

EXHIBIT

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1 TWENTY-FOURTH JUDICIAL DISTRICT COURT  
2 PARISH OF JEFFERSON  
3 STATE OF LOUISIANA

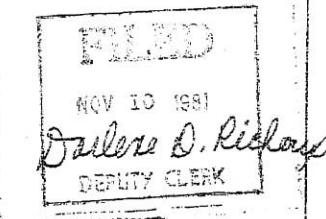
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5 \* \* \* \* \* \* \* \* \* \* \* \* \* \* \*  
6 STATE OF LOUISIANA \* NO. 80-1260  
7 VS. \* DIVISION "K"  
8 MALCOLM J. ALEXANDER \*  
9 \* \* \* \* \* \* \* \* \* \* \* \* \* \* \*  
10  
11

Testimony and proceedings taken in the  
above numbered and entitled case in open Court on  
November 5, 1980, the Honorable Alvin Rudy Eason,  
Judge presiding, Division "K".

16  
17 APPEARANCES:

18 FOR THE STATE:

19 Mr. Robert Pitre, Assistant District  
Attorney  
20  
21 FOR THE DEFENDANT:  
22  
23 Mr. Joseph J. Tosh, Attorney at Law  
24  
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REPORTED BY:

TED J. JEANSONNE

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1 THE COURT:

2 We will now proceed with the  
3 qualifications of you as  
4 jurors. You may wonder to  
5 yourself why we called you  
6 here. Fortunately yesterday  
7 we had a big election and I  
8 don't know how many of you  
9 voted yesterday but even more  
10 important than the right to vote  
11 is the right to a trial by  
12 jury. Because if you didn't  
13 vote yesterday some seventy-  
14 eight or eighty million did,  
15 but the right of a trial by  
16 jury is much more important  
17 than the right to vote. The  
18 reason that I pass that on to  
19 you is for instance, did you  
20 know that within the last six  
21 or seven years the 17th largest  
22 city in the United States lost  
23 its right to vote. The voting  
24 for the legislating body that  
25 ran that particular city was  
26 abrogated by a action of a  
27 member of the Justice Department.  
28 The federal government stopped  
29 the right to vote. How many of

1                   you know what city that is?  
2                   How many of you know that it  
3                   is New Orleans, Louisiana. You  
4                   may remember that some body was  
5                   appointed but that is what the  
6                   declaration of independence was  
7                   all about, like King George he  
8                   had a son and it was King George  
9                   the Second and it went on down  
10                  the line so we try to get away  
11                  from that, but the people don't  
12                  vote. Actually if you look at  
13                  the number of people that qualify  
14                  to vote and the people that  
15                  don't even go down and register  
16                  to vote in, even this major  
17                  election for president, you  
18                  probably only had one-third  
19                  of the people who could vote  
20                  that were qualified to vote that  
21                  actually elected the president,  
22                  and when you divide that by one-  
23                  half it turns out to be about  
24                  twenty percent of the people  
25                  who voted for the president.  
26                  that is going to run this  
27                  nation, but a trial by jury is  
28                  much more important because  
29                  like I say, if you don't vote

1 not a whole lot happens but a  
2 right to a trial by jury your  
3 person life and liberty is  
4 effected. That is why this  
5 matter is so serious. Mr.  
6 Malcolm Alexander, the youngster  
7 we have sitting over here now  
8 for a very serious matter that  
9 we will discuss in a moment.  
10 You may say to yourself that  
11 your rights of a trial by  
12 jury is not all the important  
13 and say, Judge, they pay you a  
14 handsome salary. Why don't  
15 you decide these cases and in  
16 a lot of cases we do, but a  
17 person is entitled to a trial  
18 by jury. Thank God he is  
19 entitled to that so if any  
20 of you in the Courtroom may not  
21 even remember it but there was  
22 a man named Adolph Hitler  
23 who took over Germany in  
24 1933, and you may say he just  
25 knocked out all the laws.  
26 That is not what he did. He  
27 knocked out about four or five  
28 laws of the Great System of  
29 German Justice, and one of the

1 things he knocked out was a  
2 right to a trial by jury. I  
3 don't have to tell you that six  
4 million people died because  
5 they happened to be to profess  
6 the Jewish faith. It could  
7 have happened to Negroes or  
8 if you happen to be Italian or  
9 Spanish or whatever. So our  
10 right to a trial by jury we  
11 have in the United States of  
12 America. The protection of the  
13 United States constitution which  
14 is going on for about two  
15 hundred years. You may say  
16 Judge that is fifty years ago.  
17 Come on, man. Get with it.  
18 Don't you know that Hitler has  
19 long since been dead. We won  
20 World War II, and I ask you if  
21 you ever heard of Ayatollah Khomeini?  
22 You don't think they don't want  
23 to knock this system out. It  
24 is subject to being knocked  
25 out all the time. They would  
26 like to knock this thing out,  
27 the law and order which I am  
28 one. Say let's get these  
29 prisoners. Let's try these

1 guilty so and so's, but that  
2 is just the wrong way. That is  
3 not what we are looking for.  
4 That is the expedient way. The  
5 only problem with that is the  
6 next time you may be on the  
7 other side of the fence. So  
8 in the United States we have  
9 the presumption of innocence.  
10 That we will talk about at  
11 length. First of all, I will  
12 ask you to raise your right  
13 hand and stand and be sworn in  
14 as jurors.

15 THE CLERK:

16 Do you solemnly swear to answer  
17 truthfully questions asked  
18 you relative to your qualifi-  
19 cations to serve as a juror  
20 in this case?

21 (JURORS RESPONDED I DO)

22 THE COURT:

23 Alright, ladies and gentlemen, in  
24 order to qualify as a juror  
25 you must be eighteen years of  
26 age. You must have resided  
27 at least one year in the Parish  
28 of Jefferson, two years in the  
29 State of Louisiana. You must

1 not be under interdiction.  
2  
3 That is unable to care for  
4 yourself either physically,  
5 mentally or emotionally, and  
6 have been so ordered by a  
7 court. You must not be indicted  
8 for a felony or have been  
9 convicted of a felony which  
10 you have not been pardoned  
11 and you must be able to read,  
12 write and speak the English  
13 language. Does any one fall  
14 into those categories? If  
15 any one falls into those  
16 categories, come forward. I  
17 don't want you to blurt out  
18 whatever your problem might be  
19 in front of all these people.  
20 You have a right to a personal  
21 exemption. You don't have to  
22 serve if you so choose. If  
23 you practice or involved in any  
24 of the following matters. If  
25 you are a public officer in the  
26 Executive, legislative or  
27 judicial Branch of the govern-  
28 ment of the United States or any  
29 State or any subdivision thereof,  
actively engaged in your official  
duties.

1                   If you are a member of the  
2                   active services of the Armed  
3                   Forces of the United States of  
4                   America or members of the  
5                   National Guard while on active  
6                   duty. If you are a member of  
7                   any paid fire or police depart-  
8                   ment or a member of federal  
9                   law enforcement agency. If you  
10                  are a member of and actually  
11                  practice the professions of  
12                  attorney at law, minister of  
13                  religion, chiropractor,  
14                  physicians, dentists, pharmacists  
15                  and optometrists and if you are  
16                  seventy years of age or older  
17                  and this brings up another  
18                  important point. Never ask  
19                  ladies how old they are. They  
20                  are either over eighteen or  
21                  under seventy. You don't have  
22                  to go any further than that.  
23                  we don't have any ladies here  
24                  that are housewives. They are  
25                  homemakers. I don't want to  
26                  hear anybody say you don't  
27                  work. All you do is take care  
28                  of your home and your children.  
29                  If that is not work, I don't

1 know what is. Alright, will the  
2 defendant please stand. Ladies  
3 and gentlemen, this is Mr.  
4 Malcolm Alexander. He has been  
5 accused of the crime of  
6 aggravated rape. Do any of  
7 you know Malcolm at all? Now  
8 you notice I said he has been  
9 accused of the crime of aggra-  
10 vated rape. That means that  
11 the grand jury has indicted  
12 this young man. If it hadn't  
13 been a grand jury indictment  
14 he might have been charged with  
15 the so-called bill of informa-  
16 tion by the District Attorney,  
17 but that is a mere formal,  
18 legal vehicle by which the  
19 State goes about prosecuting  
20 a American citizen. You  
21 should not in any way attach  
22 guilt to this young man. He  
23 is presumed to be innocent.  
24 It is one of the most important  
25 parts of our American system  
26 of justice, and that is that  
27 he is presumed to be innocent.  
28 The mere fact that he has been  
29 accused means just that.

1                   He has been accused. I can be  
2                   accused of being a horse thief.  
3                   You can be accused. If he  
4                   didn't do it, he didn't do it.  
5                   The presumption is that as he  
6                   sits there he is as innocent  
7                   as you and I are. Me sitting  
8                   here and you sitting there as  
9                   prospective jurors. So it is  
10                  very, very important that we  
11                  understand that particular  
12                  point. Likewise because he is  
13                  presumed to be innocent. The  
14                  State acting through Mr. Pitre,  
15                  the district attorney will have  
16                  the duty of proving beyond a  
17                  reasonable doubt the guilt of  
18                  Malcolm Alexander for the crime  
19                  that he is charged with or any  
20                  lesser crime. What we call a  
21                  responsive verdict. In this  
22                  particular case I will give  
23                  you that information as times  
24                  goes on but the burden of  
25                  proof is on the State to prove  
26                  beyond a reasonable doubt. In  
27                  other words, if we stop right  
28                  now, if there are no witnesses,  
29                  you would have to say he is

1    innocent, right. We don't  
2    have any evidence against him.  
3    As he stands right now he is  
4    innocent. The State has to  
5    put on the evidence and in  
6    connection with that there will  
7    be verbal evidence. There  
8    will be documentary type of  
9    evidence. It will be in the  
10                                         form of some type of item.  
11                                         Those will be admitted into the  
12                                         record as the laws of evidence  
13                                         are obtained. The mere fact  
14                                         that they are admitted into the  
15                                         record doesn't mean that they  
16                                         are controlling on you as a  
17                                         juror. It simply means it is  
18                                         for you to consider and if there  
19                                         is a weapon involved or some-  
20                                         thing like that and I enter it  
21                                         into the record as a Judge I  
22                                         do that according to law. I  
23                                         am not saying that is good  
24                                         evidence or bad evidence. It  
25                                         simply meets the evidentiary  
26                                         test, but it is proper to be  
27                                         in the record. It is up to you  
28                                         as a juror to make this decision.  
29                                         It is a very important decision.

I am sure all of you can handle  
it. Might you ask yourself,  
Judge, I am not a Judge. I am  
not a lawyer, how do I do this?  
All we are asking you is to sit  
here as twelve good American  
citizens and listen to the  
evidence and not be swayed by  
the fact that Mr. Alexander is  
a Negro. Does anyone feel that  
because Mr. Alexander is a  
black person that you couldn't  
render a fair and impartial  
verdict. Is there anyone who  
feels like because Mr. Alexander  
is charged with the crime of  
rape that you cannot render a  
fair and impartial verdict  
because we know that this is  
the type of crime that creates  
a serious disfeeling in many  
of our minds. Just because he  
is accused of rape, it still  
has to be proven. The same as  
if it were simple battery. So  
does anyone feel because he has  
been accused of rape or  
aggravated rape that you  
couldn't render a fair, and

1 impartial verdict. It won't  
2 be difficult for you because  
3 you, ladies and gentlemen, make  
4 judgments all the time. You  
5 decide where you are going to  
6 live, who you are going to  
7 marry, who is going to be your  
8 friends and where you are going  
9 to buy things and one thing and  
10 another. You make these  
11 judgment all of the time. There  
12 is not a person in the room that  
13 doesn't make decisions all of  
14 the time, and you don't go to  
15 Honest John's a place to buy a  
16 car. Maybe Honest John is not  
17 quite so honest, but you make that  
18 decision. In connection with  
19 this matter you will make the  
20 decision of who is telling the  
21 truth and who is not telling  
22 the truth. It is very important  
23 that you simply apply your every  
24 day intelligence and experience  
25 and disregard. There is only a  
26 difference when you are dealing  
27 with a friend or a business  
28 person. You may decide well,  
29 Gray, he is not black, he is

1                   not white, may be he is in the  
2                   middle, but you have a opportunity  
3                   under the law that if a person  
4                   gets on the stand and testifies  
5                   to what you believe to be a  
6                   total falsehood or it is  
7                   absolutely incorrect, there is  
8                   a difference. They both are  
9                   important. If you believe the  
10                  person is telling a lie or you  
11                  believe the person is totally  
12                  incorrect, then you have a right  
13                  to disbelieve all of their  
14                  testimony. If on any one point  
15                  in the case in your mind you are  
16                  the only person that makes that  
17                  decision. If that witness  
18                  tells what you believe to be a  
19                  lie or what you believe to be  
20                  incorrect, then you have the  
21                  right to throw out the testimony  
22                  from that witness and disbelieve  
23                  it all or you can believe any  
24                  portion of it, as you see fit  
25                  and that is the only difference  
26                  between judging as you do on a  
27                  day to day basis, making your  
28                  own decisions and what we have  
29                  here in this courtroom. Now

1                         the defendant need not make  
2                         a statement. He need not take  
3                         the stand on his own behalf.  
4                         He need not even put on a  
5                         defense, because after all if  
6                         we presume he is innocent as  
7                         we are starting out with, it is  
8                         up to the State to prove beyond  
9                         a reasonable doubt his guilt  
10                         in connection with this matter  
11                         and if the State doesn't do that  
12                         in your mind the fact that he  
13                         doesn't put on a defense should  
14                         not make any difference to you.  
15                         So if any of you feel like that  
16                         simply because this man has  
17                         been accused that he is  
18                         probably guilty. In other  
19                         words where there is smoke,  
20                         there is fire: Does anyone  
21                         feel that way in this case?  
22                         And we remind you that you  
23                         cannot feel that way because  
24                         we have the duty to give this  
25                         man a fair and impartial  
26                         hearing. The state has the  
27                         duty of painting the picture  
28                         of guilt and if they can't do  
29                         that then this man should be  
                               acquitted. Now if they can  
                               paint

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that picture of guilt and you  
are satisfied beyond a reasonable  
doubt as to his guilt then you  
should find this man guilty.  
Either you find aggravated rape  
or one of the lesser crimes  
that is responsive to that such  
as simple rape or forceable  
rape. We will explain to you  
what those technical terms are  
as we go about in the law. At  
the end of the case after you  
have heard all of the witnesses  
then we will have the reading  
by the Court of the so-called  
law charge, the jury charges,  
jury instructions. Now that is  
the law that you are to follow  
in connection with this regardless  
of whatever you agree with it  
or not. Is there anybody who  
will not take the instructions  
of this Court and follow the  
law as given to you by the  
Court whether you agree with it  
or not? I have to give you the  
proper law. If I give you the  
improper law then that would be  
subject of a appeal and Mr.

1           Alexander would have an oppor-  
2           tunity for another shot at it.  
3           Does anyone feel that they  
4           couldn't go along with the law  
5           as I would read it to you from  
6           the various instructions that  
7           we have? This trial looks like  
8           it will run into this afternoon  
9           and may be into tomorrow. You  
10          will not have to spend the night  
11          or be sequestered. Does anyone  
12          for some reason feel like you  
13          would not be able for some reason  
14          to be able to stay with us  
15          tonight and return tomorrow  
16          about 9:30 until this matter is  
17          completed because of illness  
18          in the family. This is  
19          important not because we are  
20          not trying to say that you got  
21          some little minor reason to  
22          leave the Court, but we don't  
23          want you sitting here trying  
24          to judge this case; after all  
25          this man's punishment if he is  
26          convicted could be forty some-  
27          thing years in jail, the rest  
28          of his natural life and we  
29          don't want you here thinking

about this when you know that  
your grandfather or your  
daughter or your mother or  
some one else is lying on  
their deathbed over at one of  
the hospitals or if you have  
some grave other matter that  
is serious in your mind  
concerning your own health  
or otherwise, then we need to  
know that. Now I am not  
going to ask you anything about  
that as you happen to be called  
in the jury box then questioned  
by the voir dire by both  
attorneys. If you have that  
they will ask you that. Please  
bring that up and they will  
talk to you personally about  
that. Now in connection with  
the voir dire as it develops  
the law, each side is entitled  
to have a certain number of  
peremptory challenges. Each  
side has the right to ask you  
so called voir dire questions.  
Voir means to look at and dire  
means to speak to. They look  
at and speak to situation where

1 the attorneys for both sides,  
2 the State and the defense will  
3 have an opportunity to ask you  
4 a number of questions. Now  
5 these questions are designed to  
6 find out as best we can what of  
7 you jurors they are going to  
8 have serve in connection with  
9 this case. Each of them has  
10 twelve peremptory challenges.  
11 They can simply excuse you  
12 because they don't like the  
13 fact that you don't have hair  
14 on your head or they don't like  
15 the tie you are wearing, the  
16 dress that you are wearing if  
17 you happen to be a lady. They  
18 may not like you because you  
19 have hair on your face. I used  
20 to be very suspicious of people  
21 with a lot of hair, but it  
22 doesn't demean you in any way  
23 if you are not selected. I  
24 hope you all will take this  
25 superseriously. They are going  
26 to play this thing again as best as  
27 they can before you are going to  
28 have to decide exactly what is  
29 going to happen in this case.

1 and I don't make that decision.  
2  
3 I am prohibited by law in any  
4 way to express an opinion as to  
5 my feeling of guilt or innocence  
6 concerning Mr. Alexander and  
7 likewise I am prohibited from  
8 in any way commenting on the  
9 evidence so this is why I warn  
10 you the mere fact that Mr. Pitre  
11 puts a piece of evidence in the  
12 record and Mr. Tosh objects to  
13 that and I eventually rule that  
14 no, it should go in evidence, it  
15 does not say ha, ha, this is  
16 the goods. All I am saying is  
17 that it meets the law of  
18 evidence test and this is why  
19 we have these trials and we go  
20 through the submission of this  
21 evidence in open court for you  
22 as jurors here, and you will  
23 notice as the case labors on,  
24 you will notice that Mr. Tosh or  
25 Mr. Pitre may object to a leading  
26 question. They may object to  
27 hearsay evidence. All of you  
28 have heard the rule against  
29 hearsay. If you watch Perry  
Mason or anything else on

1 television they talk about  
2 hearsay evidence. What is  
3 hearsay evidence? Hearsay  
4 evidence is nothing more than  
5 a out of court statement made  
6 by some other party being  
7 repeated in the courtroom by  
8 yet another party, trying to  
9 talk about the truth of the  
10 matter. Back in the old days  
11 they would just say Rudy Eason  
12 is a horse thief. They would  
13 accuse me of being a horse thief.  
14 Somebody may say that Jack Smith  
15 told me that Rudy Eason stole  
16 that horse and another witness  
17 comes in and says John Jones  
18 said he saw Rudy Eason riding  
19 that horse and somebody else  
20 came in and said I was talking  
21 to Betty Smith and she said  
22 that Rudy Eason rode her on the  
23 horse and that was all of the  
24 evidence they had and they hang  
25 you for stealing a horse. So  
26 you had thres people that never  
27 even came to court, that somebody  
28 else told them. So for that  
29 reason it is obvious we had to

1                   get rid of that system of  
2                   justice. We have so-called  
3                   leading questions where they  
4                   are prohibited simply because  
5                   they suggest an answer to the  
6                   particular witness. It wouldn't  
7                   be fair for the district  
8                   attorney to say didn't you see  
9                   Malcolm Alexander out with  
10                  this girl. Didn't you see him  
11                  with a knife. Didn't you see him  
12                  that knife to her throat. What  
13                  has the person got to answer.  
14                  The district attorney testifies  
15                  so we don't allow leading  
16                  questions. That is a over simpli-  
17                  fied example. Now in the course  
18                  of the trial remember we are  
19                  trying the guilt or innocence  
20                  of Mr. Alexander here. He is  
21                  presumed to be innocent. Now  
22                  don't get upset with either  
23                  attorney because they seem to  
24                  object one way or another. Since  
25                  I am a politician I am going  
26                  to try to court you and be your  
27                  good friend because you are going  
28                  to be my counterpart in this case.  
29                  You are going to be the judge

1                         in this case. It takes ten  
2                         of you to agree on the verdict  
3                         so when we have twelve of you  
4                         will go to the jury room and  
5                         deliberate and when ten of you  
6                         agree on whatever verdict it  
7                         might be, guilt or innocence  
8                         or any of the lesser charges.  
9                         when ten of you agree we have  
10                        a verdict bat until that time  
11                        we don't have a verdict so try  
12                        the guilt or innocence in this  
13                        case. Don't try the lawyers.  
14                        It will seem like I get angry  
15                        with Mr. Tosh or Mr. Pitre and  
16                        I would seem to not favor them  
17                        one way or the other or Mr.  
18                        Tosh continually objects and I  
19                        continually overrule it. We  
20                        are not trying the case on a  
21                        number signal. Mr. Tosh got  
22                        overruled seven times and Mr.  
23                        Pitre got overruled five times  
24                        and Mr. Tosh's man loses. That  
25                        is not what we are here about.  
26                        what we are here about is  
27                        whether or not the State can  
28                        prove the guilt of Malcolm  
29                        Alexander of this charge.

