In particular, it is misconduct for counsel to attempt to absolve the prosecution from its prima facie obligation to overcome reasonable doubt on all elements. *People v. Gonzalez* (1990) 51 Cal.3d 1179**

- **Don't use puzzles to explain (no "quantitative measure") *People v. Katzenberger* (2009) 178 Cal.App.4th 1260**



**It is misconduct for prosecutor in argument to state as facts matters as to which there is no evidence. People v. Bickley (1962) 22 Cal.Rptr. 340**

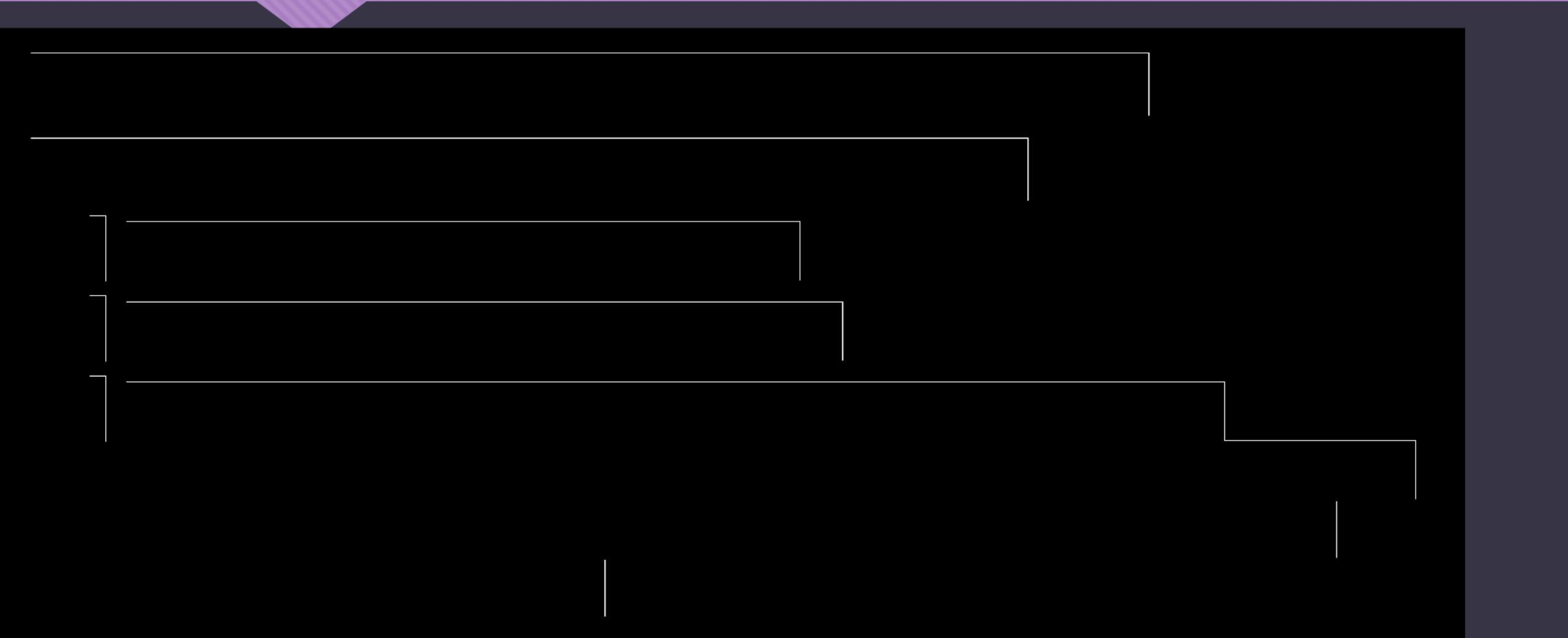
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- **Closing argument** ”may be vigorous as long as it is a fair comment on the evidence, which can include **reasonable inferences** or deductions to be drawn therefrom. “*People v. Harrison* (2005) 35 Cal. 4th 208, 244



**It was prejudicial error for prosecuting attorney in murder prosecution to argue to jury that defendant wanted to get a sexual thrill out of prior robbery and started to fondle private parts of woman, where all that she testified to in penalty phase of murder prosecution was that during course of robbery defendant put his hands down her brassiere and on her legs while he was allegedly looking for money. People v. Washington (1969) 80 Cal.Rptr. 567**



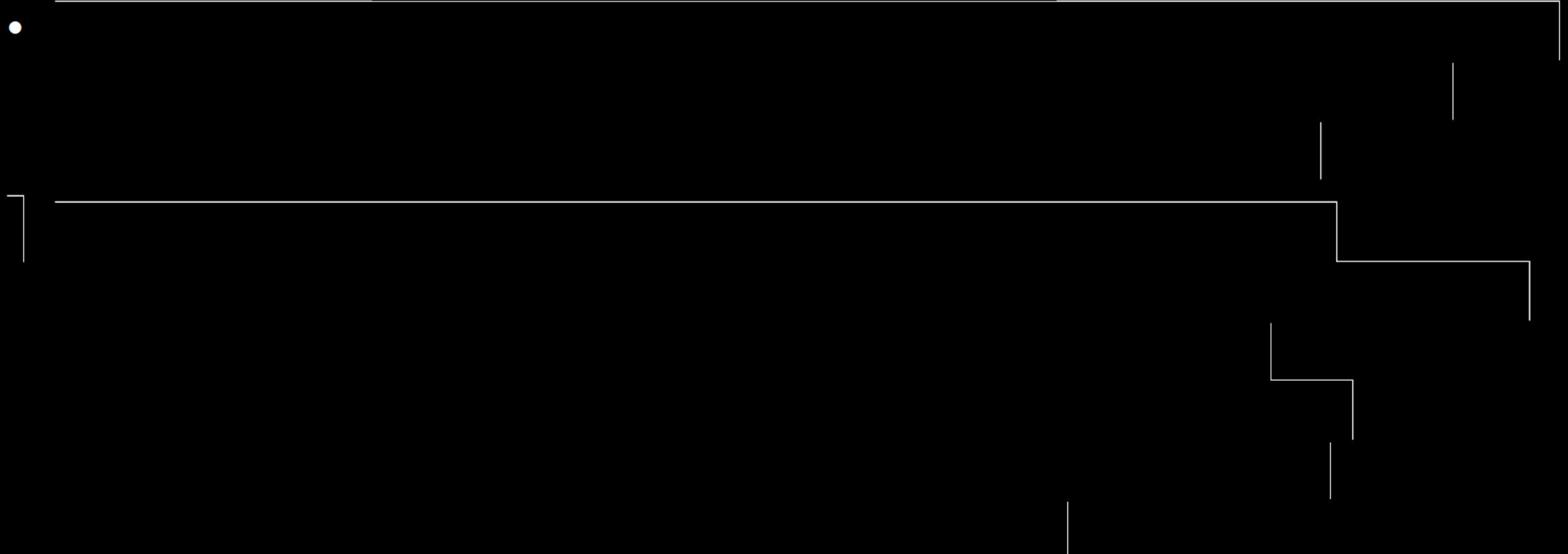
**Prosecuting attorney's remark during argument that defendants would kill again if given opportunity was without support in record and prejudicial error. *People v. Bross* (App. 3 Dist. 1966) 49 Cal.Rptr. 402**

