

COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

E

THE PEOPLE OF THE STATE OF CALIFORNIA, )

PLAINTIFF-RESPONDENT, )

VS. )

CHUCK E. JOHNSON, )

DEFENDANT-APPELLANT. )

FWV 02293

REPORTERS' TRANSCRIPT ON APPEAL

APPEAL FROM THE SUPERIOR COURT OF SAN BERNARDINO  
HON. ROBERT E. LAW, JUDGE PRESIDING

APPEARANCES:

FOR THE APPELLANT:

IN PRO PER

FOR RESPONDENT:

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REPORTED BY:

VOL 3 OF 4  
PP 470 - 720

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JANE FOLMER, C-2331,  
KATHRYNE MCNULTY, C-7651,  
OFFICIAL REPORTERS, AND  
KARIE MARTIN, C-9428,  
REPORTER PRO TEMPORE

COPY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

DEPT. NO. RC 4

HON. ROBERT E. LAW, JUDGE

THE PEOPLE OF THE  
STATE OF CALIFORNIA,  
  
PLAINTIFF,  
  
VS.  
  
CHUCK E. JOHNSON,  
  
DEFENDANT.

)  
)  
) NO. FWV 02293  
)  
)  
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REPORTERS' TRANSCRIPT ON APPEAL  
OCTOBER 19, 23, 24, 25, 26, 30, 31, 1995;  
NOVEMBER 1, 2, 6, 7, 8, 14, 1995;  
JUNE 7, 1996

APPEARANCES:

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KARIE MARTIN, C-9428,  
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1 RANCHO CUCAMONGA, CALIFORNIA; TUESDAY, OCTOBER 31, 1995

2 10:40 A.M.

3 DEPARTMENT 4

HON. ROBERT E. LAW, JUDGE

4  
5 APPEARANCES: SET FORTH ON THE TITLE PAGE.

6  
7 (GAIL GREENLEE, C-8647, OFFICIAL REPORTER.)

8 ---###---

9 (THE FOLLOWING PROCEEDINGS WERE HELD IN  
10 OPEN COURT OUTSIDE THE PRESENCE OF THE JURY;)

11 THE COURT: GOOD MORNING. PEOPLE VS. JOHNSON. WE  
12 HAVE ALL DISPLAY APPARENTLY THAT WE NEED TO THIS MORNING?

13 MS. SCHMAUSS: I NEED ABOUT TWO MORE SECONDS TO LOOK  
14 THROUGH HIS REDACTING THING.

15 MR. ABLARD.

16 MS. SCHMAUSS: LOOKS LIKE ON THE REDACTING, THERE'S  
17 ONLY ONE OF CONTENTION.

18 THE COURT: ALL RIGHT.

19 MS. SCHMAUSS: DO YOU WANT TO DO THAT NOW?

20 THE COURT: YES.

21 MR. ABLARD: WHAT IS IT, BY THE WAY.

22 MS. SCHMAUSS: ON TAPE ONE, SIDE TWO.

23 MR. ABLARD: WHERE?

24 MS. SCHMAUSS: FIRST OF ALL, ON PAGE 6.

25 THE COURT: JUST A SECOND, NOW. TAPE ONE, SIDE TWO,  
26 PAGE 6.

27 MS. SCHMAUSS: VERY FIRST PARAGRAPH. THIS IS THE  
28 NIGHTGOWN BUSINESS.

1 THE COURT: LET'S SEE WHAT HAPPENS ON PAGE 5. THERE  
2 IT IS.

3 MS. SCHMAUSS: NO. THEN ON PAGE 8, LINES 13 THROUGH  
4 17. I DON'T AGREE TO REDACTION. I FEEL EVEN MORE  
5 STRONGLY ABOUT THAT THAN PAGE 6. BECAUSE THIS CAME OUT OF  
6 LEFT FIELD FROM THE DEFENDANT HIMSELF.

7 THE COURT: YOU WANT A RULING?

8 MS. SCHMAUSS: YES.

9 MR. ABLARD: SHOULD I SAY ANYTHING? I HAVE SOMETHING  
10 TO SAY IF I NEED TO. IF NOT, THEN.

11 THE COURT: PAGE 5 AND 6 OF THE TAPE ONE, SIDE TWO  
12 DESCRIBES CONDUCT OF MR. JOHNSON IN HIS OWN WORDS THAT  
13 OCCURRED ON THE MORNING IN QUESTION. THAT'S ADMISSIBLE.

14 MR. ABLARD: MY OBJECTION TO THAT WOULD BE WE HAD  
15 RULED EARLIER REGARDING OTHER PEOPLE MENTIONED THAT  
16 PARTICULAR PASSAGE. THE FACT THAT SHE SAID--

17 THE COURT: NO. IT WAS A COMMENT MADE AT SOME OTHER  
18 TIME.

19 MR. ABLARD: OKAY. WELL.

20 THE COURT: NOT RELATED TO THE EVENT OF THE DAY IN  
21 QUESTION.

22 MR. ABLARD: OKAY, NOW.

23 THE COURT: I HAVE RULED.

24 MR. ABLARD: I UNDERSTAND.

25 THE COURT: YOU OBJECT ON ALL POSSIBLE GROUNDS.  
26 THANK YOU.

27 MR. ABLARD: THAN YOU.

28 THE COURT: PAGE 8 REDACTED.

1 MR. ABLARD: THANK YOU.

2 MS. SCHMAUSS: EXCUSE ME. IT IS REDACTED?

3 THE COURT: IT IS. THERE IS NO EVIDENCE OF CHILD  
4 MOLESTATION HAS ANYTHING TO DO WITH THIS CASE. SO, IT  
5 DOESN'T AND IT DOES.

6 MS. SCHMAUSS: OKAY. THANK YOU.

7 THE COURT: IT IS NOT RELEVANT.

8 MS. SCHMAUSS: MY ONLY TECHNICAL DIFFICULTY I CAN SEE  
9 IS MR. ABLARD WANTS SENTENCES TAKEN OUT OF PLACE. AND I  
10 WILL DO MY BEST, YOU KNOW, HAVING VERY PRIMITIVE  
11 EQUIPMENT, TO ACTUALLY REMOVE SENTENCES.

12 THE COURT: DON'T-- LOOK. THERE'S A LOT OF WAYS TO  
13 SKIN THIS CAT. IF YOU AGREE, THAT OTHERWISE THE  
14 SUGGESTION TO DO THE REDACTION YOU HAVE AGREED, ON YOU CAN  
15 CREATE A TRANSCRIPT.

16 MS. SCHMAUSS: WE HAVE ONE.

17 THE COURT: ALL CLEANED UP, ORALLY, THE TAPE, IF YOU  
18 WANT, IT WILL BE PLAYED. MAYBE YOU DON'T CARE. BUT IF  
19 YOU DO, YOU HAVE TO REDACT THE TAPE IN CONFORMITY WITH MY  
20 ORDER. AND YOU ARE AGREED ON THE OTHER REDACTION. AND  
21 YOU SHOULD HAVE TO DO IT.

22 MS. SCHMAUSS: I UNDERSTOOD THE COURT TO SAY YOU DO  
23 NOT WISH TRANSCRIPTS TO BE HANDED OUT TO THE JURY AND  
24 THEY ARE JUST TO LISTEN.

25 THE COURT: THAT IS CORRECT. THE EVIDENCE IS THE  
26 TAPE. THE TRANSCRIPT IS THERE TO ASSIST THEM. BUT ONLY  
27 IF THEY WISH TO LISTEN TO THE TAPE LATER WHILE THEY ARE  
28 DELIBERATING.

1 MS. SCHMAUSS: SO, I WILL REDACT THE AUDIO TAPE  
2 RECORDS. AND WE WILL GET YOU A CLEANED UP TRANSCRIPT, PLUS  
3 THE ONE THAT HAS BEEN MARKED SO THAT THE RECORD IS CLEAR.

4 THE COURT: THANK YOU. THAT'S EASY.

5 MS. SCHMAUSS: OKAY.

6 THE COURT: NOW, WHAT ELSE CAN WE DO THIS MORNING?

7 MS. SCHMAUSS: WE HAVE MR. JONES HERE FOR OUR 402  
8 HEARING.

9 THE COURT: THAT'S FINE. DO WE AGREE THAT THE  
10 PROSECUTION IS GOING TO OFFER EVIDENCE OF SOME SCIENTIFIC  
11 TEST HAS GOT TO BE ESTABLISHED. THE TECHNIQUE, METHOD, TO  
12 SUFFICIENTLY ESTABLISH, BEING ACCEPTANCE IN HIS FIELD,  
13 TESTIMONY WITH RESPECT TO TECHNIQUE AND ITS APPLICATION  
14 AS OFFERED BY AN APPROPRIATELY-QUALIFIED EXPERT AND IF THE  
15 CORRECT SCIENTIFIC PROCEDURES HAVE BEEN USED IN THIS  
16 PARTICULAR CASE?

17 MS. SCHMAUSS: CORRECT. AND I HAVE GIVEN THE COURT  
18 AND COUNSEL THE MOST RECENT CASES I COULD FIND.

19 THE COURT: SAYS WHAT IT IS, WHAT THE GENERAL RULES  
20 HAVE BEEN.

21 MS. SCHMAUSS: RIGHT.

22 THE COURT: LAY THE FOUNDATION. SHOW IT IS  
23 SCIENTIFICALLY ACCEPTED. SO, THE TECHNIQUE USED IS  
24 APPROPRIATE.

25 MS. SCHMAUSS: WELL, ACTUALLY, THE CASE ITSELF SAYS  
26 IT IS SCIENTIFICALLY ACCEPTED. I MEAN, WE DON'T HAVE TO  
27 RE-INVENT THE WHEEL TODAY.

28 THE COURT: THAT'S NOT WHAT I SAID AT ALL. THE CASE

1 SAYS THAT THE APPELLATE COURT REVIEWS THE RECORD DE NOVO  
2 TO SEE IF THERE'S SUFFICIENT EVIDENCE IN THE TRIAL TO  
3 ESTABLISH THOSE THINGS TO SUPPORT THE ADMISSIBILITY OF THE  
4 TECHNIQUE, THE PROCEDURE, PROPERLY APPLIED WITH THE  
5 PROPER FOUNDATION. IT DOES NOT SAY THAT THE APPELLATE  
6 COURT SAYS THAT BASED UPON THE TESTIMONY IN THAT TRIAL,  
7 FOR ALL TIMES AND ALL PLACES THIS TECHNIQUE IS ACCEPTABLE.

8 MS. SCHMAUSS: BUT KELLY SAYS, PEOPLE VS. KELLY  
9 SAYS--

10 THE COURT: YES.

11 MS. SCHMAUSS: -- SAYS ONCE A TRIAL COURT HAS ADMITTED  
12 EVIDENCE BASED ON A NEW SCIENTIFIC TECHNIQUE AND THAT  
13 DECISION IS AFFIRMED ON APPEAL BY A PUBLISHED APPELLATE  
14 DECISION, THE PRECEDENCE SO ESTABLISHED MAY CONTROL  
15 GENERAL TRIALS.

16 THE COURT: YES.

17 MS. SCHMAUSS: AT LEAST UNTIL NEW EVIDENCE TO PRESENT  
18 REFLECTING A CHANGE IN THE ATTITUDE OF THE SCIENTIFIC  
19 COMMUNITY. SO--

20 THE COURT: SO, YOU DON'T HAVE TO PROVE ONE.

21 MS. SCHMAUSS: I DON'T HAVE TO PROVE THE ACCEPTANCE  
22 IN THE SCIENTIFIC COMMUNITY. THAT HAS BEEN ESTABLISHED.  
23 I JUST NEED TO PROVE THAT MR. JONES HERE FOLLOWED PROPER  
24 PROCEDURE IN CONDUCTING HIS DNA TESTING. SO, THE FIRST  
25 PRONG IN KELLY IS NOT NECESSARY. BECAUSE--

26 THE COURT: BUT TWO AND THREE ARE.

27 MS. SCHMAUSS: RIGHT. BUT I DON'T NEED TO BRING IN  
28 A PARADE OF WITNESSES IN A THREE-WEEK HEARING.

1 MR. ABLARD: TWO AND THREE ARE REQUIRED ASSUMING IT  
2 IS IDENTICAL TO THAT AMMANSON CASE, AMADSON (PHONETIC) TWO  
3 AND THREE.

4 MS. SCHMAUSS: THAT HE FOLLOWED PROPER PROCEDURES AND  
5 HE IS PROPERLY TRAINED. IS THAT WHAT THE COURT--

6 THE COURT: TESTIMONY WITH RESPECT TO TECHNIQUE AND  
7 ITS APPLICATION IS OFFERED BY-- IN OTHER WORDS, WHAT IT  
8 IS AND WHAT IT DOES IS OFFERED BY QUALIFIED EXPERT AND  
9 THAT THE SCIENTIFIC PROCEDURES HAVE BEEN FOLLOWED IN THIS  
10 PARTICULAR CASE.

11 MS. SCHMAUSS: RIGHT. AND I AM PREPARED TO DO THAT.

12 THE COURT: BUT YOU DON'T HAVE TO ESTABLISH AGAIN--

13 MS. SCHMAUSS: RIGHT.

14 THE COURT:--THAT IF IT IS THE SAME PROCEDURE, IT IS  
15 NOW GENERALLY ACCEPTED UNDER--

16 MS. SCHMAUSS: EXACTLY.

17 THE COURT: GOT IT?

18 MS. SCHMAUSS: GOT IT.

19 THE COURT: OKAY. SO, ANY COMMENTS?

20 MR. ABLARD: YES. I WOULD OBJECT AND SUBMIT AND--

21 THE COURT: I WILL RULE.

22 MR. ABLARD: THANK YOU.

23 MS. SCHMAUSS: I HAVE TWO EXHIBITS TO MARK FOR  
24 PURPOSES OF THIS HEARING. ONE IS DONALD JONES CURRICULUM  
25 VITAE SHOWING HIS QUALIFICATIONS.

26 THE COURT: IS HE HERE?

27 MS. SCHMAUSS: HE IS RIGHT THERE.

28 THE COURT: WHY DON'T YOU RAISE YOUR RIGHT HAND, FACE

1 THE CLERK, AND BE SWORN, PLEASE.

2  
3 DONALD THOMAS JONES,  
4 CALLED AS A WITNESS BY THE PLAINTIFF, WAS SWORN AND  
5 TESTIFIED AS FOLLOWS:

6 THE CLERK: YOU DO SOLEMNLY SWEAR THE TESTIMONY YOU  
7 MAY GIVE IN THE MATTER NOW PENDING BEFORE THIS COURT  
8 SHALL BE THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT  
9 THE TRUTH, SO HELP YOU GOD.

10 THE WITNESS: I DO.

11 THE CLERK: THANK YOU. PLEASE BE SEATED. PLEASE STATE  
12 YOUR FULL NAME SPELLING YOUR LAST NAME FOR THE RECORD.

13 THE WITNESS: MY NAME IS DONALD THOMAS JONES  
14 D-O-N-A-L-D T-H-O-M-A-S J-O-N-E-S.

15 THE COURT: WHERE DO YOU WORK?

16 THE WITNESS: SIR, I WORK WITH THE SAN BERNARDINO  
17 COUNTY SHERIFFS IN THE CRIME LABORATORY.

18 THE COURT: WHAT DO YOU DO THERE?

19 THE WITNESS: I AM A CRIMINALIST. AND I HAVE BEEN  
20 FOR ABOUT FIFTEEN YEARS.

21 THE COURT: WHAT'S A CRIMINALIST?

22 THE WITNESS: CRIMINALIST IS A SCIENTIST WHO APPLIES  
23 GENERAL RULES OF SCIENCE TO THE ANALYSIS OF FORENSIC  
24 EVIDENCE.

25 THE COURT: HOW DO YOU GET TO BE ONE OF THOSE GUYS?

26 THE WITNESS: YOU APPLY FOR THE JOB. YOU NEED  
27 QUALIFICATIONS WHICH INCLUDE A BACHELOR OF SCIENCE DEGREE  
28 AND IN A NATURAL SCIENCE, PRIMARILY USUALLY THERE'S SOME

1        SORT OF APPLICATION PROCESS WHICH MAY INVOLVE AN ORAL OR  
2        WRITTEN TEST.

3            THE COURT: DO YOU HAVE ONE OF THOSE DEGREES THAT IS  
4        REQUIRED?

5            THE WITNESS: YES, SIR. I HAVE A BACHELOR OF SCIENCE  
6        DEGREE IN CHEMISTRY FROM THE CALIFORNIA STATE UNIVERSITY  
7        AT NORTHRIDGE.

8            THE COURT: WHEN DID YOU GET THAT?

9            THE WITNESS: I BELIEVE IT WAS 1978.

10          THE COURT: GOT ANY FURTHER EDUCATION BY CHANCE?

11          THE WITNESS: YES, SIR. I HAVE COMPLETED COURSE  
12        WORK IN THE MAJOR COURSE WORK IN THE CRIMINAL DIVISION  
13        MASTERS PROGRAM AT CALIFORNIA STATE UNIVERSITY AT LOS  
14        ANGELES; HOWEVER, DID NOT ATTEMPT A MASTERS DEGREE AT  
15        THAT INSTITUTION. I AM CURRENTLY WORKING ON A MASTERS  
16        DEGREE IN BIOLOGY AT THE CALIFORNIA STATE UNIVERSITY AT  
17        SAN BERNARDINO.

18          THE COURT: WHAT DO YOU HAVE TO DO TO FINISH THAT?

19          THE WITNESS: WRITE MY THESIS. I HAVE COLLECTED ALL  
20        THE DATA.

21          THE COURT: BIG ONE; RIGHT? BIG PROJECT.

22          THE WITNESS: IT IS, YES.

23          THE COURT: CAN YOU TAKE AN ORAL TEST INSTEAD OF A  
24        THESIS NOW IN SOME AREAS?

25          THE WITNESS: THERE ARE WHAT THEY CALL COMMENSURATE  
26        EXAMINATION. I HAVE OPTED NOT TO DO THAT.

27          THE COURT: OKAY. HOW LONG HAVE YOU BEEN A  
28        CRIMINALIST? DID YOU SAY FIFTEEN YEARS?



1 THE WITNESS: I HAVE BEEN SINCE OCTOBER 6 OF 1980.

2 THE COURT: HAVE YOU TESTIFIED BEFORE?

3 THE WITNESS: I HAVE TESTIFIED IN NUMEROUS OCCASIONS  
4 WITH REGARD TO DNA EXAMINATION. I HAVE TESTIFIED ONCE IN  
5 THE VICTORVILLE AREA ON WHAT IS CALLED RESTRICTION  
6 FRAGMENT LENGTH POLYMORPHISM, RFLP. AND I HAVE TESTIFIED  
7 ONCE IN CENTRAL AND I BELIEVE ONCE IN THE RANCHO  
8 CUCAMONGA COURTS ON THE POLYMERASE CHAIN REACTION  
9 APPLICATION USING THE DQ-ALPHA KITS. I HAVE ALSO RECENTLY  
10 TESTIFIED IN A MODIFIED KELLY-FRYE HEARING IN THE IN  
11 RIVERSIDE COUNTY.

12 THE COURT: WELL, DID YOU DO SOMETHING IN THIS CASE?

13 THE WITNESS: YES, SIR, I DID.

14 THE COURT: WHAT DID YOU DO?

15 THE WITNESS: I EXAMINED A STAIN THAT WAS HAD BEEN CUT  
16 OUT OF A BABY BLANKET. STAIN APPEARED TO BE A DILUTED  
17 BLOOD STAIN.

18 I EXTRACTED DNA FROM IT, DETERMINED THAT THE DNA WAS  
19 IN FACT HUMAN DNA, AND THEN TYPED IT FOR A GENETIC MARKER.  
20 IN THIS PARTICULAR CASE IT WAS FOR A MARKER CALLED  
21 DQ-ALPHA.

22 I THEN COMPARED THE RESULTS OF THAT TESTING TO THE  
23 RESULTS OF I THINK IN THE END THERE WERE SIX WHOLE BLOOD  
24 SAMPLES OR REFERENCE BLOOD SAMPLES WHICH HAD BEEN  
25 SUBMITTED, AND WAS ABLE TO TYPE THOSE SAMPLES AND RENDER  
26 AN OPINION AS TO WHO POSSIBLY COULD HAVE BEEN A  
27 CONTRIBUTOR OF DNA AND THE STAIN ON THE BLANKET.

28 THE COURT: OKAY. WHAT DID YOU DETERMINE?

1 THE WITNESS: I DETERMINED THAT THE DQ-ALPHA TYPE ON  
2 THE BLANKET IS THE SAME TYPE AS A I BELIEVE HER NAME WAS  
3 BRITTANY RIGGS. IT WAS NOT THE SAME AS DARIN RIGGS,  
4 JENNIFER RETHORN, STEVE LOPEZ, CHUCK JOHNSON, OR TRAVIS  
5 JOHNSON. I ALSO EXAMINED--

6 THE COURT: WAIT A MINUTE. YOU MEAN THE SUM TOTAL OF  
7 THIS EXPERTISE IS GOING TO TELL US THAT BRITTANY'S BABY  
8 BLANKET HAD BRITTANY'S BLOOD ON IT?

9 MS. SCHMAUSS: AND THERE WAS ALSO HIGH LEVELS OF  
10 AMYLASE.

11 THE COURT: NO. DON'T GET TOO FANCY WITH ME. SO,  
12 WE ARE GOING TO BE ABLE TO DETERMINE THAT BRITTANY'S  
13 BLANKET HAD BRITTANY'S BLOOD.

14 MS. SCHMAUSS: AND NO ONE ELSE IN THE HOUSEHOLD.

15 THE COURT: GOT THAT. BUT THE FUNDAMENTAL FACT IS  
16 THAT.

17 MS. SCHMAUSS: CORRECT.

18 THE COURT: THAT WE, MY GOSH, ARE GOING TO CONCLUDE  
19 THAT WHICH ORDINARILY ONE WOULD CONCLUDE IN THE REAL WORLD  
20 WITHOUT SCIENTIFIC ANALYSIS THAT THERE'S BLOOD ON THE BABY  
21 BLANKET COMES FROM THE BABY. OKAY.

22 MS. SCHMAUSS: THAT'S ALL.

23 THE COURT: WITHOUT.

24 MS. SCHMAUSS: IT IS NOT O.J. EVIDENCE.

25 THE COURT: HUH.

26 MS. SCHMAUSS: IT IS NOT O.J.

27 THE COURT: WHAT A SHOCK. OKAY. NOW THERE'S SOME  
28 OTHER STUFF THAT WE ARE GOING TO DISCOVER WITH THIS

1 SCIENTIFIC ANALYSIS. YOU HAVE SUMMED IT UP.

2 THE WITNESS: THE BLOOD WAS BRITTANY'S AND IS  
3 INCONSISTENT WITH EVERYONE ELSE IN THE HOUSEHOLD. AND  
4 THERE WAS SALIVA ON THE BLANKET. THAT'S IT.

5 THE COURT: OKAY. WELL, WE HADN'T GOT TO SALIVA  
6 TEST. DID YOU DO SOMETHING ELSE?

7 THE WITNESS: YES.

8 THE COURT: OKAY. WHAT WAS THAT?

9 THE WITNESS: IN THE PROCESS OF DISCUSSING THE CASE  
10 WITH--

11 THE COURT: I DIDN'T ASK ABOUT DISCUSSION. WHAT ELSE  
12 DID YOU DO SCIENTIFICALLY?

13 THE WITNESS: YES, SIR. I EXTRACTED THE STAIN AND  
14 TESTED IT FOR AN ENZYME, AMYLASE. AMYLASE IS AN ENZYME IN  
15 HIGH CONCENTRATION IN SALIVA, IS PRESENT IN LOW  
16 CONCENTRATIONS IN OTHER PHYSIOLOGICAL FLUIDS.

17 THE RESULT OF THIS PARTICULAR TEST SHOWS THAT THERE  
18 WAS A HIGHER THAN EXPECTED LEVEL OF AMYLASE IN THE STAIN  
19 THAT EXTRACTED FROM THE BLANKET. THE STAIN WASN'T IN  
20 FACT BLOOD.

21 THE COURT: OKAY. WELL, IT WAS BLOOD. YOU GOT BLOOD  
22 AND SALIVA IN THIS SPOT.

23 THE WITNESS: THAT WOULD BE A CONCLUSION THAT COULD  
24 BE DRAWN, YES, SIR.

25 THE COURT: FROM BRITTANY.

26 THE WITNESS: I DID NOT MAKE A DETERMINATION AS TO  
27 THE--

28 THE COURT: THERE'S NO DNA CONNECTION BETWEEN SALIVA

1 AND A PERSON?

2 THE WITNESS: SIR, WHEN YOU COME DOWN TO IT, THE FACT  
3 THAT YOU HAVE A MIXTURE OF BLOOD AND THAT I AM EXTRACTING  
4 HUMAN DNA, I REALLY DID NOT MAKE A DETERMINATION WHICH  
5 HUMAN THE DNA CAME FROM.

6 THE COURT: ONE OR THE OTHER.

7 THE WITNESS: YES, SIR. IT APPEARS TO ME THAT  
8 THERE'S A MIX OF FLUIDS ON THE BLANKET, BLOOD AND POSSIBLY  
9 SALIVA, AND THAT THE DNA THAT I EXTRACTED HAS HUMAN DNA,  
10 WAS THE SAME GENETIC MARKER IN THIS LIMITED FIELD OF SIX.

11 AND ONE PERSON IN THAT LIMITED, I HAVE ELIMINATED FIVE  
12 OTHERS.

13 THE COURT: AND THE KIND OF TESTS YOU USED TO DO THAT  
14 WAS A WHAT?

15 THE WITNESS: THE GENETIC MARKER TYPE. THE DQ-ALPHA  
16 TYPING WAS DONE BY A WALHAOUS HLA DQ-ALPHA AMPLI-TYPE KIT,  
17 IS MARKETED BY PERK & ELMER.

18 THE COURT: OKAY. YOU CAN EXAMINE.

19 MS. SCHMAUSS: THANK YOU, YOUR HONOR. A LITTLE BIT  
20 MORE.

21 THE COURT: JUST WANT TO FIND OUT WHAT HAPPENED MORE  
22 QUICKLY THAN YOU ARE LIKELY TO GET THERE.

23 MS. SCHMAUSS: YOU DID A GREAT JOB.

24 THE COURT: I HAVE DONE IT BEFORE.

25 DIRECT EXAMINATION

26 BY MS. SCHMAUSS:

27 Q OKAY. THIS KIT THAT YOU ARE DESCRIBING, IS THIS  
28 A STANDARD KIT THROUGHOUT THE INDUSTRY FOR CONDUCTING PCR

1 ANALYSIS?

2 A FOR CONDUCTING PCR ANALYSIS, OF THE WHAT IS  
3 CALLED DQ-ALPHA LOCUS, YES. PCR OR POLYMERASE CHAIN  
4 REACTION IS A TECHNIQUE. AND YOU USE IT TO APPLY IT TO  
5 DIFFERENT DNA LOCATIONS. DQ-ALPHA IS ONE OF THOSE  
6 LOCATIONS. THERE HAS BEEN A KIT DEVELOPED FOR THAT  
7 APPLICATION. AND THAT KIT IS USED BY MY LAB AND THE NEWER  
8 LABS.

9 Q OKAY. IS THERE ONLY ONE KIT, BASED ON YOUR  
10 TRAINING AND EXPERIENCE, THERE'S ONLY ONE KIT OUT THERE  
11 THAT IS BEING USED FOR THESE TESTS?

12 A CURRENTLY, THAT IS TRUE. THEY ARE IN THE  
13 PROCESS OF REDESIGNING THE KITS. IT IS STILL ONLY BY THE  
14 SAME MANUFACTURER.

15 Q WHICH IS WHAT?

16 A PERK AND ELMER.

17 Q OKAY. ARE YOU FAMILIAR WITH A LABORATORY BY THE  
18 NAME OF SERI?

19 A YES. THAT WOULD BE SERI, CAP S, CAP E, CAP R,  
20 CAP I. IT STANDS FOR SEROLOGICAL RESEARCH INSTITUTE.  
21 THEY ARE LOCATED IN EMERYVILLE, I BELIEVE. THEY MOVED TO  
22 ALAMEDA. IT WAS HEADED BY BRIAN RACKSELL. AND THEY DO  
23 SEROLOGICAL TESTING WHICH WOULD HAVE ALSO DQ-ALPHA TYPING,  
24 BOTH PROSECUTING ATTORNEYS AND DEFENSE ATTORNEYS. AND I  
25 BELIEVE THEY MAY ALSO WORK IN CIVIL CASES.

26 Q OKAY.

27 A OR PRIVATE LABORATORIES.

28 Q ARE YOU FAMILIAR WITH THE KIT? IS IT PRONOUNCED

1       SERI?

2           A       SERI.

3           Q       ARE YOU FAMILIAR WITH THE KIT SERI USES?

4           A       YES.   SERI WOULD ALSO USE THIS SAME CALLED A

5 DQ-ALPHA HLA AMPLI-TYPE KIT.

6           Q       AND THAT'S THE KIT YOU USED IN THIS PARTICULAR  
7 CASE?

8           A       YES.

9           Q       IS THERE ANY WAY FOR YOU TO EXAMINE THE KIT THAT  
10 YOU ARE USING TO MAKE SURE THAT ALL COMPONENTS ARE IN

11 TACT?

12           A       WITH REGARD TO THE INDIVIDUAL KIT THAT WE  
13 RECEIVE, THEY HAVE BASIC COMPONENTS WHICH WE THEN MUST USE  
14 IN THE PROCESS OF OUR TESTING.  IT ALSO COMES WITH A  
15 ESSENTIALLY AN INSTRUCTION BOOK, A HOW-TO-USE-THIS-KIT  
16 BOOK WHICH WE HAVE ESSENTIALLY REWRITTEN AND PUT INTO OUR  
17 METHOD MANUAL.  THE CONTENTS OF THE KIT INCLUDE ALL OF THE  
18 BASIC THINGS THAT YOU NEED FOR USING THE PCR TECHNOLOGY  
19 FOR SPECIFICALLY FOR DQ-ALPHA.  THERE ARE OTHER SOLUTIONS  
20 SUCH AS BUFFERS AND WATCHES THAT NEED TO BE MADE BY THE  
21 INDIVIDUAL LABORATORY.  BUT THE FUNDAMENTAL PCR REAGENTS  
22 ARE IN THE KIT.

23           Q       OKAY.  AND WHAT KIND OF TRAINING HAVE YOU  
24 RECEIVED IN THE USE OF THIS KIT?

25           A       I TOOK A CLASS CONDUCTED BY THE CALIFORNIA  
26 CRIMINALISTIC INSTITUTE.  I BELIEVE THAT WAS IN DECEMBER  
27 OF 1993.  THAT WAS IT WAS PUT ON BY CALIFORNIA  
28 CRIMINALISTIC INSTITUTE.  IT WAS TAUGHT AT THE DEPARTMENT

1 OF JUSTICE BERKLEY LABORATORY, THIS STATE DNA LABORATORY.  
2 ESSENTIALLY SHOWED THE EXTRACTION OF DNA PROCESSES AND THE  
3 EFFECTUAL USE OF THE AMPLI-TYPE KIT FOR TYPING DQ-ALPHA.

4 I HAVE ALSO--

5 Q LET ME STOP YOU THERE. WERE YOU ACTUALLY GIVEN  
6 HANDS-ON TRAINING AND WERE YOU EVALUATED, GRADED?

7 A THERE WAS NO GRADING PROCESS. BUT IT WAS A  
8 HANDS-ON LABORATORY EXERCISE TYPE OF PROGRAM.

9 Q WAS THERE ANY WAY TO ASSURE YOURSELF THAT YOU  
10 HAD CONDUCTED THE TEST PROPERLY?

11 A WELL, WITH REGARD TO ANY TESTS THAT ARE  
12 PERFORMED USING THIS KIT, THERE ARE CERTAIN CONTROLS THAT  
13 ARE RUN ALONGSIDE THE SAMPLE. IF THOSE CONTROLS PERFORM  
14 IN AN EXPECTED MANNER, THE CONCLUSION IS MADE THAT YOU RAN  
15 THE TEST CORRECTLY.

16 Q AND DID THE CONTROLS ADD UP IN YOUR TEST?

17 A YES, MA'AM.

18 MR. ABLARD: EXCUSE ME. WHICH TEST, SEMINAR OR THE  
19 TEST, THAT WE ARE TALKING ABOUT?

20 MS. SCHMAUSS: SEMINAR.

21 Q BY MS. SCHMAUSS: WAS THERE A PARTICULAR  
22 SEMINAR?

23 A IT WAS A WEEK-LONG CLASS.

24 Q HOW MANY TESTS DID YOU RUN IN THAT WEEK-LONG  
25 CLASSE?

26 A I EXTRACTED FIVE OR SIX SAMPLES. I DON'T  
27 REMEMBER SPECIFICALLY.

28 Q YOU HAD ANY FURTHER TRAINING SPECIFIC TO PCR

1 ANALYSIS WAS DONE IN THIS CASE?

2 A YES, MA'AM. OUR LABORATORY ESSENTIALLY  
3 VALIDATES THE USE OF THE DQ-ALPHA KIT. PRIOR TO OUR USING  
4 IT FOR CASE WORK. THAT PARTICULAR WORK WAS DONE BY MY  
5 PARTNER, DAN BRUGONESS. AFTER HE HAD DONE THIS VALIDATION  
6 STUDY, I WAS THEN PUT IN A ESSENTIALLY A TRAINING METHOD  
7 TO LEARN YOU TO USE THE KIT AND HOW TO APPLY IT TO CASE  
8 SAMPLES. I LOOK AT SEVERAL ESSENTIALLY WHOLE BLOOD  
9 SAMPLES. I BELIEVE FIVE OLD SEXUAL ASSAULT KITS, I  
10 BELIEVE IT WAS FIVE WHAT ARE CALLED ENVIRONMENTALLY ABUSED  
11 SAMPLES. THEY ARE SAMPLES THAT ARE PUT BLOOD STAINS ON A  
12 PIECE OF CLOTH. AND YOU LEFT IT OUT IN THE SUN FOR THREE  
13 OR FOUR DAYS, SOME SORT OF ENVIRONMENTAL ABUSE.

14 AND I LOOKED AT A SET OF PROFICIENCY TEST SAMPLES.  
15 IN ALL, I WOULD SAY I PROBABLY LOOKED AT A HUNDRED OR MORE  
16 SAMPLES IN MY TRAINING EXERCISES. EACH SET OF SAMPLES  
17 WOULD HAVE A SET OF CONTROLS. MOST OF THE SAMPLES HAD  
18 BEEN PREVIOUSLY ANALYZED BY ANOTHER PERSON. SO,  
19 THEREFORE, THEY'RE ESSENTIALLY BLIND, A BLIND PROFICIENCY  
20 TEST OF MYSELF TO SEE IF I CAN PROPERLY APPLY THIS NEW  
21 TECHNOLOGY, NEW FOR ME. AND AT THE TEND OF THAT TIME, I  
22 SUBMITTED MY RESULTS TO MR. BRUGONES WHO THEN WROTE A  
23 MEMORANDUM TO MY LABORATORY DIRECTOR EXPLAINING MY RESULTS  
24 AND SO FORTH. MY LABORATORY DIRECTOR ESSENTIALLY OKAYED  
25 ME TO USE THIS KIT ON CASE WORK.

26 Q SO, YOU PASSED THE TESTS?

27 A YES.

28 Q WERE YOU RIGHT IN EVERY INSTANCE?



1 A YES, MA'AM.

2 Q AND WHEN WAS THIS TESTING PROCEDURE?

3 A I BELIEVE IT EXTENDED THROUGH JANUARY OF '94.

4 Q NOW, ARE YOU CURRENTLY ASSIGNED TO THE DNA UNIT  
5 AT THE CRIME LAB HERE IN SAN BERNARDINO COUNTY?

6 A YES, MA'AM, I HAVE BEEN PRIMARILY A FORENSIC DNA  
7 ANALYST FOR ABOUT FOUR AND A HALF TO FIVE YEARS.

8 Q HOW MANY PREVIOUS DQ-ALPHA TESTS HAVE YOU DONE  
9 PRIOR TO THIS PARTICULAR CASE?

10 A LOTS. I REALLY HAVEN'T KEPT ACCOUNT OF THE  
11 NUMBER OF TESTS. I KNOW THAT I HAVE WORKED SAY ON AN  
12 AVERAGE FIFTEEN TO TWENTY CASES A YEAR IN THE YEAR AND A  
13 HALF THAT I HAVE, YEAR AND A HALF THAT I HAVE BEEN USING  
14 THIS PARTICULAR TEST. I SAY PROBABLY ABOUT FIFTY CASES.

15 Q USING DQ-ALPHA?

16 A YES, MA'AM. BUT I REALLY HAVEN'T KEPT AN  
17 ACCURATE ACCOUNT OF THAT.

18 Q OKAY. AND I NOTICE FROM YOUR CURRICULUM VITAE  
19 THAT YOU ALSO WENT TO COURSE IN VIRGINIA. VIENNA,  
20 VIRGINIA OR FROM A GROUP FROM VIENNA, VIRGINIA, THE  
21 COMBINED DNA INDEX SYSTEM END USER TRAINING?

22 A YES, MA'AM. THAT ACTUALLY PERTAINS TO ANOTHER  
23 PORTION OF OUR DNA ANALYSIS SYSTEM. THE COMBINED DNA  
24 INDEXING SYSTEM OR CODIS, CAPITOL C, CAP O, CAP D, CAP I  
25 CAP S INVOLVES ESSENTIALLY A NATIONAL NETWORK IN WHICH  
26 TEST RESULTS CAN BE COMPARED BETWEEN AGENCIES EITHER AT  
27 THE STATE LEVEL OR AT THE NATIONAL LEVEL TO SEE IF WE CAN  
28 ACTUALLY LINK CASES TOGETHER THAT OTHERWISE MY NOT HAVE

1 BEEN LINKED TOGETHER.

2 Q OKAY. HAVE YOU MENTIONED ALL THE TRAINING THAT  
3 YOU HAVE HAD IN DNA ANALYSIS?

4 A WELL, I HAD SOME FUNDAMENTAL DNA TRAINING WITH  
5 REGARD TO THE EXTRACTION OF DNA AT THE FEDERAL BUREAU OF  
6 INVESTIGATION FACILITY IN QUANTICO, VIRGINIA. THEY HAVE A  
7 RESEARCH AND TRAINING CENTER THERE. SPENT A MONTH THERE.  
8 I BELIEVE IT WAS 1991, IN 1990. I HAVE A DIFFICULT TIME  
9 WITH YEARS AND DATES.

10 Q VITAE SAYS 1990?

11 A OKAY. THANK YOU. I JUST REMEMBER IT WAS  
12 BETWEEN THANKSGIVING AND CHRISTMAS. IT WAS A HECK OF A  
13 MONTH. BUT WE WERE THERE. WE LEARNED THE TECHNIQUES OF  
14 DNA EXTRACTION, EXTRACTION AND ISOLATING AND CLEANUP. AND  
15 THEN QUANTIZATION, TELL HOW MUCH DNA IS THERE. AND THEN  
16 WE WENT ON TO OTHER TECHNIQUES, MOSTLY INVOLVING WHAT IS  
17 CALLED THE RFLP TECHNOLOGY. WE DID RECEIVE ESSENTIALLY  
18 CLASSROOM TRAINING WITH REGARD TO PCR AND UNDERSTANDING AS  
19 TO HOW THE PCR TECHNOLOGY WORKS. BUT THAT WAS BEFORE OUR  
20 LABORATORY GOT INTO THE USE OF PCR TECHNOLOGY.

21 Q OKAY. I NOTICE ALSO YOU HAVE LISTED, YOU STATED  
22 FORENSIC DNA ANALYSIS AT THE UNIVERSITY OF CALIFORNIA,  
23 BERKLEY IN 1989.

24 A THAT'S TRUE. PRIOR TO-- I ACTUALLY THAT WOULD  
25 BE RIGHT ABOUT THE TIME THAT OUR LABORATORY WAS THINKING  
26 ABOUT GETTING INTO THE DNA ANALYSIS IDEA. MY PARTNER AND  
27 I WERE SENT TO A ONE-WEEK COURSE AT UNIVERSITY OF  
28 CALIFORNIA AT BERKLEY. IT WAS TAUGHT BY A GENTLEMAN FROM

1 I BELIEVE HIS LABORATORY WAS IN DENVER. BUT HE CAME OUT  
2 TO ESSENTIALLY TEACH FOLKS ON THE WEST COAST AGAIN THE  
3 AFFECT OF DNA EXTRACTION AND AGAIN USING THE RFLP  
4 TECHNIQUE. AT THAT PARTICULAR COURSE ALSO DR. ED BLAKE  
5 CAME IN AND SHOWED US SOME OF THE PCR TECHNOLOGY. WE DID  
6 NOT HAVE HANDS-ON WITH REGARD TO THAT.

7 Q DR. BLAKE IS HE KNOWN TO YOU AS ONE OF THE WORLD  
8 RENOWN EXPERTS IN PCR ANALYSIS?

9 A DR. BLAKE ASSISTED IN THE DEVELOPMENT OF THE  
10 DQ-ALPHA KIT AND WAS ONE OF THE FIRST TO USE IT IN A  
11 FORENSIC CASE. FIRST TO USE THE DQ-ALPHA TYPING SYSTEM IN  
12 A FORENSIC CASE.

13 Q SO, YOU ARE FAMILIAR WITH HIS WORK?

14 A YES. I KNOW DR. BLAKE. HE CAME IN AND CAME IN  
15 AND SHOWED US THAT PARTICULAR TECHNOLOGY IN THE CLASS IN  
16 1989. HE CAME IN AND TALKED TO US AT THE CLASS IN 1993.  
17 I HAVE WATCHED DR. BLAKE TESTIFY. AND HE HAS PARTICIPATED  
18 IN A NUMBER OF ESSENTIALLY WE HAVE WHAT WE CALL DNA USER  
19 MEETINGS. WE GET TOGETHER SEMIANNUALLY, DISCUSS CURRENT  
20 TOPICS WITH REGARD TO DNA, WHERE IT HAS BEEN, WHERE IT IS  
21 GOING, NEW TECHNOLOGIES THAT ARE GOING OUT. AND DR. BLAKE  
22 PARTICIPATES IN THOSE ALSO.

23 Q AND HAVE YOU ALSO READ SCIENTIFIC ARTICLES IN  
24 THIS AREA OF DQ-ALPHA AS KEEPING UP YOUR OWN PERSONAL  
25 TRAINING?

26 A YES, MA'AM. IN FACT CURRENTLY, PART OF MY  
27 MASTERS THESIS INVOLVES LOOKING AT DQ-ALPHA WITH REGARD TO  
28 ITS RELATIONSHIP TO SEVERAL OTHER CONVENTIONAL SEROLOGY

1        MARKERS.

2            Q        SO, YOU HAVE READ A LOT IN THE FIELD?

3            A        YES, MA'AM.

4            Q        OKAY. YOU HAVE MENTIONED DR. BLAKE. ANYONE  
5        ELSE?

6            A        WITH REGARD TO WITH REGARD TO DQ-ALPHA,  
7        DR. REBECCA REYNOLD HAS DONE A LOT OF RESEARCH WITH REGARD  
8        TO DEVELOPMENT OF THE KIT AS WELL AS ITS APPLICATION.  
9        THERE'S A DR. KATE KOMI WHO WORKS WITH THE FORENSIC  
10       SCIENCE SECTION AT FBI WHO HAS AUTHORED SOME ARTICLES

11       AGAIN LOOKING AT THE USE OF PCR TECHNOLOGIES AND DQ-ALPHA  
12       IN FORENSIC SCIENCE. THERE HAVE BEEN NUMEROUS OTHER  
13       REPORTS OF THE USE OF EITHER DQ-ALPHA ON PARTICULAR CASES  
14       IN TERMS OF LIKE TECHNICAL NOTE OR IN THE ESSENTIALLY THE  
15       POPULATION STUDIES OF DQ-ALPHA TO FIND OUT HOW COMMON OR  
16       RARE CERTAIN TYPES ARE.

17            Q        OKAY. SO, ALL OF THAT HAS BEEN PART OF YOUR OWN  
18        READING AND RESEARCH FOR WRITING YOUR THESIS?

19            A        YES, MA'AM.

20            Q        WHEN YOU ARE DOING THESE TESTS, DO YOU FOLLOW A  
21        CERTAIN PROTOCOL?

22            A        YES, MA'AM. AS I PREVIOUSLY STATED, THERE'S A  
23        BOOKLET THAT IS ENCLOSED WITH EACH KIT THAT HAS THE  
24        STANDARD PROTOCOL FOR THE DQ-ALPHA TYPING KIT. WE HAVE  
25        PRETTY MUCH WORD-FOR-WORD INCORPORATED THAT INTO OUR  
26        METHOD MANUAL.

27            Q        THIS PARTICULAR CASE, DID YOU FOLLOW THE  
28        PROTOCOL THAT'S DICTATED BY THAT BOOK AS ENCOMPASSED BY

1 YOUR TRAINING MANUAL?

2 A YES, MA'AM, I DO WITH EVERY CASE.

3 Q AND YOU DID IN THIS CASE?

4 A YES, MA'AM.

5 Q AND COULD YOU BRIEFLY OUTLINE THE PROTOCOL FOR  
6 US?

7 A WITH REGARD TO THE PROTOCOL IN THE BOOKLET, I  
8 CAN'T REMEMBER EXACTLY WHERE IT STARTS, IF IT STARTS-- I  
9 DON'T THINK IT STARTS WITH DNA EXTRACTION. IT MAY. BUT  
10 ESSENTIALLY, THE WAY WE EXAMINE THE EVIDENCE IS TO TAKE A  
11 LOOK AT THE STAIN, CUT THE STAIN INTO PORTIONS. WE ALSO  
12 WILL TAKE A WHAT IS CALLED A CONTROL OR A NON-STAIN AREA  
13 OF THE GARMENT OR OF THE BLANKET OF THE MATERIAL AND  
14 EXTRACT THESE ALONG WITH A SEPARATE, START OUT AS AN EMPTY  
15 TUBE. WE WILL TAKE ALL OF OUR SOLUTION THROUGH THIS. IT  
16 IS A REAGENT CONTROL.

17 SO, ESSENTIALLY, THREE TUBES WILL HAVE THE STAIN. I  
18 HAVE A BACKGROUND PORTION OF THE MATERIAL. AND I HAVE A  
19 REAGENT CONTROL. AND I WILL PROCESS THESE THROUGH ALL OF  
20 MY EXTRACTION TECHNIQUES. I WILL THEN DO A QUANTITATIVE  
21 TEST TO FIND OUT HOW MUCH DNA IS PRESENT IN EACH OF THESE  
22 SAMPLES. HOPEFULLY, I WILL GET DNA FROM THE STAIN.  
23 SOMETIMES YOU WILL OR WILL NOT GET IT FROM THE BACKGROUND  
24 MATERIAL. AND IN THE REAGENT CONTROL, THERE SHOULD BE  
25 ABSOLUTELY ZERO DNA.

26 AFTER THIS QUANTIZATION HAS BEEN DONE, SEE HOW MUCH  
27 DNA IS THERE, I WILL THEN TAKE A SMALL PORTION OF IT AND  
28 PUT IT INTO THIS KIT, A MIXTURE IN THIS KIT. AND

1 ESSENTIALLY THIS MIXTURE OR THIS KIT WILL THEN ASSIST ME  
2 IN LOOKING AT WHAT IS CALLED THE DQ-ALPHA TYPE OF THE DNA  
3 WHICH IS PRESENT. THIS INVOLVES PUTTING A SMALL PORTION OF  
4 THE DNA IN A IN A TEST TUBE, PUTTING THIS TEST TUBE IN A  
5 HEAT BLOCK. THE HEAT BLOCK WILL THEN BE WHAT IS CALLED  
6 CYCLED THROUGH SEVEN TEMPERATURES IN ORDER TO ACCOMPLISH  
7 THIS POLYMERASE CHAIN REACTION, THIS PCR TECHNIQUE. THEN  
8 A PORTION OF THIS REACTION MIX WILL THEN BE WASHED OVER  
9 THE TOP OF WHAT ARE CALLED TYPING STRIPS. TYPING STRIPS  
10 ARE ANOTHER COMPONENT OF THE KIT. THE KIT, THE STRIPS  
11 WILL THEN BE TREATED THROUGH SEVERAL WASHES OR BATHS AT  
12 DIFFERENT TEMPERATURES AND THEN EVENTUALLY TREATED WITH A  
13 COLOR REAGENT TO DEVELOPE A COLOR WHICH WILL ASSIST IN  
14 DOING THE TYPING.

15 Q THAT'S PART OF THE KIT TOO?

16 A YES, MA'AM.

17 Q OKAY. THEN WHAT DO YOU DO?

18 A THEN, BASED ON THE COLOR SPOTS THAT YOU SEE ON  
19 THE TYPING STRIP, YOU DETERMINE WHAT DQ-ALPHA TYPE WAS  
20 PRESENT IN THE ORIGINAL EXTRACTION DNA SAMPLE. AND THEN  
21 THAT PARTICULAR DQ-ALPHA TYPE CAN BE COMPARED TO DQ-ALPHA  
22 TYPE FROM REFERENCE SAMPLES OR WHOLE BLOOD SAMPLES FROM  
23 OTHER INDIVIDUALS WHICH HAVE SIMILARLY BEEN EXTRACTED AND  
24 TESTED.

25 Q OKAY. IS THAT THE SUMMARY OF THE PROTOCOL?

26 A YES, MA'AM. THAT'S A VERY SIMPLIFIED, VERY  
27 SIMPLIFIED, THUMBNAIL SKETCH OF HOW IT WORKS.

28 Q IN THIS CASE, IN A CASE INVOLVING PEOPLE VS.

1 CHUCK JOHNSON, DID YOU FOLLOW THIS EXACT PROTOCOL?

2 A YES, MA'AM.

3 Q AND ALL ACCORDING TO THE INSTRUCTIONS THAT ARE  
4 SUPPLIED WITH THE KIT AS INCORPORATED IN YOUR OWN MANUAL?

5 A YES, MA'AM.

6 THE COURT: WHAT DO YOU GET WHEN YOU ARE DONE? WHAT  
7 ARE YOU LOOKING AT?

8 THE WITNESS: WHEN YOU ARE FINISHED, THERE IS A SMALL  
9 WHITE STRIP THAT'S ABOUT HALF AN INCH BY FIVE INCHES LONG.  
10 IT HAS A SERIES OF MAY HAVE A SERIES OF COLORED BLUE DOTS

11 ON THEM. NEXT TO THE DOTS THERE WILL BE NUMBERS WHICH  
12 WILL HELP YOU IN ESSENTIALLY DECODING WHAT THE COMBINATION  
13 OF DOTS MEANS. ONCE YOU HAVE DECODED THIS COMBINATION OF  
14 DOTS, IT WILL THEN TELL YOU WHAT DQ-ALPHA TYPE YOU HAVE.

15 AND SINCE YOU SIMPLY MATCH THE CODES AMONG THE  
16 STRIPS-- I WILL HAVE STRIP FOR A DNA THAT I TOOK OUT OF  
17 THE STAIN. I WILL ALSO HAVE A STRIP FOR THE MATERIAL THAT  
18 WASN'T STAINED. GENERALLY SPEAKING AND IN THIS PARTICULAR  
19 CASE, IT GIVES ME EXTREMELY WEAK OR NO RESULTS. IN THIS  
20 CASE, IT GAVE ME EXTREMELY WEAK RESULTS WHICH I COMPARE TO  
21 THE DNA FROM THE STAIN.

22 I ALSO HAVE THE REAGENT CONTROL WHICH I RAN WHICH  
23 SHOULD GIVE ME ABSOLUTELY NOTHING. NO SPOTS. AND THAT'S  
24 EXACTLY WHAT IT DID. THEN, I ALSO HAVE THE SIX REFERENCE  
25 SAMPLES OR WHOLE BLOOD SAMPLES THAT I HAVE TESTED BECAUSE  
26 THEY ARE SUBMITTED IN THIS PARTICULAR CASE. I WILL ALSO  
27 RUN WHAT IS CALLED AN AMPLIFICATION NEGATIVE. I JUST TAKE  
28 A VIAL OUT OF THE KIT THAT THEY SEND US. I JUST TAKE A

1 VIAL OUT THERE. I DON'T PUT ANYTHING IN IT. I DON'T PUT  
2 ANY DNA IN IT OR ANYTHING THAT I JUST EXPECT HAS DNA IN IT  
3 AT ALL AND I AM AMPLIFYING JUST TO SEE IF THERE WASN'T DNA  
4 IN THERE WHEN THEY MADE THE KIT. SO, I WILL HAVE TO  
5 COMPLETION NEGATIVE ANALYSIS MUST BE ABSOLUTELY ZERO  
6 BLANK. AND IN THIS CASE, IT WAS. WITH THE KIT, THEY WILL  
7 ALSO GIVE US A KNOWN DNA TYPE. AND THIS IS TO MAKE SURE  
8 THAT THE PROCESS REALLY WILL WORK WHETHER THERE IS DNA  
9 PRESENT. AND THIS KNOWN DNA TYPE AFTER I HAVE PUT IT IN  
10 THE REACTION VIAL AND RUN IT THROUGH, THE TEMPERATURE  
11 CYCLE THAT I SPOKE OF, IT SHOULD GIVE ME A PARTICULAR  
12 DQ-ALPHA TYPE. AND I CHECKED THAT EVERY TIME. AND IN  
13 THIS CASE, IT DID GIVE ME THE CORRECT TYPE.

14 THE COURT: WE, WHAT I AM CURIOUS ABOUT IS WHEN YOU  
15 ARE THROUGH, AFTER YOU HAVE THE STRIP OF PAPER WITH SOME  
16 SPOTS ON IT?

17 THE WITNESS: YES, SIR.

18 THE COURT: WHERE DO THE NUMBERS COME FROM THAT  
19 RELATE TO THE SPOTS?

20 THE WITNESS: MIGHT BE EASIER IF I DREW SOME PICTURES  
21 OR SHOWED YOU PART OF MY NOTES. THE STRIP IT HAS ON IT A  
22 SERIES OF WHAT ARE CALLED PROTECTION DNA PROTECTION FOR  
23 SPECIFIC DQ-ALPHA TYPES. IF A SPOT TURNS BLUE, THAT  
24 DQ-ALPHA TYPE IS PRESENT. THEY HAVE PROTECTION FOR WHAT  
25 THEY CALL TYPE ONE, TYPE TWO, AND TYPE THREE. AND TYPE  
26 FOUR. TYPE ONE'S CAN BE FURTHER DIVIDED INTO 1.1, 1.2,  
27 AND 1.3. SO, IN ESSENCE, I HAVE SIX DIFFERENT DQ-ALPHA  
28 THINGS THAT I CAN GET, .1, 1.2, 1.3; 2, 3, AND 4. THE



1 COMBINATION OF DOTS ON THE STRIP ALLOWS ME TO FIND OUT  
2 WHAT COMBINATIONS OF THESE DQ-ALPHA THINGS ARE PRESENT. I  
3 EXPECT EVERYBODY TO HAVE ESSENTIALLY TWO OF THESE SIX.  
4 YOU WILL HAVE TWO BECAUSE YOU HAVE BECAUSE OF INHERENT  
5 FACTORS, YOU GET ONE FROM YOUR MOM AND ONE FROM YOUR DAD.  
6 SOMETIMES, YOU MIGHT GET THE SAME ONE FROM YOUR MOM THAT  
7 YOU GOT FROM YOUR DAD. MAYBE YOU GOT TWO FROM YOUR MOM  
8 AND TWO FROM YOUR DAD. THEREFORE, ONLY THE TWO WILL SHOW  
9 IN YOUR DQ-ALPHA STRIPS. BUT MOST OF THE TIME, PEOPLE  
10 WILL GET TWO OF THESE SIX DQ-ALPHA. THEY ARE CALLED  
11 ALLELES. YOU WILL GET TWO OF THESE.

12 AND DUE TO A SLIGHT COMPLEXITY OF KIT, YOU NEED TO  
13 READ THESE PARTICULAR SPOTS CORRECTLY IN ORDER TO  
14 DETERMINE WHICH OF THESE ALLELES ARE PRESENT. AT THE END  
15 OF MY TESTING, I WILL TAKE THESE STRIPS WHICH HAVE THE  
16 BLUE DOTS AND I WILL TAKE A BLACK AND WHITE POLOROID  
17 PICTURE OF THEM. AND THAT WILL GO IN MY CASE FILE. STRIPS  
18 EVENTUALLY, IF YOU LEAVE THEM AROUND FOR A DAY OR A DAY OR  
19 SO, THEY TURN COLORS AND SO ON AND THEY WRINKLE UP. I  
20 THROW THEM AWAY.

21 THE COURT: OKAY.

22 Q BY MS. SCHMAUSS: JUST SO THAT WE ALL  
23 UNDERSTAND, WHAT IS AN ALLELE?

24 A AN ALLELE IS A VARIATION AT A PARTICULAR DNA  
25 LOCUS OR CITE OR LOCATION. IF I TAKE A LOOK AT ALL OF THE  
26 DNA THAT I HAVE IN MY BODY AND I GO TO ONE PARTICULAR  
27 SPOT, A LOCUS OR A LOCATION, IF THIS LOCATION CAN BE  
28 DIFFERENT, YOU NOW, IF I TAKE A LOOK AT IT, AND THEN I GO

1 TO YOUR DNA AND I LOOK AT THE SAME LOCATION, OUR DNA AND  
2 YOU ARE DIFFERENT, THERE IS WHAT IS CALLED A POLYMORPHISM  
3 THAT ARE DIFFERENT. I AM DIFFERENT THAN YOU AT THAT  
4 PARTICULAR LOCATION. EACH OF THESE DIFFERENCES IS CALLED  
5 AN ALLELE OR A POSSIBLE TYPE FOR THAT PARTICULAR DNA  
6 LOCATION. IF WE ARE THE SAME AND IF IT TURNS OUT THAT  
7 EVERYBODY IS THE SAME, THEN THE WORD ALLELE DOESN'T APPLY  
8 AND IN FACT IT REALLY DOESN'T HELP US IN FORENSICS.  
9 BECAUSE OUR INTEREST IS BE ABLE TO TELL DIFFERENCES AMONG  
10 PEOPLE RATHER THAN WHERE THEY ARE ALL THE SAME.

11 Q OKAY. AND AS YOU JUST STATED, EVERYBODY HAS GOT  
12 TWO AND THEY CAN EITHER BE THE SAME OR DIFFERENT. FOR  
13 EXAMPLE IN THIS CASE, I NOTICE THAT DARIN RIGGS, HE HAS  
14 GOT 1.1, 1.1. SO, HIS ALLELES ARE THE SAME?

15 A YES, MA'AM. WHEN I TYPED HIS PARTICULAR SAMPLE,  
16 HE SHOWED THAT HE HAD ONE ALLELE. THE ASSUMPTION THEN IS  
17 THAT IF YOU ONLY GET JUST ONE ALLELE THAT YOU DETECT THAT  
18 IS ESSENTIALLY HE HAS TWO COPIES OF THIS ONE ALLELE.

19 Q SO, HE GOT THEM BOTH EITHER HIS MOTHER OR HIS  
20 DAD, OR GOT ONE FROM HIS MOM AND ONE FROM HIS DAD. HIS  
21 MOM GAVE HIM A 1.1. HIS DAD GAVE HIM A 1.1. THEY CAME  
22 TOGETHER. THAT IS WHAT HIS BLOOD TYPE IS.

23 Q WHEN YOU ARE DOING THESE TESTS, YOU TALK ABOUT  
24 THE--

25 THE COURT: YOU DID END UP WITH SIX POSSIBILITIES IN  
26 THE TEST; IS THAT CORRECT?

27 THE WITNESS: THERE ARE SIX POSSIBLE ALLELES THAT CAN  
28 BE DETECTED.

1 THE COURT: ALL RIGHT. AND EVERYBODY GETS TWO OF  
2 THEM?

3 THE WITNESS: YES, SIR.

4 THE COURT: SO, THE NUMBER OF VARIATIONS IS  
5 RELATIVELY SMALL; ISN'T IT?

6 THE WITNESS: WHEN YOU HAVE COMBINATION OF SIX, TAKEN  
7 TWO AT A TIME.

8 THE COURT: SURE.

9 THE WITNESS: YOU GET TWENTY-ONE DIFFERENT TYPES.

10 THE COURT: OKAY.

11 THE WITNESS: SO, THAT IS IF IN TERMS OF NUMBER OF  
12 VARIATIONS.

13 THE COURT: SO, THIS IS KIND OF A GROSS TEST; ISN'T  
14 IT, IN THE SENSE THAT THE WHOLE POPULATION CAN BE  
15 DISTINGUISHED ONE FROM ANOTHER WITH TWENTY-ONE  
16 POSSIBILITIES.

17 THE WITNESS: THAT IS CORRECT. IT IS ESSENTIALLY TO  
18 CATEGORIZE.

19 THE COURT: THIS IS A CATEGORIZATION TEST AND YOU  
20 CAN GO FURTHER--

21 THE WITNESS: YES, SIR.

22 THE COURT: -- AND BEGIN TO IDENTIFY OR EXCLUDE. I  
23 ASSUME THE WHOLE PROCESS IS TO INCLUDE OR EXCLUDE IN THIS  
24 PARTICULAR. SO ALL YOU HAVE DONE HERE IS REALLY KIND OF A  
25 GROSS ANALYSIS SAYING THAT I DON'T HAVE TO GO ANY FURTHER.  
26 I JUST RUN THIS PORTION OF TEST AND I CAN EXCLUDE THE  
27 KNOWN GROUP HERE OR INCLUDE AND EXCLUDE WITHOUT GOING ANY  
28 FURTHER.

1 THE WITNESS: IN THIS PARTICULAR TEST, THAT IS MY  
2 CONCLUSION. IF THERE ARE-- IF THERE WAS FURTHER QUESTION  
3 AS TO THESE RESULTS, AS TO CAN I STILL INCLUDE BRITTANY,  
4 IF I DO FURTHER TESTS, I WOULD HAVE TO DO FURTHER TESTS IN  
5 ORDER TO DO THAT.

6 THE COURT: WELL, IT IS CLEARLY POSSIBLE THAT YOU  
7 COULD HAVE HAD TWO OR MORE PEOPLE COMING OUT IDENTICAL;  
8 CORRECT?

9 THE WITNESS: I AM ACTUALLY QUITE SURPRISED THAT OF  
10 THESE SIX PEOPLE, TWO OF THEM DIDN'T HAVE EXACTLY THE SAME  
11 TYPE.

12 THE COURT: YEAH.

13 THE WITNESS: I REALLY WAS.

14 THE COURT: WHICH MEANS YOU'D HAVE TO HAVE GONE  
15 FURTHER IN YOUR ANALYSIS IN ORDER TO EXCLUDE OR INCLUDE?

16 THE WITNESS: IF THE TWO PEOPLE WHO ARE THE SAME WERE  
17 THE SAME AS THAT IN THE STAIN.

18 THE COURT: YEAH.

19 THE WITNESS: YES, SIR.

20 THE COURT: OKAY. YOU SAY NOW YOU CAN GO ON FURTHER  
21 WITH FURTHER ANALYSIS. AND OKAY. I GOT IT. THIS IS WHEN

22 YOU END UP WITH TWENTY-ONE POSSIBLE, THAT'S KIND OF A  
23 GROSS INDICATOR.

24 THE WITNESS: YES, SIR.

25 THE COURT: THAT'S ABOUT AS GROSS AS SAY YEAH,  
26 THERE'S REALLY BLOOD?

27 THW WITNESS: IT'S A LITTLE MORE INFORMATIVE THAN  
28 SAYING A B.O. TYPE IN WHICH YOU ONLY HAVE FOUR TIES AND

1 THERE ARE OTHER CONVENTIONAL MARKERS.

2 THE COURT: SURE.

3 THE WITNESS: IN WHICH YOU ONLY HAD MAYBE TEN TIMES  
4 IF YOU ARE TALKING ABOUT SAY MAYBE PGM. THE ADVANTAGE OF  
5 THIS PARTICULAR-- THERE ARE SEVERAL ADVANTAGES TO THIS  
6 PARTICULAR TYPE OF TESTING. YOU HAVE MORE TYPES. AND YOU  
7 CAN WORK WITH SMALLER SAMPLES. AND YOU ARE WORKING WITH  
8 DNA WHICH IS MORE STABLE THAN SOME OTHER THINGS THAT WE  
9 HAVE USED IN THE PAST. IT WILL STAY AROUND LONGER IN THE  
10 DRY STAIN.

