

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:

ATTORNEY GENERAL
DEPARTMENT OF JUSTICE
110 WEST "A" STREET, SUITE 600
SAN DIEGO, CALIFORNIA 92101

DENNIS L. STOUT
DISTRICT ATTORNEY
316 NORTH MT. VIEW AVENUE
SAN BERNARDINO, CALIFORNIA 92415

REPORTED BY:

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GAIL GREENLEE, C-8647
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.

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) 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:

FOR THE PLAINTIFF: DENNIS L. STOUT
DISTRICT ATTORNEY
BY: KAREN SCHMAUSS, DEPUTY
8303 HAVEN AVENUE
RANCHO CUCAMONGA, CA 91730

FOR THE DEFENDANT: GARY ABLARD
ATTORNEY AT LAW
10700 CIVIC CENTER DRIVE
RANCHO CUCAMONGA, CA 91730
(909) 941-7881

REPORTED BY: GAIL GREENLEE, C-8647,
JANE FOLMER, C-2331,
AND KATHY MCNULTY, C-7651,
OFFICIAL REPORTERS, AND
KARIE MARTIN, C-9428,
REPORTER PRO TEMPORE

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1 RANCHO CUCAMONGA, CALIFORNIA; THURSDAY, OCTOBER 19, 1995

2 A.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: CHUCK JOHNSON. PEOPLE VERSUS JOHNSON.

10 MS. SCHMAUSS: YOU ARE STARTING WITHOUT ME.

11 THE COURT: MR. ABLARD IS PRESENT. DEFENDANT,
12 MR. JOHNSON IS PRESENT, DRESSED. MS. SCHMAUSS IS PRESENT
13 NOW.

14 THE JURY IS WAITING DOWNSTAIRS. WE WILL GO GET THEM
15 IN A FEW MINUTES.

16 MS. SCHMAUSS: THERE IS ABOUT A ZILLION PEOPLE
17 OUTSIDE.

18 THE BAILIFF: OUTSIDE. ROLL HAS BEEN DONE.

19 THE COURT: ALL RIGHT. SO, EVERYBODY IS PAYING
20 ATTENTION. AS SOON AS YOU GET YOUR STUFF UNLOADED.

21 EVERYBODY'S ATTENTION.

22 HERE IS WHAT I INTEND TO DO. I HAVE A PANEL COMING
23 IN NOW. I HAVE A PANEL COMING IN AT 1:30. I ORDERED TWO,
24 FORTY-FIVE PEOPLE PANELS. HOPEFULLY THEY WERE SCREENED
25 FOR TIME FRAME.

26 I AM GOING TO TELL THEM OUR WORK SCHEDULE IS
27 COMMENCING TO COME BACK ON TUESDAY, OCTOBER 24. AND THEY
28 ARE GOING TO WORK THE 24TH THROUGH 26TH; THEY WILL RETURN

1 ON 10-30 THROUGH 11-2. THEY WILL COME BACK ON 11-7.

2 MS. SCHMAUSS: WHAT DOES IT SAY ON 11-8 UP THERE?

3 THE CLERK: THAT'S YOUR TRIAL ON THE PRIORS ON--

4 THE COURT: THAT'S A NOTHING.

5 MS. SCHMAUSS: THAT IS A NO PANEL. 11-7 AND 11-8.

6 BACK ON 11-14 IF NEEDED.

7 MS. SCHMAUSS: GARY.

8 MR. ABLARD: YEAH.

9 THE COURT: 11-14 TO 11-16. I THINK THAT SHOULD BE
10 IT.

11 MR. ABLARD: ONE--

12 THE COURT: YOU HAVE A 11-14 PROBLEM; RIGHT?

13 MR. ABLARD: YES, THANK YOU.

14 THE COURT: OKAY. WE ARE GOING TO CALL A PANEL IN.
15 AND IF WE HAVE SPECTATORS, I'D LIKE THE SPECTATORS TO
16 LOCATE THEMSELVES IN THE COURTROOM SOMEWHERE IN ONE ROW SO
17 WE, POSSIBLY THE FRONT ROW, SO, YOU KNOW, WHEN PEOPLE
18 STAND UP TO BE SWORN I CAN SEE THAT EVERYBODY IS STANDING
19 UP AND BEING SWORN.

20 HERE IS WHAT I INTEND TO DO, ASSUMING COUNSEL AGREE.
21 IT IS MY CUSTOM TO EXCUSE PEOPLE FOR HARDSHIP AS I DEFINE
22 IT. IF THEY HAVE VACATION, NON-REFUNDABLE VACATION PLANS
23 OR SOMETHING, MEDICAL PROBLEMS THAT YOU KNOW IF THEY ARE
24 IN A H.M.O. AND THEY HAVE YOU KNOW SCHEDULED STUFF, THEY
25 CAN'T GET BACK FOR SIX MONTHS, IF IT'S KAISER, IF IT'S A
26 PROBLEM. IT'S MY GENERAL THINKING IF SOMEONE CAN'T HEAR ME
27 OR HEAR YOU TO EXCUSE THEM WITHOUT DEALING WITH THE
28 PERSON'S WITH DISABILITIES ACT. IF I FIND PEOPLE WHO ARE

1 HAVING GREAT DIFFICULTY UNDERSTANDING THE CONCEPT OF JURY
2 TRIAL, AND SO ON, I AM GOING TO ASK TO EXCUSE THEM. IF I
3 HEAR FROM SOME PEOPLE THEY, THAT BASED UPON SOME
4 EXPERIENCE IN THEIR LIFE, THEY ARE VERY CONCERNED ABOUT
5 ~~BEING ABLE TO BE FAIR IN A CASE LIKE THIS OR ANY KIND OF~~
6 CASE FOR WHATEVER REASON, OR IF I FIND IF IN MY SENSE THEY
7 ARE HAVING THEIR CONNECTION WITH LAW ENFORCEMENT IS SO
8 GREAT THAT IT'S GOING TO BE OVERWHELMING, I AM GONNA
9 EXCUSE PEOPLE.

10 MR. ABLARD: FINE.

11 THE COURT: DO NOT WANT TO HAVE A LONG EXPLANATION
12 FROM SOME JURORS WHY BECAUSE HER NIECE WAS KILLED BY THE
13 NIECE'S STEPFATHER, SHE CANNOT BE FAIR IN THIS CASE. AND
14 ON AND ON WE GO. I DON'T WANT TO GO THROUGH ALL THAT.
15 SO, I ACT TO EXCUSE. WE HAVE GOT PLENTY OF JURORS OUT
16 THERE THAT WE CAN FIND THAT WILL BE FAIR. JUST WANT 'EM
17 GONE. DON'T WANT TO RUIN A WHOLE PANEL BY SOMEBODY YOU
18 KNOW TIRADE AS TO WHAT THEY THINK OR DON'T THINK OR
19 COMMENTS ON THE SIMPSON TRIAL OR WHATEVER IT IS.

20 SO, I AM GOING TO ASSUME THAT YOU WAIVE ANY, BOTH
21 SIDES WAIVE ANY OBJECTION TO THIS COURT'S EXCUSING A
22 JUROR.

23 MR. ABLARD: WAIVED.

24 MS. SCHMAUSS: SO WAIVED.

25 THE COURT: UNLESS YOU INDICATE OTHERWISE. AND
26 CERTAINLY, I'LL PERMIT TO YOU STAND UP AND SAY YOUR HONOR,
27 BEFORE YOU EXCUSE THE JUROR OR BEFORE THE JUROR LEAVES,
28 MAY WE APPROACH. AND THEN I'LL HEAR IF YOU THINK THE

1 COURT HAS EXCEEDED ITS AUTHORITY GRANTED BY BOTH OF YOU TO
2 ASSIST IN THE JURY SELECTION. OKAY.

3 MR. ABLARD: THAT'S FINE. THANK YOU.

4 THE COURT: ALL RIGHT. OTHER RULES, SINCE YOU BOTH
5 ARE BRAND NEW TO MY COURT IS I AM GONNA GROSSLY VOIR DIRE
6 THE JURY, EXCUSE THEM UNTIL TUESDAY; THE 1:30 GROUP, SAME
7 THING. ON TUESDAY, WE WILL START SERIOUS SELECTION.

8 I HAVE SOME MORE QUESTIONS. BUT I AM GOING TO PERMIT
9 VOIR DIRE BY BOTH OF YOU. THIS IS THE COMPLICATED, SORT OF
10 COMPLICATED CASE. I WILL PERMIT YOU TO GO INTO SOME OF THE

11 FACTS, NOTHING SPECTACULAR, BUT THE GENERAL KINDS OF
12 THINGS THAT THE JURY IS GOING TO HEAR ABOUT THE TECHNICAL
13 AND MEDICAL STUFF SO THAT YOU CAN DETERMINE IN YOUR MIND
14 WHETHER YOU HAVE JURORS THAT ARE EITHER INTELLIGENT ENOUGH
15 OR SOPHISTICATED ENOUGH TO HEAR AND UNDERSTAND THE
16 EVIDENCE. I'LL PERMIT THAT. I MEAN THAT'S NOT THE
17 REAL-WORLD FACTS. IT'S TRIAL FACTS, IF YOU WILL.

18 PROCEDURE, BETWEEN MYSELF AND THE CORNER OF COUNSEL
19 TABLE TO THE JURY, IS A PLACE IF YOU GO, I WILL LASSO AND
20 DRAG YOU UP HERE OR THE TRAP DOOR WILL OPEN. THIS IS NOT
21 L.A. LAW WHERE YOU CAN GO DRAPE YOURSELVES OVER THE RAIL
22 BETWEEN THE WELL AND THE JURY. YOU CAN USE THE LECTERN.

23 YOU ARE NOT REQUIRED TO. YOU CAN ALWAYS GO TO WITNESSES
24 AND BACK FOR THE PURPOSES OF DISCUSSION OR WHATEVER. YOU
25 DON'T HAVE TO REQUEST IT. JUST YOU GOT THE RUN OF THE
26 COURTROOM. MY REQUIREMENT IS I AM ABLE TO OBSERVE THE
27 JURY AT ALL TIMES AND YOU NEVER GET IN THE WAY. THAT'S
28 ALL.

1 MS. SCHMAUSS: IS IT ALL RIGHT IF I ONLY STAND RIGHT
2 THERE?

3 THE COURT: THAT'S FINE. YEAH, YEAH. JUST SO WHEN YOU
4 LOOK AT ME, YOU KNOW I CAN SEE ALL THE JURORS AND SO I
5 DRAW THE LINE TO THE CORNER OF COUNSEL TABLE.

6 MR. ABLARD: NOT FURTHER THAT WAY. THE OTHER WAY.

7 THE COURT: YOU CAN WORK IN HERE.

8 MR. ABLARD: OKAY.

9 THE COURT: BUT YOU CAN'T GET CLOSER TO THE JURY. I
10 AM OFFENDED BY LAWYERS WHO WANT TO SIT ON THE JURORS'

11 LAPS.

12 MR. ABLARD: SO, NOT CLOSER THAT WAY.

13 THE COURT: YEAH, NOT CLOSER THAT WAY. I DON'T THINK
14 THAT INTERFERES WITH ANYTHING.

15 MR. ABLARD: FINE.

16 THE COURT: SOME DAY, EVERY DAY I AM GONNA PUT TAPE
17 DOWN.

18 MS. SCHMAUSS: HOW ABOUT LITTLE FEET.

19 THE COURT: WITH A LITTLE CIRCLE WITH A LINE ACROSS
20 IT OR LITTLE FEET ACROSS THE LINE SHOWING THE TOES CHOPPED
21 OFF OR SOME APPROPRIATE DESIGNATION.

22 CAN'T THINK OF ANYTHING ELSE OFFHAND. DID EVERYBODY
23 HEAR? I DON'T HAVE A LIST.

24 MS. SCHMAUSS: A WITNESS LIST. WOULD YOU LIKE A--

25 THE COURT: AFTER I DO THE HARDSHIP, VACATION, THE
26 NEXT AREA OF CONCERN TO THE COURT IS WHETHER OR NOT THEY
27 KNOW ANYBODY. SO WHAT I USUALLY DO IS I ASK COUNSEL TO
28 INTRODUCE THEMSELVES-- EXCUSE ME. THAT IS YOU

1 MS. SCHMAUSS, AND YOU, MR. ABLARD AND MS. SCHMAUSS. I ASK
2 YOU TO TELL US TO IDENTIFY THE WITNESSES YOU EXPECT TO
3 CALL, THAT IS, NAME, SOMETHING ABOUT THEM SO WE KNOW IT IS
4 JUST NOT DON SMITH. IT IS DON SMITH WHO WORKS FOR ONTARIO
5 POLICE DEPARTMENT. HE IS A LIEUTENANT IN THAT DEPARTMENT,
6 OR WHATEVER IT IS YOU HAVE TO DESCRIBE.

7 OKAY. MR. ABLARD, IF YOU HAVE WITNESSES YOU EXPECT
8 TO CALL, I'LL ASK YOU TO DO THE SAME. YOU ARE NOT REQUIRED
9 TO. YOU MAY INTRODUCE YOUR CLIENT.

10 MR. ABLARD: THANK YOU.

11 THE COURT: AND SO ON. SO, DRAG THEM IN.

12 (AT WHICH TIME JURY VOIR DIRE WAS REPORTED,
13 AND WAS NOT TRANSCRIBED AT THIS TIME.)

14 (COURT ADJOURNED UNTIL MONDAY, OCTOBER 23, 1995.)
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1 RANCHO CUCAMONGA, CALIFORNIA; MONDAY, OCTOBER 23, 1995

2 9:42 A.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: THIS IS THE JOHNSON CASE. MR. JOHNSON IS
10 PRESENT. MR. ABLARD IS PRESENT. MS. SCHMAUSS IS PRESENT

11 TAKING THINGS OUT OF HER BOX.

12 MS. SCHMAUSS: THIS IS DETECTIVE DONLEY. HE IS MY
13 INVESTIGATING OFFICER.

14 THE COURT: HE IS GOING TO BE DESIGNATED YOUR
15 INVESTIGATING OFFICER FOR THE PURPOSES OF THIS LITIGATION?

16 MS. SCHMAUSS: YES, YOUR HONOR.

17 THE COURT: THANK YOU. HE IS SO DESIGNATED.

18 MR. ABLARD: I HAVE ONE TOO, YOUR HONOR, JOHN MARTIN.

19 HE IS NOT HERE RIGHT NOW.

20 THE COURT: ALL RIGHT. DO YOU EXPECT MR. MARTIN TO
21 BE A WITNESS?

22 MR. ABLARD: HE MAY BE.

23 THE COURT: ALL RIGHT. HE WILL BE DESIGNATED YOUR
24 INVESTIGATING OFFICER.

25 MR. ABLARD: THANK YOU.

26 THE COURT: WHAT CAN I DO FOR YOU TO GET US READY?

27 MR. ABLARD: I HAVE ONE QUICK ITEM TO BRING UP WITH
28 THE COURT'S SCHEDULING. LAST, OH, ABOUT A COUPLE OF WEEKS

1 AGO, WEEK AND A HALF OR WHATEVER, I WAS SUBPOENAED TO BE A
2 WITNESS IN A TRIAL IN VAN NUYS. AND THAT TRIAL WAS
3 SUPPOSED TO START LAST MONDAY. BUT AS I UNDERSTAND FROM
4 LATE FRIDAY AFTERNOON, STARTING THIS MONDAY.

5 THEY HAVE SCHEDULED ME FOR TUESDAY, TOMORROW
6 AFTERNOON IN VAN NUYS. NOW, THIS THING HAS BEEN GOING ON
7 FOR FIVE YEARS. AND I DON'T KNOW. I AM NOT GOING TO BE
8 ON THE STAND FOR TWO MINUTES. AND I NEVER HEAR FROM THEM
9 AGAIN. BUT SO I TOLD THEM I NEED TO KNOW TOMORROW MORNING
10 FOR SURE. THAT WAY WE CAN TELL THE JURY WHAT'S GOING ON.

11 THE COURT: ALL RIGHT. WHAT COURT IS IT IN?

12 MR. ABLARD: I DON'T HAVE THE SUBPOENA. IT IS IN
13 VAN NUYS. IT IS A CIVIL TRIAL. AGAIN THE COUNTY OF THE--
14 I DON'T KNOW. I COULD GET ALL THAT INFORMATION.

15 THE COURT: ALL I NEED TO KNOW IS WHAT JUDGE--

16 MR. ABLARD: NO PROBLEM.

17 THE COURT: -- THAT YOU ARE REQUIRED TO APPEAR IN
18 FRONT OF.

19 MR. ABLARD: NO PROBLEM.

20 THE COURT: ORDINARILY WHEN YOU CALL AND SAY LOOK, I
21 KNOW YOU NEED THE WITNESS, BUT RIGHT NOW HE IS IN THE
22 MIDDLE OF A MURDER TRIAL, AND I WILL EXCUSE HIM, THEY
23 USUALLY SAY OKAY, WE WILL CALL YOU DIRECTLY AND TELL YOU
24 WHEN WE WANT HIM. WE WILL JUST GO RIGHT AROUND THE
25 LAWYERS AND THEIR REQUESTS.

26 MR. ABLARD: THAT WILL BE GREAT. GREAT. PERFECT.

27 THE COURT: YOU KNOW. SOMETIMES THAT WORKS.

28 MR. ABLARD: ALL RIGHT. WE WILL SEE. OKAY. SOUNDS

1 GOOD. THE ITEMS THIS MORNING THAT I WANT TO DISCUSS,
2 JUDGE--

3 THE COURT: MY FIRST QUESTION IS SHOULD I USE PENCIL
4 OR INK?

5 MR. ABLARD: MAYBE YOU SHOULD LISTEN TO THEM FIRST
6 AND DECIDE.

7 THE COURT: I LIKE TO WRITE THEM DOWN. REMEMBER, I
8 AM NOT REALLY SMART. AND I AM NOT REAL FAST. SO, NICE
9 AND SLOW.

10 MR. ABLARD: MRS. SCHMAUSS AND I HAVE DISCUSSED THE
11 MOTION OF THE PRIOR ACTS OF MY CLIENT AS STATED BY OTHER,
12 PROPENSITY FOR VIOLENCE. AND THE 273 CHARGE, .273.5
13 CHARGE. I BELIEVE THAT SHE HAS STATED AND SHE COULD FOR
14 THE RECORD ELABORATE THAT SHE WOULD NOT BE BRINGING THOSE
15 IN UNLESS I BROUGHT IN EVIDENCE OF GOOD CHARACTER; RIGHT?

16 MS. SCHMAUSS: YES, YOUR HONOR. I INFORMED MR.
17 ABLARD THIS MORNING THAT I HAVE RESEARCHED THE ISSUE OVER
18 THE WEEKEND. AND THE RESULTS OF MY WEEKEND WAS THAT THE
19 TWO VICTIMS ARE TOO DISSIMILAR TO QUALIFY AS 1101 SIMILAR
20 MOTIVE, INTENT, PLAN.

21 AND I DO NOT PLAN TO USE ANY OF THE SPOUSAL-ABUSE
22 EVIDENCE IN MY CASE IN CHIEF. HOWEVER, IF MR. ABLARD WERE
23 TO PUT IN THE DEFENDANT'S GOOD CHARACTER FOR NONVIOLENCE,
24 THEN I THINK IT WOULD BE A WHOLE DIFFERENT ISSUE.

25 THE COURT: THANK YOU. THAT I AM NOT SURPRISED.
26 THAT TAKES CARE OF--

27 MS. SCHMAUSS: THAT WOULD HAVE BEEN YOUR RULING
28 ANYWAY.

1 THE COURT: WELL, NOT WITHOUT HAVING THE FACTS THAT
2 WOULD SUPPORT THE 1101. WHEN YOU HAVE A DIFFERENT KIND OF
3 VICTIM, YOU HAVE A DIFFERENT PROBLEM.

4 MS. SCHMAUSS: I THINK IT WOULD BE A GUARANTEED
5 REVERSAL. AND WE DON'T WANT THAT.

6 THE COURT: THE COURT MAKES LOTS OF ERRORS. BUT IT
7 TRIES TO NOT MAKE THOSE KIND THAT REQUIRE RETRIALS. OKAY.
8 THEN BASED UPON THAT WHAT I BELIEVE TO BE AN
9 UNDERSTANDING, THE COURT DOESN'T HAVE TO RULE ON THE
10 REQUEST FOR OTHER ACTS TO BE ESTABLISHED.

11 MS. SCHMAUSS: WE WITHDRAW.

12 THE COURT: ANY INTENT, MOTIVE, DESIGNS, COMMON
13 SCHEME UNDER 1101 OF THE EVIDENCE CODE OR OTHERWISE UNTIL
14 IT BECOMES AN ISSUE LATER AND PRIOR TO THE PRIOR TO
15 EVIDENCE OF OTHER ACTS, CRIMINAL OR MORAL TURPITUDE, WE
16 WILL HAVE A DISCUSSION.

17 MR. ABLARD: THANK YOU.

18 THE COURT: THANK YOU.

19 MR. ABLARD: ALONG WITH THAT, THERE WERE SUPPOSED
20 STATEMENTS BY MY CLIENT TO OTHER INDIVIDUALS PRECEDING THE
21 EVENT IN QUESTION ABOUT KILLING PEOPLE OR STRANGLING
22 PEOPLE OR WHATEVER. I THINK THAT THOSE ARE FARFETCHED.

23 THOSE MIGHT BE WITHIN THE PURVIEW OF WHAT MS. SCHMAUSS IS
24 TALKING ABOUT ON THE ABUSE. BUT JUST IN CASE IT IS NOT,
25 THOSE STATEMENTS ARE VERY FARFETCHED AND AFIELD FROM THE
26 FACTS IN THIS CASE. AND I'D LIKE A RULING ON THOSE. AND
27 WE GET THE PROSECUTION'S NOTION ON THOSE FIRST.

28 THE COURT: I DON'T HAVE ANY INFORMATION ABOUT

1 STATEMENTS.

2 MS. SCHMAUSS: WELL, FOR AN OFFER OF PROOF, THIS IS
3 DIFFERENT ISSUE THAN THE SPOUSAL ABUSE.

4 THE COURT: YES.

5 MS. SCHMAUSS: I HAVE A WITNESS ON THE WITNESS LIST.
6 HER NAME IS LISA WOOD. AND SHE, I BELIEVE, IS A COUSIN OF
7 THE DEFENDANT'S WIFE. AND SHE TOLD THE POLICE AND
8 REITERATED TO ME THAT THE DEFENDANT, HIS WIFE, ANGELA,
9 WERE VISITING HER. THIS WAS IN EASTER TIME OF 1991. AND
10 THEY WERE DISCUSSING SELF DEFENSE AND WHAT TO DO IF
11 SOMEBODY ATTACKED THEM.

12 AND CHUCK JOHNSON TOLD LISA WOOD THAT HE HAD THE
13 PERFECT WAY TO KILL SOMEONE. ALL YOU WOULD HAVE TO DO IS
14 COME UP BEHIND SOMEONE WITH A PLASTIC GROCERY SACK AND TIE
15 IT AROUND THEIR NECK. AND THEY WOULD SUFFOCATE SLOWLY.

16 WOOD ALSO REMEMBERS THE DEFENDANT SAYING THAT
17 FINGERPRINTS WOULD NOT BE OBTAINABLE. AND WHAT'S
18 INTERESTING, OF COURSE, IS THE VICTIM IN THIS CASE WAS
19 SUFFOCATED. AND THE DEFENDANT DID MAKE A NUMBER OF
20 COMMENTS. YOU'LL NEVER GET ANY FINGERPRINTS FROM ME.
21 THERE WON'T BE ANY OF MY FINGERPRINTS.

22 SO, I WAS GOING TO PUT LISA WOOD ON TO TESTIFY TO
23 THIS CONVERSATION BY THE DEFENDANT. AND THE COURT SHOULD
24 KNOW A PLASTIC, TRASH-TYPE BAG WAS FOUND OVER THE VICTIM'S
25 FACE WHEN SHE WAS DISCOVERED IN THE CLOSET. AND IT
26 APPEARS SHE SUCKED IN OR INHALED IT. IT WAS MOLDED TO HER
27 FACE. AND THERE WAS A NECKTIE LOOSELY TIED AROUND HER
28 NECK.

1 THE COURT: THE DATE OF THAT EVENT WAS?

2 MS. SCHMAUSS: THE DATE OF WHAT?

3 THE COURT: THE DEATH ROUGHLY.

4 MS. SCHMAUSS: WAS OCTOBER 10TH, 1993. THE STATEMENT
5 WAS EASTER TIME, 1991.

6 THE COURT: THAT WILL BE AND '91.

7 MS. SCHMAUSS: RIGHT. APRIL. ALSO, FURTHER, WOOD
8 SAID THAT JOHNSON WAS ALWAYS BRAGGING ABOUT HOW HE WOULD
9 KILL AND SUFFOCATE SOMEONE.

10 THE COURT: NOW, I HAVE AN OFFER OF PROOF.

11 MR. ABLARD: YES. FIRST OF ALL, YOUR HONOR, IT WOULD
12 BE THE RELEVANCY OF THAT IN THE CONTEXT OF SELF-DEFENSE
13 WOULD LACK SUFFICIENT FOUNDATION. IT WOULDN'T BE
14 RELEVANT.

15 SECOND OF ALL, UNDER 352, IT IS, I WOULD THINK, A BIT
16 REMOTE. AND ADDITIONALLY, IT WOULD BE FAR MORE
17 PREJUDICIAL THAN IT WOULD BE PROBATIVE WHEN HE IS TALKING
18 TO ADULTS ABOUT SELF-DEFENSE AND COMING UP BEHIND SOMEBODY
19 AND TIEING A BAG AROUND THEIR NECK. THERE WAS NOT BAG
20 TIED AROUND ANYBODY IN THE CASE HERE. AND I WOULD SUBMIT
21 ON THAT.

22 THE COURT: PRELIMINARILY, I WOULD DEEM IT ADMISSIBLE
23 FOR THE FOLLOWING REASONS: EVEN THOUGH IT IS REMOTE I
24 TIME, IN TERMS OF THE STATEMENT, ONCE A PERSON HAS
25 GENERATED A THOUGHT PROCESS THAT ARRIVED AT A RESULT, ONE
26 DOESN'T FORGET THEM. IT IS A PART OF THE YOU KNOW,
27 CONSCIOUS BEING OF THE PERSON WHO WAS DESCRIBED OR
28 CONSIDERED A PARTICULAR COURSE OF CONDUCT. IT JUST

1 DOESN'T GO AWAY.

2 ASSUMING THAT THE OFFER OF PROOF IS MET AND THAT THE
3 STATEMENT DESCRIBED SUFFOCATION, DESCRIBED USE OF A BAG TO
4 ACCOMPLISH THE SUFFOCATION, ASSUMING THE VICTIM DIED OF
5 SUFFOCATION, WITH A OBVIOUS USE OF OR PROBABLE USE OF
6 IDENTICAL MEANS, IT CERTAINLY HAS PROBATIVE VALUE IN TERMS
7 OF IDENTIFYING THE PERPETRATOR IF THE EVIDENCE CONNECTS
8 MR. JOHNSON TO THE VICTIM IN SOME MEANINGFUL FASHION IN
9 TERMS OF TIME AND SO ON.

10 MR. ABLARD: I WOULD REQUEST THAT WE RESERVE ON THAT
11 ISSUE INSOFAR AS THE CAUSE OF DEATH BE ESTABLISHED BEFORE
12 THOSE STATEMENTS ARE TOLD TO THE JURY OR LISA WOOD TAKES
13 THE WITNESS STAND.

14 MS. SCHMAUSS: CAUSE OF DEATH WILL BE ESTABLISHED BY
15 THE PATHOLOGIST. IF HE WANTS ME TO PUT HER ON AFTER HIM,
16 I CAN DO THAT.

17 MR. ABLARD: YES.

18 THE COURT: THE CONNECTION IS CIRCUMSTANCES
19 SURROUNDING THE DEMISE OF THE VICTIM THAT MAKES THESE
20 STATEMENTS RELEVANT. BECAUSE THEY ARE EARLY. SO, THAT
21 MAKES GOOD SENSE.

22 YOU RUN THE RISK OF, BECAUSE I CAN'T PRETRY THE FACTS
23 HAVING NOT HEARD ANY OF THE FACTS EXCEPT BY OFFER THAT YOU
24 PUT THAT KIND OF TESTIMONY ON FIRST, AND THEN THE CAUSE OF
25 DEATH DOESN'T MATCH UP, IN MY JUDGMENT, I SAY NOW WE HAVE
26 TO UNRING THAT BELL.

27 SO IF YOU WANT TO, WE HAVE TWO CHOICES. BUT I THINK
28 MY FAVORITE OF THE TWO WOULD BE TO HEAR THE PATHOLOGIST IN

1 TERMS OF THE REAL FACTS THAT ARE SCIENTIFICALLY AVAILABLE,
2 AND THEN THE IDENTITY ISSUES THAT RELATE THERETO TO FOLLOW
3 MAKES GOOD SENSE. THAT WAY, WE DON'T MAKE A MISTAKE. I
4 AM NOT, IN MAKING MISTAKES OR TRYING TO UNRING A BELL, IF
5 WHAT YOU BELIEVE THE TESTIMONY IS GOING TO BE SHIFTS
6 SLIGHTLY, NOT THAT WITNESSES SOMETIMES SAY THINGS YOU
7 DON'T EXPECT, BUT EVERY NOW AND THEN, THE EXACT WORDS
8 DON'T COME OUT QUITE RIGHT OR THE CONTEXT SHIFTS AND
9 CHANGES, MEMORIES CHANGE, THAT'S A LONG TIME AGO.

10 SO, ABSENT HAVING A 402 HEARING WITH THE WITNESSES
11 WHO ARE GOING TO TESTIFY, THAT IS THE PATHOLOGIST AND THE
12 WITNESS TO SHOW THE SIMILARITY, LET'S DO ONE PRIOR TO THE
13 OTHER. MY PRELIMINARY INDICATION, IT APPEARS TO BE
14 RELEVANT ON A BUNCH OF ISSUES INCLUDING IDENTITY WHICH IS
15 AN ISSUE IN THIS CASE.

16 MR. ABLARD: THANK YOU.

17 THE COURT: WHAT NEXT?

18 MR. ABLARD: NEXT THERE IS A TAPE THAT MS. SCHMAUSS
19 AND I TALKED ABOUT, A CONVERSATION OF OFFICER LUX. AND IT
20 WAS TAKEN OUTSIDE OF MIRANDA. WE WOULD REQUEST THAT BE
21 EXCLUDED AND THE PROSECUTOR CAN MAYBE FILL THE COURT IN ON
22 THAT.

23 THE COURT: WHAT IS IT A CUSTODIAL INTERROGATION?

24 MR. ABLARD: YES.

25 MS. SCHMAUSS: HE WAS DRIVING THE DEFENDANT TO THE
26 JAIL AND STRUCK UP A CONVERSATION WITH HIM.

27 THE COURT: SOUNDS CUSTODIAL.

28 MS. SCHMAUSS: UNLESS THE DEFENDANT SHOULD TAKE THE

1 STAND AND SAY SOMETHING, THAT WOULD TRIGGER PEOPLE VS.
2 DISBROE (PHONETIC) I WON'T USE IT.

3 THE COURT: ALL RIGHT. BASED UPON THOSE OPERABLE
4 FACTS, THE STATEMENT MADE BY THE DEFENDANT TO OFFICER LUX
5 WHILE IN CUSTODY WITHOUT THE USE OF A MIRANDA WARNING ARE
6 AVAILABLE ONLY FOR REBUTTAL IF APPROPRIATE.

7 MR. ABLARD: THANK YOU.

8 THE COURT: OR CROSS-EXAMINATION.

9 MR. ABLARD: NEXT, YOUR HONOR, JUST BRIEFLY. I'D
10 LIKE TO TAKE UP HOW THE COURT WANTS TO HANDLE THE DNA
11 FOUNDATION. AS I UNDERSTAND IT, LAST, I THINK IT WAS LAST
12 WEEK, MAYBE EARLY LAST WEEK, WE GOT THE RESULTS OF THE DNA
13 ON THE BLANKET AND THE BLOOD.

14 THE COURT: ALL RIGHT.

15 MR. ABLARD: IF THE COURT WANTS TO CONSIDER A 402
16 HEARING AT THE TIME JUST PRIOR TO THE TESTIMONY OF I
17 BELIEVE IT IS DON JONES, HOWEVER THE COURT WANT TO HANDLE
18 IT IN CONSIDERATION OF TIME AND PROCEDURES, I HAVE THAT
19 INQUIRY.

20 THE COURT: WHAT IS THE TIME FOR LENGTH OF TIME FOR
21 JONES' TESTIMONY BASED UPON YOUR BEST JUDGMENT?

22 MS. SCHMAUSS: THE WITNESS'S ACTUAL TESTIMONY WILL BE
23 VERY BRIEF. I DON'T THINK HE WILL TESTIFY MORE THAN HALF
24 AN HOUR.

25 THE COURT: ON THE SCIENTIFIC RESULTS, ASSUMING
26 THERE'S FOUNDATION FOR THEM.

27 MS. SCHMAUSS: RIGHT. IT IS NOT A LENGTHY-- IT IS AN
28 ANALYSIS OF A BLANKET THAT WAS FOUND IN THE DEFENDANT'S

1 ROOM AND HAD A SPOT THAT LOOKED LIKE BLOOD THAT WAS
2 TESTED. IT WAS BLOOD. AND THEN HE DID D.Q.-ALPHA TYPING
3 ON IT WHICH I AM SURE HE WILL EXPLAIN. AND IT WAS MATCHED
4 WITH THE VICTIM AND NOT A MATCH WITH ANY OTHER MEMBER OF
5 THE HOUSEHOLD.

6 THE COURT: ALL RIGHT. WELL, I THINK IT WOULD
7 APPEAR JUST SORT OF THRESHOLD TO THE COURT THAT THE
8 FOUNDATION FOR THE EXAMINATION OF MATERIAL TO DETERMINE
9 THAT A SPOT IS BLOOD IS PROBABLY WELL ACCEPTED WITHIN THE
10 SCIENTIFIC COMMUNITY. SO, YOU KNOW, THAT'S NOT A

11 SUBSTANCE OF GREAT DISPUTE. THE D.Q.-ALPHA TESTING FOR
12 BLOOD TYPE DNA TYPE, IF YOU WILL, WOULD REQUIRE SOME
13 FOUNDATION AT LEAST I THINK THE CURRENT CASE LAW SUGGESTS
14 THE COURT MUST DETERMINE THAT IT'S AN ACCEPTABLE
15 SCIENTIFIC METHOD AND ARRIVE AT AN ACCEPTABLE SCIENTIFIC
16 RESULT. WOULD YOU AGREE, MS. SCHMAUSS?

17 MS. SCHMAUSS: YES, YOUR HONOR.

18 THE COURT: AND JONES IS SUPPOSED TO TESTIFY TO THAT.

19 MS. SCHMAUSS: I AM SURE HE IS. HE IS ONE OF THE DNA
20 CRIMINALISTS ASSIGNED TO THE SAN BERNARDINO COUNTY CRIME
21 LAB.

22 THE COURT: ALL RIGHT. SO, I WILL GUESS WHAT, HALF A
23 DAY MAXIMUM?

24 MR. ABLARD: MAXIMUM.

25 THE COURT: DO YOU EXPECT TO CALL OTHER WITNESSES?

26 MR. ABLARD: AT THIS POINT, NO. I MEAN, I AM OF
27 COURSE WAITING FOR SOME CALLS FROM SOME PEOPLE. FOR
28 WHATEVER REASONS, EXPERTS IN THIS FIELD AREN'T AS QUICK TO

1 GET BACK TO ME AS THEY MIGHT IF I WERE ANOTHER ATTORNEY.
2 BUT AT THIS POINT, I WOULD HOPE NOT. EVEN IF WE DO HAVE
3 A DAY OR A LITTLE OVER WOULD BE ALL THAT I THINK I WOULD
4 TAKE.

5 THE COURT: I WOULD PROPOSE THAT WE TRY TO SCHEDULE A
6 HALF A DAY FOR THIS TESTIMONY. WELL, WE WILL JUST HAVE TO
7 WAIT AND SEE. I'D LIKE TO DO-- I LIKE A DAY, AT LEAST
8 TWENTY-FOUR HOURS OR A DAY AND A HALF PRIOR TO THE WITNESS
9 HAVING TO COME BACK AND OTHERWISE TESTIFY FOR THE
10 FOLLOWING REASON: THAT UNTIL THE WITNESS TESTIFIES,

11 MR. ABLARD, YOU KNOW, CANNOT DETERMINE WHETHER HE NEEDS AN
12 EXPERT TO TESTIFY TO THE CONTRARY ON SOME POINT. AND
13 UNTIL HE HAS THE TESTIMONY, IT IS FOUNDATIONAL, IT IS VERY
14 DIFFICULT TO GO TO AN EXPERT AND SAY IS THIS CORRECT OR
15 NOT.

16 MR. ABLARD, WOULD YOU AGREE?

17 MR. ABLARD: AGREE.

18 THE COURT: SO, IF YOU HAVE SOMEONE ON LINE TO REVIEW
19 THE TESTIMONY THAT'S FOUNDATIONAL AND SO ON, AND SOME OF
20 IT, YOU COULD AT LEAST YOU COULD TURN TO SOMEBODY AND SAY
21 IS IT WORTHWHILE FOR YOU TO COME AND SAY THERE IS SOME
22 SERIOUS QUESTION. AND UNTIL YOU HAVE IT IN THIS CASE, YOU
23 CAN'T KNOW.

24 MR. ABLARD: TRUE.

25 THE COURT: YOU WILL HAVE THE REPORT OF THE TESTING,
26 BUT NOT THE TESTIMONY WHICH SOMETIMES IS A DIFFERENCE.
27 SO, WE WILL SCHEDULE THAT. LET'S SCHEDULE-- WE WILL PLAN
28 A HALF-A-DAY SESSION WITHOUT THE JURY ON THAT AT SOMETIME

1 DURING THE PROCESS DURING THE PROSECUTION'S CASE.

2 MS. SCHMAUSS: THE OTHER THING I LEFT OUT, HE WILL
3 TESTIFY THERE WERE HIGH LEVELS OF AMYLASE ON THE BLANKET
4 WHICH ARE CONSISTENT WITH SALIVA. I DON'T THINK THAT'S
5 ANYTHING UNUSUAL.

6 THE COURT: NO, I DON'T THINK SO EITHER. I THINK
7 THAT BODY FLUID ARE EASILY DETECTABLE CURRENTLY,
8 SCIENTIFICALLY WITHOUT TOO MUCH DISPUTE. BUT THE DNA IS
9 ONE THAT I THINK BY CASE LAW WE HAVE TO EXAMINE FOR
10 FOUNDATION. BECAUSE ALTHOUGH THE RECENT CASES HAVE ALL
11 SUPPORTED THE COURT PERMITTING THE ADMISSIBILITY OF THE
12 DNA, IT IS ALL BEEN BASED UPON THE EVIDENCE IN IT IN THAT
13 PARTICULAR CASE. WE GET THEM. BUT ONCE A WHILE, WE SEE A
14 NEW ONE. SO.

15 MR. ABLARD: CORRECT.

16 THE COURT: SO, WE WILL SCHEDULE IT THAT WAY. WHAT
17 ELSE CAN I DO?

18 MR. ABLARD: MOVING RIGHT ALONG HERE. TAKE SOME OF
19 THE EASIER ONES. WE ARE WORKING UP TO SOME MORE DIFFICULT
20 ONES, ACTUALLY, I GUESS. BUT HAS TO DO WITH PICTURES AND
21 ENLARGEMENTS. IN THE EVENT THAT THE PROSECUTION IS
22 PLANNING ON USING GIANT ENLARGEMENTS OF THE VICTIM.

23 THE COURT: YOU MEAN PHOTOGRAPHS?

24 MR. ABLARD: PHOTOGRAPHS, RIGHT. THERE WOULD REALLY
25 BE NO NEED OTHER THAN TO PREJUDICE MY CLIENT WITH THOSE.
26 AND THEY, IF THEY WERE PLANNING ON USING THEM, I'D LIKE TO
27 KNOW SO WE CAN DISCUSS.

28 THE COURT: WELL, I HAVE NO IDEA.

1 MS. SCHMAUSS: WELL, I CERTAINLY DO PLAN TO USE A
2 PICTURE OR PICTURES OF THE VICTIM ALIVE FOR THE ISSUE OF
3 PROVING HOW LARGE THIS CHILD WAS. SHE WAS A VERY LARGE
4 CHILD FOR HER AGE. AT THREE AND A HALF, SHE WEIGHED
5 FORTY-FIVE POUNDS. AND SHE WAS ABOUT THREE AND A HALF
6 FEET TALL. AND THE PATHOLOGIST IS GOING TO TESTIFY SHE
7 WAS A ROBUST CHILD AND VERY MUCH DID FIGHT FOR HER LIFE.
8 AND THAT WOULD NEGATE ANY SUGGESTION THAT PERHAPS SHE
9 SUFFOCATED ON HER OWN OR DIED OF NATURAL CAUSES. I DO
10 HAVE A VERY LARGE ENLARGEMENT THAT THE PARENTS BROUGHT.

11 IF THE COURT WOULD LIKE TO SEE IT, I CAN GET IT.

12 THE COURT: IS THIS OF THE CHILD ALIVE?

13 MS. SCHMAUSS: YES.

14 THE COURT: ALL RIGHT.

15 MS. SCHMAUSS: WOULD THE COURT LIKE TO SEE IT? I
16 COULD SEND OFFICER DONLEY TO GET IT.

17 THE COURT: NO. SO, WE HAVE AN ENLARGEMENT TO
18 ESTABLISH THE SIZE OF THE CHILD; CORRECT-- PRIOR TO
19 DEMISE. IT IS NOT AN AUTOPSY LIFE SIZE.

20 MS. SCHMAUSS: I HAVE SOME.

21 THE COURT: LET'S DON'T GET TO THE AUTOPSY.

22 MS. SCHMAUSS: OKAY. ALIVE. I DO HAVE A VERY LARGE
23 PICTURE OF HER.

24 THE COURT: ALL RIGHT.

25 MR. ABLARD: MAY I INQUIRE HOW LARGE VERY LARGE IS?
26 I MEAN, IF WE ARE TALKING PORTRAIT SIZE, I MEAN?

27 MS. SCHMAUSS: ABOUT THE SIZE OF YOUR TABLET BACK
28 THERE ON THE BULLETIN BOARD.

1 THE COURT: ALL RIGHT.

2 MR. ABLARD: YOUR HONOR, THE PROBLEM I HAVE--

3 THE COURT: ABOUT A TWO BY THREE AND A HALF, TWO FOOT
4 BY THREE AND A HALF FOOT OR SOMETHING LIKE THAT.

5 MR. ABLARD: I, ON BEHALF OF MY CLIENT, I THINK THAT
6 THAT'S JUST THERE TO, THE SIZE OF IT, IS THERE TO
7 PREJUDICE THE CLIENT BY HAVING THIS YOU KNOW ACTUALLY A
8 WALL-SIZE PICTURE.

9 THE COURT: OKAY. THAT'S THE FIRST ONE. IT IS A-- I
10 WILL CALL A POSTER-SIZE OF THE CHILD. OKAY. WHAT ELSE?

11 MR. ABLARD: SECONDLY, OF COURSE--

12 THE COURT: LET'S DEAL WITH THE ENLARGEMENT. LET'S
13 DON'T GET PAST THAT. OTHER PHOTOGRAPHS ENLARGED OR
14 OTHERWISE.

15 MS. SCHMAUSS: WELL, I HAVE SOME OTHER PICTURES OF
16 HER THAT ARE MUCH SMALLER. THEN I HAVE SOME AUTOPSY
17 PICTURES.

18 THE COURT: THOSE POLOROID SIZE ARE NORMAL, 38
19 MILLIMETER SIZE CAMERA PHOTOGRAPHS; RIGHT?

20 MS. SCHMAUSS: RIGHT. I HAVE JUST A SMALL PICTURE OF
21 HER HERE, SHOWING IT TO COUNSEL.

22 THE COURT: ARE THESE PICTURES OF HER WHILE ALIVE?

23 MS. SCHMAUSS: YES.

24 THE COURT: ALL RIGHT.

25 MS. SCHMAUSS: I HAVE ONE THAT WAS TAKEN RECENTLY. I
26 HAVE ONE THAT WAS A WEEK AND A HALF BEFORE.

27 THE COURT: BUT THESE ARE ALL PICTURES OF THE GIRL
28 WHILE ALIVE, SOME OF WHICH YOU MADE OFFERS ON THE ISSUE OF

1 HER SIZE AND OTHERWISE HEALTH CONDITION AND SO ON.

2 MS. SCHMAUSS: RIGHT, RIGHT.

3 THE COURT: ALL RIGHT. NOT ALL OF WHICH MAY BE
4 ESSENTIAL. WHAT ELSE?

5 MS. SCHMAUSS: WELL, THAT'S IT FOR THE ALIVE. AND
6 THAT'S THE REASON FOR THE PICTURE, THAT'S THE LEGALLY
7 ACCEPTABLE REASON WOULD BE TO SHOW HER SIZE AND HER
8 HEALTH.

9 THE COURT: SURE.

10 MS. SCHMAUSS: SHE LOOKS ROBUST. SHE LOOKS STRONG.
11 SHE IS BIG KID. THEN I HAVE SOME PICTURES AFTER SHE WAS
12 DECEASED FOR THE SAME ISSUE. AND THEN OTHER PICTURES TO
13 SHOW THE INJURIES ON HER BODY.

14 THE COURT: WELL, LET'S DEAL WITH THE-- SO I HAVE
15 CATEGORY A, B, AND C. B IS PICTURE, AUTOPSY PICTURES.

16 MS. SCHMAUSS: I CAN SHOW THOSE TO THE COURT IF THE
17 COURT WANTS TO SEE THEM.

18 THE COURT: YES. THE COURT HAS TO MAKE A JUDGMENT
19 PURSUANT TO 352, PROBABLE VS. PREJUDICE.

20 MS. SCHMAUSS: I CAN SEND OFFICER DONLEY TO GET THE
21 LARGE PICTURE.

22 THE COURT: I DON'T NEED THE LARGE PICTURE, A PICTURE
23 OF A CHILD ALIVE IS HARDLY EXCITING IN THE SENSE THAT IT
24 ENGENDERS STUFF.

25 MR. ABLARD: WELL, I SHOULD MENTION TOO, IT IS A
26 PICTURE THAT I-- AND I DON'T KNOW WHICH. MAY I INQUIRE IF
27 IT IS A PICTURE OF THE COWBOY OUTFIT?

28 MS. SCHMAUSS: THE COWBOY OUTFIT.

1 MR. ABLARD: IN THE NEWSPAPER?

2 MS. SCHMAUSS: YOU SAW IT IN COURT THE OTHER DAY.

3 MR. ABLARD: I DIDN'T SEE IT. I SAW A BIG PLASTIC
4 BAG. I DIDN'T SEE THE PICTURE.

5 THE COURT: ARE YOU SUGGESTING THAT THE TYPE OF
6 COWBOY OUTFIT IS SOMEHOW INAPPROPRIATE IN SAN BERNARDINO
7 COUNTY? DO YOU REMEMBER THIS IS MARLBOROUGH COUNTRY;
8 ISN'T IT.

9 MR. ABLARD: RIGHT. BUT WE ARE NOT IN VICTORVILLE.

10 MS. SCHMAUSS: I WOULD REQUEST THAT GIVEN THE OUTFIT
11 SHE IS WEARING, THAT WAS THE PICTURE THAT WAS IN THE PAPER
12 THAT THE COURT VIEW THAT BEFORE.

13 THE COURT: THE COURT WILL VIEW IT UPON YOUR REQUEST.
14 THANK YOU. WHAT ELSE?

15 MS. SCHMAUSS: WE HAVE A SMALL ONE OF THE SAME
16 PICTURE. WOULD THE COURT LIKE TO SEE IT?

17 THE COURT: CERTAINLY. BRING IT UP. BRING UP ALL
18 THE REST OF THE PHOTOGRAPHS, IF YOU WOULD, THAT YOU HAVE.
19 WELL, PRELIMINARILY, THE COURT FOUND THAT IT IS HARD TO
20 SUGGEST THAT THE COWBOY BOOTS AND THE COWBOY HAT SOMEHOW
21 ACTS PREJUDICIALLY ON A LIVE PICTURE OF THE VICTIM FOR
22 IDENTIFICATION PURPOSES AND ANY OTHER PURPOSES,

23 APPROPRIATE IDENTIFICATION, HEALTHINESS, SIZE, YOU NAME
24 IT. AUTOPSY PICTURES. YOU HAVE A LOT OF THEM?

25 MS. SCHMAUSS: SOME ARE JUST TAKEN WHILE SHE WAS
26 FIRST BROUGHT TO THE HOSPITAL BEFORE SHE WAS ACTUALLY
27 AUTOPSIED.

