

1 that's just the way it starts. Somebody gets the ball  
2 rolling, yeah, in this case there were white shorts as a  
3 gag, and everybody else picks up and says, yeah, white  
4 shorts used as a gag.

5 If she's gagged, that must have meant they're  
6 trying to make her quiet, and; therefore, it has to be  
7 rape and therefore and therefore and therefore. Here we  
8 are. There wasn't any basis for the therefore.

9 The second thing that sometimes people jump to  
10 conclusion on is we have DNA. Case closed. Game over.  
11 That's all we need. We've got DNA. DNA is the big Holy  
12 Grail these days in law enforcement. DNA is fantastic.  
13 If we have DNA, there's no more questions. We're done.  
14 Had to be a rape, had to be a murder, because we have  
15 DNA.

16 We don't need to look at all these other  
17 suspects. We don't need to look to see if it wasn't  
18 Sidney Poitier or it wasn't Sam because we have DNA.  
19 Let's forget about these other guys, forget about  
20 everything else. Let's -- we got DNA. That's not how  
21 our system works. We don't jump to conclusions. We  
22 don't make solutions that are not based on something  
23 more than we would like them to be that way.

24 What I'd like to do next is review the  
25 testimony in this case. We had a number of witnesses  
26 that said some things, a lot of them not very important,  
27 but a lot of them I thought were rather important. I  
28 want you to keep in -- in mind when I'm going over what

1 was said, what we did see, keep in mind what we didn't  
2 see and what we don't know.

3 After all, this happened 25 years ago. Do you  
4 remember what you were doing 25 years ago in February of  
5 1985 or '86 now would be 25 years? I can roughly  
6 remember. Well, let's see, I think I owned a house in  
7 Riverside then. I hadn't moved to Tustin. My kids were  
8 about this age. That's what we're dealing with here.

9 The victim in this case, Ms. Cobb, was 55 years  
10 old then. That would make her 80 right now. If you're  
11 80 years old, are the people that knew you best, your  
12 contemporaries, still around? Not unless there's  
13 something in the water in Lucerne Valley that makes  
14 everybody live more than 80 years.

15 We're dealing here with trying to figure out,  
16 trying to put a puzzle together where all we know is one  
17 or two little pieces. We don't know who her friends  
18 were. We don't know who she dated. We don't know what  
19 she liked to do. We don't know where she went. We  
20 don't know who she invited to her house. We don't know  
21 any of those things because most of those people are  
22 probably dead or gone or moved to New Jersey or  
23 something. We don't have that.

24 I was kind of -- I think when I made a list of  
25 some things that -- 25 years ago. Most of her  
26 contemporaries are dead. How often did she go out?  
27 Where did she go? How often did she date? Who did she  
28 date? Did she often have guys over? Did she have a

1 boyfriend that had ever hit her? Did she have  
2 boyfriends who had ever been rough with her? Had she  
3 just broken up with anybody? What was in her closet?  
4 What was in her closet (sic)? What was in her bathroom?

5           You know, the prosecutor made a big deal over a  
6 pair of panties on the floor, and he wanted you to see,  
7 if there's a pair of panties on the floor, that is a  
8 conclusion that she had to have been raped. What if  
9 there are another pair of panties in the laundry hamper  
10 that had semen on them? We don't know. What if there  
11 was another pair of panties in her bathroom that she had  
12 taken off and put there before she got a different pair  
13 out? Then the sex could have been the Friday before the  
14 party. We don't know.

15           What was in her clothes hamper? What numbers  
16 did she call on her telephone on Friday or Saturday or  
17 Thursday? Who knows? Telephone records 25 years ago;  
18 how do you find them? What numbers called her? Did  
19 anybody see her in a bar after the party Friday night?  
20 Apparently, she did enjoy going to the VFW, and the  
21 Moose Lodge, the Lion Lodge was mentioned, the  
22 El Cantero. There was a couple other ones mentioned,  
23 local watering holes.

24           What fingerprints were in this house? Whose  
25 fingerprints were in her house? How many men's  
26 fingerprints were in her house? Who were the 16 people  
27 that the criminalist matched -- tried to match that  
28 blood stain with? Who were those 16 people that it was

1 so important that the police actually got blood samples  
2 from them apparently? Were they all potential suspects?  
3 How many of them are dead now? How many of them are  
4 gone? How many of them was there pretty good reason to  
5 believe that maybe they might have not liked her enough  
6 to kill her? We don't know all those things. All those  
7 kinds of things are gone.