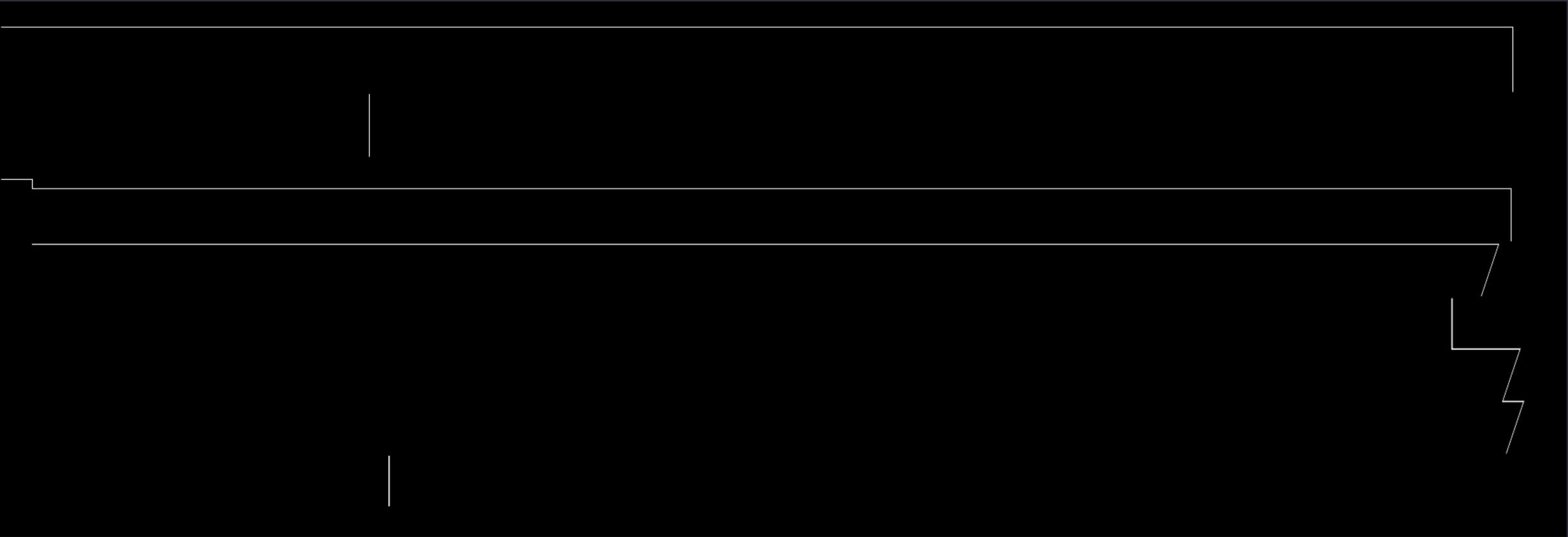


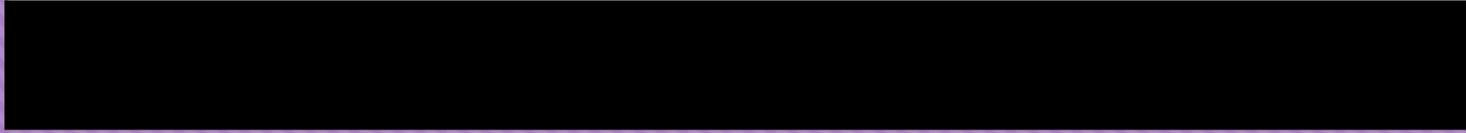


***People v. Frye* (1998) 18 Cal. 4th 894**

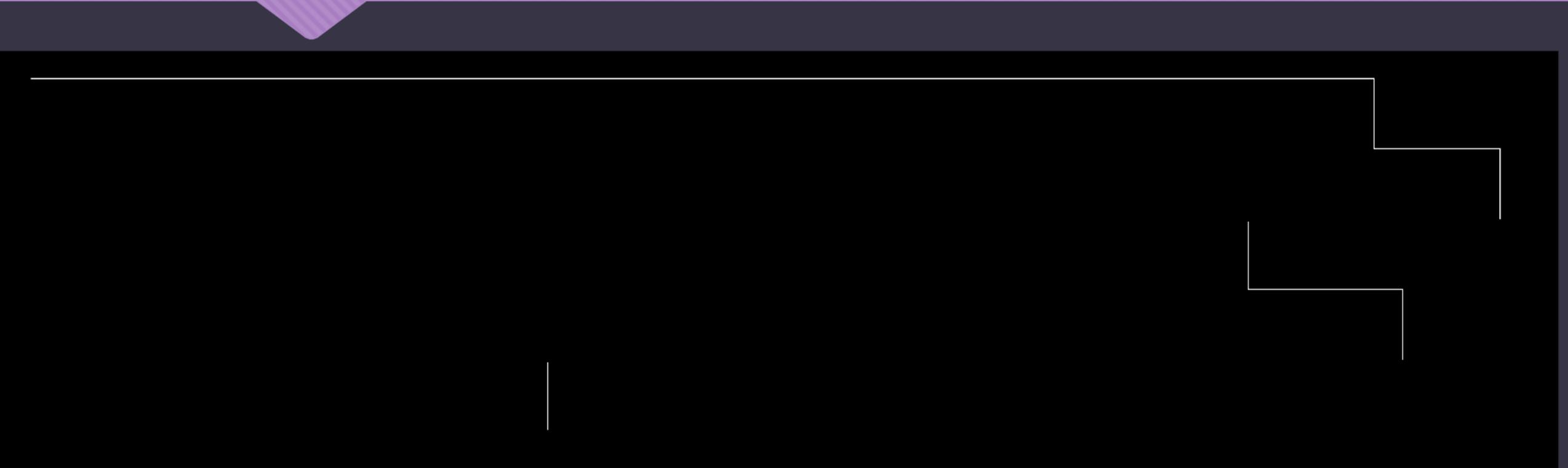
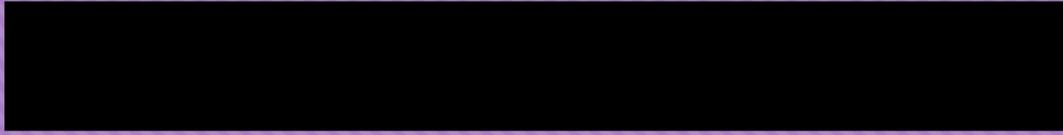
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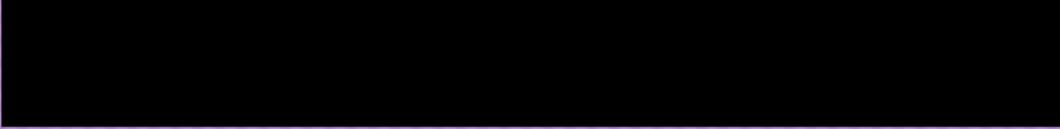