11 Q BY MS. SCHMAUSS: YOU HAVE MENTIONED QUALITY  
12 CONTROL. IN THIS PARTICULAR CASE, WAS THERE ANYTHING-- I  
13 GUESS I AM DONE.

14 THE COURT: YES, I THINK SO.

15 MR. ABLARD: I HAVE A COUPLE OF QUESTIONS.

16 THE COURT: I THOUGHT YOU MIGHT.

17 CROSS-EXAMINATION

18 BY MR. ABLARD:

19 Q THANK YOU. NOW, THERE WAS SIX SAMPLES OF BLOOD  
20 THAT YOU TESTED; CORRECT?

21 A IN THE END, THERE WERE SIX WHAT I WOULD CALL  
22 REFERENCE SAMPLES, YES, SIR.

23 Q ALL RIGHT. THOSE WERE IN THE PEOPLE UP THERE?

24 A YES, SIR.

25 Q ON YOUR CHART. AND WHEN WERE THOSE SAMPLES  
26 TAKEN FROM THE PEOPLE; DO YOU KNOW?

27 A I COULD TELL YOU WHEN THEY WERE RECEIVED IN THE  
28 LABORATORY. BUT AS TO WHEN THEY WERE TAKEN, NO, SIR. I

1 CAN'T. I CAN'T GIVE YOU SPECIFICS.

2 Q OKAY. AND DO YOU KNOW UNDER WHAT CIRCUMSTANCES  
3 THEY WERE TAKEN, AND JUST TO MAKE IT QUICKER HERE, HOW  
4 THEY WERE STORED?

5 A WITH REGARD TO?

6 Q WHEN THEY CAME INTO THE LAB?

7 A WITH REGARD TO HOW THEY ARE STORED WITHIN THE  
8 LAB, I DO KNOW.

9 Q BEFORE THEY CAME TO THE LAB?

10 A NO, SIR, I DON'T.

11 Q GIVEN THE NATURE OF THIS PARTICULAR TEST WOULD  
12 STORAGE OF BLOOD SAMPLES BE IMPORTANT?

13 A WITH REGARD TO THE WHOLE BLOOD SAMPLES?

14 Q WHATEVER SAMPLES THE LAB GOT TO TEST FOR THIS  
15 PARTICULAR PROCEDURE, WOULD IT BE IMPORTANT TO KNOW OR IF  
16 WOULD STORAGE BE IMPORTANT? IS THERE PROPER OR IMPROPER  
17 STORAGE OF A BLOOD SAMPLE THAT IT MIGHT AFFECT OUTCOME OF  
18 TESTS, THIS TEST, THE DQ-ALPHA TEST?

19 A IF THE STAINS OR THE SAMPLES WERE IMPROPERLY  
20 STORED, THEN I WOULD NOT GET A TEST RESULT. IF THEY WERE  
21 NOT-- IF THEY ARE IMPROPERLY STORED FOR A LONG ENOUGH  
22 PERIOD OF TIME-- THE DNA IS AN EXTREMELY HARDY MOLECULE, A  
23 VERY STABLE MOLECULE EVEN IN A DRY STATE. WITH REGARDS TO  
24 THIS PARTICULAR TECHNOLOGY, BECAUSE IT HAS THE ABILITY TO  
25 WORK WITH SMALL DNA FRAGMENTS, THE STORAGE CONDITIONS  
26 WOULD BE LESS LIKELY TO AFFECT THE TYPING RESULTS.

27 Q COULD IT AFFECT THE TYPING RESULTS?

28 A IF THE LIQUID BLOODS WERE LEFT IN A REFRIGERATOR

1 FOR AN EXTENDED FOR A REALLY LONG PERIOD OF TIME PRIOR TO  
2 A DRY SWATCH OR A DRY STAIN BEING MADE OF THEM, IT MIGHT  
3 BE POSSIBLE FOR THEM TO DEGRADE FAR ENOUGH THAT YOU WOULD  
4 NOT GET A DQ-ALPHA TYPE.

5 Q BUT WHEN WERE THE SWATCHES MADE, DO YOU KNOW?

6 A SWATCHES WERE, IN GENERAL, SWATCHES ARE MADE  
7 WITHIN A WEEK'S TIME OF THE BLOOD BEING SUBMITTED TO THE  
8 LABORATORY.

9 Q WHEN WERE THESE MADE, THE ONES THAT ARE  
10 PRESENTED TO YOU?

11 A I CAN TELL YOU THAT THE BLOOD SWATCH FOR TRAVIS  
12 JOHNSON, REFERENCE NUMBER 3174, THAT WAS MADE ON OCTOBER  
13 23, 1995. I CAN SAY THAT BECAUSE I MADE THE SWATCH.

14 Q OKAY.

15 A THE REFERENCE SAMPLE FOR STEVE LOPEZ WAS  
16 RECEIVED BY OUR LABORATORY ON JULY 27, 1995. AND THE  
17 BLOOD SWATCH WE HAVE MADE THE DRY SWATCH WOULD HAVE BEEN  
18 MADE WITHIN A WEEK OF THAT TIME.

19 Q IS THERE ANYTHING INDICATES THAT IT WAS MADE  
20 WITHIN A WEEK OF THAT TIME, BY THE WAY?

21 A I HAVE A REPORT FROM OUR PROPERTY SECTION THAT  
22 SAYS THAT THE SWATCH WAS LOGGED INTO OUR PROPERTY SECTION  
23 ON AUGUST 4, 1995. AND IT WOULD HAVE BEEN LOGGED IN AFTER  
24 THE SWATCH HAS BEEN MADE, IT HAS BEEN DRIED, AND IT HAS  
25 BEEN PLACED IN A ESSENTIALLY A FREEZER IN OUR SEROLOGY  
26 SECTION PRIOR TO IT BEING TAKEN TO THE FREEZER IN THE  
27 PROPERTY SECTION.

28 Q WAS ALL THAT DONE THAT YOU JUST MENTIONED, YOU

1 KNOW, THAT THAT WAS DONE, THE STORAGE OF THE SWATCH?

2 A IN TERMS OF HOW THINGS WERE, HOW THINGS  
3 PROGRESSED, YES, SIR. THEY HAD TO HAVE PROGRESSED THAT  
4 WAY IN ORDER FOR ME TO BE ABLE TO FIND THEM WHEN I  
5 EVENTUALLY WENT TO TEST THEM.

6 Q I GUESS WHAT I WAS ASKING WAS YOU, WHEN YOU ARE  
7 GOING TO GO DO YOUR TEST, DO YOU GO TO A PARTICULAR PLACE  
8 AND THERE THEY ARE?

9 A I ESSENTIALLY I GO TO THE PROPERTY SECTION AND  
10 LOG THEM OUT OF THE PROPERTY SECTION. YES, SIR.

11 Q AND IS IT IMPORTANT FROM THE TIME THAT THE  
12 SWATCH IS DONE UNTIL THE TIME THAT IT GETS INTO THE  
13 PROPERTY SECTION WHERE YOU RETRIEVE IT, WHAT HAPPENS TO  
14 THAT SWATCH IN THE INTERIM? IS THAT AN IMPORTANT TIME  
15 PERIOD?

16 A WITH REGARD TO?

17 Q TO HAVING IT PROPERLY PRESERVED SO YOU CAN  
18 ACTUALLY DO THE PROPER TEST? IN OTHER WORDS, IF  
19 PROCEDURES AREN'T FOLLOWED DURING THAT TIME PERIOD, WOULD  
20 THERE BE CONTAMINATION? COULD THERE BE CONTAMINATION THAT  
21 WILL CALL FOR MISREADING LATER ON?

22 A OKAY. ON THE WHAT WE CALL THE CONTINUUM OF  
23 POSSIBILITIES, IT IS PROBABLE ON THERE SOMEWHERE AS BEING  
24 POSSIBLE; LIKELIHOOD, NO.

25 Q OKAY. BUT IS THERE A LOG KEPT FROM THE TIME THE  
26 SWATCH IS MADE UNTIL THE TIME IT GOES INTO THE PROPERTY  
27 WHERE YOU RETRIEVE IT? IS THERE SOME SORT OF A LOG KEPT  
28 WHAT YOU HAVE, WHAT THEY HAVE DONE WITH THAT SWATCH?



1           A     AS FAR AS A LOG.

2           Q     OR NOTE OR ANYTHING THAT WE KNOW THAT THE  
3     PROCEDURE HAS BEEN FOLLOWED PROPERLY?

4           A     I BELIEVE THERE WERE WITH REGARD TO SOME OF THE  
5     SAMPLES, WE DID SWITCH OVER TO A SUCH A SPECIFIC LOG  
6     TRACKING SYSTEM FOR THE SAMPLE AND FOR THE SWATCHES THAT  
7     WOULD BE, THAT WOULD IN OUR SEROLOGY SECTION AND BE  
8     CHECKED BY OUR QUALITY ASSURANCE OFFICER.

9           Q     OKAY.

10          A     THERE ARE TWO SAMPLES WHICH I BELIEVE WE  
11     RECEIVED OR PROCESSED PRIOR TO THIS PARTICULAR LOG COMING  
12     INTO EFFECT AND THEREFORE WOULD NOT BE REFLECTED ON  
13     THERE.

14          Q     AND WHICH SAMPLES WERE THOSE?

15          A     AND REFERENCE SAMPLE NUMBER 303, WHICH IS A  
16     SAMPLE FROM DARIN RIGGS. AND A SEXUAL ASSAULT KIT, BLOOD  
17     NUMBER 13008, WHICH WOULD BE THE REFERENCE SAMPLE FOR  
18     BRITTANY RIGGS.

19          Q     SO, AS TO THOSE TWO SAMPLES, WE ARE NOT SURE  
20     WHETHER WE ARE ASSUMING THAT PROCEDURES WERE FOLLOWED.  
21     BUT IT IS NOT LOGGED IN. IT IS NOT WRITTEN DOWN WHETHER  
22     OR NOT THEY WERE; CORRECT?

23          A     WELL, IT DEPENDS ON HOW EXACTING YOU WANT  
24     THINGS TO BE WRITTEN DOWN. IN TERMS OF WHERE THEY WERE,  
25     EVERY PARTICULAR MINUTE, THAT WON'T HAPPEN ON ANY  
26     PARTICULAR ITEM OF EVIDENCE.

27          Q     RIGHT.

28          A     WITH REGARD TO THE BLOOD SAMPLES, THERE IS A

1 RECORD OF THEM BEEN RECEIVED IN THE LABORATORY AND A  
2 RECORD OF THE SEXUAL ASSAULT KIT WITH REGARD TO BRITTANY  
3 RIGGS.

4 THE COURT: ALL RIGHT. WHY ARE YOU SAYING THAT? WHY  
5 DO YOU HAVE A SEXUAL ASSAULT KIT?

6 THE WITNESS: IT WOULD HAVE BEEN EVIDENCE THAT WOULD  
7 HAVE BEEN COLLECTED AT THE AUTOPSY AS A STANDARD ROUTINE  
8 TO COLLECT.

9 THE COURT: WELL, I UNDERSTAND YOU COLLECTED THE  
10 EVIDENCE IN AN AUTOPSY.

11 THE WITNESS: RIGHT.

12 THE COURT: BUT WHY SEXUAL ASSAULT KIT?

13 THE WITNESS: THE KIT HAS A NUMBER OF ITEMS IN IT: A  
14 BLOOD SAMPLE, SALIVA SWABS, VAGINAL, ORAL, AND RECTAL  
15 SWABS WHICH CAN BE SELECTED IN TERMS OF COLLECTION OF  
16 EVIDENCE. ALSO HEAD HAIR SAMPLES AND IN OTHER CASES  
17 FINGERNAIL SCRAPPINGS, ETCETERA. THESE ARE ALL OTHER  
18 ITEMS OF EVIDENCE THAT ARE NEEDED FOR THE POSSIBLE,  
19 POSSIBLE CRIME BEING COMMITTED OR REFERENCE SAMPLES THAT  
20 CAN BE USED FOR COMPARISON AT A LATER DATE.

21 THE COURT: I UNDERSTAND ALL THAT.

22 THE WITNESS: OKAY.

23 THE COURT: WHY DON'T YOU HAVE A MURDER KIT?

24 THE WITNESS: SIR, WITH REGARD TO A MURDER KIT, WE DO  
25 COLLECT, WE DO COLLECT EVIDENCE.

26 THE COURT: WITH A DEAD PERSON, YOU SAY AREN'T WE  
27 CURIOUS ABOUT DEATH AND ALL THAT STUFF.

28 THE WITNESS: WITH REGARD TO SEXUAL ASSAULT

1 INVESTIGATION, THERE ARE SPECIFIC--

2 THE COURT: I UNDERSTAND ALL THAT. BUT THIS AIN'T  
3 ONE OF THEM. THAT'S A DIFFERENT KIND OF INVESTIGATION.

4 THE WITNESS: BUT I NEED TO EXPLAIN THE WHOLE THING  
5 IN ORDER FOR IT TO BECOME A LITTLE CLEARER IN A LARGER  
6 LIGHT.

7 THE COURT: OKAY. GO AHEAD.

8 THE WITNESS: PART OF A HOMICIDE INVESTIGATION MAY  
9 ALSO INCLUDE A SEXUAL ASSAULT INVESTIGATION.

10 THE COURT: I UNDERSTAND ALL THAT.

11 THE WITNESS: THEN AS PART OF A HOMICIDE  
12 INVESTIGATION, YOU SHOULD ROUTINELY CHECK A SEXUAL ASSAULT  
13 KIT.

14 THE COURT: OKAY, FOR MALE AND FEMALE BOTH?

15 THE WITNESS: I THINK PRIMARILY IT IS--

16 THE COURT: JUST CURIOUS.

17 THE WITNESS: WELL, I THINK PRIMARILY WITH FEMALE  
18 VICTIMS, THAT IS COLLECTED. THERE MAY BE OCCASIONS THAT  
19 IT IS COLLECTED ALSO ON MALE VICTIMS.

20 THE COURT: WOULDN'T YOU WANT ALL THOSE SAMPLES  
21 GENERALLY ANYWAY IF YOU ARE DOING AN INVESTIGATION AS TO  
22 CAUSE OF DEATH?

23 THE WITNESS: WELL, SIR, I THINK YOU ARE ASKING  
24 QUESTIONS THAT ARE A LITTLE BIT OUT OF MY REALM. MY REALM  
25 MOSTLY HAS TO DO WITH THE SCIENTIFIC APPLICATION FOR THE  
26 ANALYSIS.

27 THE COURT: OKAY. FOR CLARIFICATION, HOWEVER YOU  
28 GET THE INFORMATION IN THIS CASE, IT IS NOT A SEXUAL

1       ASSAULT KIT.  THERE IS NO SEXUAL ASSAULT.  SO, WE ARE  
2       GOING TO REDACT THAT.

3           MS. SCHMAUSS:  PERHAPS WE COULD ADVISE THE WITNESS TO  
4       REFER TO BRITTANY'S SAMPLE AS HER BLOOD SAMPLE.

5       THE COURT:  YEAH.

6       THE WITNESS:  THAT'S FINE.

7           THE COURT:  SINCE THERE'S NO EVIDENCE OF A SEXUAL  
8       ASSAULT, AND THE ISSUE BEFORE US IS CAUSE OF DEATH ONLY  
9       AND ISN'T EVIDENCE OF SOME ALLEGATIONS OF THAT, I AM  
10      KEEPING IT OUT OF THIS CASE.  BECAUSE IT IS NOT RELEVANT.

11      AND IT HAS THE EFFECT OF JURORS SAYING OH, I WONDER IF  
12      WHAT WAS GOING ON WITH NO EVIDENCE ABOUT IT.  AND WHEN YOU  
13      SUGGEST THAT OH, WE DID A SEXUAL ASSAULT, THEY ARE GOING  
14      TO SAY WHY IN THE WORLD DID YOU DO THAT.  AND IF THE BELL  
15      RINGS, IT DOESN'T GO ANY FURTHER.  SO, CHANGE IT TO  
16      WHATEVER.  THE KIT.  ANYTHING FURTHER?

17      MR. ABLARD:  YES.

18      THE WITNESS:  I WILL DO MY BEST.

19      THE COURT:  NO.  YOU SHALL DO IT OR I HAVE TO START  
20      THIS TRIAL OVER AGAIN.

21      THE WITNESS:  I UNDERSTAND.

22      THE COURT:  BEST IS NOT GOOD ENOUGH.  PERFECTION WILL  
23      BE ACCEPTABLE, JUST LIKE YOUR TESTS.

24      THE WITNESS:  YES, SIR.

25      THE COURT:  ALL RIGHT.  MR. ABLARD,  ANYTHING  
26      FURTHER?

27      MR. ABLARD:  YES.

28      THE COURT:  OKAY.

1 MR. ABLARD: THANK YOU.

2 Q BY MR. ABLARD: THE KIT THAT WE WERE JUST  
3 TALKING ABOUT, BRITTANY'S BLOOD?

4 A THE COLLECTION KIT, YES, SIR.

5 THE COURT: I LIKE THAT. COLLECTION KIT.

6 MR. ABLARD: SOUNDS GREAT. I LIKE IT, COLLECTION  
7 KIT.

8 Q BY MR. ABLARD: THE COLLECTION KIT, THAT WAS  
9 FROM THE AUTOPSY?

10 A RIGHT. YES, SIR.

11 Q AND THAT WAS DONE WHEN? WHEN WAS THE AUTOPSY?  
12 DO YOU HAVE THAT IN YOUR NOTES?

13 A THE BEST THING I CAN TELL YOU IS WHEN THE KIT  
14 WAS DELIVERED TO THE LAB.

15 Q AND THAT WAS?

16 A THAT WAS DELIVERED ON OCTOBER 12, 1993.

17 Q OKAY. AND IT WAS STORED WHERE?

18 A IT WOULD HAVE BEEN PROCESSED THROUGH THE  
19 SEROLOGY SECTION, THE BLOOD SAMPLE REMOVED, A SWATCH MADE,  
20 AND THEN THE LIQUID BLOOD SAMPLE WAS STORED IN THE WALK-IN  
21 REFRIGERATOR IN THE SEROLOGY SECTION. AND THE SWATCH WAS  
22 STORED IN A FREEZER IN THE SEROLOGY SECTION. THE KIT WAS  
23 RESEALED AND SUBMITTED TO THE PROPERTY UNIT FOR STORAGE IN  
24 THE FREEZER.

25 Q OKAY. THAT'S A PROCEDURE. IS THAT WHAT WAS  
26 DONE?

27 A TO THE BEST OF MY KNOWLEDGE, YES, SIR. MY  
28 REASON FOR BELIEVING THAT IS NUMBER ONE, THE LIQUID

1 SAMPLES WAS IN THE WALK-IN REFRIGERATOR WHEN I WENT TO  
2 LOOK FOR IT AND BRING IT TO COURT TODAY. THE DRY BLOOD  
3 SWATCH AT THE TIME THAT I WENT TO EXAMINE IT, I HAD TO  
4 ESSENTIALLY RETRIEVE IT FROM ANOTHER AREA WHICH WE HAD  
5 TRANSFERRED ALL OF OUR SWATCHES FROM FREEZER TO ANOTHER  
6 AREA. AND THE SECTION-- I'M SORRY. THE COLLECTION KIT  
7 IS SHOWN TO HAVE BEEN LOGGED INTO THE PROPERTY SECTION ON  
8 OCTOBER 12, 1993.

9 Q AND YOUR BEST ASSUMPTION IT WAS HANDLED PROPERLY  
10 UNTIL THE TIME THAT YOU RAN THIS DQ-ALPHA?

11 A I HAVE NO OTHER EVIDENCE. I HAVE NO EVIDENCE  
12 OTHERWISE.

13 Q AND BECAUSE THIS IS WHAT NORMALLY HAPPENS, WHAT  
14 IS USUAL PROCEDURE ARE NORMALLY FOLLOWED?

15 A THAT IS CORRECT.

16 Q EVER BEEN ANY CASES WHERE THERE HAS BEEN A  
17 PROBLEM IN THAT AREA?

18 A WITH REGARD TO HUMAN SAMPLES HAVE BEEN HANDLED?

19 Q YES?

20 A PERSONALLY, I HAVE NOT. I AM AWARE THAT THERE  
21 WAS, THERE WAS A CASE THAT A PARTNER OF MINE WORKED IN  
22 WHICH THERE HAD BEEN SOME PROBLEMS WITH REGARD TO A SAMPLE  
23 THAT HAD BEEN COLLECTED.

24 Q OTHER THAN THAT, EVERYONE THAT RUNS THROUGH  
25 THERE IS FINE?

26 A IN GENERAL, I'D SAY YES, SIR.

27 Q OKAY. NOW, DO YOU DETERMINE FROM THE SWATCHES  
28 THAT YOU HAD IF THERE WAS ANY MIXTURE OF BLOOD, IN OTHER

1 WORDS, MORE THAN ONE PERSON'S BLOOD ON IT?

2 A YOU SAY THE REFERENCE SWATCHES? IS THAT WHAT  
3 YOU ARE REFERRING TO?

4 Q I AM SORRY. FROM THE BLANKET, THE BLOOD ON THE  
5 BLANKET?

6 A THE STAIN ON THE BLANKET. THE APPEARANCE OF THE  
7 BLOOD STAIN WAS ESSENTIALLY DIFFUSE STAIN THAT DID NOT  
8 APPEAR TO HAVE BEEN A RESULT OF MULTIPLE DEPOSITS, IF YOU  
9 WILL.

10 Q OKAY. SO, ANYTHING ELSE?

11 A I THINK THAT'S THE BEST I CAN ANSWER TO THAT FOR  
12 RIGHT NOW UNLESS YOU HAVE SOMETHING MORE SPECIFIC YOU WANT  
13 TO ASK.

14 Q IN OTHER WORDS, IT APPEARS THAT IT WAS JUST ONE  
15 PERSON'S BLOOD. AND ON THAT ASSUMPTION, THAT THE BASIS  
16 FOR YOUR OPINION THAT WAS ONE, WAS ONE PERSON'S BLOOD;  
17 RIGHT?

18 A WELL, ALSO, THE TYPING THAT I DID IS SOMEWHAT  
19 INDICATIVE OF THAT IN THAT THERE'S ESSENTIALLY FOR THE  
20 MAJOR PORTION OF IT ANYWAY ONE PARTICULAR PERSON'S  
21 DNA. THERE'S SOME INDICATION THAT THERE MIGHT BE A REAL  
22 SMALL COMPONENT OF ANOTHER PERSON IN THAT DNA.

23 Q UH-HUH?

24 A BUT THAT'S AT A WHAT I WOULD CALL A REALLY LOW  
25 LEVEL. AND I HESITATE TO CALL THAT AS BEING A POSITIVE.  
26 SO--

27 Q BUT IT COULD BE MORE THAN ONE, COULD BE A  
28 MIXTURE IN THERE, COULD THERE NOT?

1           A     YES, SIR. FOR THE PARTICULAR STAIN, THERE COULD  
2     BE A LOW LEVEL MIXTURE. THERE IS A PRIMARY TYPE, IS A  
3     1.1,4.

4           Q     OH, WELL, BUT--

5           MS. SCHMAUSS: YOUR HONOR, I HATE TO INTERRUPT. BUT  
6     THIS SEEMS TO BE GETTING KIND OF FAR AFIELD FROM A 402  
7     HEARING.

8           MR. ABLARD: WELL, I WOULD SUGGEST NOT.

9           MS. SCHMAUSS: FOR ADMISSIBILITY.

10          THE COURT: ON THE ISSUE OF ADMISSIBILITY, PROBABLY.  
11     ANYTHING FURTHER ON THE ACCEPTABILITY OF THAT ANALYSIS AND  
12     THE PROCEDURE USED?

13          MR. ABLARD: REAL QUICK.

14          THE COURT: AND THE SCIENTIFIC ADAPTABILITY AND  
15     WHETHER OR NOT IT WAS FOLLOWED EFFECTIVELY IN THIS CASE?

16          MR. ABLARD: FIVE MINUTES AND I AM DONE.

17          THE COURT: THAT'S FINE.

18          MR. ABLARD: OR LESS.

19          THE COURT: UNLESS.

20          MR. ABLARD: OR MORE.

21          THE COURT: BECAUSE THE JURY IS COMING BACK IN 12.  
22     AND THE QUESTION IS WHETHER OR NOT YOU WANT A BREAK LONG  
23     ENOUGH TO GET A CIGARETTE, MR. ABLARD.

24          MR. ABLARD: WELL, THIS WHOLE TESTING PROCESS SOUNDS  
25     PRETTY GOOD TO ME. NO. ACTUALLY, REAL QUICK.

26          Q     BY MR. ABLARD: WHEN THOSE STRIPS THAT YOU GET  
27     IN THE KIT?

28          A     YES, SIR.



1 Q ALL RIGHT. WHAT CONTROLS-- ARE THOSE EVER  
2 DEFECTIVE?

3 A I HAVE NEVER HAD A PERSONAL EXPERIENCE WITH A  
4 DEFECTIVE STRIP. I HAVE HEARD FROM ANOTHER LABORATORY  
5 THAT THEY HAD AN EXPERIENCE IN FACT IT WAS WITH THE STATE,  
6 STATE LABORATORY. THEY THEN CONTACTED THE PERK AND ELMER  
7 CORPORATION. BUT MY PARTNER AND I HAVE NEVER HAD ANY  
8 PROBLEMS WITH A DEFECTIVE KIT OR DEFECTIVE STRIPS.

9 Q AND THE WASH AND BATH THAT IS USED, YOU  
10 MENTIONED THAT?

11 A YES, SIR.

12 Q THAT DOESN'T COME IN THE KIT THAT COMES FROM THE  
13 LAB?

14 A THAT IS CORRECT.

15 Q RIGHT. AND YOU MAKE THAT WASH AND BATH UP OR  
16 WHAT IS THAT?

17 A THERE ARE ACTUALLY TWO THINGS WHICH YOU MAY BE  
18 ALLUDING TO. ONE IS A TEMPERATURE BATH.

19 Q RIGHT?

20 A WHICH MUST BE MAINTAINED AT 55 DEGREES  
21 CENTIGRADE FOR TWO OF THE STEPS IN THE PROCEDURE THAT WE  
22 CHECK WITH A SECONDARY THERMOMETER OR A TEMPERATURE  
23 VERIFICATION KIT. THE SOLUTIONS THAT WE DO TO THE WASHING  
24 ARE ONES THAT WE MADE UP IN THE LABORATORY. THERE ARE  
25 DIFFERENT BUFFERS THAT ARE USED. AND THEY ARE USED FOR  
26 THE WASHING AS WELL AS FOR THE COLOR DEVELOPMENT. THEY  
27 ARE MADE UP IN THE LABORATORY.

28 Q IS THERE A PERCENTAGE OF ERROR IN THIS TEST THAT

1 YOU KNOW OF, A BUILT-IN PERCENTAGE OF ERROR, ANY TYPE OF  
2 PERCENTAGE OF ERROR, OR IS THAT A HUNDRED-PERCENT,  
3 POSITIVE-PROOF, NO-PROBLEM TYPE TEST?

4 A WELL, SIR, IN TERMS OF BUILT IN ERROR, THAT  
5 SEEMS TO BE A NONSENSICAL INTERPRETATION WITH REGARDS TO  
6 THIS PARTICULAR TEST.

7 Q PROBABLY BECAUSE I ASKED IT. SO, WE WILL GO  
8 BEYOND THAT. IS THIS A HUNDRED-PERCENT, PROOF-POSITIVE  
9 TEST?

10 A IN TERMS OF IF I GET A IF I HAVE EXTRACTED  
11 THINGS CORRECTLY AND PERFORMED THE TEST CORRECTLY, IT WILL  
12 GIVE ME THE CORRECT DQ-ALPHA TYPE OR I'D FIND THE CORRECT  
13 DQ-ALPHA ALLELE PRESENT IN THE SAMPLE.

14 Q SO, IF YOU DID IT CORRECTLY, YOU FOLLOW  
15 PROTOCOL, DID EVERYTHING RIGHT, THEN IT IS A HUNDRED  
16 PERCENT?

17 A WITH REGARD TO ACCURACY.

18 Q YEAH?

19 A YES, SIR. I BELIEVE SO.

20 Q OKAY. YOU MENTIONED ONE LAST THING. SOMETHING  
21 ABOUT WEAK RESULTS, SIX REFERENCE SAMPLES, AND SOME WEAK  
22 RESULTS. YOU MENTIONED THAT A LITTLE EARLIER?

23 A OKAY. SIR, THE WEAK RESULTS WAS NOT WITH REGARD  
24 TO THE REFERENCE SAMPLES. IT WAS WITH REGARD TO THE STAIN  
25 ON THE BLANKET. I HAVE NOTED THERE IS NOTED ON THE  
26 EXHIBIT HERE IS A 1.1,4 WHICH WAS PRESENT ON THE, IN THE  
27 STAIN, THE DNA STAIN. WHEN I TOOK A LOOK AT THE TEST  
28 STRIPS, WHEN I-- DO YOU REMEMBER WHEN I SAID THAT? THERE

1 ARE COLORED DOTS THAT I USE FOR THE CODE.

2 Q UH-HUH?

3 A THE DOTS FOR THE TWO ALLELES WAS EXTREMELY WEAK  
4 AND EXTREMELY FAINT. IT WAS NOT HIGH ENOUGH FOR ME TO SAY  
5 POSITIVELY YES, THERE IS A 2 ALLELE PRESENT IN THE STAIN.  
6 HOWEVER, IT WAS COLORED ENOUGH TO SAY YES, IT IS SOMETHING  
7 HAS REACTED WITH THIS DOT. AND I HAVE TO MAKE SOME SORT  
8 OF NOTE OF IT.

9 Q OKAY. AND AT THE VERY BEGINNING, YOU MENTIONED  
10 APPEARS TO BE A NEW BLOOD SAMPLE? OR DID I HEAR YOU  
11 WRONG? THE BLOOD ON THE BLANKET I THINK YOU WERE TALKING  
12 ABOUT, YOU SAY A NEW BLOOD SAMPLE?

13 A I BELIEVE I SAID A DILUTE.

14 Q DILUTE. DIDN'T HEAR. HOW OLD WAS THE BLOOD  
15 SAMPLE ON THAT BLANKET?

16 A I DON'T KNOW.

17 MR. ABLARD: I HAVE NOTHING FURTHER WITH RESPECT TO  
18 THIS FACET OF HIS TESTIMONY.

19 THE COURT: THANK YOU. WE WILL TAKE OUR MORNING  
20 RECESS. THE JURY IS COMING BACK IN SIX OR SEVEN MINUTES.

21 MR. ABLARD: I HAVE A MOTION TO MAKE.

22 THE COURT: WHAT IS IT?

23 MR. ABLARD: WELL.

24 THE COURT: YOU CAN STEP DOWN.

25 MR. ABLARD: ONE, MOTION TO EXCLUDE IT.

26 THE COURT: THAT'S DENIED. WHAT ELSE?

27 MR. ABLARD: THANK YOU. AND SECONDLY AS TO THE  
28 THESE AMYLASE.

1 THE COURT: YES.

2 MR. ABLARD: I DON'T BELIEVE WE HEARD ANY EVIDENCE ON  
3 PROCEDURES, TESTING THAT, AND SO ON AND SO FORTH. I  
4 WOULD REQUEST THAT THAT BE EXCLUDED.

5 MS. SCHMAUSS: THAT'S NOT DNA HOWEVER.

6 MR. ABLARD: YEAH. BUT DNA ARE NOT-- WE ARE-- IS THE  
7 EXPERT'S TESTIMONY.

8 THE COURT: YOU ARE SUGGESTING THAT WE NEED TO LAY A  
9 FOUNDATION UNDER KELLY-FRYE THAT PEOPLE HAVE SALIVA AND  
10 PEOPLE HAVE BLOOD AND THAT WE CAN FIND OUT THAT THEY LEAVE  
11 IT PLACES. IS THAT HOW FAR BACK YOU WANT TO GO?

12 MR. ABLARD: NO.

13 THE COURT: WELL, I DON'T.

14 MR. ABLARD: WE ARE GOING TO HAVE AN OPINION.

15 THE COURT: WELL.

16 MR. ABLARD: IN OTHER WORDS, THERE HAVE BEEN--

17 THE COURT: I THINK IT IS SCIENTIFICALLY ACCEPTED  
18 WITHOUT FURTHER ADO THAT IF THERE IS A STAIN ON A  
19 MATERIAL, THAT SCIENCE TODAY WILL BE ABLE TO TELL US  
20 WHETHER IT IS BLOOD OR NOT.

21 MR. ABLARD: THANK YOU.

22 THE COURT: I AM NOT GOING TO GO BACK TO THE  
23 BEGINNING OF TIME. AND I THINK SCIENCE CAN TELL US  
24 WHETHER OR NOT YOU KNOW A STAIN IS SALIVA OR A  
25 COMBINATION, OR WHETHER HAIR FOLLICLES ARE REALLY WHETHER  
26 WE HAVE HAIR, AND IF HE IS GETTING SOMETHING THAT LOOKS  
27 LIKE IT IS WHY, BY GOLLY, IT IS A HAIR FOLLICLE. WE CAN  
28 TELL THAT NOW. WE HAVE A MICROSCOPE AND STUFF.

1 MR. ABLARD: SORT OF SORRY I ASKED.

2 THE COURT: THAT'S A THRESHOLD SORT OF GENERAL  
3 SCIENTIFIC INFORMATION AVAILABLE TO THE COURT WITHOUT  
4 FURTHER ADO THAT PEOPLE HAVE BLOOD AND IF YOU CUT THEM, IT  
5 WILL FALL OUT OF THE BODY AND GRAVITY WILL CAUSE IT TO GO  
6 DOWN AS OPPOSED TO UP, SORT OF GENERAL PERVASIVE. AND I  
7 CAN KEEP GOING.

8 MR. ABLARD: I AM BEING PUNISHED, I KNOW.

9 THE COURT: YOU WON'T BE ABLE TO HAVE A CIGARETTE.  
10 THERE WON'T BE TIME, MR. ABLARD.

11 MR. ABLARD: THANK YOU VERY MUCH.

12 THE COURT: IN CASE IT IS NOT CLEAR, I DON'T MEAN TO  
13 MAKE FUN OF YOUR OBJECTION. BUT THE COURT RULED ON IT  
14 THAT THERE IS SUFFICIENT FUNDAMENTAL SCIENTIFIC AVAILABLE  
15 KNOWLEDGE FOR THE COURT AND OTHER THAT PEOPLE HAVE SALIVA  
16 AND GENERALLY, GENERALLY THAT CAN BE DETERMINED WITHOUT  
17 FURTHER ADO.

18 MR. ABLARD: THANK YOU.

19 THE COURT: ALL RIGHT.

20 (RECESS)

21 THE COURT: WE HAVE THE EXPERT IS COMING TO TESTIFY  
22 PURPOSES OF QUALIFICATION AND SCIENTIFIC ACCEPTABILITY.  
23 OBVIOUSLY, THE SAMPLES THAT HE TESTED HAVE TO HAVE CHAIN  
24 OF CUSTODY TO ESTABLISH THEIR VALIDITY. BUT THAT CAN BE  
25 DONE AFTER THE TESTIMONY OF THE EXPERT. AND THE COURT  
26 WOULD OF COURSE EXCLUDE ANY OF THE RESULTS WERE THE CHAIN  
27 NOT ESTABLISHED. AND OFFICER DONLEY AND WHO ELSE, KELLY?

28 MS. SCHMAUSS: OFFICER KELLY. MY ONLY PROBLEM, I

1 ASKED HIM AT 1:30.

2 THE COURT: THAT'S OKAY. WE CAN KIND OF FUSS ALONG  
3 AND INTERRUPT OFFICER DONLEY'S TESTIMONY. BECAUSE YOU  
4 KIND OF GOT A YOU GOT THE TAPE-RECORDING OR THE VIDEO ON.  
5 AND THEN YOU FILL IN THE VACUUM, IF YOU WILL.

6 MS. SCHMAUSS: RIGHT.

7 THE COURT: NATURE IN THIS COURT, OF COURSE, A VACUUM  
8 IT WANTS TO GO FULL TIME. AND I'D LIKE TO INTERRUPT  
9 OFFICER DONLEY'S TESTIMONY AND YOUR FURTHER DIRECT AND  
10 CROSS AND GET THE EXPERT ON AND OFF.

11 MS. SCHMAUSS: AND THEN I HAVE SPOKEN TO COUNSEL  
12 ABOUT A STIPULATION THAT AT THE CONCLUSION OF THE  
13 TESTIMONY CONCERNING THE BLOOD SAMPLES, THEY CAN BE  
14 RETURNED TO CRIMINALIST, DON JONES, TO BE RETURNED TO THE  
15 LABORATORY AND PROPERLY STORED.

16 MR. ABLARD: YES.

17 THE COURT: COURT WILL APPROVE THAT AND DIRECT THAT  
18 OCCUR. BUT WE WILL NEED YOU TO SIGN THEM OUT OF EVIDENCE  
19 AT THAT TIME. ALL RIGHT.

20 MR. ABLARD: I AM SORRY.

21 THE COURT: OH, I'D LIKE TO CALL THE JURY IN AND HAVE  
22 THE EXPERTS TESTIFY. MAYBE WE CAN CONCLUDE WITH HIM IN AN  
23 HOUR. SINCE THE FOUNDATION HAS BEEN LAID, WE DON'T NEED  
24 TO GO INTO THE FOUNDATION UNLESS YOU CHOOSE TO IN SOME  
25 SORT OF GENERIC FORM.

26 MS. SCHMAUSS: I DON'T KNOW IF WE WILL GET DONE OR  
27 NOT.

28 MR. ABLARD: IN OTHER WORDS, EXPERT GOES ON, THEN

1 KELLY, AND DONLEY FOR CHAIN, AND THEN WE START BACK.

2 THE COURT: WITH DONLEY.

3 MR. ABLARD: SOUNDS GREAT.

4 THE COURT: AND/OR KELLY, IF YOU HAVE TO PUT HIM ON,  
5 ONCE THEY ARE ON FOR CHAIN, THAT'S FINE.

6 MR. ABLARD: YEAH.

7 THE COURT: BUT IT IS NOT GOING TO-- THAT WILL WE  
8 WILL DO THAT TODAY, I GUESS. ALL OF THAT WILL BE DONE  
9 TODAY.

10 MS. SCHMAUSS: IT WILL BE DONE TODAY. I AM NOT  
11 CERTAIN WE WILL BE DONE BEFORE LUNCH.

12 THE COURT: WE WILL JUST GIVE IT OUR BEST SHOT. EVEN  
13 PEOPLE FROM THE CRIME LAB GET TO HAVE LUNCH. I MEAN, IF  
14 HE WERE THERE, HE'D GET TO GO TO LUNCH. SO, IF HE IS  
15 HERE, AND WE GO TO LUNCH, HE CAN TOO. SEE IF WE CAN GET A  
16 BUNCH OF PEOPLE OUT THERE.

17 (THE JURY ENTERED THE COURTROOM AND THE  
18 FOLLOWING PROCEEDINGS WERE HELD:)

19 THE COURT: GOOD MORNING, LADIES AND GENTLEMEN. HAS  
20 IT STARTED TO RAIN OUT THERE YET? JUST DRIZZLE A LITTLE  
21 BIT. IS IT A LITTLE MISTY. IS IT STILL COLD? IT'S OUR  
22 FIRST, POSSIBLE WINTER MOISTURE.

23 IF WE ARE LUCKY, WE MIGHT RECESS AT 4 THIS AFTERNOON  
24 SO THOSE WITH GOBLINS THAT THEY NEED TO DRESS UP AND GO  
25 OUT BEFORE IT IS TOO LATE CAN DO IT.

26 MS. SCHMAUSS: I THINK IT MAY BE BEFORE THAT.

27 THE COURT: WELL, YOU PLANNING TO RUN OUT OF  
28 TESTIMONY EARLIER AGAIN TODAY?

1 MS. SCHMAUSS: WELL, I STILL HAVE TO DO THE  
2 REDACTION.

3 THE COURT: WELL, THAT WILL BE FINE TOO. A VERY  
4 SPECIAL EVENT IF YOU ARE A PUMPKIN.

5 MS. SCHMAUSS: I HAVE TWO PUMPKINS OF MY OWN.

6 THE COURT: ALL RIGHT. IF YOU RECALL, YESTERDAY,  
7 OFFICER DONLEY WAS TESTIFYING. WE ARE GOING TO INTERRUPT  
8 HIS TESTIMONY. HE IS HERE ALL THE TIME. AND WE ARE  
9 GOING TO HEAR FROM A GENTLEMAN WHO IS TESTIFYING TO THE  
10 COURT FOR VARIOUS LEGAL REASONS THAT THE COURT HAS TO  
11 CONDUCT IN HERE NEXT. SO, MS. SCHMAUSS, YOU ARE UP.

12 MS. SCHMAUSS: PEOPLE CALL DON JONES.

13 THE COURT: THANK YOU. PLEASE SWEAR MR. JONES FOR  
14 PURPOSES OF THE JURY.

15  
16 DONALD THOMAS JONES  
17 CALLED AS A WITNESS BY THE PLAINTIFF, WAS SWORN AND  
18 TESTIFIED AS FOLLOWS:

19 THE CLERK: PLEASE RAISE YOUR RIGHT HAND.

20 YOU DO SOLEMNLY SWEAR THE TESTIMONY YOU  
21 MAY GIVE IN THE MATTER NOW PENDING BEFORE THIS COURT  
22 SHALL BE THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT  
23 THE TRUTH, SO HELP YOU GOD.

24 THE WITNESS: I DO.

25 THE CLERK: THANK YOU. PLEASE BE SEATED. PLEASE STATE  
26 YOUR FULL NAME SPELLING YOUR LAST NAME FOR THE RECORD.

27 THE WITNESS: MY NAME IS DONALD THOMAS JONES.  
28 D-O-N-A-L-D T-H-O-M-A-S J-O-N-E-S.



## DIRECT EXAMINATION

BY MS. SCHMAUSS:

Q MR. JONES, HOW ARE YOU EMPLOYED?

A I AM A CRIMINALIST WITH THE SAN BERNARDINO COUNTY SHERIFFS DEPARTMENT WORKING IN THE CRIME LABORATORY.

Q OKAY. AND WHAT IS A CRIMINALIST?

A A CRIMINALIST BASICALLY IS A SCIENTIST WHO LOOKS AT LEGAL EVIDENCE.

Q HOW LONG HAVE YOU BEEN SO EMPLOYED?

A ABOUT FIFTEEN YEARS.

Q HAS THAT ALL BEEN WITH THE COUNTY OF SAN BERNARDINO?

A YES, MA'AM.

Q COULD YOU OUTLINE TO THE JURY YOUR EDUCATIONAL BACKGROUND THAT'S ENABLED YOU TO BE A CRIMINALIST?

A PRIMARILY, IN ORDER TO BE A CRIMINALIST, I NEEDED A BACHELOR OF SCIENCE DEGREE IN A NATURAL SCIENCE. AND I HAVE A BACHELOR OF SCIENCE DEGREE IN CHEMISTRY FROM THE CALIFORNIA STATE UNIVERSITY AT NORTHRIDGE. I HAVE ALSO ATTENDED CLASSES AT CALIFORNIA STATE UNIVERSITY AT LOS ANGELES IN THE MASTERS PROGRAM FOR CRIMINALISTICS. AND I AM CURRENTLY ENROLLED AT THE CALIFORNIA STATE UNIVERSITY OF SAN BERNARDINO IN THE MASTERS PROGRAM IN BIOLOGY.

Q WHEN DO YOU EXPECT TO RECEIVE YOUR MASTERS?

A I HOPE TO HAVE IT BY NEXT SPRING.

Q WHAT ARE YOU MISSING?

1           A     RIGHT NOW I AM WORKING ON THE LAST PART WHICH IS  
2     THE THESIS. I HAVE TO WRITE ESSENTIALLY TWO LARGE  
3     EXPERIMENTS AND WRITE THE RESULTS AND PRESENT IT TO THE  
4     FACULTY AT THE UNIVERSITY AND HAVE IT ACCEPTED.

5           Q     WHAT IS THE SUBJECT OF YOUR THESIS?

6           A     SUBJECT OF MY THESIS HAS TO DO WITH POPULATION  
7     STUDIES OF DIFFERENT GENETIC MARKERS THAT ARE USED IN  
8     FORENSIC SCIENCES AND HOW THE MARKERS RELATE TO EACH  
9     OTHER.

10          Q     IS THAT PART AND PARCEL OF DNA?

11          A     ONE OF THE CONSIDERATIONS IS DNA MARKERS. YES,  
12     MA'AM. THE OTHER ONES ARE WHAT ARE CALLED PROTEIN MARKERS  
13     WHICH ARE USED IN OTHER FORENSIC TESTING.

14          Q     WHAT KIND OF TRAINING HAVE YOU RECEIVED--WELL,  
15     STRIKE THAT.

16                WHAT IS YOUR CURRENT POSITION AT THE CRIME LAB?

17          A     CURRENTLY I AM ASSIGNED TO THE FORENSIC DNA  
18     SECTION. I HAVE BEEN ASSIGNED FOR THE LAST FOUR OR FIVE  
19     YEARS PRIMARILY TO THIS PARTICULAR SECTION.

20          Q     SO, ALL YOUR WORK NOW INVOLVED DNA ANALYSIS?

21          A     ALL OF IT INVOLVES THAT, YES.

22          Q     CAN YOU TELL THE JURY WHAT KIND OF TRAINING YOU  
23     RECEIVED IN THE AREA OF DNA?

24          A     YES, MA'AM. I ATTENDED A ONE MONTH COURSE AT  
25     THE FBI TRAINING ACADEMY IN VIRGINIA WITH REGARD TO  
26     HANDLING EVIDENCE, FORENSIC EVIDENCE, EXTRACTING THE DNA  
27     FROM IT, AND TYPING THE DNA. I ALSO ATTENDED SEVERAL  
28     OTHER SHORT-TERM COURSES, ONE WEEK COURSE AT THE

1 UNIVERSITY OF CALIFORNIA AT BERKLEY. THEY THEN TAUGHT ME  
2 TO DO THIS DNA EXTRACTING AND TYPING, AND A ONE-WEEK  
3 COURSE AT THE DNA LAB IN BERKLEY. AT THE STATE DNA LAB AT  
4 BERKLEY WHICH TAUGHT ME HOW TO APPLY A PARTICULAR DNA  
5 TEST, A DQ-ALPHA TEST TO EVIDENCE AND HOW TO PROPERLY  
6 PERFORM THE TEST.

7 Q HAVE YOU ALSO RECEIVED TRAINING AT THE CRIME LAB  
8 WHERE YOU WORK IN THE AREA OF DNA?

9 A YES, MA'AM. WITH REGARD TO OUR DNA PROGRAM IN  
10 GENERAL, MYSELF AND OTHER ANALYSTS, A DAN BRUGONESS, SET  
11 UP OUR DNA PROGRAM AGAIN WITHIN THE LAST FOUR TO FIVE  
12 YEARS. AND WE HAVE BEEN UNDERTAKING OUR DNA ABILITIES AS  
13 TIME GOES ON. EACH TIME THAT WE HAVE A NEW TYPE OF TEST,  
14 WE WILL CHECK IT TO MAKE SURE THAT IT GIVE US THE PROPER  
15 RESULTS WE WILL TRADE SAMPLES WITH OTHER LABORATORIES AND  
16 IF THEY GOT A PARTICULAR TYPE, WE WILL CHECK TO MAKE SURE  
17 THAT WE GET THE SAME TYPE ON THE SAME SAMPLES. AND THEN  
18 WE WILL ALSO DO WHAT ARE CALLED PROFICIENCY TESTS. THESE  
19 ARE TESTS THAT OUTSIDE PRIVATE CORPORATIONS WILL SEND US  
20 ESSENTIALLY TEST US TO SEE HOW WELL WE CAN DO THIS DNA  
21 TYPING. PRIOR TO ANY OF OUR CHANGES IN DNA WITH REGARD  
22 TO NEW DNA TECHNIQUE, WE HAVE TO GO THROUGH THIS TYPE OF  
23 VALIDATION BEFORE WE CAN USE IT ON CASE WORK. AND I  
24 ASSISTED IN SOME OF THESE VALIDATION STUDIES. I HAVE ALSO  
25 TRAINED IN SOME OF THESE TYPES OF NEW DNA TECHNIQUES  
26 SINCE OUR LABORATORY STARTED USING THEM.

27 Q OKAY. HAVE YOU TESTIFIED AS AN EXPERT BEFORE IN  
28 COURTS OF THIS STATE ON THE AREA OF DNA ANALYSIS?

1 A YES, MA'AM, I HAVE.

2 Q ABOUT HOW MANY TIMES?

3 A I HAVE TESTIFIED THREE TIMES IN ESSENTIALLY JURY  
4 TRIALS AND ONE TIME IN WHAT WAS CALLED A PRETRIAL MOTION.

5 Q AND HOW LONG--STRIKE THAT.

6 ABOUT HOW MANY ESTIMATE DNA TESTS HAVE YOU DONE IN  
7 THE FOUR OR FIVE YEARS YOU HAVE BEEN ASSIGNED TO THE DNA  
8 UNIT?

9 A DNA TESTS, OVERALL, I REALLY DON'T KEEP TRACK.

10 Q HUNDREDS, THOUSANDS?

11 A I WOULD SAY, YES, IN TERMS OF EXTRACTION OF THE  
12 DNA, GETTING THE DNA OUT OF THE SAMPLES, SEEING IF THERE'S  
13 ENOUGH DNA TO WORK WITH AND THEN IF THERE'S ENOUGH DNA TO  
14 WORK WITH, OF EVENTUALLY GOING ON AND DOING SOME SORT OF  
15 DNA TYPING, I WOULD SAY IT IS EASILY IN THE HUNDREDS.

16 Q NOW, IN THIS PARTICULAR CASE, WE HAVE A METHOD  
17 CALLED PCR. DQ-ALPHA WHICH YOU WILL EXPLAIN IN A FEW  
18 MINUTES. HOW MANY OF THOSE TESTS HAVE YOU DONE?

19 A I HAVE BEEN INVOLVED IN APPROACHING FIFTY CASES  
20 WITH THE, WITH NOT JUST THE-- WELL, WITH REGARD TO  
21 EXTRACTION OF SAMPLES AND WITH TESTING THE PARTICULAR  
22 SAMPLES, EACH CASE MAY HAVE TWO OR THREE SAMPLES OR IT MAY  
23 HAVE ANYONE OR TEN SAMPLES OR SOME CASES LARGER NUMBERS

24 Q DOES THAT FIFTY CASES INVOLVE DQ-ALPHA?

25 A I THINK IF I WERE TO GO BACK AND TAKE A LOOK AT,  
26 TAKE A LOOK AT MY TRAINING AND THE CASE WORK THAT I HAVE  
27 PERFORMED, YES, MA'AM.

28 Q OKAY.

1           A     AGAIN, I DON'T KEEP A REAL HARD NUMBER ACCOUNT  
2     ON THESE THINGS. I REALLY WOULD HAVE TO GO BACK AND DO  
3     THAT TO GIVE YOU A CORRECT ANSWER.

4           Q     OKAY. CAN YOU TELL THE JURY IN SIMPLE TERMS  
5     WHAT DNA IS, AND IF YOU NEED TO DRAW ANYTHING, THERE IS A  
6     BOARD BEHIND YOU OF PAPER BEHIND YOU?

7           A     I WILL TRY TO KEEP IT SIMPLE. DNA IS A MOLECULE  
8     THAT EACH ONE OF US HAS IN OUR CELLS IN OUR BODY. AND IT  
9     IS MADE UP OF SOME COMPONENTS THAT YOU GET FROM YOUR  
10    MOTHER AND SOME FROM YOUR FATHER, ESSENTIALLY INHERITED  
11    PORTION OF DNA. PEOPLE HAVE CALLED IT THE BLUEPRINT OF  
12    LIFE. IT IS WHAT YOUR BODY CELLS USE IN ORDER TO  
13    DETERMINE WHAT EYE COLOR YOU WILL HAVE, WHAT YOUR HAIR  
14    COLOR WILL BE, SOME CASES, WHERE, YOU KNOW, WHAT YOUR  
15    STATURE WILL BE. THERE'S SOME OTHER INDICATIONS THAT IT  
16    MAY ALSO DETERMINE, WHAT SORT OF DIFFERENT DISEASES YOU  
17    MAY ENCOUNTER IN YOUR LIFE, WHETHER OR NOT YOU ARE MORE  
18    SUSCEPTIBLE TO THEM OR NOT. IT ESSENTIALLY DETERMINES WHO  
19    YOU ARE IN TERMS OF A PHYSICAL SENSE.

20           SOME OF THESE FACTORS IN DNA CAN BE USEFUL TO ME AS A  
21    FORENSIC SCIENTIST BECAUSE SOME OF THESE FACTORS WILL BE  
22    DIFFERENT FROM ONE PERSON TO THE NEXT. AND THEREFORE, IF  
23    I CAN FIND WHERE PEOPLE ARE DIFFERENT OR WHERE LOTS OF  
24    PEOPLE ARE DIFFERENT, I CAN THEN, IF I HAVE A BLOOD STAIN,  
25    I CAN THEN TAKE A LOOK AT A DNA FACTOR AND THEN CHECK  
26    PEOPLE TO SEE IF THEY HAVE THAT FACTOR OR NOT. THOSE  
27    PEOPLE WHO DON'T HAVE THAT FACTOR CAN'T BE THE SOURCE OF  
28    THIS PARTICULAR BLOOD STAIN. THOSE WHO DO, MIGHT BE THE

1 SOURCE. AND THEN I CAN CHECK ANOTHER DNA FACTOR AND  
2 FURTHER EXCLUDE SOME OF THESE PEOPLE. AND SO FORTH. THIS  
3 IS THE TYPE OF TESTING THAT WE DO WITH DNA TESTING.

4 Q SO DNA IS PRESENT IN EVERY LIVING THING; IS THAT  
5 CORRECT?

6 A YES, MA'AM, IT IS PRESENT IN EVERY LIVING THING.  
7 IT IS ESSENTIALLY THE BLUEPRINT OF LIFE FOR EVERY LIVING  
8 THING.

9 Q AND EVEN AFTER ONE DIES, CAN YOU EXTRACT DNA?

10 A YES, MA'AM.

11 Q LIKE IN JURASIC PARK?

12 A IT'S A RATHER--THAT IS A RATHER EXTREME EXAMPLE.  
13 BUT THE IDEA IS THE IDEA OF BEING ABLE TO GET DNA OUT OF  
14 OLD TISSUE, OF BEING ABLE TO GET IT OUT AND DO SOMETHING  
15 WITH IT IS PLAUSIBLE. IT IS VERY PLAUSIBLE. IN FACT, WE  
16 DO SAMPLES. WE TAKE A LOOK AT SAMPLES FROM PEOPLE WHO  
17 HAVE DIED. WE HAVE ALSO SOME FORENSIC SCIENTISTS--I HAVE  
18 NOT DONE IT. BUT WE WILL TAKE A LOOK AT DNA TYPE OF SAY  
19 TREES TO SEE IF A PARTICULAR PIECE OF EVIDENCE COULD HAVE  
20 COME FROM A PARTICULAR LOCATION. THINGS LIKE THIS HAVE  
21 BEEN DOCUMENTED IN FORENSIC JOURNALS.

22 Q SO, DNA IS EXTREMELY DURABLE; IS THAT CORRECT?

23 A CORRECT. IT IS. IT IS DURABLE. IT IS BEST WHEN  
24 IT IS KEPT COOL AND DRY IN TERMS OF ITS STABILITY IN TERMS  
25 OF MY BEING ABLE TO TYPE IT. SO, IF I GET A BLOOD STAIN  
26 OR SOME SORT OF FLUID STAIN, I WANT IT TO BE KEPT DRY AND  
27 COOL IN ORDER TO BETTER PRESERVE THE DNA FOR ME TO BE ABLE  
28 TO TEST IT.

1           Q     IF YOU HAD A BLANKET THAT HAD A SUSPECTED BLOOD  
2 STAIN ON IT, AND IT WAS KEPT IN AN EVIDENCE LOCKER AT A  
3 POLICE STATION, COOL AND DRY, WOULD YOU BE ABLE TO EXPECT  
4 TO GET ADEQUATE DNA FROM THAT BLANKET?

5           A     I WOULD EXPECT IT WOULD BE POSSIBLE. THE BEST  
6 THING TO DO IS TO CUT THE STAIN OUT, EXTRACT DNA. AND THEN  
7 I CAN DO TESTS TO DETERMINE IF IT IS WHAT I CALL HIGH  
8 QUALITY DNA OR HIGH MOLECULAR WEIGHT DNA, OR IF IT HAS  
9 BEEN BROKEN DOWN A BIT OR DEGRADED A BIT, I DO THAT TYPE  
10 OF TEST. I CAN ALSO TELL IF IT IS HUMAN DNA OR NOT.

11          Q     IS IT-- ISN'T IT SO DURABLE IS IT NECESSARY THAT  
12 THE ITEMS BE REFRIGERATED AS LONG AS IT IS KEPT IN A COOL  
13 AND DRY ENVIRONMENT? YOU COULD TEST IT PRESUMABLY FOR  
14 YEARS, YEARS LATER?

15          A     THAT'S TRUE. THE STORAGE ASPECT WILL ACTUALLY  
16 MAKE IT THE ABILITY TO TYPE IT EXTEND LONGER AND LONGER.  
17 BUT YOU, BASICALLY TWO ENEMIES OF ANY PHYSIOLOGICAL FLUID  
18 DEAL WITH HEAT AND MOISTURE. IF YOU CAN KEEP IT OUT OF  
19 HEAT, KEEP IT DRY, AND NOT HAVE NAY BACTERIA AND SO ON  
20 GROW ON IT, YOU ARE FINE.

21          Q     OKAY. IN THIS PARTICULAR CASE, WERE YOU ASKED  
22 TO PERFORM SOME TESTING?

23          A     YES, MA'AM.

24          Q     OKAY. AND WHAT SPECIFICALLY IS THE TYPE OF  
25 TESTING THAT YOU DID?

26          A     I DID DNA TESTING ON A STAIN ON A BLANKET. AND  
27 ALSO ON SIX BLOOD SAMPLES FROM INDIVIDUALS TO SEE IF THEY  
28 COULD BE THE SOURCE OF THIS STAIN ON THE BLANKET.

1 Q MR. JONES, I AM GOING TO SHOW YOU FIRST WHAT IS  
2 MARKED EXHIBIT 69 FOR IDENTIFICATION AND ASK YOU IF YOU  
3 RECOGNIZE THE EXHIBIT 69?

4 A YES, MA'AM, I DO.

5 Q WHAT IS IT?

6 A THIS IS AN ENVELOPE WHICH CONTAINS A PORTION OF  
7 A BLANKET AND THAT PORTION OF THE BLANKET ACTUALLY HAD THE  
8 STAIN ON IT THAT I HAD EXAMINED. I RECOGNIZE MY INITIALS  
9 AND DATE ON THE SEAL ON THE BOTTOM OF THE ENVELOPE.

10 Q OKAY. DID YOU OBTAIN THIS FROM THE CRIME LAB TO  
11 DO, AT MY REQUEST, TO BRING TO COURT?

12 A YES, MA'AM.

13 Q WHERE WAS IT KEPT?

14 A IT IS KEPT IN THE FREEZER IN THE LABORATORY IN  
15 THE PROPERTY SECTION.

16 Q I NOTICE IT WAS SEALED AT SOMETIME. DID YOU  
17 UNSEAL IT TO CONDUCT AN EXPERIMENT?

18 A YES, MA'AM. IN FACT, I HAVE OPENED THIS TWICE,  
19 TWO SEPARATE EXPERIMENTS, I PERFORMED ON THE STAIN.

20 Q OKAY. AND IS IT NOTED ANYWHERE EITHER ON THE  
21 ENVELOPE OR IN THE LOG THAT YOU KEPT WHEN THIS ITEM WAS  
22 RECEIVED BY YOUR CRIME LAB?

23 A IN TERMS OF THE ITEM, YES. THE ITEM ACTUALLY  
24 WOULD HAVE BEEN A LARGER BLANKET. AND IT WOULD HAVE BEEN  
25 THEN CUT OUT. IT WAS CUT OUT BY ANOTHER MEMBER OF THE  
26 LABORATORY WHO THEN PACKAGED IT IN HERE AND FROZE IT.

27 Q DOES YOUR REPORT REFLECT WHEN THE BLANKET WAS  
28 RECEIVED BY YOUR CRIME LAB?



1           A     YES, MA'AM. I HAVE THE BLANKET WAS RECEIVED ON  
2           MARCH 22, 1995.

3           Q     OKAY. AND THEN ON WHAT DATE WERE THE CUTOUTS  
4           MADE?

5           A     CUTOUTS WERE MADE ON JUNE 23, 1995 BY JOHN  
6           JOHNSON OF OUR LABORATORY.

7           Q     RECOGNIZE HIS INITIALS THERE?

8           A     YES, MA'AM.

9           Q     THEN WHAT WAS DONE WITH THE SAMPLES THAT ARE CUT  
10          OUT AFTER JOHNSON CUT THEM OUT?

11          A     ESSENTIALLY, THEY ARE PLACED IN THIS ABOUT SIX  
12          INCH BY NINE INCH ENVELOPE, SEALED, AND SENT DOWN TO OUR  
13          PROPERTY SECTION TO BE STORED IN FREEZER UNTIL WE ANALYZED  
14          THE SAMPLE UNTIL I ANALYZED THE SAMPLES.

15          Q     DID YOU PERSONALLY GO REMOVE IT FROM THAT  
16          FREEZER TO ANALYZE IT?

17          A     I WENT DOWN TO THE PROPERTY SECTION. THE  
18          PROPERTY CLERK HAD TO GO IN THE FREEZER TO GET IT FOR ME.

19          Q     ON WHAT DATE DID YOU PERFORM TESTS, DATES OR  
20          DATE DID YOU PERFORM TESTS?

21          A     WOULD HAVE BEEN OCTOBER OF THIS YEAR. I BELIEVE  
22          I STARTED IT. OCTOBER 3D OR 4TH IS WHEN I STARTED MY  
23          TESTING.

24          Q     ON THE PIECE OF BLANKET?

25          A     YES, MA'AM, OCTOBER 3, 1995 IS WHEN I RETRIEVED  
26          THE ITEM, STARTED THE WORK.

27          Q     WHAT TIME DID YOU RESEAL IT AND PUT IT BACK IN  
28          THE FREEZER?

1           A     WELL, I HAD IT IN MY POSSESSION FOR A WHILE. I  
2 RESEALED IT ONE ON THE 4TH AFTER I DID MY INITIAL CUT.  
3 AND THEN I WENT BACK TO DO A SECOND TEST. AND I THEN  
4 RESEALED IT. THAT WAS ON OCTOBER 11TH.

5           Q     COULD YOU OPEN IT FOR US, PLEASE? DO YOU NEED  
6 SOMETHING, SCISSORS?

7           A     DO YOU HAVE A SCISSOR?

8           MS. SCHMAUSS: YOUR HONOR, I AM STILL CONFUSED WHERE  
9 I AM ALLOWED TO WALK AND I AM NOT. CAN I GO THAT WAY?

