

1 THE COURT: My visiting court assistant,
2 Ms. Andrade, is here today because Vickie, who you saw
3 yesterday, is out with her husband who's getting an
4 operation. She was saying we're hoping it can be done
5 the easy way because if they do it the hard way, they
6 have to go in through the, and at that point I said,
7 stop, and let me out of here. Again, I get queasy.

8 Is it the case for you, Ms. Grace, that if you
9 were a juror, you really think you'd become physically
10 ill?

11 THE PROSPECTIVE JUROR: Yes, because I --

12 THE COURT: Counsel, I think that's a medical
13 hardship. I'm inclined to excuse her right out.

14 Anybody have a problem with that?

15 MR. SANDERS: No, sir.

16 MR. THOMAS: People don't have a problem.

17 THE COURT: Ms. Grace, thank you for being
18 here. You're excused.

19 THE PROSPECTIVE JUROR: Thank you.

20 THE COURT: Call another name for that seat.

21 THE CLERK: Juror Number 13, David Buell.

22 THE COURT: Is it Buell or Buell?

23 THE PROSPECTIVE JUROR: Buell just like the
24 motorcycle.

25 THE COURT: That's what I was going to say.
26 I guess you don't know anything about Harley Davidsons
27 and Buells and things like that.

28 THE CLERK: I'm sorry, I don't.

1 THE COURT: Mr. Buell, what about Number 14?
2 Is there any reason why you feel you should not sit as
3 a juror in this case?

4 THE PROSPECTIVE JUROR: No, sir. I have a
5 brother doing time up state, half brother for same
6 circumstances but --

7 THE COURT: But that's fine -- this is --
8 what I'm looking for is you telling me why you cannot
9 be fair.

10 THE PROSPECTIVE JUROR: I can be fair.

11 THE COURT: All right. So now, as for
12 067XXXXXXXXX and all of you in the front row, did you
13 all hear the general legal principles we spoke about
14 so far?

15 (Whereupon the prospective jurors nodded in the
16 affirmative.)

17 THE COURT: You understand that Mr. -- as he
18 sits there right now, Mr. Yablonsky is innocent?

19 (Whereupon the prospective jurors nodded in the
20 affirmative.)

21 THE COURT: Okay. You understand that
22 Mr. Yablonsky, because he's presumed innocent, doesn't
23 have to prove to you that he's not guilty? It's just
24 a presumption.

25 You understand that Mr. Thomas is the one who
26 has to prove his case beyond a reasonable doubt?

27 (Whereupon the prospective jurors nodded in the
28 affirmative.)

1 THE COURT: You understand that beyond a
2 reasonable doubt doesn't mean beyond any possible
3 doubt, but it means something that I'm going to define
4 for you, and you're going to use your common sense to
5 arrive at the conclusion? Each one of you agree with
6 that?

7 (Whereupon the prospective jurors answered in the
8 affirmative.)

9 THE COURT: Each one of you agree you'll be
10 able to decide this case based not on predetermined
11 notions or agenda but just based on the law that I
12 give you, the facts as you determine them from the
13 evidence, and the arguments of the attorneys? Can you
14 all do that?

15 (Whereupon the prospective jurors nodded in the
16 affirmative.)

17 THE COURT: Did anyone hear or read anything
18 about -- I guess I'll get to that on down the line.

19 067XXXXXXXXXXXXXXXXX

20 BY THE COURT:

21 Q 067XXXXXXXX, will you answer these questions
22 for us please?

23 A These questions? Sure. Yes. I'm retired
24 navy, separated for years. She was a retail clerk,
25 never been on a jury before.

26 Question Number 12, I entered yes to. About 30
27 years ago, I was robbed when I worked in retail.

28 Q Okay. That wouldn't affect how you view the

1 evidence in this case?

2 A No.

3 Q You -- I guess, everybody ought to add a mental
4 note, when I ask about have you read or heard anything
5 about this case in the newspapers, I'm also going to
6 want to know did anybody -- please tell me if you saw
7 this political flyer or mailer that has been referred to
8 and shown by Mr. Sanders.

9 You didn't see that; did you, 067XXXXXXXXX?

10 A No.

11 THE COURT: Thank you.

12 072XXXXXXXXXXXXXX

13 BY THE COURT:

14 Q 072XXXXXX.

15 A Yes. I'm a student.

16 Q Where?

17 A Victor Valley College.

18 Q So you're on break and this is not going to be
19 a problem for you?

20 A Depends how long it lasts.

21 Q When does school start?

22 A Mid February.

23 Q Ain't going to last that long.

24 A Never know.

25 Q That's a good point. You never do know because
26 Murphy's Law applies in my court like it applies
27 everywhere else, and any number of things could happen
28 to cause an exceptional delay, but it's not going to go

1 passed either the 4th of February or at the very outside
2 February the 10th. If it did, oh, well, we have
3 alternates. If you were on this jury, I wouldn't allow
4 you to miss classes. So go ahead.

