

1 in this case.

2 "The defendant, John Henry  
3 Yablonsky, is charged in Count I of  
4 the Information with the offense of  
5 murder of Rita Mabel Cobb.

6 "It is further alleged as to  
7 Count I that the murder of Rita Mabel  
8 Cobb was committed by John Henry  
9 Yablonsky while the said defendant was  
10 engaged in the commission of and/or  
11 the attempted commission of the crime  
12 of rape."

13 These are slightly out of order. I'm going to  
14 try to avoid the confusion. I'm going to come back to  
15 this one.

16 "Homicide is the killing of one  
17 human being by another. Murder is a  
18 type of homicide. The defendant is  
19 charged with murder. I will instruct  
20 you on the different types of murder.

21  
22 "The defendant is charged with  
23 murder.

24  
25 "To prove that the defendant is  
26 guilty of this crime, the People must  
27 prove that:

28 "1. The defendant committed an

1 act that caused the death of another;  
2 and

3 "2. When the defendant acted, he  
4 had a state of mind called malice  
5 aforethought.

6  
7 "There are two kinds of malice  
8 aforethought, express malice and  
9 implied malice. Proof of either is  
10 sufficient to establish the state of  
11 mind required for murder.

12  
13 "The defendant acted with express  
14 malice if he unlawfully intended to  
15 kill.

16  
17 "The defendant acted with implied  
18 malice if:

19 "1. He intentionally committed  
20 an act;

21 "2. The natural and probable  
22 consequences of the act were dangerous  
23 to human life;

24 "3. At the time he acted, he  
25 knew his act was dangerous to human  
26 life; and

27 "4. He deliberately acted with  
28 conscious disregard for human life.

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"Malice aforethought does not require hatred or ill will toward the victim. It is a mental state that must be formed before the act that causes death is committed. It does not require deliberation or the passage of any particular period of time.

"If you decide that the defendant has committed murder, you must decide whether it is murder of the first or second degree.

"The defendant is guilty of first degree murder if the People have proved that he acted willfully, deliberately, and with premeditation.

"The defendant acted willfully if he intended to kill.

"The defendant acted deliberately if he carefully weighed the considerations for and against his choice and, knowing the consequences, decided to kill.

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"The defendant acted with premeditation if he decided to kill before committing the act that caused death.

"The length of time the person spends considering whether to kill does not alone determine whether the killing is deliberate and premeditated. The amount of time required for deliberation and premeditation may vary from person to person and according to the circumstances. A decision to kill made rashly, impulsively, or without careful consideration is not deliberate and premeditated. On the other hand, a cold, calculated decision to kill can be reached quickly. The test is the extent of the reflection. The length of time alone is not determinative. All other murders are of the second degree.

"The People have the burden of proving beyond a reasonable doubt that the killing was first degree murder

1           rather than a lesser crime. If the  
2           People have not met this burden, you  
3           must find the defendant not guilty of  
4           first degree murder.

5  
6           "The defendant is charged with  
7           murder under a theory of felony  
8           murder. To prove that the defendant  
9           is guilty of first degree murder under  
10          this theory, the People must prove  
11          that:

12                 "1. The defendant committed or  
13                 attempted to commit rape;

14                 "2. The defendant intended to  
15                 commit rape or attempted rape; and

16                 "3. While committing or  
17                 attempting to commit rape, the  
18                 defendant did an act that caused the  
19                 death of another person.

20  
21                 "A person may be guilty of felony  
22                 murder even if the killing was  
23                 unintentional, accidental or  
24                 negligent.

25  
26                 "To decide whether the defendant  
27                 committed or attempted to commit rape  
28                 or attempted rape, please refer to the

1 separate instructions that I will give  
2 you on that crime. You must apply  
3 those instructions when you decide  
4 whether the People have proved first  
5 degree murder under a theory of felony  
6 murder."

7 Now, I'm going to go back.

8 "The defendant is charged with  
9 attempted rape" --

10 MR. THOMAS: Your Honor, can we approach?

11 THE COURT: Is that the instruction you  
12 submitted to me?

13 MR. THOMAS: No, this is not.

14 THE COURT: This is not?

15 MR. THOMAS: No.

16 THE COURT: I think we're okay. All I have  
17 to do is not return to that part that I skipped the  
18 first time. For some reason there's an error in part  
19 of my presentation.

20 "You will be given verdict forms  
21 for guilty and not guilty of first  
22 degree murder and second degree  
23 murder. You may consider these  
24 different kinds of homicide in  
25 whatever order you wish, but I can  
26 accept a verdict of guilty or not  
27 guilty of second degree murder only if  
28 you all have found the defendant not

1 guilty of first degree murder.

2 "To return a verdict of guilty or  
3 not guilty on any count, you must all  
4 agree on that decision.

