

STATE OF MICHIGAN

- IN THE 22<sup>nd</sup> CIRCUIT COURT FOR THE COUNTY OF WASHTENAW

PEOPLE OF THE STATE OF MICHIGAN,  
Plaintiff

Case No. 04-2017 FC

V

GARY EARL LEITERMAN,  
Defendant

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JURY TRIAL CONTINUED

BEFOR HONORABLE DONALD E. SHELTON, CIRCUIT COURT JUDGE

Ann Arbor, Michigan - Friday, July 22, 2005

APPEARANCES:

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Ann Arbor, Michigan

Friday, July 22, 2005 - at 8:00 a.m.

JUDICIAL ATTORNEY: All rise. The Washtenaw County Trial Court is now in session. The Honorable Donald E. Shelton, presiding.

THE COURT: Bring the jury. One item while the jury is coming out. I understand that we have agreed that the venue provision in the instructions that we talked about will not be given. Is that correct?

MR. HILLER: I'm requesting that, Your Honor.  
Yes.

THE COURT: And you have no objection? All right. Thank you. So I understand there are no objections to the instructions.

MR. HILLER: That's correct.

JUDICIAL ATTORNEY: All rise for the jury, please.

THE COURT: Please be seated. Good morning, ladies and gentleman. As I indicated to you yesterday what remains in the trial are the closing arguments of the attorney's, my instructions and your deliberations. The Prosecutor makes the first closing argument to you because he has the burden of proof. Then the defense attorney will make his closing argument and the Prosecutor will

1 then have the opportunity to make a brief concluding  
2 remarks before my instructions. Are you ready to proceed?

3 MR. HILLER: I am, Your Honor.

4 THE COURT: Mr. Hiller.

5 MR. HILLER: May I please the Court, Mr. Gabry,  
6 ladies and gentleman. Very soon this case is going to be  
7 in your hands. The judge has explained to you we're going  
8 to give closing arguments, he's then going to instruct  
9 you. I want to remind you that the things that the  
10 attorney's say are not evidence. The things that they  
11 attorney's say in closing argument like opening statements  
12 are not evidence. Nothing that I say, nothing that Mr.  
13 Gabry may say is evidence. It's comment on the evidence,  
14 but it's not evidence. The evidence is the testimony that  
15 was presented from the witness stand and the exhibits -  
16 the physical things that have been admitted during the  
17 course of the trial. Your memory of the evidence is  
18 critical here. That's what you'll be using to discuss the  
19 case - your memory and that of your fellow jurors. If I  
20 say something or if Mr. Gabry says something that doesn't  
21 jog with your memory, I'm asking you to trust your memory  
22 of it. Discuss it with your fellow jurors - trust in them  
23 as well. Now as the judge has explained to you because  
24 the People bare the burden of proof, I'm allowed two  
25 opportunities to speak to you. It's probably not the most

1 exciting news that you've heard in a while. I don't have  
2 to take that second opportunity but I can't recall an  
3 opportunity to make a rebuttal argument that I didn't take  
4 advantage of. So, I'm certainly going to be speaking to  
5 you again after I sit down. I want to take this  
6 opportunity however to thank you for serving as a juror on  
7 this case. It's been a long case, you've already done a  
8 lot of hard work and the hardest work is yet to come.  
9 After we're done talking to you, the judge is going to  
10 give you some instructions - the rules by of which you  
11 must go about deliberating your verdict. All of those  
12 instructions are equally important. Some of them are  
13 general. That is, they're the same for every criminal  
14 case that's tried in the State of Michigan. Some of them  
15 are particular to the offense that's charged in this case  
16 - murder. They're all equally important. I will talk  
17 about some of them in my closing argument but when I do  
18 that, I don't mean to suggest to you that what I'm talking  
19 about is more important than the others. There are things  
20 that I feel is important to highlight during the course of  
21 the closing argument. One of the instructions that the  
22 judge is going to give you early on in the instructions,  
23 you've actually already heard and I want to speak about it  
24 briefly this morning. It deals with the burden of proof  
25 and the presumption of innocence and it deals with the

1 definition of reasonable doubt. As you know, we have the  
2 burden of proving the defendant guilty beyond a reasonable  
3 doubt. And, until you're called upon to sit as jurors in  
4 a criminal case, the definition of reasonable doubt is  
5 something you take for granted. It's a term that we hear  
6 in everyday life. It's on television; it's in the  
7 newspapers, magazines, radio. It comes up in everyday  
8 conversation and it's something that's accepted at face  
9 value. But now it's important that you all use the same  
10 definition of what a reasonable doubt is and that's why  
11 the judge is going to give you an instruction of what the  
12 law says a reasonable doubt is and what he's going to tell  
13 you is, in part, that a reasonable doubt is a fair doubt  
14 based on reason and common sense. It's not a mirror,  
15 imaginary or possible doubt. And, I submit to you that  
16 what that means is, is it's not a what if or couldn't it  
17 be so kind of a doubt, but its a doubt based on reason and  
18 common sense. And those two things, ladies and gentleman,  
19 a reason and common sense, pardon me, are the two most  
20 important tools that you will take with you back into that  
21 jury room. Those are the tools that will allow you to go  
22 about deliberating a fair and just verdict in this case.  
23 What I suggest that you do when you get back into the jury  
24 room is look at all the evidence that's been submitted,  
25 decide what makes sense of the evidence. Decide what

1 stands to reason. Hold that evidence up to the light of  
2 reason and common sense and if you do that, you will reach  
3 the right conclusion. Now again, I have to prove to you  
4 three things. I submit we have proven these three things  
5 to you. One, that Gary Leiterman killed Jane Mixer. Two,  
6 that he did it intentionally - that he intended to kill  
7 her. And three, that he did it with premeditation and  
8 deliberation. That means he thought about his actions  
9 beforehand and he chose what he dis--what he wanted to do.  
10 Now, Mr. Gabry mentioned something in his opening  
11 statement that I agree with and that is that this case  
12 really doesn't involve a question of whether or not this  
13 was a first degree murder. The facts in this case clearly  
14 show first degree, premeditated murder. Jane Mixer was  
15 shot point-blank range, a contact wound in the head. She  
16 was then shot a second time, a contact wound in the head.  
17 The muzzle of the gun pressed to her scalp when the  
18 trigger was pulled. A ligature was then wrapped around  
19 her neck and knotted tight enough that had she not already  
20 been dead from the gunshot wounds, it surely would have  
21 killed her. You can judge the defendant's intent by what  
22 he did and what he did clearly shows an intent to kill,  
23 and conscious choices to shoot her--shoot her twice and to  
24 wrap that ligature around her neck. You've learned that a  
25 towel was used to staunch the flow of blood from her head.

1 Perhaps to wipe up blood that had spilled in the  
2 defendant's car. You've learned that she was taken to  
3 Denton Cemetery - a place that the defendant must have  
4 driven past countless times. Remember the testimony of  
5 Ken Harvey, he went to school--high school in one of the  
6 schools in Wayne, Michigan. His mother lived off Fosdick  
7 Road--lived on Fosdick Road just off Michigan Avenue. The  
8 defendant later bought a house in Westland, just north of  
9 Michigan Avenue. We know that he went to visit his  
10 mother. Paul Esper testified that even he was--went to  
11 that house - right past Denton Cemetery. The defendant  
12 picked up Jane Mixer's body from the car, dragged it at  
13 least part of the way to where she was rested because  
14 remember that Don Bennett observed drag marks on the  
15 ground and dirt on one of the heels of her stocking. He  
16 took her belongings from the car, placed them with her  
17 body, covered her body with the coats and left her there -  
18 but not before setting that bag across the street where  
19 the next morning you learned Mark Grow found it on his way  
20 to school. You've heard about the bag. You've heard  
21 about what was in it - a folder, some note cards with  
22 notes on them--study type of cards; a birthday present  
23 with the note that Mark recalls being signed by someone  
24 named Jenny or Jennifer but, remember that Jane Mixer  
25 liked to be called Janie. We know that because that's



1        what she called herself when she talked to Jill Patula  
2        "that night and then she disappeared. You heard from the  
3        detectives and Trooper Schoenberger went to the crime  
4        scene, that they kept people away from the body until the  
5        team from the crime lab was able to arrive to begin  
6        processing the evidence - to begin documenting the crime  
7        scene. Now, evidence collections proce--evidence  
8        collections procedures were different then than they are  
9        now. Technology, science was different then than it is  
10       now. But, you learned how the crime lab came documented  
11       the evidence. You've seen some of the crime scene  
12       photographs that have been admitted into evidence. You've  
13       learned how some of the evidence was collected at the  
14       scene; some was collected by George Hein; some was  
15       collected by Don Bennett - that the body was transferred  
16       to the University of Michigan Morgue by a man named Arie  
17       Milligan but you heard his stipulation about what he would  
18       have testified to had he been here - that he was the  
19       ambulance driver who took the body to the morgue, that it  
20       was followed by a trooper, that nobody tampered with the  
21       body during the time that he had possession of it. You've  
22       learned from Don Bennett that the body was wrapped and  
23       tagged before it left the cemetery and it was in the same  
24       condition when he saw it at the morgue a short time later  
25       before the autopsy started. You learned that during the

1 autopsy Don Bennett collected evidence, including things  
2 that Janie Mixer was wearing - jumper, shirt--turtleneck  
3 shirt, pantyhose, underwear, the stocking that had been  
4 knotted around her neck. He collected those things. He  
5 explained to you how he stored them - placed them in the  
6 separate envelopes. You also learned how detectives went  
7 to the law school later that night and they found other  
8 evidence that they collected - two phonebooks. One from  
9 Jane Mixer's room. It had a tick mark next to the name of  
10 David Johnson. One phone booth from the basement of the  
11 law school with words, "Muskegon Mixer" written on the  
12 cover. (sic) That's the phonebook that writing that  
13 Lieutenant Riley says it's highly probable the defendant  
14 wrote that. The tick mark on the other phonebook next to  
15 the name David Johnson led detective to a fraternity house  
16 kiddie-corner from the law school where that David Johnson  
17 lived. And there they talked to Joe Katulic and learned  
18 from him about the phone call that Jane had made to him  
19 just before 10:00 the night before. Joe Katulic said he  
20 received his phone call just before 10:00 and he remembers  
21 the time because it was right before he was kidnapped to  
22 go to Bimbo's. Janie Mixer asked him, is this the David  
23 Johnson who's supposed to take me to Muskegon. Remember,  
24 that was what her fiancée, Bill Weitzman and her dad knew  
25 to be her plans - that David Johnson was to take her to

1 Muskegon. Joe Katulic explained to her that the David  
2 Johnson who was his roommate was doing a play on stage in  
3 front of an audience and that he didn't think that Joe  
4 Katulic was going to be taking anybody to Muskegon that  
5 night. (sic) She told him, well in case it is the Joe  
6 Katulic can you tell him Janie Mixer called. That was Joe  
7 Katulic's testimony. We know from David Johnson that he  
8 was in a play that night - a production of a Gilbert and  
9 Sullivan musical--light opera I suppose it was called. It  
10 was being presided a theatre, on campus. He even brought  
11 in a copy of the program showing the dates, including  
12 March 20, 1969 and showing that he was in that production.  
13 We also learned from David Johnson that there were posters  
14 up around campus advertising this play with his name and  
15 his picture on it. You learned from Don Bennett how he  
16 attended the autopsy with the crime scene team and that he  
17 collected evidence at the autopsy - her clothing. After  
18 they had finished their work in Ann Arbor, the crime scene  
19 team took that evidence to Lansing. They stored it at the  
20 Lansing lab. This was a Friday if you recall. They  
21 stored it at the Lansing lab and examined it the next when  
22 they came in. When they were done with it Don Bennett  
23 told you that they took it over and gave it to Walter  
24 Holes at the State Health Department laboratory. Walter  
25 Holes examined it. Things that went over there included -

1 the spot of blood from the hand that was collected, the  
2 clothing - including the pantyhose, also the ligature that  
3 was tied around her neck. Now, we talked about evidence  
4 collection procedures being different then than they are  
5 now and certainly there were some things done wrong in  
6 handling the evidence--some of the evidence that was  
7 collected at the crime scene and elsewhere. Some of the  
8 evidence, such as the phonebook with "Mixer" and  
9 "Muskegon" on it was destroyed. Remember the janitor at  
10 the State Police Post put that into the incinerator. He  
11 didn't realize the value of it. This was five years  
12 later. Some of it has been lost, including the three-ring  
13 notebook that was collected at the defendant's house in  
14 2004. Mistakes aren't something just in the past.  
15 Fortunately there were good quality images available that  
16 had been taken by Lieutenant Riley. Some of it no one  
17 knows what happened to it. The cigarette butt collected  
18 by George Hein. The other phonebook with the tick mark  
19 next to David Johnson. We know those things existed.  
20 Gorge Hein testified that yes, in fact I did collect a  
21 cigarette butt. The phonebook was observed at the scene.  
22 It was collected. We know it was there because that's  
23 what led them to go and talk to Joe Katulic and David  
24 Johnson. But, over 26 years they're gone. Some of the  
25 property was even returned to Dr. Mixer. You heard Max