5 A Okay. Well, I'm not married. This is the
6 first time I've been on a jury.

7 Q Okay.

8 A That's about it.

9 Q No yes answers?

10 A No.

11 Q Thank you. You didn't see the political flyer?

12 A No.

13 065XXXXXXXXXXXX

14 BY THE COURT:

15 Q 065XXXXX.

16 A I'm a maintenance worker. My wife is a retired
17 retail worker. I've never been on a jury before, and I
18 answered yes to 7 and 8.

19 I have -- my daughter works in the court system
20 as a clerk, and my son-in-law's a peace officer.

21 Q Which court system?

22 A Arizona.

23 Q Okay. And where is your son?

24 A Same place, Arizona, and I know a lot of other
25 peace officers too.

26 Q 059XXXXX, you said 7 and 8. Did you mean 6 and
27 7?

28 A Yes, 6 and 7.

1 Q Thank you. Is that it?

2 A That's it.

3 Q How long does it take to grow a beard that
4 long?

5 A I've had it forever.

6 MR. ESITIMOA OTUAFI

7 BY THE COURT:

8 Q Mr. Otuafi.

9 A Yes.

10 Q Can you say your name for me too?

11 A Otuafi.

12 Q Thank you.

13 A Correctional officer with California Department
14 of Corrections.

15 Q Where do you work? Chino?

16 A Norco.

17 Q Okay. That's the --

18 A Rehab center.

19 Q -- California Rehab Center's drug treatment
20 location; is that right?

21 A I don't know about the drug treatment part, but
22 everything else, yes.

23 Q Is it really true that that was the original
24 Hotel California?

25 A Hotel California, yep.

26 Q Referred to by the Eagles in the song?

27 A He served time there. That's where he came up
28 with that song. Never served on a jury before. My

1 wife's a dispatcher for California -- CHP and yes on 6
2 and 7 and no on the flyer.

3 Q Okay. So 6 and 7 only. That means that you
4 work with a lot of people in law enforcement?

5 A Father-in-law retired federal, cousin that's a
6 San Bernardino County.

7 Q DA?

8 A No, sheriff.

9 Q Sheriff.

10 A Yeah.

11 Q Okay. All right. So let's get to the bottom
12 line here. You work in law enforcement because you work
13 in the jails. You have friends that are involved in law
14 enforcement. Suppose you were a juror in this case, and
15 you thought, gosh, Mr. Thomas is just a great guy, but
16 he didn't prove the case beyond a reasonable doubt.

17 Are you going to want to sort of lighten the
18 burden on him since you feel like you're on his side?

19 A No.

20 Q You can be a fair person? You're the kind of
21 person you would want to hear the case --

22 A Yes.

23 Q -- if you were on trial; is that right?

24 A Yes.

25 Q Do you ever have to get involved with -- I
26 asked this of Ms. Austin earlier. You might have heard
27 me ask. Do you have to get involved with determining
28 who's in the right when there's a beef between another,

1 let's say, another correctional peace officer and an
2 inmate?

3 A I could, but I've never been in that situation.

4 Q You understand how it's possible that someone
5 who's a law enforcement officer might not be telling the
6 truth in every instance?

7 A Yes.

8 Q You understand just because somebody has a
9 prior conviction, that doesn't mean they're going to lie
10 in every situation; does it?

11 A Yes.

12 Q It does?

13 A Or --

14 Q You don't think that means they're going to lie
15 every time?

16 A No, no.

17 Q All right. Thank you.

18 MS. BARBARA HOLMWOOD

19 BY THE COURT:

20 Q Ms. Holmwood.

21 A Yes. I'm unemployed. I was a human resource
22 representative. My husband has his own lawn-care
23 business, and I was on a jury quite awhile ago, but we
24 did not reach a verdict. We didn't go to the end.

25 Q Does that mean you started deliberations?

26 A We didn't start deliberation and the district
27 attorney got sick and the trial was postponed or nothing
28 happened.