1                   Alright at this time call  
2                   twelve prospective jurors. Now  
3                   we will have an alternate juror.  
4                   This alternate juror will be  
5                   kind of like a relief pitcher.  
6                   He will sit there during the  
7                   whole trial and if no body gets  
8                   sick or ill or is indisposed in  
9                   any way then that alternate  
10                  juror will be excused at the  
11                  end of the trial before deliver-  
12                  ations, but it will be super  
13                  important just like the relief  
14                  pitcher is in a baseball game  
15                  to be there. We don't like to  
16                  take your time but this saves  
17                  a lot of time. If during the  
18                  course of the trial one of your  
19                  jurors suddenly becomes ill then  
20                  we would want to have to put  
21                  anybody through this again so  
22                  we will ask you to be patient  
23                  with us and we will ask you if  
24                  you don't have good cause not  
25                  to serve, please let us know,  
26                  but please don't say simply I  
27                  would rather not serve. I have  
28                  a system that prevents you from  
29                  walking out and saying no, I

1                   don't want to serve. I think  
2                   it is not good. I will say  
3                   sit with us. I can order you  
4                   to sit here for the whole trial  
5                   and that is a shame and I don't  
6                   like it but I ask you if you  
7                   do have good cause that you can't  
8                   serve on this jury, let us know,  
9                   but if you don't have good cause  
10                  please don't make up some other  
11                  thing; that is a very important  
12                  part of our life and the only  
13                  way we can do it is to have  
14                  people such as you come. You  
15                  might say judge why don't you  
16                  pay a few jurors a little  
17                  decent salary and let them serve  
18                  as jurors and you won't have  
19                  to keep calling citizens. The  
20                  only problem with that is before  
21                  too long the jurors are going  
22                  to say Judge how do you like that  
23                  last verdict. We are right back  
24                  where we started. All we get  
25                  is some people over here who  
26                  are looking for their own welfare  
27                  and have their money coming in  
28                  so they say I want to be a good  
29                  juror and I want to please the

1                         judge involved. We obviously  
2                         can't have that situation. Are  
3                         all of you jurors drawn by  
4                         lot?

5                         (JURORS RESPONDED YES)

6                         THE COURT:

7                         We have the number and names of the  
8                         jurors written on this list for  
9                         the convenience of the attorneys.  
10                        Now one other thing I ask you  
11                        once you take a seat in the  
12                        jury box please remain in that  
13                        seat throughout the trial. So  
14                        call the jurors now by lot  
15                        again.

16                         THE BAILIFF:

17                         No. 162, Mr. Glen Weaver. Number 193,  
18                         Mr. Michael Tillman. Number 225,  
19                         Mr. Samuel Keller. Number 66,  
20                         Mr. Raymond Neuman. Number 25,  
21                         Ms. Sandra LeBlanc. Number 4,  
22                         Clifton Daigle. Number 227,  
23                         Ms. Anne Mae Davis. Number 203,  
24                         Ms. Geraldine Sapp. Number 235,  
25                         Mr. Carlos Piper. Number 236,  
26                         Ms. Shirley Rogers Picou.  
27                         Number 115, Ms. Georgiana  
28                         Smith. Number 208, Ms. Paula  
29                         Demma.

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2 THE COURT:  
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Now, ladies and gentlemen, we have sworn each of you and asked you if you would tell us your qualifications of a juror. We now ask you to recall that each as certain questions will be asked you on voir dire. Both attorneys will have an opportunity to ask you questions. Now I will repeat the questions and I will ask all jurors, prospective jurors remaining in the audience as well as the people in the jury box itself to please listen to the questions asked when they are asked. It is very important. Now ladies and gentlemen I have previously asked you if you understood and agreed to serve and understand that you believe in the presumption of innocence. The presumption of innocence is that Mr. Alexander as he stands is innocent as you are sitting in the jury box, as innocent as I am sitting in this Judge's box. Can any of you not accord him the

1                         presumption of innocence. Now  
2                         the State has a duty of proving  
3                         beyond a reasonable doubt that  
4                         Mr. Alexander is guilty of the  
5                         crime of aggravated rape or  
6                         any lesser crime such as forcible  
7                         rape or simple rape which I  
8                         will define for you later. Does  
9                         any one not require the State to  
10                         prove beyond a reasonable doubt  
11                         the guilty of Mr. Alexander?  
12                         Do any of you feel that you  
13                         couldn't convict him under any  
14                         set of circumstances no matter  
15                         what? Do you understand that  
16                         beyond a reasonable doubt does  
17                         not mean absolute proof. There  
18                         is no such thing as absolute  
19                         proof. I can't prove to you the  
20                         sun is shining. If you look at  
21                         the sun long enough and try to  
22                         figure out where it is you will  
23                         go blind and all we know is that  
24                         somebody told us when we were  
25                         children that is the sun, and  
26                         we believed that. As far as  
27                         going out and being able to touch  
28                         it, you can't do that. So  
29                         absolute proof is impossible.

1                  You can't tell us who you are.  
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You can't tell us who you are. It is not tattooed on your arm. Your mother told you you were so and so and it is super important that you understand the proof beyond a reasonable doubt. Now it is not as it is in civil trials. In civil trials you simply have to prove that it is more likely than not. It is not a simple question of more likely than not. It has to be a conviction in your own mind to a reasonable certainty that the picture of guilty shown by the evidence in the case convinces you of guilt of Mr. Alexander. Now it doesn't have to be that you stood there and saw it, because that would be then absolute proof, but the reasonable doubt is the test. It is your own judgment, the reasonable doubt concept, but each of us as individuals can handle it I am sure. Any one has any problems? Alright.

Mr. Pitre.

MR. PITRE:

E 21

1                   Ladies and gentlemen in order to  
2                   avoid a lot of repetitions  
3                   questions I am going to ask  
4                   each of you to give us a little  
5                   of your background to tell us  
6                   if you are married, whether  
7                   you are employed, what sort of  
8                   work that you do. If you have  
9                   any children, how long you have  
10                  lived in Jefferson Parish.

11                  A JUROR:

12                  My name is Glen Weaver. I have  
13                  lived in Jefferson Parish the  
14                  last twenty years and I am  
15                  single. Right now I presently  
16                  left my last job about a week  
17                  ago. I am still looking. I  
18                  attended Southeastern Louisiana  
19                  University for four years.

20                  MR. PITRE:

21                  Mr. Tillman?

22                  A JUROR:

23                  My name is Michael Tillman. I am  
24                  originally from Jersey City,  
25                  New Jersey. I have been living  
26                  in Louisiana for three years.  
27                  I work for Louisiana Power  
28                  and Light Company. I am  
29                  married and live in Marrero.

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I have no children.

MR. PITRE:

Mr. Keller?

A JUROR:

My name is Samuel Keller. I am twenty years old. I am presently employed at a seafood company and I am also a part-time writer. I have attended the University of Southwestern for two years and at present I am still single.

MR. PITRE:

Mr. Neuman?

A JUROR:

I am Raymond Neuman. I am sixty-five years old. I have lived in Jefferson Parish about twenty-two years and retired from federal government service since 1972. I have two daughters grown and I have one granddaughter.

MR. PITRE:

Ms. LeBlanc?

A JUROR:

My name is Sandra LeBlanc. I am married to a police officer in Jefferson Parish. I work

for an insurance company. I  
lived in Jefferson for about  
fourteen years.

MR. PITRE:

Mr. Daigle?

A JUROR:

My name is Clifton Daigle. I am  
thirty-four years old. I lived  
in Jefferson Parish all my life.  
I am married and have three  
children. I work for Highline  
Construction. I have been  
working there for the past  
five years.

MR. PITRE:

Ms. Davis?

A JUROR:

My name is Anne Davis. I am a  
licensed practical nurse. I  
work at Charity Hospital. I am  
also a student at L.S.U. Medical  
Center. I am married and have  
been living in Jefferson for  
five years.

MR. PITRE:

Ms. Sapp?

A JUROR:

My name is Geraldine Sapp. I am  
a public school teacher. I am

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employed by the Jefferson Parish School Board. I am a student at U.N.O. I have two children, ages 19 and 4.

MR. PITRE:

Mr. Piper?

A JUROR:

I am Carlos Piper. I am employed by the United States Department of Agriculture. I am a resident of Jefferson Parish for twenty years. I have four children and two step-children. I am married.

MR. PITRE:

Ms. Picon?

A JUROR:

My name is Shirley Picon. I work at the West Jefferson Mental Health Clinic for the past ten years. I have a stepson and two children.

MR. PITRE:

Ms. Smith?

A JUROR:

My name is Georgiana Smith. I have been living in Jefferson Parish for seven years. I am married and have five children and I am

1                   a homemaker.

2                   MR. PITRE:

3                   Ms. Demma?

4                   A JUROR:

5                   My name is Paula Demma. I am a legal  
6                   secretary. I am twenty-three  
7                   years old. I have lived in  
8                   Jefferson Parish all of my life  
9                   and I am engaged to be married.

10                  MR. PITRE:

11                  I am going to ask you some questions.  
12                  If you have a affirmative  
13                  response, please raise your  
14                  hand. Have any of you served  
15                  on a jury before?

16                  A JUROR:

17                  I have in Orleans Parish this year a  
18                  civil case.

19                  MR. PITRE:

20                  How long have you been a resident  
21                  of Jefferson?

22                  A JUROR:

23                  Fourteen years.

24                  MR. PITRE:

25                  Have any of you ever been a victim  
26                  of any sort of a crime of  
27                  violence or any member of your  
28                  immediate family.

29                  A JUROR:

I have a brother accused of rape.

1 MR. PITRE:

2           The fact that your brother was  
3           accused in another case, would  
4           that affect or influence your  
5           decision in this case?

6 A JUROR:

7           No, it wouldn't.

8 MR. PITRE:

9           Any one else?

10 A JUROR:

11           I have a stepbrother who was involved  
12           in a burglary.

13 MR. PITRE:

14           The fact that your stepbrother was  
15           charged with a crime would that  
16           affect or influence your  
17           decision in this case in any  
18           way?

19 A JUROR:

20           I don't believe so.

21 MR. PITRE:

22           Any one else has any, any of your  
23           immediate family other than  
24           the ones mentioned have ever  
25           been arrested for any sort of  
26           a crime?

27 A JUROR:

28           My son was arrested as a juvenile.

29 MR. PITRE:

1           Would this fact, the fact that he  
2           was arrested affect or influence  
3           your decision in this case?

4           A JUROR:

5           No.

6           MR. PITRE:

7           Any one else?

8           A JUROR:

9           I was arrested for D.W.I.

10          MR. PITRE:

11          Would that arrest influence your  
12           decision?

13          A JUROR:

14          No, it would not.

15          MR. PITRE:

16          Anyone else?

17          A JUROR:

18          I have a brother-in-law who was  
19           arrested for drugs.

20          MR. PITRE:

21          Would that affect your decision  
22           in this case?

23          A JUROR:

24          No, it wouldn't.

25          MR. PITRE:

26          Anyone else?

27          A JUROR:

28          I have a stepbrother who was  
29           arrested for drugs.

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MR. PITRE:

The fact that your stepbrother was arrested would that influence your decision in any way in this case?

A JUROR:

No.

MR. PITRE:

Do any of you have any religious or moral scruples that would interfere with you returning a verdict of guilty should the State prove its case beyond a reasonable doubt? Is there anything in your background where you say I can't find ... this man guilty if the State proves it? Would you please raise your hand and are there any of you that have any problem with the crime itself that would prejudice you either for or against the defendant or for or against the State in any way just because the nature of the crime? Some people are strongly prejudiced against certain narcotics cases. Some are prejudiced against rape

1 cases. As a general rule you  
2 are prejudiced against all  
3 crime but the fact that this  
4 defendant is accused of rape,  
5 would that influence you in  
6 such a sense that you couldn't  
7 give him a fair trial? Do any  
8 of you feel that because he  
9 is charged with rape, would  
10 cause or affect your decision  
11 in this case? Is there any  
12 reason that you could give  
13 us why you couldn't give the  
14 State or the defendant a fair  
15 trial in this case, anything  
16 at all that would divert your  
17 attention away from this  
18 courtroom for the next several  
19 hours today and may be into  
20 tomorrow. The victim in the  
21 case is Betty Neff. Are any  
22 of you sitting in the jury box  
23 that might know this lady?  
24 That's all I have.

25 THE COURT:

26 Let me ask you one question. You  
27 say that your husband is a  
28 police officer?

29 A JUROR:

1           Yes, sir.

2           THE COURT:

3           I ask you this question and  
4           generally, would you believe  
5           a police officer more than you  
6           would any other lay witness?  
7           It is very important to know  
8           just because a man is a police  
9           officer would you believe him,  
10           would you be more likely to  
11           believe him or disbelieve him  
12           than any other witness simply  
13           because he is a police officer?  
14           As a witness suppose he gets up  
15           and says one thing and another  
16           witness gets up and says another  
17           entire opposite thing. Would  
18           you believe the police officer  
19           simply because he is a police  
20           officer or would you give him  
21           the same test that you would  
22           give any other witness?

23           A JUROR:

24           I would probably be more inclined  
25           to believe a police officer  
26           since I am married to one.

27           THE COURT:

28           Does anyone feel the other way that  
29           may be a police officer arrested

1                         you unfairly. You feel like a  
2                         police officer could not be  
3                         trusted just because a man is  
4                         a police officer that you would  
5                         disbelieve him, just the  
6                         opposite? I thank you for  
7                         your candor, ma'am. Mr. Tosh,  
8                         please.

9                         MR. TOSH:

10                         Is there anybody else related to a  
11                         police officer or anybody in  
12                         law enforcement?

13                         A JUROR:

14                         I have a cousin on the police force.

15                         MR. TOSH:

16                         Would your relationship to the  
17                         officer as the judge says in  
18                         anyway cause you to believe a  
19                         police officer more?

20                         A JUROR:

21                         No.

22                         MR. TOSH:

23                         The fact that you are related to  
24                         a police officer would have any  
25                         influence on you one way or  
26                         the other?

27                         A JUROR:

28                         No.

29                         MR. TOSH:

1  
2           Do you have occasion to discuss any  
3           cases with your relative?  
4

5           A JUROR:  
6

7           No.  
8

9           MR. TOSH:  
10

11           Anybody else?  
12

13           A JUROR:  
14

15           I have a cousin. I don't know  
16           exactly knew the title. It  
17           is in Jefferson Parish he works  
18           closely with the Harry Lee  
19           administration.  
20

21           MR. TOSH:  
22

23           Do you know his name?  
24

25           A JUROR:  
26

27           William Norman.  
28

29           MR. TOSH:  
30

31           Again we go back to the Judge's  
32           questions. You are married to  
33           a police officer. Do you think  
34           you can sit here through the  
35           testimony and give us a fair  
36           and impartial trial. You must  
37           decide we are here for one  
38           thing today. That is justice,  
39           and if you feel that you are  
40           prejudiced, we have to know  
41           now. We appreciate an honest  
42           answer.

1           A JUROR:

2           Like I said previously, that I would  
3           be inclined to believe the  
4           police officer more if he made  
5           an arrest I would be inclined  
6           to believe him more.

7           MR. TOSH:

8           Does anybody else have relations in  
9           law enforcement at all and are  
10          prejudiced in any kind of way?

11          MR. TOSH:

12          You work for the federal government.  
13          Is that correct?

14          A JUROR:

15          Yes.

16          MR. TOSH:

17          The department of agriculture was  
18          that a enforcement type agency  
19          at all?

20          A JUROR:

21          No.

22          MR. TOSH:

23          What about you, sir? Mr. Neuman?

24          A JUROR:

25          Department of labor.

26          MR. TOSH:

27          You weren't in any type of law  
28          enforcement?

29          A JUROR:

1 No.

2 MR. TOSH:

3 The Judge explained to you that  
4 this is a indictment, but it  
5 is mere piece of paper that  
6 allows the system to operate  
7 that brings the defendant,  
8 Mr. Alexander into the courtroom  
9 to allow this trial. Does any  
10 body here have any problem  
11 that this is only a piece of  
12 paper that this is no way  
13 saying that he is guilty of  
14 anything. Does everyone under-  
15 stand that? The Judge also  
16 explained to you that if the  
17 trial were to cease right  
18 now that the defendant with  
19 the presumption of innocence  
20 would be acquitted and found  
21 not guilty. Does anybody  
22 have any problem with that?  
23 I didn't see any head shaking  
24 before. I kind of had my  
25 back to you when the Judge  
26 was asking you some questions.  
27 Does anybody have a problem;  
28 some times this presents a  
29 problem. No problem at all?

1                   The Judge also went into  
2 reasonable doubt and I am not  
3 going to belabor this point,  
4 but he is going to explain this  
5 more when it is time to charge  
6 you with the charges and the  
7 law that you have to follow.  
8 The Judge says you can't prove  
9 absolutely that something is  
10 a fact. Which is true, but in  
11 a criminal matter, if there is  
12 any reasonable doubt that the  
13 defendant did not commit this  
14 crime then it is your sworn  
15 duty to acquit him. Now if the  
16 State came in here and proved  
17 may be he did it or there is a  
18 likelihood that he did it, but  
19 did not prove beyond a reasonable  
20 doubt, can you take it upon  
21 your sworn duty to acquit this  
22 man. Does anybody have any  
23 problems because that is  
24 important because this man's  
25 life although he is not facing  
26 death, he is facing the rest  
27 of his life in the penitentiary.  
28 Now I want a fair trial and so  
29 does the State and so does the

1    Judge. We just want you to  
2    listen to the testimony. It  
3    is going to come from that  
4    stand and be able to follow  
5    the law that the judge gives  
6    you. No problem with that?  
7    Sometimes there is a problem  
8    with jurors that I have found  
9    that you are going to be given  
10   the possible verdicts. One of  
11   the verdicts is not guilty, but  
12   if in any event that you find  
13   that the State has proven its  
14   case beyond a reasonable doubt  
15   you are going to be asked to  
16   find the defendant not guilty.  
17   I would prefer the term would  
18   be acquittal but that is not  
19   the law so I would have to try  
20   to explain this to you. Do  
21   you understand that if the State  
22   has not carried its burden, the  
23   State has the burden. We  
24   don't have the burden. If the  
25   State has not carried the  
26   burden, but you feel there is  
27   a possibility of guilt and you  
28   are going to have to come back  
29   and use the term not guilty.

1                   You don't have to find him  
2                   not guilty if you acquit. You  
3                   have not found him guilty. You  
4                   understand that. Any problem  
5                   with that and the Judge did  
6                   mention that the defendant has  
7                   a constitutional right to stay  
8                   right where he is seated and  
9                   not take the stand and no matter  
10                  how curious you are as to what  
11                  he might have to say, the decision  
12                  is going to be mine. Whether  
13                  I let him take the stand or not.  
14                  No matter how curious you are,  
15                  if he doesn't take the stand  
16                  will you hold that against  
17                  him. You understand he has  
18                  his constitutional right just  
19                  as if you were on trial today.  
20                  you could be seated there and  
21                  would not have to take the  
22                  stand to testify. You understand  
23                  that? Any problems? No  
24                  further questions.

25                  THE COURT:

26                  Will you all approach the bench,  
27                  gentlemen?

28                  (CONFERENCE AT THE BENCH)

29                  THE COURT:

1                   Alright, ladies and gentlemen,

2                   this is the first of a number  
3                   of so-called bench conferences  
4                   which we discuss matters with  
5                   the attorneys that if were  
6                   discussed before you might be  
7                   prejudicial to you. It is not  
8                   because we feel like we have any  
9                   great magic or anything else.  
10                  It is just that we discuss it  
11                  openly before you it might  
12                  indicate something to you and  
13                  make you prejudiced in the case.

14                  Now, ladies and gentlemen, we  
15                  are going to the peremptory  
16                  challenge time and as I  
17                  indicated to you before for  
18                  some reason the district attorney  
19                  or defense counsel may not want  
20                  you to serve in connection with  
21                  this case. It does not demean  
22                  you in any way. Simply because  
23                  they have elected not to have  
24                  you as a juror. It simply  
25                  means for some peculiar reason:  
26                  you have a motion in connection  
27                  Mrs. LeBlanc?

28                  MR. TOSH:

29                  I move that the Court excuse Ms.

1 LeBlanc for cause.  
2

3 THE COURT:

4 I think under the circumstances  
5 she has been perfectly candid  
6 with us and I think it would  
7 be an unfair trial if we have  
8 a police officer's testimony  
9 and if it is close it might  
10 have you wondering in your own  
11 mind, to make sure you are not  
12 prejudiced, we are going to  
13 excuse you, now, Mrs. LeBlanc.

