

yablonsky, john complete

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN BERNARDINO

DEPARTMENT NO. V-2 HONORABLE JOHN M. TOMBERLIN, JUDGE

PEOPLE OF THE STATE OF
CALIFORNIA,

Plaintiff,

vs.

JOHN HENRY YABLONSKY,

Defendant.

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Case No. FVI900518

APPEAL FROM THE SUPERIOR COURT OF SAN BERNARDINO COUNTY
REPORTER'S TRANSCRIPT OF JURY TRIAL

MASTER INDEX

APPEARANCES:

MICHAEL A. RAMOS
District Attorney
BY: John Thomas
Deputy District Attorney

For the Defendant:

PHYLLIS MORRIS-GREEN
Public Defender
BY: David Sanders
Deputy Public Defender

C E R T I F I E D C O P Y

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SHAWNA MANNING, CSR NO. 12827
COPYING PROHIBITED PURSUANT TO GOVERNMENT CODE 69954(D)

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SEP 02 2011

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DEPARTMENT NO. V-2 HONORABLE JOHN M. TOMBERLIN, JUDGE

PEOPLE OF THE STATE OF
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Plaintiff,

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Defendant.

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JANUARY 18, 2011, JANUARY 19, 2011, JANUARY 20, 2011,
JANUARY 24, 2011, JANUARY 25, 2011, JANUARY 27, 2011,
JANUARY 31, 2011, FEBRUARY 2, 2011, and FEBRUARY 3, 2011

APPEARANCES:

MICHAEL A. RAMOS
District Attorney
BY: **John Thomas**
Deputy District Attorney

For the Defendant:

PHYLLIS MORRIS-GREEN
Public Defender
BY: **David Sanders**
Deputy Public Defender

C E R T I F I E D C O P Y

Reported by: Shawna Manning, CSR No. 12827
Official Reporter
Vol. 1 of 4 Michelle Swal, CSR No. 13580
Pages 1 through 266, incl. Pro Tempore Reporter

760-269-4794

1 VICTORVILLE, CALIFORNIA; JANUARY 19, 2011;
2 DEPARTMENT NO. V-2 HONORABLE JOHN M. TOMBERLIN, JUDGE
3 A.M. SESSION

4 APPEARANCES:

5 The Defendant with his counsel,
6 **DAVID SANDERS**, 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 THE COURT: Back on the record in the case of
13 People of the State of California versus John Henry
14 Yablonsky. There are matters we did not complete.
15 There are matters that don't concern the jury. I
16 should indicate Mr. Yablonsky's present before the
17 Court. He's with his attorney, Dave Sanders.
18 John Thomas is here for the People.

19 We were discussing a motion by Mr. Sanders on
20 behalf of Mr. Yablonsky to allow admission of alleged
21 prior acts of a criminal sexual nature. We discussed
22 the circumstances of an alleged rape occurring in 1981.
23 We got to the point discussing a second alleged rape
24 occurring in 1996. At that time there was a phone call
25 or text that Mr. Sanders had to take care of something,
26 and we terminated our hearing.

27 MR. THOMAS: Then I also found a case that
28 I'd like the Court to review.

1 THE COURT: I will do that, and I
2 appreciate -- I do appreciate anybody getting me any
3 authority. I will read the authority that you provide
4 to me. What I'd like to do, for my own organizational
5 purposes, so I can keep the eggs in the proper basket,
6 is I'd like to hear about this 1996 rape.

7 MR. SANDERS: Your Honor --

8 THE COURT: You gave me the first description
9 of what happened with the 1981, so, Mr. Sanders, why
10 don't you tell me what you have to say about the 1996
11 alleged rape?

12 MR. SANDERS: Yes, your Honor. This was a
13 situation -- basically a domestic situation. My
14 client was living with a woman, and they got into a
15 situation where my client decided it would be better
16 to not live with her any longer. It was a situation
17 where there was all kinds of problems developing in
18 the relationship and at one point the young lady
19 invited my client to come over. My client came over,
20 they had sex, and my client began to move out.

21 Then he was approached by police officers who
22 said that she had indicated she had been raped rather
23 than having consensual sex, and the -- a short time
24 after that, the district attorney in Los Angeles county
25 determined not to file charges, not to proceed with the
26 case, and my client, a short time later, was given a
27 restraining order that that young lady could not
28 continue to bother him and harass him.

1 My point is that not only was it not a -- not a
2 rape, but even if it had been, even if it was as the
3 young lady said, there's no similarities. There's no
4 connections that could be drawn to any evidence in the
5 instant case. There's no -- there's no similar
6 circumstances. There's no similar approach or --
7 there's no evidence that any of the things that the lady
8 in Long Beach alleged were at all similar to something
9 that happened in 1985 even if what she said was true.

10 You know how district attorneys are. They're
11 pretty dogged about these things. In that case they
12 looked at it and said, no, we're not going to file
13 charges. In fact, we're going to give Mr. Yablonsky a
14 restraining order.

15 THE COURT: Well, the DA didn't decide to
16 give Mr. Yablonsky a restraining order.

17 MR. SANDERS: Pardon.

18 THE COURT: The DA didn't decide to give
19 Mr. Yablonsky a restraining order.

20 MR. SANDERS: No.

21 THE COURT: I'm sure you did not mean that.

22 MR. SANDERS: But the investigating officer
23 released him that same day.

24 THE COURT: Okay. All right.

25 MR. SANDERS: So my argument is that it's --
26 under 352, the prejudice of it overwhelms any
27 probative value.

28 THE COURT: Mr. Thomas.

1 MR. THOMAS: Again, the victim gives an
2 entirely different story than Mr. Yablonsky in this
3 case. She said that she did know Mr. Yablonsky, and
4 that she was at home just after midnight --

5 THE COURT: I'm sorry. She did say she did
6 know --

7 MR. THOMAS: Mr. Yablonsky.

8 THE COURT: Okay.

9 MR. THOMAS: She said that she was at home
10 just after midnight on the night that this occurred,
11 and Mr. Yablonsky entered through a bedroom door,
12 which was closed but unlocked, and when he entered the
13 residence, she asked him, what are you doing here?
14 What are you doing here? And Yablonsky said, you will
15 have to do what I want. I'm addicted to you. I'm
16 fucked up. I've gone too far to turn back. She asked
17 what he meant by fucked up. He didn't answer, and
18 then afterwards he told her, I will kill you if you
19 don't do what I want.

20 Then at that point he had a Taser that belonged
21 to the victim and threatened her with the Taser. Then
22 at that point there was a rape that occurred and her
23 underwear were ripped and other things happened, and she
24 reported it to the police afterwards.

25 THE COURT: Other than talking about cases
26 that -- any authority someone may have, have I been
27 given the factual circumstances that I need to plug in
28 the law? Do you think I've heard everything about the

1 facts?

2 MR. SANDERS: If I didn't mention it, your
3 Honor, my client lived at that residence. He actually
4 lived there.

5 THE COURT: At the time of the event?

6 MR. SANDERS: Yes. He was moving out at the
7 time and also a disagreement -- she didn't want him to
8 move out. She spoke to my client two or three times
9 after this, and my client, you know, asked, why did
10 you say all those things about me that aren't true?
11 She admitted that, I know they're not true, but I felt
12 that in our relationship at times that you raped my
13 soul, so I made those statements. That's why the
14 detectives and the police never took it any further
15 after they learned all these various things.

16 THE COURT: They learned these things -- did
17 she say that to the police?

18 MR. SANDERS: That's why they didn't file
19 charges.

20 THE COURT: Did she say that to the police?
21 She said to the police -- you're saying the police
22 reports contain her saying that she wasn't raped; that
23 he raped her soul?

24 MR. SANDERS: Yes. The police listened to a
25 phone call between my client and her.

26 MR. THOMAS: I don't have any of that
27 information.

28 THE COURT: Do you have the police report?

1 MR. SANDERS: No, I have my client that was
2 there.

3 THE COURT: Okay. All right.

4 MR. THOMAS: Then as far as the turn down, I
5 have a law enforcement arrest disposition. It looks
6 like the reason that it was turned down is the victim
7 refused to prosecute. There could be several reasons,
8 as the Court I'm sure is well aware, of why a victim
9 might choose not to want to prosecute or testify.

10 THE COURT: Mr. Thomas, you have a case you
11 mentioned.

12 MR. THOMAS: Yeah. The case is People V
13 Story, 2009 case, 45 Cal.4th 1282. Basically, that
14 case involved a murder. There were no allegations
15 alleged or no charges filed in the Information
16 alleging a rape or any type of sexual assault, but the
17 prosecution's theory in that case was that the victim
18 in the case was murdered in the course of -- in the
19 course of a rape or an attempted rape. They sought to
20 bring in evidence of defendant's prior conduct, two
21 occasions prior to the murder and two occasions after
22 the murder.

23 The trial court allowed that to come in under
24 1108 saying that because of the prosecution's theory was
25 that it was a first degree murder based on the felony
26 murder rule, that that -- those four prior -- those four
27 different incidents were allowed to come in.

28 The appellate court reversed on the basis that

1 there was no charging document alleging a sexual
2 assault. The California Supreme Court reversed the
3 appellate court and allowed the conviction to stand
4 based on the fact that it doesn't have to be alleged.
5 If the prosecution's theory is murder in the course of a
6 rape or attempted rape, the defendant's prior conduct or
7 prior actions can come in under 1108, and that's the
8 argument that the People are putting forth in this case
9 is in this case there's a special allegation or special
10 circumstance alleged that this was committed in the
11 course of a rape or attempted rape per Penal Code
12 Section 261.

13 THE COURT: Is there any authority that you
14 wanted me to look at, Mr. Sanders?

15 MR. SANDERS: Your Honor, I did --

16 THE COURT: Just a minute.

17 MR. SANDERS: Excuse me.

18 THE COURT: -- other than what we have
19 discussed so far?

20 MR. SANDERS: There were a couple of cases
21 that I found last evening. I didn't bring them with
22 me this morning. I apologize. I thought we were
23 going to get to this after we selected a jury.

24 THE COURT: I understand. I thought we'd
25 exercise an opportunity -- we'd use this opportunity
26 to do things we hadn't completed. That's fine. We're
27 not going to be talking to the jury about this this
28 morning.

1 Have we heard from the jury? We're ready?

2 THE CLERK: Um-hmm.

3 (Whereupon proceedings were held off the record.)

4 (Whereupon proceedings were
5 held in unrelated matters.)

6 THE COURT: Mr. Sanders, I'm going to take a
7 recess on this trial. We're going to start --
8 hopefully in 15 minutes we're going to have a reporter
9 available. I'm going to read whatever authority I
10 just got from the case that Mr. Thomas has given me.
11 I want you to find whatever case you wanted me to look
12 at. You mentioned there might be a couple of cases.

13 MR. SANDERS: I'd have to run back to my
14 office a couple of blocks away.

15 THE COURT: Well, I suppose that 15 minutes
16 is enough time to do that; isn't it?

17 MR. SANDERS: It will be tight.

18 THE COURT: Okay. Thank you.

19 (Whereupon a recess was taken.)
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1 VICTORVILLE, CALIFORNIA; JANUARY 19, 2011;
2 DEPARTMENT NO. V2 HONORABLE JOHN M. TOMBERLIN, JUDGE
3 A.M. SESSION

4 APPEARANCES:

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

10 (Michelle Swal, Pro Tempore Reporter, CSR #13580.)

11 -oOo-

12 THE BAILIFF: All rise. In the presence of
13 the flag of the United States of America symbol of
14 freedom and justice. Department 2 of the Victorville
15 Superior Court is now in session, the Honorable
16 John Tomberlin presiding. Please be seated.

17 Please raise your right hand to be sworn.

18 THE CLERK: Do each of you understand and
19 agree that you will accurately and truthfully answer
20 under penalty of perjury all questions propounded to
21 you concerning your qualifications and competency to
22 serve as a trial juror in the matter now pending
23 before this court, and that failure to do so may
24 project to you criminal prosecution?

25 If so, say, "I do."

26 (Whereupon the prospective jurors answered in the
27 affirmative.)

28 THE COURT: Good morning, ladies and

1 gentlemen.

2 That wasn't bad. We are here to pick a jury.
3 Juries work together. Let's practice. Good morning.

4 Welcome to Department 2, San Bernardino County
5 Superior Court. You have been summoned to hear the case
6 of People of the State of California versus
7 John Henry Yablonsky. Mr. Yablonsky is present here in
8 court, along with David Sanders, his attorney.

9 Mr. Sanders, will you please introduce yourself
10 and your client to this prospective jury.

11 MR. SANDERS: Good morning, ladies and
12 gentlemen. My name is David Sanders. This is my
13 client John Yablonsky. Good morning.

14 THE COURT: Anytime a case is brought in
15 court, somebody has to come in and allege something.

16 In this case it's the District Attorney's
17 office. And we have John Thomas, who is a Deputy
18 District Attorney. And his investigating officer is
19 Detective Robert Alexander.

20 Would you please introduce yourself and your
21 investigating officer, please.

22 MR. THOMAS: Good morning, ladies and
23 gentlemen of the jury. I am John Thomas, and I'm a
24 Deputy District Attorney for the county of
25 San Bernardino. And I represent the People of the
26 State of California in this case. The gentleman
27 seated or standing right next to me is Detective
28 Robert Alexander. He's from the San Bernardino County

1 Sheriff's Department. He'll be sitting with me
2 throughout this trial as my investigating officer.

3 Thank you.

4 THE COURT: Anytime there's a lawsuit,
5 someone has to come in and allege something, whether
6 it's a civil case or a criminal case. They don't just
7 pop up by themselves. You have to start somewhere.
8 Usually you start with a piece of paper.

9 In a felony case like this one, the document
10 that we work from is what is called an information. An
11 information is something that accuses a person of a
12 crime but it is not evidence of guilt. So I'm going to
13 read to you this information having explained to you
14 already the fact that someone has been charged with this
15 crime does not make them guilty of the crime.

16 Determination of guilt or innocence will be
17 your job after you listen to the evidence that is
18 presented in this case.

19 The Superior Court, County of San Bernardino.
20 The People of the State of California plaintiff versus
21 John Henry Yablonsky. The District Attorney of the
22 county of San Bernardino by this information alleges
23 that Count 1, on or about September 20th, 1985, in the
24 above-named judicial district the crime of murder in
25 violation of Penal Code section 187(a), a felony, was
26 committed by John Henry Yablonsky, who did unlawfully in
27 malice aforethought murder Rita Mabel Cob, a human
28 being.

1 It is further alleged as to Count 1 that the
2 murder of Rita Mabel Cob was committed by Defendant
3 John Henry Yablonsky while the said defendant was
4 engaged in the commission of and or the attempted
5 commission of the crime of rape, in violation of
6 Penal Code section 261.

7 This information consists of one count and is
8 signed Michael A. Ramos, District Attorney County of
9 San Bernardino, State of California by John Thomas,
10 Deputy District Attorney.

11 So now you know what this particular trial is
12 going to be about. Let me tell you how long it's going
13 to last, what our schedule will be.

14 Today is the 19th?

15 MR. SANDERS: The 19th, your Honor.

16 THE COURT: The attorneys and I pretty much
17 have agreed that this is the schedule. We're going to
18 pick a jury today and tomorrow. We will not be in
19 session on Friday. In fact, we won't be in session on
20 any Friday during this trial unless you, the jury,
21 have the case and are already in deliberations. So we
22 won't be in session on January 21st. We will come
23 back next week the 24th and we'll begin evidence.

24 We believe that the evidence will be presented
25 on the 24th, 25th, 26th, and 27th. We won't be in
26 session on the 28th unless you're deliberating. But the
27 case will probably not be finished by that day. We'll
28 come back on January 31st, then we'll be in session,

1 that's Monday. On February 1st, 2nd, and 3rd, we
2 believe you'll have this case submitted to you by
3 February the 4th.

4 Is that the schedule that we've anticipated,
5 Mr. Sanders?

6 MR. SANDERS: Yes, sir, I believe it is.

7 MR. THOMAS: Yes, your Honor.

8 THE COURT: Okay. So in order for you to be
9 able to serve on this jury, you'd have to be available
10 until about February the 4th.

11 Some of you might not be able to be with us.
12 We're going to give you a chance to address me in just a
13 few minutes. There are 74 of you, I believe. So
14 unfortunately even if you want to be with us, I can't
15 guarantee you a seat on this jury. We'll probably be
16 picking, I know we will be picking 12 jurors, probably
17 pick 15 with alternates. You can do the math. What is
18 that? About one chance in five of getting on this jury
19 panel.

20 So if you sit here with us and you don't get
21 selected, I'll be excusing you. And you'll be done for
22 your jury service for the year. What was it that
23 Clint Eastwood asked to Dirty Harry? Do you feel lucky?

24 I don't know which way you want it. If you
25 tell me that you don't have the ability to be here, I
26 can excuse you for hardship. Here's what I need to
27 hear. I need to hear a severe economic hardship or
28 medical hardship. Severe economic hardship means that

1 you don't get paid for jury service. Or you've already
2 booked a round-the-world cruise and you're leaving
3 before the trial is over and you're going to lose your
4 deposit, lose your airfare. You're going to tell me
5 that you've got a promotional exam that's only offered
6 once a year and that's during the course of our trial.
7 And if you don't have a chance to take that exam, you
8 won't get a chance to get promoted. Perhaps you're paid
9 for jury service but paid minimum wage and you get
10 commission on top of that and your employer doesn't give
11 you the commission while you're here. Or you need the
12 overtime you're getting now and you don't get paid by
13 your employer for the overtime. And if that's a
14 severe economic hardship to you -- and how am I going
15 know? -- I'm going to take your word for you it. You
16 have taken an oath to tell the truth. But we're not
17 going to make you present pay stubs or a letter from
18 your employer, any of that kind of stuff.

19 If you fall into that category, I will excuse
20 you for economic hardship. What is not economic
21 hardship? It's not economic hardship that you are
22 someone who is just so important that your work can't do
23 without you. Because that's economic hardship to
24 somebody else. The fact that you have a co-worker
25 that's on vacation and your boss is not going to know
26 what to do in your absence, sorry, but we all are
27 important in one way or another. I don't care if you're
28 a brain surgeon or you have a job taking care of

1 children at a home, your time -- well, I'm only going to
2 say as Shakespeare did when he said, "Time is the stuff
3 that life is made of." So the time for all of us is of
4 equal value in my opinion. And taking the time out of
5 your lives is what was contemplated when someone came up
6 with this idea of a jury trial a long, long time ago.
7 So people have fought wars over this. People have died
8 over it. The fact that people are called in and
9 expected to serve jury service is part of the
10 responsibility that we have for the blessings that we
11 enjoy of living in a free society. The fact that is a
12 hardship on somebody who is a co-worker, the fact that
13 your children if you're a teacher are not going to get
14 the quality of education from a substitute that they're
15 going to get from you, those are things that are
16 limitable but not a basis to which I will excuse you.

17 Okay. Medical hardship is a little easier.
18 Medical hardship is I'm sick right now, I can't stay
19 here. I can't sit. I'm taking medication and it
20 affects my ability to figure out what's being said or to
21 remember things. Or I have an appointment with the
22 VA Hospital for surgery. It takes me a long time to
23 reschedule these things. Please excuse me so I can go
24 to the doctor. Or my husband has a surgery scheduled,
25 and I'm the only one that takes him to the surgery or
26 the follow-up. Those are things which are medical
27 hardship for which I can excuse you.

28 There might be something else that you can tell

1 me about that's going to cause me to excuse you. Okay.
2 For example, maybe you're a college student. You're in
3 the middle of classes. You have finals coming up. You
4 need to study. If you don't do that, you're going to
5 fail your college classes. That would be a financial
6 hardship.

7 There could be other things. But I want you to
8 understand what I have just told you. If I can't fit it
9 into either financial hardship or medical hardship that
10 affects you personally or someone for who you are
11 responsible personally, I won't be able to excuse you.

12 Does that mean you won't be excused by the
13 attorneys? Let me explain to you that in my experience
14 as a trial attorney before I was a judge and now as a
15 judge -- we're talking about a lot of years -- attorneys
16 don't want people on their jury that don't want to be
17 here. Just so you'll know, even if you're qualified to
18 sit as a juror in this case, even though I can't excuse
19 you for hardship, the attorneys are going to have 20
20 peremptory challenges each. So 20 people that are
21 qualified and able to be with us are going to be excused
22 or maybe excused by Mr. Thomas and Mr. Sanders, that's
23 40 people combined. So keep in mind you may not be
24 excused by me but you might still be excused by the
25 attorneys later on in these proceedings.

26 Have I scared everyone? I don't mean to. I
27 just wanted to give you an idea of what the rules are
28 for which I can excuse you. If you think that you have

1 a hardship for which you should be excused and you're
2 seated at my left side of the room, your right side of
3 the room, and if you're in the front row, I want you to
4 stand. I see some hesitation. If you're in the front
5 row, I want you to stand right now if you have a
6 hardship you want to address to the Court.

7 You were thinking about it, weren't you? No?
8 Okay. I will always start with the person who is
9 closest to the isle so there will be less people to
10 trample over as you leave.

11 Would you please state your name and your juror
12 number if you know it.

13 PROSPECTIVE JUROR: Deanna Hudak, 035.

14 THE COURT: Tell me what your hardship is.

15 PROSPECTIVE JUROR: Medication issue as well
16 as a doctor's appointment that that medication relies
17 on.

18 THE COURT: Okay. You're taking medication
19 and it's affecting your ability to be a juror?

20 PROSPECTIVE JUROR: Uh-huh.

21 THE COURT: You're shaking your head yes, and
22 the record will so reflect.

23 PROSPECTIVE JUROR: Yes. Sorry.

24 THE COURT: That's all right.

25 Mr. Thomas? Mr. Sanders?

26 MR. THOMAS: People stipulate.

27 MR. SANDERS: Stipulate, your Honor.

28 THE COURT: Mr. Thomas and Mr. Sanders, would

1 you agree that if I ask -- that I won't ask you again,
2 and if somebody asks to be excused for hardship only,
3 and I do excuse them, that your silence on that
4 subject will be deemed your consent, Mr. Thomas?

5 MR. THOMAS: Yes, your Honor.

6 THE COURT: Mr. Sanders?

7 MR. SANDERS: Yes, sir.

8 THE COURT: Okay. They have stipulated to
9 you being excused, Ms. Hudak. Thank you for being
10 with us. You are excused.

11 PROSPECTIVE JUROR: Sandy Zazueta, Juror
12 Number 074. I have two school-age children and a
13 two-year-old that I don't have daycare for after 3:00.

14 THE COURT: So what happens if you're here
15 with us until 4:30?

16 PROSPECTIVE JUROR: They're at school with
17 another teacher that will be with them at school until
18 I get there to pick them up.

19 THE COURT: What's wrong with that?

20 PROSPECTIVE JUROR: I can't pay for child
21 care for her.

22 THE COURT: So they would be with the teacher
23 at the school but that would be a charge that you
24 would incur.

25 Is that what you're telling me?

26 PROSPECTIVE JUROR: Exactly.

27 THE COURT: And you can't afford that?

28 PROSPECTIVE JUROR: No, not at this moment.

1 THE COURT: Thank you for being with us,
2 Ms. Zazueta. You are excused for financial hardship.

3 PROSPECTIVE JUROR: Thank you.

4 THE COURT: All right. Thank you.

5 We're going to be to the second row. If you're
6 in that second row and you want to address me with
7 medical or financial hardship, please stand.

8 PROSPECTIVE JUROR: My name is
9 Julia Erickson, Number 021. I am a migraine sufferer,
10 and I get migraines at any time. And I take
11 prescription medication and it makes me very light
12 headed and I have to lay down.

13 THE COURT: Okay. Let me say -- just so
14 you'll know, Ms. Erickson, and I'm saying this for
15 everyone who is listening, we also accommodate people
16 with issues, if they request that. So if you tell me
17 that, cause I don't know the frequency, I can tell by
18 your discussion of it that I can guess the intensity.
19 I'm sure it's difficult when you have a migraine.

20 Do you take this medication only when the
21 migraine comes on?

22 PROSPECTIVE JUROR: Right when it comes on.
23 I never know when it's going to come on.

24 THE COURT: Do you know about the frequency?

25 PROSPECTIVE JUROR: The frequency can vary
26 from once a week to five times a week. It varies.

27 THE COURT: Do you think if you were to sit
28 with us there would be a likelihood that you would

1 have an outbreak?

2 PROSPECTIVE JUROR: Yes. Yes. If I'm
3 sitting for long periods of time, it tends to bring
4 them on.

5 THE COURT: I heard something about
6 florescent lights too. Is that something that affects
7 you?

8 PROSPECTIVE JUROR: Yeah.

9 THE COURT: Okay. All right. Well, I
10 certainly -- again, I want you to know, Ms. Erickson,
11 if your request was I want to be on this jury and I
12 want you to agree to shut things down if I have a
13 migraine come on, if that's what you were asking, I
14 would be happy to try and accommodate you. But what I
15 think I'm hearing from you is that this particular
16 process would be inclined to bring on the migraine and
17 you'd rather be excused?

18 PROSPECTIVE JUROR: Yes.

19 THE COURT: I'm going to excuse you for
20 medical hardship. Thank you for being with us this
21 morning.

22 PROSPECTIVE JUROR: Thank you.

23 THE COURT: We're going to go to the third
24 row. If you are in the third row and want to address
25 me with a hardship, please stand.

26 Hello.

27 PROSPECTIVE JUROR: 002, Catherine Anderson.
28 I'm starting a --

1 THE COURT: Just one second. 002?

2 PROSPECTIVE JUROR: Yes. I am starting five
3 weeks physical therapy, three times a week. I can see
4 the latest I can reschedule since I've already
5 scheduled it. It's for my left arm and my left knee.

6 THE COURT: I'm sorry, I can't hear you very
7 well. You're personally scheduled for physical
8 therapy?

9 PROSPECTIVE JUROR: Yes.

10 THE COURT: And --

11 PROSPECTIVE JUROR: Work related on my left
12 knee and left arm.

13 THE COURT: Okay. And you want to find
14 out --

15 PROSPECTIVE JUROR: Willing to see -- I did
16 not know how long this would last, the time. If I
17 could schedule it later, I'm willing to.

18 THE COURT: Okay. You know what, if you'll
19 do me a favor, Ms. Anderson, maybe during the lunch
20 recess you can talk to someone and find out. 4:30 is
21 the normal time that we'll knock off. Let's face it,
22 this is not a real short trial. This is not a real
23 long trial. But if somebody has something that's
24 coming up and they have to leave at 4:15 or 4:00 on
25 some particular day are we willing to accommodate you?
26 Yes, we are. I won't be able to do it on a daily
27 basis, but I'll certainly stay this: You will be out
28 of here by 4:30 every day. If you come back after

1 lunch, let us know, Ms. Anderson, and you can address
2 me again.

3 PROSPECTIVE JUROR: Okay. I might add also
4 to save some time most of my family is law
5 enforcement, so I don't know.

6 THE COURT: That's not of interest to me.
7 Law enforcement officers themselves can't be jurors.

8 PROSPECTIVE JUROR: I didn't know if you
9 would dismiss me, that's why I said it now.

10 THE COURT: Sworn officers cannot sit as
11 jurors. Law enforcement officers that are retired or
12 the family of law enforcement officers can. And I
13 appreciate your volunteering that, but this is
14 strictly a hardship discussion right now.

15 Thank you.

16 PROSPECTIVE JUROR: Joel Richartz, 057 is my
17 juror number. I am a teacher. I live 45 minutes from
18 my house to work. My son is also a high school
19 student at my high school so it's -- would be to get
20 him to school and back every day. And I don't know
21 how we're going to pull that off. He's very happy
22 about today because he gets to stay home.

23 THE COURT: Okay. There's no one else that
24 can get your son to school?

25 PROSPECTIVE JUROR: My wife and I work. She
26 works also up in the High Desert. If we go along, we
27 will try to figure it out. But there will probably be
28 days that we will not be able to get him to school.

1 THE COURT: I'm sorry. Just so I'll know,
2 where do you live?

3 PROSPECTIVE JUROR: I live in Wrightwood.

4 THE COURT: Okay. And where does your son go
5 to school?

6 PROSPECTIVE JUROR: Norco High School. I'm a
7 teacher at Corona/Norco Unified School District.

8 THE COURT: And your wife? Where does she
9 work?

10 PROSPECTIVE JUROR: She owns her own business
11 up in the High Desert in Wrightwood.

12 THE COURT: So is there anyone that can watch
13 the shop while she takes your son to high school?

14 PROSPECTIVE JUROR: It's also picking him up.

15 THE COURT: Is there anyone that can watch
16 the shop while she picks him up from high school?

17 PROSPECTIVE JUROR: She does have employees,
18 yes.

19 THE COURT: Well, Mr. Richartz, I'm going to
20 keep you with us for right now. It doesn't sound like
21 such a financial hardship that would be a reason for
22 me to excuse you.

23 PROSPECTIVE JUROR: Okay, sir.

24 THE COURT: Yes, sir?

25 PROSPECTIVE JUROR: My name is
26 Thomas Medlock. I am 043, and this is a personal
27 issue for me.

28 THE COURT: I'm sorry. What?

1 PROSPECTIVE JUROR: A personal issue. My son
2 was murdered in an armed robbery. I really don't
3 think a murder trial is something I can sit on.

4 THE COURT: Mr. Medlock, I'm going to say
5 this to you with all due respect. I am so sorry that
6 that's the case. But you're going to have to sit back
7 down because we're talking about one thing right now
8 and that's hardship.

9 Next row.

10 PROSPECTIVE JUROR: My name is Chris Proctor,
11 054, I believe. My hardship probably would be I
12 don't -- I get a partial payment. I'm the only bread
13 winner in the house. I get a partial payment. I
14 don't know what that partial payment is because I
15 never ask, but we get a percentage for jury duty.

16 THE COURT: Who do you work for?

17 PROSPECTIVE JUROR: Wal-Mart Distribution
18 Center.

19 THE COURT: Mr. Proctor, I have had a lot of
20 jurors from Wal-Mart Distribution Center. Are you
21 saying to me that you get only a percentage because
22 they don't pay you overtime that you would have
23 otherwise gotten?

24 PROSPECTIVE JUROR: I don't know how it
25 works. I know that they --

26 THE COURT: I need you to do this, I need you
27 to call your HR people over lunch. I've never heard
28 this before. I know that often there is

1 miscommunication. I don't know where the source of
2 your information is that you're giving me. If you
3 come back and you say, "Yeah, they are only going to
4 give me X number of dollars and that reduces my pay
5 too much," then I'll excuse you. But I think that you
6 need to confirm that with the HR staff because I have
7 had numerous people on my juries over the years that
8 have worked for the Wal-Mart Distribution Center.
9 It's a large employer for our area. I have never
10 heard that before.

11 PROSPECTIVE JUROR: Just a lot of secrets.

12 THE COURT: Mr. Proctor, why don't you see me
13 and talk to us after lunch about this.

14 Okay?

15 PROSPECTIVE JUROR: Okay. Will do.

16 THE COURT: Thank you.

17 Yes, ma'am?

18 PROSPECTIVE JUROR: Theresa Reyes, 056. My
19 hardship is medical. I'm under medication and
20 sometimes the medication has side effects which I'm in
21 the bathroom quite a bit.

22 THE COURT: I don't want to get too personal,
23 I just say to you that we'll normally not go more than
24 about an hour and 15 minutes at a time.

25 PROSPECTIVE JUROR: I'm talking about loose
26 stools. That's what I mean.

27 THE COURT: Okay. Ms. Reyes, thank you. I
28 didn't want to give that information for other people

1 to know, but I'm going to excuse you for medical
2 hardship.

3 Thank you.

4 PROSPECTIVE JUROR: Joann Banbury, 007. I
5 don't have, like, a medical or financial hardship. My
6 case -- I have to be in court on Thursday the 27th.

7 (Whereupon a cell phone rang.)

8 THE COURT: If that's for me, tell them I
9 can't take that call right now.

10 Now, tell me again what you just said?

11 PROSPECTIVE JUROR: I have to be in court on
12 the 27th.

13 THE COURT: Who has to be in court?

14 PROSPECTIVE JUROR: I do.

15 THE COURT: For what?

16 PROSPECTIVE JUROR: Me and my husband. We
17 are in a custody issue with kids so it's -- we -- we
18 have already had mediation on that. And they said I
19 will have to be there on the 27th. So that's why I'm
20 telling you. I don't have a problem with serving, but
21 I don't know if we can work around that.

22 THE COURT: We can.

23 PROSPECTIVE JUROR: Cool.

24 THE COURT: I don't really understand yet
25 where we are. Is it a dissolution of marriage and
26 it's regarding that?

27 PROSPECTIVE JUROR: No. It's the issue of
28 custody of the kids. The divorce and all that is

1 already done.

2 THE COURT: The children between you and your
3 husband?

4 PROSPECTIVE JUROR: Between -- no.

5 THE COURT: The custody of whose children?

6 PROSPECTIVE JUROR: It's actually his son.
7 But the situation I'm involved in, you know,
8 they -- I'm having to go through everything with him.

9 THE COURT: Okay.

10 PROSPECTIVE JUROR: But it's only for that
11 one day. That's our court date.

12 THE COURT: Right. Those court dates are
13 frequently continued, but there's also another thing I
14 can tell you.

15 I have a little influence here at this
16 facility.

17 PROSPECTIVE JUROR: Right.

18 THE COURT: And I can simply -- are you going
19 to be in front of -- do you know who you're going to
20 be in front of? Commissioner Proulx or Judge Harris?

21 PROSPECTIVE JUROR: Proulx.

22 THE COURT: I'll -- I don't know how long
23 that procedure normally will take, but I will make
24 sure that Commissioner Proulx puts your matter on
25 first thing.

26 PROSPECTIVE JUROR: Okay. That works for me.
27 Usually we're sitting there all day.

28 THE COURT: Thank you.

1 Is that the penultimate row? Was that the
2 penultimate row?

3 MR. THOMAS: Yes, sir, it is.

4 THE COURT: Let's go to the last row.

5 PROSPECTIVE JUROR: My name is
6 Kenneth Rowe, 060 I believe it is.

7 THE COURT: Yes, sir.

8 PROSPECTIVE JUROR: I was trying to calculate
9 the days that you're saying because my work will pay
10 me for four jury days and after that I don't get paid
11 anymore. I'm the only one that makes income in the
12 family. My wife doesn't work. My son is in college.

13 THE COURT: Where do you work?

14 PROSPECTIVE JUROR: American Career College
15 down in Ontario.

16 THE COURT: They say they only pay for four
17 days?

18 PROSPECTIVE JUROR: Four days, I was told,
19 and after four days they don't pay for jury duty
20 anymore.

21 THE COURT: Mr. Rowe, you are excused for
22 financial hardship.

23 PROSPECTIVE JUROR: Thank you, your Honor.

24 THE COURT: It was the "son in college" line
25 that got me. I take it personally.

26 Yes, Ma'am?

27 PROSPECTIVE JUROR: My name is
28 Martha Chisolm, Juror Number 017. Hardship for me is

1 my husband is blind. He also has severe hearing loss.
2 I like to be close enough that I can keep track of
3 anything happening to him. He's had four heart
4 attacks.

5 THE COURT: Okay. You're a care provider for
6 your husband who has disabilities?

7 PROSPECTIVE JUROR: Yes.

8 THE COURT: Ms. Chisolm, I'm going to excuse
9 you for medical hardship. Thank you.

10 All right. Now we're going to take the other
11 side of the room. If you're in the front row and you
12 have a hardship, please stand.

13 PROSPECTIVE JUROR: Jay Storer, I'm Number
14 64. And my employer does pay for me to come to jury
15 duty but I'm scheduled for a lot of overtime for the
16 next six weeks. And that effects me if I have that
17 taken away if I come to jury duty. I'm the only one
18 in my family working. I have six kids and a daughter
19 in college.

20 THE COURT: Mr. Storer, thank you for being
21 with us today. You're excused financial hardship.

22 Yes, sir?

23 PROSPECTIVE JUROR: It's not a hardship. I
24 heard you mention to the young lady here that -- I'm
25 in law enforcement. I would love to serve but --

26 THE COURT: Feel free to serve then. Sit
27 down.

28 Hardship, folks. Second row.

1 Yes, sir?

2 PROSPECTIVE JUROR: My name is
3 Michael Sparks, Number 063. I am currently trying
4 to --

5 THE COURT: I can't hear you. You're
6 currently what?

7 PROSPECTIVE JUROR: I'm currently living in
8 the City of Victorville. My hardship is that I have a
9 short-term memory, and I can't comprehend a lot of
10 things.

11 THE COURT: I didn't hear everything you
12 said, but I believe you said you have a very
13 short-term memory?

14 THE PROSPECTIVE JUROR: Yes. And I have a
15 partial mental retardation, and I can't comprehend a
16 lot of things.

17 THE COURT: You believe that it would be
18 difficult for you to serve because of your mental
19 abilities?

20 PROSPECTIVE JUROR: Yes.

21 THE COURT: Okay. Mr. Sparks, I'm going to
22 let that be a medical hardship and excuse you.

23 Thank you.

24 Third row. Last row. Last chance. Okay.

25 Sir, in the front row. We now have a few more
26 minutes to talk. You mentioned that you're in law
27 enforcement. And the reason why I didn't want to
28 address anything other than hardship was I wanted to

1 make sure that we do things in order. I'm talking about
2 law enforcement right now because you heard my comments
3 to someone else. My comments were general. And as
4 usual when I'm not addressing something real specific, I
5 tend to misstate stuff. Sorry. That's just me.
6 Otherwise, I act like the lawyer I was for 20 years, and
7 I speak with so much specificity that people are looking
8 at me and saying I asked what time it was, and you tell
9 me how to make a watch.

10 Shorthand I say, law enforcement doesn't sit
11 but that's not exactly the case. There are different
12 sections within the California Penal Code that define
13 who is a law enforcement officer for the purpose of jury
14 service. People who are like Deputy Fleigner, who is
15 passing some papers out right now, he's wearing a
16 uniform. He carries a gun any time he wants to,
17 anywhere he wants to. There is a section in the
18 Penal Code in which he is described and it
19 is -- what -- 832.8?

20 THE BAILIFF: 832?

21 THE COURT: It doesn't matter. You do not
22 need to know this. No one needs to know this.

23 There are some people that are involved in law
24 enforcement that are not defined by the same Penal Code
25 section as Deputy Fleigner is. Who -- if you were let's
26 say a policeman, or a police woman, who maybe is
27 assigned to a school district and you're only a peace
28 officer for the purposes of that Penal Code section

1 while you're on duty, then that's different than being a
2 full-time peace officer like Deputy Fleigner is. Other
3 people that fall into the category of peace officers
4 would include California Correctional peace officers,
5 people that are involved in housing and supervision of
6 our inmates. But they're not defined by the same
7 Penal Code section and are not exempt from jury service.

8 What is your name, sir?

9 PROSPECTIVE JUROR: Esitimoa Otuafi.

10 THE COURT: What number is it?

11 PROSPECTIVE JUROR: 050.

12 THE COURT: What is your exact job?

13 PROSPECTIVE JUROR: CDC.

14 THE COURT: California Department of
15 Corrections. Okay.

16 So you are a Correctional Peace Officer?

17 PROSPECTIVE JUROR: Yes.

18 THE COURT: And that is a different section
19 than the section that defines Mr. Deputy Fleigner.
20 For that reason you're not exempt.

21 So that's -- pardon me for having made such a
22 broad statement at the beginning.

23 Now, we also will go back now to Mr. Medlock.
24 Mr. Medlock has had an opportunity to address the Court.
25 I don't normally take these things out of order.
26 Usually if someone has a reason that they feel they
27 can't sit on a jury -- everyone will get a chance to
28 talk to me. So I don't -- I'm not inviting other people

1 to explain why they should be excused for what we refer
2 to as cause. But Mr. Medlock has already volunteered to
3 us that his son was the victim of a murder.

4 Mr. Medlock, sir, would you stand up so I can
5 talk to you?

6 PROSPECTIVE JUROR: Thank you.

7 THE COURT: You indicated that your son was a
8 victim of murder; is that correct?

9 PROSPECTIVE JUROR: Yes, sir.

10 THE COURT: How long ago was that?

11 PROSPECTIVE JUROR: January 8th, 2004.

12 THE COURT: Is it something that is so
13 emotional to you still that if you were to be a juror
14 in this case that you believe you'd have a hard time
15 separating the facts that you hear in this courtroom
16 from the circumstances that you recall or the facts
17 that you were aware of that relate to your son's
18 murder?

19 PROSPECTIVE JUROR: Yes, your Honor, I do.

20 THE COURT: Okay. Counsel, this is not a
21 stipulation for hardship. This is whether or not you
22 want to at this point in the proceedings agree that I
23 can excuse Mr. Medlock for cause.

24 Do you want to do that?

25 MR. THOMAS: The People would be willing to
26 stipulate.

27 MR. SANDERS: As would the defense.

28 THE COURT: Thank you, Mr. Medlock. Again,

1 I'm sorry for the circumstances.

2 PROSPECTIVE JUROR: Thank you, your Honor.

3 THE COURT: You're welcome.

4 Okay. We're going to play the numbers game.
5 Call 18 names.

6 THE CLERK: Juror Number 19, Lisa Cuautle;
7 Juror Number 59, 059XXXXXXXXX; Juror Number 6,
8 Nitika Austin; Juror Number 2, Catherine Anderson;
9 Juror Number 30, Marvell Greenwood; Juror Number 53,
10 Tony Pol; Juror Number 52, Donna Pineiro; Juror
11 Number 16, 016XXXXXXXXXXXX; Juror Number 42,
12 Debra McKenzie; Juror Number 9, Cameron Bean; Juror
13 Number 29, Tasia Green; Juror Number 73,
14 Linda Whittaker; Juror Number 18, 018XXXXXXXXX; Juror
15 Number 12, Katherine Bradfield; Juror Number 25,
16 025XXXXXXXXXXXXXXXX; Juror Number 66, Sharon Tierney;
17 Juror Number 15, Marie Cervantes; Juror Number 54,
18 Christopher Proctor.

19 THE COURT: Funny we have two people that
20 we're going to get more information from. Started
21 right off with them in the jury box, first call.

22 Ms. Anderson and Mr. Proctor, we're still going
23 to listen to you. Just because you're called up here
24 that doesn't change anything. After lunch if you're not
25 able to you find out you can be with us and have you
26 back, you'll still have to come back. Or we can excuse
27 you for hardship still, if necessary.

28 If you're way in the back and you want to be

1 able to hear what goes on and you can hear, stay where
2 you are. If you don't have the ability to hear
3 everything, I want you to move closer.

4 It's really important that everyone follow
5 directions during this part of the proceedings so that
6 we can get through this in an organized manner. This is
7 a process that is a group participation process. I'm
8 going to be asking questions of the potential jurors
9 here. They're going to be answering those questions. I
10 want everyone in the courtroom to be able to hear every
11 question that I ask and every answer that I receive.

12 If you don't hear everything, then the process
13 is not going to work properly because later on we're
14 going to be streamlining. You'll be hearing me asking
15 things like: Did you hear everything I've asked
16 everybody else? Did you hear the other people's
17 responses? Would your responses be different?

18 Okay. It's not tough. It just requires that
19 everyone hear everything because I'm going to talk about
20 a lot of important principles, and I'm not going to
21 repeat those principles unless somebody asked me to. I
22 don't mind explaining things or re-explaining things.
23 But you'll see how this works in just a moment.

24 I've got a questionnaire here with 14
25 questions. I'm going to start with Ms. Cuautle in just
26 a moment. I'm going to read her each of these
27 questions. There's no reason for you to wait until I'm
28 talking to you to decide what your answers are. Decide

1 what your answers are while you're listening to her
2 answer these questions. That way if you do what I am
3 suggesting, when I get to 059XXXXX, she's already going
4 to know what answers she's going to give me because
5 she's going to have listened to the question and
6 answered it for herself while I've been speaking to
7 Ms. Cuautle. That way I never have to have people
8 looking at me and saying things like, "My answer to
9 question 5 is no. Number 6 is no." Okay. You'll see
10 how this goes during the course of our discussions.

11 Everybody is glad to have an answer probably to
12 questions 1, 2, and 3. Some people are going to say, "I
13 have no "yes" answers to questions 4 through 14." Most
14 people will have a few. As I mentioned, though, I'm
15 going to be discussing some general principles. I'll be
16 doing that while I'm speaking to the jurors up here. So
17 that's why I want everyone to listen and think of how
18 you would respond to the things that I ask for during
19 this discussion. Even if you're here in the gallery,
20 that's what we might refer to as an audience if this
21 were a theater. And the people up here are in the jury
22 box. Behind the lawyers there's a row of seats and then
23 the deputies are sitting there. And there's a division
24 then what we refer to as the gallery, and that division
25 is called the bar.

26 Show them where the bar is, will you, Pete?

27 THE BAILIFF: My hand is on it and it runs
28 all the way across to you guys (indicating).

1 THE COURT: In the old days, I'm talking way
2 back when, judges probably went through the English
3 countryside. And I don't mean just England. We
4 basically have a system of law in the United States
5 based upon English common law developed over a long
6 period of time.

7 And the judge was probably a circuit writing
8 judge. The judge would come to a town and
9 there wouldn't be a courthouse. There might be a
10 dispute. There might be someone being tried for some
11 kind of crime. And I would have with me -- if I were
12 that judge -- bailiffs like the deputies that I have
13 here. And maybe for security, they would actually have
14 a bar and they would put it in front of me so that no
15 one could approach me except for if that person were
16 addressing the Court as someone who was a litigant or a
17 party to the action.

18 This area -- by the way, in front of me between
19 my bench and the seat where the attorneys are, that's
20 called the counsel table. It is typically referred to
21 as the well. So if I went to a small town when I was
22 going to sit as a judge, maybe the bailiffs would put me
23 behind the well. So that in order for someone to get to
24 me they would have to fall into the well. It would be
25 another procedure for personal safety. I'm giving you a
26 little bit of history of what's going on here.

27 This process now that we're going to enter into
28 is voir dire. Voir dire means to speak the truth. It's

1 an opportunity for the attorneys and myself to know a
2 little bit about you and what your feelings are. The
3 reason why I was allowing Mr. Medlock to address me, and
4 then I could excuse him was, one of the reasons, was I
5 wanted to explain this to you later. I couldn't look at
6 Mr. Medlock and say Mr. Medlock, you can't be a fair
7 juror; right? You can't look at him and tell that, but
8 he knew it. And he volunteered that.

9 Some of you may have feelings that are like
10 Mr. Medlock's that we haven't given you an opportunity
11 to express at this point. I'm not going to be able to
12 or try and trick you into saying something. I'm only
13 going to know if you can be a fair juror or not if you
14 tell me. That's why we're going to ask you questions.
15 If a final analysis can't be fair in my opinion because
16 of things you have told us, we're going to excuse you
17 for cause. That's how we refer to it. We had hardship
18 and now we have cause. Think of it because I can't be
19 fair.

20 The attorneys also have what are called
21 peremptory challenges. It means that even though you
22 could be fair and you're qualified to sit as a juror,
23 for one reason or another they do not want to have you
24 sit on the case. And then they get a chance to exercise
25 peremptory challenges. They cannot use peremptory
26 challenges to exclude someone because of their gender or
27 because of their ethnicity or any other, what we refer
28 to as, cognizable characters. But if for some reason

1 they don't like some of your answers, I have seen so
 2 many different theories. Some people believe that
 3 teachers don't make good jurors and they excuse
 4 teachers. Some people might excuse people whose family
 5 was involved in law enforcement or people whose family
 6 maybe was involved in some kind of a criminal act
 7 themselves.

8 These are things that they get the chance to
 9 exercise peremptory challenges and they have 20 each.
 10 So we're going to start with this process right now.
 11 I'm going to talk to Ms. Cuautle, and then we're going
 12 to take lunch and everyone will have an idea of what's
 13 going to happen when we get back and I'm going to say
 14 "059XXXXX." And she'll know that's her cue. And after
 15 I'm done with 059XXXXX I'm going to say Ms. Austin.
 16 She'll know that's her cue to answer these questions.

17 Let's start with you now, Ms. Cuautle.

18 **MS. LISA CUAUTLE**

19 BY THE COURT:

20 Q What is your business or occupation?

21 A Office clerk.

22 Q What kind of office is it?

23 A Environmental.

24 Q Is that a governmental agency?

25 A No.

26 Q Tell me what that is. I want more.

27 A Deals with environmental issues, mold samples.

28 Q Okay. You eradicate those problems?

1 A No.

2 Q Yes?

3 A No.

4 Q Do you identify them?

5 A Yes.

6 Q Okay.

7 Now, this next question is poorly worded
8 because it's antiquated. It uses the word "spouse."
9 I'm going to use the term life partner instead. Giggles
10 are heard all around but I say that because I don't care
11 if you're married to the person that you're living with.
12 I don't care about those kinds of things. I just want
13 to know if you share your life with someone; I want to
14 know what that person does. So here we go.

15 What is the business or occupation of your life
16 partner if you have one?

17 A He works for a roofing company, part owner of a
18 roofing company.

19 Q Do you mind, Ms. Cuautle, if I ask you to
20 please speak up.

21 A Okay.

22 Q It's tough to put you on the spot but I want
23 everyone in the room to be able to hear everything
24 that's said. Sorry. Just one second. I have another
25 jury back there deliberating. We are very busy.

26 Have you previously served on a jury?

27 A Yes.

28 Q How many times?

1 A Once.

2 Q Criminal or civil?

3 A Criminal.

4 Q Listen to my question carefully, please.

5 Because invariably someone is going to blow the answer
6 to this question. It's not the end of the world. But
7 I'm going to ask Ms. Cuautle in just a moment if there
8 was a verdict reached. I don't want anybody to
9 volunteer, "Yes. We acquitted someone. Yes. We
10 convicted someone." I just want to know if the jury was
11 able to reach a verdict.

12 Was the jury able to reach a verdict in your
13 case?

14 A No.

15 Q Okay. Was it a hung jury?

16 A Yes.

17 Q Sometimes juries don't reach a verdict for a
18 variety of reasons including cases that are settled out,
19 or just a mistrial for something -- some other reason
20 during the course of the trial.

21 In the case that you sat on a jury, what kind
22 of charge was it?

23 A A murder.

24 Q A murder case. Okay. And do you know how long
25 ago was that?

26 A 2003.

27 Q From memory can you tell us what the division
28 was like? Let's say 10 to 2 or 6 to 6?

1 A 7 to 2.

2 Q 7 to what?

3 A 7 to 2.

4 Q Was that a California case?

5 A Yes.

6 Q There has to be 12 people on a jury.

7 A I mean 7 to 5.

8 Q Okay. There was quite a discrepancy. Okay.

9 THE COURT: Now, for everyone else, you
10 should know that if Ms. Cuautle said, "I'm retired," I
11 would have asked her what did she retire from. Had I
12 asked her about her life partner and had she said that
13 her life partner is retired or deceased, then I would
14 have asked what did he do or she do during his or her
15 life. So you can just help us out by giving us that
16 information rather than me having to ask.

17 I'm going to say again, if you were on a jury,
18 I'm going to ask you did you reach a verdict. I don't
19 mean what was the verdict. I want to know did you reach
20 one.

21 If you answer yes to any of the following
22 questions, please tell me the question number and your
23 response. I'm only going to read these once to
24 Ms. Cuautle.

25 BY THE COURT:

26 Q Are you acquainted with the Deputy District
27 Attorney, the Defense Attorney, the defendant, or any of
28 the following witnesses: Detective Greg Myler,

1 Daryl Kraemer, Martha Kraemer, Roger McCoy,
2 Donald Jones, Linda Mitchell, John Sullivan of
3 Lucerne Valley, Detective Robert Alexander, who you have
4 met, Dr. Bill Saukel (pathologist), Francesca Drake,
5 Holly Marie Brown, also known as Holly Marie Yablonsky,
6 Susan Anderson, Monica Siewertsen, Diane Flagg,
7 Angela Neete, Dr. Frank Sheridan (pathologist),
8 David Stockwell, Lori Kay Amaro, Kye Sun Kwoun,
9 Marshall Franey, Bruce Nash, Sherry Bratus (phonetic),
10 Ed White, Detective Mike Tuttle (phonetic), Detective
11 Gary Woods, and Detective Randy Nap (phonetic)?

12 A No.

13 Q Have you heard or read anything about this case
14 in the newspapers?

15 A No.

16 Q I read 6 and 7 together because they are so
17 closely related.

18 Do you know any persons connected with law
19 enforcement, the legal profession, or the court system?

20 And 7, are any close relative or friends
21 members of any law enforcement agency?

22 A No.

23 THE COURT: You know, I think that's as far
24 as I'm going to be able to get before we take our
25 lunch break.

26 We're going to start back at 1:40. Usually
27 we'll start at 1:30 but I had a matter continued from
28 this morning that I still have to resolve. So that

1 means that I need to have everyone come in the court,
2 wait outside the door, be ready to come in when you're
3 called at 1:40.

4 Every time we take a break I'm going to give
5 you this admonition.

6 You are admonished that it is your duty not to
7 converse among yourselves or with anyone else on any
8 matter connected with this case nor form or express an
9 opinion on it until it is submitted to you.

10 That means that when you're outside, feel free
11 to talk about the weather, talk about the Golden Globes,
12 talk about the upcoming playoffs in football season.
13 You can talk about any kind of sports, the Australian
14 Open is something I would be talking about, maybe.

15 I'm giving you an example of things that you
16 can talk about. What you can't talk about when I say
17 anything "connected with this case"? You're going to be
18 standing around. Maybe you're going to be calling in to
19 your work. Maybe you will be speaking to a loved one at
20 lunch.

21 Don't talk to them about murder. Don't talk to
22 them about where you heard something that might have
23 peeked your curiosity about a crime that allegedly
24 occurred on September 20th, 1985. That's almost 25
25 years ago.

26 It's something you can't talk about with
27 anybody. Don't talk about anything related to this case
28 until the case is over, and then you can talk about it

1 with people all you want to. So you might run into the
2 attorneys outside, you can say good morning, good
3 afternoon as the case may be.

4 If somebody talks to you, direct them to
5 Deputy Fleigner. You met Deputy Fleigner. Pete is not
6 only our bailiff, but he's also the court liaison
7 officer.

8 If somebody wants to say something to me, if
9 somebody wants to bring something to my attention or
10 feels the need to tell something to the attorneys, don't
11 talk to them. Talk to Deputy Fleigner first.

12 Okay. We will take our lunch recess. We can't
13 get started until everyone is back. Don't come inside
14 the courtroom. Wait outside the courtroom until you're
15 called at 1:40. Have a nice lunch.

16 (Whereupon a lunch recess was taken.)

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1 VICTORVILLE, CALIFORNIA; JANUARY 19, 2011;
2 DEPARTMENT NO. V2 HONORABLE JOHN M. TOMBERLIN, JUDGE
3 P.M. SESSION

4 (Appearances as heretofore mentioned.)

5 (Michelle Swal, Pro Tempore Reporter, CSR No. 13580.)

6 -oOo-

7 THE COURT: We're back on the record in
8 People of the State of California versus
9 John Yablonsky. He is here along with David Sanders,
10 his attorney. John Thomas is here along with
11 Detective Alexander, his investigating officer.

12 Well, ladies and gentlemen of the jury, I was
13 exactly a half an hour off. That's not acceptable by my
14 standards. The matter that I had to deal with took
15 longer than I had anticipated. And I apologize that I
16 have kept you all waiting.

17 During the course of this trial there will
18 undoubtedly be some additional unintended delays. I
19 will assure you that never will it be something that I
20 have done without realizing that all of you are standing
21 out there in the hall waiting and that it's my fault if
22 I have inconvenienced you by having you summoned back
23 too early. Not in my defense, but just a fact of life,
24 I indicated that we're very busy. I could easily say
25 come back at 2:30. But then if I'm done early, then I
26 have lost court time. So, in a way of doing this to try
27 to move things expediently -- don't get me wrong, speed
28 isn't the only option and it's not the only result that

1 we're trying to obtain. We're trying to obtain a fair
2 trial to both sides. But I do apologize for the fact
3 that I kept you waiting.

4 When we left off, we were talking to
5 Ms. Cuautle and we had just finished 6 and 7. The
6 answers to which were no. It was a good time to take a
7 break because Number 8 is a question that I'm going to
8 read in just a moment. The rest of these questions
9 start needing a little bit of information, I think to
10 understand why they're here.

11 Would the fact that a witness is a law
12 enforcement cause you to favor one side or the other in
13 this case? Before I have you answer that, I want to
14 just make sure that you and everyone else understands
15 that when this trial is over, I'm going to be giving you
16 the law that applies to the case. You will be the judge
17 of the facts. I'm the judge of the law, so I'm going to
18 be explaining what the law is that applies to the case.

19 One of the things I'm going to tell you is you
20 must evaluate the testimony of each witness by the same
21 standards. Does that mean that all witnesses are
22 equally believable? Of course not. Somebody might have
23 been standing closer to an event, might have had a
24 better view of it, might have better vision, might have
25 been looking in the daylight. Somebody else might have
26 been looking from farther away at night, not wearing
27 glasses. So somebody could be absolutely sure they saw
28 something and somebody else could be absolutely sure

1 they saw that same event yet they might report it
2 differently.

3 You might have to determine who is to be
4 believed. And, of course, the opposite side of that
5 coin is there someone maybe that is less believable?
6 Some things I will be telling you about you can take
7 into consideration, might be has the person made a
8 statement in the past that is different than his or her
9 statement here in court? Did the person appear to you
10 to be telling the truth? What was the person's behavior
11 like on the witness stand?

12 In some cases you might hear that a witness has
13 been convicted of a felony in the past. That's
14 something you can take into consideration. There's a
15 lot of different things that you can take into
16 consideration in trying to determine whose testimony you
17 value over another's if there's a contradiction in the
18 testimony.

19 The reason why I say, though, that everybody
20 must be evaluated by the same standard is that there is
21 no belief, at least in this court, that just because
22 someone puts on a uniform that he or she is
23 automatically telling the truth any more than there's a
24 belief, at least in this court, that just because
25 someone put on a uniform, that he or she is lying. This
26 is another way of dealing with an issue that I'm going
27 to simply say to be a fair juror in this case, you're
28 going to decide the case based upon the evidence that is

1 presented in this courtroom, and not based upon biases,
2 on agendas, on issues that you've resolved between
3 yourself and somebody else before you came into court.
4 So in other words, if you think all cops are liars at
5 all times, that's an attitude you might be bringing in
6 with you to this courtroom.

7 The corollary of that, the opposite is, if all
8 cops are telling the truth all the time, then that's an
9 attitude that you're bringing with you into this
10 courtroom. And it's not deciding the case based on the
11 facts that are presented.

12 Does everyone understand that?

13 (Whereupon the prospective jurors answered in the
14 affirmative.)

15 THE COURT: That's why that question is in
16 there.

17 So when you get to answer that question -- have
18 you answered that question yet, Ms. Cuautle?

19 THE PROSPECTIVE JUROR: No.

20 THE COURT: What's the answer?

21 THE PROSPECTIVE JUROR: No.

22 THE COURT: Okay. That's the explanation I
23 gave because I want everyone know. It's fine to be
24 supportive of law enforcement people, the police
25 officers, the men and women that protect us all. Of
26 course they're honorable people. It's an honorable
27 profession, but not everyone tells the truth all the
28 time.

1 they're charged with.

2 There have been situations in this court where
3 from time to time we had to have trials with people that
4 involved the taking of a life of a child through
5 physical torture and abuse. If I had defined 12 people
6 that were going to say I feel neutral about that crime,
7 I think -- I hope I wouldn't be able to find 12 people
8 that would be able to do that. Does that mean the case
9 could never be tried? Of course not.

10 Mr. Sanders is not going to tell you that
11 murder is an okay thing. Mr. Sanders' position is
12 this: Mr. Sanders' position is that Mr. Yablonsky, like
13 anyone who is charged with a crime, is entitled to be
14 presumed innocent until the contrary is proved, if it
15 can be, beyond a reasonable doubt. That's a right that
16 we all enjoy. So that when I read you the charges
17 earlier, I read there was a charge and there was a
18 special allegation. Mr. Yablonsky pleaded not guilty to
19 that charge. Mr. Yablonsky denied that special
20 allegation. We're not looking for people that feel
21 neutral about this crime. We're looking for people that
22 are able to evaluate this crime on the facts that are
23 presented in this courtroom.

24 We already heard Mr. Medlock. Just one second.
25 Number 47, Rebecca Ness. Where are you,
26 Ms. Ness? You would rather have a root canal than be in
27 my courtroom?

28 THE PROSPECTIVE JUROR: Absolutely not.

1 THE COURT: But you have a root canal
2 scheduled for the 26th that I see. That's next
3 Wednesday?

4 THE PROSPECTIVE JUROR: Right.

5 THE COURT: And you are excused for medical
6 hardship. Thank you for being with us.

7 Okay. Now that I have taken that break,
8 Ms. Anderson, what did you find out?

9 THE PROSPECTIVE JUROR: I can schedule for
10 later.

11 THE COURT: Mr. Proctor, what did you find
12 out?

13 THE PROSPECTIVE JUROR: Pretty much nothing,
14 but I will go off of your judgment on that because
15 you --

16 THE COURT: Well, tomorrow is another day.
17 Maybe you can find some more information out.

18 THE PROSPECTIVE JUROR: I just couldn't
19 contact anyone.

20 THE COURT: Maybe tomorrow we'll know
21 something different.

22 Everybody get it? I think I have beaten that
23 horse just about into the ground. We're not looking for
24 somebody that feels neutral about the crime.

25 Why do we ask this question, then? We ask this
26 question because there are people like Mr. Medlock out
27 there. Mr. Medlock's son was killed I think he said in
28 2003. He was murdered. So he's going to have an

1 emotional reaction to this, and he's concerned it's
2 going to affect how he views the evidence. We want
3 people that are going to be able to listen to the
4 evidence, that are going to be able to evaluate and use
5 their common sense and logic. But we don't want people
6 that are going to be using emotion to make their
7 decisions. We don't want somebody to make a decision
8 based on sympathy, either sympathy for a victim or
9 sympathy for the defendant who is on trial.

10 Does that make sense to you, Ms. Cuautle?

11 THE PROSPECTIVE JUROR: Yes.

12 THE COURT: Does that make sense -- does that
13 make sense to everyone else?

14 (Whereupon the prospective jurors answered in the
15 affirmative.)

16 THE COURT: Sometimes we have cases where a
17 person says, "Yeah, I was robbed at gunpoint three
18 times because I was a bank teller. But, yeah, I can
19 sit here as a juror and be fair in this case even
20 though it involves the robbing of a bank at gunpoint."
21 Some people are like that. They are -- I don't know.
22 They're people that just have a better ability to
23 compartmentalize their emotions. Sometimes you have
24 people that -- I had one gentleman, I believe that
25 this is correct, he indicated that he didn't think he
26 could be fair in a domestic violence case because of
27 his wife had told him that years and years ago before
28 they met that her mother had been abused in a

1 relationship. And that seemed to me that was really
2 remote. But he was telling me that it was going to
3 affect his ability to be a fair and impartial juror.
4 Who might argue with that? I can only listen to what
5 you have to tell me.

6 **MS. LISA CUAUTLE**

7 BY THE COURT:

8 Q Have you answered those questions already?

9 A No.

10 Q Would you now?

11 A No.

12 Q 11, have you or any of your close relatives or
13 friends been charged in any criminal offense?

14 A No.

15 Q 12, have you or any of your close relatives or
16 friends been the victim of a crime?

17 A No.

18 Q What a good sport. I'm picking on you because
19 you're the first person I'm speaking to.

20 Does the fact that the defendant has been
21 arrested or charged with this offense cause you to
22 believe from these facts alone that he is more likely to
23 be guilty than not guilty?

24 A No.

25 THE COURT: Isn't that an interesting
26 question?

27 Does anybody think that it's possible that you
28 might feel it more likely than not that the defendant is

1 guilty than not guilty but that you could still be a
2 fair juror in this case? How does that make sense? How
3 do we make sense of that? Let me explain it to you.

4 The fact that someone else is suspicious of
5 Mr. Yablonsky, the fact that someone, for instance, has
6 arrested Mr. Yablonsky and charged him of the crime is
7 not evidence of his guilt. I'm going to be saying that.
8 You will hear me say that probably several times between
9 now and the time that this trial is over and you begin
10 your deliberations. Because we don't base a jury
11 verdict on someone else's suspicions. It's not time to
12 be suspicious now. Now is the time to prove the case.

13 There is a line from the author Conan Doyle,
14 when Sherlock Holmes is talking to Dr. Watson and he
15 says, "What we know is not important, what is important
16 is what we can prove."

17 Does everyone understand what I'm talking
18 about?

19 There's another way to look at this that I'll
20 mention. What is more important than not? What do you
21 think that means? Do you think that means like
22 51 percent on one hand and 49 percent on the other more
23 important? How much more important, a little tiny bit?

24 In civil cases, we have a burden of proof that
25 we call preponderance of the evidence. My guess is that
26 preponderance comes from the root "ponderance" as in
27 weighing or heavy. So in order to prove a case that's a
28 civil case -- and by the way in a civil case, all you

1 can lose is your money.

2 In a criminal case, we have a different
3 standard because you can lose your freedom. So
4 preponderance of the evidence means just a little bit of
5 that scale is tipped. I have this up here -- I get to
6 use my show and tell page. Let's assume that this was
7 just not a cheap trick, but a very, very, expensive
8 scale and these pans weighed exactly the same amount.
9 They would be in perfect equilibrium, and this would be
10 absolutely straight across; right?

11 I always like to think of an old miner who goes
12 to Sacramento, and he brings out some gold dust. And
13 what does the assayer do? The assayer puts a Troy
14 weight here, one ounce, and it brings down the pan. And
15 you start pouring gold dust until these things are in
16 perfect equilibrium. And then you know you have one
17 Troy ounce of gold, and the assayer knows how much money
18 to pay the old miner. If you pour too much, it goes
19 down too far. That side preponderates. Don't have
20 enough gold dust, this side goes down too far, this side
21 preponderates. That's the civil standard. That's more
22 likely than not; right? That's where there's more
23 weight on one side than that which is opposed to it on
24 the other.

25 We don't have a standard like that in a
26 criminal case. We might talk about preponderance of the
27 evidence, by the way, in this case. It may relate to
28 other evidence that is presented, but we're going to be

1 talking about a different standard of proof. As far as
2 the charge goes, the jury is going to have to decide
3 whether or not Mr. Thomas has proved this case beyond a
4 reasonable doubt. I'm going to be giving you an
5 explanation, a definition what beyond a reasonable doubt
6 means. But I can tell you that it is a highest standard
7 that we have the courts of law. It's not just clear and
8 convincing, it's not just preponderance of the evidence,
9 it's not a strong suspicion, but it means beyond a
10 reasonable doubt. It would probably be something almost
11 like putting something -- one side all the way down and
12 the other side up. And you can't prove everything
13 beyond any possible or imaginary doubt because
14 everything in life is subject to some imaginary doubt,
15 possible doubt, but you will be using a high standard.

16 And that's why I can tell you that the fact
17 that you might believe Mr. Yablonsky is guilty more
18 likely than not would be totally irrelevant to the final
19 decision that you would make as a juror in this case.

20 Does that make sense to anyone? Have I
21 explained that in such a way you're getting my point?

22 (Whereupon the prospective jurors answered in the
23 affirmative.)

24 THE COURT: Because frankly, somebody might
25 be sitting there thinking, "Hey where there's smoke,
26 there's fire." You heard that, haven't you?

27 John Kennedy said, "Where there's smoke,
28 there's probably someone operating a smoke-making

1 machine." I don't know which way you want to look at
2 it, but I'm simply going to tell you that these are
3 attitudes, these are feelings that we bring into court.
4 We're not going to be using those. We're going to be
5 evaluating this case based upon the evidence that's
6 presented on the arguments of the attorneys and the law
7 that I give you.

8 **MS. LISA CUAUTLE**

9 BY THE COURT:

10 Q Is that something you can do, Ms. Cuautle?

11 A Yes.

12 Q Finally, is there any reason why you feel you
13 should not sit as a juror on this case?

14 A Well, my husband -- I wasn't sure about
15 hardship. I was going to ask you because at
16 lunch -- but I wasn't for sure about hardship if my
17 company was going to pay for the jury service and
18 they're not. And I have part-time job as it is, so it
19 is going to be a hardship for me.

20 Q After all this time.

21 By the way, I'm guessing I've spent probably a
22 half an hour altogether talking to Ms. Cuautle. And I'm
23 going to be excusing her in just one minute, but can you
24 see what I'm doing when I say, "Pay attention to this"?
25 I'm not going to spend this half an hour talking with
26 anyone else. I'm not going to go over these things with
27 everyone. I'm not going to go over the specifics.

28 That's why I want you to be listening so when I

1 say, "Would you be able to follow the instructions on
2 those important things we discussed, could you do that?"
3 Then you're going to be able to say, "Yes" or "No."

4 But we'll go back to the hardship issue. If
5 you're not going to be paid for your part-time job while
6 you're here -- pardon me, that would be a financial
7 hardship to not be paid; right?

8 A Yes.

9 Q I'm going to excuse you. Thank you for being
10 with us.

11 A Thank you. Sorry.

12 Q That's all right. We have more.

13 THE COURT: Can you call another name to fill
14 that seat, please.

15 THE CLERK: Juror Number 4, 004XXXXXXXXXX.

16 THE COURT: 004XXXXXXXXXX. I saw you looking
17 at me when I was talking. You gave me the impression
18 that you heard me.

19 THE PROSPECTIVE JUROR: I was paying
20 attention.

21 THE COURT: Excellent.

22 Now, what I'm going to do is what I said I was
23 going to do first because what I said when I finished
24 with Mr. Cuautle I was going to talk with 059XXXXX. So
25 you catch up with this, 004XXXXXXXXX, and I will be right
26 back to you.

27

28

059XXXXXXXXXXXXXX

1
2 BY THE COURT:

3 Q You know what you're supposed to do, don't you?

4 A Uh-huh.

5 Q Please do.

6 A I'm supposed to answer these questions.

7 Q That's right.

8 A Number 1 is I'm a coach operator, when I am
9 working.

10 Q A what operator?

11 A A coach operator.

12 Q Is that like a bus driver?

13 A Yes.

14 Q Okay.

15 A My significant other is an on-the-road truck
16 driver. I have served on a jury. It's been a while.

17 Q Was it a criminal or civil case and did you
18 reach a verdict?

19 A It was a criminal case.

20 Q Did you reach a verdict?

21 A They did. I was an alternate.

22 Q Okay. No on the other ones?

23 A All the way down.

24 Q No all the way down. You heard the things I
25 was talking about in some detail, didn't you?

26 A Yes.

27 Q What do you think about those things?

28 A Not much.

1 Q We're here to guarantee that Mr. Thomas
2 representing the People gets a fair trial. We're here
3 to make sure that Mr. Sanders representing Mr. Yablonsky
4 gets a fair trial. That's why I ask those questions.

5 Do you think those principles we talked about
6 are important?

7 A Yes, they are.

8 Q Would you guarantee those safeguards be
9 protected if you were a juror in this case?

10 A Uh-huh. Yes.

11 THE COURT: Thank you.

12 004XXXXXXXXXXXXXXXXXX

13 BY THE COURT:

14 Q 004XXXXXXX?

15 A Yes, sir. I'm an operator engineer for the
16 State of California. My wife works for Kaiser as a
17 receptionist. I don't know anybody from --

18 Q Jury --

19 A -- from the jury or anyone.

20 Q Any prior jury service?

21 A Yes, I do. I have been in a criminal case and
22 that case we did deliberate.

23 Q And reached a verdict?

24 A Yes.

25 Q Okay. What "yes" answers do you have?

26 A None.

27 Q Okay. Thank you very much.

28

MS. NITIKA AUSTIN

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BY THE COURT:

Q Ms. Austin?

A I am a federal correctional officer for federal prison. My husband same occupation. No to 3. No to 4. No to 5.

Q Do you have any "yes" answers?

A Number 6.

Q You know people involved in law enforcement because your husband also is involved?

A And brother-in-law.

Q Okay.

A Both federal, my brother-in-law is state, and my husband and I are federal.

Q Okay. Now, let's ask you this: Does the fact that someone is a law enforcement officer mean they're always going to tell the truth?

A No.

Q Have you had to investigate from time to time the events, what events may have occurred during the --

A My occupation, yes.

Q Yeah. So sometimes there's a beef that somebody who is an inmate, a convicted person, could get in a beef with a corrections officer?

A Yes, I have to look further.

Q And you have to decide what happened. You can't just say, "This person is convicted of a crime. We're not going to believe him"?

1 A That's true. That's true.

2 Q Everybody get that point? I hope everybody
3 understands it. She's the one in a position that she
4 knows. That's what she's telling us, in her experience.
5 Her experience is that you have to evaluate each case on
6 its own merits.

7 That's a fair statement, isn't it?

8 A Yes.

9 Q Any other "yes" answers?

10 A Number 11 and 12, which I don't -- I don't have
11 contact with family members, but I do know some of them
12 have criminal cases.

13 Q Do you know if some of your family members have
14 been involved with the law in an adverse way?

15 A Yes. I don't know the --

16 Q You don't know the specifics, and it's not
17 going to affect how you evaluate the evidence in this
18 case.

19 Is that a fair statement?

20 A Yes.

21 Q Anything else?

22 A That's it.

23 THE COURT: Thank you.

24 **MS. CATHERINE ANDERSON**

25 BY THE COURT:

26 Q Ms. Anderson, how do you do?

27 A I'm a food service worker. My husband is a
28 retired CHP officer. No, I -- Number 3 is no.

1 Q Never served on a jury. Tell me what kind of
2 worker are you, again?

3 A Food service.

4 Q Okay. Thank you.

5 A 3, 4 and 5 are no. 6 and 7 are yes, my
6 brother, my husband, and my son.

7 Q All involved in law enforcement?

8 A Correct.

9 Q What about if you were a juror in this case
10 could you evaluate the testimony of that person by the
11 same standard?

12 A I would actually -- it goes into 8 where I
13 would take their expertise into consideration, which
14 might persuade me in some ways.

15 Q Okay. Remember, I told you that you could
16 treat people differently as long as you had a reason for
17 it. The fact that somebody is a law enforcement officer
18 and has some expertise, that might be a reason that you
19 should take their testimony as more convincing than
20 someone that has no expertise.

21 I'll give you a perfect example. If you're
22 someone that has listened to a lot of gunshots at a
23 firing range -- I'm making this up -- maybe you can hear
24 a gun and you can say, "I heard a revolver." Somebody
25 else -- and then maybe you can hear a gun and say,
26 "That's an automatic."

27 THE COURT: Do you think that's possible to
28 make a different sound?

1 (Whereupon the prospective jurors answered in the
2 affirmative.)

3 THE COURT: I see people shaking their heads
4 yes. What about -- so maybe they know something
5 because if they have expertise in listening to guns go
6 off because one of the things that police officers
7 have to do is they have to qualify at a shooting range
8 some number of days a month or weeks in the year or
9 whatever. And maybe I have shot a gun a few times in
10 my life, but I don't have much expertise with it. I
11 certainly haven't had an opportunity to get my ear
12 attuned to be able to tell what's being fired but some
13 people probably can.

14 So that's acceptable, someone's expertise.
15 Now, veracity is something different. Veracity is the
16 word that we're talking about in this case. Veracity or
17 in Latin we say "in vena veritas," which some of you
18 would know means "In wine there is the truth." So the
19 veritas that we're talking about is can you believe
20 someone or is someone telling you something honestly, as
21 opposed to someone accurate in relating their expertise.
22 That's the one we're talking about and that's the one
23 that makes the difference.

24 BY THE COURT:

25 Q What about that, Ms. Anderson, do you think
26 putting on a uniform is a guarantee of honesty?

27 A No.

28 Q Okay. Any other "yes" answers?

1 A 11 and 12, yes. And that's the only yeses I
2 have.

3 Q Tell us about 11 and 12.

4 A One was a car jacking and --

5 Q An arrest or victim?

6 A A victim.

7 Q Okay.

8 A And 12 was an arrest.

9 Q Who was arrested?

10 A A nephew.

11 Q Anything about the way your nephew's case was
12 treated would affect how you view the evidence in this
13 case?

14 A No. He deserved it.

15 Q Okay. Thank you.

16 **MR. MARVELL GREENWOOD**

17 BY THE COURT:

18 Q Mr. Greenwood?

19 A Number 1, I am a singer/song writer.

20 Q Would you speak up. I think I heard
21 singer/song writer?

22 A Yes, sir.

23 Q Wow. Cool.

24 A My ex-wife, she is a paralegal, I guess,
25 something like that. She works.

26 Q Okay.

27 A No, I have not worked as a juror.

28 MR. SANDERS: Your Honor, I can't hear.

1 THE COURT: Mr. Greenwood, you're going to
2 have to really sing out for us.

3 THE PROSPECTIVE JUROR: Sorry.

4 BY THE COURT:

5 Q You said that your wife worked for you before
6 she --

7 A No. She worked as a paralegal --

8 Q Before you were divorced?

9 A Right. Well, not paralegal. I don't know
10 exactly what it was. She worked in an office, that type
11 of work.

12 Q You never served on a jury before?

13 A No.

14 Q Any "yes" answers, Mr. Greenwood?

15 A No.

16 THE COURT: Okay.

17 MR. TONY POL

18 BY THE COURT:

19 Q Mr. Pol?

20 A I am a retired mailman. My wife is a
21 housewife. First time I have been here. And all the
22 rest are no except 12. And a year ago, my daughter was
23 raped and drugged. She almost died.

24 Q Okay. All right. You know, Mr. Pol, you heard
25 what I said, people are affected differently. I don't
26 believe that because it's hard for you to talk about it,
27 that you're necessarily telling me you couldn't be a
28 fair juror. But you have to tell me.

1 A My daughter -- it's kind of hard to accept on
2 this case, like you said, it's murder/rape. I just
3 can't.

4 Q You can't do it?

5 A No.

6 THE COURT: I'm not going to ask you to. I'm
7 going to ask the attorneys.

8 Counsel, do you stipulate to excuse Mr. Pol for
9 cause?

10 MR. SANDERS: Yes, sir.

11 MR. THOMAS: People would stipulate.

12 THE COURT: I'm sorry, sir, but you are
13 excused.

14 Call another came for that seat, please.

15 THE CLERK: Juror Number 44, Clyde Milburn.

16 THE COURT: We will wait for Mr. Milburn to
17 get up there, and we'll start talking in the meantime
18 to Ms. Pineiro.

19 MS. DONNA PINEIRO

20 BY THE COURT:

21 Q Ms. Pineiro?

22 A I am retired. I have plenty of time. My time
23 is your time. My husband is also retired. I worked at
24 the Victorville Court and the court down in
25 San Bernardino in the clerk's office in traffic. I have
26 been retired six-and-a-half years. I don't really have
27 any -- I did jury once and it was decided. And I don't
28 know any deputy or District Attorney. I haven't heard

1 anything about the case.

2 Q Ms. Pineiro, I'm going to pick on you.

3 I want everyone to know I only want to know
4 your "yes" answers. That's what I wanted you to do when
5 I was talking to Ms. Cuautle to figure out what your
6 "yes" answers were.

7 A 6 and 7.

8 Q Okay.

9 A My ex-son-in-law is a deputy sheriff for the
10 San Bernardino County. I haven't had much contact with
11 him in five or six years. And like I said, I worked
12 here, but that was a long time ago. And I don't have
13 any close friends except for one lady who is on medical
14 retirement.

15 Q Okay.

16 A The rest is no.

17 Q So Ms. Pineiro, are you a good sport?

18 A Yes.

19 Q Can I ask you a trick question?

20 A Yes.

21 Q Suppose -- and this isn't going to
22 happen -- suppose I say to Deputy Fleigner I want you to
23 take the 12 people in the back two rows, put them back
24 there in the jury room right now, and come back with a
25 verdict. What's your verdict?

26 A I would say I haven't decided. I haven't heard
27 the evidence. I'm a firm believer, and I'm a great
28 note-taker. You have to hear evidence on both sides.

1 Q In other words, you don't have a verdict. You
2 can't reach a verdict right now?

3 A I haven't even heard it.

4 Q Doesn't that sound absolutely reasonable?
5 That's what people should be like, isn't it? You don't
6 decide something until you've heard the evidence. You
7 don't rush to judgment.

8 A I wouldn't want that to happen to me.

9 Q Why did I say it was a trick question? It
10 sounds easy, doesn't it? Because as good as your answer
11 is -- I like it. It's the way I view things in my
12 regular life. If I'm trying to figure out what kind of
13 car I'm going to buy, I'm going to probably get all the
14 information I can, find out what the price is, what's
15 the gas mileage, what's the service record. I'm going
16 to go out and get information. That's what we would do
17 if we were going to be using the skills that we
18 developed in our normal lives.

19 In our courtroom sometimes things are what I
20 refer to as counter intuitive. In other words, it's
21 different than what we expect that the answer is going
22 to be. Why is that? It's different because
23 Mr. Yablonsky is presumed innocent until the contrary is
24 proved. Remember that? So this is not like we're
25 starting a foot race and Mr. Thomas and Mr. Sanders are
26 going to be on an equal footing and we're going to see
27 who is the best performer. Mr. Sanders does not have to
28 prove anything to you. The only person with a burden of

1 proof here is Mr. Thomas. And because Mr. Yablonsky is
2 presumed innocent and you haven't heard any evidence
3 yet -- I've already told you that because someone was
4 arrested and charged with a crime or brought to trial
5 that's not evidence of guilt.

6 So what evidence do you have that Mr. Yablonsky
7 is guilty?

8 A None.

9 Q None? So what's your verdict?

10 A Hung.

11 Q If he's presumed innocent, your verdict is
12 what?

13 A Until proven guilty --

14 Q So what's your verdict?

15 A Not -- I don't have any.

16 THE COURT: Okay. Well, I won't press the
17 point any farther. Does everyone see there is a
18 verdict right now and that verdict is not guilty?

19 (Whereupon the prospective jurors answered in the
20 affirmative.)

21 THE COURT: Okay. That's the only one you
22 can come to.

23 MR. CLYDE MILBURN

24 BY THE COURT:

25 Q Now I'm going to move over to Mr. Milburn.

26 Hello, Mr. Milburn. How are you doing?

27 A I'm a rigger for my trade. My wife is a nurse.

28 And --

1 Q A rigger?

2 A Yes.

3 Q You work at a casino?

4 A No. No. I work in shipyards. I work with the
5 cranes and stuff.

6 Q Wow. Interesting work.

7 A Dangerous work.

8 Q Yeah, I can see that.

9 A And I have served on a jury before, and it was
10 a hung jury.

11 Q How long ago was that?

12 A Back in the '80s.

13 Q A criminal case?

14 A Yes. Well -- yes.

15 Q Do you know what the split was, like, 11 to 1
16 or 10 to 2?

17 A 10 to 2, I think.

18 Q Were you in the 10 or the 2?

19 A I was in the 2.

20 Q Okay.

21 A And I only have yes to 12.

22 Q What is that?

23 A My sister was murdered, something like this.
24 It was her husband, kind of -- she was living with him,
25 so he just blowed her away.

26 Q How long ago did that happen?

27 A Yesterday. Not yesterday, like yesterday.

28 Q You remember it like yesterday?

1 A Yes.

2 Q Is that going to make this difficult?

3 A Yeah, already.

4 Q Mr. Milburn, I can see that.

5 Mr. Thomas, Mr. Sanders, will you stipulate
6 that I can excuse Mr. Milburn for cause?

7 MR. THOMAS: People stipulate.

8 MR. SANDERS: Yes, your Honor.

9 THE COURT: Thank you, Mr. Milburn. I'm
10 going to excuse you for cause. Thank you for being
11 with us. I'm sorry for your loss.

12 THE CLERK: Juror Number 26,
13 026XXXXXXXXXXXXXXXXXX.

14 016XXXXXXXXXXXXXXXXXX

15 BY THE COURT:

16 Q While 026XXXXXXXXXX gets up there and gets
17 situated, 016XXXXXXX. Hello.

18 A Hi.

19 Q Will you answer those questions for us, please.

20 A I'm retired for Number 1. My significant other
21 is also retired.

22 Q What did you do before you retired?

23 A I was working for a bank.

24 Q And what did he do?

25 A The same thing. We were -- we met at the bank.

26 Q Please speak up. You were what?

27 A We both worked for the bank, and we both
28 retired.

1 Q Right.

2 A I have yes on Number 3. It was a criminal
3 case, and we reached the verdict. And yes on Number 12.
4 My daughter's car was parked in front of our house and
5 somebody broke in. But she's a 17-year-old so there's
6 not much that was taken, but I thought that was
7 considered a yes.

8 Q Okay. That's not going to affect how you view
9 the evidence in this case; right?

10 A No.

11 THE COURT: Thank you.

12 026XXXXXXXXXXXXXXXXXXXXXXXXXXXX

13 BY THE COURT:

14 Q 026XXXXXXXXXXXX?

15 A Yes. Right now I'm unemployed.

16 Q When you have a job what do you do?

17 A I worked at warehouses as a receiving clerk.
18 I'm single. No, this is my first time. And I have yes
19 answers for 11 and 12. 11 would be my dad, and Number
20 12 was myself and my sister.

21 Q What's 11? What about your dad? He was
22 arrested?

23 A Yes.

24 Q For what?

25 A Child abuse and the other one I don't wish to
26 disclose.

27 Q Okay. What about if you were to come down here
28 and speak to me on the record with the attorneys?

1 A Okay.

2 THE COURT: Okay. Ladies and gentlemen of
3 the jury, pardon us for a minute. We don't want to be
4 rude.

5 (Whereupon a bench conference was held on the record.)

6 026XXXXXXXXXX?

7 A I was -- he molested my sister.

8 Q Father molested your sister. And did he
9 also -- you said that you were a victim, so he abused
10 you?

11 A Yes.

12 Q Okay. How long ago about did that happen?

13 A It would be 27 years ago.

14 Q Okay. Is that something that affects how you
15 would view the evidence in this case?

16 A No, sir.

17 Q Is there -- was your father convicted?

18 A Yes.

19 Q Did you feel that justice was done in that
20 situation?

21 A I believe it was. My mom was -- she was in
22 favor for him not being prosecuted to the fullest, I
23 would say.

24 Q Would that affect how you view things in this
25 case?

26 A No.

27 THE COURT: Mr. Thomas, do you have any
28 questions you'd like to ask 026XXXXXXXXXX?

1 MR. THOMAS: I do.

2 BY MR. THOMAS:

3 Q Will this affect how you view the evidence in
4 this case?

5 A No. I was a young boy.

6 Q Thank you.

7 A Yes.

8 THE COURT: Thank you.

9 So that everyone else will know, sometimes I
10 bring it up, usually I don't. I wait for somebody to
11 tell me, and you have just seen that someone has chosen
12 to get a chance to talk to me with the attorneys to ask
13 a couple of questions of him. You don't need to be
14 concerned about why a person might want to have some
15 matters private.

16 If you fall into that category, we don't want
17 to put you on the spot or embarrass you. We do want
18 honest answers to the extent that this encourages it
19 then we have you come down here and talk to me and the
20 attorneys. There's another way I can do it. I suppose
21 I could clear the courtroom. But if I did that, I'm
22 going to have to excuse you. I'm going to have to
23 admonish you. I'm going to have to wait until everyone
24 gets gathered back up, bring you back in, take roll, and
25 it's going to cause a lot of delay. To avoid doing
26 that, I think it's better and a better use of your time
27 if I just do what would be considered rude at the
28 Tomberlin Household is to whisper behind people's backs

1 but that's what we do, so I hope you don't mind.

2 Thank you, 026XXXXXXXXXX.

3 **MS. DEBRA McKENZIE**

4 BY THE COURT:

5 Q Ms. McKenzie?

6 A I'm a division assistant support for a sales
7 organization in Loma Linda for advertising. My late
8 husband of ten years was an employer of a small paint
9 store in Nevada. I have served on one criminal trial as
10 an alternate. There was a verdict reached but I wasn't
11 a part of it. I have -- 6 and 7 are yes. I have
12 several close acquaintances that are police officers,
13 and my nephew is attempting to be hired on by the
14 Riverside PD. 11 and 12 are yes. My daughter-in-law's
15 younger brother is currently incarcerated on a charge of
16 rape and serving 25 years. He's attempting to get his
17 appeal filed and I'm involved in that.

18 Q You're involving in helping him get his appeal
19 filed?

20 A Yes.

21 Q Okay.

22 A I'm helping her with the paperwork. I can't
23 literally be involved in it because I'm not related but
24 I can tell her.

25 Q Okay. So you feel if that person was -- I
26 don't know. I shouldn't have said it that way.

27 Do you feel that that person was wrongly
28 convicted?

1 A Yes.

2 Q Okay. Do you think that would affect how you
3 might view the evidence in this case?

4 A No.

5 Q Okay.

6 A 12, my house has been broken into several times
7 and that's about the extent, petty things taken usually
8 by kids. They were never brought --

9 Q Is that it for "yes" answers?

10 A Yes -- not since I have lived up here.

11 THE COURT: Okay.

12 MR. CAMERON BEAN

13 BY THE COURT:

14 Q Mr. Bean?

15 A Good afternoon, your Honor. I'm a painting
16 contractor for South El Monte, California. My wife is a
17 mother and a nurse.

18 Q Wait a minute, from South El Monte. You don't
19 live in South El Monte, do you?

20 A I do not. That's where I work. That's where
21 my shop is at.

22 Q Okay. You're a contractor. Are you going to
23 be all right here with this schedule?

24 A Yes, sir.

25 Q Okay.

26 A Never served on a jury before. 6 and 7 are yes
27 to both of those. I have a couple of good acquaintances
28 that are retired law enforcement. And then my son has

1 several friends who are DOC, they work in the Department
2 of Corrections.

3 Q Okay.

4 A 11 is a yes. My brother for interstate
5 trafficking drugs from here to somewhere else and got
6 caught. 13 is a yes. As a hard working tax paying
7 citizen, I would hope that the District Attorney and the
8 law enforcement would have facts in order to at least
9 attempt to prove a case, as opposed to just throwing out
10 charges. I would hope that they would, you know, have
11 enough evidence that they would feel that they have a
12 good chance of a verdict in the case in their favor
13 before they bring it to this point.

14 Q Okay. That's a fair assessment, perhaps. Let
15 me ask you this question.

16 A Sure.

17 Q So if you believe that Mr. Thomas thinks he can
18 prove the case, do you think that's evidence of guilt?

19 A No.

20 Q Okay. So are you with me that what's going to
21 happen is that no matter how strongly he believes it,
22 the final analysis is going to be the question of has he
23 proven it to you; is that right?

24 A Yes, sir.

25 Q Okay. Let me introduce another topic,
26 Mr. Bean. Let's say that Mr. Yablonsky decides that he
27 doesn't want to give testimony in this case. Everybody
28 should know, by the way, that there's a thing called a

1 Fifth Amendment to the United States Constitution.
2 Remember the first ten amendments were referred to as
3 the Bill of Rights. The Constitution wasn't ratified
4 until the Bill of Rights was added? So everyone has a
5 right to remain silent and can't be forced to give
6 testimony against themselves.

7 If you were a juror in this case and
8 Mr. Yablonsky decides not to testify, would you be able
9 to ignore that issue and not hold that against him from
10 wanting to remain silent?

11 A I would.

12 THE COURT: It might be a difficult concept
13 for us to come by. We're curious, aren't we? We are
14 curious people. I have people, and some of you might
15 have children, and what may take place in your
16 home -- if you hear like a "wack" and you go into the
17 other room and there's Rachel crying and there's Jack
18 laughing, what are you going to do? Are you going to
19 say, "I wonder what happened." Or are you going to
20 pick them up and start -- never mind.

21 We won't describe things that are probably not
22 within the Statute of Limitations now. But you're going
23 to ask what happened. This kind of goes back a little
24 bit to what we discussed with Ms. Pineiro. We are
25 trying to get to the bottom of this. We don't have the
26 ability of controlling the information. You don't have
27 the ability to control the information that you get.
28 You're going to get what Mr. Thomas gives you. And

1 you're going to get something if Mr. Sanders thinks that
2 he should give you some information, remembering he has
3 no burden of proof and remembering that Mr. Yablonsky
4 has the constitutional right to decide whether or not to
5 give testimony.

6 I'm going to give instruction that will order
7 that you not consider for any purpose if Mr. Yablonsky
8 decides to remain silent. Remembering, again, that he
9 has a right to be presumed innocent the contrary is
10 proved, remembering that it's his decision to
11 make -- he'll make it with Mr. Sanders but he may choose
12 to rely on the state of the evidence.

13 Does everyone see that if you could infer that
14 someone was guilty because of the fact that they
15 exercised their privilege not to testify, then the right
16 to remain silent would not be much of a right, would it?
17 That privilege would not be very valuable.

18 Does everyone understand and agree that we
19 protect that important privilege? Okay.

20 **MS. TASIA GREEN**

21 BY THE COURT:

22 Q Ms. Green, hello.

23 A Hello. Right now I'm a student, and I collect
24 unemployment. My spouse is a pharmacy technician. I
25 have never served in a jury before. Yes to answers 11,
26 12, and 13. My nephew is in jail right now for a
27 murder. He's awaiting trial. And I in 2009 I was
28 beaten and sexually assaulted by my boyfriend. And

1 Number 13, I have to say yeah.

2 Q Okay. Would any of those things that you just
3 said affect your ability to be a fair and impartial
4 juror?

5 A You were saying when you were talking about how
6 if he wouldn't want to tell his story, I would
7 automatically think that he was guilty if he didn't want
8 to testify.

9 Q Even if I told you to ignore that, you wouldn't
10 be able to do that?

11 A Yeah, I believe if he wouldn't be able to
12 testify and say his side of the story, I just wouldn't
13 believe him at all.

14 Q Okay. Should we have further discussion on
15 that, Mr. Thomas or Mr. Sanders, to talk to this person?

16 MR. SANDERS: No, your Honor.

17 MR. THOMAS: I would stipulate.

18 THE COURT: She indicated an unwillingness to
19 follow an instruction that I'm certainly going to
20 give. I don't know whether he's going to testify or
21 not. But based upon what you have said, they're
22 stipulating I can excuse you for cause so I'm going to
23 excuse you for cause. Thank you for being with us.

24 Would you call out another name for that seat.

25 THE CLERK: Juror Number 34, 034XXXXXXXXX.

26 THE COURT: While 034XXXXXXXXX comes forward to
27 take his seat, I'm going to say hello Ms. Whittaker.

28

MS. LINDA WHITTAKER

1
2 BY THE COURT:

3 Q Hello.

4 A Hi. I'm unemployed right now. I was in
5 retail. My husband works for the phone company. I
6 never served on a jury. And the answer to 14 is no.

7 THE COURT: Thank you.

8 034XXXXXXXXXXXXXX

9 BY THE COURT:

10 Q 034XXXXXX.

11 A Hi. I work for the Department of Navy, DOD.
12 And I work with, you know, we fix the machines out
13 there, the war machines, and I'm a part-time student.
14 My wife is -- she works out there as well.

15 Q When you say "out there," where is that?

16 A Naval test station?

17 A No. A marine base in Barstow.

18 Q What's the same of that?

19 A Marine Core Logistics Base.

20 Q Thank you.

21 A I have never served on a jury. And yes to 11,
22 and yes to 12. Yes to 11, when I was younger as a
23 juvenile I got in some trouble.

24 Q You don't have to tell us about your juvenile
25 record.

26 A Okay. And then I have a couple brothers that
27 are incarcerated.

28 Q Anything about the way they were treated that

1 would cause you to question the fairness of --

2 A There have been in certain situations. My
3 older brother -- and a lot of stuff I didn't know
4 exactly how it went down. But from what I was told, the
5 police didn't act accordingly in that situation, so
6 yeah.

7 Q Does that mean you would automatically distrust
8 the police officers in this case?

9 A Not necessarily. I'd have to look at all the
10 facts and everything and go from there, but no.

11 Q Okay. Is that it for yes answers?

12 A No, 12. I have had my truck stolen before.
13 But everything else is a no.

14 THE COURT: Thank you.

15 018XXXXXXXXXXXXXX

16 BY THE COURT:

17 Q 018XXXXXXX?

18 A I'm a homemaker. My husband is a high school
19 teacher. And I have never served on a jury.

20 Q Any "yes" answers?

21 A No. I do know a few people in law enforcement.

22 Q Okay. Probably you had some --

23 A Friends.

24 Q Your husband teaches at Granite Hills; right?

25 A No. Victor Valley.

26 THE COURT: All right.

27

28

MS. KATHERINE BRADFIELD

1
2 BY THE COURT:

3 Q Ms. Bradfield?

4 A I am a food service worker for a middle school.
5 I husband works for the railroad. I have never served
6 on a jury. And I have a yes answer to Number 5. I read
7 the newspaper every day, and I do have some vague memory
8 of reading the two names of the victims of
9 Mr. Yablonsky.

10 Q Okay. Are you like me? You see something in
11 the newspaper and it's kind of an interesting thing to
12 read, but you don't necessarily believe that everything
13 printed in the newspaper is true?

14 A I can't say at this point. I would have to
15 read more and I have my thoughts. I'm kind of drawn
16 towards if it's there, then if there's smoke there must
17 be fire.

18 Q Let me ask you this: You have read something
19 in the newspaper, and you think it might be related to
20 this trial, do you think that if I were to tell you to
21 ignore what you heard or read in the newspaper could you
22 do that?

23 A Yeah.

24 Q Okay. This is not trial by what the cop
25 thinks. This is certainly not trial by what the
26 newspaper reporter thinks. There's nothing wrong with
27 newspapers, but I can tell you from personal experience
28 that I sometimes read about things that happened in a

1 courtroom. And I'm reading it and I go, "That sounds
2 weird." Then I'll realize that they're talking about
3 something that happened in my courtroom that's not quite
4 accurate. Reporters have to get information. They have
5 to get a story out.

6 I mentioned the question of honesty of police
7 officers. You heard me talk about that. You know we
8 make a big deal of it. It's even on question 8 out of
9 the few that we ask. The fact is that most of the time
10 you're not going to have a law enforcement officer who
11 is a witness to anything other than relating to us what
12 he saw later or somebody pointed out to him or her or
13 what somebody told him or her.

14 So are you going to be able to be a fair juror?

15 A I think so.

16 Q Okay. Is that it?

17 A Yeah.

18 025XXXXXXXXXXXXXXXXXXXX

19 BY THE COURT:

20 Q 025XXXXXXXXXX?

21 A Good afternoon. I'm a registered nurse. My
22 husband is a school teacher. He teaches fifth grade. I
23 have been on two previous juries, one has been within
24 this -- your court system. And verdicts on both of
25 them.

26 Q Okay.

27 A No to all of the answers.

28 THE COURT: Thank you.

MS. SHARON TIERNEY

1
2 BY THE COURT:

3 Q Ms. Tierney?

4 A Good afternoon, Judge. Yes to 3. There was a
5 verdict. 6, I know a lot of law enforcement over the
6 years, and I do have attorneys in the family that are
7 San Bernardino County. Yes on 11, a son, friends,
8 family. 12 is a yes. And for myself, personally, just,
9 like, home invasion and vehicle theft. My son was
10 charged and he was -- on 11 -- he was sentenced, and
11 that was a felony. It was later dropped to a
12 misdemeanor and I believe before your court. I attended
13 most of the hearings or whatever. I thought he got a
14 fair shake.

15 Q What about 1 and 2?

16 A Sorry.

17 Q I'm wondering if you were anti-consecutive or
18 chronological.

19 A Dyslexic. I have been retired for about ten
20 years from the medical field, phases from nursing to
21 managing. And separated from my spouse for ten years.
22 I guess he would be categorized as welder, maintenance.

23 Q Is your son an attorney?

24 A No. My brother-in-law and father-in-law.

25 THE COURT: Okay. Thank you.

MS. MARIE CERVANTES

26
27 BY THE COURT:

28 Q Ms. Cervantes?

1 A Hi. I'm an instructional assistant for the
2 Victor Valley Elementary School here in Victorville. My
3 husband is in maintenance. I did serve on a jury a long
4 time ago, civil. Number 7 would be yes. My nephew is a
5 sergeant. He is a transfer here in the courthouse
6 somewhere.

7 Q What's his name?

8 A Steven Hinojos.

9 Q There's only one sergeant here in the
10 courthouse. I wanted to see if we were talking about
11 the same person.

12 A Yeah.

13 Q Yeah.

14 A Steven Hinojos and the last time I knew, he was
15 supposed to be transferred here.

16 Q He's here. He replaced Sergeant Bachelor, who
17 was a lieutenant. Maybe Steven will get promoted too.

18 A Does that mean I can leave? Number 12 is a
19 yes. My son was a victim. And the rest would be no.

20 THE COURT: Thank you.

21 MR. CHRISTOPHER PROCTOR

22 BY THE COURT:

23 Q Mr. Proctor?

24 A I work at Wal-Mart Distribution Center as a
25 loader. I have been there for seven years. My wife is
26 a stay-at-home mom/home school teacher. And I never
27 served on a jury. The only one I have a yes to is
28 Number 12. My best friend, she was raped by her father.

1 And my sister-in-law, she was raped at a party.

2 Q Okay. Is there anything about the fact that
3 you have friends or relatives that were raped, you know,
4 that rape is an allegation in this case? Is that going
5 to affect how you view the evidence in this case?

6 A I would like to say no. But a part of me -- I
7 didn't know until just now until I said it.

8 Q Okay. It happens all the time. Don't feel
9 like the Lone Ranger. Sometimes you can sit there
10 thinking about it, and you have your thoughts all in
11 order and I have seen people before all of a sudden have
12 a catch in their throat, hear the emotion rising, and
13 realize that it's going to affect them. This is going
14 to be something that you're going to hear about. It's
15 going to be an unpleasant experience in some ways.
16 Nobody says you have to be able to be unaffected by your
17 jury service.

18 But if you think that what you are telling me
19 about your own experience through your relative and your
20 friend and if those are going to affect you.

