

1 THE PROSPECTIVE JUROR: Fontana PD. My
2 brother and husband, highway patrol.

3 MR. SANDERS: Right. Now, you're not
4 supposed to talk about this case.

5 THE PROSPECTIVE JUROR: Correct.

6 MR. SANDERS: Okay. But when it's over, and
7 you go home, do you anticipate that they will be
8 interested what happened in the trial you were on?

9 THE PROSPECTIVE JUROR: Yes.

10 MR. SANDERS: Do you believe that there's any
11 chance that they might be disappointed if you were to
12 decide that the verdict is not guilty?

13 THE PROSPECTIVE JUROR: I'm able to make my
14 own decisions.

15 MR. SANDERS: They won't give you a hard time
16 about it?

17 THE PROSPECTIVE JUROR: Yes.

18 MR. SANDERS: That's a different question,
19 but you can stand up to them? You're nodding your
20 head yes.

21 THE COURT: Counsel, will you approach
22 please? Off the record is fine.

23 (Discussion held off the record.)

24 THE COURT: Mr. Sanders, I've stopped him
25 because Mr. Sanders is going to be a little bit
26 longer. I have another jury that I have to bring back
27 in and deal with this afternoon still. So I'm going
28 to have you all back in the morning. I shouldn't have

1 much to do in the morning. We should be able to start
2 very close to 8:30 but you were probably waiting for
3 everybody to go through the metal detector this
4 morning so I'm going to have you come in at
5 9:00 o'clock.

6 Be here at 9:00 o'clock. That will give
7 everybody a chance to hopefully find some parking places
8 that have been vacated by people that are leaving and
9 not being a big line waiting to get in.

10 So I've already talked about this for you, I'll
11 say it again. You're admonished that it is your duty
12 not to converse among yourselves or with anyone else in
13 any matter connected with this case. Do not form or
14 express an opinion until it's submitted to you.

15 We'll see everybody here tomorrow morning ready
16 to go at 9:00 o'clock.

17 Mr. Thomas?

18 MR. THOMAS: Can the Court also admonish the
19 jury that this case may be in the newspapers?

20 THE COURT: Yeah, sure. Thanks.

21 What can I say, Mr. Thomas is right. This is
22 always a difficult thing to talk about. It took me a
23 while to come to this conclusion. If you can't tell
24 your spouse that you're here on a possible murder trial,
25 and I'm telling you can't. You can't really tell your
26 spouse to go through the paper and watch out for murder
27 trial that's a cold case. That's the term that people
28 use these days. I guess popularized by TV's series or

1 whatever. But, you know, so how are you going to know?
2 All I can say is don't look at the paper. That seems
3 kind of dumb. Everybody needs to know what's going on
4 in the sports world, we know that. So I can just tell
5 you, try and use some common sense. The front page of
6 the paper is probably something you don't want to be
7 looking at, reading any in-depth articles that happen to
8 be talking about a murder case, or if you see the name
9 Yablonsky or you see something about a cold case, just
10 don't read it. Put it away if you want to read it later
11 on when the case is over.

12 MR. THOMAS: Thank you, your Honor.

13 THE COURT: Okay, folks. 9:00 tomorrow
14 morning, which isn't started until everyone is here.
15 (Whereupon the following proceedings were held outside
16 the presence of the jury:)

17 THE COURT: The jury is gone, and now
18 Mr. Sanders has requested, and I agreed to make an
19 order that the jail can comply with this order, that
20 Mr. Yablonsky can be given access to a shave every
21 day. And he'll be allowed to trim his beard every
22 third day. And I'll make an order to that extent that
23 it doesn't have any problem with the jail procedures.

24 (Whereupon proceedings in the above-entitled
25 matter were concluded for the day.)

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1 VICTORVILLE, CALIFORNIA; JANUARY 20, 2011;
2 DEPARTMENT NO. V-2 HONORABLE JOHN M. TOMBERLIN, JUDGE
3 A.M. SESSION

4 (Appearances as heretofore mentioned.)

5 (Shawna Manning, Official Reporter, CSR No. 12827.)

6 -oOo-

7 THE BAILIFF: Remain seated. Come to order.
8 Court is now in session.

9 THE COURT: Good morning, ladies and
10 gentlemen. Back on the record in the case of People
11 of the State of California versus John Henry
12 Yablonsky. Mr. Yablonsky is here with his attorney,
13 David Sanders. John Thomas is here for the People.
14 We're continuing in our jury-selection process.
15 Mr. Sanders is using his remaining time for voir dire
16 this morning. You may proceed.