1 Little testify that he in fact returned some of the  
2 property, including a Hudson's bag - the contents of the  
3 suitcase, the clothing that was laid on Jane Mixer's body.  
4 He returned that to her father. Some of the evidence just  
5 wasn't taken care of very well at the post. You've heard  
6 Earl James' description of what the property room at the  
7 post looked like--or the bomb shelter where this evidence  
8 was stored, looked like when he took control of it in  
9 1974. But, the property that went to Walter Holes stated  
10 the Health Department Laboratory--it was stored properly.  
11 It was safeguarded. It was kept there until Earl James  
12 came and got it in November of 1974 after he was ordered  
13 to collect all the property and take it to the long-term  
14 storage evidence vault at the State Police Headquarters in  
15 East Lansing. And, Earl James told you what he did and  
16 how he did that. And, he also told you about an addition  
17 to the condition of the property that he found at the  
18 State Police Post. He told you about the condition of the  
19 property that he found at the Health Department Laboratory  
20 - that it was in good shape. It was stored properly. It  
21 was packaged. It was sealed. He inventoried it and  
22 everything that was supposed to be there was there. He  
23 put it into clean boxes. He took it to East Lansing. It  
24 was placed into the evidence vault where it stayed until  
25 Lieutenant Minzy and his crew moved everything in that

1 vault from the East Lansing Headquarters to a new storage  
2 facility on Lake Lansing Road and you heard Lieutenant  
3 Minzy describe the security that was there, the way that  
4 move was made. They didn't open the boxes. They moved  
5 them and then moved them again a few years later to the  
6 new and current storage area on Collins Road in Lansing.  
7 And that's where that evidence stayed until Sergeant  
8 Powell came and got some of it out - took it to the  
9 laboratory for DNA testing. The evidence she got out  
10 included the blood spot. It included the pantyhose. It  
11 included the bloody towel and later Sergeant Schroader,  
12 pardon me, took the ligature out of the long-term storage  
13 locker and took that to the lab for testing as well. Dr.  
14 Milligan you've learned performed DNA analysis on these  
15 items. He was able to get profiles--DNA profiles from the  
16 blood spot, which we all know matches the DNA profile of  
17 David Ruelas. There's been a lot of talk about  
18 contamination surrounding that blood spot and out of all  
19 that talk about contamination, there isn't a single bit of  
20 evidence that contamination occurred. Even the  
21 defendant's expert said that the sentries, the controls  
22 that were in place, he has no evidence that there was any  
23 contamination. The towel yielded a profile from the  
24 intense blood spot in the middle that was used as a  
25 presumed known sample of Jane Mixer's blood. We've

1       learned of the stipulation by Dr. Marco Scarpetta that he  
2       analyzed the DNA profile's taken from the towel, taken  
3       from Dan Mixer, Sr., Dan Mixer, Jr., and Barbara Nelson  
4       who is Janie's sister and that the odds are overwhelming  
5       that the blood on the towel was from a sibling of Dan Jr.  
6       and Barbara and was a child of Dan Sr. In other words, the  
7       odds are overwhelming that the presumed--the use of that  
8       as a presumed sample is good science - that that's Jane  
9       Mixer's blood. You also know that there were five  
10      profiles that were obtained from the pantyhose. Here at  
11      the crotch, two places on the front of the right leg, back  
12      heel and on the back of the left leg. We also know that  
13      there was a mixture or a profile that was mainly Jane but  
14      there was some indications of male DNA from this area of  
15      the stocking. That area of the stocking--remember this  
16      was cut into four pieces. This area of the stocking that  
17      was tested is the area of the stocking that Walter Holes  
18      happened to put his evidence marker on when he received it  
19      at the Health Department Laboratory. He didn't know that  
20      there was DNA here. That just happens to be where he put  
21      his marker. So, we know because his marker's there, there  
22      can be no question that that portion of stocking was  
23      testing and that yielded that DNA profile was from this  
24      stocking that you see tied around Jane Mixer's neck. Now,  
25      the DNA profile off of this stocking that the crime lab

1 got--that Dr. Milligan got was overwhelmingly female. It  
2 was overwhelmingly Jane Mixer. There was so much female  
3 DNA there that is was, Dr. Milligan thought masking the  
4 male DNA that was there. So, the extract--the DNA extract  
5 that Dr. Milligan obtained from the end of that stocking  
6 was sent to Bohde Laboratories in Virginia. You heard  
7 Silvia Gild testify. Silvia Gild is the young woman who  
8 came in. She's the one that worked to identify World  
9 Trace Center victims and Tsunami victims. She examined  
10 the evidence that Dr. Milligan was able to obtain from the  
11 end of that stocking. Using a technology called YSTR.  
12 It's a technology--exact same technology as regular STR  
13 testing. STR - Short Tandem Repeat, those sections of DNA  
14 that tend to repeat in pattern over and over. Using the  
15 YSTR, the technology is able to ignore the female DNA  
16 that's there. That's the value of it is in this kind of a  
17 situation, where you've got a mixture that's  
18 overwhelmingly female and you need to try and identify the  
19 male, the YSTR testing is the appropriate tool to use  
20 because it doesn't look at the female DNA. It looks at  
21 locations on the Y-chromosome only. Silvia Gild told you  
22 of the results of her testing. She told you that there  
23 were--they test at 12 locations on the Y-chromosome. Off  
24 of this piece of evidence she was able to get results at 8  
25 of those 12 loci--8 of those 12 locations. She also



1 tested a known sample of the defendant's DNA looking at  
2 those same 12 locations and at all 8 of the locations that  
3 she found on the stocking--that she was able to get  
4 interpretable results from on this stocking, the  
5 defendant's DNA matched. At the other locations she was  
6 either able to get no results off the stocking or results  
7 that fell below their reporting thresholds so that she  
8 couldn't report to you a result. But she did say there  
9 was nothing in her results that would eliminate the  
10 defendant as having been the donor of the DNA that's found  
11 on this end of the ligature where he would have grabbed it  
12 and made the knot. Now, we've learned some things about  
13 the defendant along the way. We've learned from his birth  
14 certificate that he was a single birth. Here's the birth  
15 certificate. There's a portion right here where it  
16 indicates whether he was a twin or a triple and there's a  
17 line through it indicating he was a single birth. He had  
18 no identical twin. He wasn't a triplet. Why is that  
19 important? It's important because identical twins have  
20 the same DNA. The defendant didn't have the same DNA as  
21 anybody else. We've also learned that he has only one  
22 biological brother from his father. That's Tim. We've  
23 heard about Tim. Why is that important? Well, it's  
24 important for this piece of evidence because as Silvia  
25 explained to you, because they are testing on the y

1 chromosome only, all of the males in this line will have  
2 that same profile. So, Timothy Leiterman has the same  
3 profile has was found on this sock. That's why the  
4 elimination sample was taken from Timothy Leiterman and it  
5 was tested using the more discriminating full STR testing  
6 that's done at the State Police Laboratory and you've  
7 heard about the results of that--that Timothy Leiterman is  
8 eliminated as a contributor from the DNA that was found on  
9 this stocking. We've learned that he lived in Westland -  
10 just north of US-12. We've learned his mother lived in  
11 Saline just off US-12 on Fosdick Road which means that  
12 that route between his house just off of US-12 in Westland  
13 and his mother's house in US-12--off of US-12 in Saline  
14 would have been a familiar route to him. It would have  
15 taken him right past Denton Cemetery countless times.  
16 We've learned that in that house in Westland, Paul Esper  
17 found newspapers in his closet--newspapers that had  
18 articles about the series of killings. Why do you save  
19 newspapers? You save newspapers because they're of  
20 special interest to you. We've also learned that the  
21 defendant has Ruger Single 6 handgun. We have the  
22 certified documents from the State Police documenting the  
23 purchase of that handgun and the registration of the  
24 handgun with the Washtenaw County Sheriff's Department in  
25 1967. We know from the testimony of Reinhard Pope, State

1 Police Firearms Examiner, that one of the bullets that was  
2 fired into her head came from a gun with six lands and  
3 grooves and a right-hand twist - that that left marks on  
4 the bullet. And we also know that Ruger Single 6 has  
5 identical rifling characteristics - six lands and grooves,  
6 right-hand twist, which means that the defendant's gun was  
7 capable of having fired the bullet that killed Jane Mixer.  
8 We also know that the defendant cannot be eliminated from  
9 being the contributor of several DNA profiles that were  
10 obtained from the towel. Probability of a random match  
11 ranging from 1 and 6 to 1 and 3200 for a Caucasian. We  
12 also know that the defendant cannot be eliminated as the  
13 donor of the DNA on the heel of Jane Mixer's stocking.  
14 That match was--there was a mixture of Jane Mixer and a  
15 male. The defendant matches at 3 out of the 13 for this  
16 loci for this piece of evidence cut from the heel. Now,  
17 the chance from a random mat--for a random match at that  
18 sight is pretty good. The odds are better than 1 and 10--  
19 1 and 8 is the testimony of Dr. Milligan. But, we also  
20 know that the defendant cannot be eliminated as the donor  
21 of DNA from the stain from the crotch and there he matched  
22 at 9 of the 13 COTIS locations and can't be eliminated at  
23 the others. The odds of a random match there, 1 and 2000  
24 in the Caucasian population. 1 and 6900 in the Hispanic  
25 population. 1 and 10,400 in the African American

1 population. Now, you may wonder why we're talking about  
2 "these other populations. Clearly the defendant is a  
3 Caucasian man. Well, the purpose of those statistics is to  
4 calculate the probability of a random match if it's not  
5 the defendant. So, we shouldn't make assumptions about  
6 the race of the person who did this if it wasn't the  
7 defendant based on his race. Therefore, it's appropriate  
8 to look at all of those various statistics. We also know  
9 that the defendant cannot be eliminated as a donor here,  
10 here and here. Two places on the front of the right leg,  
11 one place on the rear of the left leg. There the  
12 defendant matches at 13 out of 13 places where they  
13 checked. COTIS locations that are checked, he matches at  
14 all 13 - no differences. The chance of a random match  
15 given a 13 out of 13 match with the defendant's DNA  
16 profile were Caucasians 1 and 171.7 trillion where African  
17 Americans 1 and 40.8 trillion. For Hispanic American's 1  
18 and 980.5 trillion. The State Police have guidelines  
19 about what they can say. They can say you can't be  
20 eliminated. They can say the profiles match. They can  
21 give the statistics. The defendant's expert went even  
22 further. He said, I think we can conclude that this is  
23 Timothy Leiterman's DNA--or Gary Leiterman's DNA here,  
24 here, here. What that shows, ladies and gentleman was  
25 that there was substantial physical contact between the

1       defendant and Janie Mixer. Remember the testimony of Dr.  
2       Milligan. This wasn't a little DNA. This wasn't a few  
3       cells. They're reporting thresholds acquits to something  
4       in the neighborhood of 20 cells worth of DNA. At one of  
5       these locations, DNA was the equivalent of 1400 cells - 70  
6       times the reporting threshold add another 2000 cells. Add  
7       another 5000 cells. That's a lot of DNA. It is not  
8       something that you pick up off a coffee cup. There was  
9       substantial physical contact between the defendant and  
10      Jane Mixer. It shows that the defendant picked up Jane  
11      Mixer on the night of March 28, 1969. It shows that he  
12      took his 22 caliber Ruger Single 6 revolver, pulled the  
13      hammer back because remember that's a single action  
14      revolver. He has to cock it. He pulled the hammer back.  
15      He pressed his weapon to the head of Jane mixer and pulled  
16      the trigger and put a bullet into her brain. He pulled  
17      the hammer back again, he put it to her head again. He  
18      pulled the trigger again and put another bullet into her  
19      brain. He took a stocking. He wrapped it twice around  
20      her neck and knotted it leaving his DNA here. He used the  
21      towel to staunch the flow of blood and then he lifted Jane  
22      Mixer's body from the car, moved it out, set it down,  
23      dragged it to the location where she was found, went back  
24      to the car, took her property out, placed it with her  
25      body, placed her clothing on hangers on top of her body,

1 placed the towel on her body, placed her shoes on her  
2 body, placed Phil Weitzman's book on her body, covered the  
3 bottom half of her body with her coat, the top half with  
4 her raincoat. But, not before he pulled her panties and  
5 her pantyhose down and lifted her skirt up to expose her  
6 genitals - and then he left her there. It shows, ladies  
7 and gentleman that the defendant is guilty of the murder  
8 of Jane Mixer. (INAUDIBLE) DNA on the ligature.

9 (INAUDIBLE) DNA here, here, here, and here on her  
10 stockings. 1 and 171.7 trillion are the odds of that. I  
11 submit to you those are the odds that the defendant did  
12 not commit this crime. That is not a reasonable doubt  
13 ladies and gentleman. I submit to you that that is proof  
14 beyond a reasonable doubt with all the other evidence that  
15 the defendant murdered Jane Mixer and left her body in the  
16 Denton Cemetery to be found the next morning by Nancy  
17 Grow. Listen carefully to the rest of the arguments.  
18 Consider the evidence carefully. Comply the judge's  
19 instructions carefully. When you do, I'm convinced that  
20 you'll find the evidence shows the defendant is guilty of  
21 Jane Mixer's murder. I ask you to return the verdict of  
22 guilty first-degree premeditated murder.

