

No. _____

IN THE
Supreme Court of the United States

DARRYL BURGHARDT,

Petitioner,

v.

TAMMY L. CAMPBELL, WARDEN,

Respondent.

On Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Ninth Circuit

APPENDIX

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UNITED STATES COURT OF APPEALS

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U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

DARRYL BURGHARDT,

Petitioner-Appellant,

v.

TAMMY L. CAMPBELL,

Respondent-Appellee.

No. 21-56183

D.C. No.
2:14-cv-04677-JAK-DFM

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
John A. Kronstadt, District Judge, Presiding

Submitted June 28, 2023**
Pasadena, California

Before: N.R. SMITH, LEE, and VANDYKE, Circuit Judges.

Darryl Burghardt appeals the district court's denial of his petition for a writ of habeas corpus. We have jurisdiction, *see* 28 U.S.C. §§ 1291, 2253(a), and affirm.

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

The district court correctly determined that the California Supreme Court’s 2020 summary denial of Burghardt’s petition for state habeas relief, was an adjudication on the merits and that the deferential standard of review set forth in 28 U.S.C. § 2254(d) applied.¹ *See Harrington v. Richter*, 562 U.S. 86, 101 (2011). Respondent identified “strong evidence” to rebut the presumption that the Supreme Court’s “silence implie[d] consent” with the lower court’s reasoning, here the Los Angeles County Superior Court’s 2019 denial on procedural grounds. *Ylst v. Nunnemaker*, 501 U.S. 797, 804 (1991). The record before the Supreme Court clearly showed that Burghardt’s petition for state habeas relief asserted different claims than those raised on direct appeal and that the Superior Court misread Burghardt’s petition to make an obviously incorrect factual finding on that point. *See Wilson v. Sellers*, 138 S. Ct. 1188, 1196 (2018). The Supreme Court could not reasonably have adopted the Superior Court’s reasoning in light of the petition and memorandum Burghardt filed with the Supreme Court. *See Kernan v. Hinojosa*, 578 U.S. 412, 415 (2016) (per curiam).

¹ Because the last reasoned decision addressing the claims Burghardt’s federal habeas petition raises was the Superior Court’s 2019 decision, the district court erred in looking through to the Superior Court’s 2013 decision with respect to some of Burghardt’s federal claims. *See Barker v. Fleming*, 423 F.3d 1085, 1091, 1093 (9th Cir. 2005).

Burghardt also raises three uncertified issues on appeal. We construe his brief as a motion to expand the certificate of appealability (COA) to include these three claims. *See* Ninth Cir. Ct. R. 22-1(e); *Valerio v. Crawford*, 306 F.3d 742, 772–73 (9th Cir. 2002) (en banc). We deny the request because Burghardt fails to “demonstrate that reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong.” *Miller-El v. Cockrell*, 537 U.S. 322, 338 (2003) (citation omitted).

AFFIRMED.

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Information Regarding Judgment and Post-Judgment Proceedings

Judgment

- This Court has filed and entered the attached judgment in your case. Fed. R. App. P. 36. Please note the filed date on the attached decision because all of the dates described below run from that date, not from the date you receive this notice.

Mandate (Fed. R. App. P. 41; 9th Cir. R. 41-1 & -2)

- The mandate will issue 7 days after the expiration of the time for filing a petition for rehearing or 7 days from the denial of a petition for rehearing, unless the Court directs otherwise. To file a motion to stay the mandate, file it electronically via the appellate electronic filing system or, if you are a pro se litigant or an attorney with an exemption from the electronic filing requirement, file one original motion on paper.

Petition for Panel Rehearing (Fed. R. App. P. 40; 9th Cir. R. 40-1) Petition for Rehearing En Banc (Fed. R. App. P. 35; 9th Cir. R. 35-1 to -3)

(1) Purpose

A. Panel Rehearing:

- A party should seek panel rehearing only if one or more of the following grounds exist:
 - A material point of fact or law was overlooked in the decision;
 - A change in the law occurred after the case was submitted which appears to have been overlooked by the panel; or
 - An apparent conflict with another decision of the Court was not addressed in the opinion.
- Do not file a petition for panel rehearing merely to reargue the case.

B. Rehearing En Banc

- A party should seek en banc rehearing only if one or more of the following grounds exist:
 - Consideration by the full Court is necessary to secure or maintain uniformity of the Court's decisions; or
 - The proceeding involves a question of exceptional importance; or

- The opinion directly conflicts with an existing opinion by another court of appeals or the Supreme Court and substantially affects a rule of national application in which there is an overriding need for national uniformity.

(2) Deadlines for Filing:

- A petition for rehearing must be filed within 14 days after entry of judgment. Fed. R. App. P. 40(a)(1).
- If the United States or an agency or officer thereof is a party in a civil case, the time for filing a petition for rehearing is 45 days after entry of judgment. Fed. R. App. P. 40(a)(1).
- If the mandate has issued, the petition for rehearing should be accompanied by a motion to recall the mandate.
- See Advisory Note to 9th Cir. R. 40-1 (petitions must be received on the due date).
- An order to publish a previously unpublished memorandum disposition extends the time to file a petition for rehearing to 14 days after the date of the order of publication or, in all civil cases in which the United States or an agency or officer thereof is a party, 45 days after the date of the order of publication. 9th Cir. R. 40-2.

(3) Statement of Counsel

- A petition should contain an introduction stating that, in counsel's judgment, one or more of the situations described in the "purpose" section above exist. The points to be raised must be stated clearly.

(4) Form & Number of Copies (9th Cir. R. 40-1; Fed. R. App. P. 32(c)(2))

- The petition shall not exceed 15 pages unless it complies with the alternative length limitations of 4,200 words or 390 lines of text.
- The petition must be accompanied by a copy of the panel's decision being challenged.
- An answer, when ordered by the Court, shall comply with the same length limitations as the petition.
- If a pro se litigant elects to file a form brief pursuant to Circuit Rule 28-1, a petition for panel rehearing or for rehearing en banc need not comply with Fed. R. App. P. 32.

- The petition or answer must be accompanied by a Certificate of Compliance found at Form 11, available on our website at www.ca9.uscourts.gov under *Forms*.
- Attorneys must file the petition electronically via the appellate electronic filing system. No paper copies are required unless the Court orders otherwise. If you are a pro se litigant or an attorney exempted from using the appellate ECF system, file one original petition on paper. No additional paper copies are required unless the Court orders otherwise.

Bill of Costs (Fed. R. App. P. 39, 9th Cir. R. 39-1)

- The Bill of Costs must be filed within 14 days after entry of judgment.
- See Form 10 for additional information, available on our website at www.ca9.uscourts.gov under *Forms*.

Attorneys Fees

- Ninth Circuit Rule 39-1 describes the content and due dates for attorneys fees applications.
- All relevant forms are available on our website at www.ca9.uscourts.gov under *Forms* or by telephoning (415) 355-8000.

Petition for a Writ of Certiorari

- The petition must be filed with the Supreme Court, not this Court. Please refer to the Rules of the United States Supreme Court at www.supremecourt.gov.

Counsel Listing in Published Opinions

- Please check counsel listing on the attached decision.
- If there are any errors in a published opinion, please send a letter **in writing within 10 days** to:
 - Thomson Reuters; 610 Opperman Drive; PO Box 64526; Eagan, MN 55123 (Attn: Maria Evangelista, maria.b.evangelista@tr.com);
 - **and** electronically file a copy of the letter via the appellate electronic filing system by using the Correspondence filing category, or if you are an attorney exempted from electronic filing, mail the Court one copy of the letter.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Form 10. Bill of Costs

Instructions for this form: <http://www.ca9.uscourts.gov/forms/form10instructions.pdf>

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Case Name

The Clerk is requested to award costs to (*party name(s)*):

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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

DARRYL BURGHARDT,
Petitioner,
v.
JEFFREY BEARD et al.,
Respondents.

Case No. CV 14-04677-JAK (DFM)

**ORDER GRANTING CERTIFICATE
OF APPEALABILITY**

Rule 11 of the Rules Governing Section 2254 Cases in the United States District Courts provides:

(a) Certificate of Appealability. The district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant. Before entering the final order, the court may direct the parties to submit arguments on whether a certificate should issue. If the court issues a certificate, the court must state the specific issue or issues that satisfy the showing required by 28 U.S.C. § 2253(c)(2). If the court denies a certificate, the parties may not appeal the denial but may seek a certificate from the court of appeals under Federal Rule of Appellate Procedure 22. A motion to reconsider a denial does not extend the time to appeal.

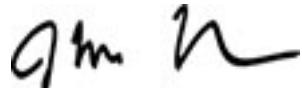
(b) Time to Appeal. Federal Rule of Appellate Procedure 4(a) governs the time to appeal an order entered under these rules.

A timely notice of appeal must be filed even if the district court issues a certificate of appealability.

Under 28 U.S.C. § 2253(c)(2), a Certificate of Appealability may issue “only if the applicant has made a substantial showing of the denial of a constitutional right.” The Supreme Court has held that this standard means a showing that “reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were “adequate to deserve encouragement to proceed further.”” Slack v. McDaniel, 529 U.S. 473, 483-84 (2000) (citation omitted).

After considering Petitioner’s contentions in support of the claims alleged in the Second Amended Petition, the Court finds and concludes that Petitioner has made the requisite showing with respect to whether the Court has correctly determined that AEDPA deference rather than de novo review should be applied to the claims that were mistakenly not reviewed by the Superior Court in its 2019 denial of Petitioner’s state habeas petition. Accordingly, under 28 U.S.C. § 2253(c)(2) and Habeas Rule 11, a Certificate of Appealability is GRANTED as to this issue.

Date: September 23, 2021



JOHN A. KRONSTADT
United States District Judge

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

DARRYL BURGHARDT,
Petitioner,
v.
JEFFREY BEARD, et. al,
Respondents.

Case No. CV 14-04677-JAK (DFM)
JUDGMENT

Pursuant to the Court's Order Accepting the Report and
Recommendation of United States Magistrate Judge,

IT IS ADJUDGED that the Second Amended Petition is denied, and
this action dismissed with prejudice.

Date: September 23, 2021



JOHN A. KRONSTADT
United States District Judge

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

DARRYL BURGHARDT,

Petitioner,

v.

JEFFREY BEARD, et al.,

Respondents.

Case No. CV 14-04677-JAK (DFM)

Order Accepting Report and
Recommendation of United States
Magistrate Judge

Under 28 U.S.C. § 636, the Court has reviewed the Second Amended Petition, the other records on file herein, and the Report and Recommendation of the United States Magistrate Judge. Further, the Court has engaged in a de novo review of those portions of the Report and Recommendation to which objections have been made. The Court accepts the report, findings, and recommendations of the Magistrate Judge.

IT IS THEREFORE ORDERED that Judgment be entered denying the Second Amended Petition and dismissing this action with prejudice.

Date: September 23, 2021


JOHN A. KRONSTADT
United States District Judge

O

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

DARRYL BURGHARDT,

Petitioner,

v.

JEFFREY BEARD, et al.,

Respondent.

Case No. CV 14-04677-JAK (DFM)

Report and Recommendation of
United States Magistrate Judge

This Report and Recommendation is submitted to the Honorable John A. Kronstadt, United States District Judge, under 28 U.S.C. § 636 and General Order 05-07 of the United States District Court for the Central District of California.

I. PROCEDURAL BACKGROUND

A. Trial and Direct Appeal

A jury convicted Darryl Burghardt (“Petitioner”) of attempted murder, shooting at an inhabited dwelling, assault with a firearm, and misdemeanor assault and battery. See Dkt. 114-6, Clerk’s Transcript (“CT”) 159-63.¹ The

¹ With the exception of the Clerk’s and Reporter’s Transcripts, all page citations to electronically-filed documents use the CM/ECF pagination.

jury also found true gang and firearm-use allegations with respect to each count. See id. In 2010, Petitioner was sentenced to life in state prison plus 20 years for the firearm enhancements and a 60-day county jail term for the misdemeanor assault. See CT 203-11.

On direct appeal, Petitioner raised several claims related to gang expert testimony and instructions, see Dkt. 110-1, none of which he raises in his federal petition.² The California Court of Appeal vacated the gang enhancements but otherwise affirmed his conviction. See Dkt. 60-2; see also People v. Burghardt, No. B227564, 2012 WL 1305909 (Cal. Ct. App. Apr. 17, 2012).³ In his petition for review in the California Supreme Court, Petitioner argued only that counsel should have objected to gang expert testimony; that petition was summarily denied in July 2012. See Dkt. 60-3; Dkt. 60-4.

B. Pro Se State Habeas Corpus Petitions

In June 2013, Petitioner filed pro se a habeas corpus petition in the Los Angeles County Superior Court. See Dkt. 60-7. He argued that his conviction was based on unconstitutionally suggestive identifications. See id. at 3-4. He also argued that his counsel should have raised challenges during jury selection under Batson v. Kentucky, 476 U.S. 179 (1986), and Duren v. Missouri, 439 U.S. 357 (1979). See id. at 5-6, 29-32. The Superior Court denied the petition, reasoning that it raised issues that could have been raised on appeal and that

² Respondent submitted two sets of lodged documents. See Dkt. 60 (lodging Lodged Documents 1 through 13); Dkt. 110 (lodging different Lodged Documents 1 through 8). The Court therefore refers to lodged documents by docket number.

³ The state appellate court found that the trial court erred in instructing the jury as to the gang enhancements. It permitted the state to conduct a new trial on the gang enhancement allegations, but the state instead proceeded with resentencing without these allegations. See Burghardt, 2012 WL 1305909, at *6.

Petitioner had failed to show prejudice from any errors by counsel. See Dkt. 60-8.

Petitioner raised the same claims in habeas corpus petitions filed with the California Court of Appeal and the California Supreme Court. See Dkt. 60-9 through Dkt. 60-17; Dkt. 60-19; Dkt. 60-22. Both courts denied his petitions summarily, with the California Supreme Court issuing its denial in April 2014. See Dkt. 60-18; Dkt. 60-20.

C. Initial Federal Habeas Proceedings

In June 2014, Petitioner filed in this Court a Petition for Writ of Habeas Corpus by a Person in State Custody. See Dkt. 1 (“Petition”) at 8. He raised the same claims raised in his state habeas corpus petitions: suggestive identification and ineffective assistance of counsel based on counsel’s failure to object under Batson and Duren. See *id.* at 5.

Respondent moved to dismiss the Petition as untimely, and the Court granted the motion in October 2015. See Dkts. 10, 28-30. The Ninth Circuit granted Petitioner’s request for a certificate of appealability and appointed counsel. See Dkt. 37. Petitioner’s new counsel caused the Superior Court to amend its judgment on December 18, 2017. See Dkt. 46 at 4-7.⁴ Because the amended judgment re-started the AEDPA limitation period, the Court granted Petitioner’s motion to reopen the case. See Dkt. 73. The Court also appointed the Office of the Federal Public Defender as counsel for Petitioner. See *id.* at 8. Petitioner then voluntarily dismissed his Ninth Circuit appeal. See Dkt. 75.

⁴ When the Superior Court set aside the gang allegations against Petitioner in 2012, it neglected to recalculate Petitioner’s credits. The Superior Court recalculated Petitioner’s credits and an amended judgment was filed. See Dkt. 44 ¶ 3; Dkt. 46 at 4-7.

D. Subsequent Federal and State Habeas Proceedings

In January 2019, Petitioner filed a First Amended Petition. See Dkt. 77 (“FAP”). The FAP presented seven claims: (1) his due process rights were violated by the trial court allowing him to represent himself without a knowing and intelligent waiver of his right to counsel in violation of Faretta v. California, 422 U.S. 806 (1975); (2) the jury was purged of black jurors in violation of Batson; (3) the jury was chosen by methods that systematically excluded black jurors in violation of Duren; (4) pre-trial identifications were unreliable and violated due process; (5) ineffective assistance of trial counsel in failing to raise these issues; (6) ineffective assistance of appellate counsel for failing to raise these issues; and (7) cumulative error. See Dkt. 77-1 at 8. Petitioner concurrently moved for a stay of these proceedings to permit exhaustion of his state remedies. See Dkt. 78. The Court granted the stay. See Dkt. 81.

Petitioner next filed a habeas corpus petition in the Superior Court, raising the FAP’s seven claims. See Dkt. 104-4 at 201-51. The Superior Court apparently mistook a list of grounds raised on direct appeal—improper gang expert testimony, improper instruction on gang enhancement, and related ineffective assistance of counsel and cumulative error claims—as Petitioner’s intended grounds for relief. See id. at 245 (section of Superior Court habeas form requiring petitioners to list grounds raised on direct appeal).⁵ The Superior Court therefore stated inaccurately that Petitioner “repeat[ed] allegations of inadequate representation, improper instructions and inadequacy of evidence.” Id. at 253. The Superior Court denied relief, reasoning that Petitioner’s claims were “previously raised unsuccessfully on appeal, by prior

⁵ The Superior Court judge who ruled on Petitioner’s habeas corpus petition in 2019 was not the trial judge.

habeas petition, or both,” id.—when in fact Petitioner had never before raised in state court most of his proposed seven claims. The California Court of Appeal and California Supreme Court then summarily denied Petitioner’s subsequent habeas corpus petitions, each of which raised the FAP’s seven claims. See id. at 410, 505.

E. Second Amendment of Federal Petition

In April 2020, the Court lifted the stay. See Dkt. 103. Petitioner filed a Second Amended Petition and a supporting memorandum of points and authorities. See Dkt. 107 (“SAP”); see also Dkt. 104-3 (“SAP Mem.”). The SAP raised the same claims as the FAP but included subsequent procedural developments. Respondent filed an answer, see Dkt. 109, and Petitioner filed a traverse, see Dkt. 112 (“Traverse”).

II. STATEMENT OF FACTS

The underlying facts are taken from the California Court of Appeal’s unpublished opinion on direct review.⁶ Unless rebutted by clear and convincing evidence, these facts are presumed correct. See 28 U.S.C. § 2254(e)(1); Crittenden v. Chappell, 804 F.3d 998, 1011 (9th Cir. 2015).

A. October 2009

In October 2009, La Charrie Langram was watering the grass outside her home when Petitioner approached on a bicycle and attempted to sell marijuana to her. Langram declined, and she and Petitioner had a conversation in which he told her his name was “Young Watts,” that he was from the Front Street Crips gang, that he had just been released from jail, and that this was his “hood” in which he knew everyone. Petitioner wanted to know

⁶ In all quoted sections of the state court records, “Burghardt” has been replaced with “Petitioner.”

where Langram was from, to which she responded that she was not a gang member. During the conversation, Petitioner became agitated. He asked Langram, who was rather tall and dressed “like a guy,” whether she was male or female, and when she said she was female, he hit her in the face. Langram’s friend Davvisha Moore intervened; Petitioner said he would be back and left on his bicycle.

Moore reported the events to Langram’s mother, Chenee Stone. Moore and Langram’s parents drove around the area looking for Petitioner. When they spotted Petitioner, Langram’s parents confronted him, resulting in a physical altercation. Petitioner ran away, threatening as he fled that he and his “homeboys” would come back to their house.

B. November 2009

On the day before Thanksgiving, Moore was in a nail salon when she saw Petitioner outside on the street. Waiting in a car outside, Langram also saw Petitioner, and asked him, “Don’t I know you from somewhere?” Petitioner first said no, but then said, “Well, I’ll be over there tomorrow.”

On Thanksgiving Day, Petitioner came to the door of the residence where he had encountered Langram the month before. Langram’s seven-year-old sister ran to answer the door but Stone stopped her and admonished her not to open the door. Instead, Stone opened the wooden door, leaving the security gate closed. Petitioner asked for the mother at the house, and Stone identified herself as the mother. Petitioner then said, “You guys have one more time to threaten me,” or something similar. In one motion, he pulled a gun from his waistband and fired multiple shots

through the window of the house into the living room. Stone pushed the door closed when she saw the gun; she pushed her daughter down and they ran away from the front window, down a hallway.

The police were summoned and Moore told the police that “Young Watts” was the shooter. The police brought Moore a photograph of Petitioner and Moore confirmed he was the shooter. Moore and Stone also identified Petitioner from a photographic lineup.

Petitioner was arrested and charged with attempted murder (§§ 187/664); shooting at an occupied dwelling (§ 246); two counts of assault with a firearm (§ 245, subd. (a)(2)); and misdemeanor battery (§ 242). Each of the felony charges included a gang enhancement allegation under section 186.22, and the attempted murder and assault with a firearm charges also included firearm enhancement allegations.

C. Trial

In addition to Moore, Langram, and Langram’s parents, Los Angeles Police Department Detective Erik Shear testified at trial. Shear testified that he was a gang impact officer and to the nature of his duties. He testified that he had investigated the shooting in this case and had identified Petitioner as a suspect. Shear described the process of creating and using a photographic lineup. Shear testified that Petitioner wore a grill (a decorative dental apparatus) bearing the letters “F.S.,” and opined that “F.S.” stood for “Front Street.” He described personally searching Petitioner’s residence in December 2009, and finding a black baseball cap with a Florida Marlins logo of an “F” with a marlin behind it. Shear testified that

based on his knowledge, training, and experience, the “F” on the hat referred to the Front Street Crips. Letters Shear found at Petitioner’s residence were addressed to Darryl B. or Darryl Burghardt, and they also said “Young Watts.” The letters included gang graffiti relating to the Front Street Watts Crips, and the text included the word “back” being spelled “bacc”—the significance of this spelling, Shear testified, being that Crips avoided using the letters “C” and “K” together because they stood for “Crip killer.”

Shear testified that he had interviewed Petitioner in December 2009, and that based on the residence information Petitioner gave, he lived near the nail salon when Moore and Langram saw him on the street there. During the interview Petitioner admitted that he had a grill with “F.S.” on it; he claimed it stood for “Fashion Statement.” Petitioner denied being a gang member or being called “Young Watts,” and claimed not to know anything about the Front Street Crips. According to Shear, Petitioner first said that on Thanksgiving Day he and his girlfriend got a ride to his aunt’s house, but then he said that he went without his girlfriend and that he traveled by bus.

...

Petitioner presented three alibi witnesses concerning his whereabouts and activities on Thanksgiving Day, and testified in his own defense. Petitioner denied trying to sell Langram marijuana or hitting her. He denied being involved in an altercation the same day with the Stones. He claimed to have been at a relative’s house on Thanksgiving Day and denied shooting into the Stones’ home. On cross-examination, Petitioner attempted to explain his questions and reactions in a taped telephone call

after his arrest during which he asked his girlfriend numerous questions about what the police had taken from his home during a search and what she had said to them. He also testified that the letters including gang references were not the original letters matching the envelopes that were sent to him and suggested that they had been altered.

LD 2 at 4-11.

III. PETITIONER'S CLAIMS

Petitioner presents seven claims in the SAP in the following order: (1) pre-trial and trial identifications were unreliable and violated due process; (2) the jury was chosen by methods that systematically excluded black jurors in violation of Duren; (3) the jury was purposefully purged of black jurors in violation of Batson; (4) his due process were violated by the trial court allowing him to represent himself without obtaining a knowing and intelligent waiver of his right to counsel in violation of Faretta; (5) ineffective assistance of trial counsel in failing to raise the first four issues; (6) ineffective assistance of appellate counsel for failing to raise the first five issues; and (7) cumulative error. See SAP at 5-6; SAP Mem. at 22-56.

IV. DISCUSSION

A. Petitioner's Suggestive Identification Claim

1. Factual Background

On October 27, 2009, at noon, a man on a bicycle approached Moore and Langram outside of Langram's family home, identified himself as "Young Watts from Front Street," and struck Langram in the face after she declined to buy marijuana from him. 3 RT 611-12, 632. Thirty minutes later by a laundromat, Moore pointed out the same man near his bicycle to Langram's parents; they got out of the car and, after the argument turned physical, the man said he would get his "homeboys" and be "back" to the house. 3 RT 682-

83, 612-14, 632-33, 674.

A month later, on November 25, 2009, Langram was waiting outside of a nail salon while Moore and Langram's mother had their nails done. See 3 RT 637, 661, 638. Langram saw the man who had attacked her in October and called out to him; first the man said he did not know her, but he then identified the street on which Langram lived and said he would be "over there" the next day. 3 RT 659-62. Moore also saw the man as they drove away from the salon, recognizing him as the same man who had attacked Langram in October. See 3 RT 637-38.

The next afternoon, a man knocked on Langram's front door and asked for the "mom." 3 RT 683-86. Langram's mother opened the wooden door but the security door remained closed, so she could see out but the man could not see inside. See 3 RT 685. Moore came out of the shower and was standing three feet behind Langram's mother and saw the man. See 3 RT 614-16, 641-43. When Langram's mother identified herself, the man said something like, "You guys have one more time to threaten me" and started shooting. Id. Both women said that the man was wearing a short-sleeved blue polo shirt with white stripes. See 3 RT 686, 642-43.

The shooter ran away, and the police arrived shortly thereafter. See 3 RT 688. When Langram's mother and Moore told the police that the shooter was "Young Watts"—i.e., the same man who had attacked Langram in October—the police returned later that night with a photograph of Petitioner with writing on it. 3 RT 648-50, 688. The mother and Moore, who were in separate rooms when shown the photograph, confirmed that it looked like the shooter. See id.

Several days later, a detective showed Langram, Langram's mother, and Moore a photospread that included Petitioner and five other African-American men. See 3 RT 695-97, 624-27, 651-52, 662-64. The three women identified Petitioner because of his distinctive eyes. See id. Petitioner was the only person

in the photospread to wear a “grill” on his teeth, which had the letters “F.S.” Dkt. 104-5 at 11; 3 RT 907-10. At trial, Moore identified a photo of a shirt recovered by police from Petitioner’s apartment as the polo shirt worn by the shooter. See 3 RT 618-19. Letters recorded from Petitioner’s apartment were addressed to “Young Watts” and included Front Street graffiti. 3 RT 915-16.

2. Standard of Review

The Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”). governs federal review of state criminal convictions. Under AEDPA a petitioner may obtain relief on federal habeas claims that were adjudicated on the merits in state court if the state court’s adjudication resulted in a decision: (1) “contrary to, or involv[ing] an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States”; or (2) “based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.” 28 U.S.C. § 2254(d). If “the evidence leads very clearly to the conclusion that a federal claim was inadvertently overlooked in state court,” federal courts review the claims *de novo*. Johnson v. Williams, 568 U.S. 289, 303 (2013).

Petitioner argues that *de novo* review should be applied to his suggestive identification claim. According to Petitioner, the California Court of Appeal and California Supreme Court likely relied on the 2019 Superior Court’s order that mistakenly addressed the wrong claims; as a result, no state court has ever addressed the merits of his claims and this Court should review those claims *de novo*. See Traverse at 11-16 (citing Johnson).

The Court disagrees. While Petitioner is correct that the Superior Court erroneously identified the wrong claims as the claims brought on habeas review, nothing in the record suggests that the California Court of Appeal and the California Supreme Court made the same mistake. “[T]he unreasonableness of the lower court’s decision itself provides some evidence

that makes it less likely the state supreme court adopted the same reasoning.” Wilson v. Sellers, 138 S. Ct. 1188, 1196 (2018) (holding that it is more likely that state supreme court’s single word “affirm” rests upon alternative grounds where lower state court decision was unreasonable).⁷ The Court therefore assumes that the California Supreme Court’s summary denial rested on different grounds. See Roberts v. Robertson, No. 19-04002, 2020 WL 6588389, at *4 (C.D. Cal. Sept. 10, 2020) (finding that presumption was rebutted where lower court’s decision was unreasonable).

To discover what these grounds are, the Court looks through the California Supreme Court’s 2019 summary denial to the Superior Court’s 2013 reasoned opinion, which concluded that Petitioner’s suggestive-identification claim was procedurally barred. See Ylst v. Nunnemaker, 501 U.S. 797, 803 (1991) (“Where there has been one reasoned state judgment rejecting a federal claim, later unexplained orders upholding that judgment or rejecting the same claim rest upon the same ground.”). Petitioner argues that there was cause for and prejudice from this procedural bar. See SAP Mem. at 33-35; see also Dickens v. Ryan, 740 F.3d 1302, 1321 (9th Cir. 2014) (“[I]f Dickens can show cause and prejudice to excuse a procedural default, AEDPA no longer applies and a federal court may hear this new claim *de novo*.”). The Court need not address cause and prejudice, because the claim is clearly not meritorious. See Franklin v. Johnson, 290 F.3d 1223, 1232 (9th Cir. 2002) (“[A]ppeals courts are empowered to, and in some cases should, reach the merits of habeas

⁷ Petitioner argues that the California Supreme Court “must give some indication it ruled on grounds other than those cited” if it disagrees with “a lower court’s erroneous application of a procedural bar.” Traverse at 14. The California Supreme Court was not obliged to affirmatively correct the Superior Court. Its silence is not evidence leading “very clearly” to the conclusion that the California Supreme Court “overlooked” Petitioner’s claim. Johnson, 568 U.S. at 303.

petitions if they are, on their face and without regard to any facts that could be developed below, clearly not meritorious despite an asserted procedural bar.” (citing Lambrix v. Singletary, 520 U.S. 518, 525 (1997)).

3. Law

Admitting a witness’s identification violates due process only if the identification procedure is “so impermissibly suggestive as to give rise to a very substantial likelihood of irreparable misidentification.” Simmons v. United States, 390 U.S. 377, 384 (1968). To determine whether a challenged identification procedure is impermissibly suggestive, courts examine the totality of the surrounding circumstances. See United States v. Johnson, 820 F.2d 1065, 1072 (9th Cir. 1987). Even if the procedure was impermissibly suggestive, the resulting identification evidence need not be excluded if the totality of the circumstances establishes that the identification is reliable. See Manson v. Brathwaite, 432 U.S. 98, 113-14 (1977). To make this determination, the reviewing court considers: (1) the witness’s opportunity to observe the individual at the time of the crime; (2) the degree of attention focused on the individual by the witness; (3) the accuracy of the witness’s description of the individual prior to the challenged procedure; (4) the level of certainty demonstrated by the witness during the challenged procedure; and (5) the elapsed time between the crime and the identification procedure. See Neil v. Biggers, 409 U.S. 188, 199-200 (1972).

4. Analysis

The Court need not determine if the identification procedure was unduly suggestive, because the totality of the circumstances establishes that the witnesses’ identifications were reliable. At the time of the crime, Langram’s mother and Moore each had a sufficient opportunity to observe the man who shot at them in broad daylight from the front door. See 3 RT 685 (“My front door – it’s a – a bar door. You can’t see me, but I can see out.”). Langram’s

mother even had a brief conversation with the man from a short distance away before the shooting began. Both women had their attention turned toward the door and were looking at the shooter. Both women were certain that Petitioner was the shooter and that he was the same man who had assaulted Langram the month prior. Their identification was corroborated by Langram, who identified Petitioner as the man who struck her. Moore had seen Petitioner three times before the shooting, and Langram's mother had seen him at least once in a memorable encounter at the laundromat. The day before the shooting, Langram and Moore heard Petitioner threaten that he would be "over there" the next day. Langram's mother's and Moore's descriptions of the shooter before being shown the photographs were consistent with each other and with evidence recovered from Petitioner's apartment. Additionally, Petitioner had a clear motive to shoot into the household, as retaliation for the altercation at the laundromat. Thus, the totality of the circumstances establishes that their identification of Petitioner as the shooter was reliable, regardless of any suggestiveness of the photographic identification procedures. See United States v. Jones, 84 F.3d 1206, 1210 (9th Cir. 1996) (holding that, even where circumstances of identification were suggestive, there was no substantial likelihood of misidentification where witnesses received "a good, complete look" at robber, were close to him, had their attention focused on him, and gave consistent descriptions of him).

Petitioner's suggestive-identification claim clearly lacks merit. Accordingly, habeas relief is not warranted on this claim of error. See Lambrix, 520 U.S. at 525.

B. Duren Claim

1. Standard of Review

As explained above, the evidence does not suggest that the California Supreme Court made the same error as the Superior Court in misconstruing

the claims raised in Petitioner's counseled habeas corpus petitions. The Court therefore assumes that its summary denial of Petitioner's Duren claim rested on different grounds. See Roberts, 2020 WL 6588389, at *4.

No reasoned state court opinion addressed Petitioner's stand-alone Duren claim. Because the California Supreme Court did not explain its denial, the question is whether there was any "reasonable basis" for the court to deny this claim. Harrington v. Richter, 562 U.S. 86, 98 (2011) ("Where a state court's decision is unaccompanied by an explanation, the habeas petitioner's burden still must be met by showing there was no reasonable basis for the state court to deny relief.").

2. Law

The Sixth Amendment right to a trial by jury includes a right to a jury venire that is "representative[of a] cross section of the community." Taylor v. Louisiana, 419 U.S. 522, 528 (1975). To establish a prima facie violation of that right, a petitioner must show that: (1) the group alleged to be excluded is a "distinctive" group in the community; (2) the representation of this group in venires from which juries are selected is not fair and reasonable in relation to the number of such persons in the community; and (3) this underrepresentation is due to systematic exclusion of the group in the jury-selection process. Duren, 439 U.S. at 364.

3. Analysis

Petitioner meets the first Duren prong in that African Americans are a distinctive group. See Randolph v. People of the State of Cal., 380 F.3d 1133, 1140 (9th Cir. 2004). The Court need not address the second prong, because Petitioner has not shown that the California Supreme Court unreasonably concluded that he did not meet the third prong.

Petitioner argues that Los Angeles County's "bullseye method of placing jurors at certain courthouses based on their proximity to the court" causes

underrepresentation. SAP Mem. at 25. To be “systematic,” underrepresentation must be due to the system by which juries were selected. United States v. Hernandez-Estrada, 749 F.3d 1154, 1165 (9th Cir. 2014) (en banc). In Duren, for example, the underrepresentation was systematic because women but not men could obtain an automatic exemption from jury service by requesting an exemption on the juror questionnaire. See 439 U.S. at 362, 367-68 (“[T]o establish a prima facie case, it was necessary for petitioner to show that the underrepresentation of women, generally and on his venire, was due to their systematic exclusion in the jury-selection process. Petitioner’s proof met this requirement. His undisputed demonstration that a large discrepancy occurred not just occasionally but in every weekly venire for a period of nearly a year manifestly indicates that the cause of the underrepresentation was systematic—that is, inherent in the particular jury-selection process utilized.”).

In contrast, Petitioner has not shown that any underrepresentation was the result of the system employed in Los Angeles County. He merely speculates that this is the case. “A showing that a jury venire underrepresents an identifiable group is, without more, an insufficient showing of systematic exclusion under the third prong of the Duren test.” Randolph, 380 F.3d at 1141. Further, “[n]o ‘clearly established’ precedent of [the Supreme] Court supports [the] claim that [a petitioner] can make out a prima facie [third prong Duren] case merely by pointing to a host of factors that, individually or in combination, might contribute to a group’s underrepresentation.” Berghuis v. Smith, 559 U.S. 314, 332 (2010); see also Paulino v. Asuncion, No. 16-00449, 2017 WL 6767380, at *8 (C.D. Cal. May 19, 2017) (rejecting Duren claim where petitioner provided declarations from attorneys and statistical reports, because allegation that underrepresentation was due to bullseye method was “speculative and conclusory”).

The California Supreme Court had a reasonable basis to deny

Petitioner's Duren claim. Habeas relief is therefore not warranted.

C. Batson Claim

1. Background

a. Pre-Trial

At a March 2010 hearing at the Compton courthouse, the trial court appointed private counsel to represent Petitioner, because the public and alternate public defenders had conflicts of interest. See Augmented CT ("ACT") 1. Petitioner told the trial court that he did not want to waive time and wanted to "file a 170.6" because he did "not feel comfortable . . . in this courtroom." Id. At a pretrial hearing the next month, a different appointed attorney appeared as Petitioner's counsel and stated that he was in trial on a death penalty case, needed at least two months to prepare for Petitioner's trial, intended to seek the appointment of an investigator, and planned on interviewing eight witnesses. See ACT 4-5. Counsel also explained that Petitioner did not want to follow that approach and wanted to go to trial as soon as possible. See ACT 5. At a subsequent hearing on June 4, 2010, the trial court noted that Petitioner had "made a reference that he [knew the trial court judge] or used to be in [his court]," and while the trial court was "not quite sure exactly what he's talking about," Petitioner's case would be assigned to another courtroom. ACT 14. Petitioner's case was reassigned to a courtroom in the Torrance courthouse and trial began on June 21, 2010. See 2 RT 1.

b. Voir Dire

According to Petitioner, there were only two African American prospective jurors in the jury venire: Juror No. 9 and Juror No. 6. See SAP Mem. at 39 (citing CT 184).

Prospective Juror No. 9 was a married stay-at-home mother. See 2 RT 310. When she was 13 years old, her mother was beaten, stabbed and "left for dead" by a white neighbor. 2 RT 312-14. She stated that this would not affect

her ability to decide Petitioner's case. See 2 RT 314. Thirty years earlier, her then-boyfriend had been arrested for DUI; he was "drunk" and "deserved it." 2 RT 314-15. Her good friend's husband was captain of the local police department; she saw her friend every day and saw the husband once every couple months. See 2 RT 316. Prospective Juror No. 6 was a former warehouse worker whose granddaughter was drugged and raped at a party by four black men. See 2 RT 40-42. Juror No. 6 indicated that the Fresno Police Department "knew who . . . did it" but failed to "go after" them. 2 RT 41. He stated that Petitioner's race did not bother him. 2 RT 43.

The prosecutor used his first peremptory challenge against Juror No. 9. See 2 RT 340. Defense counsel exercised his first peremptory challenge against Juror No. 6. See 2 RT 344. No Batson objection was raised to either challenge.

After the jury was sworn in and excused, the following colloquy took place:

Court: You wanted to say something, [Petitioner's counsel]?

Petitioner: I can speak for myself. I'm not comfortable with the jury panel.

Court: Anything else?

Petitioner: Is there any way we can make that convenient for – for both of us, if the District Attorney and me –

Court: Is there anything what?

Petitioner: Is [there] any way we can make it convenient for me by – by making – by you guys making the jury panel [a] jury of my peers?

Court: This is a jury of your peers.

Petitioner: Of my ethnicity?

Court: That doesn't count. That's what a jury of your peers is considered to be. [Your counsel] is a very experienced attorney. How long have you been practicing law?

Petitioner's Counsel: About 32 years, sir.

Court: He's done enumerable jury trials. He knows what an appropriate jury is. He has accepted this jury panel, and this is the jury we're going to proceed with.

...

Petitioner: I'm not comfortable. It's a jury trial of my peers.

Court: You don't have to be comfortable. [Your counsel] is comfortable with it.

2 RT 505-06.

c. Motion for New Trial

Before sentencing, the trial court granted Petitioner's request to represent himself. See 4 RT 1802-04. Petitioner submitted a written motion for a new trial on the ground that he did not receive a jury of his peers. See CT 177-86 (motion). At the hearing, Petitioner and the trial court had the following exchange:

Petitioner: [I]f there were black jurors . . . it would have been a different outcome.

Court: Why do you think that? Why do you think that the jurors' race would matter?

Petitioner: Because it's like part of everyday lives. They're around certain people and at certain times, and they could pretty much tell the difference between, let's say, inconsistency or a contradiction which were made during the trial.

Court: Black people can tell that but other races can't?

Petitioner: No. Through another – they could tell that against another black person.

Court: So black people can tell when black people are lying. But Hispanics, Whites, Asians, they can't tell?

Petitioner: No, I'm not saying that the whole panel be black. But at least 25 percent out of a hundred.

Court: What's your . . . legal theory for 25 percent be African-American? What's the legal authority for that?

Petitioner: The legal authority? I'm not sure.

Court: What case – what case or statute calls for that? Let's say 25 percent?

Petitioner: Well, a jury of his – of your peers.

Court: You had a jury of your peers. You were represented by a very competent attorney. And he assisted along with the D.A. in making sure that you had a jury of your peers. You seem to think that a jury of your peers is only satisfied if you have a certain number of African-Americans on it.

Petitioner: No, that's not—

Court: That's not the test.

Petitioner: No, ethnicity or age. There were no—and also none of the jurors was my age. . . . I just wasn't satisfied with the jury. . . .

Court: Your motion is denied.

4 RT 2105-07. The trial court proceeded with sentencing. 4 RT 2107.

d. 2019 Habeas Discovery Hearing

When he filed his habeas corpus petition in the Superior Court in 2019, Petitioner also filed a petition for personal juror-identifying information, asking the state court to release to Petitioner copies of his jurors' driver's licenses so that he could identify their "racial/ethnic backgrounds." Dkt. 104-4

at 336-46. The same judge who presided over Petitioner's trial and sentencing heard this discovery request. Id. at 413. At the hearing, the following exchanged occurred between the trial court and Petitioner's counsel:

Court: The D.A., did you know he was black?

Counsel: Yes.

Court: You did know that?

Counsel: Yes.

Court: Did you know the defense attorney, Richard Leonard?

Counsel: No, I did [not].

Court: I knew him very well. . . . I've known him for 30 years. He was on the death penalty panel here for the Superior Court. He was an absolutely outstanding attorney. I faced him when I was a D.A. He tried cases in front of me as a lawyer. If there was any hint of Batson-Wheeler, he would have raised it. This issue was never raised on appeal. . . . The only evidence is that [Petitioner] said he wanted a jury of his peers. There's no evidence other than [Petitioner] saying that. . . . This is pure speculation about the ethnicity of these jurors. . . . The only evidence is [Petitioner's] statement, "I want a jury of my peers," and it not being raised on appeal, I believe that there is insufficient good cause and your motion's denied.

. . .

Counsel: Your honor, do you recall if there were any black members of the jury?

Court: How many black members are supposed to be on the jury of 12?

Counsel: An objection as to even one black juror that can be supported by a Batson-Wheeler claim is sufficient to get relief in federal court.

Court: How is one black juror excused – how is that a prima facie case?

Counsel: . . . [The] Ninth Circuit says you can have a prima facie case with the dismissal of one black juror. . . . [Petitioner] said that there were no black jurors. That both black jurors were dismissed. And that's also apparent from . . . his statements on the record. . . . I don't think that it's fair to say there's no evidence that there were no black jurors. But I'm also, I guess, concerned or wondering why it's not so prudent to grant the motion, because there's no harm to be done from granting it. [Petitioner] can't make his federal claim without being able to recompose the jury composition. He's now severely mentally ill, so we cannot use his testimony alone to establish, and we need it in order to argue the composition of the jury to support the claim.

Court: The reason is because there's insufficient good cause. Your motion's denied.

Id. at 416-18.

2. Standard of Review

As explained above, the evidence does not suggest that the California Supreme Court made the same error as the Superior Court in misconstruing the claims raised in Petitioner's counseled habeas corpus petitions. The Court therefore assumes that its summary denial of Petitioner's Batson claim rested on different grounds. See Roberts, 2020 WL 6588389, at *4.

No reasoned state court opinion addressed Petitioner's stand-alone Batson claim. Because the California Supreme Court did not explain its denial,

the question is whether there was any “reasonable basis” for the court to deny this claim. Richter, 562 U.S. at 98.

3. Law

The exercise of a peremptory challenge solely on the basis of a potential juror’s race violates the Equal Protection Clause of the Fourteenth Amendment. See Batson, 476 U.S. at 89. Batson established “a three-step process for determining when a strike is discriminatory.” Foster v. Chatman, 136 S. Ct. 1737, 1747 (2016). First, the objecting party must establish a prima facie case by showing that the prospective juror was a member of a cognizable group and the totality of the circumstances raises an inference that the prosecutor’s peremptory strike was motivated by the juror’s race. See United States v. Collins, 551 F.3d 914, 919 (9th Cir. 2009). Once a prima facie case is established, the burden shifts in the second step to the party exercising the peremptory challenge, who must “offer a race-neutral basis for striking the juror in question.” Foster, 136 S. Ct. at 1747 (citation omitted). In the third step, the court determines whether the objecting party has “shown purposeful discrimination.” Id. (citation omitted). If the objecting party “fails to present sufficient evidence to establish a prima facie case” at step one, the Batson motion “may be denied and the court need not continue to step two.” United States v. Guerrero, 595 F.3d 1059, 1062 (9th Cir. 2010). “At Batson’s first step, whether the defendant has made a prima facie showing is a mixed question of law and fact accorded a presumption of correctness in the habeas context.” Crittenden, 804 F.3d at 1006 (9th Cir. 2015).

4. Analysis

The California Supreme Court could have concluded, without unreasonably applying clearly established federal law, that Petitioner did not raise a Batson challenge that would have triggered the three-step process for determining if the strikes were discriminatory. Petitioner, who was represented

by counsel at the time, stated after voir dire that he was not “comfortable” with the jury and wanted the jurors to be of his “ethnicity.” 2 RT 505.⁸ Petitioner cites no clearly established federal law that a represented party’s statement after voir dire is complete that he wants more jurors of his “ethnicity” amounts to a Batson challenge that triggers the three-step process. Nor is there any clearly established federal law that a post-trial motion for a new trial qualifies as a Batson challenge. See United States v. Contreras–Contreras, 83 F.3d 1103, 1104 (9th Cir. 1996) (holding that “a Batson objection must be made as soon as possible, and preferably before the jury is sworn”). The appropriate avenue to challenge on collateral review trial counsel’s inaction during voir dire would be through an ineffective assistance of counsel claim, which Petitioner has raised and the Court addresses below.

Even if Petitioner’s trial counsel had raised a Batson challenge, the California Supreme Court still would have had a reasonable basis to conclude that the totality of the circumstances did not give rise to an inference of discriminatory purpose in the peremptory challenges identified by Petitioner. Petitioner alleges that Juror Nos. 6 and 9 were the only prospective African American jurors.⁹ While a “single invidiously discriminatory governmental

⁸ When Petitioner asked for a jury of his peers—i.e., “of [his] ethnicity,”—the trial court responded, “That doesn’t count.” 2 RT 505. Petitioner interprets this to mean that “Petitioner’s [ethnicity] ‘doesn’t count.’” Traverse at 23. In context, the Court interprets the trial court’s statement differently. The trial court was informing Petitioner that he did not have a constitutional right to a jury made up of a particular percentage of African Americans—i.e., that a jury of “his peers” did not mean a jury with a particular racial makeup. This reflects the principle articulated in Batson that defendants have the right “to be tried by a jury whose members are selected pursuant to nondiscriminatory criteria.” Batson, 476 U.S. at 85-86.

⁹ In denying Petitioner’s 2019 Petition for Personal Juror-Identifying Information, the trial court arguably implied that an African American

act” can establish a Batson violation, see Johnson v. California, 545 U.S. 162, 171 n.5 (2005) (citation omitted), the California Supreme Court did not unreasonably conclude that Petitioner failed to establish a prima facie case that the prosecutor struck Juror No. 9 because of her race. See Fernandez v. Roe, 286 F.3d 1073, 1078 (9th Cir. 2002) (holding that “standing alone,” prosecutor’s use of two peremptory challenges to strike the only two African American prospective jurors “may not be sufficient to support an inference of discrimination”). “[T]he striking of one juror of a cognizable racial group does not by itself raise an inference of discriminatory purpose.” Tolbert v. Gomez, 190 F.3d 985, 988 (9th Cir. 1999); see also United States v. Vasquez-Lopez, 22 F.3d 900, 902 (9th Cir. 1994) (“But just as ‘one’ is not a magic number which establishes the absence of discrimination, the fact that the juror was the one Black member of the venire does not, in itself, raise an inference of discrimination.”).

The prosecutor’s questions and statements during the selection of the jury do not support an inference of purposeful discrimination. See Batson, 476 U.S. at 97. Petitioner points out that Juror No. 5334 was eventually empaneled and, like Juror No. 9, had a relationship with someone in law enforcement. See SAP Mem. at 41. But Juror No. 5334 had served on a jury in a criminal trial that had reached a verdict. See 2 RT 353. He had been arrested for driving under the influence but conceded that it was “his fault.” 2 RT 356. He had a brother who worked in law enforcement, but they did not speak because they had different political beliefs. See 2 RT 357 (“He’s a Republican. I’m a

prosecutor would be less likely to violate Batson and that excusing a single African American juror could not support a prima facie Batson case. The Court does not condone these comments, but neither are they relevant to the question presented: whether the California Supreme Court had a reasonable basis for denying Petitioner’s Batson claim.

Democrat. That kind of stuff.”). The prosecution could have viewed Juror No. 5334’s participation in a trial that reached a verdict and acceptance of responsibility for his past crime as favorable characteristics in a juror.¹⁰

Because the California Supreme Court had a reasonable basis for denying Petitioner’s Batson claim, habeas relief is not warranted on this ground.

D. Farettta Claim

1. Background

At sentencing on August 2, 2010, Petitioner stated that he “wanted to go pro per and waive time for sentencing.” 4 RT 1802. The following exchange then took place:

Court: You want to represent yourself for purposes of sentencing?

Petitioner: Yes.

Court: Let’s have him fill out the waiver and we’ll take it up further. Do you feel somehow that you representing yourself is going to change the sentence?

Petitioner: It may have, yes.

Court: It’s not going to. The sentence is the sentence. If you want to represent yourself you can do that, but you’ve been foolish since the start of the case. You could have stayed in Compton. You could have waived time as your attorney suggested, but you didn’t want to do any of that and now you’re looking at a life sentence

¹⁰ Petitioner does not object to his defense counsel’s use of a peremptory to strike the other African American juror. Such a claim would fail because “there is no clearly established Supreme Court precedent holding that a defense counsel’s Batson violations warrant reversal of a conviction.” Henderson v. La Marque, 82 F.App’x 182, 184 (9th Cir. 2003).

plus 20 years. If you want to represent yourself, fill out the waiver form and you'll be able to represent yourself.

Petitioner: Thank you.

4 RT 1802. Petitioner reviewed and completed the waiver form. See 4 RT 1802-03. The form included a section entitled "Dangers and Disadvantages to Self-Representation," which listed a number of challenges Petitioner might face if he represented himself; Petitioner wrote his initials next to each of these. See CT 171-74. The following exchange then occurred:

Court: We're back on the record in the Burghardt matter. I have a waiver of right to counsel form bearing the name Darryl Burghardt with what appears to be the initials D.B. in the boxes. Are these your initials?

Petitioner: Yes.

Court: By placing your initials in the boxes does this mean that you have read each paragraph and you understand each paragraph?

Petitioner: Yes.

Court: Do you understand that you have a right to continue to be represented by a lawyer?

Petitioner: Yes.

Court: Do you wish to waive that right and represent yourself?

Petitioner: Yes.

Court: You understand there are dangerous disadvantages of you representing yourself. Do you understand that?

Petitioner: Yes.

Court: You nevertheless wish to represent yourself?

Petitioner: Yes.

Court: Mr. Leonard is relieved.

4 RT 1803-04.

Petitioner appeared before the trial court for sentencing on September 9, 2010. See 4 RT 2101-10. He requested ancillary funds, more law library access, an investigator, legal runners and transcripts. See 4 RT 2102-04. The trial court denied his requests. Id. The trial court noted that Petitioner had engaged in several fights since going pro per. Id. Petitioner responded: “I had went to the psyche ward. That’s the only thing I was involved in.” 4 RT 2103. The trial court asked Petitioner if he wished to be heard regarding his sentence, and Petitioner replied, “No.” 4 RT 2107.

2. Standard of Review

As explained above, the evidence does not suggest that the California Supreme Court made the same error as the Superior Court in misconstruing the claims Petitioner raised in his counseled habeas corpus petitions. The Court therefore assumes that its summary denial of Petitioner’s Fareta claim rested on different grounds. See Roberts, 2020 WL 6588389, at *4.

No reasoned state court opinion addressed Petitioner’s stand-alone Fareta claim. Because the California Supreme Court did not explain its denial, the question is whether there was any “reasonable basis” for the court to deny this claim. Richter, 562 U.S. at 98.

3. Law

A criminal defendant may waive his Sixth Amendment right “to have the Assistance of Counsel for his defence,” U.S. Const. amend. VI, only if he acts “knowingly and intelligently,” with full awareness of the “dangers and disadvantages of self-representation.” Fareta, 422 U.S. at 835. The Fareta doctrine polices the border between “two correlative and mutually exclusive Sixth Amendment rights: the right to have counsel, on one hand, and the right to refuse counsel and represent [oneself], on the other.” United States v. Gerritsen, 571 F.3d 1001, 1007 (9th Cir. 2009).

Under the governing Supreme Court precedents, so long as “the record . . . establish[es] that ‘[the defendant] knows what he is doing and his choice is made with eyes open,’” the waiver of counsel is valid. Faretta, 422 U.S. at 835. The Supreme Court has accordingly declined to “prescribe[] any formula or script to be read to a defendant who states that he elects to proceed without counsel.” Iowa v. Tovar, 541 U.S. 77, 88 (2004). “The information a defendant must possess in order to make an intelligent election . . . will depend on a range of case-specific factors, including the defendant’s education or sophistication, the complex or easily grasped nature of the charge, and the stage of the proceeding.” Id. Even if the defendant “lacked a full and complete appreciation of all of the consequences flowing from his waiver, it does not defeat the State’s showing that the information it provided to him satisfied the constitutional minimum.” Id. at 92 (citation omitted). The “information a defendant must have to waive counsel intelligently will depend, in each case, upon the particular facts and circumstances surrounding that case.” Id. (citation omitted).

4. Analysis

The California Supreme Court had a reasonable basis for denying Petitioner’s Faretta claim. Petitioner’s exchange with the trial court indicated that he understood “what he [was] doing.” Faretta, 422 U.S. at 935. He was adamant that he wanted to represent himself, because he believed that he would be more effective than his attorney. The trial court warned him of the dangers of self-representation; he indicated that he understood and wished to proceed anyway. Finally, Petitioner had been convicted and was facing sentencing, a proceeding which courts have recognized as requiring less specialized knowledge than trial. See United States v. Day, 998 F.2d 622, 626 (8th Cir. 1993) (“Sentencing hearings demand much less specialized knowledge than trials; for instance, the Federal Rules of Evidence do not apply

in sentencing hearings.”); United States v. Salemo, 61 F.3d 214, 219-20 (3d Cir. 1995) (acknowledging that “sentencing is a critical and often times complicated part of the criminal process that contains subtleties which may be beyond the appreciation of the average layperson” but stating that Fareta warnings given before sentencing “need not be as exhaustive and searching as similar inquiry before the conclusion of trial”).

Petitioner advances several arguments. First, he argues that the sentencing court’s colloquy with Petitioner was “perfunctory and meaningless.” SAP Mem. at 46. The Court disagrees. The trial court advised Petitioner that he was facing a life sentence; confirmed with him that he had read and understood the waiver form in full; reminded him of his right to counsel; and warned him of the “dangerous disadvantages” in representing himself. The Supreme Court has never required more than this. See Arrendondo v. Neven, 763 F.3d 1122, 1130 (9th Cir. 2014) (“No clearly established Supreme Court case law requires trial courts to apprise defendants in any particular form of the risks of proceeding to trial pro se.”).

Second, Petitioner argues that the court misleadingly stated that representing himself would not affect Petitioner’s sentence, because some of his sentence was discretionary. See SAP Mem. at 45. The Court does not interpret “the sentence is the sentence” to mean that the trial court believed it had no discretion. The trial court presumably meant that there would likely be no difference in the sentence if Petitioner represented himself rather than counsel. No clearly established law suggests that this warning was constitutionally inadequate.

Third, Petitioner argues that his review and signing of the Fareta waiver does not show that he understood what he was signing. See SAP Mem. at 47. He points to Petitioner’s identification of “attempted murder” as the only charge against him and checking the box that he did not know the legal

defenses against these crimes. See CT 173; see also SAP Mem. at 47. But Petitioner's written responses reflect that he understood the main charge against him and his own limitations. And that he did not understand the defenses was irrelevant, given that he had already been convicted.

Fourth, Petitioner argues that his lack of legal training or specialized education showed that he did not sufficiently appreciate the risks of waiver, citing United States v. Mohawk, 20 F.3d 1480 (9th Cir. 1994). See SAP Mem. at 47. Mohawk is a Ninth Circuit case and cannot be law clearly established by the Supreme Court. Furthermore, Mohawk did not hold that only those with special training should be permitted to represent themselves. See id. at 1484-85 (reversing conviction when there was “no contemporaneous record of the June 21, 1983 proceedings at which Mohawk received permission to proceed in *propria persona*”).

Last, Petitioner argues that the trial court should have probed further Petitioner's statement that he had been receiving mental health treatment. See SAP Mem. at 48. Looking at the facts and circumstances surrounding this case, including Petitioner's responses to the court's questions and proactive requests to the court, the sentencing court was not under any obligation to “re-assess” Petitioner's waiver. Certainly, the California Supreme Court did not unreasonably apply clearly established federal law in so concluding. Because there was a reasonable basis to deny this ground, habeas relief is not warranted.

E. Ineffective Assistance of Trial Counsel

1. Standard of Review

Petitioner argues that trial counsel was constitutionally ineffective for failing to move to suppress the suggestive identifications, failing to make Duren and Batson motions, and failing to take action—Petitioner does not say

what action—with respect to Petitioner’s Faretta claim.¹¹ See SAP Mem. at 51-54.

The Court employs two different standards of review in analyzing Petitioner’s ineffective assistance of trial counsel claims. The portion predicated on trial counsel’s failure to raise Batson and Duren was presented to the Superior Court in 2013, which reasoned that the claims were procedurally defaulted and, turning to the merits, that Petitioner had not shown prejudice. See Dkt. 104-4 at 122. Even if the Court found cause and prejudice to excuse Petitioner’s default, it would review the state court’s alternative merits holding under AEDPA. See Apelt v. Ryan, 878 F.3d 800, 825 (9th Cir. 2017) (“[W]hen a state court ‘double-barrels’ its decision—holding that a claim was procedurally barred and denying the claim on its merits—both its procedural default ruling and its merits ruling are entitled to deferential review by federal courts, as intended by AEDPA.”). In the interest of judicial economy, the Court applies AEDPA deference to the state court’s merits ruling on these claims.

Petitioner also argues that trial counsel should have raised the suggestive-identification and Faretta arguments. Petitioner presented these claims to the state courts in his counseled state habeas corpus petitions, and as explained above, the evidence does not suggest that the California Supreme Court made the same error as the Superior Court in misconstruing the claims raised. The Court therefore assumes that its summary denial rested on different grounds. See Roberts, 2020 WL 6588389, at *4. No reasoned state court opinion addressed Petitioner’s ineffective assistance of trial counsel claims predicated on suggestive-identification and Faretta. Because the California

¹¹ The Court nonetheless addresses briefly below this aspect of Petitioner’s ineffective assistance of trial counsel claim.

Supreme Court did not explain its denial, the question is whether there was any “reasonable basis” for the court to deny these claims. Richter, 562 U.S. at 98.

2. Law

A petitioner claiming ineffective assistance of counsel must show that counsel’s performance was deficient and that the deficient performance prejudiced his defense. See Strickland v. Washington, 466 U.S. 668, 687 (1984). “Deficient performance” means unreasonable representation falling below professional norms prevailing at the time of trial. Id. at 688-89. To show deficient performance, the petitioner must overcome a strong presumption that his lawyer “rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Id. at 690. To meet his burden of showing the distinctive kind of “prejudice” required by Strickland, Petitioner must affirmatively “show that there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome.” Id. at 694. A court deciding a claim alleging ineffective assistance of counsel need not address both components of the inquiry if the petitioner makes an insufficient showing on one. See id. at 697.

AEDPA requires an additional level of deference to a state-court decision rejecting an ineffective assistance of counsel claim: “The pivotal question is whether the state court’s application of the Strickland standard was unreasonable. This is different from asking whether defense counsel’s performance fell below Strickland’s standard.” Richter, 562 U.S. at 101. The Supreme Court further explained,

Establishing that a state court’s application of Strickland was unreasonable under § 2254(d) is all the more difficult. The standards created by Strickland and § 2254(d) are both “highly

deferential,” and when the two apply in tandem, review is “doubly” so. The Strickland standard is a general one, so the range of reasonable applications is substantial. Federal habeas courts must guard against the danger of equating unreasonableness under Strickland with unreasonableness under § 2254(d). When § 2254(d) applies, the question is not whether counsel’s actions were reasonable. The question is whether there is any reasonable argument that counsel satisfied Strickland’s deferential standard.

Id. at 105 (citations omitted).

3. Analysis

The Superior Court did not unreasonably apply clearly established federal law in concluding that counsel’s failure to raise Duren or Batson arguments did not prejudice Petitioner. As explained above, Petitioner’s Duren claim lacks merit. Petitioner therefore was not prejudiced by trial counsel’s failure to raise it. See United States v. Moore, 921 F.2d 207, 210 (9th Cir. 1990) (noting that meritless motion could not have prejudiced petitioner).

As for Petitioner’s Batson claim, “the initial question is not whether defense counsel would have succeeded had a . . . motion been made—a reasonable attorney is not required to make every potentially meritorious motion. Instead, the question is whether reasonable counsel might have declined to make a . . . motion under these circumstances.” Carrera v. Ayers, 670 F.3d 938, 944 (9th Cir. 2011) (denying pre-AEDPA federal habeas petition under the California analog of Batson). The trial transcript reveals strategic reasons for not challenging the removal of Prospective Juror No. 9. See id. at 945 (rejecting ineffective assistance claim for failure to bring a Wheeler motion because, although transcript did not reveal specific justification for not bringing motion, it implied one). Prospective Juror No. 9 was close with the wife of the local police department, which could have made her more likely to trust law

enforcement officials' testimony. She also believed that an ex-boyfriend "deserved" to be arrested for a DUI, suggesting that she would be inclined to convict someone she believed was guilty, regardless of personal feelings. Both of these characteristics could have led a reasonable defense attorney to refrain from objecting to her removal from the jury pool. See Barnett v. Burge, No. 02-01528, 2007 WL 1624770, at *7 (N.D. N.Y. June 6, 2007) ("[T]rial counsel might have had a strategic reason for electing not to challenge the removal of Perkins from the jury. To wit, trial counsel could have reasonably believed that Perkins' relationship with Tutt and employment with DOCS would have led her to favor the prosecution."). It is Petitioner's burden to show that his trial counsel was deficient for failing to bring a Batson motion in response to the prosecutor's peremptory strike of Prospective Juror No. 9. On this record, he has failed to carry his burden.

Last, there was a reasonable basis for the California Supreme Court to deny Petitioner's ineffective assistance of trial counsel claims predicated on his suggestive-identification and Faretta arguments. As explained above, the suggestive identification portion of this claim is clearly not meritorious. Petitioner does not explain how trial counsel should have proceeded differently with respect to Petitioner's Faretta claim, and the Court cannot conceive of any argument that would warrant habeas relief. See Moore, 921 F.2d at 210.

F. Ineffective Assistance of Appellate Counsel

Petitioner argues that appellate counsel was constitutionally ineffective for failing to raise the suggestive identification, Duren, Batson, Faretta, and ineffective assistance of trial counsel claims on appeal. See SAP Mem. at 54-55. Petitioner presented his ineffective assistance of appellate counsel claim to the state courts in his counseled state habeas corpus petitions, and as explained above, the evidence does not suggest that the California Supreme Court made the same error as the Superior Court in misconstruing Petitioner's claims. The

Court therefore assumes that its summary denial rested on different grounds. See Roberts, 2020 WL 6588389, at *4. Because the California Supreme Court did not explain its denial, the question is whether there was any “reasonable basis” for the court to deny the claim. Richter, 562 U.S. at 98. There was such a reasonable basis. See Rupe v. Wood, 93 F.3d 1434, 1444-45 (9th Cir. 1996) (“[T]he failure to take a futile action can never be deficient performance.”); see also Boag v. Raines, 769 F.2d 1341, 1344 (9th Cir. 1985) (“Failure to raise a meritless argument does not constitute ineffective assistance.”).

G. Cumulative Error

Petitioner argues that the errors identified in the SAP cumulatively violate his due process rights. See SAP Mem. at 56. Under any standard of review, his claim fails. See Hayes v. Ayers, 632 F.3d 500, 524 (9th Cir. 2011) (“Because we conclude that no error of constitutional magnitude occurred, no cumulative prejudice is possible.”).

H. Evidentiary Hearing

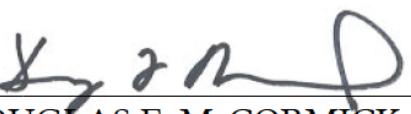
Petitioner requests an evidentiary hearing on his suggestive-identification, Duren, Batson, Faretta, and ineffective assistance of counsel claims. See SAP Mem. at 35, 37, 41-42, 50, 53, 56. The Court denies this request. Petitioner’s claims can be resolved by reference to the record. See Totten v. Merkle, 137 F.3d 1172, 1176 (9th Cir. 1998) (“[A]n evidentiary hearing is not required on issues that can be resolved by reference to the state court record.”); see also Earp v. Ornoski, 431 F.3d 1158, 1173 (9th Cir. 2005) (to be entitled to an evidentiary hearing, petitioner “must demonstrate by his evidence the potential of a colorable claim that, if proven true at the hearing, would show” that he is entitled to relief). The Court has assumed for purposes of this Report and Recommendation that Juror Nos. 6 and 9 were, as Petitioner alleged, the only two prospective African American jurors. Petitioner’s claims still failed. Petitioner does not explain what additional facts

could be developed at an evidentiary hearing that would support his claims. See Gandarela v. Johnson, 286 F.3d 1080, 1087 (9th Cir. 2002) (holding that failure “to show what more an evidentiary hearing might reveal” precludes holding one).

V. CONCLUSION

IT IS THEREFORE RECOMMENDED that the District Judge issue an Order: (1) accepting this Report and Recommendation; and (2) directing that judgment be entered denying the Petition and dismissing this action with prejudice.

Date: July 1, 2021


DOUGLAS F. McCORMICK
United States Magistrate Judge

SUPREME COURT
FILED

FEB 11 2020

Jorge Navarrete Clerk

S256954

Deputy

IN THE SUPREME COURT OF CALIFORNIA

En Banc

In re DARRYL BURGHARDT on Habeas Corpus.

The petition for writ of habeas corpus is denied.

CANTIL-SAKUYE

Chief Justice

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 FOR THE COUNTY OF LOS ANGELES
3 DEPARTMENT 115 HON. MARK S. ARNOLD, JUDGE
4

5 PEOPLE OF THE STATE OF CALIFORNIA,)
6 PLAINTIFF,)) SUPERIOR COURT
7 VS.)) NO. TA109929-01
8 DARRYL BURGHARDT,))
9 DEFENDANT.))
10 _____)
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12
13 REPORTER'S TRANSCRIPT OF PROCEEDINGS
14 TUESDAY, JULY 16, 2019
15
16
17
18 FOR THE PLAINTIFF: OFFICE OF THE DISTRICT ATTORNEY
19 BY: JESSICA TILLMAN, DEPUTY
20 211 WEST TEMPLE STREET
SUITE 200
LOS ANGELES, CALIFORNIA 90012
21
22 FOR THE DEFENDANT: OFFICE OF THE
FEDERAL PUBLIC DEFENDER
BY: DEVON HEIN, DEPUTY
321 EAST SECOND STREET
LOS ANGELES, CALIFORNIA 90012
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CATHERINE A. ZINK, #9242
OFFICIAL REPORTER

COPY

1 CASE NUMBER: TA109929-01
2 CASE NAME: PEOPLE VS. DARRYL BURGHARDT
3 LOS ANGELES, CALIFORNIA TUESDAY, JULY 16, 2019
4 DEPARTMENT 115 HON. MARK S. ARNOLD, JUDGE
5 REPORTER: CATHERINE A. ZINK, CSR #9242
6 TIME: A.M. SESSION

7

8 APPEARANCES:

9 THE DEFENDANT IS PRESENT IN COURT WITH COUNSEL,
10 DEVON HEIN, DEPUTY PUBLIC DEFENDER;
11 THE PEOPLE ARE REPRESENTED BY
12 ANTHONY NELSON, DEPUTY DISTRICT ATTORNEY.

13

14 THE COURT: WE'LL GO ON THE RECORD IN BURGHARDT.

15 WHERE'S THE DEFENSE ATTORNEY?

16 THE CLERK: SHE IS COMING UP.

17 THE COURT: IS THAT YOU? YOU'RE POTASHNER?

18 MS. HEIN: I'M DEVON HEIN.

19 THE COURT: POTASHNER IS THE PUBLIC DEFENDER.

20 YOU'RE MS. HEIN?

21 MS. HEIN: YES, YOUR HONOR.

22 THE COURT: THIS IS CASE TA109929.

23 THIS IS A MOTION FROM THE FEDERAL PUBLIC
24 DEFENDER TO DISCOVER THE ADDRESS INFORMATION OF --
25 PERSONAL INFORMATION FROM THE JURORS.

26 I READ WHAT HAS BEEN SUBMITTED BY MS. HEIN.

27 DID YOU WISH TO ADD ANYTHING?

28 MS. HEIN: NO, YOUR HONOR. JUST TO CLARIFY THAT

1 IT'S NOT JUST THE SEATED JURORS, BUT ALSO --

2 THE COURT: THE ENTIRE VENIRE.

3 DID YOU WISH TO BE HEARD?

4 MS. TILLSON: GOOD MORNING. JESSICA TILLSON ON
5 BEHALF OF THE HABLIT TEAM OF THE DISTRICT ATTORNEY'S
6 OFFICE, RESPONDENT IN THIS MATTER. I APOLOGIZE FOR NOT
7 FILING A WRITTEN BRIEF WITH THE COURT, WE DIDN'T --

8 THE COURT: I DON'T NEED ONE.

9 MS. TILLSON: WE JUST RECEIVED IT ON THURSDAY. I'M
10 PREPARED TO ORALLY ARGUE IT TODAY, IF THE COURT WOULD
11 LIKE TO HEAR ARGUMENT FROM US.

12 THE COURT: SURE.

13 MS. TILLSON: OBVIOUSLY, WE'RE OBJECTING TO THE
14 MOTION, REASONS BEING SEVERAL.

15 FIRST, JUST FOR THE PROCEDURAL HISTORY IN
16 THIS CASE, THE 2019 PETITION, WHICH THE COURT MAY OR MAY
17 NOT BE AWARE OF, WHICH WAS DENIED IN DEPARTMENT G IN
18 TORRANCE COURT THIS YEAR BY JUDGE CLARKE, WE ARE, YOUR
19 HONOR, IN POSSESSION OF, BUT I CAN ONLY ASSUME THAT THAT
20 PETITION WAS FILED FOR THE PURPOSES OF EXHAUSTION, WHICH
21 APPEARS TO BE WHAT JUDGE CLARKE FOUND IN HIS MINUTE
22 ORDERS. EXHAUSTION MEANING TO BE ABLE TO BRING A
23 PETITION LATER IN FEDERAL COURT BY THE FEDERAL PUBLIC
24 DEFENDER.

25 IT'S NOT ACTUALLY THE ONLY PETITION THAT WAS
26 FILED IN THE STATE SIDE THOUGH. THERE WAS A 2013
27 PETITION FILED IN SUPERIOR COURT, AND THEN AGAIN LATER
28 THAT SAME YEAR IN THE APPELLATE COURT. ONCE THE FIRST

1 CERT WAS DENIED BY THE SUPREME COURT OF THE UNITED
2 STATES, AGAIN ANOTHER PETITION WAS FILED IN 2014 IN THE
3 CALIFORNIA STATE SUPREME COURT.

4 ALL OF THOSE PETITIONS, ACCORDING TO THE
5 MAGISTRATE'S FINDING, WHICH IS ATTACHED AS AN EXHIBIT TO
6 THE FEDERAL PUBLIC DEFENDER'S MOTION TODAY, INCLUDED AN
7 I.A.C. CLAIM BASED ON THE SAME ISSUE WE'RE HERE FOR
8 TODAY.

9 ADDITIONALLY, THIS COURT, WHICH WAS THE
10 TRIAL JUDGE IN THIS CASE, ACTUALLY HEARD THE SAME MOTION
11 BROUGHT BY THE PETITIONER IN PRO PER AT THE TIME OF HIS
12 SENTENCING. SO THIS IS NOT A NEW CLAIM THAT WAS
13 UNAVAILABLE AT ANY POINT, SPECIFICALLY THROUGH THE
14 APPELLATE PROCESS OR THROUGH PREVIOUS PETITIONS.

15 IT'S OUR POSITION, ON BEHALF OF THE
16 RESPONDENT TODAY, THAT THE ONLY PURPOSE FOR BRINGING
17 FORTH THIS MOTION HERE WOULD BE TO GET DISCOVERY TO FILE
18 ANOTHER SUCCESSIVE PETITION. THOSE SUCCESSIVE PETITIONS,
19 UNDER THE *RENO* CASE, WOULD BE IMPROPER. THEY ARE
20 PROCEDURALLY BARRED, AND SO THERE'S NO PURPOSE FOR US TO
21 BE GOING THROUGH THIS PROCESS IN THE SUPERIOR COURT WHEN
22 THE ONLY REASON WOULD BE FOR A PETITION THAT WOULD NO
23 LONGER -- WOULD BE PROCEDURALLY BARRED.