8 So what do we have? Daryl testified that they  
9 had a bad argument. Daryl did not live in  
10 Lucerne Valley, so he wasn't able to shed a lot of  
11 light, even if he wanted to. He hadn't seen his mom for  
12 over a month. They had a little argument. They hadn't  
13 spoken, but then she had called him up and left a  
14 message on his phone that said she was worried about  
15 something or somebody. We don't have that anymore. We  
16 can't listen to it. We don't know, was it more  
17 specific, was it more direct, was there a guy that was  
18 giving her trouble? We don't know.

19 The drapes were closed. There was no  
20 ransacking.

21 His wife, Marta, testified the only real thing  
22 that was important in this case was that she said, we  
23 tried to call her all weekend. See, that's another  
24 thing. Sometimes people say when you just ask them a  
25 question, yeah, we tried all weekend. Then I asked her  
26 a question, well, did you try? No, I didn't try. I  
27 think Daryl tried to call her. Did Daryl try to call  
28 her Friday? I don't know. Did he try to call Saturday

1 morning? Afternoon? I'm not sure, but I think sometime  
2 Saturday.

3 Then we got the specifics and we realized that  
4 we really don't know. We don't know if she could have  
5 picked up the phone on Friday or Saturday or not. We  
6 don't know.

7 Diane Flagg, this is a good one. This is  
8 really interesting. Diane Flagg was the wolf lady up  
9 the street. Remember, this must have been a very  
10 interesting neighborhood. You had Ms. Cobb's house.  
11 Then you had the Geetam Rajneesh. I said that just so  
12 the court reporter would have to write it down.

13 Those of you that lived back in the '60s  
14 remember the different areas where he would set up, and  
15 his followers would come to do their thing. Next to  
16 her, was the wolf lady. This was somebody that would  
17 find wolves and adopt them and bring them home.

18 Diane Flagg comes in here. What was the  
19 purpose of that testimony? Why did the prosecutor bring  
20 her in? Probably because she's one of the only people  
21 alive still that remembers anything even remotely close  
22 to this case.

23 What did she say? On Friday, I saw several  
24 cars, and one was a Pinto, a silver Pinto. Why is that  
25 important? I have no clue except for when the  
26 detectives talked to my client, they found out that he  
27 had a dark blue Pinto.

28 I think that that is -- it is what shows the

1 weakness of this case. Of all of the important things  
2 we could have talked about, which apparently there isn't  
3 any evidence of, we bring in some thing that's not  
4 important, but hopefully the jury will think it is kind  
5 of important that she saw a Pinto there. It might not  
6 have been the silver one, and it might not have been  
7 there by itself, but let's put it in. Let's put those  
8 tire prints in too.

9           They did a good job. They didn't go in her  
10 closet. They didn't go in her bathroom. We don't know  
11 what is in her kitchen. We don't know what they  
12 vacuumed up off the floors. Was there a hair or fiber  
13 there? Did it lead to somebody else that killed her?  
14 We don't know, but we do know that there was tracks out  
15 in the yard, and there was some big tracks and some  
16 smaller tracks. I suppose that's an insinuation for you  
17 to decide that, well, the smaller tracks probably were  
18 Pinto tracks, and they were probably dark blue Pinto  
19 tracks, not silver Pinto tracks; therefore, guilty.  
20 Otherwise, why do they bring her in? I don't know.

21           Then we had Detective McCoy. Now,  
22 Detective McCoy underscored my argument. He was a  
23 detective back in 1985. He wasn't as old apparently as  
24 Rita Cobb, and so he -- I don't know. Maybe he was 80  
25 years old. I didn't think he looked 80 years old.

26           What was his testimony? Pretty much that I  
27 don't remember anything. That was his testimony. I  
28 showed him a picture of the back house. I don't

1 remember the back house. I showed him a picture of the  
2 Jeep. I don't remember the Jeep. Showed him a picture  
3 of beer on the porch. I don't remember the beer.  
4 Showed him the two blood spots in the hall. I don't  
5 remember those. Look at your report. Do you see it in  
6 your report? Oh, yeah it's in my report.

7           That is what the evidence is that we're dealing  
8 with in this case. I thought it was interesting,  
9 though. He didn't remember when I showed him a picture  
10 of the six-pack on the patio that Daryl and his wife had  
11 brought, but he did remember that there was another  
12 six-pack in the house. There was. Someone brought a  
13 six-pack according to Deputy McCoy. There was another  
14 six-pack in the house. Who brought it? Whose  
15 fingerprints were on it? Do people bring six-packs when  
16 they're intending to rape or kill? I don't think so. I  
17 can't imagine that unless they're going to use it to hit  
18 somebody over the head with that. That was an important  
19 piece of evidence.