21 You think it will?

22 A Yeah. I would believe so, but like I said,
23 I've been trying to work on that for a while.

24 Q But you think it might be hard to separate?

25 A Yeah.

26 THE COURT: Counsel, do you stipulate that I
27 can excuse Mr. Proctor for cause?

28 MR. SANDERS: Yes, your Honor.

1 MR. THOMAS: Yes, your Honor.

2 THE COURT: Mr. Proctor, you are excused.

3 We are getting close to that break. If you're
4 wondering does he ever stop.

5 Call another name, please.

6 THE CLERK: Juror Number 1, Cherri Allen.

7 **MS. CHERRI ALLEN**

8 BY THE COURT:

9 Q Hello, Ms. Allen.

10 A Hello. I am a campus assistant for Hesperia
11 Unified School District, Hesperia High School. My
12 husband is a laid off construction foreman. I have
13 never served on a jury. And I have yes to 6, 7, and 12.
14 6, I have an acquaintance that works for San Bernardino
15 police department, he's a detective. And I have my son
16 works -- is a San Bernardino County sheriff's deputy
17 here in Victorville. And me and my husband had some
18 construction equipment stolen about 20 years ago.

19 Q That's it?

20 A That's it.

21 Q So your son's name, what is his first name?

22 A Steven Allen.

23 Q Steve Allen. I have heard of that name before.
24 It was a joke. The original Tonight Show. What about
25 this? You know that Detective Alexander is with the
26 San Bernardino Sheriff's Department; right? So if you
27 sat as a juror in this case, are you going to
28 automatically want to see Mr. Thomas win because

1 Mr. Thomas is here as the attorney for the People and
2 he's the one calling the police officers and he's trying
3 to sell you on this investigation being proven beyond a
4 reasonable doubt? Are you going to want to see that or
5 are you going to wait and see?

6 A No.

7 Q You will wait and see?

8 A Yeah, I'll wait and see.

9 Q Okay. This case is over. Your son comes up,
10 "Hey Mom, you acquitted somebody on a murder?"

11 What are you going to say?

12 A I listened to all the facts.

13 Q No problem. Let the chips fall where they may?

14 A Yeah.

15 THE COURT: I'm going to ask this now for
16 everyone here, that is all 18, you have heard me bring
17 up some things back there, for instance, 059XXXXX. I
18 talked to you quite a while ago. Ms. Austin, I talked
19 to you before I brought up the subject of presumption
20 of innocence, the right to remain silent. All of
21 those things I talked about later. But you all heard
22 everything that I have talked about so far.

23 Does everyone agree to apply those principles
24 that I have talked about with you so far?

25 (Whereupon the prospective jurors answered in the
26 affirmative.)

27 THE COURT: Any problem with any of them?

28

1 (Whereupon the prospective jurors answered in the
2 negative.)

3 THE COURT: Okay. We're going to take a
4 recess. When we come back, we're going to hear from
5 Mr. Sanders. He is going to get an opportunity to ask
6 questions of you, then Mr. Thomas will get a chance.

7 Every time we take a break I'm going to say
8 you're admonished, that it is your duty not to converse
9 among yourselves or with anyone else on any matter
10 connected with this case nor form or express an opinion
11 on it until it's submitted to you.

12 15 minutes.

13 (Whereupon a brief recess was taken.)

14 THE COURT: Okay. Thank you very much.

15 We're back on the record in the case of
16 People of the State of California versus
17 John Henry Yablonsky, who is here along with his
18 attorney David Sanders. John Thomas is here along with
19 Detective Alexander.

20 And we're continuing in our voir dire.

21 Mr. Sanders, would you like to have an
22 opportunity to ask questions?

23 MR. SANDERS: I do. Thank you.

24 THE COURT: Ladies and gentlemen, Dave
25 Sanders.

26 You're going to have to speak so loudly that
27 the people behind you can hear you, and I know that's
28 not your normal tone of voice. Maybe if you would move

1 to this podium down here, you would be facing the right
2 direction.

3 MR. SANDERS: I'm sorry, your Honor. I
4 started off with something happening in my throat and
5 it came out soft. I'll try to make it louder.

6 THE COURT: Thank you.

7 MR. SANDERS: Ladies and gentlemen of the
8 jury, my opportunity at this point is to ask you some
9 questions. As the judge indicated, voir dire is the
10 desire that all of us have to have a fair trial, to
11 have a jury that is fair, a jury that is unbiased, a
12 jury that is unprejudiced, and a jury that can perform
13 a task that we hope in our country that jurors will
14 do. My questions are asked in that light.

15 I know the judge asked all of you individual
16 questions, and it took a couple of hours so I hope
17 you'll forgive me if I sometimes repeat some of the
18 things that the judge asked you. The reason I do that
19 is sometimes when 059XXXXX answers questions at 10:30 in
20 the morning and we get all the way to Ms. Tierney,
21 059XXXXX thinks over, "Wait a minute. You know, there
22 was this other time," or "There was -- I do have an
23 answer to question Number 8 or 9," or something like
24 that. So I might do that a couple of times.

25 Then I do have some individual questions based
26 upon the answers that you gave the judge. All of you
27 understand that to be a juror, you're going to be a
28 judge. You're going to have to judge people. And those

1 people will be witnesses in this case.

2 Is there any of you that have a feeling, a
3 religious feeling or otherwise, that you should not
4 judge other people? I don't see any hands.

5 Do you understand that those people are going
6 to come up here and sit right here and Mr. Thomas and
7 myself will ask them questions? And you will have to
8 judge that. Now, his honor is the judge of the law. He
9 will tell you what the law is because you have to be the
10 judge of the witnesses and the facts. You, and only
11 you, would have to decide what it was that happened or
12 what it was that didn't happen in this case.

13 Some of those witnesses may not be people off
14 the street. We might have a doctor coming in this case.

15 In fact, I think we will have a doctor come in this
16 case. And that doctor is going to take a stand and he's
17 going to testify. And you understand that if you're on
18 the jury in this case, you have to judge the doctor's
19 testimony and decide if it is credible or not.

20 Is there anybody intimidated by that
21 task?

22 Ms. Austin, do you feel up to that?

23 THE PROSPECTIVE JUROR: Yeah.

24 MR. SANDERS: That's not a problem, Mr. Bean?

25 THE PROSPECTIVE JUROR: No, sir.

26 MR. SANDERS: Okay.

27 You understand that the judge said we may have
28 some police officers testify in this case. Usually it's

1 police officers that go out to a crime scene and pick up
2 evidence and things like that, and there may be
3 testimony of that. You will have to judge when they
4 testify. If they say they saw something or they say
5 they heard something, you have to make a judgment.

6 Is that reasonable?

7 (Whereupon the prospective jurors answered in the
8 affirmative.)

9 MR. SANDERS: Anyone intimidated by that
10 task?

11 (Whereupon the prospective jurors answered in the
12 negative.)

13 MR. SANDERS: Okay.

14 I think in this case we might have some people
15 that call themselves experts, some people that say, "I
16 know all about DNA testing. I know all about
17 fingerprinting. I know about something else." And you,
18 again, are going to have to make those judgments, make
19 the decisions.

20 Is anyone intimidated by that?

21 (Whereupon the prospective jurors answered in the
22 negative.)

23 MR. SANDERS: No matter who the witness is in
24 this case or what it is that they're testifying about,
25 you are the people that have to make the judgments as
26 to whether or not that's reasonable testimony,
27 consistent testimony, it's competent testimony.

28 In this case, you are going to have to make

1 logical judgments. The judge is going to, for example,
2 instruct you that there is more than one kind of
3 evidence. There's direct evidence, something somebody
4 saw happen, and there's indirect or circumstantial
5 evidence. And you'll have to decide is that
6 circumstantial evidence that the District Attorney or
7 the government's lawyer presented? Is it logical?

8 Is there anyone that feels they're not up to
9 that task? I don't see any hands.

10 All of us have emotions. There's nobody in
11 this room, I don't think, that is emotionless. You go
12 see a movie sometimes and just cry. Somebody tells you
13 a sad story, it makes you cry. One of your kids does
14 something great, they are in a play at school, you get
15 those feelings inside. And it's a strong feeling. But
16 you understand that emotion is something that you have
17 to set aside when you are a juror in a case like this.
18 You may hear things that are very emotional. But you
19 can't judge the case on emotion. You have to judge the
20 case on evidence and logic.

21 Is there any of you that feel you may have
22 difficulty with that?

23 (Whereupon the prospective jurors answered in the
24 negative.)

25 MR. SANDERS: Okay. Ms. Bradfield, do you
26 think you might have difficulty with that? Or do you
27 think that emotions might overwhelm?

28 THE PROSPECTIVE JUROR: I feel I might get

1 emotional but I don't think that would overwhelm me
2 because the logic would come over and it would have to
3 be --

4 MR. SANDERS: The logic and the thought would
5 be there?

6 THE PROSPECTIVE JUROR: Right.

7 MR. SANDERS: Okay.

8 034XXXXXX, do you feel that way?

9 THE PROSPECTIVE JUROR: Yes.

10 MR. SANDERS: Mr. Greenwood?

11 THE PROSPECTIVE JUROR: Yes.

12 MR. SANDERS: How about 016XXXXXXX?

13 THE PROSPECTIVE JUROR: The same.

14 MR. SANDERS: Okay.

15 This case is about a woman that died 25 years
16 ago. It may be that there will be people in the
17 audience that were related to her or that feel -- or her
18 family, feel strong -- and they be sitting in the
19 audience, and they will be watching you and listening to
20 what happens and looking at you and watching what you
21 do.

22 Do you realize that no matter what -- who is
23 out there or who is listening or who is watching you,
24 you have to decide the case based on the evidence and
25 not on whether or not someone might be sad or happy
26 depending on which side you're on as to what you are
27 doing?

28 Is there anybody who might have difficulty with

1 that?

2 Ms. McKenzie, so you are a juror in this case,
3 and it's time for you to go deliberate. And you go back
4 in the back room and you decide there's not enough
5 evidence here. I have to put not guilty because there's
6 not enough evidence beyond a reasonable doubt. But I
7 know if I do that, I'm going to come out and there's
8 going to be six members of their family and they're all
9 going to be crying and looking at me. I don't think I
10 can do that.

11 Do you think you might feel that way?

12 THE PROSPECTIVE JUROR: No.

13 MR. SANDERS: 018XXXXXXX, do you think that
14 way?

15 THE PROSPECTIVE JUROR: No.

16 MR. SANDERS: Is there anybody here that is
17 concerned that maybe might affect them?

18 (Whereupon the prospective jurors answered in the
19 negative.)

20 MR. SANDERS: Mr. Bean, I wanted to ask you a
21 couple of questions based upon a couple of answers
22 that you gave the judge. I think you used the words
23 "Where there's smoke, there's fire." Did you use
24 that, or did you answer a question?

25 THE PROSPECTIVE JUROR: I didn't use the
26 words, no.

27 MR. SANDERS: I think what you said was, you
28 hope that as a taxpayer that your government -- the

1 politicians that run the District Attorney's office
2 are not going to bring a case in to you unless they
3 have some evidence.

4 Is that when you said?

5 THE PROSPECTIVE JUROR: That's correct.

6 MR. SANDERS: Okay. I hope that too. But at
7 the same time, are you able to follow the instructions
8 the judge will give you that you must presume my
9 client innocent until the government's attorney is
10 able to prove otherwise?

11 THE PROSPECTIVE JUROR: Sure.

12 MR. SANDERS: Okay. And you don't think that
13 would be a problem one way or the other?

14 THE PROSPECTIVE JUROR: No.

15 MR. SANDERS: You understand that this
16 presumption of innocence is one of the pillars of our
17 own justice system?

18 THE PROSPECTIVE JUROR: I do.

19 MR. SANDERS: Okay. And the other main
20 pillar of our justice system, being that you can't
21 find a person guilty unless the government is able to
22 prove it beyond a reasonable doubt.

23 Now, the judge indicated as he was questioning
24 some of you, he told you the difference between -- in a
25 civil case it's just a preponderance and in some other
26 civil cases it might be clear and convincing evidence.
27 But this is a criminal case. This isn't preponderance.
28 This is beyond a reasonable doubt. You must decide the

1 case beyond a reasonable doubt to find anyone guilty.

2 Is there any of you that think that that was
3 unfair to the other side of the prosecution that they
4 have to meet such a high standard? Is there any of you
5 that think that's not fair? I don't see any hands.

6 Is there any of you that will not or you have a
7 doubt in your mind that you could actually have to find
8 somebody guilty beyond a -- or not guilty beyond a
9 reasonable doubt?

10 (Whereupon the prospective jurors answered in the
11 negative.)

12 MR. SANDERS: Okay. Have any of you ever
13 been a part of an organization, a political
14 organization or a club or a class or a group that has
15 ever tried to change anything in the criminal justice
16 system telling -- for example, writing letters to your
17 congressman that the criminal justice needs to be
18 changed?

19 Pardon me for a minute. I'm going through my
20 notes here. Ms. Anderson, you said that you had a
21 brother or husband or son in law enforcement?

22 THE PROSPECTIVE JUROR: Correct.

23 MR. SANDERS: All the same ages?

24 THE PROSPECTIVE JUROR: My brother and my
25 husband and my son.

26 MR. SANDERS: Your husband is retired?

27 THE PROSPECTIVE JUROR: Yes.

28 MR. SANDERS: And your son is?

1 THE PROSPECTIVE JUROR: Fontana PD. My
2 brother and husband, highway patrol.

3 MR. SANDERS: Right. Now, you're not
4 supposed to talk about this case.

5 THE PROSPECTIVE JUROR: Correct.

6 MR. SANDERS: Okay. But when it's over, and
7 you go home, do you anticipate that they will be
8 interested what happened in the trial you were on?

9 THE PROSPECTIVE JUROR: Yes.

10 MR. SANDERS: Do you believe that there's any
11 chance that they might be disappointed if you were to
12 decide that the verdict is not guilty?

13 THE PROSPECTIVE JUROR: I'm able to make my
14 own decisions.

15 MR. SANDERS: They won't give you a hard time
16 about it?

17 THE PROSPECTIVE JUROR: Yes.

18 MR. SANDERS: That's a different question,
19 but you can stand up to them? You're nodding your
20 head yes.

21 THE COURT: Counsel, will you approach
22 please? Off the record is fine.

23 (Discussion held off the record.)

24 THE COURT: Mr. Sanders, I've stopped him
25 because Mr. Sanders is going to be a little bit
26 longer. I have another jury that I have to bring back
27 in and deal with this afternoon still. So I'm going
28 to have you all back in the morning. I shouldn't have

1 much to do in the morning. We should be able to start
2 very close to 8:30 but you were probably waiting for
3 everybody to go through the metal detector this
4 morning so I'm going to have you come in at
5 9:00 o'clock.

6 Be here at 9:00 o'clock. That will give
7 everybody a chance to hopefully find some parking places
8 that have been vacated by people that are leaving and
9 not being a big line waiting to get in.

10 So I've already talked about this for you, I'll
11 say it again. You're admonished that it is your duty
12 not to converse among yourselves or with anyone else in
13 any matter connected with this case. Do not form or
14 express an opinion until it's submitted to you.

15 We'll see everybody here tomorrow morning ready
16 to go at 9:00 o'clock.

17 Mr. Thomas?

18 MR. THOMAS: Can the Court also admonish the
19 jury that this case may be in the newspapers?

20 THE COURT: Yeah, sure. Thanks.

21 What can I say, Mr. Thomas is right. This is
22 always a difficult thing to talk about. It took me a
23 while to come to this conclusion. If you can't tell
24 your spouse that you're here on a possible murder trial,
25 and I'm telling you can't. You can't really tell your
26 spouse to go through the paper and watch out for murder
27 trial that's a cold case. That's the term that people
28 use these days. I guess popularized by TV's series or

1 whatever. But, you know, so how are you going to know?
2 All I can say is don't look at the paper. That seems
3 kind of dumb. Everybody needs to know what's going on
4 in the sports world, we know that. So I can just tell
5 you, try and use some common sense. The front page of
6 the paper is probably something you don't want to be
7 looking at, reading any in-depth articles that happen to
8 be talking about a murder case, or if you see the name
9 Yablonsky or you see something about a cold case, just
10 don't read it. Put it away if you want to read it later
11 on when the case is over.

12 MR. THOMAS: Thank you, your Honor.

13 THE COURT: Okay, folks. 9:00 tomorrow
14 morning, which isn't started until everyone is here.
15 (Whereupon the following proceedings were held outside
16 the presence of the jury:)

17 THE COURT: The jury is gone, and now
18 Mr. Sanders has requested, and I agreed to make an
19 order that the jail can comply with this order, that
20 Mr. Yablonsky can be given access to a shave every
21 day. And he'll be allowed to trim his beard every
22 third day. And I'll make an order to that extent that
23 it doesn't have any problem with the jail procedures.

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

26
27
28

1 VICTORVILLE, CALIFORNIA; JANUARY 20, 2011;
2 DEPARTMENT NO. V-2 HONORABLE JOHN M. TOMBERLIN, JUDGE
3 A.M. SESSION

4 (Appearances as heretofore mentioned.)

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

6 -oOo-

7 THE BAILIFF: Remain seated. Come to order.
8 Court is now in session.

9 THE COURT: Good morning, ladies and
10 gentlemen. Back on the record in the case of People
11 of the State of California versus John Henry
12 Yablonsky. Mr. Yablonsky is here with his attorney,
13 David Sanders. John Thomas is here for the People.
14 We're continuing in our jury-selection process.
15 Mr. Sanders is using his remaining time for voir dire
16 this morning. You may proceed.

17 MR. SANDERS: Thank you, sir. Good morning,
18 ladies and gentlemen. Okay. Starting where we ended
19 up yesterday, and I've forgotten some of the questions
20 I asked. Did I ask any of you if you understand that
21 my client has to be found guilty beyond a reasonable
22 doubt? I already said that?

23 (Whereupon the prospective jurors nodded in the
24 affirmative.)

25 MR. SANDERS: I got all your names yesterday,
26 and I think over night I've forgotten some of your
27 names. I just -- the only ones I remember was Mr. --
28

1 (Whereupon the court reporter asked
2 counsel to speak up.)

3 MR. SANDERS: The only one I remember was
4 Mr. Bean and he was sitting next to Ms. Green. I
5 thought they should switch places so we would have
6 Green Bean instead of Bean Green. It would be easier
7 for me to remember, but I remember most of them.

8 MS. NITIKA AUSTIN

9 BY MR. SANDERS:

10 Q Let's see, Ms. Austin, you are presently a
11 corrections officer; is that correct?

12 A Yes.

13 Q And is that up in the federal facility?

14 A Yes.

15 Q North of here?

16 A Victorville.

17 Q Okay. So in a way, you're a peace officer --

18 A Yes.

19 Q -- is that correct?

20 A Yes.

21 Q I believe you said your husband is also?

22 A Yes.

23 Q And you understand that this is a criminal
24 case?

25 A Yes.

26 Q And we're going to be talking about whether or
27 not there's evidence to show that my client committed a
28 crime or not?

1 A Um-hmm.

2 Q All right. I assume that you hang out with
3 other correction officers and socialize with them?

4 A Yes.

5 Q Okay. Is that going to be a problem in any way
6 for you?

7 A No.

8 Q Okay. Like I asked the other lady yesterday,
9 suppose that you hear all the evidence in this case and
10 you determine that there's not enough evidence to show
11 beyond a reasonable doubt that my client committed a
12 crime.

13 Would that be a problem if your buddies or
14 friends or husband talked to you about the case after it
15 was over?

16 A No.

17 Q If they said, you found that guy not guilty,
18 that wouldn't be a problem for you? That wouldn't be in
19 your mind at all?

20 A No.

21 MS. CATHERINE ANDERSON

22 BY MR. SANDERS:

23 Q Yesterday, Ms. Anderson, I asked you a couple
24 questions about your relatives. One thing I forgot to
25 ask you, did I hear you say that you've been a victim of
26 a carjack?

27 A No, it was a relative.

28 Q Okay. And which relative was that, how close?

1 A It was a nephew.

2 Q Does he live in this area?

3 A No, it was in Los Angeles.

4 Q So you heard about it?

5 A Yeah. I had gotten a call that he was okay and
6 was able to get away.

7 Q Very good. You didn't have to go to court or
8 anything like that?

9 A No.

10 Q All right. Was there anything about -- about
11 the way that case was handled that made you have a good
12 feeling or bad feeling?

13 A No, I wasn't -- I didn't keep contact with it,
14 just the basics and left it at that.

15 MS. SHARON TIERNEY

16 BY MR. SANDERS:

17 Q I think, let's see, Ms. Tierney, did you say --
18 you said something about a carjacking also?

19 A Not a carjacking.

20 Q What was it?

21 A My son was convicted of a felony, dropped to a
22 misdemeanor, and I was involved in a home burglary and
23 home invasion.

24 Q That's right. You said home invasion. Was
25 that you?

26 A Yes.

27 Q You were a victim of that?

28 A Yes.

1 Q Did you have to go to court and testify?

2 A No. There was a shoot-out shortly after that
3 in Big Bear and that solved the problem.

4 Q I guess that's one way to solve it, but you
5 were --

6 THE COURT: I'm sorry. I didn't hear what
7 you said. What solved the problem?

8 MR. SANDERS: There was a shoot-out.

9 THE COURT: Yes. What solved the problem?

10 THE PROSPECTIVE JUROR: In Big Bear.

11 THE COURT: And that solved the problem?

12 THE PROSPECTIVE JUROR: I don't know who shot
13 him, but he was killed after accosting a woman in a
14 bathroom up there and carjacking. That's -- I don't
15 think I mentioned anything about carjacking.

16 BY MR. SANDERS:

17 Q This person that got shot in Big Bear was a
18 person that was the suspect in your home invasion
19 robbery?

20 A Yes, with my gun.

21 Q The shoot-out in Big Bear was with your gun?

22 A Yes. He stole the gun, used the gun accosting
23 somebody in Big Bear.

24 Q Got you. Thank you. But you had to go through
25 the process of having officers come to your house and
26 take statements from you --

27 A Yes.

28 Q -- and write down things?

1 A Try to claim property.

2 Q Was there anything about that situation that
3 gave you either a good feeling or bad feeling about the
4 criminal justice system the way it was handled?

5 A From what I can remember, because I was kind of
6 like in shock, when I had entered the home, the person
7 had already left, but there was a crowbar on my bed with
8 lingerie out of my drawer, and that kind of gave me a
9 invasion of personal nature, and that. So to remember
10 everything that transpired when the sheriffs arrived,
11 and that, I think everything was fine.

12 Q Okay. Let me --

13 A I don't have a feeling one way or the other.

14 Q All right. I guess the case never got to
15 court?

16 A No.

17 Q There never was a trial or anything?

18 A Not to my knowledge.

19 Q But at the same time you were victimized and
20 you had some -- some strong natural feelings about that;
21 correct?

22 A Yes.

23 Q All right. In this case, we're going to be
24 talking about a woman that was killed back in 1985 in
25 her home. Now, do you suppose that if you were to be a
26 juror in this case and listen to that that there would
27 be things there that because of your particular
28 experiences would make it difficult for you to be a fair

1 and impartial juror?

2 A To be honest, no, sir, because working in the
3 medical field and having to counsel patients, and that,
4 that have gone through different traumas in their lives,
5 I've put everything aside. There's people a lot worse
6 off.

7 Q Okay. Thank you, ma'am.

8 MS. DONNA PINEIRO

9 BY MR. SANDERS:

10 Q We had another juror with that same kind of
11 situation. See if I can find it. Ms. Pineiro?

12 A Yes.

13 Q I believe that you said that your sister was
14 murdered?

15 A No.

16 Q That wasn't you?

17 A No.

18 Q Was that somebody that's still here? I guess I
19 wrote down the wrong person. I thought you said you
20 worked in a courtroom.

21 A Yes.

22 Q You've been on one jury?

23 A Um-hmm.

24 Q Your ex-son-in-law is with the sheriff's
25 department?

26 A Right.

27 Q And your sister was murdered by her husband?

28 A No.

1 Q Where did I get that? Okay.

2 A Well --

3 MR. SANDERS: Never mind. I'll cross that
4 one off. Most of you now have had some time to think
5 about the questions yesterday. Let me ask you this
6 question again, I know it was asked yesterday, but now
7 that you've had a chance to think, maybe you came up
8 with something: Have any of you had a relative, a
9 friend, a close acquaintance, that's been the victim
10 of either a murder or a rape? Anybody? No? All
11 right.

12 THE COURT: Other than as disclosed
13 yesterday, Mr. Sanders?

14 MR. SANDERS: Well, I'm asking the question
15 of -- of the audience -- or of the prospective jurors
16 as a whole.

17 THE PROSPECTIVE JUROR: I had attempted.

18 MR. SANDERS: Right.

19 THE PROSPECTIVE JUROR: My mother was raped
20 when she was 16.

21 MR. SANDERS: Okay. Did we talk about that
22 yesterday?

23 THE PROSPECTIVE JUROR: No, because I didn't
24 remember yesterday. She doesn't talk about it.

25 MR. SANDERS: Okay. Got it. You were 16?

26 THE PROSPECTIVE JUROR: No, my mother was 16.

27 MR. SANDERS: She told you about it?

28 THE PROSPECTIVE JUROR: No. Her sister told

1 me about it because she refused to talk about it.

2 MR. SANDERS: I take it that that was a long
3 time ago?

4 THE PROSPECTIVE JUROR: Yes, and nobody was
5 ever prosecuted even though they knew who did it. It
6 was at a time in life when that sort of thing was not
7 acted upon. She was not considered a victim.

8 MR. SANDERS: Right. And it would not affect
9 your ability to sit on this case?

10 THE PROSPECTIVE JUROR: No.

11 MR. SANDERS: Anybody else here in the first
12 row think of anything like that?

13 You understand that this is a murder case? You
14 understand that the prosecutor here, the government's
15 lawyer, is going to try to bring in evidence to show
16 that my client killed somebody and because of that there
17 are going to be photographs, and those will be explicit
18 photographs, and there will be blood in those
19 photographs and things like that? Some of those things
20 may not be very easy to look at.

21 We're going to have a doctor come, and he's
22 going to testify about doing an autopsy, and what he
23 found. Again, are there any of you that feel that that
24 type of testimony or evidence would make you
25 uncomfortable and so that it would be difficult for you
26 to act without being emotional? Anyone?

27
28

MS. CATHERINE ANDERSON

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BY MR. SANDERS:

Q Ms. Anderson.

A Yes.

Q Tell me your feelings.

A I have trouble -- I've seen my children in accidents and friends that I know. I usually don't go -- I went to see my mom in the hospital, and I fainted. A lot of that stuff is -- that's just how I am. I'm real queasy.

Q Okay. Is it to the point that it would make it difficult for you to -- for example, if the district attorney were to pull that screen down and put a picture on that little -- whatever that thing is called.

THE COURT: ELMO.

BY MR. SANDERS:

Q ELMO -- and it's up here in 8 feet by 6 feet showing a decomposed body --

A I wouldn't know unless I saw it, and if I fainted, then I'd know.

Q All right.

THE COURT: I've got to say, I can't hear, and I know that if I can't hear there's some people in the back that can't hear. Anybody shaking their head in the back that could be sitting closer, I'm going to say, you all should move closer, but I'm going to ask everybody to keep their voices up. You too, Mr. Sanders. I think if you keep your voice up, it

1 will make it easier for people to remember to keep
2 theirs up. Use our outdoor voices. This is a big
3 room.

4 I didn't hear what your response was, and
5 before you give me your response, I'm going to say
6 something real quickly to stick in here. Mr. Sanders
7 can ask if it would make you uncomfortable to look at
8 photographs that will be troubling. It seems that
9 anybody's answer to that would be yes. If the
10 photographs are troubling, it's going to make us
11 uncomfortable.

12 The question I'm concerned about as far as
13 cause goes is not whether you'll be uncomfortable
14 looking at photographs that are troubling, but it's
15 going to be, can you do it. If you're someone who's
16 going to be able to say, I'm going to suck it up and
17 look at these photographs, then you can be a good juror.
18 If you're someone who's going to say, I'm not going to
19 look at what's on the board and ignore it, and thereby,
20 perhaps lose the benefit of the doctor's testimony while
21 he is talking about the procedures used for the
22 postmortem, the autopsies, then you may not get the full
23 impact of the evidence that is being presented. That
24 would make you someone who probably could not be a juror
25 here and would have to be excused for cause.

26 Again, I'm not trying to stop Mr. Sanders from
27 the inquiry that he's making, but I will tell you this:
28 Without mentioning the name of any case, wasn't long

1 ago, Mr. Sanders I don't know if you were on that case
2 or not. It was a case that was a murder trial, and I
3 gave a long story to the -- one juror about how I don't
4 like these pictures, never liked these pictures. When I
5 was an attorney 20 years ago, I had occasion to have to
6 look at these photographs. I could always do it. I
7 didn't have a problem doing it at all. It was my job to
8 look at these photographs. I just would never look at
9 these photographs if it weren't my job. I'm squeamish.

10 I'd be in my office sometimes, and I'd have a
11 big stack of photographs from a homicide scene followed
12 by photographs from an autopsy, and they were
13 disturbing. Again, I had no problem looking at them
14 because it was my job. People in my office would come
15 in, plop themselves down, grab the photographs and start
16 going through these things to entertain themselves, so
17 everybody's different.

18 After I got through explaining that to one
19 juror, she said she would -- she would try. I told her
20 she has to do more than try. She has to tell me she
21 can, and she finally said, okay, I can. The prosecutor
22 made the opening statement in that case. At the end of
23 the opening statement, we took a break. At some point
24 my bailiff came to me and said Juror Number 7 said she's
25 got to get out of here. I had to release that juror.

26 Fortunately, as you'll see and you've heard
27 people mention alternates, we will pick alternate
28 jurors. If somebody has to be excused, we'll have an

1 alternate juror step into his or her shoes, but to lose
2 a juror and have to replace somebody within the first
3 15 minutes of a trial is probably bad. I'm not trying
4 to talk anybody into trying to be brave or heroic or
5 anything when it comes to looking at these photographs.

6 With all due respect, the question is not would
7 it make you uncomfortable because there's nowhere along
8 the line that says that a juror has to feel comfortable
9 during the course of a trial that involves events that
10 are by their nature going to make you feel
11 uncomfortable.

12 I've talked about murder. We don't want people
13 that feel neutral about murder. We don't want people to
14 feel comfortable about murder. That's not the issue.
15 The issue is whether or not it's going to affect your
16 ability to be a fair and impartial juror.

17 With that, Mr. Sanders, you may proceed.

18 MR. SANDERS: Did you want her to repeat that
19 answer or can we go forward?

20 THE COURT: You can go forward.

21 MS. CATHERINE ANDERSON

22 BY MR. SANDERS:

23 Q Okay. Ms. Anderson, the question then is do
24 you believe or do you think that there's a chance that
25 your uncomfortableness would rise to a level that it
26 would make it difficult for you to be objective?

27 A Yes.

28

1 MS. DEBRA MC KENZIE

2 BY MR. SANDERS:

3 Q All right. Ms. McKenzie, I had a couple of
4 other questions for you.

5 A Yes, sir.

6 Q I believe that you said you have been the
7 victim of a number of burglaries?

8 A Yes.

9 Q In any of those, did you have to go to court
10 to --

11 A Yes.

12 Q -- testify?

13 A I was supposed to, but they got it resolved
14 before I was even in the courtroom, so I got my property
15 back, and the man was convicted.

16 Q Okay. Same question that I asked Ms. Anderson
17 and Ms. Tierney, was there anything about the way that
18 you were treated or that your case was handled that made
19 you feel --

20 A No.

21 Q -- either good -- very good feelings or very
22 bad feelings about the criminal justice system?

23 A It was handled very professionally.

24 Q Okay.

25 A So I have no feeling one way or the other.

26 MR. CAMERON BEAN

27 BY MR. SANDERS:

28 Q Mr. Bean, you said you had your vehicle stolen?

1 A I have, yes.

2 Q Did you have to go to court and testify?

3 A No. They finally found it in the river bottom,
4 stripped.

5 Q Was anyone prosecuted for that?

6 A No, never.

7 018XXXXXXXXXXXXXX

8 BY MR. SANDERS:

9 Q Okay. 018XXXXXXXX, what is the extent of your
10 socializing with the friends that you have in law
11 enforcement?

12 A Mainly acquaintances.

13 THE COURT: Got to speak up.

14 THE PROSPECTIVE JUROR: Acquaintances.

15 BY MR. SANDERS:

16 Q Okay.

17 A And --

18 Q So these are people you know, but it's not
19 people that you have over for dinner?

20 A No.

21 Q In the same bridge club or play golf?

22 A Um-hmm.

23 MR. SANDERS: Okay. This case is going to
24 involve discussions about DNA. Are there any of you
25 that have any specialized training in the science of
26 DNA? How about --

27 THE PROSPECTIVE JUROR: Not specialized, but
28 I'm a student right now, part-time student. We're

1 learning about DNA.

2 MR. SANDERS: Is that at the local college?

3 THE PROSPECTIVE JUROR: No, online. I'm
4 taking online courses.

5 MR. SANDERS: Is that a criminalistics
6 course?

7 THE PROSPECTIVE JUROR: Yeah.

8 MR. SANDERS: Have you gotten into that
9 course very far?

10 THE PROSPECTIVE JUROR: Yeah, I'm almost
11 done.

12 MR. SANDERS: All right. You understand that
13 if you have above-average knowledge of this, that you
14 can't -- in other words, if someone comes in here and
15 gives DNA evidence and you're a part of the jury and
16 you go into the jury room, that you can't then testify
17 to the other members of the jury about what you might
18 know about DNA?

19 THE PROSPECTIVE JUROR: Right. I understand.

20 MR. SANDERS: All right. Anyone else have
21 any special knowledge about DNA, blood typing,
22 fingerprinting, anything like that?

23 (Whereupon the prospective jurors answered in the
24 negative.)

25 MR. SANDERS: I'm going to repeat one of the
26 questions that the judge asked yesterday. Did you all
27 understand that in the criminal justice system a
28 person that is accused of a crime has a constitutional

1 right not to testify? Any of you that have done any
2 research on this issue or maybe in a class that you
3 took in college and wrote a paper about it or debated
4 about it or anything like that? I don't see any
5 hands.

6 Any of you who have participated in a political
7 group or anything to try to amend or change that
8 particular law?

9 Any of you that disagree with that right that
10 thinks that a criminal defendant, person that's charged
11 with a crime, shouldn't have the right not to testify?

12 What is your feeling?

13 THE PROSPECTIVE JUROR: I feel they should
14 testify and hear what they have to say.

15 MR. SANDERS: We ought to make them do it?

16 THE PROSPECTIVE JUROR: Yes.

17 MS. KATHERINE BRADFIELD

18 BY MR. SANDERS:

19 Q Ms. Bradford (sic).

20 A I feel that they -- if they are defending
21 themselves, they should take the stand and defend
22 themselves.

23 Q You understand that the law is that the
24 prosecutor, the government's attorney, has the burden of
25 proof in cases like this; that they have to prove a case
26 beyond a reasonable doubt, and that there's no burden of
27 proof on the defendant? That's our criminal justice
28 system.

1 Knowing that, Ms. Bradford, would you be able
2 to set aside your feelings and follow the law and not
3 consider that or would that be something that would
4 bother you if my client doesn't testify?

5 A It would be something that would bother me. It
6 would.

7 Q You don't -- if he didn't testify, you don't
8 think you could be a fair juror in this case?

9 A Not at this point.

10 MR. SANDERS: Let me ask you another thing;
11 Ms. Bradford indicated she had read about this case in
12 the newspaper. The rest of you indicated you have
13 not. Let me ask the question again. Now that we've
14 had some time to think about this, do any of you
15 recall reading articles in the newspaper about a cold
16 case involving a woman that was killed in
17 Lucerne Valley in 1985, any of that -- any of those
18 kinds of things?

19 Sometimes what I worry about is that you may
20 not remember now, but as a case goes along, you may
21 remember something later. Let me ask you this: The
22 district attorney of our county is a politician. Like
23 any other politician, he has to be elected. When he was
24 running for re-election, he sent out mailers and the
25 mailers looked like this on the front. There was
26 another mailer that he sent out that looked like this.

27 Do any of you remember receiving these in the
28 mail?

1 THE PROSPECTIVE JUROR: I did.

2 THE COURT: Ms. Tierney.

3 THE PROSPECTIVE JUROR: Yeah.

4 MR. SANDERS: 034XXXXXX. Any of the rest of
5 you? The reason is because when the district attorney
6 sent them out, he put my client's picture on the back.

7 Do any of you remember seeing that photograph
8 when you got the mailer in the mail?

9 THE PROSPECTIVE JUROR: I ripped mine up
10 coming out of the post office.

11 MR. SANDERS: That's what I do. I throw them
12 in the trash. People may read them, and it may come
13 back to you and actually in the mailer --

14 THE COURT: Just a minute. Just a minute.
15 Sorry. We only have one reporter, so we can only have
16 one voice at a time. If someone's talking, you'll
17 have to stop.

18 MR. SANDERS: Yes, sir.

19 THE COURT: Go ahead.

20 MR. SANDERS: Okay. Who was talking?
21 Ms. Tierney?

22 THE PROSPECTIVE JUROR: I didn't -- like I
23 said, it came out in the mail, and I ripped -- I don't
24 remember seeing that side.

25 MR. SANDERS: Okay. Those of you that saw
26 this, if you read the writing on this, it makes it
27 sound like Mr. Yablonsky has already been convicted,
28 and he hasn't been.

1 Did any of you get that impression that saw
2 this that he had been found guilty? All right.

3 Again, those of you -- do you remember seeing
4 this one with my client's picture on the inside?

5 Ms. Bradford, do you remember seeing that?

6 THE PROSPECTIVE JUROR: It's Bradfield.

7 MR. SANDERS: I'm sorry. You don't remember
8 seeing that?

9 THE PROSPECTIVE JUROR: I don't remember that
10 mailer at all.

11 MR. SANDERS: All right. 025XXXXXXXXXX, you
12 don't remember seeing this?

13 THE PROSPECTIVE JUROR: No.

14 MR. SANDERS: 059XXXXX?

15 THE PROSPECTIVE JUROR: Um-hmm, no.

16 MR. SANDERS: No one else? All right.

17 If during the trial you remember that you did
18 read something in the paper or something triggers a
19 memory in your mind, would all of you agree to decide
20 this case just on the evidence that comes out in court
21 and not on anything that you might have read or seen any
22 other occasion?

23 Is there anyone that couldn't do that?

24 Fact is, when this case is over, you'll know
25 more about this case than the district attorney. You
26 will have all the facts.

27 Thank you, your Honor.

28 THE COURT: Thank you, Mr. Sanders.

1 Mr. Thomas will now get an opportunity to
2 address you.

3 MR. THOMAS: Good morning, ladies and
4 gentlemen. Before I get started, I want to thank
5 everybody that's in the box right now and everybody
6 who's out in the audience for your time and your
7 attention in this matter. It's really important that
8 we have jurors in order for our criminal justice
9 system to work the way that it does. Without each one
10 of you taking the time out of your busy schedules and
11 every day lives, we wouldn't be able to have the
12 system that we have. So I wanted to thank you, and
13 I'm sure Mr. Sanders and the judge feel the same way.

14 I also want to emphasize something that the
15 judge said yesterday about telling the truth. It's very
16 important that you answer our questions truthfully. I
17 can give you numerous examples. My last trial down in
18 Fontana in October through December was about a
19 two-month trial, one and a half month, and there was a
20 juror that failed to disclose some information during
21 the voir dire process.

22 Well, we found out there was some information
23 that she failed to disclose, and she sat through the
24 whole trial. At the very end when we found out this
25 information, she was dismissed as a juror. So she
26 wasted all her time being a part of the jury for that
27 trial and never got to deliberate or make any decisions
28 on the case.

1 If there's something that comes to mind that
2 you're not sure of whether or not this is important or
3 unimportant or that this would answer the question that
4 was posed, it's very important for you to tell us or
5 tell the judge that information regardless of whether or
6 not we ask you specifically about that particular
7 incident or not. If it's something you feel might cause
8 you to feel one way or the other or not be impartial in
9 the case, we need to know that.

10 With that, I want to get started. I'm sure all
11 of you received your jury summons weeks ago that you
12 were going to be on jury duty. I'm sure once you opened
13 up that envelope and you saw, oh, I got a jury summons,
14 you got all excited and you called your spouse or
15 significant other and told them, I got selected to be on
16 jury duty. I'm so excited about this; right,
17 Mr. Greenwood? Nobody does that; right? That's because
18 this is one of those things that people take seriously.
19 It's a duty pretty much that you come here, and you sit
20 as a juror. That's part of being an American and being
21 in the system that we are.

22 Not everybody gets to do this. There's certain
23 people that don't get to participate in this. If you
24 live outside the county of San Bernardino, you wouldn't
25 be able to sit as a juror here in San Bernardino County.
26 People that have been convicted of felonies, they aren't
27 able to sit and be a juror on these cases. So it's a
28 privilege to do that, and it's like voting.

1 As far as the whole thing, what was the first
2 thing that came to your mind, 004XXXXXXX, as far as when
3 you opened that summons? What did you think?

4 THE COURT: Boating, Mr. Thomas? Did you say
5 boating?

6 MR. THOMAS: Voting. When I was over there?

7 THE COURT: Yeah.

8 MR. THOMAS: Yeah.

9 THE COURT: You're speaking plenty loud. I
10 thought I heard boating, and I kept waiting to figure
11 out where the privilege of boating was going to become
12 important. Go ahead, please.

13 004XXXXXXXXXXXXXX

14 BY MR. THOMAS:

15 Q What were your first thoughts, 004XXXXXXX?

16 A Well, I didn't like it.

17 Q Uh-huh.

18 A I mean for one, who likes to come and sit in
19 court, go through the process and get picked. Most of
20 the time, I don't get picked when I have sat. I was
21 picked once, late '90s, and I enjoyed it. It was
22 something that I wanted to do again, and I never got
23 picked again.

24 Q When you got picked, what kind of case was it?

25 A It was a murder.

26 Q Murder case?

27 A Um-hmm.

28 Q That was in the 1980s?

1 A No, it was late '90s.

2 Q Late '90s. Was that in this county?

3 A Yes.

4 Q Okay. And you were actually a member of the
5 actual 12 that got to decide?

6 A Yes.

7 MR. THOMAS: Okay. And you said -- one of
8 the things you said was who wants to come in here and
9 spend their day listening to a bunch of attorneys
10 basically talk to you, a bunch of attorneys argue and
11 judge tell you all the instructions.

12 Anybody here think that this is going to be
13 like what they see on TV, on Law and Order and CSI and
14 some of those other shows?

15 Anybody open that jury summons and say this is
16 going to be great? I get to listen to something that's
17 kind of like Law and Order. It will be real-life TV
18 basically.

19 MS. NITIKA AUSTIN

20 BY MR. THOMAS:

21 Q Ms. Austin, did you think it was going to be
22 like that?

23 A No, I didn't. Every time I call it always says
24 I'm canceled. That's what I was hoping for.

25 Q I'm sure more people here were hoping they
26 would call up and say it was canceled.

27 Everybody here understand as far as TV goes
28 that's something that isn't real life? Everybody

1 understands that nobody's going to go back in the
2 deliberation room -- let's say the 16 of you are
3 selected and you go back in the deliberation room and --
4 who watches CSI or Law and Order just by show of hands?
5 Okay.

6 034XXXXXXXXXXXXXX

7 BY MR. THOMAS:

8 Q 034XXXXXX, let's say you're selected as a
9 juror. You watch CSI Miami?

10 A No, Law and Order.

11 Q So you watch Law and Order. Let's say you go
12 back in the deliberation room, something comes up and it
13 reminds you of an episode that you saw the night before
14 or sometime on Law and Order where you heard that the
15 prosecution or the police did something in that show and
16 you wonder how come they didn't do it in this case. How
17 come Mr. Thomas and Detective Alexander didn't do all
18 this stuff that I saw on Law and Order? I'm having
19 problems with that.

20 Would that be something that you would do back
21 in the deliberation room?

22 A No. A lot of that on TV, I know it's not true
23 because I've been studying about that and a lot of stuff
24 on like Law and Order wouldn't even hold in court as far
25 as that goes. No, I don't think so.

26 MR. THOMAS: Anybody disagree with 034XXXXXX
27 who would go back in the deliberation room and
28 basically say, look, you know, Horacio on CSI Miami

1 did this cool thing that I saw on Monday night and why
2 didn't Detective Alexander do that when he was
3 investigating this case? Nobody's going to do that;
4 right? All right.

5 018XXXXXXXX

6 BY MR. THOMAS:

7 Q What was the first thought that went through
8 your head, 018XXXXXXXX, when you heard the charges and
9 you heard the charge was murder in this case?

10 A I was surprised. I didn't think I'd be here
11 anyway, and I have never been on a jury. That's a big
12 one.

13 Q Okay. Did you have some sense of shock or
14 anything when you heard murder?

15 A Um-hmm.

16 Q What was your thought after you heard the
17 murder or before you heard the murder you heard the date
18 that it occurred, 1985? What was your thought when you
19 heard that?

20 A That was a long time ago.

21 MR. THOMAS: Okay. 016XXXXXXXX, did you have
22 any thoughts when you heard murder and the fact that
23 it occurred back in 1985?

24 THE PROSPECTIVE JUROR: No, because that's
25 just life, you know. We have -- every day there's
26 crime and every day there's trials, and we just have
27 to weigh everything out and see what fits and use your
28 better judgment on everything that's presented to you.

1 MR. THOMAS: Other than 004XXXXXXX, has
2 anybody sat on a jury before where the charge was
3 murder? I know there were a few individuals that sat
4 on juries before.

5 059XXXXXXXXXXXXXXXXXX

6 BY MR. THOMAS:

7 Q 059XXXXX, you've sat as an alternate on a jury?

8 A Um-hmm.

9 Q What type of trial was that?

10 A It was a criminal -- I guess it was criminal,
11 guy running from the police.

12 Q Okay. So kind of an evading charge?

13 A Yeah.

14 Q Okay. And as an alternate, what would -- what
15 did that make you feel like when you saw the 12 jurors
16 that were selected as jurors go back there and
17 deliberate and you weren't invited back there to
18 deliberate?

19 A Well, it didn't take long for them to
20 deliberate. Everybody got out of court and they had
21 already did the judgment.

22 Q Uh-huh. So you didn't feel like you were left
23 out or anything like that?

24 A No.

25 025XXXXXXXXXXXXXXXXXXXX

26 BY MR. THOMAS:

27 Q All right. I know there was someone that had
28 two prior jury experiences. 025XXXXXXXXXX, I think it

1 was you; right?

2 A Um-hmm.

3 Q What type of trials were they?

4 A One was in Big Bear, spousal abuse. The other
5 one was here. It was an incident at the Adelanto Jail.

6 Q Both of those trials you were actually one of
7 the 12 jurors?

8 A Yes.

9 Q You came to verdicts on both of those trials?

10 A Yes.

11 MR. THOMAS: Did anybody here follow any of
12 these high-profile cases, let's say the Lindsay Lohan
13 case or any of these other cases where you have
14 celebrities or has anybody been following what's been
15 going on in the news in Tucson with the congresswoman
16 that was shot there and the federal judge that was
17 killed? A few of you have been following that.

18 Has anybody watched any of the trials on these
19 high-profile cases on TV where you sat through and
20 watched it on TV? No.

21 016XXXXXXXXXXXXXXXXXX

22 BY MR. THOMAS:

23 Q 016XXXXXXX, as far as your prior jury
24 experience, what did you think about the whole
25 experience?

26 A It's educational.

27 Q Uh-huh.

28 A You -- you are privileged to examine everything

1 and weigh the facts, and I think that's a very good
2 experience.

3 MR. THOMAS: Okay. Anybody here think
4 that -- think it's going to be a bad experience,
5 anybody that's not been a jury before?

6 I always ask this question of everybody in
7 here, and I didn't tell the people in the audience, but
8 it's very important that you listen to all of the
9 questions that are posed by myself and Mr. Sanders and
10 the judge in this case because once you get up here,
11 we're not going to go through all this again.

12 It's going to be a shortened version,
13 basically, did you hear everything that I asked all the
14 other jurors while they were up here? Yes. Would your
15 answers be any different? No or yes, they would be
16 different. I remember you asking this question, it
17 would be different as far as that particular question.
18 So it's very important that you pay attention.

19 As far as when you opened up that summons and
20 going back to opening up the summons, did you think,
21 look, I know I have this duty to go in there, a civil
22 duty to be a juror on this case, but, you know, this is
23 just a bad time in life? I got too much other stuff
24 going on? I wouldn't be able to concentrate for
25 whatever reason? I have a family member in the hospital
26 or something along those lines or, you know, I'm too
27 busy looking for a job or something along those lines
28 where it's going to impair your ability to concentrate?

1 When you're up in the jury box listening to all the
2 evidence in this case you might be wondering, you know,
3 what's going on with this, what's going on with that, to
4 the extent that it impairs your ability to actually
5 listen to the testimony carefully.

6 Anybody here of the 18, did you get that
7 feeling when you opened up that summons or do you have
8 that feeling now where there's something in your life
9 that's going on right now that this isn't a good time
10 for me to be a juror?

11 MS. CATHERINE ANDERSON

12 BY MR. THOMAS:

13 Q Ms. Anderson.

14 A Yes, not when I opened the summons. Yesterday
15 when I was driving home, things that I had already
16 scheduled, medical things for family members that I do
17 for them, I remembered I had dates set and everything.
18 I was going to have to look at the dates and see if I
19 can manage.

20 Q Okay. You think it will be to the extent where
21 let's say you're selected that you'd be focusing in on,
22 oh, well, what do I have to do tomorrow? I got to make
23 sure that I do this, get to this medical appointment in
24 time or I got to make sure I do this particular thing at
25 a certain time the day after? Is that something that
26 would cause you to lose focus?

27 A It might because I have a sister that's going
28 in for a third brain surgery. I'm the one that's taking

1 her and dealing with that along with my father also.

2 Q I'm sorry to hear that.

3 A I take him, so I take care of three people in
4 between, not all the time but right now things
5 scheduled, surgeries are getting scheduled. I was going
6 through it to see if I can re-arrange or if anything
7 was -- I really didn't think I was going to get this far
8 in this process. I had something I want to add too.

9 Q Go ahead.

10 A You said that it's important if it's small or
11 large if we feel it's important to know, Mr. Sanders
12 asked jurors about socializing with people. Yesterday I
13 was at a social event where there was law enforcement,
14 and they did know that I'm on jury duty. They said, oh,
15 you weren't dismissed, and I said no. That was it.

16 Then I was asked a question and the question
17 was, you know, you're -- the 40-plus years that you've
18 been around law enforcement, not -- have you known any
19 law enforcement to lie of all the years you've been
20 associated?

21 Q Uh-huh.

22 A And I said no. Being honest and truthful,
23 that's important, but I was asked that question. I just
24 think that -- you know, you said nothing's too small. I
25 think it's important.

26 Q We really appreciate your honesty. As far as
27 that particular thing goes, it's connected to what the
28 judge was talking about yesterday.

1 A Right.

2 Q Do you think you can set that aside? Just
3 because you personally haven't had the experience of a
4 law enforcement officer lying, that doesn't mean that
5 law enforcement officers don't lie; right?

6 A Correct.

7 Q Okay. And let's say a law enforcement officer
8 gets up on the stand and says something that you believe
9 is contrary to what all the other evidence shows, and
10 you believe, well, I think they -- they could be lying.
11 Would you be able to set your personal experiences, the
12 fact that you haven't had a law enforcement officer lie
13 to you personally, and still be able to judge that
14 officer's credibility separately?

15 A Yes.

16 Q Okay.

17 A Then they wanted to make sure -- it's just the
18 way it was -- I was approached that be made clear that I
19 have -- you know, that I never had -- you never met --
20 you don't know of anyone that has ever lied; correct?

21 Q Uh-huh.

22 A Correct. I don't know -- you know, I've never
23 heard of anyone that I've known that lied. It was just
24 the way I was approached.

25 Q Along those lines, you mentioned that if
26 Mr. Yablonsky didn't take the witness stand that you
27 would have some difficulty with that?

28 A Yes.

1 Q Okay. Despite the fact that you're going to be
2 instructed that you can't consider that as part of the
3 evidence in this case?

4 A Correct, but it's always --

5 Q Do you think you can set that aside? Let's say
6 we go through the whole trial and at the end of the
7 prosecution's case you don't believe that I proved my
8 case beyond a reasonable doubt, and Mr. Yablonsky and
9 his attorney decide they're not going to put on any
10 evidence. He's not taking the stand. They're not going
11 to put on any evidence.

12 Do you think that you can set that feeling that
13 you have that you believe defendants should have to take
14 the stand and judge the evidence the way it is at the
15 end of my case?

16 A I would probably have to hear it, but I feel,
17 knowing myself, it would still be a -- I would have that
18 doubt that there has to be more to it if he didn't want
19 to defend himself. For myself, I don't see why a person
20 wouldn't want to defend themselves for something.

21 Q It sounds like you're telling me you wouldn't
22 be able to set that aside. You wouldn't be able to
23 follow the judge's --

24 A I wouldn't want to say yes.

25 MS. KATHERINE BRADFIELD

26 BY MR. THOMAS:

27 Q Ms. Bradfield, you had the same problem that
28 Ms. Anderson had. You heard the question I posed to

1 Ms. Anderson about at the end of the prosecution's case
2 if you believed I hadn't proved my case beyond a
3 reasonable doubt, would you be able to set that aside
4 and still come to a verdict of not guilty?

5 A I would have to hear the evidence, like you
6 said, and if I didn't feel it -- I don't know. If I --
7 I'd probably have to go back and weigh it. If you
8 haven't proved beyond a reasonable doubt to me, and he
9 simply hadn't taken the stand, I would have to actually
10 think about it and deliberate. If that's -- if you
11 understand that.

12 Q Okay. So let's say, hypothetically, at the end
13 of the case you believe that I haven't proven the case
14 beyond a reasonable doubt. Mr. Sanders gets up. The
15 defense isn't going to present any evidence. Do you
16 think you can go back in the deliberation room and say,
17 hey, Mr. Thomas didn't prove his case beyond a
18 reasonable doubt and the verdict by law has to be not
19 guilty, but I can't come back with a not guilty verdict
20 because I haven't heard from Mr. Sanders's client in
21 this case?

22 A Yes, because if you haven't proved it, all the
23 more reason for him to get up there and prove that he's
24 actually not guilty.

25 Q So you would have difficulty with that, and you
26 would have some difficulty coming back with a verdict of
27 not guilty in this case in this hypothetical?

28 A Yes.

1 Q And you don't think that you can set that
2 feeling that you have that Mr. Sanders' client has to
3 take the stand, and you don't think you can set that
4 aside and follow the law and come to a verdict of not
5 guilty?

6 A I don't think I could.

7 MR. THOMAS: Okay. Does anybody here have
8 any specialized training? I know 034XXXXXX mentioned
9 something in the law or criminal justice, like, you've
10 taken classes way back in junior college or high
11 school regarding the criminal justice system and how
12 it works.

13 Ms. Anderson? Nobody else?

14 THE PROSPECTIVE JUROR: I was asked by the
15 other attorney about working in courts. I did
16 traffic.

17 MR. THOMAS: Okay.

18 THE PROSPECTIVE JUROR: I did a little bit of
19 criminal when I worked in San Bernardino, but I did
20 that like 20 years ago.

21 MR. THOMAS: That was Ms. Pineiro.

22 THE PROSPECTIVE JUROR: The majority of my
23 time I worked -- I've been retired six and a half
24 years. When I was working up here, it was traffic.

25 MR. THOMAS: Nobody else other than
26 Ms. Anderson? Mr. Greenwood?

27 THE PROSPECTIVE JUROR: I'm not sure. I did
28 security, and I don't know if that pertains to that,

1 but I did security for three years.

2 MR. SANDERS: I'm sorry?

3 THE COURT: He did security for about three
4 years.

5 MR. MARVELL GREENWOOD

6 BY MR. THOMAS:

7 Q During those three years, did you have to take
8 some classes on what you can do and what you can't do as
9 a security officer?

10 A Right, yes.

11 Q Okay.

12 A To obtain a guard card, you have to learn your
13 power to arrest, tear gas, perhaps first aid, CPR.

14 Q Like Mr. Sanders had asked 034XXXXXX, those
15 people that have any specialized training in that area,
16 particularly Mr. Greenwood, I'm going to ask you the
17 same question that was asked of 034XXXXXX by
18 Mr. Sanders. Do you think you can set that aside and
19 not bring that into the deliberation room?

20 Let's say something comes up where you say,
21 wait a minute. I learned when I was doing security the
22 police aren't allowed to do that or that I wasn't
23 allowed to do that in order to make an arrest.

24 Do you think you can keep that out of the
25 deliberation room?

26 A Yes, I can.

27 MR. THOMAS: Has anybody here been a witness
28 in court before whether or not it be a deposition of

1 some sort or a civil case, divorce proceeding,
2 anything like that where you had to testify on the
3 weekend, take an oath before you got up there?

4 Ms. Tierney?

5 THE PROSPECTIVE JUROR: Medical malpractice.

6 MR. THOMAS: Okay. Then, Ms. McKenzie, you
7 had to?

8 THE PROSPECTIVE JUROR: My divorce.

9 MR. THOMAS: Anybody else? Ms. Anderson?
10 You always have your hand up. So you've had to too.

11 THE PROSPECTIVE JUROR: Yes. I worked for an
12 insurance company, and it was somebody that had some
13 racial things said to them.

14 MR. THOMAS: I'm going to pick on Ms. Tierney
15 since she volunteered information regarding having to
16 give a statement to the police which was written down
17 in a police report.

18 When you did that, did you remember every
19 single detail and you told every single detail to the
20 police?

21 MR. SANDERS: Objection, your Honor, not for
22 cause.

23 THE COURT: Sustained.

24 BY MR. THOMAS:

25 Q As far as --

26 THE COURT: That's a two-sided sword,
27 Mr. Sanders.

28 MR. SANDERS: It is.

1 THE COURT: Go ahead.

2 MR. THOMAS: Then as far as being a witness,
3 let me give you an example. As far as let's say
4 you're asked to evaluate testimony as jurors, and
5 that's what you're going to be asked to do. There's
6 going to be certain factors that you have to evaluate.
7 There's going to be an instruction given to you that
8 just because there's a discrepancy in testimony that
9 that doesn't mean somebody's lying. The example I
10 like to give is let's say that you're at the Rose
11 Parade, and you see about 20 floats, about 10 bands
12 and 5 horses. You go home, and you tell your
13 significant other, your spouse, I was at this parade.
14 I saw so many floats. I saw so many horses. I saw so
15 many bands. Are you going to tell your significant
16 other all the details of the parade, like what the
17 floats looked like, what the horses' colors were,
18 everything like that?

19 Mr. Bean, would you do that?

20 THE PROSPECTIVE JUROR: Probably not, no.

21 MR. THOMAS: You'd try to get to the
22 important details like if there was a float you
23 thought was really cool, you would say hey, I saw this
24 float and --

25 MR. SANDERS: Same objection, your Honor.

26 THE COURT: Sustained.

27 MR. THOMAS: I know one of the questions that
28 was asked by the judge was has anybody had a close

1 family member or relative or close friend who had been
2 charged with a crime, and my question's going to be,
3 has anybody here had either themselves or close
4 friend, close family member, relative ever been
5 arrested for a crime?

6 THE COURT: You're asking that question
7 separate from the issue of disclosures made yesterday;
8 is that correct?

9 MR. THOMAS: That's correct.

10 THE COURT: So if you have already told us
11 about that, he's not asking you to repeat it. Go
12 ahead.

13 MR. THOMAS: The people that had their hands
14 up, if you already told us about it, put your hand
15 down. If you hadn't told us about it, keep your hand
16 up.

17 MR. MARVELL GREENWOOD

18 BY MR. THOMAS:

19 Q Mr. Greenwood, what was that about?

20 A I had a misdemeanor that happened five or six
21 years ago.

22 Q Okay. What type of misdemeanor was it?

23 A It was domestic violence actually.

24 Q Okay. So you were arrested for it but never
25 charged?

26 A Well, yes, I was charged.

27 Q Okay. So you were charged with it too. You
28 had to go to court?

1 A Yes.

2 Q Was that here in this courthouse?

3 A No, actually it was Long Beach.

4 Q Then as far as the case goes, was it dismissed?

5 A No, actually did something ignorant. I took a
6 deal because I didn't want jail time and should have
7 went through it.

8 Q Then you were placed on misdemeanor probation?

9 A No. It was misdemeanor (sic).

10 Q Okay. As far as your experience in the system,
11 did you think you were treated fairly?

12 A Yeah, for what they -- from their view point.

13 Q What about your view point?

14 A From mine, it was -- no.

15 Q Okay. What was it that you felt like you were
16 being treated unfairly?

17 A For one, the physicalness started with my
18 ex-wife, and that's what it was. It was like if you
19 want to call it that, a mutual thing. I would say that
20 I pushed her. That was after she started fighting me
21 first, and I was just getting her off me. The police
22 were called by our neighbors or something. That's when
23 they came. There was nothing else I could have done.

24 Q You felt like you weren't able to tell your
25 side of the story?

26 A Well, just ignorance of the law system. I went
27 ahead because they had me over the weekend. I was
28 not -- I don't go to jail, so I was trying to get out of

1 it.

2 Q Okay.

3 A They came in and bargained, so I took it. I
4 shouldn't have because now that's on my record as a
5 misdemeanor domestic violence and it shouldn't have
6 been. If anything, it was defensive.

7 Q Okay. I'm sorry to hear that you feel that you
8 were treated unfairly.

9 MS. CATHERINE ANDERSON

10 BY MR. THOMAS:

11 Q Ms. Anderson, you also had your hand up?

12 A Yes, mine was my nephew that had raped my
13 grandmother. He went to prison.

14 MS. NITIKA AUSTIN

15 BY MR. THOMAS:

16 Q Okay. I know yesterday, Ms. Austin, you said
17 that some of your family was involved in crime of some
18 sort. I don't think we ever discussed what type of
19 crimes we're talking about.

20 Are we talking about drug crimes, crimes of
21 violence?

22 A Talking about a lot of drug crimes, violence,
23 murder. I don't know the extent of what it was, but I
24 have a cousin who is now serving time for murder. I
25 have a relative that is serving time for drugs.

26 Q Did you follow any of these cases as it went
27 through the justice system?

28 A Never.

1 Q Then as far as the court proceeding, you never
2 went to court on any of them?

3 A No.

4 Q Did you ever go visit any of your relatives
5 while they were incarcerated?

6 A I visited my --

7 THE COURT: I can't hear you.

8 THE PROSPECTIVE JUROR: I did visit one, my
9 cousin.

10 BY MR. THOMAS:

11 Q And that was the cousin that --

12 A With the murder charge.

13 Q With the murder? Okay. But you didn't talk
14 about any of the details?

15 A No.

16 MR. THOMAS: Okay. Anybody else here, since
17 we're on the topic, ever gone and visited a friend,
18 family member in jail, or prison?

19 018XXXXXXXXXXXXXX

20 BY MR. THOMAS:

21 Q 018XXXXXXXX, you've done that? What was the
22 person in prison or jail for?

23 A He was a friend in jail who was accused of
24 child molestation, and he was found innocent.

25 Q Okay. And did you ever talk about the case
26 with him?

27 A He asked me to testify if he needed me to, but
28 I never did.

1 Q All right. Were you willing to testify?

2 A Yes.

3 004XXXXXXXXXXXXXXXXX

4 BY MR. THOMAS:

5 Q And then, 004XXXXXXX, you had your right hand
6 up also?

7 A Couple of my cousins, one just got out from
8 dealing drugs. He served his time, and two other
9 cousins that are dead now for -- in LA doing the
10 gang-bang stuff.

11 Q Again, as far as these visits go, were they
12 just to say hello, how are you doing?

13 A Yeah. You know, the one I visited before he
14 died in the hospital. The other one was murdered. The
15 other one I visited in jail once because he kept going
16 back. I just visited him once. That was it.

17 MR. THOMAS: Has anybody here ever sought
18 some type of employment where they applied to be a law
19 enforcement officer or be involved in law enforcement
20 in some fashion or another?

21 THE PROSPECTIVE JUROR: I work for the
22 courts.

23 MR. THOMAS: In what capacity?

24 THE PROSPECTIVE JUROR: Clerk with traffic.

25 MR. THOMAS: Okay. So it was the same thing
26 we talked about?

27 THE PROSPECTIVE JUROR: Yeah.

28 THE PROSPECTIVE JUROR: My job that I'm doing

1 now, I have to -- I work maintaining State buildings.
2 Sometimes I got to go to the Department of Justice and
3 take care of buildings and make sure their evidence
4 rooms are nice and cold and they have heat where they
5 need to have heat, electrical, lights supposed to be
6 working where they should. I get exposed to a lot of
7 that stuff that they do in there.

8 MR. THOMAS: Okay.

9 THE PROSPECTIVE JUROR: I get to see a lot of
10 the stuff, evidence, pictures.

11 MR. THOMAS: Uh-huh.

12 THE PROSPECTIVE JUROR: Crime scenes and
13 sometimes they -- they kind of are in the garage, what
14 happened, sometimes they bring cars that are all, you
15 know, bullet holes in them, sometimes see the blood
16 and just horrible stuff, you know.

17 MR. THOMAS: You think that's going to affect
18 you in any way as being a juror?

19 THE PROSPECTIVE JUROR: No. I mean, been
20 around it for so long that you just do what you got to
21 do and get out.

22 MR. THOMAS: Has anybody here had some sort
23 of contact with law enforcement where they, at the end
24 of the contact, were dissatisfied in some way? The
25 example I give is let's say you were pulled over.
26 Most of us have been pulled over, and let's say the
27 officer pulled you over or the deputy that pulled you
28 over just wasn't a nice person. They were having a

1 bad day or whatever. Has anybody had that experience
2 before, show of hands?

3 026XXXXXXXXXXXXXXXXXXXXXXXXXX

4 BY MR. THOMAS:

5 Q Okay. 026XXXXXXXXXX, since we haven't talked
6 to you really today, what was that experience?

7 A It was a case of mistaken identity. There was
8 a person that was in a store and was pointed out to
9 officers -- the owner of the store said that I was
10 involved in the crime he was committing, and it was like
11 a group of cars, say three, four, and they slandered my
12 friends and I, used force on us, and we didn't know what
13 was going on.

14 Q Um-hmm.

15 A And, you know, I was just really dissatisfied
16 how they approached us with guns drawn, and we didn't
17 show any kind of appearance that we were threatening.

18 Q Okay. Would you be able to set that experience
19 aside in this case and judge the evidence as it comes
20 out during the trial?

21 A Sure.

22 Q That wouldn't affect your judgment of the
23 evidence?

24 A No.

25 MR. THOMAS: And everybody knows as far as
26 their contacts with law enforcement, if you have an
27 unpleasant contact with law enforcement, that doesn't
28 mean all law enforcement acts that particular way?

1 Everybody agree with that just by nodding your heads.

2 (Whereupon the prospective jurors answered in the
3 affirmative.)

4 MR. THOMAS: Anybody disagree? Just raise
5 your hand. No hands.

6 Anybody here think that the legal system -- I
7 know it's been touched upon by Ms. Anderson and
8 Ms. Bradfield, anybody here think the legal system
9 favors or unduly favors one side over the other, they
10 favor the prosecution or they favor the defense?

11 THE PROSPECTIVE JUROR: That's not what --

12 034XXXXXXXXXXXXX

13 BY MR. THOMAS:

14 Q Were you going to say something?

15 A Yeah. In the family court system, not -- not
16 particularly defendant -- the lawyers per se, but
17 it's -- I've had bad experiences in family court --

18 Q Okay.

19 A -- with the other party, them siding with the
20 other party once I even gave all the evidence of what
21 was going on. I had a pretty bad experience in family
22 court for my children.

23 Q You'd be able to set that experience that you
24 had aside in family court and judge the evidence?

25 A I would try. I would try.

26 Q When you say you're going to try --

27 A Yeah.

28 Q Always makes myself, and I'm sure Mr. Sanders

1 feels the same way, it always makes us nervous when
2 people say I'm going to try because it tells us that
3 there's something there you might not be able to.

4 A The only reason I'm taking the classes and
5 about to get my degree is because, you know, of a lot of
6 the stuff I didn't know when I went to court over my
7 children and stuff, and I ended up losing custody
8 because of what I didn't have. When I'm saying I would
9 try it's not that, you know -- everybody is different.
10 I know that much. I know when the system starts to
11 play, there's certain things that I would look for and,
12 you know, if I see the same thing maybe it would make
13 me, you know, feel that something's not fair.

14 Q Let's say hypothetically we go through this
15 trial and you come up with something that you think was
16 unfair one way or the other, whether or not it favored
17 me or whether or not it favored the defense in this
18 case, and the judge at the end of the trial is going to
19 give you the law. Let's say your feelings conflicts
20 with the judge's instructions on the law.

21 Would you be able to put your feelings aside
22 and follow the instructions that the judge has given no
23 matter how strong your feeling might be? It might be
24 where you're about to explode, hey, this is totally
25 unfair. Would you be able to put that aside and follow
26 what Judge Tomberlin's instructions are?

27 A Based on the facts I know -- I know, I'd have
28 to go based on the facts, but it might still, you know,

1 my decision -- still influence my decision. I think it
2 would seriously, yeah.

3 Q So you don't think you can set that aside? You
4 think it would be too much in a case where you wouldn't
5 be able to follow the judge's instructions?

6 A Not really sure. I don't -- I would do my
7 best, you know, to ensure that Mr. Sanders can get a
8 fair trial with what I hear. I -- I don't know. All I
9 can say is I'll try, but there's an element of --

10 Q You think that if it came down to it where you
11 had a particular feeling, you wouldn't be able to set
12 that aside?

13 A I think maybe I could.

14 Q You think maybe you could?

15 A Yeah.

16 Q One of the things that you said during your
17 answer was that Mr. Yablonsky gets a fair trial.

18 A Yeah.

19 Q The People are entitled to a fair trial also.

20 A Definitely.

21 Q Would you be sure that you'd give the People a
22 fair trial that they're entitled to also?

23 A Yeah, definitely.

24 MR. THOMAS: Okay. And everybody here heard
25 Mr. Hoody's answer. Everybody agree with him as far
26 as giving both sides a fair trial in this case?

27 (Whereupon the prospective jurors nodded in the
28 affirmative.)

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034XXXXXXXXXXXXX

BY MR. THOMAS:

Q Okay. 034XXXXXX, I don't know if anybody's asked you. I know yesterday we talked about you had a couple of brothers in prison.

What were the charges in that case?

A Several different ones drugs, gang violence, but mostly they're going -- they're repeat offenders. They're in and out. They've been going for violations of parole. They don't see their PO. Then they go back. Most of those, but this last -- my -- my brother a year older than I am is facing like his third strike right now because of some stuff that went down in Barstow.

Q Are you following that case?

A Little bit, as much as I can.

Q I know there's a lot of people that don't feel that this third-strike law is something that's fair or good. Are you one of those people that -- do you think it's fair that your brother's facing life on a third strike? I'm assuming that the charge is a non-violent charge?

A No, it's -- it's a violent charge --

Q Okay.

A -- what he's looking at because he's had two. I think it depends on the charge. I'm sure there's people that can get the third strike and not be a serious charge. Then there's those who do something really bad, so it's like, you know, that's how I feel.

1 Q It's a case-by-case basis, sometimes you agree
2 with the way that the system works and sometimes you
3 disagree?

4 A Yeah. As far as my brother, I'm going to be a
5 little biased because he is my brother, but I got to
6 look at, you know, the facts, and did he do what he was,
7 you know, suspected of doing, and that's -- when I talk
8 to him, he said, no, so, you know what I mean?

9 MR. THOMAS: As a family member, you believe
10 what your brother's saying.

11 Anybody else here in a similar situation as
12 034XXXXXX where you have some issues with the way that
13 the laws are? No. Nobody's raising their hand.

14 Mr. Sanders talked about it and the judge
15 talked about it, my burden in this case is beyond all
16 reasonable doubt. The judge kind of hit on it
17 yesterday. There's a higher standard than that. That's
18 all possible doubt. I can tell you right now if that
19 was the standard I would never be able to prove a case
20 because there's always, as the judge said, there's
21 always some possible or imaginary doubt out there.

22 The example I give is, let's say I tell you I
23 can drive from here to Vegas in an hour, and all of you
24 are going to say that's not reasonable. That's not
25 reasonable for you to drive a distance of 186 miles or
26 190 miles from here to Vegas. Is it possible? Of
27 course it's possible. I can have the -- let's say I had
28 the governor's powers, and I was able to shut down the

1 15, and I had a race car, and I was able to drive
2 200 miles an hour. I can get there in an hour. It's
3 possible, but does everybody understand the difference
4 between reasonable and possible as far as that goes?

5 Anybody here going to hold me to a higher
6 standard of the beyond all possible doubt? No.

7 Has anybody here ever been strangled or choked
8 before or know somebody that's been in that situation?

9 MS. CATHERINE ANDERSON

10 BY MR. THOMAS:

11 Q I see Ms. Anderson shaking her head. Can you
12 tell us about it?

13 A It was a close friend of mine whose second
14 husband was strangling her and her daughter caught him
15 and called the police.

16 MR. THOMAS: Okay. Anybody else ever seen
17 something like that? No.

18 In this particular case, you're going to hear
19 some scientific evidence. Let's say there was no
20 scientific evidence and I'm asking you to convict
21 somebody on a murder charge with no scientific evidence.
22 The jury instructions the judge is going to give you
23 apply for that.

24 Is there anybody here that would be unable to
25 do that? Would anybody here require some sort of
26 scientific evidence before you were able to convict in a
27 murder case?

28 The example I give is --

1 THE COURT: Just one minute. Counsel, I'm
2 sorry. I'm sorry. I heard you say there's going to
3 be scientific evidence then you gave a hypothetical
4 about what happens if there's -- in a case where
5 there's no scientific evidence. I really don't think
6 this goes for cause at all. The Court's going to
7 sustain its own objection under 352.

8 MR. THOMAS: Could I rephrase the question,
9 your Honor?

10 THE COURT: I don't think so, but I'm not
11 going to try to stop you from getting questions
12 answered that are for cause. Why invent a
13 hypothetical that doesn't apply in this case? How can
14 that be for cause? If you can ask it in another way,
15 go ahead.

16 MR. THOMAS: Let's say there is scientific
17 evidence but you didn't believe the scientific
18 evidence, and let's say at the end of the case you
19 still believe that there is a murder that was
20 committed, and it's based on the testimony of
21 witnesses. Would you be able to still convict even
22 though in your mind there's no scientific evidence
23 because you disbelieve the scientific evidence? Would
24 you be able to convict on a murder charge?

25 MR. SANDERS: Objection, your Honor. It's an
26 incomplete hypothetical, and it's not for cause.

27 THE COURT: It's also asking them something
28 that I think is asking them to prejudge the evidence.

1 I'm going to sustain the objection.

2 MR. THOMAS: This case is going to involve a
3 sexual assault or alleged sexual assault. Is there
4 anybody here that feels like, well, a sexual assault
5 requires some degree of force or some degree of the
6 victim resisting in some way, otherwise you're not
7 going to have a sexual assault?

8 MS. DEBRA MC KENZIE

9 BY MR. THOMAS:

10 Q Ms. McKenzie, you have your hand up?

11 A Isn't that the definition of rape?

12 Q The definition that's going to be given
13 involves force or fear. Let's say the hypothetical --

14 MR. SANDERS: Objection, your Honor.

15 THE COURT: Sustained. This is not the time
16 for the instructions, Mr. Thomas. Sorry.

17 MR. THOMAS: Does anybody here feel like
18 because a sexual assault wasn't reported, that it
19 didn't happen?

20 Anybody here going to require that a sexual
21 assault be reported before they would ever be able to
22 say it happened? No

23 THE PROSPECTIVE JUROR: You're confusing.

24 MR. THOMAS: How is that confusing?

25 THE COURT: I'm going to sustain the Court's
26 objection. It's going into instruction on the law
27 that's going to be given, and that's really something
28 that I'm jealous about, Mr. Thomas. So I'm going to

1 sustain the Court's objection.

2 MR. THOMAS: Anybody here, other than what
3 we've already talked about, has anybody here been a
4 victim or know somebody close to them, family
5 relative, friend, that's been a victim of sexual
6 assault?

7 Other than what we've already discussed,
8 anybody thought of a situation that they haven't
9 discussed already?

10 MS. MARIE CERVANTES

11 BY MR. THOMAS:

12 Q Ms. Cervantes.

13 A It was my son. I feel like it's personal for
14 me because they're strangers.

15 Q Would you like to go up with the judge's
16 permission? Can we approach?

17 THE COURT: Sure.

18 (Whereupon the following proceedings were held at the
19 bench out of the hearing of the jury:)

20 THE PROSPECTIVE JUROR: My son was sexually
21 abused by a baby sitter at a young age, by a male, and
22 to me that's personal for me.

23 THE COURT: Sure.

24 THE PROSPECTIVE JUROR: As a male, and I know
25 he's a male. I can put it to the side and forget
26 about it. As long as I can see the evidence, I would
27 be fine.

28 THE COURT: All right. Any questions you

1 want to ask her?

2 MR. THOMAS: Would you be able to set that
3 aside?

4 THE COURT: She just said that.

5 MR. SANDERS: No questions.

6 (Whereupon the prospective juror left the bench and the
7 following proceedings were held at the bench:)

8 THE COURT: Mr. Thomas, I don't like the idea
9 of shutting you down in front of the jury. You're not
10 going to be able to try the case right now. This is
11 not the time to ask them to make a decision on what
12 they're going to do with certain facts if they're
13 there. That's asking them to prejudge the case. I'll
14 sustain the objections every time.

15 How much more time do you think you're going to
16 have?

17 MR. THOMAS: Five minutes.

18 (Whereupon the following proceedings were held in open
19 court in the presence of the jury:)

20 MR. THOMAS: I know there was another hand
21 up.

22 026XXXXXXXXXXXXXXXXXXXXXXXXXX

23 BY MR. THOMAS:

24 Q 026XXXXXXXXXX, is it something more than what
25 we talked about yesterday?

26 A Yes, with the person that I spoke of yesterday.

27 Q Yeah. We already talked about yesterday?

28 A No, it was another person.

1 Q Okay. All right.

2 A My ex-girlfriend was gang raped.

3 MR. MARVELL GREENWOOD

4 BY MR. THOMAS:

5 Q Mr. Greenwood, you had your hand up?

6 A Yes, it was my ex-wife when she was a minor.

7 Q She was sexually assaulted?

8 A Yes.

9 Q Okay. And then --

10 THE COURT: Mr. Thomas, we've got a request
11 for a rest room break. Do you --

12 MR. THOMAS: We can take a recess.

13 THE COURT: Okay. 15 minutes, ladies and
14 gentlemen. You're admonished that it is your duty not
15 to converse among yourselves or with anyone else about
16 any matter connected with this case nor form or
17 express an opinion on it until it's submitted to you.
18 15 minutes.

19 (Whereupon a recess was taken.)

20 THE BAILIFF: Remain seated. Come to order.
21 Court is now in session.

22 THE COURT: Welcome back. We're on the
23 record in the case of People of the State of
24 California versus John Henry Yablonsky who is here
25 with his attorney, David Sanders. John Thomas is here
26 for the People.

27 Mr. Thomas.

28 MR. THOMAS: Thank you, your Honor. Good

1 morning, again. I just have two more questions then
2 I'm done. Everybody here, regardless of the law the
3 judge instructs you, are you going to be able to
4 follow that law regardless of what your personal view
5 points and opinions are? Everybody comfortable with
6 that?

7 (Whereupon the prospective jurors answered in the
8 affirmative.)

9 MR. THOMAS: Except for the people we've
10 talked about, the difficulties that you're having,
11 anybody else?

12 The last question I'd like to ask of everybody,
13 you've heard all these questions we've asked. You've
14 heard the overall subjects and subject matter that we
15 covered. Anything that comes to mind you can think of
16 at this time that might cause you to not be able to be
17 an impartial juror in this case? Anything at all? I
18 mean, anything at all that you wanted to bring up at
19 this point that you haven't brought up that you thought
20 might be important for us to know?

21 MS. SHARON TIERNEY

22 BY MR. THOMAS:

23 Q Ms. Tierney.

24 A I've lived here most of my life. Back in '85,
25 it was still a relatively small town, and I worked in
26 the medical field. Some of the names that the judge
27 read off yesterday sound familiar, however, I won't know
28 until I see faces.

1 MR. THOMAS: Okay. Anybody here going along
2 those lines? Anybody here lived in Lucerne Valley or
3 live in Lucerne Valley now? No.

4 All right. Thank you very much.

5 Thank you, your Honor.

6 THE COURT: Both sides pass for cause?

7 MR. THOMAS: We need to approach.

8 THE COURT: Come on up.

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

11 THE COURT: Mr. Sanders, I'll start with you.

12 MR. SANDERS: Your Honor, we're just doing
13 the first 12?

14 THE COURT: We can do all 18.

15 MR. SANDERS: Juror Number 2, Ms. Anderson.
16 She said she did not believe she'd be able to follow
17 the judge's instruction relative to the right not to
18 testify.

19 THE COURT: Okay.

20 MR. SANDERS: And for a number of other
21 reasons, and Ms. Bradfield, Number 12, I believe.

22 THE COURT: Anything else?

23 MR. SANDERS: Nope.

24 THE COURT: Mr. Thomas.

25 MR. THOMAS: I don't have anything, but I
26 agree with Mr. Sanders on the challenge for cause for
27 Jurors 2 and 14.

28

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

3 THE COURT: Ms. Anderson, Ms. Bradfield, same
4 question for each of you, we're going to spend no
5 additional time other than for me to make sure I have
6 a final understanding of what your answer is.
7 Yesterday I explained to all of the jurors, including
8 yourselves, the importance of the constitutional
9 protection that we have based upon the 5th Amendment
10 of the United States Constitution to not be forced to
11 give testimony against ourselves and the cases over
12 the years have interpreted that to mean that it does
13 not allow a jury to form any conclusions based upon
14 the fact the defendant chooses to exercise his right
15 to remain silent.

16 I stated it this way, and I'll try to state it
17 the same way that the right to remain silent would be a
18 hollow right if it allowed someone to infer guilt by
19 that determination.

20 Do you each understand that, Ms. Anderson?

21 THE PROSPECTIVE JUROR: Yes.

22 THE COURT: Ms. Bradfield?

23 THE PROSPECTIVE JUROR: Yes.

24 THE COURT: So if you were a juror in this
25 case, I would order you not to let it come into your
26 deliberative process. I would tell you that if you
27 were a juror in this case and you were back in the
28 jury deliberation room and somebody happened to bring

1 up the fact that Mr. Yablonsky didn't testify,
2 assuming he didn't, you'd have to turn to them and
3 say, cannot talk about that. The judge told us not to
4 talk about it. It's improper. That's what you'd have
5 to do.

6 Frankly, I could care less about your personal
7 feelings of curiosity. The point is, that's an
8 important constitutional right at stake.

9 Ms. Anderson, is it your position that you
10 could not follow the law and give the defendant the
11 protection that I've ordered you to give him if you were
12 a juror in this case?

13 THE PROSPECTIVE JUROR: No.

14 THE COURT: Say again.

15 THE PROSPECTIVE JUROR: No.

16 THE COURT: Your position is not that?

17 THE PROSPECTIVE JUROR: No, I would respect
18 what you ask.

19 THE COURT: Okay. You could follow the law
20 as I give it to you?

21 THE PROSPECTIVE JUROR: Yes.

22 THE COURT: Ms. Bradfield, would you put your
23 personal curiosity above the constitutional rights of
24 a defendant accused of a crime?

25 THE PROSPECTIVE JUROR: Say that again.

26 THE COURT: Would you put your personal
27 curiosity above the rights of a defendant who's
28 accused of a crime?

1 THE PROSPECTIVE JUROR: No.

2 THE COURT: So if I ordered you to not
3 consider that issue, could you do so?

4 THE PROSPECTIVE JUROR: Yes.

5 THE COURT: Okay. Thank you very much.
6 Other than that, counsel, do you pass for cause, each
7 side?

8 MR. SANDERS: Yes, your Honor.

9 MR. THOMAS: Yes, your Honor.

10 THE COURT: We're going to use peremptory
11 challenges now. The Court has determined based upon
12 the questions that all -- that everyone has been asked
13 that each of you is qualified to sit as a juror, but
14 the attorneys have 20 peremptory challenges each.
15 They could choose to exercise their challenges for
16 whatever reason that they want to other than an
17 improper discriminatory use of those challenges.
18 That's not allowed, and the attorneys wouldn't try to
19 do it. I mentioned that yesterday.

20 If a person's trying to exclude some people
21 based upon their gender or exclude people based upon
22 their ethnicity or something like that, that would be an
23 improper exercise of peremptory challenges.

24 The People go first, and there's going to be
25 challenges only to the 12 people in the back two rows,
26 and you'll see why I refer to this as the musical chairs
27 portion of the trial. Now, it's kind of late in the
28 morning. I would like everyone to know now if they are

1 excused. You should not feel bad because one of the
2 attorneys or the other has made a determination that
3 you're not going to be a valuable juror for their side
4 of the case. That's really what it comes down to. I
5 don't want you to take it personally. I also don't want
6 you to waste the Court's time slapping high fives as you
7 leave the courtroom.

8 Mr. Thomas, the peremptory challenge is with
9 the People.

10 MR. THOMAS: People would ask the Court to
11 thank and excuse juror in Seat Number 9, Ms. McKenzie.

12 THE COURT: Ms. McKenzie, thank you for being
13 with us. You're excused. Would you please take that
14 seat 018XXXXXXXX?

15 Defense.

16 MR. SANDERS: Pardon, your Honor?

17 THE COURT: Defense.

18 MR. SANDERS: You said defense?

19 THE COURT: Yes.

20 MR. SANDERS: Okay. The defense would thank
21 and excuse juror in Seat Number 3, Ms. Austin.

22 THE COURT: Ms. Austin, thank you for being
23 with us. You're excused. Ms. Bradfield, you want to
24 start for that seat?

25 Mr. Thomas.

26 MR. THOMAS: People would ask the Court to
27 thank and excuse the juror in Seat Number 12,
28 Ms. Whittaker.

1 THE COURT: Ms. Whittaker, thank you for
2 being with us. You are excused. Would you take that
3 seat please, 025XXXXXXXXXX?

4 Mr. Sanders.

5 MR. SANDERS: The defense would thank and
6 excuse Juror Number 10, Mr. Bean.

7 THE COURT: Mr. Bean, thank you for being
8 with us, and you are excused. Will you take that seat
9 please, Ms. Tierney?

10 Prosecution.

11 MR. THOMAS: People would ask the Court to
12 thank and excuse juror in Seat Number 5,
13 Mr. Greenwood.

14 THE COURT: Mr. Greenwood, thank you for
15 being here. You're excused. Will you take that seat
16 please, Ms. Cervantes?

17 Mr. Sanders.

18 MR. SANDERS: The defense would thank and
19 excuse Juror Number 3, Ms. Bradfield.

20 THE COURT: Ms. Bradfield, thank you for
21 being with us. You're excused. Would you take that
22 seat please, Ms. Allen?

23 Mr. Thomas.

24 MR. THOMAS: If I can have just a moment,
25 your Honor?

26 THE COURT: Please.

27 MR. THOMAS: People would accept the jury.

28 THE COURT: Mr. Sanders.

1 MR. SANDERS: The defense would thank and
2 excuse Juror Number 4, Ms. Anderson.

3 THE COURT: Ms. Anderson, thank you for being
4 with us. You're excused.

5 Now we need to call seven names.

6 THE CLERK: Juror Number 7, Joann Banbury;
7 Juror Number 40, 040XXXXX; Juror Number 36, Ferrill
8 Jordan; Juror Number 10, 010XXXXXXXXX; Juror Number 69,
9 Anne Vaughan; Juror Number 57, Joel Richartz; Juror
10 Number 24, Hue Fortson.

11 THE COURT: Hello. In the back two rows, I
12 have 11 folks that I'm not talking to, not because I
13 don't like you. We've talked to you enough. You
14 might think too. We already have done all the
15 examination of you that we're going to do. Even
16 though I'm looking in your direction, I'm not talking
17 to you. Mr. Sanders is not talking to you, and
18 Mr. Thomas is not talking to you. So I'm speaking
19 only to Ms. Banbury and those of you who are in the
20 front row. If you think I'm talking to you, and
21 you're not Ms. Banbury or somebody in the front row,
22 I'm not. Don't volunteer anything, don't shake your
23 head yes to agree with something, shake your head no
24 to disagree.

25 If, however, something asked by one of the
26 attorneys or asked by me makes you remember something
27 that you wish you would have told us before, just raise
28 your hand. We'll get back to you and give you an

1 opportunity to amplify anything you've told us.

2 Other than that, everybody bring their
3 questionnaires with them? Ms. Banbury, those of you in
4 the front row, did you bring your questionnaires?

5 MR. JOEL RICHARTZ

6 BY THE COURT:

7 Q Mr. Richartz, yesterday you talked to me about
8 issues regarding you're a teacher and getting your son
9 to school.

10 A Correct.

11 Q Did that work out okay?

12 A We're still working on it.

13 Q Okay. Perhaps I didn't give you enough
14 opportunity to explain to me whether or not it was going
15 to be a hardship. You said your wife has other
16 employees --

17 A Well, correct.

18 Q -- in her business. So how does that work out?
19 Is she going to be able to do that?

20 A She's in the process of talking to her other
21 employees and trying to arrange her schedule. We own a
22 video store in Wrightwood. The store's not open -- it's
23 open eight hours a day from noon to 8:00. The early
24 part -- but she is going back to school at Cal Poly
25 Pomona, and she does that on Tuesdays and Thursdays from
26 8:00 in the morning till 12:00 in the afternoon.

27 I do want to say that we are part owners of the
28 company. There's another couple that helps us with the

1 company, but we are in the process, and she is in the
2 process right now and at lunch today I will be calling
3 her to see how that's coming along and we'll talk again
4 tonight to see how that's coming along.

5 Q Is this a financial hardship on you or not?

6 A No, it's not a financial hardship. I mean, I
7 am not --

8 Q Wait. Wait. Wait. Let me ask a question. Is
9 this going to be a distraction for you if you're here?

10 A No.

11 Q It's not going to keep you from being a fair
12 juror?

13 A No.

14 Q If things end up not being a hardship -- is
15 this going to result in your son missing school?

16 A There might be a few days.

17 Q That's unacceptable. You're a teacher. You
18 know that; right?

19 A That's true. What will end up happening is I
20 do know all his teachers, and we will make sure that I'm
21 in contact with his teachers to get what homework we
22 need to do to get him caught up. I don't want to say
23 it's a hardship financial or medical because it's not.

24 Q I understand that, but how do I put this? You
25 have an obligation as you're well aware. Some of you
26 don't know this. I'll mention there's something called
27 a SARB board, School Attendance Review Board. I don't
28 know if any of you have heard of it before. I don't

1 think I'd heard of it before I had to hear people that
2 were given citations. It's the law. If you have a
3 student, you've got to have that kid in school or I
4 guess if you want to do some kind of approved home-study
5 program that's allowed. Other than that, you have to
6 have your child in school every day, and I don't know if
7 that changes when you graduate from high school or when
8 you turn 18 or what.

9 How old's your son?

10 A 15 years old.

11 Q Either way he hasn't graduated, and he hasn't
12 reached 18. I'm sure the law requires that -- you to
13 have him in school unless he has an excused absence.

14 A Correct.

15 Q Well, I'm going to tell you, I enumerated
16 various things that were hardships that I was concerned
17 about. How about this one, I don't think I should make
18 an order that causes you to break the law. So if you're
19 not able to tell me that your son's going to be able to
20 get to school every day as the law requires, I'm not
21 going to be able to have you here.

22 A That is your decision.

23 Q No. Let me put that in the form of a question.
24 Are you able to tell me that your son is not going to
25 miss school if you are here?

26 A I am not going to be able to tell you a hundred
27 percent positive that my son might miss occasional days.
28 I cannot at this point be a hundred percent confident in

1 that statement.

2 Q Okay. And I guess that there's another way of
3 putting that because he could be ill as well and stay
4 home, all kinds of things could happen. You're saying
5 you can't guarantee he's going to have transportation
6 available?

7 A Correct.

8 THE COURT: Mr. Thomas and Mr. Sanders, it's
9 my intention to excuse Mr. Richartz for hardship
10 unless you want to keep him around and just kick him
11 on your own.

12 What do you want to do?

13 MR. SANDERS: I'll submit on whatever the
14 Court wants to do.

15 MR. THOMAS: I'll do the same.

16 THE COURT: Mr. Richartz, thanks for being
17 with us. I'm going to excuse you. It sounds like I
18 should not permit the situation to occur that causes
19 you to be in violation of a law, so the Court -- I
20 don't know which one trumps which. There's no reason
21 to have a conflict here. Thank you. You're excused.

22 Call another name for that seat please.

23 THE CLERK: Juror Number 58, Angela Roo.

24 THE COURT: Mr. Thomas said the reason why he
25 took so long in his questioning was because the rest
26 of it was going to go quickly. I agree with that. I
27 spent a long time yesterday. You've heard -- by the
28 way, I'm speaking to, again, now Ms. Roo because she's

1 in the front row and each of you. You've heard a lot
2 of questions. You've heard responses. You've heard
3 many people being excused. We're going to jump to the
4 \$64 question before I have you go through the
5 questionnaire individually.

6 As to Ms. Banbury and those of you in the front
7 row, look at Question 14. Is there any reason why you
8 feel you should not sit as a juror in this case?
9 Ms. Banbury and those of you in the front row, raise
10 your hands if that applies to you. Seeing no hands.
11 Good.

12 We're going to remember that the way we proceed
13 is you answer those questions by telling me only what
14 yes answers you have to Questions 4 through 14, if any.

15 MS. JOANN BANBURY

16 BY THE COURT:

17 Q Let's start with you, Ms. Banbury.

18 A Yes to 5, 7 and 12.

19 Q Well, I get to hear 1, 2 and 3.

20 A I thought you said -- sorry.

21 Q I'm sorry.

22 A I'm a receiver at Costco. My husband is a
23 concrete finisher, and I've never served before.

24 Q Okay. And then give me your yes answers?

25 A Yes, I saw the article in the paper when it
26 first came out.

27 Q How long ago was that? Back in 1985?

28 A No, not the original one, but recently. It

1 goes to -- like I did see that postcard and all that and
2 seeing that -- that the defendant -- he did feel that
3 he's being shafted is what I got out of the picture
4 because of the way it was done.

5 Q Okay. All right. So let's talk about those
6 things, and, frankly, I had no idea Mr. Sanders was
7 going to pull out those pictures. I might have done
8 something to have stopped it rather than showing the
9 pictures, but I would have allowed him to ask the
10 question, did you see that and will that affect you?

11 So you've seen not only the flyers that -- what
12 do they call them? Slate mailers or political ads,
13 flyers, whatever they are. I'm not going to suggest
14 anything about my political beliefs but those trash cans
15 at the post office are there for some reason.

16 Is that going to affect how you view the
17 evidence in this case, Ms. Banbury?

18 A Well, of course I'm going to try to be fair.

19 Q Yeah. Everybody is going to try to be fair.
20 Some of us can be. Some of us can't be. Not a bad
21 thing if you are -- if you already have your mind made.
22 I'm going to say to be a juror and be fair, you're going
23 to have to be able to say without any reservation that
24 you understand that your verdict has to be based on what
25 happens in this courtroom, not based upon what somebody
26 puts on a political flyer and not based on something
27 that you read in the newspaper.

28 A Well, I'm going to listen to all of the

1 evidence and try to make my decision that way, but I've
2 had -- you know, I grew up with a lot of my parents'
3 friends that were police officers and stuff. I feel if
4 he's here, I am leaning towards the fact that he's
5 probably --

6 Q Got to keep focusing on what I'm asking you
7 because that's a different answer to a different
8 question. That's -- I'm asking if you can put aside at
9 this point what you might have seen in the newspaper and
10 seen in any political flyer or are you going to base
11 your verdict on those things?

12 A I can put them aside.

13 Q Now let's move on. What was your other --
14 we're going to talk about what you mentioned about your
15 family, friends, and police officers, and things.

16 Was that your answer to Number 8?

17 A 7 and 12 was my other two.

18 Q So close friends or members of any law
19 enforcement agency. Yesterday I spent quite a bit of
20 time with Mr. Bean on this subject. I hope you were
21 paying attention. Mr. Bean said something about his
22 belief that -- he said, I hope we don't spend a lot of
23 taxpayer money on attempting to convict someone that is
24 just randomly selected off the street; right?

25 We probably all share that feeling and think
26 Mr. Sanders might have even said that he concurred with
27 that. I said to Mr. Bean -- I used that as an
28 opportunity to explain that it's okay as long as you

1 understand that when you have to decide this case, you
2 don't base your decision on the fact that someone's been
3 arrested, accused of a crime, or brought to trial
4 because of the fact that they might or you might be
5 leaning one way or the other should not come into your
6 deliberations at the end. Mr. Thomas has the
7 responsibility of proving Mr. Yablonsky guilty beyond a
8 reasonable doubt.

9 Do you agree with that?

10 A Yes.

11 Q Do you think that the fact that you've known
12 law enforcement officers or your family's known law
13 enforcement officers should lessen Mr. Thomas's burden?

14 A No, it shouldn't lessen it. It still needs to
15 be proved one way or another if he's guilty or innocent.

16 Q Let me say this, again, I'm not trying to
17 quibble with you. I'm saying this for everyone's
18 benefit. You said it needs to be proved one way or the
19 other. No, it doesn't. It only needs to be proved one
20 way. The presumption is that he's innocent right now.
21 Have it however you like. You can even say he's proved
22 innocent right now. The point is Mr. Yablonsky does not
23 have to prove to you that he's not guilty or that he's
24 innocent. The only one with a burden of proof in this
25 case is Mr. Thomas. That's the People.

26 If he doesn't meet that burden, you don't have
27 to have proof that Mr. Yablonsky's innocent because he's
28 presumed innocent.

1 Does that make sense to you?

2 A Yes.

3 Q Could you follow that law?

4 A Yes.

5 Q Okay. What about Number 12?

6 A That had to do with my father. For 20 years
7 that I was growing up, he had a liquor store and he was
8 robbed a number of times at gun point. A few of those
9 times I was there too at the store when it happened. So
10 I was exposed to all that. So that's why I was
11 mentioning it.

12 Q Would that affect how you view the evidence in
13 this case?

14 A No, I don't think it will.

15 THE COURT: Okay. Thank you.

16 040XXXXXXXXX

17 BY THE COURT:

18 Q 040XXXXX.

19 A Yes. I'm a student at Victor Valley College.

20 Q Are you missing classes by being here?

21 A No, it's winter break.

22 Q Okay.

23 A I'm single, and I haven't served on any jury
24 and no to 4 through 14.

25 Q What are you studying?

26 A Undecided yet.

27 Q Okay. What's your favorite class?

28 A Computer repair.

1 THE COURT: Okay. Thank you.

2 MR. FERRILL JORDAN

3 BY THE COURT:

4 Q Mr. Jordan.

5 A Yes, sir. I'm in between jobs right now. When
6 I was working, I was working in water treatment. My
7 wife is a caregiver. She takes care of old people that
8 are sick in their homes, and I have served on a jury
9 before.

10 I am acquainted with people in the legal
11 profession.

12 Q Hold on. On the jury, how many times?

13 A Two times.

14 Q Criminal?

15 A Civil, negligence, both.

16 Q Both of them were civil cases?

17 A Yes.

18 Q I assume you reached a verdict in each case?

19 A Yes.

20 Q Go ahead.

21 A When Attorney Sanders pulled out that flyer, it
22 did jog my memory that I had read something in the paper
23 about a criminal accused being featured in a political
24 flyer, but I don't really know much about it passed
25 that. I am acquainted with some people in the legal
26 profession, attorneys.

27 I have -- I have been charged with a criminal
28 offense, and I have been the victim of a crime.

1 Q What offense were you charged with and when?

2 A Spanking my child when he was little.

3 Q How long ago was that?

4 A 1997.

5 Q How was it resolved?

6 A I pled guilty to a misdemeanor charge, time
7 served, 300 bucks.

8 Q Okay. And you were the victim of a crime?

9 A Yeah. When I moved to Victorville, I had
10 somebody break in the house and steal everything when I
11 was moving in.

12 Q Anybody get caught?

13 A Yeah. Oh, yeah. Yeah. It was a big deal.
14 The police caught a big burglary ring. I got a lot of
15 my property back. They did a pretty good job.

16 Q 1993, where were you arrested?

17 A In '97? Here.

18 Q Here.

19 A Victorville.

20 Q Okay. How do you feel about that?

21 A You know, at the time I was pretty angry about
22 it because I remember growing up it was very -- a very
23 different attitude. The police would hold you while
24 your parents hit you, and I was upset about that, but
25 with a little time, you know, it worked out pretty well.
26 I ended up on my own taking parenting training. It was
27 a pretty positive experience when it was all said and
28 done.

1 Q You're not going to hold that against
2 anybody -- it's not going to make you more sympathetic
3 to one side or the other in this case?

4 A No. That was my deal.

5 THE COURT: Thank you.

6 010XXXXXXXXXXXXXX

7 BY THE COURT:

8 Q 010XXXXX.

9 A I'm employed by the FAA, Federal Aviation
10 Administration. My wife is -- basically, she stays at
11 home. She manages the property and the family concerns.
12 I've been on a jury four times, one civil, three
13 criminal. In each case a verdict was reached.

14 I have yeses to Item Number 6 and Item
15 Number 12. In the case of Item 6, I've got a casual
16 friend that is a deputy for San Bernardino County.
17 Also, in my work, I have regular contact with a number
18 of different law enforcement agencies.

19 Number 12, my daughter, who's an adult now, has
20 her own family, was the victim of a property crime. Her
21 vehicle was stolen from the front of their house. It
22 was recovered the following day, but the laptop that she
23 had in the vehicle was stolen, and that went unresolved
24 although it was reported. Nobody was ever found that
25 committed the crime.