10          THE COURT: SURE.

11          THE WITNESS: GLOVES?

12          MS. SCHMAUSS: GLOVES, TANYA?

13          Q     BY MS. SCHMAUSS: YOU HAVE EXTRACTED AN INNER  
14 ENVELOPE FROM THE OUTER ENVELOPE OUT OF EXHIBIT 69?

15          A     EXHIBIT 69 CONTAINS THREE ENVELOPES. TWO SMALL,  
16 ABOUT TWO INCH BY FOUR INCH ENVELOPES. AND ONE LARGE  
17 ABOUT SIX INCHE BY NINE INCH ENVELOPE.

18          Q     IS THAT JOHN JOHNSON'S WRITING ON THE BIG ONE  
19 YOU ARE HOLDING?

20          A     YES, MA'AM.

21          Q     IS YOUR WRITING ANYWHERE?

22          A     YES, THERE ARE TWO AGAIN, TWO SEALS ON THIS  
23 PARTICULAR ENVELOPE WHICH INDICATE MY INITIALS DTJ AND  
24 ALSO THE DATES OF OCTOBER 4, 1995, AND OCTOBER 11, THE TWO  
25 DATES THAT I OPENED THE ENVELOPE. REALLY, THE ONLY  
26 REASON I AM PUTTING ON THE GLOVES RIGHT NOW IN CASE  
27 SOMEONE WANTS TO DO SOME FURTHER TESTING ON THIS  
28 PARTICULAR SAMPLE, THEN AT LEAST IT WILL BE SORT OF

1 PROTECTED. I WOULDN'T HAVE TRANSFERRED ANYTHING THAT  
2 MIGHT HAVE CONTAINED MY DNA TO THE SAMPLE. IN FACT, I  
3 THINK THAT CHANCE IS VERY MINIMAL. BUT, I JUST TAKE THIS  
4 PRECAUTION ANYWAY.

5 Q DO THE GLOVES FIT?

6 A INNER ENVELOPE CONTAINS A PORTION OF A BLANKET  
7 WHICH MR. JOHNSON HAD EXTRACTED FROM THE--

8 Q MR. JOHNSON BEING JOHN JOHNSON?

9 A JOHN JOHNSON THAT IS RIGHT, WHICH HE HAD CUT  
10 OUT. THAT IS RIGHT. I FORGOT. JOHN JOHNSON OF OUR

11 LABORATORY HAD CUT FROM THE ORIGINAL LARGER BLANKET. IT  
12 HAS SOME SORT OF CARTOON DESIGN, ALMOST LOOKS LIKE A  
13 PORTION OF GOOFY'S FACE IN THE CORNER. ON THE BACK SIDE  
14 OF THE SAMPLE WAS A-- THERE WAS A-- THERE WAS A STAIN THAT  
15 WAS ABOUT THE SIZE THAT HAS BEEN CUT OUT NOW. THERE IS  
16 STILL A SMALL PORTION OF THE STAIN YOU CAN SEE IT IS ON  
17 THE BACK. IT IS KIND OF A LIGHT BROWN COLOR. STILL A  
18 SMALL PORTION OF THE STAIN THAT REMAINS.

19 Q OKAY. IS THIS WHAT YOU LATER DETERMINED TO BE  
20 BLOOD?

21 A YES, MA'AM.

22 Q THE BROWN STAIN?

23 A YES, MA'AM.

24 Q OKAY. I AM PULLING A BLANKET NOW OUT OF THE  
25 EXHIBIT 5 FOR IDENTIFICATION, ASKING YOU IF THAT CUTOUT  
26 WOULD COMPORT TO ANY HOLE THAT YOU SEE HERE IN THE  
27 BLANKET?

28 A YES MA'AM. IN FACT IT WAS GOOFY NOW. SO,

1 APPEARS TO BE THE LARGER HOLE WHERE THE LITTLE S IN THE  
2 BLANKET.

3 Q NOW, YOU HAVE TWO OTHER SMALL ENVELOPES. MAYBE  
4 YOU CAN PUT THAT BACK IN THERE SO IT DOESN'T GET LOST.  
5 THERE'S WRITING ON THE BACK OF THE BLANKET. DO YOU  
6 RECOGNIZE ANY OF THIS?

7 A THERE'S WRITING AROUND THE LARGER HOLE THAT I  
8 REFER TO HAS THE NUMBER 1 NEXT TO IT. THERE IS A  
9 SOMEWHAT SQUARE-SHAPE HOLE THAT SAYS CON. GENERALLY MEANS  
10 CONTROL. AND THERE'S ANOTHER AREA WHICH HAS THE NUMBER 2  
11 NEXT TO IT. YOU CAN ALSO SEE IF LOOK AROUND THESE HOLES,  
12 THERE ARE SOME OTHER SLIGHT DISCOLORATION.

13 Q HOW ABOUT THE RED WRITING. THERE'S SOME RED.  
14 THERE'S SOME RED MARKS ON HERE?

15 A I DON'T KNOW WHAT THOSE REFER TO.

16 Q OKAY. AND THE OTHER CONTROL THEN IS THAT ONE OF  
17 THE OTHER ENVELOPES YOU HAVE IN THERE?

18 A TWO SMALLER ENVELOPES. ONE OF THEM IS LABELED  
19 CONTROL AND THE OTHER ONE IS WB, THE SECTION FROM THE FROM  
20 NUMBER TWO.

21 Q OKAY. CONTROL PERHAPS YOU DON'T NEED TO OPEN  
22 THAT. CAN YOU JUST TELL THE JURY WHAT THE CONTROL IS?

23 A YES, MA'AM. WHEN WE DO OUR TESTS, WE LIKE TO CUT  
24 OUT A PORTION OF THE STAIN AND ALSO A PORTION OF THE  
25 MATERIAL THAT WAS NOT STAINED. AND THEN WHAT WE WILL DO  
26 IS WE WILL TEST BOTH OF THESE SIDE BY SIDE. AND SEE WHAT  
27 THE DIFFERENCES ARE. AND IT GIVES US SOME CONFIDENCE THAT  
28 WHATEVER TESTS WE GET FROM THE STAIN REALLY CAME FROM THE

1 STAIN AND NOT FROM THE BLANKET'S MATERIAL THAT WAS ALREADY  
2 ON THERE TO START WITH.

3 Q SO, IT THAT WOULD FIT HERE IS MARKED CONTROL IS  
4 JUST A PIECE OF BLANKET WITHOUT A STAIN ON IT?

5 A THAT IS CORRECT.

6 Q OKAY. AND THEN WHAT ABOUT THIS OTHER SMALL  
7 CUTOUT PIECE HERE LABELED NUMBER TWO?

8 A I DID NOT EXAMINE THAT. I DON'T KNOW.

9 Q OKAY. YOU DIDN'T EXAMINE THAT?

10 A NO.

11 Q HAD THAT SUSPECTED BLOOD ON IT?

12 A ACTUALLY, I DID TAKE A LOOK AT IT. BUT I DID  
13 NOT ANALYZE IT.

14 Q CAN YOU OPEN IT THEN?

15 A (WITNESS COMPLIES.)

16 Q ALSO GOT MR. JOHNSON'S WRITING AND YOUR WRITING  
17 ON IT?

18 A JOHNSON OF OUR LABORATORY; RIGHT?

19 Q RIGHT, JOHN JOHNSON?

20 A IT IS A SMALLER SEMICIRCULAR PIECE. THERE IS A  
21 SMALL BROWNISH DISCOLORATION ON IT. AND THIS PIECE WOULD  
22 FIT IN A NUMBER TWO.

23 Q IS THAT BROWN DISCOLORATION CONSISTENT WITH THE  
24 BROWN DISCOLORATION ON THE LARGE PIECE THAT YOU DID  
25 ANALYZE?

26 A IT'S A SIMILAR COLOR. IT IS MUCH SMALLER.

27 Q APPEARS TO BE BLOOD?

28 A APPEARS TO BE THE SAME TYPE OF MATERIAL.

1 Q THANK YOU. CAN YOU PUT THOSE BACK.

2 MR. JONES, I AM LAYING OUT IN FRONT OF YOU SIX  
3 DIFFERENT SEALED PLASTIC CONTAINERS. AND THEY ARE LABELED  
4 EXHIBIT 70, 71, 72, 73, AND 74 AND 75. AND I'D LIKE TO  
5 ASK YOU WHAT THESE ITEMS ARE?

6 A THESE ITEMS ARE THE BLOOD TUBES THAT WERE THAT  
7 CONTAIN THE BLOOD THAT I EXAMINED IN THIS CASE. THERE ARE  
8 SIX DIFFERENT INDIVIDUALS THAT I WAS ASKED TO SEE IF THEY  
9 COULD OR COULD NOT BE THE SOURCE OF THE BLOOD STAIN THAT  
10 WAS ON THAT PARTICULAR BLANKET. AND THESE ARE THE BLOOD  
11 FROM THOSE SIX PEOPLE.

12 Q AND THEN DO YOU HAVE RECORDS OF WHEN THESE WERE  
13 RECEIVED, WHERE THEY WERE KEPT?

14 A YES.

15 Q I SUPPOSE WE CAN START WITH NUMBER 70 WHICH IS A  
16 BLOOD SAMPLE FROM BRITTANY RIGGS.

17 A BLOOD SAMPLE FROM BRITTANY RIGGS WAS SUBMITTED  
18 TO THE LABORATORY IN A COLLECTION KIT ON OCTOBER 12, 1993.

19 Q OKAY. AND WHERE WAS IT PLACED WHEN IT WAS  
20 RECEIVED?

21 A THE KIT WAS PLACED, WAS DELIVERED TO THE  
22 LABORATORY. THE KIT WAS OPENED. THE BLOOD TUBE WAS TAKEN  
23 OUT. A DRY-- WHAT WE DO IS WE OPEN UP THE BLOOD SAMPLE,  
24 TAKE A PORTION OF THE BLOOD OUT, PUT IT ON A PIECE OF  
25 CLOTH, AND DRY IT. AGAIN, TRYING TO KEEP IT DRY AND COLD.  
26 THAT WILL PRESERVE MOST OF THE GENETIC MARKERS THAT WE  
27 WANT TO PRESERVE IN THE SAMPLE. WE MAKE THIS DRY CLOTH.  
28 THE BLOOD TUBE ITSELF WAS THEN STORED IN A REFRIGERATOR IN

1 THE LABORATORY AND THE DRY PIECE OF CLOTH WITH THE BLOOD  
2 STAIN ON IT NOW WAS TO BE STORED IN A FREEZER IN THE  
3 LABORATORY. THE COLLECTION KIT WAS THEN SEALED AND SENT  
4 TO OUR PROPERTY SECTION FOR STORAGE.

5 Q OKAY. AND THEN IT WAS THIS DRIED STRIP THAT YOU  
6 USED FOR THE ANALYSIS?

7 A THAT'S CORRECT.

8 Q AND THEN THE NUMBER IS 013008R ON HERE. IS THIS  
9 THE IDENTIFYING NUMBER FOR BRITTANY RIGGS' SAMPLE?

10 A THAT CORRESPONDS TO THE COLLECTION KIT FOR  
11 BRITTANY RIGGS.

12 Q ALL RIGHT. THEN MOVE ON TO EXHIBIT 71 FOR  
13 IDENTIFICATION WHICH IS IDENTIFIED AS CHUCK JOHNSON. WHEN  
14 WAS THAT RECEIVED BY YOUR LAB?

15 A OKAY. THE SAMPLE FROM MR. JOHNSON WAS RECEIVED  
16 ON JULY 27, 1995. WAS RECEIVED AGAIN IN AN EVIDENCE  
17 COLLECTION KIT AND RECEIVED BY THE LABORATORY. AGAIN  
18 ANOTHER SWATCH WAS MADE OR DRIED DRY CLOTH SAMPLE OF THE  
19 BLOOD SAMPLE. THE LIQUID SAMPLE WAS THEN STORED IN A  
20 REFRIGERATOR. THE BLOOD STAIN MADE FROM THAT WAS STORED  
21 IN A FREEZER. AND THE REST OF THE COLLECTION KIT WAS  
22 SEALED AND STORED IN THE FREEZER.

23 Q OKAY. THANK YOU.

24 MOVE TO NUMBER 72. IDENTIFIED AS TRAVIS JOHNSON.

25 A TRAVIS JOHNSON WAS THE LAST SAMPLE THAT WE  
26 RECEIVED. OR THE I AM SORRY, THE LATEST SAMPLE THAT WE  
27 RECEIVED. RECEIVED ON OCTOBER 23, LAST MONDAY, A WEEK AGO  
28 YESTERDAY, 1995. IT WAS RECEIVED BY OUR PROPERTY

1 SECTION. A DRY STAIN WAS MADE OF THE LIQUID SAMPLE  
2 INSIDE. THE LIQUID SAMPLE WAS THEN STORED IN A  
3 REFRIGERATOR. THE DRIED SAMPLE ACTUALLY WAS CUT  
4 IMMEDIATELY BY ME. I DID THIS ALL AT ONE TIME. AND IT  
5 HAS SINCE BEEN STORED IN A FREEZER IN THE LABORATORY.

6 Q OKAY. MOVING ON TO NUMBER 73 IDENTIFIED AS  
7 DARIN RIGGS. WHEN WAS THAT RECEIVED?-- ALSO THERE IS  
8 REFERENCE SAMPLES ARE THOSE NUMBERS THAT YOUR LAB ASSIGNS?  
9 WE HAVE GOT THEM DOWN HERE. THERE IS LIKE A LITTLE ORANGE  
10 TAG.

11 A YES, MA'AM. THE REFERENCE NUMBER. WE HAVE  
12 SEVERAL WAYS OF NUMBERING THESE TUBES AS THEY GO THROUGH  
13 DIFFERENT STAGES. AND THE REFERENCE NUMBER, FOUR-DIGIT  
14 NUMBER, OR THE KIT COLLECTION NUMBER ARE THE ONES THAT I  
15 CURRENTLY REFER TO IN MY NOTES.

16 Q SO, THE NAME IS NOT AS HELPFUL TO YOU AS A  
17 REFERENCE NUMBER?

18 A CORRECT.

19 Q SO, TRAVIS JOHNSON, REFERENCE NUMBER 3174, AND  
20 DARIN RIGGS IS REFERENCE 3063?

21 A YES, MA'AM. THAT WAS, THE SAMPLE FROM  
22 MR. RIGGS, WAS RECEIVED ON I BELIEVE THAT SAYS JULY 3,  
23 1995. AGAIN, WAS PROCESSED IN THE SAME WAY WITH A DRY  
24 STAIN MADE OF THE LIQUID SAMPLE. INSIDE THE LIQUID SAMPLE  
25 WAS THEN PLACED IN THE REFRIGERATOR. THE DRY STAIN WAS  
26 PLACED IN THE FREEZER. IT WOULD BE THE DRY STAIN THAT I  
27 USE FOR THE EXAMINATION.

28 Q I KNOW EACH OF THESE HAS WRITING. AND THE



1 INITIAL DJ. IS THAT YOU?

2 A YES, MA'AM, DTJ.

3 Q OH. MOVE TO NUMBER 74. LOOKS LIKE 3069.

4 A 3069 WAS A REFERENCE SAMPLE THAT WE HAVE FROM A  
5 JENNIFER RETHORN. WE RECEIVED ON JULY 20, 1995. AGAIN,  
6 WHEN IT CAME INTO THE LABORATORY, LIQUID SAMPLE WAS USED  
7 TO PREPARE A DRY STAIN. THE LIQUID SAMPLE WAS STORED IN  
8 REFRIGERATOR AND THE DRY STAIN IN A FREEZER. DRY STAIN  
9 WILL BE THE SAMPLE THAT I USED THEN TO CONDUCT MY TEST.

10 Q FINALLY, REFERENCE SAMPLE 3078?

11 A 3078 WAS A SAMPLE FROM A STEVE LOPEZ. IT WAS  
12 RECEIVED ON JULY 27, 1995. AGAIN THE LIQUID SAMPLE CAME  
13 INTO THE LABORATORY. A DRY STAIN WAS MADE OF THIS  
14 REFERENCE SAMPLE. THE LIQUID SAMPLE WAS THEN PLACED IN A  
15 REFRIGERATOR IN THE LAB. AND THE DRY STAIN WAS THEN  
16 PLACED IN THE FREEZER. AND THE DRY STAIN IS WHAT I WOULD  
17 HAVE USED FOR MY ANALYSIS.

18 Q NOW, YOU STATED THAT YOU TESTED THE CUTOUT PIECE  
19 OF BLANKET WAS YOUR FIRST TEST FOR BLOOD?

20 A YES, MA'AM. IN FACT, THAT TEST, THAT WILL BE  
21 THE FIRST TEST THAT I DO, CALLED A SCREENING TEST,  
22 ESSENTIALLY, A COLOR TEST TO SEE IF IT IS CONSISTENT WITH  
23 BEING BLOOD. AND THAT PARTICULAR TEST WAS POSITIVE FOR  
24 THAT STAIN.

25 Q AND IS THERE A WAY FOR YOU TO TELL IF IT IS  
26 HUMAN BLOOD?

27 A YES, THERE IS. THERE ARE SEVERAL METHODS FOR  
28 DETERMINING IF IT IS HUMAN BLOOD. THE METHOD I USED

1 INVOLVES ACTUALLY CUTTING THE STAIN AND EXTRACTING OUT THE  
2 DNA. AND THE STEP THE DNA TO SEE IF IT IS HUMAN. THAT'S  
3 WHAT I DID. THE RESULT WAS POSITIVE THERE WAS HUMAN DNA  
4 PRESENT IN THE STAIN.

5 Q THERE BE EXTRAPOLATION, YOU CAN STATE THAT THE  
6 BLOOD ON THE BLANKET WAS IN FACT HUMAN BLOOD?

7 A THAT WAS MY CONCLUSION, YES, MA'AM.

8 Q OKAY. AFTER YOU ESTABLISHED THAT THE BLOOD ON  
9 THE BLANKET WAS HUMAN BLOOD, THEN WHAT WAS THE NEXT STEP  
10 OF YOUR PROCESS?

11 A THE NEXT STEP WAS TO DETERMINE HOW MUCH DNA WAS  
12 PRESENT IN THERE AND THEN USE AN ADEQUATE AMOUNT OF THE  
13 DNA TO DO ANY TESTING TO SEE IF I CAN TO SEE IF I CAN  
14 DETERMINE A DNA TYPE FOR A PARTICULAR DNA LOCATION. THE  
15 PARTICULAR LOCATION THAT I USED IN THIS IS SOMETHING  
16 CALLED DQ-ALPHA. IT IS A LOCATION IN WHICH SOME PEOPLE  
17 MAY BE DIFFERENT THAN OTHERS.

18 Q SO, THE TEST IS CALLED DQ-ALPHA?

19 A IT IS GENERICALLY CALLED THE DQ-ALPHA TEST. AND  
20 DQ-ALPHA TYPING TEST, YES, MA'AM.

21 Q SO, YOU'RE LOOKING FOR THE LOCATION OF A GENE  
22 MARKER ON A PARTICULAR PIECE OF DNA?

23 A THERE IS A PARTICULAR LOCATION ON THE DNA THAT  
24 SOME RESEARCHER SOMEWHERE HAS SAID OKAY, THIS IS YOUR  
25 DQ-ALPHA REGION. WHAT WE DO IS WE GO IN AND WE LOOK AT  
26 DQ-ALPHA REGION AND FIND OUT WHAT TYPE IS THERE. AND THERE  
27 COULD BE A NUMBER OF-- THERE ARE ACTUALLY TWENTY-ONE  
28 DIFFERENT TYPES THAT WE COULD GET FROM A PARTICULAR

1 PERSON'S SAMPLE. AND WE JUST TAKE A LOOK AND FIND OUT  
2 WHAT TYPE ARE THERE. WE CAN ALSO EXTRACT DNA FROM STAINS  
3 TO SEE WHAT TYPE IS PRESENT IN THE STAINS.

4 Q AND THIS PROCESS THAT YOU ARE CALLING, IT IS  
5 KNOWN AS PCR; CORRECT?

6 A THE PROCESS WE USE IN ORDER TO DO THE TYPE IS  
7 CALLED PCR. ESSENTIALLY, IT IS A TECHNIQUE USED TO HELP  
8 AS YOU TAKE A LOOK AT THIS LOCATION. IN ACTUALITY, IF I  
9 TOOK ONE OR TWO STRANDS OF DNA, THERE'S ALL THE DNA THERE,  
10 IS VERY HARD TO WORK WITH. WHAT THE PCR TECHNIQUE DOES,  
11 IT GOES IN AND IT FINDS A PARTICULAR DNA LOCATION. IN THIS  
12 PARTICULAR TEST, WE HAVE TUNED THE TEST TO ONLY LOOK AT  
13 DQ-ALPHA LOCATION IN YOUR DNA. WHAT IT DOES, IT GOES IN  
14 AND SEES WHAT DQ-ALPHA TYPE YOU HAVE AND ESSENTIALLY XEROX  
15 COPIES IT A MILLION TIMES. SO NOW, I NO LONGER HAVE JUST  
16 A LITTLE BIT OF DNA. I HAVE A LOT OF DNA THAT ARE ALL THE  
17 COPIES OF THAT PARTICULAR SMALL REGION DNA. AND AN  
18 ANALOGY WOULD BE IT GOES INTO AN ENCYCLOPEDIA BOOK, FINDS  
19 PAGE 300, AND COPIES PAGE 300 A MILLION TIMES. NOW I HAVE  
20 A STACK OF PAGE 300 LIKE THIS WHEREAS THE ORIGINAL AMOUNT  
21 OF DNA THAT I HAD WAS VERY SMALL. AND IT JUST MAKES IT  
22 EASIER TO READ OR TO FIND PAGE 300 TO BE ABLE TO TELL WHAT  
23 IT IS.

24 Q WHAT IS PCR STAND FOR?

25 A IT STANDS FOR POLYMERASE CHAIN REACTION.

26 Q AND THAT'S A LONG WORD FOR THE XEROXING  
27 PROCEDURE?

28 A FOR THE XEROX. IT IS CALLED A MOLECULAR XEROX

1       PROCESS, THIS MAKING OF COPIES OVER AND OVER.

2           Q       WHAT IS AN ALLELE, A-L-L-E-L-E?

3           A       AN ALLELE IS A PARTICULAR FACTOR THAT YOU CAN  
4       HAVE AT A GENETIC LOCATION.  WHEN WE ARE SPEAKING  
5       DQ-ALPHA, THERE ARE SIX POSSIBLE ALLELES THAT CAN BE  
6       THERE.  AND EACH PERSON WILL ACTUALLY HAVE TWO ALLELES.  
7       ONE ALLELE YOU GOT FROM YOUR MOM, ONE ALLELE YOU GOT FROM  
8       YOUR DAD.  AND THAT'S JUST HOW THE INHERITANCE WORKS.  SO,  
9       IF I TEST SOMEBODY'S BLOOD AND THEY HAVE A 2 ALLELE AND A  
10      3 ALLELE, THEY WILL BE A DQ-ALPHA TYPE 2,3.  IF I TEST  
11      SOMEBODY ELSE'S BLOOD AND THEY WERE, AND YOU ONLY DETECT  
12      THE 4 ALLELE, I MEAN THEY DON'T COPY, THEY GOT FROM THEIR  
13      PARENTS, ONE THEY GOT FROM THEIR DAD MUST HAVE A 4, THE  
14      ONE THEY GOT FROM THEIR MOM MUST HAVE BEEN A 4.  I  
15      NORMALLY WOULD EXPECT TWO ALLELES.  BUT IT CHANCES CAN  
16      COME ABOUT WHERE THEY HAVE THE SAME, SAME ALLELE THAT THEY  
17      GET FROM BOTH PARENTS.  THAT PERSON WOULD TYPE AS WHAT'S  
18      CALLED A 4,4.

19           Q       NOW, IN THIS PARTICULAR CASE, YOU FOLLOWED A  
20      PROCEDURE; CORRECT?

21           A       YES, MA'AM.

22           Q       USING A KIT?

23           A       YES, MA'AM.  THAT IS COMMERCIALLY AVAILABLE KIT  
24      FOR DOING THIS DQ-ALPHA TYPING.  AND THE KIT COMES  
25      ESSENTIALLY WITH MOST OF THE NECESSARY REAGENTS THAT YOU  
26      NEED.  YOU HAVE TO MAKE UP A FEW SOLUTIONS AND BUFFERS AND  
27      SO FORTH.  BUT ALL OF THE KEY INGREDIENTS ARE IN THE KIT  
28      AS WELL AS AN INSTRUCTION MANUAL.

1 Q OKAY. NOW, DID YOU START OUT ANALYZING WHAT  
2 KIND OF DQ-ALPHA WAS ON THE STAIN IN THE BLANKET?

3 A I WILL HAVE TO CHECK MY NOTES AND FIND OUT. LET  
4 ME CHECK MY NOTES IN TERMS OF A STRATEGY FOR THE APPROACH.  
5 I SHOULD REMEMBER. BUT THERE HAVE BEEN A LOT OF THINGS  
6 HAPPENING LATELY. THE STRATEGY THAT I USED IN THIS  
7 PARTICULAR CASE WAS THERE WERE SO MANY POTENTIAL DONORS  
8 FOR THIS BLOOD STAIN. FIRST THING I WANTED TO DO WAS TO  
9 TEST MOST OF THE DONORS AND MAKE SURE THAT THEY ARE  
10 DIFFERENT IN THEIR DQ-ALPHA TYPING. AND IF THEY ARE  
11 DIFFERENT, IF I COULD DISTINGUISH AMONG THESE DONORS AND  
12 THIS DQ-ALPHA TYPE, THEN I COULD TEST THE STAIN AND BE  
13 ABLE TO TELL FROM THIS TEST WHO I CAN ELIMINATE AND WHO I  
14 CAN INCLUDE. IF SOME OF THEM ARE THE SAME, THE SAME  
15 DQ-ALPHA TYPE, IT WOULD HAVE BEEN A LITTLE MORE DIFFICULT  
16 TO DO THAT.

17 IN THIS PARTICULAR CASE, ALL SIX OF THE INDIVIDUALS  
18 ARE DIFFERENT. IN MY INITIAL BATTERY BEING I BELIEVE I  
19 ONLY TESTED FOUR OF THE REFERENCE SAMPLES. THOSE FOUR  
20 PEOPLE WERE DIFFERENT IN THEIR DQ-ALPHA. I THEN WENT ON  
21 AND TESTED THE STAIN. SINCE THEN, THERE WERE TWO OTHER  
22 INDIVIDUALS THAT I TESTED. AND THEY ALSO WOUND UP BEING  
23 DIFFERENT DQ-ALPHA TYPES. AND THEREFORE, I WAS ABLE TO  
24 MAKE ESSENTIALLY AN INCLUSION OR EXCLUSION STATEMENT.

25 Q AND I AM SORRY. THE TASK THAT YOU ARE PRESENTED  
26 WITH WAS TEST THE STAIN ON THE BLANKET, TEST ALL THE  
27 INDIVIDUALS WHOSE BLOOD HAS BEEN SUBMITTED TO YOU, AND  
28 DETERMINE IF YOU CAN INCLUDE OR EXCLUDE ANY OR ALL OF

1       THEM; IS THAT CORRECT?

2           A       CORRECT.

3           Q       OKAY. DID YOU TEST THE STAIN ON THE BLANKET AT  
4       SOMETIME?

5           A       YES, I DID.

6           Q       WHAT DID YOU FIND? WHAT WERE THE RESULTS OF  
7       YOUR TEST ON THE OF THE STAIN ON THE BLANKET?

8           A       TEST RESULTS WITH REGARD TO DNA IS THAT THERE  
9       WAS SUFFICIENT DNA FOR ME TO BE ABLE TO TYPE IT. IT WAS  
10       HUMAN DNA. AND THE DQ-ALPHA TYPE PRESENT WAS A 1.1,4.

11          Q       OKAY. AND SO, WHOEVER HAD DONATED THE STAIN HAD  
12       TWO DIFFERENT TYPES, PRESUMABLY ONE FROM MOM AND ONE FROM  
13       DAD?

14          A       HAD TWO DIFFERENT ALLELES IN THEIR DQ-ALPHA  
15       TYPE.

16          Q       THEN YOU WENT ON AND TESTED THE BLOOD FROM THE  
17       SIX INDIVIDUALS; CORRECT. AND YOU CAN REFER TO EXHIBIT 68  
18       FOR IDENTIFICATION IF YOU WOULD. DOES THAT ACCURATELY  
19       SHOW THE RESULTS OF YOU TESTING?

20          A       YES, MA'AM.

21          Q       OKAY. COULD YOU EXPLAIN WHAT EACH OF THE TEST  
22       RESULTS IN?

23          A       THE TOP LINE IN THE EXHIBIT 68 SHOWS THE  
24       RESULTS, THE DQ-ALPHA TYPING RESULTS, FOR THE STAIN IN THE  
25       BLANKET, SHOWS THAT THE ALLELES DETECTED WERE 1.1,4.

26                THE NEXT SIX LINES SHOW THE BLOOD SAMPLES THAT I  
27       EXAMINED TO COMPARE TO THIS PARTICULAR TYPE. THE FIRST OR  
28       THE LINE THAT SAYS BRITTANY RIGGS SHOWED THAT SHE TYPED,

1 HAD A 1.1,4. THEREFORE, SHE COULD BE INCLUDED AS A  
2 POSSIBLE DONOR FOR THIS DQ-ALPHA TYPE.

3 CHUCK JOHNSON WAS 2,4. HE COULD NOT HAVE GIVEN US  
4 THIS TYPE.

5 TRAVIS JOHNSON WAS 2.2. HE COULD NOT HAVE GIVEN US  
6 THE TYPE FOUND ON THE BLANKET.

7 DARIN RIGGS IS A 1.1,1.1. HE COULDN'T BE THE  
8 CONTRIBUTOR OF THE STAIN ON THE BLANKET.

9 JENNIFER RETHORN, 1.2,4 ALSO IS ELIMINATED AS A  
10 SOURCE OF BLOOD STAIN ON THE BLANKET.

11 STEVE LOPEZ, A 3,4 IS ALSO ELIMINATED AS A SOURCE OF  
12 THE TYPE ON THE BLANKET.

13 Q SO, THEREFORE, THE ONLY ONE THAT CAN BE INCLUDED  
14 AS A SOURCE WILL BE BRITTANY RIGGS?

15 A YES, MA'AM, FROM THIS LIMITED NUMBER OF PEOPLE.  
16 MS. SCHMAUSS: RIGHT.

17 THE COURT: THANK YOU. AND ON THAT NOTE, WE WILL  
18 TAKE OUR LUNCH RECESS, FOLKS. DON'T DISCUSS THE CASE.  
19 DON'T FORM ANY OPINION OR CONCLUSION. WE WILL RETURN AT  
20 1:30, PLEASE.

21 (NOON RECESS)  
22  
23  
24  
25  
26  
27  
28

1 RANCHO CUCAMONGA, CALIFORNIA; TUESDAY, OCTOBER 31, 1995

2 1:35 P.M.

3 DEPARTMENT 4

HON. ROBERT E. LAW, JUDGE

4  
5 ~~APPEARANCES: SET FORTH ON THE TITLE PAGE.~~

6  
7 (GAIL GREENLEE, C-8647, OFFICIAL REPORTER.)

8 ---###---

9 THE COURT: GOOD AFTERNOON. NOW, WE ARE GOING TO  
10 INTERRUPT A WITNESS THAT INTERRUPTED ANOTHER WITNESS WITH  
11 ANOTHER WITNESS. PLEASE.

12 MS. SCHMAUSS: THANK YOU. PEOPLE CALL OFFICER KELLY.

13  
14 ROBERT KELLY,  
15 RECALLED AS A WITNESS BY THE PLAINTIFF, WAS SWORN AND  
16 TESTIFIED AS FOLLOWS:

17 THE CLERK: PLEASE RAISE YOUR RIGHT HAND.

18 YOU DO SOLEMNLY SWEAR THE TESTIMONY YOU  
19 MAY GIVE IN THE MATTER NOW PENDING BEFORE THIS COURT  
20 SHALL BE THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT  
21 THE TRUTH, SO HELP YOU GOD.

22 THE WITNESS: I DO.

23 THE CLERK: THANK YOU. PLEASE BE SEATED. PLEASE STATE  
24 YOUR FULL NAME SPELLING YOUR LAST NAME FOR THE RECORD.

25 THE WITNESS: ROBERT KELLY K-E-L-L-Y.

26 ///

27

28



## DIRECT EXAMINATION

BY MS. SCHMAUSS:

Q OFFICER KELLY, IN THE COURSE OF YOUR ASSISTANCE  
IN THIS CASE, WERE YOU ASKED TO WITNESS BLOOD WITHDRAWALS  
OF A COUPLE OF WITNESSES?

A YES, I WAS.

Q AND WHICH WITNESSES WERE THOSE?

A MR. RIGGS AND MS. RETHORN.

Q OR ACTUALLY, A COUPLE OF PEOPLE INVOLVED IN THIS  
CASE. OKAY. AND WHERE DID THOSE BLOOD WITHDRAWALS TAKE  
PLACE?

A AT THE MONTCLAIR POLICE DEPARTMENT.

Q WERE THEY ON THE SAME DAY OR SEPARATE DAYS?

A THEY WERE ON SEPARATE DAYS.

Q WHAT DATE WAS THE FIRST BLOOD WITHDRAWAL?

A MR. RIGGS' BLOOD WAS WITHDRAWN ON JULY 10, 1995.

Q AND WHEN WAS MS. RETHORN?

A HERS WAS WITHDRAWN ON JULY 18, 1995.

Q OKAY. AND TURNING TO FIRST MR. RIGGS, WHO DREW  
THE BLOOD FROM HIM?

A THERE WAS A REPRESENTATIVE FROM WESTERN NURSES  
WHO WITHDREW HIS BLOOD.

Q IS THAT SOMEONE THAT IS ON CONTRACT WITH THE  
MONTCLAIR POLICE DEPARTMENT?

A YES, IT IS.

Q AND CAN YOU DESCRIBE THE PROCEDURE THAT YOU  
WITNESSED WITH MR. RIGGS?

A STANDARD PROCEDURE WITHDRAWING BLOOD, INSERTING

1 A NEEDLE IN A VEIN AND STICKING OF THE COLLECTION TUBES  
2 INTO THE NEEDLE TO WITHDRAW THE BLOOD.

3 Q IS THERE ANYWHERE ON THIS TEST TUBE THAT IS  
4 LABELED REFERENCE 3063, OR ACTUALLY, COLLECTION VIAL THAT  
5 ALLOWS YOU TO RECOGNIZE IT AS THE ONE YOU WITNESSED?

6 A IT HAS MY INITIALS ON IT UP AT THE TOP OF THE  
7 TUBE.

8 Q AND DID YOU INITIAL THIS TUBE RIGHT AFTER THE  
9 BLOOD WAS WITHDRAWN?

10 A YES.

11 Q AND DID YOU OBSERVE IT TO BE SEALED?

12 A YES.

13 Q AND DID YOU TAKE CUSTODY OF THE BLOOD VIAL AFTER  
14 THE BLOOD WITHDRAWAL WAS COMPLETE?

15 A YES, I DID.

16 Q WHAT DID YOU DO WITH THE BLOOD VIAL?

17 A THE BLOOD VIAL WAS PACKAGED IN AN ENVELOPE THAT  
18 WESTERN NURSES HAD PROVIDED. I THEN PACKAGED IT IN  
19 ANOTHER MANILA ENVELOPE, PLACED IT INSIDE THE EVIDENCE  
20 ROOM.

21 Q OKAY. AND WHERE WAS IT PLACED?

22 A IT WAS PLACED IN A REFRIGERATOR?

23 A INSIDE THE EVIDENCE ROOM.

24 Q AND THEN WHO HANDLED THE EVIDENCE FROM THERE ON  
25 FOR YOUR DEPARTMENT?

26 A EVIDENCE CLERK, MIKE CUNA.

27 Q SO, HE TRANSPORTED IT TO THE CRIME LAB?

28 A YES.

1 Q OKAY. AND SIMILARLY WITH JENNIFER RETHORN,  
2 SAMPLE, DID YOU ALSO WITNESS HER WITHDRAWAL?

3 A YES, I DID.

4 Q WHO DID THE WITHDRAWAL?

5 A IT WAS ALSO A REPRESENTATIVE OF WESTERN NURSES.

6 Q AND IS THERE ANY WAY FOR YOU TO RECOGNIZE THIS  
7 VIAL AS THE VIAL YOU SAW BEING COLLECTED ON JULY 18, 1995?

8 A YES. IT HAS MY INITIALS ON IT.

9 Q AND YOU DID THAT RIGHT AFTER THE WITHDRAWAL?

10 A YES.

11 Q WHAT DID YOU DO WITH THE PIECE OF EVIDENCE THAT  
12 IS LABELED EXHIBIT 74 FOR IDENTIFICATION?

13 A IT WAS ALSO PLACED IN AN ENVELOPE THAT WESTERN  
14 NURSES HAD PROVIDED. I THEN PLACED IT IN ANOTHER MANILA  
15 ENVELOPE INSIDE THE EVIDENCE ROOM.

16 Q AND PLACE IT WHERE?

17 A IT WAS ALSO PLACED INSIDE THE EVIDENCE  
18 REFRIGERATOR.

19 Q AND THEN HANDLED FROM THEN ON BY MIKE CUNA?

20 A YES.

21 Q AND FOR THE RECORD, DARIN RIGGS IS EXHIBIT 73  
22 FOR IDENTIFICATION?

23 A YES.

24 MS. SCHMAUSS: THANK YOU. NO FURTHER QUESTIONS.

25 MR. ABLARD: I HAVE NO QUESTIONS. THANK YOU.

26 THE COURT: THANK YOU.

27 MS. SCHMAUSS: MAY HE BE EXCUSED.

28 THE COURT: YES.

1 MR. ABLARD: YES.

2 DONALD THOMAS JONES

3 HAVING BEEN PREVIOUSLY SWORN, RESUMED THE STAND, WAS  
4 EXAMINED AND TESTIFIED AS FOLLOWS:

5 DIRECT EXAMINATION, RESUMED

6 BY MS. SCHMAUSS:

7 Q MR. JONES, IN ADDITION TO THE HUMAN BLOOD THAT  
8 YOU FOUND ON THE BLANKET, DID YOU DETECT ANY OTHER BODY  
9 SUBSTANCE?

10 A I DID A TEST FOR AN ENZYME CALLED AMYLASE WHICH  
11 IS AN ENZYME THAT IS FOUND IN HIGH LEVELS IN SALIVA. AND  
12 THE TEST RESULTS THAT I GOT ON THIS PARTICULAR STAIN WERE  
13 HIGHER THAN THOSE I WOULD HAVE EXPECTED FOR SIMPLY BLOOD  
14 ALONE. THERE'S SOME INDICATION SALIVA MAY BE PRESENT.

15 Q OKAY. IS AMYLASE PRESENT IN SALIVA?

16 A IN EXTREMELY LOW AMOUNTS, IT IS PRESENT IN A LOT  
17 OF BODY FLUIDS, IN REALLY LOW AMOUNTS. BUT IN SALIVA, IT  
18 IS A VERY HIGH AMOUNT.

19 Q OKAY. WELL, I THINK YOU MUST HAVE MISUNDERSTOOD  
20 MY QUESTION. I SAID IS IT PRESENT IN SALIVA?

21 A YES, MA'AM.

22 Q IN THE VERY HIGH AMOUNT?

23 A YES.

24 Q AND IS IT PRESENT IN OTHER BODY SUBSTANCES BUT  
25 IN VERY LOW AMOUNTS?

26 A CORRECT.

27 Q SO, YOU FOUND A HIGH AMOUNT OF AMYLASE IN THIS  
28 SAMPLE?

1           A     I WOULD SAY I FOUND A LEVEL THAT IS HIGHER THAN  
2 I WOULD HAVE EXPECTED FOR A BLOOD STAIN ALONE. I WOULDN'T  
3 CLASSIFY THE TEST AS SAYING IT GAVE ME A HIGH LEVEL OF  
4 AMYLASE. BUT IT GAVE ME HIGHER THAN I WOULD HAVE EXPECTED  
5 FOR A BLOOD STAIN, ESPECIALLY WHEN IT WAS A COUPLE OF  
6 YEARS OLD.

7           Q     SO, IT WAS CONSISTENT WITH THE PRESENCE OF  
8 SALIVA?

9           A     THAT IS CORRECT. THAT'S PROBABLY AS FAR AS I  
10 WOULD TAKE IT. I WOULD NOT ABSOLUTELY SAY YES, SALIVA IS  
11 PRESENT. TEST RESULTS KIND OF KIND OF INDICATE THAT. BUT  
12 THERE IS NOTHING. IT IS NOT A HARD-AND-FAST IDENTIFICATION  
13 OF SALIVA.

14          Q     IS DNA PRESENT IN SALIVA?

15          A     IF THERE ARE--

16          Q     CAN YOU GET DNA FROM SALIVA?

17          A     IF YOU HAVE-- ESSENTIALLY DNA COMES FROM CELLS.  
18 AND IF CELLS ARE PRESENT IN THE FLUID OR IN THE LIQUID,  
19 THEN YOU COULD GET DNA FROM THEM. WITH REGARD TO BLOOD,  
20 THERE ARE CELLS THAT ARE PRESENT IN THE BLOOD. THE WHITE  
21 BLOOD CELLS THAT ARE PRESENT IN THE BLOOD IS WHERE YOU GET  
22 YOUR DNA. FROM SALIVA, YOU MAY OR MAY NOT HAVE CELLS THAT  
23 RUB OFF INSIDE SURFACE OF YOUR MOUTH. AND SO IF YOU HAVE  
24 THE CELLS, YES, YOU WILL HAVE DNA. IF YOU DON'T HAVE THE  
25 CELLS, THEN NO, YOU WON'T.

26          Q     IF IN FACT THIS IS A MIXTURE OF BLOOD AND  
27 SALIVA, IS THERE ANY WAY TO DIFFERENTIATE THAT THE ENZYMES  
28 YOU DETECT OR THE ALLELES YOU DETECT IS FROM ONE OR THE

1 OTHER?

2 A IF THE SOURCE OF THE SALIVA AND THE BLOOD ARE  
3 THE SAME INDIVIDUAL, THEN THE TYPE THAT I GET IS  
4 REPRESENTATIVE OF THE INDIVIDUAL. AND I CAN'T TELL YOU  
5 WHAT REALLY ACTUALLY WHERE THE DNA TYPE DQ-ALPHA TYPE CAME  
6 FROM. I CAN TELL YOU THAT I WOULD SUSPECT THAT IT WOULD  
7 BE MORE LIKELY THAT IT CAME FROM THE BLOOD SAMPLE BECAUSE  
8 OF THE NATURE OF THE BLOOD AND THE WHITE-- PRESENCE OF THE  
9 WHITE BLOOD CELLS.

10 MS. SCHMAUSS: THANK YOU. I HAVE NO FURTHER  
11 QUESTIONS.

12 MR. ABLARD: THANK YOU, YOUR HONOR.

13 CROSS-EXAMINATION

14 BY MR. ABLARD:

15 Q IF THERE WAS SALIVA IN THAT BLOOD SAMPLE,  
16 SCIENTIFICALLY, COULD YOU TELL WHOSE IT WAS, TESTING?

17 A THERE ARE GENETIC MARKER TESTS THAT CAN BE DONE  
18 ON THE FLUIDS THAT CAN DISTINGUISH AMONG INDIVIDUALS. I  
19 DID NOT DO ANY OF THAT TESTING ON THIS PARTICULAR SAMPLE.

20 Q OKAY. NOW, GOING TO THE DNA TESTING, JUST HOW  
21 LONG DOES THE PROCESS TAKE YOU TO DO THE TEST? FIRST OF  
22 ALL, ESTABLISH THAT IT IS BLOOD AND THEN SEPARATE THE DNA,  
23 AND IT IS HUMAN BLOOD, STRAIGHT OUT DNA, IT IS HUMAN BLOOD  
24 UNTIL ACTUALLY THE TEST IS COMPLETE AND YOU HAVE THE  
25 RESULTS?

26 A IF I WERE GIVEN A SAMPLE TODAY AND NOT HAD ANY  
27 INTERRUPTION, I COULD DO THE DQ-ALPHA TEST IN A MATTER OF  
28 A DAY AND A HALF OR TWO DAYS AND GET A RESULT.

1 Q OKAY. COULD YOU TELL BY THE TEST THAT YOU DID  
2 WHEN THE BLOOD GOT ON THE BLANKET?

3 A NO, SIR. NONE OF THE TYPES OF TESTS THAT I DO  
4 WILL TELL ME HOW LONG THE STAIN HAS BEEN THERE.

5 Q NOW, THE TEST THAT YOU DID, THE DQ-ALPHA, HOW  
6 WOULD YOU DESCRIBE THAT TEST? WOULD THAT PLACE PEOPLE IN  
7 CATEGORIES? IS IT A VERY FINE, UNIQUE, MINUTE TEST? OR  
8 IS IT HOW--EXPLAIN THAT TO US?

9 A YES, SIR. AGAIN, WITH REGARD TO THE DIFFERENT  
10 TYPES OF DQ-ALPHA RESULTS THAT YOU CAN GET, THERE ARE  
11 ESSENTIALLY TWENTY-ONE TYPES. SOME ARE MORE COMMON THAN  
12 OTHERS. BUT ESSENTIALLY, THERE'S ONLY TWENTY-ONE  
13 CATEGORIES. SO, IF THEY ARE ALL EQUAL, ONE OUT OF EVERY  
14 TWENTY-ONE PEOPLE WOULD HAVE A PARTICULAR TYPE. THEY ARE  
15 NOT ALL EQUAL. SO, THE DISTRIBUTION IS A LITTLE  
16 DIFFERENT. SO, IN TERMS OF PINPOINTING THIS TEST,  
17 PINPOINTING EXACTLY WHERE A PARTICULAR SAMPLE CAME FROM  
18 AND ONLY ONE PARTICULAR INDIVIDUAL, THE DQ-ALPHA TEST DOES  
19 NOT DO THAT. IT IS BETTER FOR ESSENTIALLY IS USED AT  
20 CATEGORIZING AND THAT'S PROBABLY APPROPRIATE. I CAN  
21 ESSENTIALLY CATEGORIZE PEOPLE.

22 Q PEOPLE WHO COULD HAVE CONTRIBUTED TO BLOOD STAIN  
23 AND PEOPLE WHO COULD NOT. WAS THERE AN INDICATION THAT  
24 THERE WAS ANY MIXTURE OF BLOOD IN THE SAMPLE THAT WAS  
25 TESTED?

26 A THERE WERE ACTUALLY TWO INDICATIONS OF MIXTURES.  
27 ONE WE HAVE ALREADY SPOKEN OF, THE HIGH LEVEL OF AMYLASE  
28 WHICH SUGGESTS THAT THERE MAY BE ANOTHER FLUID SUCH AS

1 SALIVA PRESENT. ANOTHER TEST RESULT THAT WAS RECEIVED  
2 INVOLVED THE STAIN ON THE BLANKET. WHEN I TYPED IT ON A  
3 USING THE KIT, GAVE ME A VERY STRONG RESULT FOR THE 1.1  
4 AND THE 4. THERE WAS KIND OF AT A REALLY WEAK LEVEL WHAT  
5 IS CALLED A 2 ALLELE, ESSENTIALLY A 2 WAS, THERE IS A  
6 POSSIBILITY THAT IT IS PRESENT. THE RESULT THAT I GOT DID  
7 NOT HAVE A HIGH ENOUGH RESPONSE OR A HIGH ENOUGH RESULT  
8 FOR ME TO SAY CONCLUSIVELY THAT YES, I FELT THE 2 ALLELE  
9 DEFINITELY IS PRESENT. THE MAJOR TYPE WAS 1.1, 4. THAT  
10 IS WHAT I REPORTED. HOWEVER, I DID NOTICE THIS OTHER  
11 EXTREMELY MINOR COMPONENT WHICH I DID NOT CONCLUSIVELY  
12 CALL.

13 Q BUT IT COULD HAVE BEEN A MIXTURE OF TWO PEOPLE'S  
14 BLOOD?

15 A I WOULD-- I WOULD SAY THAT WITH REGARD TO THE  
16 MIXTURES, I--

17 Q THAT WOULD BE FAIR TO SAY YOU ARE NOT SURE?

18 A IT WOULD BE FAIR TO SAY THAT THE MAJOR  
19 INDICATION THAT I HAVE IS THERE IS ONE PARTICULAR SOURCE  
20 FOR THE DNA. IF SOMEONE WERE TO TELL ME WELL, THERE'S A  
21 POSSIBILITY THAT THAT'S A SECOND DONOR OF THE DNA, THAT IS  
22 THERE THAT COULD HAVE GIVEN YOU THIS REALLY LOW 2 ALLELE,  
23 I WOULD HAVE TO AGREE, THERE IS A POSSIBILITY THERE. AND  
24 THAT WOULD BE, ESSENTIALLY THAT WILL BE IT. I'D HAVE TO  
25 AGREE THAT'S A POSSIBILITY. THE MAJOR TYPE OF THE DONOR  
26 DID NOT INVOLVE THE 2 ALLELE.

27 Q SO, THERE IS A POSSIBILITY MORE THAN ONE  
28 PERSON'S BLOOD?



1           A     AGAIN, WELL, WHEN YOU SAY BLOOD, I PREFER TO  
2 JUST SAY DNA. BECAUSE WHAT I AM DOING IS TYPE THE DNA. I  
3 DON'T KNOW EXACTLY WHERE THAT PARTICULAR 2.

4           Q     OKAY. IF THERE WERE JUST ONE PERSON'S BLOOD  
5 THERE, THEN THERE WOULD JUST BE ONE DNA TYPE; RIGHT?

6           A     IF THERE WAS ONE PERSON'S BLOOD THERE, I WOULD  
7 EXPECT AT MOST TWO OF THESE ALLELES?

8           A     SUCH AS I SAW, SUCH AS I CALLED ON THE BLANKET.  
9 IF THERE WERE MORE THAN ONE PERSON'S ALLELES PRESENT, THEN  
10 I HAVE THERE'S A POSSIBILITY THAT I MAY SEE MORE THAN 2  
11 ALLELES. IN FACT THAT IS A PRIMARY THING FOR OUR TESTING  
12 IS IF WE DO TESTING ON A PARTICULAR ITEM, IF WE GET MORE  
13 THAN TWO ALLELES, THAT WE ARE CONFIDENT THAT ARE THERE, WE  
14 WILL SAY STRAIGHT OUT THIS IS A MIXTURE OF SOURCES. YOU  
15 HAVE MORE THAN ONE PERSON CONTRIBUTING TO THIS STAIN.

16          Q     OKAY. SO, YOU HAVE MORE THAN TWO ALLELES, ONE  
17 MINOR, BUT YET YOU HAVE MORE THAN TWO?

18          A     IN THIS PARTICULAR CASE, I CONFIDENTLY CALLED  
19 TWO ALLELES. I MADE NOTE OF A WEAK RESULT THAT MIGHT  
20 INDICATE ANOTHER ALLELE THAT I DID NOT CALL THAT AS A  
21 CONFIRMATORY, CONCLUSIVE RESULT.

22          Q     OKAY. SO, WOULD IT BE FAIR TO SAY THAT IT IS  
23 INCONCLUSIVE AS FAR AS TWO PEOPLE, BUT POSSIBLE?

24          A     I WOULD SAY THAT IT, IN TERMS OF IF SOMEONE WAS  
25 THERE IS OH A POSSIBILITY OF ANOTHER PERSON'S MIXTURE OR  
26 DNA BEING MIXED IN THERE, AND THAT THIS OTHER PERSON HAS A  
27 2 ALLELE. I WOULD SAY I CAN'T REALLY REFUTE IT. IT WOULD  
28 BE AN EXTREMELY LOW LEVEL, BELOW WHAT I WOULD CALL THE

1 CONFIDENCE LEVEL THAT I WOULD DEFINITELY SAY THAT IS  
2 THERE.

3 MR. ABLARD: THANK YOU. NO FURTHER QUESTIONS.

4 THE COURT: THANK YOU.

5 MS. SCHMAUSS: THAT'S IT. OH, I AM NOT DONE. I  
6 HAVE ONE THING. SORRY.

7 THE COURT: OH.

8 REDIRECT EXAMINATION

9 BY MS. SCHMAUSS:

10 Q THIS EXTREMELY WEAK ALLELE, LET'S SAY

11 HYPOTHETICALLY IF A PERSON WHO HAD THE 2,4 ALLELE  
12 COMBINATION WERE TO PERSPIRE OR SPREAD A LITTLE BIT OF  
13 SALIVA ON THE STAIN, WOULD YOU POSSIBLY SEE THIS EXTREMELY  
14 WEAK 2 POP UP?

15 MR. ABLARD: YOUR HONOR, I AM GOING TO OBJECT AS  
16 INCOMPLETE HYPOTHETICAL.

17 MS. SCHMAUSS: AS AN INCOMPLETE?

18 THE COURT: DOES THE HYPOTHETICAL MAKE SENSE TO YOU?

19 THE WITNESS: THE WAY I UNDERSTAND THE HYPOTHETICAL  
20 IS THAT IF SOMEONE ELSE WHO WAS A 2,4 HAD SOME SORT OF--

21 THE COURT: CONTACT.

22 THE WITNESS: --CONTACT.

23 THE COURT: WITH THE SAME PARTICULAR AREA.

24 THE WITNESS: YES, SIR. THE ONLY CAVEAT THAT I WOULD  
25 PUT IN THERE IS THAT THEY WOULD HAVE TO DEPOSIT SOME SORT  
26 OF CELLS ON THERE THAT HAD DNA. AND WHETHER IT BE BY  
27 PERSPIRATION OR BY SOME SORT OF SALIVA, HAIR FOLLICLES  
28 OR--

1 THE COURT: SKIN.

2 THE WITNESS: BASICALLY, YOUR OUTSIDE SKIN IS  
3 ANUCLEATED. IT DOESN'T HAVE ANY NUCLEUS, THEREFORE,  
4 SHOULD NOT HAVE ANY DNA ON IT OR IN IT. BUT OTHER TYPES  
5 OF NUCLEATED CELLS IF THEY ARE PRESENT IN LOW  
6 CONCENTRATIONS, THEY COULD GIVE.

7 THE COURT: THE OBJECTION IS OVERRULED. I THINK--

8 MR. ABLARD: I SORT OF GOT THAT.

9 THE COURT: -- HE HAS GIVEN THE CAVEAT THAT YOU NEED.  
10 SO, GO AHEAD.

11 MR. ABLARD: THANK YOU.

12 THE COURT: SO, HAVE YOU GOT AN ANSWER.

13 Q BY MS. SCHMAUSS: KEEP GOING.

14 A IF THIS PARTICULAR SITUATION HAD OCCURRED WHERE  
15 YOU HAVE SOMEONE WHO HAS, WHO IS A 2,4, THEY COULD BE AND  
16 THEY ARE-- THEIR CELLS ARE PRESENT IN A RELATIVELY SMALL  
17 AMOUNT, THEY COULD BE THE SOURCE OF THE 2 ALLELE, THE WEAK  
18 2 ALLELE THAT I DID NOT CALL OR DID NOT CONCLUSIVELY CALL  
19 IN THE SAMPLE.

20 Q AND IT WOULD BE POSSIBLE THAT THE 4 COULDN'T  
21 SHOW UP AT ALL BECAUSE IT IS SUCH A MINUSCULE AMOUNT OF  
22 DNA?

23 A WELL, THE 4 WOULD ACTUALLY BE FROM THE 2,4, THE  
24 4 WOULD BE MASKED BY THE 4 THAT IS ALREADY PRESENT THERE.

25 MS. SCHMAUSS: RIGHT. I UNDERSTAND. NO FURTHER  
26 QUESTIONS. THANKS.

27 MR. ABLARD: NOTHING FURTHER.

28 MS. SCHMAUSS: YOUR HONOR, WE HAVE A STIPULATION WE

1 SHOULD PUT ON THE RECORD.

2 THE COURT: YOU CAN STEP DOWN.

3 MS. SCHMAUSS: MR. JONES WILL BE ALLOWED TO BRING  
4 BACK TO THE LABORATORY FOR PROPER STORAGE ALL THE BLOOD  
5 SAMPLES AND THE FROZEN OR THE PIECES OF BLANKET THAT ARE  
6 CUT OUT.

7 BUT I DO NEED TO PUT OFFICER DONLEY ON FOR  
8 IDENTIFICATION OF THE SAMPLES BEFORE HE LEAVES.

9 THE COURT: PUT HIM ON. WE ARE BACK NOW TO A WITNESS  
10 WHO WAS INTERRUPTED.

11 YOU ARE STILL UNDER OATH. GO AHEAD.

12 MICHAEL DONLEY,  
13 HAVING BEEN PREVIOUSLY SWORN, RESUMED THE STAND, WAS  
14 EXAMINED, AND TESTIFIED AS FOLLOWS:

15 DIRECT EXAMINATION, RESUMED  
16 BY MS. SCHMAUSS:

17 Q OFFICER DONLEY, I AM BRINGING TO YOU FOUR BLOOD  
18 SAMPLES THAT HAVE JUST BEEN TESTIFIED TO BY MR. JONES  
19 FROM THE CRIME LAB. AND WE HAVE GOT EXHIBIT 71 FOR  
20 IDENTIFICATION, EXHIBIT 72 FOR IDENTIFICATION, EXHIBIT 70  
21 FOR IDENTIFICATION, AND EXHIBIT 75. SO, WHY DON'T WE  
22 START WITH EXHIBIT 70 FOR IDENTIFICATION WHICH IS LABELED  
23 RIGGS, BRITTANY.

24 AND MY QUESTION IS WERE YOU PRESENT WHEN THIS VIAL OF  
25 BLOOD WAS COLLECTED FROM THE VICTIM IN THIS CASE, BRITTANY  
26 RIGGS?

27 A YES, I WAS.

28 Q WHEN DID THIS OCCUR?

1 A OCTOBER 11, 1993.

2 Q AND WHERE DID IT OCCUR?

3 A AT THE AUTOPSY.

4 Q AND DID YOU OBSERVE ANYONE TO WITHDRAW BLOOD  
5 FROM BRITTANY?

6 A YES. DR. SHERIDAN.

7 Q OKAY. IS THERE ANY WAY FOR YOU TO IDENTIFY THIS  
8 VIAL OF BLOOD THAT I AM HOLDING IN MY HAND AS BLOOD THAT  
9 YOU WITNESSED BEING WITHDRAWN?

10 A YES. IT HAS MY NAME WRITTEN ON IT.

11 Q OKAY. WHAT DID YOU DO WITH THIS VIAL OF BLOOD  
12 AFTER IT WAS WITHDRAWN FROM THE VICTIM?

13 A IT WAS COLLECTED FROM DR. SHERIDAN AND TAKEN  
14 BACK TO THE POLICE STATION AND PLACED INTO EVIDENCE.

15 Q WAS IT PUT IN ANY SORT OF REFRIGERATOR?

16 A I DON'T RECALL IF THAT ONE WAS OR NOT. I HAVE  
17 IN MY REPORT THAT IT WAS IN THE EVIDENCE LOCKER. SO, I  
18 DON'T KNOW IF IT WAS ACTUALLY REFRIGERATED OR NOT.

19 Q OKAY. WAS IT TAKEN BY ANYONE TO THE CRIME LAB?

20 A YES, IT WAS BY-- I WAS TOLD THAT IT WAS GOING  
21 TO BE TAKEN WITHIN A DAY. SO I BELIEVE TOOK IT THE NEXT  
22 DAY.

23 Q AND DO YOU HAVE SOMEBODY DESIGNATED TO DO THAT?

24 A AT THE TIME, YES, WE DO. AT THE TIME, I  
25 BELIEVE IT WAS SHERRY WENTSTER WHO NO LONGER WORKS FOR OUR  
26 POLICE DEPARTMENT, AND MIKE CUNA, MIKE CUNA'S PREDECESSOR.

27 Q TURNING TO EXHIBIT 71 FOR IDENTIFICATION WHICH  
28 IS LABELED CHUCK JOHNSON, WERE YOU PRESENT WHEN BLOOD WAS

1 WITHDRAWN FROM THE DEFENDANT IN THIS CASE?

2 A YES, I WAS.

3 Q AND WHAT DAY DID THIS OCCUR?

4 A OCCURRED ON JULY 26 OF 1995.

5 Q OKAY. AND WHO WITHDREW THE BLOOD?

6 A IT WAS N. MARQUEZ WHO WAS FROM LAW ENFORCEMENT  
7 MEDICAL SERVICES.

8 Q OKAY. DID YOU WITNESS HER TO ACTUALLY TAKE THIS  
9 BLOOD SAMPLE OUT OF THE DEFENDANT?

10 A YES, I DID.

11 Q AND DID YOU LABEL IT WITH ANYTHING TO ALLOW YOU  
12 TO IDENTIFY IT?

13 A A YES, I HAD MY INITIALS AND MY I.D. NUMBER.

14 Q WHAT DID YOU DO WITH THIS VIAL OF BLOOD AFTER IT  
15 WAS WITHDRAWN?

16 A I HAD TAKEN IT BACK TO THE MONTCLAIR POLICE  
17 DEPARTMENT AND PLACED IT IN REFRIGERATOR.

18 Q DID ANYBODY PERHAPS FORWARD IT TO THE CRIME LAB?

19 A YES.

20 Q WHO?

21 A I BELIEVE IT WILL BE MIKE CUNA.

22 Q HE WAS WORKING--HE WAS THE ONLY ONE THAT DOES  
23 THE EVIDENCE AT MONTCLAIR POLICE DEPARTMENT NOW?

24 A YES.

25 Q OKAY. THEN TURNING TO EXHIBIT 72 FOR  
26 IDENTIFICATION, LABELED TRAVIS JOHNSON. WERE YOU PRESENT  
27 WHEN BLOOD WAS WITHDRAWN FROM TRAVIS JOHNSON?

28 A YES.

1 Q WHO WAS TRAVIS JOHNSON, BY THE WAY?

2 A TRAVIS JOHNSON IS THE DEFENDANT'S SON.

3 Q HOW OLD IS HE NOW?

4 A I BELIEVE HE IS THREE.

5 Q OKAY. AND WHAT DATE WAS BLOOD WITHDRAWN FROM  
6 TRAVIS?

7 A THAT WAS TAKEN ON OCTOBER 19 OF 1995.

8 Q WHERE?

9 A MONTCLAIR POLICE DEPARTMENT.

10 Q WHO DID THE WITHDRAWAL?

11 A THAT WAS DONE BY MARY QUINN OF THE LAW  
12 ENFORCEMENT MEDICAL SERVICES.

13 Q OKAY. AND IS THERE ANY MARKING ON THIS VIAL  
14 THAT ALLOWS YOU TO IDENTIFY IT?

15 A YES, IT HAS MY INITIALS AND MY I.D. NUMBER.

16 Q OKAY. WHAT DID YOU DO WITH THIS VIAL AFTER IT  
17 WAS WITHDRAWN FROM TRAVIS JOHNSON?

18 A THAT WAS DIRECTED DIRECTLY TO MIKE CUNA WHO WAS  
19 THE EVIDENCE CLERK.

20 Q TO TRANSPORT TO THE CRIME LAB?

21 A YES.

22 Q AND THEN FINALLY, EXHIBIT 75, FOR IDENTIFICATION  
23 WHICH WAS LABELED STEVE LOPEZ. WERE YOU PRESENT WHEN  
24 BLOOD WAS WITHDRAWN FROM STEVE LOPEZ?