24 IF THE FEDERAL PUBLIC DEFENDER WANTS TO
25 PURSUE THIS IN, FOR EXAMPLE, FEDERAL COURT, THEY'RE
26 CERTAINLY ABLE TO DO SO. THEY CAN BRING THE SAME MOTION
27 BEFORE THE MAGISTRATE AND LITIGATE THAT THERE. AND IN
28 THAT SITUATION, IT MAY NOT BE BARRED BECAUSE THEY HAVE A

1 60-DAY STAY FROM THE FEDERAL COURT. BUT FOR PURPOSES OF
2 THE SUPERIOR COURT PETITION, I BELIEVE IT'S BARRED AND
3 IMPROPER.

4 THE COURT: MS. HEIN, WHY DO YOU THINK THAT THE
5 BATSON-WHEELER ISSUE -- THIS CLAIM OF BATSON-WHEELER
6 ISSUE WAS NEVER RAISED ON APPEAL?

7 MS. HEIN: I WOULD ASSUME BECAUSE THE APPELLATE
8 COUNSEL DIDN'T -- CHOSE NOT TO RAISE IT. AT THE SAME
9 TIME, INEFFECTIVE ASSISTANCE OF COUNSEL CLAIMS ARE NOT
10 REQUIRED TO BE BROUGHT ON APPEAL, NOR ARE THEY ALWAYS
11 PROPER TO. SO IT ALSO MIGHT HAVE BEEN IN THE APPELLATE
12 COURT'S JUDGMENT THAT THE RECORD REQUIRED EXPANSION IN
13 ORDER TO BRING IT IN THIS CASE, WHICH IS WHAT WE DID.
14 PROPERLY BROUGHT ON HABEAS, NOT ON DIRECT APPEAL.

15 THE COURT: THE D.A., DID YOU KNOW HE WAS BLACK?

16 MS. HEIN: YES.

17 THE COURT: YOU DID KNOW THAT?

18 MS. HEIN: YES.

19 THE COURT: DID YOU KNOW THE DEFENSE ATTORNEY,
20 RICHARD LEONARD?

21 MS. HEIN: NO, I DID.

22 THE COURT: I KNEW HIM VERY WELL. I KNEW -- I'VE
23 KNOWN HIM FOR 30 YEARS. HE WAS ON THE DEATH PENALTY
24 PANEL HERE FOR THE SUPERIOR COURT. HE WAS AN ABSOLUTELY
25 OUTSTANDING ATTORNEY. I FACED HIM WHEN I WAS A D.A. HE
26 TRIED CASES IN FRONT OF ME AS A LAWYER. IF THERE WAS ANY
27 HINT OF BATSON-WHEELER, HE WOULD HAVE RAISED IT.

28 THIS ISSUE WAS NEVER RAISED ON APPEAL. THE

1 ONLY EVIDENCE THAT THE DEFENDANT IS -- THE ONLY EVIDENCE
2 IS THAT THE DEFENDANT SAID HE WANTED A JURY OF HIS PEERS.
3 THERE'S NO EVIDENCE OTHER THAN THE DEFENDANT SAYING THAT.
4 THE *WILSON* CASE, 43 CAL.APP.4TH, STATES THAT -- AT PAGE
5 389 -- THAT THE TRIAL COURT PROPERLY REFUSED TO DISCLOSE
6 JUROR ADDRESSES AND PHONE NUMBERS WHERE DEFENSE COUNSEL
7 DID NOT SHOW GOOD CAUSE, BUT SPECULATED AS TO HOW THE
8 JURORS MIGHT HAVE ARRIVED AT A VERDICT.

9 THIS IS PURE SPECULATION ABOUT THE ETHNICITY
10 OF THESE JURORS. THE FACT THAT THERE'S -- THE ONLY
11 EVIDENCE IS THE DEFENDANT'S STATEMENT "I WANT A JURY OF
12 MY PEERS," AND IT NOT BEING RAISED ON APPEAL, I BELIEVE
13 THAT THERE IS INSUFFICIENT GOOD CAUSE AND YOUR MOTION'S
14 DENIED.

15 MS. HEIN: WELL, YOUR HONOR, IF I MAY.

16 THE ISSUE HERE ISN'T ONE OF JUROR
17 MISCONDUCT, SO IT'S NOT A SITUATION WHERE WE'RE LOOKING
18 TO --

19 THE COURT: BUT THERE HAS TO BE GOOD CAUSE TO
20 DISCLOSE IT. THERE'S NO -- YOU HAVEN'T ESTABLISHED GOOD
21 CAUSE.

22 MS. HEIN: WELL, I SUPPOSE -- YOUR HONOR, DO YOU
23 RECALL IF THERE WERE ANY BLACK MEMBERS OF THE JURY?

24 THE COURT: HOW MANY BLACK MEMBERS ARE SUPPOSED TO
25 BE ON THE JURY OF 12?

26 MS. HEIN: AN OBJECTION AS TO EVEN ONE BLACK JUROR
27 THAT CAN BE SUPPORTED BY A *BATSON-WHEELER* CLAIM IS
28 SUFFICIENT TO GET RELIEF IN FEDERAL COURT.

1 THE COURT: HOW IS ONE BLACK JUROR EXCUSED -- HOW
2 IS THAT A PRIMA FACIE CASE?

3 MS. HEIN: PRIMA FACIE CASE -- NINTH CIRCUIT SAYS
4 YOU CAN HAVE A PRIMA FACIE CASE WITH THE DISMISSAL OF ONE
5 BLACK JUROR, YOUR HONOR. SO HENCE, WHEN MY CLIENT MAKES
6 THE CONTENTION THAT THERE WERE NO BLACK JURORS --

7 THE COURT: DIDN'T HE SAY -- HE SAID HE --

8 MS. HEIN: HE CONTESTED IT IN FEDERAL PETITIONS,
9 WHICH WE'VE INCLUDED WHEN WE'VE RE-RAISED THE ISSUE IN
10 OTHER PETITIONS, THAT HE SAID THAT THERE WERE NO BLACK
11 JURORS. THAT BOTH BLACK JURORS WERE DISMISSED. AND
12 THAT'S ALSO APPARENT FROM THE RECORD -- OR AT LEAST
13 APPARENT FROM HIS STATEMENTS ON THE RECORD TO THIS COURT
14 IN -- AS I BELIEVE COUNSEL POINTED OUT AT THE TIME OF
15 SENTENCING.

16 AND SO I DON'T -- I DON'T THINK THAT IT'S
17 FAIR TO SAY THERE'S NO EVIDENCE THAT THERE WERE NO BLACK
18 JURORS. BUT I'M ALSO, I GUESS, CONCERNED OR WONDERING
19 WHY IT'S NOT SO PRUDENT TO GRANT THE MOTION, BECAUSE
20 THERE'S NO HARM TO BE DONE FROM GRANTING IT. THE
21 PETITIONER CAN'T MAKE HIS FEDERAL CLAIM WITHOUT BEING
22 ABLE TO RECOMPOSE THE JURY COMPOSITION. HE'S NOW
23 SEVERELY MENTALLY ILL, SO WE CANNOT USE HIS TESTIMONY
24 ALONE TO ESTABLISH, AND WE NEED IT IN ORDER TO ARGUE THE
25 COMPOSITION OF THE JURY TO SUPPORT THE CLAIM.

26 THE COURT: THE REASON IS BECAUSE THERE'S
27 INSUFFICIENT GOOD CAUSE. YOUR MOTION'S DENIED.

28 BUT YOU DID A GOOD JOB. IT'S VERY, VERY

1 WELL PUT-TOGETHER MOTION.

2 MS. HEIN: THANK YOU, YOUR HONOR.

3 THE COURT: OKAY.

4

5 (PROCEEDINGS IN THE ABOVE-ENTITLED
6 MATTER WERE CONCLUDED.)

7 -000-

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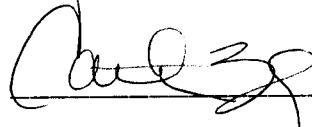
1 SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 FOR THE COUNTY OF LOS ANGELES
3 DEPARTMENT 115 HON. MARK S. ARNOLD, JUDGE
4

5 PEOPLE OF THE STATE OF CALIFORNIA,)
6 PLAINTIFF,) NO. TA109929-01
7 VS.) REPORTER'S
8 DARRYL BURGHARDT,) CERTIFICATE
9 DEFENDANT.)
10

11 STATE OF CALIFORNIA) SS
12 COUNTY OF LOS ANGELES)

13 I, CATHERINE A. ZINK, CSR #9242, OFFICIAL REPORTER
14 FOR THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR
15 THE COUNTY OF LOS ANGELES, DO HEREBY CERTIFY THAT THE
16 FORGOING PAGES 1 THROUGH 7 COMPRIZE A FULL, TRUE, AND
17 CORRECT TRANSCRIPT OF THE PROCEEDINGS AND TESTIMONY
18 TAKEN IN THE ABOVE-ENTITLED MATTER ON JULY 16, 2019.
19
20
21

22 DATED THIS 24TH DAY OF JULY, 2019.
23
24



25 CSR #9242
26 CATHERINE ZINK, OFFICIAL REPORTER
27
28

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

COURT OF APPEAL - SECOND DIST.

FILED

Jun 19, 2019

DANIEL P. POTTER, Clerk

R. Lopez

Deputy Clerk

In re

B298164

DARRYL BURGHARDT

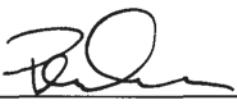
(Super. Ct. No. TA109929)

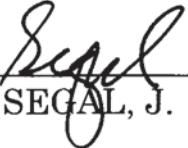
on Habeas Corpus.

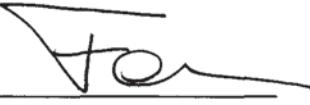
ORDER

THE COURT:

The petition for writ of habeas corpus filed on June 6, 2019 has been read and considered. The petition is denied.


PERLUSS, P. J.


SEGAL, J.


FEUER, J.

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CONFIRMED COPY
OF ORIGINAL FILED
Los Angeles Superior Court

MAY 06 2019

Sherri R. Carter, Executive Officer/Clerk
By Deborah A. Cotton, Deputy
Deborah A. Cotton

SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

PEOPLE OF THE STATE OF CALIFORNIA) Case No. TA109929
Plaintiff and Respondent,)
) ORDER SUMMARILY DENYING
v.) HABEAS CORPUS PETITION
)
) (Cal. Rules of Court 4.551(g))
Darryl Burghardt)
Defendant and Petitioner,)

)

IN CHAMBERS

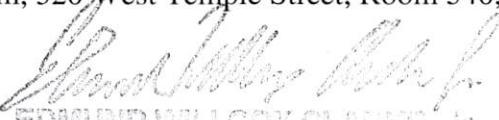
Petition for Writ of Habeas Corpus by Darryl Burghardt, *pro se* ("Petitioner"). No appearance by a Respondent. Denied.

The Court has read and considered the Petition for Writ of Habeas Corpus filed by Petitioner on 04/11/2019. Petitioner repeats allegations of inadequate representation, improper instructions and inadequacy of evidence. Every claim has been previously raised unsuccessfully on appeal, by prior habeas petition, or both. The Petition is summarily denied.

Based on substantial attachments from Central District case CV 14-04677 -JAK (DFM), this court concludes that Petitioner does not expect that this most recent petition will be granted. Rather, he hopes to show that he has exhausted his state court remedies. The trial court believes that he has.

The Clerk is ordered to serve a copy of this memorandum upon Petitioner, and upon the District Attorney's Habeas Corpus Litigation Team, 320 West Temple Street, Room 540, Los Angeles, California 90012.

Dated: 05/06/19


EDMUND WILLCOX CLARKE, JR.

Judge of the Superior Court



MINUTE ORDER
SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE PRINTED: 05/16/19

CASE NO. TA109929

THE PEOPLE OF THE STATE OF CALIFORNIA
VS.

DEFENDANT 01: DARRYL BURGHARDT

INFORMATION FILED ON 01/19/10.

COUNT 01: 664-187(A) PC FEL
COUNT 02: 246 PC FEL
COUNT 03: 245(A)(2) PC FEL
COUNT 04: 242 PC MISD
COUNT 05: 245(A)(2) PC FEL

ON 05/06/19 AT 830 AM IN SOUTHWEST DISTRICT DEPT SWG

CASE CALLED FOR HABEAS CORPUS PETITION

THIS IS A SECOND STRIKE CASE.

PARTIES: EDMUND WILLCOX CLARKE, JR (JUDGE) DEBORAH COTTON (CLERK)
NONE (REP) NONE (DDA)

DEFENDANT IS NOT PRESENT IN COURT, AND NOT REPRESENTED BY COUNSEL

***** IN CHAMBERS *****

PETITION FOR WRIT OF HABEAS CORPUS BY DARRYL BURGHARDT, PRO SE
("PETITIONER"). NO APPEARANCE BY A RESPONDENT. DENIED.

THE COURT HAS READ AND CONSIDERED THE PETITION FOR WRIT OF
HABEAS CORPUS FILED BY PETITIONER ON 04/11/2019. PETITIONER
REPEATS ALLEGATIONS OF INADEQUATE REPRESENTATION, IMPROPER
INSTRUCTIONS AND INADEQUACY OF EVIDENCE. EVERY CLAIM HAS BEEN
PREVIOUSLY RAISED UNSUCCESSFULLY ON APPEAL, BY PRIOR HABEAS
PETITION, OR BOTH. THE PETITION IS SUMMARILY DENIED.

BASED ON SUBSTANTIAL ATTACHMENTS FROM CENTRAL DISTRICT
CASE CV 14-04677 -JAK (DFM), THIS COURT CONCLUDES THAT
PETITIONER DOES NOT EXPECT THAT THIS MOST RECENT PETITION WILL
BE GRANTED. RATHER, HE HOPES TO SHOW THAT HE HAS EXHAUSTED HIS

CASE NO. TA109929
DEF NO. 01

DATE PRINTED 05/16/19

STATE COURT REMEDIES. THE TRIAL COURT BELIEVES THAT HE HAS.

THE CLERK IS ORDERED TO SERVE A COPY OF THIS MEMORANDUM UPON PETITIONER, AND UPON THE DISTRICT ATTORNEY'S HABEAS CORPUS LITIGATION TEAM, 320 WEST TEMPLE STREET, ROOM 540, LOS ANGELES, CALIFORNIA 90012.

A COPY OF THIS MINUTE ORDER AND SIGNED ORDER ARE SENT VIA U.S. MAIL AS FOLLOWS:

DISTRICT ATTORNEY
HABEAS CORPUS LITIGATION TEAM
320 WEST TEMPLE STREET, ROOM 540
LOS ANGELES, CALIFORNIA 90012.

DEVON L. HEIN
OFFICE OF THE FEDERAL PUBLIC DEFENDER
321 EAST 2D STREET
LOS ANGELES, CA 90012

COURT ORDERS AND FINDINGS:

-PETITION FOR WRIT OF HABEAS CORPUS IS DENIED.

NEXT SCHEDULED EVENT:
PROCEEDINGS TERMINATED

Case 2:14-cv-04677-JAK-DFM Document 1-5 Filed 06/18/14 Page 57 of 60 Page ID #:317

S216481

IN THE SUPREME COURT OF CALIFORNIA

En Banc

In re DARRYL BURGHARDT on Habeas Corpus.

The petition for writ of habeas corpus is denied.

**SUPREME COURT
FILED**

APR 16 2014

Frank A. McGuire Clerk

Deputy

CANTIL-SAKAUYE

Chief Justice

RESTRICTED Case: 15-56795, 11/27/2015, ID: 9772372, DktEntry: 2-10, Page 1 of 1

LODGING DOC. # 10
CV 14-04677-JAK (DFM)

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT
DIVISION SEVEN

In re

DARRYL BURGHARDT

on Habeas Corpus.

B250418

(Super. Ct. No. TA109929)

(Mark S. Arnold, Judge)

COURT OF APPEAL - SECOND DIST.
FILED

AUG 07 2013

JOSEPH A. LANE

Clerk

D. LEE

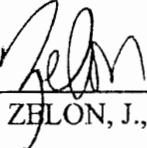
Deputy Clerk

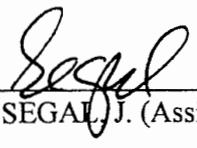
ORDER

THE COURT:

The petition for writ of habeas corpus filed herein August 6, 2013 has been read and considered. The court has also examined the file in proceeding number B227504, petitioner Burghardt's direct appeal from the judgment in Los Angeles County Superior Court case number TA109929. The petition is denied.


PERLUSS, P. J.,


ZELON, J.,


SEGAL, J. (Assigned)

1 SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES
2
3
4
5

6 In re, CASE NO.: TA109929-01
7 Darryl Burghardt ORDER RE: WRIT OF
8 Petitioner, HABEAS CORPUS
9 On Habeas Corpus

10 THE COURT ACKNOWLEDGES IT HAS READ AND CONSIDERED PETITIONER'S WRIT OF
11 HABEAS CORPUS FILED ON JUNE 12, 2013.

12 THE COURT HAS READ AND CONSIDERED THE PETITION FOR WRIT OF HABEAS CORPUS
13 FILED BY THE PETITIONER AND DEFENDANT ON 6/12/13, AND FINDS THAT THE FOLLOWING
14 APPLY:

15 THE PETITION RAISES ISSUES COULD HAVE BEEN RAISED ON APPEAL, BUT WERE NOT,
16 AND PETITIONER HAS FAILED TO ALLEGE FACTS ESTABLISHING AN EXCEPTION TO THE RULE
17 BARRING HABEAS CONSIDERATION OF CLAIMS THAT COULD HAVE BEEN RAISED ON APPEAL.
18 *IN RE RENO* (2012) 55 CAL. 4TH 428, 490-93; *IN RE HARRIS*, (1993) 5 CAL. 4TH 813, 825-26; *IN RE DIXON*,
19 (1953) 41 CAL. 2ND 755, 759; *IN RE SMITH* (1911) 161 CAL. 208.

20 AS TO THE CLAIM OF INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL. PETITIONER HAS
21 FAILED TO SHOW THAT BUT FOR COUNSEL'S ALLEGEDLY DEFICIENT PERFORMANCE, THERE
22 IS A REASONABLE PROBABILITY THAT A MORE FAVORABLE OUTCOME WOULD HAVE
23 RESULTED. IT IS NOT ENOUGH TO SPECULATE ABOUT POSSIBLE PREJUDICE TO THE ACCORDED
24 RELIEF. PETITIONER HAS FAILED TO SHOW THAT THE PREJUDICIAL EFFECT OF COUNSEL'S
25 ERRORS WAS A "DEMONSTRABLE REALITY." *IN RE COX* (2003) 30 CAL. 4TH 974, 1016; *IN RE CLARK*
26 (1993) 5 CAL. 4TH 750, 766; *STRICKLAND V. WASHINGTON* (1984) 466 U. S. 668, 697).

27 FOR ALL OF THE FORGOING INDICATED REASONS, THE PETITION IS DENIED.

28 THE COURT IS ORDERED TO SERVE A COPY OF THIS MEMORANDUM UPON THE

1 PETITIONER AND UPON THE DISTRICT ATTORNEY (HABEAS CORPUS LITIGATION TEAM), 320
2 WEST TEMPLE STREET, ROOM 540, LOS ANGELES, CALIFORNIA 90012.
3
4

5

6

7

8 DATE: June 17, 2013



Mark S. Arnold
9 MARK S. ARNOLD, JUDGE OF THE SUPERIOR COURT

10

11 THE CLERK IS TO GIVE NOTICE TO THE DEFENDANT.

12 COPY OF RULING MAILED THIS DATE TO DEFENDANT VIA U. S. MAIL TO:

13 Darryl Burghardt E-61090
14 PO Box 7500 A-2 / 201 (P.B.S.P.)
14 Crescent City, CA 95532

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**SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES**

THE PEOPLE OF THE STATE OF CALIFORNIA) Case No. 1A109429
versus)
Plaintiff and Respondent,) ORDER SUMMARYL DENYING
versus) PETITION FOR WRIT
DARRYL BURGHARDT,) OF
Defendant and Petitioner,) HABEAS CORPUS
)
)
)
)
)
(CRC 4.551(g))

IN CHAMBERS

Petition for Writ of Habeas Corpus by petitioner, *pro se* ("Petitioner").
No appearance by a Respondent. Denied.

The Court has read and considered the Petition for Writ of Habeas Corpus filed by the Petitioner and Defendant on 6/12/13, and finds that the following apply:

[] The Petition is required to be on Judicial Council form MC-275 and the Petitioner has not shown good cause to be excused from this requirement. California Rule of Court 4.551 (a).

[] The petition is incomplete in that it lacks some or all of the required information (i.e., when and where was Petitioner sentenced or otherwise detained; by whom and where the Petitioner is restrained; whether there was an appeal and the outcome of that appeal; whether prior habeas petitions have been filed and, if so, when, in which court, and the outcome of each). Penal Code §§1474, 1475 and 1477; California Rule of Court 4.551(a).

[] The petition is not verified. Penal Code §1474; *People v. Lyons* (2009) 178 Cal. App. 4th 1355, 1362.

[] The Petitioner has failed to allege that he or she is actually or constructively in the custody of the State and being unlawfully imprisoned or restrained of his or her liberty. Penal Code §§1473, 1473.5 or other lawful ground to vacate the judgment of conviction. Penal Code §1473.6.

[] It appears from the allegations of the petition that the Petitioner is in the custody of the federal government or the authorities of another state and that this custody has not been requested or authorized by the State of California. Rather, Petitioner's custody is at most a collateral consequence of his or her California conviction. Under such circumstances, Petitioner is not in custody for California habeas corpus purposes. *People v. Villa* (2009) 45 Cal. 4th 1063, 1069-74; *In re Izurin* (2001) 87 Cal. App. 4th 20, 25-26.

1 [] The writ of habeas corpus is reserved for errors of a fundamental jurisdictional or
 2 constitutional type, rather than erroneous evidentiary or procedural rulings.. *In Re Harris* (1993)
 3 5 Cal. 4th 813, 828. No ground alleged here is of a type cognizable on habeas corpus.

4 [] Assuming the facts alleged in the petition are true, petitioner fails to allege facts establishing
 5 a *prima facie* case for habeas relief. *People v. Duvall*, (1995) 9 Cal.4th 464, 474-75.

6 [] A habeas petitioner must allege with particularity the facts upon which relief is sought and
 7 include copies of reasonably available documents supporting the claim. Vague or conclusory
 8 allegations made without any explanation of the basis for the allegations do not warrant relief. *In*
re Martinez (2009) 46 Cal. 4th 945, 955-56; *People v. Duvall*, (1995) 9 Cal.4th 464, 474; *People*
v. Karis (1988) 46 Cal. 3rd 612, 656; *In re Swain*, (1949) 34 Cal. 2nd 300, 303-04.

9 [] Petitioner has failed to explain and justify the significant delay in seeking habeas relief. *In re*
Clark, (1993) 5 Cal.4th 750, 765; *In re Swain* (1949) 34 Cal. 2nd 300, 302.

10 [] The petition raises issues could have been raised on appeal, but were not, and Petitioner has
 11 failed to allege facts establishing an exception to the rule barring habeas consideration of claims
 12 that could have been raised on appeal. *In re Reno* (2012) 55 Cal. 4th 428, 490-93; *In re Harris*,
 13 (1993) 5 Cal.4th 813, 825-26; *In re Dixon*, (1953) 41 Cal. 2nd 755, 759; *In re Smith* (1911) 161
 Cal. 208.

14 [] The petition raises issues which were raised and rejected on appeal and Petitioner has failed
 15 to allege facts establishing an exception to the rule barring habeas consideration of claims that
 16 were been raised on appeal. *In re Reno* (2012) 55 Cal. 4th 428, 478-79; *In re Harris*, (1993) 5
 Cal.4th 813, 825-26 (1993); *In re Waltreus*, (1965) 62 Cal. 2nd 218, 225.

17 [] The petition presents claims raised and rejected in a prior habeas petition and Petitioner has
 18 not alleged facts establishing an exception to the rule barring reconsideration of claims
 19 previously rejected. Such successive claims constitute an abuse of the writ of habeas corpus. *In*
re Reno (2012) 55 Cal. 4th 428, 455; *In re Martinez* (2009) 46 cal. 4th 945, 956; *In re Clark*,
 (1993) 5 Cal.4th 750, 767-68; *In re Miller* (1941) 17 Cal. 2nd 734, 735.

20 [] Petitioner filed a prior petition for habeas relief and failed to raise the claims raised in the
 21 current petition, and Petitioner has not alleged facts establishing an exception to the rule
 22 requiring all claims to be raised in one timely filed petition. *In re Reno* (2012) 55 Cal. 4th 428,
 454; *In re Clark*, (1993) 5 Cal.4th 750, 767-68; *In re Horowitz* (1949) 33 Cal. 2nd 534, 546-47.

23 [] Habeas corpus is not available to challenge the use of evidence obtained by an illegal search
 24 or seizure in violation of the Fourth Amendment. *In re Sakarias* (2005) 35 Cal. 4th 140, 169-70;
In re Sterling, (1965) 63 Cal. 2nd 486, 487-89.

25 //

26

1 [] As to the claim of ineffective assistance of trial counsel, Petitioner has failed to show that but
 2 for counsel's allegedly deficient performance, there is a reasonable probability that a more
 3 favorable outcome would have resulted. It is not enough to speculate about possible prejudice to
 be accorded relief. Petitioner has failed to show that the prejudicial effect of counsel's errors
 was a "demonstrable reality." *In re Cox* (2003) 30 Cal. 4th 974, 1016; *In re Clark* (1993) 5 Cal.
 4th 750, 766; *Strickland v. Washington* (1984) 466 U. S. 668, 697.

5 [] As to the claim of ineffective assistance of appellate counsel, during Petitioner's first appeal
 6 of right, Petitioner has failed to show that appellate counsel's exercise of professional judgment
 7 was deficient or that, but for counsel's errors, the outcome of the appeal would have been
 8 different. Appellate counsel is not required to raise every non-frivolous issue and Petitioner
 alleges no more than a failure to raise issues. *Smith v. Robbins* (2000) 528 U. S. 259, 288; *Jones*
v Barnes (1983) 463 U. S. 745, 750-52.

9 [] It appears that administrative remedies are available to petitioner. The petition does not
 10 contain factual allegations establishing that petitioner has exhausted available administrative
 11 remedies, or that exhaustion is excused. *In re Dexter*, (1979) 25 Cal. 3rd 921, 925;

12 [] Petitioner's conviction arose from a plea of guilty or no-contest, and the claims Petitioner
 13 now raises in this petition only go to Petitioner's guilt or innocence or are challenges to an
 14 agreed-upon disposition. As such, they have been waived by virtue of his plea and there is no
 15 basis to excuse this waiver. *See People v. Maultsby* (2012) 53 Cal. 4th 296, 301-04; *People v.*
Hester (2000) 22 Cal. 4th 290, 295. Petitioner has received the benefit of his or her bargain and
 16 may not thereafter trifile with the courts by attempting better his or her bargain. *People v. Hester*,
supra, at 295.

17 [] Petitioner is not now in actual or constructive State custody, and the Petitioner has not
 18 alleged a basis to excuse the requirement of State custody. The petition is therefore moot. *In re*
Azurin (2001) 87 Cal. App. 4th 20, 25; *In re Wessley W.* (1981) 125 Cal. App. 3rd 240, 246; *In re*
King (1970) 3 Cal. 3rd 226, 229 n.2.

19 For all of the foregoing indicated reasons, the petition is DENIED.

20 The Clerk is ordered to serve a copy of this memorandum upon the petitioner and upon
 21 the District Attorney (Habeas Corpus Litigation Team), 320 West Temple Street, Room 540, Los
 22 Angeles, California 90012.

23
 24 Dated: 6/12/13

Mark Arnold

25
 26 Judge of the Superior Court

COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT

THE PEOPLE OF THE STATE OF CALIFORNIA,
PLAINTIFF-RESPONDENT,
VS.
DARRYL BURGHARDT,
DEFENDANT-APPELLANT.

OCT 21 2010
SUPERIOR COURT
NO. TA 109929-01

APPEAL FROM THE SUPERIOR COURT OF LOS ANGELES COUNTY
HONORABLE MARK S. ARNOLD, JUDGE PRESIDING
REPORTERS' TRANSCRIPT ON APPEAL
JUNE 25 AND 28; AUGUST 2; SEPTEMBER 9, 2010

APPEARANCES:

FOR THE PLAINTIFF-RESPONDENT:

EDMUND G. BROWN, JR.
STATE ATTORNEY GENERAL
300 SOUTH SPRING STREET
NORTH TOWER, SUITE 1701
LOS ANGELES, CALIFORNIA 90013

FOR THE DEFENDANT-APPELLANT:

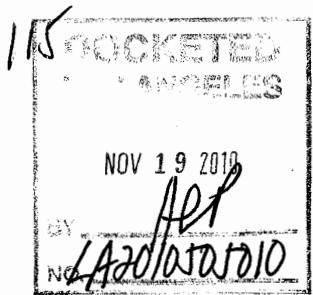
IN PROPRIA PERSONA

VOLUME 4 OF 4

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1501 THROUGH 1513\1800, INCL.
1801 THROUGH 1805\2100, INCL.
2101 THROUGH 2110\2400, INCL.

DENISE K. NAGAO, CSR NO. 7722
OFFICIAL REPORTER

COPY



copy

1 CASE NUMBER: TA0109929
2 CASE NAME: PEOPLE VS. BURGHARDT
3 TORRANCE, CALIFORNIA THURSDAY, SEPTEMBER 9, 2010
4 DEPT. SOUTHWEST "G" HON. MARK S. ARNOLD
5 COURT REPORTER: LUCY I. MILIVOJEVIC, CSR #11496
6 TIME: A.M. SESSION

7

8 APPEARANCES:

9 DEFENDANT DARRYL BURGHARDT, PRESENT IN PROPRIA
10 PERSONA; KEVIN STENNIS, DEPUTY DISTRICT
11 ATTORNEY, REPRESENTING THE PEOPLE OF THE STATE
12 OF CALIFORNIA.

13

14 THE COURT: ALL RIGHT. WE'RE ON THE RECORD IN THE
15 BURGHARDT MATTER, TA109929.

16 THE FIRST ISSUE IS WE WILL HANDLE THE MOTION FOR
17 NEW TRIAL AS WELL AS SUPPLEMENTAL MOTION FOR NEW TRIAL.

18 I HAVE READ THE MOTIONS.

19 HAVE YOU READ THEM?

20 MR. STENNIS: I HAVE, YOUR HONOR.

21 THE COURT: DID YOU WISH TO ADD ANYTHING?

22 THE DEFENDANT: YES. MY WRITTEN SUPPORTING ARGUMENT
23 AND MY ORAL ARGUMENT AND THE DATE OF THE HEARING. BUT I
24 ACTUALLY WANTED TO WITHDRAW THAT MOTION, THE SUPPLEMENTAL
25 MOTION AND THE NEW TRIAL MOTION.

26 THE COURT: SO YOU DO NOT WANT A MOTION FOR NEW TRIAL?

27 THE DEFENDANT: YES. BUT I HAD -- I MADE A REVISEMENT
28 ON THIS MOTION, AND I BROUGHT THEM WITH ME HERE TODAY. AND

1 I HAD ALSO A COUPLE OF OTHER REQUESTS. I NEEDED THREE COURT
2 ORDERS.

3 THE COURT: FOR WHAT?

4 THE DEFENDANT: ONE IS FOR THE ANCILLARY FUNDS.

5 THE COURT: IT'S DENIED.

6 THE DEFENDANT: DENIED?

7 THE COURT: YES, IT IS. YOU'RE HERE FOR SENTENCING
8 TODAY. YOU DON'T NEED -- THERE IS NO -- YOU DON'T NEED ANY
9 MONEY. WHAT DO YOU NEED MONEY FOR?

10 THE DEFENDANT: WELL, I HAVEN'T HAD AN INVESTIGATOR.
11 AND I HAVEN'T BEEN ABLE TO PURCHASE THE PRO PER NECESSITIES.

12 THE COURT: WHAT DO YOU NEED AN INVESTIGATOR FOR?

13 THE DEFENDANT: TO HELP ME PROPERLY PREPARE MY CASE,
14 ADEQUATE DEFENSE.

15 THE COURT: YOU HAVE ALREADY BEEN CONVICTED BY A JURY.

16 THE DEFENDANT: YES. BUT I NEVER HAD A JURY OF MY
17 PEERS, AND I WAS --

18 THE COURT: I READ THAT IN YOUR MOTION.

19 THE DEFENDANT: ALSO -- WELL, THE OTHER COURT ORDER
20 WAS TO BE MOVED TO THE DESIGNATED PRO PER MODULE IN
21 LOS ANGELES COUNTY JAIL BECAUSE I HAVEN'T BEEN MOVED AT ALL.
22 AND I HAVEN'T BEEN RECEIVING LAW LIBRARY TIME AT ALL. I
23 WOULD ASK FOR THAT TO BE REINSTATED ALSO.

24 THE COURT: THAT'S BECAUSE YOU'VE BEEN GETTING IN
25 FIGHTS AT THE JAIL. I RECEIVED A REPORT SHOWING THAT YOU'VE
26 BEEN GETTING IN A NUMBER OF DIFFERENT FIGHTS.

27 THE DEFENDANT: NO, THEY HAD SINGLED ME OUT AS A
28 SUSPECT. THE COUNTY JAIL HAD PUT ME TO THE SIDE WHEN THEY

1 SUSPENDED MY PRO PER TIME. I'M --

2 THE COURT: LOOKS LIKE YOU GOT INTO A FIGHT AT THE
3 JAIL ON AUGUST 9TH, 2010, AUGUST 18TH, 2010, AND
4 AUGUST 22ND, 2010.

5 THE DEFENDANT: YEAH, THAT'S WHAT I'M SAYING. I
6 HAVEN'T -- THAT'S NOT ME. I HAVEN'T BEEN IN ANY FIGHTS.
7 THE ONLY THING I WAS INVOLVED IN I WAS BREAKING SOMETHING UP
8 BETWEEN SOME OTHER GENTLEMEN.

9 THE CLERK: I'M SORRY. I RECEIVED A PHONE CALL FROM
10 COUNTY JAIL YESTERDAY REGARDING MR. BURGHARDT THAT HE HAD
11 ALSO GOTTEN INTO RECENTLY MORE FIGHTS. AND SHE WANTED US TO
12 KNOW. SHE DID NOT FAX OVER ANYTHING. BUT SHE WAS RELAYING
13 TO THE COURT THAT HE ALSO HAD BEEN INVOLVED IN A COUPLE
14 OTHER DISTURBANCES. AND HE WAS MOVED TO THE -- TO C.J.

15 THE COURT: OKAY. ALL RIGHT.

16 THE DEFENDANT: NO, I HAD ALREADY BEEN IN C.J. I HAD
17 WENT TO THE PSYCHE WARD. THAT'S THE ONLY THING I WAS
18 INVOLVED IN.

19 AND THE OTHER IS -- THE LAST COURT ORDER WAS --
20 I DON'T KNOW IF YOU CAN DO THIS. BUT I NEED ANOTHER LEGAL
21 RUNNER SHEET.

22 THE COURT: FOR WHAT?

23 THE DEFENDANT: TO REQUEST A LEGAL RUNNER.

24 THE COURT: FOR WHAT? WHY DO YOU NEED A LEGAL RUNNER?

25 THE DEFENDANT: ON MY BEHALF. TO HANDLE MY LEGAL --

26 THE COURT: TO DO WHAT?

27 THE DEFENDANT: WELL, TO HELP ME PROPERLY PREPARE MY
28 CASE. HELP ME WITH THE LEGAL --

1 THE COURT: WHAT DO YOU WANT THE LEGAL RUNNER TO DO?

2 THE DEFENDANT: THERE'S A NUMEROUS AMOUNT OF THINGS.

3 THE COURT: LIKE WHAT?

4 THE DEFENDANT: TO BRING ME THE NECESSARY DOCUMENTS.

5 LIKE I HAD ALSO SENT IN A REQUEST TO BE BROUGHT IN BEFORE
6 THIS ACTUAL DATE. I HAVE A COPY OF THESE RIGHT THERE ALSO.

7 A LETTER REQUEST SO THAT I COULD HAVE THE JURY SELECTION
8 TRANSCRIPTS BUT -- SO I COULD GO OVER THE MOTION.

9 THE COURT: YOU'RE NOT GOING TO GET THAT. YOU WERE
10 HERE FOR THE TRIAL.

11 THE DEFENDANT: WELL --

12 THE COURT: THAT CAN BE AN ISSUE ON APPEAL. YOUR
13 APPELLATE ATTORNEY WILL BE PROVIDED A FULL TRANSCRIPT OF THE
14 ENTIRE PROCEEDINGS.

15 THE DEFENDANT: YEAH. WELL, I ADDRESSED THE COURT
16 DURING MY JURY SELECTION THAT I WASN'T COMFORTABLE WITH THE
17 JURY. AND THAT'S WHY I SUBMITTED THE MOTION.

18 THE COURT: ALL RIGHT. YOUR MOTION FOR THE
19 TRANSCRIPTS IS DENIED.

20 THE DEFENDANT: AND THAT'S THE LAST PORTION.

21 THE COURT: GOOD. ALL RIGHT. ANYTHING ELSE?

22 THE DEFENDANT: YEAH. JUST THE ORAL ARGUMENT FOR THE
23 MOTIONS.

24 THE COURT: OKAY. GO AHEAD.

25 THE DEFENDANT: WELL, YEAH. I NEVER HAD A JURY OF MY
26 PEERS. I BELIEVE THAT I'M ENTITLED TO A JURY OF MY PEERS.

27 I ADDRESSED THE COURT. THERE WAS NO APPARENT REASON FOR
28 THEM TO DISMISS -- FOR THE -- MY ATTORNEY OR THE DISTRICT

1 ATTORNEY TO DISMISS THE BLACK JURORS THAT WERE ON THE PANEL.
2 FOR THE PROSECUTING WITNESSES WERE NOT OF ONE RACE. THEY
3 WERE -- IT WAS A NUMEROUS AMOUNT OF RACES.

4 THERE WAS A CAUCASIAN GUY. AND THERE WAS --
5 THERE WAS BLACK -- THERE WERE ALSO AFRICAN AMERICANS.
6 THERE'S NO REASON FOR -- THERE'S NO APPARENT REASON --
7 THE -- THE VOIR DIRE QUESTIONS THAT WERE ASKED OF THE BLACK
8 JURORS WERE ANSWERED THE SAME WAY AS THE JURORS THAT WERE
9 ALREADY ON THE PANEL.

10 THERE'S NO APPARENT REASON FOR -- AT ALL FOR
11 THEM TO BE DISMISSED. I THINK THAT -- WELL, I KNOW THAT IF
12 THERE WERE BLACK JURORS ON THE STAND IT WOULD HAVE BEEN A
13 DIFFERENT OUTCOME.

14 THE COURT: WHY DO YOU THINK THAT? WHY DO YOU THINK
15 THAT THE JURORS' RACE WOULD MATTER?

16 THE DEFENDANT: BECAUSE IT'S LIKE PART OF EVERYDAY
17 LIVES. THEY'RE AROUND CERTAIN PEOPLE AND AT CERTAIN TIMES.
18 AND THEY COULD PRETTY MUCH TELL THE DIFFERENCE BETWEEN,
19 LET'S SAY, INCONSISTENCY OR A CONTRADICTION WHICH WERE MADE
20 DURING THE TRIAL.

21 THE COURT: BLACK PEOPLE CAN TELL THAT BUT OTHER RACES
22 CAN'T?

23 THE DEFENDANT: NO. THROUGH ANOTHER -- THEY COULD
24 TELL THAT AGAINST ANOTHER BLACK PERSON.

25 THE COURT: SO BLACK PEOPLE CAN TELL WHEN BLACK PEOPLE
26 ARE LYING. BUT HISPANICS, WHITES, ASIANS, THEY CAN'T TELL?

27 THE DEFENDANT: NO, I'M NOT SAYING THAT THE WHOLE
28 PANEL BE BLACK. BUT AT LEAST 25 PERCENT OUT OF A HUNDRED.

1 THE COURT: WHAT'S YOUR THEORY OF -- WHAT'S YOUR LEGAL
2 THEORY FOR 25 PERCENT BE AFRICAN-AMERICAN? WHAT'S THE LEGAL
3 AUTHORITY FOR THAT?

4 THE DEFENDANT: THE LEGAL AUTHORITY? I'M NOT SURE.

5 THE COURT: WHAT CASE -- WHAT CASE OR STATUTE CALLS
6 FOR THAT? LET'S SAY 25 PERCENT?

7 THE DEFENDANT: WELL, A JURY OF HIS -- OF YOUR PEERS.

8 THE COURT: YOU HAD A JURY OF YOUR PEERS. YOU WERE
9 REPRESENTED BY A VERY COMPETENT ATTORNEY. AND HE ASSISTED
10 ALONG WITH THE D.A. IN MAKING SURE THAT YOU HAD A JURY OF
11 YOUR PEERS.

12 YOU SEEM TO THINK THAT A JURY OF YOUR PEERS IS
13 ONLY SATISFIED IF YOU HAVE A CERTAIN NUMBER OF
14 AFRICAN-AMERICANS ON IT.

15 THE DEFENDANT: NO, THAT'S NOT --

16 THE COURT: THAT'S NOT THE TEST.

17 THE DEFENDANT: NO, ETHNICITY OR AGE. THERE WERE
18 NO -- AND ALSO NONE OF THE JURORS WAS MY AGE.

19 THE COURT: ANYTHING FURTHER?

20 THE DEFENDANT: EXCUSE ME?

21 THE COURT: ANYTHING MORE?

22 THE DEFENDANT: UM --

23 THE COURT: ARE YOU FINISHED OR DO YOU WANT TO SAY
24 MORE?

25 THE DEFENDANT: I JUST WASN'T SATISFIED WITH THE JURY.
26 AND THE PALENO (PHONETIC) CASE ALSO SUPPORTS THAT ALSO.

27 THE COURT: DO YOU HAVE ANY RESPONSE?

28 MR. STENNIS: NO, YOUR HONOR.

1 THE COURT: YOUR MOTION IS DENIED.

2 ANYTHING FURTHER?

3 THE DEFENDANT: I GOT MY NOTICE OF APPEAL.

4 THE COURT: OKAY. DO YOU HAVE THAT WITH YOU?

5 THE DEFENDANT: YEAH.

6 THE COURT: OKAY. YOU CAN GIVE THAT TO DEPUTY
7 TOMIGAWA, AND WE WILL ACCEPT THAT FOR YOU.

8 DID YOU WISH TO BE HEARD ON THE SENTENCE?

9 MR. STENNIS: NO.

10 THE COURT: DID YOU WISH TO BE HEARD ON THE SENTENCE?

11 THE DEFENDANT: NO.

12 THE COURT: COUNT 1. YOU WERE CONVICTED OF A WILLFUL,
13 DELIBERATE, AND PREMEDITATED ATTEMPTED MURDER. YOU'RE
14 SENTENCED TO THE STATE PRISON FOR LIFE.

15 THE JURY FOUND THAT YOU PERSONALLY USED AND
16 FIRED A FIREARM WITHIN THE MEANING OF PENAL CODE SECTION
17 12022.53(C). YOU'RE TO SERVE A CONSECUTIVE 20-YEAR
18 SENTENCE.

19 THE JURY FOUND TRUE THAT THE GANG WAS -- THE
20 CRIME WAS COMMITTED FOR THE BENEFIT OF A GANG WITHIN THE
21 MEANING OF PENAL CODE SECTION 186.22, SUBDIVISION (B),
22 SUBDIVISION (1), SUBDIVISION (C). THEREFORE, YOUR MINIMUM
23 PAROLE PERIOD IS 15 YEARS.

24 COUNT 2. THAT'S THE PENAL CODE SECTION 246
25 COUNT. YOU'RE SENTENCED TO THE STATE PRISON FOR FIVE YEARS.
26 THAT'S STAYED PURSUANT TO PENAL CODE SECTION 654.

27 THE GANG ALLEGATION UNDER 186.22, SUBDIVISION
28 (1), SUBDIVISION (C), YOU'RE TO SPEND TEN YEARS IN THE STATE

1 PRISON. BUT THAT IS STAYED PURSUANT TO PENAL CODE SECTION
2 654.

3 THE STRIKE ALLEGATION UNDER PENAL CODE SECTION
4 66 -- WAIT. DID YOU --

5 MR. STENNIS: I DIDN'T --

6 THE COURT: YOU DID NOT GO FORWARD ON THE STRIKES.
7 OKAY.

8 SO THE ENTIRE SENTENCE ON COUNT 2 IS STAYED
9 PURSUANT TO PENAL CODE SECTION 654.

10 ON COUNTS 3 AND 5, THOSE ARE BOTH ASSAULT WITH A
11 FIREARM COUNTS. IN EACH -- ON EACH COUNT, YOU'RE SENTENCED
12 TO THREE YEARS IN THE STATE PRISON. EACH TERM IS STAYED
13 PURSUANT TO PENAL CODE SECTION 654.

14 THE FIREARM ALLEGATIONS WERE FOUND TRUE UNDER
15 PENAL CODE SECTION 12022.5. FOUR-YEAR TERMS ARE IMPOSED ON
16 EACH COUNT. EACH TERM IS STAYED PURSUANT TO PENAL CODE
17 SECTION 654.

18 AND THE GANG ALLEGATION, AGAIN, WAS FOUND TRUE.
19 YOU'RE SENTENCED TO THE STATE PRISON FOR TEN YEARS. THAT IS
20 ALSO STAYED PURSUANT TO PENAL CODE SECTION 654.

21 COUNT 4 WAS A SEPARATE INCIDENT INVOLVING
22 BATTERY. YOU'RE SENTENCED TO SIX MONTHS IN THE COUNTY JAIL.
23 AND THAT WILL BE SERVED FIRST BEFORE YOU SERVE THE SENTENCE
24 ON COUNT 1.

25 CREDITS? DO WE KNOW WHAT -- DO YOU KNOW WHEN
26 YOU WERE ARRESTED?

27 THE DEFENDANT: DECEMBER 16, 2009.

28 THE COURT: OKAY. DECEMBER 16, 2009.

1 ALL RIGHT. YOUR ACTUAL CREDITS ARE 268 DAYS.
2 AND YOUR GOOD-TIME/WORK-TIME CREDITS ARE 40. SO YOUR TOTAL
3 CREDITS ARE 308.

4 IS THERE RESTITUTION?

5 MR. STENNIS: NO.

6 THE COURT: YOU'RE TO PAY \$200 TO THE VICTIMS'
7 RESTITUTION FUND.

8 YOU'RE TO PAY \$30 AS A CRIMINAL CONVICTION
9 ASSESSMENT FINE PURSUANT TO THE PENAL CODE. AND A -- THE
10 COURT ALSO IMPOSES A \$120 -- LET'S SEE. \$150 COURT SECURITY
11 CHARGE PURSUANT TO THE PENAL CODE.

12 THE COURT IMPOSES BUT STAYS A \$200 PAROLE
13 REVOCATION RESTITUTION FINE, PENDING SUCCESSFUL COMPLETION
14 OF PAROLE.

15 WITHIN FIVE DAYS OF YOUR RELEASE FROM THE STATE
16 PRISON, YOU'RE TO GO TO THE LOCAL POLICE DEPARTMENT AND
17 REGISTER AS A GANG MEMBER.

18 AND YOU'RE TO PROVIDE YOUR DNA PURSUANT TO PENAL
19 CODE SECTION 296.

20 HAVE YOU GIVEN YOUR NOTICE OF APPEAL TO
21 DEPUTY --

22 THE DEFENDANT: YES.

23 THE COURT: ALL RIGHT. IT'S ALREADY BEEN FILED?

24 ALL RIGHT. DO YOU WANT A FORTHWITH ORDER?

25 WE ARE ACCEPTING HIS NOTICE OF APPEAL.

26 THE CLERK: OKAY. ON THE CRIMINAL CONVICTION
27 ASSESSMENT FINE --

28 THE COURT: THAT'S PER COUNT?

1 ALL RIGHT. THE CRIMINAL CONVICTION ASSESSMENT
2 FINE IS \$150 AS WELL. THAT'S \$30 PER COUNT.

3 DO YOU WANT A FORTHWITH ORDER?

4 THE DEFENDANT: YES.

5 THE COURT: ALL RIGHT. FORTHWITH TO THE DEPARTMENT OF
6 CORRECTIONS.

7

8 (END OF PROCEEDINGS FOR THIS DATE.)

9 //

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FILED
LOS ANGELES SUPERIOR COURT

SEP 03 2010

000181
RECEIVED

1 Darryl Burghardt JOHN A. CLARKE, CLERK
2 #2164979 Deborah A. Bergin
BY DEBORAH A. BERGIN, DEPUTY

SEP 03 2010

SOUTHWEST DISTRICT

3 P.O. Box 86164
4 Los Angeles, CA 90086

5
6 IN PRO PER

7
8 SUPERIOR COURT OF CALIFORNIA
9 COUNTY OF LOS ANGELES

10
11 PEOPLE OF THE STATE } NO. TA-109929
12 OF CALIFORNIA } SUPPLEMENTAL MOTION
13 Plaintiff, } FOR NEW TRIAL
14 VS. } PURSUANT TO CAL.
15 Darryl Burghardt, P.C. 1181 (a) (E)
16 Defendant.

17
18
19
20 TO: The District Attorney, County of
21 LOS Angeles, and/or his representative:

22
23
24
25
26
27
28 NOTICE IS HEREBY GIVEN that on 9-9-10, or as
soon thereafter as the matter may be heard in
Department 52 of the above-entitled court, defendant
Darryl Burghardt, will move for an order granting a
new trial. This motion will be made on the following
grounds: (1) The court erred by violating defendant's
Bentley/Wheeler rights. (2) The court erred by

000182

1 misdirecting the jury concerning the elements of
2 self-defense (3) The evidence was insufficient
3 to sustain the conviction (4) The verdict was
4 contrary to law (5) Ineffective assistance of
5 Counsel

6

7 The motion is based on this notice
8 of motion, the attached declaration of Darryl
9 Burghardt, and the trial transcript, and all evidence
10 to be presented at the hearing.

11

12 Dated: 8/30/10

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000183

1 Supporting Argument
2

3 DEFENDANT IS ENTITLED TO A NEW
4 TRIAL PURSUANT TO P.C. 1181 AS THE TRIAL
5 COURT ERRED BY VIOLATING DEFENDANT'S
6 BATSON/WHEELER RIGHTS
7

8 Defendant was denied and was constitutionally
9 entitled to a jury panel that is as near an
10 approximation of the ideal cross-section of the
11 community. (See) (Reo v. Wheeler (1978) 22 Cal. 3rd 280)
12 See also Paulino v. Castro, 371 F.3d 1083
13 (9th 2004) "[Wheeler standard is impermissibly
14 stringent in comparison to the more comparison to
15 the more generous Batson" "inference" test. Calif.
16 courts in following the strong likelihood language
17 of Wheeler are not applying the correct legal
18 Standard for a *prima facie* case under Batson"
19 58 [Citing Wade v. Terhune, 202 F. 3d 1190
20 (9th Cir 2000)]
21

22 Defendant was denied an impartial jury due
23 to, (1) No distinctive group in the community, (2)
24 No representation in jury panel and reasonable in
25 relation to the number of such reasons in the
26 community; and (3) the defendant was under
27 representation, the judicial district was not fully
28 pooled by racial cross-sections. (See) (Batson v.

000184

1 Kentucky (1986) 90 L. Ed. 2d 69 (see also) (Pee
2 v. Jenkins (2000) 22 UTA 900, 982).
3

4 Specifically on 6/21/10 jury selection
5 commenced. The panel consisted of two African
6 Americans. See (C.T.) The prosecutor and
7 defense attorney used their first two peremptory
8 challenges to dismiss the only African American
9 jurors off of the panel.
10

11 Defendant, addressed this court raising
12 a Wheeler/Batson motion. See (C.T.) The court
13 never addressed this issue, but rather bypassed it
14 without having the prosecutor and defense attorney
15 to explain the actual reasons that motivated for
16 the peremptory challenges. Paulino I 371 f 3d at
17 1092.

18
19 Defendant alleges that the prosecutor and
20 defense attorney's gave neutral reasons for the
21 apparently biased pattern of the peremptory challenges
22 violates Batson. As he was not required to
23 explain them.
24

25 Thus violates defendant's Sixth Amendment
26 and Fourteenth Amendment right to due process.
27 See also, Batson, supra.
28

000185

1 The defendant's motion should be granted
2 based upon these supporting arguments and
3 facts of the case.
4

5 Dated: 8/30/10

6 Respectfully Submitted
7

8 *Barry Berhardt B*
9

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Proof of Service

000186

I, Darryl Burghardt, declare under
penalty of perjury that I sent the
following documents, supplemental motion
for new trial pursuant to Cal PC 1181
(a)-(f) to:

Kevin Stevens
Deputy District Attorney
100 West Compton Blvd
7th floor
Compton, CA 90220

and

Mr. Arnold Dept. of
Torrance Courts
825 Maple Avenue
Torrance, CA
90503

Sent this day 8/30/10 from the Los
Angeles County jail

8/30/10 Darryl Burghardt

FILED
LOS ANGELES SUPERIOR COURT

000177
RECEIVED

1 Darryl Burghardt AUG 30 2010 AUG 30 2010
2 # 2164979 JOHN A. CLARKE, CLERK
3 P.O. Box 86164 Deborah J. Bergin
4 Los Angeles, CA 90086 BY DEBORAH A. BERGIN, DEPUTY
5
6 IN PRO PER
7
8 SUPERIOR COURT OF CALIFORNIA
9 COUNTY OF LOS ANGELES
10
11 PEOPLE OF THE STATE } NO. TA-109929
12 OF CALIFORNIA } MOTION FOR
13 Plaintiff, } NEW TRIAL
14 VS.
15 Darryl Burghardt ,
16 Defendant.
17
18
19 TO: The District Attorney, County of
20 Los Angeles, and/or his representative;
21
22 NOTICE IS HEREBY GIVEN that on 9-9-10 or
23 as soon thereafter as the matter may be heard,
24 in Department G of the above-entitled court,
25 defendant, Darryl Burghardt, will move for an order granting
26 a new trial. This motion will be made on the
27 following grounds: I State grounds, e.g., the verdict
28 was contrary to the law and the evidence, in that the

000178

1 evidence is insufficient to sustain the
2 conviction and/or the court erred by misdirecting
3 the jury concerning the law of self-defense.]

4
5 The motion is based on this notice
6 of motion, the attached memorandum of points
7 and authorities, the attached declaration of
8 Darryl Burghardt, and the trial transcript, and all
9 evidence to be presented at the hearing.

10

11 Dated : 8/16/10

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1 Supporting Argument
2

3 Defendant was denied and was constitutionally
4 entitled to a jury panel that is as near an
5 approximation of the ideal cross-section of the
6 community. (See) (Pea. v. Wheeler (1978) 22 C 31 258)
7

8 Defendant was denied an impartial jury due
9 to, (1) NO distinctive group in the community,
10 (2) NO representation in jury panel and reasonable
11 in relation to the number of such reasons in the
12 community, and (3) the defendant was under
13 representation, the judicial district was not fully
14 pooled by racial cross-sections. (see) (Batson v.
15 Kentucky (1986) 90 L.Ed 2d 69) (See also) (Pea v.
16 Jenkins (2000) 22 C 47A 900. 982).
17

18 The defendant's motion should be granted based
19 upon these supporting arguments and facts of the
20 case.

21
22 Dated: 8/16/10

23 Respectfully Submitted
24

25
26
27
28
Daryl Burchette

Proof of Service 000180

I Darryl Borchardt declare under
penalty and perjury that I sent the
following documents, Motion For New
Trial to:

Kevin Steenis
Deputy District Attorney
100 West Compton BLVD
7th floor
Compton, CA 90220

and

Mr. Arnold Dept. I
Torrance Court
825 Maple Avenue
Torrance, CA
90503

Sent this day 8/16/10 from the Los Angeles
County Jail

8/16/10 B. Darryl Borchardt B

COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

OCT 21 2010

THE PEOPLE OF THE STATE OF CALIFORNIA,)
)
 PLAINTIFF-RESPONDENT,)
) SUPERIOR COURT
VS.) NO. TA 109929-01
)
DARRYL BURGHARDT,)
)
 DEFENDANT-APPELLANT.)
)
)

APPEAL FROM THE SUPERIOR COURT OF LOS ANGELES COUNTY

HONORABLE MARK S. ARNOLD, JUDGE PRESIDING

REPORTERS' TRANSCRIPT ON APPEAL

JUNE 23 AND 24, 2010

APPEARANCES:

FOR THE PLAINTIFF-RESPONDENT:

EDMUND G. BROWN, JR.
STATE ATTORNEY GENERAL
300 SOUTH SPRING STREET
NORTH TOWER, SUITE 1701
LOS ANGELES, CALIFORNIA 90013

FOR THE DEFENDANT-APPELLANT:

IN PROPRIA PERSONA

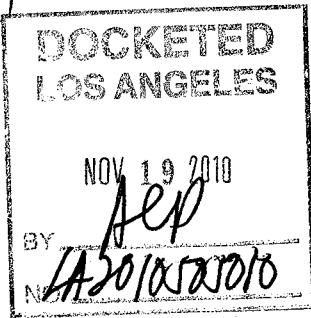
VOLUME 3 OF 4

PAGES 601 THROUGH 712\900, INCL.
901 THROUGH 1042\1200, INCL.

COPY

DENISE K. NAGAO, CSR NO. 7722
OFFICIAL REPORTER

254



1 CASE NUMBER: TA 109929
2 CASE NAME: PEOPLE VERSUS DARRYL BURGHARDT
3 TORRANCE, CA WEDNESDAY, JUNE 23, 2010
4 DEPARTMENT SW G HON. MARK S. ARNOLD JUDGE
5 REPORTER: DENISE K. NAGAO, CSR NO. 7722
6 TIME: 1:44 P.M.
7 APPEARANCES:

8 THE DEFENDANT APPEARING IN COURT WITH
9 COUNSEL, RICHARD A. LEONARD, ATTORNEY
10 AT LAW; KEVIN STENNIS, DEPUTY DISTRICT
11 ATTORNEY, REPRESENTING THE PEOPLE OF
12 THE STATE OF CALIFORNIA.

13 --000--
14
15

16 (THE FOLLOWING PROCEEDINGS
17 WERE HELD IN OPEN COURT,
18 OUTSIDE THE PRESENCE OF
19 THE JURY:)

20
21 THE COURT: YES. WHAT WOULD YOU LIKE TO SAY?

22 THE DEFENDANT: I WOULD LIKE TO KNOW WHY THE EXACT
23 REASON WHY I CAN'T HAVE A JURY OF MY PEERS.

24 THE COURT: ALL RIGHT.

25 IF YOU HAVE ANY LEGAL QUESTIONS,
26 MR. LEONARD IS A VERY EXPERIENCED ATTORNEY, AND I'M NOT
27 GOING TO INSTRUCT YOU OR GIVE YOU CASE DECISIONS ON WHY
28 THIS IS A LAWFUL JURY. THAT'S WHY MR. LEONARD IS

1 SITTING NEXT TO YOU, AND HE WILL ANSWER YOUR QUESTIONS.

2 ALL RIGHT. BOTH SIDES READY FOR THE JURY?

3 MR. LEONARD: YES, YOUR HONOR.

4 MR. STENNIS: YES.

5 THE COURT: ALL RIGHT.

6 LET'S BUZZ THEM OUT.

7

8 (THE FOLLOWING PROCEEDINGS
9 WERE HELD IN OPEN COURT IN
10 THE PRESENCE OF THE JURY:)

11

12 THE COURT: WE ARE BACK ON THE RECORD.

13 ALL PARTIES AND COUNSEL ARE PRESENT.

14 I SEE THE NOTEBOOKS HAVE BEEN DISTRIBUTED
15 TO YOU.

16 THIS IS THE TIME AND PLACE FOR OPENING
17 STATEMENTS. AS I MENTIONED TO YOU YESTERDAY, THE
18 OPENING STATEMENT IS NOT EVIDENCE. SO THERE IS NO
19 REASON TO TAKE NOTES DURING THE OPENING STATEMENT.

20 IF YOU ARE A NOTE-TAKER, ONCE THE OPENING
21 STATEMENTS ARE FINISHED AND THE WITNESSES BEGIN TO
22 TESTIFY, THAT WOULD BE THE TIME TO TAKE NOTES, IF YOU
23 ARE SO INCLINED.

24 MR. STENNIS, DO YOU INTEND TO MAKE AN
25 OPENING STATEMENT?

26 MR. STENNIS: YES, YOUR HONOR.

27 THE COURT: ALL RIGHT.

28 THE FLOOR IS YOURS.

1 CASE NUMBER: TA 109929
2 CASE NAME: PEOPLE VERSUS DARRYL BURGHARDT
3 TORRANCE, CA TUESDAY, JUNE 21, 2010
4 DEPARTMENT SW G HON. MARK S. ARNOLD, JUDGE
5 REPORTER: DENISE K. NAGAO, CSR NO. 7722
6 TIME: 3:18 P.M.
7 APPEARANCES:

8 THE DEFENDANT APPEARING IN COURT WITH
9 COUNSEL, RICHARD A. LEONARD, ATTORNEY
10 AT LAW; KEVIN STENNIS, DEPUTY DISTRICT
11 ATTORNEY, REPRESENTING THE PEOPLE OF
12 THE STATE OF CALIFORNIA.

13 --000--
14
15

16 (THE FOLLOWING PROCEEDINGS
17 WERE HELD IN OPEN COURT,
18 OUTSIDE THE PRESENCE OF
19 THE PROSPECTIVE JURORS:)

20
21 THE COURT: ALL RIGHT.

22 WE'RE ON THE RECORD IN DARRYL BURGHARDT,
23 TA 109929.

24 HE IS REPRESENTED BY MR. LEONARD.
25 MR. STENNIS FOR THE PEOPLE.
26 THE MATTER IS HERE FOR TRIAL.
27 THE JURORS ARE OUTSIDE.
28 BOTH SIDES READY TO THE JURY?

1 MR. STENNIS: YES.

2 MR. LEONARD: READY, YOUR HONOR.

3 THE COURT: IS THERE ANYTHING TO BRING UP BEFORE
4 THE JURORS COME IN?

5 THE CLERK: YES.

6 THE COURT: OH, YES.

7 ON THE LIST, JUROR NO. 14 -- THAT'S THE
8 14TH ONE DOWN FROM THE TOP --

9 MR. LEONARD: RIGHT.

10 THE COURT: -- APPARENTLY HAS AN ENGLISH PROBLEM.

11 THE CLERK: SPEAKS FILIPINO. HIS WIFE IS HERE
12 HELPING HIM TO UNDERSTAND WHAT'S GOING ON AS WELL AS
13 READ THE QUESTIONNAIRE. HE'S BEEN IN THE UNITED STATES
14 APPROXIMATELY 20 YEARS, MORE OR LESS.

15 MR. LEONARD: WE'LL STIPULATE. WE'LL STIPULATE.

16 MR. STENNIS: YEAH. I DON'T HAVE A PROBLEM.

17 THE COURT: BOTH SIDES STIPULATE HE CAN BE
18 EXCUSED.

19 ALL RIGHT, MARCIA. GO AHEAD AND TAKE HIM
20 TO THE ALCOVE, EXCUSE HIM, AND HAVE THE REST OF THEM
21 COME IN.

22 OH, JUROR NO. 1, MR. LEONARD --

23 MR. LEONARD: YES.

24 THE COURT: -- AND MR. STENNIS?

25 SEAT NO. 1 IS UPPER LEFT.

26 MR. LEONARD: OKAY.

27 THANKS.

28 THE COURT: IS THERE A MOTION TO BIFURCATE THE

1 ALLEGATIONS AND THE STRIKES?

2 MR. STENNIS: YES, YOUR HONOR.

3 THE COURT: ALL RIGHT.

4 THE MOTION IS GRANTED.

5

6 (THE FOLLOWING PROCEEDINGS
7 WERE HELD IN OPEN COURT IN
8 THE PRESENCE OF THE
9 PROSPECTIVE JURORS:)

10

11 THE COURT: ALL RIGHT.

12 BOTH SIDES STIPULATE --

13 MR. STENNIS: YES.

14 THE COURT: -- JUROR NO. 8019 BE EXCUSED?

15 MR. STENNIS: YES.

16 MR. LEONARD: YES, YOUR HONOR.

17 THE COURT: ALL RIGHT.

18 8019, YOU ARE EXCUSED. THANK YOU.

19 THE COURT: ALL RIGHT.

20 MARCIA, COULD YOU SWEAR THE JURORS, PLEASE.

21 ACTUALLY LET ME GO AHEAD AND WELCOME YOU
22 ALL. WE APPRECIATE YOU COMING OUT TO HELP US OUT WITH A
23 JURY TRIAL.

24 IT'S A CRIMINAL CASE. I'LL TELL YOU MORE
25 ABOUT IT IN A MOMENT. FIRST, MARCIA, THOUGH, IS GOING
26 TO ADMINISTER THE OATH.

27 THE CLERK: WOULD THE PROSPECTIVE JURORS PLEASE
28 STAND AND RAISE YOUR RIGHT HAND.

1 DO YOU, AND EACH OF YOU, UNDERSTAND AND
2 AGREE THAT YOU WILL ACCURATELY AND TRUTHFULLY ANSWER
3 UNDER PENALTY OF PERJURY ALL QUESTIONS PROPOUNDED TO YOU
4 CONCERNING YOUR QUALIFICATIONS AND COMPETENCY TO SERVE
5 AS A TRIAL JUROR IN THE MATTER PENDING BEFORE THIS COURT
6 AND THAT FAILURE TO DO SO MAY SUBJECT YOU TO CRIMINAL
7 PROSECUTION?

8 IF YOU UNDERSTAND AND AGREE, PLEASE RESPOND
9 "I DO."

10 THE PROSPECTIVE JURORS: I DO.

11 THE CLERK: YOU MAY BE SEATED.

12 THE COURT: ALL RIGHT, FOLKS.

13 THE CASE IS ENTITLED THE PEOPLE OF THE
14 STATE OF CALIFORNIA VERSUS DARRYL BURGHARDT.

15 MR. BURGHARDT IS SEATED AT THE END OF
16 COUNSEL TABLE WEARING THE BLACK SHIRT. HE IS
17 REPRESENTED BY ATTORNEY MR. RICHARD LEONARD. THAT'S THE
18 GENTLEMAN WHO IS STANDING BEFORE YOU NOW.

19 MR. LEONARD: GOOD AFTERNOON.

20 THE COURT: AND THE PROSECUTION IS REPRESENTED BY
21 DEPUTY DISTRICT ATTORNEY KEVIN STENNIS.

22 MR. STENNIS: GOOD AFTERNOON.

23 THE COURT: AND THAT'S THE GENTLEMAN BEFORE YOU
24 NOW.

25 MR. BURGHARDT HAS FIVE CHARGES AGAINST HIM.
26 COUNT 1 ALLEGES A VIOLATION OF PENAL CODE SECTION 664
27 AND 187, ALSO KNOWN AS ATTEMPTED MURDER.

28 COUNT 2 ALLEGES A VIOLATION OF PENAL CODE

1 246, WHICH IS SHOOTING INTO AN INHABITED DWELLING.

2 COUNTS 3 AND 5 BOTH ALLEGE VIOLATIONS OF
3 PENAL CODE SECTION 245, SUBDIVISION (A), SUBDIVISION
4 (2), WHICH IS ASSAULT WITH A FIREARM.

5 AND COUNT 4 ALLEGES A VIOLATION OF PENAL
6 CODE 242, WHICH IS BATTERY.

7 IT'S ALSO ALLEGED THAT MR. BURGHARDT
8 PERSONALLY USED A FIREARM, AND IT'S ALSO ALLEGED THAT
9 THESE OFFENSES WERE GANG RELATED.

10 HE HAS PLEAD NOT GUILTY, HE HAS DENIED ALL
11 OF THE ALLEGATIONS, AND THAT IS WHY YOU FOLKS ARE HERE.
12 YOU'RE HERE TO HELP US OUT WITH THIS JURY TRIAL.

13 OUR COURTROOM DOORS OPEN AT 8:30 IN THE
14 MORNING, AND WE HAVE ANYWHERE BETWEEN 10 TO 20 CASES
15 THAT WE HAVE TO DEAL WITH EVERY DAY THAT ARE GETTING
16 READY FOR TRIAL.

17 AND IT'S USUALLY NOT UNTIL ABOUT 10:30 THAT
18 WE ARE READY TO RESUME WHATEVER JURY TRIAL WE ARE
19 ENGAGED IN. SO THAT'S GENERALLY WHEN WE WILL RESUME
20 WITH THE JURY TRIAL, WHICH IS THIS TRIAL, 10:30 IN THE
21 MORNING. AND WE'LL GO 10:30 TO NOON AND THEN 1:30 IN
22 THE AFTERNOON 'TIL 4:30 IN THE AFTERNOON.

23 THERE MIGHT BE A MORNING OR AN AFTERNOON
24 WHEN WE'RE NOT IN SESSION AT ALL BECAUSE OF SOME TYPE OF
25 SCHEDULING CONFLICT, BUT THAT'S GENERALLY THE SCHEDULE,
26 10:30 TO NOON, 1:30 TO 4:30.

27 BOTH ATTORNEYS BELIEVE THAT THE CASE WILL
28 BE OVER BY A WEEK FROM TODAY. SO IT'S NOT GOING TO BE A

1 LONG CASE.

2 I WANT TO GO OVER SOME THINGS THAT I KNOW
3 MARCIA HAS MENTIONED TO YOU. I WANT TO GO OVER THEM SO
4 THERE IS A RECORD OF WHAT WAS SAID BECAUSE OUR COURT
5 REPORTER, DENISE, IS WRITING DOWN EVERYTHING THAT ALL OF
6 US WILL SAY.

7 THERE IS LITTLE QUESTION IN ANY OF OUR
8 MINDS THAT YOU ARE THE MOST IMPORTANT COMPONENT OF THE
9 JURY TRIAL. WITHOUT YOU FOLKS THERE CAN BE NO JURY
10 TRIALS. SO WE APPRECIATE WHAT YOU DO.

11 WE KNOW IT'S AN INCONVENIENCE TO COME TO
12 THE COURTHOUSE AND PARTICIPATE IN JURY DUTY. IT'S AN
13 OBLIGATION OF CITIZENSHIP. YOU DON'T REALLY HAVE AN
14 OPTION. BUT WE ALSO KNOW IT'S INCONVENIENT, AND IT'S AN
15 IMPOSITION, BUT WE, NEVERTHELESS, APPRECIATE YOUR DOING
16 THIS.

17 OUR PREFERENCE WOULD BE TO CALL YOU BY YOUR
18 NAME BECAUSE JUST, YOU KNOW, IT'S A SIGN OF RESPECT.
19 HOWEVER, THE COURTS OF APPEAL HAVE TOLD US THAT WE
20 CANNOT REFER TO YOU BY YOUR NAME. WE HAVE TO REFER TO
21 YOU BY YOUR JURY IDENTIFICATION NUMBER.

22 OUR PREFERENCE WOULD BE TO CALL YOU BY YOUR
23 NAME. BUT WE COULD CALL YOU BY YOUR NAME THEN, BUT AT
24 THE END OF THE TRIAL, OUR COURT REPORTER, DENISE, SHE
25 WOULD HAVE TO LOOK UP WHAT EACH ONE OF YOUR JUROR
26 IDENTIFICATION NUMBERS WAS AND THEN DELETE YOUR NAME AND
27 THEN INSERT YOUR JUROR IDENTIFICATION NUMBER, AND SHE
28 WOULD HAVE TO DO THAT FOR EACH AND EVERY ONE OF YOU.

1 OBVIOUSLY, IT IS LABOR INTENSIVE AND TIME
2 SENSITIVE. TO COMPLY WITH THE DIRECTIONS OF THE COURT
3 OF APPEAL AND TO SAVE OUR COURT REPORTER A WHOLE LOT OF
4 UNNECESSARY BUSYWORK, WE WILL ONLY REFER TO YOU BY THE
5 LAST FOUR NUMBERS OF YOUR JUROR IDENTIFICATION NUMBER.

