

1 put them into evidence and logged them into this  
2 particular case.

3 Subsequent to that, if there were other items  
4 that were either submitted to the laboratory or  
5 submitted to property, they were all related to this  
6 particular LR number. As we progressed through the  
7 years, just as recently as a couple of years ago, an  
8 item was submitted to the laboratory. It was referenced  
9 to this particular LR number since it was part of this  
10 investigation.

11 Q Then as far as -- in conjunction with the  
12 LR number, there is another -- a DR number that's also  
13 assigned to it?

14 A Yes, sir. The DR number will be something that  
15 the individual investigating agency has. The reason we  
16 don't use the DR number in the crime laboratory is  
17 because our crime lab not only works with sheriff's  
18 department cases, such as this, we also work with  
19 individual police agencies, and they will have their own  
20 DR or reporting number system.

21 You can see there's a whole bunch of different  
22 types of numbers we would get from different agencies.  
23 The laboratory actually instituted its own laboratory  
24 report number, the LR number. So then we could readily  
25 keep track of individual cases without worrying about  
26 whether Colton PD used the same number as Fontana PD and  
27 so forth, just lessen the confusion.

28 Q Okay. As far as this particular case, can you

1 give us the DR number that was assigned to it?

2 A The DR number was 1331036 dash 07.

3 Q You said that you collected some vaginal swabs  
4 from the victim in this case.

5 That would be Rita Cobb?

6 A That's correct.

7 Q As far as the vaginal swabs, were they given an  
8 item number of some sort?

9 A Yes, sir.

10 Q What was the item number?

11 A The item number was A dash 11. When we went to  
12 the crime scene, everything that we were to collect at  
13 the crime scene was called item A and then in order as  
14 we collected them we sub-itemized them. So A-1 was the  
15 vacuum sweepings and so forth. A-11, then would be the  
16 11th item that we collected at the scene, which were the  
17 vaginal swabs from Ms. Cobb.

18 Q As far as the vaginal swabs were concerned, how  
19 were those collected by you?

20 A Two swabs were inserted into the vaginal area  
21 and swabbed around, withdrawn. One swab was then  
22 smearred across a microscope slide. That microscope  
23 slide being A dash 12. The swabs were dried and,  
24 packaged for later analysis.

25 Q As far as the swabs go, they were taken at the  
26 crime scene itself?

27 A This particular set of swabs was taken at the  
28 crime scene. There was another set taken later on at

1 the autopsy.

2 Q There was item, a felt pad of some sort, that  
3 was collected.

4 Do you recall that?

5 A Yes. That was Item A dash 18. Actually, it  
6 was in a group of items that were taken as A dash 18,  
7 and the felt pad was further examined and kind of  
8 sub-itemized with stains that were on the felt pad.

9 Q Then as far as the felt pad was concerned, I'm  
10 going to show you a photograph and then maybe you can  
11 point it out to the jury. Show you what's been marked  
12 Exhibit 14.

13 Do you see the felt pad in Exhibit 14?  
14 A The felt pad in the very lower right-hand  
15 corner of the photo, kind of a tan or brownish, light  
16 brown colored pad.

17 Q Let me see if I have another photograph. This  
18 one might be a better one. Show you what's been marked  
19 Exhibit 13.

20 Do you see that felt pad in that particular  
21 exhibit?

22 A Right in that area that I'm showing with the  
23 laser pointer here, which is somewhat to the lower left  
24 center of the photograph.

25 Q And then that particular item was given the  
26 designation A-18 along with other items of clothing?

27 A Yes.

28 Q Were there any blood stains that you analyzed

1 or collected?

2 A There were two blood stains that were not part  
3 of this particular -- directly within the room that we  
4 took -- that we collected. There was a blood stain that  
5 actually was on the door frame going into this room, and  
6 another blood stain that was on a portion of the hall or  
7 end of a wall in the hallway. Those are Items A dash  
8 23. That is the one in the hallway, and A dash 24,  
9 would be the one on the doorpost of the room.

10 Q Let's start with A dash 24, the one on the  
11 doorpost of the room.

12 Did you actually collect a sample of that?

13 A Yes. That would have been swabbed and removed  
14 from the doorpost.

15 Q When you swab it, how do you go about that?

16 A I believe at that time -- we've had a couple of  
17 different collection techniques. I believe at that time  
18 we had small squares of white linen that we moisten with  
19 sterile water and then swabbed over the top of the blood  
20 stain to collect it.