25 A YES.

26 Q WHEN WAS THAT?

27 A THAT WAS TAKEN ON JULY 25TH OF 1995.

28 Q OKAY. WHERE DID THAT OCCUR?

1 A THE MONTCLAIR POLICE DEPARTMENT.

2 Q WHO WITHDREW IT?

3 A THAT WAS TAKEN BY N. MARQUEZ, ALSO OF LAW  
4 ENFORCEMENT MEDICAL SERVICES.

5 Q ARE YOUR INITIALS ANYWHERE ON THIS BLOOD VIAL?

6 A YES.

7 Q AND YOU PLACED THOSE RIGHT AFTER THE BLOOD WAS  
8 WITHDRAWN?

9 A YES.

10 Q WHAT DID YOU DO WITH THIS VIAL AFTER IT WAS  
11 WITHDRAWN?

12 A I GAVE IT TO MIKE CUNA.

13 Q AND HE TRANSPORTED IT TO THE CRIME LAB?

14 A YES.

15 MS. SCHMAUSS: THANK YOU. AT THIS TIME, YOUR HONOR,  
16 I AM GOING TO RETURN ALL THESE ITEMS.

17 THE COURT: LET'S SEE THE EXHIBIT NUMBERS THAT I  
18 ASSUME YOU ARE MOVING THEM INTO EVIDENCE.

19 MS. SCHMAUSS: YES. PEOPLE WOULD MOVE TO ADMIT ITEM  
20 NO. 69, WHICH IS THE PIECE OF THE BLANKET, ITEM NO. 70,  
21 71, 72, 73, AND 74 AND 75 INTO EVIDENCE.

22 MR. ABLARD: NO OBJECTION.

23 THE COURT: THEY ARE RECEIVED. THAT MEANS, LADIES  
24 AND GENTLEMEN, YOU WILL BE ABLE TO CONSIDER THEIR  
25 EXISTENCE LATER. BUT FOR REASONS OF PRESERVATION AND  
26 AGREEMENT BY THE PARTIES, THEY ARE GOING TO BE RETURNED  
27 BACK TO THE CRIME LAB. SHOULD WE NEED THEM OR SHOULD YOU  
28 NEED THEM FOR EXAMINATION OR EVALUATION, AT YOUR REQUEST,



1 WE WILL HAVE THEM RETURNED IN THE CARE, CUSTODY OF SOMEONE  
2 FROM THE CRIME LAB FOR YOUR PERUSAL WHILE DELIBERATING.  
3 BUT ONLY UPON REQUEST. BECAUSE IT IS IMPORTANT THEY BE  
4 PRESERVED.

5 MS. SCHMAUSS: THANK YOU, YOUR HONOR.

6 THE COURT: MS. SCHMAUSS, DID YOU HAVE ANY CIVILIANS  
7 THAT YOU WANTED TO CALL, INTERRUPTING THIS WITNESS?

8 MS. SCHMAUSS: ACTUALLY, NOW, I DON'T. I CAN  
9 CONTINUE WITH MR. DONLEY.

10 THE COURT: WELL, IF YOU HAVE CIVILIANS THAT YOU'D  
11 LIKE TO GET IN AND OUT THAT ARE--

12 MS. SCHMAUSS: ALL RIGHT. I DO.

13 THE COURT: WHY DON'T WE DO THAT.

14 MS. SCHMAUSS: OKAY.

15 THE COURT: IF THAT'S ALL RIGHT WITH YOU.

16 MR. ABLARD: THAT'S FINE, YOUR HONOR.

17 THE COURT: WELL, I KNEW IT WOULD BE.

18 MS. SCHMAUSS: I HAVE ANGELA JOHNSON OUTSIDE.

19 THE COURT: WHY DON'T YOU GET MS. JOHNSON ON AND OFF.

20 MS. SCHMAUSS: THAT'S A GOOD IDEA.

21 THE COURT: IS THAT THE END OF IT?

22 MS. SCHMAUSS: LISA WOOD.

23 THE COURT: LISA WOOD IS HERE TOO?

24 MS. SCHMAUSS: YES. THAT'S THE END OF IT EXCEPT FOR  
25 THEM.

26 THE COURT: OKAY.

27  
28 ANGELA MARIE JOHNSON

1 CALLED AS A WITNESS BY THE PLAINTIFF, WAS SWORN AND  
2 TESTIFIED AS FOLLOWS:

3 THE CLERK: PLEASE RAISE YOUR RIGHT HAND.

4 YOU DO SOLEMNLY SWEAR THE TESTIMONY YOU  
5 MAY GIVE IN THE MATTER NOW PENDING BEFORE THIS COURT  
6 SHALL BE THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT  
7 THE TRUTH, SO HELP YOU GOD.

8 THE WITNESS: I DO.

9 THE CLERK: THANK YOU. PLEASE BE SEATED. PLEASE STATE  
10 YOUR FULL NAME SPELLING YOUR LAST NAME FOR THE RECORD.

11 THE WITNESS: ANGELA MARIE JOHNSON J-O-H-N-S-O-N.

12 DIRECT EXAMINATION

13 BY MS. SCHMAUSS:

14 Q MS. JOHNSON, ARE YOU CURRENTLY THE WIFE OF THE  
15 DEFENDANT IN THIS CASE?

16 A YES, MA'AM.

17 Q ARE YOU IN THE PROCESS OF DIVORCE?

18 A YES, MA'AM.

19 Q WERE YOU MARRIED TO THE DEFENDANT AS OF OCTOBER  
20 10, 1993?

21 A YES, MA'AM, I WAS.

22 Q DO YOU REMEMBER THAT DAY?

23 A YES.

24 Q ON THAT DATE, WERE YOU CONTACTED BY THE  
25 DEFENDANT?

26 A YES.

27 Q AND THAT WAS VIA WHAT?

28 A A TELEPHONE CALL.

1 Q AND WHAT DID HE TELL YOU ON THE TELEPHONE?

2 A THE FIRST PHONE CALL TOLD ME THAT THEY COULD NOT  
3 FIND BRITTANY; THAT BRITTANY WAS MISSING.

4 Q DO YOU RECALL APPROXIMATELY WHAT TIME THAT WAS?

5 A APPROXIMATELY A LITTLE BIT, A LITTLE TIME BEFORE  
6 9.

7 Q OKAY. AND DID YOU RECEIVE A LATER PHONE CALL  
8 FROM THE DEFENDANT?

9 A YES, I DID.

10 Q ABOUT WHAT TIME?

11 A I AM NOT SURE OF THAT EXACT TIME. I KNOW IT  
12 WAS AFTER THEY HAD FOUND HER. AND HE TOLD ME THAT SHE WAS  
13 DEAD. SO, IT WOULD HAVE TO HAVE BEEN AFTER 10.

14 Q DID HE ASK TO COME OVER?

15 A YES, HE DID.

16 Q AND DID YOU INVITE HIM TO COME OVER?

17 A I CHECKED WITH MY MOTHER FIRST TO MAKE SURE IT  
18 WAS ALL RIGHT. AND SHE CLEARED IT SO, THAT HE COULD BE  
19 REACHED BY MONTCLAIR POLICE DEPARTMENT AT OUR TELEPHONE.

20 Q AND WERE YOU STAYING WITH YOUR MOM AT THE TIME?

21 A YES, I WAS.

22 Q WHERE WAS THAT?

23 A 628 NORTH SAN ANTONIO AVENUE IN ONTARIO.

24 Q DID THE DEFENDANT COME OVER?

25 A YES, HE DID.

26 Q DO YOU REMEMBER APPROXIMATELY WHAT TIME HE GOT  
27 TO YOUR MOTHER'S HOUSE?

28 A APPROXIMATELY 10:30, 11:00, I BELIEVE.

1 Q AND DID HE TELL YOU ONCE HE GOT TO YOUR MOM'S  
2 HOUSE WHAT HAD HAPPENED AT 9393 EXETER?

3 A YES, HE DID.

4 Q TO THE BEST OF YOUR RECOLLECTION WHAT DID HE  
5 TELL YOU?

6 A WELL, HE STARTED OFF TOLD MY MOTHER BECAUSE SHE  
7 WAS IN THE ROOM, ONE OF THE FIRST STATEMENTS OUT OF HIS  
8 MOUTH WAS YOU DON'T HAVE A MURDERER IN YOUR HOUSE. TOLD  
9 US WENT ON TO TELL US THAT THERE WAS FIRST THAT THEY  
10 COULDN'T FIND HER, AND TOLD THEM-- TOLD US THAT-- PARDON  
11 ME. SORRY.

12 STARTED OFF SAYING HOW ABOUT THE MORNING HOW HE WOKE  
13 UP 7, 7:30 APPROXIMATELY. HE GOT UP, WENT OUT TO CLEAN  
14 THE BUG. BRITTANY WAS UP. SHE FOLLOWED HIM OUT TO HIS  
15 BUG TO HELP HIM CLEAN THE BUG OUT. THEN HE WENT INSIDE  
16 A FEW MINUTES. A COUPLE MORE THINGS HAPPENED.

17 HE SAID HE FIXED HER JUICE AND SOMETHING TO EAT-- I  
18 BELIEVE IT WAS JUICE AND TOAST-- AND WENT BACK TO HIS  
19 ROOM. AND LET'S SEE. THEN WENT BACK TO BED HIMSELF.

20 AND LATER ON, HE HAD AWOKEN TO A PHONE CALL THAT I  
21 BELIEVE DARIN WAS ON THE OTHER LINE. BUT SOMETHING ABOUT  
22 THE CALLER HAD HUNG UP.

23 THEN HE AWOKE AGAIN TO THE SOUND OF DARIN'S VOICE  
24 CALLING FOR BRITTANY IN THE BACKYARD. AND HE PEEKED OUT  
25 THE BLINDS TO SEE WHAT WAS GOING ON AND ASKED DARIN.

26 DARIN REPLIED THAT THEY COULDN'T FIND BRITTANY, COULD  
27 YOU PLEASE COME OUT AND HELP. TELL HIM THAT HE GOT  
28 DRESSED. HE HAD THROWN ON SOME WORK CLOTHES AND WENT OUT

1 TO HELP LOOK FOR BRITTANY; THEY, THAT HE SEARCHED,  
2 SEARCHED FOR AROUND THE HOUSE; THAT HE COULDN'T FIND HER;  
3 AND THAT THEN THEY GAVE HIM A PICTURE; AND THAT HE WENT TO  
4 A NEIGHBOR'S HOUSE TO SEE THEN ABOUT THAT TIME.

5 WHEN HE GOT BACK, THE POLICE HAD ALREADY ARRIVED AND  
6 THAT THEY HAD FOUND HER WHEN HE GOT BACK. HE SAID THAT  
7 THE POLICE HAD FOUND HER AND THEN ALSO THAT HE HAD  
8 PREVIOUSLY IN THE TIMES WHILE THEY WERE LOOKING FOR HER,  
9 HE DID, YOU KNOW, HE DID MENTION AT THAT TIME THAT HE  
10 MENTIONED LATER FACT--

11 Q WELL, NO. JUST AT THE INITIAL TIME THAT HE  
12 FIRST CAME OVER TO YOUR HOUSE, I AM ASKING YOU.

13 A I APOLOGIZE.

14 Q THERE IS A LATER CONVERSATION. I WILL ASK YOU  
15 ABOUT THAT.

16 A I APOLOGIZE.

17 Q BUT WHEN HE FIRST CAME OVER, WHAT DID HE SAY  
18 WHEN HE FIRST CAME OVER?

19 A OKAY. FROM THAT POINT, HE SAID THAT POLICE  
20 SEARCHED THE HOUSE. HE HELPED THEM. AND WHEN, LATER ON  
21 HE WAS OUT I BELIEVE HE WAS OUT TALKING IN I BELIEVE THE  
22 LIVING ROOM OR THE KITCHEN AREA, HE SAW ONE OF THE  
23 OFFICERS HAD HER IN HIS ARMS AND WAS TAKING HER OUT THE  
24 DOOR.

25 Q THIS FIRST CONVERSATION, FIRST CAME OVER BETWEEN  
26 10:30 AND 11:00. DID HE SAY ANYTHING ABOUT KNOWING  
27 BRITTANY HAS BEEN IN HIS CLOSET?

28 A AT THAT TIME, NO, HE DIDN'T.

1 Q DID HE LATER ON THAT DAY GO WITH SOME POLICE  
2 OFFICERS TO THE POLICE DEPARTMENT FOR AN INTERVIEW?

3 A YES. THEY PICKED HIM UP AT THE 628 ADDRESS.

4 Q AND THEN DID YOU GO TO PICK HIM UP AFTER THE  
5 INTERVIEW WAS OVER?

6 A YES, I DID.

7 Q ABOUT WHAT TIME WAS THAT, IF YOU CAN REMEMBER?

8 A I DON'T REMEMBER AN EXACT TIME.

9 Q LATER THAT AFTERNOON?

10 A YEAH.

11 Q ON THE 10TH?

12 A YES, IT WAS.

13 Q OKAY. AND AFTER HE RETURNED FROM THE POLICE  
14 DEPARTMENT, DID HE TELL YOU SOMETHING ADDITIONAL THAT HE  
15 HADN'T TOLD YOU IN THE MORNING?

16 A YES, HE DID.

17 Q WHAT WAS THAT?

18 A THAT WAS THAT HE HAD INITIALLY SEEN BRITTANY IN  
19 THE CLOSET AND HE PANICKED. AND THAT HE JUST, HE DIDN'T  
20 KNOW WHAT TO DO. HE DIDN'T WANT TO BE BLAMED FOR IT. AND  
21 THAT HE JUST KIND OF COVERED HER UP AND CLOSED THE CLOSET.  
22 HE DIDN'T WANT TO-- DIDN'T EVEN WANT TO BELIEVE THAT SHE  
23 WAS THERE.

24 Q NOW, IN THIS CONVERSATION, THE SECOND  
25 CONVERSATION AFTER HE HAD COME BACK FROM THE POLICE  
26 DEPARTMENT, DID HE SAY ANYTHING ABOUT WHETHER HE BELIEVED  
27 ANYBODY FROM THE OUTSIDE COULD HAVE COME IN AND HARMED  
28 BRITTANY?

1           A     NO, HE DIDN'T. HE DIDN'T STATE IT AT THAT TIME.  
2           WELL, HE KNEW, YOU KNOW THAT THERE WAS NOBODY HE KNEW.  
3           STEVEN WAS ASLEEP. HE KNEW DARIN AND JENNIFER WERE  
4           ASLEEP. HE WAS OUTSIDE. BUT HE HAD STATED THAT IN THE  
5           CONVERSATION EARLIER THAT MORNING--

6           Q     SO HE TOLD YOU IN ONE OF THE CONVERSATIONS THAT  
7           HE KNEW NOBODY--WELL, FIRST OF ALL, DID HE SAY WHETHER HE  
8           THOUGHT SOMEBODY FROM OUTSIDE, A STRANGER, HAD COME IN AND  
9           HARMED BRITTANY?

10          A     NO, HE DIDN'T.

11          Q     DID HE SAY SOMETHING TO THAT EFFECT; THAT HE  
12          KNEW NO ONE?

13          A     YEAH. HE DID SAY THAT HE KNEW NOBODY COULD HAVE  
14          GOT IN BECAUSE YOU KNOW, HE WAS UP.

15          Q     AND THEN WHAT DID HE SAY ABOUT THE OTHER PEOPLE  
16          IN THE HOUSEHOLD?

17          A     HE SAID JENNY AND DARIN WERE ASLEEP AND THAT  
18          STEVE WAS ASLEEP. BUT HE WASN'T SURE, YOU KNOW, HE WASN'T  
19          SURE WHETHER STEVE WOULD HAVE DONE IT OR IF JENNIFER WOULD  
20          HAVE DONE IT. BUT IT DIDN'T SEEM LIKE DARIN WOULD DO IT.

21          Q     HE SAID THAT AS FAR AS HE KNEW, THEY WERE ALL  
22          ASLEEP?

23          A     RIGHT.

24          Q     HE CAME BACK TO YOUR MOTHER'S HOUSE AFTER THE  
25          INTERVIEW AT THE POLICE STATION. DO YOU KNOW WHERE HE  
26          WENT LATER THAT DAY?

27          A     YES, HE WENT TO HIS MOTHER'S HOUSE IN MONTEREY  
28          PARK.

1 Q DO YOU KNOW WHETHER HE STAYED THE NIGHT THERE?

2 A YES, I DID. BECAUSE HIS FATHER CALLED ME WHEN  
3 HE DID REACH THEIR APARTMENT.

4 Q DID YOU HEAR HIM IN THE BACKGROUND WHERE HIS  
5 FATHER CALLED YOU?

6 A I BELIEVE HE WAS TALKING TO HIS MOTHER, YES.

7 Q AND YOU RECOGNIZE HIS VOICE?

8 A YES.

9 Q WERE YOU AWARE THAT HE WAS PLACED INTO CUSTODY  
10 THE NEXT DAY?

11 A YES.

12 Q AND THEN DID YOU HAVE CONTACT WITH HIM AFTER HE  
13 WAS PLACED INTO CUSTODY?

14 A NOT WITH HIM. I BELIEVE I HAD CONTACT WITH  
15 OFFICER DONLEY WHO RELEASED HIS KEYS AND WALLET TO ME.

16 Q BACK TO CHUCK HIMSELF, THOUGH?

17 A NO.

18 Q DID YOU GO SEE HIM AT THE JAIL?

19 A YES, I WENT.

20 Q OKAY.

21 A VIRTUALLY EVERY OTHER DAY.

22 Q THE PERIOD OF TIME BETWEEN OCTOBER 11 THROUGH--  
23 OCTOBER THE 10TH, OCTOBER 20TH, DO YOU KNOW WHERE CHUCK  
24 JOHNSON WAS?

25 A YES, I DO.

26 Q WHERE?

27 A WEST VALLEY DETENTION CENTER.

28 Q HOW DO YOU KNOW PERSONALLY THAT HE WAS THERE?



1 A I WENT TO SEE HIM.

2 Q EVERY DAY?

3 A AT LEAST EVERY OTHER DAY, SOMETIMES EVERY DAY.

4 Q AS FAR AS YOU KNOW WAS HE IN CUSTODY AT WEST

5 VALLEY DETENTION CENTER THROUGHOUT THE MONTH OF OCTOBER?

6 A YES, HE WAS.

7 Q OF '93?

8 A YES.

9 Q THAT'S BECAUSE YOU WENT TO VISIT HIM?

10 A YES.

11 Q DID YOU KNOW BRITTANY RETHORN RIGGS?

12 A FOR A BRIEF PERIOD OF TIME BEFORE HER DEATH,

13 YES, I DID.

14 Q IS THAT FROM YOUR COMING OVER TO THE HOUSE?

15 A YES, IT WAS.

16 Q WHAT KIND OF A CHILD WAS SHE?

17 THE COURT: I AM SORRY. I DON'T THINK YOU HAVE A  
18 FOUNDATION FOR THAT KIND OF QUESTION FOR SOMEONE WHO JUST  
19 MET HER ON OCCASION.

20 Q BY MS. SCHMAUSS: DID CHUCK EVER COMMENT ON HIS  
21 FEELINGS ABOUT BRITTANY TO YOU?

22 MR. ABLARD: I AM GOING TO OBJECT ON HEARSAY, LACK OF  
23 FOUNDATION.

24 MS. SCHMAUSS: I CAN GIVE YOU AN OFFER OF PROOF IF YOU  
25 WANT.

26 THE COURT: WELL, YOU BETTER.

27 MS. SCHMAUSS: DO YOU WANT IT--

28 (SIDE BAR; NOT REPORTED.)

1 THE COURT: MOVE ALONG.

2 Q BY MS. SCHMAUSS: MS. JOHNSON, WAS THERE EVER AN  
3 OCCASION THAT YOU VISITED THE DEFENDANT AT THE HOUSE AT  
4 EXETER?

5 A YES, MA'AM.

6 Q PRIOR, OF COURSE, TO THE DEATH OF BRITTANY?

7 A YES, THERE WAS.

8 Q DO YOU RECALL WHEN IT WAS IN RELATION TO OCTOBER  
9 10TH, 1993 THAT YOU WERE AT THE HOUSE ON EXETER?

10 A I'M SORRY.

11 Q WELL, WHAT IS THE TIME FRAME THAT YOU WERE  
12 THERE?

13 A ON THE 10TH?

14 Q NO. IN RELATION TO THE 10TH, SO, WELL, LET ME  
15 BACK UP.

16 ARE YOU AWARE THAT THE DEFENDANT LIVED AT THE HOUSE  
17 AT EXETER A SHORT PERIOD OF TIME?

18 A YES.

19 Q DO YOU KNOW ABOUT LONG?

20 A APPROXIMATELY SIX WEEKS.

21 Q SO, DURING THOSE SIX WEEKS, DID YOU EVER VISIT?

22 A YES, I DID. SORRY.

23 Q OKAY. HOW MANY TIMES WAS THAT?

24 A TEN, FIFTEEN TIMES.

25 Q DID YOU EVER GO IN HIS ROOM?

26 A YES.

27 Q BEHIND YOU IS AN EXHIBIT MARKED 3 FOR  
28 IDENTIFICATION, IS A COUPLE OF PHOTOGRAPHS ON THE

1 RIGHT-HAND SIDE. DO YOU RECOGNIZE THOSE?

2 A YES, I DO.

3 Q WHAT ARE THEY?

4 A A IS THE HOUSE ON EXETER. B, THAT IS THE DOOR  
5 TO CHUCK'S ROOM. C, THAT'S A PICTURE OF HIS ROOM, THE  
6 FARTHER PART, THE OPEN CLOSET. AND D IS PICTURE OF THE  
7 NIGHT STAND THAT LOOKING INTO THE CLOSET.

8 Q THE DISARRAY THAT'S SHOWN IN THOSE TWO PICTURES  
9 OF THE DEFENDANT'S ROOM, IS THAT HOW HIS ROOM NORMALLY  
10 LOOKED?

11 A AT TIMES, YEAH.

12 Q DURING THE TIME THAT YOU VISITED?

13 A YEAH.

14 Q OKAY, DID YOU EVER SPEND THE NIGHT THERE WITH  
15 YOUR SON, TRAVIS?

16 A YES, I DID.

17 Q NOW, YOU HAD AT THE TIME, 1993, HOW MANY  
18 CHILDREN DID YOU HAVE?

19 A IN 1993, AS OF SEPTEMBER 13, I HAD TWO.

20 Q OKAY. TRAVIS WAS HOW OLD?

21 A TRAVIS WAS APPROXIMATELY ELEVEN MONTHS.

22 Q AND THEN YOUR YOUNGER CHILD, HOW OLD WAS HE?

23 A APPROXIMATELY TWO AND A HALF WEEKS.

24 Q DID YOU SPEND THE NIGHT WITH BOTH CHILDREN OR  
25 JUST THE ONE?

26 A WITH BOTH.

27 Q OKAY. AND WHEN YOU VISITED WITH THE TWO KIDS,  
28 DID YOU BRING ALL THE BEDDING AND THINGS THAT THEY MIGHT

1       NEED?

2           A       YES, I DID ALWAYS.

3           Q       HOW MANY TIMES DID YOU SPEND OVERNIGHT WITH THE  
4       DEFENDANT WITH THE KIDS?

5           A       ONCE.

6           Q       AND WHEN WAS THAT IN RELATION TO THE TIME I AM  
7       TALKING ABOUT?

8           A       APPROXIMATELY THE WEEKEND. I WANT TO SAY THE  
9       WEEKEND BEFORE THE INCIDENT. THE, THIS INCIDENT HAPPENED.

10          Q       WAS THERE EVER A TIME THAT ANY OF YOUR CHILDREN  
11       SPENT TIME ALONE WITH THE DEFENDANT IN HIS ROOM?

12          A       ALONE, YES.

13          Q       WHO WAS THAT?

14          A       TRAVIS.

15          Q       ONLY TRAVIS?

16          A       YES.

17          Q       NOT THE YOUNGER CHILD?

18          A       HUH-UH. I WAS BREAST FEEDING AT THE TIME.

19          Q       OKAY. AND WHEN WAS IT THAT TRAVIS SPENT  
20       SOMETIME WITH THE DEFENDANT ALONE?

21          A       HE SPENT TIME WITH HIM FREQUENTLY AT THE HOUSE  
22       ON SEVERAL OCCASIONS. AT ONE POINT IN TIME, THERE WAS  
23       ARRANGEMENT FOR HIM TO STAY THE NIGHT. BUT HE, I BELIEVE  
24       HE DID END UP BRINGING HIM BACK LATE. I DON'T KNOW A  
25       DATE.

26          Q       YOU DON'T KNOW HOW SOON BEFORE BRITTANY'S DEATH?

27          A       LET'S SEE. HER DEATH OCCURRED ON A SATURDAY.  
28       WAS IT SATURDAY?

1 THE COURT: WELL, EXCUSE ME.

2 THE WITNESS: SUNDAY.

3 THE COURT: I'M SORRY. THE ANSWER IS YOU DON'T KNOW.

4 THE WITNESS: I'M NOT REMEMBERING--

5 THE COURT: THAT'S FINE.

6 THE WITNESS: -- DAYS OF THE WEEK.

7 THE COURT: I'S OKAY NOT TO KNOW STUFF.

8 DO YOU HAVE A LOT OF QUESTIONS THAT SHE DOESN'T HAVE  
9 ANSWERS FOR? YOU HAVEN'T TALKED TO HER.

10 EXCUSE ME. WHEN I TALK, EVERYONE ELSE IS QUIET,  
11 INCLUDING YOU.

12 THE WITNESS: SORRY.

13 THE COURT: GOT THE MESSAGE.

14 THE WITNESS: PARDON ME.

15 THE COURT: IF YOU HAVEN'T TALKED TO THIS WITNESS AND  
16 YOU DON'T KNOW WHAT SHE IS TALKING ABOUT, OR HAVE ANY IDEA  
17 WHAT THE ANSWERS ARE FOR HER QUESTIONS, SHE WILL HAVE TO  
18 STEP DOWN.

19 MS. SCHMAUSS: I TALKED TO HER, YOUR HONOR.

20 THE COURT: WELL, LET US BE PRECISE, THEN.

21 MS. SCHMAUSS: IT'S BEEN A COUPLE OF YEARS. MAYBE I  
22 CAN ASK IT THIS WAY.

23 Q BY MS. SCHMAUSS: WAS IT WITHIN THE SAME WEEK?

24 A YES, IT WAS.

25 Q OKAY. I AM GOING TO SHOW YOU EXHIBIT NUMBER I  
26 THINK IT IS 5. EXHIBIT 5 FOR IDENTIFICATION. I AM GOING  
27 TO ASK YOU IF YOU HAVE EVER SEEN THIS BLANKET BEFORE?

28 A YES, I HAVE. I HAVE SEEN IT IN THE LAUNDRY AT

1 THE HOUSE ON EXETER.

2 Q OKAY. AND DOES IT BELONG TO YOU?

3 A NO, IT DOES NOT.

4 Q DOES IT BELONG TO CHUCK JOHNSON?

5 A NO, IT DOES NOT.

6 Q IN YOUR PRESENCE WAS THIS EVER USED WITH EITHER  
7 OF YOUR CHILDREN?

8 A NO.

9 Q AT THE TIME THAT TRAVIS SPENT ALONE AT THE HOUSE  
10 AT EXETER WITH THE DEFENDANT, DID YOU SEND BLANKETS AND

11 OTHER THINGS WITH TRAVIS?

12 A ALWAYS.

13 Q WHEN YOU GOT TRAVIS BACK THAT NIGHT AFTER HE  
14 SPENT SOMETIME WITH THE DEFENDANT, WAS TRAVIS BLEEDING IN  
15 ANY WAY?

16 A NONE, NONE WHATSOEVER.

17 Q AND THE NIGHT THAT YOU SPENT THE NIGHT WITH THE  
18 TWO BOYS, DID EITHER OF THEM BLEED?

19 A NONE WHATSOEVER.

20 Q DID YOU BLEED?

21 A NO.

22 Q YOU STARTED TO MENTION ABOUT OFFICER DONLEY  
23 GIVING YOU PERMISSION TO GO TO THE HOUSE, PICK UP SOME  
24 PROPERTY. DO YOU REMEMBER WHAT DATE THAT WAS?

25 A THAT WAS THE DATE OF HIS ARREST.

26 Q OKAY. AND DID YOU TAKE SOME OF HIS PROPERTY  
27 HOME WITH YOU?

28 A YES, I DID.

1 Q WHAT KIND OF PROPERTY?

2 A I STRIPPED EVERYTHING THAT WAS ON THE FLOOR THAT  
3 YOU SEE IN THIS PICTURE. HIS TOOL BOX, I STARTED TO TAKE.  
4 BUT I DID RELEASE THEM. I DID GIVE THEM TO THEM, TO  
5 OFFICER DONLEY AT THE HOUSE AND WAS TAKEN TO MONTCLAIR  
6 POLICE DEPARTMENT. BUT EVERYTHING ELSE.

7 THE COURT: WHAT ELSE?

8 THE WITNESS: EVERYTHING ELSE YOU SEE.

9 THE COURT: YOU SAW THEM TAKE TO THE POLICE  
10 DEPARTMENT?

11 THE WITNESS: I SAW HIM TAKE IT FROM THE HOUSE.

12 THE COURT: YOU SAID YOU SAW HIM TAKE IT TO THE  
13 POLICE DEPARTMENT.

14 THE WITNESS: I APOLOGIZE. I SAW HIM TAKE IT FROM  
15 THE HOUSE.

16 THE COURT: WHY DON'T YOU JUST ANSWER THE QUESTIONS  
17 THAT ARE ASKED. NEXT QUESTION.

18 MS. SCHMAUSS: I HAVE NO FURTHER QUESTIONS.

19 THE COURT: THANK YOU. CROSS.

20 MR. ABLARD: I HAVE NOTHING.

21 THE COURT: THANK YOU. YOU CAN STEP DOWN.

22 MS. SCHMAUSS: NEXT WITNESS WILL BE LISA WOOD.

23 THE COURT: THANK YOU.

24 MR. ABLARD: MAY WE APPROACH?

25 THE COURT: CERTAINLY. START BRINGING THE OTHER  
26 WITNESS IN, THOUGH.

27 (SIDE BAR; NOT REPORTED)

28 THE COURT: FOLKS, DON'T GO ANYWHERE.

1 (THE FOLLOWING PROCEEDINGS WERE HELD IN CAMERA:)

2 THE COURT: OKAY. WE ARE IN THE IN CAMERA WITH THE  
3 COURT REPORTER, CLERK, MR. ABLARD.

4 YOU WANT YOUR CLIENT IN HERE?

5 MR. ABLARD: NO.

6 THE COURT: THANK YOU.

7 MR. ABLARD: HE IS WAIVED.

8 THE COURT: WELL, I WILL BRING HIM IN IF YOU WANT.

9 MR. ABLARD: NO. HE WAIVED ALL APPEARANCES BACK  
10 HERE.

11 THE COURT: OKAY. THAT'S FINE. THE NEXT WITNESS IS  
12 WHO?

13 MS. SCHMAUSS: LISA WOOD.

14 THE COURT: LISS WOOD. LISA WOOD IS GOING TO SAY IN  
15 19--

16 MS. SCHMAUSS: EASTER OF '91, SHE, ANGELA, AND CHUCK  
17 JOHNSON WERE ALL VISITING. AND THEY ARE TALKING ABOUT  
18 MR. JOHNSON'S KNOWLEDGE OF SELF DEFENSE AND WHAT THEY  
19 WOULD DO IF SOMEONE CAME UP BEHIND THEM.

20 THE COURT: YES, MA'AM.

21 MS. SCHMAUSS: NONE OF--

22 THE COURT: YEP. NONE OF THAT HAS ANYTHING TO DO  
23 WITH THE KILLING.

24 MS. SCHMAUSS: SHE SAID SHE SAID THE PERFECT WAY TO  
25 KILL SOMEONE IS TO PUT A BAG OVER THEIR HEAD AND A TIE  
26 AROUND THEIR NECK. AND THEY WOULD SUFFOCATE SLOWLY.

27 THE COURT: THANK YOU.

28 MS. SCHMAUSS: HE SAID FINGERPRINTS WOULD NOT BE



1 OBTAINABLE.

2 THE COURT: HOW IS THAT RELEVANT TO THE CASE NOW THAT  
3 WE HAVE DETERMINED THAT THE CAUSE OF DEATH IS NOT A BAG ON  
4 HER FACE, BUT IN FACT A BLANKET WITH BLOOD AND SALIVA ON  
5 IT?

6 MS. SCHMAUSS: SHE WAS SUFFOCATED.

7 THE COURT: YES, SHE WAS.

8 MS. SCHMAUSS: AND A PLASTIC BAG WAS USED AT SOME  
9 POINT.

10 MR. ABLARD: IF I MAY, WE HAVE TWO--

11 THE COURT: THAT DOESN'T APPEAR TO BE THE EVIDENCE.

12 MR. ABLARD: SHERIDAN SAID THAT THE PLASTIC BAG WAS  
13 NOT THE CAUSE OF DEATH. THE OFFICER KELLY FOR THE FIRST  
14 TIME IN THREE BOXES OF MATERIAL SAID ANYTHING ABOUT A HEAD  
15 BEING IN A BAG, ATTEMPTED TO TIE IT WITH THE TIE. THAT  
16 HAS NEVER BEEN ANYWHERE. IT WAS NOT TRUE. AND NOW, WE  
17 ARE IN A POSITION TO SEE THAT IT WAS MERELY LAYING OVER  
18 AND IT IS NOT THE CAUSE OF DEATH.

19 MS. SCHMAUSS: DR. SHERIDAN SAID IT COULD HAVE BEEN  
20 USED.

21 MR. ABLARD: NO.

22 MS. SCHMAUSS: THERE WAS CONFUSION ABOUT WHAT--

23 THE COURT: NOT IN MY MIND. TIE WASN'T USED. NO  
24 STRANGULATION MARKS. KELLY EVENTUALLY SAID THAT THE BAG  
25 WAS NOT OVER HER-- HER HEAD WAS NOT IN THE BAG.

26 SO, THERE WAS NO BAG PLACED OVER HER HEAD AND TIED.  
27 SIMILAR TO THE TESTIMONY THAT YOU EXPECT TO ELICIT,  
28 DOESN'T TIE UP ANY MORE THAN I THOUGHT IT DID.

1 MS. SCHMAUSS: KNOW.

2 THE COURT: I THOUGHT THAT YOUR EVIDENCE WAS AS KELLY  
3 FIRST SAID THAT THERE WOULD BE A BAG OVER HER HEAD-- I  
4 DON'T MEAN OVER HER FACE, BUT OVER HER HEAD-- AND THAT  
5 THERE WAS A TIE MAYBE LOOSELY TIED, MAYBE NOT, CAN'T TELL.  
6 BUT ALL THE EVIDENCE CLEARLY NOW SUGGESTS THAT THAT MAY  
7 HAVE BEEN AN ACCIDENTAL LOCATION OF THE BAG. I MEAN, COME  
8 ON. HE IS-- WE KNOW HE DID IT. PUSHED DOWN, GOT SALIVA,  
9 GOT THE BLOOD FROM HER. HELD HER DOWN WITH THE BLANKET  
10 UNTIL SHE DIED. DON'T WE KNOW THAT?

11 MS. SCHMAUSS: I THINK WE DO.

12 THE COURT: I THINK WE NOW KNOW THAT. AND SO THE  
13 SOLE STATEMENT WAY BACK WHEN IS THE PREJUDICE OUTWEIGHS  
14 THE PROBATIVE VALUE SINCE THE CAUSE OF DEATH I THINK  
15 OVERWHELMINGLY IS CLEARLY SOMETHING OTHER THAN A BAG OVER  
16 TIED OVER HER HEAD.

17 MS. SCHMAUSS: I UNDERSTAND.

18 THE COURT: ASPHYXIA.

19 MS. SCHMAUSS: SO, SHE HAS NOTHING ELSE TO SAY.  
20 THEREFORE, I WON'T CALL HER.

21 THE COURT: THANK YOU. THEN WE ARE BACK TO DONLEY.  
22 THE SAME. BECAUSE DOESN'T CHANGE. ANY OTHER PEOPLE WHO  
23 COULD HAVE KILLED HER.

24 (THE FOLLOWING PROCEEDINGS WERE HELD IN OPEN COURT:)

25 THE COURT: REMEMBER YOU ARE GOING TO NEED THIS  
26 WITNESS TOMORROW, I BELIEVE.

27 MS. SCHMAUSS: OFFICER DONLEY. YES, I WILL.

28 THE COURT: AFTER WE DO YOUR WORK THIS AFTERNOON.

1 MS. SCHMAUSS: YES, YOUR HONOR.

2 THE COURT: JUST REMINDING YOU.

3 MS. SCHMAUSS: OKAY.

4 MICHAEL DONLEY,

5 HAVING BEEN PREVIOUSLY SWORN, RESUMED THE STAND, WAS  
6 EXAMINED, AND TESTIFIED AS FOLLOWS:

7 DIRECT EXAMINATION, RESUMED

8 BY MS. SCHMAUSS:

9 Q OFFICER DONLEY, YESTERDAY WE WERE TALKING ABOUT  
10 TIMES AND PLACES. AND BACK TO THE 10TH OF OCTOBER, 1993,

11 DID YOU GO TO DOCTOR'S HOSPITAL AT SOME POINT?

12 A YES, I WENT TO DOCTOR'S HOSPITAL AFTER I DROPPED  
13 MR. JOHNSON OFF AT THE STATION.

14 Q AND THEN DID YOU RETURN TO THE HOUSE AT EXETER  
15 AT SOME POINT?

16 A YES. IT WAS ABOUT THIRTY, FORTY MINUTES AFTER  
17 THAT.

18 Q SO, THAT WOULD GET US TO THE HOUSE AT EXETER ON  
19 THE 10TH ABOUT WHAT TIME?

20 A ABOUT 1, 1. RIGHT AROUND 1:00 IN THE AFTERNOON.

21 Q AND WHO WAS THERE WHEN YOU GOT THERE?

22 A OFFICER KELLY.

23 Q AND NO CIVILIANS; CORRECT?

24 A NO.

25 Q WHEN YOU WERE AT DOCTOR'S HOSPITAL OR LATER AT  
26 THE AUTOPSY, DID YOU FINGERPRINT THE VICTIM'S BODY?

27 A NO.

28 Q WHY NOT?

1           A     WELL, IT IS ONLY DONE IN RARE CASES. I HAVE  
2 NEVER DONE IT NOR HAVE I EVER SEEN IT DONE. AND IN A  
3 SITUATION LIKE THIS, WHERE SHE OBVIOUSLY WAS INTUBATED AND  
4 HAD PEOPLE TOUCHING HER FACE THE ENTIRE MORNING, IT WOULD,  
5 I DON'T BELIEVE BE VERY PRODUCTIVE. ALSO, THE FACT THAT  
6 THE MOTHER OBVIOUSLY TOUCHED THE CHILD THE NIGHT BEFORE  
7 AND MR. JOHNSON I BELIEVE GAVE HER A HUG THE NIGHT BEFORE,  
8 SO.

9           Q     WOULDN'T HAVE YIELDED ANY RESULTS THAT WOULD BE  
10 USEFUL?

11          A     NOT IN MY OPINION.

12          Q     HAVE YOU HEARD IN SEMINARS YOU HAVE GONE ABOUT  
13 THIS PROCESS OF FINGERPRINTING THE BODY?

14          A     I HAVE READ LITERATURE. I HAVE NEVER ACTUALLY  
15 NEVER ACTUALLY HEARD ANYBODY TALK ABOUT IT. BUT--

16          Q     IS IT A VERY--

17          A     I HAVE NEVER SEEN IT DONE.

18          Q     --DIFFICULT PROCEDURE?

19          A     THAT, I DON'T KNOW.

20          MS. SCHMAUSS: OKAY. I HAVE NO FURTHER QUESTIONS,  
21 YOUR HONOR.

22          THE COURT: OKAY. SUBJECT TO RECALL FOR FOUNDATION  
23 TOMORROW.

24          MS. SCHMAUSS: CORRECT.

25          MR. ABLARD: YES. THANK YOU.

26          THE COURT: OTHER THAN THAT, DO YOU HAVE ANY  
27 QUESTIONS?

28          MR. ABLARD: YES, I DO, YOUR HONOR.

## CROSS-EXAMINATION

BY MR. ABLARD:

Q YOU HAD MENTIONED IN THE BEGINNING OF YOUR TESTIMONY YESTERDAY AFTERNOON WE HAD TALKED ABOUT YOU MENTIONED SOMETHING ABOUT AT SOME POINT THE SCENE HAS BEEN PROCESSED?

A YES.

Q OKAY. WHAT DOES THAT MEAN?

A WELL, BASICALLY IT HAD BEEN GONE THROUGH AND CHECKED.

Q OKAY. ONCE A SCENE HAS BEEN PROCESSED, DOES THAT MEAN THE INVESTIGATION IS OVER?

A NO.

Q WHAT DAY, IN OTHER WORDS, ALL ONCE IT HAS BEEN PROCESSED, ALL THE EVIDENCE AND WHAT ELSE IS THERE LEFT TO DO AFTER IT'S BEEN PROCESSED?

A YOU MEAN TO THE SCENE?

Q YES?

A OR WHAT A-- ONCE IT HAS BEEN PROCESSED AND YOU HAVE GOT ALL THE EVIDENCE THAT YOU WANT OUT, THEN YOU CAN OPEN IT UP AND AS I DID, AND LET HIS WIFE GET THE STUFF OUT.

Q OKAY. WELL, THAT'S WHAT I WAS INTERESTED IN. I WAS CURIOUS. ONCE IT HAS BEEN PROCESSED AND ALL THE EVIDENCE IS OUT, IN OTHER WORDS, IN THIS PARTICULAR SCENE EVERYBODY WAS OUT THAT YOU WANTED OUT FOR EVIDENCE WHEN AT THE TIME YOU SAID IT HAS BEEN PROCESSED?

A I DON'T RECALL AT WHAT POINT I WAS REFERRING TO

1 IT BEING COMPLETED OR PROCESSED.

2 Q I BELIEVE YOU TESTIFIED IT WAS ON OCTOBER THE  
3 13TH?

4 A WELL, THE 12TH WAS THE DAY WE WENT BACK AND  
5 COMPLETED COLLECTING EVIDENCE. ON THE 13TH HIS WIFE WENT  
6 THROUGH IT.

7 Q RIGHT. WAS IT ON THE 13TH THAT THE SCENE HAS  
8 BEEN PROCESSED? IN OTHER WORDS, THE PROCESS OF COLLECTING  
9 EVIDENCE WAS OVER. THIS LAST PIECE OF EVIDENCE THAT I  
10 COLLECTED WAS THE TOOL BOX FROM HIS WIFE.

11 Q AND YOU HAD GONE OVER TO THE HOUSE WITH HER?

12 A YES. OR I HAD MET HER THERE. I DON'T REMEMBER  
13 IF I DROVE HER THERE.

14 Q YEAH?

15 A OR WHAT.

16 Q YOU-ALL ENDED UP THERE AT THE SAME--

17 A WE ENDED UP THERE, YES.

18 Q AND YOU WENT INSIDE WITH HER?

19 A YES.

20 Q OKAY. YOU WALKED BACK INTO THE BEDROOM WITH  
21 HER?

22 A SHE WALKED BACK THERE. AND I KIND OF LEFT HER  
23 ALONE. I MEAN, I WALKED BACK TO THE BEDROOM. AND ONCE  
24 SHE WAS INSIDE THE ROOM, I DIDN'T STAY RIGHT WITH HER.

25 Q RIGHT. SORT OF STAYED AROUND THE FRONT LIVING  
26 ROOM AREA?

27 A THE KITCHEN AREA, HALLWAY.

28 Q YES. RIGHT. WELL, THE KITCHEN AREA IS, THE

1 HALLWAY STARTS. AND THE KITCHEN AREA IS THROUGH THE SIDE  
2 OF THE HALLWAY AT THE ENTRANCE; RIGHT?

3 A RIGHT.

4 Q OKAY. SO, SHE WAS IN THERE DOING WHATEVER SHE  
5 DOES; RIGHT?

6 A YES.

7 Q AND PICKING UP SOME OF THOSE CLOTHES AND TOOL  
8 BOX. THAT SCENE IN HIS ROOM HAD ALREADY BEEN PROCESSED.  
9 ANYTHING YOU NEEDED, YOU HAD TAKEN?

10 A AS FAR AS I WAS CONCERNED, YES.

11 Q OKAY. AND YOU WERE THE LEAD INVESTIGATOR?

12 A YES.

13 Q NOW, AFTER THE SCENE WAS PROCESSED, DO YOU TAKE  
14 OFF THESE LITTLE EVIDENCE SEAL THINGS THAT YOU TALKED  
15 ABOUT?

16 A USUALLY, THEY STAY ON THERE. THEY SOMETIMES  
17 AFTER THEY TEAR, THEY COME OFF. I DON'T MAKE A PRACTICE  
18 OF ACTUALLY RIPPING THEM OFF. IS THAT WHAT YOU ARE ASKING.

19 Q BUT ONCE THEY ARE BROKEN, YOU DON'T REPLACE THEM  
20 AFTER IT'S BEEN PROCESSED?

21 A IF IT'S BEEN PROCESSED, NO.

22 Q AND THIS HAD BEEN PROCESSED? THIS SCENE HAS  
23 BEEN PROCESSED ON OCTOBER THE 13TH, CORRECT?

24 A YES.

25 Q AND WHEN SHE WENT INTO JOHNSON'S ROOM, WAS IT  
26 SEALED WHEN SHE WENT IN?

27 A I DON'T BELIEVE. I DON'T REMEMBER FOR SURE.  
28 BUT I DON'T BELIEVE SO.

1 Q YOU, SINCE IT HAS BEEN PROCESSED, YOU DIDN'T  
2 REPLACE THE SEAL?

3 A NO.

4 Q OKAY. NO ONE AT YOUR DIRECTION REPLACED THE  
5 SEAL?

6 A NO.

7 Q HOW ABOUT TO THE FRONT DOOR?

8 A THERE WAS NO SEAL ON THE FRONT DOOR EITHER.

9 Q THERE WAS NO SEAL ON THE FRONT DOOR BEFORE THE  
10 13TH?

11 A I DON'T RECALL ONE. OFFICER BALES SEEMED TO  
12 THINK THERE WAS ONE. BUT I DON'T REMEMBER IT.

13 Q WOULD THAT BE SOMETHING YOU WOULD KNOW SINCE YOU  
14 WERE THE HEAD OF THE INVESTIGATION?

15 A IF I HAD PUT IT THERE, I WOULD KNOW.

16 Q OKAY. WOULD IT BE PUT THERE AT YOUR DIRECTION  
17 OR TAKEN OFF AT YOUR DIRECTION, OR IS THAT JUST THE  
18 PATROLMAN, THAT THEY SEE FIT?

19 A BALES MIGHT HAVE DONE IT AS HE SAW FIT.

20 Q HOW DOES IT WORK IN A HOMICIDE INVESTIGATION?  
21 WHO WAS YOUR INVESTIGATION-- INVESTIGATIVE TEAM?

22 A WELL, ACTUALLY, IT STARTS FROM THE DISPATCHER  
23 ON. THE ACTUAL PERSON THAT CALLED THE SHOTS ON THE ACTUAL  
24 DATE OF THE DEATH WAS SERGEANT LEONI. AND THEN ON THE  
25 FOLLOWING MONDAY, THE NEXT DAY, LIEUTENANT PIPER SORT OF  
26 TOOK OVER AND SERVED OUT THE ENTIRE INVESTIGATION!

27 Q HANDS-ON TYPE OF SITUATION?

28 A WELL, IT WAS WITH LEONI. PIPER BASICALLY DOES



1 WHAT IT IS ALL LIEUTENANTS DO, SIT BACK AND TELL YOU WHAT  
2 TO DO.

3 Q BUT LEONI WAS SORT OF A HANDS-ON SORT OF  
4 SITUATION. HE WAS THERE AT THE ORIGINAL CALL?

5 A RIGHT. SO, HE, YES, I MET WITH HIM AND BALES  
6 BEFORE I EVEN GOT STARTED IN THIS THING.

7 Q RIGHT. AND DID HE DESIGNATE YOU AS THE LEAD  
8 INVESTIGATOR?

9 A THAT WAS DONE BY LIEUTENANT PIPER.

10 Q OKAY. ALL RIGHT. NOW, YOU MENTIONED YESTERDAY  
11 THAT THERE WEREN'T ANY-- THAT THE DEFENSE TEAM, I GUESS,  
12 THE OTHER LAWYER HAD SOME FINGERPRINTING DONE ON THE  
13 PLASTIC BAG AND TOOL BOX?

14 A SENT SOMEBODY OUT TO DO IT, YES.

15 Q AND YOU WERE PRESENT?

16 A YES.

17 Q OKAY. YOU WATCHED THIS HAPPEN?

18 A YES.

19 Q AND YOU, YOURSELF, TRIED TO TAKE FINGERPRINTS  
20 OFF ITEMS IN THE PAST. YOU KNOW WHAT THAT IS?

21 A CORRECT.

22 Q AND THERE WERE NO FINGERPRINTS ON THE TOOL BOX?

23 A THAT WAS MY UNDERSTANDING. THAT'S WHAT HE TOLD  
24 ME.

25 Q OKAY. YOU WERE RIGHT THERE. DID YOU LET HIM DO  
26 IT?

27 A YES.

28 Q DID YOU SEE ANY--HOW DID HE DO THAT?

1           A     WELL, HE DID IT OVER A TWO-TIME PERIOD. IN  
2 OTHER WORDS, ONE TIME, HE CAME IN AND DID THE FINGERPRINT  
3 ON THE INSIDE. AND THEN HE CAME BACK ON A DIFFERENT DATE  
4 AND FINGERPRINTED THE OUTSIDE OF IT. BUT HE DUSTED IT AND  
5 HE TRIED TO LIFT IT WITH THE TAPE. AND HE TOLD ME HE  
6 COULDN'T GET ANYTHING.

7           Q     THERE WAS NOTHING THERE?

8           A     WELL, HE SAID HE COULDN'T LIFT ANY FINGERPRINTS.

9           Q     OKAY. NOW, THE BAG, HE COULDN'T GET ANY PRINTS  
10 OFF THE BAG?

11          A     THAT'S-- NOT. HE COULD NOT.

12          Q     DID HE-- WELL, DID HE TELL YOU WHY?

13          A     NO. BASICALLY HE JUST LOOKED AT IT AND I  
14 BELIEVE HE PUT SOME POWDER ON IT. BUT HE JUST SAID THERE  
15 WAS NO WAY.

16          Q     DID HE MENTION TO YOU THAT HAD IT BEEN PRESERVED  
17 PROPERLY, MIGHT HAVE BEEN ABLE TO GET SOME PRINTS OFF OF  
18 IT?

19          A     NO.

20          Q     ARE YOU AWARE YOU CAN GET FINGERPRINTS OFF OF  
21 PLASTIC BAGS LIKE THAT IF PRESERVED PROPERLY?

22          A     IF IT IS SMOOTH AND UNWRINKLED AND UNSTRETCHED,  
23 SOMETIMES YOU CAN GET IT THROUGH A PROCESS CALLED  
24 SUPERGLUING. BUT THE BAG IN THE CONDITION IT WAS, I  
25 DON'T KNOW IF YOU'D BE ABLE TO GET PRINTS OFF OF IT OR  
26 NOT.

27          Q     IT'S BEEN ALL CRINKLED UP?

28          A     CRINKLED UP, YES.

1 Q NOW, SPEAKING OF MR. JOHNSON'S ROOM AND THE BAG  
2 AND EVERYTHING?

3 A YES.

4 Q YOU, ON THE DAY, WAS IT THAT YOU-- WAS IT ON THE  
5 10TH THAT YOU AND OFFICER KELLY AND BALES SEARCHED THE  
6 ROOM?

7 A YES.

8 Q OKAY. AND YOU MENTIONED YESTERDAY THAT WHAT DID  
9 YOU CALL IT? DID YOU NOT CONSIDER IT A CRIME SCENE AND SO  
10 THE SEARCH WOULD HAVE BEEN DIFFERENT HAD IT BEEN A CRIME  
11 SCENE?

12 A RIGHT.

13 Q OKAY. NOW, WHY WAS IT NOT CONSIDERED A CRIME  
14 SCENE WHEN YOU AND BALES AND KELLY SEARCHED IT?

15 A WHEN I GOT THERE, THE ONLY INFORMATION THAT I  
16 HAD FROM SERGEANT LEONI AND OFFICER BALES WAS THAT IT WAS  
17 SUSPICIOUS DEATH. WE OBVIOUSLY HAD A CHILD THAT WAS  
18 DECEASED. I HADN'T HAD A CHANCE TO TALK TO MR. JOHNSON AT  
19 THIS POINT. I WAS INTERESTED IN GETTING IN THERE AND  
20 FINDING OUT HOW SHE WAS OR HOW SHE DIED ALONG WITH IF  
21 THERE WAS EVIDENCE AS TO WHO DID IT, I WAS INTERESTED IN  
22 THAT. BUT AT THAT POINT, I DIDN'T KNOW IF WE HAD A  
23 HOMICIDE. I DIDN'T KNOW IF WE HAD A CHILD THAT SUFFOCATED  
24 BY HERSELF OR I JUST DIDN'T KNOW. AND SO, I BASICALLY, I  
25 WENT IN THERE JUST SEARCHING FOR EVIDENCE, CANDY THAT SHE  
26 MIGHT HAVE SWALLOWED, OR I MEAN, THAT'S BASICALLY WHY.

27 IT DID NOT BECOME A CRIME SCENE UNTIL AFTER I TALKED  
28 TO MR. JOHNSON AND AFTER I WENT TO THE AUTOPSY. AND ONCE

1 I WAS ASSURED BY DR. SHERIDAN THAT IT WAS IN FACT AT THE  
2 HANDS OF ANOTHER, THEN IT BECAME A CRIME SCENE.

3 Q BEFORE YOU WENT TO SEARCH ON THE 10TH, HAD YOU  
4 BEEN TO THE HOSPITAL WHERE THE CHILD WAS TAKEN?

5 A YES.

6 Q DID YOU SPEAK WITH ANYONE THERE?

7 A I SPOKE WITH THE DEPUTY CORONER.

8 Q AND DID-- WHAT DID HE MENTION TO YOU?

9 A HE JUST MENTIONED THAT THERE WAS NO REAL OUTWARD  
10 SIGNS OF INJURY OTHER THAN THERE WAS SOME BLEEDING FROM

11 THE FLAP OF SKIN THAT HOLDS THE UPPER LIP AND THE GUM. I  
12 DON'T KNOW THE MEDICAL TERM FOR IT. AND ALSO A LITTLE  
13 BIT OF BLOOD AND I BELIEVE IT WAS HER RIGHT EAR.

14 Q HE TOLD YOU THE FRENULUM WAS TORN; RIGHT, THAT  
15 LITTLE PART OF THE UPPER HERE?

16 A I DON'T REMEMBER IF THAT WAS HIS TERM. I  
17 REFERRED TO IT AS A FLAP OF SKIN.

18 Q RIGHT.

19 A I DON'T KNOW. IF HE TOLD ME THAT, I WOULDN'T  
20 HAVE KNOWN WHAT THAT MEANT.

21 Q OKAY. DID YOU DISCUSS WHAT THAT MEANT WITH  
22 DEPUTY CORONER MORROW?

23 A HE PULLED HER LIP BACK AND SHOWED ME THE  
24 ABRASION OR THE TEAR.

25 Q OKAY. DID HE TELL YOU WHAT THAT WAS INDICATIVE  
26 OF?

27 A NO.

28 Q HE DIDN'T?

1 A NO.

2 Q NO?

3 A NOT THAT I RECALL.

4 Q I'M SORRY. YOU SAID WHAT YOU DIDN'T--

5 A NOT THAT I RECALL HIM EXPLAINING WHAT IT WAS.

6 Q OH, I DON'T THINK HE GAVE ME ANY MEDICAL  
7 INFORMATION.

8 Q OKAY. LET ME ASK YOU. AT THE TIME OF THIS  
9 INCIDENT, WHAT, YOU WERE A HOMICIDE DETECTIVE; RIGHT?

10 A AT ONE TIME, I WAS. NOT AT THIS PARTICULAR  
11 TIME. I HAD ROTATED OUT OF THE DETECTIVE BUREAU.

12 Q WHEN WERE-- YOU ARE A HOMICIDE DETECTIVE?

13 A I BELIEVE IT WAS THE YEARS '88 THROUGH '90,  
14 THREE YEARS.

15 Q OKAY. AND DURING THAT PERIOD OF TIME, DID YOU  
16 EVER DEAL WITH ANY SUFFOCATION TYPE HOMICIDES?

17 A I DEALT WITH A STRANGULATION.

18 Q DID YOU EVER DEAL WITH ANY SUFFOCATION-TYPE  
19 HOMICIDES?

20 A NOT THAT I CAN RECALL.

21 Q NOW, THE SEARCH ON THE 10TH IN THAT ROOM, IT WAS  
22 MORE CASUAL THAN HAD IT BEEN POSSIBLE HOMICIDE SCENE;  
23 RIGHT?

24 A IT WAS A LOT MORE CASUAL THAN IF WE WERE TO HAVE  
25 FOUND A BODY THAT WAS DEAD IN A FIELD. I MEAN, YEAH. IT  
26 WAS A LOT MORE CASUAL.

27 Q AT SOME POINT THOUGH ONCE IT WAS CONSIDERED A  
28 SCENE OF A POSSIBLE HOMICIDE, THE CRIME SCENE

1 INVESTIGATION I TAKE IT WOULD SET UP IN A DIFFERENT  
2 CATEGORY?

3 A YES.

4 Q OKAY. AND WHEN IT STEPPED UP TO THAT CATEGORY,  
5 WHAT THEN WOULD HAPPEN AS FAR AS WHAT YOU WOULD DO PER A  
6 CRIME SCENE INVESTIGATION?

7 A WELL, WE WENT BACK TO THE RESIDENCE AND PICKED--  
8 OFFICER BALES PICKED UP THE BED SHEET AND THE ORANGE  
9 JUICE. AND BASICALLY, THAT'S ALL THAT WE REALLY FELT WE  
10 NEEDED AT THAT TIME.

11 Q AND WHEN DID HE GO BACK? WHEN WAS THAT?

12 A THAT WAS ON THE 11TH. THAT WAS THE DATE THAT  
13 MR. JOHNSON WAS ARRESTED.

14 Q OKAY. THEN YOU'D GONE BACK AGAIN ON THE 12TH  
15 TO DO MORE CRIME-SCENE INVESTIGATIONS?

16 A I DON'T RECALL IF WE WENT BACK ON THE 12TH OR  
17 NOT.

18 Q DO YOU HAVE ANY NOTES THAT WOULD REFLECT WHETHER  
19 OR NOT YOU WENT BACK ON THE 12TH?

20 A I HAVE TO LOOK HERE.

21 Q VERY WELL. THAT'S OKAY.

22 A THE ONLY SECOND OR THE THIRD TIME WOULD BE THE  
23 ITEM WITH THE TOOL BOX IS ALL I CAN TELL YOU THAT I WAS ON  
24 THE 13TH.

25 Q THAT'S FINE. I MEAN, I TAKE IT THAT WHAT YOUR  
26 THOUGHT WAS THAT YOU HAD A DEAD CHILD. YOU DIDN'T KNOW  
27 WHAT THE PROBLEM WAS. AND SO YOU WENT BACK, SEARCHED THE  
28 ROOM TO SEE IF THERE WAS SOMETHING SHE CHOKED ON OR

1       WHATEVER?

2           A       YES.

3           Q       RIGHT.  THAT WAS AROUND 1 OR 2 IN THE AFTERNOON  
4       ON THE 10TH.

5           A       AROUND 1:00, YES.

6           Q       NOW, IN YOUR REPORT OF 10-10, SUPPLEMENT TWO, IT  
7       SAYS ON 10-10 AT APPROXIMATELY 1100 HOURS I WAS CONTACTED  
8       AT HOME IN REFERENCE TO A POSSIBLE HOMICIDE WHICH HAD  
9       OCCURRED AT 9393 EXETER IN THE CITY OF MONTCLAIR?

10          A       RIGHT.

11          Q       RIGHT.  NOW, THAT WAS BY SERGEANT PIPER?

12          A       NO.  IT WAS THROUGH DISPATCH.

13          Q       OKAY.  SO, DISPATCH TELLS YOU AT 11:00 THERE'S A  
14       POSSIBLE HOMICIDE?

15          A       NO.  THEY TOLD ME IT WAS A SUSPICIOUS DEATH.

16          Q       WHAT DOES YOUR REPORT SAY?

17          A       THE REPORTS SAYS A POSSIBLE HOMICIDE.  THAT'S  
18       WHAT I AM PUTTING DOWN WHEN I AM WRITING THE REPORT  AFTER  
19       I HAVE TALKED TO MR. JOHNSON.

20          Q       OKAY.  SO, YOUR REPORT SAYS THAT THEY CALL YOU  
21       AT HOME WITH THE POSSIBLE HOMICIDE.  BUT WHAT REALLY  
22       HAPPENED IS THEY CALL YOU AT HOME WITH THE SUSPICIOUS  
23       DEATH?

24          A       THEY TOLD ME WHEN THEY CALLED ME WAS IT WAS A  
25       SUSPICIOUS DEATH AND THEN SHE WENT ON AND SHE EXPLAINED  
26       WHAT THE CIRCUMSTANCES-- THEY SAID THEY DIDN'T KNOW  
27       EXACTLY WHAT IT WAS.  THAT'S WHAT I WAS PERCEIVING IT AS.

28          Q       BUT THAT'S NOT WHAT YOU PUT IN YOUR REPORT?

1 A WELL, I PUT IN THERE POSSIBLE HOMICIDE.

2 Q RIGHT.

3 A YES.

4 Q OKAY. SO, NONETHELESS YOU DIDN'T TREAT IT LIKE  
5 A POSSIBLE HOMICIDE IN YOUR SEARCH. AND YOU WENT AND  
6 SEARCHED THE ROOM; RIGHT?

7 A NOT ON THE 10TH, NO.

8 Q DIDN'T YOU AND BALES AND KELLY DIDN'T SEARCH THE  
9 HOUSE-- I MEAN THE ROOM ON THE 10TH?

10 A WELL, I BELIEVE YOU JUST SAID AS A CRIME SCENE.

11 Q I DON'T THINK I DID. BUT IF I DID, I  
12 APOLOGIZE?

13 A WELL, I APOLOGIZE IF YOU DIDN'T.

14 Q OKAY.

15 A I AM JUST SAYING ON THE 10TH, WE WENT IN THERE  
16 AND DID A SEARCH TO TRY AND FIND OUT WHAT BRITTANY DIED  
17 FROM.

18 Q AND WHEN DID YOU GO IN THERE FOR THE CRIME-SCENE  
19 SEARCH?

20 A THAT WAS ON THE NEXT DAY.

21 Q AND?

22 A THE 11TH.

23 Q DID YOU BAG UP ALL THESE CLOTHES AND ALL THESE  
24 THINGS AND TAKE THEM DOWN?

25 A NO.

26 Q DID YOU-- WHAT DAY WAS IT YESTERDAY YOU WERE  
27 TALKING ABOUT YOU LIFTED A BED?

28 A THAT WAS ON THE 10TH.



1 Q AND YOU DIDN'T MOVE THE BED OVER, YOU LIFTED IT  
2 UP?

3 A YES, I JUST LIFTED THE MATTRESS AND BOX SPRINGS  
4 UP.

5 Q AND THEN YESTERDAY, YOU WERE REMEMBERING WHETHER  
6 OR NOT YOU SAW THAT BLANKET. BUT YOU DON'T KNOW; DO YOU?

7 A I SAW A BLANKET WHICH I PERCEIVED AS A CHILD'S  
8 BLANKET. I COULDN'T EVEN BEGIN TO TELL YOU IF I HAD A  
9 PATTERN ON IT OR IF IT WAS DISNEY OR ANY OTHER THING. IT  
10 JUST DIDN'T LOOK OUT OF PLACE. BECAUSE OF THE OTHER--

11 BECAUSE OF THE KIDS CLOTHING.

12 Q SO, EVERYTHING THERE LOOKED SORT OF OUT OF PLACE  
13 BUT NOT OUT OF PLACE?

14 A RIGHT. IT DIDN'T LOOK UNUSUAL CONSIDERING IT  
15 WAS WITH CHILDREN'S CLOTHING AND TOYS AND THINGS LIKE  
16 THAT.

17 Q AT THAT TIME, YOU KNEW THAT ANYTHING YOU SAW IN  
18 THERE WAS NOT BRITTANY'S; RIGHT?

19 A I'M SORRY.

20 Q AT THAT TIME ON THE 10TH, YOU KNEW THAT  
21 EVERYTHING YOU SAW IN JOHNSON'S ROOM, ALL THOSE CLOTHES  
22 AND ALL DIFFERENT THINGS WAS NOT BRITTANY'S?

