

1 A Once.

2 Q Criminal or civil?

3 A Criminal.

4 Q Listen to my question carefully, please.

5 Because invariably someone is going to blow the answer
6 to this question. It's not the end of the world. But
7 I'm going to ask Ms. Cuautle in just a moment if there
8 was a verdict reached. I don't want anybody to
9 volunteer, "Yes. We acquitted someone. Yes. We
10 convicted someone." I just want to know if the jury was
11 able to reach a verdict.

12 Was the jury able to reach a verdict in your
13 case?

14 A No.

15 Q Okay. Was it a hung jury?

16 A Yes.

17 Q Sometimes juries don't reach a verdict for a
18 variety of reasons including cases that are settled out,
19 or just a mistrial for something -- some other reason
20 during the course of the trial.

21 In the case that you sat on a jury, what kind
22 of charge was it?

23 A A murder.

24 Q A murder case. Okay. And do you know how long
25 ago was that?

26 A 2003.

27 Q From memory can you tell us what the division
28 was like? Let's say 10 to 2 or 6 to 6?

1 A 7 to 2.

2 Q 7 to what?

3 A 7 to 2.

4 Q Was that a California case?

5 A Yes.

6 Q There has to be 12 people on a jury.

7 A I mean 7 to 5.

8 Q Okay. There was quite a discrepancy. Okay.

9 THE COURT: Now, for everyone else, you
10 should know that if Ms. Cuautle said, "I'm retired," I
11 would have asked her what did she retire from. Had I
12 asked her about her life partner and had she said that
13 her life partner is retired or deceased, then I would
14 have asked what did he do or she do during his or her
15 life. So you can just help us out by giving us that
16 information rather than me having to ask.

17 I'm going to say again, if you were on a jury,
18 I'm going to ask you did you reach a verdict. I don't
19 mean what was the verdict. I want to know did you reach
20 one.

21 If you answer yes to any of the following
22 questions, please tell me the question number and your
23 response. I'm only going to read these once to
24 Ms. Cuautle.

25 BY THE COURT:

26 Q Are you acquainted with the Deputy District
27 Attorney, the Defense Attorney, the defendant, or any of
28 the following witnesses: Detective Greg Myler,

1 Daryl Kraemer, Martha Kraemer, Roger McCoy,
2 Donald Jones, Linda Mitchell, John Sullivan of
3 Lucerne Valley, Detective Robert Alexander, who you have
4 met, Dr. Bill Saukel (pathologist), Francesca Drake,
5 Holly Marie Brown, also known as Holly Marie Yablonsky,
6 Susan Anderson, Monica Siewertsen, Diane Flagg,
7 Angela Neete, Dr. Frank Sheridan (pathologist),
8 David Stockwell, Lori Kay Amaro, Kye Sun Kwoun,
9 Marshall Franey, Bruce Nash, Sherry Bratus (phonetic),
10 Ed White, Detective Mike Tuttle (phonetic), Detective
11 Gary Woods, and Detective Randy Nap (phonetic)?

12 A No.

13 Q Have you heard or read anything about this case
14 in the newspapers?

15 A No.

16 Q I read 6 and 7 together because they are so
17 closely related.

18 Do you know any persons connected with law
19 enforcement, the legal profession, or the court system?

20 And 7, are any close relative or friends
21 members of any law enforcement agency?

22 A No.

23 THE COURT: You know, I think that's as far
24 as I'm going to be able to get before we take our
25 lunch break.

26 We're going to start back at 1:40. Usually
27 we'll start at 1:30 but I had a matter continued from
28 this morning that I still have to resolve. So that

1 means that I need to have everyone come in the court,
2 wait outside the door, be ready to come in when you're
3 called at 1:40.

4 Every time we take a break I'm going to give
5 you this admonition.

6 You are admonished that it is your duty not to
7 converse among yourselves or with anyone else on any
8 matter connected with this case nor form or express an
9 opinion on it until it is submitted to you.

10 That means that when you're outside, feel free
11 to talk about the weather, talk about the Golden Globes,
12 talk about the upcoming playoffs in football season.
13 You can talk about any kind of sports, the Australian
14 Open is something I would be talking about, maybe.

15 I'm giving you an example of things that you
16 can talk about. What you can't talk about when I say
17 anything "connected with this case"? You're going to be
18 standing around. Maybe you're going to be calling in to
19 your work. Maybe you will be speaking to a loved one at
20 lunch.

