

1 VICTORVILLE, CALIFORNIA; JANUARY 31, 2011;
2 DEPARTMENT NO. V-2 HONORABLE JOHN M. TOMBERLIN, JUDGE
3 P.M. SESSION

4 (Appearances as heretofore mentioned.)

5 (Shawna Manning, Official Reporter, CSR No. 12827.)

6 -oOo-

7 (Whereupon the following proceedings were held in open
8 court in the presence of the jury:)

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

11 THE COURT: Good afternoon, ladies and
12 gentlemen. We're back on the record in the case of
13 People of the State of California versus John Henry
14 Yablonsky. Mr. Yablonsky is present before the Court
15 represented by his attorney, David Sanders.
16 John Thomas is here for the People along with his
17 investigating officer, Detective Alexander.

18 Mr. Sanders, you may proceed.

19 MR. SANDERS: Thank you, your Honor.

20 Okay. Ladies and gentlemen, I hope you all had
21 a good lunch.

22 THE COURT: Got to keep your voice up.

23 MR. SANDERS: Yes, sir.

24 If you're going to be an actor or going to be
25 in a play, don't eat before you go on because it makes
26 your voice soften down, but I'll try to keep it up.

27 We're just getting to the best part here,
28 ladies and gentlemen. I was going through the witnesses

1 and what they testified to and I'm now on
2 Marshal Franey. You'll remember Mr. Franey. He was
3 the, I thought, colorful gentleman that came in. He had
4 been a funeral director for many years. He was a deputy
5 coroner. When he said that, I could picture him. He
6 looked like the kind of guy who would be driving a
7 hearse and getting out and greeting people and doing the
8 things that funeral directors do.

9 Here's what he said: He said, the body had
10 been there either two to three days. That's an
11 important point. What is our time frame here? Our time
12 frame is a body was found about 12:30 or noon -- let's
13 call it noon on Monday. So he says, okay. She could
14 have been dead anytime from noon on Friday to noon on
15 Saturday. We know she didn't die noon on Saturday (sic)
16 because she was at the party Friday.

17 The other end is the part that's important.
18 She could have died anytime from noon on Friday to noon
19 on Saturday. There's no evidence that said she had to
20 have died on Friday night or Saturday morning or
21 Saturday midmorning. She could have died as late as
22 Saturday noon. That would be within the evidence that
23 he had.

24 He said he saw a mark on her knee. He said
25 that mark could be an injury. I can't tell its age.
26 The government didn't like that response because they
27 want you to think that, hey, injury on her knee;
28 therefore, there was a sexual assault. He said, I can't

1 tell its age, could be lividity and could be an injury.

2 He said clearly, I did not see the shorts in
3 her mouth. He did say something about tissue paper.
4 You guys looked at that picture. There was this white
5 thing. I couldn't figure out what that was.
6 Apparently, there was a piece of tissue paper.

7 How did tissue paper get there and why was it
8 just a little piece of issue paper? Why would you have
9 tissue paper in a bed? I don't know. I don't know why.
10 They didn't mention that. I don't know why they didn't
11 think that was a gag, but they didn't because they had
12 decided the shorts were a gag, and they went with that
13 theory and he says no.

14 The next witness was Dr. Saukel. Apparently
15 he's been doing this a long time, and you noted how he
16 testified. He was extremely knowledgeable and extremely
17 unbiased. He was not going to say anything because
18 someone wanted him to. He said what he saw. What did
19 he say? He said, well, the time of death -- that's an
20 important thing here. The time of death, you know why
21 that's important? Because the more that the government
22 can compress the time of death, the more they can argue
23 that it had to be Mr. Yablonsky. The bigger the time of
24 death, the more it could be other people.

25 What did he say? Well, the time of death he
26 has at least two days. That's the best I can say. He
27 says, I know it was at least one day because there was
28 infestation there, but he said two days at least. Where

1 does that put us? Puts us, again, at noon on Saturday.
2 We've still got a 14-hour, 13-hour window that something
3 happened.

