

# UNIVERSITÀ DELLA CALABRIA



Dipartimento di Scienze Politiche e Sociali

Scuola di Dottorato in *Conoscenze e Innovazioni per lo Sviluppo*  
“André Gunder Frank”

Indirizzo: *Analisi dei linguaggi e studi interdisciplinari*

Settore Scientifico Disciplinare: L-LIN/12 Lingua e Traduzione - Lingua Inglese

XXVI CICLO

TESI DI DOTTORATO

**PERSUASION IN THE COURTROOM:  
A CRITICAL DISCOURSE ANALYSIS OF PROSECUTION AND  
DEFENSE CLOSING ARGUMENTS IN THE JODI ANN ARIAS CASE  
AND THE O.J. SIMPSON CASE**

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## Acknowledgments

I would like to thank the following people who had an important impact on the writing of this work, which has been an incredibly challenging but also very instructive journey.

- ♣ I am very grateful to my supervisor, Alessandra Fazio, for her endless guidance and support.
- ♣ I am also very thankful to my co-supervisor, Michael Cronin, who was very supportive throughout the past two years. I am also very appreciative for his useful suggestions.
- ♣ I would like to thank my friend and colleague, Ida Ruffolo, for her explanations concerning the use of AntConc.
- ♣ I would also like to thank my friend and colleague, Assunta Caruso, for her useful suggestions regarding MIP.
- ♣ I sincerely thank all of my colleagues and friends that encouraged me not to let go despite the many difficulties.
- ♣ Thank you to Paride Valentino, my IT helper, who always answered my calls when desperate with computer problems promptly solving them.
- ♣ A special thank you goes to Vincenzo Valentino. Words cannot express my gratitude to him for his moral support throughout this entire journey.
- ♣ Thank you to my parents, Assunta and Vittorio Rizzuti, who have always been there for me.
- ♣ An immense thank you goes to my 13 year-old son, William, who had to put up with me and the many weekends that I spent in front of the computer rather than going out with him.

## ABSTRACT

Analyzing the language of a specific community has the aim of understanding how it is employed within that group of people. For this reason, it is important to understand what type of language is used and how people behave in that particular social context. The language of the law, in specific courtroom discourse, is indeed different from everyday language, because everyday language is often contextualized and refers to the participants and the actions around the speakers. Moreover, in everyday language, speakers mostly know each other, and treat each other as equals. While, on the other hand, the law and its language are formal and impersonal. It is important to stress that the law is based on the operation of power, and therefore the language of the law manifests power asymmetries. Furthermore, casual conversation is not technical and specialist. While, the language of the law is full of technical jargon, much of it, which is incomprehensible to lay people who may not know the underlying legal concepts to which the jargon refers. For this reason, legal language plays an important role in the construction, interpretation, negotiation and implementation of legal justice and in order for trial lawyers to win a case they must be able to persuade the judge or jury that their version of the story is the true story. In fact, persuasion is constantly practiced in the courtroom; it is the absolute purpose of the lawyer's argument. Lawyers do so by using both verbal and nonverbal communication skills and the manner in which they conduct this communication can change how the act of persuasion is accomplished. For this reason, attention must also be paid to lexical representation in courtroom discourse. Indeed, analyzing courtroom discourse helps identify potentially discriminating linguistic practices. By carefully controlling and constraining the ways in which the actors and acts constituting the crime are formulated in court through particular lexical choices, it is possible for lawyers to convey a set of meanings beyond their strictly referential and denotational meaning. By skillfully selecting

and employing specific lexical items lawyers are able to communicate more subtle information about victims, alleged perpetrators and crimes. In fact, by “choosing lexical items, which not only describe but also provide an evaluative slant, lawyers are able to formulate their representations in such a way as to emphasize the affective force of the lexical item selected (Cotterill, 2001: 293). Therefore, the objective of this present study is to understand how communication and the use of persuasion or persuasive techniques and/or strategies may influence peoples’ decisions. In particular, this study will attempt to:

- a) investigate and examine the language employed by trial lawyers in the U.S. courtroom;
- b) observe and analyze the techniques and/or strategies employed to persuade and influence the jury; and
- c) understand how the choice of specific lexical items may exercise power in the courtroom. This will be achieved by focusing on the closing arguments of prosecution and defense lawyers in two specific murder trials, i.e., the Jodi Ann Arias case and the O.J. Simpson case.

This study is a corpus-based approach to discourse and critical discourse analysis, which focuses on both quantitative and qualitative techniques. The quantitative approach is achieved by employing Corpus Linguistics because it can help identify words or particular patterns that are employed by trial lawyers. While, the qualitative approach is achieved by analysing the data through the Linguistic Category Model, the Metaphor Identification Procedure, Monroe’s Motivated Sequence and the use of Repetition.

The results show how trial lawyers influenced and manipulated the jury by employing specific techniques and strategies within the two specific murder cases. Indeed, the use of the right technique or combination of techniques is essential because it guarantees that the closing argument will appeal to the many personalities of the jury members. Moreover, results show that lawyers downplay the significance of information that they possess, information that is or may be harmful to their case.

## Chapter One

Whether one admits or not, or whether one knows or not, language entails power. Linguistic power often works in a subtle and invisible way because language is so natural and innate to all of us that it often works its power and influence without us realizing it. This is particularly the case in the courtroom and the legal process, where language sometimes exerts tremendous power.

(Cao, 2011: xv)

### 1. Introduction

Every day, people communicate to express themselves and exchange ideas. In fact, communication is “the most basic and widespread linguistic means of conducting human affairs” (Pridham, 2001: 1). Therefore, speech, which is the primary and universal method of communication, plays an important role in our lives. Moreover, speaking makes us understand how people communicate with each other by talking (Zhang, 2010: 144). However, it is essential to highlight that the language that people choose to use when relating with others influences communication. The influence that communication has on individuals has challenged scholars for centuries (Dillard and Pfau, 2002). It is an influence that is traceable back to the 5<sup>th</sup> century B.C. in Greece (McCroskey, 1997: 4). During this period, Corax and Tisias “composed some of the first known scholarly essays on rhetorical communication” (Perloff, 1993: 37). According to Gorgias, a Sophist, public speaking was mainly based on style and emotional appeals. However, Gorgias’ approach was rejected by Plato, who instead claimed that the only moral means of persuasion was grounded in logic (Katula and

Murphy, 1995). At this point it is necessary to emphasize that the present study does not aim to be an excursus of the past, which focuses in detail on how and when communication began to influence society, but rather has the objective of understanding how communication and the use of persuasion or persuasive techniques may influence peoples' decisions. The specific purpose of the dissertation, therefore, is to investigate the use of trial lawyers' language within the U.S. courtroom. Particular attention will be given to the phase of the closing arguments, also known as summation or final argument. Closing arguments are considered to be highly complex events from a linguistic, communicative and/or social perspective. Final argument is "the advocacy's only opportunity to tell the story of the case in its entirety, without interruptions, free from most constraining formalities" (Lubet, 1997: 443). Furthermore, it is essential to highlight that the language employed by trial lawyers is a language that belongs to a specific discourse community. A discourse community is a group of people who share the same set of discourses and are involved in and communicate about a particular topic in order to achieve the same goals. For this reason, it is crucial to explore and study the language employed by a specific community, in our case trial lawyers, in order to understand how their use of detailed and explicit linguistic expressions or the use of particular strategies may have a persuasive influence on the outcome of the jury's final decision in a criminal case.

### **1.1 Analyzing the Language of a Specific Community**

The discourse of a discourse community is

A form of social behaviour... a means of maintaining and extending the group's knowledge and of initiating new members into the group, and... is epistemic or constitutive of the group's knowledge (Swales, 1990: 21).

Therefore, the aim of analyzing the language of a specific community is to understand how it is employed within that group of people for professional usage or “community of practice” (Wenger, 1998). It is also fundamental to comprehend what type of language is used and how people behave in that particular social context. Indeed, it is through language that social problems are translated into legal issues. It is through language that the law works to shape our lives, and it is through language that people, including professionals, come to understand the world in particular ways (Mertz, 2007: 12). In order to understand the social contexts of a text it is fundamental to work with natural occurring data. In fact, Schiffrin explains that “data come from a speech community: data are about people using language, not linguists thinking about how people use language” (Schiffrin, 1987: 416). Therefore, in order to examine a language it is essential to start from identifying discourse – i.e., authentic language as it occurs in context - and how the people of that community use it. Another important aspect linked to discourse is that communities develop rules and conventions for speaking and writing that are usually considered to be ‘natural’ within that group. This means that the discourse of a community reflects the notions and the ideologies of that community. As van Dijk affirms, “ideologies are the belief systems that define a group, its social practices, and its interaction with other groups” (van Dijk, 1997: 26). Van Dijk proceeds to highlight that ideologies tend to preserve the status quo – i.e., the power relations among the members of the group and states that “the ideology of a group affects its discourse: the rhetorical devices used, the kind of vocabulary considered appropriate, the choice of metaphors, and the very topics selected are influenced by group ideology” (van Dijk, 1997b: 33). For this reason, ideologies place limitations on who communicates with whom and under what conditions.

## **1.2 The Rationale of Investigating Courtroom Discourse**

With specific reference to the study of legal discourse or legalese, the term used within the legal community, it is known that lawyers employ a language that is obscure, ambiguous and complex to ordinary people. It is important to emphasize that lawyers have their own set of conventions when they speak or write. However,

Trial language also offers convincing proof that when lawyers are properly motivated, they are fully capable of using ordinary English to explain complex topics to a lay audience. Moreover, lawyers are well aware that legalese does not go down very well with a jury (Tiersma, 1999: 5).

For this reason, in order to “enhance precision lawyers avoid pronouns, they prefer to repeat nouns, hoping to avoid ambiguity, rather than using pronouns that are common in ordinary speech” (Tiersma, 1999: 71). Since pronouns can have ambiguous reference, the legal profession tends to shy away from them. On the other hand, Williams sustains that “legal language is often considered to be beyond the comprehension of the non-expert, because it is so markedly different in many ways from the type of language used in day-to-day life” (Williams, 2005: 13). Williams (2005) asserts that the language of lawyers is the result of a deliberate – and rather devious – policy on the part of the legal profession. Moreover, Judge Hughes of the U.S. District Court affirms,

The common language of the law or legal jargon is not the product of the necessity, precedent, convention, or economy, but the product of sloth, confusion, hurry, cowardice, ignorance, neglect, and cultural poverty (Hughes, 2011)

By analyzing courtroom discourse, it is possible to identify potentially discriminating linguistic practices especially within the criminal justice system. In fact, it is essential to identify and examine the use of powerfully negatively oriented formulations, in order to



comprehend how a prosecutor constructs a negative image of the accused and, on the contrary, how the defense minimizes and neutralizes the negative prosodies evoked by the prosecution. In fact, the use of specific lexis in context, and the role of lexical choice in constructing representations of reality play a fundamental role in the courtroom (Cotterill, 2001). In any courtroom, a great deal of communication occurs among the different participants, i.e., the witnesses, clients, attorneys, jury members, and judges. Attorneys, in particular, are essential to the outcome of a court case, because they communicate all of the facts of the case, along with their client's arguments, to the judge and/or jury that rules on the case. Indeed, what attorneys say and the language that they employ definitely affects the final results of the case. For this reason, this study focuses on how the attorney's verbal and non-verbal communication can change and/or influence the jury in reaching its verdict. Indeed, lawyers play a leading role in the performance of a trial and what is being evaluated is not only the evidence they present, but themselves as well, as they are under the constant scrutiny of the jurors. Beyond professional expertise, attorneys must develop excellent rhetorical skills and master impression management in order to convey the idea of an attorney that assumes a set of ideal features that may inspire the juror's consensus (Trenholm, 1989). The optimal identity that lawyers strive to project is primarily twofold: on the one hand, they have to emphasize their belonging to a certain professional category, their competence and their expertise; on the other hand, it is fundamental that the attorneys constantly construct and project a self-representation that is in line with the jurors' own identity, in order to seek alignment with them. Indeed, it is a well-assessed aspect of trial argumentation that it is easier for the jury to believe the attorney they identify most with (Mauet, 1980), because they share a certain set of features (be they cultural, ethical, moral, etc.). It is the perception of a shared identity that may lead the jurors to

associate with one of the participants (or a certain group of participants) and his/her theory of the case.

### **1.3 Research Objective**

The objective of the present research is to understand how trial lawyers use language persuasively during criminal court cases and how the language employed may or may not influence the judge and/or the jury. Indeed, “trial lawyers often use informal and even intimate speech to bond with the jury” (Tiersma, 1999: 5). For this reason, the dissertation aims to identify and examine the legal language and the persuasive techniques/strategies employed by trial lawyers during their closing arguments. It has been observed that different expressions, such as jury summation, closing speech, closing statement, and/or final arguments, are used to refer to this phase of the closing arguments (Walter, 1988: 7). However, for the purpose of this study, the term *closing argument* will be employed throughout the dissertation. The use of the word arguments “clearly emphasizes the argumentative character of this event, which may be seen as - the moment for pure advocacy” (Lubet, 2004: 467). In fact, the closing arguments represent the moment in which the attorney can state what has been proven during the trial, and this phase consists of a series of sub-phases, which, Aron *et al.*, identify as:

An introduction, where the crucial issues of the cases are emphasized - a development of the argument (including a review of the relevant evidence) - a discussion of the legal principles related to the case - a conclusion, which mainly aims at guiding the jury through the reasoning process and towards a favourable verdict (Aron *et al.*, 1996).

Furthermore, Burns states that in the closing argument attorneys carry out a reconstruction of the story by highlighting some of its crucial elements; at the same time

this phase also has a deconstructive function, meaning that:

This is the time when the advocate can point out the incoherence and implausibility of the competing account and the opponent's failure to keep his or her promise to present adequate evidence to support the story told in opening statement (Burns, 2009: 25-26).

In fact, closing arguments are:

The last chance attorneys have to communicate directly with the jurors and they represent the final opportunity to offer a mental image of the case that will lead to a verdict favourable to them. In other words, this phase can be defined as the chronological and psychological culmination of a jury trial (Mauet, 1980: 205).

#### **1.4 The Corpus Analyzed and Research Questions**

The corpus analyzed is based on the closing arguments of prosecutors and defense lawyers of two particular American murder cases. Specifically, the Jodi Ann Arias case that occurred in the jurisdiction of Arizona and the O.J. Simpson case that occurred in the jurisdiction of California. Since both trials captured the attention of the media and the world, they represent interesting cases to examine in order to verify how prosecutors and defense lawyers employ language persuasively and are able to influence the jury's decision. As previously mentioned, the use of persuasive language or specific techniques and strategies are employed by trial lawyers with the aim of minimizing their client's culpability but they are also used in order to convince the jury to accept their narrative or version of events as being the truth (Tiersma, 1999). Therefore, in order to detect this particular use of language the transcriptions of the closing arguments delivered by the prosecutors and defense lawyers, of the two criminal court cases, will be investigated and analyzed. The theoretical and methodological framework for the

investigation will be articulated within the field of Discourse Analysis (DA) and Critical Discourse Analysis (CDA) and corpus linguistics.

This dissertation addresses the following research questions:

1. What type of language do lawyers employ in order to persuade the jury?
2. What techniques do lawyers adopt in order to downplay their client's culpability?
3. To what extent can the lawyer's choice of language exercise power in the courtroom and influence the jury's final decision?

The dissertation begins with the Literature Review in Chapter Two, which is divided into five sections. The first section focuses on Discourse, Spoken and Written Discourse, Discourse Communities and Legal Language. The second section places emphasis on Closing Arguments and how lawyers should organise and prepare for closings. The third section focuses on the lawyer's techniques and strategies used in court, thus attention is also dedicated to the concept of persuasion. The fourth section focuses on the theoretical and methodological framework of the dissertation, i.e., Discourse Analysis and Critical Discourse Analysis. This section also concentrates on Corpus and Corpus Linguistics. The final section is an overview of the Adversarial trial process, with particular reference to U.S. trial lawyers and the role of prosecutors and defense lawyers. Chapter Three focuses on the methodology and the analysis of the data by initially addressing the research questions and then exploring the American Legal System. The chapter is also divided into different sections. However, great importance is given to the stories and settings of the Jodi Ann Arias case and the O.J. Simpson case, because the stories delimit the motives for the murder. The next section focuses on the prosecutor and defense's corpus that will then be analyzed in chapter four. The final section describes the methods, procedures and tools that were adopted for the gathering

of the data. In particular two software packages were employed. The first one was JDownloader 2 BETA, which was used to download the YouTube videos from the Internet. The second was the computer-based software AntConc used to examine the data gathered from a quantitative perspective. The quantitative-based analysis has the aim of investigating the frequency, thus observing how many times a specific lexical item is used by the lawyers, and the use of collocations, thus observing what patterns are recurrent in specific linguistic features. The chapter ends with what are considered to be the limitations of the study. Chapter Four focuses on the results and the discussion of the data collected. Results are analyzed by combining different approaches, drawing on Discourse Analysis and Critical Discourse Analysis. Moreover, the qualitative analysis is achieved by examining the data through a combination of the Linguistic Category Model (LCM), the Metaphor Identification Procedure (MIP), Monroe's Motivated Sequence and the use of Repetition. Therefore, results are examined by combining an overall quantitative approach with a qualitative one. However, the approaches are not necessarily mutually exclusive. Although case studies traditionally tend to be associated with qualitative research, quantitative methods are not therefore excluded a priori. In fact, Gerring states, "to study a single case intensively need not limit an investigator to qualitative techniques" (Gerring, 2007: 10). Indeed, an approach based on multiple methodological standpoints might intuitively call for an association with the "concept of triangulation" (Denzin, 1978: 291); to some extent, the study applies the concept of "methodological triangulation" (Denzin, 1978: 295), derived from the idea that "each method reveals different aspects of empirical reality" (Denzin, 1978: 28). However, it is essential to point out that the use of different approaches is not intended as a chance to obtain a complete and objective image of such a complex event. The combination of different methodological orientations can simply constitute a means

of achieving a deeper understanding of the phenomenon that is investigated, but it is clearly not an automatic and mechanical test of validity. Chapter Five is the conclusion of the study. Finally, a list of referenced works and the appendices, which include a timeline for the Jodi Ann Arias case and one for the O.J. Simpson case, the trial statistics for the O.J. Simpson case, the jury selection for the O.J. Simpson case, jury instructions for both the Jodi Ann Arias case and the O.J. Simpson case, a sample of jury questions asked during voir dire, Nicole Brown Simpson's 911 call and full transcriptions of the prosecutor and defense's closing arguments of both trials.

## Chapter Two

### Review of the Literature

The law is a profession of words.  
(Mellinkoff, 1963: vi)

#### 2.1 Introduction

Since the law is a profession of words and since much of what legal processes involve is speaking, understanding how spoken language operates is critical for understanding certain parts of the legal process (O’Barr, 1982: 28). Moreover, since language involves power, it is considered to be a powerful tool for social manipulation. For this reason, linguistic utterances are commonly used or abused in court for the benefit of the defense or the accused (Wagner and Cheng, 2011). Law is expressed in language and therefore performs its functions through language. As Danet affirms, “Law would not exist without language” (Danet, 1980: 448). Likewise, Schauer claims that

Language plays a central role in the operation of law that is different from, even if not necessarily greater than, the role it plays in facilitating many other forms of human interaction (Schauer, 1993: xii).

Consequently, linguistic power often works in a subtle and invisible way because language is so natural and innate to all of us that it often works its power and influence without our realizing it (Cao, 2011). This is the case of the courtroom and legal process, where language sometimes exerts tremendous power. The courtroom is a stage for the display of linguistic power at work, with various actors performing mainly linguistic acts in the discursive choices in (re)presenting and (re)constructing stories or events in real life (Cao, 2011: xvi). Communication in court is not like everyday communication, since it is highly regulated and conducted for a specific purpose, and that is, to present information relevant to a particular matter to one or more judges or a jury. A jury trial is

composed of six parts and each one of them - *voir dire* (jury questioning and selection), a French term which refers to the oath to speak truthfully when examined, therefore after the jury is selected the search for truth can begin (Tiersma, 1999: 154), *opening statements* as presented by opposing counsel, *evidence* as introduced by witnesses, *closing arguments* as spoken by opposing counsel, *the charge* to the jury by the judge, and *the verdict* rendered by the jury following deliberation – is crucial to the trial as a whole (Walter, 1988).

This literature review targets the following areas:

- 1) (a) discourse, spoken and written discourse, discourse communities, and legal discourse;  
(b) closing arguments, organising and preparing for closing arguments and power in the courtroom;  
(c) metaphors and repetition as persuasive techniques;  
(d) discourse analysis, critical discourse analysis, corpus linguistics and specialised corpora;  
(e) the adversarial trial process, U.S. trial lawyers and their role, prosecutors and defence lawyers.
- 2) The section begins with an overview of discourse and moves on to spoken and written discourse, because trial transcripts, based on court cases, are spoken discourse at first, and then transcribed into written discourse. Focus is then placed on discourse communities and discourse practices because it is within these specific groups of people that a particular type of language is employed. At this stage, legal discourse, which is the main focus of this study, is introduced. The theoretical framework and the methodological approach are within the fields of Discourse Analysis, Critical Discourse Analysis and Corpus Linguistics.



An important part is the section dedicated to the adversarial trial process. It is necessary for the reader to understand how the specific trial process functions - a trial process that may be different from their own - in order to comprehend the roles of prosecutors and defense lawyers and the specific tactics employed by both during a trial. The final section of the chapter is dedicated to closing arguments, which are the communicative events of the study, and the power that is exercised within the courtroom by trial lawyers. In particular, this section considers the language, the concept of persuasion, power and/or manipulation that trial lawyers employ when delivering their closing arguments.

## **2.2 Discourse**

### **2.2.1 Discourse and its use**

*Discourse* is perhaps one of the most used and least agreed upon terms across the social sciences. In the field of linguistics there is a formalist approach which defines *discourse* as “language above the sentence” (Stubbs, 1983: 1), which is concerned with the structural and semantic relations between sentences, and a functionalist one which views it as “language in use” (Brown and Yule, 1983: 1), which is concerned with the relations between the linguistic text - of any length, and the context in which it is embedded. From this latter use it is possible to derive many of the other uses of discourse in the social sciences. Firstly, as language is used recurrently in conventional contexts of communication, it will tend to give rise to patterns of linguistic use, which can then be referred to as types of discourse such as “legal discourse” and “the discourse of advertising” (Cook, 2001). Secondly, where such uses are recorded in written language, they will lead to a body of texts within the same field, which represent the tradition of that field. Therefore, in fields like the law, discourse is frequently used

to refer to “a stream of scholarly consideration, usually written, of the issues of concern to a particular field of enquiry” (Conley and O’Barr, 1998: 2). Finally, if this “stream of consideration” is taken into consideration and critical concerns are added, with the power-dependent conditions of production and reception of these texts, then there is an approach to a use of ‘discourse’ common in social, cultural and critical theory (Foucault, 1972; 1980).

In natural language, sentences are typically found in discourse, just as words are typically found in sentences. Chomsky (1965) observed that there is no limit to the number of possible sentences that can be generated from the grammar and lexicon of a language. Nevertheless, putting together a grammatically correct random group of sentences does not necessarily constitute discourse. Discourse is to be considered as an organized and coherent text that makes sense in the context of an interaction. However, there is some confusion as to what constitutes a discourse and how is it organised. In fact, van Dijk sustains that “the notion of discourse is essentially fuzzy” (van Dijk, 1997: 1) and different models of discourse analysis have been designed to cope with this difficulty (McCarthy, 1991; Sinclair and Coulthard, 1992). Probably one of the reasons for this vagueness is that there are many different types of discourse, and each type exhibits distinctive kinds of organization (Dooley and Levinsohn, 2000).

Crystal defines discourse as “a continuous stretch of language larger than a sentence, often constituting a coherent unit” (Crystal, 1992: 25) In practical terms, discourse centres on the actual operation of language, beyond the restrictions of grammar. Its overriding focus is on context and on the behavioural patterns that structure the social functions of a language, above and beyond the construction of structural models. Crystal (1987) also claims that the reader will search for coherence and meaning within the linguistic and contextual knowledge of the language and the situation, because

discourse involves the participants' beliefs and expectations, the knowledge that they share about each other and the world, and the situation in which they interact. Therefore, for the utterance to be interpreted in the intended sense, context and participant co-operation are important. Conversely, Jaworski and Coupland affirm that discourse is the study of "language use relative to social, political and cultural formations - it is language reflecting social order but also language shaping social order, and shaping individuals' interaction with society" (Jaworski and Coupland, 1999: 3). This definition also encompasses "non-linguistic semiotic systems [...] those of non-verbal and non-vocal communication which accompany or replace speech or writing" (Jaworski and Coupland, 1999: 6). Bhatia claims "discourse is understood in a general sense as language use in institutional, professional or more general social contexts" (Bhatia, 2004: 3). In contrast, Fairclough (2003) argues that discourse moves back and forth between reflecting and constructing the social world, thus language cannot be considered neutral because it is hindered in political, social, racial, economic, religious, and cultural formations. Therefore, discourses are used for building power and knowledge, and for the development of new knowledge and power-relations. Furthermore, Fairclough (1995a; 1995b; 2003) states that to completely understand what discourse is and how it works, analysis needs to draw out the form and function of the text, the way that this text is connected to the way it is produced and consumed, and the relation of this to the wider society in which it takes place. Consequently, discourse is based on the theory that language is a part of society and is a social process, which is conditioned by non-linguistic parts of society. For this reason, there is "an internal and dialectical relationship between language and society, and this dialectical relationship is a two-way relationship, in which discursive events are shaped by situations, institutions and social structures" (Fairclough, 2001: 18). Since language may be ideological it is

necessary to analyze texts in order to investigate their interpretation, reception and social effects, because every single instance of language use reproduces or transforms society and culture, and this includes power-relations.

### **2.2.2 Spoken versus Written Discourse**

It is important to underline that there are certain essential differences between spoken and written discourse. Research (Drieman, 1962; Devito, 1966; O'Donnel, 1974; Kroll, 1977) shows that the features in spoken and written language are generally different. The features of spoken discourse are: (a) longer text, (b) simpler vocabulary, (c) less sentence-combining transformation. The features of written discourse, on the other hand, are: (a) shorter text, (b) more difficult words, (c) more idea density. In fact, writing is not just spoken language written down (Biber, 1988, 1992, 1995) but is constituted by lexicogrammatical forms and rhetorical structures that occur between spoken and written language, depending on the genre. Written discourse (Goody and Watt 1968) is of a higher order - more logical, formal, and complex - than oral discourse and therefore is traditionally considered to be superior. However, the notion of formality is an aspect of many spoken genres, such as courtroom argumentations or academic presentations, while some written genres, such as email or personal diaries, can be considered informal. When referring to courtroom argumentations or academic presentations, however, it may be more appropriate to speak of planned versus unplanned discourse (Ochs, 1979).<sup>1</sup> Ochs (1979) states that speakers rely more on

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<sup>1</sup> 1. Unplanned discourse is a kind of discourse that lacks forethought and organizational preparation.

2. Planned discourse is another kind of discourse that has been thought out and organized prior to its expression (Ochs, 1979: 55).

‘context’ to express a proposition whereas writers rely more on ‘syntax’ to fulfil communicative information. Indeed, context includes non-linguistic means and information shared between speakers and listeners. Ochs points out that speakers tend to presuppose that listeners will have a certain knowledge of what is being said, while, on the other hand, listeners will have to turn to previous discourse to locate what was actually referred to. For this reason, deletion is frequently found in spoken language but rarely in written language. Conversely, in written language, since there is no direct interaction between writers and readers, the writers tend to produce syntactically well-formed sentences in order to avoid communicative misunderstanding. Also, written style is more concise and better organized (Chafe, 1992). Since spoken discourse is more contextual, or situational, than written discourse, it is probably the form of discourse that poses the greatest problems in terms of analysis due to its apparently unstructured nature. The number of interlocutors may vary and the use of non-verbal expressions can add to the difficulty of its analysis, given the use of ‘talking turns’ as McCarthy (1991: 69) calls them, and the real possibility of interruptions and interjections, which, nonetheless, are part of discourse.

Another important difference lies in the fact that the expression of emotion and attitude is different in spoken versus written genres. In speaking, one can rely more on facial expressions, gestures, and prosody - the pitch, timing, and volume of the voice - to convey a variety of meanings and emotions (Aaron, 1998; Wennerstrom, 2001). Moreover, in spoken discourse, speakers can reach a richer context; they have prosody and phonology as well as non-verbal communication or interaction with external physical objects. Brown and Yule claim,

The speaker has available to him the full range of ‘voice quality’ effects (as well as facial expression, postural and gestural systems). [...] These paralinguistic

cues are denied to the writer. [...] Not only is the speaker controlling the production of communicative systems which are different from those controlled by the writer, he is also processing that production under circumstances which are considerably more demanding (Brown and Yule, 1983: 4).

Conversely, Shumin claims,

In discourse, whether formal or informal, the rules of cohesion and coherence apply, which aid in holding the communication together in a meaningful way. In communication, both the production and comprehension of a language require one's ability to perceive and process stretches of discourse, and to formulate representations of meaning from referents in both previous sentences and following sentences (Shumin, 2002: 207).

Therefore, effective speakers should acquire a large repertoire of structures to express ideas, show relationships of time, and indicate cause, contrast, and emphasis (Scarcella and Oxford, 1992). Analyzing a spoken text is a difficult and time-consuming task since the speaker does not follow the same rules of organization that are frequently used when building up a text in written form. As Halliday explains, "communication is more than merely an exchange of words between parties" (Halliday, 1978: 169); it is a "sociological encounter" (Halliday, 1978: 139) and through exchange of meanings in the communication process, social reality is "created, maintained and modified" (Halliday, 1978: 169). Moreover, spoken texts have a wider number of significant features that are not usually found in examples of written texts. These features may be influenced by variables such as the speaker's age, educational background, literacy in their target language, (Brown, 1994; Bernat and Gvozdenko, 2005), gender (Bacon and Finnemann, 1992; Banya and Chen, 1997; Siebert, 2003), language proficiency

(Mantle-Bromley, 1995; Peacock, 1998, 1999; Huang and Tsai, 2003; Tanaka and Ellis, 2003), or even personality traits (Bernat, 2006).

With specific reference to the purpose of the present study it is essential to understand and emphasize that it is through language that social problems are translated into legal issues. It is through language that “the law works to shape our lives, and it is through language that people, including professionals, come to understand the world in particular ways” (Mertz, 2007: 12). People communicate every day to express themselves and exchange ideas. Communication thus represents “the most basic and widespread linguistic means of conducting human affairs” (McArthur, 1992: 1). The following section will help to better comprehend how people relate with each other in specific contexts and within the same discourse communities.

### **2.2.3 Discourse Communities and Communities of Practice**

In order to understand the social contexts examined, discourse analysts usually work with naturally occurring data. Schiffrin (1987) explains that data come from a speech community, and consequently are “empirical”. Discourse analysts however, are interested not only in the social context, but also in the cultural context in which discourse occurs. The language that we choose to express ourselves and the contexts in which we do so display our social identities and group affiliations. Thus, Discourse Analysis can lead to a better understanding of the values and social practices of a community. In fact,

Discourse communities have in common the idea of language [and genres] as a basis for sharing and holding in common: shared expectations, shared participation, commonly (or communicably) held ways of expressing. Like audience, discourse community entails assumptions about conformity and

convention (Rafoth, 1990: 140).

It is fundamental to highlight that discourse communities possess their own genres, specific lexis, and even analytical paradigms. However, the concept goes beyond language, as Swales claims, the discourse of the discourse community is “a form of social behavior, [...] a means of maintaining and extending the group’s knowledge and of initiating new members into the group, and [...] is epistemic or constitutive of the group’s knowledge” (Swales, 1990: 21). However, a concept related to discourse communities that has become popular over the years is that of communities of practice (Lave and Wenger, 1991; Brown and Duguid, 1991). Referring to the term discourse communities, the focus is on texts and language, the genres and lexis that enable members throughout the world to maintain their goals, regulate their membership, and communicate efficiently with one another (Swales, 1990: 24-27). Therefore, discourse communities are constituted of many different practices and values that hold communities together, or separate them from one another. Since language is studied within society, it is essential to comprehend what groups of people engage in what specific types of texts and in which specific discourse activities they take part. Swales (1990) outlines some features so that a group of language users can be considered as a discourse community. First of all, there have to be common public goals. A key element in Swales’ concept of discourse communities is the public nature of the communicative activity. For this reason, a family is not a good candidate. The second criterion is the existence of some mechanisms of intercommunication among its members. These members must use participatory mechanisms to provide information and feedback. Since a discourse community possesses one or more genres and, therefore, exerts influence on its linguistic character – community creates genre. Moreover, access to and engagement with a particular genre allows an individual to be placed within a



community - genre creates community (Devitt, 2004). Another criterion concerns the use of specific lexis by the members of a discourse community in order to fulfil its communicative goals. Finally, for the community to stay active, there must be a certain quantity of members and ways of controlling the group dynamics (Swales, 1990). Swales' concept of community of practice is very similar to the idea of community of practice outlined by Lave and Wenger (1991) and then developed by Wenger (1998). According to Wenger,

We all belong to communities of practice. At home, at work, at school [...] we belong to several communities of practice at any given time. And the communities of practice to which we belong change over the course of our lives. In fact, communities of practice are everywhere (Wenger, 1998: 6).

While, Eckert and McConnell-Ginet state that

A community of practice is an aggregate of people who come together around mutual engagement in an endeavour. Ways of doing things, ways of talking, beliefs, values, power relations – in short, practices – emerge in the course of this mutual endeavour. As a social construct, a community of practice is different from the traditional community, primarily because it is defined simultaneously by its membership and by the practice in which that membership engages (Eckert and McConnell-Ginet, 1992: 464).

For Meyerhoff, a community of practice is “an analytical domain which usually encompasses a smaller population of language users but which can also guide us towards principles of language use of broader significance” (Meyerhoff, 2002: 526). The following sections will research the field of legal discourse to then move on to the analysis of closing arguments within the courtroom.

#### **2.2.4 Legal Discourse**

One of the defining characteristics of discourse analysis is that it is capable of application in a wide variety of settings and contexts. Wherever there is continuous text, written or spoken, there is a potential analysis of such text. The area of law provides an open opportunity for discourse analysis, especially since law is such a highly verbal field. It is generally regarded as a field containing written discourse, for care is taken to record in print all oral interactions that occur in court. Cases are preserved in written form to serve as the basis for later decisions and to record the cases for later review. For this reason, law is a fertile field for discourse analysts. Like all human language,

Legal language is embedded in a particular setting, shaped by the social context and institutions surrounding it. Systematic study of this contextual moulding provides an important antidote to the hubris that inheres in standard legal metalinguistic assumptions and pushes legal professionals to remember the limits of their knowledge (Mertz, 2007: 223).

Legal discourse is the area of human communication, which constructs law and provides context for its practice. It is important to underline that, depending on the different legal genres, there will be a difference between the rhetorical functions correlated with their specific task: persuasion, argumentation, declaration, obligation, etc., although it is natural to expect certain linguistic features that are characteristic of legal discourse. Not many professions depend upon a language as does that of the lawyer. In fact, a lawyer's typical day is articulated around reading, speaking and writing more than any other profession (Tiersma, 1999). However, it is fundamental to emphasize that legal language is a part of everyone's daily life in society. Every day, people are involved in different types of transactions that are governed by legal language. For instance, the simple action of buying a train ticket is strictly linked to a

legal transaction. In fact, on the back of the ticket you can read language that is related to transportation regulations governing the relationship between the passenger and the train company. Tiersma asserts,

Law is a profession that requires critical reading skills, the ability to write well, the ability to synthesize sources resulting from research, and the ability to speak clearly and concisely. Although, there are several major sources of law in the Anglo-American tradition, all consists of words [...] Thus, the legal profession focuses intensely on the words that constitute the law, whether in form of statutes, regulations, or judicial opinions (Tiersma, 1999: 1).

Tiersma continues “Words are also a lawyer’s most essential tool. Attorneys use language to discuss what the law means, to advise clients, to argue before a court or jury, and to question witnesses” (Tiersma, 1999: 1). According to several scholars “Law is language” (Gibbons, 1999: 159; Walker, 2001), “the law is a profession of words” (Mellinkoff, 1963: vii), “with law expressed formally, in formal language, it is also natural to conclude that law is language” (Glenn, 2007: 154), “law is the tower that language built” (Hutton, 2009: 4), “our law is a law of words” (Tiersma, 1999: 1). Therefore, it is crucial to make a distinction between the language of the law and legal language. Kurzon (1997), who uses more generally the term ‘legal discourse’, states that the language of the law and legal language are not synonymous and specifies that the language of the law is “the language or the style used in documents that lay down the law”. Legal language refers to “the language that is used when people talk about the law.” Therefore, legal language is “a metalanguage used to talk about the law in a broad sense, and the language of the law is literally just the language in which the law is written.” Furthermore, “the language of the law is the language used to draw up statutes and contracts, while legal language is the language used in legal textbooks and judges’

opinions” (Kurzon 1997: 120-121). Maley (1994) claims that legal discourse is a multifaceted set of related discourses: judicial discourse, courtroom discourse, and the language of legal documents and discourse of legal consultation. However, other scholars divide legal discourse into oral and written types (O’Barr and Conley, 1990; Kurzon, 1997).

### **2.3 Closing Arguments**

The “intrinsic merits of any case are mediated by the persuasive impact of the messages which present the case and the persuasive skills of the individuals who present them” (O’Barr, 1982: 16). Indeed, in closing arguments,

Every word pronounced in front of the jury assumes a persuasive function, as persuasion is the ultimate goal of every attorney arguing a case. Every moment of the interaction virtually becomes a battle that could reveal crucial in determining who wins or loses (Hobbs, 2003: 275).

Therefore, it is essential to understand what closing arguments are and how they should be organised and planned in order to guarantee a positive outcome of the trial for one of the lawyers.

#### **2.3.1 What are Closing Arguments?**

For many, closing arguments are considered to be the quintessential, most traditional form of legal advocacy. It is in this phase that the lawyer has the opportunity to use nearly all rhetorical tools and devices in support of their theory of the case, when the lawyer can hold forth, uninterrupted, on the merits of their client’s case under the applicable legal standard, thus the lawyer’s final call to action to the jury (Bugliosi, 1996; Lief *et al.*, 1998; Schmid and Fiedler, 1998; Tanford, 2002; Saltzburg, 2011).

Since closing arguments are the final opportunity for prosecutors and defense, they must carefully prepare in order to present a persuasive summary of the evidence before the jury retires to consider its verdict. It is at this stage that the process of convincing the juries and the accused reaches its peak. According to Bugliosi “I’ve always considered the final summation the most important part of the trial for the lawyer. It’s the climax of the case, where the lawyer has his last and best opportunity to convince the jury of the rightness of his case” Bugliosi (1996: 194).

The closing argument is not only significant because of the recency effect<sup>2</sup> involved; it is also significant because closings have an undeniably theatrical quality (Cotterill, 2003). It is important to emphasize that in a typical two-party case, three closing arguments are presented: (1) argument by the plaintiff or prosecution (bearing the burden of proof); (2) argument by the defense; and (3) rebuttal argument on behalf of the plaintiff or prosecution. Moreover, it is important to highlight that closing arguments have two primary purposes. The main purpose is to provide the jury with a rational summation and analysis of the evidence and its implications regarding the defendant’s guilt. The second purpose is to aid the jury in setting an appropriate sentence if it finds the defendant guilty. Therefore, a properly presented closing argument aids in making a determination of the defendant’s guilt or innocence, solely based on the evidence and its implications. An improperly presented closing argument is one that stimulates the jury to find the defendant guilty for reasons other than those drawn from the evidence, for example, personal fear of crime in general or personal fear of the defendant. Consequently, any statement not contributing to the jury’s rational

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<sup>2</sup> This is the principle that the most recently presented items or experiences will most likely be remembered best. If you hear a long list of words, it is more likely that you will remember the words you heard last (at the end of the list) than words that occurred in the middle.  
(Retrieved from: <http://www.alleydog.com/glossary/definition.php?term=Recency%20Effect>)

conclusions about a criminal defendant's guilt should be closely scrutinized because such a statement may operate to deny the defendant a fair trial (Smith, 1978).

It is essential to highlight that a closing argument has various objectives, among which: to provide a rationale, based on the relevant facts; to support the theme of the case and the theory of the case; to state the case boldly - the lawyer must be able to convince the jury that they have prevailed in proving disputed factual issues; to review the facts, especially the facts upon which the case relies; to address gaps in the evidence, including theories raised by the adversary that have been shown to be unsupported by evidence; to propose conclusions based on the evidence, including reasonable inferences from the evidence; to refer to exhibits, writings, documents, transcripts, illustrations, and matters of common knowledge in support of the client's case; and to point out the adversary's failure to adduce evidence available to him that might have supported their claims and/or defenses, reinforce the points that the lawyer made at the beginning of the trial, in the opening statement, and to argue and tell the story. The closing argument is the time and place for using analogies, hypotheticals, rhetorical challenges, and other time-tested persuasive devices in the service of the case theme. This is the advocate's opportunity to motivate the jurors with a bold call to justice (Katz *et al.*, 2012). For this reason, an important aspect in the closing arguments is the use of metaphors by trial lawyers. Indeed, the use of metaphor in courtroom argumentation is twofold:

- 1) it represents a single, isolated lexical choice;
- 2) it involves the systematic and sustained construction of a framework within which to view the trial participants and processes.

### **2.3.2 Organizing and Preparing a Closing Argument Efficiently**

Although, trial lawyers cannot prepare their entire argument in advance, they can prepare most of it. Indeed, the closing argument is an oral presentation of the lawyer's theory of the case, thus some parts of the argument may be studied and developed before trial. As previously mentioned, the closing argument is ultimately based on what occurs at trial, thus it is important to develop a persuasive case theme early on, and then craft it into a compelling argument, long before the evidence is presented. The best way to prepare the closing argument is at the very beginning of the case, and then refine it throughout the pre-trial and trial proceedings. An early development of the closing argument helps to focus better on the theme and helps bring clarity to the entire case. Although the argument and the case theme may change as the presentation of new facts is developed, the chances that the trial presentation will be internally consistent and logically compelling will be enhanced if a lawyer starts building the case with the closing argument in mind. Indeed, referring to trial lawyers, Tanford asserts,

Many of you probably view closing argument as an opportunity to sway the jury and win your case with your powers of eloquence and persuasion. Much of the literature reinforces the view that closing argument is directed at those jurors who are thinking of voting against you — if you can only reveal to them the errors of their ways, you will convince them to change their minds and vote for you (Tanford, 2002: 373).

For this reason, it is necessary and crucial for a trial lawyer to organize and prepare, in advance their closing argument, so that nothing is improvised. It is in this conclusive stage that a trial lawyer will display skills, strategies and techniques in order to win the case. As Tanford states, “A closing argument is not a spontaneous outpouring of emotion and off-the-cuff eloquence. To give a good argument requires careful and

thorough planning” (Tanford, 2002: 394).

### 2.3.2.1 Organizing for the Closing Argument

The organization of the closing argument consists of various phases. At this point it is necessary to:

- (1) *assemble the facts*, which will change as pre-trial and the trial progress;
- (2) *review the theory of the case*, the lawyer will need to revisit the theory of the case as they develop the facts and analyze the legal theories. Although the thesis of the case will probably change as the trial unfolds, having a basic trial outline based on the theory of the case will allow the lawyer to make important strategic decisions about what facts to emphasize and how to sequence the witnesses;
- (3) *determine the respective burdens of proof*<sup>3</sup>, it is crucial that the lawyers explain the burden of proof to the jurors in the case. The burden of proof is an important legal issue, it is in fact subject to characterization by the parties to a case and the closing argument is the lawyer’s last opportunity to impart to the jurors the explanation as to why the burden favours the lawyer’s client;
- (4) *confirm the sequence of closing arguments*, the prosecution generally has the right to commence and to conclude the final argument, but the defense may be allowed to open and close if the defendant carries the burden of proof on a substantial issue;

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<sup>3</sup> Burden of proof: the requirement that the plaintiff (the party bringing a civil lawsuit) show by a “preponderance of evidence” or “weight of evidence” that all the facts necessary to win a judgment are presented and are probably true. In a criminal trial the burden of proof required by the prosecutor is to prove the guilt of the accused “beyond a reasonable doubt”. Unless there is a complete failure to present substantial evidence of a vital fact (usually called an “element of the cause of action”), the ultimate decision as to whether the plaintiff has met his/her burden of proof rests with the jury or the judge if there is no jury. (dictionary.law.com, retrieved from: <http://dictionary.law.com/Default.aspx?selected=109>)



- (5) *confirm the evidence that will be addressed*, it is not only improper to rely upon facts that are not part of the evidence in the closing argument, but it may be considered by the jurors (prodded by the adversary) to be a broken commitment that harms the lawyer's credibility. As the lawyer gets closer to a final version of the closing argument, it is necessary to be sure to continuously confirm that the facts can be traced to admissible evidence;
- (6) *decide on demonstratives and other materials*, for instance charts, deposition clips, excerpts of testimony, and other presentation materials. Having confirmed the evidence that is available for reference in the closing argument, determine what demonstratives or other materials will be part of the argument. It is crucial that a trial lawyer prepare a strong conclusion, thus they should begin and end the argument with impact.

Other significant factors during this phase are that the trial lawyer does not deliver the conclusion of the closing argument by referring to notes but maintains eye contact with the jurors, speaks to each individual juror and tries to motivate them into action on behalf of the client. Finally, it is fundamental to practice the closing argument; a trial lawyer should not assume that they might extemporize effectively. During the course of the trial, there is too much information and too many variables that need to be organized carefully and in detail. This procedure will help the trial lawyer to ensure that they are not neglecting any important points or presenting a disorganized argument.

### **2.3.2.2 Preparing for the Closing Argument**

The closing argument usually follows a straightforward structure:

- (1) briefly review the evidence;
- (2) list the key issues to be resolved;

(3) review the burden of proof;

(4) and then argue in detail, by reference to the evidence. Indeed, evidence is necessary for a favourable resolution of the issues.

Since there is less time to prepare a closing argument than there is to prepare an opening statement, owing to the fluid and unpredictable nature of a trial, it is fundamental to develop template structures to use as an organizing principle for the closing argument.

Key elements of a closing argument are the following:

(1) *Prefatory remarks*, the standard preface of a closing argument begins with recognition of the jury's patient participation and with an explanation of the procedures relating to closing argument. This discussion includes an explanation of the role of jurors as triers-of-fact, as contrasted with the judge's role as instructor in the law. This phase is also useful for building rapport with the jurors.

(2) *Statement of the facts*, in the closing argument, it is not necessary to re-introduce parties and events, as the jurors will be familiar with the key elements of the case by this point. In this phase, focus is on the specific witness testimony and evidence that is necessary for resolving conflicts later in the argument.

(3) *Applicable law and the burden of proof*, in this phase the trial lawyer should summarize the legal issues based upon the instructions the jury received, use the terms that the court uses to instruct the jury, preview the verdict form for the jury, outline the causes of action and briefly explain each element.

(4) *Description of the issues and their resolution*, issues should be defined in detail and made understandable to the jurors, this may require a detailed explanation, in layperson's terms of legal standards and concepts. In order to do this, it is

useful to outline the issues on which the advocate intends to address them, and it is often helpful to use a chart or a whiteboard to keep track of the various issues.

- (5) *Conclusion* at this stage it is essential to deliver a strong, dramatic, and positive reaffirmation of the themes of the case. The principle of recency dictates that the trial lawyer leaves the jurors with the best impression possible.
- (6) *Rebuttal*, if properly viewed, rebuttal is an opportunity to respond to arguments made by the defense after the plaintiff's initial argument. It is not an opportunity to repeat what was said during the initial closing argument. It is not necessary – and is often strategically a bad idea – to try to answer every point made by the defense.

After describing the different stages related to the closing arguments it is crucial to approach the techniques and strategies employed by trial lawyers in order to persuade, influence and hook the jury and guarantee oneself a successful and winning case.

## **2.4 Power in the Courtroom**

### **2.4.1 Techniques and Strategies employed by Trial Lawyers**

Foucault's (1972) view on the relativism of power is that those who have power do not exercise power by ordering their subjects directly using imperatives. Instead power is interaction, and it structures both parties in the power relationship, whose identity in this interrelationship changes accordingly. Law is *a discourse of power* and lawyers are speakers of a specific discourse, indeed they are empowered *to speak differently* - to each other as well as to their respective social institutions (Wagner and Cheng, 2011). The courtroom offers a rich and fascinating field of linguistic research. It represents a unique space of social engagement and a distinct domain of language usage. Linguists

have been particularly interested in the way barristers use language to construct particular narratives and evoke specific images in the minds of the judge or jury (Aldridge and Luchjenbroers, 2007; Coulthard and Johnson, 2007). While, outsiders might think that confusion, ambiguity and misunderstandings should be avoided during the process of ‘justice’, barristers are not only comfortable with those conditions, but may seek them out to the advantages of their client. To lawyers, they are seen as a natural part of the adversarial system’s competing narrative process (McCaul, 2011).

#### **2.4.1.1 Defining Persuasion**

Persuasion is a topic that has intrigued researchers since antiquity; because it has an immense relevance in all human interaction (Halmari and Virtanen, 2005). In fact, persuasion has been defined as the “act of influencing the minds of others by arguments or reasons, by appeals to both feeling and intellect; it is the art of leading another man’s will to a particular choice, or course of conduct” (Costopoulos, 1972). Persuasion is “a symbolic process in which communicators try to convince other people to change their attitudes or behaviors regarding an issue through the transmission of a message in an atmosphere of free choice” (Perloff, 2010: 12). For this reason, all language use can, in a certain sense, be regarded as persuasive (Miller, 1980). Moreover, language has been identified as the “primary medium of social control and power” (Fairclough, 1989, 2001: 3), “most notably in legal settings” (Coulthard and Johnson 2007: 37), where the use of language is structured in such a way as to facilitate control through the exercise of power (O’Barr 1982; Conley and O’Barr 1998, 2005; Cotterill 2003). Since legal discourse is an essential tool in implementing and applying the law, to the point that it might possibly be argued that legal reasoning is mainly a question of semantics and language interpretation. Courtroom discourse serves as an instrument of institutional

empowerment and control. In fact, lawyers perform a script, in front of an audience, in order to present a particular view of a set of circumstances. Though they may not realize it, lawyers, particularly defense lawyers, may adopt particular skills, such as misdirection, to persuade juries of the validity of their arguments. Therefore, attorneys redirect the attention of fact finders because they are interested in telling stories and creating illusions.

#### **2.4.1.2 The use of Persuasion within a Trial**

The trial has been described by many scholars in rather emotive words – it is a battle (Hale, 2004), a story telling (Luchjenbroers, 1997), a theatre (Goldberg, 2003), an art (Wellman, 2005), a war of words (Ehrlich, 2001), all these labels are based on the fact that there are two opposing parties that present their version of the facts to the judge and jury. For this reason, persuasion is at the very heart of the adversarial system. A proper advocacy is the determining factor between a winner and a loser. In fact, as Burkley and Anderson (2008) mention, the ultimate goal in the judicial process is persuasion. Meaning that, what is said is not the only cause that can make a difference, it is how an argument is presented to the jury that tends to be more productive. In the context of a jury trial, persuasion may be broadly interpreted as the process that allows lawyers presenting their case to make their case credible and acceptable (Rieke and Stutman, 1990). The narration is therefore strictly related to a constant process of persuasion, as persuading the jurors about the credibility and the acceptability of a story can be considered, to some extent, as the ultimate goal of this communicative process. In fact, “persuasion is, in sum, the purpose of trial communication” (Aron *et al.*, 1996: 1). In this context, it is clear that the persuasive process is crucial, as “the concept of persuasion goes hand in hand with decision making” (Lubet, 2004: 31). In a trial, there

is a conflict of opinions, and each side tries to persuade the judge or jury that his/her opinion is right. Indeed, each side will have a burden of proof, since the nature of the trial is that there is a winner and a loser once the trial has been completed. For this reason, it would appear then that the central goal of any argument used in a trial is that of persuasion. Yet it is not just any kind of persuasion. “Persuasion is also what is called ‘prove’. It is supposed to prove something. In order for the arguments to be persuasive to prove what they are supposed to prove, they must somehow be logical, and must be based on what are supposed to be real facts in a case” (Walton, 2002: 156). According to Stone “to persuade is the objective of advocacy, which includes the presentation of evidence” (Stone, 1995: 87). In fact, the presentation of evidence reveals that the purpose of advocacy is not only rhetorical persuasion,<sup>4</sup> but also a type of persuasion that is based on evidence. In a trial the advocates on opposing sides are trying to persuade the audience to accept opposing propositions. Therefore, one proposition will be accepted as true only if the other one is not, because a trial is based on a conflict of opinions and two opposing propositions are advocated by two contesting sides. In the context of a trial, persuasion is the organization of legal arguments and evidence within the framework of court procedures in a way likely to cause the jury to make a certain decision (Jansen, 2005). However, the interactive, dialogic, or dialectic dimension of persuasion, the sense of an ever-present audience or multiple audiences – sometimes invisible and abstract rather than tangible and easily identifiable – may complicate the assignment of a text as persuasive (Halmari and Virtanen, 2005). Moreover, Jucker (1997) claims that if texts are identified as persuasive depending on their effects on the

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<sup>4</sup> Rhetorical persuasion in a trial means giving reasons, when required, but also responding appropriately to critical questioning. Alexy claims, “Every speaker must give reasons for what he or she asserts when asked to do so, unless he or she can cite reasons which justify a refusal to provide a justification” (Alexy, 1989: 297).

audience, persuasion becomes “an elusive language function,” an unresearchable target, unless, of course audience reactions are simultaneously subjected to explicit and, preferably, quantifiable scrutiny. Jucker (1997) continues and underlines that persuasion in speech act theory is a ‘perlocutionary effect’. The definition of persuasion thus necessitates the existence of an audience.

It is during the closing argument that lawyers are free to draw on a broader way of expressing themselves, than during any other phase of the trial, because in closings they are allowed to draw conclusions and to discuss the law, the evidence, and inferences from the law. By contrast, this is not opening statement where the lawyers are restricted by stating the facts and are forbidden from arguing. Therefore, the lawyers’ word choice will influence how their thoughts will be received by the jurors. For closing argument lawyers should employ a vocabulary that will best convince the jury (Berger *et al.*, 2008: 548-549). It is at this stage that the art of persuasion comes into play and becomes a necessary component of effective, ethical trial advocacy. The way lawyers talk, the way they look, and even the way they gesture is believed to have a profound impact on the jury’s perception of them and their clients. As Childress (2007) sustains, the best trial lawyers are ‘onstage’ at all times in court. Trial lawyers, much like actors, are encouraged to master and employ techniques designed to make them, their clients, and their client’s position likeable to the jury. A lawyer’s use of persuasive trial tactics is an accepted component of the lawyer’s ethical obligation to zealously advocate for the client’s position. However, in some situations the lawyer’s attempts to persuade the fact finder can cross the line from zealous advocacy to unethical and improper distraction. Although no test exists to determine when tactics that are intended to persuade cross the ethical line, the Rules of Professional Conduct, together with the Rules of Practice and Rules of Evidence, establish a framework for analyzing an attorney’s conduct (Lynch,

2008). In all situations, lawyers should consider the propriety of their intended tactics in the light of those rules and exercise professional judgment and common sense to ensure that their advocacy does not cross the line from persuasion to manipulation. In fact, people use language every day to convey information to others and their language is subject to various types of bias, only some of which they will be aware of. Often, people may consciously intend to communicate objectively and truthfully, but nonetheless produce utterances that are flavoured by their own opinions and unconscious motivations (Maass *et al.*, 1989; Franco and Maass, 1996, 1999; Haskell, 1999; Ruscher, 2001). On the other hand, people may consciously intend to communicate in a biased, persuasive manner. They may lie to others in order to manipulate their beliefs (Lewis and Saarni, 1993; Robinson, 1996), or communicate persuasively (Petty and Cacioppo, 1986; Schmid and Fiedler, 1998) in order to propagate beliefs to which they do not personally subscribe.

Since persuasion is achieved by the use of words that a lawyer will choose to employ, it is essential to emphasize that the use of metaphors and repetition play an essential role in closing arguments. The following two sections focus on the trial techniques of metaphors and repetition that prosecution and defense lawyers exploit to their advantage in closing arguments. These sections will now focus on metaphorical language usage and the use of repetition. This will be carried out by seeking to understand why metaphors and repetition are considered persuasive techniques employed by trial lawyers in the courtroom.

#### **2.4.2 What are Metaphors?**

According to Lakoff and Johnson (2003) metaphor, for most people, is a device of the poetic imagination and a rhetorical flourish. Moreover, “metaphor is typically viewed as



characteristic of language alone, a matter of words rather than thought or action. On the contrary, metaphor is pervasive in everyday life, not just in language but in thought and action. Our ordinary conceptual system, in terms of which we both think and act, is fundamentally metaphorical in nature” (Lakoff and Johnson, 2003: 3). However, we are not normally aware of our conceptual system. In fact, as Knowles and Moon (2006) claim, many familiar words and phrases have metaphorical meanings, although we do not usually realize this when we use them. Likewise, Lakoff and Johnson sustain that “a metaphor is no longer seen as ephemeral to the theory of meaning but as being among our principal vehicles for understanding our physical, social and inner world” (Lakoff and Johnson, 1980: 159), by “mapping conceptual structures from relatively familiar, experientially grounded *source domain* onto a more abstract or less well-known *target domain*” (Lakoff and Johnson, 1980: 156-160; Lakoff, 1993: 208-209). Therefore, metaphors are viewed as being ‘conceptual in nature’ and essential for the creation of social realities. Furthermore, “we draw conclusions, set goals, make commitments, and execute plans, all on the basis of how we in part structure our experience, consciously and unconsciously, by means of metaphor” (Lakoff and Johnson, 2003: 158).

Charteris-Black, on the other hand, states that:

A metaphor is a relative concept that cannot be defined by a single criterion that applies in all circumstances and that a definition needs to include linguistic, pragmatic and cognitive criteria. This is because one cannot ensure an exact fit between the intentions of encoders of metaphor and the interpretation of decoders; these will vary between individuals according to the contexts in which metaphors occur and their own experience of these contexts (Charteris-Black, 2004: 7).

Kövecses asserts that “in the cognitive linguistic view, metaphor is defined as understanding one conceptual domain in terms of another conceptual domain” (Kövecses, 2010: 4). Goatly, on the other hand, affirms that “a metaphor is [...] a unit of discourse which is used to refer unconventionally to an object, process or concept, or colligates in an unconventional way [...] understood on the basis of similarity, matching or analogy” (Goatly, 1997: 8). Winter, on the other hand claims “metaphor is both a basic dimension of human reason and an indispensable tool of legal thought” (Winter, 2008: 364). For this reason, metaphor has a coercive rhetorical aspect, which may be fully exploited in the power-asymmetric environment of the courtroom (Cotterill, 2003: 201).

#### **2.4.2.1 The use of Metaphors as a Persuasive Technique**

Legal language, like any other language for specific purposes, is based on general language principles and follows general principles of human cognition. Indeed, the use of metaphor belongs to the general principles of language. Research (Lakoff and Johnson, 1980; Lakoff, 1993; Ortony, 1993; Schön, 1993) shows that metaphor is not a ‘special’ use of language but rather a central organizing principle for the way we think and talk. However, it is important to understand that a metaphor is a set of correspondences between two conceptual domains (Lakoff, 1993). These sets of correspondences can be represented as lists of entailments (Lakoff, 1993) or as structure mapping graphs (Gentner, 1989) but this is immaterial to the identification of metaphor in discourse. When metaphorical thinking is organized in language, it enables us to articulate and develop a perspective on a situation in a rhetorically vivid as well as persuasive way. Moreover, Lakoff and Johnson (1980, 2003) and Grady (2007) claim that metaphor is pervasive in language, thought and action. Charteris-Black (2004)

claims that metaphor is a figure of speech that is typically used in persuasion; that is because it represents a novel way of viewing the world that offers some fresh insight. Moreover, Cotterill sustains that

Metaphorical constructs serve to create a powerful conceptual and ideological framework for the jury, and in this way lawyers are able to influence the perception of both witnesses and their evidence. The use of alternative representations permits a coercive reconstruction of 'reality' in the crime story, in terms which may activate powerful schemata in the minds of the jury, thereby achieving a good degree of fit in terms of narrative typification (Cotterill, 2003: 201).

Furthermore, Bugliosi highlights the functional role of figurative language and the coercive value of metaphorical imagery in closing arguments because this is a particular moment in which it is crucial to hold the jury's attention. As Bugliosi affirms:

I do not agree that it is difficult to hold a jury's attention for more than an hour or so. In fact, it is not difficult to keep their attention for one, two, or even three days if the lawyer can deliver a powerful, exciting summation that is sprinkled with example, metaphor and humour (Bugliosi, 1996: 199).

Therefore, not only does the use of metaphorical language represent a valuable linguistic strategy in framing the crime story, i.e., the acts and actors which constitute the story in the trial (Jackson, 1995), but it can also direct the jurors towards a specific view of the trial process itself, i.e., the story of the trial.

For the purpose of the present study, the analysis of metaphors is related to the investigation of understanding which metaphors were employed and how the prosecution and defense lawyers used them in their closing arguments. As Louw sustains " [...] one even finds that the assistance of a metaphor can be enlisted both to

prepare us for the advent of a semantic prosody and to maintain its intensity once it has appeared” (Louw, 1993: 172). Therefore, the use of semantic prosodies may be supported by metaphorical constructs, which serve to reinforce the message conveyed. Indeed, one of the ways that words acquire new meanings is through metaphor. The lexical units or expressions identified as having metaphorical resonance are investigated by using the Metaphor Identification Procedure (MIP) developed by the Pragglejaz Group (2007). At this stage, it is crucial to understand what the Metaphor Identification Procedure is. MIP is a tool for linguistic metaphor identification in natural discourse, which focuses on the linguistic analysis of metaphorically used words, or lexical units, in discourse (Steen *et al.*, 2010: 4-5). Metaphor identification is concerned with ideational meaning – that is, identifying whether they are present in a text and establishing whether there is a tension between a literal source domain and a metaphoric target domain. Metaphor interpretation is concerned with interpersonal meaning – that is, identifying the type of social relations that are constructed through them. Metaphor explanation is concerned with textual meaning – that is, the way that metaphors are interrelated and become coherent with reference to the situation in which they occur (Charteris-Black, 2004: 34-35).

This section has described the usefulness of metaphors in closing arguments. We will now turn to the examination of the use of repetition.

### **2.4.3 The use of Repetition**

It is essential to underline that legal language, also known as legalese, is often difficult for the layperson and the non-lawyer to understand, because it is full of wordiness, redundancy, and specialized vocabulary and it often contains lengthy, complex, and unusual sentence structure (Tiersma, 1999). Therefore, it is important that lawyers keep

their language simple and clear when communicating with the jurors. Since the language must be simple and clear, it is possible for repetition to occur. For this reason, the use of repetition may be perceived as a strategy employed by trial lawyers in order to reach such goals. In fact, repetition plays a crucial role in the courtroom, because it is impossible to be certain that 12 people – i.e., the jury, have contemporarily paid attention to the facts that have been mentioned, hence by repeating facts that are particularly favourable to the attorney's case, they increase the chance that a higher number of jurors will focus on a specific point. Moreover, Ingle and Bini (2003) sustain that one of the bases for a strong closing argument is the use of repetition throughout a trial. However, it is fundamental that repetition be employed carefully in order to avoid the boredom effect and/or the risk that the jurors may feel that they are being patronized and that their capacity to comprehend is being underestimated. Nevertheless, the strategic use of repetitions has other purposes, if, on the one hand, it contributes to fluent production, on the other it makes things easier to understand. In fact, it helps negotiate meanings between speakers and listeners. As Tannen claims,

Each time a word or phrase is repeated, its meaning is altered. The audience reinterprets the meaning of the word or phrase in light of the accretion, juxtaposition, or expansion; thus it participates in making meaning of the utterances (Tannen, 1987b: 576).

Repetition is frequently used in both casual and planned conversation (Tannen, 1987a, 1987b, 2007; Norrick, 1987) and Tannen (1987b) identifies four main functions of repetitions:

- (1) Production - Repetition allows a more efficient and fluent production of language.
- (2) Comprehension - Repetition allows for semantically/lexically less dense

discourse, facilitating comprehension.

- (3) Connection - In line with Halliday and Hasan (1976), Tannen highlights the role of repetition as a cohesive device, in that - it serves a referential and tying function.
- (4) Interaction - Repetition serves to tie participants to the discourse and to one another and functions as a conversational management tool.

(Tannen, 1987b: 583)

Repetition is a highly versatile device and it can be effectively used to stress critical propositional content (Danet, 1980: 531). In opening statements, the use of repetition is strategically chosen for a series of purposes:

- (1) it contributes to clarity;
- (2) a dramatic sequence of repetitions has an engaging and involving effect;
- (3) it gives a particular rhythm to the speech that may lead to a mesmerizing effect.

Moreover, repeated items are more likely to be recalled, and, therefore, they assume an important function in the deliberation process. Since the use of repetition occupies an important part of courtroom discourse, the correct choice of the use of personal pronouns may represent a fundamental aspect to investigate. In fact, pronominal choices differ depending on who makes the utterance and they can also vary depending on how confident the speaker is that others will share their views and opinions (Beard, 2000: 46). Furthermore, De Fina presented a study that showed how uncertainty or consistency might have different effects on the speaker's self-presentation. De Fina's findings showed that the pronouns selected for usage in a speech reflect other choices, such as identification and involvement with the audience, as well as different purposes in speeches. For instance the use of the pronoun *we* as a way for the speaker to refer to

himself indicates that he is speaking as a representative of a group or organization, rather than speaking as an individual (De Fina, 1995: 24).

## **2.5 The Theoretical Framework and the Methodological Approach**

### **2.5.1 Discourse Analysis**

The term Discourse Analysis (DA) refers to a broad area of study that involves several dimensions and covers a variety of disciplines. Discourse Analysis is based on the main principle that language is always studied in its social context. Therefore, DA can be characterised as the study of the relationship between language and the contexts in which it is used. Throughout the past the social sciences have experienced a ‘discursive turn’ and have become increasingly interested in how language has a fundamental role in the creation of the reality that surrounds us (Bhatia *et al.*, 2008). Although DA has been considered to be located more within the discipline of linguistics, it has an interdisciplinary field of study. In fact, language can be analyzed not only on the level of the phoneme/morpheme, the word, the clause or the sentence, but also on the level of the text, and the idea that language should be analyzed not as an abstract set of rules, but as a tool for social action. In fact, an important aspect of DA is that texts are regarded as wholes, beyond the grammatical sentence level. Stubbs (1983) claims that DA is very ambiguous and that it attempts to study the organisation of language above the sentence or above the clause, and therefore to study larger linguistic units, such as conversational exchanges or written texts. Discourse Analysis is also concerned with language in use in social contexts, and in particular with interaction or dialogue between speakers. Therefore, DA bases itself upon the realization that language, action and knowledge are inseparable. In fact, McCarthy (1991) claims that discourse analysis can be described as the investigation of the correlation between language and the contexts in

which it is actually used, meaning that language is a part of social life, dialectically interconnected with other elements of social life. Also Crystal claims that the common concern among discourse analysts is:

To see language as a dynamic, social, interactive phenomenon - whether between speaker and listener, or writer and reader” [and involves] “the participants’ beliefs and expectations, the knowledge they share about each other and about the world, and the situation in which they interact (Crystal, 1987: 116).

Johnstone claims that Discourse Analysis sheds light on “how speakers indicate their semantic intentions and how hearers interpret what they hear” (Johnstone, 2002: 5), and discourse analysts help describe how speakers acquire new competence and what it is they are acquiring. Nevertheless, McCarthy underlines that DA is “not a method of teaching languages; it is a way of describing and understanding how language is used” (McCarthy, 1991: 2). Consequently, discourse analysts consider the investigation of language above the sentence level, to identify and describe linguistic regularities and irregularities occurring in utterances (Sinclair and Coulthard, 1975; Stubbs, 1983). Thus, for the utterance to be interpreted in the intended sense, context and participant co-operation is important. Furthermore, discourse analysts study the underlying rules that speakers and writers use which differ from culture to culture, and from situation to situation (Escribano *et al.*, 2005). Nevertheless, the analysis of linguistic structures is not enough for discourse analysis. This view is supported by Cameron who investigates “language in use, that is language used to do something and mean something, language produced and interpreted in a real-world context” (Cameron, 2001: 13).



### 2.5.2 Critical Discourse Analysis

Critical Discourse Analysis (CDA) is concerned with studying and analyzing written texts and spoken words, by focusing upon linguistic and non-linguistic elements, to reveal the discursive sources of power, dominance, inequality and bias, and how these sources are initiated, maintained, reproduced, and transformed within specific social, economic, political, and historical contexts (van Dijk, 1988). Since language may be considered as an instrument of communication and control, linguistic forms will allow significance to be conveyed and distorted. According to Fairclough (1995a; 1995b; 2001) ‘critical’ in Critical Discourse Analysis is used in the special sense of aiming to identify and show connections that may be hidden from people – such as the connections between language, power and ideology, which actively construct society on various levels. Moreover, given the power of the written and spoken word, CDA is necessary for describing, interpreting, analyzing, and critiquing the social life that is reflected in text (Luke, 1997). Another important aspect is the ideology that is concealed in discourse, because the analysis of ideology attempts to relate structures of discourse with structures of society. Furthermore, most ideological texts deal with concrete events, situations and people (van Dijk, 1993). Since CDA typically analyzes social interactions by focusing upon their linguistic and non-linguistics features, it is essential to study how vocabulary, grammar and visual images are used by the writer or speaker. Fairclough sets out to “examine how the ways in which we communicate are constrained by the structures and forces of those social institutions within which we live and function” (Fairclough, 1989: vi), by defining a framework for analyzing text. Moreover, Fairclough identifies three levels of discourse, these being firstly, *social conditions of production and interpretation*, i.e., the factors in society that have led to the production of a text and how these factors effect interpretation. Secondly, *the*

*process of production and interpretation*, i.e., how the text has been produced and how this effects interpretation. Thirdly, the product of the first two stages, the *text*.

Corresponding to the three levels or dimensions of discourse, Fairclough distinguishes three stages of critical discourse analysis:

- (1) Description is the stage, which is concerned with the formal properties of the text.
- (2) Interpretation is concerned with the relationship between text and interaction – with seeing the text as a product of a process of production, and as a resource in the process of interpretation.
- (3) Explanation is concerned with the relationship between interaction and social context – with the social determination of the processes of production and interpretation, and their social effects. (Fairclough, 2001: 21-22)

To better understand a text, Fairclough also provides a list of ten main questions and a number of sub-questions, which could be addressed when analyzing a text. It is important to bear in mind that the following questions are primarily geared to written text. However, for the purpose of the study it is essential to stress that only certain selected categories will be adapted for the analysis of the spoken corpus.

The ten questions are divided into three main groups:

#### A. Vocabulary

- (1) What *experiential* values do words have?  
What classification schemes are drawn upon?  
Are there words which are ideologically contested?  
Is there *rewording* or *overwording*?

What ideologically significant meaning relations (*synonymy*, *hyponymy*, *antonym*) are there between words?

(2) What *relational* values do words have?

Are there euphemistic expressions?

Are there markedly formal or informal words?

(3) What *expressive* values do words have?

(4) What metaphors are used?

## B. Grammar

(5) What experiential values do grammatical features have?

What types of *process* and *participant* predominate?

Is agency unclear?

Are processes what they seem?

Are *nominalizations* used?

Are sentences active or passive?

Are sentences positive or negative?

(6) What relational values do grammatical features have?

What *modes* (*declarative*, *grammatical*, *question*, *imperative*) are used?

Are there important features of *relational modality*?

Are the pronouns *we* and *you* used and if so, how?

(7) What expressive values do grammatical features have?

Are there important features of *expressive modality*?

(8) How are (simple) sentences linked together?

What logical connectors are used?

Are complex sentences characterized by *coordination* or *subordination*?

What means are used for referring inside and outside the text?

### C. Textual structures

(9) What interactional conventions are used?

Are there ways in which one participant controls the turns of others?

(10) What larger-scale structures does the text have?

(Fairclough, 2001: 92-93)

To conclude, CDA practitioners (van Dijk, 1977; Fowler *et al.*, 1979; Fairclough, 1992) assume that people's notions of reality are constructed largely through interaction with others, as mediated by the use of language and other semiotic systems. Therefore, reality is not seen as immutable but open to change. Moreover, according to Wodak (1996) and Fairclough (2001), by focusing on language and other elements of discursive practice, critical discourse analysts try to shed light on ways in which the dominant forces in a society construct versions of reality that favour the interests of those same forces. Richardson gives a more thorough description and states that

Critical discourse analysts offer interpretation of the meanings of texts; situate what is written or said in the context in which it occurs; and argues that textual meaning is constructed through an interaction between producer, text and consumer, rather than simply being read by all readers in exactly the same way (Richardson, 2007: 15).

The following sections focus on different aspects related to corpus and corpus linguistics. The use of corpus linguistics is fundamental because the data gathered will be investigated not only from a qualitative point of view but also from a quantitative one. Therefore, in order to achieve this purpose, the research will be supported by the use of computerised software. The section also focuses on the adversarial trial process describing the U.S prosecutors and defense lawyers' role.

## **2.6 Corpus and Corpus Linguistics**

### **2.6.1 Brief definition of a Corpus**

A corpus is a representative, substantial body of systematically collected and recorded data, spoken or written, which is normally electronically stored as text on a PC. Linguists use the word *corpus* to describe a collection of naturally occurring examples of language, consisting of anything from a few sentences to a set of written texts or tape recordings (Hunston, 2002). Nevertheless, it is essential to emphasize that a corpus itself is nothing, meaning that, a corpus is nothing other than a store of texts. In other words, a corpus is just the source, the text that analysts want to investigate and study. However, “corpora allow researchers not only to count categories in traditional approaches to language but also to observe categories and phenomena that have not been noticed before” (Hunston, 2002: 1). In order to analyze corpora, it is necessary to access software that may help rearrange the specific store of texts, so that various observations may be made. It can also help identify words or particular patterns that an analyst is searching for. Furthermore, the use of software is essential because it manipulates and sorts the data in various ways in order to uncover a range of linguistic patterns based around frequency, including keywords and collocation. The specific tool is called a concordance, which functions more or less in the same way as an Internet search engine. A corpus is compiled for a particular purpose, for example corpora of spoken language, are often created through demographic sampling, audio recording, and transcription. The body of data is then normally electronically scanned, so that individual words or phrases can then be retrieved, and seen as a set. Such a corpus can be ‘tagged’, not only for syntactic or lexical features, but for speaker features such as age, sex, social class, occupation, place of birth, current domicile and ethnicity. It is essential to highlight that compiling a corpus related to the two cases investigated was

necessary in order to understand how trial lawyers actually influence the jury's final decision. This is usually achieved by manipulating the facts of the story that each lawyer decides to narrate. Through the use of specific words or phrases, a lawyer is capable of painting pictures in a juror's mind. In fact, as Aron *et al.*, remark, "vivid language creating striking mental images will help the finder of fact visualize the cases" (Aron *et al.*, 1996: 12). For this reason, lawyers summarize the case through highly emotional images. With reference to the research questions the compiling of the corpus had the objective of determining what type of lexical items were employed, verifying how many times a specific word, phrase or expression was repeated – technique employed to convince a jury, but also which and how specific techniques facilitated the winning of the cases.

### **2.6.2 Corpus Linguistics**

Corpus Linguistics is "the study of language based on examples of real life language use" (McEnery and Wilson, 1996: 1). However, this approach is different from other qualitative approaches to research, because it employs bodies of electronically encoded texts, implementing a more quantitative methodology, by using frequency information about occurrences of specific linguistic phenomena (Baker, 2006). Scholars have postulated a 'cultural divide' between corpus linguistics and discourse analysis (Leech, 2000), on the grounds that discourse analysis relies on the integrity of text whereas corpus linguistics tends to use representative samples. While, discourse analysis is primarily qualitative and focuses on the contents expressed by language, corpus linguistics is essentially quantitative and is interested in language *per se*. However, today there is a growing consensus that the two areas are mutually complementary and may even overlap (Stubbs, 2007). Furthermore, Baker *et al.*, (2008) show that corpus

linguistics and discourse analysis can be combined to exploit the strength of each approach. In fact, the combination of qualitative and quantitative approaches identifies distinctive features and investigates non-obvious meanings within specific discourse types (Marchi and Taylor, 2009). Moreover, McEnery and Wilson claim, “whereas quantitative analysis is statistically reliable, qualitative techniques as a method are rich and precise” (McEnery and Wilson, 2001: 77). The evolving understanding of corpus linguistics is that although patterns in language can be studied through concordancing and other tools, the analysis of meaning should always have a central role (Sinclair, 2004a). In linguistic terms, the investigation of samples of texts affords direct access to *parole*, or what the professionals in question actually write or say on particular occasions, in the form of horizontal concordance lines. However, when concordance lines are viewed vertically, more enduring patterns come to light that can provide considerable information about the discourses that operate among particular groups (Breeze, 2011). Moreover, it is essential to emphasize that the use of corpus linguistics provides a valuable way to create and analyze large bodies of data. It also provides answers to questions about, for example, whether two words or grammatical structures ever occur together, how frequently and with what range of uses and meanings. While, longitudinally, it can provide information about early uses of new words, and increases and decreases in certain phrasings over time. At this stage it is fundamental to distinguish between general and specialised corpora. General corpora typically serve as a basis for an overall description of a language or language variety. On the other hand, specialised corpora tend to be domain (e.g. medicine, law) or genre (e.g. newspaper text or academic prose) specific (McEnery *et al.*, 2006: 15). Both general and specialised corpora should be representative of a language or language variety. For the purpose of the present study, the following section will focus only on specialised corpora. The use

of Corpus Linguistics proved to be beneficial for the study because through the identification of representative samples within the texts it was possible to observe specific patterns in language.

### **2.6.3 Specialized Corpora**

A specialised corpus can be domain or genre specific and is designed to represent a sub-language. It aims to be representative of a given type of text, and is used to investigate a particular type of language (Hunston, 2002). Therefore, in order to access the discourses of professional groups, corpus methodology provides a useful tool, which generally proves to be a more reliable and objective analysis than introspection or observation (Breeze, 2011). Since specialized corpora do not contain standard language as a whole, but rather very specific language, the emphasis is placed on examining very specific phenomena and not on analyzing standard language. Specialized corpora are usually rather small in comparison to reference corpora, which however does not represent a major drawback, because the texts included are so specific that there is no need for many instances of a search query in order to prove or disprove research questions. In this case, the right interpretation of the results is much more important than the quantity of hits. An important aspect to take into consideration when analyzing corpora is their representativeness. With specific reference to specialized corpora, representativeness at a lexical level can be measured by the degree of ‘closure’ (McEnery and Wilson, 2001: 166) or ‘saturation’ (Belica, 1996: 61-74) of the corpus. Closure or saturation for a particular linguistic feature (e.g. size of lexicon) of a variety of language (e.g. computer manuals) means that the feature appears to be finite or is subject to very limited variation beyond a certain point. To measure the saturation of a corpus, the corpus is first divided into segments of equal size based on its token. The corpus is said to be



saturated at the lexical level if each addition of a new segment yields approximately the same number of new lexical items as the previous segment, i.e., when ‘the curve of lexical growth has become asymptotic’ (Teubert, 1999), or is flattening out. However, when analyzing specialised corpora, connections can be made between the phraseology of the discourse and the ideology of the discourse community. Indeed, a growing concern in Applied Linguistics is the relation between language and ideology, in particular, the role of language in forming and transmitting assumptions about what the world is and should be like, and the role of language in maintaining (or challenging) existing power relations (Hunston, 2002: 109). The dominant school of research into language and ideology is Critical Linguistics (Fowler, 1987) or Critical Discourse Analysis (Fairclough, 1995a), because critical linguistics looks at language, not as a system on its own but as something that ‘intervenes’ in the social world, largely by perpetuating the assumptions and values of that world (Fowler, 1987: 482). The final section of the chapter focuses on the U.S. trial process, which is representative of the Anglo-American judicial system. It is crucial to understand the adversarial process, basis of the American legal system; because it is in this legal system that the cases analyzed took place. Moreover, it is in this type of trial that persuasion plays a fundamental role.

## **2.7 The Adversarial Trial Process**

### **2.7.1 Introduction**

There are two legal systems that categorize all the courts of the world: the Adversarial (Accusatorial) system<sup>5</sup> - used in Anglo-America, Britain and Australia - and the

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<sup>5</sup> The method courts use to resolve disputes. Through the adversarial process, each side in a dispute has the right to present its case as persuasively as possible, subject to the rules of evidence, and an independent fact finder, either judge or jury, decides in favour of one side or the other.

Inquisitorial system that is customary in Europe (Certoma, 1982). The Adversarial system involves a ‘contest’ between rival parties, and a frequent criticism of this system is that it is primarily concerned with ‘winning’ and not necessarily about revealing the truth (Brouwer, 1981). In fact, Brouwer (1981) describes the Adversarial system as ‘Gladiatorial’, where the jury decides who fought the better battle. In the Adversarial system “juries receive selected information, managed and controlled by the parties and their attorneys and they have to construct the truth out of competing partisan presentations” (Jonakait, 2003: 175). The communication process underlying a jury trial is based on the idea that “jurors take in the information presented by lawyers and witnesses and decode it into terms that fit their own experience” (Lisnek and Oliver, 2001: 4). Therefore, a jury trial represents a unique communicative situation in which a variable number of agents present different versions of a certain event to an audience (the jurors), which is in charge of making the final decision about the case. The Anglo-American Adversarial trial process is based on the adjudication of conflicting and competing versions of events presented by prosecution and defense. The Adversarial system is not primarily concerned with establishing the true facts of the case; rather, it involves attempts to persuade the jury that one constructed version of reality is more plausible than the other. In other parts of the world, the Inquisitorial system is employed. This system views the evidence elicited from witnesses with an investigative and exploratory eye, while the adversarial approach prioritises argumentation and persuasion, with its primary objective being a dialectic and dialogic appraisal of the evidence. In the Adversarial system, more attention is placed on the ‘performance’ aspect of the trial as compared to the Inquisitorial system. Since the orientation of the adversarial trial is inherently a persuasive, even a coercive one, the *style* in which the

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evidence is presented in court comes to be of vital importance, to the extent that some critics of the adversarial system accuse trial lawyers of prioritising style of delivery over substance of fact in their attempts to convince the jury (Cotterill, 2003: 9). Cotterill claims that the ‘facts’ in an adversarial trial are not simply allowed to speak for themselves; rather, witnesses are called to appear on the stand and are required to present their evidence in person, if need be under subpoena.<sup>6</sup> Therefore, “the overwhelmingly primacy of the *oral* over the *written* in court also means that the verbal dexterity of the speaker becomes a significant factor in the presentation of credible testimony” (Cotterill, 2003: 10).

A significant aspect of the adversarial process is the dual concept of the *burden of proof* and *reasonable doubt*.<sup>7</sup> Since the defendant is essentially assumed to be ‘innocent until proven guilty’, the responsibility remains decisively with the prosecution to construct a case, through the elicitation of evidence, which will effectively meet the burden of proof. On the other hand, the role of the defense is to suggest that the prosecution’s formulation of events is flawed, incomplete or implausible, creating therefore, a reasonable doubt in the minds of the jury (Cotterill, 2003).

The jury’s role in this phase is crucial, they will have to consider whether or not the burden of proof is adequately satisfied. A jury of twelve empanelled lay people is given

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<sup>6</sup> A subpoena is an order of the court for a witness to appear at a particular time and place to testify and/or produce documents in the control of the witness. A subpoena is used to obtain testimony from a witness at both depositions (testimony under oath taken outside of court) and at trial. (dictionary.law.com, retrieved from: <http://dictionary.law.com/Default.aspx?selected=2041>)

<sup>7</sup> Reasonable doubt: not being sure of a criminal defendant’s guilt to a moral certainty. Thus, a juror (or judge sitting without a jury) must be convinced of the guilt of a crime (or the degree of crime, as murder instead of manslaughter) “beyond a reasonable doubt” and the jury will be told so by the judge in the jury instructions. However, it is a subjective test since each juror will have to decide if his/her doubt is reasonable. (dictionary.law.com, retrieved from: <http://dictionary.law.com/Default.aspx?selected=1731>)

the onerous responsibility of determining the persuasiveness of the prosecution's account, or the relative plausibility of the two versions if the defense does decide to present an alternative construction. The trial judge instructs the jury that they may convict only if they are satisfied that the prosecution case has been proven 'beyond a reasonable doubt'; conversely, the jury is instructed to acquit if they feel that this challenge has not been adequately met. The jury, considered as a group of neutral outsiders, has the crucial task of deciding between the conflicting versions of reality and the competing narratives displayed in court.

Trial by jury is very similar to the classic Labovian structure<sup>8</sup>, which offers an introduction and background information to the case during opening statements, a presentation of the crime events in witness examination, and a final evaluative summary in the closing arguments. The trial builds up to a climax during the deliberation process, concluding with a resolution in the form of a verdict and a sentencing or release coda. Figure 1 below shows a summary of Labov's (1972) six narrative components mapped onto the trial-by-jury counterparts.

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<sup>8</sup> According to Labov (1972) a fully-formed oral narrative follows six stages:

1. Abstract: What is the story about?
2. Orientation: Who, when where, how?
3. Complicating action: Then what happened?
4. Evaluation: How or why is this interesting?
5. Result/Resolution: What finally happened?
6. Coda.

<b>Narrative Component</b>	<b>Narrative Content</b>	<b>Trial Equivalent</b>
Abstract ↓	Summary of story	Opening statements
Orientation ↓	Participants, time, place, etc.	Opening statements
Complicating action ↓	Story events, what happened	Witness (cross)-examination
Evaluation ↓	Point of story	Closing arguments
Resolution ↓	What finally happened	Verdict
Coda	Closing the narrative	Sentencing/Release

Figure1 Mapping Labovian narrative structures onto the trial narrative

It is essential to point out that the opening statements and closing arguments ideologically frame the witness examination phase of the trial and have greater significance in the trial than the classic abstract/orientation does in non-courtroom stories. By nature, a jury trial is purposive and persuasive; therefore, it is fundamental that one of the conflicting versions, i.e., the defence or the prosecution, captures the attention of the hypercritical audience, the jury, whose sole responsibility is to assess the relative quality of the stories presented to them. In this context, the initial (opening) and terminal (closing) summaries of the narratives presented during the trial function not only as a preview or aide-mémoire, respectively, but also take on a coercive dimension. Indeed, the trial is the telling not of a single story but of a number of alternative versions from a variety of conflicting perspectives (Cotterill, 2003: 24-25). At this stage, it is important to understand who trial lawyers are, prosecutors and defense, and their role within the American legal system.

## **2.7.2 U.S. Trial Lawyers**

As previously mentioned, the U.S. legal system uses the adversarial process in which lawyers are essential. Lawyers are responsible for presenting their clients' evidence and legal arguments to the court. Based on the lawyers' presentations, a trial judge or jury determines the facts and applies the law to reach a decision before judgment is entered. Individuals are free to represent themselves in American courts, but lawyers are often necessary to present cases effectively. An individual who cannot afford to hire a lawyer may attempt to obtain one through a local legal aid society. Persons accused of crimes who cannot afford a lawyer are represented by a court-appointed attorney or by federal or state public defender offices. American lawyers are licensed by the individual states in which they practice law. There is no national authority that licenses lawyers. However, most states require that applicants for a license to practice law pass a written bar examination and meet certain standards of character. Some states allow lawyers to become bar members based on membership in another state's bar.

### **2.7.2.1 The Role of U.S. Trial Lawyers**

The role of a lawyer:

Resembles that of an interviewer, they are the ones who lead and determine both the content and the form of the responses of potential jurors and of witnesses. There are questions and answers that are asked rather than formally following the format of courtroom practice. Although there is no script that is followed in the courtroom, there is an expected pattern of interaction established by the legal system (Young and Fitzgerald, 2006: 241).

The witness or the juror can expect to be asked questions, and is often forced to answer questions they may not wish to answer. Further, "the lawyer may press and guide

responses so that it is difficult to resist certain representations determined by the lawyer's framing of the questioning" (Cotterill, 2004: 514). Moreover, Young and Fitzgerald (2006) claim that the role of the lawyer is that of the narrator of the story that unfolds in any given case, with prosecution and defense each shaping the story of their own ends. Also, Cotterill affirms that "an attorney leads a witness by framing the questions, by creating a thread of discourse, and weaving a specific version of events that leads to a special lexical landscape"<sup>9</sup> (Cotterill, 2004: 527). Furthermore, "the repetition of one word by a lawyer creates a very particularized version of a story from the witness" (Young and Fitzgerald, 2006: 252). According to Cotterill (2003) the challenge for trial lawyers not only consists of eliciting the appropriate evidence from the witness in a clear and persuasive form, but they must also be able to shape these frequently temporally and logically disjointed and fragmented versions of events into a coherent account. Therefore, the lawyer is also 'on trial' (Cotterill, 2003: 10), in a certain sense. Both lawyers and lay people believe that the outcome of a trial is very much determined, on the one hand, by the rhetorical skill of the trial lawyer, but at the same time also the strength of the evidence is fundamental.

#### **2.7.2.2 Prosecutors and Defense Lawyers**

Since the U.S. courts operate in an adversarial system, the prosecutor and defense attorney operate as opponents (adversaries) and vigorously defend their client's interest.

The prosecutor (district attorney's office) represents the State and the victim, while the defense attorney represents the accused. Prosecutors in the federal system are part of the

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<sup>9</sup> Cotterill specifies how certain lexicalizations can express far more than a straightforward neutral denotational meaning, and as such can be exploited by cross-examining lawyers in court. However, it is also possible for trial lawyers to manipulate certain lexicalizations across extended stretches of testimony or in clusters within a segment of evidence, to create lexical landscapes. If lawyers can construct a particular lexical landscape within which to elicit testimony [...] the jury may be more likely to incorporate these versions into a schematically satisfying version of events (Cotterill, 2004: 527-528).

U.S. Department of Justice in the executive branch. The Attorney General of the United States, who heads the Department of Justice, is appointed by the President with Senate confirmation. The chief prosecutors in the federal court districts are called U.S. attorneys and are also appointed by the President with Senate confirmation. Within the Department of Justice there is the Federal Bureau of Investigation, which investigates crimes against the United States. Each state also has an attorney general in the state executive branch who is usually elected by the citizens of that state. There are also prosecutors in different regions of the state, called state's attorneys or district attorneys; these prosecutors are also usually elected. Defense attorneys, for their part, defend the accused against the government's case, the defendant either hires them or (for defendants who cannot afford an attorney) the court assigns them. To sum up, the prosecutor represents the state, while the defense attorney represents the defendant.

According to the legal imperative of the burden of proof, the prosecution must satisfy the jury on several counts. Prosecutors must first establish beyond a reasonable doubt that an act actually happened and that the act can be considered as a crime. Furthermore, the prosecution needs to present the defendant as the perpetrator. Conversely, the defense needs only to show that the prosecution's version is flawed in some significant respect. In order to create reasonable doubt, the defense may use various strategies, for instance, they may challenge threads of the prosecution story during cross-examination, pinpointing inconsistencies or improbabilities in their account; the defense may also attempt to redefine one or more of the crime elements by suggesting alternatives, such as a different perpetrator, or more ambitiously, they may construct an entirely different story, formulating a new narrative framework within which to interpret the evidence (Bennett and Feldman, 1981). If the defense can successfully create a new context for incriminating evidence, the jury may be persuaded to adopt this interpretation of events



and circumstances. Even when the most critical of the prosecution imperatives has been adequately established beyond a reasonable doubt, with the identification of the perpetrator of the crime, the defense may still challenge one of the other elements by suggesting that one of the links in the ‘actor-purpose-act’ triad is defective and must be considered in an alternative context. Therefore, the defense may reformulate the motivation behind the crime in order to favour the defendant (Cotterill, 2003: 27). For this reason, the use of language plays an important role in the legal setting. Both prosecutors and defense attorneys rely on communication skills in order to persuade juries and judges in trial cases. As a result, an attorney’s choice of words can either promote or interfere with the desired outcome of a trial. Language can be seen as a tool for communicating meaning. Many types of messages can be communicated through the use of language. However, in the legal setting emphasis is placed on persuasive speech. Persuasion is necessary in order for a prosecuting attorney to prove guilt or for a defense attorney to prove innocence. On the witness stand, the concept of storytelling plays an important part in the communication of testimony. Although storytelling is not the focus of the present study, it is essential to highlight why it may be considered a persuading technique to be used in the courtroom. Storytelling provides the most effective format for conveying persuasive, memorable arguments, allowing the character of the teller to increase the persuasive nature of the argument. The teller and the jury will relate to the material thereby creating a greater connection between the teller and the story, the teller and the jury, and most importantly, the story and the jury (Belzer, 2001). Obviously, two sides of a story will be given in the course of a trial, and it is the role of the judge or jury to decide which of the two versions is more credible and therefore true. Consequently, the lawyer’s job is to present the story in a manner which persuades the judge or jury to agree with their client’s point of view. However,

besides persuasion there are a number of ways in which the lawyer can utilize language to achieve this end. For instance, the way in which a witness is questioned can have an effect on the credibility of the testimony. Indeed, a clever lawyer may limit what a witness is able to say by the use of leading questions or by restricting the response to a yes or no answer during cross-examination. Although, the present study does not focus on persuasion achieved through cross-examination and leading questions this could represent a prompt for further research.

## Chapter Three

### Research Design and Methodology

It is believed that courtroom language represents the most dramatic of language use.

(Cao, 2011: xv)

#### 3.1 Introduction

Since courtroom discourse serves as an instrument of institutional empowerment and control it is essential to understand how power is exercised within the courtroom. In fact, courtroom discourse involves a situation where the jury starts with no knowledge of the crime narrative, which is constructed during the trial, and a very limited knowledge of courtroom procedures. In contrast to ordinary discourse, courtroom interactions are notoriously explicit and repetitive in nature (Lakoff, 1985). Moreover, Lakoff states that:

Our use of language embodies attitudes as well as referential meanings and languages use as much as we use language. As much as our choice of forms of expression is guided by the thoughts we want to express, to the same extent the way we feel about the things in the real world governs the way we express ourselves about these things (Lakoff, 1973: 45).

The chapter focuses on the investigation of two criminal cases, specifically the Jodi Ann Arias trial and the Orenthal James - better know as and hereafter O.J. - Simpson trial. Both Jodi Ann Arias and O.J. Simpson were accused of murder. The former was accused of the murder of her ex-boyfriend Travis Alexander, while the latter was accused of the double murder of his ex-wife Nicole Brown Simpson and her friend

Ronald Goldman, also known as Ron. The two cases form the corpora that will be investigated and examined. The corpus collected has the objective of exploring and understanding how legal discourse is employed by trial lawyers within the courtroom setting, by uncovering the strategies and tactics that they employ in order to downplay their client's culpability. In fact, the study aims to examine how language may be used to persuade a jury of a person's innocence or guilt. The chapter is divided into five sections. Specifically, the first section focuses on the American legal system, because it is in the U.S.A. that the murders occurred and this is the country where the trials were conducted. The second section focuses on the stories of the people involved, the settings where the murders occurred and jury selection. The third section, for a better understanding of the American Adversarial trial process, focuses on a clear-cut description of what occurs during opening statements, direct and cross-examination and closing arguments. However, as previously mentioned for the purpose of the study the analysis of the data focuses only on the closing arguments of the two criminal cases. The fourth section focuses on the methods and research tools adopted for the investigation of the data gathered. The final section focuses on the limitations of the study.

Having described what the reader will find in this chapter it may be appropriate here to revise the research questions that the study seeks to answer.

The study aims to answer the following research questions:

1. What type of language do lawyers employ in order to persuade the jury?
2. What techniques do lawyers adopt in order to downplay their client's culpability?
3. To what extent can the lawyer's choice of language exercise power in the courtroom and influence the jury's final decision?

## **3.2 Overview of the American Legal System**

### **3.2.1 Background as pertains to a trial**

The United States (U.S.) Constitution establishes a federal system of government. The constitution gives specific powers to the federal (national) government. All power not delegated to the federal government remains with the states. Each of the 50 States has its own state constitution, governmental structure, legal codes, and judiciary. As far as the U.S. court system is concerned, there are two legal systems: federal courts and state courts. Pluralism in courts refers to the fact that each state has its own independent court system. Most states have three levels of courts: Courts of Limited Jurisdiction, Trial Courts of General Jurisdiction, and Appellate Courts. The courts operate on an adversarial system in which the prosecution and defense battle as advocates for the state and the accused. The U.S. Constitution establishes the judicial branch of the federal government and specifies the authority of the federal courts. Federal courts have exclusive jurisdiction only over certain types of cases, such as cases involving federal laws, controversies between states, and cases involving foreign governments. In certain other areas, federal courts share jurisdiction with state courts. For example, both Federal and State courts may decide cases involving parties who live in different states. Conversely, state courts have exclusive jurisdiction over the vast majority of cases. Parties have a right to trial by jury in all criminal and most civil cases. A jury<sup>10</sup> usually consists of a panel of 12 citizens who hear the evidence and apply the law stated by the judge to reach a decision based on the facts as the jury has determined them from the evidence presented at trial. However, most legal disputes in the U.S. are resolved before a case reaches a jury because they are resolved by legal motion or settlement, not by

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<sup>10</sup> In the adversarial trial the jury is often given the name of ‘fact finder’, which, however is misleading, because the jury are not asked to find the truth, but instead to adjudicate between the plausible narratives displayed in court by defense and/or prosecution.

trial.

### **3.2.2 Structure of the Federal Court System**

The U.S. Constitution establishes the U.S. Supreme Court and gives Congress the authority to establish the lower federal courts. Congress has established two levels of federal courts below the Supreme Court: the U.S. district courts and the U.S. circuit courts of appeals. U.S. district courts are the courts of first instance in the federal system. There are 94 district courts throughout the nation. At least one district court is located in each state. District judges sit individually to hear cases. In addition to district judges, bankruptcy judges (who hear only bankruptcy cases) and magistrate judges (who perform many judicial duties under the general supervision of district judges) are located within the district courts. U.S. circuit courts of appeals are on the next level. There are 12 of these regional intermediate appellate courts located in different parts of the country. Panels of three judges hear appeals from the district courts. A party to a case may appeal as a matter of right to the circuit court of appeals (except that the government has no right of appeal in a criminal case if the verdict is “not guilty.”) These regional circuit courts also hear appeals from decisions of federal administrative agencies. One non-regional circuit court (the Federal Circuit) hears appeals in specialized cases such as cases involving patent laws and claims against the federal government. At the top of the federal court system is the U.S. Supreme Court, made up of nine justices who sit together to hear cases. At its discretion, the U.S. Supreme Court may hear appeals from the federal circuit courts of appeals as well as the highest state courts if the appeal involves the U.S. Constitution or federal law.

### **3.2.3 Structure of the State Court System**

The structure of the state court system varies from state to state. Each state court system has unique features; however, some generalizations can be made. Most states have courts of limited jurisdiction presided over by a single judge who hears minor civil and criminal cases. States also have general jurisdiction trial courts that are presided over by a single judge. These trial courts are usually called circuit courts or superior courts and hear major civil and criminal cases. Some states have specialized courts that hear only certain kinds of cases such as traffic or family law cases. All states have a highest court, usually called a state supreme court that serves as an appellate court. Many states also have an intermediate appellate court called a court of appeals that hears appeals from the trial court. A party in a case generally has one right of appeal. The following sections will now focus on the stories and the participants related to the two criminal cases investigated and will also provide an overview of jury selection.

### **3.3 Stories within the Courtroom**

Since a criminal trial is organised around storytelling it is essential to highlight how stories are constructed within the courtroom. It is essential to highlight that “the story is an everyday form of communication that enables a diverse cast of courtroom characters to follow the development of a case and reason about the issues in it” (Bennett and Feldman, 1981: 4). However, storytelling will simply be outlined for a better understanding of how trials are structured. Indeed, stories organise information in ways that help the listener to perform three interpretative operations. First, the interpreter must be able to locate the central action in a story. This is the key behaviour around which the point of the story is drawn. Second, the interpreter must construct inferences about the relationships among the surrounding elements in the story that impinge on the

central action. The connections among this cast of supportive symbols create the interpretative context for the action or behaviour at the centre of the story. Finally, the network of symbolic connections drawn around the central action in a story must be tested for internal consistency and descriptive adequacy or completeness (Bennett and Feldman, 1981: 41).

### **3.4 The Participants and the Setting of the Jodi Ann Arias Case**

#### **3.4.1 Personal Background of the two Protagonists of the Story**

Travis Victor Alexander was born on July 28, 1977, in Riverside, California. After his father's death, Alexander and his siblings were taken in by their paternal grandmother, Norma Jean Preston Alexander Sarvey (1932–2012), who eventually introduced them to The Church of Jesus Christ of Latter-day Saints, thus becoming a Mormon. Alexander was a salesman for the multilevel marketing company Prepaid Legal Services, however he also worked as a motivational speaker.

Jodi Ann Arias was born on July 9, 1980, in Salinas, California. Jodi and Travis met in September 2006 at a Prepaid Legal Services conference, located in Las Vegas, Nevada, while he was living in Arizona and she was a resident of Palm Desert, California. On November 26, 2006, Travis baptized Jodi into the Latter-day Saint faith. As of February 2, 2007, Travis and Jodi were a couple and in a committed relationship. However, only after five months as a couple the two went their separate ways in late June 2007 but still maintained a sexual relationship. After the two broke up on June 29, 2007, Jodi moved to Mesa, Arizona, until April 2008, at which time she moved to her grandparents' house in Yreka, California.



### **3.4.2 The Murder of Travis Alexander**

On June 4, 2008, Travis Alexander was killed at his home in Mesa, Arizona. However, it was five days later, on June 9, 2008, that Travis Alexander's body was found in a pool of blood in the shower of his home by some friends who were increasingly worried about his whereabouts after not being able to contact him for several days. After entering the bathroom his friends came upon Travis' corpse. He had been brutally murdered. He had been shot in the head, stabbed multiple times and his throat had been slit from ear to ear showing a deeply and widely slashed throat. As far as concerns the stab wounds, there have been conflicting reports over their number with some reports stating 29, many stating 27 and after the verdict "more than 20". Maricopa County Medical Examiner, Dr. Kevin Horn, testified that Travis' jugular vein, common carotid artery, and windpipe had been slashed. Travis' hands also presented defensive wounds. Dr. Horn further testified that Travis might have been dead at the time the gunshot was inflicted. The medical examiner ruled his death a homicide. Jodi quickly became the focus of the sensational case. She was charged with Travis' murder on July 9, 2008 and arrested soon after. Initially, Jodi denied any involvement in his death. Then, after investigators found her DNA mixed with Travis' blood at the crime scene, she changed her story. Jodi claimed that two masked intruders had attacked her and her ex-boyfriend. After killing Travis, the criminals decided to let her live, she told police, adding that she chose not to alert authorities at the time because she feared the intruders might seek revenge. The trial began on January 2, 2013; during trial Jodi revised her story for the third time and stated that she killed Travis in self-defense and she was a victim of domestic violence. Testimony in Jodi's trial began in January 2013. Four months later, on May 8, 2013, after spending 18 days on the witness stand, Jodi was found guilty of first-degree murder. Two juries became deadlocked over punishment

terms, with a judge slated to determine the extent of a life sentence in April 2015. The case attracted significant attention from the news media, and was considered by many as an example of both trial by media and a media circus. For a thorough timeline of the Jodi Ann Arias trial see Appendix A.

### **3.4.3 The Story Behind the Story**

At this stage it would be a good idea to step back a moment and take a look at Travis' life up until his murder, in order to understand the context in which it occurred. Travis had scheduled a trip to Cancun, Mexico, he had also missed an important conference call on the night of June 4, 2008, at 7 pm. On June 9, having been unable to reach Travis, people from Prepaid Legal Services went to his home to check on him. Travis' roommates said he was out of town. After some searching, they found a key to Travis' master bedroom. When they entered it, they noticed large pools of blood in the hallway leading to the master bathroom, where his body was discovered in the shower. The people who found Travis called 911 notifying authorities of the discovery and mentioning an ex-girlfriend, Jodi Ann Arias, who Travis said had been stalking him, hacking into his Facebook account, and slashing his car tires. On May 28, 2008, a burglary occurred at the residence of Arias' grandparents, with whom she was living in Yreka, California. A .25-caliber gun and other objects were taken. The grandparents' gun was never recovered. The prosecutor argued that Jodi staged the burglary and the stolen gun was used to shoot Travis. Several days before Jodi's trip to see Travis she repeatedly contacted her ex-boyfriend, Darryl Brewer, asking him if he could lend her two 5-gallon gas cans for a trip to Arizona. The cans were never returned to Brewer. Receipts presented as evidence at trial also showed that Jodi had purchased a third 5-gallon gas can, sunblock, and facial cleanser from Walmart in Salinas, California, on

June 3, 2008. That evening, at an ARCO gas station in Pasadena, California, she purchased 8.301 gallons of gasoline with her debit MasterCard, and four minutes later purchased 9.59 gallons of gas with cash. The MasterCard was used again on June 6, 2008, three times at a Tesoro gas station in Salt Lake City, at a Pilot Flying J travel center in Winnemucca, Nevada and a 7-Eleven in Sparks, Nevada. After Travis' death, but before his body was discovered, Jodi had continued to call him and had left him several voicemail messages. It was later alleged that she had accessed Travis' voicemail messages after his death. Jodi said that Travis had originally planned to visit her in May 2008 but that his plans had changed. On June 2, 2008, Jodi rented a white Ford Focus in Redding, California, about 100 miles south of her residence. She told the Budget Rent a Car staff that she would only be driving the car locally, but when the car was returned on June 7, it had been driven about 2,800 miles. The car was also missing all of its floor mats, and there were what looked like Kool-Aid stains on the front and rear seats. The car was cleaned before police were able to examine it. A consumed .25-caliber round was located near one of the sinks in the master bath. Travis' damaged digital camera was located in the downstairs washing machine. The camera was new. Detective Flores, via phone interview with Jodi, asked her if she knew a possible motive for why someone would want to damage Travis' camera. Although images had been deleted, Mesa Police were able to recover them. The recovered images included Jodi and Travis, both in sexually suggestive poses, at approximately 1:40 pm on June 4, 2008. The last photo of Travis alive, and in the shower, was taken at 5:29:20 pm on June 4. Moments later, images appear of an individual, believed to be Travis, profusely bleeding on the floor. A bloody palm print was located in the bathroom hallway, which DNA revealed to be a mixture of Jodi and Travis' DNA. Jodi continued to insist that she had last seen Travis in April 2008 despite being presented with DNA and photographic evidence by

Detective Esteban Flores. Ryan Burns and other people who met Jodi in Utah after the killing indicated that she had bandages on her hands and she wore long sleeves on days when it was very hot. Jodi told different stories about how she received the cuts to her hands. Ryan Burns was told they were from an injury while working at ‘Margaritaville’ restaurant. At the trial, it was revealed by Siskiyou County, California, authorities that no such restaurant exists, nor ever existed in the area. At the time of the killing, Jodi worked at Casa Ramos in Yreka. On June 5, 2008, West Jordan, Utah, Police Officer Michael Galieti pulled Jodi over while she was in the rented vehicle driving to a meeting with Burns. The front license plate of the car was missing and the rear plate was upside down, she attributed this to some kids at a Starbucks playing a trick on her. Ryan helped Jodi fix the license plate, and Galieti did not cite her for the infraction. Jodi was indicted by a grand jury on a first-degree murder charge on July 9, 2008, and arrested at her grandparents’ home on July 15, 2008. She was extradited to Arizona on September 5, 2008, where she pleaded not guilty on September 11, 2008.

#### **3.4.4 Jury Selection**

The trial commenced on December 10, 2012, in Maricopa County Superior Court before Judge Sherry K. Stephens. During jury selection on December 20, Jodi’s defense attorneys argued that the prosecution was ‘systematically excluding’ women and African-Americans; prosecutor Juan Martinez said that race and sex were irrelevant to his decisions to strike certain jurors. Judge Stephens ruled that the prosecution had shown no bias in the jury selection.

#### **3.4.5 Sensational Trial**

Testimony in the Arias’ trial began in early January 2013, which was aired live to the

public and thus became a media sensation. The following month Jodi took the witness stand in her defense, where she testified for 18 consecutive days. Already infamously known for her different accounts of Travis' murder, Jodi stated that she had killed her ex-boyfriend in an impassioned act of self-defense. Jodi testified that Travis had frequently abused her and that she killed him after he came at her in a fit of rage when she dropped his camera. Jodi also claimed to have suffered memory loss as the result of emotional trauma experienced during the incident, with a psychological expert confirming that she was suffering from post-traumatic stress disorder.

#### **3.4.6 The Conviction**

Jurors reached a unanimous decision in the case on May 8, 2013, Jodi Arias was found guilty of first-degree murder. Five jurors found her guilty of premeditated murder and seven found her guilty of both premeditated and felony murder. The verdict generated elation among Travis Alexander's family members as well as the general public. The jury however was deadlocked when it came to sentencing, and thus a penalty trial began in October 2014 with a new jury. In March 2015, the second jury was unable to agree on Jodi's sentence as well, thus removing the option of the death penalty. The decision on punishment terms was then left to Judge Stephens. On April 13, after expressing remorse for her actions in a statement, Jodi received a life sentence without the possibility of parole. At the moment Jodi is serving her time at the Arizona State Prison Complex-Perryville.

### **3.5 The Participants and the Setting of the O.J. Simpson Case**

#### **3.5.1 The Murders of Nicole Brown Simpson and Ronald Lyle Goldman**

Late at night on June 12, 1994, a man discovered a bloodstained dog in an agitated state on Bundy Drive, West Los Angeles, an affluent suburb of the city. The dog led the man to 875 South Bundy, once the marital home of ex-American footballer Orenthal James (O.J.) Simpson and Nicole Brown Simpson, and now occupied by Nicole and their two young children. The bodies of the two Caucasian adults, one female, one male, lay on the walkway to the house. The female victim was Simpson's ex-wife, 35 year-old Nicole Brown Simpson, murdered as she returned home from dinner, the male, 25 year-old Ronald Lyle Goldman, waiter at the restaurant where Nicole had spent the evening. Both victims had suffered from multiple stab wounds in a brutal attack and left to die outside the Westside condominium, while the Simpson's two young children slept upstairs. Police officers discovered that O.J. Simpson had left town to attend a Hertz convention in Chicago. On hearing of the murders, O.J. returned immediately to Los Angeles, where he was questioned by police officers for almost four hours before being released without charge. Throughout the interview, Simpson maintained his innocence and claimed to know nothing about the murders. The day after Nicole's funeral, June 17, 1994, police investigators enforced a warrant for O.J.'s arrest on suspicion of having carried out the double homicide. O.J. failed to surrender voluntarily and became involved in a 60-mile slow-speed chase across southern California, pursued by dozens of police cars, helicopters and news crews. The vehicle, a white Bronco, was driven by a friend, Allen (Al) Greg Cowlings, who reported that O.J. was suicidal and holding a gun to his head throughout the pursuit. The chase ended peacefully when O.J. returned to his Rockingham mansion, where he surrendered and was arrested. On the evening of June 17, 1994, O.J. Simpson was formally charged with two counts of first-degree

murder, a capital offence under California law. On July 8, 1994, following a six-day preliminary hearing, Judge Kennedy-Powell ruled that there was ‘ample evidence’ to bind Simpson over for trial. He made his first appearance before Judge Lance Ito’s court on July 22 in an arraignment hearing; in response to the two counts of murder, O.J. pleaded “absolutely 100 per cent not guilty”. O.J. Simpson was indicted on two counts of murder and the scene was set for a real-life courtroom drama, which came to be known as “The Trial of the Century” (Cotterill, 2003: 1-2). For a thorough timeline of the O.J. Simpson trial see Appendix B.

### **3.5.2 The People vs. Orenthal James Simpson**

The criminal trial lasted nine months, involved 126 witnesses and cost Los Angeles County an estimated \$9 million. The official court transcripts from the trial amounted to 50,000 pages, or 6.2 million words, of trial talk. In addition to the trial transcripts, the Simpson case generated a large amount of related texts. These include police interviews with the suspect, transcripts of grand jury and preliminary hearings, and pre-trial jury selection questionnaires. For a more systematic and synthetic outline of the number of days and hours, the length and the costs and other significant information regarding the general outcome of the trial see Appendix C.

The trial itself was broadcast live on US cable station Court TV, allowing unprecedented audio-visual access to the courtroom proceedings; more than 50 hours of this coverage were broadcast in the UK and were recorded for analysis. These video-recorded data proved to be invaluable, since they permitted a more three-dimensional analysis of the trial, providing non-verbal and intonational insights. In addition, the recordings served as a means of verifying the integrity and accuracy of the trial transcripts. Finally, post-verdict, a number of jurors wrote and published trial memoirs,

and several members of the jury gave extended interviews to TV and print journalists. Together, this multi-modal and multi-perspectival set of resources constitutes one of the most complete, publicly available records of criminal trial proceedings to date. For the analyst of language and the law, it represents a rich source of data, enabling a rare and privileged glimpse into the extended legal process from crime scene to criminal courtroom and beyond, into the usually secret world of the jury room (Cotterill, 2003: 2). Furthermore, as Lakoff (1996) states the trial has spawned concern beyond its immediate consequences. There has been a good deal of worry in the media (the very media that obsessively covered it in every detail) about the ways in which the presence of cameras in the courtroom may have affected the outcome of the trial (Estrich, 1995; Graham, 1995), the ways in which the reportage of the trial may have affected Americans' perception of the workings of the criminal justice system (Margolick, 1995c; Navarro, 1995; Rimer, 1995); and the ways in which the statements of dismissed jurors may be affecting the Americans' already troubled views of race relations in this country (Chiang, 1995a). At this stage, it is significant to highlight what Hobbs claims. According to Hobbs (2005) although courts in the United States are open to spectators, including members of the media, the question of whether to allow cameras in courtrooms has been debated for decades. Proponents argue that the right of public access to the courts, as well as the First Amendment's guarantee of freedom of the press, mandate that cameras should be allowed, while opponents cite the "media circuses" which resulted from unlimited press coverage of cases such as the Lindburgh baby kidnapping case and the O. J. Simpson trial, which raised a host of concerns relative to the sound administration of justice, including the risk of unfair prejudice to the defendant in the former case, and, in the latter, the danger that the presence of cameras may cause lawyers, and even the trial judge, to "play to the media" rather than



scrupulously performing their legitimate roles. The federal courts prohibit the photographing or videotaping of proceedings, while state courts generally address the issue on a case-by-case basis (Hobbs, 2005: 113).

### **3.5.3 The Jury**

By November 3, an initial jury of twelve people had been selected. The jury consisted of 8 Blacks, 2 Hispanics, 1 half-Caucasian and half Native American, and 1 Caucasian female. Fifteen alternates were selected over the next few weeks. However, the final jury composition was formed. The selection of the jury was divided by race with 9 Blacks, 1 Hispanic, 2 Whites, by sex 10 women, 2 men and by education 2 college graduates, 9 high school graduates, 1 without diploma. On December 4, the jury was assembled and given cautionary instructions by Judge Ito. They were told that the trial would begin on January 4, and that they could expect to be sequestered for the duration of the several-month trial.

### **3.5.4 Jury Selection**

Although it is normal practice to file a case in the district where a crime occurs, the Simpson case would not be heard in Santa Monica Superior Court, which had jurisdiction over Brentwood. Prosecutor Garcetti mistakenly believed that once the prosecution had begun to present a case before the grand jury, which met in the downtown Los Angeles Criminal Court Building, the criminal case had to be continued downtown. Months later, it would become obvious that the problem with conducting Los Angeles County Superior Court Case BA#097211, *The People v. Orenthal James Simpson*, in downtown Los Angeles with a predominantly African-American jury would prove so suspicious of the official version of events that it would overlook the

evidence against O.J. Simpson. Racial perceptions could be hardly ignored in any case involving an African-American defendant and the LAPD. Like most American cities, Los Angeles had a long history of racial tensions and police violence against African-Americans (Gordon-Reed, 2002: 219). Had the case been filed in Santa Monica, the Simpson jury would have been mostly white instead of, as was the case, mostly African-American. With poll data showing that most whites believed O.J. Simpson to be guilty and most blacks believing him to be innocent, the decision to file the case in Santa Monica may have been the biggest mistake the prosecution made. In fact, Vincent Bugliosi, the famous prosecutor in the Charles Manson case, said the mistake “dwarfed anything the defense did”.

Jury selection started on September 24, 1994, in Judge Ito’s courtroom. Present that day were 250 potential members of the jury - for a list of names of the jurors who voted, remaining alternates and dismissed jurors (see Appendix D) - the judge, O.J. Simpson, and lawyers for both sides. Participating for the defense in the jury selection process were attorneys Robert Shapiro and Johnnie Cochran as well as highly respected jury consultant Jo-Ellan Dimitrius. The prosecution was represented by Marcia Clark, Christopher Darden, Bill Hodgman and jury consultant Don Vinson. Judge Ito explained procedures for jury instructions (see Appendix E) to the potential jury members and warned them that the trial might last several months. Judge Ito told jurors they must complete a 79-page, 294-question questionnaire including questions proposed by both the prosecution and defense – a sample questionnaire can be seen in Appendix F. In addition, they were to complete a one-page ‘hardship’ questionnaire designed to determine jurors who could be initially excluded from the selection process. Potential jurors complained about the lengthy questionnaire that took about four hours for many people to complete. They were also overheard muttering complaints about the personal

nature of many of the questions - questions about their beliefs concerning the causes of domestic violence, about their feelings concerning interracial marriages, about whether they “ever provided a urine sample to be analyzed for any purpose”. Jury selection continued for two months. Judge Ito excluded from consideration potential jurors who violated his strict rules relating to exposure to the media. A week later Judge Ito had to deal with another controversy, brought on by prosecutor Marcia Clark who had publicly complained that potential jurors were ‘lying’ to get on the Simpson jury and that they all should be given lie-detector tests. During the voir dire process, each potential juror took a seat at a conference table. Also seated at the table were lawyers for both sides and O.J. Simpson, who was sitting not more than six feet from the people that might soon judge him. The object of voir dire, from each side’s perspective, is not to get a fair jury, but rather a prejudiced one - one prejudiced in their favor. In theory, what results is a fair jury, one from which both sides have excluded potential jurors that are least likely to be sympathetic to their cause. Jurors who give answers that indicate that they have prejudged the case can be challenged for cause; others can be excluded using a limited number of peremptory challenges. Attorneys can exercise their peremptory challenges for almost any reason, body language, appearance, dissatisfaction with answers, but not for reasons of race or sex. Every challenge by the prosecution of a potential black juror caused Johnnie Cochran to approach the bench and suggest that the challenge may have been racially motivated. This tactic may have worked to dissuade the prosecution from challenging some black jurors. It was no secret that the prosecution wanted white jurors and the defense wanted black jurors. Despite defense survey data suggesting that women generally made better defense jurors than men, Prosecutor Clark willingly accepted a disproportionate number of women jurors. She believed wrongly, as it turned out, that female jurors responded well to her courtroom

style. The defense's simulated jury tests had indicated that black females disliked Nicole Brown Simpson - believing that she was irresponsibly milking money from a famous black man - and that they would also likely be hostile to a hard-edged female prosecutor such as Marcia Clark. The defense poured great effort into the jury selection process. Consultant Dimitrius coordinated massive data on each of the jury finalists, including their answers to the questionnaire, responses and body language during voir dire, and other data the defense had managed to collect. This data was put into a computer and each juror ranked according to their likely sympathy to the defense. At this point, it is fundamental to analyze and examine the stages that come before closing arguments. What follows is a sub-division of the phases of the trial each including a list of steps that should be respected by the lawyers.

### **3.6 The Stages preceding the Closing Argument**

For a better understanding of what happens in an adversarial trial a thorough overview of the various stages, that precede the closing arguments is presented in the following sections.

#### **3.6.1 The Opening Statement**

Opening statements represent the lawyer's first chance to make an impression on the judge and jury. The prosecution and then the defense make opening statements to the judge or jury. These statements provide an outline of the case that each side expects to prove. Since neither side wants to seem irrational to the jury, the attorneys are careful to promise only what they think they can deliver. In some cases, the defense attorney reserves opening statement until the beginning of the defense case. The lawyer may even choose not to give an opening statement, perhaps to emphasize to the jury that it's

the prosecution's burden to do the convincing.

In this phase, there are some steps that the lawyer should keep in mind in order to better illustrate the case. The steps consist in telling the court:

- what the case is about, i.e., setting the scene by having a theme and telling a story;
- what the witnesses will say, never tell the judge or jurors anything that they will hear from a witness;
- what the weaknesses of the opposing side are;
- what the key theory is, both prosecutors and defense lawyers should explain why they should win and not the opposing side;
- explain the theory of the case: it must be logical, fit the legal requirements and be simple so that anyone can understand it;
- what the evidence will prove;
- never state personal opinions;
- why and how the court should rule in their favour;
- remind jurors and judge that they will see and hear from him or her again at the end of the case when he or she will give the closing argument.

(The John Marshall Law School)

To conclude, the prosecution has the burden of proving the defendant's guilt beyond a reasonable doubt, he or she has the role of convincing the jury that the defendant committed the offense. On the other hand, the defendant offers evidence to rebut the prosecution's evidence. Although the defendant has no burden of proof, and is presumed to be innocent until proven otherwise, he or she may introduce evidence either to weaken the prosecution's case or to help establish the defendant's innocence.

### **3.6.2 Direct Examination**

Prosecution case-in-chief. The prosecution presents its main case through direct examination of prosecution witnesses. Direct examination is the judge's opportunity to experience what happened in the facts of this case through his or her client's perspective. Since the trial lawyer is working with a witness rehearsed by the lawyer and who ordinarily agrees with the lawyer's goals (Stritmatter, 2009), it is essential to:

- only ask who, what, when, where, how, describe, and explain questions;
- let the witness tell the story - the Witness is the star, while the Attorney is the producer, who provides the necessary tools and questions for the star;
- no leading questions can be asked - leading questions are questions that suggest to the witness the answer to be given or prompts the answer without regard to witnesses actual memory;
- keep it simple;
- organize it logically to establish a point;
- no personal information, no scene description and no action description.

(The John Marshall Law School)

### **3.6.3 Cross-examination**

The objective of cross-examination is to test the witness's testimony in order to discredit the case for the prosecution; in this phase leading questions are permitted and answers may be contradicted by later evidence (Bartley and Brahe, 1986). Consequently, the purpose of cross-examination is to get the witness to admit to those facts that are helpful to the lawyer's case. In this phase the attorney:

- is the director and the star, he or she tells the story and how it should be told;
- finds holes in the witness's story;

- exposes any bias the witness might have (mother testifying for her son, close friend testifying for his other friend);
- never ask open ended questions;
- never ask anything that does not require just a YES or a NO;
- never ask open ended questions that require the witness to explain;
- never ask questions that go outside the scope of questions asked in the direct examination;
- only leading questions are permitted;
- organize questions logically to establish a point.

(The John Marshall Law School)

In fact, good cross-examination is the work of an experienced trial lawyer skilled in the methods of witness examination. There are facts to be introduced, points to be made, theories to be supported, and opponent theories to be undermined. Cross-examination has firmly established rules, guidelines, identifiable techniques, and definable methods, all acting to increase the cross-examiner's ability to prevail. It is also considered an art, an experience more than anything else, which helps develop the artistic components of cross-examination (Stritmatter, 2009).

#### **3.6.4 The Closing Argument**

The closing argument is the lawyer's last impression to the jury; in this phase he or she retells the story using the evidence and testimony presented at trial to support his or her case. During the closing argument the lawyer should:

- connect the Opening Statement theme and Closing Statement theme together;
- tell the judge and jurors what they heard from witnesses and what they observed;
- only discuss the facts of what was presented;

- the prosecutor or state should discuss that he or she has established the burden by going through the testimony and evidence that has been admitted;
- the defence should emphasize the fact that the State did not meet their burden by missing testimony or evidence;
- argue the theory of the case;
- avoid personal opinions;
- use rhetorical questions, e.g., “Why would the defendant have acted this way but for the fact that he was guilty?”;
- argue the strengths;
- deal with the weaknesses and force opponent to argue them;
- conclude.

(The John Marshall Law School)

At this point, it could be useful to distinguish between the prosecution and the defenses’ closing arguments. The prosecution makes its closing argument, summarizing the evidence as the prosecution sees it and explaining why the jury should render a guilty verdict. The defense explains why the jury should render a not guilty verdict - or at least a guilty verdict only on a lesser charge. It is essential to emphasize that the accused is innocent until proven guilty, so it is not necessarily the task of the defense to replace the prosecution’s story with another version, instead, they merely have to discredit that story. This is a fundamental contrast and centres on the jury instructions to only deliver a verdict of guilty in absence of any reasonable doubt. Hence, it may be easier for the defense to show the case against as unlikely or incoherent, than to replace it with an alternative that might suffer the same type of deficiencies - i.e., if the jury is presented two stories to choose from, they might chose the better story, instead of only judging the merits of the case (Luchjenbroers, 1991). To conclude the story presented by the



prosecution and an alternate version offered by the defense are the fundamental characteristics linked to the adversarial trial by jury. In fact, the prosecutor's task is to present to the jury a most plausible scenario, i.e., a narrative in which all the known facts ideally fit together to form a seamless whole in which the jury can believe, and which identifies the defendant as the only person who could have committed the crime, therefore the prosecution story should be considered as the only way in which the crime could have taken place, i.e., beyond reasonable doubt. On the other hand, the defense's task is to unravel and cast doubt on the prosecution's narrative. A good defense attorney will present an alternate, more plausible, scenario, exonerating his client. Now that the reader has a better idea of how an adversarial trial is organised it is essential to explain what corpus will be analyzed and investigated in the following chapter.

### **3.7 The Corpus of the Closing Arguments**

The corpus is formed by the closing arguments of prosecutors and defense attorneys of two criminal cases. Specifically,

- (1) Juan Martinez, prosecutor in the Jodi Ann Arias case and Kirk Nurmi, defense attorney;
- (2) Marcia Clark, Deputy DA for Los Angeles County and Christopher Darden, Deputy DA in the O.J. Simpson case and Johnnie Cochran Jr., lead defense attorney.

As previously mentioned in chapter two, specialised corpora constitute a rather small corpus if compared to Standard English. For this reason, the material that is under examination is considered *specific* because it is spoken by a particular discourse community and may be considered difficult to understand by those people that do not belong to that community. In fact, it is meant to be *representative* for a particular kind

of speaker, register, variety, or language as a whole, which means that the sampling scheme of the corpus represents the variability of the population it is meant to represent. Furthermore, consistent with Sinclair, “language should be studied in naturally occurring contexts of use, and should have at its centre the analysis of meaning” (Sinclair, 2004a: 2).

The data, i.e., the transcripts of the closing arguments, have been retrieved and downloaded from the Internet, saved, named and stored. The websites from which the material was downloaded were: ‘*Crime and Courts News*’ for the Arias case, and ‘*Famous American Trials*’ for the Simpson case. Both trials are supplemented by many visuals used during the trial, for instance, photographs or images, which are significant in better illustrating the cases. However, for the purpose of the study only the transcripts of the closing arguments are investigated and discussed. It is crucial to mention that the transcripts downloaded from the Internet unfortunately were incomplete. Therefore, in order to obtain a faithful transcription, it was necessary to first download the files containing only the closings. This was achieved with the help of the software package JDownloader 2 BETA. JDownloader 2 BETA is a free, open-source download management tool. Therefore, the first step was to capture the files, by going on to the tool bar and then downloading them. The downloading process could take from several minutes to hours depending on file size. The next step was to verify whether or not the videos included subtitles. Unfortunately, most of the videos did not include subtitles. However, if subtitles were included they were, for the most part, incorrect, but at least they helped in making inaudible words understandable at times. It is important to point out that this process of downloading and validating the files was very time consuming. The last step was then listening and manually transcribing all the missing parts. The data was then stored in an electronic format and saved both in doc. format and in .txt

format. The former format served as a copy to go back to whenever necessary for personal reference and then was employed as a copy for the various appendices whereas, the latter format was necessary in order to use the software *AntConc 3.4.3m* (Anthony, 2014), which requires this type of format to be able to process the data. In fact, the software allows the data to be processed through concordances, word lists and frequency lists. The tool is considered to be useful in a qualitative-based study (Stubbs 1996, 2001), but also because it may be beneficial in providing other information regarding certain patterns, frequencies and tendencies. Although, the idea of combining different approaches may not seem appropriate, it may however lead to a fruitful methodological synergy (Baker *et al.*, 2008). However, it is important to underline that a drawback of the software is that once the files are uploaded, the software will not allow the user to save the files. Therefore, every time that the programme is closed the files will not be saved and the user will have to upload them whenever necessary. Nevertheless, the beneficial aspect is that this software programme is free and user-friendly. Although the software chosen may have had this pitfall, it is essential to highlight that the Internet offers a vast choice of software and material that may be downloaded freely. Subsequently, the transcriptions were stored as two different corpora and each corpora was divided into two sub corpora, specifically the *Jodi Ann Arias sub corpus* and the *O.J. Simpson sub corpus*. Both sub corpuses include files containing the prosecutor's and the defense's closing arguments. The full and final versions of the transcripts can be seen in the appendix. Specifically, as far as concerns the Jodi Ann Arias case, Appendix G is Juan Martinez's closing, while Appendix I is Kirk Nurmi's closing. On the other hand, for the O.J. Simpson case Appendix J is Marcia Clark's closing, Appendix K is Christopher Darden's closing, Appendix L is Johnnie Cochran's closing and Appendix M is Berry Scheck's closing on physical

evidence issues. In both cases the transcripts were compared to the videos that were uploaded on YouTube because it was necessary to have the most accurate transcription possible. However, from a deeper analysis, it was observed that the transcripts found on the official websites had not been faithfully transcribed; therefore it was necessary to integrate with the numerous missing parts. The comparison and integration of the missing parts was very time consuming, but crucial in order to have a truthful picture of the closing arguments. The necessary time employed to compare and compile the missing information for the Jodi Ann Arias case was a total of 161 hours, an average of 8 hours a day, and a total of 22 days analyzing videos and transcribing the missing parts. The hours of the YouTube videos are:

- Prosecution 4:00:02 total hours
- Defense 3:25:66 total hours

The defense videos consisted of three different videos on YouTube and specifically:

- part one 1:11:05 total hours
- part two 1:05:27 total hours
- part three 1:09:34 total hours

The Jodi Ann Arias corpus was entirely analyzed manually and the full size of the corpus amounts to a total of 55166 running words. In specific a total of 31814 word tokens for prosecutor Juan Martinez's closing and a total of 23352 word tokens for defense Kirk Nurmi's closing. While, it was observed that there was a total of 4466 word types. In specific a total of 2333 hits for prosecutor Juan Martinez's closing and a total of 2133 hits for defense Kirk Nurmi's closing.

For what concerns the O.J. Simpson case the necessary time employed to compare and compile the missing information was a total of 262 hours, an average of 8 hours a day,

and a total of 53 days analyzing videos and transcribing the missing parts. Regarding the O.J. Simpson trial, it is important to specify that on YouTube it is possible to find various videos of the trial. For the purpose of the present study, five videos were downloaded and examined. Below is a list that subdivides the videos into prosecution and defense closings. The division also considers all videos separately regarding the timing of each closing.

The closing argument hours of the YouTube videos are:

- Prosecution 6:08:32 total hours
- Defense 7:88:36 total hours

It is important to specify that the prosecution video included both Clark and Darden's closings. However, it is possible to give the exact timing by considering them separately. Specifically:

- Clark 4:17:56 total hours
- Darden 1:90:76 total hours

Also the defence videos consisted of four different videos on YouTube of which three regarding Cochran's closing and one regarding Scheck's discussion of the DNA evidence, and specifically:

Cochran:

- part one 5:23:19 total hours
- part two 1:03:49 total hours
- part three 57:28 total hours

Scheck:

- DNA 1:04:40 total hours

Also the O.J. Simpson corpus was entirely analyzed manually and the full size of the corpus amounts to a total of 146650 running words. In specific a total of 35958 word tokens for prosecutor Marcia Clark's closing, a total of 21201 word tokens for prosecutor Christopher Darden's closing, a total of 60947 word tokens for defense Johnnie Cochran's closing and a total of 28544 word tokens for Berry Scheck's closing. While, it was observed that there was a total of 10575 word types. In specific a total of 2665 hits for prosecutor Marcia Clark's closing, a total of 1904 hits for prosecutor Christopher Darden's closing, a total of 3641 hits for defense Johnnie Cochran's closing and a total of 2365 hits for Berry Scheck's closing. At this stage it is also important to recall the reader's attention to the fact that the act of transcribing the missing parts of all the closing arguments was a very time consuming process. Indeed, if we were to consider the total of hours and number of days employed to transcribe both trials it would amount to a total of 423 hours and 75 days.

### **3.8 Methods and Tools**

#### **3.8.1 Corpus-based analysis**

According to Biber *et al.*, corpus-based research depends on both quantitative and qualitative techniques, because "association patterns represent quantitative relations, measuring the extent to which features and variants are associated with contextual factors. However, functional (qualitative) interpretation is also an essential step in any corpus-based analysis" (Biber *et al.*, 1998: 4). For this reason, on the one hand the data collected will be analyzed quantitatively by using the computer software tool AntConc. On the other hand, the data will also be analyzed qualitatively based on the theoretical framework of critical discourse analysis by examining and investigating the texts according to the Linguistic Category Model (LCM), the Metaphor Identification

Procedure (MIP) and Monroe's Motivated Sequence. Identifying specific uses of adjectives, metaphors, metaphor-related words and lexical expressions will help understand how trial lawyers employ specific language in order to support their case. Similarly, the use of repetition will be investigated and a smaller section focuses on the use of two particular lexical expressions, i.e., *common sense* and *reasonable doubt* by prosecution and defense.

### **3.8.2 AntConc as a Research Tool**

AntConc serves to highlight the frequency of the selected terms within the chosen documents. AntConc is a free and highly versatile concordancer that provides support for many advanced concordancing features, as well as additional functionality. A particular feature of this programme is that AntConc can analyze files with .txt or .doc extensions, but it cannot elaborate .pdf files directly. For this reason, the files had to be transformed and saved as .txt or .doc.

AntConc, as with other types of software packages, processes data from a corpus in three ways, showing:

- (1) frequency;
- (2) phraseology;
- (3) collocation. (Hunston: 2002: 3)

For a better understanding of how the software runs it is necessary to observe the three above-mentioned ways separately.

#### (1) Frequency

Since language consists of thousands of words and patterns, certain lexical and grammatical choices are preferred over others in some situations. As Stubbs states "Choice of words expresses an ideological position" (Stubbs, 1996: 107).

Therefore, it is significant to study with what frequency certain words are employed within specific contexts. In fact, words in a corpus can be arranged in order of their frequency, which is useful for identifying possible differences between the corpora that then can be studied in more detail. Moreover, frequency conveys not only what is frequent but also what is typical in a given data set (saliency) in order to direct the researcher's attention to particular items in the corpus.

## (2) Phraseology

Phraseology may be observed through the use of concordances. A corpus may be accessed also through a concordance program; concordance lines bring together many instances of a word or phrase, allowing the user to observe regularities in use that tend to remain unobserved when the same words or phrases are met in their normal contexts.

## (3) Collocation

Collocation is the way in which words co-occur in natural text in statistically significant ways. Collocations are not words which we, in some sense, 'put together', they co-occur naturally (Lewis, 2000: 132). Firth defined collocation as "you shall know a word the company it keeps" and "collocation as actual words in habitual company" (Firth, 1957), or as Stubbs defines it "the habitual co-occurrence of words" (Stubbs, 1995b: 245).

The calculation of collocation is the statistical tendency of words to co-occur. A list of the collocates of a given word can yield similar information to that provided by concordance lines, with the difference that more information can be processed more



accurately by statistical operations of the computer than a human observer could be able to deal with.

### **3.8.3 Semantic Prosody**

The use of computerized software is beneficial not only to observe frequency, phraseology and collocation but it may also be used to study semantic prosodies (Louw, 1993). Semantic prosody is “a phenomenon that has been revealed computationally, and whose extent and development can only be properly traced by computational methods” (Louw, 1993: 159). In fact, Adolphs and Carter state that the study on semantic prosody “has only become possible with the advent of large corpora and suitable software” (Adolphs and Carter, 2002: 7). However, Hunston claims, “semantic prosody can be observed only by looking at a large number of instances of a word or phrase, because it relies on the typical use of a word or phrase” (Hunston, 2002: 142). Similarly, Partington states that semantic prosody is “reserved for instances where an item shows a preference to co-occur with items that can be described as bad, unfavourable or unpleasant, or as good, favourable or pleasant” (Partington, 2004: 149). Nevertheless, Sinclair points out that semantic prosodies are “evaluative or attitudinal and are used to express the speaker’s approval (good prosody) or disapproval (bad prosody) of whatever topic is momentarily the object of discourse” (Sinclair, 1996: 87).

### **3.8.4 The Linguistic Category Model (LCM)**

As previously mentioned the data gathered will be analyzed through the studies of Semin and Fiedler (1988) who have designed The Linguistic Category Model (LCM). LCM is a model about the psychological properties of interpersonal language (Semin, 1998; Semin and Fiedler, 1991, 1992a; Semin and Marsman, 1994) which is used to

classify verbs and adjectives employed in the interpersonal domain to represent actions and states between people, as well as their more enduring characteristics or traits. According to Coenen *et al.*, (2006) social psychological processes are regarded as taking place in a communication context. In communication, social behaviour or action entails messages (speech acts) that are composed by means of linguistic tools. The psychological processes of the transmitter determine the shape of this type of action. The purpose of the message is to shape the cognitive representation of an addressee or recipient thereby influencing the recipient's psychological process or response. The psychological properties are important for three reasons:

- (1) the choice of particular linguistic tools over others in the composition of a message allows one to specify why a message (a speech act) is shaped;
- (2) how a message is composed indicates how the transmitter wants to structure a recipient's representation of the communication: the message therefore gives information about the goals that the transmitter is pursuing;
- (3) it is possible to specify what psychological impact the message is likely to have upon a recipient on the basis of how the message is composed.

(Coenen *et al.*, 2006: 4)

Therefore, the Linguistic Category Model helps understand social behaviour through the use of language, which carries communication and makes social interaction possible. This focus constitutes a shift, in terms of methodological commitment, from the individual to the social. Semin and Fiedler's (1991) approach to the interplay between language and social cognition regards this relationship as a dialectical one, in which language as the product of these practices, in turn, exercises and influences on social cognitive processes. Semin and Fiedler state that "it is within this orientation that we can best outline three ways of approaching language within which the different

emphases of our work can be located” (Semin and Fiedler, 1991: 2), namely language as a structure, a complex skill, and a practical activity (Riceour, 1955). Language can first of all be considered as a *structure*, or seen as an abstract property of a community of speakers. Thus, it can be conceived of as an abstract set of rules which are ‘virtual and outside of time’ (Riceour, 1955). Obviously, their application is not mechanical, but members of a language community use them generatively. Another important feature of this view is that language as an institution is neither the intended product of any one subject nor orientated towards another. Language is obviously produced by individuals, but individuals produce language as historically located agents and not under conditions of their own choosing. Viewed in this way, language cannot be regarded as being the property of any particular speaker, in other words it is ‘without subject’ (Semin and Fiedler, 1991).

#### **3.8.4.1 The Classificatory Model and its Criteria**

The theoretical framework advanced by the Linguistic Category Model (LCM) is motivated by a desire to advance a general framework of the informational constraints to be found in interpersonal terms rather than focusing on particular semantic properties. In the LCM, a distinction is made between four different verb categories and adjectives. Figure 2 below illustrates the model so that the reader may have a clearer idea of the characteristics that a linguistic term must have and its classification criteria.

Category	Examples	Characteristics	Classification Criteria
Descriptive action verbs (DAV)	Call Meet Kick Kiss	Reference to single behavioural event; reference to specific object and situation; context essential for sentence comprehension; objective description of observable events.	Refer to one particular activity and to a physically invariant feature of the action; action has clear beginning and end; in general do not have positive or negative semantic valence.
Interpretative action verbs (IAV)	Cheat Imitate Help Inhibit	Reference to single behavioural event; reference to specific object and situation; autonomous sentence comprehension; interpretation beyond description.	Refer to general class of behaviours; have defined action with a beginning and end; have positive and negative semantic valence.
State action verbs (SAV)	Surprise Amaze Anger Excite	As IAV, no reference to concrete action frames but to states evoked in object of sentence by unspecified action.	As with IAV, except that the verb expresses emotional consequence of action rather than referring to action as such.
State verbs (SV)	Admire Hate Abhor Like	Enduring states, abstracted from single events; reference to social object, but not situation; no context reference preserved; interpretation beyond mere description.	Refer to mental and emotional states; no clear definition of beginning and end; do not readily take progressive forms; not freely used in imperatives.
Adjectives (ADJ)	Honest Impulsive Reliable Helpful	Highly abstract person disposition; no object or situation reference; no context reference; highly interpretative, detached from specific behaviours.	

Figure 2 The classification of linguistic terms in the interpersonal domain and their classification criteria (Semin and Fiedler, 1991: 5)

According to Semin and Fiedler (1991) the five categories are described as follows:

- (1) Descriptive action verbs (DAV – kick, kiss, push) refer to an action with a clear beginning and end, and maintain a direct reference to an invariant

feature of the behaviour in question. DAVs do not have positive or negative semantic valence and their interpretation is highly context bound;

- (2) Interpretative action verbs (IAV – help, cheat, imitate), have a distinctive feature i.e., they act as a frame for diverse behaviours. However, the behaviours have distinct beginnings and ends as well as a clear positive or negative semantic valence;
- (3) State action verbs (SAV), essentially these are action verbs with one difference: they refer to an implicit action frame by the sentence subject that leads to the experience of a state in the object of a sentence (e.g. surprise, bore, amaze, thrill);
- (4) State verbs (SV) refer to mental or emotional states. In contrast with the other action verbs (DAV or IAV), these do not take the progressive form (e.g. “He is believing in Santa Clause”) and are not freely used in imperatives;
- (5) Adjectives (ADJ), the distinctive feature of these ADJs is whether they have a morphological origin in a verb stem (i.e., DAV-DAVADJ, talk, talkative; IAV-IAVADJ, help-helpful; SAV-SAVADJ, repulse-repulsive; SV-SVADJ, like-likeable) or are genuine adjectives (ADJ, extraverted, friendly, etc.).

(Semin and Fiedler, 1991: 6-7)

### **3.8.5 The Metaphor Identification Procedure (MIP)**

The study of metaphors is essential because they represent a persuasive strategy adopted by trial lawyers. The metaphors identified in the study will be analyzed by using the Metaphor Identification Procedure (MIP), which aims to offer an instrument for capturing the bulk of the linguistic expressions of metaphor. It is important to highlight

that the lexical units identified as metaphors or as metaphor-related words will be studied by employing two distinct dictionaries. The necessity to employ a dictionary or even two dictionaries is linked to the fact that the MIP calls for a corpus-based dictionary and the Pragglejaz Group suggests the use of the Macmillan English Dictionary for the general definition of a word. The subsequent use of an etymology dictionary is suggested when a doubt exists between the contextual and basic meanings of a word, and it is necessary to check if one of the two is historically prior.

In order to identify metaphors the Pragglejaz Group claims that it is necessary to:

- (1) Read the entire text/discourse to establish a general understanding of the meaning.
- (2) Determine the lexical units in the text-discourse.
- (3) (a) For each lexical unit in the text, establish its meaning in context, that is, how it applies to an entity, relation or attribute in the situation evoked by the text (contextual meaning). Take into account what comes before and after the lexical unit.
- (b) For each lexical unit, determine if it has a more basic contemporary meaning in other contexts than the one in the given context. For our purposes meanings tend to be:
  - more concrete; what they evoke is easier to imagine, see, hear, feel, smell, and taste;
  - related to bodily action;
  - more precise (as opposed to vague);
  - historically older.

Basic meanings are not necessarily the most frequent meanings of the lexical unit.

(c) If the lexical unit has a more basic current-contemporary meaning in other contexts than the given context, decide whether the contextual meaning contrasts with the basic meaning but can be understood in comparison with it.

(4) If yes, mark the lexical unit as metaphorical.

(Pragglejaz Group, 2007: 3)

The rationale behind the Pragglejaz Group's procedure is that metaphorical meaning in usage is indirect, arising out of a contrast between the contextual meaning of a lexical unit and its more basic meaning, the latter being absent from the actual context but observable in others (Steen *et al.*, 2010: 6). Indeed, it is fundamental to highlight that the Pragglejaz Group is not concerned with identifying metaphorical utterances or with finding conventional linguistic metaphors that may arise from postulated conceptual metaphors. Furthermore, they do not claim that their identification procedure reflects what ordinary listeners or readers do when they judge that some word is used metaphorically. Finally, they emphasize that any decision not to mark a word as metaphorical in context does not imply the word is being used literally (i.e., the word may express metonymic, hyperbolic or some other type of figurative meaning). Their general purpose is only to provide a research tool that is relatively simple to use and flexible for adaptation by scholars interested in the metaphorical content of realistic discourse (Pragglejaz Group, 2007). It is important to emphasize that other linguists, such as Cameron (2003) and Charteris-Black (2004), dealing with metaphor in usage have also made a methodological separation between identifying the linguistic forms of metaphor as opposed to specifying its conceptual structures. In fact, Charteris-Black (2004) explains that metaphor identification is concerned with ideational meaning – that is, identifying whether they are present in a text and establishing whether there is a tension between a literal source domain and a metaphoric target domain. Metaphor

interpretation is concerned with interpersonal meaning – that is, identifying the type of social relations that are constructed through them. Metaphor explanation is concerned with textual meaning – that is, the way that metaphors are interrelated and become coherent with reference to the situation in which they occur (Charteris-Black, 2004: 34-35).

### **3.8.6 Monroe's Motivated Sequence**

The Motivated Sequence, developed by Alan Monroe, is one of the most widely used formulas for persuasive speech (McCroskey, 1968; Ehninger *et al.*, 1978; Sprague and Stuart, 2000; Waicukauski *et al.*, 2001). Monroe's Motivated Sequence is a modified problem-solution format. This psychologically based format echoes and anticipates the mental stages through which listeners progress as they hear a speech. As Monroe claims "By following the normal processes of human thinking it motivates an audience to respond affirmatively to the speaker's purpose" (Ehninger *et al.*, 1978: 143). Therefore, before people act, they must be motivated to do what they know they should do. Consequently, it is important to provide emotional as well as logical reasons. Monroe's pattern includes the word *motivated*, because it has several built-in steps to increase motivational appeals. It is not necessary to use each element of the pattern, but Monroe suggests various ways to develop the points based on what is needed. The five steps are:

(1) Attention Step: As with any other speech, you begin by gaining the audience's attention and drawing it up to your topic.

(2) Need Step: This step is similar to the problem part of a problem-solution speech.

Monroe suggests four elements:

(a) *Statement* – tell the nature of the problem;

(b) *Illustration* – give a relevant detailed example or examples;



- (c) *Ramifications* – provide additional support such as statistics or testimony that show the extent of the problem; and
  - (d) *Pointing* – show the direct relationship between the audience and the problem.
- (3) Satisfaction Step: After you demonstrate the problem or need, show its extent and its effects on the audience, and then propose a solution that will satisfy the need. This step can have as many as five parts:
- (a) *Statement* – briefly state the attitude, belief, or action you want the audience to adopt;
  - (b) *Explanation* – make your proposal understandable (visual aids may help at this point);
  - (c) *Theoretical demonstration* – show the logical connection between the need and its satisfaction;
  - (d) *Practicality* – use facts, figures and testimony to show that the proposal has worked effectively or that the belief has been proved correct; and
  - (e) *Meeting objectives* – show that your proposal can overcome your listeners’ potential objections.
- (4) Visualization Step: This step is unique. Here, you ask listeners to imagine the future, both if they enact the proposal and if they fail to do so.
- (a) *Positive* – describe a positive future if your plan is put into action. Create a realistic scenario showing good things your solution provides. Appeal to emotions such as safety needs, pride, and pleasure.
  - (b) *Negative* - have listeners imagine themselves in an unpleasant situation if they fail to put your solution into effect.

(c) *Contrast* – compare the negative results of not enacting your plan with the positive results your plan will produce.

5) Action: In the final step, call for a specific action:

(a) name the specific, overt action, attitude, or belief you are advocating;

(b) state your personal intention to act; and

(c) end with impact.

(Jaffe, 2007: 321-322)

Moreover, Monroe states,

Although individuals may vary to some extent, research has shown that most people seek consistency or balance among their cognitions. When confronted with a problem that disturbs their normal orientation, they look for a solution; when they feel a want or need, they search for a way to satisfy it. In short, when anything throws them into a condition of disorganization or dissonance, they are motivated to adjust their cognitions or values, or to alter their behavior so as to achieve a new state of balance (Monroe, 1943: 42).

In order to explore the identified persuasive strategies the theoretical framework and methodological approach appropriate to the study are Discourse Analysis and Critical Discourse Analysis.

### **3.9 Limitations**

Before discussing the data analysis in chapter four it is worth pointing out some limitations concerning the study. First, having investigated and examined only the closing arguments of two criminal cases does not prove generalizability among a larger corpus. Probably investigating other cases would have given greater depth to the research. Second, at times it was difficult to fully comprehend some words due to sound quality. In fact, it was problematic to understand words, either because the lawyer

was speaking too fast or he or she moved away from the microphones that were positioned in specific points of the courtroom. As a result this could have compromised the accuracy of some words. Furthermore, in order to achieve a thorough transcription of the videos examined it took a lot of effort to manually transcribe the videos because it was necessary to watch and listen to them numerous times. As a result, using playback, to view and review the closing arguments, did not however guarantee that every little detail was seized. Third, having decided to examine only the closing arguments may have represented a limit because it precluded the knowledge of other aspects correlated to the adversarial system. In fact, there are many factors other than the structure of closing arguments that influence the outcome of the final verdict in a case. Therefore, if these aspects had been investigated a layperson may have benefited of greater awareness and/or understanding of the adversarial system. Forth, since the purpose of the study was to analyze persuasive strategies employed by trial lawyers it is acknowledged that only some of the many persuasive techniques or strategies were investigated and discussed. Indeed, aspects such as nonverbal communication, body language or overall deliverance of the closing arguments have not been taken into consideration. Nevertheless, it is important to emphasize that all the limitations may represent cues for further research.

## **Chapter Four**

### **Results and Discussion of the Data**

#### **4.1 Introduction**

Lawyers should be very good effective speakers because the words that they choose to use will have a significant impact on their listeners, therefore a wrong choice of words could be a large setback (Kennedy, 2007). Consequently, in order to understand social behaviour it is fundamental to comprehend that language is a tool that carries communication, thus making social interaction possible constituting a shift in terms of methodological commitment from the individual to the social (Semin and Fiedler, 1991). Semin and Fiedler (1991) explain that lawyers speak of ‘the social’ when referring to language, because language is not an individual but a social product. It is essential to emphasize that the persuasive strategies employed by trial lawyers refer to a pattern of speech organisation employed in order to increase the effectiveness of communication. Nevertheless, from a very different perspective, probably from a more theatrical point of view lawyers are considered to be similar to magicians. In fact, according to Corcos (2011) lawyers are similar to magicians as they both perform a script, before an audience, in an effort to present a particular view of a set of circumstances. Magical words are used by both of them and although they may not realize it, lawyers, particularly defense lawyers, may imitate and adopt what are in essence magician’s skills, such as misdirection and/or persuade juries of the validity of their arguments. In such ways, attorneys redirect the attention of fact finders, just as magicians redirect the attention of their audiences. Lawyers are interested in telling stories and creating illusions, just as magicians tell stories and create illusions. Therefore, both trial lawyers and magicians create a cohesive whole, for an extended

period. When the trial is concluded, a lawyer's work is over, just as the magician's performance concludes. Similarly, Baird states,

Everyone knows that magicians misdirect audiences, that they visually and verbally disguise their dirty work [...] Lawyers also engage in verbal misdirection by 'blindsiding' witnesses, focusing attention on strengths and away from weaknesses, substituting jury charm for legal substance, and bobbing and weaving with words to deflect, convince and prevail (Baird, 1989: 24).

However, it is fundamental to underline that when an attorney, in particular defense attorneys, may come very close to the line of deception, they may not cross it, because their job is to defend, as far as possible, but never to lie (Corcos, 2011). For this reason, the closing arguments will be investigated taking into consideration different studies. The following sections will investigate the results of the Jodi Ann Arias and the O.J. Simpson trials according to different studies. In specific, the former will analyze the data according to the Linguistic Category Model (LCM) by observing what types of adjectives the Prosecution and the Defense employed to describe the relationship between the two protagonists, how Jodi and Travis were depicted and ultimately the murder in itself. Subsequently, the case will be examined by observing the metaphorical expressions and the metaphor-related words (MRWs) employed by using the Metaphor Identification Procedure MIP. The latter, instead will be investigated by analyzing the data through the use of Monroe's Motivated Sequence. Finally, both trials will be observed by taking into consideration the use of repetition.

## **4.2 Results**

Since trial lawyers use various persuasive strategies in order to convince the jury and guarantee a positive outcome of their verdict the closing arguments, as above

mentioned, will be analyzed according to different persuasive techniques. It is essential to highlight that the strategies that may seem irrelevant to a layperson obviously have an impact on the outcome of the final verdict. In general, the results will be investigated by considering first the prosecution and then the defense because in closing arguments the prosecutors are the first to argue the case. For this reason, all the tables will gather first the prosecution and then the defense's frequencies, ranking from the highest to the lowest. Data that scored the same frequency will be inserted in the tables based on alphabetical order. In specific, the results will be analyzed and examined by applying them to the different techniques and/or strategies relevant to the present study.

With reference to the Jodi Ann Arias case the results will be grouped into different tables and subsequently examined through the Linguistic Category Model and the use of metaphors. The metaphors will be also investigated by studying their etymological definition, because "the original meanings of words are essential in order to know the starting point from which a transfer could be said to occur" (Charteris-Black, 2004: 20). As far as concerns the O.J. Simpson case, results will be gathered into different tables and subsequently examined through the analysis of Monroe's Motivated Sequence. Furthermore, both cases will investigate the use of repetition. The use of repetition is to emphasize the points by repeating the same words, phrases, sentence patterns or ideas. Repetition can certainly be an effective technique when people are trying to persuade others because it helps them reinforce their points. In fact, Murphy (2011) claims that repetition helps persuade a jury. While, Mauet (2005) states that a good theme is memorable and that when lawyers use the right theme they will want to repeat them periodically.

### **4.3 The Linguistic Category Model**

As previously mentioned, LCM is used to classify verbs and adjectives employed in the interpersonal domain to represent actions and states between people, as well as their characteristics or traits. For the purpose of the present study, the analysis will only focus on the Adjectives (ADJ) employed by the lawyers because descriptive adjectives represent another tool that lawyers may use to persuade the jury. Moreover, adjectives may paint a vivid picture for the jury, project the tone and mood of the story and captivate the members of the audience, drawing them into the argument. Another important aspect is that adjectives make a presentation more interesting, which is crucial because, like all people, jurors also have limited attention spans. Furthermore, inducing the jurors to visualize the location of an event may make them feel as if they were there and may also help them pay better attention to the story.

### **4.4 Monroe's Motivated Sequence**

As regards the Motivated Sequence, Monroe (1978) developed a persuasive pattern, which is considered to be especially useful for speeches intended to stimulate human behavior. According to Monroe, it is important that the speaker not only gains the audience's attention but that they gain a favorable attention and direct that attention towards the major ideas or points of the speech. In order to accomplish this the speaker must include rhetorical questioning, make a startling statement, begin with a famous, relevant quotation, or share a humorous anecdote or illustration. However, the speaker will be able to capture people's attention only if they naturally and logically lead the above mentioned in the rest of the speech. Another important aspect that the speaker has to take into consideration is that a statement or description of the need or problem should be clear and concise, enabling the listener to know exactly what the problem is.

For this reason, the speaker should also include one or more detailed evidences to illustrate the problem. The speaker must also intensify the audience's desire or perceived need to agree with them by motivating the listeners to believe, feel, or act accordingly. Therefore, it is psychologically important that the audience have a picture of the benefits of agreeing with the speaker. Finally, the speech that is delivered should end with an overt call for the listeners to act in agreement with the speaker's pleas. Its purpose is to encourage listener determination to retain the belief being advocated and/or to urge the audience to take the definite action proposed. Typical strategies of achieving this include a blatant challenge or appeal, a summary of the speech, or a statement of inducement (Ehninger *et al.*, 1978).

#### **4.5 Discussion of the data with reference to the Jodi Ann Arias case**

##### **4.5.1 Discussing the Adjectives employed by Prosecutor and Defense Lawyers**

The trial drew such great attention from the media, because it was considered to be a tale of sex, betrayal, violence and religion. For this reason, it was interesting to identify and analyze the adjectives employed by the lawyers in order to understand how persuasion took place and how it was handled. Since Jodi pleaded guilty of murder, but for self-defense, it became a matter of persuading the jury to deliver a final verdict of first-degree murder for the prosecution or a verdict of not guilty of first-degree but of second-degree or manslaughter for the defense. It is through the use of specific adjectives that the two lawyers were able to paint a picture, not only in the minds of the jurors but also in the minds of Americans. Painting a picture becomes indispensable because it is crucial that one of the two lawyers be able to convince the jury that their version of the story is more credible than the other's.



The adjectives identified are gathered into four tables including those employed by both prosecutor and defense. Each table includes the adjectives referring to:

- (1) the relationship between Jodi and Travis;
- (2) how Jodi is represented;
- (3) how Travis is represented;
- (4) the description of the murder scene.

To better understand how the adjectives were employed, excerpts have been extrapolated from the original transcripts of both lawyers. It is essential to point out that since the lawyers employed a large number of adjectives, throughout their closing arguments, only those considered to be relevant for the purpose of the study will be investigated and discussed in order to comprehend the story between the two protagonists and observe how the lawyers employed certain strategies to manipulate and convince the jury.

The following table includes the adjectives, employed by both the prosecutor and the defense, to describe Jodi and Travis' relationship. As previously mentioned the tables do not gather the adjectives in alphabetical order but are grouped based on the frequency, ranking from the highest to the lowest. Martinez's closing argument is the first one to be analyzed since he opened the closing arguments. After identifying what adjectives had been employed by Martinez, crosschecking was done in order to verify if Nurmi used the same adjectives. Subsequently, the adjectives employed by Nurmi were examined and added to the table.

n.	Adjectives referring to the relationship	Frequency Prosecution	Frequency Defense
1	Sexual	24	6
2	Domestic	21	10
3	Little	/	15
4	Dirty	/	15
5	Physical	6	2
6	Afraid	7	4
7	Tied	4	5
8	Battered	1	3
9	Romantic	2	3
10	Jealous	/	2
11	Sad	/	1
12	Toxic	/	1

Table 1 Adjectives employed by the prosecutor and the defense to describe Jodi and Travis' relationship

As can be seen from Table 1, it was observed that the adjective to rank the highest frequency was *sexual*. The adjective was employed with a frequency of 24 hits by the prosecution and with a frequency of 6 hits by the defense. Martinez's recurrent use of the adjective *sexual* referring to *sexual contact* or *sexual acts* shows that the relationship between Jodi and Travis may have been exclusively a sexual one.

The following examples show the use of the adjective *sexual*.

Excerpts from the prosecution:

- (1) *She's the one, and I don't need to repeat it, you remember those text messages where she's the one that requesting the **sexual** acts.*  
(see Appendix G lines 320-322)

- (2) *And he says, and he tells you the reason why. And the reason why is that he enjoys having **sexual** contact with her. (see Appendix G lines 430-432)*
- (3) *And there is anger that is being exchanged back and forth and he sort of capsulizes it by saying, or using a term that's not quite so **sexual**, but really capsulizes what's going on here and how the defendant attempts to manipulate the truth, when he says "I am nothing more than a dildo with a heartbeat to you." That's what he tells her, because that's how he feels. That's how she makes him feel. (see Appendix G lines 477-481)*
- (4) *She comes in and according to her they go to sleep. There's no **sexual** activity between them at that point. If mister Alexander was this **sexual fiend** that she has attempted to portray, why didn't he just force himself upon her there? (see Appendix G lines 931-934)*
- (5) *The next day, they do engage in some **sexual** contact. (see Appendix G lines 938-939)*
- (6) *...either way it's symbolic, if you will, of her attentiveness to this **sexual** relationship that they had. (see Appendix G lines 998-999)*

Excerpts from the defense:

- (7) *Travis Alexander places his penis inside of her while she was asleep and she kinda says no, pushes off and continues the act doesn't want to break her vow of chastity she doesn't consider that a **sexual assault** cause they'd already done other **sexual** things before. She didn't say no at the time he entered her but the law tells you and the, the definitions and therefore you that someone cannot consent to **sexual** activity when they're asleep that's just the bottom line that is a **sexual assault** and we have instance on June 4<sup>th</sup>, don't we? (see Appendix I lines 658-665)*
- (8) *Where mister Alexander and you have your definition of **sexual assault** grab miss Arias put her arm behind her back, bend her over the desk and have rough*

*vaginal sex with her. She say you know it wasn't that big a deal 'cause I didn't say no, but why didn't she say no?* (see Appendix I lines 665-668)

- (9) *Because it was a better alternative to his anger, his raps, to his hits, it was a better alternative, she submitted out of fear, fear of physical violence, that's the **sexual assault**.* (see Appendix I lines 668-671)

It was observed that Martinez's use of the adjective *sexual* seems to be emphasizing the fact that their relationship was only based on sex and physical attraction rather than love, tenderness, compassion, consideration and respect for one another. In example n. 1 Martinez is underlining that it was Jodi who usually demanded to have sexual contact with Travis. In examples n. 2, n. 5 and n. 6, the evidence clearly shows that their relationship was a relationship based on sex. In example n. 3, in a text message Travis writes: *"I am nothing more than a dildo with a heartbeat to you."* Probably Travis finally understood that Jodi had been using him and considered him just a sex toy. It is interesting to specify that the word *dildo* dates back to the 1590's and comes from Italian. Its etymological meaning is probably a corruption of the Italian word *deletto*, delight, which means to esteem highly, to love (Online Etymology Dictionary). Also example n. 4, is interesting because Martinez employs the noun *fiend* before the adjective *sexual*. The use of the noun *fiend* seems to convey the image of Travis as an evil and harmful person. As Bugliosi (1996) emphasizes it is in the precise moment of the closing arguments that the jurors attention should be captured through the functional role of figurative language. On the other hand, Nurmi employs the adjective *sexual* to refer to the *sexual assaults* that Jodi had been subjected to by Travis. In example n. 7, Nurmi is telling the jurors that, while asleep, Jodi had to agree to have sex with Travis. Emphasizing the use of *sexual assault* is conveying a vivid image, in the jurors' mind, of a man who is very aggressive towards this woman. The picture that the defense is

thus painting for the jury is that Travis is a violent man who is sexually attacking Jodi in their relationship. Consequently, Jodi is the victim of the situation, while Travis is the perpetrator. In examples n. 8 and n. 9, Nurmi's use of an explicit, intense and harsh language transmits a vivid image of the abusive relationship between Travis and Jodi. However, it is important to stress that there was no evidence to support Jodi's allegations that Travis sexually assaulted her. Although, there was no evidence or testimony during the trial to confirm Jodi's stories that Travis was violent or owned a gun, i.e., the very same gun that she supposedly used to shoot him.

As can be seen from Table 1, the adjective *domestic* was employed with a frequency of 21 hits by the prosecution and with a frequency of 10 hits by the defense.

The following examples show the use of the adjective *domestic*.

Excerpts from the prosecution:

- (10) *Is that what she means when she is talking to you about **domestic** violence? Kissing see that's the problem you didn't get it the first time. Kissing is **domestic** violence. Tender kissing is domestic violence. (see Appendix G lines 350-353)*
- (11) *And the other thing that we have is that she claims that on January 22<sup>nd</sup> of 2008 there was also this act of **domestic** violence. And that is not what the act was at this point because there's no corroboration involving that act of **domestic** violence either. (see Appendix G lines 360-363)*
- (12) *Or in our case is it the trauma of lying about killing mister Alexander is that what we're talking about? Or is it the killing of mister Alexander that we're talking about? Or as the other expert Cheryl Karp was it the trauma of this non-existent **domestic** violence. The problem is that when you start lying and the experts get involved and they start basing their tests on a lie how valid can the results be? (see Appendix G lines 1545-1550)*

Excerpts from the defense:

- (13) *So what are those past acts and how do we define **domestic** violence?*  
(see Appendix I lines 629-630)
- (14) ***Domestic** violence means any act that is an offense, assault we have an assault in this case. Was Jodi Arias a victim of an assault?*  
(see Appendix I lines 632-633)
- (15) *Actually that's unlawful imprisonment aside from an assault, double bonus for mister Alexander assault and unlawful imprisonment, two acts of **domestic** violence.* (see Appendix I lines 636-638)

It is interesting to observe that despite the fact that Nurmi grounded his theory on self-defense, claiming that Jodi was a victim of *domestic violence*, he used the adjective only 10 times compared to Martinez who instead used it twice as much. Indeed, Martinez's larger use of the term *domestic violence* is connected to the fact that he is trying to discredit the defense's theory, maintaining instead that the killing of Travis was premeditated. On the other hand, Nurmi claims that Travis' murder originated in a momentum of sudden quarrel or heat of passion. At this point it is fundamental to highlight that if a murder occurs during a sudden quarrel or heat of passion it can not be considered premeditated murder. For this reason, the defense claimed that the murder originated from a moment of rage, while the prosecution constantly insisted that the murder was premeditated.

As can be seen from Table 1, the adjectives *little* and *dirty* were both employed only by the defense with a frequency of 15 hits each.

The following examples show the use of the adjectives *little* and *dirty*.

Excerpts from the defense:

- (16) *...this relationship and sometimes lies bleed into **dirty little** secrets don't they, was a **dirty little** secret she goes there with few, she goes there with the lies, the*

*dirty little secrets, she goes there with an elemental of love for this man, let's face the facts and certainly one of the things we talked about when we talked about premeditation is she always loved this guy and there's no evidence to the contrary but she goes there fear, love, sex. (see Appendix I lines 704-709)*

(17) [...] *it's all a woven tale for which geography is irrelevant and love, fear, sex, lies and **dirty little secrets**, it's pervasive regardless of where we're at, regardless of where we're at [...]* (see Appendix I lines 714-716)

(18) *So this sacks love, the fear, the lies and the **dirty little secrets** all culminate on June 4<sup>th</sup> unfortunately what happened is that mister Alexander's bedroom became a crime scene. (see Appendix I lines 893-895)*

(19) *It's part of the reality ladies and gentlemen of this day is it added this scene added this picture behind which many **dirty little secrets** for help somebody, somebody was not gonna make it out alive it was either gonna be Jodi or it was gonna be Travis. (see Appendix I lines 1021-1024)*

Nurmi uses the two adjectives when referring to the secrecy of Travis and Jodi's relationship. Nurmi is probably trying to convince the jury that Jodi told some lies only because she did not want to discredit Travis in front of his community, mainly because he was engaged in a sexual relationship with her and as a Mormon he was not allowed to have pre-marital sex, which is considered shameful and dishonourable for the Mormon faith and religion. Nurmi insists on emphasizing that this *secret* is a *little* one but also *dirty* because it involves sex. The concept of employing the adjective *little* before *dirty* and *secret* may convey the idea that Nurmi is trying to persuade the jurors to perceive these lies as simple white lies, i.e., minor and harmless lies that can not damage anyone. The examples extrapolated are emblematic of this peculiar relationship. Nurmi emphasizes that the relationship was based on secrets and he describes them as being *dirty* and *little*, as to paint the picture of a sick relationship, that had to be hidden

because Travis' Mormon faith did not contemplate sex before marriage. Example n. 19, seems to underline the dangerousness of this relationship, which according to Nurmi could have ended only in one way i.e., the death of one of the two. However, the relationship was probably destined to end because the two protagonists of the story wanted different things from this relationship, Jodi wanted to marry Travis and have children from him, while Travis just wanted to have sex with her.

As can be seen from Table 1, the adjective *physical* was employed with a frequency of 6 hits by the prosecution and with a frequency of 2 hits by the defense. The adjective was used to refer to the *physical violence* between Travis and Jodi and the *physical acts* within this relationship.

The following examples show the use of the adjective *physical*.

Excerpts from the prosecution:

(20) *And with regard to these acts of **physical** violence, "Well, they weren't so bad and I didn't write about them." And with regard to any particular **physical** act of violence, there's no one that knows about it.* (see Appendix G lines 328-330)

(21) *And during that evaluation with the defendant, she gave many not four - many - ten - fifteen, twenty incidents of **physical** violence. Because at that point, **physical** violence was being used as the predicate, if you will, the seminal act for Post Traumatic Stress Disorder.* (see Appendix G lines 387-390)

Excerpt from the defense:

(22) *Because it was a better alternative to his anger, his raps to his hits, it was a better alternative, she submitted out of fear, fear of **physical** violence, that's the sexual assault.* (see Appendix I lines 668-671)

At this stage, it is essential to highlight that the use of *physical violence* is quite clear in this case. However, Nurmi puts great emphasis on the *physical violence* that Jodi had



been supposedly exposed to and highlights the fact that the physical and mental abuse caused her Post Traumatic Stress Disorder.

As can be seen from Table 1, the adjective *afraid* was used with a frequency of 7 hits by the prosecution and with a frequency of 4 hits by the defense.

The following examples show the use of the adjective *afraid*.

