

1 MR. THOMAS: Okay. Anybody here going along  
2 those lines? Anybody here lived in Lucerne Valley or  
3 live in Lucerne Valley now? No.

4 All right. Thank you very much.

5 Thank you, your Honor.

6 THE COURT: Both sides pass for cause?

7 MR. THOMAS: We need to approach.

8 THE COURT: Come on up.

9 (Whereupon the following proceedings were held at the  
10 bench out of the hearing of the jury:)

11 THE COURT: Mr. Sanders, I'll start with you.

12 MR. SANDERS: Your Honor, we're just doing  
13 the first 12?

14 THE COURT: We can do all 18.

15 MR. SANDERS: Juror Number 2, Ms. Anderson.  
16 She said she did not believe she'd be able to follow  
17 the judge's instruction relative to the right not to  
18 testify.

19 THE COURT: Okay.

20 MR. SANDERS: And for a number of other  
21 reasons, and Ms. Bradfield, Number 12, I believe.

22 THE COURT: Anything else?

23 MR. SANDERS: Nope.

24 THE COURT: Mr. Thomas.

25 MR. THOMAS: I don't have anything, but I  
26 agree with Mr. Sanders on the challenge for cause for  
27 Jurors 2 and 14.

28

1 (Whereupon the following proceedings were held in open  
2 court in the presence of the jury:)

3 THE COURT: Ms. Anderson, Ms. Bradfield, same  
4 question for each of you, we're going to spend no  
5 additional time other than for me to make sure I have  
6 a final understanding of what your answer is.  
7 Yesterday I explained to all of the jurors, including  
8 yourselves, the importance of the constitutional  
9 protection that we have based upon the 5th Amendment  
10 of the United States Constitution to not be forced to  
11 give testimony against ourselves and the cases over  
12 the years have interpreted that to mean that it does  
13 not allow a jury to form any conclusions based upon  
14 the fact the defendant chooses to exercise his right  
15 to remain silent.

16 I stated it this way, and I'll try to state it  
17 the same way that the right to remain silent would be a  
18 hollow right if it allowed someone to infer guilt by  
19 that determination.

20 Do you each understand that, Ms. Anderson?

21 THE PROSPECTIVE JUROR: Yes.

22 THE COURT: Ms. Bradfield?

23 THE PROSPECTIVE JUROR: Yes.

24 THE COURT: So if you were a juror in this  
25 case, I would order you not to let it come into your  
26 deliberative process. I would tell you that if you  
27 were a juror in this case and you were back in the  
28 jury deliberation room and somebody happened to bring

1 up the fact that Mr. Yablonsky didn't testify,  
2 assuming he didn't, you'd have to turn to them and  
3 say, cannot talk about that. The judge told us not to  
4 talk about it. It's improper. That's what you'd have  
5 to do.

6 Frankly, I could care less about your personal  
7 feelings of curiosity. The point is, that's an  
8 important constitutional right at stake.

9 Ms. Anderson, is it your position that you  
10 could not follow the law and give the defendant the  
11 protection that I've ordered you to give him if you were  
12 a juror in this case?

13 THE PROSPECTIVE JUROR: No.

14 THE COURT: Say again.

15 THE PROSPECTIVE JUROR: No.

16 THE COURT: Your position is not that?

17 THE PROSPECTIVE JUROR: No, I would respect  
18 what you ask.

19 THE COURT: Okay. You could follow the law  
20 as I give it to you?

21 THE PROSPECTIVE JUROR: Yes.

22 THE COURT: Ms. Bradfield, would you put your  
23 personal curiosity above the constitutional rights of  
24 a defendant accused of a crime?