23 THE COURT: Mr. Gabry?

24 MR. GABRY: Thank you, Your Honor. If it pleased  
25 the Court, Mr. Hiller, good morning ladies and gentleman.

1       It's been about 11 days since I've had an opportunity to  
2       talk to you. The last time was in an opening statement  
3       after Mr. Hiller had outlined what he believed he would be  
4       able to prove over whatever number of days we were going  
5       to be here together. On behalf of Mr. Leiterman and his  
6       family, I want you to know how much they appreciate your  
7       acceptance of the responsibility that you have. His life  
8       is in your hands. His future is in your hands. What you  
9       decide collectively that fate will be, must be based on  
10      all of the evidence and how all of that evidence fits  
11      together. And I want to spend some time talking about all  
12      of the evidence. Because, over the past 11 days we've  
13      actually traveled about 36 years. We've gone back in time  
14      to a different setting, a different way of life. We've  
15      gone back in time because of a change in advancement in  
16      science that as Mr. Hiller described a new generation of  
17      detectives took upon themselves to look into an old case.  
18      A case that frankly had been closed. There had been no  
19      activity on it with the exception of the fingerprint. A  
20      case that had been investigated by a massive array of law  
21      enforcement professionals because it was considered to be  
22      one of the series of a brutal number of homicides of young  
23      ladies here in Washtenaw County. And, Jane Mixer and the  
24      mystery of her 13 hours when she was last seen by her  
25      fiancée and she was discovered the next morning remained

1       one of those mysteries. If you'll remember in my opening  
2       statement, I told you that I suspected that when we heard  
3       what we would hear in this courtroom we would be further  
4       from knowing what happened that night than closer. That  
5       the mystery would deepen and ladies and gentleman, it has.  
6       What you have heard from Mr. Hiller is one piece of  
7       evidence. We've ignored and not discussed in much detail  
8       the rest of it. You've been here for 11 days while a  
9       number--unbelievable number of witnesses were brought  
10      forward to give you pieces of evidence. You'll remember  
11      the evidence of the finding of the bullets in the car in  
12      2004, which Mr. Pope basically looked at and said, those  
13      aren't even similar to the ones that they're looking for.  
14      I contend to you that this was an effort to show so much  
15      evidence, so much cooperation, so much support for what  
16      frankly is not that much evidence. I remember Mr. Hiller  
17      talked about his opening and what his opening would be and  
18      he likened that time--at that time the evidence to what he  
19      called, pieces of a puzzle and that his opening statement  
20      was going to be the cover of that puzzle. Now, as I  
21      thought every night about what we had heard in court - why  
22      we had heard it? Why was it being brought? I tried to  
23      put together that puzzle in my mind. I tried to see what  
24      you were seeing, what you were hearing, how you might put  
25      together this puzzle from these pieces that Mr. Hiller



1 would pull out of his box - that you would take and you  
2 would put together and that you would be the people who  
3 would determine whether these pieces fit. So, as I began  
4 to think about how to address the evidence I want to do it  
5 in that way and I want you to understand that I don't do  
6 it to demean it in anyway. This is an unbelievably  
7 serious case to the Mixer family, to law enforcement, to  
8 the Leiterman family. Mr. Hiller called it, pieces of a  
9 puzzle. So, lets look at some of those pieces of the  
10 puzzle. But, lets look at them in the standards and under  
11 the guidelines, the fundamental principles of our criminal  
12 justice system. Lets look at it understanding right now  
13 that Mr. Leiterman is presumed--presumed--he is innocent  
14 until you make the determination having looked at all of  
15 the evidence, having determined from that evidence or the  
16 lack of that evidence that there is no reasonable doubt.  
17 Only then is that presumption of innocence removed. He  
18 has the right to sit there and to hear and to listen to  
19 what he's accused of and to hear and understand why they  
20 believed after 36 years he should be uprooted from his  
21 life, his home invaded, his world changed sitting here  
22 accused of a terrible, terrible crime. Of a terrible,  
23 terrible crime committed against a beautiful young lady  
24 with her life going for her, articulate, brilliant that he  
25 had no connection to--that his world didn't even intersect

1 with. Gary Leiterman from the picture that the Prosecutor  
2 put in you'll see was a Pharmaceutical Salesman - not a  
3 West Lawbook Distributor, not someone in Frequent's Law  
4 Library, he was a Pharmaceutical Sales Rep who went to  
5 hospitals and doctors offices. He lived not in Ann Arbor.  
6 There has been no evidence of an association in Ann Arbor.  
7 He lived over in Westland and at some point in time lived  
8 in Saline. His world - Ed Messingham, the roommates, his  
9 new house, his family often Westland. Jane Mixers world -  
10 here in this city. In that law quad studying to be a  
11 lawyer. He didn't talk about the other world. He ignored  
12 the other world. But, that's part of the evidence, folks.  
13 That's one of the pieces that we pull out of this puzzle  
14 box that we have to lay out and we have to fit it together  
15 and that's the other world. But, you need to look at all  
16 of this evidence with the understanding and the acceptance  
17 of responsibility, because you all took an oath - follow  
18 the law, follow the instructions that the Court gives  
19 them, that the burden of proving beyond any reasonable  
20 doubt is on the government to show the elements of the  
21 crime. And, while we can contend and agree that most of  
22 the elements are not in question as far as the killers  
23 intent, the killers premeditation, the element that's in  
24 contention here is the killers identity. And, it's from  
25 the pieces of the puzzle or lack thereof that you'll make

1       that determination is as to who the killer is and you'll  
2       make that determination beyond a reasonable doubt after  
3       assessing all of the evidence. Now, you can say and you  
4       have the power to say, oh it's in the DNA, we're done.  
5       We're out of here - it's the DNA. Duh. But, it's not  
6       just the DNA. As a matter of fact, it's probably in law  
7       enforcement's mind, too much DNA because there's too many  
8       players involved to make it as nice and clean as the  
9       'slideshows would suggest. To many players. Some we know,  
10      some we don't. And, that same evidence that Mr. Hiller  
11      points to, points us to the existence of that other. Mr.  
12      Leiterman has the right to remain silent and he's  
13      exercised that and the judge will instruct you that you  
14      are not to consider that silence in your deliberation.  
15      Mr. Leiterman, testimony showed through either Mr. Powell  
16      and Mr. Schroader was cooperative when he was confronted  
17      at his home a couple of days before Thanksgiving last  
18      year. He went willingly with him. He spoke to them for  
19      five hours. The Prosecutor hasn't shared that. So you  
20      will make your determination based on the evidence that  
21      the Prosecutor has presented and the evidence that we have  
22      presented and it's not a question of who's done more or  
23      what. It's all up to you. It's all on a level of playing  
24      field. Let's talk about some of that evidence. Let's  
25      talk about the DNA. Two issues here. You heard Mr.

1 Hiller just talk at length about the statistics, the  
2 probability, the chances. Numbers--1 and such and such, 1  
3 and so and so. We've heard about profiles. We've heard  
4 about alleles. We've heard about (INAUDIBLE). What we  
5 have learned about the science of DNA is that we don't  
6 know when DNA sticks on something. We basically  
7 particularly as it pertains to Mr. Leiterman's profiles  
8 don't know how it got there, when it got there or in what  
9 form it got there. That's a given. Now, it's easy just  
10 to jump to the conclusion law enforcement jumped to and  
11 that sense it's there and since we found it here and since  
12 we found it there, it's got to be this nice, neat package.  
13 This nice, neat puzzle box - we'll call it. But, that's  
14 not the evidence that they pulled out to give you. We've  
15 spent time in cross-examination, the Prosecutor spent a  
16 tremendous amount of time countering the possibility that  
17 the drop of blood on Jane Mixer's blood could have  
18 occurred as a result that there was a contamination  
19 problem in the lab. They discovered that - the similarity  
20 of the testing. They ordered the additional testing.  
21 Their concern is about that blood work. Their  
22 Conclusion based on the extra testing they did, based on  
23 their protocols were being followed, based on Dr.  
24 Milligan's belief that he's never made a mistake is that  
25 the tests are all okay. That even though Gary Leiterman's

1 DNA was in the building, even though John Ruelas' clothing  
2 and you've heard testimony about how much DNA is going to  
3 be on an individual was in the building all at the same  
4 time the evidence was in the building. The human beings  
5 didn't make mistakes here and that's all evidence that  
6 came from those same people coming together 36 years  
7 earlier in the past. You don't know how many times I  
8 wanted to ask one of the scientists if they could do a  
9 "statistical determination for me on that probability.  
10 What are the chances of that? Well, they contend that it  
11 happened. They contend that there was no contamination in  
12 the lab. This case is about 36 years ago. A different  
13 group of detectives with a different base of knowledge  
14 working with a different set of detectives specializing  
15 and seen processing handled things a certain way. And  
16 while the slideshow is nice and neat and it is compelling,  
17 it leaves so many unanswered questions for this family and  
18 for that family. I believe (INAUDIBLE). You heard and  
19 you saw through cross-examination and the direct testimony  
20 of the scientist from today's Michigan State Police  
21 Forensic Lab. They care in the detail. It almost sounds  
22 like its a dangerous thing to the extent that they--they  
23 change gloves, they keep air circulating in a certain way.  
24 They are so careful on how they handle this evidence and  
25 then we go back to 1969 when the detective who is now in

1 the crime lab basically just picks it up and puts it in a  
2 bag, grabs the next piece of evidence, picks it up and  
3 puts it in the bag - no gloves, no hammer to the degree of  
4 care that's exhibited with this highly, I guess  
5 susceptible to contamination chemical that we call DNA.  
6 And what do we see? What do we tal--what did we talk--  
7 what did we bring Dr. Krane in for - to give you more  
8 insight. Clearly the opinion of the Michigan State Police  
9 Forensic Laboratory is that oh no, even though we're so  
10 careful about how we handle DNA in our lab and we  
11 recognize that we have to change gloves before we move  
12 from one evidence article to the same evi--to another  
13 evidence article in the same case. Even though we take  
14 all those precautions, you know, it's not really because  
15 DNA can transfer much. It's not because the chemical can  
16 be transferred from contact from one item to another item,  
17 well, we didn't put in a lot of exhibits. But, we put in  
18 a picture of Jane Mixer's body and you look at where that  
19 towel that has DNA partial--DNA profile on it has alleles  
20 we'll call it, what it is--a number of alleles that are  
21 consistent with some alleles in Gary Leiterman's profile.  
22 It doesn't have a full profile. It doesn't match that--  
23 that towel is there it's in contact. It's laying right  
24 there, right along the leg. Why do we bring that up? The  
25 issue is cross contamination. The issue is the movement

1 of the DNA molecule within the evidence samples. Where do  
2 we see that contamination again? We clearly see it where  
3 the autopsy's done because there, Bennett now has gloves  
4 on so we don't even look for or see if any of his DNA is  
5 going to transfer. But, he removes the pantyhose. He  
6 handles with gloves. He handles the ligature. He takes  
7 those same gloved hands and grabs the cut-off piece and  
8 puts it in there and the question is, is that reasonable?  
9 Is it reasonable that the way they handled evidence back  
10 then, that that kind of cross contamination can hurt and I  
11 would say to you if it wasn't reasonable they probably  
12 wouldn't be spending so much time worrying about changing  
13 gloves and how they handle things in the lab. So, the  
14 problem here is we're going back in time. We're applying  
15 to some extent apples to oranges. You know, I want to  
16 stop just for a second because I want to make sure we  
17 understand something. Mr. Hiller talked about his burden  
18 of proof and it is a substantial burden. It's not a  
19 difficult burden to overcome. I mean, Prosecutor's do it  
20 all the time. But, it's a substantial burden of proof.  
21 But ladies and gentleman, it is the same burden of proof  
22 in a case that's 36 years old as if it was a case that  
23 happened a month ago. And I point that out because, you  
24 know, in this case we can't just shrug off. It's not fair  
25 to the Mixer family. It's not fair to my client to just

1 shrug off, well this was lost. Well, we don't have that  
2 and somehow maybe make us believe, well, our burden's not  
3 as great but it is great and you need to look at what's  
4 been lost and what's been (INAUDIBLE). The DNA on the  
5 pantyhose matches--that 13 and 13, Mr. Leiterman's  
6 profile. But, what the science tells us is we don't know  
7 how it got there. We don't know when it got there. We  
8 don't know if Jane Mixer was even in the pantyhose when it  
9 got here. That's what the signs tell us. Now, the job  
10 then for the police is to tell us the rest. The job for  
11 the police to do the investigation is to go out there and  
12 fill in those pieces - help us complete that puzzle and  
13 that's what we have to look at because if it was just  
14 about the DNA, CSI would only be about a five minute show.  
15 Looking at those pieces, what do we have here? Well,  
16 (INAUDIBLE). Well, we have lost some evidence. We lost  
17 the cigarette butt that was laying just southeast of Jane  
18 Mixer's body. A cigarette butt that was observed, was  
19 believed to be worthy of being made part of the crime  
20 scene collection and it was lost. What better way to  
21 determine the DNA profile than to look at the cigarette  
22 butt located between the car track and where Jane Mixer's  
23 body was dropped to. Do you think Mr. Leiterman would  
24 have loved to have had you had an opportunity. No one in  
25 here more than Gary Leiterman wishes we had that cigarette



1 butt, that we could see the profile on that cigarette  
2 butt. We talk about the crime scene. We don't know where  
3 the crime scene is. We know where Jane Mixer's body was  
4 found. We have no idea ladies and gentleman, where she  
5 was killed. Whether it was Wayne, whether it was Oakland,  
6 whether it was on the street on Washtenaw - in the car in  
7 a back alley. But, we do know some other things. We know  
8 that there were peanut shells affixed to her coat. We  
9 know that there was soap granules associated a number of  
10 articles of her clothing as well as I believe the stocking  
11 that was used as the ligature. Where was she killed?  
12 Where was she held? How long was she alive? Mr. Hiller  
13 talked about Dr. Cassin. It's interesting. Mr. Hiller  
14 has accepted Dr. Cassin that these were point blank  
15 gunshot wounds. Dr. Cassin can see--Dr. Hendericks who  
16 actually did the autopsy had an opportunity to examine the  
17 wound track concluded the opposite. But now that we have  
18 someone charged with first degree murder, we have contact  
19 wounds. When did those contact wounds occur? Can you  
20 recall that dialog back and forth about rectal  
21 thermometers, temperature because it got problematic. If  
22 by what Dr. Cassin was saying was moving Jane Mixer's  
23 death closer to the 20<sup>th</sup>, not morning to the 21<sup>st</sup>. We don't  
24 know when she was killed. We don't know where she was  
25 killed. We know she died of two bullet wounds. We don't

1 know where she went. It's interesting as we think about  
2 what we--what little, really what little we've learned  
3 about Ms. Mixer is that she was responsible, that she was  
4 excited about going home to her parents to talk about a  
5 big change in her life, that she had made arrangements to  
6 leave at 6:00 and apparently she just sat there patiently  
7 until about 10 before she started trying to look for  
8 someone and yet she didn't even call her dad and say, dad  
9 I'm just leaving now. There's so much we don't know about  
10 what went on from the time Phil Weitzman dropped Jane  
11 Mixer off and even though we didn't know those things  
12 before, it's gotten worse now. It's gotten so much worse  
13 because of one piece of evidence. One very damning piece  
14 of evidence which has been causing all types of concern in  
15 this case and that is a drop of blood, clearly visible  
16 from one of the Prosecutor's photographs, there on Jane  
17 Mixers top of her palm. You want to talk DNA. You want  
18 to talk investigative ability to connect source. You got  
19 direct, one to one contact. Blooding dripping from John  
20 David Ruelas onto Jane Mixer's hand. Not smears. Not  
21 like something was rubbed up against it. Not like  
22 something was transferred inadvertently. What was unusual  
23 and why this was collected was because it was a drop.  
24 Apart from the rest of the blood, sitting there on her  
25 hand. Where did that come from? How did that occur?