Excerpts from the prosecution:

(23) *And he's talking to her and he says "I'm extremely **afraid** of miss Arias, because of her stalking behavior."* (see Appendix G lines 447-448)

(24) *How prophetic of him? Back on May 19<sup>th</sup> and this is nine days after this telephone call. But he's extremely **afraid** of her because of this stalking behavior. Little does he know that he has less than a month to live.*  
(see Appendix G lines 448-451)

Excerpts from the defense:

(25) *Now the implication was made maybe he was expecting her maybe he wasn't but we know there were phone calls Jodi certainly told you he was expecting her and if he wasn't keep in mind course we're supposed to believe in, we'll get into that a little later, we're supposed to believe in that he's so scared of her, right he's **afraid** of her so my goodness how could she walk right into the house and then sleep with him sleep in the bed and then get up and take pictures of her naked, he's so scared of her he's taken naked pictures of her in his bed.*  
(see Appendix I lines 430-437)

(26) *This was from May 10<sup>th</sup>, May 10<sup>th</sup> 2008. Few weeks before the killing, a few days before about nine days before he tells Reagan Housley how he's **afraid** of Jodi Arias.* (see Appendix I lines 1245-1247)

The use of the adjective *afraid* is significant because it describes how Travis felt about Jodi. Indeed, Travis told his friends that he was afraid of Jodi because she had been stalking him. Therefore, it is crucial to underline some important facts that occurred

when Travis and Jodi broke up. After their split-up Travis engaged in other relationships first with Lisa Andrews and then with Marie “Mimi” Hall. It is at this point that Jodi started stalking him. In fact, she hacked into his Facebook account, she hacked into his e-mail account, she slashed his tires, she was eavesdropping on his conversations and she was also able to read some of his text messages. All this was possible because, although they had broken up, they still continued to see each other. In fact, Travis offered Jodi to pay her to clean his house, a job that she accepted just to be around him and hopefully be with him.

As can be seen from Table 1, the adjectives *tied* and *battered* were employed. Specifically, *tied* was employed with a frequency of 4 hits by the prosecution and with a frequency of 5 hits by the defense, whereas *battered* was employed with a frequency of 1 hit by the prosecution and with a frequency of 3 hits by the defense. It is important to underline that these two adjectives were used by Jodi to describe what happened to her the day of the murder. Indeed, Jodi claimed that she was *tied* to the bed and that Travis *battered* her.

The following examples show the use of the adjective *tied*.

Excerpt from the prosecution:

(27) *She talked earlier about a knife, justifying how a knife would've been upstairs by saying that there was this 20-foot rope. And that somehow she was **tied** up with that 20-foot rope to that bed. And it depends on whose she's talking to as to whether or not she was **tied** on her ankles as well as her wrists. But you've taken a look at that slay bed. Where is she going to be **tied** up on that bed? If she's not making it up, then why has she told some of the experts that she was **tied** by her ankles, or on the foot of the bed?* (see Appendix G lines 1023-1028)

Excerpt from the defense:

(28) *Exhibit number 63 we see Travis Alexander's bedroom and we see what I believe is a chair and a half there with some pillows, now one of the things that was postulated to you yesterday was the idea that miss Arias was lying about*

*being **tied** to the bed again, as regards knocking down, lying to you about being **tied** to this bed because it was a slave bed, and there's no way you could do that. Miss Arias talked to you about how the rope went through the back of the bed and it really wasn't a severe restraint but more a prop that she could get out of and I say no there's no way that it could happen but of course it could've there's no laws of physics or logistics that would prevent someone from being at least in a as a prop **tied** to the bed in the way miss Arias described it, right with both her wrists out the rope behind the headboard and **tied** there.*

(see Appendix I lines 1359-1369)

In example n. 27, it was observed that the prosecution had serious doubts as to whether or not Jodi had been actually tied to the bed and physically abused, maybe it was just another of her lies, especially when Martinez says: *But you've taken a look at that slay bed. Where is she going to be **tied** up on that bed? If she's not making it up [...].* On the other hand, the defense, in example n. 28, insists on the fact that who could actually say that Jodi was not tied to the bed because there are no laws of physics that could contradict what Jodi had confirmed.

Moving on to the adjective *battered*, the following examples show how the adjective was employed.

Excerpt from the prosecution:

(29) *Ah couldn't give me the name, give me a name, go ahead give me a name...well she said "Well, I didn't testify I actually wrote a report." She wanted to make herself more than she really was. She also talked about being a keynote speaker at one of the conferences where was Snow White a **battered** woman, she indicated that she was one of the keynote speakers there at one of those conferences and she wasn't.* (see Appendix G lines 1497-1502)

Excerpts from the defense:

(30) *Janeen DeMarte one years of experience well of course she counted her time as a student so if you count all those years it's a lot more but you know one year license she's out there and she says you know she had this experience of*

*domestic violence and actually administering questionnaires is what she did but she said what we all know really common sense is that **battered** women lie right they don't call the cops all the time [...] (see Appendix I lines 749-754)*

(31) *[...] but I will submit to you that she did drop the camera that Travis Alexander did fly into a rage the kind of rage the kind of anger that you've seen in the text messages and in the recordings that he did threaten her and make her feel that her life was in jeopardy remember her perspective on this is that of a **battered** woman. (see Appendix I lines 1542-1546)*

(32) *But ladies and gentlemen there's no doubt about the fact one of the things Alyce LaViolette said was that sometimes when a **battered** woman is attacked and they're defending their life they don't know when to stop.  
(see Appendix I lines 1546-1548)*

In example n. 29, Martinez refers to the use of *battered woman* by reporting what Alyce LaViolette said. LaViolette is the expert witness on domestic violence brought by the defense. Also example n. 30, refers to the words said by another expert witness Janeen DeMarte, brought by the prosecution. However, Nurmi uses the term *battered* to refer to all of those women that are abused and seems to justify Jodi's lies about not reporting to the police or telling anyone about Travis and his violent behavior. Examples n. 31 and n. 32, are also an important part of Nurmi's defense because he insists on the fact that when a *battered woman* is in danger she may reach a point of no return and therefore is capable of committing a severe crime. Consequently, it becomes a matter of survival, so it will be either the victim or the abuser to survive in an abusive relationship. The image that Nurmi is portraying is that of a violent relationship which is about to explode. Although Nurmi employed the adjective only with a frequency of 3 hits he is playing the card of the violent man who sexually abuses his partner. This partner who, on the

other hand, must defend herself some way or another and who may view the killing of the violent man as her only way out, her only salvation, because her life is at stake.

As can be seen from Table 1, the adjective *jealous* was employed only by the defense with a frequency of 2 hits.

The following example shows the use of the adjective *jealous*.

Excerpt from the defense:

(33) [...] *mister Alexander says that he intimidated him in the bathroom he was a **jealous** guy, hey you know I gave him I gonna whip your ass says something of that effect. I'm gonna whip his ass because he kissed my girlfriend.*

(see Appendix I lines 835-837)

In example n. 33, the adjective *jealous* seems to describe Travis' personality within the relationship. Its use probably had the aim of underlining Travis' bad temper.

As can be seen from Table 1, the adjectives *toxic* and *sad* were both employed only by the defense with a frequency of 1 hit each.

The following example shows the use of the adjective *toxic*.

Excerpt from the defense:

(34) *All of it in some ways a **sad** symbolic ending to a **toxic** relationship, all of it.*

(see Appendix I lines 1560-1561)

In example n. 34, the adjectives *toxic* and *sad* seem to define what type of relationship Jodi and Travis had. Although, the frequency of the adjectives may seem irrelevant it actually stresses the aspect that this relationship was a poisonous and harmful relationship instead of a peaceful, easy-going and loving type of relationship. Indeed, the ending to this relationship emerged into a murder. Probably, for this reason, Nurmi described it as a *sad symbolic ending to a **toxic** relationship*.

As can be seen from Table 1, the last adjective to be examined is *romantic* which was used with a frequency of 2 hits by the prosecution and with a frequency of 3 hits by the defense.

The following examples show the use of the adjective *romantic*.

Excerpts from the prosecution:

- (35) *Ryan Burns was nothing more than her alibi... maybe he was a little bit more because of the interest she showed in him but she calls him up makes up this story about where the cell phone has been and continues...into his waiting arms. Gosh you could hear the violins making their sound as she goes up to him and gives him that first kiss. Ain't that **romantic**?* (see Appendix G lines 1380-1385)
- (36) *So what? So what that he's kissing another woman? He's not seeing her, he's entitled to do it. And he's entitled to do it, he's in his house. He has no lights on. It's a **romantic** evening. Whether she likes it or not, he's moved on.*  
(see Appendix G lines 285-287)

Excerpt from the defense:

- (37) *Type of relationship regardless of whether they call themselves boyfriend and girlfriend or not, whether they use that distinction, the relationship was a sexual one, a **romantic** one, whatever length we wanna use it was that type of relationship that we're talking about here **romantic** or sexual.*  
(see Appendix I lines 674-677)

It is interesting to observe that the only positive adjective employed by Martinez does not refer to Travis and Jodi. In example n. 35, Martinez seems to use the adjective in a sarcastic way when referring to Jodi kissing Ryan Burns for the first time. What happens at this stage of the story is that after killing Travis Jodi goes on this trip to visit Ryan Burns, a young man that she had recently met at a business conference and with whom she was about to start a new relationship. According to Martinez Jodi had calculated everything, she had manipulated and seduced Ryan by giving him this kiss.

The plan was that Jodi spend some days at Ryan's house so that he could provide her with an alibi. By seducing Ryan Jodi was showing interest in him probably convinced by the fact that if the truth were ever to come to light Ryan would be on her side. In example n. 36, Martinez uses the adjective again but this time to refer to the new relationship that Travis was in and he stresses that fact that he had moved on with his life and probably was not interested in Jodi any longer. On the other hand, in example n. 37, Nurmi employs the adjective to show that Travis and Jodi's relationship was not only sexual but also romantic. Nurmi in some way is attacking Martinez's theory that Travis and Jodi's relationship was purely sexual.

To conclude this section, it was observed that the adjectives employed to describe the relationship between Travis and Jodi probably were based more on sex than love or respect for one another. However, the defense portrays Travis as a cheating womanizer who simply used Jodi for sex and abused her physically and emotionally. On the other hand, the prosecution describes Jodi as a liar who invented many stories to make Travis look like a perpetrator and a violent man who had continuously victimized her.

Below follows Table 2, which collects the adjectives employed to describe Jodi's personality and behaviour within the relationship. It is important to understand what adjectives the lawyers used when describing Jodi because lexical choice has a fundamental role on persuading the jury to reach their final verdict. In fact, the main purpose of a closing argument is to persuade the fact finder. Therefore, the most effective means of persuasion will be to present information in such a manner that the person receiving the information will act upon it in a certain predictable way (Seckinger, 1995: 69).

<b>n.</b>	<b>Adjectives referring to Jodi</b>	<b>Frequency Prosecution</b>	<b>Frequency Defense</b>
1	Manipulative	6	/
2	Smart	/	10
3	Guilty	5	11
4	Incredible	5	/
5	Attentive	4	/
6	Good	3	/
7	Stolen	3	3
8	Crazy	/	3
9	Calm	2	/
10	Hateful	2	/
11	Innocent	2	/
12	Ornate	2	/
13	Quick	2	/
14	Inordinate	1	/
15	Nimble	1	/
16	Poised	1	/
17	Silly	/	1
18	Sly	1	/
19	Sophisticated	1	/

Table 2 Adjectives employed by the prosecutor and the defense with reference to Jodi

It is important to highlight that the adjectives gathered in Table 2 will not be discussed based on the frequency list but rather will consider the lexical items that could to be investigated together.



As can be seen from Table 2, the adjective *manipulative* was employed only by the prosecution with a frequency of 6 hits.

The following examples show the use of the adjective *manipulative*.

Excerpts from the prosecution:

(38) *She's an individual, who is **manipulative**. This is an individual who wants to play the victim, even though there is no abuse as you heard from those that know her. (see Appendix G lines 17-19)*

(39) *This is an individual who is **manipulative**. This is an individual who will stop at nothing and will continue to be **manipulative** and will lie at every turn and at every occasion that she has. (see Appendix G lines 28-30)*

It was observed that in all the sentences where Martinez employed the adjective *manipulative* he never mentioned Jodi's name he just used the lexical items *this individual who is manipulative* or *this person who is manipulative*, as to create distance and formality between her and the defendant. In fact, through the lexical choices of terms of reference to the defendant and/or the victim, lawyers create certain identities for them while silencing other aspects that do not help the lawyer's case (Danet, 1980a, 1980b; Aldridge and Luchjenbroers, 2007). When a person hears the adjective *manipulative* you are brought to think of someone who is capable of psychologically influencing another person. Although there is much more to that. Meaning that manipulation is accomplished through covert-aggression or aggression that is so carefully veiled or so subtle that it is not easily detected. By using the adjective *manipulative* Martinez is describing Jodi as a person who is capable and was capable of influencing other people. The adjective is a very strong and direct one and may strike the people that are listening to Martinez's closing. Indeed, Martinez describes Jodi as *manipulative* because he has considered her and depicted her as an obsessed ex-girlfriend who was not able of accepting the end of their relationship. Probably Jodi is

trying to manipulate everyone from the lawyers, to the jury, to the media, to the Americans. During the trial Jodi always proclaimed to be Travis' victim and swore under oath that her behavior was due to the fact that she had been a victim of this violent man for such a long time.

As can be seen from Table 2, the adjective *guilty* was employed with a frequency of 5 hits by the prosecution and with a frequency of 11 hits by the defense. It is interesting to observe that the adjective was employed twice as much by the defense compared to the prosecution.

The following examples show the use of the adjective *guilty*.

Excerpts from the prosecution:

(40) *If based on your consideration of the evidence you are firmly convinced that the defendant is **guilty** of the crime charge you must find her **guilty**.*  
(see Appendix G lines 1790-1792)

(41) *[...] the State is asking that you return a verdict of **guilty** and that you return a verdict of **guilty** as to first-degree murder not only as premeditated but also as to felony murder for no other reason that it's your duty and the facts and the law support it. (see Appendix G lines 1998-2001)*

Excerpt from the defense:

(42) *If after finding the elements of second-degree murder will perfectly be under reasonable doubt you also unanimously find beyond a reasonable doubt if the homicide was not committed upon a sudden quarrel or heat of passion resulting from adequate provocation and then you find the defendant **guilty** of second-degree murder but if you find the elements a second-degree murder were proven beyond a reasonable doubt you must also unanimously find beyond a reasonable doubt that the homicide was committed upon a sudden quarrel or heat of passion with adequate provocation, you don't find miss Arias **guilty** of second-degree murder but of manslaughter. And it says finally if you determine the defendant is **guilty** of either second-degree murder or manslaughter but you*

*have reasonable doubt as to which it was you must find the defendant **guilty** of manslaughter.* (see Appendix I lines 1132-1143)

In examples n. 40 and n. 41, Martinez does not need to prove Jodi guilty of murder, because she has already confessed to it, but rather it is a matter of making sure that Jodi is sentenced to capital punishment or first-degree murder<sup>11</sup>. While, Nurmi had the burden to attempt and guarantee his client a sentence of second-degree murder<sup>12</sup> or manslaughter<sup>13</sup>. Although example n. 42, is rather long it has the objective of showing how Nurmi attempted to convince the jury that even if Jodi had committed Travis' murder she did not do it intentionally. For this reason, Nurmi plays the card of the battered woman who is the victim of this violent man, thus Jodi confesses to having committed the crime but only in self-defense and that the murder occurred in a sudden quarrel or a heat of passion. This part of the story is fundamental because if Nurmi is capable of proving his theory of self-defense Jodi will have a lighter sentence. Also, Nurmi insists on the concept of reasonable doubt in his closing, which may justify his greater use of the adjective *guilty* if compared to Martinez's use. Probably Martinez

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<sup>11</sup> First-degree murder: although it varies from state to state, it is generally a killing which is deliberate and premeditated (planned, after lying in wait, by poison or as part of a scheme), in conjunction with felonies such as rape, burglary or involving multiple deaths, the killing of certain types of people (such as a child, a police officer), or certain weapons, particularly a gun. The specific criteria for first-degree murder are established by statute in each state and by the U.S. Code in federal prosecutions. (dictionary.law.com. retrieved from: <http://dictionary.law.com/Default.aspx?selected=754>).

<sup>12</sup> Second-degree murder: a non-premeditated killing, resulting from an assault in which death of the victim was a distinct possibility. Second-degree murder is different from first-degree murder, which is a premeditated, intentional killing or results from a vicious crime such as raped armed robbery. Exact distinctions on degree vary by state. (dictionary.law.com. retrieved from: <http://dictionary.law.com/Default.aspx?selected=1897>).

<sup>13</sup> Manslaughter: the unlawful killing of another person without premeditation or so-called "malice aforethought" (an evil intent prior to the killing. It is distinguished from murder (which brings greater penalties) by lack of any prior intention to kill anyone or create a deadly situation. There are two levels of manslaughter: voluntary and involuntary. Voluntary manslaughter includes killing in heat of passion or while committing a felony. Involuntary manslaughter occurs when a death is caused by a violation of a non-felony. However, if a gun is involved and someone dies from a gunshot a murder charge is more likely since he/she brought a deadly weapon to use in the crime. (dictionary.law.com. retrieved from: <http://dictionary.law.com/Default.aspx?selected=1209>).

feels that he does not have to employ the adjective so recurrently because the evidence brought to court shows that Jodi planned in advance and premeditated Travis' murder, consequently it was not the effect of a sudden quarrel or a heat of passion.

As can be seen from Table 2, the adjective *innocent* was employed only by the prosecution with a frequency of 2 hits.

The following examples show the use of the adjective *innocent*.

Excerpts from the prosecution:

(43) *She has signed a manifesto, just in case she becomes famous. And to top it all off, she has indicated that she is **innocent**. That no jury will convict her.*  
(see Appendix G lines 11-12)

(44) *She looked at each and every one of you and that's what she told you. Well, that's because of course she's **innocent** and you as the jury are not going to convict her, right.* (see Appendix G lines 1459-1461)

In examples n. 43 and n. 44, Martinez uses the adjective *innocent* to refer to different episodes. In particular when, Jodi confessed to the police, in a television interview and on the witness stand under oath, that she had nothing to do with Travis' murder and that she was not even near Travis' home at the time of the murder. Martinez refers to these episodes in order to paint the picture of a person who is a liar and not a victim. It is crucial to remember that Martinez has, throughout his closing, represented Jodi as a deceiver and liar, thus represented her negatively. In fact, Martinez emphasizes that Jodi lied in many different occasions, consequently his strategy is to create lack of credibility in Jodi as a persona and destroy the defense's theory that she committed the crime in self-defense.

As can be seen from Table 2, the adjective *stolen* was used by both prosecution and defense with a frequency of 3 hits each.

The following examples show the use of the adjective *stolen*.

Excerpts from the prosecution:

- (45) *May 28<sup>th</sup> is the end of May when this gun is **stolen** by the defendant from her grandparent's home. (see Appendix G lines 569-570)*
- (46) *[...] then you have her stealing the gun or there's the **stolen** gun and it's a .25-caliber that is actually found at the scene. (see Appendix G lines 1449-1450)*

Excerpts from the defense:

- (47) *[...] the State says that miss Arias decides to put her plan into motion she's **stolen** the gun, she's dyed hair, she's rented the car, she's altered the license plate, she's got her gas cans everything is built-up to this moment so the State wants you to believe, right? (see Appendix I lines 576-579)*
- (48) *The State also said something else in terms of the gun shot right that after he's dragged back down the hallway that Jodi Arias shoots him, this gun she has **stolen** she decides to use it and shoot him, right.  
(see Appendix I lines 1446-1448)*

In examples n. 45 and n. 46, the use of the adjective *stolen* is crucial because Martinez grounds his theory on premeditated murder and underlines the fact that Jodi had *stolen* the .25-caliber gun, used in the attack, from her grandparents' home two days after a heated text-message exchange between her and Travis. In that intense and fiery exchange, Travis described her as a 'sociopath' and 'evil'. It is essential to emphasize that Martinez worked to build his first-degree murder case by providing examples in which he affirmed that Jodi planned out her attack weeks in advance. In examples n. 47 and n. 48, Nurmi, on the other hand, is trying to destroy Martinez's theory that Jodi had stolen the gun so that she could kill Travis.

As can be seen from Table 2, the adjective *smart* was employed only by the defense with a frequency of 10 hits.

The following examples show the use of the adjective *smart*.

Excerpts from the defense:

(49) [...] *under this concocted theory that she orchestrated this theft, she brakes in or herself steals money, a DVD player and this .25-caliber gun and it creates a police report and it creates a trail would that be a choice and keep in mind the State conceded it yesterday that Jodi Arias is a **smart** woman. Is that behavior consistent with a **smart** woman who is starting, planning this covert mission [...]*  
(see Appendix I lines 151-156)

(50) *Nothing linking it to her but does she do that, this a **smart** woman who is planning this covert mission do that?* (see Appendix I lines 174-175)

In examples n. 49 and n. 50, Nurmi is trying to demonstrate that Jodi was not as clever and cunning as Martinez wanted to paint her and make the jurors believe. It is important to highlight that Nurmi sustains that if Jodi were really that *smart* she probably would not have made some careless and/or even foolish mistakes. Mistakes that directly lead to Jodi and created a trail tracing back to her. Consequently, it seems that Nurmi has also employed the adjective to demonstrate and convince the jury that the murder was not premeditated, otherwise she would have been more cautious and prudent in hiding her traces.

As can be seen from Table 2, the adjective *crazy* was employed only by the defense with a frequency of 3 hits.

The following examples show the use of the adjective *crazy*.

Excerpts from the defense:

(51) *Because she couldn't live without Travis Alexander, right? She's **crazy**. She can't break up with any of her boyfriends, she can't let it go, she couldn't live without Travis Alexander.* (see Appendix I lines 104-106)

- (52) *She visits two former boyfriends, this **crazy** woman that can't let it go has friendships with two of her former boyfriends [...]*  
(see Appendix I lines 248-250)

In examples n. 51 and n. 52, Nurmi uses the adjective *crazy* with a sarcastic tone because he is trying to demonstrate that Jodi was no longer interested in Travis. On the other hand, Martinez aimed at convincing the jury of the contrary, i.e., that Jodi was still in love with Travis and could not accept the fact that he had gone on with his life after their break up.

As can be seen from Table 2, the adjective *attentive* was employed only by the prosecution with a frequency of 4 hits.

The following examples show the use of the adjective *attentive*.

Excerpts from the prosecution:

- (53) *She begins to be more **attentive** - that's the word - she begins to be more **attentive** to mister Alexander. Perhaps if she's more **attentive** to mister Alexander, perhaps then he'll want to come back and have her be the only one.*  
(see Appendix G lines 267-269)
- (54) *And the way that she's **attentive** is the way that everyone does it normally.*  
(see Appendix G lines 269-270)

In examples n. 53 and n. 54, Martinez employed the adjective *attentive* to show that Jodi was still in love with Travis, even though they had split up and he was dating other Mormon girls. Martinez also seems to suggest that Jodi probably had the illusion that if she were more caring towards Travis he might rethink the idea of them getting back together.

As can be seen from Table 2, the adjectives *good*, *calm*, *quick*, *nimble*, *poised* and *sly* were employed only by the prosecution. Specifically, *good* was employed with a frequency of 3 hits, *calm* was employed with a frequency of 2 hits, *quick* was employed

with a frequency of 2 hits, *nimble* was employed with a frequency of 1 hit, *poised* was employed with a frequency of 1 hit and *sly* was employed with a frequency of 1 hit. The adjectives are worthy of mention because they were used by Martinez to describe Jodi's personality. The following examples show the use of the adjectives *good*, *calm*, *quick*, *nimble*, *poised* and *sly*.

Excerpts from the prosecution:

(55) *And she's making preparations, and she's very **good** at making these preparations.* (see Appendix G lines 688-689)

(56) *[...] then she's again the center of attention she's being the **calm** one she's being the person the individual that you would look to for the answers it's not just the lies, she's a very **good** liar [...]* (see Appendix G lines 1660-1662)

(57) *[...] this individual craves the media loves the media went on national television to talk about this and what did she do not only did she lie to them but she made herself seem like such a **calm** person [...]* (see Appendix G lines 1632-1634)

(58) *For example one of the things that she was asked at the first interview well isn't it true that you were there she kept saying no I wasn't even there, how could I have possibly done this if I wasn't even there and then she was asked, [...] isn't it true that your fingerprint in blood was there and then she said of course it's there I've been there all this time and so it shows you the adaptability and how **nimble** this individual so that when she gets into any situation, whether it be involving mister Alexander or here in court this individual is **quick** thinking and is **good** on feet and so that when she's talking to you on cross-examination and you get those answers, those answers are to manipulate.*  
(see Appendix G lines 1589-1598)

(59) *And who's telling us that this is the instant effect of a sudden quarrel or heat of passion? A liar is somebody who is telling us that, a liar who was dressed at the time a liar who was **poised** to strike.* (see Appendix G lines 1874-1876)



- (60) *But that's **quick**, if you will, on the **sly** and very slow on the facts, very low on the facts. You don't have any individual that they could even point to a name.*  
(see Appendix G lines 230-232)

In general, it was observed that Martinez gave a negative connotation to the adjectives above-mentioned, when describing Jodi's personality. In examples n. 55 and n. 56, Martinez uses the adjective *good* to stress the fact that Jodi is *a good liar* and that she seems confident in telling lies and hiding the truth. In examples n. 56 and n. 57, Martinez underlines the fact that although she is telling lies she is very *calm* about it. Therefore, the image conveyed is that of a person who is not nervous at all when telling lies. On the contrary, Jodi seems to be very confident in situations in which a normal person would not feel at ease. In example n. 58, the use of the adjectives *quick* and *nimble* show that Jodi is a fast thinker and is capable of giving the right answer at the right time. Martinez is stressing the fact that Jodi is able to give the right answers because she already knows what happened during the murder; consequently she had enough time to prepare her version of the events. In example n. 59, the use of the adjective *poised* is also significant because it shows that Jodi is a person full of self-confidence that goes on the witness stand and lies about Travis' murder. In example n. 60, the use of the adjective *sly* not only conveys a negative image of a person but it also transmits the image of a very strong and calculating person, who has already prepared and decided what her answers will be.

As can be seen from Table 2, the adjective *incredible* was employed only by the prosecution with a frequency of 5 hits.

The following examples show the use of the adjective *incredible*.

Excerpts from the prosecution:

- (61) *And you know, short of the old saying with the truth you ain't got to remember nothing, at least you have to give her credit for having an **incredible memory**.*

*Well, an **incredible memory** as to the fantasy world that she wants to create for you. (see Appendix G lines 193-195)*

(62) *Then the **fog** moves in, then there's an excuse, then there's a reason why she doesn't remember, she has an **incredible memory**, all right when it comes to lying. (see Appendix G lines 1741-1743)*

In examples n. 61 and n. 62, Martinez uses the adjective *incredible* followed by the noun *memory* because his objective is to persuade the jury that Jodi actually remembered everything that happened the day of the murder. Moreover, Martinez is emphasizing that Jodi is playing with everyone's mind in trying to manipulate them into thinking that she really did not remember anything. Noteworthy of mentioning is that when Martinez employs the adjectives previously discussed, *quick, nimble, poised* and *sly* he is instead demonstrating that Jodi was truly capable of thinking and lying, when on the witness stand and when questioned about the day of the murder during cross-examination. Furthermore, Martinez's use of the lexical unit *the fog*, which will be later discussed in the metaphor-related words section, has the purpose of demonstrating that the confusion Jodi had in her head, did not really exist. Especially when it came to recalling the lies that she told, she proved to have a great memory.

As can be seen from Table 2, the adjective *hateful* was employed only by the prosecution with a frequency of 2 hits.

The following examples show the use of the adjective *hateful*.

Excerpts from the prosecution:

(63) *How does one defendant that when there are no images there [...] the police looked everywhere absolutely **hateful** that allegation is and how absolutely extensive she was with it but remember I said she went a little too far with these lies. (see Appendix G lines 1683-1686)*

(64) [...] *whether it was on the computer or whether it was in photograph form just went a little bit too far this these lies to take for mister Alexander when the only thing he has left is his reputation... in light of what she says it's just too much in this particular case it is a **hateful** allegation with nothing to support it but imagine what goes through somebodies head when they hear it for the first time that person does not deserve justice that person doesn't deserve anything because of what he did.* (see Appendix G lines 1702-1708)

In examples n. 63 and n. 64, the adjective *hateful* was used by the prosecution, not only to describe how cruel Jodi was towards Travis, but also to refer to the allegations of pedophile that she accused him of. Jodi's accusations of pedophile were to show that Travis was a horrible person. In fact, Jodi testified that the day of the murder she had seen Travis on his computer looking at pictures of naked children. Jodi's false allegations only continued to build Martinez's theory that she was a liar, because the police was never able to find any trace of the pictures that she was talking about. However, probably Jodi's intention was to paint the picture of this repugnant and sick man by convincing the jurors that what she was theorizing was true.

At this point it is significant to examine the adjectives employed by the lawyers to refer to Jodi's continuous lying.

As can be seen from Table 2, the adjectives *ornate*, *inordinate* and *sophisticated* were employed only by the prosecution. Specifically, *ornate* was employed with a frequency of 2 hits, *inordinate* was employed with a frequency of 1 hit and *sophisticated* was employed with a frequency of 1 hit. As can be seen from Table 2, the adjective *silly* was employed only by the defense with a frequency of 1 hit.

The following examples show the use of the adjectives *ornate*, *inordinate*, *sophisticated* and *silly*.

Excerpts from the prosecution:

- (65) [...] *she does these things because she's such **inordinate** liar it's just has to add the extras to it to really sell it and that's what she did for you for all of those times and all of those days that she testified to you and the reason I bring to you this **ornate** storytelling is because it applies to her defense and her defense is really based on lies it's it it really is in if you can say for example she presented as it was in self-defense but not only did she present it as if it were in self-defense she added some **ornate** lies to it. (see Appendix G lines 1649-1655)*
- (66) [...] *she's a very good liar but she on top of that she is a very **sophisticated liar** in the sense that she adds these extra elements to it um and and she did that with regards to the acts of domestic violence and they are lies. (see Appendix G lines 1662-1665)*

Excerpt from the defense:

- (67) [...] *he's terrible but she came up with this **silly** lie about two intruders to try to avoid the reality [...]* (see Appendix I lines 1037-1038)

In example n. 65, the adjective *ornate* has the aim of conveying the image of a person who is embellishing and decorating her lies to make them seem more credible. Moreover, in examples n. 65 and n. 66, Martinez describes Jodi as an *inordinate* and *sophisticated liar* because the concept is to transmit the picture of a person who is creating a web of lies and trying to make them seem true. Martinez uses *sophisticated liar* not only to sustain that Jodi's claims of self-defense were merely lies but also, and above all, to confirm that Jodi's lies were intentional in order to meticulously create herself an alibi and to avoid suspicion within the hours of Travis' death. According to Martinez Jodi is a manipulative individual who has practically lied about everything. In fact, Martinez's closing was grounded on the theory that Jodi was a liar and he accomplishes this by describing in great detail how Travis was stabbed multiple times, shot in the head and how his throat was slit ear to ear.

Below follows Table 3, which gathers the adjectives employed to describe Travis' personality and behavior within the relationship. Similarly as Table 2 it is essential to understand what adjectives were employed because the right choice of words is crucial when trying to persuade the jury that one's closing argument is more valid than the other's.

<b>n.</b>	<b>Adjectives referring to Travis</b>	<b>Frequency Prosecution</b>	<b>Frequency Defense</b>
1	Bad	6	/
2	Scared	/	7
3	Fearful	/	4
4	Worst	4	/
5	Angry	2	2
6	Evil	2	2
7	Mad	2	/
8	Violent	/	2
9	Corrupted	/	1
10	Perfect	1	/
11	Soulless	/	1
12	Successful	1	/
13	Virgin	1	1

Table 3 Adjectives employed by the prosecutor and the defense with reference to Travis

As can be seen from Table 3, the adjective *bad* was employed only by the prosecution with a frequency of 6 hits. Although the adjective *virgin* is at the bottom of the list it will be investigated and discussed together with the adjective *bad* because they were

employed within the same sentence. The adjective *virgin* was employed by both prosecution and defense with a frequency of 1 hit each.

The following examples show the use of the adjectives *bad* and *virgin*.

Excerpts from the prosecution:

(68) *Can't point the finger enough at the fact that you know he's a **bad** Mormon, because he's having sex with her.* (see Appendix G lines 130-131)

(69) *If he's such a **bad** Mormon, why stay with him? You're the one that chose him, if he's such a **bad** guy, why are you hanging out with him?*  
(see Appendix G lines 131-133)

(70) *She wants you to believe that "Wow, he's such a **bad** guy. He's holding himself out to be a **virgin**, and somehow that's really, really **bad**."*  
(see Appendix G lines 954-955)

Excerpt from the defense:

(71) *Mister Alexander miss Reid tells us when people would've asked about his virginity he just kinda shut it off and laughed made it look like he was still a **virgin** when everyone when he knew he wasn't.* (see Appendix I lines 866-868)

In examples n. 68, n. 69 and n. 70, it was observed that the adjective was not directly used by Martinez but he was reporting Jodi's words. Jodi uses of the adjective *bad* because she considers Travis to be a *bad* Mormon because he does not obey the rule of sexual abstinence, which is a must for the Mormon faith. However, Martinez is trying to demonstrate that there is nothing wrong with the fact that Travis and Jodi were having pre-marital sex even though he was a Mormon. Moreover, Jodi considers Travis *bad* because he deceived the people of his religious community into believing that he was a virgin. Instead he had a very active sexual life with Jodi, not only physically but also verbally. In fact, they also had phone sex, which is proved by some phone calls that Jodi recorded. In example n. 71, Nurmi instead considers Travis to be a liar because he lied

to his Church and to his friends about his virginity. Although Travis' relationship with Jodi was no secret he hid the fact that they had a pretty lively sex life.

As can be seen from Table 3, the adjective *scared* was employed only by the defense with a frequency of 7 hits.

The following examples show the use of the adjective *scared*.

Excerpts from the defense:

(72) [...] *we're supposed to believe in that he's so **scared** of her [...] so my goodness how could she walk right into the house and then sleep with him sleep in the bed and then get up and take pictures of her naked, he's so **scared** of her he's taken naked pictures of her in his bed. That is a new level of being **scared** but anyway [...]* (see Appendix I lines 433-437)

(73) *How **scared** of his stalker is he pretty if they go to the balloon festival as we see in exhibit 431 how scared is he how **scared** is he in this view of exhibit 435.*  
(see Appendix I lines 876-877)

(74) *When while still in New York they travelled to Niagara Falls together. How **scared** is he?* (see Appendix I lines 878-879)

In examples n. 72, n. 73 and n. 74, Nurmi is attacking Martinez's theory that Travis was frightened by Jodi especially because of her stalking behaviour. Nurmi also sustains that if Travis were actually *scared* of Jodi he would not have done so many things with her such as traveling and taking pictures with her, instead on the contrary he would have distanced her.

As can be seen from Table 3, the adjective *fearful* was employed only by the defense with a frequency of 4 hits.

The following examples show the use of the adjective *fearful*.

Excerpts from the defense:

- (75) *So **fearful** of Jodi his stalker was mister Alexander that in exhibit 393 on the 11<sup>th</sup> 2006 he sends a picture of his penis. (see Appendix I lines 871-872)*
- (76) *How **fearful** of his stalker is he if in using exhibit 434 if he attends Pre-paid Legal functions with her. (see Appendix I lines 873-874)*
- (77) *How **fearful** is he of this stalker as if they do in exhibit 432 they go to the Sacred Groves, a sacred historical site in New York [...] (see Appendix I lines 874-875)*

In examples n. 75, n. 76 and n. 77, Nurmi's objective is to attack Martinez's theory that Jodi was a dangerous person. Nurmi uses the adjective *fearful* in a sarcastic way to underline that Travis was not at all afraid of Jodi, because he continues to encourage this unusual relationship although they were no longer a couple.

As can be seen from Table 3, the adjective *worst* was employed only by the prosecution with a frequency of 4 hits.

The following example shows the use of the adjective *worst*.

Excerpt from the prosecution:

- (78) *“You, Jodi Arias, are the **worst** thing that ever happened to me.” Do we need to look at the pictures of his gashed throat? Do we need to look at the sort of frog like state that she left him in, all crumpled up in that shower? Or do we need to look at his face where she put that bullet in his right temple to know that what he says there is true. “You are the **worst** thing that ever happened to me.” (see Appendix G lines 498-503)*

In example n. 78, Martinez is using Travis' words, reporting how he felt about Jodi. In fact, Travis considered Jodi to be the *worst* thing that ever happened to him. Moreover, Travis refers to Jodi's unpleasant and harsh behaviour, especially her annoying and exasperating personality.

Moving on with the discussion it was observed that other interesting adjectives such as: *evil*, *corrupted* and *soulless* were employed to describe Travis.



As can be seen from Table 3, the adjective *evil* was employed by both prosecution and defense with a frequency of 2 hits each, the adjectives *corrupted* and *soulless* were both employed only by the defense with a frequency of 1 hit each.

The following examples show the use of the adjectives *evil*, *corrupted* and *soulless*.

Excerpt from the prosecution:

(79) *He says "I want you to understand how **evil** I think you are." At that point when he's writing that he is extremely afraid of her because of her stalking behavior. And he does think she's **evil**. (see Appendix G lines 492-494)*

Excerpt from the defense:

(80) *This is someone he's supposedly afraid of or so the theory goes, right? Someone he wants nothing to do with, someone in other text messages he calls **evil**, someone and other text messages he calls **soulless** of course... he says he calls her a **corrupted** carcass, right but it doesn't seem to stop him from having sex with her. One day yeah he wants to have sex with her and says all these graphic things, another you're **evil** well then maybe you know she's a stalker now I need her over here for sex. (see Appendix I lines 1315- 1322)*

In example n. 79, Martinez is reporting the words that Travis used to describe Jodi and what he thought of her. The adjective *evil* is a very strong adjective, which may convey the impression of a person who has low moral standards and is probably capable of harming someone. Nevertheless, the use of the adjective may also have a religious connotation, there may be an association between Evil and Good. In fact, Travis considers Jodi as a unworthy person because he thinks she is malefic. On the other hand, Travis' use of the adjectives *corrupted* and *soulless* may be related to his faith, since he was a devoted Mormon there is a possible correlation between his religious faith and his choices of words used to describe Jodi. Indeed, the use of the adjective *corrupted* transmits a negative impression when employed to describe a person. From a religious point of view *corrupted* and *soulless* may convey the image of a person who is

not conscientious and probably has no moral values. Moreover, the Macmillan Dictionary defines *soulless* as “showing no emotions such as sympathy, happiness, or excitement”, but from a religious perspective *soulless* may convey the image of a person who has lost his/her soul and therefore may not be able to redeem in the afterlife. As can be seen from Table 3, the adjective *angry* was employed by both prosecution and defense with a frequency of 2 hits each.

The following examples show the use of the adjective *angry*.

Excerpt from the prosecution:

(81) *He’s telling her “enough is enough.” And yes, he’s **angry**. Absolutely **angry** after everything that she has done to him.* (see Appendix G lines 503-504)

Excerpt from the defense:

(82) *She feared that he might go farther, this time was different he was **angry** he was **angry** in a different way.* (see Appendix I lines 928-929)

In example n. 81, Martinez refers to Travis’ anger because he was tired of Jodi’s stalking behaviour. In example n. 82, on the other hand, Nurmi uses the adjective to underline that Jodi was afraid of Travis because he would easily get angry at her and would consequently have violent reactions. In fact, the day of the murder Travis had a fit when Jodi accidentally made Travis’ camera fall on the floor.

As can be seen from Table 3, the adjective *mad* was employed only by the prosecution with a frequency of 2 hits.

The following example shows the use of the adjective *mad*.

Excerpt from the prosecution:

(83) *And she said “I had scratched them”. For whatever reason she said she had scratched those CD’s. And he got **mad**. And he threw that CD because you know, that guy, he gets **mad** at everything. And so then I have to have intercourse with him to calm him down. That’s what she said.*  
(see Appendix G lines 651-654)

In example n. 83, it was observed that Martinez was reporting Jodi's use of the adjective *mad* when referring to Travis. By using the specific adjective Jodi is trying to paint the picture of this person who is aggressive and who loses his temper for no reason at all. Furthermore, when Jodi confesses that she had "*to have intercourse with him to calm him down*" the revelation transmits the image of this controlling and authoritative individual. However, this is Jodi's side of the story and there is no one that can contradict it because Travis is dead.

As can be seen from Table 3, the adjective *violent* was employed only by the defense with a frequency of 2 hits.

The following examples show the use of the adjective *violent*.

Excerpt from the defense:

(84) *He's a **violent** guy, right he had a punching bag and you saw the exhibits...maybe he needed that for when Jodi Arias wasn't around...and we have him being **violent** in this phone call [...]* (see Appendix I lines 840-844)

In example n. 84, it was observed that the adjective *violent* is used to describe how Jodi considers Travis and it conveys the image of a really horrible person. The constant use of Nurmi's negative adjectives to describe Travis seems to justify Jodi's actions. Indeed, it seems that Jodi's reaction to Travis' unceasingly cruelty towards her, may in a really distorted way, justify what she did. Moreover, Nurmi's aim is to persuade the jury that Jodi, continuously abused of and mistreated by Travis - this fierce and brutal man, in a moment of rage and confusion lost her mind and killed him.

As can be seen from Table 3, the adjectives *perfect* and *successful* were both employed only by the prosecution with a frequency of 1 hit each.

The following examples show the use of the adjectives *perfect* and *successful*.

Excerpts from the prosecution:

(85) *She wanting to find a boy just like him, because she had an ulterior motive.*

*She wanted somebody that was Mormon, she wanted somebody that could give her a child, so this seemed like the **perfect** catch for her.*

(see Appendix G lines 108-111)

(86) *And these boys think work, they seem to be very **successful**, they just seem to have everything that she desires in a husband [...]*

(see Appendix G lines 101-103)

In examples n. 85 and n. 86, it was observed that the two adjectives were used with a positive connotation and referred to Jodi's impression of Travis when they first met. Probably, at the time Jodi understood that Mormon men were a good catch because they have moral values that they believe in, they are part of a very close community and they regularly attend church. Indeed, Travis was a successful person in life who was a popular salesman for PPL – Prepaid Legal Services, and a respected and esteemed motivational speaker for the company. When they first met, at one of the company's conferences, Jodi soon understood that Travis was a man to marry, what a shame that Travis did not think the same of her.

Continuing with the analysis of the corpora it was observed that both lawyers had also employed many adjectives to describe the murder and the murder scene. For this reason, the adjectives identified were gathered into two different tables. Table 4 gathers the adjectives referring to the murder in general. Table 4.1 gathers the adjectives referring to Travis' death.

<b>n.</b>	<b>Adjectives referring to the murder</b>	<b>Frequency Prosecution</b>	<b>Frequency Defense</b>
1	Covert	/	32
2	Cleaned	16	1
3	Premeditated	12	2
4	Planned	7	10
5	Bloody	6	/
6	Hysterical	3	/
7	Meticulous	3	/
8	Wet	3	/
9	Aggravated	/	2
10	Dripping	2	/
11	Foggy	2	/
12	Massive	/	2
13	Awkward	/	1
14	Bucolic	1	/
15	Fantastic	/	1
16	Greatest	/	1
17	Cold	1	1
18	Horrific	1	1
19	Big	/	2
20	Great	/	2
21	Orchestrated	1	3
22	Vicious	/	1

Table 4 Adjectives employed by the prosecutor and the defense with reference to the murder

As can be seen from Table 4, it was observed that the adjective to rank the highest frequency was *covert*. The adjective was employed only by the defense with a frequency of 32 hits.

The following examples show the use of the adjective *covert*.

Excerpts from the defense:

(87) *Well ladies and gentlemen the nonsense kinda continues from there because of course what else would she need to go on this **covert mission** to Mesa Arizona, and she needs a way to get to Mesa Arizona, right?*

(see Appendix I lines 161-164)

(88) *Okay now you would think ladies and gentlemen wouldn't you, that if somebody was on a **covert mission**, right and now we're on June 2<sup>nd</sup> she's in Redding, she's got a new car and under the States theory she has the car, she's got the gun, she's ready to rock, right. (see Appendix I lines 240-243)*

(89) *Well if this was a **covert mission** first of all and I would submit to you that he was probably mistaken about Mesa she did go there but whether or not she was planning on going there not but think about if this was a **covert mission** would you say to your ex-boyfriend can I borrow a couple of gas cans and I'm going to Mesa. Doesn't make any sense. (see Appendix I lines 257-261)*

In examples n. 87, n. 88 and n. 89, it was observed that Nurmi used the adjective mainly with the noun *mission*, in order to attack and discredit Martinez's theory that the murder was premeditated. Indeed, Nurmi uses the adjective and the noun in a sarcastic way insisting that the murder was no secret mission that Jodi had planned and committed. In example n. 87, Nurmi is downplaying Martinez by considering his theory of premeditation as *nonsense*. It is important to recall that in closings lawyers attack each other's theory by trying to persuade the jury in believing that their version of the story is the true story. As previously mentioned, storytelling is not the focus of the study, but it does represent another significant technique of persuasion used by lawyers in the

courtroom. In example n. 89, the defense continues to argue against the prosecution's theory of premeditation. Nurmi claims that if Jodi were on this secret mission she would not have asked her ex-boyfriend for some gas cans, which could have represented incriminating evidence against her. Actually for Martinez the gas cans represent the proof that Jodi wanted to stock up on gas so that she would not have to stop at any gas stations where she could be easily recognised through examination of security cameras footage. Indeed, for the prosecution the act of borrowing the gas cans shows that Jodi had the intention of hiding any trace that could lead back to her.

As can be seen from Table 4, the adjective *cleaned* was employed with a frequency of 16 hits by the prosecution and with a frequency of 1 hit by the defense. It was observed that the adjective refers to the murder scene and not to the murder per se.

The following examples show the use of the adjective *cleaned*.

Excerpts from the prosecution:

(90) *But what she did is she **cleaned** herself up first. The police did not, and you looked at all the stairs, did not find anything that showed that there was any activity other than up in the bedroom. Which means she **cleaned** up.*

(see Appendix G lines 1270-1273)

(91) *Other things that she has done, according to her, is there was this glass underneath the sink area. And that's the glass that's found on top of mister Alexander after she **cleaned** him up. After she **cleaned** him up in the shower.*

(see Appendix G lines 1279-1281)

(92) *Perhaps that's where she dropped the knife and she needed to clean the knife there - because we know that the knife was **cleaned**.*

(see Appendix G lines 1297-1299)

Excerpt from the defense:

(93) *Of course ladies and gentlemen there's no real evidence to show that we don't know if she could've stepped on the shelf to the side... she testified as best as she could remember... we don't know the height of all the shelves one of the things we know...miss Arias was about 5.5... this smart woman if she was lying making this up boy it would seem less smarter to just say no the gun was under one of this shirts, it was behind one of those pairs of shoes it was some where I could grab easily but she didn't say that, not only that but you know we've seen evidence this crime scene is **cleaned** up, could she have up a shelf this large back into place, yeah she could've done that too. (see Appendix I lines 955-966)*

In example n. 90, Martinez employs the adjective to show that, if the murder were due to a sudden quarrel or heat of passion, and therefore committed in self-defense Jodi would not have cleaned herself up and then the crime scene and mislead the police officers who were investigating the crime. Instead, she would have called the police and informed them of what had actually happened the day of the murder. Furthermore, in example n. 90, Martinez claims that Jodi was very careful in cleaning herself up but also cleaning the house because there was no evidence that could be traced back to her and show that she was there at the time of the murder. In example n. 91, Martinez refers to the fact that Jodi took great care in also cleaning up Travis before leaving his house. In example n. 92, Martinez is telling the jurors that Jodi also cleaned the knife that she used to stab Travis multiple times, because the knife was found clean. When referring to the clean up Martinez insists on the fact that Jodi cleaned up so that her DNA would not be found on the murder scene or on the murder weapon. Therefore, according to Martinez if Jodi was cleaning herself, the murder scene and Travis, then she had something to hide. Although example n. 93 is quite long it is necessary in order to explain why Nurmi is convinced that Jodi did not take Travis' gun from off the shelf and use it to shoot him. Nurmi explains that Jodi is too short to be able to reach the gun



on the shelf, kill Travis, put it back on the shelf where Travis kept it and finally clean up everything.

As can be seen in Table 4, adjectives considered to be associated to *cleaned* were *bloody*, *wet* and *dripping*. The adjectives were employed only by the prosecution. Specifically, *bloody* was employed with a frequency of 6 hits, *wet* was employed with a frequency of 3 hits and *dripping* was employed with a frequency of 2 hits.

The following examples show the use of the adjectives *bloody*, *wet* and *dripping*.

Excerpts from the prosecution:

(94) *And if she was all **bloody** because we do know that the floor was all **bloody**, it was also very **wet**. It was either **wet** with water which is white, or it was **wet** with blood, which is red, Mister Alexander's blood.*

(see Appendix G lines 1037-1040)

(95) *Had the knife been **dripping** blood, and remember she had just stuck it into his neck had that been happening... she cleaned the area where it appears some of the attack occurred, the other implement, the knife, that was cleaned because it wasn't found or **dripping** anywhere, the um the gun well it was taken, the clothing that she had **on** her, specifically the footwear that you see in exhibit 162, that wasn't found anywhere, there was no **bloody** socks anywhere and even the towels that were upstairs [...]* (see Appendix G lines 1300-1308)

(96) *The other thing is she packed up the clothing that she wearing, it was **bloody**, the shoe, the socks included, packed all of that up and took it them with her, cameras, her purse, the gun all of that, she was cleaning it up [...]*

(see Appendix G lines 1349-1351)

In examples n. 94, n. 95 and n. 96, Martinez uses the adjectives to depict a clear and gruesome picture of the crime scene. Travis' murder was a macabre killing, in fact Jodi shot Travis in the head to render him harmless and then stabbed him 29 times producing a very bloody crime scene.

As can be seen from Table 4, the adjective *aggravated* was employed only by the defense with a frequency of 2 hits. Nurmi uses the adjective to show that Travis was a violent person and claims that Travis was constantly abusive towards Jodi, that he mistreated her but continued to stay in this relationship only for the sex.

The following examples show the use of the adjective *aggravated*.

Excerpts from the defense:

(97) *Did he endanger her with these acts? Sure slapping her, kicking her, **aggravated assault** kicking her, breaking her finger.* (see Appendix I lines 638-640)

(98) *Now remember now there has been much may of this finger alright, we talk about this **aggravated assault** the State says to you my goodness this didn't happen this happened on June 4<sup>th</sup> and we can tell it happened on June 4<sup>th</sup> because on May 15<sup>th</sup> looking at exhibit 452 your miss Arias hand injury is invisible so the State inquire and they said see you're a liar, they even showed exhibit 453 the hand hanging down [...] (see Appendix I lines 640-645)*

In examples n. 97 and n. 98, Nurmi employs the adjective *aggravated* followed by the noun *assault* with the intention of conveying the image of a violent person. Nurmi is specifically referring to an episode where Travis in a violent attack towards Jodi had broken one of her fingers. Moreover, in example n. 98, Nurmi is recalling the jurors' attention by using visual aids. In fact, Nurmi shows the jurors exhibits of Jodi's broken finger. The episode goes back to a month before the murder. By showing photos to the jurors Nurmi is probably trying to demonstrate that Travis was a violent person and that Jodi was not a liar as the prosecution was trying to prove.

As can be seen from Table 4, the adjective *foggy* was employed only by the prosecution with a frequency of 2 hits. Martinez uses the adjective because Jodi said that she remembered Travis attacking her in a fury after a day of sex, she also said that she ran

into his closet to retrieve the gun that he kept on a shelf and fired in self-defense but has no memory of stabbing him.

The following example shows the use of the adjective *foggy*.

Excerpt from the prosecution:

(99) *She claims that she was in this sort of **foggy** state; she wasn't in such a **foggy** state that she couldn't put the license plate back on the car that she was driving [...] (see Appendix G lines 1342-1344)*

In example n. 99, Martinez asserts that Jodi is not in any state of confusion, instead she is completely lucid and knows exactly what she is doing. Martinez sustains this theory when he refers to the episode of the license plate of the car that Jodi had rented and to the fact that she had turned it upside down so that the police could not read it in case she were to get a speed ticket. Martinez insists that after the murder she was able to turn back the license plate into its correct position. Therefore, she was thinking straight and was in no *foggy* state of mind, as she claimed.

As can be seen from Table 4, the adjective *premeditated* was employed with a frequency of 12 hits by the prosecution and with a frequency of 2 hits by the defense. For the purpose of the study the adjective *planned* will be analyzed together with the adjective *premeditated* because they are part of Martinez's theory. It was observed that the adjective *planned* was employed with a frequency of 7 hits by the prosecution and with a frequency of 10 hits by the defense. In fact, Martinez had always claimed that since Jodi had *planned* Travis' murder, it therefore had to be *premeditated*.

The following examples show the use of the adjective *premeditated*.

Excerpts from the prosecution:

(100) *It is cold, it is thinking, it is **premeditated**, to go up to this individual, someone that she has planned to kill for days, someone with whom she has been intimate with, and then attack him. (see Appendix G lines 1074-1076)*

(101) *Let's talk about **premeditated** murder. Well it requires that it be proven that the defendant caused the death of another person well exhibit 207 he's dead, that element is proven. Well the defendant intended or knew that she was would cause the death of another person, that's also proven.*

(see Appendix G lines 1816-1888)

Excerpt from the defense:

(102) *But nowhere nowhere in your jury instructions are you asked to convict Jodi Arias of lying there is no verdict form...Well of course she is but there's no verdict form to that regard because that's not the crime that she being charged with. It's **premeditated** murder that's the ultimate crime, okay.*

(see Appendix I lines 337-341)

In example n. 101, Martinez is explaining, to the jury, that premeditated murder *requires the death of another person* and therefore since Travis was killed it was premeditated. The prosecution's theory was strongly supported also by Jodi's continuous lying, her unusual behavior and the fact that she meticulously created herself an alibi to avoid suspicion within the hours of Travis' murder. For this reason, Martinez sustained that Jodi had behaved as a person that had committed premeditated murder. In example n. 102, on the other hand, Nurmi tried to turn tables by telling the jurors that they could not convict Jodi for telling lies. The only crime that the jurors had to take into consideration was that of premeditated murder and nothing else. By acknowledging the fact that Jodi told lies, before and during the trial, only stressed the fact that she probably had a disturbed personality and was an unstable person, favouring Martinez's theory.

The following examples show the use of the adjective *planned*.

Excerpts from the prosecution:

(103) *There is no other explanation for those CD's to be in Mesa, Arizona other than that she knew, she absolutely knew and had already **planned** it. She knew she was going to kill. Why else take the CD's? (see Appendix G lines 662-664)*

(104) *Then, after she shoots him, she goes back and places him in the shower. Some point either after shooting him at the um, at the sink or after placing him in the shower at some point, she's still thinking. Because remember how much she has **planned** before. (see Appendix G lines 1250-1253)*

Excerpts from the defense:

(105) *[...] keep in mind ladies and gentlemen they said this woman's smart she's **planned** her lies and she's **planned** this crime for weeks and now by the time she's with Detective Flores it's been months and she comes up with on the second day she comes up with this lie about the intruders that if you look at the evidence it can be proven but it also can be disproven that would be a pretty good lie [...]* (see Appendix I lines 1073-1078)

(106) *Why would somebody who has experience with digital cameras who has **planned** this murder out, for weeks, for week, week-and-a-half I guess why would she then not take the camera with her after she has all these crime scene photos she know she's taken there, why should she stand there, she's **planned** this out right, she's smart why would she delete some photographs and throw it in the washing machine?* (see Appendix I lines 1347-1352)

In examples n. 103 and n. 104, Martinez continues to insist that Travis' death was intentional and calculated because Jodi had planned everything beforehand. In fact, Martinez built his first-degree murder case around the evidence provided, in which he determined that Jodi had planned out her attack weeks in advance. Martinez said that Jodi stole the .25-caliber gun used in the attack from her grandparents' home where she was staying in Yreka, California, two days after a heated text-message exchange between Jodi and Travis. Furthermore, the fact that Jodi found out that Travis wanted to end their relationship and was preparing to go on a trip to Cancun with another woman probably generated a jealous rage in her which resulted in the killing of Travis. In examples n. 105 and n. 106, on the other hand, Nurmi is trying to show that if Jodi had

planned everything as Martinez is sustaining then why was there sufficient proof compatible with her story of the two intruders. Moreover, why would she leave the camera in the washing machine that would have been certainly and was eventually found by the police? Nurmi is emphasizing that Jodi's behavior shows that she did not plan anything and that unfortunately the killing occurred in a particular moment of their relationship but it was not planned at all.

As can be seen from Table 4, another adjective that may be related to the adjective *premeditated* is *meticulous*. It was observed that the adjective *meticulous* was employed only by the prosecution with a frequency of 3 hits.

The following example shows the use of the adjective *meticulous*.

Excerpt from the prosecution:

(107) *And so she picks up these two gas cans and begins to drive. And after she begins this ride, why not take a little detour. And this little detour is after some thought. Because this is a **meticulous** approach to premeditation. This is a **meticulous** approach to killing.* (see Appendix G lines 710-713)

In example n. 107, Martinez continues to stress the aspect of premeditation by claiming that Jodi had meticulously organised everything in advance and therefore the murder was premeditated.

As can be seen from Table 4, the adjective *hysterical* was employed only by the prosecution with a frequency of 3 hits.

The following examples show the use of the adjective *hysterical*.

Excerpts from the prosecution:

(108) *And if she's into this horrific, **hysterical** state, she would have ran down or thrown it down there. But what she did is she cleaned herself up first.*

(see Appendix G lines 1269-1271)

(109) [...] *and had she been in this **hysterical** sort of mood that she wants you to*

*believe, it's fair to say then that knife would not have been bloody... and she would have dropped blood along the way. (see Appendix G lines 1301-1304)*

In examples n. 108 and n. 109, the adjective refers to Jodi's state of mind shortly after the murder. Martinez insists that Jodi is in no *hysterical* mood or *hysterical* state, as Nurmi wants the jurors to believe. Jodi instead is aware and conscious of what happened and what she did soon after the murder.

As can be seen from Table 4, the adjective *massive* was employed only by the defense with a frequency of 2 hits.

The following examples show the use of the adjective *massive*.

Excerpts from the defense:

(110) *Now the State during their case in chief showed you exhibit 118 that Jodi knew what she was doing planned all this out because she engaged in some **massive** clean up of higher function right that she was functioning and thinking and acting on a higher level. (see Appendix I lines 1409-1413)*

(111) *The State's theory is that mister Alexander after being stabbed walked over to the sink with this **massive** wound in his chest and stood there. (see Appendix I lines 1482-1484)*

In examples n. 110 and n. 111, Nurmi is trying to minimize two particular situations on which Martinez based his theory. In example n. 110, Nurmi insists on the fact that Jodi had in some way cleaned the crime scene, trying not to leave proof of her being there that day. While, in example n. 111, Nurmi insists on the fact that Travis, because of the seriousness of the wounds inflicted would not have been capable to walk towards the sink.

As can be seen from Table 4, the adjective *awkward* was employed only by the defense with a frequency of 1 hit.

The following example shows the use of the adjective *awkward*.

Excerpt from the defense:

(112) *Now under the States theory they claimed that Jodi Arias leaned down grabbed the knife and and stuck it into mister Alexander's in an **awkward** back hand position and was able to penetrate his chest and damage his heart and go deep deep wound, right. (see Appendix I lines 1497-1500)*

In example n. 112, by using the adjective *awkward* Nurmi is trying to convince the jurors that the prosecution's theory is not exact and that there is a flaw in it. The flaw consists in the fact that it would have been impossible for Jodi to stab anyone in that strange position. Moreover, Nurmi is also emphasizing the fact that Jodi would have been incapable of inflicting Travis with deep wounds because he considered her to be too weak.

As can be seen from Table 4, the adjective *bucolic* was employed only by the prosecution with a frequency of 1 hit.

The following example shows the use of the adjective *bucolic*.

Excerpt from the prosecution:

(113) *And she begins to take these photographs. And as she takes these photographs, even though she says they are of a Calvin Klein kind of quality water coming down as if it was sort of a specific, a very quiet **bucolic** kind of scene. That's not what's going on. (see Appendix G lines 1020-1023)*

In example n. 113, Martinez employs the adjective *bucolic* to describe the scene of Travis, still alive, under the shower with water running down on him. The choice of this specific adjective is peculiar because the juror may associate the word to a rural scene, especially because *bucolic*, which comes from the Greek boukolos, means cowherd or herdsman (Vocabulary.com). However, it is also related to the countryside and its pleasant aspects (Macmillan Dictionary). When asked, Jodi affirms that the photos that



she was taking of Travis, under the shower, were similar to a photo shoot of an important fashion designer, i.e., Calvin Klein. In her twisted mind she seems to be an important photographer who is taking these probably unusual types of photos of a naked man while taking a shower. The pictures taken the day of the murder may be considered unusual for a normal couple but also unusual because she then kills him soon after taking them.

As can be seen from Table 4, the adjective *fantastic* was employed only by the defense with a frequency of 1 hit. It was observed that the adjective is however one of the very few positive adjectives used by the defense.

The following example shows the use of the adjective *fantastic*.

Excerpt from the defense:

(114) *Now the theory goes on as it relates to premeditation to say what Jodi did this **fantastic** job of covering her tracks.* (see Appendix I lines 598-600)

In example n. 114, although the adjective has a positive connotation Nurmi seems to use it to convey sarcasm. The defense uses sarcasm to attack the prosecution and transmit the image of Jodi who is very good at removing all signs of her presence on the crime scene. The prosecution insisted that since Jodi tried to conceal her presence at Travis' house, the day of the murder, that represented proof that she had organized the murder. Nurmi's defense sounds a little weak and his use of the specific adjective *fantastic* does not make it better, the impression given is that he is not capable of attacking Martinez's theory of premeditation so it seems that he is just using the adjective randomly. Although Jodi cleaned up the crime scene the investigators were able to find a blood print of the palm of her hand, this obviously showed that Jodi was there contradicting her version of the story. Therefore, the use of *fantastic* probably did not make much

sense because Jodi did not do a good job in hiding the traces of her presence in Travis's home.

As can be seen from Table 4, the adjective *greatest* was employed only by the defense with a frequency of 1 hit. It was observed that the use of the adjective refers to the blood that was found on the crime scene.

The following example shows the use of the adjective *greatest*.

Example from the defense:

(115) *The **greatest** amount of blood loss presumably what to be presumed as footprints is where his throat was slit.* (see Appendix I lines 1392-1393)

In example n. 115, the use of the superlative *greatest* goes to show that there was so much blood found on the crime scene and conveys the image of how cruel and macabre the murder must have been. Throughout the trial the prosecution tried to show that Travis' body was moved from the floor, of the master bedroom, to the shower because Jodi's footprints were found in other places of the house. While, the defense sustained the contrary, i.e., that most of blood was in the shower where Travis' was found dead with a slit throat. Nevertheless, the prosecution's aim was to prove that Jodi was aware of what she was doing and she was acting consciously and intentionally by moving the body from the actual place where she killed him to the shower where the body was found. Moreover, Martinez was trying to convince the jurors that Jodi was thinking and she knew that she had to delete all the evidence that could relate her to the murder.

As can be seen from Table 4, the adjective *cold* was employed with a frequency of 1 hit by the prosecution and 1 hit by the defence. It was observed that the adjective was used to refer to Jodi's behaviour.

The following examples show the use of the adjective *cold*.

Excerpt from the prosecution:

(116) *It is **cold**, it is thinking, it is premeditated, to go up to this individual, someone that she has planned to kill for days, someone with whom she has been intimate with, and then attack him.* (see Appendix G lines 1074-1076)

Excerpt from the defense:

(117) *Does this look like a clean up of some **cold** calculation or rather instead a reaction of what the hell happened reaction to what happened to the experience the fight she was just in?* (see Appendix I lines 1414-1416)

Examples n. 116 and n. 117, show the contrasting concepts that the prosecution and the defense have of Jodi. In example n. 116, for the prosecution Jodi had deliberately planned to kill a person that she once loved, by calculating all the details of the murder so that nothing could lead back to her. In example n. 117, for the defense there was no evidence on the crime scene that could convict Jodi. Nurmi claims that if Jodi had planned things she would have been very cautious of cleaning up everything so that no traces could lead back to her.

As can be seen from Table 4, the adjective *horrific* was employed with a frequency of 1 hit by the prosecution and 1 hit by the defense.

The following examples show the use of the adjective *horrific*.

Excerpt from the prosecution:

(118) *And if she's into this **horrific**, hysterical state, she would have ran down or thrown it down there. But what she did is she cleaned herself up first.*  
(see Appendix G lines 1269-1271)

Excerpt from the defense:

(119) *This fog is not made up because ultimately it is instead an inconvenient truth it would be much more convenient for miss Arias to tell you this sort of thing that we just talked about to paint this **horrific** scene, right of what he did, she didn't do that because she couldn't, she couldn't.* (see Appendix I lines 1066-1070)

In example n. 118, Martinez used the adjective to refer to the mental condition in which Jodi declared to be, but again the prosecution states that if she were in this shocking state of mind she would not have washed herself, cleaned up everything and then tried to mislead the police. On the other hand, in example n. 119, Nurmi employs that adjective to refer to Travis and how he behaved the day of the murder. Nurmi is referring to the episode when Travis was chasing Jodi down the hallway armed with a knife and saying that he wanted to kill her. Therefore, the adjective *horrific* is used to refer to the fact that Travis wanted to kill Jodi and not vice versa.

As can be seen from Table 4, the two adjectives *great* and *big* were employed only by the defense with a frequency of 2 hits each. It was observed that the two adjectives occur one after another in the sentence for this reason they will be examined together.

The following example shows the use of the adjectives *great* and *big*.

Example from the defense:

(120) [...] *we'll talk about the stories in a minute but this story of self-defense it's a **great big** lie, right? That's what they say but if it's a **great big** lie think that might be what you did or you might do something else way smarter than what Jodi did after this took place.* (see Appendix I lines 603-606)

In example n. 120, Nurmi employs the adjectives *great* and *big* to attack Martinez because according to him Martinez is exaggerating about the lies that Jodi had supposedly told. Furthermore, Nurmi sustains that Jodi did not plan or premeditate the murder because if she had she would have at least behaved more cunningly so that no one would ever suspect her.

As can be seen from Table 4, the adjective *orchestrated* was employed with a frequency of 1 hit by the prosecution and 3 hits by the defense.

The following examples show the use of the adjective *orchestrated*.

Excerpt from the prosecution:

(121) *So it's a very well **orchestrated** killing. And it takes time. By time, if somebody takes time, people think.* (see Appendix G lines 1182-1183)

Excerpts from the defense:

(122) *So the State says she **orchestrated** a theft a theft of a gun now in exhibit 325 we see this so-called gun cabinet this impenetrable force, we also see this in 326 the same gun cabinet.* (see Appendix I lines 129-132)

(123) [...] *there would have been no sign of it, but under this concocted theory that she **orchestrated** this theft, she brakes in or herself steals money, a DVD player and this .25-caliber gun and it creates a police report and it creates a trail [...]*  
(see Appendix I lines 150-153)

The use of this adjective is very interesting. In example n. 121, according to Martinez Jodi has committed an *orchestrated* killing which takes time to plan. So again Martinez is highlighting the aspect of premeditation. In example n. 122, on the other hand, Nurmi employs the adjective to refer to the accusation against Jodi of stealing her grandfather's gun, which she then employed to shoot Travis. In example n. 123, Nurmi is trying to demolish Martinez's theory because if Jodi had stolen her grandfather's gun that would have represented proof easily traceable back to her.

As can be seen from Table 4, the adjective *vicious* was employed only by the defense with a frequency of 1 hit.

The following example shows the use of the adjective *vicious*.

Excerpt from the defense:

(124) *Had Jodi Arias really been interested in this **vicious** attack of Travis Alexander you know even though the State has contemplated you, oh that she was craving the media [...]* (see Appendix I lines 792-794)

In example n. 124, Nurmi's use of the adjective *vicious* is interesting. Since the entire nation knew how Travis had been killed, Nurmi could not deny the fact that the murder

was gruesome. Therefore, Nurmi uses the adjective to emphasize that he was aware of how cruel and horrible the killing actually was.

Below follows Table 4.1, which investigates the adjectives employed to describe Travis' death. It is important to point out that the adjectives examined refer to the positions in which Travis was found and how he was killed.

<b>n.</b>	<b>Adjectives referring to Travis' death</b>	<b>Frequency Prosecution</b>	<b>Frequency Defense</b>
1	Dead	12	2
2	Stabbed	11	5
3	Naked	2	8
4	Prophetic	5	/
5	Nude	/	5
6	Shallow	/	5
7	Bleeding	4	2
8	Defenseless	3	/
9	Vulnerable	/	4
10	Defensive	2	/
11	Deep	/	2
12	Dying	2	/
13	Fatal	2	1
14	Stumbling	2	/
15	Crumpled	1	/
16	Crunched	1	/

Table 4.1 Adjectives employed by the prosecutor and the defense with reference to Travis' death

As can be seen from Table 4.1, it was observed that the adjective to rank the highest frequency was *dead*. The adjective was employed with a frequency of 12 hits by the prosecution and with a frequency of 2 hits by the defense.

The following examples show the use of the adjective *dead*.

Excerpts from the prosecution:

(125) *Bottom line he was **dead** at the time that he was shot, in order to forensically get the result of no blood in the track of the bullet.*

(see Appendix G lines 1204-1205)

(126) *And when the heart isn't pumping, he is **dead**. There's no other medical phenomenon or any other medical indications that um, would, ah, give any other indication. And if that's the case, then he's already **dead**.*

(see Appendix G lines 1223-1226)

(127) *Let's talk about premeditated murder well it requires that it be proven that the defendant caused the death of another person well exhibit 207 he's **dead**, that element is proven well the defendant intended or knew that she was would cause the death of another person, that's also proven.*

(see Appendix G lines 1816-1820)

Excerpts from the defense:

(128) *Well, that doesn't make any sense because he was slump completely on the ground, she would have to reach way over and shoot him in the shower and that doesn't make any sense either, right it is just this idea that after this Jodi shot Travis after he was **dead**, doesn't make any sense.*

(see Appendix I lines 1459-1463)

(129) *And when the detective went though and related all of these things about you know the shot first and what happened next, yeah the shot first and then detective excuse me doctor Horn comes forward says no, no the shot was last he was already **dead** it was never my opinion that he was shot first I never would have said that, so again somebody's not telling the truth here [...]*

(see Appendix I lines 1004-1009)

In example n. 125, Martinez claims that, according to experts and the evidence found on the crime scene, Jodi shot Travis when he was already dead. In example n. 127, Jodi committed premeditated murder because she had caused Travis' death. In examples n. 128 and n. 129, on the other hand, Nurmi comments the experts report and does not believe in the theory that Travis was shot after he was dead because it does not make any sense to him.

As can be seen from Table 4.1, the adjective *stabbed* was employed with a frequency of 11 hits by the prosecution and with a frequency of 5 hits by the defence. It is fundamental to emphasize that Jodi not only shot Travis but she also stabbed him. The medical examiner established that Travis had suffered 27 to 29 stab wounds.

The following examples show the use of the adjective *stabbed*.

Excerpts from the prosecution:

- (130) *One of the things that we know this particular case is that amongst other things she slit his throat, she **stabbed** him in the heart and we also know that she shot at him. (see Appendix G lines 1820-1822)*
- (131) *And she took that knife and **stabbed** him um in the front. (see Appendix G lines 1085-1086)*
- (132) *The reason that you know that he has already been **stabbed**, at this point, is because of the patterns you have on this particular photograph. (see Appendix G lines 1107-1109)*
- (133) *And he's also being **stabbed**, as you saw, in the back of the head as he stands at that sink. Because he is standing at that sink, and he is bleeding, and the amount of blood that's at that sink is indicative of time. (see Appendix G lines 1125-1127)*
- (134) *So if he was standing at the sink, and he was shot at the sink, after being **stabbed**, there would be lots of blood there. And the doctor did not find any*



*there.* (see Appendix G lines 1199-1201)

Excerpts from the defense:

(135) *Stab him, stab him [...] remember now there's this big guy, strong guy working out getting ready for his trip to Cancun, stab him gees you know you wouldn't think you'd stab someone, she didn't have a gun wait in the States theory she did have a gun, she had a gun so she chooses [...] but keep in mind the State went to great length throughout this trial and say you bet yeah no doubt about it Jodi's a liar she's **stabbed** him first and she **stabbed** him right there in the shower.*

(see Appendix I lines 586-593)

(136) *The State's theory is that mister Alexander after being **stabbed** walked over to the sink with this massive wound in his chest and stood there.*

(see Appendix I lines 1482-1484)

In all of the examples Martinez's objective is to show the jurors how fierce the killing was. The fact that Jodi inflicted Travis with so many stab wounds confirms that she must have been in a state of total fury and rage. In examples n. 135 and n. 136, on the other hand, Nurmi is trying to show that Jodi was too weak to be able to stab Travis because he was bigger and stronger than her. Moreover, the defence insists on the fact that Jodi did not have the gun with her but she used Travis' gun that she found in the bedroom closet. This represents the main reason why Nurmi insisted that the murder should not be considered as premeditated. It is interesting to observe that the excerpts also revealed that Travis was not murdered in the shower but somewhere else. This is essential because it proves that Jodi acted cruelly and was pitiless when she was killing Travis. Jodi did not limit herself to shoot Travis, which would have probably also caused his death, but she enraged against him by stabbing him multiple times. Jodi's actions were deliberate. For this reason, the prosecution claimed that the murder be tried as first-degree murder and not as manslaughter as the defense was trying to obtain.

As can be seen from Table 4.1, the adjectives *naked*, *nude* and *vulnerable* were employed. Specifically, *naked* was employed with a frequency of 2 hits by the prosecution and with a frequency of 8 hits by the defence. While, the adjectives *nude* and *vulnerable* were employed only by the defense. Specifically *nude* was employed with a frequency of 5 hits and *vulnerable* with a frequency of 4 hits. It was observed that the adjectives were employed when referring to the pictures that Travis and Jodi took of themselves hours before the murder.

The following examples show the use of the adjectives *naked*, *nude* and *vulnerable*.

Excerpt from the prosecution:

(137) [...] *and that was the gun that was used to kill him the issue of the gun will not go away especially since she said that he didn't have one especially since she also indicated that there was a circuitous route through the closet especially when she could've just walked out the guy's **naked** he's not gonna run after her outside **naked** and then indicating that she came through the closet shoots him in the closet according to some accounts, shoots him outside of the closet in the bathroom and grabs a gun that she believes is unloaded.*

(see Appendix G lines 1929-1935)

Excerpts from the defense:

(138) [...] *we're supposed to believe in that he's so scared of her, right he's afraid of her so my goodness how could she walk right into the house and then sleep with him sleep in the bed and then get up and take pictures of her **naked**, he's so scared of her he's taken **naked** pictures of her in his bed. That is a new level of being scared [...]* (see Appendix I lines 433-437)

(139) *We have pictures and Jodi **naked** on the bed that's the important question keep in mind now under the State's theory Jodi is there to kill Travis Alexander.*

(see Appendix I lines 466-468)

(140) [...] *the State postulated to you yesterday but this was it that she had convinced mister Alexander to get in the shower that they had sex twice she kinda wore him*

*down so that he was **naked** and **vulnerable** in this shower so she could take her shot right... that was the plot of all... and keep in mind that the State is theorized throughout this case that Jodi Arias had the gun and the knife with her in the bathroom she had mister Alexander **naked** and **vulnerable** in the shower and she was waiting for her moment in time.*

(see Appendix I lines 511-519)

(141) *[...] we have mister Alexander right there don't we he's in the shower look at his head facing completely against the wall arms up **vulnerable**, still make it one of the State's theory that would matter but be that as it may there he is.*

(see Appendix I lines 525-528)

(142) *The mister Alexander is **nude** you can see that **vulnerable** so the State says although it seems highly less likely 'cause [...] he's looking at miss Arias certainly would've seen it coming, his hands are up but it is this moment in time the State says that miss Arias decides to put her plan into motion [...]*

(see Appendix I lines 573-577)

(143) *[...] Jodi Arias **nude** on the bed can see her face and you can see the time 1:42 and that's important ladies and gentlemen because keep in mind now by 1:42 in the afternoon of June 4<sup>th</sup> miss Arias was due to be in Utah ... and she lets the man tie her up... tie her up to the bed take **nude** photographs of her and she doesn't shot him and drive off... but she didn't, right she didn't but this was the plan under of the State's theory, this was the plan to kill him and get to Utah as an alibi [...]* (see Appendix I lines 488-497)

In example n. 137, Martinez employs the adjective *naked* simply to explain to the jurors that Travis was in no condition of attacking Jodi, he would not even have been able to run outside of the house if he were chasing Jodi as the defense sustained, when referring to the fight that they had and to the fact that Travis had tried to kill her. In examples n. 138, n. 139 and n. 143, Nurmi employs the adjectives *naked* and *nude* to refer to the fact that both Jodi and Travis had taken nude pictures of themselves when they were in bed.

In example n. 140, Nurmi employs *naked* and *vulnerable* to describe Travis, who is under the shower, therefore not only naked but also vulnerable because he is an easy target. In fact, Travis could be easily attacked also because he was not expecting it. Furthermore, in examples n. 140, n. 141 and n. 142, Nurmi employs the adjective *vulnerable* probably to stress the fact that Travis could be exposed to an unsafe and dangerous situation. By using *vulnerable* the jurors may have the impression that the defense is describing a person who is incapable of defending himself in a serious and critical context. By employing the three adjectives, *naked*, *nude* and *vulnerable*, Nurmi is also probably trying to demonstrate that if Travis were afraid of Jodi and considered her to be a stalker then why was he letting her take nude pictures of him and why was he taking nude pictures of her? Nurmi is trying to prove that Travis would not have put himself into a dangerous situation if he were really frightened of Jodi and that he did not feel at all threatened by her, therefore this establishes that the murder was not premeditated.

As can be seen from Table 4.1, the adjective *prophetic* was employed only by the prosecution with a frequency of 5 hits.

The following examples show the use of the adjective *prophetic*.

Excerpts from the prosecution:

(144) *How **prophetic** of him? Back on May 19<sup>th</sup> and this is nine days after this telephone call. But he's extremely afraid of her because of this stalking behavior. Little does he know that he has less than a month to live.*  
(see Appendix G lines 448-451)

(145) *And, how **prophetic**, looking at these next words, how **prophetic**, how absolutely **prophetic** no one can dispute that those are the truest words that are spoken in this case, and they're spoken by mister Alexander, even though he is not here, through his writings. (see Appendix G lines 494-498)*

In examples n. 144 and n. 145, Martinez's use of the adjective is to paint a picture of Travis who probably had some sort of intuition that something bad was going to happen between him and Jodi especially when he tells her in an instant message that she is an evil person. The instant message that Martinez is referring to is dated May 26, exactly 9 days before the murder. Martinez probably uses the adjective to highlight how Travis felt about Jodi and her behavior. However, despite Travis' intuition he had a last rendezvous with Jodi, which unfortunately was fatal for him.

As can be seen from Table 4.1, both lawyers employed the adjectives *shallow*, *deep* and *fatal*. It was observed that the adjectives *shallow* and *deep* were employed only by the defense. Specifically, *shallow* was employed with a frequency of 5 hits and *deep* was employed with a frequency of 2 hits. While, the adjective *fatal* was employed with a frequency of 2 hits by the prosecution and with a frequency of 1 hit by the defense. It was observed that the adjectives were employed to refer to Travis' wounds.

The following examples show the use of the adjectives *shallow* and *deep*.

Excerpts from the defense:

- (146) *But keep in mind the testimony of doctor Horn the first time these 9 wounds were all real **shallow, shallow** wounds. (see Appendix I lines 1496-1497)*
- (147) *Jodi has this knife still in her hand, why didn't she just come behind him and cut him? Instead we have these superficial not a superficial but we have these **shallow** stabbings. (see Appendix I lines 1507-1509)*
- (148) *Now under the States theory they claimed that Jodi Arias leaned down grabbed the knife and and stuck it into mister Alexander's in an awkward back hand position and was able to penetrate his chest and damage his heart and go **deep deep** wound, right. (see Appendix I lines 1497-1500)*

The following examples show the use of the adjective *fatal*.

Except from the prosecution:

(149) [...] *it's the States position at the stake that the stabbing happened first because of the forensic evidence and of the blood spatter evidence that's upstairs, either way she killed him three times over, she stabbed him in the heart, he would die from that, certainly the throat was immediately **fatal** and the gunshot would also have been immediate, would have been **fatal**. So there is this premeditation aspect [...]* (see Appendix G lines 1335-1339)

Excerpt from the defense:

(150) *Now presumably for the blood to hit this sink and not the mirror and not somewhere else and as we saw mister Martinez do yesterday you know we have a palm print there, he's leaning forward right he's leaning forward he has a hand on the sink and that is where the State theorizes that Jodi Arias then after stabbing him in the chest for some reason backs up cause he's down he's got this chest wound right hey this is a **fatal** wound he has it and he's sitting in the shower when he has it that somehow he gets up gets past miss Arias whose got the knife in her hand, keep in mind still, and then once he gets past miss Arias and he stumbles to the counter he's standing there bleeding out his chest and spitting all this blood and that they somewhat the State told us yesterday miss Arias then comes behind mister Alexander to stab him in the back.*  
(see Appendix I lines 1484-1494)

In examples n. 146, n. 147 and n. 148, Nurmi insists with his theory that since Jodi was not that strong enough she could have only inflicted superficial wounds to Travis. In example n. 149, Martinez insists that the slitting of Travis' throat was lethal.

As can be seen from Table 4.1, the adjective *bleeding* was employed with a frequency of 4 hits by the prosecution and with a frequency of 2 hits by the defense.

The following examples show the use of the adjective *bleeding*.

Excerpts from the prosecution:

(151) *He's still alive. But he's **bleeding**, that red stuff there it's blood.*  
(see Appendix G lines 1117-1118)

(152) *Because he is standing at that sink, and he is **bleeding**, and the amount of blood that's at that sink is indicative of time. (see Appendix G lines 1126-1127)*

(153) *[...] one of the things that they wanted you to believe was that this person is shot and hit through the head, he couldn't have been shot there at the sink, according to them, he's already **bleeding** and still continued on. But the knife wounds do have to be first. Of course that would violate the Laws of Nature because he's **bleeding** so profusely there that the doctor by necessity would have had to found lots of blood in the track of the bullet and he didn't.  
(see Appendix G lines 1194-1199)*

Excerpts from the defense:

(154) *[...] he stumbles to the counter he's standing there **bleeding** out his chest and spitting all this blood and that they somewhat the State told us yesterday miss Arias then comes behind mister Alexander to stab him in the back.  
(see Appendix I lines 1492-1494)*

(155) *Keep in mind as well the theory goes it she was out to slit his throat, well there he is right, bent over the counter **bleeding** at his chest according to the State.  
(see Appendix I lines 1505-1507)*

Due to the numerous stab wounds Travis is obviously bleeding, but it is in example n. 153, that Martinez is trying to establish and prove that Travis was first stabbed and then shot in the head. For the prosecution it is important to establish what happened first, whether Travis was stabbed or shot because this represents a significant discrepancy among the lawyers and their expert witnesses within the trial. Establishing what happened first is essential in order to understand the dynamics of the murder and understand whether or not the murder was premeditated. In example n. 155, on the other hand, Nurmi is discrediting the prosecution, especially when he affirms that the State's theory is that Travis was stabbed countless times and when incapable of defending himself Jodi stabbed him in the back which represented the coup de grace.

As can be seen from Table 4.1, the adjective *defenseless* was employed only by the prosecution with a frequency of 3 hits.

The following examples show the use of the adjective *bleeding*.

Excerpts from the prosecution:

(156) *Sitting there not only is he **defenseless**, he does not have a gun, he does not have a knife. He doesn't have any weapon whatsoever. Not only does he not have that, he doesn't have any clothing on. And as he sits there, he doesn't have any dignity either. She's taken that away from him.*

(see Appendix G lines 1046-1050)

(157) *And if anybody is **defenseless** in this case, it isn't the defendant. It's Travis Alexander as he sits like that in that shower with his killer standing there dressed in pants [...] with this camera. And she starts snapping this.*

(see Appendix G lines 1050-1054)

(158) [...] *just a long period of time between the stab wounds to the heart and the shower when he was **defenseless** to the time that he was trying to get away, going along the wall and absolutely uh falling down so in this case it can be very short she killed them three different ways she knew that she was going to kill him [...]* (see Appendix G lines 1858-1862)

In examples n. 156, n. 157 and n. 158, Martinez employs the adjective *defenseless* to describe the peculiar situation in which Travis was, i.e., in the shower having nude pictures taken of him. Martinez's objective is to prove to the jurors that Travis was in a powerless and unprotected situation and therefore incapable of defending himself.

As can be seen from Table 4.1, the adjective *defensive* was employed only by the prosecution with a frequency of 2 hits.

The following example shows the use of the adjective *defensive*.

Excerpt from the prosecution:

(159) *And so, she gets her knife. And she took that knife and stabbed him um in the*



*front. The reason that we know that she did that is because mister Alexander has **defensive** wounds. And he has **defensive** wounds to his left and his right hand.*

(see Appendix G lines 1085-1088)

In example n. 159, Martinez is emphasizing the fact that Travis was trying to defend himself from Jodi's fury, the wounds on his hands demonstrate that he raised his arms and hands to protect himself, this is what an unarmed person would do in a situation like that.

As can be seen from Table 4.1, the adjective *dying* was employed only by the prosecution with a frequency of 2 hits.

The following examples show the use of the adjective *dying*.

Excerpts from the prosecution:

(160) *And part of the **dying** process includes, because of the cuts to the heart, blood coming from his mouth and blood coming out from the wounds. But he's not going to die immediately.* (see Appendix G lines 1091-1093)

(161) *And as he is in this position of **dying**, he then ambulates. And we know she didn't carry him over to the, um sink. We know that he goes there by himself.*

(see Appendix G lines 1104-1106)

In example n. 160, Martinez is explaining that Travis did not die immediately but, while Jodi is stabbing him, he is tottering from one room to another, as can be seen in example n. 161. The fact that Jodi keeps on stabbing Travis, never stops to even think of what she is doing, never calls 911 to ask for help, never shows any signs of hesitation, but inflicts Travis with the final coup de grace by slitting his throat shows that Jodi was brutal and vicious. According to Martinez this brutality demands for a person who is thinking and not confused or disorientated as Nurmi has always tried to

claim. Therefore, for the prosecution Jodi was conscious and well aware of what she was doing.

As can be seen from Table 4.1, the adjectives *stumbling*, *crumpled* and *crunched* were employed only by the prosecution. Specifically, *stumbling* was employed with a frequency of 2 hits, *crumpled* with a frequency of 1 hit and *crunched* with a frequency of 1 hit. It was observed that the adjectives were used to refer to the minutes before Travis died and to display the position in which he was found in the shower. Moreover, the use of the adjectives perfectly describe the scene immediately before Travis' death. The following examples show the use of the adjectives *stumbling*, *crumpled* and *crunched*.

Excerpts from the prosecution:

(162) *And then in this rainbow, somewhat ironic there is no good luck for him at the end of that rainbow. But you can see that it starts high and it arcs down to the area where there's a larger amount of blood. He's **stumbling** at that point. But he's **stumbling** with somebody after him. He's trying to get away. He's trying to get away from her over there.*

(see Appendix G lines 1144-1148)

(163) *[...] Do we need to look at the pictures of his gashed throat? Do we need to look at the sort of frog like state that she left him in, all **crumpled** up in that shower? Or do we need to look at his face where she put that bullet in his right temple [...]* (see Appendix G lines 499-502)

(164) *And it isn't because she loved mister Alexander that she cleaned him up, or it isn't that she wanted him to look good, even though he, with all due respect, he looked a little bit **crunched** up there. It wasn't that. The net effect of what she did is to destroy any of her DNA. She washed it off.*

(see Appendix G lines 1290-1293)

In example n. 162, Martinez is painting a lively picture of Travis falling and tripping around the house because of the multiple stab wounds that he is suffering from. The adjective is employed to describe Travis' state exactly before his death. In examples n. 163 and 164, the adjectives *crumpled* and *crunched* have the intention of painting another vivid picture of the murder scene. Martinez probably thought that the jurors would have the image of this person in a fetal position almost as wanting to protect himself. It is essential to point out that during the trial Martinez also used the autopsy photos to display Travis' mutilated body and show the jurors how dreadful the murder was.

To conclude this section, it is essential to highlight that the adjectives investigated and employed by the prosecution and the defense may have created doubts about whose version of the story was more credible. In fact, some adjectives were very strong, explicit and disclosed many details of the relationship between Jodi and Travis. Moreover, it is fundamental to highlight that the lawyers selected very different lexical and syntactic forms. For instance, the defense often de-emphasized or even silenced the negative (violent, sexual, criminal, etc.) aspects of the defendant's alleged or known actions by not mentioning them or using generalizations, nominalizations, and other similar forms to hide their true nature. By employing descriptive adjectives the lawyers are trying to establish a connection with the jurors, who, on their part, may feel more sympathy for the defendant or the victim. Although everything will depend on the lawyers' skill to use the right language and words in order to obtain a guilty or non-guilty verdict. Therefore, it is essential that a lawyer be brighter than the other and employ specific techniques in order to influence the jurors. Furthermore, the use of specific adjectives may help bridge the gap between the factual evidence presented and the human element of the crime. For this reason, lawyers must be capable of eliciting

emotions in the jurors. This strategy will enhance the closing argument and lead to a favorable outcome either for the prosecution or for the defense.

#### **4.5.2 The use of Metaphors**

In this section, the metaphorical expressions and metaphor-related words (MRWs) employed by the prosecution and the defense are analyzed through the Metaphor Identification Procedure (MIP). As previously mentioned metaphor-related words (MRWs) have the potential to be viewed as metaphor. For this reason, the aim is to carry out a linguistic investigation of the lawyers' language and try to identify possible underlying metaphorical conceptualisations. In fact, the lexical units identified are analyzed on a linguistic level and studied in order to verify whether or not they may actually be considered metaphorical expressions and/or metaphor-related words. Therefore, the purpose of the study is to understand how trial lawyers use these metaphorical expressions and metaphor-related words to hook the audience's attention and convince the jury that his/her story is more credible than his/her opponents. Moreover, it is important to comprehend how metaphorical expressions and metaphor-related words may be employed as persuasive strategies within the courtroom, because when metaphors are involved, the meaning in that particular piece of writing or speech act goes far beyond the words of the text or of the spoken message. It is essential to stress that one basic tenet of contemporary metaphor research is that metaphor in language and thought is not typically deviant, novel, and erratic, but rather natural, conventional, and systematic (Gibbs, 1994). In fact, a complex web of metaphors is employed in courtroom communication, especially in closing arguments, because of their nature, structure and purpose. Indeed, metaphors are strictly unavoidable in legal language because they are constructive of legal reasoning (Morra *et al.*, 2006).

Moreover, as Gotti affirms metaphorization offers a series of advantages, such as terminological transparency, conciseness, and “the tangible quality of images from the physical world used to represent abstract and often complex concepts that would otherwise be difficult to define” (Gotti, 2008: 56-57).

When investigating the Jodi Ann Arias corpus, it was observed that the prosecution made greater use of metaphor-related words, while the defense made greater use of metaphorical expressions. The metaphor-related words are gathered in Table 5, while the metaphorical expressions are gathered in Table 6. As mentioned in the previous chapter MIP requires that the lexical units under analysis, which will be marked as metaphor-related or not, be searched in the Macmillan English Dictionary for its general definition. While, an etymology dictionary should be used for greater reliability of the metaphor-related words, because it determines whether or not a lexical unit is historically prior. Another important aspect to highlight is that the metaphor-related words and the metaphorical expressions will be investigated by analyzing first the contextual meaning i.e., its meaning in the situation in which it is used, then its basic meaning i.e., its more concrete, specific and human-oriented sense in contemporary language use, and finally the contextual meaning versus the basic meaning (Steen *et al.*, 2010). For the reader can have a clearer idea of the metaphor-related words, employed by Martinez, and the metaphorical expressions, employed by Nurmi, each analysis will be followed by figures showing the concordance lines directly taken from AntConc. Furthermore, it is also important to underline that the investigation of the metaphor-related words will not be discussed based on their frequency, but rather on the same root words.

n.	Metaphor-related words	Frequency
1	<i>Staged</i>	8
2	<i>Staging</i>	5
3	<i>Fog</i>	5
4	<i>Stage</i>	4
5	<i>Limelight</i>	3
6	<i>Foggy</i>	2
7	<i>Fogginess</i>	1
8	<i>Honeymoon</i>	1

Table 5 Metaphors employed by the prosecutor

As can be seen from Table 5, Martinez employed the lexical unit *staged* with a frequency of 8 hits. However, it was observed that *staged* was followed by the nouns *a scene* or *her defense*. Specifically, *staged a scene* was used with a frequency of 6 hits, while *staged her defense* with a frequency of 2 hits.

As can be seen from table 5, Martinez employed the lexical unit *staging the scene* with a frequency of 5 hits, while *stage the scene* was employed with a frequency of 4 hits.

- (a) Contextual meaning: in this context, *staged a scene* or *staged her defense* indicates the idea that Jodi is making false statements, thus lying in order to defend herself because she continues to lie and deceive the jury and the lawyers, not only during the TV interviews that she released but also when she is under oath on the witness stand.

Macmillan 1: (verb) to organize an event.

- (b) Basic meaning: the basic meaning of the verb to *stage* is to organize an event or exhibit or present to an audience, or to be adaptable or suitable for theoretical

presentation. The etymology dictionary states that the meaning of this lexical unit is historically prior.

Macmillan 1: (verb) is to organize an event.

Macmillan 2: (verb) to be the place where an event happens.

- (c) Contextual meaning versus basic meaning: the contextual meaning contrasts with the basic meaning and can be understood by comparison with it: we can understand the concept of an abstract performance and the idea of acting a part in terms of a real performance or a real actor who is acting in a play on a stage in the theatre. Although, Jodi is not an actress, according to Martinez she is performing as an actress who is playing a part on stage. Therefore, the contrast may be seen as falsifying her defense as is acting a part.

The persuasive aspect is that Martinez, by employing the verb *to stage* is conveying the image of a person who is illusive, maybe even deceptive, just as an actor would be when he/she plays a part and assumes another identity. Therefore, Jodi is being portrayed as a false individual. Also, the use of *staging the scene* suggests the same image of an untruthful person. Furthermore, the lawyer is also metaphorically referring to the fact that what happens during a trial is similar to what happens during a play at the theatre, where various actors play the role of a fictional character and different scenes take place. The concept is that all the actors during the trial, i.e., the lawyers, the defendant, the judge and the jury all have a role and the trial represents the various phases of the play. In fact, Karton sustains that “the advocate who goes into the courtroom is usually the writer of the script, as well as the presenter of the script [...] the actor (Karton, 2002: 80). Moreover, it was also observed that the verb *to stage* was referred to by using different tenses, for instance the infinitive, past simple, present

continuous and present perfect. The lawyer's use of the present perfect simple is important because the tense is used to refer to one or more events that have occurred at some time within a period leading up to the present (Greenbaum and Quirk, 1990: 51). The following sentences, which refer to something that has been said or done, by the defendant, before the present action, may give a better understanding of how the present perfect has been employed by the prosecutor.

The following examples show how the lexical unit was used in context.

Excerpt from the prosecution:

(165) *That none of you will convict her, after she **has staged the scene** for you.*

(see Appendix G lines 12-13)

In example n. 165, by using the expression: *she has staged the scene* Martinez is referring to a particular moment of the entire event, i.e., during a television interview when Jodi claimed that no jury would ever convict her of Travis' killing because, according to her version of the facts she was not even present at the time of the murder, therefore she was innocent. Instead according to Martinez it is in this specific moment that Jodi is continuing to weave her web of lies about the murder.

Excerpt from the prosecution:

(166) *But now, instead of a gun, instead of a knife she uses lies. And she uses these lies in court when she testified to **stage the scene** for you. Just like she **staged the scene** for the police, after she killed mister Alexander. And this woman, who would **stage the scene**, has even attempted to **stage the scene** through the use of the media. (see Appendix G lines 4-8)*

In example n. 166, Martinez refers to Jodi's conduct on the witness stand where she continues to lie about her innocence. On the other hand, Martinez claims that she had planned Travis' killing in advance and in detail. A significant aspect to highlight is that Martinez's use of the lexical unit *staged the scene through the use of the media* conveys



the idea that Jodi is a manipulative person who is using the television and TV interviews to create a distorted image of herself, namely that of an innocent girl who had no part in the killing of Travis. Therefore, according to Martinez she is putting on a play not only for the jury but also for the entire nation.

Excerpt from the prosecution:

(167) *So she's now **staged the scene**, she's now cleaned up, there has been days of premeditation, [...]* (see Appendix G lines 1330-1331)

In example n. 167, by underlining the fact that: *she's now staged the scene, she's now cleaned up* Martinez is demonstrating, to the jury, that Jodi's act of cleaning up the murder scene proves that the murder was not committed in a moment of rage or anger it was intentional and therefore premeditated. For this reason, Martinez insists and stresses the aspect of *days of premeditation*.

In the following sentences Martinez used the past simple tense of the verb *to stage*, thus he is referring to a past action.

Excerpts from the prosecution:

(168) *Just like she **staged the scene** for the police, after she killed mister Alexander.*  
(see Appendix G lines 6-7)

(169) *[...] and so she **staged the scene** at that point, then she did some other things that were equally as interesting and by interesting I mean demonstrative of how well she was thinking at the time.* (see Appendix G lines 1340-1342)

(170) *She **staged the scene** of the murder and then she came into court and during these proceedings has **staged her defense** and she **staged her defense** by lies, and the lies that she told were to a number of people, and to various groups of people.* (see Appendix G lines 1408-1411)

By employing the lexical units *to stage*, *staged* or *staging* Martinez is persuading and proving to the jury that Jodi is a liar. This assertion is supported by Martinez’s depiction of Jodi as a woman capable of inventing numerous stories that she tells the police when questioned and then during trial, as can be seen in example n. 168. Or as in example n. 170 where Martinez insists on Jodi’s lying to everyone. To conclude Martinez’s use of *she staged the scene* and *she staged her defense* is a strategy to continuously underline that Jodi is playing a part where she is an innocent person that has been accused of a horrible crime. According to Martinez the truth lies in the fact that she is a liar who is deceiving everyone.

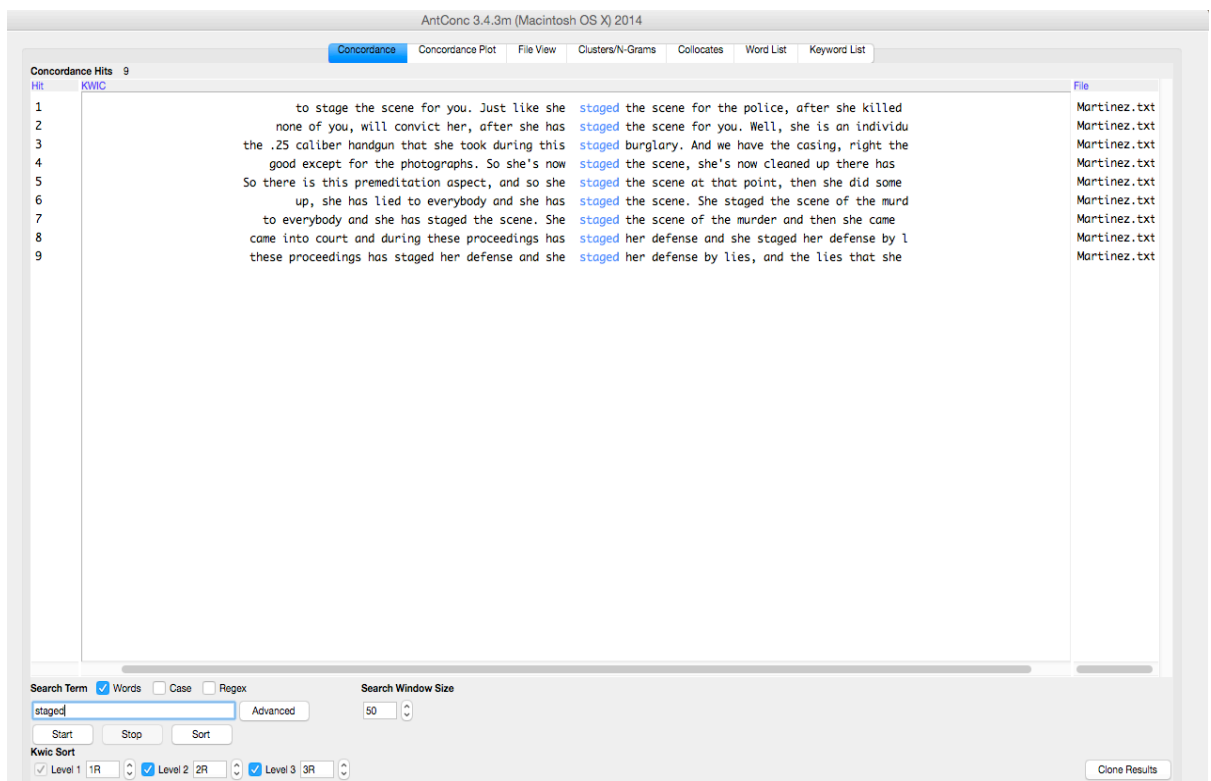


Figure 3 Concordance lines for the metaphor-related word *staged*

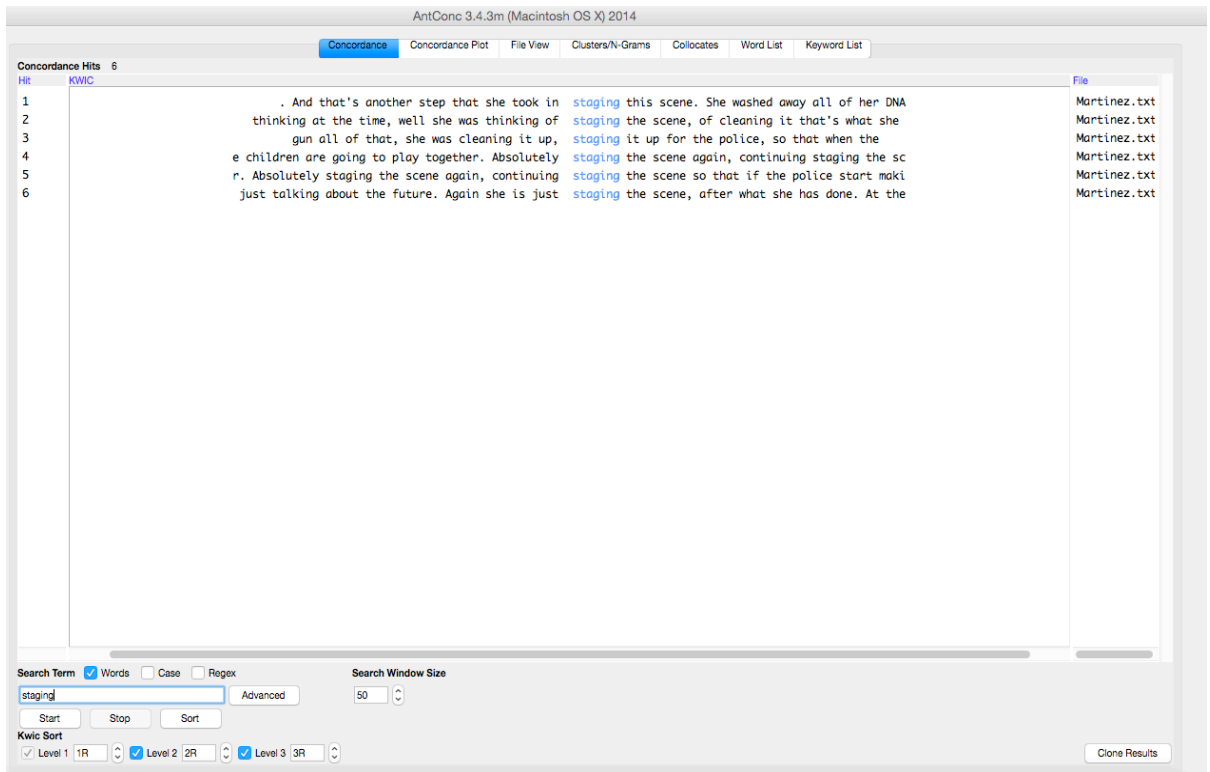


Figure 4 Concordance lines for the metaphor-related word *staging*

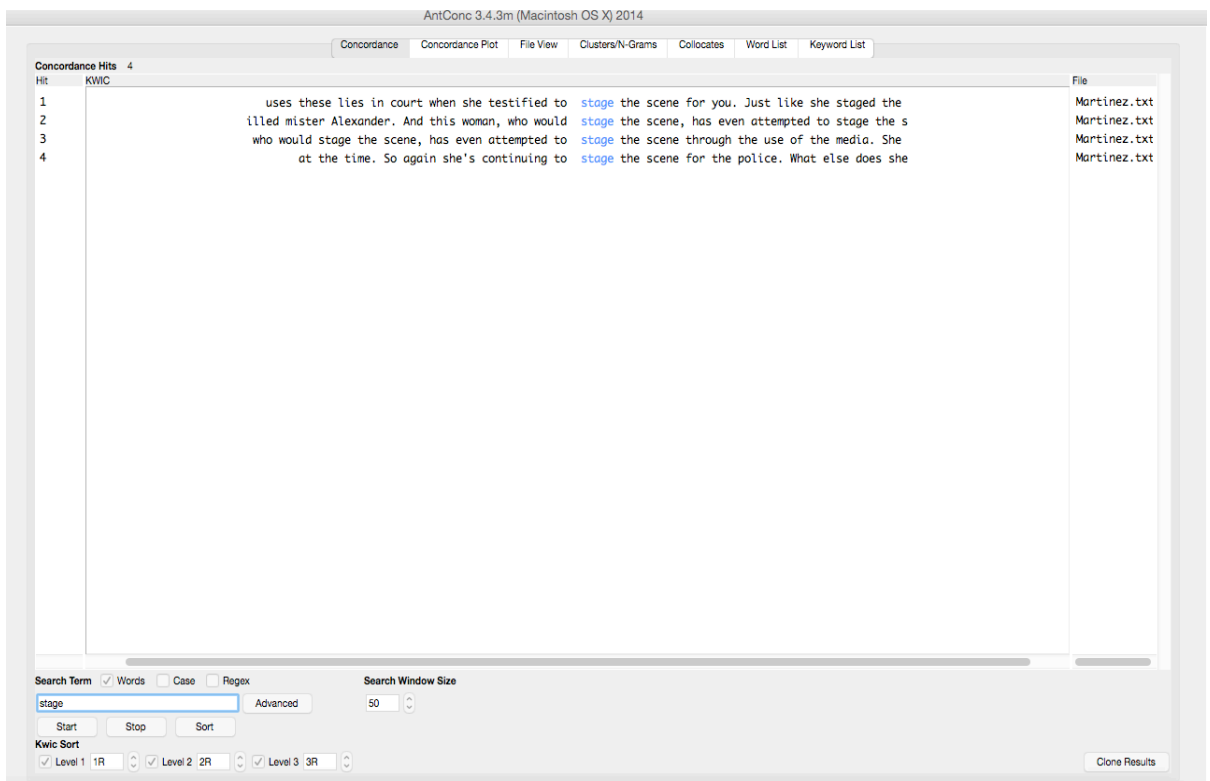


Figure 5 Concordance lines for the metaphor-related word *stage*

As can be seen from Table 5, other identified metaphor-related words employed by Martinez were the lexical units *fog*, *foggy* and *fogginess*. Specifically, *fog* with a frequency of 5 hits, *foggy* with a frequency of 2 hits and *fogginess* with a frequency of 1 hit.

- (a) Contextual meaning: in this context, *fog* indicates the idea that Jodi is in a state of disorientation and/or bewilderment, thus she does not remember what happened the day of the murder.

Macmillan 3: (noun) a confused or confusing situation or state.

Macmillan 2: *Foggy* (adj.) confused because you cannot think or see clearly.

- (b) Basic meaning: the basic meaning of the noun *fog* is that of an obscuring haze, as of atmospheric dust or smoke, or a cloud of vaporized liquid. The etymology dictionary also suggests this meaning is historically prior.

Macmillan 1: (noun) a thick cloud that forms close to the ground or to water and is difficult to see through.

Macmillan 1: (adj.) full of fog or covered with fog.

- (c) Contextual meaning versus basic meaning: the contextual meaning contrasts with the basic meaning and can be understood by comparison with it: we can understand an abstract confusion in terms of something that is dangerous and unseen or as a thick cloud that confounds us and causes us to lose our sense of direction. This confrontation pertains not only to the element of *fog* in the physical world, but also to the metaphor of *fog* in the mental world. Therefore, the confusion that *fog* can present us with in the physical world is the same type of confusion that *fog* can present us with in the mental world.

The concept of *fog* employed by Martinez describes confusion and a lack of clarity that may baffle a person. Moreover, since the term *fog* is described as a thick cloud, this thick cloud can symbolically mean that the truth is being hidden. This truth may be the truth behind the whole story that Jodi is telling and lying about.

The following examples show how the lexical unit was used in context.

Excerpt from the prosecution:

(171) *Dissociative Amnesia* you heard what the definition of that was. Or is it a **fog**? Even a San Franciscan **fog**, if such a thing existed, wouldn't be so cloudy to account for this kind of behavior. There is no **fog** that someone can tell you about that hasn't lifted or allow for this. (see Appendix G lines 1257-1261)

In example n. 171, there are two aspects that should be highlighted. The first is that Martinez is figuratively comparing Jodi's state of confusion to the San Franciscan fog, which is a typical weather phenomenon that occurs within the San Francisco Bay Area. This is a specific type of fog, which is a low-lying stratus of clouds due to a combination of factors particular to the region that appears in the summer morning and evenings, which magically disappears before arriving in the city. Since this fog magically disappears before arriving in the city, and as Martinez says *a San Franciscan fog, if such a thing existed*, he is drawing a precise picture in the minds of the jurors and conveying the image and proving to the jury that Jodi's state of confusion is non-existent just like a San Franciscan fog. The second aspect is that Martinez says: *there is no fog that someone can tell you about that hasn't lifted [...]* with this statement Martinez is emphasizing the fact that the fog has to rise at a certain point of the day making things visible to see. Just as the fog is *lifted* also Jodi's reminiscences of what happened the day of Travis' murder should re-emerge so that the truth may come out.

Excerpt from the prosecution:

(172) [...] *and according to her at some point coming up with gas, then the gas cans, if you're in such a **fog** how can you even remember that you have a gas can, how can you possibly even remember that you have a gas can.*

(see Appendix G lines 1356-1359)

Example n. 172 serves to corroborate what has been previously mentioned about Jodi's blurriness feeling that Martinez does not believe in. Indeed, Martinez's persistence is based on the fact that he does not believe that Jodi is in any state of confusion, which is confirmed by the fact that she remembers the gas cans but still continues to lie and make up stories.

Excerpt from the prosecution:

(173) *Then the **fog** moves in, then there's an excuse, then there's a reason why she doesn't remember, she has an incredible memory, all right when it comes to lying.* (see Appendix G lines 1741-1743)

In example n. 173, by using the expression *the fog moves in* Martinez is transmitting the perception of movement, which is particularly important in metaphor. The concept of movement and change create the potential for metaphor to transport us by evoking emotional responses. In fact, it is important to stress that motion and emotion have the same etymological source and that it is not surprising that metaphors often serve as bearers of meanings that carry a heavy load (Charteris-Black, 2004: 19).

Excerpt from the prosecution:

(174) *She claims that she was in this sort of **foggy** state; she wasn't in such a **foggy** state that she couldn't put the licence plate back on the car that she was driving, on the back, she was in a hurry to put it on upside down [...]*

(see Appendix G lines 1342-1344)

In example n. 174, Martinez continues and insists on the fact that Jodi was not confused at all. Martinez shows that Jodi was able of making rational decisions the days preceding the murder.

Excerpt from the prosecution:

(175) *If she was really in this state of **fogginess** she you would have heard some mumbling or you she wouldn't have been able to work some props on the phone, but she was able according to her keep going back and try to do the message.*

(see Appendix G lines 1370-1373)

In example n. 175, Martinez employs the noun *fogginess* to additionally refer to Jodi's state of confusion. The use of the lexical unit is noteworthy because *fogginess* is an atmosphere in which visibility is reduced because of a cloud of some substance (Vocabulary.com Dictionary). To conclude, probably Martinez employed the lexical units *fog*, *foggy* and *fogginess* to transmit the image of a person who has not lost her sense of orientation with respect to time, place and is in a disturbed mental state, but instead is a lot more rational and lucid than Jodi is trying to show everyone.

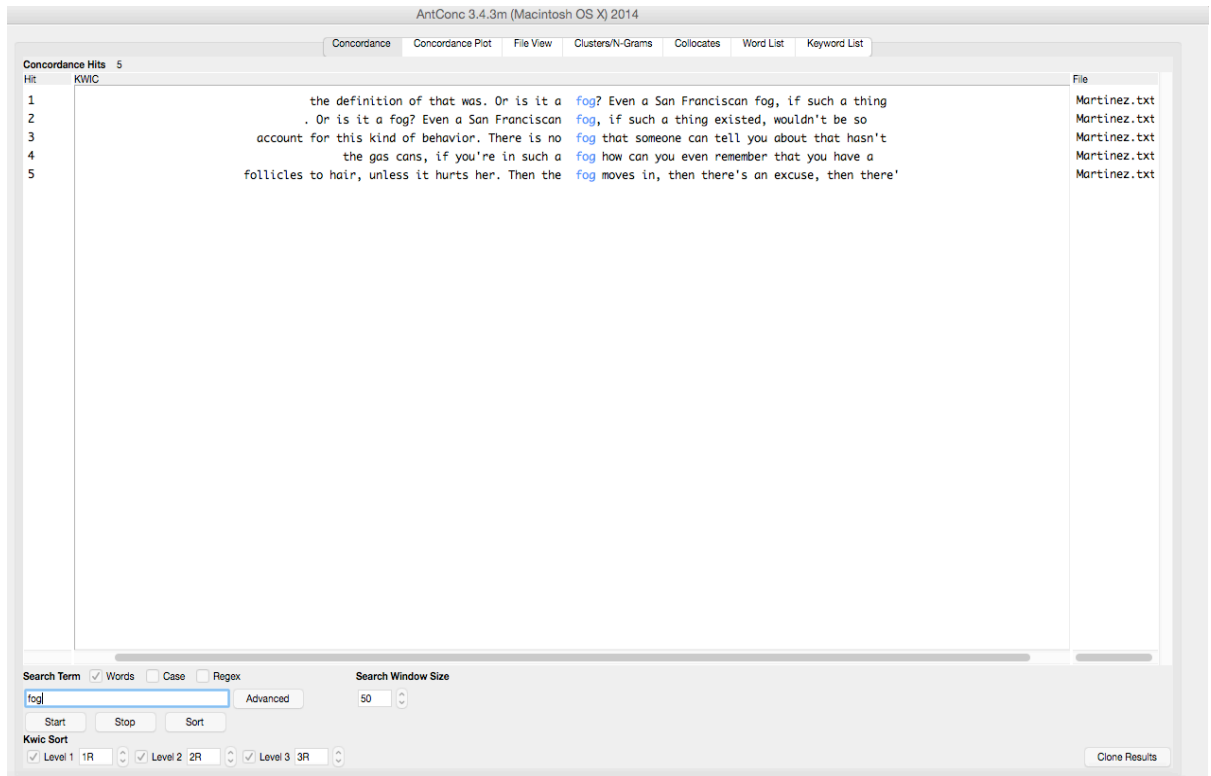


Figure 6 Concordance lines for the metaphor-related word *fog*

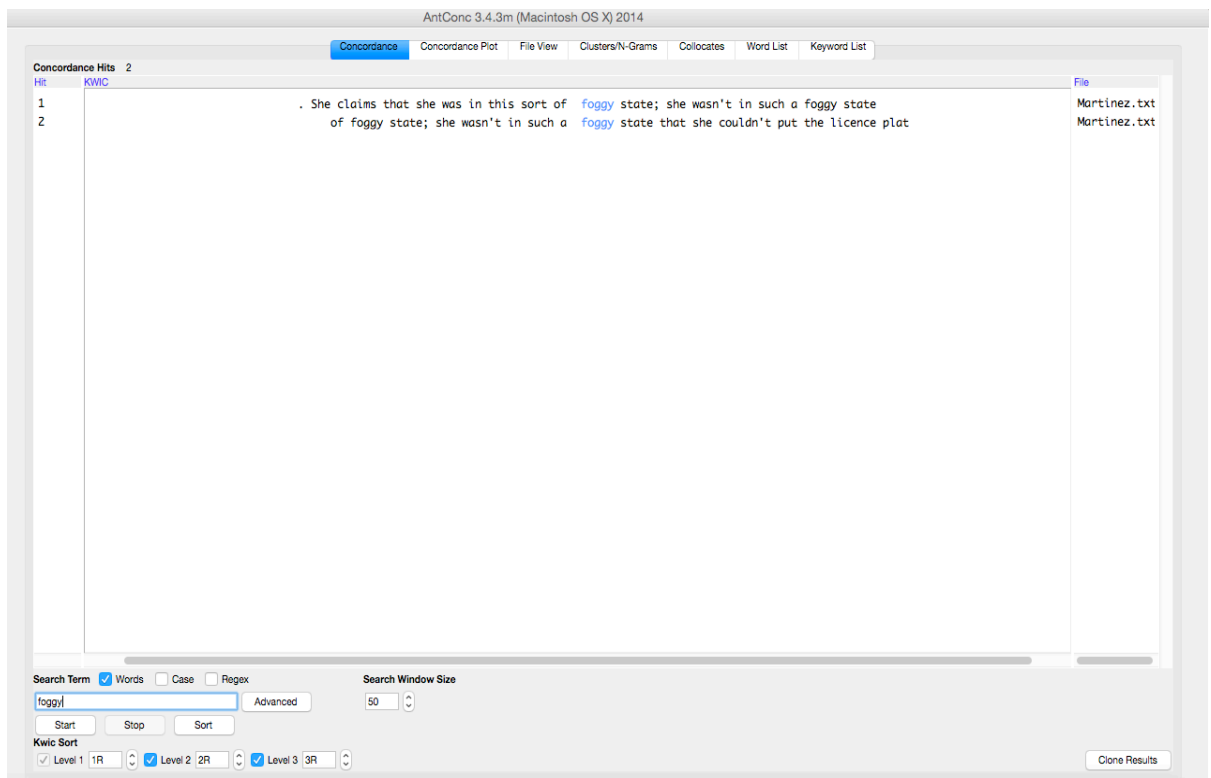


Figure 7 Concordance lines for the metaphor-related word *foggy*



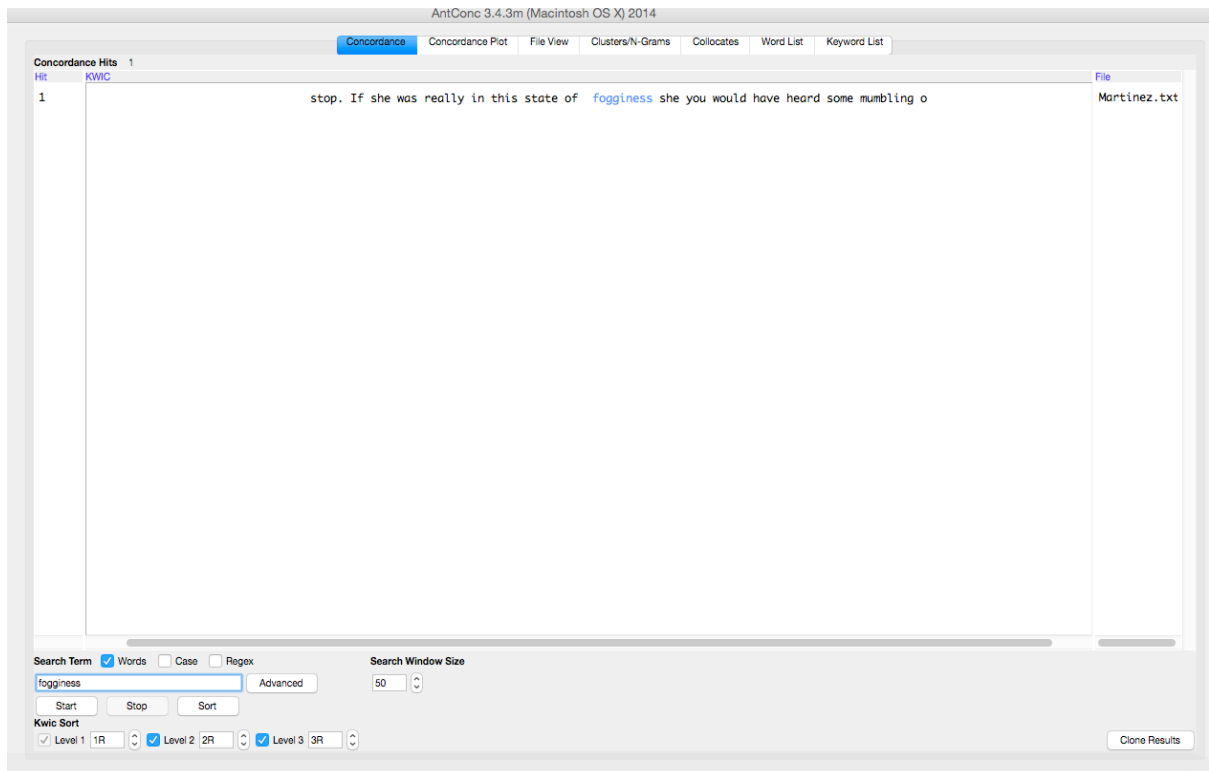


Figure 8 Concordance line for the metaphor-related word *fogginess*

As can be seen from Table 5, another identified metaphor-related word employed by Martinez was the lexical unit *limelight* with a frequency of 3 hits.

- (a) Contextual meaning: in this context, *limelight* is used to put Jodi under the spotlight; she is at the centre of attention.
- (b) Basic meaning: the basic meaning of the noun *limelight* is a situation in which you are getting a lot of interest and attention from the newspaper, television etc. The etymology dictionary also suggests this meaning is historically prior.  
Macmillan: (noun) a situation in which you are getting a lot of interest and attention from the newspapers, television etc.
- (c) Contextual meaning versus basic meaning: the contextual meaning does not contrast with the basic meaning and can be understood by comparison with

it: we can understand the similar concept of public attention that is being given to Jodi and the entire trial.

The following examples show how the lexical unit was used in context.

Excerpt from the prosecution:

(176) *She has courted the media, she has gone on national television. You've seen the programs and you've seen some of the, her words to the media. She has also attempted, or gone out in **search of the limelight**. She has signed a manifesto, just in case she becomes famous.* (see Appendix G lines 8-11)

In example n. 176, by using the expression *she has courted the media* Martinez is implying that Jodi wanted public attention from the media. Furthermore, when Martinez says: *in search of the limelight* by employing the verb *to search* it seems as if Jodi were pursuing and eager for attention. Therefore, Martinez is portraying Jodi as a person who wants to be famous, at the centre of everyone's attention and put under the spotlight. The image of the *spotlight* may remind the juror of the lights that are used on a stage and therefore recall the idea of a performance in which actors are constantly under the spotlight, especially when acting in a monologue. Again there is the constant image of Jodi acting a part.

Excerpts from the prosecution:

(177) *Well, she is an individual, as you have seen, who has **craved the limelight**.*  
(see Appendix G lines 13-14)

(178) *So, it seems that it is only fitting, that this individual that has **craved the limelight**, it is really only fitting that she now bask in a different kind of light: the light of truth.* (see Appendix G lines 14-16)

In examples n. 177 and n. 178, by using the lexical units *has craved* before the noun *limelight* Martinez is stressing the fact that Jodi has an extreme desire to obtain and

accomplish something. In fact, the definition of *crave* is “to want something very much and in a way that is very hard to control” (Macmillan 1). Therefore, by using the verb *to crave* Martinez is trying to convince the jurors that Jodi was desperate to get some attention from the media. By using these lexical units Martinez is painting the picture of a self-centred person.

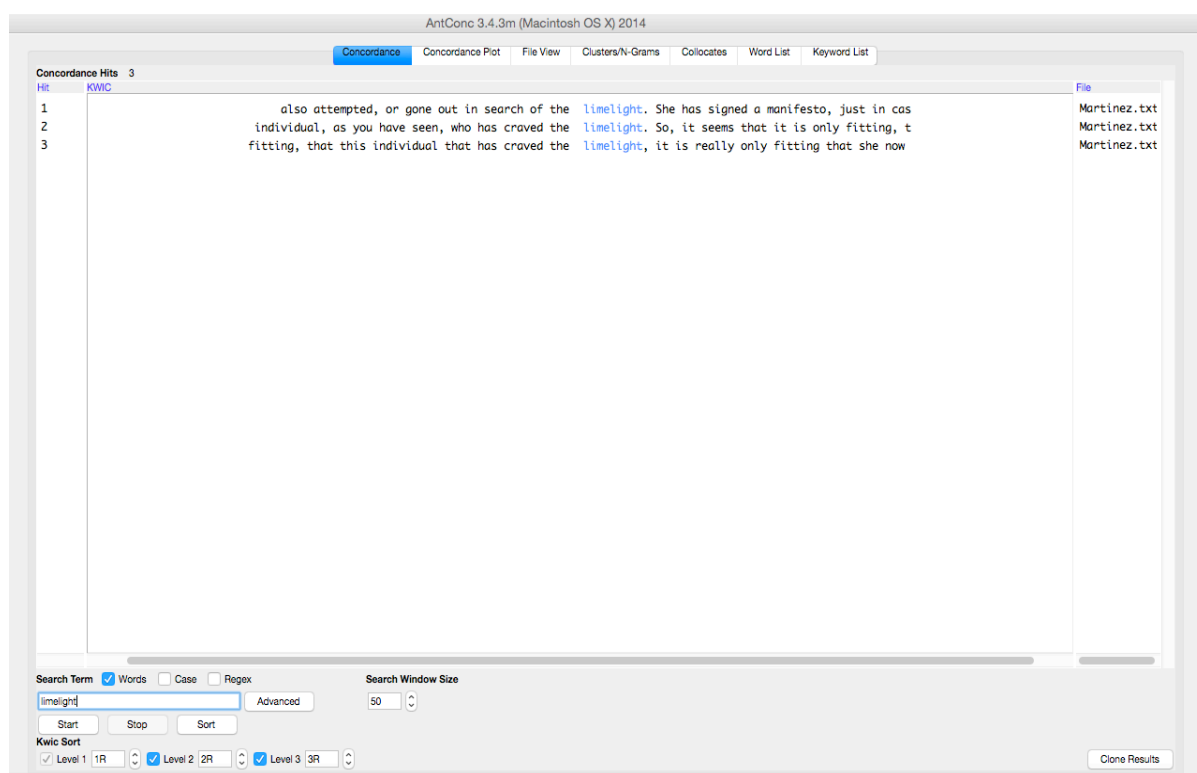


Figure 9 Concordance lines for the metaphor-related word *limelight*

As can be seen from Table 5, the last metaphor-related word to be employed by Martinez is *honeymoon*. The lexical unit was used with a frequency of 1 hit.

- (a) Contextual meaning: in this context, *honeymoon* indicates the beginning of their relationship, which probably was idyllic and peaceful.

Macmillan 2: (noun) the beginning of a period of time, when everything is pleasant and people try not to criticise.

(b) Basic meaning: the basic meaning of the noun *honeymoon* is an indefinite period of tenderness and pleasure experienced by a newly wed couple. The word comes from two distinct words, i.e., honey in reference to the new marriage's sweetness; and moon in reference to how long it probably will last or from the changing aspect of the moon. The etymology dictionary suggests this meaning is historically prior.

Macmillan 1: (noun) a holiday that two people take after they get married.

(c) Contextual meaning versus basic meaning: the contextual meaning does not contrast with the basic meaning and can be understood by comparison with it: the noun *honeymoon* is conventionally used metaphorically to refer to a trouble-free period occurring at the beginning of a new activity or relationship (Semino, 2009: 221). Furthermore it refers to the traditional period of time taken by a bride and the groom after their wedding when the newly wed couple is enjoying a carefree or light-hearted period.

The following example shows how the lexical unit was used in context.

Excerpt from the prosecution:

(179) *And so, throughout this early part of the relationship, which some might call the **honeymoon** portion, during this part, it appears that they do what two people that are young and involved in a relationship do, they engaged in relations.*

(see Appendix G lines 125-127)

In example n. 179, Martinez is probably referring to the beginning of Jodi and Travis' relationship, this happy and wonderful phase that is usually always perfect and idyllic for the new couple. It was observed that *honeymoon* was followed by the noun *portion* probably Martinez is referring to a limited period in their relationship, i.e., before everything turns into a typical relationship made of daily routine.

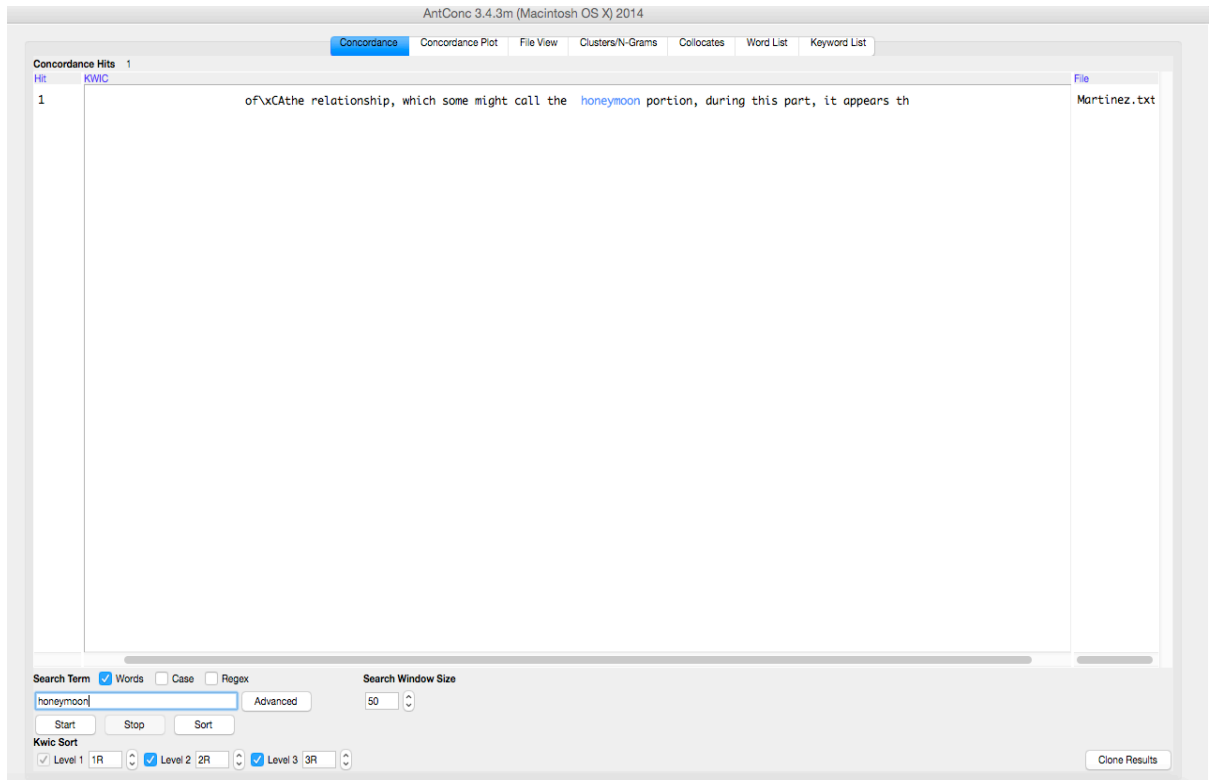


Figure 10 Concordance line for the metaphor-related word *honeymoon*

Below follows Table 6 that gathers the metaphors employed by the defense. The metaphors will be discussed based on their frequency, because it was observed that in this case there were no same root words employed.

n.	Metaphors	Frequency
1	<i>House of cards</i>	7
2	<i>Light of truth</i>	4
3	<i>Fog</i>	3
4	<i>Orchestrated</i>	3
5	<i>Spotlight of truth</i>	2

Table 6 Metaphors employed by the defense

As can be seen from Table 6, Nurmi employed the lexical unit *house of cards* with a frequency of 7 hits.

(a) Contextual meaning: in this context, *house of cards* indicates some sort of intangible and immaterial construction, something that does not really exist.

Macmillan 1: (noun) something such as a plan or system that could easily fail or be destroyed.

(b) Basic meaning: the basic meaning of the noun *house of cards* refers to a small structure made of playing cards (Idioms by The Free Dictionary).

Macmillan 2: (noun) a set of playing cards that has been built into a structure that could easily fall or be knocked down.

(c) Contextual meaning versus basic meaning: the contextual meaning contrasts with the basic meaning and can be understood by comparison with it: we can understand the abstract construction of a house of cards, as something which is non-existent, in terms of a tangible house of cards that can easily fall down and fall into pieces because of any type of physical movement. Indeed, the defense's use of the metaphor indicates a clear attack against the State, which insists on Jodi's plan of premeditation. While, for the defense this premeditated plan does not exist.

The following examples show how the lexical unit was used in context.

Excerpts from the defense:

(180) *Did they check the others do they know, who knows, but again set up a **house of cards** and knock it down and call her a liar, because that's the basis we're gonna use for our case. (see Appendix I lines 332-334)*

(181) *Again it's another one of these **house of cards** because it seems to set up this premises that relates to the journals anyway but there's this requirement that a journal be complete you know he's asking miss LaViolette.*

(see Appendix I lines 737-739)

(182) *So we know at one point in time and let me say this this is to say if you do not believe Jodi Arias' self-defense claim you believe the States refuted it just by creating a **house of cards** and knocking it down.*

(see Appendix I lines 1474-1477)

In examples n. 180, n. 181 and n. 182, Nurmi employs the lexical unit *house of cards* to attack Martinez's closing argument because he considers it too weak and that it can be easily destroyed because it does not have any basis. In fact, the metaphor consists in the fact that a *house of cards* easily falls down and when this happens the destruction is complete and thus a new house of cards has to be rebuilt.

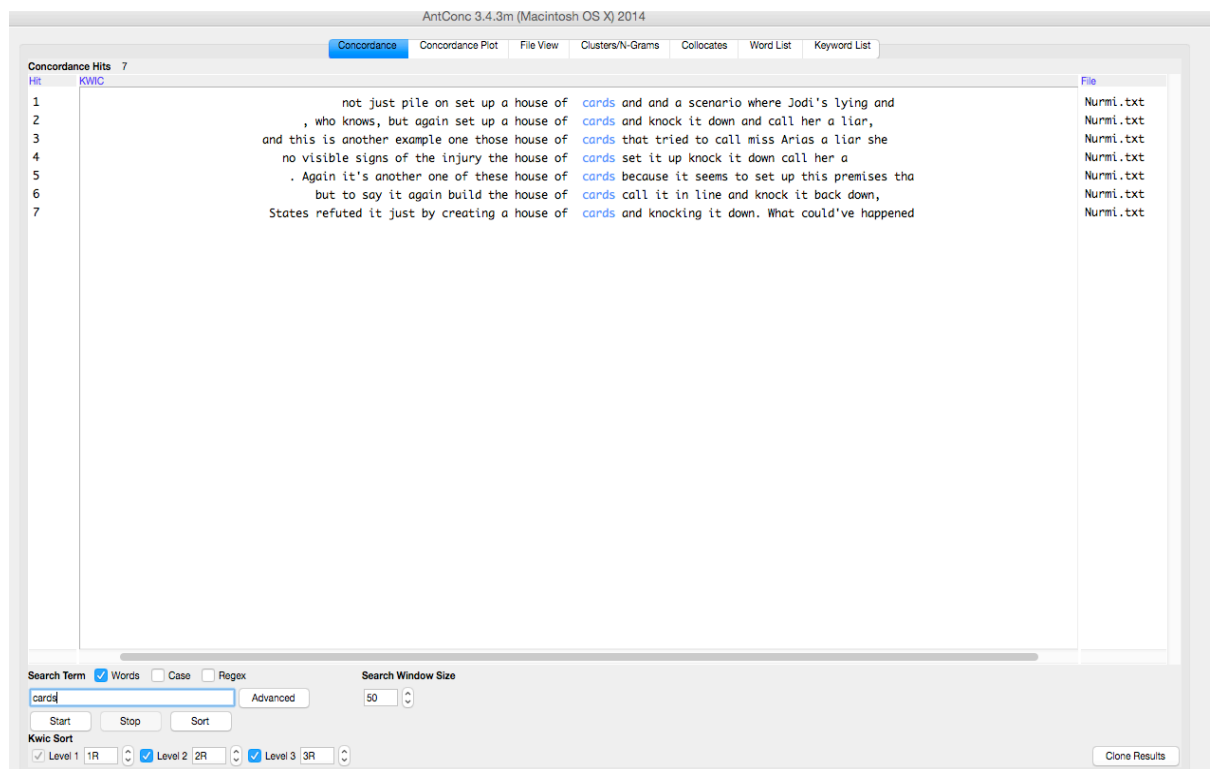


Figure 11 Concordance lines for the metaphor *house of cards*

As can be seen from Table 6, Nurmi employed the lexical unit *light of truth* with a frequency of 4 hits.

- (a) Contextual meaning: in this context, *light* in the metaphorical expression *light of truth* indicates that other people in the story have been telling lies so it is necessary to clarify and make light on the situation in order to find a solution.

Macmillan (phrases): (noun) if facts are brought to light or come to light, people discover them.

- (b) Basic meaning: the basic meanings of the two words *light* and *truth* are analyzed separately in order to understand their meanings and then considered as a whole when interpreted. The term *light* means a source of light, especially a lamp, a lantern, or an electric lighting fixture. While, *truth* means sincerity; integrity; fidelity or it may refer to something that is conform to fact or actuality. Moreover, *truth* is a comprehensive term that in all of its nuances implies accuracy and honesty.

Macmillan 1: (noun) brightness from the sun or from a light, which allows you to see things.

- (c) Contextual meaning versus basic meaning: the contextual meaning contrasts with the basic meaning and can be understood by comparison with it: we can understand the abstract concept of this symbolic light that has to be shone on the others because they know where the truth lies within the story as to the physical and tangible light that comes from a lamp or the sun.

The following examples show how the lexical unit was used in context.

Excerpts from the defense:

- (183) *That's what the State said to you, she lied to you on the stand, the **light of truth** and we'll talk about shinning the **light of truth** on some people that have been*



*involved in this trial later, but she doesn't throw it away and she said she returned the item. (see Appendix I lines 325-329)*

(184) *Now in the State's theory, under the State's theory that woman was never hit cause it wasn't in a police report. Well let's shine the **light of truth** on that, shall we ladies and gentleman. (see Appendix I lines 760-763)*

Before analyzing the lexical unit, it is essential to underline that the word *truth* is marked non-metaphor related, because as previously mentioned it means sincerity, integrity and fidelity, therefore it cannot be considered as a metaphor in this specific context. Consequently, only the lexical unit *light* will be studied as a metaphor within the metaphorical expression *light of truth*. In both examples n. 183 and n. 184, it was observed that Nurmi employed the verb *shinning or shine* before the expression *the light of truth*. Probably because the 'light' has the characteristic of shining, therefore when the truth is achieved there is the impression that there is some sort of illumination or elucidation. Furthermore, by using the lexical unit *light* it seems that Nurmi is depicting the image of the sun and its rays that may lead to the truth. The concept is that something that shines gives light. Indeed, a shining object reveals itself because light cannot be hidden in darkness, so it shows us the right direction or gives us the correct instruction. Hence, when a light shines out, a person immediately sees it. For this reason, Nurmi's use of *light of truth* symbolically means that the truth has to be revealed.

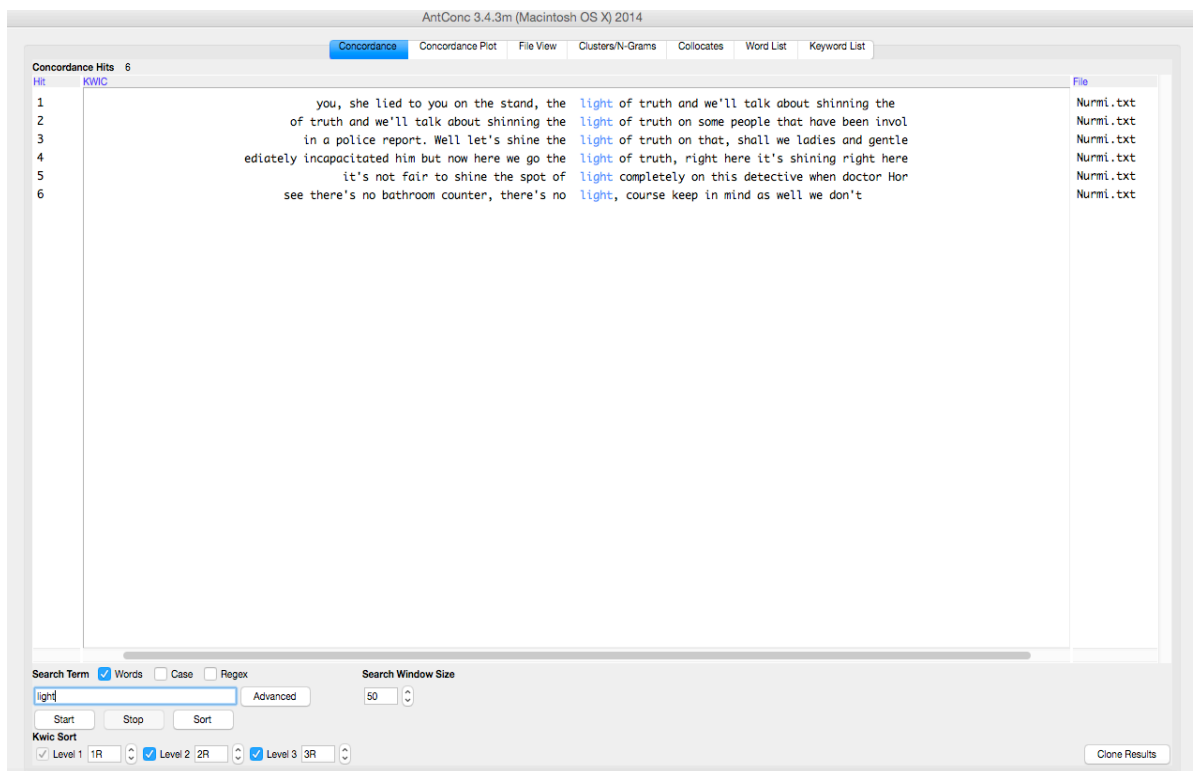


Figure 12 Concordance lines for the metaphor *light of truth*

As can be seen from Table 6, Nurmi employed the lexical unit *fog* with a frequency of 3 hits. It is essential to remember that also Martinez employed the lexical unit *fog*. To avoid repetitiveness the reader is asked to refer back to the previous section where *fog* is described.

The following examples show how the lexical unit was used in context.

Excerpt from the defense:

(185) *One of the things though about this memory loss you answered questions about it, it was referred to the **fog**, right and that she had lost, she didn't have a memory so what happened next, she told you about a couple of things related to her memory [...]* (see Appendix I lines 1042-1045)

(186) *[...] oh she had years to think about this years to think about this and this is what she came up with and this **fog** is part of this, right. This **fog** is not made up because ultimately it is instead an inconvenient truth it would be much more convenient for miss Arias to tell you this sort of thing that we just talked about to paint this horrific scene [...]* (see Appendix I lines 1065-1069)

In examples n. 185 and n. 186, Nurmi's use of the lexical item *fog* is employed differently from Martinez. In fact, Nurmi employs *fog* to underline that Jodi truly suffered from a memory loss. While, Martinez insists that Jodi did not suffer from any state of confusion, instead she knew exactly what happened the day of the murder. Nevertheless, both Martinez and Nurmi employed the lexical unit *fog* with reference to Jodi's mental state during and after the murder. For this reason, it is important to highlight that "metaphorical images do not emerge in isolation, but are characterized by circularity. Given their representational, conceptual and ideological force, an attorney often re-employs and re-frames a metaphor used by his opponent at his advantage. Indeed, "figurative representations often significantly prefigure or angle the subsequent representations suggested by the opposing attorney" (Anesa, 2011: 179). Noteworthy is that these metaphorical images do not only represent a rhetorical persuasive device, but they also have a conceptual function. As Ullmann observes,

By unthinkingly and mechanically repeating the same image, we may in the end forget that it is metaphorical, and this representation may affect our feelings for the object or idea in question, in that - our feelings for the tenor may be affected by those for the vehicle (Ullmann, 1964: 237-238).

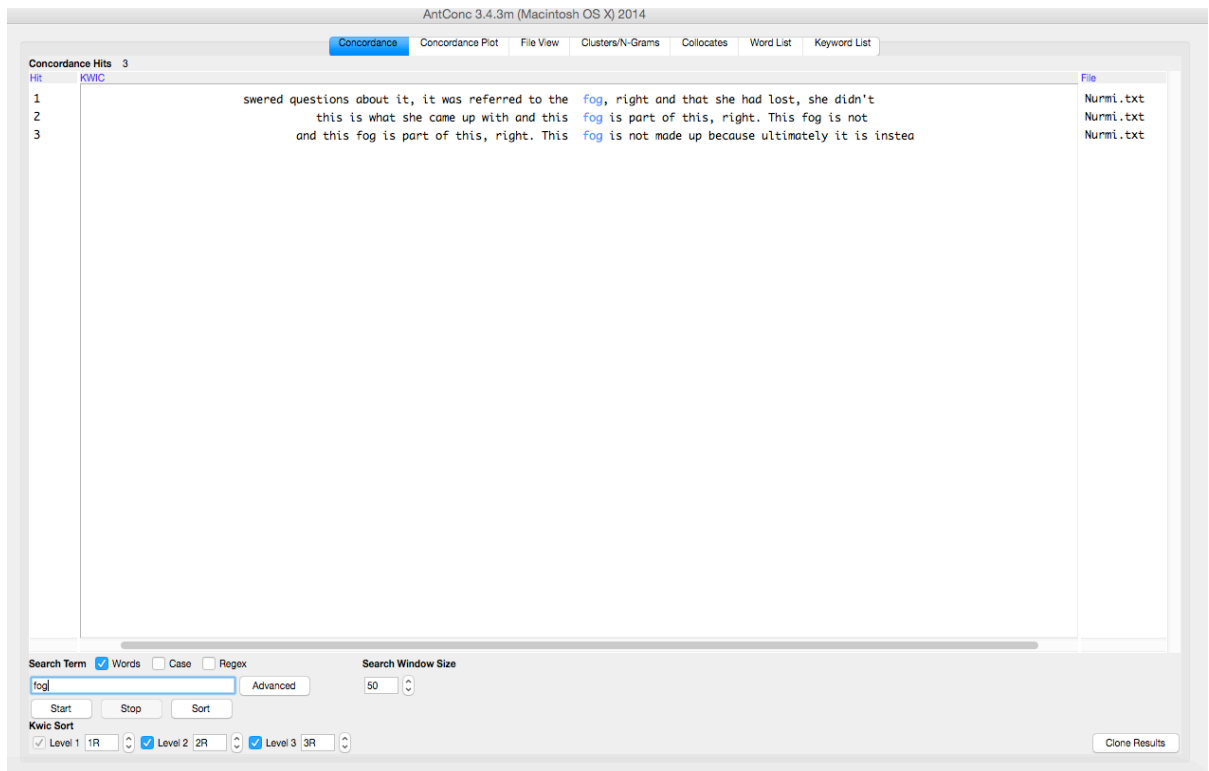


Figure 13 Concordance lines for the metaphor *fog*

As can be seen from Table 6, Nurmi employed the lexical unit *orchestrated* with a frequency of 3 hits.

- (a) Contextual meaning: in this context, *orchestrated* indicates that Jodi has planned the killing of Travis and that she is insincere and deceiving when she is trying to convince the jury that this was not a premeditated murder.

Macmillan 1: (verb) to plan and organize a complicated event or course of actions, especially without being noticed, so that it achieves the result you want.

- (b) Basic meaning: the basic meaning of *orchestrated* is to compose or arrange music for a performance by an orchestra or to arrange or control the elements of a desired overall effect.

Macmillan 2: (verb) to arrange a piece of music.

- (c) Contextual meaning versus basic meaning: the contextual meaning contrasts with the basic meaning and can be understood by comparison with it: we can understand the abstract concept of planning the murder in terms of actually composing and arranging a music performance. Again there is the idea of performing and acting a part in a play.

The following examples show how the lexical unit was used in context.

Excerpts from the defense:

- (187) *So the State says she **orchestrated** a theft, a theft of a gun now in exhibit 325 we see this so-called gun cabinet this impenetrable force, we also see this in 326 the same gun cabinet. (see Appendix I lines 129-132)*
- (188) *[...] there would have been no sign of it, but under this concocted theory that she **orchestrated** this theft, she brakes in or herself steals money, [...]*  
(see Appendix I lines 150-152)
- (189) *What's the reality she threw some water down with a cup in a panic. Does this look like a clean up of some cold calculation or rather instead a reaction of what the hell happened reaction to what happened to the experience the fight she was just in? This does not look like some **orchestrated** clean up.*  
(see Appendix I lines 1413-1416)

In examples n. 187, n. 188 and n. 189, Nurmi is referring to Martinez's theory of premeditated murder. In fact, in his closing argument Martinez tried to influence and convince the jury that Jodi had planned Travis's murder in advance. For this reason, Nurmi uses the lexical unit *orchestrated* to highlight that the prosecution's theory was probably exaggerated and magnified. The idea of something being *orchestrated* conveys the image of an elaborate and intricate plot that has been organised way before. On the other hand, the concept of something *orchestrated* may recall the idea of a performance that is put on stage. So again there is this recurring image of a show that is

being put on stage. Therefore, the second definition of the metaphor has been chosen as the basic meaning because it represents a more concrete action and is historically prior.

As can be seen from Table 6, Nurmi employed the lexical unit *spotlight of truth* with a frequency of 2 hits.

- (a) Contextual meaning: in this context, *spotlight of truth* indicates that Jodi is again at the centre of the attention. According to Nurmi Jodi is not a liar thus it is necessary that the truth come out because there are other people that are aware of the truth, which should come out in the open.

Macmillan 2: (noun) a situation in which you get a lot of public attention.

- (b) Basic meaning: the basic meanings of the two words *spotlight and truth* are analyzed separately in order to understand their meanings and then considered as a whole when interpreted. The term *spotlight* means a strong beam of light that illuminates a small area, used especially to centre attention on a stage performer. It can also mean public notoriety or prominence, thus to focus attention on someone or something. While, *truth* means sincerity; integrity; fidelity or it may refer to something that is conform to fact or actuality. Moreover, *truth* is a comprehensive term that in all of its nuances implies accuracy and honesty.

Macmillan 1: (noun) a powerful light that shines on a small area, for example in a theatre.

- (c) Contextual meaning versus basic meaning: the contextual meaning does not contrast with the basic meaning and can be understood by comparison with it: we can understand the abstract concept of Jodi under a real spotlight where she is getting all the attention and is scrutinised as to a beam of light that reflects upon a person. However, the notion of *spotlight of truth* may

also mean that the ‘light’ within the ‘spotlight’ which should lead towards the truth. The truth that the defense lawyer has been declaring throughout his closing argument.

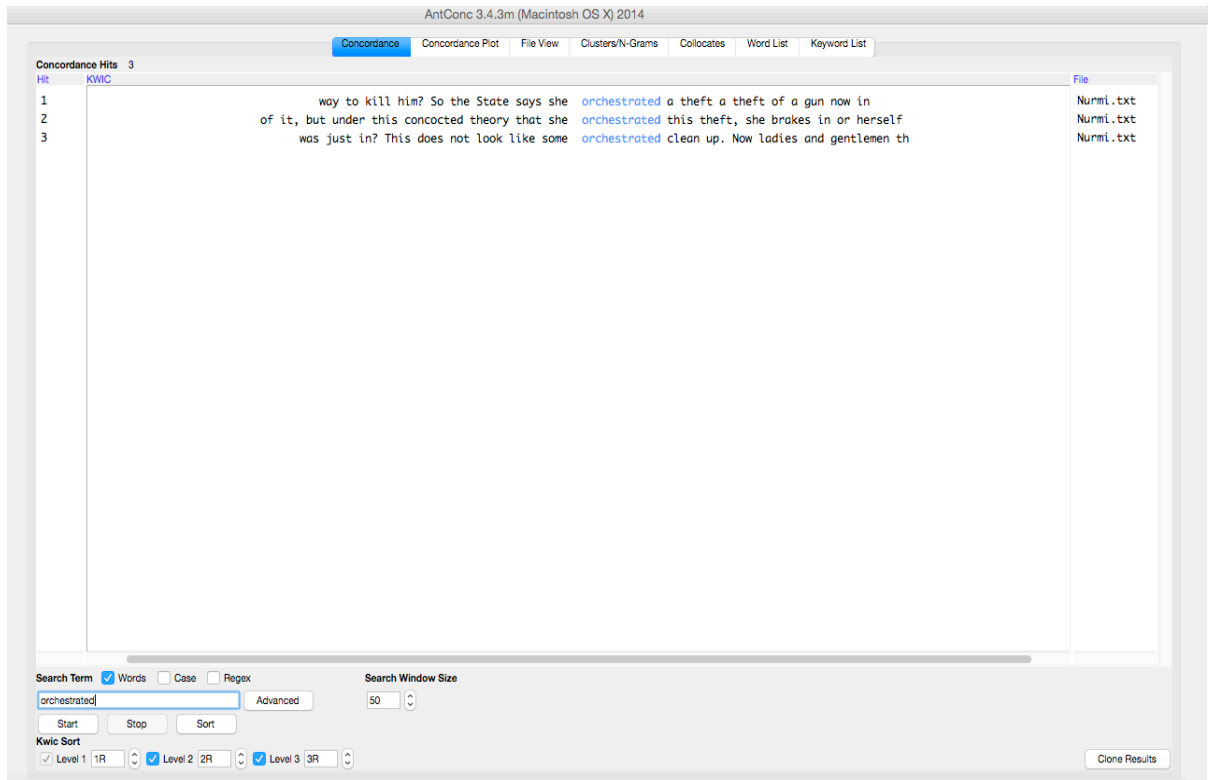


Figure 14 Concordance lines for the metaphor *orchestrated*

As previously mentioned for the lexical unit *light of truth*, also here for *spotlight of truth* the word *truth* is marked non-metaphor related, because it means sincerity, integrity and fidelity, thus it cannot be considered as a metaphor in this specific context. For this reason, only the lexical unit *spotlight* will be analyzed as a metaphor within the metaphorical expression *spotlight of truth*.

The following examples show how the lexical unit was used in context.

Excerpts from the defense:

(190) *And remember before we talk about this the testimony of doctor Horn, now certainly in varying we'll talk about that a little bit when we talk about lies*

*in that **spotlight of truth** but doctor Horn says the wound to the [inaudible] came down to up, down to up, so what we're to believe now then [...]*

(see Appendix I lines 579-583)

(191) [...] *when miss Arias goes to Travis' home on June 4<sup>th</sup> 2008 she does so going back to what I started out this morning with an element of fear with some lies being attacked and we'll talk about those a little while longer because again that **spotlight of truth**, keep in mind this relationship and sometimes lies bleed into dirty little secrets don't they, [...]*

(see Appendix I lines 700-704)

Noteworthy of observation is the fact that both lawyers employed the concept of a strong light transmitting the impression that something important needs to be clarified or investigated in depth or that something needs to be put under a magnifying glass or a microscope in order to be extremely scrutinized. Martinez uses *limelight*, while Nurmi employs *light of truth* and *spotlight of truth*. Nurmi's use of the metaphorical expressions *light of truth* and *spotlight of truth* show that something in Jodi's story needs to be disclosed and brought to the centre of attention, meaning that the truth must be searched.



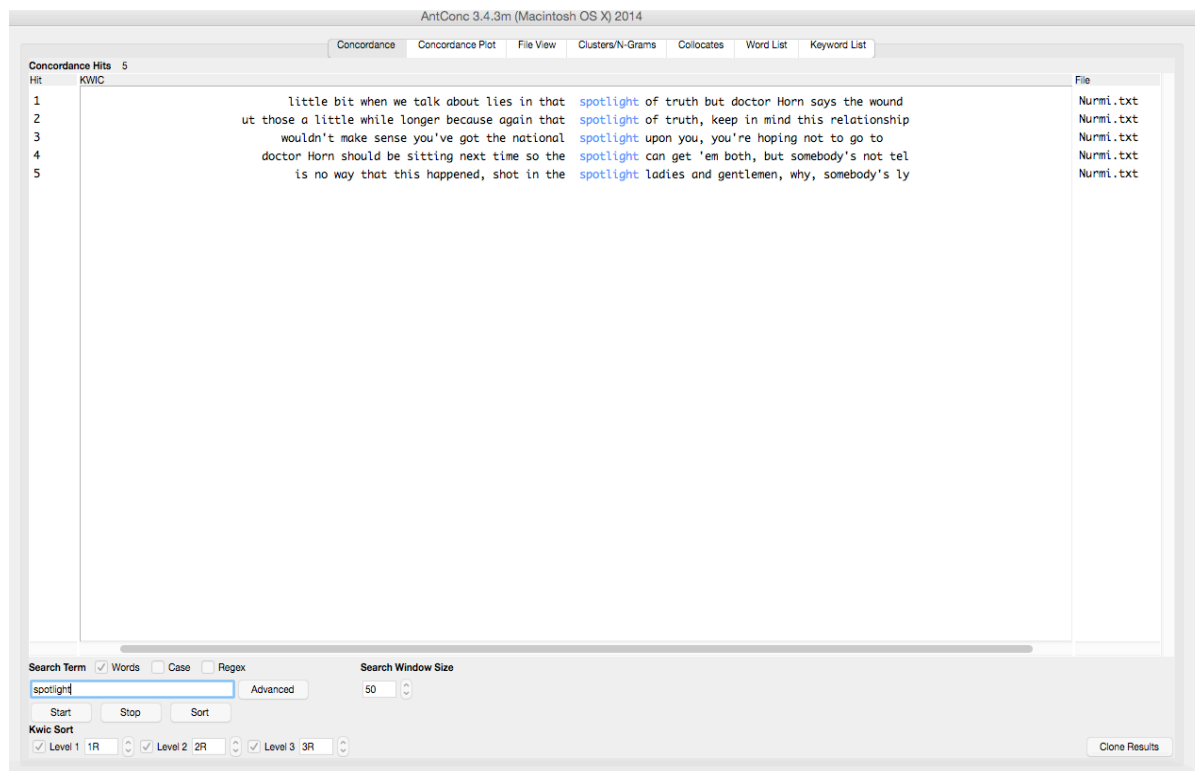


Figure 15 Concordance lines for the metaphor *spotlight of truth*

It is fundamental to highlight that throughout the investigation of the corpora it was observed that there were constant references to acting a part in a play, the theatre or other aspects related to various types of performance. Indeed, as Vogelmann (1992) states the courtroom is like a theatre and that the trial lawyer is the author, choreographer, actor and dancer. Every move in the courtroom is purposeful; every word is planned. Every witness examination or argument becomes a performance. However, a trial is not a theoretical performance. The jury is not made up of theatre critics judging the competence of the lawyer by his/her adherence to the rules and the slickness of his/her performance, but the task of the trial lawyer is to persuade and to make the jury believe, and not to entertain. Furthermore, it is essential to emphasize that the trial setting has the aim to engender emotion and persuade others to accept a certain point of view. In fact, language has the power to reveal as well conceal, it has the power to inform and enlighten as well as misinform and mislead (Cao, 2011). More,

specifically, an effective closing argument requires careful, calculated communication because it is the last thing the jurors will hear from a lawyer before deliberation, moreover, the closing has the purpose to guide the jury's thought process and ultimate decision. Also as Goldberg (2003) sustains in the adversarial system the actual presentation is much more important than the truth. Furthermore, as Kennedy claims,

With considering the fact that your play stands against the play of your opponent, 'persuasion' becomes a fundamental issue. The tactics by which the attorney can persuade the jury that her/his version of the facts is the true one not the opposite party's, is significant in the adversarial system. Therefore, logic and emotion must be tied together in a closing argument; a lawyer should create a picture with his words and convey an image to the jury, including all the evidence presented during the trial (Kennedy, 2007: 594).

To conclude this section on the use of metaphors it is significant to highlight that as Thornburg asserts "metaphors, while originally mythical or inspiration, become real and influence the way litigators think and behave" (Thornburg, 1995: 226).

#### **4.6 Discussion of the data with reference to the O.J. Simpson case**

##### **4.6.1 Discussing the data according to Monroe's Motivated Sequence**

It is interesting to note that after having manually transcribed the closing arguments of the O.J. Simpson case it was observed that the defense lawyer, Mr. Cochran, made a stronger case when presenting his closing argument. However, another important aspect observed was that the prosecution and the defense lawyers focused on different aspects when the corpus was compared to the Jodi Ann Arias corpus. The former particularly focused on the reliance of the DNA evidence, found on the crime scene and also at O.J. Simpson's estate, then the closing focused on Darden's allegations of domestic violence

against O.J. Simpson. The latter focused more on a corrupt Los Angeles Police Department, specifically against two detectives, Mark Fuhrman and Philippe Vannatter. According to the defense, these two detectives were dishonest and corrupt and both played an important role in contaminating the crime scene. Furthermore, the two detectives were also accused of trying to frame O.J. Simpson for the murders of Nicole Brown Simpson and Ron Goldman. It soon became well known that the O.J. Simpson case was a pretext to attack the LAPD police force because of its racial discrimination against African-Americans, a battle that began in the early 1980's. Since both lawyers employed different persuasive techniques the data will be analyzed by applying Monroe's Motivated Sequence.

Below follows Table 7 with the data related to Step n. 1 of Monroe's Motivated Sequence, i.e., the Attention Step.

<b>n.</b>	<b>Attention Step</b>	<b>Frequency Prosecution</b>	<b>Frequency Defense</b>
1	Ladies and Gentlemen	27	24
2	Advocates	/	6
3	Judges	3	1

Table 7 Attention Step  
Expressions employed by the prosecutor and the defense to create connection with the jurors

Initially analyzing Clark's closing argument, it was observed that she begins on a very personal note. In fact, after opening with a stereotypical greeting *Good morning, ladies and gentlemen*, she refers to her own emotions in very informal language, empathizing with the jurors, trying to negate the rather stiff and combative image of herself that she had projected during most of the trial (Tiersma, 1999). Another significant aspect to take into consideration is that Clark had some difficulties in connecting with the jurors,

perhaps because she was white and most of the jurors were black. To bond with these jurors, she would have to do so as a woman. She seemed to have hoped that the prosecution would benefit from female sympathy with the main victim, Nicole Simpson, a woman who had been abused by her husband and alleged killer. However, it seems that Clark tried to create a bond with the jury by positioning herself as a woman, although she portrayed herself as someone who was not afraid of revealing her emotions, and who was concerned about the wellbeing of the jurors (Tiersma, 1999).

As can be seen in Table n. 7, it was observed that Clark addressed the jury by using the nouns *ladies and gentlemen* with a frequency of 27 hits. The following examples extrapolated from the closing arguments may seem very long but they have the objective of examining in greater depth the structure of the language employed in order to understand how connection between the trial lawyers and the jurors was created.

The following examples show the use of the expression *ladies and gentlemen*.

Excerpts from the prosecution:

(192) *Good morning, **ladies and gentlemen** [...] I wanna sit down and I wanna talk to you I want you to tell me “What do you want to know? What do you want to talk about?” **Because that way I don't have to talk about stuff you don't want to hear, stuff that you don't want explained, stuff that you are not interested in, and I can't, and I always have this sense of frustration. So I'm sorry if I say things that you don't need to hear or I explain things that are already clear to you. Please bear with me because I am not a mind reader and I don't know. Let me first take this opportunity to thank you and I want to thank you from the bottom of my heart. You have been through so much.***

(see Appendix J lines 27-44)

(193) *You have made a **tremendous sacrifice**. You haven't seen your children enough, you haven't seen your family enough, you haven't seen your loved ones enough, and all of this in the name of justice and the service of justice. **Your dedication and your selflessness are truly beyond the pale**. No one can say that any jury has sacrificed more for the cause of justice than you have, and I want you to*

*know sincerely from my heart I appreciate it. I speak on behalf I know of the People of the State of California **this was a tremendous sacrifice, your selflessness and your devotion** will long be remembered by many and I thank you. I think no one can understand how great their **sacrifice** has been, **how terrible the pressure has been, how awful it must be for you have your lives kinda out of control this way at the mercy of us taking longer than we should have** and you having to put your lives aside for longer than you should have had to do. **I'm sorry for that I apologize.***

(see Appendix J lines 44-57)

Before analyzing the data gathered, it is important to highlight that, in the videos examined, Clark's tone of voice seemed to be relaxed and friendly when delivering her closing argument. In examples n. 192 and n. 193, it was observed that Clark employed great use of short and simple sentences. By using informal instead of formal language - which is characteristic of legal language, Clark is trying to create a social connection between herself, representative of the State, and the jurors. The use of simple language, comprehensible by lay people is fundamental. In fact, "lawyers are well aware that they need to get to the point as quickly and clearly as possible." Moreover, "in closing arguments to a jury, most lawyers have learned to lay out their arguments to courts as plainly as possible" (Tiersma, 1999: 216).

In example n. 192, Clark seems to show interest in how the jurors feel when she says: *Because that way I don't have to talk about stuff you don't want to hear, stuff that you don't want explained, stuff that you are not interested in [...]* Or, moreover when Clark thanks the jurors because she understands that the entire trial may have been very stressful for them. In fact, Clark expresses her feelings by sending this message to the jury: *Let me first take this opportunity to thank you and I want to thank you from the bottom of my heart. You have been through so much.* At this stage it is again essential to

stress that “trial lawyers often use informal and even intimate speech to bond with the jury” (Tiersma, 1999: 5).

Example n. 193 also displays the use of simple language, probably because Clark is trying to sympathize with the jurors, by understanding how difficult the entire trial must have been for all of them and their families. When Clark says: *Your dedication and your selflessness are truly beyond the pale [...] this was a tremendous sacrifice, your selflessness and your devotion [...] how terrible the pressure has been, how awful it must be for you have your lives kinda out of control this way at the mercy of us taking longer than we should have [...]* she is referring to the fact that the jurors had been so patient during this very long trial. The trial had lasted for a year and a trial of this length was becoming unacceptable, it had gone beyond anything that can be considered conceivable for a human being. Clark is bonding with the jurors by telling them that she truly understands what they must have been through, when she employs the expression *tremendous sacrifice*, employed with a frequency of 2 hits. Clark considers the jury’s duty comparable to a *sacrifice* because the jurors have been sitting there in silence, listening and watching people coming and going, within the various phases of the trial, for a very long time. The trial had taken away precious time from families and friends of the jurors. This empathy for the jurors may be related to the fact that Clark knows, very well, how important it is to persuade the jurors until the end of the trial. By employing the adjective *tremendous* Clark is conveying the image of something that is extremely great, important or strong (Macmillan Dictionary). At this point Clark also apologizes and says: *I’m sorry for that I apologize* for what the jurors had been put through, by doing this she is again showing empathy and understanding for the jurors. As Tiersma claims “ [...] good lawyers try to connect with the jurors and address them in terms they will understand” (Tiersma, 1999: 194). Moreover, it is important to point

out that all the lawyers thanked the jurors, and, apologizing or at least acknowledging the time and effort they had spent during the trial, allowed the lawyers to give themselves visible roles as characters in the discourse rather than just being the animator and author.

Moving on, when initially analyzing Cochran's closing argument it was immediately observed that he employed a moderate and calm tone of voice and compassionate and thoughtful language when addressing the jurors. It was also observed that during his closing Cochran spoke with the tone of a preacher and not that of a lawyer. In fact, Tiersma (1999) in his book 'Legal Language' investigates the O.J. Simpson case and claims that the rhythm of Cochran's voice and the cadence were similar to the style of black ministers. With reference to Monroe's Motivated Sequence it is fundamental to stress that Cochran at the very beginning of his closing addressed the jury by quoting Frederick Douglass and Abraham Lincoln (see Appendix L). By doing this he is capturing the jurors' attention by quoting famous statements made by important Americans. Frederick Douglass, in the early 19<sup>th</sup> century, became the eminent human rights leader in the anti-slavery movement and the first African-American citizen to hold a high U.S. government rank. On the other hand, Abraham Lincoln, 16<sup>th</sup> President of the United States, in 1863 issued the Emancipation Proclamation declaring forever free the slaves within the Confederacy. By quoting famous people, Cochran's purpose is to specifically capture the attention of the African-American jurors that made up most of the jury. Indeed, as previously mentioned, the jury consisted of 8 Blacks, 2 Hispanics, 1 half Caucasian half Native American, and 1 Caucasian female. Cochran also seems to assume an attitude of complete interest in the jurors by conferring and entrusting them with great importance. It seems as if Cochran is trying to establish a connection between himself and the jury.

As can be seen in Table n. 7, it was observed that Cochran appealed to the jurors by employing the nouns *ladies and gentlemen* with a frequency of 24 hits.