5  
6 "Follow these directions before  
7 you give me any completed and signed  
8 final verdict form. Return the unused  
9 verdict form to me unsigned.

10

11 "1. If all of you agree that the  
12 People have proved beyond a reasonable  
13 doubt that the defendant is guilty of  
14 first degree murder, complete and sign  
15 that verdict form. Do not complete or  
16 sign any other verdict forms.

17

18 "2. If all of you cannot agree  
19 whether the defendant is guilty of  
20 first degree murder, inform me that  
21 you cannot reach an agreement and do  
22 not complete or sign any other verdict  
23 forms.

24

25 "3. If all of you agree that the  
26 defendant is not guilty of first  
27 degree murder but also agree that the  
28 defendant is guilty of second degree

1 murder, complete and sign the form for  
2 not guilty of first degree murder and  
3 the form for guilty of second degree  
4 murder. Do not complete or sign any  
5 other verdict forms.

6  
7 "4. If all of you agree that the  
8 defendant is not guilty of first  
9 degree murder but cannot agree whether  
10 the defendant is guilty of second  
11 degree murder, complete and sign the  
12 form for not guilty of first degree  
13 murder and inform me that you cannot  
14 reach further agreement. Do not  
15 complete or sign any other verdict  
16 forms.

17  
18 "5. If all of you agree that the  
19 defendant is not guilty of first  
20 degree murder and not guilty of second  
21 degree murder complete and sign the  
22 form for not guilty of both. Do not  
23 complete or sign any other verdict  
24 forms.

25  
26 "If you find the defendant guilty  
27 of first degree murder, you must also  
28 decide whether the People have proved



1           that the special circumstance is true.

2           "The People have the burden of  
3           proving the special circumstance  
4           beyond a reasonable doubt. If the  
5           People have not met this burden, you  
6           must find the special circumstance has  
7           not been proved.

8  
9           "In order for you to return a  
10          finding that the special circumstance  
11          is or is not true, all 12 of you must  
12          agree.

13  
14          "Before you may rely on  
15          circumstantial evidence to conclude  
16          that a special circumstance allegation  
17          is true, you must be convinced that  
18          the People have proved each fact  
19          essential to that conclusion beyond a  
20          reasonable doubt.

21  
22          "Also, before you may rely on  
23          circumstantial evidence to conclude  
24          that a special circumstance allegation  
25          is true, you must be convinced that  
26          the only reasonable conclusion  
27          supported by the circumstantial  
28          evidence is that the special

1           circumstance allegation is true. If  
2           you can draw two or more reasonable  
3           conclusions from the circumstantial  
4           evidence, and one of those reasonable  
5           conclusions supports a finding that  
6           the special circumstance allegation is  
7           true and another reasonable conclusion  
8           supports a conclusion that it is not  
9           true, you must conclude that the  
10          allegation is not proved by the  
11          circumstantial evidence. However,  
12          when considering circumstantial  
13          evidence, you must accept only  
14          reasonable conclusions and reject any  
15          that are unreasonable.

16  
17                 "In your deliberations, you may  
18                 not consider or discuss penalty or  
19                 punishment in any way when deciding  
20                 whether a special circumstance or any  
21                 other charge has been proved.

22  
23                 "The defendant is charged with  
24                 the special circumstance of murder  
25                 committed while engaged in the  
26                 commission of a rape or attempted  
27                 rape.

1 "To prove that this special  
2 circumstance is true, the People must  
3 prove:

4 "1. The defendant committed or  
5 attempted to commit rape or attempted  
6 rape;

7 "2. The defendant intended to  
8 commit rape or attempted rape;

9 "3. The defendant did an act  
10 that caused the death of another  
11 person; and

12 "4. The act causing the death  
13 and the rape or attempted rape or  
14 attempted rape" -- that's a little bit  
15 of extra verbiage there. Number 4 is going to  
16 be amended to drop some extra words. It should read.

17 "4. The act causing the death  
18 and the rape or attempted rape were  
19 part of one continuous transaction.

20  
21 "To decide whether the defendant  
22 committed or attempted to commit rape  
23 or attempted rape, please refer to the  
24 separate instructions that I will give  
25 you on that crime. You must apply  
26 those instructions when you decide  
27 whether the People have proved first  
28 degree murder under a theory of felony

1 murder.

2

3 "Is it alleged in Count I that  
4 the defendant committed murder while  
5 he was engaged in the commission of  
6 and/or the attempted commission of the  
7 crime of rape.

8 "In order for you to find that  
9 the defendant was engaged in the  
10 commission of the crime of rape, the  
11 People must prove:

12 "1. The defendant had  
13 intercourse with a woman;

14 "2. He and the woman were not  
15 married to each other at the time of  
16 the intercourse;

17 "3. The woman did not consent to  
18 the intercourse; and

19 "4. The defendant accomplished  
20 the intercourse by force, violence,  
21 duress, menace or fear of immediate  
22 and unlawful bodily injury to the  
23 woman or to someone else.

