

1 sperm fraction, the donor's also an 8. CSF1PO the sperm
2 fraction is 10, 11. The reference is also 10, 11. D3
3 is 15, 18, and here, again, in the reference sample is
4 15, 18. D16 is 11, 12 and here in the reference sample
5 11, 12. D7 is 10, 12. Here, again, the reference
6 sample 10, 12.

7 Q At the end of the day, do you have an opinion
8 as far as Item J dash 1 and whether or not that specific
9 item or the person that contributed that item is the
10 donor that left Items A dash 18a, sperm fraction, and A
11 dash 18b, sperm fraction, and Item A dash 11, sperm
12 fraction?

13 A For A-18a and b, sperm fractions, I performed
14 the work and the -- the profiles match the reference
15 sample from John Yablonsky. For A dash 11, sperm
16 fraction, looking at the table that was provided, it
17 appears to match the reference sample, which I did the
18 extraction and the analysis.

19 Q As far as your analysis is concerned on the
20 items that you did the analysis, the A dash 18a and b,
21 the non-sperm fraction, do you have an opinion as to who
22 the major donor is for the non-sperm fraction?

23 A I'm going to refer to my report. The non-sperm
24 fraction, the results determined indicate a mixture of
25 two people consistent with contributions from a male and
26 a female. Assuming only two donors and that male donor
27 from the sperm fraction is a contributor, then Rita Cobb
28 is included as a possible source of the female DNA

1 detected in the non-sperm fraction as Item A-18a.

2 Q As far as the stain was concerned, your notes
3 indicate it was a felt pad?

4 A Yes.

5 Q Okay. If it's a stain that has a non-sperm
6 fraction and a sperm fraction on there, what conclusions
7 can you come up with as far as why you have a female
8 profile and a male profile in the stain that's on the
9 felt pad?

10 MR. SANDERS: Objection, your Honor, beyond
11 her expertise.

12 THE COURT: Just a minute. I heard you
13 whispering something, Mr. Sanders. Why don't you say
14 it out loud.

15 MR. SANDERS: I will. Objection that appears
16 to be beyond her expertise. It would call for
17 speculation.

18 THE COURT: Can you answer that question
19 without speculation?

20 THE WITNESS: I didn't examine the body or do
21 any serological tests on it, but there is male and
22 female DNA. That's about all I can say. I can't say
23 where it could have come from.

24 BY MR. THOMAS:

25 Q Hypothetically, if you had --

26 THE COURT: Let me back up for a second and
27 sustain the objection to the previous question.

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1 BY MR. THOMAS:

2 Q Hypothetically, if you had a semen stain on an
3 item, if that person had not engaged in any sexual
4 intercourse with a female, would you expect there to be
5 any female DNA?

6 A Well, there's two scenarios, one is that the
7 semen was deposited in a female and drained out. The
8 other scenario is that there was female DNA already on
9 the pad and then semen was deposited on that female DNA
10 causing a mixture. There's two possible scenarios.

11 Q As far as the DNA that you would get from the
12 semen stain, without one of those two scenarios coming
13 up, you wouldn't expect there to have been any female
14 DNA?

15 MR. SANDERS: Objection. Incomplete
16 hypothetical. Calls for speculation.

17 THE COURT: Can you answer that question
18 without speculating?

19 THE WITNESS: Can you say that again?

20 BY MR. THOMAS:

21 Q Hypothetically, if -- let's say there's an item
22 and no female has ever touched that item, and a male
23 donor deposits a semen stain on that item, would you
24 expect there to be any female DNA?

25 A No, not if no female has touched it.

26 MR. THOMAS: Okay. If I can have just a
27 second, your Honor? Nothing further at this time.

28 THE COURT: Mr. Sanders.

1 MR. SANDERS: Thank you, your Honor.

2 **CROSS-EXAMINATION**

3 BY MR. SANDERS:

4 Q Ms. Anderson, you used a very large number when
5 you said how many persons you would expect to find these
6 numbers in the Caucasian population.

7 A Yes.

8 Q You got that number by multiplying the
9 possibilities of each of the separate allele counts;
10 correct?

11 A Yes.

12 Q And so after you -- if there's ten chances at
13 the first place and ten chances at the second place,
14 then 1 in 100 chances of both of those?

15 A Correct.

16 Q That's how you got that big number?

17 A Yes.

18 Q Then the prosecutor asked you a different
19 question. He said, in what size population would you
20 expect -- how many people would you have to have in a
21 population to find that.

22 That's not the same question; is it?

23 A I believe the way I phrased it was that I would
24 expect to find that particular profile once within a
25 profile of a certain size. That is a calculated number.

