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**CERTIFIED COPY**

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF ORANGE, CENTRAL JUSTICE CENTER  
DEPARTMENT C39

THE PEOPLE OF THE STATE OF CALIFORNIA, )  
)  
)  
PLAINTIFF, )  
)  
VS. ) CASE NO. 14CF1874  
)  
KEVIN ROJANO-NIETO, )  
)  
DEFENDANT. )  
\_\_\_\_\_ )

HONORABLE M. MARC KELLY, JUDGE PRESIDING  
REPORTER'S TRANSCRIPT  
APRIL 3, 2015

APPEARANCES OF COUNSEL:

FOR THE PEOPLE: TONY RACKAUCKAS  
DISTRICT ATTORNEY  
BY: WHITNEY BOKOSKY  
DEPUTY DISTRICT ATTORNEY

FOR THE DEFENDANT: LAW OFFICES OF  
ERFAN PUTHAWALA  
BY: ERFAN PUTHAWALA  
ATTORNEY AT LAW

JEANETTE A. GILLICK, CSR NO. 7961  
OFFICIAL COURT REPORTER

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I N D E X

PROSECUTION WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS	VOIR DIRE
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(NONE)

DEFENSE WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS	VOIR DIRE
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(NONE)

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E X H I B I T S

PEOPLE'S EXHIBIT  
(NONE)

FOR  
IDENTIFICATION

RECEIVED

DEFENSE EXHIBIT  
(NONE)

FOR  
IDENTIFICATION

RECEIVED

1 (SANTA ANA, CALIFORNIA - FRIDAY, APRIL 3, 2015)

2 (AFTERNOON SESSION.)

3 \* \* \* \* \*

4 THE COURT: THE RECORD SHOULD REFLECT WE ARE ON  
5 THE RECORD IN THE CASE OF PEOPLE VERSUS KEVIN ROJANO.  
6 APPEARANCES, PLEASE.

7 MS. BOKOSKY: WHITNEY BOKOSKY FOR THE PEOPLE.

8 MR. PUTHAWALA: ERFAN PUTHAWALA FOR MR. ROJANO.

9 THE COURT: THE COURT ACKNOWLEDGES THAT THERE ARE  
10 MANY FAMILY MEMBERS AND INTERESTED PARTIES THAT ARE HERE  
11 PRESENT FOR THIS HEARING. A LOT OF THESE PARTIES WERE HERE  
12 PRESENT FOR THE HEARING ON FEBRUARY 6TH WHEN THE COURT TOOK  
13 THE VICTIM IMPACT STATEMENT. WELCOME. YOU ARE WELCOME TO  
14 STAY. PLEASE MAKE SURE YOU ABIDE BY THE COURT PROTOCOL AND  
15 SHUT YOUR TELEPHONES OFF AND ALSO DON'T HAVE ANY  
16 COMMUNICATION.

17 OBVIOUSLY, WHEN WE COME TO A SITUATION LIKE THIS  
18 WHERE WE ARE SET FOR SENTENCING TODAY, IT'S VERY SENSITIVE  
19 AND EMOTIONAL FOR A LOT OF PEOPLE INVOLVED ESPECIALLY  
20 FAMILY MEMBERS. I WOULD JUST ASK YOU TO RESPECT THE  
21 COURT'S DECISION AND THE COURT PROTOCOL AS WE GO FORWARD  
22 WITH THE SENTENCING.

23 ACKNOWLEDGE, MR. PUTHAWALA?

24 MR. PUTHAWALA: YES.

25 THE COURT: AND MISS BOKOSKY?

26 MS. BOKOSKY: YES.

1 THE COURT: THANK YOU. I AM GOING TO START OUT BY  
2 INDICATING WHAT THE COURT HAS REVIEWED IN TERMS OF  
3 DOCUMENTATION IN PREPARATION FOR THE SENTENCING HEARING  
4 TODAY. I HAVE REVIEWED THE FOLLOWING DOCUMENTS. THE 14  
5 PAGE P & S REPORT WHICH ALSO HAS THE STATIC 99 TEST RESULTS  
6 IN THERE, AS WELL AS THE HANDWRITTEN STATEMENT BY YOUR  
7 CLIENT, MR. PUTHAWALA, AND ALSO SOME CHARACTER REFERENCE  
8 LETTERS THAT ARE ATTACHED TO MY COPY.

9 YOU ACKNOWLEDGE RECEIPT OF THAT?

10 MR. PUTHAWALA: YES.

11 MS. BOKOSKY: YES.

12 THE COURT: I HAVE ALSO RECEIVED ORIGINALLY A  
13 PEOPLE'S SENTENCING BRIEF, AND ON FEBRUARY 6TH THE COURT  
14 HAD RECEIVED THAT. ACTUALLY, MUCH PRIOR TO THAT.

15 AND YOU HAD RECEIVED THAT, CORRECT, MR. PUTHAWALA?

16 MR. PUTHAWALA: YES, YOUR HONOR.

17 THE COURT: INITIALLY YOU HAD NOT FILED A  
18 SENTENCING BRIEF, CORRECT?

19 MR. PUTHAWALA: CORRECT.

20 THE COURT: THEN ON FEBRUARY 6TH THE COURT ASKED  
21 THE PARTIES TO PROVIDE THE COURT WITH SOME GUIDANCE  
22 CONCERNING THE ISSUE ON CRUEL AND UNUSUAL PUNISHMENT AND IF  
23 IT'S APPLICABLE TO THE FACTS AND CIRCUMSTANCES IN THIS  
24 CASE.

25 SO BOTH PARTIES PROVIDED THE COURT WITH SOME  
26 GUIDANCE, SOME SUPPLEMENTAL BRIEFING AND POINTS &

1 AUTHORITIES REGARDING THAT ISSUE. SO I WANT TO THANK YOU  
2 FOR PROVIDING THAT TO THE COURT. I RECEIVED YOUR  
3 SENTENCING BRIEF AND RECOMMENDATIONS AND ANALYSIS,  
4 MR. PUTHAWALA.

5 YOU HAVE RECEIVED THAT, CORRECT, MISS BOKOSKY?

6 MS. BOKOSKY: YES, I HAVE.

7 THE COURT: I ALSO RECEIVED A VERY EXTENSIVE  
8 SUPPLEMENTAL SENTENCING BRIEF FROM THE PEOPLE IN WHICH THE  
9 PEOPLE ACTUALLY PROVIDED THE COURT WITH OTHER  
10 JURISDICTIONS, ALL 50 STATES, THEIR COMPARABLE PUNISHMENT  
11 AND SENTENCING SCHEMES FOR THIS CRIME THAT MR. ROJANO WAS  
12 CONVICTED OF. THE COURT THANKS YOU FOR THAT, MISS BOKOSKY.

13 YOU RECEIVED THAT, RIGHT, MR. PUTHAWALA?

14 MR. PUTHAWALA: YES, YOUR HONOR.

15 THE COURT: IN ADDITION, COURT HAS REVIEWED THE  
16 288.1 FORENSIC PSYCHOLOGICAL EVALUATION REPORT PREPARED BY  
17 DR. FLORES DE APODACA. BOTH PARTIES ACKNOWLEDGED THEY  
18 RECEIVED THAT 288.1 REPORT WHICH ALSO HAS TESTING  
19 INFORMATION IN THERE.

20 LASTLY, THE COURT REVIEWED THE VICTIM IMPACT  
21 TRANSCRIPT FROM FEBRUARY 6, 2015 WHEREIN MR. ROJANO'S  
22 MOTHER JUDY NIETO AND HER HUSBAND WHO IS MR. ROJANO'S  
23 STEPFATHER MR. AREVALO MADE A VERY COURAGEOUS AND SINCERE  
24 STATEMENT TO THE COURT. I HAVE REVIEWED A TRANSCRIPT OF  
25 THAT.

26 ARE MR. AREVALO AND MISS NIETO PRESENT?

1 MS. BOKOSKY: YES, THEY ARE.

2 THE COURT: JUST SO YOU KNOW, I REVIEWED THE  
3 ENTIRE TRANSCRIPT OF YOUR STATEMENT THAT YOU GAVE TO ME A  
4 COUPLE OF MONTHS AGO. THANK YOU. I SHOULD ASK COUNSEL. I  
5 DON'T KNOW IF YOU RECEIVED A COPY OF THIS OR WOULD LIKE A  
6 COPY OF THIS.

7 MS. BOKOSKY: I DID NOT, BUT I WOULD LIKE ONE.

8 THE COURT: I CAN HAVE MY CLERK PREPARE ONE FOR  
9 YOU.

10 MR. PUTHAWALA: THAT IS FINE, YOUR HONOR.

11 THE COURT: I WANT YOU TO HAVE EVERYTHING THAT I  
12 HAVE.

13 MS. BOKOSKY: THANK YOU.

14 THE COURT: GO AHEAD AND TAKE A MOMENT, COUNSEL,  
15 IF YOU WOULD LIKE TO REVIEW THAT TO REFRESH YOUR MEMORY.

16 MS. BOKOSKY: THANK YOU.

17 MR. PUTHAWALA: THANK YOU.

18 THE COURT: SO THE RECORD SHOULD REFLECT THAT BOTH  
19 COUNSEL HAVE RECEIVED A COPY OF THE VICTIM IMPACT STATEMENT  
20 AND THEN MY QUESTION TO YOU, MISS BOKOSKY, BEFORE WE  
21 PROCEED, WOULD THERE BE ANYONE ELSE WHO WOULD LIKE TO  
22 ADDRESS THE COURT AT THIS TIME UNDER 1191?