25 THE PROSPECTIVE JUROR: Say that again.

26 THE COURT: Would you put your personal  
27 curiosity above the rights of a defendant who's  
28 accused of a crime?

1 THE PROSPECTIVE JUROR: No.

2 THE COURT: So if I ordered you to not  
3 consider that issue, could you do so?

4 THE PROSPECTIVE JUROR: Yes.

5 THE COURT: Okay. Thank you very much.  
6 Other than that, counsel, do you pass for cause, each  
7 side?

8 MR. SANDERS: Yes, your Honor.

9 MR. THOMAS: Yes, your Honor.

10 THE COURT: We're going to use peremptory  
11 challenges now. The Court has determined based upon  
12 the questions that all -- that everyone has been asked  
13 that each of you is qualified to sit as a juror, but  
14 the attorneys have 20 peremptory challenges each.  
15 They could choose to exercise their challenges for  
16 whatever reason that they want to other than an  
17 improper discriminatory use of those challenges.  
18 That's not allowed, and the attorneys wouldn't try to  
19 do it. I mentioned that yesterday.

20 If a person's trying to exclude some people  
21 based upon their gender or exclude people based upon  
22 their ethnicity or something like that, that would be an  
23 improper exercise of peremptory challenges.

24 The People go first, and there's going to be  
25 challenges only to the 12 people in the back two rows,  
26 and you'll see why I refer to this as the musical chairs  
27 portion of the trial. Now, it's kind of late in the  
28 morning. I would like everyone to know now if they are

1 excused. You should not feel bad because one of the  
2 attorneys or the other has made a determination that  
3 you're not going to be a valuable juror for their side  
4 of the case. That's really what it comes down to. I  
5 don't want you to take it personally. I also don't want  
6 you to waste the Court's time slapping high fives as you  
7 leave the courtroom.

8 Mr. Thomas, the peremptory challenge is with  
9 the People.

10 MR. THOMAS: People would ask the Court to  
11 thank and excuse juror in Seat Number 9, Ms. McKenzie.

12 THE COURT: Ms. McKenzie, thank you for being  
13 with us. You're excused. Would you please take that  
14 seat 018XXXXXXXX?

15 Defense.

16 MR. SANDERS: Pardon, your Honor?

17 THE COURT: Defense.

18 MR. SANDERS: You said defense?

19 THE COURT: Yes.

20 MR. SANDERS: Okay. The defense would thank  
21 and excuse juror in Seat Number 3, Ms. Austin.

22 THE COURT: Ms. Austin, thank you for being  
23 with us. You're excused. Ms. Bradfield, you want to  
24 start for that seat?

25 Mr. Thomas.

26 MR. THOMAS: People would ask the Court to  
27 thank and excuse the juror in Seat Number 12,  
28 Ms. Whittaker.

1 THE COURT: Ms. Whittaker, thank you for  
2 being with us. You are excused. Would you take that  
3 seat please, 025XXXXXXXXXX?

4 Mr. Sanders.

5 MR. SANDERS: The defense would thank and  
6 excuse Juror Number 10, Mr. Bean.

7 THE COURT: Mr. Bean, thank you for being  
8 with us, and you are excused. Will you take that seat  
9 please, Ms. Tierney?

10 Prosecution.

11 MR. THOMAS: People would ask the Court to  
12 thank and excuse juror in Seat Number 5,  
13 Mr. Greenwood.

14 THE COURT: Mr. Greenwood, thank you for  
15 being here. You're excused. Will you take that seat  
16 please, Ms. Cervantes?

17 Mr. Sanders.

18 MR. SANDERS: The defense would thank and  
19 excuse Juror Number 3, Ms. Bradfield.

20 THE COURT: Ms. Bradfield, thank you for  
21 being with us. You're excused. Would you take that  
22 seat please, Ms. Allen?

23 Mr. Thomas.

24 MR. THOMAS: If I can have just a moment,  
25 your Honor?

26 THE COURT: Please.

27 MR. THOMAS: People would accept the jury.

28 THE COURT: Mr. Sanders.

1 MR. SANDERS: The defense would thank and  
2 excuse Juror Number 4, Ms. Anderson.

3 THE COURT: Ms. Anderson, thank you for being  
4 with us. You're excused.

5 Now we need to call seven names.

6 THE CLERK: Juror Number 7, Joann Banbury;  
7 Juror Number 40, 040XXXXX; Juror Number 36, Ferrill  
8 Jordan; Juror Number 10, 010XXXXXXXXX; Juror Number 69,  
9 Anne Vaughan; Juror Number 57, Joel Richartz; Juror  
10 Number 24, Hue Fortson.