23 A WELL, THE CLOTHING WAS OBVIOUSLY NOT AND THE  
24 DIAPERS, I DIDN'T BELIEVE WERE BRITTANY'S. BECAUSE SHE  
25 SEEMED TOO OLD.

26 Q RIGHT.

27 A THE TOYS, WHO KNOWS. I DIDN'T KNOW WHOSE TOYS  
28 THEY WERE.

1 Q RIGHT. AND HOW ABOUT THE MORE GENERIC SORT OF  
2 THINGS. YOU DIDN'T KNOW WHOSE BLANKET THAT WAS THAT YOU  
3 SAW NOW THAT YOU SAW?

4 A I DON'T KNOW WHOSE BLANKET IT WAS.

5 Q WELL, YOU SAW IT ON THE 10TH. YOU WENT BACK ON  
6 THE 11TH TO DO THE CRIME SCENE INVESTIGATION.

7 A UH-HUH.

8 Q NOT KNOWING WHOSE BLANKET IT WAS?

9 A UH-HUH.

10 Q WHY DIDN'T YOU TAKE IT?

11 A ON THE 11TH.

12 Q WHENEVER YOU DID THE CRIME SCENE INVESTIGATION?

13 A RIGHT.

14 Q WHY DIDN'T YOU TAKE IT IF YOU KNEW IT WAS THERE?

15 A BECAUSE IT DIDN'T EVEN REGISTER. THEN WHEN WE  
16 WENT IN ON THE 10TH, IT DID NOT EVEN COME TO MIND. NEXT  
17 THING I KNOW IS ON THE 20TH-- AND I THOUGHT WELL, I THINK  
18 I SAW THAT BLANKET. DIDN'T EVEN REGISTER.

19 Q HAD YOU EVER-- YOU NEVER PUT THAT IN A REPORT;  
20 DID YOU? I MEAN ABOUT IT YOU MIGHT NOT EVEN HAVE SEEN  
21 THAT BLANKET. YOU DON'T KNOW; DO YOU?

22 A I DON'T KNOW. IT SEEMS TO ME WHEN THEY WERE  
23 TALKING ABOUT A BLANKET, WHEN OFFICER CARLOS TOLD ME ABOUT  
24 A BLANKET, I THOUGHT I SAW IT. BUT I DO NOT KNOW, TO BE  
25 PERFECTLY HONEST WITH YOU.

26 THE COURT: THAT'S WHAT WE ARE HERE LOOKING FOR.

27 MR. ABLARD: THANK YOU.

28 Q BY MR. ABLARD: ALSO, YOU ALSO MENTIONED

1 YESTERDAY THAT THIS LITTLE HOOK AND EYE LOCK THAT FOR  
2 WHATEVER REASON, YOU DON'T THINK IT WAS THERE ON THE 20TH  
3 OR BEFORE THE 20TH?

4 A NO. I SAID I DIDN'T KNOW IF IT WAS THERE ON THE  
5 20TH. I SAW IT THERE ON THE 10TH. AND I BELIEVE I SAW  
6 IT AGAIN THERE ON THE 11TH. BUT AFTER THAT, I COULDN'T  
7 TELL YOU.

8 Q WHAT LITERATURE HAD YOU READ ABOUT TAKING  
9 FINGERPRINTS OFF OF BODIES OR TAPE LIFTING PRINTS?

10 A I DON'T KNOW. I READ A LOT OF LITERATURE. AND I  
11 SAW IT SOMEWHERE, SOMEDAY. AND I AND I DON'T BELIEVE IT  
12 WAS DONE WITH TAPE IF THAT IS WHAT YOU ARE ASKING ME.

13 THE COURT: WAIT. WAIT A MINUTE. ARE WE MOVING INTO  
14 A SUBJECT ABOUT WHICH HE REALLY DOESN'T KNOW ANYTHING?

15 MR. ABLARD: I DON'T KNOW.

16 THE COURT: WELL, WE WILL FIND OUT. DO YOU KNOW  
17 ANYTHING ABOUT ANY OF THIS?

18 THE WITNESS: I READ AN ARTICLE. BUT I DON'T KNOW  
19 ANYTHING ON HOW IT IS DONE.

20 THE COURT: WHEN YOU READ IT, OR WHAT IT WAS, OR WHY  
21 IT WAS OR--

22 THE WITNESS: YEAH.

23 MR. ABLARD: I WON'T GO INTO IT.

24 THE COURT: LET'S DON'T TRY TO PROVE STUFF THAT WE  
25 DON'T.

26 MR. ABLARD: I AGREE.

27 THE COURT: DON'T MAKE ISSUES OUT OF NON-ISSUES.

28 Q BY MR. ABLARD: DURING YOUR CRIME-SCENE

1 INVESTIGATION, YOU TAKE SOME MEASUREMENTS?

2 A NO. THE BODY HAS BEEN MOVED.

3 Q DID YOU TAKE A MEASUREMENT HOW CLOSE THE ROOMS  
4 WERE, THE WALL, THE CLOSET, THE BATHROOM?

5 A NO.

6 Q THEY DO ANY DEMONSTRATION AS FAR AS WHERE SOUND  
7 WAS COMING FROM, SO ON AND SO FORTH?

8 A NO. IT IS-- NO, I DIDN'T.

9 Q DID YOU EVER DO YOUR CRIME-SCENE INVESTIGATION,  
10 EVER CHECK THE OTHER ROOMS IN THE HOUSE?

11 A YES, WHEN I INITIALLY WENT IN, I DID A CURSORY  
12 SEARCH OF THE OTHER ROOMS. MY MAIN FOCUS HOWEVER WAS ON  
13 THE ROOM THAT SHE WAS IN.

14 Q RIGHT. AND THE CURSORY SEARCH, YOU MEAN WHAT?

15 A JUST LOOKING AROUND, LOOKING AT THE FLOOR PLAN,  
16 LOOKING AT THE CLOSETS, JUST LOOKING AROUND.

17 Q OKAY. WASN'T A CRIME SCENE SEARCH?

18 A NO.

19 Q NEVER DID A CRIME-SCENE SEARCH ON ANY OTHER ROOM  
20 EXCEPT MR. JOHNSON'S; CORRECT?

21 A CORRECT.

22 Q DID YOU EVER LOOK IN THE TRASH CANS AND GARAGE  
23 OR OUTSIDE?

24 A I DON'T BELIEVE SO.

25 Q EVER LOOK IN THE TRASH CAN IN THE HOUSE?

26 A I LOOKED THROUGH SOME TRASH CAN IN THE HOUSE,  
27 YES.

28 Q WHICH ONES?

1 A THERE'S A TRASH CAN IN HIS BEDROOM.

2 Q UH-HUH. ANY OTHER TRASH CANS?

3 A I DON'T RECALL SPECIFICALLY.

4 Q YOU MAY HAVE AND YOU MAY NOT HAVE?

5 A MAY HAVE, MAY NOT HAVE.

6 Q ALL RIGHT. THAT'S FAIR ENOUGH. AS TO THOSE  
7 AREAS THAT YOU DID DISCOVER, DID YOU MAKE NOTES OF THOSE  
8 OTHER THAN MR. JOHNSON'S ROOM?

9 A NO.

10 Q NOW AS FAR AS ANY TYPE OF FORENSICS IN THIS  
11 PARTICULAR CRIME SCENE THAT WAS TO BE GATHERED WITH AN EYE  
12 TOWARDS FORENSICS TESTING?

13 A YES.

14 Q WITH THAT WAS THERE A DECISION OR WAS THAT  
15 SOMEBODY ELSE'S DECISION?

16 A YOU MEAN COLLECTION OF EVIDENCE?

17 Q WHAT TO COLLECT?

18 A IT WAS MY DECISION TO COLLECT THE JAR OF  
19 VASELINE, THE NECKTIE, THE TOOL BOX, THE BAG, THE PLASTIC  
20 BAG. AND I BELIEVE THAT'S IT.

21 Q WHEN GIVEN THOSE INSTRUCTIONS TO COLLECT THOSE,  
22 WERE YOU DOING IT WITH AN EYE TOWARDS SOME FORENSIC  
23 TESTING?

24 A I DIDN'T COLLECT THEM. BUT YES, WHENEVER YOU  
25 TAKE EVIDENCE, YOU WANT TO TRY AND PRESERVE IT THE BEST  
26 YOU CAN.

27 Q HAD YOU PLANNED ON TAKING--DID YOU KNOW WHAT  
28 TESTS YOU SORT OF HAD AN EYE TOWARDS TAKING HAVING DONE ON

1 THIS EVIDENCE THAT YOU HAD COLLECTED BY PEOPLE?

2 A WELL, IT DEPENDED ON HOW THE INVESTIGATION WENT.  
3 BUT CERTAINLY, YOU HAVE AN IDEA WHY YOU WOULD TAKE  
4 SOMETHING.

5 Q CORRECT. NOW, I KNOW THAT WE TALKED ABOUT  
6 ACTUALLY YOU AND THE PROSECUTOR TALKED ABOUT YOU DON'T  
7 KNOW A LOT ABOUT LIVIDITY?

8 A YES.

9 Q AND I AM NOT GOING TO GO INTO IT OTHER THAN TO  
10 ASK AS A HOMICIDE INVESTIGATOR--

11 A YES.

12 Q -- ONE, WHEN YOU WENT TO THE HOSPITAL INITIALLY?

13 A YES.

14 Q DID YOU--CAN YOU RECOGNIZE LIVIDITY?

15 A YES.

16 Q WAS THERE LIVIDITY ON THE CHILD?

17 A YES.

18 Q OKAY. NOW, AS A HOMICIDE INVESTIGATOR, DID YOU  
19 ATTEMPT TO LOOK AT THAT LIVIDITY TO MATCH IT UP AS TO  
20 WHERE THE CHILD WOULD HAVE BEEN LAYING?

21 A WELL, HERE AGAIN, AND WE MAY BE GETTING OUT OF  
22 MY EXPERTISE. BUT LIVIDITY--

23 Q I DON'T WANT TO CHANGE THAT?

24 A CHANGES WITH MOVEMENT OF THE BODY. SO, IF SHE  
25 HAS BEEN LAYING ON HER BACK AT THE HOSPITAL FOR AN HOUR OR  
26 SO, OR TWO HOURS, WHATEVER IT WAS, THAT LIVIDITY CAN  
27 CHANGE.

28 Q EXACTLY.

1           A     SO, NO, I DIDN'T DO ANY CHECKING TO SEE IF IT  
2     MATCHED ON WHERE SHE WAS.  BECAUSE IT COULD HAVE CHANGED.

3           Q     WHO DO YOU KNOW IS THE FIRST OFFICER AT THE  
4     HOSPITAL?  THAT WOULD HAVE BEEN KELLY.

5           A     AT THE HOSPITAL?

6           Q     YES?

7           A     IT WAS.  IT WAS KELLY AND SGT. LEONI.

8           Q     AS THE PRIMARY INVESTIGATOR IN THIS CASE, WERE  
9     YOU WHO THEY DID THE REPORTING TO? BALES AND KELLY, AND  
10    ALL THE DIFFERENT REPORTS, THEY WENT TO YOU?

11          A     NO.  THEY GO TO A SERGEANT, SERGEANT'S APPROVAL.

12          Q     SERGEANT WHO?

13          A     THE SERGEANTS APPROVE THEM.

14          Q     OKAY.

15          A     DIFFERENT SERGEANTS.

16          Q     DIFFERENT SERGEANTS?

17          A     RIGHT.

18          Q     OKAY.  BUT FOR INVESTIGATIVE PURPOSES, DO THEY  
19    GO TO YOU SO YOU CAN SEE WHAT--

20          A     YES, ONCE THEY ARE WRITTEN, THEY ARE APPROVED BY  
21    A SERGEANT AND THEY COME DOWN TO ME.

22          Q     AND THEN WHAT DO YOU DO WITH THEM?

23          A     READ THEM.  LOOK AT THEM, SEE IF THERE'S  
24    DIRECTIONS WE NEED TO GO.

25          Q     DO YOU, IF YOU HAVE QUESTIONS ABOUT THEM, DO YOU  
26    THEN GO BACK TO THE OFFICER WHO WROTE THE REPORT, ASK HIM  
27    ABOUT IT, FOLLOW UP WITH IT, THAT SORT OF A THING?

28          A     ONLY IF IT IS SOMETHING THAT I SAW THAT DOESN'T

1 AGREE WITH WHAT I SAW.

2 MR. ABLARD: OKAY. YOUR HONOR, MAY I TAKE A BREAK  
3 NOW? OR I GUESS I WILL BE REQUESTING A BREAK NOW.

4 THE COURT: ARE YOU DONE?

5 MR. ABLARD: NO.

6 THE COURT: HOW MUCH LONGER?

7 MR. ABLARD: OH, A FEW MINUTES. I AM NOT SURE.

8 THE COURT: WELL, THAT'S OKAY. BECAUSE THEN WE ARE  
9 DONE. WE WILL HAVE RUN OUT OF WITNESSES.

10 MR. ABLARD: YOU DON'T HAVE TO WORRY. RAN OUT OF  
11 PAPER. SO WE ARE DONE.

12 MR. ABLARD: WE WILL KEEP GOING.

13 THE COURT: CHANGE PAPER.

14 READY?

15 MR. ABLARD: THANK YOU.

16 Q BY MR. ABLARD: AT SOME POINT, YOU WANT TO LOOK  
17 AT MY CLIENT'S HANDS?

18 A RIGHT.

19 Q OKAY. AND YOU SAW NOTHING?

20 A NO.

21 Q EVER ASK TO SEE ANYBODY ELSE'S HANDS THERE IN  
22 THE HOUSE?

23 A I DON'T BELIEVE SO.

24 Q EVER DIRECT ANYBODY TO SEE ANYBODY ELSE'S HANDS  
25 IN THE HOUSE?

26 A NO.

27 MR. ABLARD: I HAVE NOTHING FURTHER, THEN. THANK  
28 YOU. RESERVE, PLEASE.



## REDIRECT EXAMINATION

BY MS. SCHMAUSS:

Q OFFICER DONLEY, THE BLANKET THAT YOU FEEL YOU  
MAY HAVE NOTED, DID YOU OPEN IT UP TO INSPECT IT?

THE COURT: WELL, WAIT, WAIT, WAIT. THE BLANKET HE  
IS NOT SURE HE EVER SAW, DID HE DO ANYTHING WITH IT? I  
DON'T THINK SO. TRY A DIFFERENT AREA.

Q BY MS. SCHMAUSS: OKAY. DID YOU EVER NOTICE  
ANY BLANKET WITH BLOOD ON IT?

A NO.

Q DO YOU EVER RECALL OPENING UP A BLANKET AND  
INSPECTING IT?

A NO.

MS. SCHMAUSS: NOTHING FURTHER. THANK YOU.

THE COURT: THANK YOU. YOU CAN NOW STEP DOWN SUBJECT  
TO--

MR. ABLARD: RECALL.

MS. SCHMAUSS: RECALL TOMORROW.

THE COURT: RECALL TOMORROW. AREAS THAT YOU HAVE TO  
PREPARE AND WORK ON.

WE ARE DONE FOR THE DAY. PROSECUTION WITNESS HAS  
ANOTHER FIFTEEN MINUTES OF TESTIMONY AND A PRESENTATION.

MS. SCHMAUSS: CORRECT.

THE COURT: WHICH WILL TAKE AN HOUR OR IS IT AN HOUR  
AND A HALF?

MS. SCHMAUSS: AN HOUR.

MR. ABLARD: AN HOUR AND THEN.

THE COURT: WELL, YOU HAVE WORK TO DO.

1 MR. ABLARD: PARDON? I DIDN'T HEAR. I'M SORRY,  
2 YOUR HONOR.

3 THE COURT: THAT'S OKAY. NEVER MIND.

4 FOLKS, I HATE TO TELL YOU THIS. WE ARE DONE FOR THE  
5 DAY. TOMORROW WE WILL HAVE OFFICER DONLEY. WE WILL HAVE  
6 SOME OTHER PROSECUTION STUFF FOR YOU WHICH WILL TAKE ALL  
7 MORNING, NO DOUBT.

8 MS. SCHMAUSS: YES.. THE TAPES WILL BE AN HOUR.

9 THE COURT: AND YOU WILL HAVE WITNESSES FOR THE  
10 AFTERNOON. WELL, WE WILL DISCUSS THAT.

11 MR. ABLARD: YES. THANK YOU.

12 THE COURT: IN ANY EVENT, SEE YOU TOMORROW ABOUT  
13 9:30. GIVE 9:30 A SHOT IF YOU WOULD, PLEASE, FOLKS.

14 DON'T DISCUSS THE CASE, DON'T FORM ANY OPINION OR  
15 CONCLUSION. AND WE WILL SEE YOU THEN. DON'T FORGET TO  
16 LEAVE YOUR NOTEBOOKS AND PENCILS BEHIND.

17 (THE JURY LEFT THE COURTROOM, AND THE  
18 FOLLOWING PROCEEDINGS WERE HELD:)

19 THE COURT: ALL RIGHT. THE JURORS ARE GONE. SO,  
20 OFFICER DONLEY, TOMROROW.

21 INVESTIGATOR DONLEY: YES. I WILL WORK ON THE TAPE.

22 THE COURT: I ASSUME THAT YOU, BOTH. COUNSEL WILL  
23 LISTEN TO THE TAPE IN ITS FINAL VERSION.

24 MR. ABLARD: YES.

25 THE COURT: APPROVE AND AGREED UPON.

26 MS. SCHMAUSS: IF I CAN GET IT DONE BEFORE.

27 MR. ABLARD: WE WILL HAVE TO DO IT IN THE MORNING,  
28 LISTEN TO IT IN THE MORNING.

1 MS. SCHMAUSS: YES. BECAUSE I CAN'T REPRODUCE IT.

2 THE COURT: I AM NOT INTERESTED IN YOUR TECHNICAL  
3 PROBLEMS. JUST BOTH LISTEN TO IT BEFORE IT IS OFFERED  
4 INTO EVIDENCE SO YOU CAN TELL ME THAT YOU HAVE, AND YOU  
5 ARE SATISFIED, AND IT COMPORTS TO YOUR AGREEMENT AND MY  
6 RULING. ONE. TWO, PROSECUTION WILL REST TOMORROW AROUND  
7 NOON.

8 DEFENSE GOING TO HAVE WITNESSES IN THE AFTERNOON?

9 MR. ABLARD: NO. I'D RATHER-- I WOULD MAKE THE  
10 REQUEST.

11 THE COURT: YES. YOU HAVE A BETTER WAY TO START THAN  
12 I WOULD RATHER. BECAUSE SOMETIMES "I WOULD RATHER" DON'T  
13 WORK.

14 MR. ABLARD: I DIDN'T COMPLETE THAT "I'D RATHER"  
15 THING.

16 IN ALL SERIOUSNESS, I WOULD REQUEST THAT WE START THE  
17 DEFENSE ON THURSDAY AND POSSIBLY TOMORROW AFTERNOON WE CAN  
18 DO JURY INSTRUCTIONS.

19 THE COURT: I WILL PERMIT THAT.

20 MR. ABLARD: I APPRECIATE IT.

21 THE COURT: FOR YOU TO GET YOUR WITNESSES ORGANIZED.  
22 BECAUSE WE ARE CONCLUDING WITH THE PEOPLE'S CASE MAYBE A  
23 LITTLE MORE QUICKLY THAN YOU HAD ANTICIPATED. ALTHOUGH  
24 SOUNDS PRETTY CLOSE TO THE SCHEDULE I HAD IN MIND AT THE  
25 BEGINNING; DOESN'T IT?

26 MS. SCHMAUSS: IT DOES.

27 MR. ABLARD: YES, IT DOES. I THINK WE WILL DO OKAY.

28 THE COURT: ALL RIGHT. I WILL PERMIT YOU TO COMMENCE

1 ON THURSDAY MORNING.

2 MR. ABLARD: APPRECIATE IT.

3 THE COURT: DO YOU REMEMBER WE WILL BE GOING OVER TO  
4 TUESDAY, THE 7TH BECAUSE I HAVE THAT OTHER CASE ON THE  
5 6TH.

6 MR. ABLARD: RIGHT.

7 THE COURT: SO, YOU WILL CONCLUDE YOUR EVIDENCE ON  
8 TUESDAY, DO YOU BELIEVE?

9 MR. ABLARD: I WILL PROBABLY CONCLUDE THE EVIDENCE,  
10 NO, I WOULD SUSPECT NO LATER THAN WEDNESDAY, MAYBE EVEN ON  
11 TUESDAY.

12 MS. SCHMAUSS: I HAVE STILL ONLY RECEIVED NOTICE OF--

13 THE COURT: SORRY. I DON'T HAVE ANY QUESTIONS FOR  
14 YOU RIGHT NOW.

15 CONTINUE YOUR ANSWER.

16 MR. ABLARD: YES. I SUSPECT TUESDAY, MAYBE  
17 WEDNESDAY. THE WITNESSES THAT I DO HAVE, DEPENDING UPON  
18 CROSS-EXAMINATION, THERE IS NOT THAT MUCH, SHOULD BE DONE  
19 I WAS GOING TO SAY WEDNESDAY TO MAKE SURE.

20 THE COURT: WEDNESDAY AT NOON.

21 MR. ABLARD: I CAN'T PROMISE IT. BUT I AM REALLY  
22 GOING TO TRY. I MEAN, WE HAVE BEEN PRETTY GOOD SO FAR. I  
23 AM GOING TO TRY THAT. SO, THURSDAY, TUESDAY, MAYBE EVEN  
24 TUESDAY.

25 THE COURT: WELL, I LIKE TUESDAY.

26 MR. ABLARD: WE ARE GOING TO TRY FOR TUESDAY.

27 THE COURT: THIS MEANS WE COULD ARGUE AND INSTRUCT  
28 WEDNESDAY. THURSDAY IS A THURSDAY-FRIDAY. AND THEN

1 THERE'S A FOUR DAY HOLIDAY BETWEEN THE 10TH AND THE 13TH  
2 WHICH IS A FURLOUGH DAY. I WOULD REALLY LIKE THE JURY TO  
3 HAVE THE CASE FOR AT LEAST A FULL DAY IF AT ALL POSSIBLE  
4 BEFORE WE TELL THEM TO QUIT THINKING ABOUT IT AND TAKE A  
5 FOUR-DAY BREAK.

6 MR. ABLARD: WORK VERY HARD TO GET IT DONE ON  
7 TUESDAY, ARGUE ON WEDNESDAY.

8 THE COURT: OKAY. IF YOU DON'T GET IT DONE UNTIL  
9 WEDNESDAY, MY THINKING-- AND YOU CAN COGITATE UPON THIS IF  
10 YOU WILL-- COUNSEL, IS TO WAIT UNTIL THE FOLLOWING

11 TUESDAY. NOTE YOU ARE NOT HERE ON THAT DAY.

12 MR. ABLARD: I WON'T BE HERE ON THE 14TH.

13 THE COURT: THE 15TH, ALL OF A SUDDEN WE GET A  
14 FIVE-DAY BREAK. ARGUMENT AND INSTRUCT. SEE THE PROBLEM?

15 MR. ABLARD: I SEE THE PROBLEM.

16 THE COURT: SO, THE SOLUTION TO THE PROBLEM IS THIS  
17 FOLLOWING:

18 IF I PERMIT YOU TOMORROW AFTERNOON NOT TO PRESENT ANY  
19 EVIDENCE AND DEFER UNTIL THURSDAY, IT IS MY EXPECTATION  
20 THAT YOU WILL DO WHAT THE PROSECUTION HAS FAILED TO DO,  
21 THAT IS LINE UP THE WITNESSES SO WE DO NOT RUN OUT OF  
22 WITNESSES TO THE EXTENT THAT YOU HAVE THEM AVAILABLE AND  
23 WITHIN OUR AREA.

24 MR. ABLARD: I UNDERSTAND.

25 THE COURT: IF THERE IS COSTS TO THAT, WE WILL MAKE  
26 SURE THAT SOMEBODY TAKES CARE OF THAT. THE TAX PAYERS WHO  
27 HAVE BEEN PAYING ALL THE COSTS IN ONE WAY OR ANOTHER. SEE  
28 YA.

1 MR. ABLARD: OKAY.

2 THE COURT: OKAY. THANK YOU.

3 MR. ABLARD: MANANA. INSTRUCTIONS, TAKE THEM UP  
4 TOMORROW AFTERNOON.

5 (RECESS UNTIL THE FOLLOWING DAY.)

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1 RANCHO CUCAMONGA, CALIFORNIA; WEDNESDAY, NOVEMBER 1, 1995

2 A.M.

3 DEPARTMENT 4

HON. ROBERT E. LAW, JUDGE

4  
5 APPEARANCES: SET FORTH ON THE TITLE PAGE.

6  
7 (GAIL GREENLEE, C-8647, OFFICIAL REPORTER.)

8 ---###---

9 THE COURT: GOOD MORNING, LADIES AND GENTLEMEN.

10 YOU WANT TO DO SOMETHING ON GREEN?

11 (PROCEEDINGS REGARDING ANOTHER MATTER WERE  
12 REPORTED, AND NOT TRANSCRIBED AT THIS TIME.)

13 THE COURT: MS. SCHMAUSS, ARE YOU READY?

14 MS. SCHMAUSS: YES.

15 THE COURT: ALL RIGHT.

16 MS. SCHMAUSS: CALL OFFICER DONLEY.

17 THE COURT: OKAY. OFFICER DONLEY, YOU ARE STILL UNDER  
18 OATH FROM YESTERDAY OR THE DAY BEFORE, WHENEVER YOU WERE  
19 FIRST UP.

20 MICHAEL DONLEY,  
21 HAVING BEEN PREVIOUSLY SWORN, RESUMED THE STAND, WAS  
22 EXAMINED, AND TESTIFIED AS FOLLOWS:

23  
24 REDIRECT EXAMINATION, RESUMED  
25 BY MS. SCHMAUSS:

26 Q OFFICER DONLEY, IN THE COURSE OF INVESTIGATION  
27 IN THIS CASE, DID YOU INTERVIEW THE DEFENDANT?

28 A YES, MA'AM.

1 Q AND WHAT WAS THE INITIAL DATE OF INTERVIEWING  
2 THE DEFENDANT?

3 A OCTOBER 10, 1993.

4 Q WHERE DID THAT OCCUR?

5 A MONTCLAIR POLICE DEPARTMENT.

6 Q WHO WAS PRESENT DURING THIS INTERVIEW OF THE  
7 DEFENDANT?

8 A MYSELF, OFFICER BALES, AND MR. JOHNSON.

9 Q WAS IT ONE CONTINUOUS INTERVIEW, OR WAS THERE--  
10 WERE THERE ANY BREAKS?

11 A THERE WERE TWO DIFFERENT BREAKS.

12 Q HOW LONG, ROUGHLY, DID THE INTERVIEW LAST?

13 A APPROXIMATELY AN HOUR AND A HALF.

14 Q OKAY. I AM GOING TO SHOW YOU THREE CASSETTE  
15 TAPES MARKED EXHIBIT 76, 77, AND 78 FOR IDENTIFICATION,  
16 DIVIDED INTO TAPE ONE, SIDE ONE, TAPE ONE, SIDE TWO, AND  
17 TAPE TWO?

18 A YES.

19 Q AND ASK YOU IF YOU HAD THE OPPORTUNITY TO LISTEN  
20 TO PART OF THOSE THREE TAPES THIS MORNING?

21 A YES.

22 Q AND DID THEY APPEAR TO YOU TO BE FAIR AND  
23 ACCURATE COPIES OF THE TAPED INTERVIEW YOU DID WITH  
24 MR. JOHNSON ON OCTOBER 10, 1993?

25 A YES.

26 Q DURING THE INITIAL INTERVIEW, WHAT WE WILL CALL  
27 AS TAPE ONE, SIDE ONE, WAS THERE A TIME WHEN THE TAPE  
28 RECORDER RAN OUT?



1           A     YES.  AT THE END OF TAPE ONE, WAS IN A RECORDER  
2           THAT WAS SUPPOSED TO SWITCH SIDES AUTOMATICALLY AND TURN  
3           AROUND, GO BACK THE OTHER DIRECTION AND RECORD.  AND I  
4           LOOKED DOWN AT IT AND IT HAD STOPPED.

5           Q     OKAY.  SO, YOU LOST PART OF THE INTERVIEW?

6           A     YES.

7           Q     FROM TAPE ONE, SIDE ONE TO TAPE ONE, SIDE TWO?

8           A     YES.

9           Q     ANY IDEA HOW MUCH WAS LOST?

10          A     I WOULD GUESS A MINUTE, NOT A WHOLE LOT.

11          Q     OKAY.  IN REVIEWING LATER TRANSCRIPTION OF THE  
12          TAPINGS, DID YOU NOTICE ANYTHING THAT SEEMED TO BE  
13          GLARINGLY MISSING?

14          A     THE ONLY THINK THAT I CAN RECALL THAT WAS  
15          MISSING WAS THERE WAS A QUESTION PERTAINING TO HIS DOOR.  
16          AND MR. RIGGS TALKING TO HIM ON THE TELEPHONE WITH THE  
17          DOOR OPEN.  AND THAT DOESN'T APPEAR--I COULDN'T HEAR THAT  
18          ON THE TAPE.  BUT I DON'T RECALL ANYTHING SPECIFICALLY AT  
19          THIS TIME.

20          Q     OKAY.  SO, HAVING REVIEWED ALL THE TAPES  IN  
21          THEIR ENTIRETY AT SOME TIME?

22          A     YES.

23          Q     THAT'S THE ONLY THING THAT YOU NOTICE THAT WAS  
24          MISSING IN YOUR INTERVIEW?

25          A     YES.

26          MS. SCHMAUSS:  I DON'T HAVE ANY OTHER QUESTION,  
27          FOUNDATIONAL, YOUR HONOR.

28          THE COURT:  DID YOU IDENTIFY THE TAPE?

1 MS. SCHMAUSS: YES.

2 THE COURT: OKAY. ANY QUESTIONS ON THIS?

3 MR. ABLARD: NOT RIGHT NOW, YOUR HONOR.

4 THE COURT: ALL RIGHT. MAY THE REPORTER BE RELIEVED  
5 OF THE RESPONSIBILITY OF TAKING DOWN ALL TAPE RECORDINGS?

6 MS. SCHMAUSS: YES>.

7 MR. ABLARD: YES.

8 THE COURT: THANK YOU.

9 FOR YOUR INFORMATION, LADIES AND GENTLEMEN, WE ARE  
10 GOING TO LISTEN TO A TAPE RECORDING OF CONVERSATION.

11 THERE IS A TRANSCRIPT THAT HAS BEEN PREPARED THAT YOU WILL  
12 HAVE WITH YOU DURING YOUR DELIBERATIONS. SO, THE  
13 TRANSCRIPT WILL BE SOMEONE'S BEST INTERPRETATION WHAT THEY  
14 BELIEVE THEY HAVE HEARD ON THE TAPE.

15 BOTH COUNSEL, OF COURSE, HAVE GONE OVER IT. AND YOU  
16 WILL SEE SOME INAUDIBLES WHICH IS THE NATURE OF THE BEAST.  
17 YOU REALLY OUGHT TO BE GOVERNED BY WHAT YOU HEAR ON THE  
18 TAPE RECORDING AS OPPOSED TO THIS TRANSCRIPT THAT IS  
19 MARKED AND WILL BE PART OF THE EVIDENCE. IT IS  
20 ESSENTIALLY OPINION OF OTHERS ABOUT WHAT THEY THINK THEY  
21 HEAR. AND IT IS WHAT YOU HEAR THAT IS IMPORTANT AND  
22 DETERMINE WHAT THE FACTS ARE.

23 YOU WILL ALSO BE ABLE TO LISTEN TO THE TAPE OR  
24 PORTIONS THEREOF AS BEST WE CAN DO IT FOR YOU DURING YOUR  
25 DELIBERATION IF YOU REQUEST IT. YOU WILL FIND AS YOU  
26 LISTEN TO THE TAPE THAT IT JUST IT IS DISJOINTED. AND  
27 WHEN YOU LOOK AT THE TRANSCRIPT, YOU WILL ALSO FIND THAT  
28 IT APPEARS TO BE DISJOINTED FOR SOME REASON. AND YOU WILL

1       SEE SOME BLACKED OUT MATERIAL.

2           AS I TOLD YOU, IT IS MY OBLIGATION TO BE AN UMPIRE  
3       AND TO INTERFERE ONCE IN A WHILE TO MAKE SURE THAT THE  
4       EVIDENCE YOU RECEIVE IS RELATED TO THIS CASE AND NOT OTHER  
5       MATTERS THAT ARE EXTRANEEOUS TO WHY WE ARE HERE. SO, I RUB  
6       THIS LITTLE THING CALLED THE EVIDENCE CODE WHICH IS MY  
7       BIBLE AS TO WHAT YOU GET TO HEAR AND NOT HEAR. AND SO,  
8       YOU ARE TO BE-- YOU WILL SEE THAT I HAVE ORDERED SOME  
9       MATERIAL THAT IS IN THESE CONVERSATIONS TO BE EXTRACTED  
10      FROM THE TAPE. BECAUSE IT DOESN'T DEAL WITH THIS CASE OR  
11      ANYTHING THAT HAS TO DO WITH ANYTHING THAT YOU HAVE TO  
12      DECIDE AS I HAVE OCCASIONALLY COUNSELED INQUIRIES ABOUT  
13      THINGS THAT NO ONE HAS ANY INFORMATION ABOUT. SO, JUST  
14      IGNORE WHAT ISN'T THERE OR IS BLACKED OUT. SO YOU  
15      UNDERSTAND WHAT WE ARE DOING AND SO WHEN YOU LISTEN TO THE  
16      TAPE, YOU WILL SEE IT OR HEAR IT. THAT IS JUST THE WAY  
17      LIFE IS IN MY COURT.

18           (PROCEEDINGS REGARDING OTHER MATTERS WERE  
19      REPORTED, AND NOT TRANSCRIBED AT THIS TIME.)

20      MS. SCHMAUSS: MAY I PLAY THE TAPE NOW, YOUR HONOR?

21      THE COURT: YEAH. BUT YOU DON'T NEED HIM UP THERE.

22      MS. SCHMAUSS: NO.

23      THE COURT: SHOULD WE DIM THE LIGHTS?

24      MS. SCHMAUSS: NO. DON'T ERASE IT BY ACCIDENT.

25      OKAY. TRY NOT TO.

26           THE COURT: THIS WILL PROBABLY BE THE END OF THE  
27      EVIDENCE FOR YOU FOLKS TODAY. START DEFENSE CASE

28      TOMORROW, 9:30 OR SO, MAYBE 10:00. PROBABLY 10:00. SO,

1 IF YOU LEAVE YOUR EMPLOYER'S NUMBERS WITH ME, I WILL CALL  
2 THEM AND TELL THEM THAT YOU FINISHED UP EARLY AND THEY CAN  
3 EXPECT YOU TO ARRIVE AT YOUR PLACE OF EMPLOYMENT AT 1:00,  
4 MID AFTERNOON.

5 JUROR NO. SIX: THE LONG DISTANCE NUMBERS TOO?

6 THE COURT: I WILL TAKE THE LONG DISTANCE. YEAH.  
7 WE WILL CALL; NOT A PROBLEM.

8 MS. SCHMAUSS: READY.

9 THE COURT: PUSH PLAY.

10 (AT WHICH TIME THE AUDIO TAPE WAS PLAYED

11 AND WAS NOT REPORTED.)

12 MS. SCHMAUSS: OKAY. YOUR HONOR, FOR THE RECORD, I  
13 AM GOING TO NOW PLAY EXHIBIT 77 FOR IDENTIFICATION WHICH  
14 IS TAPE ONE, SIDE TWO.

15 THE COURT: ALL RIGHT.

16 MS. SCHMAUSS: COULD WE INQUIRE IF IT IS HIGH ENOUGH  
17 FOR EVERYONE IN THE JURY.

18 THE COURT: IT IS LOUD ENOUGH.

19 MS. SCHMAUSS: OKAY.

20 (AT WHICH TIME THE AUDIO TAPE WAS PLAYED

21 AND NOT REPORTED.)

22 MS. SCHMAUSS: WE HAVE ONE LAST ONE. DO YOU WANT TO  
23 TAKE A BREAK BEFORE? NO.

24 THE COURT: NO.

25 MS. SCHMAUSS: FOR THE RECORD, YOUR HONOR, THE FINAL  
26 TAPE IS EXHIBIT 78 FOR IDENTIFICATION KNOWN AS TAPE TWO.

27 THE COURT: ALL RIGHT.

28 (AT WHICH TIME THE AUDIO TAPE WAS PLAYED

1           AND NOT REPORTED.)

2           THE COURT:   IS THAT THE END?

3           MS. SCHMAUSS:   THAT THE END OF THE TAPES, YES, YOUR  
4   HONOR.

5           THE COURT:   THANK YOU.   CALL YOUR NEXT WITNESS.

6           MS. SCHMAUSS:   I NEED TO CLARIFY SOMETHING BEFORE I  
7   CALL HIM BACK.   NO, I DON'T HAVE ANY FURTHER QUESTIONS,  
8   YOUR HONOR.   I DO HAVE AN EXHIBIT THOUGH AND A STIPULATION  
9   FOR THE EXHIBIT.

10          THE COURT:   WITH MR. ABLARD?

11          MS. SCHMAUSS:   YES.   WITH MR. ABLARD.   IT IS THE TV  
12   GUIDE, PAGE.   IT IS AN EXHIBIT 79 FOR IDENTIFICATION.   AND  
13   IT IS PHOTOCOPY OF THE TELEVISION GUIDE FROM THE DAILY  
14   BULLETIN ON OCTOBER 10, 1993 THAT SHOWS AT 8:30 A.M. ON  
15   CHANNEL 13 THE CARTOON SPEED RACER OF WHICH TOM SLICK IS A  
16   CHARACTER WAS ON.

17          MR. ABLARD:   I WILL STIPULATE THAT THAT IS WHAT IT  
18   SAYS.   THANK YOU.

19          THE COURT:   ALL RIGHT.   ANYTHING FURTHER?

20          MS. SCHMAUSS:   NO, YOUR HONOR, EXCEPT FOR THE  
21   EVIDENCE.   PEOPLE, REST.

22          THE COURT:   THANK YOU.   10:00 TOMORROW.

23          MR. ABLARD:   THAT WILL BE FINE, YOUR HONOR.

24          THE COURT:   YOU WILL BE READY TO START CALLING  
25   WITNESSES.

26          MR. ABLARD:   YES.   THANK YOU.

27          THE COURT:   I AM SORRY FOLKS.   IT IS 11:10 WHICH IS A  
28   LITTLE EARLY.   AND IT IS A RAINY DAY.   BUT I WILL SEND

1 YOU OUT TO DO WHAT YOU NEED TO DO. PLEASE DON'T DISCUSS  
2 THE CASE. DO NOT FORM ANY OPINIONS OR CONCLUSIONS.  
3 PEOPLE HAVE PUT IN ALL THE EVIDENCE THAT THEY ARE GOING TO  
4 PUT IN THEIR PROSPECTIVE. AND THE DEFENSE WILL START ON  
5 THURSDAY, THAT'S TOMORROW, AT 10:00. I EXPECT WE SHOULD  
6 HAVE A FULL DAY. REMEMBER WE WILL BE COMING BACK ON  
7 TUESDAY. WAIT A MINUTE. I GUESS IT IS TUESDAY, THE 7TH  
8 FOR CONCLUSION OF THE DEFENSE EVIDENCE.

9 I THINK THAT WE WILL CONCLUDE THIS CASE PROBABLY  
10 TUESDAY OR WEDNESDAY. WE WILL HAVE ARGUMENT AND

11 INSTRUCTION. AND YOU WILL HAVE THE CASE I AM HOPEFUL  
12 WEDNESDAY SO THAT YOU CAN WORK ON THURSDAY. BECAUSE THERE  
13 IS A LONG TIME IN BETWEEN THEN AND THE NEXT DAY. THAT IS  
14 MY FANTASY. ANYWAY. SO, LET'S HOPE THAT THAT WORKS.

15 DON'T DISCUSS THE CASE. DON'T FORM OPINIONS OR  
16 CONCLUSIONS. WE WILL SEE YOU TOMORROW AT 10:00. THANK  
17 YOU.

18 COUNSEL IS NOT EXCUSED. WE HAVEN'T CONCLUDED THIS.  
19 BUT I WILL GIVE YOU FOLKS A RECESS. TEN MINUTES.

20 MR. ABLARD: THANK YOU.

21 (RECESS)

22 (THE FOLLOWING PROCEEDINGS WERE HELD IN  
23 OPEN COURT OUTSIDE THE PRESENCE OF THE JURY:)

24 THE COURT: JOHNSON.

25 MR. ABLARD: WAIVE HIS PRESENCE FOR JURY  
26 INSTRUCTIONS.

27 THE COURT: WE ARE DOING EXHIBITS FIRST. WHILE WE  
28 ARE WAITING FOR MR. JOHNSON, HAVE YOU REVIEWED THE

1 INSTRUCTIONS THAT THE DISTRICT ATTORNEY HAS OFFERED AND  
2 THE VERDICT FORMS?

3 MR. ABLARD: I LOOKED THEM OVER AT 1:30. I AM  
4 PREPARED TO DEAL WITH THAT.

5 THE COURT: WE ARE GOING TO DO IT AT 1:30. WE ARE  
6 GOING TO DO IT NOW. THEY ARE NOT CLEAN. SO, WE CAN GO  
7 THROUGH THEM AS THEY ARE UGLY. YOU HAVE THE JURY  
8 INSTRUCTIONS WITH YOU?

9 THE COURT IS INTENDING TO GIVE 1.00, COURT INTENDS TO  
10 GIVE 1.01. COURT INTENDS TO GIVE 1.02, 1.03, 1.20, 1.21.

11 THE COURT INTENDS TO GIVE 2.00, 2.01, 2.02. THE COURT  
12 INTENDS TO GIVE 2.03 SUBJECT TO DISCUSSION.

13 MR. ABLARD: RIGHT.

14 THE COURT: LIMITED EVIDENCE, LIMITED AND PURPOSE,  
15 WHAT EVIDENCE WAS ADMITTED?

16 MS. SCHMAUSS: I PULLED THIS ONE NOT KNOWING WHAT  
17 WOULD HAPPEN.

18 THE COURT: WELL, RIGHT NOW, THE COURT WOULD NOT GIVE  
19 2.04 UNLESS IT BECOMES APPROPRIATE.

20 MS. SCHMAUSS: RIGHT.

21 THE COURT: COURT INTENDS TO GIVE 2.11, 2.13, 2.20  
22 WITH ADJUSTMENT BECAUSE THERE'S NO CHARACTER EVIDENCE THAT  
23 I HAVE SEEN PRIOR CONVICTION OF FELONY OR MISDEMEANOR PAST  
24 CONDUCT.

25 COURT INTENDS TO GIVE 2.21.1, 2.21.2, 2.22 UNLESS THE  
26 DEFENSE CALLS NO WITNESSES, 2.27, 2.51, 2.60, 2.61. THE  
27 COURT WILL CONSIDER 2.71 SUBJECT TO DISCUSSION OF WHETHER  
28 ANY STATEMENTS ARE IN FACT AN ADMISSION, AND 2.75 IS

1 QUESTIONABLE. WE WILL CONSIDER IT, DETERMINE WHAT,  
2 DETERMINE IT. I CANT DETERMINE IT YET UNTIL THE DEFENSE  
3 PUTS ON ALL OF THE CASE.

4 MR. ABLARD: 2.72.5 YOU ARE TALKING ABOUT?

5 THE COURT: YES.

6 MR. ABLARD: OKAY.

7 THE COURT: THE COURT BASED UPON WHAT IT HEARD SO FAR  
8 DOESN'T SEE A 2.72. THAT'S ONE OF THE PROBLEMS THAT GOES  
9 WITH 71 AND 71.5.

10 MR. ABLARD: RIGHT.

11 THE COURT: COURT INTENDS TO GIVE 2.80, 2.81, 2.82.

12 I DON'T KNOW ABOUT 2.83 UNTIL WE HAVE CONTRADICTORY  
13 TESTIMONY BY EXPERT. WE DON'T HAVE ANY YET. THE COURT  
14 WILL CONSIDER 2.90 UNLESS YOU DON'T LIKE IT, MR. ABLARD.

15 MR. ABLARD: WE ARE TALKING ABOUT THE LEAVING OUT  
16 THE--

17 THE COURT: -- PRESUMPTION OF INNOCENCE AND THE  
18 REASONABLE DOUBT INSTRUCTION.

19 MR. ABLARD: I UNDERSTAND THAT.

20 THE COURT: REVISED '94.

21 MR. ABLARD: YOU ARE USING THAT. AND I WILL BE  
22 MAKING ARGUMENT FOR THE RECORD FOR THE OTHER ONE.

23 THE COURT: YOU WANT THE MORAL CERTAINTY?

24 MR. ABLARD: AND ALL THAT BUSINESS.

25 THE COURT: ABIDING CONVICTION.

26 MR. ABLARD: I GET THAT. I WANT THE MORAL CERTAINTY.

27 THE COURT: THE MORAL CERTAINTY.

28 MR. ABLARD: SO WE CAN DISCUSS THAT AT SOMETIME.



1 THE COURT: OKAY. I HAVE A 3.0, GENERAL CRIMINAL  
2 INTENT WHICH WHAT DOES THAT RELATE TO?

3 MS. SCHMAUSS: WELL, I PULLED A BUNCH OF THEM. AND  
4 WE ARE GOING TO HAVE TO HONE THEM DOWN.

5 THE COURT: WE ARE. I DON'T SEE A GENERAL INTENT  
6 CRIME; DO YOU? YOU KNOW, LAST TIME I LOOKED, 187 HAS A  
7 STATE OF MIND THAT IS A SPECIFICALLY-DEFINED STATE OF  
8 MIND.

9 MS. SCHMAUSS: RIGHT.

10 THE COURT: THEY HAVEN'T CHANGED THAT.

11 MS. SCHMAUSS: WHICH IS DEFINED IN THE INSTRUCTION  
12 ITSELF.

13 THE COURT: YES.

14 MS. SCHMAUSS: WELL, I CAN WITHDRAW IT. I DIDN'T  
15 KNOW ABOUT VOLUNTARY, INVOLUNTARY, ANY LESSERS THAT THE  
16 DEFENSE MAY WANT. I PULLED MORE THAN WE NEED.

17 MR. ABLARD: RIGHT.

18 THE COURT: WELL, I HAVE ALL THESE MENTAL STATE.  
19 THEN YOU HAVE-- OKAY. HERE WE GO. I AM JUST BYPASSING  
20 ALL THOSE. BECAUSE THEY ARE NOT FILLED IN AND THEY MAKE  
21 NO SENSE. AND THE COURT DOESN'T DO THAT. IF THE COURT  
22 GIVES THE INSTRUCTION, THEN I DON'T READ THEM I JUST TELL  
23 THE JURY WHAT I THINK THEY OUGHT TO DO.

24 MS. SCHMAUSS: THAT WILL BE FINE.

25 THE COURT: THE WAY THEY DO IN THE ENGLISH SYSTEM.

26 MR. ABLARD: THAT'S AN INSTRUCTION THAT SAYS THAT WE  
27 CAN DO THAT, I GUESS. RIGHT.

28 MS. SCHMAUSS: WANT TO STIPULATE?

1 MR. ABLARD: WHAT?

2 MS. SCHMAUSS: THAT HE CAN TELL THEM WHAT TO DO?

3 MR. ABLARD: THE JUDGE IS GOING TO TELL THEM WHAT TO  
4 DO. BUT HE IS GOING TO READ THE INSTRUCTION ANYWAY.

5 MS. SCHMAUSS: SO, WHY DON'T WE JUST PUT A BIG  
6 QUESTION MARK IN GENERAL INTENT.

7 MR. ABLARD: OKAY.

8 THE COURT: OKAY. I HAVE 80 WHICH IS A DEFINITION OF  
9 HOMICIDE INFORMATION. YOU HAVE GOT THE GENERAL 187.  
10 THERE IS NO EVIDENCE OF A FELONY INHERENTLY DANGEROUS.

11 HAS TO GET CLEANED UP. OKAY. MALICE, 8.11, YES.  
12 EXPRESS MALICE. THAT IS 8.20. DELIBERATE DEFINED  
13 DELIBERATE AND PREMEDITATED. 8.30 IS APPROPRIATE. 8.31  
14 IS APPROPRIATE.

15 MS. SCHMAUSS: I DON'T KNOW ABOUT 8.45 IF MR. ABLARD  
16 WANTS IT. I AM NOT OFFERING IT. I PULLED IT AS A  
17 COURTESY TO HIM.

18 MR. ABLARD: RIGHT. THAT IS CORRECT. I WOULD LIKE  
19 TO PASS THAT FOR RIGHT NOW, YOUR HONOR.

20 THE COURT: WHAT YOU ARE SAYING IS THAT YOU DON'T KNOW  
21 WHETHER YOU WANT A 192B IN THE CASE OR NOT?

22 MR. ABLARD: RIGHT.

23 THE COURT: AND LET ME ASK YOU THIS QUESTION. EVEN  
24 IF YOU DON'T, AM I NOT COMPELLED TO GIVE IT IF I BELIEVE  
25 THE FACTS SUPPORT IT?

26 MR. ABLARD: WELL, IF THE FACTS SUPPORT IT, YOU MIGHT  
27 BE COMPELLED TO GIVE IT. I THINK I COULD ALSO, WE CAN  
28 WAIVE IT. THERE SEEMS TO BE A SPLIT ON THAT A LITTLE BIT.

1 THE COURT: WELL, MY SPLIT IS TO GIVE THE JURY THOSE  
2 INSTRUCTIONS THAT MIGHT IN ANY WAY SHAPE OR FORM HAVE  
3 APPLICATION TO THE FACTS AS THEY MAY INTERPRET THEM.

4 MS. ABLARD: I UNDERSTAND. SO, IF WE CAN DISCUSS  
5 THAT.

6 THE COURT: WE CAN. WE CAN.

7 MR. ABLARD: THANK YOU.

8 THE COURT: WHICH ALSO DEFERS THE DISCUSSION OF 8.46.

9 MR. ABLARD: RIGHT.

10 THE COURT: AND 8.50.

11 MR. ABLARD: CORRECT.

12 THE COURT: AND 51.

13 MR. ABLARD: CORRECT.

14 MS. SCHMAUSS: I DID NOT PULL VOLUNTARY BECAUSE I DID  
15 NOT THINK THERE WAS GOING TO BE ANY EVIDENCE THAT SUGGESTS  
16 THAT. VOLUNTARY MANSLAUGHTER. COUNSEL.

17 THE COURT: THAT'S A SUBJECT MATTER WE CAN DISCUSS AT  
18 THE CONCLUSION.

19 MR. ABLARD: YES, CORRECT.

20 THE COURT: TWO DEGREES, 8.70, 8.71. 8.72 IF WE GO  
21 THAT FAR. THAT'S THE MANSLAUGHTER MURDER CONCLUSIONS. BUT  
22 YOU GOT 8.73 WHICH IS PROVOCATION WHICH IS A VOLUNTARY.  
23 AND IT IS NOT AN INVOLVED FIRST OR SECOND.

24 MS. SCHMAUSS: SO WE CAN PULL THAT.

25 THE COURT: THAT'S SUBJECT TO WHATEVER. OKAY.

26 MR. ABLARD: YEAH.

27 THE COURT: AND 8.74 WHICH HAS TO BE TAILORED  
28 DEPENDING UPON WHAT LESSERS ARE GIVEN. AND 8.75, GOES

1 WITH IT. AND 17.10 WHICH IT WILL HAVE TO BE PREPARED  
2 SPECIFICALLY GIVEN 17.30.

3 MS. SCHMAUSS: HOW ABOUT 17.11.

4 THE COURT: YEAH. ALL THE 17'S I JUST PASSED OVER  
5 THEM. INDIVIDUAL OPINION, .40 I WILL GIVE 41. I WILL GIVE  
6 42, 17.43, 45, 47, 48, 49 WON'T WORK. HAS TO BE TAILORED  
7 TO THE CHARGES FIRST, SECOND, AND LESSERS. BUT I CAN DO  
8 THAT WITHOUT AN INSTRUCTION. 50, OBVIOUSLY 51 IS NOT. 52,  
9 AND 53 ARE CAUTIONARY IN CASE. SO THAT LEAVES US WITH  
10 THE INSTRUCTION PROFFERED APPEARS TO BE ACCEPTABLE SUBJECT  
11 TO THE 2.03, 2.09, 2.71, 71.5 AND 72 WHICH DEAL WITH  
12 ADMISSIONS.

13 MR. ABLARD: RIGHT.

14 THE COURT: NO CONFLICT IN EXPERT TESTIMONY 8. 3.  
15 AND 3.30. GENERAL CRIMINAL INTENT DOESN'T APPEAR TO BE  
16 APPROPRIATE AT THIS JUNCTURE. AND THEN A CLEAR  
17 DEFINITION OF FIRST, SECOND, AND INVOLUNTARY IF THAT IS  
18 REQUESTED AND HOW THEY ARE TO DO THAT WHICH IS THE 1700  
19 SECTION.

20 MS. SCHMAUSS: I DIDN'T GET THAT ONE.

21 THE COURT: WELL, YOU HAVE THEM IN THERE. BUT THEY  
22 ARE ALL BLANK.

23 MS. SCHMAUSS: OKAY. RIGHT. WE WILL TALK ABOUT AND  
24 AGAIN WE WILL GET A CLEAN COPY TYPED UP.

25 THE COURT: YEAH. WE WILL. BUT THAT'S THE ONLY  
26 ISSUE REMAINING. MR. ABLARD, IF YOU HAVE INSTRUCTIONS  
27 THAT YOU WOULD LIKE TAILOR-MADE TO THIS CASE, YOU CAN  
28 SUBMIT THEM AT THE CONCLUSION OF YOUR CASE.

1 MR. ABLARD: I APPRECIATE IT. THANK YOU.

2 THE COURT: NOW, ARE YOU PREPARED TO OFFER EXHIBITS  
3 INTO EVIDENCE AT THIS TIME?

4 MS. SCHMAUSS: YES. I WOULD ASK ALL OF THE EXHIBITS  
5 THAT I MARKED, I WOULD MOVE TO ENTER INTO EVIDENCE. AND  
6 I LOST COUNT. WHERE ARE WE AT NOW, IN THE 70'S  
7 SOMEWHERE?

8 THE CLERK: 80.

9 THE COURT: YES, 80. ARE YOU PREPARED TO DO THAT,  
10 MR. ABLARD, OR DO YOU NEED SOME TIME?

11 MR. ABLARD: I WOULD LIKE A LITTLE BIT OF TIME, YOUR  
12 HONOR. I DO HAVE--

13 THE COURT: OKAY. 1:30.

14 MR. ABLARD: THANK YOU VERY MUCH, YOUR HONOR.

15 (NOON RECESS)

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1 RANCHO CUCAMONGA, CALIFORNIA; WEDNESDAY, NOVEMBER 1, 1995

2 2:25 P.M.

3 DEPARTMENT 4

HON. ROBERT E. LAW, JUDGE

4  
5 APPEARANCES: SET FORTH ON THE TITLE PAGE.

6  
7 (GAIL GREENLEE, C-8647, OFFICIAL REPORTER.)

8 ---###---

9 THE COURT: HAVE YOU GONE OVER ALL THE EXHIBITS?

10 MR. ABLARD: YES, YOUR HONOR.

11 THE COURT: DO YOU HAVE A LIST FOR ME. OKAY. I  
12 HAVE A LIST HERE THAT'S BEEN PREPARED BY THE CLERK, SHOWS  
13 EIGHTY EXHIBITS HAVE BEEN MARKED. SOME HAVE BEEN RECEIVED  
14 INTO EVIDENCE, 69 THROUGH 75, I BELIEVE WERE RETURNED FOR  
15 PROPER STORAGE. THE BALANCE OF EXHIBITS HAVE NOT BEEN  
16 RECEIVED.

17 MS. SCHMAUSS: EXCEPT NUMBER 6.

18 MR. ABLARD: NUMBER 6 HAS BEEN RECEIVED. AND I HAVE  
19 A COMMENT ON THAT.

20 THE COURT: EXCEPT NUMBER 6 WHICH BECAME EVIDENCE ON  
21 10-30.

22 MR. ABLARD: RIGHT. WE ADMITTED THAT TO SHOW IN FACT  
23 THAT SHE WAS DEAD.

24 THE COURT: WELL, IT IS ADMITTED FOR WHATEVER PURPOSE  
25 IT HAD ADMITTED FOR.

26 MR. ABLARD: OKAY.

27 THE COURT: IN ANY EVENT, THAT'S ALREADY IN EVIDENCE.

28 MR. ABLARD: SO, THEN MY OBJECTION STARTS LATER WHEN

1 THE COURT IS READY.

2 THE COURT: WELL, EXHIBIT 1-5, 73, 68, AND 76 THROUGH  
3 80 TO WHICH EXHIBITS DO YOU OBJECT?

4 MR. ABLARD: START OFF WITH EXHIBIT NUMBER 38.

5 THE COURT: EXHIBIT NUMBER 38.

6 MR. ABLARD: RIGHT. PICTURE OF CLOSET.

7 THE COURT: PHOTO INSIDE OF CLOSET.

8 MR. ABLARD: RIGHT.

9 MS. SCHMAUSS: LET ME SEE IT.

10 MR. ABLARD: ONE OF THE--

11 THE COURT: WAIT A MINUTE. WHY DON'T WE DEAL WITH  
12 THE ONES TO WHICH YOU OBJECT. 38.

13 MR. ABLARD: ACTUALLY, WHOLE BUNCH OF 'EM.

14 THE COURT: THAT'S NOT A RESPONSE. JUST TELL ME THE  
15 NUMBER.

16 MR. ABLARD: I AM COUNTING THEM UP.

17 THE COURT: JUST GIVE ME THE NUMBERS.

18 MR. ABLARD: I AM TRYING TO GET SOME OF MY SCRATCH  
19 OUT. 38 THROUGH 56.

20 THE COURT: ALL OF THOSE RIGHT. 58 THROUGH 60  
21 INCLUSIVE, 62 AND PART, 64, 66 THROUGH 68 CONCLUSIVE.

22 THE COURT: THAT'S IT.

23 MR. ABLARD: THAT'S IT.

24 THE COURT: WHERE IS 38 THROUGH 56?

25 MR. ABLARD: I HAVE GOT THEM.

26 THE COURT: WELL, BRING THEM UP HERE, PLEASE. WELL,  
27 BRING SO THAT I CAN LOOK AT ALL OF THEM.

28 MR. ABLARD: AND A DISCUSSION ON 80, YOUR HONOR. I

1 AM SORRY. LET ME SEE. 76 THROUGH 80 INCLUSIVE. I MISSED  
2 THE LAST PART.

3 THE COURT: ALL RIGHT.

4 MR. ABLARD: NUMBER 38 I OBJECT TO.

5 THE COURT: WELL, YOU DIDN'T OBJECT TO 37. SO.

6 MR. ABLARD: RIGHT. THAT IS CORRECT.

7 THE COURT: 38.

8 MR. ABLARD: 38 I OBJECT TO THAT ON TWO GROUNDS:  
9 FIRST OF ALL, THE CLOSET, BUT THE ITEMS IN THERE IS NOT  
10 REPRESENTATIVE OF THE WAY IT WAS WHEN THE CHILD WAS FOUND  
11 ON THE--CORRECT ME IF I AM WRONG-- BUT NOT SURE THAT ALL  
12 THE ITEMS HADN'T BEEN MOVED AROUND IN THERE. SO IT IS NOT  
13 REPRESENTATIVE OF THE ITEMS IN THERE, MAY NOT HAVE BEEN  
14 THERE AT THE TIME OF THE INCIDENT. ADDITIONAL GROUP IS  
15 THERE WAS ALSO A WHAT APPEARS TO BE A BOX WITH A CHINA SEX  
16 DOLL ON IT, SORT OF THAT'S WHAT IT SAYS ANYWAY. AND I  
17 WOULD IF THAT WERE TO BE ADMITTED AND THE OTHER GROUNDS  
18 WERE DENIED, THEN I WOULD REQUEST THAT THAT BE CROPPED.  
19 AND THERE'S OTHER PHOTOS PARTICULARLY 37, AS I RECALL  
20 WOULD TAKE-- MIGHT SHOW BASICALLY THE SAME THING, BUT  
21 WITHOUT THAT CHINA SEX DOLL.

22 MS. SCHMAUSS: 38 IS IMPORTANT. IT SHOWS THE CHILD  
23 TOY IN THERE THAT THERE ARE CHILDREN'S TOYS IN THERE. THE  
24 DEFENDANT MADE A COMMENT THAT HE THOUGHT THAT THE VICTIM  
25 WOULD GO IN AND PLAY WITH TOYS. SO THAT'S WHY THAT IS  
26 IMPORTANT. I DON'T THINK IT SAYS CHINA SEX DOLL ON IT. I  
27 DIDN'T KNOW WHAT IT WAS. I HAD TO ASK ANGELA JOHNSON.

28 MR. ABLARD: I READ IT WITH THESE GLASSES.



1 MS. SCHMAUSS: DOES IT SAY "SEX" ON IT?

2 THE COURT: WELL, IT SAYS GIRL.

3 MR. ABLARD: OR GIRL.

4 MS. SCHMAUSS: I HAVE NO-- I HAD NO IDEA WHAT IT WAS.

5 THE COURT: DOESN'T MATTER WHETHER YOU HAVE AN IDEA.

6 IT IS WHAT IT IS.

7 WHAT ELSE IS IN THAT 38 SHOWS THAT IS NOT SHOWN IN--

8 MS. SCHMAUSS: I THINK THE BEST PICTURE THAT SHOWS  
9 THE CHILD'S TOY IN THERE ON THE THEORY THAT HE LURED HER  
10 INTO THE ROOM. ONLY THING THAT'S ATTRACTIVE IN THERE IS

11 THE CHILD TOY. AND HE MAKES MENTION OF IT TOO. SO, DID  
12 OFFICER DONLEY WHEN HE TESTIFIED.

13 MR. ABLARD: WHAT.

14 THE COURT: WHAT CHILD TOY.

15 MS. SCHMAUSS: THAT LITTLE STEERING WHEEL TOY IN 38.

16 THE COURT: STEERING-WHEEL TOY.

17 MS. SCHMAUSS: YEAH. I THINK IN 38 SHOWS A LITTLE  
18 CHILD TOY, GOT A STEERING WHEEL MICKEY MOUSE. YOU DON'T  
19 SEE IT?

20 THE COURT: NO.

21 MS. SCHMAUSS: COULD I APPROACH?

22 THE COURT: YES. WE ARE NOT HAVING A DISCUSSION. WE  
23 ARE ON THE RECORD. I CAN SEE WHY 37 IS NOT OBJECTED TO.  
24 THAT'S RECEIVED.

25 38 AT BEST IS A PICTURE TAKEN, AS A MATTER OF FACT,  
26 ALL THESE, 38 THROUGH 56; IS THAT ALL RIGHT?

27 MR. ABLARD: NO. 38 THROUGH-- 38 THROUGH 41  
28 INCLUSIVE ARE PICTURES OF THE CLOSET.

1 THE COURT: YES. AND 37 IS THE PICTURE OF THE  
2 CLOSET.

3 MR. ABLARD: YES.

4 THE COURT: OTHER THAN THIS, THEN, BEING A PICTURE  
5 OF A CLOSET, THEY DON'T HAVE ANYTHING TO DO WITH ANYTHING  
6 AS FAR AS THE COURT CAN TELL.

