

The Andrea Mims Story: "Rape of an Angel"

Part 5

Dr. Anthony Oliver, who had testified effectively at the competency hearing that Andrea was simply malingering, or faking her emotional distress, was the best at this trade, and was quite capable of selling ice cubes to Eskimos.

He had bragged to the DA's investigator, Dan Riter, on first contact, that he could demolish any psychological defense, and had proceeded to brag about how he convinced an earlier jury an obviously deranged and disassociational man was sane. Where he lacked credibility, was in his lack of board certification. In essence, he'd been practicing psychiatry without a license, and as far as I have been able to determine, his sole practice was as a shill for prosecutors. He could tear a part to pieces with his sharp British accent, his goatee, his monocle, and his red handkerchief. His stock-in-trade was style over substance.

Now, he faced a stiff challenge. Although quite eloquent in his evaluation of Andrea, he had never actually met her. Up until this point, he'd relied on his own ability to analyze materials generated by Andrea's own therapists, delighting in twisting them to suit his own pre-determined findings.

Judge Moore, however, ruled that Oliver would not be permitted to testify without first meeting and evaluating Andrea. He also ruled that Andrea would be compelled to talk to him.

A time was set aside, and much to Andrea's angst, she was forced to meet with him alone.

When Oliver walked into the room, Andrea naturally put up a wall of defense. Seeing this, Oliver smiled at her good-naturedly, and walked over to her with his hand extended. With grandiose British charm, he assured her he was not the ogre she probably thought he was. He began by asking Andrea to tell him all she wanted about her life, from her earliest memories.

Andrea was thrown off by Oliver's gentle demeanor. Could she trust this man? She enjoyed his crisp accent, even though he did occasionally have a high lilt, or crack to it. But, he couldn't help that. She remembered a delightful week she'd spent with Bernie Cornfeld in London. Then she thought of a secret love she'd rarely told anyone about. The wonderful Peter Sellers, who'd dated her and asked her to move to England, but died while she was thinking about it. She thought of Sellers' quiet demure demeanor. (Note: Of all the famous names Andrea has ever mentioned to me as having known, Sellers is the only one I can truly say I would have liked to have met).

Andrea cautiously began by telling Oliver of her earliest childhood...and as she continued, she saw the Doctor's body language relax, as he leaned forward and rested his chin on his palm. He wasn't writing....that was a good sign.

When she told Oliver of her rape, pregnancy, and forced marriage to Wes Denike, a tear welled up in the corner of his eye, and he took her hand. "This must be terribly hard for you." he offered. But, Andrea, taken by his apparent concern, told him it was OK...then laughing nervously, told him she was getting used to telling her life story by now.

When she began telling Oliver of her marriage to Bob Sand, including the incident where he brought a stranger into the room to forcibly sodomize her, he began to weep openly, often pulling his red handkerchief out of his pocket to dab his eyes.

When her story was done, Oliver had to pause and compose himself, before he could ask her questions. As he asked her further questions about Sand's behavior, and about the night of the killing, Andrea was able to relax and smile at him. This was a good man. He'd just misunderstood her.

At the close of the 2-hour session, Oliver stood up, walked over to Andrea, and gave her the warmest hug she'd received in a very long time. There was nothing sexual about it...just the warmth of a fellow human being who understood her implicitly, and would right all wrongs in her defense.

"I just didn't know..." Oliver said, his eyes still red with tears. "Don't you worry...I'm on your side now, and I'll straighten everything out for you.

That night, Andrea slept the best she had in her 15 months in the county jail.

Andrea beamed with confidence the morning Anthony Oliver walked into the courtroom and took the stand. She knew Dunn would have a big surprise coming when his star expert witness spoke. As she expected, Oliver began by telling the jury what he'd learned about Andrea's life, and the humiliation Sand had subjected her to.

Then Dunn asked him if he felt the sex games had been distressing to Andrea.

"Actually, I had the impression she quite enjoyed them." He went on to say that in large part, he believed she was lying about her past history of abuse.

On cross examination, Stafford pressed Oliver about the sexual abuse Sand had subjected her to. Oliver responded with a line Bob Dunn continues to quote to this day: "I don't believe any of the abuse ever occurred. But, if it did occur, it was no doubt initiated by Andrea. After all, she has a long history of sadomasochism. Bob Sand was no doubt the victim of Andrea's bizarre fantasies, not the other way around, as she'd have us believe."

The largely uneducated jury, having slept through most of the expert psychological testimony by the doctors who had really treated Andrea, were now sitting in rapt attention. They were fascinated by Oliver and cared more for his clipped Oxford accent, his red carnation, and his monocle. Laura, Stafford's investigator, knew they were hanging on his every word.