26 Q That would be on average?

27 A That's how big of a population I would expect
28 to have to be able to find that profile once.

1 Q Okay. For the jury, if I have a dice that has
2 six sides, you would say that you would expect the six
3 to come up one out of six times; correct?

4 A Yes.

5 Q But you know and I know that if I shake that
6 dice six times, the six might come up two times or three
7 times or four times or not at all; correct?

8 A Okay.

9 Q Right?

10 A Potentially.

11 Q Okay. So on average, if I shook that dice six
12 times, a thousand sets of that, how many shakes would it
13 take to get a second six on average?

14 A I'd have to have my calculator on me to do
15 that.

16 Q But the answer in your head is probably
17 somewhere around three; correct?

18 A I didn't even try to calculate it.

19 Q Okay. And you didn't try to calculate that
20 with these numbers either?

21 A No. I have a computer program where I put in
22 the profile and it calculates the population frequencies
23 for me because the numbers are -- there are so many
24 calculations and the numbers are so large, it is too
25 easy for me to do it by hand to make mistakes.

26 Q What was the number that you gave when you
27 multiplied the possibilities of each of those separate
28 alleles? What number did you get for white, Caucasian?

1 A The population frequency?

2 Q Well, I don't know what you call it, but you
3 told me that you got that big number by taking the
4 chances of each one of these separate alleles and then
5 multiplying them out; correct?

6 A Okay. Yes.

7 Q That's how you got that large number?

8 A Through the computer program.

9 Q Did you write that computer program?

10 A It was written by a former member of our
11 laboratory.

12 Q You did not write it?

13 A No.

14 Q And have you independently verified that the
15 computer program is accurate?

16 A It was validated in our laboratory by a
17 technical leader.

18 Q Have you done it?

19 A No.

20 Q So you couldn't testify that that's been done
21 without quoting someone that isn't here?

22 A Not personally, no. I did not validate it.

23 Q Okay. So when you were reaching these numbers,
24 you didn't just do the math on your calculator saying
25 there's 1-in-13 chance on the first one, 1-in-29 chance
26 on the second chance, so 13 times 29 and going on? You
27 didn't do it that way?

28 A No, sir.

1 MR. SANDERS: Okay. Thank you, ma'am. No
2 further questions on cross.

3 THE COURT: Mr. Thomas.

4 REDIRECT EXAMINATION

5 BY MR. THOMAS:

6 Q As an expert in the area of DNA, is that
7 computer program something that people generally rely
8 upon in the DNA scientific community to come up with
9 these numbers?

10 A The computer program we've been using was
11 created by another analyst, and I believe it was used at
12 the laboratory that he then went on to be a technical
13 leader at in Northern California, and it was validated
14 in our laboratory by our technical leader at the time
15 that we were going to start using it.

16 Q And as far as the equipment that you use and
17 everything, you don't personally validate any of that
18 either; correct?

19 A I have been part of validations but not
20 everything in our laboratory, no.

21 Q Okay. And as an expert, you still rely on that
22 equipment also?

23 A Yes.

24 Q And that's generally accepted within the DNA
25 scientific community to rely upon that equipment to do
26 your calculations and do your analysis?

27 A Yes.

28 MR. SANDERS: Objection, your Honor, lack of

1 foundation as to that answer.

2 THE COURT: Overruled.

3 MR. SANDERS: I don't know if she knows that.

4 THE WITNESS: Yes.

5 MR. THOMAS: Your Honor, can we approach real
6 quick?

7 THE COURT: Sure.

8 (Whereupon the following proceedings were held at the
9 bench out of the hearing of the jury:)

10 MR. THOMAS: Mr. Sanders went into all
11 these -- these possibilities regarding how this DNA
12 profile could show up in the population. I was going
13 to ask the question of CODIS and not going into what's
14 CODIS but -- I'm going to ask the questions regarding
15 CODIS and how this profile, A dash 11, was put into
16 CODIS in 2003 and how there were no hits on this
17 particular profile until 2008 or late 2008 there was a
18 hit to Mr. Yablonsky. During this five-year-time
19 period there were thousands -- hundreds of thousands
20 of profiles that were put into CODIS and none of those
21 profiles ever came up as being a match to this
22 particular profile in A dash 11.

23 MR. SANDERS: First of all, I don't think we
24 have a witness that can testify to that. Second of
25 all, that's not what I brought up at all. I basically
26 just brought up the fact that instead of 1 in
27 1 trillion, it's more like 1 in 4 billion. That's all
28 that I did.

1 THE COURT: Well, you said that the real
2 issue here -- I guess I'm missing something. If he
3 wants to go into that questioning, why isn't that okay
4 with you?