28 THE COURT: WELL, I SEE THAT WE HAVE SKINNED HER

1 HERE. THAT'S NOT A PARTICULAR PRETTY PICTURE. IS THAT
2 HELPFUL IN ANY WAY?

3 MS. SCHMAUSS: SHOWING YOU EXACTLY THE ONES-- I CAN
4 SHOW YOU THE ONES THAT I WILL BE USING. A PICTURE OF HER
5 FRENULUM WHICH WAS TORN. THE PATHOLOGIST IS GOING TO SAY
6 THAT WAS DURING A STRUGGLE FOR HER LIFE. THAT WAS DONE
7 BEFORE THE AUTOPSY. YOU CAN SEE THAT HER LIP IS PULLED
8 BACK. THAT WILL BE IMPORTANT.

9 AND THEN AFTER THE SCALP IS REMOVED, YOU CAN SEE THE
10 HEMATOMAS, HER SKULL. THOSE ARE VERY IMPORTANT, HER HEAD
11 WAS BANGED SEVERAL TIMES DURING THE STRUGGLE. SO, THAT
12 WILL BE IMPORTANT TO THE PATHOLOGIST'S TESTIMONY.

13 THERE'S ONLY A COUPLE OF THE ONES ACTUALLY DURING THE
14 AUTOPSY THAT I INTEND TO USE. WOULD THE COURT LIKE TO SEE
15 EXACTLY THE ONES I AM GOING TO USE, POINT TO THEM?

16 THE COURT: WELL, OKAY. YOU HAVE LISTED ONE THAT
17 SHOWS FACIAL INJURY, ONE OR TWO FACIAL INJURIES.

18 MS. SCHMAUSS: ON THE BACK OF THE HEAD AND ON THE
19 FRONT OF THE HEAD.

20 THE COURT: DON'T GO TOO FAST, REMEMBER, YOU GUYS
21 HAVE LIVED WITH THE CASE; I HAVEN'T.

22 YOU HAVE FACIAL INJURIES THAT SUGGEST STRUGGLE;
23 CORRECT?

24 MS. SCHMAUSS: YES.

25 THE COURT: AND/OR TWO PICTURES ARE SUFFICIENT.

26 MS. SCHMAUSS: YES.

27 THE COURT: PICK THEM OUT. THE COURT WILL REVIEW
28 THOSE PARTICULAR ONES JUST PRIOR TO YOUR USE.

1 PRELIMINARILY IF YOU HAVE PHOTOGRAPHS THAT SHOW AN INJURY
2 THAT ARE UTILIZED THAT YOU RELATE TO THE CAUSE OF DEATH
3 AND CIRCUMSTANCES OF DEATH, THEY ARE ADMISSIBLE EVEN
4 THOUGH THEY ARE NOT PRETTY. AND WE JUST ASSUME NOT DEAL
5 WITH IT. BUT WE ARE GOING TO DEAL WITH DEATH IN THIS
6 CASE. SO, THAT'S OKAY. NOW, YOU HAVE AUTOPSY PICTURES
7 WHERE THEY HAVE COMMENCED DESTRUCTION OF THE BODY. AND
8 THEY DO SHOW DAMAGE?

9 MS. SCHMAUSS: YES.

10 THE COURT: THE DAMAGE SUGGESTING STRUGGLE AT OR
11 DURING THE TIME OF DEATH?

12 MS. SCHMAUSS: YES.

13 THE COURT: ALL RIGHT. THE COURT WOULD ORDINARILY
14 PERMIT, HOWEVER GRUESOME. THOSE AUTOPSY PHOTOGRAPHS THAT
15 ARE NEEDED FOR THE PATHOLOGIST TO DEMONSTRATE AND VISUALLY
16 SHOW WHAT IT IS HE OBSERVED AS A BASIS FOR HIS OPINION.

17 I WOULD LIKE TO SEE THOSE PARTICULAR PHOTOGRAPHS YOU
18 BELIEVE TO BE ESSENTIAL BEFORE THEY ARE ADMITTED INTO
19 EVIDENCE OR DIRECTED TO THE PATHOLOGIST.

20 SO, YOUR OBLIGATION IS TO MARK THOSE, SHOW THEM TO
21 MR. ABLARD. AND WE WILL MORE PARTICULARLY EXAMINE EACH
22 ONE.

23 BUT THE COURT PRELIMINARILY WILL PERMIT THEM, HOWEVER
24 GRUESOME, WITHIN LIMITATION, PARTICULARLY IF YOU ARE USING
25 THE SIZE OF THE PHOTOGRAPH THAT YOU HAVE SHOWN THE COURT.
26 THEY ARE A STAND PHOTOGRAPH SIZE, NOT SOME GRUESOME,
27 ENLARGED PHOTOGRAPH.

28 MS. SCHMAUSS: THOSE ARE FOUR BY SIXES.

1 THE COURT: YES. VERY CLOSE TO IT. THEY ARE
2 STANDARD PHOTOGRAPH SIZE. THEY ARE NOT BLOWUPS.

3 MS. SCHMAUSS: RIGHT.

4 THE COURT: SO FAR, SO GOOD.

5 MR. ABLARD: RIGHT.

6 THE COURT: THAT'S THE PRELIMINARY. AFTER YOU HAVE
7 SELECTED THEM, WE WILL LOOK AT THEM AGAIN. BUT YOU KNOW
8 WHAT THE COURT IS LIKELY TO DO.

9 MR. ABLARD: YES. THANK YOU.

10 MS. SCHMAUSS: I ALSO HAVE PICTURES TAKEN AT DOCTOR'S
11 HOSPITAL WHERE SHE WAS ORIGINALLY TAKEN. AS I MENTIONED,
12 THE FRENULUM PHOTOGRAPH WAS TAKEN THERE. AND THE COURT
13 CAN SEE CLOSE-UP OF HER FACE. THERE ARE STRANGULATION
14 MARKS ON HER NECK. I WILL BE USING THOSE ALSO.

15 THE COURT: ALL RIGHT.

16 MS. SCHMAUSS: THEY ARE NOT PARTICULARLY GRUESOME AT
17 ALL.

18 THE COURT: NO. I SEE WHAT WE HAVE HERE.

19 MR. ABLARD: SO, IN OTHER WORDS, THOSE ARE REVIEWED
20 BY THE COURT BEFORE BEING USED.

21 THE COURT: WE HAVE A LOT OF PHOTOGRAPHS HERE. SOME
22 OF WHICH YOU NEED, SOME OF WHICH YOU MAY NOT. THE COURT
23 WILL PERMIT REASONABLE PHOTOGRAPHS TO ESTABLISH THOSE
24 INJURIES THAT RELATE TO CAUSE OF DEATH AS LONG AS THEY ARE
25 NOT BLOWUPS, YOU KNOW, AND NOT PARTICULARLY THEY ARE
26 NECESSARY AND NOT DESIGNED TO INFLAME.

27 WE WILL HAVE TO LET THE JURY KNOW THEY ARE GOING TO
28 SEE SOME PICTURES THAT AREN'T TOO EXCITING MAYBE EVEN

1 DURING THE SELECTION PROCESS TO MAKE SURE PEOPLE ARE
2 WILLING TO VIEW AND CONSIDER.

3 MR. ABLARD: THEN MY SUGGESTION WOULD BE THAT WE IF
4 WE ARE GOING TO USE THEM DURING THE SELECTION PROCESS THAT
5 WE REVIEW THE EXACT PHOTOS THAT THE PROSECUTION WANTS TO
6 USE. I MAY HAVE MISHEARD. BUT I THOUGHT THEY WANT TO USE
7 THE ONE THAT SHOWS THE BARE SCALP. AND IF WE ARE GOING TO
8 BE SHOWING THOSE TO THE JURY FIRST, MAYBE WE--

9 THE COURT: WE ARE NOT GOING TO SHOW TO THE JURY
10 FIRST. BUT I AM GOING TO BE ALERTING THE JURY THAT THEY
11 ARE GOING TO SEE PICTURES OF A DAMAGED BODY OF A SMALL
12 CHILD, INCLUDING AUTOPSY PICTURES WHERE THE SURGEON HAS
13 REMOVED, YOU KNOW, ESSENTIALLY PORTIONS OF THE OUTER LAYER
14 OF THE BODY TO ESTABLISH INJURIES. AND THEY ARE NOT
15 PRETTY. ARE THEY WILLING TO LOOK AT 'EM. SOME PEOPLE WILL
16 JUST SAY I CAN'T LOOK AT THAT STUFF.

17 MS. SCHMAUSS: THAT ONE LADY DID.

18 THE COURT: NO. THAT'S NOT THE FIRST TIME I HAVE HAD
19 SOMEONE SAY I CAN'T LOOK AT PICTURES.

20 MR. ABLARD: OKAY.

21 THE COURT: AUTOPSY PICTURES OR THOSE KINDS OF
22 THINGS. I'LL GET SICK. YOU DON'T WANT TO, I MEAN, I
23 DON'T MIND PEOPLE THAT GET SICK. THAT'S WHY WE HAVE THESE
24 TRASH BUCKETS AROUND HERE SO THEY DON'T INTERRUPT OUR
25 PROCEEDINGS. BUT IF TOO MANY ARE GOING TO DO THAT, WE RUN
26 OUT OF TRASH BUCKETS. YOU DON'T LIKE TO SHARE BUCKETS
27 WITH SOMEONE.

28 MR. ABLARD: NO.

1 THE COURT: SO, WHY DON'T YOU SELECT THEM, THOSE THAT
2 YOU CHOOSE WITH THE BRIEF DESCRIPTION OF WHY IT IS YOU
3 WANT EACH ONE.

4 MS. SCHMAUSS: I WILL DO THAT.

5 THE COURT: AS WE MARK THEM, IF YOU WILL, PREMARK
6 ANYWAY. AND YOU HAVE MY GENERAL THINKING ON
7 ADMISSIBILITY, NON-BLOWUPS, GRUESOME, BUT ESSENTIALLY, I AM
8 GOING TO PERMIT IF THEY RELATE TO CAUSE OF DEATH AND
9 CIRCUMSTANCES OF DEATH. BECAUSE THOSE ARE RELEVANT.

10 MS. SCHMAUSS: IF WE GET DONE IN TIME TODAY, I WAS
11 HOPING TO GO THROUGH EVERYTHING AND BRING IT TO OUR CLERK
12 SO SHE CAN DO THAT TODAY.

13 THE COURT: WE WILL. WE WILL BE DONE IN TIME. YOU
14 GOING THROUGH AND GET THOSE PREMARKED. WHAT ELSE?

15 MR. ABLARD: I TAKE IT ON THE ENLARGEMENT OF THE GIRL
16 IN THE COWBOY OUTFIT, THE POSTER SIZE ENLARGEMENT, IS THAT
17 GOING TO BE ADMITTED-- USED?

18 THE COURT: I CAN'T SEE THAT IT, IT IS CERTAINLY NOT
19 GRUESOME. AND THE DISTRICT ATTORNEY HAS OFFERED A BASIS
20 FOR ITS RELEVANCE TO ESTABLISH SIZE, ROBUSTNESS, HELPS
21 EXPLAIN THAT TO THE JURY.

22 GOSH, I MEAN, A PICTURE OF THE DEAD PERSON WHO USED
23 TO BE ALIVE, YOU KNOW, ONLY PREJUDICIAL IN THAT IT REMINDS
24 PEOPLE THAT IT WAS A REAL PERSON. THAT'S NOT PREJUDICIAL
25 IN MY OPINION.

26 MR. ABLARD: THANK YOU.

27 THE COURT: I WILL LOOK AT THE BIG ENLARGEMENT BEFORE
28 IT IS RECEIVED. BUT PRELIMINARILY, IT SEEMS REASONABLE.

1 MR. ABLARD: I IMAGINE THEY MAY WANT TO USE THAT IN
2 OPENING. I DON'T KNOW.

3 MS. SCHMAUSS: YES, THEY DO.

4 MR. ABLARD: MIGHT WANT TO TAKE A LOOK AT THAT, YOU
5 KNOW, BEFOREHAND.

6 THE COURT: THAT'S FINE.

7 MR. ABLARD: OKAY.

8 THE COURT: WE EXPECT TO HAVE ALL OF THEM MARKED
9 ANYWAY BEFORE WE EVEN FINISH OR START JURY SELECTION
10 TOMORROW.

11 MR. ABLARD: RIGHT.

12 THE COURT: OR CONCLUDE OR WHATEVER.

13 MR. ABLARD: SOMETHING REAL EASY; MOTION TO EXCLUDE
14 WITNESSES.

15 THE COURT: BOTH SIDES?

16 MS. SCHMAUSS: IT IS NOT THAT EASY. BECAUSE THERE IS
17 A REQUEST BY THE VICTIM'S PARENTS WHO ARE PRESENT IN COURT
18 TODAY UNDER THE VICTIM'S BILL OF RIGHTS, WHICH I AM SURE
19 THE COURT IS FAMILIAR WITH.

20 THE COURT: YES, I AM.

21 MS. SCHMAUSS: AND PENAL CODE SECTION 1102.6 WHERE
22 THEY ARE REQUESTING AS THE IMMEDIATE FAMILY MEMBERS OF THE
23 VICTIM TO BE ALLOWED TO ATTEND AS MUCH OF THE TRIAL AS
24 POSSIBLE. AND I CAN'T--

25 THE COURT: WHO IS IT THAT WISHES EXCEPTING FROM?
26 JUST GIVE ME THE NAME.

27 MS. SCHMAUSS: JENNIFER RETHORN. SHE IS THE MOTHER
28 OF THE CHILD. AND DARIN RIGGS, HE IS THE FATHER OF THE

1 CHILD. AND TO ALSO INFORM THE COURT, MY WITNESS ORDER IS
2 JENNIFER WILL TESTIFY FIRST, DARIN WILL TESTIFY SECOND.
3 SO, I AM GOING TO PUT THEM AT THE VERY BEGINNING OF THE
4 CASE.

5 THE COURT: ALL RIGHT. OKAY.

6 MS. SCHMAUSS: THEY HAVE PROMISED THEY WILL COMPORT
7 THEMSELVES.

8 THE COURT: I AM SURE THEY WILL. THEY HAVE BEEN IN
9 MY COURT WITH GREAT REGULARITY. I HAVE NO PROBLEM WITH
10 THEM ATTENDING.

11 SO THE COURT IS GOING TO WITHOUT FURTHER ADO THE
12 COURT IS AWARE OF THE EVIDENCE CODE AND 1102. HERE IS
13 WHAT THE COURT IS GOING TO DO:

14 THE TWO, THE MOTHER AND THE FATHER OF THE CHILD WILL
15 BE PERMITTED TO ATTEND THE COURT PROCEEDINGS.

16 I WOULD ASSUME THAT MS. RETHORN BEING WITNESS NUMBER
17 ONE, MR. RIGGS, WOULD BE ASKED TO REMAIN OUTSIDE THE
18 COURTROOM DURING HER TESTIMONY. WHEN SHE CONCLUDES, THE
19 MARCHING ORDERS THAT WE WILL EXHAUST HER TESTIMONY. THAT
20 DOESN'T MEAN THAT SHE IS NOT SUBJECT TO RECALL FOR
21 SOMETHING DOWN THE ROAD. BUT YOU KNOW, THOSE THINGS
22 HAPPEN. WE WILL EXAMINE HER UNTIL SHE IS CONCLUDED AND

23 THE COURT WILL EXCUSE HER SUBJECT TO RECALL, THEN PERMIT
24 HER TO REMAIN IN THE COURTROOM IF THAT'S ALL RIGHT WITH
25 YOU, MS. SCHMAUSS.

26 MS. SCHMAUSS: THAT'S FINE.

27 MR. ABLARD: THAT'S GENERALLY FINE.

28 THE COURT: COURT HAS DISCRETION.

1 MR. ABLARD: YES.

2 THE COURT: THEN AFTER MR. RIGGS IS EXHAUSTED IN HIS
3 TESTIMONY, HE MAY REMAIN ALSO. OTHER MEMBERS OF THE
4 FAMILY WILL NOT BE PERMITTED IF THEY ARE GOING TO BE
5 WITNESSES IN THE CASE OR REASONABLY EXPECTED TO BE CALLED.
6 IF THEY ARE NOT ON THE WITNESS LIST, NOT EXPECTED TO BE
7 CALLED, THEN THEY ARE MEMBERS OF THE PUBLIC LIKE EVERYONE
8 ELSE. HOW IS THAT?

9 MS. SCHMAUSS: THAT'S FINE.

10 THE COURT: CLEAR ENOUGH?

11 MR. ABLARD: CLEAR ENOUGH.

12 THE COURT: WITH REGARD TO OTHER WITNESSES. WE HAVE
13 THE NAMES. BUT THEIR IDENTITIES ARE UNKNOWN TO THE COURT.
14 SO, AND THE COURT'S PERSONNEL. SO, THE OBLIGATION TO
15 COMPLY WITH THE EXCLUSION OF WITNESSES UNTIL THEY HAVE
16 BEEN EXCUSED BY THE COURT IS ON BOTH COUNSEL.

17 THAT MEANS MS. SCHMAUSS, THE OBLIGATION TO KNOW YOUR
18 WITNESSES AND SEE THAT THEY ARE EXCLUDED UNTIL SUCH TIME
19 AS THEY HAVE BEEN EXCUSED.

20 AND MR. ABLARD, YOU HAVE THE OBLIGATION TO ASSIST THE
21 COURT SHOULD YOU NOTE A WITNESS HAS COME IN AND HAS NOT
22 BEEN EXCUSED OR HAS NOT TESTIFIED.

23 BECAUSE I AM NOT GOING TO-- I WILL ENFORCE THE ORDER
24 UPON APPLICATION OF COUNSEL. BUT WE ARE NOT GOING TO
25 CHECK PEOPLE'S IDENTITY WHEN THEY ARRIVE IN MY COURTROOM.

26 MR. ABLARD: THAT'S FINE.

27 MS. SCHMAUSS: YOUR HONOR, ON A SORT OF RELATED ISSUE.

28 THE COURT: DID I HEAR YOU SAY THAT'S ACCEPTABLE?

1 MS. SCHMAUSS: YES, YOUR HONOR.

2 THE COURT: THANK YOU. GOOD. THAT TAKES CARE OF
3 THAT. WHAT NEXT?

4 MS. SCHMAUSS: ON A SOMEWHAT RELATED ISSUE, I AM NOT
5 TRYING TO BUTT IN MORE. BUT ON A RELATED ISSUE, SEVERAL
6 MEMBERS OF THE DEFENDANT'S FAMILY HAVE BEEN ATTENDING,
7 AND I ASSUME WILL ATTEND. AND WE HAVE MEMBERS OF THE
8 VICTIM'S FAMILY.

9 COULD EVERYBODY BE ADMONISHED TO NOT TALK TO THE
10 JURORS IN ANY WAY. I HAVE HAD THIS PROBLEM BEFORE IN
11 OTHER CASES.

12 THE COURT: ALL RIGHT. I WILL.

13 FOLKS, I HAVE SEEN MOST OF YOU HERE ON EARLIER
14 OCCASIONS. SOME FACES ARE NEW TO ME. TWO THINGS THAT WE
15 NEED TO DO IN THIS CASE: WE ARE GOING TO PICK SOME
16 JURORS. AND THEY ARE GOING TO TRY TO GIVE BOTH SIDES A
17 FAIR TRIAL. THAT'S WHAT THIS IS ALL ABOUT. THERE ARE
18 TRIABLE ISSUES IN THIS CASE THAT THE JURY IS GOING TO HAVE
19 TO DETERMINE. AND THEY SHOULD NOT BE INFLUENCED BY
20 EXTERIOR SOURCES. BECAUSE IF THEY ARE AND I FIND OUT,
21 THEN I EXCUSE ALL THOSE JURORS AND WE START THIS PROCESS
22 AGAIN. WE DON'T WANT TO DO IT MORE THAN ONCE.

23 FOR THOSE OF YOU WHO ARE HERE, YOU ARE DIRECTED NOT
24 TO TALK TO THE JURORS OUTSIDE. PLEASE CONFINE YOUR
25 COMMUNICATIONS AMONG YOURSELVES. PLEASE CONFINE YOUR
26 OUTSIDE COMMUNICATIONS, IF YOU WILL, IN THE AREA AND
27 MANNER SO THAT YOU CANNOT BE OVERHEARD BY JURORS. PLEASE,
28 DO NOT SIGNAL WITNESSES WHEN THEY TESTIFY. PLEASE DO NOT

1 SHAKE YOUR HEAD, NOD YOUR HEAD, ANY KIND OF CONDUCT THAT
2 SUGGESTS THAT YOU BELIEVE THE TESTIMONY OF THE WITNESS TO
3 BE APPROPRIATE OR INAPPROPRIATE OR YOU AFFIRM IT OR YOU
4 DISAGREE WITH IT.

5 NONE OF THIS IS FUN. IT BECOMES EMOTIONAL. IF YOU
6 FEEL THAT YOU ARE HAVING SOME TROUBLE COMPORTING IN AN
7 ORDINARY YOU KNOW, REGULAR EVERYDAY LIFE CIRCUMSTANCES,
8 YOU CAN JUST GET UP AND WALK OUT. IT IS MUCH BETTER THAN
9 ME ASKING MY BAILIFF TO REMOVE SOMEBODY AND THEN CALLING
10 ATTENTION TO YOU KNOW YOURSELVES.

11 I KNOW THAT BOTH FAMILIES, ALL FAMILIES, MEMBERS ARE
12 CONCERNED ABOUT ALL THIS. SO, THOSE ARE THE RULES OF THE
13 COURT. YOU ARE WELCOME TO BE HERE. BUT YOU KNOW, NO
14 EMOTIONAL, NO COMMUNICATION. DON'T INTERRUPT THE
15 PROCEEDINGS. AND THEN YOU ARE WELCOME IN MY COURT AS IS
16 ANYBODY ELSE WHO IS INTERESTED IN THE CASE.

17 MIGHT BE HELPFUL NOT TO TALK TO NEWS REPORTERS.
18 THERE MAY BE A REPORTER WANDERING IN NOW AND THEN. MY
19 EXPERIENCE IS THEY COME IN DURING OPENING STATEMENTS.
20 THAT'S WHEN HE WRITES WHAT'S HAPPENING. AND THEN THEY
21 DISAPPEAR. AND THEN THEY REPORT THE DAILY EVENTS.
22 SOMEHOW. THEY ARE NOT HERE. BUT THEY STILL REPORT IT.
23 WHAT OCCURS IN COURT. SOMETIMES YOU DON'T EVEN RECOGNIZE
24 THE CASE WHEN YOU READ ABOUT IT THE NEXT DAY. BECAUSE
25 THEIR INFORMATION WAS GAINED THROUGH OTHER SOURCES.
26 IN ANY EVENT, YOU ARE ALL ADULTS AND YOU ARE ALL
27 INTELLIGENT ADULTS. SO, JUST FOLLOW THE RULES. WE WILL
28 BE FINE. ANYTHING ELSE?

1 MS. SCHMAUSS: COULD I INQUIRE OF COUNSEL IF HE
2 INTENDS TO USE ANY MEMBERS OF THE DEFENDANT'S FAMILY AS
3 WITNESSES.

4 MS. ABLARD: NOT AT THIS TIME.

5 THE COURT: ALL RIGHT. MR. ABLARD, IF IT BECOMES
6 OBVIOUS TO YOU THAT YOU EXPECT TO CALL A FAMILY MEMBER WHO
7 IS PRESENT IN COURT IN YOUR CASE, THEN WE WILL REVISIT THE
8 ISSUE OF THIS EXCLUSION DURING THE TESTIMONY AND YOUR CASE
9 IN CHIEF.

10 MR. ABLARD: APPRECIATE IT.

11 THE COURT: SURE.

12 MR. ABLARD: ONE QUICK ISSUE ON THE EXCLUSION OF THE
13 VICTIM'S FAMILY. WE WOULD ASK THAT THEY BE EXCLUDED
14 DURING OPENING STATEMENTS.

15 THE COURT: THE WITNESSES?

16 MR. ABLARD: YES, THE WITNESSES.

17 THE COURT: BUT NOT THE NON-FAMILY WITNESSES. DO YOU
18 EXPECT TO REVIEW THE TESTIMONY, MS. SCHMAUSS, OF THE TWO
19 WITNESSES WHO ARE ONE AND TWO IN YOUR OPENING STATEMENTS?

20 MS. SCHMAUSS: I DO EXPECT TO COVER THEIR TESTIMONY.

21 THE COURT: YEAH, I ASSUMED YOU WILL.

22 MS. SCHMAUSS: PROBABLY BRIEF, YES.

23 THE COURT: ALL RIGHT. BUT NOT DETAILED?

24 MS. SCHMAUSS: NO. I AM JUST GOING TO GIVE AN
25 OVERVIEW. I DON'T SEE ANY REASON.

26 THE COURT: THAT WILL BE DENIED. DOESN'T APPEAR
27 THAT-- LOOK, IF THE MOM AND THE POP OF THIS LITTLE GIRL
28 HAVEN'T TALKED TO EACH OTHER AT GREAT LENGTH ABOUT THIS

1 CASE, OVER THE LAST TWO YEARS, I'D BE SHOCKED. IT IS
2 THEIR SWORN TESTIMONY AND WHAT VARIATIONS MAY OCCUR THAT
3 ARE RELEVANT. I MEAN, SO, IF THEY HEAR AN OPENING
4 STATEMENT WHICH YOU KNOW PURPORTS TO SUMMARIZE IN SOME
5 GENERALITY THAT WHICH THE DISTRICT ATTORNEY EXPECTS THEM
6 TO TESTIFY TO, I AM NOT OFFENDED. BEYOND THAT, IT IS
7 NOT-- BUT DURING THEIR TESTIMONY, YES. BECAUSE SMALL
8 VARIATIONS MAY BE IMPORTANT.

9 MR. ABLARD: THANK YOU. THE NEXT ITEMS HAVE TO DO
10 WITH STATEMENTS MADE BY THE MOTHER TO THE POLICE REGARDING
11 MY CLIENT.

12 ONE AGAIN, THESE SHOULDN'T TAKE TOO LONG. THERE WAS
13 A SUPPOSEDLY AN INCIDENT THE NIGHT I BELIEVE PRIOR TO THE
14 EVENT IN QUESTION OF THE VICTIM CHANGING CLOTHES OR
15 SOMETHING IN THE HALLWAY WITNESSED BY MY CLIENT. THE
16 MOTHER PERCEIVED MY CLIENT AS FIDGETY AND REQUESTED THAT
17 SHE PUT PANTS ON.

18 THE CONCERN WITH THAT WITHOUT SPECULATION ON HER
19 PART, HOW HE FELT, AND WITHOUT FURTHER FOUNDATION RIGHTLY
20 GOES NOWHERE BUT TO CONFUSE AND PREJUDICE THE JURY
21 THINKING THAT MAYBE MY CLIENT HAD SOME PROBLEM OR
22 SOMETHING WITH LITTLE GIRLS, SAY IT PLAINLY.

23 THERE'S NOTHING ELSE IN THIS CASE THAT I AM AWARE OF
24 REALLY THAT CORROBORATES ANYTHING LIKE THAT. AND TO AVOID
25 THIS SORT OF PREJUDICE AND CONFUSION ON THE PART OF THE
26 JURY AND HAVE THEM START TO SPECULATE WITHOUT THE PROPER
27 FOUNDATIONS, I WOULD LIKE THAT EXCLUDED.

28 MS. SCHMAUSS: WELL, YOUR HONOR, WOULD YOU LIKE ME TO

1 RESPOND?

2 THE COURT: NOT REALLY. OBVIOUSLY, AN OPINION BY A
3 LAY WITNESS AS TO THE MENTAL CONDITION, CIRCUMSTANCES, OR
4 THOUGHT PROCESS OF SOMEBODY ELSE IS PROBABLY OUTSIDE THEIR
5 SCOPE OF EXPERTISE. SO, YOU HAVE TO TAILOR YOUR QUESTIONS
6 TO DESCRIBE EVENTS AS OPPOSED TO GIVE OPINIONS. ISN'T
7 THAT SIMPLE ENOUGH?

8 MS. SCHMAUSS: LAY OPINION WITNESSES CERTAINLY CAN
9 GIVE THEIR OPINION ABOUT SOMEONE FEELING UNCOMFORTABLE AND
10 ACTING FIDGETY. HE APPEARED TO BE UNCOMFORTABLE.

11 THE COURT: NOT IN MY COURT. APPEARANCE OF COMFORT
12 OR LACK THEREOF CLEARLY OUTSIDE THE SCOPE OF RELEVANCE OF
13 WHAT WAS OBSERVED. THE JURY CAN DECIDE WHAT IT MEANS, IF
14 ANYTHING.

15 MS. SCHMAUSS: ALL RIGHT.

16 THE COURT: BUT THINGS OBSERVED CAN BE TESTIFIED TO.
17 BUT WHAT IT MEANS IS FOR THE JURY. SO, YOU JUST TAILOR
18 YOUR QUESTIONS NOT TO RUN AFOUL.

19 MR. ABLARD: NEXT, YOUR HONOR, THERE SEEMS TO-- THANK
20 YOU. THERE SEEMS TO BE A STATEMENT MADE BY THE VICTIM'S
21 MOTHER SAID DEFENDANT DIDN'T LIKE THE POLICE. I WOULD
22 REQUEST THAT BE EXCLUDED. THE FOUNDATION AS TO THAT WOULD
23 BE THROUGH OTHER AREAS THAT WAS ALREADY BEEN EXCLUDED SUCH
24 AS PRIOR ACTS.

25 THE COURT: LET ME ASK MS. SCHMAUSS. WHETHER OR NOT
26 MR. JOHNSON LIKES OR DISLIKES POLICE, IS THAT RELEVANT?

27 MS. SCHMAUSS: NOT THAT I CAN TELL.

28 THE COURT: NOT THAT I CAN TELL.

1 MS. SCHMAUSS: I DON'T PLANT TO ELICIT THAT FROM HER.

2 THE COURT: THAT TAKES CARE OF THAT.

3 MR. ABLARD: WELL, IF I MAY GO A STEP FURTHER. I
4 UNDERSTAND THAT-- AND ONE OF THE REASONS I AM MAKING THESE
5 MOTIONS, I UNDERSTAND THAT SOMEONE MIGHT NOT BE ELICITED.

6 BUT I REQUEST THE COURT TO HAVE PROSECUTOR ADMONISHED.

7 THE COURT: YOU ARE ADMONISHED.

8 MR. ABLARD: THANK YOU.

9 THE COURT: I EXPECT THE PROSECUTOR TO HAVE GONE OVER
10 THE TESTIMONY TO BE ELICITED. THOSE THINGS THAT ARE

11 RELEVANT AND THOSE THINGS THAT ARE NOT SO THAT WE DON'T
12 HAVE THESE KIND OF THINGS OCCUR IN A MURDER CASE.
13 PREPARATION IS WHAT IT IS ALL ABOUT.

14 MR. ABLARD: RIGHT.

15 THE COURT: THE WITNESSES HERE, THE FACTS WILL SPEAK
16 FOR THEMSELVES. THEY DON'T NEED TO PUT FROSTING ON THE
17 CAKE. IF THEY DID, WE WILL JUST HAVE TO BUY A NEW CAKE,
18 START OVER. I AM SURE THEY DON'T WANT THAT EITHER.

19 MR. ABLARD: THERE'S JUST ONE OTHER OF THOSE IN THE
20 SAME CATEGORY. AND WE ARE DONE WITH THIS WHOLE CATEGORY.
21 AND I THINK IT UNDER THE COURT'S RULING THAT THE MOTHER
22 SPECULATED THAT MY CLIENT STARTED SOMETHING AND WENT TOO
23 FAR.

24 THE COURT: NO SPECULATION.

25 MR. ABLARD: THANK YOU.

26 THE COURT: KEEP GOING. WHAT ELSE?

27 MR. ABLARD: THE NEXT HAS TO DO WITH TAPED INTERVIEWS
28 WITH MY CLIENT.

1 THE COURT: MIRANDA OR NON MIRANDA.

2 MR. ABLARD: NON-MIRANDA FROM THE STANDPOINT THERE'S
3 A-- THERE ARE SOME ISSUES. IT APPEARS-- CORRECT ME IF I
4 AM WRONG-- THAT MY CLIENT CALLED THE POLICE DEPARTMENT AND
5 WANTED TO TALK TO THEM. AND THE INTERVIEWS WERE ON THAT
6 BASIS.

7 THE COURT: NONCUSTODIAL.

8 MR. ABLARD: NONCUSTODIAL. HE WAS TAKEN TO THE
9 POLICE DEPARTMENT. THEREIN LIES THE ISSUE. EVEN THOUGH
10 THE INITIAL-- AND THE FILE IS SOMEWHAT VOID OF FACTS HERE.
11 SO THAT MIGHT BE AN AREA I WANT TO EXPLORE.

12 BUT THE INITIAL CALL TO THE POLICE OF COURSE
13 VOLUNTARY. I WANT TO TELL YOU SOMETHING.

14 ONCE THE POLICE CAME OUT TO THE HOUSE AND FOR
15 WHATEVER REASON THEY WENT DOWN TO THE POLICE STATION AND
16 TALKED, I THINK THAT ONCE THEY ARE AT THE POLICE STATION,
17 DEPENDING UPON THE CIRCUMSTANCES, HOW MANY POLICE WERE
18 THERE, WHETHER OR NOT WANTING TO OR COULDN'T GO. THERE'S
19 AN ISSUE WE HAVE TO APPROACH TODAY.

20 BUT THAT'S THE ONE THING ABOUT THE TAPES. THE SECOND
21 THING ABOUT THE TAPES, MS. SCHMAUSS AND I HAVE BEEN
22 DISCUSSING THESE TAPES. AND I BELIEVE IF THEY INTEND TO
23 PLAY THE TAPE FOR THE JURY REGARDLESS OF WHETHER MY CLIENT
24 TAKES THE WITNESS STAND OR NOT. WE OBJECT TO THAT.

25 THERE IS THE SECOND ISSUE REGARDING THE TAPE. WE
26 WILL GET TO THAT IN A MOMENT.

27 THIRD ISSUE IS IF IN FACT THE TAPES ARE ALLOWED, WE
28 ARE MAKING A MOTION THAT THEY HAVE TO BE REDACTED.

1 BECAUSE CONTAINED THEREIN ARE STATEMENTS ABOUT WHAT HAS
2 BEEN EXCLUDED: PRIOR ACTS, SPOUSAL ABUSE, AND THESE SORT
3 OF THINGS. AND SO, WE NEED A REDACTED COPY TO PLAY FOR
4 THE JURY.

5 THE COURT: HOW MANY TAPES?

6 MS. SCHMAUSS: THERE'S THREE CASSETTES.

7 INVESTIGATOR DONLEY: YES, THREE.

8 MS. SCHMAUSS: WHAT THE PEOPLE WILL BE OFFERING ARE
9 TWO CASSETTES THAT ARE ONE INTERVIEW. THERE'S A THIRD
10 TAPE WHICH WAS TAKEN OUTSIDE MIRANDA WHICH I WOULDN'T

11 NECESSARILY OFFER. I HAVE DISCUSSED WITH COUNSEL IF HE
12 WOULD WANT THE THIRD TAPE PLAYED TO GIVE THE DEFENDANT'S
13 ENTIRE STATEMENT. I LEAVE THAT UP TO HIM. I PLAN TO
14 OFFER THE CASSETTE TAPE OF A SINGLE INTERVIEW THAT, AS HE
15 CORRECTLY STATED, THE DEFENDANT CALLED, INITIATED THE
16 CONTACT, SAID I WANT TO TALK TO YOU.

17 THEY MET AT HIS MOTHER-IN-LAW'S HOUSE. A NUMBER OF
18 PEOPLE WERE THERE. AND FOR PRIVACY REASONS, QUIET
19 REASONS, OFFICER DONLEY SUGGESTED THEY GO BACK TO THE
20 MONTCLAIR POLICE DEPARTMENT.

21 AND CLEARLY ON THE TAPE, THE DEFENDANT IS TOLD HE HAS
22 NO OBLIGATION TO TALK TO THE POLICE. HE WAS FREE TO GET UP
23 AND WALK OUT THE FRONT DOOR. AND IN FACT, HE DID WALK OUT
24 THE FRONT DOOR. HE WAS NOT ARRESTED. AND HE GAVE THE
25 STATEMENT TO THE POLICE.

26 THE COURT: WELL, THE COURT HAS TO DETERMINE
27 OBVIOUSLY WHETHER OR NOT THE STATEMENTS MADE, NUMBER ONE,
28 ARE VOLUNTARY; AND IF HE IS IN A LOCATION THAT SOMETIMES

1 CONSIDERED CUSTODIAL, WHETHER OR NOT THERE WAS FOCUS IN
2 CUSTODY.

3 THOSE ARE FACTS THE COURT HAS TO DETERMINE PRIOR TO
4 ADMISSIBILITY OF ANY STATEMENTS. THE COURT HAS TO

5 DETERMINE IS IT RELEVANT OR NOT RELEVANT. OBVIOUSLY IF
6 THERE'S OBJECTION ON RELEVANCY, THEREFORE, REDACTION MAY
7 OR MAY NOT BE APPROPRIATE.

8 HAVE THE TAPE TRANSCRIPT?

9 MS. SCHMAUSS: YES. THE DEFENSE HAD A TRANSCRIPT AND
10 THEN I HAVE GONE BACK WITH THE ASSISTANCE OF ONE OF OUR

11 TRANSCRIBERS AND FILLED IN A LOT OF THE INAUDIBLE. AND
12 SHE IS TYPING AS WE SPEAK. SHE HAS GOTTEN THE FIRST TAPE
13 DONE. SHE IS WORKING ON THE SECOND.

14 MR. ABLARD: I DON'T-- THAT'S TRUE.

15 THE COURT: WHEN WILL THE TAPES AND THEIR PREPARATION
16 BE COMPLETE?

17 MS. SCHMAUSS: WE HAVE GOT NUMBER ONE DONE. AND I
18 CAN GIVE A COPY TO COUNSEL. AND WE SHOULD HAVE NUMBER TWO
19 FINISHED BY THE END OF TODAY.

20 MS. ABLARD: YES, OBVIOUSLY NEED THAT. WE HAVE
21 DISCUSSED THAT.

22 THE COURT: TOMORROW MORNING, THE DISTRICT ATTORNEY
23 SHALL DELIVER NOT ONLY TO MR. ABLARD BUT TO THE COURT THE
24 TRANSCRIPTION OF THE TAPE FOR THE COURT'S REVIEW. THE
25 COURT WILL REVIEW THE WRITTEN TRANSCRIPT.

26 IF EITHER COUNSEL WISHES THE COURT TO PARTICULARLY
27 REVIEW THE TAPES THEMSELVES, IN OTHER WORDS, THERE IS AN
28 OBJECTION TO THE TRANSCRIPTION, SO ON, PLEASE ALERT THE

1 COURT AND THE COURT WILL IN FACT LISTEN TO THE TAPE.

2 SOMETIMES WHAT YOU HEAR AND HOW IT IS SAID ON TAPE
3 IMPACTS YOUR JUDGMENT ABOUT VOLUNTARINESS AND SO ON AND SO
4 FORTH AS OPPOSED TO THE WRITTEN WORD. BUT ORDINARILY ONE
5 CAN REVIEW IT.

6 SO THE COURT IS GOING TO READ THE TRANSCRIPT IN ITS
7 FINAL, YOU KNOW, TRANSCRIPTION, AND REVISIT THE ISSUE OF
8 ADMISSIBILITY AND REDACTION.

9 MS. SCHMAUSS: OKAY.

10 MR. ABLARD: ALL RIGHT. THANK YOU VERY MUCH.

11 THE COURT: FOUNDATIONALLY, BEFORE THE TAPES ARE
12 ADMITTED, THE OFFICER WHO HAS ACQUIRED THE STATEMENT IS
13 GOING TO HAVE TO LAY THE FOUNDATION. AND IF YOU WISH THE
14 COURT TO HEAR THAT AS A 402 HEARING PRIOR TO THE
15 TESTIMONY, I ASSUME THAT THOSE ISSUES COULD BE LAID OUT IN
16 ABOUT THIRTY MINUTES.

17 MR. ABLARD: YES.

18 MS. SCHMAUSS: YES, I HAVE THEM HERE. WE CAN
19 PROBABLY DO IT NOW. BECAUSE I WOULD LIKE TO REFER TO THE
20 TAPE AND THE STATEMENT IN MY OPENING STATEMENT. SO, IF WE
21 HAVEN'T HAD A RULING YET, THAT COULD BE PROBLEMATIC.

22 THE COURT: THAT'S WHY I WANTED THEM IN THE MORNING.

23 MS. SCHMAUSS: I CAN PROBABLY GET ONE, NUMBER ONE
24 FOR SURE TODAY AND MAYBE NUMBER TWO.

25 THE COURT: WELL, GET ME NUMBER ONE. WHEN IS IT?
26 TODAY?

27 MS. SCHMAUSS: YES. I WAS JUST GOING TO HAVE HER
28 RERUN IT ON LEGAL PAPER. WE CAN CHECK AND SEE IF IT IS

1 DONE.

2 THE COURT: WE WILL GET TO IT THIS MORNING. IT IS
3 ONLY 10:30.

4 MS. SCHMAUSS: I CAN PUT OFFICER DONLEY ON RIGHT NOW
5 ABOUT THE VOLUNTARINESS.

6 THE COURT: ARE YOU READY TO DO THAT, MR. ABLARD?

7 MR. ABLARD; WELL, WHAT TIME IS IT?

8 THE COURT: 10:30.

9 MR. ABLARD: WELL, WE HAVE GOT PLENTY OF TIME.

10 OKAY. THAT'S FINE.

11 MS. SCHMAUSS: I CAN INQUIRE NOW.

12 THE COURT: WOULD YOU.

13 MR. ABLARD: I PREFER TO WAIT UNTIL WE GET ALL DONE.
14 I THINK I AM JUST ABOUT DONE FOR NOW WITH THE PROVISIO.

15 THE COURT: OKAY. WE MAY COME BACK AND THE
16 INVESTIGATOR MAY TESTIFY BEFORE THE MORNING. TESTIMONY IS
17 HOW FOUNDATIONAL, 402, FOR THE ADMISSIBILITY OF AT LEAST A
18 PORTION OF THE STATEMENT MADE BY MR. JOHNSON. WHAT OTHER
19 ISSUE DO WE HAVE?

20 MS. SCHMAUSS: IS MR. ABLARD FINISHED?

21 THE COURT: NO. I AM NOT SURE.

22 MR. ABLARD: WELL, I THINK FOR RIGHT NOW, I AM. I
23 MEAN, THE WAY THAT MY MIND WORKS, IT SEEMS YOU CAN NEVER
24 GET EVERYTHING DOWN AT ONCE.

25 THE COURT: WELL. OKAY.

26 MR. ABLARD: I MIGHT HAVE SOME MORE LATER. BUT I
27 TRY TO BE VERY BRIEF.

28 THE COURT: JUST TAKE THE TIME YOU NEED IN THIS CASE.

1 MS. SCHMAUSS, YOU HAVE SOME ISSUES THAT YOU WANT THE
2 COURT TO CONSIDER PRIOR TO JURY SELECTION, OPENING
3 STATEMENTS?

4 MS. SCHMAUSS: PRETTY WELL COVERED THEM. THE ONLY
5 THING I WILL REITERATE IS I STILL HAVE NOT RECEIVED A
6 WITNESS LIST FROM COUNSEL. HE'S BEEN VERY COOPERATIVE
7 ABOUT RECIPROCAL DISCOVERY. HE GAVE ME SOME MEDICAL
8 RECORDS. BUT HE HAS NOT PROVIDED ME A LIST. SO I AM
9 STILL WAITING FOR THAT.

10 MR. ABLARD: I WILL REPRESENT TO THE COURT THAT THE
11 PROBLEM IS ANY WITNESS THAT I HAVE WILL BE IMPEACHMENT
12 WITNESSES. NOW, I WILL BE HAPPY TO GIVE A LIST OF
13 POTENTIAL WITNESSES IN THIS CASE. THE ODDS ON MOST OF
14 THEM BEING CALLED ARE VERY SLIM. BUT IF THE PROSECUTION
15 WANTS THEM, I WILL DO IT. I ALSO INDICATED THAT I AM
16 STILL WAITING FOR SOME CALLS FROM SOME PEOPLE.

17 THE COURT: WELL, YOU CAN'T GIVE A WITNESS'S NAME
18 AND IDENTIFICATION UNTIL YOU KNOW YOU ARE REASONABLY
19 EXPECTED TO CALL.

20 MR. ABLARD: THANK YOU.

21 THE COURT: YOU ARE NOT OBLIGATED TO INFORM THE
22 DISTRICT ATTORNEY OF IMPEACHMENT WITNESSES. BUT IF THEY
23 ARE PERCIPIENT WITNESSES TO THE CIRCUMSTANCES THAT PRECEDE
24 AND FOLLOW THE EVENTS OF THIS CASE, THAT ARE REAL PEOPLE
25 IN THE REAL WORLD, THEN YOU MAY OR MAY NOT CALL THEM, GIVE
26 THEM THE LIST.

27 MR. ABLARD: I WILL.

28 THE COURT: WHOMEVER THEY MAY BE, FAMILY MEMBERS OR

1 OTHERWISE POTENTIALLY CALL AS WITNESSES.

2 MR. ABLARD: THANK YOU.

3 THE COURT: WHETHER OR NOT YOU HAVE STATEMENTS FROM
4 THEM OR NOT. BUT IMPEACHMENT WITNESSES AND EXPERT

5 WITNESSES WHO YOU ARE STILL DISCUSSING THE POSSIBILITY OF
6 THEIR TESTIMONY, YOU DON'T HAVE TO DELIVER UNLESS YOU KNOW
7 THAT YOU ARE GOING TO CALL THE WITNESS. WHEN YOU HAVE
8 DECIDED YOU ARE GOING TO CALL THE WITNESS OTHER THAN
9 IMPEACHMENT WITNESSES, PLEASE LET MS. SCHMAUSS KNOW.

10 MR. ABLARD: I WILL LET HER KNOW IMMEDIATELY.

11 THE COURT: IF YOU HAVE ANY REPORTS, ORAL OR
12 OTHERWISE, SUMMARIZE THE ORAL ONES AND DELIVER COPIES OF
13 THE WRITTEN ONES.

14 MR. ABLARD: I CERTAINLY WILL.

15 THE COURT: THANK YOU.

16 MR. ABLARD: THANK YOU.

17 MS. SCHMAUSS: THE ONLY OTHER THING I CAN THINK OF IS
18 I ALSO HAVE A VIDEOTAPE WHICH IS A TAPE OF THE HOUSE AND
19 SHOWING THE LAYOUT, THE PHYSICAL LAYOUT OF THE HOUSE, THE
20 RELATIONSHIP OF THE ROOMS. IT IS NARRATED BY OFFICER
21 DONLEY.

22 THE COURT: IS IT RELEVANT?

23 MS. SCHMAUSS: WELL, IT IS RELEVANT BECAUSE IT CAN
24 SHOW THE JURY WITHOUT TAKING THEM TO THE SCENE THE EXPENSE
25 AND TRAVEL OF JURY VIEW.

26 THE COURT: WELL, WE ARE NOT GOING TO DO THAT.
27 BECAUSE I CAN'T SEE THAT IS GOING TO HELP.

28 MR. ABLARD: ON THAT ISSUE, WE REQUEST THE OBVIOUS.

1 BUT THAT THE COURT RESERVE ITS NOTION ON THAT UNTIL WE SEE
2 HOW THE EVIDENCE COMES IN ON THE PROSECUTION'S CASE.

3 MS. SCHMAUSS: WELL, THE RELEVANCE--

4 MR. ABLARD: MAYBE A MOTION TO THAT EFFECT.

5 MS. SCHMAUSS: THE RELEVANCE WOULD BE THERE WERE FOUR
6 PEOPLE, ADULT PEOPLE, IN THAT HOUSEHOLD THE MORNING OF THE
7 MURDER. AND THREE OF THE FOUR WERE ALLEGEDLY SLEEPING
8 WHILE THE DEFENDANT WAS THE ONLY ONE UP.

9 SO IT SHOULD BECOME AN ISSUE. I AM SURE AS TO WHAT
10 THEY COULD HAVE HEARD, WHAT THEY COULD HAVE PERCEIVED, THE
11 RELATIONSHIP OF WHERE THEY WERE TO WHERE THE INCIDENT
12 OCCURRED, THE DEFENDANT'S ROOM.

13 AND THAT'S WHY THE TAPE IS USEFUL IN ADDITION TO
14 STILL PHOTOGRAPHS. STILL PHOTOGRAPHS DON'T SHOW YOU VERY
15 WELL THE RELATIONSHIP OF ONE ROOM TO ANOTHER EVEN IF YOU
16 PASTED THEM ON A DIAGRAM WHICH WE HAVE. SO WE CAN PREVIEW
17 THE TAPE. IT IS VERY SHORT.