21 Don't talk to them about murder. Don't talk to
22 them about where you heard something that might have
23 peeked your curiosity about a crime that allegedly
24 occurred on September 20th, 1985. That's almost 25
25 years ago.

26 It's something you can't talk about with
27 anybody. Don't talk about anything related to this case
28 until the case is over, and then you can talk about it

1 with people all you want to. So you might run into the
2 attorneys outside, you can say good morning, good
3 afternoon as the case may be.

4 If somebody talks to you, direct them to
5 Deputy Fleigner. You met Deputy Fleigner. Pete is not
6 only our bailiff, but he's also the court liaison
7 officer.

8 If somebody wants to say something to me, if
9 somebody wants to bring something to my attention or
10 feels the need to tell something to the attorneys, don't
11 talk to them. Talk to Deputy Fleigner first.

12 Okay. We will take our lunch recess. We can't
13 get started until everyone is back. Don't come inside
14 the courtroom. Wait outside the courtroom until you're
15 called at 1:40. Have a nice lunch.

16 (Whereupon a lunch recess was taken.)
17
18
19
20
21
22
23
24
25
26
27
28

1 VICTORVILLE, CALIFORNIA; JANUARY 19, 2011;
2 DEPARTMENT NO. V2 HONORABLE JOHN M. TOMBERLIN, JUDGE
3 P.M. SESSION
4 (Appearances as heretofore mentioned.)
5 (Michelle Swal, Pro Tempore Reporter, CSR No. 13580.)

6 -oOo-

7 THE COURT: We're back on the record in
8 People of the State of California versus
9 John Yablonsky. He is here along with David Sanders,
10 his attorney. John Thomas is here along with
11 Detective Alexander, his investigating officer.

12 Well, ladies and gentlemen of the jury, I was
13 exactly a half an hour off. That's not acceptable by my
14 standards. The matter that I had to deal with took
15 longer than I had anticipated. And I apologize that I
16 have kept you all waiting.

17 During the course of this trial there will
18 undoubtedly be some additional unintended delays. I
19 will assure you that never will it be something that I
20 have done without realizing that all of you are standing
21 out there in the hall waiting and that it's my fault if
22 I have inconvenienced you by having you summoned back
23 too early. Not in my defense, but just a fact of life,
24 I indicated that we're very busy. I could easily say
25 come back at 2:30. But then if I'm done early, then I
26 have lost court time. So, in a way of doing this to try
27 to move things expediently -- don't get me wrong, speed
28 isn't the only option and it's not the only result that

1 we're trying to obtain. We're trying to obtain a fair
2 trial to both sides. But I do apologize for the fact
3 that I kept you waiting.

4 When we left off, we were talking to
5 Ms. Cuautle and we had just finished 6 and 7. The
6 answers to which were no. It was a good time to take a
7 break because Number 8 is a question that I'm going to
8 read in just a moment. The rest of these questions
9 start needing a little bit of information, I think to
10 understand why they're here.

11 Would the fact that a witness is a law
12 enforcement cause you to favor one side or the other in
13 this case? Before I have you answer that, I want to
14 just make sure that you and everyone else understands
15 that when this trial is over, I'm going to be giving you
16 the law that applies to the case. You will be the judge
17 of the facts. I'm the judge of the law, so I'm going to
18 be explaining what the law is that applies to the case.

19 One of the things I'm going to tell you is you
20 must evaluate the testimony of each witness by the same
21 standards. Does that mean that all witnesses are
22 equally believable? Of course not. Somebody might have
23 been standing closer to an event, might have had a
24 better view of it, might have better vision, might have
25 been looking in the daylight. Somebody else might have
26 been looking from farther away at night, not wearing
27 glasses. So somebody could be absolutely sure they saw
28 something and somebody else could be absolutely sure

1 they saw that same event yet they might report it
2 differently.

3 You might have to determine who is to be
4 believed. And, of course, the opposite side of that
5 coin is there someone maybe that is less believable?
6 Some things I will be telling you about you can take
7 into consideration, might be has the person made a
8 statement in the past that is different than his or her
9 statement here in court? Did the person appear to you
10 to be telling the truth? What was the person's behavior
11 like on the witness stand?

12 In some cases you might hear that a witness has
13 been convicted of a felony in the past. That's
14 something you can take into consideration. There's a
15 lot of different things that you can take into
16 consideration in trying to determine whose testimony you
17 value over another's if there's a contradiction in the
18 testimony.