23 MS. BOKOSKY: I DON'T BELIEVE SO, BUT LET ME  
24 CHECK.

25 THE COURT: OKAY.

26 MS. BOKOSKY: NO, YOUR HONOR.

1           THE COURT: FAIR ENOUGH. THE FACT YOU ARE HERE  
2 BACK AGAIN AND YOU HAVE BEEN HERE THROUGHOUT THE ENTIRE  
3 TIME THAT SPEAKS A LOT. I KNOW THERE IS A LOT OF EMOTION  
4 INVOLVED HERE AND A LOT AT STAKE HERE. SO THE COURT  
5 ACKNOWLEDGES THE FACT THAT YOU ARE BACK HERE AGAIN FOR  
6 SENTENCING.

7           AND THERE IS NO ADDITIONAL VICTIM IMPACT  
8 STATEMENTS?

9           MS. BOKOSKY: NO.

10          THE COURT: THE WAY I LIKE TO PROCEED IS THAT THE  
11 COURT AFFORDED BOTH PARTIES AN OPPORTUNITY TO ADEQUATELY  
12 RESPOND TO THE ISSUE REGARDING WHETHER THE MANDATED  
13 PUNISHMENT UNDER 288.7(A) COUNT 1 CONSTITUTES CRUEL AND  
14 UNUSUAL PUNISHMENT AS APPLIED TO THE FACTS OF THIS CASE.  
15 YOU DID BOTH ADDRESS THAT. I THANK YOU FOR YOUR GUIDANCE  
16 CONCERNING THAT.

17          I WILL GIVE YOU THE FLOOR IF YOU WANT ANY ORAL  
18 ARGUMENT TO SUPPLEMENT YOUR WRITTEN MOVING PAPERS ON THAT  
19 ISSUE, MISS BOKOSKY, AND ANY OTHER ISSUES CONCERNING  
20 SENTENCING THAT YOU WANT THE COURT TO CONSIDER I WILL LET  
21 YOU GO FIRST. THEN I WILL HEAR FROM YOU, MR. PUTHAWALA.

22          MR. PUTHAWALA: THANK YOU.

23          THE COURT: THEN IF YOUR CLIENT MR. ROJANO WOULD  
24 LIKE TO MAKE A STATEMENT TO THE COURT, YOU HAVE THE  
25 OPPORTUNITY TO DO THAT.

26          OKAY, SIR?

1 THE DEFENDANT: YES.

2 THE COURT: I READ YOUR STATEMENTS IN VARIOUS  
3 REPORTS, BUT IF YOU WANT TO MAKE A STATEMENT HERE YOU HAVE  
4 THE ABILITY TO DO THAT WHATEVER YOU WANT ME TO HEAR.

5 THE DEFENDANT: THANK YOU, SIR.

6 MS. BOKOSKY: I WOULD BE MORE THAN HAPPY TO  
7 ADDRESS ANY SPECIFIC QUESTIONS IF THE COURT HAS ANY, BUT AS  
8 THE COURT ALREADY STATED I BELIEVE THAT OUR BRIEF WAS  
9 EXTENSIVE, AND I HAVE ALSO READ MR. PUTHAWALA'S AND I  
10 DIDN'T SEE ANYTHING SPECIFICALLY IN THERE THAT I WANTED TO  
11 ADDRESS ORALLY. BUT IF THE COURT HAS ANY QUESTIONS, I  
12 WOULD BE HAPPY TO ANSWER THEM.

13 THE COURT: WELL, I GUESS THE ONLY QUESTION I  
14 WOULD HAVE FOR YOU, MISS BOKOSKY, THE COURT ALSO ASKED THE  
15 PARTIES TO ADDRESS WHAT SENTENCING OPTIONS THAT WOULD BE  
16 AVAILABLE TO THE COURT OR RESEARCH THAT IF THE COURT WERE  
17 TO FIND THIS CONSTITUTES CRUEL AND UNUSUAL PUNISHMENT.  
18 YOUR BRIEF DIDN'T FOCUS ON THAT TOO MUCH.

19 I ASSUME FROM THE BULK OF YOUR BRIEF THAT IT IS  
20 THE PEOPLE'S POSITION THAT THIS DOES NOT CONSTITUTE CRUEL  
21 AND UNUSUAL PUNISHMENT AND THE MANDATED 25 TO LIFE TERM ON  
22 COUNT 1 IS APPROPRIATE.

23 MS. BOKOSKY: THAT IS TRUE, YOUR HONOR. THERE WAS  
24 SORT OF A LOOPHOLE SO TO SPEAK FOR 288.7(A) AND (B) PRIOR  
25 TO 2009 WHERE THERE WAS THE OPTION TO GIVE PROBATION ON  
26 THAT CHARGE IF THERE WERE CERTAIN FINDINGS THAT THE COURT

1 COULD MAKE, BUT THE LEGISLATURE DID CLOSE THAT LOOPHOLE IN  
2 2009. SO THE PEOPLE'S POSITION IS THAT THE COURT DOESN'T  
3 HAVE ANY OTHER SENTENCING OPTIONS, WHICH IS WHY WE DIDN'T  
4 ADDRESS ANY IN THE BRIEF.

5 THE COURT: WELL, YOU DID ON YOUR LAST PAGE OF  
6 YOUR BRIEF INDICATE THAT IF THE COURT WERE TO DETERMINE  
7 THAT IT WAS CONSTITUTED CRUEL AND UNUSUAL PUNISHMENT, AND  
8 THEN YOU CITED DILLON AND YOU CITED FOSS CONCERNING WHAT  
9 HAPPENED THERE, BUT YOU REALLY DIDN'T EXPOUND UPON IT. I  
10 TAKE IT FROM THAT THAT IT'S THE PEOPLE'S POSITION THAT THE  
11 PUNISHMENT IS APPROPRIATE AND SHOULD STAND AS TO COUNT 1.

12 MS. BOKOSKY: YES.

13 THE COURT: ARE YOU ALSO ASKING THE COURT TO  
14 IMPOSE A SENTENCE CONSECUTIVE TO THE DETERMINATE TERM WITH  
15 RESPECT TO COUNT 2?

16 MS. BOKOSKY: YOUR HONOR, I WOULDN'T ARGUE  
17 STRONGLY FOR THAT POSITION.

18 THE COURT: IT'S YOUR POSITION THAT THE 25 YEAR TO  
19 LIFE SENTENCE IS APPROPRIATE AS APPLIES TO COUNT 1.

20 MS. BOKOSKY: YES.

21 THE COURT: ANYTHING ELSE YOU WANTED TO STATE,  
22 MISS BOKOSKY?

23 MS. BOKOSKY: NO, THANK YOU.

24 THE COURT: MR. PUTHAWALA?

25 MR. PUTHAWALA: YOUR HONOR, DOES THE COURT HAVE  
26 SPECIFIC QUESTIONS REGARDING THE DEFENSE BRIEF?

1 THE COURT: WELL, I WOULD COME BACK TO THE POINT  
2 THAT I ASKED THE PARTIES TO BRIEF CONCERNING IF THE COURT  
3 WERE TO MAKE THAT FINDING, WHAT OPTIONS THE COURT MIGHT  
4 HAVE, AND YOUR CONCLUSION INDICATES THAT THE COURT MUST  
5 OVERTURN THE CONVICTION ON COUNT 1 IF THE COURT MAKES THAT  
6 FINDING AND SENTENCE YOUR CLIENT UNDER COUNT 2.

7 I DON'T BELIEVE THAT IS ACCURATE. THAT BASICALLY  
8 WOULD BE ASKING THE COURT TO OVERTURN THE JURY'S CONVICTION  
9 ON COUNT 1. THAT IS NOT WHAT THE COURT ASKED TO BRIEF. I  
10 DON'T KNOW IF YOU HAVE ANY OTHER COMMENT ON THAT, BUT THAT  
11 IS MY POSITION ON THAT.

12 MR. PUTHAWALA: IN SO FAR AS THE FINDING OF  
13 PROPORTIONALITY CONCERNING THE PUNISHMENT, YOUR HONOR, THAT  
14 IS THE SCOPE OF WHAT WE ARE ADDRESSING AS FAR AS CRUEL AND  
15 UNUSUAL PUNISHMENT IS CONCERNED. IN LYNCH THERE IS THE  
16 THREE FACTORS THAT ARE SET OUT FOR THE COURT TO CONSIDER.

17 THE FIRST FACTOR IN LYNCH SPECIFICALLY RELATES TO  
18 THE NATURE OF THE CRIME AND THE NATURE OF THE DEFENDANT.  
19 THAT FACTOR WAS EXPANDED BY THE DILLON ANALYSIS TO  
20 INCORPORATE ALL THE OTHER SORT OF FACTUAL CONSIDERATIONS  
21 CONCERNING MOTIVE, NATURE OF THE CRIME, AGE OF THE  
22 DEFENDANT, RISK OR FUTURE HARM TO SOCIETY, ET CETERA.