18 THE COURT: WE SHALL. WHEN DO YOU WANT TO REVIEW THE
19 TAPE?

20 MS. SCHMAUSS: ANY TIME. WE HAVE IT. I CAN BRING UP
21 OUR TV SET.

22 MR. ABLARD: ANYTIME.

23 THE COURT: VERY GOOD. WE HAVE COVERED ALL THE
24 ISSUES THAT COUNSEL ARE AWARE OF TODAY IN TERMS OF
25 ADMISSIBILITY, 402, AND OTHERWISE. SO, WE WILL TAKE A
26 FIFTEEN MINUTE RECESS. THE PROSECUTION SHALL RETURN WITH
27 THE VIDEO IF YOU WISH THE COURT TO REVIEW. PROSECUTION
28 SHALL RETURN WITH AT LEAST THAT MUCH OF THE TRANSCRIPT OF

1 DEFENDANT'S STATEMENT AND BE PREPARED TO CALL YOUR
2 INVESTIGATING OFFICER FOR FOUNDATION ON THAT
3 ADMISSIBILITY.

4 MS. SCHMAUSS: OKAY. DO WE HAVE A TV UP HERE OR DID
5 WE NEED TO BRING OURS?

6 THE COURT: THE SUPERIOR COURT OF THE SAN BERNARDINO
7 COUNTY HAS NO ELECTRONIC EQUIPMENT OF ANY KIND THAT WORKS.

8 MS. SCHMAUSS: WE WILL BRING THE TV.

9 THE COURT: THE COPY MACHINE IN THE HALL IS NOW
10 BROKEN AGAIN. AND PROBABLY WILL NOT BE REPAIRED. BUT

11 DON'T FRET. THEY HAVE POOR OLD ORANGE COUNTY THAT HAS KEY
12 CARDED FOR ENTRY ALL THE SECURITY SECURED AREAS OF THE
13 COURTHOUSE. JUST FINISHED BY THE WAY. THE SYSTEM HAS
14 BROKEN. AND THEY CANNOT AFFORD TO REPAIR IT. SO, THERE
15 ARE NO SECURE AREAS IN THE COURTHOUSE ANY MORE.

16 MR. ABLARD: THAT'S WHY I KEEP SENDING SOMEBODY DOWN
17 TO DO MY ORANGE COUNTY CASE.

18 THE COURT: BECAUSE THEY ARE-- THEY HAVE TO TURN IT
19 OFF OR THEY HAVE TO LOCK EVERY DOOR AND NOBODY GETS IN.
20 SO, THERE YOU ARE. SO, WE WILL TAKE FIFTEEN OR SO.
21 MS. SCHMAUSS, GATHER UP YOUR STUFF AND COME BACK.

22 (RECESS)

23 MS. SCHMAUSS: YOUR HONOR, WE HAVE ANOTHER 402-352
24 TYPE OF ISSUE THAT WE BOTH FORGOT ABOUT THAT MAYBE WE CAN
25 ADDRESS BEFORE WE START WITH THE TAPE.

26 THE COURT: ALL RIGHT.

27 MS. SCHMAUSS: AND THAT WOULD BE IF THE DEFENSE
28 INTENDS TO GET INTO ANY CROSS-EXAMINATION OR TESTIMONY

1 ABOUT THE VICTIM'S MOTHER, MS. RETHORN, TRYING TO OBTAIN A
2 RESTRAINING ORDER AGAINST JOHN MARTIN. THERE WAS A
3 HEARING BEFORE JUDGE BRYANT ON MARCH 19, 1994 WHERE THERE
4 WERE COMMUNICATIONS FROM THE DEFENSE TO THE VICTIM'S
5 PARENTS, ALSO SENT BY MR. AARON A VISIT BY MR. MARTIN.
6 AND MS. RETHORN FELT THAT HER PRIVACY HAS BEEN INTRUDED
7 UPON. AND SHE GOT A TEMPORARY RESTRAINING ORDER. THERE
8 WAS A HEARING.

9 I THINK THAT THIS IS SO FAR AWAY FROM THE ISSUES AS
10 TO GUILT OR AS TO INNOCENCE AS TO THE DEFENDANT, AND THAT
11 IT WOULD TEND TO CONFUSE AND DISTRACT THE JURY THAT I
12 DON'T FEEL THAT THIS IS RELEVANT IN ANY WAY TO WHETHER THE
13 DEFENDANT KILLED BRITTANY RETHORN RIGGS.

14 AND I WOULD ASK THAT NO CROSS-EXAMINATION OR EVIDENCE
15 BE BROUGHT OUT BY THE DEFENSE ABOUT THIS EXTRANEIOUS ISSUE
16 BETWEEN RETHORN AND MR. MARTIN.

17 THE COURT: MARTIN IS?

18 MR. ABLARD: MY INVESTIGATOR, YOUR HONOR.

19 THE COURT: YOUR INVESTIGATOR.

20 MR. ABLARD: YES.

21 MS. SCHMAUSS: HE WAS AARON'S INVESTIGATOR
22 ORIGINALLY.

23 THE COURT: WELL, ALL RIGHT. ARE THERE
24 DOCUMENTATIONS AND TRANSCRIPTS FLOATING AROUND?

25 MR. ABLARD: YES.

26 THE COURT: I WILL REVIEW THEM.

27 MR. ABLARD: WHAT I PROPOSE, YOUR HONOR, FOR YOUR
28 CONSIDERATION IS CERTAINLY THIS IS NOT AN AREA THAT I AM

1 FOCUSING ON. AND I WOULD AGREE THAT PRIOR TO ANY
2 DISCUSSIONS WITH THE WITNESS HAVING ANYTHING TO DO WITH
3 THIS RESTRAINING ORDER, THAT I APPROACH AND GIVE MY
4 REASONS AT THAT TIME.

5 THE COURT: FAIR ENOUGH. THOSE ARE THE MARCHING
6 ORDERS.

7 MR. ABLARD: THANK YOU.

8 MS. SCHMAUSS: THEN WE HAVE THE TAPE SET UP AND BOTH
9 SIDES ARE AGREEING THAT THE COURT REPORTER NEED NOT TAKE
10 DOWN THE AUDIO. MR. ABLARD.

11 MR. ABLARD: YES, THAT IS FINE.

12 THE COURT: ALL RIGHT. YOU WANT-- THIS IS THE--

13 MS. SCHMAUSS: VIDEO OF THE HOME.

14 THE COURT: DONE BY A REAL ESTATE AGENT IN
15 PREPARATION FOR SALE; RIGHT?

16 MS. SCHMAUSS: WHEN DID YOU DO IT?

17 INVESTIGATOR DONLEY: I BELIEVE ON THE 11TH.

18 THE COURT: JUST OUT OF AN ABUNDANCE OF CAUTION FOR
19 FOUNDATION, I KNOW YOU EXPECT TO CALL YOUR INVESTIGATOR.
20 WHY DON'T WE HAVE HIM SWORN AT THIS TIME.

21 MS. SCHMAUSS: HE CAN BRIEFLY LAY A FOUNDATION FOR
22 THE TAPE NOW.

23 THE COURT: YES, I THINK THAT IS PROBABLY-- IF YOU'D
24 BE KIND ENOUGH, STAND UP, RAISE YOUR RIGHT HAND, FACE MY
25 CLERK WHERE YOU ARE.

26 MICHAEL DONLEY,
27 CALLED AS A WITNESS BY THE PLAINTIFF, WAS SWORN AND
28 TESTIFIED AS FOLLOWS:

1 THE CLERK: YOU DO SOLEMNLY SWEAR THE TESTIMONY YOU
2 MAY GIVE IN THE MATTER NOW PENDING BEFORE THIS COURT
3 SHALL BE THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT
4 THE TRUTH, SO HELP YOU GOD.

5 THE WITNESS: I DO.

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

8 THE WITNESS: MICHAEL DONLEY D-O-N-L-E-Y.

9 THE COURT: MR. DONLEY, FOR WHOM DO YOU WORK?

10 THE WITNESS: THE CITY OF MONTCLAIR POLICE

11 DEPARTMENT.

12 THE COURT: OKAY. WHAT IS YOUR STATUS THERE?

13 THE WITNESS: POLICE OFFICER.

14 THE COURT: ALL RIGHT. OFFICER DONLEY, THE COURT IS
15 AWARE IT IS ABOUT TO SEE A VIDEO THAT WAS MADE A MOMENT
16 AGO NOW TO BE PLAYED IN OPEN COURT. IS THIS A VIDEO THAT
17 YOU PREPARED?

18 THE WITNESS: YES, IT IS.

19 THE COURT: OKAY. AND WHEN.

20 THE WITNESS: OCTOBER 11 OF 1993.

21 THE COURT: THANK YOU. HAVE YOU REVIEWED IT?

22 THE WITNESS: YES, SIR, I HAVE.

23 THE COURT: DOES IT DEPICT THAT WHICH YOU ATTEMPTED
24 TO DEPICT WITH YOUR VIDEO.

25 THEE WITNESS: YES, SIR.

26 THE COURT: ALL RIGHT. DO YOU HAVE ANY QUESTIONS,
27 MR. ABLARD?

28 MR. ABLARD: NO, YOUR HONOR.

1 THE COURT: THANK YOU. THAT'S SUFFICIENT FOR
2 FOUNDATION FOR THE COURT TO PREVIEW ON A PRELIMINARY
3 BASIS.

4 MS. SCHMAUSS: CAN THE COURT SEE IT?

5 THE COURT: YES.

6 MS. SCHMAUSS: CAN COUNSEL SEE IT?

7 MR. ABLARD: YES.

8 THE COURT: TURN IT ON.

9 COURT REPORTER IS RELIEVED FROM TAKING THE AUDIO.
10 (WHEREUPON VIDEO WAS PLAYED.)

11 MS. SCHMAUSS: YOUR HONOR, THERE IS A CORRECTION.
12 OFFICER DONLEY MADE ME AWARE OF THE DATE OF THE FILM WAS
13 OCTOBER 20TH.

14 THE COURT: OKAY.

15 MS. SCHMAUSS: CORRECT, OFFICER DONLEY?

16 THE WITNESS: YES, MA'AM.

17 THE COURT: MR. ABLARD, DO YOU HAVE ANY COMMENT ON
18 THE FILM?

19 MR. ABLARD: YES, I DO. IT IS ON ONE HAND SOMEWHAT
20 HELPFUL IN THAT WE SEE THE INSIDE OF THE HOUSE. ON THE
21 OTHER HAND, THE AUDIO-- TALK ABOUT THE AUDIO FIRST. IF
22 THE VIDEO WERE TO BE SHOWN-- WE WILL TALK ABOUT THE VIDEO
23 SECOND. THEN I WOULD REQUEST THAT THE AUDIO BE REDACTED
24 SUBSTANTIALLY.

25 WE HAVE A LOT OF LEGAL CONCLUSIONS, LOTS OF EVIDENCE,
26 A LOT OF HEARSAY ON THE ONE HAND. ON THE OTHER HAND, OF
27 COURSE, WITHOUT THE AUDIO, AS THEY ARE GOING DOWN THE
28 HALLWAY WITH THE VIDEO, REALLY DOESN'T TELL ANYONE MUCH.

1 IT IS A LITTLE DIFFICULT TO ASCERTAIN WHERE THEY ARE
2 PARTICULARLY WHEN THEY ARE IN EACH ROOM.

3 THE OTHER WAY TO DO IT OF COURSE IS TO IF THE VIDEO
4 WERE TO BE USED, WE REQUEST A COMPLETE AUDIO BE ELIMINATED
5 AND HAVE AN OFFICER TESTIFY AS TO WHAT ROOM AND SO ON AND
6 SO FORTH THAT THEY ARE VIEWING AT THE TIME. THAT WILL BE
7 MY FIRST REQUEST.

8 THE COURT: WELL, LET ME SEE WHAT MS. SCHMAUSS THINKS
9 ABOUT IT.

10 MS. SCHMAUSS: WELL, I TEND TO AGREE WITH COUNSEL
11 THAT OF COURSE THE STATEMENTS OF OFFICER DONLEY DO
12 NECESSARILY INCLUDE HEARSAY--

13 THE COURT: THEY DO.

14 MS. SCHMAUSS: -- AND CONCLUSIONS. AND I WOULDN'T HAVE
15 ANY OBJECTION IF THE COURT SO RULES TO TURN OFF THE SOUND.

16 THE COURT: SO RULED.

17 MS. SCHMAUSS: AND HAVE--

18 THE COURT: THE OFFICER MAY EXPLAIN THAT WHICH HE IS
19 DEPICTING BY FILM AS IT IS SHOWN.

20 MS. SCHMAUSS: CORRECT.

21 THE COURT: THANK YOU. NEXT ISSUE. THAT TAKES CARE
22 OF THAT FILM. WHAT NEXT? FOUNDATION FOR THE STATEMENT BY
23 MR. JOHNSON IS WHETHER THE CUSTODY WAS WHETHER HE WAS IN
24 CUSTODY AND THERE WAS THE CUSTODIAL INTERROGATION.

25 MS. SCHMAUSS: SO THE COURT IS ALLOWING ME TO PLAY
26 THE TAPE AS LONG AS THERE IS NO AUDIO.

27 THE COURT: YES.

28 MR. ABLARD: THAT WAS MY FIRST PORTION.

1 THE COURT: DO YOU HAVE ANOTHER PORTION?

2 MR. ABLARD: YES, MY--

3 THE COURT: YOU SAID YOU THOUGHT IT WAS HELPFUL AND
4 RELEVANT. ISN'T IT HELPFUL AND RELEVANT?

5 MR. ABLARD: THE QUESTION BECOMES HOW HELPFUL IS IT.

6 THE COURT: WELL, IT IS NOT PREJUDICIAL. SO, IF IT
7 IS HELPFUL, AND RELEVANT, AND LACKS ANY PREJUDICE, IT IS
8 GOING TO BE RECEIVED.

9 MR. ABLARD: THANK YOU.

10 THE COURT: NEXT ISSUE.

11 MR. ABLARD: ONWARD.

12 THE COURT: ONWARD. UH-HUH.

13 MS. SCHMAUSS: ALL RIGHT. NEXT WE ARE ON FOUNDATION
14 FOR THE STATEMENT.

15 THE COURT: TAKE THE STAND, OFFICER. TAKE THE REPORT,
16 ANYTHING YOU NEED TO REFRESH YOUR RECOLLECTION FOR
17 PURPOSES OF YOUR INTERVIEW WITH MR. JOHNSON.

18 THE COURT: I HAVE WHAT IS CALLED TAPE ONE.

19 MS. SCHMAUSS: RIGHT. THAT IS THE FIRST HALF OF THE
20 TAPE INTERVIEW.

21 THE COURT: THANK YOU. ALL RIGHT. YOU ARE STILL
22 UNDER OATH FROM BEING SWORN EARLIER AT COUNSEL TABLE. YOU
23 ARE STILL A POLICE OFFICER FROM MONTCLAIR. DO YOU KNOW
24 MR. JOHNSON?

25 THE WITNESS: YES, SIR.

26 THE COURT: THANK YOU.

27 DIRECT EXAMINATION

28 BY MS. SCHMAUSS:

1 Q OFFICER BALES, (SIC) YOU ARE THE INVESTIGATING
2 OFFICER ASSIGNED TO THIS HOMICIDE INVESTIGATION?

3 A YES. OFFICER DONLEY, I AM.

4 Q WHAT DID I CALL YOU?

5 A BALES.

6 Q I AM SORRY.

7 THE COURT: THAT'S OKAY. BE DONLEY TODAY.

8 Q BY MS. SCHMAUSS: OFFICER DONLEY, I APOLOGIZE.
9 WERE YOU SUMMONED BY YOUR POLICE DEPARTMENT ON OCTOBER 10,
10 1993?

11 A YES, I WAS.

12 Q AND WERE YOU INFORMED THAT THE DEFENDANT,
13 MR. JOHNSON, WANTED TO SPEAK WITH A POLICE OFFICER?

14 A YES.

15 Q WHEN WAS THAT?

16 A AT APPROXIMATELY A QUARTER TO 12 I ARRIVED AT
17 THE STATION. AND OFFICER BALES WAS IN THE WATCH
18 COMMANDER'S OFFICE AND ADVISED ME AT THAT TIME.

19 Q AND WHO WAS OFFICER BALES?

20 A HE WAS AN OFFICER WITH THE CITY OF MONTCLAIR,
21 ONE OF THE INITIAL OFFICERS THAT RESPONDED TO THE CALL.

22 Q SO, HE RECEIVED A COMMUNICATION FROM
23 MR. JOHNSON?

24 A YES.

25 Q AND THEN HE RELAYED THAT TO YOU?

26 A CORRECT.

27 Q OKAY. WAS-- WERE STEPS TAKEN TO CONTACT
28 MR. JOHNSON RESPOND TO HIS CONTACT FROM THE POLICE

1 DEPARTMENT?

2 A YES. OFFICER BALES AND I DROVE OVER TO 628
3 NORTH SAN ANTONIO IN ONTARIO WHERE MR. JOHNSON APPARENTLY
4 HAD TOLD MR. BALES WHERE THAT HE WAS GOING TO BE THERE.
5 AND WE MADE CONTACT WITH MR. JOHNSON THERE.

6 Q DO YOU KNOW WHOSE RESIDENCE THAT WAS?

7 A I BELIEVE IT WAS MICHELLE PAMPLIN'S.

8 Q WHAT RELATIONSHIP WAS SHE TO THE DEFENDANT?

9 A MOTHER-IN-LAW.

10 Q OKAY. WAS ANYBODY PRESENT AT THE HOME ON SAN
11 ANTONIO OTHER THAN THE DEFENDANT?

12 A YES. WE DROVE UP. MS. PAMPLIN AND THE
13 DEFENDANT'S WIFE WERE OUT FRONT ON THE FRONT LAWN AREA
14 ALONG WITH TWO SMALL CHILDREN THAT WERE IN THE ROOM WHERE
15 HE WAS AT.

16 Q WAS THE HOME ITSELF CONDUCIVE TO CONDUCTING THE
17 INTERVIEW?

18 A NO, IT WAS NOT.

19 Q WHY NOT?

20 A WHEN WE WENT INTO THE DOOR, THERE WAS A SMALL
21 CHILD I BELIEVE IN A CRIB AND ANOTHER ONE IN A CRADLE.
22 THERE WAS NO PLACE TO SIT DOWN. NO PLACE TO SIT MY
23 NOTEBOOK. KIDS WERE NOISY. AND I TOLD MR. JOHNSON I
24 PREFER TO CONDUCT THE INTERVIEW SOMEWHERE ELSE.

25 Q OKAY. WHERE DID YOU ASK HIM TO GO?

26 A I ASKED HIM IF HE MINDED GOING WITH US TO THE
27 POLICE DEPARTMENT.

28 Q WHAT WAS HIS RESPONSE?

1 A HE TOLD ME THAT HE WOULD DO THAT.

2 Q DID YOU AT THAT TIME TELL HIM HE WAS UNDER
3 ARREST?

4 A NO, I DID NOT.

5 Q DID YOU PLACE HIM UNDER ARREST?

6 A NO.

7 Q HOW IS HE TRANSPORTED TO THE POLICE DEPARTMENT?

8 A HE WAS TRANSPORTED TO MONTCLAIR POLICE
9 DEPARTMENT IN THE BACK OF A POLICE CAR WITH NO HANDCUFFS.

10 Q AND THEN WHERE DID YOU GO WHEN YOU GOT TO THE
11 POLICE DEPARTMENT?

12 A WE ARRIVED IN THE BACK OF THE POLICE STATION.
13 MR. JOHNSON GOT OUT OF THE CAR. AND I ASKED HIM IF HE
14 WOULD MIND IF WE WENT AND DID SOME FOLLOW UP PRIOR TO
15 TALKING TO HIM. SO, OFFICER BALES AND I LEFT. AND THEN
16 MR. JOHNSON, I BELIEVE, WENT IN THE BACK OF THE STATION
17 WITH ANOTHER OFFICER.

18 Q AND WAITED FOR YOU?

19 A YES.

20 Q AND THEN YOU CAME BACK TO THE STATION?

21 A YES.

22 Q OKAY. AND THEN WHAT DID YOU DO THEN?

23 A WE TOOK MR. JOHNSON INTO THE INTERVIEW ROOM, AND
24 AT THAT POINT, ADVISED HIM HE WAS NOT UNDER ARREST, HE WAS
25 FREE TO LEAVE, AND HE HAD NO OBLIGATION TO SPEAK WITH US.
26 AND WE INTERVIEWED HIM.

27 Q OKAY. AND THEN THAT ADVISAL, WAS THAT TAPE
28 RECORDED?

1 A YES, IT WAS.

2 Q AND DO YOU HAVE A COPY OF THE TRANSCRIPT WITH
3 YOU THAT I PROVIDED TO THE COURT AND COUNSEL?

4 A YES, I DO.

5 Q AND WITH THE PERMISSION OF THE COURT, COULD YOU
6 READ US YOUR EXACT WORDS AT THE I GUESS IT IS ABOUT THE
7 ABOUT TOP THIRD OF PAGE 1?

8 WILL THAT BE ALL RIGHT, YOUR HONOR, SO WE CAN GET THE
9 EXACT WORDING?

10 THE COURT: THAT'S FINE. ARE WE TALKING ABOUT THE
11 PUBLIC DEFENDER'S COPY?

12 MS. SCHMAUSS: NO, THE ONE I GAVE YOU. IT STARTS OUT
13 WITH DO YOU UNDERSTAND THAT YOU HAVE NO OBLIGATION.

14 THE WITNESS: AND IT IS PAGE 1?

15 MS. SCHMAUSS: MY PAGE 1 IS DIFFERENT THAN YOURS.

16 MR. ABLARD: HE DOESN'T HAVE THE MOST RECENT.

17 MS. SCHMAUSS: MAYBE HE DOESN'T HAVE THE NEW AND
18 IMPROVED.

19 THE WITNESS: THAT'S PROBABLY THE CASE.

20 MS. SCHMAUSS: YEAH, YOU DO. FOR EVERYBODY ELSE'S
21 REFERENCE, I AM REFERRING TO LINE 24. IT LOOKS LIKE--

22 A I SAID TO MR. JOHNSON DO YOU UNDERSTAND THAT YOU
23 HAVE NO OBLIGATION TO TALK TO US.

24 Q BY SM. SCHMAUSS: AND WHAT WAS HIS RESPONSE?

25 A THE RIGHT TO REMAIN SILENT.

26 Q AND THEN WHAT WAS YOUR RESPONSE?

27 A NO. I AM NOT READING YOU YOUR RIGHTS. I AM
28 TELLING YOU THAT YOU HAVE NO OBLIGATION TO TALK TO US AND

1 YOU ARE FREE TO GET UP AND WALK OUT THIS FRONT DOOR.
2 YOUR-- YOU CONTACTED US; RIGHT.

3 AND HE RESPONDED YES, I DID.

4 Q OKAY. THEN DID YOU MAKE A FURTHER COMMENT?

5 A I SAID OKAY. AND YOU HAD NO-- AND YOU HAVE NO
6 PROBLEM WITH THIS-- WITH THAT. AND HE SAID NO, I DON'T.
7 AND I SAID--

8 Q NO, I DIDN'T?

9 A NO, I DIDN'T. YES. SORRY.

10 Q AND THEN YOU SAID?

11 A AND YOU UNDERSTAND THAT YOU ARE FREE TO GO AT
12 ANY TIME. AND HE REPLIED I UNDERSTAND.

13 Q AND THEN YOU CONDUCTED AN INTERVIEW WITH HIM?

14 A YES, I DID.

15 Q OF ABOUT WHAT DURATION?

16 A IT WAS APPROXIMATELY AN HOUR AND A HALF OR SO.

17 Q AND AT THE CONCLUSION OF THAT INTERVIEW, DID YOU
18 ARREST MR. JOHNSON?

19 A NO, I DID NOT.

20 Q WHAT DID YOU DO WITH HIM?

21 A WE RELEASED HIM.

22 Q DID YOU RELEASE HIM EVEN THOUGH HE HAD A
23 WARRANT?

24 A YES.

25 Q AND YOU TOLD HIM YOU ARE RELEASING HIM EVEN
26 THOUGH HE HAD A WARRANT?

27 A YES.

28 Q WHEN WAS HE IN FACT ARRESTED?

1 A THE NEXT DAY.

2 MS. SCHMAUSS: NO FURTHER QUESTIONS, YOUR HONOR.

3 THE COURT: WHAT WAS THE WARRANT FOR?

4 THE WITNESS: IT WAS A \$2500 WARRANT. I BELIEVE IT
5 WAS TRAFFIC. BUT I AM NOT SURE OF THAT.

6 THE COURT: DID YOU TAKE HIM BACK TO WHERE YOU GOT
7 HIM OR DID YOU JUST LEAVE HIM TO HITCHHIKE?

8 A TO BE HONEST, I DON'T REMEMBER. BUT I BELIEVE
9 WE PROBABLY JUST SENT HIM OUT THE DOOR. AND THAT WAS ONE
10 OF MY QUESTIONS. I WAS WONDERING ABOUT THAT MYSELF.

11 MS. SCHMAUSS: I GUESS IT'S ONE-WAY SERVICE.

12 MR. ABLARD: THANK YOU.

13 CROSS-EXAMINATION

14 BY MR. ABLARD:

15 Q OFFICER, WHAT TIME DID YOU ARRIVE AT THE HOME TO
16 INTERVIEW HIM?

17 A I'LL HAVE TO REFER TO MY NOTES.

18 Q OKAY.

19 A I DON'T HAVE THE EXACT TIME. BUT IT WAS RIGHT
20 AROUND 12 NOON.

21 Q OKAY. WILL THERE BE A LOG OF THAT OR SOMETHING
22 THAT YOU CAN REFER TO?

23 A I DON'T BELIEVE IT WILL BE LOGGED ANYWHERE.
24 BECAUSE IT IS NOT PART OF PATROL. IT WOULDN'T BE A PATROL
25 LOG. BUT I DON'T KNOW FOR SURE. I DON'T KNOW IF I PUT
26 MYSELF OUT THERE OR NOT AT THAT TIME.

27 Q OKAY. AND WHAT TIME DID YOU GET BACK TO THE
28 STATION?

1 A AT APPROXIMATELY 12:20 P.M.

2 Q OKAY. AND YOU TOOK HIM IN THE POLICE CAR;
3 CORRECT?

4 A THAT'S CORRECT.

5 Q HE WAS IN THE BACK SEAT?

6 A YES.

7 Q AND WHO WAS IN THE FRONT SEAT?

8 A MYSELF AND OFFICER BALES.

9 Q ANYBODY IN THE BACK SEAT WITH MR. JOHNSON?

10 A NO.

11 Q DID YOU OFFER THAT HE CAN DRIVE HIS OWN CAR TO
12 THE POLICE STATION?

13 A I DON'T RECALL.

14 Q WILL THAT BE IN YOUR NOTES?

15 A IT IS NOT IN MY NOTES. BUT I DON'T RECALL.

16 Q BUT YOU DON'T DENY THAT YOU DIDN'T OFFER HIM TO
17 TAKE HIS OWN CAR?

18 A NO, I DID NOT.

19 THE COURT: YOU DON'T ADMIT IT EITHER?

20 THE WITNESS: I DON'T ADMIT IT. I DON'T REMEMBER IT.

21 I DON'T REMEMBER IF HE WAS GIVEN THAT OPPORTUNITY.

22 THE COURT: THANK YOU.

23 Q BY MR. ABLARD: OKAY. NOW, WHEN YOU GOT TO THE
24 POLICE STATION, YOU MENTIONED THAT YOU HAD A FOLLOW-UP ON
25 SOMETHING; CORRECT?

26 A YES.

27 Q AND WHAT WAS THAT?

28 A WE WENT TO THE HOSPITAL TO CHECK ON BRITTANY.

1 AND THEN WE WENT OVER TO HIS RESIDENCE, TO THE PLACE HE
2 WAS RENTING ON EXETER.

3 Q THIS WAS ALL ON THE 10TH?

4 A YES.

5 Q NOW, PRIOR TO GOING TO THE HOSPITAL TO CHECK ON
6 BRITTANY?

7 A YES.

8 Q WAS THIS ABOUT 20 AFTER 12 OR SO?

9 A YES.

10 Q HAD YOU GOTTEN ANY WORD AS TO HER CONDITION FROM
11 THE HOSPITAL?

12 A WELL, I KNEW AT THAT POINT SHE WAS DECEASED.

13 Q AND YOU WENT TO CHECK ON HER FOR WHAT PURPOSE?

14 A JUST TO CHECK THE BODY AND SEE IF I CAN FIND ANY
15 TYPE EVIDENCE OR ANYTHING LEADING TO THE MOTIVE OF DEATH.

16 Q OKAY. FIND ANYTHING?

17 A I FOUND A DEAD LITTLE GIRL. THAT'S ABOUT ALL I
18 FOUND.

19 Q NOW, YOU WHEN YOU DROPPED HIM OFF AT THE POLICE
20 STATION AND YOU WENT TO DO YOUR FOLLOW-UP?

21 A YES.

22 Q DID YOU HAVE AN OFFICER STAY WITH HIM?

23 A WELL, HE WOULD HAVE TO HAVE AN OFFICER WITH HIM.
24 BECAUSE WE DON'T ALLOW ANYBODY IN THE BACK PART OF THE
25 POLICE STATION WITHOUT SOMEBODY TO AT LEAST STAY WITH
26 THEM.

27 Q OKAY. WELL, WAS HE-- SO, IN OTHER WORDS, A
28 POLICE OFFICER, DO YOU HAVE A POLICE OFFICER COME UP AND

1 SAY HE IS GONNA STAY BACK HERE UNTIL WE GET BACK?

2 A YES.

3 Q YOU ARE GONE WHAT HOUR, HOUR AND A HALF?

4 A WE WERE GONE A GOOD HOUR AND A HALF, YES.

5 Q OKAY. WHO WAS THAT OFFICER THAT WAS SORT OF
6 WATCHING OVER MR. JOHNSON?

7 A I DON'T RECALL.

8 Q WOULD THAT BE IN YOUR NOTES ANYWHERE?

9 A IT IS NOT IN THERE.

10 Q UH-HUH. WHEN YOU DROPPED HIM OFF AT THE POLICE

11 STATION, SAID HE WAS OFFICER SO AND SO, WE ARE GOING TO
12 WATCH YOU, WE'LL BE BACK IN A WHILE, WHY DID YOU DO THAT?
13 WHY COULDN'T HE JUST GO AROUND AND SIT IN FRONT OR HANG
14 OUT AND HAVE CIGARETTES IN THE BACK OR IN THE FRONT?

15 A THERE WAS NO REASON. HE COULD HAVE DONE THAT IF
16 HE'D HAVE ASKED. I BELIEVE HE DID HAVE SOMETHING TO DRINK
17 OR SOMETHING TO THE REAR OF THE STATION. I DON'T RECALL
18 EXACTLY. BUT I REMEMBER HIM WANTING TO DO SOMETHING BACK
19 THERE.

20 Q THAT WAS WHEN THE OFFICER WAS WATCHING HIM;
21 RIGHT?

22 A YES.

23 Q BUT THAT IS THE POLICE STATION LOCATED INSIDE
24 THE CIVIC CENTER, THERE LIKE A LIBRARY CLOSE BY OR
25 ANYTHING?

26 A THE LIBRARY IS BEHIND THE STATION, YES.

27 Q SO, YOU OPTED TO HAVE AN OFFICER WATCH HIM IN
28 BACK AS OPPOSED TO SAY WE ARE GOING TO BE BACK IN AN HOUR.

1 MEET US BACK HERE. HANG OUT SOMEWHERE. THE LIBRARY?

2 A THE LIBRARY WAS CLOSED. BUT, YES.

3 Q OKAY. AND AT SOME POINT, DID BOTH-- WERE YOU
4 THE ONLY ONE IN THE INTERVIEW ROOM WITH INTERVIEW ROOM
5 WITH MR. JOHNSON?

6 A NO. OFFICER BALES WAS IN WITH ME ALSO.

7 Q AND AT SOME POINT, HE ASKED FOR A BREAK, GO AND
8 HAVE A CIGARETTE?

9 A YES.

10 Q OKAY. AND DID YOU ALL JUST LET HIM GO OUT AND
11 HAVE A CIGARETTE ALONE?

12 A I WASN'T WITH HIM. SO, I DON'T REMEMBER IF HE
13 WAS ALONE OR NOT.

14 Q OKAY?

15 A I BELIEVE HE HAD SOMEBODY WITH HIM. BECAUSE HE
16 WAS OBVIOUSLY GOING TO BE IN THE BACK PART OF THE STATION
17 WHERE WE DON'T ALLOW ANYBODY TO BE ALONE.

18 Q OKAY. DID SOMEBODY DIRECT HIM TO THE BACK PART
19 OF THE STATION TO HAVE A CIGARETTE, OR GO OUTSIDE AND HAVE
20 A CIGARETTE; WHEN YOU ARE DONE, COME BACK IN?

21 A I DON'T RECALL.

22 Q WOULD THAT BE IN YOUR NOTES?

23 A IT IS NOT IN THERE.

24 Q UH-HUH. AND OFFICER BALES, DID HE GO WITH HIM
25 TO HAVE THIS CIGARETTE?

26 A I DON'T KNOW.

27 Q THAT'S NOT IN YOUR NOTES?

28 A NO, THAT WOULDN'T BE IN THERE.

1 Q ALL RIGHT. AND WHY DIDN'T YOU MIRANDIZE HIM?

2 A BECAUSE AT THE POINT WHEN I INTERVIEWED HIM, I
3 WASN'T SURE WHAT WE HAD. IN FACT, TO MY KNOWLEDGE, IT WAS
4 SUSPICIOUS DEATH. HE WAS NOT IN CUSTODY. AND HE WAS
5 ADVISED OF THAT.

6 Q HE WAS A SUSPECT?

7 A I WOULDN'T PLACE HIM AS A SUSPECT. WELL, YES, I
8 WOULD SAY THAT JUST ABOUT EVERYBODY IN THAT FAMILY WAS AT
9 A CERTAIN POINT.

10 Q AT 20-- WELL, SORRY. I DIDN'T MEAN TO
11 INTERRUPT?

12 A I WOULD SAY PROVIDING I KNEW IT WAS HOMICIDE AT
13 THE HANDS OF ANOTHER PERSON, HE WOULD BE MY PRIME
14 SUSPECT, YES.

15 Q ALL RIGHT. OKAY. AND SO, AT 20 AFTER 12, YOU
16 HAD NO PRIMARY SUSPECT AND YOU DIDN'T KNOW THAT IT WAS A
17 DEATH BY SOMEONE ELSE'S HANDS; CORRECT?

18 A AT THAT TIME, I DID NOT. THAT'S RIGHT.

19 Q YOU DID NOT KNOW. DURING YOUR INTERROGATION,
20 DID HE REQUEST TO HAVE SOMETHING TO DRINK OR DO ANYTHING
21 LIKE THAT?

22 A I BELIEVE HALFWAY THROUGH IT, HE SAID THAT HE
23 WANTED SOMETHING TO DRINK, YES.

24 Q WAS THAT PROVIDED?

25 A HE WAS GIVEN THE OPPORTUNITY WHEN WE BROKE, YES.

26 Q WAS IT PROVIDED WHEN HE ASKED?

27 A I DON'T RECALL AT WHAT POINT HE ASKED. I
28 BELIEVE IT WAS. BUT I DON'T SPECIFICALLY RECALL.

1 Q NOW, I AM CONFUSED. OKAY. YOU TALKED ABOUT YOU
2 MENTIONED THAT IT WAS, MAY HAVE BEEN PROVIDED AT BREAK?

3 A RIGHT.

4 Q OKAY. WHICH-- CORRECT ME IF I AM WRONG-- SORT
5 OF IMPLIES IT MAY NOT HAVE BEEN PROVIDED WHEN HE ASKED FOR
6 IT. BUT A BREAK WAS COMING UP AT SOME POINT AND WE DO IT
7 THEN?

8 A I BELIEVE AT THE BREAK WAS WHEN HE ASKED.

9 Q OH.

10 A WE HAD NO SPECIFIC TIME SAYING WE ARE GOING TO.

11 Q OKAY. AND WAS HE PROVIDED WITH THAT WHATEVER IT
12 WAS HE REQUESTED?

13 A IT IS MY UNDERSTANDING HE WAS. I DON'T
14 SPECIFICALLY REMEMBER. BUT I THINK HE WAS.

15 Q BUT YOU DON'T KNOW?

16 A I DON'T KNOW FOR A FACT.

17 Q ALL RIGHT. SO, HE MAY HAVE BEEN, MAY NOT HAVE
18 BEEN?

19 A CORRECT. PROBABLY GET A LOT MORE MILAGE FROM
20 OFFICER BALES WHO WAS MAYBE WITH HIM. I DON'T KNOW.

21 Q WELL, DID YOU AND OFFICER BALES HAVE ANY
22 DISCUSSIONS ON HOW TO PROCEED WITH THIS INTERVIEW AS FAR
23 AS LETTING MR. JOHNSON SORT OF GO OUT FRONT AND HAVE A
24 CIGARETTE AS OPPOSED TO MAYBE SENDING MR. BALES OUT WITH
25 HIM?

26 A NO.

27 Q JUST WHATEVER BALES DID, BALES DID?

28 A I GOT UP AND LEFT THE INTERVIEW ROOM. AND I

1 HAVE NO IDEA WHAT OFFICER BALES DID.

2 Q AND IS THAT YOUR STANDARD PRACTICE WHEN TWO
3 PEOPLE ARE INTERVIEWING AND SOMEONE THAT AT THAT POINT IS
4 NOT A SUSPECT, TO HAVE SORT OF KEEP SOMEWHAT OF A CONTROL
5 OVER THEM SO THEY DON'T JUST SORT OF WANDER OUT FRONT AND
6 LEAVE OR WHATEVER?

7 A THAT'S THE PRACTICE WHEN SOMEBODY IS INSIDE THE
8 POLICE STATION. HAS NOTHING TO DO WITH WHETHER THEY
9 WANDER OFF.

10 MR. ABLARD: OKAY. I HAVE NOTHING FURTHER. THANK
11 YOU.

12 THE COURT: THANK YOU.

13 MR. ABLARD: WITH THIS WITNESS.

14 REDIRECT EXAMINATION

15 BY MS. SCHMAUSS:

16 Q WHEN YOU INTERVIEWED THE DEFENDANT ON THE 10TH,
17 THE AUTOPSY HAD NOT YET BEEN CONDUCTED; HAD IT?

18 A NO.

19 Q SO, ALL YOU KNEW WERE THE THINGS THAT HAD BEEN
20 RELATED AT THE SCENE FROM THE VARIOUS MEMBERS OF THE
21 HOUSEHOLD?

22 A YES.

23 Q DID THE DEFENDANT EVER ASK TO CUT THE INTERVIEW
24 SHORT?

25 A NO, HE, TOWARDS THE END OF THE INTERVIEW, HE
26 ALLUDED TO THE FACT THAT HE WAS GETTING TIRED OR WANTED TO
27 LEAVE. AND THAT'S WHEN WE BASICALLY SUMMED IT UP AND
28 CLOSED IT OUT.

1 Q IS THAT WHY YOU SUMMED IT UP, BECAUSE HE WANTED
2 TO LEAVE?

3 A WELL, HE WAS FREE TO LEAVE AT ANY TIME.

4 Q DID HE EVER OBJECT TO REMAINING AT THE STATION
5 EITHER BEFORE YOU LEFT TO GO DO SOME MORE INVESTIGATION OR
6 AFTER?

7 A NO.

8 Q AND IF HE HAD ASKED YOU TO LEAVE, IF HE SAID--
9 THE COURT: BEGINS WITH AN "IF" WE CAN'T DETERMINE
10 ANYTHING.

11 MS. SCHMAUSS: EXCUSE ME.

12 THE COURT: "IF" IS SOME OTHER WORLD, NOT THE ONE WE
13 LIVE IN.

14 MS. SCHMAUSS: ALL RIGHT.

15 Q BY MS. SCHMAUSS: WOULD YOU HAVE RESPECTED ANY
16 REQUEST BY HIM TO LEAVE?

17 A YES.

18 Q BUT HE DID NOT ASK YOU TO LEAVE?

19 A HE DID NOT ASK.

20 THE COURT: THANK YOU.

21 MR. ABLARD: I HAVE NOTHING FURTHER FROM THIS
22 WITNESS.

23 THE COURT: PRELIMINARILY, IT APPEARS THE STATEMENT
24 INSOFAR AS I HAVE READ TAPE ONE WHICH I HAVE NOW
25 CONCLUDED, IT APPEARS TO BE VOLUNTARY AND IT APPEARS TO
26 THE COURT THAT THE DEFENDANT IS NOT IN CUSTODY.

27 IT DOES APPEAR THAT THEY HAVE NOT FOCUSED UPON HIM AS
28 A SUSPECT OTHER THAN THE GENERAL CONCERN IF YOU HAVE A

1 DEAD CHILD, CAUSE OF DEATH REMAINED UNKNOWN, ANY AND ALL
2 PEOPLE THAT ARE PRESENT AT OR ABOUT AROUND THE TIME THE
3 CHILD DIED OR BEFORE OR AFTER ARE PEOPLE THAT YOU WANT TO
4 TALK TO.

5 SO, PRELIMINARILY, IT IS ADMISSIBLE.

6 MR. ABLARD: YES, I UNDERSTAND. I AM WONDERING IF IT
7 MIGHT NOT BE HELPFUL TO HAVE MR. BALES SHOW UP FOR A
8 BRIEF, SOME BRIEF TESTIMONY. HE SEEMS TO BE THE ONE
9 ACTUALLY IN CHARGE OF MY CLIENT AT THE TIME IN QUESTION.

10 THE COURT: WELL, IT ISN'T TO THE COURT UNLESS YOU
11 HAVE SOME INFORMATION THAT SUGGESTS THAT OFFICER BALES
12 PRIOR TO THIS INTERVIEW COMMENCING HAD SOMEHOW TAKEN AWAY
13 THE OBVIOUS VOLUNTARINESS FROM THE TAPE ITSELF.

14 MR. ABLARD: WELL, NO.

15 THE COURT: LET'S DON'T GO HUNTING FOR SOMETHING THAT
16 WE DON'T KNOW.

17 MR. ABLARD: NO. I UNDERSTAND THAT. I GUESS THE
18 REQUEST WAS MADE ON THE BASIS THAT OFFICER DONLEY DOESN'T
19 REMEMBER CERTAIN NUMBER OF THINGS, WHY HE WASN'T OFFERED
20 TO GO IN HIS OWN CAR, DIDN'T GO OUT WITH HIM TO HAVE A
21 CIGARETTE, THAT HE DOESN'T KNOW WHY THE OTHER OFFICER WENT
22 OUT WITH HIM, AND WHETHER HE WAS ACTUALLY SORT OF FREE TO
23 GO, AND THESE SORT OF THINGS.

24 AND I AM WONDERING IF MR. BALES CAN FILL IN THOSE
25 HOLES. AND I WILL SUBMIT IT.

26 THE COURT: WELL, THE COURT IS NOT CALLING OFFICER
27 BALES. HE HASN'T TESTIFIED. COURT RULING REMAINS.

28 MR. ABLARD: THANK YOU.

1 MS. SCHMAUSS: THANK YOU.

2 THE COURT: HE CAN STEP DOWN.

3 MR. ABLARD: I MAY WANT TO SUBPOENA HIM MYSELF, THEN
4 AT SOME POINT.

5 THE COURT: THAT'S FINE.

6 MR. ABLARD: THANK YOU.

7 THE COURT: TO THE EXTENT YOU COME ACROSS EVIDENCE
8 THAT SUGGESTS THAT THE COURT'S RULING IS IN ERROR, COURT
9 WILL REVIEW IT. BUT PRELIMINARILY, BY THE OFFER OF THE
10 PEOPLE AS FOUNDATION, IT IS VOLUNTARY. THE DEFENDANT IS
11 NOT IN CUSTODY. THEY HAVE NOT FOCUSED ON HIM IN THE
12 SENSE THAT IS REQUIRED BY MIRANDA.

13 MR. ABLARD: APPRECIATE IT.

14 THE COURT: WHAT ELSE CAN WE DO THIS MORNING? I DO
15 NEED THE REST OF THE STATEMENT, NEED TO REVIEW IT.
16 BECAUSE I WILL REVIEW THE WHOLE TAPE. I CAN'T TELL
17 WHETHER THE INTERVIEW IS ENDED PAST ANY REQUEST OR
18 CIRCUMSTANCE CHANGE.

19 MR. ABLARD: THAT'S RIGHT, YOUR HONOR.

20 THE COURT: THAT'S WHY I SAID THIS IS MY PRELIMINARY
21 RULING.

22 MR. ABLARD: I UNDERSTAND.

23 MS. SCHMAUSS: WE ARE ALMOST DONE WITH TAPE TWO. WE
24 SHOULD GET IT TO YOU BY THE END OF THE DAY.

25 THE COURT: IF YOU GET IT TO ME BY THE END OF THE
26 DAY, I WILL READ FIRST THING IN THE MORNING.

27 MR. ABLARD: WE'D ALSO GONE THROUGH THE TAPE WITH
28 ANALYSIS AS TO WHETHER OR NOT THOSE THINGS SPOKEN WERE

1 ADMISSIONS OR NOT AND IF THEY ARE NOT, HOW TO GET THEM IN
2 EXCEPTING TO THE HEARSAY RULE. SO WE CAN DISCUSS THAT AT
3 THAT POINT. ONE OTHER THING THAT I WOULD REQUEST.

4 MS. SCHMAUSS: WELL, I GOT TO STOP THERE. AGAIN,
5 BECAUSE I INTEND TO ALLUDE TO THE STATEMENT IN OPENING
6 STATEMENT, WE CAN'T LEAVE IT HANGING.

7 THE COURT: IT IS NOT HANGING. THE COURT DETERMINED
8 THAT PRELIMINARILY IT IS ADMISSIBLE. THAT'S SUFFICIENT
9 FOR YOU TO PROCEED IN OPENING STATEMENT.

10 TO THE EXTENT THERE'S A REQUEST TO REDACT PORTIONS OF
11 THE STATEMENTS OR STATEMENT UNTIL THE FINAL, YOU KNOW,
12 TRANSCRIPT IS PREPARED, IT IS A LITTLE DIFFICULT TO DECIDE
13 ANY REDACTIONS. THAT'S WHY IF YOU GIVE IT TODAY OR FIRST
14 THING IN THE MORNING, THE COURT WILL REVIEW IT.

15 GIVE MR. ABLARD A COPY. MR. ABLARD, YOU BE PREPARED
16 TO PRESENT REDACTIONS, IF ANY.

17 MR. ABLARD: THANK YOU.

18 THE COURT: TO THE TRANSCRIPT AND/OR THE STATEMENT.

19 MR. ABLARD: THANK YOU.

20 THE COURT: FIRST THING IN THE MORNING BEFORE WE GET
21 INTO JURY SELECTION.

22 MR. ABLARD: YES.

23 THE COURT: I ONLY HAVE TWO MATTERS ON TOMORROW
24 MORNING AT 8:30. SO, WE WILL START PROMPTLY AT I WOULD
25 SAY 9:15 IF YOU'D BE SO KIND.

26 MR. ABLARD: FINE.

27 THE COURT: APPEAR WITH THOSE ITEMS IN HAND AND IN
28 MIND.

1 MR. ABLARD: GREAT.

2 THE COURT: AND I TOLD THE JURY WHAT, 9:30. AND I
3 EXPECT THAT WE WILL BE--

4 MR. ABLARD: CLOSE.

5 THE COURT: --CLOSE. YEAH.

6 MR. ABLARD: THAT'S FINE WITH ME, YOUR HONOR.

7 THE COURT: WHAT ELSE CAN WE DO TODAY?

8 MR. ABLARD: I WOULD REQUEST THAT AS TO THE MOTIONS
9 MADE, THAT WE DO NOT HAVE TO MAKE OBJECTIONS IN THOSE
10 OBJECTIONS ARE PRESERVED GIVEN OUR FAIR HEARING ON THE 402
11 MOTION.

12 THE COURT: YES.

13 MR. ABLARD: THANK YOU.

14 THE COURT: YOU DON'T HAVE TO FURTHER OBJECT. THEY
15 ARE NOTED FOR THE RECORD, PRESERVED FOR YOUR PURPOSES.

16 MR. ABLARD: THANK YOU.

17 THE COURT: THANK YOU. ANYTHING FURTHER?

18 MS. SCHMAUSS: NOT FOR ME.

19 MR. ABLARD: NO.

20 THE COURT: ALL RIGHT. WE HAVE COVERED ALL OF THE
21 ISSUES THAT YOU HAVE ALERTED ME TO EXCEPT FOR THE ONE WE
22 MUST DEAL WITH TOMORROW. I HAVE SIGNED SOME DOCUMENTS ON
23 BEHALF OF MR. ABLARD FOR WHATEVER PURPOSE.