14 MR. PITRE:

15 The State would thank and excuse  
16 Mr. Samuel Keller.

17 THE COURT:

18 Mr. Keller, you are excused with  
19 the Court's thanks.

20 MR. PITRE:

21 Clifton Daigle.

22 THE COURT:

23 Mr. Daigle, you are excused and  
24 we thank you for coming.

25 MR. PITRE:

26 Anne Davis and Carlos Piper.

27 THE COURT:

28 You are excused with the Court's  
29 thanks. We appreciate you all  
coming and all excused jurors

1    are to return to the jury room.  
2

3    MR. TOSCH:

5    I would like to thank and excuse  
6

7    No. 66, Mr. Neuman and No. 115,

8    Ms. Smith. The balance is

9    acceptable to the defendant.

10    THE COURT:

11    Alright, ladies and gentlemen, just

12    stand and be sworn in as jurors

13    at this time.

14    THE CLERK:

15    Raise your right hand. Do you solemnly

16    swear to try this case in a

17    just and impartial manner, to

18    the best of your judgment, to

19    render a verdict according to

20    the law and the evidence?

21    (JURORS RESPONDED I DO)

22    THE BAILIFF:

23    No. 221, Mr. Alfred Mequet. No.

24    262, Mr. Mark Datri. No. 181,

25    Ms. Linda Hudson. No. 137,

26    Mr. George Brunk, Jr. No. 143,

27    Ms. Shirley Jones. No. 177,

28    Mr. Pennwitt Maquin, Jr. No.

29    215, Mr. Herman Daigle, Jr.

30    THE COURT:

31    Alright, ladies and gentlemen, all

32    of you have heard the questioning

1    that has been asked you prior  
2    to this time. Are there any  
3    questions that I suggested  
4    concerning presumption of  
5    innocence and the duty of the  
6    State to prove beyond a  
7    reasonable doubt the guilt of  
8    Mr. Alexander in order to  
9    convict him and if you and if  
10   the State does not prove that  
11    beyond a reasonable doubt in  
12    your mind you could acquit him?  
13    Is there anyone who could not  
14    render that? Is there anyone  
15    that feels like that Mr.  
16    Alexander is here and he doesn't  
17    take the stand, that you would  
18    hold it against him and be  
19    prejudiced against him simply  
20    because he didn't take the  
21    stand. Do any of you feel  
22    simply because Mr. Alexander  
23    has been accused by a indictment  
24    that means that he is guilty.  
25    In other words, they wouldn't  
26    have arrested him if he wasn't  
27    guilty. Do any of you feel  
28    that way? Alright, at this  
29    time, ladies and gentlemen, we

1    are going to send you to  
2    lunch and I ask you not to  
3    discuss the case, but one of  
4    the things you are going to  
5    learn as a judge and that is  
6    what you are going to be for the  
7    next day or so. You don't make  
8    up your mind until you hear  
9    the last shread off evidence.  
10   Take it from me. I have been  
11    a judge for about six years  
12    now and I am going to be a judge  
13    awhile and your decision is  
14    just as important. I just  
15    want you to understand you  
16    cannot make your mind up until  
17    you hear the last shread of  
18    evidence so you start talking  
19    now and you start making your  
20    mind up and discussing it and  
21    you all reach a accord on one  
22    point or another then you may  
23    very well be prejudicing your  
24    own mind in reference to what  
25    may come in the future. So I  
26    will ask you now to go to lunch  
27    and one other thing if anyone  
28    should talk to you about any  
29    portion of this trial, anything

1 to do with this, please let me  
2 know as soon as you return and  
3 likewise you may see Mr. Pitre  
4 or Mr. Tosh and they may seem  
5 to avoid you and not speak to  
6 you and you may say what is  
7 the matter with that snob. Just  
8 because he is a attorney, he  
9 can't talk. It simply means  
10 that they are observing the  
11 ethics of the profession. They  
12 cannot attempt to sway you by  
13 trying to be Mr. Nice Guy or  
14 otherwise because you might  
15 have somebody handing candy  
16 and boxes of cigars out in the  
17 hall. If you see Mr. Tosh and  
18 Mr. Pitre in the hall, they will  
19 probably look right past you  
20 simply because they are observing  
21 the rules so don't hold it against  
22 them if you see one of them  
23 in the hall and they are not  
24 at least bit courteous to you.  
25 Alright we are going to break  
26 for lunch.

27 (JURY ADJOURNED FOR LUNCH)

28 (JURY RETURNED)

29 THE COURT:

1                    You waive the polling, gentlemen?

2                    MR. PITRE:

3                    Yes, Your Honor.

4                    MR. TOSH:

5                    Yes, your honor.

6                    THE COURT:

7                    Alright, ladies and gentlemen, we  
8                    will proceed with the so-called  
9                    voir-dere, the look and speak  
10                  to portion of this trial. The  
11                  new jurors please give us your  
12                  vital information, whether you  
13                  are married and single and your  
14                  occupation, et cetera.

15                  A JUROR:

16                  My name is Alfred Mequet, forty-  
17                  four years old. I live at  
18                  6015 Airline Highway, Metairie;  
19                  I am married. I have six  
20                  children. I work for Louisiana  
21                  Mobile Home Rentals, Inc. I  
22                  have lived in Jefferson Parish  
23                  for six years.

24                  A JUROR:

25                  My name is Mark Datri. I lived in  
26                  Jefferson Parish sixteen years.  
27                  I am twenty-one years old. I  
28                  am single. I work for Sperry  
29                  Sun, Inc.

A JUROR:

1  
2        My name is Linda Hudson. I have  
3        lived in Jefferson Parish  
4        about thirteen years and I  
5        work as a teacher. I am  
6        married for six years and have  
7        no children.

8        A JUROR:

9        My name is George Brunk, Jr. I am  
10       fifty-two years old, presently  
11       employed at Avondale Shipyards.  
12       I lived in Jefferson Parish  
13       for six years.

14       A JUROR:

15       My name is Shirley Jones. I have  
16       been living in Jefferson for  
17       over a year. I am single.

18       A JUROR:

19       My name is Pennwit Naquin. I have  
20       been living in East Jefferson  
21       Parish forty-one years. I  
22       have been married fifty-one  
23       years. I have four children  
24       and I am retired from sales.

25       A JUROR:

26       I am Herman Daigle. I am married.  
27       I have resided in Jefferson  
28       Parish three years. I am  
29       an automobile mechanic at  
Sears and Roebuck and Co.

1  
2 MR. PITRE:  
3

4 Have any of you members of the  
5 prospective jury ever served  
6 on a jury before?  
7

8 A JUROR:  
9

10 I did in Opelousas.  
11

12 MR. PITRE:  
13

14 How long ago was that?  
15

16 A JUROR:  
17

18 About a year and a half ago.  
19

20 MR. PITRE:  
21

22 Was it a civil or criminal case?  
23

24 A JUROR:  
25

26 Civil.  
27

28 MR. PITRE:  
29

30 Anyone else? Mr. Baquin?  
31

32 A JUROR:  
33

34 I served on a jury about twelve or  
35 fourteen years ago and I have  
36 been on a petit grand jury  
37 last year.  
38

39 MR. PITRE:  
40

41 Have any of you ever been the victim  
42 of any sort of crime of violence  
43 or has anyone in your immediate  
44 family ever been the victim of  
45 a crime of violence? Has any  
46 of you or your immediate family  
47

1                   has ever been arrested for a  
2                   crime?

3                   A JUROR:

4                   My brother for theft.

5                   MR. PITRE:

6                   The fact that your brother was  
7                   arrested, would that, in fact,  
8                   influence your decision in  
9                   this case?

10                  A JUROR:

11                  No, sir.

12                  MR. PITRE:

13                  You had your hand up?

14                  A JUROR:

15                  My brother was arrested for D.W.I.

16                  MR. PITRE:

17                  Do any of you have any religious or  
18                  moral beliefs that wouldn't  
19                  allow you to return a verdict  
20                  of guilty as charged if the  
21                  State proved its case beyond  
22                  a reasonable doubt? Do any of  
23                  you have any beliefs that would  
24                  not allow you to find the  
25                  defendant guilty under those  
26                  circumstances? Do any of you  
27                  have any prejudice because  
28                  of the nature of the crime  
29                  itself because the defendant

1                   is charged with rape? The  
2                   fact that he is charged with  
3                   rape that you couldn't give the  
4                   state as well as the defendant  
5                   a fair trial? That's all I  
6                   have.

7                   THE COURT:

8                   Mr. Tosh, you have any questions?

9                   MR. TOSH:

10                  All of you were present before when  
11                  I asked about any relatives  
12                  in law enforcement. Does this  
13                  apply to anyone here? Mr. Daigle?

14                  A JUROR:

15                  I have a sister-in-law that is a  
16                  deputy with the Jefferson Parish  
17                  Police Department.

18                  MR. TOSH:

19                  In what capacity does she work?

20                  A JUROR:

21                  She was a clerk and a guard at the  
22                  prison.

23                  MR. TOSH:

24                  Do you discuss any cases with  
25                  her?

26                  A JUROR:

27                  No.

28                  MR. TOSH:

29                  Would that have any influence on you

1 making a decision in this  
2 matter?

3 A JUROR:

4 No, sir.

5 MR. TOSH:

6 You feel that you could put aside  
7 the police officer as testified.  
8 You would not hold him in any  
9 different light then if it  
10 were a lay witness?

11 A JUROR:

12 Yes, sir.

13 MR. TOSH:

14 Mr. Jones, you heard me go over all  
15 of this information about the  
16 indictment and you have any  
17 questions about that?

18 A JUROR:

19 No, I don't.

20 MR. TOSH:

21 Do you have any problems with the  
22 things I covered earlier as  
23 far as the defendant not taking  
24 the stand?

25 A JUROR:

26 No.

27 MR. TOSH:

28 Does anybody have any problems with  
29 that? No further questions.

1 MR. PITRE:

2           The State would thank and excuse  
3           Linda Hudson and Shirley Jones.

4 THE COURT:

5           Ms. Hudson and Ms. Jones you are  
6           excused with the Court's thanks.

7 MR. TOSH:

8           Your Honor, I would thank and excuse  
9           Mr. Naquin.

10 THE COURT:

11           Mr. Naquin, you are excused with the  
12           Court's thanks.

13 MR. TOSH:

14           The balance is acceptable.

15 THE COURT:

16           The jurors who have not been previously  
17           sworn, please stand at this  
18           time.

19 A JUROR:

20           I believe I know the defendant. I  
21           believe I went to school with  
22           him.

23 THE COURT:

24           Do you know him so well that you  
25           wouldn't be able to render a  
26           fair and impartial verdict in  
27           this matter?

28 A JUROR:

29           I don't know him that well.

1                   THE COURT:

2                   Any more challenges or objections?

3                   Now is the time before they  
4                   are sworn.

5                   THE CLERK:

6                   Raise your right hand. Do you  
7                   solemnly swear to try this  
8                   case in a just and impartial  
9                   manner to the best of your  
10                  judgment and to render a  
11                  verdict according to the law  
12                  and the evidence?

13                  (JURORS RESPONDED I DO)

14                  THE BAILIFF:

15                  No. 263, Ms. Patricia Palermo.

16                  No. 58, Ms. Tomi Graves.

17                  No. 61, Mr. Nolan Doss.

18                  THE COURT:

19                  Can I have the gentlemen at the  
20                  bench.

21                  (CONFERENCE AT THE BENCH)

22                  THE COURT:

23                  What is your name please?

24                  A JUROR:

25                  Thomas Purves.

26                  THE COURT:

27                  Mr. Purves, you spoke to me just  
28                  before the jurors went to  
29                  lunch and you have indicated

1 to me that you have not lived  
2 in Jefferson for a year and a  
3 half?

4 A JUROR:

5 Yes.

6 THE COURT:

7 He is not qualified. I am going  
8 to release him unless I have a  
9 objection I am going to release  
10 him at this time.

11 MR. TOSH:

12 No objection.

13 MR. PITRE:

14 No objection.

15 THE COURT:

16 You have small children to pick up,

17 Ms. Sapp?

18 A JUROR:

19 Yea, they get home about four o'clock.

20 THE COURT:

21 We have a general motion.

22 MR. PITRE:

23 She is already a juror.

24 (CONFERENCE AT THE BENCH)

25 THE COURT:

26 Alright, on a joint motion by both  
27 counsel you are excused,  
28 Ms. Sapp. Please give that  
29 information to the people

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upstairs.

THE BAILIFF:

No. 17, Mr. Kenneth Meredith.

THE COURT:

Now we have had a number of discussions with previously selected jurors and we have asked them a number of questions concerning the presumption of innocence. Do each of you understand that as the trial starts the defendant, the accused in this matter, Mr. Alexander is as innocent as you are sitting in that box and as I am over here. Do each of you require the State to prove beyond a reasonable doubt the guilt of Mr. Alexander and if they cannot prove his guilt beyond a reasonable doubt that you will find him not guilty or acquit him. Each of you agree with that? Do you understand likewise the defendant is clothed with the rights of the fifth amendment of the United States Constitution that he need not make a statement in his own

1   Defense. Do any of you feel  
2   if he doesn't make a statement  
3   in his own defense that probably  
4   means he is guilty and that  
5   taints your feelings towards  
6   him because he did not make a  
7   statement. Do each of you  
8   understand that he is not  
9   required to put up a defense.  
10   He has no duty in this case  
11   at all, but he may if he elects  
12   to and if he does not do that  
13   would you feel like you would  
14   taint your mind against him?  
15   Is there any of you that feels  
16   simply because Mr. Alexander  
17   has been indicted in this case.  
18   In other words, he has been  
19   accused that he is probably  
20   guilty? Does anybody have a  
21   feeling of prejudice in their  
22   mind because he has been  
23   arrested and accused and there  
24   may be occasion where the  
25   Court will admit certain  
26   evidence in the record, the fact  
27   that it has been admitted into  
28   the record does not mean that  
29   the Court approves except under

1                         the evidentiary law. It meets  
2                         the test of evidence. It is not  
3                         a comment by the Court that it  
4                         is good evidence or bad evidence  
5                         or otherwise. It simply meets  
6                         the test of relevance and authen-  
7                         ticity and so forth and so on.  
8                         You are to make up your own  
9                         mind from the testimony and the  
10                         evidence. Do any of you for any  
11                         cause feel like you cannot  
12                         render a fair and impartial  
13                         verdict in this matter based on  
14                         the testimony and the evidence  
15                         presented to you in the case.  
16                         Alright, would you please give  
17                         us your name and status please.

18                         A JUROR:

19                         My name is Patricia Palermo. I have  
20                         been a resident of Jefferson  
21                         Parish for seven years. I am  
22                         a Barkers Office Manager. I  
23                         have been married ten years.

24                         A JUROR:

25                         My name is Tomi Gravois. I am a  
26                         teacher in Jefferson Parish.  
27                         I have lived in Jefferson Parish  
28                         for approximately thirty-five  
29                         years. I am married.

1  
A JUROR:

2 My name is Kenneth Meridith. I  
3 lived in Jefferson Parish twenty  
4 years. I am single.

5 A JUROR:

6 Nolan Boss, Jefferson Parish School  
7 Board. I am married. I have  
8 three children. I have lived  
9 in Jefferson Parish twenty-five  
10 years.

11 MR. PITRE:

12 Have any of you new members of the  
13 panel ever served on a jury  
14 before? Have any of you or  
15 immediate members of your  
16 family have been arrested for  
17 any crimes.

18 A JUROR:

19 I have two brothers that were arrested.

20 MR. PITRE:

21 the back that your two brothers  
22 were arrested would that effect  
23 or influence your decision in  
24 this case?

25 A JUROR:

26 No.

27 MR. PITRE:

28 Have any of you or any members of  
29 your immediate family ever been

1                          the victim of any crimes?  
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Do any of you have any religious or moral belief that would effect or influence your ability to find the defendant guilty if the State proves them guilty beyond a reasonable doubt? In other words if the State proves its case, is there something that would prevent you from saying in the courtroom you find them guilty. Do any of you know either the defendant or the victim? The victim in this case is Betty Neff and the defendant is Malcolm Alexander. Mr. Meridith, you know Mr. Alexander? How do you know him?

A JUROR:

I went to school with him.

MR. PITRE:

The fact that you know Mr. Alexander and went to school with him, would that effect or influence your decision on your ability to reach a fair and impartial

1                             verdict?

2                             A JUROR:

3                             No.

4                             MR. TOSH:

5                             Is anyone here related to anybody  
6   in law enforcement?

7                             MR. TOSH:

8                             In your capacity at Barkers, do you  
9   have an occasion to be involved  
10    with the arrest of shoplifters?

11                            A JUROR:

12                            No.

13                            MR. TOSH:

14                            Mr. Boss, I am going to ask you the  
15   question. The State has the  
16   burden of proof. If the  
17   State does not prove its case  
18   beyond a reasonable doubt, do  
19   you feel that you could come  
20   back and find the defendant,  
21   Malcolm Alexander not guilty?

22                            A JUROR:

23                            Yes, sir.

24                            MR. TOSH:

25                            Can everyone do that? The fact that  
26   the defendant may or may  
27   not take the stand if he  
28   decides not to take the stand,  
29   you will not hold that against

1  
2 him?  
3

4 MR. TOSH:  
5

6 Mr. Doss, again, I am going to have  
7 to ask you. The judge is going  
8 to explain to you the law at  
9 the end of the trial. He is  
10 going to charge you with the  
11 law. Do you feel that you could  
12 sit here and listen to the Judge,  
13 the law that he gives you, that  
14 you are to have to take the  
15 facts from the witness stand and  
16 you will have to go to the jury  
17 room and deliberate and give  
18 us a fair trial?

19 A JUROR:  
20

21 Yes, sir.  
22

23 MR. TOSH:  
24

25 I have no further question.  
26

27 MR. PITRE:  
28

29 The State at this time would thank  
30 and excuse Ms. Tomi Gravois and  
31 Mr. Kenneth Meridith.  
32

33 THE COURT:  
34

35 You are excused with the Court's  
36 thanks.  
37

38 MR. TOSH:  
39

40 Ms. Palermo and Mr. Doss are  
41 acceptable to the defendant.  
42

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THE COURT:

Please stand Ms. Palermo and Mr.

Doss.

THE CLERK:

Raise your right hand. Do you solemnly swear to try this case in a just and impartial manner to the best of your judgment and to render a verdict according to the law and the evidence?

(JURORS RESPONDED I DO)

THE BAILIFF:

No. 347, Ms. Nancy Murphy. No.  
86, Mr. Jack Sigman.

THE COURT:

You have heard the questions we have asked before concerning the presumption of innocence and the reasonable doubt concept of proof. Do both of you accord to Mr. Alexander the presumption of innocence that we have spoke of?

(JURORS RESPONDED YES)

THE COURT:

You will require the State to prove if it can beyond a reasonable doubt the guilt of Mr. Alexander

1                         in connection with the crime  
2                         of aggravated rape or any lesser  
3                         crime which I will tell you  
4                         about later on and if you find  
5                         they have presented proof  
6                         beyond a reasonable doubt that  
7                         you could find him guilty?

8                         (JURORS RESPONDED YES)

9                         THE COURT:

10                         Likewise now you will not hold it  
11                         against the defendant if he  
12                         does not speak in his own  
13                         behalf? Is that correct?

14                         (JURORS RESPONDED THAT'S CORRECT)

15                         THE COURT:

16                         You understand it will take ten of  
17                         you to make a verdict in the  
18                         matter and you understand that  
19                         at the end of the trial I will  
20                         read certain jury charges to  
21                         you. That will be the law  
22                         that I am bound by and you are  
23                         bound by. You understand that?

24                         (JURORS RESPONDED YES)

25                         THE COURT:

26                         Alright would you give us your  
27                         information please.

28                         A JUROR:

29                         My name is Nancy Murphy. I am

1                         twenty-one years old. I lived  
2                         in Jefferson Parish for two  
3                         years. I work for Speciality  
4                         Food Sales, a food broker and  
5                         I am not married.

6                         A JUROR:

7                         My name is Jack Sigman. I have lived  
8                         in Jefferson for three years  
9                         and I am a sales manager for  
10                         Associated Manufacturers Agents.  
11                         I am married and have one  
12                         child.

13                         MR. PITRE:

14                         Have either of you prospective jurors  
15                         ever served on the jury before?  
16                         Have either of you ever been  
17                         or any member of your immediate  
18                         family have been arrested? Have  
19                         either of you or any member of  
20                         your immediate family been the  
21                         victim of any crime? Do you  
22                         have any religious or moral  
23                         issues that would not allow you  
24                         to return a verdict of guilty  
25                         should the State prove its case  
26                         beyond a reasonable doubt? Is  
27                         there any reason why you can't  
28                         give the State and the defendant  
29                         a fair trial? Does anyone know

1    the defendant or the victim?  
2    The defendant being Malcolm  
3    Alexander and the victim being  
4    Betty Neff? No further  
5    questions.

