

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

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REPORTER PRO TEMPORE

VOL 4 OF 4
PP 721 - 874

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

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1 RANCHO CUCAMONGA, CALIFORNIA; MONDAY, NOVEMBER 6, 1995

2 10:45 A.M.

3 DEPARTMENT 4 (RC)

HON. ROBERT E. LAW, JUDGE

4 (APPEARANCES AS HERETOFORE NOTED.)

5 (JANE M. FOLMER, OFFICIAL REPORTER, C-2331)

6 ~~(WHEREUPON THE FOLLOWING PROCEEDINGS WERE HELD~~

7 IN OPEN COURT OUTSIDE THE PRESENCE OF THE JURY:)

8 THE COURT: 3.35 is a problem. May be by criminal
9 negligence or may be by criminal conduct which is dangerous
10 to human life. Inherently dangerous which is not criminal
11 negligence.

12 MRS. SCHMAUSS: What is 3.35?

13 MR. ABLARD: I have it in the previous approved.

14 MRS. SCHMAUSS: Concurrence of act and criminal
15 negligence. I think it is either/or. Either a misdemeanor
16 that is inherently dangerous --

17 THE COURT: Right. So it's 3.35 which defines act and
18 conduct is insufficient.

19 MRS. SCHMAUSS: You mean a general intent as well?

20 THE COURT: No.

21 MRS. SCHMAUSS: What do you need?

22 THE COURT: This volume says it's a lesser crime to
23 murder, there must exist a union or joint operation of act
24 or conduct and a mental intent or a mental -- which is
25 either criminal negligence, that is an inherently dangerous
26 act, a misdemeanor that is inherently dangerous to human
27 life which means a general intent to commit the misdemeanor
28 or criminal negligence. So, there is two and we are missing

1 again 3.35 and D parallel --

2 MRS. SCHMAUSS: Which is?

3 THE COURT: During commission of a misdemeanor. It's
4 the intent besides criminal negligence which is commission
5 of an act of high degree of risk without due caution and
6 ~~circumspection, that's one. The other you must have an~~
7 intent to commit the underlying crime or misdemeanor.

8 MRS. SCHMAUSS: That's included in the instruction 16
9 whatever-you-call-it.

10 THE COURT: But 3.35 doesn't do it. It all uses the
11 words "negligence." You've got to fix 3.35. You have to
12 add to. And look at 8.46 and 3.36. Kind of overlapping.

13 MRS. SCHMAUSS: Are you hopelessly lost?

14 MR. ABLARD: No, it's spelled out.

15 MRS. SCHMAUSS: But the use notes all say you've got
16 to give 3.36. You've got to give it.

17 MR. ABLARD: You mean 3.35.

18 MRS. SCHMAUSS: No, 3.36.

19 MR. ABLARD: I don't have a 3.36.

20 MRS. SCHMAUSS: Yeah, you do. It's in the new and
21 improved.

22 MR. ABLARD: This is the new and improved. It's back
23 in the 800 or something.

24 MRS. SCHMAUSS: No, right after the 8.46.

25 MR. ABLARD: Okay.

26 MRS. SCHMAUSS: It's the one I copied out of CALJIC.

27 Hey, Judge, on CALJIC 3.35, the one about acts and
28 conduct and criminal negligence, what if we allege as well

1 criminal intent to commit the --

2 THE COURT: As well?

3 MRS. SCHMAUSS: -- or general criminal intent to
4 commit the underlying misdemeanor. And then we define
5 general intent later anyway. We don't need to give it twice
6 because it's in the 16 whatever-you-call-it instruction for
7 child abuse. But I pulled it anyway.

8 THE COURT: If you have 17.11 in twice.

9 MRS. SCHMAUSS: I do?

10 THE COURT: Must have thought it was really
11 important.

12 MRS. SCHMAUSS: I think that's in error because I only
13 got one.

14 THE COURT: Wait a minute.

15 MRS. SCHMAUSS: All right. 3.35 I still can't find.

16 THE COURT: I thought you did but you might. Okay.
17 Here is where I am so that you can both think about it. Are
18 you ready?

19 MRS. SCHMAUSS: Ah-huh.

20 THE COURT: Okay. Here is where the yellow stickies
21 are.

22 Admission, 2.17. The admissions made, if any, are
23 his being present at the scene of a crime at or about the
24 time and on the other hand there is ample direct evidence of
25 his presence. I am not sure that it's appropriate to call
26 attention to his admission that he was there in those
27 circumstances because it's a very minor admission of
28 presence at the area. If I can hear from you later on that,

1 Mr. Ablard.

2 And 2.71.5. Conditions where he should have
3 responded, opportunity to reply, made false or misleading or
4 evasive statements. I have some concern about that.

5 MRS. SCHMAUSS: No what?

6 THE COURT: 2.72.

7 MRS. SCHMAUSS: I don't like that one.

8 THE COURT: 2.72, evident independent of admission
9 which I don't think there is one worthy of consideration.

10 All right. The next place I go to is 3.30. May be
11 okay. But we revisit criminal negligence and general
12 criminal intent to commit a misdemeanor later. So talk to
13 me about that at sometime in the future like tomorrow
14 morning first thing.

15 MRS. SCHMAUSS: Can I withdraw something?

16 THE COURT: Sure.

17 MRS. SCHMAUSS: 2.71.5, I think, is so confusing that
18 it is probably not worth what it might gain the prosecution,
19 so I would voluntarily pull. It's a very confusing
20 instruction.

21 MR. ABLARD: I don't know what it means.

22 MRS. SCHMAUSS: How about if I withdraw it?

23 THE COURT: Mr. Ablard.

24 MR. ABLARD: That's fine with me.

25 THE COURT: It's withdrawn, I will take the yellow
26 sticky off of it. We will just throw it in the trash.

27 Okay. 8.45, I have it on all of these, and
28 16.1700, 3.35, which has to have an admission, and 8.46 and

1 3.36, those are all manslaughter instructions. Read through
2 them, please, Mr. Ablard, and see if we can tailor them
3 somewhat better.

4 MR. ABLARD: Okay.

5 THE COURT: 8.51. And those are the ones that concern
6 me. Otherwise I think we are okay.

7 MR. ABLARD: Tomorrow morning I want to discuss 2.03
8 and possibly some Sears instruction. I take it on the 2.17
9 your Honor is going to sort of pinpoint that instruction?
10 Is that sort of your notion? Or admissions.

11 THE COURT: Are there any?

12 MRS. SCHMAUSS: Well, I think there are.

13 THE COURT: You want an admission instruction on the
14 only admission being that he was there.

15 MRS. SCHMAUSS: No, because an admission can be many
16 things. By his admitting he lied to the police there is
17 one major admission.

18 THE COURT: No, no. Admissions and confessions are --
19 confession is a statement made by the defendant after the
20 crime which admits each and every element of the crime
21 charged. An admission is a statement made by the defendant
22 after the events which admits one or more of the elements of
23 the crime charged as far as I am concerned. Or
24 participation therein. I am not sure that the admission
25 that he lives there and that's his room is an admission
26 sufficient to warrant an admission instruction and apply to
27 the fact that every witness said that he was there, he was
28 there when the police arrived, within minutes, and so

1 admitting that which is obvious to everyone.

2 MRS. SCHMAUSS: But, Judge, he's the only one who says
3 he is with Brittany up to moments before she must have been
4 murdered. He is the only one. 8:30 a.m. he turns on those
5 cartoons. No one else says that.

6 ~~THE COURT: That's not an admission.~~

7 MRS. SCHMAUSS: Taken with all the other evidence it
8 tends to show his guilt. That's what the Evidence Code
9 exception says.

10 MR. ABLARD: I can respond to it in the morning. I
11 know you have other things, your Honor.

12 THE COURT: Yes, you may. The Court does not think
13 that -- that that's an admission.

14 MRS. SCHMAUSS: And you don't think his admission that
15 he lied to the police is an admission?

16 THE COURT: Well, he admits lying to the police but it
17 is not an admission of any element of the crime charged.

18 MRS. SCHMAUSS: That the child was in his closet and
19 covers her up tends to show with the rest of the evidence
20 that he is the perpetrator.

21 I think we will be in major trouble if we take out
22 the instruction.

23 THE COURT: Well, that's -- the admission of covering
24 the child is one you have to consider, Mr. Ablard.

25 MR. ABLARD: Yes.

26 THE COURT: I mean all I am suggesting to you is you
27 must consider whether or not if you want the admission
28 instruction.

1 MR. ABLARD: Yes, I understand

2 THE COURT: The language that he admits -- actually he
3 admits living in the house where the death occurred, he
4 admits living in the room, but are those "admissions" for
5 the necessity of an admission instruction which says the
6 admission itself is not sufficient but may be if you have
7 some other evidence to connect him with the crime.

8 MR. ABLARD: That's correct.

9 THE COURT: Well, that certainly is a powerful
10 suggestion that the admission should be taken seriously,
11 isn't it?

12 MR. ABLARD: Yes.

13 THE COURT: Because one would argue in the offhand,
14 oh, he's admitted living there. Now, all we need is a
15 little bit of evidence to convict him of murder because he
16 lives there. Well, that's not the law obviously because
17 three other people lived there.

18 Anyway, think about it.

19 MR. ABLARD: Yes, I appreciate --

20 THE COURT: That's enough. See you tomorrow.

21 MR. ABLARD: Just a preview for tomorrow. I believe
22 the Court wanted Miss Schmauss to look through her files and
23 see if there are any reports about the insurance. I believe
24 she's done that and I believe she relates there were none.
25 So take that up in the morning as well.

26 THE COURT: That's fine. And we have the jury coming
27 back at 9:30. I guess I will see you folks at 9:00. We
28 will rework the instructions some more.

1 MRS. SCHMAUSS: Thank you very much.

2 THE COURT: We should commence arguing by about 10:30,
3 I would expect.

4 MRS. SCHMAUSS: I would renew my request for 402/352
5 since I have tape recorded statements of both Mr. Ferrar and
6 Ms. Crocker.

7 THE COURT: Well, see what they say or don't say. I
8 expect argument by 10:30, expect you to be done by 11:00.
9 Expect you to start at 11:00, be done by -- you have to
10 figure out what you want to do. If you run up too close to
11 the noon hour, then she will start in the afternoon. You
12 will have long been lost.

13 MR. ABLARD: I was wondering, just to make it
14 everything in parity, maybe we both start right after lunch.

15 THE COURT: No.

16 MR. ABLARD: Well, okay.

17 THE COURT: Not unless -- not if I got 30 minutes for
18 the prosecutor to make her opening.

19 MRS. SCHMAUSS: Thank you.

20 THE COURT: I mean the sum total of the testimony is
21 about four days, if you did away with the hiatuses for lack
22 of witnesses.

23 Child abuse is the misdemeanor.

24 MRS. SCHMAUSS: Yeah, I guess.

25 MR. ABLARD: We were discussing it and since we are
26 invited back tomorrow, we will talk about it now.

27 THE COURT: Sure, I just mentioned that one more time.

28 (Whereupon at 11:00 a.m. an adjournment was

taken until 9:00 a.m. Tuesday, November 7, 1995.)

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1 RANCHO CUCAMONGA; TUESDAY, NOVEMBER 7, 1995

2 MORNING SESSION

3 DEPARTMENT 4

HON. ROBERT E. LAW, JUDGE

4 (Appearances:

5 The defendant present with his attorney,

6 MR. GARY ABLARD, Attorney at Law; The People of

7 the State of California represented by

8 MS. KAREN SCHMAUSS, Deputy District Attorney.)

9 (Kathryne R. McNulty, Official Reporter, C-7651)

10 ++++++

11 THE COURT: I've got some new instructions, 3.35,

12 I like that better.

13 MS. SCHMAUSS: Yeah, based on our discussion.

14 THE COURT: And 3.36.

15 MS. SCHMAUSS: You know what we don't have, I
16 forgot about it, verdict forms.

17 THE COURT: Yes.

18 MS. SCHMAUSS: We need revised verdict forms.

19 THE COURT: Yes.

20 MS. SCHMAUSS: Maybe I can make a phone call for
21 that.

22 THE COURT: Let's go through the ones I have yellow
23 stickies, Mr. Ablard. I have 2.71, it's admission, 2.72,
24 I'm inclined to give those.

25 MS. SCHMAUSS: I gave Mr. Ablard a copy of what I
26 gave the Court yesterday.

27 THE COURT: Well, that's just what I pulled out
28 from the Caljic.

1 MS. SCHMAUSS: I think it answers our questions.

2 THE COURT: Well, it says the Court must give it
3 sua sponte, but that doesn't answer the question if the
4 defendant objects to it.

5 MR. ABLARD: Right. Defendant is objecting to
6 2.71.

7 THE COURT: Now you have some more work to do.

8 MS. SCHMAUSS: Well, I think you have a sua sponte
9 duty despite his objection because of the language in
10 there, and arguably, very arguably as we pointed out

11 yesterday, he makes admissions such as covering her up to
12 hide her from the police. That's an admission if I ever
13 heard one.

14 THE COURT: The inference from the statement that
15 he saw the child and did nothing in my judgment is an
16 admission which shows -- may show consciousness of guilt.
17 Arguably, you're going to argue that that's a consciousness
18 of guilt conduct and he's admitted conduct, it shows it.
19 It is not what we -- classic admission of some element of
20 defense, but I think I'm required to give it. Assuming
21 that you argue that line of reasoning to the jury, I think
22 I must give it and I probably will. If you don't argue it,
23 admissions don't become part of the argument, Court will
24 reconsider whether that statement requires the instruction,
25 but I suspect you will argue it. So from there, that's
26 where we go.

27 Now, I have --

28 MR. ABLARD: 2.72.

1 THE COURT: Cautionary. If I give 71, I've got to
2 give 72, so they go together.

3 MR. ABLARD: I object to all those.

4 THE COURT: For both of those, all right.

5 3.30 is okay.

6 8.45, Mr. Ablard?

7 MR. ABLARD: Yeah, now, on that one --

8 THE COURT: If you wish an involuntary manslaughter
9 instruction on some theory, I'm having some trouble with
10 the theory.

11 MR. ABLARD: I am, too. On the one hand, I think
12 it may be appropriate because it may at least be implied in
13 argument that the -- so I think it would be warranted in
14 the matter.

15 THE COURT: The problem with the involuntary
16 instruction is that ordinarily you would have heard some
17 evidence that gives rise to, you know, some theory of
18 involuntary. Where you have no evidence of a theory that
19 gives rise to the instruction, the Court's always caught in
20 that quandary of whether it has to be given, and you're
21 caught in the quandary of what to say if it is given if you
22 have an argument for it.

23 I think in an abundance of caution the Court is
24 safer to give an involuntary manslaughter instruction when
25 the exact circumstances surrounding the death are a little
26 bit vague.

27 MR. ABLARD: That's true.

28 THE COURT: And it's kind of left to surmise,

1 although it is a catch-all, if you will, where the evidence
2 of malice aforethought is lacking in the prosecution's case
3 but one might conclude that your client is the cause. But
4 on the other hand, that's pretty shaky.

5 MR. ABLARD: That's true. I mean, yeah, it is --
6 could go either way on that.

7 THE COURT: It's here at the commencement of the
8 trial it was indicated to the Court that there were three
9 possibilities. No one has disamused me that you're
10 requesting it or think it's appropriate. If you do, let me
11 know and then you'll put me in the hot seat. And I may
12 then defer until after I've heard argument.

13 MR. ABLARD: Right.

14 MS. SCHMAUSS: That's difficult because I need to
15 know what we're going to instruct before I argue,
16 otherwise, I'll be arguing something you may not instruct.
17 I'm going to argue or I'm going to mention it. If we're
18 giving it, I will be happy to tear out that page of my
19 argument and throw it in the trash if we're not going to
20 give it. I leave it up to counsel. It's not an
21 instruction that people are asking for.

22 MR. ABLARD: This is one of the areas I've spoken
23 over with my client, Your Honor. I need -- at some point I
24 would like to take a couple more minutes and talk to him
25 again.

26 THE COURT: We will at the conclusion of the
27 evidence.

28 MR. ABLARD: That's fine. The concept of it

1 sometimes sort of whizzes on by. I'll talk to him again
2 about that if we'll defer it.

3 THE COURT: I have a better 36 here which will
4 replace the ugly one, and a better 3.35. I would assume
5 ~~you could do the verdict information over the noon hour.~~

6 MS. SCHMAUSS: Right, but if we give her notice
7 now, somebody else won't grab her and hog her.

8 MR. ABLARD: Judge, I have some comments on some of
9 the instructions.

10 THE COURT: All right.

11 MR. ABLARD: I need to speak about 203 about
12 willful and false, misleading statements, but just to alert
13 the Court on that, I would defer that because I also have
14 discussion as regards police conduct and that insurance
15 business. So I'll come back to that. But as to, I think
16 probably 220, regarding credibility and believability of
17 witnesses.

18 THE COURT: Well, what do you want to do with
19 2.03?

20 MR. ABLARD: Well, I'm fashioning an instruction
21 depending upon what the Court wants to do about Officer
22 Donley not reporting about this insurance business, and
23 that's an ongoing topic that I need to address the Court
24 on, so I thought that I would put that last and just run
25 through the other ones that I have some more minor --

26 THE COURT: Okay, I just put a yellow sticky on 203
27 and .220.

28 MR. ABLARD: Yeah, 2.20, I believe that we should

1 also put in admission by the witness of untruthfulness
2 which is also in Caljic, but there's truth in fact in this
3 case that I think that can be argued.

4 MS. SCHMAUSS: I don't believe we've had any
5 admissions of untruthfulness.

6 MR. ABLARD: I think we have, and I would request
7 that we put that in.

8 MS. SCHMAUSS: I would like to know who counsel is
9 claiming was untruthful and admitted it.

10 THE COURT: That's a standard 2.20.

11 MS. SCHMAUSS: Well, I think I took it out because
12 I didn't feel anybody admitted they were untruthful.
13 There's a lot of people who don't remember.

14 THE COURT: Put it back in.

15 MS. SCHMAUSS: Well, we'll have to write it back in
16 at this juncture, probably.

17 THE COURT: Okay.

18 MR. ABLARD: Thank you.

19 THE COURT: What else?

20 MR. ABLARD: In the new packet, we don't have a
21 2.83, do we? It's not going to be required. As it turns
22 out, that's one expert weighing against the other expert.

23 MS. SCHMAUSS: I pulled that out.

24 MR. ABLARD: It's pulled out?

25 THE COURT: Yes.

26 MR. ABLARD: 290, Your Honor?

27 THE COURT: Yes.

28 Don't leave, Mr. Mangan.

1 290?

2 MR. ABLARD: I understand the developments in the
3 area of Freeman and Nebraska and all, but I'm requesting
4 that moral certainty be put back in, 1096(a) of the
5 Evidence Code. We don't have to take it out, it's

6 permissible to put it in, sort of my notion that some
7 courts say it's fine to narrowly change 290 and take the
8 moral certainty out, and others, at least my impression is
9 that it might be better not to mess with 290 right now, but
10 it is permissible. And so --

11 THE COURT: Well, suffice it to say the Court feels
12 abiding conviction and moral certainty were words that
13 needed further attention in lack of our society's lack of
14 morality and most people don't understand what abiding
15 means, and the last time I did that, the Fourth District
16 said that those were clearer, and the Supreme Court said
17 they're not. In any event, I'm going to leave it as it is
18 revised. Your objection is noted.

19 MR. ABLARD: Thank you. And that's all for now,
20 Your Honor, except for 203. And that, I guess -- the other
21 day we had an instance where there was some testimony on an
22 insurance policy, albeit a very small policy, but that
23 wasn't really the point. The point was that Montclair
24 Police Department found out about that and did not relay
25 that information. The Court had the prosecutor go through
26 the files, make sure that there hadn't been a report on
27 that that had been done. I was told there was not a
28 report. The Court then invited us to go on to the next

1 step.

2 THE COURT: Yes.

3 MR. ABLARD: And the one thing that I had requested
4 when you found this out was at the very least to have the
5 Court order that a copy of that insurance policy be

6 provided so we'd have an opportunity to look at it in light
7 of the testimony, matter of due process and sixth amendment
8 rights, by not letting us know that or anyone that the
9 police violated their duties. So I would like a copy of
10 that. Now, speaking with Ms. Schmauss, she says that she

11 has sent someone out to get it, but I haven't seen it yet,
12 or I guess they're in archives or something.

13 MS. SCHMAUSS: Yes, Your Honor. We contacted
14 Mr. Riggs at my request, contacted the insurance company,
15 asked them to send me a copy. He was told it was so old it
16 was in archives. They were going to try to dig it out
17 and fax it. But as of half an hour ago, it was not here.

18 Also, I'd like to clear up the record, I've been
19 informed by Officer Donley when he found out about the very
20 small insurance policy he mentioned it to the previous
21 prosecutor, Mr. Martinez. In his opinion, it was so
22 germane they weren't going to worry about it. No one ever
23 told me and Mr. Ablard found out long before I did.

24 MR. ABLARD: Well, the word "long before," we're
25 talking minutes, I guess it would be long. Nonetheless,
26 now I find this out. Now I have to explore with former
27 counsel representing Mr. Johnson to see if anyone ever told
28 him about it because as we know in a case like this, one of

1 the first inquiries, somewhere along the line, is was there
2 any insurance, and so I'm going to need to follow that up.

3 The problem, I guess, that I really have is it sort
4 of goes into the area of suppression of evidence and things
5 like that, talking about some basic rights of my client

6 have been violated. I would, for the record, request
7 minimum a hearing and possibly testimony from Officer
8 Donley, one, why that wasn't recorded and what were the
9 surrounding circumstances. Secondly, if, in fact, he was
10 -- that was relayed to the prosecution and the prosecution

11 was asked about it and they said no, there isn't, then I
12 think we go into another area, even beyond this area. And,
13 you know, we're really looking at Trombet issues, Arizona
14 versus Youngblood issues, and so I sort of feel that I'm
15 sort of at a standstill because there's this area that I
16 need to explore, and this is the reason I brought it up
17 each day. And so until that's straightened out, I mean,
18 obviously at some point depending, I would request a
19 mistrial, I'd be requesting a dismissal or whatever other
20 sanctions would be appropriate. But for right now, on
21 behalf of my client so he can be afforded his due process
22 rights, sixth amendment rights to counsel, I need to have
23 certain information that I don't have.

24 THE COURT: And from whom are you seeking the
25 information?

26 MR. ABLARD: I'm seeking the information from the
27 prosecution. I would like discovery order, an order from
28 the Court to have that policy delivered to me. I would

1 like to be able to talk to Officer Donley on the witness
2 stand surrounding, you know, why he did what or not so we
3 could then -- of course, I need to talk to Mr. Aaron and
4 Mr. Martinez.

5 THE COURT: Fine. Call Mr. Martinez, tell him to
6 get his tail over here.

7 MS. SCHMAUSS: He's in child support. I have no
8 idea where he is. I don't even know their number.

9 THE COURT: We'll find him.

10 Mr. Mangan, have you seen Mr. Aaron wandering about
11 today?

12 MR. MANGAN: Actually, I have, yes. He's in the
13 building.

14 THE COURT: Would you give me the courtesy -- well,
15 we'll have Mr. Aaron here shortly, we'll have Mr. Martinez
16 here shortly. We have Mr. Donley here now. But I don't
17 know what you're doing up here now.

18 THE WITNESS: Oh, I thought you wanted me to.

19 THE CLERK: Mr. Martinez will be down.

20 THE COURT: Mr. Martinez will be here -- in the
21 meantime, I have 12, 13, 14 people out there.

22 MS. SCHMAUSS: Your Honor, we still need to do the
23 352/402 on Crocker and Farrar. I've talked to Mr. Ablard
24 and he wants some things that I feel are not proper.

25 THE COURT: Okay. That's next. You have two
26 witnesses to testify before the jury?

27 MR. ABLARD: Yes, judge.

28 THE COURT: All right.

1 MR. ABLARD: I do.

2 THE COURT: Thank you.

3 Would you be kind enough to tell the people
4 outside? I've given the lawyers too much time.

5 (Pause taken.)