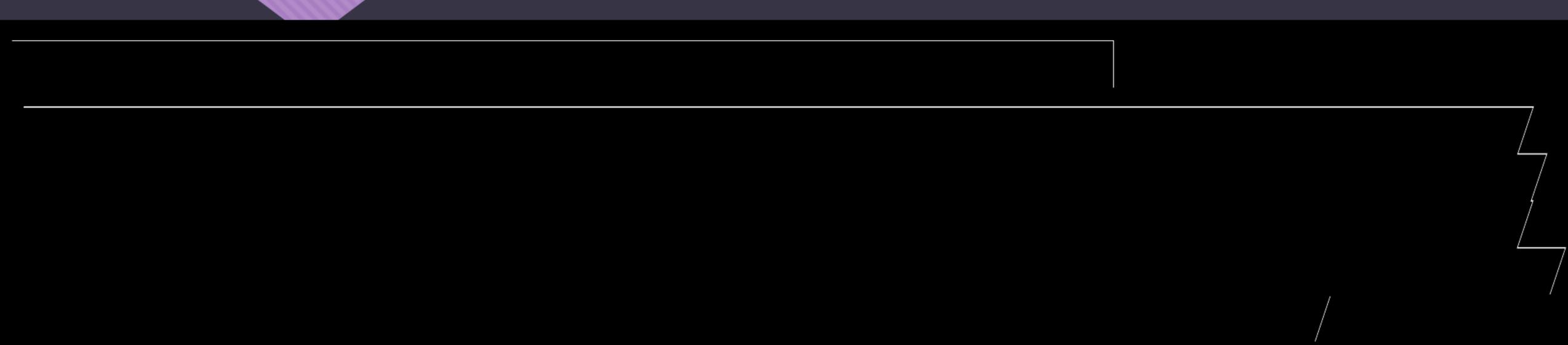
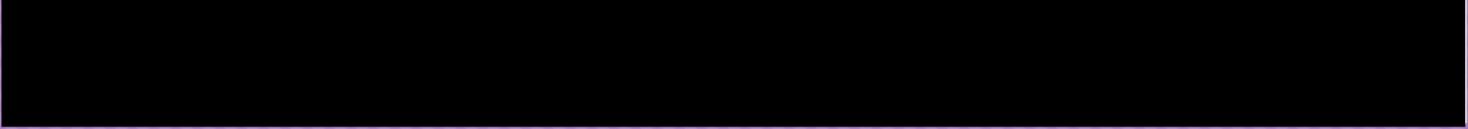
**The prosecutor's argument improperly asked the jury to view the crime through [Victim's] eyes. “We have settled that an appeal to the jury to view the crime through the eyes of the victim is misconduct at the guilt phase of trial; an appeal for sympathy for the victim is out of place during an objective determination of guilt.” *People v. Seumanu* (2015) 61 Cal. 4th 1293, 1344.**





**It is not only unseemly but most unfair for prosecutor to stoop to such billingsgate\* as argument referring to witnesses as “human sewage”. People v. Lo Cigno (App. 2 Dist. 1961) 14 Cal.Rptr. 354**

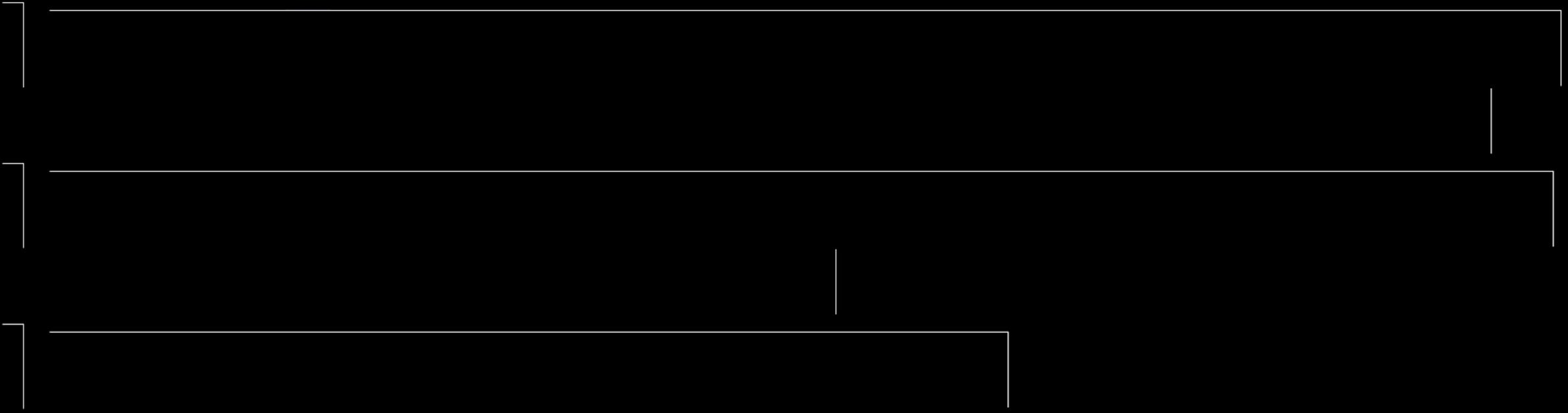
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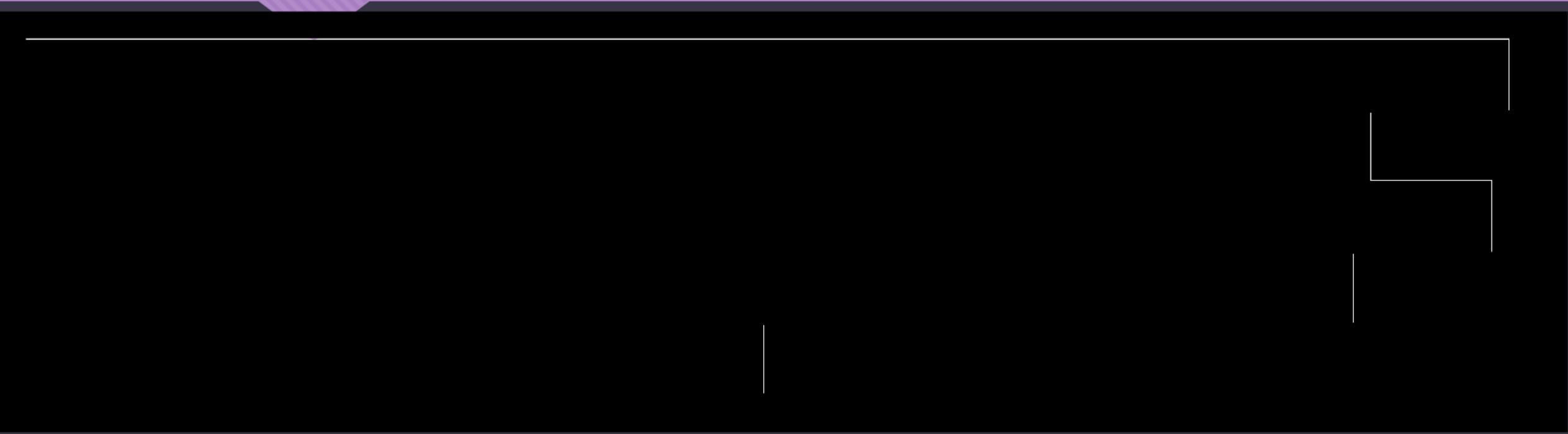
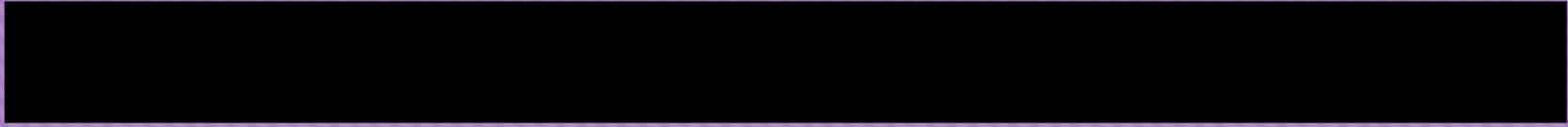