4 What else did he say? He said, I did not see
5 any evidence of sexual assault. Now, that is the
6 government's witness. They call this gentleman to the
7 stand, and he said, I did not see any evidence of sexual
8 assault. That's what the government's attorney wants
9 you to decide. They want you to say, you know what,
10 Doctor, we appreciate your testimony. We know you're an
11 expert and you've done this for 30 years, and you're a
12 professor at Loma Linda University, but we're going to
13 go with the government's lawyer on this case. I know
14 you didn't see any evidence of sexual assault, but we --
15 the jury should go with him and not with the expert.
16 That's what he was asking you to do. The doctor said, I
17 did not see any evidence of sexual assault.

18 This is what else he said; he was asked about
19 the bruise on the leg, the possible bruise on the leg,
20 and he said, and his words are really important. He
21 said, I can only make a crude assessment. That was his
22 word, a crude assessment as to the age of those marks.
23 I can't say, Mr. Prosecutor, that it's circumstantial
24 evidence of what you want it to be circumstantial
25 evidence. I can't say that. He can say, I could only
26 make a crude assessment.

27 Then the prosecutor pressed him and said, well,
28 isn't it possible, and he said, yes, one possibility.

1 He didn't even use the word one probability or, yeah,
2 there's a good chance. He doesn't use those terms. He
3 said one possibility is it's from a sexual assault.

4 He was asked about injury to the genitalia. He
5 says, whenever, you know, there's a question by the
6 detectives, we do an examination. In this case, he did.
7 When he did the autopsy, he not only examined every
8 other part, but he examined the genitalia. He said,
9 there was no injury to the genitalia. There was no
10 injury.

11 Then the prosecutor, of course, that's not good
12 for his side, so he says, well, that doesn't rule it
13 out; does it? He said, no, it doesn't rule it out, but
14 more commonly there are injuries to support the idea of
15 a sexual assault. More commonly there will be some
16 injury. Didn't rule it out, Mr. Prosecutor, but more
17 commonly there will be some.

18 Then he said this: If we suspect a sexual
19 assault, we will usually do a series of exams over a
20 wide area, but he didn't in this case. They didn't do a
21 series of exams over a wide area. Why? Because he did
22 not suspect a sexual assault. That's their expert
23 testifying to you. He didn't -- he didn't see a reason
24 to do, as he said, a series of exams over a wide area.

25 Finally, what did he say about the sex? I
26 can't tell if it's a sexual assault or consensual sex.
27 There's the guy that examined the woman. You remember
28 when he did his coroner's report, which -- his report,

1 which you're going to get into evidence, he was told the
2 circumstances of death. He was told the history. Then
3 he looked at the evidence first hand in person, no
4 hearsay from anybody else. He looked at it himself, and
5 what did he say? I can't tell if there's a sexual
6 assault.

7 When was the sex? It was within a day and a
8 half of the death. That was his estimate. It was
9 within a day and a half of death. If we put that as
10 being around noon on Saturday, up to noon on Friday,
11 that means the sex was within a day and a half of that.
12 That doesn't fit the prosecutor's scenario. That
13 doesn't fit, but that is what his witness said, within a
14 day and a half of death.

15 So the very last minute she could have died on
16 Saturday. That would mean the sex could have been that
17 morning, Friday at noon, Friday in the evening, Friday
18 before she went to the party, after she went to the
19 party, but not necessarily tied to the time of death.

20 All right. Detective Alexander then was their
21 last witness. Detective Alexander, of course, his job
22 was to introduce the statement of my client. They put
23 the statement into evidence. I know that the prosecutor
24 wants to use some circumstantial evidence from that
25 statement.

26 The circumstantial evidence argument is that we
27 know your client had sex. Your client didn't tell the
28 officer or he denied to the officer having sex;

1 therefore, he raped her. That is the logic that they
2 want you to use. He had sex with her. He told the
3 officer he didn't; therefore, he raped her. Now, does
4 that follow logically? No.

5 Could there be other reasons that you would
6 deny it? Yes. Let's, again, presume that a person is
7 innocent. Okay. We're assuming that my client is
8 innocent. He didn't do this, but he had had sex with
9 her. When the officer asked him, is there any reason
10 why he might not have admitted to it? Where did the
11 interview take place? In his house. Who was present?
12 Her voice was even on the tape. His wife.

13 Maybe there's another reason to say no. Maybe
14 there is this embarrassment issue that if somebody finds
15 out that, hey, when I was 22 years old, I had sex with
16 someone that was 55, and later I found out that it was
17 very close to the time that someone killed her. Can you
18 believe that?