6 THE COURT: Mr. Martinez and Mr. Aaron.

7 MS. SCHMAUSS: That was fast.

8 THE COURT: Yes, well, we're going to have a
9 mini-hearing.

10 Mr. Ablard?

11 MR. ABLARD: Yes, judge.

12 THE COURT: Have a seat. You want a hearing, you
13 got one.

14 MR. ABLARD: I didn't want one, she wanted one,
15 judge.

16 MS. SCHMAUSS: I didn't want one.

17 THE COURT: Well, I want one. You wanted to find
18 out if Martinez knew about the insurance.

19 MR. ABLARD: I thought you were talking about the
20 Farrar.

21 THE COURT: Let's find out if they knew about it,
22 not knew, Aaron knew, didn't know, was smart enough to ask
23 or wasn't.

24 First witness is Mr. Martinez. Why don't you raise
25 your right hand on the way up.

26 MICHAEL MARTINEZ,
27 called as a witness by the Defendant, was sworn and
28 testified as follows:

1 THE CLERK: You do solemnly swear that the
2 testimony you are about to give in the cause now pending
3 before this court shall be the truth, the whole truth, and
4 nothing but the truth so help you God?

5 THE WITNESS: I do.

6 THE CLERK: Please be seated.

7 Would you state your name for the record and spell
8 your last name, please.

9 THE WITNESS: Michael Martinez, M-a-r-t-i-n-e-z.

10 THE COURT: Mr. Martinez, you're Deputy District
11 Attorney in this County?

12 THE WITNESS: That's correct.

13 THE COURT: You were assigned as the prosecutor on
14 People versus Johnson for some time?

15 THE WITNESS: Yes, Your Honor.

16 THE COURT: So what do you want to know,
17 Mr. Ablard?

18 DIRECT EXAMINATION

19 BY MR. ABLARD:

20 Q Well, I would like to know, Mr. Martinez, at some
21 point did Officer Donley mention to you about a small
22 insurance policy that Mr. Riggs had, was beneficiary of,
23 and it was -- the policy was on Brittany Rethorn Riggs?

24 A Yes.

25 Q Okay. When?

26 A I -- I wouldn't remember. It was something in
27 passing. I remember it was a very, very small policy, so I
28 didn't place any significance on it.

1 Q Okay. Did Officer Donley give you any notes or
2 writings about that?

3 A I don't believe so.

4 Q Did you take any notes or writings?

5 A No.

6 Q And at some point, did the defense, Mr. Aaron, ask you
7 if any policy had been taken out on Brittany?

8 A I don't remember any type of discussion with regards
9 to insurance, but we have a number of discussions on this
10 case.

11 Q Is it your recollection, though, that you never told
12 Mr. Aaron that there was a policy, albeit this small
13 policy?

14 A No, I don't believe I did.

15 Q Did Officer Donley discuss with you the circumstances
16 surrounding the taking out of that policy or how it came to
17 Officer Donley's attention that in fact there was a policy?

18 A He may have, but I don't have any recollection. It
19 was just something in passing and about the most I
20 remember, it was a thousand dollar policy at most. It was
21 a very, very small policy.

22 Q But you don't recall stating how that policy came
23 about or how Officer Donley found out about the policy?

24 A He may have mentioned it to me, but it was something
25 that I have no recollection of at this point in time. A
26 discussion may have taken place, it may not have taken
27 place. It's just something I don't remember.

28 Q Okay. Did you at any time discuss with Miss Rethorn

1 or Mr. Riggs about that policy?

2 A No.

3 MR. ABLARD: I have nothing further.

4 THE COURT: Did you tell the current prosecutor
5 about the policy?

6 THE WITNESS: I don't believe I did.

7 THE COURT: And you were on the case from '93,
8 November of '93 when the information was filed until
9 approximately February of 1995; is that right?

10 THE WITNESS: That's correct.

11 THE COURT: At which time you transferred out of
12 the criminal into the family?

13 THE WITNESS: Support division.

14 THE COURT: Thank you.

15 THE WITNESS: Thank you, Your Honor.

16 THE COURT: Do you have any questions?

17 MS. SCHMAUSS: No, Your Honor.

18 THE COURT: Thanks.

19 Mr. Aaron. On your way up, would you be kind
20 enough to raise your right hand.

21 JEFFREY AARON,

22 called as a witness by the Defendant, was sworn and
23 testified as follows:

24 THE CLERK: You do solemnly swear that the
25 testimony you are about to give in the cause now pending
26 before this court shall be the truth, the whole truth, and
27 nothing but the truth so help you God?

28 THE WITNESS: I do.

1 THE CLERK: Please be seated.

2 Would you state your name for the record and spell
3 your last name, please.

4 THE WITNESS: Jeffrey Aaron, A-a-r-o-n.

5 THE COURT: Let's see, Mr. Aaron, you're a member
6 of the Public Defender's Office of this County?

7 THE WITNESS: I am.

8 THE COURT: And you were assigned to handle the
9 case of People versus Johnson for some period of time?

10 THE WITNESS: I was.

11 THE COURT: Probably from its inception in November
12 of '93 to maybe August of 1995. Does that sound about
13 right?

14 THE WITNESS: Yes.

15 THE COURT: Thank you.

16 MR. ABLARD: Thank you.

17 DIRECT EXAMINATION

18 BY MR. ABLARD:

19 Q Mr. Aaron, do you recall having asked the prosecution
20 in this case whether or not there was an insurance policy
21 on Brittany?

22 A Yes, at Mr. Johnson's insistence.

23 Q And did you receive a reply to your inquiry?

24 A Yes.

25 Q And that reply was?

26 A There was none.

27 Q Okay. Do you recall when you made that request?

28 A I do not. It was not made in writing. It was

1 informally. Mr. Martinez is correct when he said there
2 were many discussions about this case. It was a casual
3 inquiry.

4 MR. ABLARD: I have nothing further.

5 CROSS-EXAMINATION

6 BY MS. SCHMAUSS:

7 Q Mr. Aaron, you have no recollection of when you may
8 have asked that?

9 A I'm trying to think. I think it was fairly early in
10 the history of the case.

11 Q So its posit was before Mr. Martinez even knew about
12 it, or did you know?

13 A I don't know what Mr. Martinez knew or didn't know.

14 MS. SCHMAUSS: Okay. Thank you.

15 THE COURT: Thank you. I don't have any questions.

16 MR. ABLARD: I don't have any.

17 THE WITNESS: I'm excused?

18 THE COURT: Yes, you are. Go back, go to work.

19 Mr. Martinez, you're excused. Go back to whatever you were
20 engaged in.

21 THE WITNESS: Collecting money, Your Honor.

22 THE COURT: Thank you. I appreciate you gentlemen
23 coming up at my request. Mr. Aaron, thank you very much.
24 Mr. Martinez, thank you very much. I'll remember this
25 courtesy, or not.

26 Okay. Now we know the facts.

27 MS. SCHMAUSS: Do you want Donley?

28 THE COURT: Do you want Donley?

1 MR. ABLARD: Yes.

2 THE COURT: You're still under oath, Mr. Donley,
3 from prior testimony in this matter.

4 THE WITNESS: Yes, sir.

5 MICHAEL DONLEY,

6 called as a witness by the Defendant, having been
7 previously sworn, testified further as follows:

8 THE CLERK: Want to restate your name?

9 THE COURT: Yeah, restate your name for the record.

10 THE WITNESS: Michael Donley, D-o-n-l-e-y.

11 THE COURT: Thank you.

12 DIRECT EXAMINATION

13 BY MR. ABLARD:

14 Q Thank you. Officer Donley, at some point you learned
15 there was a policy on Brittany Rethorn Riggs?

16 A Yes, sir, I did.

17 Q When?

18 A It was approximately, I'm guessing, three to six
19 months after the homicide.

20 Q And how did you find that out?

21 A Via telephone call from the insurance company.

22 Q Which insurance company?

23 A I don't recall.

24 Q And once you found that out, what action did you take?

25 A I called Jennifer Rethorn to ask her if she knew about
26 it, and I talked to Mr. Riggs about it, and after I got
27 done talking to them, then I called Mr. Martinez.

28 Q Okay. Did you make any notes or reports about the

1 finding out about the policy?

2 A The only notes that I believe I made was the original
3 call came over voice mail or a message, and I had written
4 down the phone number, but no actual notes as far as the
5 policy, maybe the amount and stuff like that, but I can't
6 tell you for sure.

7 Q Okay. And during your initial investigation, did you
8 make any inquiries as of anyone whether or not there was an
9 insurance policy on Brittany?

10 A Yes, I had talked to both Mr. Riggs and Miss Rethorn,
11 and they both indicated to me that they did not have one.

12 Q Okay. And then three to six months later, you were
13 called by the insurance company, I take it, am I correct,
14 that someone was attempting to put a claim in on this
15 policy?

16 A Yes.

17 Q And they told you the amount of the policy, the
18 insurance company did?

19 A Yes.

20 Q And that was a thousand dollars?

21 A To the best of my recollection, yes.

22 Q Did you at any time try to get the policy to verify
23 any information as to when the policy was actually
24 established and so on and so forth and the amount?

25 A No, I was advised by Mr. Martinez that I didn't need
26 to do any further action on it.

27 Q Is it fair to say that you were going to do further
28 action, but you were advised by the prosecutor not to?

1 A Well, I turned to Mr. Martinez for advice. If he
2 would have said we need to follow up on it, certainly I
3 would have followed up on it, but at that point, and we
4 also discussed it at a later time, he said that there was
5 no need to follow it up due to the minuscule amount of the
6 policy.

7 Q Um-hmm. The -- and how many times did you discuss
8 this policy with Mr. Martinez?

9 A Twice that I remember.

10 Q And the first time was about three to six months after
11 the event, the 10-10-9 --

12 A Well, it was when I found out about the policy. It
13 was about ten minutes after the phone call. If you mean
14 after the homicide, yes, it was -- I'm guessing three to
15 six months.

16 Q Okay. And both the conversation of Mr. Martinez about
17 this policy took place within that three to six months
18 after the incident on 10-10 of '93?

19 A Yes, it was within maybe a week of each other.

20 Q And you were told not to follow up?

21 A Yes.

22 Q Were you told to give any writing or to note the file
23 regarding this?

24 A No.

25 Q Were you told to follow up even insofar as obtaining
26 the policy to verify the information that you had been told
27 by Riggs and Rethorn?

28 A No, sir.

1 Q That's something you wouldn't do on your own?

2 A Probably not on a thousand dollars.

3 Q Did you ever tell Ms. Schmauss that there was a policy
4 of insurance?

5 A No, sir.

6 MS. SCHMAUSS: Schmauss.

7 MR. ABLARD: Sorry, Schmauss.

8 THE WITNESS: No.

9 BY MR. ABLARD:

10 Q Was there ever an inquiry?

11 A I don't believe so.

12 MR. ABLARD: I have nothing further.

13 THE COURT: Thank you.

14 MS. SCHMAUSS: Can I ask something, judge?

15 THE COURT: Yes, you may.

16 CROSS-EXAMINATION

17 BY MS. SCHMAUSS:

18 Q When you spoke to the insurance agency or agent, did
19 that person verify that the amount was a thousand dollars?

20 A She told me how much it was. I can't remember exactly
21 what she told me, but it was a very, very small amount,
22 yes. She told me about it and she told me that it was also
23 a policy that was attached to Mr. Riggs' policy.

24 Q Okay. So if you had heard the words a million
25 dollars, would you have followed up on it?

26 A Most certainly.

27 MS. SCHMAUSS: Thank you. I have nothing further.

28 MR. ABLARD: I have nothing further.

1 THE COURT: Thank you. Anything further on that
2 issue?

3 MR. ABLARD: No.

4 THE COURT: Well, I'll permit any further
5 examination you wish to make of Mr. Riggs who was the
6 beneficiary of the policy with regards to it, and its
7 relevance to this case if you choose to. That's the
8 current -- the Court's current order absent the copy of the
9 policy.

10 MR. ABLARD: Right.

11 THE COURT: And if we have one before the case goes
12 to the jury, I'll permit you to further inquire if we have
13 a policy about which we need to discuss anything with
14 anybody.

15 MR. ABLARD: I would request the Court order
16 prosecution to get me a copy of that policy.

17 MS. SCHMAUSS: We're trying. We've asked for it
18 way back on, what day was it?

19 MS. SCHMAUSS: He just informed me he talked to the
20 insurance company yesterday. They put an expedite on it to
21 fax it over as soon as possible.

22 THE COURT: Well, it may arrive before the case is
23 concluded or it may not. In any event, you have the
24 option. I'll put it in your judgment.

25 Now, that takes care of that problem. The next
26 problem is 402, in limine of witnesses.

27 MS. SCHMAUSS: Yes.

28 THE COURT: The name of the witnesses are?

1 MS. SCHMAUSS: We have Jennifer Farrar,
2 F-a-r-r-a-r, and Christy Crocker.

3 THE COURT: Farrar and Crocker?

4 MS. SCHMAUSS: Right. These are witnesses that
5 were developed by the People, interviewed by Detective
6 Donley on tape, and both of them have conclusions about
7 disciplinary practices of Miss Rethorn. Both of them talk
8 about a biting incident that occurred a good year prior to
9 the death of Brittany, and I believe one says she never saw
10 her spank her, the other one either says she did or heard
11 that she did. They both have opinions about how many times
12 the child went to the doctor. They feel that she was taken
13 to the doctor when she only had a runny nose. I feel that
14 that is totally without foundation since neither of them
15 are medical professionals. So I would ask the Court to
16 limit any inquiry of these witnesses to what they saw and
17 heard, not their opinions, their conclusions, what they
18 heard from other people.

19 THE COURT: You mean you want to limit their
20 testimony to that which is admissible?

21 MS. SCHMAUSS: That would be nice.

22 THE COURT: So ordered. Are we ready to go now?

23 MR. ABLARD: Yes, I need to go over -- the
24 witnesses are in the building. I would request -- what
25 time is it?

26 THE COURT: It's not 11:00. It's 10:05.

27 MR. ABLARD: Good. May I have 10 or 15 minutes
28 with them? I should also indicate to the Court, those are

1 my only witnesses, and after that, I am going to rest.

2 THE COURT: It's 10:05. You will have until 10:30.

3 MR. ABLARD: Thank you very much, Your Honor.

4 THE COURT: We will inform the jury to return at
5 10:30 and we expect counsel to return at 10:30 ready to

6 start up.

7 MR. ABLARD: I will be here with the witness.

8 THE COURT: Thank you. Thank you. Court's in
9 recess until 10:30 on this matter.

10 (RECESS TAKEN.)

11 THE COURT: Back on the Johnson matter. The jury
12 is still absent, and are we ready to proceed now?

13 MR. ABLARD: Yes, judge.

14 THE COURT: Let's hear some testimony.

15 MR. ABLARD: Okay.

16 THE COURT: Let's find some jurors.

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

19 THE COURT: You folks look familiar. Have you
20 been here before?

21 A JUROR: Second home.

22 THE COURT: That's true. It's your vacation home.
23 Show up after coffee in the morning, read the newspaper,
24 watch GOOD MORNING AMERICA, I don't know what follows
25 that. Remember, we've had a long recess, this is the case
26 of People versus Johnson, murder trial. You've heard a lot
27 of witnesses from the prosecution. We're now in the
28 defense. Of course, I gave the attorneys four days off on

1 the case, not really, we met yesterday, but if I give them
2 a couple of days to think, they come, you know, with stuff
3 I have to make decisions on before you guys come back, so
4 that's what we've been doing and so here we are now.

5 And you have some more testimony for us,

6 Mr. Ablard?

7 MR. ABLARD: Yes, I do, Your Honor. We'd like to
8 call Christy Crocker.

9 THE COURT: All right.

10 MR. ABLARD: Thank you.

11 THE WITNESS: Do I go up here?

12 THE COURT: Yeah.

13 MONA CROCKER,

14 called as a witness by the Defendant, was sworn and
15 testified as follows:

16 THE CLERK: You do solemnly swear that the
17 testimony you are about to give in the cause now pending
18 before this court shall be the truth, the whole truth, and
19 nothing but the truth so help you God?

20 THE WITNESS: Yes, I do.

21 THE CLERK: Please be seated.

22 Would you state your name for the record and spell
23 your last name, please.

24 THE WITNESS: Mona Crocker, C-r-o-c-k-e-r.

25 MR. ABLARD: Thank you, Your Honor.

26 DIRECT EXAMINATION

27 BY MR. ABLARD:

28 Q Is it Miss or Mrs.?

1 A Ms.

2 Q Ms. Crocker, do you know Jennifer Rethorn?

3 A Yes, I do.

4 Q Okay. And how long have you known Miss Rethorn?

5 A Approximately three years.

6 Q Okay. And -- we're going to be discussing events
7 prior to October 10th, 1993, and events just after
8 October 10th, 1993, okay?

9 A Okay.

10 Q Now, prior to October 10th, 1993, how long had you

11 known Miss Rethorn?

12 A About a year-and-a-half.

13 Q And how would you characterize your relationship with
14 Miss Rethorn during that year-and-a-half period of time?

15 A It varied. We were friends for the first year. The
16 last six months, I really didn't see her.

17 Q Okay. Now, you mentioned the last six months, six
18 months prior to October 10th, 1993?

19 A That's correct.

20 Q Okay. And during that period of time, did you see
21 Miss Rethorn?

22 A Not that I remember.

23 Q Okay. Was there a reason for that?

24 A Yes, there was.

25 Q What was that?

26 MS. SCHMAUSS: Objection, irrelevant.

27 THE COURT: Doesn't sound relevant.

28 MR. ABLARD: That's fine.

1 THE COURT: Beyond the threshold, okay.

2 MR. ABLARD: That's fine, no problem.

3 BY MR. ABLARD:

4 Q How would you characterize your relationship with
5 Miss Rethorn in the year before that the six-month period?

6 A Friends. She was over at my house quite often.

7 Q Okay. And was there a period of time that you lived
8 with Brittany's godmother?

9 A Yes, there was.

10 Q And what period of time was that?

11 A It was -- I don't remember the exact dates, but it was
12 for about seven months.

13 Q And during that period of time, were you able to see
14 Jennifer Rethorn frequently?

15 A Oh, yes.

16 Q Okay. Did she ever live there or stay over?

17 A She did not live there, but she did spend the night.

18 Q Okay. Did you know Brittany?

19 A Yes.

20 Q And how did you know Brittany?

21 A Her and my daughter were best friends.

22 Q Now, did you -- other than Miss Rethorn visiting
23 frequently at the godmother's house where you were staying
24 and your child and Brittany being best friends, did you
25 socialize at all with Miss Rethorn?

26 A Yes, we did.

27 Q Okay. How often?

28 A We would go out like to a comedy club or Christmas

1 parties, trick-or-treating, that type of thing.

2 Q Would you categorize that as you socialized with
3 Miss Rethorn occasionally or frequently?

4 A Pretty often.

5 Q Okay, all right. Now, at some point, would you

6 categorize your relationship with Miss Rethorn during that
7 period of time that we've just been discussing as a mere
8 acquaintance?

9 A No, not at all.

10 Q Let's jump up to October 11th of 1993. In the evening

11 hours, where were you?

12 A I was at Rena's house, well, apartment.

13 Q And what time did you get there?

14 A I would say approximately between the hours of 6:30
15 and 7:30, right around there.

16 Q Okay. And what caused you to go there?

17 A I had been called to come over and basically find out
18 what had happened to Brittany, and sort of have like a
19 support group with our friends.

20 Q And who was it that called you?

21 A Jenny, Miss Rethorn.

22 Q Was it your impression that you were invited?

23 A Absolutely.

24 Q Now, did you invite anyone on your own to go over to
25 this gathering?

26 A Yes, I did.

27 Q And who was that?

28 A Jenny Farrar.

1 Q Now, when you first got to this meeting or gathering,
2 do you recall how many people were there?

3 A When I first got there, it was Rena and Angie, and
4 Jenny Farrar and myself. We were the first to arrive.

5 Q And at that time, was Miss Rethorn discussing with
6 you, plural, if you know --

7 A Yes.

8 Q -- her perception of the events of October 10th of
9 1993?

10 A Yes. But to clarify, Jenny wasn't there when we first
11 arrived.

12 Q Okay.

13 A When she did come in, we waited for a couple other
14 people, and then we did, we started discussing the
15 situation.

16 Q Okay. And Jennifer Farrar was with you in that small
17 group initially?

18 A That's correct.

19 Q Okay. Now, did Miss Rethorn discuss with you the
20 events that when her and Mr. Riggs actually got up that
21 morning and began looking for Brittany?

22 A Yes, she did.

23 Q And what did she say?

24 A You want me to start from the very beginning?

25 Q I don't want a narrative. Let me rephrase it. I want
26 to right now just sort of talk about the events as related
27 to you by Jenny Rethorn when her and Mr. Riggs first got
28 up.

1 A Okay. We were told when they first got up, they were
2 looking for Brittany and they couldn't find and they had
3 looked through the house and couldn't find her. And so
4 they went outside and discussed it with the roommate that
5 was there, and asked if he had seen her and he said he saw
6 her on the couch drinking juice -- or watching TV.

7 Q Now, at that time, did Jennifer Rethorn mention to you
8 anything about a noise that -- as a reason that her and
9 Mr. Riggs got up?

10 A That -- no, it was not a noise that got them up.

11 Q Okay. Now, were there any questions asked to Jennifer
12 Rethorn inquiring about the fact that there was no noise?

13 A Yes.

14 Q Okay. And what was asked?

15 A That if this was occurring in their house, didn't they
16 hear anything.

17 Q And did she respond?

18 A Yes, she did.

19 Q And her response was?

20 A "No, we didn't hear anything."

21 Q Now, at some point, did other people arrive?

22 A Yes.

23 Q And about when?

24 A They were arriving throughout the evening, but I would
25 say the first group of people started arriving about 25
26 minutes after we got there.

27 Q Okay. And was the topic of Mr. Riggs and Miss Rethorn
28 getting up in the morning discussed again by Jennifer

1 Rethorn?

2 A Yes, the whole subject was.

3 Q Okay. And did she at that time talk about a noise
4 that got them up?

5 A Yes, at that time it was brought up.

6 Q And what did she say?

7 A She said that she thought she had heard noise in the
8 bathroom and thought it was Brittany under the cupboards.

9 Q Now, during the time that you were there and
10 personally heard Jennifer, did she mention anything about

11 Brittany first coming into the room, say, between 7:00,
12 7:30ish?

13 A Yes, she did.

14 Q What did she say about that?

15 A She said Brittany had come in the room and woke them
16 up, and she told Brittany to go watch TV, they wanted to
17 sleep in.

18 Q Did she mention anything to you about Brittany coming
19 in and giving good morning kisses and hugs?

20 A No.

21 Q Now, you had mentioned that Miss Rethorn had spent and
22 Brittany had spent nights over at the godmother's house
23 while you were present?

24 A Yes, that's correct.

25 Q And do you have personal knowledge as to the typical
26 occurrences when Brittany comes into -- that you noticed,
27 okay, that when Brittany comes into Miss Rethorn's room in
28 the morning?

1 A Um-hmm, yes.

2 Q Okay. And what is that?

3 MS. SCHMAUSS: First of all, I would object to the
4 question as very vague. It should be answered yes or no,
5 does she have personal knowledge, and not a narrative.

6 MR. ABLARD: That's correct.

7 BY MR. ABLARD:

8 Q Do you?

9 A Yes.

10 Q And the next question is what is that personal
11 knowledge?

12 A Basically, it would be, "Leave me alone, I want to
13 sleep in," if that was the occasion.

14 Q Now, at some point, obviously, you left this gathering
15 on October 11th, correct?

16 A Yes.

17 Q And why?

18 A I was very --

19 MS. SCHMAUSS: Your Honor -- I'll withdraw it.

20 THE COURT: You may answer.

21 THE WITNESS: I was very upset with a comment that
22 was made to me -- well, made in general that evening.

23 BY MR. ABLARD:

24 Q And who made the comment?

25 A Jenny Rethorn.

26 Q And what was the comment?

27 A That Brittany was better -- in a better place and that
28 she wouldn't be sick anymore or hurting.

1 MR. ABLARD: I have no further questions. Thank
2 you very much.

3 CROSS-EXAMINATION

4 BY MS. SCHMAUSS:

5 Q And isn't it true, Miss Crocker, that after Jenny made
6 that comment you blew up at her and blamed her for not
7 protecting the child?

