

1 VICTORVILLE, CALIFORNIA; JANUARY 19, 2011;
2 DEPARTMENT NO. V-2 HONORABLE JOHN M. TOMBERLIN, JUDGE
3 A.M. SESSION

4 APPEARANCES:

5 The Defendant with his counsel,
6 **DAVID SANDERS**, Deputy Public Defender;
7 **JOHN THOMAS**, Deputy District Attorney of
8 San Bernardino County representing the
9 state of California.

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

11 -oOo-

12 THE COURT: Back on the record in the case of
13 People of the State of California versus John Henry
14 Yablonsky. There are matters we did not complete.
15 There are matters that don't concern the jury. I
16 should indicate Mr. Yablonsky's present before the
17 Court. He's with his attorney, Dave Sanders.
18 John Thomas is here for the People.

19 We were discussing a motion by Mr. Sanders on
20 behalf of Mr. Yablonsky to allow admission of alleged
21 prior acts of a criminal sexual nature. We discussed
22 the circumstances of an alleged rape occurring in 1981.
23 We got to the point discussing a second alleged rape
24 occurring in 1996. At that time there was a phone call
25 or text that Mr. Sanders had to take care of something,
26 and we terminated our hearing.

27 MR. THOMAS: Then I also found a case that
28 I'd like the Court to review.

1 THE COURT: I will do that, and I
2 appreciate -- I do appreciate anybody getting me any
3 authority. I will read the authority that you provide
4 to me. What I'd like to do, for my own organizational
5 purposes, so I can keep the eggs in the proper basket,
6 is I'd like to hear about this 1996 rape.

7 MR. SANDERS: Your Honor --

8 THE COURT: You gave me the first description
9 of what happened with the 1981, so, Mr. Sanders, why
10 don't you tell me what you have to say about the 1996
11 alleged rape?

12 MR. SANDERS: Yes, your Honor. This was a
13 situation -- basically a domestic situation. My
14 client was living with a woman, and they got into a
15 situation where my client decided it would be better
16 to not live with her any longer. It was a situation
17 where there was all kinds of problems developing in
18 the relationship and at one point the young lady
19 invited my client to come over. My client came over,
20 they had sex, and my client began to move out.

21 Then he was approached by police officers who
22 said that she had indicated she had been raped rather
23 than having consensual sex, and the -- a short time
24 after that, the district attorney in Los Angeles county
25 determined not to file charges, not to proceed with the
26 case, and my client, a short time later, was given a
27 restraining order that that young lady could not
28 continue to bother him and harass him.

1 My point is that not only was it not a -- not a
2 rape, but even if it had been, even if it was as the
3 young lady said, there's no similarities. There's no
4 connections that could be drawn to any evidence in the
5 instant case. There's no -- there's no similar
6 circumstances. There's no similar approach or --
7 there's no evidence that any of the things that the lady
8 in Long Beach alleged were at all similar to something
9 that happened in 1985 even if what she said was true.

10 You know how district attorneys are. They're
11 pretty dogged about these things. In that case they
12 looked at it and said, no, we're not going to file
13 charges. In fact, we're going to give Mr. Yablonsky a
14 restraining order.

15 THE COURT: Well, the DA didn't decide to
16 give Mr. Yablonsky a restraining order.

17 MR. SANDERS: Pardon.

18 THE COURT: The DA didn't decide to give
19 Mr. Yablonsky a restraining order.

20 MR. SANDERS: No.

21 THE COURT: I'm sure you did not mean that.

22 MR. SANDERS: But the investigating officer
23 released him that same day.

24 THE COURT: Okay. All right.

25 MR. SANDERS: So my argument is that it's --
26 under 352, the prejudice of it overwhelms any
27 probative value.

28 THE COURT: Mr. Thomas.

1 MR. THOMAS: Again, the victim gives an
2 entirely different story than Mr. Yablonsky in this
3 case. She said that she did know Mr. Yablonsky, and
4 that she was at home just after midnight --

5 THE COURT: I'm sorry. She did say she did
6 know --

7 MR. THOMAS: Mr. Yablonsky.

8 THE COURT: Okay.

9 MR. THOMAS: She said that she was at home
10 just after midnight on the night that this occurred,
11 and Mr. Yablonsky entered through a bedroom door,
12 which was closed but unlocked, and when he entered the
13 residence, she asked him, what are you doing here?
14 What are you doing here? And Yablonsky said, you will
15 have to do what I want. I'm addicted to you. I'm
16 fucked up. I've gone too far to turn back. She asked
17 what he meant by fucked up. He didn't answer, and
18 then afterwards he told her, I will kill you if you
19 don't do what I want.

20 Then at that point he had a Taser that belonged
21 to the victim and threatened her with the Taser. Then
22 at that point there was a rape that occurred and her
23 underwear were ripped and other things happened, and she
24 reported it to the police afterwards.

25 THE COURT: Other than talking about cases
26 that -- any authority someone may have, have I been
27 given the factual circumstances that I need to plug in
28 the law? Do you think I've heard everything about the

1 facts?

2 MR. SANDERS: If I didn't mention it, your
3 Honor, my client lived at that residence. He actually
4 lived there.

5 THE COURT: At the time of the event?

6 MR. SANDERS: Yes. He was moving out at the
7 time and also a disagreement -- she didn't want him to
8 move out. She spoke to my client two or three times
9 after this, and my client, you know, asked, why did
10 you say all those things about me that aren't true?
11 She admitted that, I know they're not true, but I felt
12 that in our relationship at times that you raped my
13 soul, so I made those statements. That's why the
14 detectives and the police never took it any further
15 after they learned all these various things.

16 THE COURT: They learned these things -- did
17 she say that to the police?

18 MR. SANDERS: That's why they didn't file
19 charges.

20 THE COURT: Did she say that to the police?
21 She said to the police -- you're saying the police
22 reports contain her saying that she wasn't raped; that
23 he raped her soul?

24 MR. SANDERS: Yes. The police listened to a
25 phone call between my client and her.

26 MR. THOMAS: I don't have any of that
27 information.

28 THE COURT: Do you have the police report?

1 MR. SANDERS: No, I have my client that was
2 there.

3 THE COURT: Okay. All right.

4 MR. THOMAS: Then as far as the turn down, I
5 have a law enforcement arrest disposition. It looks
6 like the reason that it was turned down is the victim
7 refused to prosecute. There could be several reasons,
8 as the Court I'm sure is well aware, of why a victim
9 might choose not to want to prosecute or testify.

10 THE COURT: Mr. Thomas, you have a case you
11 mentioned.

12 MR. THOMAS: Yeah. The case is People V
13 Story, 2009 case, 45 Cal.4th 1282. Basically, that
14 case involved a murder. There were no allegations
15 alleged or no charges filed in the Information
16 alleging a rape or any type of sexual assault, but the
17 prosecution's theory in that case was that the victim
18 in the case was murdered in the course of -- in the
19 course of a rape or an attempted rape. They sought to
20 bring in evidence of defendant's prior conduct, two
21 occasions prior to the murder and two occasions after
22 the murder.

23 The trial court allowed that to come in under
24 1108 saying that because of the prosecution's theory was
25 that it was a first degree murder based on the felony
26 murder rule, that that -- those four prior -- those four
27 different incidents were allowed to come in.

28 The appellate court reversed on the basis that

1 there was no charging document alleging a sexual
2 assault. The California Supreme Court reversed the
3 appellate court and allowed the conviction to stand
4 based on the fact that it doesn't have to be alleged.
5 If the prosecution's theory is murder in the course of a
6 rape or attempted rape, the defendant's prior conduct or
7 prior actions can come in under 1108, and that's the
8 argument that the People are putting forth in this case
9 is in this case there's a special allegation or special
10 circumstance alleged that this was committed in the
11 course of a rape or attempted rape per Penal Code
12 Section 261.

13 THE COURT: Is there any authority that you
14 wanted me to look at, Mr. Sanders?

15 MR. SANDERS: Your Honor, I did --

16 THE COURT: Just a minute.

17 MR. SANDERS: Excuse me.

18 THE COURT: -- other than what we have
19 discussed so far?

20 MR. SANDERS: There were a couple of cases
21 that I found last evening. I didn't bring them with
22 me this morning. I apologize. I thought we were
23 going to get to this after we selected a jury.

24 THE COURT: I understand. I thought we'd
25 exercise an opportunity -- we'd use this opportunity
26 to do things we hadn't completed. That's fine. We're
27 not going to be talking to the jury about this this
28 morning.

1 Have we heard from the jury? We're ready?

2 THE CLERK: Um-hmm.

3 (Whereupon proceedings were held off the record.)

4 (Whereupon proceedings were
5 held in unrelated matters.)

6 THE COURT: Mr. Sanders, I'm going to take a
7 recess on this trial. We're going to start --
8 hopefully in 15 minutes we're going to have a reporter
9 available. I'm going to read whatever authority I
10 just got from the case that Mr. Thomas has given me.
11 I want you to find whatever case you wanted me to look
12 at. You mentioned there might be a couple of cases.

13 MR. SANDERS: I'd have to run back to my
14 office a couple of blocks away.

15 THE COURT: Well, I suppose that 15 minutes
16 is enough time to do that; isn't it?

17 MR. SANDERS: It will be tight.

18 THE COURT: Okay. Thank you.

19 (Whereupon a recess was taken.)
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8 San Bernardino County representing the
9 State of California.

10 (Michelle Swal, Pro Tempore Reporter, CSR #13580.)

11 -oOo-

12 THE BAILIFF: All rise. In the presence of
13 the flag of the United States of America symbol of
14 freedom and justice. Department 2 of the Victorville
15 Superior Court is now in session, the Honorable
16 John Tomberlin presiding. Please be seated.

17 Please raise your right hand to be sworn.

18 THE CLERK: Do each of you understand and
19 agree that you will accurately and truthfully answer
20 under penalty of perjury all questions propounded to
21 you concerning your qualifications and competency to
22 serve as a trial juror in the matter now pending
23 before this court, and that failure to do so may
24 project to you criminal prosecution?

25 If so, say, "I do."

26 (Whereupon the prospective jurors answered in the
27 affirmative.)

28 THE COURT: Good morning, ladies and

1 gentlemen.

2 That wasn't bad. We are here to pick a jury.
3 Juries work together. Let's practice. Good morning.

4 Welcome to Department 2, San Bernardino County
5 Superior Court. You have been summoned to hear the case
6 of People of the State of California versus
7 John Henry Yablonsky. Mr. Yablonsky is present here in
8 court, along with David Sanders, his attorney.

9 Mr. Sanders, will you please introduce yourself
10 and your client to this prospective jury.

11 MR. SANDERS: Good morning, ladies and
12 gentlemen. My name is David Sanders. This is my
13 client John Yablonsky. Good morning.

14 THE COURT: Anytime a case is brought in
15 court, somebody has to come in and allege something.

16 In this case it's the District Attorney's
17 office. And we have John Thomas, who is a Deputy
18 District Attorney. And his investigating officer is
19 Detective Robert Alexander.

20 Would you please introduce yourself and your
21 investigating officer, please.

22 MR. THOMAS: Good morning, ladies and
23 gentlemen of the jury. I am John Thomas, and I'm a
24 Deputy District Attorney for the county of
25 San Bernardino. And I represent the People of the
26 State of California in this case. The gentleman
27 seated or standing right next to me is Detective
28 Robert Alexander. He's from the San Bernardino County

1 Sheriff's Department. He'll be sitting with me
2 throughout this trial as my investigating officer.

3 Thank you.

4 THE COURT: Anytime there's a lawsuit,
5 someone has to come in and allege something, whether
6 it's a civil case or a criminal case. They don't just
7 pop up by themselves. You have to start somewhere.
8 Usually you start with a piece of paper.

9 In a felony case like this one, the document
10 that we work from is what is called an information. An
11 information is something that accuses a person of a
12 crime but it is not evidence of guilt. So I'm going to
13 read to you this information having explained to you
14 already the fact that someone has been charged with this
15 crime does not make them guilty of the crime.

16 Determination of guilt or innocence will be
17 your job after you listen to the evidence that is
18 presented in this case.

19 The Superior Court, County of San Bernardino.
20 The People of the State of California plaintiff versus
21 John Henry Yablonsky. The District Attorney of the
22 county of San Bernardino by this information alleges
23 that Count 1, on or about September 20th, 1985, in the
24 above-named judicial district the crime of murder in
25 violation of Penal Code section 187(a), a felony, was
26 committed by John Henry Yablonsky, who did unlawfully in
27 malice aforethought murder Rita Mabel Cob, a human
28 being.

1 It is further alleged as to Count 1 that the
2 murder of Rita Mabel Cob was committed by Defendant
3 John Henry Yablonsky while the said defendant was
4 engaged in the commission of and or the attempted
5 commission of the crime of rape, in violation of
6 Penal Code section 261.

7 This information consists of one count and is
8 signed Michael A. Ramos, District Attorney County of
9 San Bernardino, State of California by John Thomas,
10 Deputy District Attorney.

11 So now you know what this particular trial is
12 going to be about. Let me tell you how long it's going
13 to last, what our schedule will be.

14 Today is the 19th?

15 MR. SANDERS: The 19th, your Honor.

16 THE COURT: The attorneys and I pretty much
17 have agreed that this is the schedule. We're going to
18 pick a jury today and tomorrow. We will not be in
19 session on Friday. In fact, we won't be in session on
20 any Friday during this trial unless you, the jury,
21 have the case and are already in deliberations. So we
22 won't be in session on January 21st. We will come
23 back next week the 24th and we'll begin evidence.

24 We believe that the evidence will be presented
25 on the 24th, 25th, 26th, and 27th. We won't be in
26 session on the 28th unless you're deliberating. But the
27 case will probably not be finished by that day. We'll
28 come back on January 31st, then we'll be in session,

1 that's Monday. On February 1st, 2nd, and 3rd, we
2 believe you'll have this case submitted to you by
3 February the 4th.

4 Is that the schedule that we've anticipated,
5 Mr. Sanders?

6 MR. SANDERS: Yes, sir, I believe it is.

7 MR. THOMAS: Yes, your Honor.

8 THE COURT: Okay. So in order for you to be
9 able to serve on this jury, you'd have to be available
10 until about February the 4th.

11 Some of you might not be able to be with us.
12 We're going to give you a chance to address me in just a
13 few minutes. There are 74 of you, I believe. So
14 unfortunately even if you want to be with us, I can't
15 guarantee you a seat on this jury. We'll probably be
16 picking, I know we will be picking 12 jurors, probably
17 pick 15 with alternates. You can do the math. What is
18 that? About one chance in five of getting on this jury
19 panel.

20 So if you sit here with us and you don't get
21 selected, I'll be excusing you. And you'll be done for
22 your jury service for the year. What was it that
23 Clint Eastwood asked to Dirty Harry? Do you feel lucky?

24 I don't know which way you want it. If you
25 tell me that you don't have the ability to be here, I
26 can excuse you for hardship. Here's what I need to
27 hear. I need to hear a severe economic hardship or
28 medical hardship. Severe economic hardship means that

1 you don't get paid for jury service. Or you've already
2 booked a round-the-world cruise and you're leaving
3 before the trial is over and you're going to lose your
4 deposit, lose your airfare. You're going to tell me
5 that you've got a promotional exam that's only offered
6 once a year and that's during the course of our trial.
7 And if you don't have a chance to take that exam, you
8 won't get a chance to get promoted. Perhaps you're paid
9 for jury service but paid minimum wage and you get
10 commission on top of that and your employer doesn't give
11 you the commission while you're here. Or you need the
12 overtime you're getting now and you don't get paid by
13 your employer for the overtime. And if that's a
14 severe economic hardship to you -- and how am I going
15 know? -- I'm going to take your word for you it. You
16 have taken an oath to tell the truth. But we're not
17 going to make you present pay stubs or a letter from
18 your employer, any of that kind of stuff.

19 If you fall into that category, I will excuse
20 you for economic hardship. What is not economic
21 hardship? It's not economic hardship that you are
22 someone who is just so important that your work can't do
23 without you. Because that's economic hardship to
24 somebody else. The fact that you have a co-worker
25 that's on vacation and your boss is not going to know
26 what to do in your absence, sorry, but we all are
27 important in one way or another. I don't care if you're
28 a brain surgeon or you have a job taking care of

1 children at a home, your time -- well, I'm only going to
2 say as Shakespeare did when he said, "Time is the stuff
3 that life is made of." So the time for all of us is of
4 equal value in my opinion. And taking the time out of
5 your lives is what was contemplated when someone came up
6 with this idea of a jury trial a long, long time ago.
7 So people have fought wars over this. People have died
8 over it. The fact that people are called in and
9 expected to serve jury service is part of the
10 responsibility that we have for the blessings that we
11 enjoy of living in a free society. The fact that is a
12 hardship on somebody who is a co-worker, the fact that
13 your children if you're a teacher are not going to get
14 the quality of education from a substitute that they're
15 going to get from you, those are things that are
16 limitable but not a basis to which I will excuse you.

17 Okay. Medical hardship is a little easier.
18 Medical hardship is I'm sick right now, I can't stay
19 here. I can't sit. I'm taking medication and it
20 affects my ability to figure out what's being said or to
21 remember things. Or I have an appointment with the
22 VA Hospital for surgery. It takes me a long time to
23 reschedule these things. Please excuse me so I can go
24 to the doctor. Or my husband has a surgery scheduled,
25 and I'm the only one that takes him to the surgery or
26 the follow-up. Those are things which are medical
27 hardship for which I can excuse you.

28 There might be something else that you can tell

1 me about that's going to cause me to excuse you. Okay.
2 For example, maybe you're a college student. You're in
3 the middle of classes. You have finals coming up. You
4 need to study. If you don't do that, you're going to
5 fail your college classes. That would be a financial
6 hardship.

7 There could be other things. But I want you to
8 understand what I have just told you. If I can't fit it
9 into either financial hardship or medical hardship that
10 affects you personally or someone for who you are
11 responsible personally, I won't be able to excuse you.

12 Does that mean you won't be excused by the
13 attorneys? Let me explain to you that in my experience
14 as a trial attorney before I was a judge and now as a
15 judge -- we're talking about a lot of years -- attorneys
16 don't want people on their jury that don't want to be
17 here. Just so you'll know, even if you're qualified to
18 sit as a juror in this case, even though I can't excuse
19 you for hardship, the attorneys are going to have 20
20 peremptory challenges each. So 20 people that are
21 qualified and able to be with us are going to be excused
22 or maybe excused by Mr. Thomas and Mr. Sanders, that's
23 40 people combined. So keep in mind you may not be
24 excused by me but you might still be excused by the
25 attorneys later on in these proceedings.

26 Have I scared everyone? I don't mean to. I
27 just wanted to give you an idea of what the rules are
28 for which I can excuse you. If you think that you have

1 a hardship for which you should be excused and you're
2 seated at my left side of the room, your right side of
3 the room, and if you're in the front row, I want you to
4 stand. I see some hesitation. If you're in the front
5 row, I want you to stand right now if you have a
6 hardship you want to address to the Court.

7 You were thinking about it, weren't you? No?
8 Okay. I will always start with the person who is
9 closest to the isle so there will be less people to
10 trample over as you leave.

11 Would you please state your name and your juror
12 number if you know it.

13 PROSPECTIVE JUROR: Deanna Hudak, 035.

14 THE COURT: Tell me what your hardship is.

15 PROSPECTIVE JUROR: Medication issue as well
16 as a doctor's appointment that that medication relies
17 on.

18 THE COURT: Okay. You're taking medication
19 and it's affecting your ability to be a juror?

20 PROSPECTIVE JUROR: Uh-huh.

21 THE COURT: You're shaking your head yes, and
22 the record will so reflect.

23 PROSPECTIVE JUROR: Yes. Sorry.

24 THE COURT: That's all right.

25 Mr. Thomas? Mr. Sanders?

26 MR. THOMAS: People stipulate.

27 MR. SANDERS: Stipulate, your Honor.

28 THE COURT: Mr. Thomas and Mr. Sanders, would

1 you agree that if I ask -- that I won't ask you again,
2 and if somebody asks to be excused for hardship only,
3 and I do excuse them, that your silence on that
4 subject will be deemed your consent, Mr. Thomas?

5 MR. THOMAS: Yes, your Honor.

6 THE COURT: Mr. Sanders?

7 MR. SANDERS: Yes, sir.

8 THE COURT: Okay. They have stipulated to
9 you being excused, Ms. Hudak. Thank you for being
10 with us. You are excused.

11 PROSPECTIVE JUROR: Sandy Zazueta, Juror
12 Number 074. I have two school-age children and a
13 two-year-old that I don't have daycare for after 3:00.

14 THE COURT: So what happens if you're here
15 with us until 4:30?

16 PROSPECTIVE JUROR: They're at school with
17 another teacher that will be with them at school until
18 I get there to pick them up.

19 THE COURT: What's wrong with that?

20 PROSPECTIVE JUROR: I can't pay for child
21 care for her.

22 THE COURT: So they would be with the teacher
23 at the school but that would be a charge that you
24 would incur.

25 Is that what you're telling me?

26 PROSPECTIVE JUROR: Exactly.

27 THE COURT: And you can't afford that?

28 PROSPECTIVE JUROR: No, not at this moment.

1 THE COURT: Thank you for being with us,
2 Ms. Zazueta. You are excused for financial hardship.

3 PROSPECTIVE JUROR: Thank you.

4 THE COURT: All right. Thank you.

5 We're going to be to the second row. If you're
6 in that second row and you want to address me with
7 medical or financial hardship, please stand.

8 PROSPECTIVE JUROR: My name is
9 Julia Erickson, Number 021. I am a migraine sufferer,
10 and I get migraines at any time. And I take
11 prescription medication and it makes me very light
12 headed and I have to lay down.

13 THE COURT: Okay. Let me say -- just so
14 you'll know, Ms. Erickson, and I'm saying this for
15 everyone who is listening, we also accommodate people
16 with issues, if they request that. So if you tell me
17 that, cause I don't know the frequency, I can tell by
18 your discussion of it that I can guess the intensity.
19 I'm sure it's difficult when you have a migraine.

20 Do you take this medication only when the
21 migraine comes on?

22 PROSPECTIVE JUROR: Right when it comes on.
23 I never know when it's going to come on.

24 THE COURT: Do you know about the frequency?

25 PROSPECTIVE JUROR: The frequency can vary
26 from once a week to five times a week. It varies.

27 THE COURT: Do you think if you were to sit
28 with us there would be a likelihood that you would

1 have an outbreak?

2 PROSPECTIVE JUROR: Yes. Yes. If I'm
3 sitting for long periods of time, it tends to bring
4 them on.

5 THE COURT: I heard something about
6 florescent lights too. Is that something that affects
7 you?

8 PROSPECTIVE JUROR: Yeah.

9 THE COURT: Okay. All right. Well, I
10 certainly -- again, I want you to know, Ms. Erickson,
11 if your request was I want to be on this jury and I
12 want you to agree to shut things down if I have a
13 migraine come on, if that's what you were asking, I
14 would be happy to try and accommodate you. But what I
15 think I'm hearing from you is that this particular
16 process would be inclined to bring on the migraine and
17 you'd rather be excused?

18 PROSPECTIVE JUROR: Yes.

19 THE COURT: I'm going to excuse you for
20 medical hardship. Thank you for being with us this
21 morning.

22 PROSPECTIVE JUROR: Thank you.

23 THE COURT: We're going to go to the third
24 row. If you are in the third row and want to address
25 me with a hardship, please stand.

26 Hello.

27 PROSPECTIVE JUROR: 002, Catherine Anderson.
28 I'm starting a --

1 THE COURT: Just one second. 002?

2 PROSPECTIVE JUROR: Yes. I am starting five
3 weeks physical therapy, three times a week. I can see
4 the latest I can reschedule since I've already
5 scheduled it. It's for my left arm and my left knee.

6 THE COURT: I'm sorry, I can't hear you very
7 well. You're personally scheduled for physical
8 therapy?

9 PROSPECTIVE JUROR: Yes.

10 THE COURT: And --

11 PROSPECTIVE JUROR: Work related on my left
12 knee and left arm.

13 THE COURT: Okay. And you want to find
14 out --

15 PROSPECTIVE JUROR: Willing to see -- I did
16 not know how long this would last, the time. If I
17 could schedule it later, I'm willing to.

18 THE COURT: Okay. You know what, if you'll
19 do me a favor, Ms. Anderson, maybe during the lunch
20 recess you can talk to someone and find out. 4:30 is
21 the normal time that we'll knock off. Let's face it,
22 this is not a real short trial. This is not a real
23 long trial. But if somebody has something that's
24 coming up and they have to leave at 4:15 or 4:00 on
25 some particular day are we willing to accommodate you?
26 Yes, we are. I won't be able to do it on a daily
27 basis, but I'll certainly stay this: You will be out
28 of here by 4:30 every day. If you come back after

1 lunch, let us know, Ms. Anderson, and you can address
2 me again.