7 MS. SCHMAUSS: WELL, THEY ARE CLOSE-UPS OF HOW THE  
8 DEFENDANT'S CLOSET APPEARED AFTER THE BODY HAS BEEN  
9 REMOVED.

10 THE COURT: WHAT DOES THAT TEND TO SHOW OR NOT SHOW?

11 MS. SCHMAUSS: SHOWS THE STUFF THAT IS THE CLUTTER  
12 IN THE CLOSET, THE THINGS THAT ARE THERE PILED ON TOP OF  
13 HER. THEY ARE FROM DIFFERENT ANGLES. THEY ASSIST THE  
14 FINDER OF FACT ON HOW IT APPEARED ON THE DAY IN QUESTION.  
15 THERE HAS BEEN TESTIMONY THAT--

16 THE COURT: HOW IT APPEARED AFTER IT WAS REMOVED AND  
17 ARRANGED BY THE POLICE. 37 IS SUFFICIENT. UNLESS YOU  
18 GIVE ME SOMETHING THAT IS REALLY RELEVANT CONNECTED TO THE  
19 CASE IN 38, 39, AND 40, NOT NECESSARY.

20 MS. SCHMAUSS: I GOT MY PROBLEM IS I HAVE GOT TO SEE  
21 THESE IN ORDER TO KNOW. THERE'S SO MANY OF THEM. BY NOT  
22 BEING ABLE TO LOOK AT THEM, I CAN'T TELL YOU.

23 MR. ABLARD: 41 AS WELL, OUR HONOR. THAT IS THE SAME  
24 CATEGORY AS 38.

25 THE COURT: 38, 39, 41.

26 40 WILL BE RECEIVED. IT IS A DIFFERENT PICTURE.  
27 DIFFERENT LOOKING AT THE CLOSET DIFFERENTLY. 37 AND 40

28 NOW WE ARE GOING TO WHAT?

1 MS. SCHMAUSS: I NEED THE CHILD TOY.

2 THE COURT: THOSE ARE THE ONES THAT ARE NOT ADMITTED  
3 YET. SO YOU CAN HAVE THEM.

4 MS. SCHMAUSS: NO. I AM SAYING--

5 ~~THE COURT: EXCUSE ME. THOSE ARE THE ONES THAT ARE~~  
6 NOT YET ADMITTED. YOU CAN HAVE THEM. TAKE THEM WITH  
7 YOU.

8 WE MOVE TO FORTY--

9 MR. ABLARD: --1.

10 THE COURT: --TWO. HERE I DON'T HAVE 42. I HAVE  
11 7,8,9,10, 11, 12, 13, 35, 36, AND 37. WITHOUT OBJECTION  
12 ARE RECEIVED. HERE THEY ARE. NO OBJECTION TO 1 THROUGH  
13 37 ARE RECEIVED.

14 6 IS ALREADY RECEIVED.

15 40 IS RECEIVED. I HAVE 59 AND 60. I DO NOT HAVE  
16 58.

17 MR. ABLARD: OH, THAT'S THE BIG PICTURE, JUDGE. 15  
18 IS THE BIG PICTURE.

19 THE COURT: 58 IS RECEIVED.

20 MR. ABLARD: THAT IS-- WELL, I HAD AN OBJECTION TO  
21 THAT.

22 THE COURT: WELL, I KNOW YOU DID. I THOUGHT WE WENT  
23 OVER THAT.

24 MR. ABLARD: WELL, WE WENT OVER IT. MAYBE I JUST  
25 MISTAKEN WE WENT OVER IT AS TO WHETHER OR NOT THEY COULD  
26 USE IT TO SHOW THE JURY. I DON'T KNOW IF WE ACTUALLY I  
27 HAD GONE OVER IT FOR ADMISSION OF EVIDENCE.

28 THE COURT: WELL, IT HAS BEEN PUBLISHED TO THE JURY.

1 SO IT IS RECEIVED.

2 MR. ABLARD: OKAY.

3 THE COURT: 59 AND 60, TWO MORE PICTURES OF BRITTANY.

4 MR. ABLARD: YES, CUMULATIVE, YOUR HONOR, AND I

5 DON'T--

6 MS. SCHMAUSS: NO THEY ARE NOT, YOUR HONOR. BECAUSE  
7 THEY SHOW HER IN DIFFERENT TIMES OVER THE TIME FRAME WHERE  
8 THERE WAS A DEBATE OVER HER STATE OF HEALTH. TESTIMONY  
9 FROM THE MOTHER WAS THAT THE BIG PICTURE WAS TAKEN IN MAY  
10 OF '93. AND THE PICTURE OF THE BEACH WAS TAKEN

11 APPROXIMATELY JUNE, JULY, I BELIEVE. AND THE PICTURE OF  
12 HER ON THE HORSE WAS TWO WEEKS BEFORE HER DEATH. SO WE  
13 NOW HAVE PHOTOS OF HER OVER THAT SIX MONTH SPAN.

14 MR. ABLARD: I HAVE OTHER PROBLEM WITH THAT, YOUR  
15 HONOR.

16 THE COURT: THEY ARE?

17 MR. ABLARD: WELL, FIRST OF ALL, WE HAVE THE BIG  
18 PICTURE. TIME FRAMES AREN'T ALL THAT IMPORTANT. BECAUSE A  
19 PERSON LOOKS HEALTHY IN A PICTURE DOESN'T MEAN THEY ARE  
20 HEALTHY. BUT THE REAL PROBLEM I HAVE WITH IT IS THE  
21 PROSECUTION AND EVERYONE HAS SELECTED CERTAIN PHOTOGRAPHS  
22 TO SHOW THE JURY THAT ONE IS IN A BATHING SUIT, A RATHER  
23 CUTE LITTLE PICTURE. THE OTHER ONE IS ON A HORSEBACK. IF  
24 THEY WEREN'T PICTURES FROM THAT TIME PERIOD, SHOUD BE NOT  
25 AS PREJUDICIAL. YOU KNOW, WE ALREADY KNOW THAT SHE WAS  
26 ALIVE AND NOW SHE IS DEAD. AND THESE ARE RATHER  
27 PREJUDICIAL. THE PICTURE, THE JURY CAN SEE HOW CUTE SHE  
28 COULD LOOK. THE ONE WITH HER TONGUE STICKING OUT AT THE

1 BEACH, ALL THAT SORT OF THING REALLY GOES A BIT BEYOND  
2 IDENTIFICATION TO SEE SHE WAS HEALTHY. I WILL SUBMIT.

3 THE COURT: BIG PICTURE GOES IN. 59. AND 60 IS NOT.  
4 ESSENTIALLY IT IS CUMULATIVE.

5 MR. ABLARD: THANK YOU.

6 THE COURT: 62.

7 MR. ABLARD: OKAY.

8 THE COURT: IN PART.

9 MR. ABLARD: IN PART. AT THE BOTTOM IF THE DISPATCH  
10 LONG, YOUR HONOR, REFERS TO THE WARRANT FROM THE 242 AND

11 THE BAIL AMOUNT. I WOULD REQUEST THAT THAT--

12 THE COURT: REDACT IT.

13 MR. ABLARD: THANK YOU.

14 THE COURT: 64.

15 MR. ABLARD: 64 IS TWEETIE-BIRD VIDEO. MY OBJECTION  
16 IS IN PART THAT WELL, ACTUALLY IT'S MOOT ISSUE AS LONG AS  
17 THEY JUST USE IT FOR THE VIDEO AND DON'T LOOK AT THAT.

18 THE COURT: TO BE PLAYED.

19 MR. ABLARD: RIGHT. I MEAN IT IS NOT GOING TO PLAY  
20 IT BUT THAT WAS MY ONLY COMMENT.

21 THE COURT: NOT TO BE PLAYED. IT IS AN ITEM.

22 MR. ABLARD: RIGHT.

23 THE COURT: THE EXISTENCE OF WHICH IS RELEVANT. IT  
24 IS RECEIVED.

25 THE CLERK: WHICH NUMBER WAS THAT?

26 THE COURT: 64. 66, 67, AND 68.

27 MR. ABLARD: OKAY.

28 THE COURT: WHAT IS 66? I DON'T HAVE 66.

1 MR. ABLARD: 66 SHOULD BE IT WAS A PRELIMINARY  
2 HEARING DIAGRAM. IF I MAY, MAY I APPROACH?

3 THE COURT: YEAH, WELL. SORT OF LOOKS LIKE WHEN IT IS  
4 ALL FOLDED UP.

5 THE COURT: 67, NOT RECEIVED.

6 MS. SCHMAUSS: I WAS NOT EVEN INTENDED 67 TO BE  
7 RECEIVED BY THE JURY. THAT WAS FOR THE COURT.

8 THE COURT: IT IS RECEIVED FOR THE PURPOSES OF THE  
9 COURT'S DETERMINATION.

10 MS. SCHMAUSS: RIGHT.

11 THE COURT: BUT NOT FOR THE JURY.

12 MS. SCHMAUSS: FOR THE 402 HEARING.

13 THE COURT: ALL RIGHT.

14 68. I DON'T HAVE ANY DISCUSSION ABOUT THIS.

15 MR. ABLARD: NO.

16 THE COURT: TWO HOOTS AND A HOLLER. 66.

17 MS. SCHMAUSS: WHICH ONE.

18 MR. ABLARD: THAT'S THE ONE OFFICER TESTIFIED THAT--

19 MS. SCHMAUSS: KELLY.

20 MR. ABLARD:--THAT THAT WAS THE POSITION OF THE BODY.  
21 BUT IT'S SO--

22 MS. SCHMAUSS: OFFICER KELLY TESTIFIED AT LENGTH  
23 ABOUT IT. HE TESTIFIED THIS IS A DRAWING HE MADE AND YES,  
24 IT IS KIND OF WEIRD LOOKING. BUT HE EXPLAINED IT. THAT  
25 WAS THE POSITION OF THE BODY AND WHICH WAY SHE WAS  
26 LAYING. AND HE DREW THE TOOL BOX IN AND HE DREW THE BAG.  
27 IT IS NOT ARTFUL, BUT HE TALKED TEN MINUTES ABOUT IT.

28 MR. ABLARD: HE DID DO A DIAGRAM OF THE HOUSE.

1 THE COURT: I WILL RECEIVE IT. 68.

2 MR. ABLARD: JUDGE, THE OBJECTION ON THAT, THAT WAS  
3 THE DNA DIAGRAM.

4 THE COURT: RECEIVED. 76 THROUGH 80, CASSETTE.

5 MR. ABLARD: THE JURY HAS ALREADY HEARD THEM.

6 HOWEVER, ONCE AGAIN, I RENEW MY OBJECTION AS INITIALLY  
7 THAT I OBJECT TO THE JURY HEARING AT ALL.

8 MS. SCHMAUSS: IT SHOWS NOT ONLY THE TESTIMONY BUT  
9 DEMEANOR AND SO ON AND SO FORTH.

10 MR. ABLARD: SO, I OBJECT TO THOSE AS BEING

11 PREJUDICIAL. AND THAT 76 OR 69 INCLUSIVE. I MOVE ON TO  
12 80. 80 NEEDS TO BE ADMITTED.

13 THE COURT: WELL, EXCUSE ME. I AM GOING TO RULE ON 76  
14 THROUGH 69-- THOSE ARE THE THROUGH 78. THOSE ARE THE  
15 STATEMENTS MADE, THE THREE SIDES OF THE CASSETTE. THEY  
16 HAVE BEEN PLAYED. THE COURT RULED THEY ARE ADMISSIBLE  
17 RIGHT OR WRONG? THEY ARE IN.

18 79 IS A COPY OF A PAGE OF THE TV GUIDE. THAT WAS  
19 STIPULATED TO.

20 MS. SCHMAUSS: RIGHT.

21 THE COURT: THAT'S RECEIVED.

22 MR. ABLARD: THAT'S TRUE. ACTUALLY, I CROSSED THAT  
23 OUT. IT WAS ONLY 76 THROUGH 67. AND THEN 80.

24 THE COURT: 80. ALL RIGHT. 80 IS AS FOLLOWS:

25 HERE'S WHAT'S HAPPENING TO THE TRANSCRIPT. THE CORRECTED,  
26 REDACTED, FINAL COPY THAT APPEARS TO TRANSCRIBE THAT WHICH  
27 THE JURY HEARD WILL BE MARKED AS AN EXHIBIT AND AVAILABLE  
28 FOR THEM.

1 MR. ABLARD: YES.

2 THE COURT: THE NON-REDACTED TRANSCRIPT WILL BE  
3 MARKED AS 80 PRIME 1, NOT TO BE DELIVERED TO THE JURY, BUT  
4 PRESERVED FOR THE RECORD. THE RECORD, I THINK THEREAFTER,  
5 I THINK AMPLY SHOWS THAT ALL REDACTIONS ARE BY AGREEMENT  
6 EXCEPTED BY THOSE THE RECORD RULED ON WHICH ARE PART OF  
7 THE RECORD. AND THEREFORE, THE RECORD IS PROTECTED WITH  
8 ONLY THE WE DON'T HAVE TO GO THROUGH THE YELLOW AND THE  
9 GREEN AND ALL THE REST OF IT.

10 MR. ABLARD: THAT IS CORRECT.

11 THE COURT: SO, WE HAVE TWO. WE HAVE 80 PRIME, OR 80  
12 SUB A OR WHATEVER WE WANT TO CALL IT WHICH IS  
13 NON-REDACTED. WE HAVE 80 REAL WHICH IS REDACTED. AND THE  
14 RECORD REFLECTS BY AGREEMENT EXCEPT BY WHERE THE COURT  
15 MADE ORDERS. THAT'S THE NEED OF THAT.

16 WHAT ELSE?

17 MR. ABLARD: WE HAVE TO GO BACK TO PHOTOS OF THE  
18 VICTIM. JUST ALERT THE CLERK THAT RIGHT NOW, THE  
19 NON-REDACTED IS 80, SO WHEN WE GET THAT BACK.

20 THE COURT: I TELL YOU WHAT WE DO. KEEP THE RECORD  
21 VERY CLEAR. IT SAYS REDACTED. BUT IT'S ONLY GOT THE  
22 YELLOW ON IT.

23 MS. SCHMAUSS: IT REDACTED IN YELLOW.

24 THE COURT: ALL RIGHT. THE NON-REDACTED BUT MARKED  
25 WILL BE 80. 81 IS GOING TO BECOME A NEW EXHIBIT WHICH  
26 WILL BLACK THROUGH THE WHICH HAS BEEN ORDERED OR AGREED  
27 REDACTED FROM 80 WHICH WILL GO TO THE JURY. HOW IS THAT.

28 MR. ABLARD: GREAT. THANK YOU.



1 THE COURT: SO, WE ARE GOING TO ADD AN 80 THAT WE  
2 DON'T YET HAVE. THOSE PHOTOGRAPHS YOU HAVE IN HAND.

3 MS. SCHMAUSS: I WILL AGREE OR I WON'T ARGUE ABOUT  
4 NUMBERS 38 AND 39.

5 THE COURT: NOT RECEIVED.

6 MS. SCHMAUSS: MY ONLY PROBLEM IS I STILL WANT NUMBER  
7 41 BECAUSE I THINK IT IS THE ONLY ONE THAT SHOWS THE CHILD  
8 TOY THAT HAS BEEN REFERRED TO NUMEROUS TIMES IN THIS  
9 TRIAL.

10 THE COURT: RECEIVED. WHAT ELSE?

11 MR. ABLARD: WE HAVE THE 42 THROUGH 56 INCLUSIVE  
12 PHOTOS OF THE VICTIM.

13 THE COURT: DIDN'T 40--I DIDN'T.

14 MR. ABLARD: WHAT NUMBERS. YES, 42 THROUGH 56  
15 EXCLUSIVE.

16 MS. SCHMAUSS: I DON'T HAVE THOSE.

17 THE COURT: I HAVE THEM.

18 MS. SCHMAUSS: HE WANTS 41 BACK. DID YOU WANT TO  
19 COPY OR DO YOU RATHER NOT.

20 THE COURT: AS PART OF THE THING ON HERE? I DON'T  
21 KNOW WHICH OF THOSE.

22 DO YOU NEED IT?

23 MS. SCHMAUSS: YES.

24 THE COURT: ALL RIGHT.

25 MS. SCHMAUSS: THOSE ARE NOT MERELY AS GRAPHIC AS THE  
26 NEXT CASE.

27 THE COURT: I KNOW. BUT THIS IS A LITTLE GIRL.

28 MS. SCHMAUSS: A LITTLE BOY ON THE NEXT CASE.

1 MR. ABLARD: INTERESTING LINE BUT I HAVE A QUESTION.  
2 IF I MAY OBJECT FOR THE RECORD AS TO THOSE AUTOPSY PHOTOS.  
3 I DON'T THINK THAT THEY ARE NEEDED THAT MUCH. THERE HAS  
4 BEEN TESTIMONY OF THE BRUISE ON THE BACK OF THE SKULL  
5 WHERE THE JURY CAN LOOK AT THOSE AND DECIDE FOR THE  
6 BRUISES OR WHATEVER THERE WAS IS REALLY A BIT NEBULOUS.  
7 AND I THINK GIVEN THOSE, THE ACTUAL AUTOPSY PHOTOS, WHAT  
8 THEY LOOK LIKE FOR THE VALUE THAT THE JURY WOULD GET,  
9 REALLY BE DEMINIMIS. THERE'S NOTHING THERE. DOESN'T  
10 SHOW ANYTHING EXCEPT A SCALP TORN AWAY, A BIG RED BLOODY  
11 MASS.

12 MS. SCHMAUSS: I THINK THEY ARE VERY IMPORTANT. THEY  
13 SHOW VERY GRAPHICALLY THE INJURY TO THIS CHILD.

14 THE COURT: BUT THEY ARE NOT DESCRIBED BY ANY WITNESS  
15 THAT THEY ARE MARKS THAT YOU TELL REALLY.

16 MS. SCHMAUSS: DESCRIBED BY DR. SHERIDAN IN GREAT  
17 DETAIL TALKING ABOUT THE AUTOPSY PICTURES.

18 THE COURT: TALKING ABOUT THESE WHERE THEY GOT HER  
19 SKIN AND STUFF. HE DESCRIBED IN GREAT DETAIL THE  
20 INJURIES, THE VARIOUS INJURIES OF TEMPLE, AS HE CALLED IT.  
21 AND THEN TO THE BACK OF THE HEAD. THAT'S WHAT THEY SHOW.  
22 THERE'S ONLY THREE.

23 MR. ABLARD: ONE PICTURE IS WORTH A THOUSAND WORDS,  
24 YOU KNOW.

25 MS. SCHMAUSS: YEAH. AND I THINK THE JURY HAS THE  
26 RIGHT AND THE DUTY TO LOOK AT THOSE.

27 MR. ABLARD: THE PROBLEM BECOMES TWO THINGS, JUDGE.  
28 ONE, SOME BRUISING ON THE INSIDE OF THE TEMPLE AND HE

1 TALKED ABOUT THE BRUISE.

2 THE COURT: THE PICTURES SHOW THE BLOOD IN THE  
3 PARTICULAR AREAS. IS RELEVANT. I DON'T LIKE THEM. BUT  
4 THEY ARE RECEIVED.

5 THE CLERK: ALL OF THEM?

6 THE COURT: WELL, THOSE THREE, 54, 5, AND 6. THANK  
7 YOU. NOW, THE REST OF THESE ALL ARE APPEAR TO BE ABOUT  
8 THE SAME THING. THEY ALL HAVE HER IN VARIOUS STAGES OF  
9 THE EMERGENCY ROOM. WHAT DOES THAT SHOW?

10 MS. SCHMAUSS: SHOWS THE BODY, THE CHILD VERY SHORTLY  
11 AFTER SHE WAS REMOVED FROM THE CLOSET. THERE WAS A  
12 STATEMENT IN TRANSCRIPT SHE LOOKED LIKE SHE WAS SLEEPING.  
13 THAT'S WHAT SHE LOOKS LIKE. THE DEFENDANT CLAIMING SHE  
14 LOOKS DEAD. SHE LOOKED BLUE.

15 THE JURY CAN SEE FOR THEMSELVES. SHE LOOKS LIKE A  
16 LITTLE GIRL SLEEPING.

17 MR. ABLARD: THE PROBLEM IS THOSE WERE TAKEN NOT IN  
18 THE CLOSET, BUT THEY ARE TAKEN AT THE HOSPITAL. WE DON'T  
19 KNOW EXACTLY WHAT POINT.

20 THE COURT: GIVE ME ANOTHER BASIS FOR THE--

21 MS. SCHMAUSS: HERE IS REDNESS ON THE NECK, 43.

22 THE COURT: RIGHT.

23 MR. ABLARD: THAT IS--

24 THE COURT: THAT IS DESCRIBED. RECEIVED.

25 MR. ABLARD: I SHOULD INDICATE, JUDGE, IF I MAY, THAT  
26 THE TEMPLE WAS-- THERE WERE NO EXTERNAL BRUISING ON THE  
27 NECK. IT WAS ALL INTERNAL. THE PROBLEM IS THAT IS GOING  
28 TO BE CONFUSING. BECAUSE THAT WAS FROM RESUSCITATION .

1       THERE WAS NO BRUISING ON THE EXTERNAL PORTION OF THE NECK.

2           MS. SCHMAUSS: NOT BY THE TIME THE DOCTOR GOT HER.

3       THEY GOT HER SOME TWENTY-FOUR HOURS LATER AFTER SHE WAS IN  
4       THE DEEP FREEZE.

5           MR. ABLARD: THAT'S WHAT AUTOPSIES ARE ABOUT. THEY  
6       CAN TELL IF THE SKIN IS DISCOLORED ON THE OUTSIDE OR  
7       INSIDE.

8           THE COURT: 43 IS RECEIVED.

9           MR. ABLARD: OKAY.

10          THE COURT: 52 IS NOT. 51 IS NOT. 50, WHAT DOES THAT  
11       HELP US DECIDE. THAT'S THAT LIVIDITY. NO EVIDENCE OF  
12       LIVIDITY. NOBODY QUALIFIED OR HAD AN OPINION. 53.

13          MS. SCHMAUSS: WHAT NUMBER WAS THE LIVIDITY?

14          THE COURT: 50.

15          MR. ABLARD: THAT'S NOT.

16          THE COURT: NOT. 50.

17          53 IS RECEIVED. SHOWS THE TORN FRENULUM.

18          MS. SCHMAUSS: ALSO, THERE WAS TALK ABOUT A BREATHING  
19       TUBE. WE HAD A PICTURE SHOWING THAT.

20          THE COURT: THE BREATHING TUBE?

21          MS. SCHMAUSS: RIGHT. WHETHER THAT COULD HAVE  
22       INJURED HER FRENULUM. AND HE TALKED ABOUT THAT.

23          THE COURT: WELL, YOU CAN'T TELL BECAUSE IT IS ALL  
24       TAPED. AND THERE'S INJURY IN EXISTENCE. SO, IT DOESN'T  
25       TELL ME WHAT ANY OF THE REST OF THESE ASSIST US IN  
26       DECIDING.

27          MS. SCHMAUSS: WELL, THE REDNESS ON THE NECK, I WOULD  
28       AGAIN--

1 THE COURT: I DIDN'T I HAVE ONE OF THOSE.

2 MS. SCHMAUSS: DO YOU HAVE ONE OF THOSE?

3 MR. ABLARD: WE ALREADY HAVE A RED NECK ONE.

4 MS. SCHMAUSS: GOT A RED-NECK ONE.

5 THE COURT: SO, 50--

6 MS. SCHMAUSS: OKAY. 46 SHOWS HER SHIRT WITH HER.

7 THE COURT: 50, 51, 52 ARE NOT RECEIVED.

8 MS. SCHMAUSS: HOW ABOUT 46, IF I CHOOSE 46 OUT OF  
9 ALL OF THESE TO SHOW? LOOKS LIKE SLEEPING LITTLE GIRL.

10 THE COURT: 46 IS IN.

11 MS. SCHMAUSS: I AM ALMOST DONE.

12 THE COURT: OKAY. 46 IS IN.

13 MS. SCHMAUSS: ONLY ONE I WANT IS 47 TO SHOW THE SIZE  
14 OF THE CHILD AND THAT'S RIGHT AFTER SHE DIED. IT IS VERY  
15 RELEVANT.

16 THE COURT: THE SIZE.

17 MS. SCHMAUSS: THIS IS A GOOD LONG SHOT OF HER SIZE.

18 THE COURT: IT IS RECEIVED.

19 MS. SCHMAUSS: WHAT NUMBER?

20 MR. ABLARD: OBJECTION NOTED TO THAT FOR THE RECORD?

21 MS. SCHMAUSS: WHAT WAS THE OTHER ONE I JUST GOT?

22 MR. ABLARD: THERE HAS BEEN TESTIMONY OF SIZE OF  
23 GIRL. WE HAVE A BIG PICTURE OF THE GIRL. THIS IS ON THE  
24 ACTUAL AUTOPSY TABLE. AND I THINK IT IS HIGHLY  
25 PREJUDICIAL AN CUMULATIVE.

26 MS. SCHMAUSS: THEREFORE, 44, 45, 42, 44, 45, 48, AND  
27 49 ARE NOT RECEIVED; CORRECT.

28 THE COURT: THAT IS CORRECT.

1 MR. ABLARD: SAY THAT AGAIN.

2 MS. SCHMAUSS: 40-- AGAIN, IN ORDER AGAIN, 42, 44,  
3 45, 48, AND 49 ARE NOT RECEIVED.

4 MR. ABLARD: YOU HAVE THE REST.

5 THE COURT: OKAY.

6 MR. ABLARD: I THINK THAT'S IT. AND ALL OF MY  
7 OBJECTIONS ARE NOTED.

8 THE COURT: YES.

9 MR. ABLARD: THANK YOU.

10 MS. SCHMAUSS: THANK YOU. HERE IS THE NOT-RECEIVED.

11 THE COURT: DO YOU HAVE A HUNCH AS TO HOW WE ARE  
12 PROCEEDING TOMORROW? WE CAN BE OFF THE RECORD.

13 (PROCEEDINGS NOT REPORTED.)

14 MR. ABLARD: NUMBER 41 IS OUT; RIGHT.

15 THE COURT: NO, IN.

16 MR. ABLARD: THEN, JUDGE, I LIKE TO HAVE THAT  
17 CROPPED.

18 MS. SCHMAUSS: SEX IS CUT OUT, I THINK.

19 MR. ABLARD: WELL, YEAH. BUT THERE'S NO SEX ON THAT.  
20 CAN YOU CAN'T SEE IT. IT IS LIKE A BOX.

21 THE COURT: YOU CAN'T READ IT.

22 MS. SCHMAUSS: I KNOW.

23 MR. ABLARD: YEAH. I KNOW. BUT WHEN I FIRST LOOKED  
24 AT IT, I KNEW IT WAS SOMETHING. I AM NOT GOING TO TELL  
25 YOU WHY. IT IS RATHER OBVIOUS WHAT IT IS, JUDGE. THERE'S  
26 TWO OF US HERE THAT KNEW WHAT IT WAS. I WOULD MAKE A  
27 MOTION SIMPLY TO HAVE THAT PART CROPPED OUT. THE REST OF  
28 IT COMES IN.

1 THE COURT: DENIED. THE REAL WORLD SNEAKS IN. WE  
2 DON'T CUT OUT EVIDENCE THAT EXISTS IN THE REAL WORLD.

3 MR. ABLARD: YOUR HONOR, I CAN READ THAT. THAT'S  
4 THE PROBLEM. I CAN READ IT. I MEAN IT IS CLEAR AS DAY.

5 IT SAY CHINA SEX GIRL. THAT'S THE PROBLEM. I MEAN, I CAN  
6 READ IT.

7 MS. SCHMAUSS: I CAN'T.

8 MR. ABLARD: HOW DID I KNOW WHAT IT WAS.

9 THE COURT: BECAUSE YOU READ IT IN THE OTHER PICTURE  
10 AND KNEW, YOU KNOW.

11 MR. ABLARD: IT IS RIGHT THERE, JUDGE.

12 THE COURT: SO, I WOULD REQUEST THAT THAT'S  
13 PREJUDICIAL, PARTICULARLY GIVEN THE PROBLEMS IN THIS CASE  
14 WITH MOTIVE AND THE LACK THEREOF, AND ALL THAT, I WOULD  
15 REQUEST THAT WE CROP THAT ONE LITTLE JUST CROP THE--

16 MS. SCHMAUSS: SCRATCH OUT CHINA SEX DOLL.

17 THE COURT: PUT A PIECE OF TAPE ON IT. TELL THEM NOT  
18 TO LOOK UNDERNEATH.

19 MR. ABLARD: THAT WILL BE FINE. IF I CHANGE MY MIND,  
20 WE CAN PULL THE TAPE OF.

21 MS. SCHMAUSS: HOW ABOUT IF WE LINE THROUGH THE CHINA  
22 SEX GIRL THING.

23 MR. ABLARD: I AM SUBMITTING IT.

24 THE COURT: IF YOU HAVE A PICTURE OF A MAGAZINE ON  
25 YOUR FLOOR WHEN YOU HAVE YOUR ROOM PHOTOGRAPHED AFTER THE  
26 BODY IS FOUND IN IT, THAT'S JUST THE WAY LIFE IS.

27 THANK YOU.

28 (PROCEEDINGS CONTINUED TO THE FOLLOWING DAY.)

1 RANCHO CUCAMONGA, CALIFORNIA; THURSDAY, NOVEMBER 2, 1995

2  
3 10:00 A.M.

4 DEPARTMENT 4

HON. ROBERT E. LAW, JUDGE

5  
6 APPEARANCES: SET FORTH ON THE TITLE PAGE.

7  
8 (GAIL GREENLEE, C-8647, OFFICIAL REPORTER.)

9 ---###---

10 (THE FOLLOWING PROCEEDINGS WERE HELD IN

11 OPEN COURT OUTSIDE THE PRESENCE OF THE JURY:)

12 THE COURT: PEOPLE VS. JOHNSON. EVERYBODY IS PRESENT  
13 BUT THE JURY. WHAT CAN I DO FOR YOU?

14 MR. ABLARD: JUST BRIEFLY, YOUR HONOR. WITH REGARD  
15 TO THE STIPULATION MS. SCHMAUSS AND I DISCUSSED  
16 YESTERDAY. AND STIPULATION BE--

17 MS. SCHMAUSS: THAT NO POLYGRAPH TEST WAS EVER OR THE  
18 DEFENDANT NEVER DID TAKE A POLYGRAPH TEST. PERIOD.  
19 WITHOUT ANY FURTHER AMPLIFICATION.

20 THE COURT: WHY.

21 MR. ABLARD: IT WAS IN THE-- I THOUGHT THAT THEY WERE  
22 GOING TO REDACT IT. THEY THOUGHT I AS GOING TO REDACT IT.  
23 IT WAS IN THE TAPE, THE ISSUE OF THE POLYGRAPH. AND THERE  
24 WAS NEVER ONE TAKEN.

25 MS. SCHMAUSS: HE DIDN'T REQUEST IT. I DIDN'T TAKE  
26 OUT ANYTHING ON MY OWN.

27 MR. ABLARD: AND SO WELL, BE THAT AS IT MAY, THE JURY  
28 HAS HEARD THAT THERE IS A REQUEST FOR IT. OFFICER SAYS



1 WELL, THE NEXT SCENE COMING. AND IT JUST SORT OF GOES OFF  
2 IN ORBIT. AND I SORT OF A LITTLE CONFUSING. I THINK TO  
3 THE JURY.

4 MS. SCHMAUSS: WE WILL STIPULATE THAT THE DEFENDANT  
5 DID NOT TAKE A POLYGRAPH TEST.

6 MR. ABLARD: THAT'S FINE. WELL, ONE WAS NOT GIVEN.

7 MS. SCHMAUSS: YES. BUT SEE, THAT'S OPEN TO  
8 INTERPRETATION TOO. HE GOT AN ATTORNEY. AND WE ARE NOT  
9 ALLOWED--

10 THE COURT: I HEARD THAT ON THE TAPE. IT SURPRISED  
11 ME SLIGHTLY. I AM GOING TO, IF YOU FOLKS AGREE, INFORM  
12 THE JURY THAT THERE WAS NO POLYGRAPH EXAM.

13 MS. SCHMAUSS: PERIOD.

14 THE COURT: IN THIS CASE.

15 MS. SCHMAUSS: THERE WAS NONE.

16 THE COURT: AND IF THERE HAD BEEN, I WOULDN'T ADMIT  
17 IT INTO EVIDENCE ANYWAY BECAUSE THEY ARE NOT RELIABLE.  
18 ANYWAY, THANK YOU.

19 MR. ABLARD: AS FAR AS MY 1118 MOTION.

20 THE COURT: IS THAT--

21 MR. ABLARD: I RESERVE THAT UNTIL AFTER MY CASE IS IN  
22 CHIEF.

23 THE COURT: WELL, YOU CAN MAKE ONE ANY TIME YOU  
24 CHOOSE.

25 MR. ABLARD: THANK YOU. WE ALSO HAVE AN AGREEMENT  
26 THAT MS. RETHORN, MR. RIGGS, AND MR. LOPEZ COULD BE  
27 PRESENT DURING THE OFFICER'S TESTIMONY. BUT THEN THEY  
28 WOULD BE EXCLUDED DURING EACH OTHER'S TESTIMONY.

1 MS. SCHMAUSS: YOU MEAN MR. RIGGS.

2 MR. ABLARD: DIDN'T I SAY THAT?

3 MS. SCHMAUSS: I THINK YOU SAID MR. LOPEZ.

4 MR. ABLARD: I AM SORRY. THOSE THREE.

5 THE COURT: FINE.

6 MR. ABLARD: THANK YOU. AND ALSO AS TO WHEN

7 CRAWFORD AND FERRERA TESTIFY, THEY BE EXCLUDED.

8 THE COURT: FINE. ARE WE READY FOR THE JURY?

9 MR. ABLARD: YES, YOUR HONOR.

10 (WHERE UPON THE JURY ENTERED THE COURTROOM, AND

11 THE FOLLOWING PROCEEDINGS WERE HELD:)

12 THE COURT: GOOD MORNING, LADIES AND GENTLEMEN. IT'S  
13 BEEN AGREED BY THE LAWYERS THAT I SHOULD ADVISE YOU AS  
14 FOLLOWS: THERE WAS MENTION ON THE TAPE YOU HEARD ABOUT A  
15 POLYGRAPH EXAMINATION. THERE WAS NO POLYGRAPH  
16 EXAMINATION. AND IF THERE HAD BEEN, IT WOULDN'T BE  
17 ADMITTED INTO EVIDENCE IN MY COURT ANYWAY. IF THAT HELPS  
18 YOU ANY.

19 THE DEFENSE IS GOING TO START THEIR CASE NOW.

20 MR. ABLARD.

21 MR. ABLARD: THANK YOU VERY MUCH, YOUR HONOR. WE  
22 CALL OFFICER DONLEY TO THE STAND.

23 THE COURT: OFFICER DONLEY, YOU ARE STILL UNDER OATH  
24 FROM EARLIER.

25 MICHAEL DONLEY

26 HAVING BEEN PREVIOUSLY SWORN, RESUMED THE STAND, WAS  
27 EXAMINED, AND TESTIFIED AS FOLLOWS:

28 DIRECT EXAMINATION

1 BY MR. ABLARD:

2 Q OFFICER DONLEY, HOW ARE YOU?

3 A YES, SIR.

4 Q OKAY. THE OTHER DAY, WE DISCUSSED THAT YOU WERE  
5 THE LEAD INVESTIGATOR IN THIS MATTER; IS THAT CORRECT?

6 A YES.

7 Q OKAY. AND AS THE LEAD INVESTIGATOR, AS THE  
8 OTHER REPORTS FROM THE OTHER OFFICERS CONCERNING THIS  
9 INCIDENT WOULD GO, BE APPROVED BY A SERGEANT AND THEN COME  
10 BACK TO YOU?

11 A CORRECT.

12 Q AND YOU WOULD THEN REVIEW THOSE AND MAKE  
13 DETERMINATIONS IF FURTHER ACTIONS WERE TO BE TAKEN?

14 A YES.

15 Q SO, WE CAN ASSUME THEN THAT YOU HAVE READ THE  
16 REPORTS AND INTERVIEWS IN THIS MATTER?

17 A YES.

18 Q OKAY. THE FIRST INTERVIEW THAT YOU HAD WITH  
19 MR. JOHNSON WAS THAT THE TAPED INTERVIEW THAT WE HEARD  
20 YESTERDAY THAT YOU PERSONALLY HAD WITH?

21 A YES, SIR, THAT I HAD WITH HIM.

22 Q YES, CORRECT?

23 A YES.

24 Q THERE WAS ALSO AN INTERVIEW WITH MR. JOHNSON BY  
25 OFFICER BALES. THAT WAS WHEN BALES BASICALLY FIRST  
26 ARRIVED, WAS AT THE HOUSE THE MORNING OF THE INCIDENT?

27 A YES, SIR. AND BRITTANY WAS DISCOVERED TO BE  
28 DEAD.

1 Q ARE YOU AWARE OF ANY TIME THAT MR. JOHNSON GOT  
2 TOGETHER WITH MR. RIGGS AND MRS. RETHORN TO DISCUSS ANY  
3 TYPE OF WHAT HAPPENED?

4 A NO, I AM NOT AWARE.

5 Q OKAY. ON THE DAY OF THE INCIDENT, DID  
6 MR. BALES, OFFICER BALES INTERVIEW RIGGS AND RETHORN?

7 A YES.

8 Q OKAY. AND THEN ON THE 11TH, YOU WERE PRESENT IN  
9 INTERVIEW WITH RIGGS AND RETHORN THAT WAS TAPED?

10 A I BELIEVE THAT WAS ON THE 12TH.

11 Q WAS THAT ON THE 12TH?

12 A YES.

13 Q OKAY. AND IN YOUR INTERVIEW WITH MR. JOHNSON  
14 THAT WAS TAPED, DID HE TELL YOU THAT HE WAS AWAKENED THAT  
15 MORNING WHEN DARIN YELLED AT BRITTANY NOT TO COME IN  
16 WITHOUT KNOCKING?

17 MS. SCHMAUSS: OBJECTION, YOUR HONOR. TAPES SPEAK  
18 FOR THEMSELVES.

19 THE COURT: OVERRULED. YOU MAY ANSWER THE QUESTION.

20 A YES, SIR.

21 Q BY MR. ABLARD: AND WHEN YOU REVIEWED OFFICER  
22 BALES' REPORT, DO YOU REMEMBER READING RETHORN TOLD BALES  
23 THAT SHE AND RIGGS WERE AWAKENED BY BRITTANY COMING INTO  
24 THE ROOM AND THAT RIGGS TOLD HER NOT TO ENTER THE ROOM  
25 WITHOUT KNOCKING?

26 A YES.

27 Q OKAY. ARE YOU AWARE IN THAT SAME REPORT BALES  
28 WRITES THAT RIGGS STATES THAT HE WAS AWAKENED AT 7 A.M. BY

1 BRITTANY COMING INTO THE ROOM; THAT HE SHOUTED AT BRITTANY  
2 NOT TO COME IN WITHOUT KNOCKING?

3 MS. SCHMAUSS: I AM GOING TO OBJECT TO HEARSAY ON THE  
4 BALES' REPORT; NOT PERSONAL KNOWLEDGE OF THIS OFFICER.

5 MR. ABLARD: YOUR HONOR, IT GOES TO THE ISSUE OF THE  
6 INVESTIGATION STATE OF MIND.

7 THE COURT: HIS STATE OF MIND?

8 MR. ABLARD: IT GOES TO THE OFFICER'S STATE OF MIND  
9 AND WHAT HE DID TO INVESTIGATE THIS MATTER WITH THE  
10 INFORMATION THAT HE HAD.

11 THE COURT: SO, YOU ARE ASKING IF HE HAD THIS AS  
12 INFORMATION. ALREADY THESE STATEMENTS ARE OUT-OF-COURT  
13 STATEMENTS BY SOMEBODY WHO ISN'T TESTIFYING TO THEM. SO,  
14 THEY ARE GOING TO BE ADMITTED FOR THE LIMITED PURPOSES OF  
15 WHAT THE OFFICER DID WHEN HE GATHERED THE INFORMATION, AND  
16 NOT FOR THE TRUTH THEREOF.

17 MR. ABLARD: THANK YOU.

18 THE COURT: I WILL INSTRUCT YOU ON THAT WHEN I ADMIT  
19 EVIDENCE FOR LIMITED PURPOSES, YOU ARE ONLY TO UTILIZE IT  
20 FOR THAT LIMITED PURPOSE. GO AHEAD.

21 A YOU ARE GOING TO HAVE TO REPEAT YOUR QUESTION.

22 Q BY MR. ABLARD: OKAY. IN BALES' REPORT--

23 A YES.

24 Q -- ORIGINAL REPORT, DO YOU RECALL RIGGS STATED  
25 THAT HE WAS AWAKENED AT 7 A.M. BY BRITTANY COMING INTO THE  
26 ROOM; THAT HE SHOUTED AT BRITTANY TO COME IN WITHOUT  
27 KNOCKING?

28 A THAT RIGGS SHOUTED?

1 Q YES?

2 A YES.

3 Q OKAY. NOW, ON THE FOLLOWING DAY, THE INTERVIEW  
4 WITH JENNIFER RETHORN CONDUCTED BY YOURSELF AND OFFICER--  
5 IS IT DEMOET?

6 A YES, SIR.

7 Q -- DEMOET DID RETHORN TELL YOU THAT BRITTANY CAME  
8 IN THE ROOM THAT MORNING AND DARIN GAVE HER A HUG AND  
9 KISS, THEN YOU ASKED HER IF DARIN SAID ANYTHING ABOUT  
10 BRITTANY ABOUT DON'T COME IN THE ROOM UNTIL YOU KNOCK, AND  
11 RETHORN SAID NOT THAT MORNING?

12 A YES. THAT WAS IN THE INTERVIEW ON THE 12TH, NOT  
13 THE 11TH.

14 Q YES. ON THE SAME DAY IN THE INTERVIEW WITH YOU  
15 AND OFFICER DEMOET, CONDUCTED WITH DARIN RIGGS, DID DARIN  
16 TELL YOU THAT HE REMEMBERED THAT AT SOME POINT IN THE  
17 MORNING, BRITTANY CAME IN THE ROOM; HE WAS STILL ASLEEP,  
18 BUT SHE GAVE HIM A HUG OR SOMETHING, AND THEN ASKED HIM IF  
19 HE REMEMBERED SAYING ANYTHING ELSE TO HER. AND HE  
20 RESPONDED NO?

21 A HE SAID HE DID NOT REMEMBER THAT IT WAS-- HE WAS  
22 NOT COMPLETELY AWAKE.

23 Q DID HE AT ANY TIME IN THAT INTERVIEW RESPOND NO  
24 INSTEAD OF I DON'T REMEMBER?

25 A I WILL HAVE TO REFER TO MY NOTES.

26 Q IF YOU WILL.

27 A HE TOLD ME THAT HE HAD NOT.

28 Q OKAY. SO, ON THAT INITIAL INTERVIEW BY BALES,

1 BOTH MY CLIENT, MR. RIGGS, AND MS. RETHORN WERE ALL  
2 CONSISTENT THAT DARIN YELLED ABOUT THE KNOCKING?

3 A YES.

4 MS. SCHMAUSS: CALLS FOR SPECULATION, YOUR HONOR. I  
5 DON'T THINK HE IS-- AGAIN, THIS IS CALLING FOR HEARSAY.

6 THE COURT: WHETHER OR NOT THAT'S A CONCLUSION THAT  
7 CAN BE DRAWN IS FOR YOU FOLKS TO DRAW. I ASSUME THAT IS  
8 FOUNDATIONAL FOR CONDUCT.

9 MR. ABLARD: YES.

10 THE COURT: ALL RIGHT.

11 MR. ABLARD: THANK YOU.

12 Q BY MR. ABLARD: AND THEN NOT THE NEXT DAY, BUT  
13 ACTUALLY ON THE 12TH, BOTH MR. RIGGS AND MS. RETHORN  
14 DIDN'T TELL YOU ABOUT THE YELLING, BUT THEY TALKED ABOUT  
15 THE HUGS AND THE KISSES?

16 A THAT IS CORRECT.

17 Q OKAY. WHAT ACTION IF ANY DID YOU TAKE TO  
18 CLARIFY THIS DISCREPANCY?

19 A NONE AT THAT POINT OTHER THAN TO ASK HIM  
20 SPECIFIC QUESTIONS ABOUT IT.

21 Q SO, YOU ASKED HIM SPECIFIC QUESTIONS ABOUT  
22 EARLIER YOU TOLD AN OFFICER THAT YOU YELLED ABOUT THE  
23 KNOCKING AND NOW YOU ARE SAYING THAT YOU JUST WALKED IN  
24 AND HUGS AND KISSES?

25 A WELL, YOU GOT TO UNDERSTAND THAT ON THE 11TH OR  
26 THE 12TH WHEN I DID THE INTERVIEWS WITH MS. RETHORN AND  
27 MR. RIGGS, I HAD NOT HAD A CHANCE AT THAT POINT TO READ  
28 OFFICER BALES' REPORT. HIS REPORT HAD NOT BEEN FURNISHED

1 TO ME. AT A LATER TIME, I WAS ABLE TO READ IT.

2 Q OKAY. SO, AT A LATER TIME, YOU READ IT?

3 A UH-HUH.

4 Q THAT'S WHEN YOU REALIZED THERE WAS A  
5 DISCREPANCY?

6 A RIGHT.

7 Q OKAY. AND THEN AT THAT POINT, WHAT, IF ANYTHING,  
8 DID YOU DO TO CLARIFY THAT DISCREPANCY WITH MR. RIGGS AND  
9 MS. RETHORN?

10 A I DIDN'T DO ANYTHING BECAUSE THEY HAD STATED TO  
11 ME THAT THEY HAD REMEMBERED THEY HAD A BETTER CLEARER VIEW  
12 AS TO WHAT HAPPENED ON THE SECOND DAY. THEY TOLD ME THAT  
13 THEIR INTERVIEW WITH OFFICER BALES WAS DONE AT A TIME WHEN  
14 THEY WERE UPSET ABOUT THEIR DAUGHTER'S DEATH.

15 Q OKAY. THAT WAS SORT OF THE END OF THAT TOPIC.  
16 THAT WORKED FOR YOU?

17 A WELL, I TOOK INTO CONSIDERATION THE  
18 INCONSISTENCIES. HOWEVER, LIKE I SAID, PEOPLE FORGET  
19 THINGS. PEOPLE DON'T SEE THINGS EXACTLY THE SAME. AND  
20 ANYTIME YOU INTERVIEW SOMEBODY, YOU ARE GOING TO GET A  
21 STATEMENT THAT CONFLICTS SOMEWHAT.

22 Q NOW, IN YOUR INTERVIEW WITH MR. JOHNSON, THAT  
23 WAS ON THE 10TH?

24 A YES.

25 Q DID HE TELL YOU THAT AFTER SPEAKING WITH DARIN  
26 AT THE WINDOW, HE GOT UP, GOT DRESSED, WENT TO THE  
27 KITCHEN, AND TRIED TO CALM DOWN JENNIFER, THEN HE TOOK A  
28 PICTURE OF BRITTANY AND WENT ACROSS THE STREET TALKED TO



1 THE LADY, WENT NEXT DOOR, NO ONE ANSWERED THE DOOR, THEN  
2 HE STOPPED A COUPLE OF CARS THAT WERE DRIVING BY ON  
3 EXETER?

4 MS. SCHMAUSS: COMPOUND. IF HE CAN ANSWER, I  
5 SUPPOSE IT'S ALL RIGHT.

6 THE COURT: CAN YOU ANSWER IT?

7 THE WITNESS: YES. HE SAID THAT.

8 Q BY MR. ABLARD: NOW, DID YOU VERIFY THAT HE HAD  
9 TALKED TO ANY OF THE NEIGHBORS?

10 A YES, I DID.

11 Q WHICH ONES?

12 A WELL, I HAD SPOKEN TO THE NEIGHBORS ACROSS THE  
13 STREET. AND THEY SAID THAT SOMEBODY HAD COME ACROSS TO  
14 TALK TO THEM-- THEY DIDN'T KNOW WHO IT WAS-- AND HAD GIVEN  
15 HIM SOME INFORMATION. I WENT THROUGH THE NEIGHBORS TO THE  
16 NORTH WHICH THERE WAS NO ANSWER FOR SEVERAL DAYS, ON THE  
17 SOUTH, AND ALSO ABOUT FOUR OR FIVE NEIGHBORS ACROSS THE  
18 STREET.

19 Q OKAY. NOW, THE NEIGHBOR ACROSS THE STREET, DID  
20 YOU GIVE HIM A DESCRIPTION OF MY CLIENT TO DETERMINE  
21 WHETHER OR NOT IT WAS MY CLIENT THAT WENT ACROSS THE  
22 STREET?

23 A YES. I HAD ASKED THEM IF THEY COULD DESCRIBE.  
24 THEY SAID THEY DIDN'T REMEMBER WHO IT WAS. THEY COULDN'T  
25 EVEN TELL ME IF IT WAS A NEIGHBOR.

26 Q RIGHT. BUT IT WAS CONSISTENT SOMEBODY WENT  
27 ACROSS THE STREET?

28 A YES.

1 Q AND THE NEIGHBOR ON THE NORTH SIDE, HE WENT  
2 BACK, INTERVIEWED THEM?

3 A I WENT BACK SEVERAL TIMES; WAS NEVER ABLE TO GET  
4 A HOLD OF HIM.

5 Q OKAY. SO, THAT'S NEVER BEEN VERIFIED BECAUSE  
6 THEY WERE NEVER HOME?

7 A WELL, NOT WHEN I AM AROUND.

8 Q RIGHT. OKAY. DID YOU HAVE ANYBODY ELSE GO OUT  
9 THERE AND CHECK?

10 A NO.

11 Q OKAY. DO YOU EVER TRY AND CALL THEM AFTER AN  
12 HOUR OR?

13 A I HAD NO IDEA WHAT THEIR PHONE NUMBER WAS.

14 Q OKAY. DO YOU RECALL ONCE YOU REVIEWED BALES'  
15 REPORT THAT JENNIFER RETHORN STATED THAT SHE HAD QUICKLY  
16 GOTTEN PHOTOS OF BRITTANY OUT AND GAVE THEM TO BOTH OF THE  
17 ROOMMATES, LOPEZ AND JOHNSON IMMEDIATELY WENT OUT INTO THE  
18 STREETS OR THEY APPARENTLY WERE TRYING TO LOCATE THE  
19 MISSING GIRL?

20 A YES.

21 Q AND ON THE INTERVIEW ON THE 12TH, DARIN RIGGS,  
22 DID RIGGS TELL YOU THAT HE KNEW AT ONE POINT, HE SAW  
23 JOHNSON RUN ACROSS THE STREET, KNOCK ON THE DOOR, JOHNSON  
24 KNOCKED ON THE TWO NEIGHBORS' DOORS?

25 A YES.

26 Q THESE TWO STATEMENTS THAT MS. RETHORN GAVE THEN  
27 IMMEDIATELY GOING OUT AND THE RIGGS' STATEMENT THEY SEEMED  
28 CONSISTENT?

1           A     NO. SHE, MS. RETHORN, ORIGINALLY SAID THAT HE  
2 DIDN'T TAKE A PICTURE. HOWEVER, SHE LATER IN HER  
3 STATEMENT MENTIONED THAT HE HAD GONE OUT AND POSSIBLY GAVE  
4 A FALSE DESCRIPTION.

5           Q     INTERESTING. HE WENT AND CHECKED ON THIS FALSE  
6 DESCRIPTION, FOUND OUT THAT THERE WAS NO BASIS FOR THAT.  
7 IS THAT NOT CORRECT?

8           A     THAT'S CORRECT.

9           Q     THANK YOU.

10          A     THAT IS CORRECT.

11          Q     YES. IT IS. AND YOU SAY THAT INITIALLY,  
12 MS. RETHORN SAID THAT HE REFUSED THE PICTURE?

13          A     YES.

14          Q     CHECK IF YOU WOULD, PLEASE, THE REPORTS. AND  
15 VERIFY WHAT WE ARE SAYING HERE, THAT THE FIRST REPORT BY  
16 MS. RETHORN INDICATED THAT HE IMMEDIATELY WENT OUT WITH  
17 THE--

18          A     THE FIRST ONE WITH OFFICER BALES.

19          Q     BALES?

20          A     OFFICER BALES.

21          MS. SCHMAUSS: YOUR HONOR, AGAIN, SO THAT I DON'T  
22 KEEP INTERRUPTING, SAME ADMONITION TO THE HEARSAY; NOT  
23 OFFERED FOR THE TRUTH, LIMITED PURPOSE.

24          THE COURT: WELL, I DON'T KNOW WHAT HE IS GOING TO  
25 ASK.

26          MS. SCHMAUSS: BECAUSE HE IS BEING ASKED CONSISTENTLY  
27 ABOUT WHAT DOES BALES' REPORT SAY. AND I AM TAKING THAT  
28 HE IS ASKING HIM FOR THE DISCREPANCIES. AGAIN, BECAUSE

1 OBVIOUSLY THIS OFFICER CAN'T SAY WHAT SHE TOLD BALES. HE  
2 WASN'T THERE.

3 Q BY MR. ABLARD: LET ME REPHRASE. IN BALES'  
4 REPORT, IF THAT IS WHAT IS SAID IN BALES' REPORT?

5 A WELL, IF I CAN FIND IT.

6 MS. SCHMAUSS: AGAIN, THAT'S HEARSAY, WHAT IS SAID IN  
7 BALES' REPORT.

8 THE COURT: WELL, OFFERED FOR THE PURPOSES OF  
9 IMPEACHMENT TOO.

10 MS. SCHMAUSS: BUT HE CAN'T IMPEACH HER THROUGH  
11 BALE'S REPORT.

12 THE COURT: NO. BALES IMPEACHING BALES. BECAUSE HE  
13 WROTE THE REPORT.

14 MR. ABLARD: DO I NEED TO RESPOND?

15 THE COURT: NO. I WILL PERMIT THE INQUIRY.

16 Q BY MR. ABLARD: THANK YOU. YOU MAY WANT TO  
17 TURN TO ORIGINAL REPORT, PAGE 5, PARAGRAPH 3.

18 A PAGE 5 PARAGRAPH 3.

19 Q CORRECT.

20 A YES. SHE MENTIONED THAT SHE GAVE LOPEZ AND  
21 JOHNSON A PICTURE. AND HE IMMEDIATELY WENT OUT INTO THE  
22 STREET WHERE THEY APPARENTLY WERE TRYING TO LOCATE A  
23 MISSING GIRL.

24 Q AND THEN ON THE INTERVIEW OF THE 12TH WITH  
25 RETHORN, THIS IS WHEN SHE TOLD YOU THAT HE REFUSED TO TAKE  
26 A PICTURE TO THE NEIGHBORS; CORRECT?

27 A CORRECT.

28 Q AND THE SAME INTERVIEW, THAT IS WHEN MS. RETHORN

1 SAID THAT MY CLIENT WASN'T RUNNING, HE WASN'T SEARCHING  
2 OUTSIDE THE HOUSE. HE WOULDN'T TAKE THE PICTURE WITH HIM  
3 OF HER?

4 A YOU ARE REFERRING TO MY REPORT?

5 Q RIGHT.

6 A THAT'S RIGHT. YES.

7 Q CORRECT. NOW THE ORIGINAL STATEMENT THAT YOU  
8 GAVE THAT HE IMMEDIATELY RAN OUT WITH THE PICTURES AND  
9 THEN HEARD STATEMENT IN OUR INTERVIEW WITH HER, THOSE YOU  
10 CONSIDER THOSE TO BE INCONSISTENT STATEMENTS?

11 A YES.

12 Q AND WHAT DO YOU DO TO VERIFY THOSE-- CLARIFY, I  
13 SHOULD SAY?

14 A I TOOK INTO CONSIDERATION THE CIRCUMSTANCES AND  
15 FIGURED THAT SHE HAD TIME TO THINK ABOUT IT.

16 Q OKAY. DID YOU GO TO MS. RETHORN'S AND SAY WE  
17 HAVE SOME INCONSISTENT STATEMENT HERE, WE NEED AN  
18 EXPLANATION?

19 A NO. BECAUSE LATER IN THE INTERVIEW, SHE  
20 CLARIFIED IT AND SAID THAT DARIN HAD SEEN HIM GO OUTSIDE  
21 WITH THE PICTURES.

22 Q BECAUSE AT SOME POINT, DARIN TOLD HER THAT HE  
23 HAD SEEN--

24 A YES.

25 Q CORRECT?

26 A APPARENTLY, YES.

27 Q APPARENTLY. SO, THAT IS A LOT DIFFERENT THAN  
28 HER VERY FIRM STATEMENT THAT SHE WAS PRESENT, HE TOOK THE

1 PICTURE AND RAN OUT?

2 A VERY MUCH.

3 MS. SCHMAUSS: OBJECTION; ARGUMENTATIVE. CALLS FOR  
4 CONCLUSION.

5 THE COURT: THAT'S CORRECT. LADIES AND GENTLEMEN, YOU  
6 GET TO MAKE THE CONCLUSION.

7 Q BY MR. ABLARD: THAT, NOW AT SOME POINT, YOU  
8 WENT TO THRIFTY DRUG STORE TO TALK TO STEVE LOPEZ;  
9 CORRECT?

10 A THAT IS CORRECT.

11 Q AND YOU STATED IN YOUR REPORT THAT THIS PERSON  
12 HAS PREVIOUSLY BEEN INTERVIEWED BY OTHER MONTCLAIR POLICE  
13 OFFICERS. BUT YOU WANTED TO CLARIFY WHAT HAD HAPPENED  
14 THE MORNING OF THE DEATH; CORRECT?

15 A YES.

16 Q AND LOPEZ, DURING HIS INTERVIEW SAID  
17 APPROXIMATELY 900 HOURS ON SUNDAY MORNING LOPEZ WOKE UP,  
18 HE WALKED OUT OF HIS BEDROOM AND FOUND THAT THE LIVING  
19 ROOM TELEVISION WAS ON, BUT HE DID NOT SEE BRITTANY. HE  
20 WENT THROUGH THE SLIDER AT THE NORTHEAST SIDE OF THE  
21 FAMILY ROOM AND WENT OUTSIDE TO SMOKE A CIGARETTE.  
22 APPROXIMATELY 9:15, BRITTANY'S FATHER, DARIN RIGGS, ASKED  
23 MR. LOPEZ THROUGH THE WINDOW IF HE HAD SEEN BRITTANY;  
24 CORRECT?

25 A YES.

26 Q READING OFFICER BALES' ORIGINAL REPORT THAT  
27 STATES THAT LOPEZ HEARS A PARENT YELLING. SO, HE GETS UP,  
28 GETS DRESSED, THEN COMES OUT?

1 MS. SCHMAUSS: OBJECTION, UNLESS IT IS STATED AS  
2 THAT IS THAT WHAT BALES'S REPORT SAYS, NOT DID HE TELL  
3 BALES. THAT BECAUSE HE COULDN'T KNOW THAT.

4 MR. ABLARD: I THINK I DID MENTION THE REPORT. IF I  
5 DIDN'T, THAT'S WHAT WE ARE TALKING ABOUT.

6 THE COURT: ALL RIGHT. LIMITED.

7 A YES.

8 Q BY MR. ABLARD: I BELIEVE SUPPLEMENTAL 4 REPORT,  
9 YOUR REPORT, STATES THAT LOPEZ TOLD YOU THAT AFTER JOHNSON  
10 FINALLY CAME OUT OF HIS BEDROOM, HE SETS DOWN ON THE FLOOR

11 NEXT TO THE CABINET BETWEEN HIS ROOM AND LOPEZ'S ROOM AT  
12 THE END OF THE HALLWAY AND BECAME HYSTERICAL;  
13 CORRECT--PAGE 4, PARAGRAPH ONE.

14 A THAT'S MY SUPP?

15 Q YES, SIR.

16 A CAN YOU READ IT BACK AGAIN, PLEASE. I DIDN'T  
17 CATCH.

18 Q YES. OKAY. THAT LOPEZ TOLD YOU THAT AFTER  
19 JOHNSON FINALLY CAME OUT OF HIS ROOM, HE SET DOWN ON THE  
20 FLOOR NEXT TO THE CABINET BETWEEN HIS ROOM AND LOPEZ'S  
21 ROOM AT THE END OF THE HALLWAY AND BECAME HYSTERICAL?

22 A YES.

23 Q OKAY. NOW, AND OFFICER BALES' ORIGINAL REPORT,  
24 PAGE 4, PARAGRAPH ONE, DID YOU CONSIDER THE FOLLOWING:  
25 LOPES STATES THAT HE MERELY JUMPED UP INTO HIS PICKUP  
26 TRUCK WITH A PHOTOGRAPH OF BRITTANY AND BEGAN CANVASING  
27 THE AREA IN AN ATTEMPT TO LOCATE THE MISSING JUVENILE.

28 A YES.

1           Q     ON THE 12TH, RETHORN TELLS YOU ABOUT WHEN SHE  
2 GETS TO CHUCK'S DOOR, BEFORE CHUCK CAME OUT OF THE ROOM  
3 AND SHE IS ASKING WHAT BRITTANY WAS WEARING. AND SHE  
4 TELLS YOU STEVE HAD ALREADY TOOK OFF IN HIS CAR TO GO  
5 LOOK?

6           A     YES.

7           Q     DO YOU RECALL THAT SAME INTERVIEW, BUT WITH  
8 RIGGS?

9           MS. SCHMAUSS: WHICH INTERVIEW? BY WHAT OFFICER?

10          Q     BY MR. ABLARD: RIGGS' INTERVIEW WITH DONLEY,  
11 DEMOET?

12          A     YES.

13          Q     OKAY. THAT DARIN SAID THAT STEVE TOOK OFF AND  
14 LEFT EVEN BEFORE C.J. OPENED THE DOOR FOR THE FIRST TIME.  
15 AND RIGGS RESPONDED YES?

16          A     YES.

17          Q     OKAY. AS THE INVESTIGATOR IN THIS CASE, IS THAT  
18 CONSIDERED AN INCONSISTENCY BETWEEN MR. LOPEZ SEEING WHAT  
19 HE OBSERVED IN THE HALLWAY, AND THE OTHER WITNESS THAT SAY  
20 IN FACT HE WAS GONE?

21          A     YES, APPARENTLY HE DIDN'T SEE THAT. HE WAS  
22 RELAYING WHAT HE HAD HEARD. IF YOU READ THE PARAGRAPH, HE  
23 IS PUTTING IN INFORMATION THAT HE APPARENTLY HAD HEARD  
24 FROM THE MOTHER. THAT'S WHAT HE IS JUST SAYING, THAT IT  
25 WAS UNUSUAL THAT AFTER HE LOOKED BACK AT IT, THAT THOSE  
26 EVENTS OCCURRED THE WAY THEY DID. I DON'T BELIEVE AT THE  
27 TIME HE STATED THAT, THAT HE ACTUALLY MEANT HE HAD SEEN  
28 IT.



1 Q DID HE SAY THAT HE HEARD-- THAT HE DISCUSSED  
2 THAT WITH THE MOTHER AND THAT'S WHAT SHE TOLD HIM?

3 A NO. I HAVE ASKED HIM SINCE THEN.

4 Q OH. SO, YOU TALKED TO HIM AGAIN AND ASKED HIM  
5 ABOUT THIS?

6 A I ASKED HIM THIS MORNING. I ASKED HIM, YOU  
7 KNOW, ABOUT THE DISCREPANCY. AND HE EXPLAINED TO ME THAT  
8 THAT IS WHAT HE HAD BEEN TOLD BY THE MOTHER.