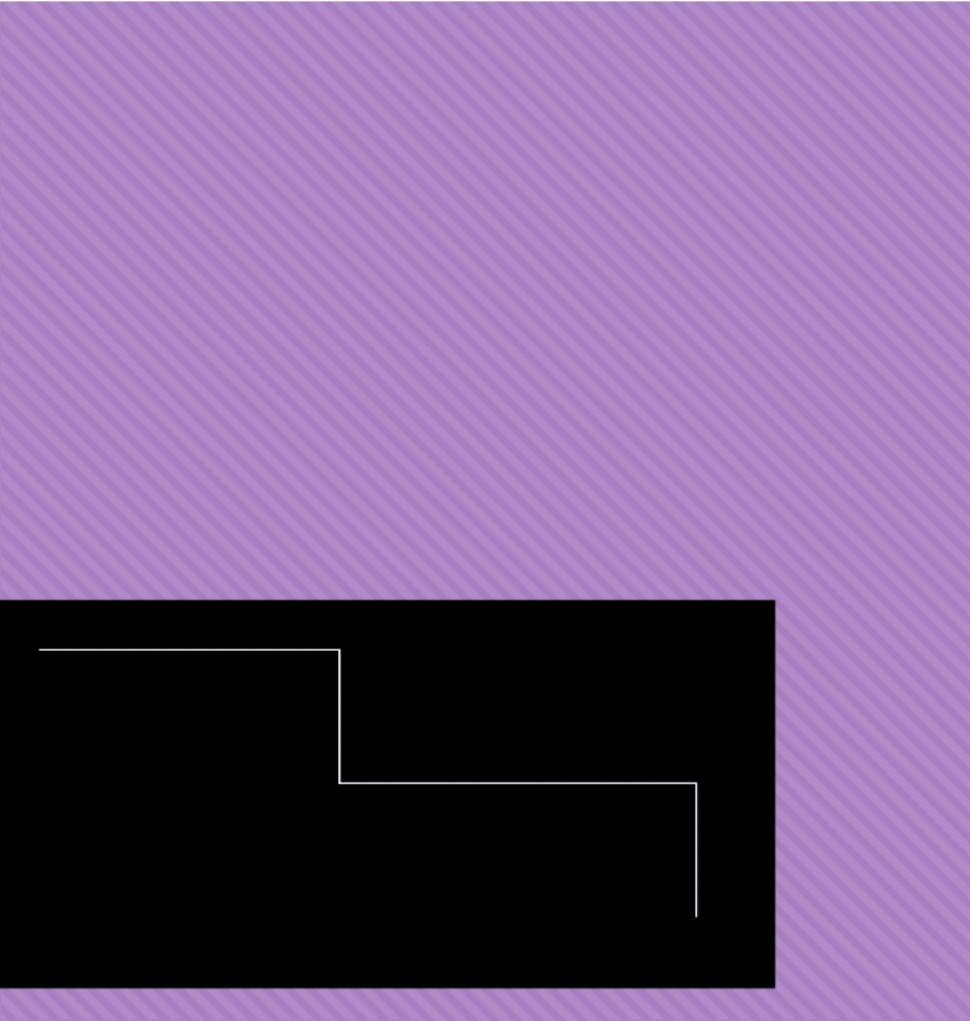
**A prosecutor may not suggest to the jury that it can draw the very logical conclusion that a defendant who decides not to testify is probably guilty. A prosecutor may not directly, indirectly or inferentially call attention to the defendant's failure to testify. *Griffin v. California* (1965) 380 U.S. 609, 615**



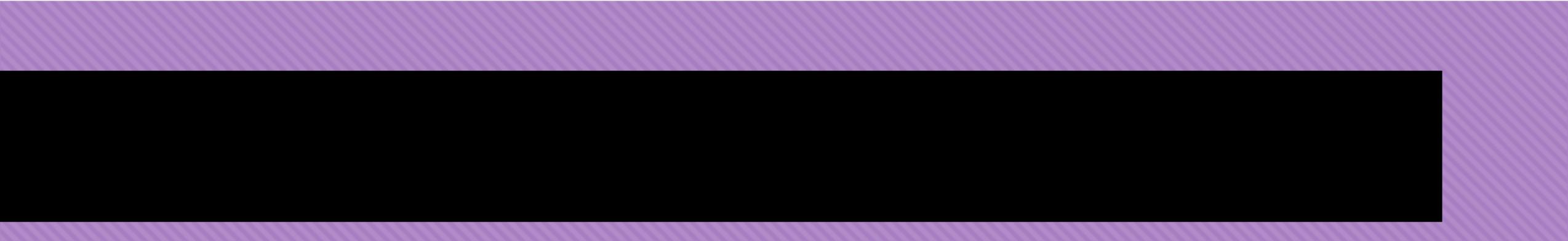
**Prosecution prohibited from impeaching a defendant with evidence of the defendant's silence after the defendant, having been advised of his constitutional rights under *Miranda*, chooses to remain silent. *Doyle v. Ohio* (1976) 426 U.S. 610**