Excerpts from the defense:

(194) [...] *I'm not going to argue with you, **ladies and gentlemen**. What I'm going to do is to try and discuss the reasonable inferences... At the outset let me join with the others in thanking you for the service that you render, you are truly a innovative jury, the longest serving jury in Los Angeles County, perhaps **the most patient and healthy we've ever seen, I hope that your health and your good health continues**. We met approximately 1 year and 1 day ago, September 26 1994. I guess **we've been together longer than some relationships as it were but we've had a unique relationship** in this matter that you've been **judges of the facts, we have been advocates from both sides, the judge has been the judge of the Law**. (see Appendix L lines 6-15)*

(195) *Now in the course of this process while we're discussing the reason of the inferences of the evidence I ask you to remember that we're all **advocates, we're all officers of this court***. (see Appendix L lines 46-48)

In example n. 194, when Cochran says: *I'm not going to argue with you [...] What I'm going to do is to try and discuss the reasonable inferences [...]* he is conveying the image of himself as a peaceful person who does not want to get into any sort of argument, but instead is willing to discuss the facts with the jurors. In fact, when Cochran employs the noun *advocates*, in example n. 195, and the expression *judges of the facts* to refer to the jurors he seems to be placing them on the same level as himself. Cochran conveys the impression of considering the jurors as colleagues. Indeed, by using *advocates* and *judges* Cochran is conferring great significance to the jurors' role. Again, in example n. 194, when Cochran says [...] *we've been together longer than some relationships [...] but we've had a unique relationship [...]* he is trying to bond with the jurors. By defining their relationship as *a unique relationship* Cochran seems to



convey the message that this relationship is very special to him and not comparable to any other. Cochran also acknowledges their patience in this long and exhausting trial, by choosing the expression *the most patient* he seems to be flattering the jurors by praising them and stressing their attentiveness to the case. Cochran also confers importance to the jurors by making them feel essential and very caring when he says: [...] *I hope that your health and your good health continues* [...] By employing this phrase, Cochran is confirming and transmitting the idea that he cares about the jurors and that he does not want anything bad to happen to them. Cochran seems to convey the image of a good preacher who cares about his flock.

Continuing with the analysis it was also observed that Clark employed the noun *judge* when referring to the jurors.

The following examples show the use of the expression *judge*.

Excerpts from the prosecution:

(196) *Now you as jurors sit as **judges** of the evidence, you're called the trier of fact and such **your job it is to be neutral and to be impartial** as you examine the testimony presented and in this regard you're guided just like any judge by the law and the jury instructions that were read to you on Friday is the law that you will apply to the evidence to determine the answers to the question that is posed here who murdered Ron Goldman and Nicole Brown.*

(see Appendix J lines 78-84)

(197) *As the instruction tells you as a trier of fact, you the **judges are to remain neutral and impartial and not be influenced by such passion or sentiment** no matter how sorely tempted you may be to do so. And this applies to both sides, both sides, although the brutal and callous way in which Ron and Nicole were murdered may understandably make you feel sorrow, pity even anger. **It would be wrong to find the Defendant guilty just because you felt sorry for them.***

(see Appendix J lines 105-111)

In examples n. 196 and n. 197, Clark considers the jurors to be judges of the case. Indeed, they have the final say in the trial and they will have to decide whether or not O.J. Simpson is to be considered guilty or not guilty of the double murder. It was observed that Clark employed the two adjectives *neutral* and *impartial* to refer to the jurors' behavior when it comes to deliberating the final verdict. The use of the two adjectives may be related to the fact that a judge in a trial must have an unbiased and detached conduct towards the defendant and the victim or victims in a case. No personal feelings should be involved. Nevertheless, it is fundamental to emphasize that both lawyers, by employing specific nouns such as *ladies and gentlemen*, *advocates* and *judges* are directly involving the jurors in their discussions of the case. The jurors are considered as participants of the trial and both Clark and Cochran are bonding with the jurors and not simply considering them as a group of people. Nevertheless, it was observed that Cochran tried to establish a deeper connection or bond with the jurors. The persuasive language employed by Cochran may be perceived in the following examples.

Excerpts from the defense:

- (198) *And together, hopefully these discussions are going to be helpful to you in trying to arrive at a decision in this case where you don't compromise, where you don't do violence to your conscious, but you do the right thing. And you are the ones who are empowered to determine what is the right thing. Let me ask each of you a question. Have you ever in your life been falsely accused of something? Have you ever been falsely accused? Ever had to sit there and take it and watch the proceedings and wait and wait and wait, all the while knowing that you didn't do it? (see Appendix L lines 108-115)*
- (199) *So when we are talking about truth, we are talking about truth and lies and conspiracies and cover-ups [...] You know when things are at the darkest there is always light the next day. In your life, in all of our lives, you have the capacity to transform Mr. O.J. Simpson's dark yesterday into bright tomorrow. You have*

*that capacity. You have that power in your hand.*

(see Appendix L lines 3675-3680)

(200) *It is now up to you. We are going to pass this baton to you soon. You will do the right thing. You have made a commitment for justice. You will do the right thing. I will some day go on to other cases, no doubt, as will Miss Clark and Mr. Darden. Judge Ito will try another case some day, I hope, but this is O.J. Simpson's one day in court. By your decision you control his very life in your hands. Treat it carefully. Treat it fairly. Be fair. Don't be part of this continuing cover-up. Do the right thing remembering that if it doesn't fit, you must acquit, that if these messengers have lied to you, you can't trust their message, that this has been a search for truth.* (see Appendix L lines 3687-3695)

In example n. 198, Cochran is trying to get the jurors to identify themselves with O.J. Simpson especially when he refers to situations related to being wrongfully accused of something. The example also includes some questions that Cochran is rhetorically asking the jurors. It is important to underline that “trial lawyers use questions to convey as clearly as possible to the jury that their client’s story is correct.” Moreover, “how clearly lawyers communicate depends on the goal that they are pursuing” (Tiersma, 1999: 242). In example n. 199, Cochran is stressing the fact that the jurors are the essential part of the trial because they have the power to decide on a person’s life, that is, whether or not O.J. Simpson should be charged with first-degree murder or acquitted. Thus, Cochran is conveying the notion that the jurors have an important role in the trial. Example n. 200 recalls the end of Cochran’s closing argument. It was observed that the language employed seemed to be very convincing and again Cochran is stressing the importance of the jurors’ role. They represent a fundamental and crucial part of the trial. Cochran repeats the expression *do the right thing* in various contexts, but it is here in the final part of his argument that he repeats it a couple of times, to make sure that the jurors understand what is at stake if O.J. Simpson were to be

convicted of this double murder. Cochran also ends his closing with the sentence that may be considered the theme of his argument, i.e., *if it doesn't fit, you must acquit*. According to Tiersma, Cochran's effective use of language was a very important factor in the trial, because "it should be evident that when lawyers are sufficiently motivated, they are quite capable of communicating with the jury in a clear and comprehensible way" (Tiersma, 1999:198). However, it is significant to highlight that McElhaney recommends lawyers to "develop a theory of your case which explains as much of the uncontroverted evidence as possible in your favor" and to encapsulate that theory in a memorable phrase, or "theme," which "epitomizes the theory" (McElhaney, 1981: 38).

Moving on to the examination of the data according to Monroe's second step, i.e., the Need Step it was observed that it would be necessary to analyze the corpus from different perspectives. As previously mentioned, the Need Step is made up of four elements. For the purpose of the study only two elements will be taken into consideration, i.e., the Statement and Illustration elements. These two elements will be acquired by extrapolating excerpts from the transcriptions. Subsequently, the data will be examined by creating two different tables that gather the lexical units and/or expressions employed by Clark and Cochran to convince the jury that their version of the story was more credible than the other. It is fundamental to emphasize how the two lawyers played their cards. Clark tried to persuade the jury that O.J. Simpson was the murderer of this outrageous crime, through the DNA evidence and the other evidence found on the crime scene. On the other hand, Cochran was very clever in employing specific strategies and maneuvers to shift the matter of the case from murder to racial issues, this way guaranteeing an acquittal for his client. However, it is also interesting to point out that the language Clark employed showed that she fully understood how the

defense was playing this game. Indeed, Clark knew that Cochran was basing his defense only on racial issues.

There here follow some examples of the language employed that can be related to the Statement and Illustration elements.

Excerpts from the prosecution:

(201) *Counsel's so scared that he's saying don't let her argue, don't let her draw reasonable inferences, don't let her pull this together for the jury. That's what we have here I'm drawing inferences from the evidence and I'm arguing the evidence. (see Appendix J lines 2-5)*

(202) *No matter how much more qualified or how much better they could have done their job. Still and all did they present enough evidence to you? Did the evidence come to you in sufficient quantity and convincing force to convince you that the Defendant committed these murders beyond a reasonable doubt? Ladies and gentlemen I submit to you that we have more than met our burden in this case. Now the Defense has thrown out a lot of possibilities to you, the merest of possibilities and a lot of them were there just to scare you. (see Appendix J lines 145-151)*

(203) *And I'm going to go through the evidence and demonstrate how we have proven that to you. So why were these issues raised? Why were these questions raised? Well they are questions and issues that were raised as a distraction. They were roads raised, roads created by the Defense to lead you away from the court truth and the issue that was searching for the question, for the answer to which is "Who murdered Ron and Nicole?" [...] but even after all the tireless efforts the evidence stand strong and powerful to prove to you the Defendant's guilt. (see Appendix J lines 167-176)*

At this point, it should be emphasized that a common device used in closing arguments is the use of rhetorical questions (Tiersma, 1999). It is crucial to understand that closings should not pose questions but provide answers to questions. Clark uses

rhetorical questions in her closing argument but with a twist because she does not only ask questions but she also answers them, as can be seen in examples n. 202 and n. 203. However, Seckinger claims, “A rhetorical question takes control away from the advocate. Rather than stating facts that can guide the listener’s thought process, a rhetorical question takes the momentum away from the speaker and confers it on the listener without guidelines or predictability” (Seckinger, 1995: 69).

When investigating Darden’s closing argument, it was observed that he had a more direct approach with the jurors. He went straight to the point and emphasized that the case was actually a very simple one and not as difficult as the defense was trying to make the jurors believe. In fact, Darden clearly understood what the defense was trying to do and this is evident in the following example.

Excerpt from the prosecution:

(204) *When you get down to the bottom line, this case really is a simple case [...] And the Defense would have you believe that this is a complex series of facts and evidence and law and science and all of that. Not really. Not really [...] It’s a simple case, but there’s been a lot of smoke, a lot of smoke screens, a lot of diversions, a lot of detractions, a lot of distractions, and in some respect, there’s been an attempt to get you to lose focus of what the real issues are in this case.*  
(see Appendix K lines 5-15)

In example n. 204, the use of nouns such as: *smoke*, *diversions*, *detractions*, *distractions* and expressions like *smoke screens* have the aim of showing how Darden is trying to convince the jurors that they have been misled and influenced by biased defense attorneys. In fact, Darden is underlining that although the jurors have a duty their foremost duty however is to

(205) [...] *look at all the evidence, to be fair, be conscientious, be objective.*

(see Appendix K lines 370-371)

It was also observed that Darden's closing was based more on the use of repetition when compared to Clark's closing. Towards the end of his closing Darden shows how the defense has been playing a part in this game and he explains what strategic techniques they have employed in order to influence the jurors. This may be seen in the following example.

Excerpt from the prosecution:

(206) *You know after he got into that Bronco and headed toward 875 South Bundy but this defense they've put on in this case is what we in the profession call a shotgun defense and it's the defense as old as the law. Way back in the day, way, way back in the day even back when I was in Law School. All lawyers and all law professors share with is the old school approach to a criminal defense case and every lawyer knows this case. You're a criminal defense attorney, you have a tough case this is what you do, you argue the Law and if the Law's against you, you argue the facts, if the facts are against you, you raise hell and blame somebody else and the facts and Law are against you blame the police, blame the Prosecution, point the finger elsewhere, create a smoke screen and ask what they've done in this case ladies and gentlemen, smoke and mirrors. That's it, that's what you've got. (see Appendix K lines 1052-1063)*

In example n. 206, Darden is explaining what a shotgun defense is, he stresses the fact that this is a technique that consists in arguing everything except the real reason of the trial, blaming others than their client and creating an ambiguous and confusing situation that would inevitably lead to reasonable doubt.

Moving on to Scheck's closing argument it was observed that when addressing the jurors, he feels empathy for them and he shares the same feelings as the other lawyers because he understands how demanding and stressful the trial must have been for them because they had been sequestered for so many months. This can be seen in the following example.

Excerpt from the defense:

(207) *Let me join with everybody in thanking you for your service. I can—the frustration, the loneliness, the sacrifice you have made in this sequestration is something that we understand or we are trying to understand.*

(see Appendix M lines 4-6)

Scheck also attempted to bond with the jurors and this can be seen in the following example.

Excerpts from the defense:

(208) [...] *it is just really an **honor and a privilege** to present this case to you.*

(see Appendix M line 15)

(209) *So it is **a privilege and honor** to have presented that evidence to you and I must also say that standing before you right now is a terrifying responsibility.*

(see Appendix M lines 28-30)

In examples n. 208 and n. 209, Scheck seems to be flattering the jurors and is showing his respect for the jurors by employing the nouns *honor and privilege*. He considers himself to be privileged because he was chosen among other forensic experts to represent O.J. Simpson, so he understands that this implies a great responsibility, in fact his duty is to convince the jury that his discussion on the DNA evidence is the most credible.

Now what follows are Table 8 and Table 9 that examine the lexical items and/or expressions employed by Clark and Cochran to convince the jurors of the credibility of their version of the story. Table 8 gathers the expressions employed by Clark with reference to the evidence found, while Table 9 gathers the expressions employed by Cochran to shift the jurors' attention from the double murder to issues of racism.



n.	Need Step	Frequency Prosecution
1	Blood	216
2	Glove(s)	65
3	Cap	34
4	Bloody shoe prints	14
5	Blue-black cotton fiber	12
6	Racist	3

Table 8 Need Step  
Expressions employed by the prosecution referring to the evidence found

As can be seen in Table 8, Clark used the noun *blood* with a frequency of 216 hits. The blood found on the crime scene, on the gloves, on Ron's shirt and at O.J. Simpson's house probably represents the strongest piece of evidence against O.J. Simpson. However, the defense was brilliantly capable of convincing the jury that the blood found, on the crime scene and at O.J.'s estate, was contaminated and planted by a corrupt LAPD. The defense's accusation against the LAPD created confusion among the jurors raising a reasonable doubt. In fact, Clark understood how the defense was playing its cards, an example of this may be seen in the following extract.

Excerpts from the prosecution:

(210) [...] *they've raised all the possibilities of things that could happen in an effort to scare you away from the evidence [...] we have proven to you that it was not contaminated, we have even proven to you that it was not planted for lack of a better term. (see Appendix J lines 162-167)*

The following examples show the use of the the noun *blood*.

(211) *You recall the testimony that **blood** was collected from the bathroom upstairs that's just off the Defendant's bedroom, and the **blood** is found very—it's found basically in-between the sink and the shower in the Defendant's bathroom.*

(see Appendix J lines 935-937)

(212) *I show you that foyer picture. You've seen that quite a number of times, with the **blood** spots on the floor. So he left **blood** downstairs as well.*

(see Appendix J lines 945-947)

(213) *Now here's the interesting thing about the **blood** trail on his driveway and the **blood** in his foyer. When you take into account the **blood** in the bathroom [...]*

(see Appendix J lines 956-958)

(214) *But you do know that you have more **blood** downstairs, you have **blood** leading out to the Bronco. (see Appendix J lines 963-964)*

(215) *Those are big **blood** drops, folks not the kind you see from that little slice that Dr. Baden showed you on the Defendant's finger. Now we've all been living in this world for while and you know that when you get big drops of **blood** that's from a big cut. (see Appendix J lines 994-997)*

(216) *Now about the **blood** on the outside of the car door. I wanna make one thing clear. I'm not saying that the **blood** could have only gotten on the well of that door handle in Rockingham. (see Appendix J lines 1006-1008)*

(217) *When you look at the **blood** at Rockingham, that's an obvious lie. Why did he do that unless he knew that he had to come up with an explanation for something that was very, very incriminating. (see Appendix J lines 1033-1036)*

(218) *The **blood** found on the **blood** trail at Rockingham is in fact the Defendant's and that is conceded. There is no dispute. Even Kato saw the **blood** in the foyer.*

(see Appendix J lines 1046-1048)

All the above examples show how the *blood* was found not only in O.J.'s Bronco but also in numerous different places of his house. Perhaps, wrongly, Clark thought that she did not need to persuade and insist on this piece of evidence because the *blood* found

should have represented sufficient and strong proof to convict O.J. of the double murders.

As can be seen from Table 8, the noun *glove(s)* was employed with a frequency of 65 hits. The *glove(s)*, a pair of Aires light gloves, represented another important piece of evidence that linked O.J. to the crime scene. Nevertheless, the defense insisted that the *glove* found at Rockingham had been placed there by a racist police officer, named Mark Fuhrman. Fuhrman in fact was the detective who discovered the glove.

The following examples show the use of the noun *glove*.

Excerpts from the prosecution:

(219) *And the killer lost his left **glove** at Bundy. Now, we know that the killer cut his left hand because we have the blood drops to the left side of the bloody shoe prints [...] (see Appendix J lines 1055-1057)*

(220) *And in having maybe the Rockingham **glove** in his pocket, when he was running down the south pathway picking up fibers from it, from his clothing, when the **glove** fell out, it still had the fiber from his clothing and that's why you have those fibers sharing the same microscopic characteristics with all the tests he performed on them, there were quite a few, in these three places, going to the crime scene, the south pathway and the Defendant's bedroom.  
(see Appendix J lines 1473-1479)*

(221) *And on this **glove** he is tied to every aspect of the murder to Ron Goldman, to Nicole Brown, to the car. And of course that's why the Defense has to say that the **glove** is planted because if they don't everything about this glove convicts the Defendant. (see Appendix J lines 1677-1680)*

(222) *But the bottom line is and I think that you'll reach the same conclusion, no one planted that **glove**. You know why? Because they're his **gloves**, they're his **gloves**. Think about all of the evidence that you heard now. Remember that he's a size extra-large, the **gloves** are a size extra-large. The **glove** at Rockingham is a mate to the **glove** at Bundy. They're a pair. A pair that are the same exact type*

*purchased by Nicole on December 18th 1990. One of only 200 pairs sold that year. **Gloves** that are cashmere lined, **gloves** that cost \$55.00, rich man's **gloves**. **Gloves** that were exclusive to Bloomingdale's, **gloves** that were not sold West of Chicago, **gloves** that the Defendant was wearing at football games from of January 1991, just a few weeks after she bought them, until the last football season before the murders. (see Appendix J lines 1704-1715)*

(223) *Now, the testimony has told us that the **gloves** in evidence are smaller now than when they were new, so the issue with all that has been done to them blood soaked, frozen, unfrozen, who knows what, the issue is how they fit at 10:00 p.m. Just before the murders on the night of June the 12th.  
(see Appendix J lines 2071-2074)*

(224) *We have the Rockingham **glove** with all of the evidence on it, Ron Goldman's fibers from his shirt, Ron Goldman's hair, Nicole's hair, the Defendants blood, Ron Goldman's blood, Nicole's blood and the Bronco fiber and the **blue-black cotton fibers**. (see Appendix J lines 2343-2347)*

The *glove(s)* represents an important piece of evidence for two reasons:

- (1) Clark was able to demonstrate to the court that O.J. owned two pairs of that specific type of glove and that they were the same size as the ones found on the crime scene. Nicole had bought O.J. this specific type of glove in 1990. The possession of the gloves was proved by photos, considered as exhibits, showing O.J. wearing the same model of gloves during football season;
- (2) Clark underlined that this type of glove was an expensive type that only rich men could afford.

Clark's theory can be seen in example n. 222. In example n. 223, Clark is explaining why the *gloves* did not fit O.J. when he was asked to try them on during the trial. The *gloves* had been exposed to too many changes throughout the year i.e., they had been soaked in blood, had been frozen and then unfrozen several times. For this reason, Clark

pointed out that the *gloves* had inevitably shrunk. Example n. 224 shows that the *glove* was considered a crucial piece of evidence because it collected elements that came directly from the crime scene, such as Ron and Nicole's hair, fibers from Ron's shirt but most of all because the *glove* was also covered with O.J.'s blood. Furthermore, the *blue-black cotton fibers* found on the *glove* were the same found on Ron Goldman's shirt, which represented another significant aspect.

As can be seen in Table 8, Clark employed the noun *cap* with a frequency of 34 hits. It was observed that throughout the closing Clark underlined the typology of the cap. In fact, it was a *knit cap*. It was also observed that the adjective *knit* was employed with a frequency of 15 hits. Specifying that it was a *knit cap* represented an important factor because it showed that the cap was soft and flexible and that it could be used to easily disguise a person's appearance.

The following examples show the use of the noun *cap*.

Excerpts from the prosecution:

(225) *He looks through a microscope so all he can tell you is that the Defendant's hair shares the same microscopic characteristics as for example the hair in the **knit cap** found at Bundy or the hair found on Ron Goldman's shirt.*

(see Appendix J lines 1379-1382)

(226) *He said there were hair--the hairs that he said were consistent with the Defendant's, he found nine inside the **cap**. (see Appendix J lines 1407-1409)*

(227) *Now, what is interesting also is that he talked about fragments that were found inside the **cap**, hairs of black origin that were not consistent with Mr. Simpson's [...] (see Appendix J lines 1411-1413)*

(228) *Why did he leave the **cap** and **glove**? This was probably very easy. It was late he had to catch a flight. This took later than expected, Ron Goldman was not expected at this scene, he was not supposed to be there but it is only because of*

*him, because of the struggle that he put up that we have the **cap**, we have the **glove** and we have all of this evidence, Ron's shirt, the **blood** because of the struggle with Ron we have all of this evidence. (see Appendix J lines 2001-2007)*

(229) *Don't forget too that the **glove** and the **cap** are in complete darkness underneath that plant in that very dark, dark area in the front of Nicole's condominium. (see Appendix J lines 2016-2018)*

In examples n. 225, n. 226 and n. 227, Clark is emphasizing the fact that the hair found in the *cap* is consistent with O.J. Simpson's typology of hair. While, in examples n. 228 and n. 229, Clark is explaining the reason why the *cap* and one of the *gloves* was found on the crime scene. Clark is showing the jury that all the evidence found is very serious incriminating evidence. In example n. 228, Clark is again asking a question and then providing an answer for the jurors. Clark is also explaining why and how other incriminating evidence was found, as for instance O.J.'s blood on Ron's shirt. Example n. 229 explains why O.J. was not able to recover the glove and the *cap* from the crime scene during the murders. When the glove and the *cap* fell during the struggle O.J. was not able to find them because the murders occurred in a very dark area of Nicole's home.

As can be seen in Table 8, Clark employed the expression *bloody shoe prints* with a frequency of 14 hits.

The following examples show the use of the expression *bloody shoe prints*.

Excerpts from the prosecution:

(230) *Mr. Bodziak I think made that very clear especially on his last visit, only one set of the imprints were **bloody shoe prints** and all of them were consistently **Bruno Magli size 12**. (see Appendix J lines 1503-1506)*

(231) *Now, for this I'm going to direct your attention to the board, the **bloody shoe prints**. Now, the **bloody shoe prints** actually start down here--I will just hold it*

*up for a minute. On this very first photograph on the bottom you can see the shoe prints right next to the blue knit cap... And those **bloody shoe prints** go all the way down the walkway until you get to about halfway when they fade out.*

(see Appendix J lines 1484-1488)

(232) *We have the **Bruno Magli shoeprint**, size 12, all of them size 12, his size shoe, all of them consistent going down the Bundy walk. We have the Bundy blood trail, his blood to the left of the **bloody shoe prints**.*

(see Appendix J lines 2340-2342)

The *bloody shoe prints*, which corresponded to a size 12, represented another piece of incriminating evidence found on the crime scene because they were the same size as O.J.'s shoe size. Moreover, experts confirmed that the *prints* found were left by a specific type of shoe, i.e., a pair of Bruno Magli shoes. The Bruno Magli shoes just like the Aires light gloves represent crucial evidence because they are both expensive items that are typically bought by wealthy people that can afford these articles. At this point, it is essential to highlight a physical description of O.J. Simpson because it constituted a key element in the incriminating evidence against him. Darden wanted to underline the fact that O.J. Simpson was an ex-athlete that had a strong and powerful body and that he could have been capable of committing a double murder without any problems. In fact, Darden describes O.J. as:

(233) *[...] this man was about six feet, six foot two, 200 pounds, African-American.*

(see Appendix K lines 245-246)

As can be seen in Table 8, Clark employed the nouns *blue-black fibers* with a frequency of 12 hits, which represented another substantial element of the case. These *fibers* are attributable to a blue-black sweat suit that O.J. Simpson owned and Kato testified that he saw him in that sweat suit exactly the night of the murders.

The following examples show the use of the nouns *blue-black fibers*.

Excerpts from the prosecution:

(234) *Now, on Mr. Goldman's shirt we have the Defendant's hair and we have the **blue-black cotton fiber**.* (see Appendix J lines 1437-1438)

(235) *We find **blue-black cotton fibers** just like those found in the shirt of Ron Goldman and on the socks of the Defendant in his bedroom.* (see Appendix J lines 1676-1677) *You recall what Kato described. He was wearing the dark blue to black cotton sweat suit with long sleeves.* (see Appendix J lines 1461-1462)

(236) *The dark blue, black cotton sweat suit that Kato described, perfect in the nighttime if you don't want to be seen. The dark **blue-black cotton fibers** that were found on Ron Goldman, the socks, the Rockingham glove, the fibers of the clothing he wore, the watch cap and the gloves.*  
(see Appendix J lines 2187-2191)

As can be seen in Table 8, Clark employed the adjective *racist* with a frequency of 3 hits.

The following examples show the use of the adjective *racist*.

Excerpt from the prosecution:

(237) *And let me come back to Mark Fuhrman for a minute, just so that it's clear. Did he lie when he testified here in this courtroom, saying that he did not use racial epithets in the last ten years. Yes. Is he a **racist**? Yes. Is he the worst LAPD has to offer? Yes. Do we wish this person was never hired by LAPD? Yes. Should LAPD ever hire him? No. Should such a person be a police officer? No. In fact, we wish there were no such person on the planet. Yes. But the fact that Mark Fuhrman is a **racist** and lied about it on the witness stand does not mean that we haven't proven the Defendant guilty beyond a reasonable doubt and it would be a tragedy if with such overwhelming evidence ladies and gentlemen, as we have presented to you, you found the Defendant not guilty in spite of all that because of all the **racist** attitudes of one police officer.* (see Appendix J lines 119-129)

Although example n. 237 is rather long it is essential because it shows that the prosecution understood that the defense was trying to shift the case from murder to an



issue of racism of the LAPD against O.J. Simpson. In fact, towards the end of the example Clark insists that the prosecution has fully proven that O.J. Simpson was guilty beyond any reasonable doubt. The prosecution throughout the closing argument had proven O.J.'s guilt with the DNA evidence found on the crime scene, i.e., Bundy, and at Rockingham. The use of adjective *racist* throughout the closing arguments is a crucial aspect to highlight because adjectives are the largest open word class in English after nouns and verbs (Leech, 1989) and they are used "to describe the qualities of people, things, places, etc." (Alexander, 1988: 13). Adjectives are content words that a speaker/writer will use in order to convey a message (Soler, 2002). With specific reference to the adjective *racist* it is interesting to look at its meaning, the Macmillan Dictionary defines racist as: "someone who does not like or respect people who belong to races that are different from their own and who believes their race is better than others."

As previously mentioned the prosecution was aware of the fact that the defense played the racism card. This is evident in the following example.

Excerpt from the prosecution:

(238) *But this isn't the case of Mark Fuhrman. This is the case of O.J. Simpson. And let me say this to you, if you will allow me to. And I don't mean to offend you or demean you, and I hope that you don't feel that I am. But this is the case of O.J. Simpson, not Mark Fuhrman.* (see Appendix K lines 47-51)

Darden's objective was to make the jurors understand that the trial was not against a corrupt police officer, that is Mark Fuhrman but against O.J. Simpson and that the defense was trying to manipulate and confuse the jurors' on the evidence found.

Below follows Table 9 that gathers the expressions employed by Cochran to shift attention from the murders to racial issues.

n.	Need Step	Frequency Defense
1	Rush to judgment	17
2	Racist	12
3	Journey toward justice	10
4	Obsession to win	7
5	Twins of deception	4

Table 9 Need step

Expressions employed by the defense to shift the attention from the murders to issues of racism

As can be seen in Table 9, it was observed that Cochran employed the expression *rush to judgment* with a frequency of 17 hits. Since the expression *rush to judgment* was often accompanied by the expression *an obsession to win at all costs*, employed with a frequency of 7 hits, they will be analyzed together.

The following examples show the use of the expressions *rush to judgment* and *an obsession to win at all costs*.

Excerpts from the defense:

(239) [...] *it becomes the business of the police to step up and to step in and take charge of the matter, a good, efficient, competent non corrupt police department will carefully set about the business of investigating homicides, they won't **rush to judgment**, they won't be bound by **an obsession to win at all costs**.*

(see Appendix L lines 142-145)

(240) *This is a case of about a **rush to judgment**, a case where there's been **an obsession to win at all costs** and in the words of Dr. Henry Lee "something is wrong with the Prosecution's case." (see Appendix L lines 219-221)*

(241) *You don't have one witness who ever says that Nicole Brown Simpson bought any Aris lights and gave 'em to O.J. Simpson. There is no such witness 'cause it*

*didn't happen and the rest of it is speculation and theory on their part. Cynical speculation I might add to try to **rush to judgment** at any cost.*

(see Appendix L lines 974-978)

(242) *Whenever these things, none of these things happened because their **rush to judgment**, they tried to come up with some kind of a motive that doesn't make any sense. (see Appendix L lines 1233-1235)*

(243) *So Vannatter the man that carries the blood, starts lying in this case from the very, very beginning. Trying to cover-up for this **rush to judgment**. (see Appendix L lines 2293-2294)*

(244) *Thank you for your attention during this first part of my argument. I hope that during this phase of it I have demonstrated to you that this really is a case about a **rush to judgment, an obsession to win, at all costs**, a willingness to distort, twist, theorize in any fashion to try to get you to vote guilty in this case where it is not warranted, that these metaphors about an ocean of evidence or a mountain of evidence is little more than a tiny, tiny stream, if at all, that points equally toward innocence, that any mountain has long ago been reduced to little more than a molehill under an avalanche of lies and complexity and conspiracy. (see Appendix L lines 3055-3062)*

Right at the beginning of his closing argument and towards the end Cochran employs the expressions *a rush to judgment* and *an obsession to win at all costs* because he is manipulating the jurors' minds in convincing them that the entire case was based on a wrongful accusation against O.J. Simpson who instead was being framed by a corrupt police department. In fact, Cochran in his closing often refers to the fact that the LAPD was corrupt especially the first police officers to arrive on the crime scene. It is significant to highlight that Cochran begins and ends with the same concept. Therefore, he is reminding or retelling the jurors that the truth is that the police department is corrupt and that they are accusing an innocent man of two murders that he has not

committed. It is fundamental to underline that “During the course of a trial, the jurors are engaged in an active, constructive comprehension process in which they make sense of trial information by attempting to organize it into a coherent mental representation” (Pennington and Hastie, 1992: 190).

As can be seen in Table 9, it was observed that Cochran employed the adjective *racist* with a frequency of 12 hits.

The following examples show the use of the adjective *racist*.

Excerpts from the defense:

(245) *Mark Fuhrman is a **lying, perjuring, genocidal racist**. And from that moment on, any time he could get O.J. Simpson he would do it. That’s when it started in ‘85 [...] (see Appendix L lines 2334-2335)*

(246) *This man who in ‘85 in his mind started this, this man who is asked to go over and help O.J. Simpson and notify him and take care of the kids, this man, this **perjurer, this racist, this genocidal racist, this is the man.***  
(see Appendix L lines 2705-2707)

(247) *First of all, both prosecutors have now agreed that we have convinced them beyond a reasonable doubt, by the way, that he is a **lying, perjuring, genocidal racist** and he has testified willfully falsely in this case on a number of scores.*  
(see Appendix L lines 2792-2795)

By using the adjective *racist* Cochran is making an overt statement of discrimination and stating that some police officers of the LAPD are racists. In fact, Mark Fuhrman played a crucial role in the defense’s case against a corrupt LAPD, because Fuhrman had lied under oath that in the past he had never used the word “nigger” or the “n” word against an African-American person. The defense proved that Fuhrman was a racist and a corrupted police officer by playing some tape recordings in which he revealed that, in the past, he had planted evidence in order to frame African-Americans accused of

specific crimes. This played to the advantage of the defense's theory but it is essential to remember that the case was against O.J. Simpson accused of double murder and not against corrupted police officers. By presenting a racist police officer, which has certainly had a reprehensible conduct in the past, the defense was influencing how the jurors would or should interpret certain evidence and facts. It is also fundamental to stress the use of other nouns or adjectives collocated in front of the adjective *racist*. The adjective *lying*, the conjugated verb *perjuring*, the noun *perjurer* and the adjective *genocidal* all go to strongly stress in the jurors' minds the image of an awful and horrible man who, since 1982, has been waiting for O.J. Simpson to commit any type of minor offense that could be used to arrest him and lock him up in jail forever. According to the defense Mark Fuhrman is a terrible man who is a racist and hates African-Americans who date or are married to white women. In fact, this view is clear from the tapes that were played in court and by the witness Kathleen Bell, who testified that Fuhrman had stated, "interracial marriage was disgusting." Mark Fuhrman also told Kathleen Bell that when he saw a black man and a white woman together in a car, he would pull them over. Kathleen Bell then testified that she asked him what would he do if the couple was not doing anything wrong. Bell claimed that Fuhrman's response was that "he'd find something." Kathleen Bell continued and reported a sentence that Fuhrman once said to her: "If I had my way I'd gather, all the n\*\*\*\*\*s would be gathered together and burned."

As can be seen in Table 9, it was observed that Cochran employed the expression *a journey toward justice* with a frequency of 10 hits. The use of the expression had the aim of drawing the jurors' attention to his side of the story. Cochran employed the expression in order to deliberately shift the trial from premeditated murder to racial issues. Cochran was able to convince the jurors and many Americans that O.J. Simpson

had been unfairly accused of double murder and that it all had been an organized plot against him who instead was a very successful and respectable African-American that probably symbolized and/or represented a payback for many African-Americans. It is crucial to emphasize that Cochran was particularly astute and cunning in skillfully doing so.

The following examples show the use of the expression *a journey toward justice*.

Excerpts from the defense:

(248) *We all understand our roles in this endeavor that I'm going to call **a journey toward justice**.* (see Appendix L lines 15-16)

(249) *That is the mission you are on in this **journey toward justice**.*  
(see Appendix L lines 2554-2555)

(250) *It has been kind of like a rally race, hasn't it been, in many respects, in this **journey toward justice**?* (see Appendix L lines 3108-3109)

Example n. 250 is interesting because Cochran compares the trial to a *rally race*. By employing these two nouns Cochran is depicting a specific picture for the jurors. A rally is a race on unpaved roads where speed is one of the key elements of the race. The analogy between the trial and a rally race probably consists in the fact that a trial at times may be a windy and devious road, but at the same time it is exciting, where unexpected and twisted situations may arise. The common denominator between the two is the combination of various situations happening all together.

As can be seen in Table 9, it was observed that Cochran employed the nouns *twins of deception* with a frequency of 4 hits. The use of these nouns represents another interesting analogy that Cochran makes when referring to Mark Fuhrman and Philippe Vannatter.

The following examples show the use of the nouns *twins of deception*.

Excerpts from the defense:

(251) *So this man with his big lies--and then we have Fuhrman coming right on the heels and the two of them need to be paired together because they are **twins of deception**. Fuhrman and Vannatter, **twins of deception** who bring you a message that you cannot trust, that you cannot trust.*

(see Appendix L lines 2657- 2661)

(252) *And so you take these two **twins of deception**, and if as you can under this law wipe out their testimony, the prosecutors realize their case then is in serious trouble.* (see Appendix L lines 2846-2848)

(253) *That is the lead detective I'm talking about, these two **twin devils of deception**.*

(see Appendix L lines 3053-3054)

The Macmillan Dictionary defines deception as: “the act of tricking someone by telling them that is not true.” Cochran does not employ this expression very often, however it transmits to the jurors a very clear idea of how the defense considered the detectives Fuhrman and Vannatter. As can be seen in example n. 253, Cochran adds the noun *devil* to add greater emphasis on the fact that these two men are not only liars, that have distorted the evidence of the case, but are also evil and powerful that could have actually had the possibility of contaminating the evidence. It is significant to highlight that according to Seckinger,

Analogies are effective communication techniques primarily because they paint clear mental pictures. An effective argument, in its simplest form, is a collection of words designed to create a persuasive mental picture in the listener’s mind. The values of a good analogy are that it paints a clear mental picture that can be readily accepted. The listener then adds his own laws and interpretation to it (Seckinger, 1995: 66).

Moving on to the examination of the data according to Monroe's third step, i.e., the Satisfaction Step it is essential to highlight that the lawyers achieved this step by using visual aids within their closings. Clark used a huge board to represent the timeline of the murders. Photos portraying O.J. Simpson wearing the incriminated gloves before the murders, during football season, were shown. Darden played the 911 call recording (see Appendix N), for the entire court to hear, where Nicole in tears called the police because O.J. was at her house screaming and yelling that he wanted to kill her. Darden also showed a photo of a battered Nicole from a domestic violence episode that occurred in 1989.

The following examples, taken from Darden's closing, refer to the night that Nicole was a victim of domestic violence.

Excerpts from the prosecution:

(254) *It seems as if she was more concerned about her kids than she was doing anything to the Defendant. She didn't--she didn't care about documenting her own injuries at that time. She just wanted to be with her kids. But Edwards took her to West L.A. Station and he took some Polaroid photographs of her. Remember those photographs? Back in February I think it was, I think I marked those People's 4 and 5. I want you to go back for a moment with me eight months ago. Take a look at these injuries. Keep in mind, these are Polaroids and they're eight years old. Look at these injuries.* (see Appendix K lines 210-218)

(255) *See the small cut to the right side from where we are on the right side of her upper lip? Look at the swollen left cheek. Look at the scar, the scratch, the bruise on the right side of her forehead. You see that? You've seen other pictures of her. You saw a picture of her when she was alive and smiling.*

(see Appendix K lines 219-22)

In example n. 254, Darden is explaining what happened the night of the 911 call and how Nicole was more worried about her children than herself. In example n. 255,



Darden is showing a picture and explaining the episode of domestic violence. The photo shows Nicole with a black-and-blue face that resulted in a bruised face, a cut lip and a handprint imprinted on her neck due to the extreme violence that O.J. had inflicted on her. The photo was used to portray a vivid picture of the real O.J. Simpson and how he behaved, at times, within the walls of his house and how he treated his so-called beloved wife. On the other hand, Cochran used pictures and videos of O.J. the day of his daughter's recital, which was also the day of the double murder, which showed a very happy O.J. Simpson. It is well known that another crucial moment of the trial, which was transmitted worldwide, was when Darden asked O.J. Simpson to try on the infamous gloves. The famous scene is due to the fact that Cochran provoked Darden into asking Simpson to try on the murder gloves. It is important to remind the reader that the gloves were found in two different places, specifically, one was found on the crime scene, while the other was found near Kato Kaelin's guest house behind O.J.'s Rockingham estate. This represented a decisive moment because Cochran probably knew that the gloves would not fit for various reasons. As previously mentioned, one of the reasons was that the gloves had been soaked in Nicole and Ron's blood and then frozen and unfrozen several times. Furthermore, the murders occurred on June 12, 1994 while O.J. was asked to try on the gloves exactly a year later on June 15, 1995. The leather gloves seemed too tight for Simpson to put on easily, especially over the latex gloves he wore underneath, that had the aim of preserving traces of evidence. This moment was probably the moment that ensured O.J. Simpson an acquittal. By showing O.J. struggling to put on the gloves just sealed the deal in proving that he did not commit the murders. This scene probably also denoted a turning point for those who were convinced that O.J. was guilty. It is at this stage that Cochran came up with the most famous phrase of the case "If it doesn't fit, you must acquit." Moreover, it is

essential to stress that O.J. suffered from arthritis and according to one of his lawyers on the Dream Team, Robert Kardashian, O.J. had not taken his anti-inflammatory medicine for several weeks before trying on the gloves causing the swelling of his joints and inflammation of his hands. Nevertheless, according to the prosecution both gloves contained DNA evidence from O.J., Nicole and Ron, in addition the glove found at Simpson's house also contained a long strand of blonde hair similar to Nicole's. To conclude this section, it is fundamental to point out that lawyers need to be as clear as possible during their closing arguments and in order to achieve that they will have to avoid legalese and other aspects of legal language that could impede comprehension (Tiersma, 1999: 183). According to Kennedy, "The spoken word is efficacious in the trial setting and essentially serves to engender emotion and persuade others to accept a certain point of view" (Kennedy, 2007: 594). For this reason, it is fundamental that trial lawyers employ language with which the jurors can relate to. Furthermore, it is fundamental to stress the importance of presenting a client's story in simple, direct, conversational English. Indeed, a lawyer will be successful if "He can take a complex set of facts and reduce it to a highly understandable situation for a jury" (Tiersma, 1999: 184).

#### **4.7 The use of Repetition in the Adversarial Trial**

As previously mentioned, repetition is also considered a persuasive strategy adopted by trial lawyers. Repetition can be used to capture the jury's attention because it is the key to most learning. In fact, the technique of repetition (Kennedy, 2007) is most effective when it is used consistently from the opening statement to the closing argument. As Kennedy states:

Individual jurors have different levels of learning and comprehension

capabilities. For jurors who are having difficulty understanding portions of the lawyer's argument, repetition will help them remember key facts and grasp important concepts. The goal in using repetition is to emphasize the most important aspects of the argument and help the jury remember those points during their deliberation. Hearing a key word or phrase repeated throughout the trial and emphasized during the closing should help jurors remember that word or phrase (Kennedy, 2007: 601-602).

For this reason, repetition is a major rhetorical strategy for producing emphasis, clarity, amplification, or emotional effect and trial lawyers use repetition of both lexical items and syntactical patterns. Following are three sections that focus on the use of repetition within the two cases. The sections are sub-divided and each one includes different tables. The first group of tables are the ones that gather the pronouns employed, the second group of tables gather lexical items referring to the defendants and the victims, the third group of tables gather specific lexical items employed by the prosecution and the defense lawyers.

#### **4.7.1 Repetition of pronouns**

It is important to analyze what pronouns are used and how, because pronouns may be used as a syntactic substitution, meaning that they substitute another word or words occurring elsewhere in discourse (Richardson, 2007). When analyzing the two cases it was observed that the prosecution and the defense made a great use of pronouns. Following are two sub-sections, specifically Table 10 that gathers the pronouns employed by both prosecution and defense in the Jodi Ann Arias case. Subsequently, Table 11 gathers the pronouns used by both prosecution and defense in the O.J. Simpson case.

#### 4.7.1.1 The use of pronouns in the Jodi Ann Arias case

n.	Personal pronoun subject	Frequency Prosecution	Frequency Defense
1	She	1131	591
2	You	782	448
3	He	372	233
4	I	232	173
5	They	141	99
6	We	126	294

Table 10 Use of pronouns by prosecution and defense in the Jodi Ann Arias case

As can be seen in Table 10, almost all the pronouns ranked in the same positions but with different frequencies. The only pronoun that did not rank in the same position was the first person pronoun *we*. At this stage it is important to highlight that the meanings of personal pronouns as Wilson claims are not either something fixed or something that form neat categorical divisions but

The pronouns of English do not form neat categorical divisions; *we* can be used to designate a range of individuals moving outwards from the speaker him/herself to the speaker plus hearer and the whole humanity [...] With such manipulative possibilities provided by the pronominal system as it operates in context, it is not surprising to find that pronouns are employed to reveal ideological bias; to encourage solidarity; to designate and identify those who are supporters (with us) as well as those who are enemies (against us) (Wilson 1990: 76).

As can be seen from Table 10, the pronoun to score the highest rank was the third person singular pronoun *she*. The pronoun *she*, used to refer to Jodi, was employed with

a frequency of 1131 hits by the prosecution and with a frequency of 591 hits by the defense. While, third person singular pronoun *he*, used to refer to Travis, was employed with a frequency of 372 hits by the prosecutor, and with a frequency of 233 hits by the defense. It is interesting to observe that *he* ranked in fourth position.

The following examples show the use of the pronouns *she* and *he*.

Excerpts from the prosecution:

(256) [...] **she** will not let him rest in peace. But now, instead of a gun, instead of a knife **she** uses lies. And **she** uses these lies in court when **she** testified to stage the scene for you. Just like **she** staged the scene for the police, after **she** killed Mr. Alexander. (see Appendix G lines 4-7)

(257) [...] **he's** a bad Mormon, because **he's** having sex with her. If **he's** such a bad Mormon, why stay with him? You're the one that chose him, if **he's** such a bad guy, why are you hanging out with him? (see Appendix G lines 130-133)

Excerpts from the defense:

(258) Well, if you believe Jodi's version of events, **she's** guilty of felony murder, because **she** went to Travis' home and **she** decided to steal his gun. And in the course of trying to steal his gun, **she** shot him. **She** went there, they had sex, they did all these things, then **she** decided **she** wanted his gun.  
(see Appendix I lines 74-78)

(259) Alexander if there's a moment in time this is it this right here is it there **he** is, **he's** worn out **he's** naked and his backs to her his eye are right against the wall he wouldn't have seen it coming [...] (see Appendix I lines 530-532)

It is essential to stress that pronouns according to scholars, are words substituting for nouns or noun phrases (Beard, 2000); or are a grammatical form referring directly to the speaker (first person), addressee (second person) or others involved in an interaction (third person) (Crystal, 1995); or certain values that are encoded in different formal aspects of language (Fairclough, 1989).

As can be seen in Table 10, it was also observed that both lawyers employed the second person plural pronoun *you*, specifically, the prosecution employed it with a frequency of 782 hits, while the defense used it with a frequency of 448 hits.

The following examples show the use of the pronoun *you*.

Excerpt from the prosecution:

(260) *And she uses these lies in court when she testified to stage the scene for **you** [...] She has courted the media, she has gone on national television. **You** 've seen the programs and **you** 've seen some of the her words to the media [...] That none of **you**, will convict her, after she has staged the scene for **you**.*

(see Appendix G lines 5-13)

Excerpt from the defense:

(261) *And rest assured, each and every one of **you** are here because all the parties involved believe that **you** are the type of people who would have the courage of your convictions to stand by your personal belief, against whatever pressures **you** may feel. Each one of **you** is entitled to deliver your verdict to this courtroom. **You** do not have to succumb to the pressure of a fellow juror who may not agree with **you**.* (see Appendix I lines 47-52)

The use of second person plural references permits the lawyers to create groups that do not necessarily exist in reality or that are not necessarily obvious to the listeners. In doing so, they emphasize the characteristics they share with the other members of the group and silence their differences (Felton Rosulek, 2015: 185). The pronoun *you* usually refers to the person(s) the speaker is talking to. In the specific case the trial lawyers are addressing the jury by using *you*, although *you* has multiple functions, one of which is to serve as an indefinite (generic) pronoun. The indefinite *you* can be a replacement for *I* and refer to the speaker, and also be used by the speaker to include himself as a member of a category. It has also been suggested that indefinite *you* is not used to discuss actual experience; instead, it is used to discuss 'conventional wisdom'.

In this sense, *you* is used to convey common sense or generally admitted truth, in the hope of receiving the agreement of the audience (Allen 2006: 13). When using the indefinite version of the pronoun *you*, it can be unclear whom the speaker is referring to. It can be used to refer to anyone and/or everyone. The indefinite version of *you* includes the speaker among the referents, even if this is not always the case. If the speaker uses the pronoun *you*, it is up to the audience to decide if they view themselves as part of that group or not. The generic *you* can be used by lawyers to criticize the opposition by including or excluding them from generalizations (Allen 2006: 13).

As can be seen in Table n. 10, it was observed that both lawyers employed the first person singular pronoun *I*. Specifically, the prosecution employed it with a frequency of 232 hits, while the defense used it with a frequency of 173 hits.

The following examples show the use of the pronoun *I*.

Excerpts from the prosecution:

(262) [...] *after having taken the oath and said, “Yeah, I bought the gas can alright, and I bought it from the Salinas Wal-Mart. I did buy it from the Salinas Wal-Mart, but you know, [after being questioned by the prosecutor] I took it back, and I received cash.”* (see Appendix G lines 31-34)

(263) *“No, I’ve never been in Salt Lake City, I never put gas in Salt Lake City,” but you saw the receipts that she had.* (see Appendix G lines 40-41)

Excerpts from the defense:

(264) *Fear, love, sex, lies and dirty little secrets will help you understand, I think, what happened in those three minutes.* (see Appendix I lines 29-30)

(265) *But, it occurred to me as I began thinking about talking to you this morning, that you might have some fear.* (see Appendix I lines 32-33)

When examining the use of the pronoun *I* it was observed that the prosecution mostly employed the pronoun to quote what Jodi had said when she was on the witness stand. While, the defense mostly used the pronoun *I* when directly addressing the jury. However, Nurmi also employed the pronoun to quote what Travis had said during the famous recorded sex telephone conversation that he had with Jodi. By doing so the defense is depicting a negative picture of the victim. In fact, Travis is represented as a sex fiend. Nevertheless, by employing the pronoun *I* both lawyers are referring to the defendant and the victim's personal experiences and their involvement in this relationship. In some way they are representing the voices of those two people that can not speak for themselves in that specific moment. It is fundamental to stress that in general the use of pronoun *I* is employed "to present oneself as an individual and speak from one's own perspective" (Bramley, 2001: 259). Nevertheless, it is essential to highlight that it was observed that the use of the pronoun *I* in the closing arguments investigated and examined was instead used to quote phrases uttered by the defendant and/or the victim.

As can be seen in Table 10, results also show that both lawyers employed the third person plural pronoun *they*. Specifically, the prosecution employed it with a frequency of 141 hits, while the defense used it with a frequency of 99 hits.

The following examples show the use of the pronoun *they*.

Excerpts from the prosecution:

- (266) *And decides that perhaps, those boys from the Mormon faith are a pretty good catch, because those boys, **they** have a lot of family values. And these boys think work, **they** seem to be very successful, **they** just seem to have everything that she desires in a husband, so that she can breathe.* (see Appendix G lines 100-103)
- (267) *And so, throughout this early part of the relationship, which some might call the honeymoon portion, during this part, it appears that **they** do what two people that are young and involved in a relationship do -- **they** engaged in relations.*



(see Appendix G lines 125-127)

Excerpts from the defense:

(268) *She went there, **they** had sex, **they** did all these things, then she decided she wanted his gun. And decided to take it. And wanted it so bad that she was willing to kill him. That's the theory of felony murder **they** have put forward.*

(see Appendix I lines 77-80)

(269) ***They** still talk on the phone, but she moved away.* (see Appendix I line 114)

The pronoun *they* is employed in a neutral context because it refers to the two protagonists of the case. Although, it is important to point out that the pronoun *they* may be used to distance the speaker from the people spoken of (Bramely, 2001: 182f).

As can be seen in Table 10, results also show that both lawyers employed the first person plural pronoun *we*. Specifically, the prosecution employed it with a frequency of 126 hits, while the defense used it with a frequency of 294 hits.

The following examples show the use of the pronoun *we*.

Excerpts from the prosecution:

(270) *Well, this individual, that attempted to manipulate you, believes, based on what **we**'ve heard [...]* (see Appendix G lines 44-45)

(271) *Well, it may have been the light of a television but now it's the light of truth that **we** are looking at things and what she was doing is she was invading his privacy by coming over and peeping in the window.* (see Appendix G lines 274-277)

Excerpts from the defense:

(272) *And as you begin -- and **we**'ve seen certainly aspects of fear throughout the course of this trial right, and **we**'ll talk about that more later.*

(see Appendix I lines 30-32)

(273) *And before we talk about the evidence and what this case is about, I think it's important to talk about what this case is not about.* (see Appendix I lines 56-57)

It is important to highlight that the pronoun *we* can be used “to invoke a group membership or a collective identity” (Bramley, 2001: 260f). Moreover, the use of the pronoun *we* can be divided into two categories: “the inclusive *we*, which can be used to refer to the speaker and the listener/viewer and the inclusive *we*, that refers to both the speaker and the listener or listeners” (Karapetjana, 2011: 3). By using the pronoun *we*, the speaker includes others in the utterance, creating a group with “a clear identity, making others responsible for potential issues as well” (Bramley, 2001: 76ff), and its main function is to create a group where multiple people are involved, instead of referring to one particular individual.

#### 4.7.1.2 The use of pronouns in the O.J. Simpson case

n.	Personal pronoun subject	Frequency Prosecution	Frequency Defense
1	You	1550	2461
2	He	1473	1469
3	I	608	994
4	They	459	1144
5	We	446	832
6	She	309	250

Table 11 Use of pronouns by prosecution and defense in the O.J. Simpson case

As can be seen in Table 11, the pronouns did not rank in the same positions, if compared to the Jodi Ann Arias case. The frequencies in Table 11 refer to the total of occurrences of the pronouns employed by all four lawyers during their closings.

As can be seen in Table 11, it was observed that the second person plural pronoun *you* scored the highest rank. All lawyers employed the pronoun, specifically, for the prosecution, Clark employed it with a frequency of 890 hits and Darden employed it with a frequency of 660 hits. While, for the defense, Cochran used it with a frequency of 1759 hits and Scheck used it with a frequency of 702 hits.

The following examples show the use of the pronoun *you*.

Excerpts from the prosecution:

Clark:

(274) *Now the purpose of the argument by the attorneys is to discuss with **you** the facts and the evidence that had been presented to **you** to discuss the law that I had instructed **you** on earlier and the attorneys may advance theories based upon the evidence and it may urge conclusions that are fairly drawn from that evidence.*  
(see Appendix J lines 16-20)

Darden:

(275) *All **you** have to do is use the tools God gave **you**, the tools he gave **you** to use or utilize whenever **you**'re confronted with a problem or an issue. All **you** have to do is use your common sense. And the Defense would have **you** believe that this is a complex series of facts and evidence and law and science and all of that.*  
(see Appendix K lines 6-10)

Excerpts from the defense:

Cochran:

(276) *The Defendant, Mr. Orenthal James Simpson, is now afforded an opportunity to argue the case, if **you** will, but I'm not going to argue with **you**, ladies and gentlemen [...] At the outset let me join with the others in thanking **you** for the service that **you** render, **you** are truly a innovative jury, the longest serving jury in Los Angeles County [...]* (see Appendix L lines 5-10)

Scheck:

(277) *And I can't tell **you** how appreciative we are because **you** paid attention, **you***

*were patient, **you** followed the evidence. I know that. I watched it. Now, **you** know it is our job to make it simple, to make it cogent without sacrificing detail that was important, and sometimes we let **you** down.*

(see Appendix M lines 20-23)

Observing the examples it was perceived that all the lawyers used the pronoun *you* to address the jury members. Research shows that

Addressing someone in the same way as they would address you shows solidarity and equality. Addressing someone with a ‘higher status’ in a different way than that person would address you shows inequality and social distance (Brown and Gilman 1960: 1ff).

It is also fundamental to highlight that the use of the pronoun *you* is inclusive. In fact, the pronoun is used to emphasize the jury’s personal role in the decision-making.

As can be seen in Table 11, the third person singular pronoun *he* was employed by all lawyers. Specifically, for the prosecution, Clark employed it with a frequency of 903 hits and Darden employed it with a frequency of 570 hits. While, for the defense, Cochran used it with a frequency of 1205 hits and Scheck used it with a frequency of 264 hits.

The following examples show the use of the pronoun *he*.

Excerpts from the prosecution:

Clark:

(278) *Nicole asked to speak to Ron, **he** took the phone and after Ron spoke to her **he** asked Karen for the glasses she gave him that envelop containing the glasses and at about 9:50, 10:10 that night Ron Goldman left the Mezzaluna restaurant. When **he** left he was wearing the white shirt and the dark pants [...]*

(see Appendix J lines 255-259)

Darden:

(279) *He doesn't warrant that kind of respect, not from me.* (see Appendix K line 47)

(280) *It's because of a letter **he** wrote her--**he** wrote to Nicole [...]* It's because he stalked her [...] (see Appendix K line 87-88)

Excerpts from the defense:

Cochran:

(281) *But **he's** Orenthal James Simpson **he's** not just the Defendant [...]*  
(see Appendix L line 72-73)

(282) *At 10:15 **he** leaves home and **he** proceeds on this route and you know **he's** in that alleyway that runs parallel with Bundy and **he** knows this neighborhood, **he's** been doing this for more than 14 years, **he** knows not only the neighborhood, **he** knows the dogs, **he** knows their barks, **he** knows the gates, **he** knows when they clink, **he** knows all of that.* (see Appendix M line 319-323)

Scheck:

(283) ***He** was up there looking at what **he** was doing.* (see Appendix M line 80-81)

(284) *The shoes that they suspect **he** was wearing that night, taking it home.*  
(see Appendix M line 151-152)

As can be seen in Table 11, the first person singular pronoun *I* was employed by all lawyers. Specifically, for the prosecution, Clark employed it with a frequency of 366 hits and Darden employed it with a frequency of 242 hits. While, for the defense, Cochran used it with a frequency of 748 hits and Scheck used it with a frequency of 246 hits.

The following examples show the use of the pronoun *I*.

Excerpts from the prosecution:

Clark:

(285) *As not news to you **I'm** sure it wasn't a big surprise to you that those are not important issues.* (see Appendix J lines 139-140)

(286) *And I'm going to go through the evidence and demonstrate how we have proven that to you. (see Appendix J lines 167-168)*

Darden:

(287) *You know, they asked me to do the summation Marcia Clark just did for you, but I told them, no, it's too long. I'm not the kind of person who likes to talk that long and Marcia isn't either, but she had to. And I think that one of the things that you probably gathered from hearing her today is that this case really is a simple case in this essence. (see Appendix K lines 1-5)*

Excerpts from the defense:

Cochran:

(288) *[...] I hope that your health and your good health continues.*  
(see Appendix L line 11)

(289) *I guess we've been together longer than some relationships [...]*  
(see Appendix L line 12-13)

(290) *Please don't let it against Mr. Simpson, I would never intentionally do that. In fact, I think you'll find that during my presentation, unlike my [inaudible] colleagues on the other side, I'm going to read you testimony [...] but remember that we're all advocates and I think it was Miss Clark who said "saying it so, doesn't make it so" if that applies very much to their arguments.*  
(see Appendix L lines 49-55)

Scheck:

(291) *I know you followed and paid attention to this evidence.*  
(see Appendix M lines 27-28)

(292) *So what I propose to do with you today, and I will try to do it as quickly as I possibly can, is go through what I believe are essential facts. Now, we don't have to prove anything and we don't have the burden of proof here and I'm going to confront each and every one of these essential pieces of evidence in this case and raise a reasonable doubt [...]* (see Appendix M lines 259-263)

It was observed that the pronoun *I* was employed when directly speaking to the jurors. It is essential to point out that the advantage of using *I* is that it shows personal involvement, which is particularly useful when positive news is delivered. The disadvantage is that it is obvious whom to put the blame on when something goes wrong. It can also be seen as an attempt of the individual speaker to place himself above or outside the shared responsibility of his colleagues (Beard, 2000: 45). By using the pronoun *I* the lawyers are clearly stating their opinion.

As can be seen in Table 11, the third person plural pronoun *they* was employed by all lawyers. Specifically, for the prosecution, Clark employed it with a frequency of 233 hits and Darden employed it with a frequency of 226 hits. While, for the defense, Cochran used it with a frequency of 766 hits and Scheck used it with a frequency of 378 hits.

The following examples show the use of the pronoun *they*.

Excerpts from the prosecution:

Clark:

(293) *You'll probably hear from the Defense multiple times we don't have to prove anything, that's right **they** don't. In every criminal case when the People complete their presentation the Defense can say no witnesses [...] but when **they** do, when **they** do then you must consider the quality and the nature of the evidence that **they** have presented, that goes into the mix, that's part of your consideration. What kind of evidence did **they** present to demonstrate something to you, to prove something to you? If **they** try to prove something to you their witnesses, their evidence gets evaluated by the same rules ours do, the same jury instruction applies. (see Appendix J lines 202-211)*

Darden:

(294) ***They** may say the Defendant is just looking through a window late at night. (see Appendix K lines 89-90)*

(295) ***They** may say that this isn't important evidence. I say **they**'re wrong.*

(see Appendix K lines 142-143)

Excerpts from the defense:

Cochran:

(296) [...] *the Prosecution never calls him Mr. Orenthal James Simpson, **they** call him Defendant.* (see Appendix L lines 66-67)

(297) ***They** must prove Mr. Simpson guilty beyond a reasonable doubt until moral certainty and we will talk about what a reasonable doubt means.*  
(see Appendix L lines 98-99)

Scheck:

(298) *In this case **they** did not count the swatches when **they** collected them. **They** did not count the swatches when **they** got back to the laboratory and put them in the tubes for drying. **They** did not count the swatches when **they** took them out of the tubes and put them in the bindles. We don't know how many swatches **they** started with. **They** didn't book the evidence in this case for three days. **They** kept it in the least secure facility, the evidence processing room, for three days, without being able to track the items.* (see Appendix M lines 140-147)

It was observed that the pronoun *they* was employed by the lawyers when referring to the opposing parts. The pronoun was used to belittle the opposing theories and sustain that the prosecution's theory was the most accurate or truthful one compared to the defense's theory or vice versa.

As can be seen in Table 11, the first person plural pronoun *we* was employed by all lawyers. Specifically, for the prosecution, Clark employed it with a frequency of 274 hits and Darden employed it with a frequency of 172 hits. While, for the defense, Cochran used it with a frequency of 577 hits and Scheck used it with a frequency of 255 hits.

The following examples show the use of the pronoun *we*.



Excerpts from the prosecution:

Clark:

(299) *I'm just using a screen instead of an easel to do what **we**'ve been doing for hundreds of years [...] Counsel's so scared that he's saying don't let her argue, don't let her draw reasonable inferences, don't let her pull this together for the jury. That's what **we** have here I'm drawing inferences from the evidence and I'm arguing the evidence.* (see Appendix J lines 1-5)

(300) *[...] because here now in this courtroom **we**'re here to deduce who murdered Ron Goldman and Nicole Brown.* (see Appendix J lines 77-78)

Darden:

(301) *And, you know, **we** know. I mean, if **we**'re honest with ourselves, **we** know, if **we** are. And it's unfortunate what **we** know. But **we** know the truth, and the truth that **we** know is that he killed these two people.* (see Appendix K lines 35-38)

Excerpts from the defense:

Cochran:

(302) *Now in the course of this process while **we**'re discussing the reason of the inferences of the evidence I ask you to remember that **we**'re all advocates, **we**'re all officers of this court.* (see Appendix L lines 46-48)

(303) ***We** haven't reached this goal yet, but certainly in this great country of ours, **we**'re trying. With a jury such as this, **we** hope **we** can do that in this particular case.* (see Appendix L lines 63-65)

Scheck:

(304) *It is a terrifying responsibility because **we** think the evidence shows that **we** represent an innocent man wrongly accused.* (see Appendix M lines 30-31)

As previously mentioned, the use of the pronoun *we* may be inclusive (judge, jury, society) and exclusive (judge, the law, the court, not the jury). By inclusive (which

relates to solidarity) meaning that who is speaking is bringing the participants into the same frame by making the jurors part of the same frame as the judges, emphasizing their joint involvement. As Mulhausler and Harre claim “*we* indexes the group, creating a bond between the participants” (Mulhausler and Harre, 1990: 198). It is essential to point out that in closings the use of *we* is employed more to include than to exclude. Therefore, the pronoun may be thoughtfully chosen to include creating solidarity with the jurors. Furthermore, it is essential to highlight that one way in which lawyers portray themselves as similar to the jurors is by using first person plural pronouns to construct themselves and the jurors or judges(s) as sharing the same opinions and evaluations. Danet (1980) shows that an Israeli defense lawyer used *we* to portray himself and the judges as all being in agreement. Felton Rosulek (2009) shows how lawyers in seventeen closing arguments used *we* to construct the jurors and the lawyers as having had the same experiences during the trial.

As can be seen from Table 11, the pronoun to score the lowest rank was the third person singular pronoun *she*. All lawyers employed the pronoun, specifically, for the prosecution, Clark employed it with a frequency of 65 hits and Darden employed it with a frequency of 244 hits. While, for the defense, Cochran used it with a frequency of 184 hits and Scheck used it with a frequency of 66 hits.

The following examples show the use of the pronoun *she*.

Excerpts from the prosecution:

Clark:

(305) [...] *before her death Nicole promised her mother that **she** would arrange to pick up the glasses.* (see Appendix J lines 251-252)

(306) *Nicole was not in the habit of letting her dog run around like that, which means that if that dog is barking like that and **she**'s not tending to it, **she**'s already dead.* (see Appendix J lines 317-319)

Darden:

(307) [...] *and **she** was yelling something. **She** was shouting something. Do you remember what **she** was shouting? [...] **She** was shouting, “He’s going to kill me, he’s going to kill me, he’s going to kill me,” and **she** shouted this four or five times as **she** arrived at that button and began pushing that button [...] He saw that **she** was covered with mud. **She** was panicked. As Officer Edwards put it, **she** was hysterical. And **she**’s hitting that button [...] and **she**’s yelling to him, “He’s going to kill me.” [...] “Who? Who is going to kill you?” [...] And what does **she** say? “O.J. O.J. O.J. Simpson. The gate finally opened, and **she** ran through the gate, **she** ran to Officer Edwards and **she** fell in his arms and collapsed and **she** said, “He is going to kill me,” and **she** just kept repeating it.* (see Appendix K lines 161-177)

Excerpts from the defense:

Cochran:

(308) *Miss Clark does take some licenses regarding time, **she** says that Mr. Goldman leaves Mezzaluna **she** says at about 9:50 p.m. [...]*  
(see Appendix L lines 577-578)

(309) *That’s equally preposterous, **she** can’t have it both ways, he’s too famous to stop and try and throw things in a dumpster the way **she** put it, he’s equally too famous to be driving this car to go over these circumstances, that is preposterous.* (see Appendix L lines 665-668)

Scheck:

(310) ***She** said that when **she** saw the next morning, June 14th, the blood vial in the black trash bag, **she** realized for the first time that **she** had been the one that carried the blood vial out of the Rockingham residence. So **she** is saying that **she** knew that on June 14th.* (see Appendix M lines 681-684)

It was observed that the use of the pronoun *she* was not always employed by the lawyers to refer to Nicole, but it was used when referring to any female that was mentioned in the closing arguments. The next section focuses on the repetition of the

lexical items referring to the defendants and the victims of the two cases investigated.

#### 4.7.2 Repetition of lexical items referring to the defendants and the victims

When examining both corpuses it was observed that prosecution and defense frequently repeated specific lexical items. For this reason, Table 12 and Table 13 gather the lexical items considered to be relevant and noteworthy to the study.

##### 4.7.2.1 Repetition of lexical items referring to defendant and victim in the Jodi

###### Ann Arias case

n.	Lexical items	Frequency Prosecution	Frequency Defense
1	Alexander	96	101
2	Defendant	62	12
3	Individual	40	/
4	Travis	13	89
5	Arias	6	134
6	Jodi	5	135
7	Victim	2	7

Table 12 Use of lexical items referring to defendant and victim by prosecution and defense

As can be seen from Table 12, both prosecution and defense largely employed the victim's surname when referencing him. Specifically, *Alexander* was used with a frequency of 96 hits by the prosecution and 101 hits by the defense. While, it was observed that there was an immense gap between the lawyers' use of *Travis*. Specifically, *Travis* was employed with a frequency of 13 hits by the prosecution and 89 hits by the defense. The victim's name was used almost 7 times more by the defense than the prosecution. Moreover, it was observed that the defendant's surname, i.e.,

*Arias*, was employed with a frequency of 6 hits by the prosecution and 134 hits by the defense. While, the name *Jodi* was employed with a frequency of 5 hits by the prosecution and 135 hits by the defense. It was also observed that the defense made a larger use of the defendant's surname and name. Specifically, the defense used the surname almost 22 times more and the name 27 times more than the prosecution. It is essential to underline that when referring to the deceased by using his/her name this gives the jurors the impression that the lawyer cares about the loss of life (Kennedy, 2007).

As can be seen in Table 12, both lawyers employed the lexical item *defendant*. Specifically, it was used with a frequency of 62 hits by the prosecution, while it was used with a frequency of 12 hits by the defense. The use of the term *defendant* without using the person's name is a process of depersonalization, which has the aim to distance oneself, and the other participants, from the accused and suggests a form of dehumanization, which is in line with the prosecution's strategy (Kennedy, 2007).

The following examples show the use of the lexical item *defendant*.

Excerpts from the prosecution:

(311) *She's the apologist for the **Defendant**. It's not the **Defendant** that manipulating you, no, no, no.* (see Appendix G line 458-459)

(312) *May 28th is the end of May when this gun is stolen by the **Defendant** from her grandparent's home.* (see Appendix G lines 569-570)

Excerpt from the defense:

(313) *Page A of your jury instructions talks about the crime of second-degree murder when someone intentionally causes the death of another person the **defendant** caused the death because of conduct [...] The risk must be said disregarding it was a growth mediation from what a reasonable person in the **defendant's** situation would have done [...] second-degree murder is that second-degree murder does not require premeditation by the **defendant**. If you determine that*

*the defendant is guilty either of first-degree murder or second-degree murder and you have reasonable doubt as to which you must find the defendant guilty of second-degree murder [...] (see Appendix I lines 1108- 1121)*

It was noticed that Martinez employed the lexical item *defendant* when referring to Jodi, while Nurmi employed it only to refer to the jury instructions that were read to the jurors by the judge.

As can be seen in Table 12, the lexical item *individual* was employed only by the prosecution with a frequency of 40 hits. Interesting to observe that the lexical item *individual* was emphasized in the prosecution's argument but it was de-emphasized and silenced in the defense. As Aldridge and Luchjenbroers (2007) state this is a key strategy that lawyers use when discussing topics that are contrary to their case. They ignore the details that the other side included, even in negotiations, quotations, and other constructions that diminish their responsibility for the claim.

The following example shows the use of the lexical item *individual*.

Excerpt from the prosecution:

(314) *She's an **individual**, who is manipulative. This is an **individual** who wants to play the victim, even though there is no abuse as you heard from those that know her. She's an **individual** that, according to her own statements in an email on Valentine's Day of 2007 to Mr. Alexander said that she was destructive. She's the **individual** that talked about what she did to doors, what she did to windows.*  
(see Appendix G lines 17-22).

As can be seen in Table 12, the lexical item *victim* was employed with a frequency of 2 hits by the prosecution and 7 hits by the defense. Although the word was not amply used it is essential to emphasize that trial lawyers also use terms such as *victim* or *deceased* during closing arguments, their use is to remind the jurors that the actions of the plaintiff resulted in another person's death. For this reason,

Word choice is especially important during the closing because these final words will be fresh in the jurors' minds during deliberation; a closing tainted with poor words or negative connotations and innuendo could do significant damage to a case (Kennedy, 2007: 597).

The following examples show the use of the lexical item *victim*.

Excerpts from the prosecution:

(315) *This is an individual who wants to play the **victim**, even though there is no abuse as you heard from those that know her.* (see Appendix G lines 17-19)

(316) *This, from a woman who is manipulative. This from a woman who pretends to be the **victim**, even though there is no abuse.* (see Appendix G lines 123-125)

Excerpts from the defense:

(317) *Why if somebody is there to commit a murder do you hangout and let the intended **victim** of this murder take pictures of you [...]*  
(see Appendix I lines 468-470)

(318) *[...] if there have been past acts of domestic violence against the defendant by the **victim** this state of mind of a reasonable person [...]*  
(see Appendix I lines 625-626)

#### 4.7.2.2 Repetition of lexical items referring to defendant and victims in the O.J.

##### Simpson case

n.	Lexical items	Frequency Prosecution	Frequency Defense
1	Defendant	339	21
2	Nicole	77	12
3	Nicole Brown	23	3
4	Mrs. Brown	3	3
5	Nicole Simpson	1	1
6	Nicole Brown Simpson	/	47
7	Ron Goldman	54	2
8	Ronald Goldman	14	4
9	Mr. Goldman	1	44
10	Goldman	1	4
11	O.J. Simpson	20	174
12	Mr. Simpson	13	144
13	O.J.	5	21
14	Mr. Orenthal James Simpson	/	5
15	Orenthal James Simpson	/	4
16	Victim(s)	17	14

Table 13 Use of lexical items referring to defendant and victim by prosecution and defense

As can be seen from Table 13, the lexical item to score the highest rank was *defendant*. All lawyers employed the lexical item. Specifically, for the prosecution, Clark employed it with a frequency of 257 hits and Darden employed it with a frequency of



82 hits. While, for the defense, Cochran used it with a frequency of 18 hits and Scheck used it with a frequency of 3 hits.

The following examples show the use of the lexical item *defendant*.

Excerpts from the prosecution:

Clark:

(319) *It would be wrong to find the **Defendant** guilty just because you felt sorry for them. [...] Still it would be wrong to find the **Defendant** guilty, not guilty just because of that anger and disgust. (see Appendix J lines 110-114)*

(320) *Did the evidence come to you in sufficient quantity and convincing force to convince you that the **Defendant** committed these murders beyond a reasonable doubt? (see Appendix J lines 147-149)*

Darden

(321) *Some people think that because the **Defendant** in this case is a celebrity, that perhaps he is someone above the law, that there ought to be special rules for him or that somehow he should be treated differently than any other **Defendant**. (see Appendix K lines 21-24)*

Excerpts from the defense:

Cochran:

(322) *The **Defendant**, Mr. Orenthal James Simpson, is now afforded an opportunity to argue the case, if you will, but I'm not going to argue with you, ladies and gentlemen. (see Appendix L lines 5-7)*

(323) *[...] we represent Mr. Orenthal James Simpson, the Prosecution never calls him Mr. Orenthal James Simpson, they call him **Defendant**. I wanna tell you right at the outset that Orenthal James Simpson like all **defendants** is presumed to be innocent [...] (see Appendix L lines 5-7)*

Scheck:

(324) *“Each fact which is essential to complete a set of circumstances necessary to establish the **Defendant**’s guilt must be proven beyond a reasonable doubt.”*

(see Appendix M lines 251-252)

Clark's great use of the lexical item *defendant* seems to be used to keep a distance between the prosecution and O.J. Simpson as if she does not want to create any sort of sympathy for him with the jurors. Clark distances O.J. by de-emphasizing him and creating an impersonal connection between O.J. and the jurors, so that the jurors may see him from a different perspective. On the other hand, Cochran is trying to create sympathy among the jurors and make them consider O.J. as a normal person even though he is a famous celebrity. Indeed, Cochran seems to build a more personal connection with the jurors and the defendant.

Also in the O.J. Simpson case all the lawyers made a great use of first names and surnames. As can be seen in Table 13, it is possible to observe that although names and surnames were employed, the trial lawyers did not always use the same form of name when speaking about the victims or the accused. Indeed, it was noticed that the prosecution and the defense used the names *Nicole*, *Nicole Brown*, *Mrs. Brown*, *Nicole Simpson* and *Nicole Brown Simpson*. Specifically, only Clark employed *Nicole* with a frequency of 77 hits. While, for the defense, Cochran used it with a frequency of 9 hits and Scheck used it with a frequency of 3 hits. The name *Nicole Brown* was used only by Clark with a frequency of 23 hits and only by Cochran with a frequency of 3 hits. The name *Mrs. Brown* was employed with a frequency of 3 hits only by Clark and only by Scheck with a frequency of 3 hits. The name *Nicole Simpson* was employed only by Clark with a frequency of 1 hit and only by Cochran with a frequency of 1 hit. The name *Nicole Brown Simpson* was not employed at all by the prosecution but it was used by the defense with a frequency of 23 hits by Cochran and with a frequency of 24 hits by Scheck. It is interesting to observe that the defense employed Nicole's extended name more frequently compared to the prosecution. While, the prosecution instead

employed only her first name more frequently. It seems as if Clark is trying to establish a connection with the victim, trying to make the jury visualize Nicole as a friend. While, on the other hand, the defense is creating a distance by using Nicole's extended name or Mrs. Brown.

As can be seen in Table 13, it was also noticed that the prosecution and the defense used the names *Ron Goldman*, *Ronald Goldman*, *Mr. Goldman* and *Goldman* when referring to the other victim. Specifically, *Ron Goldman* was employed by Clark with a frequency of 42 hits and Darden employed it with a frequency of 12 hits. While, only Cochran employed it with a frequency of 2 hits. The name *Ronald Goldman* was used by Clark with a frequency of 12 hits and Darden used it with a frequency of 2 hits. While, only Scheck used it with a frequency of 4 hits. The name *Mr. Goldman* was employed only by Clark with a frequency of 1 hit. While, Cochran used it with a frequency of 14 hits and Scheck used it with a frequency of 30 hits. The name *Goldman* was employed only by Darden with a frequency of 1 hit. While, it was used by Cochran with a frequency of 1 hit and by Scheck with a frequency of 3 hits.

As can be seen in Table 13, it was also noticed that the prosecution and the defense used the names *O.J. Simpson*, *Mr. Simpson*, *O.J.*, *Mr. Orenthal James Simpson* and *Orenthal James Simpson* when referring to the accused. Specifically, *O.J. Simpson* was used only by Darden with a frequency of 20 hits. While, it was employed by Cochran with a frequency of 168 hits and by Scheck with a frequency of 6 hits. The name *Mr. Simpson* was employed only by Clark with a frequency of 13 hits. While, it was used by Cochran with a frequency of 106 hits and by Scheck with a frequency of 38 hits. The name *O.J.* was only employed by Darden with a frequency of 5 hits. While, it was used only by Cochran with a frequency of 21 hits. The name *Mr. Orenthal James Simpson* was employed only by the defense and specifically by Cochran with a frequency of 5 hits.

Also the name *Orenthal James Simpson* was employed only by the defense and specifically by Cochran with a frequency of 4 hits.

At this stage, it is essential to highlight that in both cases with regard to the victims there were few differences between the terms used by the prosecution and by the defense. Both sides referred to the victims with just their first name or their first and last name together. However, it is fundamental to point out that in the Jodi Ann Arias case it was observed that the prosecution mostly used the surname, while the defense tended to mostly use the victim's name and surname. The result is that the prosecution silenced the victim by foregrounding his appearance that he was the same as any other person and created social distance and formality, while the defense foregrounded the victim creating a sense of familiarity. In the O.J. Simpson case it was observed that the prosecution mostly used the informal first name only, while the defense tended to mostly use the semi-formal terms. The result is that the prosecution foregrounded the victims creating a sense of familiarity, while the defense silenced them foregrounding the appearance that they were the same as any other person and creating social distance and formality.

As can be seen in Table 13, the last lexical item to be analyzed is *victim*, which was employed by Clark with a frequency of 17 hits. While, Cochran used it with a frequency of 8 hits and Scheck used it with a frequency of 6 hits.

The following examples show the use of the lexical item *victim*.

Excerpts from the prosecution:

Clark:

(325) *You've 5 blood drops leading away from the bodies of the **victims** out to the driveway and you've got the blood on the rear gate [...]*

(see Appendix J lines 1164-1165)

(326) [...] *we have linked the Defendant to the **victims**, we have linked the Defendant and the victims to his car [...]* (see Appendix J lines 1752-1753)

Excerpts from the defense:

Cochran:

(327) *They're more worried about vanity and things like that. Not about these **victims**.*  
(see Appendix L lines 1917-1918)

(328) *This case is a tragedy for everybody, for certainly the **victims** and their families, for the Simpson's family, and they are **victims**, too [...]*  
(see Appendix L lines 3553-3554)

Scheck:

(329) [...] *when these boots are taken off and it is dragged into an area where there is blood from both **victims** and then the wet blood is put into the bag.*  
(see Appendix M lines 1661- 1663)

(330) *There is no trace of--of blood from either of the victims.*  
(see Appendix M line 1827)

#### **4.7.3 Repetition of specific lexical items**

When analyzing the closings it was also noticed that the lawyers used specific lexical items as catch phrases, which indeed did attract and capture the jurors' attention. The ones considered to be more significant compared to others are gathered in Table 14 and Table 15. Although the following lexical items did not score very high frequencies they are considered to be important for the purpose of the research because they had the aim of appealing the jury's attention.

#### 4.7.3.1 Repetition of specific lexical items in the Jodi Ann Arias case

n.	Lexical items	Frequency Prosecution	Frequency Defense
1	Doesn't make any sense	/	43
2	Heat of passion	10	13
3	Sudden quarrel	8	5
4	Reasonable doubt	2	8
5	Common sense	1	8

Table 14 Use of specific lexical items in the Jodi Ann Arias case

As can be seen in Table 14, only the defense made use of the lexical item *doesn't make any sense*, which was employed with a frequency of 43 hits.

The following examples show the use of the lexical item *doesn't make any sense*.

Excerpts from the defense:

(331) *Because, what you're gonna see, as it relates to this so-called plan, is it **doesn't make any sense**. It makes no sense at all. And, the first place that it **doesn't make any sense** is the very premise of why.* (see Appendix I lines 100-102)

(332) *Why would you start a trail? Type of gun, the bullets everything **doesn't make any sense**. Why would she do that?* (see Appendix I lines 158-159)

(333) ***Doesn't make any sense**. So the nonsensical nature of the State's theory continues all the way to Monterey California she does borrow gas cans from Darryl but then again that **doesn't make any sense** either, right?*  
(see Appendix I lines 261-264)

The implication here is that the prosecution's theory is nonsense for the defense. Nurmi is trying to minimize the prosecution and its ideas and theories. The effect of

insisting on: *it doesn't make sense* suggests that a person who would plan to commit a murder is to obscure an alternative explanation that is perfectly consistent with commonsense notions of how such events could happen, meaning that, the murder was not planned, but was the result of a sudden and violent argument.

As can be seen in Table 14, both lawyers employed the lexical items *heat of passion* and *sudden quarrel*. The two lexical items will be examined together because it was observed that they often followed one another within the sentences. For what concerns *heat of passion* the prosecution employed it with a frequency of 10 hits, while the defense used it with a frequency of 13 hits. For what concerns *sudden quarrel* the prosecution employed it with a frequency of 8 hits, while the defense used it with a frequency of 5 hits.

The following examples show the use of the lexical items *heat of passion* and *sudden quarrel*.

Excerpts from the prosecution:

(334) [...] *if it was just really passion, if it was just a **heat of passion** then you wouldn't have a directed hit to someone that's going to kill [...]*  
(see Appendix G lines 1175-1177)

(335) *And an act is not done with premeditation if it's the instant effect or a **sudden quarrel of the heat of passion**. How do you know if it was or wasn't the instant effect of **sudden quarrel** or **heat of passion**? Well you can take a look at some of the photographs that we have and they will tell you that it wasn't the instant effect of a **sudden quarrel** or **heat of passion**. (see Appendix G lines 1869-1873)*

Excerpts from the defense:

(336) *Going down farther on page 9 we have a manslaughter, **sudden quarrel for heat of passion** [...] a reasonable doubt you must then whether the homicide was committed upon a **sudden quarrel of heat of passion** [...]*  
(see Appendix I lines 1122-1127)

(337) [...] *out of control sudden **heat of passion** we've been through so much and look what happened now. This instance of violence went too far she could have snapped, snapping, sudden **heat of passion** could it count for much of what you see throughout the various pictures [...]* (see Appendix I lines 1554-1558)

Noteworthy, is the meaning of *heat of passion*. The online Free Dictionary states that *heat of passion* is a phrase used in criminal law to describe an intensely emotional state of mind induced by a type of provocation that would cause a reasonable person to act on impulse or without reflection. A finding that a person who killed another acted in the heat of passion will reduce murder to manslaughter under certain circumstances. The essential prerequisite for such a reduction are that the accused must be provoked to a point of great anger or rage, such that the person loses his or her normal capacity for self-control; the circumstances must be such that a reasonable person, faced with the same degree of provocation, would react in a similar manner; and finally, there must not have been an opportunity for the accused to have “cooled off” or regained self-control during the period between the provocation and the killing.

At this stage, it is essential to emphasize that the analysis of the two lexical items *heat of passion* and *sudden quarrel* are significant because if a killing can be proven to have been committed on the basis of a *sudden quarrel* or in the *heat of passion* the defendant will have a reduced sentence from murder to voluntary manslaughter. A person will have a reduced sentence because *heat of passion* does not require anger, rage, or any specific emotion. It can be any violent or intense emotion that causes a person to act without due deliberation and reflection. In order for *heat of passion* to reduce a murder to voluntary manslaughter,<sup>14</sup> the defendant must have acted under the direct and

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<sup>14</sup> Voluntary manslaughter is commonly defined as an intentional killing in which the offender had no prior intent to kill, such as a killing that occurs in the heat of passion. The circumstances leading to the killing must be the kind that would cause a reasonable person to become emotionally or mentally disturbed; otherwise, the killing may be charged as a first-degree or second-degree murder. (The Free Dictionary, retrieved from: <http://legal-dictionary.thefreedictionary.com/manslaughter>).



immediate influence of provocation, i.e., the defendant acted rashly and under the influence of intense emotion that obscured his/her reasoning or judgment. However, it is not enough that the defendant was simply provoked. The defendant is not allowed to set up his/her own standard of conduct. You must decide whether the defendant was provoked and whether the provocation was sufficient. In deciding whether the provocation was sufficient, it is necessary to consider whether a person of average disposition would have been provoked and how such a person would react in the same situation knowing the same facts. Since the jury has the burden of proving beyond a reasonable doubt that the defendant did not kill as the result of *a sudden quarrel* or in the *heat of passion* it is fundamental to highlight that if the jury does not meet this burden, it is necessary to find the defendant not guilty of murder (The Free Dictionary). As can be seen in Table 14, both lawyers employed the lexical item *reasonable doubt*. Specifically, the prosecution employed it with a frequency of 2 hits, while the defense used it with a frequency of 8 hits.

The following examples show the use of the lexical item *reasonable doubt*.

Excerpt from the prosecution:

(338) *The other language that falls after that involves you finding **reasonable doubt** but if you find based on your consideration of the evidence that you are firmly convinced [...] (see Appendix G lines 1795-1797)*

Excerpt from the defense:

(339) *If after finding the elements of second-degree murder will perfectly be under **reasonable doubt** you also unanimously find beyond a **reasonable doubt** if the homicide was not committed upon a sudden quarrel or heat of passion [...] you find the Defendant guilty of second-degree murder but if you find the elements a second-degree murder were proven beyond a **reasonable doubt** you must also unanimously find beyond a **reasonable doubt** that the homicide was committed*

*upon a sudden quarrel or heat of passion [...] but you have **reasonable doubt** as to which it was you must find the Defendant guilty of manslaughter.*

(see Appendix I lines 1132-1143)

The concept of reasonable doubt is particularly important within the adversarial system. Indeed, it “plays a vital role in the American scheme of criminal procedure” (Diamond, 1990: 1716) and is “a cornerstone of the criminal justice system” (Diamond, 1990: 1719). Moreover, the standard of proof beyond reasonable doubt is the highest standard that must be met by the prosecution’s evidence. Given the importance of this concept for the outcome of a trial, the notion of reasonable doubt is dealt with by legal professionals on several occasions in closing arguments.

As can be seen in Table 14, both lawyers employed the lexical item *common sense*. Specifically, the prosecution employed it with a frequency of 1 hit, while the defense used it with a frequency of 8 hits.

The following examples show the use of the lexical item *common sense*.

Excerpt from the prosecution:

(340) *You can’t, but they come in and wanna tell you that because they have a Psychology degree or a Masters degree, and they wanna tell you that don’t believe what you see in your eyes or don’t use your **common sense** or the experiences that you have coming in here believe what we have to say [...]* (see Appendix G lines 970-974)

Excerpts from the defense:

(341) *Well ladies and gentlemen you have your **common sense** you have a voice of reason there are other items sitting here exhibit 17 that don't seem to have to come to this bleach, exhibit 28 other items found in the washing machine not staying with bleach, exhibit number 27 items not stained with bleach [...]*  
(see Appendix I lines 1339- 1343)

(342) *See ladies and gentlemen you are not required to check your **common sense** at the door as a matter of fact you are supposed to take it back to jury-room into your deliberations your experiences and your comments to help you as a finder of fact to determine what happened [...]* (see Appendix I 1155-1159)

According to Walter (1988) lawyers tend to focus on emotional appeals, intellectual issues, legal definitions and refutations. Moreover, Walter (1988) observes that prosecution lawyers make more reference to *good common sense* and to *evidence or facts*, while defense lawyers place more *onus on jurors* and discuss *reasonable doubt* more frequently. When analyzing the corpora it was observed that Martinez did not make great use of the expressions *common sense* and/or *reasonable doubt*. While, on the other hand, Nurmi employed both expressions more than the prosecution did.

#### 4.7.3.2 Repetition of specific lexical items in the O.J. Simpson case

n.	Lexical items	Frequency Prosecution	Frequency Defense
1	Fuse	32	18
2	Common sense	29	28
3	Smoke	21	/
4	Reasonable doubt	14	65
5	Beyond a reasonable doubt	14	26
6	It (just) doesn't fit	/	25
7	Doesn't make (any) sense	/	24
8	If it doesn't fit, you must acquit	/	6

Table 15 Use of specific lexical items in the O.J. Simpson case

As can be seen in Table 15, both prosecution and defense employed the lexical item *fuse*. Specifically, the prosecution employed it with a frequency of 32 hits, while the defense used it with a frequency of 18 hits.

The following examples show the use of the lexical item *fuse*.

Excerpts from the prosecution:

Darden:

(343) *This thing was like a **fuse**, a bomb with a long **fuse**. You see that **fuse** is lit in 1989. (see Appendix K lines 129-130)*

(344) *This is a slow burning simmering relationship and it's just like I told you yesterday the **fuse** is burning, the **fuse** is burning folks and it's getting shorter and it's getting shorter. (see Appendix K lines 387-389)*

(345) *The **fuse** is burning and it is getting short, it is getting short. He is trying to erase her presence for instance from his home. This is how short this **fuse** is getting; he's trying to erase her presence from his home [...]*  
(see Appendix K lines 623-625)

Excerpts from the defense:

Cochran:

(346) *When people theorize about things that may have been and talk to you about short **fuses** you're gonna see, that's just that, it's speculation.*  
(see Appendix L lines 135-136)

(347) *I suppose that if you're in this jealous rage, if the **fuse** is running so short, it's interesting isn't it to stop go get a hamburger at McDonald's, does that make any sinister to you. (see Appendix L lines 593-595)*

(348) *The only **fuse**, the only trigger is in Mr. Darden's mind.*  
(see Appendix L lines 2602-2603)

In examples n. 343, n. 344 and n. 345, Darden repeats the concept that the relationship between O.J. and Nicole is similar and comparable to a burning fuse. Throughout the years their relationship had worn out. In fact, the comparison of their relationship to the fuse of a ticking time bomb seems to convey the image of something that is getting shorter and shorter and that is about to explode. On the other hand, in examples n. 346, n. 347 and n. 348, Cochran seems to minimize Darden's theory that the relationship was deteriorating. In example n. 347 Cochran also insists on the fact that if O.J. were really in a furious rage he wouldn't have stopped at a fast food restaurant to pick up something to eat. Therefore, Cochran is downplaying Darden's theory. It is important to highlight that a lawyer downplays the significance of information that is harmful to his case by raising other issues that divert attention away from it; by providing excessive or contradictory details that create confusion; by using euphemistic references to refer to it; or by simply failing to mention it (Larson, 1983: 12–14). Cochran uses this technique in order to defuse the impact of O.J.'s pre-killing behavior and to present an alternative explanation for that behavior that is consistent with the prosecution's claims of first-degree murder.

As can be seen in Table 15, all of the lawyers employed the lexical item *common sense*. Specifically, for the prosecution, Clark employed it with a frequency of 17 hits and Darden employed it with a frequency of 12 hits. While, for the defense, Cochran used it with a frequency of 23 hits and Scheck used it with a frequency of 5 hits.

The following examples show the use of the lexical item *common sense*.

Excerpts from the prosecution:

Clark:

(349) *Simple **common sense** tells you that the thumping, the glove and the Defendant's appearance on the driveway almost immediately thereafter are all part of one set of events, all connected in time and space. You don't need science to tell you that; you just need reason and logic. (see Appendix J lines 794-798)*

(350) *If he wants to get away with it, he's going to do everything in his power that he can, and that's just **common sense**.* (see Appendix J lines 1084-1085)

Darden:

(351) *All you have to do is use your **common sense**. And the Defense would have you believe that this is a complex series of facts and evidence and law and science and all of that.* (see Appendix K lines 8-10)

(352) ***Common sense** tells us that, I mean we know that from life experience from living in LA, we know what kind of killing this is, this is a rage killing.*  
(see Appendix K lines 848-850)

Excerpts from the defense:

Cochran:

(353) [...] *I agree with one thing Mr. Darden said to this task I ask you to bring your **common sense**. Collectively the 14 of you have more than 500 years of experience [...] 500 years of experience you didn't leave your **common sense** out in that hallway when you came in here.* (see Appendix L lines 100-105)

(354) *You use your **common sense**; you use your visceral reaction if I can use that word to make a determination of whether or not you think this person is telling you the truth.* (see Appendix L lines 281-282)

Scheck:

(355) *Use your **common sense**. How do you get wet transfers like this?*  
(see Appendix M lines 851-852)

It was observed that the lawyers when referring to the jurors as fact finders employed the lexical item *common sense*. The lawyers are insisting that the jurors reflect on the evidence, on the witnesses and on what has been said throughout the trial. Indeed, both the prosecution and the defense are asking the jurors to agree with their version of the story and that they use sound practical judgment, intelligence and reason to make the

best decision.

As can be seen in Table 15, only the prosecution employed the lexical item *smoke*. Specifically, Clark employed it with a frequency of 1 hit, while Darden used it with a frequency of 20 hits.

The following examples show the use of the lexical item *smoke*.

Excerpts from the prosecution:

Clark:

(356) [...] *but at the conclusion of all of our arguments when you open up the windows and let the cool air blow out the **smoke** screen that's been created by the Defense [...]* (see Appendix J lines 221-224)

Darden:

(357) *The stuff you needed to hear to raise a reasonable doubt and you're reasonable people, never got presented in this case and never got presented, what you got was a lot of **smoke**.* (see Appendix K lines 1001-1003)

(358) *We've explained to you the opportunity and the means and the motive to do it and he did it and we discussed a little bit about the **smoke**, we talked about the **smoke** the Defense has put up you have to find your way through the **smoke**.* (see Appendix K lines 1242-1244)

By employing the lexical item *smoke* the prosecution is trying to show that the defense is obscuring the reality of facts, the reality of what happened and/or is misleading and quibbling on aspects that are not relevant to the case. Moreover, the defense is probably trying to tamper with the jurors' minds and thoughts.

As can be seen in Table 15, all of the lawyers employed the lexical item *reasonable doubt*. Specifically, for the prosecution, Clark employed it with a frequency of 9 hits and Darden employed it with a frequency of 5 hits. While, for the defense, Cochran used it with a frequency of 32 hits and Scheck used it with a frequency of 33 hits.

The following examples show the use of the lexical item *reasonable doubt*.

Excerpts from the prosecution:

Clark:

(359) *Do I have a **reasonable doubt** about it? No, I have no doubt found in reason that that's gonna happen.* (see Appendix J lines 195-196)

(360) *It helps to talk about **reasonable doubt** in this frame. When you think about **reasonable doubt**, you think about not only a doubt found in reason opposed to mere possibility as I talked to you about before, but you talk about something that's missing that you need to believe that the Defendant is guilty.*  
(see Appendix J lines 1039-1042)

Darden:

(361) *They put on a defense they called 58 witnesses and they called 58 witnesses in this case presumably to help raise a **reasonable doubt** in your mind as to the guilt of this man [...]* (see Appendix K lines 920-922)

(362) *The stuff you needed to hear to raise a **reasonable doubt** and you're reasonable people, never got presented in this case [...]* (see Appendix K lines 1001-1003)

Excerpts from the defense:

Cochran:

(363) *This is a case of **reasonable doubt**; this is a case of an innocent man wrongfully accused. They can't answer those questions; no one can under these circumstances.* (see Appendix L lines 1347-1349)

(364) *And if I were not to say anything else, there are many **reasonable doubts** in this case, and O.J. Simpson is entitled to an acquittal based on what we have told you.* (see Appendix L lines 3100-3102)

Scheck:

(365) *There are many, many **reasonable doubts** buried right in the heart of the scientific evidence in this case, and we have demonstrated that.*  
(see Appendix M lines 59-60)



(366) [...] *we don't have the burden of proof here and I'm going to confront each and every one of these essential pieces of evidence in this case and raise a **reasonable doubt** about it, more than a **reasonable doubt**, many **reasonable doubts**. But if they fail in one of their essential facts, you have to acquit.*

(see Appendix M lines 261-265)

As can be seen in Table 15, all of the lawyers employed the lexical item *beyond a reasonable doubt*. Specifically, for the prosecution, Clark employed it with a frequency of 9 hits and Darden employed it with a frequency of 5 hits. While, for the defense, Cochran used it with a frequency of 14 hits and Scheck used it with a frequency of 12 hits.

The following examples show the use of the lexical item *beyond a reasonable doubt*.

Excerpts from the prosecution:

Clark:

(367) *But the fact that Mark Fuhrman is a racist and lied about it on the witness stand does not mean that we haven't proven the Defendant guilty **beyond a reasonable doubt** and it would be a tragedy if with such overwhelming evidence [...] you found the Defendant not guilty in spite of all that because of all the racist attitudes of one police officer.* (see Appendix J lines 124-129)

(368) [...] *it's a burden of proof that the People have. We don't guess anybody guilty, we prove it **beyond a reasonable doubt**, which is what we've done in this case.*

(see Appendix J lines 180-182)

Darden:

(369) [...] *what can you say except he did it and we've proven it and we've proven it **beyond a reasonable doubt**.* (see Appendix K lines 374-375)

Excerpts from the defense:

Cochran:

(370) *The Prosecution then must disprove our timeline **beyond a reasonable doubt** and if they don't you must acquit.* (see Appendix L lines 482-483)

(371) *The prosecution has the burden of proving **beyond a reasonable doubt** each element of the crime charged in the information and that the Defendant was a perpetrator of any such crimes. (see Appendix L lines 1106-1108)*

Scheck:

(372) *We think the Prosecution hasn't come close to meeting its burden of proof in this case **beyond a reasonable doubt** [...] (see Appendix M lines 35-37)*

(373) *You cannot render a verdict **beyond a reasonable doubt** based on evidence like this. (see Appendix M lines 393-394)*

In both lexical items *reasonable doubt* and *beyond a reasonable doubt* the defense emphasizes that the prosecution has not met its burden of proof by presenting convincing evidence of O.J.'s guilt. For this reason, the defense is suggesting that the jury has to deliberate a not guilty verdict. Although, it is important to point out again that the prosecution insists on the fact that the jury should not consider O.J. innocent because of the racist police officer but he is guilty of murder because the prosecution has proven their burden of proof with the evidence shown in court. As previously mentioned, in the Need Step section, the defense was capable of shifting the juror's attention from double murder to issues of racism against a highly regarded African-American citizen. Indeed, Cochran was capable of drawing the jurors' attention away from two terrible murders and persuading the jury that it was some sort of conspiracy of corrupt and racist LAPD officers against his famous client. Moreover, it is essential to highlight that by doing so the defense shifted the focus allowing them to use *reasonable doubt* to strengthen their argument that the prosecution had not met its burden of proof.

As Hobbs claims:

A case can be made to look much different by isolating problematic issues and making them the focus of the jury's evaluation, this tactic was designed to create

*unreasonable doubt* – doubt that arises, not from an assessment of the totality of the evidence, but from the skewing of the evidence in a way that favors the defendant’s position (Hobbs, 2005: 136).

It is crucial to point out that the unreasonable doubt created by the defense resulted in O.J. Simpson’s acquittal. However, it is important to underline that delivering indisputable explanations about the standard of proof beyond reasonable doubt is not unproblematic. The task the attorneys have to carry out is highly complex, in that they have to provide definitions that are not only legally accurate, but also understandable to laymen, and at the same time functional to support one specific theory of the case. Moreover, proof beyond a reasonable doubt “provides concrete substance for the presumption of innocence” in the criminal setting (Diamond, 1990: 1717).

As can be seen in Table 15, the lexical item *it (just) doesn’t fit* was employed only by the defense. Specifically, Cochran used it with a frequency of 20 hits and Scheck used it with a frequency of 5 hits. However, it was also observed that only in Cochran’s closing the above phrase was followed by the expression, *if it doesn’t fit, you must acquit*, which had the aim of strengthening his theory that there was not enough proof to convict O.J. of double murder and sentence him to first-degree murder. For this reason, the lexical item *if it doesn’t fit, you must acquit* will be discussed together with *it (just) doesn’t fit*.

As can be seen in Table 15, only Cochran employed the lexical item *if it doesn’t fit, you must acquit* with a frequency of 6 hits.

The following examples show the use of the lexical item *it (just) doesn’t fit* and *if it doesn’t fit, you must acquit*.

Excerpts from the defense:

Cochran:

(374) *We this afternoon are talking about the facts. And so it doesn't make any sense. **It just doesn't fit. If it doesn't fit, you must acquit.***  
(see Appendix L lines 698-699)

(375) *If he took a shower and there's so much blood and he's covered with blood. Why didn't they bring the towels in here? Something is wrong in this case. **It just doesn't fit. If it doesn't fit you must acquit.** So the socks. I could talk about these socks forever but I'm not going to because Mr. Scheck will talk about the forensic aspect of it [...]* (see Appendix L lines 2100-2104)

Scheck:

(376) *They are not following the rules. He is grabbing this envelope. He is carrying around this blood. It doesn't make sense. **It doesn't fit.** It is a serious problem, isn't it?* (see Appendix M lines 657-659)

(377) *[...] when they do the fingernail scrapings, they come up on the EAP system with a B. That is not O.J. Simpson's type. That is not Nicole Brown Simpson's type. That is not Mr. Goldman's type. It is some other person. And that's what their typing result showed. And so then **it doesn't fit.** It can't be right.*  
(see Appendix M lines 1380-1383)

By employing the above lexical items, Cochran is belittling the prosecution and their theories. It is fundamental to point out that the phrase *if it doesn't fit, you must acquit* has become a memorable phrase or theme, which symbolizes Cochran's theory. Moreover, according to D'Aquino Cochran's abilities and effectiveness lie in the fact that "he tries to identify a theme and stick with that and push it through, rather than be a technician and throw every conceivable fact at the jurors" (Simpson and Kelly, 2003: 1a). The sentence *if it doesn't fit, you must acquit* primarily refers to the episode when Darden insisted that O.J. Simpson try on the incriminating gloves. As known the gloves did not fit O.J. and it is from this point onwards that Cochran came up with the phrase.

A very significant phrase, because Cochran gave the jury an easy phrase that anyone could understand. Moreover, it was a phrase that probably had a strong impact on the jurors' minds. The phrase also assumed the characteristics of a buzz phrase that played and replayed in people's heads for a very long time.

At this stage, it is interesting to introduce the Chewbacca defense. The Chewbacca defense is considered to be one of the oldest and most widely defenses used in law and relies on several truisms about trials. Which are:

- (1) juries are often intimidated, confused or bewildered about anything that goes on in a courtroom;
- (2) most people think they know much more about the law and legal concepts than they really do; and
- (3) anything can sound convincing if said in an authoritative, confident and persuasive manner. (Quora, 2015)

Basically, the Chewbacca defense suggests that when you have a case where the law and/or the facts seem to be going against you, the best thing to do is try to confuse the jury to the point where they feel that everything about the proceeding is so absurd and incomprehensible and that by accepting and ratifying their confusion, you have gained their acceptance and trust. An interesting aspect of the Chewbacca defense is the origin of its name. The name comes from an episode of South Park (famous American cartoon series) that mocked Johnnie Cochran's closing argument. In the South Park episode, the fictional Johnnie Cochran is defending a record company against a claim of copyright infringement brought by one of the characters and also suing that character for harassment. The case appears to be a slam-dunk verdict against the record company as there is a tape recording, which proves that the copyright was in fact infringed. At closing arguments, Cochran delivers the following summation:

Ladies and gentlemen of this *supposed* jury, I have one final thing I want you to consider. Ladies and gentlemen, *this* is *Chewbacca*. Chewbacca is a *Wookiee* from the planet *Kashyyyk*. But Chewbacca *lives* on the planet *Endor*. Now think about it; *that does not make sense!* Why would a Wookiee, an 8-foot-tall Wookiee, want to live on Endor, with a bunch of 2-foot-tall *Ewoks*? That does *not make sense!* But more important, you have to ask yourself: What does this have to do with this case? Nothing. Ladies and gentlemen, it has nothing to do with this case! It *does not make sense!* Look at me. I'm a lawyer defending a major record company, and I'm talkin' about Chewbacca! Does that make sense? Ladies and gentlemen, I am not making any sense! None of this makes sense! And so you have to remember, when you're in that jury room deliberatin' and *conjugatin'* the Emancipation Proclamation, does it make sense? No! Ladies and gentlemen of this supposed jury, it does *not make sense!* If Chewbacca lives on Endor, you must acquit! The defense rests.

(Retrieved from: <https://www.quora.com/Has-the-Chewbacca-defense-ever-been-used-successfully-in-a-court-of-law>)

In the episode, by acknowledging the absurdity of even his own argument and its connection to these equally absurd legal proceedings, Cochran wins the jury over and gets a verdict for his client. However, it is fundamental to point out that this can also happen in real life. In fact, in the specific case of O.J. Simpson the defense attorney Cochran seems to have used this technique. Cochran provoked Darden into trying to force Simpson into putting on the leather glove that was found on the murder scene but by doing so did not make much sense because the glove had been soaked in blood and other liquids and frozen and since Simpson wore other gloves underneath, it proved nothing. But Cochran made a big presentation of it and by convincing Darden to

participate in this charade only made Cochran convince the jury of O.J.'s innocence and thus win the case. Indeed, the defense team was able to prove O.J. innocent even though the evidence against him was substantial, they were also capable of turning tables upside down and persuading the jury that the evidence brought by the prosecution was not enough convincing and that it presented many flaws and weaknesses. Not only that, the defense was also capable of creating reasonable doubts in the jurors' minds making them even question whether or not the DNA evidence was reliable. The repetition of the above lexical items must have had a very strong impact on the jurors because they had the purpose of insinuating in an underhand manner or a deceitful manner that the proof brought in court was not trustworthy. It is also essential to emphasize that with the phrase *if it doesn't fit, you must acquit* Cochran gave the jury an easy sentence that anyone could understand.

As can be seen in Table 15, the lexical item *doesn't make (any) sense* was employed only by the defense. Specifically, Cochran used it with a frequency of 16 hits and Scheck used it with a frequency of 8 hits.

The following examples show the use of the lexical item *doesn't make sense*.

Excerpts from the defense:

Cochran:

(378) *So their theory doesn't have a water, it **doesn't make sense** and so they get mad at Kato Kaelin and they tell you why he's biased, he's just indebted to O.J. Simpson so we just can't trust him but yet they want you to trust him by the knocks on the wall and he becomes part of that theory but their theory **doesn't make sense**. (see Appendix L lines 680-684)*

(379) *So we know that Mr. O.J. Simpson was preparing to leave for this trip that had been long planned and when we summarize then the two timelines it seems to me that their timeline is not even reasonable, **doesn't make any sense**, it's a much less credible version than the testimony that you've heard from our witnesses. (see Appendix L lines 854-858)*

Scheck:

(380) *It **doesn't make any sense** that there's this flailing and hitting of this fabric and it's going to create those kinds of imprints.* (see Appendix M lines 1590-1591)

(381) *But you know what **doesn't make sense**? What **doesn't make sense**, what **doesn't make sense** is their theory.* (see Appendix M lines 1903-1904)

As previously mentioned in the Jodi Ann Arias section focusing on the lexical item *doesn't make sense*, in the O.J. Simpson case the defense is also belittling the prosecution's theories. The prosecution's theory that O.J. committed the double murder on the night that he was leaving for a business trip made no sense to the defense. In fact, the defense insisted and tried to prove that O.J. could not have had enough time to grab something to eat from McDonald's drive thru with Kato Kaelin, commit the murders, dispose of the dirty clothes, take a shower and be ready to leave when the limousine arrived. However, it is essential to highlight that the prosecution was able to prove, through the timeline of the events that they brought in court, that all of the above things did occur.

To conclude the section dedicated to the use of repetition it is important to highlight what researchers have observed concerning the different functions of repetition. Kernan sustains that "repetition recalls and reasserts the preceding token" (Kernan, 1977: 95). Erickson (1984) finds that repeating oneself adds preciseness. Bublitz (1989) suggests that repetition is employed both to establish and maintain the continuous and smooth flow of talk, and also to state the participants' positions so as to help to ensure comprehension of what has been said and meant. Bublitz continues and describes other functions of repetition, which include facilitating comprehension, since repetition allows time for the speaker to plan what to say next or how to say it, and facilitates message comprehension on the part of the listener or second speaker. Moreover, Bublitz



states that repetition:

Helps speakers to bridge gaps in conversation, and to state their position (agreement or disagreement) with respect to the other speaker's attitudes, decisions or opinions. For this reason, repetition has been often handled under the rubric of communicative redundancy (Brody 1986: 255).

Furthermore, according to Brody "Repetition not only performs a variety of functions, but it may also be manifested in a number of different linguistic structures" (Brody, 1986: 255).

## **Chapter Five**

### **Conclusion**

The purpose of the dissertation has been to observe and investigate the use of different persuasive techniques and/or strategies employed by trial lawyers within two notable murder cases. In general, the study looked at discourse analysis and critical discourse analysis by focusing on legal discourse and the analysis of specialized corpora through the use of specific software. The objective was to observe how power is exercised within the courtroom and how trial lawyers are capable of influencing and/or manipulating a jury. In particular, the study focused on various techniques employed by the trial lawyers within the two cases. In order to understand how different techniques are used two cases were investigated by using two distinct frameworks. The Jodi Ann Arias case was examined by using the Linguistic Category Method (LCM), and the use of metaphors analyzed through the Metaphor Identification Procedure (MIP). The O.J. Simpson case, on the other hand, was analyzed by employing Monroe's Motivated Sequence. The choice of employing different approaches was to determine that trial lawyers do not depend upon one type of technique or strategy to bias or influence the jurors; rather they will use many different tactics in order to downplay the crime committed by their client. However, it is also important to highlight that both cases were further investigated and examined by focusing on the use of repetition. Closing arguments of trials in the adversarial legal system are important sites of investigation because during this phase two speakers take the same people, same events and same evidence and create two opposing representations for the same audience. Indeed, it is fundamental to emphasize that the final aim of the trial is that the input from the various agents is to present a story that can be perceived as credible, meaning that the story told

by a particular agent (e.g. the district attorney) is presented in such a way as to be perceived as more credible than the story of another agent (e.g. the defendant's lawyer). The role played by lawyers in controlling the elements of the story displayed is indisputable. In fact, lawyers hold a privileged position in the communication exchange, even though the idea that one of the agents can be in total control of the flow of information would be an overly simplistic view of the extremely complex process that is taking place. In fact, it is important to underline that lawyers are certainly the main agents in charge of framing, organizing and presenting the content matter dealt with in the courtroom and one of the most complicated tasks they have to accomplish is to combine the different elements presented by the different other agents. Understanding how this takes place can therefore reveal how speakers' goals and belief systems affect their use of language. Moreover, these discourses are both persuasive and argumentative; therefore, they provide a prime opportunity to study how such discourses are linguistically created. It is essential to remind the reader that during the closing arguments the lawyers produce their argument without having to interact with witnesses. Consequently, the arguments are free of outside influences, which could affect the lawyers' discourses and language use. Furthermore, lawyers can speak directly to the people they are trying to convince. Since closing arguments are the last opportunity in a trial to win the hearts and minds of the jurors, the main goal is to sell the client's story through persuasive and effective communication. In order to reach this goal, preparation is essential. Proper preparation includes knowing the jury and the effective use of language, gestures, and multimedia while speaking. In addition to preparation, it is essential to ensure that the jury is captivated and moved by the closing argument. The use of the right technique or combination of techniques is important because it guarantees that the closing argument will appeal to the various personalities

and intellects of the jury members. Nevertheless, regardless of the technique or techniques employed, it is important to present the argument with passion and enthusiasm. By creating word pictures for the jury, a romantic moment, or a moving story, the jurors will be drawn into the case and see the facts from the perspective of the lawyer's client. Results to the study show that lawyers downplay the significance of information that they possess, especially the information that is or may be harmful to their case. In order to do so lawyers raise false problems, divert attention away from the real issues, or provide excessive or contradictory details, thus creating confusion. They use euphemistic references to refer to the information or simply fail to mention it. For this reason, there is the use of downplaying acts to shift the focus of the jury's perspective by de-emphasizing one issue of the case to another that is considered to be less important or relevant to the case. The results also show that lawyers try to have strict control of the lexical properties of the words that they use by frequently choosing specific words or expressions for the particular details of the trial and use them or close synonyms repeatedly. Furthermore, the study reveals that the repetition of words, phrases and/or specific lexical expressions is a widely used rhetorical strategy of the legal profession and reflects the lawyer's intuitive understanding that repetition positively influences and reinforces people's convictions. Repetition is used to intensify the repeated information by making it more salient to listeners. Therefore, repetition has a twofold role:

- (1) to underline the information;
- (2) to encode the lawyer's evaluation of its significance.

Nevertheless, repetition serves as a contextualization prompt that lawyers use to signal to jurors the key points that they are making, hence inviting them to view the evidence in a way that accords with the lawyer's formulations. For this reason, repetition is to be

seen as a core element of lawyers' closing arguments. The findings also show that the use of a clear and easy language is fundamental within the closing arguments. Indeed, the lawyer's objective is to project an image of himself/herself as a facilitator of understanding by employing comprehensible language which allows him/her to be perceived as having the jurors' interest at heart and as being honest and trustworthy. It is essential to highlight that lawyers strategically avoid using complicated language because it would be seen as a sign of hiding something from the jurors. For this reason, lawyers constantly suggest vivid visualizations in order to guide the jurors towards their interpretation of the concept, and consequently towards their perspective on the case. Therefore, the use of easy and clear language in closing arguments attempts to maintain a relationship of interrelation with the jurors and to enhance the perception of cooperation. Furthermore, everyday language is more likely to be easily understood, and consequently accepted among lay people, it may also be perceived as a sign of goodwill, whereas the use of a complex terminology may be interpreted as a way of concealing something from the jurors. Another important aspect that the results revealed is that the lawyers spent some time in their closing arguments thanking the jurors, and apologizing or at least acknowledging the time and effort that the jurors had spent in service to the court. All of these types of references allow the lawyers to give themselves visible roles as characters in the discourse rather than just being the animator and author. The research also demonstrates that a lawyer's job during a trial is to provide the jurors with information, including knowledge about the lawyers themselves, about the crime and investigation, about the witnesses, about the law and about how the jurors should think, act, and process the narratives that have been presented to them. It was observed that lawyers use many strategies while managing the messages sent to the jurors, but more importantly, they seem to have always been trying

to control and constrain exactly what versions of reality should be given to the jurors. Based on what topic was being conveyed, the lawyers used a large variety of linguistic and discursive means, but they always tried to silence specific information, de-emphasize harmful information and emphasize the topics that benefited their case. The common thread among the results is that the words that lawyers choose include and/or exclude different details that allow the lawyers to silence, de-emphasize, and emphasize explicit information related to the case. Given this consistency of this finding across a variety of speech communities and cases, it is clear that lexical selection is important for lawyers. However, this is only a limited means through which lawyers control the representations of reality that they create. Although the study has its limitations, it is hoped that it can serve as a basis for further study within other areas of the adversarial system. Indeed, investigating and examining aspects such as opening statements, cross-examination or giving greater importance to storytelling within the courtroom could bring to light other techniques or strategies employed by trial lawyers. In fact, storytelling could show how prosecutors and defense lawyers tell the same story differently. Since lawyers are free to move and talk in the courtroom they decide what they are going to say and what they are going to omit from the story. By controlling the flow of information lawyers protect their clients and belittle their opponents. Moreover, in the courtroom setting lawyers are the ones with the power, power that is exerted by employing different strategies that they adopt in order to confuse and baffle the jury in making them, at times, misunderstand specific circumstances. Indeed, many people involved in the legal process are aware of the power that words may have, thus the choice of lexical items to refer to when describing events, people or situations play an important role in influencing people's memories, perceptions, reactions and evaluations.

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## Appendix A

### The Jodi Ann Arias Trial Timeline

Jodi Ann Arias, the 32-year-old photographer was accused of shooting her lover, Travis Alexander, in the face, stabbing him 27 times and slitting his throat from ear to ear in the shower of his Mesa, Arizona apartment in 2008. Jodi Ann Arias was convicted of first-degree murder, although she claimed self-defense.

#### CASE TIMELINE

**September 2006** – Travis Alexander met Jodi Arias at a conference in Las Vegas. At the time, Alexander was a 30-year-old motivational speaker and legal-insurance salesman. Arias, then 28, was living in Palm Desert, Calif., and was trying to make it as a saleswoman and an independent photographer. The two had an instant connection and spoke on the phone every day. Court records indicate that the couple exchanged 82,000 emails.

**November 26, 2006** – Because Alexander was a Mormon, Arias chose to be baptized into the Church of Jesus Christ of Latter-Day Saints.

**February 2, 2007** – Alexander and Arias began dating.

**June 29, 2007** – Alexander and Arias broke up. Although they were no longer dating, the couple maintained a physical relationship.

**December 2007** – Alexander began dating another woman. He allegedly told friends that Arias was so jealous that she slashed the tires on his vehicle twice. After those incidents, his new girlfriend received a harassing email from a "John Doe." Alexander suspected that Arias was responsible.

**January 8, 2008** – Arias, according to prosecutors, sent this text to Alexander: "Ahhh!! I fell asleep! But to answer your question, yes I want to grind you. And I want to be LOUD. And I want to give you a nice, warm 'mouth hug' too. :)"

**January 18, 2008** – Arias, according to prosecutors, sent this text to Alexander: "My p--y is SO WET."

**March 2008** – Arias and Alexander visited several states together, including Oklahoma and Texas.

**April 2008** - Arias moved from Arizona to California. That same month, Alexander posted a blog entry stating, "This Year will be the Best year of my life. This is the year that will eclipse all others. I will earn more, learn more, travel more, serve more, love more, give more and be more than all the other years of my life combined."

**April 20, 2008** - Alexander, according to prosecutors, sent this text to Arias: "I am at a night club right now and it helped me to come to the conclusion that you are one of the prettiest girls on the planet."

**April 21, 2008** - Alexander, according to prosecutors, sent this text to Arias: "Send me a naughty picture."

**May 10, 2008** - Arias posted the last entry to her online blog. It reads, in part: "I cannot ignore that there is an ever-present yearning and desire that pulses within me. It throbs for gratification and fulfillment." That same day, according to prosecutors, Alexander sent this text to Arias: "Why don't you have him come and f-k you in the woods, I can only imagine you are so worried about me reading. You are paranoid because you have no respect for people privacy and you dare insult me of all people. Someone you should through your actions you hate more than love by denying me a human right of privacy countless times. You have a lot of freaking nerve. We are all not like you in that aspect."

**May 18, 2008** - Alexander posted the last entry, titled "Why I want to marry a Gold Digger," to his online blog. It reads, in part: "I did a little soul searching and realized that I was lonely ... I realized it was time to adjust my priorities and date with marriage in mind ... This type of dating to me is like a very long job interview and can be exponentially more mentally taxing. Desperately trying to find out if my date has an axe murderer penned up inside of her."

**June 2008** - During the first week of June 2008, Alexander told friends that he suspected Arias had hacked into his Facebook account. He allegedly said that he told her to stay out of his life forever.

**June 2, 2008** - Arias, according to police, picked up a vehicle from Budget Rent-a-Car in Redding, Calif.

**June 4, 2008** - Arias allegedly went to Alexander's home in Mesa, Ariz. They had sex and took explicit photos of each other, according to court records. That same afternoon the last outgoing call was made from Alexander's phone. That evening he missed an important business call.

**June 5, 2008** - Arias went to visit Ryan Burns, a once-budding love interest and co-worker at PrePaid Legal Services, at his home in West Jordan, Utah.

**June 7, 2008** - Arias, according to police, returned her rental car to Budget Rent-a-Car in Redding.

**June 9, 2008** - Alexander's friends, concerned because they had not heard from him for several days, went to his home in the 11,400 block of East Queensborough Ave. and found him dead inside his standup shower. A state of advanced decomposition suggested that he had been dead for several days. Large amounts of blood were discovered throughout the master bathroom, including on the floors, walls and sink

area. It was ultimately determined that Alexander had been shot in the right brow with a .25-caliber gun -- the bullet was found lodged in his left cheek -- and that he had been stabbed 27 times. Someone had also cut his throat from ear to ear.

Investigators found several vital clues inside Alexander's bedroom and bathroom. A spent .25-caliber shell casing was located on the floor near the sink, and a hair and a small latent print in blood were found near the entrance to the bathroom hall. Also, a digital camera was found in the washing machine in the downstairs laundry room. The camera appeared to have been run through the wash cycle. When questioned by police, Alexander's friends and family members indicated that Arias should be questioned. "[Arias] was totally obsessed with him," Alexander's close friend Sky Hughes told The Huffington Post. "She wouldn't let him go. Whenever he would try to sever all ties, she would threaten to kill herself ... He would tell her he didn't want anything to do with her, and she would show up at his house. We knew it was her. We didn't want it to be her, but [we] just knew it was."

**June 13, 2008** - Arias posted a photo gallery on her MySpace page titled "In Loving Memory of Travis."

**June 17, 2008** - Arias went to the Mesa Police Headquarters and was voluntarily fingerprinted. She also gave investigators a sample of her saliva for DNA testing. While waiting for the lab test results to come back, investigators were notified that several shocking images, some of which had been deleted, were recovered from the memory card of the camera found in Alexander's washing machine. The deleted pictures were of Alexander, naked in the shower, just before his death. He appeared to be posing in some of the photographs. However, other photos, which were dark and grainy, "were of a subject on the floor of the bathroom bleeding profusely," police said. Six other photos, time-stamped that same day, allegedly showed Arias on Alexander's bed. According to police, "all were nude pictures," and in some she was in "provocative sexual poses." Based on the photos, an investigator wrote: "Jodi was lying about not seeing Travis since April of 2008. This also proves that Jodi was the last person I can prove had contact with Travis prior to his death."

**June 19, 2008** - Police contacted Arias and questioned her about Alexander's murder. "Jodi stated she last saw Travis in April of 2008," a police officer wrote in a document to establish probable cause. "She admitted they had been seeing each other as boyfriend and girlfriend for over five months but had officially broken up in June of 2007, after some jealousy issues on the part of both of them. After they broke up, they continued to have a sexual relationship, but kept it quiet from people they knew. She said she last spoke to Travis on Tuesday 6-03-08." Later that day, at 10:54 p.m., Arias posted this message to her MySpace page: "misses Travis. See you soon, my friend, but not soon enough."

**June 21, 2008** - Travis Alexander was laid to rest in Olivewood Memorial Park in Riverside, Calif.

**June 26, 2008** - Investigators were notified that hair and a bloody print found inside Alexander's home belonged to Arias. DNA typing results also indicated that the bloody print was a mixture of Arias' and Alexander's DNA. The same day, Arias attended a memorial service for Alexander.

**July 9, 2008** - Arias celebrated her 29th birthday. That same day, a grand jury in California indicted her on first-degree murder charges in the death of Alexander.

**July 15, 2008** - Mesa police detectives and Siskiyou County sheriff's deputies arrested Arias at her Northern California home. Arias was booked in the Siskiyou County Jail on suspicion of first-degree murder.

**September 5, 2008** – Arias was extradited to Arizona.

**September 9, 2008** – A public defender was assigned to represent Arias.

**September 11, 2008** – Arias entered a not-guilty plea at her arraignment.

**September 12, 2008** - In a jailhouse interview with The Arizona Republic, Arias denied killing Alexander but refused to discuss how she would refute the DNA and photographic evidence that police claimed linked her to the crime. "God knows I'm innocent. I know I'm innocent," said Arias. "I had nothing to do with his murder. I would never hurt him. He was my friend."

**September 24, 2008** – Arias was interviewed by the TV show "Inside Edition" and said publicly for the first time that she was present when Alexander was attacked by two intruders.

**October 31, 2008** - The Maricopa County Attorney's Office filed a notice of intent to seek the death penalty against Arias. The notice, filed in Maricopa County Superior Court, accused Arias of committing first-degree murder "in an especially cruel, heinous or depraved manner."

**June 23, 2009** – Following her arrest, Arias expanded on her second story about the day of Alexander's death. In an interview with "48 Hours," she admitted that she was present when he was murdered, but she said that his death occurred during a home invasion. Arias reported that the two were having fun playing with his new camera when things took a sudden turn. "I heard a really loud pop. And the next thing I remember, I was lying next to the bathtub and Travis was screaming," Arias told "48 Hours." "At that point, I sort of was just trying to come around and kind of orientate myself to what was going on," she continued. "And I looked up and I just -- I saw two other individuals in the bathroom. And they were both coming toward us." The intruders, whom she described as a man and a woman dressed in black, were armed with a knife and a gun. At one point, she said, the man pointed the gun at her, but she was miraculously spared.

"He pulled the trigger. And nothing happened with the gun. And so I just grabbed my

purse, which was on the floor at that point, and I ran down the stairs and out of there and I left [Travis] there ... I pushed past him and -- and his gun. And I just didn't look back." Arias said that she kept driving and never called the police. "It was -- I was terrified. And I was scared for my life. And I think there was a naive belief that I could pretend like it didn't really happen," Arias said.

**December 2010** – Arias beat out 50 other inmates to win an "American Idol"-style caroling contest for inmates held by "America's Toughest Sheriff," Joe Arpaio, at the Maricopa County jail. Her prize was a Christmas stocking full of goodies and a turkey dinner for herself and her cellmates.

**August 8, 2011** - Arias told Judge Sherry Stephens of Maricopa County Superior Court that she wanted to represent herself. Stephens granted the request but had Arias' public defenders, Victoria Washington and Kirk Nurmi, remain on as advisory counsel.

**August 16, 2011** – A request to admit letters that Arias claimed Alexander sent her prior to his death was denied. In the letters, Alexander allegedly admitted to being a pedophile. Prosecutor Juan Martinez told the court that the letters were tested and found to be forgeries. After the ruling, Arias told Judge Stephens that she was "over her head." The judge then reinstated her defense counsel.

Arias' third story about Alexander's death was detailed in court documents as part of the request that she made to admit electronic copies of Alexander's alleged letters. "Defendant had previously attributed the crime to intruders. She now argues that all of the letters must be admitted to support her domestic violence defense," prosecutors wrote in a motion to preclude the letters. "Defendant argues that the letters are relevant to her claim of self-defense and that she was a victim of previous 'sexual and physical abuse' by Mr. Alexander." Arias, according to prosecutors, claimed that Alexander "became angry when she dropped his camera" and that she was forced to kill him in self-defense.

**December 16, 2011** – Washington filed a motion to withdraw from Arias' defense.

**December 21, 2011** – Washington's motion was granted.

**December 27, 2011** - Arias' younger sister, Angela Arias, said that her sister's statements during the "48 Hours" interview were lies and that Alexander's death was an act of self-defense on her sister's part during an incidence of domestic violence. "She was not under oath when she spoke on TV and yes, she lied," Angela Arias wrote on Facebook after The Huffington Post sent her a request for comment. "But, it was because she was so in love with that man she did not want people to know what a monster he really was. She wanted everyone to believe that he was as amazing as they thought he was ... My sister is innocent of the crime they are accusing her of ... She did kill Travis but it was not in cold blood, it was not for revenge, it was because she was afraid for her life."

**January 2012** - Jennifer Willmott, a death penalty-qualified defense attorney, was assigned to represent Arias.

**February 9, 2012** - Judge Stephens denied a motion by Arias' defense lawyers to remove the death penalty as a punishment option. The defense argued that Arias should not face death because she had not planned to kill Alexander. His death was an act of self-defense, her attorneys argued.

**December 10, 2012** - Jury selection for Arias' trial began. The court summoned 375 potential jurors.

**December 20, 2012** - A panel of 12 jurors and six alternates -- seven women and 11 men -- were sworn in for Jodi Arias' trial.

**January 2, 2013** - Opening arguments began in Arias' trial.

Maricopa County Prosecutor Juan Martinez cited the various stories that Arias had told law enforcement before she finally settled on a self-defense motive. Martinez described Alexander's murder as violent and said there were three different ways Alexander could have received a death blow: He was shot, he was stabbed in the heart, and his throat was slit from ear to ear. Alexander also had defensive wounds on his hands, according to Martinez. In wrapping up his opening argument, Martinez played part of a media interview conducted after Arias' arrest, in which she said, "Mark my words, no jury will convict me." Martinez asked the jury to mark Arias' words and concluded his opening statement. During the defense team's opening argument, lawyer Jennifer Willmott acknowledged that Arias had killed Alexander, but said that the key question is what motivated her to do it. Willmott alleged Alexander had pressured Arias into having vaginal, anal and oral sex with him. Willmott also said she planned to call to the stand an expert who would testify about how Arias' relationship with Alexander fit the mold of domestic violence. Willmott concluded her opening argument by saying that Alexander had become enraged when Arias dropped his camera and that she had had to defend herself or she would not be alive today. At the close of the opening arguments, the prosecution called their first witness, Maria Hall, to the stand. Hall testified she had attended church with Alexander and had gone on a few dates with him. Hall said she felt safe in Alexander's company and never saw his temper. Prosecutors then called their next witness, Sterling Williams. A patrol officer with the Mesa Police Department, Williams described what he witnessed when he responded to the crime scene, as well as the condition of Alexander's body. Shortly afterward, court was recessed for the day.

**January 3, 2013** – At the start of day two of Arias' murder trial, the prosecution called Esteban Flores, a Mesa homicide detective to the stand. Flores had investigated the crime scene and mentioned a phone call he had with Arias on June 10, 2008. The prosecution then played an audio recording of the conversation in court. During the recorded call, Arias described herself as a good friend of Alexander's and said she wanted to help police in any way that she could. She told Flores she had heard that Alexander had passed away and that there was a lot of blood at the crime scene. She

asked what type of weapon was used or recovered at the scene, but Flores told her he was unable to discuss that information with her. Asked about her relationship with Alexander, Arias said that they had not dated long. "We dated for like five months, and we broke up and actually did not see each other for quite a bit," Arias said. "[We] tried to remain friends, more like buddies. We were intimate but I would not say romantic as far as a relationship goes." In regard to the couple's breakup, Arias said she had a suspicion Alexander was cheating on her. She said she could not trust him and claimed he would get "upset real easily." During the phone interview, Flores told Arias that Alexander's friends had alleged that she had hacked into Alexander's email. Arias denied the allegation. "People felt you were taking advantage of him or hanging out when you weren't wanted," Flores said. Arias dismissed the opinion of Alexander's friends and said she felt they talked about her because she was an ex-girlfriend. "We need to know who had some type of beef with him or why they would want to do this to him. It was an angry situation. Somebody went in there to hurt him, and they did -- hurt him really bad," Flores said at one point in the recording.

Arias said Alexander was quite strong and she could not understand how anyone could overpower him. She also said she was concerned because "he never locked his doors." When the recording ended in the courtroom, Martinez turned the witness over to defense attorney Kirk Nurmi for cross-examination. Nurmi asked Flores if he had ever seen a picture of a French maid outfit that Alexander allegedly wanted Arias to wear when she would clean his home. Flores testified that Arias told him she had cleaned Alexander's house, but said he had never seen a picture of the French maid outfit. The defense attorney then questioned Flores about emails Alexander allegedly sent to Arias. Nurmi asked Flores if Alexander had called Arias names in the emails, like "slut" and "whore." Martinez objected, citing hearsay and speculation, but Judge Stephens allowed the question. Flores then confirmed that Alexander had sent messages to Arias calling her those names.

After a short recess, Flores read from a Facebook message that he said Alexander sent to Arias. "I was nothing more than a dildo with a heartbeat for you," the message read. Later, a fingerprint examiner with the Mesa police, Heather Connor, took the stand and unveiled evidence found at the crime scene. Forensic teams took a total of three days to complete processing the scene at Alexander's house and found evidence in his washing machine, Connor said. The contents included clothing and a broken digital camera, which contained a SIM card. The clothing items, as well as a towel, appeared to have bleach stains, she said. Shortly afterward, court was recessed until January 8.

**January 8, 2013** – Connor, the Mesa Police Department fingerprint examiner, continued her testimony on day three. Connor took the court through photos of Alexander's hallway, master bedroom and bathroom. The jury was also shown a photo of a bloody handprint on a wall. Prosecutors said the handprint contained a mixture of Alexander's and Arias' DNA.

When Connor finished her testimony, the prosecution called Dr. Kevin Horn, of the Maricopa County Medical Examiner's office, to the stand. Horn described how Alexander was stabbed 27 times, shot in the right brow with a .25-caliber gun, and nearly decapitated when his throat, voice box and arteries were cut. As Horn spoke, jurors looked at photos of the dead man, whose body, Horn said, was decomposing and starting to mummify by the time it was found. According to Horn, Alexander's stab wounds were very deep and inflicted with major force. It was, Horn testified, impossible to determine if Alexander was dead before he was shot due to the amount of decomposition. The cause of death was excessive blood loss from the victim's body, he said, and Alexander had multiple self-defense wounds to his palms and fingers. Elizabeth Northcutt, a forensic firearms examiner with the Mesa police, was called to the stand next. Northcutt testified that she had examined a cartridge casing found at the crime scene and identified it as a Winchester .25-caliber casing. She said she also examined the bullet removed from Alexander's cheek. During cross-examination, Northcutt said she was not able to match the casing or the bullet to a specific gun because no weapon has been recovered. Shortly afterward, court was recessed for the evening.

**January 9, 2013** – Ryan Burns, a once-budding love interest of Arias' and her co-worker at PrePaid Legal Services, was called to the stand by prosecutors on day four of the trial. Burns testified he had a heated make-out session with Arias just a day after Alexander was murdered. "We were talking and we kissed ... Every time we started kissing, it got a little more escalated," Burns said. He said that the couple never removed their clothes during the encounter and that he "never touched her breasts or anything." Burns testified that he first met Arias at a PrePaid Legal convention in Oklahoma in April 2008. A few weeks after that initial meeting, Burns and Arias were chatting on the phone three to five times a week. Toward the end of May 2008, he and Arias had made plans for her to visit his home in West Jordan, Utah, Burns testified. According to Burns, Arias was several hours late arriving at his home on June 5, 2008. She told him that she had gotten lost and had stopped to rest. Arias had apparently dyed hair since the last time he had met with her and had cuts on her hands when she arrived, Burns said. "She had two small bandages on a couple of her fingers," he testified. Arias explained away the injuries by saying that while working at a Margaritaville restaurant, she had broken a glass and cut her finger, Burns said.

The prosecution questioned Burns about Arias' strength. Burns said she was fit and had "close to a six-pack." "[She's] a lot stronger than she looks," Burns testified. Burns was followed on the stand by two latent-print examiners for Mesa police, Maureen Smith and Kevin Biggs. The two witnesses described taking Arias' fingerprints and a DNA sample. Latent-print examiner Heather Connor was called back to the stand to testify about a palm impression found on a wall at the crime scene, as well as items recovered from the drying machine inside Alexander's apartment and a bloody carpet stain. Police detective Esteban Flores was also called back to the stand during day four. A recording of a June 25, 2008, phone interview he conducted with Arias was played for the court.



During the interview, Arias told Flores she was afraid of guns. "That is one of the things I am scared of. [Guns and] public speaking," Arias said. "That was one of the things [Alexander] was trying to get me to do -- get out of my comfort zone." Arias' comments about guns arose during a discussion with Flores about the trip she took to visit Burns in Utah on June 5, 2008. Arias said she slept in her car during the lengthy drive from Yreka, Calif., to West Jordan, Utah. "I am not shy about sleeping in my car," Arias told the detective. Flores mentioned the practice could be dangerous and suggested she needed protection. "I was thinking of that," Aria said before detailing her fear of guns. But, she added, "Handguns are expensive [and] not in my price range." After discussing her thoughts on guns, Arias said she wanted to know if Alexander had cashed a check for \$200 that she had given him for a car payment before he died. She said she had emailed his sister to ask about the check and to offer her condolences after she found out about Alexander's death. His sister had never replied, Arias told the detective. Court was adjourned for the day shortly after that excerpt of the audio recording was played.

**January 10, 2013** – Day five of Arias' trial began with testimony by Nathaniel Mendes, a former detective with the Siskiyou County Sheriff's Office in California. Mendes testified that there is no restaurant called Margaritaville in Yreka -- a fact that suggested Arias had lied about her place of employment, which undermined her explanation of how she had injured her fingers around the time Alexander was murdered. Mendes also testified about receipts found in Arias' bedroom, which show that she had rented a car in Redding, Calif., on June 2, 2008, and returned it six days later, after she put 2,834 miles on the car. Lisa Perry, a forensic scientist for Mesa police, was called to testify after Mendes. Perry said that over two days at the crime scene, she had collected blood evidence for DNA analysis. She spent a significant amount of time on the stand detailing the blood splatter and stains that were found throughout Alexander's apartment. She also testified that a .25-caliber bullet casing was lying in a pool of congealed blood, suggesting that the bullet inside the casing had been fired after the blood was on the floor. Mesa detective Esteban Flores returned to the stand after Perry completed her testimony. Flores testified that he had a conversation with Arias in which she acknowledged she had Alexander's ATM personal identification number and the security code to enter the garage of his apartment. Flores also testified he was aware of the interview Arias had given to "Inside Edition." "No jury is going to convict me ... because I'm innocent, and you can mark my words on that one: No jury will convict me," Arias had told "Inside Edition." The interview was conducted in 2008 after Arias was indicted for murdering Alexander. "I understand all the evidence is really compelling," Arias said in the interview. She added, "I've never even shot a gun. That's heinous. I can't imagine slitting anyone's throat." During cross-examination, Flores acknowledged that testimony he had given at a hearing on August, 6, 2009, was incorrect. During that hearing, Flores had testified that Alexander was shot before he was stabbed. "So your testimony that the gunshot occurred first was inaccurate ... Your testimony was a mistake," defense attorney Kirk Nurmi said. "No, my testimony wasn't a mistake. It was a misunderstanding of what [the medical examiner] said," Flores replied. The final witness called by the prosecution on January 10 was Jodi Legg, a

DNA analyst with the Mesa police crime lab. Legg testified she had analyzed a piece of wall cut out of Alexander's apartment and found DNA belonging to both Alexander and Arias. After Legg's short testimony, court was recessed until January 14.

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<http://www.azcentral.com/story/news/local/mesa/2015/03/03/jodi-arias-trial-timeline/24326127/>

## Appendix B

### The O.J. Simpson Trial Timeline

#### June 1994

**June 12:** 9:35 p.m. O.J. and houseguest Brian “Kato” Kaelin return from McDonald’s.

11 p.m. O.J. comes out to meet limo driver taking him to airport for flight to Chicago.

**June 13:** 12:10 a.m. Nicole Brown Simpson and her friend Ronald Goldman found slashed to death outside her condominium in Brentwood.

Upon returning to Los Angeles from a trip to Chicago, O.J. the ex-football star is taken in and undergoes 3 hours of questioning at police headquarters.

**June 15:** Robert Shapiro takes over O.J.’s defense.

**June 16:** O.J. accompanies children Sydney and Justin to ex-wife's funeral; hundreds of friends and family attend Goldman’s funeral.

**June 17:** O.J. is charged with two counts of murder with special circumstances. O.J. fails to surrender and leads the police on a 60-mile low-speed pursuit across freeways from Orange County to his home.

9 p.m. O.J. arrested, jailed without bail.

#### July 1994

**July 8:** Municipal Judge Kathleen Kennedy-Powell after six-day preliminary hearing rules there is “ample evidence” to put O.J. on trial.

**July 20:** O.J. offers \$500,000 reward for information leading to arrest of “real killer or killers.” Shapiro establishes national toll-free hot line for tips.

**July 22:** O.J. pleads “absolutely, 100% not guilty”; case assigned to Superior Court Judge Lance Ito.

- July 27:** Goldman's mother files wrongful death lawsuit against O.J., alleging he "willfully, wantonly and maliciously" killed her son.
- July 30:** Grand jury transcripts paint picture of a jealous O.J. who stalked ex-wife and her companion.
- August 1994**
- August 22:** Court papers disclose that some DNA tests show O.J.'s blood has same genetic makeup as samples from blood trail leading from murder scene.
- September 1994**
- September 9:** Prosecutors announce they will seek sentence of life without parole for O.J. if he is convicted, rather than death penalty.
- September 26:** Jury selection begins.
- November 1994**
- November 3:** Jury of eight women and four men is selected. Panel includes eight blacks, one white, one Hispanic and two people of mixed race.
- December 1994**
- December 8:** Alternate jury selected; nine women and three men. Panel includes seven blacks, four whites and one Hispanic.
- January 1995**
- January 4:** Defense abandons challenge of DNA evidence.
- January 8:** Word leaks out O.J. plans to publish a book titled I Want to Tell You in response to 300,000 letters sent to him in jail.
- January 11:** Jury sequestered in secret location; prosecutors release documents accusing O.J. of long abusing Nicole.
- January 12:** Ito hears defense arguments for questioning racial attitudes of Detective Mark Fuhrman, who found bloody glove at O.J.'s estate.
- January 23:** Opening statements by prosecution and defense; Ito announces two jurors dismissed.
- January 31:** First prosecution witness is Sharyn Gilbert, 911 operator who

answered call from O.J.'s home at 3:58 a.m. on Jan. 1, 1989; said she heard woman screaming and "someone being hit."

## **February 1995**

**February 1-2:** O.J. friend Ronald Shipp testifies that O.J. told him on night after killings that he dreamed of killing his ex-wife.

**February 3-6:** Denise Brown, Nicole's sister, testifies O.J. was abusive toward his ex-wife.

**February 7:** Nicole's neighbor Pablo Fenjves tells of hearing dog's "plaintive wail" from near her condo at 10:15 p.m., first step in establishing prosecution's estimate of the time of the killings.

**February 12:** Jurors tour crime scene, O.J.'s estate and see Mezzaluna restaurant and Goldman's apartment building.

**February 27:** Rosa Lopez, domestic at O.J.'s neighbor's house, testifies out of turn for defense on videotape that she saw his Bronco outside his house at 10:15 p.m.

## **March 1995**

**March 9-10, 13-16:** Detective Mark Fuhrman tells of finding glove at O.J.'s estate, declares he had not used racial epithet in 10 years.

**March 22-23, 27-28:** O.J. houseguest Brian "Kato" Kaelin tells of last seeing O.J. at 9:35

on night of killings, says he was "upset" after clash with Nicole

earlier; later under prosecution questioning says he wouldn't lie for O.J.

**March 28:** Limo driver Allan Park says O.J. didn't answer bell at his home from 10:40 until about 11 p.m.

## **April 1995**

**April 6-7:** Juror illness closes court. Ousted juror Jeanette Harris tells of racial divisions on jury.

**April 21:** Jury strikes over dismissal of three deputies who've been accompanying them.

## **May 1995**

**May 8-12, 15:** DNA lab director Robin Cotton gives astronomical odds from blood examinations incriminating O.J.

## **June 1995**

**June 2, 6-9, 12-15:** Coroner shows jurors grisly pictures of murder victims, explains in detail how they were killed

**June 15:** O.J. tries on leather gloves linked to killings, barely squeezing them onto his hands; tells jury, "They don't fit."

## **July 1995**

**July 7:** After prosecution rests, Judge Lance Ito denied defense request for immediate innocent verdict for lack of evidence.

**July 10:** Arnelle Simpson, O.J.'s oldest daughter, testifies as first defense witness; attacks Ronald Shipp's tale about dream.

**July 11:** Danny Mandel testifies that he and date walked past Nicole's condo at 10:20 and saw nothing unusual, raising doubts about prosecution's estimate of time of killings. Robert Heidstra says he was walking dogs at 10:35, heard men arguing in vicinity of Nicole's condo, raising new time of killings.

**July 14, 17-18:** Robert Huzienga, O.J.'s doctor, backs up defense contention that O.J. had debilitating injuries from football career, but says he was physically capable of carrying out the murders. Videos show O.J. doing strenuous workout and touting a product as cure for arthritis.

**July 24:** Frederic Rieders, a forensic toxicologist, says he found evidence of blood preservative in two pieces of evidence, implying police planted the evidence.

**July 28:** North Carolina judge blocks O.J.'s defense attempts to force screenwriter to hand over taped interviews of Detective Fuhrman; defense says tapes reveal Fuhrman is racist, who lied about not using racial epithet.

## **August 1995**

**August 2:** Microbiologist John Gerdes declares L.A. police crime lab is "by far" most contaminated he's ever seen; casts doubt on most widely used DNA test.

- August 7:** North Carolina appeals court clears way for O.J.'s defense to get tapes of Fuhrman using racial epithet.
- August 9:** Ito ends defense effort to question two reporters about DNA evidence leaks.
- August 10-11:** Michael Baden, ex-New York City medical examiner, casts doubt on prosecution theories of how killings took place.
- August 15:** Prosecution calls on Ito to step down after his wife, police captain Margaret York, is derided by Fuhrman in tapes; second judge steps in to decide.
- August 17:** Albert Aguilar, police fingerprint specialist, says O.J.'s prints were not among 17 sets at crime scene.
- August 18:** Ito stays on case after another judge blocks York's testimony about Fuhrman.
- August 22-25, 28:** Henry Lee, forensics expert, testifies to finding three shoeprints at crime scene didn't match O.J.'s Bruno Magli shoes; said police mishandled evidence.
- August 29:** Excerpts of recorded interviews between Fuhrman and screenwriter Laura Hart McKinny were played with jury absent. In calm, casual tone, Fuhrman used word "nigger" 41 times, described police brutality.
- August 31:** Ito rules defense can tell jury of two instances of Fuhrman using epithet, none of misconduct.
- September 1995**
- September 5:** Five witnesses, including McKinny, testify to Fuhrman's use of racial epithet within last 10 years. At hearing with jury out of room, Fuhrman invokes Fifth Amendment protection in further testimony.
- September 7:** Ito announces he'll give jury vague instruction about why Fuhrman will not testify; prosecution appeals.
- September 8:** Appeals court rules Ito can not even give vague hint about Fuhrman invoking Fifth Amendment.
- September 11:** Defense refuses to rest while appealing on Fuhrman; Ito orders prosecution to begin rebuttal; five photographers testify about pictures of O.J. wearing gloves like ones linked to crime.

- September 12:** Glove expert says he's "100% certain" gloves were same.
- September 13:** State crime lab expert says most sophisticated DNA test finds Goldman's blood in O.J.'s Bronco.
- September 14:** Prosecution forensics expert Douglas Deedrick rebuts defense contention that there was a second set of shoe prints at the murder scene.
- September 15:** Ito says county will not - as previously suggested - financially assist a juror who claimed possible loss of \$1,500 in rental income.
- September 18:** Prosecution tentatively closes its rebuttal but reserves the right – exercised later - to call more witnesses to rebut new defense testimony.
- September 19:** Defense puts on former mobster Craig Anthony Fiato to portray L.A. detective Philip Vannatter as a liar. Simpson applies to register his name as an exclusive trademark.
- September 20:** Ito admonishes both sides: "It's astonishing what we've sunk to", as bickering over minor issues continues.
- September 21:** Ito announces his jury instructions will include possibility of finding Simpson guilty of second-degree murder - a major blow to the defense.
- September 22:** Simpson gets a chance to address the jury without being cross-examined. He says he "did not, would not, could not have committed this crime."
- September 26:** Clark begins her closing arguments by blasting her former star witness - Mark Fuhrman - as a racist but cautions that does not mean he planted key evidence at Simpson's home.
- September 27:** Christopher Darden wraps up the prosecution closing arguments by portraying Simpson as consumed by a jealous rage. Cochran then takes up for the defense, hammering home the theme "If it doesn't fit, you must acquit."
- September 28:** Cochran invokes history and the bible and wraps up by telling jurors "God bless you." Barry Scheck says jurors cannot trust any of the DNA analysis on blood because of police contamination and tampering.



**September 29:** Over more than 60 objections from defense lawyers, Darden and Clark wrap up prosecution rebuttal with a video display of everything from the 1989 911 call to photos of the bloody victims. At 4:08 p.m. Ito turns the case over to the jury, admonishing them to ignore warnings from both sides that “the world is watching.”

**October 1995**

**October 2:** Jury begins deliberations shortly after 9 a.m. PT, breaks to hear the testimony of the limousine driver who picked Simpson up on the night of the murders, and returns a verdict.

**October 3:** Verdict of not guilty is announced and O.J. Simpson is set free.

Retrieved from: *The Simpson Trial Transcripts*,  
<http://simpson.walraven.org/ojstats.html>.

## Appendix C

### The Simpson Trial Statistics

1. Days Simpson spent in jail	474
2. Days jurors were sequestered	266
3. Length of closing arguments	4 days
4. Length of opening statements	4 days
5. Length of deliberations	less than 4 hours
6. Average age of juror	43
7. Number of jurors picked	12 plus 12 alternates
8. Number of jurors dismissed	10
9. Witnesses	defence 54; prosecution 72
10. Days of testimony	defence 34; prosecution 99
11. Exhibits presented during testimony	defence 369; prosecution 488
12. Number of motions filed	433 total (no breakdown available)
13. Number of attorneys who presented evidence in court	defence 11; prosecution 9
14. Number of times judge pulled plug on television	2
15. Cost	estimated \$9 million for Los Angeles County, includes costs for court and prosecution; defence figures not available
16. Amount earned by each of the 12 jurors and two alternates	\$1,330 (at \$5 a day for time of sequestration)
17. Length of official court transcript	more than 50,000 pages
18. Number of media credentials issued	more than 1,000
19. Number of telephone lines installed in pressroom	250
20. Seating capacity in courtroom	80
21. Fines imposed on defence	\$3,000
22. Fines imposed on prosecution	\$850
23. Fines imposed on others	\$1,800

Retrieved from: *The Associated Press*, <http://simpson.walraven.org/ojstats.html>

## Appendix D

### The Simpson Trial Jury - Jurors



The Simpson jury (sketch by Bill Robles)

#### The Jurors Who Voted:

4. Armanda Cooley - #230 (seat 1) - Forewoman and Original Juror, Black female, 51, divorced, two years of college, employed as a vendor, lives in South Central L.A. Co-author of 'Madam Foreman: A Rush to Judgment?' with jurors Bess and Rubin-Jackson.
5. Yolanda Crawford - #1492 - (seat 2) - Placed on jury June 6 (replacing Farron Chavarria), Black female, 25, single, one year of college, hospital employee, lives in Gardena. Informed Ito about a note written by Chavarria on a newspaper and allegedly read by Florio-Bunten, causing their dismissal.
6. Anise Aschenbach - #1290 (seat 3) - Placed on jury March 17 (replacing Tracy Kennedy), White female, 61, divorced, one year of college, retired gasoline company clerk, lives in Norwalk. One of two jurors who voted guilty in first vote.

7. David Aldana - #19 (seat 4) - Original Juror, Hispanic male, 33, single, high school graduate, drives a Pepsi delivery truck, lives in East L.A.
8. Marsha Rubin-Jackson - #984 (seat 5) - Original Juror, Black female, 38, married, high school graduate, mail carrier for USPS, lives in Bellflower. Co-author of 'Madam Foreman: A Rush to Judgment?'
9. Lionel Cryer - #247 (seat 6) - Placed on jury Jan. 18, Black male, 44, high school graduate, works as a phone company marketing representative. Florio-Bunten told Ito she thought that he may be writing a book. Gave Simpson "power salute" after the verdict.
10. Brenda Moran - #795 (seat 7) - Placed on jury April 5 (replacing Jeanette Harris), Black female, 45, single, high school graduate, computer technician. Reported to be working on a book with Gina Rosborough, titled 'Inside the Simpson Jury: The Parallel Universe'.
11. Sheila Woods - #1233 (seat 8) - Original Juror, Black female, 39, single, college graduate, employed as an environmental health specialist, lives in Inglewood. Told Ito she thought that Aschenbach, Florio-Bunten and Chavarria disliked her, because they suspected her of being behind the dismissal of Kathryn Murdoch.
12. Carrie Bess - #98 (seat 9) - Black female, 53, divorced, high school graduate, postal clerk, lives in South Central. Co-author of 'Madam Foreman: A Rush to Judgment?'
13. Gina Rosborough - #2179 (seat 10) - Placed on jury June 6 (replacing Willie Craven), Black female, 29, married, high school graduate, postal employee. Reported to be working on a book with Brenda Moran, titled 'Inside the Simpson Jury: The Parallel Universe'.
14. Annie Backman - #63 (seat 11) - Original Juror, White female, 23, single, college graduate, insurance claims adjuster, lives in Burbank. Believed to be the other juror who initially voted 'guilty' (source: Aschenbach's interview on 'Larry King Live').
15. Beatrice Wilson - #2457 (seat 12) - Placed on jury May 26 (replacing Francine Florio-Bunten, who replaced Michael Knox), Black female, 72, married, completed 10th grade, retired cleaner, lives in L.A.'s West Adams.

### **The Remaining Alternates:**

4. Watson Calhoun - #165 (alternate) - Black male, 73, married, retired security guard. According to the transcripts, had several run-ins with the deputies and other jurors.
5. Reyko Butler - #1386 (alternate) - White female, 25, married, fire department receptionist, lives in Altadena. Said she would've voted 'guilty' in an interview with 'American Journal'.

### **The Dismissed Jurors:**

- Roland Cooper - #228 (dismissed January 18) - Black male, 49, who works for the Hertz rental car company. Allegedly met Simpson at a Hertz function. (Motion by the prosecution, objection by the defense.)
- (Name Unknown) - #320 (dismissed January 18) - Hispanic female, 39, works as a letter carrier. Apparently involved in an abusive relationship with her ex-boyfriend while on the jury. (Motion by the defense, objection by the prosecution.)
- Kathryn Murdoch - #2017 (dismissed February 7) - White female, 64, a retired legal secretary. Was found out to be a patient of the same doctor who had been treating Simpson for arthritis. The doctor was expected to be a defense witness. (Motion by the defense, objection by the prosecution.)
- Michael Knox - #620 (dismissed March 1) - Black male, 47, who works as a courier. Reportedly offered to bet a week's wages (before being empaneled) that Simpson would be found innocent of double murder. Wore a San Francisco 49ers cap at times while serving on the jury and allegedly spent too much time 'admiring' Simpson's stuff during jury's visit to Rockingham. After dismissal, co-wrote 'The Private Diary of an O.J. Juror'. (Motion by the prosecution, objection by the defense).
- Tracy Kennedy - #602 (dismissed March 17) - Male of American Indian and White heritage, 53, married, teaches high school and interviews prospective employees for Amtrak. First targeted by Robert Shapiro during a sidebar in mid-February for continually staring 'out into space' and not paying attention in the jury box. Later was accused of writing a book and dismissed when caught lying about

having juror information on his notebook computer. Co-author of 'Mistrial of the Century'. (Motion by the defense, objection by the prosecution.)

- Jeanette Harris - #462 (dismissed April 5) - Black female, 39, married, works as an employment interviewer. Found out to have had past experience with domestic violence which she failed to report during jury selection. (Motion by the prosecution, objection by the defense.)
- Tracy Hampton - #452 (dismissed May 1) - Black female, 26, single, employed as a flight attendant. Told Ito she 'couldn't take it anymore'. After her dismissal, posed for Playboy. (Motion by the court, no objection by either side.)
- Francine Florio-Bunten - #353 (dismissed May 26) - White female, 39, married, technician with Pacific Bell. Told Ito she thought Cryer may be writing a book. An anonymous letter (claiming to be from a literary agent's receptionist) accused her of contracting a book titled 'Standing Alone - A Vote For Nicole'. However, according to Ito, she was 'primarily' dismissed for lying about reading a note written on a newspaper by Chavarria. Now claims she likely would've voted 'guilty'. (Motion by the defense, objection by the prosecution.)
- Willie Craven - #1489 (dismissed June 5) - Black male, 55, married, employed as a postal operations manager. Accused of being a 'bully' and intimidating other jurors, especially Chavarria. (Motion by the prosecution, objection by the defense.)
- Farran Chavarria - #1427 (dismissed June 5) - Hispanic female, 29, single, employed as a real estate appraiser. Accused Craven of harassing her. Wanted off the jury. Wrote a 'clandestine' note on a newspaper and allegedly showed it to Florio-Bunten. (Motion by the defense, objection by the prosecution.)

Retrieved from: *The Simpson Trial Transcripts*,  
<http://simpson.walraven.org/ojstats.html>.

## **Appendix E**

### **Judge Ito's Jury Instructions**

All right, ladies and gentlemen of the jury, you have heard all the evidence, and it is now my duty to instruct you on the law that applies to this case. After I conclude reading these instructions to you, we will commence with the argument of counsel. The law requires that I read these instructions to you here in open court. Please listen carefully. It is also my personal policy that you will have these instructions in their written form in the jury room to refer to during the course of your deliberations.

You must base your decision on the facts and the law. You have two duties to perform first, you must determine the facts from the evidence received in the trial and not from any other source. A fact is something that is proved directly or circumstantially by the evidence, or by stipulation. A stipulation is an agreement between the attorneys regarding the facts. Second you must apply the law that I state to you to the facts, as you determine them, and in this way, arrive at your verdict, and any finding you were instructed to include with your verdict.

You must accept and follow the law as I state it to you, whether or not you agree with the law. If anything concerning the law said by the attorneys in their arguments or at any other time during the trial conflicts with my instructions on the law, you must follow my instructions. You must not be influenced by pity for a defendant or by prejudice against him. You must not be biased against the defendant because he has been arrested for this offense, charged with a crime, or brought to trial. None of these circumstances is evidence of guilt, and you must not infer or assume from any or all of them that he is more likely to be guilty than innocent. You must not be influenced by mere sentiment, conjecture, sympathy, passion, prejudice, public opinion, or public feeling. Both the prosecution and the defendant have a right to expect that you will conscientiously consider and weigh the evidence, apply the law and reach a just verdict, regardless of the consequences.

If any rule, direction or idea is repeated or stated in different ways than these instructions, no emphasis is intended, and you must not draw any inference because of its repetition. Do not single out any particular sentence or any individual point or instruction, and ignore the others. Consider the instructions as a whole and each in light of all the others. The order in which the instructions are given has no significance as to their relative importance.

Statements made by attorneys during the trial are not evidence, although if the attorney has stipulated to or agreed to a fact, you must regard that fact as conclusively proven. If an objection was sustained to a question, do not guess what the answer might have been, do not speculate as to the reason for the objection. Do not assume to be true any insinuation suggested by a question asked of a witness. A question is not evidence, and may be considered only as it enables you to understand the answer. Do not consider for any purpose any offer of evidence that was rejected by the court, or any evidence that was stricken by the court. You must treat it as though you had never heard it.

You must decide all questions of fact in this case from the evidence received here in court in this trial and not from any other source. You must not make any independent investigation of the facts or the law, or consider or discuss facts as to which there has

been no evidence. This means, for example, that you must not on your own visit the scene, conduct experiments or consult reference works or persons for additional information. You must not discuss this case with any other person except a fellow juror, and you must not discuss the case with a fellow juror until the case is submitted to you for your decision, and then only when all 12 jurors are present in the jury room.

Evidence consists of the testimony of witnesses, writings, material objects, or anything presented to the senses and offered to prove the existence or non-existence of a fact. Evidence is either direct or circumstantial. Direct evidence is evidence that directly proves a fact without the necessity of an inference. It is evidence which, by itself, if found to be true, establishes that fact. Circumstantial evidence, is evidence that if found to be true proves a fact from which an inference of the existence of another fact may be drawn. An inference is a deduction of fact that may logically and reasonably be drawn from another fact or group of facts established by the evidence. It is not necessary that facts be proved by direct evidence. They may be proof also by circumstantial evidence, or by a combination of direct evidence and circumstantial evidence. Both direct evidence and circumstantial evidence are acceptable as a means of proof. Neither is entitled to any greater weight than the other. However, a finding of guilt as to any crime, may not be based on circumstantial evidence unless the proof circumstances are not only one, consistent with the theory that the defendant is guilty of the crime, but two, cannot be reconciled with any other rational conclusion. Further, each fact, which is essential to complete a set of circumstances necessary to establish the defendant's guilt, must be proved beyond a reasonable doubt. In other words, before an inference essential to establish guilt may be found to have been proved beyond a reasonable doubt, each fact or circumstance upon which such inference necessarily rests, must be proved beyond a reasonable doubt.

Also, if the circumstantial evidence as to any particular count is susceptible of two reasonable interpretations, one of which points to the defendant's guilt, and the other to his innocence, you must adopt that interpretation which points to the defendant's innocence and reject that interpretation which points to his guilt. If, on the other hand, one interpretation of such evidence appears to you to be reasonable, and the other interpretation to be unreasonable, you must accept the reasonable interpretation and reject the unreasonable.

If you find that before this trial, the defendant made a willfully false or deliberately misleading statement concerning the crimes for which he is now being tried, you may consider such statement as a circumstance tending to prove consciousness of guilt. However, such conduct is not sufficient by itself to prove guilt and its weight and significance, if any, are matters for your determination.

Certain evidence was limited excuse me, certain evidence was admitted for a limited purpose. At the time this evidence was admitted, you were admonished that it could not be considered by you for any other purpose other than the limited purpose for which it was admitted. Do not consider such limited evidence for any purpose, except a limited purpose for which it was admitted. Neither side is required to call as witnesses, all persons who may have been present at any of the events disclosed by the evidence, or who may appear to have some knowledge of these events, or to produce all objects or documents mentioned or suggested by the evidence.



Testimony given by a witness at a prior proceeding, who was unavailable at this trial, has been read to you from the reporters transcript of that proceeding. You must consider such testimony as if it had been given before you in this trial. With the exception of Nurse Thano Peratis, evidence that on some former occasion, a witness made a statement or statements that were inconsistent or consistent with his or her testimony in this trial, may be considered by you, not only for the purpose of testing the credibility of the witness, but also as evidence of the truth of the facts, as stated by the witness on such former occasion. Evidence of the Thano Peratis videotape statement, which is People's exhibit 615, which may include statements that were consistent or inconsistent with his former testimony, presented by reading the transcript of his former testimony, given before both excuse me, given at the preliminary hearing, may be considered by you solely for the purpose of testing the credibility of Mr. Peratis's former testimony. If you disbelieve a witness testimony that he or she no longer remember a certain event, such testimony is inconsistent with a prior statement or statements by him or her, describing that event.

Every person who testifies under oath is a witness. You are the sole judges of the believability of a witness and the weight to be given the testimony of each witness. In determining the believability of a witness, you may consider anything that has a tendency and reason to prove or disprove the truthfulness of the testimony of the witness including, but not limited to any of the following the extent of the opportunity or the ability of the witness to see or hear or otherwise become aware of any matter about which the witness has testified, the effects, if any, from the use of consumption of alcohol, drugs or other intoxicants by the witness at the time of the events about which the witness has testified, or at the time of his or her testimony, the ability of the witness to remember or to communicate any matter about which the witness has testified, the character and quality of that testimony, the demeanor and manner of the witness while testifying, the existence or nonexistence of a biased interest or other motive, evidence of the existence or non-existence of any fact testified to by the witness, the attitude of the witness toward this action or toward the giving of testimony, a statement previously made by the witness that is consistent or inconsistent with the testimony of the witness, the character of the witness for honesty or truthfulness or their opposites, an admission by the witness of untruthfulness.

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

A witness who is willfully false in one material part of his or her testimony, is to be distrusted in others. You may reject the whole testimony of a witness who has willfully testified falsely as to a material point unless, from all the evidence, you believe the probability of truth favors his or her testimony and other particulars.

You are not bound to decide an issue of fact in accordance with testimony of a number of witnesses which does not convince you, as against the testimony of a lesser number or other evidence which appeals to your mind with more convincing force. You may not disregard the testimony of the greater number of witnesses merely from caprice, whim,

prejudice or from a desire to favor one side as against the other. You must not decide an issue by the simple process of counting the number of witnesses who have testified on the opposing sides. The final test is not in the relative number of witnesses, but in the convincing force of the evidence.

You should give the testimony of a single witness whatever weight you think it deserves. However, testimony by one witness which you believe concerning any fact is sufficient for the proof of that fact. You should carefully review all evidence upon which the proof of such fact depends. A person is qualified to testify as an expert if he or she has special knowledge, skill, experience, training or education sufficient to qualify him or her, as an expert on the subject to which his or her testimony pertains. A duly qualified expert may give an opinion on questions and controversy at a trial. To assist you in deciding such questions, you may consider the opinion with the reasons given for it, if any, by the expert who gives the opinion. You may also consider the qualifications and the credibility of the expert. You are not bound to accept an expert opinion as conclusive but should give to it the weight to which you find it to be entitled.

You may disregard any such opinion if you find it to be unreasonable.

In examining an expert witness, counsel may propound to him or her a type of question known in the law as a hypothetical question. By such a question, the witness is asked to assume to be true a set of facts and to give an opinion based upon that assumption. In permitting such a question, the Court does not rule and does not necessarily find that all the assumed facts have been proved. The Court only determines that those assumed facts are within the probable or possible range of the evidence. It is for you, the jury, to find from all the evidence whether or not the facts assumed in a hypothetical question have been proved. If you should find that any assumption in such question has not been proved, you are to determine the effect of that failure on the proof. Excuse me. You are to determine the effect of that failure of proof on the value and weight of the expert opinion based on the assumed facts.

In resolving any conflict that may exist in the testimony of expert witnesses, you should weigh the opinion of one expert against that of another. In doing this, you should consider the relative qualifications and credibility of the expert witnesses as well as the reasons for each opinion and the facts and other matters upon which it was based. In determining the weight to be given the opinion expressed by any witness who did not testify as an expert witness, you should consider his or her credibility, the extent of his or her opportunity to perceive the matters upon which his or her opinion is based and the reasons, if any, given for it. You are not required to accept such opinion but should give to it the weight, if any, to which you find it to be entitled.

The Court has admitted physical evidence, such as blood, hair and fiber evidence, and experts' opinions concerning the analysis of such physical evidence. You are the sole judges of whether any such evidence has a tendency and reason to prove any fact at issue in this case. You should carefully review and consider all the circumstances surrounding each item of evidence, including, but not limited to, its discovery, collection, storage and analysis. If you find any item of evidence does not have a tendency and reason to prove any element of the crime's charge or the identity of perpetrator of such of the crime's charge, you must disregard such evidence.

You have heard testimony about frequency estimates calculated for matches between known reference blood samples and some of the bloodstain evidence items in this case.

The random match probability statistic used by DNA experts is not the equivalent of a statistic that tells you the likelihood of whether a defendant committed a crime. The random match probability statistic is the likelihood that a random person in the population would match the characteristics that were found in the crime scene evidence and in the reference sample. These frequency estimates are being presented for the limited purpose of assisting you in determining what significance to attach to those bloodstain testing results. Frequency estimates and laboratory errors are different phenomena. Both should be considered in determining what significance to attach to bloodstain testing results.

Evidence has been introduced for the purpose of showing that the defendant committed crimes other than that for which he is on trial. Such evidence, if believed, was not received and may not be considered by you to prove that the defendant is a person of bad character or that he has a disposition to commit crimes. Such evidence was received and may be considered [sic] by you only for the limited purpose of determining if it tends to show a characteristic method, plan or scheme in the commission of criminal acts similar to the method, plan or scheme used in the commission of the offense in this case, which would further tend to show the existence of the intent, which is a necessary element of the crime charge. The identity of the person who committed the crime, if any, of which the defendant is accused, or a clear connection between the other offense and the one of which the defendant is accused, so that it may be inferred that, if the defendant committed the other offenses, the defendant also committed the crimes charged in this case. The existence of the intent, which is necessary which is a necessary element of the crime charged the identity of the person who committed the crime, if any, of which the defendant is accused, a motive for the commission of the crime charged.

For the limited purpose for which you may consider such evidence, you must weigh it in the same manner as you do all the evidence all the other evidence in this case. You are not permitted to consider such evidence for any other purpose. Within the meaning of the preceding instructions, such other crime or crimes purportedly committed by a defendant must be proved by a preponderance of the evidence. You must not consider such evidence for any purpose unless you are satisfied that the defendant committed such other crimes or crimes [sic]. The prosecution has the burden of proving these facts by a preponderance of the evidence. Within this limited context, preponderance of the evidence means evidence that has more convincing force and the greater probability of truth than that opposed to it. If the evidence is so evenly balanced that you are unable to find that the evidence on either side of an issue preponderates, your finding on that issue must be against the party who has the burden of proving it. You should consider all the evidence bear upon bearing upon every issue, regardless of who produced it.

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

A defendant in a criminal trial has a constitutional right not be compelled to testify. You must not draw any inference from the fact that a defendant does not testify. Further, you must neither discuss this matter, nor permit it to enter into your deliberations in any way. In deciding whether or not testify, the defendant may choose to rely upon the state

of the evidence and upon the failure, if any, of the prosecution to prove beyond a reasonable doubt every essential element of the crime charged against him. No lack of testimony on the defendant's part will make up for a failure of proof by the prosecution, so as to support a finding against him on any such essential element.

An admission is a statement made by the defendant, other than at his trial, which does not by itself acknowledge his guilt of the crimes for which such defendant is on trial, but which statement tends to prove his guilt when considered with the rest of the evidence. You are the exclusive judges as to whether the defendant made an admission, and if so, whether such statement is true in whole or in part. If you should find that the defendant did not make the statement, you must reject it. If you find that it is true in whole and in part, you may consider the part which you find to be true. Evidence of an oral admission of the defendant should be viewed with caution.

No person may be convicted of a criminal offense unless there is some proof of each element of the crime independent of any admission made by him outside of this trial. The identity of the person who is alleged to have committed a crime is not an element of the crime, nor is the degree of the crime. Such identity or degree of the crime may be established by an admission.