19 The reason why I say, though, that everybody
20 must be evaluated by the same standard is that there is
21 no belief, at least in this court, that just because
22 someone puts on a uniform that he or she is
23 automatically telling the truth any more than there's a
24 belief, at least in this court, that just because
25 someone put on a uniform, that he or she is lying. This
26 is another way of dealing with an issue that I'm going
27 to simply say to be a fair juror in this case, you're
28 going to decide the case based upon the evidence that is

1 presented in this courtroom, and not based upon biases,
2 on agendas, on issues that you've resolved between
3 yourself and somebody else before you came into court.
4 So in other words, if you think all cops are liars at
5 all times, that's an attitude you might be bringing in
6 with you to this courtroom.

7 The corollary of that, the opposite is, if all
8 cops are telling the truth all the time, then that's an
9 attitude that you're bringing with you into this
10 courtroom. And it's not deciding the case based on the
11 facts that are presented.

12 Does everyone understand that?

13 (Whereupon the prospective jurors answered in the
14 affirmative.)

15 THE COURT: That's why that question is in
16 there.

17 So when you get to answer that question -- have
18 you answered that question yet, Ms. Cuautle?

19 THE PROSPECTIVE JUROR: No.

20 THE COURT: What's the answer?

21 THE PROSPECTIVE JUROR: No.

22 THE COURT: Okay. That's the explanation I
23 gave because I want everyone know. It's fine to be
24 supportive of law enforcement people, the police
25 officers, the men and women that protect us all. Of
26 course they're honorable people. It's an honorable
27 profession, but not everyone tells the truth all the
28 time.

1 they're charged with.

2 There have been situations in this court where
3 from time to time we had to have trials with people that
4 involved the taking of a life of a child through
5 physical torture and abuse. If I had defined 12 people
6 that were going to say I feel neutral about that crime,
7 I think -- I hope I wouldn't be able to find 12 people
8 that would be able to do that. Does that mean the case
9 could never be tried? Of course not.

10 Mr. Sanders is not going to tell you that
11 murder is an okay thing. Mr. Sanders' position is
12 this: Mr. Sanders' position is that Mr. Yablonsky, like
13 anyone who is charged with a crime, is entitled to be
14 presumed innocent until the contrary is proved, if it
15 can be, beyond a reasonable doubt. That's a right that
16 we all enjoy. So that when I read you the charges
17 earlier, I read there was a charge and there was a
18 special allegation. Mr. Yablonsky pleaded not guilty to
19 that charge. Mr. Yablonsky denied that special
20 allegation. We're not looking for people that feel
21 neutral about this crime. We're looking for people that
22 are able to evaluate this crime on the facts that are
23 presented in this courtroom.

24 We already heard Mr. Medlock. Just one second.
25 Number 47, Rebecca Ness. Where are you,
26 Ms. Ness? You would rather have a root canal than be in
27 my courtroom?

28 THE PROSPECTIVE JUROR: Absolutely not.

1 THE COURT: But you have a root canal
2 scheduled for the 26th that I see. That's next
3 Wednesday?

4 THE PROSPECTIVE JUROR: Right.

5 THE COURT: And you are excused for medical
6 hardship. Thank you for being with us.

7 Okay. Now that I have taken that break,
8 Ms. Anderson, what did you find out?

9 THE PROSPECTIVE JUROR: I can schedule for
10 later.

11 THE COURT: Mr. Proctor, what did you find
12 out?

13 THE PROSPECTIVE JUROR: Pretty much nothing,
14 but I will go off of your judgment on that because
15 you --

16 THE COURT: Well, tomorrow is another day.
17 Maybe you can find some more information out.

18 THE PROSPECTIVE JUROR: I just couldn't
19 contact anyone.

20 THE COURT: Maybe tomorrow we'll know
21 something different.

22 Everybody get it? I think I have beaten that
23 horse just about into the ground. We're not looking for
24 somebody that feels neutral about the crime.

25 Why do we ask this question, then? We ask this
26 question because there are people like Mr. Medlock out
27 there. Mr. Medlock's son was killed I think he said in
28 2003. He was murdered. So he's going to have an

1 emotional reaction to this, and he's concerned it's
2 going to affect how he views the evidence. We want
3 people that are going to be able to listen to the
4 evidence, that are going to be able to evaluate and use
5 their common sense and logic. But we don't want people
6 that are going to be using emotion to make their
7 decisions. We don't want somebody to make a decision
8 based on sympathy, either sympathy for a victim or
9 sympathy for the defendant who is on trial.