6    MR. TOSH:

7    Do either of you have any relatives  
8    or know anybody that is in  
9    law enforcement?

10   A JUROR:

11   My father is a retired police officer.

12   MR. TOSH:

13   I am going to ask you the same thing  
14   I asked everyone else. The  
15   fact that your father is a  
16   retired police officer, would that  
17   have any effect on you rendering  
18   a verdict?

19   A JUROR:

20   No, sir.

21   MR. TOSH:

22   You wouldn't tend to believe a  
23   policeman just because he is a  
24   policeman?

25   A JUROR:

26   No, sir.

27   A JUROR:

28   My uncle is a Judge.

29   MR. TOSH:

1  
2       Would that fact have any bearing on  
3               any decision that you would  
4               make?

5       A JUROR:

6       No.

7       MR. TOSH:

8       The judge is going to explain to  
9               you at the end of the trial  
10          and you will have to go into  
11          the jury room and deliberate  
12          and discuss the case with each  
13          other but if you had your mind  
14          made up after discussing the  
15          facts that were presented to  
16          you you have made up your mind,  
17          can you stick by that regardless  
18          of what the other jurors  
19          decide? You have your own  
20          convictions. If you feel  
21          whether he is guilty or not  
22          guilty, you can abide by that  
23          regardless of the other jurors?

24       (JURORS RESPONDED YES)

25       MR. TOSH:

26       Do you know of any reason why you  
27          shouldn't serve? Do you have  
28          any problems? That's all the  
29          questions.

THE COURT:

1                   Mr. Pitre?

2                   MR. PITRE:

3                   They are acceptable.

4                   THE COURT:

5                   Mr. Tosh?

6                   MR. TOSH:

7                   Your Honor, the balance of the jury  
8                   panel is acceptable.

9                   THE COURT:

10                  Please stand and be sworn.

11                  THE CLERK:

12                  Raise your right hand. Do you  
13                  solemnly swear to try this  
14                  case in a just and impartial  
15                  manner to the best of your  
16                  judgment and to render a verdict  
17                  according to the law and the  
18                  evidence?

19                  (JURORS RESPONDED I DO)

20                  THE COURT:

21                  Has everyone been sworn?

22                  (JURORS RESPONDED YES)

23                  THE COURT:

24                  Alright we are going to select the  
25                  alternate juror.

26                  THE BAILIFF:

27                  No. 69, Mr. Gary Thomas.

28                  THE COURT:

29                  Mr. Thomas, you have heard the

1 comments by the Court concerning  
2 the presumption of innocence.  
3 Can you abide by that presumption,  
4 give Mr. Alexander that presump-  
5 tion of innocence, believing as  
6 he sits now without any evidence  
7 in this case that he is innocent  
8 as you and I am. The State is  
9 required to prove beyond a  
10 reasonable doubt his guilt and  
11 if they cannot prove this beyond  
12 a reasonable doubt, then you  
13 must vote for a acquittal. Can  
14 you do that?

15 A JUROR:

16 Yes.

17 THE COURT:

18 And if the State proves beyond a  
19 reasonable doubt the guilt of  
20 Mr. Alexander, could you find  
21 him guilty?

22 A JUROR:

23 Yes.

24 THE COURT:

25 In connection with this matter, Mr.  
26 Alexander does not have to take  
27 the stand if he does not take  
28 the stand, would you hold that  
29 against him or be prejudiced

1    against him?

2    A JUROR:

3    No.

4    THE COURT:

5    Do you understand that he does not  
6    have to make a defense in this  
7    matter if he does not, would you  
8    be prejudiced against him for  
9    that?

10   A JUROR:

11    No, sir.

12    THE COURT:

13    Likewise in this matter, he has been  
14    accused in the form of that  
15    accusation is a indictment. Do  
16    you believe that you still can  
17    give the presumption of innocence  
18    in spite of the fact that he has  
19    been indicted or accused?

20    A JUROR:

21    Yes.

22    THE COURT:

23    Give us your name and status, please.

24    A JUROR:

25    My name is Gary Thomas. I am a  
26    certified public accountant.  
27    I have lived in Jefferson Parish  
28    three years. I am married and  
29    have one son.

1 MR. PITRE:

2 Have you ever served on a jury before?

3 A JUROR:

4 No, sir.

5 MR. PITRE:

6 Have either of you or any member of  
7 your immediate family ever been  
8 charged with any sort of crime?

9 A JUROR:

10 No, sir.

11 MR. PITRE:

12 Has either of you or any member of  
13 your family been the victim of  
14 any crime?

15 A JUROR:

16 My father was beaten and robbed about  
17 a year ago.

18 MR. PITRE:

19 The fact that he was the victim of a  
20 crime, would that effect or  
21 influence your decision in this  
22 case?

23 A JUROR:

24 I think it would.

25 MR. PITRE:

26 The fact that your father was beaten  
27 violently would prejudice you  
28 against this defendant?

29 A JUROR:

1 I think it would.  
2

3 MR. TOSH:

4 No questions.  
5

6 THE COURT:  
7

8 Any motions, gentlemen?  
9

10 MR. TOSH:  
11

12 I move that Mr. Thomas be excused  
13 for cause.  
14

15 THE COURT:  
16

17 You are excused, Mr. Thomas.  
18

19 THE BAILIFF:  
20

21 Ms. Sheryl Robinson.  
22

23 THE COURT:  
24

25 Ms. Robinson, you have heard the  
26 questions that have been asked  
27 before. Would you accord Mr.  
28 Alexander the presumption of  
29 innocence?

30 A JUROR:  
31

32 No.  
33

34 THE COURT:  
35

36 You mean you can't believe he is  
37 innocent as he sits there now?  
38

39 A JUROR:  
40

41 No.  
42

43 THE COURT:  
44

45 Alright, step down. Call the  
46 next prospective juror.  
47

48 THE BAILIFF:  
49

1 No. 206, Mr. Joseph Sevier.

2 THE COURT:

3 You have heard the questions that  
4 you have been asked. Do you  
5 believe in the presumption of  
6 innocence? Do you presume Mr.  
7 Alexander to be as innocent as  
8 you are as he sits there accused  
9 today?

10 A JUROR:

11 Yes.

12 THE COURT:

13 Would you require the State to prove  
14 beyond a reasonable doubt in  
15 order to find him guilty?

16 A JUROR:

17 Yes.

18 THE COURT:

19 And if they do not prove him guilty  
20 beyond a reasonable doubt,  
21 would you acquit him?

22 A JUROR:

23 Yes.

24 THE COURT:

25 Do you understand that he has the  
right to remain silent and if  
he does not speak in his own  
behalf and does not make any  
defense in this case, would you

1 hold that against him?

2 A JUROR:

3 No.

4 THE COURT:

5 You understand he has been accused  
6 by a indictment? You understand  
7 that does not effect the  
8 presumption of innocence that  
9 we have talked about before?  
10 That is a mere accusation and  
11 has no weight of evidence at all?  
12 You understand that?

13 A JUROR:

14 Yes.

15 THE COURT:

16 Could you hold him clear of any  
17 prejudice?

18 A JUROR:

19 Yes.

20 THE COURT:

21 Could you give us your name and  
22 status?

23 A JUROR:

24 My name is Joseph Sevier. I am thirty-  
25 six years old. I have lived in  
26 Jefferson Parish for twelve  
27 years and I am married and have  
28 two daughters.

29 MR. PITRE:

1                   Has either you or any member of your  
2                   immediate family ever been  
3                   the victim of any sort of a  
4                   crime?

5                   A JUROR:

6                   Would a hit and run be a crime?

7                   I had three of those. About  
8                   ten years ago, one he got away  
9                   and my truck has been hit twice  
10                  in front of my house by hit and  
11                  run drivers.

12                  MR. PITRE:

13                  Would this fact effect or influence  
14                  your decision or your deliberation  
15                  in this case?

16                  A JUROR:

17                  No.

18                  MR. PITRE:

19                  Would it prejudice you against the  
20                  defendant, the fact that some  
21                  one struck your car?

22                  A JUROR:

23                  No.

24                  MR. PITRE:

25                  Have you ever served on a jury  
26                  before?

27                  A JUROR:

28                  No, I haven't.

29                  MR. PITRE:

1                   Do you know of any reason why you  
2                   couldn't give the State as well  
3                   as the defendant a fair trial?

4                   A JUROR:

5                   No.

6                   MR. TOSH:

7                   Are you related to anybody in law  
8                   enforcement?

9                   A JUROR:

10                  No, I am not.

11                  MR. TOSH:

12                  You have been in the Court when I asked  
13                  all of the questions. Would your  
14                  answer vary on any of the questions  
15                  to such an extent that you could  
16                  not be able to serve?

17                  A JUROR:

18                  No.

19                  MR. TOSH:

20                  The fact that you are a alternate  
21                  and may not be called upon to  
22                  deliberate the final outcome of  
23                  this matter, would that prevent  
24                  you from listening to the  
25                  evidence?

26                  A JUROR:

27                  No.

28                  THE COURT:

29                  Any challenges?

1  
2 MR. PITRE:

3 No challenges.

4 MR. TOSH:

5 He is acceptable, Your Honor.

6 THE CLERK:

7 Raise your right hand please. Do  
8 you solemnly swear to try this  
9 case in a just and impartial  
10 manner to the best of your  
11 judgment to render a verdict  
12 according with the law and  
13 evidence?

14 A JUROR:

15 I do.

16 (COURT RECESSED)

17 (JURY RETURNED)

18 THE COURT:

19 You waive the polling, gentlemen?

20 MR. TOSH:

21 Yes, Your Honor.

22 MR. PITRE:

23 Yes, Your Honor.

24 THE COURT:

25 We have talked in generalities  
26 concerning the presumption of  
27 innocence and the reasonable  
28 doubt of proof, that is required  
29 for the State to show guilt of  
Mr. Alexander. Now in connection

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with this matter it is super important that we understand that there is no absolute proof but the simple question of reasonable doubt. Proof beyond a reasonable doubt, if you have a reasonable doubt in your mind as to the guilt of Mr. Alexander after all the trial is presented with reference to whether or not there was actual anal or vaginal intercourse and whether or not that this lady was forced to have sexual relationship with the defendant, whether she defended herself to the utmost or whether she had a fear. She was such great fear of major bodily harm. She acquiesed and let the man force her to sexual intercourse. These are some of the essential elements of proving the matter which Mr. Pitre will clearly outline to you and then you should find the man guilty. Then if they are not proven to you beyond a reasonable doubt, you should acquit the man. Now first we

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will have a reading of the indictment and the plea. Likewise we will then have the opening statements by counsel. That is not opening arguments. They are opening statements by counsel. Now Mr. Pitre as the district attorney for the State of Louisiana, must make an opening statement and tells you what he intends to prove. Now it is just a statement on his part. If he says he intends to prove something by a witness or by evidence and doesn't do that, it is as though he hasn't said it. It is not opening argument. They are not trying to argue at this time and you will recognize that after we go into trial. After the opening statements by Mr. Pitre which he will give you some guide like a roadmap of where he inteds to go. It is just like a map and if he doesn't end up going that way, then it is for you to decide after he gives his opening statement. Mr. Fosh

1                   will have an opportunity to make  
2                   an opening statement. He does  
3                   not have to make an opening  
4                   statement simply because he  
5                   does not have to put on a defense,  
6                   but again we have discussed this  
7                   and this should not trouble you  
8                   if he does not make an opening  
9                   statement. Then we will proceed.

10                  Then after that to go into the taking  
11                  testimony. You will notice that  
12                  the State goes first because  
13                  they have the burden of proof.  
14                  They must prove it. If we  
15                  started with the defense, first  
16                  of all they would have to say  
17                  there are no witnesses and that  
18                  would be the end of the game.  
19                  So we start with the State who  
20                  must put on evidence to prove  
21                  to you beyond a reasonable doubt  
22                  the guilt of this man and then  
23                  after that is over , then you  
24                  will have the defense put on  
25                  their case if they so desire  
26                  to do so. Then because the  
27                  State went first, it has the  
28                  opportunity to go last with the  
29                  preservation of rebuttal evidence.

1                   Thereafter there will be the  
2                   so-called closing arguments.  
3                   The State will make a beginning  
4                   closing argument, then Mr. Tosh  
5                   will make a statement if he  
6                   desires to do so. Then thereafter  
7                   the State will have the opportunity  
8                   to make the final closing  
9                   argument because it has the  
10                  burden of proving the guilt  
11                  of Mr. Alexander. We will proceed  
12                  in that order. Thereafter I  
13                  will give you jury charges that  
14                  will take about twenty or thirty  
15                  minutes to read to you and we  
16                  will turn the matter over for  
17                  deliberation and I say to you  
18                  now you are being judges in the  
19                  case, true judges in this case  
20                  because no matter what I think  
21                  after the trial doesn't make a  
22                  darn bit of difference. What  
23                  does make a difference is what  
24                  you all do so I ask you for your  
25                  attention and I give you one of  
26                  tricks of the trade in the  
27                  judging business and that is to  
28                  listen and watch the witnesses  
29                  and listen. You are not allowed

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to take notes. You just have to listen and absorb and then after the whole trial is turned over to you, you are to go in and discuss the matter and I point out to you again wait until you have heard the last shread of evidence before you start making up your mind because if you listen to two witnesses or three witnesses and you make up your mind that those are good witnesses; the next witness that come in have a little bit tougher time. You might not be starting at ground zero. You are starting at about minus ten. So he has got to go a little bit farther than if he were the first in line so wait until you hear them all and then weight them altogether. I know that is going to be seemingly difficult for you to do. I have done it now for six years myself and I have had a number of cases decided in the last four or five minutes, after several days of testimony and trial so wait until you hear all of the

1                   evidence before you first of all  
2                   start making up your mind and  
3                   most important not to talk about  
4                   it to one another because if you  
5                   all don't agree that witness  
6                   one is probably correct than if  
7                   witness No. 2 comes along and  
8                   tells the story a little different  
9                   then you will say No. I wasn't  
10                  that good so wait until you  
11                  hear one and two and four and  
12                  five and how many they have so  
13                  with that in mind I am going to  
14                  turn it over to you for the  
15                  reading of the indictment.

16                  THE CLERK:

17                  The State of Louisiana, Parish of  
18                  Jefferson, 24th Judicial District  
19                  Court, the Grand Jurors of the  
20                  State of Louisiana, duly impaneled  
21                  and sworn in and for the body of  
22                  Parish of Jefferson in the name  
23                  and by the authority of the said  
24                  State upon their oath present that  
25                  one Malcolm J. Alexander, late of  
26                  the Parish of Jefferson on or  
27                  about the 8th day of November, in  
28                  the year of Our Lord, one thousand  
29                  nine hundred and seventy-nine,

1                   with force and arms in the Parish  
2                   of Jefferson aforesaid and within  
3                   the jurisdiction of the 24th  
4                   Judicial District Court of  
5                   Louisiana, in and for the Parish  
6                   of Jefferson aforesid, then and  
7                   there being committed aggravated  
8                   rape upon Betty S. Neff, contrary to  
9                   the form of the Statute of the  
10                  State of Louisiana, in such case  
11                  made and provided and against the  
12                  peace and dignity of the State.  
13                  Signed Ronald Louniet, Assistant  
14                  District Attorney on May 2, 1980.  
15                  The indictment was filed with  
16                  Carroll  
17                  the Deputy Clerk, A.  
18                  Marse for aggravated rape, R.S.  
19                  14:42, a true bill on September  
20                  3, 1980. The defendant Malcolm  
21                  Alexander appeared in open court  
22                  represented by counsel and  
23                  entered a plea of not guilty to  
24                  the said charge.

25                  THE COURT:

26                  Mr. Pitre?

27                  MR. PITRE:

28                  Ladies and gentlemen, my name is Bob  
29                  Pitre. I am here to prosecute  
                    on behalf of the State. Louisiana

1  
2 Law obligates me to make an  
3 opening statement to explain  
4 the nature of the charge and  
5 the kind of evidence the State  
6 is going to present to you to  
7 prove the defendant guilty  
8 beyond a reasonable doubt. The  
9 defendant is charged with  
10 aggravated rape which is defined  
11 in 14:42 in Louisiana Revised  
12 Statute and it reads as follows:  
13 Aggravated rape is a rape committed  
14 where the anal or vaginal  
15 sexual intercourse is deemed  
16 to be without the lawful consent  
17 of the victim because it is  
18 committed under any one or more  
19 of the following circumstances:  
20 One, where the victim resists  
21 the act to the utmost, but whose  
22 resistance is overcome by force  
23 or two, where the victim is  
24 prevented from resisting the  
25 act by threats of great and  
26 immediately bodily harm  
27 accompanied by apparent power  
28 of execution or three, where the  
29 victim is under the age of twelve  
years. Now the facts of this

1                   particular case will not be  
2                   concerned with that under twelve  
3                   years of age. We will be  
4                   concerned with the first and  
5                   second subsections. As far as  
6                   the evidence the State is going  
7                   to use the State's primary  
8                   evidence are going to be  
9                   witnesses that are going to sit  
10                  in that chair and are going to  
11                  swear to tell the truth and in  
12                  addition to the testimony of  
13                  witnesses we are going to  
14                  introduce certain physical  
15                  evidence that we spoke about  
16                  and may be documents and the way  
17                  we expect the trial to proceed.  
18                  The first part I am going to  
19                  call police officers. I am  
20                  going to call the technicians  
21                  who took the photographs, who  
22                  gathered certain bits of  
23                  evidence. They are not going  
24                  to come in and point the finger  
25                  at Malcolm Alexander and say  
26                  he raped Betty Neff. They are  
27                  going to come in and they will  
28                  testify as to their participation  
29                  in the trial. The officer that

1                   took the photographs is going  
2                   to tell you where he took the  
3                   photographs, where, when, and  
4                   why and what is shown in the  
5                   photographs. We are going to  
6                   call the doctor who examined  
7                   Betty Neff. We are going to call  
8                   a technician as an expert, a  
9                   man who conducted certain tests.  
10                  We are going to call the victim.  
11                  She is going to tell you what  
12                  happened. I am not going to  
13                  tell you that you don't need to  
14                  pay attention to all of the  
15                  witnesses. You should pay  
16                  attention. In a rape case,  
17                  you usually only have one  
18                  witness and that is the victim  
19                  and I ask that you do pay  
20                  careful attention to all of  
21                  witnesses. Pay particular  
22                  attention to the victim. There  
23                  are not going to be any witnesses  
24                  that are going to say we saw  
25                  Malcolm Alexander rape Betty  
26                  Neff. The only one we expect  
27                  to say that is Betty Neff. The  
28                  other witnesses that are going  
29                  to testify are corroborating

1                   certain evidence that Betty  
2                   Neff is going to give you from  
3                   the stand and at the conclusion  
4                   of the trial we are going to  
5                   ask that you return a verdict  
6                   of guilty.

7                   THE COURT:

8                   Mr. Tosh, would you like to make an  
9                   opening statement, sir?

10                  MR. TOSH:

11                  Your Honor, we would waive the  
12                  opening statement and rely on  
13                  the presumption of innocence.

14                  THE COURT:

15                  Call your first witness, sir.

16                  MR. PITRE:

17                  The State is going to call Officer  
18                  Paparone.

19                  MR. TOSH:

20                  Your Honor, at this time I would like  
21                  to move the Court for a  
22                  sequestration of the witnesses.

23                  THE COURT:

24                  Any persons who are going to be a  
25                  witness in this matter are  
26                  requested and directed to step  
27                  into the hallway. There to  
28                  remain until you are called  
29                  in connection with this case.

1            You are directed especially not  
2            to discuss your testimony at any  
3            time with any other party in  
4            connection with the matter from  
5            this moment forward less and  
6            except the attorneys involved.  
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1                   DEPUTY RALPH PEPERONE, Gretna, Louisiana,  
2 was called as a witness and after having first been  
3 duly sworn was examined and testified on his oath,  
4 as follows:

5                   DIRECT EXAMINATION

6                   MR. PITRE:

7                   Q.      Officer Peperone, by whom are you employed?

8                   A.      Jefferson Parish Sheriff's Office.

9                   Q.      How long have you been so employed?

10                  A.     Five and a half years.

11                  Q.     Do you have occasion to participate in the  
12                         alleged aggravated rape of one Betty Neff?

13                  A.     Yes.

14                  Q.     Would you tell us when and where the offense  
15                         took place to your knowledge?

16                  A.     It was at 363 Whitney Avenue, Gretna; it was  
17                         November 8, 1979, at about twelve  
18                         thirty-two p.m.