Witness Ron Shipp testified to a statement alleged to have been made by the defendant concerning dreams. You must first determine whether such statement was made by the defendant. If you find the statement was not made by the defendant, you shall disregard the statement. If you find that the statement referred to subconscious thoughts while asleep, you are to disregard the statement. If you find that the statement referred to an expression of a desire or expectation, you may give to such statement the weight to which you feel it is entitled. Evidence of oral statements by a defendant should be viewed with caution.

A defendant in a criminal action is presumed to be innocent until the contrary is proved, and in case of a reasonable doubt whether his guilt is satisfactorily shown, he is entitled to a verdict of not guilty. This presumption places upon the prosecution the burden of proving him guilty beyond a reasonable doubt.

Reasonable doubt is defined as follows. It is not a mere possible doubt, because everything relating to human affairs is open to some possible or imaginary doubt. It is that state of the case which, after the entire comparison and consideration of all the evidence, leaves the minds of the jurors in that condition that they cannot say they feel an abiding conviction of the truth of the charge.

The prosecution has the burden of proving beyond a reasonable doubt each element of the crimes charged in the information and that the defendant was the perpetrator of any such charged crimes. The defendant is not required to prove himself innocent or to prove that any other person committed the crimes charged.

In the crimes charged in counts one and two, there must exist a union or joint operation of act or conduct and a certain specific intent or mental state in the mind of the perpetrator. Unless such specific intent and/or mental state exists, the crime to which they relate is not committed. The crime of murder in the second degree requires to specific intent to kill, known as express malice. The crime of murder in the first degree requires the specific intent to kill, known as express malice, and the mental state of

premeditation and deliberation. These terms are more fully defined later in these instructions.

The specific intent or mental state with which an act is done, may be shown by the circumstances surrounding the commission of the act. However, you may not find the defendant guilty of the crimes charged in courts one and two or the crime of second degree murder, which is a lesser crime, unless the proved circumstances are not only, one, consistent with the theory that the defendant had the required specific intent or mental state, but, two, cannot be reconciled with any other rational conclusion. Also, if the evidence as to any such specific intent or mental state is susceptible of two reasonable interpretations, one of which points to the existence of the specific intent or mental state, and the other to the absence of the specific intent or mental state, you must adopt that interpretation which points to the absence of the specific intent or mental state. If, on the other hand, one interpretation of the evidence as to such significant intent or mental state appears to you to be reasonable, and the other interpretation to be unreasonable, you must accept the reasonable interpretation and reject the unreasonable. Evidence has been received for the purpose of showing that the defendant was not present at the time and place of the commission of the alleged crime for which he is here on trial. If, after a consideration of all the evidence, you have a reasonable doubt that the defendant was present at the time the crime was committed, you must find him not guilty.

The defendant is accused in courts one and two of having committed the crime of murder, a violation of Penal Code Section 187. Every person who unlawfully kills a human being with malice aforethought is guilty of the crime of murder, in violation of Section 187 of the California Penal Code. In order to prove such crime, each of the following elements must be proved one, a human being was killed, two, the killing was unlawful, and, three, the killing was done with malice aforethought.

Express malice is defined as when there is manifested an intention unlawfully to kill a human being. The mental state excuse me when it is shown that a killing resulted from the intentional doing of an act with express malice, no other mental state need be shown to establish the mental state of malice aforethought. The mental state constituting malice aforethought does not necessarily require any ill will or hatred of the person killed. The word, "aforethought" does not imply deliberation of the lapse of considerable time. It only means that the required mental state must precede rather than follow the act.

All killing which is perpetrated by any kind of willful, deliberate and premeditated killing, with express malice aforethought is murder of the first degree. The word "willful", as used in this instruction, means intentional. The word, "deliberate" means formed, or arrived at, or determined upon as a result of careful thought and weighing of the considerations for and against the proposed course of action. The word, "premeditated" means considered beforehand. If you find that the killing was preceded and accompanied by a clear, deliberate intent on the part of the defendant to kill, which was the result of deliberation and premeditation, so that it must have been formed upon pre-existing reflection and not under a sudden heat of passion or other condition precluding the idea of deliberation, it is murder of the first degree.

The law does not undertake to measure in units of time the length of the period during which the thought must be pondered before it can ripen into an intent to kill which is truly deliberate and premeditated. The time will vary with different individuals and

under varying circumstances. The true test is not the duration of time, but rather the extent of the reflection. A cold, calculated judgment and decision may be arrived at in a short period of time. But a mere unconsidered and rash impulse, even though it includes an intent to kill, is not such deliberation and premeditation as will fix an unlawful killing as murder of the first degree. To constitute a deliberate and premeditated killing, the slayer must weigh and consider the question of killing and the reasons for and against such a choice and, having in mind the consequences, he decides to and does kill. Murder of the second degree is the unlawful killing of a human being with malice aforethought, where there is manifested an intention unlawfully to kill a human being, but the evidence is insufficient to establish deliberation and premeditation. Murder is classified into two degrees and if you should find the defendant guilty of murder, you must determine and state in your verdict, whether you first the murder to be of the first or second degree.

If you are convinced beyond a reasonable doubt that the crime of murder has been committed by the defendant, but you have a reasonable doubt whether such a murder was murder of the first or of the second degree, you must give the defendant the benefit of the doubt and return a verdict fixing the murder as the second degree. Before you may return a verdict in this case, you must also agree unanimously, not only as to whether the defendant is guilty or not guilty, but also, if you should find him guilty of an unlawful killing, you must agree unanimously as to whether he is guilty of murder of the first degree or murder of the second degree.

If you find the defendant in this case guilty of murder in the first degree, you must then determine the following special circumstance whether the following special circumstance is true or not true. The defendant has, in this case, been convicted of at least one crime of murder in the first degree and one or more crimes of murder in the first or second Degree. The prosecution has the burden of proving the truth of a special circumstance. If you have a reasonable doubt as to whether a special circumstance is true, you must find it to be not true. In order to find a special circumstance alleged in this case to be true or untrue, you must agree unanimously. You will state in your finding excuse me you will state your special finding as to whether this special circumstance is or is not true on the form that will be supplied to you.

To find the special circumstance referred to in these instructions as multiple murders convictions is true, it must be proved that the defendant has, in this case, been convicted of at least one crime of murder in the first degree and one or more crimes of murder in the first or second degree. You are not permitted to find a special circumstance alleged in this case to be true, based upon circumstantial evidence unless the proved circumstance is not only, one, consistent with the theory that a special circumstance is true, but, two, cannot be reconciled with any other rational conclusion. Further, each fact which is essential to complete a set of circumstances necessary to establish the truth of a special circumstance must be proved beyond a reasonable doubt.

In other words, before an inference essential to establish a special circumstance may be found to have been proved beyond a reasonable doubt, each fact or circumstance upon which such inference necessarily rests must be proved beyond a reasonable doubt. Also, if the circumstantial evidence is susceptible of two reasonable interpretations, one of which points to the truth of a special circumstance and the other to its untruth, you must adopt that interpretation which points to its untruth and reject the interpretation which

points to its truth. If, on the other hand, one interpretation of such evidence appears to you to be reasonable and the other interpretation to be unreasonable, you must accept the reasonable interpretation and reject the unreasonable. Each count charges a distinct crime. You must decide each count separately. The defendant may be found guilty or not guilty of either or both of the crimes charged. Your finding as to each count must be stated in a separate verdict form. If you are not satisfied beyond a reasonable doubt that the defendant is guilty of the crime charged, you may nevertheless convict him of any lesser crime if you are convinced beyond a reasonable doubt that the defendant is guilty of such lesser crime.

The crime of Second Degree Murder is a lesser to that of First Degree Murder. Thus, you are to determine whether the defendant is guilty or not guilty of First Degree Murder, as charged in Counts One and Two, or of any lesser crime. In doing so, you have discretion to choose the order in which you evaluate each crime and consider the evidence pertaining to it. You may find it productive to consider and reach tentative conclusion on all charges and lesser crimes, before reaching any final verdicts. However, the Court cannot accept a guilty verdict on a lesser crime unless you have unanimously found the defendant not guilty of the greater crime.

It is alleged in Counts One and Two that in the commission of the crime charged, the defendant personally used a deadly or dangerous weapon. If you find such defendant of the crime thus charged or a lesser included crime, you must determine whether or not such defendant personally used a deadly or dangerous weapon in the commission of such crime. A deadly or dangerous weapon means any weapon, instrument or object that is capable of being used to inflict great bodily injury or death. The term, "used a deadly or dangerous weapon", as used in this instruction, means to display such weapon in an intentionally menacing manner or intentionally to strike or hit a human being with it.

The prosecution has the burden of proving the truth of this allegation. If you have a reasonable doubt whether if you have a reasonable doubt that it is true, you must find it to be not true. You will include a special finding of that question in your verdict using a form that will be supplied to you for that purpose.

The purpose of the Court's instructions is to provide you with the applicable law so that you may arrive at a just and lawful verdict. Whether some instructions apply will depend upon what you find to be the facts. Disregard any instruction which applies to facts determined by you not to exist. Do not conclude that because an instruction has been given that the Court is expressing any opinion as to the facts of this case.

All right, ladies and gentlemen, this concludes the instructions that I am going to give to you prior to the arguments of the attorneys. As I indicated to you, we will stand in recess until Tuesday morning, September the 26th, to begin at nine o'clock with the arguments of the attorneys. It's an interesting date, because if you'll recollect, those of you who came to us in the first batch of jury selection, we actually started jury selection on September 26, 1994, and I see some people recollect that date.

All right, at this point, you must remember all my admonitions to you. Do not discuss this case amongst yourselves. Do not form any opinions about the case. Do not conduct any deliberations until the matter has been submitted to you. Do not allow anybody to communicate with you with regard to this case. All right, as far as the jury is concerned, we will stand in recess - I'm sorry.

All right. Ladies and gentlemen, the attorneys brought to my attention that I misread two of these instructions to you, so I'm going to reread them to you in their correct form. And they'll be brief.

You must decide all questions of fact in this case from the evidence received in this trial and not from any other source. You must not make any independent investigation of the facts or the law or consider or discuss facts as to which there is no evidence. This means, for example, that you must not on your own visit the scene, conduct experiments or consult reference works or persons for additional information. You must not discuss this case with any other person except a fellow juror, and you must not discuss the case with a fellow juror until the case is submitted to you for your decision, and only when all 12 jurors are present in the jury room.

One additional that I misread to you - with the exception of Nurse Thano Peratis, evidence that, on some former occasion, a witness made a statement or statements that were inconsistent or consistent with his or her testimony in this trial may be considered by you not only for the purpose of testing the credibility of the witness, but also as evidence of the truth of the facts as stated by the witness on such former occasion. Evidence of the Thano Peratis videotaped statement, People's exhibit 615, which may include statements that were consistent or inconsistent with his former testimony presented by the reading of the transcript of his former testimony given before the both the grand jury and at the preliminary hearing may be considered by you solely for the purpose of testifying- Excuse me. Solely for the purpose of testing the credibility of Mr. Peratis' former testimony. If you disbelieve a witness's testimony that he or she no longer remembers a certain event, such testimony is inconsistent with a prior statement or statements by him or her describing that event.

All right. Ladies and gentlemen, that concludes the reading of the preliminary instructions to you. After the attorneys finish their arguments, I do have some concluding instructions to you that are very brief. Remember my admonitions to you. [coughs] Excuse me. Please have a pleasant weekend, and we'll see you back here on Tuesday morning 9:00. All right. We'll stand in recess.

Retrieved from: The 'Lectric Law Library- The Net's Finest Legal Resource For Legal Pros & Laypeople Alike, <http://www.lectlaw.com/files/cas62.htm>

Integration of the last instructions retrieved from: Transcript from CNN's live coverage of the trial, <http://edition.cnn.com/US/OJ/daily/9-23/instructions.html>



## Appendix F

### Sample of Jury Questions

14. Where were you born?
39. While in school, what was your favorite subject?
40. What was your least favorite subject?
49. Spouse-partner's place of birth?
142. Have you ever had any personal interaction with a celebrity (such as writing a celebrity a letter, receiving a letter or photograph from a celebrity, or getting an autograph from a celebrity)? Yes? No? If yes, please explain:
145. Please name the person for whom you are a great fan and describe why you are a fan of that person?
161. Do you have any affiliation with professional sports?
162. Have you ever experienced domestic violence in your home, either growing up or as an adult? Please describe the circumstances and the impact it has had upon you.
172. Do you think using physical force on a fellow family member is sometimes justified?
184. How do you feel about interracial marriage?
186. Have you ever dated a person of a different race? Yes? No? If yes, how did you feel about it?
191. When you were growing up, what was the racial and ethnic make-up of your neighborhood?
193. Before the Simpson case, did you read any book, articles or magazines concerning DNA analysis?
201. Do you have a religious affiliation or preference? Yes? No? If yes, please describe. How important would you say religion is in your life? Would anything about your religious beliefs make it difficult for you to sit in judgment of another person? Yes? No? Possibly? How often do you attend religious services?
202. What is your political affiliation? (Please circle)  
1. Democrat 2. Republican 3. Independent 4. Other (please specify)
203. Are you currently registered to vote? Yes? No?
204. Did you vote in the June, 1994 primary elections? Yes? No?
205. Do you consider yourself politically: Active? Moderately active? Inactive?
211. Have you ever provided a urine sample to be analyzed for any purpose? Yes? No? If yes, did you feel comfortable with the accuracy of the results? Yes? No?
212. Do you believe it is immoral or wrong to do an amniocentesis to determine whether a fetus had a genetic defect? Yes? No? Don't have an opinion?
213. Have you or anyone close to you undergone amniocentesis?
215. Did you take science or math courses in college?
222. Do you have (please check) Security bars? Alarms? Guard dog? Weapons for self-protection?
230. Have you ever seen a crime being committed (other than where you were the victim)? If yes, how many times and what kind of crime(s)?
244. What type of books do you prefer? (Example: Non-fiction? Historical? Romance? Espionage? Mystery?)

248. Have you ever written a letter to the editor of a newspaper or magazine? Yes? No?  
If yes, what was the subject matter of your comment:
249. Do you watch any of the early evening “tabloid news” programs? Such as “Hard Copy,” “Current Affair,” “American Journal,” etc.
251. Which television news shows do you enjoy watching on a regular basis?
252. What are your leisure time interests, hobbies and activities?
254. What accomplishments in your life are you most proud of?
255. What groups or organizations do you belong to now or have you belonged to for a significant period of time in the past? (For example, bowling leagues, church groups, AA, Sierra Club, MECLA, National Rifle Association, ACLU, YWCA, PTA, NAACP, etc.)
257. Are there any charities or organizations to which you make donations? Yes? No?  
If yes, please list the organizations or charities to which you contribute:
265. Are you a fan of the USC Trojans football team?
270. How many hours per week do you watch sporting activities?
271. Name the last three sporting events you attended.
273. What are your favorite sports? Why?
274. Name the most significant sport figure, sport program, or sporting event scandals you recall.
275. Does playing sports build an individual’s character? Yes? No? Please explain your answer whether you answer yes or no:
276. Do you seek out positions of leadership? (Please check answer)  
Always? Often? Seldom? Never?
277. Please name the three public figures you admire most.
281. Do you own any special knives (other than for cooking), such as hunting or penknives?
285. Would you like to be a juror in this case?

Retrieved taken from: *The Simpson Trial Transcripts*,  
<http://simpson.walraven.org/ojstats.html>, a site maintained by Jack Walraven.

## Appendix G

### Juan Martinez's Closing Argument

Before the starting of Mr. Martinez's closing argument there Judge Sherry K. Stephens reads the Jury Instructions. (see Appendix H)

- 1 **Mr. Martinez:** This individual, um, the Defendant Jodi Ann Arias, killed Travis Alexander. And even after stabbing him over and over again, and even after slashing his throat from ear to ear and then even after taking a gun and shooting him in the face, she will not let him rest in peace. But now, instead of a gun, instead of a knife she uses lies. And she uses these lies in court when she testified to stage the scene for you. Just like she staged the scene for the police, after she killed Mr. Alexander. And this woman, who would stage the scene, has even attempted to stage the scene through the use of the media. She has courted the media, she has gone on national television. You've seen the programs and you've seen some of the
- 10 her words to the media. She has also attempted, or gone out in search of the limelight. She has signed a manifesto, just in case she becomes famous. And to top it all off, she has indicated that she is innocent. That no jury will convict her. That none of you, will convict her, after she has staged the scene for you. Well, she is an individual, as you have seen, who has craved the limelight. So, it seems that it is only fitting, that this individual that has craved the limelight, it is really only fitting that she now bask in a different kind of light: the light of truth. And in the light of truth, you can see who she really is. She's an individual, who is manipulative. This is an individual who wants to play the victim, even though there is no abuse as you heard from those that know her.
- 20 She's an individual that, according to her own statements in an email on Valentine's Day of 2007 to Mr. Alexander said that she was destructive. She's the individual that talked about what she did to doors, what she did to windows. And she's an individual that does not appear to be very nice to her mother. Because she lashes out at her and strikes her physically. Additionally, when the light of truth is shining on her, she is somebody who – it's just an individual that manipulates people. That for example, when she's speaking to Mr. Alexander during that fateful May 10, 2008, conversation, that she talks about her sister and says how dumb and stupid her sister is. This is an individual who is manipulative. This is an individual who will stop at nothing and will continue to be manipulative and will lie at every turn and at every
- 30 occasion that she has. One of the examples is the issue of the gas cans. She indicated to you from the witness stand and looked at each and every one of you, after having taken the oath and said, "Yeah, I bought the gas can alright, and I bought it from the Salinas Wal-Mart. I did buy it from the Salinas Wal-Mart, but you know, [after being questioned by the prosecutor] I took it back, and I received cash."

Yet, you heard from Amanda Webb, the individual -- woman -- who works for Wal-Mart checked each and every single register, even those that were not geared to give

refunds, checked each and every single register. And each one of those registers indicated no -- there had been no such refund. Then of course you have the confirmatory action in Salt Lake City, after first

40 indicating that, "No, I've never been in Salt Lake City, I never put gas in Salt Lake City," but you saw the receipts that she had. And not only had she put gas into her car in Salt Lake City, she had two other transactions. One for 5.09 gallons of gas and then one for slightly under 10 gallons of gas. She looked at each and every one of you, this person, and attempted to manipulate you. Well, this individual, that attempted to manipulate you, believes, based on what we've heard, that even though she may have engaged in actions, she may have done certain things, none of it -- absolutely none of it -- is her fault. Why could it possibly be her fault? If you look back in her history, which is the important part of it involving her relationships with men, what do you see?

50 Well, even when she was young, she had this personality of manipulating the facts. Back when she was with Bobby Juarez, what did she tell you? "Well, this was an individual that was unfaithful to me." "How could he be so unfaithful to me after I've done so many good things for him?" "I tried to buy him clothing, I bought him food. I even lived in a trailer that was so bad it was infested." "Never mind that the reason that I moved there was because I was skipping school -- no, that wasn't my fault at all!" "No, no no, I was doing this for Bobby and how does he repay me even though it wasn't my fault?" Well, you know what -- he goes and he talks -- he sent letters to another woman over the Internet. And, it isn't her fault that she found out about it, of course not. How could it be her fault that she found out about it, if the

60 library doesn't have enough security attached to that particular computer? To have some sort of device attached to it so that somebody can't come along and hit that backspace button, so that whatever was using it before...maybe one or two or three or four people before that somebody could just come along and hit that backspace button. And it's eerily reminiscent of what she told you happened in February of 2007, when after she and Mr. Alexander began dating that she went on to his computer and began to hit that same backspace button. It's not her fault that computers have not been improved since the 90s or the two thousand. So that you can't stop hitting that backspace button. It's not her fault that that happened. Of course not. That's what she told you from the witness stand.

70 And so, according to her, she hits the backspace button and there is this conversation between Bobby Juarez and somebody else. But that's not her fault. But if you remember how aggressively she reacted to that. Nobody was going to do anything to hurt or nobody was going to be putting her or slighting her, or putting her in a position of feeling inferior if you will. She immediately went to Bobby Juarez and did something about it. There is a pattern because the same thing happened with regards to Matthew McCartney -- the person that she jumped to after

80 she and Bobby Juarez started to have problems. And I do say jump to because when she was dating Bobby Juarez, he moved away to Oregon. And when he moved to Oregon, he started living with a guy by the name of Matthew McCartney. When things soured with Bobby Juarez, she immediately went with Matthew McCartney. And in terms of that relationship, the reason that that broke up, it's not her fault. Just like it wasn't her fault in regards to Bobby Juarez. It wasn't her fault at all that she had these issues with Matthew McCartney. No, she can't help it if she is a good worker. She can't help it if she's working as a waitress and people come by when she's working as a waitress and try to tell her things about her boyfriend Matthew McCartney. She can't help that? That's what she wants you to believe. And again, isn't that reminiscent of what happened involving Mr. Alexander? It seems that this is reciprocal and it seems that the story repeats itself. It repeats itself, because she's lying. And it repeats itself because she's trying to manipulate you. Through all of

90 the days that she spent talking to you from the witness stand after she had taken an oath. Well, she gets to the point where she moves to Palm Desert in California, to be with an individual by the name of Darryl Brewer. And of course when she's there with Darryl Brewer, it's not her fault again, that the relationship is souring. No, not at all. It's not her fault because well, Mr. Brewer doesn't want to marry her. What's a girl to do? It's not her fault. She's got to look for another guy. And it appears that he doesn't want to have any kids and she does. So again, it's not her fault. How could it possibly be her fault that somebody has free will? It's absolutely not her fault. That's what she tried to tell you. But resourceful as ever, resourceful as ever. She's always been this person who is manipulative, she starts looking around

100 for somebody else. And decides that perhaps, those boys from the Mormon faith are a pretty good catch, because those boys, they have a lot of family values. And these boys think work, they seem to be very successful, they just seem to have everything that she desires in a husband, so that she can breathe. And so, what she decides to do is to look for one of those boys. And to Travis Alexander's misfortune, he was that boy. He was that boy, back in September in 2006, when he was at that PPL convention, yearly convention. Yes, he is the individual that went up to her, and they began to talk. And such is the way that things began between the two of them. She wanting to find a boy just like him, because she had an ulterior motive. She wanted somebody

110 that was Mormon, she wanted somebody that could give her a child, so this seemed like the perfect catch for her. And, although she tells you that, "Well, he kinda was the person that pushed her into this relationship, and that he was the individual that somehow was in her".. that in the lexicon of the English language there's a word it's called, "No," that you can use when you don't want to do something, and yet, you can then take the witness stand; however, and say, "Well, I do know that word, but I just chose not to use it." But, it's not her fault that, again, it's not her fault, it's Mr. Alexander's fault for being interested in her, don't you see. Can't you all see, based on those days and days that she was on that witness stand that it isn't her fault? She was thinking though, or at least that's what she told you, this person, who told

- 120 you also about the gas cans, over and over again, she kept saying, with regard to each and every single repetitious sexual act, with regard to each and every one of them -- those—"No. I was thinking no." Really? That's exactly what you were thinking? Did you ever communicate that to him? No. This, from a woman who is manipulative. This from a woman who pretends to be the victim, even though there is no abuse. And so, throughout this early part of the relationship, which some might call the honeymoon portion, during this part, it appears that they do what two people that are young and involved in a relationship do -- they engaged in relations. But there's this finger-pointing aspect to this relationship. As portrayed by the Defendant. Can't point the finger enough at Mr. Alexander.
- 130 Can't point the finger enough at the fact that you know -- he's a bad Mormon, because he's having sex with her. If he's such a bad Mormon, why stay with him? You're the one that chose him, if he's such a bad guy, why are you hanging out with him? And to compound things, well, she's also Mormon too. Why does she keep pointing the finger at him, when she is just as Mormon as he is? She converted in November of 2006. And according to Deanna Reid, there are many classes that tell you about the law of chastity, and they tell you about the law involving sexual intercourse. But wait...it's not her fault. How could you possibly think it was her fault, when those three or two Mormon missionaries came over and didn't tell her about it. Again, it's not her fault.
- 140 Although there are all these classes where they talk about it. No, let's point the finger at Travis Alexander because according to her, he's the bad guy, he's the one who told her that it was okay, and so she's going to go along with what he says, even though, those in the Mormon church are telling her otherwise. It is almost unconscionable for her to point the finger at Mr. Alexander when she's in the same situation as he is. She has the same knowledge that he does, but again, she wants you to feel sympathy, because again, it's not her fault. But you know, how could it possibly be her fault when she was thinking no. Well, luckily for Mr. Alexander, I guess, in the beginning, this relationship was from a distance. And I say luckily, because at least when she was in Palm Desert and he was in Mesa,
- 150 Arizona, during that time, at least during that time, she couldn't reach out and stab him. She couldn't reach out and shoot him in the face. She couldn't stalk him. Couldn't come over unannounced, she wasn't living ten minutes away. At least fortunately, during that time Mr. Alexander had some extra time to live. And during that time, they were not mutually exclusive. So yes, it is appropriate, when they are not mutually exclusive for an individual to send text messages to other women if they are male or even if they are not. There's nothing wrong with that. But if you see that long finger pointing from the witness stand to him, "How could he possibly, when we were together, how could he possibly, before we became exclusive, be talking to other women. How could he be on the Internet, how could he be sending
- 160 text messages." But it's okay, don't you see, when she goes to his memorial service (talking about Travis Alexander's memorial service) after she killed him, it's okay for her to talk to somebody on the airplane, to get a telephone number. It's not her

fault, that this guy was trying to pick her up. Of course it's not her fault. And what's a girl to do after all? The guy that she was involved with up and died after she stabbed him, slit his throat and shot him. What is she to do? Can't you see that it really isn't her fault? At least that's what she wants you to believe. And during this period, Mr. Alexander did see her, and during this period, Mr. Alexander did engage in sexual contact with her. There's nothing, absolutely nothing important about that as it applies to the killing. Other than trying to manipulate you, trying to shock you

170 in saying, "Oh my gosh look at this guy, he wants to kiss her and he wants to do other sexual things that other people do in their private lives." He doesn't want to talk about it for God's sake, and he doesn't want other people to know what it is that they are doing. Why would he want anybody to know what he is doing sexually with women? Is that something that is courteous in this society to do? It's just the opposite. But she has now turned the world sideways for you to look at that in an attempt to manipulate you. Well, they continue on with this relationship, and she lives out in Palm Desert. At some point, in February of 2007, after this issue involving the February 14, mailing that she indicates she receives, uh, after that they make, the relationship if you will, exclusive.

180 What's interesting about the email from February 14, 2007, and you saw that, is not only does it talk about her violent tendencies, it does talk at length about that, but it also talks about other things, and you have it there for your review, this February 14, 2007, email. And one of the things that it doesn't talk about is the package that she supposedly received in the mail that day. Take a look at the time...it's around 4:30, 5:00 in the afternoon. I guess they have mail that's really slow there in Palm Desert. Never mentioned the unholy underwear, these underwear, these spider man underwear, that so shocked her. Doesn't mention these chocolates, "Thank you for sending those to me." Doesn't thank him at all. The reason she doesn't thank him, and the reason that she doesn't mention it, 'cause there was no such delivery.

190 But of course, that's something that can't be verified, except that there's this inconsistency. And it starts showing that this individual will make things up, but she forgot, she forgot about that February 14, 2007, email. And you know, short of the old saying with the truth you ain't got to remember nothing, at least you have to give her credit for having an incredible memory. Well, an incredible memory as to the fantasy world that she wants to create for you. Just like that delivery of the underwear. Can't show them to us, well, I hope she threw them away, but she took pictures of some other things, and this email was sent out at a time where she would have already received the mail. But after that, she and Mr. Alexander continue on. And they, she comes over later on in the month of February.

200 And when she comes over in February, one of the things that happens, is that she's extremely happy, or at least that's what she tells you. That she's happy, because one of the things that she now knows is that -- well, she and Mr. Alexander are together. If she is so happy, if she is somebody that really wants to be accepted, then why prey tell, does she need to go into his computer and hit that backspace button. That's such an oh.. such an irritation to her, that these computers should have this

back space button. It's not her fault that she can't keep her hands off of his computer, it's really his fault because he's alive, he's a breathing human being who has social contact with other people: men and women. And how dare he, when they are not exclusive, how dare he attempt to spend New Year's Eve with someone.

- 210 He should really be alone in his house, or in some hut somewhere, alone. How dare he do that, but it's not her fault that she found out. At least that's what she wants you to believe. Well, they continue this dating, and they continue both involved in this Pre-Paid Legal. But the story doesn't get any better. What we're able to glean or find out from the history of that is that it doesn't get any better. And, ah, one of the things that starts to happen according to her is that she starts feeling something. Of course her feelings are so important. And rather than talk to Mister Alexander about it, rather than say "Oh I have these issues, I'm a little concerned." What does she do? Well they're on vacation. And when they're on vacation and it depends on the story that she tells, the one to Brian Burns or the story that she told to you from the
- 220 witness stand. Take your pick. Because there are many to pick from. But it depends on the story that you believe. During that time she goes on and she gets a hold of his text messages and goes through all of them ostensibly while he's either asleep or taking a shower. Take your pick. And while he's doing that, she goes through it and finds some text messages. But it's not her fault. She's not wrong in invading his privacy at all. How could she possibly be wrong about invading his privacy when she had feelings? And those feelings confirm the fact that he was a social human being. That's what in part that she liked about him, that he was very charismatic, that he was very nice, and that people liked him. That's part of the reason why she liked him but, oh no, not when it comes to other people. And she talked about him
- 230 having sexual rendezvous with these other people. But that's quick, if you will, on the sly and very slow on the facts, very low on the facts. You don't have any individual that they could even point to a name.

**Kirk Nurmi:** Objection, Your Honor. Burden-shifting.

**Judge Sherry K. Stephens:** Overruled.

**Martinez:** There was no name that was even pointed out that [he] even had any sexual contact with at that time. But she felt it, so according to her, that justified it. This person with this borderline personality disorder. And so as a result of that, she says "That's it. We're gonna break up. And we're done with this. Except that I'm so hurt, I'm so absolutely hurt." she said. You can almost feel it oozing through those

- 240 fake tears that were supposedly coming from her from the witness stand. You could almost feel this. And what you could feel of course was "Yeah, yeah, yeah I'm really hurt except, let's go on vacation. Let's go ahead and go on vacation anyway. Even though I know all about this. I'm so hurt that I would rather go on vacation with you and enjoy it. And let's continue going on vacation. Yeah, that's her way of manipulating him, that's a way of not letting go of something that she wants. She



wants to curb his free-will and when he doesn't want to do that, well, she's got something else coming for him. She is not going to let him get away that easily. And so she starts engaging in this conduct. So what else does she do? She does what every person who has caught their boyfriend, according to her, being unfaithful.

250 What does she do? She moves close to him. Moves from California to Arizona, specifically to Mesa, very close to him after they have broken up in the end of June 2007. That's what she does. Well, now this is when the stalking begins. Well, maybe it was a little bit before that when she's going into his telephone. Or maybe it was before that on the first day that they decided to make this official when she started to go into his computer. It is clear from the relationship that there was a Stalking behavior from the very beginning. And so, she moves here to Mesa. If they are not dating, if they have broken up, why is she here? It's not her fault, don't you know? It's not her fault because he's so persuasive. He talked her into coming out here. That's why she came out to Mesa. And it's again it's this thing that she can't

260 say "No". Just like whether or not they're going to engage in this sexual conduct. Can't say "No". And in this particular case, according to her, and Mister Alexander's not here to maybe dispute this, according to her she moved here because he was the one that told her to do that. Even though, according to her, at this point she had broken up with him. And what does she do when she comes out here? Well, rather than dating, rather than becoming involved in some sort of social scene in the Mormon Church or finding friends and that sort of thing. Nope. She does something else. She begins to be more attentive - that's the word - she begins to be more attentive to Mister Alexander. Perhaps if she's more attentive to Mister Alexander, perhaps then he'll want to come back and have her be the only one. And

270 the way that she's attentive is the way that everyone does it normally. I mean, she goes over to his house unannounced at night, sometime around in August of 2007, and this is what everybody does. And she goes over there and starts peeping in a window, to see what it is that he is doing. And she goes over there and by the light of the television, if you remember there was this go around by the light. Well, it may have been the light of a television but now it's the light of truth that we are looking at things and what she was doing is she was invading his privacy by coming over and peeping in the window. And that is stalking behavior, irrespective of what Alyce LaViolette has to say. This individual, Alyce LaViolette, who had problems with the truth when she spoke to you about how many times she had testified on

280 behalf of men. This individual who, quite frankly, misrepresented that to you when she was testifying. But according to Alyce LaViolette that was no big deal. Because that's what a person does. She [Arias] came over, started to look inside and low and behold, it's not her fault that she has vision. So she starts looking in there and low and behold there he is. Yes, there he is, he's kissing another woman. Like that is the end of the world. So what? So what that he's kissing another woman? He's not seeing her, he's entitled to do it. And he's entitled to do it, he's in his house. He has no lights on. It's a romantic evening. Whether she likes it or not, he's moved on. And yes, she says, it's his fault. He shouldn't have been courting me. He shouldn't

have been continuing to have sex with me. She could've said "No". She could've

290 left. She could've moved back to California. She could've never come out here in the first place. She's the person who starts stalking him. And so, she says "Oh I was so upset." And she starts talking about the brassiere, whether it was unhooked or not and we went around and around about that. So what? Well don't you know? He's a Mormon boy - they're not allowed to do that. What does she care? Is she the Mormon Conscience? Is that what this, what we have going on here? No, she's not anything like that. But she wants to make it seem like it's his fault. She presented in a way to manipulate your perception, because she's trying to take away from him what lies the only thing he has left. And that's his reputation. He's not here to talk about it, and so it's an easy shot for her. But at this particular point, she's the person

300 that starts to stalk him. And after she starts stalking him or after this event of stalking, she doesn't leave it alone. No, she comes over the next day because she's in the right. They've broken up and it's okay if you're broken up to come over and peep at your ex-boyfriend's house and then in peeping finding something, and then wanting to get an explanation. What possible explanation could he ever have owed her at that point? Oh, and, you know she didn't write about that's the first incident of domestic violence, didn't write about that incidence of domestic violence. Don't you know? Because, well she's a nice person. And you know there's this Secret that she's watched, this movie involving The Secret that talks about the Law of Attraction. And this Law of Attraction says that you lie. That's exactly what they

310 want you to believe. Now they're starting to justify the lies. It's okay to lie in a journal, which in a sense is saying lie to yourself because the Law of Attraction says it's okay to lie. Absolutely okay to lie. You don't put down exactly what's going on and so you don't write about this. Actually what's going here is that she's making it up and there's no corroboration of any incident whatsoever. And so this "relationship", if you will, if you want to call it that, continues. And there are more, um, exploitive, sexual kinds of things that are presented. And that she, you are regaled with the most intimate details that you can possibly think of. And every time it was "Well, I was uncomfortable, but I didn't want to tell him no. It was just uncomfortable." Wait a minute. But she also sent him text messages. And those text

320 messages indicated that she was not uncomfortable. She's the one, and I don't need to repeat it, you remember those text messages – where she's the one that requesting the sexual acts. She's the one that's saying to him "If you're good, this is what's going to happen, and then I'm going to want something else." So she's the individual that, if you look at the corroborative, the independent evidence that we have, she's the individual that is in this as much as he is. There is no indication that he was ever forcing her to do anything, anything at all. But you know, she's attempting to manipulate you – by saying "Well, yeah, I went along but I really didn't want to." And with regard to these acts of physical violence, "Well, they weren't so bad and I didn't write about them." And with regard to any particular

330 physical act of violence, there's no one that knows about it. There's no one that's seen any bruises. There are no police calls to 911. And she has a reason for that. The reason that she didn't call 911 involving Mister Alexander is because she had a similar experience with Bobby Juarez. And when she had that similar experience with Bobby Juarez, well she called 911 and you know what, those 911 people in California, can't trust them because they talked to Bobby Juarez and as a result of talking to Bobby Juarez, well they didn't come out and so I was so soured by that circumstance that I just never decided to call 911. She's trying to provide a justification as to why there are no 911 calls. The reason why there are no 911 calls is because it never happened. Everything in this case points to the fact that it did not

340 happen. There are no medical reports, there are no friends, there is no one that can come in and say anything about that. There are no medical records, there's absolutely nothing to the contrary. What is it you have? Well, on the day in March of 2008 when she told Mister Alexander, according to her, that she was leaving, um, he turned around and he hit her. And according to Alyce LaViolette he slapped her but the Defendant went round and round and said no it was the back of the head, the side of the head, it depended apparently on a whim as to where he hit her. But, if you take a look at the entry for that particular day in March of 2008, "You know I told him, he was so upset. And, he didn't want me to leave because, you know, we were both so in love with each other" – what she writes. And then she says "Oh he

350 kissed me, so tenderly three times. They were such wonderful tender kisses." Is that what she means when she is talking to you about domestic violence? Kissing – see that's the problem – you didn't get it the first time. Kissing is domestic violence. Tender kissing is domestic violence. But then you bring an apologist like Alyce LaViolette and you say No, no, no, no, no, that's not what it means. You need to go behind this diary here. Those words don't mean what they say. You need, for example, a little cheat sheet that tells you that under the Law of Attraction, that's not what it means. Under the Law of Attraction it means just the opposite. It means that he did hit her. Can't you read that? Is it.. "What is wrong with you...?" almost is the way it's being put to you "...that you can't see that? That you can't buy, or

360 can't be manipulated. And the other thing that we have is that she claims that on January 22nd of 2008 there was also this act of domestic violence. And that is not what the act was at this point because there's no corroboration involving that act of domestic violence either. All we have is a journal entry of January 24th of 2008. And in that journal entry of January 24th of 2008 she writes "You know, as far as January 21st, 22nd, and 23rd, nothing noteworthy happened." Not only do we have the diary relating to that, it says "nothing happened". But again, you are being asked to take a leap. You are being asked, such, as in the gas can example, to think that everybody else is wrong, and she's right. And in that example, the one involving the 24th and the supposed incident of domestic violence on the 22nd, you are being

370 asked to say "Nope. Something noteworthy did happen on the 22nd of January. And the thing that was noteworthy on January 22nd of 2008 was that he beat me. And this is the time that I had my hand up. And this is the time he came after me." But it

doesn't say that. Not only is there no corroborative evidence that could be presented, it's to the contrary. She herself said that it didn't happen. But she wants you to go back and say "Well, don't look at what I wrote. Look at this clue, this Law of Attraction. Take a look at that, combine that with my words, combine it with what Alyce LaViolette says" - we'll add that in there - "and once you do that you will be able to see and you will be able to know that hey, you know what? He did, he did abuse me. And right before she leaves in April of 2008 she says that another

380 incident happened. And she doesn't tell anybody about it? And she still stays at his home, and off she goes. And what's interesting about these acts of domestic violence is that she was very specific as to four of them. But again, you know, the truth - it's very hard to keep it straight. With the truth, you ain't got to remember nothing - but if you're not telling the truth, if you're trying or attempting to manipulate, you do have a lot to remember. She forgot that there's a psychologist by the name of Cheryl Karp that has previously been involved in this case and had conducted an evaluation of the Defendant. And during that evaluation with the Defendant, she gave many - not four - many - ten, fifteen, twenty incidents of physical violence. Because at that point, physical violence was being used as the

390 predicate, if you will, the seminal act for Post Traumatic Stress Disorder. That's what she was looking at at that time. And so of course. Let's have a lot of acts of domestic violence.

**Mr. Nurmi:** Objection, Your Honor. The facts not in evidence.

**Judge Sherry K. Stephens:** Overruled. The jury is directed to recall the evidence presented during the trial. You may continue.

**Martinez:** And so you now have this, lots of acts of domestic violence that she doesn't tell you from the witness stand. Compared to before that she does tell you. Which one is true? The only evidence that you have indicates that none of it is true, because she can't keep it straight. And she's attempting to manipulate the evidence

400 to fit the goal that she has at that particular time. With regard to Cheryl Karp at that time, according to, ah, Janeen DeMarte, one of the things that was going on is that Cheryl Karp found that Post Traumatic Stress Disorder of the Defendant involved these acts of domestic violence, these many, many acts of domestic violence. Not just four. And so now when they want to talk about things in a different vain, or a little bit differently, it's not just all these acts, it's only four. And that's the problem with the presentation and her attempt to manipulate you. It's actually not even an attempt to manipulate you. They're lies. That's what they are. And she forgot, perhaps, about speaking to other people and the statements that she made with regard to that. Well, she does move away. And when she does move away, it's

410 almost as if we're talking about light, almost like a ray of sunshine for Mister Alexander. One can only imagine that his Stalker is now far away. Because she had done other things while she was here. One of the things that we know is that she

would come over unannounced. One of the other things that she would do is she would get into his accounts and there also this incident involving Christmas and being underneath the Christmas tree. There's all these incidents. Perhaps Mister Alexander can let his guard down at this particular point because he really doesn't have to deal with her on a daily basis. And yes, there is some contact between them on May 10th of 2008. And this is the infamous phone call that involved sex. And actually that telephone call is very important because you can actually hear how she

420 deals with him, even though he doesn't know, based on everything that's in the recording, that he's being recorded. She says "No, it was being recorded pursuant to his request, don't you know?" Really? Why was it being recorded at his request? He can't listen to it. So what possible benefit is this call going to be for him? If he's recording it, he's not going to get it. There's absolutely no benefit to him on May 10th of 2008 to have that telephone call recorded. Yes, he said some things on there. But this is supposed to be, from his perspective, a private conversation never to be released to anybody, between him and this woman, that even though she's moved to Yreka, even though they've broken up, even though she's come over and watched him with another woman. Even though all of this has happened, she stalked him.

430 Even though all of this had happened, well he's going to continue talking to her on the telephone. And he says, and he tells you the reason why. And the reason why is that he enjoys having sexual contact with her. And he gives you the reasons why, and he gives you some specific features that he didn't do before, but that he does now. He talks about how she introduced him to certain things. How that was such a good thing. How it opened his horizons to that particular aspect. And so he's giving her credit for opening his eyes sexually. And there's nothing wrong with that. And there's nothing wrong with the conversation. What is wrong, or what appears to be wrong is that one of them is recording it without the knowledge of the other.

**Mr. Nurmi:** Objection. Facts not in evidence.

440 **Judge Sherry K. Stephens:** Sustained.

**Martinez:** You've listened to that recording, you can draw your own conclusions as to whether or not you believe he knew or believed that this was something that was being recorded. She says "Oh no, I kept hitting the save button. I was the one that did it. And she kept it. And she kept it all the way from May 10th of 2008.

But things were not going so well at that point. And in fact by May 19th of 2008, just nine days after that, Mister Alexander is on the computer, this instant messaging service, with somebody named Reagan Housley. And he's talking to her and he says "I'm extremely afraid of Miss Arias, because of her stalking behavior." How prophetic of him? Back on May 19th, and this is nine days after this telephone call.

450 But he's extremely afraid of her because of this stalking behavior. Little does he know that he has less than a month to live. And so he is aware of it. He's in the best position to know what is going on between the two of them because he's the one that's going through it. And so when he makes that comment, that comment is

indicative of what is going on. You can have people like Alyce LaViolette say “It’s not true.” And the reason, and we have to give her credit, is that the reason Alyce LaViolette knows that is that she can read minds through the past. She can travel back to May 19th 2008 and know what Mister Alexander was thinking, don’t you know? She’s the apologist for the Defendant. She’s the one that can really set you straight. It’s not the Defendant that manipulating you, no, no, no. If you take a look

460 at that statement, Mister Alexander was making it all up. Wasn’t true. He was just saying it. Because you know and another part of the instant messaging, they were saying “ah ha.. hi Jodi read this”.. or words to, whatever it is they were saying. And so the Defendant doesn’t want you to pay any attention to that. But that certainly goes, and it’s the beginning of pre-meditation. Her pre-meditation to kill him. Back on May 19th of 2008. He indicates that “I’m extremely afraid the Defendant because of her stalking behavior.” And who would know better than him? Especially since he’s the one that’s had to deal with her coming over, peeping in his window. He’s the one that’s had to deal with her showing up unannounced. He’s the one that’s had problems, or damage to his car according to Lisa Andrews. And he’s the one that

470 has her underneath the Christmas tree. And has had a ring stolen by her. So he would know that. And so then, what ends up happening is that some time passes. And May 26th shows up. One of the important things about May 26th is that, that is the day they break up. And much is made by the Defense that well during much of these conversations he’s mean to her. Well why wouldn’t he be mean to her? Yes there are names that people are being called, that’s correct, there are not any nice names. But he is extremely afraid of her stalking behavior on May 26th when those names are called. And there is anger that is being exchanged back and forth and he sort of capsulizes it by saying, or using a term that’s not quite so sexual, but really capsulizes what’s going on here and how the Defendant attempts to manipulate the

480 truth, when he says “I am nothing more than a dildo with a heartbeat to you.” That’s what he tells her, because that’s how he feels. That’s how she makes him feel. And yes, he uses all of those other words but he is also very derogatory about himself. He knows what’s going on. Every time, according to that statement, whenever she wants him, the way that she manipulates him is through sex. He does make that comment. And that comment was made on the 26th of May in that Instant Message. But you don’t ignore what else is going on, on the 26th of May of 2008. On that prophetic day he also tells her something else in Exhibit 450 – She’s apologizing to him. Again she’s manipulating him. She does something, she apologizes, and everything is supposed to be okay. But by this time, he has had

490 enough. And he says “I don’t want your apology. I want you to understand what I think of you.” That’s what he’s telling her. He’s telling her that he wants her to understand what it is that he thinks of her. He says “I want you to understand how evil I think you are.” At that point when he’s writing that he is extremely afraid of her because of her stalking behavior. And he does think she’s evil. And, how prophetic, looking at these next words, how prophetic, how absolutely prophetic – no one can dispute that those are the truest words that are spoken in this case, and

they're spoken by Mister Alexander, even though he is not here, through his writings. "You, Jodi Arias, are the worst thing that ever happened to me." Any doubt that that's the truth? Do we need to look at the pictures of his gashed throat? Do we

500 need to look at the sort of frog-like state that she left him in, all crumpled up in that shower? Or do we need to look at his face where she put that bullet in his right temple - to know that what he says there is true. "You are the worst thing that ever happened to me." He's telling her "Enough is enough." And yes, he's angry. Absolutely angry after everything that she has done to him. And you've seen the manipulation as she has tried to manipulate you with what she has told you. And the prime example is these gas cans. No one can argue that she lied to you. Well he's had enough. And yes, he says "You are the worst thing that ever happened to me." And then he says, in this Exhibit 450, "You are a Sociopath." No, he does not have a Psychology degree. But that certainly expresses a feeling about what she says,

510 what she does, and how she deals with him, how she always is manipulating him. It teases this anger out of him and tries to mix in the sex and he says "You only cry for yourself." Well, you saw her crying on the witness stand. Can anybody debate the reason she was crying is because she cries for herself? After all, she never intended to be caught. She said that so herself after she lied to the Police. "Oh no, I was saying that because I did not want to be caught." And so, you only cry for yourself. And then he [Travis] says "You never cared out me", supposedly that could be 'for', "and you have betrayed me worse than any example I could conjure." She has betrayed him. For whatever reason he believes that she has done something that is, that is absolutely horrific. And he's telling her "I've had it. I'm done with you." And

520 again, this is May 26th. He's done with her. "You are sick and you have scammed me." Again, she has scammed him. Are you going to allow her to scam you? - is really the question from this text message. Are you going to buy the lies? Are you going to believe what she tells you? And so, we get to May 28th. Just two days afterwards. Just two short days afterwards begins the plan, if you will. Just kill him. And planning takes preparation. And there's no doubt that this woman is a very intelligent woman. And she tries to cover up her bases. And yes, she could go out and buy a gun, but you know, if you buy a gun, one of the things that she indicated in California was that there was a waiting period, and they take your name. According to her that's something that she knows. Well, let's get a stolen gun. She

530 lives with her grandparents in Yreka and she knows that they have, she knows that her grandfather has guns and she knows where he keeps them. So on May 28th of 2008 she starts the planning. She starts the actual steps, or begins the actual steps to this journey that will take her to Mesa, Arizona to kill Travis Alexander. There is no other explanation than that. She's the one that stole that .25 caliber gun, this very small gun that according to her, looks like a toy. This small gun. And on May 28th, at a time when she's living there, there's a burglary that is reported at her Grandparent's house. And low and behold, it's so amazing - and again this is the manipulative aspect of this case and the Defendant - it is so interesting that this burglary of the house - it's kind of weird, it's kind of strange, it's kind of special -

- 540 because these burglars were meticulous. They wanted to leave the impression that this was a burglary throughout the house. So they went through four rooms, and from each of the rooms only one item was taken. And where the guns were? You saw. There was some money there. But these burglars didn't want money, they just wanted the gun. And they didn't want any kind of gun, they wanted a special gun, a small gun, because there were rifles there. If a burglar comes in, he's not going to be very discriminating: "Ah, you know, yeah, I'm just going to take this little gun. I don't want to take the money, it may be too heavy. These other guns are too big, I'm not going to be able to carry them down the street." That's not the way a burglary happens. "And oh after I've taken one item from here, I'm going to go ahead and go
- 550 to another room, and after looking in this other room I'm only going to take one item from there, and then I'll take a total of four items." If you're going to do that, if you are a burglar, then why? Why even waste the time of committing a burglary? The only thing that makes sense with regard to the burglary, is that the burglar - the person who went in there - is right there. It's Jodi Ann Arias. That's the burglar. And she needs a gun. And she needs a gun to kill Travis Alexander. And she gets it. And guess what? It can't be traced. There's this burglary report after that. No one can say it's her. Well, at least not initially no one can say it's her. But on May 28th, she began to take these steps after he [Travis] has told her in that May 26th 2008 text message that he had enough of her. And so what does she do as part of that?
- 560 Well, she then says "If I go there to Arizona, you know money is tight, there's an issue with money, one of the things I'm probably going to have to use is my credit card. If I go to Arizona, if I fill up with gas. So I've got to make sure that people don't know, if I'm going to carry this out, that I'm going to be in Arizona. Because I don't, I can't be linked to Arizona in any way, shape or form. And certainly using a credit card is going to link me to Arizona. And so, well, why don't I call Darryl Brewer." You could tell from the time that he testified that he still had feelings for her. In fact, when he was asked about this issue about the gas can he actually paused if you remember, and he gulped, and he said "Oh yeah, she did call me. She called me at the end of May." May 28th is the end of May when this gun is stolen by the
- 570 Defendant from her grandparent's home. "Yeah she did call me then and she told me she was going to Mesa, she was going to Arizona." And Alyce LaViolette has the same thing in her notes, that according to Darryl Brewer, the Defendant called him at the end of May and she was going to Mesa, Arizona and needed gas cans. And Alyce LaViolette, even in her notes indicated "I thought that this was an unplanned visit." Even in her notes, there are issues. But the Defendant's attempting to manipulate the truth. But there are issues with regard to this because she's telling Darryl Brewer that she's going there. Even her own expert says "Hmmm, there's a little bit of an issue here, there's a problem for me, because I thought you said that you were not going to Mesa, that you were going to Utah." Or is Utah just nothing,
- 580 anything else but more than a ruse? You can say you're going to Utah, You can have a sexual dalliance, not an extreme one, but a sexual dalliance with Ryan Burns,



you can adjust him, and nobody will be the wiser. Because nobody will ever know that you were in Arizona, because guess what? You never filled up anyway. You never put gas in the car. Well, okay, that's what she does. She calls Darryl Brewer in the end of May, first part of June and she gets these two containers. Two five-gallon cans for gasoline and they were empty. Wasn't like they were full. And he [Brewer] lives in the Monterey area and she leaves on June 2nd. Well, when she leaves, she doesn't take her car. She decides to rent a car. And she has told you "Well, I rented the car out of Redding, California. And the reason why I rented the

590 car out of Redding, California" – which is approximately 90 miles south of Yreka – "is because Priceline did not offer this same deal in Yreka. Priceline only offered it in Redding. And that's why I went ahead and did it that way. It wasn't that I didn't want people in Yreka to know what kind of car I was renting because heaven forbid if they knew I was renting this car they could, it could come back to me. And of course I don't want to be identified in killing Mister Alexander so I've already made provisions for the gas cans, now I've got to make provisions for the car." And so she says that's the reason why she goes to Redding, California. Except that the documents show something else. Exhibit 523 is the statement from Washington Mutual from June one of 2008 to June thirty of 2008. And this is the statement that

600 she, the Defendant, authenticated on the witness stand. And in fact, what we have here is the Budget Rent-A-Car. See it? June 9th, Budget Rent-A-Car up in Redding, California. That's what we're talking about. But if you also remember, after she killed Mister Alexander, she came to the, uh, Memorial. And she flew down there. And if you take a look at down here, there it is – see that? She paid \$246.99 and that was to Priceline.com and it says Air. [Quoting Arias] "Hmmm. This Priceline, they have to get their act together here. Yeah, yeah, at one point, when it comes down to the flight, yeah, yeah, I pay them. But when it comes to the car, even though I go through Priceline I got to pay for the car. And how is Priceline ever going to get paid if they don't take their money up front for the rental car. That's how it works.

610 They get their money upfront."

**Mr. Nurmi:** Objection, arguing facts not in evidence.

**Judge Sherry K. Stephens:** Overruled.

**Martinez:** They get their money upfront, and that's how it's listed in these documents so that we know who's getting the money. Otherwise, if it were left to Budget, then you're imposing upon Budget, if Priceline is involved, another accounting step, for them to pay Priceline. And it may be a situation where Priceline never pays them. So by this document right here, when the Defendant tells you that "Hm, the reason I went to Redding was because of the Priceline connection." She lied to you. Unless of course, Washington Mutual made this up. Maybe Washington

620 Mutual also subscribes to the Law of Attraction. And they didn't want to put anything negative here. Maybe. It could happen that way, right? That's what they

want you to believe. Don't believe what's written down. Believe what I say. That's the same situation here, as it is with those diaries. They want you to believe not what the diary said, but what she tells you. They don't want you to believe what that document says, they want you to believe what she says. So now we know that she goes to Redding after she's made provisions for the gas cans. She goes to Redding so that people will not recognize her because she is going to kill Travis Alexander. There is no other explanation for making up all these stories that we're talking about here. There is no other explanation. Contacts Darryl Brewer, now has the gas cans,

630 now has the car rented. And still, this car, it's in Redding, where people are not going to know her. And in fact it's at an airport. By definition, an airport is where people come in, and they leave, they're traveling. Those are not the kind of people that you're going to run across at the supermarket. And so it's a way for her to hide. So she shows up there, and Mister Columbus asked to her "I got this nice little red ditty over here for you. Nice little red car that you can drive on your way to Arizona, or not Arizona, just drive around. [Columbus] "By the way, where are you going to drive?" [Arias] "Oh, you know, just around town. That's, that's all I'm going to do." Why did she lie to him? Why did she make that up to him? Because she didn't want to tell him that she was going to Mesa, Arizona like she already told

640 Darryl Brewer. Because then again, that would connect her. But why not take the red car? "Well, you know" according to her "red cars call the attention of the police." And she certainly doesn't want that. She doesn't want the police to find out about her because she's on a mission. She's on a mission to kill somebody. Why would you take a gun if you are going to go on this trip other than to kill this guy? And she says "Oh, you know, I didn't know I was going to go there, even though I told Darryl Brewer, I didn't know I was going to go there." Keep in mind that this is a rental car. And one of the things that she says as she's pointing the finger at Mister Alexander and how viciously sexual he is - do you remember when she claimed that she was down in that office, do you remember she said "We were down in that

650 office, and I had brought over some CD's from the trips that we had taken with some photographs." Do you remember that? And she said "I had scratched them". For whatever reason she said she had scratched those CD's. And he got mad. And he threw that CD because you know, that guy, he gets mad at everything. And so then I have to have intercourse with him to calm him down. That's what she said. If she's not going to visit him, if she's not going, thinking, or if she hasn't already made up her mind to leave Yreka and visit Mister Alexander in Mesa, Arizona - Why? Why take these CD's of the trip with her? Why take these CD's? Who is she going to show these CD's to other than him? And she's in a rental car. So that requires a volitional movement on her part to take something from inside the house

660 or her car, whatever which one she does, but it requires a volitional movement to get those CD's into her car and drive down to Redding, California and then put them in the rental car. There is no other explanation for those CD's to be in Mesa, Arizona other than that she knew, she absolutely knew and had already planned it. She knew she was going to kill. Why else take the CD's? You think that Joe Columbo

[Columbus] wanted to look at them? You think that her family in Redding cared? The ones that she claims took her to the airport. Nobody cares about that. It's a good way to disarm, if you will, or it's a good excuse to show up unannounced somewhere. "Look, you know the only reason I'm dropping by, just like I did back in August of 2007, the only reason I dropped by was to show you this. It's not my

670 fault that you haven't seen these. It's not my fault that I haven't been able to get them to you. Not my fault at all. Not at all. But you know I'm making it up to you now." She left Yreka, California with those CD's. But she forgot about it, as she attempted to manipulate the story from the witness stand. She forgot about it. It's those little details that she forgets. And so she brings those CD's and doesn't want the red car and the reason she doesn't want the red car is because, well, police will see her. Doesn't want to be stopped by police. And that's actually foretelling at what happens later, because she stopped in West Jordan, Utah – by the police for a different reason, but she is stopped by the police and she's right. According to her mind, a red car is more significant or stopped more prominently or frequently by

680 police. She doesn't want to be stopped. Because what if she's stopped in a place that show's she going to Mesa? She wants to hide the fact that she's going to Mesa, Arizona. And the only reason to hide that fact, is because she's going to kill him. It isn't like the Bishop is going to be upset if she shows up in Mesa, Arizona. It's not like her family's going to be upset if she shows up in Mesa, Arizona there. She's an adult. It's not like her friends, whoever they may be, because we don't know who they are, they're not going to be upset if she shows up in Mesa, Arizona. The only reason to keep this whole thing a secret, which is what she tried to do, is because she was going to kill him. And she's making preparations, and she's very good at making these preparations. You do have to tip her hat, your hat to her. First of all,

690 the burglary. She does a burglary, there are no suspects. One of the only things taken at this point is this .25 Caliber. It's lost. It's out there, this .25 –caliber handgun. And then she rents this car, then takes the white car. And the white car does have some floor mats in it. She takes this white car and says "I'm only going to drive around here." Again, she lies. Makes that up. It's like a field of lies that has sprouted around her as she sat on that witness stand. It's every time she spat something out, another lie, another weed would grow around her. And so she gets in that car, heads out and sleeps the night at Matthew McCartney's house. And the next morning of June 3rd of 2008 she then shows up over in the Monterey area, shows up there in the morning and sees Darryl Brewer. And yes, she now has two

700 gas cans. And the only reason to get these gas cans is to put gas in them. There's no other reason why anybody would get a gas can to go on this trip. Well, the ostensible reason to get these gas cans is perhaps gas is cheaper in Utah. Or maybe gas is cheaper in Nevada, than it is in California. And that's one of the reasons that's given. But if gas is cheaper in Nevada or Utah, and she does fill them up in Utah, why then – why would she fill them up in Pasadena? Why would she fill up these three gas cans in Pasadena? The only reason she would fill these gas cans up in Pasadena is because she was going to take the drive to Mesa. And sure enough,

there is no evidence that she ever was in this area through, this, gas, by purchasing gasoline. Everybody that travels in, they stop somewhere and use a credit card, it's

710 easy to trace. But not if you don't stop anywhere. And so she picks up these two gas cans and begins to drive. And after she begins this ride, why not take a little detour. And this little detour is after some thought. Because this is a meticulous approach to premeditation. This is a meticulous approach to killing. Again, why stop in Salinas, California at a Walmart to buy another five-gallon can. Because she's been thinking, and she thinks "You know, ten-gallons, let's say that maybe thirty miles per gallon is only 300 miles, I need another five maybe, that gives me another 150 miles, that's 450 miles. That gets me through Arizona, and into Nevada." So she stops at the Walmart. And she stops at the Walmart and she does buy a gas can. She admits it. So when you look at this receipt, 237.00A, and you look at it, the bottom item there

720 for \$12.96 is the gas can. I guess that's the price of premeditation these days – twelve dollars and ninety six cents. And she admitted it, yeah. Sure did. On cross-examination "I bought that gas can, but", and she was very specific, "I took it back to this same store, 2458, on that same day.

**Mr. Nurmi:** Objection. Facts not in evidence.

**Judge Sherry K. Stephens:** Overruled.

**Martinez:** You remember what she said on cross-examination when she was asked "Where did you take that gas can back?" And on cross-examination, specifically, she said "I took it back to the same store that I bought it from."

**Mr. Nurmi:** Objection. Mischaracterizes the testimony.

730 **Judge Sherry K. Stephens:** Overruled. The jury is directed to recall the evidence.

**Martinez:** And do you remember at that time that the question that was followed up was "Well would it surprise you that that store in Salinas doesn't have any record of that?" And her answer was "Yes, it would surprise me because I got money back. I got a refund. That's the way the exchange went." And your notes should reflect that. So she didn't take it back there, did she? But she told you that. Why did she say that? Why did she tell you that? Because that's just crushing, if you will, in terms of whether or not this was premeditated. And it is premeditated. She was coming to Mesa with a gun and a knife. This knife appeared from somewhere, so she had to have brought it up. Knives are not in a bathroom. So she stops there, after thinking

740 about it, and now has another gas can which gives her a further range of at least 30 miles per gallon. We're talking about an extra 450 miles. Well, one of the other things that she does as part of this premeditation, or part of what's going on is that, well you know if you want to do something like this, it's a good idea that when you show up that people not recognize you at the place where you're going to commit

this murder. And so if you have blonde hair, and you saw the photograph of her with the blonde locks and the black dog and how they told you that, that's the same color. Do you remember that line of questioning that went on with, ah, Lonnie Dworkin, their expert on computers? The question was asked "Well do you think that this hair here with the dog looks the same as the one where she's laying back?" Do you

750 remember that line? Like he was some sort of expert on hair color. You don't need anybody to tell you what the hair color was when she was there with the dog. You can see for yourself. You don't need the Prosecutor or anybody to tell you. But you do know one thing. You were also shown photographs that were also taken on June 3rd of 2008 about this same time. And you saw the hair color, didn't you? Are you going to believe Mister Dworkin and the Defendant, or are you going to believe your eyes? Maybe the Law of Attraction tells you that you should believe Mister Dworkin. Because again, you can't believe the text messages, you can't believe what's written down on the receipt and you can't believe what's in her journal because of this Law of Attraction. Now you can't even believe your own eyes.

760 Because if you do believe your own eyes, you know she's premeditating the murder. She's thinking about killing him, that's all that's required. The State doesn't even need to prove a whole plan such as this. All the State needs to prove is that the Defendant thought about it, the killing, before she actually carried it out. And this is an extensive amount of planning. Days. Six days in advance. Six to seven days in advance of her killing him. A week or so. And so, she stops there, makes more preparations, and now she can freely drive through Mesa with these, with enough gas so that she doesn't have to stop anywhere. More thinking that goes on. And she tells you "Well, I hadn't planned on going there to Arizona. Hadn't even thought about it but Mister Alexander, that guy, always guilted me. This is, you know, God

770 like a bad disease, this guy always guilted me. You know, it's not my fault." That's what she's telling you. "It ain't my fault. I told him I was going to go to Utah, he was a little bit suspicious about why I was going to Utah but, why don't you stop here in Arizona, you can stop here in Arizona." That's what she told you that he said, or that he implied, that he wanted. She kept saying "No, you're going to come up here and see me after your trip in Cancun. It's okay." Well, the problem is that it's her word. Do we really know, based on all of these lies, that that's what he told her? Or was there just a call to try to find out what he was doing? Does he have a visitor there? Does he have somebody there? What are these roommates doing? Are they going to be there, when I arrive? What's the situation there? Are you going to

780 take her word for that? Is there any indication anywhere that Mister Alexander even knew that she was coming down there? You have her word. You know, in cases that are minor to you, not even important cases, are you going to take her word? And remember this individual has no problem with telling lies. You've seen throughout this whole trial – Well, she says that she does have this conversation with him, and in fact the phone records do [verify] there is this conversation. But the content of the conversation is still in doubt. And I only have to point out as far as the May 10th 2008 conversation, in terms of showing that she has no problem lying on the

telephone where she says “Well, yeah I was faking it.” And you know what she said she was faking. Even though you heard her squealing like a cat – “No, no, no, no

790 that’s just me faking it. And you know why? Because I need two hands” That’s why she was faking it. Okay, well, if you can lie on May 10th of 2008 on the telephone to Mister Alexander, what makes us think that you can’t like about what you and he talked about on June 3rd of 2008? And remember she’s got this history, all along, not only of lying outside of the courtroom, but she has sat in the witness stand – a place where you have taken an oath, a place that is sacrosanct in finding the truth – has sat on that witness stand, looked at each and every one of you in the eye and lied to you; specifically the gas cans, specifically about Priceline. And, another extent, the finger. If you remember she said “Oh, you know, he was starting to kick me, he broke my finger. I didn’t get any medical care, but he broke my finger.” Or, the

800 alternative might be “I was working at Casa Ramos before I went, and when I was at Casa Ramos, uh, or Margaritaville, one of the two – you take your pick because that’s what she told Mister Brewer “and either I went up against one of the edges, the metal edges, and it cut me, or, alternatively it was a Margarita glass.” No, and then she takes the witness stand and says “Well, in terms of the damage to the finger I actually damaged the finger when I was at Mister Alexander’s home on June 4th of 2008, but the glass was that, that’s how it happened.” What story are you going to believe with this individual? And that’s the issue here with when she tells you something, what are you going to believe? And so, she leaves that area and off she goes. Drives to Pasadena. Um, we know that the telephone calls with Mister

810 Alexander are after that, but she drives to Pasadena. And then, something that is so bizarre happens to her. It seems that there is this coincidental hoard of skateboarders in Pasadena. That’s, that’s the way the kids are in Pasadena. They go in hoards, these skateboarders. And this hoard of skateboarders, well, they carry screwdrivers. That’s one of the things. If you’re going to be in this hoard of skateboarders you have to have a screwdriver. That’s what you got to do. Or else you’re not allowed in this particular club out in Pasadena. And you can get a Strawberry Frappuccino or whatever it is that you get at Starbucks when you go there. Be careful. Because when you go in to get this Strawberry Frappuccino, things are going to happen to your license plate if you run across this hoard of skateboarders with this

820 screwdriver. And so when she was questioned about that on cross-examination, one of the things that she said was “Well, yeah, I was pulling out after stopping there, and I was pulling out and I saw something flat on the ground.” And when challenged on that, if you see something flat on the ground, what makes you think that you can go and pick it up? What in God’s name would ever motivate you to go and pick this up, especially if you were afraid of this hoard of skateboarders in Pasadena? Because she did say that she was concerned for her safety. Why even get out of the car if you don’t even know what it is, and you don’t even know if it’s related to the car? And she said “I didn’t know it was related to the car. I didn’t know what it was.” And she’s having problems with the truth there because

- 830 remember, she's got to remember, she remembers that she's got this license plate in the back that she's got to deal with, this issue involving the license plate in the back and whether or not they're connected. And she said "Oh I don't even know what the license plate was, I didn't even look in the back." When challenged further she said "Oh wait a minute, no, no, it wasn't flat. It was actually standing up. And it was standing up and I was able to reflect and realize that it was yeah, it was this, not square – she corrected the Prosecutor – but rectangular. Remember that? It was a rectangular object that she recognized as a license plate. And if you don't have any suspicion whatsoever that it has anything to do with your car, why then? Why would you get out of the car and go look, when you're scared, to get a license plate?
- 840 Why on God's green earth would you do that? When you're lying. That's when you would do that. That's exactly when you would do that. And she says "Oh, you know, I went and got it and I really couldn't tell the numbers and I didn't compare it to the back." So now you're a thief. Somebody else's license plate is sitting out there and you don't know it's yours. Potentially if it's not yours it's somebody else's. And they may potentially come back for it. So what are you doing? You're stealing it. You're depriving them of the opportunity to have the front license plate which is obviously required in the State of California because this car had two of them. So that's what you're doing then. Because she didn't check to see if it corresponded with the one in the back. And the reason that she's having problems
- 850 with that is because as you know, in West Jordan, Utah, the one in the back is upside down. Like somebody took it off, and like somebody put it in the backseat of the car when they arrived at Travis Alexander's house. So that the car wouldn't be able to be identified to them. Just like that. That's it. You know? But she can't admit that and that's why she's having problems with this license plate that's out there in this parking lot. And she ends that conversation with the Prosecutor during cross-examination by saying "Oh well, you know I didn't see numbers or whatever because you know what? I can't see. I needed glasses back there. So I really couldn't see. So I just grabbed it, and it had bugs on it and so I thought it was mine." So without any regard to whether or not she knew it was hers she throws it in the
- 860 backseat of the car. Who does that? No one does that. Making it up. And she's making it up because she got stopped in West Jordan, Utah and has to explain how it is that the front license plate got into the car – because this hoard of skateboarders from Pasadena, they can't get into her car. So she has to be the one to do it. And the only way that she could say that she's the one to do it is to make up a story. And she made up the story about these skateboarders, this wild hoard type of thing where you have to have a screwdriver, they're the ones that did it. And you know she's making that up. She's lying to you about it. And the reason she's lying to you about it is because in West Jordan, Utah that license plate was found in her car.

**Juan Martinez to Judge Stephens:** Okay, we could stop.

Recess

- 870 The Defendant had made her way to Pasadena along with her will to kill Mister Alexander in the evening of June 3rd of 2008. And she stopped at the Starbucks and after stopping at the Starbucks, or as part of this stop, she decided to fill up. And we know that she had the three gallons of gas, or the three gas cans at this point based on the receipts that are before you. And the reason that she had those gas cans filled is so that now she was prepared to make it all the way to Arizona without having to stop for gasoline. And she, on her direct testimony and also part of cross-examination, she indicated that well, the car for whatever reason had a bad engine, uh, for lack of a better term. It kept using gas so much, trying to manipulate you into thinking that she stopped at a number of places and used all the gas in the gas cans.
- 880 But there are no records or any other corroborative evidence that indicates that she stopped anywhere here in the State of Arizona for gasoline. So her plan, if you will, was working well at that point. She wanted to kill him, but there was way for anybody to say that she was even in the State of Arizona. Because the Defense would have been, well “I would have had to stop for gas.” And there was no indication anywhere and there is no indication anywhere that she stopped for gas in the State of Arizona. Another thing that she did as she came into the State of Arizona is she turned off her telephone. And this telephone that she, the cell phone that she had was turned off so it could not be traced by law enforcement. So now not only do you have her in a vessel, an automobile that will not be traced to the State of
- 890 Arizona, you also have her with a telephone that is turned off. She gave several reasons to different people as to why the telephone was turned off. One of them that she gave to Ryan Burns was that somehow it had lost its charge and that she had lost the charger and somehow she had been able to buy it at some store. That was her story and that then she was able to charge the telephone so that she then was able to call him near the Hoover, Hoover Dam. Another story that she gave was that she stopped on the side of the road and she was cleaning up from killing Mister Alexander, she was able to go underneath the seat and find the charger. Either way, the net effect of that was that as she came into Arizona there was no electronic trail of her being here and there was no physical trail of her, uh, coming through. And
- 900 this was done for the purpose. She knew she was coming to kill him. There is no other reason why you would turn off your telephone as you’re coming through here – especially this woman who clearly loved to use her telephone – but for this particular trip, for this time when she’s approaching Mesa, the telephone is off. And it doesn’t come off until sometime later near Hoover Dam, again, indicating she was never in the Mesa area. And without the electronic trail it would have been difficult for the police to find that out. So now you have her in a position where she can come to Arizona, and no one’s going to know. She’s in a car that’s white, not red, so the police are not going to stop her, and she shows up with a gun and a knife. And she shows up to see Mister Alexander. And if you remember that one of the things
- 910 that she told the police officer, she always, whenever was not to her benefit, will say



“Well no, I was lying then.” As if somehow that’s a fallback position. As if somehow that’s something to be rewarded. That “Oh, I lied. So because I have admitted that I lied, you should put that in the good column.” Forgetting that she lied to start with, and she lied to cover up the killing. And so she indicated that to this officer in a telephone call, and by this officer I mean Detective Esteban Flores, that she knew the code to his garage. Zero, One, Eight, Seven. And so she knew the code to the garage and she indicated that that’s how she came in. She didn’t knock on the front door, she didn’t go out through the back and peep through the sliding glass door just like she’s done before. She actually walked in. There’s no indication

920 that Mister Alexander came to the door. And this was sometime after four o’clock in the morning. And as she came in, one of the things that’s telling about what happened, is that she said “I came in, and I stood by the door. And I watched him. And I watched him for thirty – forty-five seconds. Who does that? Who comes in and stands there. Someone with some sort of stalking behavior in their past? Someone who’s arriving there unannounced? Someone who is there to surprise Mister Alexander. Mister Alexander happens to be awake. He’s got the dog, Napoleon with him. And the dog barks, and there’s this “Hello, how are you?” kind of thing. And at that point she says that either she does bring her stuff in or she doesn’t bring her stuff in. She may have brought her camera at that point. And we

930 also know that she brought in her purse. And her purse is big enough for this “toy” .25, “toy-looking” .25 caliber handgun. It’s also big enough for a knife. She comes in and according to her they go to sleep. There’s no sexual activity between them at that point. If Mister Alexander was this sexual fiend that she has attempted to portray, why didn’t he just force himself upon her there? And she said “Well, at that point I told him that I was tired and that I did not want to have sex.” So whenever that she said “No”, Mister Alexander abided by that. The only time that she ever indicated that no, no she didn’t want to have sex with him, he abided by that. And they went to sleep until the next day. The next day, they do engage in some sexual contact. And there’s such a, uh, stigma that the Defendant has attempted to attach to

940 this particular encounter. In fact she goes so far as to speak with Richard Samuels, Doctor Richard Samuels, and tell him about this. And tells him these photographs were actually taken when she was straddling Mister Alexander. Additionally she talks about how Mister Alexander has on his computer all these photographs of some women’s breasts. She just has to add all this to make Mister Alexander be something that he is not. Or have this encounter be something that it isn’t. He did not go to Yreka to seek her out. She drove here, to the State of Arizona, to Mesa, to see him. Yes, he did have a camera, and yes, it was used, and thank God he had the camera because that’s the reason why we’re standing here – because of the images captured on that camera. And so they engage in this sexual contact. And again

950 there’s this religious sort of overtone that somehow she’s holier than thou, that it was all at his request. It was all about him. It was nothing about her. And that he’s somehow violative of the concepts or the precepts of the Mormon Faith. Why is that important? It’s important because she wants to manipulate him. She wants you to

believe that “Wow, he’s such a bad guy. He’s holding himself out to be a virgin, and somehow that’s really, really bad.” That when people date, or when people talk about their sexual lives they somehow don’t want everybody to know everything that’s going on. If you remember that Deanna Reid indicated that yes, they had transgressed. They had engaged in sexual contact but went to see the Bishop, they got whatever penance or whatever punishment or whatever happened but they never

960 engaged in that contact again. Somehow the Defendant wants to make it seem that Mister Alexander kept constantly going. He was this individual who had lost his priesthood or had not. Had or had not. And somehow that this encounter was a microcosm of their whole relationship. Well if it is a microcosm of their whole relationship then we have the willing partner sitting right here. Someone who enjoyed it just as much as he did. One hand or two hands, she enjoyed it as much as he did. There are no indications in those photographs other than from their experts who say look at the face. You can tell by the face that she really doesn’t want to be there. Really can you tell by a grimacing face whether that’s pain or joy. Can you tell that just be looking at somebody’s face, especially if we’re talking about a

970 sexual situation? You can’t, but they come in and wanna tell you that because they have a Psychology degree or a Masters degree, and they wanna tell you that don’t believe what you see in your eyes or don’t use your common sense or the experiences that you have coming in here believe what we have to say and by looking at those photographs you can see that it was all about Mister Alexander and again that’s just a microcosmic view, if you will, of this whole relationship where she says I really never wanted to do it but it was all about him. And again if we look at the photographs there is no indication there that she really didn’t want to do it, she was enjoying it as much as he was. So they engage in this conduct, these two Mormons, so stop pointing a finger at him and stop wagging it as if somehow being

980 a Mormon precludes you from being human, as if somehow that something bad that he did it, because she is as Mormon as he is. So if there are fingers to be pointed they should be pointed at each other and if one’s conduct is bad the other one is just as bad. But that’s not what this case is about and they want you to think that this case is about, that this is about Mormonism and the fact that Mister Alexander was engaging in sexual intercourse. What those photographs show was that she was there and they show you the time that she was there, some time after 1 o’clock in the afternoon, they may say that the color of her hair there was blond but you’ve been able to see that and you know what the color of her hair is, you don’t need anybody to tell you what the color of her hair is, and so you know that by 1.30 they are

990 consummating, if you will, their feelings for each other at least on a physical level, no indication there of anything else other than perhaps Mister Alexander has adopted what the Defendant has provided for him, because you do see the KY bottle in some of those photographs and you do know who introduced that into the relationship from the May 10<sup>th</sup> 2008 conversation where Mister Alexander thanked her for introducing him to that. We don’t know who brought that on that particular day but it could be reasonable inferred that, we’re not saying that it happened, that

she brought it, she's the one that introduced him to it, perhaps he had it there, either way it's symbolic, if you will, of her attentiveness to this sexual um relationship that they had. And so, later on in the afternoon, toward, getting later, sometime after five

1000 – the Defendant says, and it depends on what you listen, or what version that you listen to that at that point Mister Alexander wanted to show off his body, according to her. And he wanted her to take photographs of him. You've heard the tape of her conversation with Detective Flores that was taken when she was arrested up in Yreka and then she says that he really didn't want to, that he was reluctant and she talked him out of it then they talked about this shaving and how she loved the way he shaved because it was old fashioned. And then she starts talking about how, yes, she is able to get him to get into the shower and take photographs of that. And it really is more of her idea than his. And the only reason that the State can say that it is really more of her idea than his is if you harken back, think back to what Darryl

1010 Brewer told you, one of the things that he was asked on direct ex - or cross-examination was, when he was on the witness stand "Weren't there ever any photographs that were taken of you by the Defendant?" And he said "Yes, only on one occasion was there photographs taken of me. I didn't want them taken – I was in the shower when she started to snap the photographs. So if it is something that she did in the past, if it is something that she is comfortable doing, to then turn around and say oh no Mister Alexander was the person that wanted me to do it. When as part of the same case you have her saying that no he did not want her do it. But then, she starts taking photographs and according to her, very sexy. But at that point the ill-will was already there. She is armed with both a knife and a gun at that

1020 point. And she begins to take these photographs. And as she takes these photographs, even though she says they are of a Calvin Klein kind of quality – water coming down as if it was sort of a specific, a very quiet bucolic kind of scene. That's not what's going on. She talked earlier about a knife, justifying how a knife would've been upstairs by saying that there was this 20 foot rope. And that somehow she was tied up with that 20 foot rope to that bed. And it depends on whose she's talking to as to whether or not she was tied on her ankles as well as her wrists. But you've taken a look at that slay bed. Where is she going to be tied up on that bed? Making it up, trying to justify her trying to have a knife there for some other purpose. But if you take a look at that bed, and you've seen it, you know that

1030 she's making it up. Just making it up. If she's not making it up, then why has she told some of the experts that she was tied by her ankles, or on the foot of the bed? Why does she tell somebody else that it was both her ankles and wrists? Why does she need to keep changing positions? Because she has a lot to remember. And with the truth, you ain't got nothing to remember. But she has a lot to remember, a lot for her to keep straight given that's she's making all of this up. And so, given the facts as we know them, and the fact that there was no rope, because it would have required her to clean up in the bedroom because that's where the rope was. And if she was all bloody because we do know that the floor was all bloody, it was also very wet. It was either wet with water which is white, or it was wet with blood

- 1040 which is red, Mister Alexander's blood. It would have had required her to go into the rest of the bedroom and leave some trail of that. And there's nothing there. So it means there was no rope there. And there was no knife there for her to get. It means that she had both the knife and, or at least the knife at the time of the attack. And so what happens then is that she's standing there. And then, we have this photograph, Exhibit 160. This is the last photograph of Mister Alexander. While he is still living and before anything bad has happened. Quite a light for him to see, isn't it. Sitting there not only is he defenseless, he does not have a gun, he does not have a knife. He doesn't have any weapon whatsoever. Not only does he not have that, he doesn't have any clothing on. And as he sits there, he doesn't have any dignity either. She's
- 1050 taken that away from him. And if anybody is defenseless in this case, it isn't the Defendant. It's Travis Alexander as he sits like that in that shower with his killer standing there dressed in pants, ah, presumably a top on, because there's no indication that she didn't have a top on, with this camera. And she starts snapping this. Part of the story of hers of course that you would have to believe is that, this is also an interfered photograph. That this is also an accidental photograph, but take a look if you will at the acuity and sharpness of this photograph. There's nothing accidental about this. Somebody held the photograph, or the camera, firmly. The Defendant held it firmly as she pressed the button and took this photograph – the last live photograph of Mister Alexander. And while she had him in that position,
- 1060 where he is in the inferior position of her, he's down, she's standing up - she can approach him, and she can approach him as he's sitting there. And he's dead. No doubt about that. This is not a case of whether or not there was an attack here or whether or not it wasn't her. It's her. And it's him. And it's the man that she has just had sex with and it's this individual that she has planned to kill all the way from May 28th of 2008, days. Even though the premeditation statute only requires a certain period of time. It doesn't require days, it doesn't require planning, it requires thinking. And so, she's been thinking about it for a long time because she came very prepared. And before she even went in there one of the other preparations that she took was to take the license plate off the car.
- 1070 Now she's inside. Now she's got him like that. Can anybody think of how anything else could be so much colder or without feeling for the person than to make...

**Mr. Nurmi:** Objection, Your Honor. [Inaudible]

**Judge Sherry K. Stephens:** Approach.

**Martinez:** It is cold, it is thinking, it is premeditated, to go up to this individual, someone that she has planned to kill for days, someone with whom she has been intimate with, and then attack him. She has indicated to you that it was a shot to the head. But the evidence, the forensic evidence speaks otherwise. And for you to believe her, and for you to believe that the shot was first – you will need to set aside

everything that she's told you, for example the gas cans – everything else that she

- 1080 has told you, including the fact that she had lied to the police, including the fact that she lied to the experts, including the fact that she lied here. And then you have to say 'Even though she's lied all of these times, even though she's looked us in the face and lied to us – we're now going to believe her with regard to just this one particular aspect. That is not something that is available to you, I submit. And I submit that because of everything that she has said. And so, she gets her knife. And she took that knife and stabbed him um in the front. The reason that we know that she did that is because Mister Alexander has defensive wounds. And he has defensive wounds to his left and his right hand. As she is stabbing him, he is alive, and he is cognizant of it, and he begins to grab at the knife. But unfortunately for
- 1090 Mister Alexander one of the knife wounds is to the heart. Doesn't mean he's going to die immediately, it means he's just going to die. And part of the dying process includes, because of the cuts to the heart, blood coming from his mouth and blood coming out from the wounds. But he's not going to die immediately. He's going to take some time, minutes, to bleed out. But he is going to die. So in a sense she has already killed him. He's dead. Well, you know that he gets up at some point. You know that he doesn't remain seated there. Because throughout the bathroom where there's the mat, where there's the scale, all around the bathroom, everywhere... there's blood. And if there's blood everywhere that means there is movement there. And it isn't the kind of movement that is the flopping of the fish kind of movement,
- 1100 it is movement, purposeful movement on the part of Mister Alexander to save his life. And as this time is going by, again, premeditation does not take days, premeditation does not take a plan, premeditation just takes time. And it could be a shorter amount of time. The stab wound for example, after the first stab wounds could be that. And as he is in this position of dying, he then ambulates. And we know she didn't carry him over to the, um sink. We know that he goes there by himself. And one of the things that you see there is this. Exhibit 98: That's the sink. And that's the sink with his blood on it after he has been stabbed. The reason that you know that he has already been stabbed, at this point, is because of the patterns you have on this particular photograph. Right here on the left. And remember the
- 1110 injuries to the hand. He had more stab wounds to the left hand than he did to the right hand. And one of the patterns that was described here was this smudge, or this transfer so that if he, and remember he had more injuries to his hand. That's not something she can tell you he doesn't, but you've looked at the photographs. You don't need to believe that, you can believe the photographs and he does have an injury, a slight injury to his right hand. But if he's standing here, this would be where his left hand is. And you can see that there's this smudge, or the transfer, as he moves that way, as he's falling, moving away, indicating movement. He's still alive. But he's bleeding, that red stuff there, it's blood. And you also have the drops here. And those are placed there by gravity. If this individual has blood in his

- 1120 mouth, and if you remember that the Medical Examiner testified that if you do have an injury to the heart, that's one of the things that happens. And as he, it required Mister Alexander to be standing there with his left arm like this [demonstrating], and as he's doing that – you do know that this is what's happening to him - she is stabbing him in the back. This is Exhibit 192. That's a concentric area. Exhibit 193 also shows us that. And he's also being stabbed, as you saw, in the back of the head as he stands at that sink. Because he is standing at that sink, and he is bleeding, and the amount of blood that's at that sink is indicative of time. You just don't go over for a second and get those [blood] patterns. He stood there, which means that the Defendant was there with the knife, stabbing him. The other pattern that you see
- 1130 there is this, on the mirror. If you remember the Blood Spatter Person indicated that “Well, yes, that could happen from, for example, a gunshot wound, but it could also happen if someone has blood in their mouth and they get hit in the back of the head.” And that's called blood splatter, high velocity splatter. And what that means then, is that Mister Alexander was having some force applied to his head at the time that he was standing there. That's how you can know that, Exhibit 193, occurred when he was standing there during the strikes to the head. Because the splatter that is on the mirror indicates movement. Hitting him. And then he goes and flies into the mirror. But he's not dead. He's still standing there. This woman, came to visit him came prepared though. So he begins to go in a different direction. And we
- 1140 know that he begins to go down the hallway, and he's still standing. The reason that we know that he's still standing is if you take a look at Exhibit 133. That's blood transfer. That's either an item of blood [came by] or the blood was already there. Well the item of blood in this case was Mister Alexander's. And as he's going by you can see him still sort of standing. And then in this rainbow, somewhat ironic – there is no good luck for him at the end of that Rainbow. But you can see that it starts high and it arcs down to the area where there's a larger amount of blood. He's stumbling at that point. But he's stumbling with somebody after him. He's trying to get away. He's trying to get away from her over there. And she may cry now. But the jury instructions have told you that sympathy is not to be considered in this
- 1150 particular case. No doubt that she did it. No doubt that he's trying to get away from her. And you can tell that by the arc that he's there. You can see that even clearer, here, with regard to Exhibit 132. That's the same view showing the arc. Just for contrast to show you that was part of what was going on. If you take a look at the other side, the other wall, you can see that these are more at the bottom, indicative of a substance with blood either rubbing it there or the blood already being there and an item going through there - as opposed to this arc that we see here. She chases him down. That's what she did. He's still alive. How many stab wounds has she already given him at that point? The ones to the back – do we really need to count the number of stab wounds that have been given to him. Is there a requisite number to
- 1160 get through the portal of death? No. Not really. There's enough here to get him there. He's already got the ones to the chest, which is going to kill him. He's already got the ones to the back of the head, they're not failed, and he's got the ones to his

back. But, they are accelerating his departure from earth, because the more he bleeds the quicker he dies. You don't die immediately. And so when he gets here [indicating photograph] to the end of his rainbow, it's there to the end and when he gets there that's what she does, this, this is Exhibit number 205, slits his throat from ear to ear, there can be no doubt that he got there on his own collision, by his own movements as he tried to get away from her, you know that because of these [inaudible] you know that because of Exhibit 130 which shows you and remember

1170 the [indicating photograph] the rainbow is right above there, he goes down, he collapses there, she catches up to him and goes for the throat and if you want to believe her that she doesn't remember anything, doesn't know anything that's going on, why then, why then, if is she really doesn't know what's going on and can't remember, why is she so directed at a place where she can certainly cause death, if she really didn't know what was going on, if it was just really passion, if it was just a heat of passion then you wouldn't have a directed hit to someone that's going to kill, you would have dispersed all over the place but when he goes down there is a direct strike to his neck which is an indication of somebody who is thinking this person's not going to live, he may get away from me in the shower, he may get

1180 away from me all the way to the sink, and he may stumble his way down that hallway but you know, I caught him and now rather than stabbing him anywhere else, right here. So it's a very well orchestrated killing. And it takes time. By time, if somebody takes time, people think. So she's now stabbed him, he's going to die. And now he's tried to get away, went to the sink. From what's almost something to consider, another thing to consider while he's at the sink is that in front of the sink is a mirror. And as he's standing there a mirror is reflective of what's going on behind him. And he has eyes. His eyes are still open at that point – he can see. He can see the Defendant deliver the strikes to his back, and down he goes and then he gets another cut to the neck. But she's not done with him yet. And again the point here is

1190 that if this was a heat of passion, if this was a situation where somebody was just upset, it would be random all over the place but this was a strike to kill – right at the neck. And then, after she does that, one of the things that we know is that a shooting didn't take place there. The shooting took place near the sink, where he had previously been standing. And so, one of the things that they wanted you to believe was that this person is shot and hit through the head, he couldn't have been shot there at the sink, according to them, he's already bleeding and still continued on. But the knife wounds do have to be first. Of course that would violate the Laws of Nature because he's bleeding so profusely there that the Doctor by necessity would have had to found lots of blood in the track of the bullet and he didn't. So if he was

1200 standing at the sink, and he was shot at the sink, after being stabbed, there would be lots of blood there. And the Doctor did not find any there. So he clearly was shot after that, when the situation was such that his heart wasn't beating, a situation when the heart wasn't pumping enough blood to get it there. Bottom line he was dead at the time that he was shot, in order to forensically get the result of no blood in the track of the bullet. So, he falls there. And then we have

more directed behavior. We have this, Exhibit number 162. That's Mister Alexander, that's blood, that's his foot, and that's her foot. And given the fact that we know that the bathroom is this way, that's her standing there. And what's important about that is that we look at this Exhibit here is that it looks like there's

1210 been a wildebeest migration near his head. Look at that. And what's important about that, is that even though there is this stomping of the feet, it just means she was over him, hovering him. How many times must she, was she stamping around, stomping around to get that pattern. But what's even more important about that is that there's nothing in the bedroom. Which means this was directed behavior at him. She was cognizant of what was going on because if she would have been in this state that she wants you to think that she was in then it would have been all over the bedroom – if she would have been in this hysterical state that she describes for you. That she went out, into the bedroom, except it's in pristine shape. What she does then is she begins to drag him. And again, we look at that which is Exhibit 163, which is a bit later,

1220 you can see that she's dragging him down the hallway. What that shows is a tempt or an attempt to clean up. And as she is going by the sink again, you know that she does something else. What she does is this – Exhibit 207 – shoots him in the head. And there's no blood in that blood track which means the heart isn't pumping. And when the heart isn't pumping, he is dead. There's no other medical phenomenon or any other medical indications that um, would, ah, give any other indication. And if that's the case, then he's already dead. And then you have the casing from the .25 - caliber handgun that she took during this staged burglary. And we have the casing, right there – falling on top of the blood, as she's dragging him back. Because by necessity, the body has to be there. And what, if you remember there's a closet

1230 that's up here, the sink is to the left, and this is, and the sink is to the left and this falls to the right. One of the things that we talked about is that the shot is right here. If she is dragging him in this fashion, that way, and she's pulling along here that would mean it would be this portion of the head that was exposed. If you're pulling someone down the hallway that's the result that you get, the casing is expelled, and it lands on the blood that is already there. So that's when she delivers this shot to him. Somebody that's already dead. So she's killed him three times over. Is that enough premeditation? Even though she's through all of this planning already, this was a very directed attack. And then she goes about the business of cleaning up. And one of the most interesting things about the clean-up that she did is that, yes,

1240 she knows about cameras. She knows what to do with cameras according to her. And one of the things she knows what to do with them is delete photographs. And she's able to look at all of the photographs that are on this camera. Let's assume for example that they've already deleted the one's involving the sex. This one right here [inaudible], Exhibit 162 for example, had to be deleted after he was dead. There is no time travel here, because that's really what they want you to believe. After this happened, she located the camera. And he's not carrying the camera as he's trying to survive. He couldn't care less about that camera as he's standing over the sink. So what does he do? He just tries to get away. So the camera getting there means that



she is the person that was holding on to the camera and carried it to that location.

1250 Then, after she shoots him, she goes back and places him in the shower. Some point either after shooting him at the um, at the sink or after placing him in the shower – at some point, she’s still thinking. Because remember how much she has planned before? “I got to get rid of this evidence. I gotta delete this.” What does she do? She deletes only certain images. It’s not like all of the images are deleted. This shows somebody who was thinking. “Oh, I don’t want to delete the one of his dog, uh, or this other one. I’ll delete just the only ones that hurt me.” And that is directed behavior by somebody who claims to have Dissociative Amnesia. Dissociative Amnesia – you heard what the definition of that was. Or is it a fog? Even a San Franciscan fog, if such a thing existed, wouldn’t be so cloudy to account for this

1260 kind of behavior. There is no fog that someone can tell you about that hasn’t lifted – or allow for this. And so, she cleans that up. She has that, and she cleans that up. The other thing that we know is that she takes the camera at some point from that area there. And again what’s important about that - yes it’s important where it was found, yes it’s important that it was found in a washer – but what’s actually more important, to show that she was thinking, is that there are no steps leading from the bedroom down to the area where the, um, camera was found that are bloody in nature, or red. Which means she was cleaning herself up. Because if you’re going to be walking around there, you by necessity are going to get it in your socks because that’s what she’s wearing. She would’ve had to get it on her socks. And if she’s into

1270 this horrific, hysterical state, she would have ran down or thrown it down there. But what she did is she cleaned herself up first. The police did not, and you looked at all the stairs, did not find anything that showed that there was any activity other than up in the bedroom. Which means she cleaned up. She took her socks off, and then maybe took her shoes off, or maybe put different socks on – but definitely the item that she was wearing was taken off before that camera was taken downstairs and put in the washing machine. And it was put in the washing machine, and put through a cycle. Oh there’s this big indication or this indication that she could’ve taken it with her. So? What does that mean? It just means that it’s an alternative. But she has done so much already. Other things that she has done, according to her, is there was

1280 this glass underneath the sink area. And that’s the glass that’s found on top of Mister Alexander after she cleaned him up. After she cleaned him up in the shower. We don’t know if the glass was an afterthought or if it used to actually clean him but actually shows that she went to the sink, approached his body, and dropped it on top of him. But she cleaned him up. Wanted to wash away anything or any contact or anything that would show her being there. Again, we’re told about what DNA is and how it’s left behind. But if somebody washes it away, it’s just not going to be there. And that’s another step that she took in staging this scene. She washed away all of her DNA from him. Could’ve turned on - we don’t know if she turned on the shower. We don’t know if she used the glass. But we do know that she cleaned up.

1290 And it isn’t because she loved Mister Alexander that she cleaned him up, or it isn’t

that she wanted him to look good, even though he, with all due respect, he looked a little bit crunched up there. It wasn't that. The net effect of what she did is to destroy any of her DNA. She washed it off. That's what people do when they want things that, such as items off their hands – they wash up. And that's what she did.

And then we don't know what was in the middle of the bathroom that was causing her concern. But we know that she focused in on the bathroom area as well as near the closet. Again, we don't know exactly what was there. Perhaps that's where she dropped the knife and she needed to clean the knife there – because we know that the knife was cleaned. We know that the knife was not left behind. So again, there is

1300 this directed behavior with regard to the knife. Had the knife been dripping blood, and remember she had just stuck it into his neck– had that been happening, and had she been in this hysterical sort of mood that she wants you to believe, it's fair to say then that knife would not have been bloody [inaudible]... bullet... and she would have dropped blood along the way. No, she carried it out. She wants you to believe that she may have carried it down to the dishwasher. If she did carry it down to the dishwasher – which the State disputes – but we can use that for demonstrative purposes to show that knife, if it was carried downstairs either had to be cleaned up upstairs or wrapped in something like a towel, which shows again directed behavior, so that no blood got on any of the stairs. Didn't get it anywhere else. So if she says

1310 which is what she said that or sort of alluded to that maybe that's what she did with the knife because no knife was found up there and we do know that a knife was used in this attack if she did that, she cleaned, she did something with the knife, she either cleaned it, stuck it in her purse or according to her even if you put it in the dishwasher, but you can't be sure about that, the behavior before the movement of the knife shows that she was thinking this [inaudible] thing. If you step back and what she thinking at the time, well she was thinking of staging the scene, of cleaning it that's what she was doing, she cleaned the body of any DNA, she cleaned the area where it appears some of the attack occurred, the other implement, the knife, that was cleaned because it wasn't found or dripping anywhere, the um

1320 the gun well it was taken, the clothing that she had on her, specifically the footwear that you see in Exhibit 162, that wasn't found anywhere, there was no bloody socks anywhere and even the towels that were upstairs, if you remember there was one towel missing from the set was take down and placed inside of the washing machine and the cycle was run, it appears that the cycle was run with Clorox and what's significant about that, is that, yes it's significant that Clorox was used but what's also significant about it is that the hands were clean at the time the Clorox was grabbed because otherwise you would have seen the handle with blood on it, you would have seen blood all over the washer, you didn't see that, she had already cleaned up upstairs, and she was cleaning up because she did not want to get caught

1330 and it was actually as as plans go pretty good except for the photographs. So she's now staged the scene, she's now cleaned up there has been days of premeditation, but if you just take the scene itself, and we will discuss the jury instructions that tells you that it just requires a space of time, and killing somebody three times over

has built into it a space of time, in respect of which event you think happened first or happened last, it's the States position at the stake that the stabbing happened first because of the forensic evidence and of the blood spatter evidence that's upstairs, either way she killed him three times over, she stabbed him in the heart, he would die from that, certainly the throat was immediately fatal and the gunshot would also have been immediate..., would have been fatal. So there is this premeditation aspect,

1340 and so she staged the scene at that point, then she did some other things that were equally as interesting and by interesting I mean demonstrative of how well she was thinking at the time. She claims that she was in this sort of foggy state; she wasn't in such a foggy state that she couldn't put the license plate back on the car that she was driving, on the back, she was in a hurry to put it on upside down, but she did had already taken it off before and remembered to put it back on, such that she drove all the way to Utah that way and was stopped in West Jordan, um West Jordan, Utah. So yes she was thinking there, she wasn't driving without a licence plate because the police officers would have stopped you quicker without a licence plate, then one upside down. So thinking there. The other thing is she packed up the clothing that

1350 she wearing, it was bloody, the shoe, the socks included, packed all of that up and took it them with her, cameras, her purse, the gun all of that, she was cleaning it up, staging it up for the police, so that when the police went up there they wouldn't even know what was going on. The guide in the car, did all of the cleaning and was sure and careful not to get it anywhere other than the bathroom. Walked down and on that hot summer June 4<sup>th</sup>, got into the car left Napoleon behind and started to drive away, after putting the licence plate on the car, and according to her at some point coming up with gas, then the gas cans, if you're in such a fog how can you even remember that you have a gas can, how can you possibly even remember that you have a gas can. If you've never done it before. And she according to her this is

1360 not something that she did on a usual basis.

**Mr. Nurmi:** Objection. Next time the evidence.

**Judge Sherry K. Stephens:** Overruled. The jury is directed to recall the evidence.

**Martinez:** In a way she goes down the road and till according to her she stops on the side of the road and starts calling Ryan and continues her lies. Starts calling Ryan and saying and gave a story about where she had been, she lied to him, she wanted to continue that, speaking with him because he could potentially say "Well no she was with me, she was somebody that was with me at the time". So again she's continuing to stage the scene for the police. What else does she do? If she didn't think that she had killed him then why is it that she calling and leaving a

1370 voice mail message as soon as she possibly can "Oh I'm sorry, I couldn't stop". If she was really in this state of fogginess she you would have heard some mumbling or you she wouldn't have been able to work some props on the phone, but she was able according to her keep going back and try to do the message. One, two, three,

four. How many times did she say? Many times, many times. She said she tried to do that. That shows some clarity of thought. And of course though she wants you to believe that there was no clarity of thought, she wants to manipulate you, wants to continue to lie. Why send an email? If you really didn't know what had happened. Why send an email? Why not call the police? And why continue on your journey? To make it seem normal. Why continue to make it seem normal as if nothing had

1380 happened? The reason that you do that is because you had it planned. Ryan Burns was nothing more than her alibi, she show, maybe he was a little bit more because of the interest she showed in him but she calls him up makes up this story about where the cell phone has been and continues on to Utah, into his waiting arms. Gosh you could hear the violins st.. making there sound as she goes up to him and gives him that first kiss. Ain't that romantic? And then later on as the kiss passionately after going out and she adjusts him, whatever that may mean, although according to her he's full of crap. Anybody that doesn't agree with her, oh they're full of crap. That those are her words from the witness stand. He's wrong, and he's not telling the truth, according to her he doesn't have anything to gain but he does tell you that

1390 yes they were involved and they were involved in a sexual fashion when she gets up there. What a wonderful riu.. what a wonderful time it must have been for her. And so then there's this talk that she has with her friend Leslie Udy and she begins to talk about the future with Mister Alexander in it. How this Mister Alexander that is going to be with her in the future after he's married and has kids and she's married and she has kids, the children are going to play together. Absolutely staging the scene again, continuing staging the scene so that if the police start making inquires, guess what, she didn't know that he was dead, boy she was normal with me Mister Burns would say, and what Leslie Udy oh she was just talking about the future. Again she is just staging the scene, after what she has done. At the restaurant that

1400 they go to there is this talk about her hands and she again makes up a story as to how she got the injury to her hand, even though it's from the knife slipping as she was knifing Mister Alexander to death. And then afterwards her friend Dan Freeman calling her on the telephone and telling her oh his body has been found and she crying and calls the Bishop trying to determine whether or not he was alive. What an absolute façade, she's creating a wall of excuses, a wall of absolute what appears to be impenetrable might, so that no one can assail her, no one can say that she had anything to do with this because she's acting the part, and she's lying, she's making it all up, she has lied to everybody and she has staged the scene. She staged the scene of the murder and then she came into court and during these proceedings

1410 has staged her defense and she staged her defense by lies, and the lies that she told were to a number of people, and to various groups of people. First of all let's start with you, perhaps it may be that in court because of the admonition and standing in front of the clerk that some how that would bring out the truth because after all this is a truth finding sort of proceeding. Well let's start with some of the examples that we could talk about that we know she lied to you about. This issue about the gas cans, absolutely without a shadow of doubt she's a liar and she's a liar about

number one that she returned it to Wal-Mart and she's a liar about the fact that she didn't have 'em with her in Salt Lake City, it's just a lie and the reason why she's lying is that that explains why there are no receipts here in Arizona and that also

1420 goes to premeditation. She planned to come and kill Mister Alexander with that .25-caliber and that night from May 28<sup>th</sup> on. That's what the evidence shows. One of the things that you could say to yourself well you don't have any direct evidence of that, that's true we have circumstantial evidence and circumstantial evidence is a fact that you can deduce from looking at the circumstances as supposed to direct evidence which is visual or hearing cut, sensory kind of evidence. The best example that I can give you about the difference between direct and circumstantial evidence and how it applies in this particular case is that if you're at a beach, it doesn't matter what beach it is and it doesn't matter what time of the year it is, and you're there by yourself and you're standing there and your watching the waves come in, as you

1430 stand there, from your left somebody walks by and goes to your right and a minute or so later somebody else comes to you and says: "Has there anybody else been on this beach?" and you could say "Sure I just saw him walk by." That is direct evidence. Well contrast that with circumstantial evidence. You're at the same beach you have not seen anyone go by, you have not seen any finger prints, you haven't seen anything and you decide that it's a nice day and that you're gonna close your eyes. You have your Wayfarer sunglasses on, you have your towel out you're gonna lay down and you close your eyes for exactly, let's say for a minute. And before you close your eyes you notice that there were no footprints here, no footprints in front of you and no footprints there and the ocean's not coming up to you. Close your

1440 eyes and you wake up and for those 45 second or so, and then you look and to your left and there's a set of footprints and you see it goes right in front of you and then it goes by. You didn't hear anything, you didn't see anything. Somebody else comes up to you or the same person comes up to you and says: "Has there been anybody been here at the beach?" You didn't see anybody and you didn't hear anybody but you can say: "Yes." And the reason you can say yes is because of the footprints that you saw after you woke up. And the same thing here, there are many footprints to this premeditation aspect. One of the footprints that we have is up in Yreka California after the May 26<sup>th</sup> 2008 argument where he tells her "you're the worst thing that ever happened to me", then you have her stealing the gun or there's the

1450 stolen gun and it's a .25-caliber that is actually found at the scene. After that you have her borrowing some gas cans and then you have her lying about the gas cans, then you have her lying about the license plate and you have her turning off her phone so that she can't be found in Arizona and then you have the photographs and you have the rest of evidence in this case. She premeditated the murder in this case. The other thing that we need to talk about in terms of what she told you and that is not true is why she rented the car in Redding. She said that that's the place where Priceline would give her the best deal, but you saw the receipts, not the receipts but the statement from Washington Mutual that indicated that hey she paid directly to Budget, so that was not a Priceline thing. She looked at each and every one of you

1460 and that's what she told you. Well, that's because of course she's innocent and you as the jury are not going to convict her, right. The other thing that she talked to you about was this injury to her finger. She said that she showed you the finger and she demonstrated it to you and she said that Mister Alexander had been the person that actually had done that to her. Well, if you remember during cross-examination when she was being asked about what happened in her killing of Mister Alexander. Ah the question was "well you really didn't get any injuries, I mean, a side from the injury to the head. Do you remember that's all that you got then?" And she says ah no uh uh I also got the injury to my finger." Do you remember her saying that? In a moment of candor, in a moment when she wasn't quite expecting it. She said "yes

1470 that's when it happened yet then she turns around and says later no no that's not how I got it, I got it working for Casa Ramos, Margaritaville, I got it at his house, who knows but she looked you straight in the face about it, an event that occurred at the time of the killing and she looked you in the face every single one of you after taking the oath and lied to you. Maybe, maybe this was attraction maybe something else, maybe that will explain it or maybe her experts will explain these three areas that you know were made up. She just made them up to you and why did she make them up? Because although she says no jury will convict her, it's because she's attempting to get you or manipulating you to get to that particular point One of the other things that perhaps we need to look at or talk about is their experts and with

1480 regards to their experts and with regard to the defense that's presented, one of the things that perhaps you could sort of allude to and maybe make reference to when you're looking at this particular defense is by reference to Elizabeth Barrett Browning in her sonnet, where she indicated that, and again it's just a reference to it, "How do I love thee? Let me count the lies." It's a little bit of a reference to it but it's not exactly what she said, but really then "How do I love thee? Let me count the lies." Well we've counted three so far that in this court looking at each of you she said what else can we look at? Well perhaps we could look at the motivation or perhaps we could look at the people that have testified on her behalf and maybe and then we can understand what's going on. We could talk for example about Alyce

1490 LaViolette she's the person who has a Masters, who came in and has been doing this for a long time and one of the things that Alyce LaViolette has, and she has an extensive CV or resume, is one of the things she hasn't included in there is that she is also a liar. That is just the bottom line. She came in here and she told you in response to one of your questions about whether or not she had ever testified on behalf of a male in court and she said one or two times. Remember that? And when she was pressed by the prosecutor during cross-examination. "Well who are they?" Ah couldn't give me he name, give me a name, go ahead give me a name ah [inaudible] and further, well she said "Well, I didn't testify I actually wrote a report." She wanted to make herself more than she really was. She also talked about

1500 being a keynote speaker at one of the conferences where was Snow White a battered

woman, she indicated that she was one of the keynote speakers there at one of those conferences and she wasn't. Her CV indicated that she was on the plenary panel which is just part of people that go there and she made a presentation to a smaller group. And just as importantly with regard to lying and Alyce LaViolette she indicated and tried to justify the Defendant's lies for you so that you wouldn't think that they were so bad, she kept saying well she lied before and not afterwards and we got into this conversation about lying and Alyce LaViolette said well you know there's such things as white lies. Those are ok. See you don't understand for her and for the Defendant white lies, white lies, they're ok and if it's to her benefit to say

1510 that something is a white lie, she will say that it is a white lie and in this case everything that's negative towards the Defendant and it is untruthful, ah well that's just a white lie according to Alyce LaViolette and to her that's ok. Probably it's ok to Alyce LaViolette because she one herself wasn't truthful to you. It's one thing to be mistaken in a report it's another thing to look at you as an expert because they're trying to provide guidance and say um yes I have testified on behalf of men before and then going back and saying no that's not true. But maybe that's a guide to the Defendant, maybe that's something that she of course believes, maybe that's something that buttresses in Defendants case, and Alyce LaViolette believes that that's something she should do. But that indicates that she's nothing more than an

1520 advocate when you begin lying on behalf of the person that you evaluated, when you begin to visit them, give them books, when you're with them for 44 hours, that line was crossed. Anything Alyce LaViolette said is contaminated, it is foul, it is not something that you should consider because how much credibility can you give her if she came up here in advocating that position? She lied to you, absolutely no worth at all. And then you have Dr. Richard Samuels and one of the things about Dr. Samuels was that and the issue of bobbing line is one of the things that he did is that he had trouble with regard to this scoring and rescoring and there were some issues as to really what the motivation was for the rescoring. Janeen De Marte, Dr. Janeen De Marte advocated that well there's no reason to be rescoring something 30 times

1530 unless you perhaps wanna change the scores or with regards to the MCMI unless you want to submit it twice and you might want to change the scores. But one of the things that we do know about Dr. Samuels is that he gave the PTDS test and there is no doubt as to that test that the Defendant lied, the Defendant made it up. There is no truth to the fact that on the question 14 number 4 that whatever seminal event that they're talking about there was never any indication whatsoever that there was a guy and a girl that came in and killed Mister Alexander, but he based his test on that and the defense and the questions maybe asked about whether or not it involved the attach of a tiger, it involved the attach of a bear or if it involved a goffer. It doesn't matter, the bottom line is that it's a lie. Let's say that somebody goes to the doctor

1540 and they go to the doctor and they're talking about some sort of pain that they have and if they start lying about the pain isn't the treatment going to be affected by it. How good is the work up going to be if the seminal event that you're there for is a lie? Oh yeah you can say she suffered trauma. Ok let's assume that you could go

that far and say the PTSD does show that she did suffer trauma. Well which trauma are we talking about, is it the bear, is it the tiger is it the goffer? Or in our case is it the trauma of lying about killing Mister Alexander is that what we're talking about? Or is it the killing of Mister Alexander that we're talking about? Or as the other expert Cheryl Karp was it the trauma of this non-existent domestic violence. The problem is that when you start lying and the experts get involved and they start

1550 basing their tests on a lie how valid can the results be? For example Cheryl Karp found that yes she believed that it was posttraumatic stress disorder based on many many events of domestic violence. Yet there are only four that were presented to you and never lengthened to posttraumatic stress disorder. And then there's this PTSD test that was taken and according to Dr. Samuels he said you know what I probably should have re-administered it. In a moment of candor he said that and yet he then reversed his position and changed it. But again what do we have here? Another lie by the Defendant. Not only to Dr. Samuels but also to Dr. Carp or Janeen DeMarte. Dr. Janeen De Marte, either one, you can't have a lot of domestic violence or a little bit of domestic violence, so you have that issue that is sort of

1560 floating out there with regard to the experts. The other area that the Defendant lied about was or to the police detective Flores.

**Judge Sherry K. Stephens:** Alright ladies and gentlemen 15 minutes please be back at 3 o'clock. 15 minutes you are excused please remember the admonition.

**Baliff:** Please stand for the jury.

**Judge Sherry K. Stephens:** We're in recess.

**Baliff:** please stand for the jury.

**Judge Sherry K. Stephens:** Please be seated the record will show the presence of the jury, the Defendant and all counsel. Mister Martinez you may continue.

**Martinez:** We were talking about oblivion and the Defendant's lies and we were at

1570 the point where we were going to talk about the lies to the police officers and you've heard so much about that that there's an effect well she did it, now you know let's accept it and move on. It's an important factor because she lied and how it fits into her particular plan and one of the things that we have to think about when we talk about lies and you think about the things she said to the police officers, maybe there was some exaggeration going on with regard to what she told the police officer or maybe there was some minimization that was going on. In terms of exaggeration one of the points that needs to be made is that Robert Geffner, who was here yesterday talking to you, said well exaggeration really isn't a lie. Well it is because it's not the truth and so some of the things that the Defendant told the police office

1580 somebody may say well though that's a bit of an exaggeration maybe it isn't, but at



the time she spoke to the police officers it had been some time, it was July 15<sup>th</sup> of 2008 when she was arrested, it had been over a month since she had killed Mr. Alexander and during that time she had had time to think about what was going to happen if she spoke to the police and so it's important from the aspect of somebody who's thinking about it, somebody who is planning it shows that this individual had the forethought to have a story ready when the police officer came to her and this individual is of such strong will that even in the face of what the police officer was talking to her about she would actually not budge initially when she was spoken to by the police officer. For example one of the things that she was asked

1590 at the first interview well isn't it true that you were there she kept saying no I wasn't even there, how could I have possibly done this if I wasn't even there and then she was asked, isn't true that your fingerprint or your palm and it was actually your palm print but the fingerprint, isn't it true that your fingerprint in blood was there and she said of course it's there I've been there all this time and so it shows you the adaptability and how nimble this individual so that when she gets into any situation, whether it be involving mister Alexander or here in court this individual is quick thinking and is good on feet and so that when she's talking to you on cross-examination and you get those answers, those answers are to manipulate. That's quite that those statements to the police are important because they show how she

1600 can attempt to manipulate things and is able to say whatever fits the story at the time. So initially when the police came to her, Detective Flores came to her and asked her well this is what we have let's talk about it, she denied everything and kept on saying let me see the photographs, I want to see the photograph. The reason she wanted to see the photograph was to conform her story to what the police knew or what she thought the police knew. In fact in other conversations during the telephone conversations they discussed it and that that just shows you this type individual can adapt if you will as she's going along with the interview with the police officer. In asking to see the photograph, it's interesting that she asks that and the only reason I mention that is that previously when the State when I was showing

1610 the photographs of the killing of mister Alexander we have the Defendant crying. Well why did you want to see the photograph when the police officer was there, when you knew what had happened and yet she's still asking to see it again it's just another form of manipulation to have you feel some sympathy for her as she sits there with the red nose face down apparently crying but yet she asks the police officer, you know, can I take a look at these photographs, the police officer of course did not show her the photograph. So the first story on July 15<sup>th</sup> is: wasn't even there, wasn't even there, then has overnight to think about it in our July 16<sup>th</sup> changes it, changes it to something else because it'll all make more sense, because now she knows about a little bit about what they have there and she now wants to be

1620 able to say that she was there but what does she say she says not just that she was there but she makes herself the hero just switching it up, not only does she say that she was there but make herself the hero in the sense that she pushes the woman down and has the gun pointed to her head and you know by luck is not killed but

she's able to push people aside and then wraps it up by saying oh you know I wish I could've stayed there and fought more I did fight but I should of fought more and then away I went again trying to bring this up not only that she was there but again that she was this hero attempting to not only tell a different story but to manipulate that story to make her look better years go by and then we have the story that we have now this non stop literally by the Defendant just does not stop she has lied to

1630 various groups of people she has lied as we said to you do she has lied to the medical help care professional she's lying to the police and she has also lied to the media something that she has craved this individual craves the media loves the media went on national television to talk about this and what did she do not only did she lie to them but she made herself seem like such a calm person although I wouldn't do that didn't tell any of the things that we can see here today and of course it's not a confessional when you go there but it is demonstrative of the fact that she's a chameleon and she'll adjust to the situation and make up whatever stories are appropriate for her at the time whether it be one the media or somebody else the same can be said is true about her friends, the people that she has the friendships

1640 that she has she lies to them and she does things that that almost like you step back and say what what could you possibly gain by that when for example she talks to Leslie Udy and makes up this thing about her kids and mister Alexander's kids fighting together, she didn't have to go that far the point I'm trying to make that these lies are lies but then she goes and she goes even further with them just to sell them to manipulate the person in to thinking that they're actually true. For example Leslie Udy she could have just said oh yeah I speak to Travis every now and then but she adds I want our kids to play together. When Daniel Freeman called her well she didn't have to after he called her and said I don't know what happened but Travis is dead, she didn't have to then go talk to the Bishop she

1650 does these things because she's such inordinate liar it's just has to add the extras to it to really sell it and that's what she did for you for all of those times and all of those days that she testified to you and the reason I bring to you this ornate storytelling is because it applies to her defense and her defense is really based on lies it's it really is in if you can say for example she presented as it was in self defense but not only did she present it as if it were in self defense she added some ornate lies to it. For example one of the things that she had to it was physical violence supposedly mister Alexander inflicted upon her but she doesn't just say that he inflicted these four incidents of violence she goes into great detail about it for example she talks about the one in August of 2007 where he goes upstairs and he's banging his head up

1660 against the wall just very flowering very out there because then she's again the center of attention she's being the calm one she's being the person the individual that you would look to for the answers it's not just the lies, she's a very good liar but she on top of that she's is a very sophisticated liar in the sense that she adds these extra elements to it hum and and she did that with regards to the acts of domestic violence and they are lies. If we are to look at her journals and setback and take a look at what she writes those journals tell you that there were no acts of

domestic violence had you been given any reason what so ever other than this law of attraction and other another Alyce LaViolette somebody who has trouble with the truth other than that [inaudible] if you have any reason to doubt what is being

1670 written there if you have anything that the Defendant has said that has corroborated in terms of the domestic violence, you have a journal entries indicating that they did not happen, you have friends indicating that they never saw that, don't have any medical reports, any police reports you don't have anything and as we get talking about these there are lies there are monumental, huge lies and she made this up because that fit her defense and one of the other things she did with regard to this is that not only did she make up this lie for her defense the other thing that she did is she created a lie that really involves behaviour, that is a hot button topic. How horrific it is to be accused falsely of being a paedophile? Not here, he's not here to say no that's not true she can say Alyce LaViolette that it was on the computer but

1680 then Alyce LaViolette and says no that's not what she told me but remember Alyce LaViolette has a problem with the truth and so State goes to the computer and doesn't find anything. Oh no no I changed my mind it was actually images, they were like this. How does one Defendant that when there are no images there, the police looked through the attic, the police looked everywhere absolutely hateful that allegation is and how absolutely extensive she was with it but remember I said she went a little too far with these lies. First of all her journal indicates that there wasn't such an event, second of all the text messages indicate the same thing and what human being if that is the allegation if they really are caring what human being doesn't go to the police and say or somebody else this person is a paedophile. For

1690 her instead what she does is no and she talks about all these phone calls going back and forth, and that also doesn't match what she does it's the new approach, it's the new approach to paedophilia. What does she do? Let's jump in the sack, that's what we're gonna do. At least that's what she tells you now but with regard to Alyce LaViolette no she didn't, she can't even keep that together if that is the truth and if that is what happened. When you expect her journal if she had it, if she didn't write about it the police wouldn't have said nothing noteworthy has happened she has gone too far at least with regard to that particular allegation and at least in this allegation it is fortunate that the police did have this mister Alexander's laptop and there weren't any images of children on it, none whatsoever, they checked

1700 throughout house there was nothing inside the house that indicated anything like that there weren't any photographs, there wasn't anything and so this allegation of hers whether it was on the computer or whether it was in photograph form just went a little bit too far this these lies to take for mister Alexander when the only thing he has left is his reputation it's just a little bit too much too in light of what we know, in light of what she says it's just too much in this particular case it is a hateful allegation with nothing to support it but imagine what goes through somebodies head when they hear it for the first time that person does not deserve justice that person doesn't deserve anything because of what he did. It's so easy for her to make these allegations, it's so easy for her to get on the

- 1710 witness stand as you've seen and lie, and this is really the pinnacle it doesn't get any higher or worse or lower whatever way you wanna look at then that. Now how do you judge that allegation? Well the judge has, how you judge these sorts of allegations? Well just like everything in this case there are rules and those rules are the jury instructions such as the ones that have been read to you today and one jury instruction in particular deals with this aspect, it's the credibility of witnesses' instruction I know the judge has read it but because it's so important there's worth my referencing it again because it directly relates to the two primary allegations in this case, that of physical abuse and the fact that mister Alexander was interested in little boys and girls according to her. It tells you that you that deciding the facts of
- 1720 this case you should consider what testimony to accept and what to reject. What it's telling you there is that you ultimately decide whether or not this person here who is the epitome of a liar, whether this individual you're gonna accept or reject what she tells you are you going to pick and choose some thing of what she says and then accept some other things. How is it that you can know with any certainty whatsoever whether or not just telling the truth about anything it says you may accept everything a witness says, part of it or none of it. The State submits to you that based on what you've seen based on what you've heard and based on the testimony of others you should accept none of it, it doesn't mean that the eighteen days she was on the witness stand are wasted, no what that means that you're finally
- 1730 able to see it. This individual in the light of day you're able to see how she reacts, you're able to see that there were push cups to shelf shelves. She looked each and every one of you in the eye and lied, doesn't matter where, and this instruction then goes on and says in evaluating testimony you should use the tests for truthfulness that people use in determining matters of importance in everyday life. Important matters, what kind of matters would those be? Medical care. Would you anybody, not you but anybody go to a doctor who has lied to them consistently about major aspects of their life. No, people would not go to a doctor who lies to them, and the factors that you are to consider are the witnesses' ability to see or hear or note things that witness testified to if we're talking about the Defendant, she was there
- 1740 she knows. The quality of the witnesses' memory. The quality of her memory is incredible, absolutely incredible down to follicles to hair, unless it hurts her. Then the fog moves in, then there's an excuse, then there's a reason why she doesn't remember, she has an incredible memory, alright when it comes to lying. And the witnesses manner will testify, how was that she testified, how was that the Defendant testified. Well you saw her many times attempt to cry, you saw her at times get angry you saw her at other times just solemnly stand there and you saw her at times when the questions we're getting difficult snap-out and tried to somehow make the person that was asking the questions, the villain, saying well you're scrambling my brain it's not my fault again it's not my fault it's the fact that

- 1750 you're asking me these questions just like Travis that's exactly what's going on here so that's not my fault that I keep lying here on the witness stand, it's yours of the because of the way you're asking me the questions the fact that you're raising your voice, that's whose fault it is and that's why I can snap at you from the witness stand I can smirk at you from the witness stand and look knowingly towards the jury because not her fault it's the person whose asking the questions whether or not the witness had a motive, bias or prejudice if there is any witness in this case who had a motive to lie it's this Defendant she's the person that's charged all of the other witnesses that came here, some of them had a motive for example Alyce LaViolette she had a motive to lie I mean maybe perhaps it was her reputation that that she was
- 1760 interested in or things like that uh... all the other individuals for example uh... Ryan Burns why would he wanna lie about anything uh... he lives in Utah he just met her at one time there's no reason to believe that he's going to be making these things up, Amanda Web why would she want to come in here after all the work that she's done to make things up. The only person with a motive is the Defendant so when evaluating her testimony that's something you need to consider, when it's to her benefit she's going to lie whether the witness the Defendant was contradicted by anything said or wrote before trial well she wrote for example in terms of these two allegations, involving the paedophilia and involving the domestic violence but they didn't happen additionally she never told anybody and all the reports out there if
- 1770 there aren't any reports that would corroborate what she said so in terms of the paedophilia well she says it's on the computer. Well the computer doesn't show that and they even went back in traced and looked everywhere the house there were no implements if you will or anything associated with that kind of conduct and so in this case nothing support what the Defendant said and then you're asked to take a look at the reasonableness of her testimony in light of the other evidence in order for her to prevail in this case in order for you to believe her because it actually comes down to whether or not believe her if you believe her then certainly you can apply the jury instructions but it comes down to whether or not you believe her the other evidence all the other evidence that's out there contradicts her so we have to go
- 1780 against all of the evidence that's out there and turn your back on all of that and say I believe her therefore I'm going to file in her favour. The State submits to you that lied of everything, that's not something that you should do so what standard do you apply? Well the standard that you apply is the burden of proof, the instruction which tells you proof beyond a reasonable doubt is proof that leaves you firmly convinced of the Defendant's guilt. Firmly convinced is the term not any of other terms that you may have heard anywhere else in life it's just firmly convinced and it does tell you that there are very few things in this world that we know with absolute certainty, so absolute certainty is not required and it does say in criminal law that the law does not require proof that overcomes every death, that's not what we're
- 1790 talking about here you just need to be firmly convinced. If based on your consideration of the evidence you are firmly convinced that the Defendant is guilty of the crime charge you must find her guilty. That's how it reads and that's the

procedures that you indicated that you would follow should you be chosen to go back there to resolve this case. Once you make that inquiry and once you find the Defendant guilty, that's the end of the inquiry. The other language that falls after that involves you finding reasonable doubt but if you find based on your consideration of the evidence that you are firmly convinced, that's the end of the inquiry, you don't need to go any further and there is only one charge in this case, the charge is first-degree murder. And first-degree murder can be committed in one

1800 of two ways obviously you've noticed that there is not two charges of first-degree murder there is only one but there are different ways in which these can be committed. First it's premeditated murder or second is felony murder. With regard to premeditated murder there are lesser included offences as the jury instructions have told you there are other offences not necessarily lesser but other offences that are involved. With regard to felony murder there are no lesser offences so for example if you are considering felony murder there are no other offenses that are to be considered the only issue with regard to felony murder is whether or not uh... in the course of a felony she killed him, that's basically what the law says and if you find that that's the end of the inquiry you don't consider lesser included offences

1810 premeditated murder does have these lesser offences but in terms of the tabulation that takes place at the end for example nine of you could find that this was premeditated murder, three of you could find that this was a felony murder and it's still first-degree murder and you do not have to be unanimous as to the theory involving the murder or you could be six and six or it could be twelve for premeditated murder and twelve for felony murder it's still only one charge, you do not have to be unanimous as to the theory of the crime. Let's talk about premeditated murder. Well it requires that it be proven that the defendant caused the death of another person, well exhibit 207 he's dead, that element is proven. Well the Defendant intended or knew that she was would cause the death of another person,

1820 that's also proven. One of the things that we know this particular case is that amongst other things she slit his throat, she stabbed him in the heart and we also know that she shot at him. There are three different ways that she killed him. So did she intend? Sure, that she did know absolutely knew, remember I was talking about how directed it was to the the throat. If you do that thing you know, anybody knows, that if you do that to the neck you're gonna kill somebody so she both intended it or knew it or in other words it you could be either or in this case she knew and also intended it based on what we see in this particular case so those elements are satisfied in this case there is no doubt about it that those two elements are satisfied. Now the issue is whether or not she acted with premeditation and premeditation

1830 means that a Defendant intended to kill another human being and then there's the disjunctive or knew it doesn't say the Defendant intended to kill another human being and then it stops and says intended to kill another human being or knew she would kill another human being. That is the element that's above in number two she knew that she was going to kill him there's three different ways that she killed him one of those trees satisfies this knew she would cause the death of another person

and after forming that knowledge after knowing that she was going to kill because it talks about intending or knowledge after knowing after forming that intent or knowledge reflective on the decision before killing and the key here is what is reflection what does that mean and it defines it for you and it tells you that it is this

1840 reflection regardless of the length of time in which it occurs that distinguishes first-degree murder from second-degree murder what that is telling you is that it don't have to have a month of thinking about or knowing about it, you don't have to have week between the thinking and the knowing and the killing you don't even have to have a day between the thinking and the knowing you just have to have a length of time regardless of the length so that it could be very short it can be as short as stabbing him in the shower and then after a couple of minutes chasing him down and going for the throat. No one can dispute that he walked that way to get away from her, no one can dispute that he was already injured he was already going to die when this was applied, by this I mean the strike to the throat she knew he was

1850 already gonna to die but that type of injury indicates you want that person to die [inaudible] when she shot him in the head when he was already dead that also indicates that she wanted him to die it does say that while reflection is required for first-degree murder the time needed for reflection is not necessarily [inaudible] again it's telling you it doesn't have to be days, it doesn't have to be hours, it doesn't even have to be minutes and then it tells you in the space and time between the intent or knowledge to kill and act of killing may be very short. In this case, I guess it depends on who you ask, this was a long period of time for mister Alexander to be going through this, just a long period of time between the stab wounds to the heart and the shower when he was defenseless to the time that he

1860 was trying to get away, going along the wall and absolutely uh... falling down so in this case it can be very short she killed them three different ways she knew that she was going to kill him additionally not only that she brought the implements she brought the gun uh... if she didn't bring the gun and it was mister Alexander's then you have a burglary and that implicates felony murder, cause she came and she took his gun if what she's saying is that she stole his gun did she have his permission to take that gun according to her, it was his gun, if she took his gun and that's a burglary and if during the burglary somebody dies in stealing the gun and that's premeditated murder, either way you look at it but we'll talk about that in a little but more. And an act is not done with premeditation if it's the instant effect or a sudden

1870 quarrel of the heat of passion. How do you know if it was or wasn't the instant effect of sudden quarrel or heat of passion? Well you can take a look at some of the photographs that we have and they will tell you that it wasn't the instant effect of a sudden quarrel or heat of passion. 160 tells y does that guy look like he's ready to fight, does that guy look like he's ready to fight? And who's telling us that this is the instant effect of a sudden quarrel or heat of passion? A liar is somebody who is telling us that, a liar who was dressed at the time a liar who was poised to strike. If she didn't have a plan why did she have her close on, why did she need to have her

close on? Why is it that the gun is with her? She says oh no the gun belonged to mister Alexander but if you remember on June 10th 2008 she called unsolicited to

1880 this police officer and said to him oh no Travis never had a gun, Travis never had a gun, the only thing that he had were his fists. So and you have that on tape there is no doubt that she said it, in fact there is a tape that says Jodi Arias' number was whatever it was and you heard her voice and you also heard her saying he did not have a gun. At that time of the investigation she didn't know how important it was going to be she didn't know what lies she was going to be telling in the future, she said he did not have a gun. So if he didn't have a gun, she brought it and you know that that she did bring it, you know about the burglary, supposed burglary of her grandparents' house and so she says that in order for you to believe that this was a sudden quarrel or heat of passion, you have to say to yourself well you know she

1890 called the police on her own and she lied to them but since she's been such a liar and she lied to us in this courtroom. I'm not going to decide to believe her when she makes up a story and says oh his father gave it to her. In addition to that I'm going to have to believe that the shooting did not occur in the closet as she told Alyce LaViolette, cause that's what she told Alyce LaViolette the person. Isn't that what she told Alyce LaViolette, you remember what Alyce LaViolette testified, that that's what she told her, and in fact there was a recording of the conversation between the prosecutor and her at an interview that took place in November of last year in which you heard her say oh it what you yeah she told me that the shooting happened in the closet, you're gonna have to disregard all of that so that you can

1900 even get to the sudden quarrel or heat of passion that's that the problem for the Defendant are you going to be willing to do that, especially when the police have looked in that place and there wasn't anything indicating that there were any bullets there, there's nothing to indicate that he had any cleaning supplies, nothing to indicate that he had a gun. The other thing that is problematic that would allow you to reach that is the shelves you would have to you know the shelves you've seen what the shelves look like, those shelves that were in the corner and by her own admission she stepped on the second shelf as she was going to get the gun, you saw what happens to those shelves when you put a little bit of pressure they go down this way and you saw the photographs there was nothing the shoes that were there

1910 there was nothing that looked like there had been any activity there everything everything the photographs, the forensic evidence, her statement says that there was no sudden quarrel or heat of passion because she brought the gun. You would have to again throw aside everything else she has said to find there was an instant effect a sudden quarrel or heat of passion in this case. What do you want to do as you sit back and deliberate? What do you want to do when one of the first conversations that she ever has with the police before she knows what the issues and says he didn't have a gun. What possible reason can or justification can she give you to say at that time I lied to him [inaudible]. Well she said before well I was afraid initially she said when she spoke to the officer back on July 15<sup>th</sup> that's why I made that first



- 1920 story, then the second story well I was trying not to get in trouble but those were present those reasons were not present on June 10<sup>th</sup> 2008 when she called this detective unsolicited to talk it's because she wanted to learn about what the police knew so that she could incorporate it into her story should something come up but with the truth he ain't got to remember nothing and she forgot about some things and made that statement involving the gun and that's problematic for her it will stay as part of this record and it will require you to sit back there and listen to that and say you know what she was lying there instead of telling the truth there and that would require you to disregard the fact a .25 caliber handgun was taken during a supposedly burglary of her grandparents' house and that was the gun that was used
- 1930 to kill him the issue of the gun will not go away especially since she said that he didn't have one especially since she also indicated that there was a circuitous route through the closet especially when she could've just walked out the guy's naked he's not gonna run after her outside naked and then indicating that she came through the closet shots him in the closet according to some accounts, shots him outside of the closet in the bathroom and grabs a gun that she believes is unloaded. If she believes that the gun is unloaded what is she gonna do with it? Throw it at him? Why stand there with a gun if you know it's unloaded? None of it, absolutely none of it is true you could even be charitable and say it doesn't, I'm not asking you to be charitable, it's an absolute lie this issue about the gun she said it and she is wedded
- 1940 to it. I'm going to discuss the lesser included offences because of the issue involving the gun she brought it herself. Felony murder uh... requires the State to prove two things, the first one is that the Defendant committed or attempted to commit a burglary in the second degree. What is a burglary in the second degree? And notice it says attempted or committed to burglary. The crime of burglary in the second-degree requires the Defendant in this case to enter or remain unlawfully in or on a residential structure. We don't know if she was invited in, we really don't know if she invited in at all so but did she remain unlawfully? I think it's not a stretch to say that an individual who owns a home and is being stabbed to death that the person that's doing the stabbing there no longer is entitled to remain lawfully in that house,
- 1950 no uh uh I may be charitable I may be a nice guy but you know what if you start stabbing me you're no longer here lawfully that consent to come in is no longer there if you keep stabbing me that's it, it is not a stretch of the imagination to say that and we understand the State understands that mister Alexander is not here to say I revoke my consent but if he's being stabbed, and he's having his throat slashed and he's being shot it's not a stretch to say based on circumstantial evidence to say that she remained unlawfully so she has remained there unlawfully. Is it a residential structure? It absolutely is. So that's his house and she did so with the intent to commit any theft, well at some point she stole the gun according to her or a felony there [inaudible] you you can you can bet that that stabbing somebody is a
- 1960 felony so he doesn't want you to be there and you're stabbing him and you're killing him, that's a felony so the elements of burglary have been satisfied so we go back to the first [inaudible] and it says the Defendant committed or attempted to commit

burglary in the second degree. Yes, she did accomplish the burglary so that element is satisfied. Number two in the course and furtherance of committing this burglary that we know she committed or immediate flight from it, in other words, she took off and she took his gun so that's the theft right there and as part of that even if it wasn't her fault, even if it wasn't her fault the Defendant caused the death of another person. If you are committing

**Mr. Nurmi:** Objection the States [inaudible]

1970 **Judge Sherry K. Stephens:** Overruled

**Martinez:** The Defendant caused the death of another person, and she did cause the death of mister Alexander during this burglary, she took off and she took off with his gun after stabbing him. So she has committed murder in the first-degree under both theories it isn't just one theory that she has committed this crime under.

So now you're left with the decision that you have to make the one admonition that I leave you with is that these jury instructions are not advisory they are mandatory and it's a situation where you go back there and you read them and as you sit back and you decide this case and you attempt to reconcile the lies with what actually happened keep in mind that the Defendant has attempted to manipulate you, has

1980 attempted to paint the picture for you, for example something like this. This is what she wants you to believe, something like that, there's mister Alexander and her. That's what she wants you to think, that's what the feeling that she wants you to have but actually reality is this. That's really what we're talking about in this case, that's his back, that his throat and you've seen his throat already and that's really the reality in this case. And as you consider this case and as you ponder your decision one of the things that I want you to consider that is symbolic of this whole case is that this issue involving the gas cans what she wants you to do because you know it's a lie, what she wants you to do is disregard it but symbolically speaking when she asks you to disregard, what she wants you to do she wants you to carry

1990 those gas cans for her, she wants you to help her fill them with gas that's what she wants you to do symbolically speaking. What the State is asking you to do is to not leave this courtroom filled with a stench of gasoline on your hands. That's what we are asking you to do because it's not true that she's already talked to you about this these gas cans it's not true that she returned them but she's asking you to help her, she asking you symbolically help her carrying them out and taking those cans with you. What the State is asking you to do is your duty and the judge has indicated that your duty is to follow the law, as she's given it to you and apply it to the facts and in asking that the State is asking that you return a verdict guilty and that you return a verdict of guilty as to first-degree murder not only as premeditated but also as to

2000 felony murder for no other reason that it's your duty and the facts and the law support it. Thank you.

**Judge Sherry K. Stephens:** Alright ladies and gentlemen we were here until last evening so we are going to adjourn for the evening now, please be back tomorrow morning we will start promptly at nine o'clock. Please remember the ammunition. Are there any questions? You are excused have a nice evening.

**Bailiff:** Please stand for the jury.

## **Appendix H**

### **Judge Stephens' Jury Instructions**

Final Jury Instructions

Hon. Sherry K. Stephens

Judge of the Superior Court

State of Arizona

v.

JODI ANN ARIAS

CR2008-031021-001

Not Guilty/Guilty Phase

#### **DUTY OF JURY**

It is your duty as a juror to decide this case by applying these jury instructions to the facts as you determine them. You must follow these jury instructions. They are the rules you should use to decide this case.

It is your duty to determine what the facts are in the case by determining what actually happened. Determine the facts only from the evidence produced in court. When I say "evidence," I mean the testimony of witnesses and the exhibits introduced in court. You should not guess about any fact. You must not be influenced by sympathy or prejudice. You must not be concerned with any opinion that you feel I have about the facts. You, as jurors, are the sole judges of what happened.

You must consider all these instructions. Do not pick out one instruction, or part of one, and ignore the others. As you determine the facts, however, you may find that some instructions no longer apply. You must then consider the instructions that do apply, together with the facts as you have determined them.

#### **LAWYERS COMMENTS ARE NOT EVIDENCE**

In their opening statements and closing arguments, the lawyers have talked to you about the law and the evidence. What the lawyers said is not evidence, but it may help you to understand the law and the evidence.

#### **STIPULATIONS**

During the trial, the lawyers are permitted to stipulate that certain evidence exists. This means both sides agree that evidence exists and is to be considered by you during your deliberations at the conclusion of the trial. You are to treat a stipulation as any other evidence. You are free to accept it or reject it, in whole or in part, just as any other evidence.

#### **EVIDENCE TO BE CONSIDERED**

You are to determine what the facts in the case are from the evidence produced in court. If the court sustained an objection to a lawyer's question, you must disregard it and any answer given. Any testimony stricken from the court record must not be considered.

## **PRESUMPTION OF INNOCENCE**

The law does not require a defendant to prove innocence. Every defendant is presumed by law to be innocent. You must start with the presumption that the defendant is innocent.

## **BURDEN OF PROOF**

The State has the burden of proving the defendant guilty beyond a reasonable doubt. This means the State must prove each element of each charge beyond a reasonable doubt. In civil cases, it is only necessary to prove that a fact is more likely true than not or that its truth is highly probable. In criminal cases such as this, the State's proof must be more powerful than that. It must be beyond a reasonable doubt.

Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt. There are very few things in this world that we know with absolute certainty, and in criminal cases the law does not require proof that overcomes every doubt. If, based on your consideration of the evidence, you are firmly convinced that the defendant is guilty of the crime charged, you must find her guilty. If, on the other hand, you think there is a real possibility that she is not guilty, you must give her the benefit of the doubt and find her not guilty.

## **VOLUNTARINESS OF DEFENDANT'S STATEMENTS**

You must not consider any statements made by the defendant to a law enforcement officer unless you determine beyond a reasonable doubt that the defendant made the statements voluntarily.

A defendant's statement was not voluntary if it resulted from the defendant's will being overcome by a law enforcement officer's use of any sort of violence, coercion, or threats, or by any direct or implied promise, however slight.

You must give such weight to the defendant's statement as you feel it deserves under all the circumstances.

## **JURY NOT TO CONSIDER THE PENALTY**

You must decide whether the defendant is guilty or not guilty by determining what the facts in the case are and applying these jury instructions.

You must not consider the possible punishment when deciding on guilt.

## **EVIDENCE OF ANY KIND**

The State must prove guilt beyond a reasonable doubt based on the evidence. The defendant is not required to produce evidence of any kind. The decision on whether to produce any evidence is left to the defendant acting with the advice of an attorney. The defendant's decision not to produce any evidence is not evidence of guilt.

## **CREDIBILITY OF WITNESSES**

In deciding the facts of this case, you should consider what testimony to accept, and what to reject. You may accept everything a witness says, or part of it, or none of it.

In evaluating testimony, you should use the tests for truthfulness that people use in determining matters of importance in everyday life, including such factors as: the witness's ability to see or hear or know the things the witness testified to; the quality of the witness's memory; the witness's manner while testifying; whether the witness had any motive, bias, or prejudice; whether the witness was contradicted by anything the witness said or wrote before trial, or by other evidence; and the reasonableness of the witness's testimony when considered in the light of the other evidence.

Consider all of the evidence in the light of reason, common sense, and experience.

### **INDICTMENT IS NOT EVIDENCE**

The State has charged the defendant with certain crimes. A charge is not evidence against the defendant. You must not think that the defendant is guilty just because of a charge. The defendant has pled “not guilty.”

This plea of “not guilty” means that the State must prove each element of the charge beyond a reasonable doubt.

### **DIRECT AND CIRCUMSTANTIAL EVIDENCE**

Evidence may be direct or circumstantial. Direct evidence is the testimony of a witness who saw, heard, or otherwise sensed an event. Circumstantial evidence is the proof of a fact or facts from which you may find another fact. The law makes no distinction between direct and circumstantial evidence. It is for you to determine the importance to be given to the evidence, regardless of whether it is direct or circumstantial.

### **EXPERT WITNESS**

A witness qualified as an expert by education or experience may state opinions on matters in that witness’s field of expertise, and may also state reasons for those opinions.

Expert opinion testimony should be judged just as any other testimony. You are not bound by it. You may accept it or reject it, in whole or in part, and you should give it as much credibility and weight as you think it deserves, considering the witness’s qualifications and experience, the reasons given for the opinions, and all the other evidence in the case.

### **OTHER ACTS**

Evidence of other acts has been presented. You may consider these acts only if you find that the State has proved by clear and convincing evidence that the defendant committed these acts. You may only consider these acts to establish the defendant’s motive, intent, preparation or plan. You must not consider these acts to determine the defendant’s character or character trait, or to determine that the defendant acted in conformity with the defendant’s character or character trait and therefore committed the charged offense.

### **TESTIMONY OF LAW ENFORCEMENT OFFICERS**

The testimony of a law enforcement officer is not entitled to any greater or lesser importance or believability merely because of the fact that the witness is a law enforcement officer. You are to consider the testimony of a police officer just as you would the testimony of any other witness.

### **DEFENDANT'S TESTIMONY**

You must evaluate the defendant's testimony the same as any witness' testimony.

### **MOTIVE**

The State need not prove motive, but you may consider motive or lack of motive in reaching your verdict.

### **THE CHARGED OFFENSE – PREMEDITATED MURDER**

Count 1 charges the defendant with First Degree Murder. Arizona law recognizes two types of First Degree Murder – Premeditated Murder and Felony Murder. The state has charged the defendant with both types.

The crime of First Degree Premeditated Murder requires the state to prove the following:

1. The defendant caused the death of another person; and
2. The defendant intended or knew that she would cause the death of another person; and
3. The defendant acted with premeditation.

“Premeditation” means that the defendant intended to kill another human being or knew she would kill another human being; and that after forming that intent or knowledge, reflected on the decision before killing. It is this reflection, regardless of the length of time in which it occurs, that distinguishes First Degree Murder from Second Degree Murder. While reflection is required for First Degree Murder, the time needed for reflection is not necessarily prolonged, and the space of time between the intent or knowledge to kill and the act of killing may be very short. An act is not done with premeditation if it is the instant effect of a sudden quarrel or heat of passion.

The crime of First Degree Premeditated Murder includes the lesser offense of Second Degree Murder. You may consider a lesser offense if either:

1. You find the defendant not guilty of First Degree Premeditated Murder; or
2. After full and careful consideration of the facts, you cannot agree on whether to find the defendant guilty or not guilty of First Degree Premeditated Murder.

You cannot find the defendant guilty of any offense unless you find that the State has proved each element of that offense beyond a reasonable doubt.

### **SECOND DEGREE MURDER**

The crime of Second Degree Murder requires proof of one of the following:

1. The defendant intentionally caused the death of another person; or
2. The defendant caused the death of another person by conduct which the defendant knew would cause death or serious physical injury; or
3. Under circumstances manifesting extreme indifference to human life, the defendant recklessly engaged in conduct that created a grave risk of death and thereby caused the death of another person. The risk must be such that disregarding it was a gross deviation from what a reasonable person in the defendant's situation would have done.

The difference between first degree murder and second degree murder is that second degree murder does not require premeditation by the defendant.

If you determine that the defendant is guilty of either first degree murder or second degree murder and you have a reasonable doubt as to which it was, you must find the defendant guilty of second degree murder.

### **MANSLAUGHTER BASED ON EXISTENCE OF SUDDEN QUARREL OR HEAT OF PASSION:**

If, and only if, you find the elements of Second Degree Murder were proven beyond a reasonable doubt, you must then consider whether the homicide was committed upon a sudden quarrel or heat of passion resulting from adequate provocation by the victim.

"Adequate provocation" means conduct or circumstances sufficient to deprive a reasonable person of self-control. Words alone are not adequate provocation to justify reducing an intentional killing to Manslaughter. There must not have been a "cooling off" period between the provocation and the killing. A "cooling off" period is the time it would take a reasonable person to regain self-control under the circumstances.

If, after finding the elements of Second Degree Murder were proven beyond a reasonable doubt, you also unanimously find beyond a reasonable doubt that the homicide was not committed upon a sudden quarrel or heat of passion resulting from adequate provocation by the victim, then you must find the defendant guilty of Second Degree Murder.

If, after finding the elements of Second Degree Murder were proven beyond a reasonable doubt, you also unanimously find beyond a reasonable doubt that the homicide was committed upon a sudden quarrel or heat of passion resulting from adequate provocation by the victim, then you must find the defendant not guilty of Second Degree Murder but guilty of Manslaughter.

If you determine that the defendant is guilty of either Second Degree Murder or Manslaughter but you have a reasonable doubt as to which it was, you must find the defendant guilty of Manslaughter.

The defendant cannot be guilty of both Second Degree Murder and Manslaughter.

### **CHARGED OFFENSE – FELONY MURDER**

As stated earlier, Count 1 also charges defendant with First Degree Felony Murder. The crime of First Degree Felony Murder requires the state to prove the following two things:

1. The defendant committed or attempted to commit Burglary in the Second Degree; and
2. In the course of and in furtherance of committing Burglary in the Second Degree, or immediate flight from it, the defendant caused the death of any person.

An "attempt" requires the state to prove that the defendant intentionally did something which, under the circumstances she believed them to be, was a step in a course of conduct planned to culminate in the commission of the offense.

The crime of Burglary in the Second Degree requires proof that the defendant:

1. Entered or remained unlawfully in or on a residential structure; and
2. Did so with the intent to commit any theft or felony therein.

Residential structure means any structure, movable or immovable, permanent or temporary, that is adapted for both human residence and lodging whether occupied or not.

"Intentionally" or "with the intent to" means, with respect to a result or to conduct described by a statute defining an offense, that a person's objective is to cause that result or to engage in that conduct.

There are no lesser included offenses for First Degree Felony Murder.

In order to find defendant guilty of Count 1, it is not necessary that you be unanimous with respect to whether the Defendant is guilty of First Degree Premeditated Murder or First Degree Felony Murder. The only requirement is that you be unanimous that the Defendant is guilty of First Degree Murder, which can be either First Degree Premeditated Murder or First Degree Felony Murder. If you find the Defendant guilty of First Degree Murder, you must indicate on the verdict form how many of you have



found the Defendant guilty of First Degree Premeditated Murder and/or First Degree Felony Murder. By way of example only, the jury can be unanimous as to both theories, or just one theory, or it may be divided.

### **JUSTIFICATION FOR SELF-DEFENSE PHYSICAL FORCE**

A defendant is justified in using or threatening deadly physical force in self-defense if the following two conditions existed:

1. A reasonable person in the situation would have believed that deadly physical force was immediately necessary to protect against another's use or apparent attempted or threatened use of unlawful deadly physical force; and
2. The defendant used or threatened no more deadly physical force than would have appeared necessary to a reasonable person in the situation.

A defendant may use deadly physical force in self-defense only to protect against another's use or apparent attempted or threatened use of deadly physical force.

Self-defense justifies the use or threat of deadly physical force only while the apparent danger continues, and it ends when the apparent danger ends. The force used may not be greater than reasonably necessary to defend against the apparent danger.

The use of deadly physical force is justified if a reasonable person in the situation would have reasonably believed that immediate deadly physical danger appeared to be present. Actual danger is not necessary to justify the use of deadly physical force in self-defense.

You must decide whether a reasonable person in a similar situation would believe that:

Deadly physical force was immediately necessary to protect against another's use or threatened use of unlawful deadly physical force.

You must measure the defendant's belief against what a reasonable person in the situation would have believed.

A defendant has no duty to retreat before threatening or using deadly physical force in self-defense if the defendant:

1. Had a legal right to be in the place where the use or threatened deadly physical force in self-defense occurred; and
2. Was not engaged in an unlawful act at the time when the use or threatened deadly physical force in self-defense occurred.

The State has the burden of proving beyond a reasonable doubt that the defendant did not act with such justification. If the State fails to carry this burden, then you must find the defendant not guilty of the charge.

If there have been past acts of domestic violence against the defendant by the victim, the state of mind of a reasonable person shall be determined from the perspective of a reasonable person who has been a victim of those past acts of domestic violence.

Domestic violence mean any act that is an offense (including assault, aggravated assault, threatening and intimidating, endangerment, sexual assault, or unlawful imprisonment) committed while the victim and perpetrator are in a romantic or sexual relationship. The following factors may be considered in determining whether the relationship between the victim and the perpetrator was/had been a romantic or sexual relationship:

- (a) The type of relationship.
- (b) The length of the relationship.
- (c) The frequency of the interaction between the victim and the perpetrator.

(d) If the relationship has terminated, the length of time since the termination.

## **DEFINITIONS**

### **“INTENTIONALLY,” “INTENT,” “INTENDED”**

“Intentionally,” “intent,” or “Intended” means that a defendant’s objective is to cause that result or to engage in that conduct.

### **“INTENT” – INFERENCE**

Intent may be inferred from all the facts and circumstances disclosed by the evidence. It need not be established exclusively by direct sensory proof. The existence of intent is one of the questions of fact for your determination.

### **“KNEW” or “KNOWINGLY”**

“Knew” or “knowingly” means that a defendant acted with awareness of or belief in the existence of conduct or circumstances constituting an offense. It does not mean that a defendant must have known that the conduct is forbidden by law.

### **INCLUDED MENTAL STATES – “KNOWINGLY”**

If the State is required to prove that the defendant acted "knowingly," that requirement is satisfied if the State proves that the defendant acted "intentionally."

### **“RECKLESSLY OR RECKLESS DISREGARD”**

“Recklessly” or “reckless disregard” means that a defendant is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or that the circumstance exists. The risk must be such that disregarding it is a gross deviation from what a reasonable person would do in the situation. A person who creates such a risk but is unaware of such risk solely by reason of voluntary intoxication also acts recklessly with respect to such risk.

### **“PHYSICAL INJURY”**

“Physical injury” means the impairment of physical condition.

### **“SERIOUS PHYSICAL INJURY”**

“Serious Physical Injury” includes physical injury which creates a reasonable risk of death, or which causes serious and permanent disfigurement, serious impairment of health or loss or protracted impairment of the function of any bodily organ or limb.

### **“FIREARM”**

“Firearm” means any loaded or unloaded handgun, pistol, revolver, rifle, shotgun or other weapon that will expel, is designed to expel or may readily be converted to expel a projectile by the action of an explosive. Firearm does not include a firearm in permanently inoperable condition.

### **“PHYSICAL FORCE”**

“Physical force” means force used upon or directed toward the body of another person and includes confinement, but does not include deadly physical force.

### **“DEADLY PHYSICAL FORCE”**

“Deadly physical force” means either:

1. Force which is used with the purpose of causing death or serious physical injury, or

2. Force which in the manner of its use is capable of creating a substantial risk of causing death or serious physical injury.

#### **“UNLAWFUL”**

“Unlawful” means contrary to law or, where the context so requires, not permitted by law.

#### **ENDANGERMENT**

The crime of endangerment requires proof of the following:

1. The defendant disregarded a substantial risk that his or her conduct would cause physical injury and
2. The defendant’s conduct did in fact create a substantial risk of physical injury.

#### **THREATENING OR INTIMIDATING**

The crime of threatening or intimidating requires proof that the defendant threatened or intimidated by word or conduct:

1. To cause physical injury to another person; or
2. To cause serious damage to the property of another person.

#### **ASSAULT**

The crime of assault requires the proof that the defendant:

1. Intentionally, knowingly, or recklessly caused a physical injury to another person; or
2. Intentionally put another person in reasonable apprehension of immediate physical injury; or
3. Knowingly touched another person with the intent to injure, insult, or provoke that person.

#### **AGGRAVATED ASSAULT**

The crime of aggravated assault requires proof of the following:

1. The defendant committed an assault, and
2. The assault was aggravated when the defendant caused serious physical injury to another person.

#### **UNLAWFUL IMPRISONMENT**

The crime of unlawful imprisonment requires proof that the defendant knowingly restrained another person.

“Restrain” means to restrict a person’s movements without consent, without legal authority, and in a manner that interferes substantially with such person’s liberty, by either moving such person from one place to another or by confining such person. Restraint is without consent if it is accomplished by physical force, intimidation, or deception.

#### **SEXUAL ASSAULT**

The crime of sexual assault requires proof that the defendant:

1. Intentionally or knowingly engaged in sexual intercourse or oral sexual contact with another person; and
2. Engaged in the act without the consent of the other person; and
3. The defendant knew the act was without the consent of the other person.

#### **DEFINITION OF “ORAL SEXUAL CONTACT”**

"Oral sexual contact" means oral contact with the penis, vulva or anus.

### **DEFINITION OF “SEXUAL CONTACT”**

"Sexual contact" means any direct or indirect touching, fondling or manipulating of any part of the genitals, anus or female breast by any part of the body or by any object or causing a person to engage in such contact.

### **DEFINITION OF “SEXUAL INTERCOURSE”**

“Sexual intercourse” means penetration into the penis, vulva or anus by any part of the body or by any object or masturbatory contact with the penis or vulva.

### **DEFINITION OF “WITHOUT CONSENT”**

“Without consent” includes any of the following:

1. The victim is coerced by the immediate use or threatened use of force against a person or property.
2. The victim is incapable of consent by reason of mental disorder, mental defect, drugs, alcohol, sleep or any other similar impairment of cognition and such condition is known or should have reasonably been known to the defendant. “Mental defect” means the victim is unable to comprehend the distinctively sexual nature of the conduct or is incapable of understanding or exercising the right to refuse to engage in the conduct with another.
3. The victim is intentionally deceived as to the nature of the act.
4. The victim is intentionally deceived to erroneously believe that the person is the victim’s spouse.

### **JUROR NOTES**

Any notes you may have taken during the trial are not evidence. The only evidence that you are to consider in determining the facts is the testimony of witnesses and exhibits admitted into evidence. Your notes are merely an aid to you for recalling trial testimony and evidence.

### **ALTERNATE JURORS**

The law provides for a jury of twelve persons in a case such as this.

As I stated at the beginning of this case, we have more than twelve jurors so that, if a juror becomes ill or has a personal emergency, the trial can continue without that juror.

In a short time, alternate jurors will be determined by lot in a drawing held in open court. The alternate jurors are still jurors on this case until they are released by court order. Therefore, alternate jurors will remain under the admonition and available to return if needed.

### **CLOSING INSTRUCTION**

The case is now submitted to you for decision. When you go to the jury room you will choose a Foreperson. He or she will preside over your deliberations.

I suggest that you discuss and then set your deliberation schedule. You are in charge of your schedule, and may set and vary it by agreement and the approval of the Court. After you have decided on a schedule, please advise the bailiff.

As jurors, you have a duty to discuss the case with one another and to deliberate in an effort to reach a just verdict. Each of you must decide the case for yourself, but only after you consider the evidence impartially with your fellow jurors. During your deliberations, you should not hesitate to re-examine your own views and change your opinion if you become convinced that it is wrong. However, you should not change your honest belief concerning the weight or effect of the evidence solely because of the opinions of your fellow jurors, or for the mere purpose of returning a verdict.

You are to discuss the case and deliberate only when all jurors are together in the jury room. You are not to discuss the case with each other or anyone else during breaks or recesses. The admonition I have given you during the trial remains in effect when all of you are not in the jury room deliberating.

After setting your schedule, I suggest that you next review the written jury instructions and verdict forms. It may be helpful for you to discuss the instructions and verdict forms to make sure that you understand them. Again, during your deliberations you must follow the instructions and refer to them to answer any questions about applicable law, procedure and definitions.

Should any of you, or the jury as a whole, have a question for me during your deliberations or wish to communicate with me on any other matter, please utilize the jury question form that we will provide you. Your question or message must be communicated to me in writing and must be signed by you or the Foreperson.

I will consider your question or note and consult with counsel before answering it in writing. I will answer it as quickly as possible.

Remember that you are not to tell anyone, including me, how you stand, numerically or otherwise, until after you have reached a verdict or have been discharged.

During your deliberations, you must not communicate with or provide any information to anyone by any means about this case. You may not use any electronic device or media, such as a telephone, cell phone, smart phone, iPhone, Blackberry or computer; the internet, any internet service, or any text or instant messaging service; or any internet chat room, blog, or website such as Facebook, My Space, LinkedIn, YouTube or Twitter, to communicate to anyone any information about this case or to conduct any research about this case until I accept your verdict.

All twelve of you must agree on each verdict. You must be unanimous. Once all twelve agree on a verdict, only the Foreperson need sign the verdict forms on the line marked "Foreperson."

You will be given one form of verdict. The verdict form reads as follows and there is no significance to the order in which the options of "guilty" and "not guilty," are listed on the verdict form.

Retrieved from: <http://archive.azcentral.com/ic/pdf/arias-jury-instructions.pdf>

## Appendix I

### Kirk Nurmi's Closing Argument

1 **Bailiff:** Please stand for the jury.

**Judge Sherry K. Stephens:** Please be seated the record will show the presence of the jury. The Defendant and all counsel. Mister Nurmi you may give your closing argument.

**Mr. Nurmi:** Fear, love, sex, lies and dirty little secrets. These aspects of the human condition may not be universal. But they were, and each one of these aspects of the human condition, played a prominent role in the relationship that Jodi Arias shared with Travis Alexander.

The relationship that began in the fall of 2006, when Mr. Alexander met Jodi

10 Arias at a Pre-Paid Legal convention in Las Vegas. And the relationship that ended, tragically, on June 4, 2008. And because these aspects of the human condition played such a prominent role in this relationship, it makes sense, that the evidence you've heard, starting on January 2nd, is a tale of fear, love, sex, lies and dirty little secrets. Now ladies and gentlemen, one of the other things we told you at the beginning of this trial, was that ultimately, your job would be to determine one thing. Your job will be to determine what happened. You were read some jury instructions yesterday that you were the finder of fact. What happened? What happened in the minutes of time between -- between -- what we see here in exhibit 159, June 4th, 2008, 5:29 and 20 seconds. What happened

20 between what we see in this photograph and what we see in exhibit 162 -- Mr. Alexander's body being driven -- drug -- excuse me, across the bathroom floor at 5:32 and 16 seconds. What happened in those three minutes is ultimately what you are to decide. Is this three minutes in time is this the culmination of a plot, a plan that Jodi Arias hatched in May of 2008, in which she was gonna go from her grandparents' house in Yreka, California to Travis Alexander's home so she could kill him? Was it what the state said it was yesterday? Was it this plan? Or, was it an act of self-defense, forced upon Miss Arias by the actions of Mr. Alexander? Or was it something else? That is ultimately what your job is to determine. Fear, love, sex, lies and dirty little secrets will help you understand, I

30 think, what happened in those three minutes. And as you begin -- and we've seen certainly aspects of fear throughout the course of this trial right, and we'll talk about that more later. But, it occurred to me as I began thinking about talking to you this morning, that you might have some fear. You've been listening to evidence for 12 weeks now. More than 12 weeks, since January 2nd. And you may feel, 'Maybe I forgot something?' 'Maybe I didn't understand a crucial piece of evidence? Maybe when I get back to deliberate my fellow jurors will not feel the same way that I do about this case, they won't see things the same way?' 'Maybe you fear how your verdict will be received?'

**Mr. Martinez:** Objection. Improper argument.

40 **Judge Sherry K. Stephens:** Approach

**Mr. Nurmi:** You may fear how your verdict will be received by those who love Travis Alexander, by those who love Jodi Arias or by the world at large. But ladies and gentlemen, as the jury instructions that were read to you yesterday indicate, your job in determining what happened between these three minutes in time, is to do an objective analysis of the facts and evidence presented to you. You are not to be guided by sympathy, or prejudice or fear. But instead, by your personal belief. And rest assured, each and every one of you are here because all the parties involved believe that you are the type of people who would have the courage of your convictions to stand by your personal belief, against whatever

50 pressures you may feel. Each one of you is entitled to deliver your verdict to this courtroom. You do not have to succumb to the pressure of a fellow juror who may not agree with you. You can have the courage of your conviction to deliver your own verdict. You are to have the courage and conviction to deliver your own verdict based on the evidence you've heard and nothing more...nothing more. You are asked to put that fear aside and look at the evidence...at the evidence. And before we talk about the evidence and what this case is about, I think it's important to talk about what this case is not about. It's not about Snow White, it's not even about any of the seven dwarfs, it's not about bad haircuts and it's not about the sexual orientation of any of the witnesses.

60 **Mr. Martinez:** Objection (unintelligible)

**Judge Sherry K. Stephens:** Overruled

**Mr. Nurmi:** It's not even about whether or not you like Jodi Arias. Nine days out of 10, I don't like Jodi Arias.

**Mr. Martinez:** Objection (unintelligible)

**Judge Sherry K. Stephens:** Sustained. The jury is directed to disregard the last statement.

**Mr. Nurmi:** But that doesn't matter. Your liking her or not liking her does not objectively assess the evidence. And you know what ladies and gentlemen? It's not even about her sitting before the cameras of Inside Edition and saying that

70 no jury will convict her. It's not about that. It's about the evidence. What happened? What happened between what we see in exhibit 159 and what we see in exhibit 162? Well, I guess you know there's one more thing this case isn't about. Remember we heard the charge of felony murder yesterday and the state making an argument that was incomprehensible? This idea that, 'Well, if you believe Jodi's version of events, she's guilty of felony murder, because she went to Travis' home and she decided to steal his gun. And in the course of trying to steal his gun, she shot him. She went there, they had sex, they did all these

things, then she decided she wanted his gun. And decided to take it. And wanted it so bad that she was willing to kill him.' That's the theory of felony murder they

80 have put forward. That shows a little fear and we'll talk about some of the fear the state has demonstrated throughout this case, but that's just some of it. All right? We also heard this idea that, 'Well, she was unwelcome once she put the weapon upon him, and she was there to commit a burglary or another felony. There's no other felony, ladies and gentlemen. There's nothing. It's silly. It's fearful. That charge is there out of fear. It makes no sense, under any scenario does that make any sense. Either she was there to kill him -- cause the state said -- hey, this is a plot that began in May. Either she was there to kill him, or she wasn't. And that's ultimately what we're here to determine. Now, what is this case about? Well, as we just spoke of, and just mentioned, yesterday, the state

90 says to you, "That in May of 2008, Jodi Arias came up with a plan." Now they pointed to a couple of different days yesterday. Pointed to May 19th, the day that Miss Arias had a conversation with Miss Houseley that excuse me...that Mr. Alexander was fearful of Jodi. Of course, on May 10th, we heard that they had a phone sex conversation. And on May 26th, we heard this conversation -- or we heard this questions about this conversation -- which Mr. Alexander had called Miss Arias a whore, a slut and a three-hole wonder. And the State theorizes at some point in this -- at some point in time here in late May, I guess -- Jodi Arias decides that Travis Alexander -- what we heard yesterday was that he had finally had decided to end the relationship -- and she couldn't deal with it. Well, let's

100 start there. Because, what you're gonna see, as it relates to this so-called plan, is it doesn't make any sense. It makes no sense at all. And, the first place that it doesn't make any sense is the very premise of why. Now, the State doesn't have to prove motive, but they've come up with this motive so we can discuss it. Why? Because she couldn't live without Travis Alexander, right? She's crazy. She can't break up with any of her boyfriends, she can't let it go, she couldn't live without Travis Alexander. Alright, that' the theory, that's the motivation, that's why she starts this plan into action. Except, for the fact, that remember, in May of 2008, she had moved back to Yreka, California to get away from Travis Alexander. To get away. She didn't want to be around him anymore. She talked

110 in her journals about how the cloud had lifted, right? These journals that were later argued to be incomplete. We'll talk about that more later. There's no rules of journaling, but the State has submitted that to you, so we'll discuss it. But, point of fact is, she moved away. This girl is supposedly obsessed, moved away. They still talk on the phone, but she moved away. What else is she doing? We heard evidence that she had an account on LDS Linkup: a Morman dating site. She was a young, Mormon woman in her mid-twenties, much like probably a lot of people on that website, who was looking for someone who shared their philosophical beliefs. Now the State has tried to cast dispersion on that, but ultimately, a lot of people use these sites, and Jodi was using them. She wasn't so

120 locked in on Travis that she wasn't looking for other men. And then we met one of those other guys. We met Ryan Burns, he sat there right before you. She began conversating with him: phone, text messages, and they'd planned to meet.



She was interested in moving on, moving past Travis Alexander. So, this whole idea to begin with, of why this plan was put into place -- this plan would have been masterminded right in May of 2008, because for this very reason, but the reason doesn't make any sense, okay. What next doesn't make sense? Well, the State tells you that in order to effectuate this plan, this plan she's conjured up to kill Travis Alexander, but once this plan is conjured up, what does she need? She needs a way to shoot him right, a way to kill him? So the State says she

130 orchestrated a theft —a theft of a gun now in exhibit 325 we see this so-called gun cabinet this impenetrable force, we also see this in 326 the same gun cabinet. Now I would say to you ladies and gentlemen first of all that if she wanted a weapon and this is weapon she wanted, for whatever reason keep in mind this is a .25 caliber gun a very weak gun. But if she wanted this weapon and she was gonna leave and go to Mesa on a covert mission with the single-minded purpose to kill Travis Alexander and that's what we're talking about here she could've just reached her hand in there during the day she was leaving and taken that gun we never know it would be discovered missing or not there would be no police report there would be no evidence nothing. The other thing is what

140 we heard is that Jodi when she was in my Yreka she didn't live with their parents but they were there and one of the bits evidence you heard was that Jodi's father owned guns that were not registered she could've got one from there. Probably a more powerful gun but she didn't right, that doesn't make any sense why would you, first of all why would you stage this burglary this burglary that the State wants you to believe is so suspicious, why would she stage this when she could just reach in and get it or get a gun from another source. You know where else she could've got a gun we heard about Matt McCartney the friend that wouldn't betray her as the State tried to portray so much on the cross-examination of Jodi Arias he had guns too, she stopped to

150 moderate but no [inaudible] got there either it would've been on trace, there would have been no sign of it, but under this concocted theory that she orchestrated this theft, she brakes in or herself steals money, a DVD player and this .22 -caliber gun and it creates a police report and it creates a trail would that be a choice and keep in mind the State conceded it yesterday that Jodi Arias is a smart woman. Is that behavior consistent with a smart woman who is starting, planning this covert mission keep in mind this covert is very poor that's what the State said yesterday covert mission to go to Mesa Arizona and kill Travis Alexander. Why would you start a trail? Type of gun, the bullets everything doesn't make any sense. Why would she do that? So now we have two

160 nonsensical propositions. Why she would wanna kill Travis Alexander and how she had obtained the weapon. Well ladies and gentlemen the nonsense kinda continues from there because of course what else would she need to go on this covert mission to Mesa Arizona, and she needs a way to get to Mesa Arizona, right? Well we heard one thing she owned a car could have drove it to Mesa Arizona now we heard that maybe it wasn't in the best mechanical shape I and maybe as the State can theorize it would've been recognized, right, okay.

So she's in Yreka California she needs a car of course whose up in Yreka California again? Her mother, her father, her sister and her grandparents all with cars. She could've exchanged cars, she could've came up some reason I'm going

170 on a road trip can I take your car? none of it, none of those actions would have caused there to be any sort paper trail, right? You borrow your mom's car you go on a long trip no paper trail, you borrow your dad's car you go on a long trip no paper trail. Those people, those same people mother and father they also could've rented a car for Jodi Arias, right? Nothing linking it to her but does she do that, this a smart woman who is planning this covert mission do that? No, she doesn't and the State theorizes that she didn't rent a car in Re.. excuse me in Yreka California did it instead in Redding California because she didn't want to be recognized in Yreka, but she hadn't lived there for years, number one and number two Redding she was with her brother and at that time his fiancée so

180 there weren't witnesses to her being in Redding California and the other issue is this choice she made to rent a car in Redding as if it would somehow be covert that way, no one would recognize her, that's the theory: No one will recognize me, no one will know. But would does she have to do? You don't go to Budget rent-a-car, cough up a couple of hundred dollars drive off with your car rentals doesn't work that way, you have a driver's license and a credit card information. There's a petty clear paper trail as to what took place when she went to the Redding airport and keep in mind too I think that's important. She went to an airport, an airport with security cameras and security all around, an airport not some rental car agency on the outskirts of the town, right? An airport doesn't

190 make any sense if you're on a covert mission. Now let's take a look at this paper trail. What does miss Arias do to get this car, right. Exhibit 235 there's various receipts she puts her initials she signs her name paper trail not very covert so far, not at all. Now adding to this level of nonsense again and that's kinda get into the line as well, this idea that well Jodi didn't really reserve the car on-line at Priceline as she said she lied to you, she really did at Budget. Let's take a look at these receipts here excuse me the bank's statement she got the car when did she get the car, she got the car in June, right as she was getting ready to go on this trip, she gets the car in early June, right, June 2nd she gets the car, she returns the car on June 9th. June 9th 2008 they were shown yesterday what is exhibit

200 523 and we see the charge there for the car rent, Budget rent-a-car, right yep Budget rent-a-car. Now the State says well look, look at here and you'll see there was a Priceline charge for airfare and that happened right away and therefore she's lying but let's face the facts here that 233.97 that you see up there she was charged when she returned the car. Airfare and car rentals are different under these times.