8 A Yes, ma'am, it is.

9 Q On reflection, didn't you think she was trying to find
10 some good in what had happened to Brittany?

11 A I can't tell you. Possibly.

12 Q Do you remember having a conversation with Detective
13 Donley over the telephone on October 26th, 1994, when he
14 called you at your place of employment?

15 A Yes, ma'am.

16 Q And do you remember telling him about this statement
17 by Miss Rethorn and then you added, "Well, it looked like
18 she was trying to find something good out of what had
19 happened"?

20 A Yes.

21 Q Do you remember telling him that?

22 A Yes, I do.

23 Q And isn't it also true that Jennifer took great pains
24 to make sure that your daughter Brianna remembered
25 Brittany?

26 MR. ABLARD: Well, Your Honor, I'm going to object
27 as outside the scope.

28 MS. SCHMAUSS: Well, it goes to what was just said,

1 Your Honor, about her comments and her feelings.

2 THE COURT: Overruled. You may answer.

3 THE WITNESS: I received a sashay of flowers and a
4 cassette tape. I don't know about great pains.

5 BY MS. SCHMAUSS:

6 Q Didn't you tell Detective Donley that Jennifer made
7 sure that Brianna didn't forget Brittany by sending her
8 this sashay of flowers off the grave and a tape of their
9 favorite music songs, Brianna and Brittany's?

10 A Yes, ma'am, that's what I received.

11 Q And did you tell Officer Donley that you felt that
12 Jennifer wanted to make sure Brianna didn't forget
13 Brittany?

14 A Yes.

15 Q Brianna and Brittany were best friends?

16 A That's correct.

17 Q Brianna was very sad when Brittany died?

18 A Extremely.

19 Q And told you she was supposed to grow up with Brianna?

20 A That is correct.

21 Q Now, these statements that you attribute to Jennifer
22 Rethorn, you didn't tell any of those to Detective Donley,
23 did you?

24 A They weren't asked.

25 Q So you never said, "Gee, Officer Donley, I think you
26 ought to know that she made this comment at this meeting"?

27 A I was told to answer the questions.

28 Q Did you write down these statements anywhere that you

1 say Jennifer Rethorn made?

2 A Not to the best of my recollection.

3 Q So these were comments made more than two years ago,
4 correct?

5 A Yes.

6 Q And I take it you were not a police officer or an
7 investigator?

8 A No, ma'am.

9 Q Are you friends with Jennifer Farrar?

10 A Yes, I am.

11 Q Have you compared notes with her about what was said
12 at that meeting on the 11th?

13 A I would say yes.

14 Q In fact, you flew out here paid for by Mr. Ablard?

15 A I believe it's the County.

16 Q And where do you live now?

17 A I live in Georgia.

18 Q Okay. Somebody paid your way out here?

19 A Yes, ma'am.

20 Q In fact, you flew out here last Friday?

21 A Yes.

22 THE COURT: The same people pay everything,
23 counsel.

24 MS. SCHMAUSS: Correct.

25 BY MS. SCHMAUSS:

26 Q The prosecution didn't contact you, did we?

27 A No, ma'am.

28 Q Mr. Ablard contacted you?

1 A That is -- well, the final person that did contact me
2 was Mr. Ablard, yes.

3 Q And, in fact, your six-year-old daughter was flown out
4 with you, too?

5 A Yes, ma'am.

6 Q And all your expenses are being paid?

7 A No, I'm staying with my parents.

8 Q You're not getting room service?

9 A No, ma'am. We had one night, last night, so we'd be
10 close to the courthouse.

11 Q In your interview with Detective Donley, did he ever
12 tell you just answer the questions?

13 A No, but that's all I did.

14 Q Didn't he ask you to tell him everything you knew
15 about Jennifer and what she said and what she did?

16 A I don't remember. It's been awhile.

17 Q Okay. Just for clarification, you say that on the
18 11th, at first Jennifer didn't say anything about hearing
19 the noise?

20 A That's correct.

21 Q But then at that same meeting, she commented about
22 hearing the noise that she thought came from the bathroom?

23 A That's correct.

24 MS. SCHMAUSS: I have nothing further, Your Honor.

25 MR. ABLARD: And I have nothing further. Thank you
26 very much.

27 THE COURT: Thank you. You may step down.

28 Next witness, please.

1 MR. ABLARD: Thank you. Be Jennifer Farrar.

2 THE COURT: Where is she?

3 MR. ABLARD: Excuse me?

4 THE COURT: Have to call more loudly.

5 MR. ABLARD: I believe she's in the ante-room, Your

6 Honor.

7 THE COURT: All right.

8 JENNIFER FARRAR,

9 called as a witness by the Defendant, was sworn and
10 testified as follows:

11 THE CLERK: You do solemnly swear that the
12 testimony you are about to give in the cause now pending
13 before this court shall be the truth, the whole truth, and
14 nothing but the truth so help you God?

15 THE WITNESS: I do.

16 THE CLERK: Please be seated. State your first and
17 last name, spelling your last name for the record.

18 THE WITNESS: Jennifer Farrar, F, as in Frank,
19 a-r-r-a-r.

20 MR. ABLARD: Thank you.

21 DIRECT EXAMINATION

22 BY MR. ABLARD:

23 Q Miss Farrar, is it Miss, Ms. or Mrs.?

24 A Mrs.

25 Q Okay. Did you know Jennifer Rethorn prior to
26 October 10th, 1993?

27 A Yes.

28 Q And how did you come about to know Jennifer Rethorn?

1 A I -- the lady that baby-sat my daughter, Christy
2 Crocker, she was friends with Jennifer, and met her through
3 her.

4 Q Okay. Did Christy Crocker ever baby-sit, to your
5 knowledge, personal knowledge, Brittany at the same time
6 that Christy Crocker baby-sat your child?

7 A Yes.

8 Q Now, prior to October 10th, 1993, how would you
9 categorize your relationship with Jennifer Rethorn?

10 A We -- it started as an acquaintance. We later became
11 friends.

12 Q Now, do you still consider yourself a friend of
13 Jennifer Rethorn?

14 A I -- I do. I haven't spoken to her in some time.

15 Q Does she -- has she contacted you after, let's say,
16 October of 1993?

17 A Yes.

18 Q About how many different occasions?

19 A 10 to 15 times.

20 Q Now, do you recall being at a meeting or gathering in
21 the evening hours of October 11th, 1993?

22 A Yes.

23 Q And how did it come about that you went to that
24 gathering?

25 A Christy Crocker called me at home and said that all of
26 us friends, our group of friends, were getting together and
27 Jenny was coming to let us know what had happened, and kind
28 of just fill us in.

1 Q And so you and Miss Crocker went over there together?

2 A Yes.

3 Q Now, do you recall about what time you arrived?

4 A I would say sevenish, roughly.

5 Q And you recall who was there?

6 A Yes, when I arrived?

7 Q Yes, ma'am.

8 A When I arrived, it was Rena Morkovich and Angela
9 Morkovich and we were first to arrive.

10 Q At some -- was Jennifer Rethorn there, do you recall?

11 A No.

12 Q At some point she arrived?

13 A Yes.

14 Q And she told -- relayed events that had happened the
15 previous day on October 10th, 1993?

16 A Yes.

17 Q Now, did she discuss the events at the time that she
18 and Mr. Riggs got up that morning?

19 A Yes, she did.

20 Q And I'm talking about -- well, when did she discuss
21 that?

22 A A few more people showed up and we were all incredibly
23 curious.

24 Q Okay. Did she discuss that initially with just the
25 small group that was there that you just mentioned?

26 A No. There were a few other people that had showed up
27 before she arrived.

28 Q Right, okay. And the first time that you heard her,

1 did she discuss this event more than once that evening?

2 A Yes.

3 Q Okay. And the first time that you -- that she
4 discussed it, were you present --

5 A Yes.

6 Q -- that you know of?

7 A Yes.

8 Q Okay. And what did she relay to you regarding her and
9 Mr. Riggs getting up that morning?

10 A She said that they were asleep in bed, Brittany had
11 been watching TV, cartoons that morning, and they were
12 still in bed asleep. That they didn't hear anything, they
13 got up, I'm not sure what time exactly, but they got up and
14 didn't see her there, and started to look for her, and
15 couldn't find her. Went to the roommate's room, asked him
16 if he had seen her and he had said something to the effect
17 the last time he saw her she was watching cartoons. They
18 started to look outside and check with neighbors at that
19 point.

20 Q Now, were there any inquiries made of Miss Rethorn at
21 that time as to the noise or lack thereof?

22 A Yes. I asked her if she was sure that she didn't hear
23 anything.

24 Q And her response was what?

25 A Was "No."

26 Q Now, did she discuss this topic later on in the
27 evening?

28 A Yes.

1 Q And there was a larger group of people there at that
2 time?

3 A Yes.

4 Q Did she at that time mention this noise?

5 A Yes.

6 Q And what did she say about the noise?

7 A She said that it sounded as if Brittany had been in
8 the bathroom getting into the cabinets.

9 Q During the period of time that Miss Rethorn first
10 relayed the waking up and the lack of noise and the second

11 time that the noise, I guess is what woke them up, is that
12 correct or not? I don't know. What did she say about that
13 the second time?

14 A The second time she had relayed the story, and didn't
15 -- I didn't question it at that point.

16 Q Between -- were you the only one questioning
17 Miss Rethorn about the noise after the first discussion she
18 had with you that there was no noise, that you recall?

19 A I believe I was the only one who had asked about it.
20 I could be wrong.

21 Q Did she appear to be, to you, adamant that she had not
22 heard a noise?

23 A Yes.

24 Q And at some point in the evening, did you and
25 Miss Christy leave together?

26 A Yes.

27 Q Christy Crocker?

28 A Um-hmm.

1 Q And do you recall the reason that you left at the time
2 that you did?

3 A Yes.

4 Q And what was that?

5 MS. SCHMAUSS: Objection, irrelevant.

6 MR. ABLARD: Has to go with the inconsistent
7 statement, Your Honor.

8 THE COURT: All right.

9 MR. ABLARD: Thank you.

10 THE WITNESS: We left, Christy had become

11 incredibly emotional, had been really upset, and had an
12 outburst and she was ready to leave.

13 BY MR. ABLARD:

14 Q Right, okay. And were you present -- do you know why
15 she had the outburst?

16 A Yes.

17 MS. SCHMAUSS: Calls for speculation, objection.

18 BY MR. ABLARD:

19 Q Were you present at the time of some event that caused
20 that outburst?

21 A Yes.

22 Q And what was that?

23 MS. SCHMAUSS: That calls for hearsay, Your Honor.

24 MR. ABLARD: Inconsistent statement, Your Honor.

25 MS. SCHMAUSS: If it's said by Jennifer, not if
26 it's said by Christy.

27 MR. ABLARD: That's correct, what Jennifer said?

28 THE WITNESS: Yes.

1 THE COURT: All right.

2 BY MR. ABLARD:

3 Q This is something Jennifer said. What was said?

4 A She said that she was in heaven, that she was in a
5 better place, that she would not be sick anymore, and that
6 she wouldn't have to worry.

7 Q "She" being Brittany?

8 A Yes.

9 MR. ABLARD: I have no further questions. Thank
10 you.

11 CROSS-EXAMINATION

12 BY MS. SCHMAUSS:

13 Q And didn't she also say that at least she got to spend
14 some time with her daddy?

15 A Yes.

16 Q Miss Farrar, you're the anonymous phone caller, aren't
17 you?

18 A Yes.

19 Q You called Detective Donley and refused to leave your
20 name and refused to leave your phone number?

21 A Yes.

22 Q And it wasn't until a year later he tracked you down?

23 A Yes.

24 Q Actually, you called after Christy told you he called
25 her?

26 A Yes.

27 Q Christy, is that the same as Mona?

28 A Yes.

1 Q So her nickname is Christy?

2 A I believe it's -- her middle name is Christina.

3 Q So you didn't recontact the police, they contacted
4 you. Well, you -- I take it back. You called them only
5 after you heard they were looking for you?

6 A Yes.

7 Q Did you ever write down these statements you state
8 that Jennifer made in a meeting?

9 A No.

10 Q It was a good year that you talked to Detective Donley
11 and he -- or you called him after he called Christy, right?

12 A Yes.

13 Q And you're positive that you have the sequence of
14 events accurately?

15 A Yes.

16 Q Do you also recall telling Detective -- or Officer
17 Donley in that same phone call that Jennifer told you that
18 the defendant had a daughter that was visiting him at jail?

19 A I recall saying that, yes.

20 Q So it's your belief that the defendant has a little
21 girl?

22 A I've been told differently now. I knew that he had
23 children, but at that time I had thought that it was a
24 daughter.

25 Q So you were wrong about that?

26 A Yes, I was wrong about that.

27 Q You live out of state now, don't you?

28 A Yes.

1 Q So you were contacted by Mr. Ablard and asked to come
2 here as a witness?

3 A Yes.

4 Q And your flight was paid?

5 A Yes.

6 Q And your hotel room?

7 A Yes.

8 Q Was your child care paid for in Houston?

9 A No.

10 Q Have you seen Christy Crocker since Friday when you
11 flew out here?

12 A Yes.

13 Q And have you discussed with her what the two of you
14 were going to testify?

15 A Not really what we were going to testify. We've
16 discussed what has happened.

17 Q Isn't it true the two of you were with Mr. Ablard
18 yesterday until about 5:00 o'clock in the evening?

19 A Yes.

20 Q Did you talk to him together?

21 A About hotel things. We were separated when we were
22 speaking to him about the case.

23 Q And it's your testimony that you've never gone over
24 what you were going to say in court with Christy Crocker?

25 A Not what I was going to say, no.

26 Q Did you discuss with her the comments that you were
27 attributing to Jennifer about not hearing anything and then
28 hearing something?

1 A Yes, I did.

2 Q You and Christy talked about that?

3 A That's correct.

4 Q Recently?

5 A Yes.

6 MS. SCHMAUSS: Thank you. I have nothing further.

7 REDIRECT EXAMINATION

8 BY MR. ABLARD:

9 Q Just briefly. The issue was brought up to the fact
10 that you're the anonymous caller. Why did you call

11 anonymously?

12 A I called because I was concerned that --

13 THE COURT: Wait, wait, just a second. The
14 question is why did you call anonymously?

15 THE WITNESS: Why did I call anonymously?

16 THE COURT: Not why did you call.

17 THE WITNESS: I called anonymously because we were
18 friends and at that point I really didn't want to be
19 involved in this situation.

20 MR. ABLARD: I have no further questions. Thank
21 you.

22 MS. SCHMAUSS: No, Your Honor.

23 THE COURT: Thank you.

24 MR. ABLARD: Your Honor, defense rests.

25 MS. SCHMAUSS: I have one very, very brief witness
26 and then I'll be done.

27 THE COURT: Whom might that be?

28 MS. SCHMAUSS: Darrin Riggs.

1 THE COURT: What subject matter?

2 MS. SCHMAUSS: It's about a car.

3 MR. ABLARD: I don't know.

4 MS. SCHMAUSS: It's very brief, Your Honor. Take
5 about two minutes.

6 THE COURT: Well, is it in rebuttal to the
7 defense, and if so, tell me how.

8 MS. SCHMAUSS: Technically, I guess I'm asking to
9 recall him. Want me to come up and tell you why?

10 THE COURT: You're asking to reopen your case?

11 MS. SCHMAUSS: Can I come up and tell you why?

12 THE COURT: Is that what you're asking?

13 MS. SCHMAUSS: I suppose, technically.

14 THE COURT: Well, you better come tell me why.

15 (A CONFERENCE WAS HELD AT THE BENCH, NOT
16 REPORTED.)

17 THE COURT: The prosecution has no rebuttal. That
18 means, Ladies and Gentlemen, you've heard all the evidence
19 that you're going to hear in this case.

20 The next thing we're going to have is what I --
21 well, it's called argument, but it's called advocacy. I've
22 gone over the instructions with counsel and they have a
23 general idea of what it is that I'm going to read to you
24 later today as to your duty and the law and the elements
25 and the various offenses that you can discuss based upon
26 the evidence that we've heard, but what the lawyers say is
27 not evidence. If you care to, you may take notes in their
28 argument, but it's not necessary.

1 And for counsel, let me tell you that we've been
2 here quite a number of days, we've hired 14 people to
3 listen to the evidence, and as I indicated to them at the
4 commencement, that often people will see or hear things
5 differently, that is in the real world, and that is right
6 here in this courtroom which is becoming their real world,
7 and we have 12 of them because each may hear things
8 slightly different and emphasis added or subtracted based
9 upon their observations. And believe it or not, Ladies and
10 Gentlemen, the lawyers will see or hear the testimony of
11 witnesses differently. That's probably on going to shock
12 you, so, counsel, during the course of your argument, the
13 objection that I'm sorry that you know you can't argue that
14 because there's no evidence of it, I'm only going to turn
15 to the jury and say, "Folks, you decide what the evidence
16 is," and I'm not going to stop anybody from arguing, or
17 either lawyer arguing what they believe the testimony was
18 if it's within the parameters generally of this case.

19 So away we go. You're up.

20 MS. SCHMAUSS: Your Honor?

21 MR. ABLARD: Your Honor?

22 MS. SCHMAUSS: Go ahead, you first.

23 MR. ABLARD: I have a couple of brief matters,
24 motions to take up with the Court at this point.

25 MS. SCHMAUSS: I just needed a minute to set up.

26 THE COURT: Well, a minute?

27 MS. SCHMAUSS: Well, enough time to get my easels
28 up and get my charts out.

1 THE COURT: Where are the easels and the charts?

2 MS. SCHMAUSS: Behind me.

3 THE COURT: All right. Folks, you can wander out.
4 Don't go very far away, don't form any opinions or
5 conclusions. We're going to call you back in five minutes
6 and we're going to commence argument.

7 (THE JURY EXITED THE COURTROOM, AND THE
8 FOLLOWING PROCEEDINGS WERE HELD:)

9 THE COURT: All right. We're on the record. The
10 jury is no longer present. Mr. Ablard, you have motions?

11 MR. ABLARD: Yes, Your Honor, I'd like to make an
12 1118 motion on sufficiency of the evidence in this case,
13 that I understand that this case deals with the death of a
14 child, but I also in listening to the evidence like to make
15 that motion that it's really insufficient evidence to
16 warrant a finding beyond a reasonable doubt my client
17 committed the crime.

18 MS. SCHMAUSS: I disagree.

19 THE COURT: Denied. What else?

20 MR. ABLARD: Additionally, Your Honor, making
21 motion as to Miss Johnson, Angie Johnson, under 1093 of the
22 Penal Code and request that Your Honor comment to the jury
23 that the lack of credibility in her testimony.

24 THE COURT: Denied. What next?

25 MR. ABLARD: I think next if I could help set up
26 easels, I will, because I'm done with my motions.

27 THE COURT: That's denied.

28 MR. ABLARD: Thank you. I'll sit down and wait.

1 (THE JURY ENTERED THE COURTROOM, AND THE
2 FOLLOWING PROCEEDINGS WERE HELD:)

3 THE COURT: All right. Have we got everybody?
4 They found their way back to their seats. You may
5 commence.

6 MS. SCHMAUSS: Thank you, Your Honor.
7 Good morning, Ladies and Gentlemen.

8 THE JURY: Good morning.

9 MS. SCHMAUSS: Get my stick. We've been together
10 quite a long time. You've heard a lot of witnesses over a
11 lot of days and now finally we're at what I suppose is the
12 climax of the trial. You're going to finally get the case
13 for deliberation, and it is your job to determine what you
14 feel happened in this case and it is your task to apply the
15 facts of the case to the law, as the judge will instruct
16 you. Following arguments of counsel, the judge will
17 instruct you on the applicable law that you are to apply to
18 this case.

19 We all know that on October 10th, 1993, more than
20 two years now, Brittany Lynn Rethorn Riggs was killed and
21 now it is your duty to do justice in this case, and in this
22 case, Ladies and Gentlemen, the people would ask that you
23 convict the defendant of the crime of first degree murder
24 in the death of Brittany.

25 Now, you're going to be instructed on the elements
26 of murder, murder as an umbrella, murder in general. The
27 elements that are required to be proven in this case are,
28 one, a human being was killed. Well, that's easy. That

1 was Brittany. We know she was killed. Number two, the
2 killing was unlawful, and the evidence has been
3 uncontradicted that Brittany was killed by the hands of
4 another. It was not an accident, it was not suicide.

5 Dr. Sheridan was very graphic in his description of what
6 happened to Brittany. Brittany was murdered at the hands
7 of another.

8 And, three, the killing was done with malice
9 aforethought. That's the third requirement for a finding
10 of murder in this case. And you'll be further instructed

11 that malice is broken down into two different definitions.
12 One is express malice, which is an intention to kill, that
13 the defendant intends to kill and does kill. Secondly,
14 malice can be implied, which is 'an intentional act,
15 dangerous to life, deliberately performed with knowledge or
16 danger to and with conscious disregard for human life.
17 Malice is not like what we think the common dictionary
18 definition which would be hatred or ill will. That's not
19 what the legal definition of malice is. The judge will
20 instruct you that no ill will or hatred is required.
21 Malice is a legal term of art that shows the state of mind
22 of the killer. Did he have express malice or did he have
23 implied malice?

24 By the way, I should point out these charts are
25 used for argument and they don't go into the jury room.
26 I've had previous cases where the jury asked for them.
27 They're not evidence. If you want to write them down, feel
28 free, but you can't have them later.

1 So we have two different kinds of malice, and why
2 is that important? It's important because of the degree of
3 murder. You're going to be given three choices in this
4 case -- actually, four. The choices are the defendant is
5 ~~guilty of the crime of first degree murder or he's guilty~~
6 of the crime of second degree murder or he's guilty of the
7 crime of involuntary manslaughter, a lesser crime, or he's
8 not guilty at all. Those will be your choices that you
9 need to determine in this case. The judge will instruct
10 you how you go about that determination. Basically, you

11 start at first degree. If you convict him of first degree,
12 your job is over. If you acquit him of first degree, then
13 you go down the list.

14 Why is this case first degree murder? Well, what
15 is necessary to be proven for a charge of first degree
16 murder? The murder must be deliberate and the law defines
17 deliberate as thought out. The killing must be
18 premeditated which the law defines as considered
19 beforehand. It doesn't come after the fact, it comes
20 before the fact. And with express malice, intent to kill,
21 the defendant intends to and does kill the victim.

22 Premeditated does not have to be a long, drawn out
23 process. It can occur in a matter of moments, but it has
24 to occur before the killing, so it may be arrived in a
25 short period of time. That's in the jury instruction,
26 California jury instruction 820, premeditated may be
27 arrived at in a very short period of time.

28 And the jury instruction goes on to tell you the

1 slayer must weigh and consider the question of a killing
2 and the reasons for and decides and does kill. In this
3 situation, do we have the situation of first degree
4 murder? Again, I ask you to reflect on Dr. Sheridan's
5 testimony, very graphic, very disturbing, I think you would
6 agree. Brittany fought for her life, she had the tear in
7 her frenulum, she had those marks on the back of her head,
8 there's pictures you will receive in the jury room when you
9 deliberate. The killer had to really work at killing
10 Brittany. He told you it took two-and-a-half to three
11 minutes to suffocate her and it probably took substantially
12 longer since she fought and more than likely dislodged the
13 attacker and managed to get a few breaths. So did he
14 deliberate, premeditate, and have intent to kill?
15 Absolutely, because he would have had all kinds of
16 occasions to stop what he was doing when the child was
17 gasping for breath. This isn't a situation of a small
18 infant, a couple of days or weeks old, where the infant is
19 unable to move its head, the infant is unable to kick.
20 This is a child by all accounts was a very strong child and
21 had the ability to fight and did fight. The evidence is
22 very definite that Brittany fought. So the killer meant to
23 do what he did. It's first degree murder.

24 You'll be further instructed on second degree which
25 is, of course, an option for you and only you can decide
26 what fits in this case. Second degree can go two ways,
27 one if you found that there was insufficient evidence of
28 deliberation and premeditation, what I just talked about.