19 You know, his dad told him. He finds out
20 later. In the statement he said he heard it from
21 somebody else. How does that make you feel? Wow. I
22 just had sex with this lady. I hope they don't try to
23 pin this murder on me because I didn't do it. Would
24 that make you want to say no? Yes, it could. There are
25 other reasons just besides the one the prosecutor's
26 pointing to that he could have said that.

27 I'd like to spend just a moment on a couple of
28 the jury instructions. One of the ones that -- I know

1 the government likes this instruction. You don't have
2 to call all the witnesses, but, you know what, when you
3 have the burden of proof, it's incumbent upon you to
4 call all the witnesses necessary, to call all of the
5 witnesses to plug the holes, to call the witnesses to
6 show that you're circumstantial evidence arguments are
7 correct.

8 My client has an absolute right not to testify.
9 I'm not going to spend long on this because it is my
10 client's right to rely on the evidence, or lack of, that
11 was put on by the prosecutor. If at the end of the
12 prosecutor's case, my client thinks there's not enough
13 to convict, there's way too many holes, he doesn't have
14 the logical arguments he thinks he has, I'm not going to
15 testify.

16 The judge told you. I'm sure you'll follow his
17 instructions that you're not to discuss that or consider
18 that. Everyone has a constitutional right not to
19 testify.

20 Number 362, if a person made a false statement,
21 what the instructions says -- it doesn't say he's
22 guilty. It says you may consider that, but you can't
23 prove guilt by that itself.

24 370 is the same thing except it's something
25 that I would rely on. Not having a motive is something
26 that you can use to show not guilty. It may be used by
27 you for that purpose.

28 There's two instructions, one is for the

1 prosecutor having made a wrongful statement; therefore,
2 he's guilty. I can say to you, he didn't have a motive.
3 There's no motive; therefore, he's not guilty. Neither
4 one of those is an absolute. They both show that
5 there's something there for you to talk about. He
6 didn't have a motive.

7 What possible motive was there? There was no
8 showing that he had bad blood, that she was a bad
9 landlord, he wanted to get even with her, he was --
10 whatever. We don't have any evidence of a motive.

11 The prosecutor made a bootstrap argument. I've
12 charged this guy with rape; therefore, rape is the
13 motive. Well, there's no evidence of that, and there's
14 no evidence by the doctor of a sexual assault in the
15 first place.

16 He talked for a minute about first degree
17 murder and second degree murder. That was an
18 interesting discussion. What's the difference between
19 first degree murder and second degree murder? First
20 degree murder is premeditated, deliberated, and willful.

21 He did an experiment for you to have you assume
22 that someone is choking someone for ten minutes. Is
23 that what happened in real life? No. How do we know
24 that? Because the doctor told us that. What did the
25 doctor say? The doctor said that once you cut off the
26 carotid blood supply, they go unconscious in an average
27 of 30 seconds. Average of 30 seconds means some people
28 may go unconscious in 30 seconds, others 40 seconds, but

1 average they go unconscious in 30 seconds.

2 If you put your hands on somebody and strangle
3 them, they go unconscious. Whoever did that, might have
4 looked around, saw a hanger there. Before she got
5 conscious again, he put the hanger around her neck and
6 then runs. He didn't have to stay there and look at the
7 clock. It's been four minutes, five minutes. That's
8 not how it works. It was inaccurate because it made you
9 think there was a long time that somebody was standing
10 with their hand on her neck. That just doesn't happen.

11 Another point that I have questions about; if
12 you're trying to show premeditation and deliberation,
13 it's like planning, you have a plan. I'm going to go
14 over to this lady's house, and I am going to rape her.
15 That was what the prosecutor said is planning.

16 If you're going to go over to somebody's house
17 and rape her, probably get a knife, maybe a gun,
18 screwdriver. You don't bring a hanger. I got my hanger
19 right here in my back pocket. I'm going to go over
20 there. It doesn't happen that way. It's one of those
21 things that show there wasn't a plan, shows it wasn't
22 premeditated and deliberated.

23 Whoever did this grabbed whatever they could at
24 the time because they were acting on a rash impulse.
25 They were doing something without thinking. There isn't
26 any premeditation and deliberation. I'm assuming the
27 hanger probably was one of hers.