23 IF THE COURT WERE TO FIND THAT SENTENCE IS GROSSLY  
24 DISPROPORTIONATE, PERHAPS OVERTURNING THE SENTENCING SCHEME  
25 ON COUNT 1 IS THE INCORRECT LANGUAGE. I DON'T KNOW IF IT  
26 WOULD BE ACCURATE TO STAY THE SENTENCE ON COUNT 1.

1       HOWEVER, DILLON SHOWS THAT THE ABILITY FOR THE COURT TO  
2       ESSENTIALLY -- I DON'T WANT TO SAY OVERTURN THAT SENTENCE,  
3       ALTHOUGH THAT IS TECHNICALLY THE INCORRECT WORD, THE COURT  
4       HAS THAT ABILITY.

5               IF THE COURT WERE TO FIND THAT THE SENTENCE UNDER  
6       COUNT 1 IS DISPROPORTIONATE, THEN THERE IS STILL COUNT 2  
7       AND THE COURT CAN SENTENCE APPROPRIATELY PURSUANT TO PENAL  
8       CODE 19.8 UNDER COUNT 2, AND THEN WE HAVE THE SENTENCING  
9       SCHEME OF THAT PARTICULAR TRIAD IS WHAT THE COURT CAN LOOK  
10      TO APPLY AND IN CONSIDERING WHAT THE SENTENCE SHOULD BE.

11             THE COURT: I APPRECIATE YOUR ANALOGY ON THAT, BUT  
12      I AM NOT PERSUADED BY THE FACT THAT A 288(A) CHARGE EVEN  
13      THOUGH THE SENTENCING SCHEME PER YOUR ARGUMENT MAY BE  
14      COMMENSURATE, I DON'T FIND THAT AS REALLY RELATED TO SODOMY  
15      OF A 3 YEAR OLD. IT'S JUST NOT. I AM TAKING YOUR ARGUMENT  
16      TO BE MORE THAT THE TRIAD SENTENCING RANGE IS MORE  
17      COMMENSURATE WITH THE DEFENDANT'S CULPABILITY.

18             MR. PUTHAWALA: ESSENTIALLY, YOUR HONOR.

19             THE COURT: DO YOU WISH ANYTHING ELSE ON THAT,  
20      MISS BOKOSKY?

21             MS. BOKOSKY: NO, THANK YOU.

22             THE COURT: MR. ROJANO, DO YOU WISH TO SAY  
23      ANYTHING TO THE COURT?

24             THE DEFENDANT: YES, YOUR HONOR.

25             THE COURT: I KNOW YOU HAVE FAMILY MEMBERS HERE  
26      PRESENT AS WELL. I KNOW THERE IS A LOT EMOTION AND HISTORY

1 OF WHAT LED YOU HERE TODAY. IT'S A SHAME THAT IT'S COME TO  
2 THIS BUT IT HAS. YOU HAVE SHOWN QUALITIES AS BEING AN  
3 INTELLIGENT YOUNG MAN WITH A SINCERE HEART. SO I WILL HEAR  
4 WHATEVER YOU WANT TO SAY.

5 THE DEFENDANT: BRIEFLY, YOUR HONOR. I AM NOT A  
6 MAN WITH MUCH WORDS. THE ONLY THING I HAVE TO SAY IS I  
7 CANNOT SAY ENOUGH WORDS OR ANYTHING TO SAY HOW SORRY I AM  
8 FOR THE TRANSGRESSIONS I CAUSED TO MY FAMILY AND PAIN I  
9 CAUSED THEM, BUT TO SAY THAT I'M SOME SORT OF BAD PERSON  
10 WOULD BE A LIE TO MY OWN EYES.

11 DESPITE THE FACT HOW EVERYTHING HAPPENED TO ME AS  
12 A CHILD I NEVER USED THAT AS AN EXCUSE TO ACT OUT IN ANY  
13 POSSIBLE WAY. THE WAY I WAS TREATED LED ME TO BE WHO I WAS  
14 TODAY. A KIND PERSON TO EVERYBODY. ALWAYS BE RESPECTFUL  
15 TO OTHERS WHO I DON'T EVEN KNOW. EVEN MY CO-WORKERS AT  
16 WORK THEY ALL LOVE ME. A LOT OF PEOPLE TELL ME AS THOUGH I  
17 WAS THEIR KID. I HAVE BOSSES WHO LOVE ME AND EVERYTHING.

18 DESPITE MY ACTIONS AND WHAT PEOPLE MIGHT SAY ABOUT  
19 ME THAT IS NOT WHAT IS IN MY HEART. REGARDLESS ABOUT WHAT  
20 PEOPLE SAY ABOUT ME THAT IS NOT WHO I AM. I AM KIND AND  
21 COMPASSIONATE TO OTHERS. ESPECIALLY NOW FOR ALL THIS  
22 THAT'S HAPPENED TO ME I THANK GOD FOR OPENING MY HEART AND  
23 TO SEE THERE ARE WORSE PEOPLE -- I WOULDN'T SAY WORSE.  
24 THERE ARE OTHER PEOPLE THAT HAVE IT WORSE THAN I. IF I  
25 COULD HELP THEM I WOULD.

26 THAT IS JUST PRETTY MUCH ALL I HAVE TO SAY ABOUT

1 THAT. IF MY FAMILY DESPISES ME? I HAVE NO RIGHT TO TRY TO  
2 CHANGE THEIR MIND.

3 THE COURT: I DON'T THINK THE VICTIM IMPACT  
4 STATEMENT THAT I HEARD, I DON'T THINK THAT REALLY CARRIED  
5 WORDS OF HATRED. IT APPEARED THEY WERE HEALING AND  
6 FORGIVING AND WANTED TO WELCOME YOU BACK INTO THEIR LIFE AT  
7 SOME POINT IN TIME.

8 THE DEFENDANT: THAT IS, CORRECT, YOUR HONOR, AND  
9 I CAN ONLY SEE THAT FROM GOD. THAT IS THE ONLY WAY. SINCE  
10 EVERYTHING THAT HAPPENED THAT IS THE ONLY WAY I CAN SEE IT.  
11 I AM THANKFUL THAT GOD TOUCHED THEIR HEARTS AND I HOPE THEY  
12 IN TIME AND IN GOD'S TIME WOULD GIVE THEIR LIVES TO GOD AS  
13 WELL BECAUSE WE AS HUMANS CANNOT POSSIBLY FORGIVE  
14 COMPLETELY WITHOUT GOD.

15 AND SO I AM VERY THANKFUL THEY ARE HERE. PROVES  
16 TO ME THAT GOD IS WORKING IN THEIR HEARTS AND SHOWS THEY  
17 TRULY LOVE ME. SO I AM VERY THANKFUL ON BOTH SIDES OF MY  
18 FAMILY. THEY ALL CAME TOGETHER TO COME SEE ME AND WITH  
19 THAT IT'S PROVES TO ME THAT THEY DO LOVE ME. THE WAY I  
20 GREW UP I AM NOT A KID THAT REALLY BELIEVED ANYBODY WHEN  
21 THEY TOLD ME THEY LOVED ME. FOR ME THEM HERE NOW IT'S VERY  
22 PROOF ENOUGH FOR ME THAT I CAN ACTUALLY BELIEVE THEM.

23 SAME THING FOR MY FATHER AND MY MOTHER WHEN SHE  
24 SAID THOSE WORDS THAT SHE WROTE IN THE WITNESS STATEMENT.  
25 FIRST TIME I WOULD HAVE TO SAY I BELIEVED HER WHEN SHE SAID  
26 SHE LOVED ME. I AM VERY THANKFUL TO BE HERE IN THIS

1 COURTROOM WITH YOUR KINDNESS AND DEPUTY'S KINDNESS AND I AM  
2 VERY GRATEFUL FOR EVERYTHING THAT HAS HAPPENED.

3 THE COURT: THIS IS THE TOUGHEST PART OF MY JOB.  
4 IT'S ALWAYS HEALING I THINK WHEN THERE IS FORGIVENESS FOR A  
5 HORRIFIC CRIME. YOU PUT YOURSELF IN THIS POSITION  
6 OBVIOUSLY. DESPITE ALL THAT HAS HAPPENED, THINGS HAPPEN  
7 AND PEOPLE HAVE IT A LOT WORSE AND YOU HAVE PROBABLY SEEN  
8 THAT IN YOUR TIME IN JAIL.

9 NO MATTER WHAT HAPPENS HERE TODAY THERE HAS BEEN  
10 SOME EXPRESSIONS OF LOVE. I THINK YOU HAVE SHOWN SOME  
11 REMORSE. YOU HAVE INDICATED PREVIOUSLY YOU ARE SORRY FOR  
12 WHAT HAPPENED TO YOUR SISTER JANE DOE. SHE IS YOUNG AND  
13 CANNOT BE HERE TODAY. I DON'T KNOW IF THERE IS ANYTHING  
14 YOU WANT TO SAY FOR YOUR APOLOGY TO HER FOR THE HORRIFIC  
15 CRIME YOU COMMITTED ON HER AND IMPACTED HERE. NOW IS THE  
16 TIME.