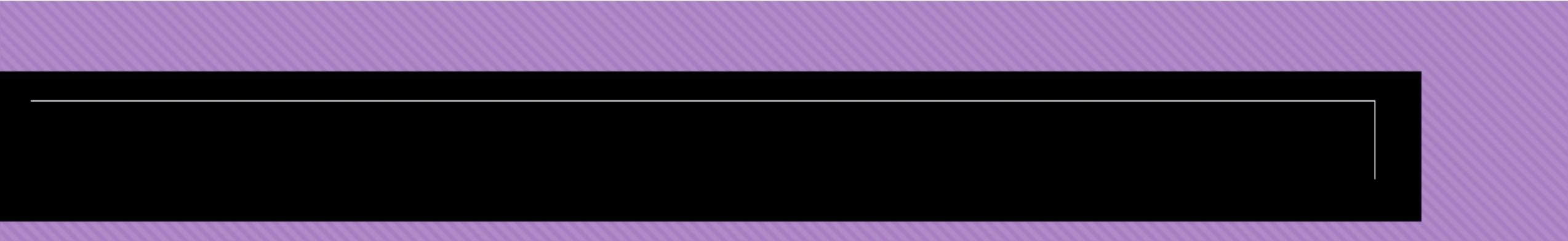




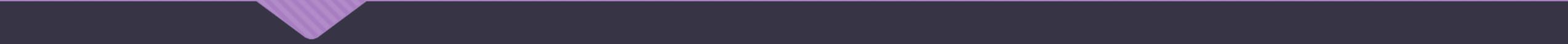








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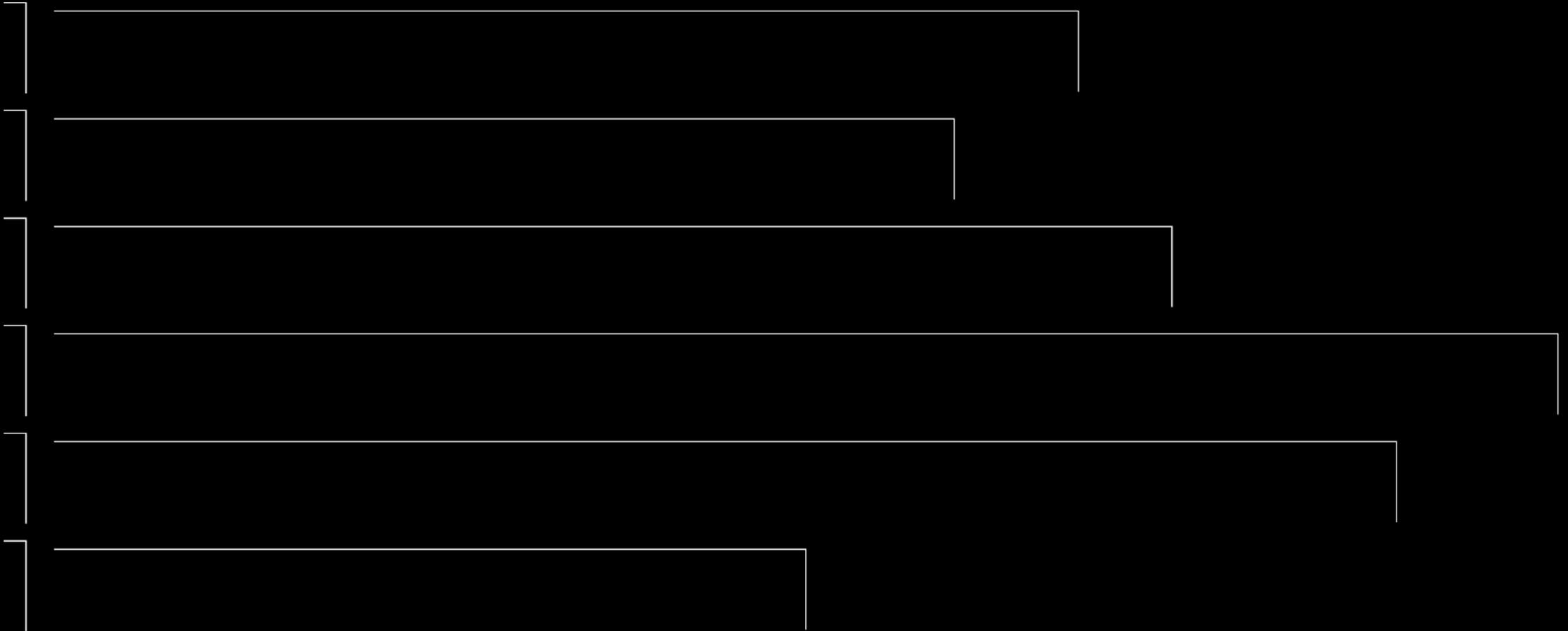


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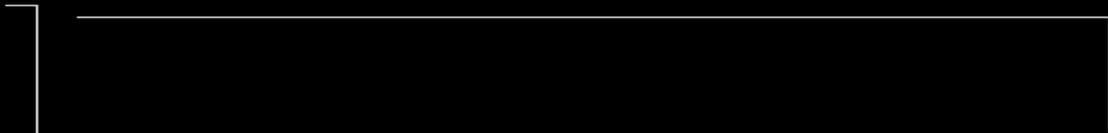
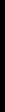
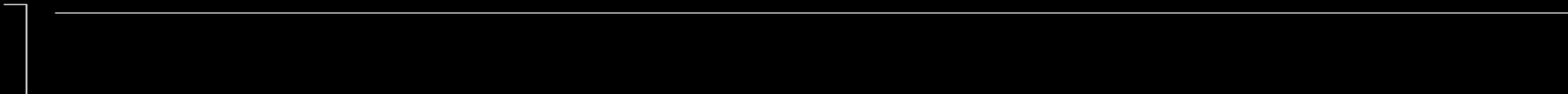
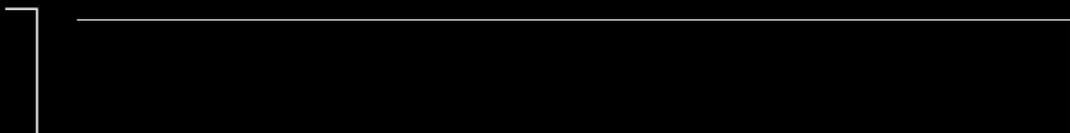
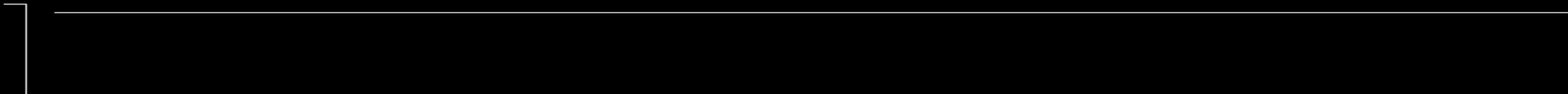
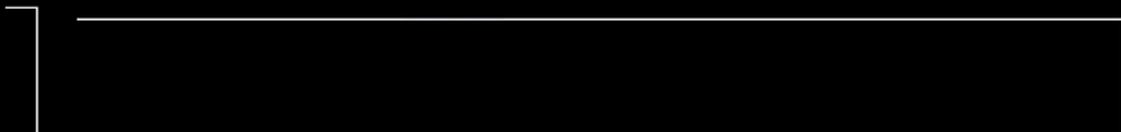
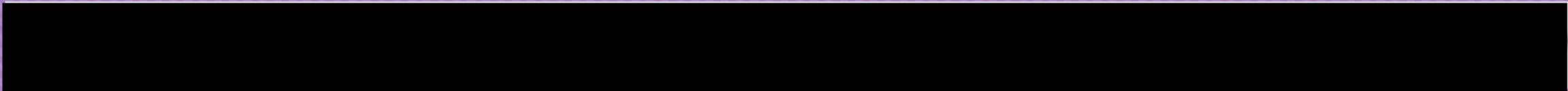
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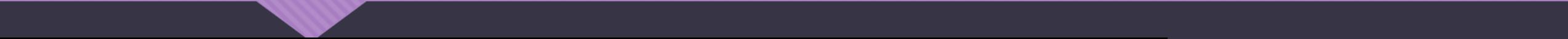
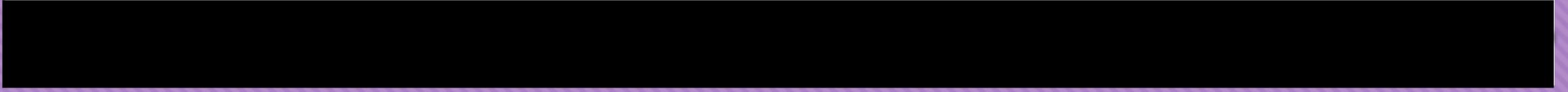
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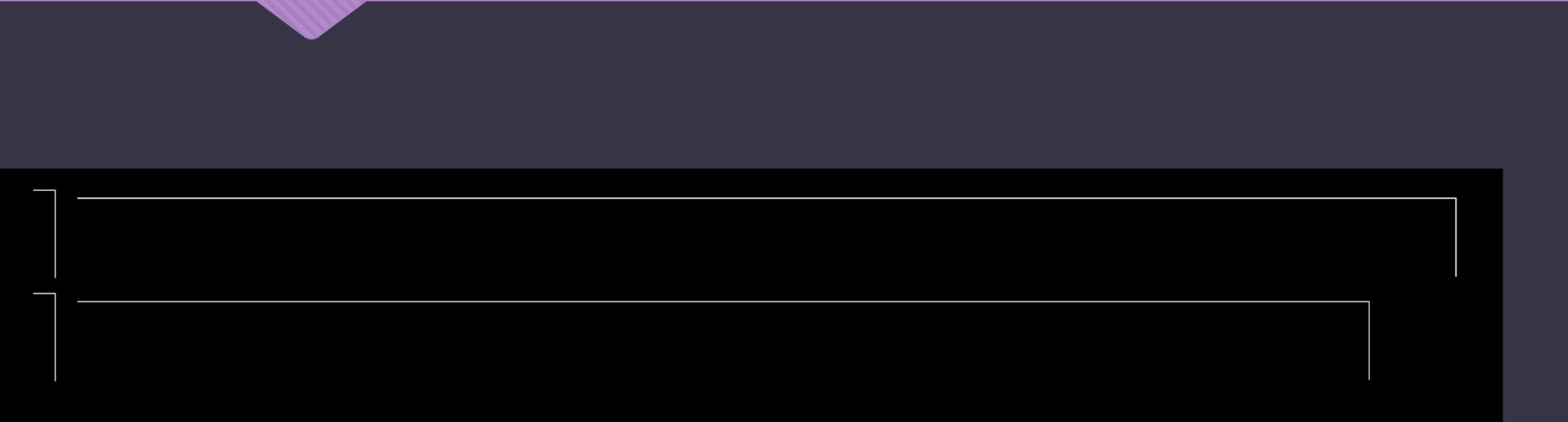