19                  Q.     This was near the middle of the day?

20                  A.     Yes.

21                  Q.     You were one of the first officers to arrive  
22                         on the scene?

23                  A.     Yes, sir.

24                  Q.     Could you tell us what you observed when you  
25                         first arrived?

26                  A.     When I first reached the scene I noticed the  
27                         construction of the building. It was a  
28                         one story antique shop. I walked inside  
29                         and met Ms. Neff. She was very

1    upset and battered. She had a lot to  
2    tell me. She related that---.

3    MR. TOSH:

4    Objection, Your Honor.

5    MR. PITRE:

6    Q. Don't tell us what she told you. Would you  
7    just tell us what you did in connection  
8    with anything she may have told you during  
9    the course of your investigation.

10                                         A. Ms. Neff gave me the description of a subject  
11    which I had already received from  
12    headquarters while in route to the scene.  
13    A description of the perpetrator was  
14    dispatched.

15                                         Q. Did you broadcast any description?

16                                         A. I reinforced the initial description.

17                                         Q. Would you give us the description that you  
18    broadcast?

19                                         A. Yes. A black male, twenty to twenty-four years  
20    old, six foot tall, a 165 to 170 pounds.  
21    A navy-type blue watch hat, black wind-  
22    breaker with a red emblem on the left  
23    breast. He had a blue shirt, blue jeans,  
24    slight beard, neat appearance.

25                                         Q. How long were you on the scene at that  
26    location?

27                                         A. Totally I was there about an hour and a half.

28                                         Q. Subsequent to your arrival, other officers  
29    arrived?

- 1 A. Yes, sir.
- 2 Q. Could you tell us what officers came there?
- 3 A. Two of my supervisors, Sgt. Jerry Karl and I  
4 believe Lt. Dorsey followed by ---.
- 5 MR. TOSH:
- 6 Your Honor, at this time we are going  
7 to object to the reading of  
8 anything.
- 9 THE COURT:
- 10 Lay a proper foundation. I am  
11 going to sustain that objection.  
12 Turn the report over. Please  
13 don't read from it.
- 14 THE WITNESS:
- 15 Followed by Technician Morin and  
16 Detective DeNoux.
- 17 MR. PITRE:
- 18 Q. While you were there did you observe Technician  
19 Morin doing anything?
- 20 A. Yes, Detective Morin filmed the scene and  
21 collected some evidence.
- 22 Q. You were present when Detective Morin photographed  
23 the scene?
- 24 A. Yes, sir, I was.
- 25 Q. What I have previously marked for identification  
26 as S-1 through S-11, I ask you to look  
27 at the photographs and tell me if you can  
28 identify them?
- 29 A. Yes, sir.

- 1 Q. Would you start with the photographs that is  
2 marked S-1?
- 3 A. S-1 is the front of the antique shop. S-2  
4 is the view to the shop through the front  
5 door out to the street. S-3 is a work  
6 table with a white cloth that was collected  
7 as evidence. S-4 is again the same table.  
8 You are getting a different view of the  
9 cloth, including the back wall of the  
10 building. That is also the check-out  
11 area of the shop. S-5 is part of bathroom  
12 floor where the crime which alleged took  
13 place. S-6 is again a shot into the  
14 bathroom showing the items used to block  
15 the door. S-7 appears to be a shot from  
16 within the bathroom down the hall. S-9  
17 is a shot of the back door which is barred  
18 from the inside and locked. S-10 is a  
19 shot of the interior of the shop showing  
20 the door leading into the hallway from  
21 the shop itself to the back hallway.  
22 S-11 is another shot of the bathroom  
23 itself, leaving a bobbypin and another  
24 piece of evidence on the floor.
- 25 Q. Were you present when those photographs were  
26 taken?
- 27 A. Yes, sir, I was.
- 28 Q. Do they accurately depict the scene which are  
29 shown on these photographs?

- 1 A. Yes, sir.
- 2 Q. During the time that you were still on the  
3 premises and conducted the investigation  
4 at the scene, did anything unusual take  
5 place?
- 6 A. Yes, sir, one of the assisting units brought  
7 back a person fitting the description of  
8 the perpetrator which was within the first  
9 ten minutes that we were there.
- 10 Q. Would you describe the person that was brought  
11 back to the scene?
- 12 A. Yes, sir. He was a black male about a hundred  
13 seventy pounds, six foot tall. A clean  
14 shaven man, short hair, dressed in jeans  
15 and a black windbreaker. The windbreaker  
16 did not have a emblem on it. We asked  
17 Mrs. Neff to look at the subject and we  
18 were about twenty feet away from the man  
19 looking through a window. She definitely  
20 stated that was not the man at all.
- 21 Q. The first man that was brought back was it  
22 Malcolm Alexander?
- 23 A. No, sir.
- 24 Q. Did you conduct any other investigation at  
25 any other location?
- 26 A. No, sir.
- 27 Q. That was the extent of your participation?
- 28 A. Yes.

29 MR. FITRE:

1                   No further questions.

2                   CROSS EXAMINATION

3                   MR. TOSH:

4                   Q.     Officer, when you were given the initial  
5                   description of the alleged perpetrator  
6                   was a description of any mode of  
7                   transportation given?

8                   A.     Yes, sir, an orange ten-speed English racer  
9                   type bike.

10                  Q.     The suspect that was brought back to the  
11                  scene, you said it was ten minutes he  
12                  arrived, was that person on a orange ten-  
13                  speed bike?

14                  A.     Yes, sir, he was.

15                  Q.     Did you observe personally the condition of  
16                  his pants? Were his pants unzipped?

17                  A.     Not that I know of.

18                  Q.     You didn't actually bring him any place. You  
19                  were at the scene?

20                  A.     I was at the scene, yes.

21                  MR. TOSH:

22                  No further questions.

23                  RE-DIRECT EXAMINATION

24                  MR. PITE:

25                  Q.     The person that was brought back to the scene  
26                  completely filled the description of  
27                  that broadcast?

28                  A.     No, sir, he did not have the emblem on his  
29                  jacket and he was clean shaven.

1 Q. About how long after the broadcast went out  
2       that he was brought there?

3 A. About ten minutes at the longest.

4       MR. PITRE:

5       No further questions.

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E. 164

1                   DEPUTY LAWRENCE MORIN, 133 Gardenia Lane,  
2 was called as a witness and after having first been  
3 duly sworn was examined and testified on his oath,  
4 as follows:

5                   DIRECT EXAMINATION

6 MR. PITRE:

7 Q. Officer, can you tell me by whom you are  
8                   employed?

9 A. Jefferson Parish Sheriff's Office.

10 Q. In what capacity?

11 A. A crime scene technician.

12 Q. How long have you been so employed?

13 A. Four years as a crime scene technician.

14 Q. During your employment with the Sheriff's  
15                   office, did you have occasion to partici-  
16                   pate in the investigation of the alleged  
17                   aggravated rape of Betty Neff?

18 A. Yes, sir, I did.

19 Q. Could you tell us what you did?

20 A. When I arrived at the scene I collected evidence  
21                   and took photographs.

22 Q. And where was the scene and the date?

23 A. The 8th of November, '79, at 363 Whitney.

24 Q. Do you recall at what time you arrived at  
25                   the scene?

26 A. At approximately 12:30 p.m.

27 Q. In the afternoon?

28 A. Yes.

29 Q. Could you tell us what you did at that location?

- 1 A. Initially I photographed the scene and  
 2 collected evidence.  
 3 Q. When you say collected evidence, what sort of  
 4 evidence?  
 5 A. A sample of hairs from the floor in the  
 6 bathroom. A towel on the counter like an  
 7 office area, of the business.  
 8 Q. The items that you collected, did you tell us  
 9 what you did with it?  
 10 A. They were turned over to the crime lab for  
 11 analysis.  
 12 Q. Those eleven photographs in front of you marked  
 13 S-1 through S-11 for identification,  
 14 would you look at them and tell us if you  
 15 can identify them?  
 16 A. Yes, sir, these are the photographs that I  
 17 took on that day.  
 18 Q. Do they actually depict the scene shown in  
 19 these photographs?  
 20 A. Yes, sir, they do.  
 21 Q. On that particular day, November 8, 1979, did  
 22 you go to any other locations to perform  
 23 any other services in connection with  
 24 this case?  
 25 A. No, sir.  
 26 Q. On any other date, did you perform any other  
 27 services in connection with the investigation?  
 A. Yes, sir, I took some photographs of a line-up  
     at the correctional center.

1 Q. I am going to show you some photographs marked  
2 for identification S-12 through S-16  
3 and I ask you to look at them and tell  
4 me if you can identify them, please?

5 A. Yes, sir. These are the photographs which  
6 I took.

7 Q. Do those photographs depict the scene at the  
8 time?

9 A. Yes.

10 Q. Other than what you testified to, did you  
11 play any other part in this investigation?

12 A. No, sir.

13 MR. PITRE:

14 No further questions.

15 THE COURT:

16 Mr. Tosh?

17 CROSS EXAMINATION

18 MR. TOSH:

19 Q. Officer, what is your function when you  
20 collect evidence at the scene, what  
21 generally do you do with it? For what  
22 purpose?

23 A. For comparison and analysis at the crime lab.

24 Q. So you picked up certain items at the scene  
25 and sent them to the crime lab for  
26 analysis?

27 A. Yes, sir.

28 Q. You didn't actually participate in any of  
29 these analysis?

1  
A. No, sir.  
2

3 MR. TOSH:  
4

5 No further questions.  
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7 MR. PITRE:  
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9 No further questions.  
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1                   O'NEIL DENOUX, JR., 290 Huey P. Long  
2                   Avenue, Gretna, Louisiana, was called as a witness  
3                   and having first been duly sworn was examined and  
4                   testified on his oath, as follows:

5                   DIRECT EXAMINATION

6                   MR. PITRE:

7                   Q. Could you tell us by whom you are employed?

8                   A. Jefferson Parish Sheriff's Office.

9                   Q. In what capacity?

10                  A. I am a homicide detective.

11                  Q. How long have you been so employed?

12                  A. One year, sir.

13                  Q. Did you have occasion to participate in an  
14                    investigation of the alleged rape of  
15                    Betty Neff on November 8, 1979?

16                  A. Yes, sir, I did.

17                  Q. Were you considered the principal officer  
18                    in charge?

19                  A. Yes, sir.

20                  Q. And would you tell us what happened from the  
21                    time you first came to the investigation?

22                  A. Beginning with the arrival at the scene?

23                  MR. PITRE:

24                  Yes.

25                  THE WITNESS:

26                  We arrived at the scene about 12:30

27                  or 12:45 that day. Interviewed

28                  Mrs. Neff and we brought her

29                  to be examined by Dr. Raviotta

1    P. Edward Hebert Hospital.  
2    Secured a statement from Mrs.  
3    Neff and we constructed a  
4    composite drawing the alleged  
5    perpetrator. She also viewed  
6    numerous photographs while at  
7    the investigation division she  
8    identified no one that day.

MR. PIERRE:

Q. While at the scene on Whitney Avenue were you present when any suspect might have been brought there?

A. No, sir, I was not. I did find out his identity and showed a picture of him to her at a later date.

Q. Would you tell us about that?

A. Yes, sir, subsequent to the initial day of the investigation I talked to one of the police officers who was on the scene before I was on the scene and I believe that was Sgt. Sherman of the Sheriff's Office and he stated that when they had brought this first man back to the scene he had gotten the man's name. He gave me the man's name. I believe it was Larry Ledet. I secured a photograph of Mr. Ledet and made a line up or six color photographs and showed it to Mrs. Neff later and she said positively that was not the man. It was none of the men in the

1 photographs.

2 Q. You said that you took Mrs. Neff to Edward  
3 Hebert Hospital?

4 A. Yes, sir, I believe so.

5 Q. I show you two photographs which are marked  
6 for identification S-17 and S-18 and ask  
7 you to look at them and tell me if you  
8 can identify what is shown in those  
9 photographs?

10 A. Yes, sir. I can. This is the victim, Mrs.  
11 Neff. This is taken at our office of the  
12 date that it occurred.

13 Q. You were present when these photographs were  
14 taken?

15 A. Yes, sir, I was.

16 Q. Does it actually depict what is shown on the  
17 photographs at the time you were there?

18 A. Yes, sir.

19 Q. You told us about the photographic line up.  
20 The man that was brought back from the  
21 scene; was there any other photographic  
22 line up conducted during the course of  
23 the investigation?

24 A. Yes, sir, there was. There was one in  
25 particular that I remember. A man that  
26 Mrs. Neff had seen later in the month  
27 from a distance and she thought this man,  
28 his general appearance might have been the  
29 man. She wasn't sure. She didn't see

1           his face. She just saw a figure from  
2           the distance. The man was employed at  
3           Superior Pontiac. I found through  
4           investigation, the man's name. I secured  
5           a photograph of the man, showed her a  
6           line up consisting of five or six photo-  
7           graphs. I think it was five photographs  
8           with that man's photograph in it and  
9           she said no, that wasn't the man either.  
10          No body in the photographs looked like  
11          the man. Further investigation revealed  
12          the name of Malcolm Alexander as a possible  
13          suspect on the 8th of February. I showed  
14          Mrs. Neff five color photographs including  
15          the photograph of Malcolm Alexander at  
16          which time Mrs. Neff without hesitation  
17          identified the photograph of Malcolm  
18          Alexander as the man who perpetrated a  
19          rape on her.

20         Q. These photographs that you just described, will  
21           you tell us what you did with them?

22         A. Yes, sir. I filed them as evidence with the  
23           criminal court's office.

24         Q. I have here a envelope which bears the Number  
25           31108 with the receipt on it. Could you  
26           tell us if you can identify that please?

27         A. Yes, sir.

28         Q. Would you open the envelope and could you tell  
29           us if you can identify what is contained

1                   theresint?

2       A. Yes, sir, these are the photographs that I  
3                   showed Mrs. Neff on the 8th of February  
4                   and the 24th of March. It is marked the  
5                   24th of March, 1980, at 1:09 p.m. That  
6                   is when she viewed them and signed the  
7                   back. She signed the back of the photograph  
8                   of Malcolm Alexander and initialed the  
9                   other photographs.

10     Q. Were there any other identification procedures  
11                   that you attended involved in this  
12                   case?

13     A. Yes, sir. There was a physical line up. I  
14                   wasn't in the room at the time. I believe  
15                   Detective Nuzzolillo was there. I was  
16                   called away at Court. I secured a  
17                   statement from Mrs. Neff after that  
18                   line up. physical line up at which time  
19                   she said----.

20                  MR. TOSH:

21                   Objection.

22                  THE COURT:

23                   Sustained.

24                  THE WITNESS:

25                   She identified Malcolm Alexander as  
26                   the perpetrator positively.

27                  MR. TOSH:

28                   Your Honor, I object. He wasn't at  
29                   the lineup. He just testified

1   to that.

2   THE COURT:

3   You weren't at the line up?

4   THE WITNESS:

5   I wasn't at the line up, sir, when  
6   they put the numbers on the  
7   men, but I was not there when  
8   she pointed him out in the  
9   line up. I had gone out and I  
10                                        had came back.

11   THE COURT:

12   You came back and then what?

13   THE WITNESS:

14   I took her statement.

15   THE COURT:

16   I am going to overrule your objection.

17   MR. PITRE:

18   Q. Officer, other than the line up procedures  
19   were there any other actions that you  
20   had taken in this investigation?

21   A. Yes, sir, I filed charges against Malcolm  
22   Alexander for the crime after I secured  
23   a statement from Mrs. Neff.

24   Q. Did you in fact, physically arrest the  
25   defendant?

26   A. Yes, sir.

27   CROSS EXAMINATION

28   MR. TOSH:

29   Q. You stated that Mrs. Neff saw somebody get on

1           a bus or from a distance who was later  
2           found out to be a employee at Superior  
3           Pontiac. Did she call on you at the  
4           detective bureau to tell you about this  
5           incident?

6       A. Yes, sir.

7       Q. Did she relay the information she thought it  
8           was the perpetrator?

9       A. No, sir, she said that she saw someone that  
10           looked like the man.

11       Q. Could she identify the man?

12       A. No, sir, I don't believe she saw his face at  
13           the time. She just saw a general  
14           description of the man.

15           MR. TOSH:

16           That's all the questions.

17           THE COURT:

18           Any re-direct?

19           MR. PITRE:

20           No, sir.

1 MARCO MUZZOLILLO, 11433 N. Bengal Road,  
2 Metairie, Louisiana, was called as a witness and  
3 after having first been duly sworn was examined and  
4 testified on his oath, as follows:

5 DIRECT EXAMINATION

6 MR. PITRE:

7 Q. Officer, could you tell us by whom you are  
8 employed?

9 A. Jefferson Parish Sheriff's Office.

10 Q. In what capacity?

11 A. I work with the Criminal Investigation Division.

12 Q. And how long have you been employed with the  
13 Sheriff's Office?

14 A. About seven years.

15 Q. During the course of your employment did you  
16 have occasion to participate in the  
17 investigation of the alleged aggravated  
18 rape of Betty Neff?

19 A. I did.

20 Q. Could you tell us what you did?

21 A. I was asked by Detective Benoux to assist  
22 him with the physical line up in the  
23 Jefferson Correctional Center.

24 Q. Could you tell us how a line up is conducted?

25 A. Basically you get a suspect and you want to  
26 prepare a line up and you pick out four  
27 or five additional suspects that generally  
28 fit his description. They are dressed  
29 in similar clothing. In our case we used

1 jumpsuits. We have them at the center  
2 that we use. They are lined up and  
3 usually we have the attorney present and  
4 he lines them up in any particular order  
5 he wants. Then we ask the victim to  
6 step inside and she views them. In this  
7 particular case I had them one at a  
8 time by number, step forward, walk to the  
9 center of the stage, turn around and go  
10 back to the original position and I had  
11 them turn in each direction, moving  
12 backward and face forward.

13 Q. The people that stand in line up do they  
14 usually photograph them?

15 A. Yes, they are always photographed.

16 Q. They are always photographed?

17 A. Right.

18 Q. Were they photographed in this case?

19 A. Yes.

20 Q. The photographs exhibits S-12 through 16 for  
21 identification, can you identify these?

22 A. These are the photographs.

23 Q. You were present when any identification was  
24 made?

25 A. Yes.

26 Q. Could you tell us who Mrs. Neff identified?

27 A. She identified Malcolm, I believe he was  
28 standing No. 4 in the line up. Each one  
29 has a number.

1 MR. PITRE:

2 That's all the questions.

3 MR. TOSH:

4 I have no questions.

5 MR. PITRE:

6 In connection with the testimony of  
7 the previous witness, we ask  
8 that the items marked S-1  
9 through S-7 and S-9 through  
10 S-18 be introduced into  
11 evidence.

12 MR. TOSH:

13 I have no objections to the ones  
14 that have already been marked.

15 THE COURT:

16 Now, ladies and gentlemen, these  
17 documents have been admitted  
18 into the record and I will permit  
19 you to review these. The mere  
20 fact that they have been admitted  
21 into the record does not in any  
22 way entertain what the Court  
23 thinks whether they are good,  
24 bad, or indifferent. As far as  
25 procedure in this case is  
26 concerned, it simply means that  
27 they have met the test for  
28 photographs. The main test  
29 on photographs is that they do

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depict the scene, the things  
that they have taken a picture  
of and that precludes the  
possibility of any of the  
touching up of the photographs  
so we eliminate that. He met  
the test. He testified he  
didn't touch them up or one  
thing or another, but the mere  
testimony that it depicts the  
scene as long as they are not  
inflammatory, then the Court  
may admit it into the record.  
Now I have ruled that they have  
met the evidentiary test, but  
beyond that it is up to you to  
decide whether it does any thing  
in your mind as far as this case  
is concerned. Alright, will  
the Bailiff give the photographs  
to the jury.

MR. PITRE:

while the jury is reviewing those  
photographs, I am going to mark  
these as line up photographs as  
S-19 and offer them into  
evidence.

MR. TOSH:

Your Honor, I am going to object to

1                         the admission of these based on the  
2                         fact that the proper foundation  
3                         has not been laid.

4                         THE COURT:

5                         I am going to overrule the objection.

6                         It seems to me what we are talking  
7                         about here is I.D. If it were  
8                         evidence at the scene I would  
9                         probably sustain the objection.