17 THE DEFENDANT: ALL I CAN SAY IS THE SAME DAY I  
18 TOLD HER I APOLOGIZED TO HER. SHE SAID IT WAS OKAY. BUT  
19 WORDS IS NOT ENOUGH TO APOLOGIZE TO HER. AS I SAID, THE  
20 WAY I GREW UP MY BROTHERS INJURED ME LIKE THAT. VERY GOOD  
21 ACTUALLY. I TOOK THAT AS A LESSON TO TREAT MY BROTHERS  
22 BETTER THAN THEY TREATED ME. I RECALL MEMORIES OF WHEN  
23 THEY FELL ASLEEP ON THE COUCH AND WOULD PUT A BLANKET ON  
24 THEM. SOMETIMES ON MY DAY OFF I TAKE MY BROTHER AND SISTER  
25 TO EAT. THINGS THAT NEVER HAPPENED TO ME. I WISH I COULD  
26 HAVE BEEN A BETTER BROTHER AND THERE COULD HAVE BEEN MORE

1 TIMES WHERE I HAD ACTUALLY LISTENED TO MY MOTHER AND GET  
2 OFF THE X-BOX AND ACTUALLY GO OUT WITH THEM TO EAT. NOW  
3 I'M PAYING FOR THAT.

4 LIKE I SAID, THERE IS NOT ENOUGH WORDS FOR ME TO  
5 SAY TO HER. I DON'T THINK THERE IS ANYTHING I CAN DO  
6 EXCEPT TRY TO BE 10 TIMES MORE THE BROTHER THAN I EVER HAD  
7 BEEN. NOT TO JUST HER BUT ALL MY BROTHERS, COUSINS, AND  
8 FAMILY AND ACTUALLY LEARN TO GROW CLOSER TO THEM. BECAUSE  
9 I HAVE ALWAYS BEEN ISOLATED IN MY OWN SELF.

10 THE COURT: WELL, NO MATTER WHAT HAPPENS HERE  
11 TODAY THE COURT HAS PRESIDED OVER THE TRIAL. I HAVE SEEN  
12 YOUR MANNERISMS THROUGHOUT THE COURSE OF THE TIME THAT YOU  
13 HAVE BEEN IN MY COURTROOM AND HOW YOU HAVE CONDUCTED  
14 YOURSELF. THE COURT BELIEVES THAT YOU ARE EXTREMELY  
15 REMORSEFUL ABOUT WHAT HAPPENED. THE COURT BELIEVES YOU  
16 WISH YOU COULD TURN BACK THE CLOCK AND IT NEVER HAPPENED.

17 OBVIOUSLY, IT DID. I THINK YOU ARE SINCERE IN  
18 YOUR REMORSE, AND I THINK THE FAMILY APPRECIATES HEARING  
19 THOSE WORDS. SOUNDS LIKE YOU APPRECIATE HEARING THE  
20 FAMILY'S WORDS. IT'S THE COURT'S HOPE THAT CAN BEGIN THE  
21 HEALING AND THE CLOSURE PROCESS WHATEVER HAPPENS HERE  
22 TODAY. THANK YOU.

23 THE DEFENDANT: YES.

24 THE COURT: MR. PUTHAWALA, ANYTHING ELSE ON BEHALF  
25 OF YOUR CLIENT?

26 MR. PUTHAWALA: NO, YOUR HONOR.

1 THE COURT: MISS BOKOSKY?

2 MS. BOKOSKY: NO.

3 THE COURT: ANY LEGAL CAUSE WHY JUDGMENT SHOULD  
4 NOT NOW BE IMPOSED ON BEHALF OF THE PEOPLE?

5 MS. BOKOSKY: NO.

6 THE COURT: ON BEHALF OF THE DEFENSE?

7 MR. PUTHAWALA: NO.

8 THE COURT: DOES MR. ROJANO WAIVE FORMAL  
9 ARRAIGNMENT FOR PURPOSES OF PRONOUNCEMENT OF JUDGMENT?

10 MR. PUTHAWALA: YES, YOUR HONOR.

11 THE COURT: WELL, AS I STATED THIS IS THE MOST  
12 DIFFICULT PART OF MY JOB. EVERY NOW AND THEN YOU COME  
13 ACROSS CASES BEFORE YOU THAT ARE MORE DIFFICULT THAN  
14 OTHERS. I WOULD CATEGORIZE THIS CASE AS ONE OF THOSE.  
15 IT'S VERY, VERY DIFFICULT IN TERMS OF THE MANDATORY  
16 SENTENCING RANGES. VERY, VERY DIFFICULT IN TERMS OF THE  
17 FACT THAT MISS NIETO IS NOT ONLY THE MOTHER OF JANE DOE,  
18 BUT ALSO THE MOTHER OF MR. ROJANO, AND THE FRACTURED FAMILY  
19 SITUATION AND THE WHOLE DYNAMIC OF THIS LITIGATION HAS BEEN  
20 TRAGIC IN MY EYES.

21 BUT IT'S MY JOB TO USE MY EXPERIENCE AND THE RULES  
22 OF COURT AND THE CRITERIA TO FASHION WHAT THE COURT FEELS  
23 IS A FAIR AND APPROPRIATE SENTENCE, AND SO I AM ABOUT TO  
24 ENGAGE IN THAT PROCESS. I WILL START WITH RULES OF COURT  
25 4.410 THE GENERAL OBJECTIVES IN SENTENCING INCLUDING  
26 PROTECTING SOCIETY, PUNISHING THE DEFENDANT, ENCOURAGING

1 THE DEFENDANT TO LEAD A LAW ABIDING LIFE AND DETER HIM FROM  
2 FUTURE OFFENSES, DETERRING OTHERS FROM CRIME BY  
3 DEMONSTRATING ITS CONSEQUENCES, AND PREVENTING THE  
4 DEFENDANT FROM COMMITTING NEW CRIMES BY ISOLATING HIM WITH  
5 INCARCERATION.

6 THE PEOPLE HAVE ASKED FOR A SENTENCE OF 25 YEARS  
7 TO LIFE ON COUNT 1, WHICH IS NOT UNREASONABLE GIVEN THAT IS  
8 THE MANDATED STATUTORY SENTENCING SCHEME AND IT'S A  
9 HORRIFIC CRIME. THERE IS NO DENYING THAT. ESPECIALLY IN  
10 THE ABSTRACT IT'S A HORRIFIC CRIME.

11 THE SENTENCING JUDGE MUST CONSIDER WHICH  
12 OBJECTIVES ARE OF PRIMARY IMPORTANCE IN THE PARTICULAR CASE  
13 AND SHOULD BE GUIDED BY STATUTORY STATEMENTS OF POLICY. AS  
14 I INDICATED, THE CRITERIA OF THE RULES OF COURT WHICH TELL  
15 ME HOW TO DO MY JOB CONCERNING SENTENCING, AND THEN I HAVE  
16 TO LOOK AT THE FACTS AND CIRCUMSTANCES OF THE CASE.

17 THE SENTENCING PORTION OF IT OFTEN INVOLVES  
18 DIFFICULT DECISIONS THAT WILL HAVE A LASTING IMPACT ON A  
19 NUMBER OF INDIVIDUALS' LIVES. IT'S NOT AN EASY TASK.  
20 THERE ARE NO BRIGHT LINE ANSWERS AS TO WHAT CONSTITUTES A  
21 FAIR AND APPROPRIATE SENTENCE. AS I HAVE INDICATED, IT'S  
22 MY JOB AND I HAVE TO FASHION A SENTENCE I DEEM FAIR AND  
23 APPROPRIATE GIVEN AND FACTS AND CIRCUMSTANCES OF ANY GIVEN  
24 CASE THAT COMES BEFORE ME. THERE IS A LOT OF CONSIDERATION  
25 THAT GOES INTO THIS DECISION.

26 FIRST WITH RESPECT TO THE 288.7 MANDATORY

1 SENTENCING OF 25 YEARS TO LIFE AND THE DOCTRINE OF CRUEL  
2 AND UNUSUAL PUNISHMENT I REVIEWED THE PARTIES' BRIEFS, AND  
3 I ALREADY THANKED YOU FOR YOUR GUIDANCE AND HELP CONCERNING  
4 THAT ISSUE. IN ADDITION, I WANT THE RECORD TO REFLECT THE  
5 COURT HAS REVIEWED THE FOLLOWING CASES.

6 MANDULEY VERSUS SUPERIOR COURT 27 CAL 4TH 537,  
7 PEOPLE VERSUS WINGO 14 CAL 3D 169, PEOPLE VERSUS RHODES 126  
8 CAL. APP. 4TH 1374, PEOPLE VERSUS MENESES 193 CAL APP. 4TH  
9 1087, PEOPLE VERSUS DILLON 34 CAL 3D 441, IN RE LYNCH 8 CAL  
10 3D 410. THOSE TWO CASES ARE PARAMOUNT IN ANALYZING THE  
11 DOCTRINE OF CRUEL AND UNUSUAL PUNISHMENT. PEOPLE VERSUS  
12 FELIX 108 CAL 4TH 994, PEOPLE VERSUS LEIGH 168 CAL. APP. 3D  
13 217, IN RE RODRIGUEZ 14 CAL 3D 639, IN RE GRANT 18 CAL 3D  
14 1, AND PEOPLE VERSUS SCHUEREN 10 CAL 3D 553.

15 I ALREADY INDICATED AT THE START OF THIS  
16 SENTENCING HEARING ALL THE DOCUMENTS I REVIEWED, INCLUDING  
17 THE P & S REPORT, SENTENCING BRIEFS, THE 288.1 REPORT, AND  
18 VICTIM IMPACT STATEMENT. ALL OF THAT I REVIEWED AND I AM  
19 INCORPORATING THAT INTO MY SENTENCING AND INTO MY ANALYSIS.