11 THE COURT: Hello. In the back two rows, I  
12 have 11 folks that I'm not talking to, not because I  
13 don't like you. We've talked to you enough. You  
14 might think too. We already have done all the  
15 examination of you that we're going to do. Even  
16 though I'm looking in your direction, I'm not talking  
17 to you. Mr. Sanders is not talking to you, and  
18 Mr. Thomas is not talking to you. So I'm speaking  
19 only to Ms. Banbury and those of you who are in the  
20 front row. If you think I'm talking to you, and  
21 you're not Ms. Banbury or somebody in the front row,  
22 I'm not. Don't volunteer anything, don't shake your  
23 head yes to agree with something, shake your head no  
24 to disagree.

25 If, however, something asked by one of the  
26 attorneys or asked by me makes you remember something  
27 that you wish you would have told us before, just raise  
28 your hand. We'll get back to you and give you an

1 opportunity to amplify anything you've told us.

2 Other than that, everybody bring their  
3 questionnaires with them? Ms. Banbury, those of you in  
4 the front row, did you bring your questionnaires?

5 MR. JOEL RICHARTZ

6 BY THE COURT:

7 Q Mr. Richartz, yesterday you talked to me about  
8 issues regarding you're a teacher and getting your son  
9 to school.

10 A Correct.

11 Q Did that work out okay?

12 A We're still working on it.

13 Q Okay. Perhaps I didn't give you enough  
14 opportunity to explain to me whether or not it was going  
15 to be a hardship. You said your wife has other  
16 employees --

17 A Well, correct.

18 Q -- in her business. So how does that work out?  
19 Is she going to be able to do that?

20 A She's in the process of talking to her other  
21 employees and trying to arrange her schedule. We own a  
22 video store in Wrightwood. The store's not open -- it's  
23 open eight hours a day from noon to 8:00. The early  
24 part -- but she is going back to school at Cal Poly  
25 Pomona, and she does that on Tuesdays and Thursdays from  
26 8:00 in the morning till 12:00 in the afternoon.

27 I do want to say that we are part owners of the  
28 company. There's another couple that helps us with the



1 company, but we are in the process, and she is in the  
2 process right now and at lunch today I will be calling  
3 her to see how that's coming along and we'll talk again  
4 tonight to see how that's coming along.

5 Q Is this a financial hardship on you or not?

6 A No, it's not a financial hardship. I mean, I  
7 am not --

8 Q Wait. Wait. Wait. Let me ask a question. Is  
9 this going to be a distraction for you if you're here?

10 A No.

11 Q It's not going to keep you from being a fair  
12 juror?

13 A No.

14 Q If things end up not being a hardship -- is  
15 this going to result in your son missing school?

16 A There might be a few days.

17 Q That's unacceptable. You're a teacher. You  
18 know that; right?

19 A That's true. What will end up happening is I  
20 do know all his teachers, and we will make sure that I'm  
21 in contact with his teachers to get what homework we  
22 need to do to get him caught up. I don't want to say  
23 it's a hardship financial or medical because it's not.

24 Q I understand that, but how do I put this? You  
25 have an obligation as you're well aware. Some of you  
26 don't know this. I'll mention there's something called  
27 a SARB board, School Attendance Review Board. I don't  
28 know if any of you have heard of it before. I don't

1 think I'd heard of it before I had to hear people that  
2 were given citations. It's the law. If you have a  
3 student, you've got to have that kid in school or I  
4 guess if you want to do some kind of approved home-study  
5 program that's allowed. Other than that, you have to  
6 have your child in school every day, and I don't know if  
7 that changes when you graduate from high school or when  
8 you turn 18 or what.

