

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

4 (Appearances as heretofore mentioned.)

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

6 -oOo-

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

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

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

18 Mr. Sanders, you may proceed.

19 MR. SANDERS: Thank you, your Honor.

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

22 THE COURT: Got to keep your voice up.

23 MR. SANDERS: Yes, sir.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28 There's two instructions, one is for the

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

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

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

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

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

1 average they go unconscious in 30 seconds.

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

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

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

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

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

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

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

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

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

1 because the glasses were on the floor.

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

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

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

1 do their scenes in the rain.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 rape.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 shows he had sex with her.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28 As far as the strangling is concerned, he said

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

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

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

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

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

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

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

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

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

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

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

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

10 Thank you, again, for your time.

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

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

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

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

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

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

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

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

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

1 orally here in open court.

2

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

6

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

13

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

20

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

24

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

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

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

6 "1-A,

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

13 "1-B,

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

19 "1-C,

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

26 "1-D,

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

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

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

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

14 "Special Allegation I as to
15 Count I;

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

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

26 Would you please swear the bailiff?

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

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

7 THE BAILIFF: I do.

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

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

15 THE COURT: (Reading:)

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

1 for one of the deliberating jurors."

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

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

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

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

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

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

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

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

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

26 Thank you, again. See you next year.

27
28

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

3 THE COURT: Anything else, counsel?

4 MR. THOMAS: No.

5 MR. SANDERS: No, sir.

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

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

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

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

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

16 MR. THOMAS: Yes.

17 THE COURT: Are you feeling better?

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

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

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

24 THE COURT: See you all.

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

27

28

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

4 APPEARANCES:

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

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

11 -oOo-

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 THE FOREPERSON: That's correct.

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

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

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

1 THE COURT: That's all right. That's all
2 right. I didn't want to know the numbers for which
3 one, but it's eight to four. I'm going to ignore what
4 the numbers are for each side.

5 There's eight people on one side and four the
6 other; right?

7 THE FOREPERSON: Correct.

8 THE COURT: You said something interesting.
9 You said currently. Has that number been pretty
10 consistent or has that deviated a lot?

11 THE FOREPERSON: Honestly, there has been
12 progress pretty much all the time. For instance, what
13 it was on Monday, changed on Tuesday, changed today.

14 THE COURT: Okay. And what is it that makes
15 you think since anybody can talk to -- anybody can
16 send a note out, whether it's the foreperson, what is
17 it that makes you think, Juror Number 4, that at this
18 point no progress can be made one way or the other?

19 THE FOREPERSON: Each juror has indicated
20 that they're solid in their position.

21 THE COURT: You've been on several juries
22 before.

23 THE FOREPERSON: Yes.

24 THE COURT: Do you believe that the jury's
25 hopelessly deadlocked?

26 THE FOREPERSON: I believe the only thing
27 that might change would be the count through further
28 discussion.

1 THE COURT: Let me tell you what my thinking
2 is, and I am not going to hold people hostage. Your
3 time is very valuable. I've tried to make it clear
4 that I appreciate your service. We're well within our
5 time frame for this trial.

6 It's 3:00 today. I'm going to propose that you
7 go home tonight, come back tomorrow morning. Let
8 everything sit where it is, get off early, come in
9 tomorrow morning and talk to each other. I won't keep
10 you here unless you feel like you're making progress. I
11 think that might be something worth while.

12 Do you think that's possible?

13 THE FOREPERSON: I think it's possible.

14 THE COURT: Is there anyone -- I'm going to
15 know -- I'm going to make the order that we're going
16 to stop for the day. I'm going to ask you to come
17 back tomorrow. If you're back a half hour and send
18 back a note saying, nothing's changed. We're done.
19 We can't come to an agreement, I'll understand that,
20 and we'll talk again. We're well within our time
21 estimate.

22 At this point I'm going to ask you to go home
23 and, once again, I'll admonish you, since you're not
24 deliberating the 12 of you back there together, you're
25 just going to be on your own, so you're admonished that
26 it is your duty not to converse among yourselves or with
27 anyone else about any matter connected with this case
28 nor form or express an opinion on it until it's

1 submitted to you. Tomorrow morning -- would it be more
2 convenient to come in at 9:00? Does that work out
3 better for you? I see a couple heads shaking yes.