6 I DON'T WANT ANYBODY TO THINK THAT YOUR
7 BEING ANONYMOUS IN THIS CASE IS BECAUSE YOU'RE SOMEHOW
8 IN DANGER. THAT HAS NOTHING TO DO WITH THIS.

9 WE DO THIS IN EVERY TRIAL, AND WE'VE DONE
10 IT FOR YEARS. THAT'S JUST THE WAY IT IS. WE HAVE TO
11 REFER TO YOU BY YOUR NUMBER. IT DOESN'T MATTER WHAT THE
12 CHARGE IS. IT DOESN'T MATTER WHO THE WITNESSES ARE. IT
13 DOESN'T MATTER WHO THE DEFENDANT IS. WE ALWAYS REFER TO
14 THE JURORS BY THE LAST FOUR NUMBERS OF THEIR JUROR
15 IDENTIFICATION NUMBER.

16 WHETHER YOU'RE HERE JUST FOR JURY DUTY --
17 EXCUSE ME -- FOR JURY SELECTION OR WHETHER YOU ARE HERE
18 FOR THE WHOLE TRIAL, IF YOU WANT TO BRING A BEVERAGE
19 INTO THE COURTROOM, YOU ARE WELCOME TO DO SO. SODA,
20 WATER, WHATEVER YOU WANT.

21 THE CLERK: NO ALCOHOL.

22 THE COURT: OH, REALLY. MARCIA SAYS NO ALCOHOL.
23 THAT IS OBVIOUS.

24 ALL RIGHT. IF YOU HAVEN'T ALREADY DONE SO,
25 PLEASE LOOK AT THE LAST FOUR NUMBERS OF YOUR JUROR
26 IDENTIFICATION NUMBER. MARCIA IS GOING TO START CALLING
27 YOU TO COME AND SIT IN THE JURY BOX.

28 IF YOURS IS THE FIRST NUMBER CALLED, YOU'RE

1 GOING TO BE SITTING IN SEAT NO. 1.

2 SEAT NO. 1 IS THE UPPER ROW, THE SEAT
3 CLOSEST TO YOU. AND THEN THE SIX OF YOU WILL SIT IN THE
4 TOP ROW. SIX OF YOU WILL SIT IN THE BOTTOM ROW.

5 YOU WILL NOTICE THERE ARE SEVEN CHAIRS IN
6 THE TOP ROW AND SEVEN CHAIRS IN THE BOTTOM ROW. THE
7 CHAIRS FURTHEST FROM YOU, DON'T SIT IN THOSE. THOSE ARE
8 FOR THE ALTERNATES, AND WE'LL SELECT THE ALTERNATES
9 AFTER WE HAVE SELECTED OUR TWELVE JURORS.

10 SO, MARCIA, IF YOU WOULD, PLEASE.

11 THE CLERK: FOR JUROR SEAT NO. 1, JUROR NO. 6809.

12 FOR JUROR SEAT NO. 2, JUROR NO. 0841.

13 FOR JUROR SEAT NO. 3, JUROR NO. 5986 -- I'M
14 SORRY. 9586.

15 FOR JUROR SEAT NO. 4, JUROR NO. 0443.

16 FOR JUROR SEAT NO. 5, JUROR NO. 6975.

17 FOR JUROR SEAT NO. 6, JUROR NO. 7875.

18 FOR JUROR SEAT NO. 7, JUROR NO. 9500.

19 FOR JUROR SEAT NO. 8, JUROR NO. 5 --

20 SORRY -- 4559.

21 FOR JUROR SEAT NO. 9, JUROR NO. 3305.

22 FOR JUROR SEAT NO. 10, JUROR NO. 6139.

23 FOR JUROR SEAT NO. 11, JUROR NO. 6203.

24 FOR JUROR SEAT NO. 12, JUROR NO. 8302.

25 THE COURT: ALL RIGHT.

26 FOR YOU FOLKS IN THE JURY BOX, DO ANY OF
27 YOU KNOW OR RECOGNIZE ANY OF THE PEOPLE SEATED AT THE
28 COUNSEL TABLE? IF YOU DO, RAISE YOUR HAND.

1 OKAY. I SEE NO HANDS.

2 I WANT TO READ TO YOU A LIST OF THE
3 POTENTIAL WITNESSES. IT'S A VERY SHORT LIST. BUT IT
4 DOESN'T NECESSARILY MEAN THAT EVERY PERSON ON THE LIST
5 WILL BE CALLED TO TESTIFY.

6 WHAT I CAN TELL YOU, THOUGH, IS OF THE
7 PEOPLE THAT DO TESTIFY, THEY WILL COME FROM THIS LIST,
8 AND WE'RE GOING TO WANT TO KNOW IF YOU KNOW OR RECOGNIZE
9 ANY OF THESE FOLKS.

10 CHENEE STONE, DAVISHA MOORE, LA CHARRIE
11 LANGRAM, L.A.P.D. DETECTIVE ERIC SHEAR, ALFRED JOHNSON,
12 IVY JOHNSON, AND ANTHEA ALLEN.

13 DO ANY OF YOU KNOW OR RECOGNIZE ANY OF
14 THOSE PEOPLE? I'M SEEING HEADS SHAKING FROM SIDE TO
15 SIDE.

16 OKAY. WHO OF YOU HAVE BEEN ON JUROR DUTY
17 BEFORE? RAISE YOUR HAND IF YOU HAVE BEEN ON A JURY DUTY
18 BEFORE. ABOUT HALF YOU. ALL RIGHT.

19 FOR THOSE OF YOU WHO HAVE HAD JURY DUTY
20 BEFORE, THIS WILL BE A REFRESHER. FOR THOSE WHO HAVE
21 NOT HAD JURY DUTY BEFORE, BY THE TIME I'M FINISHED WITH
22 YOU, YOU'LL HAVE A GOOD IDEA OF WHAT IS EXPECTED OF YOU
23 IN ORDER TO DO THE JOB OF THE JUROR THE RIGHT WAY.

24 I BELIEVE -- AND A LOT OF PEOPLE BELIEVE
25 THAT, ALTHOUGH THIS IS NOT PERFECT, THE JURY SYSTEM IS
26 THE BEST SYSTEM OF JUSTICE THAT EXISTS. IT'S CERTAINLY
27 NOT PERFECT, BUT IT'S THE BEST THAT'S OUT THERE, AND IT
28 WORKS. BUT IT ONLY WORKS WHEN JURORS UNDERSTAND WHAT

1 THEIR ROLE IS AND THEN THEY FOLLOW THAT ROLE.

2 THE MOST IMPORTANT THING YOU CAN DO AS A
3 JUROR IS TO UNDERSTAND THAT YOU'RE NOT AN ADVOCATE FOR
4 ONE SIDE ARE THE OTHER AND THAT YOU HAVE TO BE FAIR TO
5 BOTH SIDES. BOTH SIDES.

6 THE DEFENSE AND THE PROSECUTION ARE
7 ABSOLUTELY ENTITLED TO A FAIR TRIAL. THE ONLY WAY THEY
8 CAN GET A FAIR TRIAL IS IF THE JURORS TREAT THEM FAIRLY.
9 AND WHAT THAT MEANS IS THE JURORS DON'T COME INTO THIS
10 COURTROOM WITH ANY KIND OF A BIAS OR A LEANING TOWARD
11 ONE SIDE OR THE OTHER.

12 THEY LISTEN TO THE EVIDENCE. THEY APPLY
13 THE LAW THAT THEY GET AT THE END OF THE CASE BY WAY OF
14 THE JURY INSTRUCTIONS. THEY USE THEIR COMMON SENSE AND
15 THEY RENDER A VERDICT.

16 AND IF THE EVIDENCE IS APPROPRIATE, THEN
17 THEY VOTE GUILTY. AND IF THE EVIDENCE IS NOT
18 APPROPRIATE, THEN THEY VOTE NOT GUILTY. BUT IT'S VERY
19 IMPORTANT THAT YOU UNDERSTAND THAT YOU'RE NOT ON THE
20 DEFENSE TEAM. YOU'RE NOT ON THE PROSECUTION'S TEAM.
21 YOU'RE ON THE JURORS' TEAM.

22 AND ABOVE AND BEYOND EVERYTHING, YOU HAVE
23 TO BE FAIR TO BOTH SIDES.

24 I THINK A DECENT ANALOGY CAN BE DRAWN
25 BETWEEN WHAT A JUROR DOES AND WHAT AN UMPIRE DOES BEHIND
26 THE PLATE AT A BASEBALL GAME. THE UMPIRE IS BEHIND HOME
27 BASE. HE'S WATCHING THE PITCHER THROW BALLS FROM A
28 LITTLE OVER 60 FEET AWAY. AND THE PITCHER THROWS THE

1 BALL, AND IF THE BALL IS NOT IN THE STRIKE ZONE, THEN
2 THE UMPIRE IS GOING TO DO HIS JOB, AND HE'S GOING TO
3 CALL IT A BALL.

4 IT DOESN'T MATTER WHETHER HE LIKES OR
5 DISLIKES THE PITCHER, THE CATCHER, OR THE BATTER. HE'S
6 GOING TO CALL IT AS HE SEES IT. AND IF THE BALL IS IN
7 THE STRIKE ZONE, HE'S GOING TO CALL IT A STRIKE. HE'S
8 GOING TO CALL IT AS HE SEES IT.

9 AND THAT'S WHAT IS BEING ASKED OF YOU. AND
10 A LITTLE LATER ON, I'LL TELL YOU WHAT -- HOW A JUROR
11 CALLS IT AS HE OR SHE SEES IT. BUT AT THIS POINT IT'S
12 VERY IMPORTANT THAT YOU ALL UNDERSTAND THAT, ABOVE
13 EVERYTHING ELSE, YOUR PRIMARY RESPONSIBILITY IS TO GIVE
14 BOTH SIDES A FAIR TRIAL, AND THAT MEANS TO RENDER THE
15 VERDICT THAT'S DICTATED BY THE EVIDENCE.

16 I SUSPECT THAT IF ANY OF YOU WERE SEATED
17 ANYWHERE AT THAT COUNSEL TABLE, YOU, TOO, WOULD WANT THE
18 JURORS BEING FAIR TO YOU. I MEAN THAT MAKES SENSE,
19 DOESN'T IT?

20 ALL RIGHT. THIS PART OF THE CASE IS KNOWN
21 AS JURY SELECTION. AND WHAT HAPPENS IN JURY SELECTION
22 IS THE ATTORNEYS ATTEMPT TO SIZE UP THE JURY TO MAKE A
23 DECISION AS TO WHETHER THEY FEEL COMFORTABLE WITH THE
24 JURORS THAT ARE GOING TO HEAR THE CASE.

25 NOW, YOU HAVE INDICATED THAT YOU DON'T KNOW
26 THEM, AND THEY DON'T KNOW YOU. WELL, THEN, HOW DO THEY
27 SIZE YOU UP? HOW DO THEY GET A FEEL FOR EACH ONE OF
28 YOU? THE ANSWERS TO THE QUESTIONS THAT I WILL POSE TO

1 YOU AND THEN THE ATTORNEYS WILL HAVE THE OPPORTUNITY TO
2 POSE QUESTIONS TO YOU AS WELL, AND THEY'LL LISTEN TO
3 YOUR ANSWERS.

4 THEY WILL -- EACH ONE, TWELVE JURORS THAT
5 THEY FEEL COMFORTABLE WITH AND THAT THEY FEEL
6 APPROPRIATE FOR THIS PARTICULAR CASE.

7 AS PART OF YOUR DUTY OF FAIRNESS, YOUR -- I
8 SHOULD SAY YOUR ABSOLUTE DUTY OF FAIRNESS, IT'S VERY
9 IMPORTANT THAT IN THIS PHASE OF THE CASE WHERE YOU'RE
10 BEING QUESTIONED, TO ALLOW THE ATTORNEYS TO MAKE AN
11 INFORMED DECISION ABOUT YOU, THAT YOU UNDERSTAND THAT
12 THERE ARE NO RIGHT ANSWERS AND THERE ARE NO WRONG
13 ANSWERS TO ANY OF THE QUESTIONS. THE ONLY ANSWERS THAT
14 COUNT ARE THE HONEST ANSWERS. THAT'S WHAT WE'RE LOOKING
15 FOR, HONEST ANSWERS.

16 PLEASE DON'T GIVE US AN ANSWER THAT YOU
17 THINK WE WANT TO HEAR OR YOU THINK WE DON'T WANT TO
18 HEAR. JUST GIVE US THE HONEST ANSWERS.

19 AND AGAIN, IF YOU WERE SEATED ANYWHERE AT
20 THE COUNSEL TABLE, YOU WOULD WANT THE JURORS BEING
21 HONEST WITH YOU AS WELL. SO PLEASE DO FOR THEM WHAT YOU
22 WOULD WANT IF YOU WERE SEATED THERE AS WELL. JUST BE
23 HONEST REGARDING THE ANSWERS TO THE QUESTIONS.

24 DOES EVERYBODY AGREE TO DO THAT? IF YOU
25 DO, RAISE YOUR HAND, IF YOU AGREE TO GIVE US HONEST
26 ANSWERS. LET ME MAKE SURE WE HAVE EVERYBODY ON BOARD.
27 ALL RIGHT. TWELVE HANDS. ALL RIGHT.

28 WHAT I'M GOING TO DO IS THIS: I'M GOING TO

1 GO OVER SEVERAL GENERAL CONCEPTS OF CRIMINAL LAW AND
2 THEN I WANT TO GO OVER THE QUESTIONNAIRE WITH EACH OF
3 YOU, THE 18-QUESTION QUESTIONNAIRE.

4 NOW, THE CONCEPTS OF CRIMINAL LAW THAT I'M
5 GOING TO GO OVER WITH YOU, THEY'RE NOT SPECIFIC OR
6 UNIQUE TO THIS CASE. THESE CONCEPTS ARE BASIC TO THE
7 AMERICAN SYSTEM OF CRIMINAL JUSTICE. THEY APPLY IN
8 EVERY COURTROOM IN THE UNITED STATES.

9 IT DOESN'T MATTER WHAT THE CHARGE IS, FROM
10 THE LEAST SERIOUS TO THE MOST SERIOUS. THEY APPLY IN
11 EVERY SINGLE CASE, AND I WANT TO GO OVER THEM WITH YOU.
12 SOME OF YOU MAY BE VERY WELL AWARE OF THEM, BUT OTHERS
13 OF YOU MAY NOT. SO I WANT TO GO OVER THOSE.

14 BUT I JUST THOUGHT OF SOMETHING. I DO WANT
15 TO MENTION TO YOU, BEFORE I GET INTO THE LEGAL CONCEPTS,
16 I HAVE KNOWN MR. LEONARD FOR A LONG TIME. I'VE KNOWN
17 MR. STENNIS FOR A LONG TIME.

18 ANY OF YOU WOULD LIKE TO SOCIALIZE WITH
19 THEM. THEY'RE BOTH JUST -- THEY'RE GOOD GUYS. THEY
20 REALLY ARE. WHILE THE TRIAL IS GOING ON, THOUGH, IT
21 MIGHT NOT SEEM THAT WAY. AND THE REASON I SAY THIS IS
22 YOU'RE GOING TO SEE THEM OUT IN THE HALLWAY OR
23 DOWNSTAIRS IN THE LOBBY, AND THEY'RE GOING TO IGNORE
24 YOU.

25 AND IF YOU DIDN'T KNOW BETTER, YOU WOULD
26 THINK, WELL, WHAT'S GOING ON WITH RICHARD LEONARD OVER
27 HERE? WHAT KIND OF, YOU KNOW, SNOB IS HE? OR WHY IS
28 MR. STENNIS OVER HERE -- WHY DOES HE HAVE HIS NOSE UP IN

1 THE AIR?

2 THAT'S -- THAT'S NOT THE CASE. AS TRIAL
3 ATTORNEYS, THEY KNOW THEY HAVE TO AVOID ALL CONTACT WITH
4 YOU, AND THEY'RE ORDERED NOT TO HAVE ANY CONTACT WITH
5 YOU. AND THEY'RE ESSENTIALLY ORDERED TO IGNORE YOU.

6 SO THAT'S WHY THEY'RE IGNORING YOU, BECAUSE
7 THEY HAVE TO AS TRIAL ATTORNEYS. THERE HAS TO BE ALL
8 AVOIDANCE OF ANY KIND OF WHAT APPEARS TO BE IMPROPRIETY,
9 AND IT JUST DOESN'T LOOK RIGHT IF THE ATTORNEYS ON THE
10 CASE ARE TALKING WITH OR EXCHANGING NICETIES WITH THE
11 JURORS ON THE SAME CASE.

12 SO THEY'RE GOING TO IGNORE YOU BUT DON'T
13 THINK IT'S BECAUSE OF ANY PERSONALITY DEFECT. THEY'RE
14 DOING WHAT GOOD TRIAL ATTORNEYS DO. THEY HAVE TO FOLLOW
15 THEIR ROLE. SO TO MAKE IT EASIER FOR THEM TO IGNORE
16 YOU, I'M GOING TO ASK YOU, ALL OF YOU, TO IGNORE THEM.

17 AT THE END OF THE CASE, IF YOU WANT TO, YOU
18 CAN TALK TO THEM IN THE HALLWAY AND YOU CAN SEE BOTH OF
19 THEM ARE AS I DESCRIBED; THEY'RE BOTH VERY NICE,
20 DOWN-TO-EARTH MEN. ALL RIGHT.

21 ALL RIGHT. I WANT TO GO OVER THE CHARGES
22 WITH YOU -- EXCUSE ME -- I WANT TO GO OVER THE LEGAL
23 CONCEPTS WITH YOU.

24 AND AS I SAID, THE FIRST THING I WANT TO
25 MENTION TO YOU IS THAT THE CHARGES -- AND THEY'RE
26 SERIOUS, OBVIOUSLY, ATTEMPTED MURDER, ASSAULT WITH A
27 FIREARM. ANYBODY WHO WOULD ADMIT THESE ARE SERIOUS
28 CHARGES, BUT THAT'S ALL THAT THEY ARE IS CHARGES.

1 THE CHARGES ARE NOT EVIDENCE. THE CHARGES
2 ARE WORDS AND NUMBERS ON A PIECE OF PAPER. THIS IS A
3 LEGAL DOCUMENT, AND THIS IS WHAT BRINGS YOU INTO THIS
4 COURTROOM. THIS IS WHAT BRINGS MR. LEONARD AND
5 MR. STENNIS INTO THE COURTROOM. THAT'S THE PURPOSE FOR
6 THE CHARGES.

7 IT'S MERELY WORDS AND NUMBERS ON A PIECE OF
8 PAPER THAT BRINGS US ALL TOGETHER. IT WOULD BE WRONG
9 FOR ANY JUROR TO THINK TO THEMSELVES OR TO SAY TO
10 SOMEONE ELSE THE FACT THAT MR. BURGHARDT IS CHARGED IS
11 EVIDENCE OF HIS GUILT.

12 IT IS NOT EVIDENCE OF HIS GUILT. IT'S
13 EVIDENCE OF NOTHING. WHETHER HE IS ULTIMATELY FOUND
14 GUILTY OR NOT WILL BE BASED ON THE EVIDENCE THAT IS
15 PRESENTED IN THE COURTROOM AND THAT COMES TO YOU BY WAY
16 OF TESTIMONY OF WITNESSES AND PHYSICAL ITEMS, EXHIBITS,
17 CHARTS, DIAGRAM, ET CETERA.

18 BUT THE CHARGES, THAT'S EVIDENCE OF
19 NOTHING. DOES ANYBODY HAVE A PROBLEM WITH THAT? IF YOU
20 DO, RAISE YOUR HANDS.

21 OKAY. ALL RIGHT. GOOD. ALL RIGHT.

22 I WANT TO TALK TO YOU NOW ABOUT SOME
23 RELATED CONCEPTS. THERE IS THE STANDARD OF PROOF, THE
24 BURDEN OF PROOF, AND THE PRESUMPTION OF INNOCENCE. ALL
25 RIGHT.

26 THE BURDEN OF PROOF FIRST. THIS IS A
27 CRIMINAL CASE. AND WHAT THE BURDEN OF PROOF MEANS IS
28 WHICH SIDE HAS THE OBLIGATION OF CALLING WITNESSES AND

1 PRESENTING EVIDENCE.

2 IN A CRIMINAL CASE THE PROSECUTION HAS
3 100 PERCENT OF THE OBLIGATION OF CALLING WITNESSES. IN
4 OTHER WORDS, MR. STENNIS HAS 100 PERCENT OF THE BURDEN
5 OF PROOF. I KNOW VERY WELL HE'S CALLING WITNESSES. HE
6 HAS TO CALL WITNESSES.

7 IF HE DOESN'T CALL ANY WITNESSES, THEN
8 EVERYBODY GETS TO GO HOME EARLY. SO I KNOW HE'S GOING
9 TO PRESENT EVIDENCE, AND I KNOW THAT HE IS GOING TO CALL
10 WITNESSES.

11 MR. LEONARD, ON BEHALF OF MR. BURGHARDT, HE
12 DOESN'T HAVE ANY BURDEN AT ALL. HE DOESN'T HAVE TO CALL
13 ANY WITNESSES. HE DOESN'T HAVE TO PRESENT ANY EVIDENCE.
14 AND I DON'T KNOW IF HE IS OR HE'S NOT.

15 SOMETIMES DEFENSE ATTORNEYS CALL WITNESSES
16 AND PRESENT EVIDENCE. SOMETIMES THEY DON'T. IT JUST
17 DEPENDS ON HOW THEY FEEL ABOUT THE CASE.

18 SO I KNOW MR. STENNIS IS GOING TO CALL
19 WITNESSES. I DON'T KNOW IF MR. LEONARD IS GOING TO CALL
20 WITNESSES.

21 BUT ASSUME FOR THE MOMENT THAT MR. LEONARD
22 DOES CALL WITNESSES. YOU'RE GOING TO GET A JURY
23 INSTRUCTION AT THE END OF THE CASE ON HOW TO ASSESS THE
24 CREDIBILITY OF WITNESSES. AND THAT JURY INSTRUCTION IS
25 GOING TO LIST A NUMBER OF FACTORS FOR YOU TO CONSIDER
26 ON HOW DO YOU ASSESS THE CREDIBILITY, HOW BELIEVABLE IS
27 THE WITNESS THAT IS TESTIFYING.

28 YOU WILL NOT SEE A FACTOR ON THAT LIST THAT

1 SAYS, WELL, WHICH SIDE CALLED THE WITNESS? WAS IT A
2 PROSECUTION WITNESS OR WAS IT A DEFENSE WITNESS? THAT
3 WILL NOT BE ONE OF THE FACTORS.

4 AND THE REASON IS YOU ARE REQUIRED TO
5 ASSESS THE CREDIBILITY OF EACH WITNESS BY THE SAME
6 FACTORS AND THE SAME SET OF STANDARDS REGARDLESS OF
7 WHICH SIDE CALLS THE WITNESS.

8 SO YOU WILL ASSESS THE CREDIBILITY OF THE
9 PROSECUTION WITNESSES JUST LIKE YOU DO THE DEFENSE
10 WITNESSES, ASSUMING THE DEFENSE CALLS PEOPLE TO TESTIFY.

11 DOES EVERYBODY UNDERSTAND THAT? YOU
12 DON'T DISTINGUISH BETWEEN PROSECUTION WITNESSES AND
13 DEFENSE WITNESSES IN THE MANNER IN WHICH YOU ASSESS
14 THEIR CREDIBILITY.

15 ALL RIGHT. EVERYBODY OKAY WITH THAT?

16 THE PROSPECTIVE JURORS: YES.

17 THE COURT: OKAY.

18 DOES ANYBODY HAVE A PROBLEM WITH THE FACT
19 THAT MR. STENNIS HAS 100 PERCENT OF THE BURDEN OF PROOF
20 AND MR. LEONARD HAS ZERO PERCENT? DOES ANYBODY HAVE A
21 PROBLEM WITH THAT? IT'S BASIC TO THE UNITED STATES
22 CONSTITUTION AND OUR SYSTEM OF CRIMINAL JUSTICE.

23 NOBODY HAS A PROBLEM? ALL RIGHT. GOOD.

24 ALL RIGHT. TWO RELATED TOPICS, THE
25 STANDARD OF PROOF AND THE PRESUMPTION OF INNOCENCE.
26 PRESUMPTION OF INNOCENCE FIRST.

27 ANYBODY WHO IS ACCUSED OF A CRIME, IT
28 DOESN'T MATTER WHAT THE CRIME IS, FROM THE MOST

1 INSIGNIFICANT, LEAST SERIOUS CRIME YOU CAN THINK OF, ALL
2 THE WAY UP TO AND INCLUDING CAPITAL MURDER.

3 ANYBODY WHO IS ACCUSED OF A CRIME IN THE
4 EYES OF THE LAW IS PRESUMED TO BE INNOCENT UNTIL ONE OF
5 TWO THINGS HAPPENS.

6 ONE, THEY COME INTO THE COURTROOM AND PLEAD
7 GUILTY. ONCE A PERSON COMES INTO THE COURTROOM AND
8 PLEADS GUILTY, THEN THE PRESUMPTION OF INNOCENCE
9 EVAPORATES, AND THEY'RE GUILTY. THE OTHER WAY IS
10 FOLLOWING A JURY TRIAL, THE JURY GOES INTO THE JURY
11 DELIBERATION ROOM, AND THEY DISCUSS THE CASE, AND THEY
12 DETERMINE THAT THE STANDARD OF PROOF HAS BEEN MET. AND
13 ONCE THEY DO THAT AND THEY FIND THE DEFENDANT GUILTY,
14 THEN THE PRESUMPTION OF INNOCENCE EVAPORATES AND THE
15 DEFENDANT IS GUILTY.

16 SO WHERE DOES THAT LEAVE MR. BURGHARDT
17 RIGHT NOW? WHAT'S, YOU KNOW, THE PRESENT STATUS? HE
18 HASN'T PLED GUILTY. IN FACT, HE'S PLED NOT GUILTY.
19 THAT'S WHY WE ARE HERE.

20 THE WITNESSES HAVEN'T TESTIFIED. YOU
21 HAVEN'T HEARD THE FINAL ARGUMENTS OF THE LAWYERS. YOU
22 HAVEN'T HEARD THE JURY INSTRUCTION, AND THE JURY HASN'T
23 DELIBERATED.

24 SO EVEN THOUGH CHARGED WITH THE SERIOUS
25 CHARGE, IN THE EYES OF THE LAW, HE IS PRESUMED TO BE
26 INNOCENT UNLESS AND UNTIL THE STANDARD OF PROOF IS MET.
27 AND YOU FOLKS DECIDE WHETHER THE STANDARD OF PROOF IS
28 MET, AND YOU FOLKS DECIDE THAT AT THE END OF THE CASE.

1 SO AS HE SITS HERE NOW, HE IS PRESUMED IN
2 THE EYES OF LAW TO BE INNOCENT, AND HE WILL KEEP THAT
3 PRESUMPTION WHILE THE WITNESSES ARE TESTIFYING, WHILE
4 YOU'RE HEARING THE FINAL ARGUMENTS OF THE LAWYERS, WHILE
5 THE JURY INSTRUCTIONS ARE BEING READ TO YOU, AND EVEN
6 WHEN YOU WALK INTO THE JURY ROOM TO DELIBERATE.

7 DOES ANYBODY HAVE A PROBLEM WITH THAT?
8 AND YOU WILL KEEP THAT PRESUMPTION OF
9 INNOCENCE UNLESS AND UNTIL YOU FOLKS DETERMINE THAT THE
10 STANDARD OF PROOF HAVE BEEN MET AND YOU FIND HIM GUILTY
11 OF ANY, ALL, OR SOME OF THE CHARGES. ANY OF YOU HAVE A
12 DISAGREEMENT OR PROBLEM WITH THAT.

13 THE PROSPECTIVE JURORS: NO.

14 THE COURT: OKAY.

15 AND LET ME TALK TO YOU ABOUT THE STANDARD
16 OF PROOF.

17 IF THIS WAS A CIVIL CASE WHERE ONE SIDE WAS
18 SUING THE OTHER FOR MONEY, THE STANDARD OF PROOF IS
19 CALLED PREPONDERANCE OF THE EVIDENCE. WHAT THAT MEANS
20 IS, IF THE PLAINTIFF, THE ONE THAT'S DOING THE SUING,
21 CAN PROVE THEIR CASE BY 50 PERCENT PLUS OR 50 AND
22 ONE-TENTH OF A PERCENT, THEN THEY HAVE PROVED THEIR CASE
23 BY A PREPONDERANCE OF THE EVIDENCE, AND THEY ARE
24 ENTITLED TO THE FAVORABLE VERDICT.

25 WELL, THIS IS A CRIMINAL CASE, AND THE
26 STANDARD OF PROOF IS HIGHER. IF THIS WAS A CASE
27 INVOLVING CHILD CUSTODY WHERE THE COURT HAD TO MAKE A
28 DECISION REGARDING THE CUSTODY OF CHILDREN, THIS, THE

1 STANDARD OF PROOF, IS CALLED CLEAR AND CONVINCING
2 EVIDENCE. THAT'S HIGHER THAN PREPONDERANCE OF THE
3 EVIDENCE.

4 BUT THIS IS A CRIMINAL CASE, AND THE
5 STANDARD OF PROOF IS EVEN HIGHER THAN THAT.

6 THE STANDARD OF PROOF IN A CRIMINAL CASE --
7 AND I WILL POINT OUT IT'S THE SAME STANDARD NO MATTER
8 WHAT THE CHARGE IS, NO MATTER WHAT THE COURTROOM IS --
9 IT'S THE SAME STANDARD THROUGHOUT ALL OF CRIMINAL LAW.

10 THE STANDARD OF PROOF IN A CRIMINAL CASE
11 IS, IN ORDER FOR THE JURY TO LEGALLY FIND A DEFENDANT
12 GUILTY, THEY MUST FIND THAT THE EVIDENCE PROVES GUILT
13 BEYOND A REASONABLE DOUBT. THAT IS THE STANDARD OF
14 PROOF IN A CRIMINAL CASE. IT'S PROOF BEYOND A
15 REASONABLE DOUBT.

16 WHO HAS HEARD THAT TERM BEFORE, EITHER IN
17 MOVIES OR YOU READ IT? RAISE YOUR HANDS HIGH SO I CAN
18 SEE. ALMOST ALL OF YOU, EVEN THOUGH ALMOST HALF OF YOU
19 HAVE HAD JURY DUTY.

20 AND THAT IS THE STANDARD OF PROOF IN THIS
21 CASE, MEANING THAT -- AND YOU'RE GOING TO GET A JURY
22 INSTRUCTION AT THE END OF THE CASE ON WHAT IS THE
23 DEFINITION OF PROOF BEYOND A REASONABLE DOUBT.

24 AND, IN FACT, AT THE END OF THE CASE,
25 YOU'RE GOING TO GET A STACK OF JURY INSTRUCTIONS, AND
26 IT'S GOING TO TELL YOU EVERYTHING YOU NEED TO KNOW TO
27 INTELLIGENTLY DECIDE THE CASE. THERE WILL BE VERY
28 LITTLE QUESTION THAT IS UNANSWERED BY THE TIME WE HAVE

1 TALKED TO YOU AND YOU RECEIVE THE JURY INSTRUCTIONS.

2 ALL RIGHT. AND MR. STENNIS, THEN, HE HAS
3 THE BURDEN OF CONVINCING YOU THAT THE DEFENDANT IS
4 GUILTY BEYOND A REASONABLE DOUBT. AND IT'S THE HIGHEST
5 STANDARD OF PROOF THAT THERE IS. BUT HE DOESN'T HAVE TO
6 DO MORE THAN THAT. HE DOESN'T HAVE TO DO MORE THAN
7 PROVE THE CASE TO YOU BEYOND A REASONABLE DOUBT.

8 WELL, WHAT WOULD MORE BE?

9 MORE WOULD BE BEYOND ANY DOUBT, BEYOND A
10 SHADOW OF A DOUBT, BEYOND ALL DOUBT, BEYOND THE STARS
11 AND THE MOON. MR. STENNIS DOES NOT HAVE TO DO THAT.
12 BUT HE DOES -- THE LAW DOES REQUIRE THAT HE PROVE THE
13 CASE TO YOU BEYOND A REASONABLE DOUBT. SO THIS IS GOING
14 TO BE A THREE-PART QUESTION.

15 WOULD ANY OF YOU REQUIRE MORE OF
16 MR. STENNIS THAN THE LAW REQUIRES? WOULD ANY OF YOU
17 REQUIRE THAT HE PROVE THE CASE BEYOND ANY DOUBT OR
18 BEYOND ALL DOUBT OR BEYOND A SHADOW OF A DOUBT BEFORE
19 YOU WOULD FIND MR. BURGHARDT GUILTY?

20 ANOTHER WAY TO ASK IT: WOULD ANY OF YOU
21 REQUIRE MORE OF MR. STENNIS THAN THE LAW REQUIRES OF
22 MR. STENNIS? IF YOU WOULD, RAISE YOUR HAND.

23 OKAY. I SEE NO HANDS.

24 OKAY. LET ME ASK THE OPPOSITE NOW.

25 ARE ANY OF YOU PERHAPS THINKING, WELL,
26 THIS -- THE STANDARD OF THE CASE REALLY SEEMS TOO HIGH.
27 I'M NOT GONNA REQUIRE THAT OF MR. STENNIS. SO AT THE
28 END OF THE CASE, IF I THINK MR. BURGHARDT MIGHT HAVE

1 DONE IT OR HE PROBABLY DID IT OR HE LIKELY DID IT OR HE
2 COULD HAVE DONE IT, BUT I'M NOT CONVINCED BEYOND A
3 REASONABLE DOUBT, I'M STILL GOING TO GO AHEAD AND FIND
4 HIM GUILTY ANYWAY.

5 ANOTHER WAY TO ASK THE QUESTION IS THIS:
6 WOULD ANY OF YOU REQUIRE LESS OF MR. STENNIS THAN THE
7 LAW REQUIRES? IF YOU WOULD, RAISE YOUR HANDS.

8 ALL RIGHT. I SEE NO HANDS.

9 HERE'S THE THIRD PART OF THE QUESTION. HOW
10 MANY OF YOU WILL ACCEPT AND LIVE WITH THE REASONABLE
11 DOUBT STANDARD, AND AT THE END OF THE CASE, IF YOU
12 BELIEVE THE EVIDENCE PROVES GUILT BEYOND A REASONABLE
13 DOUBT, YOU WILL VOTE GUILTY; BUT IF THE EVIDENCE DOES
14 NOT RISE TO THAT LEVEL, YOU WILL VOTE NOT GUILTY?

15 IF YOU AGREE TO DO THAT, RAISE YOUR HANDS.

16 LET ME MAKE SURE THAT WE HAVE TWELVE HANDS.
17 ALL RIGHT. GOOD.

18 A WORD ABOUT THE CHARGES. ALL RIGHT.

19 FIVE CHARGES. WHATEVER YOUR VERDICT IS ON
20 COUNT 1 MAY OR MAY NOT BE THE VERDICT ON COUNT 2, WHICH
21 MAY OR MAY NOT BE THE VERDICT ON COUNT 3.

22 WHAT I'M TRYING TO TELL YOU IS YOU'RE
23 REQUIRED TO ASSESS THE EVIDENCE ON EACH COUNT
24 INDIVIDUALLY. SO AT THE END OF THIS CASE, MR. BURGHARDT
25 CAN BE FOUND GUILTY OF ALL FIVE COUNTS, HE COULD BE
26 FOUND NOT GUILTY OF ALL FIVE COUNTS, OR SOME COUNTS
27 GUILTY, SOME COUNTS NOT GUILTY.

28 DOES EVERYBODY ACCEPT THAT AND UNDERSTAND

1 THAT?

2 THE PROSPECTIVE JURORS: YES.

3 THE COURT: ALL RIGHT.

4 SOMETHING ELSE I WANT TO TALK TO YOU ABOUT.

5 I MENTIONED TO YOU THAT THE ALLEGATIONS ARE
6 THAT THE OFFENSES IN THIS CASE ARE GANG RELATED. YOU'RE
7 GONNA HEAR EVIDENCE OF GANG MEMBERSHIP AND THIS IS A
8 GANG-RELATED CRIME.

9 ALL RIGHT. THE FIRST THING I WANT TO
10 MENTION TO YOU IS WE DON'T KNOW IF THE EVIDENCE OF GANG
11 MEMBERSHIP AND THE EVIDENCE OF GANG INVOLVEMENT IS
12 BELIEVABLE OR TRUE OR NOT.

13 YOU WILL HEAR EVIDENCE, I SUSPECT, THAT
14 MR. BURGHARDT IS AFFILIATED WITH A GANG. BUT THAT
15 DOESN'T MEAN THE EVIDENCE IS BELIEVABLE OR CREDIBLE.

16 EVERYBODY UNDERSTAND THAT?

17 THE PROSPECTIVE JURORS: YES.

18 THE COURT: ALL RIGHT.

19 BUT ASSUME, FOR ARGUMENT SAKE, THAT YOU
20 BELIEVE THE EVIDENCE AND YOU BELIEVE THAT MR. BURGHARDT
21 IS AFFILIATED WITH A GANG, THE GANG THAT YOU ARE GOING
22 TO HEAR ABOUT.

23 THAT DOESN'T MEAN THAT HE IS, THEREFORE,
24 GUILTY OF WHAT HE IS CHARGED WITH. YOU CAN BE A GANG
25 MEMBER AND NOT BE GUILTY OF A CRIME YOU'RE CHARGED WITH.

26 DOES THAT MAKE SENSE?

27 THE PROSPECTIVE JURORS: YES.

28 THE COURT: IF I'M A GANG MEMBER, SAY I'M, YOU

1 KNOW, I'M A HARD-CORE GANG MEMBER, AND I GET IDENTIFIED
2 AS HAVING COMMITTED AN ARMED ROBBERY. BUT MAYBE THE
3 WITNESSES COULDN'T SEE WELL, AND THEY MISIDENTIFY ME.

4 I'M NOT GUILTY OF THE ARMED ROBBERY; RIGHT?
5 BUT I'M STILL A GANG MEMBER. SO WHAT I'M TRYING TO GET
6 ACROSS TO YOU IS, A, WE DON'T KNOW IF THE EVIDENCE IS
7 BELIEVABLE THAT MR. BURGHARDT IS AFFILIATED WITH A GANG;
8 BUT AS ASSUMING THAT HE IS, THAT'S JUST PART OF THE
9 EVIDENCE THAT YOU ARE GOING TO HEAR. IT DOESN'T,
10 THEREFORE, NECESSARILY MEAN, THEREFORE, HE'S GUILTY OF
11 ALL OF THESE CHARGES.

12 EVIDENCE OF GANG MEMBERSHIP IS JUST PART OF
13 THE EVIDENCE THAT YOU ARE GOING TO HEAR IN THIS CASE.
14 IT MAY BE AT THE END OF THE CASE THAT YOU DO FIND THAT
15 THESE CRIMES ARE GANG RELATED. BUT MAYBE YOU WILL FIND
16 THAT THEY'RE NOT.

17 BUT IT WOULD BE WRONG AND UNFAIR AND JUST
18 IMPROPER IF ANY OF YOU WERE TO DECIDE, WELL, IF YOU HEAR
19 EVIDENCE OF THAT, MR. BURGHARDT IS A GANG MEMBER, YOU
20 DON'T NEED TO HEAR ANY MORE, YOU KNOW, FOR YOU TO VOTE
21 GUILTY. YOU'RE READY TO VOTE GUILTY RIGHT NOW. THAT
22 WOULD BE WRONG. IT WOULD BE A VIOLATION OF YOUR OATH.

23 IT WOULD ALSO BE WRONG FOR YOU TO SAY TO
24 YOURSELF, WELL, AS SOON AS I BELIEVE THAT HE IS, IN
25 FACT, A GANG MEMBER, I DON'T NEED TO HEAR ANY MORE. I'M
26 VOTING GUILTY.

27 THAT WOULD BE WRONG. YOU'VE GOT TO KEEP AN
28 OPEN MIND. YOU'VE GOT TO BE FAIR MINDED. YOU HAVE TO

1 BE IMPARTIAL. YOU HAVE TO BE OBJECTIVE. AND EVIDENCE
2 OF GANG MEMBERSHIP IS JUST PART OF THE EVIDENCE.

3 DOES ANYBODY HAVE A PROBLEM WITH WHAT I
4 SAID REGARDING GANG MEMBERSHIP?

5 THE PROSPECTIVE JURORS: NO.

6 THE COURT: OKAY. ALL RIGHT. GOOD. GOOD.

7 ALL RIGHT. I WANT TO GO OVER THE
8 QUESTIONNAIRE WITH YOU. AND WHEN WE GET TO -- WELL,
9 EVERYBODY IS GOING TO GIVE THE INFORMATION IN QUESTION
10 NO. 1.

11 WHEN WE GET DOWN TO 1-F, WHICH CALLS FOR --
12 IT'S PRIOR JURY EXPERIENCE, HERE'S WHAT WE'RE LOOKING
13 FOR. IF YOU HAVE BEEN ON A JURY BEFORE AND IT WAS A
14 CIVIL CASE, WE'RE GOING TO WANT TO KNOW WHETHER THE JURY
15 REACHED A VERDICT, BUT WE DON'T NEED TO KNOW WHAT THE
16 VERDICT WAS.

17 IF IT WAS A CRIMINAL CASE, WE'RE GOING TO
18 WANT TO KNOW WHAT THE CHARGES WERE, AND WE'RE GOING TO
19 WANT TO KNOW WHETHER THE JURY REACHED A VERDICT, BUT WE
20 DON'T WANT TO KNOW WHAT THE VERDICT WAS.

21 SO IN THIS KIND OF CASE, WE DON'T WANT TO
22 KNOW WHAT THE VERDICT WAS. WE'RE JUST INTERESTED IN WAS
23 THERE A VERDICT. EVERYBODY OKAY WITH THAT?

24 ALL RIGHT. LET'S START WITH JUROR NO. 3.

25 JUROR NO. 3, COULD YOU PLEASE START AND
26 GIVE US THE LAST FOUR NUMBERS OF YOUR JUROR
27 IDENTIFICATION NUMBER AND THEN JUST GO AHEAD AND GIVE US
28 THE REST OF THE INFORMATION TO QUESTION NO. 1.

1 PROSPECTIVE JUROR NO. 3 (9586): OKAY.

2 YOU WANT -- 9586.

3 THE COURT: DON'T WORRY ABOUT WHAT'S ON THE BOARD.

4 GO AHEAD AND FOLLOW THE QUESTIONNAIRE.

5 PROSPECTIVE JUROR NO. 3 (9586): OKAY.

6 I LIVE IN TORRANCE, AND I RETIRED FROM
7 UNITED AIRLINES.

8 THE COURT: YOU WORK FOR UNITED?

9 PROSPECTIVE JUROR NO. 3 (9586): YEAH. I'M
10 RETIRED.

11 THE COURT: RETIRED. WHAT DID YOU DO FOR UNITED?

12 PROSPECTIVE JUROR NO. 3 (9586): I WORK IN CABIN,
13 DIFFERENT STUFF.

14 THE COURT: HOW LONG HAVE YOU BEEN RETIRED?

15 PROSPECTIVE JUROR NO. 3 (9586): 14 YEARS. I --
16 I -- SEVEN YEARS NOW.

17 THE COURT: OKAY. ALL RIGHT.

18 GO AHEAD.

19 PROSPECTIVE JUROR NO. 3 (9586): I SINGLE. WAS --
20 I'M WIDOW.

21 THE COURT: YOU'RE A WIDOW?

22 PROSPECTIVE JUROR NO. 3 (9586): YES.

23 MY HUSBAND WORK IN CONTINENTAL AIRLINES
24 BEFORE THAT.

25 I HAVE TWO KIDS. TWO CHILDREN.

26 MY DAUGHTER HAVE THREE KIDS, AND MY SON IS
27 JUST MARRIED. MY DAUGHTER IS A LEGAL SECRETARY. AND MY
28 SON WORK AS AN EMPLOYEE IN HYDRO.

1 THE COURT: YOUR SON DOES WHAT?

2 PROSPECTIVE JUROR NO. 3 (9586): WORKING IN HYDRO

3 FINISH.

4 THE COURT REPORTER: YOUR HONOR, I DIDN'T

5 UNDERSTAND.

6 THE COURT: I DON'T UNDERSTAND WHAT YOU ARE

7 SAYING. HIGH DEFINITION? WHAT ARE YOU SAYING?

8 PROSPECTIVE JUROR NO. 3 (9586): YEAH. THEY STORE

9 IS HIGH DEFINITION.

10 THE COURT: TELEVISIONS.

11 PROSPECTIVE JUROR NO. 3 (9586): NO. IT'S SOME --

12 BELONG TO HOME DEPOT BEFORE. IT'S PART FOR -- THEY

13 SAW -- I DON'T KNOW THE --

14 THE COURT: DOES HE WORK, LIKE, WITH COMPUTERS OR

15 ELECTRONICS?

16 PROSPECTIVE JUROR NO. 3 (9586): NO. NO. IT'S

17 WITH TUBE, SELECT MATERIALS.

18 THE COURT: ALL RIGHT.

19 PROSPECTIVE JUROR NO. 3 (9586): HOSE AND

20 SOMETHING THEY MAKE METAL, UH-HUH.

21 THE COURT: IT'S MADE OUT OF METAL?

22 PROSPECTIVE JUROR NO. 3 (9586): SOME THING.

23 THE COURT: AND WHAT DO YOU DO WITH THESE PARTS?

24 PROSPECTIVE JUROR NO. 3 (9586): OH, NO. HE'S

25 SUPERVISOR AND SHIP AND RECEIVING.

26 THE COURT: SHIPPING AND RECEIVING.

27 PROSPECTIVE JUROR NO. 3 (9586): SHIPPING AND

28 RECEIVING. I DON'T REALLY -- IT'S HARD FOR ME TO

1 EXPLAIN. UH-HUH.

2 THE COURT: ALL RIGHT.

3 HAVE YOU EVER BEEN A JUROR BEFORE?

4 PROSPECTIVE JUROR NO. 3 (9586): YES.

5 THE COURT: HOW MANY TIMES?

6 PROSPECTIVE JUROR NO. 3 (9586): TWO TIMES.

7 THE COURT: CIVIL, CRIMINAL, OR ONE OF EACH?

8 PROSPECTIVE JUROR NO. 3 (9586): CRIMINAL.

9 THE COURT: BOTH TIMES?

10 PROSPECTIVE JUROR NO. 3 (9586): BOTH TIMES,

11 UH-HUH.

12 THE COURT: THE FIRST TIME HOW LONG AGO?

13 PROSPECTIVE JUROR NO. 3 (9586): MAYBE SIX YEAR.

14 THE COURT: AND WHAT WAS THE PERSON CHARGED WITH?

15 PROSPECTIVE JUROR NO. 3 (9586): THEY DO --

16 THE COURT: WHAT?

17 PROSPECTIVE JUROR NO. 3 (9586): ROBBERY.

18 THE COURT: ROBBERY.

19 PROSPECTIVE JUROR NO. 3 (9586): ROBBERY.

20 THE COURT: ALL RIGHT.

21 AND DID THE JURY REACH A VERDICT?

22 PROSPECTIVE JUROR NO. 3 (9586): YES.

23 THE COURT: AND WHERE WAS THAT TRIAL?

24 PROSPECTIVE JUROR NO. 3 (9586): GUILTY.

25 THE COURT: NO. NO.

26 WHERE WAS THAT TRIAL? WHERE?

27 PROSPECTIVE JUROR NO. 3 (9586): WHERE? HERE.

28 THE COURT: IN TORRANCE?

1 PROSPECTIVE JUROR NO. 3 (9586): IN TORRANCE.
2 THE COURT: ALL RIGHT.
3 AND WHAT WAS THE SECOND JURY TRIAL?
4 PROSPECTIVE JUROR NO. 3 (9586): TWO YEARS AGO.
5 THE COURT: WHERE?
6 PROSPECTIVE JUROR NO. 3 (9586): HERE. TORRANCE.
7 THE COURT: AND WHAT WAS THE PERSON CHARGED WITH?
8 PROSPECTIVE JUROR NO. 3 (9586): DRUNK AND DRIVER
9 DRUNK.
10 THE COURT: DRIVING WHILE UNDER THE INFLUENCE OF
11 ALCOHOL?
12 PROSPECTIVE JUROR NO. 3 (9586): UH-HUH.
13 THE COURT: YES?
14 PROSPECTIVE JUROR NO. 3 (9586): YES.
15 THE COURT: DID THE JURY REACH A VERDICT?
16 PROSPECTIVE JUROR NO. 3 (9586): YES.
17 THE COURT: SO YOU HAVE BEEN A JUROR BEFORE. YOU
18 KNOW WHAT THE JOB IS ALL ABOUT.
19 PROSPECTIVE JUROR NO. 3 (9586): UH-HUH. YES.
20 THE COURT: WHEN YOU SAT AS A JUROR THOSE OTHER
21 TWO TIMES, DID YOU DO IT WITH THE FRAME OF MIND THAT I
22 HAVE BEEN TALKING ABOUT WHICH IS FAIR, OPEN, IMPARTIAL,
23 OBJECTIVE?
24 PROSPECTIVE JUROR NO. 3 (9586): YEAH. WAS FAIR.
25 THE COURT: YES?
26 PROSPECTIVE JUROR NO. 3 (9586): YES.
27 THE COURT: ALL RIGHT.
28 THAT'S BEING ASKED OF YOU AGAIN IN THIS

1 CASE, TO BE FAIR TO BOTH SIDES AND RENDER THE VERDICT
2 THAT'S DICTATED BY THE EVIDENCE.

3 PROSPECTIVE JUROR NO. 3 (9586): YES.

4 THE COURT: ALL RIGHT.

5 PROSPECTIVE JUROR NO. 3 (9586): YES.

6 THE COURT: NOW, AT THE END OF THIS CASE, IF YOU
7 BELIEVE THAT THE EVIDENCE PROVES GUILT BEYOND A
8 REASONABLE DOUBT, WHAT WOULD YOUR VERDICT BE?

9 PROSPECTIVE JUROR NO. 3 (9586): YES. IT'S GUILTY
10 BEYOND A REASONABLE DOUBT.

11 THE COURT: IF YOU DID NOT THINK THAT THE EVIDENCE
12 ROSE TO THAT LEVEL, WHAT WOULD YOUR VERDICT BE?

13 PROSPECTIVE JUROR NO. 3 (9586): INNOCENT. IT'S
14 NOT -- IT'S NOT GUILTY.

15 THE COURT: NOT GUILTY. RIGHT. NOT GUILTY.
16 THAT'S IT.

17 IF THE CASE IS PROVEN BEYOND A REASONABLE
18 DOUBT, YOU VOTE GUILTY. IF THE CASE IS PROVEN -- IF THE
19 CASE IS NOT PROVEN BEYOND A REASONABLE DOUBT, YOU VOTE
20 NOT GUILTY.

21 SO AT THE END CASE, IF YOU THINK, YOU KNOW,
22 MR. BURGHARDT, HE MIGHT HAVE DONE IT OR HE COULD HAVE
23 DONE IT BUT IF YOU'RE NOT CONVINCED BEYOND A REASONABLE
24 DOUBT, YOU VOTE NOT GUILTY.

25 PROSPECTIVE JUROR NO. 3 (9586): UH-HUH.

26 THE COURT: THIS IS NOT A CASE WHERE YOU DECIDE
27 GUILT AND INNOCENCE. IT'S EITHER GUILTY OR NOT GUILTY.

28 GUILTY MEANS PROVEN BEYOND A REASONABLE

1 DOUBT. NOT GUILTY MEANS NOT PROVEN BEYOND A REASONABLE
2 DOUBT.

3 DO YOU UNDERSTAND THAT?

4 PROSPECTIVE JUROR NO. 3 (9586): OKAY. YES,
5 UH-HUH.

6 THE COURT: RIGHT.

7 DO YOU HAVE ANY "YES" ANSWERS TO THE
8 QUESTIONS AND, IF YOU DO, WHICH QUESTION NUMBERS?

9 PROSPECTIVE JUROR NO. 3 (9586): NO.

10 THE COURT: NO "YES" ANSWERS?

11 PROSPECTIVE JUROR NO. 3 (9586): NO QUESTION.

12 THE COURT: CAN YOU BE FAIR TO BOTH SIDES?

13 PROSPECTIVE JUROR NO. 3 (9586): YES.

14 THE COURT: VERY GOOD.

15 JUROR NO. 11, CAN YOU GIVE US THE
16 INFORMATION, PLEASE.

17 PROSPECTIVE JUROR NO. 11 (6203): YES.

18 MY NUMBER IS 6203.

19 I LIVE IN TORRANCE.

20 MY OCCUPATION, I'M A MANAGER. I WORK AT
21 U.S.C.

22 I'M MARRIED. MY HUSBAND IS A TECHNICAL
23 TECHNICIAN. AND MY DAUGHTER IS A STUDENT, A COLLEGE
24 STUDENT.

25 MY PRIOR JURY EXPERIENCE, I'VE BEEN ON TWO
26 CASES, TWO TRIALS, AND THEY WERE BOTH CIVIL. ONE WAS
27 ABOUT 12 YEARS AGO, AND WE REACHED A VERDICT. AND THE
28 OTHER WAS ABOUT FIVE YEARS AGO, AND WE DID NOT REACH A

1 VERDICT.

2 THE COURT: WAS IT A HUNG JURY? WAS THE CASE
3 TAKEN FROM YOU?

4 PROSPECTIVE JUROR NO. 11 (6203): A HUNG JURY.

5 THE COURT: CIVIL CASE?

6 PROSPECTIVE JUROR NO. 11 (6203): CORRECT.

7 THE COURT: WHEN YOU SAT ON THE CASE THAT WAS A
8 HUNG JURY, DO YOU THINK IT WAS AN HONEST DIFFERENCE OF
9 OPINION AMONG THE JURORS OR DO YOU THINK SOME OF THE
10 JURORS WEREN'T DELIBERATING IN GOOD FAITH?

11 PROSPECTIVE JUROR NO. 11 (6203): NO. I THINK IT
12 WAS HONEST.

13 THE COURT: OKAY.

14 WHAT DO YOU MANAGE AT U.S.C.?

15 PROSPECTIVE JUROR NO. 11 (6203): OH, I'M IN
16 REGISTRATION AND RECORDS, CLASSROOM SCHEDULING.

17 THE COURT: AND I -- YOUR DAUGHTER IS GOING TO
18 S.C.?

19 PROSPECTIVE JUROR NO. 11 (6203): NO. SHE'S GOES
20 TO LONG BEACH STATE.

21 THE COURT: CAL STATE LONG BEACH.

22 WHAT IS SHE STUDYING?

23 PROSPECTIVE JUROR NO. 11 (6203): GERONTOLOGY.

24 THE COURT: SHE WANTS TO GO INTO ILLNESSES OF THE
25 AGED?

26 PROSPECTIVE JUROR NO. 11 (6203): (NODS HEAD IN
27 THE AFFIRMATIVE.)

28 THE COURT: GOOD FOR HER.

1 AND HOW FAR ALONG IS SHE?

2 PROSPECTIVE JUROR NO. 11 (6203): SHE'S GOING --
3 GRADUATED IN A YEAR.

4 THE COURT: VERY GOOD. ALL RIGHT.

5 NOW, THE STANDARD OF PROOF IN THE CIVIL
6 CASES WAS LOWER OR LESS THAN IN THIS CRIMINAL CASE. IT
7 WAS PREPONDERANCE OF THE EVIDENCE.

8 DO YOU REMEMBER THAT TERM BEING BANDIED
9 ABOUT DURING THAT CIVIL CASE?

10 PROSPECTIVE JUROR NO. 11 (6203): YES.

11 THE COURT: ALL RIGHT.

12 ARE YOU GOING TO HAVE A PROBLEM WITH THE
13 INCREASED STANDARD OF PROOF IN THIS CASE?

14 PROSPECTIVE JUROR NO. 11 (6203): NO.

15 THE COURT: ANY QUARREL WITH ANY OF THE LEGAL
16 CONCEPTS THAT I TALKED ABOUT? STANDARD OF PROOF?
17 BURDEN OF PROOF? ANYTHING YOU HEARD?

18 PROSPECTIVE JUROR NO. 11 (6203): NO.

19 THE COURT: AT THE END OF THE CASE, IF YOU BELIEVE
20 THAT THE EVIDENCE PROVED GUILT BEYOND A REASONABLE
21 DOUBT, WHAT WOULD YOUR VERDICT BE?

22 PROSPECTIVE JUROR NO. 11 (6203): GUILTY.

23 THE COURT: IF YOU THOUGHT, YOU KNOW, I THINK
24 MR. BURGHARDT -- I THINK HE MIGHT HAVE DONE IT, BUT I'M
25 NOT CONVINCED BEYOND A REASONABLE DOUBT, WHAT WOULD YOUR
26 VERDICT BE?

27 PROSPECTIVE JUROR NO. 11 (6203): NOT GUILTY.

28 THE COURT: OKAY.

1 DO YOU HAVE "YES" ANSWERS TO THE QUESTIONS?

2 PROSPECTIVE JUROR NO. 11 (6203): I HAVE "YES"
3 ANSWERS TO SIX AND SEVEN.

4 THE COURT: TELL US ABOUT SIX, PLEASE.

5 PROSPECTIVE JUROR NO. 11 (6203): SIX. MY SISTER
6 IS A LAWYER, AND SHE USED TO BE A PROSECUTOR.

7 AND ON SEVEN --

8 THE COURT: HOLD ON. HOLD ON.

9 WHO WAS YOUR SISTER A PROSECUTOR FOR?

10 PROSPECTIVE JUROR NO. 11 (6203): SHE WAS WORKING
11 IN CHICAGO AT THAT TIME.

12 THE COURT: HOW LONG WAS SHE A PROSECUTOR?

13 PROSPECTIVE JUROR NO. 11 (6203): ABOUT
14 FIVE YEARS.

15 THE COURT: AND DOES SHE DEFEND NOW?

16 PROSPECTIVE JUROR NO. 11 (6203): NO. NOW, SHE'S
17 IN THE BUSINESS.

18 THE COURT: ALL RIGHT.

19 SO FOR FIVE YEARS SHE DID WHAT MR. STENNIS
20 DOES. THEY PROSECUTE PEOPLE WHO WERE ACCUSED OF CRIMES.

21 PROSPECTIVE JUROR NO. 11 (6203): RIGHT.

22 THE COURT: DO YOU THINK THAT BECAUSE YOUR SISTER
23 WAS A PROSECUTOR THAT THAT'S GOING TO ALIGN YOU MORE
24 WITH MR. STENNIS'S SIDE OF CASE?

25 PROSPECTIVE JUROR NO. 11 (6203): NO.

26 THE COURT: WHILE THE CASE IS GOING ON, YOU CAN'T
27 DISCUSS THE CASE WITH ANYBODY, INCLUDING YOUR SISTER.

28 PROSPECTIVE JUROR NO. 11 (6203): CORRECT.

1 THE COURT: DO YOU UNDERSTAND THAT?
2 PROSPECTIVE JUROR NO. 11 (6203): YES.
3 THE COURT: NO. 7.
4 PROSPECTIVE JUROR NO. 11 (6203): NO. 7, MY MOTHER
5 HAD A CLOSE FRIEND WHO WAS RAPED AND MURDERED AT THE AGE
6 OF ABOUT 72 WHEN SHE WAS WORKING.
7 THE COURT: RAPED AND MURDERED AT THE AGE OF WHAT?
8 PROSPECTIVE JUROR NO. 11 (6203): 72.
9 THE COURT: WHERE DID THAT OCCUR?
10 PROSPECTIVE JUROR NO. 11 (6203): PROBABLY ABOUT
11 20 YEARS AGO.
12 THE COURT: WHERE DID THAT HAPPEN?
13 PROSPECTIVE JUROR NO. 11 (6203): CHICAGO.
14 THE COURT: WERE YOU LIVING BACK THERE AT THE
15 TIME?
16 PROSPECTIVE JUROR NO. 11 (6203): NO.
17 THE COURT: AND IS YOUR MOM BACK THERE?
18 PROSPECTIVE JUROR NO. 11 (6203): NO. MY MOTHER
19 IS PASSED AWAY.
20 THE COURT: BUT SHE LIVED IN CHICAGO?
21 PROSPECTIVE JUROR NO. 11 (6203): NO.
22 THE COURT: WAS SHE LIVING IN CHICAGO AT THE TIME?
23 PROSPECTIVE JUROR NO. 11 (6203): NO.
24 THE COURT: HOW DID SHE HAVE A FRIEND LIVING IN
25 CHICAGO?
26 PROSPECTIVE JUROR NO. 11 (6203): USED TO BE OUR
27 NEIGHBOR.
28 THE COURT: WHERE?

1 PROSPECTIVE JUROR NO. 11 (6203): WHEN WE WERE
2 LIVING IN LOS ANGELES.

3 THE COURT: ALL RIGHT.

4 SO THEN SHE MOVED TO CHICAGO?

5 PROSPECTIVE JUROR NO. 11 (6203): (NODS HEAD IN
6 THE AFFIRMATIVE.) YES.

7 THE COURT: DO YOU KNOW WHETHER THE CASE WAS EVER
8 SOLVED BY THE POLICE?

9 PROSPECTIVE JUROR NO. 11 (6203): IT WAS NEVER
10 SOLVED.

11 THE COURT: DO YOU OR YOUR MOTHER HOLD IT AGAINST
12 THE POLICE BECAUSE THEY DID NOT SOLVE THE CASE?

13 PROSPECTIVE JUROR NO. 11 (6203): NO.

14 THE COURT: IS THERE ANY IDEA OF WHAT THE SUSPECT
15 LOOKED LIKE?

16 PROSPECTIVE JUROR NO. 11 (6203): NO.

17 THE COURT: THE RACE OF THE SUSPECT? NOTHING?

18 PROSPECTIVE JUROR NO. 11 (6203): NO.

19 THE COURT: ALL RIGHT.

20 IS THERE ANY CHANCE AT ALL THAT YOU WOULD
21 HOLD THAT UNSOLVED RAPE AND MURDER AGAINST
22 MR. BURGHARDT, MEANING THAT YOU THINK TO YOURSELF, SINCE
23 THE RAPIST\MURDERER GOT AWAY WITH IT, I'M GOING TO MAKE
24 SURE THAT MR. BURGHARDT DOESN'T GET AWAY WITH THIS AND
25 I'M GOING TO FIND HIM GUILTY?

26 PROSPECTIVE JUROR NO. 11 (6203): NO.

27 THE COURT: ANY CHANCE OF THAT?

28 PROSPECTIVE JUROR NO. 11 (6203): NO.

1 THE COURT: LET ME ASK THE OPPOSITE: IS THERE ANY
2 CHANCE AT ALL YOU WOULD THINK TO YOURSELF, SINCE THE
3 RAPIST\MURDERER GOT AWAY WITH IT, I'M GOING TO MAKE SURE
4 MR. BURGHARDT GETS AWAY WITH IT, AND I'M GOING TO FIND
5 HIM NOT GUILTY?

6 PROSPECTIVE JUROR NO. 11 (6203): NO.

7 THE COURT: IS THERE ANYTHING ABOUT WHAT HAPPENED
8 TO YOUR MOTHER'S FRIEND GOING TO IMPACT YOU IN ANY WAY
9 ON THIS CASE?

10 PROSPECTIVE JUROR NO. 11 (6203): NO.

11 THE COURT: ALL RIGHT.

12 DO YOU HAVE ANY OTHER "YES" ANSWERS OR ANY
13 OTHER RESPONSES TO NO. 7?

14 PROSPECTIVE JUROR NO. 11 (6203): NO.

15 THE COURT: CAN YOU GIVE BOTH SIDES A FAIR TRIAL?

16 PROSPECTIVE JUROR NO. 11 (6203): YES.

17 THE COURT: VERY GOOD.

18 JUROR NO. 6, CAN YOU GIVE US THE
19 INFORMATION, SIR, IN QUESTION NO. 1, PLEASE.

20 PROSPECTIVE JUROR NO. 6 (7875): NO. 1, JUROR
21 IDENTIFICATION NO. 7875.

22 AREA OF RESIDENCE, CARSON.

23 OCCUPATION, RETIRED FROM MOHAWK INDUSTRIES.

24 THE COURT: MOHAWK, IS THAT CARPETING?

25 PROSPECTIVE JUROR NO. 6 (7875): YES.

26 THE COURT: WHAT DID YOU DO FOR THEM?

27 PROSPECTIVE JUROR NO. 6 (7875): I WAS
28 WAREHOUSEMAN.

1 THE COURT: HOW LONG DID YOU WORK FOR THEM?
2 PROSPECTIVE JUROR NO. 6 (7875): ABOUT 15 YEARS.
3 THE COURT: OKAY.
4 HOW LONG HAVE YOU BEEN RETIRED?
5 PROSPECTIVE JUROR NO. 6 (7875): A YEAR.
6 THE COURT: OKAY.
7 ALL RIGHT. GO AHEAD.
8 PROSPECTIVE JUROR NO. 6 (7875): MARITAL STATUS,
9 MARRIED.
10 OCCUPATION OF SPOUSE, PAYROLL CLERK.
11 PRIOR JURY EXPERIENCE, NONE.
12 THE COURT: HOW ABOUT CHILDREN? ANY KIDS?
13 PROSPECTIVE JUROR NO. 6 (7875): TWO. TWO GIRLS.
14 THE COURT: TWO GIRLS?
15 PROSPECTIVE JUROR NO. 6 (7875): UH-HUH.
16 THE COURT: AND WHAT DO THEY DO?
17 PROSPECTIVE JUROR NO. 6 (7875): ONE WORKS FOR
18 ST. MARY'S HOSPITAL AS A -- AS CLERK AND RECEIVE PEOPLE
19 COMING IN TO HAVE BABIES.
20 THE COURT: OKAY.
21 PROSPECTIVE JUROR NO. 6 (7875): AND THE OTHER
22 ONE, SHE'S A CLERK FOR (UNINTELLIGIBLE) COMPANY.
23 THE COURT: A CLERK FOR WHAT? FOR A MEDICAL
24 COMPANY.
25 PROSPECTIVE JUROR NO. 6 (7875): NO. METAL.
26 THE COURT: METAL?
27 PROSPECTIVE JUROR NO. 6 (7875): UH-HUH.
28 THE COURT: AND JURY SERVICE?

1 PROSPECTIVE JUROR NO. 6 (7875): NONE.

2 THE COURT: BASED ON WHAT I SAID SO FAR, DO YOU
3 GET A SENSE OF WHAT THE JOB IS ALL ABOUT?

4 PROSPECTIVE JUROR NO. 6 (7875): YEAH.

5 THE COURT: YOU HAVE TO BE FAIR TO BOTH SIDES.

6 PROSPECTIVE JUROR NO. 6 (7875): YES.

7 THE COURT: YES?

8 AS YOU SIT THERE NOW, DO YOU HAVE THE FRAME
9 OF MIND THAT I'VE BEEN TALKING ABOUT WHICH IS FAIR,
10 OPEN, AND IMPARTIAL AND OBJECTIVE?

11 PROSPECTIVE JUROR NO. 6 (7875): YES.

12 THE COURT: YOU'RE NOT HERE TO BE THE BUDDY OF
13 MR. STENNIS OR THE BUDDY OF MR. LEONARD --

14 PROSPECTIVE JUROR NO. 6 (7875): NO.

15 THE COURT: -- RIGHT?

16 BY THE SAME TOKEN, YOU'RE NOT HERE TO BE
17 THEIR FOE.

18 PROSPECTIVE JUROR NO. 6 (7875): NO.

19 THE COURT: YOU'RE HERE TO BE THE UMPIRE BEHIND
20 THE PLATE.

21 PROSPECTIVE JUROR NO. 6 (7875): YES.

22 THE COURT: DO YOU AGREE WITH THAT?

23 PROSPECTIVE JUROR NO. 6 (7875): YES.

24 THE COURT: ANY QUARREL WITH ANY OF THE LEGAL
25 CONCEPTS THAT I TALKED ABOUT?

26 PROSPECTIVE JUROR NO. 6 (7875): NO.

27 THE COURT: NOTHING RUBS YOU THE WRONG WAY?

28 PROSPECTIVE JUROR NO. 6 (7875): NO.

1 THE COURT: AT THE END OF THE CASE, IF YOU BELIEVE
2 THE EVIDENCE PROVED GUILT BEYOND A REASONABLE DOUBT,
3 WHAT WOULD YOUR VERDICT BE?

4 PROSPECTIVE JUROR NO. 6 (7875): GUILTY.

5 THE COURT: IF YOU DIDN'T THINK THAT THE EVIDENCE
6 PROVES GUILT BEYOND A REASONABLE DOUBT?

7 PROSPECTIVE JUROR NO. 6 (7875): NOT GUILTY.

8 THE COURT: DO YOU HAVE "YES" ANSWERS?

9 PROSPECTIVE JUROR NO. 6 (7875): YES.

10 THE COURT: WHICH QUESTIONS?

11 PROSPECTIVE JUROR NO. 6 (7875): NO. 7.

12 THE COURT: THAT'S THE ONLY ONE?

13 PROSPECTIVE JUROR NO. 6 (7875): YES.

14 THE COURT: OKAY.

15 TELL US.

16 PROSPECTIVE JUROR NO. 6 (7875): HAVE YOU EVER HAD
17 A LEGAL, PLUS YOU BEEN A VICTIM OF A CRIME? YES. MY
18 GRANDDAUGHTER WENT TO (UNINTELLIGIBLE) STATE. WAS RAPED
19 BY --

20 THE COURT: WAIT.

21 YOUR GRANDDAUGHTER WHAT?

22 PROSPECTIVE JUROR NO. 6 (7875): WAS A STUDENT AT
23 FRESNO STATE, AND SHE WAS RAPED BY FOUR MEN.

24 THE COURT: RAPED BY FOUR MEN?

25 PROSPECTIVE JUROR NO. 6 (7875): YES.

26 THE COURT: WAS SHE ABDUCTED OFF THE STREET OR
27 THIS HAPPENED AT A PARTY OR DO YOU KNOW?

28 PROSPECTIVE JUROR NO. 6 (7875): I'M NOT SURE.

1 I'M PRETTY SURE SHE WAS AT A PARTY, AND
2 THEY GOT HER DRUNK. THEY INJECT HER AND THEY GIVE HER
3 SOME KIND OF PILLS.

4 THE COURT: DATE RAPE DRUG?

5 PROSPECTIVE JUROR NO. 6 (7875): DATE RAPE, RIGHT.

6 THE COURT: DID SHE REPORT THE RAPE TO THE POLICE?

7 PROSPECTIVE JUROR NO. 6 (7875): YES.

8 THE COURT: WERE THE PEOPLE CAUGHT?

9 PROSPECTIVE JUROR NO. 6 (7875): NO.

10 THE COURT: DID SHE HOLD THAT AGAINST THE POLICE?

11 PROSPECTIVE JUROR NO. 6 (7875): THE FAMILY DOES,
12 YEAH.

13 THE COURT: DO YOU?

14 PROSPECTIVE JUROR NO. 6 (7875): NO.

15 THE COURT: WHY DOES THE FAMILY HOLD IT AGAINST
16 THE POLICE?

17 PROSPECTIVE JUROR NO. 6 (7875): BECAUSE THEY
18 DIDN'T GO UP TO THE GUYS AND THEY KNEW WHAT THEY DID.

19 THE COURT: SAY AGAIN.

20 PROSPECTIVE JUROR NO. 6 (7875): THEY DIDN'T GO
21 AFTER THE PEOPLE THAT DID IT, BUT THEY KNEW WHO IT WAS
22 WHO -- WHO IS THE STUDENT THAT DID IT.

23 THE COURT: WHY IS IT THAT THE FAMILY HOLDS IT
24 AGAINST THE POLICE BUT YOU DON'T?

25 PROSPECTIVE JUROR NO. 6 (7875): OKAY. I'LL SAY I
26 HOLD IT AGAINST THE POLICE.

27 THE COURT: WELL, YOU JUST SAID YOU DIDN'T. SO I
28 MEAN WE JUST WANT TO KNOW HOW YOU FEEL.

1 PROSPECTIVE JUROR NO. 6 (7875): YEAH. I HOLD IT
2 AGAINST THEM FOR NOT GOING AFTER THEM.

3 THE COURT: WHICH POLICE DEPARTMENT?

4 PROSPECTIVE JUROR NO. 6 (7875): IT WAS A FRESNO
5 POLICE DEPARTMENT.

6 THE COURT: DID THAT INCIDENT CAUSE YOU OR THE
7 FAMILY TO LOOK DOWNWARD ON ALL POLICE OR JUST FRESNO?

8 PROSPECTIVE JUROR NO. 6 (7875): JUST FRESNO
9 POLICE.

10 THE COURT: DO YOU HAVE ANY PROBLEM WITH SOUTHERN
11 CALIFORNIA POLICE DEPARTMENT?

12 PROSPECTIVE JUROR NO. 6 (7875): NO.

13 THE COURT: NO?

14 PROSPECTIVE JUROR NO. 6 (7875): NO.

15 THE COURT: IS THERE ANY CHANCE THAT YOU WOULD BE
16 LIKELY TO FIND MR. BURGHARDT EITHER GUILTY OR NOT GUILTY
17 BECAUSE OF WHAT HAPPENED TO YOUR GRANDDAUGHTER?