26 Q Those things aren't going to affect how you
27 view the evidence in this case?

28 A No.

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MS. ANNE VAUGHAN

BY THE COURT:

Q Ms. Vaughan.

A I work at Costco at membership. My husband works at Costco. He's an inventory auditor. I have been on a jury before and --

Q How many times?

A One time.

Q Criminal? Civil?

A Criminal.

Q Reach a verdict?

A Didn't get that far.

Q Case was resolved out from under you?

A Yes.

Q Okay.

A Yes to 6. My neighbor's a police officer. I don't talk to him. I talk to his wife, hi and bye. That's about it.

Yes to 11. I have an old, childhood friend that's in prison. That's about it.

Q Stay in touch?

A I've seen him a couple times in there.

Q Where?

A At Chino.

Q Okay. Think that's going to make you more sympathetic to one side or another in this case?

A No.

Q Did you follow the case as it progressed

1 through the legal system?

2 A His case?

3 Q Yes.

4 A No.

5 Q You did not form any opinion about whether he
6 was treated fairly or unfairly, just that he's friend
7 and he's in jail?

8 A He's a friend and he's in jail.

9 Q Okay. That's it?

10 A That's it.

11 MS. ANGELA ROO

12 BY THE COURT:

13 Q Ms. Roo.

14 A I work at Desert Valley Hospital in dietary,
15 and this is my first time.

16 Q Do you have a life partner, Ms. Roo.

17 A No, I'm single. I have four kids. Number 11,
18 my brother for, like, traffic.

19 Q That's it?

20 A Yeah.

21 THE COURT: Thank you.

22 MR. HUE FORTSON

23 BY THE COURT:

24 Q Mr. Fortson.

25 A Yes. I'm a material specialist with
26 Continental Airlines as well as an ordained minister.
27 My spouse, she's a home-care worker, and I have served
28 on a jury in LA county. That was a civil case, and the

1 gentleman got paid.

2 On Number 6, I have a -- we like to call her
3 our spiritual daughter who just became an attorney.
4 She's working with the LA Public Defender's Office.
5 She's now moving to San Diego in the same position.

6 On Number 11, I had a situation with my eldest
7 son before we moved up here. He was charged with --
8 supposedly accused of molesting a young man several
9 years ago that we had went to a church service and in
10 that the court battle drug out from there actually up to
11 here. We've only lived here for three years. It was
12 finally resolved in the sense that he had to take a
13 plea. It was either take a plea or go to jail for eight
14 years, get on the computer system or whatever it's
15 called. He went on and took that in spite of his
16 innocence. He went on with it. Now things are
17 resolved. He was on probation, had to go through
18 counseling and such, but he's moved on with his life.

19 Q You heard me ask Mr. Jordan how did he feel
20 about that. I'm going to ask you the same question.
21 How did you feel about that?

22 A Actually, everything happened so fast and at
23 the very wrong time in my life because at the time I was
24 laid off from my previous job. So I didn't have the
25 funds to get the proper defense that I felt he needed.
26 So we had to end up taking the lesser of the two sides.

27 It was quite an experience, but there was one
28 thing that really puzzled me with the public defender

1 that we had. I asked him, when are we going to get to
2 the truth. His words were, we never get to the truth.
3 We just want to win the case. Winning the case meant
4 that he had to take one or the other.

5 At first, I didn't understand, and I was
6 somewhat bitter, my wife and I, because we felt like it
7 was wrong and unjust. This is a kid that we had known.
8 They had gone to school with, and I know things happen.
9 I have that understanding. We're dealing with just
10 people. I felt there should have been another way, but
11 we were told because of the economic situation that he
12 was not able to have a jury trial because we thought if
13 we went to a jury trial, the truth would have come out
14 with our situation, but we're not bitter now. We're
15 just moving on with life.

16 Q Mr. Fortson, let me say this: I don't know and
17 I can't tell you what the specifics were in that
18 situation, but I can say that if the lawyer advised you
19 that because of the economics that your son couldn't get
20 a jury trial, that's not correct. Everybody's entitled
21 to a trial by jury. It's a constitutional right if
22 their liberty is at stake, and you don't have to have
23 any money to hire a lawyer. A lawyer is provided for
24 you.

25 In fact, on top of that, the court will provide
26 the expense for bringing witnesses in to testify if you
27 want them to come in. The court will make sure that
28 they are available for testimony and provide

1 investigation costs and provide costs for expert fees
2 and all kinds of things like that whether a person can
3 afford it or not. So I -- that -- the information that
4 you were given, I'll just say that's -- it was an
5 incorrect statement that you were given.

6 Now, a lot of times people look at -- what can
7 I say -- risk analysis. Somebody might look at it and
8 say, do I want to take a chance to be convicted and go
9 to prison for eight years and have to register as a sex
10 offender for the rest of my life, or am I willing to
11 save myself even that possibility I'll plead to a lesser
12 or different charge and take probation? That happens.
13 Those are plea bargains. It happens all the time.

14 I don't know what happened specifically, and I
15 would suspect that with your son, that you probably
16 didn't have as much direct contact with the attorney as
17 your son did.

18 Is that a fair statement?

19 A Yes.

20 Q A lot of what you have determined was what your
21 son related back to you --

22 A Yes.

23 Q -- from what the attorney said to him?

24 A Correct.

25 Q Okay. I didn't have to spend all that much
26 time except I didn't want to create a misimpression
27 about the rights that someone has. I need to go through
28 that.

1 Tell me, if you were a juror in this case,
2 would that be something that would affect how you view
3 the evidence here?

4 A No. I view the evidence as -- as it's put
5 before me.

6 Q Okay. You mentioned you're an ordained pastor
7 or minister?

8 A I said minister, but I am a pastor.

9 Q Okay. Do you have a church that you regularly
10 preside over?

11 A Yes, but we only meet on Sunday mornings. I
12 don't have a mid-week because I work swing shift at LAX
13 Airport.

14 Q May I ask what denomination if there is one?

15 A It's a spinoff from the Foursquare Church. We
16 were ordained under the Saints of Value Ministry, which
17 their particular leaders came from the Foursquare
18 denomination. It's a Christian non-denominational.

19 Q So do you have any problem, if it turns out
20 that you were a juror in this case, is that a problem
21 for you to sit and be a judge of the facts in this case?

22 A No, it's not in that we actually judge every
23 day about just about everything.

24 THE COURT: I say this again for everyone's
25 benefit, so you'll realize. No one's going to be able
26 to have a problem or hope that no one's going to have
27 a problem with sitting in judgment of another human
28 being because no one in this case is going to be asked

1 to sit in judgment of another human being. You, as a
2 jury, are going to be charged with the responsibility
3 of judging the facts.

4 Is that a good distinction? Everybody
5 understands the difference there?

6 (Whereupon the prospective jurors nodded in the
7 affirmative.)

8 THE COURT: Then now speaking, again, to
9 Ms. Banbury and those of you in the front row. You
10 heard me talk about a lot of things. You heard
11 amplification of those things by Mr. Thomas and
12 Mr. Sanders. Is there anyone here that has a problem
13 with the notion of the presumption of innocence?
14 Everyone okay with that? As he sits right now,
15 Mr. Yablonsky is innocent. Can you all agree with me
16 on that?

17 (Whereupon the prospective jurors nodded in the
18 affirmative.)

19 THE COURT: Okay. Mr. Sanders could sit
20 there playing tic-tac-toe with Mr. Yablonsky through
21 this entire trial, and if in the final analysis he
22 does nothing other than that, he doesn't ask a single
23 question of a single witness, do you think that --
24 that that in any way relieves the burden of proof on
25 Mr. Thomas?

26 (Whereupon the prospective jurors answered in the
27 negative.)

28 THE COURT: Okay. Because he's presumed

1 VICTORVILLE, CALIFORNIA; JANUARY 20, 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 THE BAILIFF: Remain seated. Come to order.
8 Court is now in session.

9 THE COURT: Good afternoon, ladies and
10 gentlemen. Back on the record in the case of People
11 of the State of California versus John Henry
12 Yablonsky, who is here along with his attorney,
13 Dave Sanders. John Thomas is here for the People, and
14 he is, once again, joined by his investigating
15 officer, Detective Robert Alexander.

16 One of your numbers didn't make it back from
17 lunch. Leaves me with an awkward situation. The proper
18 way of stating it is I can't go forward without excusing
19 that member of the jury because everyone has to be here
20 for all stages of all proceedings.

21 With that in mind, Mr. Sells, are you here?
22 Mr. Sells is not here.

23 Counsel, will you stipulate that I can excuse
24 Mr. Sells from this panel so we can go forward?

25 MR. THOMAS: People stipulate.

26 MR. SANDERS: Yes, your Honor.

27 THE COURT: Mr. Sells is excused from the
28 panel. Ms. Roo, I was informed by Deputy Fliegner

1 that you determined or found out that you only get
2 paid for three days?

3 THE PROSPECTIVE JUROR: Yes, I just called my
4 boss.

5 THE COURT: Where do you work?

6 THE PROSPECTIVE JUROR: At Desert Valley.

7 THE COURT: Did you tell me you had four
8 children?

9 THE PROSPECTIVE JUROR: Yeah, I'm a single
10 mom. So I won't be able to do it.

11 THE COURT: Your children have a lot of jobs?

12 THE PROSPECTIVE JUROR: No. Driving me nuts,
13 yeah.

14 THE COURT: So it would be a financial
15 hardship for you to be paid for only three days?

16 THE PROSPECTIVE JUROR: Yeah.

17 THE COURT: I'm going to excuse you for
18 financial hardship. Thank you for being here with us
19 so far.

20 THE PROSPECTIVE JUROR: Thank you.

21 THE COURT: Call another name for that seat,
22 please.

23 THE CLERK: Juror Number 14, Marie Burger.

24 MS. MARIE BURGER

25 BY THE COURT:

26 Q Ms. Burger, hello.

27 A Hello.

28 Q You remember how this goes; don't you?

1 A Yes, I do. I'm a housewife. I've never
2 worked. My husband's deceased now, and he was a
3 carpenter, and I was on a -- previously I was on a jury
4 trial.

5 Q Criminal case or civil?

6 A Yes, it was criminal.

7 Q Reach a verdict?

8 A It was -- yes, we did.

9 THE COURT: Thank you. Well, we haven't done
10 very much. I don't know if you all want to open this
11 up to re-admit Mr. Sells.

12 MR. SANDERS: It's fine with us.

13 MR. THOMAS: It's fine with the People.

14 THE COURT: Okay. Mr. Sells is with us, and
15 he's back in our pool by stipulation. Mr. Sells
16 didn't miss very much except that Ms. Roo, who was
17 Number 17, indicated she did not get paid for more
18 than three days jury duty. She just found that out.
19 I excused her for financial hardship.

20 MS. MARIE BURGER

21 BY THE COURT:

22 Q Ms. Burger, what yes answers do you have to
23 Questions 4 through 14?

24 A Number 11, my nephew was convicted.

25 Q Of what?

26 A Of murder.

27 Q Of murder. How long ago was that?

28 A It's been about ten years.

1 Q Did you follow that case?

2 A Yes, I was -- I was in the courtroom during the
3 trial. I was there.

4 Q Where was that trial?

5 A Orange county.

6 Q Did you form any opinion about how he was
7 treated by the legal system?

8 A I wasn't satisfied, no. I wasn't satisfied
9 with his trial.

10 Q Do you think that he was treated unfairly by
11 the legal system?

12 A Yes, I do.

13 Q Do you think that that feeling would in any way
14 affect how you view the evidence in this case?

15 A I don't think so, but I don't know if I would
16 relate what I heard in the courtroom or not.

17 Q Well, you've heard me say that there's no way
18 that we can look at someone and tell by just what we
19 see. We have to hear from you.

20 What do you think? Do you think this is the
21 wrong kind of case for you because of your own
22 experiences?

23 A Well, since it was a murder case, I think it
24 would be hard for me because there's a lot of evidence
25 that comes out that's not easy to hear and to see what
26 you're seeing in the courtroom. It won't be easy for
27 me, but I would do the best that I could.

28 Q I understand that you'd do the best that you

1 could, and everybody wants to be fair, but do you think
2 you've got some -- because of the influence of the
3 experience that you've had so far that that would affect
4 how you view the evidence in this case?

5 A I don't know. I can't answer that, your Honor.
6 I don't know.

7 Q Well, I don't know how to put it any other way,
8 but I'll start off saying this again. Ms. Burger,
9 everyone has to decide this case based upon just what is
10 shown here in this court; right?

11 A Yes.

12 Q It's the evidence that you hear. Mostly it's
13 going to be from sworn testimony. People are going to
14 take the witness stand and give testimony. Then they're
15 going to be given an opportunity to be examined by what
16 I refer to as the world's oldest lie detector, and
17 that's cross-examination.

18 That's what you're going to have to do. You're
19 going to have to listen to that evidence and form some
20 conclusion based upon the law that I tell you and the
21 arguments that you listen to from the attorneys. You'd
22 have to completely remove from your consideration the
23 things that involve your nephew's trial in Orange county
24 because that has nothing to do with this case.

25 You understand and agree that it has nothing to
26 do with this case?

27 A Yes, I understand.

28 Q Well, so tell me, could you completely remove

1 the influence of that case from your consideration of
2 the facts and law in this case?

3 A I could, but it would not be easy.

4 Q I'm not -- easy really has nothing to do with
5 what I'm asking. I think you heard me say before I
6 can't guarantee that this is going to be at all times a
7 pleasant task. It's a job. It's a job that you didn't
8 volunteer for, but you have the responsibility to be a
9 juror if you can be, but you have to be fair.

10 Is that -- is that your final answer that you
11 can be fair, but it's going to be hard?

12 A Yes, that's my final answer.

13 MR. FERRILL JORDAN

14 BY THE COURT:

15 Q Okay. Mr. Jordan, I thought I recognized you,
16 and I thought lots of people have similar facial
17 characteristics. You were in my court observing some of
18 the Deering trial, the trial that I did just before this
19 one; is that correct?

20 A That's correct, Judge.

21 Q Were you here for any part of any hearing
22 involved with this case?

23 A No.

24 Q Okay. And are you a lawyer?

25 A No. If I may address, I did graduate from law
26 school, and I have passed the bar. I'm in limbo waiting
27 for my background check. That said, I'd be happy to
28 follow the instructions you have much easier than trying

1 to figure it out myself.

2 Q But, in any event, you understand if you were a
3 juror in this case that we're not looking for anybody
4 that's an expert on the jury? We want the jurors to all
5 decide this case for themselves but only after talking
6 with the other jurors.

7 You could do that just like any other juror?

8 A Yes, sir. I'm nothing like an expert.

9 THE COURT: All right. Now, I'm told this
10 thing goes a lot quicker at this point in the
11 proceedings.

12 Mr. Sanders, why don't you demonstrate that for
13 us.

14 MR. SANDERS: I will, your Honor. Thank you.
15 Ms. Banbury, those in the front row, that's who I'm
16 addressing at this point. Did all of you hear the
17 questions that I asked the other jurors this morning?
18 If there's anyone that didn't, please raise your hand.

19 Did any of you have specific answers to those
20 questions and thought I have to say something? Any of
21 you thought that?

22 Is there any of you that have a doubt in your
23 mind that you couldn't be a fair juror in this case?

24 Thank you, your Honor. Finished.

25 THE COURT: Mr. Sanders, you have certainly
26 convinced me.

27 Mr. Thomas, feel free to take about the same
28 amount of time.

1 MR. THOMAS: I'll try. You've also heard all
2 the questions that I've asked. Of all you prospective
3 jurors, prior to you getting up here, do any of you
4 have any answers that would have been different or
5 that you want to volunteer information that you
6 haven't already volunteered to any of the questions
7 that I've previously asked? No.

8 010XXXXXXXXXXXX

9 BY MR. THOMAS:

10 Q Then I notice, was it, 010XXXXX, you've been on
11 three criminal trials?

12 A That's correct.

13 Q You were a juror -- part of the 12 jurors that
14 deliberated?

15 A Yes, except in one case. The trial ended as
16 soon as the jury was sat. Apparently there was a
17 settlement.

18 Q What type of criminal cases were they?

19 A This particular case was a methamphetamine
20 lab-type situation.

21 Q Were they the same for all three trials?

22 A No, I -- I was involved in another criminal
23 case that basically was a fraud -- criminal fraud-type
24 case, then another one that was a -- a murder case.

25 Q Okay. How long ago was that murder case?

26 A I'm thinking it was about sometime in the early
27 2000s.

28 MR. THOMAS: Okay. Thank you very much.

1 People pass for cause.

2 THE COURT: Guess what I told them. I told
3 them that if we get a jury today, we can stop and come
4 back to begin the case and the presentation of the
5 case on Monday. I think they like the idea of getting
6 a jump on the -- I was going to say get a jump on the
7 weekend. They all work on Fridays. I was a trial
8 attorney myself for a number of years, and it's a
9 tough job. They've got to coordinate things in court
10 and out of court. They've got to jump through hoops
11 that people in black robes put in front of them.

12 Everybody's passed for cause. We're going to
13 the musical chairs portion of our trial. Remember, they
14 have 20 each. Mr. Thomas has used three, passed one
15 time. Mr. Sanders has used four. So it's Mr. Thomas's
16 opportunity to exercise a peremptory challenge.

17 MR. THOMAS: The People accept the 12 jurors.

18 THE COURT: Mr. Sanders.

19 MR. SANDERS: Your Honor, the defense would
20 thank and excuse Juror Number 3, Ms. Allen.

21 THE COURT: Ms. Allen, thank you for being
22 with us. You're excused. 040XXXXX, will you please
23 take the seat left by Ms. Allen?

24 Mr. Thomas.

25 MR. THOMAS: People accept the 12 jurors.

26 THE COURT: Mr. Sanders.

27 MR. SANDERS: Defense would thank and excuse
28 Juror Number 4, Ms. Banbury.

1 THE COURT: Ms. Banbury, thanks for being
2 with us. You're excused. Will you take that seat
3 please, Mr. Jordan?

4 MR. THOMAS: Before Mr. Jordan takes that
5 seat, the People would thank and excuse Mr. Jordan.

6 THE COURT: Thank you, Mr. Jordan, for being
7 with us. You're excused. Will you take that seat,
8 010XXXXX?

9 Mr. Sanders.

10 MR. SANDERS: The People (sic) thank and
11 excuse Juror Number 5, Ms. Cervantes.

12 THE COURT: Ms. Cervantes, thank you for
13 being with us. You're excused. Will you take that
14 seat, Ms. Vaughan?

15 MR. THOMAS: Before Ms. Vaughan takes that
16 seat, the People would thank and excuse Ms. Vaughan.

17 THE COURT: Thank you, Ms. Vaughan. You're
18 excused. Will you take that seat, Ms. Burger?

19 Mr. Sanders.

20 MR. SANDERS: The jury (sic) thanks and
21 excuses Juror Number 10, Ms. Tierney.

22 THE COURT: Ms. Tierney, thank you for being
23 with us. Will you take that seat please, Mr. Fortson.

24 MR. THOMAS: Before Mr. Fortson takes that
25 seat, the People would ask the Court to thank and
26 excuse Mr. Fortson.

27 THE COURT: Mr. Fortson, thank you for being
28 with us. You're excused.

1 Let's call seven new names.

2 THE CLERK: Juror Number 55, Doris Redding;
3 Juror Number --

4 THE COURT: Counsel, will you approach for a
5 second? Ms. Redding, will you come up here, please?

6 (Whereupon the following proceedings were held at the
7 bench out of the hearing of the jury:)

8 THE COURT: The microphone's off. We are
9 recording this though. My bailiff indicated that you
10 have a very uncomfortable feeling about this. You
11 think you would not be able to be a fair juror based
12 upon your own experiences as a crime victim.

13 Is that a correct statement?

14 THE PROSPECTIVE JUROR: Yes.

15 THE COURT: Think that would affect your
16 ability to be fair and impartial?

17 THE PROSPECTIVE JUROR: In this case, yes.

18 MR. THOMAS: I don't have any questions.

19 MR. SANDERS: No questions.

20 THE COURT: Do you want to stipulate that
21 Ms. Redding can be excused for cause?

22 MR. THOMAS: People stipulate.

23 MR. SANDERS: Yes.

24 THE COURT: Thank you for being with us.
25 You're excused.

26 (Whereupon the following proceedings were held in open
27 court in the presence of the jury:)

28 THE COURT: Okay. No secrets. Because of

1 the nature of this case, Ms. Redding had told Pete she
2 would like to talk to us before anything else, and
3 she's been excused for cause. Thank you, Ms. Redding.

4 THE CLERK: Juror Number 67, 067XXXXXXXXX;
5 Juror Number 72, 072XXXXXXXXX; Juror Number 65,
6 065XXXXXXXXX; Juror Number 50 -- I'm sorry, sir, it's a
7 great name. I just can't say it. Juror Number 33,
8 Barbara Holmwood; Juror Number 31, Joyce Hall; Juror
9 Number 45, Curtis Miller.

10 THE COURT: Okay. I think we all know that
11 I'm going to be speaking to 067XXXXXXXXX and only those
12 of you in the front row. The other 11 of you, I'm not
13 speaking to you. The attorneys are asking nothing of
14 you, but, once again, I'll say if someone is reminded
15 of information they wish they would have brought up
16 earlier, feel free to raise your hand and we'll talk
17 to you.

18 Just as I did last time, I'm going to jump to
19 Question 14. Is there any reason you feel you should
20 not sit as a juror in this case for 067XXXXXXXXX and
21 anyone in the front row? I see one hand.

22 Hello, Ms. Hall.

23 THE PROSPECTIVE JUROR: My the problem is I
24 can't reverse what's happening. I have a dump truck
25 full of rocks coming to my house this afternoon, and
26 I'm covering what was grass with rocks, and I couldn't
27 reverse it. I thought I could, but I can't.

28 THE COURT: Are you going to be driving the

1 truck?

2 THE PROSPECTIVE JUROR: I hope not. No, it's
3 a dump truck.

4 THE COURT: What are you going to be doing?

5 THE PROSPECTIVE JUROR: Paying the guy.

6 THE COURT: It's going to be a financial
7 hardship if they come out and can't dump the rock,
8 they'll charge you for a second trip?

9 THE PROSPECTIVE JUROR: Probably, your Honor.

10 THE COURT: Why don't we say -- that
11 satisfies me. I'm going to excuse you for financial
12 hardship, Ms. Hall. Thank you for being with us.

13 THE PROSPECTIVE JUROR: Thank you very much,
14 your Honor.

15 THE COURT: Come back and see us real soon.

16 THE PROSPECTIVE JUROR: I'd love to.

17 THE COURT: Call another name.

18 THE CLERK: Juror Number 28, Susan Grace.

19 THE COURT: No one else asked or said they
20 had a problem with Number 14. What about you,
21 Ms. Grace, can you be fair? Any reason why you can't
22 be fair?

23 THE PROSPECTIVE JUROR: The only thing that I
24 have a problem with is looking at the pictures because
25 I will be vomiting because I just cannot -- my stomach
26 is very queasy for nasty things.

27 THE COURT: So am I just so you'll know.

28 THE PROSPECTIVE JUROR: Okay.

1 THE COURT: My visiting court assistant,
2 Ms. Andrade, is here today because Vickie, who you saw
3 yesterday, is out with her husband who's getting an
4 operation. She was saying we're hoping it can be done
5 the easy way because if they do it the hard way, they
6 have to go in through the, and at that point I said,
7 stop, and let me out of here. Again, I get queasy.

8 Is it the case for you, Ms. Grace, that if you
9 were a juror, you really think you'd become physically
10 ill?

11 THE PROSPECTIVE JUROR: Yes, because I --

12 THE COURT: Counsel, I think that's a medical
13 hardship. I'm inclined to excuse her right out.

14 Anybody have a problem with that?

15 MR. SANDERS: No, sir.

16 MR. THOMAS: People don't have a problem.

17 THE COURT: Ms. Grace, thank you for being
18 here. You're excused.

19 THE PROSPECTIVE JUROR: Thank you.

20 THE COURT: Call another name for that seat.

21 THE CLERK: Juror Number 13, David Buell.

22 THE COURT: Is it Buell or Buell?

23 THE PROSPECTIVE JUROR: Buell just like the
24 motorcycle.

25 THE COURT: That's what I was going to say.
26 I guess you don't know anything about Harley Davidsons
27 and Buells and things like that.

28 THE CLERK: I'm sorry, I don't.

1 THE COURT: Mr. Buell, what about Number 14?
2 Is there any reason why you feel you should not sit as
3 a juror in this case?

4 THE PROSPECTIVE JUROR: No, sir. I have a
5 brother doing time up state, half brother for same
6 circumstances but --

7 THE COURT: But that's fine -- this is --
8 what I'm looking for is you telling me why you cannot
9 be fair.

10 THE PROSPECTIVE JUROR: I can be fair.

11 THE COURT: All right. So now, as for
12 067XXXXXXXXX and all of you in the front row, did you
13 all hear the general legal principles we spoke about
14 so far?

15 (Whereupon the prospective jurors nodded in the
16 affirmative.)

17 THE COURT: You understand that Mr. -- as he
18 sits there right now, Mr. Yablonsky is innocent?

19 (Whereupon the prospective jurors nodded in the
20 affirmative.)

21 THE COURT: Okay. You understand that
22 Mr. Yablonsky, because he's presumed innocent, doesn't
23 have to prove to you that he's not guilty? It's just
24 a presumption.

25 You understand that Mr. Thomas is the one who
26 has to prove his case beyond a reasonable doubt?

27 (Whereupon the prospective jurors nodded in the
28 affirmative.)

1 THE COURT: You understand that beyond a
2 reasonable doubt doesn't mean beyond any possible
3 doubt, but it means something that I'm going to define
4 for you, and you're going to use your common sense to
5 arrive at the conclusion? Each one of you agree with
6 that?

7 (Whereupon the prospective jurors answered in the
8 affirmative.)

9 THE COURT: Each one of you agree you'll be
10 able to decide this case based not on predetermined
11 notions or agenda but just based on the law that I
12 give you, the facts as you determine them from the
13 evidence, and the arguments of the attorneys? Can you
14 all do that?

15 (Whereupon the prospective jurors nodded in the
16 affirmative.)

17 THE COURT: Did anyone hear or read anything
18 about -- I guess I'll get to that on down the line.

19 067XXXXXXXXXXXXXXXXX

20 BY THE COURT:

21 Q 067XXXXXXXX, will you answer these questions
22 for us please?

23 A These questions? Sure. Yes. I'm retired
24 navy, separated for years. She was a retail clerk,
25 never been on a jury before.

26 Question Number 12, I entered yes to. About 30
27 years ago, I was robbed when I worked in retail.

28 Q Okay. That wouldn't affect how you view the

1 evidence in this case?

2 A No.

3 Q You -- I guess, everybody ought to add a mental
4 note, when I ask about have you read or heard anything
5 about this case in the newspapers, I'm also going to
6 want to know did anybody -- please tell me if you saw
7 this political flyer or mailer that has been referred to
8 and shown by Mr. Sanders.

9 You didn't see that; did you, 067XXXXXXXXX?

10 A No.

11 THE COURT: Thank you.

12 072XXXXXXXXXXXXXX

13 BY THE COURT:

14 Q 072XXXXXX.

15 A Yes. I'm a student.

16 Q Where?

17 A Victor Valley College.

18 Q So you're on break and this is not going to be
19 a problem for you?

20 A Depends how long it lasts.

21 Q When does school start?

22 A Mid February.

23 Q Ain't going to last that long.

24 A Never know.

25 Q That's a good point. You never do know because
26 Murphy's Law applies in my court like it applies
27 everywhere else, and any number of things could happen
28 to cause an exceptional delay, but it's not going to go

1 passed either the 4th of February or at the very outside
2 February the 10th. If it did, oh, well, we have
3 alternates. If you were on this jury, I wouldn't allow
4 you to miss classes. So go ahead.

5 A Okay. Well, I'm not married. This is the
6 first time I've been on a jury.

7 Q Okay.

8 A That's about it.

9 Q No yes answers?

10 A No.

11 Q Thank you. You didn't see the political flyer?

12 A No.

13 065XXXXXXXXXXXX

14 BY THE COURT:

15 Q 065XXXXX.

16 A I'm a maintenance worker. My wife is a retired
17 retail worker. I've never been on a jury before, and I
18 answered yes to 7 and 8.

19 I have -- my daughter works in the court system
20 as a clerk, and my son-in-law's a peace officer.

21 Q Which court system?

22 A Arizona.

23 Q Okay. And where is your son?

24 A Same place, Arizona, and I know a lot of other
25 peace officers too.

26 Q 059XXXXX, you said 7 and 8. Did you mean 6 and
27 7?

28 A Yes, 6 and 7.

1 Q Thank you. Is that it?

2 A That's it.

3 Q How long does it take to grow a beard that
4 long?

5 A I've had it forever.

6 MR. ESITIMOA OTUAFI

7 BY THE COURT:

8 Q Mr. Otuafi.

9 A Yes.

10 Q Can you say your name for me too?

11 A Otuafi.

12 Q Thank you.

13 A Correctional officer with California Department
14 of Corrections.

15 Q Where do you work? Chino?

16 A Norco.

17 Q Okay. That's the --

18 A Rehab center.

19 Q -- California Rehab Center's drug treatment
20 location; is that right?

21 A I don't know about the drug treatment part, but
22 everything else, yes.

23 Q Is it really true that that was the original
24 Hotel California?

25 A Hotel California, yep.

26 Q Referred to by the Eagles in the song?

27 A He served time there. That's where he came up
28 with that song. Never served on a jury before. My

1 wife's a dispatcher for California -- CHP and yes on 6
2 and 7 and no on the flyer.

3 Q Okay. So 6 and 7 only. That means that you
4 work with a lot of people in law enforcement?

5 A Father-in-law retired federal, cousin that's a
6 San Bernardino County.

7 Q DA?

8 A No, sheriff.

9 Q Sheriff.

10 A Yeah.

11 Q Okay. All right. So let's get to the bottom
12 line here. You work in law enforcement because you work
13 in the jails. You have friends that are involved in law
14 enforcement. Suppose you were a juror in this case, and
15 you thought, gosh, Mr. Thomas is just a great guy, but
16 he didn't prove the case beyond a reasonable doubt.

17 Are you going to want to sort of lighten the
18 burden on him since you feel like you're on his side?

19 A No.

20 Q You can be a fair person? You're the kind of
21 person you would want to hear the case --

22 A Yes.

23 Q -- if you were on trial; is that right?

24 A Yes.

25 Q Do you ever have to get involved with -- I
26 asked this of Ms. Austin earlier. You might have heard
27 me ask. Do you have to get involved with determining
28 who's in the right when there's a beef between another,

1 let's say, another correctional peace officer and an
2 inmate?

3 A I could, but I've never been in that situation.

4 Q You understand how it's possible that someone
5 who's a law enforcement officer might not be telling the
6 truth in every instance?

7 A Yes.

8 Q You understand just because somebody has a
9 prior conviction, that doesn't mean they're going to lie
10 in every situation; does it?

11 A Yes.

12 Q It does?

13 A Or --

14 Q You don't think that means they're going to lie
15 every time?

16 A No, no.

17 Q All right. Thank you.

18 MS. BARBARA HOLMWOOD

19 BY THE COURT:

20 Q Ms. Holmwood.

21 A Yes. I'm unemployed. I was a human resource
22 representative. My husband has his own lawn-care
23 business, and I was on a jury quite awhile ago, but we
24 did not reach a verdict. We didn't go to the end.

25 Q Does that mean you started deliberations?

26 A We didn't start deliberation and the district
27 attorney got sick and the trial was postponed or nothing
28 happened.

1 Q All right. Any yes answers?

2 A Yes. On 12, a cousin was raped quite a few
3 years ago.

4 Q Did you follow that case?

5 A No, it was in another state.

6 Q It's not going to affect how you view the
7 evidence in this case; right?

8 A No.

9 Q Anything else?

10 A Nope.

11 THE COURT: Thank you.

12 MR. DAVID BUELL

13 BY THE COURT:

14 Q Mr. Buell.

15 A Yes, sir. I'm retired marine presently working
16 at the marine corps logistics base in Barstow. My wife
17 is a homemaker and home-school teacher. I have not
18 served on a jury before.

19 As already stated, I guess it's Number 11.

20 Q Number 11, you have a brother.

21 A Brother in Montana.

22 Q Montana?

23 A Right.

24 Q And he was convicted of murder?

25 A Yes, sir.

26 Q Did you follow that case of his?

27 A No, I did not.

28 Q Did you form any opinion about how he was

1 treated by the legal system that would affect you here?

2 A No.

3 MR. CURTIS MILLER

4 BY THE COURT:

5 Q Mr. Miller.

6 A I'm a correctional officer, California
7 Department of Corrections. Wife is a homemaker. Never
8 been on a jury. Yes to 6, 7 and 11.

9 Obviously myself and friends. Father is
10 retired Department of Corrections. I got a
11 father-in-law who retired as a investigate -- detective
12 with the San Bernardino County Sheriff's, and I have a
13 cousin that's up north in Corcoran, I think.

14 Q What's he doing in Corcoran? Is he a prison
15 guard?

16 A No. That was the answer to Number 11. He's an
17 inmate.

18 Q For what?

19 A I don't even know what he's in for this time.
20 He's in and out every three years.

21 Q That's not going to affect how you view the
22 evidence in this case; right?

23 A No.

24 Q You heard me speak to Mr. Otuafi about his
25 attitudes. Are yours similar to his?

26 A Yeah.

27 Q Where do you work?

28 A Lancaster.

1 Q And so you -- you deal with sentenced inmates?

2 A Yes.

3 Q Do you have occasion that you have to
4 investigate events that involve some kind of a dispute
5 between an inmate and a fellow peace officer?

6 A Yes.

7 Q Think you can be fair and listen to both sides?

8 A Yes.

9 Q I didn't specifically ask this question of
10 anyone else. Since Ms. Grace volunteered it though,
11 I've told people so far you've heard me say that there
12 might be things that you have to look at in this case.
13 The evidence might be difficult.

14 Is everyone willing to do that?

15 (Whereupon the prospective jurors nodded in the
16 affirmative.)

17 THE COURT: I don't know what other general
18 questions that I failed to ask, but I'm sure the
19 attorneys will help me out.

20 Mr. Sanders.

21 MR. SANDERS: I'm going to pass, your Honor.
22 Thank you.

23 THE COURT: Mr. Thomas.

24 MR. THOMAS: I'll do the same.

25 THE COURT: Here we go. Back to the musical
26 chairs portion of our program. I'm trying to think of
27 who used the last peremptory challenge.

28 MR. THOMAS: I did on Mr. Fortson.

1 THE COURT: Thank you. The peremptory
2 challenge then is with you, Mr. Sanders.

3 MR. SANDERS: We'll thank and excuse Juror
4 Number 7, Ms. Pineiro.

5 THE COURT: Thank you for being with us.
6 You're excused. Would you take that seat please,
7 072XXXXXX?

8 Mr. Thomas.

9 MR. THOMAS: The People would ask the Court
10 to thank and excuse juror in Seat Number 5,
11 Ms. Burger.

12 THE COURT: Ms. Burger, thank you for being
13 with us. You're excused. Will you take that seat,
14 059XXXXX?

15 Mr. Sanders.

16 MR. SANDERS: Your Honor, we're satisfied
17 with the jury the way it is.

18 THE COURT: Mr. Thomas.

19 MR. THOMAS: People accept the jury as it is.

20 THE COURT: Will the 12 people in the back
21 two rows stand and raise your right hands and be
22 sworn?

23 THE CLERK: Do you, and each of you,
24 understand and agree that you will well and truly try
25 the cause now pending before this Court and a true
26 verdict render according only to the evidence
27 presented to you and the instructions of the Court.
28 If so, answer, "I do."

1 (Whereupon the jurors answered in the affirmative.)

2 THE CLERK: Thank you. Please be seated.

3 THE COURT: Mr. Otuaifi and everyone, will you
4 please take a second to stand and move two seats to
5 your left?

6 Counsel, tell me how many alternates you think
7 we need.

8 MR. SANDERS: I don't think more than a
9 couple, but I'll submit to the Court.

10 MR. THOMAS: I suggest three.

11 THE COURT: Mr. Thomas, so giving me the
12 peace sign with an additional finger, which I guess is
13 a W or three. That's what I thought about before. We
14 have next week and the following week. That's the
15 time you think we're going to complete this case?

16 MR. THOMAS: We should be done by then.

17 MR. SANDERS: Yes, sir.

18 THE COURT: We're going to go with three
19 alternates. Ladies and gentlemen, you can imagine we
20 wouldn't want to start a long trip without a spare
21 tire. If you're driving a car, you got to have four
22 wheels when you leave, and you got to have four wheels
23 when you get back. This is a jury trial. It requires
24 12 people when we start and 12 people when we finish.
25 That means that when 067XXXXXXXXX wins the Megabucks
26 drawing on Wednesday night, \$390 million without
27 splitting it with anyone, and he says I'm not going to
28 go to work. I'm not going to go to that trial either,

1 then I need somebody to take his seat. Occasionally
2 other less fortunate circumstances happen to people.

3 My honest assessment is that people usually are
4 able to finish the trial when we start one. I told you
5 about one lady that couldn't handle the photographs.
6 That's why I didn't spend much time talking to
7 Ms. Grace. So we're going to go with three alternates.

8 Are each of the four of you willing to serve as
9 alternates in this case?

10 (Whereupon the prospective jurors nodded in the
11 affirmative.)

12 THE COURT: Not hearing anybody disagree with
13 that.

14 You have three peremptory challenges because we
15 have three alternates. We start with the People. As
16 they sit there, we have Mr. Otuafi, Ms. Holmwood,
17 Mr. Buell and Mr. Miller.

18 As to those three alternates, do you care to
19 use a peremptory challenge, Mr. Thomas?

20 MR. THOMAS: People ask the Court to thank
21 and excuse Ms. Holmwood.

22 THE COURT: Thank you for being with us,
23 Ms. Holmwood.

24 THE PROSPECTIVE JUROR: Thank you.

25 THE COURT: Mr. Sanders.

26 MR. SANDERS: Your Honor, we'd thank and
27 excuse Mr. Otuafi.

28 THE COURT: Mr. Otuafi, thank you. You're

1 excused. Mr. Buell and Mr. Miller, will you move down
2 two seats? Why don't you call two names, please.

3 THE CLERK: Juror Number 32, Barbara Hayes;
4 Juror Number 62, Luke Sells.

5 THE COURT: Hello, Ms. Hayes, Mr. Sells.
6 You're the only two we're talking to.

7 What about Question 14?

8 (Whereupon the prospective jurors answered in the
9 negative.)

10 MS. BARBARA HAYES

11 BY THE COURT:

12 Q Okay. Would you answer those questions for us
13 then, Ms. Hayes?

14 A Okay. The first one, I'm an office assistant,
15 and I work for the air district, and my husband is a
16 manager of a cabinet shop, and I've never served on a
17 jury.

18 Number 12, I was robbed at a -- 28 years ago
19 when I was working. That's it.

20 MR. LUKE SELLS

21 BY THE COURT:

22 Q Okay. Mr. Sells.

23 A I'm the owner of a distribution company for the
24 LA times up here in the high desert. My wife is a
25 homemaker, and I've never served on the jury.

26 Number 6, I have a cousin that is a sergeant
27 from the Long Beach Police Department.

28 Number 11, I have a nephew that was -- went to

1 trial for attempted murder.

2 Number 12, we had a car that was broken into.

3 Q So the nephew that went to trial, you mention
4 went to trial, was he acquitted or convicted?

5 A He was convicted.

6 Q Doing time?

7 A Yes.

8 Q Did you follow that case?

9 A No. It was on my wife's side, so we're not
10 real close.

11 Q That's not going to affect how you view the
12 evidence in this case?

13 A No.

14 THE COURT: You've both heard me talk about
15 all the important rights that each side has to
16 guarantee a free trial -- a fair trial.

17 Do you agree with those?

18 (Whereupon the prospective jurors nodded in the
19 affirmative.)

20 THE COURT: Do you understand that you have
21 to decide this case based only on the evidence that's
22 presented in this courtroom, the arguments of the
23 attorneys, and the law as I explain it?

24 (Whereupon the prospective jurors nodded in the
25 affirmative.)

26 THE COURT: You understand that you might
27 have to see photographs that are unpleasant or hear
28 about things that are not particularly pleasant? Does

1 that trouble anyone?

2 (Whereupon the prospective jurors answered in the
3 negative.)

4 THE COURT: Okay. You understand, as he sits
5 there, Mr. Yablonsky is presumed innocent until the
6 contrary is proven? He doesn't have anything to prove
7 to you, Ms. Hayes?

8 THE PROSPECTIVE JUROR: Yes.

9 THE COURT: Mr. Sells?

10 THE PROSPECTIVE JUROR: Yes.

11 MR. LUKE SELLS

12 BY THE COURT:

13 Q Mr. Sells, you own a company that's a
14 distribution company, so you're self employed?

15 A Correct.

16 Q Who's going to distribute those papers?

17 A People that work for me.

18 Q So it's not going to be a financial hardship
19 for you?

20 A No. I can just schedule different people to
21 cover the positions.

22 Q Did I say anything offensive about the
23 newspaper business yet?

24 A Not that I can recall. I usually am pretty
25 good at picking those things up.

26 Q I think I mentioned something to the effect of
27 just because something is in the newspaper doesn't mean
28 that you have to believe that it's true. That's all --

1 that's not -- that's not unfair; is it?

2 A No, not at all.

3 Q You didn't read anything about this case?

4 A No, I did not.

5 THE COURT: Ms. Hayes?

6 THE PROSPECTIVE JUROR: No.

7 THE COURT: Either of you see the flyer, the
8 political flyer that Mr. Sanders was holding up
9 earlier, Ms. Hayes?

10 THE PROSPECTIVE JUROR: No.

11 THE COURT: Mr. Sells?

12 THE PROSPECTIVE JUROR: No.

13 THE COURT: Mr. Sells, you did come back
14 about 15 minutes late.

15 THE PROSPECTIVE JUROR: I apologize.

16 THE COURT: That's all right. Is it going to
17 be a problem for you to be here on time?

18 THE PROSPECTIVE JUROR: No.

19 THE COURT: Okay. Mr. Sanders.

20 MR. SANDERS: Pass, your Honor. Thank you.

21 MR. THOMAS: People pass also.

22 THE COURT: As they sit there, we have
23 Mr. Buell, Mr. Miller, and Ms. Hayes as our three
24 alternates. Peremptory challenge is with you,
25 Mr. Thomas.

26 MR. THOMAS: People accept the three
27 alternates.

28 THE COURT: Mr. Sanders.

1 MR. SANDERS: I'm sorry. Where are we?

2 THE COURT: We have Mr. Buell, Mr. Miller and
3 Ms. Hayes. They're our three alternates.

4 MR. SANDERS: The People passed?

5 THE COURT: They did.

6 MR. SANDERS: Okay. Does the Court take them
7 in order?

8 THE COURT: No, I randomly select.

9 MR. SANDERS: We will thank and excuse,
10 Mr. Sells.

11 THE COURT: Mr. Sells, thank you for being
12 with us. You're excused.

13 Mr. Thomas, same three.

14 MR. THOMAS: People accept the three
15 alternates.

16 THE COURT: Mr. Sanders.

17 MR. SANDERS: Defense accepts the three
18 alternates, your Honor.

19 THE COURT: So you'll know, you exercised a
20 peremptory that you did not need to exercise. I don't
21 know what you thought or -- what you thought I was
22 answering, Mr. Sanders. What I assumed your question
23 was is during the trial if we lose one of our jurors,
24 do we take them in this order or do we randomly select
25 from the three.

26 MR. SANDERS: Right.

27 THE COURT: That was what I was answering.

28 MR. SANDERS: Right.

1 THE COURT: We put a name -- we put the three
2 names in a bin. We spin it around, and the clerk
3 reaches in and pulls out a number. That's the person
4 that we seat.

5 MR. SANDERS: Right.

6 THE COURT: Since we have our three
7 alternates being Mr. Buell, Mr. Miller, and Ms. Hayes,
8 if you would have passed peremptory challenge, we
9 would have excused Mr. Sells because he wasn't one of
10 the three.

11 MR. SANDERS: I thought that was the way it
12 would be, but I misunderstood what you were saying.

13 THE COURT: Okay. So...

14 MR. SANDERS: That's why I did that.

15 THE COURT: Do you want me to give you
16 another alternate?

17 MR. SANDERS: No, sir. We're fine.

18 THE COURT: Will the three alternates
19 please -- you waive any inconsistency in the selection
20 of alternates if there is any based upon what's just
21 happened, Mr. Thomas?

22 MR. THOMAS: Yes, your Honor.

23 THE COURT: Both sides stipulate to the
24 regular impanelment of our three alternates,
25 Ms. Sanders?

26 MR. SANDERS: Yes, sir.

27 THE COURT: Mr. Thomas?

28 MR. THOMAS: Yes, sir.

1 THE COURT: Will the three alternates please
2 stand, raise your right hand and be sworn?

3 THE CLERK: Do each of you understand and
4 agree that if called upon as a trial juror, you will
5 well and truly try the cause now pending before this
6 Court and a true verdict render according only to the
7 evidence presented to you and to the instructions of
8 the Court? If so, answer, "I do."

9 (Whereupon the alternate jurors answered in the
10 affirmative.)

11 THE COURT: I told you at the beginning I
12 couldn't promise you an opportunity to be on my jury.
13 I wish I could have had all of you here. Then again,
14 I don't know how long deliberations would take with a
15 jury of 40. I guess I'm going to have to wait and so
16 are you till next year.

17 Couldn't have gotten this far without you. We
18 thank you for being with us, being attentive. I know
19 this process can be tedious. I hope you've picked up
20 something about what goes on in the court that will be
21 of value to you in the future. I hope you're in court
22 in the future only for jury service, but I do hope you
23 come back and we can see you again next year.

24 On behalf of Department 2 and all of the judges
25 of this court, on behalf of People of the State of
26 California, on behalf of Mr. Yablonsky and the defense,
27 Court now is going to thank and excuse each of you.

28 Counsel, why don't you approach off the record?

1 Mr. Buell, Mr. Miller, take those two seats.
2 Mr. Buell will sit next to 026XXXXXXXXXX. Ms. Hayes,
3 you'll take the seat right next to 025XXXXXXXXXX. Thank
4 you.

5 (Whereupon a bench conference was held
6 off the record.)

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

9 THE COURT: Ladies and gentlemen, we're going
10 to be done here right away. I'm going to do
11 pre-instruction. I believe you all heard me talk
12 about following the law. The Court doesn't just give
13 you a copy of the Penal Code and copy of the Evidence
14 Code and send you back there and say good luck. We
15 use instructions that have been formulated and tested
16 for years.

17 It is an attempt, to the extent that the
18 lawyers and judges are capable of putting things in
19 ordinary language, we do. I hope we're successful, but
20 we have our limitations. It seems like when we go to
21 law school it results in us saying things in a way
22 that's more complicated than any other job.

23 These are the instructions that I'll be giving
24 you when the trial is over as well. Those instructions
25 will be an explanation of how you apply the law and what
26 the law is and what needs to be proved, those kinds of
27 things, what the elements are of the offenses, what the
28 elements are of the -- any allegations in the case.

1 Those will be more specific. They'll come at the end of
2 the trial.

3 Now I'm going to read you a general
4 pre-instruction set of -- pretrial set of instructions.

5 "The trial will now proceed as
6 follows: The People may present an
7 opening statement. The defense is not
8 required to present an opening
9 statement, but if it chooses to do so,
10 it may give it either after the
11 People's opening statement or at the
12 beginning of the defense case. The
13 purpose of an opening statement is to
14 give you an overview of what the
15 attorneys expect the evidence will
16 show.

17
18 "Next, the People will offer
19 their evidence. Evidence usually
20 includes witness testimony and
21 exhibits. After the People present
22 their evidence, the defense may also
23 present evidence but is not required
24 to do so. Because he is presumed
25 innocent, the defendant does not have
26 to prove he is not guilty.

27
28 "After you have heard all the

1 evidence and the attorneys have given
2 their final arguments, I will instruct
3 you on the law that applies to this
4 case. After you have heard all the
5 arguments and instructions, you will
6 go to the jury room to deliberate.

7
8 "I will now explain some basic
9 rules of law and procedure. These
10 rules ensure that both sides receive a
11 fair trial.

12
13 "During the trial, do not talk
14 about the case or about any of the
15 people or any subject involved in the
16 case with anyone, not even your
17 family, friends, spiritual advisers,
18 or therapists."

19 There's an example of what judges and lawyers
20 do that most people wouldn't do because I said, don't
21 talk about this case with anyone. Then I say, not even
22 your family, friends, spiritual advisers or therapists.
23 We just cannot help it. Why don't we say, don't talk to
24 your barber either, but you can see the point is, don't
25 talk to anyone about this case.

26 Anybody know why? I'm going to tell you why.
27 The reason is that we are going to take a careful
28 approach to everything we do in this trial. We want

1 everyone to feel that they've had a fair day in court.

2 Sometimes trial courts are compared to battle
3 fields. This is, believe me, an arena at this point.
4 Mr. Thomas and Mr. Sanders are both very professional.
5 They're going to be very courteous to one another
6 throughout this entire proceeding, but they have an
7 opposite end in mind. One of them is going to be trying
8 to convince you that Mr. Yablonsky is guilty beyond a
9 reasonable doubt. The other one's going to be trying to
10 convince you that Mr. Thomas hasn't proved that
11 Mr. Yablonsky is guilty beyond a reasonable doubt.

12 This is not where we come to compromise. This
13 isn't where we come to mediate. This is where we come
14 to a final determination with one person walking away as
15 a victor and one person ending this trial as the
16 vanquished.

17 My job, my goal as a judge, it's a pretty lofty
18 goal, but I take my job very seriously, is to make sure
19 that when this trial is over, whether you're the winner
20 or you're the loser, that you're going to leave this
21 court feeling like you had a fair trial, like you got a
22 chance to have your day in court. I want you to be my
23 partner in that. I told you that you're the judges of
24 the facts and not the judges of the law. That's my job.
25 I need your help if we're going to get through this and
26 guarantee that everyone's going to feel like they had a
27 fair trial.

28 What kind of things can happen that can make

1 people feel like they haven't had a fair trial? Failure
2 to avoid strict adherence to the orders that I make in
3 this case. I've had a situation before where the parent
4 of one of the defendants, I think it was just one
5 defendant in a trial. A parent saw a juror talking to a
6 police officer during the -- a break. Toward the end of
7 the trial, she wrote a note to me telling me about that.

8 I had to bring the police officer in. I had to
9 bring the juror in. It turns out they'd asked or been
10 discussing something about the flooding that was taking
11 place in Hesperia back in those days, and was the police
12 department in Hesperia going to do anything to improve
13 the condition of those roads.

14 They thought it was innocent, and it wasn't in
15 any way something about the trial, but the result was,
16 it cast suspicion. It cast doubt in the mind of the
17 defendant's mother as to whether or not her son had been
18 given a fair trial. We want to be like Ceasar's wife,
19 above the appearance of impropriety. That's why these
20 rules are in place.

21 When somebody presses you and says, oh, come
22 on. You can tell me about this. Nobody's going to
23 know. Well, you're going to know. You're going to be
24 asking yourself, was that just one thing that I've done
25 in not following the judge's instructions or are you
26 going to start off from this point on and make sure that
27 you scrupulously follow each of these instructions that
28 we give you?

1 Tell people that you are in Department 2 if you
2 want to. You can tell them when you're going to finish
3 your jury service. You can tell them what time you
4 start in the morning and what time you get through in
5 the evening. You can tell them that you're going to
6 have an hour and half lunch, and they can take you to
7 lunch. Tell them when the trial is over, you'll talk
8 about this case with them as long as they want to, but
9 please don't talk about anything about this case until
10 the trial is over.

11
12 "Do not share information about
13 the case in writing, by email, or on
14 the Internet.

15
16 "You must not talk about these
17 things with other jurors either until
18 the time comes for you to begin your
19 deliberations.

20
21 "As jurors, you may discuss the
22 case together only after all of the
23 evidence has been presented, the
24 attorneys have completed their
25 arguments, and I've instructed you on
26 the law. After I tell you to begin
27 your deliberations, you may discuss
28 the case only in the jury room and

1 only when all jurors are present.

2
3 "You must not allow anything that
4 happens outside the courtroom to
5 affect your decision.

6
7 "During the trial, do not read,
8 listen to, or watch any news report or
9 commentary about the case from any
10 source.

11
12 "Do not do any research on your
13 own or as a group. Do not use a
14 dictionary, the Internet, or other
15 reference materials. Do not
16 investigate the facts or law. Do not
17 conduct any tests or experiments or
18 visit the scene of any event involved
19 in this case. If you happen to pass
20 by the scene, do not stop or
21 investigate.

22
23 "If you have a cell phone or
24 other electronic device, keep it
25 turned off while you are in the
26 courtroom and during deliberations.
27 An electronic device includes any data
28 storage device. If someone needs to

1 contact you in an emergency, the court
2 can receive messages that it will
3 deliver to you without delay.

4 If you still have your court questionnaire,
5 there's handwritten phone number on the bottom of that
6 questionnaire. That's the telephone number to the
7 court, so you can tell your loved one, your work,
8 whoever might need to contact you in an emergency that
9 that's the number that you need to be reached at.

10 "During the trial, do not speak
11 to any party, witness, or lawyer
12 involved in the trial. Do not listen
13 to anyone who tries to talk to you
14 about the case or about any of the
15 people or subjects involved in it. If
16 someone asks you about the case, tell
17 him or her that you cannot discuss it.
18 If that person keeps talking to you
19 about the case, you must end the
20 conversation.

21
22 "When the trial has ended and
23 you've been released as jurors, you
24 may discuss the case with anyone.

25
26 "I'll remind you that under
27 California law, you must wait at least
28 90 days before negotiating or agreeing

1 to accept payment for information
2 about this case.

3
4 "If you receive any information
5 about this case from any source
6 outside of the trial, even
7 unintentionally, do not share that
8 information with any juror. If you do
9 receive such information, or if
10 someone tries to influence you or any
11 juror, you must immediately tell the
12 bailiff.

13 "Some words or phrases that may
14 be used during this trial have legal
15 meanings that are different from their
16 meanings in everyday use. These words
17 and phrases will be specifically
18 defined in the instructions. Please
19 be sure to listen carefully and follow
20 the definitions that I give you.
21 Words and phrases not specifically
22 defined in the instructions are to be
23 applied using their ordinary, everyday
24 meanings.

25
26 "Keep an open mind throughout the
27 trial. Do not make up your mind about
28 the verdict or any issue until you

1 have discussed the case with the other
2 jurors during deliberations. Do not
3 take anything I say or do during the
4 trial as an indication of what I think
5 about the facts, the witnesses, or
6 what your verdict should be.

7
8 "Do not let bias, sympathy,
9 prejudice, or public opinion influence
10 Your decision.

11
12 "You must reach your verdict
13 without any consideration of
14 punishment."

15 Something we may have brought during voir dire,
16 and that is this is not a death penalty case. If this
17 were a death penalty case, you would have known that.
18 We would have told you that.

19 We would have a trial in two phases. During
20 the first phase, there would have been attempt as to
21 whether or not you could reach a verdict as to guilt
22 beyond a reasonable doubt. During the second phase, the
23 jury would make a determination as to what they thought
24 the appropriate verdict -- the appropriate punishment
25 was, and the choices would be only life without
26 possibility of parole and death if the defendant was
27 indeed found to be guilty.

28 There's no penalty phase during this trial. If

1 Mr. Yablonsky is convicted, this Court will be the one
2 that decides what, within the legal range of sentences,
3 what Mr. Yablonsky's punishment should be. Again, don't
4 let punishment enter into your consideration at all. I
5 only went into that so you would understand that this is
6 not a death penalty case if you were wondering that by
7 any means.

8 "You will be given notebooks and
9 may take notes during the trial. Do
10 not remove them from the courtroom.
11 You may take your notes into the jury
12 room during deliberations. I do not
13 mean to discourage you from taking
14 notes but here are some points to
15 consider if you do take notes.

16 "1. Note-taking may tend to
17 distract you. It may affect your
18 ability to listen carefully to all the
19 testimony and to watch the witnesses
20 as they testify; and

21 "2. The notes are for your own
22 individual use to help you remember
23 what happened during the trial.
24 Please keep in mind that your notes
25 may be inaccurate or incomplete.

26
27 "At the end of the trial, your
28 notes will be collected and destroyed.

1
2 "I will now explain the
3 presumption of innocence and the
4 People's burden of proof. The
5 defendant has pleaded not guilty to
6 the charge. The fact that a criminal
7 charge has been filed against the
8 defendant is not evidence that the
9 charge is true. You must not be
10 biased against the defendant just
11 because he has been arrested, charged
12 with a crime, or brought to trial.

13
14 "A defendant in a criminal case
15 is presumed to be innocent. This
16 presumption requires that the People
17 prove a defendant guilty beyond a
18 reasonable doubt. Whenever I tell you
19 the People must prove something, I
20 mean they must prove it beyond a
21 reasonable doubt unless I specifically
22 tell you otherwise.

23
24 "Proof beyond a reasonable
25 doubt is proof that leaves you with an
26 abiding conviction that the charge is
27 true. The evidence need not eliminate
28 all possible doubt because everything

1 in life is open to some possible or
2 imaginary doubt.

3
4 "In deciding whether the People
5 have proved their case beyond a
6 reasonable doubt, you must impartially
7 compare and consider all the evidence
8 that was received throughout the
9 entire trial. Unless the evidence
10 proves the defendant guilty beyond a
11 reasonable doubt, he is entitled to an
12 acquittal and you must find him not
13 guilty.

14
15 "You must decide what the facts
16 are in this case. You must use only
17 the evidence that is presented in the
18 courtroom. Evidence is the sworn
19 testimony of witnesses, the exhibits
20 admitted into evidence, and anything
21 else I tell you to consider as
22 evidence.

23
24 "The fact that the defendant was
25 arrested, charged with a crime or
26 brought to trial is not evidence of
27 guilt.
28

1 "Nothing that the attorneys say
2 is evidence. In their opening
3 statements and closing arguments, the
4 attorneys will discuss the case, but
5 their remarks are not evidence. Their
6 questions are not evidence. Only the
7 witnesses' answers are evidence. The
8 attorneys' questions are significant
9 only if they help you understand the
10 witnesses' answers. Do not assume
11 that something is true just because
12 one of the attorneys asks a question
13 that suggests it is true.

14
15 "During the trial, the attorneys
16 may object to questions asked of a
17 witness. I will rule on the
18 objections according to the law. If I
19 sustain an objection, the witness will
20 not be permitted to answer, and you
21 must ignore the question. If the
22 witness does not answer, do not guess
23 what the answer might have been or why
24 I ruled as I did. If I ordered
25 testimony stricken from the record,
26 you must disregard it and must not
27 consider that testimony for any
28 purpose.

1
2 "You must disregard anything you
3 see or hear when the court is not in
4 session even if it is done or said by
5 one of the parties or witnesses.
6

7 "The court reporter is making a
8 record of everything said during the
9 trial. If you decide that it is
10 necessary, you may ask the court
11 reporter's record be read to you. You
12 must accept the court reporter's
13 record as accurate.
14

15 "You alone must judge the
16 credibility or believability of the
17 witnesses. In deciding whether
18 testimony is true and accurate, use
19 your common sense and experience. You
20 must judge the testimony of each
21 witness by the same standards, setting
22 aside any bias or prejudice you may
23 have. You may believe all, part, or
24 none of any witness's testimony.
25 Consider the testimony of each witness
26 and decide how much of it you believe.
27

28 "In evaluating a witness's

1 testimony, you may consider anything
2 that reasonably tends to prove or
3 disprove the truth or accuracy of that
4 testimony. Among the factors that you
5 may consider are:

6 "How well could the witness see,
7 hear, or otherwise perceive the things
8 about which the witness testified?

9 "How well was the witness able to
10 remember and describe what happened?

11 "What was the witness's behavior
12 while testifying?

13 "Did the witness understand the
14 questions and answer them directly?

15 "Was the witness's testimony
16 influenced by a factor such as bias or
17 prejudice, a personal relationship
18 with someone involved in the case, or
19 a personal interest in how the case is
20 decided?

21 "What was the witness's attitude
22 about the case or about testifying?

23 "Did the witness make a statement
24 in the past that is consistent or
25 inconsistent with his or her
26 testimony?

27 "How reasonable is the testimony
28 when you consider other evidence in

1 the case?

2 Add other evidence and being
3 untruthful

4
5 "Do not automatically reject
6 testimony just because of
7 inconsistencies or conflicts.
8 Consider whether the differences are
9 important or not. People sometimes
10 honestly forget things or make
11 mistakes about what they remember.
12 Also, two people may witness the same
13 event yet see or hear it differently.

14
15 "If you do not believe a
16 witness's testimony that he or she no
17 longer remembers something, that
18 testimony is inconsistent with the
19 witness' earlier statement on that
20 subject.

21
22 "If you decide that a witness
23 deliberately lied about something
24 significant in this case, you should
25 consider not believing anything that
26 witness says. Or, if you think the
27 witness lied about some things but
28 told the truth about others, you may

1 simply accept the part that you think
2 is true and ignore the rest."

3 This next instruction I'm going to read to you
4 requires a little explanation. Some of you have had
5 service in the past. You have probably not seen this
6 instruction. It has to do with jurors asking questions.
7 The people that put these instructions together thought
8 it would be a good idea to involve jurors more fully in
9 the experience by allowing jurors to ask questions. So
10 here's the instruction:

11 "If during the trial you have a
12 question that you believe should be
13 asked of a witness, you may write out
14 the question and send it to me through
15 the bailiff. I will discuss the
16 question with the attorneys and decide
17 whether it may be asked. Do not feel
18 slighted or disappointed if your
19 question is not asked. Your question
20 may not be asked for a variety of
21 reasons including that the question
22 may call for an answer that is
23 inadmissible for legal reasons. Also,
24 do not guess the reason your question
25 was not asked or speculate about what
26 the answer might have been.

27
28 "Always remember that you are not

1 advocates for one side or the other in
2 this case. You are impartial judges
3 of the facts."

4 It fails -- I should not say it fails.

5 Frequently this instruction fails to fully inform the
6 jurors what the purpose of this instruction is. It
7 relates to allowing you, the jury, to ask me or one of
8 the attorneys through me to pose a question to a witness
9 who is then on the stand testifying. It's not for you
10 to bring up issues that you think might be important in
11 the case. It's not for you to have an opportunity to
12 ask me what the law is.

13 I had a case -- well, I shouldn't talk about
14 specific cases, but I'll just say in a recent case a
15 question had to do with whether or not someone had
16 performed work on cars or whether that person had
17 basically gotten those cars under false pretenses and
18 chopped them up and sold them. One of the jurors wrote
19 a question, sent it to me, and the question was
20 something like, what qualifies the defendant to be a
21 mechanic? Is he certified? Something like that. The
22 defendant wasn't on the witness stand. There was no way
23 that question could have been answered.

24 Think about what it is that you want. I'm not
25 trying to discourage you. If you have a question you
26 would like to have asked, make sure that it's a question
27 that the witness can answer. Make sure it's a question
28 that you want asked of that particular witness on the

1 stand at that time.

2 Now, if you -- if your question isn't asked,
3 I've told you here don't speculate about why, but don't
4 tell the other jurors that I sent the judge this
5 question, asked him to ask it and he didn't do it. Just
6 forget about it. Means for one reason or another that
7 this is a subject that's not going to be covered. Don't
8 speculate what the answer was. Don't talk about it with
9 the other jurors.

10 I'm not going to call people back to ask a
11 question a juror wants to be asked once that person has
12 been excused. So you have to do it while that person is
13 on the witness stand. That means, you'll see this as we
14 go through the trial. Somebody's going to be called.
15 After they've given direct examination,
16 cross-examination, sometimes further direct, further
17 cross, back and forth.

18 When nobody has any questions left, I'm going
19 to turn to the attorneys and say, may this witness be
20 excused? That's your cue. If you have a question that
21 you're thinking of putting together or you're in the
22 middle of writing it out, speak now. Speak then or
23 forever hold your peace. Don't be shy. Put your hand
24 up and say hold it. Hold it. I've got to finish a
25 question. Then you can write it out. Pass it to Pete.

26 I'll look at it and talk to the attorneys about
27 it, and we can ask that question of a witness if you
28 want me and to it's an admissible question. The problem

1 is, so you understand, once that witness is gone, you
2 come back later or after a break and say I've got a
3 question I'd like to ask of the witness. If that's
4 person's been excused, you're not going to get a chance
5 to have the answer to that question.

6 A little complicated. That's hopefully clear
7 what the purpose of those questions will be.

8 Do we have anybody speaking through an
9 interpreter in this case?

10 MR. THOMAS: There's a possibility that one
11 of the witnesses will.

12 THE COURT: Okay. Would that person be
13 speaking Spanish?

14 MR. THOMAS: Korean.

15 THE COURT: I'm always embarrassed when I
16 make assumptions and I'm wrong.

17 "Some testimony may be given in
18 Korean. An interpreter will provide a
19 translation for you at the time of the
20 testimony. You must rely on the
21 translation provided by the
22 interpreter even if you understand the
23 language spoken by the witness. Do
24 not retranslate any testimony for
25 other jurors. If you believe the
26 court interpreter translated testimony
27 incorrectly, let me know immediately
28 by writing a note and giving it to the

1 bailiff."

2 You can see when this is done a witness might
3 be speaking Spanish. It's more likely in Southern
4 California that someone is going to be able to
5 understand what the interpreter is saying and understand
6 what's being said in Spanish. Korean, I think it's less
7 common, but maybe someone might speak Korean.

8 Why would we not want you to be back in the
9 jury room telling the other jurors something like this;
10 you know, this person who was the interpreter got that
11 wrong? The witness said it was dark outside, and the
12 interpreter said it was black outside. You can see that
13 we have 1 of the 12 people in charge of deliberations.
14 We don't want that.

15 Again, if somebody does speak through an
16 interpreter, if you understand that language and you
17 hear something you think is a mistake, that's all right.

18 We'll get it out in the open here. We'll ask the
19 interpreter to explain why that particular word was used
20 and everyone will be on the same footing as far as the
21 decisions that are made.

22 Witness identified as Jane Doe?

23 MR. THOMAS: Probably.

24 THE COURT: (Reading):

25 "There's a possibility that one
26 of the witnesses in this case is going
27 to be identified as Jane Doe. This
28 name is used only to protect her

1 privacy as required by law. The fact
2 that a person is identified in this
3 way is not evidence and do not
4 consider that fact for any purpose."

5 All right. That's how far I'm going to go on
6 the instructions that you're going to hear. On Monday
7 morning, you're going to hear the opening statements by
8 the attorneys -- I'm sorry, you're going to hear the
9 opening statement by Mr. Thomas. I'm sure he's going to
10 give you one.

11 As I've already explained, Mr. Sanders will
12 then have an opportunity to give you an opening
13 statement or reserve to a later time if he ever chooses
14 to make an opening statement.

15 One more time, you're admonished that it is
16 your duty not to converse among yourselves or with
17 anyone else about any matter connected with this case
18 nor form or express an opinion on it until it's
19 submitted to you. Don't come here tomorrow. Saturday
20 you're watching football? Just all Sunday?

21 MR. THOMAS: Just all Sunday.

22 THE COURT: I don't know what you're going to
23 do on Sunday, but -- I mean Saturday. Watch football
24 on Sunday. Don't talk about this case. Have a nice
25 weekend, folks. See you Monday morning at 9:00.

26 (Whereupon the jury exited the courtroom and the
27 following proceedings were held:)

28 THE COURT: Back on the record in the case of

1 People of the State of California versus John Henry
2 Yablonsky. Mr. Yablonsky's here with his attorney,
3 Mr. Sanders. When we were last together, we were
4 discussing various issues regarding the admissibility
5 of the two prior rapes under 1108. We talked about
6 the case -- the various cases. We talked about the
7 Story case 45 Cal.4th 1282, 2000. The case we talked
8 about the Falsetta case, 1999, 29 Cal.4th 903. We
9 talked about the factors that should be taken into
10 consideration by the Court in exercising its
11 discretion.

12 I gave both of you the understanding that today
13 was the time I was going to expect that you're going to
14 tell me how those factors mitigate in favor of your
15 position, specifically, why it should be admitted,
16 Mr. Thomas, and why it shouldn't be admitted,
17 Mr. Sanders.

18 Mr. Thomas.

19 MR. THOMAS: Well, as far as the -- I don't
20 know if we were saying 1981 or I misheard, but the
21 event of the first alleged rape occurred on July 16th
22 of 1982 in El Paso, Texas, and I've already gone
23 through most of the facts with the Court.

24 THE COURT: Right. I'm talking about
25 doesn't -- don't you feel that there are factors that
26 I need to consider according to the Story case?

27 MR. THOMAS: Yeah. Under Story, if the Court
28 were to find that it comes in under 1108, and I think

1 from the chambers conversations that's where the Court
2 was leaning, the Court has to consider the factors
3 under Falsetta and 352. The factors are, the nature
4 of the -- the offenses or the actions, the relevance,
5 the possible remoteness, the degree of certainty of
6 its commission, and the likelihood of confusing,
7 misleading or distracting the jurors from their main
8 inquiry, similarity to the charged offense, likely
9 prejudicial impact on the jurors, the burden on the
10 defendant in defending against the uncharged offense,
11 and the availability of less prejudicial alternatives
12 to its outright admission, such as, admitting some but
13 not all of the defendant's other sex offenses or
14 excluding irrelevant though inflammatory details.

15 In this case, the People intend to bring in two
16 complaining witnesses. We don't intend to bring in any
17 doctors or medical personnel. I think it boils down to
18 an issue of credibility that the jurors themselves can
19 determine for themselves as far as if these witnesses
20 are actually telling the truth and same goes for if
21 Mr. Yablonsky takes the stand, and they can compare the
22 stories and figure out which one is more believable to
23 them.

24 THE COURT: Just one second. Maybe I didn't
25 make myself clear. I'd like you to -- here's what I
26 want you to tell me. Talk to me about each of these
27 cases in -- one occurred in 1982 and one occurred in
28 1991?

1 THE DEFENDANT: '96.

2 MR. THOMAS: '96.

3 THE COURT: '96. Okay.

4 MR. THOMAS: It would be October.

5 THE COURT: Let's call it the '82 and '96
6 cases. I really think what your job right now for me,
7 Mr. Thomas, is to tell me how the factors apply to
8 each of those cases.

9 MR. THOMAS: Okay. As far as the nature and
10 relevance of each of those cases, I think that both
11 cases involve alleged rapes and in this particular
12 case, the People are alleging that the murder was
13 committed in the attempted commission or commission of
14 a rape. I think they're similar in nature.

15 The possible remoteness as far as three years
16 before this particular crime -- and I'm talking about
17 the 1982 -- it's not that remote. I can see somewhat of
18 an argument on the remoteness of the '96 rape.

19 The degree of certainty of its commission and
20 likelihood of confusing, misleading and distracting the
21 jurors from their main inquiry, I don't think it's going
22 to confuse, mislead, or distract the jurors. I think
23 the ultimate issue in this case is whether or not the
24 sexual relations between Mr. Yablonsky and the victim in
25 this case were consensual or nonconsensual.

26 I think both of these cases show that
27 Mr. Yablonsky has, if the jury were to believe the
28 victims in those two cases, has in the past forced

1 himself on victims, and which would support the
2 prosecution's theory in this case that he forced himself
3 on Rita Cobb before he ended up killing her.

4 As far as the prejudicial impact on the jurors,
5 of course there's going to be some prejudicial impact,
6 and that's just the cost of doing business, as you say.

7 As far as the -- there's always going to be some
8 prejudicial impact of probative evidence. That
9 prejudicial impact in this case I don't think outweighs
10 the probative value of that evidence for the jury. I
11 think that the jurors are entitled to hear that
12 Mr. Yablonsky has raped people in his past if they
13 believe these two witnesses that come in.

14 The -- I don't believe that there's any less
15 prejudicial alternatives to its outright admission in
16 this case. There's -- I can see if the People were
17 seeking to introduce medical documents or other
18 documents that would bolster the credibility of the
19 witnesses in this case or in the 1982 case and the 1996
20 case. I could see where the Court might want to limit
21 that, but -- there's case law regarding limiting the
22 medical opinions or the medical experts coming in to
23 testify. I think it's just basically going to be
24 credibility -- a credibility issue for the jury.

25 I don't think there's anything that's going to
26 be irrelevant as far as admitting the testimony of these
27 two victims in this case as to what occurred back in
28 1982 and back in 1996. I think if the Court were to

1 engage in that 352 analysis, I think that the overall
2 probative value of this evidence outweighs any
3 prejudicial effect it might have on the defendant.

4 THE COURT: Does that conclude your comments?

5 MR. THOMAS: Yes.

6 THE COURT: Mr. Sanders.

7 MR. SANDERS: Thank you, your Honor.

8 THE COURT: Let me ask a question, by the
9 way, I think one of the things that I should do if --
10 do we all agree that the issue of whether -- the issue
11 of remoteness in time is not today? The point to
12 determine the relevant temporal proximately would be
13 the alleged crime?

14 MR. THOMAS: Yes.

15 MR. SANDERS: Yes.

16 THE COURT: Okay. Mr. Sanders.

17 MR. SANDERS: Thank you, your Honor. I guess
18 it would be difficult for me to imagine a case where I
19 would differ so greatly from the district attorney as
20 I do in this one in my analysis of his offer of proof.

21 The statement was made that if there is any
22 prejudice. There's enormous prejudice

23 THE COURT: Speak up.

24 MR. SANDERS: Yes.

25 THE COURT: I heard what you said.

26 MR. SANDERS: There's enormous prejudice in
27 this kind of evidence, enormous prejudice. The
28 question is, is there even a little bit of relevance,

1 even a little bit of relevance, not that there could
2 be enough relevance to overcome the prejudice in this
3 matter.

4 What I believe the Story case says that's
5 important to note -- in Story the gentleman was charged.
6 There was two other instances that the Court allowed in
7 on the 1108 evidence. The Court noted they allowed them
8 in because, Number 1, the two 1108 allegations were
9 similar to each other in a number of respects and that
10 they were also similar to the murder.

11 In the first place, that distinguishes Story
12 from our case. There is no way in which those two
13 offers of proof are similar to each other let alone in a
14 number of respects, and, second of all, neither one of
15 them are similar to the allegations in the instant case.

16 The first case happened in a bar off a military
17 base that was frequented by GIs. The second case
18 happened in the house where my client was living with
19 his then girlfriend. There's almost nothing the same
20 about them, and I notice in the district attorney's
21 argument the only similarity we have is that they're all
22 called rape. All rapes are not the same, and the Court
23 in Story found a number of respects where they were
24 similar. In this case there are none.

25 Now we go to the factors. The Court indicated
26 there are a number of factors. What we're comparing is
27 we are comparing a case that happened in 1982, an
28 allegation of forcible sex in a rest room of a bar, a

1 pool hall, that allegedly involved a knife, and we're
2 comparing that to a 19- -- 1996 case where my client and
3 his girlfriend were having a domestic dispute over a
4 number of issues. Then we are comparing that to the
5 instant case, but in what respect?

6 In the instant case, there is no evidence of a
7 sexual assault other than that there was sperm found in
8 the victim's vagina and on a piece of cloth next to her
9 body. We don't know if the semen was left before or
10 after she died. We don't know if the semen was left the
11 day before or 36 hours before. There is no evidence of
12 that. There was nothing about the case involving the
13 instant case that would give anyone reason to believe
14 that a knife was involved. There was nothing about the
15 instant case that would show that any clothing was torn.
16 No clothing that was in the room was disturbed or torn.
17 There were no buttons missing. There was no zippers
18 that were torn.

19 The allegation in 1996 was that some panties
20 were forcibly torn in that case. There was no trauma to
21 the victim's female parts in the instant case. There's
22 nothing -- there's no evidence on her body, in the room,
23 anywhere, that would normally be associated with a rape.

24 To say that those other two cases are similar
25 in a number of respects is -- is completely false.
26 There's -- the only respect they're the same is that
27 they involve what some people would say was a rape.

28 Remoteness is extreme in the '96 case. It is

1 there in the '81 case.

2 Relevance. This basically is a homicide trial.
3 The main issue here is whether or not my client killed
4 Ms. Cobb, and the -- there is a side issue that -- a
5 special circumstance, and it's important to note that
6 the offered evidence only speaks to the special
7 circumstance, not the charge in Count I.

8 The next is the degree of certainty of
9 commission. Neither one of these cases involve a
10 criminal prosecution. Neither one of these cases
11 involved a conviction. Neither one of these cases
12 involved any findings by a magistrate, a judge, a jury,
13 or anyone, that they were actually committed.

14 In both of the cases, there was only an arrest,
15 of course, in each case by an officer that had no
16 personal knowledge and then no further steps were taken.
17 The cases were never filed. It wasn't like they were
18 dismissed. They just never were filed in the first
19 place. The degree of certainty of commission is modest
20 at best.

21 The only evidence of commission are the
22 statements of the two women that they gave years and
23 years ago. As far as I know, they have never given
24 statements since. I've never been provided with a
25 statement. I don't know of any investigative officer
26 that has taken a statement from them since that day
27 where they re-allege that any of these things happened.

28 The next is likelihood of confusing, misleading

1 or distracting the jury from their main task. Their
2 main task is the charge in Count I, the only charge,
3 which is a homicide. Basically, what we're asking the
4 jury to do is try three cases. They have to try -- they
5 have to decide, did the case in El Paso actually happen?
6 Did the case in Long Beach actually really happen? If
7 it did, did it have any relevance to the special
8 circumstance, which is attached to the main charge in
9 this case?

10 The next factor is similarity to the crime
11 charged. That's of the same nature and relevance. I've
12 already pretty well addressed that. We know of no
13 similarities because we don't have any information as to
14 what happened in the crime charged.

15 The prejudicial impact is extreme. It's
16 devastating. If this evidence is allowed to be brought
17 in -- this goes with the burden on the defendant of
18 defending against it. The prejudicial impact is extreme
19 because in -- this -- this alleged evidence by these two
20 women, if they say what they said years ago, is the only
21 evidence -- is the only evidence there is in this case
22 of a rape. There isn't any other evidence.

23 So if you say, of all the evidence in this
24 case, it only adds five percent, then the prejudice
25 isn't so great. Because there is no physical evidence
26 of rape that was collected in 1985 in the situation with
27 Ms. Cobb, that other evidence is 100 percent basically
28 of the evidence that there was a rape.

1 Burden of the defending against this; as I
2 indicated, I was not aware that these women were going
3 to be called until a week or so before trial. When that
4 occurred, my investigator and I made some phone calls
5 and found out that neither one of these women are where
6 they were in those days. The district attorney was kind
7 enough to provide me last week with their current
8 addresses, but, of course, that doesn't mean that they
9 talked to me.

10 In each of those cases, it's impossible to
11 find, for example, in the 1981 case, the other GIs that
12 were in that bar that night with my client, the
13 investigating officer or his supervisor that determined
14 that they were going to let my client go shortly after
15 he was arrested, anyone to testify to the fact that
16 there was no knife there. My client was arrested.
17 There was no knife there. The witness was impeached on
18 that issue.

19 The 1996, we can't find or we don't know how to
20 get ahold of the officers at the jail that overheard the
21 telephone conversation between my client and the
22 prosecutrix where she basically admitted that, yeah,
23 okay, you didn't really rape me, but, you know, you did
24 rape my soul. That's why I called it a rape is because
25 I felt that you had raped my soul, and the -- the police
26 after hearing that conversation on the telephone didn't
27 follow through with filing any charges.

28 I don't know where these people are. I can't

1 find them. It's almost impossible for us to defend
2 against either one of those allegations at this point.
3 I don't know of a less prejudicial alternative.

4 I believe that neither one of these should come
5 in and this case should rise and fall on its own merits.
6 One less prejudicial alternative that was discussed in
7 Story was that the judge perhaps should have chosen one
8 of those instances, but that isn't the same case in our
9 case because, as I said, there is just no evidence of a
10 common plan, similarity, similar circumstance or
11 anything in any of those cases and the present case.
12 Thank you, your Honor.

13 MR. THOMAS: May I respond?

14 THE COURT: Sure.

15 MR. THOMAS: As far as the convictions go, it
16 looks like in Story all four of those rapes that came
17 in --

18 THE COURT: If I may, that's something I
19 don't want to pass by. Mr. Sanders, you indicated
20 that the two in the instant case -- in the Story case,
21 there were four separate victims that testified.

22 MR. SANDERS: And I don't think that's an
23 important factor. That's --

24 THE COURT: You mentioned there was something
25 about limiting -- in the Story case, limiting the
26 number of people that were allowed to testify.

27 MR. SANDERS: On the less prejudicial
28 alternative.

1 THE COURT: In this instance, they were --
2 all four people were allowed to testify.

3 MR. SANDERS: Because they were all similar
4 in a number of respects.

5 THE COURT: Right. Four.

6 MR. SANDERS: Yes.

7 THE COURT: Thanks.

8 MR. THOMAS: As far as the four victims that
9 were allowed to testify, there was no mention that the
10 defendant in this case -- the Story case was ever
11 convicted of any of them. So it would be similar to
12 this.

13 In Story, the crime occurred in 1976. The
14 Court admitted two prior rapes, one that occurred in
15 1974, another one occurred in 1976, and then admitted
16 two subsequent rapes that the defendant committed, one
17 in 1980 and one in 1986. The 1986 rape that was
18 admitted was approximately ten years after the murder
19 was committed in Story.

20 Similarly in this case, we have a rape that
21 occurred in 1996, which is approximately just over ten
22 years, it's eleven years after the murder occurred in
23 the present case.

24 Mr. Sanders kept mentioning there's no physical
25 evidence, and Story it shows -- from my reading of it,
26 doesn't show that the DA admitted any physical evidence
27 except for one in 1986 that it looks like that might --
28 well, no, even in the 1986 case it was all three or four

1 victims that came in and testified for the jury that the
2 defendant in Story had committed these rapes, and there
3 was no physical evidence or mention of physical evidence
4 in the appellate opinion.

5 Mr. Sanders kept pointing out there was a lack
6 of trauma in -- in the Rita Cobb murder. Admitting the
7 two prior rapes would explain why there was a lack of
8 trauma because in the two prior rapes he used weapons,
9 one time in the 1982 case he used a knife, and then on
10 top of that he used his left hand to choke the victim.
11 In this case, the victim in the Rita Cobb case, she was
12 strangled.

13 The Story opinion talks about the fact that in
14 Story the victim was also strangled on Page 1300 of the
15 opinion.

16 THE COURT: 1300?

17 MR. THOMAS: Yeah.

18 MR. SANDERS: The case number?

19 MR. THOMAS: Case number --

20 THE COURT: Let me get there. Go ahead.

21 MR. THOMAS: The California Supreme Court
22 said:

23 "The fact that the defendant
24 strangled his victim to death after
25 the sexual intercourse permits a
26 reasonable jury to infer that Vickers
27 did resist," Vickers being the victim
28 in that case, "did resist and did --

1 and indeed died for that resistance."

2 The same argument can be made in this case. If
3 the jury were to believe that the sex occurred at or
4 near the time of death, the jury could come to the same
5 conclusion as they did in the Story case, that Ms. Cobb
6 was strangled because she resisted the defendant.

7 I would argue as far as the physical evidence
8 goes, prosecution's going to argue that because the bed
9 and the condition of the bed and the bedspread that
10 would indicate some evidence that there was a struggle
11 of some sort. It wasn't neat as far as the bed goes.
12 It wasn't made up neat, and I'm sure Mr. Sanders has a
13 contrary argument to that, but I think that that's one
14 of the arguments that the People could put forth and the
15 jury could believe.

16 Then as far as the 1996 case, this was a woman
17 that was known to Mr. Yablonsky, and he came uninvited
18 and basically took the sex if you believe the victim in
19 that case.

20 Same could be said for this case as far as
21 Rita Cobb's concerned. He knew the victim, and he --
22 the People are going to argue based on his 1996 case
23 that he did the same thing in this case. He invited
24 himself in and basically took sex from Ms. Cobb. In the
25 process of doing that, he murdered her. So I think
26 there's enough similarities and enough evidence there
27 for the Court to find that both the 1982 and the 1996
28 case have probative value, that probative value

1 outweighs any prejudicial effect on the defendant.

2 THE COURT: Anything else, either side?

3 MR. SANDERS: Please, your Honor. It's one
4 thing in the abstract to say that if you're charged
5 with certain crimes you can bring in similar crimes to
6 bolster your argument, to bolster your position, but
7 what those cases didn't suggest is exactly what the
8 prosecutor uses those cases for.

9 It's one thing to say, in the Rita Cobb case,
10 he used a knife. In the El Paso case, he used a knife.
11 You can show a common scheme, plan, purpose, all those
12 things. It's one thing to say in the Rita Cobb case, he
13 came uninvited, and in the Long Beach case, he came
14 uninvited, but even his own argument shows that that's
15 not what he's doing here.

16 What he suggested is, we don't know what
17 happened to Rita Cobb, but we know in El Paso, he used a
18 knife; therefore, he probably used a knife in this case.
19 We can argue that's why it's a rape because he used a
20 knife. In the 1996 case he came uninvited; therefore,
21 he must have come uninvited in this case. That's not
22 what Story or Falsetta or Pierce stand for; that you
23 can -- that you can bring in these other elements that
24 you don't have in your main case. They're to show
25 similarities. They're not to -- to try to bootstrap
26 other things into them that weren't there to start with.

27 If that's the similarity, if that's why it's
28 relevant, then it isn't and the prejudice, which is

1 huge, hasn't been overcome. Thank you.

2 THE COURT: Anything else?

3 MR. THOMAS: I would point out in Story that
4 the murder victim was strangled and the prior rapes
5 that were admitted the defendant did use a gun, and
6 so, therefore, it's not similar and the Court still
7 allowed its admission because -- under 1108, and that
8 would be -- we'd submit on that.

9 THE COURT: Anything else?

10 MR. SANDERS: No, your Honor. I've submitted
11 points. Thank you.

12 THE COURT: I'm struck by how, in my opinion,
13 the Story case is so close to the case that is before
14 me, and I think Story is just on all fours with People
15 versus Yablonsky. What Story stands for, I believe,
16 is allowing the fact that someone was killed --
17 someone who was killed after having had sexual
18 relations, allows the jury to be told of prior similar
19 forcible sex crimes to infer that this was not just a
20 murder but was a forcible sex crime.

21 I didn't hear much discussion about this, but
22 what strikes me mostly about the Story case is here on
23 Page -- I guess it would be on -- starting on Page 1285:

24 "Evidence presented at trial on
25 October 22nd, 1976, 26-year-old,
26 Betty Yvonne Vickers was found dead
27 lying on her stomach on the right side
28 of the bed in the bedroom of her

1 apartment on Main Street and Mountain
2 View.

3 "She was wearing only a football
4 jersey. The bottom half of her body
5 was covered with bed covers. Panties
6 were under the pillow on the bed, and
7 a bloody tampon was on the bed beside
8 her body.

9 "A large semen stain was found on
10 the bottom sheet. The rest of the
11 apartment contained no evidence of
12 struggle."

13 1286, next page -- actually, it's the end of
14 1285, beginning of 1286:

15 "The vagina contained a white
16 discharge but no signs of injuries."

17 There was evidence of a struggle in that case
18 there being an opportunity to be examined. I think we
19 must not have had, in all likelihood, the same degree of
20 body decomposition as there was when Ms. Cobb was found,
21 the victim in this particular instance, but the
22 pathologist testified that the injuries were most
23 consistent with the victim's being face up and someone
24 applying their hands to her neck and either their elbows
25 on her collar bones or chest or perhaps even their knees
26 to straddle her and immobilize her.

27 So it appears that the evidence of struggle in
28 this particular instance didn't offer any light on the

1 subject of whether she had had consensual sex or there
2 was a struggle that ensued when Mr. Story decided to
3 strangle Ms. Vickers to death. So the question in that
4 case was exactly the question in this case. Was that
5 consensual sex? Was that not consensual sex? Was
6 there, in other words, a rape?

7 I think Justice Chin let us know that prior
8 accounts of rape can help the jury to answer that
9 question if the factors are appropriately met.
10 Mr. Sanders, I disagree with you that this is something
11 that is so far away from the -- the Story case. I think
12 it is right on with the Story case, and I agree with the
13 prosecution.

14 I think that Justice Chin had exactly these
15 issues in mind when he made the statement in the opinion
16 that Mr. Thomas has already alluded to that are found on
17 Page 1300. He did not tip-toe around it. He let it be
18 known that whether there was a rape in this case could
19 be determined by the force that was used to kill this
20 person. I think the fact that there was force used
21 clearly against Ms. Cobb is also very similar.

22 There was a weapon used by the -- by the way,
23 Mr. Sanders, you spent a lot of time once again
24 reiterating factors of dissimilarity, but the factors of
25 dissimilarity that you're alluding to are those that you
26 already explained to me, are things that were told to
27 you by your client, not things that have been
28 established in any way by the record of either of these

1 prior rapes or one prior rape and one subsequent rape.

2 Your client telling you that one of the cases
3 was not filed because the woman made a statement that
4 said she might -- he raped my spirit or raped my soul,
5 and that they heard a telephone conversation. You never
6 heard that conversation. You never found a report of
7 that as being the reason this case wasn't filed.

8 MR. SANDERS: Too old. I can't.

9 THE COURT: It's too old. You can't. That's
10 one way of arguing it, but it's not convincing to me.
11 You're saying that it's too old does not mean that
12 it's evidence that was ever available. It is evidence
13 that is not corroborated. It's a statement by your
14 client to exonerate himself. That's the way that I
15 feel.

16 I see that in each case, one case is use of a
17 knife.

18 MR. SANDERS: Alleged knife.

19 THE COURT: That's all I'm talking about.
20 That's all I'm talking about. I'm talking about what
21 the prosecution's theory is and what their offer of
22 proof is. Those things that Mr. Thomas said when I
23 made him go through these factors, I agree with his
24 interpretation. I think this is exactly what 1108 was
25 intended to deal with.

26 I think that in any case where somebody is
27 giving evidence of prior criminality offered to a jury,
28 always hugely prejudicial, but you can't come to the

1 conclusion that just because it's hugely prejudicial
2 that it's more prejudicial than probative. I think the
3 probative value greatly outweighs the prejudicial -- the
4 prejudice that's going to be raised.

5 You're going to be able to cross-examine those
6 alleged victims. You're going to be given an
7 opportunity of letting the jury see that these things
8 are not true. I wonder why Mr. Thomas hasn't elected
9 under 1108 to provide the alleged instances to the jury
10 in his case in chief. I think they're admissible at
11 that point in the trial. He hasn't asked for that.
12 That's his decision. That's what he has chosen to do as
13 a tactic. I don't understand tactics. I'm sitting up
14 here as a judge, but looking at the Story case with the
15 very factors that are illuminated in Falsetta and
16 restated in Story.

17 I find this is a crime that involves a
18 sexual -- a sexual offense. I think it's appropriate to
19 let in these two instances. I don't find them remote in
20 time. I don't think that they are unduly prejudicial.
21 I think they're highly probative, and I'm going to allow
22 that evidence in.

23 Anything else, either side? Other motions?

24 MR. THOMAS: One thing I wanted to put on the
25 record so the appellate courts will know about it in
26 case there is an appeal is at one point during the
27 discovery process, Mr. Sanders and I did discuss --
28 there's another murder/rape of a woman who was 60 at

1 the time. That occurred a few months prior to the
2 Rita Cobb case.

3 We discussed that, and the DNA evidence in that
4 case is different than the DNA evidence in this case. I
5 allowed Mr. Sanders, because it's still an open case and
6 unsolved homicide, I didn't want to give him all the
7 reports, but I allowed him to go to San Bernardino
8 Sheriff's Department homicide division and review all --

9 THE COURT: Mr. Thomas, thank you. I've got
10 a meeting in four minutes. I asked about motions. I
11 want to know about other motions. We can put things
12 on the record that we need to be put on the record at
13 8:30 on Monday.

14 MR. THOMAS: The only other motion, we can
15 deal with it on Monday, is there are members of the
16 victim's family that are on the witness list that
17 would like to be present. We can discuss that on
18 Monday.

19 THE COURT: You're going to have to talk to
20 Mr. Sanders about that.

21 MR. SANDERS: I'm going to make a motion to
22 have witnesses wait out in the hall.

23 THE COURT: To exclude people.

24 MR. SANDERS: To exclude.

25 THE COURT: It's not likely that I'm going to
26 deny that motion.

27 Do you have any authority to the contrary?

28 MR. THOMAS: I do have authority.

1 THE COURT: I'm not going to hear it now.
2 I'll see you on Monday morning at 8:30. Ladies and
3 gentlemen, have a nice weekend.

4 MR. SANDERS: Thank you, your Honor.

5 MR. THOMAS: Thank you, your Honor.

6 (Whereupon proceedings in the above-entitled
7 matter were concluded for the day.)
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SFP 02 2011

BY: Carrie Robinson
CARRIE ROBINSON, DEPUTY

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN BERNARDINO

DEPARTMENT NO. V-2 HONORABLE JOHN M. TOMBERLIN, JUDGE

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

vs.

JOHN HENRY YABLONSKY,

Defendant.

Case No. FVI900518

APPEAL FROM THE SUPERIOR COURT OF SAN BERNARDINO COUNTY
REPORTER'S TRANSCRIPT OF JURY TRIAL
JANUARY 18, 2011, JANUARY 19, 2011, JANUARY 20, 2011,
JANUARY 24, 2011, JANUARY 25, 2011, JANUARY 27, 2011,
JANUARY 31, 2011, FEBRUARY 2, 2011, and FEBRUARY 3, 2011

APPEARANCES:

MICHAEL A. RAMOS
District Attorney
BY: **John Thomas**
Deputy District Attorney

For the Defendant:

PHYLLIS MORRIS-GREEN
Public Defender
BY: **David Sanders**
Deputy Public Defender

CERTIFIED COPY

Reported by: Shawna Manning, CSR No. 12827
Official Reporter
Vol. 2 of 4 Michelle Swal, CSR No. 13580
Pages 267 through 509, incl. Pro Tempore Reporter

1 VICTORVILLE, CALIFORNIA; JANUARY 24, 2011;
2 DEPARTMENT NO. V-2 HONORABLE JOHN M. TOMBERLIN, JUDGE
3 A.M. SESSION
4 (Appearances as heretofore mentioned.)
5 (Shawna Manning, Official Reporter, CSR No. 12827.)

6 -oOo-

7 (Whereupon the following proceedings were held outside
8 the presence of the jury:)

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

11 THE COURT: Back on the record in the case of
12 People of the State of California versus John Henry
13 Yablonsky without the jury. Mr. Yablonsky's here with
14 Mr. Sanders. Mr. Thomas is here for the People.

15 What is it?

16 MR. THOMAS: Good morning, your Honor. A
17 couple things that we need to put on the record that I
18 was going to put on the record last week but the Court
19 needed to leave. There is another case that happened
20 about two months prior to this where a 63-year-old
21 woman was raped and murdered.

22 THE COURT: We did talk about this some. Is
23 this going to have to do with your opening statement
24 first thing this morning?

25 MR. THOMAS: I don't want to forget about it.
26 It will be quick.

27 THE COURT: I have a jury waiting.

28 MR. THOMAS: I know. Then we have to do

1 another motion regarding --

2 THE COURT: If you're not going to mention
3 this in the opening statement, let's talk about this
4 other murder later.

5 MR. THOMAS: Okay.

6 THE COURT: I don't see why we have to worry
7 about forgetting about it. What's the name of the
8 person?

9 MR. THOMAS: Helen Brooks.

10 THE COURT: What other motion?

11 MR. THOMAS: Then I know Mr. Sanders made a
12 motion last week to have the witnesses excluded from
13 the courtroom prior to their testimony. 1102.6 of the
14 Penal Code --

15 THE COURT: He made a motion to have them
16 excluded period --

17 MR. SANDERS: Right.

18 THE COURT: -- is what he actually moved.
19 Now, the evidence code section?

20 MR. THOMAS: Penal Code Section 1102.6.

21 THE COURT: 1102.6. Did you show that to
22 Mr. Sanders?

23 MR. THOMAS: I know that he's aware -- if you
24 want to look at this --

25 THE COURT: Go ahead.

26 MR. THOMAS: Under that section, it allows
27 two members of the victim's family to be present
28 during the court proceedings. The Court has

1 discretion as to whether or not to exclude them, but
2 as far as the statute goes, there has to be a hearing
3 and the victim's family members are allowed to speak
4 at that hearing. The Court has to go through a
5 weighing or balancing process.

6 In order to speed that up, the People's
7 position on it is we are requesting they be allowed in
8 after opening statements are done and they have gotten
9 up on the stand and testified, and that way there can be
10 no issues as far as the defendant's right to a fair
11 trial because they've already testified by the time
12 they're allowed back into the courtroom.

13 THE COURT: You don't have a problem with
14 that; do you?

15 MR. SANDERS: I don't.

16 THE COURT: That's fine. That's what -- the
17 way you stated it the first time was that he made a
18 motion to exclude them until they testify. That's
19 usually something that happens, and you don't call
20 them before -- excuse me, you don't have them sitting
21 here while you call other witnesses. If they're not
22 going to be here until after they testify, that solves
23 any problems.

24 MR. THOMAS: They're going to be the first
25 two witnesses that I call.

26 MR. SANDERS: They'll be able to stay after
27 they have testified.

28 THE COURT: After what?

1 MR. SANDERS: After they have testified.

2 THE COURT: Right. As far as I'm concerned,
3 there's no reason they shouldn't be here during the
4 opening statement.

5 What are they going to testify to? The fact
6 that she's dead?

7 MR. THOMAS: There's stuff.

8 THE COURT: Is it really going to be an
9 issue, in any event, Mr. Sanders?

10 MR. SANDERS: It's possible that there is,
11 your Honor.

12 MR. THOMAS: I don't want that to be an
13 issue.

14 THE COURT: Then we'll spend no more time on
15 it. Please bring the jury.

16 MR. THOMAS: Can I have five minutes to set
17 up?

18 THE COURT: You can, of course. I'm going to
19 give you that time, but I don't know why you weren't
20 here five minutes ago to set up because the jury was
21 told to be here at 9:00. You were here when I told
22 them to be here at 9:00. It seems that this is not
23 paying much attention to common courtesy that this
24 Court feels it owes the jury. I can't pay the jury
25 that common courtesy without your cooperation.

26 MR. THOMAS: I apologize.

27 (Whereupon there was a
28 pause in proceedings.)

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: Good morning, everyone. I hope
6 you all had a nice weekend. Welcome back to
7 Department 2 where we're going to continue now with
8 the trial. This is the phase of the trial that's
9 called the People's case in chief. We're going to
10 start with the opening statements of the attorneys.

11 Mr. Thomas, I know, will make one. Mr. Thomas
12 is here for the People along with Detective Alexander,
13 his investigating officer. Mr. Sanders may make an
14 opening statement, but as I explained before during jury
15 selection and also during instructions that I started
16 off with, because Mr. Yablonsky -- who's present along
17 with Mr. Sanders -- is presumed innocent, he doesn't
18 have to prove to you that he's not guilty. Mr. Sanders
19 may make an opening statement, but he may not. It will
20 be up to him to decide if he wants to make one. If he
21 does, it will be at this time or at the end of the
22 People's case in chief.

23 Mr. Thomas, you may proceed.

24 (Whereupon opening statements commenced, were reported,
25 but are not transcribed herein.)

26 (Whereupon the following proceedings were held in open
27 court in the presence of the jury:)

28 THE COURT: Call your first witness.

1 MR. THOMAS: The People call Daryl Kraemer.

2 THE CLERK: You do solemnly state that the
3 evidence you shall give in the matter pending before
4 this Court shall be the truth, the whole truth, and
5 nothing but the truth, so help you God?

6 THE WITNESS: I do.

7 THE CLERK: Thank you. Please be seated.

8 THE BAILIFF: Slide yourself forward. Speak
9 directly towards the microphone. Keep your voice up,
10 please. Please state your full name and spell it for
11 the record.

12 THE WITNESS: Daryl B. Kraemer D-a-r-y-l
13 B-r-e-n-t K-r-a-e-m-e-r.

14 THE COURT: Good morning, Mr. Kraemer.

15 THE WITNESS: Good morning.

16 THE COURT: Your witness, Mr. Thomas.

17 MR. THOMAS: Thank you, your Honor.

18

19 **DARYL KRAEMER**, having been duly sworn,

20 testified as follows:

21 **DIRECT EXAMINATION**

22 BY MR. THOMAS:

23 Q Before we get started, I wanted to go over a
24 conviction you suffered in 1992 for a felony.

25 Do you recall that?

26 A Yes, I do.

27 Q It was for possession of a controlled substance
28 or substances with intent to manufacture

1 methamphetamine; is that correct?

2 A That's correct.

3 Q Violation of Health and Safety 11338, and you
4 were convicted of a felony in that case?

5 A Yes, I was.

6 Q That was here in the San Bernardino courts?

7 A Yes.

8 Q Then you were also sentenced to three years
9 state prison?

10 A Yes.

11 Q That's your only conviction that you've
12 suffered?

13 A Yes.

14 Q In this particular case, I'm going to show you
15 a photograph.

16 May I approach the witness, your Honor?

17 THE COURT: You may.

18 BY MR. THOMAS:

19 Q I'm going to show you a photograph. It's been
20 marked Exhibit 35. It's up on the screen.

21 Do you recognize that person?

22 (Whereupon Exhibit 35 was marked
23 for identification.)

24 THE WITNESS: Yes, I do.

25 BY MR. THOMAS:

26 Q Who is that?

27 A This was my mother, Rita Cobb.

28 Q Do you recall your mother's birthday?

1 A February 23rd, I believe, 1930.

2 Q So at the time that your mom was murdered, she
3 was 55 years old?

4 A Yes.

5 Q Take us to the time period just before you
6 found out your mom was murdered. What was your
7 relationship like with your mom at that point?