**Mr. Martinez:** [inaudible]

**Mr. Nurmi:** Irrelevant

Under these times we know that when you purchase airfare, you have your common experience, you've rented a car or purchased airfare you realize that

- 210 well you do that when you when you buy a plan ticket you have to give all your identifying information and you pay for it. When you rent a car often times you reserve a car and pay for it when you're done. You put a deposit down and your credit card you pay for it when it's done that's when she paid for it. Now the State is trying to argue that that's a lie, that miss Arias is lying she didn't use Priceline, those people at Priceline aren't getting their money, right? And and this is certainly one thing the State has done as it relates to lies Jodi Arias has made some lies about what happened so then why not just pile on set up a house of cards and and a scenario where Jodi's lying and knock it down, but here's the thing she was not lying there's no evidence that she was lying. We don't know
- 220 what kind of arrangement Budget and Priceline has with mister Colombo he didn't tell you what kind arrangement they have he didn't know. So she rents this car and mister Colombo says that when rented the car her hair was blond. We had some discussions of hair color but it wasn't right. We saw the pictures mister Colombo saw her driver's licence, Jodi Arias had blond hair whence had her driver's licence picture but he saw pictures, right? We saw a picture 413 excuse me exhibit 413 taken on May 10th 2008 and no way no one trying to have an expert testify and say this is a certain of hair. You can use you can look at it you can look at your own judgement. You may have different shades of brown. We have exhibit 414 and exhibit 414 was taken on May 15th Jodi and
- 230 her parents' dog, May 15th you judge for yourself. May 17th exhibit 415. Judge for yourself is that some sort of bright blond hair? Okay what else is it that the car rental agency, we have this issue that Jodi wanted a white car instead of a red car because the red car would draw the cops attention. Now some of us have heard of that myth as it relates to speeding tickets maybe it's a myth maybe it's not but with everything else so far we have nothing nothing that makes sense about a covert mission, right? Nothing. The difference between a white car and a red car isn't gonna be about the difference between being found and not found, being discovered and not discovered and there's many of things we can talk about in that regard but that doesn't make any sense either but that's a big deal.
- 240 Okay now you would think ladies and gentlemen wouldn't you, that if somebody was on a covert mission, right and now we're on June 2nd she's in Redding, she's got a new car and under the States theory she has the car, she's got the gun, she's ready to rock, right. So does she then go from Redding California to Mesa Arizona nonstop in order to go on this covert mission to kill Travis Alexander? You don't stop anymore, you don't visit any people there's no witnesses you go in there clean you do your business, right? Did she do that? No, she didn't. Doesn't make any sense. What did she do? She stops in Monterey California. What did she do in Monterey California? She visits two former boyfriends, this crazy woman that can't let it go has friendships with two of her former
- 250 boyfriends, Matt McCartney and Darryl Brewer and she had a relationship with Darryl's son cause they were together so long, so she had breakfast with Darryl and his son and spent some time at a karaoke bar with Matt McCartney. So what she'd have done if she were on this covert mission, is it's not quite so covert anymore now, is it? We've alerted the world to this gun theft, we've alerted the world to the rental car and we've alerted the world to where we're going or the

presence, and then Matt, then Darryl Brewer says well she told me that she was going to Mesa and needed gas cans. Well if this was a covert mission first of all and I would submit to you that he was probably mistaken about Mesa she did go there but whether or not she was planning on going there not but think about if

- 260 this was a covert mission would you say to your ex-boyfriend can I borrow a couple of gas cans and I'm going to Mesa. Doesn't make any sense. So the nonsensical nature of the State's theory continues all the way to Monterey California she does borrow gas cans from Darryl but then again that doesn't make any sense either, right? Your on this covert mission you can buy gas cans and no one will be the wiser, right? But you borrow gas cause you see you're going to Utah I don't know the way. Gas may be more expensive what have you, she's not familiar with the [inaudible], so she borrows gas cans. As they often did, to her and Darryl Brewer say the often did on their road trips. It wouldn't make any sense as far as this covert mission goes right? Well, what else happens
- 270 in Monterey? Did she just do that and nothing else? No. What else happened? You saw weeks ago some receipts, receipts for various things gas, gas cans but what happened in Monterey in terms of those receipts. Again we're on this covert mission right we don't wanna be detected, don't wanna be detected so what does she do, she goes to the bank. Remember now she has two different accounts with Washington Mutual she has a business account and she has a checking account. So what did she do? She deposits some money in the one account, she deposits money into another account. Notice one account ends in 8006, one ends in 7148. She deposits 400 dollars in one 300 dollars in the other, and we also have a deposit in 237007 of a 100 dollars into 7148. So as we look
- 280 at exhibit 237005, 237006 and 237007 what do we have? Let me make sure that you can see them all. What do we have? We have transfer money between accounts and what Jodi Arias wasn't a rich woman in June of 2008 she had a balance in one account of 548 dollars and she had a balance in another one of 207 dollars. So she's got what 750 bucks, all right. She's moved around, she said some of it was for business purposes, some of the trip was for personal purposes. That's why she moved some of this money around, okay. Well again if you're on this covert mission. Why do these banking transactions right? Why do you do these banking transactions and leave a trail where you're at? And keep in mind they're all in all in Monterey, right? Monterey, Monterey, Monterey all in
- 290 Monterey. She didn't do this back in Yreka, she didn't do this back on May 28th, did she? Remember keep in mind on May 28th right here this plan was in action, the gun was in her hands and she was working on the rest of it. She didn't pull out any cash, right? We saw and we'll talk later as we go further on this journey, this trial she didn't pull out a bunch of cash in late May or anytime before she came, cause remember she had enough 750 bucks, she wanted to do this covert mission she simply could've gone there without the need for gas cans. You know when you buy gas with cash you don't have to give your personal identifying information. We heard that, it makes sense, your own common sense and experience and we also heard that from the lady who works

- 300 for Tesoro you pay with cash there's no need for a receipt they don't take identifying information. So she had this 750 dollars or so and she doesn't take it out, she couldn't put it out in cash, she didn't do that. She wanted to buy gas cans covertly, what could she have done, right? She could have gone into Walmart and or Target or wherever, buy gas cans and walked right out, right. No one would've been the wiser she wouldn't have a witness she wouldn't have a witness who she borrowed gas cans from but again if you're on a covert mission that doesn't make any sense. To create this witness to save 20 bucks or so 12.96 the State said yesterday 12.96 is the price of premeditation. Well 20, 26 dollars seems like a small price to pay to cover your tracks if this is
- 310 what you're doing. Now what did she do here though she does buy some gas cans right the next stop on this trip as we know that she stopped in Salinas California and looking at exhibit 237008 what does she do, she buys a gas can with cash. Now keep in mind ladies and gentlemen the State says that this was done by this smart woman under the premise that she did the calculation that she needed another gas can to get into Mesa Arizona without about being detected of course we know that she had the money to buy gas without being detected without there being a paper trail she had that money in the bank so that doesn't make any sense but here's the other thing that doesn't make any sense she buys this extra gas right, and here she is with this other receipt. Well I don't know
- 320 about you ladies and gentlemen but I've never been to Walmart that doesn't have a garbage can. Why wouldn't this smart woman, why wouldn't she take this receipt and drop it in the garbage. I don't want anyone to know I bought this gas can because I'm on a covert mission. Drop it in the garbage, she didn't do that, did she? That doesn't make any sense. Then there's this theory, this receipt has been bandied about, this is evidence that Jodi Arias lied to you, right. That's what the State said to you, she lied to you on the stand, the light of truth and we'll talk about shining the light of truth on some people that have been involved in this trial later, but she doesn't throw it away and she said she returned the item. Did she ever say she returned it to the exact Walmart? You
- 330 can go back to your memory, she was in Pasadena, she was in different places, there's plenty of places where this happened but the State says oh what we've checked all the registers and at this Salinas, at this Walmart. Did they check the others do they know, who knows, but again set up a house of cards and knock it down and call her a liar, because that's the basis we're gonna use for our case. And look ladies and gentlemen if Jodi Arias were accused of the crime in line I could not stand before you and be conscious and say that she's not guilty of that crime. But nowhere, nowhere in your jury instructions are you asked to convict Jodi Arias of lying there is no verdict form that you will have to say did is Jodi Arias guilty of the crime of lying or not. Well of course she is but there's no
- 340 verdict form to that regard because that's not the crime that she being charged with. It's premeditated murder that's the ultimate crime, okay. Now the other thing that happens in Salinas is the State made this comments about the license plate right this gang of skateboarders that need a screwdriver to be in the gang right that was the comment that was the facetious nature of this theory. Jodi Arias told you and there was all this discussion all this cross-examination how

was the license plate leading, how was it front plate everything else but Jodi told you that as she saw the plate reflecting she picked it up and she put it in the car because she thought it was her front license plate there is no talk of the back license plate no talk of it. Now what the state brought forward to you yesterday

- 350 seem to be this theory that at some point in time what Miss Arias did to avoid detection was remove the license plate, remove it so she wouldn't be detected but that, doesn't make any sense. What would draw the eye of a law enforcement officer more than a car with a plate missing? Probably the next best thing that would draw the attention of a law enforcement officer would be a license plate that was upside, right we heard about that. Officer Giletti from the West Jordan Police Department said that, I noticed it because it was upside down and for no other reason, doesn't make any sense that Jodi would have put this plate upside if she's on this covert mission remember she's still trying to not be detected she's trying to go to Utah to set up her alibi. So that doesn't make any sense either. So
- 360 let's back up the car literally and figuratively right because an next point of conduct that is important here is Pasadena miss Arias goes to Pasadena and one of the things we see is that she bought gas but of course it will be the last receipt I pull up but we can see she bought gas in Pasadena. Here we go, Pasadena California she buys gas, now that receipt is definitely faded overtime, let's see here exhibit 237.011 and 237013 and 237012 she buys gas, okay. When did this gas purchase occur? June 3rd 2008. So in June 3rd of 2008 miss Arias is in the midst of a covert mission to Mesa Arizona designed with the single minded purpose of killing Travis Alexander, June 3rd. She had all that the money in the bank, she doesn't take it out and she goes to an Arco in Pasadena, June 3rd about
- 370 8.42 in the evening and she buys gas, she makes three several purchases for gas. What I have here on the right is a debit card, there can be trace and that gee-whiz doesn't make any sense if you're on a covert mission, does it? And of course she kept the receipts, well that doesn't make any sense if you're on a covert mission to keep these receipts when she filled up her gas cans and keep in mind when we talk about all this you know the State says oh it's pose if she had three gas cans because it's of the amount but they haven't provided you to look at evidence which relates to how much gas that Ford Focus holds not a lip those calculations are based on nothing, but okay, she creates this paper trail when she buys all this gas. What else happen on June 3rd 2008 that evening?
- 380 Remember something real important happened that evening, right. She spoke with Ryan Burns the man who she was gonna go see in the Salt Lake City area and now keep in mind in terms of lies part of what the State has said is you didn't know you were in Salt Lake, well you know she was in some suburbs that sort of thing, call her a liar she didn't know she was in Salt Lake, she was in West Jordan, she was in the suburbs she didn't know if she was in Salt Lake, call her a liar, it's another example but here she is, she's on the phone with Ryan Burns and yesterday keep in mind yesterday the State's says Ryan Burns no motive to lie no motive to lie and he talked to Jodi Arias that evening around 9.00 9.30 he said and you recall me asking him there was talk about when was

- 390 Jodi expected up there when was she gonna be to your in Salt Lake City area to West Jordan about 12 hours we talked and she said she'd be there in about 12 hours. That would've been about you know he said conversation was around 9:30 10 o'clock that would've been about 10 he kept saying 10 or 11 the next morning. The morning of June 4th she was expected in Utah on the morning of June 4th about 10 or 11 in the morning. Now getting back to what I asked mister Burns I ask you when you talked to her did she say anything, did she make any excuses as to why should might be late. No she said about 12 hours. So ladies and gentlemen wouldn't you think if someone was on a covert mission and that covert mission was about 5 1/2 to 6 hours away from her current location from
- 400 Pasadena to Mesa she was gonna eat up six-hour just getting there, right? Wouldn't you and there's this talk about Ryan Burns being her alibi etc. Well wouldn't you tell this person that you know what I may stop at the Grand Canyon and take some pictures I may stop somewhere else and take some pictures I may decide to pull over and take a nap at a rest area set up an alibi yourself to the point where not expected until I don't know two three four in the afternoon, right? She didn't do that 12 hours she's expected in Utah and so 12 hours doesn't set up any sort of alibi it doesn't make any sense, okay. So so far as it relates to this theory of premeditation we really have things that don't make sense on this covert mission you have one fact that admittedly, I'll admit to you
- 410 looks bad, right. Her phones goes off somewhere near Pasadena California and it doesn't get turned on till somewhere near the Hoover Dam a day or so later, okay but that a fact [inaudible] in itself taken alone with all these other things that don't make any sense could be seen as suspicious but it's also probably the case if we were out in the course of history of cell phones Jodi Arias would not be the first person to have a cell phone die on them and not have a charger available she'd probably won't even be the last. Now we have her in Pasadena we have her talking to Ryan Burns on setting up an alibi and you saw the call records that she was speaking with Travis Alexander. What happens next? Showing you exhibit 36 this is mister Alexander's office remember that Jodi told
- 420 that on the morning would be the morning out on June 4th about 4.00 4:30 5 o'clockish in the morning she arrived at mister Alexander's home and he was on the computer watching videos on YouTube and the videos were people dancing with boxes on their heads moving their hands around and there were several of these videos we saw that recently just a couple days ago even when detective Melendez excuse me testified we went through that computer report and it showed all those videos and this is another example one those house of cards that tried to call miss Arias a liar she never said there was pornography the defense never said it was pornography there. Jodi Arias said there were people dancing with boxes on their heads and that's what Travis Alexander was doing
- 430 when she arrived at his home. Now the implication was made maybe he was expecting her maybe he wasn't but we know there were phone calls Jodi certainly told you he was expecting her and if he wasn't keep in mind course we're supposed to believe in, we'll get into that a little later, we're supposed to believe in that he's so scared of her, right he's afraid of he so my goodness how could she walk right into the house and then sleep with him sleep in the bed and

then get up and take pictures of her naked, he's so scared of her he's taken naked pictures of her in his bed. That is a new level of being scared but anyway let's go back to 4 in the morning in the office there they are what Jodi said yes of Travis had his back to her watching these videos. Now ladies and gentlemen let's keep

440 in mind here this plot began back in May and there she is under the State's theory she's got the gun. We also heard the State's say yesterday that she had the knife with her they don't give you any evidence to support that but she had the knife. So she has the implements of Travis's destruction in her hand, his back is to her watching the videos we know he's watching the videos and we also know right that she's in Mesa Arizona and she's expected in West Jordan Utah now about 6 to no more than 7 hours later cause it's almost 5 in the morning. Now wouldn't you think ladies and gentlemen somebody is on this covert mission they've done all these things, all these things to prepare themselves for the moment in time when she could kill Travis Alexander does she shoot him right

450 then and there she had the gun she had the knife, why wouldn't she do that, that was her point of view now, why wouldn't she do that, that doesn't make any sense does it and then what do they do, what do they do next? We heard about drinking some water Travis wanting to have some sex and Jodi was too tired, but what do they do, they go to sleep and they wake up in the early afternoon. Now I will admit there's no support for the idea that there's you know there's no evidence that they slept and we took pictures and sleeping etc but it certainly makes sense he was up till almost 5 in the morning, she had been driving all night and we have pictures taken later that afternoon, the sexual rendezvous right at 1 - 1.30 in the afternoon. The theory or the question arises under this theory

460 that the State has perpetrated you there in bed together sleeping she's got the gun she's got the knife he's asleep what better opportunity would somebody need he's asleep, you put the gun to his head and you do it, you put the knife to his throat and you do it if that's what you're there for, isn't that what you do? No better time then when he's asleep she doesn't do that, okay. What next? Well he heard Jodi tell you that they have had sex that afternoon that he was tied her to a bed and they took pictures well we have evidence of those pictures, right. We have pictures and Jodi naked on the bed that's the important question keep in mind now under the State's theory Jodi is there to kill Travis Alexander. Why if somebody is there to commit a murder do you hangout and let the intended

470 victim of this murder take pictures of you, what's gonna assume to be a crime scene. Here I am at the crime scene, go ahead and take pictures of me, no problem, no problem at all. Now that doesn't make any sense does it and we'll look at some of those pictures perhaps later but keep in mind as well, you know in some of the pictures this man that has fear of miss Arias can't even see for head or her face conceded to spot the look on her face in some of these pictures but keep in mind what was taken on June 3rd when she's on this mission a picture from her own phone that she took in advancing of being in mister Alexander's house. Another exhibit 638 a picture that she took on June 3rd 2008 if you're on a covert mission you've died your hair you've done all this in order



- 480 to get there and kill Travis Alexander why are you taking pictures of yourself with this hair color and allowing him to take pictures of you with this hair color, right. It doesn't make any sense and not only pictures nude photographs and not only nude photographs but the graphic depictions of her genitalia, doesn't make any sense. The last thing that you would want if you're there to commit a homicide or murder is have pictures of yourself taken but that's what happened there's no dispute, that that's what happened. So now keep in mind I will just show you exhibit 164 keep in mind now this photograph was taken at 1.42 and 53 seconds Jodi Arias nude on the bed can see her face and you can see the time 1.42 and that's important ladies and gentlemen because keep in mind now by
- 490 1.42 in the afternoon of June 4th miss Arias was due to be in Utah really already right 10 or 11 in the morning even if we come in an hour or so for you know lag time, resting, bathroom breaks, whatever she's already due in Utah and she lets man tie her up and this Utah is supposed to be her alibi keep in mind, tie her up to the bed take nude photographs of her and she doesn't shot him and drive off and say oh my goodness I got lost or whatever make up some excuse to lessen the hours but she didn't, right she didn't but this was the plan under of the State's theory, this was the plan to kill him and get to Utah as an alibi, right but what do we also know about what happened that day, we know that Jodi Arias sat around hung out with mister Alexander and this office and that he threw
- 500 some CDs and yesterday the State possibly said to you that she knew she was go to Mesa to see Travis that's why she brought the CDs. So let's back up that Ford Focus again remember what you heard Pasadena was it she was going there Darryl Brewer told you his sister just had a baby she was going there to take photographs of this baby and you heard she always takes her laptop and her photographs with her when she does he sort of projects but also again keep in mind now if you're there and you're going and you're leaving your home and you're gonna pack everything up and you're gonna kill this man why would you go and pick up a bunch of picture CDs and show pictures of your travels together doesn't make any sense, right not for this covert mission it certainly
- 510 doesn't but now we have the photographs, right in the afternoon Travis Alexander in the shower the State postulated to you yesterday but this was it that she had convinced mister Alexander to get in the shower that they had sex twice she kinda wore him down so that he was naked and vulnerable in this shower so she could take her shot right that was what we heard yesterday that was the point that was the plot of all of this right and we know from the photographs that this happened at 5 o'clock in the afternoon about 5 o'clock in the afternoon and keep in mind that the State is theorized throughout this case that Jodi Arias had the gun and the knife with her in the bathroom she had mister Alexander naked and vulnerable in the shower and she was waiting for her moment in time. Yesterday
- 520 you saw the picture of mister Alexander sitting in the shower we saw we saw the top half of that in exhibit 159 right you see the water dripping off his face we saw that a few moments ago and then there's the next photograph where he's sitting in the shower they say this is where she decided to make her lead to make her move while he's looking at her you know funny thing is it seems like what is we have an exhibit 142 we have mister Alexander right there don't we he's in

the shower look at his head facing completely against the wall arms up vulnerable, still make it one of the State's theory that would matter but be that as it may there he is. Now keep in mind ladies and gentlemen this is at 5:22 and 36 seconds she's waiting for a moment in time to strike she's waiting to kill mister

530 Alexander if there's a moment in time this is it this right here is it there he is, he's worn out he's naked and his backs to her his eye are right against the wall he wouldn't have seen it coming, wouldn't have seen it coming for an instant and keep in mind she had the gun, right she could've just shot him right there if that was her plan she didn't, doesn't make any sense if this is a premeditated murder and keep in mind to this isn't just a moment in time, 5:22 and 36 seconds, 5:22 and 54 seconds is a time on exhibit 143. Ladies and gentlemen looks like it's coming in better on the screen to your side but what do we have there 5:22 and 54 seconds so I'm no mathematician but it appears we've got about 18 seconds of time but 18 seconds between these two photographs, wasn't just that one picture

540 of that one moment in time that one second where she didn't have time, um um. Seconds later he's still there showing you exhibit 144 this ladies and gentlemen you will see this happen at 5:23 and 0 seconds same guy head still against the wall near the wall not looking at 5:23 more time, more time again if this was the time and keep mind boy ladies and gentlemen by this time this had been a week or more of clotting now here he is she doesn't do it. The saga continues with exhibit 153 same guy, same shower 5:26 and 56 seconds, exhibit 154 5:27 and 12 seconds there we go 5:27 and 12 seconds. So ladies and gentlemen which are being asked to believe when we look at these photographs in 142 and the last one at 154 what you're being asked to believe is that 5:22 and

550 36 seconds right 5:27 and 12 seconds. Now certainly we don't if he maybe he makes some other movements that sort of thing during this time period the other photographs but there was five minutes in time where he was making these poses right for five minutes in time and my goodness it goes back to what I said before, wouldn't this be the moment, wouldn't this be the pinnacle moment the gotcha moment no was it because she didn't do it she didn't do it there.

**Judge Sherry K. Stephens:** Alright ladies and gentlemen we'll take recess at this time, it's 10:24 according to this clock please take a 15 minute break remember the ammunition you are excused.

**Bailiff:** Please stand for the jury.

560 **Judge Sherry K. Stephens:** The record will show the jury's out of court we are at recess counsel please approach.

**Bailiff:** Please stand for the jury

**Judge Sherry K. Stephens:** Please be seated the record will show the presence to the jury, the Defendant and all counsel, Mr Nurmi you may continue.

**Nurmi:** Thank you your Honor. Ladies and gentlemen before we took our break you and I were talking about moments in time and several minutes in time when

mister Alexander had his back to miss Arias and sometimes face against the wall. Thank you. In those moments in time past without Jodi implementing her plan doesn't make any sense. We get to this moment in time here 5:29 20 he's

570 seated can see that we saw that earlier this morning but this according to the State what we see in pics photograph number 160 this according to the State is the moment in time miss Arias chooses to implement her plan 5:30 and 30 seconds. The mister Alexander is nude you can see that vulnerable so the State says although it seems highly less likely cause keep in mind Arias is right here second to prior he's looking at miss Arias certainly would've seen it coming, his hands are up but it is this moment in time the State says that miss Arias decides to put her plan into motion she's stolen the gun, she's dyed hair, she's rented the car, she's altered the license plate, she's got her gas cans everything is built-up to this moment so the State wants you to believe, right? And remember before we

580 talk about this the testimony of doctor Horn, now certainly in varying we'll talk about that a little bit when we talk about lies in that spotlight of truth but doctor Horn says the wound to the [inaudible] came down to up down to up, so what we're to believe now then is that Jodi Arias with all these chances in other, other moments in time all these different chances when his back is turned and his defenses are down that she somehow, somehow decides to get low to the ground and reach down and stab him. Stab him, stab him doesn't that raise a question, remember now there's this big guy, strong guy working out getting ready for his trip to Cancun, stab him gees you know you wouldn't think you'd stab someone, she didn't have a gun wait in the States theory she did have a gun, she had a gun

590 so she chooses and keep in mind now and we'll talk about the change in story of the States events but keep in mind the State went to great length throughout this trial and say you bet yeah no doubt about it Jodi's a liar she's stabbed him first and she stabbed him right there in the shower. Down to up that's what happened. Apart from logistics of that not making any sense and you can judge for yourself how high off the ground Travis' chest is in that picture, why didn't you shoot, why don't you shoot? This is what we've done, you've stolen this gun you've gotten in this point in time why don't you shoot? Doesn't make any sense. Under this theory of premeditation none of this makes any sense whatsoever. Now the theory goes on as it relates to premeditation to say what Jodi did this fantastic

600 job of covering her tracks. Tried to clean up the scene she threw a little bit water around she drove up to Utah, she hung out with Ryan Burn's and she made phone calls and she sent text messages Travis to try it look like she wasn't there and then they go on to say and we'll talk about the stories in a minute but this story of self-defense it's a great big lie, right? That's what they say but if it's a great big lie think that might be what you did or you might do something else way smarter than what Jodi did after this took place. She's planned this out remember and we [inaudible] in advance she's spent all this time on the road all these hours thinking about this this moment in time and you're saying that this smart girl doesn't think what she's gonna do afterwards smarter things yeah that

- 610 doesn't make any sense, and why if it is this pre-planned murder again do you stab create this this crime scene of chaos, we had a relationship of chaos and crime scene of chaos and there is a correlation there and we'll talk about it later today. But let's think about that it doesn't make any sense none of it makes any sense as it relates to premeditation not a single thing by now we just spoke about a self-defense. Jodi Arias told you another version of events we have an instruction on self-defense I'm not going to read that to you but I wanna emphasize a particular portion of that to you as we go back through the history because history as such that what Jodi Arias told you on June 4th 2008 is a product of a lot of things that happened beforehand and when you assess the
- 620 self-defense claim you assert it and looking at page 13 of your jury instructions if at the very bottom couple things looking at this burden of proof the State has the burden of proof beyond a reasonable doubt that the Defendant did not act in justification if the State fails to carry their burden and you must, it's not optional, you must find the Defendant not guilty of the charge now we begin at the last line of page 13, if there have been past acts of domestic violence against the Defendant by the victim this state of mind of a reasonable person shall be determined from this perspective of a reasonable person this person right here who is then an act who has been who has been a victim those past acts of domestic violence. So what are those past acts and how do we define domestic
- 630 violence? As I think that kinda goes to the history of the relationship and the realities that were in miss Arias' mind when she approached mister alexander's home on June 4th. Domestic violence means any act that is an offense, assault we have an assault in this case. Was Jodi Arias a victim of an assault? Well we heard several occasions for that took place, right well we heard of at least four distinct occasions, we heard miss Arias being thrown down and held down and not being allowed to leave the room. Actually that's unlawful imprisonment aside from an assault, double bonus for mister Alexander assault and unlawful imprisonment, two acts of domestic violence. Did he endanger her with these acts? Sure slapping her, kicking her, aggravated assault kicking her, breaking her
- 640 finger. Now remember now there has been much may of this finger alright, we talk about this aggravated assault the State says to you my goodness this didn't happen this happened on June 4th and we can tell it happened on June 4th because on May 15th looking at exhibit 452 your miss Arias hand injury is invisible so the State inquire and they said see you're a liar, they even showed exhibit 453 the hand hanging down there's a closer up say no visible signs of the injury the house of cards set it up knock it down call her a liar. That's what you gotta do when you don't have evidence of premeditation but keep in mind you saw Jodi hold her finger up you saw it broken and you saw miss Willmott stand right next to miss Arias you saw that up close and miss Arias' hand draped over
- 650 her, you saw that. You can assess for yourself the visibility in the apparentness in that injury. Assault he kicked her, over [inaudible] wouldn't let her leave [inaudible] and intimidate her, we saw that in all the text messages exposing her was gonna be the worst thing that ever happen to her he was gonna expose her to everyone she knew, right, public vilification, sexual assault what about that we heard about that and what I would say is two different ways. Now miss Arias

and we heard a lot of about her psychology that that period time and we saw tables and we won't go through those again where miss Arias had real low self-esteem didn't think too much of herself so it makes sense then when Travis Alexander places penis inside of her while she was asleep and she kinda says no,

- 660 pushes off and continues the act doesn't want to break her vow of chastity she doesn't consider that a sexual assault cause they'd already done other sexual things before. She didn't say no at the time he entered her but the law tells you and the, the definitions and there for you that someone cannot consent to sexual activity when they're asleep that's just the bottom line that is a sexual assault and we have instance on June 4th, don't we? Where mister Alexander and you have your definition of sexual assault grab miss Arias put her arm behind her back, bend her over the desk and have rough vaginal sex with her. She say you know it wasn't that big a deal cause I didn't say no, but why didn't she say no? Because it was a better alternative to his anger, his raps, to his hits, it was a better
- 670 alternative, she submitted out of fear, fear of physical violence, that's the sexual assault. Now you're also to consider in terms of the relationship, you have to consider things in the relationship as far as domestic violence, the type of relationship, the length of the relationship, the frequency of interaction and if the relationship has terminated. Type of relationship regardless of whether they call themselves boyfriend and girlfriend or not, whether they use that distinction, the relationship was a sexual one, a romantic one, whatever length we wanna use it was that type of relationship that we're talking about here romantic or sexual. The length of the relationship again it began in the fulfill of 2006 and ended tragically on June 4th 2008. The consensual portion of the relationship didn't
- 680 begin right away because you recall miss Arias had a boyfriend she didn't want to be unfaithful to this boyfriend she saw the relationship going nowhere, she broke up but of course in between there, keep in mind mister Alexander was bringing Mormon missionaries over to the home to talk to miss Arias and to try to bring her into his church and another way to do that of course in terms then we talk about domestic violence relations with Alyce LaViolette but that's a way of pulling miss Arias out of the relationship she was in. She was in a sexual romantic relationship with Darryl Brewer, but if you start to begin to follow the tenants of Mormon-ship you have to metaphorically grab her and pull her away from that and tell us that she shouldn't be doing that before marriage of course
- 690 he redefines that later but he pulls her away and of course as a Mormon girl from what we know by Deanna Reid you're not supposed to tell because that's a sin. He'd already done that once he knows how to do it and he knows they'll keep the secret the frequency the interaction of this nearly two-year relationship pretty frequent I mean she was his maybe his back up booty call maybe, some days she was his first string booty call, who knows, but there was this frequency of interaction, right and if the relationship has terminated in length of time. Unfortunately as I said before t terminated on June 4th it never terminated before that not really cause even when she moved backed to Yreka they still talked, they still had phone sex, they still chatted, they still did instant messages, they

- 700 still the text messages, they did all sorts of things so when miss Arias goes to Travis' home on June 4th 2008 she does so going back to what I started out this morning with an element of fear with some lies being attacked and we'll talk about those a little while longer because again that spotlight of truth, keep in mind this relationship and sometimes lies bleed into dirty little secrets don't they, was a dirty little secret she goes there with few, she goes there with the lies, the dirty little secrets, she goes there with an elemental of love for this man, let's face facts and certainly one of the things we talked about when we talked about premeditation is she always loved this guy and there's no evidence to the contrary but she goes there fear, love, sex. Oh there was sex that day there, right
- 710 all those elements, all the elements of the relationship of Travis Alexander and Jodi Arias that began, the sex, that began when he gave her the book of Mormon who wanted oral sex. Began on other occasions as well, it went overwhelmingly, interwoven from Arenberg to the home of Christian Sky Hughes to Travis' home to her home in Palm Desert, it's all a woven tale for which geography is irrelevant and love, fear, sex, lies and dirty little secrets, it's pervasive regardless of where we're at, regardless of where we're at. So miss Arias tells you that on June 4th she arrives at the home we talked a little earlier today about how he was watching YouTube videos as he went to sleep, how they woke up and had this sex. She told you how his bedroom better then we see in some pictures of but
- 720 how his bedroom what is seen in exhibit 249 and bathroom, how that became a crime scene, she talked to you about that didn't she? Now of course the State says she's a liar that nothing happened the way she said it happened. But ladies and gentleman there is some elements of objective evidence that show you exactly that what she is saying is true. Obviously we have the computer evidence right she says what time you got there we have the pictures. Now another lie the State the State believes that there's another lie here right that before she arrives at this soon to become crime scene she is lying about her abuse that she was never a victim of physical abuse, never, why? Two reasons been proffered by the State one because she never wrote it in her journals she did not say dear diary
- 730 Travis smacked the crap out of me today, she didn't say that, she didn't say dear diary Travis ejaculated on my face today, she didn't say that she did say dear diary Travis choked me until the point I passed out, she didn't say that, she didn't say oh he slapped me in the upside the head in the car cause I wanted to move back, she didn't say that but that shows that none of these things ever happened and oh yeah she didn't write hey dear diary I saw Travis masturbating to an image of a child and so and she didn't call the cops about any of those things so therefore she's lying. Again it's another one of these house of cards because it seems to set up this premises that relates to the journals anyway but there's this requirement that a journal be complete you know he's asking miss LaViolette.
- 740 Well the journal's not complete unless it details everything, well I guess logically that's true that's an improvable premise, so she didn't write down every time she went to the bathroom on January 24th when she said nothing noteworthy to report she didn't write all these other things down and so therefore they didn't happen, right? I don't know what laws of journaling or what rules of journaling the State thinks apply here but that's nonsensical because she's not

required to do and guess what else you know the State had an expert up here, well one day she called herself an expert one day she didn't, she might have been right the first day when she said she wasn't but later she claimed to be a domestic violence expert, right? Janeen DeMarte one years of experience well of

750 course she counted her time as a student so if you count all those years it's a lot more but you know one year license she's out there and she says you know she had this experience of domestic violence and actually administering questionnaires is what she did but she said what we all know really common sense is that battered women lie right they don't call the cops all the time Alyce LaViolette told us the same thing they don't call the cops, they don't [inaudible]. Like Alyce told you a visional imagine you know someone's in a relationship for ten years they have two kids together the guy has a good job and he gets drunk and he hits the woman, right? According to the State's theory and she doesn't report cause she doesn't want him to loose his job she doesn't want him to get

760 into trouble she thinks it's a one-time thing and she doesn't report. Now in the State's theory, under the State's theory that woman was never hit cause it wasn't in a police report. Well let's shine the light of truth on that, shall we ladies and gentleman. How much sense does that make that woman didn't report it she wasn't hit, come on, I mean come on that is repulsive. Now the State said yesterday that miss Arias was trying to implying that miss Arias was trying to victimized Travis Alexander, all over again they're coming up with this theory that he is a pedophile, right? And that she caught him looking at this image of a child. Let's go back to that same doctor who claims all this experience with a one-year experience she was asked a pretty basic question I think even with

770 one-year experience she could've answered it, she was asked what is the definition of a pedophile, and miss DeMarte, doctor DeMarte said something to the offence, of someone has a sexual interest in pre [inaudible] children, okay. The State says others no evidence no evidence to support that. That's not true, that's not true on May 10th 2008 you heard about 45 minutes of a phone conversation about Travis Alexander and what was said during that phone conversation now keep in mind obviously the State's trying to write it off as a heat of the moment type of thing but when miss Arias has her orgasm whether real or fake according to the state anyone who has faked his orgasm is a big liar and nothing she every said she totally believed, she's a fraud but putting that

780 aside there's this idea that after this orgasm is heard after miss Arias articulates this Travis Alexander says that's so hot your orgasm is like a 12-year-old girl having her first orgasm. Who says that you cannot write that off to the heat of the moment, that is sick and that is wrong you can't put any spin on that you don't say that unless you have that interest and keep in mind something else he doesn't just say it once oops you know I screwed up she says what you say out of shone what you say and he doubles down it's like a 12-year-old girl having a first orgasm. Let's hope ladies and gentlemen that he doesn't know what that sounds like but he said it and he said it twice. The fact that it doesn't say dear diary I say Travis masturbating to an image of a child doesn't matter you have

- 790 Travis Alexander's own voice saying this and wait one more thing, right he doesn't just double down he goes for the trifecta he says like corking the pot of a little girl. He said that not Jodi Arias. Had Jodi Arias really been interested in this vicious attack of Travis Alexander you know even though the State has contemplated you, oh that she was craving the media she did these interviews and now therefore she's craving the media, she [inaudible] Travis Alexander in the [inaudible] gees wouldn't make sense you've got the national spotlight upon you, you're hoping not to go to trial and you have this camera, you have this camera in front of you, you have Inside Edition, you have [inaudible] shows, you have all kinds of people who wanna interview you and you don't say it she
- 800 didn't want to tell detective Flores that Travis Alexander had these interests she didn't wanna tell anyone that he had these interests. If this was a big plan and if this was her plan to throw mud on him she could have done so when she talked to detective Flores, right she could have done so when she talked to Inside Edition she could have done so when she talked to 48 hours she didn't, it is a reality of this trial it is reality of the facts and it is reality of how this abuse came was came to be you know the State says well he didn't abuse Deanna Reid, he didn't abuse and I would suggest even though they say that I think that's probably not completely accurate because while they had some consensual sex it was going against their religion and I'm sure that was damaging the both of them
- 810 but she he didn't abuse Lisa Andrews and he didn't abuse Mimi so therefore he's not an abusive guy but the relationship wasn't the same right she new his secret she knew of his interest, hopefully an interest he never acted on she knew his dirty little secret and she was his dirty little secret, wasn't she? Because remember at this point in time on June 4th when she's pulling up to this home and this soon to be crime scene Travis his sexual apart from what we just discussed the comments about 12 year-old girl the State's right, there's nothing wrong with having sex as a young adult, there's nothing wrong with it, there's nothing wrong or illegal about the intercourse that he had with Deanna Reid, nothing but and there's nothing wrong with the intercourse he had with Jodi
- 820 Arias at least time she was consenting to it but there was something wrong within the contents of the church and at this point in time when they begin a sexual relationship in 2006 that goes all the way up to 2008 he was a one time offender, right he'd already violated the dictates of his church, one time he needed to keep that little secret that he was having sex with Jodi Arias cause there could have been ramifications he was a repeat offender, he would have been a repeat offender, there's no doubt about that, no doubt about that. So the relationship was different the need to control her was different for those reasons. What did we also hear on this tape, that is demonstrative of this relationship we heard Travis Alexander engage in what Alyce LaViolette called character's
- 830 assassination, name calling. Whatever place you wanna put it on the continuum remember the beginning of the tape before the sexual portions got played you heard mister Alexander talking about mister Abe Abdelhadi and he talked about a confrontation that he had with him, well not a confrontation per se because if you recall and if you listen an you choose to listen to this in your deliberations mister Alexander says that he intimidated him in the bathroom he was a jealous



guy, hey you know I gave him I gonna whip your [inaudible] says something of that effect. I'm gonna whip his ass because he kissed my girlfriend. Jodi says she wasn't the girlfriend at the time I don't care I intimidated him in the bathroom, Jodi says he said nothing but nice things about you, I don't care, I was gonna

- 840 whip his ass. He's a violent guy, right he had a punching bag and you saw the exhibits, he had a punching bag outside the hallway to his office maybe he needed that for when Jodi Arias wasn't around, I don't know but he was also big fan of the fight club, right cage fight, bleeding, broken bones, cage fighting and we have him being violent in this phone call and we have him assassinating the character of other individuals that were associated with mister Abdelhadi. Remember this reference to Team Freedom she talked about oh I may go to a Team Freedom event of course mister Alexander probably knew that mister Abdelhadi was a part of this and wanted to stop any perpetuation of any relationship maybe that was his motivation I don't know but he says those people
- 850 are soulless those people are soulless, they're the worst, they don't care they just wanna drink and party and they're terrible people. He's assassinated the character other individuals, hasn't he? Those people on Team Freedom and so inconsistent character assassination we saw it, right we heard it, whore, slut, three-hole wonder, the only thing you're good at is giving blowjobs, things like that, bitch and you know doctor DeMarte in an effort to try to I don't know say face with her what appeared to be scripted testimony says that's an inappropriate communication pattern something of that effect and mister Alexander had an inappropriate communication pattern seriously inappropriate communication pattern. Who wants to be called a slut, a whore an a three-hole wonder? That's
- 860 beyond inappropriate but all those things the fear, the cheat experience and the violence before the love she had for mister Alexander, the sex, the lies, keep in mind now the lies sure Jodi lied but Travis Alexander lied as well too, didn't he? Not only we heard Deanna Reid talk about how he lied about having sex, he would lie by omission and the State made a big deal of Jodi Arias didn't confess to everyone she talked to, she lied by omission that she killed Travis, right? Mister Alexander miss Reid tells us when people would've asked about his virginity he just kinda shut it off and laughed made it look like he was still a virgin when everyone when he knew he wasn't. He lied when he told Jodi Arias was a stalker, let me get into that a little bit later, this idea hat she's a stalker.
- 870 She wasn't a stalker but if she was a stalker right why do you take a picture of your stalker naked on your bed? So fearful of Jodi his stalker was mister Alexander that in exhibit 393 on 11, 11 of 2006 he sends a picture of his penis. How fearful of his stalker is he if in using exhibit 434 if he attends pre-paid legal functions with her. How fearful is he of this stalker as if they do in exhibit 432 they go to the Sacred Groves, a sacred historical site in New York, a sacred historical site to the Mormon Church. How scared, scared of his stalker is he pretty if they go to the balloon festival as we see in exhibit 431 how scared is he how scared is he in this view of [inaudible] 435. When while still in New York they traveled to Niagara Falls together. How scared is he? You see ladies and

- 880 gentlemen part of the reality of this situation with this whole idea miss Arias was a stalker is it was a facade created by mister Alexander in case she ever got caught sneaking in or sneaking out. She's crazy she won't leave me alone you know that sort of thing that's why she's over here at 2 in the morning, that's why she's over here at different hours of the night. Ladies and gentlemen we know there was a continued sexual relationship and it wasn't out, it wasn't out for him maybe Travis Alexander had fear that this would be exposed not only affecting his status of the Church but maybe and probably wrongfully so, maybe he feared that his friends would lose respect for him if they knew that he was engaging in this behavior. He had come up with some sort of ruse in order for this behavior
- 890 to continue and we know it was a ruse because we know he took pictures and had Jodi Arias over and this idea that we don't know if she was welcome over there in the house of June 4th, he was taking pictures of her naked on the bed you don't do that with your stalker. So this sacks love, the fear, the lies and the dirty little secrets all culminate on June 4<sup>th</sup> unfortunately what happened is that mister Alexander's bedroom became a crime scene. Now Jodi Arias told you and she was taking photographs and we don't need to go over all the photographs again and we saw the photograph we're talking about a couple of photographs exhibits 159 and 160 if I remember correctly that mister Alexander sitting in the shower, one we see his face, one we see his body. The argument you heard
- 900 yesterday was the photograph of the body sitting in the shower was not accidental because it wasn't focused doesn't seem like a photograph anyone would particularly take but it makes sense Jodi Arias said she was holding the camera she was looking at some other photographs deleting some, deleting others, it makes sense that she could have been holding the camera steady and accidentally took that picture, okay. So we're at this moment in time in this is when this is when things differ, right up to this point in time talked about facts that are entirely consistent for which there's no real dispute at least as in terms of what happened with to make of it there could be a dispute but this moment in time right about 5:30 this is the pinnacle right where the State says miss Arias
- 910 who already has a gun reaches down and stabs in an upward motion and after this happens sometime after this happens we have exhibit one 161. What are the photographs that was recovered, right. Jodi Arias says and it's certainly coming in a little clearer today over there 531 in 14 seconds and you'll have a chance to have this back with you but Jodi Arias says she drops the camera, this photograph is entirely consistent with that, isn't it? It's a photograph up towards the ceiling Jodi Arias says Travis Alexander yelled at her for dropping the camera he called her stupid he says even a five-year-old could hold a camera. Now remember this is a budding professional photographer who loves photography and takes great pride in it he's going to his attacking her at her core
- 920 insulting her, miss LaViolette talked about those tiny insults, right the I guess they'd hire anybody type of insult attack her right to the even a five-year-old could hold the camera and you're stupid and then he jumps out and the he attacks and then he holds her down and she remembers that on a previous occasion when he hold her down he had choked her to the point where she lost consciousness. Now [inaudible] there's no diary entry but you still have the right

to believe or disbelieve what she says but she remembered that time and she thought it might go further this time because the instances of violence were becoming more frequent and more severe. She feared that he might go farther this time was different he was angry he was angry in a different way. She talked

- 930 about getting out from under there and you and your fellow jurors who aren't here anymore ask her some questions about this area here, the bathroom where everything was where everything happened where was camera, where were other things and miss Arias walked you through various points where the camera was where she remembered it to be and she told you about the fears she felt and again I'm not gonna read your self defense instruction but the fear she felt at that time the reasonableness actions that she took are to be assessed from her as a prior victim of domestic violence, sexual assault, assault take your pick. She tells you that after she gets out from underneath him she runs through the closet she tells you that while in the closet she remembers from her experiences of May to
- 940 mister Alexander not wearing the French maid outfit but cleaning for him that he had owned a gun. She tells you showing exhibit 69, let's start with the exhibit 69 she says I grabbed the gun from off the top shelf and we learned from detective Flores' measurements and if we believe the shelf to be the same as it was four five years ago that it's about seven feet tall and that's where she says she got the gun maybe it shows up a little better in exhibit 70. She grabs the gun runs to the closet and grabs the gun. Now you recall it wasn't that many days ago detective Flores was on the stand saying that he didn't measure the height of any of these other shelves we went back remember he said that he put them in the identical position that they were on June 4th and he measures them he measures the top
- 950 and he measures the ceiling but he doesn't measure any of these shelves. Now ladies and gentlemen one of the things the State is postulating to you is the idea the miss Arias is lying because the closet right there that day at that point in time on June 10th 11th 13th when Mesa police department was processing the scene that nothing's disturbed therefore there's no way it could've happened the way she said it did. Of course ladies and gentlemen there's no real evidence to show that we don't know if she could've stepped on the shelf to the side, to one of the railings, we don't know she testified as best as she could remember but we really don't know but one thing we do know when we look at this closet is even though we don't know the height of all the shelves one of the things we know you see a
- 960 lot of shirts there right and they're lower and for detective Flores miss Arias was about 5.5, you've seen her stand up and it's probably that accurate, this smart woman if she was lying making this up boy it would seem less smarter to just say no the gun was under one of this shirts, it was behind one of those pairs of shoes it was some where I could grab easily but she didn't say that, not only that but you know we've seen evidence this crime scene is cleaned up, could she have up a shelf this large back into place, yeah she could've done that too. So it just makes super be super simple if Jodi Arias was lying about this to say the gun was somewhere else, there's bags there, there's all kinds of area where she could say I grabbed the gun from and as a matter of fact if you look at exhibit 69

- 970 and 70 she pretty much picked the most inconvenient location she could have, right if this is a lie, she picked the most inconvenient location she could have, the wry top in the corner, okay. Now Jodi Arias told you about how once she grabbed this gun she ran out towards the bathroom drawing your attention back to exhibit 249 we see how she was able to run through and run back out the other way two openings to this closet she grabs the gun she backs out, right for her story she has the gun in her hand and she's running away Travis Alexander still charging. Now there was some discrepancy she told miss LaViolette it was she shot him in the closet well certainly there's no evidence to that and there's no evidence that Jodi Arias even said that, Alyce LaViolette said that was my
- 980 mistake because I'm not as concerned about things that happened on June 4th I'm there, okay. So miss LaViolette tells you well I might have been mistaken my notes were wrong that sort of thing, right, there's no evidence of Jodi Arias says I shot him in the closet but to say it again build the house of cards call it in line and knock it back down, okay. So miss Arias backs out of the closet points the gun to mister Alexander and she'd seem as he's leaping towards her. Now recall the entrance and exit of the bullet wound, right. Doctor Horn yesterday or actually two days ago now we had a long day he said the bullet never penetrated the brain and then he says oh I made a mistake on my report that was a typographical error that it really did but we see the trajectory this right from the
- 990 left cheek to the right nostril right as he's diving he says it couldn't have been the first wound because it would have immediately incapacitated him but now here we go the light of truth, right here it's shining right here because you are during this trial detective Flores testified, detective Flores testified at a hearing in this case in 2009 said the gunshot was first, I talked to doctor Horn after the autopsy which happened in July and he told me the gunshot was first after, that's what he told me. Give me his opinion, his opinion, his opinion, then he sat up there and said well I wasn't giving my opinion, keep in mind the set of proceeding was a sworn testimony and we went back and forth about the importance of being accurate it wasn't inaccurate it was a misunderstanding and
- 1000 doctor Horn said I didn't talk to him the next day, we know detective Flores had testified that he did, right that he wrote that in his report. So somebody's not telling the truth now perhaps it's not fair to shine the spot of light completely on this detective when doctor Horn should be sitting next time so the spotlight can get 'em both, but somebody's not telling the truth there, right. And when the detective went though and related all of these things about you know the shot first and what happened next, yeah the shot first and then detective excuse me doctor Horn comes forward says no, no the shot was last he was already dead it was never my opinion that he was shot first I never would have said that, so again somebody's not telling the truth here but when you assess that let's think
- 1010 about that from the standpoint of what happened the chain of events because at a certain point in time when you heard the doctors talk about that point in time after 2009 as to various points in 2010 miss Arias tells what happened she tells this story and then long [inaudible] the detective testified to about mister Alexander being shot first all of a sudden answer all and there's no way that I said that there is no way that this happened shot in the spotlight ladies and

gentlemen, why, somebody's lying here and in this case it isn't Jodi Arias okay. So she tells you he dives like a line-backer and takes her down, the gun goes off he falls on top of her and he's on top of her and he's been shot and he says fucking kill you bitch, there's this threat there obviously there was a threat there

- 1020 before cause he's chasing she was in reasonable fear that he was going to end her life. It's part of the reality ladies and gentlemen of this day is it added this scene added this picture behind which many dirty little secrets for help somebody, somebody was not gonna make it out alive it was either gonna be Jodi or it was gonna be Travis. Now what Jodi told you after that as after she remembers fucking kill you bitch is not very much, right she tells you that she has lost her memory she didn't have it perhaps but she doesn't remember and doctor Samuels talked to you about fright or flight excuse me and how the hippocampus doesn't necessarily process those memory, she might have never had them in the first place and we talked a lot about PTSD and we don't have to go over that again,
- 1030 we know all the tests we know the tests were consistent and we know that trauma is trauma, whether it was a bear, lion, tiger or this mysterious gopher that was introduced a couple of days ago, right we know that we know trauma is trauma and we know that she was attacked by two intruders or by mister Alexander there was trauma there and let's face it going back to lies and things of that nature while I'm thinking about it Jodi Arias been wanting to get mister Alexander like I said before she would have just said we attacked me, he's a pedophile, he's terrible but she came up with this silly lie about two intruders to try to avoid the reality, to try to avoid the airing in front of these cameras, everything that was at one time a dirty little secret, see one thing this trial did
- 1040 was rip off the lid off all these secrets and if Jodi Arias had submitted to you to want to rip that lid off she could've done it when she sat down with detective Flores on July 15th to July 16th. One of the things though about this memory loss you answered questions about it, it was referred to the fog, right and that she had lost, she didn't have a memory so what happened next, she told you about a couple of things related to her memory said she had and think it was in response to one of your questions he had some vague memories on being on her knees and dropping the knife and screaming and that she had memories of the knife going in the dishwasher but she's not sure, did that happen on a previous occasion or did it happen on June 4th, she wasn't sure and you know probably argument
- 1050 you're hear or you have heard that this is just made up that she remembers exactly what she did and she's lie she's faming name this memory loss, this memory loss was real and went through the testimony of doctor DeMarte and tried to say a lie every other word if she could about Jodi Arias said oh she she would have remembered she she knew what she was doing that's why she knew there was blood on her hands and killed the man that sort of thing, right she knew it's fame it's fair she's lying about it. Well the problem is if she were lying again if she were lying about this stage of events this smart woman if she's lying about this stage events we saw the closet we talked about that wouldn't she actually make up a lie where she remembered where she said he chased me

- 1060 down the hallway and he kept screaming I'm gonna kill you, I'm gonna kill you, I'm gonna kill you, you're gonna die, say anything like that no, could she have made up a story where Travis Alexander grabbed the knife and said I'm gonna kill and then dropped it and she knocked it out of his hand she could have done that, right if she was lying she didn't, she didn't and the proposition put forward that oh she had years to think about this years to think about this and this is what she came up with and this fog is part of this, right. This fog is not made up because ultimately it is instead an inconvenient truth it would be much more convenient for miss Arias to tell you this sort of thing that we just talked about to paint this horrific scene, right of what he did she didn't do that because she
- 1070 couldn't, she couldn't. Now whether the memories were there and never moved into the portion of the brain that stores them or whether trauma trauma prevented that from being processed we don't know for sure obviously but we know that this indeed is an inconvenient truth and keep in mind ladies and gentlemen they said this woman's smart she's planned her lies and she's planned this crime for weeks and now by the time she's with detective Flores it's been months and she comes up with on the 2nd day she comes up with this lie about the intruders that if you look at the evidence it can be proven but it also can be disproven that would be a pretty good lie, right for one night if you were lying and you had two years to think about it like I said I think you'd think about something better,
- 1080 right. You'd think of something better and here's the reality of the situation ladies and gentlemen the one thing that is clear this scenario of Jodi Arias being forced into doing something, forced into defending her life between what we see an exhibit 159 and what we see an exhibit 162 is a much more plausible scenario than premeditation because ladies and gentlemen this happened and this shows we talked about premeditation doesn't make any sense the pictures of him with his hands against the wall and his eyes turned away from miss Arias, we talked about how premeditation doesn't make any sense. This ladies and gentlemen the theory of self-defense is one that is so much more plausible because it happened like that something happened we have to face the reality as much as the State
- 1090 doesn't want you to believe it that something happened in this moment in time, these few minutes between 5:29 20 and 5:32 16 something happened in that moment in time.

**Judge Sherry K. Stephens:** Alright ladies and gentlemen we will take the noon recess. I would like to take one hour today rather than an hour and a half. Does anyone need more than an hour for lunch if so please raise your hand. One hour will see you back at one o'clock please remember the admonition.

**Bailiff:** Please stand for the jury.

**Judge Sherry K. Stephens:** We are in recess.

Recess

- 1100 **Judge Sherry K. Stephens:** Please be seated the record will show the presence of the jury. The Defendant and all counsel mister Nurmi you may continue.

**Mr. Nurmi:** Thank you your honor. Good afternoon ladies and gentlemen. This morning we talked about how the premeditation theory doesn't make any sense, we talked about miss Arias' description of self defense, we talked about how something could have happened in that moment and time now your jury instructions do not limit you to one of those two outcomes you're the finder of fact, you determine what happened, what happened between those two photographs I showed you this morning what happened. In that regard you have more options than merely first-degree murder. Page A of your jury instructions talk about the crime of second-degree murder when someone intentionally cause

- 1110 the death of another person the Defendant caused the death because of conduct which knew would cause death or serious physical injury or under circumstances manifesting in stream indifference to human life the Defendant recklessly engaged in conduct in creating great risk of death. The risk must be said disregarding it was a growth mediation from what a reasonable person in the Defendant's situation would have done. Now ladies and gentlemen one of the more crucial parts of this jury instruction comes in next paragraph the difference between first degree murder and second-degree murder is that second-degree murder does not require premeditation by the Defendant. If you determine that the defendant is guilty either of first-degree murder or second-degree murder and
- 1120 you have reasonable doubt as to which you must find the Defendant guilty of second-degree murder those are your instructions as was pointed out to you yesterday not optional the instructions you must follow. Going down farther on page 9 we have a manslaughter, sudden quarrel for heat of passion. That could also sounds very familiar to what we've seen throughout the course of this trial right? If and only if you find the elements of second-degree murder were proven beyond a reasonable doubt you must then whether the homicide was committed upon a sudden quarrel of heat of passion resulting from adequate provocation from the victim. Adequate provocation means circumstances that deprive a reasonable sir person of self control and it does say words alone are not have
- 1130 adequate provocation to justify reducing an intentional killing to manslaughter. There could have been a cooling-off period for which in this case miss Arias could have regained control. If after finding the elements of second-degree murder will perfectly be under reasonable doubt you also unanimously find beyond a reasonable doubt if the homicide was not committed upon a sudden quarrel or heat of passion resulting from adequate provocation and then you find the Defendant guilty of second-degree murder but if you find the elements a second-degree murder were proven beyond a reasonable doubt you must also unanimously find beyond a reasonable doubt that the homicide was committed upon a sudden quarrel or heat of passion with adequate provocation, you don't
- 1140 find miss Arias guilty of second-degree murder but of manslaughter. And it says finally if you determine the Defendant is guilty of either second-degree murder or manslaughter but you have reasonable doubt as to which it was you must find the Defendant guilty of manslaughter. So ladies and gentleman as these instructions show you your job is not limited to these two choices that we talked

about this morning and in that regard let's be honest there is no doubt about fact that each party, the party the State promoting their agenda, promoting the theory of first-degree murder there's an agenda behind that, there's a motivation behind that. They want you to convict Jodi Arias of first-degree murder. Miss Arias too there's no doubt about it, the State talked about it yesterday there's no doubt

1150 about it she's facing first-degree murder charges. There's no doubt about the fact that she would have every [inaudible] right? No doubt about it. It is your job to determine and we talked about the evidence of self defense whether that evidence the objective evidence you've heard fits that story and whether you believe her you still have the right to believe her, but there is another voice, another voice which has no agenda. The voice of reason. See ladies and gentlemen you are not required to check your common sense at the door as a matter of fact you are supposed to take it back to jury-room into your deliberations your experiences and your comments to help you as a finder of fact to determine what happened between the photograph Jodi Arias was taking of

1160 mister Alexander sitting in the shower and the moment in time when he his body was being dragged across the bathroom floor. In that regard before we talk about some of those things in those objective indicators we're gonna look at crime scene photographs, we're gonna look at evidence for which there is no dispute. That tell also these items also tell a tale but let's not forget that this even the voice of reason even your common sense even these objective indicators will tell you that this is still a tale of fear, a tale of love, a tale sex, a tale of lies and a tale of dirty little secrets. What we need to do when we talk about this objective evidence analyze we need to take you know stock I guess if you will of all the things you know we have these two pictures Travis in the shower and in his

1170 body being dragged across the bathroom floor but outside those two pictures and even outside of the pictures on June 4 we have a contents of this entire relationship don't we? You know one of you or your fellow jury members who were who may not be here, there was a question posed a couple times, think once to Miss LaViolette and once to Jodi herself. And the question was something to the effect and it was worded differently both times but did Jodi and Travis have love hate relationship? That was the question and I think it's a fair one.

**Mr. Martinez:** Objection. [inaudible]

**Judge Sherry K. Stephens:** Substate. Rephrase

**Nurmi:** The question is a fair one. But it seems that there certainly have been

1180 elements of love, elements of love in this relationship. We saw both Jodie and Travis on New Year's day express how much they loved each other. We heard elements of love, read them in the text messages we saw Jodi's journal I love Travis Alexander and we saw expressions of love from Travis Alexander, text messages did he love Jodi? He told her he did but he definitely loved having sex to her. We know that. Are there elements of hate? Maybe see maybe Jodi hated herself for some of the boundaries she crossed, even though she said she enjoyed



it, participated in it. Maybe she hated herself for crossings some of those boundaries and maybe Travis Alexander hated himself for crossing some of those boundaries too, hated the fact that he wanted to keep having sex with Jodi

1190 Arias maybe so well but whether this relationship was one of love-hate the love-hate relationship your question posed there can be no doubt about the fact that this relationship was one of chaos. Apart from all those other factors that we've been talking about these experiences of human existence we know that this relationship was one of chaos. Ladies and gentlemen what I want to begin this afternoon by doing is reminding you of some of the chaos. That what we've seen throughout the course of this trial that demonstrates that this idea premeditation, self-defense but there could be something else. I wanna play for you what's been marked as exhibit 50 A. This is a portion of a phone call, you saw and heard this before, this is a portion of the phone call that Travis Alexander and Jodi Arias

1200 had on May 10, and listen if you will ladies and gentlemen for the chaos.

Phone call:

Travis: "The way you moan, it sounds like you're this 12-year-old girl having her first orgasm - it's so hot."

Jodi: "[inaudible] Sounds that great?"

Travis: "A 12-year-old girl having her first orgasm" "I jack-off everyday, sometimes 2,3, times a day."

Jodi: "Are you serious?"

Travis: "There've been many times when you have been, like miserable and I've like... Raped you." "You cannot say I don't work that booty."

1210 Jodi: "Oh never mind you had to work the booty."

Travis: "We've had 2 & 3 hour sessions many times."

Jodi: "Yeah, yeah."

Travis: "I think 3 and a half are our top."

Jodi: "Remember that time I came to you when I was still working in California and I fell asleep on your chair next to your bed and you woke me up by pulling my pants off and licking my pussy?"

Travis: " Ya, you got to admit though there's not many guys who do that just for fun. I'm going to tie you to a tree and put it in your ass by the way."

Jodi: "What's that?"

1220 Travis: I'm going to tie you to a tree and put it in your ass. I'm going to tie your arms around a tree, blindfold you... and ah put a camera on a timer while I'm fucking you. Just think of how, how I pounded you, with a full Tootsie Roll Pop, until it was nothing. I didn't like the Pop Rocks as much as I like the Tootsie Roll part though. I'd like you to ride my freakin' face like a horse. I need to get my 69 fix too."

Jodi: "69 fix?"

Travis: "I'm going to get some shots of freakin' putting it in you. Like the actual foliage and your reaction, the angles and the whole bit. [Inaudible] "Start touching yourself. I can't wait to get jizzle all on your face. I'll try to get one as  
1230 I'm coming on your face. I wanna give you a Cream Pie too."

Jodi: "What's that? What's a Cream Pie?"

Travis: "Where I blow my Wad. Right... just like a quarter inch, inch inside your Pussy. It could be like [inaudible] a porn."

Jodi: "Yeah."

Travis: "In every sense. Everything is out... like the details of your body are so hot. Like this big friction' nipples. I could come any moment... put my dick in every orifice of your body. I wanna get like some, Park Ranger type outfits for me to wear. Oh honey, the pictures I'm going to take are so hot. One of them is going to be laying on my back, cos hard, ya know, sticking straight out. Oh

1240 honey, that was huge... I just did like 15 pumps. Which is surprising because, ya know, I drained it this morning. Seriously I could ah, ... if I was a sperm bank I could retire off this load.

**Nurmi:** Those were the words of mister Alexander. How do they demonstrate chaos? They demonstrate chaos in the context of this entire relationship don't they? This was from May 10th, May 10th 2008. Few weeks before the killing, a few days before about nine days before he tells Reagan Housley how he's afraid of Jodi Arias. Several days later after this while the 26 he's calling her a whore a slut and a three-hole wonder. You've seen these text messages, we've gone over numerous text messages, right? On one day text message could be sent Jodi was

1250 the most beautiful woman in the world, next day she could be a horrible bitch. There's text messages reference to Spiderman underwear, text messages sexual in nature, text messages loving in nature. Chaos unhealthy relationship right? On both parties there's no doubt about that. Chaos an emotional turmoil if you will, that perhaps both individuals were feeling on their own, bringing it in into this relationship, into this caustic relationship. I mean let's think about it ladies and gentlemen we have this relationship but after a few months of going out we saw what has been marked exhibit 438 a letter that Jodi Arias was motivated we'll say, to say on terms Alexander telling this same mister [inaudible] who was asked Travis kick in the bathroom that they could no longer be friends or do the

- 1260 things that friends do or do the occasional hug because it would make Travis feel uncomfortable. Chaos. We have on April 7th 2008 about a month before this phone sex according right Jodi is telling an F and lie and BS story and no matter how bad the truth is I promise the punishment will be better than the lie. You know certainly as Dr. DeMarte would say not a healthy communication pattern we also heard we also saw these text messages without going through every single one. Don't ever contact me again right, we heard messages like that from Travis Alexander and there was always still contact right. They always kept going back towards each other no matter what time or space kept them apart they always kept going back towards each other. There's no doubt about that, it
- 1270 happened all the way up to June 4th. Keep in mind to this time period to this April May time period we heard from Mimi Hall right Mimi Hall was hearing stories of Jodi being a stalker right, again didn't make any sense given what was going on but again it was this relationship of chaos, and look let's face facts this voice of reason common sense Travis wanted to maintain this image of a virginal Mormon man right, doesn't seem to be much doubt about that Deanna Reid told us that and he's dating these proper Mormon girls isn't, Lisa Andrews, Mimi Hall they're not interested in a sexual relationship with Travis Alexander but Jodi Arias was there, right. Jodi Arias was there for him and we know also speaking of Lisa Andrews, Lisa DiDone now when she came to testify for you
- 1280 but then Lisa Andrews he was dating her she was the good Mormon girl, right when he was going to the balloon fest when he was doing all these different things and Jodi dirty secret on the side. Her relationship of chaos, she was great to have around for mister Alexander for the sexual purposes but he wasn't she wasn't acceptable to his friends and she might not have been acceptable to his church. So date the Mormon girls you don't have to have sex with you don't have to abuse them you don't have to push their limits even though it seems based on her our own email and her own commentary that he did push the limits to some degree with Lisa Andrews, she wrote him that email don't want you to touch my butt in public to mark the territory. I know you know talk about sex way too
- 1290 much, you'll have your time you had your chance little did she know he had that with Deanna Reid, but that was a reality of what was going on here throughout the course is this relationship in the time period that he's dating these other girls flirting with other girls Jodi for his dictate has to write a letter and say now we can't be friends anymore because it might look upset Travis that's that's what was going on in this relationship. On May 2nd 2008 Travis Alexander sends miss Arias exhibit 391. Travis Alexander says "This photo shoot is going to be one of the best experiences of your life and mine. I haven't stopped thinking about the pics I'll take, the progressiveness of it from the very clean to the very dirty and everything in between it will tell quite a story and be a lot of fun and
- 1300 not a day has gone by that I haven't dreamt about driving my shaft long and hard into you. When I am all by lonesome I have no desire to think of anyone else in my scandalous fantasies because..." Keep in mind ladies and gentlemen although this is before the message to Reagan Housley about being afraid of Jodi, this is also around the same time period when he's dating Mimi and saying I have a stalker. Well you know it's funny too cause the State, now the State says

this is true she's stalking him but again would you send your stalker a message like this about when I'm at home and I'm lonesome I have no desire think that anyone else in my scandalous fantasies. Is that a way to tell someone to back off, I don't wanna be in a relationship with you, no doesn't sound like it to me

- 1310 nothing. Nothing from my own experience nothing is even enjoyable compared to you, as we talked about love, hey he already loves having sex with Jodi Arias the variant is because, because of that I spend a lot more time getting myself off. Cause the ultimate slut in bed, how he wants to send one down her throat. He wants her to ride his face he says you'll feel like you've been raped, you'll enjoy every delightful moment of it. This is someone he's supposedly afraid of or so the theory goes, right? Someone he wants nothing to do with, someone in other text messages he calls evil, someone and other text messages he calls soulless of course we know he did to other people as well but he says he calls her a corrupted carcass, right but it doesn't seem to stop him from having sex with
- 1320 her. One day yeah he wants to have sex with her and says all these graphic things, another your evil well then maybe you know she's a stalker now I need her over here for sex. That's the reality what common sense tells us what was going on in this relationship. All these things were happening in this time span of May 2008 when this supposed plan was being formulated these text messages were being exchanged these phone calls were being exchanged and this stalker like behavior the was being exchanged. Showing you what's been marked exhibit 164 this talking about this photo-shoot does that look like that was the best experience of Jodi Arias' life? Now ladies and gentleman going back to this idea of a voice of reason an objective evidence you've heard lots of and the
- 1330 saying goes the picture says a thousand words, right, and we have plenty of pictures of the crime scene and you've heard a lot of testimony about the works Mesa police department did of the crime scene what was weeks ago now in January I think we had a woman from the Mesa crime lab, a crime scene tech, come up and remember she had the laundry, there was laundry the camera was found in the washing machine and she showed you all this laundry all the items that were in there, right and showing you exhibit 17 there were these socks and there was this towel and the assumption was that this towel was bleached and that all these items for bleached, dumped in their than this was a blood-soaked towel with bleach. Well ladies and gentlemen you have your common sense you
- 1340 have a voice of reason there are other items sitting here exhibit 17 that don't seem to have to come to this bleach, exhibit 28 other items found in the washing machine not staying with bleach, exhibit number 27 items not stained with bleach but that suggests what I would say that should suggest to you is the idea that there was no bleach in this load of laundry. There was no effort if you will to submerge this camera in water and bleach. And you know we go back things come up but I have to go back to this idea premeditation as it relates to the camera, camera was sent in there too remember? Why would somebody who has experience with digital cameras who has planned this murder out, for weeks, for week, week-and-a-half I guess why would she then not take the camera with her

- 1350 after she has all these crime scene photo she know she's taken there, why should she stand there, she's planned this out right, she's smart why would she delete some photographs and throw it in the washing machine? That doesn't make any sense and this idea that there was bleach in the washing machine doesn't make any sense either. And these pictures what we just saw about the laundry of the items in the washing machine are things that cannot be changed, they're subject to your interpretation I guess but they are what they are these were the photographs taken by the Mesa Police Department. What else do we know about this crime scene that tells us a little more about what happened, what could have happened? Exhibit number 63 we see Travis Alexander's bedroom and we see
- 1360 what I believe is a chair and a half there with some pillows, now one of the things that was postulated to you yesterday was the idea that miss Arias was lying about being tied to the bed again, as regards knocking down, lying to you about being tied to this bed because it was a slave bed, and there's no way you could do that. Miss Arias talked to you about how the rope went through the back of the bed and it really wasn't a severe restraint but more a prop that she could get out of and I say no there's no way that it could happen but of course it could've there's no laws of physics or logistics that would prevent someone from being at least in a as a prop tied to the bed in the way miss Arias described it, right with both her wrists out the rope behind the headboard and tied there. Now
- 1370 the other issue that comes up as relates to this objective evidence is the idea of a rope. The argument by the State is there's no rope, showing your what's been marked as Exhibit 56, what do we see there ladies and gentlemen is a rope. Now when detective Flores was questioned about this the theory was put forth to the questioning anyway of gee-whiz there's a bunch of fringe on those pillows that must be where they came from looks pretty similar must be fringe from the pillows. When I spoke with detective Flores he was forced to admit to those pillows, you know I asked him something to affect him those pillows to show him and they looked organized there he was forced to admit they looked organized. And you as jurors as finders of fact only can make that decision but
- 1380 ladies and gentlemen this theory that this rope was from these pillows doesn't really make any sense either does it. Looking at exhibit 268 there's a better picture of the rope, more close-up that make any sense whatsoever as to how a fringe a piece of fringe from those pillows they were not disturbed wound up on the staircase, doesn't make any sense. One of the things you know talking about memory loss and inconvenient memories Jodi Arias doesn't have a memory of the rope wasn't there but here we see through evidence again for which there is no agenda behind it but a crime scene technician taking this picture that there's a rope, there's a rope. Could it be that Jodi Arias had carried this rope out could that be? But what else does the crime scene show us for which there can be no
- 1390 dispute in terms of what happened? Drive your attention to exhibit 130 we have the blood, the blood at the end of the hallway. Dr. Horn agreed yesterday that that is where the throat was slit makes sense right? The greatest amount of blood loss presumably what to be presumed as footprints is where his throat was slit. Exhibit 128 shows you a slightly different angle but it does show you kinda were the blood ends or the pattern is how far into the room it goes. The state

postulated for Jodi's theory to be correct there had to be blood all the way into the bedroom but that doesn't make any sense. This unfortunately is where it ended. We've heard much about the bullet casing, exhibit 111 this idea that this shot had to be last because the bullet casing was in blood, therefore the stab had

- 1400 to be first there had to be blood there's no other way for this bullet casing to wind up here. But ladies and gentlemen does that make any sense what I said earlier and what I think is true from this crime scene and we're not gonna go over every single photograph but what I said about this crime scene is that it's one of chaos as well, isn't it shows it shows passionate it shows anger, it shows rage no doubt about it, no doubt about it. But things were being moved around, kicked around and there was a fight no matter how you try to spin anything that happened here there was a fight and as the State power to struggle, there's no doubt about it, there's no doubt about it and yet at some point it was probably it was a fight, a fight for life on both Jodi's part and Travis' part. Now the State
- 1410 during their case in chief showed you exhibit 118 that Jodi knew what she was doing planned all this out because she engaged in some massive clean up of higher function right that she was functioning and thinking and acting on a higher level. What's the reality she threw some water down with a cup in a panic. Does this look like a clean up of some cold calculation or rather instead a reaction of what the hell happened reaction to what happened to the experience the fight she was just in? This does not look like some orchestrated clean up. Now ladies and gentlemen the State had shown you photographs of mister Alexander in the shower we talked about that, exhibit 159 the photograph it followed of his buttocks and his legs and I said to you based on the timing the
- 1420 photograph of his buttocks and legs that things could not have happened the way Jodi Arias says they happened that they were part of a pre-plan cause it only took 62 seconds right that's what we heard in exhibit 162. The theory is by the State that miss Arias s had the weapons he needed to cause mister Alexander's death with her and then she caused it at this point in time but the picture tells a different story. Doctor Horn was forced to admit on the stand that if someone had their neck slit at this point in time couldn't keep their, couldn't keep your head up. What do we see in this photograph it's harder to see on the screen but we see mister Alexander with his head up and you'll be able to take this back with but you can see mister Alexander with his head up his arm up and we
- 1430 certainly see blood up coming from the side there's no doubt about it but not at time not the kind of blood you would see had his neck been slit, not that kind of blood. We actually see that kinda of blood in exhibit 163. Travis Alexander that's his shoulder and it is very difficult to see through this projection and you will have a chance the opportunity to take a look at this when you deliberate. There's a lot of blood there ladies and gentlemen and we know it's not in the bathroom because we can see there's no bathroom counter, there's no light course keep in mind as well we don't see a little blood splatter here either not at this point but also keep a look in mind here to this photograph 5 30 3 and 32 seconds presumably ladies and gentlemen at this point in time the voice of

- 1440 reason and common sense tells us going back to exhibit 249 tells us that mister Alexander was being dragged back down the hallway, the end of the hallway is depicted by number 45 on this diagram and of course we know that mister Alexander was ultimately found in the shower, there was carpet in the bedroom, we saw that a moment ago so when Travis is in this position presumably what we see here is Jodi dragging him back down the hallway towards the shower. The State also said something else in terms of the gun shot right that after he's dragged back down the hallway that Jodi Arias shoots him, this gun she has stolen she decides to use it and shoot him, right. Now there hasn't been any theory specifically postulated as to how that could've happened right not any
- 1450 one theory we know though that the bullet supposedly went through the head in one side and down the other right towards the nasal cavity. So how does this happen ladies and gentlemen, I don't if you have given pause for thought to that, but how does this happen she's dragging this body back, that's pretty obvious so in theory then when she's dragging this body back we are to believe that Jodi Arias then stood with Travis down below her and shot him in the head, risking shooting herself. To what end? To what end? Did she prop him up against one of the walls? Drag him, drag him prop him up against a wall and then walk over and shoot him, in this matter. Doesn't seem to make any sense, does it? Did she shoot him in the head when he was in the shower? Well, that doesn't make any
- 1460 sense because he was slump completely on the ground, she would have to reach way over and shoot him in the shower and that doesn't make any sense either, right it is just this idea that after this Jodi shot Travis after he was dead, doesn't make any sense. Well ladies and gentlemen what does make sense? I would submit to you as I submitted to you before this morning that certainly Jodi Arias' theory or I should say the explanation that Jodi Arias offers makes more sense because it does involve a moment in time and keep in mind I think I misspoke a little bit this morning we talked about this moment in time when he's down and she's left handed, right she would have to go down there with her left hand and stab him presumably she would've used her left hand go down there and stab
- 1470 him and that's the moment in time the State thinks premeditation met reality, right. Well ladies and gentlemen here we go here's the ultimate question that we asked you the very beginning when miss Willmott sat beside you on January 2nd what happened between here and here, it's also about what happened between this photograph 162 and photograph 163. What happened? Okay. So we know at one point in time and let me say this this is to say if you do not believe Jodi Arias' self-defense claim you believe the States refuted it just by creating a house of cards and knocking it down. What could've happened? We see the shower 62 and 65 the arrow points towards the shower where mister Alexander's body was found, where you know the ultimately that was the final resting place.
- 1480 We know that the theory, that there was a shot, excuse me a stabbing first makes no sense because look, look at exhibit 98 if you will. The sink, they have the sink with all this blood splatter. The State's theory is that mister Alexander after being stabbed walked over to the sink with this massive wound in his chest and stood there. Now presumably for the blood to hit this sink and not the mirror and not somewhere else and as we saw mister Martinez do yesterday you know we

have a palm print there he's leaving forward right he's leaving forward he has a hand on the sink and that is where the State theorizes that Jodi Arias then after stabbing him in the chest for some reason backs up cause he's down he's got this chest wound right hey this is a fatal wound he has it and he's sitting in the

1490 shower when he has it that somehow he gets up gets past miss Arias whose got the knife in her hand, keep in mind still, and then once he gets past miss Arias and he stumbles to the counter he's standing there bleeding out his chest and spitting all this blood and that they somewhat the State told us yesterday miss Arias then comes behind mister Alexander to stab him in the back. We showed you the photographs of mister Alexander's autopsy and these cluster, this cluster of 9 wounds. But keep in mind the testimony of doctor Horn the first time these 9 wounds were all real shallow, shallow wounds. Now under the States theory they claimed that Jodi Arias leaned down grabbed the knife and and stuck it into mister Alexander's in an awkward back hand position and was able to penetrate

1500 his chest and damage his heart and go deep deep wound right. But when she's standing up with her full force and mister Alexander is standing over there that all she could conceded in doing is making these very shallow wounds. All her strength right she's standing up yet she can't make the kind of damage she did when that he supposedly do when he's sitting in the shower. That doesn't make any sense, does it? Keep in mind as well the theory goes it she was out to slit his throat, well there he is right, bent over the counter bleeding at his chest according to the State. Jodi has this knife still in her hand, why didn't she just come behind him and cut him? Instead we have these superficial not a superficial but we have these shallow stabbings. Why would she do that, it

1510 doesn't make any sense. The other thing is, doesn't make any sense again going back to the gun. She has this gun right, she has stabbed this guy somehow he has gotten past her and he's standing at the sink. Again makes very little sense how he could get up with this wound get past her and get to the sink, but in the States theory that's what she does, that what he does, right. But Jodi Arias, if you believe the State had a gun at the ready, did she shoot him there when he was standing over the sink? Did he drop right there? No, we know that from the crime scene photographs, we know that at a particular point in time that he walked down the hallway and he saw all the blood and all the chaos going down that hallway and all throughout the bathroom and we saw yesterday the blood

1520 smear on the hall there's no doubt about fact that yeah mister Alexander fell at that point in time fell somewhere near the end of the hallway in that bedroom but how did he get there? If the state's theory is correct he would have never gotten there, if the state's theory is correct he would have never gotten there because Jodi Arias had the implementation the implements of Travis' destruction and evidently based on this theory she didn't use it. None of what the State has said to you as it relates to what has happened that day, apart from a few very specific things makes sense. Doctor horn may be right first time before he or detective Flores change his story of the shot being first but of course the self-defense claim caused them to alter that. I would submit to you ladies and gentlemen that



- 1530 you also have to consider the possibility as you do in your manslaughter instruction that some point, some point after this photograph something happened, something obviously happened right, maybe that's silly me to say but something happened. The question is what what the chances for premeditation have gone by the wayside at least from the pictures we saw this morning, I would submit to you that in fact Jodi Arias did drop the camera we have evidence of a picture of the ceiling, did drop the camera, Travis Alexander did berate her for dropping his camera, the camera that he was gonna to take to Cancun. The more we're thinking of Cancun, we didn't hear it from the State yesterday but this idea about Cancun and how jealous Jodi would be right he
- 1540 talked about listen to the recording on May 10th, they talked about all these trips they were gonna take all these things and she told you she knew someone else was going this wasn't a matter of jealousy not on her part anyway, but I will submit to you that she did drop the camera that Travis Alexander did fly into a rage the kind of rage the kind of anger that you've seen in the text messages and in the recordings that he did threaten her and make her feel that her life was in jeopardy remember her perspective on this is that of a battered woman. But ladies and gentlemen there's no doubt about the fact one of the things Alyce LaViolette said was that sometimes when a battered woman is attacked and they're defending their life they don't know when to stop. Travis Alexander's
- 1550 body was stabbed 27 times it may be that Jodi Arias didn't know when to stop it can also be without any agenda looking at it objectively couldn't it also be that after everything, everything they went through in that relationship that she threw him down again that she did grab for the gun to defend herself that after that she simply snapped she may not know it but she may very well have snapped, out of control sudden heat of passion we've been through so much and look what happened now. This instance of violence went too far she could have snapped, snapping, sudden heat of passion could it count for much of what you see throughout the various pictures that were taken in exhibit 249 the chaos, the blood everywhere, the shallow stabs wounds, the slit to the throat, the running
- 1560 down the hall. All of it in some ways a sad symbolic ending to a toxic relationship, all of it. There was a fight but Jodi Arias might very well have lost control she might very well have come in and exceeded succeeded or gave in to a sudden quarrel heat of passion after Travis Alexander threw her down. Enough was enough no doubt for a minute, those things were there those text messages everything else this chaos, this relationship the fear, the love the sex, the lies and the little dirty secrets and throw her on the ground again and go in a situation where she has to point a gun at him and him diving towards her. Ladies and gentlemen again with no agenda behind it, not miss Arias voice, not the State's voice is that the most logical explanation for what happened? You have to
- 1570 consider that ladies and gentlemen it's in your jury instructions and that's one of the things that you decide what happened that ultimate question we've seen those two pitches over and over, what happened in that moment in time? A relationship, relationship of chaos that ended in chaos as well there is nothing about what happened on June 4th in that bathroom that looks planned, nothing. You bring a gun and instead you stab, you have his back to you with a gun and

knife and you don't do anything if it was planned wouldn't you? So we talked about it this morning this idea about something happening something did happen in this moment in time in the point of this I think is what this evidence shows you is it either what happened is that Jodi Arias defending herself and didn't

1580 know when to stop or she gave in to a sudden heat of passion from a fight that began up in that bathroom and that what she did she did under that sudden heat of passion, demonstrative of that is this idea she doesn't remember any of it. So what I'm saying to you ladies and gentlemen is ultimately if miss Arias is guilty of any crime at all it is the crime manslaughter and nothing more.

**Judge Sherry K. Stephens:** Alright we're going to take a 10 minute recess please be back in the designated area in approximately 10 minutes remember the admonition you are excused.

**Bailiff:** Please stand for the jury.

**Judge Sherry K. Stephens:** We are in recess.

## Appendix J

### Marcia Clark's Closing Argument

1 **Ms. Clark:** I'm just using a screen instead of an easel to do what we've been doing for hundreds of years. So this is not tip for tap your honor. Counsel's so scared that he's saying don't let her argue, don't let her draw reasonable inferences, don't let her pull this together for the jury. That's what we have here I'm drawing inferences from the evidence and I'm arguing the evidence. He wants to use something novel that the court wanted to safeguard I understand that. They weren't ready to see anything, we were here.

**Judge Ito:** We are at that stage where the attorneys will have the opportunity to argue to you. I shall let you know that previously I had contemplated placing a

10 time limit on the lawyers in their argument, um some of the factors I considered in whether or not I should place a time limit on them was the quantity of the evidence that was produced, the conflicts in the testimony and the complexity of the issues that you'll have to resolve and after considering the length of the case and the nature of the evidence I have decided not to place a time limit on the argument of the attorneys. However, I have placed upon each side a limit of no more than two attorneys may argue to you for this part of the trial. Now the purpose of the argument by the attorneys is to discuss with you the facts and the evidence that had been presented to you to discuss the law that I had instructed you on earlier and the attorneys may advance theories based upon the evidence

20 and it may urge conclusions that are fairly drawn from that evidence. However, during the course of their arguments please remember my previous admonition to you that the comments that argument made to you by the attorneys are not evidence. All right having said that, Ms. Clark on behalf of the People are the prosecution prepared to proceed their opening argument?

**Ms. Clark:** Yes your honor we are.

**Judge Ito:** All right you may proceed.

**Ms. Clark:** Thank you very much. Good morning ladies and gentlemen.

**Jury:** Good morning.

**Ms. Clark:** Finally, it seems forever since I've talked to you. Kinda has. It's  
30 very weird to be in this courtroom next to you, seeing you very day, not getting a chance to talk to you it's just very unnatural. And I have to tell you that as long as I've been doing this and as many years as I've been at this moment in a trial I always feel the same. I feel like I wanna sit down with you and say what you wanna talk about. Tell me what you're thinking.

**Judge Ito:** Ms. Clark I'm sorry the juror wants his pen. Ms. Clark.

**Ms. Clark:** Thank you sir. I wanna sit down and I wanna talk to you I want you to tell me "What do you want to know? What do you want to talk about?" Because that way I don't have to talk about stuff you don't want to hear, stuff that you don't want explained, stuff that you are not interested in, and I can't, and

40 I always have this sense of frustration. So I'm sorry if I say things that you don't need to hear or I explain things that are already clear to you. Please bear with me because I am not a mind reader and I don't know. Let me first take this opportunity to thank you and I want to thank you from the bottom of my heart. You have been through so much. You have made a tremendous sacrifice. You haven't seen your children enough, you haven't seen your family enough, you haven't seen your loved ones enough, and all of this in the name of justice and the service of justice. Your dedication and your selflessness are truly beyond the pale. No one can say that any jury has sacrificed more for the cause of justice

50 than you have, and I want you to know sincerely from my heart I appreciate it. I speak on behalf I know of the People of the State of California this was a tremendous sacrifice, your selflessness and your devotion will long be remembered by many and I thank you. I think no one can understand how great their sacrifice has been, how terrible the pressure has been, how awful it must be for you have your lives kinda out of control this way at the mercy of us taking longer than we should have and you having to put your lives aside for longer than you should have had to do. I'm sorry for that I apologize. Let's look at two bright sides: one it's almost over, number two you have the assurance of knowing that no stone has been left unturned. The defense has explored every

60 nook and cranny of the case we have exhaustively tried to give you every piece of information that could possibly be relevant to answer the question we're here to answer and in doing so in the exhaustive examination and cross-examination of all of the witnesses in this case and the exhaustive investigation and the work that's been done, one thing is clear this Defendant has received the ultimate and a fair trial. And at least you know that you have that assurance. Now in the course of presenting all of this evidence, in this trial just like every trial some evidence has been presented to you is really not relevant to answer the core question of who murdered Ron Goldman and Nicole Brown. And it's up to you the jury to weed out the distractions, weed out the sideshows and determine what

70 evidence is it that really helps me answer this question. And it's kind of the artist and the sculpture and somebody went to him and asked him how do you make an angel? Well I take a piece of marble and I remove everything that's not an angel. That's what you have to do. It's not easy, it's going to require a lot of focus and a lot of determination on your part because the sideshows may be very interesting they present very important issues, very serious issues but issues that really do not relate to who committed these murders and they should be dealt with outside this courtroom because here now in this courtroom we're here to deduce who murdered Ron Goldman and Nicole Brown. Now you as jurors sit as judges of the evidence, you're called the trier of fact and such your job it is to

80 be neutral and to be impartial as you examine the testimony presented and in this

regard you're guided just like any judge by the law and the jury instructions that were read to you on Friday is the law that you will apply to the evidence to determine the answers to the question that is posed here who murdered Ron Goldman and Nicole Brown. The instructions discuss a wide range of topics; they talk about guidelines for the determination of credibility of the witnesses both experts and lay witnesses and they talk about what the People are required to prove to establish the Defendant's guilt but they go beyond that and they also tell you the frame of mind that you should adopt when you look at all the evidence and one of the first instructions that was read to you by the judge on

- 90 Friday if you recall concerned your duties as a jury and it's stating in part you must not be influenced by pity for a Defendant or by prejudice against him, you must not be biased against a Defendant because he's been arrested for this offence, charged with a crime or brought to trial. Now of course that makes sense, it's logical and that means we have to present proof to you, we just can't come in and say it so. Why don't you get up here and say it so, I have to prove it to you with evidence without a reasonable doubt, so that makes sense. Now the instruction goes on to read you must not be influenced by your sentiment, conjecture, sympathy, passion, prejudice, public opinion or public feeling, both the People and the Defendant have a right to expect that you will conscientiously
- 100 consider and weigh the evidence, apply the law and reach a just verdict regardless of the consequences. In the course of this trial you have heard some testimony of a very emotional nature. I expect that in the course of arguments you're going to hear some very passionate speeches, firing speeches, [inaudible] speeches that may stir up feelings of anger, sorrow, pity. Although your feelings may be aroused, as would be natural and understandable for all of us. As the instruction tells you as a trier of fact, you the judges are to remain neutral and impartial and not be influenced by such passion or sentiment no matter how sorely tempted you may be to do so. And this applies to both sides, both sides, although the brutal and callous way in which Ron and Nicole were murdered
- 110 may understandably make you feel sorrow, pity even anger. It would be wrong to find the Defendant guilty just because you felt sorry for them. On the other hand, although it would be completely understandable if you would've feel angry and disgusted with Mark Fuhrman, as we all are. Still it would be wrong to find the Defendant guilty, not guilty just because of that anger and disgust. So as you listen to the arguments of Counsel please remember when you weigh the evidence and you consider all of the evidence, remember that an appeal to passion and emotion is an invitation to ignore your responsibility as a juror, to be fair you must examine all of the evidence in a calm and rational and a logical way. And let me come back to Mark Fuhrman for a minute, just so that it's clear.
- 120 Did he lie when he testified here in this courtroom, saying that he did not use racial epithets in the last ten years. Yes. Is he a racist? Yes. Is he the worst LAPD has to offer? Yes. Do we wish this person was never hired by LAPD? Yes. Should LAPD ever hire him? No. Should such a person be a police officer? No. In fact, we wish there were no such person on the planet. Yes. But the fact that Mark Fuhrman is a racist and lied about it on the witness stand does not mean that we haven't proven the Defendant guilty beyond a reasonable

doubt and it would be a tragedy if with such overwhelming evidence ladies and gentlemen, as we have presented to you, you found the Defendant not guilty in spite of all that because of all the racist attitudes of one police officer. It is your

130 duty and it will be your challenge to stay focused on the question you were brought here to answer and the only question you were brought here to answer. Did the Defendant commit these murders? In seeking the answer to this question you look to all of the evidence presented to you by both sides now, by both People and by the Defense and you determine what evidence really answers that question. Because the Defense has thrown out many, many other questions. They threw out questions about whether LAPD has some bad police officers, does the scientific division have some sloppy criminalists, does the coroner's office have some sloppy coroners? And the answer to all of these questions is sure, yes they do. As not news to you I'm sure it wasn't a big surprise to you that

140 those are not important issues. We should look into quality control, things should be done better, things could always be done better. In every case, at every time. There's no question about that, we're not here to vote on that today. The question is what the evidence that was presented to you that relates to who was killed Ron and Nicole. What does that tell you? Does that convince you beyond a reasonable doubt? No matter how much more qualified or how much better they could have done their job. Still and all did they present enough evidence to you? Did the evidence come to you in sufficient quantity and convincing force to convince you that the Defendant committed these murders beyond a reasonable doubt? Ladies and gentlemen I submit to you that we have more than met our

150 burden in this case. Now the Defense has thrown out a lot of possibilities to you, the merest of possibilities and a lot of them were there just to scare you. You heard Dr. Gerdes talk about it could be this, it could've been that I see the validation studies. You know, kinda like it reminds me of the doctor when you have to go in for an operation and they give you all this list of things that could possibly happen to you. Could possibly happen to you. Nevertheless, and they have to give you that warning, right? They gotta tell you that because otherwise you can not give an informed consent and say yes knowing the risk I'm gonna go and do this. Now if you really believe that all these horrible things are going to happen no one would have an operation, you wouldn't take the risk but you know

160 they gotta tell me everything no matter how remote the possibility and indeed you go and have the operation and you're fine and none of that stuff happens. Well in this case it's actually, they've raised all the possibilities of things that could happen in an effort to scare you away from the evidence, but we have done better than you could ever do in an operation because we have proven to you that nothing in this case did happen, we have proven to you that it was not contaminated, we have even proven to you that it was not planted for lack of a better term. And I'm going to go through the evidence and demonstrate how we have proven that to you. So why were these issues raised? Why were these questions raised? Well they are questions and issues that were raised as a

170 distraction. They were roads raised, roads created by the Defense to lead you

away from the court truth and the issue that was searching for the question, for the answer to which is “Who murdered Ron and Nicole?” But these roads ladies and gentlemen are false roads, they’re false roads because they lead to a dead end. The false roads were paved with inflammatory distractions but even after all the tireless efforts the evidence stand strong and powerful to prove to you the Defendant’s guilt. Now I’d like to show you a jury instruction that is very important, I think that both the Prosecution and the Defense will agree. Reasonable doubt this is an instruction that we’ll talk to you about, they’re gonna talk to you about. This is real important instruction, it’s at the real heart of

180 a case, every case, every criminal case because it’s a burden of proof that the People have. We don’t guess anybody guilty, we prove it beyond a reasonable doubt, which is what we’ve done in this case. Now this tells you about reasonable doubt, it’s kinda of a funny definition because it talks to you about reasonable and while then in very negative terms. It says that state of the evidence which after the entire comparison you cannot say that you have an abiding conviction, it’s very weirdly worded, it’s gonna take you a while to go through this, so I’m going to go through it pieces at a time to try and give you a little hand here. First of all let me point out the first paragraph talks about the fact that it is our burden of proof. I think that ones fine, it’s pretty easy. Now it

190 talks about how reasonable doubt is defined, this is real important, it is not a mere possible doubt; ok, because everything relating to human affairs is open to some possible or imaginary doubt. That’s very important. Is a doubt found any reason? I’m gonna amplify more on that with examples when we talk about the actual evidence in this case, but bear that in mind a possible doubt. I have a possible doubt that the sun will come up tomorrow. Do I have a reasonable doubt about it? No, I have no doubt found in reason that that’s gonna happen. Just for a very basic example so think about that too, we’re not thinking about what possible doubt is, it’s reasonable doubt. Now the other part of it, it is that state of the case which after the entire comparison, the entire comparison and

200 consideration of all of the evidence. Now what that means ladies and gentlemen is you consider the Defense case and you consider the Prosecution case, you consider all of it. You’ll probably hear from the Defense multiple times we don’t have to prove anything, that’s right they don’t. In every criminal case when the People complete their presentation the Defense can say no witnesses, we rest because they can sit and make the State prove their case without ever calling a witness, that’s right, that’s correct, but when they do, when they do then you must consider the quality and the nature of the evidence that they have presented, that goes into the mix, that’s part of your consideration. What kind of evidence did they present to demonstrate something to you, to prove something

210 to you? If they try to prove something to you their witnesses, their evidence gets evaluated by the same rules ours do, the same jury instruction applies. You will see a jury instruction in your packet back there that talks about how to evaluate the credibility of witnesses, both expert and lay witnesses. There is no distinction made in that jury instruction for Defense witnesses or for People’s witnesses, it’s all the same. You determine their credibility and the relevant force of the proof by the same rules, ok? So that’s the first thing to remember

when you look at everything, you look at all of it. What have they shown you? What have we shown you? We have the burden of proof, but you look at what they've shown you when you want to consider what was proven to you.

220 We've got pieces of boards and exhibits everywhere in this courtroom. All right now all I'm telling you ladies and gentlemen is that is it's reasonable doubt and not it's possible doubt and we'll come back to it again but at the conclusion of all of our arguments when you open up the windows and let the cool air blow out the smoke screen that's been created by the Defense, with the cool wind of reason you'll see that the Defendant has been proven guilty easily beyond a reasonable doubt. Or to put it another way the evidence has conclusively proven that when detective Mark Fuhrman said he did not use racial epithets in the last ten years, he lied but he has also conclusively proven that the Defendant is guilty beyond a reasonable doubt. Now I'd like to start with evidence in this case with

230 the timing ok that's the easiest place to start. The timing on June the 12<sup>th</sup>. Let's begin with a very brief review of the movements of Ron and Nicole and we're gonna start with the recital in the late afternoon, I'm sure you recall that recital for Sydney at Paul Revere high school. Nicole left the recital and went to the Mezzaluna restaurant near her home along with her parents and some friends and her children Sydney and Justin and she arrived at the Mezzaluna at approximately I think it was 6:30 pm. Ron Goldman who was an acquaintance of hers, a waiter at the Mezzaluna, was working that night but did not wait on her table and when Nicole and her family left between 8:30 and 9:00 they didn't know that the simple act of dropping a pair of glasses would have the tragic

240 consequences that we all know now that it did. Now you recall at the end of the People's case that there was a stipulation that we entered into and you recall the, the judges told you that a stipulation is to be accepted by you as an undisputed fact and the stipulation told you the following. After leaving the Mezzaluna that night Nicole's mother called the Mezzaluna to ask about her glasses that was at 9:37. Karen Crawford the bartender and Sunday night manager of the Mezzaluna took the call and went out to look for the glasses. She found them outside near where Nicole had pulled up in front of the restaurant and at Mrs. Brown's request she put the glasses into an envelop on which she wrote, I believe she wrote, Nicole Simpson will pick up Monday. That call lasted 2 minutes. It was

250 also stipulated that at 9:40 pm Mrs. Brown called her daughter Nicole and they spoke for 2 minutes and in that last conversation before her death Nicole promised her mother that she would arrange to pick up the glasses. Now those two conversations were a matter of stipulation, that's an undisputed fact. Karen Crawford testified that about 5 minutes after speaking to Nicole's mother she got a call from Nicole. That would mean that Nicole called her at about 9:43. Nicole asked to speak to Ron, he took the phone and after Ron spoke to her he asked Karen for the glasses she gave him that envelop containing the glasses and at about 9:50, 10:10 that night Ron Goldman left the Mezzaluna restaurant. When he left he was wearing the white shirt and the dark pants that were part of his

260 waiters uniform and that uniform was later found from his sister Kim Goldman in his apartment draped over the bedroom door. That uniform is here in



evidence. So we know that Ron went home and changed clothes after he left the Mezzaluna at about 9.50. The other waitress at the restaurant Tia Gavin testified that it takes about a minute to walk from the Mezzaluna to his apartment, so even being a little generous he got home by 9:52 say, he changed, he freshened up because we know that he wasn't wearing that waiters uniform when he was found and so it would be reasonable to infer that he got to Nicole's house with the envelop some time shortly after 10:00. And when I say some time shortly after 10:00 we do not know exactly at what time and I not saying that we do, but

- 270 10.10 or so would seem a reasonable amount of time to get freshened up, change and get over there. Based on what we do know. Now that brings me to something else I want to point out. In the case as in every case there's certain evidence that is introduced that is directly proving a fact. For example in this case. Ron Goldman left Mezzaluna at approximately 9:50, this approximate time, it could've been a few minutes later. So we know that some time before 10:00 he left, he changed clothes ok, but the direct thing that we know is that some time shortly before 10:00 he left, we know he changed clothes because he was wearing something different when he was found, we know how long it takes for him to get home because we have a witness telling us that, but what we don't
- 280 know is exactly what time he left his house. We know he left his house in time to be murdered, and we'll talk about that shortly and in time for him to be there with the dogs barking, we'd have to make inferences. We have to make an inference with the evidence we know about as to when he got to Bundy. Now you can draw an inference that is reasonable or you can draw an inference that is unreasonable. What we are required to do here and what I must do is draw inferences that are reasonable. Based on what we know when he left the Mezzaluna changing clothes, freshening up and I think Stewart Tanner testified that they had plans to meet at the Baja Cantina, he was gonna get cleaned up to go somewhere. It's reasonable then to infer that he took 10 minutes or so to do
- 290 that, change clothes, freshen up and then go over to Bundy. Now the dogs. The witnesses have testified to the dog, as you may recall we have heard from a number of them and they were neighbors of Nicole. Now as for the people that the Prosecution presented on this issue, all of these people were people who live close by, all of them were people home on that night and all of these were people who were not distracted by anything else going on at the time and all of these were people who did not seek out involvement in this case. All of these were people found by the police during normal police procedures as they went knocking the neighborhood doors to find out if anybody heard or saw anything and some of the people were disturbed by the police at 2:30 in the morning at
- 300 5:00 in the morning and these people were summoned by the police to tell what they heard and what they saw. They didn't go out looking for their 15 minutes of fame, they didn't go calling the police and running after the detectives to try and tell them that they knew something important so that they could be on TV and become the latest sensation. These people were called upon by the police because they were there, they were near her, they were close to the condominium they were within range where they might have seen or heard something and so they were contacted. And so they were subpoenaed, they

didn't ask to be involved and that's a big distinction between our witnesses and the witnesses called by the Defense on this issue. Now the significance of the

310 barking dog is obviously that it tells us that roughly when the murders occurred. Not exactly but it's reasonable to infer, again reasonable inference, that the murders occurred either shortly before or during the time when the dog was barking. Now the neighbors who testified to this said that they had not heard a dog barking so insistently like that before. It really drew their attention that's why they remembered it, that's why we woke them up, we disturbed them or made them concerned, made them look out the windows to see what was going on because it was unusual. Which means that Nicole was not in the habit of letting her dog run around like that, which means that if that dog is barking like that and she's not tending to it, she's already dead. Now what did they say? The

320 witnesses that we presented were very consistent in this regard. I'm gonna show you. Now I'm gonna direct your attention down here, ok. The first witness that we called was named Pablo Fenjves, you may recall that he testified, he was in his apartment on that night and at approximately 10:15 to 10:20 he heard the insistent barking of a dog, he called it a plaintive wail and the nature and sound of the barking that he heard made it sound to him that it was a dog in trouble, like something traumatic had occurred and it drew his attention and made him think about what was happening and he noticed it. He noticed it and he noticed the time because he's been watching the news so he tied the time to that event and he testified that it was between 10:15 and 10:20 approximately that he heard

330 that. We called also and you see he's right here on the timeline (Clark is indicating to a board). Mark Storfer testified as well. Now let me backup I'm sorry. Pablo Fenjves was the one who lived behind the condominium, diagonally behind Nicole Brown, across the alley if you recall. His windows, he had windows that faced the alley and at one point I think he pointed out where he was able to see and he indicated that the barking seemed to come from the location of Nicole's condo. So he lived right behind her. The other witness who testified was Mark Storfer. Mark Storfer lived down on Dorothy, that would have been just South of Nicole's condominium. Mr. Fairland do we have the dog board that we had showed with the witnesses with where they lived? Is it down

340 here? Ok I'll get it, that's fine, that's fine. Here the red house here that I'm pointing to is Nicole Brown's house. This purple house right here South on Dorothy that is Mark Storfer's house, and he testified if you may recall that he was just putting his little son to bed when he heard the dog barking and he was concerned and it drew his attention because he was worried that the dog was gonna wake up his son. You know, I think a lot of us know what that's like, we finally get the baby to bed and then something happens to wake it up, it's horrible and that's what happened to him, so he was very cognizant, he was very aware of the fact that dog was barking and it was disturbing him. He went upstairs and approximately he said 2 to 3 minutes after he heard the dog start to

350 bark went up and he looked at his clock because he was concerned how late the hour was and why the barking was so loud at that late hour, he looked and he looked at his clock and it said 10:28. Now they always said they keep their

clocks 5 minutes fast. So his clock, this gets [inaudible] really said 10:23 since he heard the dog start barking 2 to 3 minutes before he looked at the clock, it was approximately 10:20 to 10:21. Now he also lived very close and what's important for you to know and to recall about his testimony is that when the dog starting barking he indicated that he looked out his window at 10:23 a few minutes after the dog started barking he went to see what was going on and the source of the noise seemed to come from North of him on Bundy, which is of

360 course the direction of Nicole's house and when he looked out the window at 10.23 he saw no one walking down the street. That's real important. I'd like and ask you to remember that fact, Mr. Darden will discuss how significant that is when he speaks to you later. We also heard from Eva Stein and Louis Karpf they were the next-door neighbors of Nicole Brown. This is the blue house here, they live right next-door and on the night Eva Stein had gone to bed shortly before 10 o'clock and at some point she indicated shortly after she feel asleep, she was awaken by the loud and insistent barking of a dog or she thought it might have been more than one dog because it was so loud. She indicated that shortly after that [inaudible] half hour later after she started to hear the barking dog her

370 boyfriend Louis Karpf came home and she could tell that he came home because she heard the bell. So half hour after she heard the dog barking he came home and Louis Karpf told you that he came home at 10:45 10:50 at the latest, which means that she heard the dog barking also at 10:15 to 10:20 . now just to remind you Pablo Fenjves house is the yellow one indicated here on the board, so just across the alley behind Mrs. Brown's condo. All right now Louis Karpf also told you something else, he told you that when he came home he went into his garage and then he went out in front to get the mail and when he went in front to get the mail he saw a dog in the street and it was the time he indicated that he got home. When he got outside he saw a dog running around in the street barking

380 insistently, a dog that he identified for you as Kato Nicole's dog. The dog was [inaudible] around in the street and acting in a very weird manner and Mr. Karpf was a little afraid of him and went back inside. Then Mr. Karpf also told you that he saw a man walking a dog. Steven Schwab told you that at about 10:30 he left his home and went out and took his dog for a walk. If you recall he said he waited to see the end of the Dick Van Dyke show and then went out to walk his dog. It was about a little after 10.30, he told you of the route that he took walking around the neighborhood and he told you that at approximately 10:55 he saw Kato Nicole's dog at the corner of Dorothy and Bundy and he told you that the dog was acting very strangely, so he went over to look at the dog and when

390 he did he noticed that the dog had blood on his back paw and the blood appeared to be moist. He crossed over to the East side of Bundy where he said the lighting was better, in other words saying to you that the side of the street that Nicole lived on was poorly lit. Now he noticed that the dogs paws had blood on it but he did not testify that he saw any paw prints on the sidewalk. Does that mean that they weren't there? No, it means that he didn't notice them. Obviously if the dog had blood on his paw and it had gone of Nicole's home and it had walked down the sidewalk there were paw prints to be seen. The fact that someone doesn't see something doesn't mean that it isn't there, it means they didn't see it.

- That's what I mean about reasonable inferences to be drawn from the evidence.
- 400 Now when he crossed to the East side of Bundy where they had more light he dog stayed with Steven, stayed and they continued to walk but as they walked at each house where there was a pathway the dog stopped and barked looking at the pathway. This dog was acting very strangely obviously it had seen a very traumatic event. Whether it simply whether it actually witnessed the murders or simply came up on the bloody aftermath, it's clear the dog saw something. Now when Steven got home he took the dog into his courtyard and he was able to see that there was blood on the underside of the belly and there was blood on all four paws but the dog was not injured. Now Steven's friend Sukru Boztepe if you recall he was the one who found the bodies. Sukru agreed to take the dog from
- 410 Steven for the night and when you recall that he took him into his apartment the dog was acting so agitated and so nervous that he had to take it out for a walk and he decided to let it lead him perhaps lead him to where he lived and the dog did lead him, the dog pulled. The dog pulled and as the went South on Bundy the dog pulled harder and harder and as they walked South on Bundy towards Nicole's home when it got up to the pathway that lead to Nicole's house the dog stopped and it looked up the pathway and Sukru told you that had the dog not done that he would not have looked up the pathway and he would not have seen what he saw but as it was he did and because he followed that dog's gaze he saw a sight probably the most horrifying one ever seen in his life or hopefully will
- 420 ever see. Now Sukru told you that when he saw Nicole Brown lying on the ground it was midnight. So we know that the murders occurred after 10 and before midnight. That's the window that we know we have just based on what people observed and what people saw. Now I'd like to turn to the Defendant's activities for that night and I'm going to show you how during the time period proceeding the barking, during the barking and for half an hour after the barking the Defendant's whereabouts are unaccounted for. Let's start with Kato. Kato was a necessary witness for us to call but he was by no means a witness who was happy to testify for the prosecution as you could tell. This was the Defendant's house guest, someone who started out as Nicole's friend and boarder who found
- 430 a better deal. Certainly a cheaper deal at the Defendant's estate. You'll recall that he met Nicole after her divorce back in 1992 in Aspen and when he went to a party at her house in Gretna Green in 1990 during 1993 at the end of 1992 he asked if he could rent the guest house on that property and she agreed and they made it an agreement that he would pay monthly rent and reduced that monthly rent to some extent by performing babysitting activities for her two children. Now he lived there in Gretna Green for almost a year, filling in as a babysitter for the children, a friend to her and the children as well. But when Nicole moved in January of 1994 to Bundy there was no separate home for him to stay in. Now what's even more significant of Kato's lack of observation is of any cuts on the
- 440 Defendant's hand when they're in the drive-thru lane is this. Kato wound up paying for the food with his own money, paid for both of them. He handed the Defendant the money, the Defendant paid, the Defendant got change and gave it to Kato. Gave it to Kato? Wasn't the whole point of talking to Kato to get change for the sky cab? Get five's for the sky cab? Ok now you have another

inconsistency here. First of all he asked Kato to give him change when he's going out already to get it himself, secondly he has the opportunity to get change right there at the drive-thru window, either take Kato's or break the 20 that Kato gave him and he doesn't take that opportunity. That's important too, I'll come back to it. Simpson and Kato went to McDonald's, they had a burger, they came

- 450 back. He went to his guest house, Mr. Simpson stayed outside. He later heard thumps on the wall during a phone call. At that point he didn't know the significance of what he was saying and he would surely never have told the police any of those things had he known what they meant. You may recall that. Asked him if he had fives. Kato went to look and he realized he only had twenty dollar bills, so he gave the Defendant a twenty dollar bill which the Defendant took. Then the Defendant told Kato he was going out to get something to eat. He didn't invite Kato. Kato invited himself. Now, I remember when I heard that, I thought, what is wrong with this picture? This doesn't fit. If you are going out to eat and you only have hundreds, you need change, you are going to break that
- 460 hundred when you go out to eat. Why do you have to ask Kato for fives? You have only got hundreds, wherever you go, you can break it if you are going out already anyhow, so what is the point? Now, keep that thought in mind because I'm going to come back to that. That is very significant. They return to Rockingham and Kato proceeded--I wanted to indicate when they returned, during the ride home, the Defendant wolfed his food down while he was driving. Kato saved his. And I will--all of these facts are going to be tied in at the end of this presentation, so I ask for your patience. Bear with me. I want to stick with the timing right now so I don't get distracted. When they got back to Rockingham, Kato got out and he walked toward the house expecting the
- 470 Defendant to follow him, but when he got to the front door, he turned and he realized, he is not here, and he saw the Defendant still standing by the Bentley watching him and he had not moved. So as Kato told you, he took the hint, turned and went to his room. Now, why didn't the Defendant just walk in the house? Or if he intended to go somewhere, why didn't he just get back in the car and go either in the Bentley or in the Bronco? Why wait for Kato to be out of sight? I'll come back to it. Let's think about it for a minute. Now as soon as Kato got back to his room he called a friend and fortunately the friend lived far enough away that it was a long distance call so we have his phone bill that indicates what time it was and he indicated that he made that call as soon as he
- 480 got back to his room. The call was made at 9:37 so he left the Defendant's presence at 9:36 and you can see here at 9:36 the Defendant was last seen standing in the drive way. From 9:36 until 10:54 the Defendant's whereabouts where unaccounted for. So we have our window of opportunity at 9:36. ok now I'd like to remind you of some testimony that you heard about the Bronco. Back up just for a minute talk about the car. Kato said that the Defendant almost always parked the Bronco on Ashford and when I asked when during the six months that he lived there he could remember ever seeing it parked on Rockingham he said that he couldn't come up with any answer. I did ask him if he'd seen the Bronco either when they left the house to go to McDonald's or came back and he indicated that he didn't notice either way, he wasn't looking

490 for the Bronco. But there was a witness that was out on Rockingham that night, he was out walking his dog, between 9:30 and 9:45. that witness was Charles Cales, he was a neighbor of the Defendant's and when he was walking his dog, he's a neighbor of the Defendant's he knew where the Defendant lived and I think he indicated that he'd even been on Mr. Simpson's property at some point. So he was walking his dog that night between 9:30 and 9:45 and as he did so he walked down Rockingham and he looked and he could see, I think he indicated 60 yards away, but he could see, that'd be 180 feet that there was no Bronco parked on Rockingham between 9 and, when he was walking his dog, approximately between 9:30 and 9:45. Now there are two inferences we can

500 draw from this, either one is reasonable, either the Bronco was on Ashford, which is why he didn't see it on Rockingham or Mr. Simpson had already left the Bronco by the time he walked his dog. Mr. Cale also indicated that when he left his home on June 13th at 7 am when he drove down Rockingham he did see the Bronco and he noticed that it was parked at a funny angle to the curb. Now what that tells us then, let's adopt we have two reasonable inferences, I gonna talk to you about this a little but later. We have a jury instruction on direct and circumstantial evidence. And that jury instruction tells you that when you have two inferences both of which are equally reasonable, one of which points to guilt one of which points to innocence you are to adopt the interpretation that points

510 to innocence. That is if both of them are equally reasonable. Now in this case at the point that Charles Cales is walking down Rockingham and is walking his dog and sees no Bronco on Rockingham, since he didn't look down Ashford, it is equally reasonable that the Bronco could have been on Ashford as it is that the Defendant had already left in the Bronco. The inference that points to the Defendant's that is less inculpatory that is less incriminating is that the Bronco was on Ashford. Let's take that one, ok? So let's infer from his testimony that when Mr. Cales was walking his dog the Bronco was on Ashford. What that tell you? It round up on Rockingham that's where it was found in the early morning hours of June the 13th. No one's disputing that. The Bronco was moved. And the

520 inference to be drawn from that is that the Defendant was out in the Bronco and he moved it. But you don't have to rely on just that inference we have more. And what we have were two things. As may recall Dr. Baden was the Defense witness, pathologist. He testified that the Defendant told him that he had gotten cut when he went on the night of June the 12th as he was preparing to get into the limo he went to get the cell phone from the Bronco. That tell you the cell phone was in the Bronco. I gonna talk about how he got that cut a little but later. The cell phone was in the Bronco, that's where he had to go and get it from when he was getting ready to get into the limo. If the cell phone was in the Bronco and he's using the cell phone that night he was out in the Bronco and we

530 have the proof for you in the form of the Defendant's phone bill. Here's the exhibit that we marked during the trial and you will have this one back there with you. It indicates that the Defendant made two phone calls on the night of June the 12th from his cell phone. That we now know was in his Bronco at 10:03 and now in terms of timeline of that night what this tells you is that the

Defendant was outside, was out in his car at 10:03. Now at that time he made phone calls to Paula Barbieri you may recall, we heard the testimony of the I think it was Lu Ellen Robertson of Air Touch and she interpreted the record for you what it meant and she told you that the calls were not completed but we didn't need her to tell you that. The calls to Paula Barbieri were not answered

540 because Paula Barbieri was in Las Vegas she was at home either in Florida nor in Los Angeles she was in Las Vegas at the Mirage and recall we had a witness testify to that. She checked in to The Mirage at 2 pm on June the 12th. So she was not available to take those calls. Now I think we have further corroboration for the fact that the cell phone was in the Bronco in the fact that Allan Park the limousine driver testified that he saw as they were loading up the limo he saw the Defendant go out towards Rockingham, out to were we know the Bronco was parked, once or even maybe twice. So there is further corroboration for the fact that he went and got the cell phone out of the Bronco just before they left. Now those phone calls are very significant in terms of their timing because you

550 realize that at 10:03 when he's out in the Bronco and he's made those calls that the murders occurred at about 10 to 15 minutes after that. So we'll talk more about the state of mind that he was in at that time, we'll do it a little later. Now Kato, let's go back to Kato. He indicated that at about 10:15 or 10:20 and he's very approximate on these times, he's not looking at his clock as he's already admitted that to you. He made a phone call to his friend Rachel Ferrara and that was a local call so unfortunately we don't have a phone record who establishes exactly when it occurred. This is an estimate on his part. He testified and I'm sure you recall it that during that phone call and he thought that it was about half an hour after he made the call he heard those thumping noises on his wall very

560 loud so loud and so strong that the wall he was leaning on shook and a picture moved and he said that it was right in the area of the air conditioner. The air conditioner that hangs over that narrow dark South pathway. Those noises got him so upset he instantly suspected that it was an earthquake he also told you he had suspicions that it might have been a prowler and he decided that he would go and see what might have caused them. And he told Rachel he was scared and worried enough that he told Rachel that if she didn't hear from him in the next 10 to 15 minutes to call the police. Now he may have said it half jokingly but it's pretty clear he was worried, he was shook up. He was very shook up by those sounds that he heard. Which is why he kept coming back to the issue and he kept

570 trying to talk to the Defendant about it and Allan Park the limo driver. Now, let's talk about Allan Park for a minute. You remember he was the young man who had never been to Brentwood before, so he decided to make sure that he wouldn't be late, and although he was not supposed to be there until 10:45 for this pick-up to LAX, he left at 9:45 to be on the safe side. And you may remember that this was a witness who was absolutely neutral, absolutely neutral. He was not going to strain to avoid answers, he was not going to make any effort to embellish anything, this was the witness who was going to tell it straight and tell it honest all the way through no matter who was asking the questions, myself for the defense. And he stood up there and he took the grilling for a very long

580 time. I went back and I counted the cross-examination and the recross-examination but Mr. Cochran took up 175 pages of transcript in these proceedings. Now he told you that on that night he was driving down Sunset he made a right at Rockingham and drove up Rockingham at 10:22. Now he looked at his clock and his watch many times that night and the reason he did is obvious he's a driver. It's important that he'd be on time, it's important to him, it's important to his job and this was an important job. He's gonna drive for Mr. Simpson, you know it's not just me, something like that or something some ordinary average folk, it's important he wants to do well and he certainly doesn't want to be late, make Mr. Simpson miss his flight, so he's checking that clock

590 and at 10:22 he drives up Rockingham and he's looking at the curbs to see the addresses because he's never been there before and he wants to see 360 Rockingham. This is also logical, I mean what do you do when you're looking for an address. Look at the curbs and you try and see where it is and that's what he did. But when he did that, when he did that, he saw no Bronco parked on Rockingham and he was looking right there at the curb. Do we have the picture? This is People 62A your Honor. It kinda looks faded. You can see it, right? See that curb area? You can see it to 360 there. Now as he was driving up he said "I could see the 360 on the curb". Now if he could see the 360 on the curb and you can see where the Bronco is right there that big white car, he's not gonna miss it,

600 he's gonna see it. If he's driving slowly enough to see the number on the curb and realize that he's hit the Defendant's address that he's obviously paying enough attention to see a big old white car there and he didn't see it? So we know that at 10:22 that the Bronco was not on Rockingham but we know more because we know that at this point when Allan Park turned the corner on to Ashford he told you he did not see any Bronco on Ashford either. So as at 10:22 that's Bronco's gone and the Defendant is gone. That's further corroboration for what we told you with the phone calls in the Bronco, he was out in that Bronco on that night. So we indicated that he turned right on to Ashford he made a U turn and he parked across the street from the Defendant's home from the

610 Ashford gate side. He got out of his car and he went and sat on the curb behind the car and had a cigarette waiting for it to be time to start buzzing for the Defendant and when he got back in his car he looked at the clock and he saw that it was 10:39. Now at 10:39 he decided to check out the other gate, the Rockingham gate and see if that would be easier to pull into than the Ashford gate because remember he told you that he had that stretch limo kinda hard to maneuver. So you know what gate he went in and where he was, this was an important consideration for him, the logistics were not that easy with that car. When he drove down to the Rockingham gate he told you that he pulled the driver's side window parallel with the drive way so that he could look into the

620 driveway and see whether it would be easier for him to get the stretch limo up that side of the driveway because the way it curbed and you guys remember, you were there you saw it's a curbing driveway when he did that the area where the Bronco was found on the curb just North of the Rockingham gate was well within his field of vision but he didn't see it. Again further corroboration the



Bronco was not there. Now he backed up Rockingham and he back up all the way past Ashford and then made a left back on Ashford and at that point he actually he pulled up into the Ashford gate so that the head lights would be almost p against the Ashford gate I think he indicated and he told you that he saw a 300 ZX a black one parked to his left on Ashford street just to the left or

630 East of the gate and Kato told you “that’s right, that was my car that was there” and you even see it in some of the photographs that we’ve shown you during the course of this trial. Now when he pulled up facing the Ashford gate Mr. Park told you that it was 10:40 and he looked at his clock at that point he turned off his head lights and left the parking lights on and he got out to push the buzzer at the Ashford gate. He wanted to let the Defendant know that he was there he pushed the buzzer he told you a good 2 or 3 times and he heard the buzzing and the ringing noise as he did that but he got no answer. He was concerned because the pick up was supposed to be, he told you, for 10:45. Starting to get up there so he called his boss and he wanted to ask him what he should do. I have a board

640 that shows Allan Park’s cell phone record and that was a very important cell phone record because that helps us to fix a lot of events that were testified to that otherwise would have been approximate with the help of his cell phone record we have much more definite times, much more precise. He made the call to his boss at 10:43, you can see we show you when the call begins and when the call ends, Dale St. John was his boss and he called his pager. After he placed that call he told you that he got out to ring the intercom a few more times. So now he rang the intercom at 10:40, no answer, 10:43 no answer and he said he rang it a few times on each occasion, no answer. He noticed that there were no lights on downstairs and that there was one light on upstairs. He got back in his car and he

650 called his mother and he got his boss’s phone number and he called him again at 10:49 and you see that call, we have a lot more calls in here, but at 10:49 he called his boss again and he left a message because he got no answer. Then when he left that message at 10:49 for his boss after he hung up he got out and tried the buzzer again. Now this is the third time that he’s tried to get someone to answer that buzzer at the gate. The third time that he rang 2 or 3 times and this third time again he got no answer. Now he also testified, throughout all these events getting in and out of the car and buzzing, you guys can sit I’ll come back to it now where are you at? Thank you. He told you also if you recall that during this time, that he was out by the Ashford gate he was paying attention to who

660 was there, he was trying to reach the Defendant but he was very focused on whether he’d get someone to answer the buzzer on whether he could get Dale St. John to call him back. I mean these were that things that were occupying his mind and he was carefully concerned about this because he had to get to the airport but he was not listening for traffic, he was not listening to hear her Bronco pulled up and he told you it would’ve not be significant to him if he had her car pull up or a car door slam, so what? He’s thinking I got to get somebody to the airport, he’s not thinking what cars are driving by, who’s here, who’s not here, he just wants to get going, he’s late and he’s worried about that. Although it would’ve been nice if he could’ve told us that he heard the Bronco pull up on

- 670 Rockingham when it did, he just wasn't paying attention to that and so he can't give us any information on that. We know that the Bronco did pull up, we know it did because it got there. We know it wasn't there as at 10:40, 10:39 when he drove down Rockingham and it was there later that night. All right back to Park. After he tried the buzzer at 10 after calling his boss at 10:49, he got out, it was when he was actually buzzing at that point, let me back up for a second. He called his boss at 10:49 at home, he got no answer, he went out to the gate and he rang the buzzer again 2 or 3 times and got no answer. While he was at the gate that third time he heard his car phone ringing and he went back into the car, it was his boss calling him. That call came in, that last call came in at 10: 52 and
- 680 he indicated. Now he told you about the fact that his boss called him and he told his boss that no one had been home and that he had ben ringing for a while and he was very concerned because he was running late. Now at that time I asked him "Were you seated in your car when you were speaking to your boss?" he said "Yes" "Where were you looking?" "I was looking through the gate right into the driveway." What is the driveway lighting like? What was it like in there? Well it was not very well lit. The play area down in front. I'm gonna pull out a diagram of Rockingham in a minute show exactly what I mean. It was dark though, there were very little light, there was a light over the garage but it gave very little illumination and it did not light up the South pathway area at all. So he
- 690 sat in his car talking to his boss looking straight through the gate and at the driveway. Ok this is just an [inaudible] just in case you forgot, it's been a while that we went out and did the walk through at Rockingham so. You see the area that says play yards, there and Park indicated that area was very dark. He indicated also as he was seated in his car at the Ashford gate that he could not see the Rockingham gate from where he was seated. He indicated to you, you see where that line is drawn at the garage, he saw nothing below that line his field of view was limited to what was in front of that line and that's because of the lighting that was at the driveway. Now when he told his boss of no one being home and it was running late his boss said well he does run late. Mr. Simpson
- 700 does run late why don't to check look at the lighting in the I believe he said the pantry area because he usually watches TV there. Well Park checked the area, looked and he could see any lighting coming from that area and he told that to his boss. During this conversation Allan told you that he saw Kato come out on the side yard, where the arrow is pointing. Roughly in that area I think it was a little bit farther back towards the tree, the other tree, that one and he was holding a flash light you recall he told you that? And at the same time he said almost simultaneously he saw a person approximately six feet tall, 200 pounds, African American wearing all dark clothing, walking at a good pace up the driveway and he told you that he hung up. Ok I'm going to ask Mr. Pharell to hold off I
- 710 wasn't watching his arrow. I wanna be precise if I about where Mr. Park said he first saw this man. Go ahead and use the arrow I'll tell you where, you can turn it around. Now let me say this cause I know I'm gonna forget if I don't say it when I think of it now. If you have any questions about anything that is said by either myself or by the Defense during argument as to whether or not it is accurate you can ask me how the record read that. Court reporter hate me for say this but a

trial this length you're probably gonna need to have your memory refreshed about something and it's real important that you not, if your memory conflicts if your notes conflict with what we're saying you gotta have that result if you need to have the record read back to have that resolved than do it and if you think that

720 something that I have said is a misstatement believe me I'm not trying to I'm trying to be very, very accurate here but in case, everybody makes mistakes, in case I make a mistake have the record read back. I believe the testimony indicated that he saw this persona at approximately where the arrow is and he saw home walk up the driveway and into the entrance. Now, he hung up within thirty seconds of seeing that, which means that according to the cell phone bill, according to the cell phone bill, the call ended at 10:55 and 12 seconds. Approximately 30 seconds before that is when he saw the man walk into the house and immediately. Immediately as soon as the man walk into the house the lights started to go on and they went on downstairs. Now Allan waited in his car

730 thinking that someone would let him in but no one did. Now if you recall Kato said that he had gone out to the side yard to investigate the thumping noises and when he saw the limo driver he figured that the limo driver was already taken care of and that the Defendant would buzz him in so he didn't worry about it he kept on about his business and he went down that South pathway if you recall to start looking to see what was going on back there. So Allan got out of his car and buzzed again and this was now within a minute of seeing the man walk into the house, the lights go on. Within a minute of that Allan buzzed again. This is the fourth time. This time he got an answer immediately and the answer that was given to him was by the Defendant. The Defendant answered and told him he

740 had overslept and he had just gotten out of the shower and he would be down in a minute. Now, Allan told you that the man who he saw entered the house appeared to be the same size as the Defendant and about the same height and weight. He would not stretch even one iota to draw the obvious conclusion that the man he saw walking up the driveway was the Defendant. Of course it was. There was no one else there that night. It was the Defendant. Who else could walk in the door, immediately turn on the lights and then answer the intercom? I mean, this is an easy reasonable inference to draw. Easy. But what is significant here is that he lied. Why did the Defendant lie? Why when he was just out in the driveway walking into the house dressed in all dark clothing, why when he

750 answered the intercom for Allan Park, did he lie and say I have overslept, just getting out of the shower? We know it is not true. We know it is not true. Why was it important for him to make Allan Park believe that he had been at home? And I think we all know the answer to that question because he hadn't been at home because he'd just come back from Bundy. Now let's go back to Kato for a moment. Concerning those thumps and when they happened. Kato said he hung up his call with Rachel pretty quickly after he heard the thumping. He estimated for you 2 to 3 minutes. Now with Allan's cell phone call bill we can be very very precise about when that was. He indicated that he went out to investigate the noises, hung up with Rachel, went out to investigate, 2 to 3 minutes after he

760 heard the thumping. Allan told you he said he saw Kato and the Defendant, I'm

saying the Defendant, he said the man that looked like the Defendant, you understand I'm talking about what we know based on all of the evidence, it was him. 10:54 he saw Kato approximately because it was at the same time he saw the Defendant and he hung up 30 seconds after seeing him walk in the house and seeing Kato on the side yard. So at 10:54 Kato was out in the side yard hearing the thumping noises 2 to 3 minutes before that means he heard the thumping on his wall at 10:51 to 10:52. So what we have about 2 minutes after the thumping the Defendant was walking into his house from the driveway and Kato out in the side yard. In other words we have the thumping [Marcia Clark makes thumping

770 noises on the desk] and Kato walking out and the Defendant walking out around at the same time. And the thumping happened very shortly, what is it, within half an hour of the murders. And the Defense would have you believe ladies and gentlemen that the Defendant's appearance on the driveway just 2 minutes after the thumping on Kato's wall is a coincidence. And the Defense would have you believe that the thumping and the appearance of that glove, the Defendant's glove, were unrelated events. And the thumps themselves just think about that. Regardless of where or how they happened just the fact that they happened shortly after the murders at the Defendant's house and just before the Defendant walked up his driveway in dark clothing, like the dark blue or black sweat out

780 that Kato described, you just put those facts together and you realize what has happened. The Defendant came back from Bundy in a hurry, Ron Goldman upset his plans and things took a little longer than anticipated. He ran back behind the house that dark narrow South pathway, you all saw it, you were there in daytime, imagine how dark it is at night. A dark narrow South pathway thinking he could get rid of the glove, the knife in that dirt area, you recall back behind the guest houses there's a dirt area, there's all dirt not very well tended. But he was in a hurry, he was moving quickly down a dark narrow pathway over hung with trees strewn with leaves and in his heist he ran right into that air conditioner that was hanging over that South pathway and running into that air

790 conditioner caused him to fall against the wall, making the wall of Kato's room shake. You recall that air conditioner. It was hanging low. You had to stoop to get down under it. And if you are in a hurry and you are not looking where you are going in that dark, narrow pathway, you can see how it can easily happen how someone in a hurry can do that. And it was just as simple as that. Simple common sense tells you that the thumping, the glove and the Defendant's appearance on the driveway almost immediately thereafter are all part of one set of events, all connected in time and space. You don't need science to tell you that; you just need reason and logic.

**Judge Ito:** All right let the record reflect that we've been rejoined by our jury

800 panel. Good afternoon ladies and gentlemen.

**Jury:** Good afternoon.

**Judge Ito:** All right Miss Clark are you prepared to proceed?

**Ms. Clark:** Yes, your honor. Thank you.

**Judge Ito:** All right you may resume.

**Ms. Clark:** Good afternoon ladies and gentlemen.

**Jury:** Good afternoon.

**Ms. Clark:** All right when we left off I was talking about the occurrence of the thumping, the gloves appearing, the gloves dropping on the South pathway and the Defendant's appearance on the driveway at within a couple of minutes of

810 each other. Now, while Allan Park was speaking to the Defendant on the intercom at that time, Kato who realized that--who wasn't worried about Allan being left outside, went over to the south pathway and looked down the gate. Can we get section 6-D back? I'm going to put up that diagram again so you can orient yourself because it's hard talking about this in the abstract. Okay. Can we back out just a little bit more? A little bit more. There we go. And the south pathway if you'll recall is at the bottom most edge below where the area marked "Garage" is you might recall. And he said that he went over to that area, looked down there, went through the first gate, went as far as the second gate, but that flashlight was very dim and he was worried and he was scared and he didn't

820 want to go any farther. So he looked down there, but it was dark and he didn't want to go any farther. He said that he could not see the portion of the pathway that was right outside the wall of his room where he had heard the thumping. It was too dark, and he came back out without going actually any farther on the pathway. When he came back out, he realized that Allan Park was still waiting outside the gate. Now, this is after Allan had spoken to the Defendant on the intercom. And when he realized that the Defendant had not yet buzzed Allan in, he went and he let him in. Now, let me ask you this. Why didn't the Defendant let Allan Park drive in the driveway? Why leave him sitting out there at the gate? Why make him wait outside? Because the Defendant was frazzled, ladies and

830 gentlemen, he was hurried and he needed to buy some time, time to wash himself up, wash off the blood, change the clothes and to compose himself to appear normal, to appear calm, business as usual. So he bought himself that time and he didn't let Allan in. And when he came, when the Defendant came downstairs he had changed clothes. No longer the dark clothing that Kato had described him in earlier that evening. He was wearing stone washed denim jeans, denim shirt and carrying a garment bag. You remember that Louis Viton garment bag that's here in evidence? Allan estimated that the Defendant came downstairs dressed like that carrying the garment bag about 5 to 6 minutes after he spoke to him on the intercom. I think Allan Park's words were a good 5

840 minutes. Could've been longer, this was an estimate by him. But before the Defendant actually came down, Kato went down to let Allan Park in the gate. Let him in and he immediately told Allan about the thumping noises he had heard. He asked him "Did you feel an earthquake?" The same thing he asked Rachel Ferrara if you recall. She told him she hadn't, Allan said the same thing

“I didn’t feel an earthquake”. Now Kato was clearly upset, clearly distracted and upset by that thumping noise he had heard. In fact, as you recall he went to check that South pathway twice. Once before he let Allan in and a second time after he let Allan in because he had the conversation with Allan Park asked him about the earthquake if he had felt it told him about the thumping noises. Think

850 City told him he thought it or he was thinking anyway that it might have been a prowler and after he let Allan in he felt safer and he went back to check the South pathway again with again that dim flashlight and didn’t get any farther than he did the last time and still wasn’t able to see as far the area as his room was and it was still very dark back there and he gave up. So Kato was concerned enough to check that South pathway twice, talk to his girlfriend Rachel about it, say call the police if you don’t hear from me, talk to Allan Park about it and he talked to the Defendant about it. The Defendant came downstairs and he started talking to him. “Did you hear that?” “Did you feel an earthquake?” “I’m really worried I heard this thumping on my wall. I’m really concerned about this.”

860 He’s really worried about it and what does the Defendant do? The Defendant never went out to the South pathway to check what might have gone on back there to check the sound the source of the thumping. The Defendant never called Westec Security nor did he ever tell Kato to call Westec Security. The Defendant never called the police nor did he tell Kato to call the police. In fact, he left without even setting the alarm and had to call Kato from the airport to tell him to set the alarm something he had never done before. Now having heard about the thumping noise from Kato, hearing Kato’s concern about it how Kato was trying to figure out why that happened and what was the source of it and being very worried about it, knowing that he was going out of town his daughter Arnelle

870 staying on the property and would be there alone with Kato he did nothing to check on the source of the thumping. He did none of the things you’d expect someone to do under those circumstances, that is someone who didn’t already know what caused the thumping, but you see he did, he knew. So of course he was unconcerned, he knew it was no prowler. Certainly we know it’s no earthquake because he knew the thumps were caused by him, bumping into the wall and so he didn’t have to be worried that Arnelle was going to be in danger or even Kato in danger or his home in danger because it was not a question for him it was something he knew about and he acted like someone who already knew what the source of those sounds were. Unconcerned. Now back to loading

880 up the car. Allan and Kato described how they loaded up all the bags all except one. You may recall that there was testimony of a small dark bag that was on the edge of the driveway by the Bently and Kato while they were loading up the bags offered to go and get that bag for him. “I’ll go get that for you.” The Defendant said “No, no, no I’ll get it.” And the testimony was that all the bags were loaded by either Kato or Allan Park except for that one and after the Defendant walked towards it after saying “No, I’ll get it” after he walked towards it no one ever saw that little black dark bag again. Nor had we ever found the knife the Defendant used nor had we ever found the clothes that he wore during the murder nor had we ever found the shoes hat he wore during the

- 890 murder and it's so typical and so common they get rid of the murder weapon they think that's it. Can't get me. Home free but you see as you see it's not that easy. Evidence was left behind so we don't need the murder weapon because we have much, much more proof than that. Now while they were loading the bags Allan, as I told you before, saw the Defendant go out to the Rockingham gate where we saw that the Bronco was parked. Now I referred to this earlier that the Defendant told Dr. Baden that he had cut his hand while getting the cell phone out of the Bronco. I'm going to show you why that does not all of his blood on that car and I'm going to show you that he did not receive that cut on his finger from the cell phone. Now the Defense did in the foyer talk into Kato for a few
- 900 moments, could we have the photography of that? And that's when he dripped blood, you see the little mark in that photograph but after he came downstairs the testimony went he never went upstairs Kato stood with him. Kato was talking to him, Kato went inside the foyer with him went towards the kitchen at one point looking for a flashlight you may recall because Kato was asking the Defendant for a better flashlight to go look down that South pathway. Kato was standing by him but the Defendant was moving around the cars getting things loaded up but no one ever testified that he went back upstairs and I think it was Kato's testimony, I think Kato only testified to going into the house with the Defendant once and that was to get the flashlight and they also had a conversation at that
- 910 time about setting the alarm when Kato said I don't wanna set the alarm I don't want the responsibility, I don't know the code and the Defendant said at that time ok I'll set it and the he forgot and called him from the airport. Now Allan Park indicated I think that he saw the Defendant go in and out of the house a couple of times but he never brought anymore bags out he only brought one bag out with him and that was the garment bag as he came downstairs the first time that was the only time he saw him bring a bag outside. But Alan Park was busy loading the limo and he was not watching the Defendant carefully. Kato was hanging by the Defendant, Kato was asking him, talking him about the thumping and he was trying to get his attention about something that he was very
- 920 concerned about cause he was going to be left on that property alone with whatever caused that thumping noise Kato didn't know. So he was talking to the Defendant, he was asking for the flashlight and he was talking to him about setting the alarm. And so Kato was the one more carefully tracking where the Defendant was going and Kato talked to him about what I told you the flashlight and the alarm. Now, the Defendant left. And when he left, as you know, he didn't set the alarm. While he was in the limousine, he asked the limousine driver to turn on the air conditioning. He complained repeatedly of being very hot. He rolled the windows down, "Boy, it's hot. Boy, it's hot." You have the weather report and it'll indicate to you it was a cool night. The Defendant was—
- 930 kept complaining about being hot, "Man, I'm hot. Roll down the windows, turn on the air conditioning." I asked Allan Park, "Were you hot that night?" "No." I asked Kato, "Were you hot that night?" "No." It was a cool night. Now, I said I'd show you that the Defendant did not get that big cut on his middle finger from that cell phone when he went to get it from the Bronco. Let me show you something. You recall the testimony that blood was collected from the bathroom

upstairs that's just off the Defendant's bedroom, and the blood is found very--it's found basically in-between the sink and the shower in the Defendant's bathroom. The Defendant was bleeding in his bathroom when he was cleaning and changing his clothes obviously. That was before he went down to the limo,

940 ladies and gentlemen, before he ever went to the Bronco. He already had that cut by the time he got downstairs. He got it long before he went out to that Bronco to get that cell phone. So since we know he was bleeding upstairs in his own bathroom and before he went down to the limo, how come there weren't any bloodstains on the staircase? Obviously, he didn't fly. And just as obviously, he also bled downstairs. I show you that foyer picture. You've seen that quite a number of times, with the blood spots on the floor. So he left blood downstairs as well. There are two possible reasons we didn't see photographs of blood spots on the staircase. No. 1, they were there and they were missed. It seems doubtful because it's a light carpet, light colored carpet. Blood should show. It's possible.

950 Or, two, the cut temporarily stopped bleeding. As you may remember Dr. Huizenga testified that a cut will bleed, clot up, re-bleed and I'm sure that wasn't news to you. That's life experience, that's common to all of us. You cut yourself you'll bleed a while and the maybe your hand will be still and then you'll re-bleed if you exercise it or you rub it against something you irritated some how. But in any case by the time the Defendant got downstairs with the garment bag and started loading the limo the cut was temporarily sealed. Now here's the interesting thing about the blood trail on his driveway and the blood in his foyer. When you take into account the blood in the bathroom doesn't it make sense that he actually reopened the cut while he was moving around getting ready to go.

960 You know you have the blood in the bathroom before he gets down to the limo so he was already bleeding, you know that you don't have blood spots in between the bathroom and the foyer so at some point the bleeding stopped before he left his bedroom. But you do know that you have more blood downstairs, you have blood leading out to the Bronco. Now Allan Park told you that he saw the Defendant go out toward the Rockingham gate as they were preparing to leave. You know that the Defendant told Dr. Baden that he went out to the Bronco to get his cell phone from the car. Now although we don't know for a fact based on photographs that he certainly did not receive that cut on some razor sharp cell phone it certainly does make sense that when he went out to get

970 the phone he opened the door to the Bronco his knuckle grazed the well of the door handle reopening the cut. [May I have the Bronco door?] You see where the spot is Dennis Fung is holding up the number 1, you see that little speck there? Picture yourself at the door at the car ok and you're up to the driver's door what hand do you use to open the door? Your left. Especially one like that where you have to push the bottom in to open the door. Using his left hand in which case this middle knuckle is going to graze that door in which case a cut that has temporarily sealed seconds or many minutes earlier is going to get irritated and re-bleed. Now this is just common sense but when you open the car door obviously you need to use the handle when you close the car door you

980 don't. How do you close the car door? Slam. Very simple. So by the time he



opened the door before he reached in and got the cell phone that cut was bleeding again. You have him bleeding before he comes down to the limo up in his bathroom, you have him going down to the Bronco and opening the door. But either way you look at it he's already bleeding before he gets the cell phone and that's shown to you by photographs. Now consider this possibility he opened the car door grazing his knuckle on that car door reopening the cut and after getting the cell phone out walks back up the driveway dripping blood, walks into the foyer talks to Kato about getting a flashlight that's better or stringer than the one he's got talks to him about setting the alarm and while he's

990 talking to him he's standing in the foyer. All right he's standing in that foyer. Can we get that close up? All right there you see those two drops down to the left of number 12? It's kind of faint on this picture. You're gonna have the pictures back in the jury room and I think they'll be better and clearer for you than this is. Other big drops. Those are big blood drops, folks not the kind you see from that little slice that Dr. Baden showed you on the Defendant's finger. Now we've all been living in this world for while and you know that when you get big drops of blood that's from a big cut. You're not gonna cut yourself on a little get little slice almost looking like a small slice on the inside of that finger and drip blood like that. It just makes, this is common sense stuff, it's very

1000 logical. Those drops came from a big cut and we're talking about this cut on the middle finger. Now did the Defendant notice at that point that he was bleeding? Maybe. Maybe not. Maybe he did put something small on it get ready to go, let's go. But in the rush of getting ready to leave Kate was worried about a burglar back there. Allan Park who's worried about getting to the airport on time, no one's paying attention to Mr. Simpson's hands, the fingers, his finger's not the foremost thing that they're worried about here. Now about the blood on the outside of the car door. I wanna make one thing clear. I'm not saying that the blood could have only gotten on the well of that door handle in Rockingham.

**Judge Ito:** Forgive me for interrupting you. Let me see councils at the sidebar

1010 with court reporter please.

**Judge Ito:** All right the fact please ladies and gentlemen let me ask you to step back into the jury room for just a moment.

**Judge Ito:** Council as I mentioned to you at sidebar the reason that I interrupted Ms. Clark and Ms. Clark forgive me for the interruption but while I was taking my notes here on your argument I noticed that the television camera came along the Defense Council table and Mr. Cochran did a close up of your client taking notes and it's not appropriate for the television camera to be going alone sidebar close enough that one can see what people are writing in their notes and that's not appropriate. Now I thought it would not be necessary to tell the television

1020 coverage that that's not appropriate but apparently it's necessary to tell them that it's not appropriate and it's a very flagrant violation an intrusion into the attorney client privilege and I'm inclined to terminate the coverage at this time. All right. So Mr. Bancroft I'm going to direct you to turn the camera to the seal

and the television coverage is terminated.

**Ms. Clark:** With the blood drops and the bloody shoe prints leading out to the driveway, a very reasonable and very logical inference is that his hand was still bleeding when he went to reach for the door to open it at Bundy. The point here to make is that it doesn't matter at which point you think that blood was placed on the outside of the door because the important point to get is that he was

1030 already cut, he was already bleeding when he went to his Bronco. Whether it was after the murders at Bundy or whether it was at Rockingham to go and get the cell phone out, that finger was already cut. That's the point. So why did he tell Dr. Baden that he got the cut getting the cell phone out of the Bronco? When you look at the blood at Rockingham, that's an obvious lie. Why did he do that unless he knew that he had to come up with an explanation for something that was very, very incriminating. That, ladies and gentlemen, is one piece of evidence that proves the Defendant's guilt, opportunity, one piece of the puzzle. I don't know if--I don't think I've given you the example I would like to give of a jig-saw puzzle. It helps to talk about reasonable doubt in this frame. When you

1040 think about reasonable doubt, you think about not only a doubt found in reason opposed to mere possibility as I talked to you about before, but you talk about something that's missing that you need to believe that the Defendant is guilty. And in that sense, I compare it to a jig-saw puzzle. In order to get the picture, to know what a jigsaw puzzle is depicting, if you're missing a couple pieces of the sky, you still have the picture. The Defendant cut his hand on the night of June the 12th. That is conceded. That is not in dispute. The blood found on the blood trail at Rockingham is in fact the Defendant's and that is conceded. There is no dispute. Even Kato saw the blood in the foyer. If you recall when he was testifying, as he left that morning about 7:30, he saw the blood drops on the floor

1050 of the foyer and that was before the Defendant ever came back from Chicago. Now, it's also clear that the Defendant cut himself on the night of the 12th after the recital. As I told you, you have that picture showing his left hand. No cuts. So it was on the night of the recital--I mean, it was on the night of June the 12th on the night of the murders his left hand got cut after the recital. Now, add to that the fact that the cut is on the left hand, but he's right-handed. And the killer lost his left glove at Bundy. Now, we know that the killer cut his left hand because we have the blood drops to the left side of the bloody shoe prints. So now we have the Defendant getting his hand cut on the night of his wife's stabbing, cut on his left hand, which just happens to be the hand that the

1060 murderer cut that same night. That's an alarming coincidence. Using your life experience, stop and think about the blood at Rockingham just for a moment. Sure people get their fingers cut. May not happen every day, but it happens. It's happened to me. I'm sure it's happened to you. And I don't know whether anybody's ever gotten their finger cut on a cell phone. That might be a little bit more of a rare occurrence, but the thing is, when we do--when we cut ourselves and we drip blood, what do we do? We clean it up. You drip blood around the bathroom, you drip blood in your kitchen, you drip blood in the foyer, you get a

napkin, you clean it up. It's just a natural--it's something that you wouldn't even think about doing, but you would do it. Now, in all the months that you've been

- 1070 sequestered, how many blood trails have you left in your rooms from the bathroom to the hallway? How many times in your life have you left a trail of blood around your house or your apartment and not cleaned it up? The scariest homicides are always the ones where the bad guy is handsome, charming, someone who doesn't look like a murderer. That threatens our sense of security. We want to believe that bad people look like what they are because we can steer clear of them. Strictly as a matter of our personal security, we want to know. We want to know. And when we can't know, then we are deceived by the appearance of a pretty face. Then our sense of security is threatened by that. Our life experience tells us that we cannot predict what a killer looks like. We cannot say
- 1080 this one does or that one doesn't. We know it's a command of common sense. You can sit next to a killer in the movies and you can stand behind them in line, stand in line for the bus with a rapist and you wouldn't know it. Well, the same is true for post-homicidal conduct. No different. What exactly do you expect someone to do after he's committed murder? If he wants to get away with it, he's going to do everything in his power that he can, and that's just common sense. So whatever his image is of someone who is not guilty is the image he will try to project. And to the extent he is accurate in determining what that is to the extent that he has an image that comports with our own of what an innocent person would do, we will be deceived. Now, Mr. Simpson is not the first killer to
- 1090 commit murder and drive a car, to commit murder and fly in an airplane. They don't wear any neon sign saying, "I just committed murder." I know that's common sense. But there are certain things that he can do, things that tell you that it most certainly was not business as usual on the night of June the 12th after he murdered Ron and Nicole. Now, Detective Phillips testified that he told the Defendant Nicole had been killed. And what did the Defendant do? Did he ask how? No. Did he ask who? No. Did he ask where? No. Did he ask when? No. Did he ask whether it was a car accident? No. Now, think about the reasonable response. Someone is informed that the mother of their children has been killed and a detective calls and says, "I'm sorry to tell you this, but the mother of your
- 1100 children has been killed." What do you do? Wouldn't you think that the first reaction--I can understand shock. Wouldn't you think that the first reaction would be one of disbelief? No. First response, deny it, no, that can't be because you don't believe--you know, you don't believe someone close to you can be met with violence. Even if it's a car accident, you have a sense of disbelief about can't be, you know, someone I know doesn't die that way. Can't be. And so in your effort to make it where it might be real or to test the truth of the statement, you ask questions. How did it happen? When? Who do you think did it? Where did it happen? What was the cause of death? How could this be? Not one of those questions, not one. And I think probably the first thing that you normally
- 1110 ask is, "Was it a car accident," one of the first things that pops in your mind. But he said none of those things, ladies and gentlemen. He asked none of the questions that an innocent man would ask. So now you have another piece of the

puzzle. You have opportunity, you have the cuts on the hand and you have post-homicidal conduct showing you consciousness of guilt all over the place.

**Ms. Clark:** Good afternoon. Ok so we've talked about conduct, we've talked about opportunity and timing, let's talk about the physical evidence. I'm not going to do it in the detail you have already heard it, heaven forbid, but although you have already seen with the opportunity evidence, with the conduct evidence, we already have evidence to show you that the Defendant did commit these

- 1120 murders, without even really getting into the physical evidence, and once you see the vast array of physical evidence, you can see that there is virtually an ocean of evidence to prove that this Defendant committed these murders. What all of this does, all of this evidence, it links the Defendant to the victims and the crime scene at Bundy. Now, the Defense has gone to great lengths to try and show that they could discredit this evidence and the lengths that they have included have been some of the most bizarre and far-fetched notions I think I have ever heard. They hinted that the blood was planted. They have tried to create the impression that multiple other bloodstains were contaminated and that somehow all the contamination only occurred where it would consistently prove
- 1130 the Defendant was guilty. So now the little amplicons, those little DNA, they are co-conspirators, too, because they know they have got to rush to only the places where you can attribute the blood to the murderer. When you think about that, just think about that one point logically, okay? Obviously it is common sense, if contamination is going on you are going to see it going on all over the place. As a matter of fact, if what they are saying is true with this aerosol effect, flying DNA all over the place, then Mr. Simpson's blood type ought to be showing up in other cases somewhere. You know, somewhere out or down in another department in a rape case Mr. Simpson's type should be showing up because it is everywhere. Or even let's confine to it this case. Talk about that. That how come
- 1140 if the argument is that his blood is flying all over the place, DNA is flying all over the place, why didn't we find his blood type showing up where obviously it shouldn't be? What I mean is this: They took samples from the pool of blood by Nicole's body. They took samples of blood that was near Ron Goldman's body. Obviously the blood came from them because they were lying there. And then of course you know you have the blood drops leading away from the crime scene that had to be left by the killer. There is no question about that. That was left by the killer because they are next to the bloody shoe prints. So you know, why is it that the samples of blood they took from her pool of blood didn't come up with the Defendant's blood type if the Defendant's blood type DNA is flying all over
- 1150 the place? It's flying all over the place. Then it oughtta be all over the place. Why isn't it in the pool of blood sample that was taken from Nicole Brown? Why isn't it in the pool of the blood sample that was taken from near Ron Goldman's body? Logic, common sense it oughtta be there. The DNA, the amplicons, the little things they don't know where to go. They don't, they're not guided contamination's a random thing, happens willy-nilly and what you have here, if they're trying to get you believe that only the killer's blood was contaminated and it was consistently contaminated with only the Defendant's

blood type. Does this make any sense to you? What you oughtta have, if you have contamination, if you got a problem here is that some of the blood drops

1160 come back to the Defendant and some don't. They come back to the real killer. That's what you oughtta get because it can't be this consistent. If you had one blood drop in this case ladies and gentlemen you know you might be concerned with all of these possibilities they've raised but you have so many. You have so many. You've 5 blood drops leading away from the bodies of the victims out to the driveway and you've got the blood on the rear gate and that's the other part of their scenario that makes no sense, no sense. You have all of these police officers that were there on June the 13th. Officer Riske saying his partner, young Rouky made officer Tour shinned his light on the rear gate to show him the blood on the rear gate. You have officer Riske seeing the blood on the rear gate,

1170 you have officer Rossi seeing the blood on the rear gate, you have detective Phillips seeing the blood on the rear gate all of it early on. Dennis Fung whom you can see is not the model of efficiency, forgot to collect it and for this we get a theory that seems, they seem to imply that the blood was planted. Why do they say that? Now first of all I wanna hear was to Mr. Cochran actually stand up in front of you and tell you he believes the blood was planted. I wanna hear that because that is incredible, that is absolutely incredible. When you think about that, think what evidence have you been given to show you how that blood was planted, to show you when that blood was planted, to show you who planted that blood. Now the reason they have to come up with this story about contamination

1180 and planting and I wanna hear if they really, really do that, say that to you is because they can't get around the result. You recall Dr Gerdes testified for the Defense and he's said that the DNA testing that allowed for RLFP the most powerful of the techniques for DNA was successful on the rear gate because that blood had higher molecular weight DNA. From the fact that you have higher molecular weight DNA on blood collected later, July 3rd, they want you to infer that somehow it was planted. But they are inconsistent, because if you remember, now if you plant the blood, aren't you going to plant it close to the time you collect? What are you going to do, plant it and hope somebody finds it later? You plant it when you expect someone to find it, right? When they have

1190 the EDTA going on, you have all these cross-examination questions about EDTA breaking down due to sunlight exposure. No proof that that happens, by the way, and as could you tell, they did no test to prove that that happens, by the way. Would be nice if they wanna prove that, do a little testing you've got the expert right there. Why didn't he do any test, by the way? But he didn't do any, ok. So they're asking EDTA breaking down in the sunlight trying to infer that it was there for 3 weeks, that the blood was there. If it's there for 3 weeks it wasn't planted folks it was there on the night of the murder. This is what I mean, inconsistent, illogical, this makes no sense. If you're going to say that the blood was planted then you're going to say that it was planted at a nearer time of

1200 collection in which case the EDTA would not break down, in which case the EDTA should be intact, in which case you should see the kind of high smooth arch that the graphs showed you from the reference tubes instead of the jagged

noise that you actually saw and they brought in Dr. Rieders to try and tell you that that jagged noise looks just like that high arch which is ridiculous, which is insulting to your intelligence. But the reason that they have to say this, defying logic, defying common sense, is because, ladies and gentlemen, his blood on the rear gate with that match that makes him one in 57 billion people that could have left that blood, I mean there is what, five million people on the planet, that means you would have to go through 57 billion people to find the DNA profile

1210 that matches Mr. Simpson's. There is only five billion people on the planet. Ladies and gentlemen, that is an identification, okay, that proves it is his blood. Nobody else's on the planet; no one. Now, they know that. Now, the blood on the socks, Nicole's blood on the socks. Again RFLP match, very powerful. Showed from Cellmark that was a five-probe match and I believe found to be one in 6.8 billion people. Again, more than--there are people on the planet. Identification. And 11-probe match by DOJ showed that it was one in 7.7 billion people. Again, her blood and only hers on this planet could be on that sock. Now, how do you get around that? It wasn't wrong and they couldn't find an expert who would say it was contaminated because there is too much DNA. That

1220 is the blood. That type is the type. It is her blood. How do you get around that? And if you know that that's true, if you know it is her blood on his socks that they find on the morning of June the 13th, that alone with the rear gate stain convicts him. You can't believe otherwise. You have so much proof now. How do they get around that? They have to find a theory to get around that and what do they do this is what they come up with. So if it's low in volume DNA it's contaminated. If it's high volume DNA it's planted and it's also very convenient and ridiculous. Now their experts have access to all of the evidence in this case. Their experts could have come in and shown you how the evidence got contaminated. Got contaminated, not possibly, remember I to you about mere

1230 possibility? No, did, did get contaminated and they could've come in here and told you and pointed out the evidence that showed why only the blood drops left by the murderer got contaminated and shown you why they consistently and only got contaminated in a way that showed the Defendant's DNA type, not that they possibly could have. Yes, possibly we're sitting on Mars right now, you know and I'm from Venus and I'm talking, anything's possible. Let's talk about what did happen. Let's talk about what we've got. They could have shown you proof that the Bundy blood drops were contaminated, not the mere possibility. No I'm talking about evidence that gives you a reason to conclude that that happened and that thing could never do and they could've done it if it were true

1240 but they didn't. And not one expert they brought in on the DNA did even one test on the blood evidence. The evidence that we have that proves to you that the Defendant committed these murders, not one with all those experts you saw. And the reason for that, ladies and gentlemen is that it isn't true. The blood on the Bundy trail comes back to the Defendant because it's his blood, blood on the rear gate comes back to the Defendant because it's blood he left there on the night of the murders. So they took you through all this tortured and twisted road, one moment saying they're that the police are all a bunch of bumbling idiots, the next moment their clever conspirators and now ask yourself, did they ever prove

1250 who planted, when, how. And it's a fact that the Defense doesn't have to prove anything. That's a fact. But once they do decide to put on a case, once they decide to try and prove something their witnesses are subject to the same scrutiny as the People's witnesses are. Your jury instructions as I've told you makes no distinction. It's up to them to do the best job that they can to make their point. And I think a good example of how they failed to do that miserably in this case is the EDTA, that preservative that you find in the purple top tube. They've got to make you believe that blood was planted, it's the cornerstone of their defense. It really is because as I've pointed out if you know that's his blood left on the rear gate, if you know that's her blood on his socks, what are you left to conclude? Now what do they do? To show you, to prove to you, the

1260 cornerstone of their defense. What do they do? They take our tests and they have some other expert who neither did the test himself, nor could come in and try and interpret those graphs for you. Not only that, but he does it inconsistently. He writes a report if you recall. He wrote a report in which he said he found one parent ion and one daughter ion. Not the full daughter spectrum that would permit identification of EDTA but the same finding of one parent ion and one daughter ion that Mr. Martz said he found in his own blood, in his own unpreserved blood, which tends to prove, no which does prove that the blood on the rear gate, the blood on the socks are just like agent's Martz unpreserved blood natural blood not from a preservative tube. So what did they

1270 do with that? Here's what happened. Dr. Rieders wrote that report and he said the blood on the sock, the blood on the gate, one parent ion, one daughter ion. Wrote that report I believe on July 17th. A few days after he wrote the report he found out that agent Martz had just done the test on his own blood and come up with the same result he got on the sock and the gate. Very, very low noise readings and only two of the three ions that he should have found. Which leads you to understand that it was unpreserved blood. Well know he's got to do something about that, he has to answer that contradiction, because now what we've got is he can't address this, we have proven conclusively it was not EDTA blood, he's got to do something to make this testimony [...] And don't forget, in

1280 case you have, we even did prove that their contamination theory was untrue. If you remember we had a lot of testimony of what we call sub straight controls. Now all the sub straight controls are, I think it's very simple you go and collect a blood stain from here [indicating the palm of her hand] and then in order to make sure that the blood type you're gonna pick up there isn't the result of something underneath that was already there before the blood came down, you take a little swatch right next to it to show that the ground underneath didn't have any DNA and we did that, that was done at Bundy, next to every blood stain systematically done. Now how do they help you when you go to test the swatches. The blood stains swatches and the controls are tested the same way

1290 and if you have contamination, the controls should come up showing DNA and the controls on the Bundy walk did not. And there you go. I wanna go over an instruction with you. This is a long instruction that has particular relevance to this case. This is the instruction about circumstantial and direct evidence. There's a lot of words in this instruction I must say. Uhm let me say something

to you about direct and circumstantial evidence, this instruction explains them both I don't know how well, you know I'm not a big fan of these the way they're written I think they could be a lot clearer frankly but uhm they talk about direct and circumstantial evidence, uhm this one is just circumstantial evidence, you have another instruction that distinguishes between the two. You're told in these

- 1300 instructions that direct and circumstantial evidence are of equal weight, neither one is better than the other. Now the example of a direct evidence would be an eyewitness, someone who would say I saw him, I saw that. We have an eyewitness in Alan Park, ok? His testimony seeing the man we know to be the Defendant walking into the house at Rockingham. Alan Park testified to his observations, that's direct evidence, ok? Circumstantial evidence is evidence that leads you to infer, ok? For example, in this case the blood. The blood at Bundy dripped by the killer next to the bloody shoe prints. It's not direct, somebody didn't see the murder being committed, didn't see the murderer leaving the scene of the crime but you have the blood of the murderer left behind. It's kind of like
- 1310 uhm, well you have the blood on the rear gate that actually identifies Mr. Simpson. That's kinda like a finger print, ok? That's circumstantial evidence as opposed to have seeing it. Now in terms of quality, there's no difference, the law has no favorites but when you think about it you, think about it logically. Circumstantial evidence has a lot of benefits that direct evidence doesn't. What is that? It gives you a lot of quality assurance, it gives you independent corroborating basis on which to believe that the Defendant is guilty. Instead of relying on one person's observation, one person who might be mistaken, who might be tired, who might have not observed very well. You know what happens, you saw it happen in this case. What happens with an eye witness?
- 1320 They start out saying for example you know a robbery, ok? I was standing on the street corner and I saw the Defendant go over to uhm the woman and grab her purse. Ok, purse snatch. Ok cross-examination. How far away were you from that woman? Where were you standing. Were they standing in shadow? Do you wear glasses? How much of the Defendant's face did you see? Half, three quarters, only a quarter? What kind of hair did he have? What kind of shirt did he wear? What kind of pants did he wear? What color eyes did he have? Did he have a goatee? Did he have a moustache? Did he have a beard? And so on and so forth. And the witness starts to get torn down and if that's all you've got, that's all you've got is that person's observation, make you a little unsteady
- 1330 about whether or not you really have enough proof to give you that certainty that you need. Now contrast that with the following. You have the Defendant committing a purse snatch and what you have is someone who hears the woman scream, sees the back of a man running and then a few minutes later the Defendant is caught three blocks away holding her purse. Assume for a moment that she cannot really identify her attacker. You got him with her purse just a few minutes later. A lot of things can be said about how it got to him. But that's circumstantial evidence, but even that circumstantial evidence is not nearly as good it doesn't come close to what we have in this case. In this case you have circumstantial evidence of the blood, you have hair and fiber and you have some



- 1340 of the conduct evidence and the opportunity evidence. You have a wealth of evidence in this case, all pointing to one person, the Defendant. Now this instruction. Usually when I see lawyers argue they take out one paragraph and they only talk about that one. Let me talk about the whole instruction here. Ok begins in the very first paragraph with that “a finding of guilt as to any crime may not be based on circumstantial evidence unless the proved circumstances are not only (1) consistent with the theory that the Defendant is guilty of the crime, but (2) cannot be reconciled with any other rational conclusion”. You’ll see the word reasonable, rational throughout these jury instructions because that’s what it’s all about, reason, common sense, logical, rational. All right I’m
- 1350 gonna jump around between this and I’m gonna come back and forth to this instruction because there’s a lot here. But in the third paragraph this is what I told you about a little bit earlier. If you have two reasonable interpretations, remember I talked to you about I gave you the example of the Bronco that could have been on Ashford or could have been gone completely at the time that Charles Cales was walking his dog. You had two reasonable interpretations from that evidence when he said he couldn’t see the Bronco on Rockingham at the point and time that he testified, based on his testimony, you had two reasonable conclusions to draw. Either that it was not there at all, or that it was on Ashford and he didn’t see it. When you have “two reasonable interpretations one of
- 1360 which points to guilt and the other to innocence you adopt the interpretations that points to the innocence and reject that interpretation which points to his guilt, that is when they are equal as acceptable of two reasonable interpretation”. On the other hand, “one interpretations of the evidence appears to you to be reasonable and the other to be unreasonable, you must accept the reasonable interpretation and reject the unreasonable”. Reasonable, rational the Defense will argue to you many things, inferences that could be drawn just like the possibilities I talked to you about. Ask yourself are they reasonable because if they are not, if those inferences are not reasonable then you are to reject them and accept the reasonable. And that’s why I keep referring to common sense,
- 1370 rational, logical. All right I’d like to start with hair and fiber. If you remember Mr. Deedrick testified about the microscopic comparisons of hairs and fiber in this case and when he did so, let me point something out, his testimony was uncontradicted by any other expert. His testimony is not disputed, his conclusions are not disputed and you know that the hair and fiber evidence was examined by at least by two other experts for the Defense. Now when Mr. Deedrick testified he told you what his conclusions were based only on what he could see through the microscope. That’s all he could tell you about. He did not take into account the results of the DNA testing, he didn’t take into account the testimony of Kato or of Alan Park none of that. He looks through a microscope
- 1380 so all he can tell you is that the Defendant’s hair shares the same microscopic characteristics as for example the hair in the knit cap found at Bundy or the hair found on Ron Goldman’s shirt. He can only say its consistent shares the same microscopic characteristics but when you take into account all of the evidence including the DNA, including the testimony of Kato and Park, including the Defendant’s opportunity to commit the murders, including his post-homicidal

conduct you know it's his hair, you know it's that fiber. So now we are gonna put it all together so when I talk to you now about that's the Defendant's hair in the cap, I'm talking about not just Deedrick's testimony I'm talking about his testimony along with everything else all the reasonable inferences that you could

1390 draw. All the logical conclusions that you come to knowing all that we know in this case. Now I'm not gonna talk about every conclusion that Mr. Deedrick testified to, some of them were only testified to give you more information more background more knowledge about what you expect to find in this testimony. So let's start, what I'd like to do is start with the bodies at Bundy and move away from them as the Defendant moved away from them after the murders and analyze all of the evidence that was left behind from that perspective. And just so you know I will show you a couple of photographs from the crime scene but I not gonna put any coroner's pictures. I've seen enough of that for a while. So when I describe the wounds from the coroner and that sort of thing I'm just

1400 gonna describe them, you're not gonna see pictures from me you can see them back in the jury room if you like. All right let's start with the knit cap. uhm can we get the Bundy board? The knit cap. You can barely see it under the plant here. This was the position in which it was found. Now you see how the Defendant could miss it in the dark. It is underneath that plant I'm pointing to right here, that patch of blue here, (*Indicating*). On that knit cap you recall that the--well, it is the Defendant's hairs. Now, let me refer specifically to Mr. Deedrick's testimony in this regard because what he told us is this. He said there were hair--the hairs that he said were consistent with the Defendant's, he found nine inside the cap. It is clear--extrapolating from his testimony, it is clear that

1410 nine--there were nine I think naturally shed hairs is what he said, not fragments, but naturally shed hairs, that he wore the cap from that. Now, what is interesting also is that he talked about fragments that were found inside the cap, hairs of black origin that were not consistent with Mr. Simpson's, and so I asked him, you know, what about those hairs? He said they were treated, chemically treated. How long were they in the cap? Can't tell. They could have been there for years, because you can--you know, life experience, if you ever had anything knit like that kind of a loose weave, you will have it in evidence, you can check it out, it is going to get hairs in it and those hairs could stay there for a very long time if it is not washed and it is not laundered. So that is why I asked the Defendant's

1420 hairdresser, what about the Defendant's former wife Marguerite, did she treat her hair? What about Arnelle, did she treat her hair? These are other people, people that could have worn the cap whose hair--the fragments, old fragments could be from, but the nine naturally shed hairs inside the cap that were consistent with the Defendant's were different in quality than those, because they were not fragments and therefore unlikely to be old. All right. And taking into account everything that we know, those were his hairs in the cap. He wore the cap. He also found on that cap fiber and he said it was consistent with the Defendant's--the carpet from the Defendant's Bronco. And he talked to you about the unusual nature of the--the trilobal cross-section of that fiber, and he showed you

1430 photographs of it through the--that were taken from the scanning electron

microscope. You will have that back in the jury room if you want to see it, it is very interesting stuff, but what we know from all we know, that was a fiber from the Defendant's Bronco on that cap. Now, that's very important because that actually--with that cap we have tied the Defendant and his car to the crime scene at Bundy and now you see, to summarize, on the knit cap we have the Defendant's hair and the Bronco fiber from the carpet in his Bronco. And another piece of the puzzle. Now, let's go to Ron's shirt. Now, on Mr. Goldman's shirt we have the Defendant's hair and we have the blue-black cotton fiber. Now, of course the Defendant's hair is of obvious significance. Mr. Deedrick was

1440 asked whether or not that hair appeared to be--the hair that he said was consistent with the Defendant's, whether it appeared soiled. He said no. That was very important and that was very important for this reason. If we had simply found hairs of the Defendant in the soil of that area at Bundy where Ron Goldman was lying, we probably would not think that was a big deal. Why? He visited the place. He was there. Pick up the children, leave the children, and that there might be stray hairs lying around in the soil, you know, falling from whatever reason. This would not be very significant. I wouldn't be standing here talking to you about it right now. But you have an unsoiled hair on the victim's shirt. That's important. And that makes the distinction. Because if it had been

1450 something that he picked up from the soil, then you should have seen dirt in it. The fact that it was unsoiled means it was the result of contact between the Defendant and Ronald Goldman that night during the murders. We certainly have no reason at all to believe there was any contact between the Defendant and Ronald Goldman before the murder is committed. We have something else on Ron's shirt. We have the blue-black cotton fibers. All right. So what is the big deal about that? Well, you recall that Mr. Deedrick found blue-black cotton fibers in two other places and the blue-black cotton fibers that he found that shared the same microscopic characteristics as those he found on Ron Goldman's shirt were found on the Rockingham glove and on the Defendant's socks. So

1460 what could that be? Well, clearly those are fibers from what the Defendant was wearing that night. You recall what Kato described. He was wearing the dark blue to black cotton sweat suit with long sleeves. Now, a sweat suit has banded ankles and is going to be in contact with your socks. Obviously, too, a sweat suit, you know, if you have those--if you have an elastic ankle, exertion, you are going to pull the pants up, it is going to rub, there is going to be some friction there. And it is natural, it is also common sense, that you will find fiber from one piece of clothing transferred to another, which is why if you recall when he was testifying, I asked him did you find any of Ron Goldman's shirt fibers on his jeans? Yeah, I did. Not a surprising thing. Very common. Same thing happened

1470 with the Defendant. And when he had contact with Ronald Goldman, when he attacked Ronald Goldman, he left fibers from what he was wearing on Ron Goldman's shirt. And when he went to take--and in wearing that sweat suit over those socks, he left fibers on those socks. And in having maybe the Rockingham glove in his pocket, when he was running down the south pathway picking up fibers from it, from his clothing, when the glove fell out, it still had the fiber from his clothing and that's why you have those fibers sharing the same

microscopic characteristics with all the tests he performed on them, there were quite a few, in these three places, going to the crime scene, the south pathway and the Defendant's bedroom. So with this piece of evidence we have again tied

1480 the Defendant to the murders and this link carries us from Bundy clear into the Defendant's bedroom in Rockingham. And here's a summary of what we've just discussed the Defendant's hair on Ron Goldman's shirt and the blue-black cotton fibers. And another piece of the puzzle. All right. Now, let's move away from Ron and start up the walkway. Now, for this I'm going to direct your attention to the board, the bloody shoe prints. Now, the bloody shoe prints actually start down here--I will just hold it up for a minute. On this very first photograph on the bottom you can see the shoeprints right next to the blue knit cap. It starts between--okay. And those bloody shoe prints go all the way down the walkway until you get to about halfway when they fade out. This is another important piece of evidence that proves the Defendant's guilt.