10                        MR. TOSH:

11                        With all due respects, I respectfully  
12                        object.

13                        THE COURT:

14                        At this time the Court is advised  
15                        that we have an expert witness  
16                        on the way, a physician. I  
17                        don't know if he is going to  
18                        be qualified as an expert but  
19                        we are going to take this  
20                        moment while we are waiting for  
21                        him to explain to you what an  
22                        expert is. An expert is a  
23                        person such as a doctor or an  
24                        engineer or an architect or a  
25                        metallurgist or something like  
26                        that. A particular expertise  
27                        in a certain area. If the  
28                        Court is satisfied that he is  
29                        an expert then he can give

1    opinion testimony. No body else  
2    but an expert can give you  
3    opinion testimony. The only  
4    testimony that any other person  
5    can give is what they saw  
6    themselves.What I am saying to  
7    you is this man if qualified will  
8    become an expert and will be  
9    able to give you opinion testimony.  
10   Now that doesn't make him the  
11   judge in the case. It just  
12   means you can give whatever weight  
13   to him that you see fit. If  
14   you are impressed of what he says  
15   is true and correct, then you  
16   give that weight. If you are not  
17   too satisfied with that, then  
18   you make your own judgment and  
19   sometimes this information that  
20   I am giving, the expert takes  
21   it as an insult and I try to avoid  
22   same. This before the expert  
23   witness when I can. So we will  
24   have a physician to come in and  
25   if he qualifies as an expert  
26   I will tell you and you will  
27   weigh his testimony the same  
28   as you weigh these photographs.  
29   The mere fact that they are

1 admitted into the record and  
2 the mere fact that he testifies  
3 doesn't mean that it is good  
4 bad, or indifferent. You are the  
5 ones that decides that and no  
6 one can ever demand of you to  
7 tell why. The only question  
8 that will be asked of you is  
9 whether you voted yes or no  
10 for the verdict so we are going  
11 to recess at this time.

12 (COURT RECESSED)

13 (COURT RETURNED)

14 THE COURT:

15 You waive the polling of the jury?

16 MR. PITRE:

17 Yes, Your Honor.

18 MR. TOSH:

19 Yes, Your Honor.

1 DR. JOHN RAVIOTTA, 3439 Kable Drive, New  
2 Orleans, Louisiana, was called as a witness and after  
3 having first been duly sworn was examined and  
4 testified on his oath, as follows:

5 DIRECT EXAMINATION

6 MR. PITRE:

7 Q. Doctor, are you a medical doctor?

8 A. Yes, sir, I am.

9 MR. PITRE:

10 Your Honor, the State intends to  
11 qualify the doctor as an expert  
12 in the field of gynecology.

13 THE COURT:

14 You have any objection, Mr. Tosh?

15 MR. TOSH:

16 I have no objection, Your Honor.

17 THE COURT:

18 You are gynecologist, board certified?

19 THE WITNESS:

20 Yes.

21 THE COURT:

22 This means he has gone as far as  
23 he can go in preparation for  
24 his profession. First of all  
25 a doctor and secondly a  
26 specialist in the field of  
27 gynecology. The Court is  
28 certifying him as an expert  
29 and as I explained to you

1 previously, he can give opinion  
2 testimony and as I explained  
3 to you earlier you are to weigh  
4 it yourselves.

5 MR. PITRE:

6 Q. Doctor, did you have occasion on November 8,  
7 1979, to examine one Betty Neff?

8 A. Yes, sir. I did.

9 Q. Would you tell us the purpose of that  
10 examination?

11 A. The victim was brought to P. Edward Hebert  
12 Hospital by the Sheriff's Department with  
13 a history of having been physically  
14 assaulted at approximately 11:45 a.m.  
15 the morning of the 8th of November. I  
16 examined her within a couple of hours  
17 after the episode had occurred. I took  
18 a history from the lady and I did a  
19 physical examination and took the  
20 appropriate specimens for evaluation of  
21 her sexual assault.

22 Q. Could you tell us the history she gave?

23 A. Well, she gave a history that at about 11:45  
24 that morning a young black man in his  
25 early twenties appeared----

26 MR. TOSH:

27 I am going to object to any descrip-  
28 tion along these lines.

29 THE COURT:

1                         Alright.

2                         THE WITNESS:

3                         The person entered the store where  
4                         she was working at and he had  
5                         a pistol---.

6                         MR. TOSH:

7                         Your Honor, again I am going to  
8                         object to anything to do other  
9                         than the medical aspect of it.

10                        THE COURT:

11                        I am going to sustain that. Just  
12                        respond to the questions  
13                         concerning what you found.

14                        MR. PITRE:

15                        Q.     Would you give me your physical observations?

16                        A.     The physical observations were compatible with  
17                         the history that the patient gave.

18                        Q.     Could you tell us what you observed as far as  
19                         the physical appearance of the victim?

20                        A.     The patient was notably distraught. She was  
21                         quite anxious, but she was oriented,  
22                         conversant, not unable to give what I  
23                         consider a reliable medical history.

24                        Her vital signs were not unusual except  
25                         for a slight increase in her pulse rating  
26                         which considering an anxious condition,  
27                         she was in, wouldn't have been unusual.

28                        She had a raised area on the left side  
29                         of her back, part of her head, about

1                       two inches in diameter which  
2                       was elevated and tender. She  
3                       had some scratch marks and  
4                       bruises on her left arm. She  
5                       had bruises on both of her  
6                       pelvic bones in the front. There  
7                       were bruises on her thigh.

8 Q. This raised area you spoke of behind the  
9                       left ear would this commonly be called  
10                      a hickey, the lump?

11 A. Yes,

12 Q. I am going to show you two photographs,  
13                      doctor, marked as S-17 and S-18 that have  
14                      been introduced into evidence and ask  
15                      that you look at the photographs and tell  
16                      us if you can identify what is shown?

17 A. This is the patient that I examined. This  
18                      is Mrs. Neff.

19 Q. And on S-17?

20 A. Yes,

21 Q. And what is this area?

22 A. This is a scratch mark.

23 Q. Other than your physical examination, did  
24                      you conduct any sort of test?

25 A. We did some combs of pubic hair. We took  
26                      some samples of the vaginal secretions  
27                      and made a wet preparation to look under  
28                      the microscope for sperm. We took a  
29                      Gonorrhea culture of the cervix and the

1                   rectal area. We took some mouth sampling  
2                   for type and Rh for characteristics and  
3                   I also got some skull x-rays because of  
4                   the history of the trauma to the head.

5 Q. Regarding these samples the combed pubic  
6                   hairs and so forth, could you tell us  
7                   what you did with them?

8 A. I gave those to the representative from the  
9                   Sheriff's Office who brought them to the  
10                  crime lab. I examined the wet preparation  
11                  myself.

12 Q. For the presence of sperm?

13 A. For the presence of sperm and could not find  
14                  any.

15 Q. The test that you conducted for the presence  
16                  of sperm, would this be the same test  
17                  for the presence of seminal fluid?

18 A. No.

19 Q. Could you tell us what seminal fluid is?

20 A. Seminal fluid is a combination of secretions  
21                  from the prostate gland and other glands  
22                  that are ejaculated at the time of  
23                  climax of the male. Also contained in  
24                  that seminal secretions are sperm. One  
25                  can be present without the other.

26 Q. In the normal course of the examination like  
27                  you conducted for this purpose, do you  
28                  test for seminal fluid?

29 A. I personally do not test for seminal fluid.

1 I only look for the presence of active  
2 or immobile sperm.

3 Q. And what was the result of the tests?

4 A. I couldn't find any active or immobile sperm  
5 from the examination.

6 MR. PITRE:

7 That's all the questions.

8 THE COURT:

9 Mr. Tosh?

10 CROSS EXAMINATION

11 MR. TOSH:

12 Q. Doctor, you say you took some combs of the  
13 public hair. Did you examine these?

14 A. No, sir, those were taken and placed in an  
15 envelope and given to the sheriff's  
16 representative.

17 Q. What did you turn over to the Sheriff's  
18 Office?

19 A. I turned over all of the specimens that I  
20 noted above with the exception of  
21 Gonorrhea cultures and the slide for the  
22 wet preparation for the sperm.

23 MR. TOSH:

24 No further questions.

1 STEVEN KIRBY, 3022 Derbigny Street,  
2 Metairie, Louisiana, was called as a witness and  
3 after having first been duly sworn was examined and  
4 testified on his oath, as follows:

5 DIRECT EXAMINATION

6 MR. PITRE:

7 Q. Mr. Kirby, by whom are you employed?

8 A. Jefferson Parish Sheriff's Office, crime lab.

9 Q. How long have you been so employed?

10 A. Four years.

11 Q. What are your duties at the crime lab?

12 A. I am a criminologist assigned to the forensic  
13 serology section and my

14 duties are to examine the evidence which  
15 is submitted of a biological nature. I  
16 am responsible for the examination of  
17 blood, body fluids and hairs.

18 Q. What sort of training and education do you  
19 have that would qualify you to testify  
20 in this case?

21 A. I received a bachelor of science degree in  
22 biology from Loyola University. My major  
23 was biology. My minor was chemistry. I  
24 joined the staff at the crime lab four  
25 years ago in a training status. My  
26 training up to this date has included  
27 besides the formal training at the crime  
28 lab, I have attended the F.B.I. Academy  
29 School for Forensic Serology.

1                                  Forensic Serology                          Research  
2                                  Institutes of Advanced Blood Stain and  
3                                  Body Fluids workshops. I have attended  
4                                  numerous small schools and seminars an  
5                                  relationship to my membership in several  
6                                  professional societies. The Louisiana  
7                                  Association of Forensic Scientists and the  
8                                  Southern Association of Forensic Scientists.  
9                                  I have been both a student and a lecturer  
10                                 in a continuing workshop program sponsored  
11                                 by the Louisiana Board of Crime Lab  
12                                Directors. There are numerous workshops  
13                                on different aspects of forensic serology  
14                                and I have been a guest lecturer at  
15                               Loyola in the criminology department.

16                                MR. PITRE:

17                                Your Honor, the State would offer  
18                                Mr. Kirby as an expert in the  
19                                field of Forensic Serology.

20                                THE COURT:

21                                Mr. Tosh?

22                                MR. TOSH:

23                                I have no objection.

24                                THE COURT:

25                                Mr. Kirby, once again you are  
26                                certified as an expert in  
27                                forensic serology.

28                                MR. PITRE:

29                                Q. Mr. Kirby, during the course of your employment

1                   with the crime lab, did you have occasion  
2                   to receive any items from any officers  
3                   with reference to the alleged rape of  
4                   Betty Neff?

5                   A. Yes, sir, I have.

6                   Q. Could you tell us what you received and when  
7                   you received it?

8                   A. I received twelve articles of evidence from  
9                   Mr. Don Carson, the evidence custodian  
10                  at the crime lab. I received those  
11                  last November. I received them at the  
12                  crime lab from Technician Carson. As I  
13                  said there are twelve articles in this  
14                  bag if you want me to open it. They  
15                  consist of several medical specimens and  
16                  the clothing of the victim. One bag has  
17                  the medical specimens in it. The white  
18                  towel, a pair of blue jeans and a pair  
19                  of woman's underwear and a shirt.

20                  Q. These items, the white towel, the blue jeans,  
21                  the ladies' underwear, and the shirt, did  
22                  you conduct any tests on these articles?

23                  A. Yes, sir, I did. I examined all of these  
24                  items for the presence of seminal fluid  
25                  and the presence of any foreign hairs.

26                  Q. What was the results of your examination?

27                  A. The results of my examination was I found  
28                  evidence of seminal fluid on the white  
29                  towel and I did not find any evidence

1                   of the seminal fluid on any of the other  
2                   articles of clothing. I did find several  
3                   hairs on the shirt when I compared the  
4                   hairs on the shirt from the known head  
5                   hairs from the victim. I determined  
6                   that there were undistinguishable the  
7                   hairs that I found on here were from a  
8                   human Caucasian and they were hairs that  
9                   had fallen out naturally.

10 Q.               What about the medical specimens that you  
11                  received? Could you tell us what they  
12                  were?

13 A.               They consisted of a vaginal swabs, a vaginal  
14                  smear which they were consumed by the  
15                  analysis. I don't have them here today,  
16                  and I have a known head hair sample  
17                  from the victim, a known pubic hair  
18                  sample from the victim and a combed pubic  
19                  sample from the victim and some fingernail  
20                  scrapings from the victim.

21 Q.               Regarding the known sample of the combed pubic  
22                  hair sample, did you find any that were  
23                  distinguishable?

24 A.               No, sir. I found no hairs in the combed pubic  
25                  hairs from the victim which I could  
26                  distinguish from the pulled pubic hairs.  
27                  That means that I didn't find any hairs  
28                  in the combed sample that were not the  
29                  victim's.

- 1 Q. What were the other items?  
2 A. I received a vaginal swab and a vaginal smear.  
3 Q. These two items a swab and a smear, did you  
4 conduct any tests?  
5 A. Yes, sir, I did.  
6 Q. What were the results?  
7 A. I conducted several clinical and microscopic  
8 examinations of both items and I found  
9 human seminal fluid present on those  
10 items.  
11 Q. What about the blue jeans, the underwear and  
12 the shirt?  
13 A. I didn't find any evidence of any seminal  
14 fluid there.  
15 MR. PITRE:  
16 That's all the questions I have.  
17 CROSS EXAMINATION  
18 MR. TOSE:  
19 Q. Mr. Kirby, in the field of serology, correct  
20 me if I am wrong, you have the expertise  
21 to match blood types. Is that correct?  
22 A. Yes, sir.  
23 Q. Can you do this with such things as seminal  
24 fluid?  
25 A. In some instances it is possible to find.  
26 Q. Did you match any blood type in this case?  
27 A. No, sir, I didn't do any comparison work  
28 in this case.  
29 Q. You have blue jeans and what else up there?

1 A. A pull-over shirt, blue jeans, underwear, a  
2 white towel and medical specimens.  
3 Q. Blue jeans, a shirt and underwear. You didn't  
4 find any seminal fluid? Is that correct?  
5 A. That's right.  
6 Q. And you found no foreign pubic hairs?  
7 A. That's right.  
8 Q. Normally in the case of pubic hairs, can you  
9 tell the race?  
10 A. Yes, sir. I can distinguish the race.  
11 Q. But you didn't have any to work with?  
12 A. No.

13 MR. TOSH:  
14 No further questions.

15 MR. PITKE:  
16 Your Honor, in connection with the  
17 testimony of the witness, we  
18 ask that the white towel be  
19 marked as S-20 for identification  
20 and introduced into evidence.  
21 The blue jeans, underwear, and  
22 a shirt marked S-21 in globo.

23 MR. TOSH:  
24 I have no objection.

25 THE COURT:  
26 Without objection.

27  
28  
29

1                   BETTY NEFF, 34 Berbes Drive, Gretna, Lou-  
2 isiana, was called as a witness and after having  
3 first been duly sworn was examined and testified on  
4 her oath, as follows:

5                   DIRECT EXAMINATION

6 MR. PITRE:

7 Q. November 8, of last year, would you tell us  
8 where you were employed?

9 A. I was employed at the Antiques and Accents  
10 Shop on Whitney Avenue in Gretna.

11 Q. Were you one of the owners of the shop?

12 A. Yes.

13 Q. Could you tell us what you were doing?

14 A. I was sitting down at my desk.

15 Q. And would you tell us what happened?

16 A. I saw a black man come up on a yellow bicycle  
17 and into the shop. I asked him if  
18 there was something that I could help  
19 him with and he said he was looking for  
20 a coffee table and I walked toward him,  
21 as I did so I faced him. All of a sudden  
22 I said there was one outside because  
23 I had furniture outside that I was working  
24 on, repairing it and as I made my way  
25 I went toward the door to go outside, he  
26 grabbed me from behind. When he did that  
27 I struggled and got away and ran toward  
28 the door. He hit me over the head with  
29 a gun and dragged me.

1 Q. Would you go on and tell us what happened?  
2 A. He pulled the curtain to the back of the  
3 shop. He asked about money and I said  
4 there isn't any here I just opened the  
5 shop.  
6 Q. Mrs. Neff, at what time of the day did this  
7 take place?  
8 A. This was somewhat after 11 o'clock.  
9 Q. Are there any other business places in that  
10 area?  
11 A. The one next door to me was open at twelve  
12 o'clock.  
13 Q. Is there anything across the street?  
14 A. No.  
15 Q. Anything around the block?  
16 A. The next thing close to me would be about a  
17 block away.  
18 Q. I think you told us you were hit in the head  
19 with a gun---.  
20 MR. TOSH:  
21 Your Honor, I am going to object to  
22 the leading question.  
23 THE COURT:  
24 That is reiteration. It is not a  
25 leading question. I overrule  
26 the objection.  
27 MR. PITRE:  
28 Q. From the point of your testimony where I  
29 interrupted you, could you go on and tell

1                   us what happened?

2   A. He brought me back to the back of the shop and  
3                   I said I didn't have any money and he  
4                   looked around the shop to see if there  
5                   was anyone else around or if there was  
6                   someone in the back. The door that leads  
7                   to the back and he told me to go in  
8                   there and he walked to the back and he  
9                   looked around and then he spotted there  
10                  was a bathroom in the back and he told me  
11                  to get in there.

12   Q. Mrs. Neff, I have some photographs identified  
13                  and introduced into evidence and I am  
14                  going to show you and ask if you can  
15                  identify them? For example, S-1?

16   A. That's my shop.

17   Q. S-2, could you tell us what that shows?

18   A. As you first walk into the shop.

19   Q. S-3?

20   A. That's on my desk, a towel.

21   Q. S-4?

22   A. That's my desk and again a white towel.

23   Q. S-5?

24   A. That was in the bathroom.

25   Q. S-6?

26   A. The door there, the door to the bathroom.

27   Q. S-7?

28   A. From the bathroom showing the air conditioning  
29                  area.

1 Q. S-10?

2 A. That was the door leading to the back.

3 Q. This was the door you just testified to?

4 A. Yes.

5 Q. S-9?

6 A. That was the back door with the bars on it.

7 Q. S-11?

8 A. The bathroom.

9 Q. You told us you were brought to the back of

10 the shop. Would you go on and tell us

11 what happened then?

12 A. He brought me to the bathroom and he told me

13 to take my clothes off. I objected to

14 it. He said do as I say. I said please

15 go away and leave me alone and I asked

16 him please don't hurt me and he said do

17 as I say and get down on the floor and

18 he said take your pants off and I took

19 them off and he proceeded to do what he

20 wanted to do and I just said please leave

21 me alone. There was nothing I could do.

22 I had been hit over the head and I was

23 afraid of being killed. I did exactly

24 as I was told to do.

25 Q. And what did he tell you to do?

26 A. He told me to get down on the floor and just

27 to keep quiet and he kept talking to

28 me.

29 Q. This person that you are talking about, what

1                    did he tell you?

2 A    I took my pants off. He said get down on the

3                    floor and that is exactly what I did.

4 Q    Did he do anything to you?

5 A    He sexually assaulted me.

6 Q    I have some specific questions about that.

7                    Did his penis enter into your vagina?

8 A    Yes.

9 Q    Do you know if he ejaculated?

10 A   I am sure that he did. I wasn't thinking

11                    about that.

12 Q    Did anything else happen?

13 A   Other than the sexual assault. That's all

14                    that was happening in there.

15 Q    This person that assaulted you, did you, do

16                    you see him in the Courtroom?

17 A   Yes.

18 Q    Would you point him out please?

19 A   He is the black man sitting there with the

20                    stripped shirt on.

21                    MR. PITRE:

22                    I would like the record to reflect

23                    that the witness identified the

24                    defendant, Malcolm Alexander.

25                    THE COURT:

26                    So ordered.

27                    MR. PITRE:

28 Q    Is there any question in your mind?

29 A   No.

1 Q. After this attack, Mrs. Neff, could you tell  
2 us what happened?

3 A. The phone rang. It kept ringing and I told  
4 him I have to answer that and it rang again  
5 and he said answer it. Hurry up. I  
6 tried to talk without being disturbed or  
7 anything like that. The girl that was on  
8 the other end of the phone said something  
9 was wrong, but I didn't know exactly how  
10 to say it because she was due at work  
11 about twelve o'clock. It was getting  
12 pretty close to about that time and he  
13 said watch what you say and after that  
14 I hung up the phone and he took me back  
15 into the bathroom and sexually assaulted  
16 me again.

17 Q. You testified that he hit you in the head with  
18 a gun?

19 A. Yes.

20 Q. Where was the gun while this sexual assault  
21 was going on?

22 A. He had it to my head.

23 Q. The whole time?

24 A. Yes.

25 Q. Were you afraid?

26 A. Yes, I was afraid.

27 Q. Could you tell us what happened after the  
28 sexual assault the second time?

29 A. He proceeded to do what he wanted to and I

1           said why don't you just leave. He said  
2           just do what I am telling you to do. He  
3           said respond to me which I wouldn't, and  
4           he kept insisting that I did and after  
5           he finished. He started pulling his pants  
6           up and started piling stuff where I  
7           couldn't get out.

8 Q. Did you have any trouble getting out?

9 A. No, because the door opened to the inside,  
10           and I made my way over and pushed the  
11           door open from the inside of the bathroom.

12 Q. So the door that he piled up with the stuff to  
13           keep you in, didn't in fact keep you in  
14           the door; it opened from inside?