28 You know, you got to think this out in your

1 mind. If the prosecutor is saying, okay, the rape and
2 the murder happened at the same time, what's he doing?
3 Getting a hanger ready while he's raping her? Is
4 somebody -- hold it right there. Stop. I got to get a
5 hanger. Don't move.

6 I've got a couple other things to say about
7 that too. She had all her clothes off. She didn't have
8 any clothes on. If you're having sex with someone, they
9 usually take their clothes off. If you're raping
10 someone, you usually tear off what you need to, ripped
11 panties, maybe a torn dress, maybe, but once you get the
12 pants off, you don't have to worry about anything else.

13 Where was her ring? It was on the night stand.
14 Is that something that a rapist would say, I got this
15 hanger, ma'am; take off all your clothes; and put your
16 ring right there? No. That doesn't happen that way.
17 What happens when you're having consensual sex with
18 someone, you take off all your clothes. You don't tear
19 them, and you put your ring where you can reach it.

20 The prosecutor says, what about the glasses?
21 They're on the floor; therefore, this was a rape.
22 Glasses on the floor; therefore, this was a rape or
23 there's a woman that just came home from a party, and
24 she's smashed. She had been drinking a lot of bourbon,
25 and people had asked her not to drive herself. Maybe
26 she missed that little nightstand. She got one out of
27 two. She got the ring on, but the glasses maybe fell
28 off. It doesn't prove that somebody was raping her

1 because the glasses were on the floor.

2 I want to talk about some of the circumstances
3 that we have referred to when we're talking about
4 circumstantial evidence. Just to make sure we are on
5 the same page, the judge told you there's direct
6 evidence and circumstantial evidence. If you see the
7 rain coming from the sky, that's direct evidence that
8 it's raining. If you see someone come in from outdoors
9 with a raincoat on and it has water on it, that's
10 circumstantial evidence that it's raining but not
11 necessarily a hundred percent.

12 For example, let's say that someone came in
13 with a wet raincoat on. It could be raining or could be
14 a fireman putting out the fire next door. Years ago, I
15 was working at the Riverside County Courthouse. The
16 Riverside County Courthouse is beautiful because -- it's
17 beautiful. They make movies there. They were making a
18 movie. I don't remember the name of the movie, but
19 Jack Lemmon and Walter Matthau were in it.

20 They had redone the Riverside downtown so it
21 looked like a different city, put up a fake board and
22 painted them. All the time for about four or five weeks
23 outside they were filming the various scenes. One scene
24 they filmed, they had these big sprinklers because it
25 was supposed to be a rainy scene. They had great big
26 sprinklers that were making this fake rain. Everybody
27 that was working on the scene was running around in
28 raincoats except the actors and actresses. They had to

1 do their scenes in the rain.

2 I see someone coming in a raincoat, it could be
3 it's raining. It could be they are firemen, or it could
4 be Walter Matthau doing a scene in this movie.

5 When you have more than one possibility, the
6 prosecutor has the duty to show you beyond a reasonable
7 doubt that it wasn't the other three; that it was just
8 the one that he wanted you to choose. That is part of
9 his burden, and my point is he didn't do that on all of
10 the circumstantial evidence. He wants you to choose the
11 one that he wants you to choose, but he hasn't shown you
12 why the others are invalid.

13 Circumstantial evidence. There's a bruise on
14 the knee; therefore, it's rape. Bruise on the knee;
15 therefore, rape. We've already talked about that.
16 There could a number of things, maybe she lost her
17 balance, maybe she has a shift knob in her car that
18 bangs on her knee. Could be a hundred -- maybe she was
19 riding horses the day before. Nobody knows. Could be a
20 hundred things. The doctor said, I don't know the age
21 of that bruise.

22 Rented from her; therefore, he has a motive.
23 That one is so far out there. I'm not even going to --
24 she is killed with a hanger; therefore, had to be him.
25 This doesn't follow a bit; does it? Here's one. She's
26 an older woman. She's 55. He's 22; therefore, it has
27 to be rape. Does that follow? Are there other
28 reasonable possibilities than that? Maybe there weren't

1 cougars back then, but maybe there were cougars back
2 then. We don't know. We don't know. The prosecutor
3 hasn't given us the evidence to throw out that
4 possibility.