3 PROSPECTIVE JUROR: Okay. I might add also
4 to save some time most of my family is law
5 enforcement, so I don't know.

6 THE COURT: That's not of interest to me.
7 Law enforcement officers themselves can't be jurors.

8 PROSPECTIVE JUROR: I didn't know if you
9 would dismiss me, that's why I said it now.

10 THE COURT: Sworn officers cannot sit as
11 jurors. Law enforcement officers that are retired or
12 the family of law enforcement officers can. And I
13 appreciate your volunteering that, but this is
14 strictly a hardship discussion right now.

15 Thank you.

16 PROSPECTIVE JUROR: Joel Richartz, 057 is my
17 juror number. I am a teacher. I live 45 minutes from
18 my house to work. My son is also a high school
19 student at my high school so it's -- would be to get
20 him to school and back every day. And I don't know
21 how we're going to pull that off. He's very happy
22 about today because he gets to stay home.

23 THE COURT: Okay. There's no one else that
24 can get your son to school?

25 PROSPECTIVE JUROR: My wife and I work. She
26 works also up in the High Desert. If we go along, we
27 will try to figure it out. But there will probably be
28 days that we will not be able to get him to school.

1 THE COURT: I'm sorry. Just so I'll know,
2 where do you live?

3 PROSPECTIVE JUROR: I live in Wrightwood.

4 THE COURT: Okay. And where does your son go
5 to school?

6 PROSPECTIVE JUROR: Norco High School. I'm a
7 teacher at Corona/Norco Unified School District.

8 THE COURT: And your wife? Where does she
9 work?

10 PROSPECTIVE JUROR: She owns her own business
11 up in the High Desert in Wrightwood.

12 THE COURT: So is there anyone that can watch
13 the shop while she takes your son to high school?

14 PROSPECTIVE JUROR: It's also picking him up.

15 THE COURT: Is there anyone that can watch
16 the shop while she picks him up from high school?

17 PROSPECTIVE JUROR: She does have employees,
18 yes.

19 THE COURT: Well, Mr. Richartz, I'm going to
20 keep you with us for right now. It doesn't sound like
21 such a financial hardship that would be a reason for
22 me to excuse you.

23 PROSPECTIVE JUROR: Okay, sir.

24 THE COURT: Yes, sir?

25 PROSPECTIVE JUROR: My name is
26 Thomas Medlock. I am 043, and this is a personal
27 issue for me.

28 THE COURT: I'm sorry. What?

1 PROSPECTIVE JUROR: A personal issue. My son
2 was murdered in an armed robbery. I really don't
3 think a murder trial is something I can sit on.

4 THE COURT: Mr. Medlock, I'm going to say
5 this to you with all due respect. I am so sorry that
6 that's the case. But you're going to have to sit back
7 down because we're talking about one thing right now
8 and that's hardship.

9 Next row.

10 PROSPECTIVE JUROR: My name is Chris Proctor,
11 054, I believe. My hardship probably would be I
12 don't -- I get a partial payment. I'm the only bread
13 winner in the house. I get a partial payment. I
14 don't know what that partial payment is because I
15 never ask, but we get a percentage for jury duty.

16 THE COURT: Who do you work for?

17 PROSPECTIVE JUROR: Wal-Mart Distribution
18 Center.

19 THE COURT: Mr. Proctor, I have had a lot of
20 jurors from Wal-Mart Distribution Center. Are you
21 saying to me that you get only a percentage because
22 they don't pay you overtime that you would have
23 otherwise gotten?

24 PROSPECTIVE JUROR: I don't know how it
25 works. I know that they --

26 THE COURT: I need you to do this, I need you
27 to call your HR people over lunch. I've never heard
28 this before. I know that often there is

1 miscommunication. I don't know where the source of
2 your information is that you're giving me. If you
3 come back and you say, "Yeah, they are only going to
4 give me X number of dollars and that reduces my pay
5 too much," then I'll excuse you. But I think that you
6 need to confirm that with the HR staff because I have
7 had numerous people on my juries over the years that
8 have worked for the Wal-Mart Distribution Center.
9 It's a large employer for our area. I have never
10 heard that before.

11 PROSPECTIVE JUROR: Just a lot of secrets.

12 THE COURT: Mr. Proctor, why don't you see me
13 and talk to us after lunch about this.

14 Okay?

15 PROSPECTIVE JUROR: Okay. Will do.

16 THE COURT: Thank you.

17 Yes, ma'am?

18 PROSPECTIVE JUROR: Theresa Reyes, 056. My
19 hardship is medical. I'm under medication and
20 sometimes the medication has side effects which I'm in
21 the bathroom quite a bit.

22 THE COURT: I don't want to get too personal,
23 I just say to you that we'll normally not go more than
24 about an hour and 15 minutes at a time.

25 PROSPECTIVE JUROR: I'm talking about loose
26 stools. That's what I mean.

27 THE COURT: Okay. Ms. Reyes, thank you. I
28 didn't want to give that information for other people

1 to know, but I'm going to excuse you for medical
2 hardship.

3 Thank you.

4 PROSPECTIVE JUROR: Joann Banbury, 007. I
5 don't have, like, a medical or financial hardship. My
6 case -- I have to be in court on Thursday the 27th.

7 (Whereupon a cell phone rang.)

8 THE COURT: If that's for me, tell them I
9 can't take that call right now.

10 Now, tell me again what you just said?

11 PROSPECTIVE JUROR: I have to be in court on
12 the 27th.

13 THE COURT: Who has to be in court?

14 PROSPECTIVE JUROR: I do.

15 THE COURT: For what?

16 PROSPECTIVE JUROR: Me and my husband. We
17 are in a custody issue with kids so it's -- we -- we
18 have already had mediation on that. And they said I
19 will have to be there on the 27th. So that's why I'm
20 telling you. I don't have a problem with serving, but
21 I don't know if we can work around that.

22 THE COURT: We can.

23 PROSPECTIVE JUROR: Cool.

24 THE COURT: I don't really understand yet
25 where we are. Is it a dissolution of marriage and
26 it's regarding that?

27 PROSPECTIVE JUROR: No. It's the issue of
28 custody of the kids. The divorce and all that is

1 already done.

2 THE COURT: The children between you and your
3 husband?

4 PROSPECTIVE JUROR: Between -- no.

5 THE COURT: The custody of whose children?

6 PROSPECTIVE JUROR: It's actually his son.
7 But the situation I'm involved in, you know,
8 they -- I'm having to go through everything with him.

9 THE COURT: Okay.

10 PROSPECTIVE JUROR: But it's only for that
11 one day. That's our court date.

12 THE COURT: Right. Those court dates are
13 frequently continued, but there's also another thing I
14 can tell you.

15 I have a little influence here at this
16 facility.

17 PROSPECTIVE JUROR: Right.

18 THE COURT: And I can simply -- are you going
19 to be in front of -- do you know who you're going to
20 be in front of? Commissioner Proulx or Judge Harris?

21 PROSPECTIVE JUROR: Proulx.

22 THE COURT: I'll -- I don't know how long
23 that procedure normally will take, but I will make
24 sure that Commissioner Proulx puts your matter on
25 first thing.

26 PROSPECTIVE JUROR: Okay. That works for me.
27 Usually we're sitting there all day.

28 THE COURT: Thank you.

1 Is that the penultimate row? Was that the
2 penultimate row?

3 MR. THOMAS: Yes, sir, it is.

4 THE COURT: Let's go to the last row.

5 PROSPECTIVE JUROR: My name is
6 Kenneth Rowe, 060 I believe it is.

7 THE COURT: Yes, sir.

8 PROSPECTIVE JUROR: I was trying to calculate
9 the days that you're saying because my work will pay
10 me for four jury days and after that I don't get paid
11 anymore. I'm the only one that makes income in the
12 family. My wife doesn't work. My son is in college.

13 THE COURT: Where do you work?

14 PROSPECTIVE JUROR: American Career College
15 down in Ontario.

16 THE COURT: They say they only pay for four
17 days?

18 PROSPECTIVE JUROR: Four days, I was told,
19 and after four days they don't pay for jury duty
20 anymore.

21 THE COURT: Mr. Rowe, you are excused for
22 financial hardship.

23 PROSPECTIVE JUROR: Thank you, your Honor.

24 THE COURT: It was the "son in college" line
25 that got me. I take it personally.

26 Yes, Ma'am?

27 PROSPECTIVE JUROR: My name is
28 Martha Chisolm, Juror Number 017. Hardship for me is

1 my husband is blind. He also has severe hearing loss.
2 I like to be close enough that I can keep track of
3 anything happening to him. He's had four heart
4 attacks.

5 THE COURT: Okay. You're a care provider for
6 your husband who has disabilities?

7 PROSPECTIVE JUROR: Yes.

8 THE COURT: Ms. Chisolm, I'm going to excuse
9 you for medical hardship. Thank you.

10 All right. Now we're going to take the other
11 side of the room. If you're in the front row and you
12 have a hardship, please stand.

13 PROSPECTIVE JUROR: Jay Storer, I'm Number
14 64. And my employer does pay for me to come to jury
15 duty but I'm scheduled for a lot of overtime for the
16 next six weeks. And that effects me if I have that
17 taken away if I come to jury duty. I'm the only one
18 in my family working. I have six kids and a daughter
19 in college.

20 THE COURT: Mr. Storer, thank you for being
21 with us today. You're excused financial hardship.

22 Yes, sir?

23 PROSPECTIVE JUROR: It's not a hardship. I
24 heard you mention to the young lady here that -- I'm
25 in law enforcement. I would love to serve but --

26 THE COURT: Feel free to serve then. Sit
27 down.

28 Hardship, folks. Second row.

1 Yes, sir?

2 PROSPECTIVE JUROR: My name is
3 Michael Sparks, Number 063. I am currently trying
4 to --

5 THE COURT: I can't hear you. You're
6 currently what?

7 PROSPECTIVE JUROR: I'm currently living in
8 the City of Victorville. My hardship is that I have a
9 short-term memory, and I can't comprehend a lot of
10 things.

11 THE COURT: I didn't hear everything you
12 said, but I believe you said you have a very
13 short-term memory?

14 THE PROSPECTIVE JUROR: Yes. And I have a
15 partial mental retardation, and I can't comprehend a
16 lot of things.

17 THE COURT: You believe that it would be
18 difficult for you to serve because of your mental
19 abilities?

20 PROSPECTIVE JUROR: Yes.

21 THE COURT: Okay. Mr. Sparks, I'm going to
22 let that be a medical hardship and excuse you.

23 Thank you.

24 Third row. Last row. Last chance. Okay.

25 Sir, in the front row. We now have a few more
26 minutes to talk. You mentioned that you're in law
27 enforcement. And the reason why I didn't want to
28 address anything other than hardship was I wanted to

1 make sure that we do things in order. I'm talking about
2 law enforcement right now because you heard my comments
3 to someone else. My comments were general. And as
4 usual when I'm not addressing something real specific, I
5 tend to misstate stuff. Sorry. That's just me.
6 Otherwise, I act like the lawyer I was for 20 years, and
7 I speak with so much specificity that people are looking
8 at me and saying I asked what time it was, and you tell
9 me how to make a watch.

10 Shorthand I say, law enforcement doesn't sit
11 but that's not exactly the case. There are different
12 sections within the California Penal Code that define
13 who is a law enforcement officer for the purpose of jury
14 service. People who are like Deputy Fleigner, who is
15 passing some papers out right now, he's wearing a
16 uniform. He carries a gun any time he wants to,
17 anywhere he wants to. There is a section in the
18 Penal Code in which he is described and it
19 is -- what -- 832.8?

20 THE BAILIFF: 832?

21 THE COURT: It doesn't matter. You do not
22 need to know this. No one needs to know this.

23 There are some people that are involved in law
24 enforcement that are not defined by the same Penal Code
25 section as Deputy Fleigner is. Who -- if you were let's
26 say a policeman, or a police woman, who maybe is
27 assigned to a school district and you're only a peace
28 officer for the purposes of that Penal Code section

1 while you're on duty, then that's different than being a
2 full-time peace officer like Deputy Fleigner is. Other
3 people that fall into the category of peace officers
4 would include California Correctional peace officers,
5 people that are involved in housing and supervision of
6 our inmates. But they're not defined by the same
7 Penal Code section and are not exempt from jury service.

8 What is your name, sir?

9 PROSPECTIVE JUROR: Esitimoa Otuafi.

10 THE COURT: What number is it?

11 PROSPECTIVE JUROR: 050.

12 THE COURT: What is your exact job?

13 PROSPECTIVE JUROR: CDC.

14 THE COURT: California Department of
15 Corrections. Okay.

16 So you are a Correctional Peace Officer?

17 PROSPECTIVE JUROR: Yes.

18 THE COURT: And that is a different section
19 than the section that defines Mr. Deputy Fleigner.
20 For that reason you're not exempt.

21 So that's -- pardon me for having made such a
22 broad statement at the beginning.

23 Now, we also will go back now to Mr. Medlock.
24 Mr. Medlock has had an opportunity to address the Court.
25 I don't normally take these things out of order.
26 Usually if someone has a reason that they feel they
27 can't sit on a jury -- everyone will get a chance to
28 talk to me. So I don't -- I'm not inviting other people

1 to explain why they should be excused for what we refer
2 to as cause. But Mr. Medlock has already volunteered to
3 us that his son was the victim of a murder.

4 Mr. Medlock, sir, would you stand up so I can
5 talk to you?

6 PROSPECTIVE JUROR: Thank you.

7 THE COURT: You indicated that your son was a
8 victim of murder; is that correct?

9 PROSPECTIVE JUROR: Yes, sir.

10 THE COURT: How long ago was that?

11 PROSPECTIVE JUROR: January 8th, 2004.

12 THE COURT: Is it something that is so
13 emotional to you still that if you were to be a juror
14 in this case that you believe you'd have a hard time
15 separating the facts that you hear in this courtroom
16 from the circumstances that you recall or the facts
17 that you were aware of that relate to your son's
18 murder?

19 PROSPECTIVE JUROR: Yes, your Honor, I do.

20 THE COURT: Okay. Counsel, this is not a
21 stipulation for hardship. This is whether or not you
22 want to at this point in the proceedings agree that I
23 can excuse Mr. Medlock for cause.

24 Do you want to do that?

25 MR. THOMAS: The People would be willing to
26 stipulate.

27 MR. SANDERS: As would the defense.

28 THE COURT: Thank you, Mr. Medlock. Again,

1 I'm sorry for the circumstances.

2 PROSPECTIVE JUROR: Thank you, your Honor.

3 THE COURT: You're welcome.

4 Okay. We're going to play the numbers game.
5 Call 18 names.

6 THE CLERK: Juror Number 19, Lisa Cuautle;
7 Juror Number 59, 059XXXXXXXXX; Juror Number 6,
8 Nitika Austin; Juror Number 2, Catherine Anderson;
9 Juror Number 30, Marvell Greenwood; Juror Number 53,
10 Tony Pol; Juror Number 52, Donna Pineiro; Juror
11 Number 16, 016XXXXXXXXXXXX; Juror Number 42,
12 Debra McKenzie; Juror Number 9, Cameron Bean; Juror
13 Number 29, Tasia Green; Juror Number 73,
14 Linda Whittaker; Juror Number 18, 018XXXXXXXXX; Juror
15 Number 12, Katherine Bradfield; Juror Number 25,
16 025XXXXXXXXXXXXXXXXX; Juror Number 66, Sharon Tierney;
17 Juror Number 15, Marie Cervantes; Juror Number 54,
18 Christopher Proctor.

19 THE COURT: Funny we have two people that
20 we're going to get more information from. Started
21 right off with them in the jury box, first call.

22 Ms. Anderson and Mr. Proctor, we're still going
23 to listen to you. Just because you're called up here
24 that doesn't change anything. After lunch if you're not
25 able to you find out you can be with us and have you
26 back, you'll still have to come back. Or we can excuse
27 you for hardship still, if necessary.

28 If you're way in the back and you want to be

1 able to hear what goes on and you can hear, stay where
2 you are. If you don't have the ability to hear
3 everything, I want you to move closer.

4 It's really important that everyone follow
5 directions during this part of the proceedings so that
6 we can get through this in an organized manner. This is
7 a process that is a group participation process. I'm
8 going to be asking questions of the potential jurors
9 here. They're going to be answering those questions. I
10 want everyone in the courtroom to be able to hear every
11 question that I ask and every answer that I receive.

12 If you don't hear everything, then the process
13 is not going to work properly because later on we're
14 going to be streamlining. You'll be hearing me asking
15 things like: Did you hear everything I've asked
16 everybody else? Did you hear the other people's
17 responses? Would your responses be different?

18 Okay. It's not tough. It just requires that
19 everyone hear everything because I'm going to talk about
20 a lot of important principles, and I'm not going to
21 repeat those principles unless somebody asked me to. I
22 don't mind explaining things or re-explaining things.
23 But you'll see how this works in just a moment.

24 I've got a questionnaire here with 14
25 questions. I'm going to start with Ms. Cuautle in just
26 a moment. I'm going to read her each of these
27 questions. There's no reason for you to wait until I'm
28 talking to you to decide what your answers are. Decide

1 what your answers are while you're listening to her
2 answer these questions. That way if you do what I am
3 suggesting, when I get to 059XXXXX, she's already going
4 to know what answers she's going to give me because
5 she's going to have listened to the question and
6 answered it for herself while I've been speaking to
7 Ms. Cuautle. That way I never have to have people
8 looking at me and saying things like, "My answer to
9 question 5 is no. Number 6 is no." Okay. You'll see
10 how this goes during the course of our discussions.

11 Everybody is glad to have an answer probably to
12 questions 1, 2, and 3. Some people are going to say, "I
13 have no "yes" answers to questions 4 through 14." Most
14 people will have a few. As I mentioned, though, I'm
15 going to be discussing some general principles. I'll be
16 doing that while I'm speaking to the jurors up here. So
17 that's why I want everyone to listen and think of how
18 you would respond to the things that I ask for during
19 this discussion. Even if you're here in the gallery,
20 that's what we might refer to as an audience if this
21 were a theater. And the people up here are in the jury
22 box. Behind the lawyers there's a row of seats and then
23 the deputies are sitting there. And there's a division
24 then what we refer to as the gallery, and that division
25 is called the bar.

26 Show them where the bar is, will you, Pete?

27 THE BAILIFF: My hand is on it and it runs
28 all the way across to you guys (indicating).

1 THE COURT: In the old days, I'm talking way
2 back when, judges probably went through the English
3 countryside. And I don't mean just England. We
4 basically have a system of law in the United States
5 based upon English common law developed over a long
6 period of time.

7 And the judge was probably a circuit writing
8 judge. The judge would come to a town and
9 there wouldn't be a courthouse. There might be a
10 dispute. There might be someone being tried for some
11 kind of crime. And I would have with me -- if I were
12 that judge -- bailiffs like the deputies that I have
13 here. And maybe for security, they would actually have
14 a bar and they would put it in front of me so that no
15 one could approach me except for if that person were
16 addressing the Court as someone who was a litigant or a
17 party to the action.

18 This area -- by the way, in front of me between
19 my bench and the seat where the attorneys are, that's
20 called the counsel table. It is typically referred to
21 as the well. So if I went to a small town when I was
22 going to sit as a judge, maybe the bailiffs would put me
23 behind the well. So that in order for someone to get to
24 me they would have to fall into the well. It would be
25 another procedure for personal safety. I'm giving you a
26 little bit of history of what's going on here.

27 This process now that we're going to enter into
28 is voir dire. Voir dire means to speak the truth. It's

1 an opportunity for the attorneys and myself to know a
2 little bit about you and what your feelings are. The
3 reason why I was allowing Mr. Medlock to address me, and
4 then I could excuse him was, one of the reasons, was I
5 wanted to explain this to you later. I couldn't look at
6 Mr. Medlock and say Mr. Medlock, you can't be a fair
7 juror; right? You can't look at him and tell that, but
8 he knew it. And he volunteered that.

9 Some of you may have feelings that are like
10 Mr. Medlock's that we haven't given you an opportunity
11 to express at this point. I'm not going to be able to
12 or try and trick you into saying something. I'm only
13 going to know if you can be a fair juror or not if you
14 tell me. That's why we're going to ask you questions.
15 If a final analysis can't be fair in my opinion because
16 of things you have told us, we're going to excuse you
17 for cause. That's how we refer to it. We had hardship
18 and now we have cause. Think of it because I can't be
19 fair.

20 The attorneys also have what are called
21 peremptory challenges. It means that even though you
22 could be fair and you're qualified to sit as a juror,
23 for one reason or another they do not want to have you
24 sit on the case. And then they get a chance to exercise
25 peremptory challenges. They cannot use peremptory
26 challenges to exclude someone because of their gender or
27 because of their ethnicity or any other, what we refer
28 to as, cognizable characters. But if for some reason

1 A No.

2 Q Yes?

3 A No.

4 Q Do you identify them?

5 A Yes.

6 Q Okay.

7 Now, this next question is poorly worded
8 because it's antiquated. It uses the word "spouse."
9 I'm going to use the term life partner instead. Giggles
10 are heard all around but I say that because I don't care
11 if you're married to the person that you're living with.
12 I don't care about those kinds of things. I just want
13 to know if you share your life with someone; I want to
14 know what that person does. So here we go.

15 What is the business or occupation of your life
16 partner if you have one?

17 A He works for a roofing company, part owner of a
18 roofing company.

19 Q Do you mind, Ms. Cuautle, if I ask you to
20 please speak up.

21 A Okay.

22 Q It's tough to put you on the spot but I want
23 everyone in the room to be able to hear everything
24 that's said. Sorry. Just one second. I have another
25 jury back there deliberating. We are very busy.

26 Have you previously served on a jury?

27 A Yes.

28 Q How many times?

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.)
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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.

1 Q We're here to guarantee that Mr. Thomas
2 representing the People gets a fair trial. We're here
3 to make sure that Mr. Sanders representing Mr. Yablonsky
4 gets a fair trial. That's why I ask those questions.

5 Do you think those principles we talked about
6 are important?

7 A Yes, they are.

8 Q Would you guarantee those safeguards be
9 protected if you were a juror in this case?

10 A Uh-huh. Yes.

11 THE COURT: Thank you.

12 004XXXXXXXXXXXXXXXXX

13 BY THE COURT:

14 Q 004XXXXXXX?

15 A Yes, sir. I'm an operator engineer for the
16 State of California. My wife works for Kaiser as a
17 receptionist. I don't know anybody from --

18 Q Jury --

19 A -- from the jury or anyone.

20 Q Any prior jury service?

21 A Yes, I do. I have been in a criminal case and
22 that case we did deliberate.

23 Q And reached a verdict?

24 A Yes.

25 Q Okay. What "yes" answers do you have?

26 A None.

27 Q Okay. Thank you very much.

28

MS. NITIKA AUSTIN

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BY THE COURT:

Q Ms. Austin?

A I am a federal correctional officer for federal prison. My husband same occupation. No to 3. No to 4. No to 5.

Q Do you have any "yes" answers?

A Number 6.

Q You know people involved in law enforcement because your husband also is involved?

A And brother-in-law.

Q Okay.

A Both federal, my brother-in-law is state, and my husband and I are federal.

Q Okay. Now, let's ask you this: Does the fact that someone is a law enforcement officer mean they're always going to tell the truth?

A No.

Q Have you had to investigate from time to time the events, what events may have occurred during the --

A My occupation, yes.

Q Yeah. So sometimes there's a beef that somebody who is an inmate, a convicted person, could get in a beef with a corrections officer?

A Yes, I have to look further.

Q And you have to decide what happened. You can't just say, "This person is convicted of a crime. We're not going to believe him"?

1 A That's true. That's true.

2 Q Everybody get that point? I hope everybody
3 understands it. She's the one in a position that she
4 knows. That's what she's telling us, in her experience.
5 Her experience is that you have to evaluate each case on
6 its own merits.

7 That's a fair statement, isn't it?

8 A Yes.

9 Q Any other "yes" answers?

10 A Number 11 and 12, which I don't -- I don't have
11 contact with family members, but I do know some of them
12 have criminal cases.

13 Q Do you know if some of your family members have
14 been involved with the law in an adverse way?

15 A Yes. I don't know the --

16 Q You don't know the specifics, and it's not
17 going to affect how you evaluate the evidence in this
18 case.

19 Is that a fair statement?

20 A Yes.

21 Q Anything else?

22 A That's it.

23 THE COURT: Thank you.

24 **MS. CATHERINE ANDERSON**

25 BY THE COURT:

26 Q Ms. Anderson, how do you do?

27 A I'm a food service worker. My husband is a
28 retired CHP officer. No, I -- Number 3 is no.

1 Q Never served on a jury. Tell me what kind of
2 worker are you, again?

3 A Food service.

4 Q Okay. Thank you.

5 A 3, 4 and 5 are no. 6 and 7 are yes, my
6 brother, my husband, and my son.

7 Q All involved in law enforcement?

8 A Correct.

9 Q What about if you were a juror in this case
10 could you evaluate the testimony of that person by the
11 same standard?

12 A I would actually -- it goes into 8 where I
13 would take their expertise into consideration, which
14 might persuade me in some ways.

15 Q Okay. Remember, I told you that you could
16 treat people differently as long as you had a reason for
17 it. The fact that somebody is a law enforcement officer
18 and has some expertise, that might be a reason that you
19 should take their testimony as more convincing than
20 someone that has no expertise.