1       What does that tell us? Well, it tells us that sometime  
2       "after 6 when Phil Weitzman left Ms. Mixer and the next  
3       morning when she was found, John David Ruelas who lived in  
4       downtown Detroit and who was 4 years, 8 months old,  
5       dripped his blood on her hand. Sometime between 6--  
6       probably 10 if in fact she was the one who called Mr.  
7       Katulic--10 and 6:30 in the next morning. And, throughout  
8       all of the police work that's been done in this case--all  
9       of those pieces to help you pull out of that box to make  
10      the picture, they've been unable to pull out any--any that  
11      associates John Ruelas' world with Jane Mixer's world,  
12      with Gary Leiterman's world. What we have learned about  
13      is John David Ruelas' world. We've seen a lot of people  
14      who's DNA has been eliminated. We have seen some that has  
15      not. We know that David Ruelas, his father was in and out  
16      of his life and was alive at the time. We know we heard  
17      Fred Kochecko describe that. We know that John David was  
18      close apparently to an Uncle Gilbert, who is also a bit of  
19      a character in the Detroit area according to his brother.  
20      We know that the mother was apparently not one of the more  
21      pleasant individuals from what we learned with John  
22      David's half sister. How was that blood dripped on her?  
23      How does that piece of the puzzle fit? Is it as easy for  
24      in determining the fate of a human being how he will lead  
25      his life to just say, well you know, the Prosecutor said

1 we've lost that in time so I guess that's just--that's not  
2 important. I've mentioned to you that I believe it is  
3 important because of some of the other evidence. What  
4 we've learned through this DNA, if you recall the  
5 testimony of Anne Borgen, is that there was DNA found  
6 associated with the jumper that Ms. Mixer had on that day  
7 when the body was found and that there's unidentified  
8 profiles, that Gary Leiterman is excluded from the profile  
9 - that it's not him. So, we don't know who it is. Is  
10 that enough? Is the slideshow on DNA enough now because  
11 it can be fit together in one scenario if you disregard  
12 everything else? We don't know what form or in what way  
13 Gary Leiterman's DNA became associated with the pantyhose.  
14 We know that it was associated with the pantyhose by the  
15 scientist and Dr. Krane. There's no dispute about that.  
16 But, we know that it moves. We know that it transfers.  
17 We know that the evidence wasn't handled properly up to  
18 today's standard and those questions - those are  
19 reasonable doubts that you need to address before you can  
20 just accept the way Mr. Hiller feels that picture should  
21 look. Mr. Leiterman was excluded from being the  
22 contributor of the DNA on a profile lifted from Ms.  
23 Mixer's jumpers stomach area. He was excluded from being  
24 the contributor to a source of DNA found on the left thigh  
25 area of her jumper. There's other pieces to this puzzle

1       that you don't have - that you can't pull out of the box  
2       to match to the cover. Let's talk about YSTR. Let's talk  
3       about what's happened in the courtroom. You heard about  
4       it. You heard how it works and how it's different and  
5       what did we hear gentleman, this is important to us, what  
6       we heard is that it's male - that it's in the male  
7       (INAUDIBLE). What's been done in the courtroom with Tim  
8       Leiterman and the discussion is to stop that lying--that  
9       myth. But, that's not the way STR works because Nick had  
10      a dad. Nick's dad had a dad. Nick's dad's dad had a dad  
11      and it goes. And their projemie of a male line has a YSTR  
12      profile if I understood what Ms. Gill was testifying to,  
13      it would be the same. So that a cousin of mine on my  
14      dad's side that I've never met that might--well, he's not  
15      even a cousin, somebody with the same last name as me that  
16      lives somewhere in Livonia would in--would at least if I  
17      understand the science, have the same profile. What  
18      troubles me even more about the YSTR is how calamity we  
19      just disregard that there are alleles that are not  
20      identified - that we just as you to disregard the fact  
21      that they didn't identify an allele of a certain locus -  
22      that one allege, a 9 instead of a 10 changes the world.  
23      So, you have to be very careful on how much stock you put  
24      on these bits and pieces that are put together. Excluded  
25      is a good piece to have. Not excluded just means that

1        what they're seeing matches but they can't say it's a  
2        match. They're playing the numbers game. So, the YSTR on  
3        the stocking one, we've got to understand the science of  
4        it two, we've got to look at the transfer of it and again,  
5        there's other reasonable explanation other than what the  
6        Prosecutor wants you to believe. Okay, we got a picture  
7        that the Prosecutor wants you to see. And painted it very  
8        clearly and very eloquently to you. In order to get to  
9        that picture we have to pull the pieces, the evidence  
10       together and make that picture. I've already talked about  
11       the lack of any showing by the investigators no matter how  
12       hard they work to show a connection between Jane Mixer and  
13       Gary Leiterman other than DNA. Their worlds, their  
14       hobbies - in any regard did you hear any evidence that  
15       there was any overlap? We have had physical evidence that  
16       suggested quite strongly where Ms. Mixer may have been.  
17       The nutshells affixed to her coat - Nutshells like Bimbo's  
18       where they throw peanuts around. Soap granules dragged on  
19       the back of her clothing and in her coats - a laundry  
20       room. Someplace where that soap is going to be laying  
21       around where she's going to be laying down in it - not  
22       shot in a car, taken somewhere, held somewhere, where?  
23       Have we seen any of that--any of those pieces come  
24       forward? Any of those things that help us? We've heard  
25       suggestions about I guess the extent of the planning that

1       this killer engaged in - that he would have had the where  
2       with all to see that somebody named David Johnson was  
3       going to be in a play that night, that he was going to  
4       pick her up and that he would go ahead and presume to be  
5       that David Johnson. And that he would call her days ahead  
6       of time - somehow, somewhere, why? Why Jane Mixer? Has  
7       anybody asked that question? Why Jane? Why is she dead?  
8       Why was she killed? Why was she singled out? Was the  
9       killer there when she put the ride boards thing up? Was  
10      he lurking--watching to see, well that's somebody I think  
11      I'd like to kidnap and do something with and then he  
12      planned all of this--and all of this is planned out? Ok,  
13      I'll call her, I'll tell her that I'm this guy who's on  
14      the poster and then I'll pick her up and do whatever I'm  
15      going to do with her. But, you know I'm not going to pick  
16      her up anywhere near the time I'm supposed to pick her up.  
17      I'm going to wait about three to four hours before I'm  
18      going to pick her up. Oh and by the way, when I do it I  
19      think I'll take my legally registered firearm, traceable  
20      back to me to do the murder. Those pieces don't fit.  
21      Let's talk about the gun. Let's talk about the gun  
22      evidence. Let's see if those pieces fit. Do any of you  
23      believe based on what the Prosecutor has relied on in this  
24      case that we wouldn't be here even if Gary Leiterman  
25      didn't have a gun? Even if they didn't have registrations

1       that show he bought a gun, a gun he's never loaded. Do  
2       you think that we--that would be enough now - oh we can't  
3       go to court now. We don't have a gun that is one of the  
4       possible hundred of thousands to millions of guns that  
5       could have done it - that we wouldn't still be here? Of  
6       course we would. So, let's look at what happened in this  
7       firearm evidence - what you've been presented with. You  
8       know that in 1969 Gary clearly with expertise, Don Bennett  
9       examined those bullets found and he couldn't identify the  
10      pieces, was about to make identifications of F1 and he  
11      said very clearly and he signed it and he cooperated it  
12      with other members of the State Police that it had six  
13      lands and six grooves and that it was characteristic of  
14      Gold--Remington gold-tone ammunition. That's what was  
15      said. That's what was held to. That's the way it stood  
16      until the DNA came back--until the records checks showed  
17      that Gary Leiterman had a Ruger Single 6 and until we  
18      learned that a Ruger Single 6 has a right hand twist. And  
19      now, in 2004--5 after Gary Leiterman was identified as a  
20      suspect, we have additional connection suddenly found.  
21      Where we now have a right hand twist to a bullet that in  
22      1969 the experts didn't see it. Coincidentally, it now is  
23      closer to matching Gary Leiterman. We have a search for  
24      ammunition. Why? Unfortunately, while it takes up time  
25      it brings in a lot of I guess, stuff to lug around. Do



1       those pieces fit? Were the pieces bought in 200--1969?  
2       Remington gold-tone ammunition? No, they were not.  
3       There were some Western Savage, triple F and it was rabbit  
4       hunting season if I followed Ed Messingham's hunting  
5       seasons. Were the bullets that were confiscated by the  
6       State Police found in the vehicle pouch or the car - were  
7       those Remington gold-tones? No, they were not. Were all  
8       of the bullets that were confiscated by the police that  
9       were given to Mr. Pope looked at - yup. How many of those  
10      were consistent with the bullet fired back in 1969 - none.  
11      Absolutely none. But, we bring it all in. We show it  
12      off, okay? Do those pieces fit? No, they don't. What we  
13      know is that Gary Leiterman was a legally registered owner  
14      of a gun that was one of up to a million guns that could  
15      have done it. That's what we know. Let's talk about  
16      fingerprints a minute. There was a lot of testimony about  
17      fingerprints. We heard from George Hein about  
18      fingerprints. Preeminent fingerprint, latent print expert  
19      from the (INAUDIBLE). One of the individuals that was at  
20      the crime scene that roles through the ranks to run the  
21      crime lab when I got involved in the criminal justice  
22      system. He was the one who always signed the reports that  
23      I got back from them. Importance of latent prints -  
24      talked about it, heard a lot about it. Sure, the fact  
25      that you don't have a print doesn't mean that somebody

1 didn't touch it. But, what do we have in this case and  
2 how does it fit? Well, the first little twist that you  
3 gotta consider is that throughout how many years was the  
4 print, the ridge structure on a suitcase of value to this  
5 investigation? That identifications are being attempted,  
6 prints are being looked at after all of this time. Then  
7 we get a suspect, thanks to the lab. Actually we got two  
8 suspects but one of them is old enough to be the suspect  
9 and it's Gary Leiterman. And now all of the sudden, that  
10 print doesn't have any investigative evidence. It  
11 doesn't--there's not enough ridge structure now. What is  
12 that telling you? Given the fact that if we've got three  
13 alleles matching out of a possible 15 times 2 and we get  
14 that statistic, do you think that if the ridge structure  
15 matched in any way that wouldn't have brought in? But,  
16 there's another print piece of the puzzle that doesn't fit  
17 and it's an important piece and the Prosecutor (INAUDIBLE)  
18 an important piece. You heard about the bag - the  
19 Hudson's bag. You heard about the folder, too and until  
20 he pointed out the folder in his clothing now, I'll be  
21 frank - I love sight of that. But we then heard from the  
22 new generation fingerprint analyst, Greg Michaud. Well,  
23 the palm print on the suitcase is no good. But, we still  
24 have unidentified latent print and where are those  
25 unidentified latent print? They're on the bag - the

1 Hudson's bag. The important bag, sitting there. It was  
2 standing up that I guess the theory there is that the  
3 killer placed it there as he left. And, we know that we  
4 heard from Mr. Hein that a lot of those prints were  
5 excluded. Mark Grow, Mrs. Grow - wasn't there prints?  
6 It's still unknown and it's not my client. So, what did  
7 the fingerprints do for us? How do they fit into this  
8 puzzle box? They don't. Let's talk about handwriting.  
9 Let's talk about what you saw and what you learned. The  
10 judge is going to give you instructions about expert  
11 witnesses. You're the experts here. You really are. You  
12 get to disregard anything an expert says. You can decide  
13 that it doesn't match what you believe. You can disregard  
14 it. You can accept it. You are the expert witness in all  
15 these fields. Now, you saw a real difference in a couple  
16 of experts. You saw the slide presentation in the new  
17 generation where they put up there, they flashed up there  
18 certain words - selectively picked out words, flashed up  
19 there and we saw "angry", I don't know how many times with  
20 his explanation--Mr. Riley's explanation of what he thinks  
21 in his opinion is jut about certain the words "Muskegon  
22 Mixer" were authored by Gary Leiterman. And we had an  
23 expert and our expert tried to help you. Tried to teach.  
24 Tried to show what he looks at, how he looks at because  
25 you're going to look at it. You're going to look at those