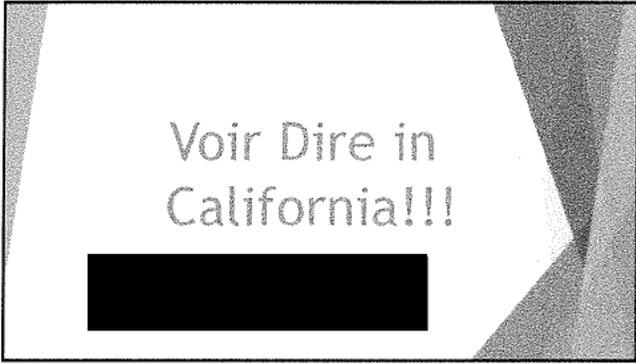
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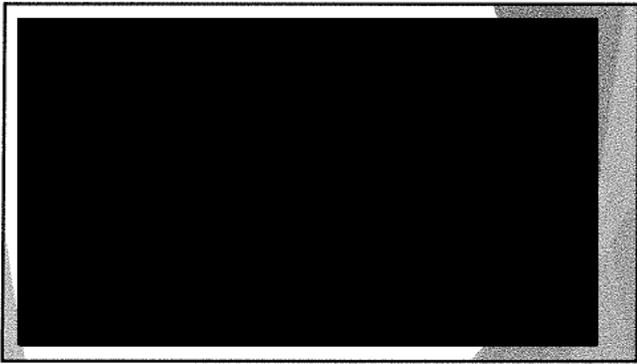
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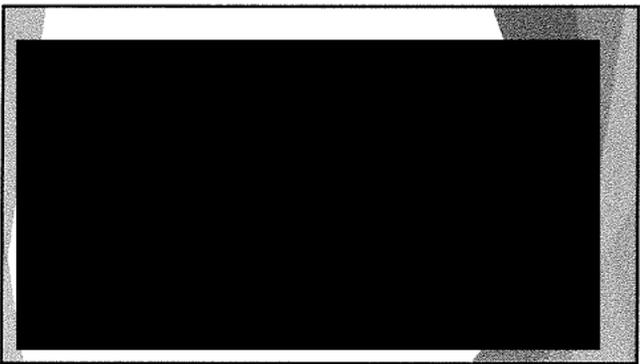
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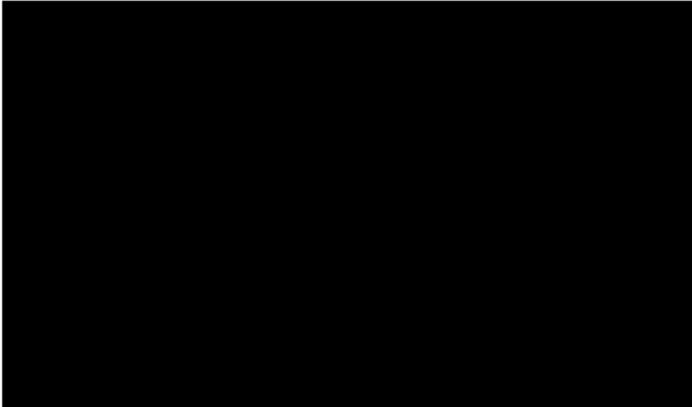
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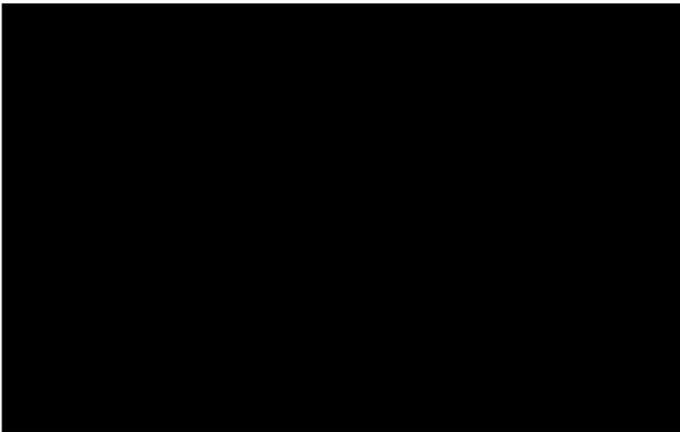
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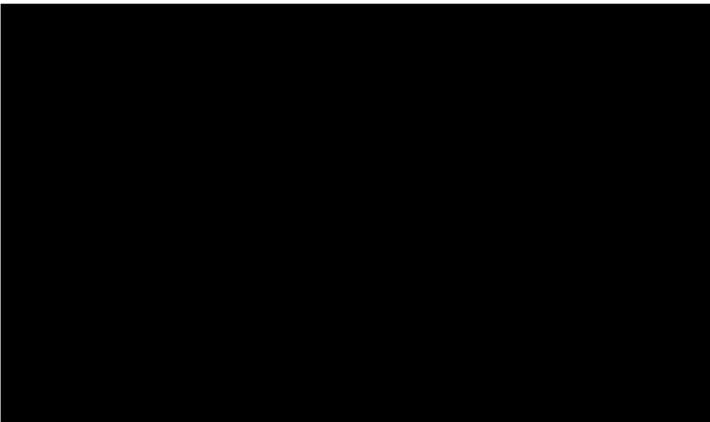
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The Law

The procedure for jury selection are set out in:

- ▶ California Rules of Court Section 4.200
- ▶ California Code of Civil Procedure Section 223
- ▶ AB 3070/CCP 231.7 - January 1, 2022 effective date
- ▶ Case Law

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CCP 223 & CA Rule of Court 4.201

- ▶ The Court shall conduct an initial examination of prospective jurors.
- ▶ This can be done orally or by written questionnaire, or both.