8 A We had a good relationship. We were the
9 only -- it was her and I. We were originally from
10 Canada. We were the only ones that had each other here.
11 I have no brothers or sisters. We had our good times.
12 We had our bad times, but we always stayed in contact.
13 If we had an argument, sometimes we wouldn't see each
14 other for a little while. Then it would blow over, and
15 we'd get back together. I lived with her a period of
16 time.

17 Q And had you been over to her residence on
18 several occasions?

19 A Yes.

20 Q I'll show you an exhibit that's been marked
21 Exhibit 1.

22 Do you recognize that?

23 (Whereupon Exhibit 1 was marked
24 for identification.)

25 THE WITNESS: I recognize it as the house.

26 BY MR. THOMAS:

27 Q That's the house your mom, Rita, lived in?

28 A Yes.

1 Q And then if you notice, I'm going to point it
2 out with a laser pointer, there appears to be a garage
3 on the right-hand corner of the photograph.

4 Do you see that?

5 A Yes, I do.

6 Q Okay. Do you also see the car that -- what
7 appears to be a vehicle inside the garage?

8 A Yes.

9 Q Is that your mom's vehicle?

10 A Yes, I believe it was her Cadillac.

11 Q Was that the only vehicle that she owned at the
12 time back in 1985?

13 A As I recall, she maybe had a Jeep, an old
14 armory Jeep.

15 Q I think I have that in one of the photographs.
16 Let me pull that up. I'm going to show you what has
17 been marked Exhibit 8.

18 Looking at Exhibit 8, do you see what appears
19 to be a Jeep just to the right of center of the
20 photograph?

21 (Whereupon Exhibit 8 was marked
22 for identification.)

23 THE WITNESS: Yes.

24 BY MR. THOMAS:

25 Q Is that the Jeep that you're talking about?

26 A Yes.

27 Q I'm going to show you another photograph that's
28 been marked Exhibit 2. It might be better for me to

1 bring it up there.

2 May I approach the witness?

3 (Whereupon Exhibit 2 was marked
4 for identification.)

5 THE COURT: You may.

6 BY MR. THOMAS:

7 Q Looking at Exhibit 2, do you notice to the
8 right and behind the main house there appears to be
9 another structure? Do you see that?

10 A Yes.

11 Q And using the laser pointer to point to that
12 structure, is that a second house kind of?

13 A Yes, it was a guest house.

14 Q Back in 1985 when Rita was murdered, did you
15 know if anybody was staying in this guest house?

16 A At that time, no, I don't recall anybody
17 staying there.

18 Q Show you another photograph that's been marked
19 Exhibit 9.

20 Do you recognize this photograph?

21 (Whereupon Exhibit 9 was marked
22 for identification.)

23 THE WITNESS: I recognize it as the guest
24 house.

25 BY MR. THOMAS:

26 Q Is that the front? Rear? From what you can
27 recall.

28 A The part -- that would be the side view. This

1 would be the back, and that would be the front.

2 Q There's a laser pointer up there. Maybe you
3 can use that laser pointer to explain to the jury where
4 the front would be on there.

5 A The front would be on the other side of this.
6 I believe this was a water heater. The front would be
7 around the side there. This was the sliding side door
8 that would face the, I believe it would be the east.

9 Q Just for the record, you used the laser pointer
10 to direct the jury's attention to the right-hand side of
11 the photograph, and on the other side of that right-hand
12 side is where you're indicating that the front of the
13 guest house would have been?

14 A Correct, around that side.

15 Q Okay. Prior to you finding -- prior to you
16 going over to your mom's house and finding your mom's
17 body, when was the last time that you saw your mother?

18 A I believe it was a month, month and a half.

19 Q Had you spoken to your mother prior to that?

20 A Prior to the month and a half?

21 Q During that month and a half that --

22 A I don't recall speaking to her between that
23 month and a half up until the time she was murdered.

24 Q And then as far as any phone calls, did you
25 receive any phone calls from your mother prior to her
26 murder?

27 A I believe over the years, what stays in my
28 mind, there was -- I had a message on an answering

1 machine stating she needed to talk to me. She was
2 worried about something or worried about somebody. I
3 don't recall exactly what it was, but I believe -- it
4 might have been that I talked to her, but what stays in
5 my mind all this time is that there was something on an
6 answering machine.

7 Q And you recall being interviewed by
8 Detective Tuttle (phonetic) back in -- on September 23rd
9 of 1985?

10 A Yes.

11 Q Okay. And this interview took place after you
12 had located your -- or found your mom's body in the
13 residence?

14 A Yes.

15 Q And during that interview -- have you had a
16 chance to look over that interview?

17 A Yes, I have.

18 Q And during that interview, did you ever mention
19 to -- or is it in there that you ever mentioned getting
20 that message?

21 A No.

22 Q So this is something that you're remembering
23 years later?

24 A Yes. It was years later. That's like a
25 concern of why I wanted to talk to her that weekend.

26 Q Okay. Did you attempt to talk to her that
27 weekend prior to September 23rd of 1985?

28 A From what I recall, I was attempting to call

1 her Friday, Saturday -- at least Saturday and Sunday.
2 When there was no answer at her home, I called her work
3 on Monday or called her work on Monday, and she hadn't
4 appeared -- come to work that day.

5 Q That's the reason that you eventually went over
6 to your mom's residence on September 23rd of 1985?

7 A Yes.

8 Q Do you recall approximately what time you went
9 over to the residence?

10 A I believe it was in the morning. It was
11 approximately 11:30 in the morning I arrived there.

12 Q Okay. When you arrived. Do you recall what
13 vehicle you were driving?

14 A I believe we had a Monte Carlo.

15 Q When you say we had a Monte Carlo, who's the we
16 that you're speaking about?

17 A At the time it was my -- my present wife,
18 Marta Kraemer.

19 Q Was she your wife at that time?

20 A No.

21 Q You were boyfriend/girlfriend?

22 A Boyfriend/girlfriend living together.

23 Q So when you showed up at the residence, where
24 exactly did you park at the residence?

25 A I recall parking behind her car that was parked
26 in the garage -- parked in her garage.

27 Q I'm going to show you what has been marked
28 Exhibit 3.

1 Is that about the location where you parked
2 your Monte Carlo?

3 (Whereupon Exhibit 3 was marked
4 for identification.)

5 THE WITNESS: Yes.

6 BY MR. THOMAS:

7 Q It would have been directly -- would it have
8 been directly behind your mom's Cadillac?

9 A I recall being in the driveway, in this area.

10 Q Okay. If you can orientate us, how far away is
11 the house from the main road?

12 A Well, the property was five acres, and the
13 house sat directly at the back of the five acres.

14 Q And then as far as the address of the house, do
15 you recall the address?

16 A Something to the effect of 25435 Highway 18, I
17 believe it was.

18 Q That's in Lucerne?

19 A In Lucerne Valley, yes.

20 Q That's within the county of San Bernardino?

21 A Yes.

22 Q How long had your mom been living there at that
23 residence?

24 A From what I can recall, approximately 1978.

25 Q Was she living there alone as far as you knew?

26 A She was living there with her husband at the
27 time, Jim Cobb.

28 Q Now, fast forward to 1985, was she living there

1 alone or was Jim still living there?

2 A She was living there alone. From what I
3 recall, he died in approximately 1981, 1980.

4 Q So you go to the house. Did you think it was
5 unusual at all that the garage door was open and the car
6 was in the garage?

7 A Well, I thought it was -- it seemed normal that
8 the garage door was open. Sometimes she would close it.
9 From what I can recall, it was open if she was going to
10 be home.

11 Q Okay. So the fact that the garage door was
12 open and her car was in there, that didn't throw up any
13 red flags or anything like that?

14 A No.

15 Q So as far as the garage goes, how did you enter
16 the house?

17 A We entered the house through the door that was
18 right here in the garage that led into the kitchen area.

19 Q I'm going to show you a photograph that's been
20 marked Exhibit 4.

21 Do you recognize the -- what's depicted in
22 Exhibit 4?

23 (Whereupon Exhibit 4 was marked
24 for identification.)

25 THE WITNESS: Yes.

26 BY MR. THOMAS:

27 Q What is that?

28 A That would be the door that entered into the

1 side of the house through the kitchen.

2 Q That's your mom's car that's in the bottom
3 right-hand corner of the photograph?

4 A Yes.

5 Q You were using the laser pointer to point to a
6 door in the center of the photograph?

7 A Yes.

8 Q So when you entered the door, was it closed?
9 Open?

10 A It was closed.

11 Q Do you recall if it was locked? Unlocked?

12 A I don't recall if it was locked or unlocked.
13 From what I recall, it was unlocked.

14 Q Do you recall telling the detectives back in
15 1985 that you don't know if the door was locked or
16 unlocked, but you used your key to enter the residence?

17 A Yes, after reviewing that, yes.

18 Q And your memory of events would have been more
19 fresh in your mind back in 1985, specifically
20 September 23rd of 1985?

21 MR. SANDERS: Objection, your Honor.
22 Leading.

23 THE COURT: It's foundational. It's
24 overruled.

25 BY MR. THOMAS:

26 Q Specifically, September 23rd of 1985, than they
27 are today; right?

28 A Yes, my memory would be better then, yes.

1 Q Okay. So you enter the house. What, if
2 anything, did you observe or hear?

3 A When we went into the house I noticed all the
4 drapes were closed.

5 Q Let's stop right there. You noticed all the
6 drapes were closed. Was that unusual?

7 A Yes, we found that unusual.

8 Q Okay. And why is that?

9 A Because my mother always left the drapes open,
10 the curtains open. She enjoyed the view. Just kind
11 of -- the way she lived. She didn't make a habit of
12 closing curtains before she went to bed.

13 Q So as far as the drapes go, was there anything
14 else that you noticed when you walked into the house?

15 A The first thing was the odor.

16 Q Okay. And this odor that you're speaking of,
17 what did it smell like?

18 A Well, it smelled like the septic tank backing
19 up or something dead.

20 Q Okay. And so that was unusual?

21 A Yes.

22 Q Was there anything else that you noticed when
23 you walked in?

24 A It was very hot, hot room -- the house was very
25 hot.

26 Q This is sometime middle/late September. Do you
27 recall if it was hot outside that day?

28 A The temperature at that time was -- it was like

1 summer. It was very warm.

2 Q Okay. So are we talking like 80 degrees or
3 higher?

4 A Yeah, at least 80 degrees, yes.

5 Q Okay. And then as far as inside the house, did
6 your mom have some air conditioning or some way to cool
7 down the house?

8 A Yes.

9 Q And what was the method that she used?

10 A Swamp cooler.

11 Q Okay. Did you at any point check if the swamp
12 cooler was on or whether or not it was malfunctioning?

13 A The swamp cooler was not on.

14 Q Did you check anything regarding the heat
15 because you said it was really hot? Was it hotter than
16 outside or --

17 A Yes, it was hotter than outside. The heater
18 was on.

19 Q So you actually checked the heater and saw that
20 it was on?

21 A Yes, we had to turn the heater down.

22 Q And when you say we had to, you're referring to
23 Marta?

24 A Correct.

25 Q Okay. When you went inside the house, were you
26 together at that point?

27 A Yes, one -- I believe I was probably the first
28 one to go through, and she was right behind me.

1 Q Okay. Nobody else was with you at that point?

2 A No.

3 Q And then I notice in your interview back in
4 1985 with Detective Tuttle that there was no mention of
5 the heat being on.

6 Did you see that in the report?

7 A Yes.

8 Q Was that something that you told
9 Detective Tuttle back in 1985?

10 A No, it wasn't.

11 Q Okay. That's something you still remember as
12 being in the house?

13 A I remember that this whole time.

14 Q As far as the details that you gave
15 Detective Tuttle, did you give him every single detail
16 when you were interviewed?

17 A Every detail I could remember at that time. I
18 was pretty much in a state of shock.

19 Q You said you were in a state of shock. That's
20 because you discovered your mom's body that same day?
21 In fact, hours before you were interviewed, you
22 discovered your mom's body?

23 A Yes.

24 Q So you walk in. You notice the heat's on. Is
25 that something that you do prior to walking -- or you
26 turn off the heat prior to walking around the house
27 looking for your mom?

28 A We didn't even -- from what I recall, we didn't

1 do that. That was done after we saw her body.

2 Q Okay. When you entered the house, did you call
3 out for your mom?

4 A I don't recall calling out. I recall pretty
5 much walking straight into the -- into the bedroom.

6 Q When you walked in towards the bedroom -- let
7 me see if I can pull up a -- I'm going to show you
8 what's been marked Exhibit 39.

9 May I approach the witness?

10 THE COURT: You may.

11 BY MR. THOMAS:

12 Q Showing you what has been marked Exhibit 39, do
13 you see the door that you entered in Exhibit 39?

14 (Whereupon Exhibit 39 was marked
15 for identification.)

16 THE WITNESS: Yes, it was that door.

17 BY MR. THOMAS:

18 Q You're pointing to a door at the bottom
19 right-hand corner of the exhibit?

20 A Right, from the garage.

21 Q Okay. It's a door leading from the -- what's
22 marked garage to the main residence?

23 A Correct.

24 Q Okay. And then as far as the path that you
25 took to get to your mother's bedroom, what path did you
26 take? Maybe you can use the laser pointer to --

27 A Walked through the kitchen, made a right-hand
28 turn and straight into her bedroom this way.

1 Q You're indicating with the laser pointer you
2 walked, I believe it would be, to the east from the
3 garage. If you look at the bottom of the exhibit, there
4 appears to be north, south, west, east.

5 Do you see that?

6 A Right.

7 Q So you're walking east from the garage area.
8 Then at some point you walk south down that hallway in
9 the center of the exhibit, and then your mother's
10 bedroom is in the right-hand -- upper right-hand corner
11 of the exhibit; is that correct?

12 A Correct.

13 Q So as far as the path that you took, where's
14 the heater and the swamp cooler at?

15 A The swamp cooler would have been -- I believe
16 this area in the living room. The swamp cooler was -- I
17 believe that was probably the swamp cooler.

18 Q You're pointing to a box just outside the
19 portion of the residence in the upper left-hand corner
20 of Exhibit 39; is that correct?

21 A Correct. I'm assuming that's the swamp cooler.

22 Q Then the room that's on the interior of the
23 residence that you described as being a living room
24 area?

25 A Living room area there.

26 Q Where's the heater?

27 A From what I recall, it was -- I believe it
28 would have been this area.

1 Q So it would have been in the hallway area?

2 A From what I recall.

3 Q Okay. And it would have been just north of
4 your mother's bedroom?

5 A Yes.

6 Q So once you get to the bedroom -- prior to
7 getting there, did you notice if anything was disturbed
8 in any way like somebody had been ransacking the
9 residence at some point or did everything appear to be
10 normal to you?

11 A Everything appeared to be normal from what I
12 can recall.

13 Q So you get to your mother's bedroom. What do
14 you see when you get to your mother's bedroom?

15 A I see my mother lying on the bed. From what I
16 recall, leg propped up. I went pretty much into shock
17 at that period of time. It's been really hard for me to
18 visualize what I saw then.

19 Q Did you notice whether or not your mother had
20 any clothing on?

21 A No, I don't remember her having any clothing
22 on.

23 Q Then other than that, was there anything else
24 that you could remember about your mother's body?

25 A Not other than she was laying there, and I saw
26 her dead, appeared to be dead for a period of time. I
27 just pretty much basically went into shock, just broke
28 down.

1 Q When you say you broke down, are you talking
2 about crying?

3 A Crying.

4 Q Did you go into the bedroom at any point to
5 actually see if your mother had a pulse or anything like
6 that?

7 A No, I -- no.

8 Q So you saw her about from the doorway?

9 A I believe I went into the room.

10 Q Did it appear that the room had been ransacked
11 in any way that you can recall?

12 A At that time, no, it didn't appear to be
13 ransacked that I can recall at that point.

14 Q Let me ask you this: Did you touch anything or
15 touch your mom's body?

16 A No, I don't believe I touched her body, no.

17 Q At that point when you saw your mom's body, was
18 Marta there with you?

19 A She was behind me, I believe.

20 Q And then what did you do at that point?

21 A I broke down, and I screamed. I screamed, and
22 I believe, oh, no, she's done it. She's killed herself.

23 Q And as far as your belief that she killed
24 herself, that wasn't based on what you saw at the scene;
25 right?

26 A No.

27 Q That was a belief that you had based on your
28 experiences with your mom?

1 A Yes, because she'd been so lonely and
2 despondent.

3 Q As far as you said you broke down, you
4 screamed, what did you do at that point after?

5 A From what I can recall, I ran out of the
6 residence. From what I can recall, I looked up in the
7 sky and just yelled out, why. That's the -- at that
8 point I was in a state of panic. A lot of things have
9 been blacked out in my mind about that.

10 Q Is it fair to say that a lot of emotions were
11 going through you at that point?

12 A Extremely.

13 Q You were extremely emotional?

14 A Oh, extremely.

15 Q What was Marta doing at that point if you can
16 recall?

17 A Then it was the point that I believe that she
18 had gone in and seen, and at some point -- I don't
19 recall how everything went. She attempted to open up
20 the window because the smell was so overwhelming.

21 Q Did you notice if the windows were opened?
22 Closed?

23 A From what I recall, the windows were closed.

24 Q So you run outside. Does Marta run outside
25 with you?

26 A From what I can recall, I told her to call --
27 call the sheriff's department. Call somebody.

28 Q And at that point you had no idea that your mom

1 had been murdered?

2 A At that point, no.

3 Q And so you call -- or you tell Marta, call the
4 sheriff's department. Call somebody.

5 What did you do at that point?

6 A Well, almost to that point, she came out and --
7 from what I can recall, she came out and said something
8 to the effect that, it's more than that. It appears
9 that somebody's been here.

10 Myself, what I had done is my first thought was
11 having her call somebody, and the first person I could
12 think of is I wanted to go to John Sullivan's house.

13 Q Who is John Sullivan?

14 A John Sullivan is a very close personal family
15 friend, and he -- my mom would associate with him and
16 his wife quite often. He would come down, had for many
17 years, at least the past five years, would come down and
18 help fix the house if she needs something done or -- and
19 he was just the first person I could think of. I jumped
20 in my car, and I was just despondent, and I don't even
21 remember driving up there, but I got in my car and
22 backed out of the driveway, drove around the driveway
23 and drove up to his house.

24 Q Where's his house in relation to your mom's
25 house?

26 A It was a couple miles up the road at a place
27 called Mini Springs Ranch.

28 Q As far as that drive, is it a dirt road? Paved

1 road?

2 A It was a paved road back out on Highway 18
3 towards Big Bear.

4 Q Is it just right off the highway, or do you
5 have to take other side roads?

6 A No. It's pretty much right off the highway.

7 Q So it's kind of like your mom's house?

8 A Right, correct.

9 Q That's about three miles up the road you said?

10 A Approximately.

11 Q So did Marta go with you at that point?

12 A No.

13 Q So you take off. Does she even know where
14 you're going? Did you tell her, I'm going to
15 John Sullivan's?

16 A I told her, I got to find John. I got to go
17 get John. I got to go get John.

18 Q And you said the reason you went to go get John
19 is because John's a close family friend of your mom's?

20 A Yes.

21 Q Did it occur to you at any point during the --
22 this whole incident that there could still be somebody
23 inside the house or was that something that didn't even
24 cross your mind?

25 A Didn't even cross my mind other than just went
26 crazy in shock.

27 Q And then you go over to John Sullivan's house.
28 What did you do over at John Sullivan's once you get

1 there?

2 A He's not home. From what I recall, I was
3 yelling in his yard, still looking up at the sky going,
4 why, and I jump back in the car and went back to the
5 house, which seemed like minutes to me.

6 Q I assume during this time period, you were
7 crying at this point?

8 A Oh, yes.

9 Q You go back to the house. This time where do
10 you park the car when you get back?

11 A From what I recall, I parked in the same
12 location, behind her Cadillac.

13 Q And then once you parked the car, did you go
14 back in the residence? What did you do?

15 A Yes, went back inside the residence.

16 Q Where was Marta at this point?

17 A I don't recall where she was at. I recall
18 asking her if she called, you know, the authorities, and
19 she had called the fire department -- she said the fire
20 department was on their way. I don't recall exact
21 statements.

22 Q Then when you go back inside the house, did you
23 go back to the bedroom area where you discovered your
24 mom's body?

25 A I don't recall. I might have gone back in and
26 looked again. It's hard for me to recall exactly what I
27 did in what order.

28 Q Then let me ask the question I did before. At

1 this point did you ever touch your mom's body the second
2 time when you were at the house?

3 A I don't believe I ever touched her body.

4 Q Did you notice anything about her body the
5 second time that you went into the room that you didn't
6 notice the first time?

7 A Not that I can recall.

8 Q And based on your personalty, would that be
9 something that you would have done or something that you
10 wouldn't want to even do or think about?

11 A About touching her?

12 Q Touching her or looking at her body?

13 A I would have wanted to reach out and hold her,
14 but the visual of her decomposing, dead, she appeared to
15 be days -- it just -- it just -- I just couldn't do it.

16 Q Then as far as the windows, do you recall when
17 you went back to the residence if the windows were open
18 at this point?

19 A I believe maybe Marta had tried to open up a
20 window. I remember trying to open up windows. We
21 opened up a curtain, but the smell was so bad that
22 that's what -- we naturally did that.

23 Q And then you turned the heat off before you
24 left for John Sullivan's house?

25 A I don't recall if it was then or after I got
26 back. I don't recall.

27 Q Okay. But at some point you do recall?

28 A At some point I do recall, yes, we did that.

1 Q Do you recall a radio being on at any point?

2 A I vaguely recall talking with my wife that --
3 that, yeah, the radio was on very loud in the living
4 room and she had to turn it off in order to make phone
5 calls.

6 Q But that's something that you specifically
7 don't have any recollection of, yeah, I remember for
8 sure that the radio was on?

9 A Myself, I don't recall.

10 Q Is that something that Marta recalls?

11 A Yes.

12 Q As far as the swamp cooler being off and the
13 heater being on, that's something that you specifically
14 recall?

15 A I don't recall which manner we did. I believe
16 we started doing that after -- after we -- were making
17 some of the phone calls before anybody arrived.

18 Q Had you ever been over to your mom's place
19 during the summer months where she had the heater on at
20 any point?

21 A In the summertime, at that time, no.

22 Q That's because it's hot outside?

23 A It was hot out.

24 Q When you entered your mother's bedroom the
25 second time that you were at that house, after you went
26 over to John Sullivan's, did you notice anything about
27 the room or the house that you thought, this is strange
28 or unusual?

1 A No, didn't -- didn't -- didn't appear that
2 there was a fight or anything disturbed from what I can
3 recall.

4 Q You didn't see anything that caused you to
5 believe that the house had been ransacked at some point?

6 A No.

7 Q Were there any items of value that you saw just
8 laying out in the open?

9 A I believe we saw -- my wife recalls more than I
10 do. Her purse was there. Her car keys were there. I
11 believe she had a ring that was there.

12 Q Show you a photograph that's been marked
13 Exhibit 10.

14 May I approach the witness?

15 THE COURT: You may.

16 BY MR. THOMAS:

17 Q Show you Exhibit 10. It's also up on the
18 screen.

19 Do you recognize that?

20 (Whereupon Exhibit 10 was marked
21 for identification.)

22 THE WITNESS: Yeah, I recognize it as a ring.

23 BY MR. THOMAS:

24 Q Do you recognize the ring itself?

25 A Well, I recognize it as the ring. I believe my
26 wife wears it now.

27 Q As far as that particular ring, it's on top of
28 what appears to be a table of some sort.

1 Do you see that?

2 A Yes.

3 Q Would that be one of the night stands or night
4 tables next to the bed?

5 A Yes, I believe it was.

6 Q At any point either the first time or the
7 second time when you were going through the house, did
8 you notice if any of the windows, doors, or any opening
9 from the outside were forced open or pried open?

10 A No.

11 Q So you didn't notice any of that?

12 A No. There was nothing -- everything was
13 unlocked.

14 Q Was it unusual for your mom to keep everything
15 unlocked?

16 A Yes, she made a habit of that, not locking the
17 place up.

18 Q Were there any times where she would lock the
19 place up?

20 A When she would leave, go to work, go to town.

21 Q But if she was home, it was not unusual for her
22 to leave everything unlocked?

23 A No, that was not unusual.

24 Q Did your mom have any animals or pets?

25 A Yes, she had a dog.

26 Q Let me ask you about the dog. Was the dog
27 present when you arrived there the first time?

28 A From what I recall, he was there running around

1 outside.

2 Q When you say outside, where are we talking
3 about? Here. I'll put the diagram back up, Exhibit 39.
4 Okay.

5 Looking at that exhibit, Exhibit 39, where was
6 the dog in relation to the residence?

7 A Up in the front porch area where he usually
8 was -- if he was around, he'd be on the front porch by
9 the front door.

10 Q So when you drove up, you saw him on the front
11 porch area?

12 A Yeah, then he would get up, come out barking.

13 Q Okay. And were you familiar with your mother's
14 practices as far as if the dog was allowed inside the
15 house or where the dog was kept during the night hours
16 or anything like that?

17 A She, from what I recall, had the habit of
18 leaving the dog in the house when she was home at night.

19 Q Then when would the dog be outside?

20 A When she went to work or went to town or went
21 somewhere.

22 Q So when you go back inside the house, you go to
23 your mother's bedroom. You look in. What do you do
24 after that?

25 A From what I can recall, I picked up a phone. I
26 asked her if she called.

27 Q When you say you asked her, are you talking
28 about Marta?

1 A Right. If she called the authorities, anybody.
2 She said, yes, she called the fire -- the fire
3 department, or the fire department was on their way.
4 She talked to the -- maybe the sheriff's department. I
5 don't recall exactly how it went down, but I remember
6 then I called -- called them myself and told them what
7 was happening.

8 From what I recall, is that the dispatcher told
9 me to -- asked me if I touched anything. I said, yeah,
10 we opened windows. They said don't touch anything else
11 and get out of the house. That's what we did.

12 Q All right. And you've already explained to us
13 your demeanor as far as you being extremely emotional at
14 that point.

15 Could you describe Marta's demeanor for us?

16 A I think she was holding it together better than
17 I was.

18 Q Was she crying?

19 A Yeah, we were both crying.

20 Q But as far as the emotional aspect, you would
21 characterize yourself as being more emotional than Marta
22 was?

23 A Oh, yes, yes.

24 Q And then -- so you get off the phone. Was it
25 the sheriff's department or you don't remember?

26 A I don't recall.

27 Q And they tell you you have to get out of the
28 house. At that point did you follow what they told you

1 and leave the residence?

2 A Yes. I yelled to Marta to get out of the
3 residence. They told us not to touch anything, to get
4 out. That's what I recall.

5 Q Do you recall how you exited the residence?

6 A I don't recall if we went out the front door or
7 it could have been the garage. I don't recall.

8 Q Just for the record, you pointed to the door
9 that's in the bottom left-hand corner of Exhibit 39.

10 That's the front door that you were pointing
11 to?

12 A Right. I don't recall which door.

13 Q That leads into the living room area?

14 A Yes, this was the living room area.

15 Q Okay. So approximately, if you had to
16 estimate, how long -- or how much time did you spend in
17 the house the first time that you were in there?

18 A Before I --

19 Q Before you went over to John Sullivan's?

20 A -- John Sullivan's. I don't recall. It was
21 seemed like minutes. I just don't recall it.

22 Q Would you estimate that it would be about the
23 same amount of time you spent the second time that you
24 went inside the residence?

25 A I would estimate probably the same. Probably
26 the same.

27 Q Then as far as you leaving the residence,
28 what's the next thing that happened while you're outside

1 the residence?

2 A I believe we moved the car, after reviewing the
3 statement, moved the car down to the highway so they
4 could find out where the house was. We had a hard time
5 giving out an address at that time.

6 Q Okay. This is kind of a rural area. How would
7 you describe it?

8 A Rural area.

9 Q Okay. As far as the car, you're talking about
10 your Monte Carlo?

11 A Correct. I don't remember exactly doing that,
12 but reviewing a little bit of the statement, I guess
13 that's what we did.

14 Q And was it you that did it or was it Marta or
15 you don't remember?

16 A I really don't recall.

17 Q At some point the car's moved. Do people start
18 showing up at some point?

19 A At that point I believe the paramedics showed
20 up.

21 Q And then how long were you outside before the
22 paramedics showed up?

23 A I don't recall. Once that -- once they told us
24 to get out, don't touch anything else, get out of the
25 house, it didn't seem like it was very long after that.

26 Q Matter of minutes?

27 A Yes, from what I can recall.

28 Q When the paramedics show up, where's the dog at

1 this point?

2 A I don't recall.

3 Q As far as your mom's dog goes, if you know, was
4 it aggressive towards strangers?

5 A It would go out if somebody was pulling up or
6 trying to walk up. It would bark, which could be
7 intimidating.

8 Q But it would never attack somebody?

9 A No, never attacked anybody.

10 Q Okay. And as far as the clothing, your mom's
11 clothing was concerned, do you recall what type of
12 hangers she used to hang clothing?

13 A Metal hangers.

14 Q When you say metal hangers, you're talking
15 about wire hangers?

16 A Yeah, the wire hangers.

17 Q She didn't have those plastic hangers or
18 anything?

19 A Not that I recall. I almost recall nothing but
20 wire hangers.

21 Q Then approximately, you said, that it's -- you
22 already told us it's a rural area. Approximately how
23 far away was the closest neighbor to your mom's?

24 A Would have been the one right across
25 the highway.

26 Q So directly across the highway there's another
27 residence?

28 A Yes.

1 Q Do you recall who lived there?

2 A It was Don Stow (phonetic).

3 Q As far as that residence, was it also backed
4 away from highway 18?

5 A Not like my mother's was.

6 Q So your mom's was farther from the highway than
7 Don Stow's?

8 A Yes, it was the back of five acres, and his was
9 pretty much right on the highway.

10 Q So the paramedics showed up. Did you see where
11 they went or what they did?

12 A They went into the residence. They had to go
13 in and check to see if she could possibly be alive.

14 Q Did you go in with them at that point?

15 A No, I didn't.

16 Q Did you see Marta go in with them?

17 A I believe Marta started following them in, and
18 I believe I might have said to get out of the house.
19 Told us not to touch anything, not to go back in.

20 Q And then as far as your mom, you said that she
21 went to work. Do you know where she worked?

22 A Yes, she worked at Spring Valley Country Club.

23 Q That's Spring Valley Lake --

24 A Spring Valley Lake.

25 Q -- over here in Victorville? As far as your
26 mom's eye sight was concerned, did she have to wear
27 glasses or any type of prescription glasses or contacts?

28 A She wore glasses.

1 Q Okay. Is that something she had pretty much
2 every time that you would see her?

3 A Yes, pretty much all the time.

4 Q So if you went over to her house, she would
5 have her glasses on when she met with you?

6 A Yes, from what I can recall.

7 Q Then as far as her normal work hours at the
8 Spring Valley Lake Country Club or Golf Club, did she
9 have a normal work schedule that you knew of?

10 A I believe it was Monday through Friday 8:00 to
11 5:00, 8:00 to 4:00.

12 Q I'm going to ask; do you know that gentleman
13 seated next to the defense attorney, Mr. Sanders, in
14 this case?

15 A I know him now.

16 Q Back in 1985, did you know John Yablonsky?

17 A Not that I can recall.

18 Q Do you know of a person with the last name of
19 Yablonsky?

20 A Yes.

21 Q Who was that?

22 A That was his father.

23 Q That would be George Yablonsky?

24 A Yes.

25 Q And how did you know George?

26 A I've known George since when I first went to
27 Lucerne Valley, 1980 or 1981. Just knew him as a casual
28 relationship through living there.

1 Q So is it more of an acquaintance-type
2 relationship?

3 A It was an acquaintance. We drank together in
4 the bar. I believe we went to the Colorado River once.

5 MR. THOMAS: If I can have just a moment,
6 your Honor?

7 THE COURT: We'll take our morning recess,
8 ladies and gentlemen, 15 minutes. You're admonished
9 that it is your duty not to converse among yourselves
10 or with anyone else about any matter connected with
11 this case nor form or express an opinion on it until
12 it's submitted to you. 15 minutes.

13 (Whereupon a recess was taken.)

14 THE BAILIFF: Remain seated. Come to order.
15 Court is now in session.

16 THE COURT: Counsel approach.

17 (Whereupon the following proceedings were held at the
18 bench out of the hearing of the jury:)

19 THE COURT: Okay. Mr. Sanders.

20 MR. SANDERS: Yes, your Honor.

21 THE COURT: If you want to put something on
22 the record, tell me next time. I told Mr. Thomas in
23 this polite way that I need to have the cooperation of
24 not being rude to this jury. I'm not going to let you
25 or Mr. Thomas cause me to be rude to this jury. If
26 there's something you need to put on the record when
27 we're taking a break, say can we wait before we leave
28 in advance. Give me a heads up so I can tell the jury

1 something. I'm not going to leave them waiting.

2 MR. SANDERS: I'm going to object to the
3 opening statement and ask for a mistrial to be
4 declared on the grounds that Mr. Thomas referred to my
5 client's statement, which was not a statement against
6 interest, but may become a statement against interest
7 and has put me in a position that I have to put my
8 client on the stand.

9 THE COURT: Your client's statement is always
10 a statement against his interest.

11 MR. SANDERS: But it wasn't. It was like we
12 were talking about the other day when I wanted to put
13 in a guy's statement, and he said you want to put his
14 statement in.

15 THE COURT: Your client's a party to this
16 action. Anything he says is admissible against him.

17 MR. SANDERS: Yes, but the way that the DA
18 phrased it, I now have to put him on the stand because
19 of the manner in which he told the jury things.

20 THE COURT: Either he told the jury what your
21 client said or he didn't. If he told the jury your
22 client said something your client didn't say, that's
23 not grounds for a mistrial. That's grounds for you to
24 show he hasn't proven his case. If he told the jury
25 something your client said that your client did say,
26 then it's admissible. It's free game unless there's
27 an issue about admissibility, and I assume that you
28 wouldn't make a motion regarding violation of Miranda

1 at this point in the proceeding without having
2 mentioned it during our opportunity to have motions in
3 limine.

4 Am I wrong about that, the Miranda issue?

5 MR. SANDERS: No.

6 THE COURT: Mr. Sanders, whatever your client
7 said is totally fair game to reference by Mr. Thomas.
8 If he misquotes your client, then that's fodder for
9 you. If he quotes your client, that's what your
10 client has to deal with. If it happens that that
11 requires him to get on the witness stand, that's
12 something that happened long before you had an
13 opportunity to be involved. So your motion for a
14 mistrial is going to be denied.

15 MR. SANDERS: Thank you.

16 (Whereupon the following proceedings were held in open
17 court in the presence of the jury:)

18 THE COURT: Ladies and gentlemen, I'm sure
19 that you recall that I wear glasses and sometimes I
20 leave them in my chambers. I'm sure you recall that
21 we had on occasion during jury selection did things at
22 bench. When we can do something in a brief time, I'd
23 rather do that rather than excuse you and keep you
24 waiting in the hall.

25 Back on the record in the case of People of the
26 State of California versus John Henry Yablonsky, who is
27 here with David Sanders, his attorney. John Thomas is
28 here along with Detective Robert Alexander, and on the

1 witness stand is your first witness, Daryl Kraemer,
2 who's still under oath and still in direct examination.

3 You may continue, Mr. Thomas.

4 MR. THOMAS: Thank you, your Honor.

5 BY MR. THOMAS:

6 Q There was just a couple of questions I forgot
7 to ask you before the break.

8 Did you bring any items over? Did you or Marta
9 bring any items over to your mother's house?

10 A Not that I recall.

11 Q Do you recall some beer cans that were brought
12 over?

13 A I don't recall that.

14 Q I'm going to show you a photograph that's been
15 marked Exhibit 24.

16 Do you recall those beer cans that are depicted
17 in Exhibit 24?

18 (Whereupon Exhibit 24 was marked
19 for identification.)

20 THE WITNESS: No, I don't.

21 BY MR. THOMAS:

22 Q Do you ever recall talking with Detective McCoy
23 or any other detective and telling them that the 12-pack
24 of Coors beer belonged to you or was brought over by
25 you?

26 A I don't recall that.

27 Q Was Coors something that you would drink back
28 then in 1985?

1 A Yes.

2 Q So it may have been one of those situations
3 where you may have brought it over, but you don't
4 remember now?

5 A Yes, I don't recall that.

6 Q Do you recall if Marta brought anything over to
7 the residence?

8 A I don't recall.

9 Q Back in 1985, did you or Marta smoke?

10 A Yes.

11 Q What type of cigarettes did you smoke?

12 A Marlboro regulars.

13 Q What type of cigarettes did Marta smoke?

14 A I believe it was Virginia Slims.

15 Q Do you recall what type of cigarettes your mom
16 smoked if she smoked?

17 A Yeah, she smoked -- I don't recall. Something
18 like Virginia Slims, but I don't recall what it was.

19 Q Do you know if your mom smoked Benson Hedges?

20 A I don't recall what she was smoking at the
21 time.

22 Q Prior to going over to your mother's residence,
23 did you stop anywhere along the way?

24 A I believe it's Marta's recollection that we
25 stopped and she grabbed something to drink.

26 Q But I'm talking about your recollection. You
27 don't have --

28 A I don't recall stopping.

1 MR. THOMAS: Nothing further.

2 THE COURT: You may inquire, Mr. Sanders.

3 MR. SANDERS: Thank you, your Honor.

4 **CROSS-EXAMINATION**

5 BY MR. SANDERS:

6 Q Good morning, Mr. Kraemer.

7 A Good morning.

8 Q This date we're talking about, I believe you
9 said was the 23rd of September?

10 A Correct.

11 Q And that was in 1985?

12 A Yes.

13 Q All right. You had been trying to get ahold of
14 your mother for a couple of days; is that correct?

15 A Yes.

16 THE COURT: Mr. Sanders, will you pull that
17 microphone in front of you, please?

18 MR. SANDERS: Yes, sir. Is that better?

19 THE COURT: Sure. Can't be any worse.

20 BY MR. SANDERS:

21 Q I believe you said that you had not seen your
22 mother for four, five or six weeks, something like that?

23 A Approximately, yes.

24 Q All right.

25 THE BAILIFF: Try it now.

26 MR. SANDERS: Okay.

27 BY MR. SANDERS:

28 Q And my understanding was that you decided --

1 you made some phone calls to her home?

2 A Yes.

3 Q Do you remember the dates that you called her
4 that you were not able to get ahold of her?

5 A I believe it was that Saturday and that Sunday
6 and that Monday when I called her at work.

7 Q Okay. Was she supposed to have gone to work on
8 Sunday that week?

9 A No, her days off were Saturdays and Sundays.

10 Q So do you remember what time it was that you
11 tried -- started trying to call her on Saturday?

12 A I don't recall.

13 Q Could have been in the evening?

14 A I don't recall.

15 Q Okay. And you had not spoken to her before
16 that for four or five weeks?

17 A Yes.

18 Q All right. You indicated that she and you had
19 a good relationship most of the time; is that correct?

20 A Yes.

21 Q All right. I believe you had lived there at
22 that residence for a year or two earlier that decade;
23 correct?

24 A Yes.

25 Q Sometimes you guys would have arguments?

26 A Yes.

27 Q And I believe that the last time you had seen
28 her you and she had had a pretty good argument?

1 A Yes.

2 Q All right. So you'd stayed away a little
3 while, and now you were checking up on her and wanted to
4 talk to her again?

5 A Yes.

6 Q And I believe that you said that she had
7 contacted you at some point before the 20th?

8 A It's just something that stuck in my head. I
9 knew there was some kind of urgency that I call her that
10 weekend, and it's always stuck in my head that there was
11 an answering (sic) on my voice machine. I don't recall
12 how urgent it was, but from what I recall -- it stayed
13 with me all this time that she needed to talk to me;
14 that there was something bothering her or something.
15 She was worried about somebody, and that's what just
16 stayed in my head all these years. I believe there was
17 an urgency of why I wanted to get ahold of her that
18 weekend.

19 Q Do you remember how many days it was before
20 that weekend that you had gotten that call on your voice
21 mail -- on your telephone?

22 A I don't recall.

23 Q And she had -- was it a short message? Long
24 message?

25 A From what I'm thinking, it was a short message.

26 Q Just that she was having a problem or something
27 like that?

28 A Right.

1 Q No names were given?

2 A No.

3 Q You and Marta were together at that time; is
4 that correct?

5 A Yes.

6 Q The two of you got in the car and drove over,
7 and you believe you stopped along the way and Marta got
8 something to drink; is that correct?

9 A What I recall, I don't recall that.

10 Q Okay. And you didn't recall that box of Coors
11 beer; is that correct?

12 A No.

13 Q Okay. When the two of you drove, I understand
14 that your mother's house was a ways off of the road, a
15 hundred yards? Less?

16 A Probably more than that. It was back five
17 acres from the highway.

18 Q But you think it was maybe more than a hundred
19 yards to the house?

20 A Yeah. I would say more than a hundred yards.

21 Q And the driveway up to the house, was there
22 just one or was there a horseshoe, and it went out in
23 two places?

24 A It was a horseshoe drive.

25 Q It entered the road at two locations?

26 A Yes.

27 Q The top of the horseshoe would be in front of
28 the front porch?

1 A Yes.

2 Q So you were driving the Monte Carlo and you
3 pulled up behind her car; is that right?

4 A Yes.

5 Q And then you went into the house, and you
6 discovered what you discovered?

7 A Correct, yes.

8 Q I notice the prosecutor asked you a couple
9 questions about how your mother would use the heater and
10 the swamp cooler, and what she would do with windows and
11 things like that.

12 Are you fairly confident in the things you said
13 that she would have the drapes open every day when she
14 was there?

15 A Yes.

16 Q Okay. There never was a time she didn't do
17 that?

18 A Not when she was -- from what I can recall, she
19 always left them open.

20 Q Do you recall what the temperatures were back
21 then on the 23rd of September in Lucerne Valley?

22 A I recall that they were 75, 80 degrees outside.
23 It was just like summer just coming to an end.

24 Q What about at night?

25 A It wouldn't get -- it wouldn't get -- in my
26 opinion, it wouldn't get cool enough to turn on the
27 heater.

28 Q All right. Some people like the heater on when

1 other people wouldn't. Can you say for sure that your
2 mom wouldn't have turned on the heater?

3 A I don't believe she would turn on the heater
4 high.

5 Q Let me ask you this: Is it -- what was the
6 mechanism to turn the heat up?

7 A It was probably a dial.

8 Q And you turned it to a temperature?

9 A Yes.

10 Q If you wanted, you could set it at 70 or 80 or
11 85?

12 A Correct.

13 Q Do you remember what it was set on when you
14 came in the house?

15 A I don't recall what temperature it was set on,
16 no.

17 Q And you're not the one that turned it down; is
18 that correct?

19 A I don't believe -- it was Marta or I.

20 Q Okay. And did you open any of the windows?

21 A From what I -- I recall -- seems like what I
22 recall I tried to open windows.

23 Q All right. I understand that there are three
24 doors into the house; is that correct?

25 A The garage door, the front door, then there was
26 a sliding door.

27 Q Sliding glass door. Was that at the front or
28 the back?

1 A I know there was one on the side. I know when
2 you looked out towards the highway, you could see the
3 highway out there through like the sliding door, but at
4 this moment I can't recall if there was a sliding door
5 too, unless it was a big window.

6 Q Do you recall checking to see whether the front
7 door or the sliding door were locked when you were
8 there?

9 A From what all I can recall, is that all the
10 doors were unlocked.

11 Q Unlocked? I'm sorry. Were they locked or
12 unlocked?

13 A Unlocked.

14 Q Okay. Mr. Thomas asked you about what you
15 observed when you went into the house.

16 Do you have any recollection of seeing anything
17 that you thought was out of place?

18 A At that time, no. I don't recall seeing
19 anything that was out of place.

20 Q Your mother was a smoker; is that correct?

21 A Yes.

22 Q So it would not be unusual to have a pack of
23 cigarettes or ashtray or something like that?

24 A In the room?

25 Q Right.

26 A Yes, it wouldn't be unusual, no.

27 Q Okay. And when -- when you had lived there,
28 you said you noticed your mother always used the wire

1 hangers; is that correct?

2 A Yes.

3 Q Was she -- it was her habit when she would go
4 to bed -- was she the kind of person that liked to hang
5 her clothes up before she retired or would she put them
6 on the floor and put them away the next day?

7 A From what I can recall, I didn't see her hang
8 her clothes up every day. She dressed professionally to
9 go to work, and she took care of her clothes and hung
10 them up.

11 Q Did you notice any of her clothes on the floor
12 in the bedroom when you went in there?

13 A Not that I can recall.

14 Q Did your mother usually wear pajamas, if you
15 know?

16 A I don't recall.

17 Q Okay. Now, you spoke to the police and they
18 told you to go outside and wait; is that correct?

19 A That's correct.

20 Q You did that until they finished their work?

21 A Right.

22 Q Did you then go back into the house and look
23 around again?

24 A When they left?

25 Q Yes, when they were gone, maybe not that day
26 but --

27 A No, I stayed there in the house.

28 Q Okay. And you had more time and you were a

1 little bit more calm?

2 A Correct.

3 Q At that time did you try to take an inventory
4 to see if anything was missing?

5 A We looked around and nothing seemed -- appeared
6 to have been -- her ring was there, her purse was there.
7 Nothing appeared to be missing.

8 Q I think at some point you called the police and
9 told them that you found -- there was a gold chain that
10 was missing.

11 Do you remember that?

12 A After reviewing, I vaguely remember that.

13 Q When was it that you discovered that the gold
14 chain was missing?

15 A Well, I believe I thought it was a gold chain,
16 and we ended up discovering after this period of time
17 that that was not a gold chain; that it was a watch.

18 Q A watch that was missing?

19 A Yeah.

20 Q Okay. Did you call the police and let them
21 know there was a watch missing?

22 A Well, I believe from reading the statement that
23 it was a chain.

24 Q And you told the police it was a chain that was
25 missing; is that correct?

26 A Correct.

27 Q And then at a later time, after you talked to
28 the police, you determined it was not a chain?

1 A Right. I don't -- down the road a period of
2 time, we ended up finding something missing.

3 Q Okay. So it never was missing in the first
4 place or you found it at another time?

5 A We resolved that it -- the person that it came
6 from, that it wasn't a chain at all. It was a watch.

7 Q All right. So some person had given your
8 mother this watch?

9 A Right.

10 Q Was that Mr. Bidard (phonetic)?

11 A Yes.

12 Q So you spoke to Fred Bidard, and he told you it
13 wasn't a chain?

14 A I don't remember the conversation about it.
15 Yeah, the end result was that it was a watch that he had
16 given her.

17 Q All right. So when you told the detectives
18 that a chain was missing, that's what you are referring
19 to, and that Fred had given it to her, that's what
20 you're referring to?

21 A Right.

22 Q It wasn't a chain. It was a watch, and you
23 found the watch?

24 A Yes. The watch was returned to us from the
25 coroner. She was wearing it at the time.

26 Q And Fred was -- had been a boyfriend of hers at
27 sometime?

28 A Yes.

1 Q I assume that the police questioned you
2 diligently about her social contacts; is that correct?

3 A Yes.

4 Q And you were able to give them information
5 about people that she had dated or spent time with; is
6 that correct?

7 A Yes, the most that I can recall that day,
8 September 23rd.

9 Q The information you gave the police that day,
10 is that what you're saying?

11 A That's when they were talking to me the most
12 about who she, you know, was seeing from what I recall.

13 Q Did you tell the police that you didn't know
14 all the different people that she may have seen?

15 A Yes.

16 Q And you just told them about some of them that
17 you knew?

18 A Correct.

19 Q Okay. Who did you tell the police she had been
20 dating other than Mr. Bidard?

21 MR. THOMAS: Objection. Relevance.

22 THE COURT: Sustained.

23 BY MR. SANDERS:

24 Q You were asked by the district attorney about
25 some of the habits of your mother.

26 Do you know if she would sometimes invite
27 people to come over to her home?

28 A I'm sure she did.

1 Q So she wasn't a person that was just always
2 alone and no one ever came over?

3 A No.

4 Q She had -- she would sometimes invite
5 boyfriends and acquaintances to her house; is that
6 correct?

7 A Yes.

8 MR. THOMAS: Objection. Calls for
9 speculation.

10 THE COURT: If you know the answer, you can
11 answer.

12 THE WITNESS: If she had people come to visit
13 her?

14 BY MR. SANDERS:

15 Q Right.

16 A I'm sure -- I would say so, yes.

17 MR. THOMAS: Same objection. I don't think
18 it's been established that this witness knows for
19 sure.

20 THE COURT: And I don't know why you're
21 whispering, but I did hear what you said with great
22 difficulty.

23 MR. THOMAS: I'll speak up next time, your
24 Honor.

25 THE COURT: I'm going to sustain the
26 objection. Speculation.

27 BY MR. SANDERS:

28 Q Let me ask you: To your personal knowledge,

1 had you seen at times your mother bring friends over to
2 the house?

3 A Yes.

4 Q And on occasion those were boyfriends?

5 A The only boyfriend that I can even recall would
6 have been Mr. Bidard.

7 Q I think you told the police that to your
8 knowledge she had broken up with Mr. Bidard three months
9 prior to September?

10 A Yes, I don't recall the amount of -- three,
11 four months.

12 Q Was your mother someone that would seek social
13 interaction with men?

14 MR. THOMAS: Objection. Relevance.

15 THE COURT: Vague. Sustained.

16 BY MR. SANDERS:

17 Q In the six-month period preceding
18 September 1985, do you have knowledge that your mother
19 would seek social interaction with men?

20 A No -- I don't understand the question.

21 Q Did she like to date?

22 A Sure, she liked to date.

23 Q Okay. And she dated fairly often to your
24 knowledge?

25 A Not -- I don't know how often.

26 Q Would she, to your knowledge, sometimes date
27 people that she had not known for a long time?

28 A That could be possible.

1 MR. THOMAS: Objection. Calls for
2 speculation based on the witness's answer. Move to
3 strike. Do I need to speak up more? I'm sorry.

4 THE COURT: Good idea if you want me to hear
5 anything you say.

6 MR. THOMAS: I objected on the basis that the
7 witness is speculating. I moved to strike the answer
8 that the witness gave based on that.

9 THE COURT: Sustained.

10 MR. SANDERS: Excuse me just a moment, your
11 Honor?

12 BY MR. SANDERS:

13 Q After the police had left, did you take a
14 closer look in your mother's bedroom to determine if
15 there were items of property that were missing?

16 A Yes.

17 Q Did you notice whether or not there were items
18 of property that were in plain sight?

19 A Yes.

20 Q And some of those may have been -- have some
21 value?

22 A Yes.

23 Q You indicated you initially thought that
24 perhaps your mother had killed herself?

25 A Yes.

26 Q That was because you had noted that she was
27 lonely and despondent?

28 A Yes, and I worried about her, yes.

1 Q All right. The district attorney asked you if
2 you thought perhaps someone might still be in the house.

3 Do you remember that question?

4 A Yes.

5 Q At any time when you had your chance, did you
6 look through the house to see if you could find any
7 evidence that someone had come in the house?

8 A No -- no -- I don't -- no.

9 Q When -- when you went in initially and then
10 after you came back from Mr. Sullivan's and went in
11 again, did you move anything inside the house? Pick up
12 anything? Look at anything?

13 A The only thing that -- nothing other than
14 the -- was trying to open the window.

15 Q I think you said the dog was outside when you
16 came?

17 A Correct.

18 Q After you initially drove up behind the
19 Cadillac that was in the garage, I believe that you said
20 that you then went to Mr. Sullivan's; correct?

21 A Yes.

22 Q And to do that, you got back in your car and
23 backed it up a short distance; correct?

24 A Yes.

25 Q And then you drove around the top of the
26 horseshoe drive and out the other side?

27 A Yes.

28 Q For lack of a better term, I'm going to use the

1 side you initially came in as being the west drive and
2 the side you went out as the east drive.

3 Does that make sense to you?

4 A Yes.

5 Q When you came back from Mr. Sullivan's, did you
6 drive all the way up to the house again?

7 A Yes, from what I can recall, yes.

8 Q All right. And do you recall if you came in
9 the west drive again the second time?

10 A Actually, I don't recall which -- what I
11 believe is I backed out and went around the horseshoe,
12 went out and came back in the same way.

13 Q The same way you came in the first time?

14 A I would -- I would guess I came back in the
15 same way I went out.

16 Q I see. Okay.

17 A But I don't recall exactly.

18 Q When you came from your house -- where were you
19 living at the time?

20 A Phelan.

21 Q What is that a 30-, 45-minute drive?

22 A Hour drive, approximately.

23 Q So you came from the west and entered the west
24 driveway the first time?

25 A I guess you could call it the west. I'm
26 thinking the north driveway and south driveway towards
27 the mountains.

28 Q Let's do that then. The one you came in first

1 was the north driveway? The one you went down to see
2 Mr. Sullivan was the south driveway?

3 A Yes.

4 Q All right. And then Mr. Sullivan's house was
5 towards the south?

6 A Right.

7 Q So when you came back from his house, you went
8 to the closest driveway?

9 A That's what I'm thinking. I don't recall
10 exactly -- don't recall exactly. That's what I'm
11 thinking that I did.

12 Q Okay. Then the -- someone told you you should
13 go move your car or you thought you should go move your
14 car by the highway so they could find your house?

15 A I don't recall that. I guess that's what we
16 did. We moved the car down by the highway, so they'd
17 see where the residence was.

18 Q Did you put it by the north or south driveway?

19 A I don't recall.

20 Q All right. So the first people to get there
21 was the fire department?

22 A The paramedics.

23 Q Fire, paramedics. They came in one vehicle?

24 A What I can recall.

25 Q Did they drive all the way up to the house?

26 A From what I can recall, yes.

27 Q After that, police vehicles arrived; is that
28 correct?

1 A Correct.

2 Q And do you know how many of them drove to the
3 house?

4 A I don't recall.

5 Q I guess what I'm wanting to know is: Did you
6 ever notice that there was any distinctive tire prints
7 in the driveway, either one of them, that seemed odd or
8 didn't fit?

9 A At that time I was such an emotional wreck that
10 none of that came into -- I wasn't thinking of anything
11 like that at that moment.

12 Q Okay. Thank you. I believe you said that the
13 nearest neighbor was Mr. Stow and he lived across the
14 highway?

15 A Right.

16 Q So his house was pretty close to the highway,
17 maybe 150 yards from your mother's house?

18 A I'd say it's more than that.

19 Q 200 yards?

20 A At least 200 yards.

21 Q All right. Do you know if he was there that
22 day?

23 A I don't recall. I don't recall if he was there
24 that day.

25 Q You didn't go to his house because you're
26 better friends with Mr. Sullivan than with him?

27 A Correct.

28 Q Okay. And you said you never met my client

1 back in the '80s; correct?

2 A Not that I can recall.

3 Q You did know his father, Mr. Yablonsky?

4 A Yes.

5 Q The gentleman seated by -- behind me in the
6 Hawaiian shirt?

7 A Yes.

8 Q And apparently you guys were pretty good
9 friends; is that correct?

10 A I would consider us friends. We socialized
11 together.

12 Q Went to the river together?

13 A Went to the river once together, if I recall.

14 Q Okay. Sometimes you would go out and you said
15 you'd drink with Mr. Yablonsky?

16 A Yes.

17 Q Did your mom -- was she ever present when the
18 two of you were drinking?

19 A With Mr. Yablonsky?

20 Q Yes.

21 MR. THOMAS: Your Honor, vague as to which
22 Mr. Yablonsky we're talking about.

23 THE COURT: Would you move that microphone in
24 front of you, please? And I'll sustain the objection
25 as vague.

26 BY MR. SANDERS:

27 Q I'm referring to the elder Mr. Yablonsky.

28 Do you recall if when you and he were drinking

1 that your mother was there also?

2 A I would believe there's been occasions, yes.

3 Q Okay. A few occasions?

4 A I would say yes.

5 Q Okay. Now, this all happened a long time ago,
6 and have you had an opportunity -- have you been
7 provided with police reports to help you refresh your
8 recollection?

9 A Yes.

10 Q Okay.

11 A Just --

12 Q When were those reports provided to you?

13 A I believe it was Friday.

14 Q Did you get a chance to read them over the
15 weekend?

16 A Yes.

17 Q Was there things there that you had forgotten?

18 A Yeah -- well, yes.

19 Q Okay. And then did you have to discuss your
20 testimony with anyone prior to testifying?

21 A No, nobody other than with my wife.

22 Q You didn't have to have a conversation with
23 Detective Alexander?

24 A No.

25 Q Mr. Thomas?

26 A No.

27 Q About what questions were going to be asked?

28 A No.

1 MR. SANDERS: Okay. If I might have just a
2 minute, your Honor?

3 THE COURT: You might.

4 MR. SANDERS: Thank you, your Honor. No
5 further questions on cross-examination.

6 THE COURT: Redirect.

7 MR. THOMAS: Thank you, your Honor.

8 **REDIRECT EXAMINATION**

9 BY MR. THOMAS:

10 Q What years did you actually live with your mom
11 at her residence?

12 A I believe it was off and on between 1981, '82,
13 '83.

14 Q Then was it right around '83 that you stopped
15 living over there?

16 A I don't recall the exact date. She used to
17 work down below. I'd be there, watch the house, come up
18 to see her on weekends. I don't recall the specific
19 dates or years. Seems like it was in the early '80s.

20 Q In 1985 were you living with your mom at that
21 point?

22 A No.

23 Q If you had to estimate as to when you stopped
24 living with your mom at her residence, what year would
25 that be, if you had to estimate?

26 A Late '82, early '83.

27 Q On cross-examination Mr. Sanders asked you some
28 questions about a chain, and then you testified that it

1 wasn't a chain that was missing, it was a watch, and
2 that you essentially got that watch back. I think you
3 said it was from the coroner's office; is that correct?

4 A Correct.

5 Q Okay. Could you describe that watch to us?

6 A Just a gold lady's watch. I haven't looked at
7 it in years.

8 Q Thin band? Thick band?

9 A I think thicker band, not like a man's
10 thickness, but maybe (indicating).

11 Q You're holding up your index finger and thumb?

12 A Say maybe half an inch or quarter inch.

13 Q Maybe quarter inch, half inch, somewhere in
14 that neighborhood?

15 A Yes, I haven't looked at it in years.

16 Q When you received it from the coroner's office,
17 was the watch intact? What I mean by intact, was the
18 band still connected to the actual time piece?

19 A From what I recall, yes.

20 Q And then Mr. Sanders asked you when looking
21 around the house after the police left, do you recall
22 that line of questioning?

23 A Yes.

24 Q Do you recall where or if you found your
25 mother's glasses at any point?

26 A Yes, I don't recall.

27 Q And as far as your mother's glasses, would she
28 be the type of person that would throw her glasses on

1 the floor or would she set them down on the table? What
2 would she do with her glasses when she took them off?

3 A Set them on the table.

4 Q She wouldn't just toss them on the floor that
5 you've ever seen?

6 A No, I can't see her doing that.

7 MR. THOMAS: Nothing further.

8 THE COURT: Mr. Sanders.

9 MR. SANDERS: No questions. Thank you, your
10 Honor.

11 THE COURT: May this witness be excused?

12 MR. SANDERS: I'd ask that he remain on call,
13 please.

14 THE COURT: That means you're subject to
15 recall, Mr. Kraemer. It has been determined,
16 nevertheless, that the attorneys are willing to allow
17 you to remain in the court, contrary to the witness
18 exclusion order, while you're on call as a witness.
19 I'll order that you not discuss your testimony with
20 any other witness in this case until the trial is
21 over. You may remain in the gallery.

22 Call your next witness.

23 MR. THOMAS: People would call Marta Kraemer.

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

26 THE CLERK: You do solemnly state that the
27 evidence you shall give in the matter pending before
28 this Court shall be the truth, the whole truth, and

1 nothing but the truth, so help you God?

2 THE WITNESS: Yes, I do.

3 THE CLERK: Thank you. Please be seated.

4 THE BAILIFF: Slide yourself forward. Speak
5 directly towards the microphone. Keep your voice up,
6 please. Please state your full name and spell it for
7 the record.

8 THE WITNESS: Marta Kraemer M-a-r-t-a
9 K-r-a-e-m-e-r.

10 THE COURT: Good morning, Ms. Kraemer.

11 THE WITNESS: Good morning.

12 THE COURT: Your witness.

13 MR. THOMAS: Thank you, your Honor.
14

15 **MARTA KRAEMER**, having been duly sworn,
16 testified as follows:

17 **DIRECT EXAMINATION**

18 BY MR. THOMAS:

19 Q I'm going to show you an exhibit I'm putting up
20 on the screen.

21 May I approach the witness?

22 THE COURT: You may.

23 BY MR. THOMAS:

24 Q I'm going to show you Exhibit 35. Do you
25 recognize the person depicted in this photograph?

26 A Yes, I do.

27 Q Who is that?

28 A That's Rita Cobb.

1 Q Okay. And who was Rita Cobb in relation to
2 you?

3 A My mother-in-law.

4 Q And as far as Rita was concerned, how long
5 prior to Rita's murder did you know Rita?

6 A Approximately four years.

7 Q And then as far as Rita was concerned, how did
8 you first meet Rita? Was there a person that you met
9 Rita through?

10 A Yes.

11 Q Who is that?

12 A Through Daryl.

13 Q Okay. And Daryl is your husband?

14 A Yes.

15 Q Back in 1985, specifically September of 1985,
16 were you and Daryl married at that point?

17 A No.

18 Q When was it that you actually got married?

19 A In 1990.

20 Q Going to the events of September 23rd of 1985,
21 prior to that day, when was the last time that you saw
22 Rita?

23 A Approximately a month.

24 Q Where did you see Rita that month prior?

25 A At her home.

26 Q And where was that home located if you can
27 recall?

28 A On Highway 18.

1 Q Okay. Let me give you an address and you can
2 tell me if that address is familiar. Is the address
3 located at the -- the residence located
4 at 35435 Highway 18 in Lucerne Valley, county of
5 San Bernardino?

6 A I can only speculate. I don't recall.

7 Q Okay. So you don't recall the exact address?

8 A No, I never lived there at the time.

9 Q I'm going to show you a photograph that's been
10 marked Exhibit 1.

11 May I approach?

12 THE COURT: You may.

13 BY MR. THOMAS:

14 Q Do you recognize what's depicted in Exhibit 1?

15 A Yes.

16 Q What is that?

17 A That's the residence.

18 Q That's Rita's residence?

19 A Yes.

20 Q Was there another separate residence from the
21 residence that we're looking at in Exhibit 1?

22 A Yes.

23 Q And where was that residence located on the
24 property?

25 A Behind this house.

26 Q I'm going to show you what's been marked
27 Exhibit 2, and if you can use the laser pointer just to
28 point out to the jury where that second residence is in

1 Exhibit 2.

2 You're pointing to a structure just located to
3 the right and behind the main residence that you've
4 described?

5 A That's correct.

6 Q That's on Exhibit 2. Did you ever become aware
7 of anyone else, prior to September 23rd of 1995 (sic),
8 living on this property in this back residence?

9 A Can you repeat the question?

10 Q Prior to September of 1985, did you ever become
11 aware of anyone else, besides Rita, living on that
12 property in that rear residence that you just pointed
13 out?

14 A I don't recall, no.

15 Q Fast forwarding to September 23rd of 1985, that
16 was the day that you found -- you and Daryl found Rita's
17 body inside the residence; is that correct?

18 A Yes.

19 Q Prior to going over to the residence, was there
20 anything that you did? Did you call her? Did you see
21 Daryl call her?

22 A We had tried calling her all weekend.

23 Q When you say we, you're talking about you --
24 yourself and Daryl?

25 A Yes.

26 Q Do you remember -- when you say all weekend,
27 are you including Friday, Saturday, Sunday or --

28 A I remember calling all weekend.

1 Q Do you recall how many times you called or
2 Daryl called?

3 A No, I don't remember the amount of times.

4 Q Somewhere in the neighborhood of two to five or
5 five to ten?

6 A I don't recall.

7 Q Before you arrived at Rita's residence on
8 September 23rd of 1985, did you stop anywhere or do you
9 recall stopping anywhere prior to going to the
10 residence?

11 A I don't recall. It's been a long time.

12 Q As far as how you got to the residence, do you
13 recall how you got to the -- to Rita's residence?

14 A Yes.

15 Q How was that?

16 A We drove in the Monte Carlo.

17 Q That's the Monte Carlo that you and Daryl
18 owned?

19 A Yes.

20 Q Do you recall where you parked the Monte Carlo
21 when you got to the residence?

22 A Yes. We pulled in right behind the Cadillac
23 that was parked in the garage.

24 Q I'm going to show you Exhibit 3. Is that the
25 Cadillac that you just referred to?

26 A Yes.

27 Q And that's the garage area that you just
28 referred to also?

1 A Yes, it is.

2 Q And when you pulled up in the Monte Carlo, did
3 you park it immediately behind there or how far behind
4 the Cadillac?

5 A Just a few feet behind to the -- the Cadillac.

6 Q Do you recall who was driving? Was it you or
7 was it Daryl?

8 A I don't recall.

9 Q And then once you pulled up, was that something
10 that -- strike that.

11 You've been over to Rita's house on several
12 occasions prior to September 23rd, 1985?

13 A Yes.

14 Q During those prior occasions, was it unusual
15 for the garage door to be up and the Cadillac parked
16 inside the garage?

17 A No, that wasn't unusual.

18 Q Was that an indication that Rita was home if
19 you saw that?

20 A That would be correct.

21 Q So at this point you pull up. I assume you and
22 Daryl both get out of the car?

23 A Yes.

24 Q What did you do at that point once you and
25 Daryl get out of the car?

26 A We proceeded to go into the house.

27 Q Do you recall how you got inside the house?

28 A We went -- I followed Daryl. He went in the

1 side door of the garage, inside the garage.

2 Q I'm going to show you a photograph that's been
3 marked Exhibit 4. Looking at Exhibit 4, there appears
4 to be a door in the center of the photograph of
5 Exhibit 4.

6 Do you see that?

7 A Yes, I do.

8 Q Is that the door that you were referring to
9 that you and Daryl went into?

10 A Yes, it is.

11 Q And then once you get inside the house, is
12 there anything that you notice that was unusual?

13 A The smell was terrible. I mean, it was awful.
14 It smelled like the septic system was totally backed up.
15 It was -- it was awful.

16 Q Besides the smell, was there anything else that
17 you noticed that was unusual?

18 A At that time, no.

19 Q Did you notice whether or not it was hot or
20 cold inside the house?

21 A Looking back or at the very -- thinking about
22 it at the time?

23 Q What you can remember today.

24 A It was warm.

25 Q Do you recall whether it was warmer inside the
26 house or outside the house?

27 A Inside the house, but the smell was very
28 gagging. It was overwhelming to where you couldn't

1 breathe.

2 Q So as far as you were concerned, that smell was
3 so overpowering that it prevented you from seeing or
4 observing any other things inside the house at that
5 point?

6 A Yes.

7 Q Did you notice whether or not the door in the
8 garage was locked or unlocked when you went in?

9 A No, I didn't.

10 Q Did you notice whether or not the windows or
11 any other doors to the inside of the residence were open
12 at any point?

13 A I noticed the drapes in the front was -- was
14 closed, which was unusual because the drapes in the
15 front was normally open.

16 Q Was that something that you noticed when you
17 pulled up to the residence or was that something that
18 you noticed once inside -- once you were inside the
19 residence?

20 A Once I was inside the residence.

21 Q That's when you noticed the drapes were pulled
22 shut?

23 A Yes.

24 Q That was unusual because they weren't normally
25 shut like that?

26 A That is correct.

27 Q Had you ever seen them shut like that?

28 A No.

1 Q So you walk in. Do you recall where you went
2 once you walked inside the residence?

3 A I walked towards the table because I believe I
4 had something in my hand.

5 Q Do you recall what you had in your hand?

6 A I believe I had a cigarette in my hand, and I
7 had a drink in my hand.

8 Q Do you recall where the table was inside the
9 residence?

10 A It was the dining room table right there when
11 you walk into the house.

12 Q I'm going to show you an exhibit. It's been
13 marked Exhibit 39.

14 May I approach the witness?

15 THE COURT: You may.

16 BY MR. THOMAS:

17 Q Do you recognize that exhibit or what it
18 appears to be?

19 A Yes, a diagram of the house.

20 Q Okay. That's the interior of Rita's house?

21 A Yes.

22 Q Do you notice on that diagram, Exhibit 39, the
23 garage area? Do you see where that is?

24 A Yes, I do.

25 Q And from there, you entered what appears to be
26 a door leading from the garage area to the interior of
27 the residence.

28 Do you see that?

1 A Yes.

2 Q Where was the table that you said you might
3 have set some stuff down?

4 A This being a desk, this would be the table by
5 the front windows.

6 Q You're indicating a circle that's about in the
7 center of the photograph, a little to the left of
8 center, that's at the bottom of the photograph; is that
9 correct?

10 A Yes.

11 Q Okay. I'm going to show you an exhibit that's
12 been marked Exhibit 25.

13 Do you recognize what's depicted in Exhibit 25?

14 (Whereupon Exhibit 25 was marked
15 for identification.)

16 THE WITNESS: Yes.

17 BY MR. THOMAS:

18 Q What does that exhibit show or depict?

19 A A drink and a pack of cigarettes.

20 Q On this table that you were just speaking to us
21 about?

22 A Yes.

23 Q The drink that's on the table, is that
24 something that you brought over to the residence?

25 A Very possibly.

26 Q Okay. But you don't independently recall
27 bringing that over?

28 A No, I --

1 Q Do you recall telling any of the detectives at
2 the scene that you brought that drink over?

3 A No.

4 Q And have you had an opportunity to review your
5 statements that you made back in 1985 to the detectives?

6 A Yes.

7 Q And back in 1985, your recollection of the
8 events were -- was more fresh in your memory than it is
9 today; right?

10 A Yes.

11 Q Do you remember seeing this in any of the
12 reports about a drink that you had brought over?

13 A Yes.

14 Q Even seeing that didn't refresh your
15 recollection as to bringing the drink over to the house?

16 A No, but the -- definitely the cigarettes.

17 Q What type of cigarettes did you smoke?

18 A Virginia Slims.

19 Q I'm going to show you a photograph that's been
20 marked Exhibit 26.

21 Would that have been the type of cigarettes
22 that you smoked back in September of 1985?

23 (Whereupon Exhibit 26 was marked
24 for identification.)

25 THE WITNESS: Yes.

26 BY MR. THOMAS:

27 Q Those were Virginia Slims lights?

28 A Yes.

1 Q And that was on the table that you just
2 described or earlier described?

3 A Yes.

4 Q I notice there's what appears to be a Slurpee
5 to the left of the pack of cigarettes?

6 A Yes.

7 Q Is that something that you would drink back in
8 September of 1985? Did you have Slurpees every now and
9 then?

10 A Yes.

11 Q Okay. Did Daryl smoke too?

12 A Yes.

13 Q Okay. Do you recall what he smoked back in
14 1985?

15 A I believe Marlboros.

16 Q Okay. Do you recall whether or not Rita
17 smoked?

18 A She did.

19 Q Do you recall what type of cigarettes she would
20 smoke?

21 A I don't recall.

22 Q When you entered the house, you said you went
23 to the table. You put some items down, which included
24 the pack of cigarettes; correct?

25 A Yes.

26 Q Do you recall telling the detective back in
27 September of 1985 that you were carrying a wax cup
28 containing a Slurpee that you had purchased at the local

1 convenience store and the cigarettes and lighter when
2 you entered the residence?

3 A I don't recall that, but I did read that in the
4 statement.

5 Q As far as Daryl was concerned, you said you
6 went to the table.

7 Did you see where Daryl went once you went to
8 the table?

9 A No.

10 Q At some point was there something that was said
11 by Daryl that caused you some concern?

12 A Yes.

13 Q Was that while you were in the general area of
14 that desk and that table?

15 A Yes.

16 Q What was said?

17 A Oh, my God. She's finally done it.

18 Q Do you recall telling the detective back when
19 you were interviewed in 1985 that Daryl stated quote
20 "Oh, my God. She's killed herself"?

21 A That would -- that sounds right.

22 Q And then once you heard this, what did you do?

23 A I immediately turned and went towards him.

24 Q Where was he at at this point when you went
25 towards him?

26 A He was in the hallway. It was only a matter of
27 seconds that all this occurred.

28 Q Putting Exhibit 39 back on the screen there,

1 where was Daryl at the time you met up with him after
2 you heard him say, oh, my God. She's finally done it or
3 she's killed herself?

4 A Right by the post going towards her room.

5 Q If you could use the laser pointer to point
6 that out.

7 A Right here by the wall.

8 Q You're pointing to the area that there's an A24
9 in that area.

10 Do you see that?

11 A Right.

12 Q Then there's what appears to be a door and
13 you're pointing to that general area as to where Daryl
14 was?

15 A Yes.

16 Q Is that correct?

17 A Yes.

18 Q What was Daryl's demeanor when you first made
19 contact with him at the doorway there?

20 A He was in a state of panic, hysteria.

21 Q Was he crying?

22 A He was screaming.

23 Q Okay. Do you recall any of the things he was
24 screaming?

25 A Oh, my God, why?

26 Q At this point did you know what was going on?

27 A No.

28 Q What did you do while he was screaming at this

1 point?

2 A I walked into the bedroom, and --

3 Q When you walked into the bedroom, what, if
4 anything, did you see?

5 A I remember -- this is really hard.

6 Q Take your time.

7 A I remember him saying that he thought she
8 killed herself. I'm sorry. I thought I could do this
9 real easily. It's not that easy.

10 Q Take your time.

11 A I remember her leg being propped up. Thank
12 you. I remember her teeth -- I thought I saw her teeth
13 on the pillow. I thought I saw part of her face, and I
14 just said, she didn't kill herself. Somebody's been
15 here.

16 Q And what caused you to say that? Was there
17 anything in particular that caused you to say that?

18 A I don't know. I think I blocked some things
19 out since then, but I just told him I knew somebody had
20 been there. Nobody could have done this to themselves.
21 Somebody has been here. She could not have killed
22 herself.

23 Q Did you notice whether or not Rita had any
24 clothing on?

25 A No. I could tell her body was twice the size
26 of her normal capacity because of the de- --

27 Q Would you characterize her body as being
28 somewhat bloated?

1 A Quite a bit bloated.

2 Q Okay.

3 A And you got to understand, the smell was still
4 totally overwhelming in the house. It was real hot, and
5 the odor in the house was still really overwhelming.

6 Q You described to us seeing some of the stuff.
7 Was there anything that you haven't already
8 mentioned that you remember observing when you walked
9 into the room?

10 A Such as?

11 Q Anything else. You described seeing some of
12 her, I guess, it would be her dentures on the bed?

13 A Yeah, I thought I saw her dentures on the
14 pillow. I saw her wedding ring over on the night stand.

15 Q I'm going to show you a photograph, and prior
16 to coming to court today, you were never shown any
17 photographs; correct?

18 A That's correct.

19 MR. THOMAS: May I approach?

20 THE COURT: You may.

21 BY MR. THOMAS:

22 Q I'm going to show you Exhibit 10. You
23 described seeing her wedding ring.

24 Is that what you saw that's depicted in
25 Exhibit 10?

26 A Yes, sir.

27 Q And that's the way that you saw the ring was
28 how it's depicted in Exhibit 10?

1 A Yes, sir.

2 Q Did you touch anything when you went into the
3 room at all?

4 A No, not when I first went into the room.

5 Q You just saw Rita, and she was on the bed?

6 A Yes, she was on the bed.

7 Q Okay. You described that you saw her dentures.
8 You described seeing a wedding ring.

9 Was there anything else that you saw that you
10 can remember?

11 A I remember later that I -- after I tried to
12 make the phone call and I was trying to get some air,
13 because I went in and tried to open the bedroom window
14 at one point, when I was coming out, I thought I saw her
15 purse on the bed.

16 Q Okay. So you -- you think you observed her
17 purse laying on the bed area?

18 A Yeah. When I was coming out, that was -- that
19 wasn't the first initial time that I had been in the
20 room.

21 Q Okay. So that was at a later point?

22 A A later point after -- after I -- already tried
23 to make phone calls.

24 Q So let's just focus in on the first time that
25 you go into the room. Did the room appear to be
26 ransacked --

27 A No.

28 Q -- in any way? As far as, did you notice any

1 clothing or anything around the room?

2 A No.

3 Q Do you recall as far as Rita was concerned, are
4 you familiar with how she hung her clothes and
5 specifically what type of hangers she would use?

6 A After we -- after a year and a half, after we
7 went through the room because that took us that long to
8 go through the room, it took us a year and a half, she
9 had metal coat hangers.

10 Q Those were the only types of coat hangers that
11 you remember observing a year and a half later?

12 A Yeah.

13 THE COURT: We're going to take our lunch
14 recess now, ladies and gentlemen. 1:30. You're
15 admonished that it is your duty not to converse among
16 yourselves or with anyone else about any matter
17 connected with this case nor form or express an
18 opinion on it until it's submitted to you.

19 Ms. Kraemer, I'll order you back at 1:30.

20 THE WITNESS: Yes, sir.

21 (Whereupon the lunch recess was taken.)
22
23
24
25
26
27
28

1 VICTORVILLE, CALIFORNIA; JANUARY 24, 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. Back on the
12 record in People of the State of California versus
13 John Yablonsky, who is here with his attorney,
14 Dave Sanders. John Thomas is here along with his
15 investigating officer, Detective Robert Alexander.
16 Marta Kraemer is on the witness stand still under oath
17 in cross-examination.

18 You may proceed.

19 MR. THOMAS: Thank you, your Honor.

20 BY MR. THOMAS:

21 Q I believe before we took the lunch break, we
22 were talking about how you were in the room and you were
23 still trying to figure out what you saw in the room the
24 first time that you went in there.

25 Do you recall that?

26 A Yes.

27 Q You've explained to us that you saw Rita's
28 dentures and you saw her wedding ring on the table and

1 then was there anything else that you noticed?

2 A I noticed she was lying on her back, and her
3 leg was propped up.

4 Q As far as whether or not -- correct me if I'm
5 wrong, I think before the lunch hour, you said that you
6 couldn't remember whether or not she had clothing on?

7 A No, she did not have clothing on.

8 Q You remember that?

9 A Yes.

10 Q Now, as far as what you did once you went in
11 the room the first time, was Daryl inside the room with
12 you or was he at the door? Do you recall?

13 A No, he was out of the room at that time.

14 Q What did you do when you went in the room? Did
15 you touch anything or --

16 A No.

17 Q Then you left the room?

18 A Yes.

19 Q What did you do once you left the room?

20 A I remember coming out to find Daryl. I don't
21 remember where he was at that time. I believe he was
22 standing right there in the hallway, and I remember
23 telling him that somebody had been there; that there's
24 no way she could have done that to herself.

25 Q So you knew it wasn't a suicide at that point?

26 A Correct.

27 Q Once you told Daryl that, what was the next
28 thing that you did?

1 A I remember hugging him in the hallway for a
2 moment. It's like everything happened so fast.

3 Q Then after you hugged him, at some point did
4 Daryl leave the house? Did he tell you where he was
5 going?

6 A He was going to go find John Sullivan.

7 Q Who was John Sullivan? Did you know that
8 person?

9 A Yes, I did.

10 Q How did you know John Sullivan?

11 A He was a family friend.

12 Q Did you go with Daryl to find John Sullivan?

13 A No.

14 Q What did you do once Daryl left?

15 A He told me to stay there and call whoever I
16 needed to call.

17 Q Do you remember at that point -- you said
18 earlier that the smell was overwhelming for you, and
19 that was what you were concentrating on. Was there a
20 point after you left the room that you were able to
21 notice other things that were unusual?

22 A It was very hot. It was very warm in the
23 house.

24 Q Did you find out or figure out why it was very
25 warm in the house?

26 A I think at the time I wasn't trying to figure
27 out why it was warm. I was more interested in trying to
28 cool it off, like, turn the swamp cooler on or open a

1 door.

2 Q What did you do to see if you can cool off the
3 house?

4 A I tried to -- I opened the door. I don't
5 remember the exact order that I did it in. It was a
6 long time ago.

7 Q Do you remember whether or not you opened up
8 the drapes?

9 A I did.

10 Q Do you remember opening up any windows or other
11 doors other than the ones that you've already mentioned?

12 A I tried to open only the one in Rita's room and
13 it did not open.

14 Q Were there drapes in Rita's room?

15 A Yes.

16 Q Do you recall whether or not those drapes were
17 open? Shut?

18 A I tried to move the drapes aside -- I don't
19 recall.

20 Q Okay. So you tried to cool off the house by
21 opening the doors.

22 Did you at some point turn on the swamp cooler?

23 A Yes.

24 Q At any point did you notice that the heater was
25 on?

26 A I think Daryl was the one that noticed the
27 heater was turned on.

28 Q That wasn't something you did?

1 A No.

2 Q As far as you turn on the swamp cooler, did you
3 make any attempts at this point to call for help?

4 A Yes.

5 Q What attempts did you make to call for help?

6 A I remember dialing zero, and I got a busy
7 signal, so I dialed 9-1-1.

8 Q Did somebody answer when you dialed 9-1-1?

9 A Yes.

10 Q Yes. At that point were you able to talk to
11 somebody and explain what was happening?

12 A Yes.

13 Q At that point Daryl's already left I assume?

14 A Yes.

15 Q So you're on the phone with the 9-1-1 person.
16 Did they tell you that help was on the way?

17 A Yes.

18 Q How soon after you first entered the residence
19 did you call 9-1-1?

20 A I don't recall. Everything seemed to happen so
21 fast, and it was so long ago.

22 Q If you had to estimate, would it be a period of
23 minutes? Hours?

24 A Minutes.

25 Q It wasn't seconds?

26 A I would say minutes. You could tell she was
27 already deceased.

28 Q Okay. And then at some point when you called

1 9-1-1 or after you called 9-1-1, did Daryl come back?

2 A Yes.

3 Q Were you still on the phone when Daryl came
4 back? Do you recall?

5 A I don't believe I was on the phone still.

6 Q Were you inside the house? Outside the --
7 Rita's house when Daryl came back?

8 A I think I met him on the porch.

9 Q When you met him on the porch, did you hear him
10 pulling up to the driveway and you went out to the porch
11 area or do you recall how this happened or were you
12 standing outside waiting for Daryl to come back?

13 A I don't recall.

14 Q Once he came back, did you and Daryl go back
15 inside the house, either of you? Do you recall doing
16 any of that?

17 A I don't recall.

18 Q Then at some point medical help came to the
19 residence I assume?

20 A Yes.

21 Q When they came to the residence, do you recall
22 what you did, if anything? If you can't remember, you
23 can't remember.

24 A It was a long time ago, John.

25 Q Do you recall telling -- prior to the medical
26 help arriving, did you pull the car out from the
27 driveway area? Do you recall that?

28 A Did I pull the car out?

1 Q Yeah.

2 A I believe that they told me on the phone to put
3 the car down on Highway 18 so they could find -- so they
4 could find the residence.

5 Q So you personally moved the Monte Carlo after
6 Daryl got back from going to John Sullivan's place?

7 A I do recall that now that you mention that.

8 Q And then do you recall telling ^Detective Matt
9 back in 1985 that when the paramedics arrived they
10 entered the residence through the front door going to
11 the victim?

12 A Yes.

13 Q Once they arrived, did you ever go back inside
14 the house that day?

15 A I think they said to stay out of the house.

16 Q You followed their orders and stayed out of the
17 house?

18 A I think I proceeded to go in, but Daryl said
19 not to go in, and the sheriff's office said to stay out
20 of the house.

21 Q At some point did -- after -- I assume the
22 sheriff's department showed up at the scene?

23 A Yes.

24 Q -- is that correct? And at some point after
25 all the personnel, the sheriff, the paramedics, after
26 they all left the scene, did you go look around the
27 house at any point?

28 A Can you repeat the question?

1 Q When you -- when the sheriff's department,
2 paramedics, left Rita's house, did you and Daryl go
3 inside the house afterwards at some point?

4 A At some point, yes.

5 Q Do you recall if it was that day or some later
6 day that you actually went inside the house?

7 A Yes.

8 Q Was it that day or --

9 A Later in the evening, yes.

10 Q Okay. Did you ever look at Rita's car at some
11 point?

12 A Yes.

13 Q What, if anything, did you find in Rita's car?

14 A There was a bag of pistachios in the backseat
15 of her car.

16 Q Do you recall where the car keys for Rita's car
17 were?

18 A I found them on the desk by the phone.

19 Q I'm going to show you a photograph that's been
20 marked Exhibit 29.

21 May I approach the witness?

22 THE COURT: You may.

23 BY MR. THOMAS:

24 Q Show you what has been marked Exhibit 29, do
25 you recognize this?

26 (Whereupon Exhibit 29 was marked
27 for identification.)

28 THE WITNESS: Yes.

1 BY MR. THOMAS:

2 Q There's a set of keys in the exhibit. Are
3 those Rita's keys, if you know?

4 A They appear to be, yes.

5 Q And those were in the desk area that you spoke
6 about earlier this morning?

7 A Yes.

8 Q Do you recall the day that you were -- or that
9 you found Rita's body, do you recall a radio being on?

10 A Yes.

11 Q And is that something that you recall telling
12 the detectives back in 1985 or is that something that
13 you recalled earlier in 2009 when you were again
14 interviewed by Detective Alexander?

15 A In 2009.

16 Q As far as your interview with the detectives
17 back in 1985, could you describe to us your emotional
18 state when you were being interviewed?

19 A In 2009?

20 Q In 1985.

21 A In 1985, my emotional state?

22 Q Yes.

23 A I was very upset.

24 Q Would it be fair to say that you weren't
25 focused in on all the details that you were giving to
26 the police officer or the detective that was
27 interviewing you?

28 A That would be correct.

1 Q Fair to characterize that during that interview
2 you were in a state of shock?

3 A Very much so.

4 Q This interview occurred approximately less than
5 two hours after you had found the body?

6 A Yes.

7 Q As far as this radio being on, tell us about
8 what you remember about the radio.

9 A I had to turn the radio down in order to make
10 the phone call.

11 Q Was it playing loud or was it just on?

12 A It was loud enough that I needed to turn it
13 down in order to make the phone call.

14 Q Do you recall where the radio was?

15 A It was in the living room.

16 Q Now, as far as Rita was concerned and her
17 clothing, you're familiar with the room she was found
18 in, her bedroom?

19 A As far as?

20 Q Had you been in there before?

21 A A couple of times.

22 Q And you were in there afterwards; right?

23 A After that day?

24 Q Yeah.

25 A Yes.

26 Q How would you characterize the clothing
27 situation? Were her clothes spread all over the room or
28 were they nicely hung? How would you characterize the

1 room?

2 A They were nicely hung. I mean, it didn't look
3 like there had been things, like, they had been strung
4 all over the place like there had been an altercation of
5 any type.

6 MR. THOMAS: I have nothing further at this
7 point.

8 THE COURT: Cross.

9 MR. SANDERS: Thank you, your Honor.

10 **CROSS-EXAMINATION**

11 BY MR. SANDERS:

12 Q Good afternoon, Ms. Kraemer.

13 A Good afternoon.

14 Q I think you said you had known Ms. Cobb four
15 years before her death?

16 THE COURT: Move the microphone in front of
17 your face, please.

18 BY MR. SANDERS:

19 Q Had you known Ms. Cobb for about four years
20 before her death; is that correct?

21 A Yes, sir.

22 Q Had you met her before you met Daryl? The
23 reason I ask is I was under the impression that she had
24 been married to your former father-in-law?

25 A That is correct. She had been married to my
26 former father-in-law, but I had not met her until I met
27 Daryl.

28 Q Okay. What was your former father-in-law's

1 name?

2 A Paul Simon, Sr.

3 Q Paul Simon, Sr. That was not the one that she
4 was married to that died in 1979?

5 A I don't know what year -- I don't know which
6 one you're referring to.

7 Q Okay. Daryl had said that she had been married
8 to somebody and that he passed away in, like, 1979, and
9 he lived at that house.

10 A That would probably be Mr. Cobb.

11 Q That was Mr. Cobb. Okay. You didn't know her
12 when she was married to Mr. Simon?

13 A No.

14 Q When you said that you and Daryl had been
15 trying all weekend to call her, was that you trying to
16 call her or Daryl trying to call her?

17 A Daryl.

18 Q You didn't try to call her yourself?

19 A No.

20 Q All right. And the district attorney asked you
21 were you trying to call her on Friday.

22 Do you know if Daryl was trying to call her on
23 Friday the 20th?

24 A I don't recall.

25 Q You don't know what time it was he was trying
26 to call her on Saturday?

27 A I don't recall the times.

28 Q So you and Mr. Kraemer get over there and you

1 park and you go in the back door. I'm going to call the
2 garage door the back door.

3 A That's fine.

4 Q We're on the same page?

5 A Yes.

6 Q You walk through the kitchen and set down your
7 cigarettes; is that correct?

8 A Correct.

9 Q Did you ever smoke a cigarette in the house
10 that day?

11 A I don't recall.

12 Q Okay. Then you heard Daryl, and you also went
13 in the bedroom; is that correct?

14 A Yes.

15 Q Do you remember how much time you spent in the
16 bedroom that first time before you went out?

17 A Seconds.

18 Q All right. And then I believe you said Daryl
19 went off to go to Mr. Sullivan's house?

20 A Correct.

21 Q He told you he was going to do that?

22 A Yes.

23 Q All right. And did he give you any
24 instructions when he left like, call the cops, or
25 something like that?

26 A Yes.

27 Q And you had a cell phone?

28 A No, back then there was no cell phones.

1 Q Okay. What phone did you use then?

2 A The house phone.

3 Q It was working?

4 A Yes.

5 Q You didn't have any trouble getting through?

6 A No.

7 Q Then you said that there was another point when
8 you went into the bedroom; is that correct?

9 A Yes.

10 Q And how long were you in the bedroom the second
11 time?

12 A Probably a matter of seconds.

13 Q Is that because you were trying to open the
14 window?

15 A Yes.

16 Q And it wouldn't open?

17 A That's correct. The odor was so intense. You
18 could not stand to be there very long at all.

19 Q Then you came out?

20 A That's correct.

21 Q And you didn't go back in there a third time?

22 A No, sir.

23 Q Okay. So everything that you observed in that
24 bedroom, you observed in one of those two visits which
25 were each for a very few seconds?

26 A Correct.

27 Q I'm interested in a statement that you told the
28 prosecutor.

1 You said when you looked at her, you felt she
2 could not have done this; correct?

3 A That's correct.

4 Q And do you remember what it was that you saw
5 that made you feel that way?

6 A Like I said, it's a bit -- I think I blocked a
7 lot of things out since then, but I remember seeing her
8 dentures on the pillow.

9 Q Yes.

10 A The way she was lying there with her nude body,
11 and the way she was positioned with her leg up and she
12 was twice her normal size.

13 Q Was it -- I didn't mean to cut you off. Were
14 you finished?

15 A No. There was -- there was -- just appeared to
16 me that somebody had been there, and I didn't feel that
17 she could have done that to herself.

18 Q Thank you. The -- the -- the other question I
19 had on that was: Did you see any particular wound or
20 anything like that that made you feel that way?

21 A The way that she was positioned, it made me
22 feel like somebody had had sex with her to be quite
23 frank.

24 Q All right. When you said you opened the
25 drapes, which drapes were you referring to?

26 A The front drapes to the house.

27 Q Those are the ones that are right there by the
28 dining room table?

1 A That's correct.

2 Q I noticed that in that photograph of your
3 cigarettes and Slurpee cup, the drapes are open.

4 Is that because you had opened them?

5 A Yes.

6 Q I believe that you said that when the police
7 were finished doing what they were doing, it was later
8 in the evening; is that right?

9 A Well, they quickly interviewed me because I had
10 my son I needed to pick up back where I lived in Phelan.

11 Q I see. Then you went to Phelan and came back?

12 A I left Daryl sitting down at the highway.

13 Q Okay. So you had to go back and get Daryl?

14 A No, I had to go back and get our son in Phelan.

15 Q I'm sorry. After you got your son in Phelan,
16 did you then go back out to Lucerne Valley to pick up
17 Daryl?

18 A Yes.

19 Q And is that when you went into the house later
20 that evening?

21 A Yes.

22 Q Okay. And you were discussing with the
23 prosecutor here that you then looked through the
24 Cadillac also?

25 A I don't know if it was that night or not.

26 Q Could have been a different time?

27 A I don't recollect.

28 Q Do you ever recall seeing my client in 1985?

1 A No.

2 Q Did you ever meet Mr. George Yablonsky back in
3 '82, '83, '84 or '85?

4 A Myself, no.

5 Q So you had never socialized with Mr. George
6 Yablonsky at any time that you can recall?

7 A Myself, no.

8 Q I believe you told the police that -- the
9 police asked you of people that had had contact with
10 Ms. Cobb; is that correct?

11 A Yes.

12 Q You told them about a boyfriend she had named
13 Fred?

14 A Yes.

15 Q I believe you also said she was dating a guy
16 from the country club?

17 A Yes, I said that. She told me she had a couple
18 of drinks with a guy from the country club.

19 MR. THOMAS: Objection. Calls for hearsay.
20 Move to strike.

21 THE COURT: Sustained. It will be stricken.

22 BY MR. SANDERS:

23 Q Were you -- were you aware of any other persons
24 that she had been seeing, let's say, six months before
25 her death?

26 MR. THOMAS: Objection. Relevance.

27 THE COURT: Sustained.

28

1 MR. SANDERS: Nothing further. Thank you,
2 your Honor.

3 THE COURT: Cross -- I mean, redirect.

4 MR. THOMAS: Nothing further, your Honor.

5 THE COURT: May this witness be excused?

6 MR. SANDERS: Remain on call please.

7 THE COURT: Subject to recall.

8 MR. SANDERS: Thank you.

9 THE COURT: That's fine. Ms. Kraemer, the
10 attorneys have agreed that, though you're subject to
11 recall, you may remain in the courtroom for the
12 remainder of the trial. I will order that you don't
13 speak to anyone. I know you're here with your
14 husband. Do not speak to him about your testimony
15 today. You may speak to anybody you want to after the
16 trial is over, but until a verdict has been reached,
17 you may speak to no one unless it's either the
18 investigating officer for one of the attorneys or one
19 of the attorneys themselves. Is that okay?

20 THE WITNESS: Thank you.

21 THE COURT: Do you agree?

22 THE WITNESS: Yes.

23 THE COURT: Please have a seat. Call your
24 next witness.

25 MR. THOMAS: People call Diane Flagg.

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

28 THE CLERK: You do solemnly state that the

1 evidence you shall give in the matter pending before
2 this Court shall be the truth, the whole truth, and
3 nothing but the truth, so help you God?

4 THE WITNESS: Yes, I do.

5 THE CLERK: Thank you. Please be seated.

6 THE BAILIFF: Slide yourself forward. Speak
7 directly towards the microphone. Keep your voice up,
8 please state your full name and spell it for the
9 record.

10 THE WITNESS: Diane Flagg D-i-a-n-e, also
11 Marie M-a-r-i-e, Flagg F-l-a-g-g.

12 THE COURT: Good afternoon, Ms. Flagg.

13 THE WITNESS: Good afternoon.

14 THE COURT: You know, you've got a nice full
15 voice. You don't have to worry about speaking into
16 that microphone.

17 THE WITNESS: Good. It makes me feel more
18 comfortable when I don't.

19 THE COURT: Just keep your voice up.

20 THE WITNESS: I am.

21 THE COURT: Your witness.

22 MR. THOMAS: Thank you, your Honor.

23

24 **DIANE FLAGG**, having been duly sworn,

25 testified as follows:

26 **DIRECT EXAMINATION**

27 BY MR. THOMAS:

28 Q Back in September of 1985, where were you

1 living?

2 A At 7520 Fairlane in Lucerne Valley at
3 Wolf Mountain Sanctuary.

4 Q And as far as that sanctuary goes, in relation
5 to Highway 18, where is that?

6 A It's a little bit closer -- it's on the way to
7 Big Bear, little bit closer than where Rita Cobb's house
8 was.

9 Q The sanctuary is a little bit closer
10 to Big Bear than Rita Cobb's place?

11 A Correct.

12 Q You knew a person by the name of Rita Cobb?

13 A Yes, I did. I knew of her.

14 Q And at some point were you interviewed by a
15 Detective Roger McCoy from the San Bernardino County
16 Sheriff's Department?

17 A Yes, I was.

18 Q And what was the purpose of that interview?

19 A Well, we actually -- Tonya and I were noticing
20 that there was a lot of police officers over at Rita's
21 house, and we noticed -- we had a conversation like the
22 day before that we had seen --

23 MR. SANDERS: Objection, your Honor. The
24 answer is nonresponsive, and I'd ask that the witness
25 only speak for herself.

26 THE COURT: That's sustained. In other
27 words, you were mentioning a we. I don't know that
28 there's any reason for that so at this point --

1 THE WITNESS: Try to exclude the person that
2 I'm having a conversation with.

3 THE COURT: Yeah. He's not asking you about
4 a conversation. Listen to the question. Start again.

5 THE WITNESS: Go ahead.

6 BY MR. THOMAS:

7 Q You noticed there was police cars outside
8 Rita's house.

9 Do you recall what day that was?

10 A It was either -- I mean, it's been 26 years. I
11 can't say the exact day that it was, but I know it
12 was -- it was -- we had a lot of -- there was a lot of
13 cars and everything. Then the next day, we noticed that
14 there was -- the police were there, and that's when we
15 thought -- I thought that I should go and talk to the
16 police because I had saw something before, you know, the
17 day before when I saw the police cars. We knew
18 something was wrong -- I knew something was wrong. I'm
19 sorry.

20 Q This interview that you had, it looks like it
21 occurred sometime approximately September 26th of 1985?

22 A Yes.

23 Q The time that this interview occurred, the
24 events were fresher in your memory at that point than
25 they are today?

26 A That's correct.

27 Q You've had a chance to look over the police
28 report containing your interview?

1 A Yes.

2 Q And during that interview, you described to
3 Detective McCoy a few things.

4 Do you recall that?

5 A Yes.

6 Q What did you describe to Detective McCoy?

7 A That I saw a man hitchhiking that was between
8 Rita Cobb's house going towards the Big Bear area
9 hitchhiking that way. He was, like, around six feet
10 tall, black hair, mustache, beard, and had jeans on.
11 Then I also recall --

12 Q Let me stop you there. That's one thing that
13 you told Detective McCoy?

14 A Yes.

15 Q Okay. And then you also told Detective McCoy
16 about another thing; is that correct?

17 A Yes.

18 Q What was this other thing that you told
19 Detective McCoy about?

20 A I saw a number of cars there before I seen the
21 police there. I remember seeing a number of cars, and
22 then I saw a Pinto car, silver.

23 Q I'm going to show you what's been marked
24 Exhibit 1, and I'll bring it up there so that you can
25 see it.

26 May I approach the witness?

27 THE COURT: You will -- you can.

28

1 BY MR. THOMAS:

2 Q Do you recognize what's depicted in Exhibit 1?

3 A Yes.

4 Q What's depicted in Exhibit 1?

5 A You see, that's Rita's house where she lived
6 and her car in the garage there.

7 Q And you described that car to Detective McCoy
8 as a Cadillac?

9 A Cadillac, yes.

10 Q What color would you say that car is?

11 A It's -- I don't have my glasses on. From what
12 I can see --

13 MR. SANDERS: Objection, your Honor. The
14 photograph speaks for itself if that's what she's
15 using for identification.

16 THE COURT: Sustained.

17 BY MR. THOMAS:

18 Q Do you recall without looking at the photograph
19 what color Rita's car was, her Cadillac was?

20 A I don't remember the color of her car. Looks
21 like it was blue -- bluish.

22 Q As far as the day where you were describing
23 this to Detective McCoy, do you recall telling
24 Detective McCoy that it was either Friday night or
25 Saturday night?

26 A Yes.

27 Q And you specifically remember another car being
28 there?

1 A Yes.

2 Q What kind of car was that?

3 A A Ford Pinto.

4 Q Was this a Pinto station wagon or was it a
5 regular --

6 A It was a car.

7 Q Okay. Do you recall what color that was?

8 A Silver.

9 Q As far as the color of the vehicle, do you
10 recall what time you saw this?

11 A No.

12 Q Was it evening hours?

13 A No, I don't recall.

14 Q You just recall there was a silver Pinto?

15 A Because I had a conversation with the other
16 person. That's why I recall it.

17 Q That conversation was with this person that you
18 referred to as Tonya?

19 A Yes.

20 Q The color of the Pinto, would that be something
21 that you were positive of back in 1985 or that you could
22 be wrong on the color?

23 A It's like 25, 26 years ago. I know for sure it
24 was a Pinto, and it was a car. I know that for sure.
25 As far as the color, it's a possibility. You know, I
26 mean, it's 26 years later.

27 Q As far as anybody in the area of the Pinto or
28 Rita's Cadillac, did you see anybody outside?

1 A No.

2 Q Do you recall the Cadillac? Was it in the
3 garage? Outside?

4 A No, I don't recall.

5 MR. THOMAS: Nothing further.

6 THE COURT: Mr. Sanders, you may inquire.

7 MR. SANDERS: Thank you, your Honor.

8 **CROSS-EXAMINATION**

9 BY MR. SANDERS:

10 Q Good afternoon, Ms. Flagg.

11 A Good afternoon.

12 Q Have you seen a copy of the police report that
13 has your statement?

14 A Yes.

15 Q Were you able to read over that?

16 A Yes.

17 Q When you read over that, do you remember that
18 that's what you said or could you remember?

19 A The part -- the only thing I was questioning
20 myself was more on the hitchhiker, but cars I kind of
21 like, so our neighbor had a Pinto car. I do remember
22 the car. As far as the hitchhiker, I surely couldn't
23 identify him today.