18 PROSPECTIVE JUROR NO. 6 (7875): NO.

19 THE COURT: DO YOU KNOW THE ETHNICITY, THE RACE OF
20 THE INDIVIDUALS WHO RAPED YOUR GRANDDAUGHTER?

21 PROSPECTIVE JUROR NO. 6 (7875): YES.

22 THE COURT: WHAT?

23 PROSPECTIVE JUROR NO. 6 (7875): BLACK.

24 THE COURT: NOW, YOU CAN SEE THAT MR. BURGHARDT IS
25 BLACK.

26 PROSPECTIVE JUROR NO. 6 (7875): YES.

27 THE COURT: HOW DO YOU FEEL ABOUT THAT?

28 PROSPECTIVE JUROR NO. 6 (7875): IT DOESN'T BOTHER

1 ME.

2 THE COURT: WAS THIS --

3 PROSPECTIVE JUROR NO. 6 (7875): IT DOESN'T BOTHER
4 ME.

5 THE COURT: SO HIS RACE IS NOT GOING TO COME BACK
6 TO HAUNT THEM ON THIS CASE?

7 PROSPECTIVE JUROR NO. 6 (7875): NO.

8 THE COURT: YOU'RE NOT GOING TO THINK, "WELL, YOU
9 KNOW, AFRICAN-AMERICANS RAPED MY GRANDDAUGHTER. I'M
10 GONNA FIX OLD MR. BURGHARDT HERE AND FIND HIM GUILTY
11 BECAUSE HE'S BLACK?"

12 PROSPECTIVE JUROR NO. 6 (7875): NO.

13 THE COURT: DO YOU HAVE ANY OTHER "YES" ANSWERS?

14 PROSPECTIVE JUROR NO. 6 (7875): NO. THAT'S IT.

15 THE COURT: DO YOU HAVE ANY OTHER RESPONSES TO
16 NO. 7?

17 PROSPECTIVE JUROR NO. 6 (7875): NO.

18 THE COURT: CAN YOU BE FAIR TO BOTH SIDES?

19 PROSPECTIVE JUROR NO. 6 (7875): YES.

20 THE COURT: IT'S VERY IMPORTANT THAT YOU BE FAIR.
21 I KNOW YOU KNOW WHAT HAPPENED TO YOUR GRANDDAUGHTER.
22 YOU KNOW, IT'S BEYOND HORRID.

23 BUT, YOU KNOW, SOMETIMES -- WELL, WHEN
24 PEOPLE PERFORM JURY DUTY, THEY -- THEY'RE NOT GOING TO
25 FORGET THEIR PERSONAL EXPERIENCE, BUT THEY HAVE TO PUT
26 THEM TO THE SIDE.

27 THIS CASE IS ONLY FAIRLY DECIDED IF THE
28 JURORS BASE THEIR DECISION ON THE EVIDENCE THAT IS

1 PRESENTED, THAT IS, THEIR COMMON SENSE AND THE LAW THAT
2 THEY GET AT THE END OF THE CASE, NOT THEIR PERSONAL
3 FEELINGS OR, YOU KNOW, PRIOR EXPERIENCES.

4 DO YOU ACCEPT THAT?

5 PROSPECTIVE JUROR NO. 6 (7875): YES.

6 THE COURT: CAN YOU BE FAIR TO BOTH SIDES?

7 PROSPECTIVE JUROR NO. 6 (7875): HUH?

8 THE COURT: CAN YOU BE FAIR TO BOTH SIDES?

9 PROSPECTIVE JUROR NO. 6 (7875): YES.

10 THE COURT: ALL RIGHT. VERY GOOD.

11 JUROR NO. 12, CAN YOU GIVE US THE
12 INFORMATION, PLEASE?

13 PROSPECTIVE JUROR NO. 12 (8302): OH.

14 JUROR IDENTIFICATION NUMBER 091578302.

15 AND AREA OF RESIDENCE, TORRANCE.

16 OCCUPATION IS STUDENT.

17 MARITAL STATUS, SINGLE. SO, THEREFORE,
18 NO -- NO SPOUSE OR CHILDREN.

19 AND PRIOR JURY EXPERIENCE, NO.

20 THE COURT: WHERE ARE YOU GOING TO SCHOOL?

21 PROSPECTIVE JUROR NO. 12 (8302): EL CAMINO
22 COLLEGE.

23 THE COURT: WHAT ARE YOU STUDYING?

24 PROSPECTIVE JUROR NO. 12 (8302): PARALEGAL
25 STUDIES.

26 THE COURT: PARALEGAL.

27 YOU WANT TO BE A PARALEGAL?

28 PROSPECTIVE JUROR NO. 12 (8302): YES.

1 THE COURT: WHAT AREA OF LAW INTERESTS YOU?

2 PROSPECTIVE JUROR NO. 12 (8302): I'M NOT SURE
3 YET.

4 THE COURT: ARE YOU THINKING MAYBE SOMETIME DOWN
5 THE LINE OF GOING TO LAW SCHOOL?

6 PROSPECTIVE JUROR NO. 12 (8302): POSSIBLY.

7 THE COURT: GOOD FOR YOU.

8 NOW, YOU, LIKE THE JUROR WHO IS SEATED
9 RIGHT BEHIND YOU, YOU HAVE NEVER BEEN ON A JURY BEFORE.

10 DO YOU GET A SENSE OF WHAT IS BEING ASKED
11 OF YOU?

12 PROSPECTIVE JUROR NO. 12 (8302): YES.

13 THE COURT: WHICH IS BE FAIR TO BOTH SIDES AND
14 RENDER THE VERDICT AS DICTATED BY THE EVIDENCE?

15 PROSPECTIVE JUROR NO. 12 (8302): YES.

16 THE COURT: IS THERE ANYTHING THAT YOU HEARD SO
17 FAR OR IS THERE ANYTHING ABOUT YOU THAT WOULD PREVENT
18 YOU FROM DOING IT?

19 PROSPECTIVE JUROR NO. 12 (8302): NOT THAT I CAN
20 THINK OF.

21 THE COURT: ANY QUARREL WITH ANY OF THE LEGAL
22 CONCEPTS?

23 PROSPECTIVE JUROR NO. 12 (8302): NO.

24 THE COURT: ANY PROBLEM WITH THE STANDARD OF
25 PROOF, THE BURDEN OF PROOF, PRESUMPTION OF INNOCENCE,
26 THE CHARGES, ANYTHING AT ALL?

27 PROSPECTIVE JUROR NO. 12 (8302): NO.

28 THE COURT: NOW, AT THE END OF THE CASE, IF YOU

1 BELIEVE THAT THE EVIDENCE PROVED GUILT BEYOND A
2 REASONABLE DOUBT, WHAT WOULD YOUR VERDICT BE?

3 PROSPECTIVE JUROR NO. 12 (8302): GUILTY.

4 THE COURT: RIGHT.

5 AT THE END OF THE CASE, IF YOU THOUGHT TO
6 YOURSELF, YOU KNOW, HE COULD BE GUILTY, BUT I'M JUST NOT
7 CONVINCED BEYOND A REASONABLE DOUBT, WHAT WOULD YOUR
8 VERDICT BE?

9 PROSPECTIVE JUROR NO. 12 (8302): NOT GUILTY.

10 THE COURT: DO YOU HAVE "YES" ANSWERS?

11 PROSPECTIVE JUROR NO. 12 (8302): YES.

12 THE COURT: WHICH QUESTIONS?

13 PROSPECTIVE JUROR NO. 12 (8302): 2, 6, 7, AND 12.

14 THE COURT: NO. 2?

15 PROSPECTIVE JUROR NO. 12 (8302): I WAS AN INTERN
16 AT THIS COURT LAST SEMESTER.

17 THE COURT: OH, REALLY.

18 PROSPECTIVE JUROR NO. 12 (8302): YES.

19 THE COURT: WHO DID YOU WORK FOR?

20 PROSPECTIVE JUROR NO. 12 (8302): COMMISSIONER
21 CARNAHAN.

22 THE COURT: RIGHT NEXT DOOR?

23 PROSPECTIVE JUROR NO. 12 (8302): YES.

24 THE COURT: SO YOU CAME IN HERE SOMETIMES FOR JURY
25 TRIAL?

26 PROSPECTIVE JUROR NO. 12 (8302): YES UH, -HUH.

27 THE COURT: WAS YOUR HAIR DIFFERENT?

28 PROSPECTIVE JUROR NO. 12 (8302): YES. I GOT A

1 HAIRCUT.

2 THE COURT: ACTUALLY, YOU LOOKED A LITTLE
3 FAMILIAR, BUT I COULDN'T REALLY SAY, YOU KNOW, THAT,
4 YEAH, I RECOGNIZE YOU BECAUSE YOUR HAIR -- ACTUALLY,
5 IT'S QUITE A BIT DIFFERENT; RIGHT?

6 PROSPECTIVE JUROR NO. 12 (8302): YES.

7 THE COURT: DID YOU SAY HELLO TO HIM?

8 PROSPECTIVE JUROR NO. 12 (8302): NO, I DIDN'T GET
9 A CHANCE.

10 THE COURT: YOU SHOULD GO SAY HELLO TO HIM.

11 THE FACT THAT YOU HAVE BEEN IN HERE BEFORE
12 OR YOU WORKED AT THE COURTHOUSE HERE AS A -- YOU
13 ASSISTED HIM WITH CIVIL CASES --

14 PROSPECTIVE JUROR NO. 12 (8302): YES.

15 THE COURT: -- RIGHT?

16 THE FACT THAT YOU HAVE BEEN IN THIS
17 COURTROOM BEFORE, IS THAT IN ANY WAY GOING TO CAUSE YOU
18 TO LEAN ONE WAY OR THE OTHER?

19 PROSPECTIVE JUROR NO. 12 (8302): NO.

20 THE COURT: NO. 6.

21 PROSPECTIVE JUROR NO. 12 (8302): OH.

22 PARALEGAL AT EL CAMINO. THAT'S JUST
23 MYSELF. SAYS "DO YOU OR ANY RELATIVE." JUST MYSELF.
24 NO RELATIVES.

25 THE COURT: YOU CAN'T DISCUSS THE CASE WITH
26 ANYBODY, EVEN YOUR -- YOU KNOW, ANY INSTRUCTORS THAT YOU
27 HAVE OR ANY LAWYERS THAT YOU KNOW. YOU CAN'T GO OVER TO
28 COMMISSIONER CARNAHAN AND, YOU KNOW, RUN THE FACTS BY

1 HIM OR YOU CAN'T DISCUSS THE ATTORNEYS WITH HIM
2 OR ANYBODY ELSE.

3 PROSPECTIVE JUROR NO. 12 (8302): UH-HUH.

4 THE COURT: DO YOU UNDERSTAND THAT?

5 PROSPECTIVE JUROR NO. 12 (8302): YES.

6 THE COURT: ALL RIGHT.

7 NO. 7.

8 PROSPECTIVE JUROR NO. 12 (8302): A FRIEND OF MINE
9 WAS JUMPED BY SIX MEN IN FRONT OF HIS APARTMENT IN
10 GARDENA.

11 THE COURT: JUMPED BY SIX PEOPLE?

12 PROSPECTIVE JUROR NO. 12 (8302): THAT'S WHAT I
13 HEARD FROM HIM.

14 THE COURT: WAS YOUR FRIEND INJURED?

15 PROSPECTIVE JUROR NO. 12 (8302): YES.

16 THE COURT: BADLY?

17 PROSPECTIVE JUROR NO. 12 (8302): HIS BACK WAS
18 INJURED, AND I THINK HE HAD A BLOODED FACE.

19 THE COURT: HOW LONG AGO WAS THIS?

20 PROSPECTIVE JUROR NO. 12 (8302): I THINK IT WAS
21 EITHER, LIKE, EARLIER IN THE YEAR, LIKE LAST YEAR.

22 THE COURT: AND WERE THE PEOPLE RESPONSIBLE
23 APPREHENDED?

24 PROSPECTIVE JUROR NO. 12 (8302): NO.

25 THE COURT: DID YOUR FRIEND REPORT IT TO THE
26 POLICE?

27 PROSPECTIVE JUROR NO. 12 (8302): YES.

28 THE COURT: WHICH POLICE DEPARTMENT?

1 PROSPECTIVE JUROR NO. 12 (8302): I THINK IT WAS
2 GARDENA, BUT I DON'T KNOW FOR SURE.

3 THE COURT: DO YOU OR YOUR FRIEND HOLD IT AGAINST
4 THE POLICE BECAUSE IT WASN'T SOLVED?

5 PROSPECTIVE JUROR NO. 12 (8302): NO.

6 THE COURT: WAS THIS SUPPOSEDLY A GANG-RELATED
7 INCIDENT?

8 PROSPECTIVE JUROR NO. 12 (8302): NEITHER OF US
9 KNOW.

10 THE COURT: SO YOU DON'T -- WHY DO YOU THINK YOUR
11 FRIEND WAS JUMPED BY SIX PEOPLE?

12 PROSPECTIVE JUROR NO. 12 (8302): I HONESTLY DON'T
13 KNOW. IT MIGHT HAVE BEEN, LIKE, GUYS TRYING TO PROVE
14 THEIR -- I DON'T KNOW -- TOUGHNESS OR SOMETHING BECAUSE
15 HE'S NOT -- HE'S NOT GANG AFFILIATED. HE DOESN'T --

16 THE COURT: ALL RIGHT.

17 PROSPECTIVE JUROR NO. 12 (8302): I DON'T KNOW
18 WHY.

19 THE COURT: THERE IS GOING TO BE EVIDENCE THAT
20 MR. BURGHARDT IS AFFILIATED WITH A GANG. IF YOU HEAR
21 THAT THERE IS SUCH EVIDENCE, WOULD YOU AUTOMATICALLY
22 FIND HIM GUILTY OF THESE CHARGES?

23 PROSPECTIVE JUROR NO. 12 (8302): NO.

24 THE COURT: EVEN IF YOU BELIEVE THAT HE IS, IN
25 FACT, AFFILIATED WITH THE GANG, WOULD YOU AUTOMATICALLY
26 FIND HIM GUILTY OF THESE CHARGES?

27 PROSPECTIVE JUROR NO. 12 (8302): NO.

28 THE COURT: DID YOU ACCEPT WHAT I SAID EARLIER

1 THAT EVIDENCE OF GANG MEMBERSHIP IS JUST PART OF THE
2 EVIDENCE THAT IS GOING TO BE INTRODUCED IN THIS CASE?

3 PROSPECTIVE JUROR NO. 12 (8302): YES.

4 THE COURT: OKAY.

5 DO YOU HAVE ANY OTHER RESPONSES TO NO. 7?

6 PROSPECTIVE JUROR NO. 12 (8302): NO.

7 THE COURT: YOU WON'T HOLD IT -- DID I ASK YOU --
8 DO YOU HOLD IT AGAINST -- I DID ASK YOU.

9 NO. 12.

10 PROSPECTIVE JUROR NO. 12 (8302): I PREFER TO
11 DISCUSS THAT IN PRIVATE.

12 THE COURT: WELL, LET'S -- LET ME TELL YOU WHAT
13 I'D LIKE YOU TO DO, DENISE.

14 I'D LIKE YOU TO WALK THROUGH THAT DOOR --

15 PROSPECTIVE JUROR NO. 12 (8302): UH-HUH.

16 THE COURT: -- AND THEN YOU'LL BE IN THE HALLWAY,
17 AND I'LL TELL YOU WHERE TO GO NEXT AND THEN YOU AND
18 MYSELF, YOU AND ME, AND MR. LEONARD AND MR. STENNIS,
19 WE'LL TALK ABOUT THAT IN PRIVATE.

20 PROSPECTIVE JUROR NO. 12 (8302): OKAY.

21 THE COURT: OKAY.

22 SO LET'S JUST GO INTO CHAMBERS.

23

24 (THE FOLLOWING PROCEEDINGS
25 WERE HELD IN CHAMBERS:)

26
27 THE COURT: ALL RIGHT.

28 GO AHEAD.

1 PROSPECTIVE JUROR NO. 12 (8302): I HAD A LAWSUIT
2 WITH A FORMER EMPLOYER, THE CITY OF LOMITA. I HAVE
3 REASON TO BELIEVE THAT HE CAUSED AN INJURY, CAUSED
4 MYSELF TO HAVE TENDONITIS. I THOUGHT THAT WOULD, I
5 GUESS, LIKE, TRANSFORM INTO CARPAL TUNNEL SYNDROME, AND
6 WE DIDN'T GO TO TRIAL.

7 BUT WE TRIED TO SETTLE, AND THE ATTORNEY
8 REPRESENTING ME AND I DECIDED NOT TO GO WITH THE CITY OF
9 LOMITA'S OFFER. SO THAT'S MY ONLY TIME I'VE BEEN A
10 PARTY.

11 THE COURT: SO THE CASE IS STILL PENDING?

12 PROSPECTIVE JUROR NO. 12 (8302): I DON'T THINK
13 SO. I HAVEN'T HEARD FROM ANYONE IN A FEW YEARS, AND I
14 HAVEN'T REALLY FOLLOWED UP WITH ANYTHING. SO I DON'T
15 THINK IT'S PENDING.

16 THE COURT: WELL, IF YOU DIDN'T ACCEPT THE CITY'S
17 OFFER, THEN YOU DIDN'T SETTLE THE CASE --

18 PROSPECTIVE JUROR NO. 12 (8302): OH.

19 THE COURT: -- RIGHT?

20 PROSPECTIVE JUROR NO. 12 (8302): I GUESS I TRY,
21 BUT WE DIDN'T ACTUALLY GO THROUGH AND AGREED TO
22 SETTLEMENT.

23 THE COURT: WHAT HAPPENED? WHAT'S THE PRESENT
24 STATUS OF THE CASE?

25 PROSPECTIVE JUROR NO. 12 (8302): I DON'T KNOW.

26 THE COURT: YOU PROBABLY OUGHT TO GIVE THE
27 ATTORNEY A CALL AND SAY, "HEY, WHAT'S GOING ON?"

28 WHO IS THE ATTORNEY?

1 PROSPECTIVE JUROR NO. 12 (8302): I DON'T REMEMBER
2 THEIR EXACT NAME, BUT THEY'RE IN LONG BEACH.

3 THE COURT: WAS THIS AN ATTORNEY HIRED BY THE
4 INSURANCE COMPANY?

5 PROSPECTIVE JUROR NO. 12 (8302): I THINK THEY'RE
6 THROUGH THE UNION THAT I HAD WITH THE CITY OF LOMITA.

7 THE COURT: OKAY. ALL RIGHT.

8 IF YOU DIDN'T SETTLE, THEN THE CASE SHOULD
9 STILL BE PENDING, AND YOU NEED TO FIND OUT WHAT'S
10 HAPPENING. IS THERE ANYTHING ABOUT THAT CASE TO IMPACT
11 YOU IN DECIDING THIS CASE?

12 PROSPECTIVE JUROR NO. 12 (8302): NO.

13 THE COURT: DO EITHER OF YOU HAVE ANY QUESTIONS OF
14 THIS?

15 MR. LEONARD: WHAT WAS THE OFFER?

16 PROSPECTIVE JUROR NO. 12 (8302): \$3,000, I THINK.

17 MR. LEONARD: I CAN SEE WHY YOU DIDN'T SETTLE.
18 OKAY.

19 THE COURT: \$3,000?

20 PROSPECTIVE JUROR NO. 12 (8302): YEAH.

21 THE COURT: ALL RIGHT. OKAY.

22 THANK YOU FOR CONFIDING THIS. AND YOU CAN
23 GO AHEAD AND RETURN TO YOUR SEAT.

24 DID YOU HAVE ANY QUESTIONS, MR. STENNIS?

25 MR. STENNIS: NO.

26 \ \ \

27 \ \ \

28 \ \ \

1 (THE FOLLOWING PROCEEDINGS
2 WERE HELD IN OPEN COURT IN
3 THE PRESENCE OF THE
4 PROSPECTIVE JURORS:)

5
6 THE COURT: ALL RIGHT.

7 DO YOU HAVE ANY OTHER ANSWERS, JUROR
8 NO. 12?

9 PROSPECTIVE JUROR NO. 12 (8302): NO.

10 THE COURT: OKAY.

11 CAN YOU GIVE BOTH SIDES A FAIR TRIAL?

12 PROSPECTIVE JUROR NO. 12 (8302): YES.

13 THE COURT: OKAY. VERY GOOD.

14 THANK YOU.

15 LET'S GO WITH JUROR NO. 1.

16 PROSPECTIVE JUROR NO. 1 (6809): HI.

17 THE COURT: HI.

18 GIVE US THE INFORMATION TO QUESTION NO. 1.

19 PROSPECTIVE JUROR NO. 1 (6809): 6809.

20 AND I LIVE IN TORRANCE.

21 I'M CURRENTLY A STUDENT. I AM MARRIED.

22 AND MY SPOUSE IS A SOFTWARE TESTER.

23 I HAVE NO CHILDREN, AND I HAVE SERVED AS A
24 JUROR ON A CRIMINAL CASE PRIOR TO THE EARLY '90'S, AND
25 WE DID -- WE DID --

26 THE COURT: YOU REACHED A VERDICT?

27 PROSPECTIVE JUROR NO. 1 (6809): YEAH.

28 THE COURT: WHAT WAS THE CHARGE IN THE CASE THAT

1 YOU SAT ON?

2 PROSPECTIVE JUROR NO. 1 (6809): ARMED ROBBERY.

3 THE COURT: AND WHERE WAS THAT TRIAL?

4 PROSPECTIVE JUROR NO. 1 (6809): DOWNTOWN,

5 LOS ANGELES.

6 THE COURT: WHERE ARE YOU GOING TO SCHOOL?

7 PROSPECTIVE JUROR NO. 1 (6809): ANIMAL BEHAVIORAL

8 COLLEGE.

9 THE COURT: ANIMAL BEHAVIORAL COLLEGE?

10 PROSPECTIVE JUROR NO. 1 (6809): UH-HUH.

11 THE COURT: AND WHAT IS AFTER YOU FINISH THERE?

12 PROSPECTIVE JUROR NO. 1 (6809): I'M GOING TO GO

13 ON TO DO CANINE TRAINING AND CANINE BEHAVIORAL

14 REHABILITATION.

15 THE COURT: LIKE DOG TRAINING?

16 PROSPECTIVE JUROR NO. 1 (6809): UH-HUH.

17 THE COURT: SO IF SOMEBODY HAS AN UNRULY DOG, THEY

18 TAKE THE DOG TO YOU?

19 PROSPECTIVE JUROR NO. 1 (6809): YES.

20 THE COURT: SO YOU ARE LIKE WHAT THE DOG WHISPERER

21 DOES?

22 PROSPECTIVE JUROR NO. 1 (6809): UH-HUH.

23 THE COURT: HE WAS IN THE NEWS THIS MORNING. DID

24 YOU KNOW THAT?

25 PROSPECTIVE JUROR NO. 1 (6809): I DID NOT KNOW

26 THAT.

27 THE COURT: HE'S GETTING DIVORCED FROM HIS WIFE.

28 I HEARD THAT. IT'S -- NO, NOT FUNNY. THAT'S -- I GUESS

1 HIS MARRIAGE IS BREAKING UP.

2 WHEN YOU SAT AS A JUROR THE LAST TIME ON
3 THAT ROBBERY CASE, DID YOU DO IT WITH THE FRAME OF MIND
4 THAT I'VE BEEN TALKING ABOUT?

5 PROSPECTIVE JUROR NO. 1 (6809): YES.

6 THE COURT: THE LEGAL CONCEPTS IN THAT CASE, THE
7 STANDARD OF PROOF, THE BURDEN OF PROOF, PRESUMPTION OF
8 INNOCENCE, APPLIED EXACTLY THE SAME AS IN THIS CASE.
9 IT'S ALL THE SAME.

10 DO YOU ACCEPT THAT?

11 PROSPECTIVE JUROR NO. 1 (6809): YES.

12 THE COURT: NOW, WHEN YOU SAT AS A JUROR IN THAT
13 OTHER CASE, DID YOU DO IT WITH THE FRAME OF MIND THAT
14 I'VE BEEN TALKING ABOUT, WHICH IS FAIR, OPEN, IMPARTIAL?

15 PROSPECTIVE JUROR NO. 1 (6809): YES.

16 THE COURT: WE WANT YOU TO DO THAT AGAIN IN THIS
17 CASE. WOULD ANYTHING PREVENT YOU FROM DOING THAT?

18 PROSPECTIVE JUROR NO. 1 (6809): NO.

19 THE COURT: IF YOU THOUGHT THE EVIDENCE PROVES
20 GUILT BEYOND A REASONABLE DOUBT, WHAT WOULD YOUR VERDICT
21 BE?

22 PROSPECTIVE JUROR NO. 1 (6809): GUILTY.

23 THE COURT: IF YOU DIDN'T THINK THE EVIDENCE ROSE
24 TO THAT LEVEL?

25 PROSPECTIVE JUROR NO. 1 (6809): NOT GUILTY.

26 THE COURT: DO YOU HAVE "YES" ANSWERS?

27 PROSPECTIVE JUROR NO. 1 (6809): I DO.

28 NO. 7 AND NO. 9.

1 THE COURT: OKAY.

2 TELL US ABOUT 7, PLEASE.

3 PROSPECTIVE JUROR NO. 1 (6809): MY AUNT WAS
4 MURDERED. SHE WAS FOUND IN A SHALLOW GRAVE AND OUT IN
5 THE DESERT.

6 THE COURT: WAS IT DETERMINED WHO DID IT?

7 PROSPECTIVE JUROR NO. 1 (6809): I BELIEVE THAT
8 THERE WAS SOMEONE ARRESTED, YES.

9 THE COURT: WAS THAT PERSON PROSECUTED?

10 PROSPECTIVE JUROR NO. 1 (6809): I DON'T KNOW. IT
11 WAS IN COLORADO.

12 THE COURT: HOW LONG AGO?

13 PROSPECTIVE JUROR NO. 1 (6809): IT WAS IN THE
14 EARLY '90'S.

15 THE COURT: SO YOU DON'T KNOW WHAT ULTIMATELY
16 HAPPENED?

17 PROSPECTIVE JUROR NO. 1 (6809): NO.

18 THE COURT: DO YOU KNOW THE ETHNICITY OF THE
19 INDIVIDUAL WHO KILLED YOUR AUNT?

20 PROSPECTIVE JUROR NO. 1 (6809): WHITE.

21 THE COURT: DO YOU KNOW WHY, WHAT THE REASON WAS?

22 PROSPECTIVE JUROR NO. 1 (6809): HE WAS FOUND WITH
23 HER PERSONAL BELONGINGS AND HER VEHICLE. AND HE HAD
24 SAID THAT SHE HAD GIVEN THEM TO HIM FOR PAYMENT FOR
25 SOMETHING. AND SHE WAS GONE -- HER BODY WASN'T
26 DISCOVERED UNTIL OVER A YEAR LATER BY HUNTERS.

27 THE COURT: IS THERE ANYTHING ABOUT WHAT HAPPENED
28 TO YOUR AUNT THAT WOULD IMPACT YOU IN DECIDING

1 MR. BURGHARDT'S CASE?

2 PROSPECTIVE JUROR NO. 1 (6809): NO.

3 THE COURT: DO YOU HAVE ANY OTHER RESPONSES TO
4 NO. 7?

5 PROSPECTIVE JUROR NO. 1 (6809): NO.

6 THE COURT: NO. 9.

7 PROSPECTIVE JUROR NO. 1 (6809): I HAVE A DISTANT
8 COUSIN, A POLICE OFFICER UP IN NORTHERN CALIFORNIA.

9 THE COURT: WHAT DOES YOUR COUSIN DO AS FAR AS FOR
10 THE POLICE DEPARTMENT? DETECTIVE, PATROL, OR DO YOU
11 KNOW?

12 PROSPECTIVE JUROR NO. 1 (6809): I BELIEVE HE'S
13 PATROL.

14 THE COURT: NOW, DO YOU HAVE CONTACT WITH THE
15 COUSIN?

16 PROSPECTIVE JUROR NO. 1 (6809): I HAVE NOT SPOKEN
17 TO HIM IN OVER 15 YEARS.

18 THE COURT: REGARDING A WITNESS'S CREDIBILITY,
19 POLICE OFFICERS WHEN THEY FIRST SIT DOWN IN THIS CHAIR,
20 START OFF AT THE SAME PLACE AS ANY OTHER WITNESS WHEN
21 THEY FIRST SIT DOWN IN THIS CHAIR.

22 NO PERSON, REGARDLESS OF WHAT THEY DO FOR A
23 LIVING OR EVEN WHETHER THEY DO SOMETHING FOR A LIVING,
24 IS AUTOMATICALLY ENTITLED TO MORE OR LESS CREDIBILITY
25 BECAUSE OF THEIR EMPLOYMENT OR LACK OF EMPLOYMENT.

26 THE BUTCHER, THE BAKER, THE CANDLESTICK
27 MAKER -- THEY ALL START OFF AT THE SAME PLACE AS FAR AS
28 CREDIBILITY IS CONCERNED, INCLUDING POLICE OFFICERS.

1 DO YOU ACCEPT THAT?
2 PROSPECTIVE JUROR NO. 1 (6809): YES.
3 THE COURT: DO YOU HAVE ANY OTHER "YES" ANSWERS?
4 PROSPECTIVE JUROR NO. 1 (6809): NO, I DO NOT.
5 THE COURT: CAN YOU GIVE BOTH SIDES A FAIR TRIAL?
6 PROSPECTIVE JUROR NO. 1 (6809): YES.
7 THE COURT: VERY GOOD.
8 JUROR NO. 8, CAN YOU GIVE US THE
9 INFORMATION, PLEASE, SIR.
10 PROSPECTIVE JUROR NO. 8 (4559): I AM 4559.
11 I RESIDE IN TORRANCE.
12 I AM THRICE RETIRED. I WORKED 30 YEARS AT
13 HUGHES AIRCRAFT. I WAS ALSO A TUTOR FOR THREE AND A
14 HALF YEARS. AND I SPENT TWO YEARS AS AN ACCOUNTANT FOR
15 AN EXPORT\IMPORT COMPANY IN CARSON.
16 THE COURT: WHAT SUBJECT DID YOU TUTOR?
17 PROSPECTIVE JUROR NO. 8 (4559): MOSTLY MATH AND
18 SCIENCE, CHEMISTRY, PHYSICS, CALCULUS, ADVANCED
19 TRIGONOMETRY, ET CETERA.
20 THE COURT: HOW LONG HAVE YOU BEEN RETIRED?
21 PROSPECTIVE JUROR NO. 8 (4559): I RETIRED THE
22 LAST TIME IN 2007.
23 THE COURT: "LAST TIME." ARE YOU GETTING READY TO
24 GO BACK TO WORK?
25 PROSPECTIVE JUROR NO. 8 (4559): NO, SIR.
26 THE COURT: THAT WAS IT?
27 PROSPECTIVE JUROR NO. 8 (4559): THAT'S IT.
28 THE COURT: THIRD TIME IS THE CHARM.

1 PROSPECTIVE JUROR NO. 8 (4559): THAT'S IT.

2 THE COURT: ALL RIGHT.

3 GO AHEAD AND GIVE US --

4 PROSPECTIVE JUROR NO. 8 (4559): I AM MARRIED.

5 MY WIFE IS A STUDENT -- SCHOOL TEACHER
6 STILL. I HAVE TWO CHILDREN. ONE IS AN ASTROPHYSICIST
7 IN HARVARD. THE OTHER ONE IS A -- HE -- HE DOES
8 CLASSIFIED WORK FOR RAYTHEON. I'M NOT ALLOWED TO TALK
9 ABOUT IT.

10 THE COURT: I WON'T ASK.

11 AND THE ASTROPHYSICIST?

12 PROSPECTIVE JUROR NO. 8 (4559): YES, SIR.

13 THE COURT: THAT'S A ROCKET SCIENTIST.

14 PROSPECTIVE JUROR NO. 8 (4559): THEY STUDY GALAXY
15 FORMATIONS, EDGE OF UNIVERSE.

16 THE COURT: JUST SIMPLE, BASIC STUFF.

17 PROSPECTIVE JUROR NO. 8 (4559): BASIC STUFF.

18 THE COURT: HAVE YOU EVER BEEN A JUROR?

19 PROSPECTIVE JUROR NO. 8 (4559): YES. AND I'VE
20 BEEN CALLED TO JURY DUTY SOME 30 TIMES, AND I BELIEVE IN
21 THOSE 30 TIMES, I'VE SAT ON THREE TRIALS.

22 THE COURT: YOU'VE BEEN CALLED TO JURY DUTY 30
23 TIMES?

24 PROSPECTIVE JUROR NO. 8 (4559): YES.

25 THE COURT: SO YOU'VE BEEN ON TWO JURIES; IS THAT
26 CORRECT?

27 PROSPECTIVE JUROR NO. 8 (4559): I REMEMBER BEING
28 ON THREE.

1 THE COURT: OH, THREE. OKAY.

2 THE FIRST?

3 PROSPECTIVE JUROR NO. 8 (4559): THE FIRST ONE WAS
4 IN LONG BEACH. IT WAS A CRIMINAL TRIAL INVOLVING A ROAD
5 RAGE ASSAULT AND BATTERY, AN EVENT WHERE A WEAPON WAS
6 INVOLVED.

7 THE COURT: DID THE JURY REACHED A VERDICT?

8 PROSPECTIVE JUROR NO. 8 (4559): AND THE JURY DID
9 REACH A VERDICT.

10 THE COURT: HOW LONG AGO WAS THAT TRIAL,
11 APPROXIMATELY?

12 PROSPECTIVE JUROR NO. 8 (4559): OH, WE'RE TALKING
13 LATE '70'S.

14 THE COURT: OKAY.

15 SECOND TRIAL, WHAT WAS IT?

16 PROSPECTIVE JUROR NO. 8 (4559): SECOND TRIAL WAS
17 IN COMPTON, AND I DON'T WANT TO BELIEVE IT WAS ONE OF
18 THOSE MEMORY Lapses. I DON'T EVEN REMEMBER THE TRIAL.
19 IT WENT TO A VERDICT, BUT I DON'T REMEMBER WHAT THE
20 SITUATION WAS.

21 THE COURT: DO YOU RECALL WHETHER IT WAS VIOLENCE
22 RELATED, THEFT RELATED, OR DRUG RELATED?

23 PROSPECTIVE JUROR NO. 8 (4559): IT WAS VIOLENCE
24 RELATED.

25 THE COURT: ALL RIGHT.

26 AND THE JURY REACHED A VERDICT?

27 PROSPECTIVE JUROR NO. 8 (4559): YES, YOUR HONOR.

28 THE COURT: AND WHAT ABOUT THE LAST ONE?

1 PROSPECTIVE JUROR NO. 8 (4559): THE THIRD ONE WAS
2 IN THE L.A. SUPERIOR COURT DOWNTOWN. IT WAS A CRIMINAL
3 CASE OF AN ILLEGAL BUSINESS AND ALL THE RAMIFICATIONS
4 ASSOCIATED WITH THAT.

5 THE COURT: DID THE JURY REACH A VERDICT?

6 PROSPECTIVE JUROR NO. 8 (4559): THAT'S A HUNG
7 JURY.

8 THE COURT: HUNG JURY.

9 AND HOW LONG AGO WAS THIS TRIAL?

10 PROSPECTIVE JUROR NO. 8 (4559): ABOUT TEN YEARS.

11 THE COURT: HOW LONG DID YOU SIT IN THE JURY BOX
12 AND LISTEN TO EVIDENCE?

13 PROSPECTIVE JUROR NO. 8 (4559): I ALSO NEED TO
14 ADD, I ALSO SAT ON A GRAND JURY ONCE FOR ONE MONTH AND
15 THAT WAS ABOUT 2004.

16 THE COURT: OKAY.

17 PROSPECTIVE JUROR NO. 8 (4559): AND THERE WERE
18 FOUR CASES PRESENTED THERE. ONE OF THE FOUR ACTUALLY
19 WAS PRESENTED TO THE JUDGE TO BE PASSED ON.

20 THE COURT: WAS IT CIVIL GRAND JURY OR CRIMINAL
21 GRAND JURY?

22 PROSPECTIVE JUROR NO. 8 (4559): CRIMINAL.

23 THE COURT: YOUR LAST CRIMINAL JURY TRIAL WHERE IT
24 WAS A HUNG JURY, HOW LONG DID YOU SIT IN THE JURY BOX
25 AND HEAR THE EVIDENCE?

26 PROSPECTIVE JUROR NO. 8 (4559): IN THE JURY BOX
27 ITSELF?

28 THE COURT: HOW LONG WAS THE TRIAL?

1 PROSPECTIVE JUROR NO. 8 (4559): APPROXIMATELY
2 THREE DAYS.

3 THE COURT: AND HOW LONG DID THE JURY DELIBERATE
4 FOR?

5 PROSPECTIVE JUROR NO. 8 (4559): TWO DAYS.

6 THE COURT: TWO DAYS?

7 PROSPECTIVE JUROR NO. 8 (4559): I BELIEVE IT WAS
8 TWO DAYS.

9 THE COURT: I DON'T WANT TO KNOW HOW MANY VOTED
10 FOR GUILTY OR HOW MANY VOTED FOR NOT GUILTY. I'M JUST
11 CURIOUS WITH NUMBERS. WAS IT SIX TO SIX? SEVEN TO
12 FIVE? ELEVEN TO ONE?

13 PROSPECTIVE JUROR NO. 8 (4559): IT WAS EIGHT TO
14 FOUR.

15 THE COURT: DO YOU THINK IT WAS AN HONEST
16 DIFFERENCE OF OPINION AMONGST THE JURORS?

17 PROSPECTIVE JUROR NO. 8 (4559): AS FAR AS I CAN
18 TELL.

19 THE COURT: WERE YOU IN THE EIGHT OR WERE YOU IN
20 THE FOUR?

21 PROSPECTIVE JUROR NO. 8 (4559): I WAS IN THE
22 FOUR.

23 THE COURT: ALL THE TIMES THAT YOU SAT AS A JUROR,
24 DID YOU DO IT WITH THE FRAME OF MIND THAT I TALKED
25 ABOUT?

26 PROSPECTIVE JUROR NO. 8 (4559): YES.

27 THE COURT: WHICH IS FAIR, IMPARTIAL, OPEN,
28 OBJECTIVE?

1 PROSPECTIVE JUROR NO. 8 (4559): YES.

2 THE COURT: ARE YOU WILLING TO DO THAT AGAIN IN

3 THIS CASE?

4 PROSPECTIVE JUROR NO. 8 (4559): YES.

5 THE COURT: IS THERE ANYTHING YOU HEARD SO FAR

6 THAT WOULD PREVENT YOU FROM DOING THAT?

7 PROSPECTIVE JUROR NO. 8 (4559): NO.

8 THE COURT: ANY QUARREL WITH ANY OF THE LEGAL

9 CONCEPTS?

10 PROSPECTIVE JUROR NO. 8 (4559): NO.

11 THE COURT: ALL RIGHT.

12 DO YOU HAVE "YES" ANSWERS TO THE -- WELL,

13 LET ME ASK YOU THIS: AT THE END OF THE CASE, IF YOU

14 THOUGHT THE EVIDENCE PROVED GUILT BEYOND A REASONABLE

15 DOUBT, WHAT WOULD YOUR VERDICT BE?

16 PROSPECTIVE JUROR NO. 8 (4559): GUILTY.

17 THE COURT: IF YOU DIDN'T THINK THE EVIDENCE ROSE

18 TO THAT LEVEL?

19 PROSPECTIVE JUROR NO. 8 (4559): NOT GUILTY.

20 THE COURT: DO YOU HAVE "YES" ANSWERS?

21 PROSPECTIVE JUROR NO. 8 (4559): YES, TO NO. 7.

22 THE COURT: THAT IS THE ONLY ONE?

23 PROSPECTIVE JUROR NO. 8 (4559): THAT'S CORRECT.

24 THE COURT: OKAY.

25 TELL US, PLEASE, ABOUT 7.

26 PROSPECTIVE JUROR NO. 8 (4559): IN 1967 MY

27 ROOMMATE AND I WERE LIVING AT WEST LOS ANGELES, AND WE

28 WERE VICTIMS OF A BREAK-IN ASSAULT.

1 THE COURT: A HOME INVASION?

2 PROSPECTIVE JUROR NO. 8 (4559): YES.

3 THE COURT: WERE YOU ROBBED AS WELL?

4 PROSPECTIVE JUROR NO. 8 (4559): NO.

5 TURNS OUT AFTER THE BREAK HAD OCCURRED, AN
6 ASSAULT HAD STARTED. POLICE ARRIVED JUST IN THE NICK OF
7 TIME AND -- AND SAVED OUR BUNS.

8 THE COURT: SAVED YOUR BUNS?

9 PROSPECTIVE JUROR NO. 8 (4559): THAT'S CORRECT.

10 I'M SORRY. I'M VIETNAM.

11 THE COURT: SAVE YOUR BUNS ALONG WITH THE BREAD
12 AND THE BAGELS?

13 PROSPECTIVE JUROR NO. 8 (4559): YES.

14 THE COURT: YOU MEANT THE POLICE RESCUED YOU?

15 PROSPECTIVE JUROR NO. 8 (4559): THEY RESCUED US,
16 YES INDEED.

17 THE COURT: WELL, I WAS IN THE SERVICE, TOO, AND
18 WE DIDN'T CALL IT BUNS.

19 PROSPECTIVE JUROR NO. 8 (4559): I WAS TRYING -- I
20 WAS TRYING TO BE NICE.

21 THE COURT: WHAT WAS THE ETHNICITY OF THE PERSONS
22 THAT BROKE INTO YOUR APARTMENT?

23 PROSPECTIVE JUROR NO. 8 (4559): WHAT WAS THE?

24 THE COURT: RACE. WHAT'S THEIR RACE?

25 PROSPECTIVE JUROR NO. 8 (4559): BLACK.

26 THE COURT: HOW DO YOU FEEL THAT MR. BURGHARDT IS
27 BLACK?

28 PROSPECTIVE JUROR NO. 8 (4559): I DON'T HAVE ANY

1 PROBLEM. THAT'S -- QUITE A FEW YEARS HAVE ELAPSED.

2 SO --

3 THE COURT: DID YOU HAVE TO TESTIFY IN ANY OF THE
4 COURT PROCEEDINGS?

5 PROSPECTIVE JUROR NO. 8 (4559): NO, I DID NOT.

6 THE COURT: WAS IS GOING TO BE A ROBBERY, A HOME
7 INVASION ROBBERY?

8 PROSPECTIVE JUROR NO. 8 (4559): I BELIEVE IT WAS
9 JUST SIMPLY ASSAULT.

10 THE COURT: WHY WOULD THEY BREAK IN?

11 PROSPECTIVE JUROR NO. 8 (4559): IT WAS JUST ANGER
12 AT INDIVIDUALS.

13 THE COURT: AT WHAT INDIVIDUALS? DID YOU KNOW
14 THESE PEOPLE?

15 PROSPECTIVE JUROR NO. 8 (4559): PRIMARILY MY
16 ROOMMATE.

17 THE COURT: DID YOUR ROOMMATE KNOW THESE PEOPLE?

18 PROSPECTIVE JUROR NO. 8 (4559): WELL, WE LIVED IN
19 THE SAME APARTMENT BUILDING. SO YA KIND OF -- YOU KINDA
20 KNOW EVERYBODY THAT LIVES IN THE APARTMENT BUILDING.
21 THERE WERE 52 UNITS IN THE BUILDING.

22 THE COURT: THESE WERE NOT STRANGERS?

23 PROSPECTIVE JUROR NO. 8 (4559): THEY WERE NOT
24 STRANGERS.

25 THE COURT: OH, I UNDERSTAND.

26 IS THERE ANYTHING ABOUT THAT CASE THAT
27 WOULD IMPACT YOU IN DECIDING MR. BURGHARDT'S CASE?

28 PROSPECTIVE JUROR NO. 8 (4559): NO.

1 THE COURT: WERE YOU PHYSICALLY INJURED?
2 PROSPECTIVE JUROR NO. 8 (4559): NO.
3 THE COURT: WAS YOUR ROOMMATE PHYSICALLY INJURED?
4 PROSPECTIVE JUROR NO. 8 (4559): NO.
5 THE COURT: SO YOU'RE SATISFIED WITH THE OUTCOME
6 OF THE CASE?

7 PROSPECTIVE JUROR NO. 8 (4559): YES. I MEAN
8 IT'S -- YOU ARE SAD THAT IT EVEN OCCURRED IN THE FIRST
9 PLACE, THAT -- THE PEOPLE TO COME THERE. BUT IN THAT
10 PARTICULAR CASE, THERE WAS A GROUP OF FOUR YOUNG BLACK
11 GIRLS THAT TESTIFIED FOR US. I MEAN, GAVE EVIDENCE TO
12 THE POLICE THAT WE WERE TELLING THE TRUTH AND THAT
13 SEEMED TO TAKE CARE OF IT.

14 THE COURT: OKAY.

15 SO YOU NEVER HEARD ANYTHING ABOUT IT AFTER
16 THAT?

17 PROSPECTIVE JUROR NO. 8 (4559): I NEVER HEARD
18 AGAIN. I MOVED FROM THE CITY. AND I -- THEY NEVER
19 CONTACTED ME AGAIN.

20 THE COURT: SO IS THAT INCIDENT GOING TO BE A
21 NONISSUE FOR YOU IN DECIDING THIS CASE?

22 PROSPECTIVE JUROR NO. 8 (4559): YES.

23 THE COURT: ALL RIGHT.

24 ALL RIGHT, FOLKS. WE'RE GOING TO BREAK
25 NOW. I'D LIKE YOU TO PLEASE BE OUTSIDE THE COURTROOM
26 DOORS AT 10:30 TOMORROW MORNING.

27 FOR THOSE OF YOU IN THE JURY BOX, YOU'RE
28 GOING TO BE IN THE SAME SEATS THAT YOU ARE NOW. SO

1 WE'LL SEE YOU TOMORROW AT 10:30.

2 OH. MARCIA NEEDS THE PENCILS BACK.

3

4 (THE FOLLOWING PROCEEDINGS
5 WERE HELD IN OPEN COURT,
6 OUTSIDE THE PRESENCE OF THE
7 PROSPECTIVE JURORS:)

8

9 THE COURT: ALL RIGHT.

10 DOES EITHER SIDE HAVE ANYTHING FOR THE
11 RECORD?

12 MR. STENNIS: NO, YOUR HONOR.

13 MR. LEONARD: JUST GOOD VOIR DIRE, JUDGE.

14 THE COURT: MR. STENNIS?

15 MR. STENNIS: NO.

16 THE COURT: ALL RIGHT.

17 SEE YOU TOMORROW.

18 MR. STENNIS: THANK YOU.

19 THE CLERK: I NEED THE LISTS, BOTH LISTS.

20 MR. LEONARD: I PUT MINE UP.

21 THE COURT: WHEN I'M DONE, YOU PRETTY MUCH HAVE A
22 FEEL FOR EVERYBODY.

23 MR. LEONARD: OH, ABSOLUTELY, JUDGE. YES.

24 YOU JUST TAKE AWAY THE QUESTIONS I'D LIKE
25 TO ASK. THAT'S THE PROBLEM. BUT YOU ONLY GAVE US
26 TWO MINUTES WITH THE TWELVE BECAUSE THAT'S ALL I'M GOING
27 NEED.

28 THE COURT: YOU CAN RE-ASK IF YOU WANT TO. THAT'S

1 FINE. I DON'T CARE ABOUT THAT.

2 MR. LEONARD: I CAN DO WHAT?

3 THE COURT: IF YOU WANT TO RE-ASK THE SAME
4 QUESTION.

5 MR. LEONARD: OH, I GOT -- I HAVE TO ASK SOME OF
6 THE SAME, JUDGE, SAME THING.

7 THE COURT: THAT'S FINE.

8

9 (AT 4:35 P.M., THE MATTER WAS
10 CONTINUED TO TUESDAY, JUNE 22,
11 2010, AT 10:30 A.M., FOR
12 FURTHER PROCEEDINGS.)

13 (THE NEXT PAGE IS 301.)

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1 CASE NUMBER: TA 109929
2 CASE NAME: PEOPLE VERSUS DARRYL BURGHARDT
3 TORRANCE, CA TUESDAY, JUNE 22, 2010
4 DEPARTMENT SW G HON. MARK S. ARNOLD, JUDGE
5 REPORTER: DENISE K. NAGAO, CSR NO. 7722
6 TIME: 10:38 A.M.

7 APPEARANCES:

8 THE DEFENDANT APPEARING IN COURT WITH
9 COUNSEL, RICHARD A. LEONARD, ATTORNEY
10 AT LAW; KEVIN STENNIS, DEPUTY DISTRICT
11 ATTORNEY, REPRESENTING THE PEOPLE OF
12 THE STATE OF CALIFORNIA.

13 --000--

14

15 (THE FOLLOWING PROCEEDINGS
16 WERE HELD IN OPEN COURT IN
17 OUT OF THE PRESENCE OF THE
18 PROSPECTIVE JURORS:)

19

20 THE COURT: COUNSEL STIPULATE JUROR NO. 8977 MAY
21 BE EXCUSED?

22 MR. STENNIS: YES.

23 MR. LEONARD: YES.

24

25 (THE FOLLOWING PROCEEDINGS
26 WERE HELD IN OPEN COURT IN
27 THE PRESENCE OF THE
28 PROSPECTIVE JURORS:)

1 THE COURT: ALL RIGHT.
2 WE ARE BACK ON THE RECORD.
3 ALL PARTIES AND COUNSEL ARE PRESENT.
4 OUR PROSPECTIVE JURORS ARE IN THEIR SEATS.
5 AND JUROR NO. 7, GOOD MORNING.
6 PROSPECTIVE JUROR NO. 7 (9500): GOOD MORNING.
7 THE COURT: CAN YOU GIVE US THE INFORMATION,
8 PLEASE, IN QUESTION 1?
9 PROSPECTIVE JUROR NO. 7 (9500): I.D. 9500.
10 I LIVE IN REDONDO BEACH.
11 I'M AN ADMINISTRATOR FOR LEXUS.
12 I'M DIVORCED. MY EX-SPOUSE IS A TEST
13 ENGINEER.
14 I'VE BEEN ON TWO JURIES THAT I RECALL. ONE
15 ARE -- BOTH CRIMINAL. ONE ABOUT 25 YEARS AGO. IN
16 COMPTON. ENDED UP BEING A HUNG JURY. AND ONE
17 APPROXIMATELY 20 YEARS AGO IN TORRANCE WHERE WE REACHED
18 A VERDICT.
19 THE COURT: WHEN YOU SAY YOU WORK FOR LEXUS, ARE
20 YOU TALKING ABOUT THE AUTOMOBILE COMPANY?
21 PROSPECTIVE JUROR NO. 7 (9500): YEAH.
22 THE COURT: DO YOU HAVE ANY CHILDREN?
23 PROSPECTIVE JUROR NO. 7 (9500): A DAUGHTER.
24 SHE'S A STUDENT AT U.C. SANTA CRUZ.
25 THE COURT: WHAT IS HE STUDYING?
26 PROSPECTIVE JUROR NO. 7 (9500): HISTORY AND
27 DIGITAL MEDIA.
28 THE COURT: ALL RIGHT.

1 THE TRIAL 25 YEARS AGO IN COMPTON, WHAT WAS
2 THE PERSON ACCUSED OF?

3 PROSPECTIVE JUROR NO. 7 (9500): RAPE.

4 THE COURT: AND HOW LONG DID YOU LISTEN TO
5 EVIDENCE? HOW LONG WAS -- DID THE TRIAL PART LAST?

6 PROSPECTIVE JUROR NO. 7 (9500): I'M GOING TO SAY
7 ABOUT THREE DAYS.

8 THE COURT: AND HOW LONG WERE YOU IN THE JURY
9 DELIBERATION ROOM?

10 PROSPECTIVE JUROR NO. 7 (9500): ABOUT FOUR DAYS.

11 THE COURT: WAS IT AN HONEST DIFFERENCE OF OPINION
12 AMONGST THE JURORS OR DO YOU THINK SOME JURORS WERE JUST
13 NOT DELIBERATING IN GOOD FAITH?

14 PROSPECTIVE JUROR NO. 7 (9500): BASED ON COMMENTS
15 MADE, I DON'T THINK IT WAS GOOD FAITH.

16 THE COURT: WHAT WERE THE NUMBERS? 6-6?

17 PROSPECTIVE JUROR NO. 7 (9500): 11-1.

18 THE COURT: 11-1?

19 PROSPECTIVE JUROR NO. 7 (9500): (NODS HEAD IN THE
20 AFFIRMATIVE.)

21 THE COURT: ALL RIGHT.

22 NOW, THE SECOND TRIAL, WHAT WAS THAT PERSON
23 ACCUSED OF DOING?

24 PROSPECTIVE JUROR NO. 7 (9500): MURDER.

25 THE COURT: AND A JURY REACHED A VERDICT?

26 PROSPECTIVE JUROR NO. 7 (9500): YES.

27 THE COURT: AND THAT TRIAL WAS HERE?

28 PROSPECTIVE JUROR NO. 7 (9500): YES.

1 THE COURT: HOW LONG AGO?

2 PROSPECTIVE JUROR NO. 7 (9500): PARDON ME?

3 THE COURT: HOW LONG AGO WAS IT?

4 PROSPECTIVE JUROR NO. 7 (9500): ABOUT 20 YEARS.

5 THE COURT: ALL RIGHT.

6 SINCE YOU HAVE BEEN ON JURIES BEFORE, YOU
7 KNOW WHAT IS EXPECTED, WHICH IS TO BE FAIR TO BOTH
8 SIDES, RENDER THE VERDICT THAT IS PROVEN BY THE
9 EVIDENCE.

10 PROSPECTIVE JUROR NO. 7 (9500): YES.

11 THE COURT: DID YOU DO THAT IN THESE PRIOR TWO
12 CASES?

13 PROSPECTIVE JUROR NO. 7 (9500): YES.

14 THE COURT: ALL RIGHT.

15 THAT'S BEING ASKED OF YOU AGAIN IN THIS
16 CASE. ARE YOU WILLING TO DO THAT?

17 PROSPECTIVE JUROR NO. 7 (9500): YES.

18 THE COURT: IS THAT TROUBLESOME TO YOU ABOUT
19 ANYTHING YOU HEARD SO FAR?

20 PROSPECTIVE JUROR NO. 7 (9500): NO.

21 THE COURT: IF YOU THOUGHT THE EVIDENCE PROVED
22 GUILT BEYOND A REASONABLE DOUBT, WHAT WOULD YOUR VERDICT
23 BE?

24 PROSPECTIVE JUROR NO. 7 (9500): GUILTY.

25 THE COURT: AND IF THE EVIDENCE DID NOT RISE TO
26 THAT LEVEL?

27 PROSPECTIVE JUROR NO. 7 (9500): NONE -- NOT
28 GUILTY.

1 THE COURT: DO YOU HAVE "YES" ANSWERS?
2 PROSPECTIVE JUROR NO. 7 (9500): QUESTION 9.
3 THE COURT: IS THAT THE ONLY ONE?
4 PROSPECTIVE JUROR NO. 7 (9500): YES.
5 THE COURT: ALL RIGHT.
6 TELL US ABOUT 9.
7 PROSPECTIVE JUROR NO. 7 (9500): MY BROTHER-IN-LAW
8 IS A DETECTIVE WITH THE INDIANAPOLIS POLICE DEPARTMENT.
9 THE COURT: DID YOU ACCEPT WHAT I SAID YESTERDAY
10 REGARDING WITNESS CREDIBILITY AND THE POLICE OFFICERS
11 ARE NOT AUTOMATICALLY ENTITLED TO MORE OR LESS
12 CREDIBILITY THAN ANYBODY ELSE?
13 PROSPECTIVE JUROR NO. 7 (9500): YES.
14 THE COURT: CAN YOU GIVE BOTH SIDES A FAIR TRIAL?
15 PROSPECTIVE JUROR NO. 7 (9500): YES.
16 THE COURT: VERY GOOD. THANK YOU.
17 JUROR NO. 5, CAN YOU GIVE US THE
18 INFORMATION, PLEASE.
19 PROSPECTIVE JUROR NO. 5 (6975): MY JUROR I.D.
20 NO. IS 6975.
21 I LIVE IN GARDENA.
22 THE COURT: WAIT. WAIT.
23 YOU NEED TO SPEAK A LITTLE LOUDER.
24 PROSPECTIVE JUROR NO. 5 (6975): MY I.D. NO. IS
25 6975.
26 I LIVE IN THE AREA OF GARDENA.
27 MY OCCUPATION IS A (UNINTELLIGIBLE).
28 THE COURT: YOU'RE A FRONT ENGINEER?

1 PROSPECTIVE JUROR NO. 5 (6975): QUALITY ENGINEER.
2 THE COURT: QUALITY ENGINEER?
3 PROSPECTIVE JUROR NO. 5 (6975): YES.
4 I'M MARRIED. MY WIFE STAYS AT HOME. AND I
5 HAVE, LIKE, TWO BOYS. ONE IS ALMOST TWO. ONE ALMOST
6 FOUR.
7 AND MY JURY -- I DON'T HAVE EXPERIENCE FOR
8 JURY.
9 THE COURT: HAS YOUR WIFE WORKED OUTSIDE THE HOME?
10 PROSPECTIVE JUROR NO. 5 (6975): NO. SHE'S STAY
11 HOME, TAKING CARE OF KID.
12 THE COURT: DID SHE EVER WORK OUTSIDE THE HOME?
13 PROSPECTIVE JUROR NO. 5 (6975): NO.
14 THE COURT: HAVE YOU UNDERSTOOD ALL THE LEGAL
15 CONCEPTS I TALKED ABOUT?
16 PROSPECTIVE JUROR NO. 5 (6975): YES.
17 THE COURT: DO YOU HAVE ANY PROBLEM OR ANY
18 DISAGREEMENT WITH ANYTHING I SAID SO FAR?
19 PROSPECTIVE JUROR NO. 5 (6975): NO.
20 THE COURT: DO YOU UNDERSTAND WHAT THE JOB OF A
21 JUROR ENTAILS AND INVOLVES?
22 PROSPECTIVE JUROR NO. 5 (6975): YES.
23 THE COURT: YOU'VE GOT TO BE FAIR TO BOTH SIDES.
24 PROSPECTIVE JUROR NO. 5 (6975): YES.
25 THE COURT: IF THE VERDICT -- IF THE EVIDENCE
26 CALLS FOR A VERDICT OF NOT GUILTY, WELL, THEN, YOU COME
27 INTO THE COURTROOM AND SAY "NOT GUILTY"?
28 PROSPECTIVE JUROR NO. 5 (6975): YES.

1 THE COURT: IF THE APPROPRIATE VERDICT, HOWEVER,
2 IS GUILTY, THEN YOU COME INTO THE COURTROOM AND YOU SAY,
3 "GUILTY"?

4 PROSPECTIVE JUROR NO. 5 (6975): YES.

5 THE COURT: ARE YOU WILLING TO DO THAT?

6 PROSPECTIVE JUROR NO. 5 (6975): YES.

7 THE COURT: ALL RIGHT.

8 DO YOU HAVE ANY "YES" ANSWERS TO THE
9 QUESTIONS?

10 PROSPECTIVE JUROR NO. 5 (6975): NO.

11 THE COURT: CAN YOU BE FAIR TO BOTH SIDES?

12 PROSPECTIVE JUROR NO. 5 (6975): YES.

13 THE COURT: VERY GOOD.

14 JUROR NO. 10, HI. CAN YOU GIVE US THE
15 INFORMATION, PLEASE?

16 PROSPECTIVE JUROR NO. 10 (6139): NO. 6139.

17 LIVE IN HARBOR CITY.

18 I'M A NURSE PRACTITIONER. I'M MARRIED.

19 MY HUSBAND IS AN ADMINISTRATIVE ASSISTANT,
20 AND NO PRIOR JURY EXPERIENCE.

21 THE COURT: WHAT KIND OF COMPANY DOES YOUR HUSBAND
22 WORK AT?

23 PROSPECTIVE JUROR NO. 10 (6139): HE WORKS AT
24 U.C.L.A.

25 THE COURT: AND WHO DOES HE ADMINISTRATIVELY
26 ASSIST?

27 PROSPECTIVE JUROR NO. 10 (6139): HE WORKS FOR THE
28 SPORTS DEPARTMENT.

1 THE COURT: FOR THE WHAT?

2 PROSPECTIVE JUROR NO. 10 (6139): THE SPORTS.

3 THE COURT: NOW, A NURSE PRACTITIONER, THAT IS

4 ABOVE A NURSE, AN R.N.?

5 PROSPECTIVE JUROR NO. 10 (6139): YES. A MASTER'S

6 DEGREE.

7 THE COURT: YOU UNDERSTAND WHAT THE JOB OF A JUROR

8 INVOLVES?

9 PROSPECTIVE JUROR NO. 10 (6139): YES.

10 THE COURT: YOU'VE GOT TO NOT BE IN FAVOR OF OR

11 AGAINST EITHER SIDE. AND WHATEVER VERDICT YOU REACH HAS

12 GOT TO BE BASED ON WHAT YOU HEAR IN THIS COURTROOM, WHAT

13 YOU SEE IN THIS COURTROOM, YOUR COMMON SENSE, AND THE

14 LAW WHICH YOU WILL GET BY WAY OF A JURY INSTRUCTION.

15 DO YOU AGREE TO DO THAT?

16 PROSPECTIVE JUROR NO. 10 (6139): YES.

17 THE COURT: ANY QUARREL WITH ANY OF THE LEGAL

18 CONCEPTS?

19 PROSPECTIVE JUROR NO. 10 (6139): NO.

20 THE COURT: IF YOU THOUGHT THE STANDARD OF PROOF

21 WAS MET, WHAT WOULD YOUR VERDICT BE?

22 PROSPECTIVE JUROR NO. 10 (6139): GUILTY.

23 THE COURT: IF YOU DID NOT THINK THE STANDARD OF

24 PROOF WAS MET?

25 PROSPECTIVE JUROR NO. 10 (6139): NOT GUILTY.

26 THE COURT: DO YOU HAVE "YES" ANSWERS?

27 PROSPECTIVE JUROR NO. 10 (6139): TO NO. 6.

28 THE COURT: TELL US.

1 PROSPECTIVE JUROR NO. 10 (6139): A FRIEND THAT IS
2 A LAWYER.

3 THE COURT: WHAT KIND OF LAWYER?

4 PROSPECTIVE JUROR NO. 10 (6139): I BELIEVE AN
5 ENVIRONMENTAL LAW.

6 THE COURT: HOW DO YOU HAVE THIS PERSON AS A
7 FRIEND?

8 PROSPECTIVE JUROR NO. 10 (6139): I WENT TO
9 COLLEGE WITH HIM.

10 THE COURT: HOW OFTEN DO YOU HAVE CONTACT WITH
11 HIM?

12 PROSPECTIVE JUROR NO. 10 (6139): ONCE EVERY TWO,
13 THREE MONTHS.

14 THE COURT: IF YOU HAPPEN TO HAVE CONTACT WITH HIM
15 IN THE NEXT, YOU KNOW, FOUR, FIVE DAYS, YOU CAN'T
16 DISCUSS ANYTHING ABOUT THIS CASE WITH HIM OR WITH
17 ANYBODY ELSE FOR THAT MATTER.

18 PROSPECTIVE JUROR NO. 10 (6139): OKAY.

19 THE COURT: DO YOU UNDERSTAND THAT?

20 PROSPECTIVE JUROR NO. 10 (6139): YES.

21 THE COURT: ANY OTHER "YES" ANSWERS?

22 PROSPECTIVE JUROR NO. 10 (6139): NO.

23 THE COURT: CAN YOU BE FAIR TO BOTH SIDES?

24 PROSPECTIVE JUROR NO. 10 (6139): YES.

25 THE COURT: VERY GOOD.

26 JUROR NO. 9, HI.

27 PROSPECTIVE JUROR NO. 9 (3305): HI. MY I.D.
28 NO. IS 3305.

1 LIVE IN HARBOR CITY.
2 I'M A STAY-AT-HOME MOM. MARRIED.
3 MY HUSBAND IS AN ADVISING EXECUTIVE. I
4 HAVE BEEN ON A CIVIL TRIAL ABOUT FIVE YEARS AGO. WE DID
5 REACH A VERDICT ONE DAY.
6 THE COURT: DO YOU HAVE ADULT CHILDREN?
7 PROSPECTIVE JUROR NO. 9 (3305): NO.
8 THE COURT: HAVE YOU EVER WORKED OUTSIDE THE HOME?
9 PROSPECTIVE JUROR NO. 9 (3305): YES.
10 THE COURT: WHAT DID YOU DO?
11 PROSPECTIVE JUROR NO. 9 (3305): I WAS A
12 CONTROLLER FOR A COSMETIC FIRM.
13 THE COURT: OKAY.
14 NOW, THE STANDARD OF PROOF IN THIS CRIMINAL
15 CASE IS MORE STRINGENT THAN THE ONE IN A CIVIL CASE.
16 CIVIL CASE IS THE PREPONDERANCE OF THE EVIDENCE.
17 NOW, IT'S --
18 PROSPECTIVE JUROR NO. 9 (3305): RIGHT.
19 THE COURT: -- PROOF BEYOND A REASONABLE DOUBT.
20 ARE YOU GOING TO HAVE ANY DIFFICULTY
21 ADAPTING TO A MORE STRINGENT STANDARD OF PROOF?
22 PROSPECTIVE JUROR NO. 9 (3305): NO.
23 THE COURT: WHEN YOU SAT AS A JUROR THE LAST TIME,
24 DID YOU HAVE THE SAME FRAME OF MIND THAT I'VE BEEN
25 TALKING ABOUT?
26 PROSPECTIVE JUROR NO. 9 (3305): YES.
27 THE COURT: ARE YOU WILLING TO DO THAT IN THIS
28 CASE?

1 PROSPECTIVE JUROR NO. 9 (3305): YES.

2 THE COURT: ANY PROBLEM?

3 IS THERE ANYTHING YOU HEARD SO FAR
4 REGARDING THE CHARGES, THE ALLEGATIONS, LEGAL CONCEPTS,
5 ANYTHING?

6 PROSPECTIVE JUROR NO. 9 (3305): NO.

7 THE COURT: IF THE EVIDENCE PROVES GUILT BEYOND A
8 REASONABLE DOUBT, WHAT WOULD YOUR VERDICT BE?

9 PROSPECTIVE JUROR NO. 9 (3305): NOT GUILTY.

10 I MEAN GUILTY. EXCUSE ME.

11 THE COURT: AT THE END OF THE CASE, IF YOU
12 THOUGHT, YOU KNOW, MR. BURGHARDT, HE VERY WELL MIGHT
13 HAVE DONE THIS, BUT I'M NOT CONVINCED BEYOND A
14 REASONABLE DOUBT --

15 PROSPECTIVE JUROR NO. 9 (3305): UH-HUH.

16 THE COURT: -- WHAT WOULD THE VERDICT BE?

17 PROSPECTIVE JUROR NO. 9 (3305): NOT GUILTY.

18 THE COURT: DO YOU HAVE ANY "YES" ANSWERS?

19 PROSPECTIVE JUROR NO. 9 (3305): YES, I DO.

20 THE COURT: WHICH ONES?

21 PROSPECTIVE JUROR NO. 9 (3305): NO. 7.

22 THE COURT: IS THAT THE ONLY ONE?

23 PROSPECTIVE JUROR NO. 9 (3305): NO. 7, 8, AND 9.

24 THE COURT: ALL RIGHT.

25 TELL US ABOUT 7.

26 PROSPECTIVE JUROR NO. 9 (3305): OKAY.

27 7. I HAD A FRIEND THAT HAD A D.U.I.

28 THE COURT: SEVEN IS WHETHER YOU OR SOMEONE CLOSE

1 TO HAS BEEN A VICTIM.

2 PROSPECTIVE JUROR NO. 9 (3305): OH, MY MOTHER.

3 I'M SORRY.

4 THE COURT: WHAT HAPPENED TO YOUR MOTHER?

5 PROSPECTIVE JUROR NO. 9 (3305): SOMEONE TRIED TO
6 KILL HER.

7 THE COURT: SOMEONE TRIED TO KILL HER?

8 PROSPECTIVE JUROR NO. 9 (3305): YES.

9 THE COURT: WHEN WAS THAT?

10 PROSPECTIVE JUROR NO. 9 (3305): I WAS 13.

11 THE COURT: WHO WAS IT TRYING TO KILL YOUR MOTHER?

12 PROSPECTIVE JUROR NO. 9 (3305): THEY DON'T KNOW.

13 THE DETECTIVE NEVER FOUND WHO DID IT.

14 THE COURT: AND HOW -- WHAT DID THIS PERSON DO?

15 PROSPECTIVE JUROR NO. 9 (3305): THEY BEAT HER,
16 AND LEFT HER FOR DEAD AND STABBED HER.

17 THE COURT: WHERE WAS THIS?

18 PROSPECTIVE JUROR NO. 9 (3305): IN FRONT OF OUR
19 HOUSE IN CARSON.

20 THE COURT: WOW.

21 WAS IT EVER FIGURED OUT WHO DID IT OR THE
22 REASON?

23 PROSPECTIVE JUROR NO. 9 (3305): THEY HAVE NO
24 IDEA.

25 THE COURT: WAS SHE ROBBED?

26 PROSPECTIVE JUROR NO. 9 (3305): NO.

27 THE COURT: SEXUALLY ASSAULTED?

28 PROSPECTIVE JUROR NO. 9 (3305): NO.

1 THE COURT: JUST BEATEN SEVERELY AND STABBED?
2 PROSPECTIVE JUROR NO. 9 (3305): BEAT HER AND WAS
3 IN A COMA FOR A WEEK.

4 THE COURT: JEEZ.

5 DO YOU KNOW HOW MANY SUSPECTS THERE WERE?
6 PROSPECTIVE JUROR NO. 9 (3305): SHE DOESN'T KNOW.

7 THE COURT: DO YOU KNOW IF THE SUSPECTS WERE MALE
8 OR FEMALE?

9 PROSPECTIVE JUROR NO. 9 (3305): WELL, WHEN MY
10 MOTHER WAS DYING, SHE -- I KINDA ASKED HER WHO DID IT
11 AGAIN BECAUSE I THINK SHE WAS AFRAID TO SAY.

12 AND SHE WAS -- HAD DEMENTIA, BUT SHE SAID
13 IT -- IT WAS A NEIGHBOR, A MALE. BUT THIS WAS -- LIKE I
14 SAID, SHE HAD DEMENTIA. AND SHE WAS TELLING ME THIS.

15 THE COURT: DO YOU OR THE FAMILY HAVE ANY QUARREL
16 WITH THE SHERIFF'S DEPARTMENT BECAUSE THEY DIDN'T SOLVE
17 THE CASE?

