

1 reasonable for somebody to believe that; that, hey,
2 Mr. Yablonsky just had consensual sex with her and all
3 of a sudden hours later somebody happened to be pissed
4 off at the victim in this case and made it look like it
5 was a rape, put her in a position that it was a rape and
6 then didn't rape her but just killed her, just strangled
7 her? No. That's not reasonable.

8 Is it possible that aliens from outer space
9 came down and murdered Rita Cobb? Anything's possible,
10 but we're dealing with what is reasonable, and what is
11 unreasonable.

12 In the instructions that you have, you have an
13 instruction on circumstantial and direct evidence. In
14 that instruction, that's 224, that last sentence there:
15 However, when considering circumstantial evidence, you
16 must accept only reasonable conclusions and reject any
17 that are unreasonable. There's the key phrase right
18 there. You have to reject what is unreasonable. I
19 would argue that Mr. Sanders and his arguments are
20 unreasonable because there is no evidence.

21 When Mr. Sanders said, whoever had sex -- when
22 he was inferring that whoever had sex with her didn't
23 kill her, look at all of the evidence. I mean, look at
24 the fact that -- I'm not going to put the pictures up
25 here again. I think you've seen them enough, but look
26 at the photographs. Look at the way the body's
27 positioned. She's nude. She's positioned in a sexual
28 position. There's evidence from Mr. Yablonsky that

1 shows he had sex with her.

2 Even Mr. Sanders said at one point, I'm not
3 saying my client's DNA was not there, but then right
4 after that, he talks about how, well, you know, the DNA
5 stuff is all a matter of probabilities and all this
6 stuff making it seem like it's less scientific; that
7 it's like a roll of the dice.

8 The criminalist in this case explained, there's
9 certain times where this particular number would come
10 up, and there's certain times where it doesn't. She
11 explained how she went about determining how that random
12 probability or the random people on the earth or in
13 society, if they were to look at random people and look
14 at when this combination would come up, it would come up
15 in the quadrillions or trillions every single time.

16 Mr. Sanders came up here and talked about
17 rolling dice and everything. Anybody that knows about
18 probabilities and what Mr. Sanders was talking about,
19 it's the same thing that we do when we play the Lotto.
20 The first number that comes up, you have a one in
21 whatever how many numbers they have. I think it's 40
22 some in some of the Lottos, 50 some in the other. Then
23 the second number, you have the same amount, but you got
24 to times the 54 times 54, and you keep doing that. The
25 possibility of your six numbers coming up is out there
26 in the millions of probabilities.

27 Same thing with this. It's not -- this is
28 based on scientific analysis and not on just a game of

1 chance, but that's what the criminalists are doing in
2 this. They're doing the same thing.

3 Then Mr. Sanders talked about the sperm count,
4 and you know, well, it's possible that Mr. Yablonsky had
5 a high sperm count. We didn't hear any evidence of what
6 his sperm count is. He wants you to speculate about
7 what his sperm count is.

8 We heard Don Jones say when he examined the
9 swab that he took, it was a lot of sperm. Then there
10 was another swab that Dr. Saukel took that he described
11 as a moderate amount of sperm. I asked Dr. Saukel how
12 is it that you have Don Jones saying it's a lot, and
13 then you say it's moderate. He explained during that
14 day that some of these sperm could have been lost, and
15 that would explain why there's a difference between a
16 lot and moderate. You go down as far as the next day,
17 the next day, and that -- that's what I would argue
18 happened here. This swab was taken on Monday by
19 Don Jones. Tuesday there was a swab taken by
20 Dr. Saukel.

21 That brings me to another point. The defense
22 said, well, there was no sexual assault examination.
23 Dr. Saukel testified they took a vaginal swab. If there
24 was no indication of sexual assault in this case, why
25 would he have taken a vaginal swab? It's because of
26 this evidence of sexual assault.

27 Let's talk about the white shorts in the mouth.
28 Why else would those white shorts be in the mouth area?

1 I didn't hear any explanation from the defense as far as
2 that goes. The only reasonable conclusion that you can
3 come to, as far as why are those white shorts in her or
4 near her mouth area, is because at some point they were
5 in her mouth.

6 The reason they were no longer in her mouth is
7 because you saw how her dentures were coming out. You
8 saw how her tongue was protruding. Her tongue was out.
9 Anything that would have been in her mouth would now be
10 outside of her mouth because her tongue pushed the items
11 out of her mouth, the dentures and the white shorts.