15 A. It opened to the inside, right, the door  
16           opened to the inside.

17 Q. You called the police?

18 A. No, I called my x-husband and we then called  
19           the police.

20 Q. And what did the police do?

21 A. They started asking me questions about certain  
22           things: My experience and went through  
23           procedures.

24 Q. Were you asked to identify him?

25 A. Yes, I explained to them a black man coming on

26 Q. a bicycle and after a while they brought  
27           a black man that was on a bicycle and

28           asked me if this was the man and I said  
29           no.

1 Q. This man that they brought by, was it the same  
2 day?  
3 A. The same day.  
4 Q. Was he dressed similar to the perpetrator?  
5 A. Yes, he had on jeans and a jacket.  
6 Q. Were you in a position to see this person that  
7 was brought by that day by the police?  
8 A. Yes, I saw him.  
9 Q. You were sure that was not him?  
10 A. I was positive.  
11 Q. Were you asked at other times to look at any  
12 photographs or view any persons to make  
13 an identification?  
14 A. Yes, I viewed hundreds of photographs and I  
15 couldn't see anyone that resembled the  
16 man.  
17 Q. Could you tell us about any of the line up  
18 procedures that you may have viewed?  
19 A. Only the one line up and the man was in the  
20 line up.  
21 Q. When you speak of line up there are two types,  
22 photographic line ups or physical line  
23 ups?  
24 A. I think I had seen about four or five or maybe  
25 more photographic line ups.  
26 Q. Did you ever make an identification?  
27 A. At the last group of photographs I saw the  
28 man that I was almost a hundred percent  
29 sure of.

1 Q. You say a hundred percent sure of. Could you  
2 tell us---?

3 A. I was asked to see him in a physical line up.

4 Q. Any reason for that?

5 A. I was quite positive of the picture but I wanted  
6 for my sake as well as his sake to make  
7 sure this was the right person.

8 Q. You were taken over to F. Edward Hebert Hospital?

9 A. Yes.

10 Q. Could you tell us what happened?

11 A. The doctors checked me and done things and  
12 so forth and the tests that they give  
13 you.

14 Q. I have two other photographs S-17 and S-18 that  
15 have been introduced into evidence. I  
16 would like for you to look at them and  
17 tell me if you can identify them?

18 A. The first one is a white female which is  
19 myself and the second one I was holding  
20 my arm which is quite bruised.

21 Q. How did that bruise occur?

22 A. When I was on the floor I guess from the  
23 motion and abrasion of being on the  
24 floor while I was on a tile floor that  
25 needed repair.

26 Q. The doctor that examined you, did he give you  
27 a complete examination?

28 A. Yes, he did.

29 Q. One of the items that was introduced into

1                   evidence was a white towel and I noticed  
2                   that these two photographs marked S-3 and  
3                   S-4, they depict something that appears  
4                   to be a white towel?

5 A.               When he left me in the bathroom, this was the  
6                   bathroom towel that I had to clean myself.  
7                   I just felt I had to. I picked up the  
8                   white towel and cleaned myself in going  
9                   for the door at the time I let myself  
10                  out.

11 Q.               You said you attended a physical line up?

12 A.               Yes.

13 Q.               Did you have any trouble making the identifi-  
14                  cation?

15 A.               No.

16 Q.               The charge against the defendant is a serious  
17                  charge. Is there any question in your  
18                  mind; now is the time to tell us?

19 A.               No question.

20 Q.               You are sure this man that stands accused,

21                  Malcolm Alexander is the man that raped  
22                  you?

23 A.               Yes, sir.

24                  MR. PITRE:

25                  No further questions.

26                  CROSS EXAMINATION

27                  MR. TOSH:

28 Q.               Mrs. Neff, you said this occurred on November  
29                  8, 1979? Is that correct?

1 A Yes.

2 Q The same day you were asked to identify

3 someone else that was brought back to the

4 scene and you said that was not the

5 person?

6 A Yes.

7 Q You were shown hundreds of pictures I believe

8 you referred to over what period of time

9 were you shewn all of these pictures?

10 I am talking about in relationship to

11 the date of the incident?

12 A Six months.

13 Q You were constantly being shown pictures?

14 A Yes.

15 Q Did the police contact you on each one of these

16 occasions and ask you to view certain

17 line ups?

18 A Yes.

19 Q This was a continuous thing on different

20 days?

21 A Yes.

22 Q Right prior to the set of photographs that

23 you were shown that had Malcolm Alexander's

24 picture on it, what were you told by the

25 police?

26 A I don't understand the question.

27 Q Were you told by the police that they had a

28 suspect and they wanted you to look at

29 a line up?

1 A. No.

2 Q. Was there any one else present at this line up  
3       besides yourself that you knew off to  
4       make an identification?

5 A. No.

6 Q. As far as you know there was no other witnesses  
7       that saw this incident and were present  
8       at the physical line up that you know  
9       off?

10 A. No.

11 Q. Do they have windows in those rooms in the  
12       back?

13 A. No.

14 Q. Were the lights on or off?

15 A. Someone would have to put them on which would  
16       have been me or him. I don't recall  
17       putting them on. There was one window  
18       and they had bars on the window and  
19       there was enough light from the window.

20 MR. TOSH:

21       No further questions.

22 MR. PITRE:

23       The State rests.

24 THE COURT:

25       That ladies and gentlemen, means  
26       that the State has painted its  
27       picture. It is the question for  
28       you to determine now whether  
29       or not the picture is sufficient

1           to prove the guilt beyond a reasonable  
2           doubt in your mind. Likewise the  
3           defendant will have an opportunity to  
4           put on evidence if he sees fit. If he  
5           doesn't see fit as we talked about on  
6           numerous occasions, it should not taint  
7           you in anyway or make you feel like  
8           he has omitted a duty and represents some  
9           presumption against him because he has  
10          not presented a case.

11          MR. TOSH:

12          Could we have a recess.

13          THE COURT:

14          Yes.

15          (COURT RECESSED)

16          (OUT OF THE PRESENCE OF THE JURY)

17          THE COURT:

18          Let the record reflect the jury is  
19          not present. The State has  
20          rested in the matter and Mr.  
21          Tosh has indicated to the  
22          Court that he intends to put  
23          the defendant on. Take the  
24          stand, Mr. Alexander, if you  
25          see fit, sir.

26

27

28

29

1                   MALCOLM JOSEPH ALEXANDER, 224 Coretta  
2 Drive, Avondale, was called as a witness and after  
3 having first been duly sworn was examined and testified  
4 on his oath, as follows:

5                   DIRECT EXAMINATION

6                   THE COURT

7                   Mr. Alexander, you know you have the  
8                   right to remain silent in  
9                   this case?

10                  THE WITNESS:

11                  Yes, sir.

12                  THE COURT:

13                  You know you are not required to take the  
14                  witness stand?

15                  THE WITNESS:

16                  Yes, sir.

17                  THE COURT:

18                  You want to take the stand on your  
19                  own motion? Do you want to  
20                  take the witness stand? You  
21                  don't have to. You have a  
22                  right not to. Now I am not  
23                  telling you what to do and  
24                  what not to do. I just want  
25                  to make sure you understand  
26                  Malcolm, that you don't have  
27                  to take the stand. You have  
28                  to want to get on the stand  
29                  before the Court will let you  
                      testify. No body can make you

1                   testify. You understand that?

2                   THE WITNESS:

3                   Yes, may I talk to my lawyer?

4                   THE COURT:

5                   Yes, the big problem is that once  
6                   you get on the stand you can't  
7                   pick and choose what you are  
8                   going to answer. I know you  
9                   would like to get up on the  
10                  stand and say I didn't do it.  
11                  Somebody else did it. I presume  
12                  that is what you are going to  
13                  say. I know you are not going  
14                  to go on the stand and say I  
15                  did do it. What I am saying  
16                  to you is when you get on the  
17                  stand and say I didn't do it,  
18                  they are going to ask you a lot  
19                  of other questions, you may not  
20                  want to have asked you. Now  
21                  they can't ask you about other  
22                  charges that you have pending  
23                  against you now, but they can  
24                  ask you about what your activities  
25                  have been before now. It is up  
26                  to your attorney to advise you  
27                  as to the import of that or  
28                  what that means. Now I don't  
29                  want you to take the stand unless

1                   you understand what this means  
2                   so you talk to your attorney and  
3                   make a decision.

4                   (CONFERENCE BETWEEN DEFENDANT  
5                   AND ATTORNEY)

6                   MR. TOSH:

7                   The defendant has decided not to take  
8                   the stand.

9                   THE COURT:

10                  Mr. Alexander, you understand that I  
11                  am not cutting you off on this.  
12                  You understand I am not saying  
13                  you can't?

14                  THE WITNESS:

15                  Yes, sir.

16                  THE COURT:

17                  I just wanted to make sure you  
18                  understand that. I am sure  
19                  your attorney advised you of that  
20                  but I felt you should be advised  
21                  by the Court. Mr. Tosh, are you  
22                  going to have any witnesses?

23                  MR. TOSH:

24                  No.

25                  THE COURT:

26                  Let recall the jury.

27                  (JURY RETURNED)

28                  THE COURT:

29                  You waive the polling of the jury?

MR. PITRE:

1           Yes, Your Honor.

2           MR. TOSH:

3           Yes, Your Honor.

4           THE COURT:

5           The defense has not elected to put  
6           any witnesses on at this time.

7           As I indicated to you earlier  
8           and as you have agreed to do and  
9           you are sworn to do, you will  
10           not treat that as prejudicial  
11           on the part of the defendant.

12           The fact that the defendant  
13           has not put on a defense doesn't  
14           in anyway militate against  
15           him or create any presumption  
16           against him. The presumption is still  
17           that he is innocent, until you  
18           decide from the evidence that  
19           has been put on at this time  
20           whether or not he is guilty of  
21           the crime of aggravated rape  
22           or any lesser offense. A lesser  
23           offense which I will explain  
24           to you in just a moment, the  
25           jury charges. At this time  
26           we are going to have the so-  
27           called closing argument of  
28           counsel. Now, ladies and  
29           gentlemen, the closing argument

1 of counsel is just that. The  
2 evidence and all of the testimony  
3 are in the record. What is said  
4 now is merely argument. It is  
5 important that you listen closely  
6 to what both counsel say, not  
7 because it is evidence but  
8 because they have a right to  
9 try to persuade you from the  
10 testimony that is in this record  
11 that has been given to you here  
12 today to make up your mind as  
13 best you can whether or not  
14 the State has shown this man  
15 guilty beyond a reasonable  
16 doubt, or whether they have  
17 not. In all events, please  
18 listen to what they have to  
19 say rather closely. The Court  
20 does not limit the argument of  
21 counsel with reference to  
22 whatever they say. If they  
23 decide they have proven that  
24 the moon is full of green  
25 cheese and they talk about that  
26 today, God knows we haven't  
27 had any testimony to that effect.  
28 We had a lot of other stuff,  
29 but we haven't had anything to

1 that effect. Mr. Pitre and Mr.  
2 Tosh gets up and says we have  
3 shown you now the moon is full  
4 of green cheese and you know  
5 that is not so. So if the  
6 decision had something to do  
7 with green cheese, it hadn't  
8 been shown. So anything that  
9 appears to be a ridiculous  
10 conclusion you are just going  
11 to pass it over because I  
12 admonish you now if they say  
13 something the district attorney  
14 or the defense counsel says  
15 something that simply hasn't  
16 been brought out in anyway by  
17 the testimony or the evidence  
18 then make up your own conclusions  
19 from that. Now sometimes there  
20 are some logical carryovers  
21 which attorneys may carryover.  
22 Remember attorneys are thinking  
23 all the time and their job is  
24 to defend and to prosecute.  
25 Now they are advocates whereas  
26 I get to sit here like a bump  
27 on a log and smile and say  
28 objection sustained and objection  
29 overruled, but that is it. Now

1           i have talked to you about the  
2           lesser offenses. In connection  
3           with this matter there are  
4           lesser offenses. One of the  
5           lesser offenses is simple rape  
6           and simple rape is where the  
7           victim of a rape would be  
8           incapable to of resisting and  
9           understanding the nature of the  
10          act because he or she was so  
11          drunk or messed up on drugs or  
12          some stupor. from or anesthetic  
13          agent that she couldn't know  
14          what she was doing or whether  
15          she was incapable because she  
16          was stupored and just didn't  
17          know what was going on really.  
18          didn't know what was going on  
19          or whether she believed that she  
20          was doing the right thing. May  
21          be the man convinced her that they  
22          were married. Now there is  
23          simple rape, then they have the  
24          question of forcible rape.  
25          Now forcible rape is a rape  
26          committed where the sexual  
27          intercourse would be without  
28          the lawful consent of the  
29          victim because the victim is

1 prevented from resisting the  
2 act by force or threats of  
3 physical violence where the  
4 victim reasonably believes that  
5 such resistance would not  
6 prevent the rape. Now I tell  
7 you these because you can find  
8 a lesser charge that Mr. Alexander  
9 may be guilty of aggravated  
10 rape or simple rape or forcible  
11 rape or attempt and I will  
12 describe that to you and you  
13 can find him not guilty if they  
14 have not shown beyond a reasonable  
15 doubt any of these things in your  
16 mind then you have the right and  
17 the duty to find the defendant  
18 not guilty. I will read the  
19 charges to you. I simply put  
20 these charges in your mind so  
21 you will have some basic idea  
22 what we are talking about. You  
23 can also have a attempt. You  
24 may say what does one have to do  
25 with the other. It is simply a  
26 question of how you feel about  
27 it. We will explain these  
28 things more fully at the time  
29 of closing argument but I think

1 I have told you several times  
2 what we are going to talk about  
3 the lesser responsive charges  
4 but obviously he couldn't be  
5 found guilty of murder. Now  
6 but he can be found guilty of  
7 simple rape or aggravated rape  
8 or you can find him not guilty  
9 or attempt of any of those  
10 matters that I have explained  
11 to you. I tell you that as a  
12 background so that you can  
13 understand what Mr. Tosh or  
14 Mr. Pitre are going about  
15 explaining to you that is what  
16 we call responsive verdicts. I  
17 explained those to you so you  
18 would have some basic idea and  
19 to where we are going from here.  
20 Now Mr. Pitre?

21 MR. PITRE:

22 Ladies and gentlemen, first of all  
23 I would like to thank you for  
24 your patience. The issues that  
25 we have here are not complicated.  
26 They are really easy to explain.  
27 We have the situation where the  
28 woman was in the shop, just opening

1 up the shop in the early part of  
2 the day, 11:30. She was sexually  
3 assaulted. The evidence shows  
4 that within a short period of  
5 time after she reported the  
6 assault to the police. The  
7 police did find a suspect who  
8 fitted the physical general  
9 description of the perpetrator.  
10 He was not the man. Mrs. Neff  
11 viewed the man. He didn't have  
12 the patch on his jacket. He  
13 was clean shaven. This was  
14 within an hour. This is the only  
15 thing that there may be a question.  
16 I am satisfied as you must be  
17 on seeing Mrs. Neff on the stand.  
18 That she is satisfied that was  
19 not the man. As I told you before  
20 the State called several witnesses.  
21 We called police officers that  
22 really don't add alot to the case.  
23 Some of them gather evidence.  
24 Some of them take photographs,  
25 and others like Detective  
26 Denoux who testified and Mr.  
27 Nuzzolillo who just conducted  
28 minor small things. They taxied  
29 the victim from place to place to

the hospital to the doctor.  
They bring the evidence from  
the hospital to the crime lab  
and they conduct line ups. Here  
there were several line ups over  
a period of some months. Technician  
Morin's testimony was just to  
the effect that he took photo-  
graphs and he gathered the items  
of evidence, things like the towel,  
any physical evidence from Mrs.  
Neff's shop. Denoux and Muzzolini  
did exactly what their testimony  
was more or less conducted the  
identification. The deputy that  
came by Peperone was only called  
to testify because he was one of  
the first officers on the scene  
and obtained the description.  
He was present when the photographs  
were taken and was present when  
the other suspect was brought  
by. Then you have the victim.  
In what sense you are a judge  
in that you judge the credibility  
of the witnesses. One of the  
things that you can judge is  
whether or not Mrs. Neff made  
a good or bad identification

1    of this man, whether or not  
2    she had a ample opportunity  
3    to view the defendant at the  
4    time the rape was committed  
5    and whether or not she identified  
6    the right person. You also judge  
7    the credibility of the witnesses  
8    who testified in doing that you  
9    ask yourself what was actually  
10   testified to for what reason  
11    she identified this witness.  
12    This is what you need to gage  
13    the weight of the evidence  
14    as you heard it. Mrs. Neff did  
15    identify thisman from the stand.  
16    The first thing that is going to  
17    have to enter your mind is this  
18    the same man that committed  
19    the offense or was she mistaken.  
20    I am positive she was postive  
21    of the identification. Now  
22    the Judge is going to read these  
23    charges to you and cover several  
24    areas. One is going to be  
25    identification and this is where  
26    you satisfy in your mind that  
27    there was a good identification  
28    or there was not. If you find  
29    Mrs. Neff identified the wrong  
  person, then you would have to

1 find the defendant, Malcolm  
2 Alexander not guilty. If you  
3 find that she identified the  
4 proper person then you have  
5 the burden to find him guilty.  
6 One of the other matters the  
7 Judge is going to talk to you  
8 about is reasonable doubt.  
9 Reasonable doubt is not beyond  
10 all doubt. You weren't witnesses  
11 to the offense. You weren't  
12 there when it happened. The  
13 only thing that you use to  
14 gauge doubt is the witnesses  
15 that testified. There is always  
16 some doubt. That is why the  
17 State's burden is beyond  
18 reasonable a doubt that a  
19 reasonable man can use success-  
20 fully from the evidence. Now  
21 just because the State has the  
22 burden of proof beyond a reason-  
23 able doubt I get to talk to  
24 you twice, once now and once  
25 after the defense makes its  
26 closing argument. One thing  
27 you should keep in mind,  
28 whatever I say, whatever Mr.  
29 Tosh says, is not evidence.

1                   It is not sworn testimony. We  
2                   tell you what we think, what  
3                   we believe to be the case. The  
4                   State feels that through the  
5                   evidence the introduction of  
6                   the evidence that we have  
7                   brought to you that we are in  
8                   a position to ask you to return  
9                   a verdict of guilty.

10                  THE COURT:

11                  MR. TOSH, please.

12                  MR. TOSH:

13                  I would like to take this  
14                  opportunity to thank you. I  
15                  know it is somewhat tedious  
16                  in the Courtroom, but this is  
17                  very important and I ask you  
18                  to take whatever time is  
19                  necessary to deliberate. This  
20                  is my last opportunity to talk  
21                  to you and I do appreciate your  
22                  attention. Mr. Pitre said that  
23                  this is basically a simple  
24                  case. Well in some respects  
25                  it is simple because the only  
26                  thing the state has in this  
27                  case is Mrs. Neff and I think  
28                  that is what you have to decide.  
29                  All of the witnesses that came

1 up here, all of the evidence  
2 that was put on you have to  
3 keep in mind what evidence  
4 wasn't put on. There was no  
5 blood sample. There was no  
6 hair samples. No physical  
7 evidence that would tie in  
8 the person who had raped Mrs.  
9 Neff. In fact, there was some  
10 testimony that some foreign  
11 hairs were found. They were  
12 from a Caucasian male. I am  
13 not saying a Caucasian raped  
14 her. It just goes to show  
15 you that there was no physical  
16 evidence pointing to Mr.  
17 Alexander. On the identification  
18 immediately after the rape a  
19 suspect was picked up that  
20 fit the description all except  
21 for the patch on the windbreaker.  
22 The same height, the same  
23 weight, the same age riding a  
24 orange ten-speed bike in the  
25 area. There may be some  
26 discrepancies as to the facial  
27 hairs or not. You see Mr.  
28 Alexander. Look at him, look  
29 at him quick. The man may not

1 have facial hairs and some  
2 black people do not grow the  
3 same facial hairs that white  
4 people do. She couldn't  
5 identify this man she testified  
6 there were hundreds of pictures  
7 over a three month period. She  
8 even called the police. She  
9 said she thought she saw  
10 somebody getting on the bus or  
11 saw someone. They got a picture  
12 of that man to identify him.  
13 It just goes to show you there  
14 is a lot of doubt going on in her  
15 mind. Finally after three  
16 months for whatever reason she  
17 picked Mr. Alexander. I am  
18 not trying to tell you that she  
19 is lying, but it is very  
20 possible that she is mistaken  
21 and that is where you have to  
22 make the decision. Was she  
23 mistaken? I am not accusing  
24 her of coming in here and  
25 telling a falsehood because  
26 in her mind she may believe  
27 that of all the pictures she  
28 looked at, all the black people  
29 she looked at that she had

1                   seen people that looked similar  
2                   to Mr. Alexander and seen enough  
3                   people it may look like Mr.  
4                   Alexander so you have to go  
5                   back there and you have to make  
6                   that decision, but I submit to  
7                   you there is enough reasonable  
8                   doubt in this case that you  
9                   should return a verdict of not  
10                  guilty. You took an oath when  
11                  we started that you would give  
12                  me the benefit of that doubt  
13                  if there is any reasonable  
14                  doubt. I am asking you to go  
15                  back there. Keep that in  
16                  mind after you deliberate I  
17                  think you will find the  
18                  defendant not guilty.