1       phonebook covers. You're going to look at writing of Gary  
2       Leiterman and you're going to make that determination and  
3       I'm confident that ladies and gentleman, you're going to  
4       find something real troublesome about the phonebook. One  
5       phonebook that we don't know really where it was or who  
6       collected it because it didn't show up to the document  
7       examiner lab until sometime in April. A phonebook that  
8       they believe had the killers writing on it that they don't  
9       even fingerprint. Or, if they did fingerprint it because  
10      we're not really sure, but if they did fingerprint that  
11      book, we know that Gary Leiterman's fingerprints aren't on  
12      that book. It's not his writing. To paraphrase Mr.  
13      Ponan, it's a different writing style. He didn't write  
14      that. The killer wrote that. It's not our job to prove  
15      who the killer is. Law enforcement has been trying for 36  
16      years. They still haven't (INAUDIBLE). They've  
17      identified some material that certainly weren't any of  
18      investigation. (sic) They've certainly gone out and then  
19      they looked. Who put it there? Well, we've heard some  
20      pretty gruesome testimony about the death of the other  
21      young ladies at that time period. We also heard the  
22      killings stopped when John Norman Collins was caught. We  
23      also heard that John Norman Collins, the main suspect in  
24      that other killing, Alice Callin, in which a 22-caliber  
25      gun was used to kill her. You also heard that David

1 Johnson was a name not unfamiliar to John Norman Collins.  
2 Someone that he lived with. You also heard Karen Beineman  
3 had been held in her uncle's basement, in the laundry  
4 room. You also saw the signature of John Norman Collins  
5 placed on Jane Mixer's neck. Now, you remember that Earl  
6 James worked backwards--backwards, not forward - backwards  
7 and when the last body was found out to California and  
8 moved all the way up to Jane Mixer, identifying how  
9 everyone of those individuals had had something wrapped  
10 around the neck or strangled with something around the  
11 neck. Was John Norman Collins the killer? We don't know.  
12 Is there a question in your mind? Do we know the dynamic  
13 that this bright young girl had with whoever ended up with  
14 her to that period of time? This articulate, intelligent  
15 woman - we don't know. We just don't know. What we do  
16 know is John David Ruelas didn't get in his car and drive  
17 over to Ann Arbor or planned this apprehension of Jane  
18 Mixer. We do know that John David Ruelas' blood was on  
19 her and that he was in the scene somehow and he doesn't  
20 know Gary Leiterman. There has been no evidence that they  
21 know each other - that there's any again that their worlds  
22 crossed in any way other than well, in any way.  
23 (INAUDIBLE) who killed Jane Mixer, figure out why there's  
24 a little boy grow up to be his mother (INAUDIBLE). Who's  
25 in his life? Who does he associate with? What kind of

1 people were (INAUDIBLE)? What kind of people were Gary  
2 Leiterman? He's an outdoorsman. He loves to hunt. HE  
3 loves to take pictures. He loves to be outside. He takes  
4 care of a fox when he finds it. He likes to go over to  
5 his friend's house to eat. But yet this is this cold  
6 blooded, (INAUDIBLE) killer and for some reason, no idea  
7 what the motive might have been, identifies Jane Mixer as  
8 the target, picks her up and does the terrible things that  
9 Mr. Hiller said to her. Ladies and Gentleman, those  
10 pieces of the puzzle just don't fit. Mr. Leiterman has  
11 come here today asking for you to be the determiners of  
12 his fate. For you to be the fact finders in determining  
13 his guilt - not the computer scientist from Michigan State  
14 Police. Not a Prosecutor. I have a littl--little trouble  
15 and it was--it's fair, it's all in the battle, but we've  
16 sat here and we have seen how many police officers  
17 involved, how much investigation has been done and I  
18 commend them for the work that they have done. They've  
19 looked everywhere they can look under any rock they could  
20 lift to try to tie these loose ends together - to try to  
21 support their evidence that the lab gave them. We brought  
22 in a couple of experts and gee we had to pay them. We  
23 haven't been able to find too many that work for free.  
24 Two people and a few of Mr. Leiterman's friends and you've  
25 seen the evidence coming and some of it, I don't know why

1       it's coming but it's here--it's for you to consider and  
2       we've seen investigator after investigator. And, the  
3       problem ladies and gentleman is no matter how good they  
4       are - and they're good, they can't find what isn't. They  
5       can't find connections that don't exist - not even Matlock  
6       can do that. You have to have the evidence and they can't  
7       connect them. The circumstances under which John David  
8       Ruelas bled on Jane Mixer or the circumstances that lead  
9       to her death and Gary Leiterman is not connected to that.  
10      He's connected to her pantyhose and there's no way science  
11      puts her in it or tells you when that DNA got on those  
12      pantyhose. You can take the simple way and say, well it's  
13      the DNA like the world does. Or, you can do what I  
14      believe you're going to do. The right thing to look at  
15      all of the evidence. To understand and appreciate the  
16      seriousness of your responsibility to all the parties  
17      here. But, unfortunately we still don't really know what  
18      happened. They've re-opened these old notes. They've  
19      disrupted some lives and they don't have the picture  
20      puzzle box to show you. Based on that ladies and  
21      gentleman, there is reasonable doubt. Based on that  
22      ladies and gentleman, Gary Leiterman didn't kill Jane  
23      Mixer. It's a little harder than just saying he did it.  
24      Tie it together - and you won't tie it together. I'm  
25      going to ask you to look at the evidence and to come back

1 and give this man his life back. This isn't about just  
2 closing an old case. This is about finding the killer,  
3 seeing that justice is done and if you do justice to the  
4 evidence presented to you in this case, Gary Leiterman  
5 will go home and the investigators can find the killer if  
6 he's not already found or dead. Thank you.

7 THE COURT: Prosecutor, your final remarks?

8 MR. HILLER: Thank you, Your Honor. Ladies and  
9 gentleman, this is the last time I'm going to have an  
10 opportunity to speak to you. I'm going to be talking  
11 exclusively about things that Mr. Gabry brought up during  
12 his closing argument. To that extent, rebuttal arguments  
13 tend to be a little discombobulated because they are  
14 responses to what has just been said and as long as I've  
15 been doing this, I still haven't found a real good way to  
16 have good organization to that kind of a response in this  
17 short of period of time. But, let me start out with one  
18 thing that Mr. Gabry mentioned toward the end of his  
19 closing argument and that was he mentioned that the  
20 defendant's DNA is on the pantyhose and certainly that's  
21 true. Single source, single source, single source, 13 out  
22 of 13 of the COTIS locations, the defendant's DNA matches  
23 the DNA on those pantyhose. Mr. Gabry also said, science  
24 can't put Jane Mixer in those pantyhose. Well,  
25 photographs can. Don Bennett could. He testified that



1 the pantyhose that are in court today are the pantyhose  
2 that were taken off Jane Mixer's body at the autopsy - the  
3 pantyhose that you see on her in this photograph. What  
4 you see here is what you see here. You can have the  
5 actual pantyhose to inspect in the jury room if you  
6 choose.

7 THE COURT: Excuse me.

8 MR. HILLER: There was substantial physical  
9 contact between Gary Leiterman and Jane Mixer in order for  
10 him to leave that much DNA on her body. Now, Mr.  
11 Leiterman--pardon me, Mr. Gabry brings up the--and a fair  
12 number of unidentified fingerprints that are still in  
13 existence in this case. He implies that there's been some  
14 kind of tampering with the opinion of George Hein or  
15 tampering with the evidence and that what was once  
16 identifiable is no longer identifiable on the suitcase.  
17 Well, George Hein testified very clearly that he never  
18 felt that fingerprint--that palm print on that suitcase  
19 was identifiable. He said he thought it has investigative  
20 value but he testified there isn't enough structure there,  
21 there isn't enough information in that fingerprint and  
22 there never was for it to be identifiable. There's a big  
23 difference between what investigators might use to point  
24 them in a direction and what fingerprint experts can come  
25 to court and say, this is a match. Now, we had that in

1       this case. We had Lieutenant Michaud testify about a  
2       match on a fingerprint in this case and we had Lieutenant  
3       Hein also testify about several matches that were made.  
4       Phil Weitzman on the book. Mark and Nancy Grow on the  
5       Hudson's bag - still print--still a print from the  
6       Hudson's bag unidentifiable. Several prints on the  
7       phonebook. We don't know which phonebook but based on the  
8       number of prints that are on it, it's probably the one  
9       from the basement of the law school library. Several  
10      prints on a phonebook that are unidentifiable. But, it's  
11      important to remember, ladies and gentleman, number one,  
12      it is not only criminals who leave fingerprints. We've  
13      all left fingerprints some place today. I've left  
14      fingerprints many places today. People who handled that  
15      phonebook in its normal use, left fingerprints. The fact  
16      that the defendant's fingerprints aren't on it because he  
17      wrote something on it isn't surprising. Pens don't leave  
18      fingerprints. Fingers leave fingerprints. There's no  
19      evidence that the defendant's hands touched the phonebook.  
20      There's evidence that the defendant's pen that was in his  
21      hand touched the phonebook. With respect to the Hudson  
22      bag there are many possibilities. Starting out with the  
23      clerk who gave the bag to Jane Mixer at Hudson's. The  
24      fact that a print is not identifiable doesn't change the  
25      fact that the defendant's DNA is identifiable and was

1 identified in Jane Mixer's stockings. Mr. Gabry implied  
2 the same thing with respect to Reinhard Pope and the  
3 bullet and the fact that Don Bennett said it was six lands  
4 and grooves and Reinhard Pope said six lands and grooves,  
5 right hand twist. Sargent Pope is describing what he saw.  
6 Lieutenant Bennett was describing what he saw. Same  
7 bullet, different optics now doesn't mean that we're  
8 playing fast and loose with anything despite the  
9 implications that defense counsel made. The fact is,  
10 whether you look at Lieutenant Bennett's opinion, whether  
11 you look at Sargent Pope's opinion, either way the  
12 defendant's Ruger Single 6 revolver was capable of firing  
13 the bullets that killed Jane Mixer. That didn't change.  
14 That did not change. Mr. Gabry suggests that because Ann  
15 Gordon found partial unidentified profiles on the towel  
16 that that means the defendant is not the killer of Jane  
17 Mixer. The fact that there are partial profiles on the  
18 towel doesn't mean that the defendant didn't kill Jane  
19 Mixer. Recall that there are lots of people who we are  
20 unable to test because they're gone who would have been in  
21 a position to have deposited DNA through casual contact  
22 leaving a partial profile. Trooper Elan, Sargent Canada  
23 is a name we've heard - he's gone. Trooper Luland, gone.  
24 Luland was at the autopsy, remember - as was Canada. Dr.  
25 Hendricks, the medical examiner at the time, gone. The

1 Wayne County medical examiner came to the scene and  
2 apparently took a rectal temperature at that time. Arie  
3 Milligan, the ambulance driver. All of these people were  
4 in a position and we don't, as Mr. Gabry points out, we  
5 don't know when that DNA was on the towel. It could have  
6 been from someone else who handled it before the defendant  
7 used it to mop up Jane Mixer's blood. Mr. Gabry says that  
8 we know one thing about DNA. We know that it moves and  
9 that it transfers, implying that that's how the  
10 defendant's DNA got on the pantyhose. But, the DNA has to  
11 come from some place. There is no evidence of secondary  
12 or truciary transfer in this case. What we have is a lot  
13 of the defendant's DNA on an area of Jane Mixer's body  
14 where it shouldn't be and as Mr. Gabry points out other  
15 than the fact that when Jane Mixer's body was found, the  
16 defendant's DNA was all over it, here, here, here, 9 out  
17 of 13 here, 13 out of 13 here - substantial physical  
18 contact between the defendant and Jane Mixer. The fact of  
19 John Ruelas' blood being found on Jane Mixer doesn't  
20 change this into something that it's not. It doesn't  
21 change this into someone other's DNA. It's the  
22 defendants. Mr. Gabry says, well we still don't know  
23 where Jane Mixer was killed. But, we do know. Because of  
24 the defendant's DNA we know there was substantial physical  
25 contact. Consistent I would submit to you as him lifting

1 her from the car. His car is where she was killed. Dr.  
2 Cassin told you and explained the reasons why that it is  
3 his opinion that these were contact gunshot wounds - that  
4 the gun was placed to the scalp of Jane Mixer when the  
5 trigger was pulled. He showed you the wound. He also  
6 showed you pictures of the blood and the blood cracks down  
7 Jane Mixer's face indicating that she was upright when she  
8 was shot. That her head was upright and then it slumped  
9 forward so that the blood trickled down in this direction  
10 like you see in the photographs. But, there's no evidence  
11 that she had injuries from a dead fall on the cement or  
12 ground or anything else. The gunshot wounds were on the  
13 left side of her head. Consistent with her being seated  
14 in the passenger seat of the defendant's car and in  
15 reaching out with his right hand, putting the gun to her  
16 head and pulling the trigger - reaching out again, cocking  
17 it, putting the gun to her head and pulling the trigger.  
18 The ligature is on her left side, consistent with the  
19 defendant getting out of his car, walking around and  
20 applying the ligature while she's seated in the passenger  
21 side. The DNA found on her stocking back of the left leg,  
22 front of the right leg and on the heel consistent with the  
23 defendant lifting her from the car, her dead weight  
24 leaning against him, her legs coming into contact with his  
25 body there, his arm cradling the back of her left leg