17 MR. SANDERS: Thank you, sir. Good morning,
18 ladies and gentlemen. Okay. Starting where we ended
19 up yesterday, and I've forgotten some of the questions
20 I asked. Did I ask any of you if you understand that
21 my client has to be found guilty beyond a reasonable
22 doubt? I already said that?

23 (Whereupon the prospective jurors nodded in the
24 affirmative.)

25 MR. SANDERS: I got all your names yesterday,
26 and I think over night I've forgotten some of your
27 names. I just -- the only ones I remember was Mr. --
28

1 (Whereupon the court reporter asked
2 counsel to speak up.)

3 MR. SANDERS: The only one I remember was
4 Mr. Bean and he was sitting next to Ms. Green. I
5 thought they should switch places so we would have
6 Green Bean instead of Bean Green. It would be easier
7 for me to remember, but I remember most of them.

8 MS. NITIKA AUSTIN

9 BY MR. SANDERS:

10 Q Let's see, Ms. Austin, you are presently a
11 corrections officer; is that correct?

12 A Yes.

13 Q And is that up in the federal facility?

14 A Yes.

15 Q North of here?

16 A Victorville.

17 Q Okay. So in a way, you're a peace officer --

18 A Yes.

19 Q -- is that correct?

20 A Yes.

21 Q I believe you said your husband is also?

22 A Yes.

23 Q And you understand that this is a criminal
24 case?

25 A Yes.

26 Q And we're going to be talking about whether or
27 not there's evidence to show that my client committed a
28 crime or not?

1 A Um-hmm.

2 Q All right. I assume that you hang out with
3 other correction officers and socialize with them?

4 A Yes.

5 Q Okay. Is that going to be a problem in any way
6 for you?

7 A No.

8 Q Okay. Like I asked the other lady yesterday,
9 suppose that you hear all the evidence in this case and
10 you determine that there's not enough evidence to show
11 beyond a reasonable doubt that my client committed a
12 crime.

13 Would that be a problem if your buddies or
14 friends or husband talked to you about the case after it
15 was over?

16 A No.

17 Q If they said, you found that guy not guilty,
18 that wouldn't be a problem for you? That wouldn't be in
19 your mind at all?

20 A No.

21 MS. CATHERINE ANDERSON

22 BY MR. SANDERS:

23 Q Yesterday, Ms. Anderson, I asked you a couple
24 questions about your relatives. One thing I forgot to
25 ask you, did I hear you say that you've been a victim of
26 a carjack?

27 A No, it was a relative.

28 Q Okay. And which relative was that, how close?

1 A It was a nephew.

2 Q Does he live in this area?

3 A No, it was in Los Angeles.

4 Q So you heard about it?

5 A Yeah. I had gotten a call that he was okay and
6 was able to get away.

7 Q Very good. You didn't have to go to court or
8 anything like that?

9 A No.

10 Q All right. Was there anything about -- about
11 the way that case was handled that made you have a good
12 feeling or bad feeling?

13 A No, I wasn't -- I didn't keep contact with it,
14 just the basics and left it at that.

15 MS. SHARON TIERNEY

16 BY MR. SANDERS:

17 Q I think, let's see, Ms. Tierney, did you say --
18 you said something about a carjacking also?

19 A Not a carjacking.

20 Q What was it?

21 A My son was convicted of a felony, dropped to a
22 misdemeanor, and I was involved in a home burglary and
23 home invasion.

24 Q That's right. You said home invasion. Was
25 that you?

26 A Yes.

27 Q You were a victim of that?

28 A Yes.

1 Q Did you have to go to court and testify?

2 A No. There was a shoot-out shortly after that
3 in Big Bear and that solved the problem.

4 Q I guess that's one way to solve it, but you
5 were --

6 THE COURT: I'm sorry. I didn't hear what
7 you said. What solved the problem?

8 MR. SANDERS: There was a shoot-out.

9 THE COURT: Yes. What solved the problem?

10 THE PROSPECTIVE JUROR: In Big Bear.

11 THE COURT: And that solved the problem?

12 THE PROSPECTIVE JUROR: I don't know who shot
13 him, but he was killed after accosting a woman in a
14 bathroom up there and carjacking. That's -- I don't
15 think I mentioned anything about carjacking.

16 BY MR. SANDERS:

17 Q This person that got shot in Big Bear was a
18 person that was the suspect in your home invasion
19 robbery?

20 A Yes, with my gun.

21 Q The shoot-out in Big Bear was with your gun?

22 A Yes. He stole the gun, used the gun accosting
23 somebody in Big Bear.

24 Q Got you. Thank you. But you had to go through
25 the process of having officers come to your house and
26 take statements from you --

27 A Yes.

28 Q -- and write down things?

1 A Try to claim property.

2 Q Was there anything about that situation that
3 gave you either a good feeling or bad feeling about the
4 criminal justice system the way it was handled?