21 Q Okay. And then so that became A dash 24?

22 A Yes, sir.

23 Q And then I'm going to show you Exhibit 36,  
24 which depicts A dash 23.

25 Did you do the same thing regarding A dash 23  
26 as you did with A dash 24?

27 A Yes, sir.

28 Q Then at some point did you analyze any of these

1 blood stains, A dash 23 or A dash 24?

2 A Yes, sir. I did not analyze them immediately.  
3 It was quite a number of years later that I went back  
4 and actually analyzed them using the DNA techniques.  
5 Remember at that time in 1985, we were not doing  
6 forensic DNA work in our laboratory. We didn't start  
7 that until 1992, so it would have been after 1992 that I  
8 looked at these with DNA techniques.

9 Q Would looking at your reports and notes refresh  
10 your recollection as to when your analysis was done?

11 A Yes, sir. Yes, sir. 1999 was when I took a  
12 look at the two blood stains that were on the -- that we  
13 previously spoke of.

14 Q When you were taking a look at the two blood  
15 stains, did you also look at a profile from the victim  
16 in this case?

17 A Yes, sir. Actually, as a matter of fact, there  
18 were about 16 different reference profiles that I looked  
19 at at that time, which includes the reference sample  
20 from the victim.

21 Q Then as far as Item A-23 and A-24, what type of  
22 DNA analysis did you do to those specific items?

23 A I used a -- a technique that involved the  
24 polymerase chain reaction, PCR process that we spoke of  
25 earlier, and it employed a DNA-typing kit, in fact, a  
26 couple of kits that we were using at that time in 1999.  
27 This is prior to the one that we have employed most  
28 recently, but it still was discriminating enough to tell

1 the difference among all of these reference samples, and  
2 I was able to distinguish among all of the ones that I  
3 looked at and also to determine that that particular --  
4 these two particular stains had the same DNA type as the  
5 victim and not of any of the other reference samples.

6 Q As far as the -- I guess it would be the random  
7 probabily that this same profile was found in another  
8 human being, did you also determine what that was?

9 A Yes, sir. What you're looking for is basically  
10 a population frequency, how common does this particular  
11 set of DNA markers occur in the general population. I  
12 did some calculations for what I called three major  
13 ethnic groups that we report in our report.

14 Q What were those calculations as far as Items  
15 A-23 and A-24?

16 A You would expect that -- that particular DNA  
17 type or particular profile to occur in 1 in 27,000  
18 Caucasians, 1 in 160,000 Hispanics, and 1 in about  
19 610,000 African Americans or blacks as we reported at  
20 that time.

21 Q Then as far as that specific testing that you  
22 did, was that specific testing generally accepted in the  
23 scientific community as reliable and accurate back then?

24 A Yes, sir. It still is today. It's just not as  
25 discriminating -- not as powerful as the current  
26 technology. So we've moved onto more powerful  
27 technologies.

28 Q As far as these specific numbers, I think you

1 talked about it earlier, they're not 1 in 7 billion or  
2 trillion or quadrillions?

3 A These numbers are not. They're still fairly  
4 specific.

5 Q Then based on your own training and experience,  
6 did you have an opinion as to whose blood that was on  
7 these stains A-23 and A-24?

8 A My opinion would be that particular blood would  
9 be that of the victim.

10 Q That would be Rita Cobb?

11 A That's correct.

12 Q At some point did you extract DNA from Item A  
13 dash 11, the vaginal swabs taken from Rita Cobb?

14 A Yes, sir, I did.

15 Q And how did you do that?

16 A The purpose of looking at vaginal swabs is to  
17 look to see if there had been a sexual assault, which  
18 would mean there could be the -- I shouldn't say sexual  
19 assault -- if there had been sexual intercourse, which  
20 would mean the possible presence of what are called  
21 sperm cells.

22 The samples that contain spermatozoa are  
23 handled different than other samples that are extracted  
24 for DNA. Something about the spermatozoa cells that  
25 make them hardier than non-sperm cells. If you have a  
26 mixture, such as, when we take a vaginal swab, you're  
27 going to have vaginal epithelial cells from whoever the  
28 victim is.