1 If you don't feel that the defendant premeditated and
2 deliberated, or if you find that he didn't have an
3 intention to kill, he didn't have the express malice we
4 just talked about but he had implied malice. And if you
5 find that there was implied malice, intent to kill is not
6 required. So that's probably the biggest distinction
7 between first degree murder and second degree murder.
8 First degree requires an intent to kill which, as we know,
9 can come in a matter of moments, the premeditation. You
10 can intend to kill just before you kill. However, in a
11 second degree situation, intent to kill is not required if
12 there is this thing called implied malice. And, once
13 again, implied malice comes from the following: The
14 killing results from an intentional act, not an accident.
15 The act was intentional. The natural consequences of the
16 act were dangerous to life, and the act was deliberately
17 performed with knowledge of danger to and with conscious
18 disregard for human life. Could that possibly fit our
19 situation here? Sure. The defendant is cutting off her
20 air supply, perhaps he's not contemplating that he's going
21 to kill her. Well, cutting off someone's air supply,
22 putting something over their face and stopping them from
23 breathing is definitely an intentional act. The natural
24 consequences are dangerous to life and you can't really
25 suffocate somebody without meaning to.

26 Now, I feel the evidence shows that this is a first
27 degree act, again, Dr. Sheridan with how long it took, how
28 hard she fought. So, yes, the elements of second degree

1 are there, but so are the elements of first degree.

2 There's a third choice, what we call a lesser
3 included offense. It's very much a less serious charge.
4 It's known as involuntary manslaughter. That requires no
5 malice aforethought and no intent to kill. Basically, it's
6 one step short of an accident, and you can get it from
7 criminal negligence, you're being negligent about what
8 you're doing. And you'll be instructed that the elements
9 of that are a human being was killed, killing was unlawful,
10 and it occurred during the commission of a misdemeanor

11 that's inherently dangerous to human life or while
12 committing an ordinary lawful act with a high degree of
13 risk of death or great bodily harm. In this case what does
14 the evidence suggest even though the defendant denies it,
15 an act of child abuse. He was abusing the child and in the
16 course of abusing the child, he killed her. Now, I would
17 submit to you that the facts in this case are really,
18 really clear, that the murderer of little Brittany, for
19 reasons known only to him, decided to choke the life out of
20 that child, and it's real clear that this didn't happen
21 accidentally. This didn't happen out of negligence, this
22 happened because the killer intended to kill the victim.

23 You've heard all the evidence, you've heard all the
24 witnesses, and their believability and credibility are for
25 you to determine. I submit to this case has been proven to
26 you beyond a reasonable doubt, that there was only one
27 person that had contact with the victim that day, there is
28 only one person that had the opportunity to kill the victim

1 that day. We don't know why, we'll probably never know
2 why. But the facts are strong, the facts are compelling
3 that the defendant murdered Brittany Rethorn Riggs and he
4 murdered her with malice aforethought, premeditation and
5 deliberation and it's a first degree murder.

6 Now, Mr. Ablard is going to have an opportunity to
7 talk to you and he's going to argue to you what he feels
8 the facts in this case have shown and what you should do.
9 Since I have the burden of proof, I will have one more
10 opportunity to address you before you go out and make your
11 decision.

12 Thank you.

13 MR. ABLARD: Thank you.

14 Your Honor, I would request to start my opening
15 after lunch if the Court would so indulge.

16 THE COURT: I think not.

17 MR. ABLARD: Thank you.

18 MS. SCHMAUSS: Do you want me to move that out of
19 the way?

20 MR. ABLARD: I was going to use it.

21 Prosecutor said there was a fourth choice and that
22 was not guilty. Let me get the podium and talk about that.

23 Can I use that?

24 MS. SCHMAUSS: No, don't go that far.

25 MR. ABLARD: No?

26 MS. SCHMAUSS: That's for later.

27 MR. ABLARD: Okay.

28 MS. SCHMAUSS: You want me to clip up to that

1 point?

2 MR. ABLARD: Got a time line here.

3 MS. SCHMAUSS: There. You can use these.

4 MR. ABLARD: Okay. You are going to use any of the
5 other ones?

6 MS. SCHMAUSS: I'm going to use them later.

7 MR. ABLARD: Have that straightened out.

8 Interesting looking at the time line because one of
9 the very interesting points on this matter -- well, the
10 problem, of course, that we have is that Brittany was found

11 in Chuck Johnson's closet. Chuck Johnson told the police
12 that he found the body there and that he panicked, and
13 tried to hide the body. There's a benchmark time of 8:57,
14 and I reckon the problem everybody is having is when did
15 that body get in Mr. Johnson's closet and who put it
16 there. You see, if Mr. Johnson, after being outside, came
17 and went back in his room and locked his door and went to
18 sleep, right, then no one else could put the body in there,
19 I guess. Well, that's the problem, you see, because if we
20 look at the testimony in this case, you find out a couple
21 different interesting points. The first point is if you
22 recall the testimony from Rethorn and Riggs, particularly,
23 that Mr. Johnson didn't go outside. Jennifer Rethorn says
24 that Mr. Johnson lingered about, didn't go outside, stayed
25 in the house, acted hysterical and peculiar. She also said
26 at one point that, in fact, he did go out but it was for a
27 little less than a minute, followed her out in the yard and
28 he came back in, he stayed on the property and so on. But

1 is that what really happened?

2 In the initial report, she tells the officer that,
3 in fact, he had gone out with the other roommate to check
4 the neighborhood. She had given him pictures and he went
5 out to check. That's verified by what Darrin Riggs says is
6 that, in fact, he saw Mr. Johnson out at a neighbor's
7 house. So it's not correct that Mr. Johnson did not go
8 outside. He did go outside to look. The question becomes
9 why would someone say that he wasn't outside or just
10 outside for a very short period of time, not leaving the
11 property, if in fact, he really was? Something is going on
12 here.

13 We heard that Riggs and Rethorn get up in the
14 morning. We'll get to sort of the different stories on
15 that in a minute when we ask ourselves why are they
16 different stories. Part of things people say we can strike
17 up to the fact that they're hysterical. There's no doubt
18 about it. There's a jury instruction that says minor
19 discrepancies and perception and memory is normal, but
20 that's not what we're going to be talking about.

21 At some point early on Darrin is in the yard, he
22 yells, Mr. Johnson opened up the shades or looks out, says,
23 "What's going on?" Brittany is missing, according to
24 Mr. Riggs. It's about that time, and that's early on in
25 this scenario, that Jennifer says she goes to the door of
26 Mr. Johnson and asks what Brittany was wearing, and
27 Mr. Johnson doesn't really respond but tells her to go
28 away.

1 Before that happened, they had searched the rest of
2 the house. There was one room left, Mr. Johnson's room.
3 Miss Rethorn says he said, "Go away." You all find it
4 peculiar that she did not touch the doorknob to see if the
5 door was open, did not pound on the door. There was a

6 spare key in the closet, we heard about that. If every
7 place else had been searched, you have a fella, who was
8 estranged from his wife, living out of his car, brought
9 into the house about six, seven weeks earlier, he's a
10 boarder, your three-year-old daughter is missing, you don't

11 even check his room, you don't even try to open it. Not to
12 mention, we've all seen Mr. Riggs, the big man.

13 Would you stand up, please, Chuck? Chuck isn't all
14 that big. Now, common sense, may I suggest, and for your
15 consideration, may dictate that if you're looking for a
16 missing three-year-old child and you have a boarder of six
17 or seven weeks and he tells you to go away, you want to
18 know what's in that room. Now, we don't know if that event
19 really happened or if it's an untruth. We don't know.
20 Consider it doesn't make a lot of sense, but please
21 consider why did we hear about that? What's the motivation
22 behind that little vignette, that little part of the
23 scenario?

24 We then find out that Mr. Johnson, according to
25 Mr. Riggs in the interviews to the police and so on, that
26 Mr. Johnson does not come out of his room for about 10
27 minutes. That is highly suspicious. That would cause, I
28 suggest, someone to take a very close look at what's going

1 on. And, of course, the police latch onto that, and
2 rightfully so. The problem becomes on the witness stand
3 Mr. Riggs tells us that after the preliminary hearing,
4 quite awhile ago, he figured that this 10-minute thing that
5 he had told the police and so on didn't fit. It didn't
6 work. It didn't work given the dispatch log that we have.
7 If Mr. Johnson stayed in the room 10 minutes, or not quite
8 15 or 5 to 10, a legitimate time line from the dispatch
9 tape would not work. Mr. Riggs didn't tell that to the
10 police when he figured it out. The two or three minutes,
11 that worked for whatever was in Mr. Riggs' mind. The
12 problem is it worked for whom and what? Was it the truth
13 on how long Mr. Johnson was in the room or did it work for
14 some time line that somebody was concocting? That's the
15 problem. The truth is the truth. Nobody is holding anyone
16 to exact times here, but when you have to go back and when
17 you've told the police and you've told your partner and
18 people relying on this that the suspiciousness of a boarder
19 staying in his room 10-plus minutes or 10 minus a couple of
20 minutes when this child was missing, telling people to go
21 away, I mean, that's a major, major problem and that's what
22 people get arrested for. Well, you found out under oath
23 that that wasn't so.

24 I guess a long time ago when he figured that out at
25 the preliminary hearing, that's when he says he figured it
26 out, he would have gone to someone, the police, and told
27 them that, we may have had, as they say, a revisiting of
28 the issue, but he didn't do that.

1 There is a phone call first thing in the morning
2 that Mr. Riggs testified about. Miss Rethorn testified
3 about -- my client, you heard on the tape, talks about this
4 phone call. My client picks up the phone, it's Mr. Riggs
5 on there, and whoever called had already hung up. Well, if
6 you'll get read backs, you'll find that as the interviews
7 continue, that phone call sort of dissipates, it sort of
8 goes off. People don't remember it, it didn't happen. My
9 client says it happened, but Riggs and Rethorn say, no,
10 that didn't happen. You look at why there would be that
11 phone call that later on people say did not happen -- let
12 me back up just a minute.

13 If you go through the progression of the story that
14 Rethorn and Riggs and Lopez tell, it always seems to get
15 worse for Mr. Johnson. You know, people can dial their own
16 number and call any phone in their house. I don't know
17 what this first call was about. We can't speculate what it
18 was about, but why do they deny it later on? Okay. So,
19 one, we have the phone call, and, two, we have the business
20 of the room, 10 minutes, but it's really 2 to 3 because
21 that's what fits. Three, we have the fact that, I'm going
22 to put "R" for Miss Rethorn, says that Mr. Johnson says,
23 "Go away." She never tries to get in there.

24 Let's talk a little bit about my client at the end
25 of this hallway. If this is the opening of the hallway,
26 this is his room, here's his door, he's back here becoming
27 hysterical and generally carrying on, okay. Sort of my
28 recollection a little bit that Mr. Lopez mentioned that he

1 had seen that, and read that, that was a little confusing
2 to me, but anyway, at some point it was straightened out by
3 him saying that was told to him by either Riggs and/or
4 Rethorn. And it also sort of appeared that he had just
5 come out of his room maybe when that happened. Well, we

6 know that that isn't quite accurate because he came out of
7 his room and was immediately given pictures and went
8 outside. We also know he was there to dial 911, 911, and
9 911 was called at 9:11. So at 8:57, Riggs/Rethorn are
10 awakened. Two to five minutes later at 9:03, they realize

11 a child is missing. 9:11, 911 was called. The police are
12 then dispatched for a critical search of a missing
13 three-year-old child. We'll have to check the dispatch
14 log, and I'll double-check that, maybe around 9:13, 9:15,
15 the police arrive. We know that Mr. Johnson, Chuck, is
16 there when they arrive. Whether or not he's outside and
17 sees them coming and goes into the kitchen or he's already
18 in the kitchen when they actually arrive or actually come
19 in the house, it's a bit unclear. We know that Chuck
20 dialed -- Chuck dialed 911 and that Chuck was outside
21 searching. Why do you suppose Riggs and Rethorn say Chuck
22 is lingering and not helping to search?

23 The stories of Riggs and Rethorn go to
24 opportunity. It's very tough sometimes being a lawyer
25 because, you know, we're people, too. There's times that
26 there's certain things that we don't really want to talk
27 about but we have to. Develop the time line of death is
28 somewhere between 8:45, 9:00, around in there. When did

1 the body get into Mr. Johnson's closet? I'm going to
2 suggest to you if you look at the evidence in this case
3 that the body did not have to be placed in there prior to
4 Riggs and Rethorn getting up. Remember, Mr. Johnson was
5 outside of the house going to neighbors' houses and
6 stopping cars and showing pictures. Remember, Mr. Riggs
7 told the police that Mr. Johnson even gave false
8 descriptions, even though that was determined to be
9 completely unfounded.

10 Miss Rethorn first told the police the front door
11 was locked, the garage door and sliding door was unlocked.
12 The fact that the garage door was unlocked lend credibility
13 to my client's story that he the second time went out into
14 the garage to clean up and close the main garage door. The
15 other thing it lends credibility to his story is the fact
16 that there was that newspaper on the front porch. If
17 you'll recall in the statement, he had gone out the second
18 time, cigarette, got the newspaper, sat up on the front
19 porch. My client lied to the police. He lied about
20 finding the body. Is that a motive to lie? Consider the
21 odd man out. Riggs and Rethorn are intimate, Mr. Lopez, a
22 friend from school from way back. Mr. Johnson rents a room
23 from them. He's looking for the child. Outside looking,
24 dials 911, the police come, Mr. Johnson is now going to go
25 out and get into his car and help with Mr. Lopez and
26 whatever with the canvas of the neighborhood in the
27 automobile. He goes to his room, key, wallet, shoes,
28 easiest pair of shoes he can find. We know his room is a

1 real mess. He never finds the shoes. What he finds is
2 Brittany and he tells us on that tape that he freaked out,
3 that he panicked.

4 A lot of us would at that time go and say we found
5 Brittany, but we haven't lived Mr. Johnson's life. We
6 don't know, we haven't walked in his footsteps. We don't
7 know how he would react and he's told us how he would
8 react. We don't even know how, you know, anyone would
9 really react. We knew one thing, he was the odd man out
10 here.

11 Officer Telly is in the hallway and sees
12 Mr. Johnson going up and down in the closet. At that time
13 he didn't suspect anything. He thought he was looking and
14 searching, but it seems apparent that at that time the body
15 was there. If you listen carefully to the tape, to the
16 tape itself of Mr. Johnson explaining to Officer Donley
17 here about when he found the body, I suggest you're not
18 going to find that it's inconsistent, what he says, if you
19 listen closely. He's interrupted, he starts to say one
20 thing, words are put in his mouth. You listen, you
21 determine.

22 THE COURT: On that note, we'll take our noon
23 recess, if you don't mind.

24 MR. ABLARD: I don't mind. Thank you.

25 THE COURT: Thank you. Folks, 1:30. Don't discuss
26 the case, don't form opinions or conclusions.

27 (An adjournment was taken until 1:30 p.m.
28 of the same day.)

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1 RANCHO CUCAMONGA; TUESDAY, NOVEMBER 7, 1995

2 AFTERNOON SESSION

3 DEPARTMENT RC-4

HON. ROBERT E. LAW, JUDGE

4 (Appearances:

5 The defendant present with his attorney,

6 MR. GARY ABLARD, Attorney at Law; The People of

7 the State of California represented by

8 MS. KAREN SCHMAUSS, Deputy District Attorney.)

9 ***

10 (Kathryne R. McNulty, Official Reporter, C-7651)

11 ++++++

12 MR. ABLARD: Ladies and Gentlemen, we left off
13 talking about the tapes of Mr. Johnson and to listen
14 closely about what he was saying when he found the body.
15 Also, if you would, please, listen closely to the tapes
16 about his bedroom door being locked or unlocked. I think
17 what you will find is that what Mr. Johnson is saying that
18 when he actually leaves the house, is going to go
19 somewhere, he locks his door. When he's asleep, when he's
20 inside the bedroom, he locks the door, but when he's out in
21 the house, in the yard, just hanging around, the door is
22 unlocked.

23 Now, Mr. Johnson finds the body, says the body is
24 dead and blue. Well, we know a couple of things.
25 Unfortunately, Brittany was not asleep. We assume she was
26 dead. She's laying there, looked dead, might have had a
27 tinge to it, but it wasn't blue. That's the way he
28 described it, but he knew that something was very, very

1 wrong and he panicked.

2 This is a peculiar case because there's no motive.
3 The question why sort of looms up. Why did somebody kill
4 Brittany? In the prosecutor's opening statement, she told
5 you she does not have to prove a motive. That's true.

6 Prosecutors sure like to prove a motive, but they don't
7 have to. But the judge will read the law on what to do in
8 the case where there's no motive. You can consider motive
9 or you can consider the lack of motive in determining the
10 case. The judge will read to you part of that jury

11 instruction. No. 2.51, says, "Presence of a motive may
12 tend to establish guilt. Absence of a motive may tend to
13 establish innocence." You can give the presence or absence
14 of motive any weight that you want. Why did somebody kill
15 her? There is nothing in evidence whatsoever to establish
16 a motive for Mr. Johnson to kill Brittany. There is an
17 interesting little part that says I believe in
18 Mr. Johnson's statement about I wanted -- she was unruly or
19 loud, I forget exactly what it is, you'll hear it, wanted
20 to keep her quiet so the parents could sleep in, they were
21 having problems, something like that. The inquiry is,
22 that's sort of like a bootstrap into a motive. If you'll
23 look at the time of death according to Sheridan, that 8:40
24 to 8:45 to 9:00 range, something like that, is somebody
25 going to kill a girl so the parents can sleep an extra 10
26 or 15 minutes? Is it commonsensical?

27 There is a constant in this case so far. One thing
28 that seems to remain constant, at least, and that's that

1 Mr. Riggs and Miss Rethorn got up at 8:57 and their initial
2 awakening that morning was between 7:00 and 7:30ish,
3 somewhere around there. Brittany comes in, Rethorn, Riggs
4 and my client, Mr. Johnson, say she's yelled at, "Don't
5 come in before knocking." In the interview of the 12th,

6 that's changed to the hugs and kisses. Why? What's the
7 problem of saying, "Yeah, she came in, we shoed her on
8 out"? There's something going on here. Between 7:30 and
9 8:57, Rethorn and Riggs say, "We're asleep. Then we're
10 awakened." That's never changed. They've never said that

11 they were up between that period of time.

12 We look at other circumstances that might bring a
13 little bit into focus and talk about the noise. Consider
14 the first report to Bales, there is no noise, they just got
15 up. Then on the 11th in this gathering you find that
16 they -- Miss Rethorn says for the first group, no noise.
17 That's questioned. Next group comes in, joins later on,
18 now there's noise. Did they wake up to a noise? That's
19 important for their time line, I guess, because it
20 establishes when something was happening. Well, the
21 testimony was that noise went on for -- and you can have
22 this read back, I do my best to remember -- half a minute,
23 minute, two minutes. That's a long time for noise to be
24 going on and not know where it's coming from. At first
25 they said the noise was coming from the bathroom. As time
26 goes on, this rummaging and cabinets move to rummaging and
27 wrestling and things. This is a small house, and if you'll
28 all recall during my opening statement, we went through a

1 couple of things, opening statement or questioning
2 somebody, I don't remember, but we went through a couple of
3 things that are a bit interesting, I think anyway, and I
4 would ask you to consider them.

5 Here's a picture of Darrin and Jennifer's bedroom

6 and next to it is the picture of Chuck's bedroom. Now,
7 this is Exhibit Number 61. If you all will look at Exhibit
8 Number 29, you will be able to see how close the doors to
9 those bedrooms are between Darrin and Jennifer's bedroom
10 and Chuck Johnson's bedroom. They're like right there. In

11 Number 65 it shows the hallway, not a very long hallway,
12 and a bunch of doors off of it. What's so important is in
13 Exhibit Number 61, in their bedroom we see the
14 Riggs/Rethorn bed. In 65, that bed, the head of the bed is
15 right here against this wall in the hallway. The noise
16 that they say they first hear is in this bathroom. Chuck's
17 closet is right here, has the wall to the Darrin/Jennifer
18 bedroom. The bathroom is here where they say they first
19 hear the noise. Chuck's closet is right here. Mr. Riggs
20 says he got up and got dressed. Mr. Riggs got up and got
21 dressed and sat on this side of the bed. He's pretty darn
22 close to this wall. If he got dressed at the foot of the
23 bed, he's real close to the wall in a very small room. And
24 at some point they tell us, "We don't know where the noise
25 came from." One noise to the diagonal is up here, the
26 other noise is down here, and it lasts awhile. Was there a
27 noise? If there were no noise, is that inconsistency? Is
28 that a change of thought processes? Is it a purposeful

1 change of thought processes? Why are they talking about a
2 noise that is not there, the non-existence of a noise? Is
3 it that they really weren't asleep from 7:00, 7:30 until
4 8:57?

5 You see, one of the, I guess, speculation or
6 theories is that when Mr. Johnson came back, Brittany
7 follows him into his room. No evidence of that. She's in
8 his closet, but does she follow him into his room? If the
9 noise is a lie, is it also reasonable to surmise that he
10 goes in his room and locks his door as he says and the

11 child went into another room? This ties together a little
12 bit. 10 days later there's a blanket found in my client's
13 room under my client's bed. This is after two searches of
14 his room by police officers, one of which was a crime scene
15 search. Two officers looked under the bed. One saw
16 nothing, one saw a porno magazine. Officer Donley after
17 two years takes the witness stand and says, "Oh, yeah, I
18 remember, I think that was dealt with." So 10 days later
19 something under the bed that wasn't there before.

20 On the 13th, the crime scene had been processed,
21 done. The searches took place, I don't recall, 11th, 12th,
22 right around there. People have been in and out of the
23 house within that 10-day period. Not Mr. Johnson. His
24 estranged wife, went through the divorce, we heard a little
25 bit from her, she came in after it had been processed to
26 get the tool box and they said, "Well, we want to take
27 that." Why was the blanket there? Is that a reason to
28 doubt?

1 There was a tie around Brittany's neck, had nothing
2 to do with the death of Brittany. No ligature marks,
3 Dr. Sheridan testified to it, nothing to do with it. Why
4 was it there? You can speculate, was Mr. Johnson playing
5 with the girl, left around the neck? Well, if so, be sort

6 of peculiar to leave that, your tie around the neck.
7 Somebody else killed Brittany, puts Brittany in
8 Mr. Johnson's closet, puts his tie around her neck to make
9 it look like he had something to do with it. 10 days later
10 this blanket appears. Consider whoever put the blanket

11 around her neck is the same person that killed
12 Brittany.

13 What room was Brittany killed in? Nobody knows.
14 We know that there was cuts, bruises, blood. There's only
15 one room that was searched by the police, that was
16 Mr. Johnson's room. Not one other room in that house was
17 searched for anything. There were no tests on any carpets
18 in the parent's room, Lopez's room, any other room for
19 blood. The bedding was taken off my client's bed. The
20 bedding wasn't taken off anyone else's bed to be tested.
21 There's no evidence that that bed sheet was ever tested or
22 if there were any results if they tested it. Just sort of
23 went off.

24 The tie was collected. No evidence of any tests
25 done or results. There was a thing of Vaseline, no tests.
26 There's an orange juice cutter, no tests.

27 We have heard this girl, Brittany, fought
28 violently. That's what people are thinking. They looked

1 at my client's hands, nothing there. What gets stuck in
2 the craw a little bit is they didn't look at anybody else's
3 hands, just my client's.

4 We talked about inconsistencies in this case and
5 what was done about them. Officer Donley was on that
6 witness stand and we went through the inconsistencies,
7 waking up to the noise, not waking up to the noise, Riggs
8 waking up first, Rethorn waking up first, the door is
9 locked, the door is unlocked, all the way down. Did you
10 check it out? No. Did you have them in the police station
11 and say, "Wait a minute, that's not right," and interrogate
12 them as they interrogated Mr. Johnson? No. Mr. Johnson
13 gave what they perceived as inconsistent statements. The
14 body was found in his room and we're here.