10 Does that make sense to you, Ms. Cuautle?

11 THE PROSPECTIVE JUROR: Yes.

12 THE COURT: Does that make sense -- does that
13 make sense to everyone else?

14 (Whereupon the prospective jurors answered in the
15 affirmative.)

16 THE COURT: Sometimes we have cases where a
17 person says, "Yeah, I was robbed at gunpoint three
18 times because I was a bank teller. But, yeah, I can
19 sit here as a juror and be fair in this case even
20 though it involves the robbing of a bank at gunpoint."
21 Some people are like that. They are -- I don't know.
22 They're people that just have a better ability to
23 compartmentalize their emotions. Sometimes you have
24 people that -- I had one gentleman, I believe that
25 this is correct, he indicated that he didn't think he
26 could be fair in a domestic violence case because of
27 his wife had told him that years and years ago before
28 they met that her mother had been abused in a

1 relationship. And that seemed to me that was really
2 remote. But he was telling me that it was going to
3 affect his ability to be a fair and impartial juror.
4 Who might argue with that? I can only listen to what
5 you have to tell me.

6 **MS. LISA CUAUTLE**

7 BY THE COURT:

8 Q Have you answered those questions already?

9 A No.

10 Q Would you now?

11 A No.

12 Q 11, have you or any of your close relatives or
13 friends been charged in any criminal offense?

14 A No.

15 Q 12, have you or any of your close relatives or
16 friends been the victim of a crime?

17 A No.

18 Q What a good sport. I'm picking on you because
19 you're the first person I'm speaking to.

20 Does the fact that the defendant has been
21 arrested or charged with this offense cause you to
22 believe from these facts alone that he is more likely to
23 be guilty than not guilty?

24 A No.

25 THE COURT: Isn't that an interesting
26 question?

27 Does anybody think that it's possible that you
28 might feel it more likely than not that the defendant is

1 guilty than not guilty but that you could still be a
2 fair juror in this case? How does that make sense? How
3 do we make sense of that? Let me explain it to you.

4 The fact that someone else is suspicious of
5 Mr. Yablonsky, the fact that someone, for instance, has
6 arrested Mr. Yablonsky and charged him of the crime is
7 not evidence of his guilt. I'm going to be saying that.
8 You will hear me say that probably several times between
9 now and the time that this trial is over and you begin
10 your deliberations. Because we don't base a jury
11 verdict on someone else's suspicions. It's not time to
12 be suspicious now. Now is the time to prove the case.

13 There is a line from the author Conan Doyle,
14 when Sherlock Holmes is talking to Dr. Watson and he
15 says, "What we know is not important, what is important
16 is what we can prove."

17 Does everyone understand what I'm talking
18 about?

19 There's another way to look at this that I'll
20 mention. What is more important than not? What do you
21 think that means? Do you think that means like
22 51 percent on one hand and 49 percent on the other more
23 important? How much more important, a little tiny bit?

24 In civil cases, we have a burden of proof that
25 we call preponderance of the evidence. My guess is that
26 preponderance comes from the root "ponderance" as in
27 weighing or heavy. So in order to prove a case that's a
28 civil case -- and by the way in a civil case, all you

1 can lose is your money.

2 In a criminal case, we have a different
3 standard because you can lose your freedom. So
4 preponderance of the evidence means just a little bit of
5 that scale is tipped. I have this up here -- I get to
6 use my show and tell page. Let's assume that this was
7 just not a cheap trick, but a very, very, expensive
8 scale and these pans weighed exactly the same amount.
9 They would be in perfect equilibrium, and this would be
10 absolutely straight across; right?

11 I always like to think of an old miner who goes
12 to Sacramento, and he brings out some gold dust. And
13 what does the assayer do? The assayer puts a Troy
14 weight here, one ounce, and it brings down the pan. And
15 you start pouring gold dust until these things are in
16 perfect equilibrium. And then you know you have one
17 Troy ounce of gold, and the assayer knows how much money
18 to pay the old miner. If you pour too much, it goes
19 down too far. That side preponderates. Don't have
20 enough gold dust, this side goes down too far, this side
21 preponderates. That's the civil standard. That's more
22 likely than not; right? That's where there's more
23 weight on one side than that which is opposed to it on
24 the other.