1 Q All right. Any yes answers?

2 A Yes. On 12, a cousin was raped quite a few
3 years ago.

4 Q Did you follow that case?

5 A No, it was in another state.

6 Q It's not going to affect how you view the
7 evidence in this case; right?

8 A No.

9 Q Anything else?

10 A Nope.

11 THE COURT: Thank you.

12 MR. DAVID BUELL

13 BY THE COURT:

14 Q Mr. Buell.

15 A Yes, sir. I'm retired marine presently working
16 at the marine corps logistics base in Barstow. My wife
17 is a homemaker and home-school teacher. I have not
18 served on a jury before.

19 As already stated, I guess it's Number 11.

20 Q Number 11, you have a brother.

21 A Brother in Montana.

22 Q Montana?

23 A Right.

24 Q And he was convicted of murder?

25 A Yes, sir.

26 Q Did you follow that case of his?

27 A No, I did not.

28 Q Did you form any opinion about how he was

1 treated by the legal system that would affect you here?

2 A No.

3 MR. CURTIS MILLER

4 BY THE COURT:

5 Q Mr. Miller.

6 A I'm a correctional officer, California
7 Department of Corrections. Wife is a homemaker. Never
8 been on a jury. Yes to 6, 7 and 11.

9 Obviously myself and friends. Father is
10 retired Department of Corrections. I got a
11 father-in-law who retired as a investigate -- detective
12 with the San Bernardino County Sheriff's, and I have a
13 cousin that's up north in Corcoran, I think.

14 Q What's he doing in Corcoran? Is he a prison
15 guard?

16 A No. That was the answer to Number 11. He's an
17 inmate.

18 Q For what?

19 A I don't even know what he's in for this time.
20 He's in and out every three years.

21 Q That's not going to affect how you view the
22 evidence in this case; right?

23 A No.

24 Q You heard me speak to Mr. Otuafi about his
25 attitudes. Are yours similar to his?

26 A Yeah.

27 Q Where do you work?

28 A Lancaster.

1 Q And so you -- you deal with sentenced inmates?

2 A Yes.

3 Q Do you have occasion that you have to
4 investigate events that involve some kind of a dispute
5 between an inmate and a fellow peace officer?

6 A Yes.

7 Q Think you can be fair and listen to both sides?

8 A Yes.

9 Q I didn't specifically ask this question of
10 anyone else. Since Ms. Grace volunteered it though,
11 I've told people so far you've heard me say that there
12 might be things that you have to look at in this case.
13 The evidence might be difficult.

14 Is everyone willing to do that?

15 (Whereupon the prospective jurors nodded in the
16 affirmative.)

17 THE COURT: I don't know what other general
18 questions that I failed to ask, but I'm sure the
19 attorneys will help me out.

20 Mr. Sanders.

21 MR. SANDERS: I'm going to pass, your Honor.
22 Thank you.

23 THE COURT: Mr. Thomas.

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

25 THE COURT: Here we go. Back to the musical
26 chairs portion of our program. I'm trying to think of
27 who used the last peremptory challenge.

28 MR. THOMAS: I did on Mr. Fortson.

1 THE COURT: Thank you. The peremptory
2 challenge then is with you, Mr. Sanders.

3 MR. SANDERS: We'll thank and excuse Juror
4 Number 7, Ms. Pineiro.

5 THE COURT: Thank you for being with us.
6 You're excused. Would you take that seat please,
7 072XXXXXX?

8 Mr. Thomas.

9 MR. THOMAS: The People would ask the Court
10 to thank and excuse juror in Seat Number 5,
11 Ms. Burger.

12 THE COURT: Ms. Burger, thank you for being
13 with us. You're excused. Will you take that seat,
14 059XXXXX?

15 Mr. Sanders.

16 MR. SANDERS: Your Honor, we're satisfied
17 with the jury the way it is.

18 THE COURT: Mr. Thomas.

19 MR. THOMAS: People accept the jury as it is.

20 THE COURT: Will the 12 people in the back
21 two rows stand and raise your right hands and be
22 sworn?

23 THE CLERK: Do you, and each of you,
24 understand and agree that you will well and truly try
25 the cause now pending before this Court and a true
26 verdict render according only to the evidence
27 presented to you and the instructions of the Court.
28 If so, answer, "I do."

1 (Whereupon the jurors answered in the affirmative.)

2 THE CLERK: Thank you. Please be seated.

3 THE COURT: Mr. Otuaifi and everyone, will you
4 please take a second to stand and move two seats to
5 your left?

6 Counsel, tell me how many alternates you think
7 we need.

8 MR. SANDERS: I don't think more than a
9 couple, but I'll submit to the Court.

10 MR. THOMAS: I suggest three.

11 THE COURT: Mr. Thomas, so giving me the
12 peace sign with an additional finger, which I guess is
13 a W or three. That's what I thought about before. We
14 have next week and the following week. That's the
15 time you think we're going to complete this case?