24

25 "In order for you to find that  
26 the defendant was engaged in the  
27 attempted commission of the crime of  
28 rape, the People must prove that:

1                   "1. The defendant took a direct  
2 but ineffective step towards  
3 committing rape; and

4                   "2. The defendant intended to  
5 commit rape.

6  
7                   "Sexual intercourse means  
8 penetration, no matter how slight, to  
9 the vagina or genitalia by the penis.

10  
11                   "To consent, a woman must freely  
12 and voluntarily" -- excuse me, "to  
13 consent, a woman must freely and  
14 voluntarily --

15                   MR. THOMAS: I think that "and" between  
16 "voluntarily" and "know" needs to be taken out.

17                   THE COURT: I appreciate that. You may be  
18 right. You don't mind if I double check? I'll take  
19 that as a yes. There's a word missing. It will be in  
20 your packet.

21                   "To consent, a woman must act  
22 freely and voluntarily and know the  
23 nature of the act.

24  
25                   "Intercourse is accomplished by  
26 force if a person uses enough physical  
27 force to overwhelm the woman's will.

28

1 "Duress means a direct or implied  
2 threat of force, violence, danger, or  
3 retribution that would cause a  
4 reasonable person to do something that  
5 she would not do otherwise.

6  
7 "When deciding whether the act  
8 was accomplished by duress, consider  
9 all of the circumstances including the  
10 woman's age and her relationship to  
11 the defendant.

12  
13 "Retribution is a form of payback  
14 or revenge.

15  
16 "Menace means a threat,  
17 statement, or act showing an intent to  
18 injure someone.

19  
20 "Intercourse is accomplished by  
21 fear if the woman is actually and  
22 reasonably afraid.

23  
24 "A woman must be alive at the  
25 time of the sexual intercourse for the  
26 crime of rape to occur.

27  
28 "Intercourse with a deceased

1 victim may constitute attempted rape  
2 if the defendant intended to rape a  
3 live victim.  
4

5 "A direct step requires more than  
6 merely planning or preparing to commit  
7 rape or obtaining or arranging for  
8 something needed to commit rape. A  
9 direct step is one that goes beyond  
10 planning or preparation and shows that  
11 a person is putting his or her plan  
12 into action. A direct step indicates  
13 a definite and unambiguous intention  
14 to commit rape. It is a direct  
15 movement towards the commission of the  
16 crime after preparations are made. It  
17 is an immediate step that puts the  
18 plan in motion so that the plan would  
19 have been completed if some  
20 circumstance outside the plan had not  
21 interrupted the attempt."

22 Okay. This is going to be the last instruction  
23 that I give you, but I'm not giving it to you yet.  
24 First, you're going to hear the arguments of the  
25 attorneys.

26 As you well know by now, Mr. Thomas has the  
27 burden of proof. So he gets the opportunity to go  
28 first. After he's given his closing argument, you'll

1 hear the closing argument of Mr. Sanders. After  
2 Mr. Sanders has given his closing argument, you'll hear  
3 from Mr. Thomas. When Mr. Thomas is given the burden of  
4 proving the case, he's also given the opportunity to  
5 have two chances to speak to you.

6 When Mr. Thomas gives his closing or final  
7 rebuttal, it means rebuttal. You don't bring up  
8 something in rebuttal that you didn't bring in your  
9 first presentation. That would be not giving  
10 Mr. Sanders an opportunity to reply or to contest  
11 something. That's going to be the limit of Mr. Thomas's  
12 final argument.

13 Are we having trouble up there?

14 THE BAILIFF: Yeah.

15 MR. THOMAS: Does the Court want to take a  
16 brief recess?

17 THE COURT: No. Okay. I'm convinced.  
18 Mr. Thomas, you were right the first time. This is an  
19 excellent opportunity for us to take a recess.  
20 15 minutes, ladies and gentlemen. When you come back,  
21 we hope that our technical difficulties will be  
22 resolved.

23 You're admonished that it is your duty not to  
24 converse among yourselves or with anyone else about any  
25 matter connected with this case nor form or express an  
26 opinion on it until it's submitted to you, which should  
27 be right away. 15 minutes.

28 (Whereupon a recess was taken.)



1 (Whereupon the following proceedings were held in open  
2 court in the presence of the jury:)

3 THE BAILIFF: Remain seated. Come to order.  
4 Court is now in session.

5 THE COURT: Back on the record in the case of  
6 People of the State of California versus John Henry  
7 Yablonsky who is here with David Sanders, his  
8 attorney, along with John Thomas for the People, along  
9 with Detective Robert Alexander for his investigating  
10 officer.