4 THE FOREPERSON: Works out better for me.

5 THE COURT: Let's make it 9:00 in the
6 morning. Everyone, have a good evening. We'll see
7 you tomorrow morning at 9:00 a.m.

8 (Whereupon the jury exited the courtroom and the
9 following proceedings were held:)

10 THE COURT: Okay. The jury is now gone.
11 Counsel, you're going to be here tomorrow?

12 MR. THOMAS: I'll be here tomorrow.

13 THE COURT: Maybe Mr. Sanders will be back
14 tomorrow.

15 MR. ZYWICIEL: Probably. Otherwise it will
16 probably be me.

17 THE COURT: I'm not a betting man. I never
18 know what a jury's going to do. I've had people go
19 home and come back, that half hour has turned into an
20 all-day deliberation ending in verdicts, and I've also
21 had them come back and say, this is done. We're not
22 going to go anywhere.

23 I think it's important that someone be here on
24 behalf of each side to talk to the jurors, so that I'll
25 be enlightened, if this case does result in a mistrial,
26 as to what should happen next.

27 MR. ZYWICIEL: I was curious, when he
28 mentioned the progress was made each day, I'm not sure

1 how you would define progress. Was it 11, 1 guilt
2 and, that and, progress is now 8, 4?

3 THE COURT: I didn't ask him that; did you
4 notice?

5 MR. ZYWICIEL: Right. But he was gracious
6 enough to tell us which way the split was.

7 THE COURT: Did I fail to explain clearly
8 that I didn't want him to tell me that?

9 MR. ZYWICIEL: I heard it.

10 MR. THOMAS: I heard it clearly.

11 THE COURT: I should say I failed to explain
12 it. There's no question I failed to explain it
13 because he didn't understand it. If I would have
14 explained myself properly, I guess he wouldn't have
15 said that. Seemed like people were trying to stop him
16 on each side.

17 Anything anybody want to add?

18 MR. ZYWICIEL: No.

19 MR. THOMAS: I was going to ask the Court
20 tomorrow if they come back and still have issues, if
21 the Court could bring up, do you think further
22 argument from the attorneys would help.

23 THE COURT: I didn't even get to that.

24 MR. THOMAS: Yeah.

25 THE COURT: When I made my proposal, and he
26 said yes, then I did that. Remind me tomorrow if
27 that's what you want me to do. That's going to be
28 important to know whether or not Mr. Sanders is going

1 to be here before I even try that.

2 Mr. Zywicki can argue anything. I've known
3 him long enough. We went to the same law school. I
4 don't know. I'd have to talk to you and Mr. Sanders,
5 and you'd have to tell me why reopening argument might
6 be of some benefit. You'd have to help me understand
7 it. We don't do that until Mr. Sanders is here.

8 MR. THOMAS: Well, it would be up to the jury
9 too if they had a specific issue that is holding them
10 up versus across the board.

11 THE COURT: Like whether or not
12 Mr. Yablonsky's DNA was taken voluntarily or
13 involuntarily.

14 MR. THOMAS: Yeah.

15 (Whereupon proceedings in the above-entitled
16 matter were concluded for the day.)
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1 VICTORVILLE, CALIFORNIA; FEBRUARY 3, 2011;
2 DEPARTMENT NO. V-2 HONORABLE JOHN M. TOMBERLIN, JUDGE
3 P.M. SESSION

4 APPEARANCES:

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

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

11 -oOo-

12 (Whereupon the following proceedings were held in open
13 court in the presence of the jury:)

14 THE BAILIFF: Remain seated. Come to order.
15 Court is now in session.

16 THE COURT: Good afternoon, ladies and
17 gentlemen. Back on the record in the case of People
18 of the State of California versus John Henry
19 Yablonsky. Mr. Yablonsky is here before the Court
20 with Mr. Zywiciel again. Mr. Sanders was in for a
21 little while this morning, but I believe he had to go
22 home. He's ill. John Thomas is here for the People
23 along with his investigating officer,
24 Detective Robert Alexander.