1 touching her heal. The defendant was a hunter. He hunted  
2 all the time according to Ed Messingham--all the time.  
3 The hunted lots of things but that wouldn't have prepared  
4 him for what he was feeling when he killed a person. He  
5 would have been upset. Maybe exhilarated. Maybe crying.  
6 Sweating, almost certainly leaving the DNA here, here, and  
7 here as he lifts her from the car. Those things are  
8 consistent. Those things make sense. Those things stand  
9 to reason. It also stands for reason that the defendant's  
10 DNA is here at the end of the ligature where he would have  
11 had to touch it singe the knot around Janie Mixer's head.  
12 What they're left with is to argue that this is jut a  
13 coincidence that John Ruelas' blood was in or--John  
14 Ruelas' blood was never in the crime lab. Let's get that  
15 clear, except the blood on his hand. (sic) That the  
16 evidence from John Ruelas' murder case was in the lab at  
17 the same time that the evidence from this case was in the  
18 lab. Well, it's not that coincidental. We're talking  
19 about evidence from crime scenes. State Police  
20 laboratories is where evidence from crime scenes goes.  
21 But, look at the timing and remember the timing and  
22 remember the testimony of Sarah Tivault , remember the  
23 testimony of Steve Milligan, remember the testimony of  
24 Jeff Nye - particularly of Jeff Nye who made that side by  
25 side comparison and his responsibility as supervisor of

1 the unit. He made that side by side comparison and yes  
2 that was done at the Prosecutions request and yes the  
3 additional testing was done at the Prosecutions request.  
4 Why? Because it's important for us to make sure that  
5 there was no problem. It's important for us to double  
6 check if there's any hint of a problem. It was the  
7 responsible thing to do and it was done. And, what Jeff  
8 Nye found out was the evidence was never in anywhere  
9 physical proximity. It's sealed up. It's in--pardon me,  
10 it's in bags. It's kept in the evidence locker or in the  
11 biology refrigerator or in the DNA refrigerator but when  
12 it's out they're not out at the same time Sarah Tivault  
13 processed her evidence on--in late February - pardon me,  
14 late January of 2002. She packaged--she processed it in  
15 one day. She packaged the evidence back up. She put it  
16 back into the evidence room, not into the evidence  
17 refrigerator at the DNA lab. She told you about the  
18 precautions she used. New paper, washing the table,  
19 washing the instruments, new gloves with each piece of  
20 evidence. That evidence was put away. Everything was  
21 sealed up in envelopes until she extracted the DNA from it  
22 and then it's put into stopper tubes and kept in a  
23 separate area from the other DNA scientist work. A month  
24 later Dr. Milligan opens the evidence in this case - a  
25 month later. Uses the same precautions. Goes through the

1 same procedures. All of the controls, the sentries, as  
2 Dr. Krane called them showed no evidence of contamination.  
3 None. We double-checked with ReliaGene just to be sure.  
4 The results were the same as the lab results. Virtually a  
5 single source match with John Ruelas with a little bit of  
6 DNA consistent with it having been scraped off the hand of  
7 Jane Mixer and a few of her skin cells coming with it.  
8 There's no Margaret Ruelas in that blood spot. There was  
9 no blood of John Ruelas in the lab other than the blood  
10 that came off Jane Mixer's hand. The notion that there  
11 was contamination in John Ruelas--in the John Ruelas blood  
12 spot does not stand to reason and common sense. But, why  
13 is it important for the defense to have you believe that  
14 it does? Because then it's easier for you to believe that  
15 there was contamination which resulted in the spots in the  
16 DNA here, here, here, here, here and on the ligature.  
17 But, where would that DNA come from? The only evidence  
18 that there was any DNA of the defendant's in the  
19 laboratory building was his COTIS sample which is put on a  
20 piece of paper that is designed and does bind the DNA to  
21 the paper. It never is stored or moves with evidence. It  
22 is kept in a separate room. It is stored with only COTIS  
23 samples on this paper. We know about the ventilation  
24 system where the air goes into the lab and goes out of the  
25 lab. It doesn't re-circulate around the lab - not that



1 airborne contamination under those circumstances is a  
2 realistic possibility anyway. There is no possible source  
3 for these stains that resulted in the defendants DNA to be  
4 a result of contamination in the lab. There is no  
5 possible source. Mr. Gabry points out that through his  
6 questioning of investigators they were unable to find any  
7 connection in everyday life between Jane Mixer and the  
8 defendant. That is important evidence but not in the way  
9 the defendant suggests. It's important because there is  
10 not a reasonable explanation other than the defendant  
11 having killed Jane Mixer for his DNA to be on her body.  
12 They weren't friends. They weren't acquaintances. They  
13 didn't interact. Contrast that if you would with the  
14 story of Gary Kaberle who came in and testified. It was  
15 his fingerprint that was found on one of the phonebooks,  
16 probably the one from the basement of the law school but  
17 either way he explained to you what his connection with  
18 Jane Mixer was. His then fiancée lived in the same law  
19 quad with Jane Mixer. He wasn't sure if it was one floor  
20 up or one floor down but in the same building. One right  
21 above the other. He studied in the law school on a  
22 regular basis. He used those phone booths. There were  
23 innocent explanations, good reasons for his fingerprint to  
24 have been on those phonebooks. Mr. Kaberle would have you  
25 believe--or pardon me, Mr. Gabry would have you believe

1       that John Norman Collins committed this murder and he  
2       talked about the signature of John Norman Collins being  
3       something being wrapped around the neck. Well, here is a  
4       situation where I'm going to ask you to trust your own  
5       recollection of the testimony because my recollection of  
6       the testimony was what's different on that score than Mr.  
7       Gabry's. That would be the testimony of Earl James and  
8       also the testimony to a lesser extent of Detective Taylor.  
9       What I do recall about Earl James testimony and what I  
10      suggest to you what was testified to on this record was  
11      that this crime was different from the others. Those  
12      victims were treated differently. They were brutalized.  
13      They were battered. They were beaten. They were slashed.  
14      They were dumped. They were not placed with care as Jane  
15      Mixer had done. Remember that Lieutenant James talked  
16      about the fact that it was--it was a different killer who  
17      cared about Jane Mixer and placed her body carefully  
18      leaving her objects with her. That's different than the  
19      other victims - very different thanks to the fact that if  
20      John Norman Collins killed the other victims, surely he  
21      killed Karen Sue Beinaman (INAUDIBLE). If he killed the  
22      other victims, he did not kill Jane Mixer because those  
23      victims were treated very differently. Mr. Gabry talked  
24      about--Mr. Gabry talked about the handling of the evidence  
25      - cross contamination. He even showed a picture of the

1 towel laying on Jane Mixer's legs as it was found in the  
2 cemetery. It's a different view but you can see it a  
3 little bit in this picture and he suggests that that is a  
4 possible source of contamination and he suggests that  
5 another possible source of contamination resulted in Gary  
6 Leiterman's DNA being on one or more articles that were  
7 collected would have been at the autopsy because Don  
8 Bennett didn't change gloves every time he handled a  
9 different piece of evidence but, the problem with that is  
10 that means Gary Leiterman's DNA was at the crime scene,  
11 Gary Leiterman's autopsy was in the autopsy report. That  
12 surely was the case. The more reasonable explanation for  
13 where the DNA is. I talked about the DNA likely got on  
14 the pantyhose, how it likely got on the ligature when he  
15 synched it tight. When Mr. Gabry first stood up to talk  
16 to you he told you that Gary Leiterman's life and Gary  
17 Leiterman's future are in your hands. Well, on March 20<sup>th</sup>,  
18 March 21, 1969 Janie Mixer's life and her future were in  
19 that man's hands. The choice he made that night was to  
20 end her life and to end her future. What I'm asking you  
21 to do now is to give her justice by using your reason,  
22 your common sense, the judges instructions and the  
23 evidence that's been submitted to find as you should that  
24 the defendant killed Janie Mixer - that it's been proven

1       beyond a reasonable doubt and that he is guilty of the  
2       first degree premeditated murder of Jane Louise Mixer.

3               THE COURT: Ladies and gentleman, my instructions  
4       aren't going to be very long but we're going to take a  
5       brief recess before we begin those instructions. Ms.  
6       Washington will appear momentarily - here she is. Please  
7       go with Ms. Washington.

8               JUDICIAL ATTORNEY: All rise, please.

9               (At 10:12 a.m., court in recess)

10              (At 10:26 a.m., court reconvenes)

11              JUDICIAL ATTORNEY: All rise. Court is now back  
12       in session.

13              THE COURT: Bring the jury.

14              JUDICIAL ATTORNEY: All rise for the jury,  
15       please.

16              THE COURT: Please be seated. I've been doing  
17       this for a long time. First as an attorney, now as a  
18       judge and so from time to time mainly just because I'm so  
19       old, I guess, I'm called upon to talk to at seminars for  
20       young lawyers - trial lawyers. One of the things I tell  
21       lawyers they should never so is read to the jury and the  
22       reason I tell them that is that because our--when we were  
23       children our parents had an ulterior motive when they read  
24       to us at bedtime and that is when we're read to our mind  
25       wanders, our eyelids get a little heavy and pretty soon we

1 drop off to sleep, which is what they intended in the  
2 first place. Unfortunately, I'm at a point in the trial  
3 where I can't practice what I preach. I'm going to be  
4 reading my instructions to you. They aren't very long but  
5 I'm reading them to you for two reasons. First of all,  
6 these are important instructions and I don't want to take  
7 a chance on paraphrasing something that should be said  
8 exactly and secondly, as you may have gathered from the  
9 attorney's comments, I've gone over with them what my  
10 instructions to you are going to be and I want to be  
11 faithful to what I said to them. The instructions aren't  
12 as I said, they're not very long but I need your help.  
13 Fight that natural tendency if you would to sort of zone  
14 off as we're read to and pay careful instruc--attention.  
15 The evidence and the arguments in the case are now  
16 finished and I am now going to instruct you on the law.  
17 That is, I'm going to explain the law that applies to this  
18 particular case. You took an oath to return your true and  
19 just verdict based only on the evidence and my  
20 instructions on the law. You must not let sympathy or  
21 prejudice influence your decision. As jurors, you must  
22 now decide what the facts of this case are. This is your  
23 job and nobody else's. You must think about all of the  
24 evidence and all the testimony and then you must decide  
25 what each piece of evidence means and how important you

1 think it is. This includes whether you believe what each  
2 of the witnesses told you. Ladies and gentleman, what you  
3 decide about any fact in this case is final. Now, it's my  
4 duty to instruct you on the law and you must take the law  
5 as I give it to you. If the lawyer said something  
6 different than what I tell you about the law, follow what  
7 I say. At various times I've already given you some  
8 instructions about the law. Take all of my instructions  
9 together is the law you're to follow. In other words,  
10 don't pay attention to one or two (INAUDIBLE) to ignore  
11 the rest. To sum up, it's your job to decide what the  
12 facts of the case are, then to apply the law as I give it  
13 to you to those facts and in that way decide the case.  
14 Let me remind you of some things I told you when you were  
15 first seated. The person accused of a crime is presumed  
16 to be innocent and this means you must start with the  
17 presumption that this defendant is innocent. That  
18 presumption continued throughout the trial. It entitles  
19 the defendant to a verdict of not guilty unless you are  
20 convinced beyond a reasonable doubt that he is guilty.  
21 Every crime is made up of parts called elements and I'll  
22 detail those elements for you in a few moments. The  
23 Prosecutor must prove each element beyond a reasonable  
24 doubt and the defendant is not required to prove his  
25 innocence or to do anything. If you find that the

1       Prosecutor has not proven every element beyond a  
2       reasonable doubt you must find the defendant not guilty.  
3       As I've said, a reasonable doubt is a fair, honest doubt  
4       growing out of the evidence or lack of evidence. It's not  
5       merely an imaginary or possible doubt, but a doubt based  
6       on reason and common sense. A reasonable doubt is one  
7       that is reasonable after a careful and considered  
8       examination of the facts and circumstances. Now, when you  
9       discuss this case and decide on your verdict you may only  
10      consider the evidence that was property admitted and it's  
11      important for you to understand what is evidence and  
12      what's not. Evidence includes only the sworn testimony of  
13      witnesses, the stipulations of the parties, the exhibits,  
14      which were admitted into evidence and anything else I told  
15      you as we went through the trial that you could consider as  
16      evidence. Many things are not evidence. Be careful not  
17      to consider them as such. Let me describe some things  
18      that are not evidence. The fact that the defendant is on  
19      trial and charged with a crime is not evidence of  
20      anything. The lawyer's statements and their arguments are  
21      not evidence. They're only meant to help you understand  
22      the evidence and how we--at each side its legal theories.  
23      Lawyer's questions to the witnesses are not evidence.  
24      Consider the questions only to the extent that they give  
25      meaning to the witness's answers. Only accept the things