5 A From what I can remember, because I was kind of
6 like in shock, when I had entered the home, the person
7 had already left, but there was a crowbar on my bed with
8 lingerie out of my drawer, and that kind of gave me a
9 invasion of personal nature, and that. So to remember
10 everything that transpired when the sheriffs arrived,
11 and that, I think everything was fine.

12 Q Okay. Let me --

13 A I don't have a feeling one way or the other.

14 Q All right. I guess the case never got to
15 court?

16 A No.

17 Q There never was a trial or anything?

18 A Not to my knowledge.

19 Q But at the same time you were victimized and
20 you had some -- some strong natural feelings about that;
21 correct?

22 A Yes.

23 Q All right. In this case, we're going to be
24 talking about a woman that was killed back in 1985 in
25 her home. Now, do you suppose that if you were to be a
26 juror in this case and listen to that that there would
27 be things there that because of your particular
28 experiences would make it difficult for you to be a fair

1 and impartial juror?

2 A To be honest, no, sir, because working in the
3 medical field and having to counsel patients, and that,
4 that have gone through different traumas in their lives,
5 I've put everything aside. There's people a lot worse
6 off.

7 Q Okay. Thank you, ma'am.

8 MS. DONNA PINEIRO

9 BY MR. SANDERS:

10 Q We had another juror with that same kind of
11 situation. See if I can find it. Ms. Pineiro?

12 A Yes.

13 Q I believe that you said that your sister was
14 murdered?

15 A No.

16 Q That wasn't you?

17 A No.

18 Q Was that somebody that's still here? I guess I
19 wrote down the wrong person. I thought you said you
20 worked in a courtroom.

21 A Yes.

22 Q You've been on one jury?

23 A Um-hmm.

24 Q Your ex-son-in-law is with the sheriff's
25 department?

26 A Right.

27 Q And your sister was murdered by her husband?

28 A No.

1 Q Where did I get that? Okay.

2 A Well --

3 MR. SANDERS: Never mind. I'll cross that
4 one off. Most of you now have had some time to think
5 about the questions yesterday. Let me ask you this
6 question again, I know it was asked yesterday, but now
7 that you've had a chance to think, maybe you came up
8 with something: Have any of you had a relative, a
9 friend, a close acquaintance, that's been the victim
10 of either a murder or a rape? Anybody? No? All
11 right.

12 THE COURT: Other than as disclosed
13 yesterday, Mr. Sanders?

14 MR. SANDERS: Well, I'm asking the question
15 of -- of the audience -- or of the prospective jurors
16 as a whole.

17 THE PROSPECTIVE JUROR: I had attempted.

18 MR. SANDERS: Right.

19 THE PROSPECTIVE JUROR: My mother was raped
20 when she was 16.

21 MR. SANDERS: Okay. Did we talk about that
22 yesterday?

23 THE PROSPECTIVE JUROR: No, because I didn't
24 remember yesterday. She doesn't talk about it.

25 MR. SANDERS: Okay. Got it. You were 16?

26 THE PROSPECTIVE JUROR: No, my mother was 16.

27 MR. SANDERS: She told you about it?

28 THE PROSPECTIVE JUROR: No. Her sister told

1 me about it because she refused to talk about it.

2 MR. SANDERS: I take it that that was a long
3 time ago?

4 THE PROSPECTIVE JUROR: Yes, and nobody was
5 ever prosecuted even though they knew who did it. It
6 was at a time in life when that sort of thing was not
7 acted upon. She was not considered a victim.

8 MR. SANDERS: Right. And it would not affect
9 your ability to sit on this case?

10 THE PROSPECTIVE JUROR: No.

11 MR. SANDERS: Anybody else here in the first
12 row think of anything like that?

13 You understand that this is a murder case? You
14 understand that the prosecutor here, the government's
15 lawyer, is going to try to bring in evidence to show
16 that my client killed somebody and because of that there
17 are going to be photographs, and those will be explicit
18 photographs, and there will be blood in those
19 photographs and things like that? Some of those things
20 may not be very easy to look at.

21 We're going to have a doctor come, and he's
22 going to testify about doing an autopsy, and what he
23 found. Again, are there any of you that feel that that
24 type of testimony or evidence would make you
25 uncomfortable and so that it would be difficult for you
26 to act without being emotional? Anyone?