18 PROSPECTIVE JUROR NO. 9 (3305): NO. NO.

19 THE COURT: DO YOU THINK THEY DID WHAT THEY COULD?

20 PROSPECTIVE JUROR NO. 9 (3305): YES, THEY DID.

21 THE COURT: DO YOU HAVE ANY SENSE OF WHAT THE RACE
22 WAS OF THE PERSON?

23 PROSPECTIVE JUROR NO. 9 (3305): YES.

24 THE COURT: WHAT?

25 PROSPECTIVE JUROR NO. 9 (3305): WHITE, CAUCASIAN.

26 THE COURT: IS THAT BECAUSE OF THE NEIGHBOR WAS
27 WHITE?

28 PROSPECTIVE JUROR NO. 9 (3305): THAT'S WHAT MY

1 MOTHER SAID DID IT.

2 THE COURT: AND IS THAT WHO YOU THINK DID IT?

3 PROSPECTIVE JUROR NO. 9 (3305): YES.

4 THE COURT: IS THERE ANYTHING ABOUT YOUR MOTHER
5 GOING TO AFFECT YOU IN DECIDING MR. BURGHARDT'S CASE?

6 PROSPECTIVE JUROR NO. 9 (3305): NO.

7 THE COURT: DO YOU HAVE OTHER RESPONSES TO NO. 7?

8 PROSPECTIVE JUROR NO. 9 (3305): NO.

9 THE COURT: NO. 8?

10 PROSPECTIVE JUROR NO. 9 (3305): NO. 8. I HAD A
11 FRIEND THAT WAS ARRESTED FOR A D.U.I. 30 YEARS AGO.

12 THE COURT: HOW MANY?

13 PROSPECTIVE JUROR NO. 9 (3305): ONE.

14 THE COURT: AND IS THIS FRIEND A NAME OR FEMALE?

15 PROSPECTIVE JUROR NO. 9 (3305): MALE.

16 THE COURT: AND HOW DO YOU HAVE THIS FRIEND?

17 PROSPECTIVE JUROR NO. 9 (3305): IT -- IT WAS A
18 BOYFRIEND.

19 THE COURT: AND THIS WAS ONE YEAR AGO?

20 PROSPECTIVE JUROR NO. 9 (3305): NO. 30.

21 THE COURT: OH. 30 YEARS AGO?

22 PROSPECTIVE JUROR NO. 9 (3305): YEAH.

23 THE COURT: BACK UP.

24 THE ARREST WAS A YEAR AGO?

25 PROSPECTIVE JUROR NO. 9 (3305): NO.

26 THE COURT: THE ARREST WAS 30 YEARS AGO?

27 PROSPECTIVE JUROR NO. 9 (3305): YES.

28 THE COURT: WHAT WAS ONE YEAR AGO? YOU SAID

1 SOMETHING.

2 PROSPECTIVE JUROR NO. 9 (3305) : NO.

3 THE COURT: THEN I MISHEARD YOU. ALL RIGHT.

4 WERE YOU DATING HIM AT THE TIME --

5 PROSPECTIVE JUROR NO. 9 (3305) : YES.

6 THE COURT: WERE YOU WITH HIM AT THE TIME?

7 PROSPECTIVE JUROR NO. 9 (3305) : NO.

8 THE COURT: WHICH POLICE DEPARTMENT ARRESTED HIM?

9 PROSPECTIVE JUROR NO. 9 (3305) : CARSON SHERIFFS.

10 THE COURT: DID HE EVER TALK ABOUT THE ARREST?

11 PROSPECTIVE JUROR NO. 9 (3305) : JUST SO -- HE --
12 HE WAS DRUNK, AND HE DESERVED IT. SO --

13 THE COURT: SO YOU GET THE IMPRESSION HE WAS
14 TREATED FAIRLY BY THE SHERIFF'S DEPARTMENT?

15 PROSPECTIVE JUROR NO. 9 (3305) : YES, HE WAS.

16 THE COURT: AND BY THE COURT SYSTEM?

17 PROSPECTIVE JUROR NO. 9 (3305) : YES.

18 THE COURT: DO YOU THINK HE WAS GUILTY?

19 PROSPECTIVE JUROR NO. 9 (3305) : OH, YES.

20 THE COURT: DO YOU THINK THAT BECAUSE
21 MR. BURGHARDT IS SITTING THERE THAT HE MUST BE GUILTY?

22 PROSPECTIVE JUROR NO. 9 (3305) : NO.

23 THE COURT: IS THERE ANY CONNECTION BETWEEN YOUR
24 EX-BOYFRIEND'S CASE AND MR. BURGHARDT'S CASE?

25 PROSPECTIVE JUROR NO. 9 (3305) : NO.

26 THE COURT: IT COULD BE, AT THE END OF THE CASE,
27 HE'S, IN FACT, FOUND GUILTY, OR IT COULD BE THAT HE'S
28 FOUND NOT GUILTY OR GUILTY OF SOME COUNTS, NOT GUILTY OF

1 OTHERS.

2 DO YOU GO WITH THAT?

3 PROSPECTIVE JUROR NO. 9 (3305) : YES.

4 THE COURT: NO. 9, QUESTION 9.

5 PROSPECTIVE JUROR NO. 9 (3305) : OKAY.

6 MY GOOD FRIEND, HER HUSBAND'S THE CAPTAIN
7 OF A DETECTIVES DEPARTMENT HERE IN TORRANCE.

8 THE COURT: HOW OFTEN DO YOU SEE HIM?

9 PROSPECTIVE JUROR NO. 9 (3305) : JUST SAW HIM -- I
10 SEE HER ALMOST EVERY DAY. BUT I SEE HIM MAYBE ONCE
11 EVERY TWO MONTHS OR --

12 THE COURT: I SAID YESTERDAY THAT, REGARDLESS OF
13 WHAT PERSONS DO FOR A LIVING, THAT DOES NOT
14 AUTOMATICALLY CLOAK THEM WITH MORE OR LESS CREDIBILITY
15 THAN ANYBODY ELSE.

16 SO POLICE OFFICERS, THEY START OFF AT THE
17 SAME PLACE WHEN THEY FIRST SIT DOWN IN THIS CHAIR AS
18 ANYBODY ELSE AS FAR AS CREDIBILITY GOES.

19 DO YOU ACCEPT THAT?

20 PROSPECTIVE JUROR NO. 9 (3305) : YES.

21 THE COURT: OTHER RESPONSES ON THE QUESTIONNAIRE?

22 PROSPECTIVE JUROR NO. 9 (3305) : NO.

23 THE COURT: CAN YOU GIVE BOTH SIDES A FAIR TRIAL?

24 PROSPECTIVE JUROR NO. 9 (3305) : YES.

25 THE COURT: JUROR NO. 4, COULD YOU GIVE US THE
26 INFORMATION, PLEASE.

27 PROSPECTIVE JUROR NO. 4 (0443) : MY I.D. NUMBER IS
28 0443.

1 AREA OF RESIDENCE IS (UNINTELLIGIBLE).

2 THE COURT: AREA OF RESIDENCE IS WHAT?

3 PROSPECTIVE JUROR NO. 4 (0443) : LOMITA.

4 THE COURT: OH, LOMITA. OKAY.

5 PROSPECTIVE JUROR NO. 4 (0443): I'M A TEACHER AT
6 SOUTH HIGH SCHOOL.

7 I AM MARRIED. MY HUSBAND IS AN I.T. PERSON
8 FOR PORTS OF AMERICA.

I DO NOT HAVE ANY PRIOR JURY EXPERIENCE,
AND I HAVE A TEN-MONTH-OLD DAUGHTER.

11 THE COURT: YOU UNDERSTAND WHAT THE JOB OF A JUROR
12 INVOLVES?

13 PROSPECTIVE JUROR NO. 4 (0443): (NODS HEAD IN THE
14 AFFIRMATIVE.) YES.

15 THE COURT: DOES IT MAKE SENSE TO YOU THAT THE
16 ONLY WAY THE SYSTEM WORKS IS IF THE JURORS ARE
17 COMPLETELY FAIR AND IMPARTIAL AND THEY RENDER A VERDICT
18 THAT'S DICTATED BY THE EVIDENCE AND NOT SOME AGENDA OR
19 SOME PERSONAL FEELING?

20 PROSPECTIVE JUROR NO. 4 (0443): YES.

21 THE COURT: ANY QUARREL WITH ANY OF THE LEGAL
22 CONCEPTS OR THE CHARGES OR ANYTHING YOU HEARD SO FAR?

23 | PROSPECTIVE JUROR NO. 4 (0443): NO.

24 THE COURT: AND ARE YOU THE PERSON THAT NEEDS TO
25 BE OUT OF HERE BY 4:30?

26 PROSPECTIVE JUROR NO. 4 (0443): YES, IT'S FINAL
27 WEEKS.

28 | THE COURT: WHAT'S THAT?

1 PROSPECTIVE JUROR NO. 4 (0443): FINAL WEEKS.
2 THE COURT: IF YOU ARE IN THE JURY BOX, WE WILL
3 BE -- YOU WILL BE OUT OF HERE BY 4:30 --
4 PROSPECTIVE JUROR NO. 4 (0443): OKAY.
5 THE COURT: -- ALL RIGHT?
6 PROSPECTIVE JUROR NO. 4 (0443): (NODS HEAD IN THE
7 AFFIRMATIVE.)
8 THE COURT: IF YOU THOUGHT THE EVIDENCE PROVED
9 GUILT BEYOND A REASONABLE DOUBT, WHAT WOULD YOUR VERDICT
10 BE?
11 PROSPECTIVE JUROR NO. 4 (0443): GUILTY.
12 THE COURT: AND IF YOU DIDN'T THINK THE EVIDENCE
13 ROSE TO THAT STANDARD, WHAT WOULD YOUR VERDICT BE?
14 PROSPECTIVE JUROR NO. 4 (0443): NOT GUILTY.
15 THE COURT: DO YOU HAVE "YES" ANSWERS?
16 PROSPECTIVE JUROR NO. 4 (0443): YES, I DO.
17 THE COURT: WHICH ONES?
18 PROSPECTIVE JUROR NO. 4 (0443): 6, 7, 8, AND 9.
19 BUT 7 AND 8 I'D LIKE TO DISCLOSE PRIVATELY.
20 THE COURT: ALL RIGHT.
21 WHY DON'T YOU TELL US ABOUT 6?
22 PROSPECTIVE JUROR NO. 4 (0443): 6. I HAD A GOOD
23 FRIEND WHO IS A PUBLIC DEFENDER IN L.A., BUT HE'S
24 STRAIGHT AND NARROW, WOULD NEVER SAY ANYTHING OR DISCUSS
25 ANY CASES. SO --
26 THE COURT: HOW DO YOU HAVE THIS PERSON AS A
27 FRIEND?
28 PROSPECTIVE JUROR NO. 4 (0443): I'VE KNOWN HIM

1 SINCE WE WERE ABOUT 14 OR 15. SO I'VE KNOWN HIM ABOUT
2 15 YEARS IN HIGH SCHOOL.

3 THE COURT: WHAT'S HIS NAME?

4 PROSPECTIVE JUROR NO. 4 (0443): MICHAEL MATOBA
5 (PHONETIC).

6 THE COURT: SINCE YOU HAVE A FRIEND AS A PUBLIC
7 DEFENDER, IS THAT GOING TO ALIGN YOU, YOU KNOW, WITH THE
8 PUBLIC DEFENDER? HE DEFENDS PEOPLE THAT ARE ACCUSED OF
9 CRIMES --

10 PROSPECTIVE JUROR NO. 4 (0443): RIGHT.

11 THE COURT: -- RIGHT?

12 MR. LEONARD IS AN ATTORNEY WHO DEFENDS
13 PEOPLE WHAT ARE ACCUSED OF CRIMES.

14 PROSPECTIVE JUROR NO. 4 (0443): HE NEVER
15 DISCUSSED TRIALS OR ANYTHING. SO --

16 THE COURT: ARE YOU GOING TO ALIGN YOURSELF WITH
17 MR. LEONARD BECAUSE --

18 PROSPECTIVE JUROR NO. 4 (0443): NO.

19 THE COURT: -- HE AND YOUR FRIEND DO THE SAME
20 THING?

21 PROSPECTIVE JUROR NO. 4 (0443): NO.

22 THE COURT: OTHER RESPONSES TO NO. 6?

23 PROSPECTIVE JUROR NO. 4 (0443): NO.

24 THE COURT: NO. 9?

25 PROSPECTIVE JUROR NO. 4 (0443): NO. 9. MY COUSIN
26 HAS TALKED TO ME. HE WAS IN THE POLICE DEPARTMENT FOR
27 TORRANCE, AND THEN JUST MY FRIEND WHO WAS A PUBLIC
28 DEFENDER.

1 THE COURT: SO YOU SAY THAT YOU HAVE A FRIEND THAT
2 WAS ON THE TORRANCE POLICE?

3 PROSPECTIVE JUROR NO. 4 (0443): MY COUSIN.

4 THE COURT: YOUR COUSIN.

5 PROSPECTIVE JUROR NO. 4 (0443): UH-HUH.

6 THE COURT: WHY DID HE LEAVE?

7 PROSPECTIVE JUROR NO. 4 (0443): HE MOVED TO
8 ARIZONA.

9 THE COURT: OH, ALL RIGHT.

10 ANY QUARREL WITH WHAT I SAID ABOUT WITNESS
11 CREDIBILITY?

12 PROSPECTIVE JUROR NO. 4 (0443): NO.

13 THE COURT: POLICE OFFICERS ARE NOT AUTOMATICALLY
14 MORE OR LESS BELIEVABLE THAN ANYBODY ELSE.

15 DO YOU ACCEPT THAT?

16 PROSPECTIVE JUROR NO. 4 (0443): I ACCEPT THAT.

17 THE COURT: ALL RIGHT.

18 FOR QUESTION 7 AND 8, WHY DON'T YOU GO
19 AHEAD AND GO THROUGH THAT DOOR, AND THEN WE'LL TELL YOU
20 WHERE TO GO AFTER THAT.

21

22 (THE FOLLOWING PROCEEDINGS

23 WERE HELD IN CHAMBERS:)

24

25 THE COURT: ALL RIGHT.

26 NO. 7.

27 PROSPECTIVE JUROR NO. 4 (0443): NO. 7.

28 MY -- I DON'T KNOW WHICH BIRTHDAY IT WAS,

1 MY 5TH OR 6TH. MY UNCLE ROBBED US.

2 THE COURT: YOUR UNCLE ROBBED YOU?

3 PROSPECTIVE JUROR NO. 4 (0443): UH-HUH.

4 THE COURT: ON YOUR 5TH OR 6TH BIRTHDAY?

5 PROSPECTIVE JUROR NO. 4 (0443): HE WAS STAYING
6 WITH OUR HOUSE. WE HAD LEFT AND THEN WHEN WE CAME BACK,
7 HE HAD ROBBED OUR HOUSE.

8 THE COURT: BURGLARIZED?

9 PROSPECTIVE JUROR NO. 4 (0443): YES.

10 THE COURT: HE STOLE -- HOW DO YOU KNOW IT WAS
11 HIM?

12 PROSPECTIVE JUROR NO. 4 (0443): BECAUSE HE WAS
13 STAYING AT OUR HOUSE. HE SUDDENLY DISAPPEARED.
14 EVERYTHING WAS GONE.

15 AND THEN HE ALSO HAS COMMITTED ARMED
16 ROBBERY.

17 THE COURT: DOES HE HAVE A DRUG PROBLEM BY ANY
18 CHANCE?

19 PROSPECTIVE JUROR NO. 4 (0443): YES, HE DOES.

20 THE COURT: WHEN WAS THE LAST TIME YOU SAW HIM?

21 PROSPECTIVE JUROR NO. 4 (0443): COUPLE MONTHS
22 AGO.

23 THE COURT: IS HE IN CUSTODY?

24 PROSPECTIVE JUROR NO. 4 (0443): NO. HE HAS BEEN
25 LET OUT. HE DID HIS FULL SENTENCE FOR ARMED ROBBERY.
26 WELL, ACTUALLY, THEY LET HIM OUT.

27 THE COURT: DID YOU OR ANY OF THE FAMILY MEMBERS
28 EVER CONFRONT HIM ABOUT, YOU KNOW, TAKING ALL OF YOUR

1 BELONGINGS ON YOUR BIRTHDAY?

2 PROSPECTIVE JUROR NO. 4 (0443): I NEVER DID. I
3 WAS ONLY 5 OR 6 AT THE TIME.

4 THE COURT: DID YOUR MOTHER OR FATHER EVER SAY
5 ANYTHING TO HIM?

6 PROSPECTIVE JUROR NO. 4 (0443): I DON'T KNOW. I
7 WOULD ASSUME SO, BUT I WAS TOO YOUNG AT THE TIME. I
8 DON'T KNOW IF THEY DID OR NOT.

9 THE COURT: ALL RIGHT.

10 DID YOU VISIT HIM WHILE HE WAS IN PRISON?

11 PROSPECTIVE JUROR NO. 4 (0443): NO.

12 THE COURT: YOU WRITE TO HIM WHEN HE WAS IN
13 PRISON?

14 PROSPECTIVE JUROR NO. 4 (0443): NO.

15 THE COURT: HOW DO YOU FEEL ABOUT HIM NOW?

16 PROSPECTIVE JUROR NO. 4 (0443): I HATE HIM.

17 THE COURT: HOW DID YOU HAPPEN TO SEE HIM A LITTLE
18 WHILE AGO?

19 PROSPECTIVE JUROR NO. 4 (0443): HE GOT OUT OF
20 JAIL, HAD NOWHERE TO GO. SO MY GREAT GRANDMOTHER TOOK
21 HIM IN AND SO HE WAS HELPING TAKE CARE OF HER BECAUSE
22 SHE REFUSED TO GO INTO A HOME.

23 THE COURT: DID HE TAKE CARE OF HER, OR DID HE
24 TAKE THINGS FROM HER, TOO?

25 PROSPECTIVE JUROR NO. 4 (0443): HE BASICALLY
26 DRAINED ALL OF HER ACCOUNTS. THERE IS POSSIBLE ABUSE
27 THAT WE DIDN'T FIND OUT UNTIL IT CAUSED HER TO GO INTO
28 THE HOSPITAL AND THEN SHE PASSED.

1 THE COURT: IS THERE ANYTHING ABOUT YOUR COUSIN
2 THAT'S IN ANY WAY -- OR YOUR UNCLE, THAT IS GOING TO
3 IMPACT YOU IN DECIDING THIS CASE?

4 PROSPECTIVE JUROR NO. 4 (0443): NO.

5 THE COURT: ALL RIGHT.

6 KIND OF MAKES YOU WONDER, YOU KNOW, HOW
7 PEOPLE LIKE THAT, YOU KNOW, CAN EVEN LOOK AT THEMSELVES
8 IN THE MIRROR.

9 PROSPECTIVE JUROR NO. 4 (0443): (NODS HEAD IN THE
10 AFFIRMATIVE.)

11 THE COURT: I'M VERY SYMPATHETIC THAT THAT HAS
12 HAPPENED TO YOU AND YOUR FAMILY, ESPECIALLY TO YOUR
13 GREAT GRANDMOTHER, WHO EXTENDED, YOU KNOW, A HELPING
14 HAND OUT TO HIM.

15 NO. 8, IS IT THE SAME THING?

16 PROSPECTIVE JUROR NO. 4 (0443): IT IS THE SAME
17 THING EXCEPT FOR MY GRANDMOTHER. OKAY.

18 SO MY GRANDFATHER RAPED MY GRANDMOTHER IN
19 FRONT OF ONE OF HIS -- I KNOW -- I'M SORRY -- IN FRONT
20 OF ONE OF HIS FRIENDS, AND THEN SHE SHOT AND KILLED HIM.
21 THEY ARRESTED HER, BUT SHE WAS ACQUITTED BASED ON
22 SELF-DEFENSE.

23 THE COURT: OKAY.

24 HOW LONG AGO WAS THAT?

25 PROSPECTIVE JUROR NO. 4 (0443): THAT WAS WHEN MY
26 MOM AND HER BROTHER AND MY AUNT WERE MAYBE ABOUT 15 OR
27 16.

28 THE COURT: SO IT WAS A LONG TIME AGO?

1 PROSPECTIVE JUROR NO. 4 (0443): UH-HUH.

2 THE COURT: BUT THEY WITNESSED IT WELL BEFORE YOU

3 WERE BORN?

4 PROSPECTIVE JUROR NO. 4 (0443): UH-HUH.

5 THE COURT: THEY WITNESSED THE RAPE AND THE

6 SHOOTING?

7 PROSPECTIVE JUROR NO. 4 (0443): NOT THE RAPE.

8 THEY WITNESSED THE MURDER.

9 THE COURT: HOW LONG AGO DID SHE KILL HIM?

10 EXCUSE ME. HOW LONG AFTER THE RAPE?

11 PROSPECTIVE JUROR NO. 4 (0443): ALMOST

12 IMMEDIATELY.

13 THE COURT: OKAY.

14 PROSPECTIVE JUROR NO. 4 (0443): SHE WENT UPSTAIRS

15 AND GRABBED THE GUN.

16 THE COURT: IS THIS GOING TO HAVE ANY BEARING ON

17 YOU IN DECIDING THIS CASE?

18 PROSPECTIVE JUROR NO. 4 (0443): NO.

19 THE COURT: ALL RIGHT.

20 THOSE TWO VERY BAD THINGS THAT HAVE

21 HAPPENED TO THE FAMILY.

22 PROSPECTIVE JUROR NO. 4 (0443): RIGHT.

23 AS A TEACHER I DIDN'T WANT ANYONE TO KNOW

24 BECAUSE I KNOW COMMUNITY MEMBERS WHO ARE OUT THERE IN

25 THE JURY.

26 THE COURT: OH, I HAVE NO QUARREL WITH YOU COMING

27 BACK HERE. I MEAN THESE ARE THINGS THAT, YOU KNOW,

28 ARE -- I DON'T BLAME YOU FOR NOT WANTING TO DISCUSS THIS

1 IN FRONT OF A -- YOU KNOW, A GROUP OF 60 PEOPLE WHO YOU
2 DON'T KNOW.

3 BUT I APPRECIATE YOUR CANDOR.

4 MR. LEONARD, ANY QUESTIONS?

5 MR. LEONARD: NO QUESTIONS.

6 THE COURT: DO YOU HAVE ANY QUESTIONS?

7 MR. STENNIS: NO.

8 THE COURT: ALL RIGHT.

9 THANK YOU FOR CONFIDING THIS, THAT YOU DID
10 WHAT YOU WERE SUPPOSED TO DO.

11 PROSPECTIVE JUROR NO. 4 (0443): OKAY.

12 THE COURT: YOU CAN GO BACK TO YOUR SEAT. GO OUT
13 AND THEN GO BACK THROUGH THE SAME DOOR THAT YOU LEFT
14 FROM THE COURTROOM.

15 PROSPECTIVE JUROR NO. 4 (0443): THANK YOU.

16

17 (THE FOLLOWING PROCEEDINGS

18 WERE HELD IN OPEN COURT IN

19 THE PRESENCE OF THE

20 PROSPECTIVE JURORS:)

21

22 THE COURT: ALL RIGHT.

23 JUROR NO. 4, CAN YOU GIVE BOTH SIDES A FAIR
24 TRIAL?

25 PROSPECTIVE JUROR NO. 4 (0443): YES.

26 THE COURT: VERY GOOD.

27 JUROR NO. 2, CAN YOU GIVE US THE
28 INFORMATION, PLEASE.

1 PROSPECTIVE JUROR NO. 2 (0841): MY I.D. NUMBER IS
2 0841.

3 MY RESIDENCE IS IN VENICE, CALIFORNIA.

4 I'M A NURSING ASSISTANT.

5 THE COURT: YOU'RE WHAT?

6 PROSPECTIVE JUROR NO. 2 (0841): WHAT?

7 THE COURT: I CAN'T HEAR YOU.

8 PROSPECTIVE JUROR NO. 2 (0841): MY RESIDENCE IS
9 IN VENICE, CALIFORNIA.

10 THE COURT: RIGHT.

11 PROSPECTIVE JUROR NO. 2 (0841): AND I'M -- I'M A
12 NURSING ASSISTANT.

13 THE COURT: OH.

14 PROSPECTIVE JUROR NO. 2 (0841): AND I'M A WIDOW.

15 MY LATE HUSBAND IS -- WAS -- WAS AN
16 ELECTRICIAN.

17 AND I HAVE A 36-YEAR-OLD SON AND
18 34-YEAR-OLD DAUGHTER. MY SON LIVES IN TEXAS.

19 THE COURT: WHAT DOES HE DO?

20 PROSPECTIVE JUROR NO. 2 (0841): HE'S -- HE'S AN
21 AIRCRAFT MECHANIC. AND MY DAUGHTER IS IN PHOENIX,
22 ARIZONA. SHE IS WORKING IN A DOCTOR'S OFFICE, MAYO
23 CLINIC.

24 THE COURT: OKAY.

25 HAVE YOU EVER BEEN A JUROR BEFORE?

26 PROSPECTIVE JUROR NO. 2 (0841): NEVER BEEN. THIS
27 IS THE FIRST TIME.

28 THE COURT: GOOD.

1 EVIDENCE PROVES GUILT BEYOND A REASONABLE DOUBT, WHAT
2 WOULD YOUR VERDICT BE?

3 PROSPECTIVE JUROR NO. 2 (0841): GUILTY.

4 THE COURT: AND IF YOU DON'T THINK THAT THE
5 EVIDENCE PROVES GUILT BEYOND A REASONABLE DOUBT, WHAT
6 WOULD YOUR VERDICT BE?

7 PROSPECTIVE JUROR NO. 2 (0841): NOT GUILTY.

8 THE COURT: ALL RIGHT.

9 DO YOU HAVE "YES" ANSWERS TO ANY OF THE
10 QUESTIONS?

11 PROSPECTIVE JUROR NO. 2 (0841): NO.

12 THE COURT: CAN YOU BE FAIR TO BOTH SIDES?

13 PROSPECTIVE JUROR NO. 2 (0841): YES.

14 THE COURT: VERY GOOD.

15 ALL RIGHT. I APPRECIATE ALL OF YOUR
16 ANSWERS, FOLKS.

17 MR. LEONARD AND MR. STENNIS, THEY'RE GOING
18 TO HAVE THE OPPORTUNITY TO ASK YOU SOME QUESTIONS.
19 PLEASE REMEMBER WHAT I MENTIONED YESTERDAY, THAT THERE
20 IS NO RIGHT OR WRONG ANSWERS. WE ONLY WANT THE HONEST
21 ANSWERS.

22 SO, MR. LEONARD, THE FLOOR IS YOURS.

23 MR. LEONARD: AND THANK YOU, YOUR HONOR.

24 CAN EVERYBODY HEAR ME IN THE BACK?

25 THE PROSPECTIVE JURORS: YES.

26 MR. LEONARD: JUST GOT AT FEW QUESTIONS TO ASK.
27 AND SOME OF THEM ARE GOING TO BE REDUNDANT, BUT THEY'RE
28 REDUNDANT FOR A PURPOSE, ONLY BECAUSE THE JUDGE ASKED

1 ALL THE QUESTIONS THAT OBVIOUSLY, IF I WAS UP HERE FOR
2 THE FIRST TIME, I WOULD BE ASKING YOU. OKAY.

3 MR. STENNIS AND I, PRIMARILY WERE LOOKING
4 FOR TWELVE JURORS THAT WOULD BE FAIR TO BOTH SIDES.
5 OKAY.

6 AND WHAT WE DON'T WANT, WE DON'T WANT
7 YOU -- AND WE DON'T KNOW THAT MUCH ABOUT YOU. BUT IF
8 YOU'RE BIAS -- AND WE ALL HAVE BIASES -- BUT IF YOU ARE
9 BIASED TOWARDS MY CLIENT OR ANYTHING ELSE OR THINK YOU
10 CAN'T BE FAIR TO EITHER SIDE, JUST RAISE YOUR HAND AND
11 LET US KNOW BECAUSE IT WOULDN'T BE FAIR TO MY CLIENT.

12 IF YOU HAD A BIAS AND YOU COULD NOT BE FAIR
13 TO HIM OR, ON THE OTHER HAND, IF YOU COULDN'T BE FAIR TO
14 MR. STENNIS BECAUSE MR. STENNIS, HIS JOB AS A D.A. IS
15 HE'S GOT THE RESPONSIBILITY TO TRY TO PROVE TO YOU THAT
16 MY CLIENT IS GUILTY.

17 AND YOU HEARD THE BURDEN OF PROOF. THE
18 BURDEN OF PROOF IS BEYOND A REASONABLE DOUBT. OKAY.

19 SO IT'S A HIGHER BURDEN. IT'S RIGHT UP
20 HERE. IT'S NOT -- IT'S ONE THAT CAN BE MET. I'M NOT
21 SAYING IT CAN'T BE MET. IT CAN BE MET IF THE EVIDENCE
22 PROVES IT. OKAY.

23 AND WHAT WE'RE LOOKING FOR IS JURORS HAVING
24 TO HEAR, AND YOU ARE GOING TO HEAR WITNESSES THAT ARE
25 GOING TO COME UP ON THE STAND, AND YOU ARE GOING TO HEAR
26 TESTIMONY FROM THE WITNESSES.

27 AND YOU'VE GOT TO KEEP AN OPEN MIND TO
28 THOSE WITNESSES. OKAY.

1 CAN EVERYBODY DO THAT?

2 THE PROSPECTIVE JURORS: YES.

3 MR. LEONARD: OKAY.

4 JUROR NO. 4, LET ME PICK ON YOU. YOU'RE A

5 TEACHER. OKAY. RIGHT.

6 PROSPECTIVE JUROR NO. 4 (0443): YES.

7 MR. LEONARD: TEACHERS ALWAYS PICKED ON ME WHEN I

8 WAS IN SCHOOL, ONLY BECAUSE I WAS IN THE BACK. I WASN'T

9 THAT GUY IN THE FRONT THAT RAISED MY HAND ALL THE TIME.

10 I WAS ALWAYS TRYING TO HIDE, AND THEY KNEW IT.

11 LET ME ASK YOU THIS: IF YOU HAD TO VOTE

12 RIGHT NOW, HOW WOULD YOU VOTE?

13 YOU HAVE TWO CHOICES, GUILTY OR NOT GUILTY.

14 HOW WOULD YOU VOTE?

15 PROSPECTIVE JUROR NO. 4 (0443): OH. I THOUGHT

16 YOU WERE TALKING ABOUT TO POLITICAL AFFILIATIONS.

17 MR. LEONARD: NO. NO. OH, NO.

18 IF YOU HAD TO VOTE GUILTY OR NOT GUILTY,

19 HOW WOULD YOU VOTE?

20 PROSPECTIVE JUROR NO. 4 (0443): I DON'T HAVE AN

21 ANSWER.

22 MR. LEONARD: OKAY.

23 NOW, THAT'S SORT OF A TRICK QUESTION.

24 PROSPECTIVE JUROR NO. 4 (0443): YES.

25 MR. LEONARD: AND LET ME TELL YOU WHY IT'S A TRICK

26 QUESTION. BUT IT -- WHAT IT SHOWS IS WHAT THE SYSTEM IS

27 ALL ABOUT. IN OTHER WORDS, EVIDENCE COMES IN THROUGH

28 EITHER A STIPULATION BY MYSELF AND MR. STENNIS OR

1 THROUGH WITNESSES. OKAY?

2 NOW, HAVE YOU HEARD ANY EVIDENCE?

3 PROSPECTIVE JUROR NO. 4 (0443): NO.

4 MR. LEONARD: OKAY.

5 YOU JUST HEARD ME TALKING; RIGHT? THAT'S
6 ALL.

7 SO WITHOUT ANY EVIDENCE, YOU HAVE TO VOTE
8 NOT GUILTY; RIGHT?

9 PROSPECTIVE JUROR NO. 4 (0443): INNOCENT UNTIL
10 PROVEN GUILTY.

11 MR. LEONARD: HAS MR. STENNIS PROVEN ANYTHING TO
12 YOU RIGHT NOW?

13 PROSPECTIVE JUROR NO. 4 (0443): NO.

14 MR. LEONARD: ALL RIGHT.

15 SO HE HASN'T PROVED TO YOU THAT MY CLIENT'S
16 GUILTY BEYOND A REASONABLE DOUBT; ISN'T THAT CORRECT?

17 PROSPECTIVE JUROR NO. 4 (0443): THAT'S CORRECT.

18 MR. LEONARD: AND LET ME ASK YOU THIS: WHAT DO
19 YOU THINK I HAVE TO DO IN THIS CASE?

20 PROSPECTIVE JUROR NO. 4 (0443): PROVE THAT HE'S
21 INNOCENT OR --

22 MR. LEONARD: NO. THAT'S GOOD. I'M GLAD YOU GAVE
23 THAT ANSWER BECAUSE, YOU KNOW, EVERYBODY THINKS I'M
24 SITTING OVER HERE, AND I'M REPRESENTING MR. BURGHARDT.
25 OKAY.

26 AND WHAT IF I JUST SIT HERE, I DON'T ASK
27 ANY QUESTIONS, WITNESSES TAKE THE STAND, I DON'T
28 CROSS-EXAMINE ANYBODY. I JUST SIT HERE, PATTED MY GUY

1 ON THE SHOULDER, AND SAID, "OKAY. GREAT."
2 AND I DON'T ASK ANY QUESTIONS. OKAY.
3 DO YOU THINK I HAVE TO DO ANYTHING?
4 PROSPECTIVE JUROR NO. 4 (0443): I DON'T THINK YOU
5 HAVE TO, BUT YOU SHOULD.
6 MR. LEONARD: OKAY.
7 BE NICE IF I DID SOMETHING; RIGHT? BECAUSE
8 HE MAY THINK I'M INCOMPETENT, BUT I DON'T HAVE TO DO
9 ANYTHING. AND THAT'S THE PRINCIPLE I'M TRYING TO GET
10 THROUGH HERE IS BECAUSE THE DISTRICT ATTORNEY,
11 MR. STENNIS, HE'S THE ONE THAT HAS TO PROVE TO YOU. HIS
12 JOB IS TO PROVE TO YOU THAT MY CLIENT IS GUILTY BEYOND A
13 REASONABLE DOUBT.
14 IN ORDER FOR YOU TO FIND HIM GUILTY, IF HE
15 DOESN'T DO HIS JOB -- AND YOU SAY, WELL, BECAUSE THE
16 JUDGE INDICATED, WELL, YOU KNOW, MAYBE, YOU KNOW, HE
17 BELONGED -- HE MIGHT BELONG TO A GANG, THEY MAY PROVE HE
18 BELONGED TO A GANG, HE'S A GANG MEMBER, YOU KNOW.
19 THEREFORE, HE PROBABLY DID IT.
20 AND IF YOU SAY PROBABLY OR LIKELY OR MAYBE,
21 HASN'T BEEN PROVEN TO YOU BEYOND A REASONABLE DOUBT, HAS
22 IT?
23 PROSPECTIVE JUROR NO. 4 (0443): NO.
24 MR. LEONARD: SO THEN YOU HAVE TO VOTE NOT GUILTY;
25 RIGHT?
26 PROSPECTIVE JUROR NO. 4 (0443): RIGHT.
27 MR. LEONARD: OKAY.
28 JUROR NO. 5, HOW ARE YOU THIS MORNING?

1 PROSPECTIVE JUROR NO. 5 (6975): I'M GOOD.

2 MR. LEONARD: OKAY.

3 WHEN THE CHARGES WERE READ YESTERDAY
4 AFTERNOON, WHAT DID YOU THINK OF THIS CASE?

5 PROSPECTIVE JUROR NO. 5 (6975): THE CHARGE?

6 MR. LEONARD: YEAH. THE CHARGES WERE READ, LIKE
7 THE ATTEMPTED MURDER, ASSAULT WITH A DEADLY WEAPON,
8 SHOOTING AT AN INHABITED DWELLING, THOSE TYPE OF
9 CHARGES, WHAT -- DID ANYTHING COME TO YOUR MIND?

10 PROSPECTIVE JUROR NO. 5 (6975): IS IT -- YOU TALK
11 ABOUT, LIKE, THE TELEVISION OR WHAT? WHAT ON THE
12 TELEVISION?

13 MR. LEONARD: NO. NO.

14 I DON'T WANT TO TALK ABOUT THAT O.J. CASE
15 ON TELEVISION.

16 HOW ABOUT THE CHARGES THAT THE JUDGE READ
17 TO YOU WERE, OH, LIKE ATTEMPTED MURDER. MY CLIENT IS
18 CHARGED WITH ATTEMPTED MURDER. MY CLIENT IS CHARGED
19 WITH ASSAULT WITH A DEADLY WEAPON, YOU KNOW, THOSE
20 CHARGES.

21 PROSPECTIVE JUROR NO. 5 (6975): YEAH.

22 MR. LEONARD: YOU HEARD THOSE CHARGES; RIGHT?

23 PROSPECTIVE JUROR NO. 5 (6975): NO. NO. I
24 DIDN'T HEAR.

25 MR. LEONARD: OKAY.

26 WELL, IF I TOLD YOU MY CLIENT IS CHARGED
27 WITH ATTEMPTED MURDER, ASSAULT WITH A DEADLY WEAPON,
28 WHAT DO YOU THINK?

1 PROSPECTIVE JUROR NO. 5 (6975): I DIDN'T SEE ANY
2 EVIDENCE YET, AND THAT'S WHY I CAN'T MAKE A --

3 MR. LEONARD: OKAY.

4 BUT THERE ARE SERIOUS CHARGES; RIGHT?

5 PROSPECTIVE JUROR NO. 5 (6975): YES.

6 MR. LEONARD: OKAY. OKAY.

7 AND IS THIS THE TYPE OF CASE YOU WOULD LIKE
8 TO SIT ON AND BE A JUROR ON?

9 PROSPECTIVE JUROR NO. 5 (6975): YES.

10 MR. LEONARD: OKAY.

11 WHY?

12 PROSPECTIVE JUROR NO. 5 (6975): NO, BECAUSE I --
13 I -- I NEED TO DO MY -- MY CITIZEN EVERY DAY. I NEED TO
14 PERFORM THE WORK.

15 MR. LEONARD: OKAY.

16 AND YOU'RE WILLING TO DO THAT; RIGHT, SIR?

17 PROSPECTIVE JUROR NO. 5 (6975): YES.

18 MR. LEONARD: THAT'S -- THAT I COMMEND YOU FOR
19 THAT. AND BECAUSE WITHOUT CITIZENS LIKE YOU, WE DON'T
20 GET JURORS, YOU KNOW, BECAUSE -- AND I KNOW NOBODY WANTS
21 TO GO AND SIT AND BE A JUROR FOR FIVE, SIX DAYS,
22 PROBABLY MAY HAVE OTHER THINGS TO DO, BUT IT'S VERY,
23 VERY IMPORTANT. SO I APPRECIATE YOUR COMING.

24 JUROR NO. 7, YOU'VE BEEN A JUROR; RIGHT?

25 PROSPECTIVE JUROR NO. 7 (9500): UH-HUH.

26 MR. LEONARD: ON A MURDER CASE BEFORE --

27 PROSPECTIVE JUROR NO. 7 (9500): YES.

28 MR. LEONARD: -- CORRECT?

1 PROSPECTIVE JUROR NO. 7 (9500): YES.

2 MR. LEONARD: ANY PROBLEM SITTING WITH THIS CASE

3 IF YOU ARE CHOSEN AS A JUROR?

4 PROSPECTIVE JUROR NO. 7 (9500): NO.

5 MR. LEONARD: OKAY.

6 DID YOU LIKE THE EXPERIENCE ON THAT OTHER

7 CASE?

8 PROSPECTIVE JUROR NO. 7 (9500): HONESTLY, NO, BUT

9 I DIDN'T HATE IT. IT JUST WAS A DUTY.

10 MR. LEONARD: RIGHT. OKAY. OKAY.

11 IT'S A DUTY YOU ACCEPTED; RIGHT?

12 PROSPECTIVE JUROR NO. 7 (9500): YES.

13 MR. LEONARD: OKAY.

14 HOW ABOUT JUROR NO. 9? HOW ARE YOU THIS

15 MORNING?

16 PROSPECTIVE JUROR NO. 9 (3305): FINE.

17 THANK YOU.

18 MR. LEONARD: DO YOU WANT TO BE A JUROR ON THIS

19 CASE?

20 PROSPECTIVE JUROR NO. 9 (3305): NOT REALLY.

21 MR. LEONARD: OKAY.

22 WELL, THAT'S AN HONEST ANSWER. A LOT OF

23 PEOPLE DON'T, BUT YOU ARE CHOSEN, AND IF YOU ARE CHOSEN

24 AS A JUROR -- AND LIKE I SAID, WHAT WE'RE LOOKING FOR IS

25 TWELVE JURORS THAT ARE GOING TO SIT THERE, KEEP AN OPEN

26 MIND, AND LISTEN TO ALL THE EVIDENCE.

27 CAN YOU DO THAT?

28 PROSPECTIVE JUROR NO. 9 (3305): YES, I CAN.

1 MR. LEONARD: OKAY.

2 NOW, LET'S SAY YOU'RE CHOSEN AS A JUROR.

3 PROSPECTIVE JUROR NO. 9 (3305): YES.

4 MR. LEONARD: AND AT THE END OF THE CASE, YOU GO
5 BACK IN THAT JURY ROOM. NOW, YOU GOT TO DELIBERATE.
6 NOW, YOU'RE THE DECIDER AS TO WHETHER MY CLIENT IS
7 GUILTY OR NOT GUILTY.

8 DO YOU THINK YOU CAN HANDLE THAT?

9 PROSPECTIVE JUROR NO. 9 (3305): YES.

10 MR. LEONARD: OKAY.

11 SAY YOU GET BACK IN THAT BACK ROOM, AND I
12 BEEN TOLD BEFORE IT -- IT'S VERY CONTENTIOUS. AND LET'S
13 ASSUME -- YOU EVER SEE THE PICTURE 12 ANGRY MEN?

14 PROSPECTIVE JUROR NO. 9 (3305): YES.

15 MR. LEONARD: OKAY. OKAY.

16 SAY IT GETS REAL CONTENTIOUS BACK THERE,
17 AND YOU'RE THE ONE PERSON -- I DON'T CARE WHICH WAY --
18 YOU'RE VOTING. BUT YOU'RE THAT ONE PERSON OVER THERE --
19 AND IT'S FRIDAY AFTERNOON, GETTING NEAR THE COCKTAIL
20 HOUR FOR THE REST OF US -- AND THE JURORS ARE SAYING,
21 "WHAT ARE YOU THINKING ABOUT? AREN'T YOU LISTENING TO
22 US? WE'RE TRYING TO TELL YOU SOMETHING."

23 WHAT WOULD YOU DO?

24 PROSPECTIVE JUROR NO. 9 (3305): I WOULD BE THE
25 HOLDOUT PERSON BECAUSE, IF I HAD THE CORRECT EVIDENCE
26 THAT I FELT HE WAS INNOCENT OR GUILTY, I WOULD HAVE TO
27 JUST STICK WITH WHAT I FELT.

28 MR. LEONARD: OKAY.

1 IN OTHER WORDS, YOU WOULDN'T JUST GIVE IN
2 BECAUSE YOU WERE BEING OUT-NUMBERED?

3 PROSPECTIVE JUROR NO. 9 (3305): NO. NO. NO.

4 MR. LEONARD: NO.

5 WELL, THAT'S THE PRINCIPLE I'M TRYING TO
6 GET ACROSS HERE. AND YET, ALSO, WHEN YOU ARE BACK
7 THERE, YOU WOULD WANT THOSE OTHER PEOPLE TO LISTEN TO
8 YOUR POINT OF VIEW; ISN'T THAT CORRECT?

9 PROSPECTIVE JUROR NO. 9 (3305): CORRECT.

10 MR. LEONARD: OKAY.

11 AND THEN, IF THEY HAD A POINT OF VIEW --
12 AND LET'S SAY THEIR POINT OF VIEW, AFTER YOU LISTEN TO
13 THEM, YA LISTEN TO THESE PEOPLE, AND YOU SAID, "MAYBE
14 I'M WRONG. MAYBE THEIR POINT OF VIEW IS CORRECT."

15 WOULD YOU CHANGE?

16 PROSPECTIVE JUROR NO. 9 (3305): IF THE EVIDENCE
17 WASN'T THERE, NO, I COULD NOT.

18 MR. LEONARD: NO. BUT I'M SAYING WHAT IF THEY'RE
19 SAYING, "HEY" --

20 PROSPECTIVE JUROR NO. 9 (3305): YEAH.

21 MR. LEONARD: -- "LISTEN TO WHAT WE HAVE TO SAY."

22 YOU WOULD LISTEN TO WHAT THEY HAVE TO SAY?

23 PROSPECTIVE JUROR NO. 9 (3305): RIGHT.

24 MR. LEONARD: AND THEN, IF YOU THOUGHT THEY WERE
25 RIGHT, WOULD YOU CHANGE YOUR MIND?

26 PROSPECTIVE JUROR NO. 9 (3305): YES.

27 MR. LEONARD: OKAY.

28 WELL, YOU WOULD HAVE TO; RIGHT?

1 PROSPECTIVE JUROR NO. 9 (3305): EXACTLY.

2 MR. LEONARD: DOES EVERYBODY GET THAT CONCEPT IN
3 THE JURY? I'M SURE YOU DO; RIGHT? OKAY.

4 BUT IT'S AN IMPORTANT CONCEPT, AND THAT'S
5 WHY I'M GOING OVER IT.

6 THERE IS ANOTHER CONCEPT I'D LIKE TO JUST
7 GO OVER JUST VERY BRIEFLY. AND THAT'S WHAT IS CALLED
8 THE FIFTH AMENDMENT, THE RIGHT YOU HAVE TO INVOKE. IF
9 YOU DON'T WANT TO BECAUSE YOU SIT AS YOU ARE CHARGED
10 WITH A CRIME, YOU DON'T HAVE TO SAY ANYTHING. YOU DON'T
11 HAVE TO GET ON THAT WITNESS STAND.

12 NOW, I KNOW THAT, AS YOU'RE ALL SAYING,
13 THEY'RE SITTING THERE RIGHT NOW. YOU'RE THINKING, YEAH,
14 THAT SOUNDS GOOD. THAT'S A GREAT LEGAL CONCEPT. BUT IF
15 I'M CHARGED WITH A CRIME, AS SOON AS I GET ON THAT
16 STAND, I'M GOING TO GO UP ON THAT STAND, GET ON THAT
17 STAND AND TELL THOSE JURORS I DIDN'T DO IT; RIGHT?

18 OKAY. WHAT IF MY CLIENT -- THAT'S HIS
19 CONSTITUTIONAL RIGHT NOT TO TESTIFY. IF HE DOESN'T
20 TESTIFY, WOULD ANYBODY HOLD THAT AGAINST MY CLIENT?

21 THE PROSPECTIVE JURORS: NO.

22 MR. LEONARD: OKAY.

23 LET'S REVERSE IT. LET'S ASSUME MY CLIENT
24 DECIDES TO TESTIFY, AND HE TESTIFIES. WOULD YOU SAY,
25 WELL, YOU KNOW, HE'S CHARGED WITH A CRIME. HE'S GETTING
26 UP THERE. HE'S PROBABLY LYING, OKAY, TO SAVE HIMSELF.

27 WOULD YOU THINK THAT?

28 THE PROSPECTIVE JURORS: NO.

1 MR. LEONARD: NO.

2 YOU WOULD HAVE TO LISTEN TO WHAT HE HAS TO
3 SAY; RIGHT?

4 THE PROSPECTIVE JURORS: YES.

5 MR. LEONARD: BECAUSE THAT'S WHERE THE JUDGMENT,
6 THE CREDIBILITY CALL COMES IN, TO SEE IF HE'S TELLING
7 THE TRUTH OR NOT; RIGHT?

8 THE PROSPECTIVE JURORS: YES.

9 MR. LEONARD: OKAY.

10 JUROR NO. 12, HOW ARE YOU?

11 PROSPECTIVE JUROR NO. 12 (8302): GOOD.

12 AND YOU?

13 MR. LEONARD: WHAT WAS YOUR HAIR LIKE?

14 PROSPECTIVE JUROR NO. 12 (8302): WAS LONGER.

15 MR. LEONARD: OH. LONGER. OKAY.

16 AND YOU WALKED INTO A COURTROOM QUITE A FEW
17 TIMES, DID YOU NOT?

18 PROSPECTIVE JUROR NO. 12 (8302): YES.

19 MR. LEONARD: DID THE JUDGE HAVE HIS GOATEE THEN?

20 PROSPECTIVE JUROR NO. 12 (8302): YES.

21 MR. LEONARD: HE SHAVED THE GOATEE.

22 OKAY. THANK YOU.

23 I'LL PASS FOR CAUSE, YOUR HONOR.

24 THE COURT: ALL RIGHT. THANK YOU.

25 MR. STENNIS.

26 MR. STENNIS: YES, YOUR HONOR.

27 LADIES AND GENTLEMEN, IS THERE ANYBODY HERE
28 WHO FEELS LIKE, IN SPITE OF THE EVIDENCE, AT THE END OF

1 THE CASE, LET'S SAY, ALL OF THE WITNESSES TESTIFIED AND
2 YOU FELT WE PROVED OUR CASE BEYOND A REASONABLE DOUBT --
3 IS THERE ANYONE WHO WOULD HAVE A HARD TIME FINDING HIM
4 GUILTY BECAUSE THEY DON'T WANT TO SIT IN JUDGMENT OF
5 SOMEONE?

6 IS THERE ANYONE HERE THAT THINKS THEY WOULD
7 HAVE A HARD TIME FINDING HIM GUILTY IF THE EVIDENCE,
8 AGAIN, WAS BEYOND A REASONABLE DOUBT BECAUSE OF THE
9 DEFENDANT'S APPEARANCE?

10 THE PROSPECTIVE JURORS: NO.

11 THE COURT: IS THERE ANYBODY HERE WHO WOULD HAVE A
12 HARD TIME FINDING HIM GUILTY BECAUSE OF A POSSIBLE
13 SENTENCE WHICH, AT THE END OF THE CASE, YOU GET JURY
14 INSTRUCTIONS YOU WILL BE ADVISED NOT TO TAKE THAT INTO
15 CONSIDERATION.

16 BUT IS THERE ANYONE IN HERE THAT THINKS
17 THEY MIGHT STILL DO THAT?

18 THE PROSPECTIVE JURORS: NO.

19 MR. STENNIS: OKAY.

20 I DON'T HAVE ANY OTHER QUESTIONS.

21 THE COURT: ALL RIGHT.

22 BOTH SIDES PASS FOR CAUSE?

23 MR. LEONARD: PASS, YOUR HONOR.

24 MR. STENNIS: YES.

25 THE COURT: THE FIRST PEREMPTORY IS WITH THE
26 PEOPLE.

27 MR. STENNIS: YOUR HONOR, THE PEOPLE ASK THE COURT
28 TO THANK AND EXCUSE JUROR NO. 9.

1 THE COURT: ALL RIGHT.
2 THANK YOU, MA'AM. RETURN TO THE JURY ROOM,
3 PLEASE.
4 THE CLERK: FOR JUROR SEAT NO. 9, JUROR NO. 8492.
5 THE COURT: HI.
6 PROSPECTIVE JUROR NO. 9 (8492): HELLO.
7 THE COURT: CAN YOU GIVE US THE INFORMATION ON
8 QUESTION NO. 1, PLEASE.
9 DO YOU HAVE YOUR QUESTIONNAIRE?
10 PROSPECTIVE JUROR NO. 9 (8492): YES, SIR.
11 JUROR IDENTIFICATION NO. 8492.
12 I RESIDE IN REDONDO BEACH.
13 LET'S SEE. I OWNED AND OPERATED A DAY SPA
14 IN HERMOSA BEACH FOR SEVERAL YEARS. WE CLOSED DOWN LAST
15 MONTH, STILL TYING UP THE LOOSE ENDS TO THAT. SO
16 TECHNICALLY UNEMPLOYED.
17 I AM SINGLE. NO CHILDREN.
18 AND NO PRIOR JURY EXPERIENCE.
19 THE COURT: DO YOU UNDERSTAND WHAT IS BEING ASKED
20 OF YOU AS A JUROR?
21 PROSPECTIVE JUROR NO. 9 (8492): YES, I DO.
22 THE COURT: BE FAIR TO BOTH SIDES?
23 PROSPECTIVE JUROR NO. 9 (8492): YES.
24 THE COURT: COME INTO THIS AND REMAIN IN THE JURY
25 BOX WITH AN IMPARTIAL, OBJECTIVE, AND OPEN STATE OF
26 MIND?
27 PROSPECTIVE JUROR NO. 9 (8492): YES.
28 THE COURT: WITH THE WILLINGNESS TO RENDER THE

1 VERDICT AS DICTATED BY THE EVIDENCE? YOU WILLING TO DO
2 THAT?

3 PROSPECTIVE JUROR NO. 9 (8492): YES.

4 THE COURT: ANYTHING TROUBLESOME YOU HEARD SO FAR
5 FROM ANY OF US THAT RUBBED YOU THE WRONG WAY OR YOU
6 THINK DOESN'T MAKE SENSE? ANYTHING LIKE THAT?

7 PROSPECTIVE JUROR NO. 9 (8492): NO.

8 THE COURT: AT THE END OF THE CASE, IF YOU BELIEVE
9 THE EVIDENCE PROVES GUILT BEYOND A REASONABLE DOUBT,
10 WHAT WOULD YOUR VERDICT BE?

11 PROSPECTIVE JUROR NO. 9 (8492): GUILTY.

12 THE COURT: AT THE END OF THE CASE, IF YOU
13 THOUGHT, YOU KNOW, I THINK HE PROBABLY DID IT, BUT I'M
14 JUST NOT CONVINCED THAT HE IS GUILTY BEYOND A REASONABLE
15 DOUBT, WHAT WOULD YOUR VERDICT BE?

16 PROSPECTIVE JUROR NO. 9 (8492): NOT GUILTY.

17 THE COURT: DO YOU HAVE "YES" ANSWERS?

18 PROSPECTIVE JUROR NO. 9 (8492): I'M NOT SURE HOW
19 NO. 7 READS. I HAVE ANY OR I -- I TAKE THAT BACK. I
20 UNDERSTAND HOW IT READS.

21 OVER THE YEARS I -- I SAW -- SOMEONE
22 MENTIONED DRIVING, WELL, UNDER THE INFLUENCE. OVER THE
23 SPAN OF MY LIFE, I HAVE KNOWN --

24 THE COURT: NO. 7 IS WHETHER YOU OR SOMEONE CLOSE
25 TO YOU HAS BEEN THE VICTIM OF A CRIME.

26 PROSPECTIVE JUROR NO. 9 (8492): OH, I APOLOGIZE.

27 THE COURT: HAVE YOU OR ANYONE CLOSE BEEN THE
28 VICTIM OF A CRIME?

1 PROSPECTIVE JUROR NO. 9 (8492): NO.

2 THE COURT: ALL RIGHT.

3 NO. 8, HAVE YOU OR ANYONE CLOSE TO YOU EVER

4 BEEN ARRESTED?

5 PROSPECTIVE JUROR NO. 9 (8492): RIGHT. THAT'S

6 THE ONE, NO. 8. MINOR THINGS OVER THE YEARS. I WOULD

7 HAVE TO SAY THAT WOULD BE TRUE.

8 THE COURT: FOR YOU?

9 PROSPECTIVE JUROR NO. 9 (8492): I -- I KNOWN A

10 COUPLE PEOPLE IN MY LIFE THAT GOT D.U.I.'S, YES.

11 THE COURT: HAVE YOU BEEN ARRESTED FOR ANYTHING?

12 PROSPECTIVE JUROR NO. 9 (8492): NO.

13 THE COURT: COUPLE FRIENDS HAVE BEEN ARRESTED FOR

14 D.U.I.?

15 PROSPECTIVE JUROR NO. 9 (8492): YES.

16 THE COURT: A POLICE DEPARTMENT ARRESTED THEM?

17 PROSPECTIVE JUROR NO. 9 (8492): OH, GOSH. I --

18 YOU KNOW, I DON'T EVEN KNOW OFFHAND. IT WAS -- I REALLY

19 DON'T.

20 THE COURT: ANY OF THESE CASES DO YOU THINK THE

21 POLICE TREATED YOUR FRIENDS UNFAIRLY?

22 PROSPECTIVE JUROR NO. 9 (8492): NO.

23 THE COURT: IS THERE ANYTHING ABOUT THOSE D.U.I.

24 CASES THAT WOULD IMPACT YOU IN DECIDING MR. BURGHARDT'S

25 CASE?

26 PROSPECTIVE JUROR NO. 9 (8492): NO.

27 THE COURT: YOUR FRIENDS' D.U.I. CASE HAVE NOTHING

28 TO DO WITH MR. BURGHARDT?

1 PROSPECTIVE JUROR NO. 9 (8492): OF COURSE NOT.
2 THE COURT: YOU AGREE WITH THAT?
3 PROSPECTIVE JUROR NO. 9 (8492): ABSOLUTELY.
4 THE COURT: OTHER ANSWERS -- OTHER QUESTIONS
5 BESIDES NO. 8 DO YOU HAVE "YES" ANSWERS TO?
6 PROSPECTIVE JUROR NO. 9 (8492): NO, SIR.
7 THE COURT: CAN YOU BE FAIR TO BOTH SIDES?
8 PROSPECTIVE JUROR NO. 9 (8492): YES.
9 THE COURT: VERY GOOD.
10 ALL RIGHT. MR. LEONARD?
11 MR. LEONARD: NO QUESTIONS.
12 I'LL PASS FOR CAUSE, YOUR HONOR.
13 THE COURT: MR. STENNIS?
14 MR. STENNIS: NO QUESTIONS.
15 THE COURT: NO QUESTIONS?
16 MR. STENNIS: NO QUESTIONS.
17 THE COURT: ALL RIGHT.
18 YOU PASS FOR CAUSE AS WELL?
19 MR. STENNIS: YES.
20 THE COURT: NEXT PEREMPTORY IS WITH THE DEFENSE.
21 MR. LEONARD: THANK YOU, YOUR HONOR.
22 WE ASK THE COURT TO PLEASE THANK AND EXCUSE
23 JUROR NO. 6.
24 THANK YOU, SIR.
25 THE COURT: ALL RIGHT, SIR.
26 THANK YOU. RETURN TO THE JURY ASSEMBLY
27 ROOM, PLEASE.
28 THE CLERK: FOR JUROR IN SEAT NO. 6, JUROR NO.

1 5305.

2 THE COURT: SIR, CAN YOU GIVE US THE INFORMATION,
3 PLEASE, FOR QUESTION NO. 1.

4 PROSPECTIVE JUIROR NO. 6 (5305): YEAH.

5 JUROR NO. 5305.

6 LIVE IN SAN PEDRO.

7 I'M A VESSEL SUPERINTENDENT.

8 THE COURT: YOU'RE A WHAT?

9 PROSPECTIVE JUIROR NO. 6 (5305): VESSEL
10 SUPERINTENDENT DOWN AT THE PORT.

11 THE COURT: OKAY.

12 PROSPECTIVE JUIROR NO. 6 (5305): I AM NOT
13 MARRIED. MY GIRLFRIEND IS A THERAPIST.

14 THE COURT: WHAT KIND OF THERAPIST?

15 PROSPECTIVE JUIROR NO. 6 (5305): MARRIAGE AND
16 FAMILY THERAPIST.

17 AND NO PRIOR JURY EXPERIENCE.

18 THE COURT: ALL RIGHT.

19 AS YOU HAVE BEEN SITTING IN THE AUDIENCE,
20 HAVE YOU BEEN LISTENING TO THE QUESTIONS THAT HAVE BEEN
21 ASKED AND THE ANSWERS THAT HAVE BEEN GIVEN?

22 PROSPECTIVE JUIROR NO. 6 (5305): YES.

23 THE COURT: YOU UNDERSTAND THAT MR. BURGHARDT IS
24 CHARGED WITH SOME SERIOUS CRIMES?

25 PROSPECTIVE JUIROR NO. 6 (5305): UH-HUH.

26 THE COURT: YES?

27 PROSPECTIVE JUIROR NO. 6 (5305): YES.

28 THE COURT: BUT THESE ARE JUST CHARGES. THEY ARE

1 NOT EVIDENCE. DO YOU ACCEPT THAT?

2 PROSPECTIVE JUROR NO. 6 (5305): YES.

3 THE COURT: IT IS MANDATORY FOR THE JURORS TO
4 PERFORM JURY DUTY WITH AN IMPARTIAL OBJECTIVE STATE OF
5 MIND AND RENDER THE VERDICT THAT'S DICTATED BY THE
6 EVIDENCE.

7 DOES THAT MAKE SENSE TO YOU?

8 PROSPECTIVE JUROR NO. 6 (5305): YES.

9 THE COURT: ALL RIGHT.

10 ARE YOU WILLING TO DO THAT?

11 PROSPECTIVE JUROR NO. 6 (5305): YES.

12 THE COURT: OKAY.

13 DO YOU HAVE ANY QUARREL WITH ANY OF THE
14 LEGAL CONCEPTS YOU HEARD SO FAR?

15 PROSPECTIVE JUROR NO. 6 (5305): NO.

16 THE COURT: ONE THING. MR. LEONARD MENTIONED
17 ABOUT WITNESS, ABOUT PEOPLE ON TRIAL TESTIFYING. I
18 FORGOT TO MENTION IT.

19 IT IS MR. BURGHARDT'S DECISION, IN
20 CONJUNCTION WITH DISCUSSING THE CASE WITH MR. LEONARD,
21 AS TO WHETHER HE WANTS TO GET ON THE STAND AND TESTIFY.
22 SOMETIMES PEOPLE DO. SOMETIMES DEFENDANTS DO.
23 SOMETIMES THEY DON'T.

24 IF THEY DON'T, IT COULD BE FOR ANY ONE OF A
25 NUMBER OF REASONS. SOMETIMES THE DEFENDANTS HAVE A
26 SPEECH IMPEDIMENT. SOMETIMES THEY'RE NERVOUS IN FRONT
27 OF BIG GROUPS.

28 SOMETIMES THEY JUST DON'T WANT TO GET ON

1 THE STAND AND TALK ABOUT THE INCIDENT. THERE COULD BE
2 ANY NUMBER OF REASONS WHY A DEFENDANT DOES NOT TESTIFY.

3 I DON'T KNOW WHETHER MR. BURGHARDT IS GOING
4 TO TESTIFY. BUT IF HE DOESN'T, IF HE DOES NOT TESTIFY,
5 THE JURY IS GOING TO GET A JURY INSTRUCTION AT THE END
6 OF THE CASE THAT THEY ARE NOT TO CONSIDER HIS LACK OF
7 TESTIFYING FOR ANY PURPOSE AT ALL.

8 IT HAS NO BEARING ON WHETHER HE'S GUILTY.
9 IT HAS NO BEARING ON WHETHER HE'S NOT GUILTY; AND, IN
10 FACT, IT CAN'T EVEN BE DISCUSSED IN THE JURY ROOM. THE
11 JURY CAN'T EVEN MENTION, WELL, MR. BURGHARDT DIDN'T
12 TESTIFY. IT'S A NON-ISSUE.

13 DO YOU UNDERSTAND THAT?

14 PROSPECTIVE JUROR NO. 6 (5305): YES.

15 THE COURT: HOW ABOUT THE SAME TOKEN, SINCE
16 MR. BURGHARDT, IF HE WANTS TO, HE DOESN'T HAVE TO
17 TESTIFY. IF HE DOES ELECT TO TESTIFY, THAT DOESN'T MEAN
18 THAT HE GETS A HIGHER LEVEL OF CREDIBILITY OR A HIGHER
19 LEVEL OF BELIEVABILITY THAN ANYBODY ELSE.

20 LIKE A JUROR CAN THINK, HE DOESN'T HAVE TO
21 TESTIFY, BUT BECAUSE HE IS, THEREFORE, HE'S MORE
22 BELIEVABLE THAN ANYBODY ELSE. THAT WOULD BE AN IMPROPER
23 WAY TO VIEW IT.

24 IF THE DEFENDANT TESTIFIES, YOU ASSESS HIS
25 CREDIBILITY JUST AS YOU WOULD ANY OTHER WITNESS.

26 DO YOU UNDERSTAND AND ACCEPT THAT?

27 PROSPECTIVE JUROR NO. 6 (5305): YES.

28 THE COURT: AT THE END OF THE CASE, IF YOU BELIEVE

1 THE EVIDENCE PROVES GUILT BEYOND A REASONABLE DOUBT,
2 WHAT WOULD YOUR VERDICT BE?

3 PROSPECTIVE JUROR NO. 6 (5305): GUILTY.

4 THE COURT: IF YOU THOUGHT, YOU KNOW, HE -- YEAH,
5 HE COULD HAVE DONE IT, BUT I'M JUST NOT CONVINCED BEYOND
6 A REASONABLE DOUBT?

7 PROSPECTIVE JUROR NO. 6 (5305): NOT GUILTY.

8 THE COURT: VERY GOOD.

9 DO YOU HAVE "YES" ANSWERS?

10 PROSPECTIVE JUROR NO. 6 (5305): YES, I DO.

11 THE COURT: WHICH ONES?

12 PROSPECTIVE JUROR NO. 6 (5305): NO. 6.

13 THE COURT: THAT'S THE ONLY ONE?

14 PROSPECTIVE JUROR NO. 6 (5305): I'M SORRY, NO. I
15 HAVE MORE.

16 THE COURT: WHICH ARE ALL THE ONES YOU HAVE "YES"
17 ANSWERS TO?

18 PROSPECTIVE JUROR NO. 6 (5305): 6, 7, 8 -- AND
19 THAT'S IT.

20 THE COURT: OKAY.

21 TELL US ABOUT 6, PLEASE.

22 PROSPECTIVE JUROR NO. 6 (5305): 6. MY
23 GIRLFRIEND'S FATHER IS A PARTNER IN A FIRM.

24 THE COURT: WHAT KIND OF LAW FIRM?

25 PROSPECTIVE JUROR NO. 6 (5305): CIVIL.

26 THE COURT: CAN'T DISCUSS THE CASE WITH YOUR
27 GIRLFRIEND'S FATHER OR ANYBODY ELSE WHILE THE CASE IS
28 GOING ON.

1 PROSPECTIVE JUROR NO. 6 (5305): OKAY.

2 THE COURT: DO YOU UNDERSTAND THAT?

3 PROSPECTIVE JUROR NO. 6 (5305): YES.

4 THE COURT: ALL RIGHT.

5 NO. 7.

6 PROSPECTIVE JUROR NO. 6 (5305): NO. 7. I HAD MY

7 BEST FRIEND'S BROTHER, VICTIM OF CRIME, MURDER.

8 THE COURT: YOUR BEST FRIEND'S BROTHER WAS

9 MURDERED?

10 PROSPECTIVE JUROR NO. 6 (5305): YES.

11 THE COURT: WHERE DID THAT OCCUR?

12 PROSPECTIVE JUROR NO. 6 (5303): SAN PEDRO.

13 THE COURT: AND WHAT WAS THE CIRCUMSTANCES?

14 PROSPECTIVE JUROR NO. 6 (5305): IT WAS A GANG

15 RELATED. THEY BASICALLY ROBBED HIM AND KILLED HIM,

16 ROBBED -- WENT INTO HIS HOUSE, MURDERED HIM, ROBBED HIM,

17 AND -- AND THAT WAS IT.

18 THE COURT: HOW LONG AGO?

19 PROSPECTIVE JUROR NO. 6 (5305): ABOUT TEN YEARS

20 AGO.

21 THE COURT: WERE THE PERSONS RESPONSIBLE

22 APPREHENDED AND PROSECUTED?

23 PROSPECTIVE JUROR NO. 6 (5305): YES.

24 THE COURT: SO IS YOUR FRIEND SATISFIED WITH THE

25 WAY THE CRIMINAL CASE PROCEEDED?

26 PROSPECTIVE JUROR NO. 6 (5305): HE'S SATISFIED AS

27 FAR AS THE CRIMINAL CASES PROCEEDED, BUT HE'S -- HE'S

28 STILL MOURNING.

1 THE COURT: OH. I'M SURE HE WILL ALWAYS BE
2 MOURNING.

3 PROSPECTIVE JUROR NO. 6 (5305): YEAH.

4 THE COURT: BUT THE --

5 PROSPECTIVE JUROR NO. 6 (5305): THERE IS SOME
6 SATISFACTION.

7 THE COURT: AGAIN?

8 PROSPECTIVE JUROR NO. 6 (5305): HE HAS SOME
9 SATISFACTION OF THAT.

10 THE COURT: WHAT WAS THE ETHNICITY OF THESE GANG
11 MEMBERS?

12 PROSPECTIVE JUROR NO. 6 (5305): BLACK.

13 THE COURT: HOW DO FEEL ABOUT THE FACT
14 MR. BURGHARDT IS AFRICAN-AMERICAN?

15 PROSPECTIVE JUROR NO. 6 (5305): I DON'T HAVE A
16 PROBLEM WITH HIM BEING AFRICAN-AMERICAN.

17 THE COURT: THERE IS GOING TO BE EVIDENCE THAT HE
18 IS AFFILIATED WITH THE GANG. FIRST OF ALL, WE DON'T
19 KNOW IF THAT IS CREDIBLE EVIDENCE OR NOT.

20 DO YOU ACCEPT THAT?

21 PROSPECTIVE JUROR NO. 6 (5305): IT'S -- I'D
22 ACCEPT IT, BUT IN MY EYES SOMEBODY THAT'S AFFILIATED
23 WITH A GANG, IT'S -- IT WOULD BE -- IT WOULD BE
24 DIFFICULT FOR ME TO JUDGE BEING BIAS, BE DIFFICULT FOR
25 ME IF -- IF I --

26 THE COURT: TELL YOU WHAT. BEFORE YOU GO ANY
27 FURTHER, I WANT TO TALK TO YOU OUTSIDE THE PRESENCE OF
28 THE OTHER JURORS.

1 SO I'D LIKE YOU TO GO RIGHT THROUGH THAT
2 DOOR, AND THEN WE'LL TELL YOU WHERE TO GO.

3 PROSPECTIVE JUROR NO. 6 (5305): OKAY.

4

5 (THE FOLLOWING PROCEEDINGS
6 WERE HELD IN CHAMBERS:)

7

8 THE COURT: ALL RIGHT.

9 THANK YOU. ALL RIGHT.

10 YOU KNOW THERE IS GOING TO BE EVIDENCE OF
11 GANG MEMBERSHIP. WE DON'T KNOW IF IT'S BELIEVABLE OR
12 NOT. BUT IF YOU HEAR EVIDENCE THAT THE DEFENDANT IS
13 AFFILIATED WITH A GANG, WOULD THAT MEAN YOU
14 AUTOMATICALLY FIND HIM GUILTY?

15 PROSPECTIVE JUROR NO. 6 (5305): NO, BUT,
16 YOUR HONOR, I'VE BEEN AFFILIATED. I'M NOT PERSONALLY IN
17 A GANG, BUT I'VE HAD -- MANY OF MY FRIENDS THAT HAVE
18 BEEN IN A GANG. AND I KNOW THAT GANGS ARE UP TO NO
19 GOOD. AND I'VE SEEN BAD THINGS HAPPEN FROM GANG
20 MEMBERS.

21 AND AS MUCH AS I WOULD TRY TO KEEP AN OPEN
22 MIND, I'D BE HONEST WITH YOU. I PROBABLY WOULD. THAT
23 WOULD BE IN THE BACK OF MY HEAD IF HE WAS IN A GANG.

24 THE COURT: ALL RIGHT.

25 DO YOU FEEL THAT YOU WOULD HAVE DIFFICULTY
26 BEING FAIR TO HIM?

27 PROSPECTIVE JUROR NO. 6 (5305): I THINK I WOULD,
28 YES.

1 THE COURT: ALL RIGHT.

2 DOES EITHER SIDE WISH TO ASK THIS MAN ANY

3 QUESTIONS, OR DO YOU BOTH STIPULATE HE CAN BE EXCUSED?

4 MR. LEONARD: NO. I'LL STIPULATE HE BE EXCUSED.

5 THE COURT: ALL RIGHT, SIR.

6 WE'LL EXCUSE YOU FROM THE CASE. THANK YOU

7 FOR YOUR --

8 PROSPECTIVE JUROR NO. 6 (5305): OKAY.

9 THE COURT: -- CANDOR. I'LL SHOW YOU WHERE TO GO.

10

11 (THE FOLLOWING PROCEEDINGS

12 WERE HELD IN OPEN COURT IN

13 THE PRESENCE OF THE

14 PROSPECTIVE JURORS:)

15

16 THE COURT: ALL RIGHT, MARCIA.

17 WE NEED ANOTHER JUROR FOR SEAT 6.

18 THE CLERK: FOR JUROR SEAT NO. 6, JUROR NO. 5334.

19 THE COURT: GOOD MORNING, SIR.

20 PROSPECTIVE JUROR NO. 6 (5334): GOOD MORNING.

21 THE COURT: DO YOU HAVE THE QUESTIONNAIRE?

22 PROSPECTIVE JUROR NO. 6 (5334): YES, I DO.

23 THE COURT: CAN YOU GIVE US THE INFORMATION,

24 PLEASE.

25 QUESTION NO. 1.

26 PROSPECTIVE JUROR NO. 6 (5334): MY I.D. IS 5334.

27 I LIVE IN TORRANCE.

28 I'M A SENIOR NETWORK ENGINEER WITH TIME

1 WARNER CABLE.

2 I'M MARRIED. MY WIFE IS -- IS AN
3 ORTHODONTIST ASSISTANT. TWO DAUGHTERS, 25 AND 22.
4 OLDEST DAUGHTER IS A MODEL, BARTENDER. YOUNGEST
5 DAUGHTER JUST GRADUATED FROM U.C. IRVINE.