15 You all noticed when I was fiddling with this
16 there's time lines and stuff that the prosecutor is going
17 to use. It's not because I'm lazy, that I don't have one,
18 but I couldn't do one. I tried to do one. The problem
19 that came, it was you have to pick and choose whose version
20 of what you're going to use to make the time line. This is
21 all assuming, of course, that the original report by
22 Officer Bales is correct. Either it's all correct or
23 partially correct for some people and not for others, or as
24 to some facts and not to others, or it's completely
25 inaccurate, but we don't know. It's a little difficult to
26 make time lines that way.

27 If you go through the testimony, if you pick and
28 choose, you can make a time line. We do know from what

1 Dr. Sheridan told us that Brittany was killed in that
2 loosely 8:30 to 9:00 range. Does that mean when the body
3 got in my client's room? Not necessarily. Remember
4 earlier this morning I was concerned about why people were
5 saying that my client didn't leave the house searching.

6 Well, we know that he was out of the house. It was odd,
7 too, once you search the house, you immediately have
8 pictures and sending everybody out to go search.

9 It's not your job to solve this. Your job is to
10 determine if the state has proven the charges beyond a

11 reasonable doubt against my client. That's the job. In
12 doing that job, the Court instructs us and gives us
13 guidance to the law that we can apply the facts to, one of
14 which is that if you find that a person is willfully
15 false -- not a person, but a witness is willfully false in
16 one area, you can disregard their testimony as being
17 untruth. You don't have to, but you can.

18 Circumstantial evidence, they will try to show you
19 a reasonable scenario on what happened. I believe that
20 there's a reasonable scenario as well that proves the
21 innocence of Mr. Johnson, and I also admit that given all
22 the varying stories, it's a little hard to know what
23 happened, but that's the prosecution's problem. That's the
24 protection that all of us have is they have to prove to you
25 beyond any reasonable doubt, and that means that if you
26 think that Mr. Johnson is possibly guilty, you have to vote
27 for not guilty. And if you think that Mr. Johnson is
28 probably guilty, you have to vote not guilty. Or if you

1 think he's likely guilty, you still have to vote not
2 guilty. Beyond any reasonable doubt. Jury instruction 290
3 is a protection that this country has had that juries stand
4 between the state and the individual. That's a very hard
5 burden. There's really only three burdens in the law,

6 preponderance of the evidence, that's really low, civil
7 case, 51 percent you win. Then there's clear and
8 convincing, if you find the evidence clear and you're
9 convinced, then you make the conviction. Beyond a
10 reasonable doubt is higher than that. You basically -- not

11 basically, you have to. A defendant in a criminal action
12 is presumed to be innocent until the contrary is proved,
13 and in the case of reasonable doubt whether his guilt is
14 satisfactorily shown, he is entitled to a verdict of not
15 guilty. The presumption places upon the people the burden
16 of proving him guilty beyond a reasonable doubt.

17 Reasonable doubt is defined as follows: It is not a mere
18 possible doubt because everything relating to human affairs
19 is open to some possible or imaginary doubt. It is that
20 state of the case which after the entire comparison and
21 consideration of all the evidence leaves in the mind of the
22 jurors that the condition -- that condition that they
23 cannot say they feel an abiding conviction of the truth of
24 the charge. Not a conviction of the truth of the charge,
25 but an abiding conviction.

26 The other protection that a defendant has is that
27 when you all go back and deliberate, they are entitled to
28 12 individual votes. After all the deliberation, if a

1 person feels differently about the topic for either side
2 and talks and hashes it out some more, if that person
3 hasn't changed their mind, the defendant in this case,
4 Mr. Johnson in this case, has a right to that individual's
5 decision.

6 One thing is overlooked sometimes in deliberations
7 and that's when you first go back you have to pick a
8 foreman. The foreman is very important because they help
9 lead and organize, not to be taken lightly. Pick somebody
10 that you think is going to do well. If you think you can

11 do better, let me know about it. But it's an important
12 step.

13 I guess what we're trying to say, is there a reason
14 to doubt? Tons of inconsistent statements all over the
15 place, different scenarios all over the place, we have
16 evidence that shows up 10 days later in my client's room.
17 We have the tie around the neck as a reason to doubt.

18 We're going to go now into the loneliest part there
19 is for myself and Mr. Johnson, the prosecutor's rebuttal.
20 Listen to it carefully because they have to prove to you
21 beyond any reasonable doubt there's no real reason to
22 doubt. They have to prove to you he did it. It's lonely
23 because we can't say anything. This is it for us. We
24 cannot respond to anything the prosecutor says and you
25 really want to, but we can't. Two things: We're asking
26 for not guilty, and consider with all the questions that
27 have been raised legitimately, all the investigations that
28 weren't done, all the things that weren't checked out, that

1 blanket in there 10 days later, the different scenarios
2 that all seem to work against Chuck as time went on, as
3 they changed, as they became inconsistent, as the thought
4 processes changed, is this something that does not deserve
5 further inquiry beyond today.

6 Thank you very much. Thank you, Your Honor.

7 MS. SCHMAUSS: Let's talk a little about common
8 sense. The defense has raised some issues. There's an
9 issue here and an issue here.

10 THE COURT: Excuse me, excuse me.

11 MS. SCHMAUSS: And I'm standing too close. Thank
12 you. And what about the tie and what about this. Ladies
13 and Gentlemen, your job is to look at all the evidence.
14 Take the evidence as a whole. Let's look at the evidence,
15 not insinuations and innuendos, but the evidence.

16 Mr. Ablard mentioned a time line and, yes, he
17 already peaked at this, but now I'll let you see it. The
18 window of opportunity. In order for you to find the
19 defendant not guilty as Mr. Ablard asks you to finds him
20 not guilty, you have to find that he is not the murderer.
21 There has been no suggestion that anyone from the outside
22 committed this crime, therefore, one of the other members
23 of the household had to commit the crime, and so then we
24 must look at all the facts that have developed from this
25 case and determine if there is any opportunity for another
26 murderer, what I call the mystery murderer, to commit this
27 crime. And we look at the defendant's own statement. You
28 don't have to worry about Officer Bales was a good cop or

1 not a good cop, you have it on tape. I brought my little
2 tape recorder with me and I'm going to leave it with the
3 bailiff and I invite you to listen to the defendant's
4 tapes. I've listened to them many times. It's not only
5 what he says, it's how he says it. The inconsistencies,
6 the changing stories, but we have from his own mouth what
7 he claims happened that morning. This is a little
8 deceptive. I was trying to draw in 7:30, not 6:00 a.m.
9 7:30 is the time Brittany shows up in the bedroom. Is she
10 yelled at? Does she get hugs and kisses? Does it really
11 matter? All we know is she went in, she is told to go
12 out. He wakes up at 7:30, by his statement, by his own
13 admission he's with her until that TV show that he claims
14 he turned on for her. You have the TV Guide in evidence.
15 The show was called SPEED RACERS, the character is called
16 Tom Slick. The show comes on -- he says in the statement
17 it was just coming on, maybe there was some commercials
18 preceding it, maybe a few minutes after 8:30, but it comes
19 on at 8:30. We have the TV Guide. That's proven. Until
20 then he's with her. Obviously, the mystery murderer
21 couldn't have murdered her while he was with her. Then
22 please listen to the tape because he is all over the map
23 about whether he saw her or he didn't see her after he
24 allegedly went outside. What's very significant, I don't
25 know if you caught it or not, is that he tells Officer
26 Donley on the videotape, on the audio tape, that she was on
27 the couch against the wall, the same wall as her bedroom.
28 That's this little couch with the blue throw. She wasn't

1 on the couch where the back of the couch might be to you
2 when you walk in, she's on the couch that's facing the
3 doorway. He couldn't miss her. There's no way he would
4 not see her when he walked back inside, if, in fact, that's
5 what he did. That's a very compelling piece of evidence
6 and it's in there, it's in the tapes. The couch against
7 the wall when you walk in the door, you walk by the couch.
8 No way would he have not seen her. And listen to him on
9 the tape. He is all over the map, and the officer will
10 say, "Well, okay, you just said, you subconsciously saw

11 her," he said, "No, that's not the right word." He waffles
12 and he wiggles, he's realizing, gee whiz, I can't say I saw
13 her on the couch because how could somebody else have
14 killed her.

15 So that's a very interesting little fact. Be that
16 as it may: First story to Officer Bales he mentions
17 nothing about going outside. According to Officer Bales,
18 the defendant told him that he turned on the TV for
19 Brittany and he immediately went into his room, locked the
20 door and went to sleep or went to bed, whatever.

21 Interesting that Mr. Ablard wants to use Officer Bales both
22 ways, that everything Officer Bales says that might be
23 inconsistent with the witnesses for the prosecution's
24 testimony you should believe, but of course you shouldn't
25 believe him for what the defendant says. So I leave that
26 to your -- you can decide that. But anyway, he claims on
27 the tape, on the audio tapes, that he goes outside and he
28 does a number of things, and he says consistently over and

1 over again, if you listen to the tapes you'll hear it, 20
2 minutes he was in his room, 20 minutes. Never waivers from
3 that 20 minutes, that he was in his room, lying on his bed,
4 maybe sleeping, maybe not until he talks to Darrin. So
5 what does that leave? It leaves a tiny little nothing
6 window of opportunity. The window is further narrowed by
7 what he says. As I said, the TV show is on at 8:30 and
8 then it's very interesting about what he says he did when
9 he was outside if you listen again to that, reflect back on
10 that. He keeps changing his story about what he was

11 doing. Why? Because he's making it up. He's making the
12 lies as he goes along because he has to cover what he was
13 supposedly doing to give the opportunity to someone else to
14 kill Brittany. And he says in the tapes, first he says, "I
15 was fixing a fuse on my car." Then later he contradicts
16 himself and says, "No, I wasn't fixing a fuse, I was
17 putting antifreeze in my car." Well, he had a Volkswagen
18 Bug and last time I checked, they were air-cooled engines
19 so he couldn't be putting antifreeze in his car. That's a
20 lie. He has to think of something to fill up the time so
21 Officer Donley will believe him. And then he shifts over
22 to, "Well, I was picking up towels, I moved the paper from
23 the lawn to the front porch, I shut the garage door and I
24 smoked a cigarette." How long does that take? A few
25 minutes, 5 minutes, 10 minutes. A very small, little bit
26 of time. That is to allow the supposed real murderer to
27 kill Brittany.

28 Now, we know from Dr. Sheridan, as I said before,

1 Brittany fought for her life. It took a while to kill this
2 little girl. Now, think of the absurdity of the other
3 murderer theory. We'll deal with theory number one and
4 then we'll deal with Mr. Ablard's new and improved theory.
5 Theory number one, this murderer came in during this little
6 sliver of time, had to approach Brittany, is watching TV.
7 Would the real murderer kill her in the front room where
8 anybody could come or would the real murderer drag her into
9 a place of safety, say the defendant's bedroom, knowing the
10 defendant wouldn't come in and catch the real murderer and
11 kill Brittany and then hide her in his closet and sneak
12 back to a place of safety, knowing somehow the defendant
13 who is puttering outside isn't going to catch this person.
14 It is an absurd set of facts. It is not reasonable. That
15 jury instruction the defense attorney was talking about, if
16 there's two interpretations, one is reasonable and the
17 other is unreasonable, you must reject the unreasonable. I
18 submit to you the defense scenario makes no sense. When
19 you look at all the evidence, when you think about it with
20 common sense dictates that what the defense is hoping you
21 will believe couldn't have happened. So the, quote, real
22 murderer isn't going to have an opportunity.

23 And then we seem to have a conspiracy theory now.
24 Was it Jennifer? Was it Darrin? Was it Steve? Was it all
25 of them? What was the motive? Defense attorney talks
26 about lack of motive on the defendant's part. I never said
27 he didn't have a motive, I said that I can't look in his
28 head and tell you the motive. What motive on earth did

1 this little girl's parents, this little, adorable little
2 girl, obviously well cared for, obviously well kept -- look
3 at her, look at her in her little cowboy suit. Is that a
4 child somebody would want to kill? Darrin just got his
5 little daughter back. You saw them on the stand. Do you

6 believe they killed their child? There's some conspiracy
7 among the parents of this adorable little girl and Steve
8 who has known her since he was a baby and took care of
9 her. It's absurd, this conspiracy theory. What, for a
10 thousand dollar insurance policy that Darrin couldn't even

11 remember he had, and he's sitting here talking about
12 underwriters when he means rider. He doesn't even
13 understand insurance or what it is. This is not a man that
14 set out to kill his daughter for the money. It is an
15 absurd set of circumstances that those three people in that
16 household somehow conspired to kill this child.

17 Please, look at common sense. All of you are
18 individuals that have gone through life, make decisions
19 every day that are very important in your work and your
20 personal lives. Please don't abandon your common sense as
21 the defense is hoping you will do.

22 Now, let's talk about the new and improved theory.
23 The new and improved theory is the body was hidden
24 afterwards, because Mr. Ablard realizes that he's got a
25 little itchy-bitsy time period to work with and it really
26 doesn't work, so here's a new theory, that after Jennifer
27 and Darrin are running around like chicken with their heads
28 cut off, looking for Brittany, they're screaming and

1 yelling so the whole world hears, that somehow Jennifer
2 orchestrates it so the defendant goes outside and she
3 sneaks the body into his closet. Does that make one iota
4 of sense? Everyone agrees that the whole house had been
5 searched except the defendant's bedroom. She was a

6 43-pound-child, this large child. I mean, she's not
7 exactly tiny to hide. And then you'd have to have probably
8 the conspiracy theory again that no one else would catch
9 her in the act, and it's totally absurd, that, well, when
10 Chuck was outside, that's when she moved the body without

11 getting caught. It makes no sense.

12 Defense, of course, dwells on inconsistent
13 statements of the victims. And I would -- and the victim's
14 parents. I would call your attention to the jury
15 instruction about discrepancies in testimony, and again,
16 this is common sense.

17 Discrepancies in a witness' testimony or between
18 his or her testimony and that of others, if there were any,
19 do not necessarily mean the witness should be discredited.
20 Failure of recollection is a common experience and innocent
21 misrecollection is not uncommon. It is a fact also that
22 two persons witnessing an incident or a transaction often
23 will see or hear it differently. Whether a discrepancy
24 pertains to a fact of importance or only to a trivial
25 detail should be considered in weighing its significance.

26 Now, is it significant whether the garage was
27 locked or unlocked? Is it significant what time the phone
28 rang? Are any of these things significant about exactly

1 what time somebody went outside? Those are trivial
2 inconsistencies that make sense when you are reacting to an
3 extremely emotional experience, and probably everybody one
4 way or another has had emotional experiences.

5 I think about giving birth. I can't tell you if I
6 was in labor for 4 hours or 400 hours. Time gets very
7 subjective when you're in a situation of great stress, and
8 so holding Jennifer and Darrin to exact times doesn't make
9 sense, because they were emotionally distraught. They find
10 out their little girl has been murdered and we're picking

11 over how many minutes the defendant was in his bedroom.
12 Well, two minutes can be very long when you've got a little
13 kid that's lost and the defendant doesn't come out. The
14 defense counsel attacked Darrin, but it was Darrin himself
15 that thought about it later that said maybe it wasn't a
16 whole 10 minutes but it seemed like it at the time.

17 By the way, what was taking the defendant so long
18 to get out? I believe he said on the tapes, "I grabbed
19 what was -- whatever on the floor and I came out." He
20 wouldn't have needed any time. What about this ridiculous
21 contention that Jennifer and Darrin should have barged in
22 and tore down the door? They had no reason to suspect
23 Chuck. There's been no evidence of any animosity between
24 the roommates. Quite the contrary. The night before
25 everybody is happy, talking away, defendant talks about how
26 much he likes Darrin and all this stuff. So why would they
27 suspect him? They had no idea. If they've searched the
28 whole house and the only room that's left is Chuck's,

1 obviously, they would expect Chuck would check his own
2 room. It's ludicrous to believe Jennifer should have been
3 banging on the door, rattling the passkey and Darrin should
4 have been barging into the room. That doesn't make sense.
5 Think about what they knew at the time. All they knew was
6 their little girl was gone and they knew the defendant was
7 in his room. And at the time that Jennifer asked what was
8 she wearing, she knew he had seen her. That's it. So it
9 doesn't make sense that they'd be tearing into the room.
10 That's absurd.

11 Let's talk about discrepancies. It's what I call
12 the defendant's shifting tale. Tapes, again, it's all on
13 tape. You don't have to rely on anyone's notes or lack of
14 notes or memory. When you really look at the tapes and you
15 look at the transcript, you'll have the transcript in
16 evidence to look at, he changes his story and his changes
17 are not trivial. His changes are significant. The
18 defendant is weaving a lie. There's that old saying what a
19 tangled web we weave when first we endeavor to deceive.
20 It's hard to be consistent when you're lying, when you're
21 caught in your lies and you're trying to make the lie
22 believable.

23 First he announces, "I always lock the door when I
24 leave, always, always, always." And then when he realizes
25 that's not going to work because how would she get in his
26 room, he says, "No, my door is open." When he's grilled a
27 little further, "Well, it was halfway open, to be exact."
28 He changes, "I always lock the door." He doesn't put any

1 spin on it, "When I leave to go away, I always lock the
2 door." That doesn't work. That's not getting him out of
3 it. He puts the spin on here.

4 When did he notice the body, about noticing the
5 body in the closet. Very telling. At first he pretends

6 he's as surprised as everybody else that Brittany was found
7 in his closet. He doesn't realize or he's not thinking
8 about Officer Kelly seeing him rummaging in the closet so
9 he pretends to Officer Bales, he pretends on the first tape
10 to Officer Donley that he was as surprised as everyone

11 else. Is that a trivial inconsistency? Heck, no. That's
12 a very important one. I thought about it and, gee, that's
13 my room. I was shocked as everyone. Then, of course, when
14 he's called on it, he admits, "You got me there." He says
15 that, "Here I'm lying. I found her there and I freaked
16 out." Very telling. And then on lying, you got this guy
17 saying, "I did not lie."

18 Listen to the tape. "Here's the truth," he says.
19 How many times have you heard a liar say that? Here's the
20 real truth. That wasn't the real truth, throw that away.
21 Here's the real truth. He says that over and over again.
22 And before they've called him on it, before he has to cop
23 out to lying, "I did not lie." Then he says, "Okay, you
24 got me, I knew she was there toward the end." Then he's
25 all over the map about, well, when did he see her, and we
26 had lots of arguments about it and counsel here says,
27 "Well, they're putting words in his mouth and he didn't see
28 her until after the cops got there." That's not true.

1 Look at or listen to the tapes. When did he notice
2 Brittany's body? Well, he says on tape one, side one,
3 "Well, I looked for my wallet and keys before I went to my
4 car. I got the easiest shoe I could get and started out
5 before the police got there. I saw her when looking for my
6 wallet and keys." That was before the police got there.
7 He forgot what he said in the first tape. "I felt guilty
8 when I was putting my shoes on, I called my mom, I totally
9 panicked." He says -- he doesn't realize he's saying it
10 because he's weaving his lies, but he says by this wallet
11 and keys stuff he knew she was in there before the cops
12 ever got there. So he's lied about that. And when they
13 call him on it, he said, "You misunderstood me. Maybe you
14 misunderstood me." He is a liar. Why is he lying?
15 Because he's also the killer.

16 No motive. As I said before, I'm not saying he
17 didn't have a motive. I'm saying I can't look in that head
18 of his. He knows what happened, Brittany knows what
19 happened. She's forever silenced. There are clues, I will
20 leave it to your interpretation, but I picked them out of
21 the transcript of the tapes. Brittany is getting a little
22 loud. I had to tell her "Shush" -- by the way, you don't
23 get these charts. I had to tell her "Shush," she started
24 getting a little wild. Officer's question, "Did you punish
25 her at all?" Answer, "I'm not some kind of pervert."

26 Where did that come from? "My son's toys are in
27 there. She's always snooping. She lies, she's stubborn,
28 she's nosy, she's curious." He throws these little nuggets

1 out. Of course, we don't know what happened, we weren't
2 privy to it. But what motive did he have? What motive did
3 the others have? The others had no motive whatsoever.
4 This ridiculous contention about the insurance policy, that
5 for a thousand dollars Darrin is going to kill his little

6 girl, that Jennifer didn't even know about. I mean, is
7 there some sort of conspiracy they're going to split up
8 this thousand dollars, they're going to split up 333, we
9 have to give a share to Donley and Bales so now we're down
10 to \$200. That's ridiculous. Something happened between

11 Brittany and the defendant.

12 It's interesting what facts were brought out during
13 the trial. This is Brittany's blanket and the defendant
14 had no reason to have it. Then we have Brittany's tape.
15 Why was that in his VCR and who found it? Angela and his
16 mother-in-law, not Jennifer, not Darrin. Why was that in
17 his VCR? In his statement the night before he said he
18 watched some movies on his videotape. Last time I checked,
19 Tweety is a cartoon, it's not a movie. So reasonable to
20 infer that what happened, he gets her blanket, he gets her
21 tape, he gets her in his room. The cartoons are on in the
22 outer room, that's cover noise. Then he did to her what he
23 was going to do to her that we will never know, then she
24 started to protest. What do you do when somebody protests
25 and you don't want them to be heard? You muffle their
26 noise. What do you muffle their noise with? Something
27 that will keep her quiet. What? This blanket. Does the
28 evidence add up? It adds up.

1 Exhibit 53, it's in evidence, Dr. Sheridan talked
2 about -- pass it along.

3 THE COURT: I'm sorry, you can't publish.

4 MS. SCHMAUSS: No publish. Can I wave it?

5 THE COURT: You can wave it.

6 MS. SCHMAUSS: All right, I'll wave it. You'll get
7 to see it later. This is a her frenulum, that's the little
8 piece of skin we heard about. It bleeds but it doesn't
9 bleed that much. Hopefully, all of you saw when Mr. Jones
10 showed you the cutout pieces of blanket there wasn't a

11 whole lot of blood there. That's consistent with the
12 frenulum, that small area of bleeding. This was held over
13 that small child's face to muffle any cries she might have
14 made. That adds up. Mr. Ablard, of course, ridicules the
15 blanket evidence saying, "Well, ten days later." Look at
16 his bedroom. His bedroom was a pigsty. There's junk
17 everywhere. That's what Officer Donley was faced with was
18 this pigsty and his explanation was reasonable. There's
19 kid's clothes, his son's clothes. There's diapers, there's
20 toys, or a toy, at least. This wouldn't have registered
21 any alarm had it been seen, and the blood was so minuscule
22 that unless somebody opened it up and examined it, you
23 wouldn't even notice it. And the defendant had no
24 opportunity to take this out. Probably you guys caught
25 that when I was asking the questions, because after
26 Brittany was found the room was sealed off with that tape.
27 The defendant was ordered out of the house as was everyone
28 else. The defendant was not allowed back in that house.

1 The tape was intact. There were no signs of getting into
2 the room. And then he was arrested. And then as Angela
3 told you, he was in custody, so he couldn't get this out.
4 That answers the question on why on earth would he leave
5 incriminating evidence in his room. He had no chance to
6 remove it. Why wasn't it found before? As I said, the
7 room was a trash can and it was found all the way behind
8 the bed. Angela is not moving the bed, she's just picking
9 up valuables, TV, VCR, clothing, she was walking out with
10 the tool box. This is not unreasonable. It was found
11 later. He hid it because he didn't have the opportunity to
12 remove it, just like he didn't have the opportunity to
13 remove Brittany's body.

14 Good question raised by the officers during the
15 interview, "Well, what were you going to do with her?" he
16 says, on, on. He was hiding her on the hopes that the
17 police wouldn't find her. Remember he made a comment, "I
18 didn't think you guys were going to poke around." He
19 didn't really think they were going to find her, that he
20 had her so well hidden. And you heard Officer Kelly's
21 testimony, she wasn't visible at all. There was all that
22 stuff on top of her. So his hopes were that he could
23 dispose of the body before he would ever be caught at it.
24 And unfortunately for him, Officer Kelly did dig further
25 and found her.