24 MR. ABLARD: THANK YOU.

25 THE COURT: SO, I GUESS I SHOULD SEE YOU IN THE
26 MORNING. AND WE WILL DEAL WITH THE LAST ISSUE. BE
27 PREPARED TO SELECT JURY TOMORROW.

28 MS. SCHMAUSS: WHAT TIME DO YOU WANT US HERE?

1 THE COURT: 9:15. TRY 9:15. IF YOU HAVE THE
2 PAPERWORK DONE AND HERE, WON'T TAKE VERY LONG FOR ME TO
3 READ THAT. AND I EXPECT US TO GET A JURY TOMORROW IF AT
4 ALL POSSIBLE.

5 MS. SCHMAUSS: IS THERE ANY TIME LIMIT ON VOIR DIRE?
6 WE DIDN'T COVER THAT.

7 THE COURT: YES, THERE IS.

8 MS. SCHMAUSS: HOW MUCH PER SIDE?

9 THE COURT: REASONABLE. WHEN YOU FEEL THE HOOK PULL
10 AT YOUR ANKLE, YOU WILL KNOW IT IS TIME TO MOVE ON.

11 MS. SCHMAUSS: A NUMBER MAY BE ALLOWED?

12 THE COURT: I DON'T TIME IT. WHEN COUNSEL VOIR DIRE
13 ABOUT INANE OR SILLY OR WANDER, I SUGGEST WE RE-FOCUS ON
14 WHETHER OR NOT WE ARE GETTING A FAIR JURY AS OPPOSED TO
15 WHATEVER. YOU WILL GET THE MESSAGE.

16 MS. SCHMAUSS: OKAY. WE STAY DIRECTED.

17 THE COURT: I AM TRYING TO FIND TWELVE PEOPLE WITH A
18 COUPLE OF ALTERNATES WHO CRITICALLY ANALYZE THE EVIDENCE
19 TO REACH A FAIR AND JUST DECISION, APPLY THE LAW.

20 WE ARE NOW OFF THE RECORD.

21 (PROCEEDINGS CONTINUED TO THE FOLLOWING DAY.)
22
23
24
25
26
27
28

1 RANCHO CUCAMONGA, CALIFORNIA; TUESDAY, OCTOBER 24, 1995

2
3 DEPARTMENT 4

HON. ROBERT E. LAW, JUDGE

4 9:20 A.M.

5 APPEARANCES: SET FORTH ON THE TITLE PAGE.

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

8 ---###---

9 THE COURT: WE ARE ON THE RECORD. PEOPLE VERSUS
10 JOHNSON.

11 SO, ON THE RECORD, IT BECOMES APPARENT THAT THERE IS
12 ONE SIDE OF A TAPE THAT NO ONE KNEW ABOUT REALLY. AND
13 EXCEPT THE OFFICER. AND WE ARE GETTING COPY OF IT NOW;
14 RIGHT.

15 MR. ABLARD: RIGHT. THE SIDE B OF JOHNSON ON THE
16 INTERVIEW WAS JUST GIVEN TO ME. AND I SPOKE WITH
17 MS. SCHMAUSS LATE YESTERDAY AFTERNOON REGARDING SOME
18 PROFFER SOME DISCOVERY TO EACH OTHER. AND SHE INFORMED ME
19 OF THE PROBLEM. LAST NIGHT WHEN I GOT HOME, ABOUT 8:00, I
20 TRIED MY COPY. AND THERE IS NOTHING ON THE B SIDE OF MY
21 TAPE EITHER. THE PROBLEM IS I NEED TO KNOW WHAT IS ON
22 THAT OTHER SIDE OF THE TAPE BEFORE A COUPLE OF THINGS

23 HAPPEN:

24 ONE, OTHER THAN THE OBVIOUS DEDACTIONS, I NEED TO
25 KNOW WHAT IS ON THE OTHER SIDE IN ORDER TO FIGURE OUT
26 EXACTLY WHAT I AM GOING TO REQUEST TO HAVE REDACTED FROM
27 SIDE A.

28 ADDITIONALLY, AND PROBABLY EVEN MORE IMPORTANTLY IN A

1 SENSE THAT IN ORDER TO DEFEND MR. JOHNSON ADEQUATELY UNDER
2 THE SIXTH AMENDMENT, I NEED SOME TIME TO LOOK OVER THE
3 TRANSCRIPTION TO HEAR THE TAPE AND ASSIMILATE IT WITH ALL
4 OF THE OTHER THINGS THAT I HAVE, POLICE REPORTS, SO ON AND
5 SO FORTH.

6 WHAT I AM GOING TO BE REQUESTING THEN IS THAT A
7 CHANGE OF SCHEDULE SLIGHTLY; THAT WE DON'T START--
8 ACTUALLY, I'D LIKE TO HAVE IT BEFORE I PICK THE JURY.
9 THAT WILL BE MY FIRST REQUEST.

10 MY SECOND REQUEST--

11 THE COURT: YOU KNOW WHAT IS GOING TO HAPPEN ON THAT
12 ONE.

13 MR. ABLARD: YES.

14 THE COURT: THAT'S AN EVIDENTIARY MATTER. WE ARE NOT
15 GOING TO DISCUSS EVIDENCE WITH THE JURY.

16 MR. ABLARD: RIGHT.

17 THE COURT: SO, THE MATTERS THAT ARE ON THE TAPE YET
18 TO BE REDACTED OR NOT UNTIL SUBJECT TO LITIGATION.

19 MR. ABLARD: RIGHT. THE SECOND REQUEST AND THE ONE
20 THAT GOES TO THE HEART OF THE MATTER IS I WOULD LIKE TO
21 START EVIDENCE AND OPENING, INSTEAD OF TOMORROW, TO GIVE
22 ME A DAY TO GO THROUGH ALL THE REPORTS AND OTHER

23 STATEMENTS VIS-A-VIS THE NEW TAPE ON THURSDAY MORNING, ONE
24 DAY.

25 THE COURT: MAYBE.

26 MR. ABLARD: THANK YOU. GIVEN THAT ONE, I TAKE IT
27 THE COURT IS TAKING THAT UNDER SUBMISSION.

28 THE COURT: WE'LL SEE WHAT WE ACCOMPLISH TODAY.

1 MR. ABLARD: THANK YOU. I DO HAVE ANOTHER ISSUE I'D
2 LIKE TO BRING UP BRIEFLY. I'D LIKE TO RETURN TO THE BIG
3 PICTURE OF THE GIRL.

4 THE COURT: OH. ALL RIGHT. I HAVEN'T SEEN THE
5 PICTURE.

6 MR. ABLARD: DO WE HAVE IT WITH US NOW?

7 MS. SCHMAUSS: I CAN GET IT. I HAVEN'T FETCHED IT.

8 THE COURT: WHAT ABOUT THE BIG PICTURE.

9 MS. SCHMAUSS: I CAN HAVE HIM GET IT.

10 THE COURT: I PREFER YOU NOT.

11 MR. ABLARD: THAT IS FINE.

12 THE COURT: WE HAVE EIGHTY PEOPLE OUT THERE WHO ARE
13 PROSPECTIVE JURORS WHO ARE GOING TO SEE THE PICTURE IF HE
14 GOES AND GETS IT, DEFEATING ANY OBJECTION YOU MAY HAVE
15 ABOUT THE BIG PICTURE.

16 MR. ABLARD: RIGHT.

17 THE COURT: CAN'T STICK IT UNDER HIS JACKET.

18 MS. SCHMAUSS: WE HAVE A TRASH BAG TO TRANSPORT IT.

19 MR. ABLARD: THE PROBLEM IS THE RELEVANCY. THERE'S
20 NO ISSUE THAT WE HAVE ONE TIME A LIVE CHILD AND NOW A DEAD
21 CHILD.

22 I GUESS THE RELEVANCY IS STATED TO THE COURT WAS THAT
23 IT SHOWS HOW BIG SHE WAS. WELL, THAT COULD BE DEALT WITH
24 WITH SMALL PICTURES. THERE'S NO MEASURING TAPE BEHIND
25 THE PICTURE. THERE'S NOTHING LIKE THIS. I MEAN THE ONLY
26 REASON TO HAVE A POSTER SIZE PICTURE OF A LIVE PERSON IS
27 TO CONSTANTLY HAVE THAT IN FRONT OF THE JURY. IT COULD BE
28 TAKEN UP IN TESTIMONY BY THE PATHOLOGIST HOW BIG SHE WAS.

1 IT COULD BE TAKEN UP BY REGULAR PICTURES.

2 AND I WOULD SUBMIT THAT TO THE COURT FOR
3 RECONSIDERATION, THAT VIRTUALLY IT IS IRRELEVANT IN AN OF
4 ITSELF TO HAVE A BIG PICTURE.

5 THANK YOU.

6 THE COURT: ALL RIGHT. I HAVEN'T SEEN THE BIG
7 PICTURE.

8 MR. ABLARD: MAY I INQUIRE.

9 THE COURT: IF I HAVE SEEN THE BIG PICTURE? YOU
10 PROBABLE WON'T SEE ME.

11 MR. ABLARD: THAT'S RIGHT. I UNDERSTAND. MAY I
12 INQUIRE IS THAT GOING TO BE USED DURING THE QUESTIONING OF
13 THE JURY TODAY?

14 MS. SCHMAUSS: NO.

15 MR. ABLARD: THANK YOU.

16 THE COURT: NO. THAT'S SIMPLE ENOUGH.

17 MS. SCHMAUSS: WE COULD DELIVER THE BIG PICTURE
18 DURING THE RECESS. WE WILL PUT IT IN A TRASH BAG SO NO
19 ONE CAN SEE IT AND WE CAN BRING IT AT 1:30.

20 THE COURT: THAT'S FINE.

21 MR. ABLARD: THANK YOU.

22 THE COURT: WHAT WOULD YOU LIKE TO DO NEXT?

23 MR. ABLARD: WHAT WE ARE SUPPOSED TO DO, I GUESS,
24 OTHER THAN WAS TO DECIDE WHAT PORTIONS OF THIS INTERVIEW
25 WERE SUPPOSED TO TAKE OUT.

26 THE COURT: IF ANY.

27 MR. ABLARD: IF ANY.

28 THE COURT: WELL, UNTIL WE HAVE THE COMPLETE

1 INTERVIEW.

2 MR. ABLARD: RIGHT.

3 THE COURT: IT IS DIFFICULT TO DETERMINE. THE COURT
4 WILL DEFER A DISCUSSION OF THAT.

5 MR. ABLARD: GREAT.

6 THE COURT: OPENING STATEMENTS WILL NOT BE
7 APPROPRIATE UNTIL THE PROSECUTION KNOWS WHAT, IF ANY,
8 PORTION OF THIS TAPE WILL BE ADMITTED INTO EVIDENCE OR
9 LIKELY TO BE ADMITTED, I WOULD GUESS. AND WE WILL DEAL
10 WITH THAT PRIOR TO OPENING STATEMENT.

11 MR. ABLARD: PROSECUTOR BROUGHT UP A POINT AS WELL
12 THAT I WOULD REQUEST THAT WE HANDLE AT THE SAME TIME AND
13 HANDLE THE ADMISSIBILITY OF THE INTERVIEWS. THERE'S ALSO
14 A THIRD TAPE WHICH IN THE SENSE WOULD GO TO THE MORE OF AN
15 EXPLANATORY TYPE PROBLEM, BE AT LEAST ARGUABLY ADMISSIBLE
16 UNDER 354. I'D REQUEST WE BRING THAT ISSUE UP AT THE SAME
17 TIME AS THE OTHER TRANSCRIPT OF THE TAPES ARE ARGUED.

18 MS. SCHMAUSS: I HAVE A TRANSCRIPT PREPARED OF TAPE
19 THREE, BUT I HAVEN'T PROOFED IT YET.

20 THE COURT: ALL RIGHT. THERE'S SOME THINGS TO DO YET.
21 MAYBE WE WILL TAKE THAT UP IMMEDIATELY AFTER JURY
22 SELECTION.

23 MR. ABLARD: WELL, ONCE AGAIN, YOUR HONOR, THE
24 PROBLEM WITH THAT IS I NEED TO HEAR THE TAPE.

25 THE COURT: I UNDERSTAND.

26 MR. ABLARD: OKAY.

27 THE COURT: BUT I WOULD ASSUME THAT YOU WILL HAVE THE
28 NOON HOUR TO LISTEN TO IT. HOW LONG IS THAT ONE SIDE?

1 MS. SCHMAUSS: THIRTY MINUTES.

2 THE COURT: THIRTY MINUTES. OVER YOUR TUNA SANDWICH
3 YOU CAN LISTEN TO IT AND SEE WHAT YOU THINK.

4 MR. ABLARD: YEAH, I CAN DO THAT.

5 THE COURT: YEAH. YES. YOU CAN. THANK YOU. WE
6 CONTINUE ON WITH JURY SELECTION WHILE WE ARE A COUPLE OF
7 MINUTES AHEAD OF SCHEDULE HERE.

8 MR. ABLARD: SINCE WE HAVE A COUPLE OF MINUTES, LET
9 ME JUST SAY THAT--

10 THE COURT: WE DON'T HAVE TO FILL IT--

11 MR. ABLARD: WITH TALK.

12 THE COURT: --WITH NOISE. YOU CAN SIT THERE AND
13 CONTEMPLATE. MR. ABLARD, ANY PARTICULAR VOIR DIRE THINGS
14 YOU ARE INTERESTED IN?

15 MR. ABLARD: WELL, I HAVE A NUMBER OF QUESTIONS. I
16 AM INTERESTED IN OF COURSE THE PERCEPTION OF THE CASE AND
17 THE JURY SYSTEM ITSELF.

18 THE COURT: 2.60.

19 MR. ABLARD: YES.

20 THE COURT: THAT'S CONSTITUTIONAL RIGHT NOT TO
21 TESTIFY.

22 MR. ABLARD: I WOULD LIKE THAT COVERED. I COVER THAT
23 AS WELL.

24 THE COURT: ALL RIGHT.

25 MR. ABLARD: I WOULD APPRECIATE THAT.

26 THE COURT: OKAY.

27 (WHEREUPON THE JURY PANEL ENTERED THE COURTROOM,
28 JURY VOIR DIRE WAS RESUMED, WAS REPORTED,

1 AND WAS NOT TRANSCRIBED AT THIS TIME.)
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1 RANCHO CUCAMONGA, CALIFORNIA; TUESDAY, OCTOBER 24, 1995

2
3 DEPARTMENT 4

HON. ROBERT E. LAW, JUDGE

4 P.M.

5 APPEARANCES: SET FORTH ON THE TITLE PAGE.

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

8 ---###---

9 THE COURT: WE ARE ON THE RECORD. COURT IS IN SESSION.
10 BIG PICTURE.

11 MS. SCHMAUSS: WE BROUGHT THE BIG PICTURE.

12 THE COURT: WELL, FLASH IT.

13 MS. SCHMAUSS: ALL RIGHT. THIS IS THE BIG PICTURE.

14 THE COURT: UH-HUH. ARE YOU GOING TO TAKE
15 MEASUREMENTS OFF OF IT?

16 MS. SCHMAUSS: NO, I WASN'T PLANNING TO.

17 THE COURT: BOY. IS IT LIFE SIZE OR SUPPOSED TO BE?

18 MS. SCHMAUSS: IT IS LIFE SIZE. WOULD THE COURT LIKE
19 TO EXAMINE IT MORE CLOSER?

20 THE COURT: WELL, THE COURT HAS NO INFORMATION ABOUT
21 IT. I DON'T WANT TO EXAMINE IT CLOSER.

22 THE PICTURE OF THE DECEASED IS NOT NECESSARILY
23 RELEVANT UNLESS IT HAS SOME EVIDENTIARY VALUE.

24 MR. ABLARD'S OBJECTION IS IT IS JUST A BIG PICTURE OF
25 A LITTLE GIRL.

26 AND YOUR OFFER ON IT IS THE BIG PICTURE WILL
27 ESTABLISH THAT SHE IS LARGER THAN AVERAGE, MORE ROBUST
28 THAN AVERAGE.

1 AND THE QUESTION IS HOW DOES THAT PICTURE FIT AS TO
2 DEMONSTRATE THOSE TWO ASPECTS OF YOUR OFFER?

3 MS. SCHMAUSS: A BIG PICTURE IS EASIER TO SEE THAN
4 THE SMALL PICTURE. I SUPPOSE I COULD GET A SMALL PICTURE
5 ~~AND PASS IT AROUND. BUT THAT WAY, THEY WOULDN'T BE~~
6 LISTENING TO ME WHEN I WAS MAKING MY OPENING STATEMENT.
7 THIS ONE, EVERYONE CAN SEE. IT IS JUST A BLOW UP OF A
8 PHOTOGRAPH.

9 THE COURT: I UNDERSTAND WHAT IT IS. JUST IS.

10 MS. SCHMAUSS: AND IT SHOWS A VERY HEALTHY-- SHE
11 APPEARS TO BE A VERY HEALTHY, ROBUST, FOR LACK OF A BETTER
12 WORD, LITTLE GIRL PRIOR TO HER DEATH; NOT A SICKLY, CHILD
13 NOT A PUNY CHILD.

14 THE COURT: WELL, ARE YOU GOING TO HAVE SOMEONE
15 TESTIFY ON THE ASPECT OF THAT PICTURE THAT SO INDICATE
16 OTHER THAN JUST ASKING THE JURORS TO OBSERVE AND CONCLUDE
17 ON THEIR OWN BASED UPON THEIR LIFE EXPERIENCES.

18 MS. SCHMAUSS: THE PARENTS WILL TESTIFY ABOUT WHEN
19 THE PICTURE WAS TAKEN AND THE CHILD'S GENERAL STATE OF
20 HEALTH.

21 MR. ABLARD: AND I DON'T KNOW WE NEED A BIG PICTURE
22 TO DO THAT. I THINK THAT'S THE PROBLEM. THE WHOLE REASON
23 ~~FOR THE BIG PICTURE IS SO IT IS THERE AND BIGGER THAN~~
24 LIFE.

25 AND I WOULD RENEW MY MOTION AS I EARLIER STATED, 352
26 GROUNDS, THE PREJUDICE OF THE PICTURE OUTWEIGHS ITS
27 PROBATIVE VALUE GIVEN THE FACT THAT THE OTHER PICTURE AND
28 THE TESTIMONY. I WILL SUBMIT IT.

1 THE COURT: WELL, YOUR DESIGNATION OF PREJUDICE IS
2 THAT THE PEOPLE WILL LOOK AT THE PICTURE OF THE YOUNG
3 GIRL, HAVE SYMPATHY, AND IF THE PICTURE IS BIGGER, THE
4 SYMPATHY IS GREATER.

5 MR. ABLARD: I MEAN, IN SO MANY WORDS, THAT'S PART OF
6 IT. THAT'S PART OF IT.

7 THE COURT: HOW ABOUT IN THE WORDS I JUST SPOKE?

8 MR. ABLARD: YES.

9 THE COURT: THE BIGGER THE PICTURE, THE BIGGER THE
10 SYMPATHY IS THE BASIS OF YOUR OBJECTION?

11 MR. ABLARD: YES.

12 THE COURT: WELL, THE COURT CAN'T FIND ANY RATIONAL
13 NEXUS BETWEEN PICTURE SIZE AND AMOUNT OF SYMPATHY. SO, I
14 AGREE IT IS PREJUDICIAL TO THE EXTENT THAT IT HAS SOME
15 MINOR PROBATIVE VALUE. IT HAS MINIMAL, IF ANY, PREJUDICE
16 ON THAT THEORY.

17 SO, IT WILL BE RECEIVED. IT IS A NICE PICTURE TOO.

18 MR. ABLARD: IT IS A VERY NICE PICTURE. THAT'S NOT
19 THE PROBLEM. ARE WE GOING TO HAVE A PICTURE UP HERE ALL
20 THE TIME, OR WHAT'S THE PROGRAM?

21 THE COURT: NO. I PERMIT THE PICTURE OF PIECES OF
22 EVIDENCE DURING OPENING STATEMENT. NOTHING MORE WILL BE

23 PUBLISHED EXCEPT TO THE EXTENT IT IS VIEWED AND DISCUSSED
24 BY A WITNESS. I DON'T PUBLISH TO THE JURY DURING THE
25 TRIAL. THEY WILL GET IT ALL AT THE END. YOU MAY ALSO
26 PUBLISH DURING ARGUMENT FOR THE PURPOSES OF ILLUSTRATION.
27 BUT WE DON'T HAND THINGS TO THE JURY TO LOOK AT ORALLY.

28 MR. ABLARD: OKAY.

1 MS. SCHMAUSS: I DON'T INTEND TO KEEP IT UP DURING
2 THE ENTIRE TRIAL, IF THAT IS WHAT COUNSEL IS ASKING. I
3 WILL DISPLAY DURING OPENING STATEMENT AND PROBABLY HAVE TO
4 HAVE IT IDENTIFIED LATER. BUT IT WILL BE PUT AWAY WITH
5 THE CLERK.

6 THE COURT: LIMITED PUBLICATION IN OPENING STATEMENT,
7 ARGUMENT, AND IF IT IS AN EXHIBIT, IT IS AN EXHIBIT. THEY
8 GET IT IN THE JURY ROOM. PUBLISH IT THERE.

9 MR. ABLARD: THANK YOU.

10 THE COURT: SO, IF THEY ARE OUT THERE, WOULD YOU?

11 THE BAILIFF: OKAY.

12 MR. ABLARD: WELL, YOUR HONOR, WE WILL QUICK, I DON'T
13 THINK WE WANT TO DO IT. I WANTED TO BRING UP THE ISSUE OF
14 SAVING A LITTLE BIT OF TIME ON MY REQUEST, GIVEN THE SIDE
15 B TAPE PROBLEM, OF A DAY. BECAUSE THAT WAY WE CAN TELL
16 THE JURY INSTEAD OF HOLDING THEM UP AT THE END, WE WILL
17 HAVE ALREADY MADE OUR DECISION ON ONE-DAY CONTINUANCE
18 GIVEN THE-- ACTUALLY SURPRISED EVERYBODY. AND I
19 LISTENED. PROCEDURALLY IF WE CAN BRING IT UP NOW, I WOULD
20 LIKE TO SAVE SOMETIME AND SOME CONFUSION.

21 THE COURT: BRING IT UP. HANG ON A MINUTE. GO
22 AHEAD. HAVE YOU LISTENED TO THE TAPE?

23 MR. ABLARD: I LISTENED TO MOST OF THE TAPE IN THE
24 TIME THAT I HAD DURING LUNCH. I AM GOING TO NEED SOME
25 TIME TO-- ONE, THE TRANSCRIPTION IS BEING DONE NOW--
26 ASSIMILATE THAT INTO THE REST OF THE CASE. I WOULD
27 REQUEST MINIMAL CONTINUANCE, BEGIN OPENING STATEMENTS ON
28 THURSDAY INSTEAD OF TOMORROW.

1 THE COURT: WELL, WHEN WILL THE TRANSCRIPTION BE
2 DONE?

3 MS. SCHMAUSS: WE CHECKED WITH HER. WHAT DID SHE
4 SAY?

5 INVESTIGATOR DONLEY: SHE SAID SHE IS WELL INTO IT
6 AND CHECK WITH HER IN AN HOUR OR SO TO SEE HOW CLOSE SHE
7 IS. SHE DIDN'T KNOW EXACTLY.

8 MS. SCHMAUSS: I HAVEN'T HAD TIME TO PROOFREAD OR
9 ANYTHING.

10 THE COURT: WELL.

11 MS. SCHMAUSS: I HOPE BY THE END OF TODAY SHE WILL
12 HAVE IT ALL TYPED. BUT THEN I NEED TO PROOF IT, READ IT,
13 AND SHE NEEDS TO CORRECT IT.

14 THE COURT: LET ME ASK YOU THIS, MR. ABLARD. HAVING
15 HEARD THE TAPE, IS IT ANY DIFFERENT THAN THE PORTIONS THAT
16 WE HAVE READ AND WHICH PRECEDED AND FOLLOWED THAT ONE
17 SIDE?

18 MR. ABLARD: TWO THINGS: ONE, THERE ARE SOME SORT OF
19 DIFFERENT THINGS ON THERE ON THE TALKING ABOUT THE SAME
20 THINGS THAT WERE TALKED ABOUT BEFORE. THE PROBLEM BECOMES
21 IN A MICRO-SENSE. I DON'T KNOW IF THERE IS ANYTHING
22 REALLY DIFFERENT OR NOT. I WENT BACK. I HEARD THE TAPE,
23 MOST OF IT. BUT I HAVE GOT TO THEN COMPARE THAT IN A
24 MICRO-SENSE WITH THE OTHER DOCUMENT THAT I HAVE. AND SO,
25 I AM NOT REALLY SURE IF THERE IS SOME LITTLE SUBTLE
26 CHANGES OR NOT.

27 THE COURT: WELL, THERE ARE NO OTHER INTERVIEWS OF
28 THE DEFENDANT; ARE THERE?

1 MS. SCHMAUSS: THERE WAS ONE WITH OFFICER BALES THAT
2 WAS NOT RECORDED. THAT'S MEMORIALIZED IN THE POLICE
3 REPORT THAT MR. ABLARD HAS.

4 MR. ABLARD: RIGHT. WHAT WE HAVE IS THE SIDE A.

5 THEN WE HAVE AN ADDITIONAL INTERVIEW. AND NOW, WE HAVE
6 SIDE B. ALL TO BE VIEWED VIS A VIS NOT ON THE INTERVIEWS
7 PLUS THE POLICE REPORTS AS WELL.

8 THE COURT: WELL.

9 MR. ABLARD: I CANNOT GIVE ADEQUATE REPRESENTATION TO
10 MY CLIENT. I AM GOING TO NEED SOME TIME TO DO THAT. AND
11 THAT'S WHY I AM ASKING FOR A DAY.

12 THE COURT: IT IS NOT DENIED IMMEDIATELY. I WILL
13 RECONSIDER IT AFTER WE GET A COPY IF WE HAVE A COPY, BE
14 REVISITED. MY JUDGMENT IS YOU MAY HAVE AS MUCH TIME AS I
15 TO REVIEW IT, ANALYZE IT, AND COMPARE IT TO THE OTHER
16 TRANSCRIPTION AND TAPES. AND IF I CAN DO IT, YOU CAN DO
17 IT.

18 MR. ABLARD: BUT I HAVE MORE STUFF THAN YOU. I
19 SUBMIT IT FOR NOW. AND WE WILL TALK ABOUT IT LATER.

20 THE COURT: YEAH. MY THINKING IS NOT TO DELAY IT IF
21 IT IS MORE OF THE SAME. I HAVEN'T SEEN IT.

22 MS. SCHMAUSS: YOUR HONOR, I SINCERELY DOUBT WE WILL
23 GET IT BY THE END OF TODAY. BECAUSE IF I AM HERE, I CAN'T
24 BE THERE PROOFING IT.

25 THE COURT: UNPROOFED. AND YOU CAN DO A PROOFED COPY
26 IN THE MORNING.

27 MS. SCHMAUSS: WELL, WE CAN PROBABLY HANDLE THAT.
28 YES.

1 THE COURT: YES. THAT'S MY PLAN. I DON'T KNOW ONE
2 DIRECTION.

3 MS. SCHMAUSS: MAYBE HALF DAY WOULD BE A GOOD
4 COMPROMISE.

5 THE COURT: I DON'T THINK SO.

6 MR. ABLARD: NO, I WOULD REQUEST MY FULL DAY. THANK
7 YOU.

8 THE COURT: WE WILL DO WHAT WE DO WHICH IS GO FOR ONE
9 PLODDING STEP AFTER ANOTHER.

10 (WHEREUPON THE JURY PANEL ENTERED THE COURTROOM,

11 JURY VOIR DIRE RESUMED, WAS REPORTED,
12 AND WAS NOT TRANSCRIBED AT THIS TIME.)

13

14 (JURY EXITED THE COURTROOM, AND THE FOLLOWING
15 PROCEEDINGS WERE HELD:)

16

17 THE COURT: HOW YOU DOING ON THAT TRANSCRIPT ON THE
18 MISSING SIDE OF THE TAPE?

19 MS. SCHMAUSS: YOU KNOW, I DIDN'T EVEN GO BACK TO MY
20 OFFICE. BUT I CAN CALL DOWN IF YOU WANT ME TO DO THAT.

21 THE COURT: THERE'S A PHONE RIGHT THERE.

22 (PAUSE)

23 MS. SCHMAUSS: SHE IS HALFWAY THROUGH. SHE IS TRYING
24 AS FAST AS SHE CAN TO GET DONE BY 5.

25 THE COURT: ALL RIGHT. WELL, AS SOON AS YOU GET IT
26 DELIVER IT TO MR. ABLARD. YOU MAY PROOF IT LATER AND GIVE
27 HIM ANOTHER COPY IN THE MORNING.

28 MS. SCHMAUSS: OKAY. I WILL BRING IT TO HIS OFFICE.

1 THE COURT: MR. ABLARD, YOU CAN LISTEN TO THE TAPE AT
2 YOUR LEISURE THIS EVENING, MAYBE TWO OR THREE TIMES.

3 MR. ABLARD: AFTER THE CLIENTS LEAVE THE OFFICE.
4 SOUNDS GOOD.

5 THE COURT: YES, IN THE EVENING. IT IS A REFRESHING
6 INTERLUDE FROM THE WORLD SERIES GAME.

7 MR. ABLARD: IS THAT ON TONIGHT? I MEAN, I DON'T
8 KNOW.

9 THE COURT: YEAH. GAME THREE; DOESN'T MATTER.
10 WHILE I AM WATCHING IT, I WILL BE THINKING. LISTEN TO THE
11 TAPE AGAIN AND AGAIN. SO THAT YOU HAVE ALL THE INFORMATION
12 AND YOU CAN, YOU KNOW, PLUG IT IN WITH THE REST OF THE
13 INFORMATION THAT YOU HAVE.

14 MR. ABLARD: THANK YOU. OBJECTION NOTED?

15 THE COURT: DO YOU HAVE THAT? WE WILL TALK ABOUT
16 YOUR NEED FOR MORE CONSIDERATION TOMORROW.

17 MR. ABLARD: APPRECIATE IT.

18 THE COURT: BUT AND OF COURSE, THE AVAILABILITY OF
19 THE TRANSCRIPT. HOWEVER, THE AVAILABILITY OF THE
20 TRANSCRIPT AND THE DISCUSSION ABOUT REDACTING OR
21 REEVALUATING ALL OF IT IS A SUBJECT MATTER THAT CAN BE
22 LEFT UNTOUCHED IN OPENING STATEMENTS.

23 MS. SCHMAUSS: I'D LIKE TO MENTION THAT HE MADE
24 STATEMENTS. I WON'T GET IN GREAT DETAIL OF WHAT-- HE MADE
25 A VARIETY OF DIFFERING STATEMENTS THAT CHANGE. BUT I
26 DON'T INTEND TO GET GREAT--

27 THE COURT: NO ONE COULD PROBABLY FORECAST THERE WILL
28 BE EVIDENCE OF THAT.

1 MS. SCHMAUSS: OKAY.

2 THE COURT: AND IF THERE ISN'T, THEN THERE ISN'T. IT
3 IS LIKE ANYTHING ELSE IN LIFE. YOU FORECAST WHAT YOU
4 THINK WILL BE THE EVIDENCE. AND SOMETIMES AT THE END OF
5 THE CASE, THERE IS STUFF YOU DIDN'T EXPECT AND THAT
6 HAPPENED, AND THERE'S STUFF YOU EXPECT THAT DIDN'T.

7 MS. SCHMAUSS: OKAY. DO WE HAVE ANY IDEA? YOU WANTED
8 TO DO A HEARING ON THE DNA SCHEDULE.

9 THE COURT: WHEN IS THE DNA WIZ GOING TO BE HERE?

10 MS. SCHMAUSS: WE DIDN'T REALLY DISCUSS THAT. I HAVE
11 TALKED TO HIM. HE IS ON CALL AT HOMICIDE, CALLED OUT
12 CRIMINALIST.

13 THE COURT: NO. MY FANTASY IS THAT WE WILL HAVE
14 OPENING STATEMENTS COMMENCING AT 9:30. ALL THE EXHIBITS I
15 ASSUME HAVE BEEN PROPERLY MARKED.

16 MS. SCHMAUSS: YES.

17 THE COURT: AND YOU MAY UTILIZE ANY YOU CHOOSE IN
18 OPENING STATEMENT INDICATING THAT THEY ARE NOT EXHIBITS
19 BUT THEY HAVE BEEN MARKED FOR IDENTIFICATION AT YOUR RISK,
20 THE RISK OF HAVING THEM BEING RECEIVED.

21 IF TOO MUCH GETS BEFORE THE JURY THAT DOESN'T MAKE IT
22 INTO EVIDENCE, WE HAVE THAT LITTLE PROBLEM AT THE END OF
23 THE CASE. SO, YOU KNOW, USE YOUR OWN JUDGMENT ON THAT.

24 AND MR. ABLARD, YOU CAN MAKE OR RESERVE YOUR OPENING
25 STATEMENT. THAT WILL BE ABOUT 9:45.

26 MR. ABLARD: THANK YOU.

27 THE COURT: AND THEN I THINK--

28 MS. SCHMAUSS: 9:45?

1 THE COURT: WE SHOULD HAVE--

2 MS. SCHMAUSS: I HAVE A FIFTEEN-MINUTE OPENING?

3 THE COURT: I WOULD THINK. IF YOU NEED IT. YOU
4 DON'T HAVE TO USE IT ALL. THERE'S NO REQUIREMENT THAT YOU

5 USE ALL FIFTEEN, TWENTY. I'LL GIVE YOU TWENTY MINUTES IF
6 YOU REALLY NEED IT. BUT I CAN'T BELIEVE YOU WILL. HAVE
7 WITNESSES. HAVE A WHOLE BUNCH.

8 MS. SCHMAUSS: RIGHT. I THINK--

9 THE COURT: FOR TOMORROW.

10 MS. SCHMAUSS: I HAVE THREE. THEY ARE ALL MAJOR.

11 THE COURT: FOR THE MORNING?

12 MS. SCHMAUSS: YES.

13 THE COURT: AND IN THE AFTERNOON, HAVE SOME MORE.

14 MS. SCHMAUSS: I HAVE THREE FOR THE DAY. I HAVE THE
15 MOTHER, THE FATHER, AND THE OTHER ROOMMATE. AND THEY ALL
16 HAVE QUITE A BIT TO SAY.

17 THE COURT: ORR NOT. WHEN YOU GET RIGHT DOWN TO IT.
18 OKAY. HAVE A FEW JUST KIND OF HANGING AROUND LIKE ON CALL
19 FOR THE AFTERNOON JUST TO MAKE SURE. BECAUSE SOMETIMES
20 THESE LONG WITNESSES GET SHORT. BECAUSE THEY DON'T HAVE
21 AS MUCH TO SAY AS YOU THINK THEY DO.

22 MS. SCHMAUSS: I WILL PUT A COUPLE ON CALL.

23 THE COURT: THAT'S A GOOD IDEA. THURSDAY, JUST GET
24 THE REST OF THEM READY.

25 MS. SCHMAUSS: ALL RIGHT.

26 MR. ABLARD: THANK YOU.

27 THE COURT: BECAUSE I THINK WE MIGHT BE REAL CLOSE TO
28 FINISHING YOUR CASE THIS WEEK IF WE REALLY STAY ON.

1 MS. SCHMAUSS: THE PATHOLOGIST WILL TAKE A WHOLE-- I
2 HAVE HIM SCHEDULED TENTATIVELY FOR MONDAY.

3 THEN WE DEED THE LITIGATION OF DNA. BUT YOU DON'T
4 WANT THE CRIMINALIST TO BE HERE FOR TESTIMONY AND THE 402
5 MOTION.

6 THE COURT: SURE. DO IT ALL IN ONE.

7 MS. SCHMAUSS: CAN WE?

8 THE COURT: OH, YES.

9 MS. SCHMAUSS: I THOUGHT YOU SAID YOU DIDN'T WANT IT
10 DONE AT THE SAME DAY.

11 THE COURT: NO, IT CAN BE DONE THE SAME DAY; JUST
12 SCHEDULE IT CORRECTLY.

13 MS. SCHMAUSS: ALL RIGHT. I'D LIKE TO DO HIM AFTER
14 THE PATHOLOGIST.

15 THE COURT: WELL, THAT SOUNDS LIKE MONDAY AFTERNOON.

16 MS. SCHMAUSS: OKAY. THEN WE HAVE THE TAPE. WE HAVE
17 TO GO THROUGH THE REDACTING, PLAY THE TAPE.

18 THE COURT: WELL, THAT WON'T TAKE VERY LONG. I HAVE
19 READ THE TRANSCRIPT SO FAR. WE WILL BE ABLE TO DO THAT IN
20 ABOUT TWENTY MINUTES.

21 MS. SCHMAUSS: OKAY.

22 MR. ABLARD: THAT'S WHEN WE ARE GOING TO DECIDE ON MY
23 MOTION WHETHER TO ADMIT IT.

24 THE COURT: YES. ALL OF IT. I WILL REVIEW IT TO SEE
25 IF IT BECOMES INVOLUNTARY OR SOME OTHER SIMPLE STANDARD
26 ORDINARY OPERATION. SO, START LINING THEM UP. SEE YOU AT
27 9:30.

28 MR. ABLARD: THANK YOU.

1 THE COURT: LISTEN TO THAT TAPE TWO OR THREE TIMES.
2 BY THE WAY, MR. ABLARD.

3 MR. ABLARD: YES.

4 THE COURT: DID MS. SCHMAUSS GIVE YOU A COPY OF THOSE
5 INSTRUCTIONS?

6 MR. ABLARD: YES, I BELIEVE. DID YOU GIVE THEM TO
7 ME. SITTING ON THE TABLE I WAS ASSUMING THOSE WERE THEM.

8 MS. SCHMAUSS: THEY ARE YOURS.

9 THE COURT: LOOK AT THEM. MOST OF THE STUFF IS IN
10 THERE.

11 MR. ABLARD: I HAVEN'T LOOKED AT THEM.

12 THE COURT: YOU CAN DO THEM WHILE YOU ARE LISTENING
13 TO THE TAPE.

14 MR. ABLARD: THERE YOU GO.

15 THE COURT: AND THERE'S A MARKED ABSENCE OF VERDICT
16 FORMS.

17 MS. SCHMAUSS: YES. I WAITED BECAUSE I DON'T KNOW
18 WHICH WE ARE GOING TO BE OFFERED. I FELT THAT THAT WOULD
19 BE SOMETHING THAT SHOULD COME AT THE END OF THE CASE.

20 THE COURT: HELP US FOCUS ON WHERE WE ARE GOING IF WE
21 KNOW WHAT WE ARE GOING TO ASK THE JURY.

22 MS. SCHMAUSS: I CAN GET THEM DONE BASED ON MY
23 THEORY OF THE CASE. BUT MR. ABLARD MAY HAVE DIFFERENT
24 THOUGHTS.

25 MR. ABLARD: WE SHOULD TAKE UP THAT RIGHT NOW. I
26 HAVEN'T SPOKEN AT LENGTH WITH MY CLIENT. BUT AT SOME
27 POINT, THE COURT'S NOTION AND OUR NOTIONS ON WHETHER OR
28 NOT WE WANT TO WAIVE ANY LESSERS OR IF THE COURT WOULD

1 ALLOW US TO WAIVE OR NOT TO WAIVE AND GO FROM THERE.

2 THE COURT: WELL, IT'S DIFFICULT FOR THE COURT TO
3 MAKE A DETERMINATION OF WHAT KIND OF VERDICT WE ARE GOING
4 TO HAVE.

5 MR. ABLARD: RIGHT.

6 THE COURT: BUT I WOULD ASSUME THE CHARGE IS STANDARD
7 MURDER CHARGE.

8 MR. ABLARD: RIGHT.

9 THE COURT: WHICH GIVES AT LEAST TWO POTENTIAL, FOUR
10 POTENTIAL VERDICTS. BECAUSE VOLUNTARY IS PROBABLY NOT
11 GOING TO BE SUPPORTED BY THE EVIDENCE.

12 MR. ABLARD: RIGHT.

13 THE COURT: ONE COULD ARRIVE AT THAT. IT IS HARD TO
14 HAVE A SUDDEN QUARREL OR FIGHT WITH A THREE AND A HALF
15 YEAR OLD. IT'S MEANINGFUL IN THE LAW. BUT YOU MIGHT HAVE
16 AN INVOLUNTARY.

17 MR. ABLARD: THAT'S TRUE.

18 MS. SCHMAUSS: YES.

19 THE COURT: SO, YOU MIGHT THINK ABOUT THAT.

20 MS. SCHMAUSS: I THINK FIRST, SECOND, AND
21 INVOLUNTARY.

22 THE COURT: FIRST, SECOND, INVOLUNTARY, AND SOME NOT
23 GUILTY. SO THERE YOU ARE.

24 MR. ABLARD: THAT'S WHAT WE DISCUSSED.

25 THE COURT: WITH THE INSTRUCTIONS OF HOW TO DEAL WITH
26 MULTIPLE VERDICTS. THAT'S LESSER ON THE FACTS OR LESSER.

27 MS. SCHMAUSS: I THINK I PULLED THOSE.

28 THE COURT: FINE. GOOD. I LIKE TO SEE THOSE IN THE

1 MORNING AT 9:30.

2 MS. SCHMAUSS: IT IS THE SAME PERSON WHO IS WORKING
3 ON OUR JURY INSTRUCTIONS. I MEAN, ON OUR TAPE. SO--

4 THE COURT: WELL, YOU HAVE OTHER STAFF IN YOUR
5 OFFICE. I AM SURE YOU CAN ACCOMPLISH THAT. AND THE JURY
6 INSTRUCTIONS WERE NOT TAILORED. THEY ARE JUST KIND OF
7 GENERIC. HIS AND HERS AREN'T CROSSED OUT. AND ANY OF
8 THAT IMPORTANT THINGS. THE PART THAT THERE'S AN
9 APPROPRIATE HASN'T BEEN ADJUSTED YET, YOU KNOW. AND
10 THERE'S BLANKS AND LIKE THE 2.02 AND THAT IS JUST THAT
11 NEEDS TO BE WORKED ON A LITTLE BIT TOO.

12 SO, JUST A FEW THINGS TO HAVE FOR TOMORROW MORNING
13 ALONG WITH WITNESSES. SEE YOU. HAVE A NICE EVENING.

14 MR. ABLARD: THANK YOU.

15 (PROCEEDINGS CONTINUED TO THE FOLLOWING DAY.
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1 RANCHO CUCAMONGA, CALIFORNIA; WEDNESDAY, OCTOBER 25, 1995

2 9:50

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: PEOPLE VERSUS JOHNSON.

10 MR. ABLARD: GARY ABLARD ON BEHALF OF MR. JOHNSON.

11 WE ARE READY.

12 MS. SCHMAUSS: KAREN SCHMAUSS FOR THE PEOPLE.

13 THE COURT: THANK YOU. WE HAD HAD A DISCUSSION
14 EARLIER ABOUT PHOTOGRAPHS THAT WERE GOING TO BE USED,
15 AUTOPSY PHOTOGRAPHS.

16 MS. SCHMAUSS: YES.

17 THE COURT: AND OTHERS. AND YOU ARE GOING TO RUMMAGE
18 THROUGH THE CLEARING BINDER PHOTOGRAPHS.

19 MS. SCHMAUSS: I HAVE DONE THAT.

20 THE COURT: AND SELECT SOME. HAVE YOU THE ONES THAT
21 HAVE BEEN SELECTED, MR. ABLARD?

22 MR. ABLARD: NO.

23 MS. SCHMAUSS: I DON'T PLAN TO USE ANY AUTOPSY
24 PICTURES IN OPENING.

25 THE COURT: ALL RIGHT. CONSIDER FOR THE PURPOSES OF
26 THE AUTOPSY PHOTOGRAPHS IF IT IS YOUR OFFER AS YOU
27 INDICATED THAT THERE IS AN INJURY TO THE BRAIN.

28 MS. SCHMAUSS: TO THE SKULL.

1 THE COURT: SKULL, HEMATOMA SHOWING, IT MAY NOT BE
2 NECESSARY TO HAVE THE TOTAL AUTOPSY PHOTOGRAPH RECEIVED.
3 AND WE COULD REMOVE SOME OF THE UNNECESSARY--

4 MS. SCHMAUSS: CROP IT.

5 THE COURT: -- THINGS.

6 MS. SCHMAUSS: WE COULD CROP IT.

7 THE COURT: YES. I WAS THINKING ABOUT CROPPING IT OR
8 COVERING IT OR DOING SOMETHING. I THROW THAT OUT. WE
9 WILL CONSIDER THAT.

10 MR. ABLARD: I TAKE IT THAT THE PATHOLOGICAL EVIDENCE
11 WON'T PROBABLY COME IN UNTIL MONDAY. SO, WE CAN HAVE TIME
12 TO--

13 THE COURT: WELL, MR. ABLARD, THE COURT WILL CONSIDER
14 SUCH A REQUEST BASED UPON YOUR EARLIER REQUEST ON
15 PHOTOGRAPHS. SO, WE SHALL SEE.

16 MR. ABLARD: I UNDERSTAND.

17 THE COURT: THANK YOU. SO, RAISE IT AT THE
18 APPROPRIATE TIME. AND WE WILL CONSIDER IT.

19 MR. ABLARD: YES. THANK YOU.

20 THE COURT: I NOW HAVE A COPY OF A TAPE ONE SIDE TWO
21 WHICH HAS BEEN MISSING. MR. ABLARD, DO YOU HAVE A COPY OF
22 IT?

23 MR. ABLARD: YES, I RECEIVED I GUESS THIS IS THE
24 FINAL COPY RECEIVED THIS JUST NOW. THE ONE THAT HADN'T
25 BEEN PROOFREAD, I RECEIVED LAST NIGHT.

26 THE COURT: IT APPEARS TO BE TWENTY-FIVE PAGES. YOU
27 CAN READ IT DURING THE RECESS.

28 MR. ABLARD: THANK YOU.

1 THE COURT: ALL RIGHT.

2 MR. ABLARD: I AM RUNNING OUT OF TUNA SANDWICHES IS
3 THE PROBLEM.

4 THE COURT: WE WILL ORDER UP SOME SPECIAL FOR YOU.
5 ~~AND DO YOU BELIEVE THAT YOUR DUTY AS A WITNESS IS WHAT~~
6 TIME TODAY?

7 MR. ABLARD: 1:30 IN VAN NUYS.

8 THE COURT: AND THEY WILL HAVE YOU OFF AND BACK HERE
9 BY 3.

10 MR. ABLARD: WELL, THEY MIGHT. I WOULD HOPE THEY
11 WOULD HAVE ME OFF. BUT THE REST HAS TO DO WITH THE
12 FREEWAY SYSTEM. SO, I DON'T KNOW. I SUSPECT OBVIOUSLY IF
13 I DO HAVE TO GO OUT THERE THIS AFTERNOON THAT I WOULD BE
14 GONE ALL AFTERNOON LONG.

15 THE COURT: WHEN WILL WE KNOW IF YOU REALLY ARE GOING
16 TO BE TESTIFYING?

17 MR. ABLARD: THEY CALLED ME AT MY OFFICE LAST NIGHT.
18 I GUESS JUST BEFORE 6 OR 7. I DON'T RECALL NOW.

19 MS. SCHMAUSS: YOU TOLD ME THEY CALLED AT 6:20.

20 MR. ABLARD: 6:20. AND SAID THAT I WOULD BE UP TODAY
21 AT 1:30. I TOLD THEM THAT IF THERE IS A CHANGE THIS
22 MORNING TO HAVE SOMEBODY CALL THE OFFICE AND LET US KNOW.

23 ~~THE COURT: WHO IS THE JUDGE SITTING AND WHAT~~
24 DEPARTMENT?

25 MR. ABLARD: I GAVE THE-- I GAVE A NOTE TO THE CLERK,
26 JULIE, AND BRIMMERMAN. AND IT IS NORTH VALLEY G. IT IS
27 ACTUALLY SAN FERNANDO COURT SITTING IN BUNGALOWS IN VAN
28 NUYS.

1 THE COURT: AND THIS IS SUPERIOR COURT?

2 MR. ABLARD: YES.

3 THE COURT: DO WE HAVE A NUMBER?

4 THE CLERK: NO. MR. ABLARD DID NOT HAVE A NUMBER.

5 MR. ABLARD: NO. I ASKED FOR THE NUMBER. HE DIDN'T
6 HAVE THE NUMBER.

7 THE COURT: WELL, LOOK IN OUR BOOK. MAYBE WE CAN
8 FIND IT.

9 (PAUSE)

10 THE COURT: THE LOST IS FOUND, ASSUMING THEY HAVE IT.

11 MS. SCHMAUSS: IF WE CAN HAVE A MOMENT TO EXAMINE THE
12 CLOTHING.

13 THE COURT: NOW ARE WE READY?

14 MS. SCHMAUSS: YES.

15 THE COURT: DRAG THEM IN.

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

18 THE COURT: LOOKS LIKE SOME OF YOU FIGURED YOU WERE
19 GOING TO CAMP OUT HERE. GOT THEIR ICE CHESTS AND EXTRA
20 CLOTHING AND STUFF. I PROMISE YOU I WILL LET YOU GO HOME
21 TONIGHT. DON'T WORRY.