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MS. CATHERINE ANDERSON

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BY MR. SANDERS:

Q Ms. Anderson.

A Yes.

Q Tell me your feelings.

A I have trouble -- I've seen my children in accidents and friends that I know. I usually don't go -- I went to see my mom in the hospital, and I fainted. A lot of that stuff is -- that's just how I am. I'm real queasy.

Q Okay. Is it to the point that it would make it difficult for you to -- for example, if the district attorney were to pull that screen down and put a picture on that little -- whatever that thing is called.

THE COURT: ELMO.

BY MR. SANDERS:

Q ELMO -- and it's up here in 8 feet by 6 feet showing a decomposed body --

A I wouldn't know unless I saw it, and if I fainted, then I'd know.

Q All right.

THE COURT: I've got to say, I can't hear, and I know that if I can't hear there's some people in the back that can't hear. Anybody shaking their head in the back that could be sitting closer, I'm going to say, you all should move closer, but I'm going to ask everybody to keep their voices up. You too, Mr. Sanders. I think if you keep your voice up, it

1 will make it easier for people to remember to keep
2 theirs up. Use our outdoor voices. This is a big
3 room.

4 I didn't hear what your response was, and
5 before you give me your response, I'm going to say
6 something real quickly to stick in here. Mr. Sanders
7 can ask if it would make you uncomfortable to look at
8 photographs that will be troubling. It seems that
9 anybody's answer to that would be yes. If the
10 photographs are troubling, it's going to make us
11 uncomfortable.

12 The question I'm concerned about as far as
13 cause goes is not whether you'll be uncomfortable
14 looking at photographs that are troubling, but it's
15 going to be, can you do it. If you're someone who's
16 going to be able to say, I'm going to suck it up and
17 look at these photographs, then you can be a good juror.
18 If you're someone who's going to say, I'm not going to
19 look at what's on the board and ignore it, and thereby,
20 perhaps lose the benefit of the doctor's testimony while
21 he is talking about the procedures used for the
22 postmortem, the autopsies, then you may not get the full
23 impact of the evidence that is being presented. That
24 would make you someone who probably could not be a juror
25 here and would have to be excused for cause.

26 Again, I'm not trying to stop Mr. Sanders from
27 the inquiry that he's making, but I will tell you this:
28 Without mentioning the name of any case, wasn't long

1 ago, Mr. Sanders I don't know if you were on that case
2 or not. It was a case that was a murder trial, and I
3 gave a long story to the -- one juror about how I don't
4 like these pictures, never liked these pictures. When I
5 was an attorney 20 years ago, I had occasion to have to
6 look at these photographs. I could always do it. I
7 didn't have a problem doing it at all. It was my job to
8 look at these photographs. I just would never look at
9 these photographs if it weren't my job. I'm squeamish.

10 I'd be in my office sometimes, and I'd have a
11 big stack of photographs from a homicide scene followed
12 by photographs from an autopsy, and they were
13 disturbing. Again, I had no problem looking at them
14 because it was my job. People in my office would come
15 in, plop themselves down, grab the photographs and start
16 going through these things to entertain themselves, so
17 everybody's different.

18 After I got through explaining that to one
19 juror, she said she would -- she would try. I told her
20 she has to do more than try. She has to tell me she
21 can, and she finally said, okay, I can. The prosecutor
22 made the opening statement in that case. At the end of
23 the opening statement, we took a break. At some point
24 my bailiff came to me and said Juror Number 7 said she's
25 got to get out of here. I had to release that juror.

26 Fortunately, as you'll see and you've heard
27 people mention alternates, we will pick alternate
28 jurors. If somebody has to be excused, we'll have an

1 alternate juror step into his or her shoes, but to lose
2 a juror and have to replace somebody within the first
3 15 minutes of a trial is probably bad. I'm not trying
4 to talk anybody into trying to be brave or heroic or
5 anything when it comes to looking at these photographs.

6 With all due respect, the question is not would
7 it make you uncomfortable because there's nowhere along
8 the line that says that a juror has to feel comfortable
9 during the course of a trial that involves events that
10 are by their nature going to make you feel
11 uncomfortable.

12 I've talked about murder. We don't want people
13 that feel neutral about murder. We don't want people to
14 feel comfortable about murder. That's not the issue.
15 The issue is whether or not it's going to affect your
16 ability to be a fair and impartial juror.

17 With that, Mr. Sanders, you may proceed.

18 MR. SANDERS: Did you want her to repeat that
19 answer or can we go forward?

20 THE COURT: You can go forward.

21 MS. CATHERINE ANDERSON

22 BY MR. SANDERS:

23 Q Okay. Ms. Anderson, the question then is do
24 you believe or do you think that there's a chance that
25 your uncomfortableness would rise to a level that it
26 would make it difficult for you to be objective?