Another prosecution rebuttal witness was even more devastating. The analysis had finally come back on the fake letter from Richard. An expert handwriting analyst from the office of the Postal Inspector testified quite convincingly that the letter was written by Andrea, not Richard. It wasn't even close.

A letter Andrea had written to herself in an effort to understand why an old friend would betray her, had now become the instrument of her downfall. Richard, who under ordinary circumstances might not have been believed, was given false credibility because of a stupid blunder on the part of Charles Stafford, or a deliberate fatal wound he'd inflicted on the client he despised. And, since Richard was the only witness who could testify to pre-meditation, this letter alone might have driven the final nail in Andrea's coffin.

In surrebutal, Stafford called on Dr. Morton Kurland, who testified quite eloquently that "It's my feeling that her behavior is such that she has lost contact with reality on more than one occasion, and that this represents a much more severe disorder than simple histrionic disorder."

With the close of surrebutal, the case went to the jury. Judge Moore offered the jury a choice of 5 verdicts. They could find Andrea not guilty by reason of self-defense, guilty of involuntary manslaughter, voluntary manslaughter, 2nd degree murder, or 1st degree murder.

In closing arguments, Dunn asked the jury to return a verdict of 1st degree murder, claiming Andrea had married Bob Sand expecting him to die soon, then murdered him to collect the \$150,000 codicil to his will when she realized he would not die soon. He ignored the fact that a new Will had been taken out giving Andrea 1/3 of Sand's estate, and had remained unsigned. He then lied and told the jury that Andrea had suffered no physical injuries the night of the killing (she'd suffered a massive concussion from the head wound), and that she'd staged the killing to look like the work of intruders. He told the jury another clear lie when he said that when Andrea broke free of Sand's grip and could have run out of the room, that her claim to self defense, or diminished capacity was invalid.

The law in California clearly states that to claim self-defense you do not need to retreat should the opportunity present itself, and while this was stated in the judge's instructions to the jury, it's apparent the jury listened far more attentively to Dunn's histrionic lies than to Judge Moore's rather prosaic reading of dry law. And sadly, the law does seem to allow attorneys to lie in opening and closing arguments, since it's not considered evidence. But, just because Dunn did not violate the letter of the law, that does not make him an ethical man. In the end, he only considered his blind ambition! Finally, he relied most heavily on Richard, the jailhouse witness who'd testified to premeditation.

Stafford argued that Sand's killing was legitimate self-defense, but even if they did not believe it, she was only guilty of involuntary manslaughter. He told them it made no sense for Andrea to kill Bob Sand for \$150,000 when she could have waited a few days and gotten much more. But, everything he said to the jury was in a soft, dull monotone, without conviction or any sense of caring for his client. In fact, when he'd turn in Andrea's direction, a contemptuous look would come over his face. The only words he used with any degree of emphasis was when he described Andrea as having "gone into a vacuum," a phrase she's resented ever since.

After closing arguments, Judge Moore issued his instructions to the jury, and they retired to deliberate Andrea's fate.

Judge Moore's Instructions to the Jury

On this page, you will be asked to evaluate the information I have given, and render a verdict according to the actual jury instructions given by Judge Moore to the jury on March 7th and 8th, 1984. However, in one area, I will part from the law, and with the definitions of the crimes, you will be told the penalty, or potential penalty should you render that particular verdict. In keeping with the principles of fully informed jury," you are obligated to judge not just the defendant in light of the evidence, but the law itself. And, you are obligated to consider the penalty, so that even if you feel the defendant is guilty of a particular crime, if, in light of the individual circumstances surrounding the defendant and her crime, you feel that the potential penalty is too harsh, you must either acquit her, or find her guilty of a lesser offense so that the penalty for that lesser offense is more fitting. This is not, however a 2-way street. You may not find a defendant guilty of a more serious crime than they actually are simply to elicit a harsher sentence! If you have any questions about "jury nullification," please click on the link provided above. Additional research links on the subject are provided on that page.

There were 5 possible verdicts in Andrea's trial. They were "Not Guilty by reason of self defense," "Involuntary Manslaughter," "Voluntary Manslaughter," "2nd Degree Murder," and "1st Degree Murder." The legal definitions given will be as defined under California Law, and as were in effect on May 14th, 1981. The same holds true for the potential penalties. It is possible that some of these have changed since that time, however, if Andrea were to be re-tried, 1981 law would still apply, as per the "ex post facto" provisions of the US Constitution.

There was a separate insanity phase of the trial, however that will not be addressed here. Inasmuch as a proper defense would have negated the need for an insanity presentation in any case, I do not feel it necessary to include the instructions from that phase.