21 I'll give you a perfect example. If you're
22 someone that has listened to a lot of gunshots at a
23 firing range -- I'm making this up -- maybe you can hear
24 a gun and you can say, "I heard a revolver." Somebody
25 else -- and then maybe you can hear a gun and say,
26 "That's an automatic."

27 THE COURT: Do you think that's possible to
28 make a different sound?

1 THE COURT: Mr. Greenwood, you're going to
2 have to really sing out for us.

3 THE PROSPECTIVE JUROR: Sorry.

4 BY THE COURT:

5 Q You said that your wife worked for you before
6 she --

7 A No. She worked as a paralegal --

8 Q Before you were divorced?

9 A Right. Well, not paralegal. I don't know
10 exactly what it was. She worked in an office, that type
11 of work.

12 Q You never served on a jury before?

13 A No.

14 Q Any "yes" answers, Mr. Greenwood?

15 A No.

16 THE COURT: Okay.

17 MR. TONY POL

18 BY THE COURT:

19 Q Mr. Pol?

20 A I am a retired mailman. My wife is a
21 housewife. First time I have been here. And all the
22 rest are no except 12. And a year ago, my daughter was
23 raped and drugged. She almost died.

24 Q Okay. All right. You know, Mr. Pol, you heard
25 what I said, people are affected differently. I don't
26 believe that because it's hard for you to talk about it,
27 that you're necessarily telling me you couldn't be a
28 fair juror. But you have to tell me.

1 anything about the case.

2 Q Ms. Pineiro, I'm going to pick on you.

3 I want everyone to know I only want to know
4 your "yes" answers. That's what I wanted you to do when
5 I was talking to Ms. Cuautle to figure out what your
6 "yes" answers were.

7 A 6 and 7.

8 Q Okay.

9 A My ex-son-in-law is a deputy sheriff for the
10 San Bernardino County. I haven't had much contact with
11 him in five or six years. And like I said, I worked
12 here, but that was a long time ago. And I don't have
13 any close friends except for one lady who is on medical
14 retirement.

15 Q Okay.

16 A The rest is no.

17 Q So Ms. Pineiro, are you a good sport?

18 A Yes.

19 Q Can I ask you a trick question?

20 A Yes.

21 Q Suppose -- and this isn't going to
22 happen -- suppose I say to Deputy Fleigner I want you to
23 take the 12 people in the back two rows, put them back
24 there in the jury room right now, and come back with a
25 verdict. What's your verdict?

26 A I would say I haven't decided. I haven't heard
27 the evidence. I'm a firm believer, and I'm a great
28 note-taker. You have to hear evidence on both sides.

1 Q In other words, you don't have a verdict. You
2 can't reach a verdict right now?

3 A I haven't even heard it.

4 Q Doesn't that sound absolutely reasonable?
5 That's what people should be like, isn't it? You don't
6 decide something until you've heard the evidence. You
7 don't rush to judgment.

8 A I wouldn't want that to happen to me.

9 Q Why did I say it was a trick question? It
10 sounds easy, doesn't it? Because as good as your answer
11 is -- I like it. It's the way I view things in my
12 regular life. If I'm trying to figure out what kind of
13 car I'm going to buy, I'm going to probably get all the
14 information I can, find out what the price is, what's
15 the gas mileage, what's the service record. I'm going
16 to go out and get information. That's what we would do
17 if we were going to be using the skills that we
18 developed in our normal lives.

19 In our courtroom sometimes things are what I
20 refer to as counter intuitive. In other words, it's
21 different than what we expect that the answer is going
22 to be. Why is that? It's different because
23 Mr. Yablonsky is presumed innocent until the contrary is
24 proved. Remember that? So this is not like we're
25 starting a foot race and Mr. Thomas and Mr. Sanders are
26 going to be on an equal footing and we're going to see
27 who is the best performer. Mr. Sanders does not have to
28 prove anything to you. The only person with a burden of

1 proof here is Mr. Thomas. And because Mr. Yablonsky is
2 presumed innocent and you haven't heard any evidence
3 yet -- I've already told you that because someone was
4 arrested and charged with a crime or brought to trial
5 that's not evidence of guilt.

6 So what evidence do you have that Mr. Yablonsky
7 is guilty?

8 A None.

9 Q None? So what's your verdict?

10 A Hung.

11 Q If he's presumed innocent, your verdict is
12 what?

13 A Until proven guilty --

14 Q So what's your verdict?

15 A Not -- I don't have any.

16 THE COURT: Okay. Well, I won't press the
17 point any farther. Does everyone see there is a
18 verdict right now and that verdict is not guilty?

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

21 THE COURT: Okay. That's the only one you
22 can come to.

23 MR. CLYDE MILBURN

24 BY THE COURT:

25 Q Now I'm going to move over to Mr. Milburn.

26 Hello, Mr. Milburn. How are you doing?

27 A I'm a rigger for my trade. My wife is a nurse.

28 And --

1 Q A rigger?

2 A Yes.

3 Q You work at a casino?

4 A No. No. I work in shipyards. I work with the
5 cranes and stuff.

6 Q Wow. Interesting work.

7 A Dangerous work.

8 Q Yeah, I can see that.

9 A And I have served on a jury before, and it was
10 a hung jury.

11 Q How long ago was that?

12 A Back in the '80s.

13 Q A criminal case?

14 A Yes. Well -- yes.

15 Q Do you know what the split was, like, 11 to 1
16 or 10 to 2?

17 A 10 to 2, I think.

18 Q Were you in the 10 or the 2?

19 A I was in the 2.

20 Q Okay.

21 A And I only have yes to 12.

22 Q What is that?

23 A My sister was murdered, something like this.
24 It was her husband, kind of -- she was living with him,
25 so he just blowed her away.

26 Q How long ago did that happen?

27 A Yesterday. Not yesterday, like yesterday.

28 Q You remember it like yesterday?

1 A Yes.

2 Q Is that going to make this difficult?

3 A Yeah, already.

4 Q Mr. Milburn, I can see that.

5 Mr. Thomas, Mr. Sanders, will you stipulate
6 that I can excuse Mr. Milburn for cause?

7 MR. THOMAS: People stipulate.

8 MR. SANDERS: Yes, your Honor.

9 THE COURT: Thank you, Mr. Milburn. I'm
10 going to excuse you for cause. Thank you for being
11 with us. I'm sorry for your loss.

12 THE CLERK: Juror Number 26,
13 026XXXXXXXXXXXXXXXXXX.

14 016XXXXXXXXXXXXXXXXXX

15 BY THE COURT:

16 Q While 026XXXXXXXXXX gets up there and gets
17 situated, 016XXXXXXX. Hello.

18 A Hi.

19 Q Will you answer those questions for us, please.

20 A I'm retired for Number 1. My significant other
21 is also retired.

22 Q What did you do before you retired?

23 A I was working for a bank.

24 Q And what did he do?

25 A The same thing. We were -- we met at the bank.

26 Q Please speak up. You were what?

27 A We both worked for the bank, and we both
28 retired.

1 Q Right.

2 A I have yes on Number 3. It was a criminal
3 case, and we reached the verdict. And yes on Number 12.
4 My daughter's car was parked in front of our house and
5 somebody broke in. But she's a 17-year-old so there's
6 not much that was taken, but I thought that was
7 considered a yes.

8 Q Okay. That's not going to affect how you view
9 the evidence in this case; right?

10 A No.

11 THE COURT: Thank you.

12 026XXXXXXXXXXXXXXXXXXXXXXXXXXXX

13 BY THE COURT:

14 Q 026XXXXXXXXXXXX?

15 A Yes. Right now I'm unemployed.

16 Q When you have a job what do you do?

17 A I worked at warehouses as a receiving clerk.
18 I'm single. No, this is my first time. And I have yes
19 answers for 11 and 12. 11 would be my dad, and Number
20 12 was myself and my sister.

21 Q What's 11? What about your dad? He was
22 arrested?

23 A Yes.

24 Q For what?

25 A Child abuse and the other one I don't wish to
26 disclose.

27 Q Okay. What about if you were to come down here
28 and speak to me on the record with the attorneys?

1 A Okay.

2 THE COURT: Okay. Ladies and gentlemen of
3 the jury, pardon us for a minute. We don't want to be
4 rude.

5 (Whereupon a bench conference was held on the record.)

6 026XXXXXXXXXXXX?

7 A I was -- he molested my sister.

8 Q Father molested your sister. And did he
9 also -- you said that you were a victim, so he abused
10 you?

11 A Yes.

12 Q Okay. How long ago about did that happen?

13 A It would be 27 years ago.

14 Q Okay. Is that something that affects how you
15 would view the evidence in this case?

16 A No, sir.

17 Q Is there -- was your father convicted?

18 A Yes.

19 Q Did you feel that justice was done in that
20 situation?

21 A I believe it was. My mom was -- she was in
22 favor for him not being prosecuted to the fullest, I
23 would say.

24 Q Would that affect how you view things in this
25 case?

26 A No.

27 THE COURT: Mr. Thomas, do you have any
28 questions you'd like to ask 026XXXXXXXXXXXX?

1 MR. THOMAS: I do.

2 BY MR. THOMAS:

3 Q Will this affect how you view the evidence in
4 this case?

5 A No. I was a young boy.

6 Q Thank you.

7 A Yes.

8 THE COURT: Thank you.

9 So that everyone else will know, sometimes I
10 bring it up, usually I don't. I wait for somebody to
11 tell me, and you have just seen that someone has chosen
12 to get a chance to talk to me with the attorneys to ask
13 a couple of questions of him. You don't need to be
14 concerned about why a person might want to have some
15 matters private.

16 If you fall into that category, we don't want
17 to put you on the spot or embarrass you. We do want
18 honest answers to the extent that this encourages it
19 then we have you come down here and talk to me and the
20 attorneys. There's another way I can do it. I suppose
21 I could clear the courtroom. But if I did that, I'm
22 going to have to excuse you. I'm going to have to
23 admonish you. I'm going to have to wait until everyone
24 gets gathered back up, bring you back in, take roll, and
25 it's going to cause a lot of delay. To avoid doing
26 that, I think it's better and a better use of your time
27 if I just do what would be considered rude at the
28 Tomberlin Household is to whisper behind people's backs

1 but that's what we do, so I hope you don't mind.

2 Thank you, 026XXXXXXXXXX.

3 **MS. DEBRA McKENZIE**

4 BY THE COURT:

5 Q Ms. McKenzie?

6 A I'm a division assistant support for a sales
7 organization in Loma Linda for advertising. My late
8 husband of ten years was an employer of a small paint
9 store in Nevada. I have served on one criminal trial as
10 an alternate. There was a verdict reached but I wasn't
11 a part of it. I have -- 6 and 7 are yes. I have
12 several close acquaintances that are police officers,
13 and my nephew is attempting to be hired on by the
14 Riverside PD. 11 and 12 are yes. My daughter-in-law's
15 younger brother is currently incarcerated on a charge of
16 rape and serving 25 years. He's attempting to get his
17 appeal filed and I'm involved in that.

18 Q You're involving in helping him get his appeal
19 filed?

20 A Yes.

21 Q Okay.

22 A I'm helping her with the paperwork. I can't
23 literally be involved in it because I'm not related but
24 I can tell her.

25 Q Okay. So you feel if that person was -- I
26 don't know. I shouldn't have said it that way.

27 Do you feel that that person was wrongly
28 convicted?

1 A Yes.

2 Q Okay. Do you think that would affect how you
3 might view the evidence in this case?

4 A No.

5 Q Okay.

6 A 12, my house has been broken into several times
7 and that's about the extent, petty things taken usually
8 by kids. They were never brought --

9 Q Is that it for "yes" answers?

10 A Yes -- not since I have lived up here.

11 THE COURT: Okay.

12 MR. CAMERON BEAN

13 BY THE COURT:

14 Q Mr. Bean?

15 A Good afternoon, your Honor. I'm a painting
16 contractor for South El Monte, California. My wife is a
17 mother and a nurse.

18 Q Wait a minute, from South El Monte. You don't
19 live in South El Monte, do you?

20 A I do not. That's where I work. That's where
21 my shop is at.

22 Q Okay. You're a contractor. Are you going to
23 be all right here with this schedule?

24 A Yes, sir.

25 Q Okay.

26 A Never served on a jury before. 6 and 7 are yes
27 to both of those. I have a couple of good acquaintances
28 that are retired law enforcement. And then my son has

1 several friends who are DOC, they work in the Department
2 of Corrections.

3 Q Okay.

4 A 11 is a yes. My brother for interstate
5 trafficking drugs from here to somewhere else and got
6 caught. 13 is a yes. As a hard working tax paying
7 citizen, I would hope that the District Attorney and the
8 law enforcement would have facts in order to at least
9 attempt to prove a case, as opposed to just throwing out
10 charges. I would hope that they would, you know, have
11 enough evidence that they would feel that they have a
12 good chance of a verdict in the case in their favor
13 before they bring it to this point.

14 Q Okay. That's a fair assessment, perhaps. Let
15 me ask you this question.

16 A Sure.

17 Q So if you believe that Mr. Thomas thinks he can
18 prove the case, do you think that's evidence of guilt?

19 A No.

20 Q Okay. So are you with me that what's going to
21 happen is that no matter how strongly he believes it,
22 the final analysis is going to be the question of has he
23 proven it to you; is that right?

24 A Yes, sir.

25 Q Okay. Let me introduce another topic,
26 Mr. Bean. Let's say that Mr. Yablonsky decides that he
27 doesn't want to give testimony in this case. Everybody
28 should know, by the way, that there's a thing called a

1 Fifth Amendment to the United States Constitution.
2 Remember the first ten amendments were referred to as
3 the Bill of Rights. The Constitution wasn't ratified
4 until the Bill of Rights was added? So everyone has a
5 right to remain silent and can't be forced to give
6 testimony against themselves.

7 If you were a juror in this case and
8 Mr. Yablonsky decides not to testify, would you be able
9 to ignore that issue and not hold that against him from
10 wanting to remain silent?

11 A I would.

12 THE COURT: It might be a difficult concept
13 for us to come by. We're curious, aren't we? We are
14 curious people. I have people, and some of you might
15 have children, and what may take place in your
16 home -- if you hear like a "wack" and you go into the
17 other room and there's Rachel crying and there's Jack
18 laughing, what are you going to do? Are you going to
19 say, "I wonder what happened." Or are you going to
20 pick them up and start -- never mind.

21 We won't describe things that are probably not
22 within the Statute of Limitations now. But you're going
23 to ask what happened. This kind of goes back a little
24 bit to what we discussed with Ms. Pineiro. We are
25 trying to get to the bottom of this. We don't have the
26 ability of controlling the information. You don't have
27 the ability to control the information that you get.
28 You're going to get what Mr. Thomas gives you. And

1 you're going to get something if Mr. Sanders thinks that
2 he should give you some information, remembering he has
3 no burden of proof and remembering that Mr. Yablonsky
4 has the constitutional right to decide whether or not to
5 give testimony.

6 I'm going to give instruction that will order
7 that you not consider for any purpose if Mr. Yablonsky
8 decides to remain silent. Remembering, again, that he
9 has a right to be presumed innocent the contrary is
10 proved, remembering that it's his decision to
11 make -- he'll make it with Mr. Sanders but he may choose
12 to rely on the state of the evidence.

13 Does everyone see that if you could infer that
14 someone was guilty because of the fact that they
15 exercised their privilege not to testify, then the right
16 to remain silent would not be much of a right, would it?
17 That privilege would not be very valuable.

18 Does everyone understand and agree that we
19 protect that important privilege? Okay.

20 **MS. TASIA GREEN**

21 BY THE COURT:

22 Q Ms. Green, hello.

23 A Hello. Right now I'm a student, and I collect
24 unemployment. My spouse is a pharmacy technician. I
25 have never served in a jury before. Yes to answers 11,
26 12, and 13. My nephew is in jail right now for a
27 murder. He's awaiting trial. And I in 2009 I was
28 beaten and sexually assaulted by my boyfriend. And

1 Number 13, I have to say yeah.

2 Q Okay. Would any of those things that you just
3 said affect your ability to be a fair and impartial
4 juror?

5 A You were saying when you were talking about how
6 if he wouldn't want to tell his story, I would
7 automatically think that he was guilty if he didn't want
8 to testify.

9 Q Even if I told you to ignore that, you wouldn't
10 be able to do that?

11 A Yeah, I believe if he wouldn't be able to
12 testify and say his side of the story, I just wouldn't
13 believe him at all.

14 Q Okay. Should we have further discussion on
15 that, Mr. Thomas or Mr. Sanders, to talk to this person?

16 MR. SANDERS: No, your Honor.

17 MR. THOMAS: I would stipulate.

18 THE COURT: She indicated an unwillingness to
19 follow an instruction that I'm certainly going to
20 give. I don't know whether he's going to testify or
21 not. But based upon what you have said, they're
22 stipulating I can excuse you for cause so I'm going to
23 excuse you for cause. Thank you for being with us.

24 Would you call out another name for that seat.

25 THE CLERK: Juror Number 34, 034XXXXXXXXX.

26 THE COURT: While 034XXXXXXXXX comes forward to
27 take his seat, I'm going to say hello Ms. Whittaker.

28

MS. LINDA WHITTAKER

1
2 BY THE COURT:

3 Q Hello.

4 A Hi. I'm unemployed right now. I was in
5 retail. My husband works for the phone company. I
6 never served on a jury. And the answer to 14 is no.

7 THE COURT: Thank you.

8 034XXXXXXXXXXXXXX

9 BY THE COURT:

10 Q 034XXXXXX.

11 A Hi. I work for the Department of Navy, DOD.
12 And I work with, you know, we fix the machines out
13 there, the war machines, and I'm a part-time student.
14 My wife is -- she works out there as well.

15 Q When you say "out there," where is that?

16 A Naval test station?

17 A No. A marine base in Barstow.

18 Q What's the same of that?

19 A Marine Core Logistics Base.

20 Q Thank you.

21 A I have never served on a jury. And yes to 11,
22 and yes to 12. Yes to 11, when I was younger as a
23 juvenile I got in some trouble.

24 Q You don't have to tell us about your juvenile
25 record.

26 A Okay. And then I have a couple brothers that
27 are incarcerated.

28 Q Anything about the way they were treated that

1 would cause you to question the fairness of --

2 A There have been in certain situations. My
3 older brother -- and a lot of stuff I didn't know
4 exactly how it went down. But from what I was told, the
5 police didn't act accordingly in that situation, so
6 yeah.

7 Q Does that mean you would automatically distrust
8 the police officers in this case?

9 A Not necessarily. I'd have to look at all the
10 facts and everything and go from there, but no.

11 Q Okay. Is that it for yes answers?

12 A No, 12. I have had my truck stolen before.
13 But everything else is a no.

14 THE COURT: Thank you.

15 018XXXXXXXXXXXXXX

16 BY THE COURT:

17 Q 018XXXXXXX?

18 A I'm a homemaker. My husband is a high school
19 teacher. And I have never served on a jury.

20 Q Any "yes" answers?

21 A No. I do know a few people in law enforcement.

22 Q Okay. Probably you had some --

23 A Friends.

24 Q Your husband teaches at Granite Hills; right?

25 A No. Victor Valley.

26 THE COURT: All right.

27

28

MS. KATHERINE BRADFIELD

1
2 BY THE COURT:

3 Q Ms. Bradfield?

4 A I am a food service worker for a middle school.
5 I husband works for the railroad. I have never served
6 on a jury. And I have a yes answer to Number 5. I read
7 the newspaper every day, and I do have some vague memory
8 of reading the two names of the victims of
9 Mr. Yablonsky.

10 Q Okay. Are you like me? You see something in
11 the newspaper and it's kind of an interesting thing to
12 read, but you don't necessarily believe that everything
13 printed in the newspaper is true?

14 A I can't say at this point. I would have to
15 read more and I have my thoughts. I'm kind of drawn
16 towards if it's there, then if there's smoke there must
17 be fire.

18 Q Let me ask you this: You have read something
19 in the newspaper, and you think it might be related to
20 this trial, do you think that if I were to tell you to
21 ignore what you heard or read in the newspaper could you
22 do that?

23 A Yeah.

24 Q Okay. This is not trial by what the cop
25 thinks. This is certainly not trial by what the
26 newspaper reporter thinks. There's nothing wrong with
27 newspapers, but I can tell you from personal experience
28 that I sometimes read about things that happened in a

1 courtroom. And I'm reading it and I go, "That sounds
2 weird." Then I'll realize that they're talking about
3 something that happened in my courtroom that's not quite
4 accurate. Reporters have to get information. They have
5 to get a story out.

6 I mentioned the question of honesty of police
7 officers. You heard me talk about that. You know we
8 make a big deal of it. It's even on question 8 out of
9 the few that we ask. The fact is that most of the time
10 you're not going to have a law enforcement officer who
11 is a witness to anything other than relating to us what
12 he saw later or somebody pointed out to him or her or
13 what somebody told him or her.

14 So are you going to be able to be a fair juror?

15 A I think so.

16 Q Okay. Is that it?

17 A Yeah.

18 025XXXXXXXXXXXXXXXXXXXX

19 BY THE COURT:

20 Q 025XXXXXXXXXX?

21 A Good afternoon. I'm a registered nurse. My
22 husband is a school teacher. He teaches fifth grade. I
23 have been on two previous juries, one has been within
24 this -- your court system. And verdicts on both of
25 them.

26 Q Okay.

27 A No to all of the answers.

28 THE COURT: Thank you.

MS. SHARON TIERNEY

1
2 BY THE COURT:

3 Q Ms. Tierney?

4 A Good afternoon, Judge. Yes to 3. There was a
5 verdict. 6, I know a lot of law enforcement over the
6 years, and I do have attorneys in the family that are
7 San Bernardino County. Yes on 11, a son, friends,
8 family. 12 is a yes. And for myself, personally, just,
9 like, home invasion and vehicle theft. My son was
10 charged and he was -- on 11 -- he was sentenced, and
11 that was a felony. It was later dropped to a
12 misdemeanor and I believe before your court. I attended
13 most of the hearings or whatever. I thought he got a
14 fair shake.

15 Q What about 1 and 2?

16 A Sorry.

17 Q I'm wondering if you were anti-consecutive or
18 chronological.

19 A Dyslexic. I have been retired for about ten
20 years from the medical field, phases from nursing to
21 managing. And separated from my spouse for ten years.
22 I guess he would be categorized as welder, maintenance.

23 Q Is your son an attorney?

24 A No. My brother-in-law and father-in-law.

25 THE COURT: Okay. Thank you.

MS. MARIE CERVANTES

26
27 BY THE COURT:

28 Q Ms. Cervantes?

1 A Hi. I'm an instructional assistant for the
2 Victor Valley Elementary School here in Victorville. My
3 husband is in maintenance. I did serve on a jury a long
4 time ago, civil. Number 7 would be yes. My nephew is a
5 sergeant. He is a transfer here in the courthouse
6 somewhere.

7 Q What's his name?

8 A Steven Hinojos.

9 Q There's only one sergeant here in the
10 courthouse. I wanted to see if we were talking about
11 the same person.

12 A Yeah.

13 Q Yeah.

14 A Steven Hinojos and the last time I knew, he was
15 supposed to be transferred here.

16 Q He's here. He replaced Sergeant Bachelor, who
17 was a lieutenant. Maybe Steven will get promoted too.

18 A Does that mean I can leave? Number 12 is a
19 yes. My son was a victim. And the rest would be no.

20 THE COURT: Thank you.

21 MR. CHRISTOPHER PROCTOR

22 BY THE COURT:

23 Q Mr. Proctor?

24 A I work at Wal-Mart Distribution Center as a
25 loader. I have been there for seven years. My wife is
26 a stay-at-home mom/home school teacher. And I never
27 served on a jury. The only one I have a yes to is
28 Number 12. My best friend, she was raped by her father.

1 And my sister-in-law, she was raped at a party.

2 Q Okay. Is there anything about the fact that
3 you have friends or relatives that were raped, you know,
4 that rape is an allegation in this case? Is that going
5 to affect how you view the evidence in this case?

6 A I would like to say no. But a part of me -- I
7 didn't know until just now until I said it.

8 Q Okay. It happens all the time. Don't feel
9 like the Lone Ranger. Sometimes you can sit there
10 thinking about it, and you have your thoughts all in
11 order and I have seen people before all of a sudden have
12 a catch in their throat, hear the emotion rising, and
13 realize that it's going to affect them. This is going
14 to be something that you're going to hear about. It's
15 going to be an unpleasant experience in some ways.
16 Nobody says you have to be able to be unaffected by your
17 jury service.

18 But if you think that what you are telling me
19 about your own experience through your relative and your
20 friend and if those are going to affect you.