1 Q When you say epithelial cells, what are you  
2 referring to?

3 A Upper surface skin-cell type of cells. The  
4 soft, soft tissue cells on the inside of the vaginal  
5 vault. Those can be broken open and dissected and DNA  
6 recovered from them and have the sperm cells stay  
7 intact. We have a different extraction process by which  
8 we'll take a portion of the vaginal swab, put it in a  
9 solution, treat it for a short amount of time with  
10 chemicals which will break open these non-sperm cells  
11 and allow the DNA to float free in the solution.

12 The sperm cells stay intact. If I take that  
13 sample and put it in a centrifuge and spin it really  
14 fast, the sperm cells will go to the bottom. The liquid  
15 with the DNA from the non-sperm cells floats to the top.  
16 I can take my test tube, draw off the liquid on the top.  
17 It now has a non-sperm cell DNA, which most would have  
18 come from the victim. I expect all of that DNA to be  
19 the same as the victim's type.

20 The sperm cells that are at the bottom -- sperm  
21 cells did not come from the victim. I can now treat  
22 them a little more harshly, which will break open the  
23 cells, break open the nucleus in there and get the DNA  
24 out of the sperm cells in seconds. I now have separated  
25 sperm cell DNA from the non-sperm DNA, and I can  
26 individually type them and compare them to reference DNA  
27 samples that I get from individuals.

28 Q Okay. Then once you do the extraction from the



1 cells, is that something -- you stated before that there  
2 is a different type of technology that you were using or  
3 a system that you were using back in 1999?

4 A Back in 1999, there was a different typing --  
5 way that we typed the DNA. In fact, I believe when I  
6 first started looking at these samples, it was actually  
7 in 1997 when I started looking at these samples. The  
8 technology that we used, it was what we call typing or  
9 comparison part of it toward the end of our DNA work.

10 The initial part of it when we extract the DNA,  
11 we digest it, we break it open, that part has maintained  
12 and been steady throughout. I still use the same  
13 process today as I did when I first started in DNA 20  
14 years ago, break open these cells, differentially break  
15 open the non-sperm cells and sperm cells. That's the  
16 same techniques.

17 Where the advances have come is in the DNA  
18 typing itself. The typing I used back in 1997, some of  
19 that typing needed a lot of DNA other parts I used the  
20 polymerase chain reaction and used a small amount of the  
21 DNA that I recovered.

22 What I should tell you is that when we separate  
23 out these extractions, and I have non-sperm cells and  
24 the sperm cell, I have it in a small volume of water  
25 based, like aqueous solution, and I -- first thing I had  
26 to do is figure out how much of that is human DNA.  
27 There might be some bacterial DNA. So how much is  
28 human. After I figure out how much is human, then I

1 know how much of it I can take, and maybe there's a  
2 volume of 40 microliters. It might be that I can take  
3 five microliters off of that and be able to do all of my  
4 DNA testing and still save some of that liquid for  
5 someone else to test later if they need it.

6 So this quantitation that I do, determining how  
7 much human DNA is there, is rather critical to know how  
8 much of the sample I need to use in order to do my  
9 typing.

10 It also will then, as I mentioned, let me know  
11 if this sample will have something left for future  
12 technologies, which may come about.

13 Q As far as the typing procedure that you used,  
14 you said that the extraction procedure is basically the  
15 same throughout from 1999 to when you did it to today.

16 The typing that's done or that you used in  
17 1999, is that different than the typing that was used in  
18 2003?

19 A Yes, it is. It's -- the typing is very  
20 different. It is -- it uses a totally different set of  
21 DNA factors and DNA locations that it looks at. In  
22 fact, the results that I got in 1993 --

23 Q '99.

24 A '97, the results that I got in 1997 are not  
25 compatible with the DNA typing results that we get now.  
26 I can't take these and compare them to the new kit or  
27 new set of data. I would need to take a small little  
28 bit of that extract and process that with this new

1 typing kit in order to get a new set of data or  
2 additional DNA information. I have the -- I hesitate to  
3 call it the old DNA information that I got in '97, and  
4 then if the sample was retyped to get a new set of DNA  
5 information using that more recently developed DNA  
6 typing kit.