5 MR. SANDERS: Well, it's irrelevant and
6 there's --

7 THE COURT: It's irrelevant?

8 MR. SANDERS: There's no foundation.

9 THE COURT: The fact that it didn't show up
10 until 2008?

11 MR. SANDERS: No, that someone else's didn't.
12 You have to get into statistics to show that that
13 would be relevant. The bottom line is, they want to
14 say that no one else did show up, which really isn't
15 the point here. Just like the Helen Brooks murder.
16 That's just not the point. The point is, did he
17 match.

18 THE COURT: The accuracy is important and you
19 mentioned hearsay before. She's an expert. She can
20 talk about the accuracy. She can rely on things --

21 MR. SANDERS: Are we talking about the
22 identification of a sample?

23 THE COURT: We're talking about CODIS and the
24 fact that somebody showed up, whether or not this is
25 something that underscores the accuracy. I don't know
26 why you want to approach. I don't know why you don't
27 just ask.

28 MR. THOMAS: I wanted to give him the

1 opportunity to object.

2 THE COURT: All right.

3 (Whereupon the following proceedings were held in open
4 court in the presence of the jury:)

5 THE COURT: You may proceed.

6 MR. THOMAS: Thank you, your Honor.

7 BY MR. THOMAS:

8 Q As far as Item A dash 11, are you familiar as
9 to whether or not that item was placed in CODIS?

10 A Yes, it was.

11 Q I already talked about CODIS is a database that
12 all these profiles go into; correct?

13 A Correct.

14 Q You're familiar with how CODIS works?

15 A Yes.

16 Q How many different profiles are -- back in,
17 let's say, late 2008, how many different profiles were
18 in CODIS?

19 A May I refer to my -- I will be referring to my
20 notes.

21 THE COURT: That's fine.

22 THE WITNESS: In California's database, there
23 were approximately 1.1 million at that point.

24 BY MR. THOMAS:

25 Q Okay. Do you know nationwide how many?

26 A I don't know nationwide at that point.

27 Q Then as far as profiles, each state puts in
28 their own profiles into CODIS?

1 A Yes.

2 Q Do you have an idea approximately how many
3 profiles are in there at the present?

4 A I don't know right now, no.

5 Q If you had to estimate, what would your
6 estimation be?

7 A I would say over three million nationwide.

8 Q Okay. And then as far as this particular
9 sample, Item A dash 11, do you know when this was
10 actually put into CODIS?

11 A On January 23rd, 2003.

12 Q Then at some point you were notified that there
13 was a hit to a person by the name of John Yablonsky?

14 A Correct.

15 Q Then at that time, your lab requested a
16 reference sample from John Yablonsky in order to confirm
17 that that hit is accurate?

18 A That's correct.

19 MR. THOMAS: Okay. Nothing further.

20 THE COURT: Mr. Sanders.

21 **RECROSS-EXAMINATION**

22 BY MR. SANDERS:

23 Q You said nationwide. Do all states participate
24 in looking for the same DNA at the same locations as
25 California?

26 A Yes. CODIS is based on the same 13 locations.

27 Q All the states have agreed to that?

28 A Yes.

1 Q And I understand that's most of the western
2 hemisphere?

3 A Yes.

4 Q But not Asia?

5 THE COURT: Not what?

6 MR. SANDERS: Asia.

7 THE COURT: Thank you.

8 THE WITNESS: Only the United States
9 participates in CODIS. Other countries aren't allowed
10 to participate in CODIS. I'm not sure what Asia is
11 using if they have a database.

12 MR. SANDERS: Thank you, your Honor. No
13 further questions.

14 THE COURT: Mr. Thomas.

15 **REDIRECT EXAMINATION**

16 BY MR. THOMAS:

17 Q Did you get any other hits other than
18 Mr. Yablonsky regarding Item A dash 11?

19 A No.

20 MR. THOMAS: Nothing further.

21 THE COURT: Mr. Sanders.

22 MR. SANDERS: No, sir. No further questions.

23 THE COURT: May this witness be excused?

24 MR. THOMAS: She may.

25 MR. SANDERS: Yes, your Honor.

26 THE COURT: Okay. Ms. Anderson, thank you
27 for being with us. You're excused.

28 THE WITNESS: Thank you.

1 THE COURT: Do you have another witness to
2 call, Mr. Thomas?

3 MR. THOMAS: Yes.

4 THE COURT: We'll do that in 15 minutes.
5 We're going to take a 15-minute recess, ladies and
6 gentlemen. You're admonished that it is your duty not
7 to converse among yourselves or with anyone else about
8 any matter connected with this case nor form or
9 express an opinion on it until it's submitted to you.