The instructions are quite extensive, however I will only transcribe the section dealing with the definitions of the crime. The rest deals with instructions on judging the credibility of a witness, which are quite ponderous and unnecessary for our purposes here.

In order to avoid confusion, instructions printed in bold face are quoted directly from Andrea's trial transcripts, and are the verbatim words of Judge Frank Moore, with the exception of my comments in red italic. Words in standard type, such as this, are my own, including "instructions for a fully informed jury," which are my own interpretations on how such a law would work. Please read the instructions carefully, then at the bottom, cast your vote for the proper verdict in the poll. You may check back often for running totals.

(On the site, there was a poll that allowed the reader to vote on their choice of verdicts)

The offense with which the defendant, Andrea Claire Mims is charged in the Information is as follows:

The District Attorney of the County of Riverside hereby accuses Andrea Claire Mims, also known as Andrea Claire Sand of a violation of Section 187 of the Penal Code, a felony, in that on or about May 14, 1981, in the County of Riverside, State of California, she did willfully and unlawfully and with malice aforethought murder Robert Clark Sand, a human being.

The District Attorney of the County of Riverside further charges that in the commission and attempted commission of the offense herein above set forth in Count I of the Information, the defendant Andrea Claire Mims also known as Andrea Claire Sand personally used a deadly and dangerous weapon, to wit, a knife, said use not being an element of the above offense within the meaning of Penal Code Section 12022(b).

Now homicide is defined -- actually there are two kinds. One is lawful and one is unlawful. And used in the instructions, the word homicide includes murder and manslaughter which are unlawful, and the acts of excusable and justifiable homicides which are lawful. But I'll give you the definitions of the lawful first.

The killing of another person in self-defense is justifiable and not unlawful:

1. When the person who does the killing has reasonable grounds to believe and does believe that there is imminent danger that the other person will kill him or cause him great bodily injury. 2. a reasonable person under the same circumstances would believe that it was necessary to kill the other person to prevent death or great bodily injury to himself.

In order to justify killing another person in self-defense, actual danger or great bodily injury is not necessary. On the other hand, a bare fear of death or great bodily injury is not sufficient.

In order to justify a killing, it must be established:

1. The circumstances must be sufficient to excite the fears of a reasonable person that there was imminent danger of death or great bodily injury , and

2. The party killing must have acted under the influence of such fears alone and under the belief that such killing was necessary to save himself from death or great bodily injury.

3. It is lawful for a person who is being assaulted to defend themselves from attack if, as a reasonable person, he has grounds for believing and does believe that bodily injury is about to be inflicted upon him. In doing so, he may use all force and means with which he believes to be reasonably necessary and which would appear to a reasonable person in the same or similar circumstances to be necessary to prevent the injury which appears to be imminent.

A person who is threatened with an attack that justifies the exercise of the right of self-defense need not retreat. (comment: This is very important to note, since Bob Dunn lied to the jury in his closing arguments and stated that Andrea could not claim self defense because of a lull in the fight during which she had the time to escape!) In the exercise of his right of self-defense, he may stand his ground and defend himself by the use of all force and means which would appear to be necessary to a reasonable person in a similar situation and with similar knowledge; and he may pursue his assailant until he has secured himself from danger if that course likewise appears reasonably necessary. This law applies even though the assailed person may more easily have gained safety by flight or by withdrawing from the scene.

Actual danger is not necessary to justify self-defense. If one is confronted by the appearance of danger which arouses in his mind, as a reasonable person, an honest conviction and fear that he is about to suffer bodily injury, and if reasonable man -- if a reasonable man in a like situation seeing and knowing the same facts would be justified in believing himself in like danger and if the person so confronted acts in self-defense upon such appearances and from such fear and honest convictions, his right of self-defense is the same whether such danger is real or merely apparent.

The right of self-defense exists only as long as the real or apparent danger continues to exist. When such danger ceases to appear to exist, the right to use force in self-defense ends.

The right of self-defense ceases to exist when there's no longer any apparent danger of further violence on the part of the assailant. Thus, where a person is attacked under circumstances which justifies his exercise of the right of self-defense and thereafter he uses such force upon his attacker as to render the attacker incapable of inflicting further injuries, the law of self-defense then ceases to work in favor of the person attacked.

Now, with regard to the unlawful homicide and the definition of murder. The crime of murder is the unlawful killing of a human being with malice aforethought.

In order to prove the commission of murder, each of the following elements must be proved:

1. That a human being was killed,
2. That the killing was unlawful, and
3. That the killing was done with malice aforethought.

The definition of malice aforethought: Malice may be either implied or express.

Malice is express when there is manifested an intention unlawfully to kill a human being.