26 Now, there's comment by the defense counsel about
27 the noise and how come they didn't hear it. Well,
28 remember, their heads would be at the head of the bed which

1 is furthest away from the defendant's closet. They were
2 asleep. Have you ever been woken up by a noise, you're
3 disoriented and you hear a noise, you don't know where it
4 comes from, it comes from somewhere in the house but you're
5 asleep, you're jolted awake. Is it unreasonable that they
6 weren't positive where it came from when they're just woken
7 up? Now, had they been awake and up and alert and had
8 their coffee, then maybe it would be reasonable to believe
9 they could pinpoint where it was coming from. But they
10 weren't. They had just woken up. So they assumed, they
11 jumped to a conclusion it was Brittany in the bathroom
12 because Brittany has done that before. That's not
13 unreasonable. And then, of course, counsel has spent a
14 great deal of time saying well, they didn't come up with
15 this noise stuff until later because it didn't fit, then
16 they dragged in Crocker and Farrar from points far away to
17 talk about this. Once again, when you've got a traumatic
18 experience and you're trying to put it all together and
19 you're trying to look at what happened, sometimes on
20 reflection things come up that you hadn't thought of.
21 That's not unreasonable. As Officer Donley said, had those
22 people been right on, precise, everything in place,
23 everything totally -- all their stories matched, he'd be
24 highly suspicious. You're hearing truth from these people
25 because they're telling it the best they could. And when
26 Jennifer and Darrin had a couple of days to collect their
27 thoughts, get over the initial stomach thudding chalk of
28 their little girl being murdered, then they're going, "We

1 heard that noise, didn't we?" It hadn't really sunk into
2 them what had happened. But defense counsel would have you
3 believe because of their own nefarious reasons because
4 there's a conspiracy to murder a little
5 three-and-a-half-year-old girl that they made that up.

6 Defense counsel says no evidence of tests or
7 results. Well, you heard Officer Donley testify the
8 defense investigator came and he did his little tests and
9 he had full access to everything. Don't you think that if
10 someone else's prints had been on there, you'd have heard
11 about it? That's a red herring. That's a little let's
12 divert the jury onto that area. The defense investigator
13 couldn't get any prints off of the bag. He says he
14 couldn't even get prints off the tool box. If there was
15 something there, you'd have heard about it.

16 Now, the orange juice, now that's ludicrous.
17 Dr. Sheridan testified there was nothing in her
18 toxicology. They took the orange juice in case it came
19 back she had been poisoned. She hadn't been. Testing the
20 orange juice was ridiculous because there was nothing in
21 her body to suggest she had been poisoned.

22 Mr. Ablard made a comment here that somehow in this
23 nefarious conspiracy Jennifer hands out pictures and
24 immediately sends everyone out to search. Well, of course,
25 they've already looked in the house. Chuck has said she's
26 not in his room. Where else do you look if the child is
27 not in the house? You look outside. So that's a
28 ridiculous argument that somehow she's got this bad motive

1 to send everybody outside.

2 The most compelling evidence in this case is the
3 defendant's behavior. Common sense, once again. What
4 would make sense if you were the defendant? You have done
5 nothing wrong, you have not harmed that child one iota,
6 everybody in the house is looking for her, he says he told
7 Jennifer, "Calm down, calm down, kids do that." He says
8 that on the audio tapes. No one suspects him, no one hates
9 him, you're helping to look for this kid. The kid has
10 access to the whole house, right? He says he left his door
11 open when he's in the house, and you find her in the
12 closet, what would you do? "I found her, I found her, here
13 she is." Would you cover her up with stuff? And then the
14 other most telling piece of evidence in this case is that
15 he didn't help her. He covered her up, he didn't help her,
16 he claims he knew she was dead and he's just like the sofa
17 thing. He's all over the place about what made him think
18 she was dead. Look at Exhibit 46. That's a picture taken
19 at Doctor's Hospital right after she was brought to the
20 hospital. She doesn't look dead, she looks like a sleeping
21 little child. That's what she looks like. He said he saw
22 her foot in her hand, how do you know someone is dead from
23 their foot in her hand? Later he says he saw her face. He
24 couldn't have known. He's not a doctor. He's a store
25 clerk at Thrifty's. Officer Kelly, an experienced police
26 officer, he wasn't certain. He rushed her to the
27 hospital. The hospital got her heart started again, they
28 weren't certain. How did he know she was dead? Because he

1 killed her. Only the murderer would know she was dead. He
2 acted unreasonably, Ladies and Gentlemen of the jury.
3 Everybody, everybody, everybody would have yelled out,
4 "Here she is." Everybody would have tried to help her.
5 The only person who wouldn't is the killer who is sitting
6 right there.

7 The jury instruction tells you if the people's
8 version is reasonable and the defendant's version is
9 reasonable, your verdict is not guilty. But if the
10 people's version is reasonable and the defendant's version
11 is unreasonable, the verdict is guilty. The defense
12 version of this case is unreasonable, Ladies and
13 Gentlemen. The only reasonable interpretation of the facts
14 is the defendant is guilty of the crime of murdering
15 Brittany.

16 And that brings us back to our degree of murder. I
17 noticed counsel totally ignored that. He didn't talk about
18 degrees of murder, and as I said in my opening statement or
19 my opening argument to you, this is a case of calculated,
20 premeditated first degree murder. Maybe not at the
21 beginning, maybe not at the beginning, but at the end he
22 meant to kill her. He needed to quiet her. She could
23 talk. She could tell what he was doing. He's afraid of
24 Darrin Riggs. You heard him on the audio tape. He had to
25 silence that kid. And if you believe for one second that
26 he didn't want to kill her and he didn't intend to kill
27 her, think about how long it took Brittany -- my daughter's
28 time-out timer. Dr. Sheridan said two-and-a-half to three

1 minutes. We'll set it on two-and-a-half minutes. This
2 blanket is over this kid and she's struggling. I want you
3 to sit for two to two-and-a-half minutes.

4 Felt like an eternity, didn't it? And my doll
5 didn't fight and my doll didn't struggle and Brittany did.

6 It took that killer a long time to kill that little girl.
7 You can't have any doubt as to the degree, that killer
8 intended to kill her, that killer intended and he meant it,
9 he had malice aforethought. There's your killer. There's
10 no wild conspiracy theory. Chuck Johnson, the defendant in

11 this case, murdered Brittany on October 10th, 1993.

12 The case is now in your hands. Please don't let a
13 murderer go free. Don't let the defendant get away with
14 murder. Brittany, if she had lived, would be in
15 kindergarten now. She would have been five,
16 five-and-a-half. This is a horrible shame. An innocent
17 child. He killed her. Please do your duty, bring back a
18 verdict of guilty of murder in the first degree.

19 I thank you very much for your time and attention.

20 THE COURT: Ladies and Gentlemen of the jury,
21 you've heard the evidence and the arguments of the
22 attorneys and now it's my duty to instruct you on the law
23 that applies to this case.

24 Tonya, would you move that?

25 THE BAILIFF: Sure, Judge.

26 J U R Y I N S T R U C T I O N S

27 THE COURT: The law requires I read these
28 instructions to you and you will have these instructions

1 with you in their written form in the jury room during your
2 deliberations. You must base your decision on the facts
3 and the law. You have two duties to perform: First you
4 must determine the facts from the evidence received in the
5 trial, not from any other source. A fact means something

6 that is proved directly or circumstantially, by the
7 evidence or by stipulation. A stipulation is an agreement
8 between attorneys regarding facts.

9 Secondly, you must apply the law that I state to
10 you to the facts as you determine them and in this way

11 arrive at your verdict. You must accept and follow the law
12 as I state it to you whether or not you agree with the
13 law. Anything concerning the law said by the attorneys in
14 their arguments or any other time during the trial that
15 conflicts with my instructions in the law, you must follow
16 my instructions. You must not be influenced by pity for a
17 defendant or by prejudice against him. You must not be
18 biased against the defendant because he's been arrested for
19 the offense, charged with a crime or brought to trial.

20 None of these is evidence of his guilt and you must not
21 infer or assume from any or all of them that he's more
22 likely to be guilty than innocent. Conjecture, sympathy,
23 passion, prejudice, public opinion or public feeling. Both
24 the people and the defendant have a right to expect that
25 you will conscientiously consider the evidence, apply the
26 law and reach a just verdict regardless of the
27 consequences.

28 Now, if any rule, direction or idea is repeated or

1 stated in different ways in these instructions, no emphasis
2 is intended and you must not draw any reference because of
3 its reputation. Do not single out any particular sentence
4 or any individual point or instruction and ignore the
5 others. Consider all the instructions as a whole and each

6 in light of all the others. The order in which the
7 instructions are given has no significance as to their
8 relative importance.

9 Statements made by the attorneys during the trial
10 are not evidence. Although if attorneys have stipulated or

11 agreed to a fact, you must regard that fact as conclusively
12 proved. If an objection was sustained to a question, do
13 not guess what the answer might have been. Do not
14 speculate as to the reason for the objection. Do not
15 assume to be true any insinuation suggested by a question,
16 asked a question. A question is not evidence and may be
17 considered only as it enables you to understand the
18 answer. Do not consider for any purpose any offer of
19 evidence that was rejected or any evidence stricken out by
20 the Court. Treat it as though you had never heard it.

21 You must decide all question of fact in this case
22 from the evidence received in this trial and not from any
23 other source. You must not make any independent
24 investigation of the facts or law or consider or discuss
25 facts as to which there's no evidence. This means, for
26 example, you must not on your own visit the scene, conduct
27 experiments or consult reference works or persons for
28 additional information. You must not discuss this case

1 with any other person except a fellow juror and you must
2 not discuss this case with a fellow juror until the case is
3 submitted to you for your decision and only when all jurors
4 are present in the jury room.

5 The word "willfully" when applied to the intent
6 with which an act is done or omitted means with the purpose
7 or willingness to commit the act or omission in question.
8 The word "willfully" does not mean any intent to violate
9 the law or injure another or to acquire any advantage.

10 The word "knowingly" means with knowledge or with
11 the existence of the facts in question. Knowledge of the
12 unlawfulness of any act or omission is not required. A
13 requirement of knowledge does not mean the act must be done
14 with any specific intent.

15 Now, evidence consists of witnesses -- excuse me.
16 Evidence consists of testimony of witnesses, writings,
17 material objects or anything presented to the senses and
18 offered to prove the existence or nonexistence of a fact.
19 Evidence is either direct or circumstantial. Direct
20 evidence is evidence that directly proves a fact without
21 the necessity of an inference. It is evidence which by
22 itself if found to be true establishes that fact.

23 Circumstantial evidence is evidence that if found
24 to be true proves a fact from which an inference of the
25 existence of another fact may be drawn. An inference is a
26 deduction of fact that may logically and reasonably be
27 drawn from another fact or group of facts established by
28 the evidence. It's not necessary that facts be proved by

1 direct evidence. They may be proved also by circumstantial
2 evidence or by a combination of direct evidence and
3 circumstantial evidence. Both direct evidence and
4 circumstantial evidence are acceptable as means of proof,
5 neither is entitled to any greater weight than the other.

6 However, a finding of guilt as to any crime may not
7 be based on circumstantial evidence unless the proved
8 circumstances are not only consistent with the theory the
9 defendant is guilty of the crime, but cannot be reconciled
10 with any other rational conclusion. Further, each fact

11 which is essential to complete a set of circumstances
12 necessary to establish the defendant's guilt must be proved
13 beyond a reasonable doubt. In other words, before an
14 inference essential to establish guilt may have been found
15 to have been proved beyond a reasonable doubt, each fact or
16 circumstance on which each inference necessarily rests must
17 be proved beyond a reasonable doubt. Also, if the
18 circumstantial evidence is acceptable of two reasonable
19 interpretations, one of which points to the defendant's
20 guilt and the other to his innocence, you must adopt that
21 interpretation which points to the defendant's innocence
22 and reject that interpretation which points to his guilt.

23 If on the other hand one interpretation of such
24 evidence appears to be reasonable and the other
25 interpretation to be unreasonable, you must accept the
26 reasonable interpretation and reject the unreasonable.

27 The specific intent with which an act is done may
28 be shown by the circumstances surrounding the commission of

1 the act. However, you may not find the defendant guilty of
2 the crime charged, namely murder, unless the proved
3 circumstances are not only consistent with the theory the
4 defendant had the required specific intent but cannot be
5 reconciled with any other rational conclusion. Also, if

6 the evidence as to any such specific intent is susceptible
7 of two reasonable interpretations, one of which points to
8 the existence of the specific intent and the other to the
9 absence of the specific intent, you must adopt that
10 interpretation which points to the absence of the specific

11 intent. If on the other hand one interpretation of the
12 evidence as to such specific intent appears to be
13 reasonable and the other interpretation to be unreasonable,
14 you must accept the reasonable interpretation and reject
15 the unreasonable.

16 If you find that before this trial the defendant
17 made willfully false or deliberately misleading statements
18 concerning the crime for which he's now being tried, you
19 may consider such statements as a circumstance tending to
20 prove a consciousness of guilt. However, such guilt is not
21 sufficient by itself to prove guilt and its weight and
22 significance, if any, are matters for your determination.

23 Now, certain evidence was admitted for a limited
24 purpose. At the time the evidence was admitted, you were
25 admonished that it could be considered by you -- that it
26 could not be considered by you for any purpose other than
27 the limited purpose for which it was admitted. Do not
28 consider such evidence for any purpose except a limited

1 purpose for which it was admitted.

2 Now, neither side is required to call as witnesses
3 all persons who may have been present at any of the events
4 disclosed by the evidence or who may appear to have some
5 knowledge of these events or to produce all objects or
6 evidence mentioned by the evidence.

7 Evidence that on former occasion a witness made
8 some statement or statements that were consistent or
9 inconsistent with his or her testimony in this trial may be
10 considered by you not only for testing the credibility of
11 the witness but also as evidence of the truth of the facts
12 stated by the witness on such former occasion. If you
13 disbelieve a witness' testimony that he or she no longer
14 remembers a certain event, such testimony is inconsistent
15 with the prior statement or statement by him or her
16 describing that event.

17 Now, every person who testifies under oath is a
18 witness. You are the sole judges of the believability of a
19 witness and the weight to be given testimony of each
20 witness. In determining the believability of a witness,
21 you may consider anything that has a tendency in reason to
22 prove or disprove the truthfulness of the testimony of the
23 witness including but not limited to any of the following:
24 The extent of the opportunity or ability of the witness to
25 see or hear or otherwise become aware of any matter about
26 which the witness has testified. The ability of the
27 witness to remember to communicate any matter about which
28 the witness has testified. Character and quality of that

1 testimony. The demeanor and manner of the witness while
2 testifying. The existence or non-existence of bias,
3 interest or other motive. Evidence of the existence or
4 nonexistence of any fact testified to by the witness. The
5 attitude of the witness towards this action and towards the
6 giving of testimony, statements previously made by the
7 witness that are consistent or inconsistent with the
8 testimony of the witness, and any admission by the witness
9 of untruthfulness.

10 Now, discrepancies in a witness' testimony or
11 between his or her testimony and that of others if there
12 were any do not necessarily mean the witness should be
13 discredited. Failure of recollection is a common
14 experience and innocent misrecollection is not uncommon.
15 It's a fact, also, that two persons witnessing an incident
16 or a transaction often will see or hear it differently.
17 Whether a discrepancy pertains to a fact of importance or
18 only to a trivial detail should be considered in weighing
19 its significance.

20 Now, a witness who is willfully false in a material
21 part of his or her testimony is to be distrusted in
22 others. You may reject the whole testimony of a witness
23 who willfully has testified falsely as to a material point
24 unless from all the evidence you believe the probability of
25 truth favors his or her testimony in other particulars.
26 You are not bound to decide an issue of fact in accordance
27 with the number of -- testimony of a number of witnesses
28 which does not convince you against the testimony of a

1 lesser number or other evidence which appeals to your mind
2 with more convincing force of you may not disregard the
3 caprice whim or prejudice or from a desire to favor one
4 side as against another. You must not decide an issue by
5 the simple process of counting the number of witnesses that
6 testified on opposing sides. Final test is not the
7 relative number of witnesses but the convincing force of
8 the evidence.

9 You should give the testimony of a single witness
10 whatever weight you think it deserves. However, testimony
11 by one witness which you believe concerning any fact is
12 sufficient for proof of that fact. You should carefully
13 review all the evidence upon which the proof of such fact
14 depends.

15 Motive is not an element of the crime charged, and
16 need not be shown. However, you may consider motive or
17 lack of motive as a circumstance in this case. Presence of
18 motive may tend to establish guilt, absence of motive may
19 tend to establish innocence. You will, therefore, give its
20 presence or absence, as the case may be, the weight to
21 which you find it to be entitled.

22 Now, a defendant in a criminal action has a
23 constitutional right not to be compelled to testify. You
24 must not draw any inference from the fact the defendant has
25 not testified. Further, you must neither discuss this
26 matter nor permit it to enter into your deliberations in
27 any way. In deciding whether or not to testify, the
28 defendant may choose to rely on the state of the evidence

1 and upon the failure, if any, of the people to prove beyond
2 a reasonable doubt every essential element of the crime
3 charged against him. No lack of testimony on a defendant's
4 part will make up for a failure of proof by the people to
5 support a finding against him on any such essential
6 element.

7 An admission is a statement made by the defendant
8 other than at his trial which does not by itself
9 acknowledge his guilt of the crime for which the defendant
10 is on trial but which statement tends to prove his guilt

11 when considered with the rest of the evidence. You are the
12 exclusive judges to whether the defendant made an admission
13 and if so whether such statement is true in whole or in
14 part. If you should find the defendant did not make the
15 statement, you must reject it. If you find that it is true
16 in whole or in part, you may consider that part which you
17 find to be true. Evidence of an oral admission of the
18 defendant should be viewed with caution.

19 No person may be convicted of a criminal offense
20 unless this is some proof of each element of the crime
21 independent of each admission made by him outside.

22 Committed a crime is not an element. Crime nor is the
23 degree of the crime. Such identity or degree of the crime
24 may be established by an admission.

25 A person is qualified to testify as an expert if he
26 has special knowledge, skill, training to qualify him as an
27 expert to the subject which his testimony relates. Duly
28 qualified experts may give opinions on controversy in trial

1 to assist you in deciding such opinion and the reasons
2 given for it if any by the expert that gives the opinion.
3 You are also to consider the qualifications and credibility
4 of the expert. You are not bound to accept an expert
5 opinion as conclusive but should give it the weight to

6 which you find it to be entitled. You may disregard any
7 opinion you find to be unreasonable.

8 In examining an expert witness, counsel may
9 propound to him a type of question known as a hypothetical
10 question. By such a question, the witness is given a set

11 of facts and to give an opinion based upon that
12 assumption. In permitting such a question, the Court does
13 not rule and does not necessarily find all, if any, to be
14 true. Assumed facts are within the probable or possible
15 range of evidence. It is for you, the jury, to find from
16 all the evidence whether or not such facts as assumed in
17 the hypothetical question have been proved. If you find
18 that any assumption to such a question has not been proved,
19 you are to determine the effect of that failure of proof on
20 the value and weight of the expert opinion based on the
21 assumed facts.

22 In determining the weight to be given an opinion
23 expressed by any witness who did not testify as an expert
24 witness, you should consider his or her credibility, the
25 extent of his or her opportunity to perceive the matter
26 upon which his or her opinion is based, and the reasons, if
27 any, given for it. You are not required to accept such an
28 opinion but should give it the weight, if any, to which you

1 find it entitled.

2 Now, a defendant in a criminal action is presumed
3 to be innocent until the contrary is proved. In the case
4 of a reasonable doubt whether his guilt is satisfactorily
5 shown, he is entitled to a verdict of not guilty. This
6 presumption places upon the people the burden of proving of
7 guilty beyond a reasonable doubt. Reasonable doubt is
8 defined as follows: It's not a mere possible doubt because
9 everything relating to human affairs is open to some
10 possible or imaginary doubt. It's that state of the case
11 which after the entire comparison and consideration of all
12 the evidence leaves the mind of the jurors in that
13 condition that they cannot say they feel an abiding
14 conviction of the truth of the charge.

15 Now, in this case, Ladies and Gentlemen, there are
16 three possible crimes that you're going to consider and the
17 order in which these instructions are now going to be given
18 to you and their definitions is impossible to put them in
19 any logical sequence, so please bear with me because
20 there's so much information to cover, but you will have
21 these with you to go through, and if you have questions,
22 the Court will assist you.

23 Now, in the crime of involuntary manslaughter,
24 which is a lesser crime to murder, there must exist a union
25 or joint operation of act or conduct and a general criminal
26 intent to. To constitute general criminal intent, it's not
27 necessary there exist an intent to violate the law. When a
28 person intentionally does that which the law declares to be

1 a crime, he is acting with general criminal intent even
2 though he may not know that his act or conduct is
3 unlawful. In the crimes charged, namely murder, there must
4 exist a union or joint operation of act or conduct and a
5 certain specific intent in the mind of the perpetrator.

6 Unless such specific intent exists, the crime to which it
7 relates is not committed. Specific intent requires include
8 the definition of the crime, allegations set forth in these
9 instructions.

10 Two kinds of intent.

11 To constitute the crime of murder, there must be in
12 addition to the death of a human being an unlawful act or
13 omission which was the cause of that death of a human
14 being. Law has its own particular way in defining cause.
15 A cause of the death of a human being is an act or omission
16 that sets in motion a chain of events that produces as a
17 direct, natural, and probable consequence of the act or
18 omission the death of a human being, and without which the
19 death of a human being would not occur.

20 A homicide is a killing of one human being by
21 another either lawfully or unlawfully. Homicide includes
22 murder and manslaughter, which are unlawful, and acts of
23 excusable and homicide which are lawful.

24 Every person who willfully kills a human being with
25 malice aforethought is guilty of the crime of murder in
26 violation of Section 187 of the Penal Code. In order to
27 prove such crime each of the following elements must be
28 proved: One, a human being was killed, two, the killing

1 was unlawful, and three, the killing was done with malice
2 aforethought.

3 Malice may be either expressed or implied. Malice
4 is express when there is a manifest, manifested -- when
5 there is manifested an intention unlawfully to kill a human
6 being. Malice is implied when the killing resulted from an
7 intentional act, the natural consequences of the act are
8 dangerous to human life and the act was deliberately
9 performed with knowledge of the danger to and with
10 conscious disregard for human life.

11 When it is shown a killing, happened, *drop drop no
12 other mental state need be shown to establish mental state
13 of malice aforethought. Mental state constituting malice
14 aforethought does not necessarily require any ill will or
15 hatred of the person killed. The word "aforethought" does
16 not, or lapse of considerable time. It only means the
17 required mental state must precede rather than follow the
18 act.

19 Now, all murder which is perpetrated with any kind
20 of willful, deliberate and premeditated killing with
21 express malice aforethought is murder of the first degree.
22 The word "willful" as used in the instructions means
23 intention. The word "deliberate" means formed or arrived
24 at or determined upon as a result of careful thought and
25 weighing the consideration for and against the proposed
26 action. The word "premeditated" means considered
27 beforehand. If you find that the killing was preceded,
28 accompanied by a clear, deliberate intent on the part of

1 the defendant to kill which was the result of deliberation
2 and premeditation so that it must have been formed upon
3 preexisting reflection so that -- and not under a sudden
4 heat of passion or other condition precluding the idea of
5 deliberation, it is murder of the first degree. The law

6 does not undertake to measure units of time, the length of
7 period during which the thought must be pondered before it
8 can ripen into an intent to kill. It is purely deliberate
9 and premeditated. The time will vary with individuals and
10 other circumstances. The time not, *drop drop a cold

11 calculated judgment and decision may be arrived at in a
12 short period of time. The mere unconsidered and rash
13 impulse even though it includes an intent to kill is not
14 such deliberation and premeditation as will fix an unlawful
15 killing of murder in the first degree. To constitute a
16 deliberate and premeditated killing, the slayer must weigh
17 and consider the question of killing and the reasons for
18 and against such a choice, and having in mind the
19 consequences, he decides to and does kill.

20 Murder in the second degree is unlawful killing of
21 a human being with malice aforethought when there is
22 manifested an intention unlawfully to kill a human being
23 but the evidence is insufficient to establish deliberation
24 and premeditation.