7 Q So we're clear, as far as the extraction that  
8 you did in 1999 of the vaginal swabs labeled A dash 11  
9 and LR Number 44659, those being extracted samples,  
10 hypothetically, let's say criminalists in 2003 wanted to  
11 use the extracted samples that you obtained in 1999 to  
12 do the typing that was more advanced in 2003, there's no  
13 effect that your extraction would have on that DNA  
14 typing that's done in 2003?

15 A That's correct. In fact, one of the reasons  
16 that I save the extractions after I have taken my small  
17 portion off and typed them, I save them, package them  
18 away, if somebody else wants to test, whether to retest  
19 my work or to test with an additional DNA typing  
20 technique, I put them away to allow them to do that.  
21 That's why we save it, so it can be tested again.

22 Q Then once you do the extraction, you said you  
23 packaged it up.

24 Is it -- how do you package it up, if you can  
25 describe that for us?

26 A Well, the final result that I get is in a tube,  
27 a small what they call a cryovial tube, that final  
28 extract, and it's from there that I take off a small

1 portion I'm going to use. The amount that remains,  
2 there's a screw cap on the top of the cryovial. It then  
3 gets -- actually, I package it into several different  
4 envelopes, different extracts into different envelopes,  
5 put a bar code on them, and submit them for storage in  
6 our property unit.

7 Q And as far as the storage, you have been at the  
8 crime lab all these years, are they properly stored in  
9 accordance with what's generally accepted in the  
10 scientific community?

11 A Yes, they were. By procedure, we freeze them.  
12 The truth is, the solution that we keep the DNA in, you  
13 probably don't truly need to freeze it, but I guess I  
14 would call it for appearances sake, we store it in a  
15 freezer.

16 Q Then as far as that solution is concerned, is  
17 that something that lasts indefinitely or is there a  
18 certain number of years you can keep it for?

19 A As far as I know, there is not a shelf life, if  
20 you will. It might be somewhat dependent on how strong  
21 the DNA selection is. If it's really concentrated DNA,  
22 it probably will last longer. If it's weak DNA, I don't  
23 know if it will stick to the inside of the plastic of  
24 tube and over time become less able to type.

25 In this instance, there was a lot of DNA in  
26 these tubes. I think they're going to last a long time  
27 as long as you still have the solution in there until  
28 you use it up.

1 MR. THOMAS: Nothing further.

2 THE COURT: Do you have questions you want to  
3 ask?

4 MR. SANDERS: A couple, your Honor.

5 THE COURT: We'll do that tomorrow.

6 MR. SANDERS: Yes, sir.

7 THE COURT: 10:00, ladies and gentlemen.  
8 You're admonished that it is your duty not to converse  
9 among yourselves or with anyone else about any matter  
10 connected with this case nor form or express an  
11 opinion on it until it's submitted to you. See you  
12 tomorrow morning at 10:00.

13 Mr. Jones, see you then. You can step down.

14 THE WITNESS: Thank you.

15 (Whereupon the following proceedings were held outside  
16 the presence of the jury:)

17 THE COURT: Okay. The jury is gone. You  
18 wanted to put something on the record this morning,  
19 Mr. Thomas. This is the time to do it.

20 MR. THOMAS: I just wanted to put on the  
21 record this morning that we had a case, Helen Brooks.  
22 It's an unsolved homicide over at the sheriff's  
23 department, and it's still unsolved. There's a  
24 different DNA profile that was obtained from the  
25 vaginal swabs on that case versus this particular  
26 case, but the fact that there was a victim who was  
27 similarly aged as Rita Cobb, Helen Brooks was 60 at  
28 the time that she was killed, and it was in the same

1 general area, as far as the high desert. She was  
2 murdered in Apple Valley, and, in fact, that occurred  
3 a few months prior to this murder.

4 My office thought that it would be good for  
5 Mr. Sanders to come over and look at the file. I did  
6 provide him an opportunity to do so. We gave him access  
7 to the entire Helen Brooks file. He spent pretty much  
8 an entire day looking through the file and taking notes,  
9 but I just had a concern that this might be potential  
10 Brady material in the future if I didn't disclose it.