Malice is implied when the killing results from an intentional act involving a high degree of probability that it will result in death, which act is done for a base, antisocial purpose and with a wanton disregard for human life or when the killing is a direct casual result of the perpetration or attempt to perpetrate a felony inherently dangerous to human life.

When it is shown that a killing resulted from the intentional doing of an act with express or implied malice, no other mental state need be shown to establish the mental state of malice aforethought.

The mental state constituting malice aforethought does not necessarily require an ill will or hatred of the person killed.

"Aforethought" does not imply deliberation or the lapse of considerable time. It only means that the required mental state must precede rather than follow the act.

All murder which is perpetrated by any kind of willful, deliberate and premeditated killing with express malice aforethought is murder of the first degree.

The word willfully -- the word "willful" as used in this instruction means intentional.

The word "deliberate" means formed or arrived at or determined upon as a result of careful thought and weighing of considerations for and against the proposed course of action. The word "premeditated" means considered beforehand.

If you find that the killing was preceded and accompanied by a clear, deliberate intent on the part of the defendant to kill, which was the result of deliberation and premeditation so that it must have been formed upon pre-existing reflection and not under a sudden heat of passion or other condition precluding the idea of deliberation, it is murder of the first degree.

The law does not undertake to measure in units of time the length of the period during which the thought must be pondered before it can ripen into an intent to kill which is truly deliberate and premeditated. The time will vary with different individuals and under varying circumstances.

The true test is not the duration of time but rather the extent of the reflection. A cold, calculated judgment and decision made may be arrived at in a short period of time, but a mere unconsidered and rash impulse, even though it include an intent to kill, is not such deliberation and premeditation as will fix an unlawful killing as murder in the first degree.

To constitute a deliberate and premeditated killing, the slayer must weigh and consider the question of killing and the reasons for and against such a choice and having in mind the consequences, he decides to and does kill.

Murder of the Second Degree is also the unlawful killing of a human being with malice aforethought when there is manifested an intention unlawfully to kill a human being but the evidence is insufficient to establish deliberation and premeditation.

Manslaughter. The crime of manslaughter is the unlawful killing of a human being without malice aforethought. It is not divided into degrees but is of two kinds, namely, voluntary manslaughter and involuntary manslaughter.

Voluntary Manslaughter. The crime of voluntary manslaughter is the unlawful killing of a human being without malice aforethought when there is an intent to kill.

There is no malice aforethought if the killing occurred upon a sudden quarrel or the heat of passion.

In order to prove the commission of the crime of voluntary manslaughter, each of the following elements must be proved:

1. That a human being was killed,
2. The killing was unlawful, and
3. That the killing was done with the intent to kill.

Voluntary manslaughter is the intentional and unlawful killing of a human being without malice aforethought as I've indicated.

There is no malice aforethought if the killing is in the honest but unreasonable belief in the necessity to defend against imminent peril of life or great bodily injury or if the killing occurred upon a sudden quarrel or heat of passion or if the evidence shows that due to diminished capacity caused by mental illness, mental defect or intoxication, the defendant did not have the capacity to form the mental state constituting malice aforethought, even though the killing was intentional, voluntary, deliberate, premeditated and unprovoked.

In order to prove the commission of the crime of voluntary manslaughter, each of the following elements as I've indicated must be present:

1. A human being was killed,
2. That the killing was unlawful, and
3. The killing was done with the intent to kill.

To reduce an intentional felonious homicide from the offense of murder to manslaughter upon the ground of sudden quarrel or heat of passion, the provocation must be of such character and degree as naturally would excite and arouse such passion, and the assailant must act under the smart of that sudden quarrel or heat of passion.

The heat of passion which will reduce a homicide to manslaughter must be such a passion as naturally would be aroused in the mind of an ordinary reasonable person in the same circumstances. A defendant is not permitted to set up his own standard of conduct and to justify or excuse himself because his passions were aroused unless the circumstances in which he was placed and the facts that confronted him were such as also arouse the passion of the ordinarily reasonable man faced with the same situation. The question to be answered is whether or not, at the time of the killing, the reason of the accused was obscured or disturbed by passion to such an extent as would cause the ordinarily reasonable person of average disposition to act rashly and without deliberation and reflection and from such passion rather than from judgment.

If there was provocation, but of a nature not normally sufficient to arouse passion or if sufficient time elapsed between the provocation and the fatal blow for passion to subside and reason to return, and if an unlawful killing of a human being followed such provocation and had all the elements of murder as I have defined it to you, the mere fact of a slight or remote provocation will not reduce the offense to manslaughter.