27 A Yes.

28

1 MS. DEBRA MC KENZIE

2 BY MR. SANDERS:

3 Q All right. Ms. McKenzie, I had a couple of
4 other questions for you.

5 A Yes, sir.

6 Q I believe that you said you have been the
7 victim of a number of burglaries?

8 A Yes.

9 Q In any of those, did you have to go to court
10 to --

11 A Yes.

12 Q -- testify?

13 A I was supposed to, but they got it resolved
14 before I was even in the courtroom, so I got my property
15 back, and the man was convicted.

16 Q Okay. Same question that I asked Ms. Anderson
17 and Ms. Tierney, was there anything about the way that
18 you were treated or that your case was handled that made
19 you feel --

20 A No.

21 Q -- either good -- very good feelings or very
22 bad feelings about the criminal justice system?

23 A It was handled very professionally.

24 Q Okay.

25 A So I have no feeling one way or the other.

26 MR. CAMERON BEAN

27 BY MR. SANDERS:

28 Q Mr. Bean, you said you had your vehicle stolen?

1 A I have, yes.

2 Q Did you have to go to court and testify?

3 A No. They finally found it in the river bottom,
4 stripped.

5 Q Was anyone prosecuted for that?

6 A No, never.

7 018XXXXXXXXXXXXXX

8 BY MR. SANDERS:

9 Q Okay. 018XXXXXXXX, what is the extent of your
10 socializing with the friends that you have in law
11 enforcement?

12 A Mainly acquaintances.

13 THE COURT: Got to speak up.

14 THE PROSPECTIVE JUROR: Acquaintances.

15 BY MR. SANDERS:

16 Q Okay.

17 A And --

18 Q So these are people you know, but it's not
19 people that you have over for dinner?

20 A No.

21 Q In the same bridge club or play golf?

22 A Um-hmm.

23 MR. SANDERS: Okay. This case is going to
24 involve discussions about DNA. Are there any of you
25 that have any specialized training in the science of
26 DNA? How about --

27 THE PROSPECTIVE JUROR: Not specialized, but
28 I'm a student right now, part-time student. We're

1 learning about DNA.

2 MR. SANDERS: Is that at the local college?

3 THE PROSPECTIVE JUROR: No, online. I'm
4 taking online courses.

5 MR. SANDERS: Is that a criminalistics
6 course?

7 THE PROSPECTIVE JUROR: Yeah.

8 MR. SANDERS: Have you gotten into that
9 course very far?

10 THE PROSPECTIVE JUROR: Yeah, I'm almost
11 done.

12 MR. SANDERS: All right. You understand that
13 if you have above-average knowledge of this, that you
14 can't -- in other words, if someone comes in here and
15 gives DNA evidence and you're a part of the jury and
16 you go into the jury room, that you can't then testify
17 to the other members of the jury about what you might
18 know about DNA?

19 THE PROSPECTIVE JUROR: Right. I understand.

20 MR. SANDERS: All right. Anyone else have
21 any special knowledge about DNA, blood typing,
22 fingerprinting, anything like that?

23 (Whereupon the prospective jurors answered in the
24 negative.)

25 MR. SANDERS: I'm going to repeat one of the
26 questions that the judge asked yesterday. Did you all
27 understand that in the criminal justice system a
28 person that is accused of a crime has a constitutional

1 right not to testify? Any of you that have done any
2 research on this issue or maybe in a class that you
3 took in college and wrote a paper about it or debated
4 about it or anything like that? I don't see any
5 hands.

6 Any of you who have participated in a political
7 group or anything to try to amend or change that
8 particular law?

9 Any of you that disagree with that right that
10 thinks that a criminal defendant, person that's charged
11 with a crime, shouldn't have the right not to testify?

12 What is your feeling?

13 THE PROSPECTIVE JUROR: I feel they should
14 testify and hear what they have to say.

15 MR. SANDERS: We ought to make them do it?

16 THE PROSPECTIVE JUROR: Yes.

17 MS. KATHERINE BRADFIELD

18 BY MR. SANDERS:

19 Q Ms. Bradford (sic).

20 A I feel that they -- if they are defending
21 themselves, they should take the stand and defend
22 themselves.

23 Q You understand that the law is that the
24 prosecutor, the government's attorney, has the burden of
25 proof in cases like this; that they have to prove a case
26 beyond a reasonable doubt, and that there's no burden of
27 proof on the defendant? That's our criminal justice
28 system.