11 Closing Arguments Take 2.

12 MR. THOMAS: Thank you, your Honor.

13 Good morning, ladies and gentlemen. As you can  
14 tell, I'm a little bit sick so forgive me for my voice.  
15 I'll try to keep it up.

16 First of all, I want to thank you again for  
17 your time and your attention in this matter. Like I  
18 said before, without you as jurors, our system wouldn't  
19 work the way that it does. I want to thank you again on  
20 behalf of the People and the defendant and Mr. Sanders  
21 and the Court.

22 Closing arguments, like the judge says, is the  
23 time for the attorneys to get up here, and we can  
24 discuss the evidence, suggest what that evidence shows  
25 and discuss the law. As the Court said, closing  
26 arguments aren't evidence, so if something I say or  
27 Mr. Sanders says conflicts with what you have heard as  
28 evidence during the trial, you take what you heard as

1 evidence during the trial.

2 In this case, the charged offense is one count  
3 of murder in violation of Penal Code Section 187, and  
4 then there's a special circumstance that the murder was  
5 committed in the commission or attempted commission of a  
6 rape in this case.

7 What is murder? Murder is the unlawful killing  
8 of a human being with malice aforethought. It's a type  
9 of homicide. You'll see the instruction. I put the  
10 instruction numbers underneath whenever I could. It's  
11 the unlawful killing of a human by another. That's in  
12 Instruction 500.

13 Murder is divided into two degrees. You have  
14 first degree murder, and you have second degree murder.  
15 The definition of murder is the defendant committed an  
16 act that caused the death of another person, and when  
17 the defendant acted, he acted with a state of mind  
18 called malice aforethought, and that's in Instruction  
19 520.

20 There's two kinds of malice aforethought.  
21 There's express and implied. The first one is express  
22 malice, and express malice is the equivalent of an  
23 intent to kill. If somebody comes up to somebody and  
24 points a gun right at their head or at their chest, they  
25 intend to kill that person once they pull that trigger.  
26 That would be an example of an intent to kill.

27 Implied malice is when a person intentionally  
28 commits an act, the natural consequences of the act were

1 dangerous to human life, and at the time he acted, he  
2 knew his act was dangerous to human life and  
3 deliberately acted with that conscious disregard for  
4 human life.

5 The example I give for that is another  
6 shooting. This is where there's a group of people  
7 standing around and somebody points a gun at that group  
8 of people. They don't intend to specifically kill  
9 somebody, but by shooting into that group of people,  
10 you're acting with conscious disregard for human life.  
11 You're acting with implied malice.

12 The defendant in this case, I would argue,  
13 acted with express malice. The defendant acted with the  
14 intent to kill Rita Cobb. As the pathologist testified  
15 the cause of death was manual and/or ligature  
16 strangulation.

17 As you can see in Exhibit 16, you have a wire  
18 coat hanger tied around the victim's neck. Then  
19 Exhibit 19 and 20 show the fractured hyoid. Exhibit 20  
20 shows the fractured hyoid, and Exhibit 19 shows the  
21 fractured cricoid. The pathologist testified as to how  
22 this occurs when somebody's being strangled.

23 Degrees of murder. First degree, there's two  
24 ways to get to first degree murder in this case.  
25 There's the willful, premeditated, and deliberate way.  
26 Then there's the felony murder.

27 Let's talk about the first way. The defendant  
28 acts willfully, deliberately, and with premeditation.

1 The defendant acted willfully if he intended to kill,  
2 and as we discussed before, when somebody's strangling  
3 somebody with a coat hanger or manually strangling them  
4 with their hands, they're intending to kill that person.  
5 I'll give more details as far as how you could come to  
6 that conclusion when we get through with premeditation.  
7 Strangling a person with a wire coat hanger is evidence  
8 that you intend to kill that person.

9 The defendant acted deliberately if he  
10 carefully weighed the considerations for and against his  
11 choice and knowing the consequences still decided to  
12 kill.

13 The defendant acted with premeditation if he  
14 decided to kill before committing the act that caused  
15 death. The length of time the person spends considering  
16 whether to kill does not determine whether the killing  
17 is premeditated and deliberate. A cold, calculated  
18 decision to kill can be reached quickly. The length of  
19 time alone isn't what's determinative.

20 Most of us in every day life don't have that  
21 decision to make. The example I like to give, let's say  
22 you're late for work or an appointment, and you're  
23 driving down a street and there's a stop sign. You're  
24 thinking, I don't have time to stop. I need to make up  
25 as much time as I can. Instead of stopping, I'm going  
26 to do a Hollywood stop or rolling stop and not stop all  
27 the way.

28 When you decide that, you're looking around, of