1490 The shoeprints are all size 12. The shoeprints were all--and by the way, size 12, less than ten percent of the male population wears that size and the men who wear that size tend to fall within the height range of 5-11 to 6-4. The Defendant is 6-2. And these are not just any size 12's. They are expensive shoes, casual shoes that cost 160 bucks; not dress shoes, shoes that would be worn by a rich man, the kind of man who would wear cashmere lined gloves. And what is more important is that those shoes were only sold in forty stores in this country. And out of how many thousands maybe even millions of stores in this country these shoes are sold in only forty of them. And one of those forty stores was Bloomingdale's. The store that the Defendant shopped in regularly.

1500 Where he would buy shoes both dress and casual as you heard the testimony. They stopped selling those shoes back in 1992 but during the time they sold them the Defendant was shopping at Bloomingdale's. Now as we move down the walkway we see that there is only one set of bloody shoe prints. Mr. Bodziak I think made that very clear especially on his last visit, only one set of the imprints were bloody shoe prints and all of them were consistently Bruno Magli size 12. And there's the summary. The Defendant's shoe size is 12 less than 10% of the population expensive rare men's shoes sold at very few stores. And another piece of the puzzle. Now we look to the left of the bloody shoe prints and we see the blood drops on the walkway.

1510 These are the blood drops left by the murderer I've already talked to you about that and it's clear because they go all the way along side to the left of the bloody shoe prints down that walkway. Five blood drops all of which match the Defendant. Now of the four inside the gate, four on the walkway that is inside the gate, all four were done with PCR. One was also done with conventional serology he recalled there was testimony about that from Greg Matheson but all of them matched the Defendant. As we get to the rear gate we see it there's more blood and this blood also matches the Defendant. Now, on the rear gate I think I have already talked to you about that, the blood that matches the Defendant was type 1 in 57 billion. In other words that is his identity, that is his blood.

1520 Then we go out to the driveway and you recall blood drop no. 52 and that drop

was also done with RFLP and in that blood drop out on the driveway you have the typing I think determined with RFLP was one in 170 million. The reason for the lower number is because there are fewer probes, it was a weaker sample. The reason for that--let's talk about that for a minute. You have a different environment--and I think it is important to note on the walkway--we don't have a good picture of it here--there are other pictures that you have in evidence that will show this. The walkway is very dirty and it is concrete, it is porous, it absorbs. On the other hand, on the gate you have a smooth surface. It is up off the ground and it is not as much in contact with dirt

1530 and with the elements and it is not going to be absorbed in the gate because the paint on the gate prevents it from doing that, which is why you have higher molecular weight DNA. The more that DNA is subjected to bacteria, to dirt, that degrades it, the more it is going to degrade, the less DNA you are going to have. The dirtier the environment, the less the DNA, the cleaner--less hostile environment, the more DNA, very simple, so you have more DNA on the gate than you do on the dirty walkway. The gate is not the cleanest thing in the world, I guarantee, but you do have--it is up off the ground, you do have a non-absorbent surface, so that's part of the reason for the higher weight DNA. The other part of the reason is that the rear gate, by inference from all of the

1540 testimony, that stain was collected and taken down right away instead of sitting in plastic bags in a hot truck. All right. So you have all of the blood on the walkway matching the Defendant. You have RFLP results on the rear gate that identifies the Defendant. You have a--a drop on the driveway, one in 170 million. That is a virtual identification of the Defendant under all of these circumstances as well. And another piece of the puzzle. Now, let's talk about the Bronco. First of all just consider the fact that there is blood in the Bronco at all. I mean, ladies and gentlemen, do you have blood on the interior driver's door of your car, on the dashboard, on the console? I mean, think about that. And all at the same time. As for the amount of blood in the car, how much would you

1550 expect to see? When you think about it, the Defendant inflicted the wounds that bled out on these victims, the ones that really bled out from behind them, the throat cut that was demonstrated to you by Dr. Lakshmanan. So if he is standing behind them, they are bleeding out this way, how much blood is he going to get on him? Not very much. And he certainly wouldn't be getting any on his back which is where he is going to be in contact with his seat, the back and the back of his legs. If any blood at all on his hands from touching. So the blood that you see in the Bronco is actually, logically speaking, were you'd expected to see it from a cut hand or from a bloody glove as dropped down next to the console. It's the amount you 'd expect to see, it's where you'd expect to see it, given the

1560 circumstances of this case. Now let's talk about the cut finger. Look at where we found blood on the door. You found blood inside the well of the driver's door handle and you found some closer to the driver's window. This blood in here in the well of the driver's door handle inside this car. How do you get that blood there? Think about where you have to put your hand. Think about where you have to be sitting when you put your hand there. When you get out of the car, if you're seated in the car, in the driver's seat and you need to open the door to get

out that's what you do, you put your hand in the door handle to open it, in a seated position. So that blood got on there after he went, when he drove back from Bundy with a bloody finger to get out of his car. That's the only position

- 1570 you could be in to get the blood in the well of that door handle like that because to get it there you're opening the door and to be opening the door from inside the car you'd be seated in the car. So now we know, yet another fact that shows that he was bleeding in that car long before he went out to get his cell phone from the Bronco to leave for the airport. Now the Defense is not claiming that the Defendant's blood in the Bronco was either planted or contaminated, they concede that one right up front and that's because they can come up with an explanation for that one. Remember the razor sharp cell phone but remember it's only the evidence that they can't otherwise explain that they resort from the desperation theories of contamination and planting but it's not only the
- 1580 Defendant's blood in this car, there's also the blood of Ron and Nicole in that Bronco. And there are other people who saw that there was blood in that car at Rockingham in the early morning hours of June the 13th. Recall another witness called by the Defense officer Don Thompson who was guarding the car and kinda taking care of business at Rockingham he saw the blood in the Bronco as well. Now you may remember that the blood on the console was initially collected, by the console I mean the area here marked by the no. 31, it's number tag, it's in between the seats. Testimony was that Dennis Fung collected blood from that console on June the 14th at the precinct. That was before it went to Bretelles that tow yard where it seems that everybody and his brother went to
- 1590 look for that car. Before it went there Dennis Fung collected that blood. Now the results of the blood collected by Dennis Fung in the morning of June the 14th indicated with PCR testing the presence of blood from the Defendant and from Ronald Goldman. And it indicated that the response was mostly the Defendant's blood in that mixture. Now you heard all the testimony about all the insecure conditions at Bretelles and how the car was kept unlocked because they didn't have a key for it and you may remember that the Defendant had to be, the Bronco had to be towed from Rockingham because early in the morning when the police had contacted the Defendant. If you may recall Kato testified that the detectives asked him for a key to the Bronco cause it was locked and they
- 1600 couldn't get inside it and he couldn't find a key and you may also recall that there was testimony indicating that the car had to be towed because it couldn't be unlocked. They didn't unlock it until the 14th when they had to do it with a slim jim basically had to break into it. Well after the Bronco left Bretelles, I think it was a month later, it went to a more secure location and at the request of the Defense an examination of the Bronco was conducted in their presence and Michele Kestler told you of how she saw that Dennis Fung had not collected all of the blood off the console and she said let's collect the rest of it. So they took the console out and Greg Matheson actually swatched the remaining blood off the console in the presence of the Defense's experts and that was on I believe
- 1610 August 26th, either August 26th or September 1st. Now that blood he swatched either August 26th or September 1st in the presence of the Defense did not go

through LAPD testing at all. That blood went straight up to the Department of Justice for testing and it came back with an RFLP match that we heard late in the trial. RFLP mean we had more DNA in it and we were able to say, we were able to match the blood again to the Defendant and Ron Goldman. That's very important for two reasons 1) it shows you that it is not so easy to contaminate DNA, it's not so easy to contaminate blood even though that console sat there in the Bronco at Bretelles where everybody had to go and check this Bronco out. The results that were obtained on the morning of the 14th before it went to

- 1620 Bretelles are the same as the results that were obtained back two months later, two and a half months later. So it tells you also that PCR testing is accurate but of course even more importantly it tells you that Ron Goldman's blood is in that Bronco. And there's no reason for his blood to be in that Bronco an RFLP match unless the Defendant committed the murders and had the blood of Ron Goldman on him to swipe on that Bronco. Now there's something else about that Bronco that I wanted to point out to you. On the driver's side of the floor mat where a driver would put his foot we find a bloody imprint. A bloody imprint that Mr. Bodziak told you had characteristics consistent with the Bruno Magli shoe of that pattern that he talked about and a bloody imprint that was tested
- 1630 and matched to the blood of Nicole Brown. That carpet piece was cut out of the Bronco by Dennis Fung on June the 14th at the precinct. Now think about this one for a minute because just the fact of having blood in that location tells you something. How in the world do you get blood on a floor mat in a position where a driver puts his foot unless you have stepped in blood and then sat in the car and put your foot on that spot. How else? How many times have you stepped in blood and how many times have you tracked it into your car? I don't know how many but you can see just logically somebody who was walking around with bloody shoes gets into drive his car and the carpet comes up -there you go- and this is People's 172, thank you. I'm going to point it to you, it's, you'll probably
- 1640 see it though. Look see right here and that's what we had testimony about with respect to the blood testing and with respect to Mr. Bodziak but when I sat and I listened to that I thought I don't know how much clearer it could be. I really don't. You have the bloody shoe prints going down the walkway understandably on concrete a hard surface they fade out then you put that same bloody shoe that obviously got blood up in the grooves of the pattern of the shoe onto a soft surface like a carpet that picks up that blood whatever remaining. How else did it get there? And those bloody shoe prints that lead away from the bodies of Ron and Nicole reach right into the Defendant's Bronco. You can already see we have a wealth in evidence that we could probably stop right here but, frankly I'd
- 1650 like to but I have to finish going through all of the evidence and the Bronco went back to Rockingham. So let's go back to Rockingham as we trace the steps. And I'll quickly review the evidence for you at Rockingham. So he gets in the Bronco and he drives back to Rockingham, parking it on Rockingham just north of the Rockingham gate where we see it in all of the photographs. Now, as I've described earlier, the Defendant runs down the south pathway, and you are thinking to yourself, you know, why? Why would he do that? And I talked to you about disposing of the knife. Really common. Murderers want to get rid of

- the murder weapon, they think that is the one thing that can nail them. He is running back to that rear lot. He never gets there because he crashes into the air conditioner dropping the glove. Why would he need to put the knife on his own property? You are thinking why not drop it in a dumpster on the way home? Doesn't that make sense? Why would you want to do it, leave that on your own property or bury it on your own property? He can't. He can't because he is famous. If someone sees him hanging around near a dumpster on that night of all nights at that time of all times, dropping something into a dumpster, they are going to recognize him and he is going to have a witness, a witness who is going to put him very close to the scene of the crime, at the very wrongest time he could be there, right after the murders. He can't dispose of evidence in public. Every move he makes is noticed. So he's got to find a private place and that's
- 1660
- 1670 the one that makes the most sense and he doesn't have a whole lot of time to get real creative here. So what do we find on the Rockingham glove? The one he dropped. We find everything, everything. We find fibers consistent with Ron Goldman's shirt, we find the hair of Ron, we find the hair of Nicole, we find the blood of Ron Goldman, we find the blood of Nicole Brown and we find the blood of the Defendant and we find Bronco fiber from the Defendant's Bronco. We find blue-black cotton fibers just like those found in the shirt of Ron Goldman and on the socks of the Defendant in his bedroom. And on this glove he is tied to every aspect of the murder to Ron Goldman, to Nicole Brown, to the car. And of course that's why the Defense has to say that the glove is planted
- 1680 because if they don't everything about this glove convicts the Defendant. Where it's found, what's found on it, what's found in it even a black line hair found inside the glove, everything about it convicts him. Even though the planting theory is ridiculous, when you think about it, you give it a little rational thought and you realize it's absurd. Whatever you think about Mark Fuhrman no one thinks much of him he couldn't have done this. Why couldn't he have done this? It's not just a fact that all the other officers who were there before him saw only one glove think about what he knew at the time he went out to the south pathway. He didn't know whether or not there were eyewitnesses to the crime that we'd say somebody else did it. He didn't know if there was going to be
- 1690 someone who said I heard voices they were his, they weren't Mr. Simpson's. He didn't know if the Defendant had an airtight alibi and had maybe left on the 9:00 o'clock flight to Chicago. He didn't know any of that. What he could have done like planting evidence is been wrong and completely fouled up the solution of the case because he's doing something like that without knowing anything about the case subjecting himself, himself, think about his own self preservation to incredible, an incredible felony. He's in big trouble, big trouble and all that has to happen is that an alibi is proven or that an eye witness come forward, neither one of which he knows anything about, they could be out there for all he knows, he probably thinks they are. So think about that when you consider this theory of
- 1700 the Defense. You know it's like dismissing logic and reality and reason all at once, thrown out the window. Because nothing makes sense about that theory. Nothing from even Mark Fuhrman's point of view. But I think that if you look clearly at the evidence, if you look straight on and you use your common sense



you're gonna see this. You're gonna know this. You will. But the bottom line is and I think that you'll reach the same conclusion, no one planted that glove. You know why? Because they're his gloves, they're his gloves. Think about all of the evidence that you heard now. Remember that he's a size extra-large, the gloves are a size extra-large. The glove at Rockingham is a mate to the glove at Bundy. They're a pair. A pair that are the same exact type purchased by Nicole on

- 1710 December 18th 1990. One of only 200 pairs sold that year. Gloves that are cashmere lined, gloves that cost \$55.00, rich man's gloves. Gloves that were exclusive to Bloomingdale's, gloves that were not sold West of Chicago, gloves that the Defendant was wearing at football games from of January 1991, just a few weeks after she bought them, until the last football season before the murders. Now you'll recall that there was a photograph that was shown to you. First of all the receipt. There was a receipt that was shown to you that showed that when she bought the gloves she bought two pair of gloves and a muffler of December 18th 1990. And there was a photograph shown to you during one of the football games that, I'm trying to remember the date of, I think it was '92,
- 1720 think it was '92 in which he's wearing a brown jacket, a brown muffler and the brown gloves. Doesn't it make sense that when she bought the muffler she bought it to match at least one pair of the gloves and there he is wearing it. And you see him wearing those gloves in the photographs that we showed you right up until the last football season before the murders and the gloves you saw him wearing in all of those pictures that we showed you at all those football games are the gloves that you have right here in evidence in this courtroom. You have testimony that was taken on the, on this photograph. You see the muffler, the jacket, the glove? I think it was January of '92. If you need to have that reviewed for you it's in the testimony. Now I know you recall the glove demonstration
- 1730 when the Defendant put the gloves on, uhm the crime scene gloves on. Now he mugged for you and he tried to act that it was real difficult. And now there's something interesting about these sock stain's that perhaps was not made clear during the testimony. I wanna bring it out now because it is very important to this notion of planting. Gary Sims testified and when he did he told you about the fine spatter that he found above, uhm on sock A, that he found above the Nicole Brown stain on sock A. little dots, I think he said that there were ten of them above the Nicole Brown stain. And on sock B he found little tiny spatter between the stains to Nicole Brown's stains on sock B. Little fine spatter kinda like the little spatters you would get when you stepped in a puddle or a pool of
- 1740 blood. Mr. MacDonell didn't wanna talk to me about the little spatters, you know why? Cause that little spatter proves to you that nothing was planted here. That blood got on his sock because he was wearing it at the crime scene when he was committing the murders stepping in pools of blood, that's how that blood got there and that's why you have that fine spatter. And as I've told you now there was a smaller stain, I think there were two stains of Nicole Brown that were only good enough for PCR testing and there was one large stain that was good enough for RFLP testing and the testimony gave us that fact that you'd have to look through 6.8 billion people to find the blood type of Nicole that was found on that sock and of course once again, that's identity, we have proven it's

- 1750 hers and only hers on this planet that was on that sock. So with all of this blood evidence what we have done, and fiber and hair. Look at all we've proven. We have linked the Defendant to the crime scene, we have linked the Defendant to the victims, we have linked the Defendant and the victims to his car and that link has reached from Bundy into his bedroom at Rockingham, they are all interwoven by time, by space, by occurrence, by science all linked. Now let's turn to the murders in selves and in this section I'd like to talk to you about the manner of killing. All right in this section I'm gonna talk to you, uhm I'm not gonna start this way but ultimately I'm gonna talk to you about the law of homicide. What the People are required to prove, in terms of proving that a
- 1760 murder occurred, what's a first degree and what's a second degree murder. Before I do that I'm gonna address some preliminary questions that, these are not questions the law requires us to answer, frankly. These are just kinda questions that you have, the things that you might wanna debate in the jury room, I'd like to you some ideas about these questions and ponder them with you for a little bit, but let me prefix my remarks by saying that this has nothing to do with the elements of the crime that we are required to prove, in terms of our requirements of proof as to who did it and what they did, this has nothing to do with those. Just so you know because a matter of, as I told you in the jigsaw puzzle, this is the piece of sky but it's interesting and it might be something that
- 1770 you're interested in so, in that light I'm gonna talk little bit about it. First of all how could one person do this, without the victims being able to scream or escape. How long did this take to accomplish? What about these murders lead's us to believe that it was committed by only one person? I'll start with the last question first. First of all if someone else was involved that certainly does not mean that the Defendant didn't do it. It just means that he didn't get anyone to, that he got somebody else to help him. It doesn't necessarily mean that he didn't do it though. Not saying that he did it, I'm not saying that there were a second person there, I'm saying that that alone doesn't mean anything but secondly, first of all, if someone else was involved, on a purely basic level of observation, look
- 1780 at the nature of the wounds inflicted to each victim and I don't mean look physically cause I'm not gonna show them to you but I mean you could probably remember. The nature of these wounds, as I watch the testimony only one person could have done this because they killed the same way. The stab wounds to the back of the head, the coup de grace slash to the neck, the going, the targeting of the neck that way [Clark indicating the gesture of the throat slashing] the style of killing is the same. It's just a lay person's observation but it's kinda a practical common sense thing. The murders look the same. You also heard a great deal of testimony concerning the murder weapon if it were single or double edged, remember that? And whether all of the wounds could have been inflicted by a
- 1790 single edged knife. This is also information that goes to the determination is to whether or not you have one or two killers, although I must say two killers could have two single edged knives because you can't tell and I don't think there was no testimony whether you could match a particular knife to a knife wound. Dr. Lakshmanan testified in this regard that all of the major wounds were inflicted

by a single edged knife. He indicated to you also that there were certain other wounds, lesser wounds in which he couldn't tell whether it was made by a single or a double edged knife but it would seem to make sense that if all the major wounds are made with the single edged knife why would you come in there with the double edged knife just to the little ones. It just kinda makes sense that a

1800 single edged knife was used but beyond that scientifically I think we had Dedrick testify he examined the damage in Ron Goldman shirt and he determined that, a shirt of course is less elastic then and less messy if you will then flesh and he was able to see the damage in the shirt and see that it was the knife, that the cuts in the shirt were made with a single edged very sharp knife. Which tends to support corrugate with what Dr. Lakshmanan said. So in the outshine of all that testimony is that to the extent that anything can be said based on what the wounds permit and the description of the murder weapon it would appear to be a single edged knife. Another indication that the murders were committed by one person comes from the blood evidence and this is one of the

1810 fewer areas where there was no dispute as to the accuracy or the reliability of the result and here's a result that yet we haven't talked about. All right, you see that blood drop on the bottom of the boot, ladies and gentlemen. It was, that's a sole of Ron Goldman's boot. That's a photograph taken at the scene at Bundy after the coroner arrived because you can see he's lying on that sheet. All right now that blood drop was tested and it was high amount of DNA, there was a high amount of DNA because as you can see it was dripped on a part of the boot that doesn't look that dirty and it obviously dried on that boot so the DNA did not degrade as badly as it did on the concrete, again that's a non absorbent surface, it's plastic so it was preserved better. Now what the result of that drop was, was

1820 a mixture of the blood of Ron and Nicole. Now what does that blood drop mean? First of all, obviously that blood drop, and I think Henry Lee even testified to this, was dripped on the sole and Ron Goldman was already down when it was dripped on the sole. How could it have dripped on the sole in that manner? It would to have come from the murder weapon, from a knife. Those drops are dripped on, cast off drops from the murder weapon, from the knife and that means that Ron had already been cut badly enough to leave a quantity of blood on that knife and it also means that Nicole had also been cut badly enough to leave a quantity of blood on that same knife because unless one knife has the mixture of blood of both victims on it how can you get one blood drop from both

1830 victims? See what I mean? The blood of Ron and Nicole mixed on the knife it dripped onto the boot and that's why you get a blood drop with the mixture of their blood and that shows you one murder weapon. Now in addition to all of that add the fact that you have virtually no evidence of the presence of a second killer, I mean there should be something left but there was really virtually nothing. Now Dr. Lee tried to tell us about a second set of shoe prints as you recall but I think Mr. Bodziak made it very clear what that was all about. The only real shoe prints that were found that did not match the Bruno Magli was that one shoe print that he saw on June the 25th after police officers walked through the crime scene after it was broken down, you recall those photographs,

- 1840 two weeks after the crime, after cameramen had been on the walkway. What does that one shoe print mean? It means nothing and it certainly has nothing to do with the murders. Now what about the hair and fiber does that tell us anything in terms of whether or not it was one or two people that committed the murder. As I've already mentioned uhm with respect to the hair and fiber, Mr. Dedrick testified to hair's fragments of treated hairs that were not consistent with the Defendant's inside the knit cap or on the knit cap. He also testified that he did not know how long those hairs had been on the knit cap and they could be there for very long time but other than that there was really no hair and fiber evidence that could be directly connected to the murders that was associated
- 1850 with anyone but the Defendant and by that I mean hair and fiber on the victims or on the objects found at the crime scene that were directly and obviously involved in the murders such as the glove, the knit cap. Dr. Lee testified to stray fibers at hairs that were in the dirt or that were on the envelop that was lying in the dirt but stuff lying around in dirt could have been there for weeks, could have been there for months and as I've told you before if we had found hair consistent with the Defendant's in the dirt there I wouldn't be standing here and talking to you about that stuff because so what? Show me something that is directly connected to the murders and there was nothing, nothing and you know that if there was somebody else there they had to leave something of themselves
- 1860 there, this was a struggle, things happened there, fur was flying there as you can see. Now while I'm talking about hair and fiber there's one more piece of evidence that tells you that the Defendant acted alone and that is this. You recall that Mr. Dedrick testified that he found Nicole, well Mr. Dedrick said he found hairs consistent with Nicole Brown's on a shirt of Ron Goldman and we know from all the evidence that's Nicole's hair on his shirt. Think about how that happens. If the killer, kills Nicole or attacks Nicole in the initial attack and I'll get back to that later, and he touches her hair, touches her head he gets her hair on him, goes over to attack Ron those hairs will be transferred and Mr. Deedrick talked to you about how transfers occur. Logically her hairs would get on Ron's
- 1870 shirt if the person who attacked Nicole then went over to Ron. There would be no reason for the transfer to Ron's shirt of Nicole's hair if two people were involved in these murders. Logically speaking two people are involved, one takes on Ron, one takes on Nicole but you don't have one person attacking Nicole and moving over to attack Ron if two people are there. No one wants to take their time committing murder, as a matter of common sense you're gonna get in and you're gonna get out and if you got two people available to do it, one's gonna take one and one's gonna take the other and you're gonna have, you're not gonna have that kind of movement of hair from Nicole to Ron. So it's very clear, the crime scene makes it very clear that there is evidence of only one
- 1880 killer and all of the evidence establishes that that is the Defendant. Next question: How long could it have taken? On this second there really is some agreement. There is agreement that all of these wounds could have been inflicted very, very quickly even Dr. Boden didn't disagree with that. Dr. Lakshmanan said it could have been just a few minutes. Now when you realize you look at this crime scene, you look at what you have, look at where you have it. It is a

parent from the evidence at the crime scene that Ronald Goldman was taken by surprise and I'll get to Nicole in a minute because there's evidence with respect to her too but first let's take Ronald Goldman because that's the one who struggled. You see, give me that picture. Ok this is 43E. All right you see the

1890 envelop and it's just, just inside the gate. Now you remember 'cause you were there how small that area is, that caged area at Bundy's, it's very very, very tight and that envelop is virtually with one step in the gate, it's dropped and we have blood drippings on the envelop that indicate that it was dropped and then Ronald, dripping on to the envelop. That indicates surprise. I'm gonna show you in a moment where the keys were found as well, he dropped his keys also. Now I know a lot of suggestions were made here by how you could use keys as a weapon. Uhm I don't see how that really makes any sense, frankly. How do you use keys against a 6 inch sharp knife and how do you see any evidence there that he even had them in his hand long enough to think about that. Those keys were

1900 dropped and they were dropped right inside the gate and I'll show you the photograph of where they were found. See the keys right by the gate? Now those are a little bit, if this is the gate right here you step inside it's a little bit down to my right, I'm gesturing but again they're right inside the gate, they're right inside dropped, Ron is taken by surprise. Now Dr. Lee tried to say that the struggle with Ron was not a short struggle. What does that mean? What does that mean? More than a minute, more than five. The fact that Ron struggled is clear but what is also obvious is that someone who gets stabbed and it's flailing about can get blood all over the place as he's struggling to back away from his attacker and that happens very quickly. You can imagine in your minds eyes

1910 somebody just flailing, flailing about trying to get away from their attacker a big person with a knife in a very very dark area very confined space, he hasn't very far to go ladies and gentlemen he's only got a few feet to move and he's back into a corner like that (snapping her fingers) where's he gonna go? He falls backwards trying to avoid his attacker, the number of the contacts that you see, the bloody contacts on the fence are made at once as he's flailing. And that's what you see on that fence. You see a young man bleeding, backing and falling vaguely trying to get away from the Defendant why has him cornered in a cage and is coming at him with a very long knife. Now I'm gonna talk a little bit more in detail about how one person could do it, how. Dr. Lakshmanan spoke about

1920 the fact that Nicole suffered only two defensive wounds, one to the back of her left hand and one to the right of her palm. She suffered very little as Dr. Lakshmanan told you she was rapidly, I think he that's what he said was rapidly incapacitated, she was disabled very quickly. There were stab wounds to the back of her head that indicated movement perhaps as she tried to run, stabbing her in the back of the head, an abrasion to the right eyebrow indicates that she was pushed or fell into a hard surface, such as the wall or the stairs. She was stabbed in the left side of the neck four times. There was some movement shown on her part with respect to at least one of those stab wounds in the left side of her neck which indicates that there was still some effort at resistance and now most

1930 importantly Dr. Lakshmanan found evidence of a scalp and brain contusion

caused by a blow to the head done by either a fist or the base of a knife. A contusion that was likely to cause unconsciousness which in fact we know it did because when the Defendant cut Nicole's throat for the last time there was no indication of any movement on her part. It was a clean cut, that final coup de grace had smooth margins that indicated no resistance on her part. And there's a little bit more evidence about that that I'll talk about later. But what's important about these earlier wound to the head and neck is that Dr. Lakshmanan told you that there was evidence of bleeding in that brain contusion that showed that she lived after the inflictions of those wounds at least a minute and even more.

- 1940 Likely in an unconsciousness state certainly disabled at least a minute maybe more before the final blood throat cut was delivered. Now look at the top the upper step ladies and gentlemen you can see that she bleed out on that step above her for a while before she came to the final spot at the foot of the stairs and Dr. Lakshmanan testified that Nicole was unconsciousness when the final throat cut was administered and she was put down at the base of those stairs. If she lived for at least a minute if not more after she was hit on the head and struck unconsciousness before her throat was slashed for the last time and she was [inaudible] on that upper step where you see the first pool of blood. What was the Defendant doing during that minute or more as she was laying
- 1950 unconsciousness or incapacitated on that upper step bleeding? What was he doing before he came back to administer the final coup de grace? With Nicole disabled the Defendant had ample opportunity to deal with an unsuspecting, unarmed Ronald Goldman who just come to do a favor for a friend. And I remind you of the testimony of, I remind you of the testimony of Dr. Lakshmanan in which he described the very narrow and confined space, the cage in which the Defendant cornered him. a cage that left Ron no where to run and no where to hide literally. The Defendant had all the advantage, no matter what Dr. Huizenga has said he talked about [inaudible] grandfather, he's built like Tarzan, he is built powerfully and even Dr. Huizenga has said, admitted that
- 1960 whatever the Defendant's disabilities maybe they did not prevent him from performing the actions necessary to commit these murders. And the Defendant had the advantage, he had the advantage of size, Ron Goldman was only 5 foot 9, I think 175 pounds, Nicole Brown 5.5, 125 pounds, the Defendant 6.2, 210 pounds. He also had the advantage of the knife, he was the only one armed in this combat he was the only one and he had the advantage of surprise, he knew what he was gonna do but they didn't. And don't forget too, the adrenalin factor that's real important, that's important and Dr. Huizenga had talked about that because adrenalin pumps you up and eve Dr. Huizenga had talked about how football players get pumped up and you know they have to, they gotta go
- 1970 running through these huge men, I've never seen men that size, on the football field, you gotta be able to knock 'em down run through 'em and you gotta get pumped, you gotta have a killer instinct to do that. And that's what the Defendant did and that's what he did that night. And the Defense can talk all they want about this new rare for of arthritis the Defendant's supposedly has that allows him to swing a golf club, lift a set of heavy golf clubs in that heavy golf bag, you'll have it back there in the jury room, you'll see what I mean, lifted it

not once a few times that night and carried heavy suitcases. That curious form of arthritis that somehow prevents him only from doing the movements required to stab and murder these people. But that's not what Dr. Huizenga his witness said,

- 1980 he could do it, he could do it. Now let's talk about the attack of Ron. Ron was attacked with the Defendant behind him, that much is clear, the wounds inflicted to the neck, those control wounds and I'll talk a little bit more about that and some of the other stab wounds and Ron struggles, unlike Nicole, he's not so easily put down, he struggles and he grabs. The Defendant whose holding him from around the neck with his left hand and holding the knife in his right, Ron is struggling and he's grabbing at anything he can and he's grabbing at the hand that's holding him and that's how the blood comes off and by the way that's why the right glove doesn't come off 'cause the right glove, the right hand is holding the knife, holding the glove in place. But from that point forward after the
- 1990 Defendant first attacked him Ron's death was not a matter of if it was just a matter of when and Ron was totally on the defensive from the start trying to ward off the knife and back away and in the process hitting the fence, the trees and everything around him in a desperate effort to survive and all of this had to have happened very quickly and I saw this as a matter of common sense. It didn't take Ron Goldman and Nicole Brown more than a few minutes to be overcome and slashed to death and that's not really surprising. Think about it. A boxing match, each round is what 3 minutes? And this is with men that are both prepared, ready to do battle in good condition who are not taken by surprise, who are prepared to do battle and we know knock outs occur in the very first
- 2000 round, they certainly happen within a minute and that's with trained professionals. Same thing with martial arts matches, very quick. All right next question. Why did he leave the cap and glove? This was probably very easy. It was late he had to catch a flight. This took later than expected, Ron Goldman was not expected at this scene, he was not supposed to be there but it is only because of him, because of the struggle that he put up that we have the cap, we have the glove and we have all of this evidence, Ron's shirt, the blood because of the struggle with Ron we have all of this evidence. I am not saying that the Defendant was not aware as he was leaving the scene that he knew he had lost evidence because he was, there was evidence given to you by Mr. Bodziak who
- 2010 testified that he saw his [inaudible] shoe prints down the Bundy walk, that he saw evidence that the Defendant walked down the walkway, stepped back against the North, North wall and stepped out as to look back at the crime scene and what that shows you is evidence that "I lost my cap, I've lost a glove" but he's thinking about going back but he doesn't dare. Time is running out, he might be seen by someone, the longer he remains the more likely to be detected and probably the dog howling already and so he has to leave. Don't forget too that the glove and the cap are in complete darkness underneath that plant in that very dark, dark area in the front of Nicole's condominium. Now I know that I have not explained every move that was made by the Defendant which
- 2020 [inaudible] came first, which one came last and which one came in the middle, the Law doesn't require us to do so and of course there's a simple reason for that

because short of the video tape we very rarely know how any crime occurred, people who commit murder obviously try not to do that in public and where everyone can see them. Their victims can't talk and they can't tell us what happened. We have to look to the physical evidence and we have to use our common sense and our reason to make reasonable inferences to determine what happened to the best of our ability and even if we had a video tape ladies and gentlemen it wouldn't show you everything: what happens before the tape starts, what happens after the tape ends and what if, of course a camera picks up only

2030 what's in its lens. So if you saw for example a video tape of this case that had Nicole, that was able to focus on Nicole but not pick up Ron and you saw the Defendant killing Nicole and slashing her throat and then he stepped out of range to attack Ron would you there by conclude that he didn't kill Ron? No of course not, of course not. So the Law does not require that we prove how a murder was committed simply because in that case we'd have very, very few convictions for murder. The Law requires that we prove that a murder was committed, who committed it and what degree of murder it was. So the order of wounds makes very little difference, it doesn't answer any of those questions that were required to answer and that's what were here to determine is those

2040 questions that the Law asks us to prove. But there is one aspect of the nature of these murders that is a very telling point when you think about who did it, when you look at these pictures ladies and gentlemen you see rage, you see fury, you see overkill. These this is not the mark of a professional killer, these are not efficient murders, these are murders that are really slaughters that are personal and in that respect they reveal a great deal about who did them, no stranger, no Columbian drug dealer, a man who was involved with this intended victim, one who wanted to control her and failed and in failing found her the one way to keep her under control where she could never slip out of it again and that man is this Defendant. I have one more to go so.

2050 **Judge Ito:** All right ladies and gentlemen we're gonna take our mid or late afternoon recess at this time, please remember all my admonitions to you and we'll stand in recess until 6 o'clock. All right? Thank you.

**Ms. Clark:** Good evening ladies and gentlemen.

**Jury:** Good evening.

**Ms Clark:** We're really hanging out together today, aren't we? I hope you all really had a good dinner. I'm gonna conclude my remarks for you at this point, at about, I don't wanna say about time we're always wrong, but I really think it'll be about half an hour ok and I'm gonna talk about the law of premeditation and that means first and second degree murder. Let me tell you briefly what I

2060 forgot to tell you in the every beginning, uhm in all criminal cases because the People have the Burden of Proof I argued to you first and Mr. Darden will let argue to you, that's the Prosecution. Then the Defense will argue, then because we have the Burden of Proof we get to argue again, we get the last word, so to speak. But it's fair because it's our burden ok. So you're gonna hear from me



again. I'm making now to you the bulk of my remarks I hope and pray to not be taking as much of your time when I stand up to speak to you again at the conclusion of the case. So I just wanted to let you know that's the order of things, that's the way it goes in criminal trials. All right. What do you do with gloves that don't fit? You throw them away, right? That is why he was able to

2070 wear them. He would have bought gloves that did fit. That is what he would have done. Now, the testimony has told us that the gloves in evidence are smaller now than when they were new, so the issue with all that has been done to them blood soaked, frozen, unfrozen, who knows what, the issue is how they fit at 10:00 p.m. Just before the murders on the night of June the 12th. The issue is how stretchable they were then before the murders at 10:00 p.m. On June the 12th. And we know that those gloves fit him on the night of June the 12th because he wore them, the size extra large, the size you know fits him, because he put on a new pair of extra large in this room, as Mr. Rubin said, they fit him beautifully, and he did that, of course, without the benefit of latex--I say "Benefit"

2080 sarcastically--latex to catch on them. So you have in these gloves all of the points that I have described and as shown on the slide. And another piece of the puzzle. Now, let's move back down the walkway, the south pathway that is, that dark narrow south pathway, and when he ran back down there the Defendant undoubtedly saw that the limousine was already there because it was pulled up facing into the driveway at the Ashford gate. It would be hard for him to miss. And he knew that he should already have been home. He was running late. And don't forget, you know he is pretty shook up at this point. He is running into the air conditioner and banged into the wall. He is worried, got to be worried about the fact that Kato is going to come out and worry--and try to investigate the

2090 source of the noises. And he has got to get out of that south pathway because if Kato sees him back there how is he going to explain that? How is that going to look on the night of the murders of the wife and Ron Goldman, if Kato comes outside and sees him in that dark south pathway? What is he doing there? So he has got to get back in that house and he has got to get back in a hurry, which is why there was no time to hide the knife behind the guest house. He had to get out of there, which is also why there was no time to realize that he had dropped a glove. All right. So he goes into the house, which is at the point that Allan Park sees him go in, which is a couple minutes after the thumps are heard by Kato. The Defendant went upstairs quickly, he answered the intercom when Allan

2100 buzzed him this fourth time, I think, and he needed to collect himself, he needed to buy time. He left Allan sitting and waiting at the gate while he got ready to go, but he took off his socks, he reopened the cut on his finger, and that is why you have blood on the bathroom floor, and under pressure to get out of there, get changed and get going, because the limo driver is downstairs waiting. He left the socks on his bedroom floor. And in that one simple careless act gave--gave us the most--possibly single most devastating proof of guilt in the case, because on that sock, on that sock we found blood that matched Nicole Brown, blood that matched the Defendant and the blue-black cotton fiber. Now, while I'm talking about hair and fiber, there is one other piece of that evidence that tells you that

- 2110 the Defendant acted alone. And that is this: You recall that Mr. Deedrick testified that he found Nicole--well, Mr. Deedrick said he found hairs consistent with Nicole Brown's on the shirt of Ron Goldman and we know from all of the evidence that that is Nicole's hair on his shirt. Think about how that happens? If the killer kills Nicole or attacks Nicole in the initial attack, and I will get back to that later, and he touches her hair, touches his head, he gets her hairs on him, goes over to attack Ron, those hairs will be transferred. Do we have motive? Now under this category would fall the subject matter that Mr. Darden is going to address so I'm not going to discuss it with you other than to mention that the past episodes of domestic violence between the Defendant and Nicole uhm that
- 2120 evidence is evidence of motive. I'm not gonna say any more about that because Mr. Darden will address it. The next category is planning activity. What did the Defendant do that shows us that he was planning to commit murder? Ok now I'm gonna come back to those questions I asked you to bear in mind early in the argument. Remember when I asked you think about this. Why did he go out? Why did the Defendant go out and ask Kato for fives for the skycap to break the hundreds that he had if he was already gonna go out and eat? Remember I asked you that in the beginning of my argument. The significance of that of asking Kato for the fives, to asking him for change, when he already knew that he was gonna go out and get something to eat and could obviously get the change at that
- 2130 point. He obviously didn't need Kato to give him those fives, so what was the point? And even when he went out with Kato and he got the change back he didn't keep it. So getting change from Kato was not the point. And none of his conduct is consistent with what he's telling Kato. None of it makes sense how much you look behind the words. What was he doing? What he was doing was, he was setting up an alibi with Kato. He's going out to see Kato so that Kato can say that he saw him. He can--then Kato can later say, "I saw the Defendant. I saw him at 9:00, 10 after 9:00. He told me where he was going. He said he was going to get something to eat." So if it's discovered that his whereabouts are unknown during the time of the murder, he at least has someone to say, "Well,
- 2140 wait a minute. He told me." He has a noncriminal explanation for where he was. So he comes up with a pretext of needing change for the skycap, and it's a good way to remind Kato that he's going to be out of town too. He'll have Kato remember that alibi also. "I need change for the skycap." Unfortunately, Kato stepped in his way. Kato invited himself along, and the Defendant would have been hard-pressed to refuse because think about that. If Kato is going to be his alibi to tell anybody who later asks that, "I saw the Defendant at such and such a time, and he said he was just going to go out and get something to eat," and then he says, "But I tried to invite myself along, but he wouldn't let me go with him," then you have further evidence of consciousness of guilt. Then it's going to look
- 2150 suspicious. Why didn't he let him go with him? What's the big deal? I mean [inaudible] live there. So the Defendant agrees take Kato with him. This unexpected development however eats up time for him, time that he could have had out thinking about what to do. Something that he was getting ready to do, getting ready to commit the murders. So instead of going to real restaurant, which he had the time to do, at 10 after 9 the limo wasn't gonna get there till

10:45, even if you assume there's some packing to be done for a one day trip, how long does that take? They could've gone to a restaurant but no they didn't, they went to McDonald's, they went to a drive thru, the quickest way you can possibly think of to get some food and he went there in the Bentley. Now think

2160 about that. Why take the Bentley? Why not take the Bronco if all you're gonna do is go to McDonald's. unless there's something in the Bronco you don't want Kato to see, the knit cap, the knife, the gloves. If Kato sees those on the night he intends to commit those murders before he has committed them and the police get to him and say "What did you see?" "Where were you?" I mean what did happen. What happened in this case, he's gonna say "that knit cap I know where I saw that." These things have to pass through his mind. Now he's got these things in the Bronco, he doesn't want Kato sitting in that Bronco with him. So they took the Bentley. Now once they got their food at McDonald's the Defendant eats his in the car all the way home. Why do that? You've got plenty

2170 of time to take it home eat it in your house, relax, live a little. Doesn't have to be rushed like that but he eats it quickly, why, because now his time has been eaten up by Kato coming along, time he doesn't have. Kato saves his and it was interesting because he complained about being tired it was about 20 after 9, 25 after 9 they were in the car on their way back, I think it was and he complained about being tired and Kato said well why don't you take a nap. He said "well I've got no time" and I heard it "got no time", the limo is 9:25, the limo doesn't come until 10:45, you got time to lay down. Unless you're planning on doing something else but what was really telling was after they got back when they both got out of the car and Kato walks straight for the house and the Defendant

2180 stood there by the Bentley not moving watching Kato. Why do that? Why do you stand there and wait? Why not go in the house? Why not get back in your Bentley or get in the Bronco? Why do you wait for Kato to get out of sight? Unless you don't want him to see where you're going. Unless you have it in mind that you're not gonna go back in the house, you don't want to take the time to do that and you don't want him to see you going to the Bronco. Now, there's much more evidence of planning, planning that you see at the crime scene itself. And in that, I mean, the Defendant wore dark clothing. The dark blue-black cotton sweat suit that Kato described, perfect in the nighttime if you don't want to be seen. The dark blue-black cotton fibers that were found on Ron Goldman,

2190 the socks, the Rockingham glove, the fibers of the clothing he wore, the watch cap and the gloves. It was June the 12th. It's a summer night. Why do you need these cashmere-lined gloves and a watch cap on a summer night unless you're going to commit a crime, unless you're planning, unless you're preparing to commit a crime? Gloves are easy. Why wear the gloves? Fingerprints. You don't want to leave fingerprints. And he didn't. You heard from the print people. He didn't. Watch cap. A partial disguise. If he has to walk around the house, if he's going to be standing at the front gate, he doesn't want someone glancing to make the immediate connection. He doesn't want someone to see exactly who it is right away. Now, he doesn't intend to be there but a minute. But a watch cap

2200 over that head is going to make sure that doesn't look like something that he

would wear and it throws someone off. Now, those items alone show clear evidence of planning, planning activity, planning for a murder preparation. But there's more. There's also timing. And by that, I mean, we know that the children were asleep at the time these murders were committed. We know that from the evidence. But who else would know when the children were going to be in bed? Who else would know when they would be safely out of the way? Who else would know when Nicole would be home alone with the children? Who else would know the perfect time to attack and get Nicole without the children being in the way? The Defendant. And that not only shows premeditation, it also

2210 shows identity, who did it. Now there's one more thing that shows evidence of premeditation and deliberation and that's the knife. In the inventory tape that you have in evidence the Defendant's closet is shown and it's shown he had in that closet a gun, he had a gun but he chose a knife and this choice is evidence of planning. A gun makes noise a knife doesn't, particularly if you're intended victim is half your size. A gun is registered it can be traced and bullets could be matched to guns and even if you get rid of the gun the type of bullet can be determined, it can be determined to have come from the type of gun you used to have so if you get rid of the gun it's looking even worse almost than they catch you in possession of it. Suddenly you don't have the gun after your wife was

2220 shot to death and a bullet that could have come from that gun but not a knife a knife can't be identified to the exclusion of all other knives in making this wound or that wound you can't match a knife to a murder, a knife isn't registered. All of these things make a knife a better weapon of choice than a gun but maybe more than all of that a knife is up close and personal and that's the kind of murders these are ladies and gentlemen, these murders are up close and personal. If your desire is to vent your rage on someone a gun is far too sterile, it's far too removed but a knife, it's lethal but it affords the opportunity for the expression of violence, power and control at very close range. The choice of the knife is evidence of planning and it too is also evidence that the Defendant is the

2230 murderer. Now there's more evidence of premeditation and deliberation in the nature of the wounds themselves. Let's start with Nicole. As I previously discussed Nicole was incapacitated very quickly. She had little, if anything, in the way of defensive wounds to her hands and she had no opportunity to defend herself. Likewise, the four wounds in close proximity on the left side of her neck very close to one another, they indicated very little resistance and they suggested that she was controlled or otherwise incapable of moving away to avoid being stabbed. And the gaping neck wound, the final coup de grace that nearly decapitated her, that is classic evidence of a cold, calculated, premeditated murder. Now recall that this was a wound that was 3 and a 1/2 inches deep

2240 severed both carotid arteries and both jugular veins. This wound was so deep that the tip of the knife took a quarter inch gauche out her vertebra. As you recall and I discussed it before when this wound was inflicted Nicole was incapacitated and helpless, there was no resistance indicated in the wound, the edges of the wound were smooth and I told you that there was something else that indicated she was unconscious and that is this, the evidence of her knuckles unblooded in an area where blood had ready pooled around her showed that she was incapable of

raising her hand to protect herself, incapable of raising her hand to try and ward off the knife or the hand that held the knife, no the knuckle stayed in contact with the pavement and didn't get the blood on them that they would have gotten

2250 had she been able to raise a hand to do something to protect herself. And it's further evidence that her unconsciousness at the time that that final flash was inflicted. Now you remember as I indicated to you earlier the testimony indicated that the bleeding into the contusion in her brain showed that she lived for a minute or more before that final throat wound was administered to her. Now that final gaping wound in her neck was inflicted, inflicted upon an unconsciousness victim or the very least incapacitated, it's clear evidence or a cold and calculated decision to kill. When a victim is already incapacitated and the Defendant goes back to her holding back her head, she's lying there basically unconscious, he pulls back her head and he slashes the throat to such a degree

2260 that she's nearly decapitated. That was a cold and calculated decision to kill, to make sure she was dead and it allows for no either reasonable inference. Now, Ronald Goldman. Now, once again, a very significant point with respect to Ronald Goldman. As with Nicole, the neck is the target once again, and we know that from the neck wounds on Ron described by Dr. Lakshmanan. Why the neck? Why is the neck the target? Because it's a short kill. It's something we've all heard about, go for the jugular. You go for the jugular because you cut it, you slice that neck, that person's dead, that's a sure bet, that's a sure thing and the fact that the neck is the target for both victims indicates to you also a cold and calculated decision to kill, that is the epidemic of a premeditated murder.

2270 Now let me point out with respect to Ron you have those two wounds, you recall those two lines across the neck almost parallel to each other with very little bleeding in them that Dr. Lakshmanan indicated were inflicted early on in the struggle, they're evidence and the reason they're important is that they're evidence that the Defendant controlled Ronald Goldman. Controlled him to the point that he could hold him and draw the knife across the neck in lines that were nearly parallel to each other. Holding Ron from behind him left arm a round him with the right hand drawing the knife and Ron struggled to break free of that control and because he struggled and because he put off the fight it took the Defendant a little longer to incapacitate him then it did Nicole. And you've

2280 heard the cross-examination, you've heard the Defense attempt to say that Ron Goldman fought with his attacker. Ron struggled but it was not a struggle with the Defendant, it was a struggle to save his own life, it was a struggle to escape. The Defense wants you to believe that Ron fought that he punched the Defendant, this was not a fight and the reason we know this was not a fight is that Ron's palms are cut, for your palms to get cut your hands have to be open, if your hands are in a fist you're not gonna get your palms cut. It's just as simple as that and Ron's palms were cut because his hands were up as he was trying to ward off the knife, trying to defend himself. The Defendant could not leave a witness alive, alive to tell what he saw. He had to deliver the fatal blows and

2290 make sure that they were fatal. The Defendant surely didn't anticipate that Ron would be there that night. He came to murder Nicole. But once Ron showed up,

he could not allow him to walk away with the knowledge of what he had seen. Ron was a witness who had seen what no one was supposed to see. Ron was the ultimate threat, so Ron had to die. And the intent to eliminate a witness, ladies and gentlemen, is a premeditated and deliberate decision. It is a cold and a calculated decision and it is not a decision that takes very long. As I pointed out before, the jury instruction tells you the law does not undertake to measure in units of time the degree of thought that goes into the thinking called premeditation and deliberation. And now you can see this is a perfect example of

- 2300 how such a decision can be made in mere moments. The Defendant has Nicole Brown down, Ron Goldman comes walking up with the envelope, a witness, and the decision is made, (Snapped fingers). That's all it takes. "I can't let him live. I can't let him stay alive." Ladies and gentlemen, this is strong and it's compelling evidence that proves that the murders of Ronald Goldman and Nicole Brown were premeditated and deliberate murders of the first degree. And I spoke to you before a little bit about direct and circumstantial evidence. This is what they call--well, this is a physical evidence case obviously and they call it circumstantial evidence. Now that I've reviewed all of the evidence, you can see what I'm talking about when I say a circumstantial evidence case gives you much more
- 2310 assurance of the guilt of the Defendant. And that is because of this. In a direct evidence case, you may have one eyewitness to tell you, "I saw it." That means you have one thing to rely on. But in a circumstantial evidence case, especially this one, you have many things to rely on. You have the blood at Bundy. You have the blood of Nicole on his socks. You have his blood on the rear gate at Bundy. You have Ronald Goldman's blood in his car. You have his hair on Ron Goldman's shirt. You have the fiber from his clothing on Ron Goldman's shirt, on his socks, on the Rockingham glove. You have the Bronco carpet fiber on the Rockingham glove. You have the Bronco carpet fiber on the knit ski cap. The wealth of evidence in this case is simply overwhelming. If we only had the
- 2320 Bundy blood trail that matched the Defendant, it would be enough proof to find him guilty beyond a reasonable doubt. If we only had Nicole Brown's blood on his socks, that would be enough to prove him guilty beyond a reasonable doubt. If we only had Ron Goldman's blood in his Bronco, that would be enough to prove him guilty beyond a reasonable doubt. But we have all that and much more. And now, let me summarize for you what we have proven. One piece of the puzzle. We've proven the opportunity to kill. We've given the time window in which he was able to kill because his whereabouts were unaccounted for during the time that we know the murders were occurring. We have the hand injuries that were suffered on the night of his wife's murder to the left hand, as
- 2330 we know the killer was injured on his left hand. We have the post-homicidal conduct that I told you about, lying to Allan Park, making Allan Park wait outside, not letting Kato pick up that little dark bag, his reaction to Detective Phillips when he made notification, when Detective Phillips said to him, "Nicole has been killed." Instead of asking about a car accident, the Defendant asked no questions. We have the manner of killings, killings that indicate that it was a rage killing, that it was a fury killing, that it was not a professional hit, the manner of killing that indicates one person committed these murders, one person

with the same style of killing. We have the knit cap at Bundy. We have the evidence on Ron Goldman's shirt of the blue-black cotton fibers, the Defendant's

2340 hair. We have the Bruno Magli shoeprint, size 12, all of them size 12, his size shoe, all of them consistent going down the Bundy walk. We have the Bundy blood trail, his blood to the left of the bloody shoe prints. We have the blood in the Bronco, his and Ron Goldman's. We have the Rockingham blood trail up the driveway, in his bathroom, in the foyer. We have the Rockingham glove with all of the evidence on it, Ron Goldman's fibers from his shirt, Ron Goldman's hair, Nicole's hair, the Defendant's blood, Ron Goldman's blood, Nicole's blood and the Bronco fiber and the blue-black cotton fibers. We have the socks and we have the blue-black cotton fibers on the socks and we have Nicole Brown's blood on the socks. There he is. I haven't even spoken--you haven't even heard yet

2350 about the motive. You haven't even heard the why of it, the why he did it. And you know he did it. Now, these murders did not occur in a vacuum, and it's very important evidence that you've heard in the beginning of this case. They occurred in the context of a stormy relationship, a relationship that was scarred by violence and abuse. And this important evidence completes the picture of the Defendant's guilt as it explains the motive for these murders and shows you what led this Defendant to be sitting here in this courtroom today. Thank you very much, ladies and gentlemen.

## Appendix K

### Christopher Darden's Closing Argument

- 1 **Mr. Darden:** You know, they asked me to do the summation Marcia Clark just did for you, but I told them, no, it's too long. I'm not the kind of person who likes to talk that long and Marcia isn't either, but she had to. And I think that one of the things that you probably gathered from hearing her today is that this case really is a simple case in this essence. When you get down to the bottom line, this case really is a simple case. All you have to do is use the tools God gave you, the tools he gave you to use or utilize whenever you're confronted with a problem or an issue. All you have to do is use your common sense. And the Defense would have you believe that this is a complex series of facts and
- 10 evidence and law and science and all of that. Not really. Not really. You have to question or wonder how it is a lawyer can summarize a case in eight hours when presenting the case took eight months. It's a simple case, but there's been a lot of smoke, a lot of smoke screens, a lot of diversions, a lot of detractions, a lot of distractions, and in some respect, there's been an attempt to get you to lose focus of what the real issues are in this case. And that takes time. If I could give you any advice as jurors, any advice at all, I would say to you, use your common sense. When you get all of this evidence and go into the jury room and after you pick a Foreperson, take that common sense that God gave you, take the evidence that the Prosecution gave you and the Defense evidence, go into that jury room,
- 20 sit down, spread it out. And using that common sense, ask yourself a question; what does the evidence show. What does the evidence show? Some people think that because the Defendant in this case is a celebrity, that perhaps he is someone above the law, that there ought to be special rules for him or that somehow he should be treated differently than any other Defendant. But that's not justice. And there are some people that think because Fuhrman is a racist, that we ought to chuck the law out of the window, throw it out of the window, perhaps it shouldn't be applied in this case. Well, that's wrong and that's not why we're here, because we don't ignore the law just because of the status of a Defendant, because of who he is or because of who he knows. That isn't justice. You're here
- 30 to ensure justice, I'm here to ensure justice and we all know the rules. And the rules say and the law says that he should not kill, that he should not have killed these two people, and the law says that if you believe that he killed these two people and if you believe that it has been proven to you beyond a reasonable doubt, that you should find him guilty. You heard Marcia Clark and you've heard the evidence and you've seen the evidence, and you're reasonable people. And, you know, we know. I mean, if we're honest with ourselves, we know, if we are. And it's unfortunate what we know. But we know the truth, and the truth that we know is that he killed these two people. There have been lots of issues, lots of issues that came up in this trial. This trial has been an amazing experience. I'm
- 40 sure you would agree. But even though there are a lot of small issues, a lot of other issues, a lot of little distractions here and there, you're here to address a



single issue. This is a single case, one issue; did the Defendant killed these two people. One Defendant, O.J. Simpson. You heard from the Defense in this case and they presented testimony about slurs, epithets as they call them, a bunch of nasty, hateful, low-down language used by Mark Fuhrman. And I'm not even going to call him Detective Fuhrman if I can help it because he doesn't deserve that title. He doesn't warrant that kind of respect, not from me. But this isn't the case of Mark Fuhrman. This is the case of O.J. Simpson. And let me say this to you, if you will allow me to. And I don't mean to offend you or demean you, and

50 I hope that you don't feel that I am. But this is the case of O.J. Simpson, not Mark Fuhrman. The case of Mark Fuhrman, if there's to be a case, that's a case for another forum, not necessarily a case for another day, because today may be the day. But it is a case for another forum, another jury perhaps. This case is about this Defendant, O.J. Simpson, and the "M" word, murder; not about Mark Fuhrman and the "N" word. And you know what that is. I am going to ask you to consider the fact of his misstatements or lies or untruths, however you want to term it, because you have to consider that. That's the law. You have to consider everything Fuhrman said on the witness stand because that's evidence in this case. And I want you to consider it. I want you to consider all the evidence. So

60 don't think that I'm saying, hey, just overlook it, just overlook what he said, just overlook the fact that he lied about having used that slur in the past 10 years. But I am asking you to put it in the proper perspective. You decide what it's worth. You decide what it means. If it helps you in assessing his credibility--and it should, or his lack of credibility, I don't know--then you use it. But please just remember, Fuhrman isn't the only issue in this case and his use of that word is not the only issue in this case. And you have to be concerned about that. I have to be concerned about it as a lawyer for the Prosecution in this case because it apparently was a very, very significant event for the Defense. And when I spoke to you back in January, I told you--I promised you I think that I would expose to

70 you the other side of this man, of this Defendant. I promised you that I would expose to you the private side of him, that part of him, the side of him that was capable of extreme rage, jealousy and violence, and I said to you back then, I said to you and I asked that you consider the nature of their relationship, with Nicole, because to understand what happened at Bundy, you need to know what happened between them during the 17-year period that they were together off and on, because when you look at that, you see a motive for killing. I'm sure the Defense is going to get up here at some point and say, uh, that domestic violence evidence, it's irrelevant, and they may say to you that just because this Defendant had some marital discord or violence in his marriage to Nicole Brown, that it

80 doesn't mean anything. Well, this isn't a "Just because" issue. This is a "Because" issue. It is because he hit her in the past and because he slapped her and threw her out of the house and kicked her and punched her and grabbed her around the neck, it's because he did these things to her in the past that you ought to know about it and consider it, and it's because he used a baseball bat to break the windshield of her Mercedes back in 1985 and it's because he kicked her door down in 1993. You remember the Gretna Green incident. Remember the 911 call. It's because of a letter he wrote her--he wrote to Nicole rather around June

the 6th talking about the IRS. It's because he stalked her, because he looked through her windows one night in April of 1992. They may say the Defendant is

90 just looking through a window late at night. We say that's stalking. It's because of all those things and because all of these things alongside the physical evidence at the scene, the bloody shoeprints in his size, the blood drops at Bundy, the blood on his sock, the blood trail at Rockingham, it's because when you look at all of that, it all points to him. And as Miss Clark alluded to earlier, the killing was personal, the way it was done. The way it was done, this is personal. Somebody had a score to settle. Who had a score to settle with Nicole? When you look at all of that, you look at the domestic violence, the manner of the killing, the physical evidence, the history of abuse and their relationship, the intimidation, the stalking, you look at it, it all points to him. It all points to him.

100 Now, they may not think this evidence is important. But it was important to Nicole Brown. You heard Detective Mark Fuhrman testify about the 1985 incident. Let me say Fuhrman, Fuhrman, Fuhrman, Fuhrman. All right. I've said Fuhrman about 50 times. Let me let you know this. We're not hiding Fuhrman. He's too big, especially now, to hide. So hey, Fuhrman testified. Fuhrman described for you a 1985 domestic violence, domestic abuse incident or incident of violence or incident of abuse or disturbing--what do you call it--disturbing the peace incident, whatever you want to call it. But in 1985, Detective Fuhrman was not a detective. I just called him Detective, geez. Fuhrman was a patrol officer. He went to 360 North Rockingham in response to a call. And you recall

110 the testimony. He saw Nicole sitting on the--on a Mercedes as I recall. The window was bashed out, the fenders were dented, there was a baseball bat nearby. The Defendant was walking along the driveway. Fuhrman had a conversation with the Defendant. Nicole was crying, her face was covered with her hair, she was holding her hands to her face. You remember that testimony. That was 10 years ago. 10 years ago, Fuhrman went to 360 North Rockingham in response to that call. That's 1985. 1994, Nicole's dead. When you look at the relationship between these two and you reflect back on the testimony from Christian Reichardt and you think about the 911 calls and Officer Edwards and you think about the day of the recital, you think about Denise Brown and what

120 she had to say about the Defendant--remember that time at the Red Onion when he grabbed her by the crotch in front of a bar full of strangers and said, "This is where my babies come from. This is mine." Remember that testimony? This relationship between this man and Nicole, you know, it is like the time bomb ticking away. Just a matter of time, just a matter of time before something really bad happened. You know, you meet people in life and there are people with short fuses. You know, they just go off. And there are others with longer fuses, you know, takes them a little while longer to go off. And relationships are the same way sometimes, you know, especially a violent abusive relationship like this one. This thing was like a fuse, a bomb with a long fuse. You see that fuse is

130 lit in 1989. It was New Years, New Years night. It was about 4:00 o'clock in the morning. And as I recall, we called to the witness stand a 911 operator. Her name was Sharon Gilbert. And that night--that morning, she received a call. The

caller never identified herself. The line was left open. The call came in, the line was left open. The 911 operator stayed on the line and listened in. I stood before you back in January. I said to you if you listen carefully to that tape--and you'll have the tape in the jury room. You put it in a tape recorder. When you listen to it, listen carefully because you can hear in the background the sound of someone being struck or slapped. And that's what the 911 operator heard and she told you on the witness stand that she heard that. She heard the sound, the noise of

140 someone being beaten and she put that out on the radio. You recall that? She put it out on the radio that there was a woman being beaten at 360 North Rockingham. They may say that this isn't important evidence. I say they're wrong. There's physical abuse here, wife beating here, spousal abuse, spousal battery going on and this is an emergency situation. And Sharon Gilbert, the 911 operator, puts this call out code 2, high, get somebody to 360 North Rockingham fast. And they do. And they do. About 4:00 o'clock in the morning, Officer Edwards arrived at 360 North Rockingham. You recall Officer Edwards. He and his partner, they drove up Rockingham--I'm sorry--they drove up Ashford to pass the Ashford gate. They stopped at Rockingham where they saw the call

150 box. He got out of his patrol car and he pushed the button at the call box, and a voice responded on the other side. It was the voice of the maid at that time, Michelle Aboudram. Officer Edwards identified himself, told Michelle that he was there in response to a 911 call and that he needed to speak to the person that made the call. Michelle said, "Hey, there's no problem here. Don't worry about it. Go on about your way." But Officer Edwards was persistent and he said, "No, no, no. I'm not leaving until I speak to the person that made that call." And as he spoke to Michelle Aboudram, someone ran out of the bushes in the dark. Do you recall that testimony? You heard it. It was here. Someone ran from the bushes in the dark. It was a woman, a woman with blond hair. She was wearing a bra. She

160 was wearing a bra and pajamas or sweatpants. And that woman came running from the bushes in the darkness toward the gate where the call box was and she was yelling something. She was shouting something. Do you remember what she was shouting? Remember what the testimony was in this case? She was shouting, "He's going to kill me, he's going to kill me, he's going to kill me," and she shouted this four or five times as she arrived at that button and began pushing that button to get out of that gate, to get off that property, to get out of his house. And as Officer Edwards stood there on the street side, on the Rockingham side of that gate, looking at her on the opposite side of the gate, what did he see? He saw that she was covered with mud. She was panicked. As

170 Officer Edwards put it, she was hysterical. And she's hitting that button, hitting that button trying to open that gate to get out of there and she's yelling to him, "He's going to kill me." And what did Officer Edwards say? What did he say? "Who? Who is going to kill you?" He didn't see anybody running behind her. "Who? Who is going to kill you?" And what does she say? "O.J. O.J. O.J. Simpson." The gate finally opened, and she ran through the gate, she ran to Officer Edwards and she fell in his arms and collapsed and she said, "He is going to kill me," and she just kept repeating it. Well, at that point, Officer Edwards shined his flashlight on her face. Remember the testimony? When he

shined that flashlight on her face, he saw that her eye was starting to blacken.

180 The right side of her forehead was swollen. There was an imprint, some sort of a swollen mark on her right cheek--cheek did I say? And he also said that she had a hand print--he saw a hand print, a hand print on the left side of her neck, on the left side of her throat. A hand print. Someone had grabbed this woman, his wife by the neck hard enough to leave an imprint around her neck, an imprint in the shape of his hand. Let me say this to you. We submit to you that the hand that left that imprint five years ago is the same hand that cut that same throat, that same neck on June 12th, 1994. It was the Defendant. It was the Defendant then, it's the Defendant now. And at that point, Nicole Brown made a--she said a series of things to Officer Edwards. Remember, keep in mind that she was

190 hysterical, she was upset and she was panicked, and I'm sure that she was in fear because she must have been in fear because she was running through the night covered with mud in a bra and in her pajamas. And she said to Officer Edwards--she said something very important to Officer Edwards. She said, "You never do anything about him. You come out here, you've been out here eight times and you never do anything about him." That's what she told Officer Edwards that day. She said, "You've been out here eight times." And I don't know. This is the evidence in the case. You're going to have to decide what that means. You can interpret what he says. You don't have to just take it literally. You decide what that means. It could mean a couple things. And after he said that and after he

200 complained to Officer Edwards about the fact he was going to be arrested for beating his wife, he says to Officer Edwards, "This is a family matter. It is a family matter and nothing more." Well, wife beating is not just a family matter, is it? I mean, is this something we ought to take seriously? That's one thing about spousal abuse. You know, it happens and it always happens behind closed doors. And you know what they say; nobody knows what goes on behind closed doors. And we don't know everything that went on behind the gates of this man's estate at Rockingham, but we do know this; that whatever it was, whatever went on there had gone on eight times prior to this time, right? We know that. But he says it's a family matter. He minimizes what has happened. He doesn't care

210 about this woman. He doesn't care about what he did to her. It seems as if she was more concerned about her kids than she was doing anything to the Defendant. She didn't--she didn't care about documenting her own injuries at that time. She just wanted to be with her kids. But Edwards took her to West L.A. Station and he took some Polaroid photographs of her. Remember those photographs? Back in February I think it was, I think I marked those People's 4 and 5. I want you to go back for a moment with me eight months ago. Take a look at these injuries. Keep in mind, these are Polaroids and they're eight years old. Look at these injuries. Just look at what you can see, which isn't much at this point. See the small cut to the right side from where we are on the right side

220 of her upper lip? Look at the swollen left cheek. Look at the scar, the scratch, the bruise on the right side of her forehead. You see that? You've seen other pictures of her. You saw a picture of her when she was alive and smiling. Look at that picture, the one you're looking at now. When you look at the one of her smiling,

you look at those two pictures, you think it helps you discern just how badly bruised she was. At some point, he took her back home to be with her kids. The Defendant, well, they didn't catch him that night. And the next day, Nicole spoke to Ron Shipp and the next day as well, the Defendant spoke to Detective Farrell. Remember Detective Farrell, the detective investigating this case? He called Detective Farrell on the phone and apologized for the incident and expressed to

- 230 Detective Farrell his dismay at the extent of her injuries. You remember that. He called Farrell and told him he didn't realize she had been injured that much. You didn't realize the full extent of her injuries at the time? I don't know. You tell me. That's a Polaroid. This is People's 29. She doesn't quite look like that in any other photograph you've seen in this case, does she? She left. She filed for divorce, and he couldn't take it. You heard from Kathryn Bowe and her husband, Mr. Colby. Remember Mr. Colby? They lived at the corner on Gretna Green. In 1992, and I believe it was April 28th around 11:00 p.m. That night--it's here on the chart--they looked out the window and they saw a figure, a man, a man in the dark. In the darkness, they saw a man, and the man was out on the sidewalk and
- 240 he was looking around and he was pacing a little bit up and down the sidewalk. He was pacing, walking up and down on the sidewalk. Know what it means when people pace. I do it a lot. But I don't know what this person was doing pacing out there on the sidewalk, but they thought this was unusual at 11:00 o'clock at night. Was it a Sunday night? I think it was a Sunday night. And they watched this person and they watched this person, this man--by the way, this man was about six feet, six foot two, 200 pounds, African American. They watched this man in the dark in the night pacing up and down the sidewalk, and then they saw that man walk down the sidewalk, up the driveway and peer through the window of Nicole Brown's house on Gretna Green. Remember that
- 250 testimony? He didn't handle that divorce--the filing of that divorce too well now, did he? Now, they may say, oh, well, he--you know, he looked through a window. Big deal. This is more than just looking through a window. This is stalking. When people come up to your window at 11:00 o'clock at night and they peek through it and they look through it and they watch you, there's something wrong here. There is something wrong here. This is obsessive conduct, ladies and gentlemen. This is obsessive conduct. This is stalking. And the Colby's saw this man, they saw him do that, they saw him walk back on the sidewalk, and they became so concerned about him that they telephoned the police. They called the police. And after they called the police, they continued to
- 260 watch through this window to watch this man. They couldn't tell who the man was at that point in time, but after a few moments, they could. Who was that man? Him. It was the Defendant, O.J. Simpson, stalking Nicole. It's already April, April of 1992. Let me tell you something. By April of 1992, this woman knew she was going to die. She told Edwards that he was going to kill her. She told him that back in 1989, and apparently she believed that. You heard testimony from a D.A. Investigator in this case, my investigator from my office, Mike Stevens, and Mr. Stevens testified that in December of 1994 and with the permission of a Judge, he said that he went to a bank and he drilled a hole in a safe deposit box. You recall that testimony? And it was in that safe deposit box

270 that he found a letter that we showed you a moment ago. Remember that, the letter where the Defendant says he doesn't know how he got so crazy? They found that letter and they found two other letters from the Defendant, from O.J. Simpson, to Nicole, attempting to get back with her, attempting to convince her to take him back, attempting to convince her that things would be better the next time. They found those letters in that safe deposit box and they found something else. They found a will. They found a will, this woman's will. It had been executed during 1990, which means she must have been about 30 years old. You know many people at the age of 30 who execute wills? But they find her will, his letters and something else. Do you have that? There was some photographs,

280 some photographs from back in 1989, because after he beat her in 1989, she called her sister, Denise, and Denise came over and she showed Denise the injuries this man inflicted on her and she asked Denise to take pictures of those injuries, and she put those pictures in that safe deposit box along with her will, along with her letters. Okay. She put those things there for a reason. I mean, they're just letters and they're just pictures. But if you are going to have a safe deposit box, you'd think that the things you put in that box are the things that you think are important. Now, I don't know how you want to interpret that conduct. You can interpret it any way you want. But let me suggest to you that you should

290 interpret it this way. She is leaving you a road map to let you know who it is who will eventually kill her. She knew in 1989. She knew it and she wants you to know it. She knew who was going to do it to her, but she didn't know when. But whenever that event actually came, she wanted you to know who did it. Think about that. Just think about that. A will, photographs of her being beaten. Okay. You tell me. There is one category entitled "The pathologically jealous." Remember? And O.J. Simpson said, "Well, maybe you know, maybe a little bit. Maybe I'm a little bit jealous, a little bit pathologically jealous." That is one of these things where you can't just be a little bit of. Either you are or you aren't. You know what I mean? You can't be somewhat jealous or partially jealous.

300 Either you're jealous or you're not jealous. And this Defendant, he was jealous and he was out of control and he was consumed with passion for Nicole and he was obsessive because in April of 1992, he is peeking through windows. He has already beaten her. He has already beaten up her car. And he does some other things. In 1988 and 1989, I told you already that the testimony from Denise Brown was that he humiliated Nicole in public by grabbing her crotch in front of a bar full of strangers. And what else had he done? What else had he done? He's thrown Nicole and Denise out of his home one night. Remember that night, that night Denise said to him, "O.J., you take Nicole for granted," and he blew up. Remember, he blew up and he said, "Hey, I do everything for her." And he

310 became enraged back then. He picked Nicole up, he threw her against the wall, he threw her out of the house. He threw Denise out of the house and he threw all the clothes downstairs and out of the house too. Remember that testimony? This is the private side of him. This is the other side. This is the side of this man that you don't see in the commercial. He is out of control. He cannot handle it and the fuse is burning.

**Judge Ito:** And Mr. Darden are you prepared to continue on with your argument sir.

**Mr. Darden:** Yes, I am your Honor thank you. Good morning sir. Good morning ladies and gentlemen.

320 **Jury:** Good morning.

**Mr. Darden:** Hope everybody had a good sleep last night it was a long day yesterday. And I thank you in advance for hearing me again this morning. I don't expect to take up the entire morning um with any luck I won't take up more than half of it. But we'll have to see. Well you recall where we left off yesterday I was telling you about this Defendant's relationship, this man's relationship with Nicole Brown and I told you it was a simmering relationship, you know, it was a slow burn, it was a slow burn. And I described for you discussed with you some of the testimony that you heard in this case, testimony you heard from witnesses about their relationship and we talked about the 1985 incident involving with the

330 baseball mat and the Mercedes Benz. We talked about the 1989 incident and the fact that the police had been there 8 times before, both the Defendant here and Nicole Brown both admitted that so I guess it's true, right? We talked about the incident at The Red Onion when the Defendant grabbed Nicole by the crutch and in front of a bar full of strangers and humiliated her, we talked about that. We talked about his admission to Shipp about his jealousy after the 1989 incident, we never talked about the testimony from Denise Brown. Remember the testimony from Denise Brown? She talked about some of the really really nasty things he would say to Nicole. As you may recall Denise, Denise Brown Nicole's sister testified that during the time that she was pregnant the Defendant would call her

340 names. Do you recall that testimony? He'd call her "a fat pig" and he would call her "a fat pig" in front of other people. Now I don't know what you should extract from that and have you ever heard of such a thing. I don't know. I would suggest however that that is some indication of how he really felt about her. People get into a relationship and you have one half of the relationship whose dominant and you have another half whose some what passive and the dominant half dominates the other half and what "a fat" we'd suppose have on Nicole and has been called "a fat pig" by her husband while she's pregnant. What effect would that have on self-esteem? Because you're probably wondering, well hey, if he did all of these things to her, if he said all of these things to her, why did she stay?

350 There's this old song and the words used to go that a, I think it was a dramatic so I really can't recall but there were a couple of lines in the song where they said "the strong give up and move on and the weak give up and stay". You know if you badger a person long enough, if you beat 'em down long enough, if you wear 'em down long enough pretty soon you strip them of their dignity, their self-esteem and they are weak and they are submissive and they can't go they can't stay and you know how that is, everybody knows how that is, we've all been in bad relationships before, you have friends you see them in these bad relationships. Why, why do they stay? Why do they stay? Usually they feel they don't have a choice. They don't know that they have a choice, they forgot that

360 they had a choice. In their minds they had no choice, she's "a fat pig" but we talked about that yesterday and we talked about justice and we talked about what the real issue in this case was about and I pointed to the chart and I told you he killed her and you've heard the evidence in this case. He killed Ron Goldman. O.J. Simpson's a murderer that's what the evidence indicates, that is what the evidence shows, it shows that he's not just a murderer but he's a double murderer. And that's unfortunate, it's unfortunate that I have to stand here and tell you this because I'd rather be somewhere else. I'm sure you'd rather be somewhere else. Who wants to really have to confront and deal with these issues, but we have to because we have a duty. Marcia and I have a duty and you

370 have a duty as well. Your duty is to look at all the evidence, to be fair, be conscientious, be objective. And your duty is to look at all the evidence, the totality of circumstances, everything, we don't want you to just look at one piece, don't just look at the Prosecution's case, look at the entire case, look at everything because when you do, when you do, what can you say except he did it and we've proven it and we've proven it beyond a reasonable doubt. And we talked about the safe deposit box yesterday and we talked about the fact that Nicole knew that she was going to die and we know that she knew that because she told the police that in 1989 and we know that she knew that because of what she saved for us the road map she left for you in that safe deposit box, the letters,

380 the photographs, you recall that testimony and as we went to progression here to his history of his abusing Nicole and by the way not every incident here on this chart is an incident necessarily of abuse but we wanted to lay out the history of their relationship as well, that's why you see things like divorce and etc. So we're not trying to mislead you but we thought it was important that you know how the relationship developed over the years and this is an unusual relationship you have to agree, there's something wrong here. Henry Lee said there was something wrong. There's something very wrong here. This is a slow burning simmering relationship and it's just like I told you yesterday the fuse is burning, the fuse is burning folks and it's getting shorter and it's getting shorter. And it's

390 just getting shorter. But this morning I wanna take things a step further if I may and if you allow me to let's just cut right to the chase. Imagine that the Defendant in his Bronco, he is full of anger and he is full of rage and it's night time and he's driving that Bronco and he's full of jealousy and that fuel continues to burn and the focus of his anger is Nicole. For some reason in his mind she has done something that he can't ignore something that has set him off, he's jealous, he's raging, he's raging, he's out of control and he's in that Bronco and he is driving as fast as he can toward Nicole's house and it's about 10 o'clock, he is out of control folks he is completely out of control and when he gets to Nicole's place he quickly parks the Bronco and gets out. It's 10 o'clock

400 he's in his Bronco he's at Nicole's house it's night time, but we're not even talking about June 12th, we're not talking about June 12th 1994 we're talking about October 25 1993. All along I've asked you to be open minded, to be open minded about this man and who he is and we have suggested to you and I think we've proven to you that he is not the person you see on the TV commercials and that half-time in those football games that is his public persona, we all have



one, we all have one we behave a certain way when we're in public and we behave in another way when we're at home, you know what they say no body knows what goes on behind closed doors and the fact that we may see you and you may see us doesn't really mean that you know us or that you know me or

410 you know Miss Clark or Mr. Cochran. You see us here in public but what are we, what are we really, what are we really inside, what are we really at home. Well we have a very very very nice example. Well nice is a bad choice of words, we have a very very poor example of who this man is, of who he is at home, who he in his private life is to privatize the other side of him and I want you to listen to a tape. A tape of an emergency call and you recall that I palyed that tape a long time ago, months ago and you probably forgot about it up until yesterday I hope. I'm gonna ask to listen to that tape in just a moment and you know some people say how could, how could O.J. Simpson actually kill this woman or Ron Goldman when her kids are in the house. You know you know what I mean,

420 they say who would do something like that? Well he would. Keep this in mind if you will, if you think it's important. In 1989 when he beat her, you'll recall that when the police came to warn her to take her to West L.A. Station [inaudible] to have photographs of her injuries taken, you'll remember she said I don't wanna go I just want my kids, just take me back home, take me back home to my kids, my kids are at home, I wanna be with my kids, the night he beat her his kids were in the house. And when you listen to this tape from October 25 1993 after the first couple of minutes you hear the Defendant in the background yelling and screaming and raging, you hear that rage and you hear Nicole on the telephone say "the kids are upstairs". The fact that the kids are in the house does nothing to this man.

430 Mr. Darden plays the 911 telephone call

I think we've heard enough of that, you have this tape in the jury room I'm just a messenger and I think you get the message and you get the message straight out of his mouth. You hear this man in the background raging, he is raging about a picture a picture of a man he saw at Nicole's house, a picture of a man she had apparently dated. How many months before? How many months did Nicole say? About 18 months or something like that, it's all in the tape and Nicole said on that tape as well that it always comes up, this man, that issue always comes up. Apparently this man and that issue is of great concern to the Defendant, of so much concern that he just can't get it out of his system he can't put it behind him

440 he can't forget it, he can't forget it and you hear him back the yelling and screaming at Nicole and you hear the language and you hear the things he's saying about her and you hear him in the background saying I don't give a shit anymore. That's what he said an old relationship, a past boyfriend a boyfriend she apparently had at a time after she moved away from his home and after she filed for divorce. A year and a half and he still hadn't gotten over it. And it's October 25 in 1993 and Nicole doesn't know it at the time she knows he's gonna kill her at some point but she doesn't know at the time that she only has 8 months to live. Now we offered this tape to you as I said before so that you would know who you're dealing with because you have a right to see him the

- 450 private side of him. When you listen to the 911 call as you're taken back to the jury room listen to the part where she tries to calm him where she's on the phone and it sounds as if he's getting closer to her because you can hear his voice more clearly and his voice is raised even higher than before and she tries to calm him and as she tries to calm him she tries to calm him in a, by using a calm voice of her own, you get what I'm saying? I mean she says O.J., O.J. now 30 minutes before she was in tears on the phone calling the 911 operator, the operator but when he comes near he's in rage she's trying to calm him down with a calm voice. What does that mean? Is that helpful to you at all? Let me suggest to you that what that means is that she's been there before. She apparently feels as if
- 460 she has a way of some tactic, some approach that might help calm him down. It's Nicole's approach to her problem when the Defendant becomes enraged, a calm voice and she's scared and you know she's scared you can hear the fear, you can hear the terror in her voice when she calls the 911 operator but when he gets close and when she gets to the point that she has to calm him down she's the calm one. She's the one who is in jeopardy but she's the one with the calm voice. 1993 was the same year that the Defendant talked to Kato Kaelin. Remember Kato Kaelin was living at Gretna Green with Nicole he was living in the back in the guest house and he talked to Kato just before Nicole moved to Bundy. Remember that conversation? Recall that testimony? This is an example
- 470 of this man's control, of the control he had over Nicole, the control he exercised over her. Kato was living with her, Kato's going to be paying rent to Nicole, this is money, this is income, ok. She's divorcing this man, she is not his wife, she is not his wife, she has not been his wife since 1992, ok. Kato lives here, she has no intimate relationship with Kato, she has a right to have him live there in the guest house if she wants and if she moves to Bundy if she wants Kato to rent a room she has that right, this is 1993, he has no right to interfere with that but he wants to exercise control over her, he's about control, this is all about control ladies and gentlemen, it's all about control, the beating the humiliation all of that, that's how you control people, you beat 'em down they lose their self-
- 480 esteem and pretty soon they're like puppies. He talked to Kato and he said to Kato that it wouldn't be a good idea if he moved to Bundy, it wouldn't be right, remember? Well you know you meet people and you get involved in relationships and you continue these relationships with Nicole you have to take people and face value and take it how it comes to you, you know what I'm saying. If he wanted to be with Nicole then he should be with Nicole the way she is and if the way she is that she needs a tenant to pay rent or to make it that's her thing he should just accept that but he doesn't talk to Kato and what does he do, he bribes him, he bribes him away from her. Kato was gonna be paying from four fifty to five hundred dollars rent at Bundy, he bribes Kato away and what
- 490 does he do how does he do it. "Kato come live with me over at Rockingham, we got the jacuzzi, the pool, the thing, the tennis room, you've got your own room." And what's it gonna cost him? What's it gonna cost Kato? Nothing. Zero. Zilch. Scratch. It's free. He's bribed Kato away from her and she is upset about it you heard the testimony Nicole talked to Kato she and begged him not

to do what the Defendant asked she told Kato that he's been manipulated. This is control but Kato told you from the witness stand that the deal was too sweet, there was a freebee, free stuff, free rent and board, free room and board. How could he turn it down? Her turned his back on Nicole and Nicole was angry about that. Nicole named her dog Kato. Think about that Nicole named her dog

- 500 Kato. I'm not suggesting to you that, that this man was angry and depressed and consumed with jealousy each and every moment of the day or each day that he was with Nicole, I'm not saying that I'm sure that there were periods of calm, I'm sure that there were periods when they had a good time, I'm sure there were times and periods when things worked out great for both of them but always beneath the surface [inaudible] this jealousy and the same during this passion and that rage, the rage that you just heard on that tape and you know if you were in Nicole's position and you know all about this and you know hey there are certain things that can set him off they can set that fuse to burn that can make that fuse shorter and shorter then you're gonna tread lightly, right? You're gonna
- 510 try and do everything you can not to upset him and that's control. They went back and forth in their relationship, they make-up, they made break-up they tried to get together, they had kids that sound natural, right? I mean nothing wrong with that per se. And as I understand the testimonies I recall that they were together again in the Spring of 1994. Despite all of that, despite everything that had happened up until this point in 1994 she moves in January to Bundy and in the Spring she begins dating the Defendant. And Kato Kaelin told you from the witness stand that that they had some sort of commitment either to each other or she to him I not sure of all the details but you heard the testimony and if my memory fails me than rely on the testimony. In case I'm incorrect but they had
- 520 some sort of commitment or agreement that she would date him or anybody else before he left to go to New York for football season. She was supposed to date only him until August and Kate said that was a commitment, that they had that commitment. Well somebody broke the commitment apparently and May 19 as I recall was Nicole's birthday and for her birthday he gave her an expensive bracelet and on her birthday as well as I recall she was sick with pneumonia, was that the testimony that she was sick? And I think someone said and it may have been Miss Arnelle Simpson that the Defendant had brought her soup. Taken soup over to her on her birthday because she was sick or the day after her birthday but some time around that time or period. But for some reason Nicole
- 530 broke off their relationship, she broke off the relationship for some reason on May 22nd. Nicole got the courage to break this relationship. Now you have to assume that if someone moves out of your house that's an attempt to break off a relationship and you'd think that he'd get the point. When she filed for divorce she would think that he'd get the point and when the divorce is final you would think that he would get the point. They go back and forth for what ever reason, I'm not saying that it's all his fault I'm sure at some extent it's Nicole's fault also, if we can fault anybody for this, but she returns that bracelet on about May 22 1994. She couldn't be bothered, she couldn't be controlled anymore, she had had enough and if you look at the things that transpire after May 22 1994 you

- 540 get the sense don't you that he finally got the message, it's over, it's over, she can't be bothered. You can give me this expensive gift if you want to, that's fine but I'm not staying in this relationship, take it back and she gave it back to him and the Defense would like you to think that that this was, that there's no big deal to this break up, that no body was upset, that he wasn't upset about it but was he? Christian Reichardt testified from the witness stand for the Defense and he told you that the Defendant had been depressed during the weeks leading up to the murder, he had been depressed caused to his failing relationship with Nicole, he was depressed because she couldn't make up her mind to whether or not she wanted to stay in the relationship. You recall that testimony? He was
- 550 depressed about that. But it seems to me that perhaps this depression turned any. And the days that followed and we don't know everything that happened between them and the days that followed. But we know that at some point there was a letter that he wrote to her, we assume that he wrote it because his signature is on the bottom and this letter has been marked as evidence and Mr Farlow will get the exhibit no. um. The actual letter has been marked as evidence and the letter is dated June 6th. Inside O.J., O.J. Simpson and in the letter, know remember this is a, there are no hard feelings here if you beleive the Defense case and this letter begins "on the advice of legal counsel and because of the change in our circumstances, I am compelled to put you on written notice that
- 560 you do not have my permission to use my address at Rockingham as your residence or mailing address for any purpose including but not limited to information and tax returns filed with any taxing entity." What is this? What is this letter mean? How is this letter helpful to you? How many times did we break up with someone and didn't send them a letter a few days later or a few weeks later in legalese? And what are the changes in their circumstances that he's referring to? The change and the circumstances that she has decided that she does not want to be with him anymore. And now he's out to hurt her, he's going to hurt her. This letter is People's 25 your Honor. Did Nicole have some kind of tax problem? Looks like it. In the last paragraph he says "I cannot take part in
- 570 any course of action by you that might be misleading to the IRS or the Franchise Tax Board. What is he suggesting to her? How should she receive this letter? And look at the carbon copy. Mr. Cochran asked someone on the witness stand if they knew that Marvin Goodfriend was an accountant, as I recall. We've heard that Leroy Taft is his lawyer, a carbon copy to his lawyer and accountant. What's going on here? This is supposed to be an amiable break up? No hard feelings? This is control, this is a subtle threat. If you disagree with me, fine. If the Defense disagrees with me, that's fine as well, but let me tell you something, when the Defense began the defense case but when Mr. Cochran did his opening statement he told you about a witness he intended to call and this witness
- 580 seemed to be a pretty important witness and was seemed to be given the evidence that you've heard in this case. He told you about a woman named Dr. Lenore Walker and he said to you at page 11783 that there's an expert in the US whose name is Dr. Lenore Walker and that she is by all the accounts the no. 1 expert in America in the field of domestic violence and he said that she has been called by some the mother of the Battered Woman Syndrome, he went on to say

that she was a psychologist and she testified for the Defendant. The things that I am saying to you and discussing with you today, the testimony that you've heard on the witness stand about the domestic violence, the beating [inaudible] the intimidations, the threats, [inaudible]. How many times address in the 1989

590 incident and the October 23 1993 incident that you heard on the tape? Well, why didn't they call Dr. Lenore who could have put this all in perspective for you, if what the witness said in this case aren't true and it wasn't true. Dr. Walker could have interpreted this letter for you but they didn't call Dr. Walker, they wouldn't call Dr. Walker they bear not to call Dr. Walker and Dr. Walker never stepped foot into this courtroom. While you were hearing in the jury box. They are a group of very very fine lawyers, they called some of the most expensive experts money could buy, but we didn't see Dr. Walker explain to you why this letter is insignificant if that's the Defense position or why this cycle of violence that lead up to Nicole's murder, doesn't help to establish motive from a practical sense.

600 And there's something that he said to you on page 11793 and I wanna take a moment to show it to Mr. Cochran before I read it if I can. And at page 11793 he said to you "I'm gonna tell you about the facts" and so he says " So you will hear from Dr. Walker and you will hear about the battery of tests and I think you will find that she will say that in looking at O.J. Simpson, she does that, in looking at O.J. Simpson and interviewing him and looking at him at this point she finds no evidence of antisocial personality disorder and I think you will that becomes very important in this case, so where was Dr. Walker to come here to testify to take the witness stand, to sit in the blue chair and tell you that none of this is imporant that everything that I've told you for the last three hours is

610 insignificant and unimportant. Where is she to tell you that he does not suffer from some antisocial personality disorder, she ain't here. And had she come here to express an opinion that this was unimportant we could have cross-examined her but they can't touch this, they can't touch this. This is important evidence you have to consider it when you consider motive, when you consider the issue of identity, the identity of this man as a killer of these two people. You have to consider this on the issue of premeditation, this is imporant evidence. And as days proceeded on he hired an interior decorator and as I recall the testimony Paula Barbieri his new girlfriend, you know the one he was so happy with. It's odd but on the one hand they say he was happy with Paula Barbieri, on the

620 other hand Kato said that he told him, the Defendant told Kato, that he the Defendant didn't know if Paula was the one. I don't know but let me tell you soemthing about this letter, just to go back and this whole interior decorator situation. The fuse is burning and it is getting short, it is getting short. He is trying to erase her presence for instance from his home. This is how short this fuse is getting; he's trying to erase her presence from his home, he has hired an interior decorator to redecorate the bedroom, the master bedroom was it, and the bathroom, they're gonna rip out the plumbing. The places she had been they're going to change, they're going to erase her presence from the house. He's going to erase his presence from the house, or at least he's gonna try. He is angry and

630 he's upset, he has been rejected and he doesn't like that rejection and he's trying

to get over her, he's trying to get beyond this so what does he do? He gets rid of her wedding photo, their wedding picture puts it underneath the bed. He is trying to get beyond this but he can't get beyond this because the fuse is burning because he is upset and angry the relationship was terminated by her, I mean you look at that picture you look at them. After your divorce and after you break up with someone you don't usually keep the pictures out, right? Um you don't but do you throw them under the bed? You put 'em in a box or you get rid of 'em all together, that's what you do, but in this case, his case he is trying to get over her but he can't, he can't get over her, he can't get beyond this, on the one hand he

640 throws this picture underneath the bed and on the one hand she is out of sight and he hope out of mind but on the other hand she's just beneath the bed. Where he has access to it, where he can grab it, where can look at it, he is beginning to obsess with her, he is becoming obsessive with her and he is trying to replace her at the same time with Paula, his relationship with Paula supposedly blooms again all of a sudden at this time right after she breaks up with him. She broke up on May 22nd and by June the 6th or whatever he and Paula are back together and now they're ripping the plumbing out of the house. Now people need space, you need time when you end a relationship especially one that lasted 17 years. He is trying to replace Nicole with Paula and he's trying to find some sense of

650 control. But the fuse is burning and I just wish Dr. Walker had been here to explain this to you I'm sure she could have done a better job other than me then I have so far. And so we move on, the days pass and we begin to approach June 12th the day of the recital. You recall that the Defendant had conversations with Kato Kaelin that day and he talked about Nicole, he talked about her dress, he talked about how short it was, he talked about the relationship being over, you know. It didn't appear, you tell me maybe you disagree that he and Kato Kaelin had that kind of relationship, the kind of relationship where he would vent his frustration, his frustrations regarding Nicole to Kato. I don't know you saw Kato and I don't know why anybody would want to discuss his personal problems

660 with Kato Kaelin but he did. And he talked about Nicole a couple of times that day to Kato Kaelin and Marcia cross-examined Kato Kaelin and directly examined Kato Kaelin and he talked about those conversations and as Marcia mentioned yesterday, Kato had a bias and he was biased in favor of the Defendant. He minimized things, that's not to say that he just out right lied about things but he minimized things. I think he minimized the tone, the Defendant's voice when he talked about Nicole and I think he minimized just how upset the Defendant was when he talked about Nicole but hey whatever. The Defendant supposedly seen Paula is the day of the recital. What happened that day? Now the fuse got shorter I'll tell you why. Paula his new girlfriend

670 wanted to go to the recital, the recital where Sydney was going to be performing over at the school and they had an argument about that, a lack of a better term, they had a disagreement about that, she wanted to go, he didn't want her to go, he wanted to go alone he told Kato that, that they had a disagreement about that and she was upset. Well why is that important. It's important because she left, it's important because Paula left, she left Rockingham, she left Los Angeles but apparently he didn't know that, apparently they had their disagreement about the

recital, Paula got mad, Paula left town, it's pretty apparent that he didn't know that. I can't tell you how bad that disagreement was or if there were raised voices or whatever we don't have any of that in the testimony or in the evidence

680 of this case but we do know that Paula left and that he didn't know where Paula had gone. And the fuse is getting shorter because what happened that day is this Paula as a woman I guess she ascertained her womanhood, she supposed to be his woman now, she wants to go to the recital, why not, he won't let her, why won't he let her because he still has hope for Nicole, he still has some hope, he still has some hope, he doesn't want Paula to go the recital, he won't let Paula go to the recital and Paula realizes why and she packs up and she leaves. That afternoon the Defendant called Nicole's house, he's still got hope, he's got hope you know, she'd always come back, right each and every time that they, they've gone back and forth many many times, they've always got back together she's

690 always come back but she isn't coming back this time but he still has hope. He's put in a catch-22<sup>15</sup> situation asserts that day when he and Paula talk about her going to the recital he has to make a choice that day he's either going to go to the recital where Nicole lives alone, you know hoping hand or is he gonna choose Paula, it's either Nicole or Paula, if he takes Paula to the recital, take her out in public, take her around Nicole, take her around the Brown family, he's made a choice now ok. It's public everybody ones, he has made a choice now he is with Paula but he couldn't make that choice because he still had hope and he still had hope for Nicole so he called Nicole on June 12th he called her and talked to her 2:18 in the afternoon over 4 minute phone call and something

700 happened during that phone call. But let me tell you what else, after he finished that 4 minute phone call Nicole he tried to call Paula. As soon as he hung up with Nicole he tried to call Paula and the 305 area code Florida, right here. The phone call began at 2:18 lasted 4 minutes at 2:22 he's calling Florida. Something happened, I don't know what happened, something happened, whatever happened during that phone call he had a need to talk to Paula thereafter immediately thereafter but he's calling Florida looking for Paula but we from the testimony and the evidence in this case already that Paula's in Las Vegas in her hotel room be paid for by Michael Bolton. He doesn't know where she is, sounds like she got upset and scrambled off and went about her business but he

710 can't find Paula, he's having a problem with Nicole, he's about to lose all the women, both the women in his life and the fuse is getting shorter folks, it's getting shorter and the frustration is building and the anger is building and something has triggered his anger because in all of this, you know this is a tension, this entire relationship over a ten year period is filled with tension

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<sup>15</sup> A catch-22 situation is a paradoxical situation from which an individual cannot escape because of contradictory rules. Joseph Heller coined the term in his 1961 novel *Catch-22*, which describes absurd bureaucratic constraints on soldiers in World War II. Catch-22s often result from rules, regulations, or procedures that an individual is subject to but has no control over because to fight the rule is to accept it. Another example is a situation in which someone is in need of something that can only be had by not being in need of it. One connotation of the term is that the creators of the "catch-22" have created arbitrary rules in order to justify and conceal their own abuse of power.

because of the doors being kicked in, the punches and the slaps and the intimidation and the control and all of that, this is a very very tense relationship, things are about to explode because he has that conversation with her, he tries to call Paula, he can't find Paula and by the time he gets to that recital that afternoon around 5 o'clock he is fit to be tied. He is angry. You heard the

720 testimony of Candace Garvey, Steve Garvey's wife, she was also at the recital and she knows the Defendant, she'd known him for a long time, he came to the recital Steve spoke to him they said hello, how are you, how you doing. What was his testimony, what was his response? There was no response immediately, if you recall that testimony he had a blank stare on his face, he was distracted, she told you that it was as if he he looked right through her as if he did not recognize that she was there. And she told you that his demeanor that afternoon in the recital frightened her and she told you that he was angry and Denise Brown testified as well about that recital and they told you that he was angry and that he didn't look to be or act like the O.J. Simpson they had come to know.

730 Candace Garvey said that he was distant, that his anger was simmering that he had this look of simmering anger, he was in this little burn, the fuse was getting shorter something set him off and perhaps what set him off was this four minute phone call at 2 in the afternoon. Perhaps his inability to find Paula that afternoon set him off, now the fuse is really burning, now the fuse is getting shorter and there's gonna be an explosion folks, there's gonna be an explosion. He arrives at the recital, he sees Candace Garvey, literally ignores her, he's angry, he takes a seat in the Auditorium, he sees the Brown family seated in the Auditorium, Juditha Brown and Lou Brown, Nicole's parents and her sisters. Nicole is seated with them or near them, he goes over to the Brown family and greets everybody

740 in the family, every one of them, he greets everybody but Nicole, he doesn't address Nicole. This is a family event, right? His daughter, Nicole's daughter at the recital dancing but he doesn't address her because he is angry, he is consumed with anger and the fuse is getting shorter, he doesn't appear like the O.J. that they knew, the man that they knew, Candace Garvey is frightened by his demeanor, what does he do, he takes a seat behind the Brown family, there are no seats near the Brown's family, so nothing wrong with that, nothing wrong with the fact that he takes a seat behind the Brown family but as Denise Brown told you on the witness stand after just a few minutes he abruptly got up and moved. He got up took a chair and in the dark, in this dark Auditorium, as the

750 program was going on, he takes that chair and he moves into the corner and sits in the corner of the Auditorium. Denise Brown told you that she could not understand, she did not understand why he did that, she told you on the witness stand that she didn't say anything to offend him, nobody said anything to offend him. Why is he so angry? Who was he angry at? Well common sense would tell us that he's angry at Nicole. Why? Because he didn't address her but for another reason as well. As he sits there in the corner in the dark he isn't watching the program on the stage, he's watching Nicole. Candace Garvey told you this, Denise Brown told you this as well, that whenever they looked over at the Defendant that he was not looking at the stage or the program on the stage, or



- 760 the kids dancing upon the stage, they told you that everytime they looked over in that dark corner at the Defendant he was starring at Nicole, he was starring at Nicole and that simmering anger that he had folks he was about to lose control, the fuse is getting shorter, the fuse is getting shorter and there's about to be an explosion, he is about to lose control and about to lose control like he did on those earlier occasions and sure he didn't kill her on those earlier occasions in October of '93 or at 1989 but that was then and back then the fuse was a lot longer but now the fuse is way shorter, it's awfully short and when the program was over clearly he knew that the relationship was over. In the past he had done things to Nicole and she had come back but not only that the Brown family, he
- 770 still had the Brown family. well when you consider the evidence in this case you see that after the recital Nicole, the kids and the Brown family went to the Mezzaluna for dinner, they didn't invite him to go. He has been rejected, completely rejected, he has been rejected in public and this is how these things work, this is how these things work, you may sit here and think oh this isn't such a big deal, well sure, perhaps in your lives and in your relationships this wouldn't be such a big deal but you have to put it in the context of the relationship that they've had, this is a big deal, it is a big deal to him. And he is rejected in public, they go off to dinner, he's left to go off to dinner with Kato Kaelin. You know he isn't used to rejection, by the way, he's a celebrity, we
- 780 talked about that earlier. You know celebrities get the best tables, you know, you always get everything you want, you get what you want. There are no rules for celebrities. But on June 12th he isn't getting what he wants and so he goes home and the fuse is getting shorter and it's getting shorter and he talks to Kato Kaelin and he complains about the dress she wore and the fuse is getting shorter. Christian Reichardt was called by the Defense and he testified that he spoke to the Defendant at 9 o'clock that night and that when he spoke to the Defendant, that the Defendant was jovial happier than he'd been in weeks. He went from simmering anger at the recital to jovial at 9 pm that night. What happened? Why is that? It's because the Defendant has developed a plan, he's come up with a
- 790 plan to rid himself of the problem that has plagued him for 17 years. And he talks to Reichardt, he called Reichardt as a matter of fact, if you believe that testimony. You know so many weird things going on that evening, he wants 5 dollars for the skycap, Kato gives him a 20, he's driving a Bentley to McDonald's, he's calling Christian Reichardt at 9 o'clock and he tells Reichardt that he's packing, that he's packing right then 9 o'clock he's packing to go to the airport. That was the testimony from Reichardt but then you have these other witnesses come in Miss Arnelle Simpson and Gigi the maid, they come in and they tell you he always packs at the very very last minute, he rushes around the house and how everybody knows it, that he does that. What is going on here?
- 800 Why is he packing know? Why is he doing these things with Kato Kaelin? Why is he jovial all of a sudden if you believe Christian Reichardt is [inaudible] because he has a plan that he knows what he is going to do, he has had enough, the public rejection that day is enough, folks let me tell you that the fuse is so short at this point that he is about to explode. The next thing we know he's in that Bronco. He is in the Bronco at 10 o'clock or earlier, we don't know when

exactly he got into that Bronco but we know that at 10 o'clock he's into that Bronco and he is driving in that Bronco. Now why wouldn't he be. How do we know that? We know that because as Miss Clark said he keeps the phone in the Bronco and he is panicked and he is out of control and he needs someone or

810 something to help calm him and so what does he do. He calls Paula but he calls Paula in two places, he calls Paula at a 301 area code in LA and she isn't there, then he turns around and calls Paula at a 305 area code and she ain't there either. Paula Barbieri probably could have stopped this whole thing that night if she had been there to receive his phone call but now Paula is gone, Nicole is gone and whose fault is all of this, it isn't his fault, it isn't the Defendant's fault, it's Nicole's fault, it's Nicole's fault. Even in 1989 when he beat her, when he came out of the house he blamed her. Remember he spoke to Edwards? He didn't want her in the house anymore, he had two other women then we come to find out that she found that he had been with two women and she was upset about that and

820 wouldn't sleep with him but he took it out on her. And you listen to the October 25 1993 911 tape he's blaming her because she had a relationship with a man a year and a half before after she had moved out after she had filed for divorce when she was literally a single woman out there on her own. He always blamed her everything was her fault, his break up, his problems with Paula, the fact that he lost Paula was her fault, it was her fault because she went back and forth and termed their relationship, and the fuse was short and the fuse is about to explode. You're gonna take a 10:30 hour break your Honor?

**Judge Ito:** Yes.

**Mr. Darden:** And the bomb will explode when we come back. We're getting

830 there. I talked much longer than I'd ever expected and I don't apologize for that because I think it's necessary that we have this discussion. So I apologize in a sense I guess but I have a duty and you have a duty and I'm not gonna have much of an opportunity later I think to talk to you so I wanted to share these things with you because I think they're important and they may help guide you in your deliberations but when we left off we were talking about the fuse how short the fuse was getting and how the Defendant was on his way to Bundy in that white Bronco, same Bronco that he drove that night in October 1993 and so he's on his way and he's panicked and he is out of control and he's calling Paula

840 and he can't find Paula, he calls her in LA, he calls her in Florida, she is no where to be found he can't find her, he has lost her and he has lost Nicole. Now whose fault is this? It's Nicole's fault he made a choice that day he chose Nicole over Paula and he lost them both. And so he arrives at Bundy and Miss Clark discussed with you yesterday the details of the murder of both murders and I don't want to, you know, repeat all that she said but one of the things she said that I just want to elaborate on a little bit is his choice, his weapon choice, the use of a knife. This is a rage killing and it is up front and it is personal and that is why you see all the brutality that you see. Common sense tells us that, I mean we know that from life experience from living in LA, we know what kind of

850 killing this is, this is a rage killing. And he's using a knife because he is there to settle a personal score, a personal vendetta that he has. He stabs this woman in the neck and he is right there, it's one on one and the rage that he has, the anger, the hate that he has for her that night at that time it's like it flows out of him and it took into the knife and from the knife into her, into her and he kills Goldman and he kills her in this rage and let me make it clear to you even rage but he has made a conscious decision, a premeditated decision, a deliberate decision to go there and do what he is about to do to this woman otherwise why would he take a big knife with him, right? he killed her that way because he wanted to make a statement, he wanted to teach her a lesson, he wanted to let her know, he wanted

860 her to be there face to face to know just who it was who was doing this to her. With each thrust of that knife into her body and into Ron's body there is a release, you know, a small release, it's like a tiny time capsule, you know, like contact, there was a release, a gradual release of that anger and that rage and he stabs and he cuts and he slices until that rage is gone and until these people are dead and after that rage is gone he's better. One of the most remarkable things about this case is that after this man, him (pointing to O.J.) after he did this to these two people he didn't run away, he didn't jog away, apparently he didn't [inaudible] the way, we heard agent Bodziak's testimony he just walked away. He'd released all of that rage in that anger during this homicidal fit he was

870 having and I see as he killed these two people. Now I'm just a messenger I hate to be the one and stand here and tell you about these things but this is a murder case and this is what he did, all these things we've talked about these are the things that he did, this is how he lived, this is his life, ok. And so I think we've come full circle at this point, we've shown you that he had the opportunity to kill, we've shown you that he had the motive, that he had a motive to kill, we've shown you in this trial that he was physically capable of killing, we've shown you that he had a reason to kill, we've shown you that he would have killed, could have killed and did kill these two people. He's a murderer, was also one hell of a great football player but he's still a murderer. And so we've come full

880 circle. There's Ron and there's Nicole (showing a big picture of them) and now Ron he was just at the wrong place at the wrong time. Nicole she was in the wrong place for a long time and there's this common factor, this common element between the two of them, and one thing they had in common was this man, this Defendant. And so we began with them, too very much alive and vibrant human beings. We went through 1989 and 1985 through the beating he inflicted on her. And we went from that in '85 into 1989 and we came to this point on June 12th at Bundy. And so we've come full circle. And the only common element in all of this, the only direction and at which all of the evidence points is to O.J. Simpson and I told you when this began that I had the

890 hardest job. Nobody wants to do anything to this man, we don't, there's nothing personal about this but the law is the law and it applies to us, it applies to you, it has to apply to him. He made a promise a long time ago, a promise to love and to cherish and to keep her, he married her and he made those promises to her, he promised to be her husband and he was, and let me say to you that every wife killer or ex-wife killer starts off as a loving husband and in every household

where there's a marriage between a man and a woman there's a picture just like that picture right there. There's a picture just like that on every mantle and every home where a husband killed a wife. What he did that night on June 12th, the night of June 12th to these two people, this brutality and the violation of every

900 law high and low that we can possibly think of. And I suppose that some people that say we should cut him some slack and um you know, this were a case, you know of theft or embezzlement or something like that, you know you can always make restitution but this is a very very serious charge. Two people are dead and let me say that what you do in this case is entirely up to you, mean you the jury, when I sit down I sit down I'm done I've completed my duty I've done what the law requires me to do I've lived up to the oath, my oath as a member of the District Attorney's Office and I've presented, we hope we've presented the best evidence we could. And if we didn't present the best evidence we could don't hold that against us. I just wanted you to, you know, when the time comes to

910 going to the jury room, somebody somebody just say let's calm down, let's elect the floor person, let's read the law, let's take a minute and let's just look at the evidence. Now I'd just like you to use your common sense when you do, when you do that you use your common sense when you try to be objective when you remove all of the emotion out of this case, when you move all of the sympathy and passion, when you just look at the facts, the evidence as best you can, you'll come up with the right decision. The world's watching everybody wants to know what you're gonna do. Marcia Clark and I know that you're gonna do the right thing under the law, and whatever you do the decision is yours and I'm glad that it's not mine. Let me turn my attention and hopefully yours to the Defense case

920 if I can talk about that a little while. They put on a defense they called 58 witnesses and they called 58 witnesses in this case presumably to help raise a reasonable doubt in your mind as to the guilt of this man and you heard from some real real muckety-mucks, real big shots in the field of science and forensic science and DNA and you heard from Henry Lee. A real impressive group of experts I suppose but when you consider our case you have to consider their case as well and you have to assess the credibility of their witnesses just like you have to assess the credibility of our witnesses and when it comes to assess the credibility of witnesses you apply the same standard regardless of whether it's a Defense witness or a Prosecution witness. You have to decide whether or not

930 that expert that testimony is worth anything or what it's worth. I hope that when you do that you keep in mind you know people made a lot of money testifying in this case and you should consider that in the issue the questions of whether or not those witnesses are biased. We studied the Defense case carefully I'd insist that you do, as painful as it might be, for you but consider this the Defense that they put on in this case wasn't really an affirmative defense, it wasn't the kind of Defense were they show you that he wasn't there, ok at the time of the murder, they never did that, they never showed you that. What they did was they attacked all of our evidence but not all of it. They didn't attack the domestic violence, there are lots of things that they attacked initially only to find out of

940 course, only for you to find out that they didn't have a chance with it. But what

you really wanted to know in that Defense case and I can't talk to you directly but I'm gonna assume you're reasonable people, you have common sense, good common sense, you're all successful at life. What you really wanted to know, correct me if I'm wrong, but what you really wanted to know was where was he at the time of the murders, right. Where was that Bronco? Had they proven to you that that Bronco was not at Bundy or could not have been at Bundy, that would have been very helpful to you, would that not have been impressive to you? Isn't that the kind of evidence you want to hear, you want to see credible, reliable evidence on that issue that's the kind of evidence that raises a

950 reasonable doubt, they didn't do that, they didn't put on that kind of evidence 'cause they couldn't put on that kind of evidence, they don't have that kind of evidence. We all know where the Bronco was at 10:15, it was at Bundy. You would have liked to have known that some other person was with Nicole Brown and Ron Goldman, right? Wouldn't you not have like to have seen some evidence or some witness that the person that killed these two people was some one other than the Defendant? When Mr. Cochran spoke to you during his opening statement he talked to you about witnesses, witnesses that he intended to call and he gave you the names of those witnesses and he told you what they were going to say, we did the same thing and I did the same thing on domestic

960 violence I told you I was gonna call a few other people I did and I think you got the point, you know I can't keep you here for ever. Apparently the sequestration thing is a real drag, right and you'd like to end this experience and I can understand that but he promised to present to you the testimony of some witnesses who who had them testify could have perhaps raised a reasonable doubt in this case. So where are these people? Who are these people? Well one of those people he mentioned was a woman named Rosa Lopez. You remember this in his opening statement? He said Rosa Lopez was a maid that lived next door to 360 North Rockingham and that she would come in here and testify that the Bronco was parked at 8 pm that night the night of June 11th it was parked in

970 the exact same place the police found it the next day. And that it was parked in the same exact manner, tail sticking out, remember that? He said he was going to present that testimony to you, he was gonna call this witness. Well where is she? Where was she? You would have liked to hear that testimony, wouldn't you? He didn't call her. He told you about a woman named Mary Ann Gerchas and he tells you that she would testify that she was out on Bundy Ave. And that she saw four men running, two Hispanic men, two white men and that a couple of men wore knit caps, we have a knit cap at the death scene. And this happened at about 10:45 after the Defense told you they would do. They told you they would call Mary Ann Gerchas to give you that information and you probably you may

980 not remember all the names but I'm sure that when you heard this wow the Defense is gonna call all these people woo this is gonna be some dog fight, I mean these people are gonna come in here and they're gonna lay an alibi, Rosa Lopez is gonna give an alibi for him by showing that the Bronco had been there all night, Mary Ann Gerchas is gonna come and testify that hey there were other persons, other men apparently running from the area near 875 South Bundy a few of them wearing ski caps consistent with perhaps the real killer, a killer other than this man here. Did they call Mary Ann Gerchas? What happened to

her? Where is that testimony? You'd wanna here that, wouldn't you? Right after they talked about Gerchas they talked about a man named Tom Lange who was

- 990 supposedly down the street on Bundy who also saw somebody. They told you that Tom Lange saw Nicole Brown standing on the street at Bundy embracing someone and that Tom Lange as he stood there on the street a man standing some distance behind them a man who appeared angry, a man standing there with his hands clinched looking at Nicole and this other person, the person she was embracing. It's right there in the transcript at page 12255. Where is that person? We already talked about Dr. Lenore Walker and where's Dr. Walker? He told you Al Cowlings would testify. Where's AC? He told you that the Defendant was out chipping golf balls. He told you Paula Barbieri was gonna come in and testify about her relationship with the Defendant. What do we get of
- 1000 Paula Barbieri, what do we get in terms of her relationship with the Defendant, we get other people, people on the peripheral. The stuff you needed to hear to raise a reasonable doubt and you're reasonable people, never got presented in this case and never got presented, what you got was a lot of smoke. You got people like Gerdes telling you that their crime lab is you know, can't be relied on but then the substrate controls are all clean. You got guys like Professor MacDonell outdoing glove experiments where he's taken his own blood and then he's putting it on a new pair of Aires gloves and he's rubbing it around like this to see if they shrink. When you look at the Defense in this case you'll see that it isn't really helpful at all, it's all smoke, it really is all smoke and you
- 1010 know you're gonna have to be careful when you deal with that Defense evidence. Now some of it was pretty good though I mean the stuff they give to Fuhrman was textbook stuff from the legal perspective but even that you have to look and say what does it do for us. It upsets us but you have to look at all the evidence and see how it's helpful, if it's helpful at all. They called the demeanor witnesses, the witnesses to testify the Defendant's demeanor after the murders Marcia Clark talked about that and you know murderers don't walk around with neon signs saying I just killed somebody, people do things commit crimes like this one especially rage killing like this one, he will clam down, they will clam down and they wanna get away with it, he wanted to get away with it
- 1020 so he certainly isn't gonna do anything to draw attention to himself but they showed you those photographs, they showed you photographs of the Defendant and some women at an event the night before the murders, remember that 'cause they had Carol Connors the woman with keyboard vest come in and testify about the event the night before remember she witnessed an exquisite romantic moment between the Defendant and Paula Barbieri. What does that do for you? How does that help you resolve this case? Doesn't help at all especially when you consider the fact that he and Paula had a disagreement for lack of a better term over his refusal of let her go to the recital the next day but beyond that it's a picture. He's at this big fancy event and somebody says will you please pose
- 1030 with us for a picture. Well when somebody takes your picture what's the first thing they say? Cheese. The point is what good is it? What value is in a picture like that when somebody is posing for you? And even in that video after that

recital he sees the video camera and looks right toward it. Posed for pictures are worthless and they call that guy McKay, remember Mr. McKay who worked for the ARP, was it the ARP, or the American Association Psychologists or something like that in Chicago and there was a [inaudible] event and the Defendant came to the event as the spokesperson for Hertz and Mr. McKay and two other gentlemen took a picture together, they're posing for a picture. Not only are they posing for a picture the Defendant is basically at work he's a

1040 spokesperson for Hertz this is his job is to go out and play golf with these people. So how does that help you? There's nothing in the record that establishes for you and I guess Dr. Walker could have done this whether or not murderers have neon signs over their heads that indicate how do you know, how do you know. Well whenever they watch tv, you know you watch the news and some brutal killing happens and you know it's the neighbor, the neighbor did it, and they always interview the neighbors of the neighbor who did the murders and the reporters always say how was he, how did he act, what kind of guy was he. Ah he was a nice guy, they always say that. You don't know, you can't tell. The testimony you heard about demeanor on the airplane and at the airport, it's a

1050 waste of your time really but if you wanna attach some of significance to what you go ahead it's up to you and you're the jury. The only demeanor really that's important is his demeanor that night. You know after he got into that Bronco and headed toward 875 South Bundy but this defense they've put on in this case is what we in the profession call a shotgun defense and it's the defense as old as the law. Way back in the day, way way back in the day even back when I was in Law School. All lawyers and all law professors share with is the old school approach to a criminal defense case and every lawyer knows this case. You're a criminal defense attorney, you have a tough case this is what you do, you argue the Law and if the Law's against you, you argue the facts, if the facts are against

1060 you, you raise hell and blame somebody else and the facts and Law are against you blame the police, blame the Prosecution, point the finger elsewhere, create a smoke screen and ask what they've done in this case ladies and gentlemen, smoke and mirrors. That's it, that's what you've got. They put on those timeline witnesses remember Ellen Arronson and Danny Mandel, Judy Telander, Pilnak, remember Pilnak. Was she the woman who had two watches? If you haven't learned anything else about this case I'm sure that you've learned that there are people who are banging at the door to get in on this case. Those people and the testimony that they had to offer really wasn't helpful at all, I mean Danny Mandel and Ellen Arronson were on a date right, a blind date they went to

1070 Mezza Luna they say that they walked past by Bundy. In fact, Ellen Arronson gave an interview to the police the day after the killings and she told the police that she passed Bundy at 11 o'clock but once she heard about the Prosecution's theory of the case, well what does she do? She went back to the Mezza Luna, she talked to Mandel, they got together and they attempted to reconstruct what they did that evening. She told the police that she passed at 11 o'clock, Mandel told the police they passed between 10:28 and 10:32 and he knew that because he checked his watch but even Mandel, even Mandel himself didn't know whether he passed 875 South Bundy that night or not. He didn't know, he didn't

know until if it ever happened, he didn't know until he and Arronson got

- 1080 together and started putting their notes together trying to do as they say to reconstruct what happened. His time of passage at 875 South Bundy contradicts her time. They got together on this story because they go together and attempted as they say to reconstruct what happened. What good is this testimony to you? And now if they wanna say that they passed at 10:28 and there were no dead bodies out there, well fine I don't know how they can say that, they're on a date they're looking at each other, that pathway is pitch dark and we know that, we know that because when the bodies were discovered the police were called and Risky said he couldn't even see any bodies up that pathway when he first arrived and got out of his car, he had to walk all the way up the pathway and use a
- 1090 flashlight. The only reason anybody found the bodies was because of Kato and at Kato the human, Kato the dog. So how much attention were they paying to that particular pathway, there's lots of pathways leading to lots of condominiums on Bundy drive. That testimony isn't helpful at all to you but hey do with it whatever you like. Then they called Francesca Harman remember her? She testified that at 10:20 she was driving West on Dorthy, she's driving West on Dorthy, which is South to Bundy, she got to Bundy and she made a right hand turn. She didn't see any bodies. Then I asked her some questions I said well when you made that right hand turn at Bundy did your headlights hit 875 South Bundy? I mean did they sweep across the [inaudible] of the condominium? What
- 1100 was her answer? No. I asked her did the lights hit the gate at 875 South Bundy? She said no. And so I asked her this did you tell the defense that your lights didn't hit the gate at 875 South Bundy? And what was her response? I didn't have to they were in the car with me, they took a ride on the test drive to show, to have her show them the round she took that night, it was clearly apparent that she could not have seen what was in front of 875 South Bundy because her lights never hit the front of the location. And they called her to testify anyway. What does that say about the Defense case that you heard? It says they're desperate, that's what it says. We are not wedded to a 10:15 time frame, ok, the killings very well could have happened at 10:15 but they could have happened at 10:17
- 1110 also, they could have happened at 10:21. We call the witnesses to the stand to testify to the point in time when they first heard the wail of that dog of Kato because we know that the wail was a plaintive wail and we know that the dog was under stress so we know that something was happening, something very bad was happening to the dog's master and if the dog was first heard at around 10:15 I don't know that may mean that the Defendant is hiding outside and the dog here is aware of it. It may not mean necessarily that the killing happened at that specific time, it happened at some time around 10:15. We can't give you the exact time, we can't give you the exact time to the minute. If they want to push the time to 10:30, push it to 10:30. Whatever way you look at it he still got time
- 1120 to get to Bundy 'cause we know he's in the Bronco at 10:03, he's got time to get to Bundy to do these killings and to get back to Rockingham by 10:54 or 10:45. Their witness Robert Heidstra told you that on the Sunday night you could easily drive from 875 South Bundy to the Defendant's house, and he knows that



because Heidstra he worked next door at the Salinger's, ok. He worked at the Defendant's neighbors house, he told you that you could drive there from 875 South Bundy with under four minutes on a Sunday night easy. So you know makes us no difference, makes us no difference at all as far as all the timing is concerned. But they also called Denise Pilnak the woman that wore two watches and she came in here and showed you her two watches so that you

- 1130 would find her credible and believe her 'cause she wanted to get in on this case. Weird stuff, weird stuff, but you um, I don't know. She testified that she drove a they had a. What did she drive? No she came home with Judy Telander and she made some phone calls and she kept Telander out of her house at at certain time in all of this and how does she know all of that. Well because 6 months after the murders she put together this time line, 6 months later. So how was that helpful? And then there's Telander she's describing her drive up Bundy or around or near Bundy and you know what's weird it's that when you look at Telander's testimony and you look at Harman's testimony and you look at Heidstra's testimony you look at Pilnak's testimony and you look at Arronson's testimony
- 1140 and you look at Mandel's testimony all of these Defense witnesses and what you see, what you come away with is this, these people were all at Bundy at the same time basically, if you believe them, they were all basically on Bundy at the intersection or within view of 875 South Bundy, they're all there in this small area basically at the same time but when you talk to them, when they testify they all tell you they didn't see any cars they didn't see any people walking they didn't see eachother. Mutually exclusive, they mutually exclude eachother, all of that testimony is, they contradict themselves, they contradict themselves and I'm not here to say these people are lying or whatever, they may just be mistaken, I don't know but you have to evaluate their testimony and I just think it's
- 1150 important that you, that you take note of that. And I hope as well that you'd take a look back at the timeline witnesses if that's what we can call them. The one's that we called Mark Storfer he was concerned of the dog barking might wake his little boy and so he told you what time it was. He looked directly at the clock and he was interviewed the next day. The day after the murders and he knew what time it was and he heard the dog barking. Look back at Eva Stein she lived in a condo directly above the walkway where the bodies were found. She lived right next door at 873 South Bundy. I believe her time was 10:22, was it 10:20? It was 10:20, those are the people you can rely on in terms of time, they're right there, they live there, they live right there near 875 South Bundy. So you've
- 1160 heard the Defense and the Prosecution case and as I've said before you're gonna have to make the decision in this case and you know whatever decision you make we'll live with it but after I finish talking to you today the Defense is going to talk to you and I don't know who's gonna talk to you or who's gonna talk to you first. I would ask that you listen and listen as attentively as you have listened to me apparently but I'm gonna as you as well that you keep in mind that as you listen to them consider this um hope at least that they can some how extrapolate from all the evidence we've heard in this case, where the Defendant was at the time of the murders if he ain't the murderer. Where was he? And maybe they can tell you that based on the evidence in this case and they put on a

- 1170 defense and bear in mind and insist I think if they can explain to you what happened to O.J. Simpson's Aires light 70263 gloves. The gloves found at the murder scene, the same style of gloves purchased by Nicole, the same style of gloves you see him wearing in a January 6th 1992 game photo. Where are his gloves? They called 58 witnesses, they called the maid Gigi Guarin, they called Miss Arnelle Simpson. If he never owned a pair of those gloves I don't recall the Defense asking him if he owned a pair of those gloves, I don't recall the Defense asking the maid, the woman how kept the closet, who put things up, who did the laundry, I don't recall the asking her if he owned a pair of gloves like that, like the one's we found at Bundy, like the one we found behind his
- 1180 house. And I don't recall them asking the maid whether or not he owned a pair of Bruno Magli's. Insist that the Defense explain to you just who does, who does kill two people wearing \$200 leisure shoes. If it ain't this man, it isn't this Defendant. And ask them to explain to you why the bloody shoeprints leading away from the bodies is size 12, his size. Where did all that blood come from? Why is it that when he spoke to Tom Lange he told Tom Lange that the shoes he wore the night before were white Reebok's. They put on a Defense and you would expect that if the man that Allan Park saw entering the Defendant's house that night was not the Defendant. You would have expected that they called that man to tell you that hey it was me. It wasn't the Defendant, right? And if O.J.
- 1190 Simpson didn't create or cause those thumps on the wall behind Kato Kaelin's house, then who did? It's the Defendant's property and when Kaelin comes out with that flashlight and when he finally sees the Defendant, the Defendant sure doesn't seem too concerned about those thumps on the wall. I mean Kato's frightened enough to grab a flashlight, he's frightened enough to tell the woman he's talking to on the phone that hey if I'm not back in 10 minutes call the police, worry about me. But when he tells the Defendant about these thumps on the wall he isn't too concerned about it he has Westec Security we know that because the police talked to Westec before they entered his house. Did the Defendant call the police to say hey I may have a prowler in my property? Did
- 1200 he tell Kato too? Did he call Westec his private security to come check this out? Did they? No. Why not? Because he knew, the Defendant knew who caused th thumps on the wall, it was him. And why did he lie to Allan Park about being asleep, he wasn't asleep. And their variety of questions, a variety of questions you ought insist they be answered, that should be answered for you by the Defense before you even consider acquitting this man of these very very brutal crimes. The whole thing with the cut in his hand, what a fluke that is. You gonna fall for that? They talk about cover-ups, that's a cover-up, that is a cover-up. A major major question in all of this is what happened to that little balck bag? Remember the bag on the driveway, at the driveway? The one Kato offered to go
- 1210 get that night just before the Defendant left for the airport. The Defendant said I'll get it, I'll get it. What happened to that bag? Has it been seen since? The Defense. Well we know that some of the luggage apparently taken to Chicago by the Defendant was seized by retired Judge Delbert Wong. Remember the Luois Vuitton bag? The one the Defendant came back from Chicago with, the one he

gave to Robert Kardashian, you saw it on tape. What happened to the little black bag? What happened to the contents of that Louis Vuitton bag? Remember? When you look at the tape you see Kardashian standing there in front of the Defendant's house and you can tell that that bag is full, but when that bag comes to Delbert Wong, to Judge Wong when it's pointed out to him, when it's

- 1220 seized by him months and months later there's nothing in the bag, the bag is empty. What was in that bag? And ask them to explain to you why it is, but if he didn't do it, why then is there a ton of evidence pointing to him and only to him. And ask them to explain to you hey that if this is a rush to judgment why then did the police go out to that house 8 times prior to 1989? Why didn't they ever arrest him? And if this is a rush to judgment why did the police stand out in front of the house, in front of 875 South Bundy that night for a couple of hours doing nothing as the Defense has asserted, doing nothing but waiting for Vannatter and Lange. That's a rush to judgment. This is no rush to judgment. Unfortunately this is just how things go those cops got out there to conduct the
- 1230 murder investigation and that investigation lead them to Rockingham, they followed the blood trail. Using your common sense anyone and when you evaluate all the evidence you should do the same thing and take a look at the crime scene and follow that blood trail. Because when you do you're gonna follow it right into his house, into his yard, into his bathroom, into his bedroom right into his lap and that blood trail went no where else, didn't go anywhere else and it didn't go to any other person. When I began this discussion with you last night, you know I talked to you about justice and what justice really means in this case and it just means doing the right thing under the Law, I mean basically that's all it means. Following his instructions, just do what he tells you to do, the
- 1240 way he tells you to do it and we'll be fine. And I spent hours talking to you and I've talked to you about that explosion, about that fuse as the fuse gets shorter. We've explained to you the opportunity and the means and the motive to do it and he did it and we discussed a little bit about the smoke, we talked about the smoke the Defense has put up you have to find your way through the smoke. One of the first things they're gonna tell you is that the Prosecution's case lasted 6 months and ours lasted 2 months, they're gonna tell you that. But you just keep in mind who cross-examined those witnesses for days and days and days about minutia, about minutia there was a lot of minutia in this case and you know it was because you didn't write it down. The Defense got lost in minutia and their
- 1250 attempt to confuse you and to raise a reasonable doubt. But let me explain justice to you this way and then I'll sit down and I'll be quiet. The People put on their case, the Defense put on their case and I said the Defense is a bunch of smoke and mirrors, it's all about distracting you from the real evidence in this case so imagine the smoke and imagine a burning house, ok. Imagine that you're standing in front of a burning house and from inside that burning house you hear the wail of a baby, a baby's cry, a baby in fear, a baby about to lose its mind and you can hear that baby screaming, you can hear that wail and that baby, that baby's justice. This is baby justice, now usually justice is a strong woman but in this case justice is just a baby. And you hear that baby and you hear that

1260 wail and you see the smoke you see the Defense there's all the smoke in front of you and you feel a sense, you have a sense of justice and you have a sense of what the Law requires and you have a strong commitment to justice and to the Law and you wanna do the right thing for justice is about to perish, justice is about to be lost, baby justice is about to be lost and so you start to way through that smoke trying to get to that baby. You got to save that baby, you have to save baby justice and if you happen to run into some smoke find your way through the smoke and if you happen to run into a couple of Defense attorneys along the way just ask them to politely to step aside and let you find your way through the smoke because the smoke isn't over, ok the smoke's about to get heavier

1270 beacuse they're gonna talk to you. Just use your common sense weigh through the evidence get down to the bottom line and please do the right thing. It has been an honor to appear before you and we will wait for your verdict.

**Judge Ito:** Thank you Mr. Darden. All right let me see counsel about the court [inaudible].

**Mr. Darden:** The Defendant could not leave a witness alive, alive to tell what he saw. He had to deliver the fatal blows and make sure that they were fatal. The Defendant surely didn't anticipate that Ron would be there that night. He came to murder Nicole. But once Ron showed up, he could not allow him to walk away with the knowledge of what he had seen. Ron was a witness who had seen what

1280 no one was supposed to see. Ron was the ultimate threat, so Ron had to die. And the intent to eliminate a witness, ladies and gentlemen, is a premeditated and deliberate decision. It is a cold and a calculated decision and it is not a decision that takes very long. As I pointed out before, the jury instruction tells you the law does not undertake to measure in units of time the degree of thought that goes into the thinking called premeditation and deliberation. And now you can see this is a perfect example of how such a decision can be made in mere moments. The Defendant has Nicole Brown down, Ron Goldman comes walking up with the envelope, a witness, and the decision is made, (*Snapped fingers*). That's all it takes. "I can't let him live. I can't let him stay alive." Ladies

1290 and gentlemen, this is strong and it's compelling evidence that proves that the murders of Ronald Goldman and Nicole Brown were premeditated and deliberate murders of the first degree. And I spoke to you before a little bit about direct and circumstantial evidence. This is what they call--well, this is a physical evidence case obviously and they call it circumstantial evidence. Now that I've reviewed all of the evidence, you can see what I'm talking about when I say a circumstantial evidence case gives you much more assurance of the guilt of the Defendant. And that is because of this. In a direct evidence case, you may have one eyewitness to tell you, "I saw it." That means you have one thing to rely on. But in a circumstantial evidence case, especially this one, you have many things

1300 to rely on. You have the blood at Bundy. You have the blood of Nicole on his socks. You have his blood on the rear gate at Bundy. You have Ronald Goldman's blood in his car. You have his hair on Ron Goldman's shirt. You have the fiber from his clothing on Ron Goldman's shirt, on his socks, on the

Rockingham glove. You have the Bronco carpet fiber on the Rockingham glove. You have the Bronco carpet fiber on the knit ski cap. The wealth of evidence in this case is simply overwhelming. If we only had the Bundy blood trail that matched the Defendant, it would be enough proof to find him guilty beyond a reasonable doubt. If we only had Nicole Brown's blood on his socks, that would be enough to prove him guilty beyond a reasonable doubt. If we only had Ron

- 1310 Goldman's blood in his Bronco, that would be enough to prove him guilty beyond a reasonable doubt. But we have all that and much more. And now, let me summarize for you what we have proven. One piece of the puzzle. We've proven the opportunity to kill. We've given the time window in which he was able to kill because his whereabouts were unaccounted for during the time that we know the murders were occurring. We have the hand injuries that were suffered on the night of his wife's murder to the left hand, as we know the killer was injured on his left hand. We have the post-homicidal conduct that I told you about, lying to Allan Park, making Allan Park wait outside, not letting Kato pick up that little dark bag, his reaction to Detective Phillips when he made
- 1320 notification, when Detective Phillips said to him, "Nicole has been killed." Instead of asking about a car accident, the Defendant asked no questions. We have the manner of killings, killings that indicate that it was a rage killing, that it was a fury killing, that it was not a professional hit, the manner of killing that indicates one person committed these murders, one person with the same style of killing. We have the knit cap at Bundy. We have the evidence on Ron Goldman's shirt of the blue-black cotton fibers, the Defendant's hair. We have the Bruno Magli shoeprint, size 12, all of them size 12, his size shoe, all of them consistent going down the Bundy walk. We have the Bundy blood trail, his blood to the left of the bloody shoeprints. We have the blood in the Bronco, his and Ron
- 1330 Goldman's. We have the Rockingham blood trail up the driveway, in his bathroom, in the foyer. We have the Rockingham glove with all of the evidence on it, Ron Goldman's fibers from his shirt, Ron Goldman's hair, Nicole's hair, the Defendant's blood, Ron Goldman's blood, Nicole's blood and the Bronco fiber and the blue-black cotton fibers. We have the socks and we have the blue-black cotton fibers on the socks and we have Nicole Brown's blood on the socks. There he is. I haven't even spoken--you haven't even heard yet about the motive. You haven't even heard the why of it, the why he did it. And you know he did it. Now, these murders did not occur in a vacuum, and it's very important evidence that you've heard in the beginning of this case. They occurred in the context of a
- 1340 stormy relationship, a relationship that was scarred by violence and abuse. And this important evidence completes the picture of the Defendant's guilt as it explains the motive for these murders and shows you what led this Defendant to be sitting here in this courtroom today. Thank you very much, ladies and gentlemen.

## Appendix L

### Johnnie Cochran's Closing Argument

1 **Mr. Cochran:** Judge Ito, my colleagues on the Defense, my colleagues on Prosecution, the Goldman family, the Brown family to the Simpson family. Good afternoon ladies and gentlemen.

**Jury:** Good afternoon.

**Mr. Cochran:** The Defendant, Mr. Orenthal James Simpson, is now afforded an opportunity to argue the case, if you will, but I'm not going to argue with you, ladies and gentlemen. What I'm going to do is to try and discuss the reasonable inferences, which I feel, can be drawn from this evidence. At the outset let me join with the others in thanking you for the service that you render, you are truly a innovative

10 jury, the longest serving jury in Los Angeles County, perhaps the most patient and healthy we've ever seen, I hope that your health and your good health continues. We met approximately 1 year and 1 day ago, September 26 1994. I guess we've been together longer than some relationships as it were but we've had a unique relationship in this matter that you've been judges of the facts, we have been advocates from both sides, the judge has been the judge of the Law. We all understand our roles in this endeavor that I'm going to call a journey toward justice. That's what we're gonna be talking about this afternoon as I seek to address you. The final test of your service as jurors will not lie in the fact that you stayed here for more than a year it will lie in the quality of the verdict that you render and whether

20 or not that verdict that speaks justice as a move toward justice. Now you recall during a process called voir dire examination, each of you were fairly questioned by the lawyers, you probably thought, gee I wish they'd leave me alone but you understood I'm sure that this is very serious business our client Mr. Orenthal James Simpson is on trial for his life and so we had to be very, very careful on both sides and trying to get people who could be fair to both sides. You recall those questions that you keep an open mind which I hope you still have even to this day, that you wouldn't be swayed by sympathy for, a passion against either side in this case, that you would give both sides of this lawsuit the benefit of your individual opinion, no one, no one can tell you what the facts are that's going to be your job to determine.

30 It's not a question of age or experience, we talked about that this is one of those jobs where you kinda learn on the job. And so it's important that you fully understand that and that's why voir dire was so very important as we asked you all those questions before you were sequestered before you were actually picked. Now each of you filled out the questionnaire and you answered the questions honestly I'm sure. [Inaudible] a long time ago that he who values his oath profanes the divinity of faith itself and of course both sides of this lawsuit have faith that you look up to your promises and I'm sure you'll do that. Abraham Lincoln said that jury service is

the highest act of citizenship. So as any consolation to you, you've been involved in that highest act of citizenship and so again we applaud you and we thank you as we

40 move toward justice. One other [inaudible] a group of ladies, two ladies that I should thank our marvelous court reporters they have been patient with us, they've been here from the very beginning we very much appreciate them and their services and I especially appreciate them because I sometimes speak rather rapidly and they have a tough time keeping up with me, so I trust that today if I start to speak too fast in my zeal Miss Markson and Chris will bring it to my attention I'm sure they will. Now in the course of this process while we're discussing the reason of the inferences of the evidence I ask you to remember that we're all advocates, we're all officers of this court. I will recall the evidence and speak about the evidence. Should I mistake that evidence? Please don't let it against Mr. Simpson, I

50 would never intentionally do that. In fact, I think you'll find that during my presentation, unlike my [inaudible] colleagues on the other side, I'm going to read you testimony, what the witnesses actually said, so there'll be no misunderstanding about what, about certain key things but remember that we're all advocates and I think it was Miss Clark who said "saying it so, doesn't make it so" if that applies very much to their arguments. Ultimately it's what you determine to be the facts is what's going to be important and all of us will live with that, you are empowered to do justice, you are empowered to ensure that this great system of ours works. Listen for a moment, will you please. One of my favorite people in history is the great Frederick Douglass. He said shortly after the slaves were free, quote "In a

60 composite nation like ours, as before the law, there should be no rich, no poor, no high, no low, no black, but common country, common citizenship, equal rights and a common destiny." This marvelous statement was made more than 100 years ago. It's an ideal worth striving for and one that we still strive for. We haven't reached this goal yet, but certainly in this great country of ours, we're trying. With a jury such as this, we hope we can do that in this particular case. Now in this case you're aware that we represent Mr. Orenthal James Simpson, the Prosecution never calls him Mr. Orenthal James Simpson, they call him Defendant. I wanna tell you right at the outset that Orenthal James Simpson like all defendants is presumed to be innocent, he's entitled the same dignity and respect as all the rest of us. As he sits

70 over there now he's [inaudible] in a presumption of innocence you will determine the facts of whether or not he's set free to walk out those doors or whether he spends the rest of his life in prison. But he's Orenthal James Simpson he's not just the Defendant and we on the Defense are proud and consider it a privilege to be part of representing him in this exercise and this journey toward justice make no mistake about it. Finally I apologize to you for the length this journey has taken but you know when you're seeking justice there are no short cuts. If you were to take places with either side you'd want someone to fight hard and vigorously, especially who was a person who had maintained their innocence from the very beginning of the proceedings. Some of you in voir dire talked about that where you'd been involved

- 80 in other cases where you felt the lawyers didn't stand up. Last let me hope that in this case on both side we thought the lawyers did their best, to represent their respective positions and we will continue to, I'm sure to do that, so that although I apologize for the length of the trial I hope and I trust that you will understand that in a journey toward justice there is no short cut. Fairly with regards to your responsibilities we asked you at the very beginning to don't compromise. This is not a case for the tender or the weak of heart, this is not a case for the naïve, this is a case for courageous citizens who believe in the Constitution and while I'm talking about the Constitution think for a moment how many times you've heard my [inaudible] say the Defense didn't prove, the Defense didn't do this, the Defense
- 90 didn't do that. Remember back in voir dire? What did the Judge tell us? Judge Ito said the Defense could sit here and do actually nothing. One of you, from Missouri, and he reminded you, who's from Missouri here? Save the Prosecution, you show us, we didn't do that, we don't have an obligation, as you'll see, you've heard from the jury instruction that at the end I will show you some others. We don't have to do anything, we don't have to prove anything. This is the Prosecution's burden and we can't let them turn the Constitution on its head, we can't let them get away from that burden. My job, one of my jobs is to remind you of that and remind them of that, that that's their burden. They must prove Mr. Simpson guilty beyond a reasonable doubt until moral certainty and we will talk about what a reasonable doubt means.
- 100 And so now as we have this opportunity to analyze the facts of the case I agree with one thing Mr. Darden said to this task I ask you to bring your common sense. Collectively the 14 of you have more than 500 years of experience, I know you're all young but the 14 you won't hold it against me I don't think. 500 years of experience you didn't leave your common sense out in that hallway when you came in here. We're gonna ask you to apply it to the facts of this case. I'd like to comment and to compliment Miss Clark and Mr. Darden on what I thought were fine arguments yesterday. I don't agree with much of what they said, but I listened intently, as I hope you'll do with me. And together, hopefully these discussions are going to be helpful to you in trying to arrive at a decision in this case where you
- 110 don't compromise, where you don't do violence to your conscious, but you do the right thing. And you are the ones who are empowered to determine what is the right thing. Let me ask each of you a question. Have you ever in your life been falsely accused of something? Have you ever been falsely accused? Ever had to sit there and take it and watch the proceedings and wait and wait and wait, all the while knowing that you didn't do it? All you could do during such a process is to really maintain your dignity; isn't that correct? Knowing that you were innocent, but maintaining your dignity and remembering always that all you're left with after a crisis is your conduct during it. So that's another reason why we are proud to represent this man who's maintained his innocence and who has conducted himself
- 120 with dignity throughout these proceedings. Now, last night, as I thought about the arguments of my colleagues, two words came to mind. And I want to--I asked my wife this morning to get the dictionary out and look up two words. The two words



were "Speculative" and "Cynical." Let me see if I can get those words that she got for me. I asked her, while I was thinking about this case, to go to Webster's and I want you to tell me what does it mean to "Speculate", what does it mean to be "Cynical" as I thought about my colleagues arguments and their approach to this case and their view of this case. Cynical" is described as "contemptuously distrustful of human nature and motives, gloomy, distrustful view of life." And to "Speculate" to speculate, to engage in conjecture and to surmise is to take to be the

130 truth on the basis of insufficient evidence. I let you know those two definitions to you because I felt that much of what we heard yesterday and again this morning was mere speculation. Understand this ladies and gentlemen that none of us in this courtroom were out at 875 Bundy on June 12<sup>th</sup> 1994 after 10:30 or 10:45 in the evening. So that everything we say to you is our best effort to piece together what took place in this case. When people theorize about things that may have been and talk to you about short fuses you're gonna see, that's just that, it's speculation. People see things that are totally cynical. Maybe that's their view of the world. Not everybody shares that view. Now in this case and this is a homicide case and a very, very, very serious case and of course it's important for us to understand that. It is a

140 sad fact that in American society a large number of people are murdered each year, violence unfortunately has become a way of life in America and so when this sort of tragedy does in fact happen, it becomes the business of the police to step up and to step in and take charge of the matter, a good, efficient, competent non corrupt police department will carefully set about the business of investigating homicides, they won't rush to judgment, they won't be bound by an obsession to win at all costs. They will set about trying to apprehend the killer or killers and trying to protect the innocent from suspicion. In this case, the victims' families had an absolute right to demand exactly just that in this case. But it was clear unfortunately that in this case, there was another agenda. From the very first orders issued by the LAPD so-called

150 brass, they were more concerned with their own images, the publicity that might be generated from this case than they were in doing professional police work. That's why this case has become such a hallmark and that's why Mr. Simpson is the one on trial. But your verdict in this case will go far beyond the walls of Department 103 because your verdict talks about justice in America and it talks about the police and whether they're above the law and it looks at the police perhaps as though they haven't been looked at very recently. Remember, I told you this is not for the naive, the faint of heart or the timid. So it seems to us that the evidence shows that professional police work took a backseat right at the beginning. Untrained officers trampled--remember, I used the word in opening statement--they traipsed through

160 the witnesses, through the evidence. And it's interesting because Prosecution didn't agree with that at the beginning but later on in this trial we heard Mr. Goldberg talking to witnesses use my words tracing through the witnessing last seen there at Bundy. He used thy words because it understood we knew we're talking about, we were able to demonstrate it through the videos. They delayed [inaudible] routine procedures in notifying the coroners; they didn't call the criminal on time and yes

allowed this investigation to be infected by a dishonest and corrupt detective. They did that in this case and they may try to back all they want but that's very important as you're gonna see to this case in the resolution of my client's innocence. Because of their bungling, they ignored the obvious clues. They didn't pick up paper at the

170 scene with prints on it. Because of their vanity, they very soon pretended to solve this crime and we think implicated an innocent man, and they never, they never ever looked for anyone else. We think if they had done their job as we have done, Mr. Simpson would have been eliminated early on. And so this case is not, let me say at the outset, is not attacking the Los Angeles Police Department, we're not anti-police in making these statements, you're not anti-police, we all need the police, I've just said we have so much crime in this country we need the police but what we need, what we must demand, what all of us should have are honest, effective non-biased police officers. Who could demand less? Can any of you say that's not what we should have? And so let me tell you about how we're going to proceed here this

180 afternoon. The Defense has one opportunity basically to address you this is after the prosecutors are finished. I will address you first and after I'm concluded and I'll talk generally of the late witnesses and an overview of the evidence of what you've heard. I was trying not to bore you, I was trying through the honest of my discussions to be relevant, to be concise of what we talk about here. When I'm finished Mr. Barry Scheck will come before you and address some of the forensic issues. And then finally after Mr. Scheck finishes I'll come back and conclude some concluding remarks regarding what you've heard over the course of the last two days anyway. Now you understand that because the Prosecution there's the burden, in this case and in all the cases Miss Clark will argue last to seek to rebut that which

190 we bring up and presumably she won't be back up here talking about all kind of new things. Seek to rebut that we'd bring up. Let me tell you in front. If she brings up anything we may be precluded by standing up and saying wait a minute your honor here's the answer to that but you can then substitute your common sense, your judgment in that place and that's required in this journey toward justice. Now, at the outset, let's talk about this timeline for the Defense. I said earlier that Mr. Darden did a good job in his argument, but one thing he tended to trip over and stumble over was when he started to talk about our case. He doesn't know our case like we know our case. It was interesting, wasn't it, because first he stood up and started talking about the timeline being at 10:15? Then he said, well, they didn't prove

200 anything, but, "Golly, well, it may have been as late as 10:30." That's interesting, isn't it? Never heard that before. You look back and see what Miss Clark promised you a year ago. 10:15, 10:15 was all they talk to you about and they were gonna use because of the incompetence of this investigation the wail of the dog. So we've been relegated to in this case because of this very, very poor investigation but having said that the Defense doesn't have to prove anything in this case, we did in fact. And so Mr. Darden could talk all he wanted to about his theories about motive. They're just that, it's speculative theories about motive but when it came down to the end he wasn't talking about motive, was he? He was trying to talk about our timeline. Why

would he do that? Let's talk about why he would because the Defense in this case

- 210 called many witnesses who corroborated each other and who shattered the Prosecution's timeline. Now these are witnesses to a person who were known by the Prosecution but discarded by the Prosecution. Why? Because they didn't fit. Their torture, narrow window of opportunity. So when you'll visualize for me that jigsaw puzzle where they want to reduce this case to a jigsaw puzzle, the part that deals with opportunity is the timeline. We're gonna start off with that because in the search for truth, let's look for the truth, not some contorted, twisted truth but the real truth, the facts that you've heard during the course of this particular case. We think after you look at this timeline for the Defense you will agree with our earlier analysis. This is a case of about a rush to judgment, a case where there's been an
- 220 obsession to win at all costs and in the words of Dr. Henry Lee "something is wrong with the Prosecution's case." Let's start off with Francesca Harman. Francesca Harman is the lady who left the dinner party on Dorothy at about 10:20 p.m., she drove West on Dorothy and Bundy and turned North on Bundy. So she reheaded North toward 875, she saw nothing, heard nothing, no barking dogs. So lady known of course to both sides and so you see this graphic regarding Francesca Harman, I think to [inaudible] with that. I think at 10:20 that's the approximate time that you would pass by or near Nicole Simpson's home there, you see it with the X mark there in this graphic. That's Miss Harman. We followed Francesca Harmon with Ellen Aaronson and Dan Mandel, remember the two people who had been on their
- 230 first date, they'd gone to Mezzaluna and they were interesting young people. I think you would find incredible and by the way you hold all witnesses up to the same standard. No side has a priority on the truth, these are witnesses known to both sides. We're the ones however who elected to call them and bring them here for you. You know how they walked home form this first date at Mezzaluna, walking directly by the walkway at 875 South Bundy and they said they passed by there, they were clear, they passed by there at 10:25 and you'll see the little kind of purple lines, shows you the route they took. So they pass right in front Mrs. and you' Nicole Brown Simpson's house at 10:25 and you'll remember they continued on so they were over on Darlington Street by 10:29. She said them it took the about 4
- 240 minutes and the time they passes 875 South Bundy to get home that evening, this was their first date and I guess as I recall this was also their last date. They saw no blood, they saw no barking dogs. I submit to you if the bodies had been there they could have been seen. Now why do I say that? I say that because we have a contact print in evidence. I gonna ask Mr. Harris if he can to show us this contact print, this is an item you'll be able to take back in the jury room. This is a photograph take by Mr. Rokahr at night and it will let you see, Mr. Harris gets it focused, that scene that particular night what you could see regard to this body, your honor you may wanna cut the feet on part of this. This exhibit no. 86 was a photograph that we got late in the trial of Mr. Rokahr, the photographer was called by us. You see that document
- 250 over there, that's a contact sheet. We talked about all these photographs in sequence in this first role were taken at night. This is gonna be a very, very important role for

you s this case progresses. This is a photograph at night of what you could see from across the street and there were lights in and around there. And so when Mr. Darden stands up here as an advocate and tells you it was pitch black and you couldn't see anything, this is the photograph that was taken before the sun came up. This photograph was taken at night, it's not pitch black. We know also that according to the evidence blood had flown down that walkway, there were blood paw prints that went South bound on Bundy there. So you see that photograph, you see that photograph, now you could be an advocate, we're all sworn to do the right thing.

260 We talked about his oath, your oath is also to tell the truth, it's not pitch black. We have the evidence and I'm gonna try and do that throughout, whether they have mislead you or said things that weren't correct, I'm gonna try to straighten it out for you. Miss [inaudible] why don't you tell the court now what number that is. It's no. 1369 and that's Mr. Rokahr. We're gonna come back to some other photographs on that but you'll recall his testimony. The reason why 1369 is so important is because it is undisputed. That at 10:25 Mandel and Aaronson walked past there. If there was blood down on that sidewalk, if there had been a killing taken place, if there were dogs barking or wailing, don't you think given that and you'd been out there, you'd see it. So the time has come now to stop all this folly and fantasy. Let's deal in

270 reality and in the facts of what took place and what you can see with your own eyes. I don't want you to speculate or theorize when I sit down I want you to understand what the facts are of this case. After that we had Denise Pilnak and Judy Telander, you know I think again as advocates we have a responsibility to treat all of these witnesses with respect. These people didn't ask to come down here, these people don't ask to be malign, don't really think anybody really wants that, with the exception of one or two and most of them were called by the Prosecution. So with Denise Pilnak the lady who wore two watches comes in here as tells you I ask you to judge our credibility like you do all the witnesses, the court is instructed you, you hold all witnesses up to the same standard, you look at the reasons of that they have

280 to say, you look at their bias or interest, you look at their demeanor on the stand. You use your common sense; you use your visceral reaction if I can use that word to make a determination of whether or not you think this person is telling you the truth. None of these people know or knew O.J. Simpson, with exception of the people were together, they don't know each other, they're witnesses, available to both sides but in the search for truth we're the ones that subpoenaed them and brought them in. Let's look at Denise Pilnak. She tells you that she was at home with her friend Judy Telander. She's across the street from 875 South Bundy, she's South and across the street, you recall that. She spoke of how eerily quiet, eerily quiet. Remember those words? It was at about 10:24 p.m. when Telander left her house and she

290 remembered that because she wanted to get Telander out of there, she's been there all day and she wanted to use the computer or something to type some letters. Remember that? So she went outside on the porch with Telander as I recall and Pilnak just didn't come to you and tell you that, Pilnak did something else. She, and I believe your honor that's exhibit 1237, she showed us.

**Judge Ito:** What records.

**Mr. Cochran:** The phone record, your honor. She showed us that she got on the phone as soon as Pilnak left and called her mother. Remember she said. In Gardena. And you look there on June 12<sup>th</sup> at 10:25 p.m. she made a call to Gardena. She was able to fix the exact time that her friend left and she said to us something very

300 interesting. That there was quiet when her friend left and the quiet continued for at least another 10 minutes. So that would be 10:25 to 10:35 at the earliest. She says that at 10:35, it's the first time she heard dogs barking loudly, that particular night. And so that she as you will see along with Robert Heidstra, confirm each other, they don't necessarily know each other but they confirm each other, as to when this barking really, really began. Now they weren't laying in bed and had been asleep like Eva Stein, they weren't like Mrs. Elsie Tistaert who was across the street, who didn't really know what was happening. These are people outside or in that area who can come in here and tell you why they remember these particular times. They were wide-awake, up and about, outside around the time when this barking took

310 place. Let me call this man Robert Heidstra, you know because it came up, that Robert Heidstra had been talking to the Prosecution. You know what he said, now this is the man, an interesting man, who details cars, he's the man well-known to the Prosecution, remember he talked to detective Paine almost right away during that investigation, to Paine and he told Paine the same thing he told you in the course of this trial because what he said he says that he lives near by and he has these two elderly dogs, one of whom I recall was 14 years of age. So these dogs walk kinda slowly, remember that, he walks and takes this route. That graphic up there shows you the route he takes. Remember he told you he left home a little but late that particular Sunday evening. At 10:15 he leaves home and he proceeds on this route

320 and you know he's in that alleyway that runs parallel with Bundy and he knows this neighborhood, he's been doing this for more than 14 years, he knows not only the neighborhood, he knows the dogs, he knows their barks, he knows the gates, he knows when they clink, he knows all of that. Isn't it an interesting situation when you thought that of all the witnesses in this trial, in this journey toward justice this is the only witness that ever heard any voices but they didn't call him. you know why? Because it didn't fit in their timeline, as you're gonna see. And so he tells you that, and you'll recall, he's directly opposite Mrs. Nicole Brown Simpson's condo in that alley when he hears what he believes is the Akita starts barking and that's at about 10:35 p.m. He recognizes he says the Akita's bark, says he walks that way, that

330 same way each and every evening. So while in that alleyway East of 875 South Bundy hears a voice yell "hey, hey, hey" he says he then hears a gate slam. Now he goes on and says that at about 10:40, 10:45 he sees this white vehicle, which he describes clearly as a van or a jeep. Now they were trying to tell you all these things about a Nissan Bronco but he never said anything about any Bronco he said a van or a jeep and the important part was, is what he tells the detective but he says it goes

South bound on Bundy away from where Mr. Simpson would live and could you imagine in this area, in West Los Angeles, in Brentwood the number of white vehicles there are and there must be in that particular area. But the reason why they didn't call him because at 10.45, at 10:45 O.J. Simpson cannot be guilty of this

340 crime, can he? And how do we know that? How do we know that, ladies and gentlemen? Well, yesterday in her zeal and advocacy Miss Clark tried to push the time back from 10:40 or 10:45 that Kato heard those thumps, she tried in her chart there to push it back remember to 10:53, some of you were probably surprised. There's been no testimony about that. So let me tell you, let me quote for you. Counsel this is page 19873. This is Miss Clark talking to one of her favorite witnesses Mr. Kato Kaelin. By Miss Clark: "What happened with that picture when the thumps occurred? The picture tilted from that would be from right to left, the pictured moved." Answer: "Yes, it did." "At that point that you heard the thumps on the wall, sir approximately how long had you been on the phone with Rachel

350 Ferrara?" Remember he started, he called his friend, he called his girlfriend. About a half hour, this is after he went back in the house he called his girlfriend. "And so approximately what time was it when you heard the thumps on the wall?" Answer by Mr. Kaelin: "At about 10:40." At about 10:40. Now this is the time when the dogs were starting to bark over there. At about 10:40. "Is that exact 10:40?" Miss Clark says. "Well, what I remember I didn't look at the clock but around 10:40. Question: "Do you recall, previous in testifying, that it was 10:40 to 10:45?" Answer: "Yes." Question: "Ok and is that correct?" Answer: "Yes." Now that's their witness, that's their witness, that's what he has to say, no question he's there, they know he's there, you know he's there, they don't call him. What about this

360 search for truth. Can they handle the truth? You will be making that kind of decision. And so we didn't know according to this, that by the time Heidstra sees this vehicle turn South on Bundy, Kato Kaelin has already heard the 3 thumps on the Rockingham wall outside of his room and you know that's so interesting because yesterday Miss Clark tried to change how those thumps sounded, and now remember this is something that you will never forget probably. I will come all the way over there but just let me see if I can duplicate. Kato Kaelin said he said how those thumps sounded [Cochran using his knuckles to make the sound of the thumps] one, two, three except he used that big place up there. He said they were thumps, almost like a signal. One, two, three this is what he had to say. And of

370 course you recall that, your notes are much better than ours, I'm sure. Apparently the Prosecution in their zeal, their obsession win would have you to believe that Mr. Orenthal James Simpson is so amazing that he can be in two places at the same time, even though they are miles apart and when Darden was talking to you today, remember he used Heidstra to say well that on a Sunday evening he could make it over there in about 4 minutes and he said that in their own drive through that Vannatter did it took between 5 to 6 minutes. You saw it, it's close to 6 minutes, we didn't tell you that again today and if you wanna get a flavor for how we heard the word desperate a couple of times but how witnesses were treated. It's ordinary

witnesses, regular citizens. Let me share with you a transcript regarding Heidstra.

- 380 Counsel I'm gonna be looking at 36368 through 36370. This is how Mr. Darden treated this witness, who helped to shatter their timeline and establish O.J. Simpson's innocence. "Didn't you tell us yesterday that the voice was a youthful voice?" "Yet sounded like a young voice, ok." "When you heard that voice you thought that that was the voice of a young white male, didn't you?" And there was an objection, you may recall. The voice sounded like the voice of a white male, Mr. Darden said. Answer: "How could I say that it is a white male, I don't know the voice, it could be anybody there?" "Of course did the jury ever tell Mr. Stevens, my investigator, that it sounded like a white male?" Answer: "No. Never saw Mr. Stevens come in here and say that. Never said that?" Answer: "I don't recall that at
- 390 all. I said it was a clear voice but never what kind of white or brown or yellow." "And then there was that second voice, correct?" "Right". "And that second voice that voice sounded deeper than the first voice, didn't it?" Answer: A little bit but I couldn't hardly hear it with the dogs, the commotion, with two dogs there, it was very short. Did you ever tell anyone the second voice was a deep voice? Answer: "It was deep, it was deeper than the other one than hey, hey, hey." "Ok" Then we get to the question. At line 22 counsel. "The second voice that you heard sounded like the voice of a black man, is that correct?" [Inaudible] Witness: "Of course not." Now, you know, we can be advocates. Those questions nobody ever came in to impeach that man. He told you he heard two voices, he told you when this took place, he told
- 400 you why, because he walks his dogs, he knows that neighborhood. A search for truth, you see their job is not just try to convict, their job as Prosecutors is to make sure the innocent go free also, to make sure all of the witnesses come to your attention, as we've had to do in this case. So you can see that these responsible citizens witnesses who came before you were at times treated roughly and ridiculed and attacked by the Prosecution in their obsession to win. You don't think Heidstra was attacked as being asked the question some are of effect "are you a citizen here"? Because he's from France apparently and something about his job and his little apartment, because he's a car detailer. Everybody is entitled to dignity, that's what we fought for in this country, you don't treat witnesses, we just come in here they
- 410 don't get paid to tell the truth like that, just purely and simply cause they're not saying what you want them to say, in your contorted version of what the truth ought to be. But you saw that yourself, I don't have to tell you about it. [Inaudible] enough they chose not to mention even one of the Defense witnesses in Miss Clark's discussion of her timeline. The Prosecutors noticed that none of their timeline witnesses asked to be involved in this case. Well, none the witnesses that we call asked to be involved on this case, they came forward, you saw how they were treated but yet they told you what they observed. But perhaps the most important thing about them, as these aren't any family members, these aren't people who know O.J. Simpson these are people who happen to be out there that particular
- 420 night, and I think you can now see from that graphic. Have they all passed by there? We tried to make it as clear as we could. It's common sense; it's common sense just

like he said. Becomes very, very clear right at the outset. So if you accept the Prosecution scenario there's not enough time for O.J. Simpson to commit these murders given the evidence that we don't understand. Let me just [inaudible] in the beginning to help you understand where I'm going on this. Remember Bodziak that they liked to talk about so much. F. Lee Bailey crosses Evan Bodziak the first time he was here they barely got attempt to say this remarkable thing about whoever left out that back gate turned and went back the other way. It's pretty interesting because I didn't see all those prints but that's what he says, they went back to the

430 scene, remember that. That's what Bodziak said. Darden it said this morning. The killer or killers that went that way, they weren't in any hurry; they went that way and then came back. You take that along with the fact that credible evidence regarding this struggle, it took between 5 and 15 minutes and that's what Dr. Henry Lee, Dr. Michael Baden said. They not only told you that, they showed you why that was true. You know well long about it when I just to digress for just a moment. Mr. Darden talked this morning about calling witnesses and not calling witnesses, isn't that interesting now they're the Prosecutors, they're the ones who have the burden. In the history of man run not to the contrary. Nobody around here can remember any time that the coroner who did the autopsy, the actual autopsies on

440 these bodies wasn't called by these Prosecutors. What do you think that was? They didn't call the coroner, they chose instead to call Dr. Lakshmanan who came in here, they showed you what they thought about him, they talked about this man so badly, for 8 days we heard Dr. Lakshmanan talk to you, they talk about time in this trial let me put that in perspective for you. For 8 days Lakshmanan sat on that stand and went through direct examination by Brian check your notes if you think I'm wrong about that. Bob Shapiro got up and took three and a half hours and demonstrated because at the end of the day Lakshmanan told you this, well these were deaths that were caused by stab wounds and the time of death was between 9:00 and 12:00. There were also those discussions about big ticket items and big

450 ticket items and when you get back to the jury room you'll have a lot of fun trying to figure out all of those red and blue marks they drew all over the coroner, they spent 8 days trashing their own coroner and they didn't call him. Now why is that in this search for truth? Because somebody else who's not even there at the autopsies, who has the benefit of our experts Michael Baden and Barbara Wolf who point out to him the mistakes that Golden has made. He didn't runs in here and testifies about those mistakes that we had discovered. Remember ladies and gentlemen in this search for truth our experts were in place right away. O.J. Simpson was paying for these experts to find the killer or killers and you'll recall the evidence that Dr. Lee, Michael Baden, Barbara Wolf were offered them at the beginning. So the idea is

460 that from the beginning there was this search for truth. And so I mentioned that apparent at this point because I think it's important to talk about not calling witnesses in every murder case it's basic you gotta call the coroner. But they did a number of things in this case, ladies and gentlemen, that had never been seen before. Off the top of our heads four detectives going to the scene to notify somebody



who's not even the next [inaudible]. The detective carries blood 25 to 30 miles around in his pocket. They do things that you've never heard of before in this case. Is it because it's Orenthal James Simpson? And so as we look then at the timeline and the importance of this timeline, I want you to remember these words. Like the defining moment in this trial, the day Mr. Darden asked Mr. Simpson to try on those

470 gloves and the gloves didn't fit, remember these words; if it doesn't fit, you must acquit. And we are going to be talking about that throughout. So to summarize, if you take the witnesses who we presented who stand unimpeached, unimpeached, and if you are left with dogs starting to bark at 10:35 or 10:40, 10:40 let's say--and we know from the most qualified individuals, Henry Lee and Michael Baden, this was a struggle that took from 5 to 15 minutes. It's already 10:55. And remember, the thumps were at 10:40 or 10:45--O.J. Simpson could not be guilty. He is then entitled to an acquittal. And we have talked to you and you've heard from the court and my colleagues talked to you about this whole idea of circumstantial evidence. I wanna talk a little more about that now. We have shown you the incredible evidence that it

480 would be impossible, O.J. could not, would not, did not commit these crimes. And where you have a circumstantial evidence case this becomes very, very important. The Prosecution then must disprove our timeline beyond a reasonable doubt and if they don't you must acquit. You would then be entitled to an acquittal. So let's see if we can look quickly at this jury instruction sufficiency of circumstantial evidence generally. Mr. Douglas is gonna help me today. It's called sufficiency of circumstantial evidence generally and to be as accurate as possible let me loot to all of it. Let's [inaudible] one portion than the other and together we can consider it. This is the Law that your honor has already given you as relates to circumstantial evidence which this is in this case about opportunity to commit these crime.

490 However, a finding of guilt as to any crime may not be based on circumstantial evidence unless the proved circumstances are not only (1) consistent with the theory that the defendant is guilty of the crime, but (2) cannot be reconciled with any other rational conclusion. Further, each fact which is essential to complete a set of circumstances necessary to establish the defendant's guilt must be proved beyond a reasonable doubt. In other words, before an inference essential to establish guilt may be found to have been proved beyond a reasonable doubt, each fact or circumstance upon which such inference necessarily rests must be proved beyond a reasonable doubt. Also, if the circumstantial evidence [as to any particular count], either one of these counts, is susceptible of two reasonable interpretations, one of which points to

500 guilt and the other which points to innocence, you, as jurors, must adopt that interpretation which points to the defendant's innocence, and reject that interpretation which points to [his] guilt. If, on the other hand, one interpretation of such evidence appears to you to be reasonable and the other interpretation to be unreasonable, you must accept the reasonable interpretation and reject the unreasonable. I put that up at this very moment because you've just seen the timeline, which is circumstantial evidence of O.J.'s innocence because he couldn't have done the crime given this time. So under that scenario even if the Prosecution's

timeline was reasonable, if they're both reasonable, that you must agree ours is reasonable becomes your duty to adopt that, which points towards innocence. But

510 even further if theirs is unreasonable and ours is reasonable he's still entitled to an acquittal. The only way they're entitled to a conviction if ours is unreasonable and theirs is reasonable and I think you can see and understand that's not true, that shouldn't happen, that's not the facts of this case. So before I look at their timeline let me see if I can just summarize what I believe the Prosecution has tried to tell you about their theory in this case. This is just kinda rough but listening to them yesterday they tried to tell you that, that an insanely jealous man stalks his ex-wife, stabs her and a male visitor in a murderous rage, leaves a trail of blood to his home, barley catches a plane to Chicago in a rush to go there leaves one glove at the murder scene and one glove behind his house. Then the Defense of this case you

520 have heard evidence about O.J. Simpson's great life. Not only did he have a great life, he had a great day that day, playing golf, comes back from being out of town all week long, he comes back to go to his child's recital, he goes to that recital, prepares in the evening, get something to eat, a hamburger, by the way I have to stop at this point. I'm glad Miss Clark doesn't know this but you know if you've ever been to McDonald's they don't like you to bring a hundred dollar bills in there, you know, you can't get a hundred dollar bills changed there, generally. So some of these things about common sense some people don't know.