20           Then we had Dan (sic) Jones, very personable  
21 young man. He must have really been young back then. I  
22 don't know how old he was. I looked at him. I was  
23 trying to guess. I'm thinking 45 or 47, which means  
24 when he collected this evidence he was like 19 or 20.  
25 He must have just gotten his start with the sheriff's  
26 office, but he was a young man.

27           He vacuumed. What did he find? We don't know.  
28 Where is that evidence? We don't know. He did tape

1 lifts. We don't know. He doesn't know who did the  
2 fingerprinting. He doesn't know the results of the  
3 fingerprinting. Even Detective Alexander didn't know  
4 the results of the fingerprinting when I asked him on  
5 the stand.

6 He did find three things or two things -- three  
7 things. He found DNA. No problem. He found a watch  
8 pin a little pin that goes there in your watch, and he  
9 found a coat hanger. Now, I'm thinking, okay, if you  
10 have a woman that is being strangled or man or anybody  
11 else for that matter, and they're conscious, they're  
12 going to fight and maybe they grabbed the assailant's  
13 watch and pulled it off and left that pin there.

14 The assailant would have had to have touched  
15 that coat hanger, and I asked him, I said, you guys are  
16 pretty sharp. You could take DNA samples from just  
17 about anything. He says, a lot of things. I said, can  
18 you take it from hair? He said, yep. Can you take it  
19 from skin cells? Yes. Can you take it from semen?  
20 Yes. Can you take it from sweat? Yes.

21 I'm thinking, okay. So if some guy is  
22 struggling with a coat hanger, is he going to get  
23 perspiration on that coat hanger? If he's wearing a  
24 watch for any length of time, is his sweat or skin cells  
25 going to be all over that watch and on that pin?  
26 Probably.

27 So what was the results of the DNA test that  
28 you did on the coat hanger, Mr. Criminalist? We never



1 did it. What was the DNA results on the watch pin,  
2 Mr. Jones? Who knows? Didn't bother.

3 You know what? Of all the evidence in this  
4 case, the only evidence of the struggle, of the death,  
5 of the strangulation, would be the coat hanger and the  
6 watch pin. Nothing else is contemporaneous with it.  
7 The sex might have been an hour or two or several hours  
8 before according to their expert, the government expert.  
9 The watch pin and the hanger were at the time of  
10 strangulation. Didn't bother. Didn't do anything.

11 Fingernail scrapings. If somebody's struggling  
12 and they're trying to grab somebody's hands away from  
13 them, they're going to scratch and get something under  
14 there, maybe skin cells, maybe DNA, maybe blood.

15 What was the results of the fingernail scraping  
16 test, Mr. Jones? I don't know. We didn't do it.  
17 Didn't bother. We don't know.

18 What he did say, and he said this quick and I  
19 don't know if you caught this, they found two blood  
20 spots in the hall. They found one about this high off  
21 on the ground and one about this high off the ground out  
22 in the hall, and they took that blood and analyzed that  
23 blood. He said we tried to find a match with that blood  
24 with 16 suspects. I don't know who that was. He didn't  
25 know, but we had 16 suspects that we tried to match that  
26 blood with.

27 What's the thinking there? What is the  
28 thinking? They're thinking is still -- they're not

1 thinking broadly enough. They're thinking whoever had  
2 sex with her had to have killed her. Whoever had sex  
3 with her had to be the one; therefore, if they don't  
4 match the semen sample -- by the way, he said, we can  
5 type a semen sample for blood types. If they don't  
6 match that, we're not going to look at it. We're not  
7 interested.

8           They made that jump right at the start; that  
9 whoever had sex with her also strangled her. They went  
10 with that the whole way. They never could get rid of  
11 that fallacy of thinking. They never could broaden  
12 their approach and say maybe someone had sex with her,  
13 and then later someone killed her. Maybe A had sex with  
14 her and B killed her. They never could get that thought  
15 in their mind, so they never did those comparisons.  
16 They never did.

17           So if the 16 people did not match the semen,  
18 we're not even going to bring them in for questioning.  
19 We're not going to talk to them. We don't know who they  
20 are. Apparently, at that time, there was 16 people  
21 that, for some reason or another, they thought might  
22 have done this.

23           Don Jones said that sperm are hardy. They  
24 don't go away quickly. He also said there was lots of  
25 sperm. See, that's one of those circumstantial evidence  
26 things. There's lots of sperm, so the government's  
27 lawyer says, lots of sperm means that the sex was  
28 contemporaneous with the death. They were at the same

1 time, same person.