20 SO THIS IS A UNIQUE POSITION THIS COURT IS IN  
21 CONCERNING THE ISSUE REGARDING CRUEL AND UNUSUAL  
22 PUNISHMENT. ABSENT CONSTITUTIONAL CONSIDERATIONS TRIALS  
23 COURTS HAVE A DUTY TO IMPOSE AND NOT DEVIATE FROM  
24 STATUTORILY PRESCRIBED PUNISHMENT FOR DESIGNATED OFFENSES.  
25 SUBJECT TO THE CONSTITUTIONAL PROHIBITION AGAINST CRUEL AND  
26 UNUSUAL PUNISHMENT THE POWER TO DEFINE AND FIX CRIMES IS

1 VESTED EXCLUSIVELY IN THE LEGISLATIVE BRANCH.

2 AS THE PEOPLE NOTE IN THEIR BRIEF, THERE SHOULD BE  
3 CONSIDERABLE RELUCTANCE TO OVERTURN A SENTENCE ON THE  
4 GROUNDS THAT IT INFLECTS CRUEL OR UNUSUAL PUNISHMENT. THE  
5 DOCTRINE OF SEPARATION OF POWERS IS FIRMLY ENTRENCHED IN  
6 CALIFORNIA LAW, AND THE COURT SHOULD NOT AND DOES NOT  
7 LIGHTLY ENCROACH ON MATTERS WHICH ARE UNIQUELY IN THE  
8 DOMAIN OF THE LEGISLATURE, AND THEY FASHION A 25 TO LIFE  
9 SENTENCE FOR THIS COUNT.

10 AS THE PEOPLE HAVE POINTED OUT, IT'S RARE THAT  
11 CRUEL AND UNUSUAL PUNISHMENT IS FOUND WARRANTED BY  
12 CALIFORNIA SENTENCING JUDGES. THIS COURT HAS NEVER ENGAGED  
13 IN SUCH A PROCESS. I HAVE NEVER DONE IT IN OVER 15 YEARS  
14 ON THE BENCH IN HEARING CRIMINAL CASES. IT'S A GRAVE  
15 IMPORTANCE TO ALL PARTIES. I HAVE GIVEN CAREFUL  
16 CONSIDERATION TO ALL POSITIONS CONCERNING THIS. THIS IS NO  
17 EASY DECISION.

18 BUT AS CASE LAW HAS POINTED OUT IN LYNCH AND  
19 DILLON AND OTHERS THERE ARE RARE CIRCUMSTANCES IN THE  
20 CRIMINAL ARENA WHEN SENTENCING COURTS HAVE FOUND THAT THE  
21 MANDATED PUNISHMENT IS GROSSLY DISPROPORTIONATE TO THE  
22 DEFENDANT'S INDIVIDUAL CULPABILITY. THERE IS LEGAL  
23 PRECEDENT THAT ENABLES A SENTENCING COURT TO ENGAGE IN A  
24 THOROUGH LEGAL ANALYSIS TO DETERMINE WHETHER CRUEL AND  
25 UNUSUAL PUNISHMENT MIGHT BE APPLICABLE.

26 SO I HAVE ENGAGED IN SUCH AN ANALYSIS WHICH I WILL

1 NOW PUT ON THE RECORD. I ALSO WANT THE RECORD TO REFLECT I  
2 AM INCORPORATING THE PARTIES' POSITIONS ORALLY AND IN  
3 WRITTEN POINTS & AUTHORITIES.

4 IN DOING THE LYNCH-DILLON ANALYSIS, LYNCH BEING  
5 THE FIRST SUPREME COURT CASE THE TRIPARTITE TEST WAS  
6 ESTABLISHED IN LYNCH AND DILLON TO DETERMINE WHETHER THE  
7 PENALTY OFFENDS THE PROHIBITION AGAINST CRUEL AND UNUSUAL  
8 PUNISHMENT.

9 ONE, THE NATURE OF THE OFFENSE AND THE OFFENDER  
10 WITH PARTICULAR REGARD TO THE DEGREE OF DANGER PRESENT TO  
11 SOCIETY. TWO, A COMPARISON OF THE MANDATED PENALTY WITH  
12 THOSE IMPOSED IN THE SAME JURISDICTION FOR MORE SERIOUS  
13 CRIMES. AND THREE, THE MANDATED PENALTY AS COMPARED WITH  
14 OTHER JURISDICTIONS FOR THE SAME OFFENSE.

15 IN UNDERTAKING OF THE THREE PART ANALYSIS THE  
16 COURT MUST CONSIDER THE TOTALITY OF THE CIRCUMSTANCES  
17 SURROUNDING THE COMMISSION OF THE OFFENSE. PER DILLON ALL  
18 THREE PRONGS ARE NOT NECESSARY TO BE PRESENT IN ORDER TO  
19 FIND CRUEL AND UNUSUAL PUNISHMENT. THAT IS HIGHLIGHTED IN  
20 FOOTNOTE 38 OF DILLON. THE ULTIMATE ISSUE TO BE DECIDED IS  
21 WHETHER THE IMPOSITION OF THE MANDATORY SENTENCE FOR THE  
22 DEFENDANT'S CRIME IS GROSSLY DISPROPORTIONATE TO THE  
23 INDIVIDUAL CULPABILITY AMOUNTING TO CRUEL AND UNUSUAL  
24 PUNISHMENT.

25 SO THE QUESTION IS IN THIS CASE AFTER CONDUCTING  
26 SUCH AN ANALYSIS IS THE MANDATORY SENTENCE 25 YEARS TO LIFE

1 FOR MR. ROJANO'S CONDUCT AND CRIME GROSSLY DISPROPORTIONATE  
2 TO HIS INDIVIDUAL CULPABILITY SUCH THAT IT GOES INTO THE  
3 RARE ERROR AMOUNTING TO CRUEL AND UNUSUAL PUNISHMENT.

4 THE COURT STATED IN LEIGH, AND I THINK BOTH OF YOU  
5 CITED THIS IN YOUR BRIEFS, THE TRIAL JUDGE IS UNIQUELY  
6 SUITED TO DO THE KIND OF BALANCING OF FACTORS TO DETERMINE  
7 WHETHER THE PROHIBITION AGAINST CRUEL AND UNUSUAL  
8 PUNISHMENT APPLIES. IT IS THE TRIAL JUDGE WHO HAS THE  
9 FIRST HAND OPPORTUNITY TO ANALYZE THE PANOPLY OF FACTORS  
10 THAT MUST BE CONSIDERED IN DETERMINING THE OFFENDER'S STATE  
11 OF MIND, PERSONAL CHARACTERISTICS, AND THE DEGREE OF DANGER  
12 THAT THE DEFENDANT POSES TO SOCIETY.

13 SO FOR THE REASONS THAT I WILL STATE NOW FOR THE  
14 RECORD I CONDUCTED THIS ANALYSIS, AND IT'S MY DETERMINATION  
15 THAT THE 25 YEAR TO LIFE SENTENCE FOR MR. ROJANO'S CRIME IS  
16 GROSSLY DISPROPORTIONATE TO HIS INDIVIDUAL CULPABILITY,  
17 THUS THE CONSTITUTION'S PROHIBITION AGAINST CRUEL AND  
18 UNUSUAL PUNISHMENT COMPELS REDUCTION OF HIS SENTENCE IN MY  
19 EYES.

20 IN MAKING THIS DECISION I AM PARTICULARLY  
21 FOCUSING ON PRONG ONE OF DILLON. THE NATURE OF THE  
22 OFFENSE AND THE NATURE OF MR. ROJANO. I UNDERSTAND THERE  
23 ARE TWO OTHER PRONGS THAT ARE IMPORTANT, AND I WILL DISCUSS  
24 THOSE, BUT AS I INDICATED IN THAT FOOTNOTE IT'S NOT  
25 REQUIRED THAT ALL THREE BE PRESENT IN ORDER FOR THE COURT  
26 TO MAKE THIS FINDING, AND I THINK PRONG ONE IS MOST TELLING

1 AND INDICATIVE CONCERNING THIS CASE IN MY ANALYSIS.

2 IN LOOKING AT THE FACTS OF MR. ROJANO'S CASE, THE  
3 MANNER IN WHICH THIS OFFENSE WAS COMMITTED IS NOT TYPICAL  
4 OF A PREDATORY VIOLENT BRUTAL SODOMY OF A CHILD CASE. I AM  
5 TALKING ABOUT THE NATURE OF THE OFFENSE NOW. I AGREE WITH  
6 THE PEOPLE'S POSITION. THERE IS NO QUESTION THE NATURE OF  
7 THE OFFENSE IN THE ABSTRACT IS SUCH THAT IT POSES A  
8 SIGNIFICANT DEGREE OF DANGER TO BOTH VULNERABLE AND SOCIETY  
9 IN GENERAL. SODOMY OF A THREE YEAR OLD CHILD IS A HORRIFIC  
10 CRIME AND HARSH PUNISHMENT IMPOSITION NORMALLY IS NOT GOING  
11 TO GIVE ARISE TO CONSTITUTIONAL CONCERNS. THAT IS WHY THE  
12 LEGISLATURE MADE IT A 25 TO LIFE CRIME.