9 Q IS THERE A REASON YOU DIDN'T ASK HIM LIKE  
10 BEFORE, LIKE A COUPLE OF YEARS AGO?

11 A THAT'S THE WAY I TOOK IT WHEN HE TOLD ME THAT HE  
12 WAS PUTTING IN INFORMATION ABOUT OBVIOUSLY ABOUT THINGS HE  
13 HAD NOT SEEN.

14 Q SO, SO, THERE WAS JUST SHOWING THAT HE THOUGHT  
15 IT WAS STRANGE, NOT THAT HE ACTUALLY SEEN MR. JOHNSON.

16 Q OKAY. BUT AT SOME POINT THAT CHANGED IN YOUR  
17 MIND BECAUSE YOU ASKED ABOUT IT TODAY?

18 A THAT IS CORRECT. I JUST WANTED TO MAKE SURE.

19 Q AT SOME POINT, DID YOU RECEIVE AN ANONYMOUS  
20 PHONE CALL AND THE CALLER EXPRESSED CONCERN--

21 MS. SCHMAUSS: OBJECTION, YOUR HONOR. THIS IS  
22 HEARSAY, TOTAL HEARSAY. AND I'D LIKE TO BE HEARD AT SIDE  
23 BAR, PLEASE.

24 (SIDE BAR; NOT REPORTED)

25 MR. ABLARD: THANK YOU, YOUR HONOR.

26 Q BY MR. ABLARD: AT SOME POINT, YOU RECEIVED AN  
27 ANONYMOUS CALL REGARDING THIS CASE; CORRECT?

28 A YES.

1 Q AND WHICH WAS THAT?

2 A I'M SORRY.

3 Q WHEN WAS THAT?

4 A THE 13TH OF OCTOBER OF '93.

5 Q OKAY. AND AS IT WAS MERELY ANONYMOUS, WHAT DID  
6 YOU DO ABOUT IT?

7 A WELL, FIRST OF ALL, THE FACT THAT IT WAS  
8 ANONYMOUS--

9 THE COURT: JUST NEED YOU TO ANSWER THE QUESTIONS.

10 A WHAT DID I DO?

11 THE COURT: THAT'S WHAT HE ASKS, NOT MEANDER OFF. ALL  
12 RIGHT. I MADE SOME RULINGS ON THIS WHOLE INQUIRY. AND  
13 YOU DON'T ANSWER HIS QUESTIONS, THEN EVERYTHING I DO IS  
14 USELESS.

15 THE WITNESS: OKAY.

16 MR. ABLARD: THANK YOU.

17 THE COURT: AND I DON'T LIKE THAT.

18 THE WITNESS: OKAY.

19 Q BY MR. ABLARD: WHAT DID YOU DO AFTER YOU  
20 RECEIVED THE ANONYMOUS CALL?

21 A WELL, I REVIEWED THE RAP SHEETS ON ALL THE  
22 PEOPLE INVOLVED HERE JUST TO MAKE SURE. I ALSO  
23 RECONFIRMED THAT THERE WAS NO-- I DON'T KNOW IF I WANT--

24 MS. SCHMAUSS: YOUR HONOR, I THINK THE WITNESS  
25 DOESN'T UNDERSTAND WHAT HE IS BEING ASKED.

26 Q BY MR. ABLARD: OKAY. LET ME--

27 THE WITNESS: IT IS HARD FOR ME TO EXPLAIN IT WITHOUT  
28 KNOWING WHAT I CAN SAY AND CAN'T SAY.

1 MR. ABLARD: FINE.

2 THE COURT: THEN BE MORE SPECIFIC. YOU CAN LEAD THE  
3 WITNESS IF YOU WISH. HE IS CLEARLY NOT YOUR WITNESS.  
4 THIS IS THE LEAD INVESTIGATOR.

5 MR. ABLARD: I WOULD SAY THAT IT WOULD BE AN ADVERSE  
6 WITNESS.

7 THE COURT: WITHOUT FURTHER DISCUSSION.

8 MR. ABLARD: WOULD BE AN UNDERSTATEMENT. THANK YOU.

9 Q BY MR. ABLARD: DID YOU TAKE ANY STEPS TO LOCATE  
10 WHO THE ANONYMOUS CALLER WAS? DID YOU AT SOME POINT GO TO  
11 MR. RIGGS OR MS. RETHORN TO FIND OUT IF THEY HAD ANY  
12 INFORMATION ON THAT?

13 A YES.

14 Q OKAY. WHEN WAS THAT?

15 A THAT WAS THE OCTOBER 24TH, 1994.

16 Q OKAY. SO--

17 A OR 25TH, '94.

18 Q OKAY. SO, IN OCTOBER, OCTOBER OF '94, YOU WENT  
19 TO THEM. AND BECAUSE OF THEIR EFFORT, THEY FOUND OUT WHO  
20 THE ANONYMOUS CALLER WAS; IS THAT CORRECT?

21 A I FOUND OUT WHO THE ANONYMOUS CALLER WAS. THEY  
22 GAVE ME A LIST OF PEOPLE THEY TALKED TO.

23 Q RIGHT. AND THE LIST THAT THEY GAVE YOU WAS THE  
24 LIST FROM THE DETERMINED I GUESS THE GATHERING ON OCTOBER  
25 11TH, THE DATE AFTER BRITTANY'S DEATH; CORRECT?

26 A THAT IS CORRECT.

27 Q OKAY. THOSE WERE THE PEOPLE THAT HAD ATTENDED  
28 THAT GATHERING; CORRECT-- AT LEAST THAT'S WHAT YOU

1 REQUESTED?

2 A WELL, I BELIEVE THE LIST I GOT WAS A LIST OF THE  
3 PEOPLE THEY HAD TALKED TO BETWEEN THE TIME OF THE DEATH  
4 AND THE TIME OF THE 13TH. I DON'T BELIEVE THAT I HAD TO  
5 DO WITH ONLY THE PEOPLE--

6 Q SO, THE LIST INCLUDED BOTH THE PEOPLE WITH WHOM  
7 THEY SPOKE AND THE PEOPLE THAT WERE AT THIS OCTOBER 11TH  
8 GATHERING?

9 A YES.

10 Q OKAY. AND AT SOME POINT, YOU FOUND OUT WHO THE  
11 ANONYMOUS CALLER WAS?

12 A YES.

13 Q CORRECT?

14 A THAT IS CORRECT.

15 Q AT SOME POINT, YOU INTERVIEWED THAT ANONYMOUS  
16 CALLER?

17 A CORRECT.

18 Q AND WHEN DID YOU FIND OUT WHO THE ANONYMOUS  
19 CALLER WAS?

20 A THE 26TH.

21 Q OF?

22 A 94. I'M SORRY. OCTOBER 26, 1994.

23 Q OKAY. AND WHO WAS THAT ANONYMOUS CALLER? WAS  
24 THAT JENNIFER FERRERA?

25 A HANG ON A SECOND.

26 Q OKAY?

27 A I TAKE THAT BACK. I CONTACTED HER ON THE 27TH  
28 OF OCTOBER, 1994 AND YES, THAT WAS JENNIFER FERRERA.

1 Q AND YOU INTERVIEWED HER AND DID SHE TELL YOU  
2 THAT?

3 MS. SCHMAUSS: YOUR HONOR, I AM GOING TO OBJECT TO  
4 WHAT SHE TOLD HIM IN LIGHT OF OUR DISCUSSION.

5 MR. ABLARD: OUR DISCUSSION, YOUR HONOR, IS GOING  
6 WITH STATEMENTS OF THE INCONSISTENCIES ONLY.

7 THE COURT: THANK YOU.

8 MR. ABLARD: THANK YOU.

9 Q BY MR. ABLARD: DID SHE DURING THAT INTERVIEW  
10 TELL YOU THAT JENNIFER RETHORN SAID THAT AT SOME POINT  
11 THEY GOT UP BEFORE 8:57 AND GOT JENNIFER SOME BREAKFAST OR  
12 SOMETHING? DO YOU RECALL THAT?

13 A I AM GOING TO HAVE TO READ IT, YOUR HONOR.

14 MS. SCHMAUSS: ALSO, YOUR HONOR, THIS IS NOT FOR THE  
15 TRUTH OF WHAT JENNIFER FERRERA STATED. IT'S FOR WHAT HE  
16 MIGHT HAVE HEARD AND WHAT HE FOLLOWED UP ON.

17 MR. ABLARD: THAT'S CORRECT.

18 MS. SCHMAUSS: FOR LIMITED PURPOSE.

19 THE COURT: THAT IS CORRECT. APPARENTLY, WE ARE  
20 TRACKING THE INVESTIGATION OR LACK THEREOF.

21 MR. ABLARD: THANK YOU.

22 THE COURT: THAT'S CORRECT.

23 MR. ABLARD: YES, THANK YOU.

24 THE COURT: THANK YOU. SO, THIS IS ADMITTED FOR  
25 THAT PURPOSE AS OPPOSED TO WHETHER THERE'S ANY TRUTH WHAT  
26 SOMEBODY SAID SOMEWHERE IS NOT AN ISSUE BEFORE YOU YET.  
27 IT MAY BECOME ONE LATER. BUT AT THIS POINT, IT IS NOT.

28 THE WITNESS: I THINK I AM GOING TO ANSWER YOUR

1 QUESTION.

2 A SHE MADE THE COMMENT THAT THEY WERE ASLEEP AND  
3 DID NOT HEAR ANYTHING IS WHAT I REMEMBER REFERRING TO.

4 Q BY MR. ABLARD: THAT'S ONE OF THEM. THEY ARE  
5 ASLEEP AND DID NOT HEAR ANYTHING?

6 A OKAY. AND WHAT WAS THE SECOND QUESTION OR THE  
7 FIRST QUESTION.

8 Q OKAY. THE FIRST QUESTION WAS ACTUALLY DID  
9 RETHORN EVER MENTION ANYTHING TO MS. FERRERA IN YOUR  
10 INTERVIEW THERE ABOUT RETHORN AND/OR RIGGS GETTING UP AND  
11 GETTING SOME JUICE OR BREAKFAST OR SOMETHING FOR BRITTANY?

12 A YES.

13 Q THANK YOU. NOW, ONCE YOU HAD THAT INFORMATION,  
14 DID YOU THEN GO TO MS. RETHORN AND GET A CLARIFICATION OF  
15 THAT INCONSISTENCY?

16 A NO.

17 Q IN YOUR EXPERIENCE AND TRAINING IN THIS CASE,  
18 YOU CONSIDER THAT A MAJOR INCONSISTENCY; TRUE?

19 A WELL.

20 Q YES, OR NO?

21 A IF TRUE, YES.

22 Q OKAY. I TAKE IT YOU JUST DIDN'T BELIEVE IT?

23 A NO. IT IS NOT THAT I DIDN'T BELIEVE IT. IT  
24 IS NOT THAT. WHEN PEOPLE RELATE THINGS.

25 Q YES OR NO, OFFICER, PLEASE?

26 MS. SCHMAUSS: YOUR HONOR, HE ASKED HIM TO EXPLAIN.  
27 AND NOW HE IS CUTTING HIM OFF. AND HE IS TRYING TO  
28 EXPLAIN.

1 BY MR. ABLARD: IF I DID, I WAS MISTAKEN. I THOUGHT  
2 I CALLED FOR A YES OR NO ANSWER.

3 THE COURT: WHY DON'T YOU ASK ANOTHER QUESTION AND  
4 START OVER.

5 MR. ABLARD: I WILL. THANK YOU.

6 Q BY MR. ABLARD: YOU NEVER CONFRONTED RETHORN  
7 WITH THAT INFORMATION; CORRECT?

8 A ABOUT THE JUICE?

9 Q ABOUT THEM GETTING UP EARLY AND GETTING BRITTANY  
10 SOME JUICE?

11 A NO.

12 Q ALL RIGHT. NOW, THE OCTOBER 12TH INTERVIEW WITH  
13 JENNIFER RETHORN, DO YOU RECALL HER TELLING YOU THAT  
14 MR. JOHNSON KEPT ALL OF THIS CAR STUFF IN THE CORNER OF  
15 THE GARAGE BECAUSE HE WASHES AND WORKS ON HIS CAR A LOT?

16 A YES.

17 Q AND YOU RECALL THAT DURING THE INTERVIEW WITH  
18 MR. JOHNSON THAT YOU HEARD YESTERDAY THAT HE PUT BRITTANY  
19 INSIDE ON THE COUCH AND TURNED ON THE TELEVISION; WENT  
20 BACK OUTSIDE?

21 A YES.

22 Q AND THAT HE TALKED TO YOU ABOUT GOING OUT SECOND  
23 TIME. AND HE EXITED THE GARAGE DOOR?

24 A YES.

25 Q AND THAT DURING THAT SECOND TRIP HE WENT OUT AND  
26 TO CLEAN UP, CLEAN OUT THE GARAGE AND HE CLOSED UP THE  
27 GARAGE DOOR?

28 A CORRECT.

1 Q THE BIG GARAGE DOOR. SO HE GOES OUT THE GARAGE  
2 INTO THE GARAGE FROM THE INTERIOR GARAGE DOOR AND CLEANS  
3 OUT AND THEN CLOSES THE GARAGE DOOR OUT?

4 A THAT WAS MY UNDERSTANDING, YES.

5 Q OKAY. NOW, YOU REVIEWED OFFICER KELLY'S REPORT;  
6 CORRECT?

7 A YES. WHICH REPORT ARE YOU REFERRING TO?

8 Q I BELIEVE IT WAS THE SUPPLEMENTAL ONE. HE WAS  
9 THE FIRST ONE ON THE SCENE; CORRECT?

10 A YES.

11 Q AND THAT REPORT, IT STATED THAT JENNIFER RETHORN  
12 TOLD HIM THAT THEY AWAKENED. THE FRONT DOOR HAD BEEN  
13 LOCKED, AND THAT THE DOOR LEADING TO THE GARAGE AREA WAS  
14 UNLOCKED ALONG WITH THE SLIDER; CORRECT?

15 A YES.

16 Q AND THE FACT THAT SHE STATED THAT THE GARAGE  
17 DOOR WAS UNLOCKED WHEN SHE FIRST GOT UP, IN YOUR MIND DID  
18 THAT LEND CREDENCE TO THE SCENARIO THAT MY CLIENT HAD GONE  
19 OUT TO THAT GARAGE DOOR EARLIER?

20 MS. SCHMAUSS: OBJECTION; CALLS FOR A CONCLUSION.

21 THE COURT: I THINK IT DOES.

22 MR. ABLARD: YES, I DO TOO.

23 THE COURT: WHY DON'T YOU REPHRASE IT.

24 Q BY MR. ABLARD: THANK YOU. LET'S CONTINUE FOR A  
25 MOMENT. DID YOU EVER GO INTO THE GARAGE OR HAVE ANYBODY  
26 GO INTO THE GARAGE TO LOOK THROUGH TRASH CANS AND  
27 DIFFERENT THINGS TO SEE WHETHER OR NOT THERE WAS ANY  
28 MATERIAL IN THERE THAT CAN VERIFY THE STORY THAT



1 MR. JOHNSON WAS OUT THE SECOND TIME?

2 A NO, I DIDN'T. NOT AT THAT--

3 Q OKAY. NOW, I BELIEVE IN YOUR REPORT, OFFICER,  
4 ON 10-11, OFFICER BALES MET RIGGS AND RETHORN AT THE  
5 RESIDENCE SO THEY COULD PICK UP PERSONAL ITEMS; IS THAT  
6 CORRECT?

7 A YES.

8 Q AND ON 10-13, OFFICER DONLEY, YOU ACCOMPANIED  
9 ANGELA JOHNSON TO THE HOUSE SO SHE COULD PICK UP SOME  
10 ITEMS; CORRECT?

11 A CORRECT.

12 Q ARE THERE REPORTS, ANY OTHER REPORTS, OF ANYONE  
13 ELSE BEING IN THAT HOUSE DURING THAT PERIOD OF TIME, SAY  
14 UP UNTIL THE 20TH OF OCTOBER?

15 A ON THE 11TH, THE TIME WE WENT BACK, THE TIME I  
16 WAS WITH OFFICER BALES, IS THAT WHAT YOU'RE REFERRING TO?

17 Q WELL, IN THE REPORT, AS I UNDERSTAND IT, THERE  
18 IS TWO SEPARATE INSTANCES WHERE OFFICERS ACCOMPANY OR  
19 MET--

20 A UH-HUH.

21 Q SOME PEOPLE THAT ARE GOING BACK INTO THAT HOUSE?

22 A YES.

23 Q OKAY. ONE WAS ON THE 11TH, ONE ON THE 13TH?

24 A YES.

25 Q WERE THERE ANY OTHER REPORTS SAYING THAT  
26 OFFICERS WERE WITH PEOPLE IN THAT HOUSE FROM THE 10TH TO  
27 THE 20TH?

28 A THERE WAS IN MY REPORT SAYING THAT I WAS WITH

1 ANGELA. AND MY REPORT STATING THAT I WAS WITH MR. JOHNSON  
2 AND OFFICER BALES. IF THAT IS WHAT YOU ARE ASKING.

3 Q RIGHT. SO, YOU WERE WITH ANGELA ON THE 13TH?

4 A YES.

5 Q OKAY. YOU WERE WITH MR. JOHNSON AND OTHERS ON  
6 THE 11TH?

7 A YES.

8 Q OTHER THAN THOSE TWO DATES?

9 A OH.

10 Q YEAH. I DIDN'T MAKE THAT VERY CLEAR. OTHER  
11 THAN THOSE TWO DATES, ARE THERE ANY REPORTS INDICATING  
12 THAT ANY OFFICERS ACCOMPANIED ANYONE ELSE BACK TO THAT  
13 HOUSE BETWEEN THE 10TH OF OCTOBER AND THE 20TH OF OCTOBER?

14 A THE ONLY REPORT THAT WOULD BE AFTER THE 13TH  
15 WOULD BE MINE WHEN I WENT BACK ON THE 20TH WITH THE  
16 DISTRICT ATTORNEY'S OFFICE TO DO THE VIDEO TAPE.

17 Q RIGHT. THAT'S IT?

18 A THAT'S IT. BUT NOTHING BETWEEN THE 13TH UNTIL  
19 THE 20TH.

20 Q RIGHT. AND OTHER THAN THE 11TH AND THE 13TH AND  
21 THAT 20TH WHEN YOU AND THE DISTRICT ATTORNEY WENT THERE TO  
22 VIDEOTAPE?

23 A YES.

24 Q THERE'S NO REPORT OF ANYBODY ELSE GOING BACK IN  
25 THERE?

26 A NONE THAT I AM AWARE OF.

27 Q THAT'S SOMETHING YOU'D BE AWARE OF?

28 A I WOULD HOPE SO.

1 Q OKAY. ON 10-12 INTERVIEW WITH MR. JOHNSON, HE  
2 TOLD YOU ABOUT THE PHONE RINGING. HE PICKED UP THE PHONE.  
3 IT WAS DARIN; THAT DARIN ASKED BRITTANY IF BRITTANY WAS IN  
4 THE ROOM; CORRECT?

5 A ON THE INTERVIEW OF 10-12, ARE YOU REFERRING TO  
6 THE ONE ON THE 10TH?

7 Q YES, OCTOBER 12TH, I AM SORRY?

8 A I AM GOING TO HAVE YOU ASK ME YOUR QUESTION  
9 AGAIN, PLEASE.

10 Q I DIDN'T HEAR. I AM SORRY.

11 A I AM GOING TO HAVE YOU ASK ME YOUR QUESTION  
12 AGAIN, PLEASE.

13 Q OKAY.

14 A YOU THREW ME OFF WHEN YOU SAID THE 12TH.

15 Q RIGHT. OKAY. DURING THE INTERVIEW ON THE 12TH,  
16 MR. JOHNSON MENTIONED TO YOU THAT THE TELEPHONE RANG; HE  
17 PICKED IT UP. IT WAS DARIN. DARIN ASKED IF BRITTANY WAS  
18 IN THE ROOM. HE SAID NO?

19 A YES. AND THE INTERVIEW ON THE 10TH, YES.

20 Q YES. AND IN OFFICER BALES' REPORT, ORIGINAL  
21 REPORT, WERE YOU ALSO AWARE THAT MR. JOHNSON REPORTED TO  
22 BALES IN THE INTERVIEW THAT TOOK PLACE SHORTLY AFTER WHEN  
23 THE BODY WAS FOUND, ON THAT DAY, THE SAME THING. IN OTHER  
24 WORDS, A PHONE HAD RUNG AND--

25 A NOT WHEN THE BODY HAD BEEN FOUND.

26 Q NO. NOT WHEN THE BODY THAT DAY ON THE 10TH?

27 A YES.

28 Q RIGHT. OKAY. AND BOTH RETHORN AND RIGGS IN THAT

1 ORIGINAL REPORT MENTIONED THAT THAT SAME EVENT HAPPENED?

2 A WELL, I CAN'T FIND IT HERE. BUT IT SEEMS TO ME  
3 THAT THEY DID SAY THAT.

4 Q RIGHT.

5 A IF YOU GOT A REFERENCE POINT.

6 Q I AM LOOKING FOR MY OWN REFERENCE POINT,  
7 ORIGINAL, PAGE 5, PARAGRAPH FIVE.

8 A PAGE 5, PARAGRAPH FIVE.

9 Q THAT'S RIGGS MENTIONED THAT THIS CALLER HAD HUNG  
10 UP AND HE WAS ON THE PHONE ASKING ABOUT BRITTANY?

11 A BALES' REPORT.

12 Q THAT WAS--

13 A YES.

14 Q AND PARAGRAPH THREE, JENNIFER RETHORN STATES  
15 THAT AS WELL.

16 A YES.

17 Q OKAY. DID MR. LOPEZ IN YOUR INTERVIEW ON  
18 OCTOBER 11TH TELL YOU ABOUT THE SAME PHONE CALL THAT WE  
19 ARE DISCUSSING RIGHT NOW?

20 A YES.

21 Q NOW, ON THE 10-11 INTERVIEW WITH JENNIFER  
22 RETHORN, ABOUT THIS SAME PHONE CALL, DID SHE TELL YOU NO,  
23 THAT THE PHONE WOULD HAVE WOKEN THEM UP?

24 A YES.

25 Q AND IN THE RIGGS' INTERVIEW OF 10-11 YOU ASKED  
26 RIGGS IF HE CALLED JOHNSON ON THE PHONE OR TALKED TO  
27 JOHNSON ON THE PHONE THAT MORNING. HE SAID NO.

28 A YES. HE SAID HE DIDN'T REMEMBER.

1 Q IS THERE A PLACE THOUGH THAT HE SAID NO, DID HE  
2 SAY NO ON PAGE 16, LINE 23?

3 A PAGE 16, PAGE 16. I HAVE ONLY GOT PAGE 6.

4 MR. ABLARD: MAYBE I HAVE THE PRELIMINARY HEARING.

5 THAT'S A POSSIBILITY.

6 MS. SCHMAUSS: YES.

7 MR. ABLARD: DO YOU THINK SO?

8 MS. SCHMAUSS: YES.

9 Q BY MR. ABLARD: OKAY. AS TO THE STATEMENT OF I  
10 DON'T REMEMBER, OKAY. OR NO, I GUESS I CAN PULL THAT OUT

11 TO SAVE TIME, DO YOU CONSIDER THOSE STATEMENTS RETHORN AND  
12 RIGGS TO BE INCONSISTENT WITH THE OTHER STATEMENTS TO  
13 BALES THAT IN FACT THAT PHONE CALL HAD TAKEN PLACE?

14 A YES.

15 Q WHAT DID YOU DO TO CHECK THAT?

16 A WELL, HERE AGAIN, I DIDN'T DO ANYTHING. BECAUSE  
17 IT WAS A CHANGE IN THEIR THOUGHT PROCESS. PEOPLE FORGET  
18 STUFF.

19 Q OKAY. THAT IS CORRECT. OKAY. NOW, GOING BACK  
20 THIS MS. FERRERA, THE ORIGINAL ANONYMOUS CALLER?

21 A YES.

22 Q AS A RESULT OF THAT TIME AND THE ANONYMOUS  
23 CALLER, YOU ALSO INTERVIEWED A MS. CROCKER?

24 A YES, I DID.

25 MR. ABLARD: OKAY. I HAVE NOTHING FURTHER AT THIS  
26 TIME.

27 CROSS-EXAMINATION

28 BY MS. SCHMAUSS:

1 Q OFFICER DONLEY, YOU HAVE NO WAY OF PERSONALLY  
2 KNOWING IF OFFICER BALES WROTE DOWN EVERYTHING EVERYBODY  
3 SAID TO HIM ONE-HUNDRED PERCENT ACCURATELY; DO YOU?

4 A THAT IS CORRECT.

5 Q YOU HAVE BEEN A POLICE OFFICER FOR HOW MANY  
6 YEARS?

7 A APPROXIMATELY TWELVE.

8 Q AND I WOULD ASSUME THAT IN THOSE TWELVE YEARS  
9 HAVE YOU INTERVIEWED HUNDREDS IF NOT THOUSANDS OF PEOPLE?

10 A PROBABLY THOUSANDS.

11 Q AND IN THOSE TWELVE YEARS, ABOUT HOW MANY  
12 HOMICIDE CASES HAVE YOU INVESTIGATED?

13 A WELL, I PROBABLY BEEN INVOLVED IN TWENTY-FIVE.  
14 I HAVE PERSONALLY BEEN RESPONSIBLE FOR APPROXIMATELY OH, I  
15 WOULD SAY TEN TO FIFTEEN, SOMEWHERE ABOUT THERE.

16 Q AND THEN CASES OF OTHER TYPES, HUNDREDS?

17 A YES.

18 Q THAT YOU HAVE INVESTIGATED?

19 A YES.

20 Q IN ANY OF THOSE CASES THAT YOU HAVE  
21 INVESTIGATED, HAVE YOU EVER HAD WITNESSES A  
22 HUNDRED-PERCENT CONSISTENT WITH EACH OTHER?

23 A NO. AS A MATTER OF LAW, WHEN THEY ARE A HUNDRED  
24 PERCENT CONSISTENT, THAT'S WHEN I GET SUSPICIOUS.

25 Q WHY?

26 A WELL, IF EVERYBODY HAS THE EXACT TIMES AND THE  
27 EXACT STORIES, AND THE EXACT SCENARIO DOWN, THEN YOU START  
28 TO WONDER I WONDER IF SOMEBODY HAS MADE THAT UP. ALMOST

1 EVERY INVESTIGATION I HAVE DONE I HAVE SEEN FROM THE SMALL  
2 AMOUNT OF VARIATIONS TO A LARGE AMOUNT, EVEN WHEN THE  
3 WITNESSES THAT I KNEW WERE THERE THAT SAW IT. THEY HAVE  
4 ALL GOT A DIFFERENT OPINION, DIFFERENT VIEW. IT IS NOT  
5 UNUSUAL AT ALL.

6 Q AND IN THE STRESS OF EXCITEMENT, EVEN WHEN ONE  
7 HAS JUST LEARNED ONE'S CHILD HAS BEEN MURDERED, HAVE YOU  
8 HAD EXPERIENCES WHERE PEOPLE CAN'T EVEN REMEMBER THEIR  
9 PHONE NUMBER?

10 A IT IS A FREQUENT OCCURRENCE NOT EVEN IN A  
11 SITUATION WHERE SOMEBODY LOST THEIR CHILD, I MEAN JUST THE  
12 FACT THAT AN OFFICER IS THERE AND THAT THEY ARE UNDER A  
13 STRESSFUL SITUATION, PEOPLE SOMETIMES CAN'T REMEMBER, YOU  
14 KNOW, THEIR MOTHER'S MAIDEN NAME OR THEIR PHONE NUMBERS OR  
15 ANYTHING LIKE THAT.

16 Q AND YOU HAVE ALREADY STATED THAT ONE OF THE  
17 THINGS JENNIFER TOLD YOU TWO DAYS LATER IS THAT SHE  
18 REMEMBERED MORE BECAUSE SHE HAD TIME TO REFLECT; IS THAT  
19 TRUE?

20 A IT IS ONE OF THE REASONS WHY I WAITED UNTIL THE  
21 12TH, TWO DAYS LATER, TO GIVER HER TIME TO COME DOWN. SHE  
22 AND DARIN WERE GRIEVING. AND IT WOULDN'T BE FAIR TO  
23 ANYBODY TO EXPECT THE PARENTS OF THIS CHILD TO BE  
24 INTERVIEWED.

25 Q MR. ABLARD ASKED YOU ABOUT AN INVESTIGATION.  
26 PART OF THE INVESTIGATION WAS SOME COMMENT THAT THE  
27 DEFENDANT MAY HAVE GIVEN A FALSE DESCRIPTION OF BRITTANY.  
28 DO YOU REMEMBER THAT?

1           A     YES, MA'AM.

2           Q     DID YOU CHECK THAT OUT AND FIND OUT WHAT HAD  
3     HAPPENED THERE?

4           A     APPARENTLY IT HAD BEEN GOING FROM NEIGHBOR TO  
5     NEIGHBOR TO NEIGHBOR.  AND SOMEWHERE ALONG THE LINE THIS  
6     PERSON HAD GOT THE DESCRIPTION OF A BLOND HAired LITTLE  
7     GIRL.

8           Q     SO, IT WAS LIKE A GAME OF TELEPHONE?

9           A     PROBABLY CHANGE WITH EVERY STORY.

10          Q     SO IT WASN'T NECESSARILY THAT SOMEBODY FROM THE  
11     HOUSEHOLD GAVE A FALSE DESCRIPTION, BUT AS THE INFORMATION  
12     WAS PASSED FROM NEIGHBOR TO NEIGHBOR, IT GOT CONVOLUTED,  
13     CONTORTED?

14          A     KIND OF THE SAME WAY AS IF SOMEBODY IS TELLING A  
15     STORY ABOUT SOME OCCURRENCE.  SOMEBODY WILL TELL ONE THING  
16     AND BY THE TIME IT GETS DOWN TO THE TENTH OR ELEVENTH GUY,  
17     THE STORY IS COMPLETELY DIFFERENT.

18          Q     THE ISSUE ABOUT STEVE LOPEZ AND WHAT HE SAW AND  
19     WHAT HE MIGHT HAVE HEARD FROM SOMEONE ELSE, DID YOU ASK TO  
20     CLARIFY WITH HIM TODAY?

21          A     YES, I DID.

22          Q     THAT'S WHY YOU CLARIFIED IT WITH HIM TODAY?

23          A     YES.

24          Q     THE ANONYMOUS CALLER, IT WAS A FULL YEAR AFTER  
25     THE INCIDENT THAT YOU TALKED TO JEN FERRERA?

26          A     NO.  THE ANONYMOUS CALLER CALLED ON THE 13TH.  
27     BUT SHE DIDN'T GIVE ME ENOUGH INFORMATION WHICH KIND OF  
28     RAISED A RED FLAG RIGHT THERE.  IT SOUNDED LIKE SHE HAD A



1 VENDETTA OR SOMETHING.

2 Q OKAY. BUT THIS INTERVIEW THAT YOU HAD WITH HER  
3 THAT MR. ABLARD ASKED ABOUT ABOUT THE JUICE AND HE GOT UP  
4 AND GAVE HER JUICE?

5 A UH-HUH.

6 Q THIS WAS A YEAR LATER; IS THAT CORRECT, A YEAR,  
7 OVER A YEAR?

8 A YES.

9 Q AFTER THE INCIDENT THAT SHE CLAIMS THAT JENNIFER  
10 SAID THEY GOT UP AND GAVE HER JUICE?

11 A YES. IN FACT, SHE TOLD ME-- THERE WERE MINOR  
12 DISCREPANCIES. SHE WAS ANONYMOUS. AND THEN WHEN SHE--  
13 WHEN I TALKED TO HER AT A LATER TIME, SHE RELAYED TO ME  
14 ABOUT THE JUICE.

15 Q OKAY. DID SHE TELL YOU THAT SHE HAD WRITTEN  
16 THIS DOWN, HAD MEMORIZED IT AT THE TIME, OR ANYTHING OF  
17 THAT SORT?

18 A NO, MA'AM, SHE DID NOT.

19 Q OKAY. AND THEN YOU STARTED TO EXPLAIN THAT YOU  
20 DIDN'T INVESTIGATE THIS ANY FURTHER AND YOU SAID IF TRUE,  
21 YOU WOULD HAVE DONE SOMETHING MORE. WHAT DID YOU MEAN BY  
22 THAT?

23 A WELL, I DON'T REMEMBER EXACTLY REMEMBER THE  
24 CONTEXT, WHERE I SAID THAT.

25 Q WELL, MR. ABLARD SAID, I BELIEVE, HE WANTED TO  
26 KNOW WHY YOU DIDN'T OR HE SAID DID YOU CONFRONT JENNIFER  
27 WITH FERRERA'S COMMENTS. AND YOU SAID NO. SO, I WILL ASK  
28 YOU THIS: WHAT'S THE REASON THAT YOU DIDN'T CONFRONT

1 JENNIFER WITH MS. FERRERA'S COMMENTS?

2 A WELL, HERE AGAIN, THE TIME LAPSE, THE FACT THAT  
3 SHE WAS ANONYMOUS, THE FACT THAT DURING MY INITIAL  
4 INTERVIEW WITH HER, SHE SOUNDED LIKE SHE HAD A VENDETTA.  
5 I DON'T KNOW. I DIDN'T EVEN KNOW IF THEY KNEW EACH OTHER  
6 AT THAT POINT.

7 Q YOU JUST NOTED IT. NOW, YOU DID MAKE A FULL  
8 REPORT?

9 A MADE A FULL REPORT EXPLAINING EXACTLY WHAT WAS  
10 SAID IN FACT, I BELIEVE THE SECOND INTERVIEW WAS  
11 TAPE-RECORDED.

12 Q RIGHT. AND YOU PROVIDED THIS TO THE DEFENSE?

13 A YES, I DID.

14 Q AND YOU EVEN TOLD MS. FERRERA THAT YOU WOULD BE  
15 PROVIDING THIS TO THE DEFENSE?

16 A YES, I DID.

17 Q SO, YOU DIDN'T TRY TO HIDE ANY OF IT?

18 A NO, MA'AM.

19 Q MOVING ON TO THE DEFENDANT'S TAPE-RECORDED  
20 INTERVIEWS WITH YOU, YOU WERE ASKED ABOUT A COMMENT ABOUT  
21 THE GARAGE DOOR. AND I AM READING NOW FROM A TRANSCRIPT  
22 FROM OF TAPE TWO THAT WE HEARD YESTERDAY. PAGE 2, OR TAPE  
23 TWO, PAGE 6. IF YOU CAN FIND IT.

24 A OKAY.

25 Q AND I AM AT LINE SEVEN.

26 A OKAY.

27 Q FIND IT. JOHNSON-- WELL, I AM GUESSING MAYBE  
28 FIVE, TEN MINUTES I HAD TO SHUT THE GARAGE DOOR?

1 A YES.

2 Q HE DIDN'T SAY ANYTHING FURTHER TO YOU THAT WAS  
3 TAPE-RECORDED ABOUT THE GARAGE DOOR; DID HE?

4 A NO.

5 Q SO, YOU CAN'T TELL US WHETHER HE SHUT THE GARAGE  
6 DOOR, PADLOCKED IT, OR NOT; WALKED AROUND TO THE FRONT  
7 DOOR OR NOT-- YOU DON'T KNOW?

8 A I DON'T KNOW.

9 Q SO THAT HE SAID THAT WE HEARD IS ALL YOU KNOW  
10 ABOUT THE GARAGE DOOR?

11 A YES.

12 Q SO, WOULDN'T IT BE JUMPING TO CONCLUSIONS TO SAY  
13 WELL, JENNIFER AND DARIN MUST BE LYING ABOUT THE PADLOCK  
14 BECAUSE MR. JOHNSON DIDN'T TELL YOU WHETHER HE PADLOCKED  
15 IT OR NOT?

16 A YES.

17 Q YOU WERE ASKED BY MR. ABLARD WELL, WHY DIDN'T  
18 YOU GO TO THE GARAGE AND/OR DID YOU GO TO THE GARAGE AND  
19 TRY TO VERIFY. YOU SAID NO. WHY NOT?

20 A WELL, I WOULD HAVE NO WAY TO KNOW IF THOSE  
21 TOWELS WERE THERE FROM THE NIGHT BEFORE OR WHEN HE  
22 APPARENTLY WASHED HIS CAR OR EVEN THOUGH YOU KNOW A WEEK  
23 BEFORE THEY PROBABLY WOULD HAVE STILL BEEN WET. BUT THEY  
24 WERE THERE FROM THE NIGHT BEFORE. FINDING EVIDENCE OF  
25 SOMETHING THAT HAPPENED THAT LIKE WASHING THE CAR THAT HE  
26 APPARENTLY DID LAST NIGHT, I WOULD HAVE NO WAY TO TELL  
27 WHETHER THAT WAS THE LAST NIGHT OR FROM THAT DAY.

28 Q ALSO, WHETHER THERE WAS A PADLOCK OR NOT ON THE

1 GARAGE WHEN YOU GOT THERE, YOU WERE NOT THERE AT THE  
2 INITIAL SCENE; WERE YOU?

3 A NO.

4 Q YOU GOT THERE SOME HOURS LATER?

5 A YES.

6 Q SO, WOULD IT BE RELEVANT WHAT WAS THE STATE OF  
7 THE HOUSE HOURS AFTER THE INCIDENT?

8 A NO.

9 Q WHERE WERE PEOPLE STILL THERE?

10 A NO.

11 MS. SCHMAUSS: THANK YOU. I HAVE NOTHING FURTHER.

12 MR. ABLARD: THANK YOU, YOUR HONOR.

13 REDIRECT EXAMINATION

14 BY MR. ABLARD:

15 Q AS TO THIS GARAGE BUSINESS, IF YOU NEVER WENT  
16 OUT THERE AND LOOKED HOW WOULD YOU KNOW?

17 A HOW WOULD I KNOW?

18 Q IN OTHER WORDS YOU SAID THERE WOULD BE PROBABLY  
19 NO WAY OF KNOWING IF THERE ARE MOIST TOWELS. DID YOU EVER  
20 THEN GO OUT THERE?

21 A NO.

22 Q CONSISTENT WITH CLEANING AND FIXING UP THE CAR  
23 THAT YOU ARE ASSUMING THAT IT WOULDN'T DO ANY GOOD TO LOOK  
24 OUT THERE; RIGHT? I MEAN IT IS AN ASSUMPTION ON YOUR  
25 PART?

26 A WELL, I DON'T THINK I WAS ASSUMING. I JUST  
27 DIDN'T GO OUT THERE. IT WOULDN'T TELL ME ANYTHING. IT  
28 WOULDN'T TELL ME WHETHER HE WIPED HIS CAR TODAY OR WHETHER

1 HE WASHED HIS CAR LAST NIGHT. THE TOWELS, I HAVE NO WAY  
2 OF TELLING.

3 Q WELL, YOU THINK THERE MIGHT HAVE BEEN SOMETHING  
4 OUT THERE, IT WAS A CRIME SCENE; WAS IT NOT?

5 A WELL, AT THE ORIGINAL TIME, I WAS THERE, NO, IT  
6 WAS NOT A CRIME SCENE UNTIL WE WENT BACK ON THE 12TH.

7 Q RIGHT. AND YOU DIDN'T-- BUT YOU DIDN'T LOOK IN  
8 THE GARAGE ON THE 12TH BECAUSE YOU FIGURED IT WOULDN'T DO  
9 YOU ANY GOOD?

10 A I DON'T RECALL IF I LOOKED IN THE 12TH OR NOT.

11 Q AS PART OF AN INVESTIGATOR, YOU TRY TO GIVE THE  
12 BENEFIT OF DOUBT TO THE DEFENDANT TO VERIFY HIS STORY?

13 A I TRY AND BE EQUALLY FAIR FOR EVERYBODY, YES.

14 Q AND YOU WERE FAIR IN THIS CASE?

15 A I BELIEVE SO.

16 Q DID YOU CONSIDER MY CLIENT'S STATEMENT TO YOU TO  
17 BE A HUNDRED-PERCENT CONSISTENT?

18 A CONSISTENT WITH?

19 Q HIS STORIES. HE INTERVIEWED WITH YOU. WE  
20 HEARD THE STATEMENT YESTERDAY.

21 A YES.

22 MS. SCHMAUSS: YOUR HONOR, I WOULD OBJECT. THIS  
23 CALLS FOR CONCLUSION.

24 MR. ABLARD: THIS IS RE-CROSS. SHE HAD ASKED HIM THE  
25 QUESTION ON INCONSISTENCIES. THIS IS MY RE-CROSS.

26 MS. SCHMAUSS: I AM NOT CLEAR WHAT HE IS ASKING.

27 THE COURT: I AM GOING TO OVERRULE IT.

28 MR. ABLARD: THANK YOU.

1 A CAN I CLARIFY? ARE YOU ASKING ME--

2 Q BY MR. ABLARD: I WILL CLARIFY. THANK YOU.

3 A OKAY. GO AHEAD.

4 Q YESTERDAY, WE HEARD THE TAPE.

5 A YES.

6 Q MR. JOHNSON'S TESTIMONY.

7 A YES.

8 Q OF WHAT HE SAID TO YOU, HIS STATEMENT I MEAN?

9 A YES.

10 Q OKAY. AND IN THERE YOU TALK ABOUT

11 INCONSISTENCIES AND LYING AND SO ON AND SO FORTH; CORRECT?

12 A YES.

13 Q OKAY. YOU DO NOT CONSIDER HIS STATEMENT TO YOU  
14 A HUNDRED PERCENT CONSISTENT; DID YOU?

15 A NO.

16 Q THANK YOU. I HAVE NO FURTHER QUESTIONS?

17 THE COURT: WELL, DO YOU HAVE ANYTHING FURTHER?

18 MS. SCHMAUSS: NO, YOUR HONOR.

19 THE COURT: DO YOU FEEL LIKE A PING-PONG BALL? HAVE  
20 A SEAT. TAKE A SHORT RECESS, FOLKS. DON'T DISCUSS THIS  
21 CASE. DON'T FORM OPINIONS OR CONCLUSIONS. THE JURY IS  
22 EXCUSED. BUT COUNSEL SHALL REMAIN. THE CASE IS NOT IN  
23 RECESS.

24 MR. ABLARD, DO YOU WANT FIVE MINUTES?

25 MR. ABLARD: I WOULD NEED TO RUN DOWN THE HALL.

26 THE COURT: ALL RIGHT. I WANT YOU TO COME BACK. WE  
27 WILL DEAL WITH THE ISSUE OF ISSUES THAT WE DIDN'T DEAL  
28 WITH.

1 MS. SCHMAUSS: OKAY.

2 (RECESS)

3 (THE FOLLOWING PROCEEDINGS WERE HELD IN OPEN  
4 COURT OUTSIDE THE PRESENCE OF THE JURY:)

5 THE COURT: DID YOU WANT TO HAVE A DISCUSSION ABOUT  
6 THE OTHER INFORMATION?

7 MR. ABLARD: YES. I THINK THAT-- YES. PUT THEM AWAY  
8 HERE. THE INFORMATION THAT TUESDAY'S TESTIMONY WOULD BE  
9 AND I WOULD SUGGEST THAT WE BEFOREHAND THAT THE COURT ONLY  
10 HAVE TO REQUEST A HEARING PERSON-- AND MAKE SURE IT IS OF  
11 PERSONAL KNOWLEDGE. BUT WHATEVER. TESTIFY TO A COUPLE OF  
12 DIFFERENT THINGS.

13 THE COURT: WE ARE GOING INTO THESE AREAS; RIGHT?

14 MR. ABLARD: RIGHT. YOU JUST LIST THEM. YOU WANT ME  
15 TO LIST THEM.

16 THE COURT: NO. MY PREFERENCE IS AS FOLLOWS: SEE IF  
17 THIS FITS: THAT WITNESS WILL BE HERE ON TUESDAY.

18 MR. ABLARD: YES.

19 THE COURT: AND SHE WILL SAY WHAT SHE HAS TO SAY.

20 MR. ABLARD: YES.

21 THE COURT: AND SHE MAY RELATE THAT WHICH SHE SAID  
22 TO OFFICER DONLEY.

23 MR. ABLARD: YES.

24 THE COURT: IF AFTER THE COURT HEARS THAT, IT IS  
25 GOING TO ADMIT THE EVIDENCE, I WILL PERMIT YOU TO RECALL  
26 DONLEY TO SAY THAT HE HEARD WHAT HE HEARD AND DID WHAT HE  
27 DID.

28 MR. ABLARD: OKAY.

1 THE COURT: OR DIDN'T. HOW IS THAT?

2 MR. ABLARD: THAT'S FINE.

3 THE COURT: IN SEQUENCE. OFFICER DONLEY IS THE HEAD  
4 INVESTIGATOR, REMAINS AVAILABLE AS A PING-PONG BALL. BUT I  
5 THINK ANYTHING HE HEARS HAS GOT TO HAVE A BASIS. WHAT HE  
6 HEARS AND DOES OR DOESN'T DO HAS GOT TO HAVE A BASIS. IT  
7 IS ADMISSIBLE BEFORE WE EVEN GET INTO WHAT HE HEARS OR  
8 DOES OR DOESN'T DO.

9 MR. ABLARD: THAT'S TRUE.

10 THE COURT: SO, THAT'S ACCEPTABLE. LET'S DO IT THAT  
11 WAY.

12 MR. ABLARD: THAT WILL BE PERFECTLY FINE WITH ME.

13 THE COURT: THANK YOU.

14 MS. SCHMAUSS: I HAVE ONE CAVEAT THOUGH. SORRY.  
15 JENNIFER IS A PERSONALLY, A WITNESS TODAY. AND SINCE WE  
16 ARE NOT GOING TO GET INTO THE FERRERA-CROCKER ALLEGATION  
17 UNTIL TUESDAY, I WOULD ASK THAT SHE NOT BE CROSS-EXAMINED  
18 ABOUT IT UNTIL AND UNLESS THE COURT IS GOING TO ADMIT IT.  
19 SHE WILL BE AVAILABLE TOO. SHE IS A GOOD PING-PONG BALL.

20 THE COURT: WELL, THAT WITNESS IS NOT EXCUSED IN ANY  
21 EVENT. SO, ALL RIGHT.

22 MR. ABLARD: WE CAN WORK SOMETHING OUT.

23 THE COURT: THANK YOU.

24 MR. ABLARD: THANK YOU.

25 THE COURT: THANK YOU. WITH THAT, WE GO TO A NEW  
26 WITNESS AND BRING THE JURY IN.

27 MR. ABLARD: YES.

28 THE COURT: LET US DO THAT.



1 (THE JURY ENTERED THE COURTROOM AND THE  
2 FOLLOWING PROCEEDINGS WERE HELD:)

3 THE COURT: ALL RIGHT. THE JURORS HAVE RETURNED AND  
4 ARE PROPERLY SEATED. NEXT WITNESS, PLEASE.

5 MR. ABLARD: NEXT WE CALL MR. LOPEZ, STEVE LOPEZ.

6 THE COURT: STEVE LOPEZ.

7 MR. ABLARD: THANK YOU.

8 THE COURT: HAVE A SEAT MR. LOPEZ. DO YOU REMEMBER  
9 YOU ARE UNDER THE OATH OF THE OTHER DAY?

10 THE WITNESS: YES, I DO.

11 THE COURT: ALL RIGHT. YOU ARE STILL OBLIGATED TO  
12 CONFORM TO THAT PROMISE YOU MADE.

13 MR. ABLARD: THANK YOU VERY MUCH, YOUR HONOR.

14 STEVEN LOPEZ,  
15 HAVING BEEN PREVIOUSLY SWORN, RESUME THE STAND, WAS  
16 EXAMINED, AND TESTIFIED AS FOLLOWS:

17 DIRECT EXAMINATION

18 BY MR. ABLARD:

19 Q MR. LOPEZ, DID YOU EVER SPEAK WITH A DEFENSE  
20 INVESTIGATOR, JOHN MARTIN?

21 A JOHN MARTIN, I DON'T RECALL.

22 Q OKAY. AT SOME POINT DID SOMEONE FROM THE  
23 DEFENSE, AN INVESTIGATOR, A PERSON, COME TO YOUR PLACE OF  
24 WORK AND ATTEMPT TO TALK TO YOU ABOUT THIS CASE?

25 A YES.

26 Q YOU JUST DON'T KNOW HIS NAME?

27 A YES.

28 Q AND AT THAT TIME, YOU TOLD HIM THAT A FRIEND HAD

1 TOLD YOU ON ADVICE OF THEIR COUNSEL NOT TO TALK TO THE  
2 DEFENSE INVESTIGATOR; IS THAT TRUE?

3 A YES.

4 Q NOW, WHO ARE THOSE FRIENDS?

5 A DARIN RIGGS AND JENNIFER RETHORN.

6 Q OKAY. YOU I BELIEVE THAT WE ESTABLISHED  
7 INITIALLY THAT YOU HAD TOLD OFFICER BALES YOUR TESTIMONY  
8 THE OTHER DAY THAT YOU HAD HEARD MR. RIGGS AND RETHORN  
9 YELLING. THAT IS WHEN YOU GOT UP, GOT DRESSED, AND WENT  
10 OUT; CORRECT?

11 A NO.

12 Q YOU DID NOT TELL--

13 A NO. I DID NOT.

14 Q DID YOU TELL OFFICER KELLY THAT?

15 A I DON'T REMEMBER THE OFFICER'S NAME THAT I WAS  
16 TALKING TO AT THE TIME.

17 Q OKAY.

18 A I WAS KIND OF PREOCCUPIED. I DON'T REMEMBER  
19 STATING THAT. WHAT I DO REMEMBER STATING WAS THAT I WAS  
20 UNAWARE THAT THERE WAS ANYTHING WRONG UNTIL THEY STARTED  
21 CALLING AROUND AND LOOKING FOR BRITTANY.

22 Q OKAY. NOW, DID YOU STATE TO AN OFFICER THAT  
23 MORNING YOU HAD GOTTEN UP AND APPARENTLY GOTTEN IN THE  
24 TRUCK AND LEFT AND DIDN'T COME BACK UNTIL THE POLICE WERE  
25 PRESENT?

26 A NO, I DIDN'T. BECAUSE I HAD COME BACK ONCE.

27 Q YOU CAME BACK ONCE?

28 A YES. THAT'S WHEN I GOT A PICTURE OF BRITTANY

1 FROM DARIN.

2 Q RIGHT. AND YOU GAVE A STATEMENT AND INTERVIEW  
3 AND STATEMENT TO THE POLICE ABOUT THIS BUSINESS IN THE  
4 HALLWAY WITH MY CLIENT; CORRECT?

5 A YES.

6 Q OKAY. DID YOU PERSONALLY SEE THAT?

7 A NO, I DIDN'T.

8 Q OKAY. WHEN WAS THE LAST YOU SPOKE WITH SOMEONE  
9 THIS MORNING ABOUT THAT VERY ISSUE?

10 A YES, I SPOKE TO OFFICER DONLEY.

11 Q OKAY. AND YOU TOLD HIM BASICALLY THAT THAT IS  
12 JUST WHAT WAS TOLD YOU?

13 A YES.

14 Q OKAY. AND WHO TOLD YOU THAT?

15 A JENNIFER RETHORN.

16 Q THANK YOU. NOW, AFTER THE DATE OF THIS  
17 INCIDENT, OCTOBER 10 OF '93, HAD YOU UP UNTIL THE 20TH OF  
18 OCTOBER, 1993, HAD YOU BEEN BACK INTO THE HOUSE?

19 A I BELIEVE ONCE.

20 Q WHEN?

21 A THE NEXT DAY, THE 11TH, I BELIEVE.

22 Q THE 11TH. OKAY. HAD YOU BEEN--DID YOU GO BACK  
23 ON THE 12TH?

24 A I DON'T BELIEVE SO. I BELIEVE I ONLY WENT BACK  
25 ONCE. THAT WAS JUST SO I COULD GET CLOTHES FOR WORK.

26 Q OKAY.

27 A UNTIL AFTER THE 20TH WHEN WE MOVED EVERYTHING  
28 OUT.

1 Q DID YOU GO BACK ON OCTOBER THE 8TH?

2 A NOT THAT I REMEMBER.

3 Q WHEN YOU WERE THERE ON THE 11TH--WELL, STRIKE  
4 THAT.

5 SO, THE PART ABOUT YOU NOT GETTING UP UNTIL YOU HEARD  
6 MS. RIGGS AND MR. RETHORN YELLING FOR BRITTANY, IS THAT  
7 SOMETHING THAT IS NOT THE WAY IT HAPPENED?

8 A THAT IS CORRECT.

9 Q AND YOU DIDN'T TELL THE POLICE THAT?

10 A NOT THAT I REMEMBER. I DON'T REMEMBER A LOT OF  
11 WHAT I TOLD THE POLICE SITTING IN THE KITCHEN AT THAT  
12 TIME.

13 Q NOW, YOU RECALL SPEAKING WITH OFFICER DONLEY ON  
14 THE 11TH?

15 A YES.

16 Q OKAY. AND DURING THAT TIME, DID YOU DISCUSS  
17 WITH HIM WHEN YOU HAD ACTUALLY GOTTEN UP?

18 A YES.

19 Q DID HE DISCUSS WITH YOU WHAT THE BALES OR  
20 KELLY'S REPORT SAID THAT YOU ACTUALLY STATED THAT YOU HAD  
21 GOTTEN UP AT A DIFFERENT TIME?

22 A NO, I DIDN'T.

23 Q NO, HE DIDN'T?

24 A NO, HE DIDN'T.

25 MR. ABLARD: OKAY. I HAVE NOTHING FURTHER AT THIS  
26 TIME, YOUR HONOR.

27 CROSS-EXAMINATION

28 BY MS. SCHMAUSS:

1 Q WHEN YOU WERE TELLING OFFICER DONLEY, THIS WOULD  
2 HAVE BEEN ON THE 11TH AT YOUR STORE, THRIFTY STORE  
3 BECOMING WHEN HE CAME TO TALK TO YOU AND YOU MENTIONED THE  
4 COMMENT ABOUT JOHNSON FINALLY COMING OUT OF HIS BEDROOM,  
5 SITTING DOWN ON THE FLOOR NEXT TO THE CABINETS, BECOMING  
6 HYSTERICAL. DO YOU REMEMBER THAT?

7 A UH-HUH.

8 Q AND THEN YOU WENT AND SAID YOU FELT THIS WAS  
9 UNUSUAL BECAUSE JOHNSON WAS NOT DISPLAYING EMOTIONS THAT  
10 YOU WOULD EXPECT SOMEONE TO SHOW IF SOMEONE WAS MISSING?

11 A YES.

12 Q SO, YOU WERE RETRACING WHAT JENNIFER HAD TOLD  
13 YOU ABOUT SEEING JOHNSON IN THE HALLWAY?

14 A YES.

15 Q CORRECT?

16 A YES.

17 Q BUT THE PART ABOUT YOU FELT IT WAS UNUSUAL THAT  
18 HE WAS DISPLAYING EMOTIONS THAT YOU WOULDN'T EXPECT  
19 SOMEBODY TO SHOW JUST FOR A MISSING CHILD. WAS THAT YOUR  
20 OWN?

21 A THAT WAS MY OWN CONCLUSION.

22 Q OKAY. WASN'T SOMETHING YOU WERE REPEATING THAT  
23 JENNIFER TOLD YOU?

24 A NO.

25 Q SO, IS THAT THE PURPOSE THAT YOU TOLD OFFICER  
26 DONLEY ABOUT THAT BECAUSE YOU WANTED TO GIVE HIM MORE  
27 FEELINGS?

28 A YES.

1 Q YOU KNEW MR. JOHNSON?

2 A YES.

3 Q YOU HAD BEEN WORKING WITH HIM?

4 A UH-HUH.

5 Q IS THAT A YES?

6 A YES.

7 Q FOR ABOUT HOW LONG?

8 A SEVERAL MONTHS.

9 Q YOU HAD SOCIALIZED WITH HIM?

10 A ON OCCASION.

11 Q YOU WERE AWARE THAT HE REALLY HAD VERY LITTLE  
12 RELATIONSHIP WITH BRITTANY?

13 A YES.

14 Q IT WAS WHY YOU SAID WHAT YOU SAID?

15 A YES.

16 Q WHEN YOU WENT BACK IN THE HOUSE ON THE 11TH,  
17 WERE YOU ALONE OR WERE YOU WITH SOMEONE ELSE?

18 A I WAS WITH A FRIEND OF MINE.

19 Q WHO WAS THAT?

20 A A FRIEND OF MINE AND DARIN, JEFF BERNAKE  
21 (PHONETIC).

22 Q ON THAT DATE ON THE 11TH, DID YOU GO INTO THE  
23 DEFENDANT'S ROOM?

24 A NO, I JUST WENT INTO MY ROOM.

25 Q DO YOU RECALL IF THE DEFENDANT'S ROOM WAS OPEN  
26 OR CLOSED?

27 A I BELIEVE IT WAS CLOSED. BUT I CAN'T BE SURE  
28 ABOUT THAT.

1 Q DID YOU GO ANYWHERE NEAR IT?

2 A NO. MY DOOR WAS ACROSS THE HALLWAY A LITTLE  
3 BIT.

4 Q DID YOU TRY TO GO AND OBSERVE IT?

5 A NO. I KIND OF WANTED TO SPEND AS LITTLE TIME AS  
6 POSSIBLE IN THE HOUSE.

7 Q THAT WAS MY NEXT QUESTION. IT WAS A PARTICULAR  
8 REASON THAT YOU ONLY WENT BACK THAT YOU CAN RECALL THAT  
9 ONE TIME?

10 A I FEEL I AM KIND OF SUPERSTITIOUS. I FELT KIND  
11 OF WEIRD BEING IN THE HOUSE. I JUST ONLY REASON I WENT  
12 BACK WAS BECAUSE I HAD TO GET CLOTHES FOR WORK AND OTHER  
13 YOU KNOW JUST CLOTHES.

14 Q WHERE DID YOU STAY?

15 A INITIALLY AT MY PARENTS' HOUSE.

16 Q AND THEN IT WAS AFTER THE 20TH THAT YOU DID YOUR  
17 FINAL MOVE OUT?

18 A YES.

19 Q DO YOU REMEMBER HOW SOON AFTER THE 20TH?

20 A EXACT DATE, I DON'T KNOW.

21 Q YOU ARE SURE IT WAS AFTER THE 20TH?

22 A YES.

23 Q HOW DO YOU KNOW IT WAS AFTER THE 20TH?

24 A BECAUSE THE FUN-- WE HAD ALREADY HAD THE  
25 FUNERAL. AND I ALREADY BEEN BACK TO WORK. AND I HAD TO  
26 WAIT FOR SOME DAYS OFF TO COME UP THAT I COULD GET  
27 EVERYTHING OUT. I ALSO HAD TO ARRANGE FOR STORAGE OF A  
28 LOT OF MY STUFF.

1 Q YOU STATED I DON'T REMEMBER A LOT OF WHAT I TOLD  
2 THE POLICE IN THE KITCHEN. WHY IS THAT?

3 A NUMBER ONE, IT WAS KIND OF A STRESSFUL SITUATION  
4 TO BE UNDER. AND IT'S BEEN A WHILE SINCE THERE'S BEEN  
5 OVER TWO YEARS.

6 Q WAS THERE A LOT OF CHAOS IN THAT KITCHEN?

7 A YES.

8 MS. SCHMAUSS: NOTHING FURTHER, YOUR HONOR.

9 MR. ABLARD: BRIEF, YOUR HONOR.

10 REDIRECT EXAMINATION

11 BY MR. ABLARD:

12 Q MR. LOPEZ, WHEN YOU AND YOUR FRIENDS WERE THERE  
13 ON THE 11TH, WERE YOU ACCOMPANIED BY A POLICE OFFICER IN  
14 THE HOUSE?

15 A NO, WE WEREN'T.

16 Q WAS ANYONE ELSE THERE OTHER THAN YOU AND YOUR  
17 FRIENDS?

18 A NO.

19 Q HOW DID YOU GET IN?

20 A HOUSE KEY.

21 Q WAS A SEAL ON THE DOOR OR ANYTHING?

22 A NO.

23 MR. ABLARD: I HAVE NO FURTHER QUESTIONS AT THIS  
24 TIME. THANK YOU.

25 THE COURT: YOU MAY STEP DOWN. CALL YOUR NEXT  
26 WITNESS.

27 MS. SCHMAUSS: MAY HE BE EXCUSED?

28 THE COURT: I AM NOT EXCUSING ANYBODY UNTIL THE JURY



1 GOES OUT. THE WAY THIS CASE IS GOING, CALLING AND  
2 RECALLING. SO, AFTER ARGUMENT AND INSTRUCTION THEY CAN BE  
3 EXCUSED.

4 HE OF COURSE IF FREE TO BE SUBJECT TO RECALL.

5 SO, WHAT'S NEXT FOR US, MR. ABLARD?

6 MR. ABLARD: WELL, I BELIEVE WE WILL CALL MR. RIGGS.

7 THE COURT: THANK YOU.

8 MR. ABLARD: THANK YOU.

9 THE COURT: YOU HAVE TO CALL LOUDLY. I BELIEVE HE IS  
10 OUTSIDE.

11 HAVE A SEAT, MR. RIGGS. DO YOU REMEMBER YOUR OATH OF  
12 THE OTHER DAY?

13 THE WITNESS: YES, I DO.

14 THE COURT: ALL RIGHT. YOU ARE STILL OBLIGATED TO  
15 TELL US THE TRUTH.

16 MR. ABLARD.

17 MR. ABLARD: THANK YOU, YOUR HONOR.

18 DARIN RIGGS,

19 HAVING BEEN PREVIOUSLY SWORN, RESUMED THE STAND, WAS  
20 EXAMINED AND TESTIFIED AS FOLLOWS:

21 DIRECT EXAMINATION

22 BY MR. ABLARD:

23 Q MR. RIGGS, WERE YOU IN THAT HOUSE ON THE 11TH OF  
24 OCTOBER?

25 A THE 11TH?

26 Q I'M SORRY, OF '93?

27 A YES.

28 Q AND WE COVERED THIS BRIEFLY. I DON'T WANT TO GO

1 THROUGH THE SAME THING. I AM JUST TRYING TO RECOLLECT HOW  
2 MANY TIMES FROM THE 10TH TO THE 20TH WERE YOU IN THAT  
3 HOUSE?

4 A I DON'T KNOW. THAT WAS TWO YEAR SAGO. I WAS--  
5 I HAD STOPPED BY TO GET THE MAIL, GET SOME CLEAN CLOTHES,  
6 REMOVE VALUABLES OUT. BUT JUST BECAUSE THE ADDRESS WAS IN  
7 THE PAPER. BUT OTHER THAN.

8 Q SO, YOU DON'T KNOW?

9 A NO.

10 Q OKAY. THOSE TIMES THAT WELL, THE-- WAS

11 MR. LOPEZ WAS NOT PRESENT; WAS HE?

12 A WHEN MISS--

13 Q WHEN YOU STATED MR. JOHNSON CAME OUT OF HIS  
14 ROOM; CORRECT?

15 A NO.

16 MS. SCHMAUSS: I WOULD OBJECT AS VAGUE. WAS HE  
17 PRESENT WHEN HE STATED OR WAS HE PRESENT--

18 MR. ABLARD: I WILL REPHRASE IT.

19 THE COURT: THANK YOU, MR. ABLARD.

20 MR. ABLARD: THANK YOU, JUDGE.

21 THE COURT: OTHERWISE YOU CONFUSE ME.

22 Q BY MR. ABLARD: I CONFUSE MYSELF ON THAT ONE.

23 SO, HERE WE GO: DO YOU KNOW THAT AT THE TIME MR. JOHNSON  
24 CAME OUT OF HIS ROOM, WAS MR. LOPEZ AT THE HOUSE OR NOT?