2 That's not what that says at all. Even their  
3 own witness shows that's a fallacy of logic. He said  
4 what -- I asked him, what does lots of sperm mean? He  
5 goes, well, it's relative. Some persons have a lot of  
6 sperm and some don't. Some people can -- depends on  
7 you, the physiology of your body, when is the last time  
8 before that that you had sex, all kinds of things could  
9 come into play. It doesn't mean what the prosecutor  
10 wants you to assume. Don Jones said -- testified to  
11 that.

12 He did not see those shorts in her mouth.

13 Susan Anderson, the only reason I mention  
14 Susan Anderson is because she introduced what I call the  
15 government map. See, the government map is like a  
16 two-edged sword here. I want to mention this in a  
17 second.

18 Am I contending that my client's DNA was not  
19 there? I'm not. It might have been, but that doesn't  
20 mean he killed her.

21 In our discussion on DNA, she said something  
22 that was interesting and applies to other parts of this  
23 case. I asked her, where did you get that really,  
24 really big number. She said, well, you know, we had  
25 these 13 loci or points on the DNA strand that we look  
26 at. Each one has 1 to 7, 1 to 10 variables. So if the  
27 chances of matching on one variable can be 1 in 10, if  
28 you have two and they're both ten possibilities, then

1 you get 1-in-100 chance of a match. If the next one is  
2 ten more, we're in the thousands. If the next one is  
3 ten more, we're in the 10,000s, so on and so on.

4 I said, well, how did you get to that big  
5 number? Did you multiply those all out? She said, yes.  
6 Then I asked her the question. I said, do you ever play  
7 Yahtzee? You know the chances of getting a six when you  
8 roll the dice is 1 in 6. What's the chances of getting  
9 two sixes? What's the chance of getting three sixes? 1  
10 in 200, roughly. Four sixes, 1 in 1200. Five sixes,  
11 7200. Have you ever played Yahtzee and gotten five  
12 sixes, or three sixes, or four sixes? Sure, happens all  
13 the time.

14 She was trying to use those numbers to show  
15 astronomical, but when I asked her the easy question, I  
16 said, if I took a dice six times, how many times am I  
17 going to get two sixes or three sixes? She said, I  
18 don't know. I have to get my calculator.

19 On the other hand, here's what the prosecution  
20 is doing in this case. They have a whole bunch of  
21 little items of circumstantial evidence, and each of  
22 those items of circumstantial evidence has two or three  
23 possible meanings. They want you to think that all of  
24 those items together point to one result, but it's just  
25 the opposite way.

26 You got ten items of circumstantial evidence,  
27 and each one has three potential possible meanings.  
28 Your chances of all those things pointing to one person

1 is what? 1 in 3 million. It's the same map just  
2 applied the other way.

3 Fran Drake. Now, these were the people that  
4 were at the party the night before. Remember we heard  
5 Fran Drake. We heard Bruce Nash, and we heard  
6 John Sullivan. It was kind of interesting to me. None  
7 of them were her age apparently because when they were  
8 on the witness stand, I'm not a real good judge of age,  
9 but I knew none of them were 80 years old. They were  
10 younger contemporaries of her. Apparently she liked to  
11 hang out with people that were younger than her.

12 There's a circumstantial evidence piece for  
13 you. She was hanging out with younger people.  
14 Therefore, she always hung out with younger people? If  
15 this was the other way, the prosecutor would say, yes,  
16 my conclusion is right, the other conclusions are not.  
17 I don't think it means that. I think there's other  
18 explanations.

19 Fran Drake said one thing that was interesting.  
20 Who was at the party? There was Fran Drake and  
21 John Sullivan. There was Bruce Nash and his girlfriend,  
22 and there was Rita Cobb, and there was a guy named  
23 Joe Saunders that was there. Three couples. Three men,  
24 three women. Two of them went together, two of them  
25 went together. There was Joe Saunders, and he was at  
26 that party.

27 Where is Joe Saunders? Who is Joe Saunders?  
28 Why did he go to that party with Rita Cobb or where she

1 was in attendance? Was he dating her? Was he  
2 interested in her? Did he go to her house later that  
3 night and kill her? I don't know. We don't know. They  
4 don't know, but it's an interesting question; isn't it?  
5 Did Joe Saunders go to her house that night?

6 When you presume someone's innocent, it's  
7 instructive to try to put yourself in their position.  
8 Let's presume my client is innocent. Let's presume he  
9 did not kill Rita Cobb. He had sex with her, but he did  
10 not kill her. Is that a presumption that we could  
11 presume? Is there evidence that would support that? Is  
12 there evidence that that's not what happened? No.  
13 There isn't any. It's a conclusion that the prosecutor  
14 wants you to draw, but it's not a conclusion that's  
15 important.