13 AS I INDICATED, WHEN I LOOK AT THE FACTS OF THIS  
14 CASE IT'S NOT TYPICAL OF A PREDATORY VIOLENT BRUTAL TYPE OF  
15 SODOMY IN A CHILD CASE. LOOKING AT THE NATURE OF THE  
16 OFFENSE MR. ROJANO DID NOT SEEK OUT OR STOCK HIS SISTER.  
17 HE WAS PLAYING VIDEO GAMES AS SHE WANDERED INTO THE GARAGE.  
18 NO EVIDENCE THAT HE WAS A PREDATOR IN ANY WAY. HE  
19 INEXPLICABLY BECAME SEXUALLY AROUSED, BUT DID NOT APPEAR TO  
20 CONSCIOUSLY INTEND TO HARM JANE DOE WHEN HE SEXUALLY  
21 ASSAULTED HER.

22 AS NOTED BY THE DEFENSE, IN AN INSTANT HE REACTED  
23 TO A SEXUAL URGE AND STOPPED ALMOST IMMEDIATELY AFTER HE  
24 BEGAN THE ACT. WITHIN SECONDS OF COMMENCING HIS OFFENSE  
25 MR. ROJANO REALIZED THE WRONGFULNESS OF HIS ACT AND STOPPED  
26 IT WITHOUT EJACULATING. THAT IS AN IMPORTANT FACTOR FOR

1 THE COURT IN ITS ANALYSIS.

2 SO AS I INDICATED, ALTHOUGH THIS IS A DESPICABLE  
3 SERIOUS CRIME IT DOESN'T COMPARE TO A SITUATION WHERE A  
4 PEDOPHILE OR A CHILD PREDATOR PREYS ON AN INNOCENT CHILD.  
5 THE FACTS DON'T SUPPORT THERE WAS ANY VIOLENCE OR CALLOUS  
6 DISREGARD FOR JANE DOE'S WELL-BEING EVEN THOUGH I SAY THE  
7 ACT WAS DESPICABLE.

8 IN LOOKING AT THE NATURE OF OFFENDER MR. ROJANO'S  
9 INDIVIDUAL AND PERSONAL CHARACTERISTICS ALSO SUGGEST A  
10 LESSENERED POTENTIAL RISK TO PUBLIC SAFETY IN MY ANALYSIS.  
11 HE WAS 19 YEARS OLD WHEN HE COMMITTED THE CRIME. HE HAS  
12 ABSOLUTELY NO PRIOR CRIMINAL HISTORY, NOT EVEN AN ARREST.  
13 HE DID NOT CONSCIOUSLY INTEND TO HARM JANE DOE. THE FACTS  
14 DON'T SUPPORT THAT, AND HE ALMOST IMMEDIATELY REGRETTED HIS  
15 ACTIONS. THROUGHOUT THIS CASE HE HAS SHOWN EXTREME REMORSE  
16 FOR HIS ACTIONS AND BEEN WILLING TO ACCEPT THE CONSEQUENCES  
17 WHATEVER THEY MAY BE.

18 I DON'T KNOW WHAT HAPPENED CONCERNING THE FAMILY  
19 SITUATION AND THE DYNAMICS. IT'S OBVIOUS THERE IS A  
20 DYSFUNCTIONAL FAMILY ENVIRONMENT. THE COURT'S HOPE IS THAT  
21 CAN BE RECTIFIED IN THE FUTURE. IT'S NOT MY POSITION TO  
22 ENGAGE INTO AN ANALYSIS AS TO WHAT HAPPENED, BUT THE FACTS  
23 ARE CLEAR THAT MR. ROJANO WAS RAISED IN A DYSFUNCTIONAL  
24 FAMILY ENVIRONMENT.

25 THEN I LOOK AT THE 288.1 REPORT BY DR. APODACA,  
26 AND IN THAT HE WAS FOUND TO HAVE EXPERIENCED A GREAT DEAL

1 OF FAMILY DISRUPTION AND ABUSE MAKING HIM AN INSECURE,  
2 SOCIALLY WITHDRAWN, TIMID, AND EXTREMELY IMMATURE YOUNG MAN  
3 BOTH SEXUALLY AND IN SOCIAL MATTERS WITH LIMITED  
4 SELF-ESTEEM. ALSO PER DR. APODACA'S FINDINGS THE  
5 DEFENDANT'S CRIMINAL ACTIONS WERE MORE COMPENSATORY THAN  
6 PREDATORY. TESTING REVEALS A VERY LOW RISK FOR RECIDIVISM,  
7 WHICH FURTHER EVIDENCES THIS COURT'S BELIEF THAT MR. ROJANO  
8 DOES NOT POSE A DANGER TO SOCIETY.

9 ALSO PER THE PROBATION AND SENTENCING REPORT  
10 DEFENDANT SCORED EXTREMELY LOW ON THE STATIC 99R TEST  
11 INDICATING A LOW RISK OF BEING A SEXUAL OFFENSE  
12 RE-OFFENDER. ALSO PER DR. APODACA, MR. ROJANO IS NOT A  
13 SEXUAL PREDATOR. HE WAS NOT A PEDOPHILE. NOR IS HE A  
14 SEXUAL DEVIANT. AS THE DEFENSE NOTED IN THEIR BRIEF HE IS  
15 A CONFUSED YOUNG MAN THAT ACTED INAPPROPRIATELY IN AN  
16 INSTANT WITH IMMENSELY DAMAGING RAMIFICATIONS FOR JANE DOE,  
17 FOR HIS FAMILY, AND FOR HIMSELF.

18 SO AS A RESULT OF ALL THIS WHEN I ANALYZE THE  
19 NATURE OF THE OFFENSE AND THE OFFENDER, THE MANDATORY TERM  
20 OF 25 YEARS TO LIFE IN STATE PRISON FOR MR. ROJANO'S  
21 OFFENSE IN MY EYES IS GROSSLY DISPROPORTIONATE TO HIS  
22 INDIVIDUAL CULPABILITY AND THUS WOULD AMOUNT TO CRUEL AND  
23 UNUSUAL PUNISHMENT.

24 I LOOK AT THE SECOND PRONG OF THE DILLON ANALYSIS.  
25 I LOOK AT A COMPARISON OF CHALLENGED PENALTY WITH  
26 PUNISHMENTS IMPOSED IN CALIFORNIA FOR MORE SERIOUS

1 OFFENSES. MOST OF THOSE WHEN I LOOK AT THOSE INVOLVE  
2 MURDER OR DEATH. A 25 TO LIFE SENTENCE IS AS SEVERE AS IF  
3 THE DEFENDANT HAD BEEN CONVICTED OF FIRST DEGREE  
4 PREMEDITATED MURDER. THE SENTENCE IS AS SEVERE AS IF THE  
5 DEFENDANT HAD COMMITTED AN ASSAULT ON A CHILD IN HIS CARE  
6 WHICH RESULTED IN DEATH, 273AB(A). INVOLVING DEATH OF A  
7 CHILD IS 25 TO LIFE.

8 THE SENTENCE IS HARSHER THAN THAT OF SECOND DEGREE  
9 MURDER WHICH IS 15 TO LIFE, ATTEMPTED PREMEDITATED MURDER  
10 WHICH IS LIFE WITH PAROLE ELIGIBILITY AFTER SEVEN YEARS,  
11 ATTEMPTED MURDER, MANSLAUGHTER, AND FORCIBLE RAPE. SO YOU  
12 HAVE TO LOOK LONG AND HARD IN THE PENAL CODE TO FIND CRIMES  
13 THAT MANDATE A 25 TO LIFE SENTENCE.

14 288.7 IS ONE OF THEM, AND THE COURT HAS ALREADY  
15 ACKNOWLEDGED IN THE ABSTRACT THAT IS JUSTIFIED. BUT WHEN I  
16 LOOK AT THE FACTS IN THIS CASE, IT'S NOT. I JUST THINK  
17 THIS CASE POSES AN EXCEPTION TO THE ABSTRACT.

18 SO THE THIRD PRONG, ALL OTHER JURISDICTIONS  
19 REGARDING SIMILAR CRIMES. I ALREADY ACKNOWLEDGED  
20 MISS BOKOSKY'S EXTENSIVE RESEARCH ON THIS ISSUE. BUT TO ME  
21 THAT PRONG GENERALLY FOCUSSES ON THE CRIME OF SODOMY ON A  
22 CHILD IN THE ABSTRACT. SO WHILE IT'S CERTAINLY A FACTOR TO  
23 BE CONSIDERED AND THERE ARE A LOT OF SIMILAR PUNISHMENTS IN  
24 OTHER JURISDICTIONS AS THE COURT MENTIONED EARLIER, IT'S  
25 GIVEN MAJOR CONSIDERATION TO THE FIRST PRONG WHICH  
26 ENCOMPASSES THE NATURE OF THE CIRCUMSTANCES SURROUNDING

1 THIS OFFENSE AND THE NATURE OF THE CIRCUMSTANCES  
2 SURROUNDING MR. ROJANO.

3 I WILL NOTE FOR THE RECORD FOOTNOTE 38 IN PEOPLE  
4 VERSUS DILLON. THE COURT BALANCING THE MULTIPLE LYNCH  
5 FACTORS FOR DETERMINING WHETHER A PARTICULAR PUNISHMENT  
6 CONSTITUTES CRUEL AND UNUSUAL PUNISHMENT NEED NOT ENGAGE IN  
7 AN ASSESSMENT OF PUNISHMENTS FOR THE SAME OFFENSE ACROSS  
8 MULTIPLE JURISDICTIONS. WE NEITHER HELD NOR IMPLIED THAT A  
9 PUNISHMENT CANNOT BE RULED CONSTITUTIONALLY EXCESSIVE  
10 UNLESS IT IS DISPROPORTIONATE IN ALL THREE RESPECTS. I  
11 HAVE ENGAGED IN THE ANALYSIS WITH ALL THREE RESPECTS, BUT  
12 AS I INDICATED PRONG ONE IS THE CONTROLLING PRONG IN MY  
13 ANALYSIS.