5 Do you know what the jury instruction says on
6 circumstantial evidence? It says, if there's more than
7 one reasonable conclusion, you must accept the one that
8 points to innocence. That's what the instruction says.
9 If there is more than one reasonable interpretation of
10 that circumstance, you must accept the one that points
11 to innocence.

12 Another one, drapes were closed; therefore, it
13 had to be a rape. We don't even know who closed those
14 drapes. We don't even know if Ms. Cobb came home, and
15 she had called up my client and asked him to come over
16 to fix the leaky faucet, and she thought, you know what,
17 I better close the drapes because I don't want the
18 neighbors to see me hanging out with a 22-year-old. We
19 don't know who closed the drapes. There's nothing
20 sinister, nothing that shows guilt by the fact that
21 those drapes were closed.

22 There was a lot of sperm; therefore, she had
23 sex right before death. We've talked about that one.
24 The doctor himself says that one was invalid.

25 John Sullivan and Francesca Drake said she went
26 home; therefore, she did go home? Does that necessarily
27 follow? Is that necessarily consistent? No. She might
28 have gone to the store. She might have gone to the bar.

1 She might have gone to a gas station. She might have
2 gone to visit somebody. We don't know.

3 Moderate decomposition; therefore, the death
4 had to have been Friday night. The doctor said that's
5 not true.

6 She's dead; therefore, she was raped. Doesn't
7 follow. Just for sake of argument, even if the person
8 that had sex with her killed her, that's not evidence
9 that it was a rape. It could have just been consensual
10 sex, followed by an argument, followed by some really
11 upset people and a dead person. That's just as
12 conceivable.

13 If sex -- if he had sex with her, he killed
14 her. That's what the -- this is another one of these
15 circumstantial evidence that the prosecutor wants you to
16 buy. If he had sex with her -- if a person has sex with
17 someone in these circumstances, he had to have been the
18 one who killed her. There's too many openings, too many
19 possibilities, not necessarily that one. If there's
20 more than one reasonable possibility, you must accept
21 the one that points to innocence.

22 Here's a good one. If the bedding was bunched
23 up, it had to be a rape. Your bedding ever get bunched
24 up when you have sex? Does your sheets ever get pushed
25 to one side or blankets get pushed to one side or does
26 that only happen when you're raped? That's completely
27 illogical, but that's what the prosecutor wants to say.
28 If the bedding is bunched up, it had to have been a

1 rape.

2 If the glasses were on the floor, it had to
3 have been a struggle. We talked about that.

4 Then in his opening argument, he mentioned a
5 couple of other circumstances. If your shorts -- if the
6 shorts were in the mouth, it had to be a rape. The
7 problem we have in this case is we have sex, and we have
8 death. Then we have evidence, but who's to say -- where
9 was the witness, where was the evidence, why didn't the
10 government come in and bring you something to show that
11 that -- the sex caused the blankets to be bunched up and
12 the sex caused her to be in that position? Why couldn't
13 it have been the death?

14 If my client had sex with her on Friday night,
15 and someone else came in and killed her and got in an
16 argument enough to want to choke her and then wrap a
17 hanger around her neck, why couldn't that have made the
18 bedding bunch up? Why couldn't that have made the
19 glasses fall to the ground? There's no -- absolutely no
20 evidence to show it couldn't.

21 Then there's a big deal made about the way her
22 legs were. Look at the way her legs are. That shows
23 that she was raped, but she wasn't raped before she was
24 killed. She didn't have consensual sex before -- after
25 she was killed. The last thing that happened to her is
26 that she was killed.

27 What is the DA -- what is the government's
28 position? The government's position is that somebody

1 raped this woman and while -- then after he raped her,
2 he told her to hold still and not move her legs and keep
3 them in that position while he killed her? Doesn't make
4 any sense at all.

5 This is a little bit graphic, but I think it's
6 an important point. I don't have a bed. I'm on a bed,
7 and somebody -- I'm laying down. Doesn't look like it,
8 but pretend please. I'm laying down, and somebody is
9 strangling me. What are my legs doing? Are they
10 kicking like this? Are they bending up? Are they
11 pushing things away while I maybe arch my back and try
12 to get away?