10 (Whereupon a recess was taken.)

11 (Whereupon the following proceedings were held in open
12 court in the presence of the jury:)

13 THE COURT: Back on the record in the case of
14 People of the State of California versus John Henry
15 Yablonsky who is here along with Dave Sanders, his
16 attorney. John Thomas is here for the People along
17 with Detective Alexander.

18 Call your next witness.

19 MR. THOMAS: People call Francesca Drake.

20 THE BAILIFF: Remain standing. Raise your
21 right hand and face the clerk to be sworn.

22 THE CLERK: You do solemnly state that the
23 evidence you shall give in the matter pending before
24 this Court shall be the truth, the whole truth, and
25 nothing but the truth, so help you God?

26 THE WITNESS: I do.

27 THE CLERK: Thank you. Please be seated.

28 THE BAILIFF: Please state your full name and

1 spell it for the record.

2 THE WITNESS: Francesca Sullivan

3 F-r-a-n-c-e-s-c-a S-u-l-l-i-v-a-n.

4 THE COURT: Okay. The DA said he was going
5 to call Francesca Drake.

6 THE WITNESS: That was my name at the time of
7 the incident.

8 THE COURT: Okay. Then I'm not totally
9 confused.

10 MR. SANDERS: I think one of the jurors is
11 trying to get the bailiff's attention.

12 THE WITNESS: Oh, my gosh.

13 THE COURT: Okay. Here's what we're going to
14 do; we're going to ask, Ms. Drake, will you please
15 step outside?

16 Juror Number 12, please remain where you are,
17 and all the other jurors will you step outside. You're
18 admonished that it is your duty not to converse among
19 yourselves or with anyone else about any matter
20 connected with this case nor form or express an opinion
21 on it until it's submitted to you. Don't go too far.
22 We won't be long.

23 (Whereupon the jury exited the courtroom and the
24 following proceedings were held in the presence of Juror
25 Number 12 only:)

26 THE COURT: So a little excitement to break
27 up the proceedings. Let's see if I can relate what I
28 just observed. When Ms. Sullivan, our current

1 witness, turned and looked at the jury box, she seemed
2 to make eye contact with Juror Number 12 and -- I
3 don't know what her -- were her words, oh, my God?

4 So obviously there was some level of
5 recognition, and Mr. -- excuse me, Deputy Fliegner
6 walked over to the jury box, and apparently you said to
7 him you've worked with Ms. Sullivan, and that you know
8 her from that, and you worked with her for a number of
9 years.

10 JUROR NO. 12: For 12 years. We're both RNs.

11 THE COURT: And obviously that wasn't
12 reported, meaning the conversation that you had with
13 Deputy Fleigner was not reported. Was that pretty
14 much the sum and substance of what you told to
15 Deputy Fleigner?

16 JUROR NO. 12: Yes.

17 THE COURT: Deputy Fleigner, why don't you
18 tell us what you recall.

19 THE BAILIFF: I recall her telling me she
20 knew the witness, not in those words, to that effect,
21 and she had worked with her for five years is what she
22 said to me.

23 JUROR NO. 12: It was more like 12 years.

24 THE COURT: I don't think there's any
25 disagreement about what was said. The reason why I
26 ask that is I wanted to make sure of what might have
27 possibly been heard by the people that are seated next
28 to you or in your general vicinity. That's pretty

1 much it as far as what you said to Deputy Fleigner?

2 JUROR NO. 12: Yes.

3 THE BAILIFF: Yes, your Honor.

4 THE COURT: All right. So you'll understand,
5 I don't want you to speculate about anything else.
6 I'm going to say this to you; the reason I ask that is
7 because I wouldn't want to have heard that people
8 heard you say, I know this woman. She's a saint.
9 She's the most honest woman in the world, and I would
10 believe anything she told me. In the alternative, I
11 wouldn't have wanted you to say, I know this woman.
12 She's the biggest liar that God created, and I
13 wouldn't believe anything she had to say.

14 Nothing like that was said?

15 JUROR NO. 12: No.

16 THE COURT: How long has it been since you
17 worked with Ms. Sullivan?

18 JUROR NO. 12: From 1986 to '96, about those
19 times.

20 THE COURT: Okay. During that period of
21 time, were you more than people that worked together?
22 Did you socialize together?

23 JUROR NO. 12: Yes, because it was through a
24 home-infusion company, so there were probably only ten
25 of us that worked there. We were friends as well as
26 working together.