Neither the emotion of fear in itself or the emotion for revenge of itself nor the emotion induced by and accompanied or following an intent to commit a felony of itself nor any or all of these emotional states in and of themselves constitute the heat of passion referred to in the law of manslaughter which I have just stated to you. Any or all of such specific emotions may be involved in a heat of passion that causes judgement to give way to impulse and rashness, but also any one or more of them may exist in the mind of a person who acts deliberately and from choice following his own reasoning howsoever good or bad it may be. Hence, the law sets up the standard and requires the test that I previously stated to you for determining whether or not the defendant acted under heat of passion.

The term "without due caution and circumspection" as used in these instructions refers to negligent acts which are aggravated, reckless and gross and which are such a departure from what would be the conduct of an ordinarily prudent or careful man under the same circumstances as to be contrary to a proper regard for human life or an indifference to consequences. The facts must be such that the fatal consequences of the careless or negligent act would -- could reasonably have been foreseen and it appears that the death was not the result of misadventure but the natural and probable result of a reckless or grossly negligent act.

Involuntary Manslaughter. Involuntary manslaughter is the unlawful killing of a human being without malice aforethought and without an intent to kill. You'll recall in murder 1 or 2, there must be malice aforethought. In manslaughter, there's no malice aforethought. In voluntary manslaughter, there's an intent to kill. We are now talking about involuntary manslaughter in which there is neither malice nor an intent to kill.

In order to prove the commission of the crime of involuntary manslaughter, each of the following elements must be proved:

1. That a human being was killed, and
2. That the killing was unlawful.

A killing is unlawful within the meaning of this instruction if it occurred:

1. During the commission of a misdemeanor which is inherently dangerous to human life, namely, the offense of a battery; or in the commission of an act ordinarily lawful which involves a high degree of risk or death -- risk of death or great bodily harm without due caution and circumspection which I just gave you the definition of.

Now, the distinction between murder and manslaughter is that the murder requires malice while manslaughter does not as I have already indicated.

When the act causing the death, though unlawful, is done in the heat of passion or is excited by a sudden quarrel such as amounts to adequate provocation in the honest but unreasonable belief in the necessity to defend against imminent peril to life or great bodily injury, the offense is manslaughter. In such a case, even if an intent to kill exists, the law is that malice, which is an essential element of murder, is absent.

To establish that a killing is murder and not manslaughter, the burden is on the State to prove beyond a reasonable doubt each of the elements of murder and that the act which caused the death was not done in the heat of passion or upon a sudden quarrel or in the honest even though unreasonable belief in the necessity to defend against imminent peril to life or great bodily injury.

To reduce a killing upon a sudden quarrel or heat of passion from murder to manslaughter, the killing must have occurred while the slayer was acting under the direct and immediate influence of such a quarrel or heat of passion. Where the influence of the sudden quarrel or heat of passion has ceased to obscure the mind of the accused and sufficient time has elapsed for angry passion to end and for reason to control his conduct, it will no longer -- let me restate that.

Where the influence of the sudden quarrel or heat of passion has ceased to obscure the mind of the accused and sufficient time has elapsed for angry passion to end and for reason to control his conduct, it will no longer reduce an intentional killing to manslaughter. The question as to whether the cooling period has elapsed and reason has returned is not measured by the standard of the accused, but the duration of the cooling period as the time it would take the average or ordinarily reasonable person to have cooled his heat of passion and for reason to have returned.

Now, murder is classified into two degrees; and if you should find the defendant guilty of murder, it will be your duty to determine and state in your verdict whether you find the murder to be first or second degree.

If you are convinced beyond a reasonable doubt that the crime of murder has been committed by the defendant, but you have a reasonable doubt that the crime of murder was of first or of the second degree, you must give the defendant the benefit of that doubt and return a verdict fixing the murder as a second degree.

If you're satisfied beyond a reasonable doubt the killing was unlawful, but you have a reasonable doubt whether the crime is murder or manslaughter, you must give the defendant the benefit of such doubt and find it to be manslaughter rather than murder.

When the evidence shows the existence of provocation that played a part in instituting the unlawful killing of a human being but also shows that such provocation was not such as to reduce the homicide to manslaughter, and you find the killing was murder, you may consider the evidence of provocation for such bearing as it may have on the question of whether the murder was first or second degree.

Before you may return a verdict in the case, you must agree unanimously not only as to whether the defendant is guilty or not guilty, but also if you should find her guilty of an unlawful killing, you must agree unanimously as to whether she is guilty of murder in the first degree or murder in the second degree or voluntary or involuntary manslaughter. In other words, your verdict has to be unanimous as to that crime which you find her to be guilty of.

With regard to diminished capacity. If you find from the evidence that at the time the alleged crime was committed, the defendant had substantially reduced mental capacity, whether caused by a mental illness, mental defect, intoxication or any other cause, you must consider what effect, if any, this diminished capacity had on the defendant's ability to form any of the specific mental states that are essential elements of murder and voluntary manslaughter.