11 THE COURT: I thought we already talked about  
12 this.

13 MR. SANDERS: We did not, your Honor.

14 THE COURT: Okay. You have -- you  
15 acknowledge that you've had a chance to look at the  
16 prosecution's file; right?

17 MR. SANDERS: I have.

18 THE COURT: Anything else to be said on the  
19 subject?

20 MR. THOMAS: No.

21 MR. SANDERS: Well, the -- the -- I  
22 thought -- I'm sorry. Let me bring up a different  
23 point. It would be my intention to ask the  
24 criminalist and some of the others about the Brooks  
25 case, and the reason is this; your Honor, it is in  
26 many respects almost identical to the Rita Cobb case.  
27 I can't give you a list right now, but there's so many  
28 ways these two cases are similar because of that for

1 the first two or three years after September 23rd of  
2 1985, the sheriff's department treated the two cases  
3 as if they had been committed by the same person.

4 There were several investigations to determine,  
5 you know, who might have done both of these cases, and I  
6 think that that's part of the information that's  
7 important in this case to -- to demonstrate to the jury.  
8 I assume Mr. Thomas was going to object to my  
9 questioning along that line, and I thought that that's  
10 why we put it off till now, so it would not be mentioned  
11 if I chose to give an opening statement at the start of  
12 the case.

13 MR. THOMAS: The People -- Mr. Sanders is  
14 correct. The People would be objecting based on  
15 relevance. We wouldn't be able to bring in evidence  
16 that, well, maybe John Yablonsky is responsible for  
17 the Helen Brooks murder. He committed this murder.  
18 The Court would look at the evidence and say, wait a  
19 minute. There's an entirely different DNA profile  
20 there. What evidence do you have to link  
21 Mr. Yablonsky to the Helen Brooks case?

22 Same thing with this scenario. What evidence  
23 does Mr. Sanders have to link somebody else who might  
24 have been involved in the Helen Brooks murder to the  
25 Rita Cobb murder? There is none. I think that it would  
26 confuse the jury. It's an undue waste of court time,  
27 and I think that weighing the probative value versus the  
28 prejudicial effect or the undue waste of time, I think

1 that the probative value is slim to none.

2 THE COURT: And confusion really.

3 MR. SANDERS: No, in --

4 THE COURT: Just one second. Mr. Sanders,  
5 I'm not going to spend anymore time on this now. See  
6 me in the morning with whatever authority you have,  
7 either one of you. Everybody can bring in authority  
8 that would be helpful.

9 MR. SANDERS: Thank you.

10 THE COURT: The fact that Mr. Yablonsky did  
11 not kill Helen Brooks does not mean he did not kill  
12 Rita.

13 MR. SANDERS: Absolutely, but it -- there's a  
14 different -- it's a two-edged sword.

15 THE COURT: Bring me those cases that you  
16 find that you think shed light on this if there is  
17 such authority. I don't -- I don't know what you'll  
18 find, but if there's something there, give it to me  
19 tomorrow.

20 MR. SANDERS: Thank you, your Honor.

21 THE COURT: See you tomorrow at 9:45.

22 MR. THOMAS: Thank you, your Honor.

23 (Whereupon proceedings in the above-entitled  
24 matter were concluded for the day.)

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1 VICTORVILLE, CALIFORNIA; JANUARY 25, 2011;  
2 DEPARTMENT NO. V-2 HONORABLE JOHN M. TOMBERLIN, JUDGE  
3 A.M. SESSION  
4 (Appearances as heretofore mentioned.)  
5 (Shawna Manning, Official Reporter, CSR No. 12827.)

6 -oOo-  
7 (Whereupon the following proceedings were held outside  
8 the presence of the jury:)

9 THE BAILIFF: Remain seated. Come to order.  
10 Court is now in session.

11 THE COURT: Back on the record in the case of  
12 People of the State of California versus John Henry  
13 Yablonsky who is here with his attorney,  
14 David Sanders. Mr. Thomas is here along with his  
15 investigating officer, Detective --  
16 Detective Alexander.

17 Mr. Sanders.

18 MR. SANDERS: Yes, sir. I had two matters I  
19 wanted to address the Court. As I indicated in  
20 chambers, the first is; as I indicated yesterday,  
21 there is a case of a woman --

22 THE COURT: I don't think we need to  
23 reiterate the issues regarding Ms. Brooks. We've gone  
24 over this, and the case that you referred to, People  
25 versus Hall 41 Cal.3d 826 regarding the issues of  
26 third party culpability.