21 You think it will?

22 A Yeah. I would believe so, but like I said,
23 I've been trying to work on that for a while.

24 Q But you think it might be hard to separate?

25 A Yeah.

26 THE COURT: Counsel, do you stipulate that I
27 can excuse Mr. Proctor for cause?

28 MR. SANDERS: Yes, your Honor.

1 MR. THOMAS: Yes, your Honor.

2 THE COURT: Mr. Proctor, you are excused.

3 We are getting close to that break. If you're
4 wondering does he ever stop.

5 Call another name, please.

6 THE CLERK: Juror Number 1, Cherri Allen.

7 **MS. CHERRI ALLEN**

8 BY THE COURT:

9 Q Hello, Ms. Allen.

10 A Hello. I am a campus assistant for Hesperia
11 Unified School District, Hesperia High School. My
12 husband is a laid off construction foreman. I have
13 never served on a jury. And I have yes to 6, 7, and 12.
14 6, I have an acquaintance that works for San Bernardino
15 police department, he's a detective. And I have my son
16 works -- is a San Bernardino County sheriff's deputy
17 here in Victorville. And me and my husband had some
18 construction equipment stolen about 20 years ago.

19 Q That's it?

20 A That's it.

21 Q So your son's name, what is his first name?

22 A Steven Allen.

23 Q Steve Allen. I have heard of that name before.
24 It was a joke. The original Tonight Show. What about
25 this? You know that Detective Alexander is with the
26 San Bernardino Sheriff's Department; right? So if you
27 sat as a juror in this case, are you going to
28 automatically want to see Mr. Thomas win because

1 Mr. Thomas is here as the attorney for the People and
2 he's the one calling the police officers and he's trying
3 to sell you on this investigation being proven beyond a
4 reasonable doubt? Are you going to want to see that or
5 are you going to wait and see?

6 A No.

7 Q You will wait and see?

8 A Yeah, I'll wait and see.

9 Q Okay. This case is over. Your son comes up,
10 "Hey Mom, you acquitted somebody on a murder?"

11 What are you going to say?

12 A I listened to all the facts.

13 Q No problem. Let the chips fall where they may?

14 A Yeah.

15 THE COURT: I'm going to ask this now for
16 everyone here, that is all 18, you have heard me bring
17 up some things back there, for instance, 059XXXXX. I
18 talked to you quite a while ago. Ms. Austin, I talked
19 to you before I brought up the subject of presumption
20 of innocence, the right to remain silent. All of
21 those things I talked about later. But you all heard
22 everything that I have talked about so far.

23 Does everyone agree to apply those principles
24 that I have talked about with you so far?

25 (Whereupon the prospective jurors answered in the
26 affirmative.)

27 THE COURT: Any problem with any of them?

28

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

3 THE COURT: Okay. We're going to take a
4 recess. When we come back, we're going to hear from
5 Mr. Sanders. He is going to get an opportunity to ask
6 questions of you, then Mr. Thomas will get a chance.

7 Every time we take a break I'm going to say
8 you're admonished, that it is your duty not to converse
9 among yourselves or with anyone else on any matter
10 connected with this case nor form or express an opinion
11 on it until it's submitted to you.

12 15 minutes.

13 (Whereupon a brief recess was taken.)

14 THE COURT: Okay. Thank you very much.

15 We're back on the record in the case of
16 People of the State of California versus
17 John Henry Yablonsky, who is here along with his
18 attorney David Sanders. John Thomas is here along with
19 Detective Alexander.

20 And we're continuing in our voir dire.

21 Mr. Sanders, would you like to have an
22 opportunity to ask questions?

23 MR. SANDERS: I do. Thank you.

24 THE COURT: Ladies and gentlemen, Dave
25 Sanders.

26 You're going to have to speak so loudly that
27 the people behind you can hear you, and I know that's
28 not your normal tone of voice. Maybe if you would move

1 to this podium down here, you would be facing the right
2 direction.

3 MR. SANDERS: I'm sorry, your Honor. I
4 started off with something happening in my throat and
5 it came out soft. I'll try to make it louder.

6 THE COURT: Thank you.

7 MR. SANDERS: Ladies and gentlemen of the
8 jury, my opportunity at this point is to ask you some
9 questions. As the judge indicated, voir dire is the
10 desire that all of us have to have a fair trial, to
11 have a jury that is fair, a jury that is unbiased, a
12 jury that is unprejudiced, and a jury that can perform
13 a task that we hope in our country that jurors will
14 do. My questions are asked in that light.

15 I know the judge asked all of you individual
16 questions, and it took a couple of hours so I hope
17 you'll forgive me if I sometimes repeat some of the
18 things that the judge asked you. The reason I do that
19 is sometimes when 059XXXXX answers questions at 10:30 in
20 the morning and we get all the way to Ms. Tierney,
21 059XXXXX thinks over, "Wait a minute. You know, there
22 was this other time," or "There was -- I do have an
23 answer to question Number 8 or 9," or something like
24 that. So I might do that a couple of times.

25 Then I do have some individual questions based
26 upon the answers that you gave the judge. All of you
27 understand that to be a juror, you're going to be a
28 judge. You're going to have to judge people. And those

1 people will be witnesses in this case.

2 Is there any of you that have a feeling, a
3 religious feeling or otherwise, that you should not
4 judge other people? I don't see any hands.

5 Do you understand that those people are going
6 to come up here and sit right here and Mr. Thomas and
7 myself will ask them questions? And you will have to
8 judge that. Now, his honor is the judge of the law. He
9 will tell you what the law is because you have to be the
10 judge of the witnesses and the facts. You, and only
11 you, would have to decide what it was that happened or
12 what it was that didn't happen in this case.

13 Some of those witnesses may not be people off
14 the street. We might have a doctor coming in this case.

15 In fact, I think we will have a doctor come in this
16 case. And that doctor is going to take a stand and he's
17 going to testify. And you understand that if you're on
18 the jury in this case, you have to judge the doctor's
19 testimony and decide if it is credible or not.

20 Is there anybody intimidated by that
21 task?

22 Ms. Austin, do you feel up to that?

23 THE PROSPECTIVE JUROR: Yeah.

24 MR. SANDERS: That's not a problem, Mr. Bean?

25 THE PROSPECTIVE JUROR: No, sir.

26 MR. SANDERS: Okay.

27 You understand that the judge said we may have
28 some police officers testify in this case. Usually it's

1 police officers that go out to a crime scene and pick up
2 evidence and things like that, and there may be
3 testimony of that. You will have to judge when they
4 testify. If they say they saw something or they say
5 they heard something, you have to make a judgment.

6 Is that reasonable?

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

9 MR. SANDERS: Anyone intimidated by that
10 task?

11 (Whereupon the prospective jurors answered in the
12 negative.)

13 MR. SANDERS: Okay.

14 I think in this case we might have some people
15 that call themselves experts, some people that say, "I
16 know all about DNA testing. I know all about
17 fingerprinting. I know about something else." And you,
18 again, are going to have to make those judgments, make
19 the decisions.

20 Is anyone intimidated by that?

21 (Whereupon the prospective jurors answered in the
22 negative.)

23 MR. SANDERS: No matter who the witness is in
24 this case or what it is that they're testifying about,
25 you are the people that have to make the judgments as
26 to whether or not that's reasonable testimony,
27 consistent testimony, it's competent testimony.

28 In this case, you are going to have to make

1 logical judgments. The judge is going to, for example,
2 instruct you that there is more than one kind of
3 evidence. There's direct evidence, something somebody
4 saw happen, and there's indirect or circumstantial
5 evidence. And you'll have to decide is that
6 circumstantial evidence that the District Attorney or
7 the government's lawyer presented? Is it logical?

8 Is there anyone that feels they're not up to
9 that task? I don't see any hands.

10 All of us have emotions. There's nobody in
11 this room, I don't think, that is emotionless. You go
12 see a movie sometimes and just cry. Somebody tells you
13 a sad story, it makes you cry. One of your kids does
14 something great, they are in a play at school, you get
15 those feelings inside. And it's a strong feeling. But
16 you understand that emotion is something that you have
17 to set aside when you are a juror in a case like this.
18 You may hear things that are very emotional. But you
19 can't judge the case on emotion. You have to judge the
20 case on evidence and logic.

21 Is there any of you that feel you may have
22 difficulty with that?

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

25 MR. SANDERS: Okay. Ms. Bradfield, do you
26 think you might have difficulty with that? Or do you
27 think that emotions might overwhelm?

28 THE PROSPECTIVE JUROR: I feel I might get

1 emotional but I don't think that would overwhelm me
2 because the logic would come over and it would have to
3 be --

4 MR. SANDERS: The logic and the thought would
5 be there?

6 THE PROSPECTIVE JUROR: Right.

7 MR. SANDERS: Okay.

8 034XXXXXX, do you feel that way?

9 THE PROSPECTIVE JUROR: Yes.

10 MR. SANDERS: Mr. Greenwood?

11 THE PROSPECTIVE JUROR: Yes.

12 MR. SANDERS: How about 016XXXXXXX?

13 THE PROSPECTIVE JUROR: The same.

14 MR. SANDERS: Okay.

15 This case is about a woman that died 25 years
16 ago. It may be that there will be people in the
17 audience that were related to her or that feel -- or her
18 family, feel strong -- and they be sitting in the
19 audience, and they will be watching you and listening to
20 what happens and looking at you and watching what you
21 do.

22 Do you realize that no matter what -- who is
23 out there or who is listening or who is watching you,
24 you have to decide the case based on the evidence and
25 not on whether or not someone might be sad or happy
26 depending on which side you're on as to what you are
27 doing?

28 Is there anybody who might have difficulty with

1 that?

2 Ms. McKenzie, so you are a juror in this case,
3 and it's time for you to go deliberate. And you go back
4 in the back room and you decide there's not enough
5 evidence here. I have to put not guilty because there's
6 not enough evidence beyond a reasonable doubt. But I
7 know if I do that, I'm going to come out and there's
8 going to be six members of their family and they're all
9 going to be crying and looking at me. I don't think I
10 can do that.

11 Do you think you might feel that way?

12 THE PROSPECTIVE JUROR: No.

13 MR. SANDERS: 018XXXXXXX, do you think that
14 way?

15 THE PROSPECTIVE JUROR: No.

16 MR. SANDERS: Is there anybody here that is
17 concerned that maybe might affect them?

18 (Whereupon the prospective jurors answered in the
19 negative.)

20 MR. SANDERS: Mr. Bean, I wanted to ask you a
21 couple of questions based upon a couple of answers
22 that you gave the judge. I think you used the words
23 "Where there's smoke, there's fire." Did you use
24 that, or did you answer a question?

25 THE PROSPECTIVE JUROR: I didn't use the
26 words, no.

27 MR. SANDERS: I think what you said was, you
28 hope that as a taxpayer that your government -- the

1 politicians that run the District Attorney's office
2 are not going to bring a case in to you unless they
3 have some evidence.

4 Is that when you said?

5 THE PROSPECTIVE JUROR: That's correct.

6 MR. SANDERS: Okay. I hope that too. But at
7 the same time, are you able to follow the instructions
8 the judge will give you that you must presume my
9 client innocent until the government's attorney is
10 able to prove otherwise?

11 THE PROSPECTIVE JUROR: Sure.

12 MR. SANDERS: Okay. And you don't think that
13 would be a problem one way or the other?

14 THE PROSPECTIVE JUROR: No.

15 MR. SANDERS: You understand that this
16 presumption of innocence is one of the pillars of our
17 own justice system?

18 THE PROSPECTIVE JUROR: I do.

19 MR. SANDERS: Okay. And the other main
20 pillar of our justice system, being that you can't
21 find a person guilty unless the government is able to
22 prove it beyond a reasonable doubt.

23 Now, the judge indicated as he was questioning
24 some of you, he told you the difference between -- in a
25 civil case it's just a preponderance and in some other
26 civil cases it might be clear and convincing evidence.
27 But this is a criminal case. This isn't preponderance.
28 This is beyond a reasonable doubt. You must decide the

1 case beyond a reasonable doubt to find anyone guilty.

2 Is there any of you that think that that was
3 unfair to the other side of the prosecution that they
4 have to meet such a high standard? Is there any of you
5 that think that's not fair? I don't see any hands.

6 Is there any of you that will not or you have a
7 doubt in your mind that you could actually have to find
8 somebody guilty beyond a -- or not guilty beyond a
9 reasonable doubt?

10 (Whereupon the prospective jurors answered in the
11 negative.)

12 MR. SANDERS: Okay. Have any of you ever
13 been a part of an organization, a political
14 organization or a club or a class or a group that has
15 ever tried to change anything in the criminal justice
16 system telling -- for example, writing letters to your
17 congressman that the criminal justice needs to be
18 changed?

19 Pardon me for a minute. I'm going through my
20 notes here. Ms. Anderson, you said that you had a
21 brother or husband or son in law enforcement?

22 THE PROSPECTIVE JUROR: Correct.

23 MR. SANDERS: All the same ages?

24 THE PROSPECTIVE JUROR: My brother and my
25 husband and my son.

26 MR. SANDERS: Your husband is retired?

27 THE PROSPECTIVE JUROR: Yes.

28 MR. SANDERS: And your son is?

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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28

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 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.

1 Knowing that, Ms. Bradford, would you be able
2 to set aside your feelings and follow the law and not
3 consider that or would that be something that would
4 bother you if my client doesn't testify?

5 A It would be something that would bother me. It
6 would.

7 Q You don't -- if he didn't testify, you don't
8 think you could be a fair juror in this case?

9 A Not at this point.

10 MR. SANDERS: Let me ask you another thing;
11 Ms. Bradford indicated she had read about this case in
12 the newspaper. The rest of you indicated you have
13 not. Let me ask the question again. Now that we've
14 had some time to think about this, do any of you
15 recall reading articles in the newspaper about a cold
16 case involving a woman that was killed in
17 Lucerne Valley in 1985, any of that -- any of those
18 kinds of things?

19 Sometimes what I worry about is that you may
20 not remember now, but as a case goes along, you may
21 remember something later. Let me ask you this: The
22 district attorney of our county is a politician. Like
23 any other politician, he has to be elected. When he was
24 running for re-election, he sent out mailers and the
25 mailers looked like this on the front. There was
26 another mailer that he sent out that looked like this.

27 Do any of you remember receiving these in the
28 mail?

1 THE PROSPECTIVE JUROR: I did.

2 THE COURT: Ms. Tierney.

3 THE PROSPECTIVE JUROR: Yeah.

4 MR. SANDERS: 034XXXXXX. Any of the rest of
5 you? The reason is because when the district attorney
6 sent them out, he put my client's picture on the back.

7 Do any of you remember seeing that photograph
8 when you got the mailer in the mail?

9 THE PROSPECTIVE JUROR: I ripped mine up
10 coming out of the post office.

11 MR. SANDERS: That's what I do. I throw them
12 in the trash. People may read them, and it may come
13 back to you and actually in the mailer --

14 THE COURT: Just a minute. Just a minute.
15 Sorry. We only have one reporter, so we can only have
16 one voice at a time. If someone's talking, you'll
17 have to stop.

18 MR. SANDERS: Yes, sir.

19 THE COURT: Go ahead.

20 MR. SANDERS: Okay. Who was talking?

21 Ms. Tierney?

22 THE PROSPECTIVE JUROR: I didn't -- like I
23 said, it came out in the mail, and I ripped -- I don't
24 remember seeing that side.

25 MR. SANDERS: Okay. Those of you that saw
26 this, if you read the writing on this, it makes it
27 sound like Mr. Yablonsky has already been convicted,
28 and he hasn't been.

1 Did any of you get that impression that saw
2 this that he had been found guilty? All right.

3 Again, those of you -- do you remember seeing
4 this one with my client's picture on the inside?

5 Ms. Bradford, do you remember seeing that?

6 THE PROSPECTIVE JUROR: It's Bradfield.

7 MR. SANDERS: I'm sorry. You don't remember
8 seeing that?

9 THE PROSPECTIVE JUROR: I don't remember that
10 mailer at all.

11 MR. SANDERS: All right. 025XXXXXXXXXX, you
12 don't remember seeing this?

13 THE PROSPECTIVE JUROR: No.

14 MR. SANDERS: 059XXXXX?

15 THE PROSPECTIVE JUROR: Um-hmm, no.

16 MR. SANDERS: No one else? All right.

17 If during the trial you remember that you did
18 read something in the paper or something triggers a
19 memory in your mind, would all of you agree to decide
20 this case just on the evidence that comes out in court
21 and not on anything that you might have read or seen any
22 other occasion?

23 Is there anyone that couldn't do that?

24 Fact is, when this case is over, you'll know
25 more about this case than the district attorney. You
26 will have all the facts.

27 Thank you, your Honor.

28 THE COURT: Thank you, Mr. Sanders.

1 Mr. Thomas will now get an opportunity to
2 address you.

3 MR. THOMAS: Good morning, ladies and
4 gentlemen. Before I get started, I want to thank
5 everybody that's in the box right now and everybody
6 who's out in the audience for your time and your
7 attention in this matter. It's really important that
8 we have jurors in order for our criminal justice
9 system to work the way that it does. Without each one
10 of you taking the time out of your busy schedules and
11 every day lives, we wouldn't be able to have the
12 system that we have. So I wanted to thank you, and
13 I'm sure Mr. Sanders and the judge feel the same way.

14 I also want to emphasize something that the
15 judge said yesterday about telling the truth. It's very
16 important that you answer our questions truthfully. I
17 can give you numerous examples. My last trial down in
18 Fontana in October through December was about a
19 two-month trial, one and a half month, and there was a
20 juror that failed to disclose some information during
21 the voir dire process.

22 Well, we found out there was some information
23 that she failed to disclose, and she sat through the
24 whole trial. At the very end when we found out this
25 information, she was dismissed as a juror. So she
26 wasted all her time being a part of the jury for that
27 trial and never got to deliberate or make any decisions
28 on the case.

1 If there's something that comes to mind that
2 you're not sure of whether or not this is important or
3 unimportant or that this would answer the question that
4 was posed, it's very important for you to tell us or
5 tell the judge that information regardless of whether or
6 not we ask you specifically about that particular
7 incident or not. If it's something you feel might cause
8 you to feel one way or the other or not be impartial in
9 the case, we need to know that.

10 With that, I want to get started. I'm sure all
11 of you received your jury summons weeks ago that you
12 were going to be on jury duty. I'm sure once you opened
13 up that envelope and you saw, oh, I got a jury summons,
14 you got all excited and you called your spouse or
15 significant other and told them, I got selected to be on
16 jury duty. I'm so excited about this; right,
17 Mr. Greenwood? Nobody does that; right? That's because
18 this is one of those things that people take seriously.
19 It's a duty pretty much that you come here, and you sit
20 as a juror. That's part of being an American and being
21 in the system that we are.

22 Not everybody gets to do this. There's certain
23 people that don't get to participate in this. If you
24 live outside the county of San Bernardino, you wouldn't
25 be able to sit as a juror here in San Bernardino County.
26 People that have been convicted of felonies, they aren't
27 able to sit and be a juror on these cases. So it's a
28 privilege to do that, and it's like voting.

1 A No, it was late '90s.

2 Q Late '90s. Was that in this county?

3 A Yes.

4 Q Okay. And you were actually a member of the
5 actual 12 that got to decide?

6 A Yes.

7 MR. THOMAS: Okay. And you said -- one of
8 the things you said was who wants to come in here and
9 spend their day listening to a bunch of attorneys
10 basically talk to you, a bunch of attorneys argue and
11 judge tell you all the instructions.

12 Anybody here think that this is going to be
13 like what they see on TV, on Law and Order and CSI and
14 some of those other shows?

15 Anybody open that jury summons and say this is
16 going to be great? I get to listen to something that's
17 kind of like Law and Order. It will be real-life TV
18 basically.

19 MS. NITIKA AUSTIN

20 BY MR. THOMAS:

21 Q Ms. Austin, did you think it was going to be
22 like that?

23 A No, I didn't. Every time I call it always says
24 I'm canceled. That's what I was hoping for.

25 Q I'm sure more people here were hoping they
26 would call up and say it was canceled.

27 Everybody here understand as far as TV goes
28 that's something that isn't real life? Everybody

1 understands that nobody's going to go back in the
2 deliberation room -- let's say the 16 of you are
3 selected and you go back in the deliberation room and --
4 who watches CSI or Law and Order just by show of hands?
5 Okay.

6 034XXXXXXXXXXXXXX

7 BY MR. THOMAS:

8 Q 034XXXXXX, let's say you're selected as a
9 juror. You watch CSI Miami?

10 A No, Law and Order.

11 Q So you watch Law and Order. Let's say you go
12 back in the deliberation room, something comes up and it
13 reminds you of an episode that you saw the night before
14 or sometime on Law and Order where you heard that the
15 prosecution or the police did something in that show and
16 you wonder how come they didn't do it in this case. How
17 come Mr. Thomas and Detective Alexander didn't do all
18 this stuff that I saw on Law and Order? I'm having
19 problems with that.

20 Would that be something that you would do back
21 in the deliberation room?

22 A No. A lot of that on TV, I know it's not true
23 because I've been studying about that and a lot of stuff
24 on like Law and Order wouldn't even hold in court as far
25 as that goes. No, I don't think so.

26 MR. THOMAS: Anybody disagree with 034XXXXXX
27 who would go back in the deliberation room and
28 basically say, look, you know, Horacio on CSI Miami

1 did this cool thing that I saw on Monday night and why
2 didn't Detective Alexander do that when he was
3 investigating this case? Nobody's going to do that;
4 right? All right.

5 018XXXXXXXX

6 BY MR. THOMAS:

7 Q What was the first thought that went through
8 your head, 018XXXXXXXX, when you heard the charges and
9 you heard the charge was murder in this case?

10 A I was surprised. I didn't think I'd be here
11 anyway, and I have never been on a jury. That's a big
12 one.

13 Q Okay. Did you have some sense of shock or
14 anything when you heard murder?

15 A Um-hmm.

16 Q What was your thought after you heard the
17 murder or before you heard the murder you heard the date
18 that it occurred, 1985? What was your thought when you
19 heard that?

20 A That was a long time ago.

21 MR. THOMAS: Okay. 016XXXXXXXX, did you have
22 any thoughts when you heard murder and the fact that
23 it occurred back in 1985?

24 THE PROSPECTIVE JUROR: No, because that's
25 just life, you know. We have -- every day there's
26 crime and every day there's trials, and we just have
27 to weigh everything out and see what fits and use your
28 better judgment on everything that's presented to you.

1 MR. THOMAS: Other than 004XXXXXXX, has
2 anybody sat on a jury before where the charge was
3 murder? I know there were a few individuals that sat
4 on juries before.

5 059XXXXXXXXXXXXXXXXX

6 BY MR. THOMAS:

7 Q 059XXXXX, you've sat as an alternate on a jury?

8 A Um-hmm.

9 Q What type of trial was that?

10 A It was a criminal -- I guess it was criminal,
11 guy running from the police.

12 Q Okay. So kind of an evading charge?

13 A Yeah.

14 Q Okay. And as an alternate, what would -- what
15 did that make you feel like when you saw the 12 jurors
16 that were selected as jurors go back there and
17 deliberate and you weren't invited back there to
18 deliberate?

19 A Well, it didn't take long for them to
20 deliberate. Everybody got out of court and they had
21 already did the judgment.

22 Q Uh-huh. So you didn't feel like you were left
23 out or anything like that?

24 A No.

25 025XXXXXXXXXXXXXXXXXXXX

26 BY MR. THOMAS:

27 Q All right. I know there was someone that had
28 two prior jury experiences. 025XXXXXXXXXX, I think it

1 was you; right?

2 A Um-hmm.

3 Q What type of trials were they?

4 A One was in Big Bear, spousal abuse. The other
5 one was here. It was an incident at the Adelanto Jail.

6 Q Both of those trials you were actually one of
7 the 12 jurors?

8 A Yes.

9 Q You came to verdicts on both of those trials?

10 A Yes.

11 MR. THOMAS: Did anybody here follow any of
12 these high-profile cases, let's say the Lindsay Lohan
13 case or any of these other cases where you have
14 celebrities or has anybody been following what's been
15 going on in the news in Tucson with the congresswoman
16 that was shot there and the federal judge that was
17 killed? A few of you have been following that.

18 Has anybody watched any of the trials on these
19 high-profile cases on TV where you sat through and
20 watched it on TV? No.

21 016XXXXXXXXXXXXXXXXXX

22 BY MR. THOMAS:

23 Q 016XXXXXXX, as far as your prior jury
24 experience, what did you think about the whole
25 experience?

26 A It's educational.

27 Q Uh-huh.

28 A You -- you are privileged to examine everything

1 and weigh the facts, and I think that's a very good
2 experience.

3 MR. THOMAS: Okay. Anybody here think
4 that -- think it's going to be a bad experience,
5 anybody that's not been a jury before?

6 I always ask this question of everybody in
7 here, and I didn't tell the people in the audience, but
8 it's very important that you listen to all of the
9 questions that are posed by myself and Mr. Sanders and
10 the judge in this case because once you get up here,
11 we're not going to go through all this again.

12 It's going to be a shortened version,
13 basically, did you hear everything that I asked all the
14 other jurors while they were up here? Yes. Would your
15 answers be any different? No or yes, they would be
16 different. I remember you asking this question, it
17 would be different as far as that particular question.
18 So it's very important that you pay attention.

19 As far as when you opened up that summons and
20 going back to opening up the summons, did you think,
21 look, I know I have this duty to go in there, a civil
22 duty to be a juror on this case, but, you know, this is
23 just a bad time in life? I got too much other stuff
24 going on? I wouldn't be able to concentrate for
25 whatever reason? I have a family member in the hospital
26 or something along those lines or, you know, I'm too
27 busy looking for a job or something along those lines
28 where it's going to impair your ability to concentrate?