**Ms. Clark:** Objection.

**Judge Ito:** Beyond the evidence here. Proceed.

530 **Mr. Cochran:** Use your common sense about the last three places. He then takes a shower, [inaudible] his plane in Chicago, someone murders his wife and this male visitor for reasons unknown in this trial, and they seek to implicate him as the most obvious suspect. The investigation becomes a tragic combination of sloppy errors and cover-ups trying to achieve his conviction. There's gonna be pretty much the hypothesis that you've heard and will be hearing in this case. Under whatever scenario based on what I've already told you in this first hour of the argument. This man is entitled to an acquittal but let's now turn briefly to the Prosecutions timeline scenario. And you heard Miss Clark yesterday talk about this timeline and talk about these witnesses and she relies very heavily on this Pablo Fenjves. You remember

540 him, he's one of the early, early witnesses who started off talking about a plaintive wail of a dog at 10:30 and it got pushed back to 10:15. What's interesting because now Darden not Marcia Clark has now come back and conceded well you know maybe it really was later, they did a pretty good job. You know so he's saying that but Fenjves told us that he's in that alleyway, down the alleyway at across from Nicole Brown Simpson lives, 10:15, 10:30 whatever 10:20. Eva Stein, next door, was asleep, claimed she was awoken, you ever wake up at night you might see the time right you might not. She says about 10:20 or so she thinks she hears dogs barking. What I presume the dogs bark throughout that neighborhood all the time

and we don't know and that's the problem we're trying to convict somebody or set

550 the time of death by a dog barking. Louis Karpf, her boyfriend comes home, some time after 10:20 and then of course Miss Elsie Tistaert, the lady from across the street doesn't know when or what was precisely she heard the barks. Then there's Mark Storfer. And Mark Storfer's an interesting man because you remember he's the man who always set his watch 5 minutes fast he says, presumably. He told us in testimony, counsel 17190, says at 10:28 that's when I looked at the TV, which was a couple of minutes after I'd gotten in the room, right, ok. And then he talks about "I looked out the window of our bedroom that faces North Bundy to see if I could see where that dog was or what was going on, it was pretty dark and I couldn't see anything unusual and I couldn't locate the dog. I also looked out the West facing

560 window of our bedroom to see if the dog was further over to the West. We face the alley on the West side and I could not see anything at that time either." Now this witness becomes kinda important, doesn't he? Because the Prosecution is gonna tell you that no matter what time it is whether it's 10:40 or 10:45 or whether it's 10:15 or 10:20 or 10:25 Mr. Darden makes this big quaintly. The Bronco was there. Where's Mark Storfer? Who looks down that alley and, what exhibit is this Mr. [inaudible] do you know? Exhibit no. 38 your honor. This is looking North bound down that alleyway. You recall this because we've all been out there and you recall where Mrs. Nicole Brown Simpson's condo is located and you recall it's sitting out in the driveway there, right there is a black Cherokee as I recall and you see this

570 man can only look up this alleyway, he didn't see any white Bronco. Nobody ever tells you about any white Bronco parked back there, they don't tell about any car parked back there. So when you see people tell you about mountains of evidence and oceans of evidence, their oceans soon become little streams, their mountains become mow hills when you look at the facts. And so we go on and in addition to Mark Storfer and looking up that alley and seeing nothing or seeing no car or didn't see a dog we hear about the other witnesses which become pretty much part of the timeline. Miss Clark does take some licenses regarding time, she says that Mr. Goldman leaves Mezzaluna she says at about 9:50 p.m. says he goes home and changes clothes that he talked to Stewart Tanner about getting together later that

580 evening, remember that? Talked about going to Baja Cantina at the Marina. You know wouldn't you think it would be logical to expect if you worked all day you going home and change clothes you might of shower, you might have got something to eat. Especially if later on when you hear Mr. Scheck you look at the amount of food, undigested food that is still in the stomach of these two victims. But in a rush to judgment, in a rush to contort these facts, Miss Clark tells you yesterday let's give him 5 minutes, he's been working all day, he's gotta change clothes, he's gotta get home, let's give him 5 minutes or 10 minutes, she says let's give him 10 minutes. That seems to me to be really, really fast and what it really is ladies and gentlemen is more of that speculation, she doesn't know how long Mr. Goldman

590 was there, none of us know that, we know he changed clothes, she has absolutely no idea. So you understand that when somebody says something like that to you. And

then as part of their timeline she tells you yesterday that there's something sinister in Mr. Simpson's seeking change to buy a Big Mac from McDonald's. I suppose that if you're in this jealous rage, if the fuse is running so short, it's interesting isn't it to stop go get a hamburger at McDonald's, does that make any sinister to you. To make anything sinister to drive to McDonald's, there's no evidence he tried to tell Kato Kaelin not to come. The evidence is that these two men got in the Bentley and went to McDonald's, the evidence is that while O.J. Simpson is in this murderous rage he's worried about money to tip the skycaps at the airport 'cause he has one

600 hundred dollar bills, so he gets 20 dollars from Kato Kaelin. What's unusual about that? Kato Kaelin's living there for free so I suppose he could give him 20 dollars. Then Kato Kaelin wants to go get something to eat and Miss Clark says they could have gone to a restaurant. Well, you could anything I suppose but the facts are they went to McDonald's to get a hamburger, O.J. Simpson ate the hamburger, presumably he was hungry. Now what's sinister about that? Unless you're cynical in your view totally of this case. Kato Kaelin, their witness, they call him, they turned on him, you observed him, ask you to hold him up to the same standards you do all the other witnesses but I ask you don't misquote him, tell the truth about what he had to say and so when he says 10:40 or 10:45 don't try to make it 10:52. So if

610 you believe in this Prosecution's theory, there's this blood leading down to this rare walkway and Miss Clark told us yesterday and unveiled her theory. Here's what they ask you to believe O.J. Simpson comes home from these brutal murders in a Bronco that he must be driving fast to get back in this time frame, that he parks his Bronco out there the Rockingham gate, some how gets in the gate, gets down the side of his house and what does she tell you, bumps into the air conditioning. Let's, let's examine that for a minute. The evidence is that O.J. Simpson has lived in this house for 17 years. Who do you think knows this place better or the best of all? This is his estate, this is where he lives, this is where he's raised his children, this is where he's been married, this is where two marriages. He knows this place so as

620 part of their fantasy, their theory, their speculation; they've O.J. Simpson walking down this walkway running into an air conditioning. Well, if he ran into the air conditioning where's all the bruises that he got from running into the air conditioning, where's the sound that he made? That doesn't make any sense. You see the reason why they come up with this running into the air conditioning 'cause they can't say climbed over the fence because there's too much [inaudible] that's not broken. And we don't know if he could climb over the fence with this arthritis but they have him walking down this walkway bumping into the air conditioning but ladies and gentlemen you know we're talking about common sense here. Bumping into the air conditioning and then he just leaves is that what happens? And

630 let's look at this, thank you Mr. Douglas. You all remember, what exhibit is this Mr. Douglas?

**Mr. Douglas:** Excuse me, 115.

**Mr. Cochran:** I'll stand over here so I won't be in your way. Thank you. Under this scenario, under their scenario while Allan Park is out here somewhere looking over in this direction they have O.J. Simpson rushing back, parking the Bronco out here and somewhere other he's gets all the way down here (Cochran is indicating on a map which shows the Rockingham estate) remember Fuhrman told you how far that was, gets all the way down here, where this air conditioning is out here by Kato Kaelin's room, you'll see this right here. They have him running into this air

640 conditioning so he doesn't know his own house and he's all the way back here and she says the reason he's back here is because he's gonna go back here and he's gonna bury the knife and the clothes. Now it's that something? How does she know that? Just made that up out of the whole [inaudible]. Do you believe that's reasonable? Is that reasonable to you? Does anybody on this jury believe that? That's what you were told yesterday, he runs in this air conditioning and then he just bumps into the and drops his glove. That's what she told you. Doesn't make any sense at all, does it ladies and gentlemen? Doesn't make any sense at all, no sound of Kato Kaelin and then what kind of you know, the sound is always been very confusing, maybe not to you but to me, Kato Kaelin goes (Cochran makes the

650 thumping noise on the table) it's more like a signal than anything else, come out her or whatever but those are the fact of Kato Kaelin and what happened and that's her theory, that's her reasonable, rational theory that you have to buy into which I think that you will find to be totally ridiculous. And remember down this same way there's a door near that side room there, Mr. Simpson wanted to get into his house. What stopped him from going into that side door? Who knows his house better? He wanted not to be seen, I suppose that he'd know better than anybody else. Doesn't make any sense, any sense at all. What they are now trying to tell you and here's something else this equally implausible she tells you that the reason why Mr. Simpson couldn't stop and hide these clothes is because he's too famous and too

660 well-known, remember that? So see O.J. Simpson is too famous and too well known to stop and try to hide clothes or whatever that nature. Well, let's take that just a little bit further, part of what makes their theory so ridiculous is it O.J. Simpson is going to get in a white Bronco, that's well-known in Brentwood, drive over to his ex-wife's house, park the Bronco in this well lit alleyway that you just see leave the car there, where everybody knows him, knows that car. That's equally preposterous, she can't have it both ways, he's too famous to stop and try and throw things in a dumpster the way she put it, he's equally too famous to be driving this car to go over these circumstances, that is preposterous. So if you believe the Prosecution's theory and they told you all about a bloody trail, where's the blood back there ladies

670 and gentlemen, there's not one drop of blood. Where's the blood back there? Where's the trail that leads to that glove? And further, look at this, look at this ladies and gentlemen, that's something I'm not making up, you've see it with your own eyes, look at the glove. Now that glove is picked up, do you remember the [inaudible] blood on the ground? Any blood on that strawberry. Any blood on anything there? Where's the blood? Fuhrman and Vannatter as we discuss them

later we'll say that when they get that glove after 6 o'clock in the morning is still moist and sticky, remember their testimony? Where's the blood on the ground? Where's the blood on the leaves around there? Where's any of that? That glove looks as though it's been placed there. That glove looks as though it's been placed

680 there. You look at A you'll see how far it is out to the street. So their theory doesn't have a water, it doesn't make sense and so they get mad at Kato Kaelin and they tell you why he's biased, he's just indebted to O.J. Simpson so we just can't trust him but yet they want you to trust him by the knocks on the wall and he becomes part of that theory but their theory doesn't make sense. And when you are back there deliberating on this case, you're never going to be ever able to reconcile this timeline and the fact there's no blood back there and O.J. Simpson would run into an air conditioning on his own property and then under her scenario, he still has the knife and the clothes. But what does she tell you yesterday? Well, he still has the knife and he's in these bloody clothes and presumably in bloody shoes, and what

690 does he do? He goes in the house. Now, thank heaven, Judge Ito took us on a jury view. You've seen this house. You've seen this carpet. If he went in that house with bloody shoes, with bloody clothes, with his bloody hands as they say, where's the blood on the doorknob, where's the blood on the light switch, where's the blood on the banister, where's the blood on the carpet? That's like almost white carpet going up those stairs. Where is all that blood trail they've been banding about in this mountain of evidence? You will see it's little more than a river or a stream. They don't have any mountain or ocean of evidence. It's not so because they say so. That's just rhetoric. We this afternoon are talking about the facts. And so it doesn't make any sense. It just doesn't fit. If it doesn't fit, you must acquit. And so she has him

700 then still with the knife, with these bloody clothes and then she does something very unusual again on the time. Remember she gave Mr. Goldman 10 minutes to get dressed and go over to Nicole Brown Simpson's house with this envelop. Mr. Simpson, she says, walks in this house in the walkway and by the way they were wrong, she was wrong about something else again I'd like to read you. She's wrong in her description of Allan Park, if I can locate it. Allan Park says he saw this figure in the walkway only and so that we're clear about that. Let me just read it to you. I don't just have to tell you what I think it is I'm gonna read it for you. 20571 counsel line 17. "Yes, I saw a figure come down, well not come down but I saw a figure come into the entrance way of the house just about where the driveway starts". So a

710 figure come into the entrance way of the house just about where the driveway starts, you see that, right there where the driveway is. That's what he said. Yesterday they were trying to put it all down here because that was convenient to their theory but that's not what the witness said. You look at the facts in this case and you'll see, not what they tell you. Continuing on, there is absolutely no evidence at all that Mr. Simpson ever tried to hide a knife or clothes or anything else on his property. You recall that Fuhrman and when I get to Fuhrman we'll be spending some time on him as you might imagine but one of the things he said was that he encountered cobwebs further down that walkway indicating, if that part is true and I don't vouch for him

at all, there'd been nobody down that pathway for quite some time. And so she (Ms.

720 Clark) talks about O.J. being very, very recognizable. She talks about O.J. Simpson getting dressed up to go commit these murders. And just before we break for our break, I was thinking last night about this case and their theory and how it didn't make any sense and how it didn't fit and how something is wrong. It occurred to me how they were going to come here, stand up here and tell you how O.J. Simpson was going to disguise himself. He was going to put on a knit cap and some dark clothes, and he was going to get in his white Bronco, this recognizable person, and go over and kill his wife. That's what they want you to believe. That's how silly their argument is. And I said to myself, maybe I can demonstrate this graphically. Let me show you something. This is a knit cap. Let me put this knit cap on and you have

730 seen me for a year. If I put this knit cap on, who am I? I'm still Johnnie Cochran with a knit cap. And if you looked at O.J. Simpson over there--and he has a rather large head--O.J. Simpson in a knit cap from two blocks away is still O.J. Simpson. It's no disguise. It's no disguise. It makes no sense. It doesn't fit. If it doesn't fit, you must acquit. Good time your honor.

**Judge Ito:** All right ladies and gentlemen, we're gonna take our mid-afternoon recess at this time, remember all my admonitions to you. We'll stand in recess for 15.

**Judge Ito:** And Mr. Cochran you may continue with your final argument.

**Mr. Cochran:** Thank you, your honor. Good afternoon ladies and gentlemen.

740 Thank you for your patience thus far and we'll start up again and see if we can make it up to dinner. Um when we left, just before we broke I was sharing with you a knit hat or a knit cap that we heard so much about in this case and it reminded me that there was testimony early on that detective Lange had refused basically to pick up a knit cap inside the Brown residence that was shown to him I think by some of the lawyers and one of the investigators on that day 'cause these are fairly common but they don't really disguise anybody who's noticeable, do they? And although I was the guinea pig here this afternoon, if you were to put a knit cap on how's that gonna disguise you? We've been together, I know your face anywhere now and you know mine and the people in Brentwood, in West Los Angeles, would know O.J.

750 Simpson, they know his car, they know him, that's where he lives. Even the Prosecutors say he's so famous that he can't go anywhere where he wouldn't be recognized. Now one of the things about these People's timeline or whatever is that you recall that O.J. some of O.J.'s bags were already packed outside of the house on that bench but Kato came outside to investigate the thumps which he heard and this is interesting because the Prosecutors have kinda talked across purposes on this. Kato at some point come out 'cause he hears these thumps allegedly and he has a little, tiny flashlight or I think the court called it a pen lighter or a mag lighter, something, it was something small, 'cause it's dark back down that walkway and

apparently he went part way down that walkway and then he came back, it's

- 760 interesting isn't he, he came back and at some point he let's Park in. I remember all of these questions about opening the gate and everything, remember there's a dog there, is there a dog there named Chachi. There's a lot of talk about these dogs and you've heard a little bit about these dogs but one thing that I think is, the Prosecutors make these kind of wild speculations. You now know that the Akita dog was bought by O.J. as well as Chachi because remember one of the dogs died and like a good dad he let the dogs stay at the other house sometimes with his son Justine and they named the dog after Kato, 'cause I think the understanding of what you've heard from Arnelle but at any rate I point that out because we know there was another dog over there named Chachi, a black dog, a black Chow but while he,
- 770 Kato is out looking for these thumps, what happens to these thumps Mr. Simpson talks to him, I think they go in the house together because Mr. Simpson is gonna help him look or help him find a larger flashlight and then someone says or he's reminded that Mr. Simpson's running late for his trip so then he takes off. My understanding of the fact is Mr. Simpson said I'll call you later and have you put the alarm on because he was getting out of there, Park was already there. But I think the interesting thing to remember is that some of the bags were already down including that golf bag were already down there. This was not any unexpected trip, he started putting things down there. If you look at everything in a cynical fashion, you heard this morning Ah, ah! There was a nap sack over our nap bag or some little bag they
- 780 were talking about over in the driveway. Well, if you're a golfer isn't it reasonable to assume there's golf balls in there. Have you put that in your golf bag? What's the big deal? Because they gotta try to theorize in front of this plain evening, plain evening which they can't explain. They weren't there, they rushed to judgment and it leads to this kinda wild speculation. You have to do that when you don't have a case. And that's all you've seen them do time after time after time. With regard to that walkway less I'd be totally clear to you if O.J. Simpson had been the one for whatever reason to walk into that air conditioning. Where is the hair and trace? Where's the fiber? Where's the blood? They wanna tell you about his fingers bleeding one minute and then it stops bleeding in Miss Clark's scenario he bleeds, it
- 790 coagulates, stops bleeding and then it starts bleeding again because that's convenient for her theory. You know as I listen to both of them I wanted to call them doctor, Dr. Clark because Dr. Clark told you well gee look at that blood drop, that cut weren't big enough for that blood drop. She's not a doctor, how does she know that. Dr. Darden for the love and the [inaudible] he knows everything about relationships, he just speculates on and on and on he's got this great vivid imagination. The only thing is this is real life; this isn't anything from Murder she wrote. If they tried to sell this story to Murder she wrote they'd send it back and say that's unbelievable. You're gonna see that as we tie it together, it's nice to have vivid imaginations but not in this courtroom because here you are searching for
- 800 truth on this journey for justice. So we know that Kato had some concerns, he was looking around, we know that at some point Mr. Simpson comes down the stairs



carrying the Louis Vuitton bag or whatever and that Mr. Simpson leaves at about 11:00, 11:02 for the airport. If that's very clear based upon the evidence and you'll recall that Miss Clark again gives Mr. Simpson 5 minutes to rush in. According to the theory, he rushes in, changes clothes, disposes of all of these clothes, showers, packs does everything and comes downstairs and says composes himself. And can you imagine that? I mean who do they think they're talking to. In 5 minutes he does all these things and the they tell you, that you know under this post-homicidal way you act you get yourself all composed and you just do this. This is preposterous,

810 they're not experts, they can't testify, those are just they're wildest, [inaudible] theories. You use your common sense when they tell you things like that. O.J. Simpson was O.J. Simpson the way he always appeared by the people who knew him and talked to him. We'll talk more about that when we talk about demeanor. But the reason they can't explain his demeanor and the way he act as he always act, they then talk about well you can't tell who's a murderer. Those are real convenient words, aren't they? But they fly in the face of reasonable activity by a reasonable man on that particular night.

So there's Allan Park. O.J. Simpson comes down within 5 minutes of the time that they believe he goes upstairs. No time to dispose of bloody clothes. What about

820 blood on the carpet? What about dirt on this white carpet? How does he shower? How does he get dressed? I mean it doesn't make any sense at all, does it? Park himself says the golf bag was already packed and ready to go when he pulled up the driveway and Miss Clark went to great trouble to tell you how credible she thought Mr. Park was and how he tried to lay everything out. And I think by large we agree with that, I think if you have to quote Mr. Park you ought to quote him accurately and attempt to mislead or whatever. And so what I did is I went back to the transcript again when Miss Clark told you and showed you that photograph yesterday about whether or not Mr. Park saw "I was looking at the Bronco or looking for the Bronco on the night of June 12<sup>th</sup>". Remember that? She told you

830 yesterday "I spent a long time with him and so I remembered did I ask him questions" and his response "I asked him at some point, I'm asking you if you looked too made an effort to see if there was a car parked." Answer: "No". Was that a correct answer that time? Answer: "Yes. Alright." Question: "There might have been a car parked there and you didn't see it?" Answer: "Correct" "And the reason why you don't know one way or the other is because you weren't focusing on any cars or paying any attention, isn't that right?" And I went on to ask, this took another part of this question, basically your goal was to get Mr. O.J. Simpson, try to get him to the airport on time, isn't it? Answer: "That's correct." Question: "That is what you ended up doing, isn't it sir?" Answer: "Yes." And that's the testimony.

840 That's fine to come up here and tell you 'cause they wanna fit their theory well you never, you didn't see that Bronco out there and do all this drama. But isn't it better to read the record? If you wanna be accurate which I've just done for you. Now isn't it reasonable to ask Mr. Park also, well Mr. Park if you were around the premises there and you were up in Ashford and down in Rockingham did you ever hear a

Bronco come driving up. Did you ever hear a door slam? Did you ever hear an engine of a Bronco? And fortunately we ask him some of those questions. Not asking him of hearing or seeing a Bronco in the past and remember he talked about seeing one back in '88 or something of that nature. So I asked him this question "And would I be correct in assuming that those engines can be loud on occasion,

850 those cars, meaning the Bronco's." Answer: "Could be." Question: "You didn't hear the engines on any cars or anything that sounded like a Ford Bronco that night, did you?" Answer: "No." Now again I read from the transcript for you. I previously read to you about where Mr. Park said he saw Mr. Simpson in the entrance way of the house, we'll put that aside. So we know that Mr. O.J. Simpson was preparing to leave for this trip that had been long planned and when we summarize then the two timelines it seems to me that their timeline is not even reasonable, doesn't make any sense, it's a much less credible version than the testimony that you've heard from our witnesses. Their version does in no way disprove the Defense timeline, we don't have to even put that forward but we did. Then there must be a reasonable doubt.

860 Consider everything that Mr. Simpson would have had to have done in a very short time under their timeline. He would have had to drive over to Bundy, as they described in this little limited time frame where there is not enough time, kill two athletic people in a struggle that takes five to fifteen minutes, walk slowly from the scene, return to the scene, supposedly looking for a missing hat and glove and poking around, go back to this alley a second time, drive more than five minutes to Rockingham where nobody hears him or sees him, either stop along the way to hide these bloody clothes and knives, etcetera, or take them in the house with him where they are still hoisted by their own petard because there is no blood, there is no trace, there is no nothing. So that is why the Prosecution has had to try and push back their

870 timeline. Even to today they are still pushing it back because it doesn't make any sense. It doesn't fit. That's why they abandoned Ellen Arronson, why they abandoned Dan Mandel, why they didn't want to call Denise Pilnak, why they didn't want to call Robert Heidstra. That's why we're now hearing this preposterous add of time that the thumps may have occurred at 10:15, that's Miss Clark's wish list bit that's not the evidence in this case. Let's turn our attention for a moment and let's look at some other things that don't fit in this case. As I started to say before that perhaps the single most defining moment in this trial is the day they thought they would conduct this experiment on these gloves. They had this big build-up with Mr. Rubin, who had been out of business five, six, seven, eight years, he'd been in

880 marketing even when he was there, if they were gonna try to demonstrate to you if these were the killers gloves and these gloves that fit Mr. Simpson. You don't need any photographs to understand this. I suppose that vision is indelibly imprinted in each and every one of your minds of how Mr. Simpson walked over here and stood before you and you saw four simple words, "The gloves didn't fit." And all their strategies started changing after that. Rubin was called back here more than all their witnesses, four times all together, Rubin testified more than the investigating officers in this case because their case from that day forward was slipping away

from them and they knew it and they could never ever recapture it. We may all live to be a hundred years old, and I hope we do, but you'll always remember that those

890 gloves when Darden asked him to try them on, didn't fit. They know they didn't fit and no matter what they do they can't make them fit. They can talk about latex gloves, make any difference? They can talk about shrinkage but we did something even better, didn't we? We brought a man who won the Dondero Award, Dr. Herb MacDonell, who did an experiment on these Aris light gloves. They want to talk about liquid or blood shrinking them; you'll see it up there. What'd he say? They don't shrink, put as much blood as you can on them, they don't shrink. Doesn't work. They have the power of the State they could've done their own demonstration. They didn't because you know he's right. So we went about and proved to you these things. We didn't just stand up here and speculate as to what

900 might be, we called a leading witness who came here and passed that on for you. You can see the overlays on there, they cannot explain that. They could've called witnesses, they didn't. We called the witness, to prove beyond any doubt those gloves don't shrink. The gloves didn't fit Mr. Simpson because he's not the killer. Now, then they will say and Miss Clark said the other day well gee these gloves had been thought and they'd been frozen and all those things and remember Susan Brockbank, those gloves were measured on June 21<sup>st</sup> 1994. Those gloves are basically the same size now as they were June 21<sup>st</sup>. So that won't work. They come they tell you all these things but it won't work. And so if you look at the gloves here's the overlay. And there's something else about these gloves that I wanna take

910 a minute and share with you before we talk about Mr. Rubin and his testimony. You saw these pictures of the gloves. We had a couple of pairs of Aires light and when you have gloves that don't fit you can hardly do anything with them. (Cochran is trying on the gloves) It's very, very tough. I'll put on a pair of Aires light gloves, real tight and you can see tough it is to get these on my hand s. I'll put them on anyway here. They're the same kind of gloves that Dr. MacDonell did his experiment with, so there'd be no mistake about the leather and all those things they like to talk about. It's hard to get on. Not as hard as Mr. Simpson but they're hard to get on. Please I now want you to see these gloves 'cause they wanna tell you that when you take off gloves you take them off by this V portion and remember this

920 somebody testified you don't take off that way. One of the People's witnesses said that, you don't take them off that way. So we're asked to believe that in this tremendous struggle, that night in which Ron Goldman fought so valuably that somehow ever in that struggle somebody took these gloves, the way you pull gloves off, I wanna tell you this, pull them off like this, even Rubin knew this, pull them off like this, the gloves came off like this not through anyway like that. And so I think that's interesting when you look at these gloves and you look at what they're trying to have you believe. They talked about a lot in their rebuttal case about the glove pictures and the glove photographs. Remember that each of the glove photographs were taken or pictures of Mr. Simpson were taken in the winter. You

- 930 know the evidence; Mr. Simpson was living in New York generally from August through January when he's on football season or working for NBC Sports. Uhm generally in Southern California you don't need or wear winter dress gloves in California. You don't go skiing in Aris light gloves. And you remember that the police in searching Mr. Simpson's house. Remember detective Lange? They searched O.J. Simpson's house. The gloves, the shoes, for clothes. That one brown glove and I want to look at it at some point, the brown glove that looks similar to the brown gloves that Mr. Simpson. This glove was picked up on June 28<sup>th</sup> but what I was saying was this gloves came out of Simpson's house and I asked you to look at this glove, you'll have this back in the jury room, look at it compared to some of the
- 940 gloves he wore that day on the photographs. There were no Aris light gloves in O.J. Simpson's house. That's the point, they took this one glove on June 28<sup>th</sup>, that's the point and the point is quite simply Richard Rubin, that's putting it in perspective. Bob Blasier questioned it on his fourth trip here; we discovered a letter that he sent to the Prosecution. This man had become a soldier in the Prosecution's army. Wrote them a letter saying he wanted to come to their victory party. The problem with that letter was he wrote the letter before we ever had the chance to put on our case. That solidifies the rush to judgment, doesn't it? Because in America you have the right to wait until you hear all the evidence. That's what makes this country great. People not making up their mind at the beginning. You don't decide a baseball game or a
- 950 football game at half time, you wait until the end. That's what this judge tells you every day. Keep an open mind, you've heard everything but Rubin wasn't gonna do that. He was getting ready for the victory party. In his own letter that he wrote to them and he asked further. Send me your cards, I want Mr. Heidman's card, Miss Clark's card, build a memorial to himself on his wall the number of times he come out here. You talk about people who wanna be involved in this case, you stack him up to those other people who didn't wanna be here. Richard Rubin is one of those people and it goes to his bias, it goes to his interest. I'm telling you the facts. We told you about this letter. You gotta deal with that if you're gonna be fair and impartial in this case. And then as with all the Prosecution's evidence they're gonna
- 960 tell you that something is not like what it seems. They take a Bloomingdale's receipt, in which there's no signs or color or anything else on this receipt. And I find this particularly interesting because it's part of parcel of the Prosecution's case, isn't it? The way they've done things in this case. And this is this famous purchase of December of 1990, wasn't it? They lot number or the style number is 70268. That's what it says. I don't see anything about 70263, it's two items it says 77 dollars. 77 dollars is what it says for those two items. Does it say anything about 55 dollars? It says 77 dollars and it doesn't say anything about color or size or anything of that nature. Doesn't say anything about any mufflers but yet you've been treated and told all these had to be Aris light gloves. That looks like a computer-generated
- 970 receipt. I wonder how if it was incorrect to end put it, it didn't spit it out. This transaction apparently went through and whatever was purchased, was purchased. The point is it's a part of game of weakness of the Prosecution's case in telling you

one thing and the record shows something else. You don't have any receipt anywhere when you get back there it says anything about any 70263. You don't have one witness who ever says that Nicole Brown Simpson bought any Aris lights and gave 'em to O.J. Simpson. There is no such witness 'cause it didn't happen and the rest of it is speculation and theory on their part. Cynical speculation I might add to try to rush to judgment at any cost. Now you heard from Mr. Darden's effective argument last night a lot of statements and just before I get to that part let me say a

- 980 couple of things about Mr. Rubin, might be appropriate. Remember Mr. Rubin's an interesting witness. When he was brought back out here this last time he was asked, "Well look, how many glove manufacturers are there in the world?" And he acknowledged there over one hundred and then Bob Blasier asked him a question "Well how many did you check with?" Two, he checked with two and then he stopped looking 'cause remember he found out that this [inaudible] stitching could be made on singer sewing machines. They may not know more than I do but they stopped making them after a period of time but he stopped looking after a period of time never called anybody else. And that's interesting because that compares the way the Prosecution witnesses have conducted themselves throughout. Compare the
- 990 fact that he stopped looking after two with agents Martz who finds three of the four things you need to find EDT on the sock and the back gate. They're rather looking carefully for the characteristic the fourth one he stops searching. He uses a far less discriminating test. Consider the EAPB found under Nicole Brown Simpson's fingernails where they try to come in and tell you it is a degraded BA and a cross-examination. Again Blasier got Matheson to admit there was no specific support in any of the literature for a BA degraded into a B, and this was by all accounts a double-banded B. The reason they didn't want to pursue that, because she may have scratched somebody with a b type, but they never pursued those things. The second hat at Bundy. The Bundy location inside, when the Defense investigator finds this
- 1000 hat, nobody wanted to collect it. They refused in fact to collect it. When we in this trial, before you, discovered that evidence had been moved at Bundy and that a key piece of evidence, the piece of paper, had disappeared, they didn't do anything to find out about it that we know of and concerned about those kind of things. But it's important then when you look at Rubin because you put him along with the other prosecution witnesses and the things that they had to say. I've told you the Bloomingdale receipt, I told you about Brenda Vemich who came in. Well a thing about Brenda Vemich that was interesting, she was a lady who, that was the day I won't forget that day ever probably because that was the day, that she's a pretty tough witness. I was just trying to talk about receipts and things, she's pretty tough.
- 1010 And I was asking some questions, remember we asked her the question "Well, who's the lady, who's the person, who's the salesperson for this?" And that lady whose name was Hollings or something like that was in this building. They never called her on that receipt. They didn't call to call her but we know she was here because Brenda Vemich told us about that. We also learned something else about these gloves, that even an extra large is probably three different sizes. There's

[inaudible] size, the standard and the oversize and it depends what large you get. That's what it goes down to ladies and gentlemen. We know that, that makes sense doesn't it? And so when you look at everything regarding these gloves, by the way the lady's name was Holina Phipps. She was in the court house and of course was

1020 never called by the Prosecution. She was the actual sales clerk. But I think the important thing about these gloves that Mr. Rubin has helped us with and a couple of the pictures of the photographs of the gloves Mr. Simpson obviously had a heat pack on his hands inside the gloves, you could see the heat pack, if you live in cold weather you know about that. And try all they will about shrinking and they're gonna show you gee it's raining out there and their doing all those things. Ain't that preposterous about the, they tried to contort and distort the facts. Try and get away from that tactical mistake showing you the gloves didn't fit. Just spent all this time on that and the gloves still don't fit. Rubin can't help you, Rubin is biased, he can't find those gloves because O.J. Simpson has never had those gloves. For them to say

1030 otherwise is [inaudible] speculation. So we heard last night and we are treated to this morning some very, very interesting observations by my learned colleague, Mr. Darden. Now, this is interesting because Mr. Darden started off by saying, well, you know, we're gonna put together this other piece, it is not really one of the elements of the crime of murder, motive, but we're gonna to talk to you about motive now. We're gonna to tell you and convince you about the motive in this case, and then he spent a long time trying to do that. And as I say, he did a fine job and addressed the facts and conjured up a lot of emotion. You notice how at the end he kind of petered out of steam there, and I'm sure he got tired and he petered out because this fuse he kept talking about kept going out. It never blew up, never exploded. There was no

1040 triggering mechanism. There was nothing that would lead to that. It was a nice analogy, almost like that baby analogy, the baby justice and the house of fire. You don't have to go through any house of fire. You just have to keep you eyes on the prize, and the prize is justice, it's a city called Justice, and it's a journey you're leading toward, that's all you gotta do. And so this is what this is all about. This evidence about of other crimes. The court--Mr. Darden now looks up there, says, well, gee, judge, whatever limited purpose, but let's talk about the limited purpose for which all of his argument was about. When you talk about this evidence of other crimes, such evidence was received--excuse me, sir--and may be considered by you only for the limited purpose of determining if it tends to show the characteristic

1050 method or plan or scheme about identity or motive. For the limited purpose for which you may consider such evidence, you must weigh it in the same manner as you do all other evidence in the case. You are not permitted to consider such evidence for any other purpose. So this isn't about character assassination of O.J. Simpson, as you might think at first blush. This is about Mr. Darden trying to conjure up a motive for you. And at the outset let me say that no, none, not one little bit of domestic violence is tolerable between a man and a woman. O.J. Simpson is not proud of that 1989 incident. He is not proud of it. But you know what? He paid his debt to that and it went to court. He went through that program. And the one

good thing, and no matter how long Darden talked, from 1989 to now there was

1060 never any physical violence between O.J. Simpson and Nicole Brown Simpson. And those are the facts. He kept going back and forth, the '85, the '89, '93 but there's no physical violence. In fact, let's look at the incidents that he talked about just quickly and keep this in mind, this is supposedly for the limited purpose of determining and tends to show a common scheme and plan, a [inaudible] or motive. Only for that limited purpose. So keep that in mind, he didn't bother reading all this to you. Let me read you something else again that goes along with this as we consider this evidence. The court's already instructed you about motive and I listened very carefully as my friend read this. They got to one part and they stopped but I wanna read you the rest of it. Motive is not an element of the crime charged and need not

1070 be shown. However, you may consider motive or lack of motive as a circumstance in this case. Presence of motive may establish guilt. And he stopped after that last night. We'll read you the rest of it. Absence of motive may tend to establish innocence. You will therefore give it's presence or absence, as the case may be, the weight to which you feel or find it is entitled. Now I wondered why he read you the part of absence of motive in this case because as long as he stood up here and tried to talk to you, he couldn't show any physical violence after 1989, he can talk about 1985 the incident involving the Mercedes, Mr. Simpson wasn't arrested then. He didn't talk about 1993 and certainly you'd hate to think that two people who could have an argument like that but there was no physical violence. In fact, the police

1080 came out if you recall and did some further taping. These people were upset and they were arguing but they never fought on this occasion, they never, there were no blows on this occasion and certainly no one wants you to be thinking in your background worst argument ever tape recorded. O.J. Simpson had perhaps his worst argument tape recorded. And then he had the audacity to stand up here and say well they didn't call Lenore Walker. We didn't call Lenore Walker because it wasn't necessary. They could've called her. Talked about me having some tests showed that Mr. Simpson was not anti-social, had no anti-social personality. That wasn't true. Why didn't he call her? Because you don't have to call all witnesses just like he said. At some point all of us I think got the message there are certain horrors of

1090 sequestration. I dear say we'd still be trying this case. Left to our own devices somebody had to have some good sense in this courtroom, we had to bring this matter to a close. We did what we set out to do to demonstrate to you reasonable doubt. We think we've done that. We've called a lot more witnesses and I talked to you about in the opening statement but I don't think that's necessary. Another word about opening statement. In opening statement I stood before you and I told you this is what we expect to show you. This is not evidence that was in January this is what I would hope the evidence would show. If there's a witness that I didn't feel was credible or we didn't feel was credible I wouldn't call that witness. If a witness was not available we wouldn't call that witness. If we didn't feel a witness wasn't

1100 necessary we wouldn't call that witness. The Defense doesn't have to prove anything. We've done that in this case to prove things however but we don't have to

prove anything. So the witness wasn't called, don't hold that against O.J. Simpson, you hold that against me and I don't think you can hold that against me because the Defendant doesn't have to prove anything. And remember the judge has already instructed you as follows, let me read it to you again so we make this clear. Hey Mr. Darden remember this. The prosecution has the burden of proving beyond a reasonable doubt each element of the crime charged in the information and that the Defendant was a perpetrator of any such crimes. The Defendant is not required to prove himself innocent or to prove that another person omitted the crimes charged.

1110 That Law is not just for O.J. Simpson, that's the Law of the State of California for everyone and they know it. I told you at the beginning in this search for truth, in your courage, we cannot let them turn the Constitution on its head. I am going to be your reminder of that. So continuing on he talks about what might sound like character assassination over and over again about these incidents of controlling and jealous rage just because he says that it supposedly makes it so, isn't it interesting? 17 years these folks were married, had two beautiful kids, a beautiful life. Did they have any good times together? Think they ever wanted to talk about any of the good times? Think about even '93 remember they got a divorce and that chart in 1992 they tried to get back together Dr. Christian Reichardt told you. Wasn't O.J. Simpson it

1120 was Nicole Brown Simpson who asked to get back together in 1993. They tried to work it out for about a year, they didn't live together but they tried to work it out. They talked about this, they tried to date exclusively. They tried to salvage a 17-year marriage. And you could understand that. It was her idea. It didn't work out and they went their separate ways. The evidence is he'd been dating Paula Barbieri back in 1992 for almost a year but when he got back with his wife in April or May of '93 he stopped dating her. When he broke up with his wife again he started dating her again. He wanted to give it a fair shot. Remember Arnelle Simpson said he would wake up sometimes in the morning and Mrs. Nicole Brown Simpson would be over there with the kids at the house. During this period of time they were trying to get

1130 back and get along. They all went to Cabo San Lucas, they had a good life together. It's interesting how the Prosecution didn't want to talk about that at all in their cynical view of life. They took two or three incidents and said this just tells us the whole picture. Well all of us, all of us is more than to the entire picture and I ask you rhetorically this question who would know O.J. Simpson better his mother Eunice, his sister Shirley, his sister Carmelita, his daughter Arnelle or Marcia Clark and Chris Darden? Who do you think knows him when they sat up here and talked about his public persona and he's got this dark side. Those are all just words. He's a human being and he's not perfect, he's not proud of some of the things but they don't add up to murder, there's no escalation, force and violence throughout 1989

1140 it's not there. We don't have to call Lenore Walker, your common sense tells you this. And then he goes into this kinda make believe fantasy world where he's gonna try and tell you that on June 12<sup>th</sup> he's gonna conjure up this rage. June 12<sup>th</sup> very interesting date isn't it. It is wonderful that we live in the age of videotape because it tells you about who O.J. Simpson was. Cindy Garvey was telling you how O.J.



Simpson was. He was this mean dark brooding person at this concert that he was going to kill his ex-wife because he didn't like his seats. I guess that was what it was about. Because he didn't like his seats or because he didn't invite her to dinner. Can you imagine that. That is how silly what they are talking about in this case as he tries to play out this drama. But let me show you, rather than talk--a picture is worth

1150 a thousand words, so let me show you this video. You watch this video for a moment and we will talk about it. This is for Chris Darden. (At 4:19 P.M. a videotape was played.) You will recognize some of the people in this videotape after a while. Mr. Simpson kissing Denise Brown, kissing Miss Juditha Brown, Mr. Louis Brown. Talking to a friend. That is his son Justin who he kisses, smiling and happily waving. Mr. Brown is happy. Laughing and falling down and laughing again, bending over laughing. You see that. You see that with your own eyes. You will have that back in this jury room. How does that comport with this tortured, twisted reasoning that he was angry in some kind of a jealous rage? Did he look like he was a jealous rage to you? Your eyes aren't lying to you when you see that. Thank

1160 heaven we have videotape. I didn't tell you about that in opening statement. Do you think that is pretty compelling? Thank heaven we have that. And we know in this city how important videotapes can be when people don't want to believe things even when they see on it videotapes and you saw that yourself. So when back there somebody try to tell you there was some kind of jealous rage on June 12<sup>th</sup>, look at O.J. Simpson interacting with the Brown family and everyone else. Doesn't fit, doesn't make any sense. He isn't bruited, he's not angry, he kisses these family members, he's laughing and joking, he's playing with his son Justin. Those are the facts, not what I made up. These items that don't fit. If you wanna go a little bit further, let's talk about what we know about him that evening. That video, is what

1170 about 6 o'clock in the evening? Let's start at 6 o'clock on June 12<sup>th</sup>. We know he had a good day that day and he had a good week. We'll talk about part of the week in a minute but let's just talk about that part of the evening. 6 o'clock he's at that recital. You know you go to a recital 'cause you're proud of your child. And you know at these recitals, if you can all think back and those who we don't have kids will live for this day. You know these programs are long, your child is like 33 or 34<sup>th</sup> on the program, you love everybody else child but sometimes you don't wanna sit there and doing the whole thing, you know. We're told some stuff about he moved a chair around. Remember an auditorium where you can move a chairs around? In our auditoriums seats are like those, you can't move those seats around.

1180 This is preposterous Mr. Darden wasn't in that auditorium and even after that video like any proud papa you know what O.J. Simpson did? Took a picture a photograph with his daughter. Let's look at this photograph for a minute. If you wanna see how he looks while he's in this murderous rage while this fuse is going on that Darden talks about. Where's the fuse? Look at that look on his face like any proud papa. He is proud of that little girl and who wouldn't be proud of her? This is post the dance recital, she has the flowers that he went out and bought for her. He's standing there with her, the photograph's taken. He had no way of knowing that would be

important, he had no way of knowing that Chris Darden some day would stand before you and try to make you believe that that man was in a murderous rage at

1190 that same time and that we would bring forward that picture so you would see it with your own eyes so you'd understand. What exhibit is that Mr. Douglas, sir? Look on the back of it. So thank heaven again for the visual, a photograph is worth a thousand words. So he can speak a thousand words and I can show you one photograph. He could speak a thousand more words and I can show you that video. What it does is it puts the lie to this theory about some kind of murderous rage but we don't just stop there. We didn't just stop there this is serious business. A man's life is at stake so wanna we do? We talk to Gigi Guarin, his housekeeper. O.J. Simpson by at large has a great relationship with all the women in his life and you met a number of them. Gigi Guarin, is the housekeeper so she came in her and was a

1200 great witness. Said that she was a not spirit form. On June 12<sup>th</sup> she's out with her family and at 8 o'clock she wanted to stay over because she's due to come home that evening, she said, "could I stay over?" And Mr. Simpson says "Yes you may." And so I asked her "How did he sound to you?" "Sounded like Mr. O.J. Simpson always sounds." The employer that she knows, the relationship that she has with him. You saw here, you observed her; you saw her go through cross-examination. Did she seem believable to you? 8 o'clock? I think so I think you'll find so. Then we know that at nine o'clock he talked to Christian Reichardt, his friend Dr. Christian Reichardt, and you saw Chris Reichardt come in here and talk to you. I thought he made a very, very, very good witness from the standpoint of what he had

1210 to say. He told you that O.J. Simpson sounded even happier than usual. He was more jovial, he got his life back together and he was moving on. Isn't that interesting? Isn't that an interesting way of looking at circumstantial evidence. Let me show you how we differ in this case. The doctor witness comes in and says O.J. Simpson is jovial at nine o'clock on June 12th. Pretty good evidence, wouldn't you say? I think you would love to have that. Anybody would in a case where you are supposedly in a murderous rage. Instead of Chris Darden standing here and saying, well, that is pretty tough evidence for us to overcome; he says O.J. Simpson was happy because he was going to kill his wife. Now, if you believe that, I suppose I might as well sit down now and I am probably wasting my time. I don't think any of

1220 you believe that. That is preposterous. It flies in the face of everything that is reasonable. You have these two reasonable hypotheses, his isn't reasonable, but assume it is reasonable, you would have to adopt this, that he is jovial, he is happy. They make a date for that next Wednesday and O.J. Simpson returns from back east. You remember that. That is the testimony. Mr. Darden tries to make a big thing of the fact, well, gee, you know, golly, was he depressed about the fact that they had broken up or they had finally broke up? He said, yeah, he had been down. He never said he was depressed. Said he was down or upset and who wouldn't be. Remember the last questions I asked. If you had just ended a 17-year relationship and it was over, you would feel down for a short period of time until you got your life on track.

- 1230 You wouldn't go kill your ex-wife, the mother of your children. O.J. Simpson didn't try to kill or didn't kill Nicole Brown Simpson when they got a divorce, when they went through whatever settlement they went through when Faye Resnick moved in. Whenever these things, none of these things happened because their rush to judgment, they tried to come up with some kind of a motive that doesn't make any sense. It didn't stop with just Christian Reichardt and what he had to say and of course I have his testimony also about what he said. He talked about the demeanor of the various people he talked about but most importantly he talked about O.J. Simpson's demeanor and how it was that night and how he appeared to be. Let me read you this part here. This is 4042537 counsel. Question: "Now with regard to the
- 1240 statement about whether or not he talked about Mrs. Nicole Brown Simpson that was not the thrust of any of that conversation was it?" Answer: "Not at all. She wasn't on his mind." This time he's talking about getting ready to go to McDonald's. In fact, you recall that Mr. Simpson had said to you that he was out of the loop. That he was glad to be out of the loop, that he had gotten his life together with his new lady. Remember him telling you that? Answer: "That's correct." "And who was that new lady?" Answer: "Paula Barbieri." Let me just take a moment about Paula Barbieri one of the most outrageous things here yesterday was this wild speculation that O.J. Simpson had some kind of falling out with Paula Barbieri on that Sunday. Where's the evidence of that? I mean hat's preposterous. The evidence
- 1250 is quite to the contrary. Remember when O.J. Simpson came back into town on Friday, first person who met him and they spent the evening together was Paula Barbieri and it was interesting because I was having trouble hearing her, she said I stayed at the house, the one of you reminded me, she said till I went to the prayer meeting. That's where she left; they'd been together that day. And then on the very next day they went to this, this dinner in support of Israel. And I guess Mr. Douglas can show us that. (a picture is shown of O.J. Simpson and some ladies) This is that dinner. I really guess he's working up that murderous rage that day with those little ladies, they seem to be happy to be taking a picture with him. Had no idea we'd ever have to use this to show to counter balance this specious, cynical, speculative theory
- 1260 he had some kind of a time fuse. But that photograph again demonstrates that and then we have the testimony of the who that was there Carol Connor about what she called that exquisite moment. And I suppose she's an artist, you could tell by the way she was dressed when she was here and she's written this academy award love tune, and I guess she sees things maybe that we don't quite see. But she said it was an exquisite moment between O.J. Simpson and Paula Barbieri as they were in each other arms at that particular dinner. Remember she told you that? Was he thinking about Nicole at that point? Only in Chris Darden's mind. Not in yours, not anything else reasonable and so you have again these photographs and these word pictures which I think amply destroys this. So he continues on about Paula Barbieri. He says
- 1270 you know about Paula Barbieri, isn't that correct? Yes, I did. Also Mr. Simpson had told you that he began dating Paula Barbieri on a regular basis, isn't that correct? Answer: "Yeah." And that you had said and indicated to the police in the interview

that Mr. Simpson seemed to like Paula a lot and seem happy or at least happier than he had been before once he was with Paula. Isn't that correct? That's correct, yes. That's what you told the police, isn't that sir? That's correct. When you talked to the police and Dr. Reichardt were you telling them the truth? Answer: "Absolutely." And when you were coming here today to testify to this jury are you telling them the truth? Answer: "Absolutely." And so once again I haven't tried to speculate I read to you what the witness said. Now what about this thing that Darden keeps talking

1280 about that he knows isn't so that the police had been out there 8 times on so called domestic discord cases. They tell you that a whole bunch of times and this is why you have to look with some suspicion at what the Prosecutor's tell you in this case. Remember Mike Farrell the officer who was a sergeant I believe who after the '89 incident went back to the station to try and check and see whether or not there had been any other incidents or any of the police officers in that division, in West Los Angeles had been called. You check your notes. So what he did was he had occasion to check for other domestic discord incidents. This becomes rather important later as you're gonna see. So he talks to us he says questions all right. So you talked to some officers. How many? Just tell me a number. How many officers

1290 did you talk to all together? Answer: "I can't recall. Maybe ten." "And did you take any reports form any of those officers?" Answer: "I requested if they had any information to write out a report and give it to me" Question: "And you got a report from one officer, did you not? Answer: "That's correct." Question: "And that officer's name is Mark Fuhrman." Question: "That's correct." "And was that the only written report that you received?" So now when Darden says he talks to you about these 8 incidents or whatever whether there's nothing happened they check with at least 10 other police officers in that division. Nobody had any recollection of anything going out there. Now we know from Shipp the police was stopped by there. We know that, should've told us that not some photograph in evidence of O.J.

1300 Simpson with Shipp and maybe with some other police officers. That's a place they would stop by on occasion but this 8 to 10 times may know that was their own witness Sparrow. Isn't it an audacity to tell you about stalking. He tells you in opening statement, he's gonna tell you and show you O.J. Simpson was stalking Nicole Brown Simpson. Now this is the Prosecutor. He proved one was incident of stalking, absolutely not. In fact, yesterday when he sat up here and told you about O.J. Simpson looking in the window of Nicole Brown Simpson's house I was somewhat dismayed, so I thought yeah better get the transcript out again since the record is the best evidence, not what they say. Because they say it so, isn't so. They said that themselves. And so we talked about this. You remember Mr. Colby, Colby

1310 and Cole two people that live next door to Nicole on Gretna Green. Remember them? You remember those two? And Mr. Colby was testifying on this date, it's counsel it's 13176. "I saw him observe the residence next door and then walk around the corner which would be Southerly and Westerly on Shetland and go back around again and look again at the residence. Now let me just stop you there, all right? So that it is clear when you first saw the man who was on the sidewalk 5 feet

from Nicole Brown's driveway. His objection: "Yes. Did he walk in a Southerly direction and then back around the corner, our house is on the corner like this, indicating within Southerly and then Westerly and the back around again. Ok. Did he walk back to the same spot he was in when you saw him initially? Yes, he did.

1320 And he goes on to talk about him walking within 5 yards of Nicole Brown Simpson's driveway and the walks back. And you remember this is the incident where Mr. Colby said he was embarrassed because he saw this black man in Brentwood and he called the police. And they find it was O.J. Simpson. Now nowhere are you gonna find in that testimony that O.J. Simpson was up looking in a window or stalking anybody. Because on the sidewalk out there, the only way for his wife and for the kids to come home and then he left. That's how the People have twisted and turned things in this case. That becomes his incident of stalking. When you go back and look at this evidence and you oughtta know that you gonna be fair and honorable. You'll see. You'll make sure it works of this. You'll make sure it

1330 works. Of an emotional argument, it was very emotional but it doesn't add up. It doesn't fit, it wasn't factual, it's for a limited purpose and here may be the coup de grace. All of these things are supposedly from motive to show how somebody might have acted from June 12<sup>th</sup>. Interesting isn't it? Again in the words of Shakespeare they're hoisted by their own petard. They talk about these incidents involving Nicole and Mr. O.J. Simpson. Every time they would have an argument everybody would know about it. Whether it was in '89 or the '93. Everybody would know about it because it'd be loud, they'd be arguing back and forth, there was drinking at the time in '89 on January the 1<sup>st</sup> remember the evidence was they'd both been drinking. Certainly didn't make it right but they were loud arguments that

1340 everybody knew about. What kind of characteristic is that in this case? This is a case about stealth about somebody who would seem to me a professional assassin who kills these two people. And the thing that they're so outrageous for them to stand here and tell you that this is all about Nicole Brown Simpson. Have any of you thought during the last year what if the perpetrators were after Ron Goldman and that envelop that he had in his hand that Dr. Lee found that smear on. Who in this courtroom would know it? The rest is speculation. This is their theory that they try to come up with. We don't know. This is a case of reasonable doubt; this is a case of an innocent man wrongfully accused. They can't answer those questions; no one can under these circumstances. And so we move on and look at other things that don't

1350 fit. We know that there was this terrific struggle, it involved primarily Mr. Goldman. Mr. Goldman as he fought for his life. Why no bruises on Mr. Simpson's body? Admittedly this was a violent struggle of rather two very, very fit adults. And let's look briefly at the bruises on Mr. Goldman's hands, I don't think we have to cut the feet on this one your Honor, I don't believe. When we talked about this in opening statement and that large bruise on the knuckle. According to Dr. Baden it's consistent with Mr. Goldman's fight that he put up for his life. He struck something probably a person at that point but Miss Clark and the others can't even admit that. In the face of doctors, a doctor who did the re-autopsy, re-examination of the death

involving Martin Luther King and J.F. Kennedy. It tells you one thing. The

- 1360 Prosecutors say oh no, no it must have been flaying back, must have hit his hand against a tree or something like that. Only the facts that they wanna put into this little contorted theory. But they proved to you otherwise. We proved to you what's reasonable under the circumstances. So I think you saw that in my opening and I think that is further evidence. This was a very, very real fight. And of course in a real fight, in real life fights are awkward and clumsy. Off times they [inaudible] or rolling around the ground. Other very interesting things in this case is this dug out area near Mr. Goldman's body. This area I thought was very, very interesting. Remember I asked Detective Lange about this and this is gonna become very, very important later on. This area, this dug out area remember there's the pager over
- 1370 there and there's this dug out area. That gives you some idea of the ferocity of this altercation that took place. Remember Dr. Henry Lee talked about the blood all around in this area and the keys in one place, the beeper some place else. This dug out area, interesting isn't it? Now think with me for a moment. If you fought for 5 to 15 minutes in an area like that I suppose both parties would have a lot of bruises and marks on them. Wouldn't they? Mr. Goldman did and I bet his perpetrator does. But there's something else again, they wanna tell you and you'll hear a lot about socks before we finish but these socks, these socks that all of a sudden appear in that video at the foot of his bed, we're being warned by Mr. O.J. Simpson. Well ladies and gentlemen when you see these socks, what do you think the dirt and the dust was on
- 1380 these socks. And let's see if they can ever explain this. Where was the dirt thrown out, moved around on these socks? You're not gonna see any, you're not gonna sees any dirt 'cause those socks weren't there. You see that dirt? You see that dug out? You'll remember this photograph. What number is this Mr. Douglas? You'll remember this when you talk about this case and you wonder whether or not there's a reasonable doubt. Whether or not this is an innocent man wrongfully accused. And so you look at this when you expect common sense would tell you there'd be bruises and nicks, they'd be kicked, there'd be marks on all the perpetrators with the heavy foliage there, with the fence and the trees you would expect scratches on everyone. Or as Mr. Goldman has more than 30 stab wounds you would expect this
- 1390 struggle. Five to fifteen minutes to have left that but there's nothing like that in this case. Nothing like that on Mr. Simpson body, you've seen that before and you'll see it again. Now in this case in opening statement I showed you Bob Shapiro's foresight and wisdom. He had these photographs taken I think on June 15th. Instead of praising this lawyer who was interested in the truth, the Prosecution says, well, they went to Dr. Huizenga. That wasn't really his doctor. Isn't that preposterous. Dr. Huizenga, by all accounts, is a qualified doctor. He was the Raiders team doctor. I suppose he is supposes qualified. This is Mr. O.J. Simpson's body as it appeared on June 15th. Wouldn't you expect to see a lot of bruises and marks on that body? You see his back. Some of these aren't very flattering, but this is not about flattery; this is
- 1400 about his life. Now, on his hands--there is some slight abrasions on his hands, but nothing consistent with a fight like this. You know it. I know it. We all know it. We

will talk more about this, this so-called fishhook cut and where he got that. It will become very clear when we talk about demeanor where that came from. Miss Clark wants to try and confuse that, but that is very, very clear. And so with regard to Mr. Simpson's physical condition, I wanna just tell you to take my word, stand here and say, oh, yeah, he was in great shape on that day or he looked good or whatever. Fortunately we had photographs again, we had graphic evidence of this man's body. This man had not been in a life and death struggle for five to fifteen minutes. Miss Clark herself said it. She used the boxing analogy, saying that boxers fight for 3

1410 minutes per round. Sometimes there's a knock at in the first round but in this instance we know because of the way the injuries were and the blood lasted for this period of time. This was a violent struggle. That man that you saw up there was not involved in that violent struggle. And so we did call, Bob Shapiro called Dr. Robert Huizenga, he's a witness in this case and you recall that Dr. Huizenga was a very, very seemed to me credible, honest witness. What did he say? He said that O.J. Simpson looks like Tarzan but he moves more like Tarzan's grandfather. That's not to say that O.J. Simpson wouldn't be capable of committing a crime. It's never what we're trying to say. What we're trying to say was, see this man for who he is. See this man for the arthritis that he suffers, that everybody in his family suffers with

1420 arthritis. You saw his mother; you heard his sister and you heard he has it worse than they have. But he can still play golf, you can still do that and some of you, I hope don't, but if you have it in the early stages you know what it is. Certainly on certain days. What I think it means is you don't go out looking for anybody to be in altercation with. O.J. Simpson by all accounts has trouble with lateral movements, moving from side to side because you saw when I had him come over here those knee operations that basally spelt NFL, National Football League, four or five times on the left knee and a couple of times on the right knee. That's the price that a running back pays. And while I'm talking about running backs wasn't it interesting yesterday that Miss Clark in argument says O.J. Simpson was a football

1430 player, he has to run through the line and he has the killer instinct. Isn't that really stretching it ladies and gentlemen? O.J. Simpson hadn't played football for 15 years. That's 46 years old now, he's not gonna run with anything, anymore. But she didn't know much about sports, does she? Because a running back avoids trying to be hit, that's what he does, the problem with them they don't block, they always run, they try to get out of the way. So he's not looking for contact, he gets tackled but running backs don't try to run over anybody, only like but Jim Brown or somebody like that. So they grab at everything, the killer instinct, played football 15 years ago and he was the best at what he did. He won the Heisman's Trophy according to his daughter the day she was born, emblematic of the best football player in America.

1440 And so this was brought to you only to give you some further factors of who this man is or limitations if any he has to give you a complete picture of who he is. Now we shift our attention to Mr. O.J. Simpson's demeanor and I want you to examine with me the conduct both before and after June 12<sup>th</sup> 1994 and [inaudible] this man reacted and handled himself. You remember, let's start off with the week before.

We could've gone further back, you know from the evidence that he travels all the time. He hardly has any time to have any fuse for anything. He's never here, he's always travelling for Hertz. Is he doing something with sports, he's not here. This particular week was typical of the kind of weeks he has it seems. He was here on Monday, on Tuesday he and Paula Barbieri got together and met with this interior

1450 designer who'd done work on his house before. She brought out these other work on that house, to change the bathroom around and do some other work. She had a budget and they gave her a check. Now it's so interesting, isn't it? You change your house or get some work done Mr. Darden says that's to get Nicole out of the house. Is that stupid? Does that make any sense to you? That's preposterous. The man's moved on with his life. He's having some work done, some interior decorating work done. We proved that. You can't see the positive side to that. O.J. Simpson a check for Collins & Collins, is Mary Collins, June 7, one thousand dollars, that was a down payment on the work she was gonna do. Again you saw her, you saw her come in, this work was to be done. They wanted to do it and Paula Barbieri played

1460 the role and a great part in that work. After that he was on the road, went back East to play golf with Jack McKay and you saw Jack McKay. And you knew they were golf buddies, it was a Hertz thing. Not a Hertz thing, this was this association of retired or something or other. Played golf but the most important thing I thought was Mr. McKay indicated that there was the foursome, Mr. McKay indicated he observed Mr. Simpson walking and walking with a limp, you'll recall that. And then we came to the Carol Connor dinner, where Carol Connor observed the magic moment on this Saturday. Then we called witnesses from the family. And any daughter would be proud and wanna testify for her father. But you saw her on the stand. You got a chance to judge her like you do the other witnesses. To

1470 observe her credibility and what she had to tell you. She told you that her father always rushed around. Pretty something about him too and when she got out of college in Howard University she wanted to come home. He had a place for her to come home to. You know children go away and come back a lot these days. And so Kato Kaelin, they make a big thing about Kato Kaelin living there. You know I choose to think say something about O.J. Simpson. You know Kato Kaelin and anything. If you wanna say hey look I don't want you living with my wife, we're trying to get back together, supposedly got to say they're trying to get back together. He could say that, the let him come and live there in the other guest house. They turned that around to something better. That's something positive about this man.

1480 Who with such dignity sat there for all these months. This human being, this Orenthal James Simpson that tells you something about him. and so his daughter tells you lot about him. She can tell a lot about a person, supposed by their children. It tells you a lot about him and their living together and their life together and what he meant about how his bothers and sisters would come over there in the early morning hours as they were trying to get together in 1994 in May they'd be out by the pool she'd see them. What kind of life they had together, the dogs that they purchased and the kind of things they did. Maybe a little bit of the other side. What



these incidents that they wanna talk about in the distant past. The way O.J. Simpson really is and really was. You saw her and you observed her and she told you how

1490 her father reacted when he got the news that his ex-wife had been killed. She told you. She'd never before heard her father sound like that, how upset he was, how he lost control of himself, how destroyed he was. You heard her, you saw her on that stand. That's why we called her, so you'd have a better understanding because we knew, I knew that come a day that Marcia Clark would stand here and say well you know he didn't react like somebody does when they get this information. Just like she did yesterday. But what Miss Clark forgot because I examined Detective Phillips and you look back through your notes. The first thing that O.J. Simpson to Detective Phillips was "What do you mean she's been killed?" and then he kept repeating himself and repeating himself and Phillips to his credit said he became

1500 very, very upset kept repeating himself and Phillips gave the phone to Arnelle Simpson. So she can again theorize, fantasize all she wants, well he didn't ask was it a car accident. You ever had some bad news given to you? There's no book that you go to. The only book you should go to is the Bible or your God or whom ever you believe in to help get you through it. There's nothing that says how you would handle yourself in those times. These Prosecutors don't understand that. Remember standing and telling you that that's preposterous. This man was upset and you're gonna see that everything he did from that moment that he found out that his ex-wife had been killed was consistent only with innocence absolutely that day. And so Arnelle Simpson helps us in that regard. She's followed to the stand by Carmelita

1510 Durio, sister loves her brother but you knew that. She was called to talk about Ron Shipp, one of the witnesses in this case that the Prosecution called. It's interesting isn't it? That neither one of the Prosecutors wanted to talk about this dream because I think they're embarrassed by this. They didn't talk about it. They should be embarrassed. A dream. You listened to evidence about some dream. Was it a daydream? Was it a night dream? Was it a nightmare? Was he looking out the window? What does it mean? You know the judge's instruction. You can totally disregard that in the end, I mean who knows what that means and probably it doesn't anything mean because Shipp did not tell you the truth. If you listen to Carmelita, if you listen to Shirley, if you listen to Mrs. Eunice Simpson, Shipp was

1520 never alone with O.J. Simpson that night. He's an O.J. wannabe. Bringing police officers over there, still wanted to be a police officer off the force for whatever reason, drinking that night, drinking in the past as he said he was. Not credible, the evidence he brings is so unreliable, it's so irrelevant that I don't wanna spend much of your time with it. But you saw it, you heard them. I ask you to consider Carmelita, Shirley and Eunice as against Ron Shipp and I ask you who are you gonna believe? There can be no contest. And so you remember what Mrs. Eunice Simpson said when she said that he seemed a bit spacy, was the way she described it. He was never alone, never talked about any dreams when Shirley went upstairs with her husband. They spent the night with O.J. Simpson this was a time for

1530 family. This was a time when people gathered around. This is the time for people being sad. They sat on the couch with O.J. Simpson holding his mother's hand, you remember that. Mama always told me that you could tell a lot about a person by how they treat their mother. You probably have heard that too. And your mother is the one who always comes for you to you in times of tragedy and stress. Truth to those words there was Mrs. Eunice Simpson and she is this very day. Right there by her son's side sitting in that couch. Who you gonna believe? Eunice Simpson or Ron Shipp, this wannabe. I submit that you're gonna believe Eunice Simpson. She knows her boy. He knows his mother. And then each of these witnesses who dealt with O.J. Simpson and let me just quickly come to a logical breaking point so that

1540 you can get to your dinner. Allan Park who she places such great [inaudible] found O.J. Simpson to be, his demeanor to be normal. He never met him before; he's a normal guy, he was glad to be carry O.J. Simpson around. Another thing he said was interesting, he said you know he said he was hot. O.J. Simpson himself said he was hot in the back of the car. And I thought about this today and this morning when I was rushing around trying to get dressed and come to court today and look forward to seeing you all again, for another year and a day, I took a shower and I was trying to get dressed and I kept sweating, I kept sweating and I thought about how that applies to this case, 'cause you know we talk about common sense. You ever rushed around and take a shower and you're sweating. O.J. Simpson always

1550 rushes around according to his daughter, according to Gigi. That's the kind of common sense we know. And so when we come back this afternoon we're gonna talk about Kato Kaelin and how he found O.J. Simpson to be the same O.J. Simpson. And we're gonna talk about a range of people who see this man from 11 o'clock on to the next morning till he comes back. We'll take them one at time but they all have one thing in common it's O.J. Simpson and he's acting normally, he's himself not acting and the thing I think is probably best, and there are a number of good witnesses in that regard but Howard Bingham is a well-known person around here. Howard Bingham gets on the plane and he, it's funny because he was been coaching and he wanted to explain that to you and why you sitting back there

1560 coaching, O.J. was in first class and he sees O.J. and he runs up there to say hello to him before the plane takes off, remember. And I asked him well how did O.J. Simpson seem to you this evening? He said it was the same O.J. I've always seen and known. And so rhetorically I ask you again Howard Bingham in this area for years known O.J. for years. Who do you think knows O.J. Simpson better Howard Bingham or Marcia Clark and Chris Darden? When we come back we'll answer that question.

**Judge Ito:** All right ladies and gentlemen we're gonna take our recess for the afternoon. Please remember all my admonitions to you. We'll stand in recess until 6 o'clock. All right have a pleasant evening meal.

1570 **Judge Ito:** Ladies and gentlemen it is strange to say that but I appreciate your hanging in there. A little chilly?

**Jury:** Yes.

**Judge Ito:** Ok. All right Mr. Cochran you may continue with your closing argument.

**Mr. Cochran:** Thank you your Honor. Good evening ladies and gentlemen.

**Jury:** Good evening.

**Mr. Cochran:** I'm glad you all came back. I appreciate that. Oh I guess so. Now where were we when we left off? We were talking about demeanor. Mr. Simpson's demeanor and I think I posed a question with you just before we took our break

1580 about Howard Bingham the photographer who testified here and I asked you the question, a rhetorical question who would know O.J. Simpson the better in his mood and how he appeared on this night, the Prosecutors or Mr. Bingham who had known him for such a long time. It was a serious question because Prosecutors I suppose never met Mr. Simpson before we started this process so I think it would be relevant for you to know about how somebody who knew him over a period time saw him on that particular day. Especially when they go into their doctor mode and they use terms like post-homicidal conduct. There's been no testimony in this case at all about post-homicidal conduct and about demeanor about anybody X in a post-homicidal conduct. That again is more speculation. But what we did in this case was

1590 we tried to call for you a number a witnesses who I think bear on this issue of demeanor which seems to us is totally relevant. For one thing it totally rebuts this specious theory about any kind of a fuse or any rage that you've seen. We've done that, we shared that with you already and in the course of wrapping that up keep in mind that both Kato Kaelin and Allan Park fall into the category of demeanor witnesses who place Mr. Simpson's demeanor as being entirely appropriate and these are People's witnesses and so it doesn't matter whether we call the witnesses or they do. If you're in a search for truth you look and see if there's a common thread of truth that runs throughout these witnesses. And I think we found that. Now one of the things I wanted to share with you yesterday Miss Clark in her argument

1600 tried to indicate something to the fact that Mr. Simpson didn't want Kato Kaelin I believe to spend time with him or something of that nature as though he wanted to get rid of Kato Kaelin, it was part of her, her theory there. And I went back and I looked at the um testimony at 19854 Miss Clark herself when questioning Kato Kaelin, um, "When you got to that location what did you do?" "When I got to the door yes I turned." "Ok, what did you see?" "O.J." "And where was he?" "At the driver's side door of the Rolls." "Did you say anything to him?" "No." Um. "What did you do?" "I looked and said I'll eat in my room." The he went off to eat in his room but there was no, further on it says "Did you have any conversation with Mr. Simpson?" Answer was no. "And he said nothing to you?" "No." So I think that

- 1610 was important to understand and put that record straight but there was no discussion about whether Kato would go in the house with Mr. Simpson or whatever. They didn't talk. Kato went back to his room, Simpson was still out at his um Bentley um presumably trying to get ready to you know go on this trip which was long planned. Uhm there'd been something mentioned earlier of an argument at a Christmas party and I wanted to again try and set the record straight before we on with demeanor because I pulled up Kato Kaelin's testimony again. And what he says was that after question: "Did everybody go home together?" Answer: "Everybody celebrate Christmas Eve back at home?" Answer: "At Rockingham yes." Question: "Nicole, O.J. and the kids." Answer: "Yes." Question: "And
- 1620 yourself?" Answer: "And Arnelle and Jason." Question: "Whole family?" "Yes." Now what is it they say, well there was an argument at the Jenner's and they don't tell you remember the testimony was they left the Jenner's to go back home because it was Christmas Eve and they all celebrated Christmas Eve together. You gotta have the whole picture, don't you? That seems reasonable and there was some question about the flashlight and here's what Kato Kaelin had to say about that, where he says "Then I said O.J. do we have a better flashlight and um when I told him about the noise he was going to take one way, I was gonna go another way, but that is when I said we have this lousy flashlight we need another one and so he was going to go inside and check." And then they went in the house he followed behind
- 1630 and the that's when Mr. Simpson had to then leave um for the airport. So I think that again I wanna, I promised you I would always try to read the actual testimony to make it as clear as I could about what we were. I cut few of the housekeeping things before we get directly into the demeanor aspect. Um Miss Clark yesterday had made a number of points about phone calls and boards to Paula Barbieri and you'll recall we saw a number 305 which I think is in the Miami area code and I think the evidence is that's a cell phone or some kind and ah certainly if you call that phone number out here you can reach people on the cell phone and I find nothing unusual about that ah in regards to the calls that were made. We, there also was some discussion about what Dr. Baden had had to say about these cuts or cut on Mr.
- 1640 Simpson's hand. You recall that Brian Kilbert came back down here again and he asked some questions of Dr. Baden had tried to pull up this testimony so I'd have it clear about when Mr. Simpson had gone to the Bronco to get the portable phone, when he went back to the Bronco to get the paraphernalia in that phone and tried to piece together as when he got a small cut on his hand not any large fishhook cut. Which I think was clear from the evidence at what point that he may have bleed inside that Bronco and may not have known that. And so we read Baden and this is at page 41182. Question by Mr. [inaudible] I believe quote "If anything did Mr. Simpson have to say as to the manner when he got the cuts" Answer: "That he recalls some blood after trying to retrieve his phone or some material from the
- 1650 Bronco, from a car. From a car that he had his phone. I think it was the Bronco. That he'd gone to the Bronco to get something and may have somehow cut himself while getting stuff, stuff from the Bronco to bring with him to Chicago." What I think is

that it's important to tie this in with the fact that remember Kato Kaelin and I think even Allan Park indicated that by the time they were there when Mr. Simpson finally came down the stairs, when he left there were bags already down. So he had a golf bag and other bags already out there. So he'd been outside in that yard and apparently to Miss Clark's testimony it'd been at some point out to the Bronco and at some point he gotten his phone, this portable phone but we know he got it because he made a portable phone call on that phone by 10 o'clock or by 10:03. The

1660 car wasn't moving; this is a portable phone and remember I asked Gigi Guarin where there any portable phones inside that house. The testimony there were not. So there was no wireless telephone at Rockingham. So I think the testimony is and the reason the inference is that Mr. Simpson made that cell phone from that location to her cell phone number 305 area code. And then once we they left as I told you, they left with Park and we know that was around 11:02. So now Mr. Simpson's in the car and you know how Park describes O.J. Simpson um nothing out of the ordinary. He says he says he's hot but that's nothing unusual and the Mr. Simpson gets to the airport. You remember those two young men who came in Michael Norris and Michael Gladden and these are the two airport couriers who parked at the curb there

1670 and one of them Gladden wanted to get Mr. Simpson's autograph, you'll recall that. And so even though Mr. Simpson was rushed in trying to get to the plane or whatever, he stopped and he gave his O.J. Simpson peace to you. That was a signature that he gave at about I think the testimony was 11:20, 11:25 that particular night on June 12<sup>th</sup>. That was a testimony I'm glad and remember they described O.J. Simpson as being kind of like a model or some kind of poster boy for these jeans or whatever he had on I think the way they described him he was dressed very neatly looked very clean, that's the way they described him and he was very approachable, he put some luggage down and then turned around, forgot about the autograph and then gave the autograph, you recall that. It was very interesting because Miss Clark

1680 said yesterday something to the effect well Mr. Simpson ah didn't put on his socks because he left his socks at home. Now that was one of the most interesting things she said. You've been in this man's closet, you think that O.J. Simpson has one pair of socks. Ah, I don't think so, I think you saw his closet and you swathe clothes the way they were lined up and the way they were. In fact remember I asked the witness a question "Is it trendy, is it fashionable that a lot of people in that part of town don't wear socks when they dressed up to go out?" Somebody said yes, that's fashionable, that's what happens. O.J. Simpson has lots of socks. And the evidence is and it's so interesting isn't it? Because under the Prosecution's theory, if you follow that theory, you're asked to believe that Mr. Simpson is in sweats and tennis

1690 shoes and I presume tennis socks, that he gets this urge to go and kill his wife and he takes off his tennis shoes and his tennis socks and puts on some dress socks and dress shoes. That didn't make any sense, does it? But keeps on his sweat clothes according to them. That's how preposterous their theory is in trying to make things fit. And you're gonna see and you're gonna understand that even better when we talk about these socks. So as O.J. Simpson gets on the plane and it was interesting

because not only did he deal with Norris and Gladden but he had an interesting man in the first class across from Steve Valerie and you saw Valerie, young man who for pretty much most of that flight watched O.J. Simpson. Mr. Douglas what's that number, sir?

1700 **Mr. Douglas:** 1245

**Mr. Cochran:** A 1245 just gives you some idea of this plane we talked early about Bingham and Valerie was right across from O.J. Simpson as he sat up there in the fourth seat or something like that and he watched him and noticed him and described for you Mr. Simpson's demeanor. He looked at O.J. Simpson's hands. That was really one of the important things about it because again when Miss Clark who was Dr. Clark in this regard talked to you about these, this cut or whatever she was describing how a little cut wouldn't make this amount of blood but this larger cut but all of the witnesses who didn't know each other O.J. Simpson did not have this fishhook cut on his hand when he went to Chicago. That's unanimous. All the

1710 witnesses, you heard them, you saw them, further you heard the testimony of doctor's Huizenga and Baden who said this is not consistent with a knife cut, it's consistent with some kind of glass cut because it's raggedy, jagged. You remember that, you remember the testimony and we can prove it further by witnesses that saw him before he was in that room in Chicago and witnesses that saw him after. And we will talk about that. So on the plane was Bingham and then we had the pilot on the plane and the pilot who was flying came back and asked Mr. Simpson to autograph the [inaudible] book, which he did and we have a photograph of that. Um again you saw Wayne Stanfiled who described how Mr. Simpson was seen there reading a book. A light shading down on him, not trying to hide from

1720 anybody. Not anything, sitting there, reading his book, looked up, talked to the pilot and gave his autograph and they both continued on with their business. The he gets to Chicago and he lands and he deals with Jim Merrill the Hertz driver, you'll recall him. The Hertz driver describes the number of bags that Mr. Simpson has. And the luggage when he arrives, he describes the duffle bag, the black duffle bag, the garment bag with OJS, the golf bag, the Louis Vuitton bag. All those bags are described by Merrill and then of course, you remember we talked about the nap-sack bag, which we think logically had golf balls in it was inside the golf bag. So Merrill watched O.J. in the luggage area meet with, some I think say 20 different fans while waiting for his luggage. Merrill says he was friendly, relaxed and he saw

1730 no noticeable cuts on his hands. That's what Jim Merrill told us. This was his testimony, so we brought him here from Chicago to testify in that regard. Now I want you to contrast Mr. Simpson's demeanor and behavior after he goes to this hotel room in Chicago, after he learns of his ex-wife's death, everyone is consistent and again these witnesses don't know this person. He was emotional and concerned with the cut finger. They have Kilduff and Mr. Simpson gets the call. Here I want you to think with me for a moment. I want you to look at how he reacts to this information. We've already covered how his daughter describes him; she's never

heard him like this before. He immediately gets plane reservations to come back to Los Angeles. He's then trying to get back, finally leave this hotel. It's early in the

1740 morning; he's trying to get back to Los Angeles on the first thing flying. He's trying to find somebody to take him back to the airport. He's there to play in a golf tournament that day. Obviously that's never gonna happen. So we know the day of Kilduff, the Hertz manager drove Mr. Simpson to the airport and how he describes, now this is the first witness, Mr. Simpson's fingers bleeding and this fishhook cut. This cut that he got in that room when that broken glass was there. For the Prosecutor again with a cynical view say well, well that couldn't have happened. Dr. Baden says when talking about Mr. Simpson he got that cut when he burst this glass into the sink. It's entirely inconsistent doctors deal with cuts and they said this is consistent with the glass cut. Kilduff says that O.J. Simpson is crying and he's

1750 upset. He finally makes it to the plane and I think it's important to note that when he makes the plane he sits next I think in seat 9 to lawyer by the name of Mark Partridge just for tourists. And I thought this is very interesting about this man Partridge, remember he's the man who was a patent lawyer, he'd gone to Harvard and he observed O.J. Simpson on this flight back. He saw him make these phone calls, he saw his emotional state, he saw him trying to gather information, he saw his finger, he saw the band aid he had that came off, he saw that it was cut. You saw his testimony. These were all citizen timeline witnesses like you and I who were brought here by subpoena. They didn't ask to be here, they didn't volunteer but they had relevant information about what had taken place and what had happened. So it

1760 seems to me that we in our search for justice, in our journey toward the city of justice must take these witnesses seriously. But you understand with the power of the State the Prosecution had an equal access to all these witnesses but they didn't call them, they didn't call them because they didn't fit. They didn't fit and they didn't want to hear, so the Prosecutors decided to attack and you'll remember how these witnesses generally were treated. I thought Partridge was treated especially bad. He's a man who was so concerned about no one stealing his notes; he wrote notes about what to place. Not Partridge he's a patent lawyer so he understood he put his name on the side of the margin, to write down his notes cause he knew it would be important. Remember he said it used to be important and he sent those

1770 notes to the Prosecution and to the Defense. So that I'm just a witness here, this is what I saw, can I be of some help. They chose not to call him; they chose to attack him as though he had something to hide. In fact, remember Miss Clark standing and saying something to the effect, well you know how busy the LAPD was when they have time to respond to you. Well maybe not but this was an important witness. That was the only person in the world who sat next to O.J. Simpson on a flight back from Chicago, with everything he was doing continues to do was consistent with innocence. They didn't want to hear it, but we brought this, again for you to hear and I ask you to judge this witness as you do all the others. You remember Mark Partridge and I think you will and remember that was unfair, to attack a witness, a

- 1780 citizen witness, who seemed to be totally objective and careful. And there was Ken Berris, the police officer in Chicago, just talked about him coming out here but we brought him out here, we brought Ken Berris out here. He was the police officer who maybe 3 hours after O.J. Simpson left that room, went into that room at the Plaza, was it? 11 o'clock or thereabouts I believe he said he went into the room, he found the glass, he found the towel, he found the bedding because the maids had not done anything with regard to that room. Found this broken glass and the evidence is contrary to what the Prosecutor were trying to tell you is that this glass was consistent with O.J. Simpson cutting his hand on it. And this is the cut, the fishhook cut. Now you characterize witnesses like Kato Kaelin and Partridge, Denise Pilnak
- 1790 and some others who felt the wrath of the Prosecution and you have to ask yourself why in a search for truth why did that happen. And Mr. Simpson returns back from Chicago and this was very interesting and you'll recall because officer Don Thompson saw something looking at him, it was a very, very impressive big fellow, he's about 6 foot 7 or 8, he's a big guy and you'll remember he's the officer who's very interesting and very honest because he said that immediately upon Mr. Simpson coming back to Rockingham at 12 noon now on June 13<sup>th</sup> what happens? Vannatter had told him to hook him up. Let's see that if we can. We'll give you the number in a minute your honor. (Probably showing a photograph, the video is cut here). Thompson had testified how he had been told by Vannatter to hook him up or
- 1800 to handcuff him. Grabbed him by the arms he went in there and you recall the photograph (showing the photograph) because Thompson there in the background and the foreground. Thought Mr. Harris had that but anyway you recall that Mr. Simpson was standing over under a tree and he was handcuffed until the lawyer Howard Weitzman came you recall that because we saw that during the trial. (Another video is shown) Howard Weitzman lawyer he's talking to Mr. Simpson. You can see that Mr. Simpson is taken out of Vannatter, he's going over to him and taking the handcuffs off I believe as the conversation goes on with Weitzman. All right he is unhand cuffed at this point. That was number 1250, was it? 527, 1250 your honor. The point of that was, we have said, and I told you at the beginning and
- 1810 told you in opening statement and told you again today this was a rush to judgment. At 12 o'clock on June 13<sup>th</sup> Vannatter told Thompson to handcuff O.J. Simpson or to hook him up. Vannatter lied about that because he said in his testimony he never told him that. Thompson was very clear about that he told him, he didn't do that on his own but it shows this rush to judgment. Vannatter did not want to admit that and never did. We'll talk more about him when we discuss the officers together but seems to me the important thing for us to remember is that after this video Mr. Simpson you'll recall is on his way downtown in a vehicle with Vannatter and Lange. You remember Howard Weitzman talks to Vannatter, Simpson gets in the car with the police in the back, gees downtown without either his business lawyer or
- 1820 Howard Weitzman, rides with the police. We know according to the testimony of this case he talks with Vannatter and Lange once he gets down there. I think we asked both of them about this conversation. Referred nothing else about this



conversation he has no lawyer in there with him, has no lawyer in the car when he goes downtown after he makes this statement to the police, which we haven't heard, he then gives a blood sample, some time around 2 o'clock or whatever that afternoon on the 13<sup>th</sup>. He voluntarily gives his blood sample; he then has a photograph taken of the cut on his finger. There's no lawyer present during all that, the lawyers are some place else at that point. Mr. Simpson is dealing with this himself because he wants to clear this up, he's innocent and wants to get on with it.

1830 Everything, everything this man does is consistent with innocence. He finds out, he gets the first thing [inaudible], he comes back here. He goes right to his residence, he talks to the police, he goes downtown with the police, he goes in a room with the police, he has his finger photographed, he gives blood, his lawyers are all some place else. That's what this man did on June 13<sup>th</sup>. They weren't there, then. That's what he did. Consistent with innocence. They wanna talk about luggage? The testimony again of this honest police officer Thompson is that they wouldn't let O.J. Simpson's luggage on the premises. They talk about Bob Kardashian, they smear Bob Kardashian, a good and successful, decent businessman and friend. He can't

1840 come on the premises. They have to take the luggage away. Now these people have search warrants, they can do whatever they wanna do at that point. They have the power of the State and they have the audacity to stand here and tell you that when retired Judge Delbert Wong brings in the Louis Vuitton bag months and months and months later there's no clothes in it? Now is that folly. They're not supposed to unpack it? That is silly. I shouldn't but that's what waste my time on it but that's what was said her, you heard it. And they are the ones who turned away the luggage. So you remember that when they stand up here and try to talk about any luggage and they didn't have it or what was in the luggage. We brought the luggage back and if he didn't have by the way that portable phone in his luggage. You hear

1850 about that also. So understand we're gonna talk about the facts not any speculation. So what more than could an innocent man do? We talked briefly about the cut or cuts on O.J. Simpson's hand. It's interesting, isn't it because the one cut leads off the officer with their photographer. They take a photograph of this cut. Do you remember there were other pictures there was a cut on the side of his finger here, a nick or something like that, it looked like a paper cut, I think they said. And it's interesting because if that cut had been there, June 13<sup>th</sup>, at 2 o'clock or whatever time they took it, do you think the police would have taken a photograph of that? They didn't because it probably wasn't there at that point. So it's very interesting, this is the only cut they got but we know that he nicked himself in several places

1860 according to what he told Dr. Michael Baden. Miss Clark makes a big thing about some smear or some little tiny smear, blood in the bathroom upstairs. O.J. Simpson had been back home since Friday, shaved, whatever, I don't know when he got there, he didn't know when they got there. [Inaudible] was strange that under her hypothesis, under her theory. He comes back home with these bloody shoes on, bloody clothes with his white carpet goes upstairs. There's no blood anywhere, a little tiny spec in the bathroom. Does that seem to you to be reasonable or rational or

related to this case? One thing about blood spots, you can never date them; can never tell generally how old they are. Another thing that doesn't fit. The fingerprints. They didn't call them but we called Gilbert Aguilar. You remember

1870 that. He's the fingerprint expert. He examined and dusted and found 17 latent prints that he was able to lift at Bundy, the crime scene, the gate, the fence, the front door. He was able to identify 8 of the prints after comparing the known exemplars of the no ones being the police officers and people that you might expect around there. But there were 9 identifiable prints that were never identified, remember I asked about these various systems that you can put the prints in. doesn't work for palms but it works for prints. What efforts did you take to try to find out who of these 9 identifiable prints belong to. To this day we don't know are those the prints of the real killers. We will never know. They have not found those prints. We brought this witness in for you. We established this for you. The finger nail scrapings. Mr.

1880 Scheck will talk more about this, this EAPB. Remember there's no literature to justify how they wanna contort and twist this. This double banded B is more like a B than anything they can ever justify. And it doesn't fit, it doesn't fit in that case so they can't explain it. It's like the number 4 [inaudible] on the [inaudible]. There's no number 4's in this case, it doesn't fit, if it doesn't fit, you must acquit. They don't and they cannot explain that. Dr. Irwin Golden the missing coroner. This man was trashed by his own department, it was brutal, by his own boss and if he thinks he was gonna be treated any better, remember Kilbert how dismissed him at the end. He said by the way the next time you come and testify run out of speech slower. That was his last remarks to a man, you look at your notes, his last remarks to a man

1890 he kept on this stand for 8 days to tell us that the cause of death was stabbing, the time of death was between 9 and 12, that it could have been a single edge or a double edge knife. That's how they treated their own witness, the coroner of Los Angeles County but they did call Dr. Golden. Why not? Why is that? Why we'll have to speculate about that? They like his testimony? He couldn't help them is the more logical, reasonable inference, isn't it? Whenever there was a witness, if they couldn't fit within their little theory, they'd abandon them and talk bad about them. A rush to judgment. Detective Phillips, the very, very beginning of this case. Remember I had Phillips as a witness. He's a nice man and I quote him when he said, remember when you called the coroner after all these hours, after all these

1900 hours out there. Now remember he's off the case by then too because you know the LA the robbery homicide division has taken over. They find that out at 2 something in the morning, remember? And they wait for Lange and Vannatter to come until after 4 something. Here's Phillips still out there now, they're over at Bundy and they call the coroner, it's like 8 hours later now as I recall and what does he say. There's a little tape I think that we may have he says I think quote "We're sort of breaking the rules here." They're worried about how there gonna look here, they're worried about the press more than they're worried about these bodies that are still out there. Whether they're worried about people tracing through that crime scene more than they're worried about trying to protect the innocent and pursue the guilty. Which

- 1910 they should be doing, which they're required to do on the Law, notify the coroner immediately. Sort of breaking the rules not calling criminalists this is, this is in the early morning hours, you'll remember that, look at your notes, it's like 8 o'clock or so, 6 o'clock, now it's 8 o'clock because they're back in Rockingham. It's 8 o'clock in the morning now. These bodies were found by Riske at 12:13. Coroner didn't come until about 10 o'clock, remember that? Fung when he does come goes to Rockingham before he goes to Bundy. Sort of not following the rules. This is what this case is all about not following the rules. They're more worried about vanity and things like that. Not about these victims. We can demand more and should demand more about police and it does become very relevant tied in with this
- 1920 and so let me make it clear. We heard yesterday this snide comment about oh we had the best witnesses that money could buy or something like that in this case. Consider Dr. Henry Lee, by all accounts the number 1 criminalist in America, probably in the world. He didn't take any money, the money for his time that O.J. Simpson had to pay. Went to the State of Connecticut to help the police and police run you heard that testimony. So it's a real, real unfortunate thing when lawyers stand here and demean people with national wonderful reputations. Who come in here who are compensated only for their time. The only ones not being compensated for their time here are you and we apologize for that. But these other witnesses the Law allows that they'd be for their time out of their offices, you've heard that. Not
- 1930 doing this to make money, he's subjected to this, be on television everyday, have people [inaudible] into your private lives. Nobody wants that, it's not any fun for any of these people. The certain not right to stand here and says things like that. Those aren't the facts at all as you know them. Early I said that they'd been an offer that doctors Lee and Baden and Wolf will insist the Prosecution were not accepted but they were out here at least to the extent that they were allowed to do things. You'll hear more about the testimony of Henry Lee on that. You remember how they rushed into this thing when he came back from Seattle and how he was treated. That's the only time he seemed to be a little bit upset. He rushed back in from Seattle and how they treated him. this Los Angeles Police Department that's how
- 1940 they treated the number 1 criminalist in the world in their search for the truth. Then Detective Lange. Lange is different than these other detectives and things. You saw Lange for about 7 or 8 days, Lange is different he made mistakes, he has misstatements as you're gonna see but he was different. Remember that one day and I'll can tell you how you can characterize and understand he's different. It's very interesting he's been on the stand for 7 or 8 days. One day he came in and was a little different, he was a little more testy that I ask him, I said detective Lange there was an article in the paper today where Mr. Darden says that you're being too nice in answering my questions and you're gonna be tougher now? You know about that, don't you? He said no Mr. Cochran I'm gonna tell you the way it is regardless. And
- 1950 no matter how you ask this man a question or what anybody would want him to say, he seemed to try and answer his best he could. Now we don't always agree with

everything he did but it was refreshing to have somebody like that wouldn't be told by these Prosecutors anybody else what to say or what to do. Even when he's criticized in the paper. That was Lange but I said that I didn't always agree with him because I ask him when Riske said about that melting ice cream. Now we're not Henry Lee, not by a long shot but it seemed to me that if there were ice-cream that was still melting or partially melted at 12:40 when Riske saw it and that's Riske's testimony. Partially melted ice-cream at 12:40, that they don't bother picking up and that ice-cream, remember when you were at Bundy, that ice-cream is when you

1960 down those steps and it's on that little banister there as you're going out in the garage. Might mean that Nicole Brown Simpson went down there and letting somebody out who had been there earlier that evening. We'll never know when they saw those candles lit around the bathtub and water in the bathtub, we'll never know 'cause they didn't bother checking. They were too worried about how they would look notifying then worrying the press. We'll never know. They said the ice cream wasn't important but it was important enough that they had, and this is the evidence, they had an ice-cream melting test. Remember I asked Lange about this again. Lange experiment show that this ice cream went back to Ben & Jerry's. It's Ben & Jerry's ice cream, remember that? It melted in an hour and 15 minutes. It should be

1970 totally melted by that time frame. If you extrapolate backwards, if Riske finds the ice cream at 12:40 and it's partially melted, let's give him the benefit of the doubt and let's say it's all melted, if you went back an hour and 15 minutes, that's 11:25. Now the children are asleep, Nicole's eating an ice cream that seemed important to us. Maybe not to them but it seems important, that's another bit of evidence, when you cannot because of negligence and incompetence determine the cause of that, you have to look at other things. Isn't that reasonable? Those are the facts, ladies and gentlemen, that's what happened in this case, they tell you it's not important, we think that is important. Another factor you remember that photograph in the kitchen where there's a butcher knife on the table and you see some flowers there.

1980 Seems to me when they came home a butcher knife was used to cut whatever was off the flowers if it was a string or some rubber band, placed those flowers in a vase or whatever in that kitchen. You look at those photographs when you get a chance. And I'm always intrigued about the things they didn't do in this case. Even Riske who said and there [inaudible] was refreshing, have you had any training at crime scenes, well they kinda glossed over that at the Academy, remember he said that. You could have fallen over when he said that. They glossed over training at crime scenes at the Academy and boy was that ever more true. The first officer on the scene told us that. We knew that right early on, didn't we? Anything we made up. It's not about being anti-police, you saw the police you could believe and you now

1990 know the ones you can believe and anybody, anybody who believes that all police are perfect, that they don't lie, that they don't have the same biases and racism that the rest of society has is living in a dream world. So this is not for the faint of heart, this is not for the timid as I said this is for the courageous who understand what the Constitution is all about. That's what we're talking about here. And so let's look at

Riske the very outset, in addition he doesn't get any training but he goes in the house and the first thing he does, he picks up the phone and uses it. I said well didn't you think that might mark some fingerprints or if it had one of those numbers where you can get the last number call. Wouldn't that be important? Did you think about that? Think about that. Did you think about the fact that you shouldn't be

2000 touching that phone and you have a rover; you have on your hip some way to call. You could use those portable phones that Phillips had with all those private numbers on 'em. You could have done all those things but you didn't use any of those things. You walked in there and you didn't notice that on that phone in the kitchen, when they're looking so hard for Mr. Simpson that there's a speed dialer that you press a button that it says dad and it says nana and it says all the people. If they wanted to notify [inaudible] they press the button they could've called nana. But not these investigators. They didn't think about doing that. They're too busy hatching a plane, standing around in the street doing nothing from 2:00 to 4:30. These are facts, this is what you heard, this is this case. The so-called trial of the century. This is how the

2010 conducted themselves. Then we come to those socks. Those socks. They just don't fit, they just don't fit. Watch with me now a video. I want you to watch the time counter in this time frame and you'll understand how important this is. Now where it says 3:13 p.m. Mr. Willie Ford says, back it up please. This is Mr. Willie Ford going up in the bedroom; it's 3:13, which he says is 4:13, because it hadn't been changed. This is 4:13 p.m. on June 13<sup>th</sup> 1994. Ok, thank you, your honor. And look at the foot of the bed there where the socks are supposed to be, you'll see no socks in this video and you'll recall that Mr. Willie Ford testified about this. And I asked him well where are the socks Mr. Ford? I didn't see any socks. So now that's interesting, isn't it? At 4:13 on June 13<sup>th</sup> 1994 these socks, they supposedly

2020 recovered, these mysterious socks, these socks that no one sees any blood on until August 4<sup>th</sup> all of a sudden. These socks that are picked up, that Loper says that he picks them up because they didn't look out of place. I don't have any reason to pick them up, I'll just take these socks they're out of place. The only items that they took out of that place on that day is Lange. Lange takes the Reebok tennis shoes, the ones he takes home, you remember that? That's all they really take 'cause they don't come back on the 28<sup>th</sup> before they get the one brown glove. These socks will be their undoing. It's just another fact. None of you can deny there are no socks at the front of that bed at 4:13 p.m. Where are all the socks? Where are these socks this important piece of evidence? Well, let me show you something. This board here was

2030 a board used by Dr. Henry Lee and this is interesting. Bear with me for a moment as you look at this. In this photograph here. The one on the left your honor. Do you notice the socks or at the foot of the bed. If you look close to this photograph you'll see it there's no little white card there. You notice how they put these evidence cards when they're gonna collect something. No little white card on this photograph here and this is interesting because you see these straps on the bed? Now Loper told us when he testified these straps were liked he called them some kind of luggage straps and these luggage straps are down at some point, aren't they. See

how they're down and no evidence card that the socks are there. And we come over to this photograph here you notice how the strap is now up on the bed. It's no longer

2040 hanging down anymore. It's been moved up and Looper says that's when he looks under this bed and he sees that photograph. By the way how wrong can they continue to be? That's no wedding photograph, that's a photograph that they took at some formal event. You look at that photograph and see. That's how they speculate and most times they've been wrong. But this is a, this this is interesting. The strap is now up on the bed and you look at the socks now it's been posed for you. Here there's this number 13 out here with these socks. Now, you look back at that video and you'll have it, you'll notice that the video has the strap down, so the video is at a time before this card is placed, before the strap is up, before this is about to be collected. Now isn't that strange because at 4:13 there are no socks there, not if we

2050 tie all of this together. You remember Fung and Mazzola have a log and on their log they tell when they collected things. They tell us that they collected the blood in the foyer at 4:30 that they then come upstairs, that they collect, here it is as we speak. Now you see this. Really collected things sequentially and they kept this log. And I think that you'll remember the testimony that at 4:30 they collected the blood in the foyer. Remember that? Let me see if I can point that out for us. In foyer red stain and that's testimony. They testified at 4:30, 16:30 is 4:30. This is at least 17 minutes after Mr. Ford's up there with that camera where there are no socks, right? So 16:30 right there (indicating on a chart) they're downstairs. Didn't they say they go upstairs? And they leave this time blank but it's 16:40 they go and they look at this

2060 red little spot in the bathroom, remember that? And they say in their testimony that the socks are collected between 16:30 and 16:40. So that's giving them the benefit of the doubt. 16:35. How can the socks be there at 4:35 when you just saw that they're not there at 4:13. Who's fooling whom here? They're setting this man up and you can see it with your own eyes. You're not naïve, nobody's foolish here. And then they forget about this little strap exercise and they're posing stuff here. Move this off the bed, move this under the bed. They're gonna make a big thing about this photograph under the bed. And then they put this number down and take these pictures for you later. But they didn't know that we would know or find out about Mr. Ford's video. So they took that video, you know we talked about this

2070 earlier on. LAPD should always take videos of everything of that crime scene. They don't do that but they take this video not because they wanna help Mr. Simpson, if anything was missing or got broken this was a civil liability video, remember they're going around taking photographs of things that might be missing or whatever, there was that re-suit later on. But they got hoisted by their own petard again because the video has the counter and the number. They will never ever be able to explain that to you, because we got their testimony in black and white as to when they went upstairs and collected this. Those socks from the beginning [inaudible] is gonna bring them down. Now those are the socks, these socks, no dirt, no soil, no berries, no trace, nobody sees any blood until August 4<sup>th</sup> and all these

- 2080 miraculous things start happening and then, Mr. Scheck will talk more about this, and then we find out that it has EDTA on it. It's a planet? Along with that back gate. How would be it on there? Why didn't they see the blood before that? There's a big fight. Where's the dirt? Why would Mr. Simpson have on these kind of socks with the sweat outfit. Wait a minute now you, you have be from the fashion police to know that. You don't wear those kinda socks, you wear those kinda socks with a suit. You don't wear those kinda socks with a sweat outfit. Doesn't it make sense to you that those socks were in that hamper from Saturday night when Mr. Simpson went to that formal event. Those kinda sock is what you wear with your tuxedo when he was dressed with those other ladies. They went took it out of the hamper
- 2090 and staged it there then you see what happened. Is that not reasonable, under these facts? I think you agree to this. It's the only reasonable explanation, this posed there and the reason for doing this is because they were out of place. But isn't that interesting, in the hamper in which Looper went and they all went. They didn't take anything else. You think the police would ask Mr. Simpson what were you wearing? What were you wearing that night? They didn't take one thing and we hear all of this talk about wonder where the clothes went, wonder where the clothes went. You think that Mr. Simpson who told them everything, who co-operated with them fully, told them like he told them about those shoes, what he was wearing. They didn't bother collecting those, did they? No towels, no nothing. She's worried about him
- 2100 taking this quick shower. If he took a shower and there's so much blood and he's covered with blood. Why didn't they bring the towels in here? Something is wrong in this case. It just doesn't fit. If it doesn't fit you must acquit. So the socks. I could talk about these socks forever but I'm not going to because Mr. Scheck will talk about the forensic aspect of it, but let me just remind you of two quick more things. Dr. Herb MacDonell came in here and he told you there was no spatter or splatter on these socks. These socks had compression transfer. He used his hands to show you that somebody took those socks and they put something on them. And it went all the way through the side 3. Now with all their experts, [inaudible] 3 or 4 times, they never had anybody to counter vine that. How did that get over to side 3? How did it
- 2110 get over? It wouldn't get there if there was a leg in the sock. Can anybody explain that? Any of you explain that? Maybe Miss Clark can explain that. The experts can't explain it. Something is wrong. And the finally the EDTA which indicated the anti-coagulant from a purple top tube, that's where that blood is from. The socks as you know is something, which I can get emotional about because we've known about these socks for some time. This is to say the least disturbing. It's worse than that though. In my opening statement I told you about evidence that would be compromised, contaminated and corrupted and I told you something then I said in this case there's something even far more sinister. The socks is one example of that. Now if you wanna be fair and decide in this case, you gotta deal with these socks,
- 2120 you get a chance to see them. Look for the dirt we'd expect on them , look for the spatter that you'd expect on them, look and see why it went over to side 3, there's a leg in it. And you know isn't it interesting how you get this blood on this sock with

your pants, your pants have to be almost up. This would take a real contortion to do it. There's no way they can explain it. So let's just leave it where it is and Mr. Scheck will pick on that. And the we heard a lot of the so-called blood in the Bronco. And I wanna tell you I'm not any like a scientist. In fact, when my mother and my father wanted me to become doctor I didn't because I wasn't that great at Science. So I became a lawyer so I could talk. But let me tell you something. Even I know about amounts of blood, especially after this case. And they tell you about all

2130 this blood in the Bronco and you remember one of the early witnesses testified the total amount of blood on this counsel. On this counsel is .07 of a drop of blood. Now that's supposedly a mixture of Goldman and someone else. Now I'm gonna do a little Henry Lee experiment and I hope it doesn't cause, it doesn't cause you any problems. Now .07 of a drop

**Judge Ito:** Mr. Douglas you're gonna have to take the stand.

**Mr. Cochran:** .07 of a drop. Not even that much is the amount the testimony in this case is of the alleged blood on that counsel. Now this is an amazing thing because you remember this is the vehicle in tradition of everything else they did in this case, this is picked up, it's towed away from Rockingham, you've all seen that

2140 photograph. It's taken over and ultimately ends up at Viertel's from a Blasini William Blasini. Before we got to Blasini we dealt with John Meraz. Meraz said the vehicle was just open, you just go get in it. The press was waiting for him before he even drove it back. Everybody when this was O.J. Simpson's vehicle and they were all looking at it supposedly for all this blood that's supposed to be in here. This killer must have been covered in blood and they say he drove this Bronco and he got and he'd be covered with blood, wouldn't it? So everybody's looking for the blood. So Meraz says he gets inside the car he didn't see ant blood. Meraz said that. They meland Meraz because Meraz said I didn't take those receipts out of there that had, one had Mr. Simpson's name of it one had Mrs. Simpson's name on it. But he said

2150 he didn't see any blood in there. Never called anybody to counter vine that but we wanna make sure that you understood what was happening. So we called William Blasini the man who works for Pick you Part as far as vehicles and he was a pretty good witness, wasn't he? He said look this is my business. Is looking in cars because I go in and buy them. He says I got in that car on June 21<sup>st</sup> and first of I all I went looking for blood because I heard in the news there's gonna be lots of blood in this car. So I went and got in the Bronco which was not secured as usual Bob Jones said oh there it is over there go get in it. This is the same vehicle no holes on it could be released to Hertz. The LAPD at work gets in the car on the driver's side where he stays almost 5 minutes looking down, looking for blood, looking in the

2160 front. Remember he takes his finger prints or hands and puts them in the mirrors kinda like a souvenir. In the right front window of the car. They didn't see any blood, he looks all over for blood then he gets out walks around and I guess on the rear panel did I leave them again puts his finger prints there again. And he walks



around looks inside the driver's side, looks back, looks all down to the counsel looking for blood. He's looking for blood, ladies and gentlemen, June 21<sup>st</sup>, doesn't see any blood. Then he gets in the car and I asked him did you look on the dash? Did you look on the door? Did you look on the counsel? Didn't see any blood. He says that they patched and the bottom was cut out, the floor mat there. Didn't see any blood. And Miss Clark cross-examined this man he said look Bronco's kinda

2170 high up when I was getting ready to get in there I rested my hands on the thing and I looked right up there and there was no blood in that Bronco. Now this is very strange, isn't it? Here's the Bronco that has blood that appears, disappears and reappears and then disappears. This is a vehicle that's supposed to be secure but it's not secure. Everybody gets in it. Meraz got in it, takes stuff out that could've been helpful. We know that there was a receipt in there from Nicole Brown Simpson. This testimony, she rides and drives that car on occasion. That's forever lost to us because they didn't do their jobs again. Blasini comes along, there's no blood in there. How do you explain all this when you they talk about, they stop here and talk about an ocean of evidence and mean as I say this a little tiny trickle of a stream and

2180 anything they're just words that they use. So this Bronco is particularly troubling. Less than that 7/10's of that drop of blood is what's in that alleged console. Dr. Baden says the perpetrator would be covered with blood. Your common sense tells you that the perpetrator would be covered with blood, a 5 to 15 minute battle and struggle of this dimensions. And so it just doesn't fit, something is wrong. How does anyone drive away in that car with bloody clothes, with no blood there on the seats, no blood any place else. Every police officer came in talked about how blood the scene was. It doesn't make any sense. You can't explain it because Mr. Simpson was not in that car and never did these murders. That's the reasonable and logical explanation and none other will do. And it's too late for them to change now with

2190 these kinda shifting theories. So the Prosecution then has no shoes, no weapon, no clothes, they don't have anything except these socks, which appear all of a sudden under these circumstances. Now, when you want to think about the depths to which people will go to try to win, when you want to talk about an obsession to win, I'm gonna to give you an example. There was a witness in this case named Thano Peratis. This is a man who's their man who took O.J. Simpson's blood. This is a man who had a subpoena, at one point said he could have come down here and testify. They didn't call him. By the time we wanted to call him, he's unavailable because of his heart problem, remember? So what we did is, we read you his grand jury testimony I believe and we played for you his preliminary hearing testimony. And in

2200 that testimony, it's very, very consistent. He's been a nurse for a number of years. You saw him. He works for the city of Los Angeles. He says that when he took this blood from O.J. Simpson on June 13th, he took between 7.9 and 8.1 cc's of blood. That's what he said. That's real simple, isn't it? We knew that. He's sworn to tell the truth under oath both places, the grand jury and preliminary hearing. Pretty clear, isn't it? Pretty clear. Except you remember that in my opening statement, I told you, you know, something's wrong here, something's sinister here, something's wrong,

because if we take all their figures and assume they took 8 cc's of blood, there's 6.5 cc's accounted for, there is 1.5 cc's missing of this blood. There's some missing blood in this case. Where is it? Prosecution wants to explain that for you to make

2210 everything real easy for you. So what do they do? What do they do? We're talking about the police here, the four of them. What do they do? Hank Goldberg, they didn't give us any notice. Goes out there with the video camera with Oppler and this other lady Miss Ramirez. They take this bizarre home video of Peratis sitting there talking and mouthing words. It's the most bizarre thing, I mean, as jurors I'm sure you've seen some pretty high quality testimony here but this was bizarre. He's sitting there talking about well you know gee I don't really remember how much I took and he's going through all these [inaudible] wishes, it was sad. The depths to which they had something to try as part of this cover-up to try and convince you that this man hadn't taken 8 cc's of blood and at the very end of this case we put in a

2220 syringe for you. The kind of syringe they used and this syringe is interestingly enough has markers on it. Not only wasn't this the guessing game it has 8 cc's right on it, there goes the 10 cc syringe. So we know what was taken but that's the depths to which they will go. They try to make it fit and it just doesn't fit. That's what they'll do. You have to watch them thus is a classic example you saw it with your own eyes. You heard the testimony, need I say more. Is that a classic example? And then as another concrete example. Let's take Miss Laura McKinny. By all accounts a nice and gentle lady who didn't want to be here. You heard the testimony. I had to go all the way to North Carolina to try and get these tapes. Had to go all the way to the North Carolina Court of Appeals to get these tapes. She comes here, she has

2230 proof of what she says. You know there's conversations and there's conversations but she has the conversations on tape. These Prosecutors, if you don't fit, you're gonna have trouble. So much so that Mr. Darden is questioning her, remember her famous response? Quote " Why are we having this adversarial conversation?" "Why do I detect this negativity?" "I'm just here to tell the truth. Aren't you in a search for truth, Mr. Prosecutor?" She said that. And let me more ask why didn't you stop him from using this so-called 'n' word? She said I was in a journalistic mode. I didn't try to stop him when using that word any more than I tried to stop him from talking about cover-ups where a male police officers had no respect for women police officers 'cause they don't cover-up the misdeeds. So the testimony

2240 from that witness stand you saw her. She's credible, don't you think? She has tapes to back her up. But look how she was treated by this. And Mr. Darden said something very interesting today. He said, "I'm just the messenger." Now how many times have you heard that? I'm the messenger, don't blame me, I'm just doing my job. That's no way out. He's a fine lawyer but he can't hide behind just being the messenger, well who's message is he sending? Who's he representing in this message? It's a matter of integrity. That statement is not gonna fly on just the messenger. I'm just a messenger. He's not any messenger, he's the Prosecutor with all of the power of the State of California in this case. We're not let that get away. They're not gonna turn the Constitution on its head in this case. We're not gonna to

- 2250 allow it. And so now we bring you to a segment of this discussion where we talk about if you can't trust the messengers watch out for their message. Vannatter the man who carries the blood. Fuhrman the man who finds the glove. Remember those two phrases, Vannatter the man who carries the blood. Fuhrman the man who found the glove. Now detective Vannatter has been a police officer for 27, 28 years, experienced LAPD robbery, homicide man who's put on this case because of his experience presumably because they had the resources downtown. You know what time he got there and knew what happened. One of the things that has been totally unexplainable to me is the fact that he remembers Mr. Simpson co-operating fully. Gives his blood and give 8 cc's of blood we now know. Vannatter the blood is then
- 2260 turned over to Vannatter. Now we know if he could have booked that blood in Parker Center or he could have gone over to Piper Tech. You see these two residences. Thank you Mr. Douglas and your honor this is, ok this is just a board, an appendix not a number on this. There's Parker Center right over here in the Police building right down here 150 North Los Angeles Street. Takes this blood, could have gone a couple of floors and ripped the blood they made no requires. But he didn't do that, did he? Could have gone over to Piper Tech. Another facility downtown, right here and booked that blood. This is the reference sample of Mr. O.J. Simpson. He doesn't do that. What he does is he goes way out to this area marked Brentwood Heights. Must be 20, 25 miles, 27 miles to go way out there.
- 2270 Carrying blood in this unsealed grey envelope supposedly. Why is he doing that? Why is Vannatter carrying Mr. Simpson's blood out there? Why is he doing that? Doesn't make any sense, violates their own rules. Why is he doing that? In this case. Has he ever done it in the other case? No. Name another case where this has happened. Are you gonna ask him those questions all the time? With Bushey, officer Bushey. When have you ever sent four people, four detectives over to notify somebody who's not even the [inaudible]. Well ummm Mr. Cochran there must be somebody but I can't name you a case. There are no cases. These are the things they did in this case. So he goes way out there with that blood. Why did he do that? Doesn't make any sense and so we know because we can much of what happened is
- 2280 on video. It's the strangest thing about this, this blood. He can't explain either why he carries it out there. And then it gets even stranger, doesn't it? Because supposedly after the blood is carried out of O.J. Simpson's residence, Vannatter gives the blood to Fung, according to what we hear. But then Fung uses some kind of a trash bag, a black trash bag and gives it to Mazzola but he doesn't tell her that it's blood. Isn't that bizarre remember the video when Mazzola walking along, carrying, almost bumping into the hedges and the strawberry? It's the most bizarre thing you ever seen. She doesn't even know him and then talk about cover-ups Mazzola's asked well do you see, did you see when Vannatter gave the blood to Fung? And she says ah no I had sat down on the couch and I was closing my eyes in
- 2290 Mr. Simpson's couch at that moment, I wasn't looking at that moment. Sound like a cover-up to you? Always looking the other way, not looking, don't wanna be

involved. Covering for somebody? It's bizarre. Absolutely bizarre and it's untrue it doesn't fit. So Vannatter the man that carries the blood starts lying in this case from the very, very beginning. Trying to cover-up for this rush to judgment. Those are words, that's rhetoric. Let me prove it for you. He tells us, and this is a board, the board entitled Vannatter's big lies, the man who carried the blood. He tells us the O.J. Simpson is not a suspect and this is the biggest lie that we've heard probably in this entire trial, O.J. Simpson is not a suspect. They handcuff him within 30 to 45 seconds with the time that he gets back here. He lies about that. Weitzman succeeds

2300 in getting him unhand cuffed and they take him downtown. But he does more than that not only does he lie about that at the beginning he then feels comfortable enough to talk to these two brothers, the Fiato brothers and an FBI agent named Wacks, but isn't this bizarre, that the lead detective of this case, put on here because of his experience, is talking with these two guys, who've been in this witness program for quite a while, testifying for the Government. Now we know that in a rather unusual set of circumstances they're in a room somewhere in some hotel drinking beer. It's not even Vannatter's case. And they're sitting around talking. And I asked the FBI agent "Weren't you a little surprised that a detective would be talking to these two people about the Simpson case?" Well we found out that there was a relationship

2310 allegedly between Denise Brown and one of these brothers and maybe he felt comfortable. But why would he do that? And what does he say? He tells them "We didn't go up there to save any lives, O.J. Simpson was a suspect, the husband is always the suspect." But then he comes into court here, this lead detective takes the stand again and lies to you under oath. And says on no I never said that, never said that. It be a mistake if they said that. I never made that statement. He lied, he lied from the very beginning. He lied when they went over there and then they bring in Commander Bushey. In otherwise a good man and get him involved in this. Let me tell you something interesting about, what you heard about Phillips's voice. Phillips was talking to the Coroner's office about 7, 8 o'clock in the morning on June 13<sup>th</sup>

2320 and they had asked him to identify well yes we have one male, female, one white female, one white male, uh as though we didn't know the names or whatever. Now this is five and a half hours after Bushey said go over and notify O.J. Simpson, who's not even the [inaudible] because we don't want the family to find out about this like they did in the Belushi case. Remember he said that? Now he's doing all this from his house, from his home. Phillips if you look through his testimony, look back through your notes as to what he says he knows who this person is. But isn't it amazing that the children already be down at the station, than at her house, they got a phone with a speed dial. They know, Bushey knows they don't follow his orders out, they stand out in the street not investigating. Stand out in the street, planning

2330 whatever they're gonna do. And one thing they do, they decide that O.J. Simpson is a suspect in this case. And let me tell you why you're gonna know that. They wanna talk a lot about 1985 but he missed the whole point. In 1985 something interesting happened in this case. In 1985 Mark Fuhrman responded to a call on Rockingham. Mark Fuhrman is a lying, perjuring, genocidal racist. And from that moment on, any

time he could get O.J. Simpson he would do it. That's when it started in '85 when Farrell asked all the officers in West LA, there were 10 of them, you know anything about this residence. Only one steps forward and what does he say? It's indelibly impressed in my mind that call back in '85, four years later. And now he knew what he was gonna do on this particular night. So O.J. not a suspect? Want to save lives?

2340 You wanna get a search warrant. That's why they were lying. Denies the statement to Wacks and Fiato. Then to get that search warrant he lies to a judge. He says in the warrant that O.J. left unexpectedly from Chicago and there's some writing on the search warrant. I think it's in evidence and it's kinda interesting because everybody knew, Kato knew he was going to Chicago, everybody knew he was going to Chicago. It wasn't any unexpected trip but I suppose it would help out. In fact, if you think about it, Miss Clark said this well that's why those socks were out there and everything 'cause he left in a hurry. Again one pair of socks. You know socks there were out there. He left unexpectedly. To try and justify what they were doing. It all comes back to Fuhrman when he says in that letter, "If I see an inter-racial

2350 couple, I'll stop them, if I don't have a reason, I'll make up a reason." This man thinks he's above the law. And even Darden Mr. Darden, Mr. Christopher Darden, my friend has to admit, he said it was textbook what's happened to their witness not our witness. And so he lies to the judge, he lied to the judge, he's lied to you, his jurors. Then he says that Arnelle and Kato said that O.J. left unexpectedly that's written in the warrant. They were saying it again. Kato knew this was a planned trip for Hertz. They talked to Cathy Randa. Then in the search warrant he puts that it was confirmed there human blood on the door. That's never been tested even to this day. Another lie in this search warrant. He denies telling Thompson, they already handcuffed O.J. Simpson. Then he lies about O.J. Simpson's blood. Remember in

2360 his testimony that he got that blood at 2:30 and he was trying to push it back an hour so we're like maybe 3:30 'cause he had to explain this, it's hard to explain those hours in there. What's he walking around with this man's blood for, for 3 hours before he goes out to Rockingham at 5:30. So he has an hour in there and you look at his testimony he lies about between 2:30 and 3:30. And then Fuhrman testifies. Between these two I don't know who you can believe. And Fuhrman testifies something about that when he talks to Kato, Kato tells him about these thumps, that he didn't tell anybody about it. He's so central to this case, he's gotta be the big man and go solve this entire case. He didn't tell the rest of them. Remember he goes off all by himself for 15 minutes. Just walk off right by himself somewhere. Supposedly

2370 where he supposedly finds this glove. No opportunity? We're talking about that but Vannatter comes in and says well yes Fuhrman told me about the thumps on the wall. Contrary to what. So these are the lies of the co-lead detective in this case. If you cannot trust messenger you can't trust the message that they're trying to give you. You can't trust the message. So this man that starts to lie from the very, very beginning. We covered the lies and the things that he did and then they [inaudible] Commander Bushey. They tried to back him up by saying well I ordered them to do this, so it's a direct order to do this. Isn't that interesting now. Let's think about this.

You look at those [inaudible] and see how many police officers came out to Bundy and Rockingham. Maybe more than 30. You think that of those number of officers

2380 that maybe one of them, one of the patrol officers could have went to give the notice. It took all four detectives, all four LAPD experienced detectives to leave the bodies. They had to notify the Coroners. They didn't have a criminalist to go over to notify O.J. Simpson. Who's fooling who here? This is preposterous. They're lying, trying to get over that wall to get in that house. You don't believe so? You're talking about saving lives. Remember what Arnelle said. First of all, they all make this big mistake. They forget and they say, "Well, when we leave from the back, we go right in that back door of the house there, go right in the back door." But they forgot. Arnelle Simpson comes in here and testifies you can't go in the back door because remember, Kato had put on the alarm. You had to go around the house to the front.

2390 Arnelle had to open the keypad to let them in, remember? You think who knows better? You'd think she knows better or they know better? She had to let them in. So they're worried about dead bodies and people being in that house and saving lives? Who goes in first? Arnelle Simpson goes in first. These big, brave police officers, and the young lady just walks in there first. They don't go upstairs looking. They just want to be inside that house and make her leave to give Fuhrman a chance to start what he's doing, strolling around the premises and doing what he's doing there. Then we come to detective Phillips, a nice man but even he makes misstatements in this situation. Now he knows Fuhrman probably better than anybody because he's the one who calls Fuhrman, the one that works with Fuhrman. Fuhrman in the

2400 culture of LAPD had been promoted. We have heard that in '85 when he goes out to this incident he's a patrol officer, now he's a detective. Moving up in the ranks, working with Phillips and Phillips calls him after 1 o'clock, Fuhrman's been somewhere down in Akita the desert and he comes back supposedly and he gets this call to respond to this location. And even detective Phillips in this case and I examined it when asked "Well Fuhrman told you didn't he about his going out on that call in '85 about this so-called domestic discord and then the '89 situation, you knew about that didn't you?" He goes oh no, no, no I never, nobody ever told me, I don't know anything about that no, no, no I didn't. And then Lange comes in here and Lange in Vannatter's report, right in the report and it's in evidence, exhibit

2410 1021, Lange directly impeaches Phillips that Phillips did tell him about the '85 incident, Fuhrman had told him that he'd been out on it. Why would he do that? I think these are facts ladies and gentlemen. This is what happened in this case before your very eyes. Not anything I'm making up. And who would know Mark Fuhrman better in this case? His lack of credibility, his lying, racist views than Ron Phillips, his supervisor, whoa apparently chose to look the other way. And I'm sure he's as embarrassed than anybody else by this disgrace Fuhrman. So it's important at the outset that we understand the role of Phillips as we gotta understand the role of Vannatter. He was the one allegedly given this order by Bushey to go over and give the death notification. Didn't comply with it, till much later and presumably the

2420 reason they were gonna go over was to give the notice to Mr. Simpson and Fuhrman was going because he was needed. Now can you imagine this? Fuhrman with his

views, genocidal views was gonna go over to give notice to O.J. Simpson to help O.J. Simpson in his time of need. Can you imagine that? He's going over there to help him, help him with his kids. That is ludicrous. So from Risky to Bushey you've seen and are seeing a part of this code of silence, this cover-up. The cover-up that Laura McKinny talks about when male officers get together cover-up for each other, don't tell the truth, hide, turn their head, cover. You can't trust this evidence, you can't trust the messenger, you can't trust the message. When Fuhrman gets on the witness stand and says I haven't used this 'n' word for 10

2430 years. Phillips knows he's lying, some of you probably knew he was lying but it took those tapes to make those of you who didn't believe these kind of things exist to take place. Didn't he have an obligation to come forward under those circumstances? For a Fuhrman who speaks so candidly to his lady that he met in a restaurant in West LA, do you think he talks like that to the guys on the force? She talked about he said those words in police administration and police procedures that's the way he talks, that's the way he is. Nobody can afford to reveal this, we revealed it for you. Let me just take a moment. The whole thing about the police and what they've done in this case is extremely painful to us and I think to all right thinking citizens. Because we live in Los Angeles and we love this place but all we

2340 want is a good and honest police force where people are treated fairly no matter what part of the city they're in. That's all you want. So in talking to you about this understand there is no personal pride but I told you when we started this is not for the weak or the faint of heart. And so let's move on. Then just wanted to show you this part from detective Phillips. This is what was asked to Phillips at 15084. "Mr. Simpson and Mrs. Nicole Brown Simpson had been embroiled in previous domestic discord situations one of these result of Mr. Simpson having to go to court. You told then that too, didn't you?" Answer Phillips: "I never told him that." He's talking about to Lange. So if, my question, if detective Lange so indicates in his report, he's wrong. Answer: "If he tells you that, I told him that, he may have learned that from

2350 detective Fuhrman but he didn't get the information from me. I never knew that." And the when Lange came in I asked him a question about the same area. I asked Lange this question "So let's look at it together. Does that report that Phillips stated that victim Brown was the ex-wife of O.J. Simpson the well-known athlete-actor?" Answer: "Yes it does." And does it say additionally Phillips that Mr. Simpson and victim one had been embroiled in previous domestic violence situations, one of which results in the arrest of Mr. Simpson. That report say that. "Yes, it does." And he goes on to talk about Phillips told you, didn't he? And he goes on "but he told you this before you went over to Rockingham, isn't that correct?" Answer: "Yes." And so even Phillips was then impeached. And then Phillips tried his best he could

2360 to be a team player, well it seems so that they got together and Miss Clark tried to make a big thing out this. But here's how he described Mr. O.J. Simpson when he told him that Mrs. Nicole Brown Simpson had been found dead. "What do you mean she's been killed? Oh my God Nicole is dead." Do you recall that testimony? Yes "What do you mean she's been killed? Oh my God Nicole is dead." Now is that

a question or is that a question. What do you mean she's been killed? They're gonna make something. I mean is that preposterous. And then he goes on to say "he became upset and made that statement and he continued to be upset, continued to talk on the phone to himself. It took me several seconds to get into talk to me again, to have him listen to me and he seemed very upset." Now these Prosecutors will tell

2370 you oh boy that's something unusual about that. Find anything unusual about that? What do you think? He just kept repeating over and over again that Nicole had been killed. Eventually when I got his attention again is when I mentioned the children. You have to remember this conversation took place very quickly. He was talking and I was talking and everybody was a little excited. That's what Phillips said. And so again what I hope that I've done here is to let you share exactly what the testimony was. Then I asked Arnelle about it. She said he was very upset, he was crying, he was saying Arnelle I don't understand. He was very upset, emotional. Have you ever at any time in then your 25 years heard your father sound like that? Answer: "No." She says he was upset, struck, emotional. And then she describes

2380 him on that evening after he comes back from Chicago. "He was seated with my grandmother, my aunt Shirley, Bob Kardashian was there, the family and friends. Some of those friends were coming and going. This was in the family room." Now with regard to his demeanor and how he appeared describe again for the jury how he appeared before he left the room to go to some other place. How did he appear to you then? "He was just very upset, he was crying off and on. We were watching the news and he kept talking to the TV saying "You know I can't believe this, I can't believe this." In shock, upset and disbelief. And I read the other part for you of the police officers going in the back door but she describes how they walk around and she opens the alarm. She's the one that went in and let the police in and she's the

2390 one who walked in first. And even Tom Lange. It's a personal favor to mine but in his instance, think there are probably more mistakes than anything else. Human [inaudible] and seems to be quite different than some of the others. Remember he told us how he took these tennis shoes that O.J. Simpson told he was wearing. And I said, "What did you do with those tennis shoes?" He said "Well I took the tennis shoes and put them in the trunk of my car and I was gonna take them home for the night 'cause it was too late to book them." Then we looked at this video and the tennis shoes that he's got, remember he put the tennis shoes in the front seat with him. Maybe he stopped half way up the road on the freeway and put them in the trunk but that's not what he did then. Then he was part of the group who says O.J.

2400 was not a suspect. Turns his head perhaps, maybe that's his partner. She knows he wasn't involved in this whole de baco with these Fiato bothers and agent Wacks. He wasn't involved. He's smarter, he wouldn't have let that happen and you know what it's interesting because it's his case. That's his case that they're working on. You see him come running in here, trying to cover, he didn't do that to his credit. And then we come, before we end the day, to detective Mark Fuhrman. This man is an unspeakable disgrace. He's been unmasked for the whole world for what he is, and that's hopefully positive. His misdeeds go far beyond this case 'cause he



misspeaks a culture, this is not tolerable in America. But let's talk about this case, people worried about, this is not the case of Mark Fuhrman, well it's not the case of

2410 Mark Fuhrman. Mark Fuhrman is not in custody, he's not, that's the man who had try to put away with witnesses like this. A corrupt police officer, who is a liar and a perjury. You know they were talking yesterday in their argument about well they said would you think they would commit a felony? What do you think it was when he was asked a question by F. Lee Bailey so well put. And we'll talk about that at the very end about what he'd ever used the 'n' word in 10 years. And he swore to tell the truth. He lied and others knew he lied. But what I find particularly troubling is it they all knew about Mark Fuhrman and they weren't gonna tell you. They try this easy buy of all the witnesses who've testified in this case how many were taken up to the grand jury room where they have this prep session, they ask him all these

2420 questions. Miss Clark and I went back and read again her introduction of Mark Fuhrman. How many witnesses they do that with? Well they took him up there and they prepared him for this because you see they knew about the Kathleen Bell letter but she didn't fit, she didn't fit in what they wanted, they didn't want her, they'd rather [inaudible] her and believe this lying police officer. So they knew make no mistake about it. And so when they try preparing, they talk to him and getting ready and make him seem like a choirboy. Make him come in here and him raise his right hand as though he's gonna tell you the truth and give you a true story here. We knew he was a liar and a racist. There's something about good versus evil. Something about truth, truth crushed to earth will rise again. You can always count

2430 on that. And so when Miss Clark so gently puts him on the stand and talks to him about "Tell us how you feel about testifying today. Nervous? Ok reluctant?" And all these things about this bad lady Kathleen Bell. They brought it out at the beginning. This bad Kathleen Bell saying all these means things about you. "Oh and you don't, you don't know her even, do you?" We asked you to look at her on the Larry King show and you didn't recognize her. You don't know her. Oh oh well this is just terrible all these bad things that are happening to you detective Fuhrman." Go back and you look at your notes of how the testimony was as they tried to bring him in here and pass him off. These things were all happening. The Kathleen Bell letter was in '85 and '86. Same time he went out to O.J. Simpson's house in '85. They

2440 wanna talk so much about it but their talking about is not even relevant. What we're talking about now is what happened in this case. And so after having made all these denials and been adopted and accepted by the Prosecution and put him on the stand and you saw it. You saw it. It was sickening. And then my colleague, Lee Bailey, who can't be with us today, but God bless him, wherever he is, did his cross-examination of this individual and he asked some interesting questions. Some of you probably wondered, "I wonder why he's asking that." He asked this man whether or not he'd ever met Kathleen Bell. Of course, he lied about that. Never met this woman, I don't recognize her, I don't know her, gee I don't know anything about that. Boy and he sounded really convincing, didn't he? He says quote "I do

- 2450 not recognize this woman as anybody I have ever met.” That’s what he says. Then Bailey says: "Have you used that word, referring to the 'n' word, in the past 10 years? "Not that I recall, no. "You mean, if you call someone a Nigger, you had forgotten it? "I'm not sure I can answer the question the way it's phrased, sir." And they go on. He says, "Well--" Bailey then pins him down. "I want you to assume that perhaps at some time since 1985 or '86, you addressed a member of the African American race as a Nigger. Is it possible that you have forgotten that act on your part? "Answer: No, it is not possible. "Are you, therefore, saying that you have not used that word in the past 10 years, detective Fuhrman? "Answer: Yes. That is what I'm saying. "Question: And you say under oath that you have not addressed any
- 2460 black person as a Nigger or spoken about black people as niggers in the past 10 years, detective Fuhrman? "That's what I'm saying, sir. "So that anyone who comes to this court and quotes you as using that word in dealing with African Americans would be a liar; would they not, detective Fuhrman? "Yes, they would”. “All of them?” “Correct.” All of them. That’s what he told you under oath in this case. Did he lie? Did he lie under oath? Did this key Prosecution witness lie under oath? And I’m gonna end this part and resume tomorrow morning. Did he lie? And when they tried to tell you he’s not important. Let's remember this man. This is the man who was off this case shortly after 2:00 o'clock in the morning right after he got on it. This is the man who didn't want to be off this case. This is the man, when they're
- 2470 ringing the doorbell at Ashford, who goes for a walk. And he describes how he's strolling. Let me quote him for you. Here's what he says, "I was just strolling along looking at the house. Maybe I could see some movement inside. I was just walking while the other three detectives were down there." And that's when he walks down and he's the one who says the Bronco was parked askew and he sees some spot on the door. He makes all of the discoveries. He's got to be the big man because he's had it in for O.J. because of his views since '85. This is the man, he's the guy who climbs over the fence. He's the guy who goes in and talks to Kato Kaelin while the other detectives are talking to the family. He's the guy who's shining a light in Kato Kaelin's eyes. He's the guy looking at shoes and looking for suspects. He's the guy
- 2480 who's doing these things. He's the guy who says, "I don't tell anybody about the thumps on the wall." He's the guy who's off this case who's supposedly there to help this man, our client, O.J. Simpson, who then goes out all by himself, all by himself. Now, he's worried about bodies or suspects or whatever. He doesn't even take out his gun. He goes around the side of the house, and lo and behold, he claims he finds this glove and he says the glove is still moist and sticky. Now, under their theory, at 10:40, 10:45, that glove is dropped. How many hours is that? It's now after 6:00 o'clock. So what is that? Seven and a half hours. The testimony about drying time around here, no dew point that night. Why would it be moist and sticky unless he brought it over there and planted it there to try to make this case? And there is a
- 2490 Caucasian hair on that glove. This man cannot be trusted. He is sinful to the Prosecution, and for them to say he's not important is untrue and you will not fall for it, because as guardians of justice here, we can't let it happen. I'll see you tomorrow.

Thank you your honor.

**Judge Ito:** All right Mr. Cochran

*(The following proceedings were held in open court, out of the presence of the jury)*

**Judge Ito:** All right. Back on the record in the Simpson matter. Mr. Simpson is again present before the court with his counsel, Mr. Shapiro, Mr. Kardashian, Mr. Blasier, Mr. Neufeld, Mr. Scheck and Mr. Cochran. The people are represented by Miss Clark and Mr. Darden. We are in argument. Let's have it quiet in the

2500 courtroom, please. All right. Deputy Trower, let's have the jurors, please.

*(The following proceedings were held in open court, in the presence of the jury)*

**Judge Ito:** All right. Thank you, ladies and gentlemen. Please be seated. And let the record reflect that we have now been rejoined by all the members of our jury panel. Good morning, ladies and gentlemen.

**Jury:** Good morning.

**Judge Ito:** We are in the midst of the final arguments. Mr. Cochran, you may continue with your argument, sir.

**Mr. Cochran:** Thank you very kindly, your Honor. Good morning, Judge Ito. Good morning again, ladies and gentlemen.

2510 **Jury:** Good morning.

**Mr. Cochran:** When we concluded last night, ladies and gentlemen, we had discussed a number of things, and I'm sure you have them very much in mind. To summarize some of the things that we talked about and put it in perspective, we talked about a police department who from the very beginning was more interested in themselves and their image, and that carried through. We talked about socks that appeared all of a sudden that weren't there, socks where evidence was planted on them. We talked about police officers who lie with immunity, where the oath doesn't mean anything to them. We talked about messengers where you couldn't trust the message. We talked about gloves that didn't fit, a knit cap that wouldn't make any

2520 difference, a prosecution scenario that is unbelievable and unreasonable. In short, we talked about reasonable doubt. We talked about something that has made this country great, that you can be accused in this country for crime, but that is just an accusation, and when you enter a not guilty plea, since the beginning of the time of this country, since the time of the Magna Carta, that sets the forces in motion and you have a trial. This is what this is about. That is why we love what we do, an opportunity to come before people from the community, the consciences of the community. You are the consciences of the community. You set the standards. You tell us what is right and wrong. You set the standards. You use your common sense to do that. Your verdict goes far beyond these doors of this courtroom. As Mr.

- 2530 Darden said, the whole world is watching and waiting for your decision in this case. That is not to put any pressure on you, just to tell you what is really happening out there. So we talked about all of those things, hopefully in a logical way. Hopefully something I said made some sense to you. Hopefully as a advocate, you know my zeal, you know the passion I feel for this. We've all got time invested in this case. But it is not just about winning, it is about what is right. It is about a man's life that is at stake here. So in voir dire you promised to take the time that was necessary, and you have more than done that. Remember I asked you, though, that when you got down to the end of the case, when you kept all your promises about coming here everyday and taking these notes and paying attention, and you know, listening to us
- 2540 drone on and on and on, that pretty soon it would be in your hands and then you couldn't just rush through that, could you? And we tried to make it a little more simple with regard to the issues, but still we are going to have twelve minds coming together, twelve open minds, twelve unbiased minds to come together on these issues. And you will give it, I'm sure, the importance to which it is entitled. Please don't compromise your principles or your consciences in rendering this decision. Don't rush to judgment. Don't compound what they've already done in this case. Don't rush to judgment. Have a judgment that is well thought out, one that you can believe in the morning after this verdict. I want you to place yourself the day after you render the verdict, when you get up and you look in the mirror and you are free,
- 2550 you are no longer sequestered, you will probably look for each other but you will be happy to be home again. But what is important, look in that mirror and say, have I been true to my oath? Did I do the right thing? Was I naive? Was I timid? Or was I courageous? Did I believe in the Constitution. Did I believe in justice? Did I do my part for integrity and honesty? That is the mission you are on in this journey toward justice. And now yesterday I touched briefly on some of Mr. Darden's argument and we talked a little bit about the fact of his contention about motive. We talked about his analogy about a fuse. And I referred to him as dr. Darden with regard to what he had to say, and I thought I would just summarize briefly this morning the response to what he had to say and what he tried to weave together. As I said, he talked about
- 2560 an incident in 1985, an unfortunate incident between two people who were married. There was no arrest, there was no physical violence. The one incident in '89, the one he is not proud of, the one he wrote those letters about, the one he apologized for and said he was sorry, and there is no physical violence after that. In the 1993 call, the 911 call, you listen to that entire tape when they cut it off and you will remember that it is unfortunate when anyone has an argument, but you listen carefully to what Mr. Simpson is arguing about, what he is talking about and what the discussion is about. Mrs. Simpson mentions the children and he says, "You weren't worried about the children when you were doing so and so on the couch." He is pretty graphic, but any man or woman would be upset over what he is talking
- 2570 about on that tape. There was no physical violence. There is no excuse for him kicking the back door, but by the end--you remember what Kato Kaelin said and

what the police officer said. They resolved this matter. It was an argument, it was loud and raucous and they moved on. There was no fuse after that. And this was during a time, you will recall, that in January of 1992, when they first agreed to separate. You don't hear anything about a dispute, but Miss Nicole Brown Simpson moved out. There was not my question about a dispute. When she got this divorce at the end of '92, there was no dispute. They were both dating other people. He is with Paula Barbieri for that like whole year and then, you know, it wasn't Mr. Simpson who pursued Mrs. Simpson; it was her who wanted to get back with those kids. You

2580 heard Arnelle Simpson and then they agreed, but he put on provisos on that. She couldn't move back in that house. She still kept her own house. Who is controlling whom? Who is pursuing whom when he talks about fuse? There is no fuse. They get back together and they tried to make it work. It lasts for almost a year. My learned friend has the dates all wrong. It is around mother's day when they break up. You remember there is testimony from Kato Kaelin with a pediatric aids affair where Paula Barbieri goes with O.J. Simpson, early part of May, after mother's day, after they break up, with the kids Sydney and Justin. Now, we know they had been friends. Even when they broke up they were friends. You know how you know that? Remember the barber, Juanita Moore, nice lady who came in here and talked about

2590 O.J. Simpson not having dandruff, not having treated hair? And she said she came to the house the first part of May and there was Nicole there over at O.J.'s house. There is no fuse. Then they go on later that month. They break up. Even after being broken up, what does Arnelle tell you? That when Nicole gets sick, none of these other people who she may be seeing or whatever, it is O.J. taking her soup trying to help out. Now, you do that for your ex-wife or your ex-boyfriend or whatever. There is no fuse. There is no strings attached to that. He goes on with his life because now he is back with Paula. He had been with her the year before. And Miss Clark tried to get Kato Kaelin to ask, didn't he take Paula someplace in the summer of '93 when she knew they were now back together? And Kato says no, I don't think

2600 so, because they made this arrangement to date each other exclusively, and that is what happened, you see, and so we get all the way back past May into June and there is no trigger, there is no fuse, there is nothing going on. The only fuse, the only trigger is in Mr. Darden's mind. The evidence isn't there. And they spent all this time about motive. There is none. These were two people who divorced. The case was settled. They had their homes. They moved on. Christian Reichardt tells you that night he is happier than he had been for a long time because he had gotten his life together and moved on. And so I just wanted you to put that in perspective. If that wasn't enough, you look at that video of June 12th and the photograph of him with his daughter and you see whether or not this is a happy man just getting on

2610 with his life. So when he rhetorically asked the question why didn't we call Lenore Walker, I say back to him, why didn't you call Lenore Walker if she had something bad to say about O.J. Simpson? It wasn't necessary. It wasn't necessary. It wasn't necessary. As you know, we could be here forever calling one witness after the other. Sooner or later you were going to revolt and I wouldn't blame you. Mr.

Darden agrees, we had to cut it off at some point. So I hope that when you look about this so-called board of abuse and they have things about a divorce, you put this in perspective. Absence of motive tends to establish innocence. That is what the jury instruction says. Evidence of other offenses are introduced for a very limited portion in this case. The bottom line is the positive things in this man's life, the good

2620 days far outweigh the bad things. And in your life, in all of our lives we just hope at the end, when we must ultimately meet our makers, that the good days have outweighed the bad days, and in this marriage the lasting monuments and memorials to this marriage are these two beautiful children. They had more good days than bad days by all of the evidence. These two people loved their children. They may have gone separate ways, but they loved their children. That is why he was back in town, to go to that recital, that recital where there is so many people, where it is in this auditorium where Nicole Brown Simpson gets his tickets. You know, that is why they are talking in the afternoon, to make arrangements, and she is the one who holds a seat for him. This is what happened on that date. This isn't about any

2630 argument. This is a family thing. So Mr. Darden wants to make a big thing and says, well, he had to go out to dinner with Kato, he had to catch a plane. See the evidence for what it is. Understand these things. Put them in perspective. And so you use your common sense. There is no fuse with regard to that. It is important for you to know that. Take a look at that video when you are back there. Take a look at all of the evidence. In this case Miss Clark in her argument on several occasions said that Mr. Simpson was cut on his razor sharp cell phone. Well, that is not what the evidence is, is it? That is not what was said. I read you what dr. Baden said about that and so we can use these words, but let's hopefully be accurate as we try to say those things. Now, let's go back to where we were when we broke last night. We had started

2640 talking about the messengers in this case. We talked briefly about Vannatter and about all of his big lies. His lies become very important because he is the co-lead investigator in this case. From the very beginning he was lying to you. And it was interesting--and I thought about this last night after I left you. Just about ten days ago, a week or ten days ago, Vannatter took that stand again, and you saw him, you had a chance to again observe his demeanor, and you are smart, you know when somebody is lying and not telling you the truth. I don't have to go into that. You don't need the jury instruction. You have got this visceral experience and you have got your experiences in life and you know when somebody is lying. And he said something really interesting. It was really preposterous when you think about it. He

2650 said, "Mr. Shapiro, Mr. O.J. Simpson was no more a suspect than you were." Now, who in here believed that? Did he really think he was going to come back in here and we were going to believe that that O.J. Simpson was no more a suspect than Robert Shapiro? That is what he told you. Big lies. You can't trust him. You can't believe anything he says because it goes to the core of this case. When you are lying at the beginning, you will be lying at the end. The book of Luke talks about that. Talks about if you are untruthful in small things, you should be disbelieved in big things. There is no question about that. We have known that all along. So this man

with his big lies--and then we have Fuhrman coming right on the heels and the two of them need to be paired together because they are twins of deception. Fuhrman

2660 and Vannatter, twins of deception who bring you a message that you cannot trust, that you cannot trust. Let's continue on where we left off then with this man Fuhrman who says some very interesting things in the course of his testimony, and as we talked about Vannatter's big lies, we have Fuhrman's big lies. Vannatter, the man who carried the blood, Fuhrman, the man who found the glove. You will recall that he was asked, as I read to you yesterday briefly, the question well-phrased by Lee Bailey, "Have you ever used this 'n' word in ten years?" Went right back to '85. And he picked that '85 date. You know why? Because of the Kathleen Bell letter. Just like they knew about it, picked that date, so he knew he was lying. Honed in on it. Liars can be tricky. And so he was at that point trying to pin it down for you, ten

2670 years, '85 to '95. This was like in February of this year. He says also he never met Kathleen Bell at this marine center. He tells you that Rokahr, the photographer, took this photograph after seven o'clock in the morning. Remember that? Go back through your notes. And the reason he tells you that is because he wants that photograph of him pointing at the glove taken after he supposedly finds the glove at Rockingham. Now, you may not have caught that right at the beginning when this was happening. He says he took the photograph at Rockingham after seven o'clock A.M., after they returned from Rockingham. You know they all go over to Bundy after five o'clock. Strike that. At Bundy. They all go over to Rockingham at five o'clock, from 5:00 to 7:00, and so it becomes very, very important, as we look at this

2680 photograph in a few minutes. Rokahr then comes here near the end of the case, and there has been nobody called to refute him in rebuttal, and says these photographs on this contact sheet are all taken while it is dark. He says he could tell the difference in a photograph taken an hour and a half before sunrise, 5:41, 5:42, and an hour and a half afterwards, so then why then is this big liar in the crime scene with access to the glove and the hat? Why is he down there pointing at this glove where he is walking all in the blood and everything when he wants you to believe it is seven o'clock? Now, we know it is not seven o'clock. You see that photograph up there? That is Mark Fuhrman pointing. You see the envelope. Pointing under this neatly arranged cap. Glove supposedly just happened to fall right under that bush in

2690 that fashion. That is what you are asked to believe. There he is pointing at it. Well, now let me tell you why you recognize it. You recognize Fuhrman, personification of evil. When he is doing is that he is trying to tell you this is an important piece of evidence here and I just came back from Rockingham and this matches the glove found over there. That is what he tells you. But he is lying again. He is lying and that is why he is central to this case, because he hadn't even been to Rockingham at that point and he is tracking in that blood at that point and that becomes very important because you remember he slips up and says "In the Bronco" at some point. You get "In that Bronco." He put a bloody footprint in that Bronco. Are his shoes size 12? He talks about "In the Bronco." He talks about them. Remember

- 2700 there is a question he was asked about gloves and Lee Bailey asked him about. Well--he says, well--he is talking about gloves and he says, "Them." He never explained that. He says "Them." Does that mean two gloves? He said, "I saw them." Is that two gloves? Why would you say "Them"? He is intelligent enough to come and lie to you. So that picture, that photograph there, that seals their doom. That seals their doom. This man who in '85 in his mind started this, this man who is asked to go over and help O.J. Simpson and notify him and take care of the kids, this man, this perjurer, this racist, this genocidal racist, this is the man. And he says then inferentially he didn't plant the glove and now we know about these photographs, when they were taken, and you will have that contact sheet and you
- 2710 will see a photograph of Miss Nicole Brown Simpson and the last two on the roll taken at nighttime with the flash at 4:30 or so in the morning. Why else is this important? Because they are going to tell you, well, he didn't have an opportunity to get the glove or get access to anything. Remember they brought all these police officers in here, including Lieutenant Spangler, to say, well, you know, we were just watching Fuhrman the whole time. First of all, you knew that was a lie at the beginning. Why would they necessarily be watching him? They were always covering for him anyway. But we know that wasn't true because remember Rokahr got there shortly after three o'clock. Rokahr goes to that back alley and he sees Riske who is back there then. Remember Rokahr sees Riske in the back alley.
- 2720 Rokahr doesn't even see Fuhrman for like a half hour after he gets there, he says, and all of a sudden Fuhrman shows up. Where has he been? What has he been doing? And then Riske is out in the front of Bundy there and Riske testifies about the taking of this photograph. He wants to place the time later, but he said it is before the sun comes up, before daylight. That has to be because we've stipulated to it before 5:41. So inadvertently he corroborates Rokahr, but Rokahr knows because he took these photographs. Why then, ladies and gentlemen, is he pointing at this glove when he hasn't even been over there? Why then would they try to tell you he doesn't have time at Bundy when he is by himself for this period of time? He is not with Spangler; he is walking around by him. Why then is he walking in that crime
- 2730 scene and why does he lie to you and said he didn't have access to the crime scene? These are the facts. These are the facts. I haven't made them up. This is what you heard in this case. This is what we have proved. Some of it came in late; some of it came in early, but our job here is to piece this together so that you can then see this, so when he refers to the gloves as "Them," that has never been cleared up for you and he can't. That is a Freudian slip when he talks about "In the Bronco." And there was a dispute. Well, did he really say that? Remember the tape was played at the preliminary hearing and his voice was heard saying "In the Bronco." You can see all these things. He is strolling down to Rockingham, the big man, figuring a way to do this, to carry out this plan, this thought he has in his mind since 1985, to make the
- 2740 big score, and so Rokahr severely impeaches Fuhrman about these photographs, and once again, these photographs speak a thousand words. Concluding about Riske, he said on cross-examination that the photograph pointing at the glove was taken at



least forty minutes before daylight, the sun rose at 5:41, maybe a little bit late, but it was before daylight and so we know that. That is now clear. Why did they then all try to cover for this man Fuhrman? Why would this man who is not only Los Angeles' worst nightmare, but America's worse nightmare, why would they all turn their heads and try to cover for them? Why would you do that if you are sworn to hold the law? There is something about corruption. There is something about a rotten apple that will ultimately infect the entire barrel, because if the others don't

2750 have the courage that we have asked you to have in this case, people sit sadly by. We live in a society where many people are apathetic, they don't want to get involved, and that is why all of us, to a person, in this courtroom, have thanked you from the bottom of our hearts. Because you know what? You haven't been apathetic. You are the ones who made a commitment, a commitment toward justice, and it is a painful commitment, but you've got to see it through. Your commitment, your courage, is much greater than these police officers. This man could have been off the force long ago if they had done their job, but they didn't do their job. People looked the other way. People didn't have the courage. One of the things that has made this country so great is people's willingness to stand up and say that is wrong.

2760 I'm not going to be part of it. I'm not going to be part of the cover-up. That is what I'm asking you to do. Stop this cover-up. Stop this cover-up. If you don't stop it, then who? Do you think the police department is going to stop it? Do you think the D.A.'s office is going to stop it? Do you think we can stop it by ourselves? It has to be stopped by you. And you know, they talked about Fuhrman, they talked about him in derisive tones now, and that is very fashionable now, isn't it? Everybody wants to beat up on Fuhrman, the favored whipping boy in America. I told you I don't take any delight in that because you know before this trial started, if you grow up in this country, you know there are Fuhrmans out there. You learn early on in your life that you are not going to be naive, that you love your country, but you

2770 know it is not perfect, so you understand that, so it is no surprise to me, but I don't take any pride in it. But for some of you, you are finding out the other side of life. You are finding out--that is why this case is so instructive. You are finding out about the other side of life, but things aren't always as they seem. It is not just rhetoric, it is the actions of people, it is the lack of courage and it is a lack of integrity at high places. That is what we are talking about here. Credibility doesn't attach to a title or position; it attaches to the person, so the person who may have a job where he makes two dollars an hour can have more integrity than the highest person. It is something from within. It is in your heart. It is what the lord has put there. That is what we are talking about in this case. And so why don't they speak

2780 out? Why do they take him to their breast? Compare how our prosecutors treat Fuhrman as opposed to Kato Kaelin. Look at how they treated Mark Partridge as opposed to Kato Kaelin. Look at how they embraced him. And now they want to distance themselves. These same people say, oh, he is not important, but the Rokahr photograph puts the lie to that. He is very important. And what becomes so important when we talk about these two twin demons of evil, Vannatter and

Fuhrman, is the jury instruction which you know about now and it says essentially that a witness willfully false--I think Mr. Douglas is going to put that up for us-- "A witness willfully false in one material part of his or her testimony is to be distrusted in others. You may reject the whole testimony of a witness who willfully has

2790 testified falsely to a material point unless from all the evidence you believe the probability of truth favors his or her testimony in other particulars." Why is this instruction so important? We got the bullet points up there. First of all, both prosecutors have now agreed that we have convinced them beyond a reasonable doubt, by the way, that he is a lying perjuring genocidal racist and he has testified willfully falsely in this case on a number of scores. That is what his big lies tell you. And when you go back in the jury room, some of you may want to say, well, gee, you know, boys will be boys. This is just like police talk. This is the way they talk. That is not acceptable as the consciences of this community if you adopt that attitude. That is why we have this, because nobody has had the courage to say it is

2800 wrong. You are empowered to say we are not going to take that any more. I'm sure you will do the right thing about that. So that what then it says we must do is you have the authority, you may reject the whole testimony, you can then wipe out everything that Fuhrman told you, including the glove and all the things that he recovered with the glove. That is why they are so worried. That is why when people say Fuhrman is not central, they are wearing blinds. They have lost their objectivity. They don't understand what they are talking about. It is embarrassing for learned people to say that, but they are entitled to their opinions, but we are going to speak the truth. In a courtroom you are supposed to speak the truth. A witness who walks through those doors, who raises his or her hand, swears to tell the truth. You've

2810 heard lie after lie after lie that has been exposed and when a witness lies in a material part of his testimony, you can wipe out all of his testimony as a judge of the facts. That is your decision again. Nobody can tell you about that. Less you feel that a greater probability of truth lies in something else, they said wipe it out. This applies not only to Fuhrman, it applies to Vannatter and then you see what trouble their case is in, because they lied to get in there to do these things when Vannatter carries that blood. They can't explain to you why he did that, because they were setting this man up, and that glove, anybody among you think that glove was just sitting there, just placed there, moist and sticky after six and a half hours? The testimony is it will be dried in three or four hours, according to MacDonell. We are

2820 not naive. You understand there is no blood on anything else. There is no blood trail. There is no hair and fiber. And you get the ridiculous explanation that Mr. Simpson was running into air conditioners on his own property.

**Bailiff:** Excuse me, your Honor. We need to take a break.

**Judge Ito:** All right. Anybody else?  
(Brief pause.)

**Judge Ito:** All right. The record will reflect that we now have our complete jury panel. Mr. Cochran. *(Brief pause.)*

**Mr. Cochran:** Witnesses willfully false in one material part, distrusted in others. These two form basically the cornerstone of the prosecution's case. Now, you know people talk all the time, well, you know, you are being conspiratorial and whatever.

2830 Gee, how would all these police officers set up O.J. Simpson? Why would they do that? I will answer that question for you. They believed he was guilty. They wanted to win. They didn't want to lose another big case. That is why. They believed that he was guilty. These actions rose from what their belief was, but they can't make that judgment, the prosecutors can't make that judgment. Nobody but you can make that judgment. So when they take the law into their own hands, they become worse than the people who break the law, because they are the protectors of the law. Who then polices the police? You police the police. You police them by your verdict. You are the ones to send the message. Nobody else is going to do it in this society. They don't have the courage. Nobody has the courage. They have a bunch of people

2840 running around with no courage to do what is right, except individual citizens. You are the ones in war, you are the ones who are on the front line. These people set policies, these people talk all this stuff; you implement it. You are the people. You are what makes America so great, and don't you forget it. And so understand how this happened. It is part of a culture of getting away with things. It is part of culture looking the other way. We determine the rules as we go along. Nobody is going to question us. We are the LAPD. And so you take these two twins of deception, and if as you can under this law wipes out their testimony, the prosecutors realize their case then is in serious trouble. From Riske to Bushey they came together in this case because they want to win. But it is not about them winning; it is about justice being

2850 done. They have other cases. This is this man's one life that is entrusted or will be soon, to you. So when we talked about this evidence being compromised, contaminated and corrupted, some people didn't believe that. Have we proved that? Have we proved that it was compromised, contaminated and corrupted? And yes, even something more sinister--I think you will believe we do, but there is something else about this man Fuhrman that I have to say before I am going to terminate this part of my opening argument and relinquish the floor to my learned colleague Mr. Barry Scheck, is something that Fuhrman said. And I'm going to ask Mr. Douglas and Mr. Harris to put up that Kathleen Bell letter. You know, it is one thing, and I dare say that most of you, when you heard Fuhrman said he hadn't used the "N"

2860 word, that you probably thought, well, he is lying, we know that is not true. That is just part of it. That is just what the prosecutors want to do, just talk about that part of it. That is not the part that bothers us on the defense. I live in America. I understand. I know about slights everyday of my life. But I want to tell you about what is troubling, what is frightening, what is chilling about that Kathleen Bell letter. Let's see if we can see part of it, and I think you will agree, so I want to put the focus back where it belongs on this letter and its application to this case. You will recall

that God is good and he always brings you a way to see light when there is a lot of darkness around, and just through chance this lady had tried to reach Shapiro's office, couldn't reach it, and in July of 1994 she sent this fax to my office, and my

2870 good, loyal and wonderful staff got that letter to me early on. And this is one you just couldn't pass up. You get a lot of letters but you couldn't pass this one up because she says some interesting things. And she wasn't a fan of O.J. Simpson. What does she say? "I'm writing to you in regards to a story I saw on the news last night. I thought it ridiculous that the Simpson Defense team would even suggest that there might be racial motivation involved in the trial against Mr. Simpson." Yes, there are a lot of people out there who thought that at that time, and you know, you can't fault people for being naive, but once they know, if they continue to be naive, then you can fault them. That is what it is and this is why this case is important. Don't ever say again in this county or in this country that you don't know things like

2880 this exist. Don't pretend to be naive any more. Don't turn your heads. Stand up, show some integrity. "And so I then glanced up at the television. I was quite shocked to see that officer Fuhrman was a man that I had the misfortune of meeting. You may have received the message from your answering service last night that I called to say that Mr. Fuhrman may be more of a racist than you could even imagine. I doubt that, but at any rate, it was something that got my attention. "Between 1985 and 1986 I worked as a real estate agent in Redondo Beach for Century 21 Bob Maher Realty now out of business. At the time my office was located above a marine recruiting center off of pacific coast highway. On occasion I would stop in to say hello to the two marines working there. I saw Mr. Fuhrman

2890 there a couple of times. I remember him distinctly because of his height and build, you know, he is tall. "While speaking to the men I learned that Mr. Fuhrman was a police officer in Westwood." Isn't that interesting? Just exactly the place where Laura McKinny met him. "And I don't know if he was telling the truth but he said that he had been in a special division of the marines. I don't know how this subject was raised but officer Fuhrman said that when he sees a Nigger, as he called it, driving with a white woman, he would pull them over. I asked what if he didn't have a reason and he said that he would find one. I looked at the two marines to see if they knew he was joking, but it became obvious to me that he was very serious." Now, let me just stop at this point. Let's back it up a minute, Mr. Harris. Pull it back

2900 down, please. If he sees an African American with a white woman he would stop them. If he didn't have a reason, he would find one or make up one. This man will lie to set you up. That is what he is saying there. He would do anything to set you up because of the hatred he has in his heart. A racist is somebody who has power over you, who can do something to you. People could have views but keep them to themselves, but when they have power over you, that is when racism becomes insidious. That is what we are talking about here. He has power. A police officer in the street, a patrol officer, is the single most powerful figure in the criminal justice system. He can take your life. Unlike the supreme court, you don't have to go through all these appeals. He can do it right there and justify it. And that is why, that

- 2910 is why this has to be routed out in the LAPD and every place. Make up a reason because he made a judgment. That is what happened in this case. They made a judgment. Everything else after that is going to point toward O.J. Simpson. They didn't want to look at anybody else. Mr. Darden asked who did this crime? That is their job as the police. We have been hampered. They turned down our offers for help. But that is the prosecution's job. The judge says we don't have that job. The law says that. We would love to help do that. Who do you think wants to find these murderers more than Mr. Simpson? But that is not our job; it is their job. And when they don't talk to anybody else, when they rush to judgment in their obsession to win, that is why this became a problem. This man had the power to carry out his
- 2920 racist views and that is what is so troubling. Let's move on. Making up a reason. That is troubling. That is frightening. That is chilling. But if that wasn't enough, if that wasn't enough, the thing that really gets you is she goes on to say: "Officer Fuhrman went on to say that he would like nothing more than to see all niggers gathered together and killed. He said something about burning them or bombing them. I was too shaken to remember the exact words he used. However, I do remember that what he said was probably the most horrible thing I had ever heard someone say. What frightened me even more was that he was a police officer sworn to uphold the law." And now we have it. There was another man, not too long ago in the world, who had those same views who wanted to burn people, who had racist
- 2930 views and ultimately had power over people in this country. People didn't care. People said he was just crazy, he is just a half-baked painter. They didn't do anything about it. This man, this scourge, became one of the worst people in the history of this world, Adolph Hitler, because people didn't care or didn't try to stop him. He had the power over his racism and his anti-religion. Nobody wanted to stop him, and it ended up in World War II, the conduct of this man. And so Fuhrman, Fuhrman wants to take all black people now and burn them or bomb them. That is genocidal racism. Is that ethnic purity? What is that? What is that? We are paying this man's salary to espouse these views? Do you think he only told Kathleen Bell whom he just had met? Do you think he talked to his partners about it? Do you think
- 2940 commanders knew about it? Do you think everybody knew about it and turned their heads? Nobody did anything about it. Things happen for a reason in your life. Maybe this is one of the reasons we are all gathered together this day, one year and two days after we met. Maybe there is a reason for your purpose. Maybe this is why you were selected. There is something in your background, in your character that helps you understand this is wrong. Maybe you are the right people at the right time at the right place to say no more, we are not going to have this. This is wrong. What they've done to our client is wrong. This man, O.J. Simpson, is entitled to an acquittal. You cannot believe these people. You can't trust the message. You can't trust the messengers. It is frightening. It is quite, frankly frightening, and it is not
- 2950 enough for the Prosecutors now to stand up and say, oh, well, let's just back off. The point I was trying to make, they didn't understand that it is not just using the "N"

word. Forget that. We knew he was lying about that. Forget that. It is about the lengths to which he would go to get somebody black and also white if they are associated with black. That is pretty frightening. It is not just African Americans, it is white people who would associate or deign to go out with a black man or marry one. You are free in America to love whoever you want, so it infects all of us, doesn't it, this one rotten apple, and yet they cover for him. Yet they cover for him. And so how do we do it and what do we do with regard to this man? Well, we call some witnesses. And you recall these witnesses. And before I talk about these

2960 witnesses just briefly, and I'm going to conclude my remarks with regard to them, I indicated to you that by the nature of this case I'm going to pass the baton to Mr. Barry Scheck. You have been great from the standpoint of listening and watching, and I stayed longer than I planned to, but I hope you agree that some of these things were important. And I will get one more time to conclude with some concluding remarks after Mr. Scheck finishes. The good news is that Mr. Scheck and I will both hopefully finish today and turn it back over to Miss Clark, so in a day or so you are going to get this case. You don't have to hear lawyers talk to you any more. It will time to hear you talk, time to hear you speak out. And I will be happy. I will be able to relax tonight knowing that soon it will be in your hands. We are real comfortable

2970 about that, all of us, and you should know that, so please give Mr. Scheck the attention to which you've given me. And understand all parts of this case are very important and it all ties together because it is--all the evidence in this case went through that LAPD and that black hole over there, that cesspool of contamination and you listen into him about what he has to say in that regard. Mr. Darden said that in a textbook fashion we had impeached Mr. Fuhrman. We thank him for that. We take no pride in that, but that is what did happen. In addition to calling Kathleen Bell where you saw her--and she is not the kind of lady that--you know, in looking at her--you probably remember her. Unless you know it would be very interesting--you know he is lying about not knowing her, but this man used these words and

2980 these racial epithets so much he probably can't remember who he said it to you. He said it to whoever came in contact with him, on tape. Can you imagine the gall about that that you would have these racist views and yet would you put it on tape? Thank God he put it on tape. And so Kathleen Bell came in here and told you the same things in those letters. You saw her. You observed her. You know she told us the truth. They couldn't mess with her because now we had those tapes. And then there was Natalie Singer. Barely knew this man. He was dating her roommate. This man is an indiscriminate racist. He talks so bad that she didn't want him back in the house. What does he say to her in her presence? "The only good Nigger is a dead Nigger." You probably all heard that expression sometime in your background

2990 somewhere or heard somebody say this. And that is tremendously offensive. He just says it in the presence of his partner's girlfriend, like they are going to go on a date. I mean, I hope that in homes throughout this country people aren't acting like this. This happened to come to light, but I would be pretty frightened if I felt that the majority of people in this country acted like this behind closed doors or whatever.

Because what you do in the dark is going to come to the light. Remember that. That is what this case is about. It came to the light and just in time to get it to you. So you saw her on the stand. You saw her graphically. We will talk about that. Any doubt in anybody's mind she is telling you the truth? Any one of you think she is not telling you the truth? And then finally we had Roderic Hodge, and this series of

3000 witnesses. And Roderic Hodge, intelligent young man, understands something about his rights, too, because when--after this run-in with Fuhrman and his partner when he is in the back of the police car, Fuhrman turns around and says to him words that I want you to remember in this case, "I told you I'd get you, Nigger," that is what he tells Roderic Hodge. Why is that important? Because from 1985, when he went on that one call involving the Mercedes, that was this man's mind-set vis-à-vis O.J. Simpson, I'm going to get that guy. And in '89 when he wrote that report, indelibly impressed on his mind, and in '94 he had his chance, still in West Los Angeles, he had his chance. So Hodge is important because you can espouse all these epithets and talk theoretically about your racism, but when it is directed toward a human

3010 being--and I said to him, "Mr. Hodge, tell this jury how that made you feel." He said, "It made me feel angry and upset and frustrated." It was dehumanizing in a free society. But this man, Fuhrman, does it with immunity and his partner sat there and heard it and didn't report it. There is something rotten about this kind of conduct, that it is going on too long, and so that is why he is important. But the capper was finding those tapes, something that you could hear. Lest there be any doubt in anybody's mind, Laura McKinny came in here, and I can imagine the frustration of the Prosecutors, they've had the glove demonstration, they have seen all these other things go wrong and now they got to face these tapes. And they didn't know how to handle her. Quite frankly, she was a reluctant witness. You know that. Mr. Darden

3020 asked her those questions where he became negative with her. She is very smart, not like some others who didn't know how to handle it. He says, "Why are we having this negative conversation? Why are you acting and treating me like this?" I didn't try to stop him about cover-ups and things. "Why are you asking me these questions? I am the one who is here under subpoena. Why are you treating me like this?" You know it is true because they have heard the tapes. Why are you messing with this lady? You just get so wrapped up with what you are doing, I guess. Why are they messing with this lady? We owe a debt of gratitude to this lady that ultimately and finally she came forward. And she tells us that this man over the time of these interviews uses the "N" word 42 times is what she says. And the so-called

3030 Fuhrman tapes. And you of course had an opportunity to listen to this man and espouse this evil, this personification of evil. And so I'm going to ask Mr. Harris to play exhibit 1368 one more time. It was a transcript. This was not on tape. The tape had been erased where he said, "We have no niggers where I grew up." These are two of 42, if you recall. Then this was his actual voice. *(At 10:00 A.M., Defense exhibit 1368, a videotape, was played.)*

**Mr. Cochran:** This is the word text for what he then says on the tape. Now, you

heard that voice. No question whose voice that is. Mr. Darden concedes whose voice that is. They don't do anything. Talking about women. Doesn't like them any better than he likes African Americans. They don't go out and initiate contact with

3040 some six foot five inch Nigger who has been in prison pumping weights. That's how he sees this world. That is this man's cynical view of the world. This is this man who is out there protecting and serving. That is Mark Fuhrman. And he is paired in this case with Phil Vannatter. They are both beacons that you look at and look to as the messengers that you must look through and pass. They are both people who have shown that they lie, will lie, did lie on the stand under oath. And you know, one little parenthetical thing how these people all try to stick together from the standpoint of law enforcement. The FBI agent come in here and he talks about--when I bring out the facts he says that Vannatter says they are not there to save lives. On cross-examination, he says, well, I think he was being sarcastic, Vannatter

3050 was being sarcastic or maybe it was a joke. But you know, when I listened to that, I thought about that, I said, well, what is the joke? What is the sarcasm? Is the constitution this man's rights to be safe and secure in his home? Is that the joke? Is that the sarcasm? Sad state of affairs. That is the lead detective I'm talking about, these two twin devils of deception. You think about it and keep them in mind. Thank you for your attention during this first part of my argument. I hope that during this phase of it I have demonstrated to you that this really is a case about a rush to judgment, an obsession to win, at all costs, a willingness to distort, twist, theorize in any fashion to try to get you to vote guilty in this case where it is not warranted, that these metaphors about an ocean of evidence or a mountain of

3060 evidence is little more than a tiny, tiny stream, if at all, that points equally toward innocence, that any mountain has long ago been reduced to little more than a molehill under an avalanche of lies and complexity and conspiracy. This is what we've shown you. And so as great as America is, we have not yet reached the point where there is equality in rights or equality of opportunity. I started off talking to you a little bit about Frederick Douglas and what he said more than a hundred years ago, for there are still the Mark Fuhrmans in this world, in this country, who hate and are yet embraced by people in power. But you and I, fighting for freedom and ideals and for justice for all, must continue to fight to expose hate and genocidal racism and these tendencies. We then become the guardians of the constitution, as I

3070 told you yesterday, for if we as the People don't continue to hold a mirror up to the face of America and say this is what you promised, this is what you delivered, if you don't speak out, if you don't stand up, if you don't do what's right, this kind of conduct will continue on forever and we will never have an ideal society, one that lives out the true meaning of the creed of the constitution of life, liberty and justice for all. I'm going to take my seat, but I get one last time to address you, as I said before. This is a case about an innocent man wrongfully accused. You have seen him now for a year and two days. You observed him during good times and the bad times. Soon it will be your turn. You have the keys to his future. You have the evidence by which you can acquit this man. You have not only the patience, but the



3080 integrity and the courage to do the right thing. We believe you will do the right thing, and the right thing is to find this man not guilty on both of these charges. Thank you very, very much. I appreciate your attention. I think, your Honor, we may need a brief break because he has to be--

**Judge Ito:** Exhibits?

**Mr. Cochran:** Judge, yes.

**Judge Ito:** All right. Ladies and gentlemen, we will take a 15-minute recess at this time. Remember all my admonitions to you. And we will see you back here in fifteen minutes. All right. We will stand in recess.

3090 **Mr. Cochran:** Thank you, your Honor, Judge Ito, again to my colleagues. Good afternoon again, ladies and gentlemen.

**Jury:** Good afternoon.

**Mr. Cochran:** It seems like we did this yesterday, but I won't be nearly as long this time. I'm back, as I promised you I would come back, to try and wrap up the Defense discussion of the evidence with you. You just heard what I believe was a remarkable discussion by Mr. Barry Scheck, an excellent lawyer. He may be from Brooklyn, but he has become a Californian as far as we are concerned, and he is a very valued member of our team of Defense lawyers for Mr. O.J. Simpson. And you see why. This is indeed a talented lawyer. And so he shared with you a number of things, which I will not be redundant about and go over, you have them clear in

3100 mind. And if I were not to say anything else, there are many reasonable doubts in this case, and O.J. Simpson is entitled to an acquittal based on what we have told you. This is my last chance, of course, to speak to you, and I want to take this time to tell you again that the Prosecution, because they bear the burden of proving this case beyond a reasonable doubt, will have the opportunity to speak to you last. We may not be here too late tonight because I'm not going to be much longer and I think that more than likely I think we can probably guarantee you, this case is going to get you to sometime tomorrow afternoon, so you can kind of sit back and relax. It has been a long, long, long road to get to this point. It has been kind of like a rally race, hasn't it been, in many respects, in this journey toward justice? The Prosecution was

3110 first running with it. We then took the baton and we started running with it. We have run almost up to the jury box and soon we are going to pass the baton to you. This is how our system works. This is what makes it so great. We pass the baton to you and we will be glad. We can then sit back and watch you at work. You have watched us for a year, two or three days. Now we get to watch you. It will be symbolically watching you because we won't see you back in that room, but you know we are going to be counting on you giving both sides the benefit of your individual opinion. Now it is your time to perform. You know how you could think about us and those

days when you wanted to criticize us? We are not going to criticize you, though. We are going to watch you work, and watching you work is what makes this country so

3120 great. Because it is twelve citizens good and true coming together from this community from disparate backgrounds, experience not required, citizenship, the only requirement to do justice, to do right, to right some wrongs, to straighten this out. That is what we are asking you to do, to follow the law, to determine the facts and come to a well-reasoned decision. That is what is going to happen tomorrow afternoon for you. Now, it may take one day or a hundred days, but you've been committed. I know that you will stay the course, keep your eye on the prize and do the right thing. Now, when I sit down this time I won't get another chance to argue to you or discuss the inferences, because it has to stop sometime, but Miss Clark gets to talk to you later tonight or tomorrow. And I want you again to use your

3130 common sense and remember if she raises some point, I may not be able to get up and respond, Mr. Scheck or I. If it is something that is not purely rebuttal, you may see more objections this time because we got to keep it in line, but if it is a point that we can't respond to, you substitute your wisdom and common sense as to any point. I think you know by this time we can answer anything that they would say, so I'm sure you will give her the same attention you have given us today, and I wish them good luck. In fact, let me say this. In this case we have been advocates, we have fought hard, I hope, but it is not personal. What is personal is this case. What is personal is our zeal and our desire that our client be acquitted. It is not personal against these Prosecutors. In this part of our discussion I want to share a couple

3140 things with you and clear up a couple of things, if I might. Remember I was examining Detective Lange, and it was interesting that we saw Detective Lange here today. That is interesting, isn't it? Detective Lange was here. He is the only one who can really come any more. We discussed the roles of these people. He is the only one who is going to show his face here that we can count on, but Lange says that--early on that I asked him questions about traveling around the world to investigate this case to get an idea of what resources were they putting on this case. You remember right at the very outset the reason that robbery/homicide was put on the case was because downtown they supposedly had better resources. There is some doubt about that, but they did that and they put resources, including everybody in

3150 the LAPD, they have the D.A.'s office and their investigators, they have had the FBI. They have been all over the world. You know they have been everywhere looking for Bruno Magli shoes. They've been to Italy, they've been to many of the states in the United States. And I asked them about those things to give you a scope of what they were trying to do, and you know, it is awesome, the power of the state, and at one point I worked as Assistant District Attorney, so I know about the power of the state. There was no priority to being on this side. I used to be on this side. You can be on both sides. It perhaps gives you a little different of balance and perspective. But they have a lot of power. They can do a lot of things. They have a lot of resources and they have used them in this case. So don't feel sorry for them.