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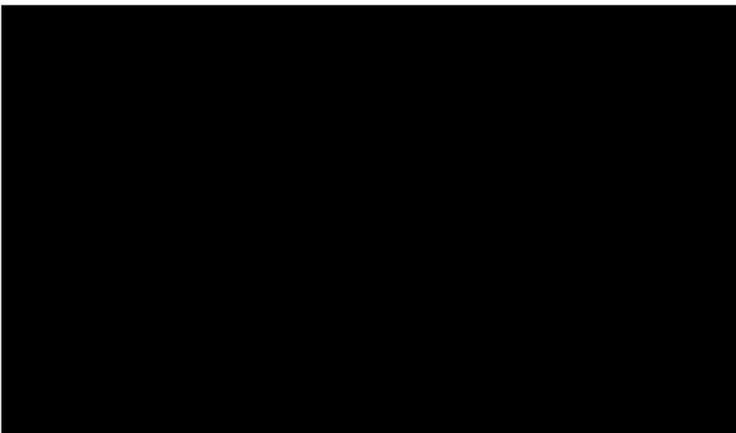
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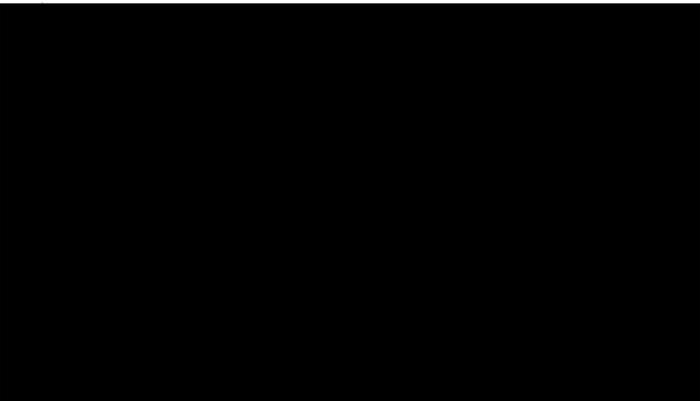
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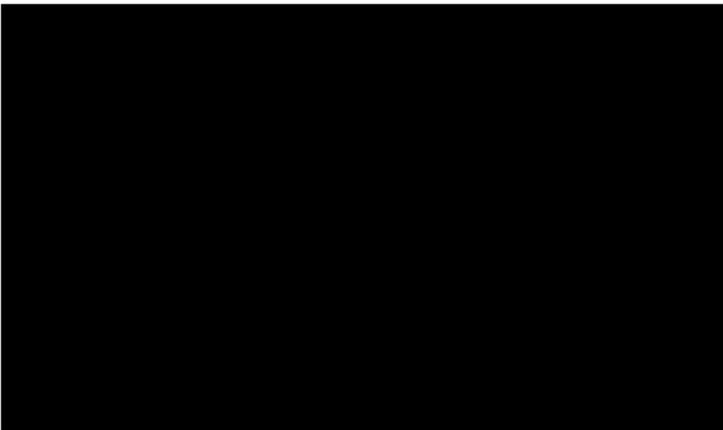
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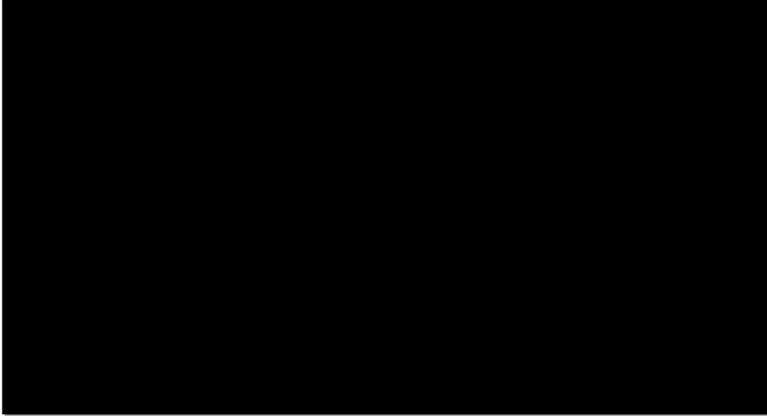
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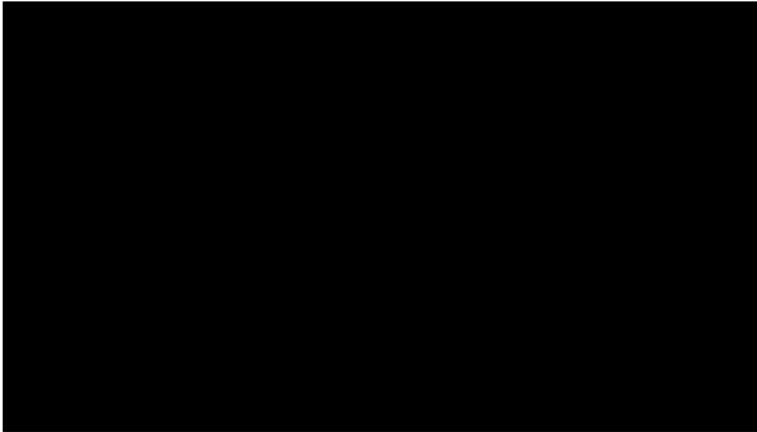
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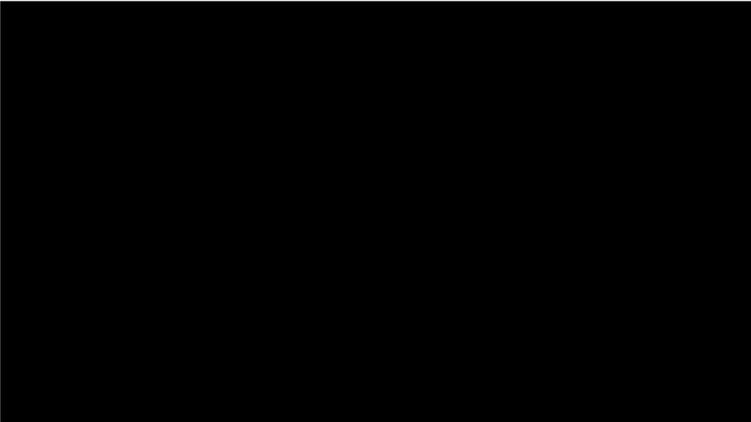
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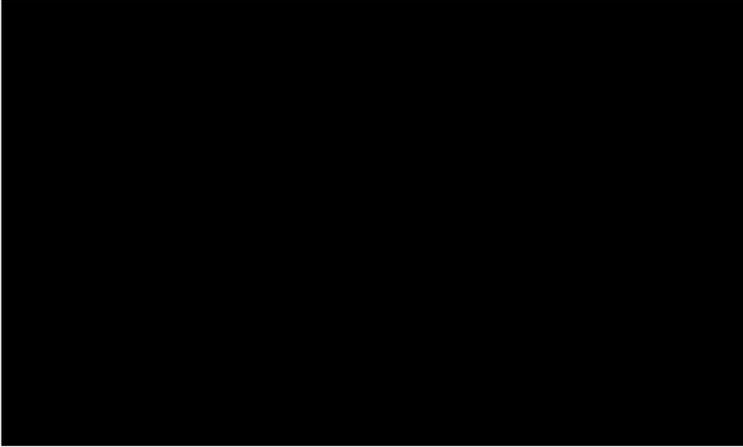
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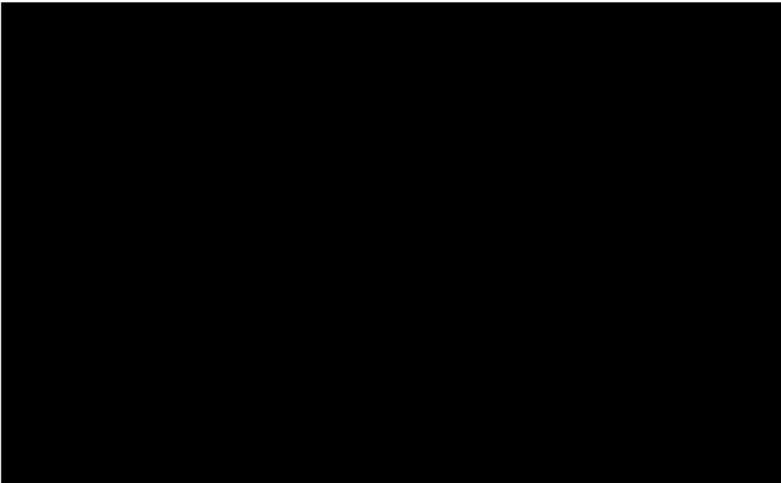
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On September 30, 2020, California Governor Gavin Newsom signed the landmark piece of legislation into law.

AB 3070 increases transparency in jury selection by requiring an attorney exercising peremptory strikes to show **clear and convincing evidence** that his or her action is unrelated to that juror's membership in a protected group or class. AB 3070 will take effect in criminal trials beginning on January 1, 2022, and in civil trials beginning on January 1, 2026.

