

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
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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

6

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.

28

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 "Duess 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.)
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