27 MR. SANDERS: Yes, your Honor. My position  
28 is that it is relevant evidence. It would assist the

1 jury in understanding the case and the situation that  
2 existed back in 1985. For those reasons, I would ask  
3 the Court to allow us to introduce that evidence.

4 THE COURT: Mr. Thomas.

5 MR. THOMAS: I think the Court's already  
6 dealt with that, in certain aspects, prior to us  
7 beginning trial. As far as People versus Hall, I  
8 think the case law, if I recall correctly, states that  
9 mere motive and opportunity is not enough to bring  
10 about third party culpability in a case.

11 Mr. Sanders hasn't even proved mere motive or  
12 opportunity. I don't see how Hall even applies or that  
13 he can get this under third-party culpability, and I'd  
14 ask the Court to prohibit him from going into this line  
15 of questioning.

16 THE COURT: 352, it seems like it's likely to  
17 lead to confusion. There's no one else that's being  
18 tried for this particular crime, but Mr. Yablonsky  
19 isn't accused of having killed Ms. Brooks. It's just  
20 as likely to lead to prejudice against Mr. Yablonsky  
21 as it would be -- it doesn't, in my opinion, tend to  
22 exonerate him by any means with the possible exception  
23 of leading to confusion. I don't see what the  
24 advantage would be to the defense to have this  
25 information in, and I'm going to order that it -- find  
26 that it is more prejudicial than probative and unduly  
27 consumptive of court time and likely to confuse the  
28 jury.

1 I know the next thing is -- let's go ahead and  
2 put it in the way you put it in chambers. You want to  
3 establish the reputation of the victim in this case as a  
4 barfly. I don't see it.

5 MR. SANDERS: Actually, what I didn't want to  
6 do is try to do that. What I would like to do is just  
7 to have the jury understand, as everyone else in  
8 those -- in 1985 understood, that Ms. Cobb did have a  
9 number of gentleman of different ages, and she  
10 entertained them at her residence. She invited them  
11 to be there, and it was not uncommon for her to have  
12 male guests at home.

13 MR. THOMAS: I would argue it's improper  
14 character evidence. What's the relevance of that?  
15 It's just to dirty the victim up.

16 THE COURT: I don't see the relevance either.

17 MR. SANDERS: There -- it's one thing if --  
18 if we -- if we had -- we had -- if we had a person  
19 that never had anybody at her house. Then if you have  
20 someone at her house, it means a lot more.

21 THE COURT: You've asked the son of the woman  
22 did he know that she dated, did she have people over.

23 MR. SANDERS: Well, there was more. I had  
24 additional questions to ask both him and Marta on that  
25 subject.

26 THE COURT: I think that you established  
27 enough for whatever you needed to. It wasn't like she  
28 had no one ever at her home. I haven't allowed

1 Mr. Thomas, nor has Mr. Thomas attempted to, establish  
2 as you just put it that she is someone who doesn't  
3 engage with any kind of social intercourse was what  
4 you called it.

5 MR. SANDERS: Thank you, your Honor.

6 THE COURT: That's -- that's it?

7 MR. THOMAS: The only other matter before we  
8 bring the jury is I was going to ask the Court's  
9 permission to reopen.

10 THE COURT: That's fine. Bring the jury.

11 MR. SANDERS: No objection.

12 THE COURT: You said that you don't object,  
13 Mr. Sanders?

14 MR. SANDERS: Yes, your Honor.

15 (Whereupon the following proceedings were held in open  
16 court in the presence of the jury:)

17 THE BAILIFF: Remain seated. Come to order.  
18 Court is now in session.

19 THE COURT: Back on the record in the case of  
20 People of the State of California versus John Henry  
21 Yablonsky who is here with his attorney,  
22 David Sanders. John Thomas is here for the People  
23 along with Robert Alexander, his investigating  
24 officer.

25 Before we get started this morning, I was  
26 advised that there was someone in the hallway, not one  
27 of the jurors, but someone near the jurors that had a  
28 copy of the Daily Press. Apparently it has an article