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**AB 3070 - New Jury Voir Dire & Wheeler-Batson Rules**

AB 3070 contains the following "intent of the Legislature" language:

Peremptory challenges are frequently used in criminal cases to exclude potential jurors from serving based on their race, etc.

Current framework disproportionately harms African Americans, Latinos, and other people of color, and has failed to eliminate discrimination.

Requiring proof of intentional bias renders the current procedure ineffective as many of the reasons routinely advanced to justify the exclusion of jurors from protected groups are in fact associated with stereotypes or otherwise based on unlawful discrimination.

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AB 3070 - Changes to existing law:  
Eliminates the first prong of Wheeler- Batson precedent by no longer requiring a prima facie showing. "Upon objection to the exercise of a peremptory challenge pursuant to this section, the party exercising the peremptory challenge shall state the reasons the peremptory challenge has been exercised." CCP § 231.7(c)

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AB 3070 - Changes to existing law:  
[Redacted]

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AB 3070 - Changes to existing law:  
"Substantial likelihood" means more than a mere possibility but less than a standard of more likely than not.  
[Redacted]

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AB 3070 - Changes to existing law:

Defines "objectively reasonable person" as someone who is aware that implicit, institutional, and unconscious biases, in addition to purposeful discrimination, have resulted in the unfair exclusion of potential jurors. Unconscious bias includes implicit & institutional bias.

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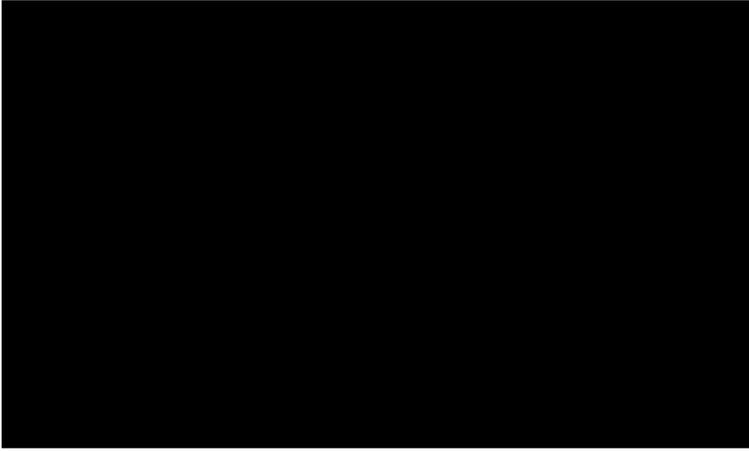
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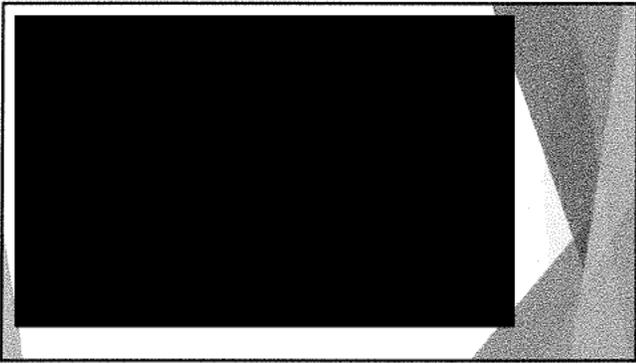
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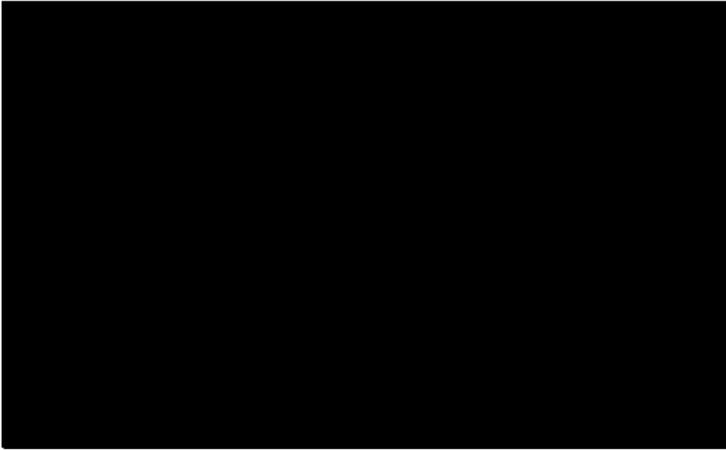
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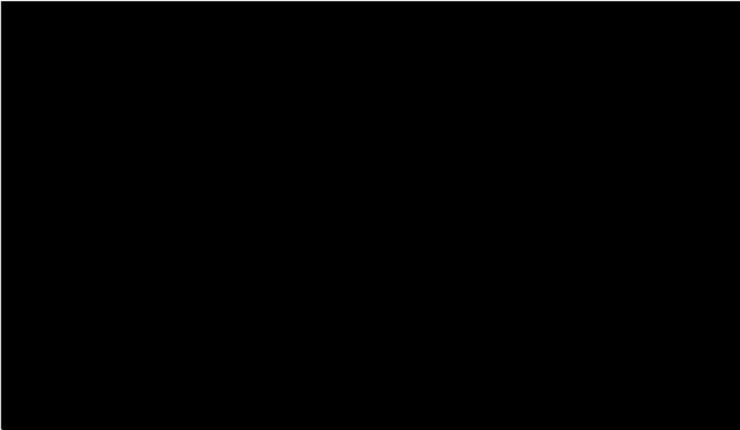
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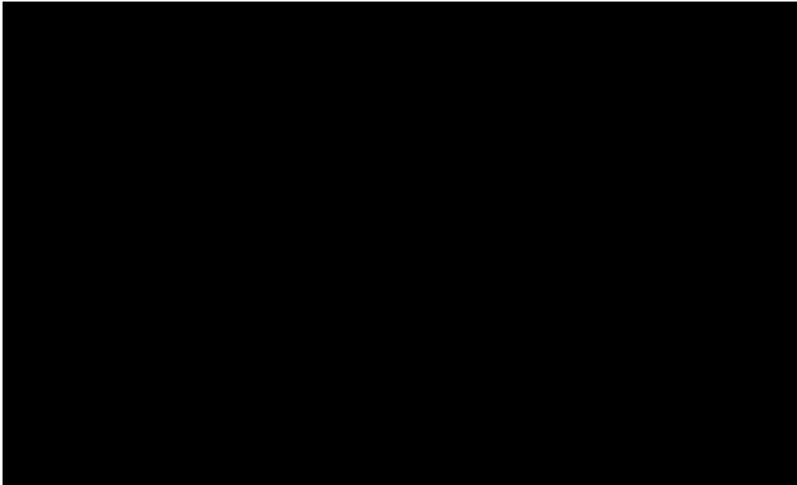
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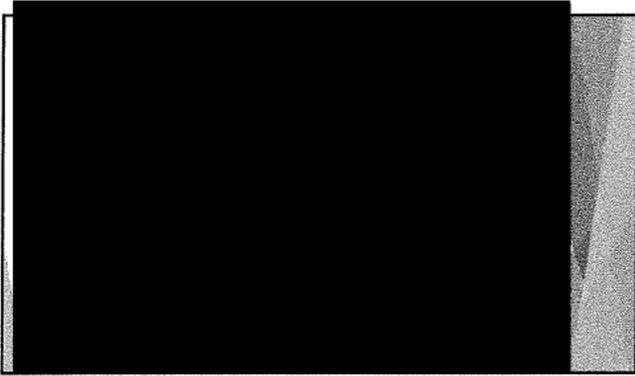
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Seven horizontal lines for writing, positioned to the right of the second redaction box.



Seven horizontal lines for writing, positioned to the right of the third redaction box.



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