6 THE COURT: MAJORING IN WHAT?

7 PROSPECTIVE JUROR NO. 6 (5334): ANALYTICAL
8 SCIENCES.

9 THE COURT: WHAT KIND OF SCIENCES?

10 PROSPECTIVE JUROR NO. 6 (5334): ANALYTICAL
11 SCIENCES. SHE'S GOING TO S.C. NEXT YEAR TO GET HER
12 MASTER'S.

13 THE COURT: VERY GOOD.

14 PROSPECTIVE JUROR NO. 6 (5334): I SERVED ON A
15 JURY ABOUT 13 YEARS AGO, CRIMINAL.

16 THE COURT: WHAT WAS THE CHARGE?

17 PROSPECTIVE JUROR NO. 6 (5334): ROBBERY.

18 THE COURT: DID THE JURY REACH A VERDICT?

19 PROSPECTIVE JUROR NO. 6 (5334): YES, WE DID.

20 THE COURT: AND WHERE WAS THE TRIAL?

21 PROSPECTIVE JUROR NO. 6 (5334): COMPTON.

22 THE COURT: ALL RIGHT.

23 SO YOU SAT AS A JUROR BEFOREHAND. YOU KNOW
24 WHAT THE JOB ENTAILS.

25 PROSPECTIVE JUROR NO. 6 (5334): YES, I DO.

26 THE COURT: YOU'VE GOT TO BE FAIR TO BOTH SIDES
27 AND RENDER THE VERDICT THAT'S DICTATED BY THE EVIDENCE.

28 PROSPECTIVE JUROR NO. 6 (5334): YES.

1 THE COURT: JUST BECAUSE MR. BURGHARDT IS SITTING
2 THERE, IT DOESN'T MEAN THAT HE IS GUILTY; RIGHT?

3 IT COULD VERY WELL BE THAT HE'S NOT GUILTY.
4 THE EVIDENCE MIGHT NOT PROVE HIM GUILTY BEYOND A
5 REASONABLE DOUBT. ON THE OTHER HAND, THE EVIDENCE MAY
6 PROVE HIM GUILTY BEYOND A REASONABLE DOUBT.

7 DO YOU UNDERSTAND AND ACCEPT THAT?

8 PROSPECTIVE JUROR NO. 6 (5334): YES, SIR.

9 THE COURT: ANY QUARREL WITH ANY OF THE LEGAL
10 CONCEPTS OR ANYTHING YOU HEARD SO FAR?

11 PROSPECTIVE JUROR NO. 6 (5334): NO, I DON'T.

12 THE COURT: AT THE END OF THE CASE, IF YOU BELIEVE
13 THE EVIDENCE PROVES GUILT BEYOND A REASONABLE DOUBT,
14 WHAT WOULD YOUR VERDICT BE?

15 PROSPECTIVE JUROR NO. 6 (5334): GUILTY.

16 THE COURT: IF YOU DID NOT THINK THE EVIDENCE
17 PROCEEDS TO THAT LEVEL?

18 PROSPECTIVE JUROR NO. 6 (5334): NOT GUILTY.

19 THE COURT: DO YOU HAVE "YES" ANSWERS?

20 PROSPECTIVE JUROR NO. 6 (5334): YES, I DO.

21 THE COURT: WHICH ONES? WHICH QUESTIONS?

22 PROSPECTIVE JUROR NO. 6 (5334): 7, 8, AND 9.

23 THE COURT: TELL US ABOUT 7.

24 PROSPECTIVE JUROR NO. 6 (5334): I GOT MY CAR
25 STEREO STOLEN. THAT WAS 17 -- ABOUT 30 YEARS AGO.

26 THE COURT: WHERE DID THAT OCCUR?

27 PROSPECTIVE JUROR NO. 6 (5334): IN FRONT OF MY
28 PARENT'S HOUSE IN INGLEWOOD.

1 THE COURT: WAS THE STEREO RECOVERED?
2 PROSPECTIVE JUROR NO. 6 (5334): NO.
3 THE COURT: WAS THE THIEF ARRESTED?
4 PROSPECTIVE JUROR NO. 6 (5334): NO.
5 THE COURT: DO YOU OR YOUR PARENTS HOLD IT AGAINST
6 THE POLICE THAT THE RADIO THIEF WASN'T CAUGHT?
7 PROSPECTIVE JUROR NO. 6 (5334): NO, SIR.
8 THE COURT: ALL RIGHT.
9 IS THERE ANY CHANCE THAT YOU WOULD HOLD
10 THAT UNSOLVED CRIME AGAINST MR. BURGHARDT IN ANY WAY?
11 PROSPECTIVE JUROR NO. 6 (5334): NOT AT ALL.
12 THE COURT: NO. 8 OR -- I'M SORRY.
13 DO YOU HAVE OTHER EXPERIENCES TO NO. 7?
14 PROSPECTIVE JUROR NO. 6 (5334): NO. THAT WAS IT.
15 THE COURT: NO. 8.
16 PROSPECTIVE JUROR NO. 6 (5334): NO. 8. I HAD A
17 D.U.I. ABOUT 17 YEARS AGO.
18 THE COURT: WHICH POLICE DEPARTMENT ARRESTED YOU?
19 PROSPECTIVE JUROR NO. 6 (5334): TEMECULA.
20 THE COURT: HOW DID THEY TREAT YOU?
21 PROSPECTIVE JUROR NO. 6 (5334): THEY TREATED ME
22 GOOD.
23 THE COURT: WERE YOU GUILTY?
24 PROSPECTIVE JUROR NO. 6 (5334): THAT WAS THE
25 FIRST YEAR. IT WAS .08, AND I ACTUALLY GOT A .08.
26 THE COURT: REALLY?
27 PROSPECTIVE JUROR NO. 6 (5334): YES, I WAS.
28 THE COURT: DID YOU HAVE AN ATTORNEY?

1 PROSPECTIVE JUROR NO. 6 (5334): NO.

2 THE COURT: YOU JUST REPRESENTED YOURSELF?

3 PROSPECTIVE JUROR NO. 6 (5334): IT WAS -- IT

4 WAS -- I JUST PLEADED GUILTY.

5 THE COURT: SO YOU WERE DRIVING WITH A .08?

6 PROSPECTIVE JUROR NO. 6 (5334): YES, SIR.

7 THE COURT: ANY NEGATIVE FEELINGS TOWARD THE

8 CRIMINAL JUSTICE SYSTEM BECAUSE YOU WENT THROUGH IT?

9 PROSPECTIVE JUROR NO. 6 (5334): NO. IT WAS MY

10 FAULT.

11 THE COURT: OKAY.

12 OTHER RESPONSES TO NO. 8?

13 PROSPECTIVE JUROR NO. 6 (5334): NO.

14 THE COURT: NO. 9?

15 PROSPECTIVE JUROR NO. 6 (5334): YES. MY BROTHER

16 IS A DEPUTY SHERIFF WITH ORANGE COUNTY.

17 THE COURT: WHAT IS HE ASSIGNED TO?

18 PROSPECTIVE JUROR NO. 6 (5334): CUSTODY AND

19 OCCASIONALLY PATROL.

20 THE COURT: YOU CAN'T DISCUSS THE CASE WITH HIM OR

21 ANYBODY ELSE.

22 PROSPECTIVE JUROR NO. 6 (5334): WE DON'T EVEN

23 TALK. THAT'S CORRECT.

24 THE COURT: YOU DON'T HAVE -- YOU DON'T GET ALONG

25 WITH HIM?

26 PROSPECTIVE JUROR NO. 6 (5334): WE HAVE

27 DIFFERENCES OF OPINION. LET'S PUT IT THAT WAY.

28 THE COURT: WOULD THAT BE ABOUT CRIMINAL LAW

1 RELATED THINGS?

2 PROSPECTIVE JUROR NO. 6 (5334): NO. HE'S A
3 REPUBLICAN, AND I'M A DEMOCRAT. THAT KIND OF STUFF.

4 THE COURT: ALL RIGHT.

5 HOW DO YOU FEEL ABOUT THE CREDIBILITY OF
6 WITNESSES -- EXCUSE ME -- THE CREDIBILITY OF POLICE
7 OFFICERS?

8 PROSPECTIVE JUROR NO. 6 (5334): THEY'RE JUST LIKE
9 EVERYBODY ELSE.

10 THE COURT: ALL RIGHT.

11 BECAUSE YOU'RE A DEMOCRAT AND YOUR BROTHER
12 IS A REPUBLICAN, IS THAT GOING TO AFFECT YOUR ABILITY TO
13 FAIRLY ASSES THE CREDIBILITY OF POLICE OFFICERS THAT
14 TESTIFY IN THIS CASE?

15 PROSPECTIVE JUROR NO. 6 (5334): NO. IT WON'T.
16 JUST SOME SERIOUS STUFF HERE. SO --

17 THE COURT: ALL RIGHT.

18 CAN YOU GIVE BOTH SIDES A FAIR TRIAL?

19 PROSPECTIVE JUROR NO. 6 (5334): YES, I CAN, SIR.

20 THE COURT: VERY GOOD.

21 MR. LEONARD?

22 MR. LEONARD: NO QUESTIONS.

23 THANK YOU, YOUR HONOR.

24 THE COURT: MR. STENNIS?

25 MR. STENNIS: NO QUESTIONS.

26 THE COURT: BOTH SIDES PASS FOR CAUSE?

27 MR. STENNIS: YES.

28 THE COURT: NEXT PEREMPTORY IS WITH THE PEOPLE.

1 MR. STENNIS: THE PEOPLE ASK THE COURT TO PLEASE
2 THANK AND EXCUSE JUROR NO. 12.

3 THE COURT: JUROR NO. 12, THANK YOU, MA'AM.

4 RETURN TO THE JURY ASSEMBLY ROOM, PLEASE.

5 THE CLERK: FOR JUROR SEAT NO. 12, JUROR NO. 1958.

6 THE COURT: HI.

7 PROSPECTIVE JUROR NO. 12 (1958): HI.

8 THE COURT: WOULD YOU GIVE US THE PERSONAL
9 INFORMATION, PLEASE.

10 PROSPECTIVE JUROR NO. 12 (1958): YES.

11 MY I.D. IS 1958.

12 I LIVE IN TORRANCE.

13 OCCUPATION, BANK TELLER.

14 I'M MARRIED. HUSBAND IS A NURSERY MAN.

15 I HAVE TWO -- THREE KIDS. ONE IS AN
16 ACCOUNTANT. ONE JUST FINISHED SCHOOL. ONE'S IN MEXICO.

17 AND I NEVER SERVED.

18 THE COURT: AND THE ONE THAT JUST FINISHED SCHOOL,
19 MAJORED IN WHAT?

20 PROSPECTIVE JUROR NO. 12 (1958): FINANCE AND
21 ACCOUNTING.

22 THE COURT: AND YOU HAVE NEVER BEEN A JUROR?

23 PROSPECTIVE JUROR NO. 12 (1958): NO, SIR.

24 THE COURT: YOU UNDERSTAND WHAT THE JOB ENTAILS?

25 PROSPECTIVE JUROR NO. 12 (1958): YES.

26 THE COURT: IS THERE ANYTHING ABOUT YOU THAT WOULD
27 PREVENT YOU FROM FULFILLING YOUR DUTIES AS A JUROR WHICH
28 IS TO BE FAIR TO BOTH SIDES?

1 PROSPECTIVE JUROR NO. 12 (1958): NO, SIR.

2 THE COURT: ANY QUARREL WITH ANY OF THE LEGAL
3 CONCEPTS THAT ANY OF US HAVE TALKED ABOUT?

4 PROSPECTIVE JUROR NO. 12 (1958): NO, SIR.

5 THE COURT: IF YOU BELIEVE THE EVIDENCE PROVES
6 GUILT BEYOND A REASONABLE DOUBT, WHAT WOULD YOUR VERDICT
7 BE?

8 PROSPECTIVE JUROR NO. 12 (1958): I'M SORRY.

9 CAN YOU REPEAT THAT?

10 THE COURT: IF YOU BELIEVE THE EVIDENCE PROVES
11 GUILT BEYOND A REASONABLE DOUBT?

12 PROSPECTIVE JUROR NO. 12 (1958): GUILTY.

13 THE COURT: IF THE EVIDENCE DOES NOT RISE TO THAT
14 LEVEL?

15 PROSPECTIVE JUROR NO. 12 (1958): NOT GUILTY.

16 THE COURT: DO YOU HAVE "YES" ANSWERS?

17 PROSPECTIVE JUROR NO. 12 (1958): YES, I DO.

18 THE COURT: WHICH ONES?

19 PROSPECTIVE JUROR NO. 12 (1958): NO. 6.

20 THE COURT: THAT'S THE ONLY ONE?

21 PROSPECTIVE JUROR NO. 12 (1958): YES, SIR.

22 THE COURT: TELL US ABOUT 6, PLEASE.

23 PROSPECTIVE JUROR NO. 12 (1958): MY OLDEST
24 BROTHER, HE'S A.P.D. FOR ALAMEDA COUNTY. MY OTHER
25 BROTHER, HE'S ALSO A LAWYER, BUT HE TEACHES.

26 THE COURT: YOUR BROTHER THAT WORKS FOR THE PUBLIC
27 DEFENDER'S OFFICE, HE DEFENDS PEOPLE ACCUSED OF CRIME?

28 PROSPECTIVE JUROR NO. 12 (1958): YES, HE DOES.

1 THE COURT: MR. LEONARD DEFENDS PEOPLE THAT ARE
2 ACCUSED OF CRIMES. BECAUSE YOUR BROTHER DOES WHAT
3 MR. LEONARD DOES, IS THAT GOING TO GIVE YOU AN
4 ALLEGIANCE WITH HIS SIDE OF THE CASE?

5 IS THAT --

6 PROSPECTIVE JUROR NO. 12 (1958): I'M SORRY. NO,
7 SIR.

8 THE COURT: OKAY.

9 AND YOU KNOW YOU CAN'T DISCUSS THE CASE
10 WITH YOUR BROTHER AND ANYBODY ELSE WHILE THE CASE IS
11 GOING ON.

12 PROSPECTIVE JUROR NO. 12 (1958): YES, I AM AWARE
13 OF THAT.

14 THE COURT: DO YOU HAVE ANY OTHER "YES" ANSWERS?

15 PROSPECTIVE JUROR NO. 12 (1958): NO, SIR.

16 THE COURT: CAN YOU BE FAIR TO BOTH SIDES?

17 PROSPECTIVE JUROR NO. 12 (1958): YES, SIR.

18 THE COURT: VERY GOOD.

19 MR. LEONARD?

20 MR. LEONARD: NO QUESTIONS, YOUR HONOR.

21 PASS FOR CAUSE.

22 THE COURT: MR. STENNIS?

23 MR. STENNIS: NO QUESTIONS.

24 PASS FOR CAUSE.

25 THE COURT: NEXT PEREMPTORY IS WITH THE DEFENSE.

26 MR. LEONARD: THANK YOU, YOUR HONOR.

27 WE ASK THE COURT TO THANK AND EXCUSE
28 JUROR -- PROSPECTIVE JUROR NO. 8.

1 THANK YOU, SIR.

2 THE COURT: ALL RIGHT.

3 THANK YOU, SIR. RETURN TO THE JURY

4 ASSEMBLY ROOM, PLEASE.

5 THE CLERK: FOR JUROR SEAT NO. 8, JUROR NO. 5688.

6 THE COURT: HI.

7 CAN YOU GIVE US THE INFORMATION IN NO. 1,

8 PLEASE.

9 PROSPECTIVE JUROR NO. 8 (5688): YES, SIR.

10 JUROR NO. 5688.

11 I LIVE IN TORRANCE.

12 OCCUPATION IS STUDENT.

13 I'M SINGLE.

14 AND I NEVER SERVED ON A JURY DUTY BEFORE.

15 THE COURT: WHERE DO YOU GO TO SCHOOL?

16 PROSPECTIVE JUROR NO. 8 (5688): EL CAMINO

17 COLLEGE.

18 THE COURT: WHAT ARE YOU STUDYING?

19 PROSPECTIVE JUROR NO. 8 (5688): STUDYING IN

20 RADIOLOGY.

21 THE COURT: ALL RIGHT.

22 IS THERE ANYTHING THAT WOULD PREVENT YOU

23 FROM BEING FAIR TO THE PROSECUTION?

24 PROSPECTIVE JUROR NO. 8 (5688): NO.

25 THE COURT: IS THERE ANYTHING THAT WOULD PREVENT

26 YOU FROM BEING FAIR TO THE DEFENSE?

27 PROSPECTIVE JUROR NO. 8 (5688): NO, SIR.

28 THE COURT: DID YOU UNDERSTAND THE ANALOGY THAT I

1 GAVE YESTERDAY ABOUT THE UMPIRE BEHIND THE PLATE --
2 PROSPECTIVE JUROR NO. 8 (5688): YES, SIR.
3 THE COURT: -- AND A JUROR?
4 PROSPECTIVE JUROR NO. 8 (5688): (NODS HEAD IN THE
5 AFFIRMATIVE.) YES, SIR.
6 THE COURT: DOES THAT MAKE SENSE TO YOU?
7 PROSPECTIVE JUROR NO. 8 (5688): YEAH.
8 THE COURT: YOU'VE GOT TO BE WILLING TO CALL IT AS
9 YOU SEE IT AND BE FAIR TO BOTH SIDES. YES?
10 PROSPECTIVE JUROR NO. 8 (5688): YES, SIR.
11 THE COURT: DO YOU HAVE ANY QUARREL OR PROBLEM
12 WITH OF ANY LEGAL CONCEPTS THAT YOU HEARD SO FAR?
13 PROSPECTIVE JUROR NO. 8 (5688): NO, SIR.
14 THE COURT: IF THE STANDARD OF PROOF IS MET, WHAT
15 WOULD YOUR VERDICT BE?
16 PROSPECTIVE JUROR NO. 8 (5688): GUILTY.
17 THE COURT: IF IT IS NOT MET?
18 PROSPECTIVE JUROR NO. 12 (1958): NOT GUILTY.
19 THE COURT: DO YOU HAVE "YES" ANSWERS?
20 PROSPECTIVE JUROR NO. 8 (5688): NO, SIR.
21 THE COURT: CAN BE FAIR TO BOTH SIDES?
22 PROSPECTIVE JUROR NO. 8 (5688): YES, SIR.
23 THE COURT: VERY GOOD.
24 MR. LEONARD?
25 MR. LEONARD: THANK YOU, YOUR HONOR.
26 NO QUESTIONS, JUDGE.
27 MR. STENNIS: NO QUESTIONS, YOUR HONOR.
28 THE COURT: ALL RIGHT.

1 BOTH SIDES PASS FOR CAUSE?

2 MR. STENNIS: YES.

3 MR. LEONARD: YES, YOUR HONOR.

4 THE COURT: PEREMPTORY IS WITH THE PEOPLE.

5 MR. STENNIS: YOUR HONOR, THE PEOPLE WOULD ASK THE

6 COURT TO THANK AND EXCUSE JUROR NO. 8.

7 THE COURT: JUROR NO. 8?

8 MR. STENNIS: YES.

9 THE COURT: ALL RIGHT.

10 THANK YOU, SIR. YOU ARE EXCUSED.

11 NO. NO. NOT YOU.

12 ARE YOU TALKING ABOUT THE MAN WHO JUST SAT

13 DOWN?

14 MR. STENNIS: YES.

15 THE COURT: ALL RIGHT.

16 THANK YOU, SIR. YOU'RE EXCUSED.

17 THE CLERK: FOR JUROR SEAT NO. 8, JUROR NO. 8084.

18 THE COURT: HI.

19 PROSPECTIVE JUROR NO. 8 (8084): HELLO.

20 THE COURT: CAN YOU GIVE US THE INFORMATION,

21 PLEASE?

22 PROSPECTIVE JUROR NO. 8 (8084): MY JUROR I.D. IS

23 8084.

24 I LIVE IN LAWNDALE.

25 MY OCCUPATION IS RECEPTIONIST,

26 ADMINISTRATIVE ASSISTANT.

27 I AM SINGLE.

28 I DON'T HAVE ANY PRIOR JURY EXPERIENCE.

1 THE COURT: WHAT KIND OF BUSINESS ARE YOU AN
2 ADMINISTRATIVE ASSISTANT AT?

3 PROSPECTIVE JUROR NO. 8 (8084): WE HAVE TWO MAIN
4 DEPARTMENTS. ONE IS STAFFING FOR OTHER COMPANIES, AND
5 THE OTHER SIDE IS CONSULTING FOR I.T. DEPARTMENTS.

6 THE COURT: HOW LONG HAVE YOU BEEN DOING THAT?

7 PROSPECTIVE JUROR NO. 8 (8084): I JUST STARTED ON
8 TUESDAY LAST WEEK.

9 THE COURT: OH.

10 WHAT DID YOU DO BEFORE THAT?

11 PROSPECTIVE JUROR NO. 8 (8084): I WORKED FOR A
12 PUBLIC ADDRESSING FIRM. SO WE HANDLED PROPERTY, LIKE,
13 HOMEOWNER PROPERTY DAMAGE, INSURANCE CLAIMS.

14 AND PRIOR TO THAT I WORKED AS A
15 ADMINISTRATIVE LEGAL SECRETARY, WHICH IS MY "YES" ANSWER
16 TO NO. 6.

17 THE COURT: OKAY.

18 YOU UNDERSTAND THAT YOU HAVE TO BE FAIR TO
19 BOTH SIDES?

20 PROSPECTIVE JUROR NO. 8 (8084): YES.

21 THE COURT: AND AT THE END OF THE CASE, IF THE
22 VERDICT CALLS -- IF THE VERDICT SHOULD BE GUILTY, VOTE
23 GUILTY; RIGHT?

24 PROSPECTIVE JUROR NO. 8 (8084): YES.

25 THE COURT: IF THE VERDICT SHOULD BE NOT GUILTY,
26 THEN YOU VOTE NOT GUILTY.

27 DO YOU AGREE WITH THAT?

28 PROSPECTIVE JUROR NO. 8 (8084): YES.

1 THE COURT: AND WE DON'T KNOW NOW WHETHER
2 MR. BURGHARDT IS GOING TO BE FOUND GUILTY OF ALL OF THE
3 CHARGES, NONE OF THE CHARGES, OR SOME OF THE CHARGE.

4 PROSPECTIVE JUROR NO. 8 (8084): CORRECT.

5 THE COURT: YOU WILL KEEP AN OPEN MIND AND MAKE
6 YOUR DECISION AFTER YOU'VE HEARD ALL THE EVIDENCE, AND
7 YOU DISCUSSED THE EVIDENCE WITH THE OTHER JURORS DURING
8 JURY DELIBERATION?

9 PROSPECTIVE JUROR NO. 8 (8084): YES.

10 THE COURT: DO YOU HAVE ANY QUARREL ABOUT ANY OF
11 THE LEGAL CONCEPTS WE TALKED ABOUT?

12 PROSPECTIVE JUROR NO. 8 (8084): NO.

13 THE COURT: ALL RIGHT.

14 DO YOU HAVE ANY "YES" ANSWERS BESIDES
15 NO. 6?

16 PROSPECTIVE JUROR NO. 8 (8084): NO.

17 THE COURT: ALL RIGHT.

18 AND TELL US ABOUT NO. 6.

19 IS THERE MORE TO IT THAN YOU ALREADY TOLD
20 US?

21 PROSPECTIVE JUROR NO. 8 (8084): YEAH. THERE'S A
22 LITTLE MORE TO IT.

23 FOR A YEAR I FORMED A FORENSIC ENGINEERING
24 ACCIDENT RECONSTRUCTION FIRM. THE PARTNERS OF THE FIRM
25 TESTIFIED AS EXPERTS FOR VEHICULAR ACCIDENT
26 RECONSTRUCTION.

27 THE COURT: WOULD THAT BE CRIMINAL CASES OR CIVIL
28 CASES OR BOTH?

1 PROSPECTIVE JUROR NO. 8 (8084): I WOULD SAY
2 PROBABLY MORE CIVIL.

3 WE DID MOSTLY DEFENSE WORK FOR THE CITY,
4 STATE, AND MANUFACTURERS. SO I WORKED AS A LEGAL
5 SECRETARY, ADMINISTRATIVE ASSISTANT UNDER ONE OF THEM,
6 AND MY BOYFRIEND IS A JUNIOR CONSULTANT ENGINEER,
7 CONSULTING ENGINEER.

8 THE COURT: IS THAT WHAT HE DOES NOW?

9 PROSPECTIVE JUROR NO. 8 (8084): CORRECT.

10 THE COURT: DID YOU GO TO COLLEGE?

11 PROSPECTIVE JUROR NO. 8 (8084): NO.

12 THE COURT: YOU HAVEN'T COMPLETED? ARE YOU GOING?

13 PROSPECTIVE JUROR NO. 8 (8084): HOPEFULLY,
14 EVENTUALLY. NOT RIGHT NOW.

15 THE COURT: HOW LONG HAVE YOU BEEN OUT OF HIGH
16 SCHOOL?

17 PROSPECTIVE JUROR NO. 8 (8084): SINCE 2005.

18 THE COURT: IS THERE ANYTHING ABOUT YOUR PRIOR
19 EMPLOYMENT THAT WOULD AFFECT YOU DECIDING THIS CASE?

20 PROSPECTIVE JUROR NO. 8 (8084): NO.

21 THE COURT: ALL RIGHT.

22 DO YOU HAVE ANY OTHER "YES" ANSWERS?

23 PROSPECTIVE JUROR NO. 8 (8084): NO.

24 THE COURT: CAN YOU BE FAIR TO BOTH SIDES?

25 PROSPECTIVE JUROR NO. 8 (8084): YES.

26 THE COURT: MR. LEONARD?

27 MR. LEONARD: NO QUESTIONS.

28 PASS FOR CAUSE.

1 THE COURT: MR. STENNIS?

2 MR. STENNIS: NO QUESTIONS AND PASS.

3 THE COURT: NEXT PEREMPTORY IS WITH THE DEFENSE.

4 MR. LEONARD: YOUR HONOR, WE ASK THE COURT TO

5 THANK AND EXCUSE PROSPECTIVE JUROR NO. 7.

6 THANK YOU, MA'AM.

7 THE COURT: ALL RIGHT.

8 THANK YOU. RETURN TO THE JURY ASSEMBLY

9 ROOM, PLEASE.

10 THE CLERK: JUROR FOR SEAT NO. 7, JUROR NO. 9417.

11 THE COURT: HI.

12 PROSPECTIVE JUROR NO. 7 (9417): HI.

13 THE COURT: CAN YOU GIVE US THE PERSONAL

14 INFORMATION, PLEASE, IN QUESTION 1.

15 PROSPECTIVE JUROR NO. 7 (9417): YES.

16 MY I.D. NO. IS 9417.

17 AND I LIVE IN PLAYA DEL REY.

18 MY OCCUPATION IS PART-TIME REALTOR.

19 I'M MARRIED. MY HUSBAND WORKS IN

20 TRANSPORTATION AND MOTION PICTURES.

21 I HAVE TWO CHILDREN. A SON THAT IS IN

22 SALES, AND MY DAUGHTER THAT IS -- IS GOING TO -- DOING

23 HER MASTER'S IN PSYCHOLOGY.

24 THE COURT: VERY GOOD.

25 HAVE YOU EVER BEEN A JUROR BEFORE?

26 PROSPECTIVE JUROR NO. 7 (9417): YES. THREE

27 TIMES.

28 THE COURT: CRIMINAL, CIVIL, OR BOTH?

1 PROSPECTIVE JUROR NO. 7 (9417): BOTH.
2 THE COURT: HOW MANY CIVIL?
3 PROSPECTIVE JUROR NO. 7 (9417): I THINK TWO. TWO
4 AND TWO. I -- PROBABLY FOUR REALLY.
5 THE COURT: FOUR?
6 PROSPECTIVE JUROR NO. 7 (9417): YES.
7 THE COURT: DID EITHER OF THE CIVIL CASES REACH
8 VERDICTS?
9 PROSPECTIVE JUROR NO. 7 (9417): YES.
10 THE COURT: BOTH?
11 PROSPECTIVE JUROR NO. 7 (9417): UH-HUH.
12 THE COURT: YES?
13 PROSPECTIVE JUROR NO. 7 (9417): YES. YES.
14 THE COURT: AND --
15 PROSPECTIVE JUROR NO. 7 (9417): SORRY.
16 THE COURT: THE FIRST CRIMINAL CASE, WHAT WAS THE
17 PERSON ACCUSED OF DOING?
18 PROSPECTIVE JUROR NO. 7 (9417): I THINK IT WAS --
19 IT WAS -- IT WAS ABOUT FIVE OR SIX YEARS AGO AND WAS
20 HERE, AND IT WAS RELATED WITH DRUGS.
21 THE COURT: DRUGS?
22 PROSPECTIVE JUROR NO. 7 (9417): DRUGS.
23 THE COURT: DID THE JURY REACH A VERDICT?
24 PROSPECTIVE JUROR NO. 7 (9417): YEAH, THEY DID,
25 YES.
26 THE COURT: IT DID?
27 PROSPECTIVE JUROR NO. 7 (9417): YES. YES.
28 THE COURT: AND WHAT WAS THE SECOND CRIMINAL CASE?

1 PROSPECTIVE JUROR NO. 7 (9417): I KNOW IT WAS A
2 CRIMINAL, BUT I DON'T RECALL EXACTLY WHAT IT WAS.

3 THE COURT: DO YOU REMEMBER WHETHER IT WAS
4 VIOLENCE RELATED, THEFT RELATED, OR DRUG RELATED?

5 PROSPECTIVE JUROR NO. 7 (9417): I BELIEVE IT WAS
6 VIOLENCE, VIOLENCE RELATED.

7 THE COURT: DID THE JURY REACH A VERDICT?

8 PROSPECTIVE JUROR NO. 7 (9417): YES.

9 THE COURT: SO EVERY TIME YOU HAVE BEEN A JUROR,
10 THE JURY HAS REACHED A VERDICT?

11 PROSPECTIVE JUROR NO. 7 (9417): ONLY ONE TIME WAS
12 IT HUNG. THEY CALL --

13 THE COURT: A HUNG JURY?

14 PROSPECTIVE JUROR NO. 7 (9417): HUNG.

15 THE COURT: SO YOU HAVE BEEN A JUROR FIVE TIMES?

16 PROSPECTIVE JUROR NO. 7 (9417): THIS ONE WOULD
17 TODAY, FIVE TIMES IF I STAY, THE FIFTH TIME.

18 THE COURT: THE HUNG JURY, WAS THAT ON A CIVIL
19 CASE OR A CRIMINAL CASE?

20 PROSPECTIVE JUROR NO. 7 (9417): IT WAS CIVIL.

21 THE COURT: CIVIL?

22 PROSPECTIVE JUROR NO. 7 (9417): YES.

23 THE COURT: WAS IT AN HONEST DIFFERENCE OF OPINION
24 AMONG THE JURORS, OR DO YOU THINK SOME OF THE JURORS
25 WERE NOT DELIBERATING PROPERLY?

26 PROSPECTIVE JUROR NO. 7 (9417): NO.

27 THE COURT: YOU SAID YOU'RE A PART-TIME REALTOR.
28 WHEN YOU ARE NOT --

1 PROSPECTIVE JUROR NO. 7 (9417): HOUSEWIFE.

2 THE COURT: ALL RIGHT.

3 THAT'S WHAT I WAS GOING TO ASK.

4 OH. AND YOUR CHILD, A SALES PERSON. WHAT
5 DOES HE OR SHE SELL?

6 PROSPECTIVE JUROR NO. 7 (9417): MY SON. HE'S
7 SELLING ELECTRONIC THINGS, LIKE POWER SUPPLIES AND
8 COMPUTERS --

9 THE COURT: ALL RIGHT.

10 PROSPECTIVE JUROR NO. 7 (9417): -- SYSTEMS.

11 THE COURT: HAVE YOU HEARD AND UNDERSTOOD ALL OF
12 THE LEGAL CONCEPTS?

13 PROSPECTIVE JUROR NO. 7 (9417): YES.

14 THE COURT: ANYTHING TROUBLESOME TO YOU IN ANY
15 WAY?

16 PROSPECTIVE JUROR NO. 7 (9417): NO.

17 THE COURT: YOU HAVE BEEN A JUROR MORE TIMES SO
18 FAR THAN ANYBODY THAT WE'VE HAD IN THIS CASE.

19 PROSPECTIVE JUROR NO. 7 (9417): YES.

20 THE COURT: DO YOU AGREE TO APPROACH THIS CASE
21 WITH THE FRAME OF MIND THAT I'VE BEEN TALKING ABOUT,
22 WHICH IS OPEN AND FAIR AND IMPARTIAL?

23 PROSPECTIVE JUROR NO. 7 (9417): YES.

24 THE COURT: AND IF THE EVIDENCE PROVES GUILT
25 BEYOND A REASONABLE DOUBT, YOUR VERDICT WOULD BE WHAT?

26 PROSPECTIVE JUROR NO. 7 (9417): GUILTY.

27 THE COURT: AND THE EVIDENCE DOES NOT RISE TO THAT
28 LEVEL?

1 PROSPECTIVE JUROR NO. 7 (9417): NOT GUILTY.
2 THE COURT: DO YOU HAVE "YES" ANSWERS?
3 PROSPECTIVE JUROR NO. 7 (9417): NO.
4 THE COURT: CAN YOU BE FAIR TO BOTH SIDES?
5 PROSPECTIVE JUROR NO. 7 (9417): YES.
6 THE COURT: VERY GOOD.
7 MR. LEONARD, GO AHEAD.
8 MR. LEONARD: NO QUESTIONS, YOUR HONOR.
9 THE COURT: MR. STENNIS?
10 MR. STENNIS: NO QUESTIONS.
11 PASS.
12 THE COURT: NEXT PEREMPTORY IS WITH THE PEOPLE.
13 MR. STENNIS: PEOPLE ASK THE COURT TO THANK AND
14 EXCUSE JUROR NO. 8.
15 THE COURT: JUROR NO. 8, THANK YOU.
16 RETURN TO THE JURY ASSEMBLY ROOM, PLEASE.
17 PROSPECTIVE JUROR NO. 4 (0443): ARE WE ALLOWED TO
18 ASK A QUESTION?
19 THE COURT: WHAT IS YOUR QUESTION?
20 PROSPECTIVE JUROR NO. 4 (0443): DOES ANY OF THIS
21 HAVE TO DO WITH DRUGS?
22 THE COURT: DOES ANY?
23 PROSPECTIVE JUROR NO. 4 (0443): IS THERE ANYTHING
24 DRUG RELATED IN THIS CASE?
25 THE COURT: IS THERE ANYTHING DRUG RELATED IN THIS
26 CASE?
27 MR. STENNIS: IN A VERY, VERY SMALL WAY.
28 THE COURT: A VERY, VERY SMALL WAY.

1 PROSPECTIVE JUROR NO. 4 (0443): OKAY.

2 THE COURT: NOW, YOU HAVE PERSONAL -- YOU HAVE
3 STRONG FEELINGS ABOUT --

4 PROSPECTIVE JUROR NO. 4 (0443): YES, I DO.

5 THE COURT: -- DRUGS?

6 THE COURT: ALL RIGHT.

7 I TALKED YESTERDAY ABOUT PERSONAL FEELINGS.
8 APPARENTLY, THERE IS SOME MINIMAL CONNECTION WITH DRUGS
9 IN THIS CASE. THIS IS -- THE JOB OF A JURY IS NOT TO
10 RENDER PHILOSOPHICAL OPINIONS ABOUT, YOU KNOW, THE EVILS
11 OF DRUGS.

12 THE JOB OF THE JURY IN THIS CASE IS TO
13 DECIDE WHETHER THE EVIDENCE PROVES THAT MR. BURGHARDT
14 COMMITTED THE CRIMES THAT HE IS ACCUSED OF.

15 SO WHAT WE ASK YOU TO DO IS JUST TO
16 COMPARTMENTALIZE YOUR PERSONAL FEELINGS. WE'RE NOT
17 TELLING YOU, YOU KNOW, WELL, FORGET IT, BECAUSE
18 OBVIOUSLY YOU'RE NOT GOING TO FORGET IT, BUT JUST
19 COMPARTMENTALIZE IT.

20 YOUR DECISION IN THIS CASE HAS TO BE BASED
21 ON THE EVIDENCE THAT WILL BE PRESENTED, YOUR COMMON
22 SENSE, AND THE JURY INSTRUCTIONS.

23 CAN YOU SET YOUR FEELINGS TO THE SIDE AND
24 YOU AND THE OTHER ELEVEN JURORS DECIDE THE CASE BASED ON
25 THE EVIDENCE PRESENTED?

26 PROSPECTIVE JUROR NO. 4 (0443): IF IT'S MINIMAL.

27 THE COURT: THAT'S WHAT I SAID.

28 PROSPECTIVE JUROR NO. 4 (0443): IT SHOULD BE

1 OKAY.

2 THE COURT: OKAY.

3 PROSPECTIVE JUROR NO. 4 (0443): AND AS LONG AS
4 IT'S NOT DRUG USE.

5 MR. STENNIS: CAN WE APPROACH?

6 MR. LEONARD: YEAH.

7 THE COURT: TELL YOU WHAT. WHY DON'T YOU GO
8 THROUGH THAT DOOR AND TALK?

9

10 (THE FOLLOWING PROCEEDINGS
11 WERE HELD IN CHAMBERS:)

12

13 PROSPECTIVE JUROR NO. 4 (0443): SORRY.

14 MR. LEONARD: NO PROBLEM.

15 PROSPECTIVE JUROR NO. 4 (0443): YOU GUYS JUST
16 KEPT ASKING ABOUT DRUGS, AND IT MADE ME NERVOUS.

17 THE COURT: I BELIEVE THAT THERE IS GOING TO BE --
18 THERE MAY BE EVIDENCE THAT THE DEFENDANT ASKED SOMEONE
19 WHETHER THEY WANTED TO BUY DRUGS OR NOT.

20 PROSPECTIVE JUROR NO. 4 (0443): OKAY.

21 THE COURT: THERE IS NO EVIDENCE OF DRUG
22 POSSESSION.

23 PROSPECTIVE JUROR NO. 4 (0443): THAT HE WAS ON
24 DRUGS?

25 THE COURT: IS THERE ANY EVIDENCE OF ANYBODY BEING
26 UNDER THE INFLUENCE?

27 MR. STENNIS: WELL, WE MIGHT -- WE MIGHT WANT
28 TO --

1 THE CLERK: STEP OUT?

2 THE COURT: ALL RIGHT.

3 THE COURT REPORTER: WITH ME?

4 MR. STENNIS: NO.

5

6 (DISCUSSION OFF THE RECORD.)

7

8 THE COURT: ALL RIGHT.

9 THERE MAY BE TESTIMONY THAT AT SOME POINT
10 THE MR. BURGHARDT WAS DRUNK.

11 PROSPECTIVE JUROR NO. 4 (0443): OKAY.

12 THAT DOESN'T BOTHER ME. I DO HAVE A
13 VERY -- JUST SO YOU KNOW, MY FATHER IS A DRUG ABUSER.
14 HIS FATHER WAS A DRUG ABUSER. MY UNCLE IS A DRUG
15 ABUSER. HIS FATHER WAS A DRUG ABUSER.

16 JUST SO YOU KNOW MY FAMILY BACKGROUND.

17 MR. STENNIS: RIGHT.

18 PROSPECTIVE JUROR NO. 4 (0443): AND THAT THAT'S
19 WHY I ASKED ABOUT THE DRUG THING BECAUSE YOU GUYS KEPT
20 ASKING.

21 THE COURT: OKAY.

22 WHO HAD THE LAST PEREMPTORY?

23 THE CLERK: PEOPLE.

24 THE COURT: ALL RIGHT.

25 EITHER OF YOU WISH TO QUESTION THIS LADY?

26 MR. LEONARD: NO, YOUR HONOR.

27 THE COURT: DID YOU WANT TO EXERCISE A PEREMPTORY?

28 MR. LEONARD: I'LL EXERCISE A PEREMPTORY.

1 THE COURT: DO YOU WANT TO EXCUSE THIS LADY NOW?

2 MR. LEONARD: YES, YOUR HONOR.

3 THE COURT: ALL RIGHT.

4 WE'RE GOING TO EXCUSE YOU.

5 PROSPECTIVE JUROR NO. 4 (0443): SORRY.

6 MR. LEONARD: THAT'S NO PROBLEM. YOU DID THE
7 RIGHT THING.

8 THE COURT: YES, YOU DID THE RIGHT THING.

9

10 (THE FOLLOWING PROCEEDINGS
11 WERE HELD IN OPEN COURT IN
12 THE PRESENCE OF THE
13 PROSPECTIVE JURORS:)

14

15 THE COURT: ALL RIGHT.

16 WE NEED TWO JURORS, MARCIA. ONE FOR SEAT 4
17 AND ONE FOR SEAT 8.

18 THE CLERK: OKAY.

19 FOR JUROR SEAT NO. 8, JUROR NUMBER 0185.

20 THE COURT: AND ONE FOR SEAT 4.

21 THE CLERK: FOR JUROR SEAT NO. 4, JUROR NO. 0163.

22 THE COURT: JUROR NO. 8, WOULD YOU GIVE THE
23 PERSONAL INFORMATION, PLEASE.

24 PROSPECTIVE JUROR NO. 8 (0185): YES.

25 JUROR I.D. NO. 0185.

26 I LIVE IN GARDENA.

27 I WORK IN RETAIL.

28 I'M DIVORCED. I HAVE NO CHILDREN.

1 AND I HAVE NO PRIOR JURY EXPERIENCE.

2 THE COURT: WHAT DO YOU SELL?

3 PROSPECTIVE JUROR NO. 8 (0185): I'M WORKING FOR
4 NORDSTROM.

5 THE COURT: OH. ON THE FLOOR?

6 PROSPECTIVE JUROR NO. 8 (0185): YES. I MANAGE
7 THEIR JEWELRY DEPARTMENT.

8 THE COURT: WHAT DOES YOUR EX-HUSBAND DO?

9 PROSPECTIVE JUROR NO. 8 (0185): HE IS EDUCATED AS
10 A LAWYER, BUT HE'S AN ENTREPRENEUR.

11 THE COURT: WHAT KIND OF BUSINESS IS HE IN?

12 PROSPECTIVE JUROR NO. 8 (0185): TAX, TAX
13 PREPARATION.

14 THE COURT: DO YOU HAVE ANY CHILDREN?

15 PROSPECTIVE JUROR NO. 8 (0185): NO.

16 THE COURT: HAVE YOU EVER BEEN A JUROR BEFORE?

17 PROSPECTIVE JUROR NO. 8 (0185): NO.

18 THE COURT: DO YOU UNDERSTAND WHAT IS BEING ASKED
19 OF YOU AS A JUROR?

20 PROSPECTIVE JUROR NO. 8 (0185): YES.

21 THE COURT: DO YOU HAVE THE FRAME OF MIND TO
22 APPROACH THIS IN THE RIGHT WAY?

23 PROSPECTIVE JUROR NO. 8 (0185): YES.

24 THE COURT: ANY QUARREL WITH ANY OF THE LEGAL
25 CONCEPTS THAT ANY OF US HAVE TALKED ABOUT?

26 PROSPECTIVE JUROR NO. 8 (0185): NO.

27 THE COURT: IF THE STANDARD OF PROOF IS MET, WHAT
28 WOULD YOUR VERDICT BE?

1 PROSPECTIVE JUROR NO. 8 (0185) : GUILTY.
2 THE COURT: IF IT IS NOT MET?
3 PROSPECTIVE JUROR NO. 8 (0185) : NOT GUILTY.
4 THE COURT: DO YOU HAVE "YES" ANSWERS?
5 PROSPECTIVE JUROR NO. (0185) : I DO.
6 THE COURT: WHICH ONES?
7 PROSPECTIVE JUROR NO. 8 (0185) : TO NO. 6, MY
8 EX-HUSBAND.
9 THE COURT: RIGHT.
10 PROSPECTIVE JUROR NO. 8 (0185) : AND THEN NO. 8.
11 THE COURT: IS ANYTHING MORE ABOUT YOUR HUSBAND
12 REGARDING NO. 6?
13 PROSPECTIVE JUROR NO. 8 (0185) : NO.
14 THE COURT: DID HE EVER PRACTICE AS A LAWYER?
15 PROSPECTIVE JUROR NO. 8 (0185) : HE NEVER
16 PRACTICED AS A LAWYER, NO.
17 THE COURT: CAN'T DISCUSS THE CASE WITH HIM OR
18 ANYBODY ELSE WHILE THE CASE IS GOING ON.
19 PROSPECTIVE JUROR NO. 8 (0185) : I UNDERSTAND.
20 THE COURT: NO. 8.
21 PROSPECTIVE JUROR NO. 8 (0185) : IS RELATED TO
22 NO. 6.
23 THE COURT: OKAY.
24 PROSPECTIVE JUROR NO. 8 (0185) : CAN WE SPEAK
25 ABOUT IT PRIVATELY?
26 THE COURT: OKAY.
27 \ \ \\\
28 \ \ \\\

1 (THE FOLLOWING PROCEEDINGS
2 WERE HELD IN CHAMBERS:)

3
4 THE COURT: OKAY.

5 GO AHEAD.

6 PROSPECTIVE JUROR NO. 8 (0185): I WAS ARRESTED
7 FOR DOMESTIC VIOLENCE.

8 THE COURT: WHO WAS?

9 PROSPECTIVE JUROR NO. 8 (0185): I WAS.

10 THE COURT: OH, YOU WERE.

11 PROSPECTIVE JUROR NO. 8 (0185): YES.

12 AND I BELIEVE IT WAS IN YOUR COURTROOM THAT
13 I WAS HERE PROBABLY ABOUT TEN YEARS AGO. BECAUSE I
14 THREW A REMOTE CONTROL AT MY EX-HUSBAND. SO HE HAD ME
15 ARRESTED.

16 THE CLERK: LET ME GO GET YOUR NAME.

17 THE COURT: HOW DID THE CASE COME OUT?

18 PROSPECTIVE JUROR NO. 8 (0185): I PLEAD
19 NO CONTEST.

20 THE COURT: TO A FELONY OR MISDEMEANOR?

21 PROSPECTIVE JUROR NO. 8 (0185): MISDEMEANOR.

22 THE COURT: YOU HAD AN ATTORNEY?

23 PROSPECTIVE JUROR NO. 8 (0185): I DID. IT WAS A
24 PUBLIC DEFENDER, BUT I COULDN'T TELL YOU WHO HE WAS.

25 THE COURT: WERE YOU WORKING AT NORDSTROM AT THE
26 TIME?

27 PROSPECTIVE JUROR NO. 8 (0185): I WAS NOT WORKING
28 AT NORDSTROM AT THE TIME, NO.

1 THE COURT: YOU THREW A REMOTE CONTROL AT YOUR --
2 PROSPECTIVE JUROR NO. 8 (0185): EX-HUSBAND.
3 THE COURT: PRESENT HUSBAND?
4 PROSPECTIVE JUROR NO. 8 (0185): EX-HUSBAND.
5 THE COURT: YOUR DIVORCED HUSBAND.
6 PROSPECTIVE JUROR NO. 8 (0185): YES. YES.
7 THE COURT: HOW DID THE POLICE TREAT YOU WHEN YOU
8 WERE ARRESTED?
9 PROSPECTIVE JUROR NO. 8 (0185): THEY WERE VERY
10 KIND. I HAD NO PROBLEMS.
11 THE COURT: HOW WERE THE -- HOW DID THE COURT
12 SYSTEM TREAT YOU?
13 PROSPECTIVE JUROR NO. 8 (0185): I THINK, YOU
14 KNOW, FOR WHAT IT WAS, I CAN'T COMPLAIN, YEAH.
15 THE COURT: ALL RIGHT.
16 IS THERE ANYTHING WITH YOUR PRIOR CASE,
17 ESPECIALLY SINCE IT WAS IN MY COURT, THAT WOULD CAUSE
18 YOU TO LEAN ONE WAY OR THE OTHER?
19 PROSPECTIVE JUROR NO. 8 (0185): NO, NOT AT ALL.
20 THE COURT: WERE YOU GUILTY?
21 PROSPECTIVE JUROR NO. 8 (0185): OF THROWING THE
22 CONTROL, YES, I WAS.
23 THE COURT: DO YOU THINK, SINCE YOU WERE GUILTY,
24 MR. BURGHARDT IS GUILTY OF WHAT HE'S ACCUSED OF?
25 PROSPECTIVE JUROR NO. 8 (0185): NO.
26 THE COURT: ALL RIGHT.
27 DO YOU -- MR. LEONARD, ANY QUESTIONS?
28 MR. LEONARD: NO QUESTIONS, JUDGE.

1 THE COURT: ANYTHING, MR. STENNIS?

2 MR. STENNIS: WHEN -- YOU WERE ARRESTED?

3 PROSPECTIVE JUROR NO. 8 (0185): YES.

4 MR. STENNIS: AND WHERE DID THEY TAKE YOU?

5 PROSPECTIVE JUROR NO. 8 (0185): TO THE LOMITA

6 SHERIFF'S DEPARTMENT.

7 MR. STENNIS: AND HOW LONG WERE YOU IN CUSTODY?

8 PROSPECTIVE JUROR NO. 8 (0185): JUST OVERNIGHT.

9 MR. STENNIS: OVERNIGHT.

10 AND DID THEY BRING YOU FROM CUSTODY WHEN

11 YOU WERE RELEASED AND --

12 PROSPECTIVE JUROR NO. 8 (0185): NO. THEY BROUGHT

13 ME TO COURT.

14 MR. STENNIS: SO COURT THE NEXT DAY SO YOU PLED

15 OUT WHILE YOU WERE IN CUSTODY?

16 PROSPECTIVE JUROR NO. 8 (0185): YES.

17 MR. STENNIS: DO YOU REMEMBER WHO YOUR LAWYER WAS?

18 PROSPECTIVE JUROR NO. 8 (0185): I DON'T.

19 MR. STENNIS: OH.

20 THE COURT: DO -- YOU KNOW WHAT? I REMEMBER YOUR

21 NAME.

22 PROSPECTIVE JUROR NO. 8 (0185): AS A MATTER OF

23 FACT, ON MY LAST DAY, I MISSED MY COURT DATE BECAUSE I

24 WAS ONE DAY OFF, AND YOU TOLD ME I HOPE I NEVER SEE YOU

25 IN MY COURTROOM AGAIN.

26 THE COURT: OFF THE RECORD.

27

28 (DISCUSSION OFF THE RECORD.)

1 THE COURT: ALL RIGHT.
2 BACK ON THE RECORD
3 IS THERE ANYTHING ELSE THAT YOU WANT TO
4 TELL US?
5 PROSPECTIVE JUROR NO. 8 (0185): NO. THAT'S IT.
6 THE COURT: OKAY, THEN.
7 THANK YOU FOR MENTIONING THIS, AND YOU CAN
8 RETURN TO YOUR SEAT.
9
10 (THE FOLLOWING PROCEEDINGS
11 WERE HELD IN OPEN COURT IN
12 THE PRESENCE OF THE
13 PROSPECTIVE JURORS:)
14
15 THE COURT: JUROR NO. 4, CAN YOU GIVE US THE
16 INFORMATION, PLEASE?
17 PROSPECTIVE JUROR NO. 4 (0163): YES.
18 MY NUMBER IS 0163.
19 I LIVE IN HAWTHORNE.
20 MY OCCUPATION IS SELF-EMPLOYED, BUT I
21 CLOSED MY SHOP TWO YEARS AGO, AND I'M BACK AT COLLEGE
22 LEARNING SOMETHING NEW.
23 THE COURT: VERY GOOD.
24 AND WHAT ARE YOU STUDYING IN SCHOOL?
25 PROSPECTIVE JUROR NO. 4 (0163): CHILD DEVELOPMENT
26 AND AMERICAN SIGN LANGUAGE.
27 THE COURT: VERY GOOD.
28 WHERE ARE YOU GOING? EL CAMINO?

1 PROSPECTIVE JUROR NO. 4 (0163): EL CAMINO, YES.

2 THE COURT: MARITAL STATUS?

3 PROSPECTIVE JUROR NO. 4 (0163): I'M MARRIED. I
4 HAVE FOUR CHILDREN.

5 THE COURT: WHAT DOES YOUR HUSBAND DO?

6 PROSPECTIVE JUROR NO. 4 (0163): MY HUSBAND, HE
7 JUST RETIRED LAST YEAR.

8 THE COURT: FROM?

9 PROSPECTIVE JUROR NO. 4 (0163): FROM BEING A
10 MECHANIC.

11 THE COURT: AND WHAT DO YOUR FOUR CHILDREN DO?

12 PROSPECTIVE JUROR NO. 4 (0163): MY OLDEST IS AN
13 R.N.

14 MY SECOND ONE IS AN ACCOUNT EXECUTIVE FOR A
15 GLOBAL IN EUROPE. SHE LIVES IN MADRID. SO SHE'S FAR
16 AWAY.

17 AND MY THIRD ONE, SHE'S BACK IN COLLEGE,
18 ALSO DOING CHILD DEVELOPMENT AT DOMINGUEZ HILLS.

19 AND MY YOUNGEST GRADUATED AS A SPANISH
20 MAJOR IN FILM. SO HE WORKS AT THE MANHATTAN STUDIOS
21 DOING MOTION -- WHAT IS THAT CALLED? SOUND EFFECTS AND
22 DIFFERENT TYPE OF BACKGROUND.

23 THE COURT: IS THAT A FOLEY, F-O-L-E-Y, FOLEY
24 ENGINEER?

25 PROSPECTIVE JUROR NO. 4 (0163): NO. NO. HE
26 JUST -- HE JUST STUDYS FILM, AND HE PRODUCES A FILM AND
27 THEN HE DOES SPECIAL EFFECTS.

28 THE COURT: I THINK THEY CALL THEM FOLEYS --

1 PROSPECTIVE JUROR NO. 4 (0163): I DON'T KNOW.

2 THE COURT: -- IS THAT RIGHT?

3 DOES ANYBODY KNOW? NOBODY KNOWS?

4 UNIDENTIFIED JUROR IN THE AUDIENCE: YES.

5 THE COURT: IT'S FOLEY?

6 UNIDENTIFIED JUROR IN THE AUDIENCE: YES.

7 THE COURT: OFF THE RECORD.

8

9 (DISCUSSION OFF THE RECORD.)

10

11 THE COURT: ALL RIGHT.

12 BACK ON THE RECORD.

13 HAVE YOU EVER BEEN A JUROR BEFORE?

14 PROSPECTIVE JUROR NO. 4 (0163): NO. MY FIRST
15 TIME.

16 THE COURT: DO YOU UNDERSTAND WHAT IS BEING ASKED
17 OF YOU, WHICH IS TO BE FAIR TO BOTH SIDES, AND DECIDE
18 THE CASE BASED ON THE EVIDENCE?

19 PROSPECTIVE JUROR NO. 4 (0163): YES, UH-HUH.

20 THE COURT: AS YOU SIT THERE NOW, DO YOU HAVE THE
21 PROPER STATE OF MIND, WHICH IS IMPARTIAL AND OPEN AND
22 OBJECTIVE?

23 PROSPECTIVE JUROR NO. 4 (0163): ABSOLUTELY.

24 THE COURT: IF YOU BELIEVE THE EVIDENCE PROVES
25 GUILT BEYOND A REASONABLE DOUBT, WHAT WOULD YOUR VERDICT
26 BE?

27 PROSPECTIVE JUROR NO. 4 (0163): GUILTY.

28 THE COURT: IF YOU DID NOT THINK THE EVIDENCE ROSE

1 TO THAT LEVEL?

2 PROSPECTIVE JUROR NO. 4 (0163): NOT GUILTY.

3 THE COURT: OKAY.

4 DO YOU HAVE "YES" ANSWERS TO ANY QUESTION?

5 PROSPECTIVE JUROR NO. 4 (0163): YES.

6 NO. 7 AND NO. 8.

7 THE COURT: TELL US ABOUT 7, PLEASE.

8 PROSPECTIVE JUROR NO. 4 (0163): NO. 7. MY
9 23-YEAR-OLD NEPHEW WAS KILLED TWO-AND-A-HALF YEARS AGO
10 IN ARIZONA.

11 THE COURT: HOW WAS HE KILLED?

12 PROSPECTIVE JUROR NO. 4 (0163): HE WAS DRIVING
13 AND AT THE STOPLIGHT SOMEBODY JUST GOT OUT OF THE CAR
14 AND SHOT HIM.

15 THE COURT: HE WAS SHOT IN HIS CAR?

16 PROSPECTIVE JUROR NO. 4 (0163): YES, UH-HUH.

17 THE COURT: WAS THAT SUPPOSEDLY GANG RELATED?

18 PROSPECTIVE JUROR NO. 4 (0163): NOT THAT WE KNOW
19 BECAUSE, YOU KNOW, HE WAS LIVING WITH THE -- WITH HIS
20 GIRLFRIEND, WITH A LITTLE BABY.

21 THE COURT: MAN.

22 PROSPECTIVE JUROR NO. 4 (0163): AND THE CRIME
23 HASN'T BEEN SOLVED.

24 THE COURT: DO YOU HOLD IT AGAINST THE POLICE
25 BECAUSE THEY HAVE NOT SOLVED THIS CASE?

26 PROSPECTIVE JUROR NO. 4 (0163): NO. IT WAS JUST
27 OUT OF THEIR HANDS. IT WAS NO WITNESS.

28 THE COURT: IS THERE ANY CHANCE YOU WOULD HOLD

1 THAT UNSOLVED MURDER AGAINST MR. BURGHARDT?

2 PROSPECTIVE JUROR NO. 4 (0163): NO. HE DON'T
3 HAVE NOTHING TO DO WITH IT.

4 THE COURT: ALL RIGHT.

5 OTHER RESPONSES TO NO. 7?

6 PROSPECTIVE JUROR NO. 4 (0163): NO.

7 THE COURT: NO. 8.

8 PROSPECTIVE JUROR NO. 4 (0163): NO. 8. ABOUT --
9 I SAY ABOUT 22 YEARS AGO MY HUSBAND'S BROTHER WAS IN
10 JAIL BECAUSE HE HIT HIS WIFE.

11 THE COURT: DOMESTIC VIOLENCE?

12 PROSPECTIVE JUROR NO. 4 (0163): DOMESTIC
13 VIOLENCE.

14 THE COURT: DID THEY STAY TOGETHER?

15 PROSPECTIVE JUROR NO. 4 (0163): OH, AFTER HE CAME
16 OUT AND THEY WERE SEPARATED UNTIL HE GOT -- YOU KNOW,
17 FOR ABOUT THREE YEARS. I UNDERSTAND THEY WENT BACK
18 TOGETHER.

19 THE COURT: ARE THEY TOGETHER NOW?

20 PROSPECTIVE JUROR NO. 4 (0163): YES, UH-HUH.

21 THE COURT: GOOD.

22 WHICH POLICE DEPARTMENT ARRESTED HIM?

23 PROSPECTIVE JUROR NO. 4 (0163): IN CHICAGO. I
24 HAVE NO IDEA.

25 THE COURT: WERE YOU OUT HERE AT THE TIME?

26 PROSPECTIVE JUROR NO. 4 (0163): YES, UH-HUH.

27 THE COURT: IS THERE ANYTHING ABOUT THAT CASE THAT
28 WOULD AFFECT YOU IN DECIDING MR. BURGHARDT'S CASE?

1 PROSPECTIVE JUROR NO. 4 (0163): NO.
2 THE COURT: DO YOU HAVE ANY OTHER "YES" ANSWERS?
3 PROSPECTIVE JUROR NO. 4 (0163): NO.
4 THE COURT: CAN YOU GIVE BOTH SIDES A FAIR TRIAL?
5 PROSPECTIVE JUROR NO. 4 (0163): OF COURSE.
6 THE COURT: ALL RIGHT.
7 AND I DID NOT ASK JUROR NO. 8. CAN YOU
8 GIVE BOTH SIDES A FAIR TRIAL?
9 PROSPECTIVE JUROR NO. 8 (0185): YES, I CAN.
10 THE COURT: VERY GOOD.
11 MR. LEONARD, AS TO BOTH JURORS, 4 AND 8?
12 MR. LEONARD: NO QUESTIONS.
13 PASS.
14 THE COURT: MR. STENNIS?
15 MR. STENNIS: NO QUESTIONS.
16 PASS.
17 THE COURT: ALL RIGHT.
18 THEN THE NEXT PEREMPTORY IS WITH THE
19 PEOPLE.
20 MR. STENNIS: AND THE PEOPLE WOULD ASK THE COURT
21 TO THANK AND EXCUSE JUROR NO. 8.
22 THE COURT: JUROR NO. 8.
23 ALL RIGHT. THANK YOU.
24 ALL RIGHT. WE REACHED 12:00 O'CLOCK,
25 FOLKS.
26
27 (THE COURT AND THE CLERK
28 CONFER SOTTO VOCE.)

1 THE COURT: ALL RIGHT, FOLKS.

2 WE HAVE TWO CASES WE HAVE TO DEAL WITH AT
3 1:30. SO I'M GOING TO ASK YOU TO PLEASE BE OUTSIDE THE
4 COURTROOM DOORS AT 1:45.

5 BUT BEFORE WE RECESS FOR THE BREAK, MARCIA,
6 WHO IS GOING TO BE SITTING IN SEAT NO. 8?

7 THE CLERK: JUROR NUMBER IN SEAT NO. 8, JUROR NO.
8 0801.

9 THE COURT: WHERE IS THAT PERSON, 0801?

10 WHEN YOU COME IN AT 1:45, YOU CAN SIT IN
11 THAT VACANT CHAIR.

12 PROSPECTIVE JUROR NO. 8 (0801): SURE.

13 THE COURT: ALL RIGHT.

14 SEE EVERYBODY AT 1:45.

15
16 (THE FOLLOWING PROCEEDINGS
17 WERE HELD IN OPEN COURT IN
18 OUT OF THE PRESENCE OF THE
19 PROSPECTIVE JURORS:)

20
21 THE COURT: OKAY

22 SEE YOU AT 1:45.

23 MR. STENNIS: YOUR HONOR, JUST FOR --

24 THE COURT: SHOULD THIS BE ON THE RECORD?

25 MR. STENNIS: NO.

26 THE COURT: ALL RIGHT.

27
28 (DISCUSSION OFF THE RECORD.)

1 (AT 12:03 P.M., A RECESS WAS
2 TAKEN UNTIL 1:45 P.M.
3 OF THE SAME DAY.)
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1 CASE NUMBER: TA 109929
2 CASE NAME: PEOPLE VERSUS DARRYL BURGHARDT
3 TORRANCE, CA TUESDAY, JUNE 22, 2010
4 DEPARTMENT SW G HON. MARK S. ARNOLD, JUDGE
5 REPORTER: DENISE K. NAGAO, CSR NO. 7722
6 TIME: 2:10 P.M.
7 APPEARANCES: (AS HERETOFORE NOTED.)
8
9

10 (THE FOLLOWING PROCEEDINGS
11 WERE HELD IN OPEN COURT IN
12 THE PRESENCE OF THE
13 PROSPECTIVE JURORS:)

14
15 THE COURT: ALL RIGHT.

16 I'M SORRY FOR THE DELAY IN GETTING STARTED,
17 FOLKS. WE HAD SOME THINGS THAT CAME UP THAT WERE
18 UNAVOIDABLE, AND I APOLOGIZE. I REALLY HATE TO MAKE YOU
19 WAIT, BUT SOMETIMES IT HAPPENS, AND I APOLOGIZE.

20 JUROR NO. 8, CAN YOU GIVE US THE
21 INFORMATION, PLEASE?

22 PROSPECTIVE JUROR NO. 8 (0801): SURE.

23 MY JURY I.D. NO. IS 0801.

24 LIVE IN LOMITA.

25 AND I'M ACTUALLY ASSISTANT ENGINEER, AND I
26 JUST MARRIED, AND MY WIFE IS SOFTWARE ENGINEER.

27 AND I DON'T HAVE ANY PRIOR JURY EXPERIENCE
28 BEFORE.

1 THE COURT: YOU UNDERSTAND WHAT YOUR OBLIGATION IS
2 AS A JUROR?

3 PROSPECTIVE JUROR NO. 8 (0801): YES.

4 THE COURT: ANY QUARREL WITH ANY OF THE LEGAL
5 CONCEPTS WE TALKED ABOUT?

6 PROSPECTIVE JUROR NO. 8 (0801): NO.

7 THE COURT: IF THE STANDARD OF PROOF IS MET, WHAT
8 WOULD YOUR VERDICT BE?

9 PROSPECTIVE JUROR NO. 8 (0801): IT WILL BE BEYOND
10 A REASONABLE DOUBT, YES.

11 THE COURT: BEYOND A REASONABLE DOUBT, WHAT WOULD
12 YOUR VERDICT BE?

13 PROSPECTIVE JUROR NO. 8 (0801): GUILTY.

14 THE COURT: IF THE EVIDENCE DOES NOT RISE TO THAT
15 LEVEL?

16 PROSPECTIVE JUROR NO. 8 (0801): NOT GUILTY.

17 THE COURT: DO YOU HAVE "YES" ANSWERS?

18 PROSPECTIVE JUROR NO. 8 (0801): JUST ACTUALLY
19 NO. 8.

20 THE COURT: TELL US.

21 PROSPECTIVE JUROR NO. 8 (0801): AND ACTUALLY JUST
22 MY FRIEND, JUST MORE CONVERSATION. ALL HE SAID, HE GOT,
23 LIKE, TWO D.U.I. BEFORE. I DON'T KNOW ANY FURTHER
24 INFORMATION ON THAT, ACTUALLY, YOU KNOW.

25 THE COURT: DO YOU KNOW WHICH POLICE DEPARTMENT
26 ARRESTED HIM?

27 PROSPECTIVE JUROR NO. 8 (0801): (SHAKES HEAD IN
28 THE NEGATIVE.) NOPE.

1 THE COURT: DO YOU KNOW WHEN THESE D.U.I. ARRESTS
2 OCCURRED?

3 PROSPECTIVE JUROR NO. 8 (0801): NOT SURE. HE
4 DIDN'T REALLY TALK. I DIDN'T REALLY EVEN BOTHER TO ASK.

5 THE COURT: DID THE FACT THAT YOUR FRIEND WAS
6 ARRESTED TWICE FOR D.U.I. -- IS THAT GOING TO IMPACT YOU
7 IN ANY WAY IN DECIDING THIS CASE?

8 PROSPECTIVE JUROR NO. 8 (0801): NO.

9 THE COURT: DOES HE HAVE AN ALCOHOL PROBLEM?

10 PROSPECTIVE JUROR NO. 8 (0801): OH, HE -- NO.
11 NO. JUST -- PROBABLY JUST AT A PARTY OR SOMETHING. HE
12 DOES ACTUALLY LIKE TO DRINK AT PARTIES. SO PERHAPS --

13 THE COURT: DOES HE HAVE ANY ILL FEELINGS ABOUT
14 POLICE BECAUSE THAT HAPPENED?

15 PROSPECTIVE JUROR NO. 8 (0801): (SHAKES HEAD IN
16 THE NEGATIVE.) NO.

17 THE COURT: ALL RIGHT.

18 DO YOU HAVE ANY ILL FEELINGS TOWARD THE
19 POLICE BECAUSE HE WAS ARRESTED TWICE?

20 PROSPECTIVE JUROR NO. 8 (0801): NO.

21 THE COURT: CAN YOU GIVE BOTH SIDES A FAIR TRIAL?

22 PROSPECTIVE JUROR NO. 8 (0801): YES.

23 THE COURT: VERY GOOD.

24 MR. LEONARD?

25 MR. LEONARD: THANK YOU, YOUR HONOR.

26 NO QUESTIONS. PASS.

27 THE COURT: MR. STENNIS?

28 MR. STENNIS: NO QUESTIONS.

1 PASS.

2 THE COURT: NEXT PEREMPTORY IS WITH THE DEFENSE.

3 MR. LEONARD: THANK YOU, YOUR HONOR.

4 WE ASK THE COURT TO THANK AND EXCUSE
5 PROSPECTIVE JUROR NO. 7.

6 THANK YOU, MA'AM.

7 THE COURT: ALL RIGHT.

8 THANK YOU, MA'AM. RETURN TO JURY ASSEMBLY
9 ROOM, PLEASE.

10 THE CLERK: JUROR FOR FOR SEAT NO. 7, JUROR
11 NO. 8521.

12 PROSPECTIVE JUROR NO. 7 (8521): EXCUSE ME.

13 THE COURT: YES.

14 PROSPECTIVE JUROR NO. 8 (0801): I AM A -- A
15 PART-TIME STUDENT.

16 THE COURT: YOU'RE A PART-TIME STUDENT?

17 PROSPECTIVE JUROR NO. 8 (0801): YEAH.

18 THE COURT: WHERE ARE YOU GOING TO SCHOOL?

19 PROSPECTIVE JUROR NO. 8 (0801): U.S.C.

20 THE COURT: WHAT ARE YOU STUDYING?

21 PROSPECTIVE JUROR NO. 8 (0801): I'M -- ACTUALLY
22 ELECTRICAL ENGINEERING FOR THE PH.D. PROGRAM, ACTUALLY.
23 SO I'M WORKING ALSO PART-TIME, ACTUALLY DOING MY
24 RESEARCH.

25 THE COURT: ARE YOU TRYING TO GET A PH.D. IN
26 ELECTRICAL ENGINEERING? SOUNDS REALLY, REALLY
27 EXCEPTIONAL.

28 PROSPECTIVE JUROR NO. 8 (0801): YEP.

1 THE COURT: DO YOU HAVE TO WRITE A THESIS?

2 PROSPECTIVE JUROR NO. 8 (0801): YES, I HAVE TO.

3 THE COURT: DO YOU KNOW WHAT YOUR THESIS IS GOING

4 TO BE ON?

5 PROSPECTIVE JUROR NO. 8 (0801): RIGHT NOW I JUST

6 ACTUALLY CHANGED MY TOPIC TO MORE BIOMEDICAL DEVICES AND

7 TO KIND OF FORWARD US TO KIND OF OLDER -- TO ACTUALLY

8 BASICALLY KIND OF MAP OUT INSTEAD OF DOING CAT SCAN.

9 I WOULD LIKE TO KINDA MAP OUT, ACTUALLY

10 KINDA TRACE DIFFERENT TYPES OF MOSTLY THE CENTRAL KIND

11 OF, YOU KNOW, WHERE -- FROM HERE TO THE STOMACH,

12 ACTUALLY TO KIND OF MAP OUT. IT MIGHT BE -- HAVE G.P.S.

13 KIND OF FUNCTIONALITY TO KINDA TRACE THE HUMAN BODY.

14 SO THAT'S KINDA THE CRITERIA THAT I WAS

15 KINDA TALKING ABOUT THAT.

16 THE COURT: SOUNDS FASCINATING. THANK YOU,

17 THOUGH, FOR LETTING US KNOW.

18 PROSPECTIVE JUROR NO. 8 (0801): OKAY.

19 THE COURT: WHERE YOU GOING TO GET YOUR PH.D.?

20 PROSPECTIVE JUROR NO. 8 (0801): TARGET IS TO

21 ACTUALLY TO GET SOME PUBLICATION. ACTUALLY RIGHT NOW IS

22 STILL UNCERTAIN BECAUSE THE TOPIC IS ACTUALLY NEW, AND

23 THERE IS A LOT OF CHALLENGES WE'RE TRYING TO OVERCOME.

24 AND ALSO GETTING SOME FUNDING AS WELL AT SOME TIME.

25 SO PROBABLY, ACTUALLY, MORE I'M GOING TO

26 GET MY -- QUALIFY EXAM PROBABLY NEXT YEAR. THAT'S THE

27 TENTATIVE GOAL.

28 THE COURT: VERY GOOD.

1 PROSPECTIVE JUROR NO. 8 (0801): SHORT TERM GOAL.

2 THE COURT: OKAY.

3 JUROR NO. 7, GIVE ME YOUR PERSONAL
4 INFORMATION, PLEASE.

5 PROSPECTIVE JUROR NO. 7 (8521): NO. 8521.

6 I LIVE IN ROLLING HILLS. I'M RETIRED. I
7 WAS A MANAGING PARTNER OF A BUSINESS AND TECHNOLOGY
8 CONSULTING PRACTICE.

9 I'M MARRIED. MY HUSBAND IS ALSO RETIRED.
10 HE WAS AN I.B.S. EXECUTIVE.

11 I SERVED ON THE CIVIL JURY. WE DIDN'T
12 REACH A VERDICT BECAUSE IT WAS SETTLED BEFORE WE
13 DELIBERATED.

14 THE COURT: DO YOU HAVE ANY ADULT CHILDREN?

15 PROSPECTIVE JUROR NO. 7 (8521): NO.

16 THE COURT: SINCE YOU HAVE BEEN A JUROR, DO YOU
17 UNDERSTAND WHAT IS BEING ASKED OF YOU?

18 PROSPECTIVE JUROR NO. 7 (8521): YES.

19 THE COURT: HOW LONG AGO WAS THAT CIVIL JURY?

20 PROSPECTIVE JUROR NO. 7 (8521): 20 YEARS.

21 THE COURT: AND HOW LONG DID YOU PARTICIPATE
22 BEFORE YOU WERE EXCUSED BECAUSE THE CASE SETTLED?

23 PROSPECTIVE JUROR NO. 7 (8521): THREE OR FOUR
24 DAYS.

25 THE COURT: WHEN YOU DID -- WHEN YOU WERE A JUROR
26 THE LAST TIME, DID YOU APPROACH IT WITH THE MENTAL STATE
27 I WAS TALKING ABOUT?