13 If I fall unconscious while I'm making this
14 motion -- there is no evidence, and the prosecutor or
15 the government's position is, they know that, but they
16 want you to think, look, the legs were in a certain
17 position; therefore, she was raped even though their own
18 experts say we don't have any evidence of that.

19 Here's some circumstantial evidence for you.
20 The government's attorney did not talk about this. That
21 watch pin was found on the right side of her head. The
22 knot in the hanger was on the left side of her head.
23 I'm assuming that whoever killed her didn't do it from
24 behind. They were facing her, so the watch pin is on
25 the right side of her head. The knot is on the left
26 side of her head. Who wears watches on their right?

27 The person is facing her. The watch pin is on
28 his left side and the knot is on his right side. Who

1 wears watches on their left side? Who ties knots on the
2 right side? Somebody that's right handed.

3 All these years trying to find out who had sex
4 with her, not trying to find out who killed her. They
5 made an unwarranted assumption right at the start, and
6 they got locked into that. If we find out who had sex
7 with her, this case is solved. Don't worry about the
8 rest. Don't worry about the rest. Just find out who
9 had sex with her, and we will go with that, and that's
10 the guy that killed her. They went with that for the
11 last 25 years. They didn't go back to the harder task
12 of trying to find out who killed her.

13 By the way, when the prosecutor was using those
14 minutes to choke someone, his argument is anybody that
15 choked someone is guilty of first degree murder, not
16 second degree murder. You know what? If that is the
17 law, if that's the way it was, the judge would instruct
18 you all that choking is first degree murder. That's not
19 the law because there are circumstances when it isn't.

20 None of us were there. I wasn't there. The
21 prosecutor wasn't there. Even the detective wasn't
22 there. We don't know for sure, but the evidence is
23 clear, there's not enough to prove beyond a reasonable
24 doubt that my client committed this crime.

25 Sometimes it's easy to do the wrong thing, and
26 sometimes it's hard to do the right thing. None of us
27 want to live in a system where we don't require our
28 government to do the right thing all the time. If

1 someone is guilty, they should go to jail, but if
2 there's some -- if the evidence is insufficient on
3 important points, then the message is clear. We vote
4 not guilty, and we ask our government to get it right
5 next time. Thank you.

6 THE COURT: Okay. Thank you, Mr. Sanders.
7 Mr. Thomas, you may proceed.

8 MR. THOMAS: Good afternoon, ladies and
9 gentlemen. Mr. Sanders got up here and talked about
10 the presumption of innocence and how you as jurors
11 need to follow the law and presume his client
12 innocent. That's only part of the system. The other
13 part is that if the evidence is there, you as a jury
14 have to find his client guilty. He's not telling you
15 that. He wants to focus on the innocent part. If
16 I've proven beyond a reasonable doubt that his client
17 is guilty of the offense, then as a juror, you need to
18 follow the law and come back with a guilty verdict on
19 this case.

20 Some of the things that Mr. Sanders talked
21 about, and this is the reason that I brought it up
22 during closing this morning, is you look at that second
23 sentence up there or the second paragraph. I mean,
24 nothing that the attorneys say is evidence. In their
25 opening statements and closing arguments, the attorneys
26 discuss the case but their remarks are not evidence.
27 Their questions are not evidence. Only the witnesses'
28 answers are evidence.

1 In this case, Mr. Sanders got up here and
2 talked about all these possibilities, but all of these
3 possibilities he talked about had no evidence behind it.
4 That's where the flaw in his argument is. He wants
5 me -- remember, we asked this question earlier during
6 the voir dire process. I have to prove this case beyond
7 a reasonable doubt, not beyond all possible doubt. I
8 told you I couldn't prove it beyond all possible doubt,
9 but that's what Mr. Sanders wants me to do. He wants
10 you to make me prove this case beyond all possible
11 doubt. I can't do it, ladies and gentlemen. I can
12 prove this case beyond a reasonable doubt, and I would
13 argue that I have.

14 Mr. Sanders is throwing all these possibilities
15 in his argument this morning and this afternoon. What I
16 found to be humorous is he talked about that *In the Heat*
17 *of the Night* and how they went out and got people who
18 were innocent, and there was no evidence. That's what
19 he would have you do in this case. That's what he
20 wanted me to do in this case from what his argument is.