Thus, if you find that the defendant's mental capacity was diminished to the extent that you have a reasonable doubt whether she did naturally and meaningfully premeditate, deliberate and reflect upon the gravity of her contemplated act or formed an intent to kill, you cannot find her guilty of a willful, deliberate and premeditated murder of the first degree.

Also, if you find that the defendant's mental capacity was diminished to the extent that you have a reasonable doubt whether she was able to form the mental states of constituting either express or implied malice aforethought, you cannot find her guilty of murder either of first or second degree.

If you have a reasonable doubt whether she was able to form an intention unlawfully to kill a human being, or whether she was aware of the duty imposed on her not to commit acts which involved the risk of grave injury or death, or whether she did not despite that awareness -- whether she did act despite that awareness, you cannot find that she harbored express malice.

Further, if you have a reasonable doubt whether her acts were done for a base, antisocial purpose or whether she was aware of the duty imposed on her not to commit acts which involve the risk of grave injury or death or whether she did act despite that awareness, you cannot find that she harbored implied malice.

Furthermore, if you find that as a result of mental illness, mental defect or intoxication, her mental capacity was diminished to the extent that she neither harbored malice aforethought nor had an intent to kill at the time the alleged crime was committed, you cannot find her guilty of either murder or voluntary manslaughter.

In determining if the defendant had diminished mental capacity, if there was evidence that the defendant's act was the product of an irresistible impulse, you must consider whether or not such irresistible impulse, if any, was due to mental illness, mental disease, or mental defect so as to render the defendant incapable of forming the mental states essential to murder or voluntary manslaughter.

Now, there are five possible verdicts as to the information. These various possible verdicts are set forth in the forms of verdict which you will receive. And, only one possible verdict may be returned by you. If you all have agreed upon one verdict, the corresponding form is the only verdict form to be signed. The others are to be left unsigned.

And, those possible verdicts are as follows:

We, the jury in the above-entitled action, find the defendant, Andrea Claire Mims, guilty of violation of Section 187 of the Penal Code of the State of California (Murder), a felony, as charged in Count 1 of the Information, and we set the degree at first degree. (Carries a mandatory sentence of 25 years to life.)

Or the next verdict is we, the jury in the above-entitled action, find the defendant, Andrea Claire Mims, guilty of violation of Section 187 of the Penal Code of the State of California (Murder), a felony, as charged in Count 1 of the Information and we set the degree at second degree. (Carries a mandatory sentence of 15 years to life.)

Or -- and the third possible verdict, we, the jury in the above-entitled action, find the defendant, Andrea Claire Mims, guilty of violation of Section 192.1 of the Penal Code of the State of California (Voluntary Manslaughter), a felony, a lesser and included offense of that charged in count 1 of the Information. (Carries a maximum sentence of up to 12 years)

The fourth possible verdict is we, the jury in the above-entitled action, find the defendant Andrea Claire Mims guilty of violation of Section 192.2 of the Penal Code of the State of California (Involuntary Manslaughter), a felony, a lesser and included offense of that charged in Count 1 of the Information. (Carries a maximum sentence of up to 6 years)

Or the fifth possible verdict, we, the jury in the above-entitled action, find the defendant, Andrea Claire Mims not guilty as charged in Count 1 of the Information.

Further Instructions for the Fully Informed Juror

(This is my version of how instructions SHOULD be given to a jury)

After you have reviewed the judge's instructions (quoted directly from Andrea's transcripts) please choose one of the 5 verdicts that were available to the jury during her trial. Be advised that 1 year will be added to any sentence given for use of a deadly weapon...a knife. Under 1981 California Law, 50% is taken off each sentence provided the convict remains discipline-free in prison. This "good time" provision has been reduced to 15% of sentence, however, were Andrea to be re-tried, the 1981 rule must apply. For 1st or 2nd Degree Murder, the convict is eligible for a parole HEARING halfway through the mandatory minimum, but you should also be advised that the politically appointed parole board has had a policy in effect of "no parole, no exceptions" for 1st or 2nd degree murder for the past 9 years, a policy which is being maintained under Gray Davis. You must therefore consider the sentence for 1st or 2nd degree murder to be, for all practical intents and purposes, "Life Without Parole."

Should you find Andrea guilty of Voluntary or Involuntary Manslaughter, she will have done more than the maximum allowable sentences even had she had numerous disciplinary reports (she has had none), and so must be immediately freed with time served in the event of a re-trial. She will, however, remain convicted of a felony for life, with the loss of certain civil rights, such as the right to vote. A finding of "not guilty" will erase her criminal record in this matter.