22 GOOD MORNING. IF YOU NO DOUBT HAVE NOTICED THAT ON

23 YOUR SEATS WHEN YOU CAME IN THIS MORNING, THERE ARE
24 NOTEBOOKS AND PENCILS. NOW, THE NOTEBOOKS ARE FOR YOUR
25 PERSONAL USE TO TAKE NOTES IF YOU CHOOSE TO DO SO. YOU
26 ARE NOT REQUIRED TO TAKE NOTES. BUT IF YOU WANT TO, YOU
27 MAY. AND NOTES ARE FOR THE USE OF THE NOTETAKER IN
28 REFRESHING YOUR RECOLLECTION LATER WHEN YOU COMMENCE

1 DISCUSSION ON THE EVIDENCE.

2 YOUR NOTEPADS MUST BE LEFT ON YOUR CHAIRS DURING
3 RECESSES. AT THE END OF THE DAY, LEAVE THEM. TANYA PICKS
4 THEM UP AND RETURNS THEM FOR THE NEXT SESSION. PLEASE
5 LEAVE THE PENCILS TOO. IF YOU TAKE THE PENCIL WITH YOU,
6 YOU MUST RETURN WITH IT TOMORROW OR WHEN YOU COME BACK.
7 WE HAVE A LIMITED SUPPLY OF PENCILS. WE WILL SHARPEN THEM
8 FOR YOU.

9 HOWEVER, DO NOT LET NOTETAKING INTERFERE WITH YOUR
10 OBSERVATIONS AND EVALUATION OF THE WITNESSES WHEN THEY
11 TESTIFY. I WILL INSTRUCT YOU THAT THE MANNER AND Demeanor
12 OF WITNESSES IS ONE OF THOSE THINGS THAT YOU SHOULD
13 CONSIDER IN ASSESSING THEIR BELIEVABILITY. SO, PLEASE
14 ALSO WATCH AS WELL AS LISTEN.

15 YOU HAVE BEEN GIVEN YELLOW JUROR BADGES. WEAR THEM
16 PROUDLY.

17 DO THEY GET ANY DEALS IN THE CAFETERIA IF THEY HAVE
18 BADGES?

19 THE BAILIFF: NO, JUDGE.

20 THE COURT: THERE'S NO ECONOMIC ADVANTAGE TO WEARING
21 THE JUROR BADGE. SO, WEAR IT IF YOU CARE TO OR NOT. IT
22 IS ENTIRELY UP TO YOU. YOU DON'T GET ANYTHING SPECIAL
23 BECAUSE OF IT. BUT PLEASE DO NOT DEFACE IT OR TAKE IT
24 HOME WITH YOU. ALL RIGHT. WE ALSO HAVE A LIMITED NUMBER
25 OF THOSE.

26 THE NEXT THING WE ARE GOING TO HAVE, LADIES AND
27 GENTLEMEN, IS OPENING STATEMENT BY THE PROSECUTION. WHAT
28 LAWYERS SAY IS NOT EVIDENCE. IT IS DESIGNED TO BE A

1 SUMMARY SO THAT YOU CAN GET SOME IDEA OF WHAT IT IS THAT
2 YOU ARE GOING TO HEAR DOWN THE ROAD, AND SOME REASONABLE
3 EXPECTATION OF WHO IS GOING TO TELL YOU WHAT OR WHAT THE
4 EVENTS WERE THAT GOT US HERE.

5 SO, WITHOUT FURTHER ADO, MS. SCHMAUSS, YOU ARE UP.

6 MS. SCHMAUSS: THANK YOU, YOUR HONOR.

7 (WHEREUPON OPENING STATEMENT BY THE PROSECUTION
8 WAS REPORTED, AND WAS NOT TRANSCRIBED AT THIS TIME.)

9 THE COURT: MR. ABLARD, DO YOU WISH TO MAKE OR
10 RESERVE?

11 MR. ABLARD: I WOULD LIKE TO MAKE ONE. MAY WE
12 APPROACH BRIEFLY?

13 THE COURT: YOU MAY.

14 MR. ABLARD: THANK YOU.

15 THE COURT: WITH OR WITHOUT?

16 MR. ABLARD: WITH SIDEBAR.

17 (THE FOLLOWING PROCEEDINGS WERE HELD AT SIDE BAR:)

18 MR. ABLARD: AT THIS TIME, I'D LIKE TO MAKE A MOTION
19 AT THIS TIME SO WE CAN DO IT HERE OR--

20 THE COURT: WHAT'S THE MOTION?

21 MR. ABLARD: THE MOTION IS FOR MISTRIAL ON THE
22 FOLLOWING BASIS: IT WAS MY UNDERSTANDING WE HAD DISCUSSED
23 WITH REFERENCE TO THE INCONSISTENCIES OF MR. JOHNSON THAT
24 THE PROSECUTOR WOULD ONLY MENTION THAT THERE WERE
25 INCONSISTENCIES, AND NOT GO INTO THEM AS SHE DID.

26 WE HAD PRESERVED ANY OBJECTION SO I WOULDN'T HAVE TO
27 OBJECT DURING IT. AS SUCH, I THINK THAT WAS MY
28 RECOLLECTION RELATIVE OF WHAT WE HAD REQUESTED AND RULED.

1 AND ON THOSE GROUNDS, I MAKE A MOTION FOR MISTRIAL.

2 THE COURT: THANK YOU. DENIED.

3 MR. ABLARD: THANK YOU.

4 (WHEREUPON OPENING STATEMENT BY THE DEFENSE

5 WAS REPORTED, AND WAS NOT TRANSCRIBED AT THIS TIME.)

6

7 MS. SCHMAUSS: PEOPLE CALL JENNIFER RETHORN.

8

9 JENNIFER RETHORN,

10 CALLED AS A WITNESS BY THE PLAINTIFF, WAS SWORN AND

11 TESTIFIED AS FOLLOWS:

12 THE CLERK: PLEASE RAISE YOUR RIGHT HAND.

13 YOU DO SOLEMNLY SWEAR THE TESTIMONY YOU

14 MAY GIVE IN THE MATTER NOW PENDING BEFORE THIS COURT

15 SHALL BE THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT

16 THE TRUTH, SO HELP YOU GOD.

17 THE WITNESS: I DO.

18 THE CLERK: THANK YOU. PLEASE BE SEATED. PLEASE STATE

19 YOUR FULL NAME SPELLING YOUR LAST NAME FOR THE RECORD.

20 THE WITNESS: JENNIFER RETHORN R-E-T-H-O-R-N.

21 MS. SCHMAUSS: NEED A MOMENT.

22 THE COURT: SHALL WE PROCEED.

23 MS. SCHMAUSS: YES, YOUR HONOR. I NEEDED TO CHECK
24 SOMETHING.

25 THE COURT: ALL RIGHT.

26 DIRECT EXAMINATION

27 BY MS. SCHMAUSS:

28 Q MS. RETHORN, WERE YOU THE MOTHER OF BRITTANY

1 LYNN RETHORN RIGGS?

2 A YES.

3 Q NOW, ARE YOU HER NATURAL MOTHER?

4 A YES.

5 Q JUST TAKE A BREATH. TELL ME WHEN YOU ARE READY?

6 A I DIDN'T HEAR YOU, KAREN.

7 Q TELL ME WHEN YOU ARE READY?

8 A YEAH.

9 Q THE PICTURE BEHIND YOU WHICH IS LABELED EXHIBIT
10 58 FOR IDENTIFICATION, IS THAT YOUR DAUGHTER?

11 A YES.

12 Q DO YOU RECALL WHEN THAT PICTURE WAS TAKEN?

13 A IT WAS IN MAY OR JUNE OF '93.

14 Q OKAY. SO, BRITTANY WAS THREE YEARS OLD?

15 A YES.

16 MS. SCHMAUSS: NO NEED TO ASK, YOUR HONOR, TO
17 APPROACH.

18 THE COURT: NO NEED.

19 Q BY MS. SCHMAUSS: MS. RETHORN, I AM GOING TO
20 SHOW YOU TWO OTHER PHOTOS. FIRST, NUMBER 59. IS THIS
21 YOUR DAUGHTER?

22 A YES.

23 Q AND WOULD YOU RECALL WHEN NUMBER 59 WAS TAKEN?

24 A JUNE OR JULY OF '93.

25 Q OKAY. AND NOW, I AM GOING TO SHOW YOU NUMBER
26 60. IS THIS YOUR DAUGHTER?

27 A YES.

28 Q AND WHEN WAS THAT TAKEN?

1 A TWO WEEKS BEFORE SHE WAS KILLED.

2 Q WHO WAS BRITTANY'S FATHER?

3 A DARIN RIGGS.

4 Q AND WHAT IS YOUR RELATIONSHIP WITH DARIN RIGGS?

5 A WE WERE LIVING TOGETHER.

6 Q DID NOT GET MARRIED?

7 A NO.

8 Q DID YOU LIVE CONTINUOUSLY WITH DARIN AFTER
9 BRITTANY WAS BORN?

10 A NO.

11 Q SO, WHAT WAS THE CHRONOLOGY AFTER BRITTANY WAS
12 BORN?

13 A DARIN AND I-- DARIN SAW BRITTANY AND STUFF. AND
14 THEN WE GOT BACK TOGETHER IN APRIL OF '93. AND THEN WE
15 MOVED INTO DARIN'S.

16 Q OKAY. SO, UNTIL APRIL, '93, YOU AND BRITTANY
17 HAD NOT LIVED WITH DARIN?

18 A NO.

19 Q HAD DARIN SEEN THE CHILD PERIODICALLY?

20 A YEAH. DARIN WOULD STAY THE NIGHT AND STUFF ON
21 AND OFF.

22 Q IN APRIL, '93, WHERE DID YOU AND BRITTANY MOVE?

23 A IT WAS ACTUALLY IN JUNE. AND DARIN AND I GOT
24 BACK TOGETHER IN JUNE OF '93. WE MOVED INTO-- DARIN AND
25 STEVE MOVED IN EARLY JUNE. AND BRITTANY AND I MOVED IN
26 LATE JUNE IN 9393 EXETER.

27 Q WHAT CITY?

28 A MONTCLAIR.

1 Q IS THAT IN THE COUNTY OF SAN BERNARDINO?

2 A YES.

3 Q WAS THERE ANYONE ELSE LIVING AT 9393 EXETER WHEN
4 YOU MOVED IN IN JUNE OF '93?

5 A STEVE LOPEZ.

6 Q STEVE. WHO IS STEVE? EXCUSE ME.

7 A STEVE IS DARIN'S FRIEND FROM HIGH SCHOOL,
8 SOMEONE THAT HAS KNOW-- I HAVE KNOWN BACK IN-- I MET STEVE
9 BACK IN 1988. AND STEVE WAS A PART OF BRITTANY'S LIFE.
10 BECAUSE DARIN AND STEVE WERE ROOMMATES PRIOR TO DARIN AND
11 I GETTING BACK TOGETHER.

12 Q SO, STEVE WAS A VERY GOOD FRIEND OF DARIN'S?

13 A YES.

14 Q HAD STEVE KNOWN BRITTANY SINCE SHE WAS BORN?

15 A YES.

16 Q DID SHE-- HOW DID SHE REFER TO HIM?

17 A UNCLE STEVE.

18 Q HOW MANY BEDROOMS WERE AT THE HOUSE ON EXETER?

19 A FOUR BEDROOMS.

20 Q WHEN YOU FIRST MOVED INTO THE HOUSE ON EXETER IN
21 JUNE, '93, HOW WERE THE PEOPLE IN THE HOUSE APPORTIONED IN
22 WHAT ROOMS?

23 A BRITTANY HAD THE BEDROOM WITHOUT A CLOSET.
24 BECAUSE IT HAD SHELVES FOR HER TOYS. AND SHE DIDN'T LIKE
25 CLOSETS. DARIN AND I HAD THE MIDDLE BEDROOM RIGHT NEXT
26 TO HER SO WE CAN HEAR HER. STEVE HAD THE MASTER BEDROOM.
27 AND THE BEDROOM AT THE FAR END OF THE HOUSE WAS NOT BEING
28 USED AT THE TIME.

1 Q HAD THERE BEEN A ROOMMATE AT ONE TIME THAT WAS
2 NO LONGER THERE?

3 A YES.

4 Q WAS THIS PERSON NO LONGER THERE WHEN YOU MOVED
5 IN IN JUNE OF '93?

6 A YES.

7 Q SO, THERE WAS A VACANCY IN THE HOUSE?

8 A WE THEN LATER RENTED TO SOMEONE ELSE THAT DIDN'T
9 WORK OUT. THAT GAVE THE OPPORTUNITY FOR STEVE TO ASK IF
10 CHUCK COULD MOVE.

11 Q WAIT UNTIL I ASK THE QUESTION. YOU ARE JUMPING
12 AHEAD OF ME.

13 BEHIND YOU IS A LARGE POSTER. IT IS LABELED EXHIBIT
14 3 FOR IDENTIFICATION. AND LET ME GET A PEN HERE. LABEL
15 THIS A, B, C, AND D. DRAWING YOUR ATTENTION TO EXHIBIT 3
16 FOR IDENTIFICATION, LETTER A FOR LETTER A. WHAT IS THAT?

17 A THAT'S THE FRONT VIEW OF OUR HOUSE.

18 Q ON EXETER?

19 A YES.

20 Q IS THAT HOW IT APPEARED AS OF OCTOBER, 1993?

21 A YES.

22 Q OKAY. NOW, YOU WERE TELLING US A LITTLE BIT
23 ABOUT WHO OCCUPIED WHAT ROOM. SO, MAYBE IF I USE THE
24 EASEL.

25 YOUR HONOR, WOULD IT BE OKAY IF I MOVED THE EASEL
26 OVER THERE? BECAUSE I DON'T THINK THE JURORS ARE GOING TO
27 BE ABLE TO SEE THIS.

28 THE COURT: THAT'S FINE. OKAY.

1 Q BY MS. SCHMAUSS: YOU STARTED TO SAY THERE WAS A
2 VACANT ROOM AND THAT ALLOWED CHUCK TO MOVE IN. HOW DID IT
3 COME ABOUT THAT CHUCK JOHNSON MOVED IN YOUR RESIDENCE ON
4 EXETER?

5 A LABOR DAY WEEKEND, DARIN AND I JUST GOT BACK
6 FROM TAKING BRITTANY AWAY FOR THE WEEKEND. AND WE WERE
7 HOME. AND WE TALKED ABOUT THE OTHER PROBLEM WITH THE
8 ROOMMATE. AND STEVE HAD AND DARIN SPOKE. AND THEY SPOKE
9 THAT THERE WAS AN EMPLOYEE OF STEVE'S FROM THRIFTY'S THAT
10 SLEPT OUT OF HIS CAR. HE SEPARATED FROM HIS WIFE AND
11 CHILD AND WOULD WE CONSIDER RENTING A ROOM TO HIM.

12 Q AND WHAT WAS THE CONSENSUS OF THE HOUSEHOLD?

13 A I WENT ALONG WITH WHAT STEVE AND DARIN SAID.

14 Q WHICH WAS TO ALLOW HIM?

15 A YES.

16 Q OKAY. DO YOU SEE THE DEFENDANT, CHUCK JOHNSON,
17 IN THE COURTROOM?

18 A YES.

19 Q COULD YOU POINT HIM OUT OR DESCRIBE HIM, PLEASE?

20 A HE IS SITTING OVER THERE AT THE DEFENSE TABLE
21 WEARING A BROWN SHIRT.

22 Q SO, WHEN TO THE BEST OF YOUR RECOLLECTION DID
23 CHUCK JOHNSON ACTUALLY MOVE INTO THE HOUSE?

24 A JUST A COUPLE OF DAYS AFTER LABOR DAY, WHATEVER
25 DATE THAT LABOR DAY FELL ON.

26 Q AND DID HE OCCUPY THE VACANT BEDROOM THAT WAS
27 VACATED BY THE OTHER ROOMMATE?

28 A YES.

1 Q COULD YOU GRAB THE POINTER THAT'S BEHIND YOU AND
2 COME OVER HERE TO EXHIBIT 61 FOR IDENTIFICATION. DID YOU
3 GET THAT 61. THIS DIAGRAM, DID YOU PREPARE IT AT MY
4 REQUEST ALONG WITH DARIN RIGGS?

5 A YES.

6 Q AND DID YOU ASSIST ME IN PLACING PHOTOGRAPHS OF
7 THE VARIOUS ROOMS OF THE HOUSE ONTO THE DIAGRAM?

8 A YES.

9 Q DO THE ROOMS DEPICT HOW THE HOUSE APPEARED AS OF
10 OCTOBER, 1993?

11 A YES.

12 Q OKAY. COULD YOU START-- WHY DON'T YOU START
13 WITH WHAT'S LABELED A. COULD YOU SEE THE LITTLE LETTERS
14 THERE AND TELL US WHAT EACH OF THESE ROOMS ARE AND WHAT
15 EACH OF THESE AREAS ARE?

16 A A IS THE BACK PATIO.

17 Q CAN YOU POINT OUT?

18 A AND THE SLIDING GLASS DOOR. B IS THE FAMILY
19 ROOM AND THE BAR TOP TO THE KITCHEN DINING AREA. C IS
20 STEVE'S ROOM. AND THE MASTER BATH CONNECTED TO STEVE'S
21 ROOM IS D. E IS THE OTHER BATHROOM THAT EVERYONE ELSE
22 USED. F IS THE DINETTE AREA. G IS THE KITCHEN. H IS THE
23 BACK OF THE BACK WINDOW OF CHUCK'S ROOM. J IS CHUCK'S
24 ROOM. K IS DARIN AND MINE ROOM. L WAS BRITTANY'S ROOM.
25 M AND N IS THE LIVING ROOM WITH THE FRONT DOOR.

26 Q OKAY. SO, CHUCK'S ROOM IS ACTUALLY I AND J; DO
27 YOU AGREE?

28 A YES.

1 Q AND THAT'S THE ROOM THAT HE OCCUPIED AS OF
2 OCTOBER 10, 1993?

3 A YES.

4 Q AND THAT WOULD BE RIGHT NEXT DOOR TO YOUR ROOM?

5 A CORRECT.

6 Q AND THEN STEVE WAS ACROSS THE HALL?

7 A RIGHT.

8 Q YOU CAN HAVE A SEAT. SO, WOULD IT BE FAIR TO
9 SAY THAT THE DEFENDANT LIVED AT YOUR HOME APPROXIMATELY
10 SIX WEEKS BEFORE BRITTANY WAS KILLED?

11 A YES.

12 Q WHAT KIND OF RELATIONSHIP WOULD YOU SAY THE
13 DEFENDANT HAD WITH YOUR DAUGHTER?

14 A IT WOULD JUST I WOULD JUST SAY IT WAS JUST AN
15 ACQUAINTANCE-TYPE RELATIONSHIP. BRITTANY WASN'T CLOSE TO
16 HIM.

17 Q WAS IT MARKEDLY DIFFERENT THAN SHE WAS WITH
18 STEVE?

19 A OH, OBVIOUSLY, YES.

20 Q HOW SO?

21 A BRITTANY WOULD DRAW THINGS FOR STEVE. HE PUT
22 THEM ON HER BEDROOM DOOR. STEVE AND BRITTANY WERE JUST
23 CLOSE. BRITTANY WOULD DO THINGS. I WOULD HAVE STEVE
24 BABY-SIT. THERE WOULD BE NO WAY I WOULD LET CHUCK
25 BABY-SIT.

26 Q WHY IS THAT?

27 A BRITTANY DIDN'T SEEM COMFORTABLE WITH HIM. SHE
28 WAS COMFORTABLE WITH UNCLE STEVE.

1 Q SO, AT NO TIME DID YOU ALLOW THE DEFENDANT TO
2 BABY-SIT THE VICTIM WHILE YOU WERE GONE?

3 A NO.

4 Q OKAY. DID SHE INTERACT AT ALL WITH THE
5 DEFENDANT?

6 A NOT REALLY.

7 Q HOW ABOUT VERY CLOSE TO THE TIME BEFORE SHE WAS
8 KILLED?

9 A THE WEEK BEFORE BRITTANY WAS KILLED, I WAS
10 HOME. AND CHUCK HAD HIS SON OVER TO THE HOUSE. AND
11 BRITTANY WAS MORE INTERESTED IN PLAYING WITH CHUCK'S SONE
12 THAN CHUCK.

13 Q OKAY. HOW OLD WAS CHUCK'S SON?

14 A TEN MONTHS.

15 Q WAS THERE ABSOLUTELY NO INTERACTION BETWEEN
16 BRITTANY AND THE DEFENDANT, OR WAS THERE SOME?

17 A A LITTLE BIT. THE DAY BEFORE, HE WAS MAKING
18 FACES AT HER AND SHE WAS LAUGHING.

19 Q THE NIGHT BEFORE THIS HAPPENED, DID BRITTANY DO
20 ANYTHING PHYSICAL WITH THE DEFENDANT?

21 A IT WAS THE FIRST TIME WE EVER SAW BRITTANY HUG
22 CHUCK GOOD NIGHT. BECAUSE I TOLD HER IT IS TIME TO GO TO
23 BED. AND SHE KEPT ON COMING BACK OUT. AND THAT WAS HER
24 EXCUSE. THE LAST TIME OUT, SHE GAVE CHUCK A HUG WHICH
25 SHOCKED ME.

26 Q LET'S GO TO THE NIGHT BEFORE. WHO WAS HOME ON
27 SATURDAY, OCTOBER 9, 1993?

28 A DURING THE DAY, KAREN?

1 Q WELL, LET'S START OUT MID AFTERNOON?

2 A CHUCK WAS HOME. STEVE WAS HOME. DARIN AND I
3 WERE HOME WITH BRITTANY. AND WE LEFT AND DID ERRANDS.
4 AND THEN WE CAME BACK AND STEVE WAS AT WORK. CHUCK WAS
5 NOT HOME.

6 Q ABOUT WHAT TIME WAS THIS?

7 A MIDDLE OF THE AFTERNOON, AROUND, WE GOT BACK
8 AROUND 3:00.

9 Q DID ANYBODY ELSE ARRIVE HOME LATER ON THAT DAY?

10 A DARIN LEFT AT 4:00 BECAUSE HE HAD A FOOTBALL

11 GAME TO GO FILM. BRITTANY AND I WERE LEAVING AT THE SAME
12 TIME TO GO TO THE GROCERY STORE. AND CHUCK CAME HOME AT
13 THE TIME WE WERE GETTING READY TO LEAVE.

14 Q AND DID YOU COME BACK WITH BRITTANY SOMETIME
15 LATER?

16 A YES, I WOULD SAY ABOUT AN HOUR AND A HALF TO TWO
17 HOURS LATER, BRITTANY AND I CAME HOME AFTER GROCERY
18 SHOPPING.

19 Q WAS THE DEFENDANT THERE?

20 A YES.

21 Q OKAY. AND THEN WHAT TRANSPIRED?

22 A CHUCK STARTED HELPING ME UNLOAD THE GROCERIES.

23 I TOLD BRITTANY TO GO TO HER ROOM TO GO CLEAN HER ROOM.
24 BECAUSE SHE WAS IN TROUBLE FOR NOT HAVING IT CLEAN EARLIER
25 IN THE DAY. CHUCK WAS IN SAYING SOME REALLY OFF-THE-WALL
26 THINGS TO ME AND WAS MAKING FACES AT BRITTANY AND TEASING
27 HER AND PLAYING.

28 Q WHAT KIND OF OFF-THE-WALL THING WAS HE SAYING?

1 A HE ASKED IF HE CAN BRING A GUN IN THE HOUSE.

2 MR. ABLARD: YOUR HONOR, I AM GOING TO OBJECT AS
3 HEARSAY; LACK OF FOUNDATION.

4 THE COURT: EXCEPTION TO THE HEARSAY RULE.

5 MS. SCHMAUSS: I WILL MOVE ON.

6 THE COURT: THANK YOU. I FORGOT TO TELL YOU, FOLKS,
7 I AM AN UMPIRE. DURING THE COURSE OF LITIGATION SOMETIMES
8 THERE ARE OBJECTIONS TO QUESTIONS. AND SOMETIMES THERE
9 ARE MOTIONS TO STRIKE ANSWERS THAT ARE NOT RELEVANT TO THE
10 QUESTION AND A WHOLE BUNCH OF OTHER MATTERS THAT RELATE TO

11 WHAT IS ADMISSIBLE AND ACCEPTABLE IN THE COURTROOM AS
12 EVIDENCE AS OPPOSED TO OTHER PLACES.

13 AND THERE'S A BOOK OF RULES. IT IS CALLED EVIDENCE
14 CODE. I KEEP IT CLOSE TO ME. AND I TOUCH IT NOW AND THEN
15 TO REMIND MYSELF THAT IT IS THERE.

16 AND WE HAVE A COUPLE OF THINGS THAT WE CAN DO WHEN WE
17 HAVE OBJECTIONS AND MOTIONS. ONE, I CAN TURN TO THE
18 LAWYERS AND SAY, YOU KNOW, HEAR THE BUSINESS, HAVE A QUICK
19 DISCUSSION, AND THEN I MAKE A RULING.

20 SOMETIMES I MAY TELL YOU TO DISREGARD EVIDENCE THAT
21 YOU JUST HEARD BECAUSE IT WAS MAYBE NOT RESPONSIVE OR
22 INAPPROPRIATE FOR YOUR CONSIDERATION. AND IF I TELL YOU

23 THAT, PLEASE DO SO. AND DON'T TRY TO MAKE ANYTHING OUT OF
24 OUR CONVERSATION ABOUT THE RULES OF EVIDENCE, IF YOU
25 WOULD, PLEASE.

26 BECAUSE THE ALTERNATIVE IS TO TAKE A BREAK AND SEND
27 YOU OUTSIDE EVERY TIME THERE IS AN OBJECTION OR A
28 DISCUSSION. OKAY.

1 AND SOMETIMES WE HAVE CONFERENCES UP HERE. DON'T TRY
2 TO EAVESDROP ON THOSE, IF YOU WOULD, PLEASE. PEOPLE ARE
3 COMING UP HERE TO TALK TO ME SO THAT YOU CAN'T HEAR ON
4 LEGAL MATTERS.

5 SO, IF YOU WOULD ABIDE BY THOSE RULES, WE WILL MOVE
6 ALONG CONSIDERABLY FASTER THAN IF EVERY TIME THERE IS AN
7 OBJECTION, THE COURT REPORTER AND THE LAWYERS AND I GO
8 BACK THERE OR YOU GO OUTSIDE. THERE WAS A JURY IN LOS
9 ANGELES THAT WAS FOREVER BEING SENT AWAY. AND THEY
10 DISAPPEARED FOR TEN MINUTES. THEN THEY WOULDN'T COME BACK
11 FOR FOUR DAYS.

12 IN ANY EVENT, ENOUGH SAID. SO, THAT'S JUST THE WAY
13 IT IS. AND YOU IGNORE ALL OF THAT. YOU HAVE TO DECIDE
14 THIS CASE BASED ON THE SWORN TESTIMONY. THE INTERPLAY
15 BETWEEN MYSELF AND LAWYERS AS I UMPIRE THE GAME CAN'T HELP
16 YOU MAKE YOUR DECISION. SO.

17 Q BY MS. SCHMAUSS: AFTER THIS DISCUSSION THAT YOU
18 HAD WITH CHUCK, THEN WHAT OCCURRED?

19 A I TOLD BRITTANY TO GET READY FOR BED. AND I
20 PROCEEDED TO SIT IN THE LIVING ROOM AND WATCH TV UNTIL
21 DARIN CAME HOME.

22 Q WAS THERE SOMETHING THAT OCCURRED WHEN BRITTANY
23 WAS GETTING READY FOR BED?

24 A YEAH. BRITTANY WOULD BE COMING IN AND OUT OF
25 HER ROOM. AND SHE CAME IN TO GET HER NIGHTSHIRT ON AND
26 CAME IN THE HALLWAY AND CHANGED CLOTHES.

27 Q WAS THERE ANY PARTICULAR REASON SHE WAS CHANGING
28 IN THE HALLWAY?

1 A IT WAS JUST CONVENIENT FOR HER TO HAVE ME HELP
2 HER STANDING RIGHT THERE.

3 Q WAS CHUCK THERE?

4 A YES.

5 Q DID HE MAKE A COMMENT?

6 A YES.

7 Q WHAT WAS THAT?

8 MR. ABLARD: YOUR HONOR, I AM GOING TO OBJECT.
9 HEARSAY.

10 MS. SCHMAUSS: GOES TO POTENTIAL REASONS FOR ACTION
11 LATER, YOUR HONOR.

12 MR. ABLARRD: YOUR HONOR, MAY WE APPROACH?

13 THE REPORTER: COUNSEL, YOU WANT THIS REPORTED?

14 MR. ABLARD: YES, NO.

15 THE COURT: WHY DON'T YOU COME UP AND TALK TO ME THEN
16 I WILL DECIDE.

17 (SIDE BAR; NOT REPORTED)

18 THE COURT: FOLKS, TAKE MORNING RECESS. DON'T
19 DISCUSS THE CASE. DON'T FORM ANY OPINION OR CONCLUSION.
20 TEN MINUTES. THE COFFEE SHOP DOWNSTAIRS NEEDS YOUR
21 BUSINESS. THEY PAY ME A SMALL PREMIUM TO MAKE SURE YOU GET
22 DOWN THERE FOR VARIOUS THINGS. SOME OF YOU ARE ACTUALLY
23 BELIEVING THAT.

24 (THE JURY EXITED THE COURTROOM, AND THE
25 FOLLOWING PROCEEDINGS WERE HELD:)

26 THE COURT: THE JURY IS NOW IS NO LONGER PRESENT.
27 YOUR OFFER IN RESPONSE TO THE LAST QUESTION WAS?

28 MS. SCHMAUSS: THAT-- I'M SORRY. THE OFFER OF

1 PROOF. THE WITNESS WOULD ANSWER THAT THE DEFENDANT MADE A
2 COMMENT THAT THE VICTIM, THE VICTIM PUT ON UNDERPANTS.
3 SHE WAS CONCERNED THAT THE VICTIM WAS NOT WEARING
4 UNDERPANTS.

5 THE CURT: FORGET YOUR ARGUMENT ABOUT THE VICTIM'S
6 STATE OF MIND. YOU ASKED A QUESTION.

7 MS. SCHMAUSS: RIGHT.

8 THE COURT: WHAT DID HE SAY?

9 MS. SCHMAUSS: WHAT DID HE SAY.

10 THE COURT: AND THE ANSWER IS GOING TO BE?

11 MS. SCHMAUSS: THE ANSWER IS GOING TO BE HE SAID WHY
12 ISN'T SHE WEARING UNDERPANTS? HAVE HER PUT ON SOME
13 UNDERPANTS.

14 THE COURT: THAT IS WHAT SHE IS GOING TO TESTIFY.

15 MS. SCHMAUSS: RIGHT.

16 THE COURT: AND THE RELEVANCE OF THAT FROM YOUR
17 POSITION IS?

18 MS. SCHMAUSS: IS THAT LATER ON WHEN HE IS BEING
19 INTERVIEWED BY THE POLICE OFFICERS AND WE HAVE A
20 TRANSCRIPT OF IT HOW-- THAT IS TAPE ONE, SIDE TWO-- HE
21 AMPLIFIES THAT IT BOTHERS HIM THAT SHE DOESN'T WEAR
22 PANTIES. IT IS A PET PEEVE OF HIS FOR GOING AROUND--

23 THE COURT: THE OFFICER ASKED HIM WHY HE MADE THAT
24 COMMENT THE NIGHT BEFORE; IS THAT RIGHT?

25 MS. SCHMAUSS: NO. THIS WAS IN RELATION TO DID HE
26 DRESS HER THE MORNING OF--

27 MR. ABLARD: PAGE, PLEASE.

28 MS. SCHMAUSS: THAT'S AT THE BOTTOM OF PAGE 5, LINE

1 25.

2 THE COURT: WELL, ALL THESE PAGINATIONS ARE TAPE
3 WHAT?

4 MS. SCHMAUSS: TAPE ONE, SIDE TWO. THEN I WOULD

5 REFER THE COURT TO PAGE 8, LINES 13 AND 14, SAME TAPE,
6 TAPE ONE, SIDE TWO.

7 THE COURT: ALL RIGHT. I HAVE READ THAT.

8 MS. SCHMAUSS: ON PAGE 8 TOO.

9 THE COURT: YES.

10 MS. SCHMAUSS: OKAY. SO, I FEEL THAT I AM ENTITLED

11 TO REASONABLE INFERENCES FROM THE EVIDENCE THAT I PLAN TO
12 USE. AND MOTIVE OF COURSE.

13 THE COURT: IF IT IS ADMISSIBLE, YOU ARE ENTITLED TO
14 REASONABLE INFERENCES FROM THE EVIDENCE.

15 MS. SCHMAUSS: MOTIVE, OF COURSE, IS ALWAYS A
16 QUESTION IN MURDER, EVEN A MURDER LIKE THIS. POSSIBLE
17 MOTIVE OF THE DEFENDANT WAS TO MOLEST THE VICTIM.
18 CORRECT, THAT THERE'S NO SPERMATOZOA OR ANYTHING NOW ON
19 HER. BUT AS TO THAT, HE DIDN'T GET THAT FAR. SHE
20 STRUGGLED. SHE MAY HAVE YELLED. HE TRIED TO SILENCE
21 HER. HE KILLED HER.

22 THE COURT: PRETTY THIN. YOU KNOW, THERE'S NO
23 EVIDENCE OF MOLESTATION; CORRECT?

24 MS. SCHMAUSS: NO PHYSICAL EVIDENCE.

25 THE COURT: YOU HAVE NO WITNESS EVIDENCE. YOU HAVE
26 NO EVIDENCE OF MOLESTATION. AND NOW YOU WANT TO INTRODUCE
27 EVIDENCE THAT IT MIGHT BE THE MOTIVE WITHOUT ANY
28 EVIDENCE?

1 MS. SCHMAUSS: WELL, I THINK IT GOES TO WEIGHT, NOT
2 ADMISSIBILITY. AND I THINK WHAT'S REALLY TELLING IS THE
3 DEFENDANT, WITHOUT PROMPTING FROM THE OFFICER, THE
4 OFFICERS DON'T SAY IT. HE BRINGS UP MOLESTATION.

5 THE COURT: WELL, WHO KNOWS WHY.

6 MS. SCHMAUSS: THEY DON'T MENTION IT. THEY DON'T
7 ACCUSE HIM OF IT.

8 THE COURT: THAT I DON'T THINK-- YOU ARE GETTING TOO
9 FAR AFIELD. NOT EVERYTHING THE DEFENDANT SAYS BEFORE OR
10 AFTER OR WHATEVER IS ADMISSIBLE JUST BECAUSE HE SAYS IT.

11 THE SCOPE OF ADMISSIBILITY OF STATEMENT MADE BY A SUSPECT
12 BEFORE, DURING, OR AFTER ARE RELEVANT IF THEY GO TO THE
13 ISSUES SURROUNDING THE CHARGE. BUT NOT JUST EVERYTHING
14 BECAUSE THE DEFENDANT SAYS IT MAKES IT ADMISSION AND
15 CONFESSION OR SOME OTHER EXCEPTION TO THE HEARSAY RULE.

16 IT IS NOT AN ADMISSION. IT IS NOT A CONFESSION. IT
17 IS NOT A STATEMENT THAT GETS YOU BY THE HEARSAY RULE THAT
18 I CAN SEE. IT IS AN OUT-OF-COURT STATEMENT OFFERED FOR
19 THE TRUTH OF THE MATTER ASSERTED. I MEAN, THAT'S HE SAID
20 IT AND THAT IT HAD MEANING.

21 SO HOW DO YOU GET AROUND THE HEARSAY RULE?

22 MS. SCHMAUSS: DEFENDANT STATE OF MIND. I AM NOT
23 OFFERING IT FOR THE TRUTH.

24 THE COURT: LET'S ASSUME IT IS HIS STATE OF MIND THAT
25 HE THINKS CHILDREN SHOULD WEAR UNDERWEAR. HOW IS THAT
26 RELEVANT TO THE FACTS OF THIS MURDER?

27 MS. SCHMAUSS: THAT HE IS SO CONCERNED ABOUT THIS
28 LITTLE THREE YEAR OLD'S UNDERWEAR.

1 THE COURT: WHAT DOES THAT DO TO THE MURDER?

2 MS. SCHMAUSS: BECAUSE IT TIES IN WITH THIS
3 UNSOLICITED COMMENT ABOUT MOLESTATION DURING HIS
4 INTERVIEW.

5 THE COURT: WHAT DOES THAT HAVE TO DO WITH MURDER?

6 MS. SCHMAUSS: MOTIVE FOR THE MURDER.

7 THE COURT: NO, IT IS NOT CONNECTED. IT IS STILL
8 HEARSAY. YOU GOT TO HAVE AN EXCEPTION FOR THE HEARSAY
9 RULE. DON'T YOU? I MEAN, THE BOOK HERE SAYS SO.

10 MS. SCHMAUSS: AN ADMISSION OF THE DEFENDANT IS WHAT
11 I WOULD ARGUE.

12 THE COURT: AN ADMISSION.

13 MS. SCHMAUSS: YES. MANY THINGS CAN BE ADMISSION, AS
14 WE ALL KNOW.

15 THE COURT: CAN'T HAVE AN ADMISSION THAT PRECEDES THE
16 CRIME. AN ADMISSION IS AN ADMISSION OF SOME FACT THAT
17 CONNECTS THE DEFENDANT WITH THE CRIME THAT HAS BEEN
18 COMMITTED OR A CONFESSION LIKE YOU CAN'T CONFESS TO A
19 CRIME YOU HAVEN'T DONE. YOU CAN'T MAKE ADMISSION THAT
20 CONNECTS YOU TO A CRIME UNTIL THE CRIME HAS OCCURRED; CAN
21 YOU?

22 I MEAN, YOU WANT ME TO REALLY LOOK AT THIS? ARE YOU
23 SERIOUS? I MEAN, I WILL BE HAPPY TO GO BACK AND REVIEW
24 WHAT HAZARD AND LEWISDELL CREATED BACK IN THE EARLY '60'S
25 BUT YOU CAN'T HAVE AN ADMISSION OR A CONFESSION SO THAT
26 CAN'T QUALIFY. YOU TRULY HAVE A CASE THAT YOU SUGGEST YOU
27 MAY CONFESS TO A CRIME PRIOR TO COMMITTING IT OR MAKE AN
28 ADMISSION THAT YOU COMMITTED SOME ELEMENT OF A CRIME PRIOR

1 TO ITS COMMISSION?

2 MS. SCHMAUSS: IN 288 CASES, WE OFTEN HAVE EVIDENCE
3 OF UNUSUAL BEHAVIOR OF THE DEFENDANT TOWARDS THE VICTIM
4 BEING INTERESTED IN HER PRIVATE PARTS, BEING INTERESTED IN
5 HOW SHE DRESSES. IT IS CIRCUMSTANTIAL EVIDENCE OF HIM
6 BEING THE PERPETRATOR.

7 THE COURT: YEAH. BUT IN THIS CASE, THERE'S NO, IN
8 THIS CASE, THERE'S NO PERPETRATION OF ANY CHILD MOLEST.
9 SO, YOU DON'T GET THERE.

10 MS. SCHMAUSS: I WOULD SUBMIT.

11 THE COURT: AND IF YOU SHOW ME A CASE THAT SAYS THIS
12 IS AN ADMISSION OR CONFESSION AND UNTIL YOU SHOW ME A CODE
13 SECTION THAT SAYS HIS STATE OF MIND THE NIGHT BEFORE ABOUT
14 WHETHER OR NOT SHE WEARS PANTIES OR DOESN'T, IS NOT
15 RELEVANT TO WHETHER OR NOT HE MURDERED HER ON THE MORNING
16 SOMETIME DURING THE NEXT DAY AS I SEE IT YET.

17 MS. SCHMAUSS: ALL RIGHT. SO, I SHALL ABANDON THAT
18 LINE OF QUESTIONING FOR NOW.

19 THE COURT: YOUR CHOICE. BUT THE QUESTION YOU ASKED
20 AND THE ANSWER YOU EXPECT TO ELICIT IS NOT RELEVANT. AND
21 UNLESS YOU HAVE AN EXCEPTION TO THE HEARSAY RULE THAT
22 FITS.

23 MS. SCHMAUSS: ON AN ENTIRELY DIFFERENT SUBJECT, I
24 JUST WANT THE RECORD TO REFLECT THAT EXHIBIT 58 FOR
25 IDENTIFICATION WAS WE REFERRED TO AS THE BIG PICTURE. I
26 TOOK IT DOWN AND TURNED IT OVER EARLY IN JENNIFER
27 RETHORN'S TESTIMONY.

28 THE COURT: I HAVE HEARD NO OBJECTION TO IT BEING

1 DISPLAYED AT, YOU KNOW, INAPPROPRIATELY. THANK YOU.

2 MS. SCHMAUSS: I WANTED THE RECORD TO REFLECT IT IS
3 NOT BEING DISPLAYED NOW.

4 THE COURT: THAT'S FINE.

5 MR. ABLARD: YOUR HONOR, GOING BACK TO THE NOTION ON
6 MOLESTATION BUSINESS.

7 THE COURT: I DON'T HAVE ANY NOTION. THERE WAS A
8 QUESTION ASKED THE WITNESS. THERE WAS AN OBJECTION
9 THERETO. I HAVE RULED ON THE OBJECTION. MY RAMBLINGS AND
10 CONSIDERATIONS ARE ONLY RELEVANT TO SHOW WHAT I RULED, IF
11 YOU CARE. NEXT QUESTION AND ANSWER I WILL RULE ON.

12 MR. ABLARD: YES.

13 THE COURT: THERE'S ANY DISCUSSION ABOUT IT. YOU GET
14 A BREAK. WE ARE GOING TO RECONVENE THE JURY IN ABOUT FIVE
15 MINUTES.

16 MR. ABLARD: GREAT. THANK YOU VERY MUCH.

17 (RECESS)

18 THE COURT: ALL RIGHT. JURORS ARE PRESENT.

19 MS. SCHMAUSS: MAY I INQUIRE, YOUR HONOR?

20 THE COURT: YOU MAY.

21

22 JENNIFER RETHORN,

23 HAVING BEEN PREVIOUSLY SWORN, RESUMED THE STAND, WAS
24 EXAMINED, AND TESTIFIED AS FOLLOWS:

25 DIRECT EXAMINATION, RESUMED

26 BY MS. SCHMAUSS:

27 Q MS. RETHORN, I AM GOING TO SHOW YOU EXHIBIT 63
28 FOR IDENTIFICATION. I AM GOING TO PULL OUT EACH OF THE

1 OBJECTS OR EACH OF THE ITEMS INSIDE AND ASK YOU IF YOU
2 RECOGNIZE THEM.

3 A BRITTANY'S SHIRT.

4 Q OKAY. PULLING OUT A MULTICOLORED PINK-PURPLE
5 T-SHIRT. DO YOU RECOGNIZE THIS?

6 A THAT'S WHAT SHE WENT TO SLEEP IN.

7 Q OKAY. SO, WAS THIS-- THIS WAS USED AS HER
8 NIGHTSHIRT?

9 A YES.

10 Q WHEN YOU--DID YOU SEE HER THE MORNING OF THE
11 10TH?

12 A YES.

13 Q AND WHAT WAS SHE WEARING?

14 A I JUST SAW THE TOP OF THE SHIRT.

15 Q THE SAME SHIRT?

16 A (WITNESS NODS.)

17 Q WOULD SHE WEAR ANYTHING WHEN SHE WENT TO BED?
18 WOULD SHE WEAR ANYTHING ELSE BUT THE SHIRT?

19 A NO.

20 Q WOULD SHE WEAR UNDERPANTS?

21 A NO.

22 Q OKAY. I AM GOING TO REMOVE THE SECOND ITEM
23 THAT'S INSIDE EXHIBIT 63 FOR IDENTIFICATION. DO YOU
24 RECOGNIZE THESE?

25 A BRITTANY'S SHORTS.

26 Q OKAY. AND DID YOU PUT THESE SHORTS ON HER AT
27 ANY TIME?

28 A NO.

1 Q DID YOU LATER RECEIVE THESE SHORTS FROM SOMEONE?

2 A FROM THE MONTCLAIR POLICE DEPARTMENT, HAD ME
3 IDENTIFY THEM.

4 Q WAS THAT AFTER SHE WAS KILLED?

5 A AFTER SHE WAS KILLED, AT THE HOSPITAL.

6 Q GOT THEM AT THE HOSPITAL AFTER SHE WAS KILLED?

7 A WE WERE ASKED TO SAY IF THOSE WERE BRITTANY'S OR
8 NOT.

9 Q DO YOU KNOW WHERE THESE HAD BEEN PRIOR TO BEING
10 PUT ON BRITTANY?

11 A THEY WERE IN A PLASTIC BAG IN THE DINING ROOM
12 AREA. BECAUSE I PUT THE CLOTHES TOGETHER TO BE GIVEN
13 AWAY.

14 Q THEY WERE NOT IN A DRESSER OF ANY SORT?

15 A NO.

16 Q OKAY. WELL, BEFORE WE LEFT OFF, WE WERE TALKING
17 ABOUT HER GOING TO BED THE NIGHT BEFORE SHE WAS KILLED.
18 AND YOU SAID THAT SHE GAVE THE DEFENDANT A HUG WHICH
19 SURPRISED YOU?

20 A YES.

21 Q OKAY. AND THEN WHAT OCCURRED? DID SHE GO TO
22 BED?

23 A BRITTANY WENT TO BED AROUND 8, 8:30.

24 Q WAS THAT A NORMAL TIME FOR HER?

25 A YES.

26 Q OKAY. AND THEN WHO WAS PRESENT IN THE HOUSEHOLD
27 ABOUT THAT TIME?

28 A MYSELF AND CHUCK.

1 Q OKAY. AND DID YOU AND CHUCK SPEAK OR TALK OR
2 WHAT?

3 A I WAS IN THE LIVING ROOM. AND HE WANTED TO MOVE
4 THE LIVING ROOM FURNITURE AROUND. AND I WOULDN'T LET HIM.
5 AND WE WERE STRIKING UP A CONVERSATION.

6 Q FRIENDLY?

7 A YEAH.

8 Q DID YOU TALK WITH HIM FOR A PERIOD OF TIME?

9 A PROBABLY A HALF HOUR.

10 Q AND THEN WHAT HAPPENED?

11 A CHUCK SAID HE WAS GOING TO GO GET HIS CAR
12 WASHED. AND I WAS NOT SAFE IN THE HOUSE. AND HE WAS
13 GOING TO LEAVE. AND I NEEDED THE FRONT DOOR LOCKED.

14 Q DID YOU NORMALLY LOCK THE FRONT DOOR WHEN YOU
15 WERE ALONE?

16 A NO.

17 Q AND THEN WHAT OCCURRED?

18 A STEVE CAME HOME FROM WORK TO CHANGE CLOTHES AND
19 LEAVE AGAIN.

20 Q SO CHUCK LEFT?

21 A YES.

22 Q AND THEN STEVEN CAME HOME AND LEFT?

23 A YES.

24 Q OKAY. THEN WHAT OCCURRED?

25 A WHEN CHUCK CAME BACK, HE YELLED AT ME FOR HAVING
26 THE FRONT DOOR UNLOCKED. BECAUSE I WASN'T SAFE IN THE
27 HOUSE AND STEVE LEFT IT UNLOCKED WHEN HE LEFT.

28 Q DID CHUCK REMAIN AT THE HOUSE AT THAT POINT?

1 A YES.

2 Q WAS ANYBODY ELSE HOME?

3 A I CALLED MY FRIEND HEATHER TO COME OVER.
4 BECAUSE I DIDN'T FEEL COMFORTABLE AT THE HOUSE ALONE.

5 Q OKAY. DID HEATHER COME OVER?

6 A YES.

7 Q DID SHE GET LOST?

8 A YES.

9 Q DID SOMEBODY RETRIEVE HER?

10 A SHE CALLED ON THE PHONE FROM THE 7-ELEVEN AND

11 SAID JENNY, I CAN'T FIND THE WAY TO THE HOUSE. AND
12 BRITTANY WAS ALREADY ASLEEP. SO, I WAS TRYING TO GIVE HER
13 DIRECTIONS OVER THE PHONE. AND CHUCK OVERHEARD ME. AND
14 HE SAID HE'D GO DOWN AND GET HER.