24 Q Okay. So let me understand, I believe that you
25 said that you lived up Highway 18 from Rita, Ms. Cobb?

26 A Yes.

27 Q And can you see her house from where you live?

28 A No.

1 Q So when you saw these things, it was because
2 you were driving by?

3 A That's correct.

4 Q All right. And you mentioned a person by the
5 name of Tonya.

6 A Yes.

7 Q Who is Tonya?

8 A Tonya Carloni (phonetic). She owns Wolf
9 Mountain Sanctuary. She knows a lot of people in
10 Lucerne, and she had mentioned Rita must have somebody
11 over.

12 Q Ma'am.

13 A I'm just saying. That's how I remember it.

14 Q Okay. I can't ask you what someone else said.

15 A Yes, that's how I remember it though.

16 Q I'm just trying -- you said that Tonya was
17 someone that was riding with you at the time?

18 A Yes.

19 Q Were you going up the hill towards
20 Wolf Mountain?

21 A Yes.

22 Q Were you going towards Wolf Mountain?

23 A Coming back to our home.

24 Q Okay.

25 A Yeah.

26 Q And I think I heard you say that you saw
27 several cars at Rita's house.

28 Then the next day is when you saw the police

1 activity?

2 A Yes.

3 Q So this time that you're driving up the
4 mountain with Tonya, was the day before you saw the
5 police activity?

6 A Yes.

7 Q All right. And I believe that the first thing
8 you said to the police was that as you were driving up
9 towards Wolf Mountain, you saw a hitchhiker going passed
10 Ms. Cobb's residence?

11 A Yes.

12 Q All right. And you gave that description to
13 the police?

14 A Yes.

15 Q And then I believe you said that you also saw
16 several cars parked in front of her house?

17 A Yes.

18 Q And by several, did you mean three or four or
19 six or seven or another number?

20 A It's been a long time, but I would -- I don't
21 think six or seven would be in my head. It would be a
22 lesser amount like three or four.

23 Q Did three or four include the Cadillac?

24 A No.

25 Q Three or four besides the Cadillac?

26 A Yes.

27 Q Do you remember the make or model of any of the
28 other cars?

1 A No.

2 Q When you were interviewed, you may not remember
3 this because, like you said, it was a long time ago --

4 A Um-hmm.

5 Q -- but when you were interviewed, you told this
6 officer that you saw several cars; is that your words?

7 A Yes.

8 Q Okay. And then did the officer ask you was one
9 of them a Pinto?

10 A No, not at all.

11 Q Okay.

12 A Not at all. Didn't know anything about that.
13 He didn't mention it. I mentioned it.

14 Q That was the only make or model other than the
15 Cadillac you can remember?

16 A Yes.

17 Q So the other three or four cars that were
18 there, you don't remember their makes or models?

19 A No.

20 Q All right. Now, when the -- when the
21 prosecutor just asked you that question, he asked you in
22 this way, did you see these things on Friday or Saturday
23 evening, but in your report you said just Friday or
24 Saturday.

25 You didn't use the word evening; did you?

26 A No, I wasn't --

27 Q Is that because your best recollection is you
28 went by there in the daytime?

1 A Yeah, I didn't know what time of day it was. I
2 don't remember the time of day 26 years ago.

3 Q Could it have been morning, noon or --

4 A Yes, that's correct.

5 Q -- or afternoon?

6 A That's correct.

7 MR. SANDERS: Thank you, ma'am. Nothing
8 further on cross-examination.

9 THE COURT: Redirect.

10 **REDIRECT EXAMINATION**

11 BY MR. THOMAS:

12 Q Do you recall what -- where you were coming
13 from when you went by Rita's house?

14 A The market. We always go down to the market.

15 Q When you say we always go down to the market,
16 you're talking about yourself and Tonya?

17 A Yes.

18 Q Did then -- as far as your trips to the market,
19 was there a specific time that would occur?

20 A No.

21 Q Would you go sometimes really late at night?

22 A If we were hungry. It was to get food.

23 Q Okay. And so there were times you would go
24 during the daytime. There were times you would go
25 during the nighttime.

26 You can't narrow it down based on when you went
27 to the market?

28 A No, I can't. I'm sorry.

1 MR. THOMAS: Nothing further.

2 THE COURT: Cross.

3 MR. SANDERS: No, sir. Thank you.

4 THE COURT: May Ms. Flagg be excused?

5 MR. THOMAS: Yes.

6 MR. SANDERS: Yes, your Honor.

7 THE COURT: Thanks for being with us,
8 Ms. Flagg. You're excused. That means you can go or
9 stay, whichever you'd like.

10 THE WITNESS: Thank you.

11 THE COURT: Call your next witness.

12 MR. THOMAS: People call Roger McCoy.

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

15 THE CLERK: You do solemnly state that the
16 evidence you shall give in the matter pending before
17 this Court shall be the truth, the whole truth, and
18 nothing but the truth, so help you God?

19 THE WITNESS: I do.

20 THE CLERK: Thank you. Please be seated.

21 THE BAILIFF: Please state your full name and
22 spell it for the record.

23 THE WITNESS: Roger T. McCoy R-o-g-e-r
24 M-c-C-o-y.

25 THE COURT: Hello.

26 THE WITNESS: Hello.

27 THE COURT: Mr. McCoy, I don't know if I
28 remember seeing you before, but you look familiar.

1 THE WITNESS: Well, been a long time I've
2 been around.

3 THE COURT: Your witness, Mr. Thomas.

4 MR. THOMAS: Thank you, your Honor.

5

6 **ROGER McCOY**, having been duly sworn,
7 testified as follows:

8

DIRECT EXAMINATION

9

BY MR. THOMAS:

10 Q Good afternoon, Mr. McCoy.

11 A Hello.

12 Q At some point did you work for the
13 San Bernardino County Sheriff's Department?

14 A Yes.

15 Q How long did you work for the San Bernardino
16 County Sheriff's Department?

17 A I was employed with them for 22 years.

18 Q And do you recall the year that you retired?

19 A 2000.

20 Q Was there a rank that you retired?

21 A Sergeant.

22 Q And at some point did you spend any of your
23 22 years with the San Bernardino County Sheriff's
24 Department as a homicide investigator?

25 A Yes.

26 Q Do you recall the years that you spent as a
27 homicide investigator?

28 A From 1984 to '86.

1 Q So it was approximately two years, a little
2 over two years?

3 A Little bit over two years.

4 Q And as far as your time in homicide, was there
5 a method or way that it would be determined who was
6 going to go out to which homicide scenes?

7 A Generally depends on who had the duty at the
8 time. There were four teams, and the duty was rotated
9 through the teams. If Team 1 was already on a case,
10 Team 2 picked it up and on down the line through Team 4.

11 Q How many people were part of each team that
12 you're talking about?

13 A Four detectives and a sergeant.

14 Q And the team that you were apart of, who was
15 all part of that team?

16 A Dave Baker was the sergeant in charge of it.
17 Gary Woods -- it's hard because they -- we rotated
18 through all the teams. I'm trying to keep track of who
19 was on the specific teams at a specific time.
20 Gary Woods was there. Let's see who else was on that
21 one. I think -- I'm trying to remember. Pepper was on
22 there.

23 Q Do you recall who the sergeant of the team was?

24 A Baker.

25 Q And then, so it was Woods, yourself, and then
26 there were two other people?

27 A Yes.

28 Q Was Peterson part of your team?

1 A It's entirely possible because, like I said, we
2 did not stay in the homogenized team. Depending on who
3 was in court or sick or whatever, you got pulled from
4 one team to another, and the only thing that stayed
5 consistent was the sergeant.

6 Q Okay. And then approximately how many homicide
7 scenes had you -- or did you go to during your time as a
8 deputy sheriff with San Bernardino County?

9 A As a deputy sheriff or as a homicide
10 investigator?

11 Q Specifically, as a deputy sheriff first?

12 A I'd have to guess 20.

13 Q And then as a homicide detective, I'm guessing
14 that was most of those 20 were as a homicide detective?

15 A Well, yeah, I would think the majority of them.

16 Q Do you recall responding to a scene at the
17 address of 35435 Highway 18 in Lucerne Valley, county of
18 San Bernardino?

19 A Yes.

20 Q And specifically back on September 23rd of
21 1985?

22 A Yes.

23 Q Do you recall approximately what time you
24 arrived at the scene?

25 A If I can refer to my notes, it would tell me
26 that.

27 Q The notes you're referring to are the reports
28 that were produced in this case?

1 A Correct.

2 Q Would that refresh your recollection?

3 A Yes.

4 MR. THOMAS: May the witness do so?

5 THE COURT: Yes.

6 THE WITNESS: We arrived at approximately
7 1422 hours on 9/23 of '85.

8 BY MR. THOMAS:

9 Q And 1422 for those of us that don't know
10 military time, that would be 2:22?

11 A Correct.

12 Q In the afternoon?

13 A In the afternoon.

14 Q I'm going to show you some photographs. First
15 I'll show you Exhibit 1.

16 May I approach the witness?

17 THE COURT: You may.

18 BY MR. THOMAS:

19 Q Show you what has been marked Exhibit 1, do you
20 recognize that photograph?

21 A Yes.

22 Q What does that photograph depict?

23 A That's the front yard portion of the victim's
24 residence.

25 Q Showing you another photograph that's been
26 marked Exhibit 2, do you recognize what that photograph
27 depicts?

28 A Appears to be the side of her residence.

1 Q Show you another photograph that's been marked
2 Exhibit 3, do you recognize what that photograph
3 depicts?

4 A The victim's garage and her vehicle.

5 Q As far as your assignment, and -- I forgot to
6 ask this earlier, when you go out to homicide scenes,
7 are certain people assigned certain assignments to do at
8 the scene?

9 A Yes.

10 Q What was your assignment?

11 A I was to do the crime scene.

12 Q When you say you were to do the crime scene,
13 what does that mean?

14 A Basically, you try to locate physically with
15 measurements, the size of the building, where it's
16 located in the building, where the victim is located,
17 any evidence that you may observe or that's located,
18 that type of thing.

19 Q Okay. And I'm going to show you an exhibit
20 that's been marked Exhibit 39.

21 Did you do a crime scene -- what they call a
22 crime scene diagram in this case?

23 A Yes, I did.

24 Q Looking up at the screen there, Exhibit 39's up
25 there.

26 Is that the crime scene diagram that you
27 prepared regarding the case of Rita Cobb?

28 A Yes.

1 Q And I notice on the diagram there's several
2 what appear to be measurements.

3 Do you see those?

4 A Yes.

5 Q Were those measurements taken by you?

6 A Yes.

7 Q And then as far as orientation goes, can you
8 give us some sort of orientation where north and south
9 is? Is that written on the diagram?

10 A It's written on the diagram. Using a compass,
11 we try to get a general direction of where everything's
12 located using a compass as a starting point as a
13 reference.

14 Q You did that in this particular case?

15 A Yes.

16 Q And you put the directions up there in the
17 bottom right-hand corner of Exhibit 39?

18 A Yes.

19 Q Can you describe to us what was the practice
20 back in 1985 as far as when you show up at one of these
21 homicide scenes?

22 You discuss who's going to do what?

23 When does somebody go inside the house and
24 start looking around?

25 A Generally, the sergeant who's in charge of the
26 team will decide you're scene, you're interviews, you're
27 whatever, whatever is appropriate for the incident. I
28 don't know that he uses any particular criteria to

1 choose it. It's just you're it.

2 Q Okay. And you were it for the crime scene?

3 A I was it.

4 Q And then as far as these photographs that I'm
5 showing you, when are these photographs taken?

6 A During the course of the investigation while we
7 were on the scene.

8 Q I'm going to show you another photograph that's
9 been marked Exhibit 4.

10 Do you recognize that photograph?

11 A Only as much as it appears to be the interior
12 of the garage.

13 Q That's the -- in the bottom right-hand corner
14 of the photograph looks -- what appears to be a
15 Cadillac?

16 A Right.

17 Q That's the same car that you see in the other
18 photographs?

19 A Yes.

20 Q Show you what has been marked Exhibit 5, do you
21 recognize this photograph?

22 (Whereupon Exhibit 5 was marked
23 for identification.)

24 THE WITNESS: Yes. That's the back of her
25 house, the back of the victim's home.

26 BY MR. THOMAS:

27 Q And looking at, I believe it's Exhibit -- were
28 there two separate residences on that property?

1 A I do not recall that.

2 Q Show you what has been marked Exhibit 2, do you
3 see the other building in the rear there?

4 A I do.

5 Q Okay. Was that a detached type of structure
6 that possibly could hold people in there?

7 MR. SANDERS: What photo are we looking at?

8 MR. THOMAS: We're looking at a different one
9 right now. He has Exhibit 2 up there.

10 Do you see it in Exhibit 2?

11 THE WITNESS: Yes. I do not recall that
12 building being there, but obviously it was. It's in
13 the photograph.

14 BY MR. THOMAS:

15 Q Okay. Show you what has been marked Exhibit 6,
16 in Exhibit 6, can you see the other building that I was
17 taking to you about?

18 (Whereupon Exhibit 6 was marked
19 for identification.)

20 THE WITNESS: I believe I can -- yes. Yes.

21 BY MR. THOMAS:

22 Q Did you do any investigation in that particular
23 building that you can recall?

24 A I cannot recall other than it was there. We
25 looked at it, but there was no investigative leads that
26 we could find in that building. I'm assuming because it
27 was there. I don't remember the building being there
28 so...

1 Q Show you what has been marked Exhibit 7, do you
2 recognize that?

3 (Whereupon Exhibit 7 was marked
4 for identification.)

5 THE WITNESS: No, I do not.

6 BY MR. THOMAS:

7 Q Now, as far as Exhibit 7, if you look at the
8 previous exhibit, Exhibit 6, can you see what appears to
9 be a metal-type container?

10 A Yes.

11 Q Did you see that in both of the photographs?

12 A Yes.

13 Q As far as that metal type of container, you can
14 see that it's from Exhibit 6 next to what appears to be
15 the smaller residence or the smaller structure on the
16 property.

17 A Yes, yes.

18 Q Okay. So looking at Exhibit 7, do you have any
19 idea what you're looking at as far as the main residence
20 is concerned?

21 A Well, in judging what I'm looking at, I'm
22 assuming you have a water tank with a structure in front
23 of what I'm assuming -- what appears to be the main
24 residence or main structure ahead of it deeper into the
25 picture.

26 Q Okay. Then I'm going to show you Exhibit 8.
27 Do you recall seeing a Jeep at any point on the
28 property?

1 A I do not, no.

2 Q So as far as the exterior of the property, was
3 that one of the things that you were assigned to do or
4 were you assigned to do the interior portion of it?

5 A The interior.

6 Q As far as the exterior portion of the
7 residence, you were never out there to take measurements
8 or anything?

9 A We found some tire tracks on the outside of the
10 residence, but I did not go around the entire structure.

11 Q Since we're speaking of tire tracks, I'm going
12 to show you an exhibit. It's been marked Exhibit 21.

13 Do you recognize that?

14 (Whereupon Exhibit 21 was marked
15 for identification.)

16 THE WITNESS: Well, only in as much as it's
17 tire prints in the dirt. Specifically, I could not
18 tell you where that was located, but we did take
19 measurements of tracks that were out in front of the
20 house and in the general area.

21 BY MR. THOMAS:

22 Q As far as those tire tracks are concerned, you
23 put that in your report?

24 A I did.

25 Q Would looking at your report refresh your
26 recollection as to where those tire tracks were?

27 A I think so.

28 Q Specifically, Page 3 of your report underneath

1 crime scene at the top of the page.

2 A Yeah. Tire prints located on the east side of
3 the structure and tire prints there (indicating).
4 Located on the west side of the structure, there were
5 additional vehicle tire prints.

6 Q So as far as these specific set of tire tracks,
7 you wouldn't be able to tell us if they were the tire
8 tracks on the east side or the west side?

9 A Not from that photograph. It's only been 25
10 years.

11 Q As far as the tire tracks, I notice there
12 appear to be placards in Exhibit 21, Placard 1 and 2.

13 Do you see that in the photograph?

14 A Yes.

15 Q I'm going to show you what has been marked
16 Exhibits 22 and 23, put them up on the screen, 22 being
17 the exhibit up at the top and 23 being the photograph at
18 the bottom. Speaking first about Exhibit 22.

19 What does Exhibit 22 depict?

20 (Whereupon Exhibit 22 was marked
21 for identification.)

22 THE WITNESS: Tire prints.

23 BY MR. THOMAS:

24 Q That's the tire prints that you marked as
25 Placard Number 1?

26 A Yes.

27 Q And then there's another set of tire tracks in
28 Exhibit 23; is that correct?

1 (Whereupon Exhibit 23 was marked
2 for identification.)

3 THE WITNESS: Correct.

4 BY MR. THOMAS:

5 Q You used Placard Number 2 to designate that
6 tire track?

7 A Correct.

8 Q At some point did you see what appears to be a
9 12-pack of Coors at the location?

10 A Yes.

11 Q At the residence?

12 A Yes.

13 Q Where's that located?

14 A On the outside, I believe, the front porch.

15 Q I'm going to show you what's been marked
16 Exhibit 24.

17 Do you recognize that?

18 A Yes.

19 Q Is that the 12-pack of Coors that you spoke
20 about?

21 A Yes.

22 Q That's depicted in the photograph on top of
23 what appears to be some sort of concrete?

24 A Cinder block.

25 Q Cinder block?

26 A Yes.

27 Q At some point did you find out who brought that
28 12-pack to the location?

1 A Yes.

2 Q Who was that?

3 A Rita's son.

4 Q That would have been Daryl Kraemer?

5 A Yes.

6 Q Once you got inside the house, did you look
7 around to see if there's anything of evidentiary value
8 to you?

9 A Other than in the bedroom where the deceased
10 was found?

11 Q Yes.

12 A Yes.

13 Q And just for the record, did you go to -- where
14 did you start your investigation? Did you start out in
15 the bedroom or did you start out at some other location
16 in the house?

17 A Do an overall from the front door. Start from
18 the front door and work our way into the structures.

19 Q And on Exhibit 39, the diagram that you
20 prepared in this case, where is the front door if you
21 can recall?

22 A It's on the northeast corner, I suppose would
23 be the best place to put it.

24 Q On the diagram, if you're looking at it, it's
25 at the bottom left-hand corner and you see what appears
26 to be a door swinging open?

27 A Correct.

28 Q So you started your investigation at that

1 particular location?

2 A Correct.

3 Q And then as far as the investigation
4 progressed, did it go to this room just adjacent to what
5 appears to be a living room where you see the circle
6 table?

7 A Yes.

8 Q Okay. You marked -- did you mark any items in
9 that particular area?

10 A I believe there -- there was another container
11 of beer in that general area.

12 Q As far as that container -- are you sure it was
13 beer?

14 A There was beer located in the house, and I'm
15 thinking that's where it was at.

16 Q Would looking at your report refresh your
17 recollection as to whether or not --

18 A Certainly.

19 Q Specifically, it would be bottom of Page 2?

20 A That's where the ashtray was located.

21 Q Do you recall seeing anything about a mention
22 of beer in this report?

23 A Yeah. It seems there was another 6-pack of
24 beer or something.

25 Q Would that have been indicated in your report?

26 A Should be, yes.

27 Q Do you recall seeing a Slurpee cup?

28 A No.

1 Q I'm going to show you a photograph that's been
2 marked Exhibit 25.

3 Do you recognize that photograph?

4 A In relationship to the Slurpee cup, no. It's
5 part of the interior of the residence, but I don't
6 recall a Slurpee cup.

7 Q Okay. As far as the Slurpee cup was concerned,
8 there's a placard just to the right of the Slurpee cup
9 in the photograph.

10 Do you see that?

11 A Yes.

12 Q That would be Placard Number 6?

13 A It appears to be, yes.

14 Q As far as Placard Number 6, what was contained
15 or designated by Placard Number 6?

16 A I don't readily find that in my report.

17 Q Would looking at a close-up of Placard Number 6
18 help refresh your recollection?

19 A I don't believe so.

20 Q You want to try?

21 A Can't hurt.

22 Q Okay. I'm going to show you what has been
23 marked Exhibit 26.

24 Do you recognize that?

25 A Yes, but it wasn't for the Slurpee cup.

26 Q What was it designating?

27 A The Virginia Slim cigarette pack.

28 Q Okay. Then looking at your report, bottom of

1 Page 2 of your report, you wrote also located in the
2 dining area is a round table which stood soft drink
3 containers and a package of Virginia Slims cigarettes.

4 Do you see that?

5 A Yes.

6 Q The soft drink container, that would have been
7 what you were referring to, the Slurpee cup?

8 A I would assume.

9 Q Okay. Then there were other items that were
10 located in the desk area.

11 Do you recall those items?

12 A Not specifically but --

13 Q Specifically, would referring to your report,
14 specifically Page 2, the last paragraph on Page 2, would
15 that refresh your recollection as to what was found on
16 the desk area?

17 A Well, it indicates the Virginia Slims
18 cigarettes and the soft drink.

19 Q Those were located, according to your report,
20 on the round table; right?

21 A Yes.

22 Q Just above that there's a -- located in the
23 dining area of the residence is a desk, which is located
24 against the south wall of the dining area. Then it
25 talks about items that were found on top of the desk.

26 A Yes.

27 Q Okay. And Placard Number 5 would have been,
28 according to your report, an ashtray?

1 A Correct.

2 Q I'm going to show you what has been marked
3 Exhibit 27.

4 Looking at Exhibit 27, that's the desk that is
5 referred to in your report?

6 (Whereupon Exhibit 27 was marked
7 for identification.)

8 THE WITNESS: Yes.

9 BY MR. THOMAS:

10 Q And then specifically I'll show you Exhibits 28
11 and 29 together, 28 being the one on top, 29 being the
12 one on the bottom.

13 Placard Number 5 appears right behind what
14 appears to be an ashtray with some cigarette butts in
15 there?

16 (Whereupon Exhibits 28 and 29 were marked for
17 identification.)

18 THE WITNESS: Correct.

19 BY MR. THOMAS:

20 Q Then Placard Number 7, what does that
21 designate?

22 A The Benson and Hedges cigarettes.

23 Q Okay. And then did you locate what appeared to
24 be blood stains or blood spots of some sort in the
25 residence?

26 A Yes.

27 Q How were those labeled?

28 THE COURT: Why don't we stop right now and

1 take our afternoon recess and call this the end of a
2 chapter and start up in 15 minutes.

3 Ladies and gentlemen, you're admonished that it
4 is your duty not to converse among yourselves or with
5 anyone else about any matter connected with this case
6 nor form or express an opinion on it until it's
7 submitted to you.

8 (Whereupon a recess was taken.)

9 (Whereupon the following proceedings were held in open
10 court in the presence of the jury:)

11 THE BAILIFF: Remain seated. Come to order.
12 Court is now in session.

13 THE COURT: Good afternoon. Back on the
14 record in the case of People of the State of
15 California versus John Henry Yablonsky. Mr. Yablonsky
16 is here with his attorney, David Sanders, along with
17 his counterpart from the District Attorney's Office,
18 John Thomas, and Detective Robert Alexander.

19 On the witness stand, we have
20 Sergeant Roger McCoy, retired, and continuing in direct
21 examination.

22 MR. THOMAS: Thank you, your Honor.

23 BY MR. THOMAS:

24 Q Before we left for the break, we were about to
25 get into what you -- what appeared to be blood spatter
26 of some sort in the residence; is that correct?

27 A Correct.

28 Q And those were designated how?

1 A A-24 and A-23.

2 Q On the diagram, Exhibit 39 that you see on the
3 screen, if you can use the laser pointer up there, can
4 you point out to us where A-23 is first?

5 A (pointing).

6 Q You're pointing to the hallway to the right
7 center of the screen where it's marked A-23, and then
8 there's an arrow to what appears to be the end of a wall
9 or doorway?

10 A Right.

11 Q Then do you see A-24 on there?

12 A (pointing).

13 Q You're pointing to an area on the diagram to
14 the right of center just before you enter the victim's
15 bedroom where it says A-24, and then there's an arrow
16 pointing to the door where it would hinge open and shut?

17 A Right.

18 Q Then as far as A-23 was concerned, did you do
19 any measurements as far as that particular suspected
20 blood drop?

21 A Yes.

22 Q What were the measurements that you took?

23 A If I can refer to my notes?

24 Q Would that refresh your recollection?

25 A Yes, it will.

26 THE COURT: Don't you think by now it's a
27 better idea to say refer to those and see if it
28 refreshes your recollection because the answer could

1 be no, and you're still going to ask him to look.

2 Go ahead, please.

3 THE WITNESS: A-23 was located approximately
4 35 inches above the floor of the hallway.

5 BY MR. THOMAS:

6 Q I'm going to show you an exhibit that's been
7 marked Exhibit 36.

8 Looking at Exhibit 36, is that the blood spot
9 that you saw that was marked A-23?

10 (Whereupon Exhibit 36 was marked
11 for identification.)

12 THE WITNESS: Yes, I believe it is.

13 BY MR. THOMAS:

14 Q And then as far as A-24 was concerned, what was
15 the description that you gave on A-24?

16 A That was located on the molding in the doorway
17 leading from the hall of the residence into the bedroom
18 where the victim was located.

19 Q How far off the ground was that located?

20 A Located approximately 43 inches from the floor
21 of the hallway.

22 Q I'm going to show you another photograph that's
23 been marked Exhibit 37.

24 Do you recognize that photograph?

25 (Whereupon Exhibit 37 was marked
26 for identification.)

27 THE WITNESS: Yes.

28

1 BY MR. THOMAS:

2 Q Is that the photograph of the blood drop or
3 blood spot marked as A-24?

4 A Yes.

5 Q As far as the exterior of the house, before we
6 get into the victim's bedroom, did you find any
7 cigarette butts?

8 A Yes, I believe there were.

9 Q Okay. I'm going to show you a couple
10 photographs. First, Exhibit 30.

11 Do you recognize what's depicted in Exhibit 30?
12 (Whereupon Exhibit 30 was marked
13 for identification.)

14 THE WITNESS: No, I do not.

15 BY MR. THOMAS:

16 Q As far as Exhibit 30 was concerned, can you see
17 just to the right of Placard 9 there appears to be some
18 cigarette butts?

19 A Yes.

20 Q Does the photograph -- if you look at the front
21 porch photograph that I showed you earlier --

22 A Exhibit 1.

23 Q I think it's Exhibit 1 or 2 or 3.

24 A I have Exhibit 1.

25 Q Do you see any of the items that you see in
26 Exhibit 30 in Exhibit 1?

27 A No, I do not.

28 Q Okay. So you don't recall marking any of the

1 cigarette butts with Placard Number 9?

2 A Those placards were generally set up by the ID
3 tech that was on scene, and they refer to his -- his
4 notes --

5 Q Okay.

6 A -- and the location of which was documented
7 when they're collected, and they're usually collected by
8 the crime lab personnel.

9 Q That would have been Don Jones?

10 A Correct.

11 Q Okay. I'll ask him.

12 Now, as far as the interior of the bedroom or
13 the victim's bedroom inside the house, could you
14 describe what you saw when you walked in there?

15 A There was a woman's body lying on the bed. She
16 was nude. It was a moderate state of decomposition,
17 face was all purple and swollen.

18 Q And then I believe you wrote in your report
19 moderate to advanced state of decomposition?

20 A Correct.

21 Q And then was there anything about her face that
22 you saw that was unusual?

23 A Her head was swollen quite a bit. Her face was
24 purple in color.

25 Q Was there a white cloth at any point that you
26 observed?

27 A Yes.

28 Q Where was that white cloth?

1 A I believe it was on the floor next to her.

2 Q Would referring to your report refresh your
3 recollection?

4 A Sure.

5 Q Page 2, top of the page, first paragraph.

6 A I'm thinking of another situation. This was
7 used as a gag in her mouth. Yes, that was present.

8 Q I'm going to show you what has been marked
9 Exhibit 33.

10 Do you recognize that exhibit?

11 (Whereupon Exhibit 33 was marked
12 for identification.)

13 THE WITNESS: Yes.

14 BY MR. THOMAS:

15 Q What does that exhibit depict?

16 A That depicts the position and the location of
17 the body when I entered the room.

18 Q And I notice there appears to be a white cloth
19 covering the victim's face in Exhibit 33?

20 A Yes.

21 Q And that's the white cloth that you referred to
22 as being used as -- possibly being used as a gag?

23 A I believe so, yes.

24 Q Show you another photograph that's been marked
25 Exhibit 13.

26 Do you recognize that photograph?

27 (Whereupon Exhibit 13 was marked
28 for identification.)

1 THE WITNESS: Yes, it's the same victim from
2 a different angle.

3 BY MR. THOMAS:

4 Q That particular picture, Exhibit 13, is taken
5 from the doorway that would lead out to the hallway?

6 A Correct.

7 Q Okay. In that particular photograph, do you
8 remember there being any clothing?

9 A Yes, there was some clothing on the bed.

10 Q Okay. Was it on the bed or --

11 A In my mind, it's on the bed.

12 Q Would referring to your report refresh your
13 recollection as to where the clothing was located?

14 A Certainly. According to my notes, it was on
15 the floor of the bedroom adjacent to what is the north
16 wall.

17 Q In looking at that photograph, the north wall
18 would be that wall just to the right there in that
19 photograph, Exhibit 13?

20 A Yes.

21 Q So there was clothing on the floor there?

22 A Yes.

23 Q I'm going to show you what's been marked
24 Exhibit 11.

25 Looking at Exhibit 11, do you recognize that --
26 what's depicted in this photograph?

27 (Whereupon Exhibit 11 was marked
28 for identification.)

1 THE WITNESS: No.

2 BY MR. THOMAS:

3 Q As far as that particular photograph, you can
4 see the victim's leg in the bottom left-hand corner of
5 the photograph?

6 A Yes.

7 Q Okay. And so looking at the other photograph,
8 that would be the -- I guess it would be the north side
9 of the bed?

10 A Yes.

11 Q Okay. And then there's what appears to be some
12 sort of item in that photograph depicted?

13 A Yes, cloth or something.

14 Q At the top of the photograph, the top
15 right-hand corner of the photograph, and I'll point it
16 out to you with the laser, there appears to be a set of
17 glasses.

18 Do you see that?

19 A Yes.

20 Q Those glasses, were they there that you can
21 remember?

22 A They're in the photograph, so they were there
23 because nothing was moved. All we were there doing was
24 measurements, and what have you. Nothing gets moved
25 until the crime lab, the ID tech, homicide, we are all
26 satisfied, the coroner comes in and the only thing
27 that's moved is the victim's body.

28 Q Okay. Were you present when the coroner came

1 in to move the victim's body?

2 A Yes.

3 Q And typically what happens when the victim's
4 body's moved?

5 A It's rolled to one side so we can inspect
6 what's under the body directly and for additional
7 evidence or investigative leads.

8 Q Okay. And then as far as the bedding, how
9 would you characterize the bedding? If you look at the
10 photographs I've shown you already, was it -- was the
11 bedding neat?

12 A No, it was -- it had been, in my description,
13 wadded up more or less.

14 Q Okay.

15 A Disturbed.

16 Q When you say wadded up, what part of the bed
17 was wadded up?

18 A If I can use the photograph as an example, it's
19 in the northeast corner of the bed.

20 Q Okay. And then let me show you another
21 photograph that's been marked Exhibit 14.

22 Do you see where the bedding was wadded in this
23 exhibit?

24 (Whereupon Exhibit 14 was marked
25 for identification.)

26 THE WITNESS: Yes, over there.

27 BY MR. THOMAS:

28 Q Then looking at Exhibit 14, that's just from a

1 different angle from the previous exhibit that I showed
2 you?

3 A Right, yes.

4 Q Okay. At any point did you notice a -- I guess
5 it would be a watch pin of some sort?

6 A Yes.

7 Q Do you recall where that was located?

8 A Located up by her head in this general area.

9 Q Show you a photograph that's been marked
10 Exhibit 12.

11 I guess it would be characterized as a
12 watchband pin?

13 (Whereupon Exhibit 12 was marked
14 for identification.)

15 THE WITNESS: Yes.

16 BY MR. THOMAS:

17 Q And so that particular item was just above
18 Rita's head on the right side of the bed?

19 A Yes.

20 Q Did you notice, as far as the bedroom itself
21 was concerned, did you notice if it appeared to be
22 somewhat orderly or was it ransacked or is that
23 something that you can't remember?

24 A The bedroom, like the rest of the house, was
25 not organized. There were things that should have been
26 put away that weren't depending on who your wife is I
27 guess. The whole house had things that were out of
28 place that just were not put away. Either she didn't

1 have a place for them or she had chosen not to put them
2 away.

3 Q As far as some of these items that were out and
4 about, would you characterize some of these items as
5 being items of value?

6 A No, just normal every day things that you'd
7 collect. You go to the store and instead of putting it
8 away, you set it down and that type of thing.

9 Q As far as the bedroom was concerned, were there
10 dressers or anything like that in that bedroom that you
11 can recall?

12 A I do not have it indicated in the diagram, and
13 I don't remember any.

14 Q When you looked through the house, did you see
15 drawers or anything that were left open like somebody
16 had been going through that?

17 A No, the house did not appear to be ransacked.
18 It was not orderly. It hadn't been torn apart.

19 Q And then as far as the victim was concerned,
20 did you notice a murder weapon or anything on the
21 victim?

22 A Yes, she had what appeared to be a coat
23 hanger -- a wire coat hanger wrapped around her neck.
24 At that point she was in a state of decomposition. She
25 was swelling, so it was cutting very deeply into her
26 throat.

27 Q Do you recall whether or not her dentures were
28 inside her mouth?

1 A She -- if I remember, uppers were inside and
2 her lowers were on the bed with her I believe.

3 Q I'm going to show you a couple photographs.
4 First, Exhibit 16.

5 Looking at Exhibit 16, can you see the wire
6 hanger that you were speaking about?

7 (Whereupon Exhibit 16 was marked
8 for identification.)

9 THE WITNESS: Not real well in that picture,
10 but in this picture certainly, yes.

11 BY MR. THOMAS:

12 Q When you say not real well in that picture,
13 you're talking about the picture on the big screen?

14 A The projection picture is not indicating the
15 wire as well as the regular photograph.

16 Q Do you see her upper dentures and lower
17 dentures in that photograph?

18 A Yes.

19 Q Again, if you can just point out to where her
20 upper dentures and lower dentures are in the photograph.

21 A Uppers are still in her mouth.

22 Q Just for the record, you're pointing to the
23 upper center of the photograph, Exhibit 16?

24 A Correct. The lowers were on the bed next to
25 her.

26 Q Then you're pointing to the area on the bottom
27 right-hand corner of the photograph.

28 A Yes.

1 Q Show you what has been marked Exhibit 15.
2 Did you notice whether or not the victim had a
3 bracelet of some sort on?

4 (Whereupon Exhibit 15 was marked
5 for identification.)

6 THE WITNESS: Yes.

7 BY MR. THOMAS:

8 Q And do you see that bracelet in the photograph,
9 Exhibit 15?

10 A Yes.

11 Q Okay. Where is it?

12 A In the projection picture, it's hard to see.
13 It's right in there.

14 Q Did she also have a watch on?

15 A Yes.

16 Q Where is the watch?

17 A Either that -- this portion is the watch and
18 this is the jewelry or it's the other way around. This
19 is probably the bracelet and that's the watch.

20 Q So --

21 A She had them on her wrists.

22 Q Just for the record, you think that the
23 bracelet might be on the right hand -- right wrist area
24 of the victim and the watch on the left wrist area of
25 the victim?

26 A Correct, yes.

27 Q Then as far as the body being rolled, one of
28 the purposes of doing that is so that the coroner

1 investigator can establish lividity and some other
2 things?

3 A Correct.

4 Q And lividity being blood settling?

5 A Blood settling, yes.

6 Q Okay. And that would indicate whether or not a
7 victim had been moved?

8 MR. SANDERS: Objection, your Honor, to the
9 prosecutor testifying.

10 MR. THOMAS: I can ask or rephrase it.

11 THE COURT: In a way that's it's not leading,
12 go ahead.

13 MR. THOMAS: As far as lividity is concerned,
14 do you know other than establishing --

15 THE COURT: Just a second. Counsel, are you
16 going to be asking these same questions of the person
17 who was there --

18 MR. THOMAS: I can ask the pathologist these
19 questions.

20 BY MR. THOMAS:

21 Q I'm going to show you Exhibit 34.

22 Looking at Exhibit 34, is that when the body is
23 being rolled?

24 (Whereupon Exhibit 34 was marked
25 for identification.)

26 THE WITNESS: Yes.

27 BY MR. THOMAS:

28 Q Then afterwards, was there a picture taken of

1 the bed after the body was removed?

2 A Yes.

3 Q I'm going to show you Exhibit 18.

4 Do you recognize that exhibit?

5 (Whereupon Exhibit 18 was marked
6 for identification.)

7 THE WITNESS: Yes.

8 BY MR. THOMAS:

9 Q What does that exhibit depict?

10 A The top of the water bed with the blanket,
11 sheet with body fluids present on the sheet.

12 Q Then as far as all of the photographs that I've
13 shown you that you've been able to identify, so
14 excluding those ones that you said I don't know what's
15 in these photographs, are all those photographs true and
16 accurate depictions of the crime scene as you saw it
17 back on September 23rd, 1985?

18 A Yes.

19 Q Did you do an investigation in the interior of
20 the residence to determine if you could see any signs of
21 forced entry?

22 A Yes.

23 Q Did you find anything to indicate there was a
24 forced entry?

25 A No.

26 Q Did you find any indications that there was a
27 theft or some sort of burglary at the location?

28 A No.

1 MR. THOMAS: Nothing further at this point.

2 THE COURT: Mr. Sanders, do you have any
3 questions?

4 MR. SANDERS: If I may have just a moment,
5 your Honor? No questions. Thank you, your Honor.

6 THE COURT: Okay. May Sergeant McCoy be
7 excused?

8 MR. THOMAS: Yes.

9 MR. SANDERS: If he may remain on call.

10 MR. THOMAS: Can we approach on that?

11 THE COURT: Sure.

12 (Whereupon the following proceedings were held at the
13 bench out of the hearing of the jury:)

14 MR. THOMAS: Sergeant McCoy is from Idaho.
15 The DA's Office had to fly him in here. He's
16 scheduled to leave first thing Wednesday morning to go
17 back to Idaho.

18 MR. SANDERS: Can we agree if there's a
19 statement that I need to corroborate, we can use his
20 report?

21 MR. THOMAS: Yeah.

22 MR. SANDERS: Okay.

23 MR. THOMAS: I don't have any problem with
24 that.

25 THE COURT: In other words, make sure we
26 understand, he said, I don't see anything wrong with
27 that. He's concerned that he's going to have
28 Joe Smith on the stand and Joe Smith is going to

1 testify differently than the report that McCoy made
2 back in 1985.

3 MR. SANDERS: We have an agreement that we
4 can use those reports for that purpose.

5 MR. THOMAS: Okay.

6 THE COURT: So in other words, I can tell him
7 that he's subject to recall, but it's a technicality
8 that he's going to be going; right?

9 MR. THOMAS: Yes.

10 MR. SANDERS: Yes.

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

13 THE COURT: Or in the alternative, we could
14 simply excuse him subject to the stipulation?

15 MR. SANDERS: Excused.

16 MR. THOMAS: Yes, your Honor.

17 THE COURT: Sergeant McCoy, thank you for
18 being with us, sir. You are excused.

19 THE WITNESS: Thank you.

20 THE COURT: Call your next witness.

21 MR. THOMAS: People call Donald Jones.

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

26 THE WITNESS: I do.

27 THE CLERK: Thank you. Please be seated.

28 THE BAILIFF: Please state your full name and

1 spell it for the record.

2 THE WITNESS: My name is Donald Thomas Jones
3 D-o-n-a-l-d T-h-o-m-a-s J-o-n-e-s.

4 THE COURT: Good afternoon, Mr. Jones.

5 THE WITNESS: Good afternoon, sir.

6 THE COURT: Your witness, Mr. Thomas.

7 MR. THOMAS: Thank you, your Honor.
8

9 **DONALD JONES**, having been duly sworn,
10 testified as follows:

11 **DIRECT EXAMINATION**

12 BY MR. THOMAS:

13 Q What is your current occupation?

14 A I'm a criminalist with the San Bernardino
15 County Sheriff's Department. Basically a forensic
16 scientist who works in the crime laboratory.

17 Q When you say forensic scientist, what does that
18 mean?

19 A It means someone who has received training with
20 regard to the laws of natural sciences and applies that
21 to physical evidence as it is necessary for
22 investigations for court purposes.

23 Q And how long have you been employed with
24 San Bernardino County as a criminalist?

25 A For about 30 and a half years.

26 Q And as far as your qualifications to be a
27 criminalist, can you briefly describe to the jury what
28 your qualifications are?

1 A It's pretty basic to be a criminalist. You
2 need to have a bachelor of science degree in some sort
3 of natural science. I have a bachelor of science degree
4 in chemistry from California State University at
5 Northridge. I have a -- went back to school to get a
6 master's degree in biology from California State
7 University at San Bernardino.

8 In order to do some of the specialized
9 techniques that we do at the laboratory, we do receive
10 additional training, either in-house practical exams or
11 through additional training that we go to outside
12 agencies, such as, the Federal Bureau of Investigation,
13 California Criminalistics Institute, or there are some
14 private organizations which will train us in various
15 techniques we use in the crime laboratory.

16 Q Then during your 30-plus years as a
17 criminalist, did you continue to be educated and go to
18 different classes that you attend in order to progress
19 in the things that you do as a criminalist?

20 A Yes, sir. There were classes and courses of
21 which I have just got finished talking about. In
22 addition to that, there's a professional organization I
23 belong to, the California Association of Criminalists.
24 We have semiannual meetings. We have study groups in
25 which we can attend to exchange information with other
26 forensic scientists who are either in the same
27 discipline or field that I'm in or in related fields,
28 and we get to exchange information about what's

1 happening in our laboratory, in our region with what's
2 happening in other regions, either of the state or of
3 the country.

4 Q Are there any licenses or certificates that you
5 need to do what you're doing as a criminalist?

6 A There are -- there is a certification program.
7 It is not a requirement. I am not certified. There
8 was, for the individual laboratories, what's called an
9 accreditation program that is required primarily to do
10 forensic DNA work. You must have -- you must be an
11 accredited laboratory. Our laboratory has been
12 accredited through an organization called the American
13 Society of Crime Lab Directors. They're a laboratory
14 accreditation board since 1995.

15 Q And what are some of the things that you've
16 done or fields that you've been in as far as a
17 criminalist and things that you've done as a criminalist
18 in San Bernardino County?

19 A When I was first hired, I primarily worked in
20 the areas of controlled substance analysis, looking at
21 drugs and narcotics and forensic alcohol analysis, doing
22 blood alcohol samples, working with breath alcohol
23 instruments.

24 I also did crime scene investigations. As kind
25 of a subset of crime scene investigations, I did
26 clandestine laboratory investigations, illegal drug
27 labs.

28 I worked a short amount of time on a few cases

1 in what's was called trace analysis, looking at maybe
2 hairs or fibers or paints, shoe prints, and so on, but
3 in about 1984, 1985, I began to specialize in the area
4 that is now called forensic biology. At the time it was
5 called serology. It was the identification of
6 physiological fluids and the characterization -- or
7 comparison of physiological fluids and stains.

8 Q Okay. And now it's forensic biology?

9 A Forensic biology was developed over the years.
10 Right now the primary area that is known in forensic
11 biology is forensic DNA work, and I have been trained in
12 forensic DNA. I went to an FBI course back in 1990. It
13 was one of the initial pushes of our laboratory to put
14 forensic DNA work online. It wound up replacing the
15 conventional serology techniques we used prior to that.

16 Since then, forensic DNA has changed in a
17 number of ways with advances of different technologies
18 that have come along with some of the research projects,
19 the human genome project. Forensic science is kind of
20 an applied science, which is a nice way of saying the
21 techniques that are used in pure research, we steal them
22 and use them to analyze evidence and so forth. We apply
23 the techniques they have developed for these other uses
24 in a specific area of looking at evidence especially
25 evidence in criminal investigations.

26 Q And you said that forensic biology kind of
27 replaced serology. What was some of the major
28 differences between what you did in serology area versus

1 what you're doing now in forensic biology?

2 A To get down to the technical parts, forensic
3 serology most of time you looked at the fluids that were
4 left behind, the liquid part, the blood or say the blood
5 or saliva or semen samples and so on, the fluids.

6 When you get more to forensic DNA work, you're
7 no longer looking at the fluid part of it. You're
8 looking at the cells that are there because that is
9 where the DNA is housed, and so it -- it really shifted
10 the focus from basically the water part of the biology
11 to the cellular part of the biology.

12 In so doing, what it did was it allowed us to
13 become more specific in terms of who could have left a
14 particular sample. It's called the discriminating power
15 of the genetic markers we would get looking at serology.
16 It was not very powerful. We would be -- we'd feel
17 really good if we could get a number that said one in a
18 hundred or one in a thousand people could have left that
19 stain.

20 When you look at DNA, it is much more
21 discriminating because of the markers we look at in DNA
22 and in the relative biology of what these markers are.
23 It allows us to look instead of one in a hundred or one
24 in a thousand, one in a billion, one in a trillion, one
25 in a quadrillion.

26 Q As far as specific training that you received
27 in the area of forensic biology, you already told us
28 that you went to a month-long course by the FBI academy?

1 A Yes, sir.

2 Q What other stuff have you done?

3 A The California Criminalistics Institute has a
4 number of courses that it put on. When a particular
5 technology came out, which uses what's called the
6 polymerase chain reaction, it allowed us to look at
7 smaller amounts of DNA.

8 The initial course I took at the FBI, in order
9 for it to be applied to evidence, you need to have a
10 fairly large stain that had a lot of DNA in it. If the
11 stain was a mixed stain, say of semen and blood or semen
12 and something else, you could separate the semen out,
13 the sperm cells. You could separate them out and get
14 the DNA, but you needed a lot of it in order to get the
15 technology that was in play at that time.

16 With the advances, as I mentioned, with the
17 human genome project and other researching, they
18 developed this process called the polymerase chain
19 reaction, which allows you to take a small amount of
20 DNA, that previously we couldn't do anything with, and
21 it puts it into a molecular Xeroxing mode and copies the
22 information millions of times. In so doing, it then
23 produces enough material for us to actually work with
24 and get an answer.

25 This became really advantageous in forensics
26 where a lot of times the samples that you get are not
27 big stains. They are small stains, and maybe something
28 as a cigarette butt and so forth. Previously we weren't

1 able to do a lot with those. With the advances, we were
2 able to take a look at skin cells that were left on the
3 cigarette butt.

4 The courses that I took then started to train
5 me as to how to apply these technologies, and the kits
6 that were being produced by certain commercial
7 manufacturers, to the analysis of these -- to the
8 analysis of evidence and the DNA that I recovered from
9 evidence.

10 Over the last ten years, the -- the kits and
11 the DNA markers that we look at have pretty much
12 plateaued or stabilized such that we have a set of DNA
13 markers or DNA locations that we look at. That is
14 pretty standard across the nation, so that a -- a sample
15 that I look at in San Bernardino County, and I can do
16 some DNA typing on it, can be compared to samples done
17 in Kansas City or in Tampa or anywhere across the
18 nation.

19 A lot of the western hemisphere uses the same
20 set of DNA markers, so my results can be compared to
21 either offender samples or to crime scene samples that
22 are typed in other laboratories across the country.

23 Q Then you referred to it as polymerase chain
24 reaction. That's also referred to as PCR?

25 A It's much easier to say PCR.

26 Q I'll start referring to it as PCR. PCR is
27 basically the process by which you multiply whatever
28 cells you have and DNA cells and make it into -- where

1 you might have few make it into millions?

2 A Roughly.

3 Q Does that seem accurate?

4 A What the PCR process does is it mimics what our
5 body does. Our body will have a cell that has various
6 organs in it. It has a nucleus, and in order for us to
7 grow, our cells have to divide. In order to divide, the
8 DNA has to duplicate itself, has to replicate itself.

9 Well, this PCR process mimics that replication
10 process. It doesn't do it exactly the same way the cell
11 does because we don't need all of that information. We
12 don't need the entire DNA strand duplicated. We need
13 certain segments.

14 What they've done is they've designed a kit.
15 That kit will look at the specific DNA segments that we
16 are interested in and copy them and copy the
17 information, and they do that the same way the cell does
18 in terms of by what's called division or duplication
19 just again and again and again.

20 It really has assisted us in being able to type
21 more and more forensic samples, some that in times
22 passed we didn't get enough DNA. Now we can process it
23 through this PCR and be able to get results and be able
24 to compare the results then to other results, either
25 other evidentiary samples or from known reference
26 samples.

27 Q As far as the PCR process, is that generally
28 accepted in the scientific community as reliable and

1 accurate?

2 A Yes, sir. It is relied upon.

3 Q Okay. And then as far as your experience --
4 going back to your experience as far as that's
5 concerned, have you testified in court prior to today
6 regarding DNA analysis?

7 A Yes, sir, I have. I've testified twice within
8 the last year. There was a period of time where I was
9 not in forensic DNA. For a period of ten years, I was
10 basically in supervision and so forth. Prior to that,
11 there was a period of about ten years that I was in DNA,
12 and I would say I think I testified probably close to
13 50 times.

14 Q And then as far as publications and
15 presentations that you've done regarding DNA, have you
16 done some of those?

17 A Yes, sir, I have.

18 Q Approximately how many of those presentations
19 or publications have you done?

20 A I should know the exact number of that, but I
21 don't.

22 Q Generally?

23 A Generally, I'd say 10 to 12.

24 Q And then as far as your current assignment,
25 you're currently assigned to the forensic biology area?

26 A Yes, sir. I'm currently assigned to do case
27 work in the forensic biology unit. I've been doing --
28 back doing case work again now for a little over a year.

1 Q Back in September, specifically September 23rd
2 of 1985, what was your assignment then as a criminalist?

3 A I worked in the serology unit at that time, and
4 I also was assigned to crime scene investigations.

5 Q So that meant you went to a lot of crime scenes
6 as part of your job or duty as a criminalist?

7 A Yes, sir. As part of my job, every six weeks
8 or so I was on call for a week. If a major
9 investigation needed my assistance to go out and
10 document the evidence or collect the evidence, then I
11 got paged in the hours of the day and night and would go
12 out to do that. If it were -- if it was a major scene,
13 then sometimes a couple of us would go out and do that
14 work with each other.

15 Q Then as far as going specifically to
16 September 23rd of 1985, did you respond to a homicide
17 location located at 35435 Highway 18 in Lucerne Valley,
18 county of San Bernardino?

19 A Yes, sir, I did.

20 Q When you got to that location, what were you
21 assigned to do?

22 A I was assigned to basically process a homicide
23 scene. There was a single female victim inside the
24 residence. There was some -- there was evidence in --
25 primarily in a bedroom, some other items of evidence of
26 interest in other parts of the house. My partner -- I
27 had a partner working with me at the time,
28 Dave Stockwell (phonetic), and Dave and I processed the

1 scene.

2 Q Then as far as the scene was concerned, do you
3 recall processing the victim's bedroom?

4 A Yes, sir.

5 Q And during processing of the victim's bedroom,
6 did you locate certain items of significance that you
7 noted?

8 A There were a number of items that we -- we
9 noted in the bedroom and collected. Then there were a
10 couple of techniques we used for collecting evidence in
11 there.

12 Q Let's start with there was a watchband pin. Do
13 you recall that?

14 A Yes, sir. There was a watchband pin that was
15 near the victim's head on the bed. The bed was a water
16 bed, and the pin was up just to the side of the victim's
17 head.

18 Q I'm going to show you a photograph that's been
19 marked Exhibit 12.

20 Do you see that particular watchband pin
21 depicted in Exhibit 12?

22 A Yes, sir, I do.

23 Q And that's the pin that looked -- appears in
24 the center of the photograph?

25 A That's correct.

26 Q Just below it there appears to be a ruler.

27 Do you see that?

28 A Yes, sir.

1 Q There appears to be several different lines on
2 that ruler, some longer than others on the top and -- or
3 the top ones are longer than the ones on bottom.

4 Do you see that?

5 A Yes, sir.

6 Q What do the top lines represent, if you know?

7 A If I may use the pointer?

8 Q Yes.

9 A This ruler from end to end is about six inches.
10 Each of these dark lines along the top is one inch.
11 These smaller lines are each a centimeter. You have
12 2.54 centimeters to an inch or so. If you were looking
13 at the watchband, it looks like it's something like
14 probably three quarters of an inch or so.

15 Q Then for those of us that aren't familiar with
16 watchband pins, what are they used for?

17 A Watchband pins are used to hold the watchband
18 on. At the edge of the watch, there are a couple of
19 holes -- the pin itself is spring loaded. It can be
20 depressed inside then put through a sleeve in the
21 watchband and then released and it will expand into two
22 receiving holes at the edge of the watch thereby holding
23 the watchband onto the watch itself.

24 There are usually two of them; one on either
25 side of the watch to hold the band in place so it can be
26 strapped to your wrist or to something else.

27 Q And that particular photograph with the size of
28 that particular watchband pin, did you -- were you able

1 to locate a watch that possibly could have fit that
2 watchband pin or this watchband pin could have fit that
3 watch?

4 A I don't remember seeing a watch or collecting a
5 watch. No, sir.

6 Q Then as far as the bed was concerned, you were
7 in charge of looking over the bed and making sure that
8 you're not missing any items that were located on the
9 bed?

10 A Yes, sir. In fact, we had a systematic way in
11 which we entered the room to start with, starting with
12 vacuuming the floor at the entry part of the door,
13 collecting evidence that was along the, as you looked at
14 the bed, the right side of the bed, then vacuuming the
15 floor there, vacuuming the floor around the other side
16 of the bed. We did a tape lift of the body. We
17 vacuumed the surface of the bed being careful not to
18 scoop that up and collected that. There was some other
19 items, a couple of pillows and some cloth and clothing
20 material that were -- that was on the bed also.

21 Q Then as far as watchband pins, are they all the
22 same length or do they have different lengths?

23 A I believe they have different lengths. It
24 would depend on the size of the receiver of the
25 individual watches. That particular pin looks very
26 similar to the size of one I've got in my watch. I just
27 replaced my watchband yesterday. Interesting that you
28 asked about watchband pins.

1 Q Now, as far as the particular watch that you're
2 wearing, the band itself, how big is the band, would you
3 say?

4 A In terms of the width of the part of the band
5 where the pin would go, probably approximately three
6 quarters of an inch to an inch.

7 Q Then when you were doing your investigation of
8 the bedroom area, you didn't find any watch during your
9 search that could match that watch pin?

10 A Not that I recall, no, sir.

11 Q Okay. Would referring to your report refresh
12 your recollection as to whether or not you collected any
13 watches or --

14 A I referred to my report a lot while I was
15 sitting in the hallway. I referred to my notes also. I
16 don't remember any mention of a watch.

17 Q So there's no mention in any of the reports
18 that you reviewed of a watch being found similar to the
19 size of that watchband?

20 A That's correct.

21 Q Okay.

22 MR. SANDERS: What page are you referring to?

23 MR. THOMAS: 349.

24 MR. SANDERS: Thank you.

25 BY MR. THOMAS:

26 Q As far as photographs were concerned, did you
27 take photographs or were you present when photographs
28 were taken?

1 A I was present when they were taken, but I did
2 not take them. I believe we had two people from the
3 identification division, I believe, Tom Moody and
4 Jeff Bedetti (phonetic) were present at the scene.

5 Q I'm going to show you what's been marked
6 Exhibit 11.

7 Looking at Exhibit 11, can you see what's
8 depicted there?

9 A I see what's depicted. I believe I know what
10 this is. If I could refer to my crime scene notes, I
11 could get a relative idea.

12 Q Would that refresh your recollection?

13 A Yes, sir. Yes, sir. That appears to be a pair
14 of panties that were, as you look at the bed, they were
15 along the right side near the top. They were on the
16 floor actually on the carpeting.

17 Q Then as far as the photograph -- I forget what
18 exhibit that is.

19 A Exhibit 11.

20 Q Exhibit 11, there also appears to be some
21 eyeglasses of some sort?

22 A Yes, sir. There was a pair of eyeglasses that
23 were underneath a table-like area there.

24 Q Were those eyeglasses damaged in any way that
25 you could tell?

26 A I don't remember, and I don't have any notes to
27 that.

28 Q As far as the collection of evidence, did you

1 actually collect any evidence from the victim herself,
2 swabs or anything like that?

3 A Yes. We collected two vaginal swabs and then
4 prepared basically a microscope smear of one of the
5 swabs.

6 Q And when you go to a crime scene and you do
7 something like that, are you familiar with what they
8 call an LR number?

9 A Yes, sir.

10 Q What is that?

11 A An LR number is a number that our crime lab
12 gives each particular investigation we come involved
13 with. This particular investigation was given the LR
14 number of 44659.

15 Q As far as that LR number is concerned, is that
16 a unique number to an individual case?

17 A Yes, it is.

18 Q Excuse me. As far as the particular LR number
19 in this case, what was it?

20 A I did just say it. It was 44659.

21 Q I'm sorry. As far as that number, is that a
22 number that ever changes? Let's say it's given to a
23 case in 1985, in 2011 is that the exact same number?

24 A Yes, sir. When we initially get a case, that
25 particular case is given that number and then any
26 evidence that comes in is associated with that LR
27 number. At the time that we made the collection of
28 evidence on September 23rd, 1985, we collected items,

1 put them into evidence and logged them into this
2 particular case.

3 Subsequent to that, if there were other items
4 that were either submitted to the laboratory or
5 submitted to property, they were all related to this
6 particular LR number. As we progressed through the
7 years, just as recently as a couple of years ago, an
8 item was submitted to the laboratory. It was referenced
9 to this particular LR number since it was part of this
10 investigation.

11 Q Then as far as -- in conjunction with the
12 LR number, there is another -- a DR number that's also
13 assigned to it?

14 A Yes, sir. The DR number will be something that
15 the individual investigating agency has. The reason we
16 don't use the DR number in the crime laboratory is
17 because our crime lab not only works with sheriff's
18 department cases, such as this, we also work with
19 individual police agencies, and they will have their own
20 DR or reporting number system.

21 You can see there's a whole bunch of different
22 types of numbers we would get from different agencies.
23 The laboratory actually instituted its own laboratory
24 report number, the LR number. So then we could readily
25 keep track of individual cases without worrying about
26 whether Colton PD used the same number as Fontana PD and
27 so forth, just lessen the confusion.

28 Q Okay. As far as this particular case, can you

1 give us the DR number that was assigned to it?

2 A The DR number was 1331036 dash 07.

3 Q You said that you collected some vaginal swabs
4 from the victim in this case.

5 That would be Rita Cobb?

6 A That's correct.

7 Q As far as the vaginal swabs, were they given an
8 item number of some sort?

9 A Yes, sir.

10 Q What was the item number?

11 A The item number was A dash 11. When we went to
12 the crime scene, everything that we were to collect at
13 the crime scene was called item A and then in order as
14 we collected them we sub-itemized them. So A-1 was the
15 vacuum sweepings and so forth. A-11, then would be the
16 11th item that we collected at the scene, which were the
17 vaginal swabs from Ms. Cobb.

18 Q As far as the vaginal swabs were concerned, how
19 were those collected by you?

20 A Two swabs were inserted into the vaginal area
21 and swabbed around, withdrawn. One swab was then
22 smearred across a microscope slide. That microscope
23 slide being A dash 12. The swabs were dried and,
24 packaged for later analysis.

25 Q As far as the swabs go, they were taken at the
26 crime scene itself?

27 A This particular set of swabs was taken at the
28 crime scene. There was another set taken later on at

1 the autopsy.

2 Q There was item, a felt pad of some sort, that
3 was collected.

4 Do you recall that?

5 A Yes. That was Item A dash 18. Actually, it
6 was in a group of items that were taken as A dash 18,
7 and the felt pad was further examined and kind of
8 sub-itemized with stains that were on the felt pad.

9 Q Then as far as the felt pad was concerned, I'm
10 going to show you a photograph and then maybe you can
11 point it out to the jury. Show you what's been marked
12 Exhibit 14.

13 Do you see the felt pad in Exhibit 14?
14 A The felt pad in the very lower right-hand
15 corner of the photo, kind of a tan or brownish, light
16 brown colored pad.

17 Q Let me see if I have another photograph. This
18 one might be a better one. Show you what's been marked
19 Exhibit 13.

20 Do you see that felt pad in that particular
21 exhibit?

22 A Right in that area that I'm showing with the
23 laser pointer here, which is somewhat to the lower left
24 center of the photograph.

25 Q And then that particular item was given the
26 designation A-18 along with other items of clothing?

27 A Yes.

28 Q Were there any blood stains that you analyzed

1 or collected?

2 A There were two blood stains that were not part
3 of this particular -- directly within the room that we
4 took -- that we collected. There was a blood stain that
5 actually was on the door frame going into this room, and
6 another blood stain that was on a portion of the hall or
7 end of a wall in the hallway. Those are Items A dash
8 23. That is the one in the hallway, and A dash 24,
9 would be the one on the doorpost of the room.

10 Q Let's start with A dash 24, the one on the
11 doorpost of the room.

12 Did you actually collect a sample of that?

13 A Yes. That would have been swabbed and removed
14 from the doorpost.

15 Q When you swab it, how do you go about that?

16 A I believe at that time -- we've had a couple of
17 different collection techniques. I believe at that time
18 we had small squares of white linen that we moisten with
19 sterile water and then swabbed over the top of the blood
20 stain to collect it.

21 Q Okay. And then so that became A dash 24?

22 A Yes, sir.

23 Q And then I'm going to show you Exhibit 36,
24 which depicts A dash 23.

25 Did you do the same thing regarding A dash 23
26 as you did with A dash 24?

27 A Yes, sir.

28 Q Then at some point did you analyze any of these

1 blood stains, A dash 23 or A dash 24?

2 A Yes, sir. I did not analyze them immediately.
3 It was quite a number of years later that I went back
4 and actually analyzed them using the DNA techniques.
5 Remember at that time in 1985, we were not doing
6 forensic DNA work in our laboratory. We didn't start
7 that until 1992, so it would have been after 1992 that I
8 looked at these with DNA techniques.

9 Q Would looking at your reports and notes refresh
10 your recollection as to when your analysis was done?

11 A Yes, sir. Yes, sir. 1999 was when I took a
12 look at the two blood stains that were on the -- that we
13 previously spoke of.

14 Q When you were taking a look at the two blood
15 stains, did you also look at a profile from the victim
16 in this case?

17 A Yes, sir. Actually, as a matter of fact, there
18 were about 16 different reference profiles that I looked
19 at at that time, which includes the reference sample
20 from the victim.

21 Q Then as far as Item A-23 and A-24, what type of
22 DNA analysis did you do to those specific items?

23 A I used a -- a technique that involved the
24 polymerase chain reaction, PCR process that we spoke of
25 earlier, and it employed a DNA-typing kit, in fact, a
26 couple of kits that we were using at that time in 1999.
27 This is prior to the one that we have employed most
28 recently, but it still was discriminating enough to tell

1 the difference among all of these reference samples, and
2 I was able to distinguish among all of the ones that I
3 looked at and also to determine that that particular --
4 these two particular stains had the same DNA type as the
5 victim and not of any of the other reference samples.

6 Q As far as the -- I guess it would be the random
7 probabily that this same profile was found in another
8 human being, did you also determine what that was?

9 A Yes, sir. What you're looking for is basically
10 a population frequency, how common does this particular
11 set of DNA markers occur in the general population. I
12 did some calculations for what I called three major
13 ethnic groups that we report in our report.

14 Q What were those calculations as far as Items
15 A-23 and A-24?

16 A You would expect that -- that particular DNA
17 type or particular profile to occur in 1 in 27,000
18 Caucasians, 1 in 160,000 Hispanics, and 1 in about
19 610,000 African Americans or blacks as we reported at
20 that time.

21 Q Then as far as that specific testing that you
22 did, was that specific testing generally accepted in the
23 scientific community as reliable and accurate back then?

24 A Yes, sir. It still is today. It's just not as
25 discriminating -- not as powerful as the current
26 technology. So we've moved onto more powerful
27 technologies.

28 Q As far as these specific numbers, I think you

1 talked about it earlier, they're not 1 in 7 billion or
2 trillion or quadrillions?

3 A These numbers are not. They're still fairly
4 specific.

5 Q Then based on your own training and experience,
6 did you have an opinion as to whose blood that was on
7 these stains A-23 and A-24?

8 A My opinion would be that particular blood would
9 be that of the victim.

10 Q That would be Rita Cobb?

11 A That's correct.

12 Q At some point did you extract DNA from Item A
13 dash 11, the vaginal swabs taken from Rita Cobb?

14 A Yes, sir, I did.

15 Q And how did you do that?

16 A The purpose of looking at vaginal swabs is to
17 look to see if there had been a sexual assault, which
18 would mean there could be the -- I shouldn't say sexual
19 assault -- if there had been sexual intercourse, which
20 would mean the possible presence of what are called
21 sperm cells.

22 The samples that contain spermatozoa are
23 handled different than other samples that are extracted
24 for DNA. Something about the spermatozoa cells that
25 make them hardier than non-sperm cells. If you have a
26 mixture, such as, when we take a vaginal swab, you're
27 going to have vaginal epithelial cells from whoever the
28 victim is.

1 Q When you say epithelial cells, what are you
2 referring to?

3 A Upper surface skin-cell type of cells. The
4 soft, soft tissue cells on the inside of the vaginal
5 vault. Those can be broken open and dissected and DNA
6 recovered from them and have the sperm cells stay
7 intact. We have a different extraction process by which
8 we'll take a portion of the vaginal swab, put it in a
9 solution, treat it for a short amount of time with
10 chemicals which will break open these non-sperm cells
11 and allow the DNA to float free in the solution.

12 The sperm cells stay intact. If I take that
13 sample and put it in a centrifuge and spin it really
14 fast, the sperm cells will go to the bottom. The liquid
15 with the DNA from the non-sperm cells floats to the top.
16 I can take my test tube, draw off the liquid on the top.
17 It now has a non-sperm cell DNA, which most would have
18 come from the victim. I expect all of that DNA to be
19 the same as the victim's type.

20 The sperm cells that are at the bottom -- sperm
21 cells did not come from the victim. I can now treat
22 them a little more harshly, which will break open the
23 cells, break open the nucleus in there and get the DNA
24 out of the sperm cells in seconds. I now have separated
25 sperm cell DNA from the non-sperm DNA, and I can
26 individually type them and compare them to reference DNA
27 samples that I get from individuals.

28 Q Okay. Then once you do the extraction from the

1 cells, is that something -- you stated before that there
2 is a different type of technology that you were using or
3 a system that you were using back in 1999?

4 A Back in 1999, there was a different typing --
5 way that we typed the DNA. In fact, I believe when I
6 first started looking at these samples, it was actually
7 in 1997 when I started looking at these samples. The
8 technology that we used, it was what we call typing or
9 comparison part of it toward the end of our DNA work.

10 The initial part of it when we extract the DNA,
11 we digest it, we break it open, that part has maintained
12 and been steady throughout. I still use the same
13 process today as I did when I first started in DNA 20
14 years ago, break open these cells, differentially break
15 open the non-sperm cells and sperm cells. That's the
16 same techniques.

17 Where the advances have come is in the DNA
18 typing itself. The typing I used back in 1997, some of
19 that typing needed a lot of DNA other parts I used the
20 polymerase chain reaction and used a small amount of the
21 DNA that I recovered.

22 What I should tell you is that when we separate
23 out these extractions, and I have non-sperm cells and
24 the sperm cell, I have it in a small volume of water
25 based, like aqueous solution, and I -- first thing I had
26 to do is figure out how much of that is human DNA.
27 There might be some bacterial DNA. So how much is
28 human. After I figure out how much is human, then I

1 know how much of it I can take, and maybe there's a
2 volume of 40 microliters. It might be that I can take
3 five microliters off of that and be able to do all of my
4 DNA testing and still save some of that liquid for
5 someone else to test later if they need it.

6 So this quantitation that I do, determining how
7 much human DNA is there, is rather critical to know how
8 much of the sample I need to use in order to do my
9 typing.

10 It also will then, as I mentioned, let me know
11 if this sample will have something left for future
12 technologies, which may come about.

13 Q As far as the typing procedure that you used,
14 you said that the extraction procedure is basically the
15 same throughout from 1999 to when you did it to today.

16 The typing that's done or that you used in
17 1999, is that different than the typing that was used in
18 2003?

19 A Yes, it is. It's -- the typing is very
20 different. It is -- it uses a totally different set of
21 DNA factors and DNA locations that it looks at. In
22 fact, the results that I got in 1993 --

23 Q '99.

24 A '97, the results that I got in 1997 are not
25 compatible with the DNA typing results that we get now.
26 I can't take these and compare them to the new kit or
27 new set of data. I would need to take a small little
28 bit of that extract and process that with this new

1 typing kit in order to get a new set of data or
2 additional DNA information. I have the -- I hesitate to
3 call it the old DNA information that I got in '97, and
4 then if the sample was retyped to get a new set of DNA
5 information using that more recently developed DNA
6 typing kit.

7 Q So we're clear, as far as the extraction that
8 you did in 1999 of the vaginal swabs labeled A dash 11
9 and LR Number 44659, those being extracted samples,
10 hypothetically, let's say criminalists in 2003 wanted to
11 use the extracted samples that you obtained in 1999 to
12 do the typing that was more advanced in 2003, there's no
13 effect that your extraction would have on that DNA
14 typing that's done in 2003?

15 A That's correct. In fact, one of the reasons
16 that I save the extractions after I have taken my small
17 portion off and typed them, I save them, package them
18 away, if somebody else wants to test, whether to retest
19 my work or to test with an additional DNA typing
20 technique, I put them away to allow them to do that.
21 That's why we save it, so it can be tested again.

22 Q Then once you do the extraction, you said you
23 packaged it up.

24 Is it -- how do you package it up, if you can
25 describe that for us?

26 A Well, the final result that I get is in a tube,
27 a small what they call a cryovial tube, that final
28 extract, and it's from there that I take off a small

1 portion I'm going to use. The amount that remains,
2 there's a screw cap on the top of the cryovial. It then
3 gets -- actually, I package it into several different
4 envelopes, different extracts into different envelopes,
5 put a bar code on them, and submit them for storage in
6 our property unit.

7 Q And as far as the storage, you have been at the
8 crime lab all these years, are they properly stored in
9 accordance with what's generally accepted in the
10 scientific community?

11 A Yes, they were. By procedure, we freeze them.
12 The truth is, the solution that we keep the DNA in, you
13 probably don't truly need to freeze it, but I guess I
14 would call it for appearances sake, we store it in a
15 freezer.

16 Q Then as far as that solution is concerned, is
17 that something that lasts indefinitely or is there a
18 certain number of years you can keep it for?

19 A As far as I know, there is not a shelf life, if
20 you will. It might be somewhat dependent on how strong
21 the DNA selection is. If it's really concentrated DNA,
22 it probably will last longer. If it's weak DNA, I don't
23 know if it will stick to the inside of the plastic of
24 tube and over time become less able to type.

25 In this instance, there was a lot of DNA in
26 these tubes. I think they're going to last a long time
27 as long as you still have the solution in there until
28 you use it up.

1 MR. THOMAS: Nothing further.

2 THE COURT: Do you have questions you want to
3 ask?

4 MR. SANDERS: A couple, your Honor.

5 THE COURT: We'll do that tomorrow.

6 MR. SANDERS: Yes, sir.

7 THE COURT: 10:00, ladies and gentlemen.
8 You're admonished that it is your duty not to converse
9 among yourselves or with anyone else about any matter
10 connected with this case nor form or express an
11 opinion on it until it's submitted to you. See you
12 tomorrow morning at 10:00.

13 Mr. Jones, see you then. You can step down.

14 THE WITNESS: Thank you.

15 (Whereupon the following proceedings were held outside
16 the presence of the jury:)

17 THE COURT: Okay. The jury is gone. You
18 wanted to put something on the record this morning,
19 Mr. Thomas. This is the time to do it.

20 MR. THOMAS: I just wanted to put on the
21 record this morning that we had a case, Helen Brooks.
22 It's an unsolved homicide over at the sheriff's
23 department, and it's still unsolved. There's a
24 different DNA profile that was obtained from the
25 vaginal swabs on that case versus this particular
26 case, but the fact that there was a victim who was
27 similarly aged as Rita Cobb, Helen Brooks was 60 at
28 the time that she was killed, and it was in the same

1 general area, as far as the high desert. She was
2 murdered in Apple Valley, and, in fact, that occurred
3 a few months prior to this murder.

4 My office thought that it would be good for
5 Mr. Sanders to come over and look at the file. I did
6 provide him an opportunity to do so. We gave him access
7 to the entire Helen Brooks file. He spent pretty much
8 an entire day looking through the file and taking notes,
9 but I just had a concern that this might be potential
10 Brady material in the future if I didn't disclose it.

11 THE COURT: I thought we already talked about
12 this.

13 MR. SANDERS: We did not, your Honor.

14 THE COURT: Okay. You have -- you
15 acknowledge that you've had a chance to look at the
16 prosecution's file; right?

17 MR. SANDERS: I have.

18 THE COURT: Anything else to be said on the
19 subject?

20 MR. THOMAS: No.

21 MR. SANDERS: Well, the -- the -- I
22 thought -- I'm sorry. Let me bring up a different
23 point. It would be my intention to ask the
24 criminalist and some of the others about the Brooks
25 case, and the reason is this; your Honor, it is in
26 many respects almost identical to the Rita Cobb case.
27 I can't give you a list right now, but there's so many
28 ways these two cases are similar because of that for

1 the first two or three years after September 23rd of
2 1985, the sheriff's department treated the two cases
3 as if they had been committed by the same person.

4 There were several investigations to determine,
5 you know, who might have done both of these cases, and I
6 think that that's part of the information that's
7 important in this case to -- to demonstrate to the jury.
8 I assume Mr. Thomas was going to object to my
9 questioning along that line, and I thought that that's
10 why we put it off till now, so it would not be mentioned
11 if I chose to give an opening statement at the start of
12 the case.

13 MR. THOMAS: The People -- Mr. Sanders is
14 correct. The People would be objecting based on
15 relevance. We wouldn't be able to bring in evidence
16 that, well, maybe John Yablonsky is responsible for
17 the Helen Brooks murder. He committed this murder.
18 The Court would look at the evidence and say, wait a
19 minute. There's an entirely different DNA profile
20 there. What evidence do you have to link
21 Mr. Yablonsky to the Helen Brooks case?

22 Same thing with this scenario. What evidence
23 does Mr. Sanders have to link somebody else who might
24 have been involved in the Helen Brooks murder to the
25 Rita Cobb murder? There is none. I think that it would
26 confuse the jury. It's an undue waste of court time,
27 and I think that weighing the probative value versus the
28 prejudicial effect or the undue waste of time, I think

1 that the probative value is slim to none.

2 THE COURT: And confusion really.

3 MR. SANDERS: No, in --

4 THE COURT: Just one second. Mr. Sanders,
5 I'm not going to spend anymore time on this now. See
6 me in the morning with whatever authority you have,
7 either one of you. Everybody can bring in authority
8 that would be helpful.

9 MR. SANDERS: Thank you.

10 THE COURT: The fact that Mr. Yablonsky did
11 not kill Helen Brooks does not mean he did not kill
12 Rita.

13 MR. SANDERS: Absolutely, but it -- there's a
14 different -- it's a two-edged sword.

15 THE COURT: Bring me those cases that you
16 find that you think shed light on this if there is
17 such authority. I don't -- I don't know what you'll
18 find, but if there's something there, give it to me
19 tomorrow.

20 MR. SANDERS: Thank you, your Honor.

21 THE COURT: See you tomorrow at 9:45.

22 MR. THOMAS: Thank you, your Honor.

23 (Whereupon proceedings in the above-entitled
24 matter were concluded for the day.)

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1 VICTORVILLE, CALIFORNIA; JANUARY 25, 2011;
2 DEPARTMENT NO. V-2 HONORABLE JOHN M. TOMBERLIN, JUDGE
3 A.M. SESSION
4 (Appearances as heretofore mentioned.)
5 (Shawna Manning, Official Reporter, CSR No. 12827.)

6 -oOo-
7 (Whereupon the following proceedings were held outside
8 the presence of the jury:)

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

11 THE COURT: Back on the record in the case of
12 People of the State of California versus John Henry
13 Yablonsky who is here with his attorney,
14 David Sanders. Mr. Thomas is here along with his
15 investigating officer, Detective --
16 Detective Alexander.

17 Mr. Sanders.

18 MR. SANDERS: Yes, sir. I had two matters I
19 wanted to address the Court. As I indicated in
20 chambers, the first is; as I indicated yesterday,
21 there is a case of a woman --

22 THE COURT: I don't think we need to
23 reiterate the issues regarding Ms. Brooks. We've gone
24 over this, and the case that you referred to, People
25 versus Hall 41 Cal.3d 826 regarding the issues of
26 third party culpability.

27 MR. SANDERS: Yes, your Honor. My position
28 is that it is relevant evidence. It would assist the

1 jury in understanding the case and the situation that
2 existed back in 1985. For those reasons, I would ask
3 the Court to allow us to introduce that evidence.

4 THE COURT: Mr. Thomas.

5 MR. THOMAS: I think the Court's already
6 dealt with that, in certain aspects, prior to us
7 beginning trial. As far as People versus Hall, I
8 think the case law, if I recall correctly, states that
9 mere motive and opportunity is not enough to bring
10 about third party culpability in a case.

11 Mr. Sanders hasn't even proved mere motive or
12 opportunity. I don't see how Hall even applies or that
13 he can get this under third-party culpability, and I'd
14 ask the Court to prohibit him from going into this line
15 of questioning.

16 THE COURT: 352, it seems like it's likely to
17 lead to confusion. There's no one else that's being
18 tried for this particular crime, but Mr. Yablonsky
19 isn't accused of having killed Ms. Brooks. It's just
20 as likely to lead to prejudice against Mr. Yablonsky
21 as it would be -- it doesn't, in my opinion, tend to
22 exonerate him by any means with the possible exception
23 of leading to confusion. I don't see what the
24 advantage would be to the defense to have this
25 information in, and I'm going to order that it -- find
26 that it is more prejudicial than probative and unduly
27 consumptive of court time and likely to confuse the
28 jury.

1 I know the next thing is -- let's go ahead and
2 put it in the way you put it in chambers. You want to
3 establish the reputation of the victim in this case as a
4 barfly. I don't see it.

5 MR. SANDERS: Actually, what I didn't want to
6 do is try to do that. What I would like to do is just
7 to have the jury understand, as everyone else in
8 those -- in 1985 understood, that Ms. Cobb did have a
9 number of gentleman of different ages, and she
10 entertained them at her residence. She invited them
11 to be there, and it was not uncommon for her to have
12 male guests at home.

13 MR. THOMAS: I would argue it's improper
14 character evidence. What's the relevance of that?
15 It's just to dirty the victim up.

16 THE COURT: I don't see the relevance either.

17 MR. SANDERS: There -- it's one thing if --
18 if we -- if we had -- we had -- if we had a person
19 that never had anybody at her house. Then if you have
20 someone at her house, it means a lot more.

21 THE COURT: You've asked the son of the woman
22 did he know that she dated, did she have people over.

23 MR. SANDERS: Well, there was more. I had
24 additional questions to ask both him and Marta on that
25 subject.

26 THE COURT: I think that you established
27 enough for whatever you needed to. It wasn't like she
28 had no one ever at her home. I haven't allowed

1 Mr. Thomas, nor has Mr. Thomas attempted to, establish
2 as you just put it that she is someone who doesn't
3 engage with any kind of social intercourse was what
4 you called it.

5 MR. SANDERS: Thank you, your Honor.

6 THE COURT: That's -- that's it?

7 MR. THOMAS: The only other matter before we
8 bring the jury is I was going to ask the Court's
9 permission to reopen.

10 THE COURT: That's fine. Bring the jury.

11 MR. SANDERS: No objection.

12 THE COURT: You said that you don't object,
13 Mr. Sanders?

14 MR. SANDERS: Yes, your Honor.

15 (Whereupon the following proceedings were held in open
16 court in the presence of the jury:)

17 THE BAILIFF: Remain seated. Come to order.
18 Court is now in session.

19 THE COURT: Back on the record in the case of
20 People of the State of California versus John Henry
21 Yablonsky who is here with his attorney,
22 David Sanders. John Thomas is here for the People
23 along with Robert Alexander, his investigating
24 officer.

25 Before we get started this morning, I was
26 advised that there was someone in the hallway, not one
27 of the jurors, but someone near the jurors that had a
28 copy of the Daily Press. Apparently it has an article

1 about this case with a photograph of Mr. Yablonsky.

2 No one has seen anything about that; have they?

3 No one's read the article? Stay away from the paper, I
4 suppose, until the case is over.

5 Anything else anyone wants to bring up on this
6 subject, Mr. Thomas or Mr. Sanders?

7 MR. THOMAS: No, your Honor.

8 MR. SANDERS: No, sir, thank you.

9 THE COURT: Donald Jones is still on the
10 witness stand -- he was going to go into
11 cross-examination, and Mr. Thomas has indicated that
12 he had a few questions that he meant to ask that he
13 didn't ask and asked to have an opportunity to reopen
14 his direct examination. Mr. Sanders has not objected.

15 Proceed.

16 MR. THOMAS: Thank you, your Honor.

17

18 **DONALD JONES**, having previously been duly sworn,
19 testified further as follows:

20 **DIRECT EXAMINATION (reopened)**

21 BY MR. THOMAS:

22 Q Good morning, Mr. Jones.

23 A Good morning, sir.

24 Q Yesterday, do you recall me showing you a bunch
25 of photographs?

26 A Yes, sir, I do.

27 Q Okay. And those photographs, each one of those
28 photographs I showed you yesterday, are those all true

1 and accurate depictions of the crime scene as you saw it
2 back on September 23rd of 1985?

3 A To the best of my recollection, yes, sir.

4 Q I was going to ask you about the extraction
5 process.

6 As far as that process is concerned, I think we
7 already went through yesterday that that was done in
8 accordance with the scientific procedures that you were
9 familiar with?

10 A Yes, sir. You're referring to the extraction
11 of DNA from the stains?

12 Q Yes.

13 A Yes, sir.

14 Q As far as that process is concerned, did you do
15 that in accordance with the training that you received?

16 A Yes, sir. In accordance with the training I
17 received in accordance with the procedures that we have
18 established and that have been reviewed as part of our
19 accreditation.

20 Q Was there anything about that process that
21 caused you any concern, anything that happened that was
22 unusual?

23 A Not that I recall and not that I remember
24 looking through and seeing in my notes.

25 Q That would have been something that you would
26 have noted if that had happened?

27 A Yes, sir.

28 Q And then I asked you about item A dash 11

1 yesterday and the extraction that occurred on that item.

2 Did you also do the extractions regarding

3 A dash 18?

4 A Yes, sir. Actually, there were several samples
5 that had been taken from A dash 18, and I took a look
6 at -- I extracted two of them then went on to do some
7 work on one of those two.

8 Q Then as far as the extractions that you did on
9 A dash 18, that was specifically the felt pad?

10 A That's correct, yes, sir.

11 Q When you did the extractions, you were familiar
12 with the felt pad from back when you collected it in --
13 on September 23rd of 1985?

14 A Yes, sir.

15 Q And it appeared to be in the same condition as
16 when you collected it?

17 A Well, actually, the samples that I looked at
18 with regard to the felt pad were samples cut from the
19 felt pad. When we take the samples back to the crime
20 lab, rather than store a gigantic piece of evidence in
21 our freezer, we'll cut out the stains, and then we put
22 the stains in a smaller envelope, and that can be stored
23 in our freezer. The rest of the items then are stored
24 at room temperature.

25 Q The question that I have is, the cutouts that
26 you had, did they appear to be cutouts from the felt pad
27 that you observed back on September 23rd, 1985?

28 A Yes, sir.

1 Q Okay. And then as far as that extraction
2 process went, you did the same process that you did with
3 the felt pad cuttings as you did with A dash 11?

4 A Yes, sir. In terms of separation of the sperm
5 cell and non-sperm cells into two fractions.

6 Q Then you did the same thing as far as being
7 able to -- that you preserved the extracted DNA for
8 future use by other criminalists?

9 A Yes, sir.

10 Q Did you label that in some way?

11 A Yes, sir. I spoke yesterday of some plastic
12 tubes with screw caps on the top called cryovials. Each
13 of those vials would have been then labeled with the
14 LR number and with the item number and with the fraction
15 number. For instance, for the felt pad, it would have
16 said the LR number, 44659, would have had the item
17 number, A dash 18. I believe it was stain B, and then
18 the fraction number would be E-2. E-1 is generally the
19 first extraction. It will have the non-sperm cell DNA,
20 and E-2 is the second extraction, if you will, and that
21 will have the sperm cell DNA.

22 Q Were they labeled A dash 18a and A dash 18b?

23 A I believe, yes, sir. I did extractions on two
24 stains from A dash 18a and b, and they would have been
25 labeled independently.

26 Q Okay. Then was there anything about that --
27 strike that. As far as that extraction process, you did
28 that in accordance with the scientific training

1 procedures that you received?

2 A Yes, sir. There probably is something that I
3 should note also that when we do this extraction
4 procedure, at the time we're doing the sample, working
5 with the samples, and so on, we extract not only the
6 evidential sample from the stain, but I have another
7 tube which has a blank in it. Basically, I put all the
8 reagents in it, all of my enzymes, all of my buffers in
9 this other tube, but it has no stain in it. It should
10 have no DNA. It is what we call a reagent control,
11 something that at the end should show no DNA at all.

12 Also, extract a known positive control, one
13 that I know has DNA in it to show that the extraction
14 works in case all my samples are negative. I want to
15 make sure that the extraction process is working. So I
16 run -- with each set of extractions, I run a negative
17 control and positive control. Those also would have
18 been collected in the small screw-cap vials and stored
19 with the rest of the samples, the positive and negative
20 controls for the extractions that I did.

21 Q Okay. And do you yourself test that
22 afterwards?

23 A In general, I test the negative control. I
24 will test them all to see if there's human DNA. If I
25 find human DNA in the evidential sample, and there's
26 human DNA in the positive extraction control, and
27 there's no DNA in the reagent control, things are coming
28 out as I expect. Then the positive extraction control,

1 I will not type that. I already know what the type of
2 that is. Its purpose is to see if I was able to recover
3 DNA.

4 The negative control, I will go on with the
5 rest of the processes to see if, even though I didn't
6 detect DNA in there, if there's anything in there that
7 would -- would be carried over into the typing process.
8 I expect that to have no DNA typing results.

9 In this particular case, it had no DNA typing
10 results. I also then will save that sample along with
11 the evidential sample, so that if somebody in the future
12 wants to test using a different typing technique or
13 different technology, they can test the known blank to
14 make sure there's something that won't show up in this
15 other type of test in the known blank.

16 Q So you did this with Item A dash 18a and b?

17 A Yes, sir.

18 Q And then you also did it with the item that we
19 spoke of yesterday, A dash 11?

20 A Yes, sir, the vaginal swab that was collected
21 at the crime scene.

22 Q Okay. And later, after you were done, you did
23 all the tests that you just explained as far as testing
24 the negative portion of it and as far as all of the
25 tests were concerned, anything come out that caused you
26 any concern?

27 A Nothing that caused me concern. The results of
28 the DNA typing that I did showed that it was the same

1 semen donor for the felt pad as for the vaginal swab,
2 but it did not match any of the reference samples that
3 had been submitted to the laboratory at the time.

4 At the time I did the testing, I had what we
5 call a semen donor profile, but I had nobody that it
6 matched.

7 Q Okay. As far as the quality control of the
8 testing that you performed on A dash 18a and b and
9 A dash 11, was there any concerns that you had regarding
10 that quality control that you talked about?

11 A No, sir.

12 Q Then the other thing I forgot to ask you
13 yesterday is, you mentioned a pair of panties that were
14 found on the floor next to the bed.

15 Do you recall that?

16 A Yes, sir. I believe we called that Item
17 A dash 3. They were on the -- as you looked from the
18 foot of the bed, they were on the right-hand side up
19 toward the head of the bed near a set of eyeglasses.

20 Q As far as that pair of panties, was there any
21 testing that was done by the crime lab to determine
22 whether or not that contained any serological fluids of
23 any sort?

24 A There was a screening test for semen on the
25 panties. That test was negative.

26 MR. THOMAS: Nothing further.

27 THE COURT: Cross.

28 MR. SANDERS: Thank you, your Honor.

CROSS-EXAMINATION

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BY MR. SANDERS:

Q Good morning, Mr. Jones.

A Good morning, sir.

Q Let me make sure I understand this. Your job back in 1985 was to collect evidence; is that correct?

A Yes, sir.

Q And you were hired by the sheriff's department to do that?

A I was hired for a number of reasons. One of my assigned tasks was crime scene investigation.

Q Then as the years went by, you assumed more responsibilities; is that correct?

A I have had different assignments as the years went by. I came to a point where I specialized. I would characterize it when I first started, I was a generalist. I worked in a number of different areas, but as time went by, I began to specialize in a particular area. In this instance, forensic serology, which became forensic biology or DNA.

This is a necessity that you wind up specializing. It is something that has been forced upon us by our accreditation that they want us to specialize in one particular task or assignment that we perform.

Q Back in 1985, you were called to go out to Highway 18 in Lucerne Valley; is that correct?

A Yes, sir.

Q And do you remember what time you arrived?

1 A I could check the -- my notes if you don't
2 mind.

3 Q Feel free.

4 A Okay. According to my notes, I actually
5 received the call when I was in Rancho Cucamonga at
6 right about 2:00 in the afternoon and went from
7 Rancho Cucamonga to the address at 35435 Highway 18 in
8 Lucerne Valley and got there a little bit after 3:00 in
9 the afternoon.

10 Q When you arrived, was anybody inside the crime
11 scene at that time?

12 A I don't know who was where. I can tell you
13 that the notes I took indicate that Sergeant Dave Baker
14 and two detectives that I have listed here as Gary Wood
15 and Al Long.

16 THE COURT: What was that last name?

17 THE WITNESS: Long L-o-n-g.

18 THE COURT: Thank you.

19 BY MR. SANDERS:

20 Q Do you know if someone had kept a log of people
21 that entered or left the crime scene before you arrived?

22 A I do not know.

23 Q No one showed you a log indicating who had been
24 in and out?

25 A No, sir. My understanding is part of the
26 investigation the homicide detectives kept track of who
27 was at the scene, but in terms of a physical log, I
28 don't remember seeing one or noting one.

1 Q All right. And then you have not seen one
2 since?

3 A That's correct.

4 Q Were you one of the persons responsible for
5 observing or collecting or preserving evidence outside
6 of the house that you went to?

7 A I don't believe we did any physical evidence
8 collection. There probably were photographs that were
9 taken by the identification division. As far as I can
10 recall, the only evidence that I collected was evidence
11 from inside the residence.

12 Q You were not the person responsible for
13 photographing; is that correct?

14 A That was handled by two -- at least -- at least
15 two other people that were there. I believe I mentioned
16 yesterday it was a Tom Moody and Jeff Bedetti. They
17 were from the identification division.

18 Pretty much people from the identification
19 division would do the photography and any latent
20 fingerprint development. People from the crime lab
21 would sketch and document the scene and collect the
22 physical evidence. The homicide investigators pretty
23 much would oversee the scene and make sure it was
24 processed and then handle the interviews and so forth.

25 Q Since you've mentioned it, let me ask you about
26 the fingerprint -- the effort that was made by the
27 sheriff's department to search the residence for
28 fingerprints.

1 Who was it that conducted that search?

2 A My answer to that is based upon procedure. I
3 don't know. I was not involved with the fingerprint
4 aspect of it, but that would have been Tom Moody and
5 Jeff Bedetti who did the fingerprint processing
6 throughout the crime scene.

7 Q As they do that, did they ever draw your
8 attention or show you some fingerprints they found?

9 A I don't remember anything with regard to
10 fingerprints at the scene.

11 Q I know that technology is different today than
12 it was back then, and sometimes we hear that you could
13 pretty much get DNA from anything these days.

14 Let me ask you this; is there -- is it possible
15 to get DNA from the same oil on hands that causes
16 fingerprints?

17 A The way I would answer that, in the continuum
18 of possibilities, it's possible. My experience with
19 what you call touch DNA is that it is -- it's very
20 dependent upon what it is that's being touched. If it's
21 a common object, the chances of getting DNA are good.
22 The chances of you being able to say it came from one
23 individual, not very good. In fact, probably from more
24 than three or four people. Generally, touch DNA on
25 common surfaces really is more confusing than -- than it
26 really is worth while to even attempt. It will give you
27 more questions or not answer any questions at all.

28 If you have something that is restricted in

1 terms of who could touch it, the handle of a tooth
2 brush, maybe a particular individual touches that and
3 nobody else uses the tooth brush. That has a greater
4 potential for showing a single source of DNA that would
5 have come from the touching on the hands that was
6 transferred to the tooth brush.

7 Q What you're saying is you can collect it, but
8 it's often compromised? It's often --

9 A It is what I would call a true forensic sample
10 in that you don't know what you're going to get and a
11 lot of times you're going to get stuff that's not going
12 to mean anything or not be helpful to you.

13 Q You can collect DNA from hair?

14 A Yes, sir.

15 Q You collect it from skin cells?

16 A Yes, sir.

17 Q You can collect it from sweat?

18 A I have done tests on items that pretty much it
19 was in the sweaty area, and I have gotten good results,
20 yes, sir.

21 Q All right. So when you went to the scene then,
22 I think you said you have a protocol of when you enter
23 the front to which way you go and what you do; is that
24 correct?

25 A I don't know that I said that. I said that the
26 way we processed that particular scene, we had a way of
27 entering the primary bedroom. That was a decision we
28 made at the time based upon the information we had about

1 the investigation.

2 Q So there was a decision made not to process
3 other rooms in the house that same way because of the
4 situation you found yourself in?

5 A Yes, sir. It was felt that our greatest
6 probability of finding something that might be related
7 to the perpetrator of the crime would be in this
8 bedroom. The evidence seemed to point that everything
9 happened in that room and, therefore, we should
10 concentrate our efforts on that.

11 Q Let me ask you a question about that. Was
12 there any thought in your mind that perhaps something
13 had happened outside this bedroom causing blood spatter
14 in the hallway?

15 A Well, the actual patterns that were in the
16 hallway aren't what I would call blood spatter. They're
17 probably more transfer. They were on some object and
18 were transferred to the wall or the doorjamb. There was
19 no other evidence outside in the hallway of any sort of
20 blood stain patterns, whether impact or cast off or
21 anything, other than these two what appear to be
22 transfer spots.

23 There were other items in the house that we did
24 collect for potential forensic biology examination.
25 Those are the cigarette butts that were present in
26 various ashtrays, but I think in terms of the rest of
27 the house, that was almost the extent of what we
28 collected.

1 Q What about the car that was out in the carport
2 or the garage, did you process the car to look for
3 evidence?

4 A No, sir.

5 Q Whose decision was that?

6 A That, I don't know. In general, speaking again
7 by procedure, if the vehicle had been requested for
8 processing, it would have been done at the crime
9 laboratory.

10 Q You indicated when you went into the bedroom,
11 the first thing you did was performed a vacuuming
12 operation?

13 A Yes, sir.

14 Q And was that done by yourself?

15 A Both by myself and by my partner,
16 Dave Stockwell.

17 Q Okay. And what, if anything, did you find when
18 you examined the results of the vacuuming?

19 A I did not examine them. Dave Stockwell did,
20 and he has a number of notes that he made with regard to
21 hair and fibers that he pulled from -- from different
22 parts, whether it be the vacuum sweeping or from
23 articles of clothing, so when they were collected and
24 there, but I did not do that examination.

25 Q All right. One of the things that you did was
26 not only did you vacuum the floor, but you vacuumed the
27 clothing?

28 A Actually, the clothing would have been examined

1 back at the laboratory, open it up and do any sort of
2 collection --

3 Q And shake it out?

4 A -- or processing looking for stains and so
5 forth. The vacuuming was on the areas of carpet around
6 the bed and then the surface of the bed itself.

7 Q And I'm assuming you have some kind of a
8 special vacuum cleaner that you --

9 A Yes, sir, we do. It looks like a regular
10 vacuum. The one we used at the time was
11 over-the-shoulder-type vacuum. It had a hose. Then at
12 the hose end, there was a special trap. It was a round
13 filter thing that you could unscrew, place a filter over
14 a screen, screw it back on, and then go through your
15 vacuuming. All the air would pass through and the
16 filter would trap any hairs, fibers, debris, trace
17 evidence and so forth onto the filter.

18 The filter would be taken out, placed in -- I
19 could check my notes. I believe we had Ziploc bags, we
20 placed the filters into. The trap would then be wiped
21 out in terms of any residual dust, put another filter
22 back into this cartridge and go on to the next section.

23 Q So you use a filter for the rug and then
24 switched and used a different one for the bed?

25 A Yes, sir. I think there were two or three
26 areas of the carpet that we did independently. We would
27 have used a separate filter for each of those and then
28 also a separate filter for the bed.

1 Q I'm assuming on the bed you did find hair
2 samples and fibers?

3 A Honestly, I don't know. I did not physically
4 examine the vacuum sweepings. We collect them because
5 you only got one shot. If someone wants to look at them
6 at a later time, I believe Mr. Stockwell may have done
7 that, then at least we have them. In terms of what the
8 sweepings contained, I couldn't tell you.

9 Q What about the -- when you approach the body, I
10 believe you said you took some tapings; is that correct?
11 How do you refer to that?

12 A Tape lifts.

13 Q Tape lifts.

14 A Yes, sir. My notes indicate that we took tape
15 lifts of various sections of the body. The idea is that
16 whatever occurred would be the most resent thing;
17 therefore, any potential evidence would be on the top or
18 the surface.

19 Q And in conjunction with that, you combed
20 through the victim's hair; is that correct?

21 A I don't remember doing that at the scene, and I
22 haven't seen any notes to indicate that we did comb
23 through the hair. That may have been done at the
24 autopsy, but I really can't tell you one way or the
25 other.

26 Q My understanding is sometimes when there's even
27 a suspicion that there was some type of sexual activity,
28 they'll take a combing of pubic hair to see if there's

1 any foreign hair?

2 A That is a common collection technique that is
3 used in sexual assault cases, yes, sir.

4 Q You do not know if that was done in this case?

5 A That's correct. I do not know.

6 Q Did you do any testing to the watch pin that
7 was found close to the victim's head?

8 A No, sir.

9 Q Was that ever examined to see if it had any
10 touch DNA?

11 A To have DNA, no, sir. I don't know if anybody
12 has looked at it again. I did not, and, honestly, if
13 someone requested we do touch DNA on it, I would find a
14 way to convince them that we weren't going to do it.

15 Q Did you examine the victim's fingernails or any
16 scraping from under her fingernails?

17 A I can check the autopsy notes that I have.

18 Q Thank you.

19 A In the notes that I have right here, a couple
20 of things. One is, with regard to fingernail scrapings,
21 no, sir. I don't have an indication of fingernail
22 scrapings.

23 Earlier you asked me with regard to pubic
24 combings. Pubic combings were done as part of a sex kit
25 that was collected at autopsy prior to me arriving
26 there. I received the sex offense kit from one of the
27 detectives that was attending the autopsy,
28 Detective Larry Brown, but there was an item called

1 pubic combings.

2 Q Did you analyze those findings?

3 A No, sir. In fact, the only thing that we
4 really -- with regard to the sex offense kit, the only
5 thing we really made any attempt to type or do anything
6 with was the reference blood sample that was collected,
7 and the blood sample itself was too putrid due to
8 decomposition to do anything meaningful with, so we did
9 not look at any of the other items collected as part of
10 the sex offense kit collected at the autopsy.

11 Q Why would a person be interested in looking at
12 fingernail scrapings?

13 A In general, fingernail scrapings may have
14 potential -- they have the potential of having DNA
15 underneath them if someone were to physically injure or
16 scratch their attacker in a confrontation, some sort of
17 assault.

18 Q In other words, if someone was being strangled
19 or having a coat hanger placed around their neck, they
20 may reach out and scratch the person that was doing
21 that?

22 A That's correct.

23 Q In this case, you said you did not -- no one
24 took any fingernail scrapings?

25 A As far as the notes I have, there were no
26 fingernail scrapings taken.

27 Q Is this something that was uncommon in 1985?

28 A I think it was uncommon. It's hard to go back

1 and take a look at what our common protocols were. At
2 the time, if we took a look at fingernail scrapings,
3 there was no serology that we could do at the time.
4 With the advent of DNA techniques, we have become more
5 aware and cognizant of the idea that you can get
6 meaningful information from underneath the fingernails.

7 Prior to that, using fingernail scrapings were
8 used to give an idea of a location that somebody was in
9 if they had dirt under there, what type of dirt it was,
10 anything else along that line. It was less likely that
11 you were looking at it to do some sort of genetic-marker
12 typing or there wasn't any DNA typing at the time, but
13 no serology typing.

14 I would say in terms of evidence collection,
15 fingernail scrapings were not high on the list with
16 regard to the things that were done all the time. With
17 the advent of the DNA techniques, that has totally
18 changed.

19 Q Did you determine whose fingerprints were found
20 in the residence?

21 A Again, sir, I had nothing to do with
22 fingerprints. I don't know if fingerprints were found.

23 Q Did you -- you said that you collected the
24 panties that were on the floor next to the bed; is that
25 correct?

26 A That's correct, yes, sir.

27 Q Did you examine those panties other than
28 looking for stains?

1 A No, sir.

2 Q For example, can you tell us whether or not
3 those panties were torn in any way?

4 A No, I cannot.

5 Q What about the eyeglasses that were on the
6 floor, was there any way in which they were damaged?
7 Was the lens cracked? Was the rim bent? Anything like
8 that?

9 A I have no notes at all with regard to the
10 condition of the eyeglasses.

11 Q My understanding is there were a number of
12 physical items in the room that you collected and put
13 into paper bags; is that correct?