27 THE COURT: Home-infusion company. I don't
28 know what that means.

1 JUROR NO. 12: Where people get IV medication
2 in their home if they're on long-term antibiotics or
3 chemotherapy.

4 THE COURT: Fairly small company and you both
5 did the same type of work, so you became friends as
6 well?

7 JUROR NO. 12: Correct.

8 THE COURT: Did you socialize together, like,
9 did she come to your house?

10 JUROR NO. 12: Yes.

11 THE COURT: And you went to her house?

12 JUROR NO. 12: Yes.

13 THE COURT: Did you take trips together?

14 JUROR NO. 12: Business trip to Chico to
15 learn how to place PIC lines.

16 THE COURT: Okay. Did you form any strong
17 feeling about this witness in terms of reliability or
18 her honesty or lack thereof?

19 JUROR NO. 12: No.

20 THE COURT: I assume that because you're a
21 registered nurse -- did you form any professional
22 opinion about her?

23 JUROR NO. 12: No.

24 THE COURT: You never heard complaints about
25 her; did you?

26 JUROR NO. 12: No.

27 THE COURT: Being a professional registered
28 nurse is tough work and requires competency and

1 accuracy?

2 JUROR NO. 12: Correct.

3 THE COURT: If you don't hear complaints
4 about someone in a field like that, they're probably
5 doing a good job; would you think?

6 JUROR NO. 12: Correct.

7 THE COURT: What if she's a witness in this
8 case? Putting it another way, since we've sworn her.
9 We haven't heard any testimony from her yet.

10 Are you going to be able to evaluate the
11 testimony of -- 1996, if my math is correct, 14 years
12 ago?

13 JUROR NO. 12: 14 years.

14 THE COURT: Have you seen her in the last 14
15 years?

16 JUROR NO. 12: I don't believe I have.

17 THE COURT: There's no on-going relationship
18 that would cause you to somehow be concerned about
19 coming up with a verdict that's going to please her?
20 I don't know what that is, but you don't have a
21 feeling that way; do you?

22 JUROR NO. 12: No.

23 THE COURT: You agree to evaluate the
24 credibility or believability of Ms. Sullivan the same
25 as the rest of the jurors or are you going to be
26 affected by opinions that you formulated about
27 Ms. Sullivan prior to this trial?

28 JUROR NO. 12: No.

1 THE COURT: You can put aside any feelings or
2 any past evaluation you have of Ms. Sullivan and form
3 your opinion based upon what she testifies to here?

4 JUROR NO. 12: Yes.

5 THE COURT: Counsel, approach.

6 (Whereupon the following proceedings were held at the
7 bench out of the hearing of the Juror No. 12:)

8 MR. SANDERS: Your Honor, Ms. Sullivan was
9 married at the time to John Sullivan, who's going to
10 be a witness tomorrow. You may want to ask her about
11 John Sullivan. She probably knew him. If she knew
12 this lady, maybe she knew her husband too.

13 THE COURT: I can ask that, but she never
14 went to this guy's house. I can ask that. Let me ask
15 this; are you satisfied with what I've done so far?

16 MR. SANDERS: Yes, sir.

17 THE COURT: You have any problem with her
18 remaining a juror in this case?

19 MR. SANDERS: No, I don't.

20 THE COURT: Okay. Thank you.

21 (Whereupon the following proceedings were held in open
22 court in the presence of Juror Number 12 only:)

23 THE COURT: Ms. Drake -- was she Ms. Drake
24 when you knew her?

25 JUROR NO. 12: No.

26 THE COURT: What was her name?

27 JUROR NO. 12: Fran Sullivan.

28 THE COURT: Okay. John Sullivan was her

1 husband.

2 Did you ever meet John Sullivan?

3 JUROR NO. 12: No.

4 THE COURT: Did you ever hear her say
5 anything to you about her husband, John Sullivan?

6 JUROR NO. 12: Now that I've seen Fran, I can
7 associate that it was John, but I never really met
8 him, know nothing about him.

9 THE COURT: Okay. So, again, why would we
10 ask this is because John Sullivan will be a witness in
11 this case as well, and the idea that you would -- if
12 she -- if she used to come to you every morning and
13 say, that awful husband of mine, John, is such a liar
14 or, oh, John Sullivan, my husband, is such an honest
15 man, you never had conversations like that; right?

16 JUROR NO. 12: No.

17 THE COURT: Any reason at all why you think
18 that would affect your ability to be a fair impartial
19 juror?

20 JUROR NO. 12: No.

21 THE COURT: Counsel, do either of you wish
22 for me to inquire any further about anything?

23 MR. SANDERS: No, sir.

24 MR. THOMAS: I had a question.

25 THE COURT: No, you don't.

26 MR. THOMAS: Can we approach?

27 THE COURT: Yeah.

28