28 PROSPECTIVE JUROR NO. 7 (8521): YES.

1 THE COURT: THIS IS A CRIMINAL CASE. THE STANDARD
2 IS HIGHER. BUT YOU'RE STILL REQUIRED TO BE FAIR TO BOTH
3 SIDES AND RENDER THE VERDICT AS DICTATED BY THE
4 EVIDENCE.

5 PROSPECTIVE JUROR NO. 7 (8521): YES.

6 THE COURT: ANY QUARREL WITH ANY OF THE LEGAL
7 CONCEPTS OR ANYTHING?

8 PROSPECTIVE JUROR NO. 7 (8521): I HAVE A CONCERN
9 ABOUT YOUR INSTRUCTION REGARDING THE CREDIBILITY OF
10 POLICE OFFICERS.

11 THE COURT: YOU BELIEVE THAT ALL POLICE OFFICERS
12 ARE MORE BELIEVABLE THAN ANYONE ELSE?

13 PROSPECTIVE JUROR NO. 7 (8521): I BELIEVE, ALL
14 THINGS BEING EQUAL, I WOULD GIVE THE POLICE OFFICER THE
15 WEIGHT.

16 THE COURT: LET ME ASK YOU THIS: A NUMBER OF
17 YEARS AGO PEOPLE WHO RECEIVED TRAFFIC TICKETS COULD GET
18 A JURY TRIAL. THEY CAN'T ANYMORE, BUT THEY USED TO.

19 ASSUME YOU ARE A JUROR ON A TRAFFIC TICKET
20 TRIAL, AND THE DEFENDANT IS ACCUSED OF RUNNING A RED
21 LIGHT; RIGHT?

22 PROSPECTIVE JUROR NO. 7 (8521): UH-HUH.

23 THE COURT: POLICE OFFICER GETS UP THE STAND AND
24 SAYS, "I WAS IN MY POLICE CAR, AND I WAS 100 YARDS FROM
25 THE INTERSECTION, AND THE LIGHT WAS RED AND THE
26 DEFENDANT RAN THROUGH IT."

27 THE DEFENDANT CALLS A WITNESS AND SAYS, "I
28 WAS STANDING RIGHT ON THE CORNER. I WAS A PEDESTRIAN,

1 AND THE LIGHT WAS GREEN WHEN THE DEFENDANT WENT THROUGH
2 IT."

3 WHAT WOULD YOUR VERDICT BE OR WHO DO YOU
4 FIND MORE BELIEVABLE?

5 PROSPECTIVE JUROR NO. 7 (8521): WAS IT THE
6 DEFENDANT'S WITNESS, IMPARTIAL, OR WAS IT --

7 THE COURT: JUST JOE CITIZEN.

8 PROSPECTIVE JUROR NO. 7 (8521): IF IT WAS AN
9 IMPARTIAL WITNESS, I WOULD -- I WOULD PROBABLY WEIGH FOR
10 THE DEFENDANT.

11 THE COURT: NO CONNECTION BETWEEN THE DEFENSE
12 WITNESS AND THE DEFENDANT. THERE IS NO --

13 PROSPECTIVE JUROR NO. 7 (8521): I MEAN ALL THINGS
14 AREN'T EQUAL. YOU HAVE TWO PEOPLE. THIS IS WHAT
15 HAPPENED, AND YOU HAVE THE POLICE OFFICER SAYING
16 SOMETHING ELSE HAPPENED.

17 THE COURT: RIGHT.

18 PROSPECTIVE JUROR NO. 7 (8521): YEAH.

19 THE COURT: SO WOULD YOU --

20 PROSPECTIVE JUROR NO. 7 (8521): I WOULD GO WITH
21 THE DEFENDANT, I GUESS, AND ASSUME THE POLICE OFFICER
22 MADE A MISTAKE.

23 THE COURT: RIGHT. RIGHT.

24 WELL, SO BASED ON WHAT -- THE SIMPLE
25 HYPOTHETICAL I GAVE YOU, YOU WEIGH THE CREDIBILITY OF
26 BOTH. WHO WAS MORE BELIEVABLE?

27 PROSPECTIVE JUROR NO. 7 (8521): RIGHT.

28 THE COURT: IF YOUR ORIGINAL PREMISE WAS CORRECT,

1 YOU WOULD HAVE JUST SAID, WELL, JUST THE POLICE OFFICER
2 BECAUSE POLICE OFFICERS ARE ALWAYS MORE CREDIBLE AND
3 BELIEVABLE THAN ANYBODY ELSE.

4 PROSPECTIVE JUROR NO. 7 (8521): OKAY.

5 THE COURT: DO YOU THINK IT HAPPENS, A POLICE
6 OFFICER GETS ON THE STAND AND LIES?

7 PROSPECTIVE JUROR NO. 7 (8521): OF COURSE.

8 THE COURT: RIGHT. BECAUSE POLICE OFFICERS ARE
9 HUMAN BEINGS.

10 DO YOU THINK CIVILIAN WITNESSES LIE?

11 PROSPECTIVE JUROR NO. 7 (8521): YES.

12 THE COURT: SURE.

13 DO YOU THINK POLICE OFFICERS, WITNESSES,
14 TELL THE TRUTH?

15 PROSPECTIVE JUROR NO. 7 (8521): MOST OF THE TIME,
16 YES.

17 THE COURT: SURE.

18 DO YOU THINK CIVILIAN WITNESSES TELL THE
19 TRUTH?

20 PROSPECTIVE JUROR NO. 7 (8521): MOST OF THE TIME.

21 THE COURT: RIGHT.

22 THAT'S WHY POLICE OFFICERS OR PROFESSORS OR
23 CAR SALESMEN OR ANY PROFESSION YOU CAN THINK OF OR
24 WHETHER A PERSON IS EMPLOYED OR NOT -- NO ONE IS
25 AUTOMATICALLY ENTITLED TO MORE OR LESS CREDIBILITY
26 BECAUSE, YOU KNOW, WE HAVE HONEST PEOPLE, AND WE HAVE
27 NOT HONEST PEOPLE.

28 THE QUESTION IS, YOU KNOW, DOES THE WITNESS

1 TESTIFYING -- DO THEY HAVE SOME TYPE OF A BIAS OR
2 INTEREST OR MOTIVE TO BE ANYTHING LESS THAN TRUTHFUL?

3 WAS HE OR SHE IN A POSITION TO SEE OR HEAR
4 WHAT THE WITNESS CLAIMS TO HAVE HEARD? WHAT IS THE
5 WITNESS'S ATTITUDE TOWARD TESTIFYING? WHAT IS THE
6 WITNESS'S DEMEANOR WHEN QUESTIONED BY THE PROSECUTOR AS
7 OPPOSED TO THE DEFENSE? ALL OF THIS CAN AFFECT
8 CREDIBILITY, AND THEY'LL BE IN THIS TRIAL.

9 SOME WITNESSES WILL BE MORE CREDIBLE THAN
10 OTHERS BASED ON THE NUMBER OF FACTORS THAT YOU WILL SEE
11 LISTED IN THE JURY INSTRUCTION FOR EVALUATING THE
12 CREDIBILITY OF WITNESSES.

13 BUT WOULD YOU AGREE THAT A POLICE OFFICER
14 WOULDN'T AUTOMATICALLY, EACH AND EVERY TIME, TELL THE
15 TRUTH OR BE 100 PERCENT ACCURATE?

16 PROSPECTIVE JUROR NO. 7 (8521): YES, I AGREE.

17 THE COURT: WELL, WILL YOU LISTEN TO WHAT EACH
18 WITNESS HAS TO SAY?

19 PROSPECTIVE JUROR NO. 7 (8521): YES.

20 THE COURT: AND ASSESS THEIR CREDIBILITY?

21 PROSPECTIVE JUROR NO. 7 (8521): YES.

22 THE COURT: ALL RIGHT.

23 DO YOU HAVE ANY OTHER ISSUES OR PROBLEMS
24 BASED ON WHAT WAS SAID SO FAR?

25 PROSPECTIVE JUROR NO. 7 (8521): NO.

26 THE COURT: DO YOU HAVE ANY "YES" ANSWERS?

27 PROSPECTIVE JUROR NO. 7 (8521): YES, I DO.

28 NO. 7, NO. 9, NO. 12.

1 ON NO. 7, MY NIECE WAS ATTACKED, AND THERE
2 WAS AN ATTEMPTED RAPE.

3 THE COURT: WAS THIS SOMEONE WHO KNEW HER?

4 PROSPECTIVE JUROR NO. 7 (8521): NO.

5 THE COURT: WAS SHE ABDUCTED OFF THE STREET?

6 PROSPECTIVE JUROR NO. 7 (8521): YES.

7 THE COURT: WHERE?

8 PROSPECTIVE JUROR NO. 7 (8521): ON THE U.C.
9 SANTA BARBARA CAMPUS.

10 THE COURT: WAS SHE PHYSICALLY INJURED?

11 PROSPECTIVE JUROR NO. 7 (8521): NOT BADLY.

12 THE COURT: BUT SOMEWHAT?

13 PROSPECTIVE JUROR NO. 7 (8521): BUT SOMEWHAT.

14 THE COURT: DID SHE REPORT IT TO THE POLICE?

15 PROSPECTIVE JUROR NO. 7 (8521): YES, SHE DID.

16 THE COURT: WAS THE SUSPECT ARRESTED?

17 PROSPECTIVE JUROR NO. 7 (8521): YES.

18 THE COURT: GOOD.

19 WAS HE PROSECUTED?

20 PROSPECTIVE JUROR NO. 7 (8521): YES.

21 THE COURT: GOOD.

22 AND WAS HE -- ARE YOU SATISFIED WITH THE
23 VERDICT?

24 PROSPECTIVE JUROR NO. 7 (8521): UH-HUH.

25 THE COURT: YES?

26 PROSPECTIVE JUROR NO. 7 (8521): YES.

27 THE COURT: WHAT WAS THE ETHNICITY OF THE
28 INDIVIDUAL THAT DID THAT?

1 PROSPECTIVE JUROR NO. 7 (8521): HE WAS
2 AFRICAN-AMERICAN.

3 THE COURT: HOW DO FEEL ABOUT MR. BURGHARDT BEING
4 AFRICAN-AMERICAN?

5 PROSPECTIVE JUROR NO. 7 (8521): I DON'T HAVE A
6 PROBLEM WITH THAT.

7 THE COURT: SO HIS RACE IS NOT GONNA COME BACK AND
8 BITE HIM?

9 PROSPECTIVE JUROR NO. 7 (8521): NO. NO.

10 THE COURT: ALL RIGHT.

11 DO YOU HAVE OTHER RESPONSES TO NO. 7?

12 PROSPECTIVE JUROR NO. 7 (8521): NO.

13 THE COURT: NO. 9.

14 PROSPECTIVE JUROR NO. 7 (8521): MY NEPHEW IS AN
15 OFFICER WITH THE CALIFORNIA HIGHWAY PATROL.

16 THE COURT: HOW OFTEN DO YOU HAVE CONTACT WITH
17 HIM?

18 PROSPECTIVE JUROR NO. 7 (8521): FREQUENTLY.

19 THE COURT: YOU CAN'T DISCUSS THE CASE WITH HIM OR
20 ANYBODY ELSE WHILE THE CASE IS GOING ON --

21 PROSPECTIVE JUROR NO. 7 (8521): YES.

22 THE COURT: -- RIGHT?

23 PROSPECTIVE JUROR NO. 7 (8521): YES.

24 THE COURT: NO. 12.

25 PROSPECTIVE JUROR NO. 7 (8521): I WAS DEPOSED IN
26 A CIVIL CASE BUT WAS NEVER CALLED AS A WITNESS BECAUSE
27 THE CASE WAS SETTLED.

28 THE COURT: HOW DID THE ATTORNEY TREAT YOU DURING

1 THE DEPOSITION?

2 PROSPECTIVE JUROR NO. 7 (8521): POORLY.

3 HE WAS ARGUMENTATIVE, AND IT WENT ON
4 FOREVER.

5 THE COURT: DID THAT AFFECT YOUR VIEW OF ALL
6 LAWYERS?

7 PROSPECTIVE JUROR NO. 7 (8521): NOT ALL LAWYERS,
8 NO.

9 THE COURT: MR. LEONARD AND MR. STENNIS, THEY ARE
10 CRIMINAL LAWYERS. THEY --

11 PROSPECTIVE JUROR NO. 7 (8521): YES.

12 THE COURT: MR. LEONARD DEFENDS.

13 MR. STENNIS PROSECUTES.

14 PROSPECTIVE JUROR NO. 7 (8521): YES.

15 THE COURT: SHOULD THEY BE AT ALL CONCERNED THE
16 WAY YOU WERE TREATED DURING THAT DEPOSITION IS GOING TO
17 SPILL OVER TO HOW YOU FEEL ABOUT THEM?

18 PROSPECTIVE JUROR NO. 7 (8521): NO.

19 THE COURT: CAN YOU GIVE BOTH SIDES A FAIR TRIAL?

20 PROSPECTIVE JUROR NO. 7 (8521): YES.

21 THE COURT: VERY GOOD.

22 MR. LEONARD?

23 MR. LEONARD: NO QUESTIONS.

24 THE COURT: MR. STENNIS?

25 MR. STENNIS: NO.

26 THE COURT: BOTH SIDES PASS FOR CAUSE?

27 MR. LEONARD: YES, YOUR HONOR.

28 MR. STENNIS: YES.

1 THE COURT: NEXT PEREMPTORY IS WITH IS THE PEOPLE.
2 MR. STENNIS: WE ACCEPT THE PANEL.
3 THE COURT: NEXT PEREMPTORY IS WITH THE DEFENSE.
4 MR. LEONARD: THANK YOU, YOUR HONOR.
5 WE WOULD LIKE TO THANK AND EXCUSE
6 PROSPECTIVE JUROR NO. 7.
7 THANK YOU.
8 THE COURT: THANK YOU, MA'AM.
9 RETURN TO THE JURY ASSEMBLY ROOM, PLEASE.
10 THE CLERK: FOR JUROR FOR SEAT NO. 7, JUROR
11 NO. 5434.
12 THE COURT: HI.
13 CAN YOU GIVE US THE INFORMATION, PLEASE FOR
14 QUESTION NO. 1.
15 PROSPECTIVE JUROR NO. 7 (5434): YES.
16 MY JUROR I.D. IS 5434.
17 AREA OF RESIDENCE IS GARDENA.
18 I'M A FULL-TIME STUDENT AT EL CAMINO
19 COLLEGE.
20 NOT MARRIED. NO KIDS.
21 AND NO PRIOR JURY EXPERIENCE.
22 THE COURT: WHAT DO YOU STUDY AT EL CAMINO?
23 PROSPECTIVE JUROR NO. 7 (5434): AUTO COLLISION
24 REPAIR.
25 THE COURT: ANY QUARREL WITH ANY OF THE LEGAL
26 CONCEPTS WE TALKED ABOUT?
27 PROSPECTIVE JUROR NO. 7 (5434): NO.
28 THE COURT: DO YOU HAVE THE PROPER STATE OF MIND

1 TO DO THE JOB OF A JUROR?

2 PROSPECTIVE JUROR NO. 7 (5434): YES.

3 THE COURT: HAVE YOU HEARD ANYTHING THAT WOULD
4 PREVENT YOU FROM DOING THAT --

5 PROSPECTIVE JUROR NO. 7 (5434): NO.

6 THE COURT: -- IN THIS CASE?

7 PROSPECTIVE JUROR NO. 7 (5434): NO.

8 THE COURT: EITHER OF THE CHARGES, THE GANG
9 ALLEGATIONS, PRESUMPTION OF INNOCENCE, STANDARD OF
10 PROOF, ANYTHING LIKE THAT?

11 PROSPECTIVE JUROR NO. 7 (5434): NO.

12 THE COURT: AT THE END OF THE CASE, IF YOU THOUGHT
13 THE EVIDENCE PROVED GUILT BEYOND A REASONABLE DOUBT,
14 WHAT WOULD YOUR VERDICT BE?

15 PROSPECTIVE JUROR NO. 7 (5434): BE GUILTY.

16 THE COURT: AND IF YOU WERE NOT CONVINCED TO THAT
17 EXTENT, WHAT WOULD YOUR VERDICT BE?

18 PROSPECTIVE JUROR NO. 7 (5434): NOT GUILTY.

19 THE COURT: DO YOU HAVE "YES" ANSWERS?

20 PROSPECTIVE JUROR NO. 7 (5434): YES, I DO.

21 THE COURT: WHICH ONES?

22 PROSPECTIVE JUROR NO. 7 (5434): NO. 8, 9, AND 10.

23 THE COURT: TELL US ABOUT NO. 10 FIRST.

24 PROSPECTIVE JUROR NO. 7 (5434): I WAS ARRESTED
25 FOR RECKLESS DRIVING ABOUT A MONTH AGO, AND I THINK THE
26 WAY THAT OFFICER TREATED ME WAS UNFAIR.

27 THE COURT: WHAT WERE YOU ACCUSED OF DOING?

28 PROSPECTIVE JUROR NO. 7 (5434): RECKLESS DRIVING.

1 THE COURT: RIGHT.

2 BUT WHAT?

3 PROSPECTIVE JUROR NO. 7 (5434): HE -- HE SAID
4 THAT I CROSSED OVER THE DOUBLE YELLOW LINE AND PASSED
5 SOMEBODY.

6 THE COURT: AND YOU WERE ARRESTED FOR THAT?

7 PROSPECTIVE JUROR NO. 7 (5434): YES.

8 THE COURT: DID THE CASE GO TO COURT?

9 PROSPECTIVE JUROR NO. 7 (5434): NOT YET.

10 THE COURT: WHERE IS THE CASE PENDING?

11 THE WITNESS: SAN DIMAS.

12 THE COURT: DO YOU HAVE A LAWYER?

13 PROSPECTIVE JUROR NO. 7 (5434): YES.

14 THE COURT: AND YOU'RE JUST CHARGED WITH RECKLESS
15 DRIVING?

16 PROSPECTIVE JUROR NO. 7 (5434): YES.

17 THE COURT: HOW FAST DID THE OFFICER SAY YOU WERE
18 GOING?

19 PROSPECTIVE JUROR NO. 7 (5434): HE DIDN'T SAY.

20 THE COURT: WAS THIS A DEPUTY SHERIFF?

21 PROSPECTIVE JUROR NO. 7 (5434): YES. L.A.
22 COUNTY.

23 THE COURT: DID THIS AFFECT YOUR VIEW OF ALL LAW
24 ENFORCEMENT, THE WAY THIS ONE PARTICULAR DEPUTY TREATED
25 YOU?

26 PROSPECTIVE JUROR NO. 7 (5434): NO. JUST THE
27 OFFICER.

28 THE COURT: AND WHEN YOU SAY YOU WERE NOT TREATED

1 WELL, WHAT DO YOU MEAN?

2 PROSPECTIVE JUROR NO. 7 (5434): WELL, HE THREW ME
3 IN CUFFS, AND I WAS, LIKE, "WHAT DID I DO?"

4 AND THEN HE TOLD ME WHAT HE THOUGHT THAT I
5 DID.

6 AND THEN I WAS, LIKE, "WELL, THAT'S NOT
7 WHAT HAPPENED."

8 AND HE ARRESTED ME ON THE SPOT, AND I
9 DIDN'T FEEL IT WARRANTED THAT.

10 THE COURT: HOW LONG WERE YOU IN CUSTODY?

11 PROSPECTIVE JUROR NO. 7 (5434): TWO HOURS.

12 THE COURT: AND THEN WERE YOU RELEASED ON YOUR OWN
13 RECOGNIZANCE OR DID YOU BAIL OUT?

14 PROSPECTIVE JUROR NO. 7 (5434): YES, I WAS
15 RELEASED RIGHT THERE.

16 THE COURT: ON YOUR OWN RECOGNIZANCE?

17 PROSPECTIVE JUROR NO. 7 (5434): YES. AND THEY
18 IMPOUNDED MY CAR.

19 THE COURT: DID YOU GET YOUR CAR BACK?

20 PROSPECTIVE JUROR NO. 7 (5434): YES.

21 THE COURT: WHAT KIND OF CAR WAS IT?

22 PROSPECTIVE JUROR NO. 7 (5434): A SCION T.C.

23 THE COURT: THERE ARE GOING TO BE POLICE OFFICERS
24 TO TESTIFY IN THIS CASE. SHOULD MR. STENNIS BE AT ALL
25 CONCERNED THAT YOU'RE GOING TO BE LOOKING AT THEM
26 SUSPICIOUSLY BECAUSE OF WHAT HAPPENED TO YOU IN
27 SAN DIMAS?

28 PROSPECTIVE JUROR NO. 7 (5434): NO.

1 THE COURT: NO. 8 -- OR IS THAT THE ARREST?

2 PROSPECTIVE JUROR NO. 7 (5434): YES, THAT IS THE

3 ARREST. AND MY FRIEND WAS ALSO ARRESTED FOR D.U.I.

4 ABOUT TWO YEARS AGO.

5 THE COURT: WERE YOU WITH HIM AT THE TIME?

6 PROSPECTIVE JUROR NO. 7 (5434): NO.

7 THE COURT: WHICH POLICE DEPARTMENT ARRESTED HIM?

8 PROSPECTIVE JUROR NO. 7 (5434): I'M NOT SURE. IT

9 WAS IN COLORADO.

10 THE COURT: DID YOU GET THE IMPRESSION, FROM

11 TALKING WITH YOUR FRIEND, HE WAS TREATED FAIRLY BY THE

12 POLICE?

13 PROSPECTIVE JUROR NO. 7 (5434): YES.

14 THE COURT: NO. 9.

15 PROSPECTIVE JUROR NO. 7 (5434): DO YOU HAVE ANY

16 RELATIVES OR FRIENDS? YEAH. MY FRIEND'S DAD IS A

17 RIVERSIDE COUNTY SHERIFF'S DEPUTY. AND MY DAD IS A

18 VOLUNTEER FOR GARDENA POLICE.

19 THE COURT: YOU DO ACCEPT WHAT I SAID REGARDING

20 WITNESS CREDIBILITY, THAT POLICE OFFICERS DON'T

21 AUTOMATICALLY --

22 PROSPECTIVE JUROR NO. 7 (5434): YES.

23 THE COURT: -- ARE NOT AUTOMATICALLY ENTITLED TO

24 MORE OR LESS CREDIBILITY THAN ANYBODY ELSE?

25 PROSPECTIVE JUROR NO. 7 (5434): YES.

26 THE COURT: YOU CAN BE FAIR TO BOTH SIDES?

27 PROSPECTIVE JUROR NO. 7 (5434): YES.

28 THE COURT: VERY GOOD.

1 MR. LEONARD?

2 MR. LEONARD: NO QUESTIONS.

3 I'LL PASS.

4 THE COURT: MR. STENNIS?

5 MR. STENNIS: NO QUESTIONS.

6 THE COURT: NEXT PEREMPTORY -- BOTH SIDES PASS FOR

7 CAUSE?

8 MR. LEONARD: YES, YOUR HONOR.

9 MR. STENNIS: YES.

10 THE COURT: NEXT PEREMPTORY IS WITH THE PEOPLE.

11 MR. STENNIS: THANK YOU.

12 THANK AND EXCUSE NO. 7.

13 THE COURT: ALL RIGHT.

14 THANK YOU, SIR. YOU'RE EXCUSED. RETURN TO

15 THE JURY ASSEMBLY ROOM.

16 THE CLERK: FOR JUROR FOR SEAT NO. 7, JUROR

17 NO. 5827.

18 THE COURT: HI.

19 PROSPECTIVE JUROR NO. 7 (5827): HELLO.

20 THE COURT: CAN YOU GIVE US THE INFORMATION TO

21 QUESTION 1, PLEASE.

22 PROSPECTIVE JUROR NO. 7 (5827): MY I.D. NUMBER IS

23 5827.

24 I LIVE IN REDONDO BEACH.

25 I AM RETIRED. I AM A WIDOW.

26 MY HUSBAND WAS A SUBSTANCE ABUSE COUNSELOR.

27 AND MY ADULT CHILD PASSED AWAY TWO YEARS AND THREE

28 MONTHS AGO.

1 AND I HAVE NO PRIOR JURY EXPERIENCE.

2 THE COURT: WHAT DID YOUR CHILD PASS AWAY
3 FROM?

4 PROSPECTIVE JUROR NO. 7 (5827): I'M NOT SURE, BUT
5 WE THINK IT WAS AN ACCIDENTAL DRUG OVERDOSE.

6 THE COURT: AND THIS WAS A BOY OR GIRL?

7 PROSPECTIVE JUROR NO. 7 (5827): IT WAS A BOY. HE
8 JUST TURNED 27.

9 THE COURT: WAS HE ADDICTED?

10 PROSPECTIVE JUROR NO. 7 (5827): HE HAD BEEN.
11 (NODS HEAD IN THE AFFIRMATIVE.) SO WHO KNOWS WHAT
12 HAPPENED.

13 THE COURT: WAS YOUR HUSBAND AN ADDICT AT ONE
14 TIME?

15 PROSPECTIVE JUROR NO. 7 (5827): YES.

16 THE COURT: WHAT WAS HE ADDICTED TO?

17 PROSPECTIVE JUROR NO. 7 (5827): HEROIN.

18 THE COURT: AND OBVIOUSLY I SUSPECT HE WAS, THEN,
19 LATER SOBER?

20 PROSPECTIVE JUROR NO. 7 (5827): YES. MANY, MANY
21 YEARS.

22 THE COURT: FOR HOW LONG WAS HE SOBER?

23 PROSPECTIVE JUROR NO. 7 (5827): OH, DEAR. 40.

24 THE COURT: 40 YEARS?

25 PROSPECTIVE JUROR NO. 7 (5827): OVER 40 YEARS.

26 THE COURT: OH, WOW.

27 WHAT DID YOU RETIRE FROM?

28 PROSPECTIVE JUROR NO. 7 (5827): I RETIRED FROM

1 UNITED AIRLINES.

2 THE COURT: AND WHAT CAUSED YOUR HUSBAND TO PASS
3 AWAY?

4 PROSPECTIVE JUROR NO. 7 (5827): COMPLICATIONS
5 FROM METASTASIZED PROSTATE CANCER.

6 THE COURT: OH. DO YOU UNDERSTAND THE FRAME OF
7 MIND THAT YOU ARE REQUIRED TO HAVE TO PERFORM THE JOB OF
8 A JUROR PROPERLY?

9 PROSPECTIVE JUROR NO. 7 (5827): YES, I DO.

10 THE COURT: DO YOU HAVE THAT FRAME OF MIND?

11 PROSPECTIVE JUROR NO. 7 (5827): I THINK SO.

12 THE COURT: IS THERE ANYTHING YOU HEARD SO FAR
13 THAT WOULD PREVENT YOU FROM BEING FAIR TO EITHER SIDE?

14 PROSPECTIVE JUROR NO. 7 (5827): NO.

15 THE COURT: AS YOU SIT THERE NOW, DO YOU FIND
16 YOURSELF LEANING IN FAVOR OF THE PROSECUTION OR THE
17 DEFENSE?

18 PROSPECTIVE JUROR NO. 7 (5827): NO.

19 THE COURT: ANY QUARREL WITH ANY OF THE LEGAL
20 CONCEPTS WE TALKED ABOUT?

21 PROSPECTIVE JUROR NO. 7 (5827): NO.

22 THE COURT: IF YOU BELIEVE THE EVIDENCE PROVES
23 GUILT BEYOND A REASONABLE DOUBT, WHAT WOULD YOUR VERDICT
24 BE?

25 PROSPECTIVE JUROR NO. 7 (5827): GUILTY.

26 THE COURT: IF THE EVIDENCE DOES NOT RISE TO THAT
27 LEVEL, WHAT WOULD YOUR VERDICT BE?

28 PROSPECTIVE JUROR NO. 7 (5827): NOT GUILTY.

1 THE COURT: DO YOU HAVE "YES" ANSWERS TO ANY OF
2 THE QUESTIONS?

3 PROSPECTIVE JUROR NO. 7 (5827): I DO.

4 THE COURT: WHICH ONES?

5 PROSPECTIVE JUROR NO. 7 (5827): TO 6, 7, AND 8.

6 THE COURT: TELL US ABOUT 6, PLEASE.

7 PROSPECTIVE JUROR NO. 7 (5827): I HAVE THREE
8 FRIENDS THAT ARE LAWYERS. ONE IN FAMILY LAW, ONE IN
9 LABOR -- THE OTHER TWO ARE IN LABOR.

10 THE COURT: YOU KNOW YOU CAN'T TALK ABOUT THE CASE
11 WITH THEM OR ANYBODY ELSE --

12 PROSPECTIVE JUROR NO. 7 (5827): I UNDERSTAND.

13 THE COURT: -- WHILE THE CASE IS GOING ON.

14 PROSPECTIVE JUROR NO. 7 (5827): I UNDERSTAND.

15 THE COURT: OKAY.

16 NO. 7.

17 PROSPECTIVE JUROR NO. 7 (5827): THE ANSWER IS
18 "YES," BUT THAT'S LONG AGO AND RESOLVED AND NOT EVEN IN
19 MY HEAD ANYWAY.

20 THE COURT: WHAT HAPPENED?

21 PROSPECTIVE JUROR NO. 7 (5827): WELL, I'VE BEEN
22 RAPED SEVERAL TIMES AND KEPT -- I CAN'T TALK ABOUT IT
23 ACTUALLY. IT CAME UP ALL OF A SUDDEN. IT JUST POPPED
24 UP, BUT IT'S -- I THOUGHT IT WAS MORE RESOLVED
25 THAN THAT, BUT IT HAPPENED A LONG TIME AGO AND IN
26 SWEDEN.

27 THE COURT: REALLY.

28 AND IT HAPPENED TWO TIMES?

1 PROSPECTIVE JUROR NO. 7 (5827): ACTUALLY, I WAS
2 HELD HOSTAGE FOR TEN DAYS AND REPEATEDLY RAPED.

3 THE COURT: WOW. GEE WHIZ.

4 HOW MANY PEOPLE WERE INVOLVED IN THIS?

5 PROSPECTIVE JUROR NO. 7 (5827): ONE PERSON
6 ACTUALLY.

7 THE COURT: WERE YOU PHYSICALLY INJURED?

8 PROSPECTIVE JUROR NO. 7 (5827): NO, BUT I GUESS
9 MENTALLY.

10 THE COURT: WELL, YEAH.

11 PROSPECTIVE JUROR NO. 7 (5827): I WAS STUCK WITH
12 A KNIFE FOR TEN DAYS.

13 THE COURT: DID THE POLICE ARREST THIS INDIVIDUAL?

14 PROSPECTIVE JUROR NO. 7 (5827): NO. HE WAS A
15 DIPLOMATIC COURT.

16 THE COURT: SO THEY'RE IMMUNE.

17 PROSPECTIVE JUROR NO. 7 (5827): THANK YOU, YES.

18 THE COURT: THAT'S A DISGRACE.

19 IS THERE ANY CHANCE YOU WOULD HOLD THAT
20 INCIDENT AGAINST MR. BURGHARDT?

21 PROSPECTIVE JUROR NO. 7 (5827): OH, GOD, NO. NO.
22 NO.

23 THE COURT: DID YOU KNOW THIS PERSON BEFORE THIS
24 HAPPENED?

25 PROSPECTIVE JUROR NO. 7 (5827): NO. IT WAS A
26 HAPHAZARDNESS MEETING AFTER MY GRADUATION IN A
27 RESTAURANT WHERE WE WERE CELEBRATING.

28 THE COURT: GRADUATE FROM WHAT?

1 PROSPECTIVE JUROR NO. 7 (5827): OH, IT WOULD BE
2 GETTING YOUR BA OR SOMETHING.

3 THE COURT: FROM COLLEGE?

4 PROSPECTIVE JUROR NO. 7 (5827): YEAH.

5 THE COURT: ALL RIGHT.

6 DO YOU HAVE ANY OTHER RESPONSES TO NO. 7?

7 PROSPECTIVE JUROR NO. 7 (5827): FRIENDS HAVE BEEN
8 BURGLARIZED. AND WHEN I WAS STAYING THERE AND THINGS
9 LIKE THAT, BUT IT ALSO HAPPENED IN EUROPE. SO LONG TIME
10 AGO.

11 THE COURT: WOULD ANY OF THESE CRIMES AFFECT YOU
12 IN ANY WAY IN DECIDING THIS CASE?

13 PROSPECTIVE JUROR NO. 7 (5827): NO.

14 THE COURT: ALL RIGHT.

15 NO. 8.

16 PROSPECTIVE JUROR NO. 7 (5827): AND I WAS
17 ONCE ARRESTED FOR DOUBLE PARKING, VERY SIMILAR TO WHAT
18 THE STORY WAS, THE STORY THE PERSON JUST TOLD YOU, JUST
19 HANDCUFFED ALL OF A SUDDEN. AND WHAT HAPPENED AND --

20 THE COURT: WAIT.

21 YOU WERE ARRESTED FOR WHAT?

22 PROSPECTIVE JUROR NO. 7 (5827): DOUBLE PARKING.
23 THIS GOES BACK TO WHEN THE POLICE NEEDED TO HAVE CERTAIN
24 AMOUNT OF ARRESTS IN A WEEK AND THINGS, AND THEY WERE
25 SHORT ONE, AND IT WAS A SATURDAY NIGHT, AND THERE I WAS
26 DOUBLE-PARKED.

27 THE COURT: YOU GOT ARRESTED FOR BEING
28 DOUBLE-PARKED?

1 PROSPECTIVE JUROR NO. 7 (5827): THANK YOU, YES,
2 BUT THERE WASN'T -- WHAT THEY SAID, I HAD RESISTED
3 ARREST WAS WHAT THEY PUT ON THE PAPER.

4 THE COURT: I SEE. I SEE.

5 WHICH POLICE DEPARTMENT ARRESTED YOU?

6 PROSPECTIVE JUROR NO. 7 (5827): YOU KNOW, I DON'T
7 KNOW. IT HAPPENED IN REDONDO BEACH. SO I'M ASSUMING IT
8 WAS THE VENICE POLICE DEPARTMENT, BUT I REALLY DON'T
9 REMEMBER.

10 THE COURT: HOW LONG AGO WAS THIS?

11 PROSPECTIVE JUROR NO. 7 (5827): IT WAS EARLY
12 '70'S.

13 THE COURT: OH, LONG TIME.

14 PROSPECTIVE JUROR NO. 7 (5827): YEAH. LONG TIME
15 AGO.

16 THE COURT: DID YOU RESIST THE POLICE?

17 PROSPECTIVE JUROR NO. 7 (5827): NO. I WAS --
18 I -- NO.

19 BUT I HAD -- MY MOUTH WAS GOING ALL THE WAY
20 UP TO SYLMAR WHEN HE PUT ME -- THEY PUT ME IN JAIL.

21 THE COURT: YOUR MOUTH WAS?

22 PROSPECTIVE JUROR NO. 7 (5827): MY MOUTH WENT ALL
23 THE WAY UP TO SYLMAR BUT, NO, I DIDN'T RESIST.

24 THE COURT: WERE YOU EXPRESSING DISPLEASURE ABOUT
25 WHAT WAS --

26 PROSPECTIVE JUROR NO. 7 (5827): YOU COULD PUT
27 THAT MILDLY, YEAH, UH-HUH.

28 THE COURT: HOW DO FEEL ABOUT POLICE OFFICERS?

1 PROSPECTIVE JUROR NO. 7 (5827): WELL, AT THE TIME
2 I WASN'T VERY HAPPY WITH THEM, BUT AS TIME HAS GONE ON,
3 MY IDEA HAS CHANGED.

4 BECAUSE AS IT TURNED OUT, MY SON WAS
5 DIAGNOSED WITH SCHIZOPHRENIA. AND SO THE REDONDO BEACH
6 POLICE DEPARTMENT AND MANHATTAN BEACH POLICE DEPARTMENT
7 HAVE -- WERE A TREMENDOUS HELP TO OUR FAMILY THROUGH
8 THOSE VERY DIFFICULT YEARS.

9 THE COURT: SO IT'S AN EXAMPLE OF THE, YOU KNOW,
10 THERE IS GOOD IN ANY PROFESSION. I THINK MOST PEOPLE
11 ARE GOOD.

12 PROSPECTIVE JUROR NO. 7 (5827): UH-HUH, YES.

13 THE COURT: BUT IN ANY PROFESSION, A FEW BAD.

14 PROSPECTIVE JUROR NO. 7 (5827): YES.

15 THE COURT: I MEAN, YOU KNOW, MOST JUDGES ARE
16 GOOD, BUT THERE ARE A FEW BAD ONES. MOST POLICE ARE
17 GOOD, BUT THERE ARE A FEW BAD ONES.

18 PROSPECTIVE JUROR NO. 7 (5827): YES.

19 THE COURT: THAT'S LIKE IN ANY PROFESSION.

20 PROSPECTIVE JUROR NO. 7 (5827): YES.

21 THE COURT: DO YOU AGREE WITH THAT?

22 PROSPECTIVE JUROR NO. 7 (5827): OH, ABSOLUTELY.

23 THE COURT: DO YOU HAVE ANY OTHER "YES" ANSWERS?

24 PROSPECTIVE JUROR NO. 7 (5827): I THINK THAT'S
25 IT.

26 THE COURT: CAN YOU BE FAIR TO BOTH SIDES?

27 PROSPECTIVE JUROR NO. 7 (5827): YES.

28 THE COURT: THANK YOU.

1 MR. LEONARD?

2 MR. LEONARD: NO QUESTIONS.

3 I'LL PASS FOR CAUSE, JUDGE.

4 THE COURT: MR. STENNIS?

5 MR. STENNIS: NO QUESTIONS.

6 THE COURT: PASS FOR CAUSE?

7 MR. STENNIS: YES.

8 THE COURT: NEXT PEREMPTORY IS WITH THE DEFENSE.

9 MR. LEONARD: THANK YOU, YOUR HONOR.

10 WE WOULD LIKE TO THANK AND EXCUSE JUROR

11 NO. 9.

12 THANK YOU, SIR.

13 THE COURT: ALL RIGHT.

14 THANK YOU, SIR. RETURN TO THE JURY

15 ASSEMBLY ROOM, PLEASE.

16 THE CLERK: FOR JUROR SEAT NO. 9, JUROR NO. 1535.

17 1535.

18 PROSPECTIVE JUROR NO. 9 (1535): THAT'S ME.

19 THE COURT: HI.

20 PROSPECTIVE JUROR NO. 9 (1535): HELLO.

21 THE COURT: DO YOU HAVE YOUR QUESTIONNAIRE WITH

22 YOU?

23 PROSPECTIVE JUROR NO. 9 (1535): OH, YES.

24 THE COURT: CAN YOU GIVE US THE INFORMATION TO

25 QUESTION NO. 1, PLEASE.

26 PROSPECTIVE JUROR NO. 9 (1535): OH, I'M SORRY. I

27 DIDN'T THINK I WOULD BE HERE.

28 YES, NO. 1535.

1 THE COURT: OKAY.

2 PROSPECTIVE JUROR NO. 9 (1535): I LIVE IN
3 MANHATTAN BEACH. MARRIED.

4 I HAD FOUR CHILDREN. MY DAUGHTER PASSED
5 AWAY FOUR YEARS AGO.

6 THE COURT: COULD YOU SPEAK A LITTLE LOUDER AND
7 JUST FOLLOW THE QUESTION NUMBER.

8 PROSPECTIVE JUROR NO. 9 (1535): I SEE.

9 QUESTION, YES. THE -- NO. 1. OH, YES.

10 OCCUPATION, RETIRED.

11 THE COURT: WHAT WERE YOU RETIRED FROM?

12 PROSPECTIVE JUROR NO. 9 (1535): I HAD A BUSINESS
13 DESIGNING LADIES' EVENING WEAR. UH-HUH.

14 I NEVER SERVED.

15 THE COURT: WHAT DOES YOUR HUSBAND DO?

16 PROSPECTIVE JUROR NO. 9 (1535): RETIRED ENGINEER
17 FROM NORTHRUP.

18 THE COURT: AND YOU HAVE FOUR KIDS, FOUR CHILDREN?

19 PROSPECTIVE JUROR NO. 9 (1535): YES.

20 THE COURT: AND WHAT DO THEY DO?

21 PROSPECTIVE JUROR NO. 9 (1535): SEE, I DIDN'T
22 KNOW I WAS GOING TO BE CALLED.

23 MY GIRL THAT PASSED AWAY WAS, OH, DEAR. I
24 CANNOT EVEN REMEMBER WHAT THE HECK IT WAS THAT SHE DOES.

25 AND MY SON PUTS AIR CONDITIONING IN BIG
26 CITY BUILDINGS.

27 THE COURT: OKAY.

28 PROSPECTIVE JUROR NO. 9 (1535): MY OTHER DAUGHTER

1 IS A RECEPTIONIST.

2 THE COURT: WHAT KIND OF BUSINESS IS SHE A
3 RECEPTIONIST AT?

4 PROSPECTIVE JUROR NO. 9 (1535): THE MOVIES, THE
5 MOVIE STUDIOS.

6 THE COURT: OKAY.

7 PROSPECTIVE JUROR NO. 9 (1535): YEAH.

8 THE COURT: AND ONE MORE CHILD.

9 PROSPECTIVE JUROR NO. 9 (1535): OH. MY YOUNGEST
10 DAUGHTER, AND SHE CARES FOR MY GRANDDAUGHTER. THEY BOTH
11 HAVE AN AFFLICTION THAT RUNS IN THE FAMILY, CEREBRAL
12 HEMORRHAGING. AND SO I HAVE A PARTIALLY PARALYZED
13 GRANDDAUGHTER. SO THAT'S HER FULL-TIME JOB.

14 THE COURT: WHAT CAUSED YOUR ONE DAUGHTER TO PASS
15 AWAY?

16 PROSPECTIVE JUROR NO. 9 (1535): CANCER.

17 NO. 2?

18 THE COURT: WHAT'S THAT?

19 PROSPECTIVE JUROR NO. 9 (1535): DO YOU WANT ME TO
20 GO ON?

21 NO PRIOR JURY EXPERIENCE.

22 THE COURT: OKAY.

23 HAVE YOU UNDERSTOOD ALL OF THE LEGAL
24 CONCEPTS THAT WE TALKED ABOUT?

25 PROSPECTIVE JUROR NO. 9 (1535): YES, I HAVE.

26 THE COURT: DOES ANYTHING DISTURB YOU OR DO YOU
27 THINK ANYTHING IS UNFAIR OR WRONG?

28 PROSPECTIVE JUROR NO. 9 (1535): NO.

1 THE COURT: DO YOU HAVE A FRAME OF MIND THAT IS
2 REQUIRED FOR JURORS TO HAVE WHICH IS IMPARTIAL,
3 OBJECTIVE, AND OPEN-MINDED?

4 PROSPECTIVE JUROR NO. 9 (1535): I BELIEVE SO.

5 THE COURT: AT THE END OF THE CASE, IF YOU THOUGHT
6 THE EVIDENCE PROVED GUILT BEYOND A REASONABLE DOUBT,
7 WHAT WOULD YOUR VERDICT BE?

8 PROSPECTIVE JUROR NO. 9 (1535): IT WOULD BE
9 GUILTY.

10 THE COURT: AND IF YOU DIDN'T THINK THAT THE
11 EVIDENCE ROSE TO THAT LEVEL?

12 PROSPECTIVE JUROR NO. 9 (1535): NOT GUILTY.

13 THE COURT: DO YOU HAVE "YES" ANSWERS?

14 PROSPECTIVE JUROR NO. 9 (1535): YES.

15 AND I WOULD LIKE TO DISCUSS THAT IN
16 PRIVATE.

17 THE COURT: WHICH QUESTION NUMBERS DO YOU HAVE
18 "YES" ANSWERS TO?

19 PROSPECTIVE JUROR NO. 9 (1535): NO. 8.

20 THE COURT: NO. 8. IS THAT THE ONLY ONE?

21 PROSPECTIVE JUROR NO. 9 (1535): YES.

22 THE COURT: OKAY. ALL RIGHT.

23 GO AHEAD AND JUST WALK THROUGH THAT DOOR.

24

25 (THE FOLLOWING PROCEEDINGS
26 WERE HELD IN CHAMBERS:)

27

28 PROSPECTIVE JUROR NO. 9 (1535): MY SON WAS --

1 THE COURT: HOLD ON. HOLD ON.

2 PROSPECTIVE JUROR NO. 9 (1535): MY SON WAS

3 ARRESTED FOR TRYING TO MOLEST. SERVED A YEAR IN

4 SOMEWHERE AT ONE OF THE SITES WHERE --

5 THE COURT: COUNTY JAIL OR PRISON?

6 PROSPECTIVE JUROR NO. 9 (1535): WELL, HE WEARS

7 ORANGE.

8 THE COURT: COUNTY JAIL?

9 PROSPECTIVE JUROR NO. 9 (1535): YEAH.

10 THE COURT: ALL RIGHT.

11 AND WAS HE PROSECUTED?

12 PROSPECTIVE JUROR NO. 9 (1535): YES.

13 THE COURT: IN RIVERSIDE?

14 PROSPECTIVE JUROR NO. 9 (1535): I BELIEVE IT WAS

15 RIVERSIDE. I KNOW IT WAS IN THAT AREA. I BLOT IT OUT

16 OF MY MIND.

17 THE COURT: DO YOU KNOW WHICH POLICE DEPARTMENT

18 ARRESTED HIM AND INVESTIGATED THE CASE?

19 PROSPECTIVE JUROR NO. 9 (1535): WELL, HE WAS

20 LIVING IN RIVERSIDE NOW THAT I REMEMBER, YES.

21 THE COURT: HOW LONG AGO WAS THIS?

22 PROSPECTIVE JUROR NO. 9 (1535): ABOUT 20 YEARS.

23 THE COURT: HOW IS HE DOING NOW?

24 PROSPECTIVE JUROR NO. 9 (1535): I HOPE, GOD

25 WILLING, HE'S FINE. HE SEEMS TO BE FINE.

26 THE COURT: DID YOU HIRE AN ATTORNEY FOR HIM?

27 PROSPECTIVE JUROR NO. 9 (1535): NO, BECAUSE WE

28 ARE CHRISTIANS, AND WE BELIEVE HE DID WRONG. SO WE FELT

1 HE HAD TO SERVE.

2 THE COURT: SO YOU THINK HE IS GUILTY OF WHAT HE
3 WAS ACCUSED OF?

4 PROSPECTIVE JUROR NO. 9 (1535): OH. HE DID
5 CONFESS TO ME.

6 THE COURT: OH, HE DID.

7 DO YOU THINK MR. BURGHARDT IS -- HE MUST BE
8 GUILTY SINCE HE IS SITTING THERE?

9 PROSPECTIVE JUROR NO. 9 (1535): OF COURSE NOT.

10 THE COURT: IS THERE ANYTHING ABOUT YOUR SON'S
11 CASE THAT WOULD AFFECT YOU IN DECIDING MR. BURGHARDT'S
12 CASE?

13 PROSPECTIVE JUROR NO. 9 (1535): ABSOLUTELY NOT.

14 THE COURT: OKAY. VERY GOOD.

15 THANK YOU FOR TELLING US ABOUT THIS. I
16 KNOW IT'S PROBABLY NOT VERY EASY TO DO, AND I CERTAINLY
17 UNDERSTAND WHY YOU DIDN'T WANT TO TELL THE WHOLE
18 COURTROOM FULL OF PEOPLE.

19 ANY QUESTIONS?

20 MR. LEONARD: NO, YOUR HONOR.

21 THE COURT: ANY QUESTIONS?

22 MR. STENNIS: NO.

23 THE COURT: OKAY.

24 YOU CAN GO BACK TO YOUR SEAT. THANK YOU.

25 \ \ \

26 \ \ \

27 \ \ \

28 \ \ \

1 (THE FOLLOWING PROCEEDINGS
2 WERE HELD IN OPEN COURT IN
3 THE PRESENCE OF THE
4 PROSPECTIVE JURORS:)

5
6 THE COURT: CAN YOU BE FAIR TO BOTH SIDES, MA'AM?
7 PROSPECTIVE JUROR NO. 9 (1535): YES, I WILL.

8 THE COURT: VERY GOOD.

9 MR. LEONARD, ANYTHING?

10 MR. LEONARD: NO QUESTIONS, YOUR HONOR.

11 I'LL PASS FOR CAUSE.

12 MR. STENNIS: NO QUESTIONS.

13 AND PASS.

14 THE COURT: ALL RIGHT.

15 NEXT PEREMPTORY IS WITH THE PEOPLE.

16 MR. STENNIS: PEOPLE WOULD ASK THE COURT TO THANK
17 AND EXCUSE JUROR NO. 9.

18 THE COURT: JUROR NO. 9?

19 MR. STENNIS: YES.

20 THE COURT: ALL RIGHT.

21 THANK YOU, MA'AM.

22 RETURN TO THE JURY ASSEMBLY ROOM, PLEASE.

23 THE CLERK: FOR JUROR FOR SEAT NO. 9, 0447.

24 THE COURT: HI.

25 PROSPECTIVE JUROR NO. 9 (0447): HELLO.

26 THE COURT: CAN YOU GIVE US THE INFORMATION,
27 PLEASE.

28 PROSPECTIVE JUROR NO. 9 (0447): OKAY.

1 JUROR I.D. NO. 0447.
2 I RESIDE IN CARSON, CALIFORNIA.
3 OCCUPATION, STUDENT.
4 MARITAL STATUS, SINGLE. NO CHILDREN.
5 I WAS IN A JURY ONCE. IT -- IT WAS A CIVIL
6 TRIAL, AND WE REACHED A VERDICT.
7 THE COURT: WHERE ARE YOU GOING TO SCHOOL?
8 PROSPECTIVE JUROR NO. 9 (0447): I GRADUATED. I
9 STUDIED PSYCHOLOGY AT U.C.L.A., BUT I'M ALSO
10 PREPHARMACY. SO I'M TAKING CLASSES AT THE COMMUNITY
11 COLLEGE AND HOPE TO GET INTO PHARMACY SCHOOL.
12 THE COURT: YOU WANT TO BE A PHARMACIST RATHER
13 THAN A PSYCHOLOGIST?
14 PROSPECTIVE JUROR NO. 9 (0447): YES, SIR.
15 THE COURT: ALL RIGHT.
16 DO YOU HAVE THE FRAME OF MIND THAT WE'VE
17 BEEN TALKING ABOUT, WHICH IS JUST FAIR, IMPARTIAL,
18 OBJECTIVE, OPEN?
19 PROSPECTIVE JUROR NO. 9 (0447): YES, SIR.
20 THE COURT: ANY QUARREL OR PROBLEM WITH ANY OF THE
21 LEGAL CONCEPTS?
22 PROSPECTIVE JUROR NO. 9 (0447): NO, SIR.
23 THE COURT: ANYTHING YOU DON'T UNDERSTAND OR
24 ANYTHING THAT RUBS YOU THE WRONG WAY?
25 PROSPECTIVE JUROR NO. 9 (0447): NO, SIR.
26 THE COURT: IF THE STANDARD OF PROOF IS MET, WHAT
27 WOULD YOUR VERDICT BE?
28 PROSPECTIVE JUROR NO. 9 (0447): GUILTY.

1 THE COURT: IF IT'S NOT MET?

2 PROSPECTIVE JUROR NO. 9 (0447): NOT GUILTY.

3 THE COURT: DO YOU HAVE "YES" ANSWERS?

4 PROSPECTIVE JUROR NO. 9 (0447): YES, SIR. 6, 7,

5 8, AND 9.

6 THE COURT: TELL US ABOUT 6, PLEASE.

7 PROSPECTIVE JUROR NO. 9 (0447): I WASN'T SURE IF

8 THIS COUNTED AS LEGAL TRAINING, BUT MY DAD'S A RETIRED

9 POLICE OFFICER, AND HE WAS ALSO A PRIVATE INVESTIGATOR.

10 THE COURT: WHICH POLICE DEPARTMENT DID HE WORK

11 FOR?

12 PROSPECTIVE JUROR NO. 9 (0447): HE WORKED IN

13 COMPTON.

14 THE COURT: COMPTON P.D.?

15 PROSPECTIVE JUROR NO. 9 (0447): YES, SIR.

16 THE COURT: WHEN DID HE RETIRE?

17 PROSPECTIVE JUROR NO. 9 (0447): SOMETIME IN THE

18 EARLY '90'S, I BELIEVE.

19 THE COURT: DO YOU ACCEPT WHAT I SAID REGARDING

20 WITNESS CREDIBILITY, THAT POLICE OFFICERS AREN'T

21 AUTOMATICALLY ENTITLED TO MORE OR LESS CREDIBILITY THAN

22 ANYBODY ELSE?

23 PROSPECTIVE JUROR NO. 9 (0447): YES, SIR.

24 THE COURT: NO. 7.

25 PROSPECTIVE JUROR NO. 9 (0447): NO. 7, YES.

26 A FRIEND OF MINE HAD THEIR CAR VANDALIZED

27 AT HARBOR COLLEGE BEFORE.

28 THE COURT: WAS THE CRIME SOLVED?

1 PROSPECTIVE JUROR NO. 9 (0447): NO.

2 THE COURT: DO YOU HOLD IT AGAINST THE POLICE

3 BECAUSE THEY DIDN'T SOLVE THE CRIME?

4 PROSPECTIVE JUROR NO. 9 (0447): NO, SIR.

5 THE COURT: A CHANCE YOU HOLD THAT CRIME AGAINST

6 MR. BURGHARDT?

7 PROSPECTIVE JUROR NO. 9 (0447): NO, SIR.

8 THE COURT: NO. 8.

9 PROSPECTIVE JUROR NO. 9 (0447): NO. 8. I HAVE A

10 COUSIN WHO WAS ARRESTED AND PUT IN JAIL TWICE FOR

11 ROBBERY.

12 THE COURT: WHERE IS YOUR COUSIN NOW?

13 PROSPECTIVE JUROR NO. 9 (0447): I HONESTLY DON'T

14 KNOW. WE -- WE HAVEN'T KEPT IN TOUCH MUCH.

15 THE COURT: DID HE HAVE A JURY TRIAL ANYTIME?

16 PROSPECTIVE JUROR NO. 9 (0447): I HONESTLY AM NOT

17 SURE. MY FAMILY CHOSE NOT TO GET US INVOLVED TOO MUCH

18 AND WITH MY RELATIVES.

19 THE COURT: DO YOU KNOW WHICH POLICE DEPARTMENT

20 ARRESTED HIM?

21 PROSPECTIVE JUROR NO. 9 (0447): WHOEVER IS HARBOR

22 CITY.

23 THE COURT: L.A.P.D.?

24 PROSPECTIVE JUROR NO. 9 (0447): UH-HUH.

25 THE COURT: WHEN WAS THE LAST TIME YOU SPOKE TO

26 YOUR COUSIN?

27 PROSPECTIVE JUROR NO. 9 (0447): PROBABLY OVER

28 FIVE YEARS AGO.

1 THE COURT: IS THERE ANYTHING ABOUT HIS CRIMINAL
2 SITUATIONS THAT WOULD AFFECT YOU IN THIS CASE?

3 PROSPECTIVE JUROR NO. 9 (0447): NO, SIR.

4 THE COURT: DO YOU HAVE ANY ILL FEELINGS TOWARD
5 THE COURT SYSTEM OR TOWARD POLICE BECAUSE YOUR COUSIN'S
6 GONE THROUGH IT?

7 PROSPECTIVE JUROR NO. 9 (0447): NO, SIR.

8 THE COURT: NO. 9.

9 PROSPECTIVE JUROR NO. 9 (0447): NO. 9. PRETTY
10 MUCH THE SAME THING.

11 MY FATHER WAS A POLICE OFFICER, AS WELL AS
12 HIS TWO OLDER BROTHERS. MY -- ONE OF MY UNCLES WAS A
13 POLICE OFFICER IN GARDENA. AND ANOTHER ONE WAS A POLICE
14 OFFICER IN ARIZONA. AND AS YOU KNOW, MY DAD IN COMPTON.

15 THE COURT: CAN YOU GIVE BOTH SIDES A FAIR TRIAL?

16 PROSPECTIVE JUROR NO. 9 (0447): YES, SIR.

17 THE COURT: THANK YOU.

18 MR. LEONARD?

19 MR. LEONARD: NO QUESTIONS.

20 I'LL PASS FOR CAUSE.

21 THE COURT: MR. STENNIS?

22 MR. STENNIS: NO QUESTIONS AND PASS.

23 THE COURT: NEXT PEREMPTORY IS WITH THE DEFENDANT.

24 MR. LEONARD: THANK YOU.

25 WE'D LIKE THE COURT TO THANK AND EXCUSE
26 PROSPECTIVE JUROR NO. 8.

27 THANK YOU, SIR.

28 THE COURT: ALL RIGHT.

1 THANK YOU, SIR. RETURN TO JURY ASSEMBLY
2 ROOM, PLEASE.

3 THE CLERK: FOR JUROR SEAT NO. 8, JUROR NO. 4287.

4 THE COURT: HI

5 PROSPECTIVE JUROR NO. 8 (4287): HOW YOU DOIN'?

6 THE COURT: OKAY.

7 CAN YOU GIVE US THE PERSONAL INFORMATION,
8 PLEASE.

9 PROSPECTIVE JUROR NO. 8 (4287): MY JUROR I.D. IS
10 4287.

11 AREA OF RESIDENCE IS HAWTHORNE.

12 OCCUPATION, I'M A MANAGER AT A RESTAURANT.

13 MARITAL STATUS, SINGLE. NO CHILDREN.

14 PRIOR JURY EXPERIENCE, NONE.

15 THE COURT: HOW LONG HAVE YOU BEEN A MANAGER OF A
16 RESTAURANT?

17 PROSPECTIVE JUROR NO. 8 (4287): BE LIKE MY SECOND
18 MONTH.

19 THE COURT: DID YOU WORK AT THE RESTAURANT BEFORE
20 YOU BECAME THE MANAGER?

21 PROSPECTIVE JUROR NO. 8 (4287): YES. FOR ALMOST
22 FOUR YEARS.

23 THE COURT: WHAT KIND OF RESTAURANT IS IT?

24 PROSPECTIVE JUROR NO. 8 (4287): IN-AND-OUT
25 BURGER.

26 THE COURT: OH, YEAH.

27 WHICH ONE DO YOU WORK AT?

28 PROSPECTIVE JUROR NO. 8 (4287): ON SEPULVEDA, BY

1 L.A.X.

2 THE COURT: BEST HAMBURGER I EVER HAD.

3 PROSPECTIVE JUROR NO. 8 (4287): IT'S ALL RIGHT.

4 THE COURT: AND PRICES ARE GOOD, TOO. I LIKE
5 IN-AND-OUT.

6 HAVE YOU HEARD, UNDERSTOOD, ALL THE LEGAL
7 CONCEPTS?

8 PROSPECTIVE JUROR NO. 8 (4287): YES, SIR.

9 THE COURT: ANYTHING BOTHER YOU OR RUB YOU THE
10 WRONG WAY?

11 PROSPECTIVE JUROR NO. 8 (4287): NO, SIR.

12 THE COURT: IS THERE ANYTHING ABOUT THAT THAT
13 WOULD PREVENT YOU FROM GIVING BOTH THE DEFENSE AND THE
14 PROSECUTION A FAIR TRIAL?

15 PROSPECTIVE JUROR NO. 8 (4287): NO.

16 THE COURT: IF YOU BELIEVE THAT THE EVIDENCE
17 PROVES GUILT BEYOND A REASONABLE DOUBT, WHAT WOULD YOUR
18 VERDICT BE?

19 PROSPECTIVE JUROR NO. 8 (4287): GUILTY.

20 THE COURT: IF YOU DID NOT THINK THE EVIDENCE ROSE
21 TO THAT LEVEL?

22 PROSPECTIVE JUROR NO. 8 (4287): NOT GUILTY.

23 THE COURT: DO YOU HAVE THE "YES" ANSWERS?

24 PROSPECTIVE JUROR NO. 8 (4287): YES.

25 THE COURT: WHICH ONE?

26 PROSPECTIVE JUROR NO. 8 (4287): TWO. NO. 9.

27 THE COURT: TELL US.

28 PROSPECTIVE JUROR NO. 8 (4287): AND, YEAH, MY

1 COUSIN IS A SHERIFF FOR L.A. COUNTY. HE'S DOING WHEN
2 YOU GO TO PRISON AND THEY DO, LIKE, THEIR TIME BEFORE
3 THEY GO ON THE STREETS.

4 THE COURT: SO HE'S WORKING IN CUSTODY?

5 PROSPECTIVE JUROR NO. 8 (4287): YEAH.

6 AND NO. 7. I WAS ALMOST A -- I WAS A
7 VICTIM OF IT.

8 THE COURT: HOLD ON. HOLD ON. BEFORE YOU GO ON.

9 DID YOU ACCEPT WHAT I SAID REGARDING
10 WITNESS CREDIBILITY?

11 PROSPECTIVE JUROR NO. 8 (4287): YES, SIR.

12 THE COURT: NOBODY GETS MORE OR LESS CREDIBILITY
13 AUTOMATICALLY --

14 PROSPECTIVE JUROR NO. 8 (4287): YES, SIR.

15 THE COURT: -- WHEN YOU FIRST SIT IN THIS CHAIR,
16 DO YOU ACCEPT THAT?

17 PROSPECTIVE JUROR NO. 8 (4287): YES, SIR.

18 THE COURT: ALL RIGHT.

19 GO AHEAD WITH NO. 7.

20 PROSPECTIVE JUROR NO. 8 (4287): I WAS A -- AN
21 ATTEMPT OF ASSAULT. WALKING HOME FROM SCHOOL, LIKE,
22 TWO YEARS AGO OR THREE.

23 THE COURT: ATTEMPTED ASSAULT?

24 PROSPECTIVE JUROR NO. 8 (4287): I'M SORRY?

25 THE COURT: YOU SAID AN ATTEMPTED ASSAULT?

26 PROSPECTIVE JUROR NO. 8 (4287): YEAH.

27 THE COURT: WHY WASN'T THE ASSAULT COMPLETED?

28 PROSPECTIVE JUROR NO. 8 (4287): WE FLED AWAY.

1 THE COURT: WHO IS "WE"?

2 PROSPECTIVE JUROR NO. 8 (4287): IT WAS ME AND

3 COUPLE OTHER FRIENDS.

4 THE COURT: DID THIS OCCUR IN HAWTHORNE?

5 PROSPECTIVE JUROR NO. 8 (4287): YES.

6 THE COURT: AND HOW MANY PEOPLE WERE TRYING TO

7 ASSAULT YOU?

8 PROSPECTIVE JUROR NO. 8 (4287): ABOUT FIVE.

9 THE COURT: WHAT WAS THEIR RACE?

10 PROSPECTIVE JUROR NO. 8 (4287): AFRICAN-AMERICAN.

11 THE COURT: HOW DO FEEL ABOUT THE FACT

12 MR. BURGHARDT IS AFRICAN-AMERICAN?

13 PROSPECTIVE JUROR NO. 8 (4287): NO PROBLEM AT

14 ALL.

15 THE COURT: SO YOU WERE ABLE TO OUTRUN THESE

16 PEOPLE?

17 PROSPECTIVE JUROR NO. 8 (4287): YEAH.

18 THE COURT: DID YOU CALL THE POLICE?

19 PROSPECTIVE JUROR NO. 8 (4287): NO.

20 THE COURT: WHY NOT?

21 PROSPECTIVE JUROR NO. 8 (4287): JUST 'CAUSE I

22 FELT LIKE THEY WERE NOT GOING TO DO ANYTHING.

23 THE COURT: DO YOU THINK THE POLICE, THEY DON'T DO

24 ANYTHING WHEN THEY ARE CALLED?

25 PROSPECTIVE JUROR NO. 8 (4287): NOT -- I'M PRETTY

26 SURE THEY DO STUFF, BUT IT WAS JUST MY PERSONAL CHOICE

27 NOT TO HAVE THEM INVOLVED.

28 THE COURT: IF YOU WENT HOME AFTER COURT TODAY AND

1 YOUR HOUSE HAD BEEN BURGLARIZED, WOULD YOU CALL THE
2 POLICE?

3 PROSPECTIVE JUROR NO. 8 (4287): YEAH. THAT'S
4 TOTALLY DIFFERENT THAN WHAT HAD HAPPENED.

5 THE COURT: DO YOU HAVE ANY OTHER "YES" ANSWERS?

6 PROSPECTIVE JUROR NO. 8 (4287): NO.

7 THE COURT: CAN YOU GIVE BOTH SIDES A FAIR TRIAL?

8 PROSPECTIVE JUROR NO. 8 (4287): YES, SIR.

9 THE COURT: VERY GOOD.

10 MR. LEONARD?

11 MR. LEONARD: JUST A COUPLE QUESTIONS.

12 THANK YOU, YOUR HONOR.

13 GOOD AFTERNOON. HOW ARE YOU?

14 PROSPECTIVE JUROR NO. 8 (4287): GOOD.

15 AND YOURSELF?

16 MR. LEONARD: GOOD. THANK YOU FOR ASKING.

17 HEY, THESE OTHER PEOPLE THAT YOU RAN AWAY
18 FROM, YOU SAID THEY'RE AFRICAN-AMERICAN; RIGHT?

19 PROSPECTIVE JUROR NO. 8 (4287): YES, SIR.

20 MR. LEONARD: LOOK LIKE GANG MEMBERS?

21 PROSPECTIVE JUROR NO. 8 (4287): YEAH.

22 MR. LEONARD: OKAY.

23 DID THEY HAVE WEAPONS?

24 PROSPECTIVE JUROR NO. 8 (4287): YEAH. ONE OF
25 THEM HAD A GUN.

26 MR. LEONARD: OKAY.

27 DID THEY SHOOT AT YOU?

28 PROSPECTIVE JUROR NO. 8 (4287): NO. HE WAS AN

1 ATTEMPTED TO, LIKE, HE WAS TRYING TO TAUNT.

2 MR. LEONARD: JUST SPLIT AND RAN AWAY; RIGHT?

3 PROSPECTIVE JUROR NO. 8 (4287): YEAH.

4 MR. LEONARD: OKAY.

5 MY CLIENT -- OBVIOUSLY, YOU HEARD A LOT OF
6 QUESTIONS. MY CLIENT IS AFRICAN-AMERICAN. AS YOU CAN
7 SEE, I LOOK OVER AND SEE MR. BURGHARDT. YOU SAID YOU
8 WOULDN'T HOLD THAT AGAINST HIM; RIGHT?

9 PROSPECTIVE JUROR NO. 8 (4287): NO, SIR.

10 MR. LEONARD: HOW ABOUT IF TESTIMONY COMES OUT OF
11 THAT THEY BELONGED TO A GANG? WOULD YOU HOLD THAT
12 AGAINST MY CLIENT?

13 PROSPECTIVE JUROR NO. 8 (4287): NO, SIR.

14 MR. LEONARD: OKAY.

15 YOU HEAR ALL THE QUESTIONS I ASKED THE
16 OTHER PROSPECTIVE JURORS EARLY IN THE MORNING?

17 PROSPECTIVE JUROR NO. 8 (4287): YES, SIR.

18 MR. LEONARD: OKAY.

19 I ASKED THE ONE QUESTION IF YA HAD TO VOTE
20 RIGHT NOW, HOW WOULD YOU VOTE?

21 PROSPECTIVE JUROR NO. 8 (4287): THERE IS NO
22 EVIDENCE. I CAN'T REALLY HOLD IT AGAINST.

23 MR. LEONARD: YOU HAVE TO VOTE GUILTY OR NOT
24 GUILTY, HOW WOULD YOU VOTE?

25 PROSPECTIVE JUROR NO. 8 (4287): I WOULDN'T VOTE
26 UNTIL I WAS HEARD.

27 MR. LEONARD: WELL, SEE, I'M TRYING TO SEE IF YOU
28 WERE PAYING ATTENTION THIS MORNING. HERE'S WHAT I'M

1 TALKING ABOUT.

2 REMEMBER WHEN I SAID -- I ASKED THAT JUROR
3 NO. 4 THAT, IF NOBODY TAKES THE STAND, YOU DON'T HAVE
4 ANY EVIDENCE; RIGHT?

5 PROSPECTIVE JUROR NO. 8 (4287): UH-HUH.

6 MR. LEONARD: OKAY.

7 AND THERE WERE ONLY TWO WAYS OF VOTING,
8 GUILTY OR NOT GUILTY. SO IF YOU DON'T HAVE ANY
9 EVIDENCE, HOW WOULD YOU VOTE? YOU GOT TO PICK FROM THE
10 TWO.

11 HAS MR. STENNIS PROVED TO YOU BEYOND A
12 REASONABLE DOUBT THAT MY CLIENT IS GUILTY?

13 PROSPECTIVE JUROR NO. 8 (4287): NO.

14 MR. LEONARD: OKAY. ABSOLUTELY.

15 THEN HOW WOULD YOU VOTE?

16 PROSPECTIVE JUROR NO. 8 (4287): NOT GUILTY.

17 MR. LEONARD: YEAH, THAT'S RIGHT.

18 OKAY. I MEAN, YOU KNOW, IT'S -- I'M NOT
19 TRYING TO BE TRICKY WITH YA. BUT IT'S A CONCEPT OF --
20 VERY STANDARD CONCEPT IN CRIMINAL LAW. SOUNDS BASIC.
21 BUT SOMETIMES IT'S HARD TO APPLY.

22 YOU THINK THAT YOU WOULD HOLD MR. STENNIS,
23 BEFORE YOU CONVICT MY CLIENT, TO THAT BURDEN OF PROOF?

24 PROSPECTIVE JUROR NO. 8 (4287): YES.

25 MR. LEONARD: AND SEE IF HE MET IT?

26 PROSPECTIVE JUROR NO. 8 (4287): (SHAKES HEAD IN
27 THE NEGATIVE.)

28 MR. LEONARD: YOU WOULDN'T HOLD HIM TO IT?

1 PROSPECTIVE JUROR NO. 8 (4287) : OH, YES. YES,
2 YES, YES.

3 MR. LEONARD: IN OTHER WORDS, I'M NOT TRYING TO BE
4 TRICKY WITH YA. IN OTHER WORDS, MR. STENNIS, HE IS THE
5 PROSECUTOR IN THE CASE.

6 PROSPECTIVE JUROR NO. 8 (4287) : UH-HUH.

7 MR. LEONARD: HIS BURDEN OF PROOF IS BEYOND A
8 REASONABLE DOUBT. HE'S GOT TO PROVE THAT TO YOU AND TO
9 ALL TWELVE JURORS BEFORE YOU CAN FIND MR. BURGHARDT
10 GUILTY.

11 DO YOU UNDERSTAND THAT CONCEPT?

12 PROSPECTIVE JUROR NO. 8 (4287) : YEAH.

13 MR. LEONARD: OKAY.

14 AND WOULD YOU MAKE MR. STENNIS DO THAT?

15 PROSPECTIVE JUROR NO. 8 (4287) : NO.

16 MR. LEONARD: NO, YOU WOULDN'T?

17 PROSPECTIVE JUROR NO. 8 (4287) : I WOULDN'T FORCE
18 HIM TO GIVE ME A --

19 MR. LEONARD: OKAY.

20 WELL, I DON'T WANT YOU TO HAVE TO FORCE
21 MR. STENNIS TO DO THAT. BUT IF LET'S -- LET'S PUT IT
22 ANOTHER WAY.

23 LET'S SAY THAT MR. STENNIS PUTS ON
24 EVIDENCE, AND I DON'T PUT ON ANY EVIDENCE. I DON'T ASK
25 ANY QUESTIONS. BUT MR. STENNIS CAN'T PROVE TO YOU
26 BEYOND A REASONABLE DOUBT THAT MR. BURGHARDT IS GUILTY,
27 HOW WOULD YOU VOTE?