25 Murder of the second degree is also the killing,
26 unlawful killing of a human being when the killer killing
27 resulted from an intentional, natural consequences
28 dangerous to human life and the act was deliberately

1 performed with the knowledge of the danger to and conscious
2 disregard for human life. When the killing is a direct
3 result of such an act, it is not necessary to establish the
4 defendant intended the act would result in the death of the
5 a human being.

6 Every person who unlawfully kills a human being
7 without malice aforethought and without an intent to kill
8 is guilty of the crime of involuntary manslaughter, a
9 violation of Penal Code Section 192(b). In order to prove
10 such a crime, each of the following elements must be

11 proved: A human being was killed, the killing was
12 unlawful. Killing is unlawful within the meaning of this
13 instruction if it occurred during the commission of a
14 misdemeanor which is inherently dangerous to a human life,
15 such as the offense of child abuse or in the commission of
16 an act ordinarily lawful which involves a high degree of
17 risk or of death or great bodily harm without due caution
18 and circumspection.

19 The crime of child abuse is committed when the
20 following occurs: A person willfully afflicts
21 unjustifiable mental pain or suffering on a individual.
22 Instruction means with knowledge of the consequences or
23 purposefully. The crime charged there must exist a union
24 or joint operation of act or conduct, general criminal
25 intent or criminal negligence. Intent it's not necessary
26 there should exist an intent to violate the law. When a
27 person intentionally does that which the law declares to be
28 a crime, he's acting with general criminal intent even

1 though he may not know his act or conduct is unlawful.
2 Justifiable physical pain or mental suffering is the
3 infliction of pain or suffering which cannot be defended or
4 excused under the circumstances as reasonable both to
5 necessity and degree. In order to prove the commission of
6 such a crime, the following elements must be proved: The
7 person willfully inflicted unjustifiable mental pain or
8 suffering on the child.

9 Now, in the crime of involuntary manslaughter,
10 which is a lesser crime to murder, there must exist both a
11 union or joint operation of act or conduct and either
12 general negligence or general criminal intent to child
13 abuse. Now, the term without due caution or circumspection
14 refers to a negligent act which is aggravated, reckless and
15 gross and which is such a departure from what would be the
16 conduct of an ordinary, prudent, careful person under the
17 same circumstances as to be contrary to a proper regard for
18 human life or to constitute indifference to the
19 consequences of such act. Facts must be such that the
20 consequences of the negligent act could reasonably have
21 been foreseen. It must also appear the death was not
22 result of inattention, mistake, natural and probable result
23 of an aggravated, reckless, or grossly negligent act.

24 Criminal negligence means conduct which is more
25 than ordinary negligence. Ordinary negligence is the
26 failure to exercise ordinary or reasonable care. Criminal
27 negligence refers to negligent acts which are aggravated,
28 reckless and gross, which repeats itself -- and which are

1 such a departure from what would be the conduct of
2 ordinarily prudent, careful person under the same set of
3 circumstances as to be contrary to a proper regard for
4 human life for to constitute indifference to the
5 consequences of such acts. Facts must be such that the
6 consequences of the negligent act may have reasonably been
7 foreseen and it must appear the death was not the result of
8 inattention, mistake, judgment or natural probable result
9 of aggravated, reckless or grossly negligent act.

10 Now, if a person causes another's death while,
11 felony the crime is murder, the person committing a
12 misdemeanor inherently dangerous to human life the crime is
13 manslaughter. Many acts which are lawful but nevertheless
14 endanger human life. By dangerous act, that's unlawful or
15 criminally neglect in a manner without realizing the risk
16 involved he's guilty of manslaughter. If on the other hand
17 a person realized the risk and acted in total disregard,
18 the danger to life involved, malice is implied and the
19 crime is murder.

20 To constitute murder or manslaughter, in addition
21 to the death of a human being unlawful act which was the
22 cause of that death.

23 Murder, as I indicated, is classified in two
24 degrees: If you should find the defendant guilty of
25 murder, you must determine and state in your verdict
26 whether you find the murder to be a first or second degree.

27 If you are convinced beyond a reasonable doubt the
28 crime of murder has been committed by the defendant, you

1 have a reasonable doubt whether such murder was the first
2 or second degree, you must give the defendant the benefit
3 of the doubt and return a verdict fixing the murder as a
4 second degree.

5 If you're not satisfied beyond a reasonable doubt
6 the defendant is guilty of the crime charged, you may,
7 nevertheless, convict him of any lesser crime if you are
8 convinced beyond a reasonable doubt that the defendant is
9 guilty of such lesser crime. If you're satisfied beyond a
10 reasonable doubt that was unlawful but you have a

11 reasonable doubt whether the crime was murder or
12 manslaughter, you must give the defendant the benefit of
13 the doubt and find it to be manslaughter rather than
14 murder. Before you return a verdict in this case you must
15 agree unanimously not only as to whether the defendant is
16 guilty or not guilty but also if you should find him guilty
17 of an unlawful killing you must agree unanimously whether
18 it's murder in the first degree, murder in the second
19 degree, or involuntary manslaughter.

20 If you're not satisfied beyond a reasonable doubt
21 the defendant is guilty of the crime of first degree murder
22 and you unanimously so find, you may convict him of any
23 lesser crime provided you are satisfied beyond a reasonable
24 doubt that he's guilty of such crime.

25 You will be provided with guilty and not guilty
26 verdict forms for the crime of murder in the first degree
27 and the lesser crimes thereto. Murder in the second degree
28 is a lesser crime to that of murder in the first degree.

1 Involuntary manslaughter is a lesser to that of murder in
2 the second degree. Thus, you are to determine whether the
3 defendant is guilty or not guilty of murder in the first
4 degree or any lesser crime thereto. In doing so, you have
5 the discretion to choose the order in which you evaluate

6 each crime and consider the evidence pertaining to it. You
7 may find it productive to consider and reach tentative
8 conclusions on all charges and lesser crimes before
9 reaching any final verdicts. Before you reach any final
10 form of verdict you must be guided by the following: If

11 you unanimously find the defendant guilty of first degree
12 murder, the foreperson should sign and date the
13 corresponding verdict form. All other verdict forms are to
14 be left unsigned. If you are unable to reach a unanimous
15 verdict as to the charge of first degree murder, do not
16 sign any verdict forms and report your disagreement -- if
17 you are unable to reach a unanimous verdict as to the
18 charge of first degree murder, do not sign any verdict
19 forms and report your disagreement to the Court. The Court
20 cannot accept a verdict of guilty of second degree murder
21 unless the jury also unanimously finds and returns a signed
22 verdict form of not guilty as to murder of the first
23 degree.

24 If you find the defendant not guilty of murder in
25 the first degree but cannot reach a unanimous verdict of
26 murder in the second degree, your foreperson should sign
27 and date the not guilty *of of first, dis, do not sign any
28 other verdict forms. If you unanimously find the defendant

1 not guilty of first degree murder but guilty of second
2 degree murder, your foreperson should sign and date the
3 corresponding verdict form and do not sign any other
4 verdict forms. The Court cannot accept a verdict of guilty
5 of involuntary manslaughter unless the *jury, not guilty

6 verdict as to both murder of the first degree and murder in
7 the second degree. If you unanimously find the defendant
8 not guilty of murder in the first degree, not guilty of
9 murder in the second degree, but are unable to unanimously
10 agree as to the crime of involuntary manslaughter, your

11 foreperson should sign and date the not guilty verdict
12 forms for first and second degree murder and you should
13 report your disagreement to the Court.

14 If you find the defendant guilty of the crime of
15 murder but have a reasonable doubt as to whether it is
16 first or second degree murder, you must find him guilty of
17 the crime of second degree murder.

18 The shorthand version is whenever you unanimously
19 agree on a verdict form, you can sign it. But when you do
20 not agree to a greater charge, you can't move to the lesser
21 charge unless you all agree.

22 Now, I have not intended by anything I've said or
23 done or any question I may have asked or any ruling I may
24 have made to intimate or suggest what you should find to be
25 the facts or that I believe or disbelieve any witness. If
26 anything I have done or said seemed to so indicate,
27 disregard it, form your own conclusions.

28 Now, the purpose of the Court's instructions is to

1 provide you with the applicable law so you may arrive at a
2 just and lawful verdict. Whether some instructions apply
3 will depend upon what you find to be the facts. Disregard
4 any instruction which applies to facts determined by you do
5 not exist. Do not conclude because an instruction has been
6 given I'm expressing an opinion as to the facts.

7 Now, the people and the defendant are entitled to
8 the individual opinion of each juror. Each of you must
9 consider the evidence for the purpose of reaching a verdict
10 if you can do so. Each of you must decide the case for

11 yourself but should do so only after discussing the
12 evidence and instructions with other jurors. Do not
13 hesitate to change an opinion if you're convinced it's
14 wrong. However, do not decide any question a particular
15 way because a majority of the jurors or any of them favor
16 such a decision. Do not decide any issue in this case by
17 chance, drawing of lots or any other chance determination.

18 The attitude and conduct of jurors at all times is
19 very important. It's rarely helpful for a juror at the
20 beginning of deliberations to express an emphatic opinion
21 on the case or to announce a determination to stand for a
22 certain verdict. When one does that at the outset a sense
23 of pride may be aroused, and one may hesitate to change a
24 position even if shown it is wrong. Remember, you're not
25 partisans or advocates in this matter, you are impartial
26 judges of the facts.

27 During your deliberations do not discuss the
28 subject of penalty or punishment. That subject must not in

1 any way affect your verdict. During deliberations any
2 question or request that you have should be addressed to
3 the Court on a form that will be *decide to you. Please
4 understand that counsel must first be contacted before a
5 response can be formulated. Readback of testimony is

6 requested, the reporter will delete objections, rulings,
7 sidebar conferences, and you'll hear only the evidence that
8 was actually presented. Please understand it may take time
9 to provide a response. Continue deliberating until you are
10 called back into this courtroom.

11 Remember the other girl that was the court
12 reporter, long dark hair? Well, she's serving on a jury
13 downstairs, so when if we get her for readback it is up to
14 some other judge down there, hopefully a lot nicer than me
15 because I wouldn't let you go. Anyway, that's a problem
16 we're going to have to live with with this case.

17 Now, a copy of these instructions are going to be
18 given to you in written form, and please, they must not be
19 defaced in any way. They are part of the official record
20 of this case. You will find the instructions, I think are
21 typed, very little handwritten, and there's a few places
22 where portions of them have been deleted or added. Now,
23 disregard any deleted portion of the instruction and do not
24 speculate as to what it was or the reason for its
25 deletion. It's just black lines. You can probably hold
26 the instruction up and maybe read through it. I just
27 deleted it because it doesn't relate to this particular
28 case, so disregard it.

1 You are not to be concerned for the reasons for any
2 modification. Every part of the text of the instruction
3 whether typed, printed, or handwritten of equal importance,
4 you're to be guided by instructions in their final
5 wording. Do not disclose to anyone outside the jury, not
6 even to me or any member of my staff orally or in writing
7 how you may be divided numerically or balloting as to any
8 issue unless I specifically direct otherwise.

9 Now, you have notebooks that -- you've been given
10 notebooks and pencils, and notes are only an aid to the
11 memory and should not take precedence over independent
12 recollection. A juror who did not take notes should rely
13 on his or her independent recollection of the evidence and
14 not be influenced by the fact that other jurors took
15 notes. Notes are for the notetaker's own personal use in
16 refreshing his or her recollection. Any discrepancy
17 between notes of jurors, recollection of jurors, notes and
18 notes, recollection, recollection and so on, you may
19 request readback of relevant portions of the proceeding.
20 This says trial transcript but there is no trial
21 transcript, we just have to go find it in a stack of notes
22 as you see.

23 In this case there's four possible verdict forms
24 and they're set forth in the verdict forms which you will
25 receive. The first set will be, I assume, I don't know
26 where they are, 1(a) and (b), that is "We the jury find the
27 defendant guilty of the crime of first degree murder."
28 There will be a corresponding verdict form, "We the jury

1 find the defendant not guilty of first degree murder."
2 2(a) and (b), "We the jury find the defendant guilty of
3 second degree murder," and then a form (b) which says, "We
4 the jury find the defendant not guilty of second degree
5 murder." There should be a (c) which says, "We the jury

6 find the defendant guilty of involuntary manslaughter," and
7 a 3(b) which says, "We the jury find the defendant" -- "We
8 the jury find the defendant not guilty of involuntary
9 manslaughter." And there should be another verdict which
10 says, "We find the defendant not guilty."

11 Is that what we have prepared?

12 MS. SCHMAUSS: Well, the way it is, it's 1(a)
13 through (f).

14 THE COURT: All right. 1(a) through (f). In other
15 words, as I indicated since the charge is murder, you must
16 decide whether or not the defendant is guilty of murder or
17 not, the degree, if not murder, manslaughter, if none of
18 the above, not guilty. There's several choices.

19 You have questions about what you're to do and how
20 you're to do it and they're not otherwise explained in
21 those instructions and that long instruction about how to
22 go through it, please ask.

23 You shall now retire and select one of your number
24 to act as foreperson. He or she, 12 jurors must agree to
25 the decision. As soon as all of you have agreed upon a
26 verdict so that when polled you may state truthfully that
27 the verdict expresses his or her vote, return with it to
28 this courtroom. Return also the unsigned verdicts.

1 Now, it will take a few minutes before the copy of
2 these instructions is prepared for you, and in the meantime
3 we will be gathering all the exhibits that have been
4 received and bringing them in to you except those, if you
5 remember, were returned for safekeeping because of their
6 character, they couldn't just be left sitting around in the
7 courtroom at ordinary room temperatures and so on.

8 You guys -- what time is it? No, it's 3:30. You
9 can set your own times for deliberations. I only have a
10 couple of requirements and that is that today it's been a

11 long hard day and if you'd like to quit at 4:00 o'clock,
12 I'll permit it, or maybe even earlier. Get organized,
13 we'll get everything to you. At that point in time if
14 you'd like to take a break, that's okay, but other than
15 today, my requirements are minimal. You can start
16 deliberating any time you want tomorrow morning so long as
17 it's not before 9:30 or not after 9:31. You can take all
18 the recesses you want tomorrow morning as long as the total
19 number doesn't exceed 15 minutes, break any time you want
20 for lunch between the hours of 11:59 and 12:00. You can
21 return any time you want between the hour of 1:30 and
22 1:31. Do you have the picture? Yes. All right.

23 Swear the bailiff.

24 (Bailiff sworn.)

25 THE COURT: One more cautionary thing for you,
26 folks, and that is this: I have permitted you to separate
27 at all recesses, noon and evening, and that has been upon
28 your promise not to discuss the case, investigate it and so

1 on. You all remember that promise. Okay. The same
2 promise applies while you deliberate. You're going to be
3 permitted to separate during recesses, noon and evening,
4 but you may not deliberate further on the case. You cannot
5 talk amongst yourselves about the case in small groups

6 outside or anywhere. Deliberation is a formal thing. It
7 can only occur when all 12 of you are in the jury room and
8 you kind of commence. And when you're not all there,
9 deliberations stop and discussion about the case stops. So
10 please follow that rule because we pay attention, and then

11 you can go home at night and so on.

12 Take them away. Bread and water.

13 For you who are alternates, please remain. If you
14 alternates -- do we have your phone number?

15 THE CLERK: I believe Tonya has, yes.

16 THE COURT: Did she get your phone number early,
17 back weeks ago? You have our phone number?

18 ALTERNATE NUMBER 1: I've got hers, yeah.

19 THE COURT: Okay. You have to promise me you will
20 not discuss the case, permit anyone to talk to you about
21 it, deliberate upon it, investigate it, all the same rules
22 apply. I will excuse you. We will call you if you are
23 needed, that is if some juror of the 12 is sick, cannot
24 continue or some other unforeseen thing happens to them or
25 their family. If we have your home and work phone numbers,
26 you may go, stay home, or you may go to work. I just need
27 you to be in a position where you can be here in an hour.
28 That's my only requirement. We can reach you and then you

1 can get here within an hour. So if you have to travel or
2 do something for work, then you can't do that. Expect the
3 most likely time you're to be called is the morning. Bad
4 things happen in the dark. So if anything goes wrong it
5 will be overnight, not during lunch, although once in a

6 while an emergency may arise during the day and we may
7 excuse a juror. If you make sure before you leave that
8 when she comes out she has your numbers, you will be
9 excused on those comments.

10 We will let you know when your duty as an alternate

11 juror terminates, okay? Do you have any questions? No,
12 good. So hang on until Tonya comes back to make sure she
13 has the information.

14 Ms. Schmauss 2.20, never had your edition, my
15 edition, remember. Talked about it.

16 MS. SCHMAUSS: You want it retyped?

17 THE COURT: I want that one sentence added.

18 MS. SCHMAUSS: Certainly.

19 THE COURT: Other than that, I think we're okay.

20 MR. ABLARD: Yes, thank you.

21 THE COURT: The instructions do not go back until
22 2.20 is corrected. Unless you stipulate -- well, you can
23 copy it. Bring me two copies of that.

24 MS. SCHMAUSS: Of 2.20?

25 THE COURT: Then I don't have to copy it.

26 MS. SCHMAUSS: Certainly.

27 THE COURT: Thanks. In any event, the Court is now
28 in recess.

1 MR. ABLARD: Thank you, Your Honor.

2 MS. SCHMAUSS: Oh, Your Honor, one other item,
3 maybe we could approach or after the alternates are
4 excused.

5 (A CONFERENCE WAS HELD AT THE BENCH, NOT

6 REPORTED.)

7 (Jury commenced deliberations.)

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RANCHO CUCAMONGA; TUESDAY, OCTOBER 15, 1996

MORNING SESSION

DEPARTMENT RC-4

HON. ROBERT E. LAW, JUDGE

(Appearances:

The defendant present with his attorney,

MR. GARY ABLARD, Attorney at Law; The People of
the State of California represented by
MRS. KAREN SCHMAUSS, Deputy District Attorney.)

(Kathryne R. McNulty, Official Reporter, C-7651)

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THE COURT: All right. In the matter of People
versus Johnson. Mr. Johnson is present, Mr. Ablard is
present, Ms. Schmauss is present, the jury is locked up.
The jury has requested certain information from the Court,
testimony of Officer Donley, testimony -- the testimony of
Dr. Sheridan and they've asked to review the video of the
house taken by Officer Donley.

MR. ABLARD: Correct.

THE COURT: And the Court is prepared to do the
following if both Counsel agree: The court reporter is
going through her notes at this time with reference to all
the testimony about the seal or when it was put on, when it
was taken off, or any other testimony related thereto which
I think is relevant, because there is some question as to
whether it was actually removed or just whatever happened
to it, and after that is all gathered, we'll discuss it at
1:30 to see what it is she has found. We know what

1 Dr. Sheridan's testimony is. He only testified once,
2 direct, cross and redirect, and they requested to review
3 the film as I indicated.

4 I propose to do the following: After we meet and
5 see what the court reporter has on the seal, we'll have her
6 go read that in the jury room and just that and then read
7 Dr. Sheridan's testimony and just that. My bailiff will
8 with the TV that's been delivered by the County office put
9 in and play continuously without discussion the video that
10 was played, and then come out. Now, I assume they're going
11 to want to -- I had this funny feeling that they're going
12 to want to go through portions of it. I don't know why, I
13 just have a feeling that that may occur. We'll deal with
14 that problem if it occurs and we'll meet at 1:30 to look at
15 the rest of it.

16 It's agreed between counsel that our court reporter
17 may read those portions of testimony requested to the jury
18 in the deliberation room as opposed to open court.

19 MR. ABLARD: Yes, agreed.

20 MS. SCHMAUSS: Agreed.

21 THE COURT: And it's standard rules, she can't talk
22 to them, can't go past what we know is going to be read and
23 all the rest of it. They'll have to write new questions.

24 Is it agreed that Bailiff Watkins or some other
25 sworn deputy may play the video, enter the jury room,
26 deliberating room, play the video and then remove it?

27 MR. ABLARD: Yes, visual only, audio out.

28 THE COURT: Audio is out, visual only.

1 MS. SCHMAUSS: Agreed.

2 THE COURT: Thank you. See you at 1:30.

3 MR. ABLARD: 1:30?

4 THE COURT: Yes.

5 MR. ABLARD: Thank you.

6 (Jury deliberations continued.)

7 (An adjournment was taken until 1:30 p.m.

8 of the same day.)

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RANCHO CUCAMONGA; WEDNESDAY, NOVEMBER 8, 1995

AFTERNOON SESSION

DEPARTMENT RC-4

HON. ROBERT E. LAW, JUDGE

(Appearances:

The defendant present with his attorney,
MR. GARY ABLARD, Attorney at Law; The People of
the State of California represented by
MRS. KAREN SCHMAUSS, Deputy District Attorney.)

(Kathryne R. McNulty, Official Reporter, C-7651)

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THE COURT: This is People versus Johnson. Have
you gone over with my court reporter those matters relating
to the inquiry of the jury?

MS. SCHMAUSS: Yes.

MR. ABLARD: Yes, we have.

THE COURT: Are you satisfied we found them and
that she may now go read --

MR. ABLARD: Yes.

THE COURT: -- those questions and answers and the
testimony of the doctor?

MR. ABLARD: Yes.

MS. SCHMAUSS: Yes.

THE COURT: Go.

MR. ABLARD: Thank you.

MS. SCHMAUSS: Thank you.

(Jury deliberations continued.)

1 THE COURT: We're on the record on the Johnson
2 matter, the inquiry from the jury that's been read by both
3 Counsel and please assent to us complying with the readback
4 and the reshowing of the video. Mr. Ablard?

5 MR. ABLARD: Yes, that's fine.

6 THE COURT: Ms. Schmauss?

7 MS. SCHMAUSS: Yes, Your Honor.

8 THE COURT: Thank you very much.

9 (Jury deliberations continued.)
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1 RANCHO CUCAMONGA, CALIFORNIA; TUESDAY, NOVEMBER 14, 1995

2 P.M.

3 DEPARTMENT 4

HON. ROBERT E. LAW, JUDGE

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

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

9 ---###---

10 THE COURT: YOU GUYS LOOK FAMILIAR. WHERE HAVE I SEEN

11 YOU BEFORE? WAS IT LAST WEEK OR WAS IT THE WEEK BEFORE?

12 ANYWAY, MS. DENNIS, YOU ARE THE FOREPERSON TO THIS JURY?

13 JUROR DENNIS: YES, I AM, YOUR HONOR.

14 THE COURT: THANK YOU. YOU DON'T HAVE TO STAND. JUST
15 SIT THERE AND RELAX. WE ARE GOING TO CHAT FOR A MINUTE.

16 FIRST OF ALL, MY BAILIFF HAS REPORTED THAT YOU FOLKS
17 HAVE REACHED A VERDICT. IS THIS CORRECT?

18 JUROR DENNIS: YES.

19 THE COURT: OR VERDICTS, IF YOU WILL, BECAUSE THERE'S
20 A WHOLE BUNCH OF STUFF HERE. ALL RIGHT. HAVE YOU,
21 PURSUANT TO THE INSTRUCTIONS THAT I GAVE YOU, SIGNED AND
22 DATED THE APPROPRIATE VERDICTS?

23 JUROR DENNIS: YES, YOUR HONOR.

24 THE COURT: AND HAVE YOU LEFT UNSIGNED AND UNDATED
25 THE OTHERS?

26 JUROR DENNIS: YES, YOUR HONOR.

27 THE COURT: HAVE YOU BROUGHT THEM ALL WITH YOU?

28 JUROR DENNIS: YES, YOUR HONOR.

1 THE COURT: WOULD YOU BE KIND ENOUGH TO DELIVER THEM
2 TO MY BAILIFF, PLEASE.

3 ALL RIGHT, LADIES AND GENTLEMEN, PLEASE PAY
4 ATTENTION. BECAUSE I AM GOING TO READ THE VERDICTS. AND
5 I AM GOING TO ASK IF THIS IS YOUR VERDICT. AND MY CLERK
6 IS GOING TO ASK EACH ONE OF YOU THE SAME QUESTION, IF YOU
7 WILL. SO PAY ATTENTION.