1 When you're up in the jury box listening to all the
2 evidence in this case you might be wondering, you know,
3 what's going on with this, what's going on with that, to
4 the extent that it impairs your ability to actually
5 listen to the testimony carefully.

6 Anybody here of the 18, did you get that
7 feeling when you opened up that summons or do you have
8 that feeling now where there's something in your life
9 that's going on right now that this isn't a good time
10 for me to be a juror?

11 MS. CATHERINE ANDERSON

12 BY MR. THOMAS:

13 Q Ms. Anderson.

14 A Yes, not when I opened the summons. Yesterday
15 when I was driving home, things that I had already
16 scheduled, medical things for family members that I do
17 for them, I remembered I had dates set and everything.
18 I was going to have to look at the dates and see if I
19 can manage.

20 Q Okay. You think it will be to the extent where
21 let's say you're selected that you'd be focusing in on,
22 oh, well, what do I have to do tomorrow? I got to make
23 sure that I do this, get to this medical appointment in
24 time or I got to make sure I do this particular thing at
25 a certain time the day after? Is that something that
26 would cause you to lose focus?

27 A It might because I have a sister that's going
28 in for a third brain surgery. I'm the one that's taking

1 her and dealing with that along with my father also.

2 Q I'm sorry to hear that.

3 A I take him, so I take care of three people in
4 between, not all the time but right now things
5 scheduled, surgeries are getting scheduled. I was going
6 through it to see if I can re-arrange or if anything
7 was -- I really didn't think I was going to get this far
8 in this process. I had something I want to add too.

9 Q Go ahead.

10 A You said that it's important if it's small or
11 large if we feel it's important to know, Mr. Sanders
12 asked jurors about socializing with people. Yesterday I
13 was at a social event where there was law enforcement,
14 and they did know that I'm on jury duty. They said, oh,
15 you weren't dismissed, and I said no. That was it.

16 Then I was asked a question and the question
17 was, you know, you're -- the 40-plus years that you've
18 been around law enforcement, not -- have you known any
19 law enforcement to lie of all the years you've been
20 associated?

21 Q Uh-huh.

22 A And I said no. Being honest and truthful,
23 that's important, but I was asked that question. I just
24 think that -- you know, you said nothing's too small. I
25 think it's important.

26 Q We really appreciate your honesty. As far as
27 that particular thing goes, it's connected to what the
28 judge was talking about yesterday.

1 A Right.

2 Q Do you think you can set that aside? Just
3 because you personally haven't had the experience of a
4 law enforcement officer lying, that doesn't mean that
5 law enforcement officers don't lie; right?

6 A Correct.

7 Q Okay. And let's say a law enforcement officer
8 gets up on the stand and says something that you believe
9 is contrary to what all the other evidence shows, and
10 you believe, well, I think they -- they could be lying.
11 Would you be able to set your personal experiences, the
12 fact that you haven't had a law enforcement officer lie
13 to you personally, and still be able to judge that
14 officer's credibility separately?

15 A Yes.

16 Q Okay.

17 A Then they wanted to make sure -- it's just the
18 way it was -- I was approached that be made clear that I
19 have -- you know, that I never had -- you never met --
20 you don't know of anyone that has ever lied; correct?

21 Q Uh-huh.

22 A Correct. I don't know -- you know, I've never
23 heard of anyone that I've known that lied. It was just
24 the way I was approached.

25 Q Along those lines, you mentioned that if
26 Mr. Yablonsky didn't take the witness stand that you
27 would have some difficulty with that?

28 A Yes.

1 Q Okay. Despite the fact that you're going to be
2 instructed that you can't consider that as part of the
3 evidence in this case?

4 A Correct, but it's always --

5 Q Do you think you can set that aside? Let's say
6 we go through the whole trial and at the end of the
7 prosecution's case you don't believe that I proved my
8 case beyond a reasonable doubt, and Mr. Yablonsky and
9 his attorney decide they're not going to put on any
10 evidence. He's not taking the stand. They're not going
11 to put on any evidence.

12 Do you think that you can set that feeling that
13 you have that you believe defendants should have to take
14 the stand and judge the evidence the way it is at the
15 end of my case?

16 A I would probably have to hear it, but I feel,
17 knowing myself, it would still be a -- I would have that
18 doubt that there has to be more to it if he didn't want
19 to defend himself. For myself, I don't see why a person
20 wouldn't want to defend themselves for something.

21 Q It sounds like you're telling me you wouldn't
22 be able to set that aside. You wouldn't be able to
23 follow the judge's --

24 A I wouldn't want to say yes.

25 MS. KATHERINE BRADFIELD

26 BY MR. THOMAS:

27 Q Ms. Bradfield, you had the same problem that
28 Ms. Anderson had. You heard the question I posed to

1 Ms. Anderson about at the end of the prosecution's case
2 if you believed I hadn't proved my case beyond a
3 reasonable doubt, would you be able to set that aside
4 and still come to a verdict of not guilty?

5 A I would have to hear the evidence, like you
6 said, and if I didn't feel it -- I don't know. If I --
7 I'd probably have to go back and weigh it. If you
8 haven't proved beyond a reasonable doubt to me, and he
9 simply hadn't taken the stand, I would have to actually
10 think about it and deliberate. If that's -- if you
11 understand that.

12 Q Okay. So let's say, hypothetically, at the end
13 of the case you believe that I haven't proven the case
14 beyond a reasonable doubt. Mr. Sanders gets up. The
15 defense isn't going to present any evidence. Do you
16 think you can go back in the deliberation room and say,
17 hey, Mr. Thomas didn't prove his case beyond a
18 reasonable doubt and the verdict by law has to be not
19 guilty, but I can't come back with a not guilty verdict
20 because I haven't heard from Mr. Sanders's client in
21 this case?

22 A Yes, because if you haven't proved it, all the
23 more reason for him to get up there and prove that he's
24 actually not guilty.

25 Q So you would have difficulty with that, and you
26 would have some difficulty coming back with a verdict of
27 not guilty in this case in this hypothetical?

28 A Yes.

1 Q And you don't think that you can set that
2 feeling that you have that Mr. Sanders' client has to
3 take the stand, and you don't think you can set that
4 aside and follow the law and come to a verdict of not
5 guilty?

6 A I don't think I could.

7 MR. THOMAS: Okay. Does anybody here have
8 any specialized training? I know 034XXXXXX mentioned
9 something in the law or criminal justice, like, you've
10 taken classes way back in junior college or high
11 school regarding the criminal justice system and how
12 it works.

13 Ms. Anderson? Nobody else?

14 THE PROSPECTIVE JUROR: I was asked by the
15 other attorney about working in courts. I did
16 traffic.

17 MR. THOMAS: Okay.

18 THE PROSPECTIVE JUROR: I did a little bit of
19 criminal when I worked in San Bernardino, but I did
20 that like 20 years ago.

21 MR. THOMAS: That was Ms. Pineiro.

22 THE PROSPECTIVE JUROR: The majority of my
23 time I worked -- I've been retired six and a half
24 years. When I was working up here, it was traffic.

25 MR. THOMAS: Nobody else other than
26 Ms. Anderson? Mr. Greenwood?

27 THE PROSPECTIVE JUROR: I'm not sure. I did
28 security, and I don't know if that pertains to that,

1 but I did security for three years.

2 MR. SANDERS: I'm sorry?

3 THE COURT: He did security for about three
4 years.

5 MR. MARVELL GREENWOOD

6 BY MR. THOMAS:

7 Q During those three years, did you have to take
8 some classes on what you can do and what you can't do as
9 a security officer?

10 A Right, yes.

11 Q Okay.

12 A To obtain a guard card, you have to learn your
13 power to arrest, tear gas, perhaps first aid, CPR.

14 Q Like Mr. Sanders had asked 034XXXXXX, those
15 people that have any specialized training in that area,
16 particularly Mr. Greenwood, I'm going to ask you the
17 same question that was asked of 034XXXXXX by
18 Mr. Sanders. Do you think you can set that aside and
19 not bring that into the deliberation room?

20 Let's say something comes up where you say,
21 wait a minute. I learned when I was doing security the
22 police aren't allowed to do that or that I wasn't
23 allowed to do that in order to make an arrest.

24 Do you think you can keep that out of the
25 deliberation room?

26 A Yes, I can.

27 MR. THOMAS: Has anybody here been a witness
28 in court before whether or not it be a deposition of

1 some sort or a civil case, divorce proceeding,
2 anything like that where you had to testify on the
3 weekend, take an oath before you got up there?

4 Ms. Tierney?

5 THE PROSPECTIVE JUROR: Medical malpractice.

6 MR. THOMAS: Okay. Then, Ms. McKenzie, you
7 had to?

8 THE PROSPECTIVE JUROR: My divorce.

9 MR. THOMAS: Anybody else? Ms. Anderson?
10 You always have your hand up. So you've had to too.

11 THE PROSPECTIVE JUROR: Yes. I worked for an
12 insurance company, and it was somebody that had some
13 racial things said to them.

14 MR. THOMAS: I'm going to pick on Ms. Tierney
15 since she volunteered information regarding having to
16 give a statement to the police which was written down
17 in a police report.

18 When you did that, did you remember every
19 single detail and you told every single detail to the
20 police?

21 MR. SANDERS: Objection, your Honor, not for
22 cause.

23 THE COURT: Sustained.

24 BY MR. THOMAS:

25 Q As far as --

26 THE COURT: That's a two-sided sword,
27 Mr. Sanders.

28 MR. SANDERS: It is.

1 THE COURT: Go ahead.

2 MR. THOMAS: Then as far as being a witness,
3 let me give you an example. As far as let's say
4 you're asked to evaluate testimony as jurors, and
5 that's what you're going to be asked to do. There's
6 going to be certain factors that you have to evaluate.
7 There's going to be an instruction given to you that
8 just because there's a discrepancy in testimony that
9 that doesn't mean somebody's lying. The example I
10 like to give is let's say that you're at the Rose
11 Parade, and you see about 20 floats, about 10 bands
12 and 5 horses. You go home, and you tell your
13 significant other, your spouse, I was at this parade.
14 I saw so many floats. I saw so many horses. I saw so
15 many bands. Are you going to tell your significant
16 other all the details of the parade, like what the
17 floats looked like, what the horses' colors were,
18 everything like that?

19 Mr. Bean, would you do that?

20 THE PROSPECTIVE JUROR: Probably not, no.

21 MR. THOMAS: You'd try to get to the
22 important details like if there was a float you
23 thought was really cool, you would say hey, I saw this
24 float and --

25 MR. SANDERS: Same objection, your Honor.

26 THE COURT: Sustained.

27 MR. THOMAS: I know one of the questions that
28 was asked by the judge was has anybody had a close

1 family member or relative or close friend who had been
2 charged with a crime, and my question's going to be,
3 has anybody here had either themselves or close
4 friend, close family member, relative ever been
5 arrested for a crime?

6 THE COURT: You're asking that question
7 separate from the issue of disclosures made yesterday;
8 is that correct?

9 MR. THOMAS: That's correct.

10 THE COURT: So if you have already told us
11 about that, he's not asking you to repeat it. Go
12 ahead.

13 MR. THOMAS: The people that had their hands
14 up, if you already told us about it, put your hand
15 down. If you hadn't told us about it, keep your hand
16 up.

17 MR. MARVELL GREENWOOD

18 BY MR. THOMAS:

19 Q Mr. Greenwood, what was that about?

20 A I had a misdemeanor that happened five or six
21 years ago.

22 Q Okay. What type of misdemeanor was it?

23 A It was domestic violence actually.

24 Q Okay. So you were arrested for it but never
25 charged?

26 A Well, yes, I was charged.

27 Q Okay. So you were charged with it too. You
28 had to go to court?

1 A Yes.

2 Q Was that here in this courthouse?

3 A No, actually it was Long Beach.

4 Q Then as far as the case goes, was it dismissed?

5 A No, actually did something ignorant. I took a
6 deal because I didn't want jail time and should have
7 went through it.

8 Q Then you were placed on misdemeanor probation?

9 A No. It was misdemeanor (sic).

10 Q Okay. As far as your experience in the system,
11 did you think you were treated fairly?

12 A Yeah, for what they -- from their view point.

13 Q What about your view point?

14 A From mine, it was -- no.

15 Q Okay. What was it that you felt like you were
16 being treated unfairly?

17 A For one, the physicalness started with my
18 ex-wife, and that's what it was. It was like if you
19 want to call it that, a mutual thing. I would say that
20 I pushed her. That was after she started fighting me
21 first, and I was just getting her off me. The police
22 were called by our neighbors or something. That's when
23 they came. There was nothing else I could have done.

24 Q You felt like you weren't able to tell your
25 side of the story?

26 A Well, just ignorance of the law system. I went
27 ahead because they had me over the weekend. I was
28 not -- I don't go to jail, so I was trying to get out of

1 it.

2 Q Okay.

3 A They came in and bargained, so I took it. I
4 shouldn't have because now that's on my record as a
5 misdemeanor domestic violence and it shouldn't have
6 been. If anything, it was defensive.

7 Q Okay. I'm sorry to hear that you feel that you
8 were treated unfairly.

9 MS. CATHERINE ANDERSON

10 BY MR. THOMAS:

11 Q Ms. Anderson, you also had your hand up?

12 A Yes, mine was my nephew that had raped my
13 grandmother. He went to prison.

14 MS. NITIKA AUSTIN

15 BY MR. THOMAS:

16 Q Okay. I know yesterday, Ms. Austin, you said
17 that some of your family was involved in crime of some
18 sort. I don't think we ever discussed what type of
19 crimes we're talking about.

20 Are we talking about drug crimes, crimes of
21 violence?

22 A Talking about a lot of drug crimes, violence,
23 murder. I don't know the extent of what it was, but I
24 have a cousin who is now serving time for murder. I
25 have a relative that is serving time for drugs.

26 Q Did you follow any of these cases as it went
27 through the justice system?

28 A Never.

1 Q Then as far as the court proceeding, you never
2 went to court on any of them?

3 A No.

4 Q Did you ever go visit any of your relatives
5 while they were incarcerated?

6 A I visited my --

7 THE COURT: I can't hear you.

8 THE PROSPECTIVE JUROR: I did visit one, my
9 cousin.

10 BY MR. THOMAS:

11 Q And that was the cousin that --

12 A With the murder charge.

13 Q With the murder? Okay. But you didn't talk
14 about any of the details?

15 A No.

16 MR. THOMAS: Okay. Anybody else here, since
17 we're on the topic, ever gone and visited a friend,
18 family member in jail, or prison?

19 018XXXXXXXXXXXXXX

20 BY MR. THOMAS:

21 Q 018XXXXXXXX, you've done that? What was the
22 person in prison or jail for?

23 A He was a friend in jail who was accused of
24 child molestation, and he was found innocent.

25 Q Okay. And did you ever talk about the case
26 with him?

27 A He asked me to testify if he needed me to, but
28 I never did.

1 Q All right. Were you willing to testify?

2 A Yes.

3 004XXXXXXXXXXXXXX

4 BY MR. THOMAS:

5 Q And then, 004XXXXXXX, you had your right hand
6 up also?

7 A Couple of my cousins, one just got out from
8 dealing drugs. He served his time, and two other
9 cousins that are dead now for -- in LA doing the
10 gang-bang stuff.

11 Q Again, as far as these visits go, were they
12 just to say hello, how are you doing?

13 A Yeah. You know, the one I visited before he
14 died in the hospital. The other one was murdered. The
15 other one I visited in jail once because he kept going
16 back. I just visited him once. That was it.

17 MR. THOMAS: Has anybody here ever sought
18 some type of employment where they applied to be a law
19 enforcement officer or be involved in law enforcement
20 in some fashion or another?

21 THE PROSPECTIVE JUROR: I work for the
22 courts.

23 MR. THOMAS: In what capacity?

24 THE PROSPECTIVE JUROR: Clerk with traffic.

25 MR. THOMAS: Okay. So it was the same thing
26 we talked about?

27 THE PROSPECTIVE JUROR: Yeah.

28 THE PROSPECTIVE JUROR: My job that I'm doing

1 now, I have to -- I work maintaining State buildings.
2 Sometimes I got to go to the Department of Justice and
3 take care of buildings and make sure their evidence
4 rooms are nice and cold and they have heat where they
5 need to have heat, electrical, lights supposed to be
6 working where they should. I get exposed to a lot of
7 that stuff that they do in there.

8 MR. THOMAS: Okay.

9 THE PROSPECTIVE JUROR: I get to see a lot of
10 the stuff, evidence, pictures.

11 MR. THOMAS: Uh-huh.

12 THE PROSPECTIVE JUROR: Crime scenes and
13 sometimes they -- they kind of are in the garage, what
14 happened, sometimes they bring cars that are all, you
15 know, bullet holes in them, sometimes see the blood
16 and just horrible stuff, you know.

17 MR. THOMAS: You think that's going to affect
18 you in any way as being a juror?

19 THE PROSPECTIVE JUROR: No. I mean, been
20 around it for so long that you just do what you got to
21 do and get out.

22 MR. THOMAS: Has anybody here had some sort
23 of contact with law enforcement where they, at the end
24 of the contact, were dissatisfied in some way? The
25 example I give is let's say you were pulled over.
26 Most of us have been pulled over, and let's say the
27 officer pulled you over or the deputy that pulled you
28 over just wasn't a nice person. They were having a

1 bad day or whatever. Has anybody had that experience
2 before, show of hands?

3 026XXXXXXXXXXXXXXXXXXXXXXXXXX

4 BY MR. THOMAS:

5 Q Okay. 026XXXXXXXXXX, since we haven't talked
6 to you really today, what was that experience?

7 A It was a case of mistaken identity. There was
8 a person that was in a store and was pointed out to
9 officers -- the owner of the store said that I was
10 involved in the crime he was committing, and it was like
11 a group of cars, say three, four, and they slandered my
12 friends and I, used force on us, and we didn't know what
13 was going on.

14 Q Um-hmm.

15 A And, you know, I was just really dissatisfied
16 how they approached us with guns drawn, and we didn't
17 show any kind of appearance that we were threatening.

18 Q Okay. Would you be able to set that experience
19 aside in this case and judge the evidence as it comes
20 out during the trial?

21 A Sure.

22 Q That wouldn't affect your judgment of the
23 evidence?

24 A No.

25 MR. THOMAS: And everybody knows as far as
26 their contacts with law enforcement, if you have an
27 unpleasant contact with law enforcement, that doesn't
28 mean all law enforcement acts that particular way?

1 Everybody agree with that just by nodding your heads.

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

4 MR. THOMAS: Anybody disagree? Just raise
5 your hand. No hands.

6 Anybody here think that the legal system -- I
7 know it's been touched upon by Ms. Anderson and
8 Ms. Bradfield, anybody here think the legal system
9 favors or unduly favors one side over the other, they
10 favor the prosecution or they favor the defense?

11 THE PROSPECTIVE JUROR: That's not what --

12 034XXXXXXXXXXXXX

13 BY MR. THOMAS:

14 Q Were you going to say something?

15 A Yeah. In the family court system, not -- not
16 particularly defendant -- the lawyers per se, but
17 it's -- I've had bad experiences in family court --

18 Q Okay.

19 A -- with the other party, them siding with the
20 other party once I even gave all the evidence of what
21 was going on. I had a pretty bad experience in family
22 court for my children.

23 Q You'd be able to set that experience that you
24 had aside in family court and judge the evidence?

25 A I would try. I would try.

26 Q When you say you're going to try --

27 A Yeah.

28 Q Always makes myself, and I'm sure Mr. Sanders

1 feels the same way, it always makes us nervous when
2 people say I'm going to try because it tells us that
3 there's something there you might not be able to.

4 A The only reason I'm taking the classes and
5 about to get my degree is because, you know, of a lot of
6 the stuff I didn't know when I went to court over my
7 children and stuff, and I ended up losing custody
8 because of what I didn't have. When I'm saying I would
9 try it's not that, you know -- everybody is different.
10 I know that much. I know when the system starts to
11 play, there's certain things that I would look for and,
12 you know, if I see the same thing maybe it would make
13 me, you know, feel that something's not fair.

14 Q Let's say hypothetically we go through this
15 trial and you come up with something that you think was
16 unfair one way or the other, whether or not it favored
17 me or whether or not it favored the defense in this
18 case, and the judge at the end of the trial is going to
19 give you the law. Let's say your feelings conflicts
20 with the judge's instructions on the law.

21 Would you be able to put your feelings aside
22 and follow the instructions that the judge has given no
23 matter how strong your feeling might be? It might be
24 where you're about to explode, hey, this is totally
25 unfair. Would you be able to put that aside and follow
26 what Judge Tomberlin's instructions are?

27 A Based on the facts I know -- I know, I'd have
28 to go based on the facts, but it might still, you know,

1 my decision -- still influence my decision. I think it
2 would seriously, yeah.

3 Q So you don't think you can set that aside? You
4 think it would be too much in a case where you wouldn't
5 be able to follow the judge's instructions?

6 A Not really sure. I don't -- I would do my
7 best, you know, to ensure that Mr. Sanders can get a
8 fair trial with what I hear. I -- I don't know. All I
9 can say is I'll try, but there's an element of --

10 Q You think that if it came down to it where you
11 had a particular feeling, you wouldn't be able to set
12 that aside?

13 A I think maybe I could.

14 Q You think maybe you could?

15 A Yeah.

16 Q One of the things that you said during your
17 answer was that Mr. Yablonsky gets a fair trial.

18 A Yeah.

19 Q The People are entitled to a fair trial also.

20 A Definitely.

21 Q Would you be sure that you'd give the People a
22 fair trial that they're entitled to also?

23 A Yeah, definitely.

24 MR. THOMAS: Okay. And everybody here heard
25 Mr. Hoody's answer. Everybody agree with him as far
26 as giving both sides a fair trial in this case?

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

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034XXXXXXXXXXXXX

BY MR. THOMAS:

Q Okay. 034XXXXXX, I don't know if anybody's asked you. I know yesterday we talked about you had a couple of brothers in prison.

What were the charges in that case?

A Several different ones drugs, gang violence, but mostly they're going -- they're repeat offenders. They're in and out. They've been going for violations of parole. They don't see their PO. Then they go back. Most of those, but this last -- my -- my brother a year older than I am is facing like his third strike right now because of some stuff that went down in Barstow.

Q Are you following that case?

A Little bit, as much as I can.

Q I know there's a lot of people that don't feel that this third-strike law is something that's fair or good. Are you one of those people that -- do you think it's fair that your brother's facing life on a third strike? I'm assuming that the charge is a non-violent charge?

A No, it's -- it's a violent charge --

Q Okay.

A -- what he's looking at because he's had two. I think it depends on the charge. I'm sure there's people that can get the third strike and not be a serious charge. Then there's those who do something really bad, so it's like, you know, that's how I feel.

1 Q It's a case-by-case basis, sometimes you agree
2 with the way that the system works and sometimes you
3 disagree?

4 A Yeah. As far as my brother, I'm going to be a
5 little biased because he is my brother, but I got to
6 look at, you know, the facts, and did he do what he was,
7 you know, suspected of doing, and that's -- when I talk
8 to him, he said, no, so, you know what I mean?

9 MR. THOMAS: As a family member, you believe
10 what your brother's saying.

11 Anybody else here in a similar situation as
12 034XXXXXX where you have some issues with the way that
13 the laws are? No. Nobody's raising their hand.

14 Mr. Sanders talked about it and the judge
15 talked about it, my burden in this case is beyond all
16 reasonable doubt. The judge kind of hit on it
17 yesterday. There's a higher standard than that. That's
18 all possible doubt. I can tell you right now if that
19 was the standard I would never be able to prove a case
20 because there's always, as the judge said, there's
21 always some possible or imaginary doubt out there.

22 The example I give is, let's say I tell you I
23 can drive from here to Vegas in an hour, and all of you
24 are going to say that's not reasonable. That's not
25 reasonable for you to drive a distance of 186 miles or
26 190 miles from here to Vegas. Is it possible? Of
27 course it's possible. I can have the -- let's say I had
28 the governor's powers, and I was able to shut down the

1 15, and I had a race car, and I was able to drive
2 200 miles an hour. I can get there in an hour. It's
3 possible, but does everybody understand the difference
4 between reasonable and possible as far as that goes?

5 Anybody here going to hold me to a higher
6 standard of the beyond all possible doubt? No.

7 Has anybody here ever been strangled or choked
8 before or know somebody that's been in that situation?

9 MS. CATHERINE ANDERSON

10 BY MR. THOMAS:

11 Q I see Ms. Anderson shaking her head. Can you
12 tell us about it?

13 A It was a close friend of mine whose second
14 husband was strangling her and her daughter caught him
15 and called the police.

16 MR. THOMAS: Okay. Anybody else ever seen
17 something like that? No.

18 In this particular case, you're going to hear
19 some scientific evidence. Let's say there was no
20 scientific evidence and I'm asking you to convict
21 somebody on a murder charge with no scientific evidence.
22 The jury instructions the judge is going to give you
23 apply for that.