12 Then as far as if you find that conclusion to
13 be reasonable and there's no other reasonable conclusion
14 that you can come to -- then you can go to the next
15 step. Why would somebody put a pair of white shorts in
16 somebody's mouth? It goes back to what I explained this
17 morning. The only reason that you would do that is to
18 keep a person quiet as you're doing some sort of act to
19 them, raping them, and you don't want them to make any
20 noise. That's why.

21 Mr. Sanders talked about the pair of panties.
22 You heard the testimony from Marta and Daryl about Rita
23 and how she kept her clothes. She was always wanting
24 her clothes to be neat. She wanted to look
25 professional. That would go against throwing your
26 clothes on the floor.

27 As far as the defendant himself, he -- he even
28 said she was proper, which would imply she kept nicely

1 dressed. So for him to argue, maybe there were other
2 pairs of panties on the floor, you didn't hear any
3 evidence of any other pair of panties. He wants you to
4 speculate. Maybe there was a pair of panties in the
5 bathroom. Maybe there was a pair of panties in the
6 garage. Maybe there was a pair of panties out in the
7 field there and the detectives didn't go out there and
8 look. There's no evidence.

9 Mr. Sanders talked about sexual assault and the
10 injuries. You heard from Dr. Saukel that sometimes
11 there are no injuries. That doesn't prove that somebody
12 hasn't been raped. If somebody has a knife to your
13 throat or gun to your head and tells you you're going to
14 submit to me having sex with you, that could explain why
15 there's no injuries. Are you going to fight somebody
16 that has a gun to your head? A knife to your throat?

17 Then Dr. Saukel also talked about injuries that
18 may be missing due to decomposition. He wasn't able to
19 do a big work up because the body was already moderately
20 decomposed.

21 Then Mr. Sanders got up here and said, well,
22 maybe somebody wrapped that hanger around her neck and
23 then walked out. That's not what Dr. Saukel testified
24 to. Dr. Saukel said there has to be continuing
25 pressure. I believe the testimony was there was a loop
26 on the right side and a loop on the left side, and so it
27 could have been right, left handed. It doesn't matter.

28 As far as the strangling is concerned, he said

1 when a person's unconscious, which was about 30 seconds
2 to a minute -- he said it could be longer than a
3 minute -- when a victim goes unconscious, there still
4 needs to be that pressure put on the throat. If you
5 release the pressure, the person is able to breathe or
6 the blood starts flowing back to the brain.

7 In this case, he said that, well, as far as the
8 pressure goes, it would have taken five minutes to ten
9 minutes for somebody to kill Rita. That's what he said.
10 That's what he testified to. The defense wants to make
11 it look like, well, he could have wrapped a hanger
12 around her and that would have been it, and she wouldn't
13 have been able to get it off of her at that point.

14 As far as that goes, it's all pure speculation.
15 That's not what Dr. Saukel testified to as happening
16 when somebody gets strangled.

17 The last thing I want to talk about is motive.
18 Again, in this case, what does all the evidence point to
19 as being a motive? It points to sexual assault, rape,
20 being the motive. There's no other motive out there.
21 Mr. Sanders wants you to speculate that maybe some other
22 person was upset at her. Where's the evidence? Maybe
23 somebody was pissed off at her about seeing her sleep
24 with somebody else. Where's the evidence? There is no
25 evidence for what he got up here and said. None.

26 There is evidence, and he didn't talk about all
27 the evidence, that shows the motive in this case was
28 rape. I'm not going to go over everything I went over

1 this morning, as far as why the motive in this case was
2 rape, but that's where all the evidence points to. It
3 doesn't point to some other circumstance that happened.
4 It points to rape as being the motive. If rape is the
5 motive, then in this case you have one person to look
6 at, and that's Mr. Yablonsky.

7 His denials during the interview. Why would
8 somebody deny that, having consensual sex? There's
9 nothing wrong with having consensual sex. You can talk
10 all you want about the 21-year-old, I think he was 21 at
11 the time, and 55-year-old, and say, well, you know,
12 maybe he was embarrassed.

13 Well, they asked him not only at the house, but
14 they asked him at the police station. What was his
15 embarrassment at the police station? He knew at that
16 point he was being looked at as a suspect, and he
17 suspected it. You could tell when he was being brought
18 over there. He asked, am I being considered a suspect?
19 In the back of his mind, he's thinking about that.

20 He understands what physical evidence is and
21 how it links somebody to a crime, that was evidenced
22 through the fingerprint -- fingerprint part of the
23 interview when Detective Alexander went through all that
24 stuff with him. So he's not stupid, ladies and
25 gentlemen. He knows what he was doing during that
26 interview. He was lying to keep himself from being
27 looked at as a suspect in Rita Cobb's murder.