15 Q DID HE DRIVE SOME SORT OF VEHICLE?

16 A YES.

17 Q WHAT VEHICLE?

18 A HIS V.W. BUG.

19 Q DID HE LEAD HER TO YOUR HOUSE?

20 A EXCUSE ME, KAREN?

21 Q DID HE LEAD HER TO YOUR HOUSE?

22 A YES.

23 Q OKAY. SO, NOW WE HAVE YOU, BRITTANY ASLEEP,
24 HEATHER AND CHUCK IN THE HOUSE?

25 A YES.

26 Q OKAY. THEN WHAT OCCURRED?

27 A HEATHER AND I WERE ON THE PATIO. AND CHUCK WAS
28 DOING SOMETHING. AND SHE SAID SHE DIDN'T LIKE HIM. AND SO

1 WE WENT IN THE HOUSE.

2 MR. ABLARD: YOUR HONOR, I AM GOING TO OBJECT AS
3 HEARSAY; RELEVANCY. BOTH GROUNDS, HEARSAY, FIRST.

4 THE COURT: SOUNDS LIKE HEARSAY TO ME.

5 Q BY MS. SCHMAUSS: OKAY. WITHOUT TELLING US WHAT
6 HEATHER SAID--

7 MR. ABLARD: YOUR HONOR, ALSO MOTION TO STRIKE. I
8 BELIEVE PART OF IT WAS ANSWERED.

9 THE COURT: YES. DISREGARD THAT WHOLE LAST ANSWER,
10 FOLKS. ONE, IT WAS UNRESPONSIVE TO THE QUESTION AND TWO,
11 IT ISN'T RELEVANT. AND I HAVE EXCLUDED IT FROM YOUR
12 CONSIDERATION.

13 Q BY MS. SCHMAUSS: YOU AND HEATHER ARE TOGETHER.
14 AND WHERE IS CHUCK?

15 A HEATHER AND I WERE INSIDE THE HOUSE AT THE
16 DINING ROOM TABLE. SHE WAS CUTTING MY HAIR. CHUCK WAS
17 OUT ON THE PATIO.

18 Q WITH ANYBODY?

19 A NO.

20 Q OKAY. DID SOMEBODY ELSE COME HOME?

21 A DARIN CAME HOME FROM HIS FOOTBALL GAME.

22 Q ABOUT WHAT TIME?

23 A 12:30, AROUND. COULD BE 1:00.

24 Q IN THE MORNING?

25 A YES.

26 Q OKAY. AND WHAT DID DARIN DO ONCE HE GOT HOME?

27 A HEATHER WAS STILL CUTTING MY HAIR.

28 THE COURT: JUST ANSWER THE QUESTION.

1 Q BY MS. SCHMAUSS: WHAT DID DARIN DO WHEN HE GOT
2 HOME?

3 A WENT INTO THE BACKYARD AFTER TALKING TO US.

4 Q OKAY. WAS THE DEFENDANT STILL IN THE BACKYARD?

5 A YES.

6 Q DID YOU OBSERVE WHAT DARIN AND THE DEFENDANT
7 WERE DOING?

8 A TALKING.

9 Q HOW LONG DID DARIN AND THE DEFENDANT TALK IN THE
10 BACKYARD?

11 A ABOUT A HALF HOUR.

12 Q SO, THIS IS UNTIL WHAT TIME?

13 A AROUND 1:30.

14 Q OKAY. AND THEN WHAT OCCURRED?

15 A HEATHER LEFT. STEVE CAME HOME.

16 Q OKAY. AND WHAT DID STEVE DO AFTER HE CAME HOME?

17 A SAT AT THE TABLE AND TALKED WITH THE THREE OF
18 US.

19 Q THE THREE OF YOU BEING WHO?

20 A DARIN, MYSELF, AND CHUCK.

21 Q UNTIL WHAT TIME?

22 A JUST ABOUT 2.

23 Q AND WHAT HAPPENED AT 2 IN THE MORNING?

24 A I MADE A COMMENT TO DARIN THAT WE HAD TO GET UP
25 AT 9:00 AND IT IS LATE. WE NEEDED TO GO TO BED.

26 Q OKAY. WAS THE DEFENDANT PRESENT WHEN YOU MADE
27 THIS COMMENT WE HAVE TO GET UP AT 9:00?

28 A YES.

1 Q AND THEN WHAT HAPPENED?

2 A THE DEFENDANT SAID HE HAD TO TAKE A SUITCASE.

3 MR. ABLARD: YOUR HONOR, I AM GOING TO OBJECT; CALLS
4 FOR HEARSAY.

5 THE COURT: WELL, IT IS NOT RESPONSIVE TO THE
6 QUESTION.

7 MR. ABLARD: THAT'S TRUE.

8 THE COURT: ON THAT BASIS.

9 Q BY MS. SCHMAUSS: DID THE DEFENDANT LEAVE THE
10 HOUSE AT THAT POINT?

11 A WITH A SUITCASE, YES.

12 Q OKAY. WHAT DID YOU DO?

13 A WENT TO BED, CHECKED ON BRITTANY AND WENT TO
14 BED.

15 Q DID DARIN GO TO BED WITH YOU?

16 A YES.

17 Q SO WHAT TIME DID YOU AND DARIN GO TO BED?

18 A 2:00, 2:05.

19 Q BEFORE OR AFTER STEVE?

20 A AFTER.

21 Q SO, STEVE WENT TO BED JUST BEFORE YOU DID?

22 A YES.

23 Q AND THE DEFENDANT WAS GONE?

24 A YES.

25 Q SO, DO YOU HAVE ANY KNOWLEDGE WHEN THE DEFENDANT
26 RETURNED?

27 A NO.

28 Q WAS THIS LATE HOUR FOR YOU AND DARIN TO GO TO

1 BED?

2 A YES, VERY LATE.

3 Q WAS IT UNUSUAL FOR STEVE TO GO TO BED AT THIS
4 HOUR?

5 A NOT REALLY.

6 Q WHY IS THAT?

7 A HE WORKS NIGHTS. SO, HE COMES HOME LATE.

8 Q WHAT IS STEVE'S USUAL HABIT ABOUT WAKING UP
9 TIME?

10 A DOESN'T GET UP UNTIL LATER IN THE AFTER-- LATER
11 IN THE MORNING, EARLY AFTERNOON, 11, 12:00.

12 Q IS THAT BECAUSE HE WORKS NIGHTS?

13 A YES.

14 Q AND HE HAS NO LITTLE KID TO TAKE CARE OF?

15 A NO.

16 Q OKAY. WERE YOU AWAKENED BY ANYTHING IN THE
17 MORNING?

18 A YES.

19 Q ABOUT WHAT TIME?

20 A AROUND 7:30 IN THE MORNING.

21 Q AND HOW DO YOU KNOW THAT THAT WAS THE TIME?

22 A BECAUSE THE SUN WAS COMING TROUGH THE BLINDS IN
23 THE BEDROOM.

24 Q DID YOU LOOK AT ANY CLOCK--

25 A NOT AT THAT TIME, NO.

26 Q -- AT THAT POINT. WHAT WOKE YOU UP AROUND 7:30?

27 A I HEARD BRITTANY COME DOWN THE HALLWAY COMING
28 INTO OUR ROOM.

1 Q OKAY. WAS YOUR ROOM DOOR OPEN OR CLOSED?

2 A IT WAS CLOSED.

3 Q WAS IT LOCKED OR UNLOCKED?

4 A UNLOCKED.

5 Q OKAY. DID SHE KNOCK?

6 A SHE KNOCKED AND WALKED IN AT THE SAME TIME.

7 Q WAS THAT A USUAL THING FOR HER?

8 A YES, IT IS NORMAL, KNOCK AND WALK IN.

9 Q OKAY. AND WHAT DOES SHE DO AFTER SHE KNOCKS AND
10 WALKS IN?

11 A SHE WENT UP TO DADDY AND SAID GOOD MORNING. WE
12 SAID GOOD MORNING TO HER. SHE SAID I LOVE YOU.

13 Q OKAY. AND THEN WHAT?

14 A DARIN AND I TOLD HER GO, GO LAY DOWN AND WATCH
15 CARTOONS.

16 Q DO YOU RECALL DARIN YELLING AT HER?

17 A NOT AT ALL. NO.

18 Q AND DID SHE LEAVE YOUR ROOM?

19 A YES.

20 Q WAS THIS AN UNUSUAL THING FOR BRITTANY TO GET UP
21 AND THEN GO LAY DOWN SOMEWHERE ELSE?

22 A NO.

23 Q WOULD YOU USUALLY GET UP WHEN SHE GOT UP?

24 A MOST OF THE TIME, YES.

25 Q BUT OCCASIONALLY NOT?

26 A YES.

27 Q WAS BRITTANY CAPABLE OF TURNING ON THE TV?

28 A YES.

1 Q WHAT WAS SHE ABLE TO DO?

2 A SHE COULD OPERATE THE VCR. SHE COULD GO TO THE
3 BATHROOM. SHE COULD BRUSH HER TEETH.

4 Q WAS SHE A, IN YOUR OPINION, A BRIGHT

5 THREE-AND-A-HALF YEAR OLD?

6 A YES, SHE WAS ALREADY STARTING TO WRITE HER NAME.

7 Q WOULD YOU CALL HER SELF-SUFFICIENT?

8 A YES.

9 Q WOULD SHE HAVE ANY TROUBLE WITH THE CONTROLS FOR
10 PUTTING A MOVIE IN?

11 A IF SHE WANTED. ON THE VCR, THE REMOTE, SHE HAD
12 PROBLEMS WITH ONCE IN A WHILE.

13 Q IF IT WASN'T ON CHANNEL 3?

14 A YES.

15 Q WAS BRITTANY THE KIND OF CHILD THAT WAS
16 INTERESTED IN WATCHING CARTOONS?

17 A MORE MOVIES THAN CARTOONS.

18 Q DID SHE HAVE A MOVIE COLLECTION?

19 A YES.

20 Q WAS IT WITHIN HER REACH?

21 A YES.

22 Q WHEN YOU TOLD HER TO GO OUT AND WATCH CARTOONS,

23 YOU SAID GO LAY OUT-- I'M SORRY. YOU SAID LAY DOWN AND
24 WATCH TV, OR DID YOU TELL HER TO GO WATCH ONE OF HER
25 MOVIES?

26 A JUST GO DOWN-- I DON'T REMEMBER EXACTLY.

27 Q OKAY. WHAT ROOM WERE YOU INTENDING HER TO GO
28 TO?

1 A THE LIVING ROOM.

2 Q WHICH WOULD BE HERE PHOTOGRAPHS M AND N ON
3 EXHIBIT 61 FOR IDENTIFICATION?

4 A YES.

5 Q IS THAT WHERE THE TV WAS?

6 A YES.

7 Q I NOTICE IN THE PHOTOGRAPHS WE HAVE HERE THE TV
8 IS GONE. CAN YOU TELL US WHY THAT IS?

9 A WE REMOVED ALL THE VALUABLES OUT OF THE HOUSE
10 WHEN THE MURDER TOOK PLACE.

11 Q OKAY. SO SHE WOULDN'T GO TO THE FAMILY ROOM?

12 A NO.

13 Q SHE'D GO TO THE LIVING ROOM?

14 A CORRECT.

15 Q WAS THERE A CERTAIN COUCH THAT SHE WOULD
16 NORMALLY GO TO? DID SHE HAVE--

17 A MOST OF THE TIME, YES.

18 Q COULD YOU STEP OVER HERE AND SHOW US?

19 A THE ONE DIRECTLY IN FRONT OF THE TV.

20 Q THAT WOULD BE PHOTOGRAPH N ON EXHIBIT 61 FOR
21 IDENTIFICATION, N?

22 A YES.

23 Q WOULD SHE HAVE USED THE COUCH LABELED PHOTOGRAPH
24 M ON EXHIBIT 61?

25 A SOMETIMES.

26 Q YOU CAN SIT DOWN. IS THE NEXT THING THAT
27 OCCURRED AFTER BRITTANY LEFT YOUR ROOM, WHAT IS THE NEXT
28 THING THAT YOU WERE AWARE OF?

1 A I FELL BACK TO SLEEP.

2 Q AND THEN WHAT?

3 A 3 MINUTES TO 9, WE HEARD THIS NOISE. THAT WOKE
4 DARIN UP.

5 Q OKAY. CAN YOU DESCRIBE-- JUST TAKE A MOMENT,
6 TAKE A BREATH. TELL ME WHEN YOU ARE READY.

7 DO YOU HAVE ENOUGH WATER?

8 A OKAY.

9 Q READY?

10 A OKAY.

11 Q YOU HEARD A NOISE. CAN YOU DESCRIBE THAT NOISE?

12 A RUSTLING, BANGING, RUMMAGING. IT WAS JUST LOUD
13 AND NOT ANYTHING YOU COULD PINPOINT PRECISELY.

14 Q COULD YOU ESTIMATE HOW LONG THIS NOISE WENT ON?

15 A IT'S REALLY HARD TO SAY. IT WAS NOT SOMETHING
16 THAT WAS JUST A SECOND. IT WAS MORE THAN A SECOND. I'D
17 SAY AT LEAST A MINUTE.

18 Q NOW, DID YOU HAVE YOUR ALARM SET?

19 A YES, WE HAD OUR ALARM SET FOR 9:00.

20 Q SO, THIS WAS PRIOR TO THE ALARM GOING OFF?

21 A YES.

22 Q DID YOU LOOK AT THE CLOCK?

23 A YES.

24 Q IS THAT HOW YOU KNOW IT WAS 8:57?

25 A YES.

26 Q AND IT WAS ACTUALLY THE NOISE THAT WOKE YOU UP?

27 A YES.

28 Q DID YOU WAKE DARIN UP?

1 A DARIN AND I BOTH WOKE UP AT THE SAME TIME. AND
2 I STARTED TO SAY SOMETHING. AND HE WAS WAKING UP.

3 Q DID YOU TALK TO HIM ABOUT THE NOISE?

4 A YES.

5 Q DID YOU HAVE ANY SORT OF IMPRESSION ABOUT WHAT
6 THE NOISE MIGHT BE?

7 A I ASSUMED IT WAS SOMETHING BEING KNOCKED OVER,
8 BRITTANY IN MY MAKEUP IN THE CABINETS, AND JUST THE
9 CABINET DOOR SLAMMING AND THINGS BEING KNOCKED OVER.

10 Q AND WHERE DID YOU THINK SHE WAS IN YOUR MAKEUP?

11 A IN THE BATHROOM UNDERNEATH THE SINK.

12 Q AND WOULD THAT BE WHAT WE HAVE LABELED THE GUEST
13 BATHROOM?

14 A CORRECT.

15 Q IS THAT WHERE YOU THOUGHT IT WAS COMING FROM?

16 A YES.

17 Q OKAY. CAN YOU-- NOW AS YOU SIT HERE, ARE YOU
18 CERTAIN IT WAS COMING FROM THE BATHROOM?

19 A NO.

20 Q WHAT DID YOU DO AFTER HEARING THE NOISE?

21 A I TOLD DARIN TO GET UP AND GET BRITTANY OUT OF
22 THE BATHROOM.

23 Q OKAY. AND DID HE GO OUT THE DOOR?

24 A YES.

25 Q AND THEN WHAT OCCURRED?

26 A I IMMEDIATELY GOT UP BEHIND HIM.

27 Q DID YOU NEED TO STOP AND GET DRESSED?

28 A YES.

1 Q OKAY. DID THAT TAKE VERY LONG?

2 A SECONDS.

3 Q DID YOU HAVE CLOTHING RIGHT THERE?

4 A YES.

5 Q WHAT WAS THE REASON THAT YOU IMMEDIATELY WENT
6 OUT?

7 A IT WAS TIME TO GET UP ANYWAYS. AND I JUST
8 WANTED TO SEE WHO GOT INTO THE NOISE, THE NOISE IS WHAT
9 MADE ME-- I WANTED TO KNOW WHAT IT WAS.

10 Q WERE YOU CONCERNED AT ALL ABOUT BRITTANY?

11 A I WAS JUST WONDERING WHAT SHE GOT INTO.

12 Q OKAY. AND WHERE DID YOU GO?

13 A I WENT DOWN THE HALLWAY TOWARDS THE KIT-- DINING
14 ROOM. AS I CAME OUT OF THE BEDROOM DOOR, DARIN WENT
15 AROUND THE CORNER TOWARDS THE DINETTE AREA.

16 Q OKAY.

17 A AND I HEARD HIM SPEAKING TO STEVE.

18 Q OKAY. THEN WHAT HAPPENED?

19 A WE ASKED STEVE IF HE SAW BRITTANY. HE SAID NO.
20 I SAID WAS IT YOU IN THE BATHROOM. HE SAID NO. I WENT TO
21 THE LIVING ROOM TO SEE IF BRITTANY WAS ON THE COUCH.

22 Q WAS SHE?

23 A NO. THE TV WAS ON.

24 Q DID THAT CONCERN YOU?

25 A YES.

26 Q DO YOU RECALL WHAT THE TV WAS ON TO?

27 A NO. I THEN WENT TO THE FRONT DOOR. AND WE HAVE
28 TWO LOCKS ON THE FRONT DOOR. AND THE TOP LOCK WAS NOT

1 LOCKED. AND THE BOTTOM ONE WAS.

2 Q DOES THAT BOTTOM LOCK, IS THAT WITHIN BRITTANY'S
3 REACH?

4 A YES.

5 Q WAS THE TOP ONE WITHIN HER REACH?

6 A YES. BUT SHE COULDN'T DO IT BECAUSE IT WAS KEY
7 ONLY.

8 Q OKAY. SO YOU ARE REASONABLY SURE THAT SHE
9 COULDN'T HAVE UNLOCKED THAT DOOR?

10 A NO.

11 Q OKAY. THEN WHAT OCCURRED?

12 A I OPENED THE FRONT DOOR AND SAW THE NEWSPAPER
13 RIGHT DIRECTLY IN FRONT OF THE DOOR WHICH IT NEVER IS.
14 AND I SLAMMED THE DOOR AND I WENT TO BRITTANY'S ROOM. AND
15 I SAID TO DARIN SHE'S NOT IN THE LIVING ROOM, AND THE DOOR
16 WAS LOCKED, BUT THE NEWSPAPER WAS THERE.

17 Q OKAY. THEN WHAT HAPPENED?

18 A THE PHONE RANG. DARIN WAS TALKING TO BRITTANY'S
19 GODMOTHER, REINA, TELLING HER THAT WE COULDN'T FIND
20 BRITTANY AND WE'D CALL HER BACK.

21 Q OKAY. WAS REINA SOMEBODY YOU WERE SUPPOSED TO
22 SEE THAT DAY?

23 A YES.

24 Q THEN WHAT HAPPENED?

25 A DARIN AND STEVE WENT OUT IN THE PATIO AND INTO
26 THE BACKYARD LOOKING FOR HER. I WAS LOOKING AROUND THE
27 HOUSE, IN HER BEDROOM AND THAT AREA. I FOLLOWED DARIN
28 OUT. AND DARIN TOLD ME THAT HE TALKED TO CHUCK. AND SO I

1 WENT BACK IN THE HOUSE DOWN TO CHUCK'S DOOR.

2 Q OKAY. NOW, DID CHUCK COME OUT AT ANY POINT?

3 A NO.

4 Q WAS ANYBODY YELLING AT THIS POINT?

5 A AT THE TOP OF MY LUNGS.

6 Q WHAT WERE YOU YELLING?

7 A BRITTANY.

8 Q AND WAS ANYONE ELSE YELLING BRITTANY?

9 A DARIN AND STEVE.

10 Q OKAY. AND WHAT WAS THE PURPOSE OF YOU GOING TO

11 CHUCK'S DOOR?

12 A BECAUSE I HEARD THAT HE SAW HER TWENTY MINUTES
13 AGO. AND I HAD TO KNOW WHAT SHE WAS WEARING.

14 Q OKAY. TAKE A MOMENT. WHEN YOU ASKED HIM WHAT
15 SHE WAS WEARING, WAS HIS DOOR OPEN OR CLOSED?

16 A IT WAS CLOSED.

17 Q DID HE ANSWER YOU?

18 A HE SAID JENNY, GO AWAY. I AM BUSY.

19 Q DID HE SAY ANYTHING ELSE?

20 A I'LL BE OUT IN A MINUTE.

21 Q AND HE DIDN'T TELL YOU WHAT SHE WAS WEARING?

22 A NO.

23 Q WHAT DID YOU DO AT THAT POINT?

24 A I SAW STEVE WAS LEAVING.

25 Q YOU SAW WHAT?

26 A STEVE PASSED ME IN THE HALLWAY WITH HIS CAR KEYS
27 BECAUSE HE WAS LEAVING TO GO SEARCH THE NEIGHBORHOOD.

28 Q OKAY.

1 A I WENT IN STEVE'S ROOM AND LOOKED AGAIN. AND
2 SHE WASN'T IN THERE. AND THEN I WENT BACK OUT DOWN THE
3 HALLWAY. CHUCK STILL WASN'T OUT OF HIS ROOM. AND I GOT
4 ON THE PHONE, STARTED CALLING NEIGHBORS TO HELP.

5 Q AND THEN WHAT HAPPENED?

6 A CHUCK CAME OUT OF HIS ROOM.

7 Q HOW LONG WOULD YOU SAY FROM THE BEGINNING OF
8 YELLING FOR BRITTANY UNTIL CHUCK CAME OUT OF HIS ROOM?
9 HOW MUCH TIME WOULD YOU SAY HAD PASSED? HOW MUCH TIME
10 WOULD YOU SAY PAD PASSED?

11 A PROBABLY TEN MINUTES.

12 Q BY THIS TIME WAS STEVE ALREADY GONE?

13 A YES.

14 Q AND WAS THERE CONTINUOUS YELLING AND SCREAMING--

15 A YES.

16 Q -- DURING THOSE TEN MINUTES THAT THE DEFENDANT
17 NEVER CAME OUT?

18 A YES.

19 Q COULD YOU HEAR ANYTHING COMING FROM HIS ROOM?

20 A NOTHING.

21 Q DID YOU STAY BY HIS ROOM THE WHOLE TIME?

22 A NO.

23 Q THEN WHAT HAPPENED?

24 A HE CAME OUT. I WAS IN THE DINING ROOM AREA.
25 AND HE SAID THAT HE SAW HER SITTING ON THE COUCH. HE PUT
26 HER THERE AND GAVE HER SOME JUICE AND GAVE HER SOMETHING
27 TO EAT. AND HE WENT BACK TO BED.

28 I THEN WENT OUT TO TOWARDS THE FRONT YARD AND TOLD

1 DARIN I WAS GOING TO CALL THE POLICE. AND I STARTED
2 COMING BACK IN THE HOUSE. AND CHUCK TOOK THE PHONE AND
3 STARTED DIALING 911. AND THEN I TOOK THE PHONE AWAY.

4 Q NOW, PRIOR TO THIS, HAD YOU GOTTEN ANY
5 PHOTOGRAPHS OF YOUR DAUGHTER OUT?

6 A YES, I DID.

7 Q AT WHAT POINT?

8 A THE POINT OF COMING BACK, GOING FROM STEVE'S
9 ROOM, I PASSED BY OUR ROOM AND GRABBED PICTURES.

10 Q WHY?

11 A SHOW THE NEIGHBORS. AND THEN WHEN THEY CAME BY
12 THE HOUSE, THEY'D HAVE PICTURES TO SHOW PEOPLE TO LOOK FOR
13 HER.

14 Q BEFORE SHE LEFT, DID YOU GIVE HIM A PICTURE?

15 A STEVE HAD ONE IN HIS WALLET.

16 Q OKAY. DID YOU ATTEMPT TO GIVE A PICTURE TO THE
17 DEFENDANT?

18 A YES, I HAD THEM ON THE COUNTER TOP. AND HE KEPT
19 ON TURNING THEM UPSIDE DOWN BY THE PHONE.

20 Q DID YOU ASK HIM WHY HE WAS DOING THAT?

21 A I JUST THOUGHT IT WAS ODD. I DIDN'T ASK.

22 Q DID HE EVER TAKE A PICTURE OF HER AND GO
23 OUTSIDE?

24 A NO.

25 Q OKAY. SO THEN YOU TALKED TO THE POLICE
26 DEPARTMENT?

27 A I CALLED 911.

28 Q THEN WHAT HAPPENED?

1 A THEY TOLD ME TO STAY ON THE PHONE AND THAT THEY
2 WERE COMING. AND--

3 Q DID THEY SHOW UP?

4 A THEY SHOWED UP. I DON'T KNOW HOW MANY. OFFICER
5 BALES GOT THERE. WE WERE IN THE DINING ROOM. MY BACK WAS
6 TO THE HALLWAY. OFFICER BALES WAS TELLING ME CALM DOWN.
7 DARIN IS IN THE OTHER ROOM TALKING TO HIS MOM ON THE
8 PHONE.

9 AND ALL OF A SUDDEN, WE JUST HEARD THIS NOISE RUN OUT
10 OF OUR HOUSE. AND SIRENS. AND TOLD TO GO TO THE
11 HOSPITAL. WE DIDN'T KNOW.

12 Q YOU DIDN'T EVEN SEE BRITTANY BEING TAKEN OUT OF
13 YOUR HOUSE?

14 A WE HAD NO IDEA WHY WE WERE TOLD TO GO TO THE
15 HOSPITAL. NOBODY WAS SAYING ANYTHING.

16 Q IF YOU CAN THINK BACK AFTER OFFICER BALES GOT
17 THERE, WHERE WAS THE DEFENDANT?

18 A HE WAS JUST LIKE LINGERING AROUND IN THE DINING
19 ROOM AREA WANDERING AROUND IN AND OUT.

20 Q WHAT WAS HIS DEMEANOR THAT YOU OBSERVED?

21 A I COULDN'T UNDERSTAND WHY HE WAS DOING THE
22 THINGS HE WAS DOING.

23 MR. ABLARD: YOUR HONOR, I AM GOING TO OBJECT AS
24 NONRESPONSIVE.

25 THE COURT: SUSTAINED. STRICKEN. DISREGARD THAT
26 RESPONSE, LADIES AND GENTLEMEN.

27 Q BY MS. SCHMAUSS: WHAT WAS HE DOING?

28 A FOLLOWING WATCHING WHERE DARIN AND I WERE GOING

1 DOWN THE HALLWAY, COMING BACK, NOT GOING ANYWHERE, JUST
2 LOST.

3 Q DID HE APPEAR TO BE SEARCHING FOR BRITTANY?

4 A NO.

5 MR. ABLARD: YOUR HONOR, I AM GOING TO OBJECT AS
6 SPECULATION.

7 THE COURT: NO. THAT'S A SUMMARY OF OBSERVABLE FACT.
8 THAT WILL STAY.

9 Q BY MS. SCHMAUSS: WERE THE OTHER OF YOU LOOKING
10 IN WHAT AREAS?

11 A LOOKING IN THE WASHING MACHINE. I LOOKED IN THE
12 DRYER. I LOOKED IN CLOSETS WHERE SHE COULDN'T HAVE BEEN.
13 WE LOOKED EVERYWHERE EXCEPT FOR HIS ROOM.

14 Q DID YOU EVER SEE THE DEFENDANT LOOKING IN
15 CUPBOARDS AND HIDING AREAS AND THINGS LIKE THAT?

16 A NO.

17 Q DID THE DEFENDANT EVER TELL YOU TO CALM DOWN?

18 A I DON'T REMEMBER.

19 Q NOW, YOU SAID EARLIER THAT AFTER YOU HEARD THE
20 RUSTLING AND RUMMAGING, BANGING SOUNDS, YOU WENT OUT AND
21 TALKED TO STEVE. WHERE WAS STEVE?

22 A STEVE WAS ON THE PATIO RIGHT AT THE SCREEN DOOR.

23 Q COULD YOU SEE WHAT HE WAS DOING?

24 A SMOKING A CIGARETTE.

25 Q WAS THAT A COMMON OCCURRENCE FOR STEVE?

26 A YES. BECAUSE THERE WAS NO SMOKING IN THE HOUSE.

27 Q YOU HAVE KNOWN STEVE FOR HOW LONG?

28 A I MET STEVE IN 1988.

1 Q AND YOU LIVED WITH HIM FOR SIX MONTHS?

2 A ROUGHLY, YES.

3 Q DID HE HAVE SOME SORT OF A HABIT AS TO MORNING
4 AND CIGARETTES?

5 A YES.

6 Q WHAT WAS THAT HABIT?

7 A HE NEEDED TO HAVE HIS CIGARETTE.

8 Q SO, IT IS COMMON THEN FOR STEVE FIRST THING WHEN
9 HE GETS UP, GO OUT AND SMOKE A CIGARETTE?

10 A YES.

11 Q THAT IS WHAT HE WAS DOING?

12 A YES.

13 Q YOU HAD SAID EARLIER THAT STEVE OFTEN SLEPT IN
14 UNTIL 11 OR 12. ARE YOU AWARE OF AN EVENT IN HIS LIFE
15 THAT WOULD CAUSE HIM TO GET UP EARLIER ON THE 10TH?

16 A YES. HE GOT--

17 MR. ABLARD: I AM GOING TO OBJECT. OFFER OF PROOF OF
18 RELEVANCY.

19 MS. SCHMAUSS: TO ACCOUNT FOR EVERYONE'S WHEREABOUTS,
20 YOU HONOR.

21 MR. ABLARD: THAT'S FINE. I WITHDRAW IT. WAS SHE
22 AWARE OF AN EVENT?

23 THE COURT: YES.

24 MR. ABLARD: FROM THAT STANDPOINT.

25 THE COURT: PROBABLY HEARSAY, NO FOUNDATION FOR
26 PERSONAL KNOWLEDGE. ON THAT BASIS, UNLESS YOU HAVE A
27 FOUNDATION FOR PERSONAL KNOWLEDGE.

28 MS. SCHMAUSS: THERE WAS A DISCUSSION THE NIGHT

1 BEFORE ABOUT SOMETHING.

2 THE COURT: DOESN'T SOUND--

3 MS. SCHMAUSS: I AM JUST GOING TO ASK IF THERE WAS A
4 DISCUSSION, YES OR NO.

5 THE COURT: YOU MAY ANSWER THE QUESTION.

6 A YES.

7 Q BY MS. SCHMAUSS: DIDN'T GET TO FINISH IT. A
8 DISCUSSION ABOUT SOMETHING THAT OCCURRED IN STEVE'S
9 IMMEDIATE FAMILY?

10 A YES.

11 Q WAS THERE SOMETHING HE NEEDED TO GO TO ON
12 SUNDAY?

13 A YES.

14 Q DO YOU KNOW WHAT TIME HE NEEDED TO GO TO THAT?

15 A NO.

16 Q DURING THE SIX MONTHS THAT THE DEFENDANT LIVED--
17 I MEAN THE SIX WEEKS THAT THE DEFENDANT LIVED AT YOUR
18 HOME, WOULD HE NORMALLY KEEP HIS BEDROOM OPEN OR CLOSED?

19 A CLOSED.

20 Q WOULD YOU SAY ALWAYS?

21 A YES.

22 Q DID YOU EVER HAVE AN OPPORTUNITY TO LOOK IN HIS
23 ROOM?

24 A ONCE OR TWICE.

25 Q THERE'S PICTURES BEHIND YOU. THAT'S AN EXHIBIT
26 MARKED 3 FOR IDENTIFICATION. THERE'S SOME BLOWUPS. ASK
27 YOU IF YOU RECOGNIZE ON THE RIGHT-HAND SIDE. I CAN'T TELL
28 WHAT NUMBER THEY ARE, C AND D, I BELIEVE?

1 A YES.

2 Q DO YOU RECOGNIZE THOSE?

3 A YES.

4 Q AND WHAT DO THEY DEPICT?

5 A THE BED.

6 Q WHOSE ROOM?

7 A CHUCK'S ROOM.

8 Q AND THE DISARRAY THAT'S SHOWN IN THOSE PICTURES,
9 WAS THAT COMMON FOR THE DEFENDANT'S ROOM?

10 A PRETTY MUCH, YES.

11 Q OKAY. DID YOU EVER HAVE TO BE IN THE ROOM AND
12 REMOVE SOMETHING?

13 A YES.

14 Q WHAT?

15 A ROTTEN FOOD.

16 Q TO YOUR KNOWLEDGE, DID THE DEFENDANT HAVE A LOCK
17 ON HIS DOOR AS OF OCTOBER 10TH, 1993?

18 A HE PUT THE LOCK ON SATURDAY.

19 Q SO, HE DID HAVE A LOCK ON THE 10TH?

20 A YES.

21 Q WHAT KIND OF A LOCK?

22 A IT WAS A LOCK THAT YOU JUST TURN FROM THE
23 INSIDE.

24 Q PUSH BUTTON?

25 A TYPE, YES.

26 Q OKAY. AND WOULD YOU NEED A KEY TO OPEN IT?

27 A YES.

28 Q WOULD YOU NEED A KEY TO OPEN IT FROM THE

1 OUTSIDE?

2 A YES.

3 Q AND TO YOUR KNOWLEDGE, DID HE HAVE ANOTHER TYPE
4 OF LOCK MECHANISM INSIDE THE DOOR?

5 A YES.

6 Q WHAT WAS THAT?

7 A A HOOK AND EYE.

8 MR. ABLARD: YOUR HONOR, I AM GOING TO OBJECT;
9 VAGUENESS AS TO TIME.

10 MS. SCHMAUSS: AS OF THE 10TH OF OCTOBER, '93.

11 THE COURT: ALL RIGHT. AS OF THE 10TH.

12 Q BY MS. SCHMAUSS: DID HE HAVE A HOOK AND EYE?

13 A YES.

14 Q THERE'S A PHOTOGRAPH BEHIND YOU, EXHIBIT 3 FOR
15 IDENTIFICATION, B. CAN YOU POINT TO WHERE THE HOOK--

16 A YES.

17 Q -- AND THE EYE WOULD BE?

18 A YOU CAN SEE THE HOOK. THE EYE PART OF THE HOOK
19 GOES INTO WAS ON THE FRAME OF THE DOOR RIGHT ABOVE THE
20 LATCH.

21 MR. ABLARD: I'M SORRY. WHAT EXHIBIT?

22 THE WITNESS: B.

23 MR. ABLARD: 3-B. THANK YOU.

24 Q BY MS. SCHMAUSS: WAS THIS AN UNUSUAL THING IN
25 YOUR HOUSEHOLD FOR PEOPLE TO HAVE LOCKS ON THEIR DOORS?

26 A DARIN AND I DID. AND I KNOW THE MASTER BEDROOM
27 HAD ONE. AND BEFORE WE MOVED INTO THE HOUSE.

28 Q AND THE DEFENDANT JOINED THE REST OF YOU IN--

1 A YES.

2 Q MS. RETHORN, I AM GOING TO SHOW YOU EXHIBIT 5
3 FOR IDENTIFICATION. YOU DON'T NEED TO TAKE IT OUT. I AM
4 GOING TO ASK YOU IF YOU RECOGNIZE EXHIBIT 5?

5 A IT IS BRITTANY'S BLANKET.

6 Q WOULD YOU DESCRIBE THIS AS A DISNEY BLANKET?

7 A YES.

8 Q WAS THE ONLY PERSON IN YOUR HOUSEHOLD WHO USED
9 IT BRITTANY?

10 A YES.

11 Q WHERE WAS IT NORMALLY KEPT?

12 A IT WAS PUT AWAY CLEAN IN THE HALL CLOSET. SHE
13 WASN'T USING IT ANYMORE.

14 Q OKAY. WHEN WAS THE LAST TIME PRIOR TO OCTOBER
15 10TH THAT YOU HAD SEEN THAT BLANKET?

16 A EARLIER IN THE WEEK WHEN I WAS PUTTING TOWELS
17 AWAY.

18 Q AND WAS IT IN THE HALL CLOSET?

19 A YES.

20 Q WAS THAT HALL CLOSET, WAS THAT ACCESSIBLE TO
21 BRITTANY?

22 A NOT ON THE SHELF, NO.

23 Q WAS THE SHELF TOO HIGH FOR HER TO REACH?

24 A YES.

25 Q HAD YOU EVER LOANED THAT BLANKET TO THE
26 DEFENDANT?

27 A NO.

28 Q HAD HE EVER ASKED YOU TO BORROW A BLANKET?

1 A NO.

2 Q YOU ARE AWARE THAT THE DEFENDANT HAD A SON?

3 A YES.

4 Q AND HAD THAT SON EVER VISITED?

5 A YES.

6 Q HOW SOON BEFORE THE KILLING?

7 A THAT WEEK BEFORE.

8 Q WERE YOU AWARE OF WHETHER THE SON HAD ANY
9 BEDDING WITH HIM?

10 A THERE WAS ALWAYS A LARGE DIAPER BAG WITH
11 EVERYTHING THAT THE CHILD NEEDED THAT CAME OVER.

12 Q AND THE DEFENDANT NEVER ASKED YOU IF HE COULD
13 BORROW ANY BEDDING?

14 A NO.

15 Q WOULD BRITTANY DRAG AROUND THE BLANKET WITH HER?

16 A NO.

17 Q THIS BLANKET WAS NOT--

18 MR. ABLARD: YOUR HONOR, I AM GOING TO OBJECT AS TO
19 TIME.

20 MS. SCHMAUSS: AS TO THE 10TH OF OCTOBER.

21 MR. ABLARD: THANK YOU.

22 A NO.

23 Q BY MS. SCHMAUSS: SO, SHE WOULDN'T NECESSARILY
24 WANT THIS BLANKET?

25 A NO.

26 MR. ABLARD: WELL, THAT'S FINE. GO AHEAD. I'M
27 SORRY.

28 Q BY MS. SCHMAUSS: YOU HAVE INDICATED TO US YOUR

1 BEDROOM AND ON EXHIBIT 61, PHOTOGRAPH K, IT SHOWS YOUR
2 ROOM. I'D LIKE TO SHOW YOU ANOTHER PICTURE OF YOUR ROOM.
3 ACTUALLY, WE HAVE SEVEN PHOTOS OF YOUR ROOM. OKAY. WE
4 HAVE EXHIBIT 10, 11, AND 12 FOR IDENTIFICATION. AND WHAT
5 DO THESE PICTURES SHOW?

6 MR. ABLARD: EXCUSE ME, YOUR HONOR. I HAVEN'T SEEN
7 THEM. MAY I. THANK YOU. THANK YOU VERY MUCH.

8 Q BY MS. SCHMAUSS: WHAT ARE THESE PICTURES
9 DEPICTING?

10 A NUMBER 10 IS OUR BEDROOM. YOU CAN SEE OUR BED.
11 AND THE DOORWAY INTO OUR ROOM AND THE LIGHT SWITCH.
12 NUMBER 11 IS FROM THE DOORWAY, THE PICTURE OF OUR BED WITH
13 MY DRESSER AGAINST HE WALL. AND THEN A PICTURE OF DARIN'S
14 SIDE OF THE CLOSET.

15 Q OKAY. NOW, THE BED IS PUSHED AGAINST THE WALL;
16 IS THAT CORRECT?

17 A IN THE CORNER; CORRECT.

18 Q IS THAT HOW THE BED WAS ON OCTOBER 10, 1993?

19 A YES.

20 Q AND THEN THIS DRESSER, IS THAT CLOSE TO THE FOOT
21 OF THE BED?

22 A YES.

23 Q WHO SLEPT TO THE WALL?

24 A I SLEPT IN THE CORNER TOWARDS THE WALL.

25 Q AND DARIN SLEPT ON THE OTHER SIDE?

26 A YES, THE OUTSIDE SIDE BY THE DOORWAY.

27 Q IF YOU NEEDED TO GET UP OUT OF BED, WHAT WOULD
28 YOU HAVE TO DO?

1 A CRAWL OVER DARIN.

2 Q WOULD YOU WAKE HIM UP?

3 A SOMETIMES. YES. MOST OF THE TIME, HE'D HEAR
4 ME.

5 Q DID YOU EVER GET OUT OF BED BETWEEN BRITTANY'S
6 COMING IN YOUR ROOM ABOUT 7:30 AND YOU HEARING THE
7 RUMMAGING OR RUSTLING SOUND?

8 A NO.

9 Q DID DARIN, TO YOUR KNOWLEDGE, EVER GET UP OUT OF
10 BED FROM 7:30 TO 8:57 A.M.

11 A NO.

12 MS. SCHMAUSS: YOUR HONOR, IT IS ALMOST 12. I HAVE
13 STILL GOT MORE QUESTIONS.

14 THE COURT: YES.

15 MS. SCHMAUSS: DO YOU WANT ME TO CONTINUE FOR TWO
16 MORE MINUTES?

17 THE COURT: SURE. SINCE WE CAN'T COME BACK THIS
18 AFTERNOON. I AM SORRY FOLKS. NEVER MIND. GO AHEAD. IT
19 IS GOING TO TAKE ABOUT A MINUTE TO TELL THEM THAT WE ARE
20 NOT GOING TO BE HERE THIS AFTERNOON FOR REASONS TOTALLY
21 BEYOND MY CONTROL, BY THE WAY.

22 MR. ABLARD, AND IT IS NOT HIS FAULT EITHER, ACTUALLY,
23 BUT THERE'S A JUDGE IN WHAT, VAN NUYS, WHERE MR. ABLARD
24 HAS BEEN SUBPOENAED TO BE A WITNESS THAT HAS COURTEOUSLY
25 CALLED US. AND THEY HAVE SPECIFICALLY SCHEDULED HIM TO
26 TESTIFY THIS AFTERNOON IN A CASE PENDING IN LOS ANGELES
27 AND WHEREVER, VAN NUYS IS. IT'S THAT A WAY. SO, THEY
28 HAVE HIM ON SCHEDULE FOR THIS AFTERNOON SOMETIME AROUND 2.

1 THEY TELL ME AS SOON AS THE WITNESS IS BEING EXAMINED HAS
2 CONCLUDED, HE WILL BE UP. I AM NOT GOING TO BRING YOU
3 BACK AT 3 OR 3:30 HOPING THAT YOU WILL HAVE CONCLUDED HIS
4 TESTIMONY AND THAT THE TRAFFIC FROM VAN NUYS TO RANCHO

5 CUCAMONGA WILL BE YOU KNOW AS FAR AS CUSTOM ORDINARILY NOT
6 AS FAR AS IN THE AFTERNOON BETWEEN YOU KNOW 2:30 AND 3:30,
7 4.

8 SO, BUT THE COURT WAS COURTEOUS TO PERMIT HIM TO
9 ATTEND THIS AFTERNOON INSTEAD OF FOR HIM TO BE THEIR ALL
10 DAY WAITING HIS TURN. SO, AT LEAST WE GOT A LITTLE

11 SOMETHING DONE TODAY.

12 SO, WE WILL BE IN RECESS UNTIL TOMORROW AT-- WHAT IS
13 TOMORROW, THURSDAY, TOMORROW AT 9:30. I MIGHT BE SLIGHTLY
14 DELAYED. I HAVE A BUSY CALENDAR OF CASES THAT I NEED TO
15 DEAL WITH IN THE MORNING BEFORE STARTING THE TRIAL. BUT I
16 AM HOPEFUL WE WILL FINISH THEM BY 9:30.

17 PLEASE REMEMBER DON'T DISCUSS THE CASE, FORM OPINIONS
18 OR CONCLUSIONS. DON'T RESEARCH OR INVESTIGATE.

19 SEE YOU TOMORROW MORNING AT 9:30. WE WILL CALL YOU
20 IN. LEAVE YOUR NOTEBOOKS AND PENCILS, REMEMBER, BEHIND.
21 THEY WILL BE SHARPENED FOR YOU IN THE MORNING. AND YOUR
22 BADGES IF YOU WANT TO TAKE THEM HOME AND SHOW THEM OFF,
23 YOU MAY. BUT BRING THEM BACK TOMORROW.

24 THANK YOU. HAVE A GOOD AFTERNOON. I WILL NOT CALL
25 YOUR EMPLOYERS TO TELL THEM THAT WE HAD TO BREAK EARLY.

26 UNLESS THERE'S SOMETHING FURTHER, WE WILL BE IN
27 RECESS ON THIS MATTER UNTIL 9:30 TOMORROW.

28 (PROCEEDINGS CONTINUED TO THE FOLLOWING DAY.)

1 RANCHO CUCAMONGA, CALIFORNIA; THURSDAY, OCTOBER 26, 1995

2 A.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 FOLLOWING PROCEEDINGS WERE HELD

10 IN OPEN COURT OUTSIDE THE PRESENCE

11 OF THE JURY:)

12 THE COURT: ON PEOPLE VERSUS JOHNSON. MR. JOHNSON IS
13 PRESENT. MR. ABLARD IS PRESENT. MS. SCHMAUSS IS PRESENT.

14 MS. SCHMAUSS: VERDICT FORMS AS YOU REQUESTED.

15 THE COURT: THE JURY IS NOT PRESENT. MR. ABLARD, YOU
16 INFORMALLY INDICATED THERE WAS SOMETHING YOU WANTED TO
17 TAKE UP IN THE JURY'S ABSENCE.

18 MR. ABLARD: BRIEFLY, YOUR HONOR, YES.

19 THE COURT: WHAT MIGHT THAT BE?

20 MR. ABLARD: THERE WAS A CONVERSATION BETWEEN MY
21 CLIENT AND MR. RIGGS THE NIGHT PRIOR TO THE INCIDENT WHICH
22 HAD BEEN ALLUDED TO AND TESTIFIED TO ALREADY, THOSE
23 CONVERSATIONS. IT HAS NOT BEEN.

24 I WOULD REQUEST THAT THE PROSECUTOR BE RULED ON THAT
25 SHE GIVE AN OFFER OF PROOF AS TO WHAT THAT IS ABOUT IN
26 CASE IT IS GOING TO BE BROUGHT UP WITH MR. RIGGS SO WE GET
27 A RULING ON WHETHER OR NOT IT IS RELEVANT AND IT UNLESS
28 THERE'S A 352 ANALYSIS.

1 MS. SCHMAUSS: I'M SORRY. I AM NOT SURE WHAT HE IS
2 TALKING ABOUT.

3 THE COURT: WELL, IN ANY EVENT, IF THERE IS A
4 QUESTION THAT'S ASKING FOR OUT-OF-COURT STATEMENTS OFFERED
5 TO PROVE THE TRUTH OF MATTERS ASSERTED THEREIN, THEY MAY
6 OR MAY NOT BE RELEVANT. AND THEY MAY OR MAY NOT BE
7 HEARSAY. WHEN THE QUESTION IS ASKED, MAKE AN OBJECTION
8 AND THE COURT WILL RULE.

9 MR. ABLARD: OKAY.

10 THE COURT: JUST LIKE WE ORDINARILY DO.

11 MR. ABLARD: WELL, YEAH. I MEAN, THE REASON I AM
12 DOING IT NOW IS SO WE DON'T HAVE TO DO IT UP THERE AND
13 HAVE THE JURY GO OUT. BECAUSE IT MIGHT FALL IN LINE WITH
14 THE OTHER TYPE OF CATEGORIES WHERE WE ARE DISCUSSING
15 EVIDENCE ON MOTIVE AND SO ON AND SO FORTH. SO, I THOUGHT
16 I'D BRING IT UP EARLY.

17 MS. SCHMAUSS: WITHOUT KNOWING WHAT MR. ABLARD IS
18 OBJECTING TO, I CAN'T ADDRESS IT.

19 THE COURT: I DON'T KNOW EITHER.

20 MR. ABLARD: WE WILL DO IT LATER THEN. THANK YOU.

21 THE COURT: I THINK WE ARE-- WHAT ELSE?

22 MS. SCHMAUSS: YOUR HONOR, IF THE COURT WILL INDULGE
23 ME, I'D LIKE TO BRIEFLY REVISIT THE ISSUE ABOUT HIS
24 CONCERN ABOUT BRITTANY'S LACK OF UNDERWEAR.

25 THE COURT: ALL RIGHT.

26 MS. SCHMAUSS: LOOKING AT EVIDENCE CODE SECTION 1250,
27 I THINK I HAVE A VALID EXCEPTION.

28 THE COURT: WELL, I WILL BE HAPPY TO REVISIT THAT.

1 DO YOU HAVE THAT CASE THAT YOU'D LIKE TO CITE UNDER THE
2 1250 ET SEQ.

3 MS. SCHMAUSS: NO, YOUR HONOR. I JUST WANT TO CITE
4 THE CODE SECTION WITH MY ARGUMENT THAT I FEEL HIS

5 STATEMENT ABOUT HIS CONCERN ABOUT HER LACK OF UNDERWEAR
6 AND HIS SUBSEQUENT STATEMENT TO THE POLICE ABOUT IT.

7 THE COURT: I HAVEN'T GOT TO THAT YET. WE ARE JUST
8 DEALING WITH THE FIRST STATEMENT.

9 MS. SCHMAUSS: OKAY. IT SHOWS HIS THEN-EXISTENT
10 STATE OF MIND, HIS MENTAL FEELING. THAT IS OFFERED TO
11 PROVE OR EXPLAIN ACTS OR CONDUCT OF THE DECLARANT MEANING
12 A POSSIBLE MOTIVE FOR HIM HAVING DONE THIS ACT.