9 How old's your son?

10 A 15 years old.

11 Q Either way he hasn't graduated, and he hasn't  
12 reached 18. I'm sure the law requires that -- you to  
13 have him in school unless he has an excused absence.

14 A Correct.

15 Q Well, I'm going to tell you, I enumerated  
16 various things that were hardships that I was concerned  
17 about. How about this one, I don't think I should make  
18 an order that causes you to break the law. So if you're  
19 not able to tell me that your son's going to be able to  
20 get to school every day as the law requires, I'm not  
21 going to be able to have you here.

22 A That is your decision.

23 Q No. Let me put that in the form of a question.  
24 Are you able to tell me that your son is not going to  
25 miss school if you are here?

26 A I am not going to be able to tell you a hundred  
27 percent positive that my son might miss occasional days.  
28 I cannot at this point be a hundred percent confident in

1 that statement.

2 Q Okay. And I guess that there's another way of  
3 putting that because he could be ill as well and stay  
4 home, all kinds of things could happen. You're saying  
5 you can't guarantee he's going to have transportation  
6 available?

7 A Correct.

8 THE COURT: Mr. Thomas and Mr. Sanders, it's  
9 my intention to excuse Mr. Richartz for hardship  
10 unless you want to keep him around and just kick him  
11 on your own.

12 What do you want to do?

13 MR. SANDERS: I'll submit on whatever the  
14 Court wants to do.

15 MR. THOMAS: I'll do the same.

16 THE COURT: Mr. Richartz, thanks for being  
17 with us. I'm going to excuse you. It sounds like I  
18 should not permit the situation to occur that causes  
19 you to be in violation of a law, so the Court -- I  
20 don't know which one trumps which. There's no reason  
21 to have a conflict here. Thank you. You're excused.

22 Call another name for that seat please.

23 THE CLERK: Juror Number 58, Angela Roo.

24 THE COURT: Mr. Thomas said the reason why he  
25 took so long in his questioning was because the rest  
26 of it was going to go quickly. I agree with that. I  
27 spent a long time yesterday. You've heard -- by the  
28 way, I'm speaking to, again, now Ms. Roo because she's

1 in the front row and each of you. You've heard a lot  
2 of questions. You've heard responses. You've heard  
3 many people being excused. We're going to jump to the  
4 \$64 question before I have you go through the  
5 questionnaire individually.

6 As to Ms. Banbury and those of you in the front  
7 row, look at Question 14. Is there any reason why you  
8 feel you should not sit as a juror in this case?  
9 Ms. Banbury and those of you in the front row, raise  
10 your hands if that applies to you. Seeing no hands.  
11 Good.

12 We're going to remember that the way we proceed  
13 is you answer those questions by telling me only what  
14 yes answers you have to Questions 4 through 14, if any.

15 MS. JOANN BANBURY

16 BY THE COURT:

17 Q Let's start with you, Ms. Banbury.

18 A Yes to 5, 7 and 12.

19 Q Well, I get to hear 1, 2 and 3.

20 A I thought you said -- sorry.

21 Q I'm sorry.

22 A I'm a receiver at Costco. My husband is a  
23 concrete finisher, and I've never served before.

24 Q Okay. And then give me your yes answers?

25 A Yes, I saw the article in the paper when it  
26 first came out.

27 Q How long ago was that? Back in 1985?

28 A No, not the original one, but recently. It

1 goes to -- like I did see that postcard and all that and  
2 seeing that -- that the defendant -- he did feel that  
3 he's being shafted is what I got out of the picture  
4 because of the way it was done.

5 Q Okay. All right. So let's talk about those  
6 things, and, frankly, I had no idea Mr. Sanders was  
7 going to pull out those pictures. I might have done  
8 something to have stopped it rather than showing the  
9 pictures, but I would have allowed him to ask the  
10 question, did you see that and will that affect you?