1       that the lawyers said to you that are supported by the  
2       evidence or by your own common sense and everyday  
3       knowledge. My comments, my rulings, my questions and my  
4       instructions are not evidence. It's been my duty to see  
5       that the trial was conducted according to the law and it--  
6       now to tell you the law that applies to this case. But,  
7       when I make a comment or give an instruction, I'm not  
8       trying to influence your vote or express any personal  
9       opinion about the case. In deed, if you think I have an  
10      opinion about how you think I should decide this case pay  
11      no attention to it. You are the only judges of the facts  
12      in this case and you should decide this case from the  
13      evidence. Times during the trial I've excluded evidence  
14      that was offered or stricken testimony of sustained  
15      objections. Don't consider those things in deciding the  
16      case. Make your decision only on the evidence I let in  
17      and nothing else. Your decision should be based all of  
18      the evidence regardless of which party produced it. Use  
19      your own common sense and your general knowledge in  
20      weighing and judging the evidence. You may not use any  
21      personal knowledge you might have about any place, person  
22      or event. To repeat once more, you must decide this case  
23      based only on the evidence that was admitted during this  
24      trial. Now as I said, it is your job to decide what the  
25      facts of the case are and to do that you must decide which



1 witnesses you believe and how important you think their  
2 testimony is. You do not have to accept or reject  
3 everything that a witness told you. You're free to  
4 believe all, none or a part of any person's testimony. In  
5 deciding which testimony you believe, rely on your own  
6 common sense and everyday experience but in deciding  
7 whether you believe a witnesses testimony you must set  
8 aside any bias or prejudice you may have based on race,  
9 gender or national origin of a witness. If you recall at  
10 the beginning of the trial I suggested that there was some  
11 questions you might want to ask yourself as you listen to  
12 the witness's testimony. Now as you sit here and you  
13 think back to the many witnesses who have testified, let  
14 me remind you of those questions as you reflect on their  
15 testimony. Was the witness able to see or hear clearly?  
16 How long was the witness watching or listening? Was  
17 anything else going on that might have distracted the  
18 witness? Did the witness seem to have a good memory? How  
19 did the witness look and act while testifying here in  
20 court? Did the witness seem to be making an honest effort  
21 to tell the truth or did the witness seem to evade the  
22 questions or argue with the lawyers? Does the witnesses  
23 age or maturity effect how you judge his or her testimony?  
24 Does the witness have any bias, any prejudice or any  
25 personal interest in how this case is decided? Have there

1        been any promises, threats, suggestions or other  
2        influences that effect how the witness testified? In  
3        general, does the witness have any special reason to tell  
4        the truth or any special reason to lie? And all in all,  
5        how reasonable does each witnesses testimony seem when you  
6        think about all the other evidence you've heard in this  
7        case? Now, sometimes the testimony of different witnesses  
8        will not agree and you must decide which testimony you  
9        accept. Think about whether the disagreement involves  
10       something important or not and whether you think someone  
11       is lying or simply mistaken. People see and hear things  
12       differently and witnesses may testify honestly but simply  
13       be wrong about what they thought they saw or remembered.  
14       As I said, it's a good idea to think about which testimony  
15       agrees best with the other evidence that you heard in the  
16       case. You may conclude however that a witness  
17       deliberately lied about something that's important to how  
18       you decide the case. If so, you may choose not to accept  
19       anything that witness said. On the other hand, if you  
20       think that witness lied about some things and told the  
21       truth about others, you may simply accept the part you  
22       think is true and ignore the rest. Now ladies and  
23       gentleman, facts can be proved to you in a couple of way.  
24       They can be proved first of all by direct evidence from a  
25       witness or an exhibit. Direct evidence is evidence about

1        what we actually see or hear. So, if you looked outside  
2        the window and you saw it was raining outside, that would  
3        be direct evidence that it was raining outside. It's not  
4        but, facts can also be proven to you by indirect or what  
5        the law calls, circumstantial evidence. Circumstantial  
6        evidences if evidence that normally or reasonably leads to  
7        other facts. So, in my example if the blinds were closed  
8        and you couldn't see outside but you saw someone walk in  
9        from outside wearing a raincoat covered with drops of  
10       water that would be circumstantial evidence that it's  
11       raining outside. You may consider circumstantial  
12       evidence. In deed, circumstantial evidence by itself or a  
13       combination of circumstantial and direct evidence can be  
14       used to prove the elements of a crime. In other words,  
15       you should consider all the evidence that you believe to  
16       be true. How ladies and gentleman, every defendant has  
17       the absolute right not to testify. When you decide this  
18       case you must not consider the fact that the defendant did  
19       not testify. It must not affect your verdict in any way.  
20       Similarly, any possible penalty should not influence your  
21       decision. In the event of a guilty verdict, it's my duty  
22       as the judge to fix the penalty within the limits provided  
23       by the law. Let me talk a little bit about some  
24       evidentiary matters. When lawyers agree on a statement of  
25       facts we call those stipulated facts. I've mentioned

1       these a couple of times during the trial. You may regard  
2       such stipulated facts as true. But, you're not required  
3       to do so. You may consider whether the defendant had a  
4       reason to commit the alleged crime. But, a reason by  
5       itself is not enough to find a person guilty of their  
6       crime. The Prosecutor does not have to prove that the  
7       defendant had a reason to commit the alleged crime. He  
8       only has to show that the defendant actually committed the  
9       crime and that he meant to do so. Don't decide this case  
10      based on which side presented more witnesses. Instead,  
11      think about each witness and each piece of evidence and  
12      whether you believe them. Then you must decide whether  
13      the testimony and the evidence that you believe to be  
14      true, proves beyond a reasonable doubt that the defendant  
15      is guilty. You heard testimony from witnesses who have  
16      given you their opinions as experts in the fields of  
17      forensic biology and DNA, latent print analysis, forensic  
18      pathology, and document and handwriting analysis. Experts  
19      are allowed to give opinions in court about matters  
20      they're experts on. You do not have to believe an  
21      expert's opinion. Instead, you should decide whether you  
22      believe it and how important do you think it is. When you  
23      decide whether you believe an expert's opinion, think  
24      carefully about the reasons and the facts they gave you  
25      for their opinion and whether those facts are true. You

1       should also think about the expert's qualifications and  
2       whether their opinion makes sense when you think about all  
3       of the other evidence in the case. You heard testimony  
4       from several witnesses who are police officers. That  
5       testimony is to be judged by the same standards you used  
6       to evaluate the testimony of any other witness. All  
7       right. Let me turn now to the elements of the offense.  
8       The defendant in this case is charged with the crime of  
9       the first degree, premeditated murder of Jane Mixer. To  
10      prove this charge, the Prosecutor must prove each of the  
11      following evidence beyond a reasonable doubt. First, that  
12      the defendant caused the death of Jane Mixer. That is  
13      that Jane Mixer died of a result of gunshot wounds.  
14      Second, that the defendant intended to kill Jane Mixer.  
15      Third, that this intent to kill was premeditated. That  
16      is, thought out beforehand. Fourth, that the killing was  
17      deliberate which means the defendant considered the pro's  
18      and con's of the killing and thought about and chose his  
19      actions before he did it. There must have been real and  
20      substantial reflection for long enough to give a  
21      reasonable person a chance to think twice about the intent  
22      to kill. The law does not say how much time is needed.  
23      It is for you to decide whether enough time passed under  
24      the circumstances of this case. The killing cannot be the  
25      result of a sudden impulse without thought or reflection

1 and fifth, that the killing was not justified, excused or  
2 done under any circumstances that would reduce it to a  
3 lesser crime. You may also consider the lesser crime of  
4 second degree murder. To prove this charge, the  
5 Prosecutor must prove each of the following evidence  
6 beyond a reasonable doubt and some of these are the same.  
7 First, that the defendant caused the death of Jane Mixer.  
8 That is that Jane Mixer died as a result of gunshot  
9 wounds. Second, that the defendant had one of these three  
10 states of minds: he intended to kill or he intended to do  
11 great bodily harm to Jane Mixer, or he knowingly created a  
12 very high risk of death or great bodily harm knowing that  
13 death or such harm would be the likely result of his  
14 actions and third that the killing was not justified,  
15 excused or done under circumstances that reduce it to a  
16 lesser crime. So, let me run through with you the  
17 differences between first degree and second-degree murder.  
18 For first degree murder the elements are the victim's  
19 death, that it was caused by the defendant. That the  
20 death was not justified or excused or mitigated to  
21 manslaughter. That the defendant actually intended to  
22 kill the victim and that the defendant premeditated the  
23 victim's death and the vi--and that the defendant  
24 deliberated the victim's death. For second-degree murder,  
25 the first three elements are the same, the victim's death,

1 caused by the defendant and not justified or excused or  
2 mitigated to manslaughter. The fourth element is that the  
3 defendant actually intended to kill the victim or the  
4 defendant intended to do great bodily harm to the victim  
5 or the defendant knowingly created a very high risk of  
6 death or great bodily harm knowing that death or such harm  
7 would be the likely result of his actions. Now, you must  
8 think about all of the evidence in deciding what the  
9 defendant's state of mind was at the time of the alleged  
10 killing. The defendant's state of mind may be inferred  
11 from the kind of weapon he used, from the type of wounds  
12 which were inflicted, from the acts and words of the  
13 defendant or from any other circumstances surrounding the  
14 alleged killing. You may infer that the defendant  
15 intended to kill if he used a dangerous weapon in a way  
16 that was likely to cause death. Likewise, you may infer  
17 that the defendant intended the usual results that follow  
18 from the use of a dangerous weapon and a gun is a  
19 dangerous weapon. A dangerous weapon as I said is any  
20 instrument that is used in a way that's likely to cause  
21 serious physical injury or death. Premeditation and  
22 deliberation maybe inferred from any actions of the  
23 defendant which show planning or from any circumstances--  
24 any other circumstances surrounding the killing. The  
25 Prosecutor need not proving motive for the killing. But,

1       you may consider evidence a motive in deciding whether  
2       there was premeditation or delibe--deliberation. Motive  
3       by itself does not prove premeditation or deliberation.  
4       If you find the defendant guilty of murder, you must state  
5       in your verdict whether it is murder in the first degree,  
6       or murder in the second degree. The crimes of first and  
7       second-degree murder require proof of a specific intent.  
8       This means that the Prosecution must prove not only that  
9       the defendant did certain acts but that he did the acts  
10      with the intent to cause a particular result. With the  
11      crimes of first and second-degree murder, this means that  
12      the Prosecution must prove that the defendant intended to  
13      kill Jane Mixer. The defendants intent maybe proved by  
14      what he said, what he did, how he did it or by any other  
15      facts and circumstances in the case. Now ladies and  
16      gentleman, when you go to the jury room, the first thing  
17      you should do is choose a foreperson. That person should  
18      see to it that you're discussion is carried on in a  
19      businesslike way and that everyone has a fair chance to be  
20      heard. A verdict in a criminal case must be unanimous.  
21      In order to return a verdict it is necessary that each of  
22      you agree on that verdict. In the jury room you'll  
23      discuss the case among yourselves but ultimately each of  
24      you will have to make up your own mind. Any verdict must  
25      represent the individual considered judgement of each



1 juror. It's your duties as jurors to talk to each other.  
2 Make every reasonable effort to reach agreement. Express  
3 your opinions and also express the reasons for your  
4 opinions. But, keep an open mind as you listen to your  
5 fellow jurors. Rethink your opinions and don't hesitate  
6 to change your mind if you become convinced that you were  
7 wrong. Try your best to work out any differences.  
8 However, although you should try to reach agreement, none  
9 of you should give up your honest opinion about the case  
10 just because other jurors disagree with you or just for  
11 the sake of reaching a verdict. In the end, your vote  
12 must be your own and you must vote honestly and in good  
13 conscience. If you want to communicate with me while  
14 you're in the jury room, have your foreperson write a note  
15 and give it to the court officer. It's not proper for you  
16 to talk directly with the judge, lawyers, court officers  
17 or other people involved in the case. As you discuss the  
18 case, you must not let anyone, even me, know how your  
19 voting stands. Therefore, until you return with a  
20 unanimous verdict, do not reveal this to anyone outside  
21 the jury room. If you want to look at any of the  
22 exhibits, write a note to the court officer and the  
23 exhibits will be brought into you to examine. When you go  
24 to the jury room you'll be given a written copy of the  
25 instructions I've just given you. As you discuss the case

1 think about all of my instructions as the law you are to  
2 follow. I have prepared a verdict form listing the  
3 possible verdicts. It begins with, "We the jury find the  
4 defendant...". As to count one, first degree murder,  
5 there are three boxes here. The choices are not guilty,  
6 guilty or guilty of the lesser-included offense of second-  
7 degree murder. Place an "X" or a check mark in one of the  
8 three boxes. Don't write me any notes, jut an "X or a  
9 check mark and then there's a place for the foreperson to  
10 sign the verdict form. Are there any objections to my  
11 instructions not previously named?

12 MR. GABY: No, Your Honor.

13 MR. HILLER: None, Your Honor. Thank you.

14 THE COURT: Ladies and gentleman, this is the  
15 point at which we're going to select two alternates. If  
16 your name is called at random, stay where you are and I'll  
17 give you all some further instructions. Select two jurors  
18 at random, please.

19 COURT CLERK: Juror number 44, chair number 8.  
20 Juror number 345, chair number 5.

21 THE COURT: For the two whose names were drawn as  
22 alternates, when you go back to the jury room, take your  
23 personal belongings and come out and Ms. Washington will  
24 give you some other instructions about where you're to go  
25 and what you're to do from this point. For the remainder

1 of the jurors, do not begin your discussions until the  
2 alternates have had an opportunity to get their belongings  
3 and leave the jury room. As soon as they've done so, then  
4 you may begin your deliberations. Do swear the court  
5 officer please.