28 So at the end of this, yes, you have a duty to

1 the defendant in this case, and you have a duty to look
2 at all of the evidence. Not only do you have a duty to
3 the defendant, but you have a duty to the People in this
4 case. You have a duty to look at all of the evidence,
5 examine all the evidence, look at what it shows.

6 At the end, I'm confident that you'll come back
7 with a verdict of first degree murder and find the
8 special circumstance that the murder was committed in
9 the attempted commission or the commission of a rape.

10 Thank you, again, for your time.

11 THE COURT: Okay. Thank you, Mr. Thomas.

12 Now, ladies and gentlemen, you've heard all the
13 evidence that you're going to hear. You've heard all
14 the arguments of the attorneys. You've heard almost
15 all of the instructions. There's one more. I'm going
16 to see if I can figure out how to do this last
17 instruction.

18 "When you go into the jury room,
19 the first thing you should do is
20 choose a foreperson. The foreperson
21 should see to it that your discussions
22 are carried on in an organized way and
23 that everyone has a fair chance to be
24 heard.

25
26 "It is your duty to talk with one
27 another and deliberate in the jury
28 room. You should try to agree on a

1 verdict if you can. Each of you must
2 decide the case for yourself but only
3 after you have discussed the evidence
4 with the other jurors. Do not
5 hesitate to change your mind if you
6 become convinced that you are wrong,
7 but do not change your mind just
8 because the other jurors disagree with
9 you.

10
11 "Keep an open mind and openly
12 exchange your thoughts and ideas about
13 this case. Stating your opinions too
14 strongly at the beginning or
15 immediately announcing how you plan to
16 vote may interfere with an open
17 discussion. Please treat one another
18 courteously. Your role is to be an
19 impartial judge of the facts not to
20 act as an advocate for one side or the
21 other.

22
23 "As I told you at the beginning
24 of the trial, do not talk about the
25 case or about any of the people or any
26 subject involved in it with anyone
27 including but not limited to your
28 spouse or other family, friends,

1 spiritual leaders, advisers or
2 therapists. You must discuss the case
3 only in the jury room and only when
4 all jurors are present. Do not
5 discuss your deliberations with
6 anyone.

7
8 "During the trial, several items
9 were received into evidence as
10 exhibits. You may examine whatever
11 exhibits you think will help you in
12 your deliberations. These exhibits
13 will be sent to the jury room with you
14 when you begin to deliberate.

15
16 "If you need to communicate with
17 me while you are deliberating, send a
18 note through the bailiff signed by the
19 foreperson or one or more members of
20 the jury. To have a complete record
21 of this trial, it is important that
22 you not communicate with me except by
23 written note. If you have questions,
24 I will talk with the attorneys before
25 I answer. So it may take some time.
26 You should continue your deliberations
27 while you wait for my answer. I will
28 answer any questions in writing or

1 orally here in open court.

2

3 "Do not reveal to me or anyone
4 how the vote stands on the issues in
5 this case unless I ask you to do so.

6

7 "Your verdict on each count and
8 any special finding must be unanimous.
9 This means that to return a verdict,
10 all of you must agree to it. Do not
11 reach a decision by the flip of a coin
12 or by any other similar act.

13

14 "It is not my role to tell you
15 what your verdict should be. Do not
16 take anything I said or did during the
17 trial as an indication of what I think
18 about the facts, the witnesses, or
19 what your verdict should be.

20

21 "You must reach your verdict
22 without any consideration of
23 punishment.

24

25 "You will be given a verdict
26 forms. As soon as all jurors have
27 agreed on a verdict, the foreperson
28 must date and sign the appropriate

1 verdict form and notify the bailiff.
2 Return any unsigned verdict form.

3
4 "In this case, your verdict may
5 be in one of the following forms;

6 "1-A,

7 "We, the jury in the
8 above-entitled action, find the
9 defendant, John Henry Yablonsky,
10 guilty of the offense of first degree
11 murder of Rita Mabel Cobb as charged
12 in Count I of the Information; or

13 "1-B,

14 "We, the jury in the
15 above-entitled action, find the
16 defendant, John Henry Yablonsky, not
17 guilty of first degree murder as to
18 Count I;

19 "1-C,

20 "We, the jury in the
21 above-entitled action, find the
22 defendant, John Henry Yablonsky,
23 guilty of the offense of second degree
24 murder of Rita Mabel Cobb as charged
25 in Count I of the Information; or

26 "1-D,

27 "We, the jury in the
28 above-entitled action, find the

1 defendant, John Henry Yablonsky, not
2 guilty of second degree murder as to
3 Count I.