14 A Yes, sir.

15 Q What would those items be?

16 A Those items would be clothing that was found on
17 the floor, the panties which we've spoken of, the --
18 there were pillows that were on the bed. There was a
19 group of articles we call A dash 18 that were on the bed
20 at the bottom of the bed.

21 Q A dash 18 is -- is the number that you gave to
22 the items that were in a certain bag --

23 A They were in --

24 Q -- placed in a bag?

25 A They were toward the foot of the bed. The
26 primary item was this felt pad.

27 Q Was a blanket included in A dash 18?

28 A Let me --

1 Q I notice there was a blue blanket there in the
2 photographs.

3 A Right. In the report that I generated, I have
4 a general description. It says clothing and cloth
5 items, foot of bed. What I can do is look at any notes
6 that we made in the laboratory in terms of processing to
7 see if there's anything more descriptive.

8 Q Okay.

9 A Okay.

10 THE COURT: Mr. Sanders, is there a question
11 pending?

12 MR. SANDERS: We're waiting for an answer,
13 your Honor.

14 THE COURT: Okay. Sorry.

15 THE WITNESS: In looking at the notes, the
16 only item in the processing that is mentioned
17 regarding A dash 18 is the felt pad.

18 BY MR. SANDERS:

19 Q All right. But in the notes it indicates
20 A dash 18 is a felt pad and --

21 A Some other items, some clothing items, yes,
22 sir.

23 Q Unknown clothing items?

24 A That's correct.

25 Q How many different bags were there that you put
26 these items into, the clothing and the felt pad and
27 whatever else you collected?

28 A The clothing on the floor near the doorway was

1 put into a paper sack. The panties were put into a
2 large envelope. The white shorts that had been stuffed
3 in her mouth were placed in a paper sack. The felt
4 cloth and other things that were related to that were
5 placed in a paper sack, and the bedding itself was
6 placed temporarily in a large plastic bag until we
7 transported it to our drying room.

8 Q Four or five different bags?

9 A At least.

10 Q Now, if you had collected that same evidence in
11 2010, you would not have done it that way; is that
12 correct?

13 A In terms of collecting it and putting it into a
14 paper bag?

15 Q Right, and putting -- having the items together
16 in the paper bag?

17 A I'm not sure why I wouldn't have grouped them
18 the same way. The -- the purpose sometimes of -- in
19 fact, the purpose of putting things into individual bags
20 usually is to keep them from contacting or -- or one
21 thing being transferred to the other. If at the scene
22 they were already sitting on top of each other, that's
23 already happened. So the -- the thought process of
24 preventing any sort of transfer, that has potentially
25 already occurred.

26 The idea of not putting the group of clothes
27 that were found near the doorway in the same bag with
28 the panties, which they were in two separate bags, that

1 would hold because at the scene they're not in contact
2 with each other. The -- the items that were at the foot
3 of the bed, again, were pretty much in contact with each
4 other; therefore, it would have gone into the same bag.
5 I would not fault an investigator or crime scene person
6 if they decided to individually package each one or if
7 they decided to put them, again, in the same container
8 with the same conditions.

9 Q You used the word in contact sometimes. We use
10 the word contaminate. You don't want one item of
11 evidence to contaminate another item of evidence?

12 A That's right. We call it transferring,
13 transfer of evidence from one thing to another.

14 Q The felt pad was placed into a bag with
15 something that you don't remember what it was at this
16 point?

17 A It was some article of clothing, yes, sir.

18 Q All right. You said -- you mention a pair of
19 white shorts?

20 A Yes, sir.

21 Q That is separate from the panties that were on
22 the floor; is that correct?

23 A That's correct.

24 Q I noticed when we were looking at the
25 photographs, there was one photograph where it appeared
26 there was a white cloth over the victim's face.

27 A That would be the pair of shorts.

28 Q You used the term that it was stuck in her

1 mouth?

2 A Yes, sir.

3 Q What portion of the white shorts was inside her
4 mouth?

5 A That, I couldn't tell you exactly which portion
6 it was without looking at the photographs, seeing if
7 it's reflected in a photograph to be able to determine
8 that.

9 Q Did you yourself actually observe the white
10 shorts in her mouth?

11 A I don't have any independent recollection of
12 it. I'm virtually positive I did. See where I might
13 have noted that. In terms of when we collected the
14 sample, Item A dash 17, I listed the description of
15 white shorts; location, victim's mouth. It was packaged
16 in a paper sack.

17 Q The reason I ask is because I know sometimes
18 when one person gets to the scene and maybe they take a
19 guess or they make an assumption, I bet that was a gag.
20 Then someone else might say, yeah, okay. From now on
21 we'll call that the gag.

22 In this case you saw the condition of the
23 victim's face when you went in the room; is that
24 correct?

25 A I saw the condition of the victim's body and
26 how she was laid out.

27 Q Okay.

28 A I --

1 Q You noted that because of decomposition that
2 had gone on one thing that had happened was her tongue
3 was protruding from her mouth because it was large and
4 swollen; correct?

5 A I believe that's true, yes, sir.

6 Q And that her top dentures were protruding from
7 her mouth, and they weren't seated on her gums the way
8 they would normally be?

9 A That's true.

10 Q And her lower dentures had been pushed out of
11 her mouth; is that correct?

12 A I know we collected the lower dentures at the
13 autopsy, so they -- they probably were still with her
14 when they moved the body.

15 Q So my question was, from the condition that her
16 mouth was in from the decomposition, where in her mouth
17 was the shorts?

18 A I -- I don't know that I can tell you without,
19 again, looking at the photographs at the scene.

20 Q Okay. Did you do any swabs of her face?

21 A No, sir.

22 Q Or tape lifts?

23 A Let me check my notes on that one. No, sir, we
24 did -- according to my notes, did five tape lifts, one
25 of each arm, one of each leg, and one of the torso area.

26 Q Was a swab taken of the mouth?

27 A No, sir, not at the scene.

28 Q You, in your career, have collected a number of

1 samples of semen and sperm and tested them for DNA; is
2 that correct?

3 A Yes, sir.

4 Q Is there a window of opportunity to do that
5 where the sperm or the semen has to be collected in a
6 certain amount of time or you're not able to do that
7 type of testing?

8 A It all depends on circumstances. If you're
9 speaking with regard to a homicide victim who is not
10 ambulatory, it is best to collect it as soon as possible
11 to minimize the effect of degradation that could take
12 place. Sperm cells, as I mentioned yesterday with
13 regard to the extraction process, are fairly hardy and
14 seem to be able to survive a period of time through the
15 decomposition process; however, I'm sure they have their
16 limits.

17 When we speak of sexual assault victims who are
18 ambulatory, the major concern there is the ability of
19 the seminal fluid to drain out or flush out during
20 bathing or normal activity, so the presence of seminal
21 fluid and the preservation of it will depend upon a
22 number of different factors.

23 The enzyme that we use or acid phosphatase that
24 we use for detecting the presence of semen and the other
25 protein called pre30, they're fairly stable in terms of
26 in a dry stain or dry state. So an idea, in fact, this
27 is what we do at the crime scenes prior to the
28 autopsies, if we suspect there might be a sexual

1 assault, that's why we take a sample at the time, take
2 it and dry it.

3 Once you dry the sample, the degradation
4 process slows down tremendously and enhances your
5 chances then of being able to detect either the enzymes
6 or the proteins or in this case in years later the DNA.

7 Q So if -- so one of the things that would
8 degrade the semen sample would be moisture?

9 A Yes, sir. In fact, in a biological setting,
10 moisture is absolutely necessary for any sort of
11 biological process to take place. If you can dry a
12 sample out, get the moisture out of there, really about
13 the only thing that will degrade it is if you bombard it
14 with UV light and break up the DNA.

15 If you can stop -- if you can dry it out, the
16 bacterial processes and degradation processes should
17 come to a virtual halt. That and freezing, keeping it
18 cold.

19 Q Okay. So that was my next question.

20 What about heat? Does heat further the
21 degradation process of the sample?

22 A If moisture is present. If moisture is not
23 present, then heat will have a minimum effect on it.

24 Q Let me ask a different question then. Back in
25 1985, you went to the crime scene on Monday afternoon of
26 a woman that was seen alive on Friday afternoon and
27 evening.

28 A Okay.

1 Q You indicated that you were able to collect
2 some samples of semen or sperm?

3 A Yes, sir.

4 Q Now, do you have an opinion as to whether or
5 not you were -- would have been able to collect that --
6 those samples of semen and sperm had you gotten there a
7 week from Monday?

8 THE COURT: Is that a hypothetical question?

9 MR. SANDERS: It is.

10 THE WITNESS: It is.

11 THE COURT: Can you answer it?

12 THE WITNESS: I believe I can. The samples
13 on the vaginal swab, I don't know that we would have
14 been able to do the serological testing on them in
15 terms of being able to identify the presence of an
16 enzyme called acid phosphatase or the P30 protein,
17 which is used to identify seminal fluid.

18 The sperm cells probably still would have been
19 there.

20 BY MR. SANDERS:

21 Q Because of their hardness?

22 A Not only hardness. There were a lot of them.
23 When I looked at the sperm count, I made a slide. There
24 were a lot of sperm cells that were present. The felt
25 pad, that stain may have dried immediately or would
26 definitely not have been subjected to the same moisture.
27 I have no doubt that even today we could possibly go to
28 that as long as it's been kept dry and still get at

1 least the P30 protein detection, definitely the DNA,
2 maybe even the acid phosphatase and it's been 25 years.

3 Q Now, going the other way, from the tests you
4 did, from the examination that you made, do you have the
5 capability of determining how long the sperm had been
6 there before you collected it or before the death of the
7 victim?

8 A Not in terms of the -- of the testing that I
9 did. That would be information that you would need to
10 piece together from other -- other facts that are
11 gathered.

12 Q That you don't have?

13 A That's correct.

14 Q Okay. By the way, your partner, that was
15 Mr. Stockwell?

16 A Yes, sir.

17 Q Did he have the training required for
18 collecting and processing evidence?

19 A Yes, sir. In fact, in many ways, Mr. Stockwell
20 left our laboratory a number of years ago, we lost a
21 great expertise. He was a tremendous, tremendous
22 criminalist.

23 MR. SANDERS: Thank you, your Honor. No
24 further questions on cross-examination.

25 THE COURT: Redirect.

26 MR. THOMAS: Thank you, your Honor.

27

28

REDIRECT EXAMINATION

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BY MR. THOMAS:

Q The blood transfer that you spoke about earlier on cross-examination, is that something that the victim herself could have done where she put that blood transfer on there?

A I have absolutely no information with regard to how that could have gotten there. Pretty much any hypothetical that you put up which has her blood on it and it touched either the doorjamb or the part of the wall would be an explanation. I have nothing I can offer you on that.

Q Okay. So there's all these possibilities out there --

A Yes.

Q -- to explain the blood transfer that you saw on Items A dash 23 and A dash 24?

A That's correct.

Q Okay. You talked about cell analysis, fluids draining out, and a victim that's ambulatory or I guess still alive basically.

A Yes, sir.

Q Okay. When the seminal fluids drain out, do they drain out of the vaginal area?

A Yes, sir. The logical thing would be that there's a gravity flow, and it would slowly drain out if the person is vertical and moving around.

Q So if the victim in that hypothetical is

1 wearing panties, they would drain out on the panties?

2 A It could, yes, sir.

3 Q Okay. And then assuming -- this is another
4 hypothetical. Assume that the victim had sex and
5 there's a pair of panties on the ground that has no
6 seminal fluid or no semen on there.

7 If you had to come to a conclusion as to how
8 soon that victim had sex prior to the discovery of the
9 body, would you have any opinion as far as that goes?

10 MR. SANDERS: Objection, your Honor.
11 Incomplete hypothetical.

12 MR. THOMAS: If I could rephrase it?

13 THE COURT: I can -- I can rule on this
14 before you rephrase it if I can ask Mr. Jones, can you
15 answer that question?

16 THE WITNESS: I'm not sure I truly understand
17 what he was trying to get at.

18 THE COURT: I think so too. I think it may
19 be an incomplete hypothetical, may be vague. You may
20 restate the question.

21 BY MR. THOMAS:

22 Q Okay. What's the significance to you of there
23 being an absence of seminal fluid on the panties that
24 were found by the bed? What did that indicate, if
25 anything, to you?

26 A If there's no seminal fluid on the panties,
27 then the suggestion is that the panties were not worn
28 after there was sexual intercourse.

1 Q And then as far as determining whether or not a
2 person had sex or sexual intercourse with someone, what
3 would you think is the most significant as far as
4 evidence? Do you think it would be a vaginal swab of
5 some sort or pubic hair or some hair found in the pubic
6 area of the victim?

7 A Definitely the vaginal sample. In fact, when
8 we have what we consider sexual assault cases, because
9 of the large back log we have, we want to look at the
10 most probative samples first.

11 THE COURT: Probative?

12 THE WITNESS: Yes, sir.

13 THE COURT: What does that word mean?

14 THE WITNESS: For me, it means the one that
15 would answer the question as succinctly as possible.

16 THE COURT: Thank you.

17 THE WITNESS: And the answer for a sexual
18 assault case would be the vaginal swab. You look at
19 that. If you can identify the presence of semen on
20 it, then do some sort of characterization or DNA
21 typing of that. That will then answer the question
22 with regard to the presence of a semen donor.

23 If nothing was found in regard to semen, then
24 you start looking at other samples. Pubic hair
25 combing, hairs that are collected around the body,
26 things related to the body.

27 If that doesn't pan out, then you start looking
28 at -- we've already -- actually, before that, you look

1 for other stains, such as the one we found on the felt.
2 Then you look for hairs that are found in the pubic
3 combing or on the body.

4 If that doesn't pan out, then you start looking
5 at the vacuum sweepings that you took or you look for
6 things of that nature.

7 If that doesn't pan out, then you start looking
8 at the cigarette butts that were collected out of the
9 living room.

10 It's a progression of things that you want to
11 look at starting with those things that are more closely
12 related to the question you're trying to answer.

13 Q And then as far as the pubic hair is concerned,
14 if you find some other foreign hair in the pubic hair
15 combings, can you do the same type of DNA analysis that
16 you would do on a semen stain or vaginal swab?

17 A It depends on the condition of the hair. If
18 the hair has a good root structure to it, yes, you can.
19 If it does not have a good root structure, then there is
20 ultimate DNA testing that we don't do in our laboratory
21 that really is more comparative testing. You need to
22 have someone that you're going to be directly comparing
23 that type of result to.

24 Q Okay. Then there was discussion about
25 fingernail scrapings that you had with Mr. Sanders.

26 Do you recall that?

27 A Yes, sir.

28 Q As far as fingernail scrapings, just because

1 somebody had a struggle with someone else doesn't
2 necessarily mean that there will be foreign DNA on those
3 fingernail scrapings?

4 A That is true. In terms of the approach that we
5 take now with regard to crime scenes, rather than say
6 there's a chance there isn't DNA, we take the chance
7 there is DNA, and we will take it. We may not get
8 anything. It may be that all the DNA would be the same
9 as the victim's because they scratched themselves.

10 Q As far as -- as far as those fingernail
11 scrapings go back in 1985, it wasn't one of those things
12 where, yeah, 20 years from now we're going to be able to
13 do DNA testing on these fingernail scrapings so we need
14 to start collecting these fingernail scrapings?

15 A The idea of DNA in 1985 was something out of a
16 science fiction magazine. It wasn't even -- for us in
17 the lab, wasn't even on the horizon. We were fully
18 involved in serology, looking at blood and semen and
19 saliva and those types of physiological fluids, trying
20 to do genetic-marker typing on proteins and enzymes and
21 antigens.

22 As I say, the -- the idea of doing DNA typing,
23 when I look at where we've come, I'm absolutely amazed.
24 Absolutely amazed. To think of what we were capable of
25 doing in 1985 and what we're capable of doing today,
26 it's unbelievable.

27 Q So basically any suggestion that we can look at
28 something in 2011 and kind of play Monday-morning

1 quarterback and say, well, 25 years ago you should have
2 done this, you should have collected that, you should
3 have collected this, would be something that would be
4 unfair?

5 MR. SANDERS: Objection, your Honor.
6 Argumentative.

7 THE COURT: Sustained.

8 BY MR. THOMAS:

9 Q As far as the sperm count was concerned, you
10 said that you saw a lot of sperm or the sperm count was
11 a lot on the slide that you looked at?

12 A Yes, sir.

13 Q When an individual is alive, does that sperm
14 count naturally decrease as the hours and minutes go by?

15 A Yes, sir. In sexual assault cases involving a
16 live victim, there's an interval called a post-coital
17 interval from the time the sexual intercourse takes
18 place until the time the kit is collected. In general,
19 the longer the period of time, the less amount of
20 seminal fluid and/or sperm you will find present.

21 There are, of course, exceptions to this, but,
22 in general, as time goes by, you will have less and
23 less. The sooner after a particular incident that you
24 collect a sample, the better off you are.

25 Q And what about in the situation hypothetically
26 of a person who dies shortly after having sexual
27 intercourse?

28 A If there's an opportunity for the -- for this

1 drainage that we talked about, then the post-coital
2 interval between the time of the intercourse and time of
3 collection will be less critical.

4 Q So you would still, in this hypothetical that I
5 just posed to you, you would expect there to be also a
6 lot of sperm or the sperm count to be high?

7 A I would expect it to be -- to decrease less.
8 If there's very little there to start with, I would
9 expect there to be very little there when I collect the
10 sample. If there was a lot there when I started or when
11 it happened, then I expect there to be a lot there when
12 I collect the sample. There would be very little
13 difference. It depends on how much was there to start
14 with.

15 MR. THOMAS: Nothing further.

16 THE COURT: Mr. Sanders.

17 MR. SANDERS: Thank you, your Honor. Couple
18 questions.

19 **RECROSS-EXAMINATION**

20 BY MR. SANDERS:

21 Q Sperm count is relative?

22 A Yes, sir.

23 Q When you say high sperm count, that could mean
24 an individual that had a lot of sperm or an individual
25 that had a larger than average amount of sperm, but it
26 had taken some time.

27 You wouldn't be able to tell which one?

28 A I'm not sure I understand the second part, the

1 larger amount that's taken some time.

2 THE COURT: The Court's going to sustain its
3 own objection to vague. You want to restate?

4 MR. SANDERS: Yes, your Honor. Thank you.

5 BY MR. SANDERS:

6 Q You said you found a large amount of sperm
7 cells.

8 A Relatively large amount compared to other
9 sexual cases that I worked, yes, sir.

10 Q All right. But you have no knowledge of the
11 person that -- that -- the sperm count of the person
12 that made that deposit?

13 A Absolutely. That's correct.

14 Q So it could have been -- you can't tell the
15 time based on just looking at what you looked at?

16 A No, sir.

17 Q Okay. In other words, from the information
18 that you had, the sexual experience of the victim could
19 have been at the time of death, hours before the time of
20 death, or after death?

21 A That's probably true. I would say it probably
22 wasn't days before in terms of she had intercourse,
23 several days passed, and then she died.

24 Q Right.

25 A I'm fairly certain of that.

26 Q Okay.

27 A If you take those days and shrink it down into
28 hours and so forth, I can't tell you.

1 Q All right. And one of the questions I asked
2 you at the preliminary hearing, isn't it true that you
3 would be unable to state that this particular victim had
4 consensual sex or nonconsensual sex before the time she
5 died?

6 A That is true. I have no information at all
7 with regard to the conditions that were present or what
8 circumstances were present. Pretty much all I can do is
9 make an assumption, but I can't tell you how it got
10 there or why it got there.

11 Q The prosecutor just asked about those blood
12 marks in the hallway.

13 A Yes, sir.

14 Q I believe that you said that you took those to
15 the lab and compared them to 16 different profiles; is
16 that correct?

17 A There was -- there were at least 16 different
18 reference blood samples that had been submitted over the
19 course of the investigation to us.

20 Q What do you mean by that?

21 A That have been submitted to us?

22 Q Yes.

23 A There were names and I'm somewhat -- I'm
24 presuming occurred during the course of investigation, a
25 person of interest, somebody for elimination purposes.
26 Those reference blood samples were submitted to the
27 laboratory. As they came in, we would analyze them and
28 compare them to the results we got for the -- initially,

1 for the -- for the stains we looked at, and then later
2 on, we were asked to compare them to these two blood
3 stains.

4 In each of these cases we eliminated the blood
5 stains as coming from the other people whose blood we
6 had received with the exception of the victim. With
7 regard to the blood stains, the typing we got was the
8 same as the victim's type.

9 Q These 16 different profiles, these are like
10 potential suspects?

11 A They could be. I don't know what they truly
12 were in the minds of the investigators.

13 Q All right.

14 A There were at least 16 subjects.

15 MR. SANDERS: Thank you, your Honor. Nothing
16 further on recross.

17 THE COURT: Mr. Thomas.

18 **FURTHER REDIRECT EXAMINATION**

19 BY MR. THOMAS:

20 Q Out of those 16 subjects, none of them matched
21 either the blood stains that you found in the hallway
22 and none of them matched the semen sample that you had?

23 A The blood stain in the hallway matched the
24 victim. That was one of the reference samples that we
25 had. The semen samples, sperm cell fractions of those
26 samples, off the vaginal swab and off the felt pad, that
27 did not match any of those other reference samples that
28 we got that I analyzed.

1 Q As far as the other reference samples that you
2 analyzed, did you have names attached to those reference
3 samples?

4 A Yes, sir.

5 Q Did the name Yablonsky ever get examined by
6 you?

7 A No, sir.

8 MR. THOMAS: Nothing further.

9 THE COURT: Mr. Sanders. We'll take a
10 ten-minute recess right now, ladies and gentlemen.
11 You're admonished that it is your duty not to converse
12 among yourselves or with anyone else about any matter
13 connected with this case nor form or express an
14 opinion on it until it's submitted to you.

15 (Whereupon a recess was taken.)

16 (Whereupon the following proceedings were held in open
17 court in the presence of the jury:)

18 THE BAILIFF: Remain seated. Come to order.
19 Court is now in session.

20 THE COURT: Back on the record in the case of
21 People of the State of California versus John Henry
22 Yablonsky who is here with Mr. Sanders. Mr. Thomas is
23 here for the People along with his investigating
24 officer. Donald Jones is on the witness still under
25 oath.

26 MR. SANDERS: I wasn't quite fast enough,
27 your Honor, to say no further questions.

28 THE COURT: You needed to review some things.

NO SUBJECT
TO RECALL

1 That's fine. I thought we would cut -- you're
2 through, both of you? May this witness be excused?

3 MR. THOMAS: Yes, your Honor.

4 MR. SANDERS: Yes, your Honor.

5 THE COURT: Thanks for being with us,
6 Mr. Jones.

7 THE WITNESS: Thank you, sir.

8 THE COURT: Call your next witness.

9 MR. THOMAS: People call Monica Siewertsen.

10 THE CLERK: You do solemnly state that the
11 evidence you shall give in the matter pending before
12 this Court shall be the truth, the whole truth, and
13 nothing but the truth, so help you God?

14 THE WITNESS: I do.

15 THE CLERK: Thank you. Please be seated.

16 THE BAILIFF: Please state your full name and
17 spell it for the record.

18 THE WITNESS: Monica Siewertsen M-o-n-i-c-a
19 S-i-e-w-e-r-t-s-e-n.

20 THE COURT: Good morning, Ms. Siewertsen.

21 THE WITNESS: Good morning.

22 THE COURT: Your witness.

23 MR. THOMAS: Thank you, your Honor.

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1 **MONICA SIEWERTSEN**, having been duly sworn,
2 testified as follows:

3 **DIRECT EXAMINATION**

4 BY MR. THOMAS:

5 Q What's your current occupation?

6 A I'm currently employed as a criminalist with
7 the Washoe County Sheriff's Department in Reno, Nevada.

8 Q How long have you been employed with the Washoe
9 County Sheriff's Department?

10 A Since January of 2009.

11 Q And then prior to that, where did you work?

12 A I was a criminalist in the San Bernardino
13 County Sheriff's Department in San Bernardino.

14 Q Do you remember what years you worked for the
15 San Bernardino County Sheriff's Department?

16 A From 2002 until the end of 2008.

17 Q Prior to working with the sheriff's department
18 in 2002, did you work for any other department as a
19 criminalist?

20 A Yes. I was employed with the Royal Canadian
21 Mounted Police in Edmonton Alberta in Canada as well as
22 the Mesa Police Department in Mesa, Arizona.

23 Q How many years of experience do you have as a
24 criminalist?

25 A Approximately 16.

26 Q Prior to becoming a criminalist, did you have
27 to take special education courses or anything like that?

28 A I have an honors bachelor of science from the

1 University of Waterloo in Waterloo, Canada. I have six
2 years of research experience in the area of molecular
3 biology, which is utilizing DNA, in my instance, to help
4 answer specific research questions.

5 Three of those years were at the Hospital of
6 Sick Children in Toronto, Canada and three years with
7 the King Faisal Specialist Hospital and Research Center
8 in Riyadh, Saudi Arabia.

9 Q As far as your training is concerned, did you
10 have on-the-job training also?

11 A Yes. At each of the police agencies where I
12 worked, I was required to undergo written, oral,
13 practical examinations, as well as demonstrating using
14 training samples and reading articles demonstrating a
15 competency in the area of the analysis that I performed
16 at each of the agencies. That would be mostly DNA
17 typing analysis.

18 Q As far as your current position at
19 Washoe County, what do you do over there as a
20 criminalist?

21 A I work in the forensic biology section. I
22 perform the identification of biological materials.
23 Then I perform DNA typing analysis in an attempt to
24 determine the origin of those biological materials.

25 Q How long have you been doing DNA typing and
26 working in the forensic biology area?

27 A Approximately most of those 16 years.

28 Q Then as far as the 16 years that you've done,

1 primarily working with DNA?

2 A Primarily, yeah.

3 Q And then did you have -- during those 16 years,
4 how many cases have you worked on where you did DNA
5 typing?

6 A I don't have an exact number, but I would say
7 well over a thousand.

8 Q And then as far as your case load is concerned,
9 eventually you had to go into court to testify on some
10 of those cases?

11 A In some, I'm required to testify, yes.

12 Q How many times have you testified in court as
13 an expert in DNA?

14 A I've been required to testify over 80 times.

15 Q As far as testifying in court, you said you've
16 done that before.

17 Is that on different types of DNA or a specific
18 type of DNA testing that you've done?

19 A The actual analysis type?

20 Q Yes.

21 A Yes. I've testified in several different
22 analysis types, yes.

23 Q Then if you can explain to the jury, what is
24 DNA?

25 A DNA stands for deoxyribonucleic acid. It's
26 often referred to as blueprint of life because it does
27 contain the information that allows us to be human,
28 carry on our daily functions, and it also allows us to

1 pass our traits on from one generation to the next.

2 Q What type of items can you find DNA on?

3 A In humans, DNA is located inside all cells
4 except for red blood cells. We're still able to analyze
5 blood in a forensic situation because white blood cells
6 are located in blood. That's where we obtain our DNA
7 from.

8 An important factor for forensic DNA analysis
9 is that no matter what the source of the cells -- the
10 source of the cells, I mean, blood, semen, saliva, the
11 roots of hair or tissue -- if it came from the same
12 individual, it will give the same DNA typing profile.
13 So we're able to compare different kinds of biological
14 material and determine if they came from the same
15 individual.

16 Q Okay. Up on the screen there is Exhibit 41.
17 May I approach?

18 (Whereupon Exhibit 41 was marked
19 for identification.)

20 THE COURT: You may.

21 BY MR. THOMAS:

22 Q Can you explain to the jury what this exhibit
23 depicts, Exhibit 41?

24 A Yes. This is a caricature to basically help to
25 remind me of things to explain about the DNA molecules.
26 As I've mentioned, DNA is located inside the cells in
27 the human body. No matter what the source of those
28 cells, if the cells came from the same individual, they

1 will give the same DNA typing profile.

2 DNA is packaged -- it's a very large molecule,
3 as you can imagine, because it contains a lot of
4 information. It's packaged in structures known as
5 chromosomes. A chromosome is similar to a spool of
6 thread. If you're familiar with a spool of thread, it
7 may contain 10 or 25 or 50 yards of thread in a very
8 small compact package that you could carry around. The
9 large DNA molecule is wound around something similar to
10 that spool of thread so it's able to be packaged in a
11 very small area.

12 The English language has 26 letters or the
13 English alphabet has 26 letters. We organize those
14 letters into words and into sentences. That's how we're
15 able to communicate with each other. The DNA alphabet
16 consists of only four letters or four building blocks
17 for the DNA molecule. They go by the letters A, T, G
18 and C. It's the order of these building blocks along
19 the DNA molecule in a certain stretch that imparts the
20 information, the blueprint that the body follows in
21 order to produce proteins and carry on functions.

22 These base pairs or building blocks pair in the
23 rungs of a ladder. This diagram here is often how a DNA
24 molecule is depicted. That is a double helix or
25 twisted-ladder format. The outsides of the twisted
26 ladder are like the outsides of the ladder -- the
27 outside of the DNA molecule is like the outside of a
28 ladder. The rungs are where those building blocks are

1 located.

2 If you divide those rungs in half, there's a
3 base on each side of that half. Every time there is a
4 T, the other half of the rung will always be an A.
5 Every time there is a C on one half of the rung, the
6 other half will always be a G. Because of that, if you
7 cut a DNA molecule down the center in half and you take
8 away half, you will always be able to reform the DNA
9 molecule because of those base pairing rules.

10 That is in nature how we make more cells in our
11 body, and how we repair injuries, how we grow, and also
12 how we're able to pass our traits from one generation to
13 the next. We use this particular technique in the
14 laboratory in order to make copies of particular areas
15 along the DNA molecule we're interested in during our
16 analysis.

17 Q That's also known as the extraction process or
18 that's done during the extraction process?

19 A That's -- the making of the copies is actually
20 done after the extraction process during the PCR or
21 polymerase chain reaction stage.

22 Q And then in this particular case, did you
23 perform some sort of DNA analysis?

24 A Yes, I did.

25 Q Okay. And what was the LR number of this
26 particular case?

27 THE WITNESS: Your Honor, may I refer to my
28 notes to refresh my recollection?

1 THE COURT: You know, you can do it anytime
2 you want to just do us a favor and just tell us, I'm
3 going to be referring to my notes.

4 THE WITNESS: Okay.

5 THE COURT: Thank you.

6 THE WITNESS: The LR number in this case
7 is 44659.

8 BY MR. THOMAS:

9 Q Was there also a DR number that was attached to
10 this particular case?

11 A Yes.

12 Q What was the DR number?

13 A 1331036 dash 07.

14 Q Were there certain items that you analyzed
15 regarding this particular LR number, LR Number 44659?

16 A Yes.

17 Q What were those items?

18 A Referring to my report, the particular items
19 that I analyzed was A dash 11, which was a vaginal swab
20 from Rita Cobb.

21 Q And then as far as that A dash 11 is concerned,
22 did you have to actually do an extraction of the DNA of
23 that particular item?

24 A I did not. These were actual tubes which
25 contained liquid. That liquid was DNA that had been
26 previously extracted from the vaginal swabs.

27 Q Then you talked about the PCR.

28 Is that done by you after you get a liquid?

1 A Yes. The steps, basically, of the DNA analysis
2 is to remove the DNA from whatever biological material
3 that you're looking at, and then to determine how much
4 you have because DNA analysis is like following a
5 recipe. We want to know how much DNA we have in order
6 to add the correct amount to our recipe.

7 Then we want to make a number of copies of the
8 particular areas of the DNA molecule that we're
9 interested in targeting. Then we want to analyze or
10 determine the differences or results at each of the
11 areas that we look at.

12 Q So you made the copies of the DNA for
13 Item A dash 11?

14 A I did.

15 Q Can you explain whether or not during that
16 process there were any abnormalities that you saw?

17 A The fact that the record is written means that
18 there was no reason to doubt the results at the end of
19 the analysis.

20 At each of the steps, there are positive and
21 negative controls that are carried through that analysis
22 to make sure that the process worked correctly, we
23 obtain the correct results from the positive control,
24 and that no results are obtained from the negative
25 control. That serves to show there's no inadvertent
26 addition of an unknown DNA sample.

27 In this particular case, once I complete my
28 analysis and write a report, my complete file is given

1 to a second individual to go over my analysis and to
2 agree with my conclusions before the report is released.

3 So there's no reason in this particular case to doubt
4 those results.

5 Q Okay. And that copying that you did, that was
6 in accordance to generally accepted scientific
7 procedures in the scientific community?

8 A Yes, as well as being validated within the
9 laboratory before they're used for case work.

10 Q And you did that in accordance with the
11 training that you received?

12 A Yes.

13 Q And then did you eventually obtain a DNA
14 profile or multiple DNA profiles from Item A dash 11?

15 A Yes, I did.

16 Q Can you tell us how, once you develop a DNA
17 profile, how that profile is developed, what you're
18 looking at in order to get that profile?

19 A Yes. As I've mentioned, we target 13 areas
20 along the DNA molecule. The DNA that we have, half of
21 our DNA is inherited from our mother and half of our DNA
22 is inherited from our father.

23 I had mentioned earlier that we have 46
24 chromosomes. We have 23 chromosome pairs. The half
25 inherited from your mother, the half inherited from your
26 father. When we look at any one area on the DNA
27 molecule, there are two copies of that area, the one
28 that you inherited from your mother, the one from your

1 father. When you target that area and do your analysis
2 and look for your result, you actually expect to see two
3 results at that area. The actual result is a length of
4 DNA.

5 The particular analysis that I perform is
6 called short tandem repeat analysis or STR analysis, and
7 what that analysis entails is the particular areas that
8 we're interested in, if we take one of those areas,
9 everyone in the world has the same core order of
10 building blocks at that location. For example, A, A, T,
11 G. That's the order of the building blocks at that
12 location. Everybody has that order.

13 What differs from person to person is the
14 number of times that that core sequence is repeated at
15 that particular location. One individual may have one
16 of their chromosomes that has four of those repeat
17 units, and the other of their chromosome has two of
18 those repeat units. At that one location, that
19 individual's DNA typing result would be a 2, 4. Someone
20 else using that same particular location will have that
21 same core sequence, but they may have three repeat units
22 at one area or one of the chromosomes and two repeat
23 units at the other chromosome. Their DNA typing result
24 at that one location would be a 2, 3.

25 So a DNA typing profile is a accumulation of
26 those numerical results at each of the areas that we
27 look at on the DNA molecule. We attempt to look at 13
28 areas.

1 Q Before we go on to the 13 areas, I'm going to
2 show you what's been marked Exhibit 43.

3 Is that an illustration of what you just
4 discussed as far as a short tandem repeats?

5 (Whereupon Exhibit 43 was marked
6 for identification.)

7 THE WITNESS: Yes.

8 BY MR. THOMAS:

9 Q I notice on Exhibit 43, that there's a group of
10 rectangular blocks with the letters A, G, A, T in there,
11 and then next to it say four alleles and then on the
12 bottom is another group of rectangular boxes with those
13 same letters and next to that is the six allele.

14 A Yes.

15 Q As far as the DNA type, that would be 4 comma
16 6?

17 A Correct.

18 Q What if it was, hypothetically, let's say the
19 second one is also four alleles?

20 A That is possible. Each of the areas that we
21 look at, there is not an infinite number of
22 possibilities or infinite number of links at that
23 particular area. There's a finite number of results.
24 So it is possible that an individual may coincidentally
25 inherit the same result from both parents.

26 The length of the fragment or the number of
27 repeat units would be the same and the result of that
28 location would be written as a 4, 4 or may be written

1 just as a 4.

2 Q So when you only see a single number, that
3 means that that same number is a duplicate and you see a
4 Number 4 all by itself that means there's two 4s there?

5 A That's correct.

6 Q You were about to talk about the 23 chromosomes
7 and the locations. Let me show you an exhibit. I'm
8 going to show you what's been marked Exhibit 42.

9 Can you explain what's depicted in Exhibit 42
10 for the jury?

11 (Whereupon Exhibit 42 was marked
12 for identification.)

13 THE WITNESS: Yes, this is a representation
14 of the 23 chromosome pairs. 22 of the -- of the
15 pairs, each half of the pair is identical to the other
16 half. The 23rd pair, which is demonstrated in the
17 bottom right corner, are the sex determining
18 chromosome. A female will have two Xs and a male an
19 X, Y.

20 We look at 13 areas along the chromosomes
21 labeled 1 to 22, and we look at an area on the X and Y
22 chromosome to determine whether the donor of the
23 biological sample is a female or a male.

24 BY MR. THOMAS:

25 Q I notice on Exhibit 42, there appear to be
26 several chromosomes with no numbers on them.

27 Do you see that?

28 A Yes.

1 Q Are those chromosomes that aren't actually
2 examined?

3 A That's correct. We do not look at areas on
4 those particular chromosomes.

5 Q And each area that you examine is designated,
6 it looks like, with a number?

7 A That's correct. Basically, what that value is
8 in the yellow is a DNA address. If I say to you that an
9 individual lives at 201 Birch Street, if you're familiar
10 with the city we're in, then you would know where
11 201 Birch Street is.

12 These destinations are what microbiologists use
13 to know where a particular piece of DNA is located. For
14 example, on the second row, the number is D13S317.
15 Basically, that means that that's a DNA fragment. It's
16 on the 13th chromosome. It's a single unique sequence
17 that is found only once on the DNA molecule. It was in
18 this particular case the 317th one characterized on the
19 13th chromosome.

20 Q I notice it looks like Chromosome 5 has more
21 than one?

22 A Yes.

23 Q Is that the only chromosome that has more than
24 one?

25 A Yes. They are located on opposite arms of the
26 chromosome. They are far enough apart on the chromosome
27 that they are considered independent of each other.

28 Q How unique are these numbers we're talking

1 about as far as these short tandem repeat numbers? Are
2 they unique to each individual when you look at them all
3 13 loci?

4 A Do you mean the overall DNA typing profile?

5 Q Yes.

6 A The more information you have, the more areas
7 you obtain results for, the more individualizing a DNA
8 typing profile is. As I mentioned earlier, each area
9 only has a certain number of possibilities. One of the
10 areas has eight possibilities. With all the people in
11 the world having to have two of those eight
12 possibilities, obviously lots of people at that one area
13 are going to have the same result.

14 The power of individualization for DNA typing
15 analysis comes in looking at a number of areas. An
16 example for a car would be if I tell you I'm looking for
17 a white vehicle, that's a good piece of information
18 because I'm able to eliminate all other colored vehicles
19 as being the one that I'm looking for. It's -- there's
20 lots of other white vehicles around. If I then tell you
21 that I'm looking for a white vehicle that has two doors,
22 I can now exclude all white vehicles that have more than
23 two doors. For each additional piece of information I
24 give you, it's less likely I'm coincidentally going to
25 find a vehicle that fits that description.

26 For DNA typing analysis, the same is true. If
27 the frequency of occurrence of a result at one area is 1
28 in 10, well, I'm able to exclude nine out of ten people,

1 but there's lots of people out there that are going to
2 have that same result. If I then have a secondary
3 result and the frequency of occurrence of that second
4 area is 1 in 10, because the two areas are totally
5 independent of each other and what I obtain at one area
6 has no affect on what I obtain on the second area, we're
7 able to multiply the frequency of occurrence of the two
8 areas together. So the two results will be found in 1
9 in 100 people.

10 If I then look at a third area, that third area
11 has a frequency of 1 in 10. The combination of those
12 three results would be found in only 1 in 1,000 people.
13 So for each additional piece of information I give, the
14 less likely it is that someone else is going to
15 coincidentally have those results.

16 By looking at all 13 areas, we're going to come
17 up with a DNA profile where it is unlikely that another
18 individual would match that profile.

19 Q So as far as these profiles are concerned, are
20 you able to get a DNA profile with those 13 points in
21 every case?

22 A No.

23 Q In some cases are you limited to maybe three or
24 four or five or six?

25 A Yes. Earlier, I mentioned that performing DNA
26 typing analysis was like following a recipe where we
27 need to add certain amounts of each of the components.
28 There's an optimum amount of DNA that we would like to

1 add to our reactions in order to obtain results at all
2 13 areas; however, it's possible that that much DNA just
3 does not exist from the particular material we isolated
4 it from.

5 It's still worth a try to perform the DNA
6 typing analysis on that less-than-optimum amount because
7 any piece of information that we have gives some
8 information -- any result that we have gives some piece
9 of information. The example of cars, if all I'm able to
10 tell you is that I'm looking for a white vehicle, that's
11 still a piece of information. So it's useful. In DNA
12 typing analysis, if the amount of DNA present is not
13 optimum amount, it's possible we don't obtain results at
14 all 13 areas.

15 If the DNA has been around for a long time and
16 subjected to not optimum conditions, the DNA may be in
17 what we call a degraded form, and we may not obtain
18 results at all areas. If we don't obtain results or
19 when we obtain results, whether those are complete or
20 partial, we attach a statistical significance to that
21 result to give some idea of how common or rare the
22 result that we obtain is in the population.

23 Q As far as this particular case, were you able
24 to obtain a DNA profile from Item A dash 11?

25 A Yes, I was.

26 Q Was it a partial profile or was it a full
27 profile?

28 A Referring to my table summary result, I was

1 able to obtain a full profile from both fractions of
2 this particular sample.

3 Q And you said both fractions, could you explain
4 to the jury what you mean by both fractions?

5 A Yes. In this particular case, the extract that
6 I worked with was from a vaginal swab. Generally, the
7 purpose of examining a vaginal swab is to look for a
8 donor of a semen sample that may be present. A vaginal
9 swab we would expect to have epithelial cells, which are
10 from the vaginal wall of the individual the sample was
11 taken from as well as sperm cells, if there is a semen
12 donor.

13 We do what's called a differential extraction,
14 which helps to attempt to separate those two cell
15 sources. There were two fractions, a non-sperm or
16 female fraction and what we call a sperm fraction or the
17 fraction that is enriched for the male component of any
18 DNA that's present.

19 Q Did you do that separation or was that done for
20 you prior to you looking at Item A dash 11?

21 A That separation was done prior to my analysis.

22 Q Okay. So that would have been done by
23 Don Jones, according to the paperwork that you have?

24 A That's correct.

25 Q Then let me show you what's been marked
26 Exhibit 44.

27 Did the Court want to take the noon recess at
28 this point since this will be a good time to break?

1 THE COURT: If this is a good time for it,
2 we're not quite at noon, but if this is a good pausing
3 point, we'll do that.

4 Ladies and gentlemen, we'll start back at 1:30.
5 You're admonished that it is your duty not to converse
6 among yourselves or with anyone else about any matter
7 connected with this case nor form or express an opinion
8 on it until it's submitted to you.

9 Ms. Siewertsen, see you back at 1:30 as well.
10 (Whereupon the lunch recess was taken.)

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1 VICTORVILLE, CALIFORNIA; JANUARY 25, 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. Back on the record in the case of People
13 of the State of California versus John Henry Yablonsky
14 who is here with his attorney, David Sanders.
15 John Thomas is here along with his investigating
16 officer, Detective Alexander. On the witness stand is
17 Monica Siewertsen, and she's still under oath in
18 direct examination.

19 You may continue.

20 MR. THOMAS: Thank you, your Honor.

21 BY MR. THOMAS:

22 Q Before the lunch hour, we were talking about
23 the analysis that was done on Item A dash 11.

24 Do you recall that?

25 A Yes.

26 Q When was that actual analysis done?

27 A Between January 7th and January 13th of 2003,
28 referring to the front page of my report.

1 Q Okay. You said there was an analysis done on
2 the non-sperm fraction and an analysis done on the sperm
3 fraction; is that correct?

4 A They would be done at the same time.

5 Q Then as far as your analysis goes, you were
6 able to obtain a full DNA profile as far as those 13
7 markers are concerned on both the non-sperm fraction and
8 the sperm fraction?

9 A That's correct.

10 Q I'm going to show you what's been marked
11 Exhibit 44.

12 May I approach the witness?

13 THE COURT: You may.

14 BY MR. THOMAS:

15 Q Showing you Exhibit 44, and I've put it up on
16 the screen there.

17 If you can, explain to the jury what exactly
18 Exhibit 44 is.

19 (Whereupon Exhibit 44 was marked
20 for identification.)

21 THE WITNESS: This is the table, which is
22 included in my report. It's the numerical results
23 regarding the DNA typing profiles I obtained from the
24 non-sperm and sperm fractions from the vaginal swab.
25 The left-hand column is the actual item that was
26 examined. The top is the non-sperm and the bottom
27 here is the sperm fraction.

28 There's two separate tables. During this

1 analysis, we attempt to look at the 13 areas along the
2 DNA molecule and the sex determining chromosome. We do
3 that using two commercially available kits that look at
4 nine and seven locations combined. Three areas; this
5 area here, which is the area on the sex determining
6 chromosomes; this area here on Chromosome Number 7, and
7 the area on Chromosome Number 3, which is, I believe,
8 here if I can see correctly and up here on the top.

9 Those areas are the same areas, and they're
10 looked at using both kits. That serves as an internal
11 quality control to ensure that the same sample is being
12 analyzed in both situations. We expect the same
13 results. The first row at the top contains those
14 addresses on the DNA molecule that I mentioned earlier.
15 Those are the particular areas that we're looking at.

16 The first actual result area is the area on the
17 X and the Y chromosome. As I mentioned earlier, an area
18 where it has an X means that that particular biological
19 sample was donated by a female, and the area that has
20 the X and Y, that particular sample was donated by a
21 male.

22 The next area as we look at it, basically once
23 we've determined the DNA typing profile for the
24 questioned samples, we put that in this particular table
25 and that would be a record of the actual DNA typing
26 profile that was obtained.

27 Q Then as far as the particular profile or
28 profiles that you obtained from this particular sample,

1 how would you go about excluding certain individuals or
2 including certain individuals?

3 A Often -- most of the time in forensic
4 situations, DNA analysis is a comparative process. I
5 can't obtain a DNA typing profile and say, I know this
6 profile came from this individual just by obtaining the
7 profile. I have questioned samples, which I have DNA
8 profiles from, and I have reference samples, which I
9 obtain DNA typing profiles from. A reference sample is
10 a sample that's collected from a particular individual,
11 so we know the source of that sample.

12 Often in forensic situations, you would have
13 the DNA typing profile that you obtained from a
14 questioned sample. You would have a DNA profile that
15 you obtained from a reference sample or known sample,
16 and you would compare the two results.

17 If we, for discussion sake, say that the first
18 line here is from a questioned sample and the second
19 line is from a reference sample, the result at the first
20 area is -- I can't see that. Is a 12, 15. The result
21 for our hypothetical reference sample is a 12. A 12 is
22 different than a 12, 15. Remember the 12 refers to a
23 12, 12. That particular individual, if that were a
24 reference sample, would have inherited two copies of
25 that one result.

26 Just using this one area if hypothetically this
27 were a questioned sample and a reference sample, I would
28 be able to exclude this individual as being the possible

1 source of this questioned sample because the 12, 15 is
2 not the same as 12.

3 If, coincidentally, that result was the same, I
4 would then move to the next area and compare the results
5 from the questioned sample with the results from the
6 reference sample.

7 In this case, I actually just have the one
8 questioned sample, which was artificially divided into
9 two in an attempt to obtain the female component of that
10 fraction and the male component of that fraction.

11 Q As far as the first row of numbers, that sample
12 would that be considered a reference sample for
13 Rita Cobb's DNA?

14 A In this particular case, this sample is a
15 vaginal swab, and in that situation a female component
16 would be vaginal cells taken from the vaginal lining.
17 That would be considered a reference sample from that
18 individual.

19 Q And then I notice in one of the columns on the
20 second column, going across under, I believe, it's
21 D371358, there's a 15 coma 18 and then underneath it
22 says with very weak 17.

23 What, if anything, does that indicate to you?

24 A When we have a single source sample, a sample
25 that comes from one individual, we would not expect to
26 see more than two results because we only have two
27 copies of each of the areas that we look at. In this
28 situation, I actually have three results. That

1 indicates to me that this was more than one person
2 contributing to that DNA typing result.

3 In this particular situation, remember that
4 this is one sample. It was a vaginal swab that was
5 artificially separated into two components in an attempt
6 to obtain a female profile and a male profile. The
7 15, 18 is the stronger result at this particular
8 location. That would be consistent with being the major
9 contributor of that -- that particular result, which
10 would go along with the rest of the results that were
11 obtained from that faction.

12 The weak 17 is consistent with the female
13 portion of that sample, which is not unexpected. If we
14 have one sample that we artificially divided into two,
15 it's just an enrichment process where that's not an
16 absolute. All of the female cells don't have to be
17 present in the one fraction, and all the male cells
18 don't have to be present in the second fraction.

19 In this particular situation, there is a very
20 good separation of the two contributors. At this one
21 location, there is a small amount of female DNA that's
22 present in that sperm fraction of the sample.

23 Q Then that sperm fraction of the sample would be
24 the unknown male donor?

25 A That's correct.

26 Q And then did you do some sort of statistical
27 analysis as to that particular male profile and how
28 often we can expect that to show up in random

1 individuals?

2 A Yes. As I had mentioned earlier, once we
3 obtain a DNA typing result or a DNA typing profile, the
4 next step would be to give an indication of how common
5 or rare that particular profile is in the population.
6 This particular profile, the one that the major
7 component in this particular location and the rest of
8 the results of the sperm fraction of that vaginal swab,
9 are from a single male donor. That profile can be
10 expected to occur at random among the following number
11 of unrelated individuals.

12 We indicate or do a statistical estimated
13 frequency of occurrence among three population groups,
14 Caucasians, African Americans, and Southwestern
15 Hispanics. In all three of those groups, that profile
16 would be found on less than 1 in 6 billion individuals.

17 The reason we use three different population
18 groups is those are the three most common groups that
19 are present in the random population. It's to show that
20 that particular profile is a rare profile in all
21 populations. It's not very common in one population and
22 very rare in another. It's very rare in all three of
23 those population groups.

24 Q Okay. Then as far as the one-in-six-billion
25 figure, that -- that's not the real number that you
26 actually calculated; is it?

27 A No, it's not.

28 Q Going to the Caucasian males, what was the

1 actual number?

2 A 1.9 times 10 to the 14th. A billion is a 1
3 with nine zeros behind it. This particular value would
4 be 1.9 with 14 zeros. So it is more rare than the 1 in
5 6 billion. The reason that I'm giving you the number of
6 6 billion is because the approximate world's population
7 is between 6 and 7 billion. It's sort of a reference
8 point.

9 Q Okay. As far as the statistical occurrence at
10 random of this particular DNA profile, you would have to
11 have several earths in order to come up with somebody at
12 random that would have this particular profile?

13 A You would not expect -- it's possible that you
14 could find someone else in the world's population that
15 had this profile. It's also possible that you could
16 sample ten earth's populations and not find it. It's a
17 very rare DNA typing profile. It's a rare event.

18 Q Then as far as the calculations regarding this
19 profile and your expected occurrence in African American
20 males, what was that calculation?

21 A That was calculated as 1.1 times 10 to the
22 16th. That would be a one with 16 zeros behind it.

23 Q That's even more rare in the African American
24 population?

25 A Potentially, but, again, this is not a
26 calculation to determine which population group it may
27 have come from. It's just there -- the calculation is
28 to show that this is a rare profile in all the

1 population groups.

2 Every time you sample a group of people in
3 order to determine an estimated frequency of occurrence,
4 if you come up with a particular result and then you do
5 the exact same samples over again with another group,
6 you're going to get slightly different results with that
7 group. The same if you were to take a dice and you were
8 to throw it 50 times and record how often you saw each
9 one. If you were to do that same experiment over again,
10 you would not get the exact same results. You'd get
11 very close to the same results, but you wouldn't get the
12 same results.

13 These calculations, there's not an exact
14 difference between population groups. It's to show that
15 it's a rare event in all population groups.

16 Q Then as far as the population group of
17 Southwestern Hispanic males, what was the calculation
18 that you came up with?

19 A That value was 3.2 times 10 to the 13th. So
20 that would be a three with 13 zeros behind it.

21 Q How many zeros do you need to get into the
22 trillions?

23 A Excuse my hesitation. I'm Canadian and
24 trillions, billions are different in America than in
25 Canada. A billion is one with nine zeros behind it. A
26 trillion is a one with 12 zeros behind it.

27 THE COURT: Would you say that again? In
28 Canada, it's different?

1 THE WITNESS: In English or British at one
2 point billions and trillions were switched. I believe
3 now they use -- it's the same way. It's one of those
4 things that I get confused about. So I prefer to use
5 one with nine zeros, 12 zeros, 15 zeros behind it to
6 prevent any confusion.

7 THE COURT: You didn't prevent confusion with
8 me. I never heard that before, and I look for
9 something new to learn every day. You say that at
10 some point people in Britain might have said a billion
11 meaning a trillion?

12 THE WITNESS: It was used the other way, yes.

13 THE COURT: Thank you. Did they become
14 enlightened now?

15 THE WITNESS: As a matter of speaking, yes.

16 THE COURT: Should we defer to theirs?

17 THE WITNESS: We're in America so a billion
18 is a one with nine zeros behind it and a trillion is a
19 one with 12 zeros behind it.

20 THE COURT: Thank you. Sorry for
21 interrupting.

22 MR. THOMAS: That's all right.

23 BY MR. THOMAS:

24 Q So going back to the chart, I think it was
25 Exhibit 44, if we were to go out and we found a person,
26 and I'm speaking just of the sperm fraction from the
27 vaginal swab, if we were to find a person that matched
28 that particular profile that's up there at all

1 13 locations, then would you have an opinion as to
2 whether or not that person was the donor of that
3 particular profile that you find up there?

4 A The calculated frequency of that profile is
5 much less than 1 in 6 billion. So that would be a very
6 rare event. In my opinion, it would be an unlikely
7 occurrence for that to happen twice.

8 Q Then was there anything in your analysis in
9 this case that caused any concern on your part that this
10 analysis that you did was somehow not done correctly?

11 A No. The positive and negative controls at each
12 of the steps were performed correctly. As I mentioned
13 earlier, the case notes and report were reviewed by a
14 second qualified individual before the report was put
15 out.

16 Q You performed all these tests in accordance
17 with the training that you received?

18 A Yes.

19 MR. THOMAS: Nothing further.

20 THE COURT: Mr. Sanders, you may inquire.

21 MR. SANDERS: Thank you.

22 **CROSS-EXAMINATION**

23 BY MR. SANDERS:

24 Q Ms. Siewertsen, when you received the samples
25 in order to count the alleles --

26 A Okay.

27 Q -- you did not extract that sample? It was
28 given to you, you just received a little vial; correct?

1 A That's correct. I did not extract the sample.
2 I received it or retrieved those extracted DNA samples
3 from the evidence section.

4 Q When you get it, there's no way for you to tell
5 if it was contaminated in any way?

6 A Contaminated how?

7 Q With other DNA coming in contact with it?

8 A In this particular analysis, I have two sources
9 of DNA. I have a female source and a male source. So I
10 don't have multiple individuals. Bacterial DNA, I don't
11 detect because we look at human specific areas. In my
12 opinion, there's no contamination as far as an extra
13 individual. There are two individuals present in the
14 sample.

15 Q That's the control you use to find if after you
16 got it it's not contaminated?

17 A I'm sorry. That's -- which control?

18 Q That would be a control.

19 A It's a result. I have two individuals in a
20 sample. In my opinion, there's no extra individuals in
21 the sample.

22 Q I'm guessing that you're familiar with
23 statistics?

24 A Somewhat familiar, yes.

25 Q If you were to say that there -- that finding a
26 person with these numbers the chances are 1 in
27 6 billion?

28 A They are. The rareness of this particular

1 profile is calculated as less than 1 in 6 billion.
2 That's an estimated frequency of that profile, the
3 chance of selecting a random individual walking down the
4 street who was unrelated that would have that particular
5 profile.

6 Q That's not the same as saying how large of a
7 sample would you have to have in order to find two
8 people with these numbers?

9 A That's correct.

10 Q Do you know how large of a sample of persons
11 you would have to have that statistically you could
12 expect to find two of these?

13 A No. It can be a sample of two or it can be a
14 sample of billions and billions.

15 Q There's no way for you to know?

16 A No.

17 MR. SANDERS: Thank you. No further
18 questions, your Honor.

19 THE COURT: Redirect.

20 **REDIRECT EXAMINATION**

21 BY MR. THOMAS:

22 Q As far as that figure that you just gave
23 Mr. Sanders, is that something that the scientific
24 community relies upon or do they look back at the
25 statistical randomness -- statistical randomness of this
26 particular profile coming up?

27 A I'm sorry. I'm not sure I understand your
28 question.

1 Q When you gave an answer as far as the sample
2 that you would need in order to find two people with the
3 same profile.

4 A That's correct. Statistics are an estimate.
5 So you can never say for sure that if I have a sample
6 size of this certain size, I will for sure find this
7 particular result. There is, based on the number of
8 areas that we look at on the DNA molecule, a size where
9 you would expect to find another result the same as
10 that, but you cannot say for sure exactly how size --
11 how big that population is where you will see this
12 result again.

13 Q Okay. So the question that Mr. Sanders posed
14 was more of a how sure can you be that in a certain --
15 like a group of jurors that two people would have the
16 same exact profile.

17 A If we're speaking of DNA typing profiles,
18 that's what the frequency of occurrence helps to
19 reflect, how common or rare is that particular result.
20 If a result for a DNA typing profile was 1 in 10, and
21 you had 12 people sitting here, then that estimated
22 frequency of occurrence gives you an idea that there is
23 a good chance that you might find somebody else that has
24 that particular result.

25 The estimated frequency of occurrence is less
26 than 1 in 6 billion gives you an idea of how large a
27 size that you would have to have in order to potentially
28 expect to see that result again.

1 MR. THOMAS: Nothing further.

2 THE COURT: Further cross.

3 MR. SANDERS: No, sir. Thank you.

4 THE COURT: May this witness be excused?

5 MR. THOMAS: Yes, your Honor.

6 MR. SANDERS: Yes, your Honor.

7 THE COURT: Thank you for being with us. You
8 are excused.

9 Call your next witness.

10 MR. THOMAS: People call Susan Anderson.

11 THE CLERK: You do solemnly state that the
12 evidence you shall give in the matter pending before
13 this Court shall be the truth, the whole truth, and
14 nothing but the truth, so help you God?

15 THE WITNESS: I do.

16 THE CLERK: Thank you. Please be seated.

17 THE BAILIFF: Please state your full name and
18 spell it for the record.

19 THE WITNESS: Susan Anderson S-u-s-a-n
20 A-n-d-e-r-s-o-n.

21 THE COURT: Good afternoon, Ms. Anderson.

22 THE WITNESS: Good afternoon.

23 THE COURT: Your witness.

24 MR. THOMAS: Thank you, your Honor.

25

26

27

28

1 **SUSAN ANDERSON**, having been duly sworn,
2 testified as follows:

3 **DIRECT EXAMINATION**

4 BY MR. THOMAS:

5 Q What is your current occupation?

6 A Currently, I'm a criminalist at the
7 San Bernardino County Sheriff's Department Scientific
8 Investigations Division.

9 Q What's your current assignment there?

10 A Currently, I'm assigned to the forensic biology
11 section and my primary duties in that section involve
12 the analysis of DNA from items of biological evidence.
13 I also serve as a technical reviewer for other analysts,
14 DNA case files, and a DNA trainer for newer analysts, as
15 well as our lab's CODIS administrator.

16 Q When you say your lab's CODIS administrator,
17 what's that?

18 A CODIS is the DNA database run by the FBI, which
19 contains DNA profiles, which are collected from forensic
20 samples from items from crime scenes as well as offender
21 samples for the purpose of searching these types of
22 profiles against each local, state, and national level
23 in order to try to solve unsolved crimes.

24 Q Did you have to receive any special training in
25 order to be a criminalist and do what you're doing right
26 now?

27 A I have a bachelor of science degree in biology
28 from the University of California at Riverside where I

1 completed undergraduate course work in biochemistry,
2 molecular biology and genetics, as well as statistics.

3 I have worked at our laboratory for
4 approximately 12 years. For the last eight years, I've
5 been a qualified DNA analyst. My DNA training entailed
6 approximately one year of training in-house at our
7 laboratory under the direct supervision of our DNA
8 technical leader.

9 Upon completion of my training, I completed a
10 qualifying test, which I correctly completed and
11 commenced case work. I have also attended courses at
12 the California Criminalistics Institute; a one-week
13 course titled, Basic Forensic Serology; another one-week
14 course titled, DNA/STR Analysis and Typing; a two-day
15 course at LA County Sheriff's Department titled,
16 Statistics in DNA Analysis.

17 Q During these eight years where you were doing
18 DNA analysis, approximately how many times have you
19 analyzed samples for DNA?

20 A I don't keep count of the samples. I would say
21 hundreds, at least, maybe thousands.

22 Q Okay. Is it fair to say it's a lot?

23 A Yes.

24 Q And you've had to come into court before and
25 testify as an expert in the area of DNA?

26 A Yes, I have.

27 Q In this case, did you do DNA analysis regarding
28 certain samples that were given to you?

1 A Yes, I did.

2 Q Were you asked to do that analysis by somebody?

3 A My supervisor assigned me this case to work.
4 As part of the case, certain samples were discussed to
5 be worked.

6 Q Okay. And you were given a reference sample of
7 a person by the name of John Yablonsky?

8 A May I refer to my notes?

9 Q Would that refresh your recollection?

10 A Yes, it would.

11 THE COURT: I always think that question is
12 speculative. How do you know it's going to refresh
13 your recollection? I think you should say, I'm going
14 to refer to my notes, and you can refer to your notes
15 anytime you want to. Just tell us when you're
16 testifying from memory as opposed to when you're
17 testifying from your notes.

18 THE WITNESS: Okay.

19 MR. SANDERS: Your Honor, I would like to
20 interpose an objection that her answer would be
21 speculative unless there's foundation for her basis of
22 knowledge.

23 THE COURT: Basis of knowledge as to whether
24 or not she'll understand what is in her notes?

25 MR. SANDERS: Basis of knowledge as to
26 whether or not the sample came from a particular
27 individual.

28 THE COURT: So you've got a foundation

1 objection?

2 MR. SANDERS: Yes, sir.

3 THE COURT: Sustained.

4 MR. THOMAS: Okay.

5 BY MR. THOMAS:

6 Q As far as this particular case, were you given
7 a reference buccal swab that was labeled as coming from
8 a certain person?

9 A Yes, I was.

10 Q Okay. And who was that person?

11 MR. SANDERS: Objection, your Honor. That
12 would call for hearsay.

13 THE COURT: Sustained.

14 MR. THOMAS: If the Court would like me to, I
15 can put Detective Alexander up and we can do it that
16 way.

17 THE COURT: Just a minute. We're having way
18 too much conversation in front of the jury on that.
19 There's another way to do it with this witness.
20 Doesn't she have records from this case? She has the
21 DR number and the LR number and LRN or whatever it is.

22 MR. THOMAS: She has an LR number.

23 BY MR. THOMAS:

24 Q In this particular case, what was the LR
25 number?

26 A 44659.

27 Q Was there a DR number?

28 A DR and bar code for that particular sample.

1 Q What was the DR number?

2 A 1331036 dash 07.

3 Q And was there an item that you analyzed that
4 was labeled J-1?

5 A The item was Item J, and it was a reference
6 buccal swab, which contained two swabs. I sampled half
7 of one of the swabs, and I labeled that sample as J-1.

8 Q And then as far as that sample was concerned,
9 was there a bar code number that was attached to that
10 particular sample?

11 A Yes.

12 Q What was that bar code number?

13 A This is from my notes, Bar Code
14 Number 0960000071.

15 Q Was there any other identifying information on
16 that particular item?

17 A On the front of the envelope is a written
18 description of who the reference buccal swab was
19 collected from, their date of birth, and when the sample
20 was collected, and by whom it was collected, as well as
21 the DR number.

22 MR. THOMAS: The People are offering this not
23 for the truth of the matter asserted but for
24 identification purposes.

25 THE COURT: Go ahead.

26 BY MR. THOMAS:

27 Q As far as the envelope was concerned, can you
28 give us some of the information that you just explained

NO FOUNDATION

1 was on the envelope as far as what it said?

2 A Yes. This is from my notes. The front of the
3 envelope says, reference buccal swabs. It was
4 identified as coming from John H. Yablonsky with a date
5 of birth of 09/30/1963, and do you want when it was
6 collected?

7 Q Yes.

8 A 03 -- March 8th of 2009 at 1:15 by
9 Rob Alexander and San Bernardino County Sheriff's
10 Department, DR Number 1331036 dash 07.

11 Q As far as this particular sample, did you do an
12 analysis of that to see if you could obtain a profile?

13 A Yes, I did.

14 Q Were you -- how did you go about doing that
15 analysis?

16 A First, I extract the DNA from the swab that the
17 DNA was deposited on. I'll then concentrate the DNA
18 once I have extracted it from the material and from the
19 cells. I will quantify it, see how much DNA is present
20 in that sample. I will then amplify or make copies of
21 that DNA and type it or find out what the profile is for
22 that sample.

23 Q Are those methods you used, is that generally
24 accepted in the scientific community as accurate and
25 reliable?

26 A Yes, it is.

27 Q After doing that, were you able to obtain a
28 profile?

1 A Yes.

2 Q Was it a partial profile? A full profile?

3 A Refer to my notes again. It was a full
4 profile.

5 Q Did you prepare a report regarding that full
6 profile that you obtained for J-1?

7 A Yes.

8 Q And I'm going to show you what's been marked
9 Exhibit 45. If you can use the laser pointer that's up
10 there to show the jury the results that you obtained
11 from Item J-1.

12 (Whereupon Exhibit 45 was marked
13 for identification.)

14 THE WITNESS: J-1 is here at the bottom of
15 this table for our Profiler Plus system, and these are
16 my results for the various locations that we test.
17 Then for the COfiler system that we test also, this is
18 the results for J-1 here.

19 BY MR. THOMAS:

20 Q And then as far as those results for J-1, was
21 there anything that you, during your testing of the
22 sample or during any part of the procedure, that you
23 thought was unusual about the results or that caused you
24 any concern that maybe these results aren't accurate?

25 A No.

26 Q And then as far as that particular frequency or
27 not frequency but -- did you do some sort of statistical
28 analysis as to how frequent you would expect that

1 profile to show up in random individuals?

2 A Not for the reference sample, no. For the
3 questioned samples, I did.

4 Q Let's get the questioned samples.

5 As far as your analysis goes, did you analyze
6 some questioned samples?

7 A Yes, I did.

8 Q Where did you get those samples from?

9 A They were previously extracted DNA from another
10 analyst, so I retrieved that extraction or that
11 extracted DNA from our property section then went
12 forward with the analysis from that step. So I
13 quantified it or found out how much DNA was present in
14 that sample then amplified and typed those samples in
15 order to obtain the DNA.

16 Q You did similarly to what you did with Item J-1
17 except you didn't have to extract any DNA from
18 Item A dash 18?

19 A Correct.

20 Q As far as the procedure that you used, it was
21 the same procedure that you used that you previously
22 described you used in Item J-1?

23 A The process was the same, yes.

24 Q Was there anything that occurred during that
25 process that caused you to have any concerns that the
26 results were somehow inaccurate?

27 A No.

28 Q Let's go to the first column, Item A dash 18a.

1 Can you explain to me what that is?

2 A With semen stains, typically the type of
3 extraction that we perform will attempt to separate out
4 the sperm cells from the non-sperm cells in order to
5 separate out potential male and female donors, and that
6 is the type of extraction that was done with these
7 samples.

8 So A-18a is a particular stain from the felt
9 pad that was extracted and in that extraction two
10 subsamples were created from that one stain. So you
11 have a non-sperm fraction and sperm fraction. The sperm
12 fraction will contain DNA from the sperm cells that were
13 present in that semen stain. The non-sperm fraction
14 will contain any epithelial cells or any other kind of
15 cellular material that was present.

16 What we have here in the non-sperm fraction is
17 a mixture of DNA from two individuals, and I know this
18 based on the number of division I have at any one
19 location because typically one person should only have
20 two variations at a location. Also, it is because of
21 the differences in the strengths of these variations.

22 So I was able to separate them, and I actually
23 had another chart showing the female profile that I
24 separated out from this, and then in the sperm fraction.
25 There was a single donor profile, which I was able to
26 compare to the reference samples that I had. I found
27 that the sperm fraction from the stain on the felt pad,
28 A-18a, actually matched John Yablonsky by looking at all

1 the locations that I tested.

2 If you go down to the COfiler table, I have the
3 exact same samples just a second system that I tested.
4 Again, you can see that for A-18a the sperm fraction is
5 a single donor -- excuse me, I'm sorry. There was a
6 slight contribution from a second donor that was
7 consistent with the female donor, but the majority or
8 the major donor was consistent or matched
9 John Yablonsky.

10 Q Then as far as there was a profile -- reference
11 profile that you used for the victim in this case,
12 Rita Cobb?

13 A Yes.

14 Q You were pointing to what looks like Table I,
15 second to the last column from the bottom; is that
16 correct?

17 A Yes. The non-sperm fraction from her vaginal
18 swab was used as her reference sample. This is a
19 single-source from a female, from Rita Cobb. This is it
20 here on Profiler.

21 Q Looking at the sperm fraction, let's say
22 hypothetically you found somebody that had in the -- I
23 guess it would be the third column where you see the
24 numbers 29 and 39 on there.

25 A It's 29, 30.

26 Q 30, I mean.

27 A This one.

28 Q Let's say you found somebody with the

1 numbers 24 coma 25 on there on that particular
2 chromosome or that particular location on the chromosome
3 and all the rest of the numbers were correct and they
4 matched, could you exclude that person solely based on
5 the differing numbers in that particular column?

6 A The profiles have to match exactly at every
7 location that I test for it to be a match.

8 Q Okay. So if one -- at one location it doesn't
9 match, then that totally excludes that person from being
10 the donor of that particular profile?

11 A Correct.

12 Q In this case, the sample that you received,
13 Item J dash 1, matched the sperm fraction from Item
14 A dash 18a exactly?

15 A Yes. A-18a sperm fraction, the major donor,
16 which is a male, matches John Yablonsky.

17 Q So you couldn't exclude John Yablonsky from
18 being that person that left the sperm fraction, Item
19 A dash 18a?

20 A Correct.

21 Q Okay. Did you do any statistical analysis as
22 to whether or not somebody else might have that same
23 particular profile?

24 A I calculated a statistic for the -- the major
25 male profile obtained from A-18a sperm fraction.

26 Q What was that particular statistic?

27 A It was that I would expect to find that profile
28 once within a population of less than 1 in 7 billion

1 Caucasian males, once within a population of less than 1
2 in 7 billion African American males, and once within a
3 population of -- you know, I'm going to give you actual
4 calculated numbers. It's a bigger number. It's -- the
5 7 billion number is the population of the earth
6 approximately, and the actual calculation for Caucasian
7 males is 190 trillion. So I would expect to find that
8 profile once given a population of 190 trillion
9 Caucasian males, once within a population of 11
10 quadrillion African American males, and once within a
11 population of 32 trillion Southwestern Hispanic males.

12 Q As far as Item A dash 18b, that would be a
13 cutting or separate type of DNA analysis than you did in
14 Item A dash 18a?

15 A That was a separate extraction from I believe a
16 second stain on the felt pad. So I took the extract and
17 went forward with the analysis.

18 Q You did the same thing that you described to us
19 earlier as you did in Items J dash 1 and A dash 18a?

20 A Correct.

21 Q Was there anything that was unusual about the
22 results or the process that caused you any concern that
23 the results might not be accurate?

24 A No.

25 Q And then as far as the -- did you have a sperm
26 fraction and non-sperm fraction for Item A dash 18b?

27 A Yes, I did.

28 Q Were you able to obtain profiles on both of

1 those samples?

2 A Yes.

3 Q And those are reflected on this chart that's up
4 there, I believe it's Exhibit 45?

5 A Yes.

6 Q And as far as the results go, did you do the
7 same comparison between the sperm fraction on
8 Item A dash 18b to the reference sample that you had
9 from a person by the name of John Yablonsky,
10 Item J dash 1?

11 A Yes. I compared the profile obtained from
12 A-18b sperm fraction to both reference samples and found
13 that A-18b sperm fraction matched Item J-1, which was
14 the reference sample from John Yablonsky.

15 Q Did you do the calculations like you did in the
16 previous sample, A dash 18a?

17 A Yes, I did.

18 Q What were those calculations?

19 A That I would expect to find a profile -- that
20 profile again within a population of 190 trillion
21 Caucasian males, once within a population of 11
22 quadrillion African American males, and once within a
23 population of 32 trillion Southwestern Hispanic males.

24 Q Then all the work and all the statistical
25 analysis that you did, those are all done in accordance
26 with the training that you received?

27 A Yes.

28 Q And those are all accepted in the DNA

1 scientific community as reliable and accurate?

2 A Yes.

3 Q And then as far as that particular profile that
4 you obtained from Item J dash 1, would you be able to
5 look at another profile that was obtained from -- prior
6 to -- at a different time than when you did your
7 analysis on Item A dash 11 and have an opinion as to
8 whether or not the person in Item J dash 1 also
9 contributed to that sample?

10 A Yes.

11 Q Did you actually do that already?

12 A As part of some previous -- yes, some previous
13 work.

14 Q I'm going to put up a mixture of charts it's
15 going to be Exhibit 46. I'm going to ask you to look at
16 Exhibit 46.

17 As far as Exhibit 46 is concerned, there's a
18 Table I at the top, Profiler Plus; correct?

19 (Whereupon Exhibit 46 was marked
20 for identification.)

21 THE WITNESS: Yes.

22 BY MR. THOMAS:

23 Q That would be the analysis that you performed
24 on Items A dash 18a and b, and then the reference sample
25 from Item A dash 11 from Rita Cobb and then just below
26 that is Item J dash 1; is that correct?

27 A Yes.

28 Q Then underneath, there's another table, also

1 Profiler Plus, that has Item A dash 11 and has a
2 non-sperm fraction and a sperm fraction; is that
3 correct?

4 A That's correct.

5 Q You're familiar with those tables?

6 A The top table was generated from my report, and
7 the bottom table was from another analyst's report, but
8 I have reviewed it.

9 Q That analyst would be Monica Siewertsen?

10 A Yes.

11 Q Regarding the sperm fraction Item A dash 11,
12 would you be able to do the comparison with Item J dash
13 1 and just specifically with what's up there on Table I
14 give us an opinion as to whether or not you can exclude
15 Mr. John Yablonsky from contributing the sperm fraction,
16 Item A dash 11?

17 A Based on the two tables, looking at this row
18 right here and the reference sample from John Yablonsky,
19 looking at the D8, they're both a 12. That matches.
20 Looking at D21 -- I'm referring to the location here.
21 At D21, the 29, 30 and the 29, 30. At D18, which is the
22 location here, you have the 13, 18 and 13, 18. At D3,
23 we have a slight mixture, a 15, 18 with a very weak 17.
24 So that indicates that you have a second weaker
25 contributor. So the 15, 18 would belong to this major
26 donor. That matches the reference sample at D3. VWA
27 16, 17 and, again, up here at vWA for Reference
28 Sample J-1. FGA 21, 24 and 21, 24. D5, 11, 12 and 11,

1 12. D13, 9, 11 and 9, 11. D7, a 10, 12 and a 10, 12.

2 Based on these two tables, I would include
3 Mr. John Yablonsky.

4 Q Then you would go to Table II and use the
5 COfiler to determine whether or not those -- or this
6 particular profile that's obtained from COfiler is the
7 same as the reference sample that you had from
8 John Yablonsky?

9 A Yes. You would go to COfiler and see if
10 COfiler matches as well.

11 Q I'm showing you what's been marked Exhibit 47,
12 and does the same go for Exhibit 47 as Exhibit 46 where
13 the top chart is the analysis that you did excluding the
14 reference sample from Rita Cobb and then the bottom
15 table is the analysis that was done by
16 Monica Siewertsen?

17 (Whereupon Exhibit 47 was marked
18 for identification.)

19 THE WITNESS: Yes.

20 BY MR. THOMAS:

21 Q Looking at Table II, would you have an opinion
22 as to whether or not you can exclude John Yablonsky from
23 contributing the sperm fraction on Sample Item A dash
24 11?

25 A So, again, going through looking at each
26 location, the sperm-fraction donor TH01 is a 7 and
27 coming up to the reference sample TH01 is also a 7. The
28 reference sample at TPOX is an 8 here. On the Item A-11

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

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

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

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

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

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

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

4 A Yes.

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

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

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

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

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

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

24 BY MR. THOMAS:

25 Q Hypothetically, if you had --

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

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1 BY MR. THOMAS:

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

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

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

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

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

19 THE WITNESS: Can you say that again?

20 BY MR. THOMAS:

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

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

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

28 THE COURT: Mr. Sanders.

1 MR. SANDERS: Thank you, your Honor.

2 **CROSS-EXAMINATION**

3 BY MR. SANDERS:

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

7 A Yes.

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

11 A Yes.

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

15 A Correct.

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

17 A Yes.

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

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

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

26 Q That would be on average?

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

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

4 A Yes.

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

8 A Okay.

9 Q Right?

10 A Potentially.

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

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

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

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

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

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

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

1 A The population frequency?

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

6 A Okay. Yes.

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

8 A Through the computer program.

9 Q Did you write that computer program?

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

12 Q You did not write it?

13 A No.

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

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

18 Q Have you done it?

19 A No.

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

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

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

28 A No, sir.

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

3 THE COURT: Mr. Thomas.

4 REDIRECT EXAMINATION

5 BY MR. THOMAS:

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

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

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

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

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

23 A Yes.

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

27 A Yes.

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

1 foundation as to that answer.

2 THE COURT: Overruled.

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

4 THE WITNESS: Yes.

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

7 THE COURT: Sure.

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

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

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

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

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

7 THE COURT: It's irrelevant?

8 MR. SANDERS: There's no foundation.

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

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

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

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

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

28 MR. THOMAS: I wanted to give him the

1 opportunity to object.

2 THE COURT: All right.

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

5 THE COURT: You may proceed.

6 MR. THOMAS: Thank you, your Honor.

7 BY MR. THOMAS:

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

10 A Yes, it was.

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

13 A Correct.

14 Q You're familiar with how CODIS works?

15 A Yes.

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

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

21 THE COURT: That's fine.

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

24 BY MR. THOMAS:

25 Q Okay. Do you know nationwide how many?

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

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

1 A Yes.

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

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

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

7 A I would say over three million nationwide.

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

11 A On January 23rd, 2003.

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

14 A Correct.

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

18 A That's correct.

19 MR. THOMAS: Okay. Nothing further.

20 THE COURT: Mr. Sanders.

21 **RECROSS-EXAMINATION**

22 BY MR. SANDERS:

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

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

27 Q All the states have agreed to that?

28 A Yes.

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

3 A Yes.

4 Q But not Asia?

5 THE COURT: Not what?

6 MR. SANDERS: Asia.

7 THE COURT: Thank you.

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

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

14 THE COURT: Mr. Thomas.

15 **REDIRECT EXAMINATION**

16 BY MR. THOMAS:

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

19 A No.

20 MR. THOMAS: Nothing further.

21 THE COURT: Mr. Sanders.

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

23 THE COURT: May this witness be excused?

24 MR. THOMAS: She may.

25 MR. SANDERS: Yes, your Honor.

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

28 THE WITNESS: Thank you.

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

3 MR. THOMAS: Yes.

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

10 (Whereupon a recess was taken.)

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

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

18 Call your next witness.

19 MR. THOMAS: People call Francesca Drake.

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

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

26 THE WITNESS: I do.

27 THE CLERK: Thank you. Please be seated.

28 THE BAILIFF: Please state your full name and

1 spell it for the record.

2 THE WITNESS: Francesca Sullivan

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

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

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

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

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

12 THE WITNESS: Oh, my gosh.

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

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

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

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

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

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

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

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

16 JUROR NO. 12: Yes.

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

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

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

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

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

2 JUROR NO. 12: Yes.

3 THE BAILIFF: Yes, your Honor.

4 THE COURT: All right. So you'll understand,
5 I don't want you to speculate about anything else.

6 I'm going to say this to you; the reason I ask that is
7 because I wouldn't want to have heard that people
8 heard you say, I know this woman. She's a saint.

9 She's the most honest woman in the world, and I would
10 believe anything she told me. In the alternative, I

11 wouldn't have wanted you to say, I know this woman.

12 She's the biggest liar that God created, and I

13 wouldn't believe anything she had to say.

14 Nothing like that was said?

15 JUROR NO. 12: No.

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

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

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

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

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

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

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

7 JUROR NO. 12: Correct.

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

10 JUROR NO. 12: Yes.

11 THE COURT: And you went to her house?

12 JUROR NO. 12: Yes.

13 THE COURT: Did you take trips together?

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

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

19 JUROR NO. 12: No.

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

23 JUROR NO. 12: No.

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

26 JUROR NO. 12: No.

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

1 accuracy?

2 JUROR NO. 12: Correct.

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

6 JUROR NO. 12: Correct.

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

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

13 JUROR NO. 12: 14 years.

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

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

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

22 JUROR NO. 12: No.

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

28 JUROR NO. 12: No.

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

4 JUROR NO. 12: Yes.

5 THE COURT: Counsel, approach.

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

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

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

16 MR. SANDERS: Yes, sir.

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

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

20 THE COURT: Okay. Thank you.

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

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

25 JUROR NO. 12: No.

26 THE COURT: What was her name?

27 JUROR NO. 12: Fran Sullivan.

28 THE COURT: Okay. John Sullivan was her

1 husband.

2 Did you ever meet John Sullivan?

3 JUROR NO. 12: No.

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

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

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

16 JUROR NO. 12: No.

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

20 JUROR NO. 12: No.

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

23 MR. SANDERS: No, sir.

24 MR. THOMAS: I had a question.

25 THE COURT: No, you don't.

26 MR. THOMAS: Can we approach?

27 THE COURT: Yeah.

28

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

3 MR. THOMAS: I was going to ask the Court if
4 the Court can ask if she goes back in the deliberation
5 room and the topic comes up as to whether or not
6 John Sullivan and Fran Sullivan --

7 THE COURT: That's different. I was going to
8 order her to have no conversation about this -- I
9 think what I will do is say to all the other jurors
10 that they should disregard anything they saw that had
11 nothing to do with the evidence in this case; that
12 there was some recognition between these two
13 individuals. They shouldn't speculation about what it
14 was, and I'll order her not to have any discussion
15 about this until deliberations are over and the
16 verdicts are reached.

17 Do you agree?

18 MR. SANDERS: I do.

19 MR. THOMAS: I agree.

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

22 THE COURT: Okay. Juror Number 12, we're
23 satisfied. Now I'm going to do something that's going
24 to be just special for you. You're a special juror
25 now. I'm going to tell you that we don't want you to
26 talk to the other jurors about this at all.

27 JUROR NO. 12: Okay.

28 THE COURT: So when you go back to

1 deliberate, if they ask you what this was about, I may
2 say something like -- I think I will tell the jury --
3 the other jurors that the two of you recognized each
4 other, and you did not associate the names before.
5 That has nothing to do with this trial, and they
6 shouldn't form any opinion about it or let that enter
7 into their deliberations.

8 Counsel, does that sound right?

9 MR. THOMAS: Yes.

10 MR. SANDERS: Yes, sir.

11 THE COURT: I'm going to order that you're
12 not going to discuss anything about what transpired
13 here between the two of you, the recognition between
14 Ms. Sullivan and yourself. Don't have any talk about
15 that when you're back in the deliberation room. If
16 they want to know where did you recognize her from or
17 how did you know her, just say, I've been ordered not
18 to talk about that until the trial is over and
19 verdicts have been reached.

20 Can you do that?

21 JUROR NO. 12: Yes.

22 THE COURT: Okay. Fine. Let's bring the
23 other jurors back in.

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

26 THE BAILIFF: Remain seated. Come to order.

27 Court is now in session. Would you like the witness
28 to take the stand?

1 THE COURT: You can get her ready.

2 Ladies and gentlemen, we're all here. You saw
3 that something took place the same time I saw something
4 that took place, and some of you that are seated most
5 closely to Juror Number 12 may have heard that she
6 mentioned to Pete that she recognized this witness as
7 someone she worked with before. We've had a
8 conversation with Juror Number 12, and we're satisfied
9 that it's not going to affect her ability to be a fair
10 and impartial juror. We're not going to have anymore
11 talk about that at all until this trial is over and you
12 can ask Juror Number 12 whatever you want to.

13 When you're back deliberating, if you're
14 evaluating trying to determine how much of someone's
15 testimony that you believe, we're not going to talk
16 about prior experience of Juror Number 12 with any
17 particular witness. We're going to talk about the
18 impressions that you gathered during the entire trial
19 relying on all of the evidence that you have heard to
20 determine what the facts are.

21 Anyone feel differently?

22 Let's bring Ms. Sullivan back in. Sometimes we
23 have exciting and unexpected things that happen in
24 trials. We're moving on along. We've had Ms. Sullivan
25 state and spell her name; is that correct?

26 THE CLERK: Correct.

27 THE COURT: You go by Fran sometimes instead
28 of Francesca; right?

1 THE WITNESS: Francesca.

2 THE COURT: So Sullivan's not a very uncommon
3 name. Someone might have heard the name
4 Francesca Sullivan and not associated it with you.
5 Mr. Sanders has a member of his law firm who shares
6 the name of John Sullivan with your husband so...

7 THE WITNESS: Ex-husband.

8 THE COURT: Okay. So there we go.
9 Mr. Thomas, your witness.

10 MR. THOMAS: Thank you, your Honor.

11

12 **FRANCESCA SULLIVAN**, having been duly sworn,

13 testified as follows:

14

DIRECT EXAMINATION

15 BY MR. THOMAS:

16 Q Good afternoon, Ms. Sullivan. Back in 1985,
17 specifically around September of -- September of 1985,
18 did you go by the last name of Drake?

19 A Yes, I did.

20 Q And at that point were you dating who is now
21 your ex-husband, John Sullivan?

22 A Yes.

23 Q And then I'm going to show you a photograph,
24 put it up on the screen there. I'll bring it up to you
25 at the witness stand.

26 May I approach the witness?

27 THE COURT: Yes.

28

1 BY MR. THOMAS:

2 Q Exhibit 35. Do you recognize the person
3 depicted in Exhibit 35?

4 A Yes, I do.

5 Q Who is that?

6 A Rita Cobb.

7 Q And as far as Rita Cobb was concerned, how did
8 you know her?

9 A I knew her through my ex-husband. He was
10 friends with her, and I met her through him.

11 Q Okay. And how long prior to September of 1985
12 did you know Rita?

13 A Probably couple of years.

14 Q And I assume that you and John would hang out
15 with Rita?

16 A Occasionally, yes.

17 Q Do you recall learning that Rita had been
18 murdered?

19 A Yes, I do.

20 Q And do you recall just prior to her being
21 murdered the last time that you saw her?

22 A Yes.

23 Q When was that?

24 A I believe it was a Friday night. It was a
25 couple of nights before. She was up at John's and my
26 place.

27 Q Then as far as the time that she was up there,
28 you said it was Friday?

1 A I believe it was.

2 Q Okay. And was it nighttime? Daytime?

3 A Nighttime.

4 Q Prior to her going over to -- was it your and
5 John's place or just John's place?

6 A He was caretaking the place, and I was living
7 with him at the time.

8 Q Prior to her arriving at that location, did you
9 meet up with her prior to that?

10 A Not that I can recall.

11 Q Okay. Do you recall there being a pistachio
12 farm around this area?

13 A That's where we were staying, Mini Springs
14 Pistachio Farm. There was another one next door to us.

15 Q So were there several different structures on
16 that, I guess it would be a ranch?

17 A Where I was living?

18 Q Yes.

19 A Yes.

20 Q Were there other people living there?

21 A No. The owners would come up occasionally, and
22 they would -- for a weekend or sometimes when it was
23 time to pick pistachios, they would come and stay at the
24 main house. We stayed in a guest cabin.

25 Q When's the time period for picking pistachios?

26 A September.

27 Q And then as far as that evening, do you recall
28 what time Rita arrived?

1 A No, I don't.

2 Q If you had to estimate, would it be early
3 evening? Late evening? It wasn't 11:00 at night; was
4 it?

5 A No, probably not 11:00 at night. I'd be
6 guessing. It would be a guess but probably 7:00, 8:00.
7 That's a guess. I really don't recall.

8 Q When she came over, what did you guys do?

9 A We were getting together. People were
10 drinking. It was a get-together-type thing.

11 Q Do you recall who else was over there?

12 A My ex-husband. I believe there was another man
13 there named Joe and other than that I really don't
14 recall. I'm sure there were other people, but I don't
15 recall.

16 Q This was just like a social get-together of
17 some sort?

18 A Right.

19 Q As far as Rita was concerned, did you and Rita
20 ever go pick pistachios that night?

21 A That night?

22 Q Yeah.

23 A I doubt it. I don't recall specifically, but I
24 doubt it.

25 Q Do you recall what time Rita left the residence
26 that evening?

27 A Again, specifically, I'd say later in the
28 evening, more like 10:00, 11:00ish. That's my

1 recollection.

2 Q Do you recall being interviewed by a deputy
3 soon after you learned that Rita had been murdered?

4 A I don't recall it. I know when I talked to
5 Detective Alexander, he had the statement and I recall
6 from that, I guess, that I did talk to him, but
7 specifically I don't recall.

8 Q The events of that Friday evening were more
9 fresh in your mind when you spoke to that deputy?

10 A More fresh in my mind at that point?

11 Q Than today.

12 A Yes, definitely.

13 Q In that statement, did you see where you told
14 the deputy that she left at approximately 11:30 that
15 night?

16 A It's been a couple years since I read that
17 statement. I don't recall.

18 Q Would looking at the statement help?

19 A Yes.

20 MR. THOMAS: May I approach?

21 THE COURT: Yes.

22 BY MR. THOMAS:

23 Q I'm directing your attention to the second to
24 the last paragraph. If you can just read the first
25 three sentences, just read them to yourself.

26 A Okay.

27 Q Did you see in that statement where you told
28 the deputy that it was 11:30 when Rita left the

1 residence?

2 A Yes, I do.

3 Q Okay. And if you told that to the deputy,
4 would that have been accurate at that time?

5 A I assume so, yes.

6 Q You wouldn't have tried to mislead the deputy
7 or anything like that?

8 A No, I wouldn't have.

9 Q Okay. Do you know a person by the name of
10 Bruce Nash?

11 A I do.

12 Q Who is that?

13 A He's my brother.

14 Q Okay. Do you recall if Bruce was there that
15 night?

16 A I don't recall.

17 MR. THOMAS: I don't have anything further at
18 this point.

19 THE COURT: Mr. Sanders.

20 MR. SANDERS: Thank you, your Honor.

21 **CROSS-EXAMINATION**

22 BY MR. SANDERS:

23 Q If Bruce Nash said he was there that night,
24 that wouldn't surprise you though?

25 A Not at all.

26 Q And his wife also?

27 A His girlfriend.

28 Q Or girlfriend.

1 A Cynthia?

2 Q Right.

3 A If he said that, then I'm sure that that's what
4 happened.

5 Q You say you can remember you and John being
6 there, and you remember Rita being there and a guy named
7 Joe?

8 A Right.

9 Q Do you remember Joe's last name?

10 A I don't know.

11 Q Was it Joe Saunders?

12 A That sounds familiar.

13 Q Was Joe Saunders someone that regularly came
14 and visited?

15 A He had recently moved to the area, and he had
16 been to our house a few times.

17 Q You said everybody was drinking; is that
18 correct?

19 A I think it was a get-together, and we were
20 drinking, yes.

21 Q Do you remember what you were drinking?

22 A Probably beer.

23 Q Okay. If -- if someone said you were drinking
24 bourbon or white lightning, would that refresh your
25 recollection?

26 A I don't know. No, not particularly.
27 Generally, if I have something to drink, it's beer. So
28 25 years ago, I don't recall.

1 Q Okay. All right. You weren't keeping track of
2 what everyone else was drinking?

3 A No.

4 MR. SANDERS: Excuse me. Just a moment. No
5 further questions. Thank you, your Honor.

6 THE COURT: Redirect.

7 MR. THOMAS: Nothing else, your Honor.

8 THE COURT: Okay. May Ms. Sullivan be
9 excused?

10 MR. SANDERS: Yes, your Honor.

11 MR. THOMAS: Yes, your Honor.

12 THE COURT: Thank you for being with us.
13 You're excused. That was your last witness for the
14 day; is that correct?

15 MR. THOMAS: Yes, your Honor.

16 THE COURT: Well, what do I have tomorrow
17 morning?

18 THE CLERK: Nothing.

19 THE COURT: Ladies and gentlemen, we're going
20 to apologize. Mr. Thomas did not have enough
21 witnesses to keep us busy all day long.

22 You sure you don't want to put
23 Detective Alexander on?

24 MR. THOMAS: We're going to have to wait to
25 put him on.

26 THE COURT: Okay. We will try and make sure
27 that we don't stop too early again, but we will be
28 done for the rest of the day. We'll start back

1 tomorrow morning at 9:00. Ladies and gentlemen,
2 you're admonished that it is your duty not to converse
3 among yourselves or with anyone else about any matter
4 connected with this case nor form or express an
5 opinion on it until it's submitted to you.

6 (Whereupon the following proceedings were
7 held outside the presence of the jury:)

8 THE COURT: All right. The jurors are gone.
9 Mr. Thomas, are you going to have enough people to
10 fill up the day tomorrow?

11 MR. THOMAS: Depending how long they go.
12 Just so the Court knows, this can be off the record as
13 far as scheduling.

14 THE COURT: I want to make sure that you
15 have extra people here. I don't mind if we don't get
16 to someone.

17 MR. THOMAS: That's what I was going to
18 explain to you. As far as tomorrow, I have
19 John Sullivan coming in. I have Marshall Franey, who
20 was the deputy coroner. Dr. Bill Saukel and
21 Bruce Nash. Those are going to be the four witnesses
22 I have.

23 Then my last witness, which will have to be on
24 Thursday is Detective Alexander. The reason it has to
25 be on Thursday is I need to wait for Mr. Sanders to take
26 out any redactions that he has in the recording because
27 that's what I was going to play on Thursday, and at that
28 point the People would rest. So we're well ahead of

1 schedule.

2 THE COURT: Can those redactions -- I am not
3 sure why the redactions cannot be done before
4 Thursday.

5 MR. THOMAS: Because Mr. Sanders has to look
6 at them. Then I need to make the redactions.

7 MR. SANDERS: I can do those tonight.

8 MR. THOMAS: Then I can get it done tomorrow.
9 I'll do that when I get home tomorrow night.

10 THE COURT: You don't have a secretary to do
11 that?

12 MR. THOMAS: No. I have to do it because I
13 have to ensure that everything's taken out that needs
14 to be taken out. I don't want to leave that up to
15 somebody else.

16 THE COURT: All right. Do you have jury
17 instructions?

18 MR. THOMAS: I'll have those for you by
19 Thursday.

20 THE COURT: Do you know how I like them?

21 MR. THOMAS: I have no idea. Last time I did
22 a trial in here --

23 THE COURT: How about Wednesday? Don't you
24 have the instructions ready? Here's what I want you
25 to do. If you can't do it by tomorrow, that's
26 understandable. I'd like to start working on them
27 myself. What I'd like you to do is give me -- you
28 know that piece of paper that you have, the checklist?

1 If you get me your checklist and just check them for
2 me and bring them over to me.

3 MR. THOMAS: Okay. So the Court does the
4 jury instructions?

5 THE COURT: I'll do the instructions, and
6 I'll meet with both of you, and we'll talk about the
7 special instructions that anybody wants or any
8 objections. Some of them we don't know yet, but I'll
9 pull them up on the computer and probably project them
10 on the screen at the time that I instruct the jury.

11 All you have to do is just don't give me a
12 whole checklist with whatever it is, 30 pages. Just
13 grab the ones that you think apply, check those. And
14 obviously you're going to include murder, the rape
15 instructions, and the murder instruction. So that's
16 going to be -- that's going to be it.

17 It doesn't have to be first thing tomorrow.
18 Mr. Sanders, you can think about whatever specific
19 instructions, any particular ones you want to ask to
20 have.

21 Have a good evening. See you tomorrow morning
22 at 9:00. Be here early if there's anything to discuss
23 before the jury.

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

26

27

28

1 VICTORVILLE, CALIFORNIA; JANUARY 26, 2011;
2 DEPARTMENT NO. V-2 HONORABLE JOHN M. TOMBERLIN, JUDGE
3 A.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 morning, ladies and
12 gentlemen. I just noticed we have an empty seat.

13 (Whereupon there was a
14 pause in proceedings.)

15 THE COURT: Back on the record in People of
16 the State of California versus John Yablonsky who is
17 here with his attorney, David Sanders. John Thomas is
18 here for the People along with Detective Rob
19 Alexander, his investigating officer.

20 What are we going to do now, counsel? I
21 suppose the issue is how much do we have to do this
22 morning? Should we wait another 15 minutes? I saw no
23 reason to leave the jurors standing out in the hallway.
24 They may as well be sitting in here. Do we think there
25 was potential for miscommunication? Everybody else got
26 the idea they're supposed to be here at 9:00.

27 Do you want to venture -- somebody want to
28 approach and chat? What do you want to do?

1 MR. THOMAS: We can approach?

2 MR. SANDERS: That will be fine.

3 (Whereupon a bench conference was held
4 off the record.)

5 THE COURT: All right. So we've stalled long
6 enough that all of our jurors are now here, and we're
7 going to continue with the People's case in chief.

8 Mr. Thomas, call your next witness.

9 MR. THOMAS: People would call Bruce Nash.

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

12 THE CLERK: You do solemnly state that the
13 evidence you shall give in the matter pending before
14 this Court shall be the truth, the whole truth, and
15 nothing but the truth, so help you God?

16 THE WITNESS: I do.

17 THE CLERK: Thank you. Please be seated.

18 THE BAILIFF: Please state your full name and
19 spell it for the record.

20 THE WITNESS: Bruce Nash B-r-u-c-e N-a-s-h.

21 THE COURT: Good morning, Mr. Nash.

22 THE WITNESS: Good morning.

23 THE COURT: Your witness, Mr. Thomas.

24 MR. THOMAS: Thank you, your Honor.

25

26

27

28

1 **BRUCE NASH**, having been duly sworn,
2 testified as follows:

3 **DIRECT EXAMINATION**

4 BY MR. THOMAS:

5 Q Good morning, Mr. Nash. Do you have a sister?

6 A Yes.

7 Q What's her name?

8 A Francesca Sullivan.

9 Q And I'm going to ask you about a photograph.
10 I'm going to show you Exhibit -- may I approach the
11 witness?

12 THE COURT: You may.

13 BY MR. THOMAS:

14 Q I'm going to show you what's been marked
15 Exhibit 35.

16 Do you recognize the person depicted in this
17 photograph?

18 A Yes, that's Rita Cobb.

19 Q How did you know Rita?

20 A She was a friend.

21 Q How long had you known her prior to her death?

22 A Probably about three or four years.

23 Q Do you recall how you originally met Rita?

24 A I believe I met her up at my brother-in-law's,
25 John Sullivan, house up on Mini Springs Ranch up on
26 Highway 18.

27 Q I assume John Sullivan was married to your
28 sister, Francesca?

1 A I don't believe at the time he was but shortly
2 thereafter.

3 Q Okay. And then as far as Rita was concerned,
4 at some point you learned Rita had been murdered?

5 A Yes.

6 Q Do you recall what date you learned that?

7 A I don't know the date. It was a Monday. My
8 sister and John Sullivan and I went to Victorville,
9 like, shopping on Monday. It was a Monday, and when we
10 came back, we saw a bunch of cars at Rita's house, and
11 we stopped. That's when I found out she had been
12 murdered.

13 Q When you stopped, did you -- was an interview
14 conducted with you at some point?

15 A Yes.

16 Q That was by one of the sheriff's detectives or
17 deputies?

18 A I believe so. I don't remember his name.

19 Q Would you looking at a report of that interview
20 refresh your recollection as to the date?

21 A Okay. It was Monday, 9/23/85.

22 Q Did that refresh your recollection?

23 A Yes.

24 Q So you find out Monday, September 23rd, 1985
25 that Rita was murdered.

26 When was the last time that you saw Rita prior
27 to that?

28 A We saw her Friday night.

1 Q And then do you recall where you saw her on
2 Friday night?

3 A It was at John Sullivan's house.

4 Q Okay. Were you familiar with where Rita lived?

5 A Yes.

6 Q And how far away was Rita's house from
7 John Sullivan's house?

8 A She lived probably a mile to a mile and a half
9 farther down 18 going towards Lucerne, I guess, going in
10 a westerly direction.

11 Q I'm going to show you a photograph that's been
12 marked Exhibit 1.

13 Do you recognize what's depicted in that
14 photograph?

15 A It looks like Rita's house.

16 Q And then if you notice on the photograph on the
17 upper right-hand corner of the photograph, there appears
18 to be a garage and inside the garage is a car.

19 A Yes.

20 Q Are you familiar with whose car that is?

21 A I believe it looks like Rita's. She had a
22 Cadillac. I remember that.

23 Q And then that Friday night when you saw Rita
24 over at John Sullivan's house, who else was present if
25 you can recall?

26 A My sister Fran Sullivan, John Sullivan, I was,
27 and Cynthia Hooper (phonetic) and Rita.

28 Q Who was Cynthia?

1 A My girlfriend at the time.

2 Q Was it just the five of you?

3 A Yes.

4 Q Do you recall what time you arrived at
5 John Sullivan's house?

6 A That's kind of hazy. My best guess would be
7 around 5:30 and 6:30.

8 Q Do you recall telling the detectives that you
9 arrived there at about 7:30, 7:45?

10 A No, I don't, but that's very possible.

11 Q And the events that happened that Friday night
12 in 1985, they were more fresh in your memory when you
13 were interviewed by the police than they are today?

14 A Of course, yes.

15 Q And there would be no reason for you to tell
16 the police something that wasn't true?

17 A No.

18 Q As far as arriving there, was everybody there
19 when you got there?

20 A I'm not sure about that. Cynthia and I came
21 together, and I'm not sure if everybody was already
22 there or if people showed up later. I'm not sure.