25 A I BELIEVE HE HAD ALREADY BEEN OR WAS OUT THE  
26 FRONT DOOR AT LEAST TO GO INTO HIS VEHICLE.

27 Q DID YOU TELL MR. LOPEZ THAT MR. JOHNSON WAS AT  
28 THE HALLWAY BECOMING HYSTERICAL AT ANY TIME?

1           A     OVER TWO YEARS, YEAH, I AM SURE I HAVE MENTIONED  
2     IT.

3           Q     OKAY.  HOW ABOUT SAY ON THE 10TH OR 11TH OF  
4     1993, DID YOU DISCUSS THAT WITH HIM?

5           A     WITH THE GRIEVING I WAS DOING, AT THE TIME, I  
6     DON'T REMEMBER MOST OF MY CONVERSATIONS THROUGH THE WEEK  
7     OR SO.

8           Q     OKAY.  WERE YOU EVER PRESENT WHEN RETHORN WAS  
9     DISCUSSING THAT ISSUE WITH MR. LOPEZ?

10          A     DURING THAT WEEK OR SO, WE WERE PRETTY MUCH SIDE  
11     BY SIDE.  BECAUSE WE WERE GRIEVING.  BUT AGAIN, I DON'T  
12     REMEMBER CONVERSATIONS.

13          Q     OKAY.  WHEN DID MR. LOPEZ LEAVE THE RESIDENCE  
14     THAT MORNING TO START LOOKING?

15          A     IN THE MORNING OF THE 10TH?

16          Q     RIGHT.  WHEN?

17          A     TIME WISE, I DON'T KNOW.  I WOULD ASSUME RIGHT  
18     AFTER 9.

19          Q     OKAY.  RIGHT AFTER 9 HE LEFT.  DID HE JUST, DID  
20     HE MERELY DRIVE OFF IN HIS CAR AND LOOK, JUST GET HIS  
21     KEYS, DRIVE OFF, AND LOOK AROUND THE NEIGHBORHOOD OR DID  
22     SOMETHING TRANSPIRE FIRST?

23          MS. SCHMAUSS:  I AM GOING TO OBJECT.  HOW IS HE GOING  
24     TO KNOW WHAT HE DID ONCE HE LEFT MR. RIGGS?

25          Q     BY MR. ABLARD:  OKAY.  DO YOU KNOW WHEN HE  
26     LEFT?

27          A     WHEN I MEAN, YEAH.  I KNOW HE LEFT THE HOUSE AT  
28     ONE POINT.

1 Q WHEN?

2 A AGAIN, TIME WHEN I WAS SEARCHING FOR MY DAUGHTER  
3 IS IRRELEVANT. I DON'T KNOW.

4 Q WHAT WAS GOING ON WHEN HE LEFT THE HOUSE? WHAT  
5 ARE YOU DOING WHEN HE LEFT THE HOUSE?

6 A I WAS SEARCHING. I HAD SEARCHED THE BACKYARD  
7 AND I WAS COMING IN THROUGH THE FRONT HOUSE, THE FRONT OF  
8 THE HOUSE TO SEARCH.

9 Q OKAY. AND DID HE SEARCH THE BACKYARD?

10 A HE HAD SEARCHED THE NORTH SIDE. I SEARCHED THE  
11 SOUTH SIDE.

12 Q THEN YOU BOTH CAME BACK IN?

13 A YES.

14 Q AT ONE POINT, THAT'S WHEN HE LEFT?

15 A YES.

16 Q OKAY. DO YOU KNOW WHEN HE CAME BACK?

17 A NO. I HAD ALREADY LEFT FOR THE HOSPITAL.

18 Q SO, HE CAME BACK SOMETIME AFTER YOU HAD LEFT FOR  
19 THE HOSPITAL?

20 A DO YOU MEAN BACK INTO THE HOUSE?

21 Q YES, SIR.

22 A CORRECT, AFTER AND HE HAD DRIVEN BY AT ONE  
23 POINT. AND I HANDED HIM A PHOTO.

24 Q NOW, I BELIEVE WE HAD COVERED THIS LAST TIME.  
25 BUT DID YOU EVER TELL OFFICER BALES THAT WHEN YOU WERE  
26 AWOKEN BY BRITTANY THE FIRST TIME, 7, 7:30-ISH THAT YOU  
27 YELLED ABOUT HER NOT KNOCKING AND JUST SENT HER AWAY?

28 A TO TELL YOU THE TRUTH, I DON'T REALLY REMEMBER

1 THE INTERVIEW WITH OFFICER BALES AT THE HOSPITAL. BECAUSE  
2 OF JUST BEING INFORMED THAT OUR DAUGHTER WAS KILLED.

3 Q OKAY. NOW, DID YOU EVER DISCUSS WITH JENNIFER  
4 RETHORN WHETHER OR NOT SOME OR ALL OF THE DOORS WERE  
5 LOCKED IN THE HOUSE WHEN SHE FIRST GOT UP?

6 MS. SCHMAUSS: OBJECTION. VAGUE AS TO TIME WHEN HE  
7 DISCUSSED IT.

8 THE COURT: HE SAID "EVER."

9 A AGAIN, OVER THE TWO YEARS, I AM SURE WE HAVE  
10 DISCUSSED IT. WE HAVE DISCUSSED THE CASE NUMEROUS TIMES.

11 Q WHEN IS THE LAST TIME YOU-ALL DISCUSSED THE  
12 CASE?

13 A WE HAVE DISCUSSED IT TODAY.

14 Q OKAY?

15 A THAT ONE TOPIC, WE HAVEN'T DISCUSSED IN A WHILE.  
16 BUT.

17 Q YOU DISCUSSED OTHER FACETS OF THE CASE TODAY?

18 A YEAH.

19 Q YOU-ALL KNEW YOU WERE GOING TO BE WITNESSES  
20 TODAY?

21 A YEAH. IF YOU ARE TRYING TO IMPLY THAT WE  
22 COLLABORATED OUR STORIES, NO, WE DID NOT.

23 Q DID JENNIFER EVER GO OUTSIDE, JENNFIER RETHORN,  
24 DURING THIS PERIOD OF SEARCH?

25 A AT ONE POINT SHE CAME OUT TO THE FRONT YARD TO  
26 ASK ME IF I FELT IT HAD BEEN LONG ENOUGH TIME TO SEARCH TO  
27 CALL 911. BUT THAT WAS BARELY OUTSIDE THE FRONT DOOR.

28 Q AND DID MR. JOHNSON COME OUT WITH HER?

1           A     I AM NOT SURE WHERE HE WAS AT THE TIME.

2           Q     UH-HUH. DID YOU EVER TELL AN OFFICER THAT  
3 JENNIFER NEVER CAME OUTDOORS?

4           A     I DON'T REMEMBER.

5           Q     DID YOU EVER TELL JENNIFER THAT YOU SAW MY  
6 CLIENT GO IN A COUPLE OF HOUSES DURING THIS SEARCH PERIOD?

7           A     YES.

8           Q     OKAY. WHEN IN THE SEARCH PERIOD WAS HE OUT  
9 SEARCHING?

10          A     I BELIEVE BEFORE THE POLICE WERE CALLED, BUT I  
11 CAN'T--

12          Q     SO, YOU REMEMBER THAT?

13          A     I SAID I BELIEVE. IT IS NOT A HUNDRED-PERCENT  
14 FACT OR I AM NOT A HUNDRED-PERCENT SURE.

15          Q     YOU EVEN MENTIONED BEFORE YOU HAVE A EXACT  
16 RECOLLECTION THAT ON THE FINAL WALK THROUGH WITH YOUR  
17 LANDLORD THAT LITTLE HOOK-AND-EYE LOCK WAS STILL ON  
18 MR. JOHNSON'S DOOR?

19          A     ALMOST A HUNDRED-PERCENT SURE IT WAS BECAUSE WE  
20 DISCUSSED IT WITH THE LANDLORD ABOUT REMOVING IT.

21          Q     SO, HE SAID HE WAS GOING TO REMOVE IT OR YOU  
22 WERE--

23          A     I ASKED HIM IF HE WANTED IT REMOVED. AND HE  
24 SAID DON'T WORRY ABOUT IT.

25          Q     OKAY. SO, HE DIDN'T IMPLY HE WAS GOING TO REMOVE  
26 IT. HE SAID DON'T WORRY ABOUT IT?

27          A     RIGHT.

28          Q     BUT YOU SPECIFICALLY RECOLLECT ASKING THE

1 LANDLORD THAT QUESTION?

2 A I DON'T KNOW IF IT WAS THOSE EXACT WORDS. BUT--

3 Q OF COURSE NOT. BUT--

4 A AND THAT--

5 Q THAT ISSUE?

6 A YES.

7 Q AND DO YOU HAVE A PERIOD OF TIME THAT YOU CAN  
8 GIVE US AS TO HOW LONG MR. JOHNSON WAS "OUT SEARCHING"?

9 A NO.

10 MS. SCHMAUSS: YOUR HONOR, I AM GOING TO OBJECT TO  
11 THE CONCLUSION THAT HE WAS OUT SEARCHING.

12 Q BY MR. ABLARD: DO YOU HAVE ANY-- I'LL REPHRASE.  
13 DO YOU HAVE A TIME-LENGTH ESTIMATE AS TO HOW LONG  
14 MR. JOHNSON WAS GOING TO THE NEIGHBOR'S HOUSE DURING THAT  
15 SEARCH PERIOD?

16 A NO, I DON'T KNOW HOW LONG HE WAS OUTSIDE. I WAS  
17 GOING IN AND OUT MYSELF.

18 MR. ABLARD: OKAY. YOUR HONOR, MAY WE APPROACH?

19 (SIDE BAR; NOT REPORTED)

20 THE COURT: LADIES AND GENTLEMEN, WE ARE GOING TO  
21 TAKE OUR NOON RECESS. DON'T DISCUSS THE CASE. DON'T FORM  
22 ANY OPINIONS OR CONCLUSIONS. LEAVE YOUR NOTEBOOKS  
23 BEHIND. WEAR YOUR-- I NOTICE MANY OF YOU ARE NOT WEARING  
24 YOUR JUROR BADGES. IS THERE SOME SIGNIFICANCE TO THAT? I  
25 WILL INQUIRE OF YOU LATER. HAVE A NICE LUNCH. 1:30,  
26 PLEASE.

27 (NOON RECESS)

28

1 RANCHO CUCAMONGA, CALIFORNIA; THURSDAY, NOVEMBER 2, 1995

2 1:35 P.M.

3 DEPARTMENT 4

HON. ROBERT E. LAW, JUDGE

5 APPEARANCES: SET FORTH ON THE TITLE PAGE.

6  
7 (GAIL GREENLEE, C-8647, OFFICIAL REPORTER.)

8 ---###---

9 THE COURT: ALL RIGHT. THE JURY HAVE RETURNED. ALL  
10 RIGHT. WE SHALL CONTINUE.

11 MR. ABLARD: THANK YOU.

12 DARIN RIGGS,

13 HAVING BEEN PREVIOUSLY SWORN, RESUMED THE STAND, WAS  
14 EXAMINED AND TESTIFIED AS FOLLOWS:

15 DIRECT EXAMINATION, RESUMED

16 BY MR. ABLARD:

17 Q MR. RIGGS, WAS THERE A POINT THAT YOU WERE, I  
18 BELIEVE, OUTSIDE THAT YOU EARLIER SAID THAT MY CLIENT TOLD  
19 MS. RETHORN THAT SHE COULDN'T COME IN OR TO GO AWAY FROM  
20 HIS ROOM?

21 A I'M SORRY. EXCUSE ME. I DIDN'T CATCH THAT.

22 Q WAS THERE AT ANY TIME THAT YOU WERE OUTSIDE  
23 AROUND IN THE YARD THAT YOU HEARD MY CLIENT TELL  
24 MS. RETHORN OR YELLED TO HER GO AWAY, YOU CAN'T COME IN,  
25 ANYTHING LIKE THAT?

26 A NOT THAT I CAN REMEMBER THAT I HEARD PERSONALLY,  
27 NO.

28 Q OKAY. DID MS. RETHORN TELL YOU THAT?



1           A     I AM SURE WE DISCUSSED IT AT TIMES, YES.

2           Q     DID SHE TELL YOU THAT THAT DAY?

3           A     AGAIN, I DON'T REMEMBER THE CONVERSATIONS OF  
4     THAT DAY OR OVER THE TWO YEARS THEY HAVE ALL BLENDED  
5     TOGETHER.

6           Q     OKAY. NOW, DID YOU HAVE AN INSURANCE POLICY ON  
7     BRITTANY?

8           A     YES, I DID.

9           Q     OKAY. AND DID, WHEN DID YOU GET THAT POLICY?

10          A     IT WAS AN UNDERWRITER ON MYSELF WHEN I HAD  
11     PURCHASED IT, MY TRUCK, AT THE TIME.

12          Q     WHAT WAS THAT?

13          A     I HAD PURCHASED THE TRUCK PROBABLY LATE '90,  
14     MAYBE EARLY '91.

15          Q     OKAY. AND THIS WAS A LITTLE LIFE POLICY ON  
16     BRITTANY?

17          A     YEAH. JUST AN UNDERWRITER.

18          Q     FOR HOW MUCH?

19          A     A THOUSAND DOLLARS.

20          Q     DID YOU EVER TELL JENNIFER ABOUT THAT?

21          A     NO. WE HAD, I BECAUSE IT WAS AN UNDERWRITER,  
22     FORGOTTEN THAT SHE WAS EVEN COVERED ON IT.

23          Q     OKAY. AND AT SOME POINT, YOU TOLD HER ABOUT IT?

24          A     I DON'T KNOW IF I TOLD HER PERSONALLY OR IF SHE  
25     CAUGHT WIND FROM OTHER PEOPLE. OR I BELIVE I TOLD HER  
26     PERSONALLY, THOUGH.

27          Q     OKAY. WAS SHE UPSET WITH YOU AT ALL FOR NOT  
28     TELLING HER THAT YOU HAD THIS LITTLE POLICY ON BRITTANY?

1 MS. SCHMAUSS: OBJECTION, CALLS FOR SPECULATION.

2 Q BY MR. ABLARD: WELL, WHAT IS HER DEMEANOR--IF I  
3 MAY REPHRASE.

4 WHAT WAS HER DEMEANOR WHEN YOU TOLD HER ABOUT THAT  
5 YOU HAD THIS LITTLE POLICY ON BRITTANY?

6 A SHE WASN'T HAPPY THAT I DIDN'T INFORM HER ABOUT  
7 IT.

8 Q DID SHE TELL YOU HOW SHE FOUND OUT ABOUT IT?

9 MS. SCHMAUSS: OBJECTION; CALLS FOR HEARSAY.

10 THE COURT: CALLS FOR YES OR NO. YOU MAY ANSWER.

11 A I AM TRYING TO THINK. I DON'T REMEMBER HOW. IF  
12 SHE HAD INFORMED ME HOW SHE DISCOVERED IT OR NOT.

13 Q BY MR. ABLARD: WHAT COMPANY WAS THAT POLICY  
14 THROUGH?

15 A J.C. PENNY LIFE.

16 Q IN '90, '91?

17 A THAT'S THE TIME I PURCHASED THE TRUCK. I AM NOT  
18 SURE WHEN I GOT, I GOT THE INSURANCE AFTER THAT AT SOME  
19 POINT.

20 Q AT SOME POINT. WHEN AT SOME POINT?

21 A I WOULD SPECULATE PROBABLY SIX MONTHS TO A YEAR  
22 AFTER THAT.

23 Q AND HAVE YOU PUT IN A CLAIM FOR THAT MONEY?

24 A YES, I DID.

25 Q YOU RECEIVE IT?

26 A YES, I DID.

27 Q HAD THE POLICE EVER ASKED YOU IF YOU HAD ANY  
28 INSURANCE ON BRITTANY?

1 A I DON'T REMEMBER IF THEY DID OR NOT.

2 Q DID ANYONE ELSE EVER ASK YOU IF YOU HAD ANY  
3 INSURANCE ON BRITTANY LIKE ANYONE FROM THE FUNERAL HOME?

4 MS. SCHMAUSS: OBJECTION, IRRELEVANT. FUNERAL HOME.

5 THE COURT: RELEVANCE?

6 MR. ABLARD: WELL, WE ARE TALKING ABOUT CREDIBILITY,  
7 YOUR HONOR.

8 MS. SCHMAUSS: IT IS IRRELEVANT.

9 THE COURT: SUSTAINED.

10 MR. ABLARD: THANK YOU. I HAVE NOTHING FURTHER AT  
11 THIS TIME.

12 THE COURT: ALL RIGHT.

13 CROSS-EXAMINATION

14 BY MS. SCHMAUSS:

15 Q OKAY. I AM A LITTLE CONFUSED. MR. RIGGS, WHEN  
16 YOU ARE TALKING ABOUT AN UNDERWRITER ON YOUR TRUCK?

17 A NO. BRITTANY WAS THE UNDERWRITER ON THE  
18 INSURANCE. THE TRUCK I HAD PURCHASED AND I HAD REALLY  
19 HIGH FINANCING. SO, MY GRANDMOTHER PAID OFF THE LOAN.  
20 AND I WAS PAYING HER BACK. BUT BECAUSE SHE DIDN'T WANT TO  
21 END UP WITH A TRUCK IF SOMETHING ACCIDENTALLY HAPPENED  
22 WITH ME, WE ENDED UP AGREEING THAT I PUT LIFE INSURANCE.  
23 BUT BECAUSE I HAD A CHILD, SHE WAS AUTOMATICALLY ON THE  
24 INSURANCE.

25 Q SO, THIS IS NOT SOMETHING THAT YOU WENT OUT AND  
26 SAID OKAY NOW GOING TO TAKE INSURANCE OUT ON MY BABY  
27 DAUGHTER'S LIFE?

28 A NO. THIS WAS SOMETHING THAT YOU GET THE

1 INSURANCE AND THEY ADDED ON BRITTANY FOR ME.

2 Q OKAY. SO, YOU DON'T HAVE TO PAY ANY PREMIUM  
3 FOR BRITTANY?

4 A I DON'T REMEMBER IF I PAID A PREMIUM OR NOT. IF  
5 IT WAS, IT WAS WELL UNDER \$20.

6 Q OKAY. SO, THE REASON YOU GOT THE INSURANCE  
7 WAS-- I AM STILL MISSING THE CONNECTION BETWEEN THE TRUCK  
8 AND THE INSURANCE?

9 A MY GRANDMOTHER HAD REFINANCED THE LOAN OR SHE  
10 HAD LOANED ME THE MONEY FOR THE TRUCK. AND IF SOMETHING  
11 WERE TO ACCIDENTALLY HAPPEN TO ME, SHE WANTED TO HAVE THE  
12 TRUCK PAID OFF THROUGH MY INSURANCE. SHE WAS THE OR SHE  
13 WAS THE RECIPIENT OF THE INSURANCE.

14 Q OKAY. SO, GRANDMA WAS THE BENEFACTOR OF YOUR  
15 LIFE INSURANCE?

16 A CORRECT.

17 Q AND YOU GOT SOME SORT OF A-- I DON'T KNOW WHAT  
18 THE LEGAL TERM IS-- ADD-ON FOR BRITTANY?

19 A RIGHT.

20 Q INCLUDED?

21 A CORRECT.

22 MS. SCHMAUSS: I HAVE NOTHING FURTHER, YOUR HONOR.

23 MR. ABLARD: I HAVE NOTHING AT THIS TIME.

24 THE COURT: YOU MAY STEP DOWN. NEXT WITNESS,  
25 PLEASE.

26 MR. ABLARD: YES. IF I MAY CALL JENNIFER RETHORN,  
27 PLEASE.

28 MS. SCHMAUSS: SHE IS UP IN THE OFFICE. SO WE HAVE

1 TO PHONE.

2 THE COURT: DO YOU REMEMBER YOUR OATH OF THE OTHER  
3 DAY?

4 THE WITNESS: YES, I DO.

5 THE COURT: ALL RIGHT. THANK YOU.

6 MR. ABLARD: THANK YOU VERY MUCH, YOUR HONOR.

7 THE COURT: YOU MAY INQUIRE.

8  
9 JENNIFER RETHORN,  
10 HAVING BEEN PREVIOUSLY SWORN, RESUMED THE STAND, WAS  
11 EXAMINED AND TESTIFIED AS FOLLOWS:

12 DIRECT EXAMINATION

13 BY MR. ABLARD:

14 Q MA'AM, DID YOU-ALL HAVE AN INSURANCE POLICY ON  
15 BRITTANY?

16 A NO.

17 Q DID DARIN?

18 A LATER, I FOUND OUT THAT OFF OF DARIN'S POLICY, I  
19 DON'T KNOW ANYTHING REALLY ABOUT IT.

20 Q OKAY. HOW DID YOU FIND OUT THAT THERE WAS  
21 INSURANCE ON BRITTANY?

22 A FROM A CONVERSATION I HAD WITH OFFICER DONLEY.

23 Q OKAY. AND WHEN WAS THAT CONVERSATION?

24 A I REALLY-- IT WAS MONTHS AND MONTHS AFTER.

25 Q OKAY. WHEN DID YOU--WHEN WAS IT, IN '94?

26 A YES.

27 Q AROUND SUMMER MAYBE?

28 A I REALLY DON'T KNOW.

1 Q OKAY. WERE YOU UPSET WITH MR. RIGGS FOR NOT  
2 INFORMING YOU OF THIS LITTLE POLICY?

3 MS. SCHMAUSS: OBJECTION; IRRELEVANT.

4 MR. ABLARD: WELL, MR. RIGGS TESTIFIED AS TO THAT  
5 POINT. AND I THINK IT IS QUITE RELEVANT.

6 THE COURT: WHAT WAS THE QUESTION?

7 MR. ABLARD: PARDON?

8 THE COURT: WHY IS IT RELEVANT?

9 MR. ABLARD: UNDER 780 OF THE EVIDENCE CODE,  
10 CREDIBILITY.

11 MS. SCHMAUSS: I DON'T SEE HOW IT GOES TO CREDIBILITY  
12 AT ALL.

13 THE COURT: SUSTAINED.

14 Q BY MR. ABLARD: DID YOU ASK MR. RIGGS WHY HE  
15 HADN'T TOLD YOU--

16 MS. SCHMAUSS: OBJECTION; IRRELEVANT.

17 THE COURT: OVERRULED.

18 A I ASKED HIM WHY HE HAD IT. HE EXPLAINED IT. AND  
19 IT IS UNDERSTANDABLE NOW. BECAUSE IT WAS AN UNDERWRITTEN  
20 POLICY OF HIS.

21 Q WAS IT UNDERSTANDABLE TO YOU AT THE TIME?

22 MS. SCHMAUSS: OBJECTION; IRRELEVANT.

23 THE COURT: THAT'S ALL RIGHT. YOU CAN ANSWER IT.

24 A I UNDERSTOOD IT AFTER IT WAS EXPLAINED TO ME.

25 Q OKAY. WHEN WAS IT EXPLAINED TO YOU?

26 A SHORTLY AFTER I SPOKE TO OFFICER DONLEY.

27 Q OKAY. SO, OFFICER DONLEY TELLS YOU THAT DARIN  
28 HAD A POLICY?

1 A UH-HUH.

2 Q CORRECT?

3 A CORRECT.

4 Q AND THEN YOU APPROACH MR. RIGGS ABOUT THAT;

5 CORRECT?

6 A IT WAS AT A COUNSELING SESSION.

7 Q YOU APPROACHED MR. RIGGS ABOUT THAT; CORRECT?

8 A YES.

9 Q OKAY. AND HOW LONG AFTER YOU HAD SPOKEN TO  
10 OFFICER DONLEY DID YOU SPEAK TO MR. RIGGS ABOUT THIS?

11 A WE WERE IN COUNSELING. WE HAD A COUNSELING  
12 APPOINTMENT THAT NIGHT.

13 Q SO, IT WAS JUST THAT NIGHT?

14 A YES.

15 Q OKAY. THAT MONEY HAS BEEN COLLECTED?

16 A I REALLY DON'T KNOW. IT IS DARIN'S BUSINESS,  
17 NOT MINE. I AM NOT A PART OF THAT.

18 Q DID YOU EVER TELL ANYBODY THAT YOU WERE SHOCKED  
19 AND VERY UPSET THAT HE HAD THIS POLICY AND YOU DIDN'T TELL  
20 YOU ABOUT IT?

21 A AT FIRST, YES.

22 Q AND WHEN YOU SAY AT FIRST, WAS THIS BEFORE OR  
23 AFTER YOU APPROACHED MR. RIGGS ABOUT IT THE FIRST TIME?

24 A I WAS UPSET WHEN I HEARD THE PHONE CALL. AND  
25 PEOPLE THAT WERE AROUND ME WHEN I GOT THE CALL, I GOT THE  
26 CALL AT WORK.

27 Q BUT THEN LATER THAT NIGHT, IT WAS EXPLAINED?

28 A YES.

1 Q AND--

2 A PART OF IT, YES.

3 Q OKAY. AND YOU WERE FINE AFTER THAT?

4 A WE HAD MORE THAN ONE CONVERSATION ABOUT IT AT  
5 COUNSELING.

6 Q YOU MEAN DIFFERENT SESSIONS OR JUST THAT NIGHT?

7 A DIFFERENT SESSIONS.

8 Q OKAY. SO, YOU HAD MENTIONED IT A LITTLE EARLIER  
9 THAT ONCE IT WAS EXPLAINED TO YOU BY MR. RIGGS, THAT YOU  
10 WERE FINE WITH IT; IS THAT CORRECT?

11 A YES.

12 Q AND THE SUBJECT CAME UP ON DIFFERENT SESSIONS  
13 THROUGH COUNSELING?

14 A A FEW YES.

15 Q HOW MANY?

16 A A FEW, I DON'T-- I MEAN, WE WERE GOING OFTEN.  
17 I WAS GOING BY MYSELF. WE WERE MEETING TOGETHER. HE WAS  
18 GOING BY HIMSELF. I CAN'T TELL YOU WHAT DAYS WE WENT  
19 TOGETHER AND WHAT DAYS WE DIDN'T.

20 Q EXACTLY. BUT IT WAS A SOURCE OF CONVERSATION?

21 A YES.

22 Q IT WAS A TOPIC WAS AN ISSUE TO BE DISCUSSED AT  
23 THE COUNSELING?

24 A SOMETIMES, YES.

25 Q OKAY. NOW, THE MORNING OF THE 10TH, JUST TO  
26 RETRACT, WE HAD TALKED ABOUT THE FACT THAT YOUR FIRST  
27 CONVERSATION I THINK WITH OFFICER BALES WAS THAT THE DOOR,  
28 THE FRONT DOOR, WAS LOCKED, THE GARAGE DOOR WAS UNLOCKED,



1 AND THE SLIDER WAS UNLOCKED. DO YOU RECALL THAT?

2 A I HARDLY RECALL EVEN SPEAKING TO OFFICER BALES  
3 THIS MORNING.

4 Q OKAY. DO YOU RECALL THAT MORNING LATER ON  
5 TELLING SOMEONE OR IN AN INTERVIEW AT SOME POINT THAT  
6 WHEN YOU FIRST GOT UP, ALL THE DOORS WERE LOCKED?

7 A I REMEMBER TALKING ABOUT THE DOORS BEING LOCKED  
8 AND WHAT WERE LOCKED AND WHAT WAS NOT LOCKED.

9 Q OKAY. BUT DID YOU ACTUALLY TELL THEM THAT ALL  
10 THE DOORS WERE LOCKED ON THE INSIDE?

11 A I CAN'T RECALL. I WAS DISTRAUGHT. I DON'T KNOW  
12 WHAT HAPPENED AT THAT TIME.

13 Q OKAY. YOU TESTIFIED THE OTHER DAY THAT  
14 MR. JOHNSON WAS OUTSIDE ONCE FOR A BRIEF PERIOD WHILE YOU  
15 WERE OUTSIDE, AND HE WAS OUTSIDE LESS THAN A MINUTE;  
16 CORRECT?

17 A CORRECT.

18 Q OKAY. AND WAS THAT YOUR ORIGINAL STATEMENT TO  
19 POLICE, DO YOU KNOW?

20 A WHICH, IN I TALKED TO THE POLICE MORE THAN ONCE.  
21 SO, I DON'T KNOW WHICH TIME YOU ARE TALKING ABOUT.

22 Q YOU ARE RIGHT.

23 A I WHEN I SPOKE TO THEM.

24 Q HOW ABOUT DURING YOUR INTERVIEW?

25 A ON THE 12TH?

26 MS. SCHMAUSS: VAGUE, WHICH ONE.

27 Q BY MR. ABLARD: YES.

28 MS. SCHMAUSS: WITHDRAWN.

1           A     I REMEMBER BITS AND PIECES OF TALKING ABOUT HIM  
2     GOING OUTSIDE.   CONTENT IS REALLY VAGUE.   I CAN'T  
3     REMEMBER.

4           Q     OKAY.   DID YOU EVER TELL AN OFFICER THAT HE  
5     NEVER WENT OUTSIDE?

6           A     I DON'T REMEMBER.

7           MR. ABLARD:   MAY WE APPROACH FOR A SECOND, YOUR  
8     HONOR?

9           (SIDE BAR; NOT REPORTED.)

10          MR. ABLARD:   WE WILL JUST WAIT FOR OFFICER BALES,  
11     JUDGE.

12          THE COURT:   WELL, OKAY.   DO YOU HAVE ANY FURTHER  
13     INQUIRY?

14          MR. ABLARD:   NOT RIGHT THIS MINUTE, NO, I DON'T.

15          MS. SCHMAUSS: I HAVE NO CROSS RIGHT THIS MINUTE  
16     EITHER.

17          THE COURT:   SHE CAN REMAIN.   NOT REMAIN?

18          MR. ABLARD:   YES, OH, SHE CAN REMAIN.

19          THE COURT:   THANK YOU.   WAS THERE SOMEONE THAT WE  
20     PLAN FOR THIS AFTERNOON ON CALL?

21          MR. ABLARD:   JUST BALES AND KELLY.   JUST GO BALES  
22     THIS AFTERNOON, YOUR HONOR.

23          THE COURT:   OKAY.   IN ROUTE MEANS WHAT IN MINUTES,  
24     BEST JUDGMENT?

25          INVESTIGATOR DONLEY:   PROBABLY FIFTEEN OR TWENTY  
26     MINUTES PROVIDING HE IS NOT ON A CALL RIGHT NOW.   SHE SAID  
27     THAT HE COULD BE FREED UP AND SENT HERE ON A CALL; THAT  
28     HE'D BE RELEASED.   HE WILL BE HERE IN ABOUT FIFTEEN

1 MINUTES TO TWENTY MINUTES.

2 THE COURT: THAT WILL BE THE LAST WITNESS FOR THE  
3 DAY.

4 MR. ABLARD: RIGHT FOR TODAY, JUDGE.

5 THE COURT: THEN ON TUESDAY, YOU WILL HAVE SOME  
6 MORE WITNESSES THAT ARE--

7 MR. ABLARD: WE WILL HAVE MORE TUESDAY. AND WE WILL  
8 BE DONE WITH EVIDENCE TAKING ON TUESDAY FROM OUR SIDE,  
9 JUDGE.

10 THE COURT: THANK YOU. I WILL LET YOU FOLKS MEANDER  
11 ABOUT WHILE WE WAIT FOR THE NEXT WITNESS WHO IS ON CALL  
12 AND HAS BEEN CALLED AND IS IN ROUTE. HE IS NOT GOING TO  
13 COME WITH SIRENS OR ANYTHING; IS HE?

14 INVESTIGATOR DONLEY: I HOPE NOT.

15 THE COURT: ALL RIGHT. DON'T TALK ABOUT THE CASE.  
16 DON'T FORM OPINIONS OR CONCLUSIONS.

17 WE WILL BE RESUMING FOR TODAY FAIRLY SHORTLY.

18 (RECESS)

19 THE COURT: ALL RIGHT. THE JURY HAS RETURNED.

20 MR. ABLARD: THANK YOU. I CALL OFFICER BALES.

21 THE COURT: OFFICER, PLEASE HAVE A SEAT. I REMIND  
22 YOU YOU ARE STILL UNDER OATH FROM THE OTHER DAY.

23

24

25

26

27

28

BRADLEY JOE BALES,  
HAVING BEEN PREVIOUSLY SWORN, RESUMED THE STAND, WAS  
EXAMINED AND TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

1 BY MR. ABLARD:

2 Q MR. BALES, THANK YOU VERY MUCH FOR COMING. JUST  
3 A FEW SHORT QUESTIONS. HOW LONG HAVE YOU BEEN A PEACE  
4 OFFICER?

5 A ACTUALLY I STARTED AS RESERVE OFFICER IN 1975 TO  
6 1979. FULL-TIME POLICE OFFICER SINCE 1979.

7 Q AND OFFICER BALES, I GUESS JUST AN ESTIMATE OF  
8 HUNDREDS, HOW MANY REPORTS HAVE YOU TAKEN SINCE YOU  
9 STARTED WORKING IN LAW ENFORCEMENT?

10 A LITERALLY HUNDREDS.

11 Q AND DO YOU OFTEN HAVE TO TAKE REPORTS IN  
12 SITUATIONS WHERE PEOPLE ARE VERY AGITATED AND UPSET?

13 A THAT IS CORRECT.

14 Q AND WHAT IS YOUR PROCESS FOR DOING A REPORT  
15 INTERVIEW AND THEN DO NOTE-TAKING, WOULD YOU JUST EXPLAIN  
16 THAT PROCESS TO US?

17 A SOMETIMES THERE'S NOTE-TAKING AND SOMETIMES  
18 THERE'S NOT. IT IS ACCORDING TO WHAT THE CRIME WOULD BE.  
19 AS A MATTER OF FACT, I WAS ASSIGNED TO THE MONTCLAIR PLAZA  
20 FOR APPROXIMATELY THIRTEEN YEARS. I GOT SO ADEPT AT  
21 WRITING REPORTS THAT INVOLVED IN THEFT, I REALLY DON'T USE  
22 NOTES.

23 Q OKAY. DID YOU USE NOTES IN THIS CASE?

24 A NO, I DID NOT.

25 Q OKAY. NOW, WHEN YOU WERE CALLED TO THE LOCATION  
26 AND IN THE ORIGINAL REPORT, YOU SPOKE WITH MR. RIGGS;  
27 CORRECT?

28 A YES.

1 Q AND HOW DID THAT WORK? DID YOU ASK QUESTIONS  
2 AND ANSWERS OR DID YOU ASK FOR A NARRATIVE?

3 A BE BASICALLY A NARRATIVE.

4 Q OKAY. AND HE TELLS YOU THE NARRATIVE; CORRECT?

5 A THAT'S CORRECT.

6 Q OKAY. AND THEN WHAT HAPPENED AS FAR AS YOUR  
7 REPORT-WRITING PROCESS?

8 A AS SOON AS I HAVE A CHANCE AND I DO A BASIC  
9 TAPED REPORT.

10 Q OKAY. AND HOW LONG AFTER THIS INTERVIEW WITH  
11 MR. RIGGS DID YOU DO A TAPED REPORT?

12 A I'D SAY APPROXIMATELY FOUR HOURS.

13 Q OKAY. NOW, THIS IS THE REPORT THAT IS SENT, I  
14 TAKE IT, TO THE SERGEANT FOR REVIEW?

15 A CORRECT.

16 Q CORRECT?

17 A THAT IS CORRECT.

18 Q AND THEN ON TO THE LEAD INVESTIGATOR WHICH IN  
19 THIS CASE OFFICER DONLEY FOR A FURTHER ACTION; CORRECT?

20 A CORRECT.

21 Q OKAY. AND IS THERE-- DO YOU BELIEVE THAT THIS  
22 ORIGINAL REPORT THAT YOU WROTE IS AN ACCURATE REPORT AS TO  
23 WHAT THE PEOPLE TOLD YOU AT THAT TIME?

24 A YES.

25 Q OKAY. CAN YOU TELL WITHOUT TAKING NOTES HOW DO  
26 YOU KNOW THAT YOU DIDN'T MAKE A MISTAKE?

27 A THAT I DIDN'T MAKE A MISTAKE?

28 Q RIGHT. IN OTHER WORDS, THEY TELL YOU SOMETHING

1 AND THAT YOU DON'T GET IT DOWN WRONG FOR THE FINAL REPORT?

2 A WELL, AS FAR AS MAKING MISTAKES, I GUESS WE ALL  
3 WILL MAKE MISTAKES. AS FAR AS WHAT THEY TELL ME, I DOUBT  
4 THAT I GOT ANYTHING INCORRECT.

5 Q WHY?

6 A I AM A GOOD COP.

7 MR. ABLARD: I HAVE NO FURTHER QUESTIONS.

8 THE COURT: DID YOU WANT TO TOUCH THAT ONE?

9 CROSS-EXAMINATION

10 BY MS. SCHMAUSS:

11 Q WITHOUT DOUBTING THAT YOU ARE A GOOD COP, GOING  
12 BACK TO THE MORNING HOURS OF OCTOBER 10, 1993, WOULD YOU  
13 AGREE THAT THE SITUATION YOU WALKED INTO WAS FAIRLY  
14 CHAOTIC?

15 A MORE EMOTIONAL THAN CHAOTIC.

16 Q OKAY. WAS THERE CRYING, YELLING?

17 A YES.

18 Q AND HOW LONG DO YOU THINK YOU WERE AT THE HOUSE  
19 AT EXETER TOTAL BEFORE YOU WERE FREED TO REFLECT UPON WHAT  
20 EVERYONE SAID? IS THAT THE FOUR HOURS YOU WERE TALKING  
21 ABOUT?

22 A WELL, I HAD COME AND GONE ONCE, YES.

23 Q OKAY. YOU HAD COME AND GONE MEANING YOU WENT TO  
24 DOCTOR'S?

25 A YES, TO THE HOSPITAL.

26 Q SO, YOU ARRIVED AT 9393 EXETER SHORTLY AFTER  
27 THE DISPATCH AT 9:12; CORRECT-- YOU WERE THE SECOND  
28 OFFICER THERE?

1 A YES.

2 Q SO, YOU GOT THERE SHORTLY BEFORE 9:30?

3 A YES.

4 Q OKAY. AND THEN YOU WENT TO DOCTOR'S AND CAME  
5 BACK AND CAME BACK TO THE HOUSE; CORRECT?

6 A YES.

7 Q SO, ABOUT WHAT TIME WAS IT THAT YOU WERE FINALLY  
8 ABLE TO SIT IN YOUR CAR AND DICTATE YOUR REPORT?

9 A TWO OR THREE IN THE AFTERNOON, SOMEWHERE IN THAT  
10 TIME FRAME.

11 Q OKAY. SO, THAT'S WHEN YOU WERE GUESSTIMATING  
12 FOUR HOURS?

13 A YES, IT COULD HAVE BEEN A LITTLE BIT LONGER THAN  
14 THAT.

15 Q AND BY A TAPE REPORT, THIS IS YOUR TAPE  
16 RECORDING. YOU ARE SAYING AND THEN I SPOKE TO RIGGS AND  
17 HE TOLD ME THE FOLLOWING. IT IS NOT A TAPE OF PEOPLE?

18 A NO. IT IS NOT OF PEOPLE, NO.

19 Q DID NOT TAPE-RECORD THESE PEOPLE'S STATEMENTS?

20 A NEVER.

21 Q AND YOU WERE NOT DISCOUNTING THE POSSIBILITY  
22 THAT PERHAPS INADVERTENTLY YOU MAY HAVE GOTTEN SOMETHING  
23 OUT OF SEQUENCE, SOMETHING OUT OF ORDER?

24 A NO. THAT COULD HAVE HAPPENED.

25 Q AND THE PEOPLE YOU TALK TO, THEY ARE NOT ALLOWED  
26 TO PROOFREAD YOUR REPORTS; ARE THEY?

27 A THE PEOPLE THAT I TALK TO?

28 Q CORRECT, THE WITNESSES ARE NOT ALLOWED TO REVIEW

1       THEIR STATEMENTS?

2           A     NO.

3           Q     YOU DON'T HAVE ANY SORT OF PROCESS WHERE  
4       SOMEBODY READS THEIR STATEMENT, MAKES CORRECTIONS, SIGNS  
5       IT?

6           A     NO.

7           Q     THAT DOESN'T HAPPEN?

8           A     NO.

9           Q     SO, WHEN THE SERGEANT REVIEWS IT, HE DOESN'T  
10      KNOW WHAT DARIN RIGGS MIGHT HAVE TOLD YOU; IS THAT

11     CORRECT?

12          A     THAT IS CORRECT.

13          Q     HE JUST LOOKING IT OVER TO MAKE SURE YOU FILLED  
14     IN ALL THE BLANKS?

15          A     BASICALLY, YES.

16          MS. SCHMAUSS:    THANK YOU.    I HAVE NOTHING FURTHER.

17          MR. ABLARD:    JUST BRIEFLY.

18                       REDIRECT EXAMINATION

19     BY MR. ABLARD:

20          Q     AS I TELL YOU THE SEQUENCE OF EVENTS, A  
21     PARTICULAR PERSON AND WHAT THEY ARE DOING, DID YOU FIND  
22     THAT TO BE IMPORTANT ENOUGH TO MAKE SURE THAT YOU MADE A  
23     NOTE, MENTAL NOTE, OF IT SO YOU GET IT DOWN PROPERLY?

24          A     YES.

25          MR. ABLARD:    I HAVE NO FURTHER QUESTIONS.

26          THE COURT:    AT THE TIME YOU WROTE YOUR REPORT, DID  
27     YOU KNOW THE LITTLE GIRL WAS DEAD?

28          THE WITNESS:   YES.



1 THE COURT: DID YOU KNOW THAT IT MIGHT BE A HOMICIDE?

2 THE WITNESS: A SUSPICIOUS DEATH, YES, SIR.

3 THE COURT: A SUSPICIOUS DEATH, AT LEAST.

4 THE WITNESS: YES.

5 THE COURT: THANK YOU. YOU CAN STEP DOWN.

6 MS. SCHMAUSS: YOUR HONOR, WAIT. I MIGHT HAVE ONE  
7 MORE IMPORTANT THING.

8 THE COURT: ALL RIGHT YOU MAY.

9 RECROSS-EXAMINATION

10 BY MS. SCHMAUSS:

11 Q OFFICER BALES, YOU WERE PRESENT DURING THE  
12 TAPE-RECORDED INTERVIEW OF THE DEFENDANT AT THE POLICE  
13 STATION ON THE 10TH?

14 A YES.

15 Q AND DIDN'T THAT INTERVIEW GET OVER AT 1607  
16 HOURS, IF YOU RECALL?

17 A THAT SOUNDS GOOD. I AM NOT SURE WHAT TIME IT  
18 GOT OVER.

19 Q WELL, WERE YOU ABLE TO TAPE YOUR REPORT INITIAL  
20 REPORT BEFORE THAT?

21 A I PROBABLY HAD STARTED ON IT, YES.

22 Q BUT YOU DIDN'T COMPLETE IT?

23 A IT WAS SOMETIME IN THE LATE AFTERNOON.

24 Q SO, IT COULD HAVE BEEN EVEN MORE THAN FOUR  
25 HOURS?

26 A YES.

27 Q HARD TO REMEMBER AFTER TWO YEARS?

28 A YES.

1 MS. SCHMAUSS: THANK YOU. NOTHING FURTHER.

2 MR. ABLARD: I HAVE NOTHING.

3 THE COURT: THANK YOU.

4 MR. ABLARD: THANK YOU. WE ARE DONE FOR THE DAY FROM  
5 MY PRESENTING OF WITNESSES.

6 THE COURT: ALL RIGHT. AND WE ARE NEXT GOING TO  
7 RETURN ON TUESDAY. LADIES AND GENTLEMEN, YOU HAVE A  
8 FOUR-DAY WEEKEND FROM ME. WE WILL RECONVENE FOR SOME MORE  
9 TESTIMONY ON TUESDAY NEXT.

10 MR. ABLARD: YES.

11 THE COURT: THAT IS BECAUSE I HAVE A PRESET VERY  
12 COMPLICATED AND DIFFICULT HEARING THAT WILL GO ALL DAY  
13 LONG. AND I HAVE WITNESSES COMING FROM ALL OVER THE PLACE  
14 AND ALL PROFESSIONALS IN A CRIMINAL HEARING PROCEEDING ON  
15 MONDAY. AND I JUST HAVE TO ATTEND TO IT. I GOT THEM AT  
16 GREAT COSTS TO EVERYBODY FOR THESE PROFESSIONALS TO BE  
17 HERE. AND SO, WE WILL BE BACK ON TUESDAY AT 9:30.

18 PLEASE REMEMBER DO NOT DISCUSS THE CASE. DO NOT FORM  
19 OPINIONS OR CONCLUSIONS. I SUSPECT THAT YOU WILL GET THIS  
20 CASE WEDNESDAY. SO YOU WILL HAVE WEDNESDAY AND THURSDAY  
21 NEXT WEEK. HAVE A NICE FOUR-DAY WEEKEND.

22 (THE JURY EXITED THE COURTROOM, AND THE  
23 FOLLOWING PROCEEDINGS WERE HELD:)

24 THE COURT: ANYTHING FURTHER WE CAN DO ON THIS CASE?

25 MR. ABLARD: YES, YOUR HONOR. I WANT TO DISCUSS WITH  
26 THE COURT THE PROBLEM THAT I ALERTED THE COURT TO A LITTLE  
27 EARLIER ABOUT NOT GETTING DISCOVERY.

28 THE COURT: WELL, ALL RIGHT. THE JURORS HAVE

1 DEPARTED. THE COURT REMAINS IN SESSION.

2 MR. ABLARD: WE HAVE THIS ISSUE. AND THIS POLICY  
3 THAT MR. RIGGS HAD AND DID NOT TELL MRS. RETHORN. THERE  
4 IS TESTIMONY THAT THE POLICE TALKED TO MS. RETHORN ABOUT  
5 THAT. AND WE DON'T KNOW IF WE HAVE TALKED TO MR. RIGGS  
6 ABOUT THAT IN TESTIMONY OR ANYTHING. WE DON'T HAVE ANY  
7 REPORT ON THAT. IF THE INSURANCE IN A CASE LIKE THIS  
8 PARTICULARLY IF ONE PERSON HAD IT ALBEIT THE AMOUNT, THEY  
9 DON'T LET US KNOW ABOUT IT, THEN THAT'S A PROBLEM. SO, IT  
10 IS A DUE-PROCESS PROBLEM. IT IS A SIGNIFICANT AMOUNT  
11 PROBLEM. THAT IS WHAT HAPPENED HERE. IN A CASE SIMILAR  
12 TO THIS, SUCH AS THIS, WHEN THERE IS APPARENTLY NO MOTIVE,  
13 IT APPEARS THAT THAT SORT OF INFORMATION REALLY COULD GO  
14 TO THE HEART OF A DEFENSE IF PROPERLY HAD IN ONE HAD TIME  
15 TO EXPLORE IT. AND THE WAY THAT WE GET THAT IS THROUGH  
16 DISCOVERY WHEN ALL THESE THINGS ARE ASKED. THAT WASN'T  
17 GIVEN. AND ON THAT GROUNDS, I WOULD REQUEST ONE, A  
18 DISMISSAL.

19 IF THAT IS NOT GRANTED, CERTAIN DISCOVERY ORDERS BE  
20 ISSUED SO WE HAVE AN OPPORTUNITY TO FOLLOW UP ON THE  
21 TESTIMONY. AND WHATEVER THE COURT MAY DEEM APPROPRIATE.

22 THE COURT: WELL, FIRST ORDER IS DISTRICT ATTORNEY IS  
23 ORDERED TO SIT DOWN WITH INVESTIGATING OFFICER AND COMB  
24 THROUGH THE MULTITUDE OF REPORTS OR INFORMATION AVAILABLE  
25 AND FIND IF THERE ARE ANY REPORTS THAT COULD BE DELIVERED  
26 THAT WERE NOT, AND RESPOND TO THAT INQUIRY. AND IF THERE  
27 ARE ANY, DELIVER THEM BETWEEN NOW AND 5:00 THIS AFTERNOON.

28 MS. SCHMAUSS: REGARDING THE LIFE INSURANCE?

1 THE COURT: REGARDING ANY INTERVIEWS OF ABOUT LIFE  
2 INSURANCE OR ANY OTHER SUBJECT MATTER THAT WHEREIN MIGHT  
3 BE REPORTS OF THAT HAVE NOT BEEN DELIVERED. AND IF THERE  
4 AREN'T ANY, THERE AREN'T ANY. SO, WELL, DEAL WITH THAT  
5 FIRST. FIRST WE WILL LOOK TO SEE IF THERE ARE. WHAT  
6 RESPONSE WE GET, THEN I WILL DEAL WITH THE OTHER PROBLEMS  
7 LATER. PLEASE DON'T COUNT UPON A DISMISSAL AS A  
8 CONSEQUENCE, HOWEVER.

9 MS. SCHMAUSS: MAY I STATE FOR THE RECORD THAT TODAY  
10 IS THE FIRST TIME I HAVE EVER HEARD ABOUT ANY LIFE  
11 INSURANCE. I WAS TOTALLY BROADSIDE.

12 THE COURT: I DIDN'T ASK THAT. I ASKED YOU TO GO  
13 THROUGH WITH OFFICER DONLEY AND COMB THROUGH THE REPORTS  
14 IN HAND, HISTORY, INTERVIEWS, AND EVERYTHING THAT WHETHER  
15 YOUR OFFICE SHOULD HAVE BEEN INFORMED OF THE INTERVIEWS OF  
16 THE WITNESSES IN THE CASE AND THE REPORTS THEREOF AND  
17 DIDN'T GET THEM. I WANT TO KNOW IF THERE ARE ANY.

18 INVESTIGATOR DONLEY: NO, YOUR HONOR. THERE IS  
19 NOTHING WRITTEN.

20 THE COURT: WELL, THERE WE ARE. I WILL DEAL WITH THE  
21 NEXT STEP LATER.

22 MR. ABLARD: THANK YOU. THE NEXT THING IS YOUR  
23 HONOR, I HAVE BEEN INFORMED BY A COUPLE OF PEOPLE THAT  
24 SOME OF THE AUDIENCE HAVE BEEN TALKING WITH JURORS DURING  
25 BREAKS AND AT LUNCH HOUR. I DON'T KNOW ABOUT WHAT. COULD  
26 BE JUST CASUAL.

27 THE COURT: DO YOU KNOW WHO MIGHT HAVE TALKED TO ANY  
28 OF OUR JURORS?

1 MR. ABLARD: WELL, I HAVE TO FIND OUT WHO. ARE YOU--  
2 I DIDN'T OBSERVE IT. SOMEBODY ELSE OBSERVED IT AND TOLD  
3 ME ABOUT IT. SO, WHO OBSERVED IT.

4 THE COURT: WHO WAS?

5 SPECTATOR WIDNER: I WAS AT A SEPARATE TABLE.

6 THE COURT: WHO ARE YOU, MA'AM?

7 SPECTATOR WIDNER: MY NAME IS LINDA WIDNER. AND I  
8 ASKED THEM IF THEY KNEW HOW TO GET TO TOYS-R-US. THAT WAS  
9 IN CHINO HILLS.

10 THE COURT: WELL, ARE YOU RELATED TO ANYONE IN THIS  
11 CASE?

12 SPECTATOR WIDNER: I AM NOT RELATED.

13 THE COURT: ARE YOU JUST A SPECTATOR?

14 SPECTATOR WIDNER: YES.

15 THE COURT: AND YOU HAD A SMALL CONVERSATION WITH A  
16 JUROR ABOUT SOMETHING OTHER THAN THE CASE?

17 SPECTATOR WIDNER: THAT WAS MY ONLY CONVERSATION.

18 TOYS-R-US.

19 THE COURT: WHICH JUROR WAS IT?

20 SPECTATOR WIDNER: SHE WAS AT ANOTHER TABLE TODAY AT  
21 LUNCH TIME.

22 THE COURT: DO YOU KNOW WHICH JUROR?

23 SPECTATOR WIDNER: THE TWO BLACK LADIES WERE SITTING  
24 AT THE NEXT TABLE OVER OUT ON THE PATIO.

25 THE COURT: THANK YOU. ANYTHING ELSE?

26 MR. ABLARD: NO. I WOULD REQUEST THAT WE CONSIDER  
27 SPEAKING WITH THE JURORS TO SEE IF THAT'S THE ONLY TIE  
28 THAT SOMEONE HAS SPOKEN WITH THEM AND--

1 THE COURT: WELL, NO. I AM NOT GOING TO TALK TO  
2 JURORS ABOUT WHOM THEY TALK TO AS LONG AS THEY ARE NOT  
3 PARTIES OR WITNESSES OR OBVIOUS RELATIVES. JURORS CAN  
4 TALK TO A LOT OF PEOPLE DURING THE DAY ABOUT A LOT OF  
5 THINGS. ALL I HAVE IS THE PARTY WITH WHO WAS SEEN TALKING  
6 TO THEM IS ONLY A SPECTATOR.

7 MR. ABLARD: WELL, SOME PEOPLE ARE JUST HERE AS  
8 SPECTATORS. AND OTHERS ARE MAYBE NOT RELATED BUT  
9 INVOLVED WITH ONE FAMILY OR ANOTHER.

10 THE COURT: WELL, YOU NEED TO PRESENT THEM WITH A  
11 GREAT DEAL MORE THAN I JUST HEARD FOR ME TO BEGIN  
12 DISCUSSING THE JURORS' ACTIVITIES.

13 MR. ABLARD: FINE.

14 THE COURT: UNTIL I HEAR SOMETHING THAT HAS A SMELL  
15 IF IMPROPRIETY, I DON'T LIKE TO TALK TO THEM ABOUT  
16 ANYTHING. THEY HAVE GOT ENOUGH PROBLEMS ON THEIR MINDS ON  
17 THIS CASE.

18 MR. ABLARD: I APPRECIATE IT. THANK YOU.

19 THE COURT: OKAY. WHAT ELSE?

20 MR. ABLARD: I GUESS THAT IS ALL OTHER THAN FROM  
21 THIS SIDE OTHER THAN TUESDAY.

22 THE COURT: WELL, I AM NOT DONE YET. DO YOU HAVE  
23 ANYTHING ELSE?

24 MS. SCHMAUSS: THE ONLY THING WE DO HAVE TIME IF WE  
25 COULD GET INTO THE 402-352 ISSUES. WE MIGHT SAVE SOME  
26 TIME ON TUESDAY. BECAUSE I KNOW EXACTLY WHAT FERRERA AND  
27 CROCKER'S STATEMENTS ARE BECAUSE WE PROVIDED THEM TO THE  
28 DEFENSE.

1 THE COURT: YOU THINK.

2 MS. SCHMAUSS: I KNOW.

3 THE COURT: THEY MAY HAVE CHANGED.

4 MS. SCHMAUSS: NOT THAT I KNOW OF.

5 THE COURT: WELL, I AM NOT GOING TO HAVE A 402  
6 HEARING ABOUT WHAT SOMEONE, WHAT YOU BELIEVE SOMEONE MAY  
7 SAY UNLESS THAT PERSON IS HERE TO CONFIRM THEY ARE OR NOT  
8 GOING TO SAY IT. OTHERWISE, I AM JUST LISTENING TO HOT  
9 AIR. IT IS ALL HOT AIR. IT IS ALL HOT AIR, ALL HEARSAY.  
10 WHAT YOU BELIEVE SOME ONE MAY SAY MAY THEY REPORT WHAT  
11 THEY SAY.

12 MS. SCHMAUSS: IT'S ON TAPE. HOW WILL WE HANDLE IT  
13 ON TUESDAY? YOU WANT ME TO OBJECT AT FIRST QUESTION.

14 THE COURT: GOSH, JUST LIKE ANY LAWYERS DO.

15 MS. SCHMAUSS: YOU DID SAY THAT WE COULD DO A HEARING  
16 BECAUSE WE HAVE THE STATEMENT.

17 THE COURT: I SAID THAT I WOULD CONSIDER HEARING IF  
18 IT SEEMED APPROPRIATE AT THE TIME. I HAVE NOTHING ELSE  
19 FOR YOU TO DO OVER THE WEEKEND. THAT IS ON MONDAY  
20 MORNING. MR. ABLARD, YOU ARE IN THE HOUSE ARE YOU NOT?

21 MR. ABLARD: YES.

22 THE COURT: AND YOU ARE TOO; ARE YOU NOT?

23 MS. SCHMAUSS: YES.

24 THE COURT: THE JURORS WILL NOT BE HERE, BUT YOU WILL  
25 BOTH BE HERE AT 9:00.

26 MR. ABLARD: YES.

27 THE COURT: YOU WILL HAVE A REALLY NICE TAILOR SET OF  
28 INSTRUCTIONS ALL PREPARED. FIRST, SECOND, VOLUNTARY WITH

1 ALL THE INTENTS AND ALL OF THE DELINEATIONS OF HOW THE  
2 JURORS ARE SUPPOSED TO WEED THROUGH THAT. YOU WILL HAVE  
3 BY THEN NO DOUBT DISCUSSED IT WITH MR. ABLARD WHAT  
4 OBJECTIONS HE MAY HAVE.

5 MR. ABLARD: FINE.

6 THE COURT: AND THEN YOU WILL PRESENT THE FINAL  
7 PRODUCT TO ME WITH THOSE AREAS THAT THERE MAY BE SOME  
8 OBJECTIONS.

9 MS. SCHMAUSS: HOWEVER, THE INVOLUNTARY WILL NOT BE A  
10 PEOPLES' REQUEST.

11 THE COURT: I DIDN'T--

12 MS. SCHMAUSS: CORRECT. BUT I HAVE TO FILL IN THE  
13 BLANK. WHAT IS THE MISDEMEANOR CONDUCT?

14 THE COURT: FIGURE IT OUT.

15 MS. SCHMAUSS: WELL, I AM NOT GOING TO BECAUSE IT IS  
16 NOT MY INSTRUCTION.

17 THE COURT: THAT'S WHY YOU ARE MEETING WITH  
18 MR. ABLARD. HE HAS THE POSSIBILITY OF FILLING IN THE  
19 BLANKS. I WANT YOU PREPARED.

20 MR. ABLARD: THAT'S WHY WE ARE GOING TO MEET HERE.  
21 WE ARE GOING TO TALK ABOUT IT. GET IT DOWN. THAT'S WHY  
22 WE ARE GOING TO DO THAT.

23 THE COURT: AND IT MIGHT BE HELPFUL IF YOU HAVE THE  
24 TAPE RECORDER AND THE TAPE FOR US TUESDAY MORNING JUST AS  
25 A HINT, NOT THAT I WANT TO LISTEN TO THEM BECAUSE YOU ARE  
26 IF YOU ASK ME WHAT I WANT TO DO YOU ALWAYS GET THE SAME  
27 ANSWER.

28 MS. SCHMAUSS: MR. ABLARD COULD REST.



1 MR. ABLARD: I AM RESTING.

2 MS. SCHMAUSS: I MEAN NOT LEGALLY RESTING. I AM  
3 RESTING. WE CAN ARGUE AND INSTRUCT WENDESDAY.

4 THE COURT: WE WILL.

5 MS. SCHMAUSS: UNLESS I HAVE REBUTTAL.

6 THE COURT: WON'T BE ANY REBUTTAL.

7 MS. SCHMAUSS: I GUESS NOT.

8 THE COURT: IF YOU CONCLUDE TUESDAY MORNING, BE  
9 PREPARED TO ARGUE TUESDAY AFTERNOON.

10 MR. ABLARD: WE WON'T BE DONE TUESDAY MORNING.

11 THE COURT: WELL, IF WE CONCLUDE EARLY IN THE  
12 AFTERNOON, BE PREPARED TO COMMENCE ARGUMENT.

13 MR. ABLARD: I HAVE GOT TO GET SOME WITNESSES.

14 THE COURT: WE ARE GOING TO HAVE THE INSTRUCTIONS  
15 FINALLY IN ORDER BEFORE THE NEXT WEEK.

16 MR. ABLARD: RIGHT.

17 THE COURT: ALL THERE ARE NEW NUMBERS OF WITNESSES  
18 THAT HAVE MUCH TO SAY ABOUT ANYTHING IN THIS CASE OR WHOSE  
19 TESTIMONY IS WORTH A DISCUSSION TO THE JURY. AND IT IS  
20 NOT A COMPLICATED SERIES OF EVENTS OVER A GREAT DEAL OF  
21 TIME. IT IS WHAT IT IS. IT HASN'T CHANGED SINCE YOU  
22 WALKED IN THE DOOR. AND SO, THE CONCEPT OF HOW TURNING TO  
23 THE JURY QUICKLY AND SAYING YOU KNOW HERE IS WHAT HAPPENED  
24 WHO DID WHAT TO WHOM. GOOD LUCK I DON'T THINK YOU HAVE  
25 TO BE TOO PREPARED AT GREAT LENGTH. AND THEREFORE, YOU  
26 DON'T GET TO.

27 MR. ABLARD: THAT'S A NORMAL REGULAR PROPOSITION. I  
28 ALWAYS HAVE TO YOU KNOW YOU HAVE TO PREPARE. I MEAN, I

1 GET TONGUE TIED.

2 THE COURT; TODAY IS THURSDAY. DO YOU THINK THAT THE  
3 NEXT WITNESS OR TWO IS GOING TO DRASTICALLY CHANGE THE  
4 BRITTANY DIED ON OR ABOUT OCTOBER 10, 1993 AND THAT THERE  
5 ARE FOUR PEOPLE AT HOME AT OR ABOUT THE TIME SHE DIED, AND  
6 THAT AIN'T GONNA CHANGE; IS IT?

7 MR. ABLARD: DOESN'T APPEAR SO.

8 THE COURT: DOESN'T APPEAR SO. SO, GREAT BULK OF  
9 WHAT THIS CASE IS ABOUT ISN'T CHANGING.

10 MR. ABLARD: NO. ACTUALLY, IT IS NOT GOING TO  
11 CHANGE.

12 THE COURT: AND THE KITCHEN WILL BE ALWAYS IN THE  
13 SAME LOCATION AS IT WAS AT THE TIME AS IT IS TO THE HALL  
14 AS IT IS TO THE BEDROOM. THE HOUSE ISN'T GOING TO CHANGE.  
15 NOTHING IS GOING TO CHANGE.

16 MR. ABLARD: SO.

17 THE COURT: SO, YOU HAVE FOUR DAYS TO THINK ABOUT IT.

18 MR. ABLARD: I SORT OF HOPED NOT TO THINK ABOUT IT IN  
19 THE NEXT FOUR DAYS.

20 THE COURT: SORRY.

21 MR. ABLARD: SO, BUT WE ARE GOING TO TUESDAY AND THEN  
22 YOU WILL LISTEN CLOSELY ON WEDNESDAY MORNING. I THINK I  
23 WILL BE INSTRUCTING THE JURY BEFORE NOON ON WEDNESDAY.

24 MR. ABLARD; GREAT. DO YOU INSTRUCT BEFORE OR AFTER  
25 ARGUMENT?

26 THE COURT: AFTER.

27 MR. ABLARD: SO WEDNESDAY MORNING WILL DO IT. THANK  
28 YOU.

1 (PAUSE IN THE PROCEEDINGS.)

2 THE COURT: ON THE RECORD ON JOHNSON. MR. JOHNSON IS  
3 AS I INDICATED TO YOUR COUNSEL, MS. SCHMAUSS, WE ARE GOING  
4 TO GO THROUGH THE JURY INSTRUCTIONS WE TALKED ABOUT THE  
5 OTHER DAY. WE ARE GOING TO GO BACK OVER FILL IN SOME OF  
6 THE BLANKS AND LOOK AT THEM AGAIN. YOU CAN BE HERE IF YOU  
7 WANT OR IF YOU DON'T WANT TO COME MONDAY, I WILL EXCUSE  
8 YOU IF THAT IS YOUR REQUEST.

9 THE DEFENDANT: I RATHER BE EXCUSED FROM MONDAY.

10 THE COURT: YOU ARE EXCUSED FOR MONDAY. YOU WILL  
11 CLEARLY HAVE A CHANCE TO BE PRESENT AS THEY AND I DISCUSS  
12 THEM WITH MR. ABLARD DEEMS IT IS IMPORTANT TO DISCUSS.

13 THE DEFENDANT: THANK YOU.

14 THE COURT: THANK YOU.

15 (PROCEEDINGS CONTINUED TO MONDAY NOVEMBER 6, 1995.)  
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