11 So you've seen not only the flyers that -- what  
12 do they call them? Slate mailers or political ads,  
13 flyers, whatever they are. I'm not going to suggest  
14 anything about my political beliefs but those trash cans  
15 at the post office are there for some reason.

16 Is that going to affect how you view the  
17 evidence in this case, Ms. Banbury?

18 A Well, of course I'm going to try to be fair.

19 Q Yeah. Everybody is going to try to be fair.  
20 Some of us can be. Some of us can't be. Not a bad  
21 thing if you are -- if you already have your mind made.  
22 I'm going to say to be a juror and be fair, you're going  
23 to have to be able to say without any reservation that  
24 you understand that your verdict has to be based on what  
25 happens in this courtroom, not based upon what somebody  
26 puts on a political flyer and not based on something  
27 that you read in the newspaper.

28 A Well, I'm going to listen to all of the

1 evidence and try to make my decision that way, but I've  
2 had -- you know, I grew up with a lot of my parents'  
3 friends that were police officers and stuff. I feel if  
4 he's here, I am leaning towards the fact that he's  
5 probably --

6 Q Got to keep focusing on what I'm asking you  
7 because that's a different answer to a different  
8 question. That's -- I'm asking if you can put aside at  
9 this point what you might have seen in the newspaper and  
10 seen in any political flyer or are you going to base  
11 your verdict on those things?

12 A I can put them aside.

13 Q Now let's move on. What was your other --  
14 we're going to talk about what you mentioned about your  
15 family, friends, and police officers, and things.

16 Was that your answer to Number 8?

17 A 7 and 12 was my other two.

18 Q So close friends or members of any law  
19 enforcement agency. Yesterday I spent quite a bit of  
20 time with Mr. Bean on this subject. I hope you were  
21 paying attention. Mr. Bean said something about his  
22 belief that -- he said, I hope we don't spend a lot of  
23 taxpayer money on attempting to convict someone that is  
24 just randomly selected off the street; right?

25 We probably all share that feeling and think  
26 Mr. Sanders might have even said that he concurred with  
27 that. I said to Mr. Bean -- I used that as an  
28 opportunity to explain that it's okay as long as you

1 understand that when you have to decide this case, you  
2 don't base your decision on the fact that someone's been  
3 arrested, accused of a crime, or brought to trial  
4 because of the fact that they might or you might be  
5 leaning one way or the other should not come into your  
6 deliberations at the end. Mr. Thomas has the  
7 responsibility of proving Mr. Yablonsky guilty beyond a  
8 reasonable doubt.

9 Do you agree with that?

10 A Yes.

11 Q Do you think that the fact that you've known  
12 law enforcement officers or your family's known law  
13 enforcement officers should lessen Mr. Thomas's burden?

14 A No, it shouldn't lessen it. It still needs to  
15 be proved one way or another if he's guilty or innocent.

16 Q Let me say this, again, I'm not trying to  
17 quibble with you. I'm saying this for everyone's  
18 benefit. You said it needs to be proved one way or the  
19 other. No, it doesn't. It only needs to be proved one  
20 way. The presumption is that he's innocent right now.  
21 Have it however you like. You can even say he's proved  
22 innocent right now. The point is Mr. Yablonsky does not  
23 have to prove to you that he's not guilty or that he's  
24 innocent. The only one with a burden of proof in this  
25 case is Mr. Thomas. That's the People.

26 If he doesn't meet that burden, you don't have  
27 to have proof that Mr. Yablonsky's innocent because he's  
28 presumed innocent.

1 Does that make sense to you?

2 A Yes.

3 Q Could you follow that law?

4 A Yes.

5 Q Okay. What about Number 12?

6 A That had to do with my father. For 20 years  
7 that I was growing up, he had a liquor store and he was  
8 robbed a number of times at gun point. A few of those  
9 times I was there too at the store when it happened. So  
10 I was exposed to all that. So that's why I was  
11 mentioning it.