24 Is there anybody here that would be unable to
25 do that? Would anybody here require some sort of
26 scientific evidence before you were able to convict in a
27 murder case?

28 The example I give is --

1 THE COURT: Just one minute. Counsel, I'm
2 sorry. I'm sorry. I heard you say there's going to
3 be scientific evidence then you gave a hypothetical
4 about what happens if there's -- in a case where
5 there's no scientific evidence. I really don't think
6 this goes for cause at all. The Court's going to
7 sustain its own objection under 352.

8 MR. THOMAS: Could I rephrase the question,
9 your Honor?

10 THE COURT: I don't think so, but I'm not
11 going to try to stop you from getting questions
12 answered that are for cause. Why invent a
13 hypothetical that doesn't apply in this case? How can
14 that be for cause? If you can ask it in another way,
15 go ahead.

16 MR. THOMAS: Let's say there is scientific
17 evidence but you didn't believe the scientific
18 evidence, and let's say at the end of the case you
19 still believe that there is a murder that was
20 committed, and it's based on the testimony of
21 witnesses. Would you be able to still convict even
22 though in your mind there's no scientific evidence
23 because you disbelieve the scientific evidence? Would
24 you be able to convict on a murder charge?

25 MR. SANDERS: Objection, your Honor. It's an
26 incomplete hypothetical, and it's not for cause.

27 THE COURT: It's also asking them something
28 that I think is asking them to prejudge the evidence.

1 I'm going to sustain the objection.

2 MR. THOMAS: This case is going to involve a
3 sexual assault or alleged sexual assault. Is there
4 anybody here that feels like, well, a sexual assault
5 requires some degree of force or some degree of the
6 victim resisting in some way, otherwise you're not
7 going to have a sexual assault?

8 MS. DEBRA MC KENZIE

9 BY MR. THOMAS:

10 Q Ms. McKenzie, you have your hand up?

11 A Isn't that the definition of rape?

12 Q The definition that's going to be given
13 involves force or fear. Let's say the hypothetical --

14 MR. SANDERS: Objection, your Honor.

15 THE COURT: Sustained. This is not the time
16 for the instructions, Mr. Thomas. Sorry.

17 MR. THOMAS: Does anybody here feel like
18 because a sexual assault wasn't reported, that it
19 didn't happen?

20 Anybody here going to require that a sexual
21 assault be reported before they would ever be able to
22 say it happened? No

23 THE PROSPECTIVE JUROR: You're confusing.

24 MR. THOMAS: How is that confusing?

25 THE COURT: I'm going to sustain the Court's
26 objection. It's going into instruction on the law
27 that's going to be given, and that's really something
28 that I'm jealous about, Mr. Thomas. So I'm going to

1 sustain the Court's objection.

2 MR. THOMAS: Anybody here, other than what
3 we've already talked about, has anybody here been a
4 victim or know somebody close to them, family
5 relative, friend, that's been a victim of sexual
6 assault?

7 Other than what we've already discussed,
8 anybody thought of a situation that they haven't
9 discussed already?

10 MS. MARIE CERVANTES

11 BY MR. THOMAS:

12 Q Ms. Cervantes.

13 A It was my son. I feel like it's personal for
14 me because they're strangers.

15 Q Would you like to go up with the judge's
16 permission? Can we approach?

17 THE COURT: Sure.

18 (Whereupon the following proceedings were held at the
19 bench out of the hearing of the jury:)

20 THE PROSPECTIVE JUROR: My son was sexually
21 abused by a baby sitter at a young age, by a male, and
22 to me that's personal for me.

23 THE COURT: Sure.

24 THE PROSPECTIVE JUROR: As a male, and I know
25 he's a male. I can put it to the side and forget
26 about it. As long as I can see the evidence, I would
27 be fine.

28 THE COURT: All right. Any questions you

1 want to ask her?

2 MR. THOMAS: Would you be able to set that
3 aside?

4 THE COURT: She just said that.

5 MR. SANDERS: No questions.

6 (Whereupon the prospective juror left the bench and the
7 following proceedings were held at the bench:)

8 THE COURT: Mr. Thomas, I don't like the idea
9 of shutting you down in front of the jury. You're not
10 going to be able to try the case right now. This is
11 not the time to ask them to make a decision on what
12 they're going to do with certain facts if they're
13 there. That's asking them to prejudge the case. I'll
14 sustain the objections every time.

15 How much more time do you think you're going to
16 have?

17 MR. THOMAS: Five minutes.

18 (Whereupon the following proceedings were held in open
19 court in the presence of the jury:)

20 MR. THOMAS: I know there was another hand
21 up.

22 026XXXXXXXXXXXXXXXXXXXXXXXXXX

23 BY MR. THOMAS:

24 Q 026XXXXXXXXXX, is it something more than what
25 we talked about yesterday?

26 A Yes, with the person that I spoke of yesterday.

27 Q Yeah. We already talked about yesterday?

28 A No, it was another person.

1 Q Okay. All right.

2 A My ex-girlfriend was gang raped.

3 MR. MARVELL GREENWOOD

4 BY MR. THOMAS:

5 Q Mr. Greenwood, you had your hand up?

6 A Yes, it was my ex-wife when she was a minor.

7 Q She was sexually assaulted?

8 A Yes.

9 Q Okay. And then --

10 THE COURT: Mr. Thomas, we've got a request
11 for a rest room break. Do you --

12 MR. THOMAS: We can take a recess.

13 THE COURT: Okay. 15 minutes, ladies and
14 gentlemen. You're admonished that it is your duty not
15 to converse among yourselves or with anyone else about
16 any matter connected with this case nor form or
17 express an opinion on it until it's submitted to you.
18 15 minutes.

19 (Whereupon a recess was taken.)

20 THE BAILIFF: Remain seated. Come to order.
21 Court is now in session.

22 THE COURT: Welcome back. We're on the
23 record in the case of People of the State of
24 California versus John Henry Yablonsky who is here
25 with his attorney, David Sanders. John Thomas is here
26 for the People.

27 Mr. Thomas.

28 MR. THOMAS: Thank you, your Honor. Good

1 morning, again. I just have two more questions then
2 I'm done. Everybody here, regardless of the law the
3 judge instructs you, are you going to be able to
4 follow that law regardless of what your personal view
5 points and opinions are? Everybody comfortable with
6 that?

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

9 MR. THOMAS: Except for the people we've
10 talked about, the difficulties that you're having,
11 anybody else?

12 The last question I'd like to ask of everybody,
13 you've heard all these questions we've asked. You've
14 heard the overall subjects and subject matter that we
15 covered. Anything that comes to mind you can think of
16 at this time that might cause you to not be able to be
17 an impartial juror in this case? Anything at all? I
18 mean, anything at all that you wanted to bring up at
19 this point that you haven't brought up that you thought
20 might be important for us to know?

21 MS. SHARON TIERNEY

22 BY MR. THOMAS:

23 Q Ms. Tierney.

24 A I've lived here most of my life. Back in '85,
25 it was still a relatively small town, and I worked in
26 the medical field. Some of the names that the judge
27 read off yesterday sound familiar, however, I won't know
28 until I see faces.

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.

1 through the legal system?

2 A His case?

3 Q Yes.

4 A No.

5 Q You did not form any opinion about whether he
6 was treated fairly or unfairly, just that he's friend
7 and he's in jail?

8 A He's a friend and he's in jail.

9 Q Okay. That's it?

10 A That's it.

11 MS. ANGELA ROO

12 BY THE COURT:

13 Q Ms. Roo.

14 A I work at Desert Valley Hospital in dietary,
15 and this is my first time.

16 Q Do you have a life partner, Ms. Roo.

17 A No, I'm single. I have four kids. Number 11,
18 my brother for, like, traffic.

19 Q That's it?

20 A Yeah.

21 THE COURT: Thank you.

22 MR. HUE FORTSON

23 BY THE COURT:

24 Q Mr. Fortson.

25 A Yes. I'm a material specialist with
26 Continental Airlines as well as an ordained minister.
27 My spouse, she's a home-care worker, and I have served
28 on a jury in LA county. That was a civil case, and the

1 gentleman got paid.

2 On Number 6, I have a -- we like to call her
3 our spiritual daughter who just became an attorney.
4 She's working with the LA Public Defender's Office.
5 She's now moving to San Diego in the same position.

6 On Number 11, I had a situation with my eldest
7 son before we moved up here. He was charged with --
8 supposedly accused of molesting a young man several
9 years ago that we had went to a church service and in
10 that the court battle drug out from there actually up to
11 here. We've only lived here for three years. It was
12 finally resolved in the sense that he had to take a
13 plea. It was either take a plea or go to jail for eight
14 years, get on the computer system or whatever it's
15 called. He went on and took that in spite of his
16 innocence. He went on with it. Now things are
17 resolved. He was on probation, had to go through
18 counseling and such, but he's moved on with his life.

19 Q You heard me ask Mr. Jordan how did he feel
20 about that. I'm going to ask you the same question.
21 How did you feel about that?

22 A Actually, everything happened so fast and at
23 the very wrong time in my life because at the time I was
24 laid off from my previous job. So I didn't have the
25 funds to get the proper defense that I felt he needed.
26 So we had to end up taking the lesser of the two sides.

27 It was quite an experience, but there was one
28 thing that really puzzled me with the public defender

1 that we had. I asked him, when are we going to get to
2 the truth. His words were, we never get to the truth.
3 We just want to win the case. Winning the case meant
4 that he had to take one or the other.

5 At first, I didn't understand, and I was
6 somewhat bitter, my wife and I, because we felt like it
7 was wrong and unjust. This is a kid that we had known.
8 They had gone to school with, and I know things happen.
9 I have that understanding. We're dealing with just
10 people. I felt there should have been another way, but
11 we were told because of the economic situation that he
12 was not able to have a jury trial because we thought if
13 we went to a jury trial, the truth would have come out
14 with our situation, but we're not bitter now. We're
15 just moving on with life.

16 Q Mr. Fortson, let me say this: I don't know and
17 I can't tell you what the specifics were in that
18 situation, but I can say that if the lawyer advised you
19 that because of the economics that your son couldn't get
20 a jury trial, that's not correct. Everybody's entitled
21 to a trial by jury. It's a constitutional right if
22 their liberty is at stake, and you don't have to have
23 any money to hire a lawyer. A lawyer is provided for
24 you.

25 In fact, on top of that, the court will provide
26 the expense for bringing witnesses in to testify if you
27 want them to come in. The court will make sure that
28 they are available for testimony and provide

1 investigation costs and provide costs for expert fees
2 and all kinds of things like that whether a person can
3 afford it or not. So I -- that -- the information that
4 you were given, I'll just say that's -- it was an
5 incorrect statement that you were given.

6 Now, a lot of times people look at -- what can
7 I say -- risk analysis. Somebody might look at it and
8 say, do I want to take a chance to be convicted and go
9 to prison for eight years and have to register as a sex
10 offender for the rest of my life, or am I willing to
11 save myself even that possibility I'll plead to a lesser
12 or different charge and take probation? That happens.
13 Those are plea bargains. It happens all the time.

14 I don't know what happened specifically, and I
15 would suspect that with your son, that you probably
16 didn't have as much direct contact with the attorney as
17 your son did.

18 Is that a fair statement?

19 A Yes.

20 Q A lot of what you have determined was what your
21 son related back to you --

22 A Yes.

23 Q -- from what the attorney said to him?

24 A Correct.

25 Q Okay. I didn't have to spend all that much
26 time except I didn't want to create a misimpression
27 about the rights that someone has. I need to go through
28 that.

1 Tell me, if you were a juror in this case,
2 would that be something that would affect how you view
3 the evidence here?

4 A No. I view the evidence as -- as it's put
5 before me.

6 Q Okay. You mentioned you're an ordained pastor
7 or minister?

8 A I said minister, but I am a pastor.

9 Q Okay. Do you have a church that you regularly
10 preside over?

11 A Yes, but we only meet on Sunday mornings. I
12 don't have a mid-week because I work swing shift at LAX
13 Airport.

14 Q May I ask what denomination if there is one?

15 A It's a spinoff from the Foursquare Church. We
16 were ordained under the Saints of Value Ministry, which
17 their particular leaders came from the Foursquare
18 denomination. It's a Christian non-denominational.

19 Q So do you have any problem, if it turns out
20 that you were a juror in this case, is that a problem
21 for you to sit and be a judge of the facts in this case?

22 A No, it's not in that we actually judge every
23 day about just about everything.

24 THE COURT: I say this again for everyone's
25 benefit, so you'll realize. No one's going to be able
26 to have a problem or hope that no one's going to have
27 a problem with sitting in judgment of another human
28 being because no one in this case is going to be asked

1 to sit in judgment of another human being. You, as a
2 jury, are going to be charged with the responsibility
3 of judging the facts.

4 Is that a good distinction? Everybody
5 understands the difference there?

6 (Whereupon the prospective jurors nodded in the
7 affirmative.)

8 THE COURT: Then now speaking, again, to
9 Ms. Banbury and those of you in the front row. You
10 heard me talk about a lot of things. You heard
11 amplification of those things by Mr. Thomas and
12 Mr. Sanders. Is there anyone here that has a problem
13 with the notion of the presumption of innocence?
14 Everyone okay with that? As he sits right now,
15 Mr. Yablonsky is innocent. Can you all agree with me
16 on that?

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

19 THE COURT: Okay. Mr. Sanders could sit
20 there playing tic-tac-toe with Mr. Yablonsky through
21 this entire trial, and if in the final analysis he
22 does nothing other than that, he doesn't ask a single
23 question of a single witness, do you think that --
24 that that in any way relieves the burden of proof on
25 Mr. Thomas?

26 (Whereupon the prospective jurors answered in the
27 negative.)

28 THE COURT: Okay. Because he's presumed

1 VICTORVILLE, CALIFORNIA; JANUARY 20, 2011;
2 DEPARTMENT NO. V-2 HONORABLE JOHN M. TOMBERLIN, JUDGE
3 P.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 afternoon, ladies and
10 gentlemen. Back on the record in the case of People
11 of the State of California versus John Henry
12 Yablonsky, who is here along with his attorney,
13 Dave Sanders. John Thomas is here for the People, and
14 he is, once again, joined by his investigating
15 officer, Detective Robert Alexander.

16 One of your numbers didn't make it back from
17 lunch. Leaves me with an awkward situation. The proper
18 way of stating it is I can't go forward without excusing
19 that member of the jury because everyone has to be here
20 for all stages of all proceedings.

21 With that in mind, Mr. Sells, are you here?
22 Mr. Sells is not here.

23 Counsel, will you stipulate that I can excuse
24 Mr. Sells from this panel so we can go forward?

25 MR. THOMAS: People stipulate.

26 MR. SANDERS: Yes, your Honor.

27 THE COURT: Mr. Sells is excused from the
28 panel. Ms. Roo, I was informed by Deputy Fliegner

1 that you determined or found out that you only get
2 paid for three days?

3 THE PROSPECTIVE JUROR: Yes, I just called my
4 boss.

5 THE COURT: Where do you work?

6 THE PROSPECTIVE JUROR: At Desert Valley.

7 THE COURT: Did you tell me you had four
8 children?

9 THE PROSPECTIVE JUROR: Yeah, I'm a single
10 mom. So I won't be able to do it.

11 THE COURT: Your children have a lot of jobs?

12 THE PROSPECTIVE JUROR: No. Driving me nuts,
13 yeah.

14 THE COURT: So it would be a financial
15 hardship for you to be paid for only three days?

16 THE PROSPECTIVE JUROR: Yeah.

17 THE COURT: I'm going to excuse you for
18 financial hardship. Thank you for being here with us
19 so far.

20 THE PROSPECTIVE JUROR: Thank you.

21 THE COURT: Call another name for that seat,
22 please.

23 THE CLERK: Juror Number 14, Marie Burger.

24 MS. MARIE BURGER

25 BY THE COURT:

26 Q Ms. Burger, hello.

27 A Hello.

28 Q You remember how this goes; don't you?

1 A Yes, I do. I'm a housewife. I've never
2 worked. My husband's deceased now, and he was a
3 carpenter, and I was on a -- previously I was on a jury
4 trial.

5 Q Criminal case or civil?

6 A Yes, it was criminal.

7 Q Reach a verdict?

8 A It was -- yes, we did.

9 THE COURT: Thank you. Well, we haven't done
10 very much. I don't know if you all want to open this
11 up to re-admit Mr. Sells.

12 MR. SANDERS: It's fine with us.

13 MR. THOMAS: It's fine with the People.

14 THE COURT: Okay. Mr. Sells is with us, and
15 he's back in our pool by stipulation. Mr. Sells
16 didn't miss very much except that Ms. Roo, who was
17 Number 17, indicated she did not get paid for more
18 than three days jury duty. She just found that out.
19 I excused her for financial hardship.

20 MS. MARIE BURGER

21 BY THE COURT:

22 Q Ms. Burger, what yes answers do you have to
23 Questions 4 through 14?

24 A Number 11, my nephew was convicted.

25 Q Of what?

26 A Of murder.

27 Q Of murder. How long ago was that?

28 A It's been about ten years.

1 Q Did you follow that case?

2 A Yes, I was -- I was in the courtroom during the
3 trial. I was there.

4 Q Where was that trial?

5 A Orange county.

6 Q Did you form any opinion about how he was
7 treated by the legal system?

8 A I wasn't satisfied, no. I wasn't satisfied
9 with his trial.

10 Q Do you think that he was treated unfairly by
11 the legal system?

12 A Yes, I do.

13 Q Do you think that that feeling would in any way
14 affect how you view the evidence in this case?

15 A I don't think so, but I don't know if I would
16 relate what I heard in the courtroom or not.

17 Q Well, you've heard me say that there's no way
18 that we can look at someone and tell by just what we
19 see. We have to hear from you.

20 What do you think? Do you think this is the
21 wrong kind of case for you because of your own
22 experiences?

23 A Well, since it was a murder case, I think it
24 would be hard for me because there's a lot of evidence
25 that comes out that's not easy to hear and to see what
26 you're seeing in the courtroom. It won't be easy for
27 me, but I would do the best that I could.

28 Q I understand that you'd do the best that you

1 could, and everybody wants to be fair, but do you think
2 you've got some -- because of the influence of the
3 experience that you've had so far that that would affect
4 how you view the evidence in this case?

5 A I don't know. I can't answer that, your Honor.
6 I don't know.

7 Q Well, I don't know how to put it any other way,
8 but I'll start off saying this again. Ms. Burger,
9 everyone has to decide this case based upon just what is
10 shown here in this court; right?

11 A Yes.

12 Q It's the evidence that you hear. Mostly it's
13 going to be from sworn testimony. People are going to
14 take the witness stand and give testimony. Then they're
15 going to be given an opportunity to be examined by what
16 I refer to as the world's oldest lie detector, and
17 that's cross-examination.

18 That's what you're going to have to do. You're
19 going to have to listen to that evidence and form some
20 conclusion based upon the law that I tell you and the
21 arguments that you listen to from the attorneys. You'd
22 have to completely remove from your consideration the
23 things that involve your nephew's trial in Orange county
24 because that has nothing to do with this case.

25 You understand and agree that it has nothing to
26 do with this case?

27 A Yes, I understand.

28 Q Well, so tell me, could you completely remove

1 the influence of that case from your consideration of
2 the facts and law in this case?

3 A I could, but it would not be easy.

4 Q I'm not -- easy really has nothing to do with
5 what I'm asking. I think you heard me say before I
6 can't guarantee that this is going to be at all times a
7 pleasant task. It's a job. It's a job that you didn't
8 volunteer for, but you have the responsibility to be a
9 juror if you can be, but you have to be fair.

10 Is that -- is that your final answer that you
11 can be fair, but it's going to be hard?

12 A Yes, that's my final answer.

13 MR. FERRILL JORDAN

14 BY THE COURT:

15 Q Okay. Mr. Jordan, I thought I recognized you,
16 and I thought lots of people have similar facial
17 characteristics. You were in my court observing some of
18 the Deering trial, the trial that I did just before this
19 one; is that correct?

20 A That's correct, Judge.

21 Q Were you here for any part of any hearing
22 involved with this case?

23 A No.

24 Q Okay. And are you a lawyer?

25 A No. If I may address, I did graduate from law
26 school, and I have passed the bar. I'm in limbo waiting
27 for my background check. That said, I'd be happy to
28 follow the instructions you have much easier than trying

1 to figure it out myself.

2 Q But, in any event, you understand if you were a
3 juror in this case that we're not looking for anybody
4 that's an expert on the jury? We want the jurors to all
5 decide this case for themselves but only after talking
6 with the other jurors.

7 You could do that just like any other juror?

8 A Yes, sir. I'm nothing like an expert.

9 THE COURT: All right. Now, I'm told this
10 thing goes a lot quicker at this point in the
11 proceedings.

12 Mr. Sanders, why don't you demonstrate that for
13 us.

14 MR. SANDERS: I will, your Honor. Thank you.
15 Ms. Banbury, those in the front row, that's who I'm
16 addressing at this point. Did all of you hear the
17 questions that I asked the other jurors this morning?
18 If there's anyone that didn't, please raise your hand.

19 Did any of you have specific answers to those
20 questions and thought I have to say something? Any of
21 you thought that?

22 Is there any of you that have a doubt in your
23 mind that you couldn't be a fair juror in this case?

24 Thank you, your Honor. Finished.

25 THE COURT: Mr. Sanders, you have certainly
26 convinced me.

27 Mr. Thomas, feel free to take about the same
28 amount of time.

1 People pass for cause.

2 THE COURT: Guess what I told them. I told
3 them that if we get a jury today, we can stop and come
4 back to begin the case and the presentation of the
5 case on Monday. I think they like the idea of getting
6 a jump on the -- I was going to say get a jump on the
7 weekend. They all work on Fridays. I was a trial
8 attorney myself for a number of years, and it's a
9 tough job. They've got to coordinate things in court
10 and out of court. They've got to jump through hoops
11 that people in black robes put in front of them.

12 Everybody's passed for cause. We're going to
13 the musical chairs portion of our trial. Remember, they
14 have 20 each. Mr. Thomas has used three, passed one
15 time. Mr. Sanders has used four. So it's Mr. Thomas's
16 opportunity to exercise a peremptory challenge.

17 MR. THOMAS: The People accept the 12 jurors.

18 THE COURT: Mr. Sanders.

19 MR. SANDERS: Your Honor, the defense would
20 thank and excuse Juror Number 3, Ms. Allen.

21 THE COURT: Ms. Allen, thank you for being
22 with us. You're excused. 040XXXXX, will you please
23 take the seat left by Ms. Allen?

24 Mr. Thomas.

25 MR. THOMAS: People accept the 12 jurors.

26 THE COURT: Mr. Sanders.

27 MR. SANDERS: Defense would thank and excuse
28 Juror Number 4, Ms. Banbury.

1 THE COURT: Ms. Banbury, thanks for being
2 with us. You're excused. Will you take that seat
3 please, Mr. Jordan?

4 MR. THOMAS: Before Mr. Jordan takes that
5 seat, the People would thank and excuse Mr. Jordan.

6 THE COURT: Thank you, Mr. Jordan, for being
7 with us. You're excused. Will you take that seat,
8 010XXXXX?

9 Mr. Sanders.

10 MR. SANDERS: The People (sic) thank and
11 excuse Juror Number 5, Ms. Cervantes.

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

15 MR. THOMAS: Before Ms. Vaughan takes that
16 seat, the People would thank and excuse Ms. Vaughan.

17 THE COURT: Thank you, Ms. Vaughan. You're
18 excused. Will you take that seat, Ms. Burger?

19 Mr. Sanders.

20 MR. SANDERS: The jury (sic) thanks and
21 excuses Juror Number 10, Ms. Tierney.

22 THE COURT: Ms. Tierney, thank you for being
23 with us. Will you take that seat please, Mr. Fortson.

24 MR. THOMAS: Before Mr. Fortson takes that
25 seat, the People would ask the Court to thank and
26 excuse Mr. Fortson.

27 THE COURT: Mr. Fortson, thank you for being
28 with us. You're excused.

1 Let's call seven new names.

2 THE CLERK: Juror Number 55, Doris Redding;
3 Juror Number --

4 THE COURT: Counsel, will you approach for a
5 second? Ms. Redding, will you come up here, please?

6 (Whereupon the following proceedings were held at the
7 bench out of the hearing of the jury:)

8 THE COURT: The microphone's off. We are
9 recording this though. My bailiff indicated that you
10 have a very uncomfortable feeling about this. You
11 think you would not be able to be a fair juror based
12 upon your own experiences as a crime victim.

13 Is that a correct statement?

14 THE PROSPECTIVE JUROR: Yes.

15 THE COURT: Think that would affect your
16 ability to be fair and impartial?

17 THE PROSPECTIVE JUROR: In this case, yes.

18 MR. THOMAS: I don't have any questions.

19 MR. SANDERS: No questions.

20 THE COURT: Do you want to stipulate that
21 Ms. Redding can be excused for cause?

22 MR. THOMAS: People stipulate.

23 MR. SANDERS: Yes.

24 THE COURT: Thank you for being with us.
25 You're excused.

26 (Whereupon the following proceedings were held in open
27 court in the presence of the jury:)

28 THE COURT: Okay. No secrets. Because of

1 the nature of this case, Ms. Redding had told Pete she
2 would like to talk to us before anything else, and
3 she's been excused for cause. Thank you, Ms. Redding.