13 THE COURT: SAME RULING.

14 MR. ABLARD: THANK YOU.

15 MS. SCHMAUSS: THANK YOU FOR CONSIDERING IT.

16 THE COURT: I READ--

17 MS. SCHMAUSS: CAN I BRING UP ONE MORE THING?

18 THE COURT: I WENT FURTHER. I READ THE CASES THAT OR
19 THE FOOTNOTES THAT APPLY UNDER THE WESTS EXCEPTION FOR THE
20 MCCURRY'S CASE WHICH HAS BEEN LIMITED. HIS STATEMENT IS
21 NOT A STATEMENT OF EXISTING PLAN, INTENT. IT IS NOT A
22 STATEMENT OF HIS MENTAL OR PHYSICAL CONDITION. IT IS--

23 MS. SCHMAUSS: OR MENTAL FEELING. HIS FEELINGS ABOUT
24 PEOPLE RUNNING AROUND WITHOUT UNDERWEAR.

25 THE COURT: WELL, YOU KNOW, THE LEAP FROM SOME
26 GENERAL CONCERN ABOUT YOUNG CHILDREN RUNNING AROUND THE
27 HOUSE NAKED WHERE THERE ARE NON-FAMILY MALE PEOPLE, YOU
28 KNOW, IN AND OUT OF THE HOUSE, MAY OR MAY NOT BE

1 REASONABLE OR UNREASONABLE. IT MAY OR MAY NOT SHOW THAT
2 HE IS A CHILD MOLESTER. BUT THAT'S A GREAT LEAP, FRANKLY.
3 AND IT IS NOT A STATE OF HIS CURRENT MENTAL FEELING OR
4 PHYSICAL CONDITION. IT IS NOT A STATEMENT DESCRIBING IT.

5 YOU MUST INFER FROM THIS STATEMENT A MENTAL FEELING WHICH
6 IS ANOTHER LEAP THE COURT IS NOT GOING TO PERMIT YOU TO
7 MAKE IN THIS CASE.

8 MS. SCHMAUSS: ON ANOTHER SUBJECT, TO SAVE TIME, SO
9 WE DON'T HAVE TO LITIGATE LATER.

10 THE COURT: WE ARE LITIGATING EVERYTHING NOW AND
11 LATER.

12 MS. SCHMAUSS: OKAY. IT IS MY BELIEF THAT ON
13 CROSS-EXAMINATION OF JENNIFER RETHORN, MR. ABLARD MAY TRY
14 TO GO INTO A REMOTE INCIDENT WHERE MS. RETHORN BIT
15 BRITTANY. AND MY UNDERSTANDING IS IT HAPPENED A YEAR
16 BEFORE THE INCIDENT THAT WE ARE IN COURT ON, A YEAR BEFORE
17 THE MURDER.

18 AND I DON'T THINK IT'S RELEVANT. AND IT'S GOING JUST
19 TO DIRTY HER CHARACTER. AND SO I'D LIKE A PRE-RULING ON
20 THAT BEFORE IT COMES UP. SHE BIT THE CHILD TO STOP HER
21 FROM BITING OTHER CHILDREN.

22 MR. ABLARD: DOES THE COURT WANT A RESPONSE?

23 THE COURT: I DON'T KNOW IF HE IS GOING TO ASK ABOUT
24 THE MOTHER BITING THE CHILD.

25 MS. SCHMAUSS: I'D LIKE A MOTION IN LIMINE BECAUSE I
26 DON'T EVEN WANT THE QUESTION ASKED. BECAUSE I OBJECT TO
27 ANY LINE OF QUESTIONING ABOUT A YEAR-PRIOR INCIDENT, ONE
28 INCIDENT, WHERE SHE BIT HER ON THE WRIST, DIDN'T DRAW

1 BLOOD. IT WAS HER METHOD OF TEACHING THE CHILD BITING
2 HURTS.

3 MR. ABLARD: WELL, THERE'S A VARIETY OF REASONS THAT
4 I MAY. I DON'T KNOW IF I AM GOING TO ASK IT OR NOT. BUT
5 IF I DO ASK IT, IT WILL BE UNDER ONE OF THE REASONS IS
6 WHILE YOU DIDN'T DRAW BLOOD, IT CERTAINLY LEFT TEETH
7 MARKS. AND WE HAVE WITNESSES AS TO THAT. IT GOES TO THE
8 WAY THAT SHE DISCIPLINES HER CHILD, THE METHODS. POSSIBLE
9 DEPENDING UPON WHAT SHE SAYS.

10 ADDITIONALLY, IT GOES TO HER CREDIBILITY, DEPENDING
11 HOW SHE ANSWERS THE QUESTION.

12 THE COURT: BITING A CHILD IS NOT A-- I SUPPOSE
13 UNDER SOME CIRCUMSTANCES, IT MAY BE A MISDEMEANOR CONDUCT.

14 MR. ABLARD: WHEN IT LEAVES TEETH MARKS, YOUR HONOR,
15 THIS WASN'T JUST A YOU KNOW, SHOULDN'T DO IT.

16 MS. SCHMAUSS: IT IS SO REMOTE. IT DOESN'T PROVE
17 ANYTHING WE ARE HERE TO PROVE.

18 THE COURT: I AGREE.

19 MS. SCHMAUSS: IT'S JUST TO DIRTY HER CHARACTER.

20 THE COURT: THAT'S OUTSIDE THE SCOPE OF THE ISSUES.

21 AND IF IT IS USED SOLELY FOR THE PURPOSE OF MORAL
22 TURPITUDE, MISDEMEANOR CONDUCT A YEAR EARLIER TO IMPEACH
23 THIS WITNESS ON HER TESTIMONY OF THE EVENTS THAT OCCURRED
24 THE EVENING BEFORE AND THE MORNING OF HER YOUNG DAUGHTER'S
25 DEATH, NO. TOO FAR AFIELD. TOO REMOTE. INSUFFICIENT.

26 MR. ABLARD: I SHOULD MENTION TO THE COURT--

27 THE COURT: AND IF IT IS OFFERED TO PROVE A VIOLENT
28 RELATIONSHIP BETWEEN MOTHER AND DAUGHTER, TO SUGGEST THAT

1 THE MOTHER MAY BE THE RESPONSIBLE PARTY, MOTHER IS NOT ON
2 TRIAL. NO.

3 WHAT ELSE?

4 MR. ABLARD: WELL, THE PROBLEM BECOMES AS TO NOT SO
5 MUCH THE WHETHER IT IS RELEVANT.

6 THE COURT: YES, IT IS. BECAUSE IF IT IS NOT
7 RELEVANT, THEN IT ISN'T GOING TO COME IN.

8 MR. ABLARD: CERTAINLY.

9 THE COURT: EVIDENCE IN MY COURT.

10 MR. ABLARD: THAT'S AND/OR LIKE ANY OTHER COURT.

11 THE COURT: STRONGLY RELEVANT, NOT JUST SOME
12 THEORETICAL, PROBLEMATIC PASSING.

13 MR. ABLARD: RIGHT. WELL.

14 THE COURT: FANCIFUL. THE ONLY ONE PERMITTED TO HAVE
15 FANCIFUL DELUSIONS IN THIS COURT IS ME. ENOUGH SAID ON
16 THAT SUBJECT. WHAT ELSE?

17 MR. ABLARD: WELL, I NEED TO ALERT THE COURT AS TO
18 THE RELEVANCY OF IT SO THERE CAN BE A RULING AS TO
19 RELEVANCY. PART OF THE PROBLEM AS I UNDERSTAND IN THE
20 CASE IS THAT WHILE I AM NOT DISCUSSING THE CAUSE OF DEATH,
21 THE METHOD, THE MEANS, HAS ALREADY BEEN EVIDENCE ON HOW
22 LONG IT TOOK.

23 GIVEN THAT, THE WAY THE CHILD WAS DISCIPLINED MAY BE
24 VERY RELEVANT TO THE ISSUE ON MEANS OF DEATH AND LENGTH OF
25 TIME IN WHICH IT TOOK TO KILL THE CHILD. THAT ISSUE HAS
26 ALREADY BEEN BROUGHT UP BY THE PROSECUTION. WE NEED TO
27 ADDRESS THAT ISSUE.

28 THE COURT: WELL, I AM SURE--

1 MS. SCHMAUSS: SHE DIDN'T DIE OF BITE MARKS, YOUR
2 HONOR. THERE'S NO EVIDENCE.

3 THE COURT: NOBODY DIES OF MARKS.

4 MR. ABLARD: THOSE ARE--

5 THE COURT: WELL, THAT MAY HAVE BEEN. THAT'S
6 INTERESTING. THAT MAY BE A DEFENSE THEORY. AND YOU MAY
7 CALL A DEFENSE WITNESS. AND IF YOU INDICATE THAT YOU ARE
8 GOING TO CALL A WITNESS THAT IS A PROSECUTION WITNESS ON
9 YOUR CASE IN CHIEF ON THE ISSUE OF HOW THE CHILD WAS
10 PUNISHED FOR THINGS THAT CHILDREN DO, AND YOU HAVE

11 EVIDENCE THAT SUGGESTS THAT IT WAS INAPPROPRIATE AND SO
12 ON, AND/OR IF IT GOES BEYOND THE REASONABLE EXPECTATION OF
13 OUR SOCIETY FROM WHICH YOU WISH TO INFER THAT A PARENT MAY
14 HAVE BEEN THE CAUSE OF DEATH AND YOU HAVE SOME EVIDENCE,
15 YOU ARE ENTITLED TO PRESENT IT.

16 MR. ABLARD: YES.

17 THE COURT: HOWEVER, UNTIL SUCH TIME AS YOU HAVE SOME
18 EVIDENCE TO SO SUGGEST IN YOUR CASE, WE ARE NOT GOING TO
19 WANDER OFF.

20 MR. ABLARD: THANK YOU.

21 THE COURT: NOW, MAY WE COMMENCE THIS TRIAL, PLEASE.
22 WHAT HAVE WE ACCOMPLISHED SO FAR THIS MORNING?

23 ALL YOUR REQUESTS HAVE BEEN DENIED. LET'S GET THE
24 JURY IN AND TRY THIS CASE ON THE ISSUES OF WHO KILLED
25 BRITTANY, WHEN, AND HOW.

26 ARE COUNSEL THROUGH CONFERRING? AND NOW MAY I CALL
27 THE JURY IN?

28 MS. SCHMAUSS: YES, YOUR HONOR, YOU MAY.

1 THE COURT: ALL RIGHT.

2 (THE JURY ENTERED THE COURTROOM, AND

3 THE FOLLOWING PROCEEDINGS WERE HELD:)

4 THE COURT: GOOD MORNING, LADIES AND GENTLEMEN. ALL
5 THE JURORS ARE NOW PRESENT. WE HAD A WITNESS ON THE STAND
6 FOR THE PROSECUTION. WOULD YOU DIRECT HER TO RETURN.

7 MS. SCHMAUSS: MS. RETHORN.

8 THE COURT: YOU ARE STILL UNDER OATH FROM YESTERDAY.

9 I AM INFORMED BY MR. ABLARD THAT HE HAD FOUR HOURS OF
10 DRIVING FOR ONE MINUTE OF TESTIMONY.

11 MR. ABLARD: THAT IS CORRECT.

12 THE COURT: YOU MAY CONTINUE YOUR DIRECT EXAMINATION.

13 MS. SCHMAUSS: THANK YOU, YOUR HONOR.

14

15 JENNIFER RETHORN,
16 HAVING BEEN PREVIOUSLY SWORN, RESUMED THE STAND, WAS
17 EXAMINED, AND TESTIFIED AS FOLLOWS:

18 DIRECT EXAMINATION, RESUMED
19 BY MS. SCHMAUSS:

20 Q MS. RETHORN, WHEN WE BROKE OFF YESTERDAY, WE
21 WERE TALKING ABOUT I BELIEVE ABOUT YOUR BED AND WHERE THE
22 BED WAS AGAINST THE WALL. DO YOU KNOW APPROXIMATELY HOW
23 MUCH YOU WEIGHED BACK IN OCTOBER OF '93?

24 A PROBABLY ABOUT 250, 260.

25 Q MORE THAN YOU WEIGH NOW?

26 A YES, DEFINITELY.

27 Q DARIN WOULD SLEEP ON THE OTHER SIDE OF THE BED,
28 SIDE NOT AGAINST THE WALL; CORRECT?

1 A CORRECT.

2 Q AND ON THE TIMES THAT HE WOULD GET UP, WOULD YOU
3 TEND TO NOTICE HIM GETTING UP?

4 A OH, YES.

5 Q WHY?

6 A I WAS A LIGHT SLEEPER AND JUST ANY MOVEMENT.
7 AND HE IS LOUD.

8 Q AND HE IS A BIG GUY?

9 A YES.

10 Q WHAT IS HIS HEIGHT?

11 A HE IS SIX SIX.

12 Q WHEN BRITTANY WALKED OUT OF YOUR ROOM AFTER SHE
13 CAME IN IN THE MORNING, DID SHE CLOSE THE DOOR?

14 A YES.

15 Q WAS THE DOOR CLOSED WHEN YOU HEARD THE RUSTLING
16 SOUND WHEN YOU GOT UP?

17 A YES.

18 Q I'D LIKE TO DRAW YOUR ATTENTION TO THE DAY
19 BEFORE THE INCIDENT, SATURDAY MORNING. WAS THERE AN
20 OCCASION WHEN YOU WERE DOING SOMETHING TO BRITTANY'S EARS?

21 A YES.

22 Q WHAT WERE YOU DOING TO HER EARS?

23 A I WAS CHECKING THEM.

24 Q FOR WHAT REASON?

25 A SHE WAS PULLING ON THE ONE EAR. AND I AM
26 LOOKING TO SEE IF WE ARE STARTING AN EAR INFECTION.

27 Q DID YOU NOTICE THAT THERE WAS ANY BLOOD IN HER--
28 IN EITHER EAR?

1 A NO.

2 Q ANY TIME UP TO THE TIME OF THIS INCIDENT, DID
3 YOU NOTICE ANY BLOOD IN HER EAR? AND I AM TALKING ABOUT
4 SATURDAY AND SUNDAY.

5 A NO.

6 Q NOW, WHEN YOU WERE CHECKING BRITTANY'S EARS, DID
7 SHE HAVE TO BE RESTRAINED?

8 A DARIN WAS HOLDING HER HEAD.

9 Q OKAY. AND WAS ANYBODY ELSE ASSISTING YOU?

10 A CHUCK CAME IN AND HELD BRITTANY'S LEGS BECAUSE
11 SHE WAS KICKING. AND I WAS AFRAID WE'D END UP HURTING
12 HER.

13 Q DID HE RESTRAIN HER LEGS?

14 A YES.

15 Q DID SHE TRY TO KICK?

16 A YES.

17 Q DID HE COMMENT ON THAT?

18 A HE SAID HOW STRONG HER LEGS WERE AND HOW STRONG
19 SHE WAS. HE WAS AMAZED BY IT.

20 Q WHILE YOU WERE CHECKING BRITTANY'S HEARING, DID
21 SHE STRIKE HER HEAD ON ANYTHING?

22 A NO.

23 Q DID YOU KNOW OF ANY INCIDENT OR OCCASION NEAR
24 THE TIME OF OCTOBER 10TH, 1993 WHERE BRITTANY STRUCK HER
25 HEAD?

26 A NO.

27 Q WAS BRITTANY THE KIND OF CHILD THAT WOULD GET
28 HURT AND NOT TELL YOU ABOUT IT?

1 A NO.

2 Q WHAT WOULD SHE DO IF SHE GOT HURT?

3 A SHE'D TELL ME ABOUT IT AND SHE'D COMPLAIN ABOUT
4 IT AND SHE'D MAKE SURE WE KNEW.

5 Q DID YOU NOTICE BRUISES OR A BRUISE ON HER SHIN
6 AT THE TIME OF OCTOBER 9 OR 10TH?

7 A THERE WAS NO BRUISE ON HER THAT I NOTED.

8 Q WHEN WAS THE LAST TIME YOU BATHED HER PRIOR TO
9 OCTOBER 10TH?

10 A SATURDAY MORNING.

11 Q DID YOU NOTICE A BRUISE WHILE YOU BATHED HER?

12 A NO.

13 Q WOULD YOU BE PRETTY CAREFUL ABOUT CHECKING HER
14 BODY AND SEEING IF SHE HAD ANY MARKS OR BRUISES?

15 A YES.

16 Q SO, YOU WOULD SAY YOU WERE AWARE OF YOUR
17 DAUGHTER'S PHYSICAL CONDITION?

18 A YES.

19 Q SPEAKING OF BRITTANY'S PHYSICAL CONDITION, WERE
20 THERE OCCASIONS DURING HER THREE AND A HALF YEARS THAT YOU
21 WOULD TAKE HER TO THE DOCTOR?

22 A YES.

23 Q FOR WHAT KIND OF PROBLEMS?

24 A EAR, SINUS, AND SOME MILD ALLERGIES AND EARLY
25 ASTHMA.

26 Q WHEN WAS THE EARLY ASTHMA?

27 A WHEN SHE WAS SMALLER WHEN WE WERE HAVING
28 ALLERGIC PROBLEMS. IT WAS PRETTY MUCH GONE BY THE TIME

1 SHE WAS TWO, TWO AND A HALF.

2 Q OKAY. SO, BY TWO, TWO AND A HALF, THERE WAS NO
3 LONGER A PROBLEM?

4 A NO.

5 Q WAS SHE ON ANY ASTHMA MEDICATION AFTER THAT?

6 A NO, NOT THAT I RECALL.

7 Q NO INHALER?

8 A I HAD ONE JUST IN CASE. BUT NOT THAT WE HAD TO
9 USE--BRITTANY WAS NEVER TAUGHT ON HOW TO USE AN INHALER.

10 Q DID SHE HAVE ANY OPERATIONS ON HER EARS?

11 A YES.

12 Q WHAT KIND OF OPERATIONS WERE THOSE?

13 A SHE'S HAD, THAT I CAN RECALL, THREE TIMES OF
14 HAVING TUBES. SHE'D HAD ADENOIDS REMOVED WITH TUBES AGAIN
15 AND A SINUS IRRIGATION.

16 Q DO YOU RECALL WHEN THOSE OPERATIONS WERE?

17 A FIRST SET OF TUBES WAS PLACED UNDER A YEAR.

18 Q UNDER A YEAR OLD?

19 A YES. SECOND SET WAS SHORTLY WHEN SHE TURNED
20 ABOUT ONE, ONE AND A HALF. HAD A THIRD SET WHEN SHE
21 TURNED TWO WHICH DEVELOPED INTO PROBLEMS. AND THEN WHEN
22 SHE WAS THREE, SHE HAD HER ADENOIDS REMOVED AND THE LAST
23 SET OF TUBES PLACED.

24 Q DID SHE HAVE TUBES IN HER EARS WHEN SHE DIED?

25 A YES.

26 Q THESE ARE THE TYPE OF TUBES THAT ARE SUPPOSED TO
27 DRAIN THE FLUID SO THE CHILD DOESN'T GET EAR ACHES?

28 A CORRECT.

1 Q WHAT WAS BRITTANY'S CONDITION PHYSICALLY AT THE
2 TIME OF HER DEATH?

3 A VERY STRONG. SHE WAS FINALLY REALLY HEALTHY.
4 AND IT WAS REALLY GOOD. SHE WAS NO LONGER ON MEDICATIONS
5 AT ALL FOR THE LAST SIX MONTHS. JUST VERY CAPABLE STRONG
6 CHILD WHO PLAYED HARD AND--

7 Q WERE YOU RELIEVED THAT YOU DIDN'T HAVE TO KEEP
8 DRAGGING HER BACK TO THE DOCTOR?

9 A YEAH. SHE WAS FINALLY ABLE TO GO TO PRESCHOOL.

10 Q DO YOU RECALL HOW MUCH BRITTANY WEIGHED--

11 A ABOUT 45 POUNDS.

12 Q -- AT THE TIME? AND WHAT SIZE WAS SHE WEARING?

13 A ANYWHERE BETWEEN A FIVE AND A SIX.

14 Q GIRL'S FIVE, SIX?

15 A YES.

16 Q YESTERDAY, YOU TESTIFIED THAT WHEN YOU GOT UP
17 AND STARTED SEARCHING THE HOUSE FOR BRITTANY, YOU NOTICED
18 THAT THE BOTTOM LOCK TO THE FRONT DOOR WAS LOCKED;
19 CORRECT?

20 A CORRECT.

21 Q ARE THERE ANY OTHER DOORS IN THAT HOUSE THAT
22 LEADS TO THE OUTSIDE?

23 A YES. THERE'S THE GARAGE DOOR WHICH IS LOCKED.

24 Q HOW WAS THE GARAGE DOOR LOCKED?

25 A THE GARAGE DOOR GETTING INTO THE GARAGE WAS A
26 DEAD BOLT. AND THEN FROM THE GARAGE ON THE OUTSIDE THE
27 GARAGE WAS A PADLOCK.

28 Q PADDLE LOCK?

1 A PADLOCK.

2 Q SO, YOU DID NOT HAVE A GARAGE DOOR OPENER YOU
3 COULD JUST PUSH A BUTTON ON THE DOOR?

4 A NO.

5 Q DID YOU HAVE OCCASION TO SEE IF THAT PADLOCK WAS
6 LOCKED THAT DAY?

7 A I DIDN'T NOTICE.

8 Q HOW ABOUT THE DOOR LEADING TO THE GARAGE?

9 A THAT DOOR WAS LOCKED.

10 Q WAS LOCKED WHEN YOU STARTED CHECKING?

11 A YES.

12 Q NOW, YOU SAID THAT WHEN CHUCK FINALLY CAME OUT
13 OF HIS ROOM, HE TOLD YOU THAT HE HAD SEEN BRITTANY, GIVEN
14 HER JUICE, TURNED ON THE TV. DO YOU RECALL THAT?

15 A CORRECT.

16 Q DID HE EVER TELL YOU AT ANY TIME BEFORE OR ANY
17 TIME THAT DAY ON THE 10TH THAT HE HAD NOTICED HER IN HIS
18 CLOSET?

19 A NO.

20 Q I AM GOING TO SHOW YOU EXHIBIT 64 FOR
21 IDENTIFICATION AND ASK YOU IF YOU RECOGNIZE IT?

22 A BRITTANY'S VIDEO.

23 Q TAKE A DEEP BREATH.

24 A HER TWEETY BIRD.

25 Q HER TWEETY-BIRD WHAT?

26 A VIDEO, VCR TAPE.

27 Q OKAY. AND DID YOU BUY THIS VIDEO FOR HER?

28 A HER GRANDPARENTS DID.

1 Q WAS THIS A VIDEO THAT SHE LIKED?

2 A YES.

3 Q WHERE WAS IT NORMALLY KEPT?

4 A IN THE LIVING ROOM WITH ALL THE OTHER MOVIES.

5 Q DID YOU EVER LOAN THIS TO THE DEFENDANT?

6 A NO.

7 Q DID HE EVER ASK YOU TO BORROW IT?

8 A NO.

9 Q WOULD THERE BE ANY REASON FOR HIM TO HAVE IT IN
10 HIS ROOM IN HIS VCR?

11 A NO.

12 Q DID SOMEBODY GIVE YOU THIS TAPE AFTER THE
13 INCIDENT ON THE 10TH?

14 A YES.

15 Q WHO?

16 A MICHELLE PAMPLIN AND ANGIE JOHNSON.

17 Q WHAT WERE THEY IN THE PROCESS OF DOING?

18 A CLEANING CHUCK'S ROOM OUT.

19 Q IS THAT A CARTOON-TYPE THING?

20 A YES.

21 Q IT IS NOT A SING-A-LONG OR MUSIC VIDEO?

22 A NO.

23 Q TO YOUR KNOWLEDGE, DID BRITTANY EVER PLAY HIDE
24 AND GO SEEK?

25 A NO.

26 Q HAD YOU EVER TAUGHT HER THAT GAME?

27 A NO.

28 Q WAS BRITTANY THE KIND OF CHILD TO GO HIDE?

1 A NO.

2 Q HAD SHE EVER HIDDEN THAT YOU KNOW OF?

3 A NOT THAT I KNOW OF.

4 Q WHAT WAS HER OPINION OF CLOSED AND DARK SPACES?

5 A SHE WAS AFRAID OF THE DARK. SHE HAD TO HAVE A
6 NIGHTLIGHT AND THE HALL LIGHT ON.

7 Q KNOWING YOUR DAUGHTER, DO YOU FEEL THAT SHE
8 WOULD VOLUNTARILY GO HIDE IN A CLOSET?

9 A NO WAY.

10 Q FINALLY, MS. RETHORN, DID YOU PERSONALLY DO
11 ANYTHING TO HARM YOUR DAUGHTER ON OCTOBER 10, 1993?

12 A NO.

13 Q AND DID YOU SEE DARIN DO ANYTHING TO YOUR
14 DAUGHTER?

15 A NO.

16 Q DID YOU SEE STEVE LOPEZ DO ANYTHING TO YOUR
17 DAUGHTER?

18 A NO.

19 MS. SCHMAUSS: THANK YOU. I DON'T HAVE ANY FURTHER
20 QUESTIONS AT THIS TIME.

21 THE COURT: YOUR WITNESS.

22 MR. ABLARD: THANK YOU, YOUR HONOR.

23 THE COURT: IN THIS MORNING'S DAILY BULLETIN, WHICH
24 IS A LOCAL NEWSPAPER-- IN FACT I THINK WE HAVE A COUPLE OF
25 LOCAL NEWSPAPERS. THEY LIKE TO WRITE ARTICLES ABOUT WHAT
26 OCCURS IN THE COURTHOUSE ON CASES THAT THEY THINK ARE
27 NEWSWORTHY AND WILL SELL PAPERS.

28 THERE'S AN ARTICLE WHICH HAS BEEN BROUGHT TO MY

1 ATTENTION. IT SAYS EMOTIONAL TESTIMONY STARTS TRIAL.
2 AND IT, BELIEVE IT OR NOT, IS DESCRIBING THE EVENTS IN
3 THIS COURTROOM.

4 YOU WILL NO DOUBT ON OCCASION IF YOU READ THE LOCAL
5 PAPERS FIND ARTICLES MAYBE ABOUT THIS CASE. AT LEAST
6 YESTERDAY, THE REPORTER WAS HERE. NOW, IF HE REPORTS
7 TOMORROW ABOUT WHAT HAPPENS TODAY, IT WON'T BE BECAUSE HE
8 WAS HERE. HE WILL REPORT-- IS HE HERE? ARE YOU A
9 REPORTER? WE HAVE A DIFFERENT REPORTER. YES THERE IS A
10 REPORTER HERE. OKAY. SOMETIMES THEY ARE HERE AND
11 SOMETIMES THEY ARE NOT. BUT THEY STILL WRITE ARTICLES
12 PERIODICALLY.

13 IF YOU READ THE ARTICLES, REMEMBER IT IS SOME
14 REPORTER'S INTERPRETATION OF WHAT THAT REPORTER THINKS THE
15 REPORTER HEARD, PLUS THE SPIN THE REPORTER WANTS TO PUT ON
16 IT.

17 I WOULD PREFER THAT IF YOU COMMENCE READING AN
18 ARTICLE ABOUT WHAT IS GOING ON IN THIS DEPARTMENT IN THIS
19 CASE, THAT YOU SET IT--DON'T READ IT. THAT'S A BETTER
20 POSITION FOR YOU FOLKS. I CAN'T ORDER YOU NOT TO.
21 BECAUSE I CAN'T ENFORCE SUCH AN ORDER. IF YOU READ IT,
22 YOU DO.

23 BUT WHAT I WANT YOU TO DO IS YOU HAD INDICATED YOU
24 WOULD DECIDE THIS CASE BASED ON THE EVIDENCE IN THIS
25 COURTROOM. AND CLEARLY, YOU WOULDN'T RELY UPON A COURT
26 REPORTER'S SPIN ON WHAT THE COURT REPORTER HEARD. SO, IF
27 YOU READ THEM, DISREGARD THEM.

28 I GUARANTEE YOU FOLKS WILL BE CONSIDERABLY MORE

1 KNOWLEDGABLE ABOUT THE CASE HAVING LISTENED CAREFULLY TO
2 ALL THE WITNESSES AND ANALYZING THE EVIDENCE AND SO ON
3 RATHER THAN HAVING SOME REPORTER HELP YOU OUT.

4 SO, IF YOU SEE THE ARTICLES, DON'T READ THEM. BUT IF
5 YOU CAN'T RESIST READING, THEN DISREGARD THEM, PLEASE.
6 NOW.

7 MR. ABLARD: THANK YOU, YOUR HONOR.

8 THE COURT: MR. ABLARD.

9
10 CROSS-EXAMINATION

11 BY MR. ABLARD:

12 Q MA'AM, JUST TO START OFF, YOU MENTIONED
13 SOMETHING ABOUT BRITTANY IN PRESCHOOL. WHAT PRESCHOOL WAS
14 SHE GOING TO IN OCTOBER OF '93? WHICH ONE WERE YOU GOING
15 TO ENROLL HER IN? DID YOU GET THAT FAR IN THE PLANNING?

16 A IT WAS JUST BEING DISCUSSED.

17 Q I WANT TO--

18 A I WAS GETTING READY TO ENROLL HER IN SCHOOL AND
19 DID NOT GET THE OPPORTUNITY BECAUSE SHE WAS KILLED.

20 Q -- MAKE SURE THAT WE-- WELL, AS YOU WERE
21 TESTIFYING YESTERDAY, I WAS TAKING THESE NOTES PRETTY
22 QUICKLY. SO, AS I UNDERSTAND IT-- AND CORRECT ME IF I AM
23 WRONG--

24 YOU-ALL, AT 8:57 IN THE MORNING, THAT'S WHEN YOU-ALL
25 GOT UP?

26 A THAT'S WHEN WE HEARD THE NOISE.

27 Q OKAY. AND DID BOTH OF YOU-ALL WAKE UP AT THE
28 SAME TIME?

1 A YES.

2 Q AND BOTH, DO YOU-ALL BOTH GET UP AT THE SAME
3 TIME?

4 A DARIN GOT UP AND WALKED OUT. AND I GOT UP AS HE
5 WAS WALKING OUT THE DOOR.

6 Q DID HE NEED TO GET DRESSED?

7 A YES.

8 Q SO, HE GOT UP, GOT DRESSED. AND HE WAS OUT THE
9 DOOR. AND THEN YOU GOT OUT THE DOOR?

10 A RIGHT.

11 Q THEN YOU GOT UP. YOU GOT DRESSED?

12 A RIGHT.

13 Q OKAY. AND YOUR TESTIMONY WAS HE WENT TO THE
14 BATHROOM WHERE YOU FELT THE NOISE WAS COMING FROM. WAS
15 THAT-- AM I CORRECT?

16 A I ASSUMED DARIN WENT TO THE BATHROOM.

17 Q OKAY. BUT YOU-ALL THOUGHT THE NOISE CAME FROM
18 THE BATHROOM?

19 A CORRECT.

20 Q OKAY. AND WHEN YOU CAME OUT OF YOUR BEDROOM,
21 WHERE IS THE FIRST PLACE THAT YOU WENT?

22 A DOWN THE HALLWAY TOWARDS THE BATHROOM AND
23 BRITTANY'S ROOM AND THE AREA.

24 Q OKAY. AND YOU LOOKED AT THE-- SHE WASN'T IN THE
25 LIVING ROOM?

26 A CORRECT

27 Q YOU CHECKED THE FRONT DOOR?

28 A CORRECT.

1 Q AND THEN YOU WENT TO THE BEDROOM, HER BEDROOM?

2 A AT THAT POINT, I ALREADY KNEW BECAUSE HAVING A
3 DISCUSSION WITH DARIN AND STEVE, HER ROOM WAS ALREADY
4 CHECKED. BUT YES, I WENT BACK TO HER ROOM.

5 Q OKAY. SO ONE, YOU CHECKED THE FRONT DOOR, YOU
6 HAD A DISCUSSION WITH DARIN AND MR. LOPEZ THAT SHE WASN'T
7 IN HER BEDROOM?

8 A CORRECT.

9 Q SO YOU DIDN'T CHECK HER BEDROOM THEN?

10 A I DID CHECK HER ROOM.

11 Q OKAY. SO, THEN OKAY. YOU CHECK HER ROOM.
12 THEN WHAT HAPPENED NEXT?

13 A THE PHONE WAS RINGING. WE WERE HAVING A
14 CONVERSATION. WE WERE JUST ALL IN THAT ONE BIG GROUP OF
15 THE AREA. STEVE AND DARIN WENT OUTSIDE. I WAS IN THAT
16 AREA. THEN I HEARD WHAT, BY FOLLOWING A LITTLE BIT OUT IN
17 THE YARD, AND THEN BACK IN NOT KNOWING WHERE SHE WAS, WENT
18 BACK DOWN THE HALLWAY, AND HAD THE CONVERSATION WITH
19 CHUCK.

20 Q OKAY. NOW, DID YOU ANSWER THE PHONE?

21 A NO.

22 Q DID ANYBODY ANSWER THE PHONE?

23 A DARIN ANSWERED THE PHONE.

24 Q AND WHAT ROOM WAS HE IN WHEN HE ANSWERED THE
25 PHONE?

26 A IT WAS ON THE BAR TOP IN THE KITCHEN-DINING ROOM
27 AREA HERE STEVE AND I WERE PRESENT.

28 Q WAS THERE EVER A TIME THAT DARIN, THAT DARIN IN

1 THIS TIME PERIOD THAT WE ARE TALKING ABOUT, THAT HE WAS ON
2 THE PHONE IN YOU-ALL'S BEDROOM?

3 A NO.

4 Q OKAY. I GUESS ONE OF THE CONCERNS IS IT HAS
5 BEEN TWO YEARS. AND I JUST WANT TO MAKE SURE THAT
6 YESTERDAY, AS THE JUDGE SAID-- AND PEOPLE'S MEMORIES
7 FADE. AND THEN AND I JUST WANT TO MAKE SURE WHAT YOUR
8 RECOLLECTION IS. AND IF IN FACT IT IS NOT A FADED
9 RECOLLECTION.

10 AS YOU-- BEAR WITH ME. OKAY?

11 A OKAY.

12 Q OKAY. FIRST OF ALL, THE TESTIMONY THAT YOU GAVE
13 YESTERDAY, WAS THAT SOMETHING THAT AS YOU COMPLETELY
14 RECALL IT?

15 A I CAN RECALL EVERYTHING THAT HAPPENED. TIME IS
16 VERY HARD TO REALIZE BECAUSE SO MUCH IS HAPPENING IN SO
17 LITTLE SPACE.

18 Q RIGHT?

19 A I CAN TELL YOU WHAT HAPPENED.

20 Q OKAY.

21 A SEQUENCE IS HARD WITH TIME.

22 Q OKAY. THERE ARE CERTAIN TIMES, I GUESS, THAT WE
23 KNOW. THAT'S 8:57.

24 A DEFINITE.

25 Q THAT'S A DEFINITE. NO QUESTION ABOUT THAT;
26 RIGHT?

27 A CORRECT.

28 Q OKAY. YOU MENTIONED THAT THIS NOISE THAT

1 YOU-ALL HEARD THE NOISE WOKE YOU-ALL UP?

2 A CORRECT.

3 Q OKAY. IS THAT SOMETHING THAT YOU THINK THE
4 NOISE WOKE YOU UP OR YOU HAVE A CLEAR RECOLLECTION?

5 A I HAVE A CLEAR RECOLLECTION OF THE NOISE WAKING
6 ME UP.

7 Q OKAY. AND YOU MENTIONED YESTERDAY THAT THE
8 NOISE TOOK YOU FOLKS LIKE A MINUTE OR SO OR TWO MINUTES, A
9 MINUTE. I AM NOT SURE?

10 A THE MINUTE WAS LONGER THAN JUST A BANG NOISE.

11 THE NOISE CONSISTENTLY WENT ON FOR A PERIOD OF TIME. IT
12 WAS NOT SOMETHING THAT SOMETHING JUST DROPPED AND THEN THE
13 NOISE GOES AWAY. IT WAS CONTINUOUS AND IT WAS MORE THAN
14 ONE SOUND. IT WAS A MIXTURE OF THINGS HAPPENING.

15 Q OKAY. AND ONCE YOU-ALL WOKE UP, IT WENT ON FOR
16 A MINUTE OR SO?

17 A I DON'T KNOW EXACTLY. LIKE I SAID, IT IS A VERY
18 HARD NOISE TO DESCRIBE.

19 Q EXACTLY. THAT'S WHY A MINUTE OR SO, YOU, YOUR
20 BEST ESTIMATE?

21 A AROUND A MINUTE.

22 Q OKAY. YOU HAD MENTIONED TO A POLICE OFFICER

23 ONCE IT MIGHT HAVE BEEN TWO MINUTES. DO YOU RECALL THAT?

24 A I DON'T REMEMBER.

25 Q OKAY. THAT'S FINE. I GUESS THE QUESTION I HAVE
26 IS-- GO AHEAD.

27 A THANK YOU.

28 Q THE QUESTION THAT I HAD WAS WHEN THE NOISE WOKE

1 YOU-ALL UP, THEN IT WENT ON FOR APPROXIMATELY-- I AM NOT
2 GOING TO HOLD YOU TO THAT-- A MINUTE. DID YOU-ALL
3 CONTINUE LISTENING TO THE NOISE AND THEN GET UP, OR DID
4 YOU HEAR THE NOISE AND IMMEDIATELY MR. RIGGS GETS UP AND
5 DRESSES AND GOES OUT?

6 A WE HEARD THE NOISE. WE MADE A COMMENT ABOUT IT.
7 'AND WE INSTANTLY STARTED TAKING ACTION BY GETTING UP.

8 Q RIGHT. AND YOU GOT UP AND WERE DRESSED, I
9 GUESS, IN A MATTER OF SECONDS?

10 A CORRECT.

11 Q AND WAS THE NOISE STILL GOING ON WHEN MR. RIGGS
12 HAD EXITED THE BEDROOM INTO THE HALLWAY?

13 A NOT THAT I CAN RECALL, NO.

14 Q OKAY. SO, THE NOISE THEN STOPPED BEFORE THE
15 FIRST PERSON EXITED YOUR ROOM WHICH IS MR. RIGGS?

16 A CORRECT.

17 Q OKAY. YOU FELT THAT THE NOISE WAS COMING FROM
18 THE BATHROOM?

19 A YES.

20 Q PARDON?

21 A YES.

22 Q OKAY. AND THAT WASN'T THE MASTER BATHROOM?

23 A NO.

24 Q THAT WAS-- YOU HAVE TWO BATHROOMS?

25 A YES.

26 Q RIGHT. THAT WAS FROM THE OTHER BATHROOM IN THE
27 HALLWAY?

28 A OKAY.

1 Q YOU NEED A MINUTE?

2 A I'M OKAY.

3 Q OKAY. ARE YOU OKAY?

4 A YES.

5 Q ALL RIGHT. LET ME SORT OF BREAK THAT OFF AND
6 GET INTO SOMETHING. JUST HAVE A LOOK AT A PICTURE. THAT
7 WAY WE WILL SORT OF RELAX YOU A LITTLE BIT. EXHIBIT
8 NUMBER 65. THANK YOU.

9 MA'AM, ON EXHIBIT NUMBER 65, WHAT DOES THIS DEPICT?
10 WHAT DOES THAT SHOW US?

11 A IT SHOWS THE HALLWAY LEADING TO THE DOOR, THE
12 FIRST DOORWAY ON THE LEFT IS THE BATHROOM. THEN YOU CAN
13 SEE THE CUPBOARD. THE LAST DOORWAY ON THE LEFT IS STEVE'S
14 BEDROOM. THE FIRST DOORWAY YOU SEE ON THE RIGHT IS
15 BRITTANY'S ROOM. THE SECOND DOORWAY ON THE RIGHT IS
16 DARIN'S AND MINE DOORWAY. THE THIRD DOORWAY ON THE RIGHT
17 IS CHUCK'S DOORWAY.

18 Q OKAY. NOW, ON THE LEFT HAND SIDE OF THE
19 HALLWAY, THERE APPEARS TO BE A DOORWAY.

20 A CORRECT.

21 Q AND THAT'S THE BATHROOM?

22 A WHICH I THOUGHT THE NOISE WAS COMING FROM.

23 Q RIGHT. AND YOU AND MR. RIGGS HAD DISCUSSED AND
24 HE FELT THE SAME?

25 A YES. WE ASSUMED IT WAS BECAUSE WE THOUGHT
26 BRITTANY WAS INTO SOMETHING.

27 Q OKAY. NOW, THE DOOR TO THE FIRST, TO THE RIGHT,
28 THAT'S BRITTANY'S ROOM?

1 A CORRECT.

2 Q AND THE NEXT DOOR ON THE RIGHT IS YOU-ALL'S
3 ROOM?

4 A CORRECT.

5 Q AND YOUR BED ON THIS PHOTOGRAPH WOULD HAVE BEEN
6 UP TO THE WALL ADJOINING BRITTANY'S ROOM?

7 A CORRECT.

8 Q AND YOU-ALL SLEPT WITH YOUR HEADS, I'M GUESSING,
9 I THINK, I IMAGINE, NEXT TO THE WALL BETWEEN THE HALLWAY?

10 A CORRECT.

11 Q SO, YOUR HEADS WERE ACTUALLY RIGHT ACROSS THE
12 HALLWAY FROM THE BATHROOM?

13 A PRETTY MUCH, YES.

14 Q RIGHT. MAYBE I SHOULD SEE THE DIAGRAM NOW.
15 THIS IS EXHIBIT NO. 61, MAYBE IF I CAN, MIGHT BE A LITTLE
16 MORE HELPFUL. OKAY. CAN YOU SEE IT AS WELL?

17 A PRETTY MUCH, YEAH.

18 Q WE MIGHT HAVE TO GET A STICK. THERE YOU GO.
19 THE PICTURE, THAT EXHIBIT NO. 66?

20 A YES.

21 Q DEPICTS, SHOWS, THIS HALLWAY RIGHT HERE?

22 A YES.

23 Q CORRECT. OKAY. AND THIS RIGHT HERE IS THE
24 DOOR TO BRITTANY'S ROOM?

25 A CORRECT.

26 Q THE DOOR TO THE BATHROOM?

27 A CORRECT.

28 Q DOOR TO YOUR ROOM?

1 A CORRECT.

2 Q THIS IS THE WALL BETWEEN YOUR ROOM AND
3 BRITTANY'S ROOM?

4 A CORRECT.

5 Q AND YOUR BED IS RIGHT HERE; CORRECT?

6 A YES. IT TOOK THE EXTENSION TO THE DOORWAY.
7 BECAUSE IT WAS A KING SIZE BED.

8 Q RIGHT?

9 A YEAH.

10 Q SO, THIS ISN'T TO SCALE?

11 A YEAH, IT WAS.

12 Q THERE?

13 A YEAH.

14 Q OKAY. YOU-ALL'S HEADS ARE RIGHT HERE. THAT'S
15 THE VAULT OF THE HALLWAY?

16 A BASICALLY, YES.

17 Q DIRECTLY ACROSS FROM THIS BATHROOM, THE GUEST
18 BATHROOM, THE ENTRANCE OF THE HALLWAY?

19 A YES, BASICALLY.

20 Q OKAY. FEEL BETTER?

21 A OKAY. THANK YOU.

22 Q OKAY. OH, BY THE WAY, WHERE WAS MR. JOHNSON'S
23 CLOSET, OKAY, ON THIS DIAGRAM. HIS CLOSET WAS UP ON THE
24 OPPOSITE OF YOUR BEDROOM?

25 A CORRECT.

26 Q DIRECT OPPOSITE FROM WHERE THE BATHROOM WAS?

27 A CORRECT.

28 Q OKAY. THAT HAVE BEEN THE BED. THE RULER IS THE

1 BED. THEN MR. JOHNSON'S CLOSET WOULD BE UP HERE BY THE
2 FEET; CORRECT?

3 A CORRECT.

4 Q OKAY. DO YOU RECALL--WOULD IT BE A FAIR
5 STATEMENT TO SAY IN YOUR BEST ESTIMATE THAT YOUR CLO--THAT
6 THE HALLWAY IS ABOUT A THREE-FOOT HALLWAY?

7 A NO.

8 Q OKAY?

9 A YEAH, FIGURING DISTANCE.

10 Q WASN'T A VERY LONG HALLWAY; WAS IT?

11 A NO.

12 Q AS HALLWAYS GO, I DON'T KNOW. I MEAN WHO KNOWS
13 HOW THEY GO. IT IS MY UNDERSTANDING IT IS ABOUT SEVENTEEN
14 FEET LONG.

15 A OKAY.

16 Q WOULD YOU ESTIMATE THEN THAT SAY ABOUT THIS
17 LONG?

18 A OH, IT IS LONGER.

19 Q DO WE HAVE A CHART? I WAS GIVEN A CHART. BUT I
20 COULDN'T FIGURE IT OUT?

21 THE COURT: CHART OF WHAT?

22 MR. ABLARD: THE DISTANCES.

23 THE COURT: I CAN TELL YOU DISTANCE.

24 MR. ABLARD: THANK YOU.

25 THE COURT: YEAH. ONE FOOT EQUALS TWELVE INCHES.

26 MR. ABLARD: THANK YOU.

27 THE COURT: THREE FEET EQUALS A YARD. OTHER THAN
28 THAT, I CAN'T HELP YOU. NOW IF YOU WANT TO GO METERS.

1 MR. ABLARD: I CAN'T DO METERS. THANK YOU.

2 THE COURT: YOU CAN. BUT YOU CAN'T USE IT. IT IS
3 NOT VERIFIED. AND THERE'S NO FOUNDATION FOR IT.

4 MR. ABLARD: FOR THIS.

5 THE COURT: YEAH.

6 MR. ABLARD: NOT A COURT THING?

7 THE COURT: NO.

8 MR. ABLARD: I AM GLAD THAT I KNOW THAT YOU ALL HAVE
9 ONE.

10 THE COURT: DRAWN BY MR. REMLINGER. THEREFORE, IT IS
11 CLEARLY NOT RELIABLE.

12 MR. ABLARD: I GUESS WE WILL COME BACK TO DISTANCE
13 LATER.

14 Q BY MR. ABLARD: IMMEDIATELY AFTER ABOUT HOW
15 LONG-- ABOUT HOW LONG AFTER YOU LEFT YOUR BEDROOM DID YOU
16 REALIZE THAT BRITTANY WAS MISSING?

17 A WITHIN A MINUTE.

18 Q AND WHEN YOU REALIZED THAT BRITTANY WAS MISSING,
19 WAS DARIN OR MR. LOPEZ WITH YOU?

20 A WE ALL BASICALLY REALIZED IT AT THE SAME TIME,
21 YES.

22 Q YOU ARE ALL TOGETHER AT THAT TIME?

23 A YES.

24 Q IMMEDIATELY WHEN EVERYONE REALIZED IT, WHAT
25 HAPPENED NEXT?

26 A STEVE AND DARIN STARTED SEARCHING THE BACK YARD.
27 I STARTED SEARCHING THE HOUSE MORE. STEVE THEN GOT IN HIS
28 CAR AND LEFT TO GO SEARCH THE NEIGHBORHOOD.

1 Q MR. JOHNSON WAS STILL IN HIS ROOM AT THAT TIME?

2 A CORRECT.

3 Q YOU STARTED SEARCHING THE HOUSE. MR. RIGGS WENT
4 IN THE BACK YARD. AND MR. LOPEZ WENT WHERE?

5 A HE WAS IN THE BACK YARD. I MEAN EVERYBODY WAS
6 JUST MOVING AROUND. IT IS NOT A LARGE HOUSE TO SEARCH.

7 Q OKAY. AS SOON AS THEY WENT IN THE BACK YARD,
8 THEN WHAT DID YOU DO?

9 A I STARTED TO FOLLOW THEM OUT A LITTLE BIT. AND
10 THEN I WOULD STEP BACK IN THE HOUSE. I CALLED A NEIGHBOR
11 TO HELP.

12 Q AND THEN YOU SPOKE WITH THE NEIGHBOR?

13 A CORRECT.

14 Q I IMAGINE RATHER BRIEFLY?

15 A SECONDS.

16 Q YES?

17 A YES.

18 Q AND THEN YOU DID WHAT?

19 A WHEN I HEARD THAT CHUCK HAS SEEN HER AND I WENT
20 DOWN THE HALL TO SPEAK TO HIM.

21 Q YOU HEARD THAT CHUCK HAD SEEN HER. AND FROM
22 WHOM DID YOU HEAR THAT?

23 A DARIN.

24 Q NOW, YOU KNOW HOW HE GOT THAT INFORMATION?

25 A CHUCK PEEKED THROUGH HIS BLINDS OUT THE BACK
26 WINDOW AND TOLD DARIN HE SAW HER TWENTY MINUTES AGO ON THE
27 COUCH.