4
5 "If, and only if, you find the
6 defendant, John Henry Yablonsky,
7 guilty of first degree murder, then
8 and only then, may you make a finding
9 as to the special allegation as to
10 Count I.

11
12 "Your verdict may be in one of
13 the following forms;

14 "Special Allegation I as to
15 Count I;

16 "We, the jury in the
17 above-entitled action, find that the
18 murder of Rita Mabel Cobb was
19 committed by John Henry Yablonsky
20 while the said defendant was engaged
21 in the commission of and/or the
22 attempted commission of the crime of
23 rape."

24 Here it has where you check a line next to the
25 word true or not true.

26 Would you please swear the bailiff?

27 THE CLERK: You do solemnly swear that you
28 will keep this jury together in some quiet, convenient

1 place and not permit any person to speak to nor
2 communicate with them nor to do so yourself unless by
3 order of the Court or to ask them whether or not they
4 have agreed upon a verdict and return them to court
5 when they have agreed or are ordered by the Court, so
6 help God?

7 THE BAILIFF: I do.

8 THE COURT: Ladies and gentlemen, the 12 of
9 you are going to go right now with Deputy Fleigner,
10 and would the alternates please remain? Take your
11 juror notebooks and pens and pencils with you.

12 (Whereupon the jury exited to courtroom to commence
13 deliberations and the following proceedings were held in
14 open court in the presence of the alternates:)

15 THE COURT: (Reading:)

16 "To the alternate jurors, the
17 jury is now deliberating, but you are
18 still bound by my earlier instructions
19 about your conduct. Do not talk about
20 the case or about any of the people or
21 any subject involved in it with anyone
22 not even your family or friends. Not
23 even with each other. Do not have any
24 contact with the deliberating jurors.
25 Do not decide how you would vote if
26 you were deliberating. Do not form or
27 express an opinion about the issues in
28 this case unless you are substituted

1 for one of the deliberating jurors."

2 I'm going to release you now to go about your
3 business, whatever you want to do, but you're still on
4 the jury. So if you work within, let's say, a distance
5 that you could get to work and be back here within an
6 hour if we call you, if that's what you want to do, you
7 may. If you don't want to go to work, that's fine with
8 me because you're still on jury service. If you're paid
9 for it, you can come by every morning and pick up a pink
10 slip that you can show to your employer.

11 Is that about an hour or so everybody can be
12 here if called anytime? Now, when I say anytime, it
13 means anytime that the jury might be deliberating. I'm
14 not going to call in the middle of the night and ask you
15 to come in.

16 Here's what's going to happen: Sometimes
17 people ask me how long it's going to take a jury to
18 reach a verdict, and I say that reminds me of a question
19 that was asked of Abraham Lincoln about how long a man's
20 legs should be. The answer was long enough to reach the
21 ground. Now it's in the jury's hands. Are they going
22 to come back in ten minutes with a verdict? Maybe. Are
23 they going to come back in three days with a verdict?
24 Maybe.

25 Until we get a verdict, we need to have the
26 alternates available to come in and begin deliberations.

27 What I will promise you is that as soon as a
28 verdict is reached, if a verdict is reached without

1 having to call you, then we'll call you immediately and
2 let you know. We'll tell you what the verdict is if
3 you're interested. Then, from that point on, it will be
4 up to you to decide whether or not you want to talk to
5 anyone about your jury service. All I can tell you is
6 if you do not want to talk to anyone, you do not have
7 to. If you do want to talk to someone, talk all you
8 want to about it.

9 I hope I've made it clear during the course of
10 this trial how much I've appreciated the service that
11 you have given to this community, and how I think you
12 should be proud of yourselves that you were selected by
13 the lawyers to serve as jurors because that means that
14 they formed the opinion that you are the kind of person
15 that would be able to use your common sense and logic
16 and be a fair person to sit on this jury.

17 You should have a sense of civic pride for
18 performing a service so important to the community. I
19 hope it hasn't been totally a one-way street. I'm
20 hoping that you're going to have left the court with a
21 little more appreciation of this important third,
22 coequal branch of the government called the judiciary.

23 With that, meet Pete outside. Leave your juror
24 button and notebooks here. We will call you back when
25 we need you.

26 Thank you, again. See you next year.

27
28

1 (Whereupon the alternate jurors exited the courtroom
2 and the following proceedings were held:)

3 THE COURT: Anything else, counsel?

4 MR. THOMAS: No.

5 MR. SANDERS: No, sir.

6 THE COURT: I assume you'll be here so we can
7 call you? Mr. Thomas, are you going to remain here?

8 MR. THOMAS: I will be here the rest of
9 today. Tomorrow I might be down in Central. I'll be
10 able to get up here within 40 minutes.