23 Q Do you recall what if -- what you guys were
24 doing that Friday evening?

25 A Just to get together I believe. I believe John
26 and my sister Fran and Rita were drinking some hard
27 liquor.

28 Q When you say hard liquor, what type of liquor?

1 A Either whiskey or white lightning.

2 Q Do you recall telling the detective during your
3 interview back in 1985 you saw Rita consuming Jim Beam
4 bourbon?

5 A I don't necessarily remember Jim Beam, but I
6 remember it was hard liquor.

7 Q When you say you don't necessarily remember
8 Jim Beam, that's today?

9 A Exactly.

10 Q Back in 1985, three days after -- on this
11 Monday when you were interviewed, that would have been
12 something that you probably would have remembered?

13 A Probably.

14 Q Do you recall what time you left the residence?

15 A No, I don't. It was probably a couple hours
16 later maybe.

17 Q As far as the alcohol consumption, were you and
18 Cynthia drinking?

19 A No, not at all. I didn't drink then, neither
20 did Cynthia.

21 Q As far as John Sullivan's residence, was there
22 a name for that residence?

23 A Mini Springs Ranch.

24 Q Okay.

25 A It was a pistachio ranch.

26 Q Do you recall that evening whether or not you
27 picked any pistachios?

28 A No, I don't recall.

1 Q As far as when you would go over to John and
2 Fran's place, was it uncommon for you to go out to pick
3 pistachios?

4 A That time of year, that's when the crop comes
5 due. So it's very possible. In September is usually
6 the -- the time.

7 Q Okay. But you don't remember specifically
8 picking pistachios that evening?

9 A No, I don't.

10 Q And then as far as Rita's condition, do you
11 recall how much she had been drinking that evening?

12 A She appeared to be fairly intoxicated. John
13 and Pinky (phonetic) and Rita all three of them appeared
14 to be fairly intoxicated.

15 Q Do you recall telling the detectives that Rita
16 appeared to be a little buzzed?

17 A Yes.

18 Q Then as far as -- you said you left a few hours
19 later, do you recall telling the detectives that you and
20 Cynthia left the residence at approximately, looks like
21 9:45?

22 A That sounds about right, yeah.

23 Q Do you recall telling the detectives that you
24 and Cynthia left, leaving Rita Cobb there consuming
25 Jim Beam?

26 A That's something I don't remember. I don't
27 remember who left first or I don't know if we left or
28 she left first. I'm not sure.

1 Q That would have been something that would have
2 been fresh in your memory when you were interviewed by
3 the detective back in --

4 A Yes. Probably, yes.

5 THE COURT: I know it's hard to adjust. You
6 probably don't have a lot of experience as a witness.

7 THE WITNESS: No.

8 THE COURT: We have somebody writing down
9 everything that's said. Even though you're
10 anticipating what he's going to ask, you need to wait
11 until the prosecutor finishes his question completely
12 before you answer --

13 THE WITNESS: Okay.

14 THE COURT: -- so the record is clear when we
15 look back at it. Okay?

16 THE WITNESS: Okay.

17 THE COURT: Thank you. Go ahead.

18 BY MR. THOMAS:

19 Q Who is Pinky?

20 A Pinky is my sister, Fran. That's a name she's
21 had since she was a child.

22 Q All right. So as far as your memory today, you
23 can't remember whether or not you left and then Rita
24 left or Rita left and then you left?

25 A No, I can't.

26 Q Okay. Do you recall offering Rita a ride home?

27 A Yes, I do, because I offered -- yes.

28 Q Do you recall whether or not she accepted your

1 offer?

2 A Yes, she did not accept it.

3 MR. THOMAS: Nothing further.

4 THE COURT: Mr. Sanders.

5 MR. SANDERS: Thank you.

6 **CROSS-EXAMINATION**

7 BY MR. SANDERS:

8 Q Mr. Nash, I know it's been awhile --

9 A Yes, it has.

10 Q -- since that evening. Do you recall
11 Joe Saunders being at that party?

12 A No, I do not.

13 Q If someone else said he was there at that
14 party, you wouldn't have an argument with that? You
15 just don't recall?

16 A Okay. If he was there, he was only there for a
17 short time because I don't remember -- well, no, I
18 don't.

19 Q Okay. Yesterday your sister said he was there,
20 and I was wondering if you had remembered that?

21 A I don't remember him being there myself.

22 Q Okay. Do you remember Joe Saunders?

23 A Yes, I do.

24 Q Okay. So you came to the party and you're not
25 sure what time; is that right?

26 A That's correct.

27 Q Okay. But you do distinctly remember that Rita
28 was fairly intoxicated and you offered her a ride home?

1 A Yes, I did.

2 Q Because you didn't think it would be safe for
3 her to drive?

4 A That's correct.

5 Q And I think the words that you used were that
6 she seemed to be more intoxicated than usual?

7 A Yes.

8 Q And when you offered her a ride home, she said
9 she didn't want a ride home; is that correct?

10 A That's correct.

11 Q Did she indicate to you she was going to go
12 somewhere other than home?

13 MR. THOMAS: Objection. Calls for hearsay.

14 THE WITNESS: She said --

15 MR. SANDERS: May we approach, your Honor?

16 THE COURT: Sure.

17 (Whereupon the following proceedings were held at the
18 bench out of the hearing of the jury:)

19 MR. SANDERS: It does call for hearsay, your
20 Honor; however, it's relevant, and I would ask that it
21 be allowed to come in because --

22 THE COURT: Why is it relevant?

23 MR. SANDERS: Because the answer is she said
24 to him, I'm going to a bar.

25 THE COURT: Keep your voice down.

26 MR. SANDERS: I'm going to go to a bar.

27 THE COURT: Just because she said she was
28 going to a bar does that mean she was going to a bar?

1 We don't know.

2 MR. SANDERS: But it is relevant. It's some
3 evidence. Doesn't have to be hundred percent.

4 THE COURT: Keep your voice down talking
5 quietly. I don't see it as relevant. I don't see it
6 as an exception to the hearsay rule; do you?

7 MR. SANDERS: Well, as I said in chambers,
8 when you have a case that's 25 years old, you need to
9 cut some slack to the rules of evidence.

10 THE COURT: Not if you don't have an indicia
11 of reliability. You don't let in evidence that's
12 unreliable. You can't talk while I'm talking.
13 There's no evidence that it's reliable, first of all.
14 It's hearsay. Hearsay is generally objectionable
15 unless there's some other indicia of reliability. You
16 don't know that she went to the bar.

17 MR. SANDERS: I don't, but I don't think you
18 have to have corroboration to get in hearsay.

19 THE COURT: The rule is you don't get in
20 hearsay.

21 MR. SANDERS: Yes.

22 THE COURT: So look for an exception. Look
23 for something that is strong indicia of reliability.
24 I don't see it. I don't see it as relevant.

25 MR. SANDERS: Okay. Thank you.

26 THE COURT: You don't have any other basis
27 for determining that she went to a bar. In fact, the
28 evidence would be that she was not seen in a bar that

1 night, and there were people that could testify
2 that -- that what she said was not what happened.

3 MR. SANDERS: There were a couple of people
4 that said they thought they remembered her in the bar.

5 THE COURT: Okay.

6 MR. SANDERS: Thank you.

7 THE COURT: Thank you.

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

10 THE COURT: I'm sustaining the objection. Go
11 ahead. Ask another question.

12 BY MR. SANDERS:

13 Q So did you -- you offered her -- to take her
14 home.

15 Was she in the process of getting ready to go
16 home?

17 A I don't remember. I believe so.

18 Q Okay. And she declined your offer to drive her
19 home?

20 A Yes.

21 Q Did you watch her as she left to go to her
22 house?

23 A I don't remember that.

24 Q Was there some discussion between she and
25 your -- it was your girlfriend?

26 A Correct.

27 Q Was there some discussion between the two of
28 you that you should follow her home to make sure she got

1 home safe?

2 A I don't remember.

3 MR. SANDERS: All right. Thank you, sir. No
4 further questions on cross.

5 THE COURT: Redirect.

6 **REDIRECT EXAMINATION**

7 BY MR. THOMAS:

8 Q Do you recall being interviewed by
9 Detective Alexander and Detective Myler back in 2009?

10 A Yes, I do.

11 Q When they were asking you questions just like
12 I'm asking you questions today, was your memory in 2009
13 better than it was back in 1985?

14 A Not at all.

15 Q If there was something you told
16 Detective Alexander in your interview in 2009 that you
17 either didn't tell the detectives back in 1985 or you
18 told something different to the detectives back in 1985,
19 if you were to -- if I were to ask you which one would
20 be more accurate, the interview you did with the
21 detectives in 2009 or the interview that you did with
22 the detectives back in 1985 --

23 A Well, it was fresher in my mind in '85.

24 Q Okay.

25 A But at the time I was being interviewed, I was
26 kind of in shock too.

27 Q So as far as the details that you would have
28 given the detective back in 1985, those would have been

1 more accurate details?

2 A Yes, I believe so.

3 MR. THOMAS: Nothing further.

4 THE COURT: Mr. Sanders.

5 **RECROSS-EXAMINATION**

6 BY MR. SANDERS:

7 Q Were you asked exactly the same questions in
8 the interview in 1985 as you were asked in 1987 (sic)?

9 A I'm not sure.

10 Q So you don't know if the detectives back in
11 1985 asked you all these specific questions that you
12 answered in 1997?

13 A That's correct.

14 Q When the detectives asked you in 1997 about the
15 party and things, you said you weren't just making
16 things up when you answered their questions?

17 A '97 or 2007?

18 Q 2007.

19 A Okay.

20 Q When you answered those questions, you weren't
21 just making things up?

22 A No.

23 Q You gave them answers based on the memory you
24 had?

25 A On what I remember, correct.

26 Q Because they asked you different questions and
27 more specific questions than you were asked in the first
28 interview?

1 A I believe so, yes.

2 MR. SANDERS: Thank you. Nothing further on
3 cross.

4 THE COURT: Mr. Thomas.

5 REDIRECT EXAMINATION.

6 BY MR. THOMAS:

7 Q That interview was in 2009, not 2007; correct?

8 A Yes, it was. It was March of 2009.

9 MR. THOMAS: Okay. Nothing further.

10 MR. SANDERS: Nothing further. Thank you
11 your, Honor.

12 THE COURT: May this witness be excused?

13 MR. SANDERS: Yes, sir.

14 MR. THOMAS: Yes, your Honor.

15 THE COURT: Mr. Nash, thank you for being
16 with us, sir. You're excused.

17 Call your next witness, Mr. Thomas.

18 MR. THOMAS: People call John Sullivan.

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

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

25 THE WITNESS: I do.

26 THE CLERK: Thank you. Please be seated.

27 THE BAILIFF: Please state your full name and
28 spell it for the record.

1 THE WITNESS: Now?

2 THE COURT: Yes.

3 THE WITNESS: John Sullivan.

4 THE BAILIFF: Spell that for the record,
5 please, sir.

6 THE WITNESS: What else?

7 THE BAILIFF: Spell your name for the record,
8 please.

9 THE WITNESS: John Martin Sullivan.

10 THE BAILIFF: Spell it for the record,
11 please.

12 THE WITNESS: S-u-l-l-i-v-a-n.

13 THE COURT: John is J-o-h-n?

14 THE WITNESS: Yes.

15 THE COURT: Good morning, Mr. Sullivan.
16 Mr. Thomas, your witness.

17 MR. THOMAS: Thank you, your Honor.

18

19 **JOHN SULLIVAN**, having been duly sworn,

20 testified as follows:

21 **DIRECT EXAMINATION**

22 BY MR. THOMAS:

23 Q Mr. Sullivan, do you have a problem hearing?

24 A Well, I do.

25 Q Okay. I'll try to keep my voice up that way
26 you can hear the questions. If you don't hear the
27 questions, if you can just say, I didn't hear what you
28 said.

1 A Okay.

2 Q Where were you living back in September of
3 1985?

4 A Lucerne Valley at Mini Springs Ranch.

5 Q Do you recall the address?

6 A Not exactly. It was Highway 18. I'm sorry
7 it's too long back.

8 Q As far as the address, it was off of Highway 18
9 itself; right?

10 A Yes.

11 Q I'm going to show you a photograph.

12 May I approach the witness?

13 THE COURT: You may.

14 BY MR. THOMAS:

15 Q Marked Exhibit 35, do you recognize the person
16 depicted in that photograph?

17 A I'm assuming that's Rita Cobb.

18 Q Okay. And how did you know Rita?

19 A Well, I originally met her through a friend of
20 hers, Art Bishop, that happened to be at the El Cantero
21 (phonetic), which was just a little further up
22 Highway 18.

23 Q Prior to you learning about Rita's death, how
24 long before that had you known her?

25 A About six years. '79 was when I first met her.

26 Q And then were you familiar with where Rita was
27 living back in 1985?

28 A In 1985, yes.

1 Q Where was she living?

2 A It was down from Mini Springs Ranch
3 approximately a mile. It happened to be next door to a
4 place called Geetam. I don't know if you recall that.

5 Q What's that place?

6 A It was an Ashram.

7 Q How do you spell that?

8 A A-s-h-r-a-m.

9 Q How do you spell the other word you said?

10 A Which one?

11 Q The --

12 THE COURT: The name of the ashram.

13 THE WITNESS: The name of the ashram, it was
14 Geetam Rajneesh.

15 THE COURT: You said Geetam. How do you
16 spell that?

17 THE WITNESS: I believe G-e-e-t-a-m.

18 THE COURT: Thank you.

19 BY MR. THOMAS:

20 Q And so Rita's residence was right off of
21 Highway 18 also?

22 A Yes.

23 Q It was about a mile down from where the ranch
24 was that you lived on?

25 A Right.

26 Q The ranch that you lived on, were there
27 pistachios on there?

28 A Yes.

1 Q At some point in the year were you picking
2 pistachios?

3 A They were still young trees at the time, but as
4 they were developing, yes. Of course, that part of the
5 project was generally from Labor Day to October.

6 Q Okay. So pretty much the whole month of
7 September you'd be picking pistachios?

8 A Right.

9 Q I'm going to show you a photograph that's been
10 marked Exhibit 1.

11 Do you recognize the residence that's depicted
12 in Exhibit 1?

13 A Yeah, I'm assuming that's Rita's house.

14 Q Okay. Does it look like Rita's house in
15 Exhibit 1?

16 A It looks like kind of a miss. I never saw it
17 like that.

18 Q But it looks like Rita's house?

19 A Yeah.

20 Q I'm going to show you another photograph that's
21 been marked Exhibit 3.

22 A That looks more like it.

23 Q Looking at Exhibit 3, do you recognize what's
24 depicted in Exhibit 3?

25 A It looks like her car.

26 Q Okay. That would be a Cadillac?

27 A Yes.

28 Q At some point you learned that Rita had been

1 murdered; is that correct?

2 A That is correct.

3 Q Do you recall what day that was?

4 A I remember it being a Monday when I heard.

5 Q Do you recall being interviewed by the police
6 or the detective the same day that you learned about
7 Rita's murder?

8 A It wasn't that day, but sometime shortly after.

9 Q And then as far as the day that you learned,
10 you said it was a Monday?

11 A It was a Monday.

12 Q When was the last time that you saw Rita prior
13 to that Monday?

14 A That Friday before.

15 Q Okay. And do you recall where you saw Rita?

16 A Yes. She came up to Mini Springs, up to the
17 ranch.

18 Q When she came up, who else was up there?

19 A Well, at the time; Fran, who became,
20 Fran Sullivan; her brother, Bruce; his girlfriend,
21 Cynthia.

22 Q Was that all the people that was up there?

23 A Yes.

24 Q Do you recall how Rita got to your house?

25 A She drove up.

26 Q And I'm assuming she drove up in the Cadillac
27 that you pointed out in Exhibit 3?

28 A Yes, that was her only vehicle.

1 Q Do you recall what time it was that Rita
2 arrived at your house?

3 A It was after 8:00, I believe, in the evening,
4 somewhere around 8:00.

5 Q You were interviewed close to the time that you
6 learned of Rita's murder; correct?

7 A It was sometime later that week, yes.

8 Q At the time that you were interviewed by the
9 detective, was your memory more clear as to what
10 happened on that Friday as to times and everything else
11 than it is today when you're testifying in court?

12 A Oh, I still have memories of that. She came
13 over, just as she often would, to socialize or ask me to
14 help her with something at the house. On this
15 particular occasion, it wasn't that. She came up and
16 had a bottle of bourbon with her. It wasn't a full
17 bottle.

18 Q Let me stop you right there.

19 As far as going back to the time, do you recall
20 telling the detectives that back in 1985 that Rita came
21 over to your house at approximately 6:00 in the evening?

22 A Was it 6:00? I thought it was -- I didn't know
23 it was that early.

24 Q Would looking at the police report refresh your
25 recollection?

26 A Well, it might, but --

27 THE COURT: Why don't you show it to him and
28 then ask if it refreshes his recollection.

1 THE WITNESS: I know it was dark when she
2 arrived.

3 BY MR. THOMAS:

4 Q I'm going to ask you to read that bottom
5 paragraph to yourself, not out loud.

6 Have you had a chance to read it?

7 A Yeah, 1800 hours. That would be 6:00 military
8 standard time, but I don't recall having gone to bed
9 before she left.

10 Q That's something that you told the detectives
11 back then?

12 A I don't recall that.

13 Q So you said she came over. She had a bottle of
14 bourbon with her?

15 A Correct.

16 Q Do you recall what type of bourbon?

17 A I'm going to say Jack -- I'm not sure but might
18 have been Jack Daniels.

19 Q But you're not sure on that?

20 A No, I'm not, might have been a Canadian
21 whiskey.

22 Q Do you recall how long Rita was over at your
23 place that evening?

24 A She was there for a couple, few hours. I'd say
25 at least two, two and a half.

26 Q Do you recall approximately what time she left
27 your residence?

28 A Well, I'm still thinking it was around 8:00 she

1 arrived. I'd say she probably left around 10:00, 10:30.

2 Q And do you recall whether or not she left in
3 her vehicle or somebody else's vehicle?

4 A Well, she did leave in hers, but because she
5 had been drinking, Bruce who was over, he and Cynthia
6 were about to head home. He suggested that he would
7 drive her down to her house, and then Cynthia would
8 follow them.

9 Q So you heard Bruce suggest this to Rita?

10 A Oh, yeah.

11 Q Did you actually see them leave?

12 A I did.

13 Q Okay. Did they leave together? Do you recall
14 how they left?

15 A They all left together. Cynthia followed
16 Bruce.

17 Q And where was Bruce?

18 A Well, he was driving Rita's car.

19 Q Okay. Is that something that you recall
20 telling the detective back in 1985?

21 A I'm sure I did.

22 Q Had you had a chance to read the police report
23 prior to coming to court from 1985?

24 A Robert Alexander gave me papers last Friday,
25 but on those papers that I read, not all of the
26 statements were actually accurate. The paper said she
27 had come over, like, on Saturday, and I know it wasn't
28 Saturday. It was the Friday before.

1 Q As far as the papers are concerned, I'm going
2 to have you look at your statement. You've already read
3 the bottom portion of that, and, counsel, it's Page 46.
4 If you could read the top two paragraphs to yourself,
5 and it's Page 65, counsel, and if you could point out to
6 us where the statement says Saturday?

7 A Okay.

8 Q Then if you can read that paragraph again that
9 you read before on the bottom of Page 64.

10 A I don't know where they got that I went to bed
11 because I was still awake.

12 Q As far as the report is concerned, the report
13 says you said it occurred on Friday night; correct?

14 A Her coming over?

15 Q Yeah.

16 A Yes.

17 Q You were incorrect as far as the report saying
18 Saturday?

19 A I don't know where they got that. I never
20 mentioned that she was over on a Saturday.

21 Q You had another report of an interview that you
22 did with Detective Alexander and Detective Myler in 2009
23 sometime?

24 A Yeah, it was about two years ago.

25 Q Okay. Could that have been the report that you
26 were referring to where it said Friday or Saturday?

27 A Right.

28 Q But as far as the 1985 report, it's accurate as

1 far as the Friday night?

2 A Right.

3 Q Then you've had a chance to read the entire
4 statement.

5 As far as the statement that you made in 1985,
6 it sounds like the only thing that you're disagreeing
7 with at this point is that the statement says you went
8 to bed and Rita left after you went to bed at around
9 10:30 that evening?

10 A Right.

11 Q So your testimony though today is that the way
12 you remember it is Rita left with Bruce and with Cynthia
13 and you hadn't gone to bed yet at that point?

14 A I imagine it was shortly afterwards.

15 Q Okay. Had you been drinking that night too?

16 A I had a couple beers.

17 MR. THOMAS: Okay. Nothing further at this
18 point.

19 THE COURT: Cross.

20 MR. SANDERS: Thank you, your Honor.

21 **CROSS-EXAMINATION**

22 BY MR. SANDERS:

23 Q I believe that you said you first met Ms. Cobb
24 in 1979; is that correct?

25 A That's correct.

26 Q And I didn't understand, did you say you met
27 her at El Cantero?

28 A El Cantero.

1 Q Is that a restaurant?

2 A It was a restaurant and a motel. Art Bishop
3 had just recently renovated it. He bought it then
4 renovated it and had opened it. I stopped in for a bite
5 to eat, and turns out as he and I spoke, turns out he
6 was from New York and turned out to be just blocks from
7 where I grew up.

8 Then he was asking me to stay and be his
9 manager. I was a sales manager for an automobile agency
10 down in Long Beach. It was an AMC dealer. Due to the
11 gas crisis in '79, I came back out to the desert and
12 planned to be here for a few days and stopping by there
13 to grab lunch before heading back. Well, turned out, I
14 got anchored here in the desert.

15 Q That's when you met Rita and you knew her until
16 her death?

17 A Correct.

18 Q And you said that you heard about her death on
19 Monday and you had seen her the Friday night before,
20 three days before?

21 A Yes.

22 Q I believe that you're telling us you don't have
23 a real good memory of that evening, but you remember
24 some details?

25 A That Friday night?

26 Q Yes.

27 A There wasn't really a whole lot to remember.
28 We sat around and talked.

1 Q Fran said that Joe Saunders was there that
2 night.

3 Do you remember that?

4 A That would have been on Monday night.

5 Q She testified yesterday that he was there that
6 Friday night at this gathering.

7 Do you remember that?

8 A Joe Saunders?

9 Q Joe Saunders.

10 A I don't remember him coming in.

11 Q You said you did remember Rita saying it's time
12 to go home sometime around 10:00?

13 A Yes.

14 Q You do remember that you thought that Mr. Nash,
15 Bruce Nash, either gave her a ride home or accompanied
16 her home?

17 A Yes, I believe -- well, I know that he drove
18 her home. Of course, Cynthia followed.

19 Q Did you see them get in the cars?

20 A I believe I did. I don't know what car
21 Cynthia -- Bruce and Cynthia had come up in.

22 Q Besides the beer you had, did you share any of
23 Ms. Cobb's bourbon?

24 A No, she did that solely.

25 Q Okay.

26 A Then she ran out and asked me if I had anything
27 to drink. I said, would you like a beer.

28 Q Right. She declined and you looked around the

1 house and found some white lightning and let her have
2 some of that?

3 A I knew I had that. I had gotten that from a
4 fellow by the name of Ben Moritz (phonetic). He was an
5 old timer around here and after doing a job for him, he
6 gave me a jar of white lightning.

7 Q You didn't have any of that that night?

8 A Never.

9 Q And you and the prosecutor, you were trying to
10 figure out the time.

11 You were not quite sure of the time she got
12 there, but you said you did know it was after dark?

13 A Yes.

14 Q Okay. So you're -- you can't remember what the
15 clock said, but you know it was dark when she got there?

16 A Right.

17 MR. SANDERS: Thank you, sir. No further
18 questions.

19 THE WITNESS: I do think it was around 8:00.

20 MR. SANDERS: Okay. No further questions on
21 cross, your Honor.

22 THE COURT: Mr. Thomas.

23 MR. THOMAS: No further questions.

24 THE COURT: May this witness be excused?

25 MR. THOMAS: Yes, your Honor.

26 MR. SANDERS: Yes, sir.

27 THE COURT: Thank you for being with us,
28 Mr. Sullivan. You're excused. Call your next

1 witness, please.

2 MR. THOMAS: People would call
3 Marshall Franey.

4 THE CLERK: You do solemnly state that the
5 evidence you shall give in the matter pending before
6 this Court shall be the truth, the whole truth, and
7 nothing but the truth, so help you God?

8 THE WITNESS: I do.

9 THE CLERK: Thank you. Please be seated.

10 THE BAILIFF: Please state your full name and
11 spell it for the record.

12 THE WITNESS: Marshall Franey M-a-r-s-h-a-l-l
13 F-r-a-n-e-y.

14 THE COURT: Good morning, Mr. Franey.

15 THE WITNESS: Good morning.

16 THE COURT: Your witness, Mr. Thomas.

17 MR. THOMAS: Thank you, your Honor.

18

19 **MARSHALL FRANNEY**, having been duly sworn,

20 testified as follows:

21 **DIRECT EXAMINATION**

22 BY MR. THOMAS:

23 Q Good morning, Mr. Franey.

24 A Good morning.

25 Q Are you retired?

26 A Yes, I am.

27 Q What did you do before you retired?

28 A I was the deputy coroner for the County of

1 San Bernardino.

2 Q How long were you a deputy coroner for the
3 County of San Bernardino?

4 A 21 years.

5 Q Do you recall when you retired?

6 A 1997.

7 Q And in order to become a deputy coroner, did
8 you have to receive any special type of training or
9 education or anything?

10 A I had pre-training prior to the coroner's
11 office. I was a funeral director/embalmer. Then I
12 entered the coroner's office, and we went through
13 classes with the coroner's office.

14 Q How long were you a funeral director?

15 A 20 years.

16 Q Just make sure that you wait until I'm done
17 with the question before you answer because the court
18 reporter is trying to take down all the answers and
19 questions.

20 A Right.

21 Q So back in -- strike that. As far as the
22 deputy coroner is concerned, what are some of the duties
23 that you had?

24 A We go to the scene, and we gather whatever
25 information there that is necessary that we feel, and we
26 determine if an autopsy is needed, and we will send the
27 body to the morgue for an autopsy by our forensic
28 pathologist.

1 Q So you're familiar with certain terms, such as,
2 lividity as it's used in your occupation?

3 A Yes, sir.

4 Q Okay. What does lividity refer to?

5 A It's blood settling in the body and it turns
6 purplish in color or dark after awhile.

7 Q And then as far as lividity is concerned, when
8 you say blood settling in the body, are you referring to
9 the location and gravity?

10 A Yes, sir, it would be gravity. Blood will flow
11 to the lowest part of the body after the death.

12 Q So if a person -- let's say a person's on their
13 back, you would expect to see lividity appearing on
14 their back?

15 A Yes, but not completely. If there's any
16 pressure spot from the body lying there in that one
17 spot, there may be no lividity in that area, but the
18 other areas where there's no pressure, then you will
19 find the lividity.

20 Q So some of the factors that go into it are the
21 surface that the body is on?

22 A I'm sorry?

23 Q Some of the -- one of the other factors that
24 might go into this would be the surface that the body is
25 lying on?

26 A Yes.

27 Q So if the body is lying on a water bed versus
28 concrete, there might be a difference?

1 A There could be a difference, yes.

2 Q Okay. Do you recall -- do you know of the term
3 demarcation?

4 A Demarcation?

5 Q Yeah.

6 A Reference -- not -- what are you getting at on
7 this?

8 Q As far as the body's concerned, is that
9 something that you just explained as far as demarcation
10 goes?

11 A Yes.

12 Q Okay. Do you recall back in September,
13 specifically September 23rd of 1985, where you were
14 working?

15 A Yes, I was.

16 Q And did you respond to a crime scene in
17 Lucerne Valley involving a victim by the name of
18 Rita Cobb?

19 A Yes.

20 Q And do you recall responding to a residence
21 there?

22 A Yes, I do.

23 Q Do you recall where Ms. Cobb's body was
24 located?

25 A She was located in the bedroom of her
26 residence.

27 Q And do you recall what time approximately you
28 arrived at the residence?

1 A I arrived there about 11:30.

2 Q And then I'm sure there's a certain procedure
3 that you have to go through before you remove the body
4 from the residence; is that correct?

5 A Yes, sir.

6 Q So you can't just show up there and then remove
7 the body from the residence?

8 A No.

9 Q You have to let the homicide investigators
10 conduct their investigation, and then once they're done,
11 that's when you're permitted to recover the body?

12 A I do. When I arrived at the scene, there were
13 deputy sheriffs already there.

14 Q Do you recall the position that Ms. Cobb was
15 lying in?

16 A Yes, she was lying on a king-sized bed on her
17 back.

18 Q Do you recall -- do you recall if it was a
19 water bed?

20 A I don't recall if it was a water bed or not.
21 No, I do not.

22 Q And was there anything else about her
23 appearance that drew your attention?

24 A Well, the body was completely nude. The -- she
25 was laying sort of on an angle on the bed. Her left leg
26 was off to the left side of the bed. The legs were
27 spread wide apart. The right leg was bent at the knee
28 in an upward position and outward from the body.

1 Q I'm going to show you some photographs. I'll
2 bring up the exhibit so that you can see it. Show you
3 what's been marked Exhibit 13.

4 A Yes.

5 Q What does Exhibit 13 depict?

6 A Position in which I just explained to you that
7 she was in.

8 Q And that's a true and accurate photograph of
9 that position that you just explained?

10 A Yes, it is.

11 Q I'm going to show you another photograph that's
12 been marked Exhibit 33.

13 Do you recognize that photograph?

14 A Yes, I do.

15 Q And what does that photograph depict?

16 A The decedent laying on the bed in the same
17 position with a pair of white walking shorts over her
18 face.

19 Q Do you recall whether or not those white
20 walking shorts were in her mouth or not?

21 A No. There was tissue paper on her mouth --
22 tissue paper in her mouth and these white shorts were
23 lying over her face. Whether they were stuffed in the
24 mouth or not, that I do not recall right now if they
25 were.

26 Q Do you recall whether or not the body was in
27 some condition of bloating?

28 A Oh, yes, yeah.

1 Q What does that refer to?

2 A Well, decomposition. Putrification had set in,
3 and the body was bloated. There was fluids emanating
4 from the nostrils, sides of the mouth, running down the
5 side of the face, which were consistent with the
6 location of the body.

7 Q So when you say consistent with the location of
8 the body, you're referring to that the body hadn't been
9 moved after death?

10 A That's correct.

11 Q Okay. And then as far as the condition of the
12 body as you saw it, based on your training and
13 experience both as a funeral director and as a deputy
14 coroner, do you have any opinion as to how long that
15 body had been there for?

16 A Well, at least two days.

17 Q And --

18 A Two days, three days, could have been a longer
19 period of time.

20 Q That was a Monday you went over there, the
21 23rd?

22 A Right now I couldn't tell you what day it was.
23 I don't know.

24 Q Let's say hypothetically she was killed on the
25 evening of September 20th, early morning hours of
26 September 21st, would the condition of the body as you
27 saw it be consistent with her being killed at that
28 period of time?

1 A Yes, it would be.

2 Q What are some of the factors that go into how
3 quickly a body decomposes?

4 A The temperature, of course, heat.

5 Q Is that the biggest factor?

6 A Yes, of course.

7 Q When you say the temperature, what are you
8 referring to?

9 MR. SANDERS: Objection, your Honor. He was
10 never given the opportunity to finish the answer.

11 THE COURT: Yeah. Mr. Thomas, I believe
12 you're stepping on your witness's lines. Let him
13 finish the answer before you ask another question.

14 BY MR. THOMAS:

15 Q Were you finished with your answer?

16 A Where are we? Let's start over again.

17 Q What are some of the factors?

18 A Pertaining to?

19 Q How a body decomposes.

20 A Well, when the body starts to decompose, you
21 get the odor from the body. You'll have skin slip.
22 You'll have water blisters about the body. The body
23 usually turns dark in color. A lot of times you'll have
24 gas emanating from the mouth and the nose.

25 Q Okay. Would a person's tongue start protruding
26 also?

27 A Yes, yeah.

28 Q If something was stuffed in a person's mouth,

1 would it essentially make its way out of the mouth?

2 A Yes, it would. Yes, it would. As a matter of
3 fact, her dentures were protruding out of her mouth. I
4 feel that was from the gases, also, the bloating of the
5 body.

6 Q As far as the rate at which a body decomposes,
7 you said one of the factors is temperature; correct?

8 A Yes.

9 Q Okay. And as far as temperature, is -- what
10 are you referring to as heat? Cold?

11 A Heat and cold. In other words, putrification,
12 the hotter it is, the quicker the body is going to
13 decompose.

14 Q If somebody were to turn on a heater in a
15 residence in the summertime, let's say the outside
16 temperature is around 80 degrees and the heater is
17 turned on inside the house on top of that, would that
18 hasten the process of decomposition?

19 A Yes, it would.

20 Q Other than temperature, are there other factors
21 that hasten the decomposition process?

22 A Not that I can think of right now.

23 Q Do you recall -- you mentioned something about
24 white tissue.

25 Do you recall if that was actually in her mouth
26 or outside her mouth?

27 A It could have been -- it was on her lips, on
28 her mouth, is what was on there, and when I rolled the

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6

6

1 body over, it had fallen off to one side. Whether it
2 was actually protruding within the mouth, I'm not too
3 sure. It had the appearance that it did.

4 Q Going back to Exhibit 33, I'm going to put it
5 back up on the screen real quick. I want to point out
6 something about Exhibit 33. If you notice, the right
7 leg is bent at the knee.

8 A Yes, I do.

9 Q Do you see there's what appears to be some
10 discoloration around the knee area?

11 A Yes.

12 Q What, if anything, would that indicate to you?

13 MR. SANDERS: Objection, your Honor. Lack of
14 expertise. Foundation. He's not a doctor.

15 THE COURT: The objection is overruled.

16 BY MR. THOMAS:

17 Q What, if anything, would that indicate to you?

18 A It could be lividity or it could be an injury.

19 Q Okay.

20 A It could be a bruise from markings of a hand or
21 anything.

22 Q So as far as you're concerned, without doing an
23 autopsy, you wouldn't be able to make a determination by
24 looking at the photograph?

25 A I would leave that up to the forensic
26 pathologist just to determine what it was.

27 Q Okay. When you arrived, you observed the
28 location of the victim as far as -- before you removed

1 the victim from the residence, is there anything that
2 you do prior to the removal of the body?

3 A Well, I examined the body at the time in which
4 is the process that we're going through.

5 Q You've described --

6 A Um-hmm.

7 Q -- what you observed?

8 A The position of the body. We rolled the body
9 over to look at the back side and see any injuries to
10 the back.

11 Q Did you observe anything around the victim's
12 neck?

13 A Yes, I did.

14 Q What was that?

15 A It was a wire coat hanger wrapped, appeared to
16 be tightly, around the neck.

17 Q I'm going to show you a photograph that's been
18 marked Exhibit 16.

19 Can you tell us what's depicted in Exhibit 16?

20 A Um-hmm.

21 Q What do you see in Exhibit 16?

22 A See the victim's head, the tissue paper on her
23 mouth. This picture was taken after the white shorts
24 were removed from over the face.

25 Q You were the one that removed the white shorts
26 from her face or was it one of the other --

27 A It could have been myself or the homicide
28 detective. I'm not sure.

1 Q This picture was taken after the white shorts
2 were removed?

3 A Yes.

4 Q Then as far as the photograph, can you describe
5 to us how this hanger was twisted around the victim's
6 neck?

7 A Well, it was twisted around in a knot towards
8 her left side of the body where you could see the wire
9 twisted in that position. I did not disturb the body
10 too much as far as this is concerned because I wanted
11 the body to go to the morgue with that wiring right
12 there without being disturbed.

13 Q Then as far as the wiring, you said it was
14 twisted to the left side of the victim's neck?

15 A Yes.

16 Q Was there a handle or something that somebody
17 could pull to tighten it?

18 A It looked to me like it was the end of the
19 hanger.

20 Q The part that hangs on the rack?

21 A Yes, sir.

22 Q Okay. And then you talked about you rolled the
23 body; is that correct?

24 A Yes.

25 Q I'm going to show you a photograph that's been
26 marked Exhibit 34.

27 Could you describe what Exhibit 34 shows?

28 A Yeah. That shows myself, of course, my arms in

1 which I'm rolling the body over to her left side.

2 Q Okay. And then --

3 A Sheriff's deputy taking pictures of her at that
4 time.

5 Q And then as far as the roll was concerned and
6 the photograph, you see what appears to be the
7 discoloration on the victim's right side.

8 Do you see that?

9 A Yes, sir.

10 Q Okay. Is that what you referred to as lividity
11 before?

12 A Lividity and decomposition also and also fluid
13 blisters or watery blisters we call them.

14 Q Then at that point after the body is rolled,
15 what are you looking for as far as when you roll the
16 body? Are you looking for anything specific?

17 A Any other injury if there should be any on the
18 back or any injury at all.

19 Q Did you observe any on the victim, Rita Cobb?

20 A No, I didn't, just the decomposition.

21 Q Once the body is removed, do you also look to
22 see if -- strike that.

23 Once the body's removed, do you look at the
24 location again to observe anything?

25 A I look at the bed after the body's removed.

26 Q I'm going to show you another photograph that's
27 been marked Exhibit 18.

28 Do you recognize what's shown in that

1 photograph?

2 A Yeah. That would be the bed covers that are on
3 there with bodily fluids on the -- upon the bedding.

4 Q Okay. Would you, as a deputy coroner, look at
5 the location to determine whether or not the fluids that
6 you're seeing in Exhibit 18 are consistent with the body
7 being there for a period of time?

8 A Yes, it would fit it.

9 Q It's consistent?

10 A It's very consistent, yes.

11 Q That's another indication to tell you the body
12 has not been moved?

13 A That's correct.

14 Q Once you remove the body from the location,
15 where do you put the body at that point?

16 A The body is removed by the coroner's
17 transportation service. She is placed in a plastic
18 zipper-type bag on a gurney and is taken to the morgue.

19 Q That's where the autopsy is preformed?

20 A The autopsy is preformed there in
21 San Bernardino.

22 MR. THOMAS: Nothing further.

23 THE COURT: Mr. Sanders.

24 **CROSS-EXAMINATION**

25 BY MR. SANDERS:

26 Q Mr. Franey, a couple of questions about your
27 opinion on the time.

28 A A little louder, would you please? I'm an old

1 man, getting hard to hear.

2 Q Me too. A couple of questions about your
3 statements about time. You said that when -- you've
4 gone to a number of scenes where you have picked up
5 bodies in your work as a coroner and a funeral director;
6 correct?

7 A Yes, sir.

8 Q In each of those scenes, you've observed either
9 no decomposition or a lot of decomposition or anywhere
10 in between?

11 A Yes, sir.

12 Q You indicated a minute ago that based upon the
13 decomposition you saw, it looked like that body had been
14 dead two or three days?

15 A Yes.

16 Q All right. And is that based upon what you
17 observed as far as the decomposition on the body or were
18 you taking into consideration other factors, such as,
19 the temperature in the room?

20 A Due to temperature in the room, also, history
21 of other cases I've been on for years.

22 Q Right. When you arrived at the scene, do you
23 recall taking the temperature in the room?

24 A No, I did not.

25 Q Do you have an opinion as to what the
26 temperature in the room was?

27 A At the present time, I have no idea what the
28 temperature was.

1 Q So you would be unable to -- to tell us the
2 conditions that that body had been in for 12 hours,
3 24 hours, 36 hours, 48 hours before you got there?

4 A No.

5 THE COURT: Just a minute. That's -- that
6 really is compound and complex. Needs to be broken
7 down.

8 MR. SANDERS: I'll break it down. Thank you,
9 your Honor.

10 BY MR. SANDERS:

11 Q You don't know what conditions existed in that
12 room 12 hours before you arrived?

13 A No, I do not.

14 Q Or 24 hours?

15 A No.

16 Q Or 36 hours?

17 A I wasn't there, sir.

18 Q All right. So if there was an extremely warm
19 temperature in that room before you got there, that
20 could have made the body decompose faster than average?

21 A Yes, it would.

22 Q And your estimate was based on average?

23 A My what?

24 Q Your estimate of two to three days was based on
25 average?

26 A That's correct.

27 Q Okay. You mentioned there are a number of
28 things that happened when a body dies, and I think that

1 you said one of the things is that there's gaseous build
2 up; is that correct?

3 A Yes.

4 Q The fat cells liquefy?

5 A Yes.

6 Q And there's bloating as a result?

7 A There is.

8 Q Okay. The pressure inside the body increases
9 after death?

10 A Yes.

11 Q And because of that, liquid comes out various
12 body orifices?

13 A That's correct.

14 Q You'll see there is liquid that comes out of
15 ears, eyes, nose, mouth or anus --

16 A Correct.

17 Q -- or urethra or any of those things; correct?

18 A Yes.

19 Q I notice that on the pictures that we were
20 looking at, there was a -- a lot of body fluid, but you
21 indicated that none of that body fluid came out as a
22 result of a wound that you saw, a wound that was on the
23 body?

24 A That's right.

25 Q Okay. For example, a picture that showed her
26 face, there was a lot of blood on the side of her face.

27 Is it your opinion that that was postmortem or
28 after death or that came -- excuse me, let me ask the

1 question different.

2 Would it be your opinion --

3 A My opinion, I would say it was after death.

4 Q Not a result of a wound she suffered?

5 A I did not see any wound there at that time. If
6 there was a wound, it would have been found when the
7 pathologist examined her.

8 Q All right. And I believe that you said that
9 there -- the prosecutor asked you about a mark on the
10 knee and your answer was that could be lividity or
11 injury, but you have no way of knowing?

12 A No, I do not.

13 Q Lividity, that's another way to describe a
14 discoloration of the blood in the body after death?

15 A Yes, sir.

16 Q Okay. The -- when she was turned, there was
17 large marks on her side, discolorations.

18 Again, is it your testimony that those are
19 artifacts that came about after her death as a result of
20 the operations of --

21 A That's correct.

22 THE COURT: Operations of what -- operations
23 of what? You're saying that's correct, but you don't
24 know what he's going to ask. Wait, please, for the
25 question.

26 The operation of what?

27 BY MR. SANDERS:

28 Q The -- excuse me -- the operation -- lost my

1 word.

2 THE COURT: You want it read back and you'll
3 get reminded or start again?

4 BY MR. SANDERS:

5 Q The operation of decomposition.

6 A Yes. However, if there was any type of injury
7 there at that time, I wouldn't be able to determine
8 that, to see that, until the body gets to the morgue.

9 Q Yes, sir. So you didn't notice any injuries
10 when you saw her?

11 A Not at that time, I did not.

12 Q You took her to the morgue so that the
13 pathologist could do a further exam?

14 A And find out if there were any injuries that I
15 could not find at that time.

16 MR. SANDERS: All right. I don't have any
17 further questions on cross-examination.

18 THE COURT: Redirect.

19 MR. THOMAS: I don't have any further
20 questions.

21 THE COURT: May this witness be excused?

22 MR. THOMAS: Yes, your Honor.

23 MR. SANDERS: Yes.

24 THE COURT: Thank you, Mr. Franey. You're
25 excused.

26 Call your next witness.

27 MR. THOMAS: That's the last witness the
28 People have this morning.

1 THE COURT: Ladies and gentlemen, we're going
2 to have an early morning break. We're going to start
3 back at 1:30. I believe there's only one witness you
4 have, then you plan on resting for this afternoon?

5 MR. THOMAS: Yeah, that's the only witness
6 this afternoon.

7 THE COURT: We may be finished early today.
8 Again, you're admonished that it is your duty not to
9 converse among yourselves or with anyone else about
10 any matter connected with this case nor form or
11 express an opinion on it until it's submitted to you.
12 (Whereupon the following proceedings were held outside
13 the presence of the jury:)

14 THE COURT: Our jury is gone. Anything else
15 we need to do on the record in this case before 1:30?

16 MR. THOMAS: No, your Honor. I gave the
17 Court the checklist this morning.

18 THE COURT: I assume you gave a copy of this
19 to Mr. Sanders, as well?

20 MR. THOMAS: I didn't give a copy of the
21 checklist. I gave a copy of the verdict forms and
22 statement of the offense.

23 THE COURT: Do you have another copy?

24 MR. THOMAS: I can give him a copy of that.

25 THE COURT: Is this the original?

26 MR. THOMAS: Yeah. That's the original.

27 THE COURT: Do you need a copy for yourself?

28 MR. THOMAS: Yes.

1 THE COURT: Make a copy for him. Anything
2 else?

3 MR. SANDERS: Thank you, your Honor. I had
4 indicated to the prosecutor the parts of the statement
5 that I felt should be redacted.

6 THE COURT: Let's talk about a little
7 information before we make assumptions.

8 MR. SANDERS: I believe we agree --

9 THE COURT: Statement that's going to be
10 offered by the prosecution, and it's a statement
11 alleged to be a statement by your client; is that
12 correct?

13 MR. SANDERS: Yes, your Honor.

14 THE COURT: All right. You are not going to
15 object to entry of the statements, but you believe
16 there should be some things that were stated by your
17 client that should be removed from the statement; is
18 that correct?

19 MR. SANDERS: Mostly statements by the police
20 officers but some statements by my client.

21 THE COURT: Mr. Thomas has not disagreed with
22 you and attempted to provide you with specifics of how
23 he intends to redact the statement of your client, so
24 that it is not objectionable to you; is that correct?

25 MR. SANDERS: That's correct.

26 THE COURT: Mr. Thomas, you've seen that, and
27 do you have any reason to disagree with the --

28 MR. THOMAS: No, as far as --

1 THE COURT: -- statements that Mr. Sanders --

2 MR. THOMAS: As far as Mr. Sanders has
3 provided, I don't have any problem with redacting the
4 stuff. The only question I did have for Mr. Sanders
5 is there's reference at the end of the interview where
6 Mr. Yablonsky's invoking. I was planning on taking
7 that out unless you wanted to keep it in.

8 MR. SANDERS: I did this very late last
9 night, and I did forget when he invoked Miranda to
10 take that out.

11 THE COURT: Other than that, sounds like
12 we're in accord on what should be done. No
13 disagreement between the two of you?

14 MR. SANDERS: I believe so.

15 THE COURT: All right. That can't be done
16 until tomorrow.

17 MR. THOMAS: I wouldn't be able to do it
18 until tonight. I'm going to start this afternoon once
19 we're done.

20 THE COURT: How much is it?

21 MR. SANDERS: It's about a three-hour
22 interview. I'm requesting redaction of ten minutes
23 but in different parts of the interview.

24 MR. THOMAS: So I got to go through
25 everything and find out where I got to cut the
26 interview out and make sure it sounds good.

27 THE COURT: Can't be done between 11:05 and
28 noon?

1 MR. THOMAS: No. I'll be up late tonight
2 doing it.

3 THE COURT: Have a nice lunch. Thank you.
4 (Whereupon the lunch recess was taken.)
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1 VICTORVILLE, CALIFORNIA; JANUARY 26, 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. Back on the record in the case of People
13 of the State of California versus John Henry Yablonsky
14 who is here along with his attorney, David Sanders.
15 John Thomas is here for the People along with his
16 investigating officer, Detective Robert Alexander.
17 Call your next witness.
18 MR. THOMAS: People call Dr. Bill Saukel.
19 THE BAILIFF: Remain standing. Raise your
20 right hand and face the clerk to be sworn.
21 THE CLERK: You do solemnly state that the
22 evidence you shall give in the matter pending before
23 this Court shall be the truth, the whole truth, and
24 nothing but the truth, so help you God?
25 THE WITNESS: I do.
26 THE CLERK: Thank you. Please be seated.
27 THE COURT: Please state your full name and
28 spell it for the record.

1 THE WITNESS: My name is George William
2 Saukel S-a-u-k-e-l.

3 THE COURT: Good afternoon, Dr. Saukel.

4 THE WITNESS: Good afternoon.

5 THE COURT: Doctor, right?

6 THE WITNESS: Yes.

7 THE COURT: Mr. Thomas, your witness.

8 MR. THOMAS: Thank you, your Honor.

9

10 **GEORGE SAUKEL**, having been duly sworn,
11 testified as follows:

12 **DIRECT EXAMINATION**

13 BY MR. THOMAS:

14 Q What's your current occupation?

15 A My current occupation, I am a pathologist at
16 Loma Linda University Medical Center and an associate
17 professor of pathology at Loma Linda University.

18 Q For those of us who don't know what pathology
19 is?

20 A Pathology is the study of -- generically of
21 diseases, and I'm primarily an anatomic pathologist,
22 which is studying the effects of diseases or injuries to
23 tissues.

24 Q When somebody uses the term forensic
25 pathologist, what are they referring to?

26 A --Forensic pathologist is a field that is
27 additional training into the effects of pathology as it
28 relates to other than natural deaths.

1 Q Have you had some training in forensic
2 pathology?

3 A Yes. After I completed my training in anatomic
4 and clinical pathology at Loma Linda, I did an
5 additional year of training with Root Pathology
6 Laboratory, which was an accredited site for forensic
7 pathology during the early '80s.

8 Q As part of that, were you involved in doing
9 autopsies for the County of San Bernardino?

10 A Yes, I was.

11 Q Okay. And do you recall what years you were
12 actually doing autopsies?

13 A I started my training at Root Pathology
14 Laboratory, which had the contract for the forensic
15 pathology services with the County of San Bernardino, in
16 1984. Then I completed my year of training and stayed
17 on for an additional year and was a partner with
18 Dr. Root.

19 Q Before we get to what an autopsy is and
20 everything, did you have to receive some special
21 education or training before you became involved in
22 pathology?

23 A Yes. Before you can take training in
24 pathology, you have to have a degree of medicine, which
25 I attended University -- Medical University of
26 South Carolina from 1976 to 1980. That's when I
27 received my MD.

28 Then for forensic pathology, you have to also

1 previously have had training in general pathology, which
2 was a four-year course, which I did at Loma Linda
3 University Medical Center between '80 and '84.

4 Q Then in 1984, you started working with
5 Dr. Root?

6 A Yes, sir.

7 Q And then as far as autopsies are concerned,
8 what is an autopsy?

9 A An autopsy is the examination of the body after
10 a person has died. So a typical autopsy is an
11 examination of the external of the body then removal of
12 all the internal organs and in most instances
13 subsequently taking samples of those organs, making
14 microscopic slides of them and examining the microscopic
15 slides and then taking the findings from the entire
16 examination and formulating an opinion regarding what
17 were the causes or sequences of diseases that affected
18 the person that led to death.

19 Q When somebody dies, is an autopsy done
20 regardless on everybody?

21 A No. Autopsies in the non-forensic setting,
22 autopsies are done only with permission of the
23 survivors. In the forensic setting, the examination of
24 the body is dictated by the local state laws.

25 Q And how many autopsies have you performed?

26 A Probably 18-, 1900.

27 Q Regarding this specific case, do you recall
28 performing an autopsy on or about September 24th of 1985

1 on a victim by the name of Rita Mabel Cobb, age 55?

2 A Yes, I did.

3 Q While you were preparing this autopsy, did you
4 prepare a report in conjunction with that autopsy?

5 A Yes, I did.

6 Q I imagine, since you've done a lot of
7 autopsies, without that report you wouldn't be able to
8 say, yeah, I remember this specific autopsy and remember
9 exactly all the injuries and documentation?

10 A I wish I had that memory, but I don't.

11 Q So before you came to court, you reviewed what
12 is often referred to as an autopsy protocol?

13 A Yes, I did.

14 Q That autopsy protocol -- can you give us a
15 brief description on what an autopsy protocol is?

16 A The protocol is the written report that is a
17 summary of the examination that I previously described.
18 It's just documentation of what history we have, what
19 examination we did, what we found, and then what our
20 conclusions were. Often we'll have ancillary
21 information regarding studies that may not be routine,
22 such as, toxicology.

23 Q In this particular case, the autopsy of
24 Rita Cobb, I assume you get the body at some point at
25 the office?

26 A Yes. During that period of time, the autopsies
27 from our coroner's office were performed in the morgue
28 of the old San Bernardino County Hospital.

1 Q So the body gets transported by the coroner's
2 deputies to the morgue?

3 A Yes.

4 Q Then once it's at the morgue, eventually you
5 get to it and perform the autopsy?

6 A Yes.

7 Q What's the first thing you did in this case
8 with Rita Cobb's body as far as the autopsy was
9 concerned?

10 A The routine is before we start the autopsy, as
11 you mentioned, we will review whatever information we
12 have available, which may include statements or a
13 written report from the deputy coroner, photographs that
14 they have taken. Then we will confirm that we have the
15 same body. Then we will -- usually the bodies are
16 transported in a plastic bag, and then they're removed,
17 put on the autopsy table. Then we will take photographs
18 of the body. We'll collect trace evidence, and then
19 we'll do the gross examination, then the dissection.

20 Q Okay. In this particular case, did you have an
21 opportunity before performing the autopsy to review some
22 of the photographs?

23 A I probably did. The routine would have been
24 there would have been photographs taken by the
25 investigating deputy coroner that would have accompanied
26 the body.

27 Q Before you came to court, did you have an
28 opportunity to review photographs taken at the scene?

1 A Yes, I have.

2 Q One of the things, I imagine that you would do
3 as a forensic pathologist is try to determine when this
4 person actually died; is that correct?

5 A That's one of the aspects that is evaluated.

6 Q What goes into determining when a -- an
7 individual died?

8 A It's a combination of what findings we have of
9 the state of the body after death. There are a series
10 of alterations that happen as the body normally goes
11 through the decomposition process, and then in addition,
12 you can compare those to evidence at the scene and then
13 reports of when the person was last seen alive.

14 Q Okay. And I forgot to ask you this earlier, I
15 imagine you've had to testify in court before regarding
16 these autopsy protocols?

17 A Yes, I have.

18 Q Approximately how many times have you testified
19 as an expert in court regarding these autopsies?

20 A Probably approximately 20.

21 Q As far as this particular case, Rita Cobb, did
22 you do an examination where you were able to determine
23 or give an estimate as to when Ms. Cobb died?

24 A It's part of the assessment, and on her, the
25 estimate would be based primarily on she had a
26 moderately advanced degree of decomposition,
27 putrefaction, where the body has started to be digested
28 by internal bacteria.

1 In addition, she had evidence of insect
2 activity. Primarily she had fly eggs about the head and
3 the vagina with the hatching of maggots from those eggs.

4 Q And then as far as your observations were
5 concerned, did you form an opinion as to when Ms. Cobb
6 actually died based on your observations that you just
7 mentioned?

8 A Yes. From the degree of decomposition, the
9 body was probably dead at least two days. From the
10 presence of the hatched fly eggs, which take a day after
11 they're laid, it was -- it was at least a day and then
12 the degree of decomposition it was more, probably at
13 least two days.

14 Q Okay. That's two days from when the body was
15 originally discovered?

16 A Yes.

17 Q Then as far as the external examination that
18 you performed, Rita Cobb, can you tell us if you found
19 anything unusual during your external examination?

20 A Yes. The primary abnormality on the external
21 examination is the presence of ligature. In this case,
22 it was a coat hanger that had been wrapped twice around
23 the neck, one loop low in the neck with a wind -- double
24 wind off to the right. Then it was looped back again
25 with a wind and a half on the left side of the neck.

26 Q As far as that particular coat hanger was
27 concerned, did you unwind it or did you just cut it off?

28 A The standard, since you want to be able to

1 exam -- anytime there's been a ligature, you want to be
2 able to reconstruct how it might have been wound whether
3 it was right to left. To preserve that -- those
4 details, the approach when you have any type of ligature
5 is to cut it away from the spots where it's tied or
6 wrapped and secure the ends. With a coat hanger, it was
7 a matter of cutting it since it does not spontaneously
8 unwrap.

9 Q I'm going to show you a photograph.

10 May I approach the witness, your Honor?

11 THE COURT: You may.

12 BY MR. THOMAS:

13 Q Show you what's been marked Exhibit 17.

14 Do you recognize what's depicted in Exhibit 17?

15 (Whereupon Exhibit 17 was marked
16 for identification.)

17 THE WITNESS: Yes. That's the coat hanger on
18 the lower portion, the site at which I cut across the
19 coat hanger to preserve it and remove it from the
20 body.

21 BY MR. THOMAS:

22 Q As far as the coat hanger, did you have any
23 opinion as to how tightly wrapped around the victim's
24 neck it was?

25 A It was sufficiently tight on the body itself.
26 There was actually what's called a ligature mark or
27 furrow in which the coat hanger had been sufficiency
28 impressed into the tissue that left a dried sort of

1 depression where it pushed the skin down. Then it
2 had -- I had an opportunity -- it damaged the surface of
3 the skin. So the tissues will dry out, and it will
4 leave a permanent mark in the body.

5 Q Then as far as the autopsy protocol, I'm going
6 to show you what's been marked Exhibit 48.

7 Do you recognize what's in Exhibit 48?

8 (Whereupon Exhibit 48 was marked
9 for identification.)

10 THE WITNESS: Yes. This is a copy of the
11 protocol that I generated at that time.

12 BY MR. THOMAS:

13 Q Okay. And looking at it, is it a true and
14 accurate copy of the autopsy protocol that was generated
15 by you back in 1985?

16 A Yes.

17 Q This protocol would have been prepared at or
18 near the time that you performed the autopsy?

19 A Yes.

20 Q Then as far as the ligature, I notice on the
21 autopsy protocol there is a mention of a chain.

22 A It looks like the body had several pieces of
23 jewelry, one of which is a necklace or chain that had
24 been broken and was sort of behind and trapped in the
25 ligature.

26 Q Then as far as -- you said there was other
27 pieces of jewelry.

28 Do you recall any of the other pieces of

1 jewelry?

2 A From my description, there was a watch. There
3 were wristbands and one finger ring -- bracelet, I mean.
4 Bracelets and watch and ring.

5 Q And the watch itself, did that appear to be
6 intact still on her wrist?

7 A Yes.

8 Q As far as the rest of the external examination,
9 did anything else catch you as unusual?

10 A Well, the body was found and then brought to
11 the morgue naked. So whenever we have a murder in which
12 the person's not clothed, the routine is to do an
13 examination for sexual assault. So we specifically will
14 do a careful examination of the genitalia and the inner
15 aspects of the legs to see any evidence that there has
16 been injuries.

17 Q In this case did you do that?

18 A Yes, I did.

19 Q Did you find any signs of injury?

20 A There were several faint bruises that were on
21 the inner aspect of her right leg, the largest was
22 three-quarters of an inch. Other than that, she did not
23 have any injuries of her inner thighs or of her
24 genitalia or vagina.

25 Q Before we get to some of those other questions
26 that I had, I want to show you another photograph that's
27 been marked Exhibit 33.

28 You had a chance to review Exhibit 33 before

1 you came into court?

2 A Yes, I did.

3 Q Looking at Exhibit 33, on the right knee area,
4 as the knee's bent in that photograph, there appears to
5 be several areas of discoloration on the knee.

6 A Yes. These are the injuries that were
7 essentially bruises that were there on her knee.

8 Q You're pointing using the laser pointer to the
9 jury on the inside part of her right knee that's bent
10 straight up almost?

11 A Yes.

12 Q As far as those injuries were concerned, did
13 you attribute that to possibly being a result of the
14 sexual assault or a sexual assault?

15 A It's a -- it's one possibility for that type of
16 injury.

17 Q And then as far as the lack of injuries to the
18 genitalia area and specifically her labia and vaginal
19 area, is that uncommon to find a lack of injuries in
20 that area in sexual assault cases?

21 MR. SANDERS: Objection. Lack of foundation.
22 Expertise. I'd like a chance to voir dire the
23 witness.

24 THE COURT: Overruled. You can do that with
25 cross-examination, Mr. Sanders.

26 THE WITNESS: I lost track.

27 BY MR. THOMAS:

28 Q Let me go back and get a little bit more of

1 your expertise.

2 You've had cases dealing with sexual assaults
3 before?

4 A Yes.

5 Q Okay. How many cases have you dealt with
6 dealing with sexual assaults or suspected sexual
7 assaults?

8 A Without going back and finding my notes from
9 that era, I wouldn't recall.

10 Q If you had to estimate?

11 A It was probably less than ten.

12 Q Okay. And as far as those cases were
13 concerned -- strike that.

14 Did you do any research as far as sexual
15 assaults and injuries that people received from sexual
16 assaults?

17 A Yes. As part of the forensic training,
18 essentially, we make use of various reference texts
19 because many of the injuries we might come across are
20 individually relatively uncommon, and so one of the ways
21 that we try to share what we do or don't, how we
22 interpret these, is people publish the results, they
23 will publish a series. Then we have access to those
24 reports to be able to determine if what we are seeing is
25 consistent or inconsistent with our -- what our
26 interpretations may be.

27 So as part of the reading and studying for
28 sexual assaults, one of them was the frequency or the

1 commonality of having injuries versus not having
2 injuries. So for injuries to the genitalia, the
3 presence of injuries is one that more strongly supports
4 that there may have been a forcible assault, where the
5 absence does not exclude that that did happen.

6 Q As far as these sources that you previously
7 stated that you used in doing your research in sexual
8 assaults and the injuries, are those sources normally
9 relied upon by persons in your specific scientific
10 community to come to certain opinions?

11 A Yes. We refer to them as reference texts.
12 They are textbooks that are generally written by persons
13 who have experience in the field and used by those of us
14 in training.

15 Q In this specific case, Rita Cobb, you didn't
16 attach any significance to the fact that you didn't see
17 any injuries to her genitalia area?

18 A No. As a consequence of that, part of our
19 examination of a person who may have been assaulted, we
20 routinely do a series of additional examinations rather
21 than just the -- the gross examination. We will
22 typically collect a variety of swabs from different
23 areas of the body and then examine those to see if we
24 have evidence of sexual activity.

25 Q And in this case, did you collect some swabs
26 from the victim's vaginal area?

27 A Yes, we did.

28 Q And based on the swab -- your examination --

1 strike that.

2 Did you examine the swabs?

3 A Examined a smear generated from the swab.

4 Q Okay. And based on your training and
5 experience and examining that smear, did you have an
6 opinion as to whether or not Rita Cobb had engaged in
7 sexual intercourse?

8 A Yes. On the swab, in addition to the normal
9 cells that are present in the vaginal tract, there also
10 were sperm head intermixed with those cells. That would
11 say she had sex prior to death.

12 Q Okay. Are you able to say -- or give an
13 estimate as to how soon prior to death she had sex?

14 A No. When you have a body that is starting to
15 undergo decomposition, in addition to the normal body
16 tissues, any internal tissue will also undergo
17 decomposition. If she had not been undergoing
18 decomposition, you could make an estimate over the
19 status of the sperm and the number to give you a rough
20 hint at how long they might have been present.

21 The sooner they were present, the more intact
22 they'll be and the greater the number. Over time, they
23 start deteriorating and become fewer. With her being in
24 a moderate degree of decomposition, the fact that the
25 sperm had lost their tails, normal sperm is composed of
26 an oblong head with a long tail. After intercourse,
27 those are intact for a day or two. Then their tails
28 basically start breaking off.

1 In this case, most of the sperms had the tails
2 absent, but since she was in decomposition, we couldn't
3 use that to state whether it was immediately prior to
4 death or at sometime prior to death.

5 Q Okay. Then as far as these sperm go, do you
6 have an estimate or did you estimate how much sperm you
7 actually saw?

8 A Just a semi quantitative. We make an estimate,
9 are they easy to find, are there just huge numbers, or
10 are they difficult to find. In this case, they were
11 relatively easy to find. I just said there were
12 moderate numbers. That's very, very imprecise.

13 Q As far as when you did your examination of the
14 smear, that was sometime around looks like 1:00 on
15 September 24th of 1985?

16 A Yes.

17 Q Hypothetically, if there was another smear or
18 another swab that was taken from the victim on
19 September 23rd of 1985, so let's say a day prior,
20 24 hours prior, would the number of sperm that you find,
21 would that decrease?

22 A It would be expected -- in that 24 hours, it
23 would be expected to because the vaginal tract contains
24 a large number of bacteria, and the bacteria, amongst
25 other things, will break down any cells that are in
26 their vicinity.

27 On the smear that we produce at the time of the
28 autopsy, there were a large number of bacteria in the

1 background. I would anticipate there would be some
2 digestion of the sperm by bacteria.

3 Q As far as the sperm is concerned, if the victim
4 were hypothetically alive and the victim were out and
5 about and walking around and doing daily activities,
6 what effect would that have on the amount of sperm that
7 you would find?

8 A There would be a progressive decrease in the
9 density of the sperm in the vaginal vault over time. So
10 immediately post-coitus, they tend to be fairly
11 numerous. As you do go about your daily activities with
12 gravity, the semen would be expelled and with that quite
13 a few of the sperm. In addition, the bacteria would be
14 digesting them. You expect to see a decrease in number
15 over time, and a smaller percentage that would be
16 intact.

17 Q How quick in time are we talking about as far
18 as the decrease goes?

19 A It's dependent upon factors, such as, is the
20 person lying down, up and running, did they use a
21 douche, did they take a shower. There's a variety of
22 factors that can impact the rate at which these
23 decrease. You have to factor in what is or is not.

24 Q Assuming somebody did engage in sexual
25 intercourse and did go about daily activities, would you
26 expect to see some sort of seminal fluid or sperm in the
27 woman's underwear?

28 A Commonly there are.

1 Q Okay. As far as any other external
2 observations that you made, were there any additional
3 ones or was that pretty much it?

4 A Those were the -- the significant findings.

5 Q Okay. Going to the internal examination, is
6 that the next step that you took in your autopsy of
7 Rita Cobb?

8 A Yes, it was.

9 Q What did you find in your internal examination
10 of the body?

11 A The primary abnormality on the internal
12 examination were a variety of injuries that were related
13 to deep tissues of the neck. So when we have any
14 suspicion that there may have been a ligature or manual
15 strangulation, we do a careful dissection of tissues in
16 the neck, pulling the skin up and going layer by layer
17 examining the muscles and getting down into the voicebox
18 or larynx.

19 Then we examine all of the -- there's a variety
20 of structures made of either bone or cartilage that are
21 components of the larynx or hold the larynx and tongue
22 in place and that are used for speaking. If there is a
23 strangulation, these very, very commonly are -- there
24 will be injuries to these structures.

25 Q Okay. And one of the structures is called the
26 hyoid?

27 A Yes. The hyoid is a bone up under the neck,
28 and it is essentially the anchor of your tongue, and it

1 connects your tongue to the edges of the upper portion
2 of your voicebox. It holds everything together so when
3 you talk, it resonates.

4 It's composed of bone, which in adults is
5 usually fairly hard and so, as a consequence, it becomes
6 brittle. If there is a forceful injury, it is very,
7 very common for that to fracture.

8 Q Then as far as the thyroid cartilage, is that
9 another portion of the neck?

10 A Yeah. The voicebox itself is composed of two
11 plates of cartilage that are called thyroid cartilage.
12 At the top, they have a finger extension that looks like
13 a horn -- so I assume it's a Latin word for horn is
14 cornu. You have that. The superior cornu at the top.
15 Then you have two that -- one on each side that point
16 downwards or the inferior cornu.

17 On the examination of this body, we found that
18 there were fractures on both sides of the hyoid bone.
19 In addition, on the left side of the voicebox, there was
20 a fracture both of the upper cornu and the lower cornu.

21 Directly beneath the voicebox itself, where you
22 go from the voicebox to your trachea, the main windpipe,
23 there's another ring of cartilage called the cricoid.
24 On the left side, there was a fracture of the cricoid
25 cartilage.

26 Q I'm going to show you what's been marked
27 Exhibit 20 and 19, 20 being the one on top of the
28 screen.

1 Looking at Exhibits 20 and 19, could you
2 explain to the jury what's depicted in those exhibits?

3 (Whereupon Exhibit 20 was marked
4 for identification.)

5 THE WITNESS: Yes. 20, which is the upper of
6 the images, shows the hyoid bone. If this was in the
7 body, the front of the neck would be towards the
8 screen. So on each side, you would have these little
9 tiny extensions that are called the cornu of the hyoid
10 bone. The one that is on, when looking at the screen,
11 the left side, which is the right side in the body,
12 there is a -- you can see that it suddenly tilts off
13 to the inner aspect about one-third or two-thirds the
14 way down. That is a fracture of the right cornu.

15 When you look at the other side, you see a
16 little fragment that's very, very sharply pointed
17 sticking upward, and then there's a -- the remainder of
18 the arm is also towards the inside. That's a fracture
19 on the left side of the hyoid bone. So there's
20 fractures on both sides of that bone.

21 BY MR. THOMAS:

22 Q Then looking at Exhibit 19, what does that
23 depict?

24 (Whereupon Exhibit 19 was marked
25 for identification.)

26 THE WITNESS: That is depicting the actual
27 larynx. That's the bottom portion of the larynx. If
28 I may use the pointer, it is right between my thumbs

1 you can see the edge of bone. That's the cricoid
2 cartilage. That's where it has -- normally should be
3 a smooth continuous piece. The fact that we can see
4 the edge means that it was fractured. So there is a
5 fracture of the cricoid cartilage.

6 Q As far as the hyoid's concerned, does that bone
7 move up and down on your neck a little?

8 A It usually stays firmly because it's anchored
9 to the tongue, just very, very minimally. So it's
10 usually fairly fixed as is the larynx.

11 Q As far as the amount of pressure you would have
12 to put on the neck in order to break the hyoid and break
13 the cricoid, how much pressure would you have to put?

14 A The amount of pounds per square inch, I don't
15 know. The primary importance when we examine remains is
16 that typically these -- if you're talking about intact
17 bodies as opposed to skeletal remains, because they are
18 stabilized by a large number of muscles and tendons,
19 they are reasonably protected. It takes external force
20 to break them. So this is one of the most common of the
21 abnormalities we find in strangulation.

22 Whether it's with an external object like a
23 coat hanger or it's done with your hands, in most
24 instances where a person is strangled because of the
25 struggling that typically accompanies the strangulation,
26 there is variable force. So these findings are very,
27 very strongly associated with strangulation as a method
28 of death.

1 Q Then as far as the rest of your internal
2 examination, did you notice anything else that was
3 unusual?

4 A The remainder -- other than the moderate to
5 advanced state of putrefaction, we did not identify any
6 other significant injuries to either, for instance, the
7 head did not find any internal injuries. The other only
8 item of any note, she had a common benign tumor on her
9 uterus.

10 Q And then once you do this internal examination,
11 what's the next step that you do?

12 A The next step is really two-fold. One is we
13 take, as I mentioned, samples of tissue as we examine
14 the organs. Then we will look at those microscopically.
15 In addition, while we're doing the dissection, there are
16 a variety of tissues that are saved so we can do
17 toxicological examination.

18 Normally what is collected is blood, stomach
19 contents, urine, portion of the liver, and a portion of
20 kidneys. In this case because of the degree of
21 putrefaction, the blood had all dissolved. There was no
22 blood to collect. So the -- and there was no urine in
23 the bladder. The only materials that were collected in
24 this case was stomach contents, the bile portion of the
25 liver, and a portion of the kidney.

26 Q As far as the stomach contents in this case,
27 what was collected specifically?

28 A In this case, the material that is in the

1 stomach was just mucus. There were no food contents,
2 just mucus. Normally the stomach because it has acid,
3 it has to have something protected. So it makes a sort
4 of material that's very, very slippery, mucus, that
5 protects the stomach from its own digestion. We
6 collected that.

7 The routine is to first do what's called a
8 screen where you examine by a method that will pick up
9 large quantities of drugs. See if there's a drug
10 present. Then identify the drug. Then, if there is, a
11 more-detailed examination. In this case, the only
12 materials that were found in the toxicologic examination
13 were breakdown products of putrefaction. There were no
14 other drugs that were detected during that process.
15 Only the liver and kidney were examined. The stomach
16 contents were not examined since there were no drugs
17 detected in the two organs.

18 Q Then as far as testing for alcohol, was that
19 done in this particular case?

20 A No. The problem with testing for alcohol is
21 that the same bacteria that are causing the putrefaction
22 generate their own alcohol. Once the body becomes
23 moderately decomposed, there's no way to detect alcohol.
24 There's no way of distinguishing whether that was
25 something that was ingested or whether that was created
26 by the bacteria themselves.

27 Q Okay. So that's the reason that no alcohol
28 tests were performed?

1 A And there was no blood. For alcohol -- alcohol
2 levels to have meaning, we have to know what it is that
3 the tissues are exposed to. That's in the blood. Since
4 there was no blood, there was no way of knowing what
5 these concentrations would have been at the tissue
6 level.

7 Q Then as far as manner of death and cause of
8 death, could you tell the difference between manner of
9 death and cause of death?

10 A Yes. Cause of death is defined as the
11 pathological process or injury that led to demise.
12 That's a diagnosis. The manner of death is a
13 categorization. In most jurisdictions, most deaths can
14 be; natural, you can have an accident, you can have
15 suicide, which is death at your own hands; or you can
16 have a homicide, which is death at the hands of another.
17 Then there are some cases which with a complete
18 examination and investigation you can't determine.
19 Those are undetermined.

20 Q In this case, did you have an opinion based on
21 your training and experience as to what the manner of
22 death was?

23 A Yes, ligature. Due to the inability of a
24 person to do this ligature on themselves and the
25 associated internal injuries, which would indicate a
26 struggle, this was classified as a homicide.

27 Q Then did you have an opinion as to what the
28 cause of death was in this case?

1 A Yes. It was strangulation with incomplete
2 evidence to determine whether it was purely ligature
3 strangulation or whether there might have been a
4 component manual strangulation. Manual strangulation is
5 defined as using the hands rather than an external
6 device.

7 Q So your opinion is that somebody could have
8 manually strangled the victim in this case and used the
9 ligature to strangle her some more?

10 A That's possible.

11 Q And you kind of talked about it in the manner
12 of death, how it would be difficult for somebody to
13 strangle themselves.

14 Could you tell us the process in which somebody
15 would die from strangulation?

16 A Strangulation is a method of death that really
17 can -- that condition can lead to death by several
18 different methods. Depending on what's being used for
19 strangulation, whether it's the hands, the arm, external
20 device, you can either compress the blood supply that's
21 going to the brain, you can compress the blood supply
22 that's coming back from the brain, or you can collapse
23 the airways. You can suffocate the person by closing
24 the airway. You can cut off -- which would take several
25 minutes. You can collapse the arteries that are taking
26 the blood to the brain, in which case the person could
27 actually become unconscious in less than a minute and be
28 dead within five minutes, or more commonly is primarily

1 the impact on the ability of the blood to drain from the
2 brain. If the blood cannot drain from the brain, then
3 the blood going into the brain can't move through, so it
4 doesn't get oxygen. In that case, you will go
5 unconscious. It will take a few minutes longer than if
6 you collapse the arteries. Once you have gone
7 unconscious, then it's about five minutes before you're
8 dead.

9 Q So as far as the unconsciousness, you said that
10 if they're able to cut off circulation to the brain, it
11 can happen within a minute?

12 A Within half a minute to a minute. If you can
13 collapse both of the arteries, very, very rapid.

14 Q If you can't do that, how long does it take for
15 them to go unconscious?

16 A It typically is described as taking several
17 minutes. It takes that long for the blood to build up
18 in the brain so it can no longer have new, fresh blood
19 coming in.

20 Q When you say several minutes, are we talking
21 two or three minutes or nine to ten minutes?

22 A It depends. Complications with strangulation
23 is, unless the person is incapacitated by a condition
24 such as being under the influence of drugs, they're
25 going to almost always fight. During the struggle, you
26 may have collapse of arteries and change position and it
27 may release. So it could go out for even longer than
28 just five or six minutes.

1 The length of struggle can be very, very
2 difficult to predict. It's a -- depending on how
3 quickly and how rapidly one of the critical functions,
4 whether it's arterial supply, venous drainage or the
5 air supply is cut off.

6 Q As far as the struggle is concerned, I just got
7 to thinking about something else, as far as the hyoid
8 being fractured and the cricoid being fractured, does
9 that indicate there was a sign of a struggle?

10 A That's -- that's part of -- this is part of
11 what makes those so important because the primary -- the
12 most similar cause of death to a strangulation is
13 hanging. Since a hanging person does not struggle, they
14 rarely ever have injuries to the neck. If you have a
15 person whose dead with a ligature, the presence of these
16 injuries that are related to the struggle is crucial for
17 making a distinction between those two methods of death.

18 Q Once a person goes unconscious, whether it be
19 because the blood's cut off to their brain or their
20 airways are cut off, how long after they go unconscious
21 do they actually end up dying?

22 A Typically, once the blood flow to the brain is
23 cut off, you have less than five minutes before you're
24 dead. Even if you recover, you're almost always left
25 with significant, permanent brain injury, vegetative
26 state. After five minutes, the possibility of the
27 victim surviving goes down to infinitesimal.

28 Q As far as if we're dealing with minutes,

1 overall it takes about five to ten minutes for someone
2 to strangle someone else?

3 A That's the best estimate.

4 Q Okay. And during that five to ten minutes,
5 does the pressure have to be constant or can it be
6 intermittent when you're strangling them, like, you let
7 go a little, strangle some more?

8 A It can be intermittent. That's part of the
9 struggle. Once the person is unconscious, then there's
10 a period where they no longer struggle, so the pressure
11 can be released and reapplied without having the --
12 having the additional injuries.

13 Q Okay. Then as far as once the person is
14 unconscious, at that point they can no longer fight or
15 struggle, so the person's basically left with being able
16 to do anything they want during that time period?

17 A That's correct.

18 Q Okay. As far as the examination that you did,
19 are you familiar with a term called petechiae?

20 A Yes.

21 Q Okay. Because of the decomposition in this
22 case, were you able to see that in this case?

23 A No. That's one of the changes that happens is
24 if you have this blockage of the veins draining the
25 blood from the neck, it's very common for blood vessels
26 to get totally engorged with blood, and as part of the
27 loss of oxygen that accompanies that, it's very common
28 to have the little tiny blood vessels rupture, and you

1 get little tiny bleeds. That's what petechiae is.
2 They're small, little. Pinpoint bleeds.

3 One of the common findings with asphyxia deaths
4 and strangulation is one -- asphyxial death is death due
5 to lack of oxygen. One of the common findings is the
6 presence of petechiae. They most easily are
7 identifiable in the whites of the eye.

8 In this examination we did on this person, the
9 degree of decomposition had advanced to the point to
10 where the whites of the eyes were totally obliterated by
11 the presence of putrefaction gases. The consequence is
12 we looked for petechiae but did not see them, but the
13 whites of the eyes were pretty much obliterated by the
14 postmortem changes.

15 MR. THOMAS: Okay. I don't have anything
16 further.

17 THE COURT: Mr. Sanders, you may inquire.

18 MR. SANDERS: Thank you, your Honor.

19 **CROSS-EXAMINATION**

20 BY MR. SANDERS:

21 Q Good afternoon.

22 A Good afternoon.

23 Q I don't have a lot of questions, but I have a
24 few. There was a couple of questions that the
25 prosecutor asked you that I want to follow up on. He
26 was asking questions about sex and the potential of a
27 sexual assault.

28 I believe you said you couldn't say with any

1 certainty how long before death the victim in this case
2 had sex; is that correct?

3 A That's correct.

4 Q He asked a second hypothetical. He said,
5 suppose someone was wearing underpants after sex, would
6 you find semen in the underpants, and I believe your
7 exact words were, commonly there are.

8 I assume the second half of that would be, but
9 not necessarily?

10 A That's correct.

11 Q I'm sorry. I apologize. I spoke at the same
12 time you did. What was your answer?

13 A My answer, yes, the other part of that
14 statement would be but not always.

15 Q Okay. As you examined the body, we looked at
16 photographs that have blood and things all over.

17 You washed that blood away; correct?

18 A We -- by the time we had completed the
19 examination, we did the initial examination with the
20 body as it was transported to the morgue. Once we have
21 collected trace evidence, once we have made that initial
22 examination to see if there's a pattern, sometimes blood
23 is part of your trace evidence, once we have completed
24 that, then the routine is to wash the body to determine
25 whether there are any additional changes that might be
26 obscured by the presence of blood or the fluids that may
27 be leaking out of the body.

28 Q Right. So you take the -- I think you have a

1 little hose that you use?

2 A What we were using then was a low-pressure
3 hose. The typical thing was -- it's sort of similar to
4 what you have in the kitchen except it's lower pressure.
5 It's not going to spray as much. You push the water,
6 see what washes away, and lightly rub if you needed to
7 let it wash away gently.

8 Q And so you -- you washed away the materials
9 that were on the outside of the skin; correct?

10 A Yes.

11 Q Then you could examine more closely the skin to
12 look for external injuries?

13 A Correct.

14 Q You did that?

15 A Yes.

16 Q And after you examined the entire body, I
17 believe you said, other than the neck, the only external
18 injury you found was there was some ecchymosis on the
19 inside of the right knee?

20 A Yes.

21 Q And ecchymosis is another word for a bruise?

22 A That's correct.

23 Q Okay. Now, I know that sometimes you fellows
24 have a way to determine the age of bruises.

25 Did you have that opportunity in this case?

26 A When the body is undergoing putrefactive
27 decomposition, the methods that might be used become
28 unpredictable because the aging of bruises, though it

1 can -- it essentially can only be done in a roughly
2 crude assessment because the breakdown -- what you're
3 looking for is the breakdown -- what a bruise is just
4 means nothing more than blood has seeped into the
5 tissues. So we're looking at the age of it. We look at
6 how much has the blood basically been metabolized and
7 broken down.

8 The problem with a decomposed body is those
9 same processes are undergoing for the entire body. We
10 typically do not do any specific examinations to try to
11 break them down because the inability to differentiate
12 breakdown of a bruise that may have been several days
13 old versus breakdown of the blood because the body was
14 undergoing putrefaction.

15 Q Would it be correct then to say that you cannot
16 tell with any degree of medical certainty if those
17 bruises were received Friday, Thursday, Wednesday, or
18 sometime before --

19 A That's correct.

20 Q -- the death of Ms. Cobb?

21 A That's correct.

22 Q Okay. By the way, I notice that in your
23 description of bruises, you indicated that they were a
24 different color from blue to tan to green and sometimes
25 I know that the color of a bruise -- bruises sometimes
26 morphosize (sic) in their coloration.

27 A That's part of the -- this is part of the
28 limitations of examination of a decomposing body is that

1 the normal color variations that we might use for saying
2 that this bruise is older than another bruise because
3 they go through a progression change. They start off
4 blue, then green, then brown, then yellow. The problem
5 is that the bacteria can alter the rate at which the
6 color changes occur.

7 If you look at the description of one of the
8 changes that happened with decomposition is you get
9 leakage of blood from the normal blood vessels called
10 reticularis. The reticularis varied from red to green.
11 That variation is all related to how the blood is broken
12 down in this case due to the presence of bacteria.

13 Q Thank you, sir.

14 A So --

15 Q I'm sorry.

16 A So the variations in color cannot be reliably
17 distinguished between whether this was because they were
18 different ages or it was a reflection of varying degrees
19 of decomposition.

20 Q Thank you. Excuse me just a moment, please.
21 When you looked at the -- the -- well, I've lost the
22 word.

23 What did we call the discoloration of the body
24 from the settling of blood?

25 A The liver mortis.

26 Q Thank you. In this case, did you find any
27 evidence of liver mortis on any areas besides the back
28 as if the body had laid in a different position

1 postmortem?

2 A All of the liver mortis changes was on the
3 dependent portions of the body. So we didn't have
4 evidence that there had been a movement of the body
5 after, say, specifically the liver mortis would become
6 fixed after several hours. Didn't see any evidence that
7 the body had been moved after -- the body was in the
8 position that it was found within an hour or two of
9 death.

10 MR. SANDERS: Thank you, sir. No further
11 questions on cross-examination, your Honor.

12 THE COURT: Redirect.

13 MR. THOMAS: Thank you, your Honor.

14 **REDIRECT EXAMINATION**

15 BY MR. THOMAS:

16 Q Mr. Sanders asked you about the certainty on
17 sexual assault cases as far as when sex took place.

18 Do you recall that line of questioning?

19 A Yes.

20 Q Okay. In this particular case, you have a
21 death; correct?

22 A (No audible response).

23 Q Is that yes?

24 A Yes.

25 Q And as far as the sex was concerned, based on
26 your training and experience and based on what you
27 termed a moderate amount of sperm, can you say that this
28 occurred a week prior to death?

1 A It would have to have been shorter than that.
2 Q How short?
3 A It could have been up to a day, day and a half.
4 Q Within a day and a half?
5 A Yes.

6 MR. THOMAS: Nothing further.

7 THE COURT: Mr. Sanders.

8 MR. SANDERS: I have just another question.

9 **RECROSS-EXAMINATION**

10 BY MR. SANDERS:

11 Q Is there any possibility in this case that
12 the -- that the sex was postmortem?

13 A Yes.

14 Q It could have been based on the things that you
15 saw?

16 A Yes.

17 MR. SANDERS: I have nothing further, your
18 Honor.

19 THE COURT: Mr. Thomas.

20 MR. THOMAS: Nothing further.

21 THE COURT: May Dr. Saukel be excused?

22 MR. THOMAS: Yes.

23 THE COURT: Thank you for being with us, sir.
24 You are excused.

25 Call your next witness.

26 MR. THOMAS: That was my only witness this
27 afternoon.

28 THE COURT: Okay. Folks, I told you it

1 looked like we might be done a little early today.
2 We're requesting to start tomorrow morning at 9:00.
3 Everybody have a nice evening. You're all ordered to
4 watch American Idol, I think. Something to do other
5 than talk about this case.

6 Just so you'll know, our original estimate was
7 that we would be finished by the end of next week. I
8 think that the chances are real good that we're going to
9 be finished very early next week. That's the idea of
10 what kind of timing you can expect this case to have. I
11 think Mr. Thomas intended to rest tomorrow.

12 MR. THOMAS: That's correct, your Honor.

13 THE COURT: So then we'll hear the defense
14 case. I'm working on instructions right now, so we
15 should be well within our time -- original time
16 estimate.

17 We haven't heard everything yet. You're
18 admonished that it is your duty not to converse among
19 yourselves or with anyone else about any matter
20 connected with this case nor form or express an opinion
21 on it until it's submitted to you. See everyone
22 tomorrow morning at 9:00.

23 (Whereupon the following proceedings were
24 held outside the presence of the jury:)

25 THE COURT: Where's the stipulation regarding
26 readback and stuff like that?

27 MR. SANDERS: We handed those in.

28 MR. THOMAS: I just signed it.

1 THE COURT: Let's talk about what we're going
2 to do the rest of the afternoon. I want to go over
3 instructions.

4 MR. SANDERS: That's fine with me, your
5 Honor. I think I determined -- I know that your
6 bailiff found an envelope on the floor.

7 THE COURT: We should chat about that.

8 MR. SANDERS: I --

9 THE COURT: Why don't you tell us on the
10 record, Deputy Pete Fleigner, about what you found.

11 THE BAILIFF: This morning, after we'd
12 excused the jury for lunch recess, about 11:00, I came
13 back into the courtroom. In the aisleway next to the
14 second row of pews in the gallery I found an envelope,
15 white mailing envelope, laying face down sealed on the
16 ground. On the front of the envelope, it said
17 something to the effect of, verbatim WeTip. I don't
18 remember the exact words on it, but verbatim WeTip
19 report.

20 THE COURT: Where is that envelope?

21 THE BAILIFF: It's in the exhibit closet. I
22 can retrieve it.

23 THE COURT: Did you get a chance to talk to
24 anybody about that?

25 THE BAILIFF: I did, your Honor. I spoke to
26 everyone that is currently seated in the gallery,
27 except for Ms. Caldwell, who is an interpreter and
28 asked each of them if they knew anything about the

1 envelope. Everyone told me, no. That's on both
2 sides.

3 THE COURT: Why don't you get this document
4 for me?

5 Yes, Mr. Sanders?

6 MR. SANDERS: I think that I dropped that
7 envelope, your Honor.

8 THE COURT: You think you dropped it?

9 MR. SANDERS: I think I did. May I explain?

10 THE COURT: You know, Mr. Sanders, let me say
11 that you're welcome to explain, but in my opinion
12 there's no need to explain anything. If you dropped
13 something, you dropped something. It was a sealed
14 envelope. It remains sealed. People drop things.
15 I've done that before myself, and there's a chance I
16 could do it again sometime.

17 Frankly, this was brought to my attention by
18 Deputy Fleigner. He had no idea of what the
19 significance of a WeTip transcript might possibly be. I
20 have discussed with you and the deputy district
21 attorney, John Thomas, WeTip information that you were
22 hoping I would allow into evidence. After, I think,
23 fully discussing the issue, I denied to admit that.

24 MR. SANDERS: Right.

25 THE COURT: I just want to make sure there
26 wasn't some kind of intention of influencing jurors in
27 some way other than the presentation of evidence here
28 according to the Rules of Court.

1 MR. SANDERS: Right.

2 THE COURT: So I'm -- I'm satisfied now that
3 there wasn't any kind of intent to do something that's
4 inappropriate but just simply --

5 MR. SANDERS: It was -- yes, I had a manila
6 envelope with a number of items in it. That was in my
7 manila envelope, and I believe it was something that
8 slipped out.

9 THE COURT: I don't think there's anything
10 further to say about the subject.

11 Does anyone?

12 MR. THOMAS: No, your Honor.

13 MR. SANDERS: Could I have it back though?

14 THE COURT: I have no problem with that.
15 Just treat this as question of lost and found.

16 MR. SANDERS: Thank you.

17 THE COURT: Now, as I discussed, we have the
18 signature on the stipulation. Does Mr. Yablonsky wish
19 to be present in court as we discuss potential jury
20 instructions?

21 Mr. Sanders, why don't you talk to him. Make
22 sure he understands, when we do argument and I rule on
23 what instructions are going to be given, that would be
24 done in his presence.

25 Does he want to be here for the informal
26 discussion?

27 MR. SANDERS: I'll let him know, your Honor.

28

1 (Whereupon there was a
2 pause in proceedings.)

3 MR. SANDERS: My client indicates he wishes
4 to be present.

5 THE COURT: No problem. Nevertheless, I'm
6 going to say we're not going to do this on the record.
7 We'll be in court and it will be an informal setting.
8 He's welcome to be present while we do our
9 discussions.

10 Do you agree?

11 MR. SANDERS: Yes, sir.

12 THE COURT: So at this time we're going to go
13 off the record.

14 (Whereupon proceedings were held
15 off the record.)

16 THE COURT: Okay. We are back on the record
17 in the case of People of the State of California
18 versus John Henry Yablonsky. Mr. Yablonsky's here
19 with Mr. Sanders and John Thomas is here for the
20 People along with his investigating officer,
21 Detective Alexander.

22 We have informally discussed the instructions,
23 and it's not my intention to spend more time on that
24 right now because no one is obligated to be telling me
25 exactly whether the instructions are in the right form
26 or not because there are too many unanswered questions.

27 One of them occurred to me that I thought I
28 would deal with right now so we don't have any question

1 about it tomorrow.

2 Mr. Yablonsky, you don't have to answer me
3 right now, but you heard me explain to all the jurors in
4 great detail that the constitutional right to testify or
5 not to testify is not a right held by Mr. Sanders but a
6 right held by you, and you understand that right?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: I have no idea what's going to
9 happen in this case. You've heard all the evidence
10 that's going to be presented. Mr. Sanders has heard
11 all of the evidence that is going to be presented.
12 The only thing that the jury hasn't heard is the
13 statement that you allegedly made to the police, and
14 there's no question about what's going to be in it
15 because there's no disagreement as to what's going to
16 be in it; is that right, Mr. Sanders?

17 MR. SANDERS: Yes, your Honor.

18 THE COURT: I understand you're not offering
19 it, but there isn't any grounds to exclude anything
20 except for certain things you've asked to have
21 redacted and Mr. Thomas has agreed. Therefore,
22 everyone knows what the evidence is going to be in
23 this case.

24 So tomorrow, after that -- unless someone tells
25 me otherwise, once that recording is played, I
26 anticipate, and you should anticipate, that Mr. Thomas
27 is going to say, subject to the admission of exhibits,
28 the People rest.

1 MR. SANDERS: Correct.

2 THE COURT: As soon as that happens, I'm
3 going to turn to you, Mr. Sanders, and say to you,
4 Mr. Sanders, this is the time for the defense case in
5 chief. Do you wish to present a defense or will you
6 rely on the state of the evidence and argue that the
7 People have not proved their case beyond a reasonable
8 doubt? At that time if it is your intention to do so,
9 you should call a witness.

10 MR. SANDERS: Right.

11 THE COURT: If you tell me that you're going
12 to rely on the state of the evidence, then here's what
13 it's going to mean to me. Mr. Yablonsky, it's going
14 to mean to me that you will have heard him say that,
15 and you will understand that that means that you're
16 not going to be giving testimony in this case. So if
17 that's what your intention is, that's fine. I'm not
18 going to stop while we have a meeting and discuss this
19 or give you any further warning or explanation of your
20 rights because you understand them; correct?

21 THE DEFENDANT: Correct.

22 THE COURT: So, therefore, I'll say it again,
23 if Mr. Sanders says, I'm going to rely on the state of
24 the evidence, that means that you are going to be
25 having him speak for you and the statement that he's
26 going to be making is going to include implicitly that
27 you waive your right to give testimony in this case,
28 and you understand that it's your right and not his?

1 Do you understand and agree?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Is that made clear enough in your
4 opinion, Mr. Sanders?

5 MR. SANDERS: I think it is, your Honor, yes.

6 THE COURT: By the way, I do not believe that
7 the law requires that I do this. I like to make sure
8 that no one is surprised.

9 Mr. Thomas, is that a sufficient advisal as far
10 as you're concerned?

11 MR. THOMAS: Yes, your Honor.

12 THE COURT: Then have a good evening. See
13 everybody tomorrow -- anything else that needs to be
14 put on the record?

15 MR. SANDERS: I don't believe so, sir.

16 THE COURT: Get that tape set up tomorrow
17 morning at 9:00 so we can hit the play button.

18 MR. THOMAS: I got to put Detective Alexander
19 on the stand first. Then I can hit the play button
20 after I ask him some questions.

21 THE COURT: You can set it up so we don't
22 have any delay. As long as we got Ms. Manning here,
23 is there a stipulation that the recording -- we have a
24 transcript; correct?

25 MR. THOMAS: Yes.

26 THE COURT: That the transcript of the
27 recording that is provided in this case can substitute
28 for Ms. Manning attempting to transcribe it as it is

1 played? Do you waive reporting of the recording,
2 Mr. Sanders?

3 MR. SANDERS: Yes, sir.

4 THE COURT: Mr. Thomas?

5 MR. THOMAS: Yes.

6 THE COURT: Thank you. Ms. Manning, you'll
7 be excused from recording the recorded media.

8 MR. THOMAS: Just to let the Court know, it's
9 my practice, instead of giving the jurors copies of
10 transcripts that have a hundred and some pages, to
11 just put the transcript on the screen there and go
12 along as the recording's happening.

13 THE COURT: I think it's a great practice. I
14 think you need to give me a copy of it.

15 MR. THOMAS: I have a copy for the Court.

16 THE COURT: So we can make it a part of the
17 record rather than just your PowerPoint. You're going
18 to use a PowerPoint to do that?

19 MR. THOMAS: I just hook it up to the
20 computer.

21 THE COURT: What is the program that you're
22 using?

23 MR. THOMAS: It's a Word program.

24 THE COURT: Okay. So just get me a copy so
25 that I can follow along, and so that I can mark it in
26 some way.

27 MR. THOMAS: I always do that too.

28 THE COURT: All right.

1 MR. THOMAS: Then after we're done on the
2 record, can we meet with you back there in chambers?

3 THE COURT: Today?

4 MR. THOMAS: Yes.

5 THE COURT: Mr. Sanders?

6 MR. SANDERS: Yes, sir.

7 THE COURT: Yes. We're off the record.

8 (Whereupon proceedings were

9 held off the record.)

10 (Whereupon proceedings in the above-entitled

11 matter were concluded for the day.)

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1 VICTORVILLE, CALIFORNIA; JANUARY 27, 2011;
2 DEPARTMENT NO. V-2 HONORABLE JOHN M. TOMBERLIN, JUDGE
3 A.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 morning, 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 here along with his
15 attorney, David Sanders. John Thomas is here for the
16 People along with his investigating officer,
17 Detective Robert Alexander. We're going to continue
18 with the People's case in chief.

19 Call your next witness.

20 MR. THOMAS: People's next witness is
21 Detective Alexander.

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

26 THE WITNESS: I do.

27 THE CLERK: Thank you. Please be seated.

28 THE BAILIFF: Please state your full name and

1 spell it for the record.

2 THE WITNESS: Robert Alexander R-o-b-e-r-t
3 A-l-e-x-a-n-d-e-r. Excuse me.

4 THE COURT: Good morning,
5 Detective Alexander.

6 THE WITNESS: Good morning, sir.

7 THE COURT: Your witness, Mr. Thomas.

8 MR. THOMAS: Thank you, your Honor.

9

10 **ROBERT ALEXANDER**, having been duly sworn,
11 testified as follows:

12 **DIRECT EXAMINATION**

13 BY MR. THOMAS:

14 Q What's your current occupation?

15 A Deputy sheriff for the San Bernardino County
16 Sheriff's Department.

17 Q How long have you been employed as a deputy
18 sheriff for San Bernardino County?

19 A Little over 14 years.

20 Q What's your current assignment?

21 A Detective for specialized investigations
22 division. I'm assigned to the homicide detail, and I
23 work cold homicide cases.

24 Q And as far as these cold homicide cases, do you
25 have anybody that works with you?

26 A Yes.

27 Q Who is that?

28 A I have one partner. His name is Greg Myler.

1 Q How long have you been assigned to the homicide
2 division?

3 A Over five years.

4 Q And how long have you been doing cold cases
5 for?

6 A On and off for the entire five years, but
7 specifically just cold cases, for right at three years.

8 Q Are you familiar with the cold case involving a
9 victim by the name of Rita Cobb?

10 A Yes.

11 Q And as far as that specific case, was that
12 something that you were assigned to work on?

13 A Yes.

14 Q And you were basically what's known as a case
15 agent?

16 A Yes.

17 Q What is a case agent?

18 A Case agent's responsibility is to review the
19 case, obtain all -- all the interviews that are
20 conducted at the time, analyze it, discuss with my
21 partner what the strengths and weaknesses are of the
22 case, come up with a game plan as to how we are going to
23 solve the case. I'm responsible for the investigation.

24 Q And at some point did you become familiar with
25 a person by the name of John Henry Yablonsky with a date
26 of birth of 9/30/1963?

27 A Yes.

28 Q And do you see Mr. Yablonsky here in this court

1 today?

2 A Yes, I do.

3 Q Could you point out where he's seated and tell
4 us what he's wearing?

5 A Mr. Yablonsky is seated to the left. He's
6 wearing a gray colored suit, green shirt, green tie,
7 some facial hair, bald head and glasses.

8 MR. THOMAS: May the record reflect the
9 witness has identified the defendant?

10 THE COURT: It will.

11 BY MR. THOMAS:

12 Q Did you actually at some point make contact
13 with the defendant?

14 A Yes.

15 Q Do you recall when that was?

16 A March 8, 2009.

17 Q Do you recall what day of the week that was?

18 A It was a Sunday.

19 Q As far as your contact with Mr. Yablonsky, what
20 was the purpose of your contact?

21 A To conduct an interview, and we wanted -- I
22 wanted some background information on Mr. Yablonsky. I
23 wanted to find out basically what the connection between
24 Mr. Yablonsky and Rita was.

25 Q Okay. And where did your contact with
26 Mr. Yablonsky occur?

27 A Took place at his residence in Long Beach.

28 Q And do you recall approximately what time you

1 first made contact with him?

2 A A little after 9:00 in the morning.

3 Q And then at some point during that contact did
4 you take a -- what we call a buccal swab?

5 A Yes.

6 Q What is that exactly?

7 A A buccal swab is basically -- it's -- we use a
8 cotton swab to obtain the buccal cells from inside the
9 mouth. They're inside the cheek. So we take a cotton
10 swab, rub it on the inside of the cheek to capture some
11 of the cells, and we use it as a sample.

12 Q Then in this particular case, did you do that
13 with Mr. Yablonsky; rub a cotton swab in his mouth to
14 take a sample?

15 A Yes, I did.

16 Q And as far as that sample was concerned, what
17 did you do with it?

18 A I placed it into an envelope, printed his name
19 on the envelope, placed a seal on the flap of the
20 envelope, signed it, and then placed that envelope,
21 along with another envelope that contained the same
22 sample -- we take two samples, placed that into a bigger
23 envelope, sealed that, and then eventually put that into
24 property.

25 Q That was done in accordance with the training
26 that you received as far as taking these buccal swabs?

27 A Yes.

28 Q When you book that into property, do you assign

1 a DR number to it?

2 A Yes.

3 Q What was the DR number that was assigned to
4 that particular swab?

5 A Can I refer to my notes to make sure I got it
6 exactly correct?

7 Q Would that refresh your recollection?

8 A Yes. 1331036 dash 07.

9 Q Then was there also a bar code that was
10 assigned to that --

11 A Yes, there was.

12 Q -- particular item? Do you recall what the bar
13 code was?

14 A Not off the top of my memory, but I will get
15 that for you. Bar Code Number 0960000071.

16 Q Then as far as that particular bar code, that's
17 unique to that particular item?

18 A Yes.

19 Q And then was there also an LR number associated
20 with this swab?

21 A There was.

22 Q What was the LR number?

23 A 44659.

24 Q As far as that particular swab, are you aware
25 which item number that eventually became?

26 A J-1.

27 Q That would be J dash 1?

28 A That's correct, J dash 1.

1 Q On March 8th of 2009 when you conducted this
2 interview with Mr. Yablonsky, during the interview, are
3 there certain things that you do in order to get people
4 to talk to you?

5 A Yes.

6 Q Would you call them techniques?

7 A Yes.

8 Q Part of your techniques in an interview with a
9 person you believe might be a homicide suspect is to lie
10 to them?