8 THIS IS THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF
9 SAN BERNARDINO. PEOPLE OF THE STATE OF CALIFORNIA VERSUS
10 CHUCK EDWARD JOHNSON, CASE NUMBER FWV 02293. VERDICT.

11 WE THE JURY IN THE ABOVE ENTITLED ACTION FIND THE
12 DEFENDANT, CHUCK EDWARD JOHNSON, GUILTY OF THE CRIME OF
13 FIRST DEGREE MURDER AS CHARGED IN THE INFORMATION AS TO
14 COUNT I.

15 DATED NOVEMBER 24, 1995, VASTIE DENNIS, FOREPERSON.

16 LADIES AND GENTLEMEN, IS THIS YOUR VERDICTS?

17 (SEVERAL JURORS ANSWER IN THE AFFIRMATIVE.)

18 THE COURT: IS THIS YOUR VERDICT:

19 THE CLERK: SANDRA WILSON.

20 JUROR WILSON: YES.

21 THE CLERK: MARLYN MANIAOL.

22 JUROR MANIAOL: YES.

23 THE CLERK: ARTHUR TAGATAC.

24 JUROR TAGATAC: YES.

25 THE CLERK: DEBORAH WOOLERY.

26 JUROR WOOLERY: YES.

27 THE CLERK: JAMES REDDIG.

28 JUROR REDDIG: YES.

1 THE CLERK: VASTIE DENNIS.

2 JUROR DENNIS: YES.

3 THE CLERK: GREGORY HAGGETT.

4 JUROR HAGGETT: YES.

5 THE CLERK: VICTORIA CATHEY.

6 JUROR CATHEY: YES.

7 THE CLERK: JESSE ORTIZ.

8 JUROR ORTIZ: YES.

9 THE CLERK: LORENA YASUDA.

10 JUROR YASUDA: YES.

11 THE CLERK: PHUONG FABRE.

12 JUROR FABRE: YES.

13 THE CLERK: AND RODGER STOTT.

14 JUROR STOTT: YES.

15 THE CLERK: TWELVE IN THE AFFIRMATIVE.

16 THE COURT: THANK YOU VERY MUCH. THE VERDICTS WILL
17 BE PLACED IN THE COURT'S FILE. I NEED TO ADVISE YOU IN
18 ACCORDANCE WITH THE LAW THAT EACH NOW HAVE THE ABSOLUTE
19 RIGHT TO DISCUSS OR NOT DISCUSS YOUR DELIBERATIONS OR YOUR
20 VERDICTS WITH ANYONE.

21 FOLLOWING YOUR RELEASE FROM JURY DUTY, DEFENDANT OR
22 HIS OR HER REPRESENTATIVE OR THE PROSECUTOR OR HIS OR HER
23 REPRESENTATIVE MAY ASK YOU TO DISCUSS YOUR DELIBERATIONS
24 OR VERDICTS.

25 IF THIS OCCURS, THE CHOICE TO DISCUSS OR NOT DISCUSS
26 IS ENTIRELY YOURS. IF YOU SHOULD BE CONTACTED AT AN
27 UNREASONABLE TIME OR UNREASONABLE MANNER, PLEASE NOTIFY ME
28 OR MY COURT STAFF IMMEDIATELY.

1 ALSO UNDER THE LAW, YOU HAVE A RIGHT TO HAVE YOUR
2 JUROR RECORDS SEALED IF THERE IS CAUSE TO DO SO. AND THERE
3 ARE CASES WHERE I THINK IN MY JUDGMENT THERE'S CAUSE. BUT
4 THIS IS NOT SUCH A CASE.

5 BUT SO, I EXPECT THAT YOU MAY BE CONTACTED ABOUT YOUR
6 VERDICT OR DELIBERATION. AND AS I INDICATED, YOU CAN TALK
7 ABOUT IT IF YOU WANT OR YOU CAN GO HOME, FORGET ABOUT IT.
8 SOMEONE MAY CALL YOU LATER. AND THAT IS ENTIRELY UP TO
9 YOU.

10 I WANT TO THANK YOU VERY MUCH. I KNOW YOU GUYS HAVE
11 WORKED HARD AND LONG ON THIS CASE. AND I WOULD ASSUME
12 THAT YOU NOW HAVE A SLIGHTLY DIFFERENT VIEW OF THE
13 CALIFORNIA JUDICIAL SYSTEM AND JURY DUTY THAN YOU DID WHEN
14 YOU WALKED IN.

15 I APPRECIATE IT A GREAT DEAL. THANKS, FOLKS. YOU'LL
16 BE EXCUSED BY MY BAILIFF.

17 MS. SCHMAUSS: YOUR HONOR, COULD YOU REQUEST IF THEY
18 SO WISH IF THEY WOULD REMAIN SO WE CAN TALK TO THEM FOR A
19 FEW MINUTES?

20 THE COURT: NO. THANK YOU, FOLKS.

21 MS. SCHMAUSS: THANK YOU.

22 (WHEREUPON THE JURY EXITED THE COURTROOM AND
23 THE FOLLOWING PROCEEDINGS WERE HELD:)

24 THE COURT: ALL RIGHT. MATTER IS REFERRED.

25 MR. ABLARD: THAT IS CORRECT, YOUR HONOR.

26 THE COURT: ALL MOTIONS AND SENTENCING WILL BE SET
27 FOR--

28 MR. ABLARD: WELL, OBVIOUSLY, THE MOTIONS SO

1 SOMEWHERE AFTER THE TWENTY COURT DAYS. SOMEWHERE IN
2 DECEMBER OR JANUARY. WELL, YOU'LL BE GONE FROM DECEMBER.
3 JANUARY. WHATEVER DATE IS GOOD.

4 THE COURT: WHY DON'T WE SET IT FOR JANUARY 5TH,
5 FRIDAY, SAY THE 5TH SUBJECT TO RESCHEDULING IF
6 APPROPRIATE.

7 MR. ABLARD: RIGHT. THANK YOU. MR. JOHNSON, YOU HAVE
8 A RIGHT TO BE SENTENCED WITHIN TWENTY COURT DAYS OF TODAY.

9 DO YOU GIVE UP THAT RIGHT AND AGREE TO GO OVER TO THE
10 5TH?

11 THE DEFENDANT: YES, YOUR HONOR. THANK YOU.

12 THE COURT: THANK YOU. WE WILL SEE YOU ON JANUARY
13 5TH.

14 MR. ABLARD: THANK YOU.

15 THE COURT: COURT WILL BE IN SHORT RECESS. THEN WE
16 WILL RETURN TO-- WHAT IS THE OTHER CASE, GARRETT?

17 (PROCEEDINGS CONCLUDED.)
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1 RANCHO CUCAMONGA, CALIFORNIA; FRIDAY, JUNE 7, 1996

2 A.M. SESSION

3 DEPARTMENT 4

HON. ROBERT E. LAW, JUDGE

4 APPEARANCES:

5 The Defendant, CHUCK JOHNSON, with Counsel,
6 GARY ABLARD, Deputy Public Defender of San
7 Bernardino County; KAREN SCHMAUSS, Deputy
8 District Attorney of San Bernardino County,
9 representing the People of the State of
10 California.

11 (REPORTED BY: KARIE LYNN MARTIN, C.S.R. 9428)

12 --o0o--

13 THE COURT: If my record is correct, Information
14 was filed, violation of Penal Code section 187. Some time
15 passed, but a jury was sworn and a case was tried.
16 Verdict was returned at about 2:00 o'clock on November
17 14th, 1995. A verdict was entered finding the defendant
18 guilty of the crimes charged. Thereafter, the matter was
19 referred to the probation department. In motions there
20 was some direction in motions regarding to jurors.

21 The Court has read and reviewed defendant's motion
22 for new trial. The Court has read and reviewed the
23 probation report.

24 MS. SCHMAUSS: Did the Court get my opposition,
25 Your Honor.

26 THE COURT: Yes. Should I read it? Well, did you
27 spend a lot of time preparing it?

28 MS. SCHMAUSS: No, Your Honor.

1 THE COURT: Then I won't spend a lot of time
2 reading it, but I will.

3 (Brief Pause.)

4 THE COURT: I have. I will hear from counsel.
5 Let's deal with the motion for new trial first, and if
6 there's anything to deal with after that, we'll deal with
7 that.

8 MR. ABLARD: Well, it's basically set out on the
9 papers, Your Honor. However, this was a case where the
10 jury was faced with somewhat of a dilemma that there were
11 very few people in the proximity of the child's death.

12 THE COURT: Four possible. Mom, dad, a friend, and
13 Mr. Johnson, if my memory is correct.

14 MR. ABLARD: That's correct. And as the evidence
15 came in, it seemed, at least to the defense, that there
16 was really inadequate evidence to support a guilty verdict
17 beyond a reasonable doubt allegation stated in the
18 paperwork. All parties had inconsistencies. It went
19 really to the greaterment of the defense.

20 In addition to that, there were no forensics done
21 in any of the rooms of the house nor were any of them done
22 on the individuals that might have proved helpful. We all
23 understand the problem of forensics in a house where all
24 the people live and all are in each room. However, that's
25 not to say that nothing would be conclusive to help find
26 the perpetrator.

27 And being such emotionally charged type of a case,
28 it's the defenses feeling that jurors tend to want the

1 defense to prove that the client is not guilty. That's
2 not our job. It's very difficulty to do, and we don't
3 have any forensics from the house or other people to help
4 support a theory of our own, and that's the basis of the
5 motion, and I'll submit it.

6 MS. SCHMAUSS: Your Honor, as I stated in my
7 response to the defendant's motion for a new trial, the
8 standard of the law is that the Court, not as a thirteenth
9 juror, but the Court look to see whether there was
10 credible evidence to support the verdict, and I submit
11 that there certainly was.

12 Of course, there are credibility contents. Of
13 course, the Court could have contributed a number of
14 ways. However, 12 jurors deliberated, I believe, four or
15 five days, if I remember correctly. Not only did they
16 find the defendant guilty, they found him guilty of first
17 degree murder. They had a number of choices all the way
18 down to manslaughter, so I don't believe at all that the
19 Court should throw out the jurors decision, and I don't
20 believe the court will, and I submit it.

21 MR. ABLARD: Your Honor, if I may very briefly, the
22 question is to credible evidence, and the credible
23 evidence that was put before the jury in our estimation,
24 if that were all taken to be true, it still doesn't prove
25 that Mr. Johnson committed the murder. The child was
26 found in his closet. Mr. Johnson put clothes on top of
27 the child when he found the child. He then began acting
28 panicky and acting strangely. Beyond that, there's

1 basically no evidence. And despite the fact that they
2 deliberated for a period of time really doesn't solve our
3 problem. Even if the credible evidence were taken into
4 account, there's still insufficient evidence to find a
5 guilty verdict beyond a reasonable doubt.

6 I submit it, Your Honor.

7 THE COURT: Thank you. Well, the Court heard the
8 case as well as the jury and found it to be an interesting
9 case. One could say that there are four possible adults
10 who contributed to the death by strangulation of the small
11 child found in the closet -- the bedroom that Mr. Johnson
12 occupied as a quote, "guest tenant."

13 The evidence as to motive which is something that
14 the triers of fact always look to give the basis for the
15 decision is lacking in this case, which always troubles, I
16 guess, finders of fact including the Court. But under the
17 current rules there are only two people that could have
18 probably given any motive. One is the deceased, and the
19 other is the perpetrator of the murder, who has the
20 constitutional right of exchanging what happened.

21 In any event, this became a question for the jurors
22 to decide in my judgment. Clearly there are conflicting
23 inferences that one could draw from the new answers of the
24 testimony that was given, but clearly the jury is judge of
25 the case of the four potential murderers. One was clearly
26 established to be the murderer, and the jurors found
27 beyond a reasonable doubt that it was Mr. Johnson.

28 The Court was also troubled, at least in a period

1 of time, with this being designated as a first as opposed
2 to a second degree murder dealing with the issue of
3 premeditation for lack of motive as the other problem.
4 You can understand certain things when you understand the
5 motive. However, the Court was convinced, based on the
6 demonstration of the people and the evidence that was
7 presented with regards to the amount of time necessary to
8 complete from commencement to death, the act of
9 strangulation by suffocation, if you will, by way of a
10 blanket or other similar soft object while the Appellate
11 courts could not define in a period of time that amount of
12 time that is necessary for premeditation, the Court thinks
13 that the testimony from 90 seconds to two and a half
14 minutes of consideration while the act of killing
15 continues is sufficient time to establish premeditation
16 for the ruling.

17 And, therefore, the motion for a new trial, and
18 while no one requested the Court to considering the
19 reduction to second degree, it's the obligation of the
20 Court to do so. And the Court has, for the reasons
21 stated, denied the motion for new trial based upon the
22 evidence of the time that it took to kill the little girl,
23 which will reduce it to first degree.

24 MS. SCHMAUSS: Thank you, Your Honor.

25 THE COURT: Now, it's time for Pronouncement of
26 Judgement. If there's no legal cause, the Court is ready
27 to proceed.

28 I've read and considered the probation report --

1 MS. SCHMAUSS: Your Honor, as I previously told
2 you, the victim's parents, the mother and father, would
3 like to make an impact statement.

4 THE COURT: Didn't they make enough statements
5 during the course of this trial for the Court to
6 understand --

7 MS. SCHMAUSS: I'm sure they did, but it's their
8 right and they wish to exercise it.

9 THE COURT: So they understand, the law says that I
10 must sentence the defendant to confinement of State Prison
11 for a total of 25 years to life and the discussion of
12 190(A), that's the only applicable punishment. The other
13 two are not available because 190.1 allegations were not
14 made.

15 Who would like to make a statement?

16 MS. SCHMAUSS: Jennifer Rethorn or, I'm sorry,
17 Darin Riggs first, and Jennifer Rethorn second.

18 Should they stand here?

19 THE COURT: No, they can address the Court from
20 wherever they are.

21 MS. SCHMAUSS: I'm Darin Riggs.

22 THE COURT: I know you. You were here for days.

23 MR. RIGGS: Yes. I know we've made eye contact.
24 It's real tough for me when I go to work and people talk
25 about their loved ones and they show pictures of their
26 children and everything else and the pictures that are
27 stuck into my head are the last pictures that were taken
28 of her. The autopsy report is burned in my head forever,

1 and it's really tough to go on.

2 The other thing is I've got Father's Day coming up,
3 and I have to get through the holidays. That's more
4 difficult than some of the other visits directed toward
5 the father. People ask me if I have children and how do I
6 answer that? "Yes, I do, but she was murdered by
7 somebody," and I have to go through what happened or I
8 deny that I ever had a child, and what do I do with that
9 situation in my heart. It's tough for me to go on with
10 that situation.

11 It's -- I feel justice was eventually served here,
12 and I thank you, Your Honor, for upholding the law to its
13 fullest, and thank you for your time.

14 THE COURT: Jennifer.

15 MS. SCHMAUSS: Good morning, Your Honor. As you
16 know, I have not missed a court date yet, and this is how
17 I'm ending it.

18 On Easter Sunday, April 15th, 1990, Brittany Lynn
19 was born. It was such a happy day for me. I enjoyed
20 Brittany's three and a half years of life at home with
21 her. I spent so many wonderful memories. I was lucky to
22 spend as much time as I did with her. As I watched
23 Brittany grow up with her buddy Chelsea, it was like
24 having twins most of the time. That time is so cherished
25 with every thought, picture and song. Brittany's life
26 will never be replaced or forgotten.

27 Then on Sunday, October 10th, 1993, I woke up to a
28 living nightmare. In one hour I would never get to hear

1 Brittany say I love you Mommy again. Because Chuck
2 Johnson took her away from me in a way that's so unreal.
3 At age 24 it was and still is so unbearable to live with.
4 You never think your only child would be killed in her own
5 home, with her own baby blanket by a man who rents a room
6 in our home. He even has two kids of his own.

7 I was asleep in the next room and heard the noise
8 of him killing her and didn't even know it. I couldn't
9 protect her when she needed me. There's not a day that
10 goes by that I don't think about Brittany, but there's a
11 cloud hanging over my memories due to the fact that Chuck
12 Johnson killed her when I was right there not able to do
13 anything. I can't imagine what pain he physically and
14 emotionally did to Brittany. She knew him. She trusted
15 him. This was her home where she was safe, but he
16 violated that trust.

17 Then that morning as I looked, cried and called out
18 to find her, he was watching knowing with his cold blooded
19 mentality I wouldn't find her. By his inhumane actions he
20 just killed her and hid her body in his closet. He even
21 pretended to help look for her hoping nobody would find
22 her under his clothes, tool box and garbage bag.

23 Now it's almost three years later, her murder still
24 continues to effect so many people. Not only myself and
25 her father, but her grandparents, great grandparents,
26 aunts, uncles, cousins and friends. This pain will always
27 be a part of us who knew and loved Brittany and those who
28 never got the chance and never will.

1 The hardest part is coping with the fact that Chuck
2 Johnson is able to see his kids in jail. He gets to talk
3 and write to them. Chuck should not be lucky enough to be
4 a father or to be a part of his kids lives. I don't get
5 to be Brittany's mom anymore because of what Chuck did. I
6 can't see her, write to her, hear her sweet voice, hug,
7 kiss, or hold her again. I have to watch Chelsea grow up
8 and wonder what Brittany would be like. My hopes and
9 dreams for her are gone forever. I wish he knew what it
10 felt like to have his child murdered then to burry that
11 child with the feeling of never saying good-bye. Holding
12 on to the last memory of time you saw them alive. But
13 he'll never know what that feels like because his kids are
14 alive and Brittany is gone forever.

15 I hope he will never get out of prison. 25 years
16 to life is not enough for me. Chuck Johnson has shown no
17 remorse or accountability for what he's done. He killed a
18 sweet innocent three-year-old child that could not protect
19 herself from him. I don't want a day to go by in his life
20 that he has hopes of getting out of prison because I have
21 a huge empty missing place in my heart for Brittany.

22 I hope you, Chuck Johnson, never have peace in your
23 life and this will haunt you forever. Brittany, Darin and
24 I have never done anything to you. You have two kids of
25 your own. How could you want to kill a child? Why did
26 you hurt my innocent family. You knew we loved her so
27 much. You may be going to prison for murdering just
28 Brittany, but you have hurt so many people and so many

1 lives. You should never be a part of society again. To
2 ensure myself that you don't forget why you are in prison,
3 I am going to exercise my victim's rights and ask for
4 restitution according to Penal Code 1202.4 for \$10 a month
5 for the rest of your life for killing my daughter and
6 killing a part of me.

7 As you go to prison, remember one thing, you'll
8 never be forgiven. I just want to know why you killed my
9 daughter because I will never go away. I will be there to
10 make sure you have no chances and stop any chance you'll
11 ever have of getting out of prison ever.

12 THE COURT: Anything further?

13 MR. ABLARD: No, Your Honor.

14 THE COURT: No legal cause, counsel?

15 MR. ABLARD: No legal cause.

16 THE COURT: Based upon the finding of the jury that
17 was entered, and pursuant to Penal Code 190(A), the
18 defendant is sentenced as follows: To state prison,
19 violation of Penal Code section 187 in the first degree,
20 25 years to life. We have some credits but they keep
21 changing faster than I can keep track of them.

22 The court finds a vehicle was not used that imposes
23 a \$200 victim restitution fund contribution, and as of
24 January 15th, '86, we had 816. So we have February,
25 March, April, May, and May had 31 days, April had --

26 MS. SCHMAUSS: 31.

27 THE COURT: 31.

28 MS. SCHMAUSS: 30.

1 THE COURT: And February was blessed with 29 this
2 year, and January had an additional 26 and today is the
3 17th. I get 970 actual plus conduct of what, 15 percent?

4 MS. SCHMAUSS: Right, 15 contact credits are the
5 same, 15 percent.

6 MR. ABLARD: That would go back to the full three
7 years.

8 MS. SCHMAUSS: Right. There's been a disagreement,
9 but apparently the law is that local time credits are also
10 20 percent.

11 THE COURT: I don't think that there's a
12 disagreement on that under 2915. 145 is close enough for
13 our work 970 plus 145 for a total of 1115.

14 Sheriffs Department is directed forthwith.

15 MS. SCHMAUSS: Thank you, Your Honor.

16 (The proceedings in the above-entitled
17 matter were concluded.)
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1 SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 FOR THE COUNTY OF SAN BERNARDINO
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5 REPORTER'S CERTIFICATE

6 FWV 02293
7

8 STATE OF CALIFORNIA)
9 COUNTY OF SAN BERNARDINO) SS
10

11
12 I, GAIL GREENLEE, OFFICIAL REPORTER OF THE
13 SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF
14 SAN BERNARDINO, DO HEREBY CERTIFY THAT THE FOREGOING,
15 PAGES 1 THROUGH 720 AND 859 THROUGH 863, INCLUSIVE,
16 COMPRISE A TRUE AND CORRECT TRANSCRIPT OF THE TRIAL
17 PROCEEDINGS IN THE ABOVE-ENTITLED CAUSE REPORTED BY ME AND
18 TRANSCRIBED BY ME TO THE BEST OF MY ABILITY.

19 DATED THIS 17TH DAY OF OCTOBER, 1996.

20
21  CSR NO. 8647
22 OFFICIAL REPORTER
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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

STATE OF CALIFORNIA)
) SS
COUNTY OF SAN BERNARDINO)

I, KATHRYNE R. MC NULTY, OFFICIAL REPORTER OF THE
SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE COUNTY
OF SAN BERNARDINO, DO HEREBY CERTIFY THAT THE FOREGOING
PAGES, 730 THROUGH 858, COMPRISE A TRUE AND CORRECT
TRANSCRIPT OF THE PROCEEDINGS HELD IN THE ABOVE-ENTITLED
MATTER, AS DESIGNATED TO BE INCLUDED THEREIN, REPORTED BY
ME ON Nov. 7 & 8, 1995.

DATED THIS 16th DAY OF Oct., 1996.

Kathryne R. McNulty
KATHRYNE R. MC NULTY, C.S.R.
OFFICIAL REPORTER, C-7651

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REPORTER'S CERTIFICATE

STATE OF CALIFORNIA)
)
COUNTY OF SAN BERNARDINO) ss.

I, JANE M. FOLMER, C.S.R. Official
Reporter of the Superior Court of the State of California,
County of San Bernardino, do hereby certify that the
foregoing pages, 721 through 729, inclusive, comprise a
full, true, and correct transcript of the proceedings and
testimony taken in the matter of the above-entitled cause on
NOVEMBER 6, 1995.

DATED THIS 14TH DAY OF OCTOBER, 1996.



OFFICIAL REPORTER, C-2331

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

DEPARTMENT 4

HON. ROBERT E. LAW, JUDGE

THE PEOPLE OF THE STATE OF CALIFORNIA,)
Plaintiff,)


vs.)

CHUCK JOHNSON,)
Defendant.)

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO) SS.

I, KARI LYNN MARTIN, do hereby certify that the foregoing pages numbered 1 through 11, inclusive, comprise a full, true and correct transcript of the proceedings and testimony taken in the matter of the above-entitled cause on June 7, 1996.

Dated this 16th day of October, 1996.


KARIE LYNN MARTIN, C.S.R.
REPORTER TEMPORE, #9428

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CLERK'S CERTIFICATE

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STATE OF CALIFORNIA)
) SS
COUNTY OF SAN BERNARDINO)

NOTICE OF COMPLETION OF REPORTER'S TRANSCRIPT ON APPEAL IN
WHICH THE WITHIN CONTAINED MATTER HAVING BEEN MAILED TO
THE ATTORNEYS REPRESENTING THE APPELLANT AND THE
RESPONDENT, AND NO REQUEST FOR CORRECTION OF THE
TRANSCRIPT ON APPEAL HAVING BEEN FILED, AND THE TIME FOR
SAID FILING HAVING EXPIRED;

PURSUANT TO RULE 8(A) OF THE CALIFORNIA RULES OF
COURT, I HEREBY CERTIFY THAT THE FOREGOING RECORD,
CONSISTING OF _____ PAGES, IS A TRUE AND CORRECT
TRANSCRIPT ON APPEAL, AS DESIGNATED BY COUNSEL.

DATED THIS _____ DAY OF _____, 1996.

COUNTY CLERK

BY: _____
DEPUTY