You should also be aware that while a finding of voluntary or involuntary manslaughter will immediately free Andrea, it will still leave her with 2 "strikes" under California's draconian "3 Strikes" law. This means that any 3rd felony committed in California, even petty shop-lifting, would earn her a new life sentence with no chance for parole. And, while she will most likely re-locate to Nevada, Nevada also has similar laws. In addition, while an outright acquittal will clear her record, she would still have the one "strike" on her record for the hammer incident with Joe Mims. Under California law, a 2nd "strike," no matter how insignificant, would earn her double whatever sentence would ordinarily be imposed.

While Judge Moore ordered the jury not to consider any potential sentence, as a fully informed juror, you are, indeed required to consider possible sentences, so as to make the punishment fit the crime...if you find that there was a crime.

Again, under "Fully Informed Jury" rules, you must find a defendant "not guilty," or guilty of a lesser charge should you find a potential sentence too harsh for the individual circumstances of a crime, even if you feel the person is guilty of that particular crime. You may not, however, find the defendant guilty of a more serious crime for which she is innocent merely to elicit a harsher sentence.

"Fully Informed Jury" rules also require that you judge the law as well as the individual case. While no one is prepared to argue that laws against unlawful homicide are wrong or unconstitutional, you may find that some of the judge's instructions under the law pose too high a standard, particularly with regard to reducing an unlawful killing to manslaughter. If, in good conscience, you determine these standards to be unreasonable when applied toward the defendant, you are free to modify or totally disregard them, at your discretion. You may not, however, impose standards higher than those given by Judge Moore.

You may not take into consideration the hammer incident regarding Joe Mims. That matter was to be tried separately, and the charges were ultimately pled out to "assault with a deadly weapon," after Joe complained about having been tricked into filing charges and wanted them dropped altogether. Had Andrea been properly informed and refused the plea bargain, Bob Dunn would have no choice but to drop the charges entirely without Joe's cooperation.

Please vote very carefully. The poll protocols do not allow you to modify your vote in the event of error, nor do they allow you to vote more than once. You may, however, check back from time to time to review the totals. May wisdom guide your choice! (This is where the poll appeared)

I'm interested in your comments on this page, particularly from those involved in the "Fully Informed Jury" movement. How did I do with my interpretation of the principle? Please let me know! On Monday, March 13th, 1984, after 4 days of deliberations, the jury returned with the worst possible verdict. Andrea was found guilty of 1st degree murder.

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Joe Mims, in the courtroom that day, almost fainted. Andrea herself felt weak. "That's the worst possible verdict, isn't it?" she asked Chuck. Stafford simply replied "No, it's what we want....it's very good. It's only the insanity part of the trial that counts. You're going to the hospital, and you're going to get well."

Outside the courtroom, Bob Dunn was jubilant.

It was not a human life he'd destroyed, but that of a puh-ROSS-ti-tute, after all. These people were expendable...and certainly of no importance on Dunn's path to political importance.

Dunn compared Andrea's claims of a lifetime of abuse to Dan White's (killer of George Moscone and Harvey Milk) "Twinkie" defense. He said it had no relevance, and that any abuse had no doubt been initiated by Andrea herself, on a poor, crippled man. He said he believed the lynchpin for his case was the "forged" letter from Richard that established his credibility.

Finally, he told the press that it was Sand who had acted in self-defense against Andrea's demand for more bizarre sex games, and that he had succumbed to her greater speed.

When asked how he planned to handle the case involving attempted murder against Joe Mims, Dunn demurred, saying it would all depend on the sanity phase of the trial.

"The jury has already rejected Andrea's claim of diminished capacity by finding her guilty of 1st degree murder. If they find her sane, as I believe they will, the People may decide to drop those other charges."

What he neglected to tell the press was that without Joe Mims' cooperation, no charges could ever be brought. Despite Stafford's empty promises to Andrea, he knew his chances of winning in light of the 1st degree conviction to be almost nil.

There is only one definition of criminal insanity in California. To find a defendant insane, a jury must decide that the defendant lacked the capacity to know right from wrong. But, in 1981, when the killing occurred, but before the trial, another definition existed: That the defendant not know that they were even committing the crime. This might define Andrea's situation, since she clearly had believed that others had committed the act.

Andrea would benefit from the earlier law, since anything less would be a violation of the "ex post facto" provisions of the constitution.

The law had been changed in response to Dan White's "Twinkie" defense, and the successful insanity finding in the John Hinckley case. Hinckley, if you'll recall, had shot Ronald Reagan to prove his love for Jody Foster.

But, once the jury had rendered a verdict of 1st degree, the very act of premeditation would negate any unconsciousness defense. Stafford had grossly underestimated the need to pursue the mitigating issues in the guilt phase of the trial, feeling all he needed to do was prove insanity.