4 THE CLERK: Juror Number 67, 067XXXXXXXXX;
5 Juror Number 72, 072XXXXXXXXX; Juror Number 65,
6 065XXXXXXXXX; Juror Number 50 -- I'm sorry, sir, it's a
7 great name. I just can't say it. Juror Number 33,
8 Barbara Holmwood; Juror Number 31, Joyce Hall; Juror
9 Number 45, Curtis Miller.

10 THE COURT: Okay. I think we all know that
11 I'm going to be speaking to 067XXXXXXXXX and only those
12 of you in the front row. The other 11 of you, I'm not
13 speaking to you. The attorneys are asking nothing of
14 you, but, once again, I'll say if someone is reminded
15 of information they wish they would have brought up
16 earlier, feel free to raise your hand and we'll talk
17 to you.

18 Just as I did last time, I'm going to jump to
19 Question 14. Is there any reason you feel you should
20 not sit as a juror in this case for 067XXXXXXXXX and
21 anyone in the front row? I see one hand.

22 Hello, Ms. Hall.

23 THE PROSPECTIVE JUROR: My the problem is I
24 can't reverse what's happening. I have a dump truck
25 full of rocks coming to my house this afternoon, and
26 I'm covering what was grass with rocks, and I couldn't
27 reverse it. I thought I could, but I can't.

28 THE COURT: Are you going to be driving the

1 truck?

2 THE PROSPECTIVE JUROR: I hope not. No, it's
3 a dump truck.

4 THE COURT: What are you going to be doing?

5 THE PROSPECTIVE JUROR: Paying the guy.

6 THE COURT: It's going to be a financial
7 hardship if they come out and can't dump the rock,
8 they'll charge you for a second trip?

9 THE PROSPECTIVE JUROR: Probably, your Honor.

10 THE COURT: Why don't we say -- that
11 satisfies me. I'm going to excuse you for financial
12 hardship, Ms. Hall. Thank you for being with us.

13 THE PROSPECTIVE JUROR: Thank you very much,
14 your Honor.

15 THE COURT: Come back and see us real soon.

16 THE PROSPECTIVE JUROR: I'd love to.

17 THE COURT: Call another name.

18 THE CLERK: Juror Number 28, Susan Grace.

19 THE COURT: No one else asked or said they
20 had a problem with Number 14. What about you,
21 Ms. Grace, can you be fair? Any reason why you can't
22 be fair?

23 THE PROSPECTIVE JUROR: The only thing that I
24 have a problem with is looking at the pictures because
25 I will be vomiting because I just cannot -- my stomach
26 is very queasy for nasty things.

27 THE COURT: So am I just so you'll know.

28 THE PROSPECTIVE JUROR: Okay.

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 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.

1 THE COURT: Will the three alternates please
2 stand, raise your right hand and be sworn?

3 THE CLERK: Do each of you understand and
4 agree that if called upon as a trial juror, you will
5 well and truly try the cause now pending before this
6 Court and a true verdict render according only to the
7 evidence presented to you and to the instructions of
8 the Court? If so, answer, "I do."

9 (Whereupon the alternate jurors answered in the
10 affirmative.)

11 THE COURT: I told you at the beginning I
12 couldn't promise you an opportunity to be on my jury.
13 I wish I could have had all of you here. Then again,
14 I don't know how long deliberations would take with a
15 jury of 40. I guess I'm going to have to wait and so
16 are you till next year.

17 Couldn't have gotten this far without you. We
18 thank you for being with us, being attentive. I know
19 this process can be tedious. I hope you've picked up
20 something about what goes on in the court that will be
21 of value to you in the future. I hope you're in court
22 in the future only for jury service, but I do hope you
23 come back and we can see you again next year.

24 On behalf of Department 2 and all of the judges
25 of this court, on behalf of People of the State of
26 California, on behalf of Mr. Yablonsky and the defense,
27 Court now is going to thank and excuse each of you.

28 Counsel, why don't you approach off the record?

1 Those will be more specific. They'll come at the end of
2 the trial.

3 Now I'm going to read you a general
4 pre-instruction set of -- pretrial set of instructions.

5 "The trial will now proceed as
6 follows: The People may present an
7 opening statement. The defense is not
8 required to present an opening
9 statement, but if it chooses to do so,
10 it may give it either after the
11 People's opening statement or at the
12 beginning of the defense case. The
13 purpose of an opening statement is to
14 give you an overview of what the
15 attorneys expect the evidence will
16 show.

17
18 "Next, the People will offer
19 their evidence. Evidence usually
20 includes witness testimony and
21 exhibits. After the People present
22 their evidence, the defense may also
23 present evidence but is not required
24 to do so. Because he is presumed
25 innocent, the defendant does not have
26 to prove he is not guilty.

27
28 "After you have heard all the

1 evidence and the attorneys have given
2 their final arguments, I will instruct
3 you on the law that applies to this
4 case. After you have heard all the
5 arguments and instructions, you will
6 go to the jury room to deliberate.

7
8 "I will now explain some basic
9 rules of law and procedure. These
10 rules ensure that both sides receive a
11 fair trial.

12
13 "During the trial, do not talk
14 about the case or about any of the
15 people or any subject involved in the
16 case with anyone, not even your
17 family, friends, spiritual advisers,
18 or therapists."

19 There's an example of what judges and lawyers
20 do that most people wouldn't do because I said, don't
21 talk about this case with anyone. Then I say, not even
22 your family, friends, spiritual advisers or therapists.
23 We just cannot help it. Why don't we say, don't talk to
24 your barber either, but you can see the point is, don't
25 talk to anyone about this case.

26 Anybody know why? I'm going to tell you why.
27 The reason is that we are going to take a careful
28 approach to everything we do in this trial. We want

1 everyone to feel that they've had a fair day in court.

2 Sometimes trial courts are compared to battle
3 fields. This is, believe me, an arena at this point.
4 Mr. Thomas and Mr. Sanders are both very professional.
5 They're going to be very courteous to one another
6 throughout this entire proceeding, but they have an
7 opposite end in mind. One of them is going to be trying
8 to convince you that Mr. Yablonsky is guilty beyond a
9 reasonable doubt. The other one's going to be trying to
10 convince you that Mr. Thomas hasn't proved that
11 Mr. Yablonsky is guilty beyond a reasonable doubt.

12 This is not where we come to compromise. This
13 isn't where we come to mediate. This is where we come
14 to a final determination with one person walking away as
15 a victor and one person ending this trial as the
16 vanquished.

17 My job, my goal as a judge, it's a pretty lofty
18 goal, but I take my job very seriously, is to make sure
19 that when this trial is over, whether you're the winner
20 or you're the loser, that you're going to leave this
21 court feeling like you had a fair trial, like you got a
22 chance to have your day in court. I want you to be my
23 partner in that. I told you that you're the judges of
24 the facts and not the judges of the law. That's my job.
25 I need your help if we're going to get through this and
26 guarantee that everyone's going to feel like they had a
27 fair trial.

28 What kind of things can happen that can make

1 people feel like they haven't had a fair trial? Failure
2 to avoid strict adherence to the orders that I make in
3 this case. I've had a situation before where the parent
4 of one of the defendants, I think it was just one
5 defendant in a trial. A parent saw a juror talking to a
6 police officer during the -- a break. Toward the end of
7 the trial, she wrote a note to me telling me about that.

8 I had to bring the police officer in. I had to
9 bring the juror in. It turns out they'd asked or been
10 discussing something about the flooding that was taking
11 place in Hesperia back in those days, and was the police
12 department in Hesperia going to do anything to improve
13 the condition of those roads.

14 They thought it was innocent, and it wasn't in
15 any way something about the trial, but the result was,
16 it cast suspicion. It cast doubt in the mind of the
17 defendant's mother as to whether or not her son had been
18 given a fair trial. We want to be like Ceasar's wife,
19 above the appearance of impropriety. That's why these
20 rules are in place.

21 When somebody presses you and says, oh, come
22 on. You can tell me about this. Nobody's going to
23 know. Well, you're going to know. You're going to be
24 asking yourself, was that just one thing that I've done
25 in not following the judge's instructions or are you
26 going to start off from this point on and make sure that
27 you scrupulously follow each of these instructions that
28 we give you?

1 Tell people that you are in Department 2 if you
2 want to. You can tell them when you're going to finish
3 your jury service. You can tell them what time you
4 start in the morning and what time you get through in
5 the evening. You can tell them that you're going to
6 have an hour and half lunch, and they can take you to
7 lunch. Tell them when the trial is over, you'll talk
8 about this case with them as long as they want to, but
9 please don't talk about anything about this case until
10 the trial is over.

11
12 "Do not share information about
13 the case in writing, by email, or on
14 the Internet.

15
16 "You must not talk about these
17 things with other jurors either until
18 the time comes for you to begin your
19 deliberations.

20
21 "As jurors, you may discuss the
22 case together only after all of the
23 evidence has been presented, the
24 attorneys have completed their
25 arguments, and I've instructed you on
26 the law. After I tell you to begin
27 your deliberations, you may discuss
28 the case only in the jury room and

1 only when all jurors are present.

2
3 "You must not allow anything that
4 happens outside the courtroom to
5 affect your decision.

6
7 "During the trial, do not read,
8 listen to, or watch any news report or
9 commentary about the case from any
10 source.

11
12 "Do not do any research on your
13 own or as a group. Do not use a
14 dictionary, the Internet, or other
15 reference materials. Do not
16 investigate the facts or law. Do not
17 conduct any tests or experiments or
18 visit the scene of any event involved
19 in this case. If you happen to pass
20 by the scene, do not stop or
21 investigate.

22
23 "If you have a cell phone or
24 other electronic device, keep it
25 turned off while you are in the
26 courtroom and during deliberations.
27 An electronic device includes any data
28 storage device. If someone needs to

1 contact you in an emergency, the court
2 can receive messages that it will
3 deliver to you without delay.

4 If you still have your court questionnaire,
5 there's handwritten phone number on the bottom of that
6 questionnaire. That's the telephone number to the
7 court, so you can tell your loved one, your work,
8 whoever might need to contact you in an emergency that
9 that's the number that you need to be reached at.

10 "During the trial, do not speak
11 to any party, witness, or lawyer
12 involved in the trial. Do not listen
13 to anyone who tries to talk to you
14 about the case or about any of the
15 people or subjects involved in it. If
16 someone asks you about the case, tell
17 him or her that you cannot discuss it.
18 If that person keeps talking to you
19 about the case, you must end the
20 conversation.

21
22 "When the trial has ended and
23 you've been released as jurors, you
24 may discuss the case with anyone.

25
26 "I'll remind you that under
27 California law, you must wait at least
28 90 days before negotiating or agreeing

1 to accept payment for information
2 about this case.

3
4 "If you receive any information
5 about this case from any source
6 outside of the trial, even
7 unintentionally, do not share that
8 information with any juror. If you do
9 receive such information, or if
10 someone tries to influence you or any
11 juror, you must immediately tell the
12 bailiff.

13 "Some words or phrases that may
14 be used during this trial have legal
15 meanings that are different from their
16 meanings in everyday use. These words
17 and phrases will be specifically
18 defined in the instructions. Please
19 be sure to listen carefully and follow
20 the definitions that I give you.
21 Words and phrases not specifically
22 defined in the instructions are to be
23 applied using their ordinary, everyday
24 meanings.

25
26 "Keep an open mind throughout the
27 trial. Do not make up your mind about
28 the verdict or any issue until you

1 have discussed the case with the other
2 jurors during deliberations. Do not
3 take anything I say or do during the
4 trial as an indication of what I think
5 about the facts, the witnesses, or
6 what your verdict should be.

7
8 "Do not let bias, sympathy,
9 prejudice, or public opinion influence
10 Your decision.

11
12 "You must reach your verdict
13 without any consideration of
14 punishment."

15 Something we may have brought during voir dire,
16 and that is this is not a death penalty case. If this
17 were a death penalty case, you would have known that.
18 We would have told you that.

19 We would have a trial in two phases. During
20 the first phase, there would have been attempt as to
21 whether or not you could reach a verdict as to guilt
22 beyond a reasonable doubt. During the second phase, the
23 jury would make a determination as to what they thought
24 the appropriate verdict -- the appropriate punishment
25 was, and the choices would be only life without
26 possibility of parole and death if the defendant was
27 indeed found to be guilty.

28 There's no penalty phase during this trial. If

1 Mr. Yablonsky is convicted, this Court will be the one
2 that decides what, within the legal range of sentences,
3 what Mr. Yablonsky's punishment should be. Again, don't
4 let punishment enter into your consideration at all. I
5 only went into that so you would understand that this is
6 not a death penalty case if you were wondering that by
7 any means.

8 "You will be given notebooks and
9 may take notes during the trial. Do
10 not remove them from the courtroom.
11 You may take your notes into the jury
12 room during deliberations. I do not
13 mean to discourage you from taking
14 notes but here are some points to
15 consider if you do take notes.

16 "1. Note-taking may tend to
17 distract you. It may affect your
18 ability to listen carefully to all the
19 testimony and to watch the witnesses
20 as they testify; and

21 "2. The notes are for your own
22 individual use to help you remember
23 what happened during the trial.
24 Please keep in mind that your notes
25 may be inaccurate or incomplete.

26
27 "At the end of the trial, your
28 notes will be collected and destroyed.

1
2 "I will now explain the
3 presumption of innocence and the
4 People's burden of proof. The
5 defendant has pleaded not guilty to
6 the charge. The fact that a criminal
7 charge has been filed against the
8 defendant is not evidence that the
9 charge is true. You must not be
10 biased against the defendant just
11 because he has been arrested, charged
12 with a crime, or brought to trial.

13
14 "A defendant in a criminal case
15 is presumed to be innocent. This
16 presumption requires that the People
17 prove a defendant guilty beyond a
18 reasonable doubt. Whenever I tell you
19 the People must prove something, I
20 mean they must prove it beyond a
21 reasonable doubt unless I specifically
22 tell you otherwise.

23
24 "Proof beyond a reasonable
25 doubt is proof that leaves you with an
26 abiding conviction that the charge is
27 true. The evidence need not eliminate
28 all possible doubt because everything

1 in life is open to some possible or
2 imaginary doubt.

3
4 "In deciding whether the People
5 have proved their case beyond a
6 reasonable doubt, you must impartially
7 compare and consider all the evidence
8 that was received throughout the
9 entire trial. Unless the evidence
10 proves the defendant guilty beyond a
11 reasonable doubt, he is entitled to an
12 acquittal and you must find him not
13 guilty.

14
15 "You must decide what the facts
16 are in this case. You must use only
17 the evidence that is presented in the
18 courtroom. Evidence is the sworn
19 testimony of witnesses, the exhibits
20 admitted into evidence, and anything
21 else I tell you to consider as
22 evidence.

23
24 "The fact that the defendant was
25 arrested, charged with a crime or
26 brought to trial is not evidence of
27 guilt.
28

1 "Nothing that the attorneys say
2 is evidence. In their opening
3 statements and closing arguments, the
4 attorneys will discuss the case, but
5 their remarks are not evidence. Their
6 questions are not evidence. Only the
7 witnesses' answers are evidence. The
8 attorneys' questions are significant
9 only if they help you understand the
10 witnesses' answers. Do not assume
11 that something is true just because
12 one of the attorneys asks a question
13 that suggests it is true.

14
15 "During the trial, the attorneys
16 may object to questions asked of a
17 witness. I will rule on the
18 objections according to the law. If I
19 sustain an objection, the witness will
20 not be permitted to answer, and you
21 must ignore the question. If the
22 witness does not answer, do not guess
23 what the answer might have been or why
24 I ruled as I did. If I ordered
25 testimony stricken from the record,
26 you must disregard it and must not
27 consider that testimony for any
28 purpose.

1
2 "You must disregard anything you
3 see or hear when the court is not in
4 session even if it is done or said by
5 one of the parties or witnesses.
6

7 "The court reporter is making a
8 record of everything said during the
9 trial. If you decide that it is
10 necessary, you may ask the court
11 reporter's record be read to you. You
12 must accept the court reporter's
13 record as accurate.
14

15 "You alone must judge the
16 credibility or believability of the
17 witnesses. In deciding whether
18 testimony is true and accurate, use
19 your common sense and experience. You
20 must judge the testimony of each
21 witness by the same standards, setting
22 aside any bias or prejudice you may
23 have. You may believe all, part, or
24 none of any witness's testimony.
25 Consider the testimony of each witness
26 and decide how much of it you believe.
27

28 "In evaluating a witness's

1 testimony, you may consider anything
2 that reasonably tends to prove or
3 disprove the truth or accuracy of that
4 testimony. Among the factors that you
5 may consider are:

6 "How well could the witness see,
7 hear, or otherwise perceive the things
8 about which the witness testified?

9 "How well was the witness able to
10 remember and describe what happened?

11 "What was the witness's behavior
12 while testifying?

13 "Did the witness understand the
14 questions and answer them directly?

15 "Was the witness's testimony
16 influenced by a factor such as bias or
17 prejudice, a personal relationship
18 with someone involved in the case, or
19 a personal interest in how the case is
20 decided?

21 "What was the witness's attitude
22 about the case or about testifying?

23 "Did the witness make a statement
24 in the past that is consistent or
25 inconsistent with his or her
26 testimony?

27 "How reasonable is the testimony
28 when you consider other evidence in

1 the case?

2 Add other evidence and being
3 untruthful

4
5 "Do not automatically reject
6 testimony just because of
7 inconsistencies or conflicts.
8 Consider whether the differences are
9 important or not. People sometimes
10 honestly forget things or make
11 mistakes about what they remember.
12 Also, two people may witness the same
13 event yet see or hear it differently.

14
15 "If you do not believe a
16 witness's testimony that he or she no
17 longer remembers something, that
18 testimony is inconsistent with the
19 witness' earlier statement on that
20 subject.

21
22 "If you decide that a witness
23 deliberately lied about something
24 significant in this case, you should
25 consider not believing anything that
26 witness says. Or, if you think the
27 witness lied about some things but
28 told the truth about others, you may

1 simply accept the part that you think
2 is true and ignore the rest."

3 This next instruction I'm going to read to you
4 requires a little explanation. Some of you have had
5 service in the past. You have probably not seen this
6 instruction. It has to do with jurors asking questions.
7 The people that put these instructions together thought
8 it would be a good idea to involve jurors more fully in
9 the experience by allowing jurors to ask questions. So
10 here's the instruction:

11 "If during the trial you have a
12 question that you believe should be
13 asked of a witness, you may write out
14 the question and send it to me through
15 the bailiff. I will discuss the
16 question with the attorneys and decide
17 whether it may be asked. Do not feel
18 slighted or disappointed if your
19 question is not asked. Your question
20 may not be asked for a variety of
21 reasons including that the question
22 may call for an answer that is
23 inadmissible for legal reasons. Also,
24 do not guess the reason your question
25 was not asked or speculate about what
26 the answer might have been.

27
28 "Always remember that you are not

1 advocates for one side or the other in
2 this case. You are impartial judges
3 of the facts."

4 It fails -- I should not say it fails.

5 Frequently this instruction fails to fully inform the
6 jurors what the purpose of this instruction is. It
7 relates to allowing you, the jury, to ask me or one of
8 the attorneys through me to pose a question to a witness
9 who is then on the stand testifying. It's not for you
10 to bring up issues that you think might be important in
11 the case. It's not for you to have an opportunity to
12 ask me what the law is.

13 I had a case -- well, I shouldn't talk about
14 specific cases, but I'll just say in a recent case a
15 question had to do with whether or not someone had
16 performed work on cars or whether that person had
17 basically gotten those cars under false pretenses and
18 chopped them up and sold them. One of the jurors wrote
19 a question, sent it to me, and the question was
20 something like, what qualifies the defendant to be a
21 mechanic? Is he certified? Something like that. The
22 defendant wasn't on the witness stand. There was no way
23 that question could have been answered.

24 Think about what it is that you want. I'm not
25 trying to discourage you. If you have a question you
26 would like to have asked, make sure that it's a question
27 that the witness can answer. Make sure it's a question
28 that you want asked of that particular witness on the

1 stand at that time.

2 Now, if you -- if your question isn't asked,
3 I've told you here don't speculate about why, but don't
4 tell the other jurors that I sent the judge this
5 question, asked him to ask it and he didn't do it. Just
6 forget about it. Means for one reason or another that
7 this is a subject that's not going to be covered. Don't
8 speculate what the answer was. Don't talk about it with
9 the other jurors.

10 I'm not going to call people back to ask a
11 question a juror wants to be asked once that person has
12 been excused. So you have to do it while that person is
13 on the witness stand. That means, you'll see this as we
14 go through the trial. Somebody's going to be called.
15 After they've given direct examination,
16 cross-examination, sometimes further direct, further
17 cross, back and forth.

18 When nobody has any questions left, I'm going
19 to turn to the attorneys and say, may this witness be
20 excused? That's your cue. If you have a question that
21 you're thinking of putting together or you're in the
22 middle of writing it out, speak now. Speak then or
23 forever hold your peace. Don't be shy. Put your hand
24 up and say hold it. Hold it. I've got to finish a
25 question. Then you can write it out. Pass it to Pete.

26 I'll look at it and talk to the attorneys about
27 it, and we can ask that question of a witness if you
28 want me and to it's an admissible question. The problem

1 is, so you understand, once that witness is gone, you
2 come back later or after a break and say I've got a
3 question I'd like to ask of the witness. If that's
4 person's been excused, you're not going to get a chance
5 to have the answer to that question.

6 A little complicated. That's hopefully clear
7 what the purpose of those questions will be.

8 Do we have anybody speaking through an
9 interpreter in this case?

10 MR. THOMAS: There's a possibility that one
11 of the witnesses will.

12 THE COURT: Okay. Would that person be
13 speaking Spanish?

14 MR. THOMAS: Korean.

15 THE COURT: I'm always embarrassed when I
16 make assumptions and I'm wrong.

17 "Some testimony may be given in
18 Korean. An interpreter will provide a
19 translation for you at the time of the
20 testimony. You must rely on the
21 translation provided by the
22 interpreter even if you understand the
23 language spoken by the witness. Do
24 not retranslate any testimony for
25 other jurors. If you believe the
26 court interpreter translated testimony
27 incorrectly, let me know immediately
28 by writing a note and giving it to the

1 bailiff."

2 You can see when this is done a witness might
3 be speaking Spanish. It's more likely in Southern
4 California that someone is going to be able to
5 understand what the interpreter is saying and understand
6 what's being said in Spanish. Korean, I think it's less
7 common, but maybe someone might speak Korean.

8 Why would we not want you to be back in the
9 jury room telling the other jurors something like this;
10 you know, this person who was the interpreter got that
11 wrong? The witness said it was dark outside, and the
12 interpreter said it was black outside. You can see that
13 we have 1 of the 12 people in charge of deliberations.
14 We don't want that.

15 Again, if somebody does speak through an
16 interpreter, if you understand that language and you
17 hear something you think is a mistake, that's all right.

18 We'll get it out in the open here. We'll ask the
19 interpreter to explain why that particular word was used
20 and everyone will be on the same footing as far as the
21 decisions that are made.

22 Witness identified as Jane Doe?

23 MR. THOMAS: Probably.

24 THE COURT: (Reading):

25 "There's a possibility that one
26 of the witnesses in this case is going
27 to be identified as Jane Doe. This
28 name is used only to protect her

1 privacy as required by law. The fact
2 that a person is identified in this
3 way is not evidence and do not
4 consider that fact for any purpose."

5 All right. That's how far I'm going to go on
6 the instructions that you're going to hear. On Monday
7 morning, you're going to hear the opening statements by
8 the attorneys -- I'm sorry, you're going to hear the
9 opening statement by Mr. Thomas. I'm sure he's going to
10 give you one.

11 As I've already explained, Mr. Sanders will
12 then have an opportunity to give you an opening
13 statement or reserve to a later time if he ever chooses
14 to make an opening statement.

15 One more time, you're admonished that it is
16 your duty not to converse among yourselves or with
17 anyone else about any matter connected with this case
18 nor form or express an opinion on it until it's
19 submitted to you. Don't come here tomorrow. Saturday
20 you're watching football? Just all Sunday?

21 MR. THOMAS: Just all Sunday.

22 THE COURT: I don't know what you're going to
23 do on Sunday, but -- I mean Saturday. Watch football
24 on Sunday. Don't talk about this case. Have a nice
25 weekend, folks. See you Monday morning at 9:00.

26 (Whereupon the jury exited the courtroom and the
27 following proceedings were held:)

28 THE COURT: Back on the record in the case of

1 People of the State of California versus John Henry
2 Yablonsky. Mr. Yablonsky's here with his attorney,
3 Mr. Sanders. When we were last together, we were
4 discussing various issues regarding the admissibility
5 of the two prior rapes under 1108. We talked about
6 the case -- the various cases. We talked about the
7 Story case 45 Cal.4th 1282, 2000. The case we talked
8 about the Falsetta case, 1999, 29 Cal.4th 903. We
9 talked about the factors that should be taken into
10 consideration by the Court in exercising its
11 discretion.