14 SO NOW THE VICTIM IMPACT STATEMENT AND OTHER  
15 FACTORS. AS I INDICATED, I HAVE HEARD AND RELIED ON THE  
16 VICTIM IMPACT STATEMENT GIVEN BY MR. AREVALO AND  
17 MISS NIETO. THE VICTIM JANE DOE IS NOT FORGOTTEN BY THE  
18 COURT. YOU WILL BE PUNISHED SEVERELY FOR YOUR ACTIONS ON  
19 JANE DOE, MR. ROJANO.

20 HOWEVER, AS I INDICATED I HEARD THE TESTIMONY.  
21 SHE TESTIFIED IN THIS COURTROOM. BY ALL INDICATIONS SHE  
22 APPEARS TO BE A HAPPY HEALTHY CHILD. SO IT'S HARD TO GAUGE  
23 HOW THIS CRIME MAY AFFECT HER MENTAL STATE IN THE FUTURE.  
24 IT CERTAINLY MAY, BUT I HOPE IT DOES NOT. IT DOESN'T  
25 APPEAR SHE SUFFERED ANY SERIOUS VIOLENT PHYSICAL INJURIES,  
26 AND BY ALL ACCOUNTS SHE APPEARS HEADED FOR A NORMAL LIFE.

1 THAT IS THE COURT'S HOPE, BUT I CANNOT GAUGE THAT.

2 MR. ROJANO'S PARENTS AND STEPPARENTS HAVE  
3 EXPRESSED FORGIVENESS. THEY HAVE EXPRESSED THE DESIRE FOR  
4 THE DEFENDANT TO BE RELEASED. IN YOUR STATEMENT,  
5 MISS NIETO, YOU INDICATED THAT YOU HAD HOPED HE WOULD BE  
6 PLACED IN A REHABILITATION PROGRAM HERE CLOSE BY IN ORANGE  
7 COUNTY SO YOU COULD GO TOGETHER TO SEEK TREATMENTS AND  
8 THINGS OF THAT NATURE.

9 THAT IS NOT GOING TO HAPPEN. HE IS NOT GOING TO  
10 BE GIVEN PROBATION FOR THIS CRIME. HE IS NOT GOING TO BE  
11 GIVEN A PROGRAM. HE WILL BE PUNISHED SEVERELY FOR HIS  
12 CONDUCT AND ONE DAY HE WILL GET OUT, BUT YOU WILL HAVE TO  
13 DEAL WITH THAT AS A FAMILY. I AM MINDFUL OF YOUR POSITION  
14 THE FACT THAT YOU ARE FORGIVING AND THAT YOU WANT HIM  
15 RELEASED, AND I HAVE ALREADY MENTIONED I CONSIDERED YOUR  
16 VICTIM IMPACT STATEMENTS. I ALSO ALREADY INDICATED I  
17 SINCERELY BELIEVE THAT MR. ROJANO IS SORRY FOR HIS CRIME  
18 THAT HE COMMITTED AND FOR THE REMORSE THAT HE HAS SHOWN.

19 NOW THE SENTENCE FOR MR. ROJANO COMMENSURATE WITH  
20 HIS CRIME. THE COURT HAVING FOUND THAT THE STATUTORILY  
21 PRESCRIBED PUNISHMENT OF 25 TO LIFE IS GROSSLY  
22 DISPROPORTIONATE TO MR. ROJANO'S INDIVIDUAL CULPABILITY,  
23 THUS IT VIOLATES THE U.S. CONSTITUTION AND THE STATE OF  
24 CALIFORNIA'S CONSTITUTIONAL PROHIBITION AGAINST CRUEL AND  
25 UNUSUAL PUNISHMENT. ACCORDINGLY, I AM GOING TO MAKE A  
26 FINDING THAT THE PRESCRIBED PUNISHMENT OF 25 TO LIFE FOR

1 COUNT 1 IS UNCONSTITUTIONAL.

2 SO AS I INDICATED AT THE START, IN YOUR BRIEFS  
3 THERE WASN'T MUCH INFORMATION PROVIDED TO THE COURT BY  
4 EITHER PARTY CONCERNING SENTENCING OPTIONS FOR THE COURT  
5 IF THE COURT WERE TO MAKE THAT FINDING. SO I HAVE HAD TO  
6 GO INTO VARIOUS CASE LAW TO FASHION A SENTENCE THAT THE  
7 COURT FEELS IS COMMENSURATE WITH MR. ROJANO'S INDIVIDUAL  
8 CULPABILITY SINCE I AM ENTRUSTED IN ARRIVING AT THAT KIND  
9 OF A SENTENCE. IT'S NOT AN EASY TASK GIVEN THE SEVERITY OF  
10 THE CRIME.

11 HOWEVER, THE COURT LOOKS AT RELATED SEXUAL CONDUCT  
12 CRIMES AND THEIR RESPECTIVE PUNISHMENTS TO DETERMINE WHAT  
13 SENTENCE MAY BE DEEMED COMMENSURATE WITH MR. ROJANO'S  
14 INDIVIDUAL CULPABILITY GIVEN THE SENTENCING OBJECTIVES OF  
15 THE COURT THAT I MENTIONED AT THE START AND ALSO THE  
16 CALIFORNIA RULES OF COURT.

17 I LOOKED AT PENAL CODE 286(C) SODOMY OF A CHILD  
18 UNDER AGE OF 14 AND MORE THAN 10 YEARS YOUNGER THAN THE  
19 PERPETRATOR. THAT PROVIDES FOR A DETERMINATE SENTENCING  
20 RANGE OF 3, 6, AND 8 YEARS. THIS CRIME IS RELATED TO A  
21 288.7(A). ITS SENTENCING RANGE IN MY EYES IS COMMENSURATE  
22 WITH THE DEFENDANT'S INDIVIDUAL CULPABILITY. THE ONLY  
23 DIFFERENCE THAT THE COURT CAN SEE IN THAT IS THAT DEALS  
24 WITH UNDER 14 AND 288.7(A) DEALS WITH A CHILD UNDER 10.

25 OBVIOUSLY, IT'S SOMEWHAT AGGRAVATED IN THIS CASE  
26 THAT YOU ARE DEALING WITH A 3 YEAR OLD, BUT I HAVE ALREADY

1 STATED MY THOUGHTS ON THE ANALYSIS. SO NOW I HAVE TO LOOK  
2 AT RELATED CRIMES AND APPROPRIATE SENTENCING RANGES. SO I  
3 LOOK AT PEOPLE VERSUS SCHUEREN 10 CAL 3D 553. IT ALLOWS A  
4 TRIAL COURT TO ADOPT AND IMPOSE THE SENTENCE PRESCRIBED FOR  
5 A RELATED OFFENSE IN ORDER TO ENSURE PUNISHMENT FOR AN  
6 OFFENSE OF WHICH A DEFENDANT STANDS CONVICTED WHICH IS  
7 COMMENSURATE TO HIS INDIVIDUAL CULPABILITY.

8 I HAVE GIVEN CAREFUL CONSIDERATION TO ALL THE  
9 PARTIES' POSITIONS. I HAVE READ VOLUMINOUS DOCUMENTATION  
10 AND CASES CONCERNING THIS SENTENCING DECISION. BASED ON  
11 THE TOTALITY OF THE CIRCUMSTANCES AND IN CONSIDERATION OF  
12 THE COURT'S SENTENCING DUTIES, ESPECIALLY THE PROTECTION OF  
13 THE PUBLIC THE COURT BELIEVES THAT A DETERMINATE SENTENCE  
14 IN THE AMOUNT OF 10 YEARS IN STATE PRISON IS THE  
15 APPROPRIATE SENTENCE IN THIS CASE. THAT IS TO BE SERVED AT  
16 85 PERCENT. I THINK THAT IS AN APPROPRIATE AND FAIR  
17 SENTENCE WHICH IS COMMENSURATE WITH MR. ROJANO'S INDIVIDUAL  
18 CULPABILITY.

19 SO I ARRIVE AT THE 10 YEAR SENTENCE AS FOLLOWS.  
20 THE AGGRAVATED TERM ON COUNT 1 OF 286(C) WHICH IS 8 YEARS.  
21 I DON'T THINK IT'S NECESSARY FOR THE COURT TO ENGAGE IN A  
22 4.421 AND 4.423 ANALYSIS OF CIRCUMSTANCES IN AGGRAVATION  
23 AND MITIGATION IN LIGHT OF THE EXTENSIVE INFORMATION I JUST  
24 PUT ON THE RECORD.