28 Q OKAY. THAT'S THEN WHEN YOU WENT DOWN TO CHUCK'S

1 ROOM?

2 A CORRECT.

3 Q OKAY. NOW ABOUT HOW LONG WAS THAT AFTER THE
4 8:57?

5 A I HAVE NO IDEA.

6 Q OKAY. AND AT THAT TIME, YOU REALIZED OF COURSE
7 WHEN YOU WERE AT MR. JOHNSON'S DOOR THAT BRITTANY WAS
8 MISSING?

9 A OF COURSE.

10 Q DARIN WAS YELLING FOR BRITTANY OUTSIDE. STEVE
11 LOPEZ, WAS HE ALREADY IN HIS CAR?

12 A HE CAME WHEN WE PASSED EACH OTHER IN THE HALLWAY
13 AS HE GOT HIS KEYS TO LEAVE. HE HAD TO GO TO HIS BEDROOM
14 TO GET HIS KEYS. AND WE PASSED EACH OTHER IN THE HALLWAY.

15 Q OKAY. AND THAT'S WHEN YOU YELLED IN TO
16 MR. JOHNSON AND AS TO WHAT SHE WAS WEARING?

17 A CORRECT.

18 Q OKAY. AND I BELIEVE YESTERDAY YOU SAID THAT
19 MR. JOHNSON SAID HE WASN'T COMING OUT OR HE DIDN'T KNOW,
20 OR WHAT DID HE SAY?

21 A HE SAID GO AWAY. I'M BUSY. I'LL BE OUT IN A
22 MINUTE.

23 Q OKAY?

24 A VERY HARSH.

25 Q DID YOU AT ANY TIME TELL ANY POLICE OFFICERS
26 ANYTHING DIFFERENT THAN THAT HE MIGHT HAVE SAID?

27 MS. SCHMAUSS: OBJECTION; VAGUE.

28 THE COURT: THAT IS PRETTY VAGUE.

1 MR. ABLARD: OKAY.

2 Q BY MR. ABLARD: DID YOU EVER TELL ANY POLICE
3 OFFICERS THAT MR. JOHNSON, WHEN YOU KNOCKED ON HIS DOOR TO
4 ASK ABOUT WHAT BRITTANY WAS WEARING, RIGHT, THAT WHAT HE
5 SAID WAS SOMETHING SIMILAR TO EITHER HE DIDN'T REMEMBER OR
6 NOT SHE HAD ON A PINK OUTFIT OR A PARTICULAR OUTFIT. DO
7 YOU RECALL TELLING ANY POLICE OFFICER THAT?

8 A HE DID NOT TELL ME AT THAT TIME. HE TOLD ME
9 LATER.

10 Q ALL RIGHT. BUT AT THAT TIME, DO YOU RECALL
11 TELLING THE POLICE OFFICER THAT AT THAT TIME THAT HE TOLD
12 YOU?

13 A NO, I DIDN'T SAY IT AT THAT POINT.

14 Q OKAY. SO, I TAKE IT OBVIOUSLY AT THAT TIME THAT
15 YOU WERE VERY CONCERNED?

16 A YES.

17 Q FOR THE OBVIOUS REASONS. AND DID YOU THEN GO TO
18 THE BACKYARD AND TELL DARIN THAT MR. JOHNSON IS IN HIS
19 ROOM AND--

20 A DARIN WAS ALREADY BACK IN THE HOUSE.

21 Q OKAY. HE WAS BACK IN THE HOUSE. AND DO YOU GO
22 TO DARIN AND SAY MR. JOHNSON IS VERY GRUFF AND WON'T GIVE
23 US ANY INFORMATION?

24 A NO. DARIN AND I JUST KEPT ON LOOKING AT EACH
25 OTHER AND SAID WHERE IS SHE.

26 Q YOU-- OKAY.

27 A OKAY.

28 Q OKAY. DID YOU, WHEN YOU SAID MR. JOHNSON SAID

1 THESE THINGS IN THIS GRUFF FASHION AND YOU WERE VERY
2 WORRIED, DID YOU TRY TO OPEN UP HIS DOOR?

3 A NO.

4 Q YOU DIDN'T TRY TO JIGGLE THE KNOB, OPEN UP THE
5 DOOR?

6 A I DIDN'T EVEN KNOCK ON THE DOOR. I TALKED FROM
7 THE DOOR.

8 Q SO, THEN RIGHT AFTER THIS INCIDENT WITH
9 MR. JOHNSON AND HIS-- AND IN HIS ROOM THEN YOU AND DARIN
10 CONTINUED SEARCHING OTHER PLACES?

11 A YES.

12 Q OKAY. AND WHERE DID YOU-ALL SEARCH?

13 A DARIN WENT OUT FRONT. I STOPPED BY OUR ROOM,
14 LOOKED AGAIN, GRABBED PICTURES OF BRITTANY. THEN I
15 DECIDED THAT I WAS GOING TO-- I WAS WORKING MY WAY BACK
16 OUT TO TELL DARIN I WAS GOING TO CALL 911.

17 Q YOU PASSED OUT PICTURES TO WHO?

18 A I GOT PICTURES TOGETHER SO WE CAN GIVE JEFF AS
19 HE CAME BY. THAT'S A NEIGHBOR. SO DARIN WOULD HAVE A
20 PICTURE. AND THEN WHEN THE POLICE GOT THERE, THEY WOULD.

21 Q WE HAVE TIME. SO, THAT'S OKAY. WHEN WAS IT
22 THAT YOU OFFERED A PICTURE TO MR. JOHNSON?

23 A I HAD THE PICTURE ON THE COUNTER TOP OF WHERE
24 THE PHONE WAS WHEN WE CALLED 911 FROM. AND THEY WERE
25 LAYING FACE UP. AND HE WAS TURNING THEM DOWN AND WOULD
26 NOT TAKE ONE.

27 Q OKAY. DID YOU EVER TELL THE POLICE OFFICER THAT
28 HE DID TAKE ONE?

1 A I DON'T REMEMBER.

2 Q AND IT WAS YOUR IDEA TO CALL 911?

3 A YES.

4 Q AND EXACTLY WHEN IN THE PROCESS WAS THAT?

5 A LIKE I SAID, AFTER I TALKED TO CHUCK AT THE
6 DOORWAY, I CAME BACK BY OUR ROOM, BY BRITTANY'S ROOM.
7 CHUCK THEN CAME OUT, SAID NOTHING TO ME. AND I THEN
8 PROCEEDED TO GO OUTSIDE TO TALK TO DARIN BECAUSE DARIN WAS
9 AT THE FRONT OF THE YARD. AND AT THAT POINT, I DECIDED IT
10 WAS TIME TO CALL THE POLICE.

11 Q AND HOW DID THAT PROCEDURE WORK?

12 A I WAS COMING BACK IN. CHUCK WAS IN THE DINING
13 ROOM AREA. I WAS UPSET. AND I SAID I AM CALLING 911.
14 AND HE GRABBED THE PHONE. AND THEN I TOOK THE PHONE AWAY
15 FROM HIM AND TALKED TO HIM. AND THEN THERE WAS POLICE AT
16 OUR HOUSE.

17 Q DID HE EVER TALK TO 911?

18 A ALL THAT I KNOW IS HE PICKED UP THE PHONE. AND
19 THEN I TOOK IT AWAY FROM HIM.

20 Q DID YOU EVER TELL ANY POLICE OFFICER OR ANYONE
21 THAT MR. JOHNSON SUGGESTED YOU CALL 911?

22 A NOT THAT I RECALL.

23 Q OKAY. NOW, I AM SORRY. DO YOU HAVE SOME WATER?

24 A YEAH, I DO. THANK YOU.

25 Q OKAY. ALL RIGHT.

26 THE COURT: WE ARE GOING TO TAKE A SHORT RECESS
27 FOLKS. I HAVE TO GIVE MY STAFF A MID-MORNING BREAK. WE
28 STARTED LONG BEFORE YOU FOLKS GOT CALLED IN HERE. I'LL

1 TELL YOU THAT.

2 TAKE ABOUT TEN. DON'T DISCUSS THE CASE. DON'T FORM
3 OPINIONS OR CONCLUSIONS. I'D LIKE TO RECOMMENCE RIGHT AT
4 11 IF WE COULD, FOLKS. PLEASE. I AM NOT TALKING TO YOU.
5 I AM TALKING TO THE OTHERS. TEN MINUTES. THANK YOU.

6 (RECESS)

7 THE COURT: ALL RIGHT. THE JURORS ARE ALL PROPERLY
8 SEATED. LET US CONTINUE.

9 JENNIFER RETHORN,
10 HAVING BEEN PREVIOUSLY SWORN, RESUMED THE STAND, WAS
11 EXAMINED, AND TESTIFIED AS FOLLOWS:

12 CROSS-EXAMINATION, RESUMED,
13 BY MR. ABLARD:

14 Q DID MR. JOHNSON EVER GO OUTSIDE AND ATTEMPT TO
15 HELP LOCATE BRITTANY?

16 A HE WANDERED OUT OF THE HOUSE BUT WASN'T GONE
17 VERY LONG.

18 Q OKAY. ABOUT HOW LONG WAS HE GONE; DO YOU
19 RECALL?

20 A I CAN'T RECALL HOW LONG. HE WAS JUST IN AND
21 OUT.

22 Q AND WHAT'S YOUR BEST ESTIMATE ABOUT HOW LONG HE
23 WAS OUT? HALF A MINUTE, A MINUTE, FIVE MINUTES?

24 A I REALLY COULDN'T SAY.

25 Q OKAY. WHEN DID HE GO OUT THE FIRST TIME? IN
26 OTHER WORDS, EVERYONE IS LOOKING?

27 A THE ONLY TIME I SAW HIM GO OUT IS AT THAT TIME I
28 WENT OUT TO TALK TO DARIN ABOUT CALLING 911.

1 Q AND YOU WENT OUT TO DARIN. DARIN WAS IN THE
2 BACKYARD?

3 A NO.

4 Q OH, I'M SORRY. TELL ME WHERE HE WAS?

5 A DARIN WAS IN THE FRONT OF THE HOUSE TALKING TO
6 NEIGHBORS.

7 Q AND MR. JOHNSON THEN CAME OUT?

8 A HE FOLLOWED ME OUT.

9 Q FOLLOWED YOU OUT. AND YOU WERE TALKING TO
10 DARIN?

11 A YES.

12 Q AND WHERE DID MR. JOHNSON GO?

13 A I DIDN'T SEE HIM. BECAUSE WHEN I CAME BACK IN
14 THE HOUSE TO ACTUALLY MAKE THE EMERGENCY CALL, HE WAS IN
15 BEFORE I WAS.

16 Q OKAY. DID YOU SEE HIM GO TO ANY NEIGHBOR'S
17 HOUSE?

18 A NO.

19 Q DID YOU SEE HIM STOP ANY VEHICLES AND MAKE
20 INQUIRIES?

21 A NO.

22 Q DID YOU SEE HIM STOP ANY VEHICLES AND SHOW THEM
23 PICTURES OF JENNIFER-- I MEAN OF BRITTANY? YOU ARE
24 JENNIFER. I AM SORRY.

25 A NO.

26 Q DID HE HAVE A PICTURE WITH HIM WHEN HE WENT
27 OUTSIDE?

28 A NOT THAT I KNOW OF.

1 Q DID YOU GIVE HIM A PICTURE FOR HIM TO TAKE
2 OUTSIDE?

3 A LIKE I SAID EARLIER, HE WAS TURNING THE PICTURES
4 UPSIDE DOWN. HE WOULD NOT LOOK AT HER PICTURE.

5 Q DO YOU REMEMBER WHEN YOU FIRST-- DO YOU RECALL
6 WHEN YOU FIRST SPOKE WITH AN OFFICER ABOUT THIS OFFICER
7 BALES, I BELIEVE IT WAS?

8 A YES, I SPOKE TO OFFICER BALES.

9 Q CORRECT. DO YOU RECALL TELLING OFFICER BALES
10 THAT YOU HAD QUICKLY GOTTEN PHOTOGRAPHS OF YOUR MISSING
11 DAUGHTER AND GIVEN THEM TO BOTH OF THE ROOMMATES, LOPEZ
12 AND JOHNSON. THEY IMMEDIATELY WENT OUT INTO THE STREET
13 FOR THEY APPARENTLY WERE TRYING TO LOCATE THE MISSING
14 GIRL?

15 A I DON'T RECALL SAYING ANYTHING TO OFFICER BALES,
16 BEING SO UPSET AT THE TIME.

17 Q OKAY. SO, I TAKE IT BECAUSE OF YOUR MENTAL
18 STATE AT THE TIME, THAT THE THINGS THAT YOU, THIS
19 PARTICULAR THING THAT YOU TOLD OFFICER BALES MAY NOT HAVE
20 BEEN EXACTLY WHAT HAPPENED?

21 A THE ONLY THING I REMEMBER WHEN OFFICER BALES WAS
22 STANDING THERE JUST TRYING AND HAVING HIM TELL ME TO CALM
23 DOWN. AND NEXT THING I KNOW HE WAS TELLING ME TO GO TO
24 THE HOSPITAL.

25 MS. SCHMAUSS: I WOULD OBJECT; STATES FACTS NOT IN
26 EVIDENCE. THE QUESTION WAS YOU TOLD OFFICER BALES. I
27 DON'T BELIEVE SHE EVER SAID SHE TOLD THAT TO OFFICER
28 BALES.

1 THE COURT: IF SHE AFFIRMS THAT, THEN IT BECOMES A
2 FACT IN EVIDENCE. OVERRULED.

3 Q BY MR. ABLARD: NOW, YOU RECALL MR. JOHNSON GOING
4 OUT OF THE HOUSE MORE THAN ONCE IN THIS--

5 A NO.

6 Q -- PERIOD OF TIME, JUST THE ONE?

7 A JUST ONCE.

8 Q WHEN BRITTANY CAME IN IN THE MORNING, WAS IT
9 FAIR TO SAY YOU--BETWEEN 7 TO-- WHAT TIME DID BRITTANY
10 FIRST COME IN IN THE MORNING?

11 A I AM ASSUMING IT WAS AROUND 7:30.

12 Q AND WAS THE DOOR CLOSED?

13 A YES.

14 Q DID SHE KNOCK FIRST?

15 A SHE KNOCKED AND WALKED.

16 Q OKAY. THAT'S WHAT YOU TESTIFIED TO YESTERDAY?

17 A YES.

18 Q OKAY. AND DID SHE SAY ANYTHING TO-- I'M SORRY.
19 EXCUSE ME. OKAY.

20 DID SHE SAY ANYTHING TO YOU OR MR. RIGGS AS SHE WAS
21 WALKING IN THE ROOM?

22 A SHE CAME IN AND SAID GOOD MORNING.

23 Q DID MR. RIGGS YELL AT HER TO GO OUT AND WATCH
24 TV?

25 A NO.

26 Q YOU NEVER TOLD THE POLICE OFFICER THAT, THAT
27 MR. RIGGS YELLED AT HER?

28 A NO, I DID NOT.

1 Q NOW, WHEN THE POLICE VERY FIRST SPOKE WITH YOU
2 ABOUT THIS WHEN THEY FIRST SPOKE TO YOU, DID YOU MENTION
3 TO THEM ANYTHING ABOUT YOU WERE AWAKENED BY A NOISE? DO
4 YOU REMEMBER?

5 A I DON'T RECALL.

6 Q OKAY. THIS WAS IN THAT VERY FIRST TIME PERIOD
7 WHEN YOU WERE OBVIOUSLY VERY UPSET; RIGHT?

8 A YES.

9 Q OKAY. DO YOU RECALL EVER TALKING TO ANYONE
10 ABOUT THAT THE NOISE ISN'T WHAT WOKE YOU-ALL UP?

11 A NO, I DON'T RECALL THAT AT ALL.

12 Q OKAY. THERE WAS A MEETING WAS HELD. I DON'T
13 KNOW IF IT WAS THE 10TH OR 11TH. A LOT OF FRIENDS CAME
14 OVER OR YOU WENT TO SOMEONE ELSE'S HOUSE.

15 A IT WASN'T A MEETING. IT WAS ON THE 11TH.

16 Q OKAY?

17 A MONDAY NIGHT AFTER I SAW MY FATHER. AND I WAS
18 GOING TO MY GODMOTHER'S-- DAUGHTER'S GODMOTHER'S HOUSE.
19 IT WAS AT THE HOSPITAL WITH US. AND A FEW OF MY FRIENDS
20 WERE COMING OVER THERE FOR THE FIRST TIME FOR US ALL TO
21 GET TOGETHER TO GRIEVE FOR BRITTANY. AND THERE WAS SOME
22 UNINVITED GUESTS WHO SHOWED.

23 Q AND WHO WERE THE UNINVITED GUESTS?

24 A CHRISTY CROCKER AND JENNY FERRERA.

25 Q OKAY. NOW, CHRISTY CROCKER, WHAT WAS YOUR
26 RELATIONSHIP SOCIALLY WITH HER?

27 A ACQUAINTANCE.

28 MS. SCHMAUSS: OBJECTION; IRRELEVANT.

1 MR. ABLARD: VERY RELEVANT, YOUR HONOR.

2 THE COURT: WELL, THAT'S NOT AN APPROPRIATE RESPONSE
3 TO THE RELEVANCY OBJECTION.

4 MR. ABLARD: OKAY. WELL.

5 MS. SCHMAUSS: DO WE APPROACH, PERHAPS?

6 MR. ABLARD: MAY WE APPROACH, OR SPEAK FROM HERE?

7 THE COURT: WHAT'S THE RELEVANCY OF HER RELATIONSHIP
8 WITH SOMEBODY THAT IS A STRANGER.

9 MR. ABLARD: WE DON'T KNOW THAT SHE IS A STRANGER.

10 THE COURT: IN THE ACTION.

11 MR. ABLARD: PARDON.

12 THE COURT: TO THIS ACTION, AS FAR AS I CAN TELL.

13 MR. ABLARD: OH, BECAUSE OF STATEMENTS MADE, YOUR
14 HONOR, BY THE WITNESS.

15 THE COURT: BY THIS WITNESS?

16 MR. ABLARD: YES.

17 THE COURT: YOU ARE TELLING ME YOU EXPECT TO CALL
18 CROCKER TO TESTIFY TO STATEMENTS MADE.

19 MS. SCHMAUSS: WELL, IT DEPENDS UPON WHAT MS. RETHORN
20 SAYS.

21 THE COURT: OVERRULED.

22 MR. ABLARD: THANK YOU.

23 Q BY MR. ABLARD: NOW, SO EARLIER SPEAKING, WHAT
24 WAS YOUR RELATIONSHIP WITH MS. CROCKER?

25 A THE LAST TIME I SAW MRS. CROCKER WAS WHEN DARIN
26 AND I GOT BACK TOGETHER.

27 THE COURT: THEY DIDN'T ASK THAT QUESTION. HE ASKED
28 WHAT WAS YOUR RELATIONSHIP, IF ANY.

1 A ACQUAINTANCE.

2 THE COURT: THANK YOU.

3 Q BY MR. ABLARD: SHE WASN'T A FRIEND. I'M SORRY.

4 A I DIDN'T CONSIDER HER A FRIEND.

5 Q OKAY. AS AN ACQUAINTANCE, HOW OFTEN DID YOU SEE
6 EACH OTHER, SAY 1993?

7 A 1993, SHE MOVED OUT OF BRITTANY'S GODMOTHER'S IN
8 MARCH. AND I SAW HER MAYBE THREE TIMES BEFORE OCTOBER 10,
9 1993.

10 Q OKAY. WAS SHE A ROOMMATE OF YOURS AT ANY TIME?

11 A NO.

12 Q HOW ABOUT MS. FERRERA, FERRERA. WAS THAT AN
13 UNINVITED GUEST?

14 A YES.

15 Q AND WHAT WAS YOUR SOCIAL RELATIONSHIP WITH HER?

16 A LESS OF AN ACQUAINTANCE THAN CHRISTY CROCKER.

17 Q OKAY. DID YOU EVER HAVE AN OPPORTUNITY TO
18 BABY-SIT MS. CROCKER'S CHILD?

19 MS. SCHMAUSS: OBJECTION; IRRELEVANT.

20 THE COURT: OVERRULED.

21 A I TURNED DOWN THE OFFER THAT SHE--

22 THE COURT: THE ANSWER IS YES, I DID OR NO. DID SHE
23 HAVE THE OPPORTUNITY.

24 MR. ABLARD: I BELIEVE I ASKED IF SHE DID.

25 THE COURT: WELL, YOU ASKED. I AM GOING TO RETHINK.
26 DID SHE HAVE THE OPPORTUNITY IS NOT RELEVANT.

27 MR. ABLARD: I AGREE.

28 Q BY MR. ABLARD: DID YOU EVER BABY-SIT

1 MS. CRAWFORD'S CHILDREN OR CHILD?

2 THE COURT: YES, I DID; NO, I DIDN'T.

3 A I DON'T RECALL. YES AND NO.

4 THE COURT: THANK YOU.

5 Q BY MR. ABLARD: OKAY.

6 A IT IS--

7 Q COULD YOU EXPLAIN IT?

8 A CHRISTY MIGHT HAVE BEEN AT HER GODMOTHER'S HOUSE
9 WHERE SHE LIVED WITH BRITTANY AND I COULD HAVE BEEN THERE
10 WHILE CHRISTY WALKED OUT THE DOOR AND THERE WAS MORE THAN
11 ONE OF US IN THE ROOM AT THE TIME.

12 Q OKAY. THERE WAS NEVER LIKE A FORMAL
13 BABY-SITTING. BUT SOMETIMES HER CHILD WAS OVER WITH HER
14 AT YOUR HOUSE?

15 A NOT AT MY HOUSE, AT BRITTANY'S GODMOTHER'S
16 HOUSE.

17 Q OKAY.

18 A AND I TURNED DOWN AN OCCASION IN AUGUST OF '94.

19 Q OKAY. DID YOU DURING THIS WHEN YOU WERE GETTING
20 YOUR FRIENDS TOGETHER, DID YOU DISCUSS THE EVENTS OF THE
21 MORNING OF THE 10TH AT THAT TIME?

22 A I DON'T RECALL WHAT HAPPENED. THE PURPOSE WAS
23 FOR ALL OF US TO BE TOGETHER. AND WE WERE CRYING. AND
24 THE NEWS CAME ON WITH BRITTANY'S PICTURE.

25 Q OKAY. AND BUT YOU DON'T RELAYING THE EVENTS AS
26 THEY UNFOLDED--

27 A NOBODY KNEW AT THAT TIME--

28 Q -- THAT MORNING?

1 A -- WHAT WAS GOING ON. I DON'T REMEMBER.

2 Q DID YOU TELL MS. FERRARA THAT BRITTANY CAME IN
3 AND WANTED SOME JUICE, AND YOU WERE LAYING, YOU-ALL WERE
4 LAYING IN BED AWAKE AT THIS TIME?

5 A I DON'T EVEN RECALL SEEING HER AND SPEAKING TO
6 HER. BECAUSE SHE WAS-- I WOULD NOT HAVE CALLED HER TO
7 TELL HER BRITTANY DIED.

8 Q RIGHT. BUT AT THIS GET-TOGETHER ON THE 11TH,
9 SHE WAS THERE?

10 A IT IS HARD TO REMEMBER EVERYTHING THAT HAPPENED
11 THAT NIGHT. I REMEMBER JUST BEING CLOSE TO MY FRIEND RICK
12 AND SHERRY AND REINA AND NOT REALLY TALKING, CRYING A LOT.

13 Q HOW MANY FRIENDS DID YOU HAVE OVER THERE, BY THE
14 WAY?

15 A IT WAS REINA'S HOUSE. HER TWIN SISTER WAS THERE,
16 SHERRY AND HER HUSBAND. DARIN AND I, RICK AND HIS FIANCE.
17 A COUPLE OF MY NEIGHBORS FROM THE APARTMENT BUILDING
18 BRITTANY AND I LIVED IN CAME DOWN. CHRISTY SHOWED UP.
19 EVERYBODY SAYS JENNY SHOWED UP. I DON'T RECALL IT. I
20 MEAN, IT WAS THERE WE WERE ALL UPSET. DARIN AND I WERE
21 GOING OVER TJERE TO SEE RICK, REINA, SHERRY. AND THAT'S
22 ALL I CARED ABOUT.

23 Q OKAY. CHRISTY IS MS. CRAWFORD?

24 A EXCUSE ME.

25 Q YOU REFERRED TO CHRISTY. IS THAT MS. CRAWFORD?

26 A YES.

27 Q YOU DIDN'T KNOW, IN OTHER WORDS, YOU DIDN'T CALL
28 MS. FERRERA TO HAVE HER COME OVER; RIGHT?

1 A CORRECT.

2 Q SHE WAS UNINVITED?

3 A CORRECT.

4 Q OKAY. DO YOU RECALL SAYING AT THAT

5 GET-TOGETHER THAT YOU WERE ASLEEP AND DIDN'T HEAR
6 ANYTHING?

7 A I DON'T RECALL ANYTHING OF CONVERSATION OF THAT
8 NIGHT.

9 Q OKAY. SO, YOU DON'T RECALL SAYING THAT YOU WERE
10 LYING IN BED AWAKE AND THEN HEARD A NOISE LIKE A NOISE
11 FROM THE BATHROOM?

12 A I DON'T RECALL ANYTHING. I JUST GOT BACK FROM
13 MY DAD, SEEING MY DAD, AND HAVING TO TELL HIM THAT HIS
14 GRANDDAUGHTER IS DEAD, GOING TO HIS HOUSE AND HAVING THE
15 NEWS SHOW MY DAUGHTER'S PICTURE. I DON'T REMEMBER
16 ANYTHING.

17 Q I AM GOING TO SOMETHING ELSE. YOU OKAY?

18 A OKAY.

19 Q ALL RIGHT. THERE WAS SOME DISCUSSION YESTERDAY,
20 I THINK, ABOUT THIS LOCK INSIDE MR. JOHNSON'S ROOM. DO
21 YOU RECALL?

22 A YES.

23 Q AND I GUESS IT WAS THAT SATURDAY, SATURDAY
24 NIGHT, MR. JOHNSON PUT ON A DOOR-KNOB LOCK?

25 A YES.

26 Q AND THAT WAS THE KIND THAT YOU COULD LOCK FROM
27 THE INSIDE, BUT ONLY LOCK FROM THE OUTSIDE WITH A KEY?

28 A CORRECT.

1 Q AND DO YOU REMEMBER THEN THAT THAT'S WHEN HE
2 TOOK OFF THE LITTLE LOCK, THE OTHER LITTLE LOCK?

3 A HE NEVER TOOK THAT LOCK OFF. IT REMAINED ON.

4 Q THAT REMAINED ON?

5 A YES.

6 Q NOW, WAS THERE A SPARE KEY TO THAT DOOR-KNOB
7 LOCK HE PUT ON?

8 A YES. I ASKED FOR ONE.

9 Q OKAY. YOU HAD A SPARE KEY?

10 A EVERYONE HAD ACCESS TO THE SPARE KEY.

11 Q AND THAT WAS KEPT WHERE?

12 A IN THE HALL CLOSET.

13 Q OKAY. DURING THE TIME THAT MR. JOHNSON WAS IN
14 HIS ROOM AND WAS SAID--

15 A EXCUSE ME.

16 Q YOU SAID WAS GRUFF TO YOU AND SO ON AND SO
17 FORTH, DID YOU EVER GO TRY TO UNLOCK THE DOOR?

18 A NO. I HAD NO REASON TO.

19 Q OKAY. NOW, THE 911 CALL AGAIN, DID
20 MR. JOHNSON--WHO DIALED THE PHONE, YOU OR MR. JOHNSON?

21 A MR. JOHNSON PICKED UP THE PHONE AFTER I STATED I
22 WAS GOING TO BE CALLING 911.

23 Q HAD YOU EVER MENTIONED TO ANYONE THAT YOU WERE
24 ACTUALLY GOING TO CALL A REGULAR NUMBER DESPITE THE FACT
25 THAT YOU FELT THAT THIS WAS SERIOUS, YOU FELT THAT THE
26 POLICE WOULD GET OUT QUICKER BY CALLING THE REGULAR
27 NUMBER?

28 A I DIDN'T RECALL THAT, NO.

1 Q OKAY. DID YOU EVER MENTION TO ANYONE THAT
2 MR. JOHNSON THEN HANDED THE PHONE TO YOU?

3 A MY RECOLLECTION IS THAT I TOOK THE PHONE AWAY.

4 Q MR. JOHNSON, WHEN IT WAS AFTER YOU-ALL GOT UP
5 AND AFTER YOU HAD GONE TO MR. JOHNSON'S DOOR AND THEN LEFT
6 TO SEARCH WITH DARIN AGAIN, IT WAS ANOTHER, WHAT, TEN
7 MINUTES BEFORE MR. JOHNSON CAME OUT?

8 A I DON'T KNOW HOW MANY MINUTES IT WAS.

9 Q OKAY. DID YOU EVER DISCUSS WITH ANYONE IT HAD
10 BEEN TEN MINUTES?

11 A I DON'T RECALL.

12 Q DO YOU RECALL THAT DURING THIS 911 PERIOD OF
13 TIME, MR. JOHNSON TAKING THE PHONE OUT OF YOUR HAND AND
14 DIALING 911?

15 A NOT THAT I CAN RECALL, NO.

16 Q YOU NEVER TOLD ANYONE THAT?

17 A I DON'T REMEMBER.

18 Q YOU THEN HAD SOME EAR PROBLEMS THAT BRITTANY WAS
19 HAVING?

20 A HAD.

21 Q RIGHT. HAD. OKAY. AND WAS SHE SCHEDULED FOR
22 ANY OTHER PROCEDURE LIKE A SINUS PROCEDURE?

23 A NO. SHE WAS PERFECTLY HEALTHY FOR THE LAST SIX
24 MONTHS OF HER LIFE.

25 Q AND JUST PRIOR TO THE--

26 A EXCUSE ME.

27 Q IT'S OKAY. AND I KNOW BEING I AM GOING SLOW, WE
28 CAN TRY TO MAKE IT SO IT'S OKAY.

1 WHAT TYPE OF MEDICATION WAS SHE TAKING FOR THIS EAR
2 PROBLEM?

3 A SHE WAS NOT ON ANY MEDICATION IN THE LAST SIX
4 MONTHS.

5 Q RIGHT. OKAY. BUT JUST PRIOR TO THAT, WHAT
6 TYPE OF MEDICATIONS WAS SHE TAKING FOR THE EAR PROBLEMS?

7 MS. SCHMAUSS: I AM GOING TO OBJECT. THAT'S VAGUE,
8 JUST PRIOR. THAT SHE SAID SIX MONTHS, SHE HADN'T BEEN.

9 MR. ABLARD: FINE. I WILL WITHDRAW AND REPHRASE.
10 THANK YOU.

11 Q BY MR. ABLARD: MA'AM, DURING THE PERIOD OF
12 TIME-- WHEN WAS THE LAST TIME SHE HAD AN EAR OPERATION
13 WITH THE TUBES?

14 A SHE HAD HER ADENOIDS REMOVED AND SINUS
15 IRRIGATION, AND THE ONE TUBE REPLACED BACK IN MARCH OF
16 '93.

17 Q OKAY. WAS BRITTANY TAKING ANY MEDICATION PRIOR
18 TO THAT LAST SURGICAL PROCEDURE FOR HER EARS OR?

19 A ON AND OFF, YES.

20 Q DO YOU RECALL WHAT?

21 A ANTIBIOTICS.

22 Q DO YOU RECALL WHAT KIND?

23 A THERE WAS DIFFERENT KINDS. BECAUSE OF DIFFERENT
24 REACTIONS SHE WAS HAVING, AT SOME POINT, SHE'D HAVE TO
25 HAVE SHOTS.

26 Q WHAT TYPE OF REACTION WAS SHE HAVING?

27 MS. SCHMAUSS: OBJECTION; IRRELEVANT.

28 MR. ABLARD: MAY WE APPROACH?

1 (SIDE BAR; NOT REPORTED)

2 THE COURT: NOW, YOU FOLKS WEREN'T EAVESDROPPING;
3 WERE YOU? I TOLD YOU YOU CANT DO THAT. AND THE FILM TOLD
4 YOU YOU COULDN'T DO THAT EITHER, DOWNSTAIRS. I CAUGHT A
5 LITTLE BIT OF IT THE OTHER DAY WALKING THROUGH.

6 Q BY MR. ABLARD: MA'AM, WHERE WERE YOU WHEN THE
7 POLICE ARRIVED?

8 A I WAS IN THE DINETTE AREA WITH MY BACK TURNED TO
9 THE HALLWAY.

10 Q AND DO YOU KNOW WHERE MR. RIGGS WAS?

11 A HE WAS ON THE PHONE TALKING TO HIS MOTHER.

12 Q DID YOU-ALL GET A CALL FROM THAT MORNING
13 SOMEWHERE BETWEEN 8:57 AND THE TIME THAT THE POLICE
14 ARRIVED, A TELEPHONE CALL?

15 A YES, WE DID RECEIVE A CALL.

16 Q FROM WHOM?

17 A REINA, BRITTANY'S GODMOTHER.

18 Q AND PRIOR TO THAT, HAD MR. RIGGS BEEN ON THE
19 TELEPHONE CALLING ANYONE?

20 A NO.

21 Q HAD YOU?

22 A NO.

23 Q DO YOU RECALL WHERE MR. LOPEZ WAS WHEN THE
24 POLICE ARRIVED?

25 A MR. LOPEZ LEFT THE HOUSE. HE WAS STILL IN HIS
26 CAR.

27 Q OKAY?

28 A HE NEVER CAME BACK WHILE I WAS THERE.

1 Q THERE WAS SOME TALK ABOUT THE TWEETY-BIRD
2 VIDEOTAPE. THERE WAS AN OCCASION WHERE, MORE THAN ONE,
3 WHERE MR. JOHNSON'S CHILD CAME TO VISIT HIM. DO YOU
4 RECALL?

5 A YES.

6 Q OKAY. AND DO YOU RECALL TELLING MR. JOHNSON HE
7 COULD BORROW THOSE TAPES?

8 A NO, BECAUSE I'D ASSUME A TEN MONTH OLD DIDN'T
9 WATCH MOVIES.

10 Q SO, YOU DIDN'T TELL MR. JOHNSON THAT HE COULD
11 BORROW THE TAPE?

12 A NOT TO MY RECOLLECTION NOW, NO.

13 Q SO, YOU DON'T RECALL?

14 A NO.

15 MR. ABLARD: YOUR HONOR, THE AREA THAT I WAS GOING TO
16 GET INTO BASICALLY HAS TO DO WITH WHAT WE WERE JUST
17 SPEAKING OF. I AM WONDERING IF WE CAN BREAK NOW AND MAYBE
18 THAT PUT THAT ON THE RECORD AND DISCUSS SOME OF IT, AND
19 THEN RESUME AT 1:30.

20 THE COURT: WELL, IF YOU HAVE SOMETHING ELSE BESIDES
21 THAT AREA, DO THAT SOMETHING ELSE FIRST.

22 MR. ABLARD: WELL, OKAY. I CERTAINLY WANT TO DO IT
23 LATER. BUT I WILL DO IT NOW. THANK YOU. OKAY.

24 Q BY MR. ABLARD: WHEN BRITTANY FIRST CAME IN IN
25 THE MORNING TO YOUR ROOM, DO YOU RECALL TELLING HER GOOD
26 MORNING AND GO LAY DOWN ON THE COUCH AND WATCH CARTOONS?

27 A CORRECT.

28 Q YES. OKAY. AND MR. RIGGS SAID BASICALLY THE

1 SAME THING?

2 A CORRECT.

3 Q YOU MENTIONED THAT. AT WHAT POINT DID YOU SEE
4 MR. LOPEZ ON THE PATIO HAVING HIS USUAL EARLY-MORNING
5 CIGARETTE?

6 A WHEN I CAME THROUGH THAT AREA.

7 Q I BELIEVE YOU YESTERDAY YOU MENTIONED THAT YOU
8 SAID THAT WE SPOKE WITH MR. LOPEZ. YOU AND MR. RIGGS
9 TOGETHER CAME THROUGH THERE AND YOU SAW HIM ON THE PATIO
10 OR NO?

11 A DARIN WAS ALREADY THERE. AND I WALKED UP.

12 Q OKAY. SO, DARIN WAS ALREADY OUT WITH MR. LOPEZ.
13 AND?

14 A DARIN WAS INSIDE THE HOUSE. MR. LOPEZ WAS
15 OUTSIDE AT THE SCREEN DOOR.

16 Q SO, OKAY. ALL RIGHT. AND HOW LONG DID-- HOW
17 LONG DID YOU-ALL TALK TO MR. LOPEZ?

18 A LONG ENOUGH TO ASK HIM IF HE'S SEEN BRITTANY
19 AND--

20 Q OKAY. SO DO YOU HAVE ANY PERSONAL KNOWLEDGE ON
21 HOW LONG MR. LOPEZ HAD BEEN UP THAT MORNING?

22 A NO.

23 Q AND DO YOU HAVE ANY PERSONAL KNOWLEDGE ON HOW
24 LONG MR. RIGGS WAS SPEAKING WITH MR. LOPEZ BEFORE YOU GOT
25 THERE TO SPEAK TO MR. LOPEZ?

26 A WITHIN SECONDS.

27 Q OKAY. SO, THIS WAS NOT A SITUATION WHERE YOU OR
28 MR. RIGGS GOT UP CHECKING, TALKING TO MR. LOPEZ, AND CAME

1 BACK AND GOT YOU OUT OF BED TO GO LOOK; CORRECT?

2 A NO. I GOT UP RIGHT AFTER DARIN.

3 Q DID YOU EVER TELL ANYONE THAT THE SCENARIO WAS
4 THAT MR. RIGGS GOT UP AND THEN CAME BACK AND GOT YOU?

5 A NOT THAT I RECALL, NO.

6 Q THAT REAL QUICK. HOW LONG WAS IT AFTER 8:57
7 THAT THE PHONE CALL CAME IN FROM THE GODMOTHER?

8 A I ASSUME AROUND 9:00.

9 Q IT WAS RIGHT AFTER YOU ALL GOT UP?

10 A YES.

11 Q WAS MR. JOHNSON-- YOU MENTIONED A LITTLE BIT
12 YESTERDAY ABOUT MR. JOHNSON. WAS HE HELPFUL IN ANY WAY
13 AROUND THE HOUSE OR--

14 A NO. HE GOT IN THE WAY.

15 Q HE GOT IN THE WAY. OKAY. HE DIDN'T TRY TO
16 PLEASE PEOPLE BY OFFERING TO DO THINGS FOR THEM, THINGS
17 LIKE THAT?

18 A HE SEEMED TO BE DOING NOTHING.

19 Q OKAY. WELL, YOU KNOW, LET ME BACK UP. I AM
20 SWITCHING GEARS AND I CONFUSED YOU. I WAS ACTUALLY
21 TALKING ABOUT BEFORE THE INCIDENT. AND I APOLOGIZE. BUT
22 BEFORE THE INCIDENT, BEFORE THE 10TH, WAS MR. JOHNSON A
23 HELPFUL PERSON, TRIED TO PLEASE PEOPLE?

24 A NOT REALLY. I DIDN'T SEE MUCH OF HIM.

25 Q OKAY. WORKED A COUPLE OF JOBS?

26 A HE WORKED NIGHTS. I WORKED DAYS.

27 Q YOU WORKED DURING THAT PERIOD OF TIME?

28 A UP TO THE FIRST WEEK, THE WEEK UP UNTIL THE

1 FIRST WEEK. THAT LAST WEEK I HAD WITH BRITTANY HOME
2 BEFORE SHE WAS KILLED.

3 Q OKAY. SO, YOU TOOK CARE OF BRITTANY AT THE
4 HOUSE. AND THEN THE WEEK BEFORE THE 10TH, YOU STARTED A
5 JOB?

6 A NO. I WAS WORKING UP UNTIL THE WEEK BEFORE
7 BRITTANY WAS KILLED.

8 MR. ABLARD: OH, OKAY. ALL RIGHT.

9 YOUR HONOR, WOULD IT BE A GOOD TIME FOR ME TO MAKE MY
10 MOTION NOW?

11 THE COURT: IS THAT THE LAST TOPIC YOU WISH TO GET
12 INTO IF I PERMIT SOME INQUIRY?

13 MR. ABLARD: WELL, THEY ARE A BIT MORE INVOLVED AS
14 WELL. THERE'S SOME VARIETY OF THINGS I NEED TO TIE UP.
15 AND IT WILL BE RATHER QUICK THIS AFTERNOON.

16 THE COURT: SINCE MR. ABLARD WANTS TO HAVE A
17 DISCUSSION WITH THE COURT OUT OF YOUR PRESENCE, LADIES AND
18 GENTLEMEN, WHICH I GUESS YOU PROBABLY FIGURED OUT, WHICH
19 IS OKAY.

20 SO WE WILL RECESS THE JURY PHASE UNTIL 1:30 THIS
21 AFTERNOON. DO NOT DISCUSS THE CASE. DO NOT FORM OPINIONS
22 OR CONCLUSION. WE WILL SEE YOU AT 1:30. LEAVE YOUR
23 NOTEBOOKS AND PENCILS. COURT IS NOT IN RECESS.

24 (THE JURY EXITED THE COURTROOM AND THE
25 FOLLOWING PROCEEDINGS WERE HELD:)

26 THE COURT: ALL RIGHT. THE JURY HAS REMOVED
27 THEMSELVES FROM THE COURTROOM.

28 MR. ABLARD: THANK YOU. YOUR HONOR, THE ISSUE PART

1 OF THE ISSUES IN THIS CASE IS THAT I UNDERSTAND THAT MY
2 CLIENT IS ACCUSED OF A CRIME.

3 THE COURT: WELL, I UNDERSTAND THAT TOO. THAT'S WHY
4 WE ARE ALL HERE. LET'S FOCUS RIGHT IN ON WHAT YOU SAY.

5 MR. ABLARD: MAKES A BIG DIFFERENCE TO ME. AND I
6 BELIEVE IT IS RELEVANT TO THIS CASE, THE CREDIBILITY OF
7 THE OTHER PEOPLE IN THE HOUSE, THE DISCIPLINE THAT THE
8 CHILD WAS RECEIVING, WHETHER OR NOT IT WAS IN LINE WITH
9 THE NORMAL DISCIPLINE OR NOT AND HOW THE CHILD ACTED, HOW
10 PEOPLE REACTED TO THE CHILD.

11 THIS ALL CAME ABOUT WHEN WE WERE DISCUSSING THE
12 QUESTION REGARDING MEDICATION SEVEN MONTHS PRIOR. A LOT
13 OF THAT CAME TO BE IN CROSS-EXAMINATION BECAUSE THERE HAS
14 BEEN TESTIMONY ABOUT HOW HEALTHY THE CHILD WAS, AND ROBUST
15 AT THE TIME OF HER DEATH.

16 TO LAY A BACKGROUND AS TO THE HEALTH OF THE CHILD ON
17 CROSS-EXAMINATION, I WOULD LIKE TO ASK SOME QUESTIONS
18 ABOUT THE DIFFERENT MEDICATIONS AND SO ON AND SO FORTH,
19 HOW IT AFFECTED HER PERSONALITY, HOW PEOPLE REACTED TO
20 THAT PERSONALITY.

21 I HAVE WITNESSES THAT, DEPENDING UPON THE ANSWERS,
22 CAN TESTIFY THAT THE DISCIPLINE AT TIMES WAS RATHER HARSH.
23 AND THE WAY THE PEOPLE REACTED TO THE CHILD OR DID NOT
24 REACT TO THE CHILD. I BELIEVE THAT IS VERY IMPORTANT,
25 VERY RELEVANT IN THIS CASE TO THE DEFENSE OF THIS CASE.

26 BASICALLY, THAT'S A BACKGROUND, TO REBUT WHAT THEY
27 HAVE TESTIFIED TO THUS FAR.

28 THE COURT: WELL, ALL RIGHT. HERE IS WHAT THE COURT

1 IS GOING TO PERMIT YOU TO DO: THE TESTIMONY THAT THE
2 CHILD IS HEALTHY AND ROBUST MAY BE IMPEACHED, I SUPPOSE,
3 BY THE FACT THAT THERE WAS A HISTORY OF NON-ROBUSTNESS AND
4 NON-HEALTHY. ALL RIGHT. SO, YOU MAY INQUIRE AS TO THE
5 LENGTH OF TIME PRIOR TO SEVEN MONTHS PRIOR TO HER DEMISE
6 WHAT HER HEALTH CONDITIONS WERE, WHAT HER LACK OF HEALTH
7 CONDITIONS WERE. THOSE THINGS THAT ARE TAKEN TO REMEDY
8 THEM. ALL RIGHT. OBSERVABLE PHYSICAL SYMPTOMS OR LACK
9 THEREOF THAT WOULD AFFECT THE CONCLUSION OF HEALTHY AND
10 ROBUST.

11 UNLESS YOU HAVE EVIDENCE THAT SUGGESTS THAT AND ARE
12 GOING TO OFFER EVIDENCE THAT ANTIBIOTICS IS A
13 PERSONALITY-VARYING DRUG, THE COURT IS NOT GOING TO PERMIT
14 YOU TO INQUIRE INTO CHANGES IN A THREE YEAR OLD'S
15 PERSONALITY BECAUSE OF HEALTH PROBLEMS AND DRUGS TAKEN.

16 IF YOUR OFFER INCLUDES TESTIMONY BY SOME EXPERT THAT
17 IS GOING TO COME IN HERE AND ASSIST US IN THAT REGARD,
18 THAT'S CLEARLY BEYOND THE INFORMATION AVAILABLE TO THIS
19 WITNESS.

20 MR. ABLARD: THANK YOU.

21 THE COURT: BECAUSE YOU MUST HAVE A CAUSATION IN
22 ORDER TO MAKE IT RELEVANT. IF YOU HAVE IT, YOU LET ME
23 KNOW. IF YOU DON'T HAVE IT, LET ME KNOW. BUT YOU GOT TO
24 HAVE THE CAUSAL CONNECTION THEN, ANTIBIOTICS AND
25 PERSONALITY VARIATIONS SOMEWHERE OUT THERE.

26 PEOPLE'S REACTION TO THE CHILD. YOU ARE GOING TO HAVE
27 TO MAKE ME AN OFFER THAT EVIDENCE WILL BE ESTABLISHED THAT
28 THE DRUGS ARE REACTIVE TO THE OR THE PERSONALITY IS

1 REACTIVE TO THE DRUGS AS OPPOSED TO THE FACT THAT CHILDREN
2 FROM AGE TWO TO THREE HAVE VERY STRANGE PERSONALITY
3 CHANGES CAUSED BY MATURATION AS OPPOSED TO DRUGS.

4 SO, IF YOU CAN CONNECT IT UP WITH EXPERT TESTIMONY, I
5 WILL PERMIT YOU SOME DISCRETION TO THIS WITNESS AND HER
6 OBSERVATIONS. BUT IF YOU DON'T, YOU DON'T.

7 BUT STATE OF HER HEALTH FOR A YEAR OR SO PRIOR TO THE
8 CONCLUSION THAT ON THE WHATEVER OCTOBER OF '93, SHE WAS
9 HEALTHY AND ROBUST IS ADMISSIBLE TO IMPEACH THAT
10 CONCLUSION.

11 MS. SCHMAUSS: WHAT ABOUT THE DISCIPLINE, HARSH
12 DISCIPLINE CONTENTION?

13 THE COURT: DOES THAT FALL UNDER PERSONALITY? I
14 MEAN, THE ANSWER TO THAT IS IF YOU CAN ESTABLISH THAT
15 PEOPLE IN THE HOUSEHOLD PHYSICALLY ABUSED THE CHILD OR
16 OVERLY DISCIPLINED. AND THAT THERE YOU KNOW BY SOME
17 TESTIMONY YOU CERTAINLY CAN OFFER IT.

18 BUT I DON'T THINK YOU ARE GOING TO SNEAK IT IN AROUND
19 BY SAYING SHE TOOK ANTIBIOTICS HER MENTALITY WAS WITH
20 VARIANCE WITH WHAT IT OUGHT TO BE, AND THEREFORE THE
21 DISCIPLINE WAS IN LIGHT OF FACT THAT HER PERSONALITY WAS
22 BEARING BY SHE TOOK ANTIBIOTICS. ALL OF THIS, NO FACTUAL
23 BASIS OR NO SCIENTIFIC BASIS FOR. THAT'S MY THINKING.

24 MR. ABLARD: THANK YOU VERY MUCH.

25 THE COURT: NOW, IF YOU HAVE ANY OTHER SUGGESTIONS
26 THE COURT IS WRONG TO THAT KIND OF CONCLUSION, PLEASE LET
27 ME KNOW.

28 MS. SCHMAUSS: YOU HAVEN'T CHANGED YOUR RULING ON THE

1 BITING QUESTION A YEAR AGO?

2 THE COURT: NO. NOT YET.

3 MR. ABLARD: THANK YOU. SEE YOU AT 1:30.

4 (NOON RECESS)

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