16 MR. THOMAS: We should be done by then.

17 MR. SANDERS: Yes, sir.

18 THE COURT: We're going to go with three
19 alternates. Ladies and gentlemen, you can imagine we
20 wouldn't want to start a long trip without a spare
21 tire. If you're driving a car, you got to have four
22 wheels when you leave, and you got to have four wheels
23 when you get back. This is a jury trial. It requires
24 12 people when we start and 12 people when we finish.
25 That means that when 067XXXXXXXXX wins the Megabucks
26 drawing on Wednesday night, \$390 million without
27 splitting it with anyone, and he says I'm not going to
28 go to work. I'm not going to go to that trial either,

1 then I need somebody to take his seat. Occasionally
2 other less fortunate circumstances happen to people.

3 My honest assessment is that people usually are
4 able to finish the trial when we start one. I told you
5 about one lady that couldn't handle the photographs.
6 That's why I didn't spend much time talking to
7 Ms. Grace. So we're going to go with three alternates.

8 Are each of the four of you willing to serve as
9 alternates in this case?

10 (Whereupon the prospective jurors nodded in the
11 affirmative.)

12 THE COURT: Not hearing anybody disagree with
13 that.

14 You have three peremptory challenges because we
15 have three alternates. We start with the People. As
16 they sit there, we have Mr. Otuafi, Ms. Holmwood,
17 Mr. Buell and Mr. Miller.

18 As to those three alternates, do you care to
19 use a peremptory challenge, Mr. Thomas?

20 MR. THOMAS: People ask the Court to thank
21 and excuse Ms. Holmwood.

22 THE COURT: Thank you for being with us,
23 Ms. Holmwood.

24 THE PROSPECTIVE JUROR: Thank you.

25 THE COURT: Mr. Sanders.

26 MR. SANDERS: Your Honor, we'd thank and
27 excuse Mr. Otuafi.

28 THE COURT: Mr. Otuafi, thank you. You're

1 excused. Mr. Buell and Mr. Miller, will you move down
2 two seats? Why don't you call two names, please.

3 THE CLERK: Juror Number 32, Barbara Hayes;
4 Juror Number 62, Luke Sells.

5 THE COURT: Hello, Ms. Hayes, Mr. Sells.
6 You're the only two we're talking to.

7 What about Question 14?

8 (Whereupon the prospective jurors answered in the
9 negative.)

10 MS. BARBARA HAYES

11 BY THE COURT:

12 Q Okay. Would you answer those questions for us
13 then, Ms. Hayes?

14 A Okay. The first one, I'm an office assistant,
15 and I work for the air district, and my husband is a
16 manager of a cabinet shop, and I've never served on a
17 jury.

18 Number 12, I was robbed at a -- 28 years ago
19 when I was working. That's it.

20 MR. LUKE SELLS

21 BY THE COURT:

22 Q Okay. Mr. Sells.

23 A I'm the owner of a distribution company for the
24 LA times up here in the high desert. My wife is a
25 homemaker, and I've never served on the jury.

26 Number 6, I have a cousin that is a sergeant
27 from the Long Beach Police Department.

28 Number 11, I have a nephew that was -- went to

1 trial for attempted murder.

2 Number 12, we had a car that was broken into.

3 Q So the nephew that went to trial, you mention
4 went to trial, was he acquitted or convicted?

5 A He was convicted.

6 Q Doing time?

7 A Yes.

8 Q Did you follow that case?

9 A No. It was on my wife's side, so we're not
10 real close.

11 Q That's not going to affect how you view the
12 evidence in this case?

13 A No.

14 THE COURT: You've both heard me talk about
15 all the important rights that each side has to
16 guarantee a free trial -- a fair trial.

17 Do you agree with those?

18 (Whereupon the prospective jurors nodded in the
19 affirmative.)

20 THE COURT: Do you understand that you have
21 to decide this case based only on the evidence that's
22 presented in this courtroom, the arguments of the
23 attorneys, and the law as I explain it?

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

26 THE COURT: You understand that you might
27 have to see photographs that are unpleasant or hear
28 about things that are not particularly pleasant? Does

1 that trouble anyone?

2 (Whereupon the prospective jurors answered in the
3 negative.)

4 THE COURT: Okay. You understand, as he sits
5 there, Mr. Yablonsky is presumed innocent until the
6 contrary is proven? He doesn't have anything to prove
7 to you, Ms. Hayes?