21 Basically, well, there's these other suspects
22 out there. Why weren't they arrested? Why -- why
23 didn't the prosecutor bring them into court? Why did
24 they focus in on Mr. Yablonsky? Because we had evidence
25 that show that Mr. Yablonsky committed this crime.
26 There was no evidence, and you didn't hear any evidence,
27 linking anybody else to this crime except Mr. Yablonsky
28 during this whole trial.

1 I was waiting for him to pick somebody in the
2 audience or pick Detective Alexander. Maybe
3 Detective Alexander did it. Those are all just
4 possibilities, ladies and gentlemen. They're all
5 figments of Mr. Sanders' imagination. That's what they
6 are. He's coming up with all these possibilities hoping
7 that you as a jury will listen to one of his
8 possibilities and ignore the evidence and ignore where
9 the evidence points. The evidence points over there to
10 Mr. Yablonsky.

11 At one point he was talking about calling all
12 the witnesses; that we have an obligation to call all
13 the witnesses. Then this morning he was talking about
14 Diane Flagg. Why did the prosecution call her? Did you
15 hear me during closing arguments this morning talk about
16 Diane Flagg in any connection between the Pinto that she
17 saw and the Pinto of Mr. Yablonsky? No. Because there
18 was none.

19 Mr. Sanders talked about what could have been
20 done. What could the police have done back then? They
21 could have done this. They could have done that,
22 playing Monday-morning quarterback 25 years later.
23 They're saying, they could have done this. They could
24 have collected this evidence. What would that have
25 proved? Nothing.

26 Let's say we did collect -- there was evidence
27 that there were fingerprints, and you didn't hear any
28 evidence, but let's say there was evidence that

1 fingerprints were collected, and it came back to
2 Mr. Yablonsky. What would his excuse be? Of course
3 Mr. Yablonsky was in the house at some point, but that
4 fingerprint, that wouldn't tell us that he was in there
5 that Friday night or Saturday morning. He'd have
6 another excuse, just like the consensual sex. He has an
7 excuse.

8 He wants you to speculate as to why
9 Mr. Yablonsky didn't tell the detectives about the sex.
10 Could have been his memory was failing. Look through
11 that transcript. You'll see he remembers Rita Cobb had
12 a dog. There was a question, and I think it was on
13 Page 94 -- Page 94, Line 19, Detective Alexander asked,
14 who else did you date back then? He responds Dana,
15 Brittney, Julie, Lori, a couple more. He remembers.

16 For Mr. Sanders to get up here and say his
17 memory is faulty in some ways, that's not true. He has
18 a great memory. He remembered the dog. For him to say,
19 oh, he didn't remember something like sexual intercourse
20 with a person who was found dead later on apparently
21 according to his father, and his father told him days
22 later that Rita Cobb was dead, but he couldn't remember
23 having sex with this woman.

24 Put yourself in that situation. If you had
25 consensual sex with Rita Cobb, and you were asked by
26 detectives -- you knew that Rita Cobb was murdered
27 afterward, and you were asked by detectives, you would
28 be honest. You would say, look, I did have sex with

1 that victim in this case. I did have sex with Rita, but
2 I didn't kill her, but I did have sex with her. That's
3 what you would say. You wouldn't deny it unless you
4 didn't want there to be a connection between you and the
5 victim. That's what I would argue Mr. Yablonsky was
6 doing during that interview.

7 I would also ask you to look back at the
8 closing argument of Mr. Sanders. Most of that argument
9 was focusing on things that we don't know instead of
10 things that we do know. He wasn't up here explaining
11 all the evidence that was presented. He was, well, it's
12 possible that this could have happened. It's possible
13 that that could have happened. This is another thing
14 that could have happened in this case. He had all these
15 possibilities. Most of his closing argument was about
16 possibilities. It wasn't about the evidence.

17 If I didn't call Diane Flagg, he would have
18 gotten up here and said maybe there was somebody
19 possibly driving around that evening that could have saw
20 somebody or some car parked at Rita's house. Who knows
21 what he would have said.

22 Point is, you as jurors are not to engage in
23 speculation. You're judges of the facts. You're judges
24 of what the evidence is in this case. If you didn't
25 hear the evidence that Mr. Sanders was talking about in
26 closing, that's not evidence.

27 Mr. Sanders also brought up all these scenarios
28 of how some other killer came in. Is it really