25 We don't have a standard like that in a
26 criminal case. We might talk about preponderance of the
27 evidence, by the way, in this case. It may relate to
28 other evidence that is presented, but we're going to be

1 talking about a different standard of proof. As far as
2 the charge goes, the jury is going to have to decide
3 whether or not Mr. Thomas has proved this case beyond a
4 reasonable doubt. I'm going to be giving you an
5 explanation, a definition what beyond a reasonable doubt
6 means. But I can tell you that it is a highest standard
7 that we have the courts of law. It's not just clear and
8 convincing, it's not just preponderance of the evidence,
9 it's not a strong suspicion, but it means beyond a
10 reasonable doubt. It would probably be something almost
11 like putting something -- one side all the way down and
12 the other side up. And you can't prove everything
13 beyond any possible or imaginary doubt because
14 everything in life is subject to some imaginary doubt,
15 possible doubt, but you will be using a high standard.

16 And that's why I can tell you that the fact
17 that you might believe Mr. Yablonsky is guilty more
18 likely than not would be totally irrelevant to the final
19 decision that you would make as a juror in this case.

20 Does that make sense to anyone? Have I
21 explained that in such a way you're getting my point?

22 (Whereupon the prospective jurors answered in the
23 affirmative.)

24 THE COURT: Because frankly, somebody might
25 be sitting there thinking, "Hey where there's smoke,
26 there's fire." You heard that, haven't you?

27 John Kennedy said, "Where there's smoke,
28 there's probably someone operating a smoke-making

1 machine." I don't know which way you want to look at
2 it, but I'm simply going to tell you that these are
3 attitudes, these are feelings that we bring into court.
4 We're not going to be using those. We're going to be
5 evaluating this case based upon the evidence that's
6 presented on the arguments of the attorneys and the law
7 that I give you.

8 **MS. LISA CUAUTLE**

9 BY THE COURT:

10 Q Is that something you can do, Ms. Cuautle?

11 A Yes.

12 Q Finally, is there any reason why you feel you
13 should not sit as a juror on this case?

14 A Well, my husband -- I wasn't sure about
15 hardship. I was going to ask you because at
16 lunch -- but I wasn't for sure about hardship if my
17 company was going to pay for the jury service and
18 they're not. And I have part-time job as it is, so it
19 is going to be a hardship for me.

20 Q After all this time.

21 By the way, I'm guessing I've spent probably a
22 half an hour altogether talking to Ms. Cuautle. And I'm
23 going to be excusing her in just one minute, but can you
24 see what I'm doing when I say, "Pay attention to this"?
25 I'm not going to spend this half an hour talking with
26 anyone else. I'm not going to go over these things with
27 everyone. I'm not going to go over the specifics.

28 That's why I want you to be listening so when I

1 say, "Would you be able to follow the instructions on
2 those important things we discussed, could you do that?"
3 Then you're going to be able to say, "Yes" or "No."

4 But we'll go back to the hardship issue. If
5 you're not going to be paid for your part-time job while
6 you're here -- pardon me, that would be a financial
7 hardship to not be paid; right?

8 A Yes.

9 Q I'm going to excuse you. Thank you for being
10 with us.

11 A Thank you. Sorry.

12 Q That's all right. We have more.

13 THE COURT: Can you call another name to fill
14 that seat, please.

15 THE CLERK: Juror Number 4, 004XXXXXXXXXX.

16 THE COURT: 004XXXXXXXXXX. I saw you looking
17 at me when I was talking. You gave me the impression
18 that you heard me.

19 THE PROSPECTIVE JUROR: I was paying
20 attention.

21 THE COURT: Excellent.

22 Now, what I'm going to do is what I said I was
23 going to do first because what I said when I finished
24 with Mr. Cuautle I was going to talk with 059XXXXX. So
25 you catch up with this, 004XXXXXXXXX, and I will be right
26 back to you.

27

28

059XXXXXXXXXXXXXX

1
2 BY THE COURT:

3 Q You know what you're supposed to do, don't you?

4 A Uh-huh.

5 Q Please do.

6 A I'm supposed to answer these questions.

7 Q That's right.

8 A Number 1 is I'm a coach operator, when I am
9 working.

10 Q A what operator?

11 A A coach operator.

12 Q Is that like a bus driver?

13 A Yes.

14 Q Okay.

15 A My significant other is an on-the-road truck
16 driver. I have served on a jury. It's been a while.

17 Q Was it a criminal or civil case and did you
18 reach a verdict?

19 A It was a criminal case.

20 Q Did you reach a verdict?

21 A They did. I was an alternate.

22 Q Okay. No on the other ones?

23 A All the way down.

24 Q No all the way down. You heard the things I
25 was talking about in some detail, didn't you?

26 A Yes.

27 Q What do you think about those things?

28 A Not much.