Now he had his work cut out for him, or possibly he had what he wanted...a conviction! Although he had previously won an insanity verdict in a rape/killing case, (making many enemies for himself, and also causing him to be passed up for promotion into the DA's office), the truth is that insanity pleas are rarely successful. When they are

successful, they make national headlines, and the public is falsely led into believing they're the norm. The truth is, they're anecdotes, and Stafford had to have known it.

A finding of insanity in California requires that a person be committed to a state mental institution for not less than 90 days, after which an evaluation is submitted to the court. If the doctors concur that the defendant is now sane, or cured, the person is released, but, if as is usually the case, they are found needing more treatment, their stay can be indefinite. In most cases, a finding of insanity means a lifetime of confinement, for which there is no appeal or habeas corpus.

Patients are afforded little, if any meaningful treatment, but are usually warehoused under the heavy influence of psychotropic drugs. In many respects, the conditions are worse than prisons, although the exterior appearances of the hospitals are more pleasing to the eye. Female "patients" are often at great risk, since they're mixed with male patients, many of whom are confined for sexual deviancy. This is a situation that is actually worsening now that convicts in prison for rape can be civilly confined in mental institutions following completion of their prison terms.

In the insanity phase, the burden of proof shifts to the defense. Stafford called Drs. Kurland, Jones, and Ernest Proud.

Proud was most eloquent in Andrea's defense. Part of his testimony was as follows:

"It's sort of the old statement 'Look before you leap.' Andrea never looks, she leaps. She gets out of control. She just decides to do something, and she does it. She became very, very fearful of Mr. Sand, and through that whole incident, she struck out. And, the more she struck out, the more fearful she became.

For her, that was reality. All the months of 'This guys is coming to rape you, this guy is coming to cut you up, this person is coming to do you harm' became real at that moment.

When he tried to grab her, she hit him, she stabbed him, that was reality for her. She was defending herself. She was no longer able to see Bob Sand there. She was able, only, to see a person who was trying to make her a victim."

When asked if Andrea was psychotic, Proud said, "A borderline personality has trouble distinguishing fantasy from reality. They're not always sure which one is which. Gets confused about what they're doing, if it's real or not real. They don't always know. They can't tell a dream from what's really going on. They become one and the same."

As to what indicated to Proud that Andrea was not simply faking things, he said:

"The consistency of it, I suppose. Andrea is a very bright woman. If she was faking it...I've seen many people try to fake mental illness, that's not particularly unusual in the jail...there usually is a misunderstanding about what insanity is, so their behavior would be more retarded than it would be insane. There's no possible way Andrea Mims could be feigning mental illness...no possible way."

On cross-examination, Dunn was unable to crack Proud, who seemed to live up to his name. When Dunn tried to trick him into saying Andrea could have been manipulative, Proud stated "Andrea is a server. She's not a person that hurts other people. She's a person that provides a service like a social worker. She sees herself in that role, providing a service for them in taking care of them.."

This is very significant, as Andrea has always told me that Bob Sand made her feel needed, at least at first. With her sons grown and out of the house, this was very important to her.

Proud went on "The real attraction was that she felt sorry for him (Sand) because he looked like a very lonely old man. Her attraction was really taking care of him." He said she could not have left him, because she grew to love him, even after he proved himself dangerous.

Finally, Stafford re-called Guy Denike, Andrea's son, and a nurse at the county jail to testify as to the amount of psychotropic drugs Andrea was being given.

In rebuttal, Bob Dunn called the elderly administrator of Patton State Mental Hospital, who testified that Andrea was not insane, but histrionic. He seemed to dismiss everything Andrea's doctors had earlier said.

Again, the evil Anthony Oliver took the stand, and proceeded to twist all the evidence favorable to Andrea...most notably, the false rapes, which he said constituted consciousness of guilt, belying insanity.

In rebuttal, Stafford presented Joe Mims, who spoke of a time Andrea had tried to jump from a car, Dr. Tweedie, and finally, the very erratic Michael Leitmann, who became inconsistent, and meandered all over the board.

It should be noted that Leitmann, while being the doctor Andrea had seen for the longest, was also a golf partner of the original prosecutor, Chuck Stafford's cousin Jim Hawkins, and had, with Hawkins, encouraged Joe Mims to file what he was later to claim were false charges against Andrea for attempted murder.

In his closing statement to the Jury, Dunn reminded them over and over that Andrea had been a puh-ROSS-ti-tute, all the while twisting his body into contortions as he drew out the word. His courtroom histrionics finally prompted Andrea to speak out and call him a liar despite admonitions to keep quiet. Dunn maintained that if Andrea could choose to be a puh-ROSS-ti-tute, which was illegal, then she could also make the choice to murder.