11 A Sometimes, yes.

12 Q Before you could do that, you have to build up
13 a rapport or trust with the individual?

14 A Yes.

15 Q In Mr. Yablonsky's case, did you go through any
16 of those techniques?

17 A Yes, I did.

18 Q During the interview, was that interview
19 recorded?

20 A Yes, it was recorded digital audio. Then
21 later -- part of it was recorded video.

22 Q As far as the digital audio portion, have you
23 had an opportunity to review a transcript, along with
24 the recording, to ensure that it was accurate?

25 A Yes.

26 Q And as far as Exhibit 49, which is the
27 recording and Exhibit 49A, which is the transcript of
28 that recording, do you believe that that's accurate to

1 the best of your ability?

2 (Whereupon Exhibits 49 and 49A were marked for
3 identification.)

4 THE WITNESS: Yes.

5 MR. THOMAS: At this time I'd be asking the
6 Court if we can play Exhibit 49. It's approximately
7 2 hours and 55 minutes. I was going to ask the Court
8 if Detective Alexander can step off the witness stand
9 and sit next to me for that time period.

10 THE COURT: Do you care where he sits?

11 MR. SANDERS: No, sir, I don't care where he
12 sits.

13 THE COURT: You can step down. I'm going to
14 explain something to the jury.

15 Ladies and gentlemen, you've heard it said that
16 he's going to play a tape. On the board -- on the
17 screen, he's going to be flashing an image. That's
18 going to be something that is a transcript that somebody
19 made. It is not evidence. It's only given to you for
20 the purpose of helping you understand the taped
21 conversation, which is the evidence.

22 Maybe it would be more accurate to say that
23 this transcript you're going to be looking at is
24 secondary evidence. My point is, if you hear something
25 on the tape that you believe is different than what you
26 are seeing on the board, you go by what's on the tape
27 because that's the actual conversation.

28 Ms. Manning, by the way, will not be reporting

1 this because the attorneys have stipulated that she may
2 be excused from having to do the tedious work of
3 transcribing multiple voices, perhaps even talking over
4 each other during the course of this interview.

5 Go ahead.

6 (Whereupon a portion of audiotape, Exhibit 49
7 was played, not reported.)

8 (Whereupon the lunch recess was taken.)
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1 VICTORVILLE, CALIFORNIA; JANUARY 27, 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 COURT: Okay. That's the end of the
10 tape -- that's the end of the tape.

11 MR. THOMAS: Yes.

12 THE COURT: Back on the record in People
13 versus John Yablonsky. Mr. Yablonsky is here with his
14 attorney, David Sanders. John Thomas is here for the
15 People along with his investigating officer,
16 Detective Robert Alexander, who is on the witness
17 stand and still under oath.

18 The record should reflect before we go on that
19 we took a morning recess since the time that we last had
20 our reporter here and we took a lunch recess. Pardon
21 me. Each time that we took a recess, I admonished the
22 jury in my normal fashion admonishing them, it is your
23 duty not to converse among yourselves or with anyone
24 else about any matter connected with this case nor form
25 or express an opinion on it until it's submitted to you.

26 Is there a stipulation that that was done in
27 accordance with general procedure after -- excuse me,
28 when we left for the morning recess and when we left for

1 the lunch recess, Mr. Thomas?

2 MR. THOMAS: Yes, your Honor.

3 THE COURT: Mr. Sanders?

4 MR. SANDERS: Yes, sir.

5 THE COURT: Is it further stipulated that
6 when we reconvened after the morning recess, and when
7 we reconvened after the noon recess, that we were
8 present with all of our 12 jurors and our three
9 alternates, Mr. Thomas?

10 MR. THOMAS: Yes.

11 THE COURT: Mr. Sanders?

12 MR. SANDERS: Yes, sir.

13 THE COURT: Okay. I think that's the
14 housekeeping we need to do.

15 You're still under oath continuing in direct
16 examination, Detective Alexander.

17 THE WITNESS: Yes, sir.

18 BY MR. THOMAS:

19 Q During the interview that we just heard, there
20 is a couple portions at the beginning of the interview
21 where I believe it was Detective Myler, for the most
22 part, was referring to missing paperwork.

23 Was that a true statement or was that a
24 statement intended to get Mr. Yablonsky to talk to you
25 more?

26 A It was intended to get Mr. Yablonsky to speak
27 with us. It wasn't true.

28 Q And as far as throughout the interview with

1 Mr. Yablonsky, there was talk with Mr. Yablonsky about
2 another individual or individuals from a family, and I
3 think he finally gave the name David Leftwich
4 (phonetic).

5 Do you recall that from the interview?

6 A Yes.

7 Q And do you recall yourself or Detective Myler
8 during the interview telling him that you've already
9 looked at that avenue or you've looked at those people
10 already?

11 A Yes.

12 Q Was that something that you had already done or
13 was that to keep the interview on track?

14 A It was basically two-fold, one to keep the
15 interview on track, but the original investigators
16 followed up on that lead.

17 Q During the interview, were there portions of
18 your interview with Mr. Yablonsky where instead of
19 giving a verbal answer he nodded his head yes or nodded
20 his head no?

21 A Yes, many times.

22 Q During the times where he did that, did you or
23 Detective Myler try to verbalize what he was doing at
24 that point by saying no or yes after the head nod?

25 A Yes.

26 Q And if you had indicated no on the recording,
27 that would have indicated that at that point he was
28 nodding his head no at that point?

1 A Yes.

2 Q There was a point in the interview or a couple
3 points in the interview where there were pauses, and it
4 looked like and sounded like Mr. Yablonsky was taking a
5 bathroom break.

6 Do you recall those?

7 A Yes.

8 Q And then there was one portion where it
9 appeared he was taking a bathroom break and you and
10 Detective Myler were whispering?

11 A Yes.

12 Q When that happened, was Mr. Yablonsky present
13 in the room?

14 A No.

15 Q On Page 99 of the transcript -- do you have a
16 copy of it up there?

17 A Yes, I do.

18 Q Do you see on the bottom of the page there was
19 a question posed by yourself, just the one time; right?
20 Never had any type of relationship with Rita? Excuse
21 me? And then Mr. Yablonsky answers, no.

22 Do you see that part?

23 A Yes.

24 Q Then after that, you ask him, no, did you ever
25 date her and there's a --

26 MR. SANDERS: Objection to this line of
27 questioning, your Honor. The evidence speaks for
28 itself, and this is cumulative.

1 MR. THOMAS: May I be heard on that?

2 THE COURT: Because of the u-h-t u-h?

3 MR. THOMAS: That's correct.

4 THE COURT: I'm going to allow this,

5 Mr. Sanders.

6 BY MR. THOMAS:

7 Q The next question, no. Did you ever date her,
8 and then Mr. Yablonsky answers, and it appears on the
9 transcript, uht uh (sic).

10 Do you recall that?

11 A Yes.

12 Q Was that a no? A yes?

13 A That was a no.

14 Q Was he also shaking his head at that point?

15 A Yes, he was.

16 Q Then the next question, kiss her, and again
17 there is a uth uh.

18 Do you see that?

19 A Yes.

20 Q Was that another no?

21 A That was another no accompanied by a shaking of
22 the head.

23 Q And then you asked, have sex with her, and then
24 there was a cell phone ringing at that point?

25 A Yes.

26 Q Did he nod his head in the negative or
27 affirmative at that point?

28 A In the negative.

1 Q And then finally you say, excuse me. I'm
2 sorry. No intimate relationship at all?

3 A Yes.

4 Q Do you see that?

5 A Yes.

6 Q Did he nod his head after you asked that
7 question?

8 A After each one of the questions, he nodded his
9 head.

10 THE COURT: Nodding the head is really one of
11 those funny things. I think nodding means, I give
12 someone the nod. I think that's an affirmative. I
13 say shake his head meaning a negative. So I really
14 don't think it's helping to use the word nod as you've
15 been using it. I think if you want to say in the
16 affirmative, in the negative, I think it's fine
17 especially if you're talking about body language, and
18 it's -- you can be specific. You better re-establish
19 that.

20 MR. THOMAS: I will. Thank you, your Honor.

21 BY MR. THOMAS:

22 Q As far as the head of Mr. Yablonsky, was he
23 shaking his in the affirmative or in the negative?

24 A He shook his head from left to right.

25 Q And did he do that on several occasions?

26 A Yes.

27 Q And that indicated to you no?

28 A That's correct.

1 Q He did that for, I think it was three or four
2 questions that were posed to him?

3 A There were many questions that he did that to,
4 but those particular ones, yes.

5 MR. THOMAS: Nothing further at this point.

6 THE COURT: Mr. Sanders.

7 **CROSS-EXAMINATION**

8 BY MR. SANDERS:

9 Q Detective Alexander, you were familiar with the
10 entire investigation that had been done up to 2009 when
11 you spoke to my client; correct?

12 A Yes.

13 Q All of the reports that had ever been generated
14 in this case were in your possession?

15 A All of the reports that I knew about were in my
16 possession, yes.

17 Q Did you later find out there was others you
18 didn't know about?

19 A No.

20 Q So when you spoke to my client, for example, I
21 don't remember if it was you or your partner that day
22 that was using the fingerprint example.

23 Was that you or your partner?

24 A That was probably me.

25 Q Okay. And you were making a point to my client
26 in the room about if you wipe a table clean and you put
27 your fingerprint on it, it's there; correct?

28 A That's correct.

1 Q And your point was that if someone examined
2 that table down at the Signal Hill Police Station, they
3 would know Mr. Yablonsky had been there because of his
4 fingerprint?

5 A Yes.

6 Q Just to be clear, you knew that there was no
7 evidence that my client's fingerprint was at Rita Cobb's
8 house?

9 A That's correct.

10 Q In fact, you already knew whose fingerprints
11 were at Rita Cobb's house?

12 A I'm not sure if there were any fingerprints
13 developed.

14 Q You didn't read the fingerprint reports?

15 A I probably did, but I don't remember all the
16 names.

17 Q Do you remember one of the glasses in the
18 kitchen had a fingerprint on it?

19 A Yes.

20 MR. THOMAS: Objection. Calls for hearsay.

21 THE COURT: Sustained.

22 BY MR. SANDERS:

23 Q And you were aware of all of the blood-typing
24 matches that had been done?

25 MR. THOMAS: Objection. Calls for hearsay.

26 MR. SANDERS: I'm not asking him for a
27 result.

28 MR. THOMAS: Then I object on relevance.

1 THE COURT: I don't know what the relevance
2 is. You want to approach so you can tell us?

3 MR. SANDERS: I'll withdraw the question,
4 your Honor.

5 THE COURT: Okay.

6 BY MR. SANDERS:

7 Q And you had -- at the time when you went to see
8 my client, you already had the DNA-hit information;
9 correct?

10 A Yes.

11 MR. SANDERS: Excuse me just a moment,
12 Detective. I have no further questions, your Honor,
13 on cross-examination.

14 THE COURT: Redirect.

15 **REDIRECT EXAMINATION**

16 BY MR. THOMAS:

17 Q When you and Detective Myler were asking
18 Mr. Yablonsky, I believe you did it on several
19 occasions, about whether or not he had any sexual
20 contact or any dating relationship with --

21 MR. SANDERS: Objection, your Honor. Beyond
22 the scope of cross-examination.

23 THE COURT: I think so.

24 MR. THOMAS: I'll withdraw the question.
25 Nothing further.

26 THE COURT: Or you can move to reopen. I
27 don't care. I'm sure Mr. Sanders doesn't mind. If
28 you want to withdraw the question, fine.

1 What do you want to do?

2 MR. THOMAS: I'd move for permission to
3 reopen.

4 THE COURT: Mr. Sanders, do you object?

5 MR. SANDERS: Yes.

6 THE COURT: Do you want to state specific
7 grounds at the bench?

8 MR. SANDERS: No, submit, your Honor.

9 THE COURT: You can reopen. I see how there
10 can be no prejudice.

11 **DIRECT EXAMINATION (reopened)**

12 BY MR. THOMAS:

13 Q As far as the question that you posed to
14 Mr. Yablonsky regarding any sexual contact or dating
15 relationship he might have had with the victim, what was
16 the purpose of constantly asking him over and over again
17 those questions?

18 MR. SANDERS: Objection, your Honor. I think
19 that that misstates the evidence.

20 THE COURT: Well, you are characterizing
21 something. I'm going to sustain the objection to the
22 question in that form.

23 BY MR. THOMAS:

24 Q What was the purpose of asking him on multiple
25 occasions?

26 THE COURT: Asking him what?

27 MR. THOMAS: The same question about --

28 THE COURT: What question?

1 MR. SANDERS: Objection to relevancy also,
2 your Honor.

3 THE COURT: I'm just going to say, you want
4 to pin it down further than that, feel free to.

5 BY MR. THOMAS:

6 Q You recall asking him questions on multiple
7 occasions regarding any dating relationship or any
8 sexual contact that he may have had with the victim in
9 this case, Rita Cobb?

10 A Yes.

11 Q What was the purpose of asking him those
12 questions on multiple occasions?

13 A Because I knew the results of the DNA testing
14 that had been completed, and I knew that there had to be
15 some sort of sexual contact, and I wanted to give him a
16 chance to explain it to me.

17 MR. THOMAS: Nothing further.

18 THE COURT: Mr. Sanders, cross.

19 MR. SANDERS: Just briefly, your Honor.

20 Thank you.

21 **CROSS-EXAMINATION**

22 BY MR. SANDERS:

23 Q Detective Alexander, I think the first time
24 that question was asked was at my client's home; is that
25 correct?

26 A That was the first time I had ever had contact
27 with your client, yes. That's correct.

28 Q Okay. Well, specifically, the first time that

1 you asked him about sexual contact with Rita Cobb, was
2 at -- at his house? You hadn't yet gone to the
3 Signal Hill Station?

4 A That's correct.

5 Q Okay. And I believe the second one was at his
6 house, and you had not yet gone to the
7 Signal Hill Station?

8 A I didn't keep count, but I believe that's
9 correct.

10 Q Then you went to the Signal Hill Station, and I
11 believe then you asked him that set of questions again;
12 is that correct?

13 A That's correct. More than once.

14 MR. SANDERS: Thank you. I don't have any
15 further questions.

16 MR. THOMAS: Nothing further.

17 THE COURT: You can step down. Thank you.
18 Call your next witness

19 MR. THOMAS: People have no further
20 witnesses. People rest subject to the admission of
21 the exhibits.

22 THE COURT: Okay. Nobody was writing out a
23 question? No. So that's the People's case in chief.

24 Mr. Sanders, this is your opportunity to put on
25 the defense case in chief or chose to rest and rely on
26 the state of the evidence.

27 What will you do?

28 MR. SANDERS: One question first, your Honor.

1 I would like to make an 1118 motion. Do you wish to
2 hear that now or at another time?

3 THE COURT: At another time.

4 MR. SANDERS: At this point, the defense
5 rests.

6 THE COURT: Ladies and gentlemen, you have
7 heard all the evidence that you're going to hear in
8 this case.

9 Counsel, why don't you approach? This will be
10 off the record for scheduling only.

11 (Whereupon a bench conference was held
12 off the record.)

13 (Whereupon the following proceedings were held in open
14 court in the presence of the jury:)

15 THE COURT: Ladies and gentlemen, I've spoken
16 to the attorneys and we're going to come back on
17 Monday. I told you we wouldn't be in session this
18 Friday because there's no way we would be likely to
19 finish the case by this Friday, but I said you might
20 be in session next Friday.

21 Well, when I tell you for sure that we're not
22 going to be in session this Friday, then I do my best to
23 keep my word because I assume people made plans
24 accordingly. We'll be back Monday morning, 9:00.
25 You'll hear the instructions on the law that applies to
26 this case, and you'll hear the arguments of the
27 attorneys. My guess is that you'll get the case for
28 deliberations sometime close to or just after the lunch

1 recess.

2 So, once again, I'll remind you, you're not
3 going to be here tomorrow. Have a nice weekend. Come
4 in ready to go 9:00 on Monday morning. You're
5 admonished that it is your duty not to converse among
6 yourselves or with anyone else about any matter
7 connected with this case nor form or express an opinion
8 on it until it's submitted to you. Have a nice, safe
9 weekend.

10 (Whereupon the following proceedings were held outside
11 the presence of the jury:)

12 THE COURT: Okay. The jury's gone.
13 Mr. Sanders and Mr. Thomas, I'll expect the two of you
14 to go over your instruction -- over your exhibits
15 together and determine what it is that you're offering
16 and what it is you're objecting to. We'll do that
17 after we take our break. That will give you
18 15 minutes to pull that information together.

19 Mr. Sanders, you have an 1118.1 motion?

20 MR. SANDERS: I do, your Honor, as to each of
21 the charges. I do not feel that there's --

22 THE COURT: Isn't it just one charge?

23 MR. SANDERS: As to the charge and --

24 THE COURT: The allegation.

25 MR. SANDERS: -- special allegation.

26 Particularly as to the special allegation, I believe
27 that there's insufficient evidence as a matter of law
28 to show the case beyond a reasonable doubt. Thank

1 you.

2 THE COURT: Mr. Thomas.

3 MR. THOMAS: There's been more than enough
4 evidence presented for this to be given to the jury on
5 Count I and the special circumstance alleged. As far
6 as Count I is concerned, there's evidence linking
7 Mr. Yablonsky to that crime scene. The evidence was
8 testified to by Don Jones --

9 THE COURT: Don't worry.

10 MR. THOMAS: The evidence was testified to by
11 Don Jones and Dr. Saukel that there was a -- depending
12 on who you believe, there was a moderate amount of
13 sperm on the victim's vaginal swab or there was a lot
14 of sperm present on the victim's vaginal swab, which
15 indicated to them that she had sex close to the time
16 of the actual murder.

17 As far as the rape allegation, I think by
18 Mr. Yablonsky basically refusing -- or denying that he
19 had sex with the victim in this case, and he was given
20 multiple opportunities to admit that, the jury can infer
21 that the sex was nonconsensual.

22 Additionally, there's evidence of a struggle at
23 the crime scene along with the victim's position at the
24 crime scene and her fully nude body that indicates that
25 there was a sexual assault of some sort that occurred at
26 or near the time of her death.

27 As far as the struggle is concerned, there was
28 a watchband that did not belong to the victim or

1 watchband pin found above her head. Also, some --
2 the -- her glasses were found on the floor. There was
3 testimony from the victim's son that she normally
4 wouldn't throw her glasses on the floor, which could be
5 inferred by the jury as an indication of a struggle.
6 The photos showed that the bedding was somewhat
7 disheveled, indicating a struggle.

8 As far as the rape is concerned, there was
9 evidence that the victim was gagged at some point or the
10 jury can infer that she was gagged by the white shorts
11 that were found protruding from her mouth.

12 Based on all that evidence, there's enough for
13 the jury to decide that Mr. Yablonsky's guilty and find
14 the special circumstance true. I'd submit.

15 THE COURT: Mr. Sanders, anything you want to
16 add?

17 MR. SANDERS: Just briefly, your Honor.
18 Everything that the prosecutor said is evidence that
19 there might have been a struggle at the time that she
20 was killed; the glasses being thrown on the floor; the
21 watchband; all of those things may be evidence that
22 she struggled while someone tried to strangle her.

23 There's no evidence that any of those things
24 happened at a time when she may have had sex, and as
25 both the doctor and the criminalist said, there's no way
26 to say that the sex happened at the same time as the
27 strangulation. I believe the doctor said it could have
28 been up to a day before. The criminalist said it could

1 have been hours before, and so with that, I'll submit.

2 THE COURT: Anything else, either side?

3 MR. THOMAS: Submit it.

4 THE COURT: Mr. Sanders.

5 MR. SANDERS: No, sir, thank you.

6 THE COURT: Mr. Sanders, there's only one
7 reasonable interpretation of the -- of all of these
8 circumstances that seems to fit, Mr. Sanders. I have
9 no idea what the jury's going to do, but I'm satisfied
10 that the reasonable explanation for these events is
11 that someone raped and killed Ms. Cobb.

12 I agree that the evidence of the struggle could
13 be that something occurred at the time that she was
14 killed and has nothing to do with having sex, but her
15 body was naked. I think that is significant -- a
16 significant circumstance. I believe that it explains
17 motive in this case. I believe that's circumstantial
18 evidence that it was murder in the commission of a rape.
19 Then there's the circumstance of your client denying any
20 sexual contact with Ms. Cobb.

21 Those things, I believe, along with all the
22 other items that were discussed in his response --
23 Mr. Thomas's response to your motion, I think those
24 things all do allow a jury to come to the conclusion
25 that there was a crime as charged including the special
26 circumstance. The 1118.1 motion is denied.

27 You said you had another motion?

28 MR. SANDERS: I do.

1 THE COURT: Go ahead.

2 MR. SANDERS: Yes. In -- on Page 106 of the
3 statement, there is a portion there, which I had asked
4 to be excluded. I'm sure the prosecutor didn't do it
5 intentionally, but he -- I gave him a long list of
6 things to be redacted from this statement. This is
7 the only one that I noticed that he failed to redact.
8 Again, accident. I'm sure that it's not because he
9 was trying to be dishonest. It's just he had a lot of
10 redacting to do.

11 If the Court were to look at -- from Page --
12 from Line 10 down to Line 11, apparently what happened
13 there is the detective showed my client a picture of
14 Ms. Cobb, and the officer makes the statement, I saw --

15 THE COURT: We saw how it tore your stomach
16 up back at the house.

17 MR. SANDERS: Yes. My objection is -- well,
18 that's objectionable. What I call this kind of
19 evidence is the human lie detector test. We don't
20 allow lie detectors because they're not reliable and
21 proved that they make mistakes.

22 This is a subjective person playing the part of
23 the lie detector test, making a statement that he saw
24 what happened to a person's stomach, which is impossible
25 to say that someone was hurt or that someone was upset.
26 It may be proper in the -- in the appropriate
27 circumstances to say, I saw someone's eyebrows raise,
28 and I saw a jaw drop. These types of characterizations

1 are inappropriate, and I would ask the judge to ask the
2 jury to disregard them.

3 THE COURT: I don't think I intend to touch
4 it. I've never seen a case that cites the human lie
5 detector test. Do you have any authority for that?

6 MR. SANDERS: I was using an analogy, your
7 Honor. In other words, a lie detector.

8 THE COURT: I understand what you're saying.
9 The thing that I'm going to tell you is that the
10 jury's already been told that detectives lie to
11 people.

12 MR. SANDERS: Okay.

13 THE COURT: You know, he could say all kinds
14 of things that are just simply not there for any
15 reason other than to get Mr. Yablonsky to talk more,
16 and I don't even know that Mr. Yablonsky's stomach was
17 torn up. I don't know that Mr. Yablonsky -- that
18 Detective Alexander believed that there was hurt in
19 Mr. Yablonsky's eyes.

20 All of those things together are just things
21 that Detective Alexander has -- has asked or stated to
22 Mr. Yablonsky. In fact, if you want, I don't mind
23 telling the jury -- you could make a motion -- perhaps,
24 we could talk about how it could be worded. I've had
25 lawyers before that have made a point that they wanted
26 me to tell the jury that what the police officer is
27 saying is not evidence.

28 MR. SANDERS: Right. I have an instruction

1 like that I'm working on.

2 THE COURT: The only thing that's -- just
3 like here, what's important is what your client says.
4 What his -- what Detective Alexander or
5 Detective Myler said to Mr. Yablonsky is only evidence
6 to the extent that it helps understand the answer that
7 your client gave. I guess what I'm saying to you,
8 Mr. Sanders, is talk to -- to Mr. Thomas about it and
9 see what can be worded. I don't think that this is
10 any type of significant error. I don't think that
11 it's even error for this to have come in. Had we been
12 fighting over this and Mr. Thomas said, I want this
13 in, and you said I want it out, I probably would have
14 left it in.

15 MR. SANDERS: Okay.

16 THE COURT: Just so you'll know, I'm not
17 saying I won't -- I said I won't touch it because I'd
18 be afraid I'd be singling out this one part. I think
19 the jury should be made aware that this is -- this
20 could be true, this may not be true. We've got more
21 time.

22 Are you going to be here tomorrow?

23 MR. SANDERS: Yes, sir.

24 THE COURT: If you want to drop off any
25 proposed type of instruction, do it as early as
26 possible, and -- now, I've got them coming back --
27 you're not going to be here tomorrow, Mr. Thomas;
28 right?

1 MR. THOMAS: No.

2 THE COURT: That means that when we come back
3 today, we're going to have to finish talking about
4 jury instructions. We'll have to take a recess.

5 MR. THOMAS: Can I put something else on the
6 record so it's clear as far as the transcript along
7 with the redacted interview? As far as any other
8 objections, I don't believe Mr. Sanders has any
9 objections other than that regarding my redaction?

10 THE COURT: That's what he said.

11 MR. SANDERS: No, I was -- I thought the
12 other redactions were very well done.

13 MR. THOMAS: Okay.

14 THE COURT: Well, by now, everyone should
15 know that the jury knows much more than the attorneys
16 do. Here's a question that was handed out -- handed
17 over too late. Jury -- this is from a juror; isn't
18 it?

19 THE BAILIFF: Yes, it is, your Honor.

20 THE COURT: The tape ended when the detective
21 said to the defendant quote "You're under arrest for
22 the murder of Rita Cobb." Question: Was the
23 defendant read the Miranda rights at that time?
24 Please let us know on Monday or when convenient.
25 Thanks.

26 I worry about little things like this. I don't
27 want the jurors to be worried about little things like
28 that, and I will tell you, quite frankly, I wish that I

1 had had this before I let the jury go. I may very well
2 allow either one of you to reopen to discuss this. I
3 don't want the jury to be confused on something that is
4 of no moment and should not enter into their
5 consideration. I don't know how we're going to do it.

6 MR. THOMAS: I think we can draw up a
7 stipulation that he was read his Miranda rights, and
8 everything was done properly.

9 THE COURT: Maybe you guys can do whatever
10 you want to do. I don't know the answer to what
11 you're going to want to do. I need to have you here
12 at 8:30 in the morning on Monday so we can get these
13 things straight.

14 In the meanwhile, we're going to take a
15 15-minute recess.

16 MR. THOMAS: Okay.

17 (Whereupon a recess was taken.)

18 THE COURT: Back on the record in the case of
19 People of the State of California versus John Henry
20 Yablonsky who is here with Mr. Sanders, his attorney.
21 Mr. Thomas is here along with Detective Alexander.

22 Did you get a chance to review the exhibits?

23 MR. THOMAS: Yes, we did.

24 MR. SANDERS: Yes, sir.

25 THE COURT: Mr. Thomas, what are the -- there
26 is the list right here.

27 THE CLERK: Yes.

28 THE COURT: Looks like we have 1 through 49A.

1 MR. THOMAS: And Mr. Sanders and I spoke. I
2 think we've agreed to all the exhibits would go into
3 evidence except for Exhibits 30, 31, 32, 38, and 40.

4 THE COURT: By stipulation?

5 MR. SANDERS: Yes, your Honor, we agree that
6 all of them will go into evidence except the ones that
7 the district attorney mentioned.

8 THE COURT: So stipulate, Mr. Thomas?

9 MR. THOMAS: Yes, your Honor.
10 (Whereupon Exhibits 1 through 29, 33 through 37 and 39
11 through 49A were admitted into evidence.)

12 MR. THOMAS: As far as the transcript is
13 concerned, both of us don't have a problem with the
14 jury getting it as an aid to Exhibit 49 itself.

15 THE COURT: Okay.

16 MR. SANDERS: That's correct.

17 THE COURT: Fine. Did anybody want to do
18 something like write a stipulation regarding the
19 Miranda issue?

20 MR. SANDERS: I like the Court's suggestion,
21 and I thought the words you used were even appropriate
22 words.

23 THE COURT: Since I never listen to myself, I
24 have no idea what I said.

25 MR. SANDERS: Something to the effect of,
26 I'll instruct the jury that they are to disregard that
27 issue.

28 THE COURT: You want me to do it informally

1 or do you want something we write up?

2 MR. SANDERS: If you prefer, I'll write
3 something up, but I think it's fine if you do it
4 informally.

5 MR. THOMAS: In the past, I used to do the
6 drug cases, and an issue that would come up would be
7 whether or not the defendant's vehicle or a person or
8 house was searched in accordance to law. The special
9 instruction that would be given usually in that case
10 would be something to the effect that, it's -- this is
11 a matter for the Court to decide, and the Court has
12 decided that it was a lawful search.

13 THE COURT: Yeah, but that's not really what
14 I'm asking you. I'm asking you whether you want to
15 write something up or for me to informally advise
16 them.

17 MR. THOMAS: I'm fine with the Court
18 informally advising them.

19 MR. SANDERS: As am I.

20 THE COURT: Somebody remind me on Monday,
21 somebody wearing glasses seated to my left. You can
22 show me that note again on Monday.

23 All right. I drafted some instructions. You
24 have them there, I think in blue. I'm going to run
25 through these, and you all can tell me -- you can tell
26 me what you think I should do when I get through telling
27 you what I'm intending to do.

28 I'm intending to give 200, 201, 202, 207,

1 208 -- no, 208 is no longer needed because it has to do
2 with somebody testifying as Jane Doe. No one has
3 testified as Jane Doe. 220 and 222, 223, 224, 226,
4 included in 226 are several bullet points. The last is,
5 has the witness engaged in other conduct that reflects
6 on his or her believability. We already have, has a
7 witness been convicted of a felony. There's only one
8 person about whom we heard of a felony conviction. The
9 next one, has the witness engaged in other conduct that
10 reflects on his or her believability. That was the one
11 that would apply to Mr. Yablonsky only under certain
12 circumstances that the evidence didn't bear those
13 circumstances out.

14 MR. SANDERS: Correct.

15 THE COURT: I'm going to strike that last
16 bullet point. Do you agree?

17 MR. THOMAS: Yes, your Honor.

18 MR. SANDERS: Yes, your Honor.

19 THE COURT: Everybody turn to 251. Anybody
20 have a problem with that language?

21 MR. SANDERS: No, sir.

22 MR. THOMAS: The only thing is with the
23 allegation, can we include special circumstance
24 instead of allegation?

25 THE COURT: Or to find the special
26 circumstance of murder committed while in the
27 commission or attempted commission of a rape. Is that
28 a fine thing to call that, a special circumstance?

1 MR. THOMAS: That's fine.

2 THE COURT: I'm giving 300, 302, and 303.
3 You know what? 303, during the trial, certain
4 evidence was admitted for a limited purpose.

5 What evidence would that have been?

6 MR. SANDERS: I can't think of any.

7 THE COURT: Taking 303 out. 316 has two
8 paragraphs, the first one refers to felony conviction,
9 the second paragraph refers to other conduct, usually
10 misdemeanors or uncharged criminality. I'm taking
11 that out.

12 MR. SANDERS: I agree, your Honor.

13 MR. THOMAS: Agreed.

14 THE COURT: 318, 332, 333, 355, 358, 359,
15 362, 370. 375 no longer applies if it ever did.

16 MR. SANDERS: Which? 375?

17 THE COURT: 375, uncharged conduct.

18 MR. SANDERS: Right.

19 THE COURT: 460 needs to be fixed. I don't
20 know how we're going to do that yet. I'm going to
21 pass over 460 for a moment.

22 MR. SANDERS: All right.

23 THE COURT: I think maybe we'd get out of
24 chronological, so we go directly to Murder 500, 520,
25 540A. That's strange language. 540A. I don't know
26 if this is something that I included that made it
27 cumbersome and confusing, but right now one says, the
28 defendant committed or attempted to commit rape or

1 attempted rape.

2 MR. SANDERS: That's correct.

3 THE COURT: That's obviously wrong. It's
4 going to be the defendant committed or attempted to
5 commit rape.

6 MR. SANDERS: Right.

7 THE COURT: The defendant intended to --
8 intended to commit rape or attempted rape and while
9 committing or attempting to commit rape, the defendant
10 did an act that caused the death of another person.

11 MR. SANDERS: You'll cross out, or attempted
12 rape?

13 THE COURT: Yes. Last paragraph, or
14 attempted rape is removed. Please refer to the
15 instruction that I will give you on that crime; right?

16 MR. SANDERS: Yes, sir.

17 MR. THOMAS: Yes.

18 THE COURT: 640, at the top of Page 13,
19 there's a blank line. The only thing that will be
20 there is the word to capital T-O. As with all the
21 charges, this is the only charge.

22 Is that instruction complete then?

23 MR. SANDERS: I believe it is, your Honor.

24 MR. THOMAS: I believe so too.

25 THE COURT: Then 700, 704, 706, 730. Now, is
26 there an allegation and a special circumstance or not?
27 Is there a special allegation?

28 MR. THOMAS: It's just a special

1 circumstance.

2 THE COURT: All right. 730 I will give you
3 on that crime. Then I'll give 1,000. After 1,000, I
4 will give 460. I think it's 460, the attempt
5 instruction? Everybody agree with that concept?

6 MR. SANDERS: Yes, sir.

7 MR. THOMAS: As far as --

8 THE COURT: Just one second.

9 MR. THOMAS: Okay.

10 THE COURT: 191 does not go in. Let's talk
11 about 460. What were you going to say?

12 MR. THOMAS: I was going to ask the Court on
13 1,000 --

14 THE COURT: Yeah.

15 MR. THOMAS: -- to add the -- the sentence
16 after, a woman must be alive at the time of the sexual
17 intercourse for a rape to occur. Intercourse with a
18 deceased victim may constitute attempted rape if the
19 defendant intended to rape a live victim under
20 People V Kelly.

21 THE COURT: Okay. But I think that doesn't
22 go at 1,000. I think it goes into 460, the attempt
23 instruction.

24 MR. THOMAS: Okay.

25 THE COURT: I think. Let's take a look
26 at 460 now. It's, the defendant is charged with
27 attempted rape. It should say --

28 MR. SANDERS: The defendant is charged --

1 THE COURT: The special circumstance -- in
2 fact, let's go up to 1,000. The defendant -- there is
3 a special circumstance alleged as to -- as to the
4 charge of murder. I'm going to take out, there is,
5 and say, a special circumstance alleged as to the
6 charge of murder is that -- or that -- what's the
7 language of the special circumstance? The -- is that
8 the murder occurred in the process?

9 MR. THOMAS: Commission or attempted
10 commission.

11 THE COURT: Occurred in the commission of --
12 commission or attempted commission of rape. To prove
13 that special circumstance...

14 MR. SANDERS: To prove the defendant is
15 guilty of that special circumstance --

16 THE COURT: I'm taking that out. To prove
17 the defendant -- to prove that special circumstance is
18 true, the People must prove that. Then I'll give 1,
19 2, 3 and 4. I'll give that whole -- I'll give the
20 whole instruction, 1,000?

21 MR. SANDERS: Yes, sir.

22 THE COURT: Then for 460 --

23 MR. SANDERS: We're going to start off the
24 same way we did in 1,000?

25 THE COURT: No. Should -- under 1,000,
26 should it say, Number 1, the defendant had sexual
27 intercourse -- had or attempted to have sexual
28 intercourse with a woman?

1 MR. SANDERS: I don't think so if we're going
2 to have 460.

3 THE COURT: I'm thinking what I would do --
4 so 1,000 could read, there is a special circumstance
5 alleged as to the charge of murder that the murder
6 occurred in the commission or attempted commission of
7 rape. To prove that special circumstance is true, the
8 People, may prove that the defendant raped
9 Rita Mabel Cobb by establishing all of the following.
10 Then put everything here that goes into 1,000. Then
11 I'd put the same preamble on 460 and say, to prove
12 this special circumstance is true, you know, that --
13 use the term attempted rape. Say, to prove that the
14 defendant attempted to rape -- you know what,
15 Mr. Thomas, why don't you do this?

16 MR. THOMAS: I would suggest instead of may,
17 use the word must, and as far as the bottom paragraph
18 is concerned, 1,000, refer to Instruction 460 for
19 elements of an attempted rape.

20 THE COURT: What I'd like you to do is I'd
21 like you to draft 1,000 and 460 any way that you think
22 makes sense and email it to me.

23 MR. THOMAS: I'll email a copy of it to
24 Mr. Sanders.

25 MR. SANDERS: That's fine.

26 THE COURT: You can do that tomorrow; right?

27 MR. THOMAS: Yeah.

28 THE COURT: So I can get it in final form.

1 MR. THOMAS: That's fine.

2 THE COURT: Mr. Sanders is going to be here;
3 right?

4 MR. SANDERS: I am, your Honor.

5 THE COURT: You don't object to Mr. Sanders
6 coming by and talking about instructions if he comes
7 up with something?

8 MR. THOMAS: No.

9 THE COURT: Okay. What we'll do is talk
10 about the -- whether or not that -- this is
11 satisfactory. I'm concerned that we're going to be
12 taking -- I do think that 1,000 should be used and 460
13 should come after 1,000. It needs to be cleaned up.
14 It's obviously a special circumstance. It's not an
15 allegation. It's not a charge.

16 Does that satisfy everyone?

17 MR. SANDERS: Yes, sir.

18 MR. THOMAS: That's fine.

19 THE COURT: So other than that --

20 MR. SANDERS: We're not using 1191?

21 THE COURT: We're not using 1191. We're
22 going to -- straight to 3550.

23 MR. SANDERS: No objection to that.

24 THE COURT: Did you look at the verdict forms
25 and statement of the offense?

26 MR. SANDERS: The ones that were provided by
27 Mr. Thomas?

28 THE COURT: Yes.

1 MR. SANDERS: Yep.

2 THE COURT: I would tract this language for
3 1,000, the -- for the preamble to 1,000 and to 460. I
4 would pull the language from the statement of the
5 offense, and I would seriously consider combining
6 these instructions into one. 1,000 and 460 don't
7 necessarily have to be separate instructions. You can
8 say, this special circumstance can be established by
9 the act being committed or the attempted act. You can
10 put in attempted in 1,000 perhaps.

11 MR. THOMAS: Okay.

12 THE COURT: Okay. I think that's it.
13 Anything else that needs to be said?

14 MR. SANDERS: No, sir. We'll see you what
15 time on Monday?

16 MR. THOMAS: No, your Honor.

17 THE COURT: 4:00 in the morning is what I was
18 thinking. If I'm not here yet, just hold the light
19 open (sic). 8:30.

20 MR. SANDERS: 8:30, Monday. I hope I
21 remember that. I'll try to remember that. I'll do my
22 best.

23 THE COURT: Write it down somewhere,
24 Mr. Sanders. I'm sure you'll do fine. Thank you
25 everyone.

26 MR. THOMAS: Thank you.

27 (Whereupon proceedings in the above-entitled
28 matter were concluded for the day.)

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

4 (Appearances as heretofore mentioned.)

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

6 -oOo-

7 (Whereupon the following proceedings were held outside
8 the presence of the jury:)

9 THE COURT: Back on the record in the case of
10 People of the State of California versus John Henry
11 Yablonsky. The jury's not present. Mr. Yablonsky is
12 with his attorney, Mr. Sanders. Mr. Thomas and
13 Detective Alexander are here for the People.

14 Did you each get a copy of the jury
15 instructions now?

16 MR. THOMAS: Yes, your Honor.

17 MR. SANDERS: Yes, your Honor.

18 THE COURT: Did you get a chance to run
19 through them and look at them?

20 MR. THOMAS: Yes, your Honor.

21 MR. SANDERS: Yes, sir.

22 THE COURT: Are these in agreement with what
23 I said I was going to give?

24 MR. SANDERS: I did not notice anything
25 either way that you said you weren't and it's there
26 and you said it would be there and it's not.

27 MR. THOMAS: The only thing that I noticed is
28 that the Court is giving 1,000 and 460.

1 THE COURT: Okay. That's not supposed to
2 have happened.

3 MR. SANDERS: That's true.

4 THE COURT: Would you call Dana back?

5 MR. THOMAS: The only thing that should be
6 shown should be 460 instead of 1,000.

7 THE COURT: Yeah. That concerns me, frankly,
8 that in some way Cheryl did not leave the final draft
9 with Ms. Tyler because there was more -- I actually
10 have proposed in my final draft it would read 1,000
11 slash 460, that is to say, the single instruction.

12 Off the record.

13 (Whereupon proceedings were
14 held off the record.)

15 THE COURT: Counsel, those of you who may not
16 recall, I like to do what you -- what's more
17 comfortable for you. I can instruct first, and you
18 can argue second, or you can argue first, and I can
19 instruct second.

20 What do you like to do, Mr. Thomas?

21 MR. THOMAS: I'd like the Court to instruct
22 first.

23 THE COURT: Mr. Sanders, I know that's your
24 preference.

25 MR. SANDERS: It is my preference.

26 THE COURT: That's what we're going to do.
27 The other thing, I guess, I want to say is, you know
28 I'm not going to give the verdicts -- final

1 verdicts -- I will give them a statement of offense,
2 but the verdict and that kind of stuff I give with
3 3550, which I do after you finish your closing
4 arguments.

5 MR. THOMAS: That's fine.

6 MR. SANDERS: Good.

7 MR. THOMAS: Did the Court want to put on the
8 record as far as the stuff we discussed?

9 THE COURT: I don't think I needed to other
10 than to say there's an issue that the juror brought up
11 something about Miranda.

12 Also, Mr. Sanders did propose a jury
13 instruction that essentially tells the jury that the
14 statement -- statements made by a police officer to a
15 defendant in an interview are hearsay. While that may
16 be correct, it wasn't an objection at the time. I'm
17 afraid going backward might affect how the jury would
18 understand it and get confused.

19 I thought I would talk to them about that and
20 explain that the things that Detective Alexander says
21 aren't necessarily true; that that was even part of what
22 they heard you ask Detective Alexander in your direct
23 examination.

24 You both agreed that was a sufficient covering
25 of those two issues; right?

26 MR. THOMAS: Yes.

27 MR. SANDERS: Yes, your Honor, with one
28 exception. I did make an objection back then. In

1 fact, I made two of them. I just want this to be part
2 of the record, please.

3 THE COURT: Sure.

4 MR. SANDERS: The first one was when
5 Mr. Thomas gave me the transcript, I marked the places
6 that I objected to. He indicated he would delete
7 those.

8 THE COURT: There was one he did not delete.

9 MR. SANDERS: There was one he did not
10 delete. When I noticed it, I didn't want to draw
11 attention to it right then. Immediately afterwards, I
12 told the Court and asked the jury be instructed to
13 disregard that part, and the Court did --

14 THE COURT: Did that.

15 MR. SANDERS: -- did not, and I submitted a
16 jury instruction. I would like that jury instruction
17 to be part of the record.

18 THE COURT: Did you submit it in writing or
19 just an email?

20 MR. SANDERS: Just an email.

21 THE COURT: Get a copy of it. We'll mark it
22 and make it part of the record.

23 MR. SANDERS: I'll do that. That was denied.

24 THE COURT: Right, because I believed that
25 you said it was sufficient when -- when we had an
26 off-the-record discussion this morning or it may have
27 been on the record, but informal discussion, I thought
28 you said that my talking about it would be sufficient

1 if I explain what the officer said isn't true.

2 MR. SANDERS: That would be my alternative
3 choice. My first choice is still to have an
4 instruction. If the Court does not want to give that
5 one, then I agree with the Court's procedure.

6 THE COURT: Okay. Well, if Mr. Thomas says
7 there's no authority for that instruction, I don't --

8 MR. SANDERS: My authority is People versus
9 Goshen, your Honor, where the Court did give that
10 instruction.

11 THE COURT: No requirement of it being -- no
12 authority for it being required is what I meant to
13 say.

14 MR. SANDERS: That's right.

15 THE COURT: I think I'm going to be able to
16 cover it in such a way that's going to avoid any
17 problems.

18 Let's get the jury in.

19 (Whereupon the following proceedings were held in open
20 court in the presence of the jury:)

21 THE BAILIFF: Remain seated. Come to order.
22 Court is now in session.

23 THE COURT: Good morning, ladies and
24 gentlemen. Welcome back to Department 2, where we are
25 continuing in the trial of the People of the State of
26 California versus John Henry Yablonsky. Mr. Yablonsky
27 is here along with his attorney, David Sanders.
28 John Thomas is here for the People along with

1 Detective Alexander, his investigating officer.

2 This is the time, ladies and gentlemen, that
3 you're going to hear the instructions on the case.
4 Before I get to that point, there are two matters that I
5 want to cover, and I'm going to do it informally.

6 Someone on the jury writes this question: The
7 tape ended when the detective said to the defendant,
8 quote "You're under arrest for the murder of Rita Cobb."
9 Then it says question; was the defendant read the
10 Miranda rights at that time? Please let us know on
11 Monday or when convenient.

12 So the Miranda rights that we refer to comes
13 from a case called Miranda versus Arizona from back in
14 the 1960s. Sometimes it's something that people know a
15 little bit about -- a little bit about, but they may not
16 know everything about it. Let me say this: Whether or
17 not a statement is in violation of a Miranda right or
18 Miranda rights is a decision that is made by a judge and
19 not a jury. It's a legal question.

20 If the judge determines that Miranda rights
21 should have been given but were not, the jury would
22 never hear the statement. I would simply say that
23 statement can't be heard by the jury. In this instance,
24 you've heard the statement. Suffice it to say, I have
25 ruled the statement is admissible and that Miranda
26 rights are nothing that the jury should be concerned
27 about. I hope that's clear to everyone. Don't
28 speculate about something that's not part of what's

1 going on in this case.

2 Counsel, do you agree?

3 MR. THOMAS: Yes.

4 MR. SANDERS: Yes, sir.

5 THE COURT: All right. We started talking
6 about the statement that was made by Mr. Yablonsky. I
7 will remind you of something. That is this:
8 Mr. Thomas even brought it out with the direct
9 examination of Detective Alexander. Sometimes the
10 police intentionally lie or make things up when
11 they're talking to defendants.

12 A defendant's statement can be used against
13 him. So what he says is called an admission, by the
14 way. You can take that as something you can use against
15 him, but you can only take the statements of the
16 policeman, interviewer, as true to the extent that it
17 helps you to understand the response the defendant
18 gives.

19 As you've heard, a police officer might say
20 something intentionally to a defendant that is not true.
21 So it's -- what's important is not what the police
22 officer says except to the extent that it helps you
23 understand the defendant's answer. That is what you are
24 concerned with, whether you believe it or not is up to
25 you, but you can use that as an admission against the
26 defendant.

27 Have I explained that correctly, Mr. Thomas?

28 MR. THOMAS: Yes, your Honor.

1 THE COURT: Mr. Sanders?

2 MR. SANDERS: I believe so, sir.

3 THE COURT: Now, I'm going to tell you to put
4 down your pencils and pens and notebooks because I've
5 got quite a bit of reading to do. These are the
6 instructions that I'm going to give you on the law
7 that applies to this case. Some of these are general
8 instructions, some of these are specific instructions.

9 Just know that I'm going to go through them
10 rather quickly as I read because I don't believe that
11 reading them more slowly gives any benefit in your
12 comprehension. I'm going to be flashing these
13 instructions up on the board so you can read them along
14 with me. I will give you copies of these instructions
15 in writing to go back into the jury deliberation room,
16 and you'll have plenty of chance to look at them when
17 deliberations start.

18 I haven't been in the 21st Century for long
19 yet. I'm kind of low-tech generally.

20 Remember when you saw the transcript, I told
21 you to go by the transcript, see if it helps you
22 understand what's on the tape, but the tape-recorded
23 media is the original. Here we go.

24 "Members of the jury, I will now
25 instruct you on the law that applies
26 to this case. I will give you a copy
27 of the instructions to use in the jury
28 room. The instructions that you

1 receive may be printed, typed or
2 written by hand. Certain sections may
3 have been crossed out or added.
4 Disregard any deleted sections and do
5 not try to guess what they might have
6 been. Only consider the final version
7 of the instructions in your
8 deliberations.

9
10 "You must decide what the facts
11 are. It is up to all of you, and you
12 alone, to decide what happened, based
13 only on the evidence that has been
14 presented to you in this trial.

15
16 "Do not let bias, sympathy,
17 prejudice, or public opinion influence
18 your decision. Bias includes, but is
19 not limited to, bias for or against
20 the witnesses, attorneys, defendant or
21 alleged victim based on disability,
22 gender, nationality, national origin,
23 race or ethnicity, religion, gender
24 identity, sexual orientation, age, or
25 socioeconomic status.

26
27 "You must follow the law as I
28 explain it to you, even if you

1 disagree with it. If you believe that
2 the attorneys' comments on the law
3 conflict with my instructions, you
4 must follow my instructions.

5
6 "Pay careful attention to all of
7 these instructions and consider them
8 together. If I repeat any instruction
9 or idea, do not conclude that it is
10 more important than any other
11 instruction or idea just because I
12 repeated it.

13
14 "Some words or phrases that may
15 be used during this trial have legal
16 meanings that are different from their
17 meanings in everyday use. These words
18 and phrases will be specifically
19 defined in the instructions. Please
20 be sure to listen carefully and follow
21 the definitions that I give you.
22 Words and phrases not specifically
23 defined in the instructions are to be
24 applied using their ordinary, everyday
25 meanings.

26
27 "Some of these instructions may
28 not apply depending on your findings

1 about the facts of the case. Do not
2 assume just because I give a
3 particular instruction that I am
4 suggesting anything about the facts.
5 After you have decided what the facts
6 are, follow the instructions that do
7 apply to the facts as you find them.

8
9 "Do not do any research on your
10 own or as a group. Do not use a
11 dictionary, the Internet, or other
12 reference materials. Do not
13 investigate the facts or law. Do not
14 conduct any experiments, or visit the
15 scene of any event involved in this
16 case. If you happen to pass by the
17 scene, do not stop or investigate.

18
19 "You have been given notebooks
20 and may have taken notes during the
21 trial. You may use your notes during
22 deliberations. The notes are for your
23 own individual use to help you
24 remember what happened during the
25 trial. Please keep in mind that your
26 notes may be inaccurate or incomplete.
27 If there is a disagreement about the
28 testimony and stipulations at trial,

1 you may ask that the court reporter's
2 record be read to you. It is the
3 record that must guide your
4 deliberations, not your notes. You
5 must accept the court reporter's
6 record as accurate.

7
8 "Please do not remove your notes
9 from the jury room.

10
11 "At the end of the trial, your
12 notes will be collected and destroyed.

13
14 "It is alleged that the crime
15 occurred on or about September 20th,
16 1985. The People are not required to
17 prove that the crime took place
18 exactly on that day but only that it
19 happened reasonably close to that day.

20
21 "The fact that a criminal charge
22 has been filed against the defendant
23 is not evidence that the charge is
24 true. You must not be biased against
25 the defendant just because he has
26 been arrested, charged with a crime,
27 or brought to trial.

28

1 "A defendant in a criminal case
2 is presumed to be innocent. This
3 presumption requires that the People
4 prove each element of a crime and
5 special allegation beyond a reasonable
6 doubt. Whenever I tell you the People
7 must prove something, I mean they must
8 prove it beyond a reasonable doubt.
9

10 "Proof beyond a reasonable
11 doubt is proof that leaves you with an
12 abiding conviction that the charge is
13 true. The evidence need not eliminate
14 all possible doubt because everything
15 in life is open to some possible or
16 imaginary doubt.
17

18 "In deciding whether the People
19 have proved their case beyond a
20 reasonable doubt, you must impartially
21 compare and consider all the evidence
22 that was received throughout the
23 entire trial. Unless the evidence
24 proves the defendant guilty beyond a
25 reasonable doubt, he is entitled to an
26 acquittal and you must find him not
27 guilty.
28

1 "You must decide what the facts
2 are in this case. You must use only
3 the evidence that is presented in the
4 courtroom. Evidence is the sworn
5 testimony of witnesses, the exhibits
6 admitted into evidence, and anything
7 else I told you to consider as
8 evidence.

9
10 "Nothing that the attorneys say
11 is evidence. In their opening
12 statements and closing arguments, the
13 attorneys will discuss the case, but
14 their remarks are not evidence. Their
15 questions are not evidence. Only the
16 witnesses' answers are evidence. The
17 attorneys' questions are significant
18 only if they help you understand the
19 witnesses' answers. Do not assume
20 that something is true just because
21 one of the attorneys asks a question
22 that suggested it was true.

23
24 "During the trial, the attorneys
25 may have objected to questions or
26 moved to strike answers given by the
27 witnesses. I ruled on the objections
28 according to the law. If I sustained

1 an objection, you must ignore the
2 question. If the witness was not
3 permitted to answer, do not guess what
4 the answer might have been or why I
5 ruled as I did. If I ordered
6 testimony stricken from the record,
7 you must disregard it and must not
8 consider that testimony for any
9 purpose.

10
11 "You must disregard anything you
12 saw or heard when the court was not in
13 session, even if it was done or said
14 by one of the parties or witnesses.

15
16 "During the trial you were told
17 that the People and the defense agreed
18 or stipulated to certain facts. This
19 means that they both accept those
20 facts as true. Because there is no
21 dispute about those facts, you must
22 also accept them as true.

23
24 "The court reporter has made a
25 record of everything said during the
26 trial. If you decide that it is
27 necessary, you may ask the court
28 reporter's notes be read to you. You

1 must accept the court reporter's notes
2 as accurate.

3
4 "Facts may be proved by direct or
5 circumstantial evidence. Direct
6 evidence can prove a fact by itself.
7 For example, if a witness testified he
8 saw it raining outside before he came
9 in the courthouse, that testimony is
10 direct evidence that it was raining.
11 Circumstantial evidence may also be
12 called indirect evidence.
13 Circumstantial evidence does not
14 directly prove the fact to be decided
15 but is evidence of another fact or
16 group of facts from which you may
17 conclude the truth of the fact in
18 question. For example, if a witness
19 testified that he saw someone come
20 inside wearing a raincoat covered with
21 drops of water, that testimony is
22 circumstantial evidence because it may
23 support a conclusion that it was
24 raining outside.

25
26
27 "Both direct and circumstantial
28 evidence are acceptable types of

1 evidence to prove or disprove the
2 elements of a charge including intent
3 and mental state and acts necessary to
4 a conviction and neither is
5 necessarily more reliable than the
6 other. Neither is entitled to any
7 greater weight than the other. You
8 must decide whether a fact in issue
9 has been proved based on all the
10 evidence.

11
12 "Before you may rely on
13 circumstantial evidence to conclude
14 that a fact necessary to find the
15 defendant guilty has been proved, you
16 must be convinced that the People have
17 proved each fact essential to the
18 conclusion beyond a reasonable doubt.

19
20 "Also, before you may rely on
21 circumstantial evidence to find the
22 defendant guilty, you must be
23 convinced that the only reasonable
24 conclusion supported by the
25 circumstantial evidence is that the
26 defendant is guilty. If you can draw
27 two or more reasonable conclusions
28 from the circumstantial evidence, and

1 one of those reasonable conclusions
2 points to innocence and the other to
3 guilt, you must accept the one that
4 points to innocence. However, when
5 considering circumstantial evidence,
6 you must accept only reasonable
7 conclusions and reject any that are
8 unreasonable.

9
10 "You alone must judge the
11 credibility or believability of the
12 witnesses. In deciding whether
13 testimony is true and accurate, use
14 your common sense and experience. You
15 must judge the testimony of each
16 witness by the same standards setting
17 aside any bias or prejudice you may
18 have. You may believe all, part, or
19 none of any witness's testimony.
20 Consider the testimony of each witness
21 and decide how much of it you believe.

22
23
24 "In evaluating a witness's
25 testimony, you may consider anything
26 that reasonably tends to prove or
27 disprove the truth or accuracy of that
28 testimony. Among the factors that you

1 may consider are:

2 "How well could the witness see,
3 hear, or otherwise perceive the things
4 about which the witness testified?

5 "How well was the witness able to
6 remember and describe what happened?

7 "What was the witness's behavior
8 while testifying?

9 "Did the witness understand the
10 questions and answer them directly?

11 "Was the witness's testimony
12 influenced by a factor such as bias or
13 prejudice, a personal relationship
14 with someone involved in the case, or
15 a personal interest in how the case is
16 decided?

17 "What was the witness's attitude
18 about the case or about testifying?

19 "Did the witness make a statement
20 in the past that is consistent or
21 inconsistent with his or her
22 testimony?

23 "How reasonable is the testimony
24 when you consider all the other
25 evidence in the case?

26 "Did other evidence prove or
27 disprove any fact about which the
28 witness testified?

1 "Did the witness admit to being
2 untruthful?

3 "Has the witness been convicted
4 of a felony?

5
6 "Do not automatically reject
7 testimony just because of
8 inconsistencies or conflicts.
9 Consider whether the differences are
10 important or not. People sometimes
11 honestly forget things or make
12 mistakes about what they remember.
13 Also, two or more people may witness
14 the same event yet see or hear it
15 differently.

16
17 "If you do not believe a
18 witness's testimony that he or she no
19 longer remembers something, that
20 testimony is inconsistent with the
21 witness' earlier statement on that
22 subject.

23
24 "If you decide that a witness
25 deliberately lied about something
26 significant in this case, you should
27 consider not believing anything that
28 witness says. Or, if you think the

1 witness lied about some things but
2 told the truth about others, you may
3 simply accept the part that you think
4 is true and ignore the rest.

5
6 "The crimes charged in this case
7 require proof of the union or joint
8 operation of act and wrongful intent.

9
10 "For you to find a person guilty
11 of the crime of murder as charged in
12 Count I or to find the special
13 circumstance of murder committed while
14 in the commission or attempted
15 commission of rape true" -- and there
16 Should be a different punctuation mark instead of that
17 period. The one you get is going to have a comma instead of
18 a period where it says, rape period true. There should not
19 be anything there; should there? Is that right?

20 I'll read that paragraph again. Ignore the
21 period. It's not going to be there in the copy that you
22 get.

23 "For you to find a person guilty
24 of the crime of murder as charged in
25 Count I or to find the special
26 circumstance of murder committed while
27 in the commission or attempted
28 commission of rape true, that person

1 must not only commit the prohibited
2 act, but must do so with specific
3 intent and mental state.

4
5 "The act and specific mental
6 state required is explained in the
7 instruction for that crime or
8 allegation.

9
10 "Neither side is required to call
11 all witnesses who may have information
12 in the case or produce all physical
13 evidence that might be relevant.

14
15 "The testimony of only one
16 witness can prove any fact. Before
17 you conclude that the testimony of one
18 witness proves a fact, you should
19 carefully review all the evidence.

20
21 "If you determine there is a
22 conflict in the evidence, you must
23 decide what evidence, if any, to
24 believe. Do not simply count the
25 number of witnesses who agree or
26 disagree on a point and accept the
27 testimony of the greater number of
28 witnesses. On the other hand, do not

1 disregard the testimony of any witness
2 without reason or because of prejudice
3 or desire to favor one side or the
4 other. What is important is whether
5 the testimony or any other evidence
6 convinces you, not just the number of
7 witnesses who testify about a certain
8 point.

9
10 "If you find that a witness has
11 been convicted of a felony, you may
12 consider that fact only in evaluating
13 the credibility of the witness's
14 testimony. The fact of a conviction
15 does not necessarily destroy or impair
16 a witness's credibility. It is up to
17 you to decide the weight of that fact
18 and whether that fact makes the
19 witness less believable.

20
21 "You have heard evidence of
22 statements that a witness made before
23 the trial. If you decide that a
24 witness made those statements, you may
25 use those statements in two ways:

26 "1. To evaluate whether the
27 witness' testimony in court was
28 believable; and

1 "2. As evidence that the
2 information in those earlier
3 statements is true.
4

5 "Witnesses were allowed to
6 testify as experts and to give
7 opinions. You must consider the
8 opinions but are not required to
9 accept them as true or correct. The
10 meaning and importance of any opinion
11 are for you to decide. In evaluating
12 the believability of an expert
13 witness, follow the instructions about
14 the believability of witnesses
15 generally. In addition, consider the
16 expert's knowledge, skill, experience,
17 training and education, the reasons
18 the expert gave for any opinion, and
19 the facts or information on which the
20 expert relied in reaching that
21 opinion. You must decide whether
22 information on which the expert relied
23 was true and accurate. You may
24 disregard any opinion that you find
25 unbelieve, unreasonable or unsupported
26 by the evidence.
27

28 "An expert witness may be asked a

1 hypothetical question. A hypothetical
2 question asks the witness to assume
3 certain facts are true and to give an
4 opinion based on the assumed facts.
5 It is up to you to decide whether an
6 assumed fact has been proved. If you
7 conclude that an assumed fact is not
8 true, consider the effect of the
9 expert's reliance on that fact in
10 evaluating the expert's opinion.

11
12 "Witnesses, who were not
13 testifying as experts, gave their
14 opinions during the trial. You may
15 but are not required to accept those
16 opinions as true or correct. You may
17 give the opinions whatever weight you
18 think appropriate. Consider the
19 extent of the witness's opportunity to
20 perceive the matters on which his or
21 her opinion is based, the reasons the
22 witness gave for any opinion, and the
23 facts or information on which the
24 witness relied in forming that
25 opinion. You must decide whether
26 information on which the witness
27 relied was true and accurate. You may
28 disregard all or any part of an

1 opinion that you find unbelievable,
2 unreasonable or unsupported by the
3 evidence.

4
5 "The defendant has an absolute
6 constitutional right not to testify.
7 He or she may rely on the state of the
8 evidence and argue that the People
9 have failed to prove the charges
10 beyond a reasonable doubt. Do not
11 consider for any reason at all the
12 fact that the defendant did not
13 testify. Do not discuss that fact
14 during your deliberations or let it
15 influence your decision in any way.

16
17 "You've heard evidence that the
18 defendant made oral statements before
19 the trial. You must decide whether or
20 not the defendant made any such
21 statement in whole or in part. If you
22 decide that the defendant made such
23 statements, consider the statements
24 along with all the other evidence in
25 reaching your verdict. It is up to
26 you decide what importance to give
27 such statements.

28

1 "The defendant may not be
2 convicted of any crime based on his
3 out-of-court statements alone. You
4 may only rely on the defendant's
5 out-of-court statements to convict him
6 if you conclude that other evidence
7 shows that the charged crime was
8 committed.

9
10 "That other evidence may be
11 slight and need only be enough to
12 support a reasonable inference that a
13 crime was committed.

14
15 "The identity of the person who
16 committed the crime and the degree of
17 the crime may be proved by the
18 defendant's statements alone.

19
20 "You may not convict the
21 defendant unless the People have
22 proved his guilt beyond a reasonable
23 doubt.

24
25 "If a defendant made a false or
26 misleading statement before this trial
27 relating to the charged crime, knowing
28 the statement was false or intending

1 to mislead, that conduct may show he
2 was aware of his guilt of the crime
3 and you may consider it in determining
4 his guilt.

5
6 "If you conclude that the
7 defendant made the statement, it is up
8 to you to decide its meaning and
9 importance. However, evidence that
10 the defendant made such a statement
11 cannot prove guilt by itself.

12
13 "The People are not required to
14 prove that the defendant had a motive
15 to commit the crime charged. In
16 reaching your verdict, you may;
17 however, consider whether the
18 defendant had a motive.

19
20 "Having a motive may be a factor
21 tending to show the defendant is
22 guilty. Not having a motive may be a
23 factor tending to show the defendant
24 is not guilty."

25 All of the instructions that I've given you so
26 far, ladies and gentlemen, might have been given in any
27 kind of trial. Now we're going to talk about the
28 specifics of the charge in this case and the allegation

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

1 course, because you're looking for the police. You want
2 to make sure that the police aren't there to catch you
3 in the act of rolling through that stop sign. You're
4 looking around, and you're hoping there's no police
5 cars. You look around, see no police cars, no police
6 around, and then you proceed to roll through that stop
7 sign.

8 When you do that, you make a conscious decision
9 to do that, and you know that if you roll through that
10 stop sign and there's a cop in the bushes hiding, you're
11 going to get in trouble for it. You're going to get a
12 ticket, and you're going to have to pay a fine. Knowing
13 the consequences, you decide to roll through that stop
14 sign after you looked around to make sure there's no
15 police.

16 In this particular case, the defendant had
17 minutes to decide whether or not he wanted to kill
18 Rita Cobb in this case. In this case, he strangled
19 Rita Cobb. You heard from Dr. Saukel, the pathologist,
20 about how long it takes to manually strangle or with a
21 ligature strangle somebody. What I'd like to do -- the
22 doctor said it's somewhere in the neighborhood of five
23 to ten minutes. I'm going to take three minutes, and in
24 the three minutes, I want you to think about it. This
25 is how long he had to think, at least three minutes.
26 We're going to take three minutes here, and we're going
27 to be silent. I want you to think about the amount of
28 pressure Dr. Saukel told you has to be applied during

1 the three minutes and how much force has to be applied
2 to strangle somebody.

3 (Whereupon there was a
4 pause in proceedings.)

5 MR. THOMAS: Right now it's approximately one
6 minute.

7 (Whereupon there was a
8 pause in proceedings.)

9 MR. THOMAS: Right now it's approximately two
10 minutes, and the person strangling Rita Cobb still has
11 his hands around her neck or pulling this wire coat
12 hanger, and at this point she's probably unconscious.

13 (Whereupon there was a
14 pause in proceedings.)

15 MR. THOMAS: Ladies and gentlemen, that's
16 approximately three minutes that you've had here. In
17 this case, Dr. Saukel testified it was five to ten
18 minutes. The person strangling Rita Cobb had up to
19 ten minutes to decide, I'm not going to do this. All
20 this time they're applying pressure. They're deciding
21 during that time period that they're acting
22 deliberately and with premeditation when they're
23 choking Rita Cobb to death.

24 The second way that you can get to first degree
25 murder in this case is felony murder. There's three
26 elements: The defendant committed or attempted to
27 commit rape; the defendant intended to commit rape or
28 attempted rape; and while committing or attempting to

1 commit the rape, the defendant did an act -- did an act
2 that caused the death of another person.

3 That could be accidental or anything like that,
4 but in this case I would argue it's not accidental.
5 It's still done on purpose. He wants to cause the death
6 of Rita Cobb. He wanted to kill her. That's
7 Instruction 540A.

8 This isn't a what-is-it. This is a
9 who-done-it. As far as what is it, I would argue to you
10 that this -- there's no doubt that this is first degree
11 murder. It's either first degree murder under the
12 felony murder rule or first degree murder under a
13 willful, deliberate, and premeditated rule.

14 The defense is going to argue that the
15 defendant wasn't the one that committed this crime; that
16 he simply had sex with Rita Cobb sometime before she was
17 murdered. I would argue this is not a reasonable
18 conclusion based on all the evidence that was presented
19 in this case.

20 Let's talk about that evidence. The first
21 thing I want to show you is Exhibit 13. That is what
22 Daryl Kraemer and Marta Kraemer saw when they walked
23 into Rita's room on September 23, 1985. They see Rita's
24 body lying in bed like it is in Exhibit 13 in a sexual
25 position. Her body is fully nude, no clothing. You can
26 see in Exhibit 14 there's what appears to be a white
27 pair of shorts or cloth in her mouth.

28 What was the motive of this killing? If you

1 had to look at all the evidence in this case and
2 determine what the motive is, you could only come to one
3 conclusion. It's not a burglary. It's not a robbery.
4 There's lack of ransacking, lack of anything valuable
5 missing, and you could see on Exhibit 10, you can see
6 the wedding ring that was described by Marta and Daryl
7 still on the table there right by the bedside.

8 You can see in Exhibit 15 -- and this is kind
9 of hard to see on the small photograph up there. When
10 you go back in the jury room, you can look at it.
11 There's a watch or what appears to be a watch on Rita's
12 left arm, and then on her right arm, there appears to be
13 a bracelet. The detective testified, there's no show of
14 forced entry or anything that would indicate to him that
15 there was a burglary or a robbery in any way.

16 The only thing you could come to the conclusion
17 of based on all the evidence that the motive in this
18 case was sex. The person who did it wanted to rape
19 Rita Cobb and then kill her. That's the only thing that
20 you could come to with all the evidence in this case.
21 That's the only reasonable conclusion as to what the
22 motive is in this case.

23 Use your common sense. You don't lose your
24 common sense as jurors. You still have your common
25 sense. Marta Kraemer's testimony, she said quote "The
26 way that she was positioned, someone had to have had sex
27 with her to be frank". You see Exhibit 13 and the
28 position that she was in, and you recall the testimony

1 from Dr. Saukel regarding the knee.

2 As far as a sexual assault, whether or not it
3 was consensual or nonconsensual, Dr. Saukel said, in
4 many cases, you could find the absence of bruising.
5 That doesn't mean that it was nonconsensual or that it
6 was consensual, one way or the other. If you look at
7 all of the evidence in this case, you can come to the
8 conclusion that it was nonconsensual; that this was a
9 rape, ladies and gentlemen. That's the only reasonable
10 conclusion.

11 You have the white shorts stuffed in Rita's
12 mouth and why else would you stuff shorts in somebody's
13 mouth? To silence them. You don't want them screaming
14 or talking while you're committing heinous crimes on
15 this person. So you stuff shorts in her mouth. Keep
16 her quiet. If the reason Rita was killed was because
17 somebody wanted to kill her, they wouldn't have to stuff
18 the shorts in her mouth. They would strangle her.
19 There would be no reason to stuff shorts in her mouth
20 and gag her because they would put their hands around
21 her neck and strangle her, and she wouldn't be able to
22 say anything anyways because the air would be cut off or
23 the blood flow would be cut off.

24 The signs of struggle. You have Exhibit 12 and
25 Exhibit 11. Exhibit 11, if you look at the top
26 right-hand corner, you have a pair of glasses, Rita's
27 glasses, that were found there. You heard Daryl say she
28 would never just throw her glasses there. The fact that

1 it's on the floor shows there had been a struggle; that
2 she was fighting.

3 What about the watchband pin? That's important
4 because look where it is. It's above her right side.
5 It's like if somebody were to hold their hand -- if a
6 male were to hold their hand, and she was struggling,
7 she might have gotten the watch pin out. It was the
8 defendant's watch pin. You heard the testimony, that
9 watchband pin does not match the watchband pin that Rita
10 had.

11 Look at the size. I would argue it's a male's
12 watchband pin. That would show additional signs of a
13 struggle and show additional signs that she was, in
14 fact, raped and this was nonconsensual.

15 If you conclude the motive in this case was
16 rape, then everything points to this person seated right
17 here at the counsel table, Mr. Yablonsky, as the person
18 who committed that rape.

19 DNA evidence showed that only the defendant had
20 sex with Rita. There's no other evidence showing that
21 anybody else had sex with Rita other than the defendant.
22 If you conclude that the motive in this case was rape
23 and that Rita Cobb was raped, then the only person the
24 evidence points to is Mr. Yablonsky. That's it. Nobody
25 else.

26 Then if you look at all of the DNA evidence,
27 Item A dash 11 and Items A dash 18a and A dash 18b, they
28 all match the defendant's DNA that was taken in Item J

1 dash 1. I'm showing you what's been marked Exhibit 46.
2 Look at those numbers up there, ladies and gentlemen.
3 The sperm fraction, Item A dash 18a, the sperm fraction
4 Item A dash 18b, then Item -- the sperm fraction, Item A
5 dash 11. Then look at Item J, the reference buccal swab
6 from Mr. Yablonsky.

7 All you got to do is look at these numbers.
8 The first is 12, 12, 12, 12. As you go down that row,
9 every single number matched Mr. Yablonsky's DNA. If
10 there was one number that did not match, you heard the
11 criminalist, then that excluded Mr. Yablonsky. You
12 heard the testimony. All of those numbers match
13 Mr. Yablonsky, Item J dash 1.

14 If you look at Exhibit 47, tells the same
15 story. This is Table II. If you look at Table II, same
16 thing. All of the numbers match, only one possible
17 explanation. Mr. Yablonsky was the one that had sex and
18 left that sperm on Rita Cobb's vaginal swab and left it
19 on that felt pad. That's the only reasonable conclusion
20 that you could come to in this case.

21 The figure the criminalist gave as far as what
22 is the possibility of somebody in a random population
23 would have that same DNA that Mr. Yablonsky has. We got
24 into the figures of trillion and quadrillion, but,
25 suffice to say, that it was at the very least 1 in
26 7 billion. That's the population of the earth.

27 There's no other evidence that exists that
28 points to anybody else. If the defense gets up here and

1 says there's evidence, it's all speculation because
2 there has not been any evidence presented in this case
3 that links this case to anybody else but the defendant.

4 Look at the defendant's own statements. He
5 denies any type of sexual contact with the victim. We
6 know that's a lie because the only way that his sperm
7 would get into Rita Cobb's vaginal swab would be if he
8 had sexual intercourse with Rita.

9 Look at Instruction 362. If the defendant made
10 a false or misleading statement before this trial
11 relating to the charged crime, knowing that statement
12 was false or intending to mislead, that conduct may show
13 he was aware of his guilt of the crime. You may
14 consider it in determining his guilt. You cannot solely
15 look at that by itself, but you can consider it along
16 with all the other evidence in determining whether or
17 not Mr. Yablonsky is guilty of these crimes that he's
18 accused of.

19 Let's go through some of the things he said in
20 the interview. When the detectives are asking about
21 several different names, his response -- this is going
22 to be on Page 31, of the transcript.

23 (Whereupon a portion of audiotape Exhibit 49 was played,
24 not reported.)

25 MR. THOMAS: He says, I didn't socialize with
26 the lady. I didn't hang out with her. He's not even
27 being asked at that point. All he had to say is he
28 had sexual contact with the victim or dated the victim

1 or did anything with the victim, oh, yeah, we used to
2 socialize. There wasn't a question pending at that
3 point that would incriminate him. He just volunteered
4 that information. I didn't socialize with the lady.
5 I didn't hang out with her, basically distancing
6 himself from the crime.

7 He already knows at that point when the
8 detectives are asking him questions. I would argue he
9 knows the detectives are there looking at him. Later
10 on, when he's asked about going to the police station,
11 he already knows, am I being considered a suspect?

12 The next part of the statement -- we're still
13 at his home at this point. So he's being asked some
14 questions, and I'll play the interview portion of that.
15 This is all coming out of Exhibit 49. This is Page 40
16 of the transcript, approximately 59 minutes and
17 55 seconds into the tape or the recording.

18 (Whereupon a portion of audiotape Exhibit 49 was played,
19 not reported.)

20 MR. THOMAS: In the interview, the detectives
21 constantly give him an opportunity to say, yes, we had
22 consensual sex. Yes, I had a dating relationship with
23 Rita, but every single time he denies any of that. At
24 this point the detectives already know that he had sex
25 with Rita at some point. The evidence shows that, and
26 for the defendant to say, I've never had any sexual
27 contact or any dating relationship with the victim in
28 this case, the only one reasonable conclusion that you

1 can come to is that he's lying to distance himself.
2 He's lying because he had nonconsensual sex with Rita.
3 He raped her.

4 Same interview, another portion of it. This is
5 going to be on Page 43 at approximately 1 hour and
6 4 minutes and 45 seconds into it.

7 (Whereupon a portion of audiotape Exhibit 49 was played,
8 not reported.)

9 MR. THOMAS: Again, being asked a simple
10 question, and he still denies it all the way through.
11 Again, the only reasonable conclusion that you can
12 come to as far as why he's denying it is because he
13 committed this crime and doesn't want to be linked
14 with the crime that he committed.

15 One last clip I want to play on Page 109 of the
16 transcript approximately 2 hours 46 minutes and
17 53 seconds into it.

18 (Whereupon a portion of audiotape Exhibit 49 was played,
19 not reported.)

20 MR. THOMAS: Again, he's asked about any
21 intimate relationship that he had with Rita, and he
22 again denies having any intimate relationship. I
23 missed the page. It was actually Page 99 where this
24 was found.

25 Then at the very end, Detective Alexander is
26 trying to give him a clue that there's evidence that
27 links him to the crime, and yet again he doesn't want to
28 admit anything as far as any sexual contact or any

1 dating relationship with the victim. The only reason
2 he's doing that, ladies and gentlemen, I would argue
3 that he is trying to distance himself from what he did
4 in 1985. This is on Page 109.

5 (Whereupon a portion of audiotape Exhibit 49 was played,
6 not reported.)

7 MR. THOMAS: Ladies and gentlemen, the
8 defendant knows what the detectives are getting at.
9 He knows. He understands. He even says so. The only
10 difference is that we're talking --

11 Detective Alexander's talking about fingerprints and
12 not DNA, and the defendant knows where his DNA is
13 going to be. He knows that he had sex with Rita Cobb.
14 He knows that he raped Rita Cobb at this point, and he
15 still doesn't want to come and admit that he had some
16 sort of sexual contact. That's because, I would
17 argue, that it was nonconsensual sex. It was a rape.

18 From all the evidence that you've heard, what
19 can we say about what happened on or about
20 September 20th, 1985? I have Exhibit 35 up there, a
21 picture of Rita Cobb that everybody's been identifying.
22 We know that somewhere around that time period somebody,
23 the defendant, came into Rita Cobb's house, raped her,
24 and then strangled her to death manually and with a wire
25 coat hanger, and left her on the bed, fully nude, in a
26 sexual position, then tried to conceal the evidence at
27 that point turning up the heat, closing the curtains,
28 turning on the radio hoping that nobody would come in

1 there and find her body before it fully decomposed.

2 From all of the evidence, what can we say about
3 the defendant, Mr. Yablonsky? We can say the defendant
4 is a cold-blooded killer who committed first degree
5 murder when he raped and strangled Rita Cobb to death.

6 What I'm going to ask you, ladies and
7 gentlemen, is to return a verdict of murder in the first
8 degree and a true finding on the special circumstance in
9 this case that the murder was committed in the
10 commission or attempted commission of a rape.

11 Thank you.

12 THE COURT: Thank you, Mr. Thomas.

13 Mr. Sanders.

14 MR. SANDERS: Thank you, your Honor. Because
15 of where I sit, I'm going to move the podium over with
16 the Court's --

17 THE COURT: Mr. Sanders --

18 MR. SANDERS: Is that okay?

19 THE COURT: -- my court is your court.

20 MR. SANDERS: Thank you, your Honor. The
21 only problem with one of these things is there's not
22 enough room at the top. I figure it's better than
23 walking back and forth and picking things up and
24 bringing them over. If you'll bear with me, ladies
25 and gentlemen.

26 I appreciate the time that you have taken to
27 sit and listen to this case. Before anything else I
28 say, I want you to make sure -- my client and I do

1 appreciate your time. We know that all of you have
2 other things to do and other people that need your
3 attention, and yet you were here two weeks now to
4 perform this service. So please know that we both want
5 to thank you for that. We do consider this an important
6 service.

7 If you're like me, you have a strong feeling
8 for our American way of doing things. Our American
9 justice system is probably one of the hallmarks of -- of
10 that system. The way we settle disputes, the way we
11 bring in people off the street to make very important
12 decisions having to do with the -- whether they're civil
13 or criminal. That's an extremely important task.

14 You can serve your country by picking up your
15 rifle and going off to the front lines. You can vote.
16 You can educate yourself on issues, make good decisions.
17 By being a juror, you do that too because when you're a
18 juror, you are listening to evidence and you're going to
19 apply the law. You make a decision in your community
20 that in our community, we will follow the law.
21 Sometimes that's a tough thing. Sometimes it's not
22 easy.

23 You're sitting here with a courtroom full of
24 people. Lots of people want you to decide one way.
25 Lots of other people want you to decide another way.
26 You're going to decide how this case is decided. You're
27 going to follow the law that was given to us by the
28 judge, and if it means we have to make a hard choice,

1 we're going to make a hard choice. If it means we're
2 going to make an unpopular decision, we're going to make
3 an unpopular decision. We're going to do what the
4 evidence says, and we're going to do what the judge has
5 instructed us to do. I appreciate you for that.

6 Sometimes I think it's helpful if we pause for
7 a second and consider what we are doing here and what is
8 going on. How does this -- how did we get here? We're
9 in this nice, lit courtroom. We've got comfortable
10 seats out here. We've got a court reporter that's
11 taking notes. It wasn't always this way.

12 Before we got to this place, many people had to
13 put in their ideas and their input and their
14 suggestions. Hundreds and hundreds of judges and
15 lawyers and common citizens had an input on how to best
16 do this. So a long time ago a trial like this would
17 have maybe only had three people there. You would have
18 had the judge, Prince John. You'd have the sheriff of
19 Knottingham, and you'd have some poor person that was
20 charged with shooting a deer in the king's woods. He's
21 brought down to a dungeon someplace and maybe assisted
22 in his confession with some hot irons or whatever. That
23 was the way trials were. We decided that wasn't a good
24 idea.

25 Let's, first of all, bring it out in the open.
26 Let's put them in a place that's open to the public.

27 Then instead of just a government magistrate,
28 we have a nonbiased, unbiased official, to be the judge,

1 but not the judge of the facts. We're going to bring in
2 every day, ordinary citizens to make these kinds of
3 judgments, a jury of our peers.

4 Then we decided, let's keep a record, and we
5 decided, let's open it to the public, make sure that
6 everything we do is on the up-and-up. One of the very
7 last things they did was they added me. They decided
8 it's a good idea to have someone come and speak for the
9 accused, someone to come in and say, wait a minute,
10 Mr. Prosecutor, wait a minute, Mr. Government Attorney,
11 before we rush into this thing, have we considered this,
12 have we considered this? Before we make all these
13 jumps, these logic jumps on circumstantial evidence, did
14 we consider this or did we consider this?

15 Everyone in the last few hundred years has
16 agreed that's an important point, so that's what I'm
17 here to do is to say, wait a minute. I know that the
18 prosecutor is in a hurry to get this done, and I know he
19 wants you to -- he's got DNA, so game over. Our system
20 of justice requires that somebody say, hold on. Wait a
21 minute. Have we considered this? Let's look at that.
22 Is that circumstantial evidence as strong as he wanted
23 you to believe?

24 The judge has instructed you on this idea of
25 reasonable doubt. The judge has instructed you that
26 before someone is convicted of a crime, they have -- the
27 government's attorney has to prove it beyond a
28 reasonable doubt. It's not, well, he sounds pretty

1 guilty, and the prosecutor -- and the prosecutor showed
2 us those bad pictures, and he's pretty sure. That's not
3 the standard. The standard is, has he proved the case,
4 all the elements of the case beyond a reasonable doubt?

5 You know what, the judge gave you another
6 instruction that I'm going to refer to, and that's the
7 one on circumstantial evidence because this case is a
8 circumstantial evidence case. Everything about it is
9 circumstantial evidence. There is no direct evidence in
10 this case that goes to the main issue.

11 So the judge instructs, well, in circumstantial
12 evidence cases, circumstantial evidence does not help
13 unless the precursors, the steps in logic to determine
14 that the only reasonable conclusion points to guilt, and
15 the prosecutor has that duty too. On all of those
16 instances, and I'm going to list about 20 of them, where
17 he wants you to make a conclusion based on
18 circumstantial evidence, did he prove beyond a
19 reasonable doubt that none of the other possible
20 circumstances were true? I don't think so.

21 Some people think you got to prove him guilty
22 beyond a reasonable doubt. That's pretty hard. Beyond
23 a reasonable doubt, that's really hard, but that is the
24 way, after hundreds of years of the best minds that we
25 could bring to bear to this subject, the way we decided
26 is best.

27 I like to use the analogy of baseball. When I
28 was a kid, everybody played baseball. It was pretty

1 much the only game in town. When I grew up, they didn't
2 have AYSO Soccer or Little League Football or
3 basketball. If you wanted to play organized sports, it
4 was baseball, and baseball was the national pastime.
5 The NBA was something that not many people heard of, and
6 the NFL wasn't a big deal if you lived west of the
7 Mississippi.

8 Baseball was evented a long time ago. Do you
9 think that they ever fine-tuned baseball, so that it
10 would stay engaging, so that it would be a good game?
11 Absolutely. They have doctored the ball so that
12 sometimes some years they think they want it to be
13 springier and some years they want it to be deader.
14 They made all these rules about bats because they don't
15 want them to be too -- make the ball go too far. They
16 don't want them to be dead.

17 They have taken the pitcher's mound and raised
18 it up a little bit or lowered it a little bit to try to
19 get the perfect combination, so that on one hand we
20 don't have games that are 30 to 27 or games that are
21 always 1 to 0. We want some somewhere in the middle.

22 They make rules about where the fences can be.
23 All these things are designed to make baseball what it
24 is, entertaining, engaging. That's the same thing with
25 this. We could have used other standards for criminal
26 trials. We could have said, you know, more likely than
27 not, that's good enough burden. It isn't good enough
28 for us in this country. We could have said, if there's

1 clear and convincing evidence, that's good enough. But
2 we decided that wasn't good enough for this country. We
3 wanted the highest standard, beyond a reasonable doubt.

4 A person is presumed innocent, and the
5 government's lawyer, the prosecutor, has to prove them
6 guilty beyond a reasonable doubt. So if there are
7 doubts, and if there are reasons for those doubts, then
8 we vote not guilty.

9 By the way, as you might see as this trial goes
10 on, you now know something about guilty and not guilty
11 that most people don't know. A lot of times we hear
12 that -- we read in the papers somebody was not guilty,
13 the jury exonerated them or, you know -- and now you
14 know that's not what that means.

15 If a person -- if there is some evidence,
16 doesn't mean they did it or did not do it, but you vote
17 not guilty because not guilty doesn't have to do with
18 whether or not they committed a crime. Not guilty has
19 to do with how much evidence there was that they
20 committed a crime. If there's enough evidence, we can
21 overcome not guilty. It has to be everything beyond a
22 reasonable doubt otherwise we vote not guilty. It
23 doesn't mean what everybody thinks it means. It means,
24 Mr. Prosecutor, you don't have enough evidence in this
25 case. That's what it means.

26 Sometimes I think our government, when it comes
27 down to these cases, I think they go too quick. They
28 take shortcuts. I think sometimes they will -- if it's

1 a case of, okay, we've got enough, day's over. I think
2 some people have said that, close enough for government
3 work, you know.

4 Some of you are old enough to remember the
5 great movie, *In the Heat of the Night*. Do you remember
6 that one? For those of you who haven't seen it, you got
7 to see it. You've got Rod Steiger. He's a sheriff down
8 there way down in Mississippi somewhere in a small town.
9 You've got Sidney Poitier who happens to be traveling
10 through, and he is a homicide detective from
11 Philadelphia. Somebody gets killed in this little town,
12 and it's an important person, and there's a lot of
13 pressure on the local sheriff to come up with the
14 killer.

15 What does he do? He sends his deputy over to
16 the train station to look around, and look at that, a
17 black man, that's not from around there, that's trying
18 to get on a train and leave town. That's enough for
19 him. Sidney Poitier is arrested, brought to jail,
20 charged with the murder. Let's go home for dinner,
21 boys.

22 Then, as the movie unfolds, they realize that
23 Sidney Poitier couldn't have done it. Then the sheriff
24 goes out and arrests his own deputy and Sidney Poitier
25 goes, you arrested Sam? The sheriff goes, well, I know
26 that Sam put \$300 in the bank last week. Where did he
27 get \$300? You know what, Sam lied to me last night
28 about where he was going on patrol. I've got the

1 evidence. I got the motive. I got him in a lie. He's
2 guilty. All Sidney Poitier can do is laugh and, come
3 on, what's going on here?

4 The point I'm trying to make is, in this case,
5 there's evidence that some of those kind of things
6 happened. Point in Chief Number 1, that -- the white
7 shorts. Did you notice the -- the evolution of the
8 white shorts? The first officer that gets to the scene
9 says -- he looks in the room. He says, yeah, there's a
10 woman lying nude on the bed, and she had a gag in her
11 mouth. Then everybody else picked up on that. Oh, yeah
12 she had a gag in her mouth, white shorts, gag.
13 Everybody after that until we got to the two people that
14 actually knew, one was the criminalist.

15 He's on the stand. I said Mr. Criminalist, I
16 can't think of his name, did you ever actually see the
17 white shorts in her mouth? Well, no, I didn't. Did you
18 ever determine that there was a test on the white shirts
19 that they had been in her mouth? No, we didn't do that.

20 The last person was the coroner. Remember when
21 the coroner took the stand, and the coroner was up
22 there, and the -- we asked him that question.
23 Mr. Coroner, you were the one that finally rolled the
24 body? Yes. Did you ever see those white shorts in her
25 mouth? No, I didn't.

26 Yet, when the prosecutor is up here, he's still
27 talking about white shorts stuffed in her mouth and a
28 gag. There was absolutely no evidence of that, but

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.)
23
24
25
26
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28

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

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. Zywiciel 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.

1 THE COURT: That's all right. That's all
2 right. I didn't want to know the numbers for which
3 one, but it's eight to four. I'm going to ignore what
4 the numbers are for each side.

5 There's eight people on one side and four the
6 other; right?

7 THE FOREPERSON: Correct.

8 THE COURT: You said something interesting.
9 You said currently. Has that number been pretty
10 consistent or has that deviated a lot?

11 THE FOREPERSON: Honestly, there has been
12 progress pretty much all the time. For instance, what
13 it was on Monday, changed on Tuesday, changed today.

14 THE COURT: Okay. And what is it that makes
15 you think since anybody can talk to -- anybody can
16 send a note out, whether it's the foreperson, what is
17 it that makes you think, Juror Number 4, that at this
18 point no progress can be made one way or the other?

19 THE FOREPERSON: Each juror has indicated
20 that they're solid in their position.

21 THE COURT: You've been on several juries
22 before.

23 THE FOREPERSON: Yes.

24 THE COURT: Do you believe that the jury's
25 hopelessly deadlocked?

26 THE FOREPERSON: I believe the only thing
27 that might change would be the count through further
28 discussion.

1 THE COURT: Let me tell you what my thinking
2 is, and I am not going to hold people hostage. Your
3 time is very valuable. I've tried to make it clear
4 that I appreciate your service. We're well within our
5 time frame for this trial.

6 It's 3:00 today. I'm going to propose that you
7 go home tonight, come back tomorrow morning. Let
8 everything sit where it is, get off early, come in
9 tomorrow morning and talk to each other. I won't keep
10 you here unless you feel like you're making progress. I
11 think that might be something worth while.

12 Do you think that's possible?

13 THE FOREPERSON: I think it's possible.

14 THE COURT: Is there anyone -- I'm going to
15 know -- I'm going to make the order that we're going
16 to stop for the day. I'm going to ask you to come
17 back tomorrow. If you're back a half hour and send
18 back a note saying, nothing's changed. We're done.
19 We can't come to an agreement, I'll understand that,
20 and we'll talk again. We're well within our time
21 estimate.

22 At this point I'm going to ask you to go home
23 and, once again, I'll admonish you, since you're not
24 deliberating the 12 of you back there together, you're
25 just going to be on your own, so you're admonished that
26 it is your duty not to converse among yourselves or with
27 anyone else about any matter connected with this case
28 nor form or express an opinion on it until it's

1 submitted to you. Tomorrow morning -- would it be more
2 convenient to come in at 9:00? Does that work out
3 better for you? I see a couple heads shaking yes.

4 THE FOREPERSON: Works out better for me.

5 THE COURT: Let's make it 9:00 in the
6 morning. Everyone, have a good evening. We'll see
7 you tomorrow morning at 9:00 a.m.

8 (Whereupon the jury exited the courtroom and the
9 following proceedings were held:)

10 THE COURT: Okay. The jury is now gone.
11 Counsel, you're going to be here tomorrow?

12 MR. THOMAS: I'll be here tomorrow.

13 THE COURT: Maybe Mr. Sanders will be back
14 tomorrow.

15 MR. ZYWICIEL: Probably. Otherwise it will
16 probably be me.

17 THE COURT: I'm not a betting man. I never
18 know what a jury's going to do. I've had people go
19 home and come back, that half hour has turned into an
20 all-day deliberation ending in verdicts, and I've also
21 had them come back and say, this is done. We're not
22 going to go anywhere.

23 I think it's important that someone be here on
24 behalf of each side to talk to the jurors, so that I'll
25 be enlightened, if this case does result in a mistrial,
26 as to what should happen next.

27 MR. ZYWICIEL: I was curious, when he
28 mentioned the progress was made each day, I'm not sure

1 how you would define progress. Was it 11, 1 guilt
2 and, that and, progress is now 8, 4?

3 THE COURT: I didn't ask him that; did you
4 notice?

5 MR. ZYWICIEL: Right. But he was gracious
6 enough to tell us which way the split was.

7 THE COURT: Did I fail to explain clearly
8 that I didn't want him to tell me that?

9 MR. ZYWICIEL: I heard it.

10 MR. THOMAS: I heard it clearly.

11 THE COURT: I should say I failed to explain
12 it. There's no question I failed to explain it
13 because he didn't understand it. If I would have
14 explained myself properly, I guess he wouldn't have
15 said that. Seemed like people were trying to stop him
16 on each side.

17 Anything anybody want to add?

18 MR. ZYWICIEL: No.

19 MR. THOMAS: I was going to ask the Court
20 tomorrow if they come back and still have issues, if
21 the Court could bring up, do you think further
22 argument from the attorneys would help.

23 THE COURT: I didn't even get to that.

24 MR. THOMAS: Yeah.

25 THE COURT: When I made my proposal, and he
26 said yes, then I did that. Remind me tomorrow if
27 that's what you want me to do. That's going to be
28 important to know whether or not Mr. Sanders is going

1 to be here before I even try that.

2 Mr. Zywicki can argue anything. I've known
3 him long enough. We went to the same law school. I
4 don't know. I'd have to talk to you and Mr. Sanders,
5 and you'd have to tell me why reopening argument might
6 be of some benefit. You'd have to help me understand
7 it. We don't do that until Mr. Sanders is here.

8 MR. THOMAS: Well, it would be up to the jury
9 too if they had a specific issue that is holding them
10 up versus across the board.

11 THE COURT: Like whether or not
12 Mr. Yablonsky's DNA was taken voluntarily or
13 involuntarily.

14 MR. THOMAS: Yeah.

15 (Whereupon proceedings in the above-entitled
16 matter were concluded for the day.)
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1 VICTORVILLE, CALIFORNIA; FEBRUARY 3, 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 in open
13 court in the presence of the jury:)

14 THE BAILIFF: Remain seated. Come to order.
15 Court is now in session.

16 THE COURT: Good afternoon, ladies and
17 gentlemen. Back on the record in the case of People
18 of the State of California versus John Henry
19 Yablonsky. Mr. Yablonsky is here before the Court
20 with Mr. Zywiciel again. Mr. Sanders was in for a
21 little while this morning, but I believe he had to go
22 home. He's ill. John Thomas is here for the People
23 along with his investigating officer,
24 Detective Robert Alexander.

25 Juror Number 4, do you remain the foreperson of
26 this jury?

27 THE FOREPERSON: Yes.

28 THE COURT: I understand the jury's reached a

1 verdict?

2 THE FOREPERSON: That's correct.

3 THE COURT: Would you please hand the signed
4 forms to Deputy Fleigner? He's going to bring them to
5 me. I'm going to tell you this; I have to say this to
6 all of you. I have no idea which form you're handing
7 me. Before I look at the form, thank you for your
8 service. I'm not thanking you for any particular
9 decision that you arrived at. I'm thanking you for
10 taking the time out of your busy lives to help us
11 resolve this case.

12 THE FOREPERSON: Sir, would you like me just
13 to hand the signed forms to the bailiff?

14 THE COURT: Why don't you hand them all to
15 him?

16 THE FOREPERSON: Okay.

17 THE COURT: Thank you. Madam Clerk, will you
18 please read the verdicts.

19 THE CLERK: (Reading:)

20 "Superior Court of the State of
21 California, in and for the County of
22 San Bernardino.

23 "The People of the State of
24 California versus John Henry
25 Yablonsky, defendant.

26 "Case Number FVI900518.

27 "Verdict 1-A,

28 "We, the jury in the

1 above-entitled action, find the
2 defendant, John Henry Yablonsky,
3 guilty of the offense of first degree
4 murder of Rita Mabel Cobb as charged
5 in Count I of the Information.

6 "Dated February 3rd, 2011.

7 "Signed by the foreperson.

8

9 "Same title of court and cause.

10 "Special Allegation I as to
11 Count I.

12 "We, the jury in the
13 above-entitled action, find that the
14 murder of Rita Mabel Cobb was
15 committed by John Henry Yablonsky
16 while the said defendant was engaged
17 in the commission of and/or attempted
18 commission of the crime of rape, true.

19 "Dated February 3rd, 2011.

20 "Signed by the foreperson."

21 THE COURT: Ladies and gentleman, as you just
22 heard those verdicts read, do they represent your own
23 personal verdicts, so say you one, so say you all?

24 (Whereupon the jurors answered in the affirmative.)

25 THE COURT: Did either counsel wish to have
26 the jury polled?

27 MR. THOMAS: I do not.

28 MR. ZYWICIEL: I would.

1 THE COURT: Okay. What's going to happen is
2 Ms. LoVasco's going to go by seat number that you're
3 sitting in. She's going to ask you if the verdicts as
4 read were your own personal verdicts as well.

5 Go ahead with your speech.

6 THE CLERK: As I refer to your jury seat
7 number, please answer yes or no to the following
8 question: Were the verdicts as read your personal
9 verdicts, Juror Number 1?

10 JUROR NO. 1: Yes.

11 THE CLERK: Two?

12 JUROR NO. 2: Yes.

13 THE CLERK: Three?

14 JUROR NO. 3: Yes.

15 THE CLERK: Four?

16 JUROR NO. 4: Yes.

17 THE CLERK: Five?

18 JUROR NO. 5: Yes.

19 THE CLERK: Six?

20 JUROR NO. 6: Yes.

21 THE CLERK: Seven?

22 JUROR NO. 7: Yes.

23 THE CLERK: Eight?

24 JUROR NO. 8: Yes.

25 THE CLERK: Nine?

26 JUROR NO. 9: Yes.

27 THE CLERK: Ten?

28 JUROR NO. 10: Yes.

1 THE CLERK: Eleven?

2 JUROR NO. 11: Yes.

3 THE CLERK: Twelve?

4 JUROR NO. 12: Yes.

5 THE COURT: I'm going to order the verdicts
6 as read will be recorded in the minutes of the
7 proceedings.

8 Mr. Zywiciel, Mr. Thomas, do we have any
9 further need for the service of this jury?

10 MR. THOMAS: No, your Honor.

11 MR. ZYWICIEL: I don't think so.

12 THE COURT: Ladies and gentlemen, I never get
13 tired of reading instructions. Here we go.

14 "You have now completed your jury
15 service in this trial. On behalf of
16 all the judges of the court, please
17 accept my thanks for your time and
18 effort.

19
20 "Now that the case is over, you
21 may choose whether or not to discuss
22 your deliberations with anyone.

23
24 "I'll remind you that under
25 California law, you must wait at least
26 90 days before negotiating or agreeing
27 to accept payment for information
28 about this case.

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"Let me tell you about some rules the law puts in place for your convenience and protection.

"The lawyers in the case, the defendant or their representatives may now talk to you about the case including your deliberations or verdict. Those discussions must occur at a reasonable time and place and with your consent.

"Please immediately report to the Court any unreasonable contact made without your consent by the lawyers in this case, their representatives or the defendant.

"A lawyer, representative, or defendant who violates these rules, violates a Court order and may be fined.

"I order that the Court's record of personal juror identifying information including names, addresses and telephone numbers be sealed until

1 further order of this Court.

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"If in the future the Court is asked to decide whether this information will be released, notice will be sent to any juror whose information is involved. You may oppose the release of this information and ask that any hearing on the release be closed to the public. The Court will decide whether and under what circumstances any information may be disclosed."

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In short, ladies and gentlemen, what I've just read to you is this: Talk if you want to. Don't talk if you don't want to. I've sealed the information, so that nobody's going to be able to get personal stuff about you without you knowing about it and have a chance to protest.

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I'm about to excuse you. Because of the hour of the day, the jury room is already closed. We would have had checks ready for you. Instead those checks will be sent to your home addresses.

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Personally accept my gratitude. I should say my personal gratitude for the effort that I know you all put in. You've worked very hard this week. Most of it has been deliberations, and, as I said before, I know that everyone knows how to get out of jury service.

1 Everyone knows how to dodge the responsibility, but you
2 should be very proud of yourselves that both lawyers in
3 this case believed you were people that they could trust
4 to be responsible and fair in deciding the verdict.

5 You also should be proud of yourselves for
6 having done your civic duty. If I haven't been clear
7 enough about how much I appreciate your service, I will
8 now switch it around and say I hope it hasn't been
9 entirely a one-way street. I hope that you are going to
10 leave this court with a little better understanding of
11 this third, coequal branch of government called the
12 judiciary.

13 On behalf of all the judges of the court, on
14 behalf of the People, on behalf of Mr. Yablonsky, thank
15 you very much for your service. You are now excused.
16 See you next year.

17 MR. THOMAS: Did the Court let them know to
18 stick around?

19 THE COURT: If you want to stick around and
20 talk to the lawyers, you're welcome to. It will be up
21 to you.

22 (Whereupon the following proceedings were held outside
23 the presence of the jury:)

24 THE COURT: Shall I refer this to the
25 probation department?

26 MR. ZYWICIEL: Yes. Mr. Yablonsky's willing
27 to waive time for sentencing. I don't know if
28 Mr. Sanders wants to file motion for new trial or not,

1 so that probably works out best.

2 THE COURT: Today is the 3rd of February.
3 How about we go out six weeks?

4 MR. ZYWICIEL: Could we go to April 8th?

5 THE COURT: I don't see why not.

6 MR. THOMAS: That's fine with the People.

7 THE COURT: Setting no interim date,
8 Mr. Zywiciel, we should tell Mr. Sanders that he needs
9 to be aware that I'm going that long because I
10 anticipate if he's going to file a post-trial motion,
11 that would be the time -- he should have it filed two
12 weeks before that date.

13 MR. THOMAS: I'm sure on that date
14 Mr. Sanders is going to want to have the Court hear
15 the due process motion that's already been filed.

16 THE COURT: So your response has been filed?

17 MR. THOMAS: It's been filed also.

18 THE COURT: Any additional motions,
19 Mr. Zywiciel, that he may choose to file, I'd ask that
20 he file those by March the -- March the 25th.

21 This matter is referred to probation for a
22 report and recommendation from the probation department,
23 and, Mr. Yablonsky, I'll order you back on April the 8th
24 for further hearing and pronouncement of judgment.

25 MR. ZYWICIEL: Thank you.

26 (Whereupon proceedings in the above-entitled
27 matter were concluded.)

28