16 Suppose -- let me give you a scenario. Let's  
17 suppose that Rita Cobb left that party. She was  
18 drinking at that party. Apparently, she brought her own  
19 bottle of bourbon according to Mr. Sullivan, but she ran  
20 out of that. Sullivan was only drinking beer. His wife  
21 was only drinking beer. I don't know who drank all the  
22 bourbon. Maybe it was Rita and Joe Saunders. I don't  
23 know, but they ran out of that. John went through the  
24 house and got some white lightning. He was clear to  
25 make sure he told you, I didn't make it, but I had some.  
26 He provided that.

27 She was pretty intoxicated when she left,  
28 according to everyone there, and someone tried to give

1 her a ride home, and she said, no. Well, you ought to  
2 maybe shouldn't be driving (sic). Mr. Nash said, you  
3 know, I tried to get her to let me drive her home. She  
4 said no.

5 Are we concluding that she went home? Is there  
6 evidence she went home? No, there's not. Suppose she  
7 didn't go home. Suppose she stopped at a gas station.  
8 Maybe she was going to see if she could find one of her  
9 old friends at the VFW or Moose Lodge, and there she met  
10 my client, and she said, hey, I haven't seen you for a  
11 long time. How are you doing? Fine. You know what? I  
12 still say, squeaky door. Could you come over to my  
13 house and fix that squeaky door? He said, I'm busy  
14 right now. Please come to my house and fix my squeaky  
15 door.

16 So he goes over to her house, and he fixes her  
17 squeaky door. One thing leads to another, and they have  
18 sex. Then he leaves in his car. Joe Saunders is  
19 outside. The guy was at the party drinking with her,  
20 and he sees that young man leave. He goes up to her  
21 house. By the way, she's now passed out, lying on her  
22 bed after the sex, and he opened her front door because  
23 she doesn't lock it, according to her family, and he  
24 walks in there.

25 They get into a shouting match, a screaming  
26 match, an argument, and he says, you know, this is the  
27 last time you're going to make a fool of me and puts his  
28 hands around her, and he chokes her. She passes out.

1 He looks around, sees a coat hanger, wraps it around her  
2 neck and she dies.

3 Is there any evidence in this case that that  
4 did not happen? No, there's not. What's another  
5 scenario? Another scenario, the same thing could have  
6 happened except my client might have had sex with her on  
7 Friday. According to the doctor, she could have had sex  
8 up to two days before she died. According to the  
9 government's own witnesses, she could have had sex with  
10 my client on Friday before she went to the party, and  
11 then she goes to the party.

12 Joe Saunders is there. He leaves. She goes  
13 home or they meet together somewhere else, go to her  
14 house. They have an argument. He kills her. Is there  
15 any evidence that that didn't happen? No, there's not.

16 A third scenario, she leaves the party. She  
17 runs into my client or calls him. They have sex. He  
18 goes home. She goes to sleep. The next morning she was  
19 supposed to have a date with someone. She was supposed  
20 to meet him at 8:00. They were going to go play golf,  
21 something like that.

22 They come over, knock on her door. She's not  
23 awake, open the front door, walk in the bedroom. There  
24 she is, bad hangover, hasn't gotten dressed. Her  
25 bedspread is messed up, and they say, you're cheating on  
26 me. They get into a fight. They get into an argument.  
27 He strangles her, wraps the coat hanger around her and  
28 leaves. Is there any evidence that that did not happen?



1 No.

2 The information that we have in this case can  
3 lead to a number of conclusions. That's just straight.  
4 I'm sure that any of you could come up with one or two  
5 more.

6 THE COURT: Mr. Sanders.

7 MR. SANDERS: Yes, sir.

8 THE COURT: I hate interrupting you but looks  
9 like it's time for lunch.

10 MR. SANDERS: Yes, sir.

11 THE COURT: Is this a good enough time as any  
12 to be interrupted?

13 MR. SANDERS: It is, your Honor.

14 THE COURT: Okay. We're going to take --  
15 we're going to have our luncheon recess, ladies and  
16 gentlemen, start back at 1:30 sharp.

17 You're admonished that it is your duty not to  
18 converse among yourselves or with anyone else about any  
19 matter connected with this case nor form or express an  
20 opinion on it until it's submitted to you. See you back  
21 at 1:30. Thank you.

22 (Whereupon the lunch recess was taken.)  
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28