19                  MR. PITRE:

20                  Ladies and gentlemen I just want to  
21                  bring out one point to keep in  
22                  mind. When you go in the  
23                  juryroom to deliberate, Mrs.  
24                  Neff has accused Malcolm  
25                  Alexander as the person who  
26                  raped her. Now Mrs. Neff had  
27                  several opportunities to  
28                  identify him. Who would have  
29                  been the best person for her

1 to identify. There would be  
2 no question in my mind the  
3 best person for her to identify  
4 would be the person that was  
5 brought back on a bicycle.  
6 They bring back a man who fits  
7 the general description on a  
8 ten-speed like the same descrip-  
9 tion that was given to the  
10 police, but she didn't do that.  
11 She took a long time in selecting  
12 the person. She took a long  
13 time before she identified the  
14 defendant before she identified  
15 the proper person.

16 THE COURT:

17 Ladies and gentlemen, the accused  
18 at the bar, Mr. Malcolm Alexander  
19 is presumed to be innocent until  
20 he is proven guilty, beyond a  
21 reasonable doubt. The consequ-  
22 ence of this rule of law is that he  
23 is not required to prove his  
24 innocence, but may rest upon  
25 the presumption in his favor  
26 until it is overthrown by  
27 positive, affirmative proof.  
28 To find the accused guilty the  
29 burden is upon the State to

1 establish to your satisfaction,  
2 and beyond a reasonable doubt,  
3 every essential element of the  
4 crime charged in the indictment  
5 or any lesser one included in  
6 it. This doubt must be reason-  
7 able one. Such a doubt as would  
8 give rise to a grave uncertainty  
9 raised in your mind by reason  
10 of the unsatisfactory character  
11 of the evidence. You are the  
12 exclusive judges of the facts.  
13 You find from the evidence or  
14 lack of evidence what facts  
15 have been proven and what facts  
16 have not been proven. For this  
17 purpose, you are the sole judges  
18 of the credibility of the wit-  
19 nesses and the weight to be  
20 given their testimony. In  
21 determining the credibility of  
22 witnesses, you may take into  
23 account his or her manner on the  
24 witness stand, the probability  
25 or improbability of his or her  
26 statement, the interest of want  
27 of interest he or she may have in  
28 the case, and every fact and  
29 circumstances surrounding the

1 giving of his or her testimony  
2 which may aid you in weighing  
3 his or her statement. If you  
4 believe that any witness in the  
5 case, either for the State or  
6 defense, has willfully and  
7 deliberately testified falsely  
8 to any material fact, for the  
9 purpose of deceiving you, then  
10 I charge you that you are justified  
11 in disregarding the entire testimony  
12 of such witness, as proving  
13 nothing and unworthy of belief.  
14 When the accused does not avail  
15 himself of his right to testify  
16 in his own behalf, you should  
17 not consider this fact or  
18 permit it to raise a presumption  
19 of guilty against him. You are  
20 also the judges of the law, but  
21 in a different sense. You  
22 receive the evidence from the  
23 witnesses; you receive the law  
24 from the Court, and it is your  
25 duty to accept the law and apply  
26 it as it is given by the Court.  
27 The bill of indictment in this  
28 case is a mere accusation or  
29 charge against the defendant.

1 and it is not evidence of the  
2 defendant's guilt, and the fact  
3 of such a bill of indictment  
4 having been found is on no  
5 weight and does not carry any  
6 presumption of guilt. You must  
7 not be influenced by it in  
8 considering the case. Opening  
9 statements made by the District  
10 Attorney or the counsel for the  
11 defendant are not evidence you are  
12 not to consider the opening  
13 statement or the closing argument  
14 as proving anything at all in the  
15 case. You are to consider only  
16 the testimony of sworn witnesses  
17 who have appeared before you on the  
18 witness stand. In closing  
19 arguments the attorneys are  
20 permitted to present for your  
21 consideration their contentions  
22 regarding what the evidence has  
23 shown or not shown and what  
24 conclusions they think may be  
25 drawn from the evidence.  
26 Evidence is either direct or  
27 circumstantial. Direct evidence  
28 is evidence which, if believed,  
29 proves a fact. Circumstantial

1 or indirect evidence is evidence  
2 which, if believed, proves a  
3 fact, and from the fact you may  
4 logically and reasonably  
5 conclude that another fact  
6 exists. You cannot find the  
7 defendant guilty solely on  
8 circumstantial evidence unless  
9 the facts proved by the evidence  
10 exclude every other reasonable  
11 hypothesis of innocence. We  
12 are now to consider the nature  
13 and character of the crime for  
14 which the defendant is being  
15 tried; what are its ingredients  
16 and what are the essentials  
17 necessary to constitute it.  
18 The defendant is charged with the  
19 crime of aggravated rape. The  
20 following are the responsive  
21 verdicts to the crime of  
22 aggravated rape: 1. guilty of  
23 aggravated rape; 2, guilty of  
24 attempted aggravated rape; 3.  
25 guilty of simple rape; 4. guilty  
26 of forcible rape; 5. guilty of  
27 attempted forcible rape; and 6.  
28 not guilty. I will instruct you  
29 as to the law of aggravated rape

1 and the lesser included offenses  
2 of attempted aggravated rape, simple  
3 rape, forcible rape and attempted  
4 forcible rape. Article 41 of the  
5 Louisiana Criminal Code defines  
6 rape as: rape is the act of anal  
7 or vaginal sexual intercourse  
8 with a male or female person who  
9 is not the spouse of the offender,  
10 committed without the person's  
11 lawful consent. Emission is  
12 not necessary; and any sexual  
13 penetration, vaginal or anal,  
14 however slight, is sufficient  
15 to complete the crime. The  
16 defendant is charged with the  
17 aggravated rape of Betty S. Neff.  
18 Aggravated rape is a rape,  
19 committed where the anal or  
20 vaginal intercourse is deemed  
21 to be without the lawful consent  
22 of the victim because it is com-  
23 mitted under any one or more of  
24 the following circumstances:  
25 where the victim resists the  
26 act to the utmost, but whose  
27 resistance is overcome by force;  
28 or where the victim is prevented  
29 from resisting the act by threats

of great and immediate bodily harm, accompanied by apparent power of execution. A lesser included offense to the crime charged is the crime of simple rape. Simple rape is a rape, committed where the anal or vaginal sexual intercourse is deemed to be without the lawful consent of the victim because it is committed under any one or more of the following circumstances: where the victim is incapable of resisting or of understanding the nature of the act by reason of stupor or abnormal condition of the mind produced by an intoxication, narcotic, or anesthetic agent, administered by or with the privity of the offender; or when the victim has such incapacity, by reason of a stupor or abnormal condition of mind from any cause, and the offender knew or should have known of the victim's incapacity; or where the victim is incapable through unsoundness of mind, whether

1 temporary or permanent, of  
2 understanding the nature of the  
3 act; and the offender knew or  
4 should have known of the  
5 victim's incapacity; or where  
6 the female victim submits under  
7 the belief that the person  
8 committing the act is her husband  
9 and such belief is intentionally  
10 induced by any artifice, pretense  
11 or concealment practiced by the  
12 offender. Another lesser  
13 included offense to the crime  
14 charged is forcible rape.  
15 Louisiana Revised Statute 14:43.1  
16 defines it as follows: "forcible  
17 rape is a rape committed where  
18 the anal or vaginal sexual  
19 intercourse is deemed to be  
20 without the lawful consent of  
21 the victim because the victim is  
22 prevented from resisting the  
23 act by force or threats of  
24 physical violence where the victim  
25 reasonably believes that such  
26 resistance would not prevent the  
27 rape." Responsive verdicts  
28 to the crime of aggravated rape  
29 also include the crimes of:

1                     attempted forcible rape. The  
2                     law of attempt is as follows:  
3                     an attempt is a separate but  
4                     lesser grade of the intended  
5                     crime; and any person may be  
6                     convicted of an attempt to  
7                     commit a crime, although it  
8                     appears on the trial that the  
9                     crime intended or attempted was  
10                     actually perpetrated by such  
11                     person in pursuance of such  
12                     attempt. An attempt is defined  
13                     as follows: "any person who,  
14                     having a specific intent to  
15                     commit a crime does or omits  
16                     an act for the purpose of and  
17                     tending directly towards the  
18                     accomplishing of his object is  
19                     guilty of an attempt to commit  
20                     the offense intended; and it  
21                     shall be immaterial whether under  
22                     the circumstances, he would have  
23                     actually accomplished his purpose."  
24                     Mere preparation to commit a  
25                     crime shall not be sufficient  
26                     to constitute an attempt; but  
27                     lying in wait with a dangerous  
28                     weapon with the intent to  
29                     commit a crime, or searching for

the intended victim with a dangerous weapon with the intent to commit a crime, shall be sufficient to constitute an attempt to commit the offense intended. It is essential to an attempt that there be specific intent to commit the crime.

"Specific intent" comprehends more than a mere decision to do some unlawful act or acts, it is a thought-out design to effect a definite result, a fixed direction of the mind to a particular goal; a contemplation of the particular consequence which would constitute the identical crime charged, combined with an expectation and intention to accomplish that precise effect. The requisite intent need not be proved by direct evidence and may be inferred from the circumstances. The essential elements are an actual specific intent to commit the offense, and an overt act directed toward that end. Of course, it will be impossible to entertain a

specific intent to commit an offense unless the offender has an apparent ability to consummate the crime. The Court instructs you members of the jury that in determining whether or not the defendant has been identified as the person who committed the offense charged against him, if any such offense was committed, you must consider all of the testimony in the case, considering the means of identification; the circumstances under which he was identified, the opportunity for identifying the said defendant; the influence brought to bear on persons claiming to identify the defendant; the description of his apparel as stated by the witnesses, and the probabilities or improbabilities that it was the defendant, and if after so judging and weighing the evidence, you are not satisfied beyond all reasonable doubt that the defendant has been correctly identified as the person who committed the offense charged

1                   in this indictment, it will be  
2                   your duty to find the defendant  
3                   not guilty. The state and the  
4                   defendant are entitled to the  
5                   individual verdict of each juror.  
6                   while the formal verdict is the  
7                   collective result of the delib-  
8                   erations of the jury as a whole,  
9                   this result must have been  
10                  arrived at by each juror  
11                  separately. In other words,  
12                  each juror must have come to his  
13                  verdict by reason of his own  
14                  appreciation of the law and the  
15                  evidence in the case. By this,  
16                  it is not meant that the jurors  
17                  should not fully discuss the  
18                  case with each other in their  
19                  deliberations in the jury room.  
20                  On the contrary, it is the duty  
21                  of each individual juror to fully  
22                  explore both the evidence and  
23                  the law of the case, according  
24                  to his lights. However, should  
25                  jurors after a full and fair  
26                  discussion of the case arrive  
27                  at a verdict which squares with  
28                  their conscience, it is their  
29                  duty and obligation to adhere

1 to this opinion and not  
2 surrender it simply because  
3 they are outnumbered by other  
4 jurors entertaining a contrary  
5 opinion, or for any reason not  
6 connected with the case. If,  
7 however, fellow jurors are able  
8 to convince them that the  
9 opinion originally entertained  
10 by them does not conform to the  
11 law and the evidence or lack of  
12 evidence in the case, it would  
13 be their duty to change their  
14 original opinion as long as they  
15 changed opinion squares with  
16 their conscience. Ten of you  
17 jurors must concur or agree  
18 on whatever verdict you shall  
19 render. You may render one of  
20 the following verdicts: guilty  
21 of aggravated rape, guilty of  
22 attempted aggravated rape,  
23 guilty of simple rape, guilty  
24 of forcible rape, guilty and  
25 attempted forcible rape and  
26 not guilty. In order to convict  
27 on any verdict responsive to  
28 the charge, it is necessary that  
29 you, the jury, find the defendant

1 guilty beyond a reasonable doubt  
2 on any responsive verdict  
3 returned. Further if you,  
4 the jury, have a reasonable  
5 doubt as to any or all grades  
6 of the offense charged, you  
7 shall find the defendant not  
8 guilty of that grade or all grades  
9 of the offense as the case may  
10 be. You will retire to your  
11 room and select among yourselves  
12 a foreman by majority vote and  
13 after you have arrived at a verdict  
14 in which at least ten of you  
15 shall concur or agree, your  
16 foreman will place a date on the  
17 back of the sheet on which the  
18 verdicts are written and under  
19 the date he will write whatever  
20 verdict you arrive at, and under  
21 the verdict he will sign his  
22 name and under his signature  
23 he will add the word "foreman".  
24 You are to go in and deliberate  
25 with one another and discuss  
26 the matter. If you have in your  
27 own conscious one verdict or  
28 another remain with that unless  
29 you are convinced by your fellow

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jurors that you should change  
your mind, don't simply change  
your mind because nine of the  
people have and they need twelve  
and they need you. Do what you  
think is right to the best of  
your ability in this case. It  
will be difficult for you  
because you are not judges and  
you are trained in the law but  
this system has been working  
for a number of years and we  
rely on it as the best system  
of justice in the world and we  
ask you to bear that in mind  
as you go about your contemplation  
in this matter understanding if  
you cannot reach a verdict here  
some other jury will have to  
reach a verdict guilty or not so  
as you go about your affairs  
you will have this verdict sheet  
which says we the jury finds the  
defendant, Malcolm J. Alexander  
and a long black line, Gretna,  
Louisiana, this blank day of  
November, 1980, and a place for  
the foreman to sign; on the  
reverse side we have the responsive

1                   verdicts which we have spoken  
2                   about before guilty of aggravated  
3                   rape, guilty of attempted  
4                   aggravated rape, guilty of  
5                   simple rape, guilty of forcible  
6                   rape, or guilty of attempted  
7                   forcible rape and not guilty.  
8                   I now turn these charges over  
9                   to you. Go into the juryroom  
10                  and elect from your number by  
11                  majority vote a foreman and he  
12                  will be the person that will  
13                  conduct the affairs in the jury  
14                  room. He is not a dictator. He  
15                  is simply the foreman. I now  
16                  turn it over to you. Alright,  
17                  the alternate juror, you are now  
18                  excused at this time, Mr. Sevier.

19                  (JURY WENT INTO DELIBERATION)

20                  THE COURT:

21                  We are going to have a verdict  
22                  from the jury now. This is not  
23                  going to be a easy verdict one  
24                  way or another for the jury but  
25                  I am not going to make it any  
26                  harder on them by having anybody  
27                  bursting out screaming or  
28                  hollering one way or another so  
29                  I tell you now if you are so

overcome by emotion that you  
can't remain quiet during the  
course of this matter I am going  
to have to ask you to leave the  
courtroom at this time. This is  
not an easy job. These people  
didn't ask to be jurors. In  
fact, they resisted as much as  
they could, but the same as I  
would call you or call anybody  
else to serve as a juror, their  
duty is to serve so let's don't  
make it any harder on them.  
Alright, let's proceed. Call in  
the jury.

(JURY RETURNED)

THE COURT:

You waive the polling, gentlemen?

MR. PITRE:

Yes, Your Honor.

MR. TOSH:

Yes, Your Honor.

THE COURT:

The person with the paper in your  
hand, you have been elected the  
foreman?

THE FOREMAN:

Yes, Your Honor.

THE COURT:

1           If you have a verdict please hand  
2           it over to the bailiff. Would  
3           you please stand, Mr. Alexander?  
4           Would the clerk read the verdict  
5           please.

6           THE CLERK:

7           24th Judicial District Court Parish  
8           of Jefferson, State of Louisiana  
9           Verdict, we the jury, find  
10          the defendant, Malcolm J.  
11          Alexander guilty of aggravated  
12          rape. Signed foreman Jack  
13          Sigman.

14           THE COURT:

15          Now, ladies and gentlemen, no body  
16          is going to ask you how you  
17          voted. I will have a polling of  
18          the jury. I will simply ask  
19          each one of you if this is  
20          your verdict and all you have to  
21          do is say yes or no.

22           THE COURT:

23          Is that your verdict?

24          A JUROR:

25          Yes.

26          A JUROR:

27          Yes.

28          A JUROR:

29          Yes.

1           A JUROR:  
2           Yes.  
3           A JUROR:  
4           Yes.  
5           A JUROR:  
6           Yes.  
7           A JUROR:  
8           Yes.  
9           A JUROR:  
10          Yes.  
11          A JUROR:  
12          Yes.  
13          A JUROR:  
14          Yes.  
15          A JUROR:  
16          Yes.  
17          A JUROR:  
18          Yes.  
19          (END OF TESTIMONY AND PROCEEDINGS)  
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I, TED J. JEANSONNE, Official Court Reporter,  
for Division "K" of the Twenty Fourth Judicial District  
Court, do hereby certify that the foregoing pages is  
a true and correct transcript of the testimony and  
proceedings taken in the matter of STATE OF LOUISIANA  
VS. MALCOLM J. ALEXANDER, No. 80-1260, on November 5,  
1980, before the Honorable Alvin Rudy Bason, Judge  
presiding.

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*Ted J. Jeansonne*

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18                   TED J. JEANSONNE  
19                   Official Court Reporter  
20                   Division "K"  
21                   24th Judicial District  
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2 TWENTY-FOURTH JUDICIAL DISTRICT COURT  
3 PARISH OF JEFFERSON  
4 STATE OF LOUISIANA

5 \* \* \* \* \* \* \* \* \* \* \*  
6 STATE OF LOUISIANA \* NO. 60-1260  
7 VS. \* DIVISION "K"  
8 MALCOLM J. ALEXANDER \*  
9 \* \* \* \* \* \* \* \* \* \* \*

10  
11 Testimony and proceedings taken in the  
12 above numbered and entitled case in open Court on  
13 December 10, 1980, the Honorable Alvin Rudy Eason,  
14 Judge presiding, Division "K"

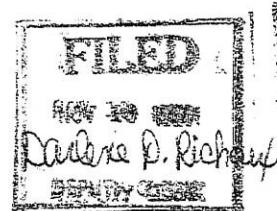
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17 APPEARANCES:

18 FOR THE STATE:

19 William Hall, Assistant District  
20 Attorney

21 FOR THE DEFENDANT:

22 Joseph J. Tosh Attorney at Law



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MR. TOSH:

Your Honor, for the record as I explained to you, Your Honor, in chambers I would like to move the Court the opportunity to have the defendant take a polygraph test for the basis of a motion for a new trial. As I explained to your Honor, the one firm that I contacted for me while I was at trial last week that they no longer testify in Court. Therefore, I would like an additional week to obtain another polygraph firm to examine the defendant. Like I said would be the basis of a new trial.

THE COURT:

Well the Court is going to deny that motion. The disposition was made in this matter. It has been almost a month since the matter has been tried and there is a mandatory sentence in connection with this matter. The jury heard this case and it was a unanimous verdict and the Court based on the testimony

1                           and the evidence presented at  
2                           the time of trial sees no reason  
3                           to put Mr. Alexander or the  
4                           victim of this rape through  
5                           another trial. There is nothing  
6                           that can be accomplished by the  
7                           delay in sentencing.

8                           MR. TOSH:

9                           Your Honor, I would like to note my  
10                          objection for the record.

11                         THE COURT:

12                         Note counsel's objection in connection  
13                         with this matter. Mr. Alexander,  
14                         you have been convicted by a jury  
15                         of your peers of aggravated  
16                         rape of Mrs. Betty S. Neff and  
17                         the provisions of Article 14:42,  
18                         aggravated rape says whoever  
19                         commits the crime of aggravated  
20                         rape shall be punished by life  
21                         imprisonment without benefit of  
22                         parole, probation, or suspension  
23                         of sentence. Accordingly the  
24                         Court sentences you to life  
25                         in prison without benefit of  
26                         parole, probation or suspension  
27                         according to the law of the State  
28                         of Louisiana.

29                         MR. TOSH:

1           Your Honor, I know that the sentence  
2           is mandatory, but I would like  
3           to note my objection to the  
4           excessiviness of the sentence.  
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6           THE COURT:  
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8           Alright, sir.  
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I, TED J. JEANSONNE, Official Court Reporter, for Division "K" of the Twenty Fourth Judicial District Court, do hereby certify that the foregoing pages is a true and correct transcript of the testimony and proceedings taken in the matter of STATE OF LOUISIANA VS. MALCOLM J. ALEXANDER, No. 80-1260, on December 10, 1980, the Honorable Alvin Rudy Eason, Judge presiding, Division "K".

*Ted J. Jeansonne*

TED J. JEANSONNE  
Official Court Reporter  
Division "K"  
24th Judicial District  
Court