8 THE PROSPECTIVE JUROR: Yes.

9 THE COURT: Mr. Sells?

10 THE PROSPECTIVE JUROR: Yes.

11 MR. LUKE SELLS

12 BY THE COURT:

13 Q Mr. Sells, you own a company that's a
14 distribution company, so you're self employed?

15 A Correct.

16 Q Who's going to distribute those papers?

17 A People that work for me.

18 Q So it's not going to be a financial hardship
19 for you?

20 A No. I can just schedule different people to
21 cover the positions.

22 Q Did I say anything offensive about the
23 newspaper business yet?

24 A Not that I can recall. I usually am pretty
25 good at picking those things up.

26 Q I think I mentioned something to the effect of
27 just because something is in the newspaper doesn't mean
28 that you have to believe that it's true. That's all --

1 that's not -- that's not unfair; is it?

2 A No, not at all.

3 Q You didn't read anything about this case?

4 A No, I did not.

5 THE COURT: Ms. Hayes?

6 THE PROSPECTIVE JUROR: No.

7 THE COURT: Either of you see the flyer, the
8 political flyer that Mr. Sanders was holding up
9 earlier, Ms. Hayes?

10 THE PROSPECTIVE JUROR: No.

11 THE COURT: Mr. Sells?

12 THE PROSPECTIVE JUROR: No.

13 THE COURT: Mr. Sells, you did come back
14 about 15 minutes late.

15 THE PROSPECTIVE JUROR: I apologize.

16 THE COURT: That's all right. Is it going to
17 be a problem for you to be here on time?

18 THE PROSPECTIVE JUROR: No.

19 THE COURT: Okay. Mr. Sanders.

20 MR. SANDERS: Pass, your Honor. Thank you.

21 MR. THOMAS: People pass also.

22 THE COURT: As they sit there, we have
23 Mr. Buell, Mr. Miller, and Ms. Hayes as our three
24 alternates. Peremptory challenge is with you,
25 Mr. Thomas.

26 MR. THOMAS: People accept the three
27 alternates.

28 THE COURT: Mr. Sanders.

1 MR. SANDERS: I'm sorry. Where are we?

2 THE COURT: We have Mr. Buell, Mr. Miller and
3 Ms. Hayes. They're our three alternates.

4 MR. SANDERS: The People passed?

5 THE COURT: They did.

6 MR. SANDERS: Okay. Does the Court take them
7 in order?

8 THE COURT: No, I randomly select.

9 MR. SANDERS: We will thank and excuse,
10 Mr. Sells.

11 THE COURT: Mr. Sells, thank you for being
12 with us. You're excused.

13 Mr. Thomas, same three.

14 MR. THOMAS: People accept the three
15 alternates.

16 THE COURT: Mr. Sanders.

17 MR. SANDERS: Defense accepts the three
18 alternates, your Honor.

19 THE COURT: So you'll know, you exercised a
20 peremptory that you did not need to exercise. I don't
21 know what you thought or -- what you thought I was
22 answering, Mr. Sanders. What I assumed your question
23 was is during the trial if we lose one of our jurors,
24 do we take them in this order or do we randomly select
25 from the three.

26 MR. SANDERS: Right.

27 THE COURT: That was what I was answering.

28 MR. SANDERS: Right.

1 THE COURT: We put a name -- we put the three
2 names in a bin. We spin it around, and the clerk
3 reaches in and pulls out a number. That's the person
4 that we seat.

5 MR. SANDERS: Right.

6 THE COURT: Since we have our three
7 alternates being Mr. Buell, Mr. Miller, and Ms. Hayes,
8 if you would have passed peremptory challenge, we
9 would have excused Mr. Sells because he wasn't one of
10 the three.

11 MR. SANDERS: I thought that was the way it
12 would be, but I misunderstood what you were saying.

13 THE COURT: Okay. So...

14 MR. SANDERS: That's why I did that.

15 THE COURT: Do you want me to give you
16 another alternate?

17 MR. SANDERS: No, sir. We're fine.

18 THE COURT: Will the three alternates
19 please -- you waive any inconsistency in the selection
20 of alternates if there is any based upon what's just
21 happened, Mr. Thomas?

22 MR. THOMAS: Yes, your Honor.

23 THE COURT: Both sides stipulate to the
24 regular impanelment of our three alternates,
25 Ms. Sanders?

26 MR. SANDERS: Yes, sir.

27 THE COURT: Mr. Thomas?

28 MR. THOMAS: Yes, sir.