25 MR. PUTHAWALA, YOUR OPINION ON THAT?

26 MR. PUTHAWALA: WE SUBMIT ON THAT, YOUR HONOR.

1 THE COURT: MISS BOKOSKY?

2 MS. BOKOSKY: I HAVE NOTHING TO ADD.

3 THE COURT: IN ADDITION, FOR COUNT 2 IN DOING AN  
4 ANALYSIS UNDER RULE OF 4.425 THE COURT FEELS THOSE CRIMES  
5 AND THEIR OBJECTIVES WERE PREDOMINANTLY INDEPENDENT OF EACH  
6 OTHER. SO FOR THE 288(A) THE COURT FEELS A SUBORDINATE  
7 TERM WILL BE APPLICABLE OF TWO YEARS CONSECUTIVE.

8 I WANT THE RECORD TO BE CLEAR THAT THE COURT FEELS  
9 THAT THE FAIR AND APPROPRIATE SENTENCE FOR THE DEFENDANT'S  
10 CONDUCT IS 10 YEARS IN STATE PRISON AT 85 PERCENT, AND THAT  
11 IS ARRIVED AT THE 8 YEAR AGGRAVATED TERM OF 286(C) AND 2  
12 YEAR CONSECUTIVE TERM ON COUNT 2. ACCORDING TO THE P & S  
13 REPORT THE DEFENDANT AS OF TODAY'S DATE WOULD HAVE 307 DAYS  
14 OF ACTUAL TIME IN CUSTODY.

15 DO YOU HAVE REASON TO DISPUTE THAT, MR. PUTHAWALA?

16 MR. PUTHAWALA: NO, YOUR HONOR.

17 THE COURT: MISS BOKOSKY?

18 MS. BOKOSKY: NO.

19 THE COURT: HE WOULD BE ENTITLED TO 15 PERCENT  
20 CUSTODY CREDITS FOR A TOTAL OF 353 DAYS CREDITS OFF THAT 10  
21 YEAR SENTENCE. SO BY MY CALCULATIONS MR. ROJANO WOULD HAVE  
22 SOMEWHERE IN THE NEIGHBORHOOD OF 7 1/2 TO 8 YEARS TO SERVE  
23 IN STATE PRISON. YOU WILL GET A CHANCE TO GET OUT AND GET  
24 YOUR FREEDOM BACK AND LIVE A LAW ABIDING LIFE SOMETIME WHEN  
25 YOU ARE AROUND 28 YEARS OLD. THAT'S UP TO THE DEPARTMENT  
26 OF CORRECTIONS AND UP TO YOU CONCERNING YOUR CONDUCT IN

1 STATE PRISON, BUT YOU WILL HAVE THAT OPPORTUNITY.

2 YOU ARE ALSO ORDERED TO REGISTER PER 290 OF THE  
3 PENAL CODE. YOU WILL BE ON THREE YEARS PAROLE ONCE YOU GET  
4 OUT, PLUS ONE YEAR CONFINEMENT FOR ANY PAROLE VIOLATION.  
5 YOU ARE ORDERED TO PAY THE APPROPRIATE RESTITUTION FINES.

6 MR. PUTHAWALA: ARE THOSE THE MANDATORY FEES?

7 THE COURT: YES. ALL MANDATORY FEES WILL BE  
8 IMPOSED.

9 IN TERMS OF RESTITUTION THERE WAS NOTHING  
10 SUBMITTED TO THE COURT CONCERNING, THAT MISS BOKOSKY. DO  
11 YOU HAVE ANY INFORMATION FOR THE COURT ON THAT?

12 MS. BOKOSKY: I DON'T, BUT IF THE COURT WANTS TO  
13 CLOSE THE ISSUE I CAN ASK THE FAMILY IF THEY WILL BE  
14 SEEKING ANY.

15 THE COURT: THAT'S FINE.

16 MS. BOKOSKY: THEY WON'T BE ASKING FOR ANY  
17 RESTITUTION.

18 THE COURT: THANK YOU. SO THEN YOU ARE  
19 COMFORTABLE WITH THE COURT ENTERING A ZERO AMOUNT IN THE  
20 MINUTE ORDER AT THIS TIME?

21 MS. BOKOSKY: YES.

22 THE COURT: YOU UNDERSTAND THE 290 SEXUAL  
23 REGISTRATION REQUIREMENT THAT I AM PLACING UPON YOU IS A  
24 LIFETIME REQUIREMENT, MR. ROJANO?

25 THE DEFENDANT: YES, SIR.

26 THE COURT: COUNSEL ACKNOWLEDGE?

1 MR. PUTHAWALA: YES, YOUR HONOR.

2 THE COURT: IT'S UP TO PAROLE WHETHER THEY FEEL  
3 IT'S NECESSARY TO USE G.P.S. MONITORING OR ANYTHING LIKE  
4 THAT CONCERNING THE FACT THAT THE DEFENDANT HAS BEEN  
5 CONVICTED OF A SEXUAL ASSAULT CRIME. THAT WOULD BE THEIR  
6 JURISDICTION CONCERNING THOSE ISSUES.

7 ARE THERE ANY OTHER TERMS AND CONDITIONS ON BEHALF  
8 OF THE PEOPLE THAT THE COURT NEGLECTED OR OMITTED THAT YOU  
9 CAN THINK OF, MISS BOKOSKY?

10 MS. BOKOSKY: NO.

11 THE COURT: MR. PUTHAWALA?

12 MR. PUTHAWALA: NO, YOUR HONOR.

13 THE COURT: THERE MAY BE AN AIDS TESTING AND  
14 EDUCATION REQUIREMENT. AT THIS POINT IN TIME I WILL  
15 MANDATE THAT AS WELL.

16 I HAVE ALREADY ADVISED YOU OF YOUR RIGHTS ON  
17 PAROLE. YOU WILL BE ON PAROLE FOR THREE YEARS, PLUS ONE  
18 YEAR CONFINEMENT FOR ANY PAROLE VIOLATION.

19 DO YOU UNDERSTAND THAT, SIR?

20 THE DEFENDANT: YES, SIR.

21 THE COURT: I WILL ADVISE ALL PARTIES OF THEIR  
22 APPELLATE RIGHTS. YOU HAVE THE RIGHT TO APPEAL THIS  
23 JUDGMENT WITHIN 60 DAYS OF TODAY'S DATE.

24 HAVE YOU ADVISED YOUR CLIENT OF HIS APPELLATE  
25 RIGHTS, MR. PUTHAWALA?

26 MR. PUTHAWALA: BRIEFLY I DID SUMMARIZE THAT.

1 THE COURT: IF YOU WANT TO APPEAL THE SENTENCE,  
2 YOU HAVE 60 DAYS FROM TODAY'S DATE TO FILE YOUR APPEAL. IF  
3 YOU WANT TO DO THAT, YOUR LAWYER CAN COMMENCE THAT FOR YOU  
4 AND YOU CAN DISCUSS THAT WITH HIM.

5 YOU UNDERSTAND THAT, SIR?

6 THE DEFENDANT: YES.

7 THE COURT: THE PEOPLE ARE AWARE OF THEIR  
8 APPELLATE RIGHTS AS WELL; IS THAT CORRECT?

9 MS. BOKOSKY: YES, WE ARE.

10 THE COURT: I DON'T HAVE ANYTHING ADDITIONAL. SO  
11 IS THERE ANYTHING ELSE THAT YOU WISH TO STATE ON THE  
12 RECORD, MISS BOKOSKY?

13 MS. BOKOSKY: NO.

14 THE COURT: MR. PUTHAWALA?

15 MR. PUTHAWALA: ON BEHALF OF THE DEFENDANT I WOULD  
16 LIKE TO EXPRESS APPRECIATION FOR THE COURT'S CONSIDERATION  
17 TO THESE MATTERS. WE UNDERSTAND IT WAS A DIFFICULT  
18 DECISION FOR THE COURT TO ARRIVE AT. HOWEVER, GIVEN THE  
19 CIRCUMSTANCES OF THIS PARTICULAR OFFENSE WE THANK THE COURT  
20 FOR ITS TIME AND CONSIDERATION.

21 THE COURT: YOU'RE WELCOME. BOTH SIDES I ALREADY  
22 THANKED YOU FOR YOUR GUIDANCE CONCERNING THIS ISSUE. I  
23 HAVE LAID OUT THE RECORD. IT IS WHAT IT IS. SO THE COURT  
24 OF APPEAL KNOWS WHAT THE COURT'S REASONING AND ANALYSIS  
25 WAS. THE COURT WISHES ALL PARTIES THE BEST.

26 DO YOU HAVE ANY QUESTIONS, MR. ROJANO?

1 THE DEFENDANT: NO, SIR.

2 THE COURT: THANK YOU.

3 (END OF PROCEEDINGS.)

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REPORTER'S CERTIFICATE

I, JEANETTE A. GILLICK, CSR NO. 7961, OFFICIAL COURT REPORTER IN AND FOR THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF ORANGE, DO HEREBY CERTIFY THAT THE FOREGOING TRANSCRIPT IS A TRUE AND CORRECT TRANSCRIPT OF MY SHORTHAND NOTES, AND IS A FULL, TRUE AND CORRECT STATEMENT OF THE PROCEEDINGS HAD IN SAID CAUSE.

DATED THIS 7TH DAY OF APRIL, 2015.

*Jeanette A Gillick*

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JEANETTE A. GILLICK, CSR NO. 7961  
OFFICIAL COURT REPORTER