11 THE COURT: Will you have someone to stand in
12 for the taking of a verdict for you?

13 MR. THOMAS: Yeah, if I'm not here.

14 THE COURT: You'll be available by cell phone
15 if we have a jury question that has to be answered?

16 MR. THOMAS: Yes.

17 THE COURT: Are you feeling better?

18 MR. THOMAS: Feeling better than I was
19 Thursday, Friday, and Saturday.

20 THE COURT: Mr. Sanders, I hope you don't get
21 whatever he's got.

22 MR. SANDERS: I hope so, your Honor, doesn't
23 sound good.

24 THE COURT: See you all.

25 (Whereupon proceedings in the above-entitled
26 matter were concluded for the day.)

27

28

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

4 APPEARANCES:

5 The Defendant with his counsel,
6 **PHILIP ZYWICIEL**, Deputy Public Defender;
7 **JOHN THOMAS**, Deputy District Attorney of
8 San Bernardino County representing the
9 State of California.

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

11 -oOo-

12 (Whereupon the following proceedings were held outside
13 the presence of the jury:)

14 THE COURT: We have Mr. Zywieciel and
15 Mr. Thomas. There's a message -- I should have told
16 the jury this right away. They've chosen to violate
17 my instructions a couple of times. Once, I didn't
18 mention it before, and everybody knows about it. It
19 just wasn't brought up, but they asked Ms. Manning for
20 a copy of a transcript that she read the testimony of
21 Fran Sullivan. They should not have asked her
22 anything. I should have sent a note back to them
23 saying, don't try to communicate with me except
24 through a written communication.

25 Now they have done that once again. You know,
26 I'm trying to keep in mind that they're just members of
27 the community serving as jurors. What they have done is
28 sent out word, oral notification, to me through

1 Deputy Fleigner that they're deadlocked. I don't think
2 I'm going to spend much time chiding on their decision
3 to speak to me orally when I've told them to do it in
4 writing, but I am going to have Mr. Yablonsky brought
5 out. We'll bring the jury out and inquire.

6 There's really not much I can tell you as to
7 what's going to happen because we've all been to this
8 particular type of rodeo before, so we'll see what the
9 numbers are, and I'll inquire whether or not they think
10 that more time might help them. Frankly, it's ten
11 minutes till 3:00. By the time they get out here, it
12 will probably be 3:00. I may send them home, have them
13 come back tomorrow, unless they are just really, really
14 clear.

15 MR. ZYWICIEL: You should make sure they have
16 a phone number they can call tonight with further
17 inquiries.

18 THE COURT: In case any of them wants to ask
19 any other questions.

20 (Whereupon there was a
21 pause in proceedings.)

22 THE COURT: After we have Mr. Yablonsky
23 seated, we'll bring the jury.

24 (Whereupon the following proceedings were held in open
25 court in the presence of the jury:)

26 THE COURT: Good afternoon. Back on the
27 record in the case of People of the State of
28 California versus John Henry Yablonsky. Mr. Yablonsky

1 is here and Mr. Sanders, his attorney, is not with us
2 today. He's gotten somewhat ill, and he has a member
3 of his firm, Phil Zywiciel, who's appearing
4 representing Mr. Yablonsky for the purpose of today's
5 proceedings. John Thomas is here for the People.

6 I've been advised through my bailiff,
7 Deputy Fleigner, that the jury has informed him that you
8 are deadlocked.

9 Juror Number 5, you're the foreperson; is that
10 correct?

11 THE FOREPERSON: That's correct.

12 THE COURT: And juries do sometimes become
13 deadlocked. It's rare, and I guess it doesn't matter
14 if it's rare or not. It does happen, but if the jury
15 can make a decision, I would like it to make a
16 decision. So I'm going to ask a few questions to see
17 where you are in the proceedings and what you've done.
18 You've been deliberating for quite awhile. It's not a
19 long, long time, but you have been back there for
20 awhile. You did some deliberation on Friday -- excuse
21 me, Thursday -- Monday afternoon, then half the
22 morning yesterday maybe and all afternoon yesterday
23 and now today. It's 3:00.

24 Mr. Foreperson, I'll ask you; without telling
25 me who's for conviction and who's for acquittal, can you
26 tell me what the split is?

27 THE FOREPERSON: Currently the split is eight
28 for guilt and four for acquittal.