12 Q Would that affect how you view the evidence in  
13 this case?

14 A No, I don't think it will.

15 THE COURT: Okay. Thank you.

16 040XXXXXXXXX

17 BY THE COURT:

18 Q 040XXXXX.

19 A Yes. I'm a student at Victor Valley College.

20 Q Are you missing classes by being here?

21 A No, it's winter break.

22 Q Okay.

23 A I'm single, and I haven't served on any jury  
24 and no to 4 through 14.

25 Q What are you studying?

26 A Undecided yet.

27 Q Okay. What's your favorite class?

28 A Computer repair.



1 THE COURT: Okay. Thank you.

2 MR. FERRILL JORDAN

3 BY THE COURT:

4 Q Mr. Jordan.

5 A Yes, sir. I'm in between jobs right now. When  
6 I was working, I was working in water treatment. My  
7 wife is a caregiver. She takes care of old people that  
8 are sick in their homes, and I have served on a jury  
9 before.

10 I am acquainted with people in the legal  
11 profession.

12 Q Hold on. On the jury, how many times?

13 A Two times.

14 Q Criminal?

15 A Civil, negligence, both.

16 Q Both of them were civil cases?

17 A Yes.

18 Q I assume you reached a verdict in each case?

19 A Yes.

20 Q Go ahead.

21 A When Attorney Sanders pulled out that flyer, it  
22 did jog my memory that I had read something in the paper  
23 about a criminal accused being featured in a political  
24 flyer, but I don't really know much about it passed  
25 that. I am acquainted with some people in the legal  
26 profession, attorneys.

27 I have -- I have been charged with a criminal  
28 offense, and I have been the victim of a crime.

1 Q What offense were you charged with and when?

2 A Spanking my child when he was little.

3 Q How long ago was that?

4 A 1997.

5 Q How was it resolved?

6 A I pled guilty to a misdemeanor charge, time  
7 served, 300 bucks.

8 Q Okay. And you were the victim of a crime?

9 A Yeah. When I moved to Victorville, I had  
10 somebody break in the house and steal everything when I  
11 was moving in.

12 Q Anybody get caught?

13 A Yeah. Oh, yeah. Yeah. It was a big deal.  
14 The police caught a big burglary ring. I got a lot of  
15 my property back. They did a pretty good job.

16 Q 1993, where were you arrested?

17 A In '97? Here.

18 Q Here.

19 A Victorville.

20 Q Okay. How do you feel about that?

21 A You know, at the time I was pretty angry about  
22 it because I remember growing up it was very -- a very  
23 different attitude. The police would hold you while  
24 your parents hit you, and I was upset about that, but  
25 with a little time, you know, it worked out pretty well.  
26 I ended up on my own taking parenting training. It was  
27 a pretty positive experience when it was all said and  
28 done.

1 Q You're not going to hold that against  
2 anybody -- it's not going to make you more sympathetic  
3 to one side or the other in this case?

4 A No. That was my deal.

5 THE COURT: Thank you.

6 010XXXXXXXXXXXXXX

7 BY THE COURT:

8 Q 010XXXXX.

9 A I'm employed by the FAA, Federal Aviation  
10 Administration. My wife is -- basically, she stays at  
11 home. She manages the property and the family concerns.  
12 I've been on a jury four times, one civil, three  
13 criminal. In each case a verdict was reached.

14 I have yeses to Item Number 6 and Item  
15 Number 12. In the case of Item 6, I've got a casual  
16 friend that is a deputy for San Bernardino County.  
17 Also, in my work, I have regular contact with a number  
18 of different law enforcement agencies.

19 Number 12, my daughter, who's an adult now, has  
20 her own family, was the victim of a property crime. Her  
21 vehicle was stolen from the front of their house. It  
22 was recovered the following day, but the laptop that she  
23 had in the vehicle was stolen, and that went unresolved  
24 although it was reported. Nobody was ever found that  
25 committed the crime.

26 Q Those things aren't going to affect how you  
27 view the evidence in this case?

28 A No.