- 3160 They have used every resource they had. If they didn't call people, there was a reason for it. It wasn't they didn't have the resources. These are excellent lawyers. They know the facts. If they didn't disprove something, if they couldn't disprove Henry Lee, if they didn't call anybody for John Gerdes, it is because they couldn't find anybody. Earlier I talked to you about Detective Fuhrman on this particular point. I wanted to make sure so that we could be as accurate as possible. This question was asked by Bailey. "There is a problem that has been brought to your attention, isn't there, Detective Fuhrman?" "Answer: No." "Question: When discussing this event in the preliminary hearing and talking about the glove, your tongue slipped and you said 'them,' didn't you?" "Answer: Yes." In case there was any
- 3170 question about what we had said earlier. Mr. Scheck has covered the brush marks on the door, but what I would like for you to do is look back at your notes, because Fuhrman said that regarding these brush marks, he said he saw these marks on that door while the door of the Bronco was closed, remember? The reason why this has become so important was he was trying to say he hadn't gotten inside. Then we called Larry Ragle who said you couldn't see the ones at the top unless the door was opened. And then Fuhrman also had said that he told Fung about these brush marks. If you look at Fung's testimony, I think you will find that Fung never says that he heard that from Fuhrman. And so you know, with regard to Fuhrman, I could have gone on and on and on about lies, but that would be counterproductive after a while
- 3180 because you know who he is now. There is one other point I wanted to share with you about Fuhrman before we take our leave of him, is that there was a question--some questions, and counsel, at 18906, about opportunity for Detective Fuhrman and here was a series of quick questions: "When you arrived at the scene this night were you wearing a coat, a jacket of some sort?" "When I first arrived at the scene, yes." "Can you describe it?" "Answer: A blue blazer." "All right. And you were wearing the trousers and shirt that we see you in with your weapon in picture pointing at the left-handed glove?" "Yes, tan slacks." "Okay." "Now, at some point did you walk back to your vehicle and take off your blazer and hang it to lay in the vehicle somewhere?" "Yes, sir." Okay. "Can you tell the court and jury about what
- 3190 time of day that happened, bearing in mind that you arrived at about 2:10, that is A.M.?" "It would be after I was relieved from the case." Now, he is relieved a short time after he gets there. He is relieved about 3 o'clock, isn't he, before three o'clock?" "All right. That would be close to three o'clock?" "Yes, sir." "Question: And that is when you walked back to the vehicle and left the jacket and stood waiting for your relief?" "Yes, sir." Now, I don't believe hardly anything he says except that it is true that in this photograph taken at 4:30 or before sunrise, the one you saw where he is pointing at the glove, he doesn't have a jacket on. So he had a jacket, went to that car by himself. There is many things in that car. This man had ample opportunity to get up to that scene. You know, as I told you, it so stretches the credulity to believe
- 3200 that so neatly placed were this knit hat and this glove, were there two gloves at some point when he says I saw them. Why would you see them? There weren't two gloves. And you know it is so unusual because everything else is spread all out. This

was a vicious fight. There is a beeper over here and there is keys over there, but these items are right there, right where he could point at them. It is too, too pat. So you can ask yourself those questions when you go back into that jury room. Now, in this case I discussed with you Miss Juanita Moore, a lady that I called to the stand, and I think I misspoke myself. I think I mentioned to you--I think I may have said she said that Mr. Simpson did not have dandruff, and if I did say that, I got that wrong. She said Mr. Simpson would get dandruff I think in the off season, in the

3210 string and summer when he was here, as opposed to when he was in New York. And I wanted to make sure. In looking at the transcript over the lunch hour I noted Miss Clark seemed to be amazed when Mr. Scheck said that Kelly Mulldorfer said that she didn't see blood on that Bronco, so to save her some time I'm going to read you the transcript. Kelly Mulldorfer at 38268, lines 26 through line 9, I think on 38269. "Question: And when you looked at the console do you remember seeing any blood there? "Answer: No, I don't have any specific recollection." That is the lady, the investigator who was looking at this. And so now we come to some jury instructions which I think have some real relevance as we conclude this case, hopefully. We have already talked about a witness willfully false. We talked an awful lot and you

3220 know now a lot about circumstantial evidence, and I dare say you know the difference between direct and circumstantial evidence. We want to talk further about--and you know what happens where the proved circumstances are equally consistent, one of which points to innocence and the other, which points to guilt. Where they are both reasonable, you must adopt that which points to innocence. You understand that. You understand about circumstantial evidence. So enough about this. And we have displayed this and we have talked about how this works and how it inures to the benefit of the Defendant because there is this burden of proof. But there is another instruction which I want to talk to you about now and this is one that--where the Prosecutors keep wanting to change things around and

3230 ask what we proved and what we didn't do. This is what the law is: "The Prosecution has the burden of proving beyond a reasonable doubt each element of the crimes charged in the information and that the Defendant was a perpetrator of any such crimes." There is no doubt about it among any of us, is it. "The Defendant is not required to prove him or herself innocent or to prove that another person committed the crimes charged." So now if that is what the law is and the judge gave you that, why did Mr. Darden ask the question, who did this? Who committed this crime? Why would he ask you that when the judge just said the Defendant doesn't have to show anything, when we know in this case in a rush to judgment they didn't look at anybody else. That is a question he should be asking these detectives, not us.

3240 We are the ones who had to depend on experts who wanted to help out and they wouldn't accept this. How can he ask us that question? How can he ask us that question in good faith? The answer is you go ask your detectives. That is the answer. Now, you ask another question. He said, well, where was O.J. Simpson? And he says, well, you know, how does he account for his whereabouts after ten o'clock? Well, let me just talk a minute about that. He asked that question. Let me

answer it for you and for him. Some of you in your former life probably lived alone. If you lived alone, if something happened between ten o'clock and six o'clock in the morning, it is real difficult, if you live alone, to prove where you were if nobody lives there with you. Isn't that true? Is that common sense? Mr. Simpson lived alone.

3250 We have done more than that. We can I think establish where he was. He was at home. That Bronco was outside. He was packing and getting ready and rushing around at the last minute and coming outside to that Bronco, getting his phone, getting the paraphernalia for that phone. That is what he was doing. He was packing, he was getting the golf bags and golf bag out of his car that was seated out there. He was getting golf shoes and whatever goes with golf if you are a golfer. That is what he is doing, getting the little knapsack out that has golf balls in it and bring another bag down, all of which were ready when Park and Kato were out there and he comes down with the other bag carrying it. That is what he was doing, Mr. Darden. That is where he was. It is your speculation he is on the side of his house

3260 running into an air conditioner. That didn't happen. That is unreasonable. Nobody here believes it. It is not going to help save their case. They are speculating again, speculating, cynically speculating, and it is not going to work. And so that brings me to this other instruction. It is called alibi. You remember during voir dire I asked you about this. I said that you won't place a bad connotation on the term "Alibi," because that is what the law calls it, alibi. And it says as follows: "That evidence has been received for the purpose of showing that the Defendant was not present at the time and place of the commission of the alleged crime for which he is here on trial. If after a consideration of all the evidence you have a reasonable doubt that the Defendant was present at the time the crime was committed, you must find him not

3270 guilty." Can I repeat that last part for you? "If after a consideration of all the evidence you have a reasonable doubt that the Defendant was present at the time the crime was committed." It doesn't say you might find him not guilty, you might think about it. It says: "You must find him not guilty." And so you know when you talk about this whole concept of reasonable doubt, and we will talk a little more about that, it is how you feel inside about this evidence. It is how you feel inside about these messengers and their message. It is when you have that queasy feeling, you can't trust this evidence. Barry Scheck described it, well, as a cancer. He talked about one cockroach. You don't need to see any more because you know if you see there is a lot of them around. All you need is one and that is going to make you go

3280 the other way. And in this case you don't have to get past the socks, but then you get to the glove and the Bronco and you get to all of it, none of which you can trust. And then how do you do it? Do you get back there and say, well, I don't trust them on this, I don't think I can trust them on that, when every essential link in the chain is broken? So you got reasonable doubt. And so your job won't be quite as tough as you may have thought. Reasonable doubt in this case. The Prosecution has not offered one coherent theory to explain how these deaths occurred. I won't talk about Thano Peratis and the desperation that brought about, but let me talk to you about this whole concept of what took place in this case. One of the things that was

intriguing to me, and I'm sure you've thought about it and I know that your

- 3290 collective minds are far better than mine and Mr. Scheck's, but you know, we think about things that will be helpful to you. Now, one of the things that is always troubling me about the Prosecution's case is--you probably thought about this--Kato, the dog, was purchased by O.J. Simpson after the other dog died. Remember Arnelle told you about how they had to bury the dog and it was a real tough time for the kids and all. O.J. Simpson had that dog Kato along with Chachi, the other dog, over at Rockingham, and he let his son have the dog because they named the dog after Kato who is now living with O.J. Simpson. That dog knows O.J. Simpson. It is his dog. He bought the dog. They didn't know this as they were speculating. It is his dog. If O.J. Simpson had been the one there that night, that dog would have
- 3300 followed him out the back gate. He wouldn't be going out the front. Those paw prints wouldn't be going out that way and down the sidewalk. That is common sense. They said use your common sense. Does that make sense to you? The other thing is the one thing that you could count on in this case is these two people, even when they weren't getting along, loved their children and their children loved them. Whether it was pediatric aids affairs, whether it was recitals, whether it was sunshine preschool affairs, just look at the month of may, the things that you heard that O.J. Simpson went to always on the weekend because he was traveling. There wasn't no fuse. He was out of town working. He was the breadwinner. So whether it was the pediatric aids or something for his children's school, 400 people over at the
- 3310 Rockingham estate, he was always there for the kids. If it meant coming back from Chicago or from wherever he was in New York on Friday to go back to Chicago on Sunday to go back for an engagement, he came home. He came home because his little girl was having a concert. That is the kind of dad he is. And somebody has to stand up for him. People don't want you to stand up for him. People can't stand the truth, but they are going to hear truth in here. There is one place you can't take away somebody's voice, and that is in the courtroom. If you want to tell the truth, for sixteen months this man sat over here and heard people talk about him day in and day out, judged him and prejudged him against the American way. What right, how dare them do that? And he has one day or two days to have somebody stand up for
- 3320 him. People are crying and moaning. It is outrageous in America. It is intolerable, if you will. And so this is a good and decent man who loves his family, who loves his kids. None of us are perfect, but he is a man who went a long, long way. Raised primarily by his mother. You know what he did with his life. He had a good life, a wonderful life. He has done well. He is not going to give all that up try and kill somebody with a knife. He is not going to give that up. And you know what, as you think about this case, can you imagine that a man who loves his children so much is going to go over, kill his ex-wife, kill their mother and leave her so that the children could come downstairs and find her? That defies credulity. None of you believe he would do that. It is contrary to everything that you can believe. And that you've
- 3330 heard about this man and what he has done and what he has done with his life. So forgive me if I speak out for O.J. Simpson, if I'm so presumptuous as to believe the

Constitution means that you are presumed to be innocent until you make the decision. Nobody outside here has a vote. You have that vote, thank heaven. These narrow-minded people, thank heaven they don't have a vote. You will have the final say. And so this concept then of reasonable doubt. What then does it mean? We've heard about it and we've talked about it. We have a chart, and I'm going to ask Mr. Douglas to put it over there, and let's talk about this whole idea of burden of proof and reasonable doubt and what is reasonable doubt. You remember during voir dire I talked to you about this concept of reasonable doubt. And before we go to that

3340 chart, I mean: "It is that state of the case after the entire comparison and consideration of the evidence, leaves the minds of the jury in that condition where they cannot say they feel an abiding conviction of the truth of the charge." That is what reasonable doubt is. And let's go over it one more time, because this is the cornerstone of every criminal case. What it really is is a doubt based upon reason. In this case we have given you myriad reasons. There are many, many, many, many, many reasonable doubts, it is not just one, all of which lead you to one verdict in this case and one verdict only of not guilty. But let's go over it one last time together. "A Defendant in a criminal case is presumed to be innocent until the contrary is proved, and in case of a reasonable doubt whether his guilt is

3350 satisfactorily shown, he is entitled to a verdict of not guilty. This presumption places upon the People the burden of proving him guilty beyond a reasonable doubt." You've heard a lot about that. That is what people need to learn and be reminded of in this country. Reasonable doubt is defined as follows: "It is not a mere possible doubt and we know that because everything relating to human affairs is open to some possible or imaginary doubt. It is that state of the case where after the entire comparison and consideration of all the evidence leaves the minds of the jurors in that condition that they cannot say they feel an abiding conviction of the truth of the charge." That is reasonable doubt. It is not written just for O.J. Simpson. It is for you, it is for you, it is for you. It is for all of us who are citizens. It is given in every

3360 criminal case. You have to give it. That is the burden. You don't change it once the trial starts. That is the burden. Let's see how it works. In this whole idea of a burden of proof let's start down at the bottom and look at the burden that is placed upon the state, and they should have a burden like this when you are talking about taking somebody's freedom for the rest of their life or whatever. There are a number of things that you might want to think, but in a case--sometimes in cases you actually can prove the person charged not guilty, and in this case, in my 32 and a half years, this may be as close as any case where somebody has been proven not guilty. Because if you look at these facts, you looked at what we've shared with you over the course of the last two days, this man has been proven not guilty, but that is at the

3370 very bottom of the rung. Somebody among you say, well, you know, I have some suspicions. I think it is highly unlikely, but I have some suspicions. But somebody else may say, well, it is less than likely, but you know, I don't know, I mean, they didn't convince me beyond a reasonable doubt. And somebody else might say, well, you know, he is probably not guilty based upon this evidence. Somebody else will

say it is unlikely he is guilty. No way in the world is he ever going to go over and kill the mother of his children under these circumstances. The timeline shatters their case. Somebody says I don't trust the police. Fuhrman was central. I don't recall trust Vannatter. It is the messengers and their message. It just doesn't fit. Something is wrong. There is a cancer here. Possibly not guilty, maybe not. And Mr. Scheck said,

3380 you know, maybe not is not good enough when you are talking about somebody's freedom for the rest of their lives. Somebody else may say perhaps, gee, I don't know. I suspect that he might be. Maybe he is possibly guilty of something. Maybe he is probably guilty. Maybe guilt is likely. Maybe guilt may be highly likely. I don't think any of you are going to find that in this case because I think we have shown that he is proven he is not guilty. But all of those levels, from proven not guilty to the guilt highly likely, it is our interpretation of what you have to do before you get all the way up to guilt beyond a reasonable doubt, so that you won't have that queasy feeling about this case, where you can believe to an abiding conviction of the truth of these charges. Can you have that? I think not on this evidence. Not on

3390 this evidence. Not on this case. They have failed. You know, we asked you a question, did you have the courage, did you have the intestinal fortitude to walk back into this courtroom if they failed to prove Mr. Simpson guilty? Did you have the courage to walk back in here and say we find him not guilty? And you said you could do that. You knew that was part of your job. You said you could do that. I'm going to tell you that, because that is what makes the system great, your courage, your willingness to stand up for what is right. And so in this scenario, thinking about reasonable doubt even more, the Prosecution had a puzzle, and it was interesting how they did this puzzle, technology is wonderful and you saw they kept under this puzzle putting on pieces and that sort of thing. And so we thought about

3400 that. I thought about this puzzle, thought about what it meant in this particular case. They got a call from a very, very wise, wise, wise lady who reminded me that if you ever have gone to the store and bought a puzzle, when you buy a puzzle, on the outside of the box of the puzzle there is a picture, so you know what the puzzle looks like when it is finished. Well, in this case the Prosecution took a photograph or picture of O.J. Simpson first, then they took the pieces apart. If they really wanted to talk about reasonable doubt, you don't jump to conclusions at the beginning. You don't rush to judgment and then be concerned about an obsession to win. What you do is you take the pieces and put them together and then you come to the conclusion. They have got it all backward. It is like what they did with the 4th

3410 amendment. It is like us, where is this witness? What did you prove? Solve this crime for us. They got it all backward, don't you see. And so that little example, a jigsaw puzzle, was clever, but really it trivializes a man's fight for his freedom who has always said that he was innocent from day one, so I wanted to just summarize our sense with a graphic, thanks to Mr. Bob Blasier, of this evidence, and why there is reasonable doubt as to each of these items. Please note the monitor. All right. Let's look at--first we know in the upper left-hand corner, there is missing blood. They can't explain it and they went down in flames going out with a home video



where it was actually embarrassing this morning. You want a little levity during the tough time in your deliberations, play the Thano Peratis video. In fact, it is so

3420 bizarre that if you listen to it again you will hear Hank Goldberg is laughing self. He starts laughing when the words are mouthed by Peratis "I don't remember" (whispering). He goes like that and Goldberg starts laughing at his next question. How embarrassing this is. This blood is missing and you will have the syringe. And so Mr. Harris and what does that mean, that missing blood? It means reasonable doubt. Then we have the socks, my personal favorite, and when I talked to you about the socks yesterday, I may not have told you that in addition to the socks not being in the video at 4:13 on June 13th and how they placed them there later and how they were collected at 4:35 or between 4:30 and 4:40, Willie Ford came in here and testified to you he didn't see the socks. I forgot to tell you that yesterday. He

3430 testified they weren't there either. So thank heaven there is one person who wasn't part of that cover-up, and although they got to him and he says, oh, well the socks may have been covered, but he still works over there, so we will forgive him for that, but you didn't know what we knew about Lange and Mazzola and the time they were collected in their log, but the time, another whole thing got them, and those straps on the bed further. So what have we shown you about the socks? Reasonable doubt. That moves to the back gate. What about that back gate with the EDTA and more DNA than you could ever imagine and it is picked up and collected three weeks afterwards when people have been all over the place. And you saw the photograph. Look at that photograph. That photograph doesn't show any blood. It

3440 shows some little tiny spot, totally inconsistent. They are trapped again by the video. This case will go down as the video case because we have shown you for your own eyes why they lose this case, where there is reasonable doubt. So the back gate, reasonable doubt. And then we started out with the timeline, because we knew at the outset the timeline with the witnesses that they failed and refused to call to establish a reasonable doubt. It shatters the Prosecution case. If you start there, you will find these witnesses credible. O.J. Simpson couldn't have committed these crimes. There is reasonable doubt. He is not guilty. The timeline. We went from there to the EAP B, and you will remember that, and Mr. Scheck has talked about it. I won't be redundant. A double-banded B. That is somebody else. They can't explain it. They

3450 never tried to explain it except to talk about something that is not in the literature. It didn't work and there is reasonable doubt about who that person was. And so with regard to--and let's see. I have lost track of my chart there. Demeanor. Before we get to EAP B, under demeanor, O.J. Simpson's demeanor, all those witnesses who didn't know each other, who you heard and who they talked to, you saw them all. You think that he was acting for those people? You remember one of the most interesting things was Mr. Darden said that when the Scott Kennedy video at the June 12th recital where a man just happens to stop by and takes a video, Simpson doesn't even know he is being videoed. This guy doesn't know Simpson. Just taking a video. Just came to us out of the blue. They had the audacity to tell you he was on camera. He

- 3460 didn't know anything about being on camera. Somebody is taking a video of you, how do you know that? But we have that video and they had nothing else to say. Whenever--notice how they had nothing else to say to you, they don't say anything. That is an example of that. That is an example of O.J. Simpson's demeanor and that was our answer to this so-called fuse. We had proof for you. You saw him on that date and we took you through step-by-step through that day. We have already covered the EAP B, the Bundy blood drops, that Mr. Scheck did such a great job on and you know about those drops and you know the numbers as well as we do. I won't go over the numbers any more. I think there is reasonable doubt based on those. And of course you know the Bronco. How can you trust the Bronco? Chain of
- 3470 custody. How can you trust it? There is nothing you can trust about the Bronco and how they handled it. Then the gloves. The gloves didn't fit. The gloves didn't fit. The gloves didn't fit. Reasonable doubt. And then the why? Motive is not an element to the crime of murder, but absence of motive may tend to establish innocence. That is why Mr. Darden went to such a long and exhaustive study. And I have shared with you the fact that there is no motive in this case, but I just want to briefly tell you this about their theory at the end. If you believe what the Prosecutors want you to believe, you would have to believe that O.J. Simpson, who has a limo driver coming I guess around 10:30, 10:40, after he goes and gets a hamburger at McDonald's, after having been worried about change because he had hundred dollar
- 3480 bills, that he has already been packing because clothes are being brought down and he is taking his golf clubs, because he's going to play golf, and that makes sense, it was a pre-planned trip. He is just off the road and going back on the road, that he is perhaps the most recognizable person in Brentwood in that area where he has lived we know for 17 years and that he drives a white Bronco, that he decides to put on a knit cap. You saw that exhibition yesterday of him or you or I in a knit cap. He decides he will put that on. He changes out of his tennis shoes, his Reebok tennis shoes and his sweat socks, and puts on some dress socks and puts on some Bruno Magli shoes. And let me just stop right there for a minute. Put a pin in that, the Bruno Magli shoes. And you heard all about Bruno Magli shoes and Bruno Magli
- 3490 shoes and we searched all around the world and we went to Bloomingdales, and what we did we find there is nobody who ever sold O.J. Simpson any Bruno Magli shoes. They searched. They tried. They never sold him any shoes, so they are back talking about Bruno Magli shoes. I mean, there must be every other house in Brentwood. I guess if somebody wanted to afford some Bruno Magli shoes, I guess they could. That is their case. There is no evidence that O.J. Simpson had any Bruno Magli shoes ever. In fact, when Lange is looking for the clothes and O.J. Simpson says this is what he wore, here are the tennis shoes, he took only tennis shoes that night. There are--is no evidence that O.J. Simpson ever owned any Bruno Magli shoes, and please remember that. So he gets--puts these Bruno Magli shoes on and
- 3500 he is trying to disguise himself. Of course he puts on a pair of gloves that don't fit and he gets in his car and he decides what he will do is he will drive over to the alleyway behind Bundy where his wife lives in this big Bronco. Now, while he is

going to do that, he has been over a number of times, and you know, they have already told you about Pablo Fenjves and these people who went back there. Remember when you went on that jury view. There are homes and windows and things that face down on that alley on both sides from I guess Gretna Green side and from the Bundy side people are looking down in that alley. It is well lit. You saw the photograph yesterday of what Mark Storfer would have seen. He pulls into this alleyway in this Bronco, in this disguise, dressed the way they want to have him

3510 dressed. He is coming to kill his wife. Now, somehow he tried to kill his wife or whatever. He doesn't kill her in the back, back there where the car is. He goes and lures her to the front gate. Doesn't make any sense, does it? He goes to the front gate to lure her to that front gate. Then he gets into a fight with somebody he doesn't even know. This fight goes on for five or fifteen minutes. The fight is so fierce that a hat and a glove are torn off. That is how fierce this fight had to be. The keys, the beeper, you saw how tough it is for any kind of an altercation, for gloves to come off, for a hat to come off. There is kicking, there is all kind of fighting in this small, small area. But that is what they want you to believe and so we find the keys and the beeper and the gloves all--of course we find specifically the cap, the gloves neatly

3520 packaged under the item there, and then he leaves this one glove behind and then just walks slowly out to the alleyway. Now, the dog that we've heard so much about who he bought, who was his dog, doesn't go with him; he goes the other way, out the front to go down the other way, Kato, the dog, under what they would have you believe. And he has got these bloody clothes on and everything and now he goes back out there where his car has been sitting ten, fifteen, twenty minutes, right out there in the alleyway. Anybody could look, anybody coming home. People are driving up and down the street. Gets back in his car and then presumably he races back home where the limousine driver who was there doesn't hear him come up, doesn't see him, doesn't do any of those things. And we know from the time they see

3530 O.J. Simpson, within five minutes he is coming downstairs packed, luggage is already down there looking neat as a pin heading for the airport. Now, he was expecting this man after he came back from the hamburger. This is what their case is. This is what they want you to believe. And just for good measure, it is not enough. That is not enough. Under their scenario, once he gets home, after he is rushing, he has got enough time and he has got all these bloody clothes and he runs down the side of his house where he has lived for 17 years and runs into the air conditioner and says, whoops--no marks of course on his body--but while he is back there he drops a bloody glove to match the other glove found over at Bundy. And just for good measure so they will be sure and find it, he knocks on the wall. He

3540 doesn't run into the wall, he knocks on the wall. He says, (*Indicating*), he gives a signal and then he decides to come in the house. But nobody sees him do any of that. That is what they have you believe. That is the Prosecution's case. We have been here one year, ladies and gentlemen, and two days, to hear this is what they have told you. It just doesn't fit. It doesn't fit; you must acquit. Something is wrong with the Prosecution's case, and your common sense is never going to let you fall for

it. So the other side, of course, we submit, in answering the questions that O.J. Simpson was at home getting ready for his trip. He had no problem with his ex-wife. He had gone to this concert. She had gotten tickets for him. There is no argument. Nobody has come in here and said they had any argument that day. There

3550 is no fight. They talked earlier, made arrangements for the tickets. He went to the concert. You saw him at the concert. You traced his steps that day and what he did and then he went on to Chicago and came back immediately and everything he did was consistent with innocence. This case is a tragedy for everybody, for certainly the victims and their families, for the Simpson's family, and they are victims, too, because they lost the ex daughter-in-law, for the Defendant. He has been in custody since June of 1994 for a crime that he didn't commit. Someone has taken these children's mother. I certainly hope that your decision doesn't take their father and that justice is finally achieved in this case. One final word about Allan Park. We talked a lot about Allan Park. He is somebody that Miss Clark, of course, found

3560 credible, but even credible people don't get everything right. Remember the golf bag? He thought it was a blue golf bag and we know it is black with an insignia on it. We know that there was a lot of questions asked about whether he saw a car parked at the curb and I read you the portion when I questioned him where he said he hadn't really been looking. He was not very clear with regard to that. But like all witnesses, you hold him up to the same standard and look at them. And so now I promise you we are coming to the end. If after hearing all of this evidence you have a reasonable doubt, it is clear that O.J. Simpson is entitled to an acquittal. And whether it is O.J. or no J, the result would have to be the same. His status doesn't count. It is the evidence that counts and what has been proven to you under these

3570 circumstances. But he is a good and decent man who you have seen and observed everyday during session since September 26, 1994. Now, as it comes time for me to conclude my remarks, I may never have an opportunity again to speak to you, certainly not in this setting, maybe when the case is over. As you have been told many, many times, these are very heavy burdens placed upon the People, and for good reason, to prove this case beyond a reasonable doubt. As such it is Miss Clark's duty to answer for you as best she can any legitimate questions arising from the evidence which we believe casts doubt upon Mr. Simpson's guilt. There may be 1000 such questions in a case like this, which could be put to her, but we intend no such exercise. I do think, after careful deliberation, that it might be fair to suggest

3580 fifteen questions, just fifteen questions which literally hang in the air in this courtroom at this moment. And as the time approaches for you to decide this case, for us to hand the baton to you. I offer these questions now as a most important challenge to the Prosecution, the Prosecution which claims that it has met its burden in this case. If that burden has in fact been met, you will be given logical, sensible, credible, satisfying answers to each of these fifteen questions. If the questions are overwhelming and unanswerable, they will be ignored or you will be told that the Prosecution has no obligation to answer questions. If you are given anything less than a complete sensible and satisfactory response, satisfying you beyond a

reasonable doubt to these fifteen questions, you will quickly realize that the case

3590 really is transparent and you will think about the scenario that I just went through for you and that--the term smoke and mirrors that you heard about doesn't apply to the Defense. We proved real hard things for you, things that you can see, things you could take back in that jury room. And accordingly, you would have to find Mr. Simpson not guilty. When I'm concluded, for Miss Clark's convenience, should she decide to deal with these very troublesome questions, I'm going to leave her a written list of these questions here when I conclude. Let me go over these fifteen questions with you just briefly.

1. Why, there on the monitor, did the blood show up on the sock almost two months after a careful search for evidence? And why, as demonstrated by Dr. Lee and

3600 Professor MacDonell was the blood applied when there was no foot in it? Do you think that is a fair question in this case? Let's see if she can answer that question.

Question no. 2. Why was Mark Fuhrman, a detective who had been pushed off the case, the person who went by himself to the Bronco over the fence to interrogate Kato to discover the glove and the thump, thump, thump area?

No. 3. Why was the glove still moist when Fuhrman found it if Mr. Simpson had dropped it seven hours earlier? As Agent Bodziak told you, as MacDonell has told you, blood dries very rapidly.

4. If Mark Fuhrman, who speaks so openly about his intense genocidal racism to a relative stranger such as Kathleen Bell, how many of his co-workers, the other

3610 detectives in this case, were also aware that he lied when he denied using the "N" word yet failed to come forward? Part of Barry Scheck's fourth C of continuing cover-up.

5. Why did the Prosecution not call a single police officer to rebut police photographer Rokahr's testimony that Detective Fuhrman was pointing at the glove, before, before Fuhrman went to Rockingham? That is around 4:30 in the morning.

6. If the glove had been dropped on the walkway at Rockingham ten minutes after the murder, why is there no blood or fiber on that south walkway or on the leaves the glove was resting on? Why is there no blood in the 150 feet of narrow walkway or on the stucco wall abutting it? And you ever been back there.

3620 No. 7. For what purpose was Vannatter carrying Mr. Simpson's blood in his pocket for three hours and a distance of 25 miles instead of booking it down the hall at Parker Center?

No. 8. Why did Deputy District Attorney Hank Goldberg, in a desperate effort to cover up for the missing 1.5 milliliters of Mr. Simpson's blood, secretly go out to the home of police nurse Thano Peratis without notice to the Defense and get him to contradict his previous sworn testimony at both the grand jury and the preliminary hearing? Peratis was never sworn. We were never given notice.

3630 9. Why, if according to Miss Clark he walked into his own house wearing the murder clothes and shoes, there is not any soil or so much as a smear or drop of blood associated with the victims on the floor, the white carpeting, the doorknobs, the light switches and his bedding?

10. If Mr. Simpson had just killed Mr. Goldman in a bloody battle involving more than two dozen knife wounds where Mr. Goldman remains standing and struggling for several minutes, how come there is less than seven/tenths of one drop of blood consistent with Mr. Goldman found in the Bronco?

No. 11. Why, following a bitter struggle allegedly with Mr. Goldman, were there no bruises or marks on O.J. Simpson's body? And you will have those photographs back in the jury room.

No. 12. Why do bloodstains with the most DNA not show up until weeks after the

3640 murder, those on the socks, those on the back gate, those on--those are the two major areas.

No. 13. Why did Mark Fuhrman lie to us? Why did Phil Vannatter lie to us?

And finally 15. Given Professor MacDonell's testimony that the gloves would not have shrunk no matter how much blood was smeared on them, and given that they never shrank from June 21st, 1994, until now, despite having been repeatedly frozen and thawed, how come the gloves just don't fit?

I'm going to leave those questions for Miss Clark and we'll see what she chooses to do with and about them. That will be her choice. But I think you have a right to demand answers if you are going to do your job in this case. It seems to me you will

3650 need to have answers to those questions. Now, there are many, many, many more, but as with everything in this case, there comes a time when you can only do so much. We took fifteen as representatives, but I can tell you we had more than fifty questions, but fifteen will be enough, don't you think? I think so. In this case, when we started out a long time ago, we talked a lot about truth. And I always like, in a circular fashion, that you kind of end up where you started out. The truth is a wonderful commodity in this society. Some people can't stand the truth. But you know what? That notwithstanding, we still have to deal with truth in this society. Carlisle said that no lie can live forever. We have seen a number of big lies in this case, in this so-called rush to judgment. We have seen lie after lie, so much so that

3660 at least two of the major witnesses, Vannatter and Lange--Vannatter and--strike that--and Fuhrman, their testimony by you may be totally disregarded, further dismantling the People's case. You have that right, you know, in this search for truth. In times like these we often turn to the bible for some answers to try to figure out when you've got situations like this and you want to get an answer and you want to try to understand. I happen to really like the book of proverbs and in proverbs it talks a lot about false witnesses. It says that a false witness shall not be unpunished and he that speaketh lies shall not escape. That meant a lot to me in this case because there was Mark Fuhrman acting like a choirboy, making you believe he was the best witness that walked in here, generally applauded for his wonderful

3670 performance. It turns out he was the biggest liar in this courtroom during this process, for the bible had already told us the answer, that a false witness shall not be unpunished and he that speaketh lies shall not escape. In that same book it tells us that a faithful witness will not lie but a false witness will utter lies. Finally in proverbs it says that he that speaketh the truth showeth the forthrightness but a

false witness shows deceit. So when we are talking about truth, we are talking about truth and lies and conspiracies and cover-ups, I always think about one of my favorite poems, which I think is so very appropriate for this case. You know when things are at the darkest there is always light the next day. In your life, in all of our lives, you have the capacity to transform Mr. O.J. Simpson's dark yesterday into

3680 bright tomorrow. You have that capacity. You have that power in your hand. And James Russell Lowell said it best about wrong and evil. He said that truth forever on the scaffold, wrong forever on the throne, yet that scaffold sways the future and beyond the dim unknown standeth God within the shadows, keeping watch above his own. You walk with that everyday, you carry that with you and things will come to you and you will be able to reveal people who come to you in uniforms and high positions who lie and are corrupt. That is what happened in this case and so the truth is now out. It is now up to you. We are going to pass this baton to you soon. You will do the right thing. You have made a commitment for justice. You will do the right thing. I will some day go on to other cases, no doubt as will Miss Clark and

3690 Mr. Darden. Judge Ito will try another case some day, I hope, but this is O.J. Simpson's one day in court. By your decision you control his very life in your hands. Treat it carefully. Treat it fairly. Be fair. Don't be part of this continuing cover-up. Do the right thing remembering that if it doesn't fit, you must acquit, that if these messengers have lied to you, you can't trust their message, that this has been a search for truth. That no matter how bad it looks, if truth is out there on a scaffold and wrong is in here on the throne, remember that scaffold sways the future and beyond the dim unknown standeth the same God for all people keeping watch above his own. He watches all of us and he will watch you in your decision. Thank you for your attention. God bless you.

3700 **Judge Ito:** Thank you very much, Mr. Cochran. All right. Let me see counsel over at the side bar without the court reporter. *(A conference was held at the bench, not reported.) (The following proceedings were held in open court)*

**Judge Ito:** All right. Ladies and gentlemen, contrary to our previous schedule, I'm going to recess for the evening at this time. We will resume tomorrow morning at nine o'clock. And the lawyers have promised me that we will finish this case. One of the conditions that we go over until tomorrow morning is that we will finish tomorrow afternoon with the rebuttal arguments by the Prosecution. I will instruct you and the case will be yours tomorrow afternoon. And I hope--hopefully we will at least get it far enough to have you go in, select a Foreperson to preside over your

3710 deliberations, and then Mrs. Robertson has a list of the exhibits and everything that will be presented to you so you can get organized for the coming days. All right. Having said that, please remember all my admonitions to you. Don't discuss the case, don't form any opinions about the case, don't conduct any deliberations until the matter has been submitted, do not allow anybody to communicate with you with regard to the case. See you tomorrow morning nine o'clock. All right. We will be in recess.

## Appendix M

### Berry Scheck's Closing Argument on Physical Evidence Issues

1 **Judge Ito:** Address the DNA issues or physical evidence issues.

**Mr. Scheck:** I would say. Ladies and gentlemen of the jury, good morning.

**Jury:** Good morning.

**Mr. Scheck:** Let me join with everybody in thanking you for your service. I can--the frustration, the loneliness, the sacrifice you have made in this sequestration is something that we understand or we are trying to understand. As the Judge has pointed out a number of times, my colleague, Mr. Neufeld and I, we are from New York city. More specifically, we are from Brooklyn, and we've been out here quite unexpectedly for a lot of months. And I remember when that

10 detective from Chicago testified about having those keys that you stick in and out of the doors and little lights go on, umm, every day going in and out of those doors again and again, and again like groundhog day, everything repeating itself, the monotony, the loneliness, the frustration. We sit around and we talk sometimes in amazement at how you deal with this and how appreciative we are and--well, it is just really a honor and a privilege to present this case to you. And as lawyers that dealt with some of the forensic evidence in this case, which was detailed and complicated, and I'm sure I speak for myself, Mr. Blasier, Mr. Neufeld, Mr. Clarke, for the Prosecution, Mr. Goldberg, that we had a job. Our job was to make it simple, to make it cogent without sacrificing any meaningful

20 detail. That is our job. And I can't tell you how appreciative we are because you paid attention, you were patient, you followed the evidence. I know that. I watched it. Now, you know it is our job to make it simple, to make it cogent without sacrificing detail that was important, and sometimes we let you down. I know that. Some days when we were talking about some of this, it was hard, and we came back to it again. And I think both sides tried to clarify the issues as much as we could, but you never let us down, because those were long days, but you were more than fair with us. I know you followed and paid attention to this evidence. So it is a privilege and honor to have presented that evidence to you and I must also say that standing before you right now is a terrifying

30 responsibility. It is a terrifying responsibility because we think the evidence shows that we represent an innocent man wrongly accused.

**Ms. Clark:** Objection, objection.

**Mr. Scheck:** We represent, we think--



**Judge Ito:** Excuse me.

**Mr. Scheck:** We think the Prosecution hasn't come close to meeting its burden of proof in this case beyond a reasonable doubt and we think that the integrity of this system. I'm sorry what--

**Ms. Clark:** Your Honor, objection.

**Judge Ito:** All right. Side bar, counsel.  
*(The following proceedings were held at the bench:)*

40 **Judge Ito:** All right. We are over at the side bar. Miss Clark, I think your objection is that there was a comment by Mr. Scheck that "We also believe."

**Ms. Clark:** Yes.

**Mr. Scheck:** My comment was, and I want to be specific because I am very aware of these rules, we believe the evidence shows.

**Ms. Clark:** That is not what he said.

**Mr. Scheck:** That is exactly what I said. I resent this interruption. I know the rules and she can go check the transcript.

**Ms. Clark:** Read it back.

**Judge Ito:** That is not just what was said there, but just a caution.

50 **Ms. Clark:** Your Honor, we think we represent a man--

**Judge Ito:** That is what he said. I cautioned him.  
*(The following proceedings were held in open court:)*

**Judge Ito:** Thank you, counsel. Proceed.

**Mr. Scheck:** The integrity of this system is at stake. You cannot convict when the core of the Prosecution's case is built on perjurious testimony of police officers, unreliable forensic evidence and manufactured evidence. It is a cancer at the heart of this case and that is what this evidence shows. When you go through it patiently, when you go through it carefully, when you go through it scientifically, logically, that is what the evidence shows, and you cannot convict on that evidence. There are many, many reasonable doubts buried right in the

60 heart of the scientific evidence in this case, and we have demonstrated that. And we don't have to prove them, but the evidence shows it. So in the words of Dr. Lee, something is wrong. Something is terribly wrong with the evidence in this case. You cannot trust it, it lacks integrity, it cannot be a basis for a verdict of beyond a reasonable doubt. There was a logo that we showed you in the opening statements that we have reproduced here on a board, and you may recall it, it is a black hole. As you recall, it shows the evidence from Bundy, the evidence from

Rockingham and the Bronco, the evidence from Mr. Simpson itself passes through the Los Angeles Police Department, the messengers that Mr. Cochran was talking about, the lab, criminalists, Coroner's office, and then it is tested by

- 70 the FBI, the Department of Justice and Cellmark. And if you recall, in the opening statements we said contaminated, compromised and corrupted, integrity of the evidence. Now, the importance of this flow chart is point no. 1, and you heard Dr. Cotton, Gary Sims, Dr. Gerdes, all the forensic experts told you with respect certainly to DNA testing, all the testing, if it is contaminated, compromised or corrupted here, it doesn't matter what the results are by these other testing agencies, because if it happens within that black hole of LAPD, it doesn't matter how many times you test it. Miss Clark got up there and said, well, why didn't we hear from Dr. Blake. If we didn't have Dr. Blake in this case to be sitting there as the testing was going on--while you were already serving
- 80 on this jury panel things were being tested. He was up there looking at what he was doing. We wouldn't have even known what was going on in this case. But the point is, by the time it reached the California Department of Justice and Gary Sims, if that evidence--and we have demonstrated, contaminated, compromised and corrupted. You could do a hundred tests. Dr. Blake could test it, Dr. Lee's lab could test it, everybody could test it and you would get the same result, so that has not been the issue in this case and don't be distracted by that. Dr. Terry speed, you will recall him, he gave testimony in this case about error, laboratory error, and he again used that term, common mode error. If it happens here and that is where the evidence is compromised, contaminated and corrupted, these
- 90 results are not adding anything. So you ask the question how did the Los Angeles Police Department, how does any laboratory become a black hole that impairs the integrity of the evidence? Can we have the first slide. Any laboratory has to have three things: you have to have rules and training, you have to have what is known as quality assurance and you have to have chain of custody, security of the evidence. Well, what have we heard about rules and training at the Los Angeles Police Department laboratory? Well, this laboratory is run without a set of rules that everyone knows. They don't even have a manual. Think about that. That is extraordinary. And then they have this draft manual and it is ignored by the criminalists, Fung and Mazzola. They don't know what is
- 100 in the draft manual, what procedures there are. And then the laboratory director, Michele Kestler, well, she was the acting laboratory director. Actually one of the real problems here is at the time of this case the head of the laboratory was a police officer, not a scientist, but Michele Kestler, she had that draft manual on her desk for four years going through it. And she says, well, some of this is no good and they didn't get around to it, so that is how you become a black hole. The testimony is clear in this case they did not give their criminalists training in state of the art techniques, in particular of great relevance here, there was no DNA training for the evidence collectors. Now, that has got to be a significant point. Miss Clark told you in the opening statement that collecting, preserving
- 110 bloodstain evidence for purposes of DNA testing was a simple as going into your kitchen and cleaning up spillage. Now, we all know, we all know that is not

true based on what we've heard in this case. May we have the next slide, please. Quality assurance. That is a term that is used in bureaucracies and hospitals and laboratories, any places where you are trying to deliver service with integrity. What is going on here? There is a failure to document how you collect the evidence, a fundamental duty as Dr. Lee showed you, remember, with that chart, fundamental duty of the criminalists to document the evidence. In other words, where it was picked up, how it was picked up, when it was picked up. And we have seen the problems in this case when you can't do that and to try to

- 120 reconstruct it later when your memories are gone and you can't do it. Well, that is not done. And failure to document testing is tolerated. Compare the notes at the Department of Justice, Gary Sims and Renee Montgomery, with what you saw from Collin Yamauchi and Dennis Fung. We--it was--I had to rearrange the notes for Collin Yamauchi, his own notes, when he was on the witness stand, and he goes that's right, first I took out O.J. Simpson's reference sample and made the fitzco card, then the next thing I did was the glove and then the next thing I did, all within that one hour twenty minutes, were the Bundy blood drops. I had to reconstruct his notes for him and he goes, that's right, that is the way it happened. I guess that is right. I mean, it had to be when you reconstructed it all,
- 130 but the notes are not there and that is fundamental for having any integrity whatsoever. There was no serious supervision of these people. That is just clear. You saw it. This lab was not inspected. This lab is not accredited. This lab is not subjected, certainly the DNA, to external blind proficiency testing which you know, which you know, is what you need. Dr. Gerdes told you about that. Everybody talked about that. This national research counsel report, DNA technology in forensic science. Could we have the next slide. Now, this is critical. Chain of custody and security. There is absolutely nothing more fundamental to preserving integrity of forensic evidence than a chain of custody, than having security. You have to know what you are picking up. You have to be
- 140 able to document it, otherwise bad things can happen and nobody can trace it. In this case they did not count the swatches when they collected them. They did not count the swatches when they got back to the laboratory and put them in the tubes for drying. They did not count the swatches when they took them out of the tubes and put them in the bindles. We don't know how many swatches they started with. They didn't book the evidence in this case for three days. They kept it in the least secure facility, the evidence processing room, for three days, without being able to track the items. The lead homicide detective in this case, and we have talked about it a little and we will talk about it some more, is walking around with an unsealed blood vial for three hours. It is unheard of. The
- 150 other lead detective in this case is taking shoes home right out of--this could be critical evidence. The shoes that they suspect he was wearing that night, taking it home. Now, you know, it was amazing, when Mr. Fung testified, the extent to which, you know, they have lost all track of the rules. At one point I asked him, well, it would have been all right if they took the blood home and he said sure you could put it in the refrigerator overnight. Do you remember that answer? I mean, there is no sense of what has to be done in order to give you reliable evidence. None. Think about the Bronco. They finished doing the collection in

the Bronco and then it is abandoned literally for two months. There is a box supposed to check off, give special care if you are going to check it for

160 biological evidence, not checked off. It is sent to Viertel's. It is abandoned for two months. There are no records of who went in and out of that car. There was a theft. Anybody was allowed in there. And then on August 26th they are collecting evidence from it. And then finally, and this is--could we have the next board. This is a critical point that I think demonstrates all you need to know about security and chain of custody in this laboratory, the missing lens, the missing lens. Now, this is very important evidence. This is the envelope that is found at the crime scene with the prescription glasses. If you are investigating a case, you are very concerned about this.

**Judge Ito:** Mr. Scheck, are there any remains on this board?

170 **Mr. Scheck:** No, there are not, your Honor.

**Judge Ito:** All right. Thank you.

**Mr. Scheck:** Now, we can tell, as Dr. Lee pointed out, on this lens there are smears of blood, trace evidence. There could have been fingerprints from the perpetrator who was going into that envelope. On June 22nd Dr. Baden and Dr. Wolf got an opportunity just to look, just to look at the evidence, not touch or examine or test, just to look, and they saw two lens there, made a note of them. February 16th, think about it, that is the first time we got a chance to inspect and just even handle the evidence. You are already sitting here February 16th. There is something wrong. When we look at it, that lens is gone. There is no report, no

180 record, no investigation of its disappearance. Nobody comes in and tells you what happened. Now, that tells you a lot. Did somebody take this from the laboratory as a souvenir? Did somebody walk off with this? How can that be? This is critical evidence in a case? How can that be? It just vanished down this black hole? Now they are going to say we are Fort Knox. Nobody could get to the evidence in this case with our evidence tracking system. I should just tell you in passing, I'm sure you caught it, that even when it is booked into the evidence control unit and it is supposedly being tracked, they didn't say their computer tracking system is a chain of custody system. It isn't. They have all the evidence items in boxes, like the sock and the blood drops, and they will put them in the

190 serology freezer and they are in a box there and then somebody will hit the computer and they can go in and then they can take any item they want out of that box. It is not tracked by specific items. There is no good security in this system. There is plenty of access if you want to tamper with evidence if you are authorized personnel, if you are a lead detective, if you are somebody there. It can happen. And the missing lens is you all you need to know. What is going on here? And if they come back and say, well, maybe Dr. Baden and Wolf are wrong, there was no lens to begin with, well, that is even weirder, isn't it? What kind of killer takes a souvenir like this? How does that fit in with their theory? The missing lens is a serious problem in this case. Now, the black hole

200 symbolizes something else. You know, science is not better than the methods employed and the people who employ it. DNA is a sophisticated technology. It is a wonderful technology. But there is a right way to do it and a wrong way to do it. The issue in this case is not is DNA good or bad DNA technology. The issue is right or wrong. So Miss Clark gets up here and tells you, well, Dr. Lee said DNA is okay, therefore the DNA evidence in this case is okay. That is ridiculous. Dr. Lee said right way, wrong way. Dr. Lee is one of the authors of this report. Right way, wrong way. And something else. During the cross-examination of Dennis Fung and Andrea Mazzola and Mr. Matheson, we brought out a pamphlet entitled "Collection of DNA evidence," how you should

210 do it. It was a pamphlet that was put together by Dr. Henry Lee in association with others. Mr. Fung had only heard of it, if you recall, after he was prepared to testify in this case, not before they all went out and collected the evidence. And in that report, as it was established, and Mr.--Agent Bodziak, I don't know if he really knows a lot about Dr. Lee. As he said he had limited knowledge. I mean, he is questioning whether he goes to crime scenes. The FBI is saying how do you collect evidence at a crime scene? Dr. Lee writes the manual and in that manual they say you don't put these swatches in plastic bags because you put wet blood swatches in plastic bags, you are going to degrade all the DNA in them. And they sat here debating whether you could do that for months, and as

220 we will talk about it now, they are trying to turn that argument around, but it is just plain that they didn't know what they were doing here. And you can have the most sophisticated technology in the world and if you don't apply it correctly, you can't trust the results. There is no compliance with the NRC report. There is no compliance with the kind of standards that you would require in a life and death situation, and this is a life and death situation. And that is what you have to demand of a laboratory. And Dr. Gerdes is a man that deals with life and death situations, bone marrow transplants, organ transplants, disease diagnosis. He came in and told you about the standards that we demand, that we require, that ought to be the minimum. They are not close. You can't brush this off, as

230 Miss Clark did in her argument, by saying that's sloppy criminalists, sloppy Coroner and that is all she said. I fully anticipate that most of the matters I am going to address to you she has been planning to address in her rebuttal summation because she certainly didn't address them in her closing argument, did she. You can't just say sloppy criminalist, sloppy Coroner, big deal. She said DNA, that's an insult to your intelligence, frankly--DNA is used to identify the war dead therefore accept all the evidence in this case. That doesn't answer the question, does it? As a matter of fact, the DNA tests she is talking about are something that are all mitochondrial dealing DNA tests and it has nothing to do with the DNA tests in this case and the war dead has nothing to do with what

240 was going on in this case. Zero. It is not an answer, it is not this case, it is not the techniques. They argue that the Defense has to prove exactly how, exactly where, exactly when tampering occurred with any of this evidence. That is not our burden. They have to prove to you that this evidence has integrity beyond a reasonable doubt. And you know when people tamper with evidence they don't do it on videotape, they try to do it with some stealth, they try to cover their

tracks, and as Mr. Cochran pointed out, when you look at the evidence, it wouldn't take more than two bad police officers to do this and a lot of people would look the other way. Could we have 2.01. Now, the way that I would like to organize the rest of my remarks for you is a systematic study of the essential

250 facts and the circumstantial evidence charged in this case talks about key points. "Each fact which is essential to complete a set of circumstances necessary to establish the Defendant's guilt must be proven beyond a reasonable doubt." Each essential fact. That is what is special about a circumstantial evidence case. For each essential fact they have to prove it beyond a reasonable doubt. If they fail, if there is a reasonable doubt about an essential fact, you must acquit. Those are the rules. And when you are looking at a piece of circumstantial evidence, if it is susceptible of two reasonable interpretations, one points to guilt, one points to innocence, you must adopt the one that points to innocence. Could we have the next chart. So what I propose to do with you today, and I will try to do it as

260 quickly as I possibly can, is go through what I believe are essential facts. Now, we don't have to prove anything and we don't have the burden of proof here and I'm going to confront each and every one of these essential pieces of evidence in this case and raise a reasonable doubt about it, more than a reasonable doubt, many reasonable doubts. But if they fail in one of their essential facts, you have to acquit. We are going to go through the socks--another reason I put this up here is that you will know when I'm getting close to done and you can follow along. The socks, the stains on the back gate, the missing blood, the hair and fiber, the evidence of struggle at Bundy, the testimony of Dr. Baden and Dr. Lee, the Bronco, the Rockingham glove. That is what we will be discussing this

270 morning. Let's start with the sock. We know that on June 13th when Mr. Fung went to collect the sock--not yet--he saw it on the throw rug--not yet--and he did not see blood. He did not see soil on the carpet. He did not see any trace evidence around, not on the stairwell, not on the carpet leading into the bedroom, not anywhere. There is supposedly a stain, an ankle stain, on these socks. You saw it, cut out, about an inch and a half. More DNA in that than anything in this case. Wouldn't that, if it were there, have left a transfer, some speck, something, if they are in a struggle? You have children; I have children. Did you ever see them go out to play in dirt like that closed-in area at Bundy, get into some kind of ruckus. Socks come back, they are filthy. It would have to be

280 here if there is anything on them at all. Nothing. Nothing there. Now Mr. Fung is looking for blood. These socks are the only clothing they take. It is logical as a criminalist, as he admitted on cross-examination, that he would be looking at the ankle area, the one they would look to first, because that would be the most likely exposed. He sees nothing. He is running around trying to do testing of anything that looks like blood. No test of the socks. Then on June 22nd Dr. Baden and Dr. Wolf were permitted to go to the crime lab and Michele Kestler shows them the socks. They see nothing. Now, we get to June 29th. This is very interesting. On June 29th the Defense wanted access to sample, split them, and the criminalists, Matheson, Kestler, the head of the laboratory and Yamauchi,

290 are going through all the evidence in about a five or six-hour period, right there

they are going through all the evidence to make an assessment of what kind of testing could be performed, of what kind of biological material or blood would be on any of these pieces evidence to see from testing, RFLP testing, how they could be divided. They also--Mr. Yamauchi said they were literally measuring the size of the swatches and making assessments and making examinations. What piece of evidence at that point is more important to these people than the socks found in Mr. Simpson's bedroom? Wouldn't you look at that? And they told us that they took white paper and they put the socks on the white paper and if there is blood, inch and a half on that ankle, you know you saw it every time

- 300 that we put something down, little specks would come off. Even when Miss Clark put those gloves on the very first day, we actually had it on white paper, you know, the plastic gloves and little pieces of trace fell off and we actually pulled those together, put them in a separate exhibit, because these kind of things fall off. If there were that stain on the sock, that big stain on the sock, they would have seen it. Gary Sims told you he was disturbed by it, that a trained criminalist should have seen it. You use light that is sufficient to look at what you are doing. They are now telling you we didn't have light. We didn't look at what we were doing. Please. Where I come from, that don't pass the laugh test. Now, what is the summary? The socks, on the report they do on June 29th, dress
- 310 socks, blood search. None observed. None observed. That tells you all you need to do. Or none obvious, I'm sorry. I can't even remember that. It is either none observed or none obvious. They have two different phrases, one on the handwritten report and one on the typewritten report. Okay. Then suddenly on August 4th Mr. Yamauchi can't remember it was some kind of general inventory, can't--Mr. Matheson might have asked him, he can't remember what the direction was. It wasn't specific to the sock. Somebody said look at--go look at this stuff and then for the first time they find the stain on the ankle. Now we have evidence of the wet transfer going through surface 1, surface 3 through the little holes in the sock to surface 3. It is pretty simple. If there is a leg in those
- 320 socks, you can't have the transfer. Professor MacDonell and Dr. Lee came in and they showed you the pictures of the little red balls and I don't think it is even being seriously contested that this is evidence of a wet transfer now. They are not contesting it really. Can't get it when the leg is in the sock. Their testimony stands unrefuted. There was no bloodstain expert that came in here and said that is not a wet transfer. Dr. Henry Lee, Professor MacDonell. Dr. De Forest didn't show up here. Why? Now, during the course of cross-examination of Dr. Lee and Professor MacDonell, the Prosecution sent up some hypothetical explanations for this that I'll view with you and each one of them was rejected by Dr. Lee, Professor MacDonell, but Dr. Lee in particular, as I recall, I think they
- 330 gave him all of them, as highly improbable. Lots of things are possible, but he said these explanations were highly improbable. No. 1, the idea that at the time of the killings there could have been a touch with the finger from the victim of Mrs Nicole Brown Simpson on the leg and that it wasn't dry when Mr. Simpson somehow got into that Bronco, came back to Rockingham, avoided Allan Park, ran down the side, left no bloodstains, hit the air conditioner, hit the stucco fence leaving no trace, somehow came in all with the bloody clothes, went up the

stairs, left no trace of blood, left no trace of soil, left no trace of berries. Got into the house, took off the socks, left them there and then it is still wet. So if it is still wet when he takes off the socks, you get the transfer to surface 3. Well,

- 340 there is a big problem with that. Then you should have seen something on the carpet if that is what happened. It doesn't make sense. It doesn't fit. Then the next explanation is on August 4th when Mr. Yamauchi did the phenol test taking the swab and brushing the stain to see if it were blood, that that somehow created wetness that transferred into the third surface. Or--well, Dr. Lee and Dr. MacDonell said that that doesn't make sense when you look at the stains because if that brushing had occurred you would see a diffusion and you don't see that kind of diffusion and that is not the way you do the test anyhow. Just touching it couldn't cause that kind of transfer through to surface 3. Highly improbable said the leading forensic scientists in America. Sweat. Next explanation is going to
- 350 be sweat. Well, there was a stain from the crime scene, but sweating in the sock and then the sock is taken off and then somehow by process of sweat it transfers to surface 3. Dr. Lee and Dr. MacDonell said ridiculous, highly improbable you would see that same diffusion as with the pheno test and we don't see it. The next explanation. When Mr. Simpson is taking off the socks he coincidentally has a finger that touches surface 3 opposite the ankle stain, so it is not Nicole Brown Simpson's blood that is on surface 3, it is Mr. Simpson's own blood that he accidentally touched exactly opposite. That is a ridiculous coincidence. That doesn't pass the laugh test. That is the other explanation they floated. Then another explanation they tried. They showed Dr. Lee the new picture of the sock.
- 360 Remember how they were folded up? They said, well, maybe blood of Mr. Simpson's, when you fold the sock over, landed on surface 3 coincidentally opposite the stain when they were bundled up and that is what created it. Again, rejected as a ridiculous highly probable coincidence. Now, none of these things make sense. Miss Clark also said, you know, there is a tiny spatter of Mr. Simpson's--Mr. Simpson's--some blood at the top of the socks of Mr. Simpson. She says, well, there is spatter there. Well, you know, doctor--Professor MacDonell said this is no spatter. Gary Sims doesn't pretend to be a bloodstain expert. Professor MacDonell, Dr. Lee, leading experts in this area. They didn't bring in anybody. It is ridiculous to say there is spatter there, and if it is spatter
- 370 of O.J. Simpson's blood, how does that happen? What? Did he bleed so much that created a puddle and spatter on the top of the sock? Nonsense. The point is every explanation that they are desperately trying to come up with is a highly improbable inference. The most likely and probable inference is the one that is not for the timid or the faint of heart. Somebody played with this evidence and there is no doubt about it. And you know why there is no doubt about it? Because they got so upset in the opening statement about the socks, about the back gate, so upset that they sent it to the FBI. And Mr. Harmon wrote them a letter saying please refute the Defense theory that somebody tampered with this evidence. Please refute it. Those were the words. Not exactly an objective way
- 380 of sending it out. Please test this for EDTA. Please refute what the Defense has to say. And Agent Martz never testified in the Prosecution's case. And you know



why that is? And that is really all you need to know, because he couldn't refute it, because it is an inference consistent with innocence that they can't refute. There is EDTA. How does that happen? There is EDTA there. So if we could have slide 4. The sock. No blood on June 13th when it is collected. No blood on June 22nd when Dr. Lee--Dr. Baden and Dr. Wolf see it. They looked for blood on June 29th on a lab paper with reasonable light, three people with 25 years of experience, and they don't see it. Most important piece of evidence. Examining it for purposes of court. The wet transfer to surface 3 unrefuted. And EDTA. Now,

390 let's think about it. Is this coincidence? Kill that, please. Is this coincidence, all these things with the sock, or is it corroboration? I say it is corroboration that something is wrong, something is terribly wrong with the most important pieces of evidence in this case. It is a cancer that is infecting the heart of this case. You cannot render a verdict beyond a reasonable doubt based on evidence like this. So if we apply 2.01, an essential fact, the socks, Miss Clark said an essential fact, whose interpretation is the most reasonable? And even if you give some of those cockamamie explanations some credence and you say, well, maybe ours is certainly reasonable enough for you to--you must adopt that, and if you must adopt it, really where does that leave us? Because, you know, there is another

400 instruction that I submit has some relevance here. Could we have the slide now. Now, you've been instructed that: "A witness who is willfully false in one material part of his or her testimony is to be distrusted in others. You may reject the whole testimony of a witness who has willfully testified falsely as to a material point unless from all the evidence you believe the probability of truth favors his or her testimony in other particulars." Thank you. Now, yes, that applies to witnesses, but I would argue to you that by analogy it applies to the messengers who are bringing you this forensic evidence as well. Because let's just think about the socks. The LAPD officers and lab people who are responsible for the collection of this, for the chain of custody, for preserving the

410 integrity of this evidence, are the same people that are bringing you everything else. Remember what Dr. Lee said about the socks? He said it is like eating a plate of spaghetti. Looking--bowl of spaghetti I think he said. You see a cockroach. Do you then take every strand of that bowl of spaghetti to look for more cockroaches or do you just throw it away and eat no more? In your deliberations somebody may say, all right, I have a reasonable doubt about this essential piece of evidence; the socks. I have a reasonable doubt. They--it is reasonable that they manufactured this piece of evidence. But let's put that aside and look at everything else. Well, just wait a second. Just think about what that means. If they manufactured evidence on the sock, how can you trust anything

420 else? How in this country, in this democracy, can they come in--there is no doubt Fuhrman is a liar and a genocidal racist. There is no doubt about that. But there is really no doubt either that they played with this sock, is there? And if that can happen, that is a reasonable doubt for this case period, end of sentence, end of case. It really is true. Not in this country. It is a test of citizenship. Not in this country. Now, let's go to the back gate. Could we have the next slide. Because, you know, there is more. There is more of this cancer. We don't have the rest of that? Put it all up. 117--put it all up, Howard. 117 was the stain taken

from the back gate, and you know, there was something very strong about it, wasn't there? The blood drops at Bundy were degraded and had extremely low

430 DNA concentrations. 117 had enough for an RFLP test. It was 27 times as much as 47, the first blood drop, 45 times as much as 48, 270 times as much as 49, 51 times as much as 50, 11 times as much as 52. This slide, like most of them I'm going to show you, is in evidence and you know who brought us that testimony; Gary Sims from the Department of Justice. Could we have the next slide. That is 117, the one on the gate. Do them all. This is 115 and 116, the one on the lower parts of the gate. 15 times as much as 47, 22 times as much as 48, 135 times as much as 49, 25 times as much as 50, 6 times as much as 52. This supposedly has been out there from June 12th to July 3rd. And--kill that. There is no question sunlight degrades DNA. Moisture and bacteria degrade DNA. Why are these

440 concentrations so much higher? And another point. There is DNA concentrations but there is also a separate test, as you have learned when you look at those yield gels, for degradation. These samples are not degraded. How can that be? Nothing. Now, there is something interesting here, too. The Prosecution is now saying, well, it is on a different surface than the Bundy blood drops. Bundy blood drops are on cement. This is on a metal gate, painted metal gate. So there is something magical about this that will prevent it from degrading at all in over three weeks. It is--remember, the blood drop no. 50 is just a few feet from this bottom portion of the gate that is very, very close to the surface and all the same environmental insults. But you know what proves this argument totally

450 fallacious? And I asked this question of Gary Sims, and you can go back. Remember the blood from the handrail? That was one of the last questions I asked him. It is very curious to me that they never typed that. They are still testing. Remember the blood on the handrail as you are leading up Bundy? Same kind of surface. Totally degraded. Remember the samples from the front gate? There was blood on the front gate. Gary Sims' testimony. No question about that, severely degraded, just like the other samples from Bundy. So those are the same kinds of surfaces, so this explanation don't pass the laugh test. Well, what is the other explanation that Miss Clark offered you? Now, this is a whopper. She said, well, it is the plastic bags. I mean, that is rich. They spent weeks trying to deny

460 that putting samples in plastic bags doesn't degrade the DNA. Well, it does. I mean, you know that from the moisture. So now they are saying on July 3rd, when Fung made this collection, he put these swatches in a plastic bag, but he didn't let them cook as long in a truck as he did on June 12th. It is our own incompetence that is the explanation. That accounts for these differences. Well, you know that doesn't work either, for a number of reasons. No. 1, they were going, as you recall, on a tour of the crime scene and Fung--apparently right away they found--all of a sudden they found this stuff on the back gate and there is no testimony, zero, as to how long it took Dennis Fung to bring those back to the evidence processing room or how long he had them in a plastic bag or what

470 other things they had him doing. There is no testimony that he immediately went back to the lab. He didn't continue with them in the tour or anything like that. And you know why it is significant that they can't come in here and argue that

when they don't present evidence? Because they could have. Because we know that there are records of when you go back into that evidence possessing room and get in the door. They could have demonstrated--if they really wanted to put this argument before you, they could have demonstrated how long it took or they could have brought him back here to testify about it. But frankly, if they brought him back here to testify about that explanation so late in the game, you wouldn't have believed him, would you? So they can't use this plastic bag theory and they

480 can't use that it is a different surface. They can't. It doesn't make sense scientifically. It doesn't fit. So what--what--you know, what is going on here? Now, there is another thing. They are going to say, well, you know, Officer Riske, Phillips, I believe, Fuhrman, Rossi, that night when they were entering the premises, the back gate, they had their flashlights and they were looking up and down and they think they saw some blood on the back gate, so they all testified to it, so you know it is there. Well, first of all, we know--you have been there--that this gate was rusty. There were all kind of darkneses, imperfections. There were berries all over there. There is all kind of discolorations. And what did they really see with their flashlights? It is not clear what they saw with their

490 flashlights. But you know what is very, very interesting is that Lange said to Fung, go look, there is blood on the back gate, you should go look, and we have heard reports there is blood on the back gate. Now, this is very interesting. Could we put up the diagram. You may remember this. This is the diagram that Fung did of the back gate. Pull back on it. And you will recall the testimony. These are--the numbers you see, 115, 116, all those numbers, right, those are the photo numbers. You recall how they did the collection, that they started, they put down a photo number, not the evidence item number, so they started on the walkway with 112 and they put down 112 and that was sample 47 and they collected that. Then they went and they put down no. 113 and that was sample 48 and they

500 collected that. Then they went down and they put down 114 and that was sample 49 and they collected that. Then they put down 115 and that was sample 50 and now we are right by the back gate and they collected that. Now, this is what shows you there was no blood on the back gate. Because at that point what do they do? They go to the front gate. They walk all the way back to the front gate where the bloodstain patterns are, that is 116, and then they go back all the way to the end of the driveway and then get the last blood drop, no. 52, 11. Why did they go all the way back? I will tell you why. Because Detective Lange had told Mr. Fung, as he testified, that there was blood on the back gate, and they looked, he heard reports of it, and they didn't see any blood on the back gate. So the only

510 blood they saw on the gate was on the front gate, so they went back and collected 116. And you know what else shows you that? Could we have the picture? Where is it, Mr. Fung? They took no pictures of any blood on the back gate, 117. There is some discoloration there that may be consistent with 115, if it is blood at all, but there is no 116. So there is no pictures either. Thank you. Now, what else? What else? What else? There is EDTA on the stains from the back. So can we have a chart on this? Let's look at the back gate. No documentation or photos on June 13th. Discovered on July 3rd. DNA concentration. EDTA. Coincidence or corroboration that something is wrong,

something is terribly wrong. There is a cancer at the heart of this case. This is a

520 reasonable doubt. You put this together with the sock, how many cockroaches do you have to find in the bowl of spaghetti. This isn't made up. This isn't invented. These are facts. How could all of this be? How can--this is not--this is a reasonable interpretation of the evidence based on solid fact. You cannot on your oath reject this and, say, ah, it never happened. You can't. It is a reasonable doubt. Now, let's discuss EDTA, because that is obviously an important issue. They asked for the tests to be done after the opening statement. Refuted. And they didn't put them on because it doesn't refute. Reasonable interpretation of the evidence, if there is EDTA there, consistent with everything, comes from a purple-topped tube on the face of it. They didn't put them on. We had to call

530 them. But you know, there is a very, very interesting point that you might have missed in Dr. Rieders' testimony when you compare Dr. Rieders and Agent Martz, and that is in January there was a gentleman named Henkhaus, works with the LAPD science division, and they were interested, after the opening statement, in seeing whether or not tests could be performed to detect EDTA. Do you recall who they called in at page 38414 of the transcript, of Dr. Rieders'? "Question: Incidentally, at one point were you consulted by the Los Angeles Police Department during the course of this case about methods to detect EDTA? "Yes." He because shown this letter from Henkhaus. "Do you remember who that was? "Mr. Henkhaus. "And did you provide him with materials on a

540 system in developing a method to detect EDTA? "Yes, of course. There was a letter with a number of citations on it." Before the testing was done, but they knew he was he going to appear as a Defense witness. They reached out to Dr. Fredric Rieders. Why? Because Dr. Fredric Rieders, a Ph.D., a distinguished teacher, he runs a reference lab outside of Philadelphia, a reference lab. People go to this laboratory when you want to develop toxicology techniques which are specialized and sophisticated because he is experienced, he is knowledgeable, he is learned. They asked him for work about EDTA. You know why else? Because Dr. Rieders testified he has expertise in EDTA and it is used to treat people for lead poisoning. He has been working with EDTA for something on the order of

550 20 years. He is the expert that you would call to interpret the data, so they asked him for references. And now they want to tell you that he is out of his mind, that he is not reasonable in his interpretation of this data and he shouldn't be trusted. Very interesting, isn't it? Now, you know when you evaluate the testimony of Agent Martz and Dr. Rieders, there really isn't that much disagreement. And remember the circumstantial evidence charge about whether if there is two plausible reasonable interpretations, you have to take the one that goes with innocence? There are three questions. Is there EDTA there? Dr. Rieders says yes. Agent Martz says could be consistent with EDTA based on the ms/ms readings. If it isn't EDTA, says Martz, I don't know what else it could be. Next

560 question. If it is EDTA, how much is there? Now, both of them agree that it is in parts per million, not parts per billion. And both agree, when you examine the testimony, that if it is in parts per million, it cannot come from the EDTA we ingest in food that then is secreted into the blood. You don't have parts per

million that way, because if you did, you would be in serious--you would have serious health problems. You wouldn't clot. You would bleed to death, as Dr. Rieders was pointing out. The next question. And this is where they parted company. Is the amount of EDTA here sufficient to have come from a purple-topped tube? Agent Martz says--Dr. Rieders says, unless you were treating somebody for lead poisoning and injecting EDTA into them, that is the

570 reasonable explanation for parts per million in these samples of EDTA. Agent Martz says, no, I can't really say because I would expect there to be more EDTA in a sample left for three weeks on the back gate or in--on a sock, you know, that I'm seeing six months later, but he never did a single experiment to find out how much you would expect to get from stains that are months old and are subjected to environmental insults. And you saw that there were quantitation problems when they tested it. It would go up and down. So when you look at it, look at the credentials, Martz versus Rieders. Rieders has far more experience with EDTA. They wanted to hire him or they consulted with him I should say. Dr. Rieders works with the FBI. They go to him and consult, as you heard, on cases. He was

580 working on a case with them at the time he came here to testify. He runs a reference lab that is specialized in these issues. Even though he does not have the \$750,000 machine yet, the ms/ms that Martz is using, he understands it, seen it before, interpreted data from it, he is getting one soon. So it is not a question of machine; it is a question of the expertise to understand the data. Agent Martz, he--he is--he has a bachelor's degree, he had some trouble with pi, I don't want to belittle that, but he didn't even--there are some disturbing parts of his testimony, let's face it. He didn't even consider the validation studies that had been performed by others at the FBI laboratory. They are going to make a big deal with these. You know, he didn't look for that 132 daughter ion. I promised not to

590 talk about daughter ions to some people, but he didn't perform the test to find that. All the digital daughters he threw away. He come up with this thing where he says he tests his own blood and he finds some level of EDTA in it but he threw away the documents about what he did. He put it in a test-tube for two weeks that has silicon in it, that has a red stopper in it that could be a source of EDTA. He doesn't go and test anybody else's blood. There would be certainly a phenomena that we found parts per million in parts of whole blood or his whole method is screwed up. They are going to come back and test more. They are going to come back and say, well, Dr. Rieders should have done more of a test on these level of samples. That is what they should have done. Well, you know,

600 it is their burden. It is their burden after all. They say it is key evidence. She said it is their defense. Well, then why not get some real studies or do more studies or save the data or present something to this jury that is credible to disprove it? Miss Clark gets up here and says we have disproven that this could be EDTA from a purple-topped tube. If Rieders has no basis whatsoever for saying this, it can't be a reasonable interpretation of the evidence. Well, saying it doesn't make it so. It is their burden. They have to disprove this beyond a reasonable doubt. They have not.

**Ms. Clark:** Objection, your Honor. Objection. That misstates--

**Judge Ito:** Overruled.

610 **Mr. Scheck:** An essential fact. That circumstantial evidence charge says, an essential fact must be proven beyond a reasonable doubt. Miss Clark got up here and told you this was essential. Have they done that? No, they haven't. That is many, many reasonable doubts. Now I would like to talk about missing blood, and I think that we can talk about this in the following way: Access, opportunity and the smoking gun, nurse Thano Peratis. Could we have the first picture? Now, Detective Vannatter, the man who carried the blood, picked up blood from the Coroner's office of Nicole Brown Simpson and Ronald Goldman, blood tubes that contained EDTA. Let's show them all. Remember these? These are pictures of both sides of the tubes. Just pull them out. I think the point is made.

620 One after another covered with blood. He got those from the lab. He carried those. Those tubes, the testimony is, have EDTA in them. He carried them on June 15th. Now, we do not have records. There are no records of the amounts that were initially put in those tubes or where he went, how long he went. No real evidence that we can examine about that, but he carried. On the other hand, when we turn now to Mr. Simpson--that is enough.

**Ms. Clark:** Your Honor, objection. That--

**Mr. Scheck:** Yeah. He testified he took them from the Coroner's office and even brought them to LAPD, but there is no record of how much was initially put in those tubes, so we can't retrace the amounts. Now let's look at the handling of

630 the Defendant's, Mr. O.J. Simpson's, reference vial. Detective Vannatter, as Mr. Cochran pointed out, was so upset about how this goes that when he was asked, well, when did you get the blood vial? He said 3:30. Well, it was 2:30. We know that. His testimony is, he gets the vial of blood and he goes off and he has a cup of coffee and he is walking around Parker Center with a blood vial in an unsealed tube. And as you know, the rules are you are supposed to book it immediately. You can book it in that building, Parker Center. You can walk--go a mile away. Takes just a few minutes. And you book them at Piper Tech where the SID lab is, and you buy a DR number, which is the number for the case, and the case starts. That is what the rules say. But that is not what they were doing.

640 Now, could we have the next--that is not it. I want the instructions.  
*(Discussion held off the record between Defense counsel.)*

**Mr. Scheck:** There are instructions on this envelope that we reviewed I think with Mr. Yamauchi, which are fascinating. It says that the investigating officer-- "Officer requesting withdrawal of blood shall, when the vial is returned to you, enter your initials, shake the tube vigorously. When the affidavit is completed, sign below as a witnessing officer and seal the vial in the completed sealed evidence labels." In other words, what you are supposed to do, after you get the vial from the nurse, is you put it in this envelope and the instructions say, "Using completed sealed evidence labels," you seal the envelope. Now, he has been a detective a long time. He knows the rules. And the testimony is he has never

650 done this before, not seal it, not walk around with the blood. And now there is something else, and it is a little hard to see on this photograph, and we tried to get the original here, but at the very, very bottom there is something really weird that you can inspect--it is covered over by the label. You see the date. "I declare"--this is Thano Peratis. "I declare under penalty of perjury the foregoing is true." And then it says "5/10/94." May 10, '94. Well, wait a second. This was June 13th. This envelope is an old envelope in the lab. It is something that Mr. Peratis had had around there for some reason that says May 10, '94. It is an old envelope in the lab? Why is that? What is going on here? They are not following the rules. He is grabbing this envelope. He is carrying around this blood. It doesn't make sense. It doesn't fit. It is a serious problem, isn't it? Now, the next

660 thing that we have is this misnumbering, you will recall, of the blood vial, and Mr. Fung, as you remember, was stumbling over it. There is a problem here. The sneakers were brought in by Detective Lange the next morning and they were put in as 17. The blood vial is numbered as 18 indicating receipt the next morning after the sneakers and 19 is this hair that Mr. Fung took off the Rockingham glove, all that morning of June 14th. And you recall the testimony that we had in this case that Mr. Fung remembers he had such, you know, problems. He said, well, and I walk walked out of Rockingham, I had the tube either in my posse box, that metal box, or I had it this in my hand in the envelope, or I had it in a brown paper bag and I put it into the truck. And then

670 we showed him videotape and all of a sudden it changed, and we had videotape of people inside and Vannatter bringing in the envelope and now the state of the evidence is that Andrea Mazzola was given a black trash bag and that she didn't know, nobody told her, that the envelope had been put in it and maybe some of those other evidence cards. And you saw the video where they walk into the truck and they throw that trash bag inside the truck and they go back to the lab and now the testimony is, is that they leave it out on the table in a trash bag after they, you know, putting the swatches in the test-tubes and they leave. Now--and they don't even refrigerate the vial. Now, this is a very odd story, to say the least. And what--and I think what is really peculiar about it, when you get down to it,

680 is the way the testimony came out. Andrea Mazzola said something very interesting. She said that when she saw the next morning, June 14th, the blood vial in the black trash bag, she realized for the first time that she had been the one that carried the blood vial out of the Rockingham residence. So she is saying that she knew that on June 14th. Are you with me? Now, we had all this--we spent three days on this, if you recall. Mr. Fung couldn't remember how the blood vial was carried out. These Prosecutors knew that there was misnumbering, that there was a problem with this blood vial and its transfer. They knew it was a problem. Now, if Miss Mazzola had known since June 14th that she had carried this out in a plastic bag, because she realized it looking at

690 that at the next moment, how come nobody was told this? Why didn't somebody know this? Why didn't they interview these witnesses before they got on the stand for eight, ten days a piece? And this was obviously a crucial problem. Because there is something wrong here. And of course when she ultimately testified, poor Miss Mazzola had to go over and sit on the couch and close her

eyes for twenty minutes, because she was tired and didn't see what went on in the foyer. Now, look. I would submit to you I don't think that is all credible evidence. I think there is something really wrong here, but, you know, you don't even need it really if you think about it, because in terms of access and opportunity, all that really matters is what nobody can deny, and that is

700 Detective Vannatter is walking around with a May 10th envelope that he should have sealed and he should have booked for three hours at least unaccounted for. What is going on? There is something wrong. It is not coincidence. There is something wrong, terribly wrong. Now, the last part really of the missing blood issue, Thano Peratis, the issue arose about how much blood was in the blood vial. Now, if you recall from the testimony, the first thing that happened is that Mr. Yamauchi got the blood and he stuck in a pipetter that says one mil and he created the Fitzco card. So that is one mil. The next thing that happens--that is on June 14th. On June 21st toxicology gets there, and toxicology does things in an appropriate way. They measured how much blood was in the tube. They take

710 a tube, they--as Mr. Matheson described, you fill it with water, you look at the other tube and you make a measurement, and they measured it to be 5.5. Now, if it is 5.5 and we started with 8 cc's and Yamauchi took one, there is 1.5 missing. No way out of that. No way out of that. Now, Mr. Matheson came in and you saw these incredible experiments that he was performing where he went and he started taking--he looked at all the other times people went into the tubes and is saying, well, you know, if you pipette it out and you pipette it out, you may lose something over time. But let's face it, the Matheson explanations can't get around the 1.5 missing right away. There is 1.5 missing right away and toxicology proves it and they know it. So the only other way to explain the

720 missing blood is Thano Peratis must have been mistaken. That is the only way. And what I will leave you with this morning are two clips from Thano Peratis, technology willing.

*(At 11:55 A.M. a videotape, was played.)*

**Mr. Scheck:** When we come back from lunch, we will discuss the meaning of this. Thank you.

**Judge Ito:** All right. Ladies and gentlemen, we are going to take our break for the lunch recess. Please remember all my admonitions to you. Don't discuss this case among yourselves, don't form any opinions about the case, don't conduct any deliberations until the matter has been submitted to you, don't allow anybody to communicate with you with regard to the case. We will stand in

730 recess until 1:30. All right. Thank you, counsel.

*(At 11:58 A.M. the noon recess was taken until 1:30 P.M. of the same day.)*

**Judge Ito:** All right. Back on the record in the Simpson matter. All parties are again present. All right. Deputy Trower, let's have the jurors, please.

*(The following proceedings were held in open court, in the presence of the jury:)*

**Judge Ito:** All right. Thank you, ladies and gentlemen. Please be seated. And let



the record reflect that we've been rejoined by all the members of our jury panel. Good afternoon, ladies and gentlemen.

**Jury:** Good afternoon.

**Judge Ito:** And, Mr. Scheck, you may continue with your argument, sir.

**Mr. Scheck:** Thank you very much, your Honor. Good afternoon, ladies and gentlemen of the jury.

740 **Jury:** Good afternoon.

**Mr. Scheck:** When we left, we were--I showed you two clips from Thano Peratis. In the first clip, he was under oath. He said when he drew Mr. Simpson's blood, he looked at the syringe and that's how he knew it was between 7.9 and 8.1. No doubt about it, something he does all the time, routine, something people in this field would do and know. He looked at the syringe. Then, because he couldn't live with it, because 1.5 is missing--and they could have called Thano Peratis in their direct case and put him under oath--Mr. Goldberg goes out and does this statement, this strange bizarre statement in Mr. Peratis' home which they told you is unscripted or that is to say, let's not say gave a script, but

750 common sense tells you that they spoke to this man before they went and did this videotape. And you could tell at parts, he literally said, "I don't remember," because he was forgetting certain parts of what he--I guess what it was--what was planned to say. But let's get down to the substance. I mean, this is not under oath. It is the only testimony you've gotten in this case that is not under oath, which is fairly extraordinary. But you know what's even weirder? It's what he said. His position is this now. First of all, you can see the syringe and you can see the calibrations on the syringe. So now he's saying, "Well, the syringe was turned over and I didn't see the numbers." Well, that's pretty strange, but I think that what's even more odd is that it is his position that he now realized that he

760 goofed. How does he know? He says that he took one of these tubes--you know, these are items in evidence--and he looked at it, and he now remembers months later that when he drew Mr. Simpson's blood on June 13th, he can remember the level that the blood was in the vial. And based on his recollection of where the blood is in the vial, he then starts putting water into another test tube to get it up to that level, and then he says, well, that's 6.5. Well, that's not worthy of belief, is it; that you can remember all these months later the exact level and that's how you come up with 6.5? So not only is it not under oath and not only is it obviously a convenient recantation and appears to have been prepared, shall we say, to suit the Prosecution's purposes when things just didn't fit, but the story is

770 an absurdity. It is just an absurdity. It is not worthy of belief. It is a reasonable doubt in and of itself. Blood is missing.

**Judge Ito:** Mr. Scheck, which two evidence items are they?

**Mr. Scheck:** This was the syringe, which is 1382, and 1124, a purple-top tube of

exactly the kind involved in this matter.

**Judge Ito:** Thank you.

**Mr. Scheck:** Could we have slide no. 9? So let's review the bidding. Missing blood, access opportunity and Mr. Peratis, the smoking gun. Detective Vannatter is walking around with this tube in a May 10th envelope unsealed going up for coffee, three hours. It is misnumbered. It comes in as 18, not 17, 18, after the

- 780 sneakers which were brought in the next morning. There is at least 1.5 mil missing, no question about it, early in the game because of the toxicology entry, and then we have Mr. Peratis' unsworn recantation. Is this a coincidence or is it corroboration that something is wrong, something is terribly wrong at the heart of this case? It is a reasonable doubt because missing blood I submit to you, the blood is an essential fact, an essential fact in the Prosecution's circumstantial case. If you can't trust the man who carried the blood, if you can't trust where this blood went--I mean, EDTA missing blood. Coincidence? Corroboration? Something is terribly wrong. Now, I'd like to move to the blood drops found at Bundy. And there are two aspects of examining this evidence. The first has to go
- 790 to the integrity of the samples and the second one goes to the issue of cross-contamination. First, I would like to address the issue of the integrity of the samples. We start with the handling of the swatches. And we know that they are not counted at the scene. They are not counted when they get back to the lab and put into test tubes for drying. They are not counted the next morning when they are taken out of those tubes. There's no count. The first time there's a count is when Yamauchi gets it between 9:00 and 11:20 that morning, June 14th. So we don't know how many swatches we started with originally. And as Dr. Lee told you, as all the criminalists told you, as Gary Sims told you, it is the first duty of a forensic scientist to document the evidence and to establish a chain of custody
- 800 that preserves the integrity of the evidence so that you can bring it into court and good people like you can feel satisfied that you have honest, reliable evidence. That was not done. No booking until June 16th. It's in the lowest security area, that evidence processing room, where that metal gate can be lifted where supposedly you have to have a card to get in the door, but other people walk in and out and entries are not monitored. It is an unlocked cabinet, and in this phase, there's no way to trace the individual items. Now, we had asked your Honor for the bindles to be produced, but they have not been produced. But you can get them. You can get them when you go back into the jury room. And there is one absolutely extraordinary fact in this case. On August 23rd, Andrea
- 810 Mazzola was called to testify at a hearing in this court, put her hand on the bible, swore to tell the truth. When she came in, she had her notes, the same crime scene log notes that she and Mr. Fung had reviewed in their testimony. She got on the stand and she was asked questions by Mr. Neufeld about how they went about collecting the swatches and the evidence in this case, and she described the process of taking up the swatches, coming back to the lab, putting them in the tubes for drying, taking them out the next morning, putting them into bindles, and then she testified that they initialed the bindles, that she, Andrea

Mazzola, took some of them, Mr. Fung took others of them and she initialed the bindles, those little white bindles that the swatches were in. You all recall that.

- 820 She said that under oath on August 23rd. And, you know, think about whether or not she would have good reason to remember and have a best recollection of what actually occurred when she testified on August 23rd. This case was the first crime scene that Andrea Mazzola had ever primary responsibility for collecting blood evidence, a good reason to remember. Between June 13th and August 23rd when she testified under oath, Andrea Mazzola had not done another crime scene. So there was nothing to confuse her. She collected blood from a crime scene. When she testified, she knew that this was an important matter. I realize that she did not know who Mr. O.J. Simpson was, fair enough, but she certainly knew that this was an important matter and that everybody was concerned about
- 830 it, and you would expect that she would want to testify in a fashion to the best of her recollection looking at those notes. She said no question about it that she initialed the bindles. You will get the bindles. We laid them out for you. You can look at 52, 50, 49, 48, 47. Her initials are on no bindles. Zero. Something is wrong. We have the board. Dr. Henry Lee is quite a remarkable man. And we tracked this evidence. He was not--his offer was not taken up, he and Dr. Baden, to examine this evidence at the time it was collected. As the testing was going on, he really did not get a chance to examine and handle the evidence until February 16th while you're still sitting there. However, we did try to track it as much as possible and we were allowed to take pictures at the Cellmark
- 840 laboratory of the swatches and we were allowed to take pictures of the bindles and measure them and weigh them because something was wrong. And then we found the wet transfers. This is very disturbing, as Dr. Lee indicates, because the uncontradicted testimony is that these swatches were put in test tubes to dry for 14 hours, and Dr. Lee gave you his best estimate that he thought they would dry within three. Then Mr. Goldberg came in with--do you have that study?--the Epstein Bar study. And if we go to cotton cloth, indicates that it should take about 55 minutes if you look at it under condition no. 1, that's at room temperature, to dry. They should have been dry. I expect they'll come in and they'll say there's a swatch sandwich, they were all stuck together so they
- 850 wouldn't dry. Nonsense. Use your common sense. How do you get wet transfers like this? Well, within three hours of the time that they were taken out and put in bindles, if somebody had switched swatches, you'd see wet transfer. Now, it was a very interesting point in this trial where Mr. Matheson was asked some questions about knowledge that detectives had with respect to the collection of blood evidence. And he and both Mr. Fung testified to this; that detectives are trained in the collection of blood evidence in exactly the way that they do it at LAPD. Now, remember, the way they do it at LAPD is not the way one should do it for the collection of samples for purposes of DNA evidence. They haven't changed their procedures as was testified by Miss Kestler, the head of the lab, in
- 860 terms of, you know, old conventional serology testing. So they're putting them in plastic bags and degrading samples. But put that aside for a second. Matheson is asked starting at 25031 of the transcript about: "Question: When you say

evidence collection technique, have you ever taught detectives how to collect a stain using LAPD procedures? "Talking about biological stain, yes." And he goes on to talk about how they want detectives to have the capability to collect blood drops and they have an on-call system and sometimes a criminalist--excuse me--is not available, so they want detectives to swatch bloodstains. And he goes on to say, and I quote: "We supply them with blood collection kits, simply a file box with the tools that are necessary to collect the samples." We're

870 talking about here plastic bags, swatches and gloves. And: "Question: I know they are taught to, you know, take a control and use the distilled water and use the tweezers, the whole nine yards? "Answer: Yes. They are both shown in the demonstration form, we talk to them about it. It is demonstrated to them, and if time permits, we have practiced with them in class. "Question: And are detectives in fact collecting biological evidence in the Los Angeles Police Department and submitting it to your laboratory for analysis? "Yes, they do. Detectives have swatches." These detectives would put them in plastic bags just like Fung and Yamauchi. If they were to be stored for some period of time, it would degrade them. Even if they put swatches with EDTA blood on them, they

880 still degrade them. These ridiculous techniques, if they were put into those envelopes and left wet transfers, the integrity of the evidence is in question. Something's wrong. We--well, admittedly, to be fair to the Prosecution, there's probably not enough sample left from the Bundy blood drops to take them out for EDTA testing. But they didn't do it. And I think you have to ask yourself a fair question given the way the blood evidence has been handled in this case. What would those results be? Just from this, you must question, must have a reasonable doubt about the integrity of this evidence. But when you consider the evidence, we have to take the evidence as it is and we have to reconstruct as best we can what's going on in the case as you must in a fair and unbiased way. And

890 you consider the evidence, the whole issue of contamination arises. And it arises in a funny way because one can see that if these samples had been contaminated, cross-contaminated in a way that I know you have followed and I will review with you--and forgive me if I repeat details that I'm sure you've followed--that certainly would convince certain people that they were on the right track and maybe they wouldn't hesitate to tamper with other evidence after that to make the case look better. Could cross-contamination have happened on these facts? Before I go into detail, I would like to make two points, the same point I think I made at the beginning, Dr. Speed made. If there was cross-contamination in the evidence processing room on the morning of June 14th when Mr. Yamauchi was

900 handling the samples and Mr. Simpson's reference sample at the same time, were on June 13th to June 14th when Fung and Mazzola were handling these swatches, it wouldn't matter how many times you tested them after that. They all come back the same. So let's focus on what the issue is. It's what Dr. Speed was calling common mode error. In fact, if we could put this flow chart on the--you remember the Prosecution showed Dr. Speed a flow chart? It's a little hard to see there, but, Mr. Harris, if you could circle the evidence processing room. This was the final flow chart. There were two little houses that represent the evidence processing room that's drying on June 13th at the bottom and sampling on 6-14.

- And as you see in terms of the testing--no. Do both. Please circle both. This is an
- 910 item in evidence. The circling won't be in evidence, although I was looking for it. I could have sworn Dr. Speed had circled one, but I couldn't find the examination. In terms of the work flow, that's where cross-contamination, contamination occurred in the way they handled these swatches on June 13th and June 14th. And if it happens there, it doesn't matter who else tests it or how many times. You can't validate it because if the DNA was cross-contaminated there, it's going to come out the same every time. Now--thank you. That's point no. 1. Point no. 2 is the presumption of regularity. You heard that the primary answer that Gary Sims and Robin Cotton were giving on why they distrusted the explanation of cross-contamination is, they said we must assume that substrate
- 920 controls were handled in parallel with the other evidence items. Now, there's a lot of problems with making that assumption. No. 1, we know that Fung and Mazzola have no training in terms of why the substrate controls should be handled in parallel. In other words, if they handled all the wet swatches and then did the controls after, they didn't put them in a precise order, then it no longer serves as a control against cross-contamination. So they're saying we must assume that they were handled in parallel. And if we make that assumption, then everything--then we think controls worked. Well, there can be no presumption of regularity at the LAPD on how they handle these swatches, and the reason that they are not entitled to that presumption and the--well, there's, no. 1, Mr.
- 930 Simpson is entitled to the presumption of innocence. But, no. 2, no. 2, we have proven that they're not entitled to it. Dr. Gerdes has proven it. Dr. Gerdes came in and he did an extensive study of the LAPD lab. Can we get rid of that circle? And I won't review all of what he said, but I think it's a fair assessment of this man's testimony that it is a solid, straightforward careful scientist who spent hundreds of hours reviewing data, doing an inspection, and what he found is that there was a cesspool of contamination in this laboratory. No mistake about it. Cesspool of contamination. The second thing that he proved, and you get that cesspool, how can you just assume you're doing everything right when we can prove they're doing everything wrong? The next part of his testimony that has
- 940 particular relevance is the whole issue of contamination by control. If you recall, when he examined the controls, there were controls that would show that there was contamination at the extraction process; that is in the evidence handling, the per, the evidence processing room stage, as opposed to later when the amplification occurs or the so-called negative amplification control. And based on this data, he made the assessment that the contamination problem in LAPD is happening in that evidence processing room stage when they're handling the samples. Thank you. So we have proven that they are not entitled to any assumption of regularity in that evidence processing room in the way they handle the samples because they are getting this contamination all the time. Dr.
- 950 Gerdes' testimony I think also proves something significant in this regard. He proved that they literally don't know what they're doing. It's a shame. They do a validation study where they're processing known samples and things like cases and they give a report saying there were no incorrect typeable results observed,

and that's simply not true. And I know we went back and forth about the errors they made, but you recall the testimony. Some of the errors they made on their own validation study, Mr. Yamauchi and the others, were of the kind that could create false positives, that could convict innocent people. And they didn't even note in their own review of it that they made those errors. If they're saying they could be justified, then they should have at the least said there was some

- 960 incorrect results observed and these are the reasons. But they didn't even do that because they didn't--weren't even aware of it. Mr. Matheson, who admits no expertise of any significance, is the one reviewing it. He didn't notice anything wrong. Dr. Gerdes, without going into too much, talked about how they don't change their reagents in a regular way like they do at DOJ, Cellmark or any other respecting laboratory. They didn't even realize that they had this contamination problem, which is even more frightening. And you did not see a witness come in to rebut Dr. Gerdes. One would have assumed that an independent scientist not associated with the laboratory would have come in here to refute his data. And they'll talk about, well, you didn't call Dr. Mullis. That
- 970 person would have come in, Dr. Mullis could have been a surrebuttal witness. It didn't happen. I'm kind of surprised frankly--

**Ms. Clark:** Objection.

**Judge Ito:** Overruled.

**Mr. Scheck:** Now, they're going to say that or have said--and what have they said about Dr. Gerdes so far? He's paid money. He's not a forensic scientist, not qualified to review a DNA laboratory. Well, I think you're going to reject that for good reasons. He's reviewed 23 forensic laboratories, the work of them. He's visited seven laboratories. He plainly knows the literature in this field. He demonstrated that on cross-examination by a very fine lawyer. They couldn't ask

- 980 him one question about an article he hadn't read or assessed. He's a microbiologist, which is particularly important training. I'm sure some of you know that from your own work, and that is a person who is a student of how contamination occurs, bacterial contamination occurs, clean methods, sterile methods. He has a Ph.D. in this field from UCLA. This man--his lab is accredited by a number of organizations in paternity testing, disease diagnosis, organ transplants, bone marrow transplants. Many organizations inspected, accredited his laboratory. He understands these procedures. This man deals with life and death every day, every day with DNA testing. The nerve of them to say, "You're not a forensic scientist. You can't assess a DNA laboratory in how they
- 990 handle the samples there." That's audacious. That is not worthy of your consideration as an answer. Put on a witness, show data, get a self-respecting scientist to come in here and refute what Dr. Gerdes said. They couldn't do it. They wouldn't do it. They can't do it and that's why you heard no one. Because he's right. And the lab--and it's terrible. You could see they were training each other, Yamauchi and Erin Riley. They had no Ph.D. brought in to construct this place. That's not right. That's not right. You're citizens here. We are entitled to

more than that. You can't run a lab like this. You can't then get up here in closing argument and go, we have a sloppy lab. We're dealing with life and death. Just like these transplants, we're dealing with life and death. It's too late to say now,

1000 ignore all this. You can't. Now, they're going to say he's doing it by medical standards. It's too high. You can't judge a forensic laboratory by the standards we use for medical DNA. But we went through this and we know frankly that forensics is more challenging. In medical applications, known samples, clean samples, unlimited amounts, they're not degraded. All that occurs in the forensic situation. There's no justification for saying the standard should be lower. And even under a forensic standard, whatever that might be--and frankly, these are the standards and, you know, they're not coming close to this book. Even by those standards, Dr. Gerdes offered a conclusion which I think is not unreasonable in the evidence and stand unrefuted; it should have been shut

1010 down. And that's what they're asking you to accept. But it goes further. You know, Miss Clark said--and I frankly think--I assume she is going to be answering all this in rebuttal. It is not--after all we went through with this DNA evidence, it's not enough to say to you--because you know a lot about this now--to say, oh, they're saying something about flying DNA caused cross-contamination. Flying DNA. That is not the contention. The contention is specific. It is in the evidence processing room. It is in the way these samples were handled. It is in the kind of lab they deal with. Can we have the next slide, please? Now, we know--and I know you know what this is about. When you take the swatches and you put them in plastic bags and you cook them for seven

1020 hours, you degrade the DNA. And as we went through it, Dr. Cotton admitted it. Gary Sims admitted it. Everybody admits it. It's fundamental. You can degrade the DNA so there's none left that's detectable. And if you cross-contaminate it with another sample from a reference tube from high concentration DNA--and remember, we're not talking about very much. The highest amount here is an RFLP test by Cellmark of 25 nanograms. And you know, because we've been through this, that is, you know, such a small amount, less than a drop of a very small speck can create the 25 nanograms of high molecular weight DNA. You know that now. I bet you before you came into this court, you never ever thought you would be literate in this. But you are. You know this now. Okay. Next. No.

1030 No. That's not it. Oh, yes. Now, there's an issue of risk factors, and you have to assess what was handled here in terms of what is an acceptable or an unacceptable level of risk. Now, we--you remember all these logos, and I won't go through all of them. But handling multiple swatches in a hurry, handling samples from both crime scenes at the same time, not changing gloves, not routinely between samples, not changing paper and washing down between samples, when you scrape the swatches out of the tubes creating aerosols, all these things create risk of cross-contamination. All these things Gary Sims told you, their witness, were wrong. But the single worse thing that was done, the cardinal rule of handling these samples in a DNA lab is the one in the upper

1040 right-hand corner, and that is handling Mr. Simpson's reference tube at the same time that you are processing the swatches and the glove. That is the biggest no-

no that forensic labs have learned from bitter experience as we'll discuss in a minute. What happened in the evidence processing room that morning? We know that Mr. Yamauchi says he got the sample at about 9:00 from Mr. Fung. And on cross-examination, he said something that was really remarkable. Do you recall this? All of a sudden, he said, "I remember now. I opened up the tube, and the blood spurted up through the cream wipe and it got on my gloves." Now, he was a little vague about what he did with the gloves. He doesn't remember whether he put them in a bio-hazard bag right in the evidence processing room

1050 or got out and went to the serology room and got rid of them there. But all of a sudden, we now know there was a spillage of blood there. Now, that is extraordinarily significant because there's plenty of high molecular weight DNA in the smallest drop if you get it on your gloves or if you don't change the gloves. And frankly, I think there's no reason to believe he did, to contaminate these samples that we know are degraded. And it's so easy to do that and not be aware of it, and it's so easy to do that when you're in a hurry, and it's so easy to do that when you're only out of training for six months and you're in a tough position, and it's so easy to do that and not really be aware of it, so easy to make that kind of mistake when you really haven't had the training, so easy to do it

1060 when you're handling 21 samples that morning in one day, something that an experienced technician like Gary Sims tells you it takes days to do, so easy to make that mistake and cross-contaminate these samples. So easy. What's most important is that there's an unacceptable level of risk. You cannot accept this presumption that it all went right beyond a reasonable doubt. There's no way. Now, interestingly, when he says even by his testimony that he opened up the tube, the blood spurted out--let's give him changing the gloves, although there's no real reason to accept that frankly. There's still, by his own admission, going to be blood on that table, blood that you can swipe with your gloves or your hands. And it doesn't make--take much to do this transfer. He didn't wash down that

1070 table. There was no paper there that he changed. There's blood on the table. A fair inference. Now, the next thing that Miss Clark said--and I don't know if she was listening to the evidence that carefully in this phase of the case to be frank. She said, "Well, if there were contamination, if there were DNA flying around from Mr. Simpson's sample, then we would have seen proof somewhere else that his blood had contaminated other samples. That's what we would have seen." Well, there was. On June 15th, if you recall, a second set of samples was handled by Mr. Yamauchi. He had the reference tube from Nicole Brown Simpson, the reference tube from Ronald Goldman and he had item no. 12, which were the three blood drops picked up at the foyer in Mr. Simpson's

1080 residence. Those were the last drops picked up that day. They were the ones that were last put in a plastic bag, and Gary Sims has told us those were the ones that had the highest DNA concentration of any of the samples. Item no. 12, they are the one that got an RFLP result from Cellmark. So we know that item no. 12 is high concentration DNA. We know that item no. 12 was being handled by Mr. Yamauchi on June 15th with the reference samples of Goldman and Nicole, which were also high concentration samples. And Dr. Gerdes showed you how at LAPD and then on the polymarkers at Cellmark and then at DOJ, we got



typings that were consistent with cross-contamination from item no. 12. And all the controls on those second days, those negative controls are clean because, as

- 1090 I'll discuss in a second, we've already proven these things happened with negative controls being clean, you get this type of cross-contamination. So this was proof that Mr. Simpson's DNA, by sloppy handling, was cross-contaminated and type lab after lab. And you heard that on cross-examination. Mr. Clarke didn't even confront Dr. Gerdes with this board. And, you know, he's a fine lawyer and he knows this subject matter well. He didn't cross him on it because they can't touch it. In order for this to be true, the only thing they can say is, well, there was an extraordinary series of artifacts that accounted for some of it, but it didn't account for this polymarker typing. That can't be an artifact. It's proven--thank you--and not refuted. And I should say one more thing in passing
- 1100 I forgot to mention. That when Dr. Gerdes showed you his study of cross--of contamination at LAPD, when you have these negative controls, you can have contamination in the negative controls come up clean. In fact, in the instances where he saw contamination, 26 percent of the time, the negative controls were clean. And there's reasons for that, because these negative controls are not always going to pick stuff up. And you saw it right here. There's proof. Now, there's one other point to be made about this issue of cross-contamination at the LAPD and that evidence processing room. We can't be anymore specific about it. There's no flying DNA. And that is, you have to have appreciation of how mistakes can happen with this technology. And we learned something about that
- 1110 from Dr. Robin Cotton. If you recall, the California association of crime lab directors gave a proficiency test where they used degraded samples in 1989. And in this test, they gave samples to Cellmark and to other labs, and they were false positives and Cellmark got two false positives, the first and the second time. You remember what Dr. Cotton told you about what they learned of that? When they did these tests, the second one in particular, the way that they got a false positive through cross-contamination is that they had a degraded sample. And the CACAD study is the only one where they're really sending these labs degraded samples just like here. It's a degraded sample. That creates a risk of cross-contamination, when you degrade out the initial DNA. And the only thing--you
- 1120 recall this. The only thing they could isolate is that they were handling the reference sample at the same time they were handling the degraded sample. And what was interesting about her testimony is, she testified that they had a witness in the room. In other words, when they were doing these proficiency tests, they were witnessed. Each transfer was witnessed by somebody standing right there. And all they could reconstruct, all they could reconstruct at the end was that they had made a mistake. This discussion started at 27517. Mr. Neufeld was asking: "And you determined that it happened at some point during the extraction process?" "Yes, in dealing with the sperm fractions." "But even to this date, Dr. Cotton, would it be fair to say you don't know how the accidental contamination
- 1130 occurred during the extraction process?" "Yes, that would be fair to say." "Question: And would it also be fair to say this cross-contamination, this accidental cross-contamination happened in spite of the fact that all of the

sample transfers were witnessed by a second person to make sure no errors occurred? "Answer: You are exactly right." Now, just think of the analogy. This is 1989. Actually, the second one also happened in 1990. This is when Cellmark was starting out. And even when they started out, they had far more qualified personnel than anybody that came in here from the LAPD. And they got a degraded sample and they handled the reference samples at the same time, and they still can't figure it out, that that's when the cross-contamination occurred. So

1140 it happens. And it happened to a much better lab than LAPD and it happened when they were just beginning, just the way LAPD is just beginning here with far less trained personnel frankly. So don't come in and tell us based on this evidence that it's unreasonable to suggest that there was cross-contamination, because all the evidence really, all the rational inferences point in that direction, that there was an unacceptable risk of it, and we have proof that it was going on with those samples from June 15th. Now, this leads me to a discussion briefly of numbers. We saw a lot of numbers in this case, and one of those numbers is--the judge has instructed you is what I guess is being called the "Random match probability." That is, what are the odds that somebody coincidentally has the

1150 same DNA pattern that they may find in some sample. And some of these numbers are pretty staggering. These are just frequencies, you know, one in a billion one in a trillion. Now, there are frankly some problems with these numbers. Dr. Weir, who came in here and testified that he's absolutely 100 percent right and these people are just wrong, then offered you numbers which he had to admit were wrong and inflated and biased against the Defendant. And Dr. Cotton, using Dr. Weir's methods, has come in here and told you that the database for a five-probe match at Cellmark for an African American is based on samples they got from Detroit. And in terms of how many people have been tested on all five probes, you get that it's a group of people from Detroit and just

1160 two of them. So there is some problems with these numbers. But let's put them aside because they're really, in a sense, irrelevant to the main issues in this case. There are problems with them and I don't think that you can just accept them at face value. But to find many reasonable doubts, they're really irrelevant. And the reason is that the issues in this case, as I'm sure you've realized, are, how did blood get on these samples in the first place, who put it there, did they get there through contamination, was there laboratory error, was there corruption, contamination of these samples? That's the issue. So the numbers really are irrelevant they're just telling you frequencies about samples, but it doesn't answer the question. Now, the judge has told you that laboratory error in these

1170 random match probabilities are a different phenomenon. They are. They are different things, and you know that from your own common sense. Let me give you a simple analogy. Let's say that we're trying to figure out the odds of somebody getting killed when they're walking across the street. There's lots of different ways that can happen. You could get struck by lightning, and the odds of that happening are probably like some of these random match probabilities, one in a trillion. On the other hand, if you're walking down the street, across the street and it's a busy thoroughfare and you walk out in the middle of traffic, the odds are greater you'll get hit and killed. If the cars are moving at 60 miles an

- hour, 70 miles an hour, the odds increase. If you walk out in the middle of the
- 1180 block, the odds are getting greater. If you're walking against the light, the odds are getting greater. The chances can be almost certain that you're making a mistake. So what you have to look at in assessing laboratory error are risk factors. And we know that the risk factors in the evidence processing room are unacceptably high as Dr. Gerdes told you, unacceptably high. So if we could review. Are the Bundy blood drops cross-contaminated? We have to look at the history of this lab. A cesspool of contamination, unrefuted. The contamination, as Dr. Gerdes says, is localized in the evidence handling, exactly where it looks like it happened in this case. The risk factors in that evidence processing room are unacceptably high. We have contamination from that reference sample board
- 1190 on June 15th of Mr. Simpson's blood going into two reference samples with the controls being clean and then we have the whole issue of Mr. Yamauchi spilling the blood. It's reasonable doubt. Now, I'd like to turn briefly to the hair and fiber evidence. You heard from--you know, Miss Clark can say it's his hair or it's this fiber. But as she had to say in her closing, that is not what the testimony was from the witness because hair and fiber evidence, as Mr. Deedrick pointed out, as we all know and as Dr. Lee pointed out, is weak they call association evidence. It ain't DNA. It is weak association. We are talking about broad similarities. You can't even say the word "Match" when you're talking about this evidence. It is really evidence by way of exclusion. You have to--they can't
- 1200 come up with a number and say this hair is--the odds of this being someone else's hair is 1 in 20. Can't even say that. It's just a question of looking at as many similar hairs to see if you can get an exclusion from a particular race. So there's no database. There's no number. It's just similarities. It is weak association evidence. Nobody is telling you that this is definitely somebody's hair or some particular fiber. Therefore, what you have to do with this kind of evidence, as Deedrick and Dr. Lee mentioned, is that you have to exclude other frequent visitors, for example, African American visitors to the Bundy condo area if you're doing a serious assessment of whose hair, man or woman, older children of Mr. Simpson, younger children of Mr. Simpson, others who were
- 1210 there could be contributors of the hair. Fiber is no different. The same general class characteristics. A big deal is being made about blue black fiber from some unknown source that's found on three objects and maybe more. Now, we have Mr. Deedrick talking about the blue black fiber at 35338, lines 12 to 17. "Question: Do you remember what you told us in your direct examination about the amount of cotton fiber that is manufactured in the United States every year? "Answer: Five billion pounds. "Question: Okay. Do you have any idea whatsoever of the number of fabrics of blue-black nature that looks black to the naked eye and were distributed in the Los Angeles area in the past five or 10 years? "Answer: I have no idea." You want to say 10 percent? What's 10 percent
- 1220 of five billion? Look around the courtroom. How many people are wearing blue black cotton fibers? Maybe some of you right now. So you have to look, when you're assessing this evidence, at background. Who could be contributing these hairs and fibers? And you can't say anything certain at all about the similarities.

It's weak association evidence. We know that Mr. Simpson is a frequent visitor to the condo area. You would expect to find his hairs around there. You would expect to find Bronco fibers around there, not just from Mr. Simpson, but from Nicole Brown Simpson, from the children, from others who were in and out of that Bronco that's used as a utility vehicle. Just as a simple illustration, Dr. Lee-- this is a soil exemplar that the LAPD took. They never made an assessment of

1230 the fibers. Here is hair and fiber that you just see in the soil from that closed-in area, okay. It's around everywhere. We shed them. It comes out. It's all around an area where people live. Now, one interesting character that could be a source of all these is Kato the dog. After all, Kato the dog is probably in that closed-in dirt area, one of the most frequent visitors, and Kato the dog is carrying hairs from all the significant members of the family and he's carrying Bronco fibers with him because he's a dog that shed. I have a sheep dog. You all have dogs. You know that is a phenomena. And Kato the dog, as we'll see in its significant point, is at the crime scene that night. In terms of assessing hair and fiber evidence, you have to look at the issue of contamination, particularly when

1240 you're talking about hair and fiber flying all over the place in a crime scene. I mean, this is where the issue of contaminating a scene is of critical importance. And how did they handle this scene? We have the issue of the blanket. I mean, this, as Mr. Fung admitted, was colossal stupidity. To take a blanket that people--Mr. Simpson and others with Bronco fibers, hairs from all kinds of African Americans on that blanket and then throw it out over the crime scene, over the bodies, over the evidence items, everywhere is asking for trouble. But perhaps the most significant problem here--and it's the one they haven't come clean on in this case at all--is dragging around the bodies. This was--in terms of handling a crime scene, this was really an incredible thing, because if you're trying to make

1250 associations about hair and fiber evidence from clothing of the two victims and what might have been in the dirt area, there were people shedding these things, and you drag the bodies all over the place over the evidence that you're testing. That--there's no integrity to that. It's ludicrous. And nobody ever came clean and said who it was that moved those bodies through the envelope and the hat. And we all know that happened, right? You have to admit it happened when they pulled Mr. Goldman's body through lord knows what was going on. It was moved and replaced, and nobody has ever come back and told you who put the envelope back in that different position, who put the hat back in a different position, who put the glove back. Nobody's ever come in and told you. And they

1260 certainly didn't investigate. We'll talk about that in a little bit more. But we put in concrete evidence this kind of cross-corruption was going on in the hair and fiber evidence. Can we have the next slide? These were slides that were put in evidence by Mr. Blasier, if you recall, and this represented something really interesting. It had to do with bloodstains that--blood evidence that you found on the clothes, the dress of Nicole Brown Simpson on the left and the shirt and the jeans of Mr. Goldman on the right. And if you recall, there was not only blood evidence stains on the bodies themselves, but there was also in the area where they were taking controls. You know, you try to find an area where there's no bloodstain, you take a control, and those controls came up showing evidence of

1270 Nicole's blood on Ron's shirts, vice versa. Can we have the next slide?

**Ms. Clark:** Could we have the exhibit number for that, your Honor?

**Mr. Scheck:** What is the exhibit number? I'll get you that. These are in evidence. The summary of the results were on those clothing--go back, please. Summary of the results, there were 23 stains tested. 16 of those stains showed carryover. And very interestingly, if Mr. Simpson supposedly committed these murders and his hand was cut and he's struggling here, no matches, no evidence of his blood on this clothing. But there is carryover between the clothing. Now, what does that mean? That means frankly that the bodies were dragged through the crime scene and blood from Nicole Brown Simpson got on Mr. Goldman and

1280 vice versa. And if that happens, that's how the fibers can get carried over too. And Miss Clark went on--I think she even put some little pieces of puzzle up there. She went on and on with this rank speculation where she was saying, "Well, we know that it was one killer, and we know it was one killer because we see some fibers that came from Nicole's dress and got on Ron's shirt or jeans and back and forth and that's how we know one person was going back and forth between two victims." Nonsense. This proves it. This proves that the hair and fiber and the blood evidence were all coming together because they--the handling of this crime scene is a disgrace, a disgrace. They're dragging the bodies back and forth. Okay. Now, also, it should be noted that it came out

1290 during the testimony of Miss Brockbank that the two gloves and the two hats, the knit hat and the plaid hat found in Mr. Simpson's Bronco and the Bronco carpet that was cut out of the car were all placed in the same box. I mean, the way they handled this stuff, and then they want to come in and say there's integrity of the hair and fiber evidence is ridiculous. Briefly on the hat, we had testimony about dandruff. You heard Mr. Simpson's barber say in the off season, in the summer, spring, he gets dandruff. Right after he's arrested, they removed known hair samples. His hair has dandruff. There's no dandruff in the hair in that hat. Now, if we look at the hair and fiber evidence as a whole, there are--and this is just weak association evidence. Nonetheless, there are powerful inferences

1300 consistent with innocence and these were put on slides that are in evidence. I would like to review them briefly with you. Both gloves, no hair consistent with Mr. Simpson on the Bundy glove, no hair consistent with Mr. Simpson on the Rockingham glove. That's the slide we put up. Do you know what we should have added to that slide? Very significant facts that I hope you don't forget. There was an unidentified Caucasian hair on the Rockingham glove. Did they test Mark Fuhrman? Did we get a hair exemplar from him? Uh-uh. Also--and this is a fascinating point. Kato the dog, his hair was found on the Rockingham glove. And I'd like to read this testimony to you because I don't think it was an answer that Miss Clark particularly liked, and this was in the cross-examination

1310 of Mr. Deedrick. "Question: --" and they were talking about Kato's hair on page 34349 of the transcript: "Is the finding of such hairs, Kato's hairs on the Rockingham glove, accounted for by possible contact between the wearer of that glove, the murderer, and Kato the dog either during or immediately after the

murders? "Answer: Could have. It could have been a direct transfer from the dog or, as I stated before, an indirect transfer from hairs at the crime scene. "Question: That would say where? "Answer: On the ground maybe. Would have to have been on the ground. "Question: Have to have been on the ground? "Answer: Or perhaps from one of the victims who had been on the ground and collected the hairs. "Question: And that you previously described those as being

1320 common to the under part of the dog as opposed to the tougher, the coat?" Now, he's talking about the hair. This was a soft hair from Kato the dog found on the Rockingham glove. "Answer: Okay. It may be just a matter of semantics here. When I say the under part, under the fur, under the outer coat, which could have been on the belly, it could have been on the back, but it is just the soft, fine hairs that are closer to the body. "Question: If that dog used this shaded place to sleep or lie down on a regular basis when it was in the Bundy residence, might you expect to find some fur hairs left behind in the soil? "Answer: I would expect that, yes. "Question: And if the Rockingham glove were deposited any time on that soil, the Rockingham glove being on the Bundy soil in the closed-in area

1330 were deposited any time on this soil, might that not explain the presence of those hairs? "Answer: It could, yes." So very simply, he's saying that this is hair from the soft under belly of Kato the dog, the kind you would expect to be shed if he were lying on the ground there, not the kind that you get if the dog sort of passed you, all right, or comes up on you as you're--they're going to probably claim fleeing the crime scene or something. It's a soft hair. It's the kind you would find on the ground in the closed-in area. What does that mean? That means that Rockingham glove started at Bundy. Somebody took it somewhere else, and you know who that was. Let's go on to the next slide. The socks. There's no fiber on the socks consistent with either glove. And these are cashmere gloves where

1340 cashmere would easily come out and get on your hands, transfer to the socks. No fiber consistent with Mr. Goldman's clothes. And we know there was hand-to-hand combat here. No fiber consistent with Nicole Brown Simpson's clothes. Nothing on those socks. Also, we should add, no soil on those socks, no trace, no berries, nothing. Pretty interesting, those socks. Next one, please. As far as the hair is concerned, no hair from Mr. Goldman, no hair from Nicole Brown Simpson on those socks. Next, please. As far as Bronco fiber is concerned, no Bronco fiber is found on either glove. No Bronco--no fiber consistent with Mr. Goldman's clothes is found. No fiber consistent with Nicole Brown Simpson's clothes is found. Next. As far as hair, no hair consistent with Mrs Nicole Brown

1350 Simpson. No hair consistent with Mr. Goldman on the Bronco. Okay. And I should add, you know, in the Bronco, what they did is not only they take out that carpet, but they went in and they vacuumed it. They vacuumed it to get all the hair and trace. They vacuumed it. And even Mr. Deedrick himself, when he was talking about hair transfer, said, "Well, the way we get transfer is when you go sit down in your car, things move on you." There's nothing in the Bronco. How can that be? Now, I'd like to move on to the crime scene at Bundy and evidence of struggle, the testimony of Dr. Baden and Dr. Lee and I guess Dr. Lakshmanan who came in here as the person for the Prosecution to try to reconstruct that crime scene. You know, there are bloodstain experts and criminalists and people

1360 like Dr. Lee out there the Prosecution could have called to come in here and try to assess this evidence for you. They did not do so. They brought you Dr. Lakshmanan working over second-generation photographs who's a Coroner to do only one part as best he could with this evidence. Now, we know, as Miss Clark indicated in her closing argument, that Nicole Brown Simpson did struggle before her death, and we know that there were defensive wounds on her hands and we know that some of the wounds to her neck showed evidence of struggle. And then we have the fingernail scrapings. Now, Mr. Sims had said that he would expect that when you did fingernail scrapings, you would find--excuse me for just a second--he would expect that there would be skin under the

1370 nails. Now, he's a fine man and a fine forensic scientist. I have no quarrel with him, but he was admittedly testifying in an area outside of his expertise when he told you--he was saying that was his common sense understanding. But Dr. Baden came in and testified about what one ordinarily finds as a Coroner with fingernail scrapings. Dr. Lakshmanan didn't dispute it. And that is that with fingernail scrapings, when you find it, you find blood under the nails, but you don't find skin because when it grabs, the blood comes up, but the skin doesn't come with it. That's what Dr. Baden says you find. That's what the textbooks say you find when you get fingernail scrapings. So you would get blood, but not tissue. So let's explore that myth right away. But now we have a problem for the

1380 Prosecution, that when they do the fingernail scrapings, they come up on the EAP system with a B. That is not O.J. Simpson's type. That is not Nicole Brown Simpson's type. That is not Mr. Goldman's type. It is some other person. And that's what their typing result showed. And so then it doesn't fit. It can't be right. So we have to see if we can make an assessment that would somehow undercut that finding. Now, remember, when you have two conflicting reasonable interpretations of evidence in a circumstantial evidence case, you have to go with the one inference that's consistent with innocence. Now, let's look at what happened. Mr. Matheson said, "I think what could be here is that we had--" can we show this slide? "--a four-banded BA from Nicole Brown Simpson that

1390 degrades into a two-banded B." Now, you recall this testimony I'm sure and the cross-examination by Mr. Blasier and the testimony by Mr. Sims who's been doing serology a lot longer than Mr. Matheson, had a lot of experience in conventional serology. These are the facts. The facts are in the literature. This supposed degradation pattern that Greg Matheson suggests could occur does not exist. There is no literature. Dr. George Sensabaugh, all the experts in this field, that doesn't happen. Nobody has seen it. Mr. Sims, who did more conventional serology than Mr. Matheson, said he in his experience has never seen a four-banded BA degrade into a two-banded B. Never. Mr. Matheson says he thinks he recalls somewhere he saw it. That ain't good enough. That kind of maybe,

1400 maybe I saw it, that ain't good enough. Maybe doesn't cut it in a criminal case. We're taking proof beyond a reasonable doubt. This is nonsense. Now, the other thing that they're trying to say is, all right, you can put aside the EAP b because there was DNA testing of some of that material under the nails and that came back as 1.1, 1.1, Nicole Brown Simpson's type. And they think that you're not going to understand this. But you do. Because as you heard, the EAP system is a

red blood cell. A red blood cell does not have a nucleus. There's no DNA in the red blood cell. The EAP typing system is something that looks at antigens on the outside of that red blood cell. So you can have blood under that nail. Small amounts of blood under that nail test out to be an EAP B, and when you get the

- 1410 little bed of epithelial cells under the nail or either some other things, blood, that might have come in from Nicole Brown Simpson, that can type out 1.1, 1.1. But the initial scrapings, when they duck down, they came up with EAP B. And you can't get around that and you can't try to explain it away, and they don't bring in any serologist. Now, even Dr.--Mr. Sims--he's not a doctor--Mr. Sims, the best that he could do in looking at all of that--and they finally asked him the question, 28748. He says: "Looking at all these findings, I can't exclude the possibility that the EPA B or that might have been from Nicole Brown Simpson. I can't exclude the possibility." That is not exactly a firm statement. That is again a maybe, and a maybe doesn't cut it in a criminal case. And when you have two reasonable
- 1420 conflicting inferences, you've got to go with the one consistent with innocence. And that's what this evidence shows. That's fact. I'm not making any of this up. Those are facts. Sorry.

**Judge Ito:** You want a glass of water?

**A Juror:** I'm fine.

**Judge Ito:** Sure?  
(*Brief pause.*)

**Mr. Scheck:** Now, could we have the board?

**Mr. Blasier:** Cut the feed, your Honor.

**Mr. Scheck:** There's the whole issue of Mr. Goldman and his struggle with a perpetrator or perpetrators. There were 30 stab wounds inflicted upon Mr.

- 1430 Goldman. Miss Clark told you about--well, there were cuts on his hand, his open palm. Sure. But what does that mean? If there are cuts on his hand and he is struggling with an assailant, it gets on the clothes of the assailant. Dr. Lee did an analysis of the scene based on the limited evidence that he could get, because they didn't document it in any way where you can do a good reconstruction, just a limited reconstruction, and we had multiple contacts, blood transfers in different areas of the closed-in area. And in each of these different areas where the multiple contacts occur, as you recall, there were also vertical blood drops. And the fair inference from that evidence is that there's a struggle. People are up against one area, then another area. Up against the other area, blood drops are
- 1440 going down. So there's a struggle in different areas with an assailant or assailants. I mean, we can just reason from facts. Dr. Lakshmanan got up--and there's a whole hypothesis here that it all happened so quickly by surprise, stealth, surprise. I mean, you can't do that. You've got to look at facts. You have got to do the best analysis, a fair inference from the facts. And the facts show



that there's multiple contacts in these different areas from the bloodstain evidence by the country's, the world's leading analyst of this, whose testimony in these points stand unrefuted. There is, of course, as we've discussed, the dug-out area, particular struggle here. Even Detective Lange told you where there's--other areas where there's signs of struggle between the assailant and Mr.

1450 Goldman, soil on the socks. There's contact by the way that they're banging against the sides of the gate, such that pants are going to come in contact with-- pants and shirt. Now, it's clear from the way the struggle went that at some point early on, Mr. Goldman sustained this wound to his neck and the blood began oozing down. And as Dr. Lee pointed out, he had to be standing--Dr. Baden, had to be standing vertical for some period of time because the blood could go down from his shirt all the way down his pants' leg. And we saw a lot of blood on the back of his pants. Now, if assailants are struggling together, there's going to be blood from the pants, blood from the shirt in close contact transferred to the assailant. Got to be. It's a bloody struggle. And that's what this bloodstain

1460 evidence shows. It's fair inferences from the facts. Now, the beeper and the keys. The significance I submit to you, the beeper and the keys, at the very least--put aside keys as a weapon. The significance is thrown--you know there's violence, tussling and struggling. The beeper is thrown down here and the other areas--another area of struggle, the keys are thrown down. If the keys were in the pocket, that's got to be a considerable tussle because for the keys to come out of the pocket in the other area or if the keys are in his hand, well, he is going to use that as a weapon. So you can't--you know, you can't have it both ways. It shows multiple banging and struggling throughout that area. Now, the key fact that Miss Clark conceded in her closing argument, key fact is what Dr. Baden told

1470 you about the time between the wound to the neck and the time to the last fatal wound in the chest. And this is just fact. As Dr. Lee would say, there's scientific fact, there's interpretation. We deal with fact. The fact is that this would have had to come first, the one to the neck. There's blood oozing down. And the last wound is to the chest. When the wound in the chest occurred--as Dr. Baden told you, there's only 100 cc's of blood in the chest. What that must mean is that by the time Mr. Goldman was stabbed there, his heart was compromised. It wasn't beating very hard. So you did not have the amount much more than 100 cc's of blood you would expect to find in the chest if it hadn't been the last--if not about the last wound. And Dr. Baden said from the time--just based on finding a

1480 hundred cc's of the bleeding, compromise of the heart, the time between the first stab and the last stab would be between at least five minutes, as much as 15 minutes, most reasonably 10. Now, that doesn't mean that the struggle took--the struggle went on from the first wound to the last wound for 10 minutes. What it means is--and this is what's crucial--that the assailant or assailants were there for that period of time. It could be that Mr. Goldman was subdued, was lying on the ground and they did come and stab him last and make that last wound. But we know from the facts that between this wound, the wound to the chest, most reasonably, 10 minutes. Somebody's there, at least some people are there for 10 minutes. Now, if the struggle occurs--starts 10:35, 10:50, based on scientific

1490 fact, Mr. Simpson can't be guilty of these crimes because he can't be two places at the same time, can he? Now, that time period is even, you know, longer. They say, oh, take the five minutes. Give us, the Prosecution, you know, the inferences. Well, you can't. You know, you can't, because reasonable inference is, if it's between five and 15, most reasonably 10, you've got to take 10. You can't give them the five. That's not the way you can reason about a circumstantial evidence case. But even if you take the five, you know, something happened before that first wound some period of time. So the window, the time here that these murders took is not this incredibly quick event that is necessary for the Prosecution's time line, and that's based on a reasonable, careful scientific

1500 investigation of the evidence by Dr. Baden, one of the foremost pathologists, and Dr. Lee, one of the foremost forensic experts. This is evidence. Now, the next thing I'd like to point out has to do with the bloodstain imprints on the envelope. Oh, I'm sorry. I forgot this. Thank you very much. One other thing I should mention about the struggle, a critical point. I can't believe I left it out.

**Judge Ito:** Mr. Blasier, are there remains?

**Mr. Blasier:** No.

**Mr. Scheck:** Where did this come from? Dr. Lee testified it is a fresh cut. You can see when you examine the clean part of the top here, or is it a fresh cut from a sharp instrument consistent with a knife? Think about that. Think about that.

1510 What does that indicate about the nature of this struggle? Mr. Goldman, one or two assailants, somebody coming towards him. He kicked. Dr. Lee testified that by the angle that is consistent with the foot being raised in the air and a sharp instrument coming down, there's kicking. And if there's kicking, why are there no bruises on Mr. Simpson's body consistent with that kick? And why didn't anybody else come in here and point out this cut on the boot? Very significant evidence. And, of course, there's the dirt on the boot, which you would expect to see, and blood on Mr. Goldman's jeans and the broken buttons, indications of a struggle there. Now, the bloodstain imprints on the envelope. Now, I know it's not Mr. Bodziak's area, but, you know, you have to consider all the evidence.

1520 And Dr. Lee I think gave us all a pretty sound education on bloodstain interpretation, enough to basically figure out and understand which bloodstains that certain deposits are made first and other deposits are made over them. And I think that that's, you know, pretty significant in terms of assessing this. Now, the first point that I think this goes to is, you recall Mr. Bodziak's testimony that there could only be one set of footprints leaving the scene. When you analyze it, he concedes that that was based on the assumption that there was a pool of blood that all assailants would have to walk through. And I understand that he was not following all of Dr. Lee's testimony, only--I guess only 95 percent that dealt with footprints, but not the full 95 percent as I originally thought he was saying. But

1530 the point is--like you forgot about Dr. Lakshmanan. Dr. Lakshmanan offered a scenario in broad respects that Dr. Baden said could well be the case. And there seems to be an operating premise here, and that is that Nicole Brown Simpson

was subdued. She could have been hit on the head. It wouldn't necessarily knock her out as Dr. Baden indicated, but might have incapacitated her or knocked her out. And then there's a struggle with Mr. Goldman and then or close to the final act, Mrs Nicole Brown Simpson is leaning over the stairwell, is inflicted with the last wound to her neck and then the huge blood pool. But if you're not necessarily--and that is the assumption underlying Agent Bodziak's testimony, that if there were to be another set of footprints, it would have to be dark from

1540 the big pool of blood. It's not even--it's not consistent with what Dr. Lakshmanan said. It could have been one or two other people left that scene, somebody, without leaving tracks. They could have come out the way the police did, which wouldn't leave imprints, or there could have been partial imprints with small amounts of blood on the shoes that were not discovered because, frankly, they were not looking, as you can tell, very hard or very aggressively for anything other than focusing in on those Bruno Magli shoes. And I realize Agent Bodziak thinks very well of the photography of the criminalists at the LAPD, but taking good photographs of one's Bruno Magli shoes does not mean that was combined with--does not mean they were looking for other imprints as his book

1550 recommends that people do and do aggressively. Now, the one really interesting part of this envelope has to do with its handling. Do you recall Dr. Lee pointed out on the far right-hand corner that this is a mirror image stain, meaning that it had to be a wet deposit and then somebody folded the envelope? So the blood is wet and the envelope is folded. And then we see--could we have the next--this is what number? I'm sorry. 1348. As he focused in is what appears to be consistent with a light transfer of a finger. Next. Next, please. No. No. After. Then if you recall, there was the other print consistent with a finger. See the bottom one there? The top one is the light one. Then the bottom one, see how that's--as Dr. Lee pointed out, that could be a finger that was completely covered in blood

1560 making contact with the envelope. Now, this is a very interesting fact if you think about it because Miss Clark gave the hypothesis to you in her closing argument that Mr. Goldman was taken by surprise, dropped the envelope to the ground. So her theory is not that he kept that envelope in his hand as the struggle was continuing or that he would make the blood imprints on the envelope with his fingers. But somebody who's interested in that envelope, somebody appears to have opened up that envelope and created a bloody smear on the one lens we have remaining. Somebody made the mirror image fold on that envelope. Somebody was looking in it for some reason who had been in a struggle and left a bloody imprint of fingers. It's interesting, isn't it? And it is consistent with—

1570 well, it is inconsistent certainly with the Prosecution theory of Mr. Simpson committing these crimes and consistent with others. Now, let's discuss the imprints. And the hour is getting late and there's lots to cover here, but let me just briefly go through that imprint evidence on a piece of paper, on the envelope and on the jeans and what Dr. Lee found on the walkway. And let's just piece it through simple step by step. You go back, you look at the imprints on the jeans. And Agent Bodziak did not say that he had any expertise in imprints on fabric and agent Deedrick said this was the first time he had ever done anything like this before. But I submit to you what Dr. Lee said about the imprints on the jean

is simply this. And I think if you look at those parallel line imprints, you'll see

1580 they can be consistent with kicking from the shoe. When they're bunched up, all right--there was some imprints Dr. Lee said is accordion effect, just the bunching of the jeans, but it's three-dimensional. You bunch up the jeans, an imprint occurs on it, and that's why some of those lines are not complete or completely parallel to that three-inch heel print in particular that we went over with Agent Bodziak. It could be consistent with that kind of an imprint, but I really think it's inconsistent with. And agent Deedrick sort of gave it away, that he had never done this kind of analysis before. This is parallel lines from Mr. Goldman's shirt because they were talking about a swipe. And you also know what a swipe is. A swipe leaves that smear. You can't swipe and leave those

1590 kinds of patterns like that on the jeans. It doesn't make any sense that there's this flailing and hitting of this fabric and it's going to create those kinds of imprints. It's more consistent with a flat, hard surface hitting the three-dimensional folded-up area. That's the jeans. Now, with respect to the piece of paper and envelope, we can have a debate about whether or not based on this evidence, you know, there's imprints before there's a lot of blood on the scene, the early imprints. There's no border, but that's not necessarily consistent with there not being a shoeprint. Parallel line imprints, Agent Bodziak didn't look very hard for these kinds of parallel line imprints. Put that aside. Put that aside. Let's go with what they say. Agent Deedrick said, "Well, maybe that's from Mr. Goldman's jeans."

1600 And then he conceded the more reasonable interpretation would be that Mr. Goldman fell once on the envelope area that's his jean imprint and then again or maybe once at the same time on the piece of paper out on the walkway. Well, that's not exactly consistent with the Prosecution's theory about how these murders occurred, is it? So I don't think that gives them any real help here. And as to those shoeprints on the walkway that Dr. Lee discovered on June 25th, one is definitely a shoeprint, no question about it. The other one, Agent Bodziak says, consistent with footwear. Well, you know, they haven't eliminated the police or the photographer. It's just an example of what you could do. He got to the crime scene for 20 minutes and did the best he could under those

1610 circumstances. It is illustrative. It is not really explained. But you don't even need that when you consider the full scope of the evidence, that two people could have done this crime on these facts as a fair inference. A lot of evidence to support that proposition.

**Judge Ito:** All right. Mr. Scheck, would this be a good time?

**Mr. Scheck:** Sure.

**Judge Ito:** All right. All right. Ladies and gentlemen, we're going to take our midafternoon break at this time. Remember all my admonitions. We'll be in recess for about 15 minutes. All right. Thank you.

*(Recess)*

*(The following proceedings were held in open court, out of the presence of the jury)*

**Judge Ito:** All right. Back on the record in the Simpson matter. All parties are

1620 again present. Deputy Trower, let's have the jurors, please.

*(Brief pause)*

*(The following proceedings were held in open court, in the presence of the jury)*

**Judge Ito:** All right. Thank you, ladies and gentlemen. Please be seated. Let the record reflect that we have now been rejoined by all the members of our jury panel. Good afternoon, ladies and gentlemen.

**Jury:** Good afternoon.

**Judge Ito:** Mr. Scheck is making his summation to the jury at this time. And Mr. Scheck, you may continue.

**Mr. Scheck:** Thank you very much. I realize these have been long days and I really appreciate the patience and the way that you followed. I was inaccurate in a statement I made to you and I want to correct it immediately. That had to do

1630 with the hairs found on the Rockingham glove. Detective Fuhrman, in checking the transcript at 32493, was in fact eliminated as the donor of that Caucasian hair and that was an inaccuracy on my part. And I have tried very hard to key things to areas of the transcript, and obviously Miss Clark I'm sure will bring any inaccuracies to your attention, if there are any, and try very hard to do that, and you should have the testimony reread. I shouldn't misread things like I just did. Another thing I forgot to mention about the Rockingham gloves, however, both gloves, and that is they found a limb hair. This Caucasian hair is not accounted for to anybody, but there is a limb hair that was found inside the glove. Now, if Mr. Simpson had had these gloves for four years, as the Prosecution contends,

1640 then there should have been more limb hairs. One thing that you saw, and when you saw his hands, and that is, is that he has a lot of hair on this part of his fingers, *(Indicating)*, and if these gloves had been worn for four years you would expect to find a lot more of these limb hairs inside the gloves, but you don't find that. So that is another point to consider that I left out. One quick point here on-- do you remember Miss Clark talked about a blood drop that landed on Mr. Goldman's boot, no. 78, that on RFLP testing turned out to be a mixture of Nicole Brown Simpson and Ronald Goldman. And Detective Lange had offered a theory to you that this mixture could have occurred because one knife had committed both of these acts and there was a combination or a mixture on the

1650 knife and the blood drop fell and hit Mr. Goldman's boot there. Now, the first point to be made about that is the photograph you were shown was Mr. Goldman's boot being lifted up at the time that his body was taken over into the walkway and the Coroners were taking pictures of him. If you look back at the photographs and you see the way his shoe was configured, it would be extremely unlikely that one drop of blood could hit, because the shoe is at an angle. You couldn't have a drop that would fall in exactly that place in exactly that way, or it is extremely unlikely. But the other thing about this so-called mixture, mostly

Nicole Brown Simpson and less of Ronald Goldman on the RFLP probes, is Dr. Lee addressed this, if you recall, when he pointed out the bag in which the boots

1660 were taken. Do you remember that? This was the wet transfer of blood coming through the bag here, (*Indicating*), when these boots are taken off and it is dragged into an area where there is blood from both victims and then the wet blood is put into the bag. Any kind of a typing that you are going to get, if there is a drop on that area, from a mixture, from the DNA test, is suspect when you are handling the in evidence this fashion in terms of getting a mixture. So that is a point for your consideration, I think. Now, what is left in this analysis is the Bronco, the Rockingham gloves, some short final remarks and you will be hearing from Mr. Cochran. The first point I would like to make, when we talk about the bloodstain patterns in the Bronco, has to do with something that Miss

1670 Clark said, first of all, about the blood drops in the foyer in Mr. Simpson's Rockingham residence. If you will recall, in her closing argument she said, and I don't know how she could say this in terms of the record, that the blood drops that were found in the foyer, you recall there were three that were recovered by LAPD, and then when Dr. Lee went back there he found another three smaller cast-off type drops. And she said, well, those drops couldn't be made by a cut on the side of the finger, comparatively superficial cut on the side of the finger; it would have to be made with a major cut or that fishhook type cut because that is their theory, right, that there is this fishhook type cut on the knuckle that nobody sees, nobody sees, no one on the way to Chicago. But Dr. Lee testified about this

1680 at page 434022 of the transcript. "Question:"--and he is talking about the blood drop pattern in the foyer. "And so if one had a superficial cut on the side of a finger and shook it in the fashion I'm doing and then."Let the record reflect I'm shaking my hand down. "Does that create the cast off pattern? "Yes, and that--would that be consistent with what you found, sir? "Yes. "And could the pattern that you found here be consistent with the superficial cut on the side of the finger? That is talking about all the drops? "Answer: It was consistent with a small volume of blood. "Is the pattern that you see here consistent with a major cut? "No." So you have Miss Clark's speculation and then you have directly contradictory testimony by Dr. Lee, and there is no testimony in the record that

1690 supports her contention, it is mere speculation on her part. She is not a bloodstain expert. And I submit to you, you have to take the sworn uncontradicted testimony. Now, we know from what was said to Dr. Baden that in the course of getting things together on leaving, Mr. Simpson sustained a cut going into the Bronco, retrieving materials on his way out packing, and that it is the position of the Defense, that the bloodstains that you see and--well, briefly, why don't we take out that board and I will come back to it. This is the Prosecution's bloodstain pattern and the Bronco board, if you will recall it. Now, there are bloodstain patterns in the handle, instrument panel, console, of course, and then these are other items, that is, the footprint area and on top of the

1700 windowsill, okay? The windowsill is somewhere around here, (*Indicating*), that are consistent, everybody agrees, with a cut to the left hand of somebody getting into the car sitting down looking for something, consistent with our theory,

consistent arguably with their theory. But then when you start looking at the rest of the bloodstain patterns, you have to start asking which interpretation is reasonable? Now, the first point that has to be made--take this down for a second--is that of course initial deposits would be made by Mr. Simpson that evening and then somebody else was in that Bronco. Now, we know someone else was in that Bronco, and that has been, I submit to you, demonstrated by the evidence. Let's take a look at this picture. Mr. Cochran has already reviewed

- 1710 with you the testimony of Mark Fuhrman at the preliminary hearing, and you heard it on videotape, where he said he saw the--found blood in the Bronco, a bit of a Freudian slip, but I submit to you one of the most significant moments has to do with the testimony of Dennis Fung and the blood--bloodstain patterns on the doorsill of the Bronco. You recall that Detective Fuhrman testified at the preliminary hearing at this trial that he observed four brush mark bloodstain patterns on the doorsill of the Bronco that he could observe when the door was closed. When Mr. Fung came in, he circled these pictures, and if you will recall his testimony, the bottom circle closest to the door, that is only one stain. He said that that stain could be observed when the door was closed, but the other
- 1720 three stains that are represented by those other two circles could only be seen when the door was opened. Could only be seen when the door was open. From their own witnesses, evidence, he was in the Bronco and it only makes sense that he would go in that Bronco. And how much credibility do you really put in this man's testimony? But here is evidence that he was in there. Do you know what other evidence there is? There is one of the most interesting facts, and it is hard scientific evidence that supports our position with respect to the bloodstain pattern in the Bronco, the steering wheel. You recall that the typing on the steering wheel was 1.1, 1.2, a genotype consistent with O.J. Simpson, and 4. Who is the contributor of the 4 allele? That was an issue, and much was made of
- 1730 it, on the--in the case, was it not? Lots of cross-examination, lots of highlighting of that 4 allele in the steering wheel. And the Prosecution well knew that it was the contention of the Defense that Mr. Fuhrman and/or other officers had been in the Bronco. Doesn't take much to get a blood sample or you just take a swab and the testimony is you run it through somebody's mouth, you can do a quick DQ-Alpha test. What is Mark Fuhrman's genotype? We know that Andrea Mazzola and Dennis Fung, just like you do eliminations, they--their genotypes were taken so we would know what they were. They are not consistent with the 4. None of them has the 4. They are eliminated. Why wasn't Mark Fuhrman eliminated? Why didn't they take exemplars from the police on this? Why? But I think that a
- 1740 fair inference consistent with innocence, which you are under oath obliged to take. You must consider that Mr. Fuhrman was in the Bronco and the evidence is that a picture, 4:30, around 4:30 in the evening, he is pointing at that glove at Bundy, walking through a pool of blood. Now comes into that Bronco, the vicinity of that Bronco, the area of 5:00 in the morning, right, initially, then go out and does his circuitous little trip where he finds the glove and is alone for fifteen minutes around 5:15. Now, there is very interesting testimony from Dennis Fung at page 21438 of the transcript about the ground and he is talking here about Fuhrman and he is talking about an arriving--excuse me--Vannatter,

he is talking about arriving--arriving initially at the Rockingham location and he

- 1750 talks about how he was shown a red stain on the driver's door of the vehicle and a blood trail and: "Question: Okay. Did you notice anything about the temperature at that time or the weather?" "Answer: It was fairly cool. What about the lawns? Did you notice anything that looked like it could have been dew on the lawns?" "Answer: I did notice there was some, that the grass was wet. "Question: All right." So Fung tells us that the grass is wet, but we know that there is no dew. We introduced into evidence under 1280 the weather, and when it was introduced--and you can take this back into the jury room. You can examine the areas that are highlighted in purple. The only thing to--that doesn't really make much of a difference to be tricky about this. Professor MacDonell
- 1760 explained all of this, that when you look at the time listing over here, it is standard time, so anytime you see a time you have to add an hour, but when you look at the temperature and the dew point, you are going to see that the temperature was always many degrees above the dew point, so in other words, when you look through this you will see there is no dew, but the grass was wet. And you were at that location and you noticed the sprinkler heads and the sprinkler system and right in that area, that grass area where the Bronco was parked, there was six sprinkler heads. The grass, a fair inference, was watered regularly at that location. The grass was wet. That is the fact. Now, if you have, as Agent Bodziak indicated, blood that is caked on the inside of your shoe, even
- 1770 if loafers like Mr. Fuhrman in the inside heel area in your shoe, and then you walk through a wet area and then you step onto the carpet, you are going to get the same kind of pattern that was testified to for the Prosecution side in terms of the fibers going into the shoes and getting out blood that would be consistent with the genotype of Nicole Brown Simpson that is found on the carpet of the Bronco. Then we have the issue of the bloodstain pattern on the console. Now, let me be precise, because when Mr. Cochran was showing you about the seven/tenths of a drop of blood, I just want to make sure that I saw some--even the Prosecutors with a quizzical look--but that happened, I think you will recall, at the very end of the trial, and that was the testimony of Gary Sims. You will
- 1780 recall that he came back, he was testifying about the RFLP tests and the combining of all the stains, and I asked him a series of questions about combining all the stains, that is, the collection on June 14th from the console of 30 and 31, then the August 26th sample, 303, 304, 305. And we talked about the amount of DNA that you would get, you know, with one drop containing 1000 nanograms of high molecular-weight DNA, and then when he looked at the amount of DNA when you combined all the samples, he said that wasn't over a hundred, and: "Question: So that is one/tenth of one drop of blood?" That is what it is. A hundred nanograms. One/tenth of one drop of blood. He said--qualified he said: "Answer: Well, you have to remember with a drop of blood,
- 1790 for example, if you were testing liquid blood, that is not the same as extracting DNA out of a stain's worth of one drop of blood, so there is--you are not quite talking apples--you are somewhat talking apples and oranges there, but in terms of the ballpark you are talking about, you know, maybe getting three/quarters of



that DNA out, so you can figure it from that." Then I asked him a question trying to make it English: "All right. "So what you are basically saying to us is maybe if you are just dealing with a pristine drop of blood you wouldn't get a thousand nanograms you would get 750? "Something like that. "Is that what you just said in English. "Answer: Yes, that is what I said. "Okay. "If we were to--and I mean no disrespect for that, just summarizing it. "And so if you've got about a hundred

1800 nanograms of DNA and 750 nanograms in a drop of blood, can you give me that fraction quickly? "That would be, what, about a seventh? "Answer: Something like that." Okay. So in other words, make it very, very simple-hand science, when you combine the amount of DNA and you give them all favorable inferences, Gary Sims, their own witness, says, when you look at the smears of blood on the console, it is seven/tenths of a drop. And how could that be you are saying? Let's say it is a drop or two. How could that be? Well, that is because as Dr. Lee explained, that when you have a blood drop and you smear it over a non-absorbent surface, it smears, so it looks--small amount of blood can make a big smear. And of course Mr. Goldman's contribution to that seven/tenths of a

1810 drop of blood is at the most thirty, forty percent. That is very, very, very little. And so then you have to ask yourself does this make any sense? How could so little--even if we assume, you know, how could so little be there? How could so little be there? You know, Miss Clark was trying to say, well, this is how the blood got there. We know the Rockingham glove had a lot of blood, mostly from Mr. Goldman, some from Nicole Brown Simpson, and that was somehow placed on the side of the console, so that is why we get the little amount of Goldman's DNA that is on the console. That is their theory. Well, that is consistent with Mr. Fuhrman placing the glove in there. It is consistent with even Mr. Fuhrman having handled the glove and getting blood on his sleeve and just searching

1820 around the area for one of the other police officers and just getting a small smear of it with his sleeve on the console. That is consistent with this evidence. And you know what isn't consistent with this evidence? Think about it. What are they really saying? If Mr. Simpson had committed these murders and he grabbed the glove, as they are saying, with his open left hand, all right, and placed it on the side, well, then in getting into the car why aren't there mixtures on the window, right, on the window, on all those other drops? Everything else, all those other bloodstains. There is no trace of--of blood from either of the victims. There is no mixtures. Wouldn't there be other blood on the hand? And of course their theory before you, this is extraordinary, is that he is wearing these clothes that we've

1830 just been through the evidence of struggle. If there is blood on pants, it is going to be on the seat. If there is blood from the struggle with Goldman, it should be there. We know there is no hair. There is no trace. There is no fibers from clothing. There is no berries, there is nothing in that Bronco that would be consistent with somebody that had committed a violent double homicide that had been in a life and death struggle with Mr. Goldman. It doesn't make one bit of sense if you look at the bloodstain pattern in the Bronco. You have to have a reasonable doubt about that. And haven't we shown you by credible, fair and reasonable evidence that this Detective Fuhrman would have gone in that car? And by his own testimony and exposed lies from the Prosecution's own

1840 witnesses, there is evidence he was there. Those--those stains on the doorsill give you the lie, don't they? He was in that car and probably more than one of them was in that car. Now, with respect to the credibility of the evidence, very briefly, and I know you are--you followed this, we have to make a distinction. You know, in our opening statement Miss Clark actually said to you that all she was going to talk about in her opening statement with respect to the Bronco were the stains that were collected on June 14th. She didn't even indicate they were going to offer you anything from--after August 26th, because they know how terribly this was handled and that no jury could really accept the integrity of the evidence after this car was abandoned. But could we bring up the board, please?

1850 On 13--I think it is 1351; the DNA board with the-  
(*Discussion held off the record between Defense counsel.*)

**Mr. Scheck:** Very briefly, you will recall this, and we made a distinction here. We have to look at the samples that were collected on June 14th and the samples that were collected on August 26th, as Dr. Gerdes suggested to you. If you look at the June 14th DNA evidence, okay, with sample 30 and 31, nothing in 30. 31 they are calling this faint 1.3 allele, where the 1.3 is showing up in the controls. And you will remember the whole business about development length and the notion of controls failing. This is it. From June 14th this is it with respect to DNA from Mr. Goldman and the Bronco. That is it. And as Dr. Gerdes indicated to you, that is not credible scientific evidence. Of course they are offering you

1860 evidence that was collected on August 26th after this vehicle was literally abandoned, after the no special care hold had been taken off it, after there was a theft. Now, Mr. Meraz, he wasn't the world's most credible witness on the issue of the theft, but I really think that is besides the point. No. 1, he is stealing, he is inside that car. What is going on? He didn't see blood. But you don't have to accept Meraz. What about Detective Mulldorfer who is investigating this? She doesn't see blood. And then there is Mr. Blasini. He doesn't see blood on the console. And we know that there is all kind of people allowed into this vehicle, and probably more disturbing than anything else is Detective Mulldorfer indicated the rules are violated and there is no record kept of any authorized

1870 police personnel, of any police personnel going in and out of there. They could just go in and out and no records were kept and nobody would know period. And all of a sudden what we have on August 26th, when the car is finally brought in, and Miss Clark said it was--she must have misspoke when she tried to imply that the inspection of the Bronco was at the request of the Defense. Those are not the facts. The facts are that they brought it in, they allowed two Defense people to observe and then Michele Kestler looks in the vehicle and there is a photographer that was brought down from life magazine at the behest of the police commissioner to witness this grand examination of the Bronco, and low and behold, they find as much blood on the console on August 26th as there was

1880 on June 14th. And then when they do the DNA testing patterns, they find out only Mr.--traces of Mr. Goldman's blood, but Nicole Brown Simpson's blood in those same areas. That is awfully odd. So the integrity of the evidence again is in question here in terms of what you can accept beyond a reasonable doubt, but

even if you are willing to look aside from that, and I don't really think that one can in fairness, I think that the Defense version of how the blood got there and the bloodstain pattern in the Bronco is far more plausible than the Prosecution's version. It just doesn't fit. There would be mixtures on all those stains, according to their own theory. There should be more blood in the Bronco, given what occurred in this case. The bloodstain patterns don't make sense, do they? They

- 1890 really don't. Nor does the hair and fiber in that Bronco. Now, let's talk about the glove. The first point to be made about the glove is an integrity issue, and that is that you will recall that when Mr. Yamauchi opened up the reference tube in the morning and spilled out the blood, the first thing he did after that was this examination of the Rockingham glove, (*Indicating*). And as you recall, he was putting his initials in, he was doing all these pheno testing, these manipulations, all in the wrist area of the glove and manipulating it. There is so little DNA in these few areas here from the D1S80 tested, minuscule nanogram amounts, very, very small, consistent with a small sample handling transfer from Mr. Yamauchi, and this alone I think can explain the small amount of DNA on the
- 1900 glove. But of course under the other scenarios, the competing scenarios of the Defense and Prosecution, if the Rockingham glove was up against the side of the console, that certainly would of course explain a small transfer of Mr. Simpson's blood into the heel area of the glove. But you know what doesn't make sense? What doesn't make sense, what doesn't make sense is their theory. First of all, the tight glove is thrown off from the left hand in the course of the struggle, but they are saying that with a cut--a bleeding cut, the fishhook on the knuckle which nobody sees on the way to Chicago, and blood on this hand, (*Indicating*), the gloves are taken off. Can they really suggest to you the gloves are taken off at the wrist? I'm from back east, Brooklyn, you know. I wear a lot of gloves.
- 1910 You may not have as much experience, but think about it. You don't take gloves off like this, (*Indicating*); you take them off like that, (*Indicating*). And you know what? That is exactly what the criminalists were thinking. That is what Gary Sims was thinking. Even Mr. Yamauchi was thinking that because most of the initial DNA testing all was done looking for blood on the fingers, top fingers of the glove, because that is all that makes sense. And there was nothing there and that has got to give you, I would submit, a reasonable doubt. So what I've tried to do in my remarks is review with you essential pieces, circumstantial evidence of the Prosecution's case. And we don't have to do that. We don't have the burden of proof in this case. And each essential piece, I think it is fair to say,
- 1920 there is a reasonable doubt and some, some of these are so profoundly disturbing in terms of the manufacturing of evidence in this case, that I'm sure you really can't abide it, not in this country, not in this democracy can we allow dishonest manufactured evidence to lie at the heart of a case like this. It cannot be. You cannot trust. I mean, you cannot go back and say, well, maybe they planted evidence on the glove. Maybe on the back gate. Oh, there is blood missing. Big deal. How can that be a big deal? That is--many, many reasonable doubts imbedded in all of that, but you know, there is a fourth C, contaminated, compromised and corrupted, but there is a fourth C that goes along with how these things happened that relates to this testimony, and the fourth C has to do

- 1930 with cover-up, and I'm not even talking about the statements of the police officers and the cover-up of Mr. Fuhrman that Mr. Cochran has discussed with you so eloquently in the last two days. Let's just talk a little bit about the criminalists and what you can view in terms of that evidence and how that affects on their credibility, because if you lie in small things, and some of these are not so small things, you lie in big things, and if you are trying to turn the other way and cover up real problems, real problems, serious problems, you can't abide it. Now, one I alluded to early, and I just think it goes to the heart of the hair and fiber evidence and so much in this case. And your common sense tells you they moved Mr. Goldman's body, they were traipsing around that crime
- 1940 scene, and we know the envelope was moved and the glove was moved and somebody put it back. And remember Mr. Fung, they actually have a form, if the scene was altered, you know, describe how, and Mr. Fung says it is not my job. We don't ask. Detective Lange, do you know? I don't know. Did anybody ask Jacoby or Ratcliffe, the Coroners? Did anybody come in and do an investigation? Isn't it important to know who is moving around this evidence that they are going to come in and make a big deal about hair and fiber and other things? Don't we have to know that? Isn't that just fair dealing with you? And how--I mean, they are covering this up. They are covering up how miserably this was handled and how the integrity of the evidence was compromised. It is as
- 1950 plain as day. It is an insult to your intelligence to say otherwise. Why--they have a responsibility to come in here and do that, and we looked at videos where I submit to you there is a glove on the blanket that somebody put back and then there was the testimony--you know, Detective Lange said--and if this isn't covering up I don't know what else. Well, why did you move the bodies? Why did you wait so long to bring the criminalists in? Why did you move the bodies before you collected the evidence? Because that is lunacy. And the answer was this is what you call a closed-in crime scene and in a closed-in crime scene where the evidence is close to the bodies, the first thing you do is move the bodies. That was a make-up. It was nonsense. As all the other criminalists whose
- 1960 came here and testified, even Mr. Fung couldn't abide that, because it is--it is covering for mistakes. Now, another one is just the whole way it went. Mr. Fung, when he testified in the grand jury and initially at the preliminary hearing, he forgot Andrea Mazzola was there with him because she was a trainee, and she played a big role in this case in handling the evidence and they wanted to forget it ever happened. And you know that is the way it was and you know when I asked him, well, was there any concern in the lab about this before you went to testify in the grand jury or the preliminary hearing? No, it is just this habit I have of saying "I" when I mean "We." It is a habit of testifying. But you know, when Miss Kestler came here she was actually asked by Mr. Neufeld was there any
- 1970 discussion before Mr. Fung testified in the grand jury about what went on in this case and then said, well, there was some concern that Miss Mazzola was listed on the reports as the officer in charge. And I think that tells you all you need to know. Of course they were concerned about that because they realized that the whole scene had been miserably botched and there was serious problems here with the integrity of this evidence. Then of course there was the hand-off of the

envelope, and just as a quality of testimony, I mean, Mr. Fung said, oh, I wouldn't take that envelope, pick up that envelope with my bare hands, and then we showed it to him on videotape where he is picking up the envelope with his bare hands and then he goes, well, that couldn't have happened because the

- 1980 Coroner wasn't there. And I have the timing right and we show the videotape of Miss Jacoby walking by where he was still there. There is something wrong with the quality of testimony like this. There is something wrong when Miss Mazzola conveniently begins to close her eyes because the problem of carrying the blood vial out, sitting on the couch. There is problems with the trash bag. There is an extra problem with Miss Mazzola suddenly forgetting that her initials are on the bindles when the only credible testimony is that they were there and something is wrong, so when something is wrong, people's memories get collective and testimony comes in in funny ways. Umm, Dr. Goldman, (Sic), the Coroner, never showed up. Mr. Martz, destroyed his underlying digital data and didn't
- 1990 save much of the EAP. Mr. Martz stopped looking in terms of testing. Mr. Rubin stopped looking pretty early. We have an anticipated exclusion on the fingernails that they are desperately trying to change, and then of course there is Miss Kestler, can't even remember the substance of the meetings that were had early in the case about security of the samples. And then that was remarkable. When Miss Kestler--when we were talking about looking for blood on the sock and it said "Blood search not obvious" and then remember that testimony? That wasn't a blood search. It says "Blood search" right here. Well, that wasn't a blood search. I mean, some of it was remarkable. And then of course there is the Thano Peratis tape and the missing blood. There is a lot of it. I'm sure you remember
- 2000 more than I have just listed. Ladies and gentlemen of the jury, I thank you very much for your patience. I've tried to reason through this evidence, drawing the fair inferences as best we could looking at the integrity of the evidence, and I just think there is very little question here, is there? So much of the essential facts in this case are just shot through with reasonable doubt. There is something wrong. There is something terribly wrong about this evidence. Somebody manufactured evidence in this case. There is missing blood. There is EDTA. There is questions, serious deeply troubling questions. You must distrust it. You have to distrust it. You cannot render a verdict in this case of beyond a reasonable doubt on this kind of evidence, because if you do, no one is safe, no
- 2010 one. The Constitution means nothing. This cannot, will not, shall not happen in this country with you good people. It just won't. Thank you very much.

**Judge Ito:** Thank you, Mr. Scheck.  
(Brief pause)

**Judge Ito:** Do you want to take a change over here?

**Mr. Cochran:** Just three minutes or so.

**Judge Ito:** All right. Ladies and gentlemen, let me ask you to just step back in the jury room. It will probably be about five minutes.

*(Brief pause)*

**Judge Ito:** And let me see counsel without the court reporter.

*(A conference was held at the bench, not reported.)*

*(Recess)*

*(The following proceedings were held in open court, out of the presence of the jury)*

**Judge Ito:** All right. Mr. Cochran, are you ready to go?

**Mr. Cochran:** Yes, your Honor, I am ready to go and ready to proceed.

2020 **Judge Ito:** All right. Deputy Trower, let's have the jurors, please.

*(Brief pause)*

*(The following proceedings were held in open court, in the presence of the jury)*

**Judge Ito:** All right. Thank you, ladies and gentlemen. Please be seated. Let the record reflect that we have now been rejoined by all our jury members. And Mr. Cochran, you may make your concluding remarks.

## Appendix N

### Nicole's 1993 911 call

The following are excerpts from the two 911 calls Nicole Brown Simpson made to police on October 25, 1993, from her townhouse.

**Nicole:** Can you send someone to my house?

**Dispatcher:** What's the problem there?

**Nicole:** My ex-husband has just broken into my house and he's ranting and raving outside the front yard.

**Dispatcher:** Has he been drinking or anything?

**Nicole:** No. But he's crazy.

**Dispatcher:** And you said he hasn't been drinking?

**Nicole:** No.

**Dispatcher:** Did he hit you?

**Nicole:** No.

**Dispatcher:** Do you have a restraining order against him?

**Nicole:** No.

**Dispatcher:** What's your name?

**Nicole:** Nicole Simpson.

**Dispatcher:** And your address?

**Nicole:** 325 Gretna Green Way.

**Dispatcher:** Okay, we'll send the police out.

**Nicole:** Nicole: Thank you.

**Dispatcher:** Dispatcher: Uh-huh.

(The dispatcher puts out a domestic violence call for any patrol car to respond to the address at Gretna Green. A short time later, Nicole Simpson called back.

**Nicole:** Could you get somebody over here now, to ... Gretna Green. He's back. Please?

**Dispatcher:** What does he look like?

**Nicole:** He's O.J. Simpson. I think you know his record. Could you just send somebody over here?

**Dispatcher:** What is he doing there?

**Nicole:** He just drove up again. (She begins to cry) Could you just send somebody over?

**Dispatcher:** Dispatcher: Wait a minute. What kind of car is he in?

**Nicole:** He's in a white Bronco, but first of all he broke the back door down to get in.

**Dispatcher:** Wait a minute. What's your name? c

**Nicole:** Nicole Simpson.

**Dispatcher:** Ok, is he the sportscaster or whatever?

**Nicole:** Yeah. Thank you.

**Dispatcher:** Wait a minute, we're sending police. What is he doing? Is he threatening you?

**Nicole:** He's (expletive) going nuts. (sobs)

**Dispatcher:** Has he threatened you in any way or is he just harassing you?

**Nicole:** (Sighs) You're going to hear him in a minute. He's about to come in again.

**Dispatcher:** Ok, just stay on the line...

**Nicole:** I don't want to stay on the line. He's going to beat the (expletive) out of me.

**Dispatcher:** Wait a minute, just stay on the line so we can know what's going on until the police get there, ok? Ok, Nicole?

**Nicole:** Uh-huh.

**Dispatcher:** Just a moment. Does he have any weapons?

**Nicole:** I don't know. He went home and he came back. The kids are up there sleeping and I don't want anything to happen.

**Dispatcher:** Ok, just a moment. Is he on drugs or anything?

**Nicole:** No.

**Dispatcher:** Just stay on the line. Just in case he comes in I need to hear what's going on, all right?

**Nicole:** Can you hear him outside?

**Dispatcher:** Is he yelling?

**Nicole:** Yep.

**Dispatcher:** Ok. Has he been drinking?

**Nicole:** No.

**Dispatcher:** Ok. (speaking over radio to police units) ... All units: additional on domestic violence, 325 South Gretna Green Way, the suspect has returned in a white Bronco. Monitor comments. Incident 48221.

**Dispatcher:** Ok, Nicole?

**Nicole:** Uh-huh.

**Dispatcher:** Is he outdoors?

**Nicole:** He's in the back yard.

**Dispatcher:** He's in the back yard?

**Nicole:** Screaming at my roommate about me and at me.

**Dispatcher:** Ok. What is he saying?



**Nicole:** Oh, something about some guy I know and hookers and Keith and I started this (expletive) before and ...

**Dispatcher:** Um-hum.

**Nicole:** And it's all my fault and 'Now what am I going to do, get the police in this' and the whole thing. It's all my fault, I started this before. (sigh) brother. (inaudible)

**Dispatcher:** Ok, has he hit you today or...?

**Nicole:** No.

**Dispatcher:** Ok, you don't need any paramedics or anything.

**Nicole:** Uh-uh

**Dispatcher:** Ok, you just want him to leave?

**Nicole:** My door. He broke the whole back door in.

**Dispatcher:** And then he left and he came back?

**Nicole:** Then he came and he practically knocked my upstairs door down but he pounded it and he screamed and hollered and I tried to get him out of the bedroom because the kids are sleeping in there.

**Dispatcher:** Um-hum. Ok.

**Nicole:** And then he wanted somebody's phone number and I gave him my phone book or I put my phone book down to write down the phone number that he wanted and then he took my phone book with all my stuff in it.

**Dispatcher:** Ok. So basically you guys have just been arguing? (Simpson is yelling)

**Dispatcher:** Is he inside right now.

**Nicole:** Yeah.

**Dispatcher:** Ok, just a moment.

**Simpson:** Do you understand me? (inaudible) Keith is a nothing. A skunk, and he still calls me. (inaudible)

**Dispatcher:** Is he talking to you?

**Nicole:** Yeah.

**Dispatcher:** Are you locked in a room or something?

**Nicole:** No. He can come right in. I'm not going where the kids are because the kids ...

**Dispatcher:** Do you think he's going to hit you?

**Nicole:** I don't know.

**Dispatcher:** Stay on the line. Don't hang it up, ok?

**Nicole:** Ok.

**Dispatcher:** What is he saying?

**Nicole:** What?

**Dispatcher:** What is he saying?

**Nicole:** What else?

**Simpson:** (inaudible)

(Sound of police radio traffic)

**Nicole:** O.J., O.J. The kids are sleeping.

**Simpson:** (More yelling)

**Dispatcher:** He's still yelling at you? (Nicole sobbing into telephone)

**Dispatcher:** Just stay on the line, ok (More yelling)

**Dispatcher:** Is he upset with something that you did?

**Nicole:** (Sobs) A long time ago. It always comes back. (More yelling)

**Dispatcher:** Is your roommate talking to him?

**Nicole:** No, who can talk? Listen to him.

**Dispatcher:** I know. Does he have any weapons with him right now?

**Nicole:** No, uh-uh

**Dispatcher:** Ok. Where is he standing?

**Nicole:** In the back doorway, in the house.

**Dispatcher:** Ok.

**Simpson:** ... I don't give a (expletive) anymore.... That wife of his, she took so much for this  
(expletive) (inaudible)

**Nicole:** Would you just please, O.J., O.J., O.J., O.J., could you please (inaudible) Please leave.

**Simpson:** I'm leaving with my two (expletive) fists is when I'm leaving. You ain't got to worry  
about me any more.

**Nicole:** Please leave. O.J. Please, the kids, the kids (inaudible) please.

**Dispatcher:** Is he leaving?

**Nicole:** No.

**Dispatcher:** Does he know you're on the phone with police?

**Nicole:** No.

**Dispatcher:** Ok. Where are the kids at right now?

**Nicole:** Up in my room.

**Dispatcher:** Can they hear him yelling?

**Nicole:** I don't know. The room's the only one that's quiet.

**Dispatcher:** Is there someone up there with the kids?

**Nicole:** No. (Yelling continues in the background.)

**Dispatcher:** What is he saying now? Nicole? You still on the line?

**Nicole:** Yeah.

**Dispatcher:** You think he's still going to hit you?

**Nicole:** I don't know. He's going to leave. He just said that. He just said he ain't leaving.

**Simpson:** You're not leaving when I'm gone. Hey! I have to read this (expletive) all week in the National Enquirer. Her words exactly. What, who got that, who? (inaudible)

**Dispatcher:** Are you the only one in there with him?

**Nicole:** Right now, yeah.

**Dispatcher:** And he's talking to you?

**Nicole:** Yeah, and he's also talking to my, the guy who lives out back is just standing there. He just came home.

**Dispatcher:** Is he arguing with him, too?

**Nicole:** No. Absolutely not.

**Dispatcher:** Oh, ok.

**Nicole:** Nobody's arguing.

**Dispatcher:** Yeah. Has this happened before or no?

**Nicole:** Many times.

**Dispatcher:** Ok. The police should be on the way it just seems like a long time because it's kind of busy in that division right now. (Yelling continues)

**Dispatcher to police:** Regarding Gretna Green Way, the suspect is still there and yelling very loudly.

**Dispatcher:** Is he still arguing? (Knock at the door.)

**Dispatcher:** Was someone knocking on your door?

**Nicole:** It was him.

**Dispatcher:** He was knocking on your door?

**Nicole:** There's a locked bedroom and he's wondering why.

**Dispatcher:** Oh. He's knocking on the locked door?

**Nicole:** Yeah. You know what, O.J.? That window above you is also open. Could you just go, please? Can I get off the phone?

**Dispatcher:** You want, you feel safe hanging up?

**Nicole:** Well, you're right

**Dispatcher:** You want to wait til the police get there?

**Nicole:** Yeah.

**Dispatcher:** Nicole?

**Nicole:** Um-hmm.

**Dispatcher:** Is he still arguing with you?

**Nicole:** Um-hum.

**Dispatcher:** He's moved a little?

**Nicole:** But I'm just ignoring him.

**Dispatcher:** Okay. But he doesn't know you're...

**Nicole:** It works best.

**Dispatcher:** Okay. Are the kids are still asleep?

**Nicole:** Yes. They're like rocks.

**Dispatcher:** What part of the house is he in right now?

**Nicole:** Downstairs.

**Dispatcher:** Downstairs?

**Nicole:** Yes.

**Dispatcher:** And you're upstairs?

**Nicole:** No, I'm downstairs in the kitchen.

**Simpson:** (continues yelling)

**Dispatcher:** Do you see the police, Nicole?

**Nicole:** No, but I will go out there right now.

**Dispatcher:** Ok, you want to go out there?

**Nicole:** Yeah.

**Dispatcher:** Ok.

**Nicole:** I'm going to hang up.

**Dispatcher:** Ok.