25 Juror Number 4, do you remain the foreperson of
26 this jury?

27 THE FOREPERSON: Yes.

28 THE COURT: I understand the jury's reached a

1 verdict?

2 THE FOREPERSON: That's correct.

3 THE COURT: Would you please hand the signed
4 forms to Deputy Fleigner? He's going to bring them to
5 me. I'm going to tell you this; I have to say this to
6 all of you. I have no idea which form you're handing
7 me. Before I look at the form, thank you for your
8 service. I'm not thanking you for any particular
9 decision that you arrived at. I'm thanking you for
10 taking the time out of your busy lives to help us
11 resolve this case.

12 THE FOREPERSON: Sir, would you like me just
13 to hand the signed forms to the bailiff?

14 THE COURT: Why don't you hand them all to
15 him?

16 THE FOREPERSON: Okay.

17 THE COURT: Thank you. Madam Clerk, will you
18 please read the verdicts.

19 THE CLERK: (Reading:)

20 "Superior Court of the State of
21 California, in and for the County of
22 San Bernardino.

23 "The People of the State of
24 California versus John Henry
25 Yablonsky, defendant.

26 "Case Number FVI900518.

27 "Verdict 1-A,

28 "We, the jury in the

1 above-entitled action, find the
2 defendant, John Henry Yablonsky,
3 guilty of the offense of first degree
4 murder of Rita Mabel Cobb as charged
5 in Count I of the Information.

6 "Dated February 3rd, 2011.

7 "Signed by the foreperson.

8

9 "Same title of court and cause.

10 "Special Allegation I as to
11 Count I.

12 "We, the jury in the
13 above-entitled action, find that the
14 murder of Rita Mabel Cobb was
15 committed by John Henry Yablonsky
16 while the said defendant was engaged
17 in the commission of and/or attempted
18 commission of the crime of rape, true.

19 "Dated February 3rd, 2011.

20 "Signed by the foreperson."

21 THE COURT: Ladies and gentleman, as you just
22 heard those verdicts read, do they represent your own
23 personal verdicts, so say you one, so say you all?

24 (Whereupon the jurors answered in the affirmative.)

25 THE COURT: Did either counsel wish to have
26 the jury polled?

27 MR. THOMAS: I do not.

28 MR. ZYWICIEL: I would.

1 THE COURT: Okay. What's going to happen is
2 Ms. LoVasco's going to go by seat number that you're
3 sitting in. She's going to ask you if the verdicts as
4 read were your own personal verdicts as well.

5 Go ahead with your speech.

6 THE CLERK: As I refer to your jury seat
7 number, please answer yes or no to the following
8 question: Were the verdicts as read your personal
9 verdicts, Juror Number 1?

10 JUROR NO. 1: Yes.

11 THE CLERK: Two?

12 JUROR NO. 2: Yes.

13 THE CLERK: Three?

14 JUROR NO. 3: Yes.

15 THE CLERK: Four?

16 JUROR NO. 4: Yes.

17 THE CLERK: Five?

18 JUROR NO. 5: Yes.

19 THE CLERK: Six?

20 JUROR NO. 6: Yes.

21 THE CLERK: Seven?

22 JUROR NO. 7: Yes.

23 THE CLERK: Eight?

24 JUROR NO. 8: Yes.

25 THE CLERK: Nine?

26 JUROR NO. 9: Yes.

27 THE CLERK: Ten?

28 JUROR NO. 10: Yes.

1 THE CLERK: Eleven?

2 JUROR NO. 11: Yes.

3 THE CLERK: Twelve?

4 JUROR NO. 12: Yes.

5 THE COURT: I'm going to order the verdicts
6 as read will be recorded in the minutes of the
7 proceedings.

8 Mr. Zywiciel, Mr. Thomas, do we have any
9 further need for the service of this jury?

10 MR. THOMAS: No, your Honor.

11 MR. ZYWICIEL: I don't think so.

12 THE COURT: Ladies and gentlemen, I never get
13 tired of reading instructions. Here we go.

14 "You have now completed your jury
15 service in this trial. On behalf of
16 all the judges of the court, please
17 accept my thanks for your time and
18 effort.