6 COURT CLERK: You do swear or affirm that you  
7 will keep the persons sworn as jurors in some appointed  
8 place, that you will no allow any communication to be made  
9 to them unless by order of the Court until they shall be  
10 discharged. You will not communicate to anyone the state  
11 of their deliberations or the verdict they have agreed  
12 upon.

13 COURT OFFICER: I do.

14 (At 10:53 a.m., court officer sworn by clerk)

15 THE COURT: Ladies and gentleman, you're excused  
16 to begin your deliberations.

17 JUDICIAL ATTORNEY: All rise, please.

18 (At 10:53 a.m., deliberations begin. Court in  
19 recess)

20 (At 2:30 p.m. court reconvenes)

21 JUDICIAL ATTORNEY: All rise, please. The  
22 Washtenaw County Trial Court is now back in session. The  
23 Honorable Donald E. Shelton presiding.

24 THE COURT: Please be seated. The jury has  
25 requested a series of exhibits. They have all been

1 provided with two exceptions at this point. One was the  
2 board that was administrated--that was admitted for  
3 demonstrative purposes only and the second is People's  
4 exhibit 65 which are the photographic copies of the spiral  
5 bound notebook. I indicated at the time that this was  
6 admitted that I was admitting it for the limited purpose  
7 of allowing a comparison of the handwriting. There was a  
8 concern about the content--substance of the writings  
9 contained in the notebook and so I did consult with  
10 counsel and wanted to have any objections to exhibit 53  
11 going into the jury room placed on the record. Mr. Gabry?

12 MR. GABRY: Thank you, Your Honor. Yes, Your  
13 Honor, having--

14 THE COURT: I'm sorry. Is it 65--thank you.

15 MR. GABRY: Having previously had an opportunity  
16 to review that and the Prosecutor did provide me with  
17 Xeroxed copies back as we went through. I did have an  
18 opportunity to read what I believed to be Mr. Leiterman's  
19 journal entries that were being required as a result of  
20 his involvement with Kalamazoo Drug Court and therapy. There  
21 are a number of entries in which he expresses some  
22 emotions. It is my understanding that was the requirement  
23 of the exercise to do that. My concern, Your Honor, is  
24 that the jury would focus on the content of those. There  
25 is certainly discussion regarding his felony, arrest and

1 the suspension of his license and the involvement with the  
2 Attorney General's office as far as being able to obtain  
3 his license. I do believe that information is  
4 prejudicial. It's not relevant to any of the facts and  
5 issues in this proceedings. So, to that extent I would  
6 object in light of the jury's request and the Court's  
7 previous ruling if the Court is inclined to provide them  
8 with that exhibit I would ask that there would be a  
9 "limiting instruction consistent with the Court's earlier  
10 ruling as to why it was being admitted. I also asked that  
11 the entire document be submitted not any piece mail  
12 representation.

13 THE COURT: I was going to ask you about that  
14 because the last apparently 16 pages are the only pages  
15 that are claimed to be his--the defendant's handwriting.  
16 But, you want the rest to go in?

17 MR. GABRY: If it's going in I want it--I would  
18 prefer that it all go in, Your Honor, in light of the  
19 testimony that was heard about one experts ident--initial  
20 identification.

21 THE COURT: On your other point, I look through  
22 here relatively quickly after the request at the last 16  
23 pages, all of the--these journal entries appear to relate  
24 to the prescription drug matter and his--the journal  
25 prepared pursuant to that Drug Court Program and to some

1 of those items relate to licensing so far as I could see.  
2 Licensing and drug testing.

3 MR. GABRY: That's correct, Your Honor.

4 THE COURT: All right. Is there anything else  
5 that was--that you thought was prejudicial in there?

6 MR. GABRY: Your Honor, in light of the tenor in  
7 the case and what we've dealt with here, there are  
8 obviously although the jury seen them because Mr. Riley  
9 did highlight certain words such as "angry", underlined  
10 things of that nature, when those are read in the entire  
11 context there are expressions of anger at certain  
12 individuals and I do have a concern that the jury would  
13 put weight on that as a character trait of my client  
14 versus just the handwriting style that's exhibited and the  
15 purpose.

16 THE COURT: Right. All right. Prosecutor, your  
17 position?

18 MR. HILLER: Well, Your Honor, I would think if  
19 these--these are--this article was admitted for the  
20 relevance being the handwriting. I think if the jury's  
21 asked for it, they should receive it. I don't have an  
22 objection giving an limiting instruction in this case. I  
23 would note that to the extent that we're dealing with the  
24 writings of the defendant, they are statements by a party  
25 opponent and if they have relevance they certainly would

1 be admissible otherwise anyway. And so I don't think that  
2 the--that whatever limited prejudicial effect is there is  
3 certainly mitigated by that. None the less, I think if  
4 the Court feels a limiting instruction is in order, I  
5 certainly don't object to do that and I think that if the  
6 jury has asked for the evidence we should give it to them.

7 THE COURT: All right. I am going to allow the  
8 jury have this in the jury room. I will give them a  
9 limiting instruction indicating to them that the substance  
10 is not relevant and that they are to consider it for the  
11 limited purpose only of the basis to which it was used for  
12 a comparison of the handwriting and penmanship in the last  
13 16 pages. I'll send the whole thing in, however. On  
14 another matter on the same note, the jury did ask for a  
15 review for playback of the testimony of the witnesses  
16 Shafer, Milligan and Thivault. Unless there's an  
17 objection, my usual practice is to tell them that that--  
18 playback of those--that there is no transcript at this  
19 point and that playback at this point is not--is not  
20 possible and they should rely on their memories and their  
21 notes at this point. Is there any objection to that?

22 MR. GABRY: Not from us, Your Honor.

23 MR. HILLER: No, Your Honor.

24 THE COURT: All right. Would you bring the jury,  
25 please?

1 JUDICIAL ATTORNEY: All rise for the jury,  
2 please.  
3 THE COURT: Please be seated. Ladies and  
4 gentleman, have you selected a foreperson? Okay and  
5 that's Mr. Skochelak?  
6 JUROR #218, seat 2: Skochelak.  
7 THE COURT: Skochelak. Almost right. Mr.  
8 Skochelak, I have a note requesting, first of all, there's  
9 been several exhibits that the jury has requested and  
10 those have been brought into you. With one exception and  
11 that is exhibit 65 which is this blue notebook that had  
12 the--referred to as the journal entries. If you recall  
13 when this was admitted I indicated that I was going to  
14 admit it for the limited purpose of handwriting  
15 comparison, okay? I'm going to allow you to examine it in  
16 the jury room but you need to clearly understand that the  
17 substance of all of the writing here, what it says, is not  
18 relevant to anything in this case. You should only  
19 consider, you may only consider these materials for the  
20 purpose of comparing or the basis to which they were used  
21 for comparing the handwriting, what in the old days we  
22 used to call penmanship, the handwriting samples that  
23 appear here. There should be no discussion of, you should  
24 not consider in any way the substance of the materials in  
25 any portion of this book - the last 16 pages of which I



1 understand were alleged to be the handwriting of the  
2 defendant. Okay? Any questions about that? Also, you  
3 had in your note indicated some desire to see a reply of  
4 the testimony of three witnesses. That's not possible at  
5 this point. There is no transcript at this point and I'm  
6 going to ask you to rely at this point on your memory and  
7 then your notes regarding the testimony of those three  
8 witnesses. This will be brought into you. Any objection  
9 not previously stated?

10 MR. GABRY: No, Your Honor.

11 MR. HILLER: None, Your Honor.

12 THE COURT: This will be brought to you--into you  
13 as soon as you've returned to the jury room. You may  
14 resume your deliberations.

15 JUDICIAL ATTORNEY: All rise, please.

16 (At 2:41 p.m., court in recess)

17 (At 4:27 p.m., court reconvenes)

18 JUDICIAL ATTORNEY: The Washtenaw County Trial  
19 Court is now back in session. The Honorable Donald E.  
20 Shelton presiding.

21 THE COURT: Please be seated. We do have a note  
22 indicating that they have reached a decision. Mr. Gabry,  
23 Mr. Leiterman, it's my accustom to have counsel and the  
24 defendant rise during the reading of the verdict. Bring  
25 the jury.

1 JUDICIAL ATTORNEY: All rise for the jury,  
2 please.

3 THE COURT: Please be seated. Foreperson, has  
4 the jury reached a verdict?

5 Juror 218, seat 2: Yes we have.

6 THE COURT: Would you give the verdict form to  
7 the Court Officer, please? Okay. Foreperson would stand  
8 and read the verdict. Counsel and the defendant please  
9 rise. Read the verdict beginning with, "We the jury".

10 JUROR 218, seat 2: We the jury find the  
11 defendant guilty, signed by the jury foreperson.

12 THE COURT: Thank you. Have a seat, sir. Have a  
13 seat. Ladies and gentleman, please stand and raise your  
14 right hands.

15 COURT CLERK: Do you swear or affirm that the  
16 verdict as stated by your foreperson is the verdict of  
17 each of you?

18 JURORS: Yes.

19 (At 4:24 p.m., jurors sworn by clerk)

20 THE COURT: Please be seated. Poll the jury.

21 THE CLERK: Is this and was that your verdict,  
22 Juror number 264, chair number 1?

23 JUROR 264, chair 1: Yes.

24 COURT CLERK: Is this and was that your verdict,  
25 Juror number 218, chair 2?

1 JUDICIAL ATTORNEY: All rise for the jury,  
2 please.

3 THE COURT: Please be seated. Foreperson, has  
4 the jury reached a verdict?

5 Juror 218, seat 2: Yes we have.

6 THE COURT: Would you give the verdict form to  
7 the Court Officer, please? Okay. Foreperson would stand  
8 and read the verdict. Counsel and the defendant please  
9 rise. Read the verdict beginning with, "We the jury".

10 JUROR 218, seat 2: We the jury find the  
11 defendant guilty, signed by the jury foreperson.

12 THE COURT: Thank you. Have a seat, sir. Have a  
13 seat. Ladies and gentleman, please stand and raise your  
14 right hands.

15 COURT CLERK: Do you swear or affirm that the  
16 verdict as stated by your foreperson is the verdict of  
17 each of you?

18 JURORS: Yes.

19 (At 4:24 p.m., jurors sworn by clerk)

20 THE COURT: Please be seated. Poll the jury.

21 THE CLERK: Is this and was that your verdict,  
22 Juror number 264, chair number 1?

23 JUROR 264, chair 1: Yes.

24 COURT CLERK: Is this and was that your verdict,  
25 Juror number 218, chair 2?

1 JUROR 218, chair 2: Yes.  
2 COURT CLERK: Is this and was that your verdict,  
3 Juror number 315, chair 3?  
4 JUROR # 315, CHAIR 3: Yes.  
5 COURT CLERK: Is this and was that your verdict,  
6 Juror number 262, chair 4?  
7 JUROR # 262, CHAIR 4: Yes.  
8 COURT CLERK: Is this and was that your verdict,  
9 Juror number 335, chair 6?  
10 JUROR # 335, CHAIR 6: Yes.  
11 COURT CLERK: Is this and was that your verdict,  
12 Juror number 374, chair 7?  
13 JUROR # 374, CHAIR 7: Yes.  
14 COURT: CLERK: Is this and what that your  
15 verdict, Juror number 350, chair 9?  
16 JUROR # 350, CHAIR 9: Yes.  
17 COURT CLERK: Is this and was that your verdict,  
18 Juror number 337, chair 10?  
19 JUROR #337, CHAIR 10: Yes.  
20 COURT CLERK: Is this and was that your verdict,  
21 Juror number 279, chair 11?  
22 JUROR # 279, CHAIR 11: Yes.  
23 COURT CLERK: Is this and was that your verdict,  
24 Juror number 352, chair 12?  
25 JUROR #352, CHAIR 12: Yes.

1 COURT CLERK: Is this and was that your verdict,  
2 Juror number 117, chair 13?

3 JUROR #117, CHAIR 13: Yes.

4 COURT CLERK: Is this and was that your verdict,  
5 Juror number 270, chair 14?

6 JUROR # 270, CHAIR 14: Yes.

7 THE COURT: Counsel is there anything further  
8 before the jury is excused?

9 MR. GABRY: No, Your Honor.

10 MR. HILLER: No, Your Honor. Thank you.

11 THE COURT: Ladies and gentleman, it's been a  
12 long two weeks and I appreciate the difficulty of serving  
13 in a case like this. As you saw a couple weeks ago there  
14 are lots of ways to try to get out of serving on jury  
15 duty. But, I also meant what I said that our system  
16 simply will not function without the willingness and  
17 devotion of people like you to serve in our criminal  
18 justice system. On behalf of the Court and all of the  
19 parties I thank you for your service, you are excused.  
20 Please go with Ms. Washington.

21 JUDICIAL ATTORNEY: All rise, please.

22 THE COURT: Please be seated. Sentencing will be  
23 August 30<sup>th</sup> at 1:30. Defendant remains remanded pending  
24 sentence. We're adjourned.

25 COURT DEPUTY: All rise.

(At 4:27 p.m. proceedings concluded)

STATE OF MICHIGAN )  
COUNTY OF WASHTENAW )

I certify that this transcript, consisting of 85 pages, is a complete, true and correct transcript to the best of my ability, of the proceedings held in this case on Friday, July 22, 2005, before the Honorable Donald E. Shelton, Circuit Court Judge.

Dated: November 28, 2005

Katherine Tait

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