12 I gave both of you the understanding that today
13 was the time I was going to expect that you're going to
14 tell me how those factors mitigate in favor of your
15 position, specifically, why it should be admitted,
16 Mr. Thomas, and why it shouldn't be admitted,
17 Mr. Sanders.

18 Mr. Thomas.

19 MR. THOMAS: Well, as far as the -- I don't
20 know if we were saying 1981 or I misheard, but the
21 event of the first alleged rape occurred on July 16th
22 of 1982 in El Paso, Texas, and I've already gone
23 through most of the facts with the Court.

24 THE COURT: Right. I'm talking about
25 doesn't -- don't you feel that there are factors that
26 I need to consider according to the Story case?

27 MR. THOMAS: Yeah. Under Story, if the Court
28 were to find that it comes in under 1108, and I think

1 from the chambers conversations that's where the Court
2 was leaning, the Court has to consider the factors
3 under Falsetta and 352. The factors are, the nature
4 of the -- the offenses or the actions, the relevance,
5 the possible remoteness, the degree of certainty of
6 its commission, and the likelihood of confusing,
7 misleading or distracting the jurors from their main
8 inquiry, similarity to the charged offense, likely
9 prejudicial impact on the jurors, the burden on the
10 defendant in defending against the uncharged offense,
11 and the availability of less prejudicial alternatives
12 to its outright admission, such as, admitting some but
13 not all of the defendant's other sex offenses or
14 excluding irrelevant though inflammatory details.

15 In this case, the People intend to bring in two
16 complaining witnesses. We don't intend to bring in any
17 doctors or medical personnel. I think it boils down to
18 an issue of credibility that the jurors themselves can
19 determine for themselves as far as if these witnesses
20 are actually telling the truth and same goes for if
21 Mr. Yablonsky takes the stand, and they can compare the
22 stories and figure out which one is more believable to
23 them.

24 THE COURT: Just one second. Maybe I didn't
25 make myself clear. I'd like you to -- here's what I
26 want you to tell me. Talk to me about each of these
27 cases in -- one occurred in 1982 and one occurred in
28 1991?

1 THE DEFENDANT: '96.

2 MR. THOMAS: '96.

3 THE COURT: '96. Okay.

4 MR. THOMAS: It would be October.

5 THE COURT: Let's call it the '82 and '96
6 cases. I really think what your job right now for me,
7 Mr. Thomas, is to tell me how the factors apply to
8 each of those cases.

9 MR. THOMAS: Okay. As far as the nature and
10 relevance of each of those cases, I think that both
11 cases involve alleged rapes and in this particular
12 case, the People are alleging that the murder was
13 committed in the attempted commission or commission of
14 a rape. I think they're similar in nature.

15 The possible remoteness as far as three years
16 before this particular crime -- and I'm talking about
17 the 1982 -- it's not that remote. I can see somewhat of
18 an argument on the remoteness of the '96 rape.

19 The degree of certainty of its commission and
20 likelihood of confusing, misleading and distracting the
21 jurors from their main inquiry, I don't think it's going
22 to confuse, mislead, or distract the jurors. I think
23 the ultimate issue in this case is whether or not the
24 sexual relations between Mr. Yablonsky and the victim in
25 this case were consensual or nonconsensual.

26 I think both of these cases show that
27 Mr. Yablonsky has, if the jury were to believe the
28 victims in those two cases, has in the past forced

1 himself on victims, and which would support the
2 prosecution's theory in this case that he forced himself
3 on Rita Cobb before he ended up killing her.

4 As far as the prejudicial impact on the jurors,
5 of course there's going to be some prejudicial impact,
6 and that's just the cost of doing business, as you say.
7 As far as the -- there's always going to be some
8 prejudicial impact of probative evidence. That
9 prejudicial impact in this case I don't think outweighs
10 the probative value of that evidence for the jury. I
11 think that the jurors are entitled to hear that
12 Mr. Yablonsky has raped people in his past if they
13 believe these two witnesses that come in.

14 The -- I don't believe that there's any less
15 prejudicial alternatives to its outright admission in
16 this case. There's -- I can see if the People were
17 seeking to introduce medical documents or other
18 documents that would bolster the credibility of the
19 witnesses in this case or in the 1982 case and the 1996
20 case. I could see where the Court might want to limit
21 that, but -- there's case law regarding limiting the
22 medical opinions or the medical experts coming in to
23 testify. I think it's just basically going to be
24 credibility -- a credibility issue for the jury.

25 I don't think there's anything that's going to
26 be irrelevant as far as admitting the testimony of these
27 two victims in this case as to what occurred back in
28 1982 and back in 1996. I think if the Court were to

1 engage in that 352 analysis, I think that the overall
2 probative value of this evidence outweighs any
3 prejudicial effect it might have on the defendant.

4 THE COURT: Does that conclude your comments?

5 MR. THOMAS: Yes.

6 THE COURT: Mr. Sanders.

7 MR. SANDERS: Thank you, your Honor.

8 THE COURT: Let me ask a question, by the
9 way, I think one of the things that I should do if --
10 do we all agree that the issue of whether -- the issue
11 of remoteness in time is not today? The point to
12 determine the relevant temporal proximately would be
13 the alleged crime?

14 MR. THOMAS: Yes.

15 MR. SANDERS: Yes.

16 THE COURT: Okay. Mr. Sanders.

17 MR. SANDERS: Thank you, your Honor. I guess
18 it would be difficult for me to imagine a case where I
19 would differ so greatly from the district attorney as
20 I do in this one in my analysis of his offer of proof.

21 The statement was made that if there is any
22 prejudice. There's enormous prejudice

23 THE COURT: Speak up.

24 MR. SANDERS: Yes.

25 THE COURT: I heard what you said.

26 MR. SANDERS: There's enormous prejudice in
27 this kind of evidence, enormous prejudice. The
28 question is, is there even a little bit of relevance,

1 even a little bit of relevance, not that there could
2 be enough relevance to overcome the prejudice in this
3 matter.

4 What I believe the Story case says that's
5 important to note -- in Story the gentleman was charged.
6 There was two other instances that the Court allowed in
7 on the 1108 evidence. The Court noted they allowed them
8 in because, Number 1, the two 1108 allegations were
9 similar to each other in a number of respects and that
10 they were also similar to the murder.

11 In the first place, that distinguishes Story
12 from our case. There is no way in which those two
13 offers of proof are similar to each other let alone in a
14 number of respects, and, second of all, neither one of
15 them are similar to the allegations in the instant case.

16 The first case happened in a bar off a military
17 base that was frequented by GIs. The second case
18 happened in the house where my client was living with
19 his then girlfriend. There's almost nothing the same
20 about them, and I notice in the district attorney's
21 argument the only similarity we have is that they're all
22 called rape. All rapes are not the same, and the Court
23 in Story found a number of respects where they were
24 similar. In this case there are none.

25 Now we go to the factors. The Court indicated
26 there are a number of factors. What we're comparing is
27 we are comparing a case that happened in 1982, an
28 allegation of forcible sex in a rest room of a bar, a

1 pool hall, that allegedly involved a knife, and we're
2 comparing that to a 19- -- 1996 case where my client and
3 his girlfriend were having a domestic dispute over a
4 number of issues. Then we are comparing that to the
5 instant case, but in what respect?

6 In the instant case, there is no evidence of a
7 sexual assault other than that there was sperm found in
8 the victim's vagina and on a piece of cloth next to her
9 body. We don't know if the semen was left before or
10 after she died. We don't know if the semen was left the
11 day before or 36 hours before. There is no evidence of
12 that. There was nothing about the case involving the
13 instant case that would give anyone reason to believe
14 that a knife was involved. There was nothing about the
15 instant case that would show that any clothing was torn.
16 No clothing that was in the room was disturbed or torn.
17 There were no buttons missing. There was no zippers
18 that were torn.

19 The allegation in 1996 was that some panties
20 were forcibly torn in that case. There was no trauma to
21 the victim's female parts in the instant case. There's
22 nothing -- there's no evidence on her body, in the room,
23 anywhere, that would normally be associated with a rape.

24 To say that those other two cases are similar
25 in a number of respects is -- is completely false.
26 There's -- the only respect they're the same is that
27 they involve what some people would say was a rape.

28 Remoteness is extreme in the '96 case. It is

1 there in the '81 case.

2 Relevance. This basically is a homicide trial.
3 The main issue here is whether or not my client killed
4 Ms. Cobb, and the -- there is a side issue that -- a
5 special circumstance, and it's important to note that
6 the offered evidence only speaks to the special
7 circumstance, not the charge in Count I.

8 The next is the degree of certainty of
9 commission. Neither one of these cases involve a
10 criminal prosecution. Neither one of these cases
11 involved a conviction. Neither one of these cases
12 involved any findings by a magistrate, a judge, a jury,
13 or anyone, that they were actually committed.

14 In both of the cases, there was only an arrest,
15 of course, in each case by an officer that had no
16 personal knowledge and then no further steps were taken.
17 The cases were never filed. It wasn't like they were
18 dismissed. They just never were filed in the first
19 place. The degree of certainty of commission is modest
20 at best.

21 The only evidence of commission are the
22 statements of the two women that they gave years and
23 years ago. As far as I know, they have never given
24 statements since. I've never been provided with a
25 statement. I don't know of any investigative officer
26 that has taken a statement from them since that day
27 where they re-allege that any of these things happened.

28 The next is likelihood of confusing, misleading

1 or distracting the jury from their main task. Their
2 main task is the charge in Count I, the only charge,
3 which is a homicide. Basically, what we're asking the
4 jury to do is try three cases. They have to try -- they
5 have to decide, did the case in El Paso actually happen?
6 Did the case in Long Beach actually really happen? If
7 it did, did it have any relevance to the special
8 circumstance, which is attached to the main charge in
9 this case?

10 The next factor is similarity to the crime
11 charged. That's of the same nature and relevance. I've
12 already pretty well addressed that. We know of no
13 similarities because we don't have any information as to
14 what happened in the crime charged.

15 The prejudicial impact is extreme. It's
16 devastating. If this evidence is allowed to be brought
17 in -- this goes with the burden on the defendant of
18 defending against it. The prejudicial impact is extreme
19 because in -- this -- this alleged evidence by these two
20 women, if they say what they said years ago, is the only
21 evidence -- is the only evidence there is in this case
22 of a rape. There isn't any other evidence.

23 So if you say, of all the evidence in this
24 case, it only adds five percent, then the prejudice
25 isn't so great. Because there is no physical evidence
26 of rape that was collected in 1985 in the situation with
27 Ms. Cobb, that other evidence is 100 percent basically
28 of the evidence that there was a rape.

1 Burden of the defending against this; as I
2 indicated, I was not aware that these women were going
3 to be called until a week or so before trial. When that
4 occurred, my investigator and I made some phone calls
5 and found out that neither one of these women are where
6 they were in those days. The district attorney was kind
7 enough to provide me last week with their current
8 addresses, but, of course, that doesn't mean that they
9 talked to me.

10 In each of those cases, it's impossible to
11 find, for example, in the 1981 case, the other GIs that
12 were in that bar that night with my client, the
13 investigating officer or his supervisor that determined
14 that they were going to let my client go shortly after
15 he was arrested, anyone to testify to the fact that
16 there was no knife there. My client was arrested.
17 There was no knife there. The witness was impeached on
18 that issue.

19 The 1996, we can't find or we don't know how to
20 get ahold of the officers at the jail that overheard the
21 telephone conversation between my client and the
22 prosecutrix where she basically admitted that, yeah,
23 okay, you didn't really rape me, but, you know, you did
24 rape my soul. That's why I called it a rape is because
25 I felt that you had raped my soul, and the -- the police
26 after hearing that conversation on the telephone didn't
27 follow through with filing any charges.

28 I don't know where these people are. I can't

1 find them. It's almost impossible for us to defend
2 against either one of those allegations at this point.
3 I don't know of a less prejudicial alternative.

4 I believe that neither one of these should come
5 in and this case should rise and fall on its own merits.
6 One less prejudicial alternative that was discussed in
7 Story was that the judge perhaps should have chosen one
8 of those instances, but that isn't the same case in our
9 case because, as I said, there is just no evidence of a
10 common plan, similarity, similar circumstance or
11 anything in any of those cases and the present case.
12 Thank you, your Honor.

13 MR. THOMAS: May I respond?

14 THE COURT: Sure.

15 MR. THOMAS: As far as the convictions go, it
16 looks like in Story all four of those rapes that came
17 in --

18 THE COURT: If I may, that's something I
19 don't want to pass by. Mr. Sanders, you indicated
20 that the two in the instant case -- in the Story case,
21 there were four separate victims that testified.

22 MR. SANDERS: And I don't think that's an
23 important factor. That's --

24 THE COURT: You mentioned there was something
25 about limiting -- in the Story case, limiting the
26 number of people that were allowed to testify.

27 MR. SANDERS: On the less prejudicial
28 alternative.

1 THE COURT: In this instance, they were --
2 all four people were allowed to testify.

3 MR. SANDERS: Because they were all similar
4 in a number of respects.

5 THE COURT: Right. Four.

6 MR. SANDERS: Yes.

7 THE COURT: Thanks.

8 MR. THOMAS: As far as the four victims that
9 were allowed to testify, there was no mention that the
10 defendant in this case -- the Story case was ever
11 convicted of any of them. So it would be similar to
12 this.

13 In Story, the crime occurred in 1976. The
14 Court admitted two prior rapes, one that occurred in
15 1974, another one occurred in 1976, and then admitted
16 two subsequent rapes that the defendant committed, one
17 in 1980 and one in 1986. The 1986 rape that was
18 admitted was approximately ten years after the murder
19 was committed in Story.

20 Similarly in this case, we have a rape that
21 occurred in 1996, which is approximately just over ten
22 years, it's eleven years after the murder occurred in
23 the present case.

24 Mr. Sanders kept mentioning there's no physical
25 evidence, and Story it shows -- from my reading of it,
26 doesn't show that the DA admitted any physical evidence
27 except for one in 1986 that it looks like that might --
28 well, no, even in the 1986 case it was all three or four

1 victims that came in and testified for the jury that the
2 defendant in Story had committed these rapes, and there
3 was no physical evidence or mention of physical evidence
4 in the appellate opinion.

5 Mr. Sanders kept pointing out there was a lack
6 of trauma in -- in the Rita Cobb murder. Admitting the
7 two prior rapes would explain why there was a lack of
8 trauma because in the two prior rapes he used weapons,
9 one time in the 1982 case he used a knife, and then on
10 top of that he used his left hand to choke the victim.
11 In this case, the victim in the Rita Cobb case, she was
12 strangled.

13 The Story opinion talks about the fact that in
14 Story the victim was also strangled on Page 1300 of the
15 opinion.

16 THE COURT: 1300?

17 MR. THOMAS: Yeah.

18 MR. SANDERS: The case number?

19 MR. THOMAS: Case number --

20 THE COURT: Let me get there. Go ahead.

21 MR. THOMAS: The California Supreme Court
22 said:

23 "The fact that the defendant
24 strangled his victim to death after
25 the sexual intercourse permits a
26 reasonable jury to infer that Vickers
27 did resist," Vickers being the victim
28 in that case, "did resist and did --

1 and indeed died for that resistance."

2 The same argument can be made in this case. If
3 the jury were to believe that the sex occurred at or
4 near the time of death, the jury could come to the same
5 conclusion as they did in the Story case, that Ms. Cobb
6 was strangled because she resisted the defendant.

7 I would argue as far as the physical evidence
8 goes, prosecution's going to argue that because the bed
9 and the condition of the bed and the bedspread that
10 would indicate some evidence that there was a struggle
11 of some sort. It wasn't neat as far as the bed goes.
12 It wasn't made up neat, and I'm sure Mr. Sanders has a
13 contrary argument to that, but I think that that's one
14 of the arguments that the People could put forth and the
15 jury could believe.

16 Then as far as the 1996 case, this was a woman
17 that was known to Mr. Yablonsky, and he came uninvited
18 and basically took the sex if you believe the victim in
19 that case.

20 Same could be said for this case as far as
21 Rita Cobb's concerned. He knew the victim, and he --
22 the People are going to argue based on his 1996 case
23 that he did the same thing in this case. He invited
24 himself in and basically took sex from Ms. Cobb. In the
25 process of doing that, he murdered her. So I think
26 there's enough similarities and enough evidence there
27 for the Court to find that both the 1982 and the 1996
28 case have probative value, that probative value

1 outweighs any prejudicial effect on the defendant.

2 THE COURT: Anything else, either side?

3 MR. SANDERS: Please, your Honor. It's one
4 thing in the abstract to say that if you're charged
5 with certain crimes you can bring in similar crimes to
6 bolster your argument, to bolster your position, but
7 what those cases didn't suggest is exactly what the
8 prosecutor uses those cases for.

9 It's one thing to say, in the Rita Cobb case,
10 he used a knife. In the El Paso case, he used a knife.
11 You can show a common scheme, plan, purpose, all those
12 things. It's one thing to say in the Rita Cobb case, he
13 came uninvited, and in the Long Beach case, he came
14 uninvited, but even his own argument shows that that's
15 not what he's doing here.

16 What he suggested is, we don't know what
17 happened to Rita Cobb, but we know in El Paso, he used a
18 knife; therefore, he probably used a knife in this case.
19 We can argue that's why it's a rape because he used a
20 knife. In the 1996 case he came uninvited; therefore,
21 he must have come uninvited in this case. That's not
22 what Story or Falsetta or Pierce stand for; that you
23 can -- that you can bring in these other elements that
24 you don't have in your main case. They're to show
25 similarities. They're not to -- to try to bootstrap
26 other things into them that weren't there to start with.

27 If that's the similarity, if that's why it's
28 relevant, then it isn't and the prejudice, which is

1 huge, hasn't been overcome. Thank you.

2 THE COURT: Anything else?

3 MR. THOMAS: I would point out in Story that
4 the murder victim was strangled and the prior rapes
5 that were admitted the defendant did use a gun, and
6 so, therefore, it's not similar and the Court still
7 allowed its admission because -- under 1108, and that
8 would be -- we'd submit on that.

9 THE COURT: Anything else?

10 MR. SANDERS: No, your Honor. I've submitted
11 points. Thank you.

12 THE COURT: I'm struck by how, in my opinion,
13 the Story case is so close to the case that is before
14 me, and I think Story is just on all fours with People
15 versus Yablonsky. What Story stands for, I believe,
16 is allowing the fact that someone was killed --
17 someone who was killed after having had sexual
18 relations, allows the jury to be told of prior similar
19 forcible sex crimes to infer that this was not just a
20 murder but was a forcible sex crime.

21 I didn't hear much discussion about this, but
22 what strikes me mostly about the Story case is here on
23 Page -- I guess it would be on -- starting on Page 1285:

24 "Evidence presented at trial on
25 October 22nd, 1976, 26-year-old,
26 Betty Yvonne Vickers was found dead
27 lying on her stomach on the right side
28 of the bed in the bedroom of her

1 apartment on Main Street and Mountain
2 View.

3 "She was wearing only a football
4 jersey. The bottom half of her body
5 was covered with bed covers. Panties
6 were under the pillow on the bed, and
7 a bloody tampon was on the bed beside
8 her body.

9 "A large semen stain was found on
10 the bottom sheet. The rest of the
11 apartment contained no evidence of
12 struggle."

13 1286, next page -- actually, it's the end of
14 1285, beginning of 1286:

15 "The vagina contained a white
16 discharge but no signs of injuries."

17 There was evidence of a struggle in that case
18 there being an opportunity to be examined. I think we
19 must not have had, in all likelihood, the same degree of
20 body decomposition as there was when Ms. Cobb was found,
21 the victim in this particular instance, but the
22 pathologist testified that the injuries were most
23 consistent with the victim's being face up and someone
24 applying their hands to her neck and either their elbows
25 on her collar bones or chest or perhaps even their knees
26 to straddle her and immobilize her.

27 So it appears that the evidence of struggle in
28 this particular instance didn't offer any light on the

1 subject of whether she had had consensual sex or there
2 was a struggle that ensued when Mr. Story decided to
3 strangle Ms. Vickers to death. So the question in that
4 case was exactly the question in this case. Was that
5 consensual sex? Was that not consensual sex? Was
6 there, in other words, a rape?

7 I think Justice Chin let us know that prior
8 accounts of rape can help the jury to answer that
9 question if the factors are appropriately met.
10 Mr. Sanders, I disagree with you that this is something
11 that is so far away from the -- the Story case. I think
12 it is right on with the Story case, and I agree with the
13 prosecution.

14 I think that Justice Chin had exactly these
15 issues in mind when he made the statement in the opinion
16 that Mr. Thomas has already alluded to that are found on
17 Page 1300. He did not tip-toe around it. He let it be
18 known that whether there was a rape in this case could
19 be determined by the force that was used to kill this
20 person. I think the fact that there was force used
21 clearly against Ms. Cobb is also very similar.

22 There was a weapon used by the -- by the way,
23 Mr. Sanders, you spent a lot of time once again
24 reiterating factors of dissimilarity, but the factors of
25 dissimilarity that you're alluding to are those that you
26 already explained to me, are things that were told to
27 you by your client, not things that have been
28 established in any way by the record of either of these

1 prior rapes or one prior rape and one subsequent rape.

2 Your client telling you that one of the cases
3 was not filed because the woman made a statement that
4 said she might -- he raped my spirit or raped my soul,
5 and that they heard a telephone conversation. You never
6 heard that conversation. You never found a report of
7 that as being the reason this case wasn't filed.

8 MR. SANDERS: Too old. I can't.

9 THE COURT: It's too old. You can't. That's
10 one way of arguing it, but it's not convincing to me.
11 You're saying that it's too old does not mean that
12 it's evidence that was ever available. It is evidence
13 that is not corroborated. It's a statement by your
14 client to exonerate himself. That's the way that I
15 feel.

16 I see that in each case, one case is use of a
17 knife.

18 MR. SANDERS: Alleged knife.

19 THE COURT: That's all I'm talking about.
20 That's all I'm talking about. I'm talking about what
21 the prosecution's theory is and what their offer of
22 proof is. Those things that Mr. Thomas said when I
23 made him go through these factors, I agree with his
24 interpretation. I think this is exactly what 1108 was
25 intended to deal with.

26 I think that in any case where somebody is
27 giving evidence of prior criminality offered to a jury,
28 always hugely prejudicial, but you can't come to the

1 conclusion that just because it's hugely prejudicial
2 that it's more prejudicial than probative. I think the
3 probative value greatly outweighs the prejudicial -- the
4 prejudice that's going to be raised.

5 You're going to be able to cross-examine those
6 alleged victims. You're going to be given an
7 opportunity of letting the jury see that these things
8 are not true. I wonder why Mr. Thomas hasn't elected
9 under 1108 to provide the alleged instances to the jury
10 in his case in chief. I think they're admissible at
11 that point in the trial. He hasn't asked for that.
12 That's his decision. That's what he has chosen to do as
13 a tactic. I don't understand tactics. I'm sitting up
14 here as a judge, but looking at the Story case with the
15 very factors that are illuminated in Falsetta and
16 restated in Story.

17 I find this is a crime that involves a
18 sexual -- a sexual offense. I think it's appropriate to
19 let in these two instances. I don't find them remote in
20 time. I don't think that they are unduly prejudicial.
21 I think they're highly probative, and I'm going to allow
22 that evidence in.

23 Anything else, either side? Other motions?

24 MR. THOMAS: One thing I wanted to put on the
25 record so the appellate courts will know about it in
26 case there is an appeal is at one point during the
27 discovery process, Mr. Sanders and I did discuss --
28 there's another murder/rape of a woman who was 60 at

1 the time. That occurred a few months prior to the
2 Rita Cobb case.

3 We discussed that, and the DNA evidence in that
4 case is different than the DNA evidence in this case. I
5 allowed Mr. Sanders, because it's still an open case and
6 unsolved homicide, I didn't want to give him all the
7 reports, but I allowed him to go to San Bernardino
8 Sheriff's Department homicide division and review all --

9 THE COURT: Mr. Thomas, thank you. I've got
10 a meeting in four minutes. I asked about motions. I
11 want to know about other motions. We can put things
12 on the record that we need to be put on the record at
13 8:30 on Monday.

14 MR. THOMAS: The only other motion, we can
15 deal with it on Monday, is there are members of the
16 victim's family that are on the witness list that
17 would like to be present. We can discuss that on
18 Monday.

19 THE COURT: You're going to have to talk to
20 Mr. Sanders about that.

21 MR. SANDERS: I'm going to make a motion to
22 have witnesses wait out in the hall.

23 THE COURT: To exclude people.

24 MR. SANDERS: To exclude.

25 THE COURT: It's not likely that I'm going to
26 deny that motion.

27 Do you have any authority to the contrary?

28 MR. THOMAS: I do have authority.

1 THE COURT: I'm not going to hear it now.
2 I'll see you on Monday morning at 8:30. Ladies and
3 gentlemen, have a nice weekend.

4 MR. SANDERS: Thank you, your Honor.

5 MR. THOMAS: Thank you, your Honor.

6 (Whereupon proceedings in the above-entitled
7 matter were concluded for the day.)

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