19
20 "Now that the case is over, you
21 may choose whether or not to discuss
22 your deliberations with anyone.

23
24 "I'll remind you that under
25 California law, you must wait at least
26 90 days before negotiating or agreeing
27 to accept payment for information
28 about this case.

1

2

"Let me tell you about some rules
the law puts in place for your
convenience and protection.

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"The lawyers in the case, the
defendant or their representatives may
now talk to you about the case
including your deliberations or
verdict. Those discussions must occur
at a reasonable time and place and
with your consent.

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"Please immediately report to the
Court any unreasonable contact made
without your consent by the lawyers in
this case, their representatives or
the defendant.

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"A lawyer, representative, or
defendant who violates these rules,
violates a Court order and may be
fined.

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"I order that the Court's record
of personal juror identifying
information including names, addresses
and telephone numbers be sealed until

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1 further order of this Court.

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"If in the future the Court is asked to decide whether this information will be released, notice will be sent to any juror whose information is involved. You may oppose the release of this information and ask that any hearing on the release be closed to the public. The Court will decide whether and under what circumstances any information may be disclosed."

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In short, ladies and gentlemen, what I've just read to you is this: Talk if you want to. Don't talk if you don't want to. I've sealed the information, so that nobody's going to be able to get personal stuff about you without you knowing about it and have a chance to protest.

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23

I'm about to excuse you. Because of the hour of the day, the jury room is already closed. We would have had checks ready for you. Instead those checks will be sent to your home addresses.

24

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28

Personally accept my gratitude. I should say my personal gratitude for the effort that I know you all put in. You've worked very hard this week. Most of it has been deliberations, and, as I said before, I know that everyone knows how to get out of jury service.

1 Everyone knows how to dodge the responsibility, but you
2 should be very proud of yourselves that both lawyers in
3 this case believed you were people that they could trust
4 to be responsible and fair in deciding the verdict.

5 You also should be proud of yourselves for
6 having done your civic duty. If I haven't been clear
7 enough about how much I appreciate your service, I will
8 now switch it around and say I hope it hasn't been
9 entirely a one-way street. I hope that you are going to
10 leave this court with a little better understanding of
11 this third, coequal branch of government called the
12 judiciary.

13 On behalf of all the judges of the court, on
14 behalf of the People, on behalf of Mr. Yablonsky, thank
15 you very much for your service. You are now excused.
16 See you next year.

17 MR. THOMAS: Did the Court let them know to
18 stick around?

19 THE COURT: If you want to stick around and
20 talk to the lawyers, you're welcome to. It will be up
21 to you.

22 (Whereupon the following proceedings were held outside
23 the presence of the jury:)

24 THE COURT: Shall I refer this to the
25 probation department?

26 MR. ZYWICIEL: Yes. Mr. Yablonsky's willing
27 to waive time for sentencing. I don't know if
28 Mr. Sanders wants to file motion for new trial or not,

1 so that probably works out best.

2 THE COURT: Today is the 3rd of February.
3 How about we go out six weeks?

4 MR. ZYWICIEL: Could we go to April 8th?

5 THE COURT: I don't see why not.

6 MR. THOMAS: That's fine with the People.

7 THE COURT: Setting no interim date,
8 Mr. Zywiciel, we should tell Mr. Sanders that he needs
9 to be aware that I'm going that long because I
10 anticipate if he's going to file a post-trial motion,
11 that would be the time -- he should have it filed two
12 weeks before that date.

13 MR. THOMAS: I'm sure on that date
14 Mr. Sanders is going to want to have the Court hear
15 the due process motion that's already been filed.

16 THE COURT: So your response has been filed?

17 MR. THOMAS: It's been filed also.

18 THE COURT: Any additional motions,
19 Mr. Zywiciel, that he may choose to file, I'd ask that
20 he file those by March the -- March the 25th.

21 This matter is referred to probation for a
22 report and recommendation from the probation department,
23 and, Mr. Yablonsky, I'll order you back on April the 8th
24 for further hearing and pronouncement of judgment.

25 MR. ZYWICIEL: Thank you.

26 (Whereupon proceedings in the above-entitled
27 matter were concluded.)

28