28 PROSPECTIVE JUROR NO. 8 (4287) : GUILTY.

1 MR. LEONARD: OKAY.

2 WHAT'S ON THAT T-SHIRT YOU HAVE THERE?

3 WHAT DOES THAT SAY?

4 PROSPECTIVE JUROR NO. 8 (4287): VANS.

5 MR. LEONARD: VANS. IS THAT FOR RUNNING SHOES?

6 PROSPECTIVE JUROR NO. 8 (4287): YEAH.

7 SKATEBOARDING SHOES.

8 MR. LEONARD: SKATEBOARD?

9 PROSPECTIVE JUROR NO. 8 (4287): HUH-UH.

10 MR. LEONARD: YOU WEREN'T ON A SKATEBOARD WHEN YOU

11 RAN AWAY FROM THOSE GUYS?

12 PROSPECTIVE JUROR NO. 8 (4287): HUH-UH.

13 MR. LEONARD: YOU JUST RAN IN VAN TENNIS SHOES?

14 PROSPECTIVE JUROR NO. 8 (4287): I WAS WEARING,

15 LIKE, I DON'T EVEN REMEMBER.

16 MR. LEONARD: OKAY. THANK YOU.

17 I'LL PASS FOR CAUSE.

18 THE COURT: MR. STENNIS?

19 MR. STENNIS: NO QUESTIONS.

20 THE COURT: ALL RIGHT.

21 NEXT PEREMPTORY IS WITH THE PEOPLE.

22 MR. STENNIS: THE PEOPLE WOULD ASK THE COURT TO

23 THANK AND EXCUSE JUROR NO. 7.

24 THE COURT: JUROR NO. 7? ALL RIGHT.

25 THANK YOU, MA'AM. RETURN TO THE JURY

26 ASSEMBLY ROOM.

27 PROSPECTIVE JUROR NO. 7 (5827): THANK YOU.

28 THE CLERK: FOR JUROR IN SEAT NO. 7, JUROR

1 NO. 2969.

2 THE COURT: HI.

3 PROSPECTIVE JUROR NO. 7 (2969): HI.

4 THE COURT: CAN YOU GIVE US THE INFORMATION,
5 PLEASE?

6 PROSPECTIVE JUROR NO. 7 (2969): I.D. 6 -- 2969.

7 EXCUSE ME.

8 I RESIDE IN REDONDO.

9 OUTREACH VOLUNTEER COORDINATOR, NONPROFIT.

10 DOMESTIC VIOLENCE FOR WOMEN AND KIDS.

11 EXCUSE ME. I'VE -- MARRIED. HAVE A SON IN
12 THE FAMILY THAT LIVES IN DALLAS. MY HUSBAND WORKS FOR A
13 COMPUTER PROGRAM GROUP AS A DIRECTOR OF CUSTOMER
14 SERVICE.

15 AND I WAS ON ONE -- EXCUSE ME -- ONE
16 CRIMINAL JURY BEFORE.

17 THE COURT: WHAT'S THE CHARGE?

18 PROSPECTIVE JUROR NO. 7 (2969): IT WAS L.A.,
19 MURDER. I BELIEVE TWO OR THREE YEARS AGO, AND I WAS THE
20 SECOND.

21 THE COURT: ALTERNATE?

22 PROSPECTIVE JUROR NO. 7 (2969): YES.

23 THE COURT: SO YOU DID NOT DELIBERATE?

24 PROSPECTIVE JUROR NO. 7 (2969): NO. I JUST
25 WAITED. WAS NOT CALLED IN.

26 THE COURT: DID THE JURY REACH A VERDICT?

27 PROSPECTIVE JUROR NO. 7 (2969): YES.

28 THE COURT: DID YOU AGREE WITH THAT VERDICT?

1 PROSPECTIVE JUROR NO. 7 (2969): YES.

2 THE COURT: WHAT DOES YOUR SON DO?

3 PROSPECTIVE JUROR NO. 7 (2969): HE WORKS IN

4 DALLAS. ACTUALLY HE JUST GOT LAID OFF. HE WAS RUNNING

5 A RESTAURANT IN DALLAS.

6 THE COURT: DO YOU HAVE THE PROPER FRAME OF MIND

7 TO DO THE JOB OF A JUROR WHICH IS OPEN, FAIR, OBJECTIVE?

8 PROSPECTIVE JUROR NO. 7 (2969): ABSOLUTELY.

9 THE COURT: IS THERE ANYTHING YOU HEARD SO FAR

10 THAT WOULD PREVENT YOU FROM DOING THAT?

11 PROSPECTIVE JUROR NO. 7 (2969): NO.

12 THE COURT: ANY QUARREL OR ANY PROBLEM WITH ANY OF

13 THE LEGAL CONCEPTS?

14 PROSPECTIVE JUROR NO. 7 (2969): NO.

15 THE COURT: IF THE STANDARD OF PROOF IS MET, WHAT

16 IS YOUR VERDICT?

17 PROSPECTIVE JUROR NO. 7 (2969): CAN YOU REPEAT

18 THAT?

19 THE COURT: IF THE STANDARD OF PROOF IS MET, WHAT

20 WOULD YOUR VERDICT BE?

21 PROSPECTIVE JUROR NO. 7 (2969): OH. NOT GUILTY.

22 THE COURT: IT WOULD BE GUILTY IF THE STANDARD OF

23 PROOF IS MET.

24 PROSPECTIVE JUROR NO. 7 (2969): IF -- IF --

25 THE COURT: IF THE EVIDENCE PROVES GUILT BEYOND A

26 REASONABLE DOUBT, WHAT WOULD YOUR VERDICT BE?

27 PROSPECTIVE JUROR NO. 7 (2969): OH. THEN GUILTY.

28 THE COURT: IF THE EVIDENCE DOES NOT RISE TO THAT

1 LEVEL, WHAT WOULD YOUR VERDICT BE?
2 PROSPECTIVE JUROR NO. 7 (2969): NOT GUILTY.
3 THE COURT: DO YOU HAVE "YES" ANSWERS?
4 PROSPECTIVE JUROR NO. 7 (2969): JUST ONE QUICK
5 ONE.
6 THE COURT: WHICH ONE?
7 PROSPECTIVE JUROR NO. 7 (2969): JUST CO-WORKER.
8 THE COURT: WHICH QUESTION NUMBER?
9 PROSPECTIVE JUROR NO. 7 (2969): OH. I'M SORRY.
10 NO. 6.
11 THE COURT: 6. OKAY.
12 PROSPECTIVE JUROR NO. 7 (2969): JUST THE
13 NONPROFIT HAS A LEGAL GROUP, AND I'M JUST -- I -- I SEE
14 THE ATTORNEY THERE, HERE AND THERE. THAT WAS IT.
15 THE COURT: CAN YOU BE FAIR TO BOTH SIDES?
16 PROSPECTIVE JUROR NO. 7 (2969): YES.
17 THE COURT: VERY GOOD.
18 ALL RIGHT. MR. LEONARD?
19 MR. LEONARD: NO QUESTIONS, YOUR HONOR.
20 PASS FOR CAUSE.
21 THE COURT: ALL RIGHT.
22 MR. STENNIS?
23 MR. STENNIS: NO QUESTIONS.
24 THE COURT: PASS FOR CAUSE?
25 MR. STENNIS: YES.
26 THE COURT: NEXT PEREMPTORY IS WITH THE DEFENSE.
27 MR. LEONARD: THANK YOU, YOUR HONOR.
28 WE'D THANK AND EXCUSE PROSPECTIVE JUROR IN

1 SEAT 8.

2 THANK YOU, SIR.

3 THE COURT: THANK YOU. YOU'RE EXCUSED.

4 THE CLERK: FOR JUROR FOR SEAT NO. 8, JUROR NO.
5 5272.

6 THE COURT: GOOD AFTERNOON, SIR.

7 PROSPECTIVE JUROR NO. 8 (5272): GOOD AFTERNOON.

8 THE COURT: CAN YOU GIVE US THE INFORMATION TO
9 QUESTION 1, PLEASE.

10 PROSPECTIVE JUROR NO. 8 (5272): SURE.

11 MY I.D. NUMBER IS 5272.

12 I LIVE IN REDONDO BEACH.

13 I AM A PART OWNER IN AN AUTOMOBILE
14 DEALERSHIP.

15 I'M MARRIED. MY WIFE IS A MANAGER IN A
16 MARKETING DEPARTMENT FOR AN AUTOMOBILE MANUFACTURER, AND
17 I HAVE NO CHILDREN.

18 AND NO PRIOR JURY EXPERIENCE.

19 THE COURT: WHAT KIND OF AN AUTOMOBILE DEALERSHIP?

20 PROSPECTIVE JUROR NO. 8 (5272): MAZDA.

21 THE COURT: IS IT NEW CARS?

22 PROSPECTIVE JUROR NO. 8 (5272): YES.

23 THE COURT: IS THE DEALERSHIP IN THE SOUTH BAY?

24 PROSPECTIVE JUROR NO. 8 (5272): ORANGE COUNTY.

25 THE COURT: AS YOU SIT THERE NOW, COULD YOU
26 DESCRIBE YOUR STATE OF MIND AS OBJECTIVE AND IMPARTIAL
27 AND OPEN?

28 PROSPECTIVE JUROR NO. 8 (5272): YES, SIR.

1 THE COURT: WOULD -- IS THERE ANYTHING THAT IS
2 CAUSING YOU TO LEAN IN FAVOR OF THE PROSECUTION?

3 PROSPECTIVE JUROR NO. 8 (5272): NO.

4 THE COURT: ANYTHING THAT IS CAUSING YOU TO LEAN
5 IN FAVOR OF THE DEFENSE?

6 PROSPECTIVE JUROR NO. 8 (5272): NO.

7 THE COURT: SO DO YOU HAVE THAT FRAME OF MIND LIKE
8 THE UMPIRE BEHIND THE PLATE? YOU'RE WILLING TO CALL IT
9 AS YOU SEE IT?

10 PROSPECTIVE JUROR NO. 8 (5272): YES, SIR.

11 THE COURT: ANY QUARREL WITH ANY OF THE LEGAL
12 CONCEPTS?

13 PROSPECTIVE JUROR NO. 8 (5272): NO.

14 THE COURT: IF THE EVIDENCE PROVES GUILT BEYOND A
15 REASONABLE DOUBT, WHAT WOULD YOUR VERDICT BE?

16 PROSPECTIVE JUROR NO. 8 (5272): GUILTY.

17 THE COURT: IF IT DOESN'T RISE TO THAT LEVEL?

18 PROSPECTIVE JUROR NO. 8 (5272): NOT GUILTY.

19 THE COURT: DO YOU HAVE "YES" ANSWERS?

20 PROSPECTIVE JUROR NO. 8 (5272): I DO.

21 FOR NOS. 6, 7, 8, AND 9.

22 NO. 6, I HAVE A GOOD FRIEND WHO IS A DEPUTY
23 DISTRICT ATTORNEY FOR THE CITY OF LOS ANGELES.

24 THE COURT: WHAT'S HIS NAME?

25 PROSPECTIVE JUROR NO. 8 (5272): FRANK TAVELMAN.

26 THE COURT: OH, SURE. I KNOW FRANK.

27 PROSPECTIVE JUROR NO. 8 (5272): HE SPEAKS HIGHLY
28 OF YOU.

1 THE COURT: YOU TALKED WITH FRANK ABOUT ME?

2 PROSPECTIVE JUROR NO. 8 (5272): I -- WE HAD AN

3 UNRELATED CONVERSATION THIS MORNING, AND HE ASKED ME WHO

4 THE JUDGE WAS.

5 THE COURT: OH, YEAH. HE'S A GOOD GUY. TELL HIM

6 I SAID, "HI."

7 PROSPECTIVE JUROR NO. 8 (5272): I WILL.

8 THE COURT: BECAUSE HE'S A PROSECUTOR AND

9 MR. STENNIS IS A PROSECUTOR, IS THAT GONNA CAUSE YOU TO

10 ALIGN YOURSELF WITH MR. STENNIS?

11 PROSPECTIVE JUROR NO. 8 (5272): NOT AT ALL.

12 THE COURT: YOU CAN'T DISCUSS THE CASE WITH FRANK

13 WHILE THE CASE IS GOING ON NOR CAN YOU DISCUSS THE CASE

14 WITH ANYBODY.

15 PROSPECTIVE JUROR NO. 8 (5272): CORRECT.

16 THE COURT: NO. 7.

17 PROSPECTIVE JUROR NO. 8 (5272): TWO INCIDENTS.

18 IN 1986 I WAS MUGGED AT GUNPOINT AND ALSO LAST YEAR MY

19 WIFE AND I, OUR HOUSE WAS ROBBED OR BURGLARIZED.

20 THE COURT: WHERE DID THESE ROBBERIES OCCUR?

21 PROSPECTIVE JUROR NO. 8 (5272): OUR HOUSE IS IN

22 REDONDO BEACH.

23 THE COURT: NO. THE ROBBERIES WHERE YOU WERE

24 ROBBED AT GUNPOINT.

25 PROSPECTIVE JUROR NO. 8 (5272): WAS FLORIDA.

26 THE COURT: WHAT WAS THE ETHNICITY OF THE PEOPLE

27 WHO ROBBED YOU?

28 PROSPECTIVE JUROR NO. 8 (5272): AFRICAN-AMERICAN.

1 THE COURT: BOTH TIMES?

2 PROSPECTIVE JUROR NO. 8 (5272): I DON'T KNOW ON

3 THE SECOND. I WAS ONLY ROBBED ONE TIME.

4 THE COURT: I THOUGHT YOU WERE ROBBED TWO TIMES.

5 PROSPECTIVE JUROR NO. 8 (5272): NO. I APOLOGIZE.

6 I WAS ROBBED ONE TIME AND GUNPOINT IN 1986.

7 THE COURT: AND THEN THERE'S THE OTHER --

8 PROSPECTIVE JUROR NO. 8 (5272): THE BURGLARY.

9 THE COURT: -- WITH YOUR WIFE.

10 PROSPECTIVE JUROR NO. 8 (5272): BURGLARY AT HOME.

11 THE COURT: DID YOU REPORT THE ROBBERY IN FLORIDA

12 TO THE POLICE?

13 PROSPECTIVE JUROR NO. 8 (5272): I DID NOT.

14 THE COURT: WHY DIDN'T YOU REPORT IT?

15 PROSPECTIVE JUROR NO. 8 (5272): I WAS A YOUNG

16 ADULT AT THE TIME IN THE WRONG PLACE, DOING THE WRONG

17 THING.

18 THE COURT: WHAT WERE YOU DOING WRONG?

19 PROSPECTIVE JUROR NO. 8 (5272): PURCHASING

20 MARIJUANA.

21 THE COURT: OH.

22 AND THEN WHAT? YOU GOT ROBBED BY THE

23 DEALER?

24 PROSPECTIVE JUROR NO. 8 (5272): YEAH. THE

25 PARTIES INVOLVED DID NOT COME TO AN AGREEMENT OF THE

26 TERMS OF THE TRANSACTION.

27 THE COURT: NOBODY WAS HURT, THOUGH.

28 PROSPECTIVE JUROR NO. 8 (5272): NO.

1 THE COURT: HOW MUCH MARIJUANA WAS -- HOW MUCH
2 PRODUCT WAS THE SUBJECT OF THE TRANSACTION?

3 PROSPECTIVE JUROR NO. 8 (5272): WELL, THEY REFER
4 TO IT AS A DIME BAG.

5 THE COURT: SO IT'S A STREET DEAL.

6 PROSPECTIVE JUROR NO. 8 (5272): YEAH.

7 YOUNG STUPID KIDS.

8 THE COURT: NUMBER -- DO YOU HAVE ANY OTHER
9 RESPONSES? OH, YOU MENTIONED YOU HAD -- YOU SAY YOU AND
10 YOUR WIFE WERE -- THE HOUSE WAS ROBBED. WERE YOU THERE
11 AT THE TIME?

12 PROSPECTIVE JUROR NO. 8 (5272): WE WERE NOT.

13 THE COURT: AND DID THAT OCCUR IN REDONDO BEACH?

14 PROSPECTIVE JUROR NO. 8 (5272): YES.

15 THE COURT: DID YOU REPORT THE BURGLARY TO REDONDO
16 BEACH --

17 PROSPECTIVE JUROR NO. 8 (5272): WE DID.

18 THE COURT: DID THEY SOLVE THE CASE?

19 PROSPECTIVE JUROR NO. 8 (5272): NO.

20 THE COURT: DO YOU HOLD THAT AGAINST THEM?

21 PROSPECTIVE JUROR NO. 8 (5272): NOT AT ALL.

22 THE COURT: DO YOU THINK THEY SHOULD HAVE DONE OR
23 THEY COULD HAVE DONE MORE?

24 PROSPECTIVE JUROR NO. 8 (5272): NO. IT WAS VERY
25 LIMITED EVIDENCE. NO WITNESSES. WE DID WHAT WE COULD.

26 THE COURT: IS THERE ANY CHANCE YOU WOULD HOLD
27 THAT BURGLARY AGAINST MR. BURGHARDT?

28 PROSPECTIVE JUROR NO. 8 (5272): ABSOLUTELY NOT.

1 THE COURT: NO. 8.

2 PROSPECTIVE JUROR NO. 8 (5272): I WAS ARRESTED IN

3 1990 FOR D.U.I.

4 THE COURT: WHICH POLICE DEPARTMENT?

5 PROSPECTIVE JUROR NO. 8 (5272): CALIFORNIA

6 HIGHWAY PATROL.

7 THE COURT: IN COURT DID YOU HAVE A TRIAL OR DID

8 YOU PLEAD GUILTY OR WHAT HAPPENED?

9 PROSPECTIVE JUROR NO. 8 (5272): WE SETTLED. IT

10 WAS -- WE SETTLED WITH A RECKLESS DRIVING.

11 THE COURT: WERE YOU GUILTY?

12 PROSPECTIVE JUROR NO. 8 (5272): I WAS.

13 THE COURT: DID THE POLICE TREAT YOU OKAY?

14 PROSPECTIVE JUROR NO. 8 (5272): ABSOLUTELY.

15 THE COURT: DO YOU THINK MR. BURGHARDT, SINCE HE'S

16 SITTING THERE, HE'S GUILTY?

17 PROSPECTIVE JUROR NO. 8 (5272): NO.

18 THE COURT: AND NO. 9?

19 PROSPECTIVE JUROR NO. 8 (5272): JUST REFERRING TO

20 FRANK. HE'S ALSO A -- A RESERVE OFFICER FOR THE

21 L.A.P.D.

22 THE COURT: HE'S BEEN A RESERVE FOR L.A.P.D. FOR A

23 LONG TIME.

24 PROSPECTIVE JUROR NO. 8 (5272): 15 YEARS.

25 THE COURT: IS HE STILL WORKING RAMPART?

26 PROSPECTIVE JUROR NO. 8 (5272): I DON'T KNOW

27 EXACTLY WHERE HE WORKS, BUT I KNOW HE'S STILL VERY

28 ACTIVE.

1 THE COURT: I THINK HE'S WORKING RAMPART STATION.
2 COULD YOU JUST MAKE A POINT OF TELLING HIM
3 I SAID, "HELLO"?
4 PROSPECTIVE JUROR NO. 8 (5272): ABSOLUTELY.
5 THE COURT: I HAVE A LOT OF RESPECT FOR HIM. HE'S
6 A GOOD GUY.
7 CAN YOU GIVE BOTH SIDES A FAIR TRIAL?
8 PROSPECTIVE JUROR NO. 8 (5272): YES, SIR.
9 THE COURT: VERY GOOD.
10 MR. LEONARD, FLOOR IS YOURS.
11 MR. LEONARD: NO QUESTIONS.
12 I'LL PASS FOR CAUSE.
13 THE COURT: MR. STENNIS.
14 MR. STENNIS: NO QUESTIONS, YOUR HONOR.
15 PASS FOR CAUSE.
16 THE COURT: ALL RIGHT.
17 NEXT PEREMPTORY IS WITH THE PEOPLE.
18 MR. STENNIS: YOUR HONOR, THE PEOPLE ASK THE COURT
19 TO THANK AND EXCUSE JUROR NO. 8.
20 THE COURT: JUROR NO. 8?
21 MR. STENNIS: I'M SORRY. 9.
22 THE COURT: JUROR NO. 9.
23 THANK YOU, MA'AM. RETURN TO THE JURY
24 ASSEMBLY ROOM, PLEASE.
25 THE CLERK: FOR JUROR SEAT NO. 9, JUROR NO. 2406.
26 THE COURT: HI.
27 PROSPECTIVE JUROR NO. 9 (2406): HI.
28 THE COURT: GIVE US THE INFORMATION ON QUESTION 1,

1 PLEASE.

2 PROSPECTIVE JUROR NO. 9 (2406): JUROR I.D. IS
3 2406.

4 AREA OF RESIDENCE CARSON.

5 OCCUPATION, I'M A LICENSED VOCATIONAL
6 NURSE, AND A STUDENT.

7 I'M MARRIED. I HAVE ONE CHILD. MY SPOUSE
8 IS NOW UNEMPLOYED.

9 AND I HAVE NO PRIOR JURY EXPERIENCE.

10 THE COURT: HAS YOUR SPOUSE BEEN EMPLOYED IN THE
11 PAST?

12 PROSPECTIVE JUROR NO. 9 (2406): YES. HE WAS JUST
13 LAID OFF.

14 THE COURT: WHAT WAS HE DOING?

15 PROSPECTIVE JUROR NO. 9 (2406): HE WAS AN OFFICE
16 MANAGER.

17 THE COURT: AND HOW OLD IS YOUR CHILD?

18 PROSPECTIVE JUROR NO. 9 (2406): 12.

19 THE COURT: YOU HEARD AND UNDERSTOOD THE LEGAL
20 CONCEPTS?

21 PROSPECTIVE JUROR NO. 9 (2406): YES.

22 THE COURT: ANYTHING TROUBLE YOU IN THE WAY --

23 PROSPECTIVE JUROR NO. 9 (2406): NO.

24 THE COURT: YOU HAVE THE PROPER STATE OF MIND TO
25 DO THE JOB OF A JUROR THE RIGHT WAY?

26 PROSPECTIVE JUROR NO. 9 (2406): YES.

27 THE COURT: IF YOU BELIEVE THE EVIDENCE PROVES
28 GUILT BEYOND A REASONABLE DOUBT, WHAT WOULD YOUR VERDICT

1 BE?

2 PROSPECTIVE JUROR NO. 9 (2406): GUILTY.

3 THE COURT: IF YOU DIDN'T THINK THE EVIDENCE ROSE
4 TO THAT LEVEL?

5 PROSPECTIVE JUROR NO. 9 (2406): NOT GUILTY.

6 THE COURT: DO YOU HAVE "YES" ANSWERS?

7 PROSPECTIVE JUROR NO. 9 (2406): JUST FOR 7.

8 THE COURT: NO. 7?

9 PROSPECTIVE JUROR NO. 9 (2406): YES.

10 THE COURT: TELL US, PLEASE.

11 PROSPECTIVE JUROR NO. 9 (2406): MY BROTHER AND A
12 FAMILY FRIEND -- MY BROTHER WAS JUMPED A COUPLE YEARS
13 AGO AT SCHOOL, AND THEY BROKE HIS RIBS, AND THEY BROKE
14 HIS JAW.

15 THE COURT: WHAT SCHOOL DID THIS HAPPEN AT?

16 PROSPECTIVE JUROR NO. 9 (2406): AT NARBONNE.

17 THE COURT: DID THE POLICE GET INVOLVED?

18 PROSPECTIVE JUROR NO. 9 (2406): YEAH.

19 THE COURT: DID THEY ARREST THE INDIVIDUALS WHO
20 BEAT UP YOUR BROTHER?

21 PROSPECTIVE JUROR NO. 9 (2406): YEAH. THEY FOUND
22 THREE OUT OF FIVE.

23 THE COURT: WHAT WAS THEIR RACE?

24 PROSPECTIVE JUROR NO. 9 (2406): ALL
25 AFRICAN-AMERICAN.

26 THE COURT: HOW DID YOU FEEL ABOUT MR. BURGHARDT
27 BEING AFRICAN-AMERICAN?

28 PROSPECTIVE JUROR NO. 9 (2406): I HAVE NO

1 PROBLEM. I HAVE NO PROBLEM.

2 THE COURT: AFTER THE THREE OUT OF FIVE WERE
3 ARRESTED, DID THE CASE GO TO COURT?

4 PROSPECTIVE JUROR NO. 9 (2406): YES.

5 THE COURT: AND WERE YOU SATISFIED WITH THE
6 OUTCOME OF WHAT HAPPENED IN COURT?

7 PROSPECTIVE JUROR NO. 9 (2406): YES.

8 THE COURT: DO YOU HAVE ANY OTHER "YES" ANSWERS?

9 PROSPECTIVE JUROR NO. 9 (2406): JUST THE SAME.

10 IT'S JUST THE FAMILY FRIEND, HIS DAUGHTER WAS ABDUCTED
11 AT GUNPOINT COUPLE MONTHS AGO.

12 THE COURT: WHERE DID THAT OCCUR?

13 PROSPECTIVE JUROR NO. 9 (2406): IN TEMECULA.

14 THE COURT: WAS SHE -- DID SHE COME OUT OF IT
15 OKAY?

16 PROSPECTIVE JUROR NO. 9 (2406): YEAH. SHE GOT
17 AWAY.

18 THE COURT: ALL RIGHT.

19 NOT PHYSICALLY INJURED?

20 PROSPECTIVE JUROR NO. 9 (2406): NO.

21 THE COURT: WAS SHE SEXUALLY ASSAULTED?

22 PROSPECTIVE JUROR NO. 9 (2406): HE TRIED.

23 THE COURT: IS THAT WHY SHE WAS ABLE TO GET AWAY?

24 PROSPECTIVE JUROR NO. 9 (2406): YES.

25 THE COURT: GOOD FOR HER.

26 AND WHAT WAS THAT PERSON'S ETHNICITY?

27 PROSPECTIVE JUROR NO. 9 (2406): AFRICAN-AMERICAN.

28 THE COURT: YOU SURE OF THAT BECAUSE MR. BURGHARDT

1 IS BLACK, THAT THAT'S NOT GOING TO --
2 PROSPECTIVE JUROR NO. 9 (2406): NO.
3 THE COURT: THAT DOESN'T BOTHER YOU IN ANY WAY?
4 PROSPECTIVE JUROR NO. 9 (2406): NO.
5 THE COURT: OTHER "YES" ANSWERS?
6 PROSPECTIVE JUROR NO. 9 (2406): NO.
7 THE COURT: CAN YOU BE FAIR TO BOTH SIDES?
8 PROSPECTIVE JUROR NO. 9 (2406): YES.
9 THE COURT: VERY GOOD.
10 MR. LEONARD.
11 MR. LEONARD: NO QUESTIONS.
12 I'LL PASS FOR CAUSE, YOUR HONOR.
13 THE COURT: MR. STENNIS?
14 MR. STENNIS: NO QUESTIONS.
15 PASS FOR CAUSE.
16 THE COURT: ALL RIGHT.
17 NEXT PEREMPTORY IS WITH THE DEFENSE.
18 MR. LEONARD: THANK YOU, YOUR HONOR.
19 WE'D LIKE THE COURT TO THANK AND EXCUSE
20 JUROR NO. 8.
21 THANK YOU, SIR.
22 THE COURT: ALL RIGHT.
23 THANK YOU.
24 THE CLERK: FOR JUROR SEAT NO. 8, JUROR NO. 7987.
25 MR. STENNIS: YOUR HONOR, CAN WE APPROACH?
26 THE COURT: OFF OR ON THE RECORD?
27 MR. STENNIS: OFF.
28 THE COURT: OKAY.

1 (A CONFERENCE WAS HELD AT
2 THE BENCH THAT WAS NOT
3 REPORTED.)

4

5 THE COURT: ALL RIGHT, FOLKS.

6 WE'RE GOING TO TAKE A RECESS NOW.

7 SO, JUROR NO. 8, WHEN YOU COME IN IN
8 15 MINUTES, YOU ARE GOING TO BE SITTING IN THAT SAME
9 SEAT.

10 IT'S FIVE MINUTES AFTER 3:00. SO IF YOU
11 COULD ALL BE OUTSIDE THE COURTROOM DOOR AT 20 AFTER
12 3:00, WE'LL RESUME.

13 SO SEE YOU IN ABOUT 15 MINUTES.

14

15 (RECESS.)

16

17 THE COURT: ALL RIGHT.

18 WE ARE BACK ON THE RECORD

19 ALL PARTIES AND COUNSEL ARE PRESENT.

20 JUROR NO. 8, COULD YOU PLEASE GIVE US THE
21 INFORMATION TO QUESTION NO. 1?

22 PROSPECTIVE JUROR NO. 8 (7987): 7987 IS MY JUROR
23 I.D.

24 I LIVE IN TORRANCE.

25 I'M UNEMPLOYED AT THE MOMENT.

26 SINGLE. I HAVE NO SPOUSE AND NO
27 OCCUPATION. I HAVE NO CHILDREN.

28 AND JUROR -- PRIOR JUROR EXPERIENCE IS

1 EXTENSIVE. I HAVE TWO CRIMINAL AND TWO CIVIC OR CIVIL.

2 THE COURT: DID THE CIVIL CASES REACH VERDICTS?

3 PROSPECTIVE JUROR NO. 8 (7987): ONE OF THEM
4 SETTLED. ONE WE CAME TO A VERDICT.

5 THE COURT: AND WHAT ARE THE CRIMINAL CHARGES THAT
6 WERE CHARGED?

7 PROSPECTIVE JUROR NO. 8 (7987): ARMED ROBBERY AND
8 DRUGS. SECOND ONE WAS A DRUG WITH MURDER.

9 THE COURT: A DRUG WHAT?

10 PROSPECTIVE JUROR NO. 8 (7987): IT WAS A DRUG
11 POSSESSION WITH ATTEMPTED MURDER.

12 THE COURT: DID THAT CASE REACH A VERDICT?

13 PROSPECTIVE JUROR NO. 8 (7987): YES.

14 THE COURT: AND WHERE WAS THAT TRIAL?

15 PROSPECTIVE JUROR NO. 8 (7987): TWO WERE IN
16 COMPTON AND TWO WERE HERE IN TORRANCE.

17 THE COURT: AND THE FIRST CRIMINAL CASE THAT YOU
18 WERE ON?

19 PROSPECTIVE JUROR NO. 8 (7987): ABOUT TEN YEARS
20 AGO.

21 THE COURT: AND WHAT WAS THAT CHARGE?

22 PROSPECTIVE JUROR NO. 8 (7987): IT WAS ATTEMPTED
23 MURDER AND THE DRUG POSSESSION.

24 THE COURT: ALL RIGHT.

25 I THOUGHT YOU SAID YOU HAVE BEEN ON TWO
26 CRIMINAL JURIES.

27 PROSPECTIVE JUROR NO. 8 (7987): YES.

28 THE COURT: ONE WAS IN -- ONE WAS HERE AND ONE WAS

1 IN COMPTON.

2 THE ONE THAT WAS ONE HERE.

3 PROSPECTIVE JUROR NO. 8 (7987): THAT'S THE DRUG
4 AND THE ATTEMPTED MURDER.

5 THE COURT: OKAY.

6 WHAT WAS ONE IN COMPTON?

7 PROSPECTIVE JUROR NO. 8 (7987): THAT WAS THE
8 ROBBERY.

9 THE COURT: OH, THAT'S ROBBERY.

10 AND THE JURY REACHED A VERDICT IN THAT AS
11 WELL?

12 PROSPECTIVE JUROR NO. 8 (7987): YES.

13 THE COURT: YOU HAVE BEEN A JUROR BEFORE. YOU
14 KNOW WHAT IS EXPECTED OF YOU.

15 PROSPECTIVE JUROR NO. 8 (7987): YES.

16 THE COURT: WHEN YOU SAT BEFORE, DID YOU HAVE A
17 FRAME OF MIND THAT IS REQUIRED?

18 PROSPECTIVE JUROR NO. 8 (7987): YES.

19 THE COURT: AND AS YOU SIT THERE NOW, DO YOU HAVE
20 THAT FRAME OF MIND?

21 PROSPECTIVE JUROR NO. 8 (7987): YES.

22 THE COURT: HAVE YOU EVER BEEN EMPLOYED?

23 PROSPECTIVE JUROR NO. 8 (7987): YES.

24 THE COURT: IN WHAT CAPACITY?

25 PROSPECTIVE JUROR NO. 8 (7987): CUSTOMER SERVICE,
26 ACCOUNT MANAGEMENT.

27 THE COURT: ANY QUARREL WITH ANY OF THE LEGAL
28 CONCEPTS WE TALKED ABOUT?

1 PROSPECTIVE JUROR NO. 8 (7987): NO, SIR.

2 THE COURT: IF THE STANDARD OF PROOF IS MET, WHAT
3 WOULD YOUR VERDICT BE?

4 PROSPECTIVE JUROR NO. 8 (7987): STANDARD OF PROOF
5 WOULD BE GUILTY.

6 THE COURT: AND IF IT'S NOT MET?

7 PROSPECTIVE JUROR NO. 8 (7987): NOT GUILTY.

8 THE COURT: DO YOU HAVE "YES" ANSWERS?

9 PROSPECTIVE JUROR NO. 8 (7987): YES.

10 THE COURT: WHICH ONE?

11 PROSPECTIVE JUROR NO. 8 (7987): 6, 7, 8, 9, AND
12 12.

13 THE COURT: TELL US ABOUT 6, PLEASE.

14 PROSPECTIVE JUROR NO. 8 (7987): 6. I HAVE A
15 TEAMMATE THAT'S A PARALEGAL, A VERY GOOD FRIEND THAT'S A
16 PARALEGAL. SHE'S BEEN A PARALEGAL HERE IN TORRANCE FOR
17 MANY YEARS.

18 THE COURT: WHAT DO YOU MEAN A "TEAMMATE"?

19 PROSPECTIVE JUROR NO. 8 (7987): I PLAY ON A
20 SOFTBALL TEAM.

21 THE COURT: OH.

22 PROSPECTIVE JUROR NO. 8 (7987): AND SHE'S A
23 PARALEGAL. AND I -- WE ALSO HAVE A TEAMMATE THAT PLAYS
24 PART TIME THAT'S A -- AN ATTORNEY.

25 THE COURT: WHAT DID THE ATTORNEY DO? WHAT KIND
26 OF LAW?

27 PROSPECTIVE JUROR NO. 8 (7987): SANTA MONICA AND
28 IT'S CORPORATE.

1 THE COURT: YOU CAN'T DISCUSS THE CASE WITH ANY OF
2 THE ATTORNEYS YOU KNOW OR ANYBODY FOR THAT MATTER.

3 PROSPECTIVE JUROR NO. 8 (7987): (NODS HEAD IN THE
4 AFFIRMATIVE.)

5 THE COURT: WHAT POSITION DO YOU PLAY?

6 PROSPECTIVE JUROR NO. 8 (7987): PITCHER AND FIRST
7 BASE.

8 THE COURT: IS IT FAST PITCH? IS THIS SLOW PITCH?

9 PROSPECTIVE JUROR NO. 8 (7987): IT'S MODIFIED.
10 IT'S -- IT'S IN BETWEEN.

11 THE COURT: SO IT'S MEDIUM PITCH?

12 IS THE BALL ARCHED OR DOES IT COME STRAIGHT
13 IN?

14 PROSPECTIVE JUROR NO. 8 (7987): STRAIGHT IN.
15 IT'S JUST NOT FAST PITCH.

16 THE COURT: DO YOU THROW THE WINDMILL?

17 PROSPECTIVE JUROR NO. 8 (7987): YES.

18 THE COURT: OH.

19 HOW OFTEN DO YOU PLAY?

20 PROSPECTIVE JUROR NO. 8 (7987): EVERY WEEKEND.

21 THE COURT: OH.

22 WHAT'S THE NAME OF YOUR TEAM?

23 PROSPECTIVE JUROR NO. 8 (7987): CHICKS WITH
24 STICKS.

25 MR. LEONARD: CHICKS WITH STICKS.

26 THE COURT: DID YOU THINK OF THAT NAME?

27 PROSPECTIVE JUROR NO. 8 (7987): NO. NO.

28 THE COURT: THAT'S A PRETTY CUTE NAME, CHICKS WITH

1 STICKS.

2 NO. 7.

3 PROSPECTIVE JUROR NO. 8 (7987): VICTIM OF A
4 CRIME, YES. MY -- ONE OF MY GOOD FRIENDS WAS HOME IN
5 VACATION, THE VICTIM OF A HOME INVASION AND MULTIPLE
6 RAPE IN HER HOME. THEY WERE NOT CAUGHT.

7 THE COURT: IS THIS ALL AT THE SAME TIME?

8 PROSPECTIVE JUROR NO. 8 (7987): WELL, IT WAS
9 MULTIPLE PEOPLE THAT BROKE INTO HER HOME AND -- AND
10 RAPED HER.

11 THE COURT: WHAT CITY WAS THIS?

12 PROSPECTIVE JUROR NO. 8 (7987): PALM SPRINGS.

13 THE COURT: WHAT WAS THE ETHNICITY OF THE PEOPLE
14 THAT COMMITTED THIS CRIME?

15 PROSPECTIVE JUROR NO. 8 (7987): I BELIEVE THAT
16 SOME OF THEM WERE AFRICAN-AMERICAN AND SOME OF THEM WERE
17 LATIN.

18 THE COURT: ALL RIGHT.

19 HOW DO YOU FEEL ABOUT THE FACT
20 MR. BURGHARDT IS BLACK?

21 PROSPECTIVE JUROR NO. 8 (7987): DOESN'T BOTHER
22 ME.

23 THE COURT: IS THERE ANY DOUBT YOUR FRIEND HAS ANY
24 ILL FEELINGS TOWARD THE POLICE?

25 PROSPECTIVE JUROR NO. 8 (7987): YEAH, SHE DOES,
26 BUT I DON'T.

27 THE COURT: WHY DOES SHE?

28 PROSPECTIVE JUROR NO. 8 (7987): BECAUSE IT WASN'T

1 SOLVED, I BELIEVE.

2 THE COURT: DO YOU THINK THE POLICE COULD HAVE
3 DONE MORE OR SHOULD HAVE DONE MORE?

4 PROSPECTIVE JUROR NO. 8 (7987): I BELIEVE THEY
5 DID THEIR JOB.

6 THE COURT: OKAY.

7 NO. 8.

8 PROSPECTIVE JUROR NO. 8 (7987): YES. I HAD
9 SEVERAL FRIENDS ARRESTED FOR D.U.I.

10 THE COURT: ALL FOR D.U.I.?

11 PROSPECTIVE JUROR NO. 8 (7987): YES.

12 THE COURT: HOW MANY FRIENDS?

13 PROSPECTIVE JUROR NO. 8 (7987): THREE.

14 THE COURT: ARE THESE THREE SEPARATE INDIVIDUAL
15 D.U.I.'S?

16 PROSPECTIVE JUROR NO. 8 (7987): YES.

17 ONE OF THEM IS MY SISTER.

18 THE COURT: DO YOU THINK THAT OF THE THREE YOU
19 TOLD US ABOUT, THAT THE POLICE ACTED ANYTHING OTHER THAN
20 FAIRLY?

21 PROSPECTIVE JUROR NO. 8 (7987): YEAH. THEY WERE
22 FAIR. I MEAN IT WAS THEIR FAULT. THEY DROVE -- THEY
23 CHOSE TO DRIVE THAT WAY.

24 THE COURT: WERE THERE ANY INJURIES INVOLVED?

25 PROSPECTIVE JUROR NO. 8 (7987): NO.

26 THE COURT: DID EVERYBODY PLEAD GUILTY OR
27 NO CONTEST?

28 PROSPECTIVE JUROR NO. 8 (7987): YES.

1 THE COURT: DO YOU THINK THEY WERE ALL GUILTY?
2 PROSPECTIVE JUROR NO. 8 (7987): YES.
3 THE COURT: DO YOU THINK MR. BURGHARDT IS GUILTY?
4 PROSPECTIVE JUROR NO. 8 (7987): I DON'T KNOW.
5 THE COURT: THE THREE D.U.I. CASES YOU TOLD US
6 ABOUT HAVE NOTHING TO DO WITH MR. BURGHARDT.
7 PROSPECTIVE JUROR NO. 8 (7987): NO, SIR.
8 THE COURT: NO. 9.
9 PROSPECTIVE JUROR NO. 8 (7987): I HAVE QUITE A
10 FEW FRIENDS THAT ARE IN THE LAW ENFORCEMENT AREA.
11 THE COURT: HOW MANY DO YOU HAVE?
12 PROSPECTIVE JUROR NO. 8 (7987): POLICE OFFICERS,
13 SHERIFFS.
14 THE COURT: HOW DO YOU HAVE THESE FRIENDSHIPS?
15 PROSPECTIVE JUROR NO. 8 (7987): THROUGH SOFTBALL.
16 THE COURT: THEY'RE ON THE TEAM, TOO?
17 PROSPECTIVE JUROR NO. 8 (7987): YES. TWO OF THEM
18 ARE ON MY TEAM.
19 THE COURT: DID YOU ACCEPT WHAT I SAID REGARDING
20 WITNESS CREDIBILITY?
21 PROSPECTIVE JUROR NO. 8 (7987): ABSOLUTELY.
22 THE COURT: POLICE OFFICERS AREN'T PERFECT.
23 THEY'RE SUBJECT TO THE SAME, YOU KNOW, WEAKNESSES AS
24 ANYBODY ELSE.
25 WOULD YOU AGREE WITH THAT?
26 PROSPECTIVE JUROR NO. 8 (7987): OH, YES.
27 AND THEN NO. 12, WAS WITNESS TO A HOMICIDE
28 OUT IN FRONT OF MY HOUSE.

1 THE COURT: REALLY?

2 PROSPECTIVE JUROR NO. 8 (7987): YES.

3 THE COURT: SHOOTING?

4 PROSPECTIVE JUROR NO. 8 (7987): NO. STABBING.

5 THE COURT: AND YOU ACTUALLY SAW IT OCCUR?

6 PROSPECTIVE JUROR NO. 8 (7987): YES, SIR.

7 THE COURT: YOU WERE CALLED AS A DEFENSE WITNESS

8 OR PROSECUTION WITNESS?

9 PROSPECTIVE JUROR NO. 8 (7987): DEFENSE.

10 THE COURT: HOW WERE YOU TREATED WHEN YOU WERE

11 CROSS-EXAMINED?

12 PROSPECTIVE JUROR NO. 8 (7987): WELL.

13 THE COURT: HOW LONG AGO WAS THE CASE?

14 PROSPECTIVE JUROR NO. 8 (7987): ABOUT 15,

15 16 YEARS AGO.

16 THE COURT: WHAT WAS THE OUTCOME OF THE CASE?

17 PROSPECTIVE JUROR NO. 8 (7987): SHE WAS FOUND

18 GUILTY.

19 THE COURT: DID YOU HAVE ANY BAD FEELINGS OR ILL

20 FEELINGS BECAUSE OF THAT?

21 PROSPECTIVE JUROR NO. 8 (7987): NO. I WAS JUST

22 NERVOUS BECAUSE SHE WAS ON THE RUN FOR A LITTLE WHILE.

23 THE COURT: OH.

24 DO YOU HAVE ANY OTHER "YES" ANSWERS?

25 PROSPECTIVE JUROR NO. 8 (7987): NOPE.

26 THE COURT: CAN YOU BE FAIR TO BOTH SIDES?

27 PROSPECTIVE JUROR NO. 8 (7987): YES, SIR.

28 THE COURT: VERY GOOD.

1 MR. LEONARD?

2 MR. LEONARD: NO QUESTIONS.

3 PASS FOR CAUSE.

4 THE COURT: MR. STENNIS?

5 MR. STENNIS: NO QUESTIONS.

6 AND PASS FOR CAUSE.

7 THE COURT: NEXT PEREMPTORY IS WITH THE PEOPLE.

8 MR. STENNIS: PEOPLE ACCEPT THE PANEL.

9 THE COURT: NEXT PEREMPTORY IS WITH THE DEFENSE.

10 MR. LEONARD: WE WILL ASK THE COURT TO THANK AND
11 EXCUSE PROSPECTIVE JUROR NO. 9.

12 THANK YOU.

13 THE COURT: ALL RIGHT.

14 THANK YOU, MA'AM. RETURN TO THE JURY
15 ASSEMBLY ROOM, PLEASE.

16 THE CLERK: FOR JUROR SEAT NO. 9, JUROR NO.
17 3960.

18 THE COURT: HI.

19 CAN YOU GIVE US THE PERSONAL INFORMATION,
20 PLEASE, SIR.

21 PROSPECTIVE JUROR NO. 9 (3960): YEAH.

22 MY JUROR I.D. NUMBER IS 3960.

23 I LIVE IN LOMITA.

24 I'M A WELDER.

25 I'M MARRIED. MY WIFE IS AN A.P.
26 SUPERVISOR.

27 I'VE BEEN ON FOUR TRIALS.

28 THE COURT: WHAT IS AN A.P. SUPERVISOR?

1 PROSPECTIVE JUROR NO. 9 (3960): ACCOUNTS PAYABLE.
2 THE COURT: OH. AND WHAT KIND OF BUSINESS?
3 PROSPECTIVE JUROR NO. 9 (3960): IMPORT/EXPORT
4 BROKERAGE.
5 THE COURT: THE TRIALS YOU HAVE BEEN ON, A
6 COMBINATION OF CIVIL OR CRIMINAL OR CRIMINAL?
7 PROSPECTIVE JUROR NO. 9 (3960): THREE CRIMINAL,
8 ONE CIVIL.
9 THE COURT: DID THE CRIMINAL CASE REACH A VERDICT?
10 PROSPECTIVE JUROR NO. 9 (3960): YES.
11 THE COURT: WHAT WAS THE CHARGE IN THE FIRST
12 CRIMINAL CASE?
13 PROSPECTIVE JUROR NO. 9 (3960): ATTEMPTED MURDER.
14 THE COURT: DID THE JURY REACH A VERDICT?
15 PROSPECTIVE JUROR NO. 9 (3960): YES.
16 THE COURT: AND WHERE WAS THAT TRIAL?
17 PROSPECTIVE JUROR NO. 9 (3960): COMPTON.
18 THE COURT: HOW LONG AGO?
19 PROSPECTIVE JUROR NO. 9 (3960): 1999, I BELIEVE.
20 THE COURT: AND THE SECOND TIME, WHAT WAS THE
21 CHARGE?
22 PROSPECTIVE JUROR NO. 9 (3960): IT WAS A MURDER
23 TRIAL.
24 THE COURT: WHERE WAS THAT?
25 PROSPECTIVE JUROR NO. 9 (3960): IT WAS HERE.
26 THE COURT: DID THE JURY REACH A VERDICT?
27 PROSPECTIVE JUROR NO. 9 (3960): YES.
28 THE COURT: AND THE LAST CRIMINAL TRIAL?

1 PROSPECTIVE JUROR NO. 9 (3960): IT WAS ATTEMPTED
2 MURDER.

3 THE COURT: WHERE WAS THAT?

4 PROSPECTIVE JUROR NO. 9 (3960): LONG BEACH.

5 THE COURT: DID THE JURY REACH A VERDICT?

6 PROSPECTIVE JUROR NO. 9 (3960): YES.

7 THE COURT: ON THE FOUR OUT OF FOUR TIMES THE JURY
8 REACHED VERDICTS?

9 PROSPECTIVE JUROR NO. 9 (3960): YES, SIR.

10 THE COURT: WERE YOU THE FOREPERSON?

11 PROSPECTIVE JUROR NO. 9 (3960): NO, SIR.

12 THE COURT: IN THE TIMES PAST, DID YOU SIT WITH
13 THE FRAME OF MIND THAT I HAVE BEEN TALKING ABOUT?

14 PROSPECTIVE JUROR NO. 9 (3960): YES.

15 THE COURT: DO YOU HAVE THAT FRAME OF MIND NOW AS
16 YOU SIT THERE?

17 PROSPECTIVE JUROR NO. 9 (3960): YES.

18 THE COURT: ANY QUARREL WITH ANY OF THE LEGAL
19 CONCEPTS OR THE CHARGES OR THE ALLEGATIONS THAT YOU
20 HEARD?

21 PROSPECTIVE JUROR NO. 9 (3960): NO.

22 THE COURT: WHAT WOULD YOUR VERDICT BE IF YOU
23 THOUGHT THE EVIDENCE WOULD BE GUILT BEYOND A REASONABLE
24 DOUBT?

25 PROSPECTIVE JUROR NO. 9 (3960): GUILTY.

26 THE COURT: BUT IF YOU DIDN'T THINK IT ROSE TO
27 THAT LEVEL?

28 PROSPECTIVE JUROR NO. 9 (3960): NOT GUILTY.

1 THE COURT: DO YOU HAVE "YES" ANSWERS?
2 PROSPECTIVE JUROR NO. 9 (3960): LET'S SEE.
3 8 AND 9.
4 THE COURT: TELL US ABOUT 8, PLEASE.
5 PROSPECTIVE JUROR NO. 9 (3960): I WAS ARRESTED
6 FOR RECEIVING STOLEN PROPERTY POSSIBLY 30 YEARS AGO.
7 THE COURT: WHAT PROPERTY DID YOU RECEIVE?
8 PROSPECTIVE JUROR NO. 9 (3960): BICYCLE.
9 THE COURT: WHO DID YOU GET IT FROM?
10 PROSPECTIVE JUROR NO. 9 (3960): A FRIEND.
11 THE COURT: DID HE GIVE IT TO YOU OR YOU BOUGHT
12 IT?
13 PROSPECTIVE JUROR NO. 9 (3960): I BOUGHT IT.
14 THE COURT: AND IT WAS A STOLEN BIKE?
15 PROSPECTIVE JUROR NO. 9 (3960): YES.
16 THE COURT: WERE YOU A JUVENILE AT THE TIME OR AN
17 ADULT?
18 PROSPECTIVE JUROR NO. 9 (3960): YES.
19 THE COURT: THE CASE GO TO JUVENILE COURT?
20 PROSPECTIVE JUROR NO. 9 (3960): NO.
21 THE COURT: WHAT HAPPENED?
22 PROSPECTIVE JUROR NO. 9 (3960): ACTUALLY, I
23 BELIEVE IT WAS CRIMINAL COURT.
24 THE COURT: WHAT HAPPENED IN CRIMINAL COURT?
25 PROSPECTIVE JUROR NO. 9 (3960): I WAS PLACED ON
26 SUMMARY PROBATION.
27 THE COURT: SO YOU WERE CHARGED WITH A
28 MISDEMEANOR?

1 PROSPECTIVE JUROR NO. 9 (3960): YES.

2 THE COURT: DID YOU PLEAD GUILTY?

3 PROSPECTIVE JUROR NO. 9 (3960): NO CONTEST.

4 THE COURT: DO YOU THINK YOU WERE TREATED FAIRLY

5 BY THE POLICE AND BY THE COURT SYSTEM?

6 PROSPECTIVE JUROR NO. 9 (3960): YES.

7 THE COURT: WHICH POLICE DEPARTMENT ARRESTED YOU?

8 PROSPECTIVE JUROR NO. 9 (3960): L.A.P.D. HARBOR.

9 THE COURT: AND WHICH COURTHOUSE DID YOU GO

10 THROUGH?

11 PROSPECTIVE JUROR NO. 9 (3960): I BELIEVE IT WAS

12 SAN PEDRO.

13 THE COURT: OKAY.

14 IS THERE ANYTHING ABOUT THAT CASE THAT

15 WOULD IN ANY WAY IMPACT ON YOU DECIDING THIS CASE?

16 PROSPECTIVE JUROR NO. 9 (3960): NO.

17 THE COURT: NO. 9?

18 PROSPECTIVE JUROR NO. 9 (3960): I HAVE A

19 BROTHER-IN-LAW THAT'S AN INVESTIGATOR WITH THE D.A.'S

20 OFFICE IN ORANGE COUNTY.

21 THE COURT: DID YOU ACCEPT WHAT I SAID REGARDING

22 WITNESS CREDIBILITY?

23 PROSPECTIVE JUROR NO. 9 (3960): YES.

24 THE COURT: OKAY.

25 CAN YOU BE FAIR TO BOTH SIDES?

26 PROSPECTIVE JUROR NO. 9 (3960): YES.

27 THE COURT: VERY GOOD. THANK YOU.

28 MR. LEONARD?

1 MR. LEONARD: NO QUESTIONS.
2 PASS FOR CAUSE.
3 THE COURT: MR. STENNIS?
4 MR. STENNIS: NO QUESTIONS.
5 PASS FOR CAUSE.
6 THE COURT: NEXT PEREMPTORY IS WITH THE PEOPLE.
7 MR. STENNIS: ACCEPT THE PANEL.
8 THE COURT: NEXT PEREMPTORY IS WITH THE DEFENSE.
9 MR. LEONARD: YOUR HONOR, CAN WE ASK THE COURT TO
10 THANK AND EXCUSE PROSPECTIVE JUROR NO. 9?
11 THANK YOU, SIR.
12 THE COURT: ALL RIGHT. THANK YOU.
13 RETURN TO THE JURY ASSEMBLY ROOM, PLEASE.
14 THE CLERK: FOR JUROR SEAT NO. 9, JUROR NO. 4550.
15 THE COURT: HI.
16 PROSPECTIVE JUROR NO. 9 (4550): HI.
17 THE COURT: CAN YOU GIVE US THE INFORMATION,
18 PLEASE.
19 PROSPECTIVE JUROR NO. 9 (4550): I.D. NO. 4550.
20 I AM FROM MANHATTAN BEACH.
21 I'M A NURSE MANAGER.
22 I'M MARRIED, AND MY HUSBAND IS A RADIOLOGIC
23 TECHNOLOGIST.
24 I HAVE A 17-YEAR-OLD SON. HE'LL BE A
25 SENIOR THIS COMING SCHOOL YEAR.
26 I WAS NOT SELECTED AS A JUROR IN PRIOR JURY
27 DUTY.
28 THE COURT: YOU SAID YOU WERE NOT SELECTED?

1 PROSPECTIVE JUROR NO. 9 (4550): I WAS NOT
2 SELECTED AS A JUROR.

3 THE COURT: THIS IS YOUR FIRST TIME?

4 PROSPECTIVE JUROR NO. 9 (4550): THIS IS MY FIRST
5 TIME.

6 THE COURT: DO YOU HAVE THE -- PARDON ME -- THE
7 STATE OF MIND THAT IS MANDATORY?

8 PROSPECTIVE JUROR NO. 9 (4550): YES.

9 THE COURT: DO YOU HAVE ANY PROBLEMS OR QUARREL
10 WITH ANY OF THE LEGAL CONCEPTS THAT ANY OF US HAVE
11 TALKED ABOUT?

12 PROSPECTIVE JUROR NO. 9 (4550): NO.

13 THE COURT: IF YOU THOUGHT THE EVIDENCE PROVED
14 GUILT BEYOND A REASONABLE DOUBT, WOULD YOU -- WHAT WOULD
15 YOUR VERDICT BE?

16 PROSPECTIVE JUROR NO. 9 (4550): GUILTY.

17 THE COURT: IF YOU DID NOT THINK THAT THE EVIDENCE
18 ROSE TO THAT LEVEL, WHAT WOULD YOUR VERDICT BE?

19 PROSPECTIVE JUROR NO. 9 (4550): NOT GUILTY.

20 THE COURT: DO YOU HAVE "YES" ANSWERS TO THE
21 QUESTIONS?

22 PROSPECTIVE JUROR NO. 9 (4550): YES, SIR.

23 THE COURT: WHICH QUESTIONS?

24 PROSPECTIVE JUROR NO. 9 (4550): NO. 6, MY COUSIN.

25 THE COURT: ANY OTHER ONE?

26 PROSPECTIVE JUROR NO. 9 (4550): AND NO. 7.

27 THE COURT: OKAY.

28 TELL US ABOUT 6, PLEASE.

1 PROSPECTIVE JUROR NO. 9 (4550): NO. 6, MY COUSIN
2 IS A CORPORATE LAWYER.

3 THE COURT: YOU CAN'T DISCUSS THE CASE WITH HIM OR
4 HER.

5 MALE OR FEMALE?

6 PROSPECTIVE JUROR NO. 9 (4550): A MALE.

7 THE COURT: CAN'T DISCUSS THE CASE WITH HIM OR
8 ANYBODY ELSE WHILE THE CASE IS GOING ON; RIGHT?

9 PROSPECTIVE JUROR NO. 9 (4550): YES.

10 THE COURT: OKAY.

11 NO. 7.

12 PROSPECTIVE JUROR NO. 9 (4550): NO. 7. MY CAR
13 STEREO WAS STOLEN. THAT WAS WAY BACK IN '99. IT'S --
14 MY HUSBAND PARKED IT ON THE STREET SOMEWHERE IN, I
15 THINK, CANOGA PARK.

16 THE COURT: THAT'S THE ONLY ONE?

17 DID YOU REPORT IT TO THE POLICE?

18 PROSPECTIVE JUROR NO. 9 (4550): YES. MY HUSBAND
19 REPORTED IT.

20 THE COURT: AND YOU NEVER GOT THE STEREO BACK?

21 PROSPECTIVE JUROR NO. 9 (4550): NO.

22 THE COURT: DO YOU HOLD IT AGAINST THE POLICE?

23 PROSPECTIVE JUROR NO. 9 (4550): NO.

24 THE COURT: WOULD YOU HOLD IT AGAINST
25 MR. BURGHARDT?

26 PROSPECTIVE JUROR NO. 9 (4550): NO.

27 THE COURT: DO YOU HAVE ANY OTHER "YES" ANSWERS?

28 PROSPECTIVE JUROR NO. 9 (4550): THAT'S IT.

1 THE COURT: CAN YOU GIVE BOTH SIDES A FAIR TRIAL?
2 PROSPECTIVE JUROR NO. 9 (4550): YES.
3 THE COURT: VERY GOOD.
4 MR. LEONARD?
5 MR. LEONARD: NO QUESTIONS.
6 PASS FOR CAUSE.
7 THE COURT: MR. STENNIS?
8 MR. STENNIS: NO QUESTIONS.
9 PASS FOR CAUSE.
10 THE COURT: NEXT PEREMPTORY IS WITH THE PEOPLE.
11 MR. STENNIS: YOUR HONOR, THE PEOPLE ACCEPT THE
12 PANEL.
13 THE COURT: NEXT PEREMPTORY IS WITH THE DEFENSE.
14 MR. LEONARD: WE ASK THE COURT TO THANK AND EXCUSE
15 JUROR NO. 9, JUDGE.
16 THE COURT: ALL RIGHT.
17 THANK YOU, MA'AM.
18 PROSPECTIVE JUROR NO. 9 (4550): AM I NO. 9?
19 THE COURT: YOU ARE.
20 THE CLERK: FOR JUROR FOR SEAT NO. 9, JUROR
21 NO. 3481.
22 THE COURT: HI.
23 PROSPECTIVE JUROR NO. 9 (3481): HOW'S IT GOING?
24 THE COURT: OKAY.
25 CAN YOU GIVE US THE INFORMATION, PLEASE?
26 PROSPECTIVE JUROR NO. 9 (3481): SURE.
27 MY NUMBER IS 3489 (SIC).
28 I LIVE IN GRANADA HILLS.

1 THE COURT: ARE YOU SURE IT'S NOT 3481?

2 PROSPECTIVE JUROR NO. 9 (3481): YEAH, 3481.

3 THE COURT: YOU LIVE WHERE?

4 PROSPECTIVE JUROR NO. 9 (3481): GRANADA HILLS.

5 THE COURT: HOW DID YOU GET ASSIGNED TO TORRANCE?

6 PROSPECTIVE JUROR NO. 9 (3481): MY PARENTS LIVE

7 OUT HERE, AND I LIVE UP THERE FOR SCHOOL.

8 I'M SELF-EMPLOYED, AND I'M SINGLE.

9 I HAVE NO SPOUSE OR CHILDREN.

10 AND I NEVER BEEN ON A JURY BEFORE.

11 THE COURT: OKAY.

12 HOW ARE YOU SELF-EMPLOYED? WHAT DO YOU DO?

13 PROSPECTIVE JUROR NO. 9 (3481): WELL, ACTUALLY

14 I'M JUST FINISHING GETTING OFF THE GROUND, A NONPROFIT

15 ORGANIZATION. IT'S LIKE AN EVENT COORDINATOR WHERE I GO

16 AND WORK WITH CLUB AND BAR VENUES IN LOS ANGELES AND

17 OTHER PLACES AND WE SET UP, LIKE, A SUPPLEMENTARY,

18 COUPLE DOLLARS, TO THEIR DRINKS AND FOOD AND THEN

19 WHATEVER THAT MAKES FOR A SPECIFIC NIGHT, COUPLE NIGHTS

20 A WEEK EACH MONTH, WE DONATE ALL OF THAT MONEY TO A

21 SPECIFIC CHARITY.

22 THE COURT: REALLY? THAT'S NICE.

23 PROSPECTIVE JUROR NO. 9 (3481): (NODS HEAD IN THE

24 AFFIRMATIVE.)

25 THE COURT: YOU GET A PORTION OF THE MONEY, I

26 ASSUME.

27 PROSPECTIVE JUROR NO. 9 (3481): KINDA. BUT I

28 MEAN, YOU KNOW, I MAKE MONEY SOMEHOW, BUT, YOU KNOW,

1 IT'S BEEN PRETTY COOL SO FAR.

2 THE COURT: HOW DO YOU DECIDE WHICH CHARITY?

3 PROSPECTIVE JUROR NO. 9 (3481): EACH MONTH IT'S
4 SOMETHING DIFFERENT. AND THE STATE OF THE WORLD RIGHT
5 NOW, THERE'S A LOT OF ONES THAT ARE DESERVING OF IT. SO
6 IT JUST DEPENDS EVERY MONTH. YOU TRY TO DO SOMETHING
7 DIFFERENT.

8 THE COURT: PRETTY NICE.

9 ARE YOU LIVING WITH YOUR FOLKS NOW?

10 PROSPECTIVE JUROR NO. 9 (3481): NO. I HAVE A
11 HOUSE IN GRANADA HILLS.

12 THE COURT: ARE YOU COMMUTING FOR THIS JURY
13 SERVICE?

14 PROSPECTIVE JUROR NO. 9 (3481): (NODS HEAD IN THE
15 AFFIRMATIVE.)

16 THE COURT: HOW LONG DID IT TAKE TO GET HERE
17 TODAY?

18 PROSPECTIVE JUROR NO. 9 (3481): NOT TOO LONG.
19 ABOUT AN HOUR OR SO.

20 THE COURT: YOU HAVE NEVER BEEN A JUROR BEFORE.

21 PROSPECTIVE JUROR NO. 9 (3481): HUH-UH, NO.

22 THE COURT: YOU UNDERSTAND WHAT IS INVOLVED AS FAR
23 AS THE MENTAL STATE YOU HAVE TO HAVE?

24 PROSPECTIVE JUROR NO. 9 (3481): YES.

25 THE COURT: DO YOU HAVE THAT STATE OF MIND?

26 PROSPECTIVE JUROR NO. 9 (3481): ABSOLUTELY.

27 THE COURT: ANY PROBLEM OR ANY QUARREL WITH ANY OF
28 THE LEGAL CONCEPTS OR ANYTHING YOU HEARD SO FAR?

1 PROSPECTIVE JUROR NO. 9 (3481): NOPE.

2 THE COURT: IF YOU THOUGHT THE EVIDENCE PROVED

3 GUILT BEYOND A REASONABLE DOUBT, WHAT WOULD YOUR VERDICT

4 BE?

5 PROSPECTIVE JUROR NO. 9 (3481): GUILTY.

6 THE COURT: IF YOU DIDN'T THINK THE EVIDENCE ROSE

7 TO THAT LEVEL?

8 PROSPECTIVE JUROR NO. 9 (3481): NOT GUILTY.

9 THE COURT: DO YOU HAVE "YES" ANSWERS?

10 PROSPECTIVE JUROR NO. 9 (3481): YES.

11 I HAVE 4, 6 AND 7.

12 THE COURT: TELL US ABOUT 6, PLEASE.

13 PROSPECTIVE JUROR NO. 9 (3481): 6. MY AUNT AND

14 UNCLE ARE BOTH CRIMINAL LAWYERS.

15 THE COURT: WHERE?

16 PROSPECTIVE JUROR NO. 9 (3481): WELL, THEY --

17 THEY'RE RETIRED NOW, BUT THEY WERE EDUCATED AND SO --

18 AND WORKED FOR A LONG TIME.

19 THE COURT: WHERE DID THEY PRACTICE?

20 PROSPECTIVE JUROR NO. 9 (3481): BEVERLY HILLS,

21 LOS ANGELES, THAT AREA.

22 THE COURT: WHAT KIND OF LAW DID THEY PRACTICE?

23 PROSPECTIVE JUROR NO. 9 (3481): CRIMINAL, I

24 BELIEVE.

25 THE COURT: CRIMINAL DEFENSE? THEY DID WHAT

26 MR. LEONARD DOES?

27 PROSPECTIVE JUROR NO. 9 (3481): I BELIEVE SO.

28 THE COURT: IS THAT GOING TO GIVE YOU AN

1 ALLEGIANCE WITH MR. LEONARD?

2 PROSPECTIVE JUROR NO. 9 (3481): NO.

3 THE COURT: WHAT WERE THEIR NAMES OR ARE THEIR
4 NAMES?

5 PROSPECTIVE JUROR NO. 9 (3481): MARK AND SHANNON
6 HUGHES (PHONETIC).

7 THE COURT: OH.

8 PROSPECTIVE JUROR NO. 9 (3481): SHE'S BEEN
9 RETIRED FOR A WHILE.

10 THE COURT: YOU CAN'T DISCUSS THE CASE WITH THEM
11 OR ANYBODY ELSE WHILE THE CASE IS GOING ON.

12 PROSPECTIVE JUROR NO. 9 (3481): I UNDERSTAND.

13 THE COURT: NO. 7.

14 PROSPECTIVE JUROR NO. 9 (3481): 7. I ACTUALLY,
15 ABOUT TEN DAYS AGO IN MY HOUSE IN THE VALLEY, I WAS OVER
16 VISITING SOME NEIGHBORS. AND THERE WAS, LIKE, A
17 HELICOPTER SEARCHING FOR SOMEONE. AND SOMEONE WAS
18 BACKYARD HOPPING AND THEN ENDED UP IN OURS AND/OR MY
19 FRIEND'S HOUSE, ACTUALLY.

20 AND I GUESS THEY STOWED A GUN SOMEWHERE.
21 AND THE POLICE CAME AND SEARCHED THE HOUSE AND TRIED TO
22 FIND THE GUY. AND I GUESS THEY FOUND HIM SOMEWHERE AND
23 TOOK HIM AWAY. AND THEN ONE OF HIS FRIENDS, OR
24 SOMETHING, HAD SHOWED UP A LITTLE BIT LATER.

25 WE WERE HANGING OUT, WATCHING A MOVIE, AND
26 WE SEE SOMEONE POKING AROUND THE BACKYARD AS ONE OF HIS
27 FRIENDS. AND SO WE WENT TO KINDA ASK, "WHAT'S GOING ON?
28 WHAT ARE YOU DOING HERE?"

1 AND ONE OF HIS FRIENDS WAS LOOKING FOR A
2 GUN, IN THE BACKYARD, AROUND THEIR BACKYARD AND COULDN'T
3 FIND IT AND THREATENED US BY SAYING HE WAS GOING TO BE
4 BACK AND LOOKING FOR A GUN AND LOOK FOR THE WEAPON. AND
5 WE DIDN'T KNOW --

6 THE COURT REPORTER: JUDGE, CAN YOU ASK HIM TO
7 SLOW DOWN?

8 PROSPECTIVE JUROR NO. 9 (3481): THAT'S A LITTLE
9 EXCITING, BUT WE REPORTED IT AGAIN TO THE POLICE, AND,
10 YOU KNOW, THERE WASN'T MUCH THEY COULD DO BUT --

11 THE COURT: NO SUSPECT ARRESTED?

12 PROSPECTIVE JUROR NO. 9 (3481): WELL, THEY
13 ARRESTED THE PERSON THAT THEY WERE LOOKING AFTER, BUT
14 THE PERSON THAT CAME LOOKING FOR THE GUN AFTERWARD, WE
15 DON'T KNOW WHO IT WAS OR WHAT HAPPENED TO HIM. AND, YOU
16 KNOW, SINCE THEY -- WE CALLED IN, THEY SAID THEY STILL
17 WILL. AND WE SAID, NO. AND THEY SAID, WE REALLY CAN'T
18 DO ANYTHING IF HE'S NOT THERE. SO --

19 THE COURT: WHAT WAS THE RACE OF THIS PERSON
20 LOOKING FOR THE GUN?

21 PROSPECTIVE JUROR NO. 9 (3481): HE WAS
22 AFRICAN-AMERICAN.

23 THE COURT: DO YOU FEEL, SINCE MR. BURGHARDT IS
24 AFRICAN-AMERICAN --

25 PROSPECTIVE JUROR NO. 9 (3481): NO PROBLEM. I
26 WISH HIM GOOD LUCK.

27 THE COURT: OKAY.

28 ANY OTHER "YES" ANSWERS?

1 PROSPECTIVE JUROR NO. 9 (3481): NOPE.

2 THE COURT: WOULD YOU BE FAIR TO BOTH SIDES?

3 PROSPECTIVE JUROR NO. 9 (3481): YES.

4 THE COURT: VERY GOOD.

5 MR. LEONARD?

6 MR. LEONARD: NO QUESTIONS.

7 I'LL PASS FOR CAUSE.

8 THE COURT: MR. STENNIS?

9 MR. STENNIS: NO QUESTIONS.

10 PASS FOR CAUSE.

11 THE COURT: NEXT PEREMPTORY IS WITH THE PEOPLE.

12 MR. STENNIS: THANK AND EXCUSE JUROR NO. 9.

13 THE COURT: ALL RIGHT.

14 THANK YOU, JUROR NO. 9. GO BACK TO GRANADA

15 HILLS.

16 PROSPECTIVE JUROR NO. 9 (3481): THANK YOU.

17 THE COURT: BUT GO BACK TO THE JURY ASSEMBLY ROOM

18 FIRST.

19 THE CLERK: FOR JUROR NO. 9, JUROR NO. 6659.

20 PROSPECTIVE JUROR NO. 9 (6659): 59?

21 THE CLERK: 59.

22 THE COURT: HI.

23 PROSPECTIVE JUROR NO. 9 (6659): HI.

24 THE COURT: GIVE US THE INFORMATION, PLEASE.

25 PROSPECTIVE JUROR NO. 9 (6659): MY JUROR I.D.

26 NUMBER IS 6659.

27 MY AREA OF RESIDENCE IS -- IS TORRANCE.

28 I'M A FINANCIAL ANALYST FOR L.A. COUNTY.

1 I AM MARRIED. NO CHILDREN. MY HUSBAND IS
2 A PHARMACIST, SELF-PROPRIETOR.

3 AND I'VE BEEN ON TWO CIVIL JURORS --
4 JURIES, AND WE CAME TO A VERDICT.

5 THE COURT: BOTH TIMES?

6 PROSPECTIVE JUROR NO. 9 (6659): YES.

7 THE COURT: ALL RIGHT.

8 SO SINCE YOU HAVE BEEN A JUROR BEFORE, YOU
9 KNOW WHAT IS ENTAILED. YOU GOT TO BE FAIR TO BOTH SIDES
10 AND GIVE BOTH SIDES A FAIR TRIAL AND RENDER THE VERDICT
11 THAT IS DICTATED BY THE EVIDENCE. YES?

12 PROSPECTIVE JUROR NO. 9 (6659): YES.

13 THE COURT: IS THERE ANYTHING ABOUT THAT THAT
14 PREVENTS YOU FROM DOING THAT IN THIS CASE?

15 PROSPECTIVE JUROR NO. 9 (6659): NO.

16 THE COURT: IF YOU THOUGHT THE EVIDENCE PROVED
17 GUILT BEYOND A REASONABLE DOUBT, WHAT WOULD YOUR VERDICT
18 BE?

19 PROSPECTIVE JUROR NO. 9 (6659): PARDON ME? I'M
20 SORRY.

21 THE COURT: IF YOU THOUGHT THE EVIDENCE PROVED
22 GUILT BEYOND A REASONABLE DOUBT, WHAT WOULD YOUR VERDICT
23 BE?

24 PROSPECTIVE JUROR NO. 9 (6659): GUILTY.

25 THE COURT: IF YOU DID NOT THINK THE EVIDENCE ROSE
26 TO THAT LEVEL?

27 PROSPECTIVE JUROR NO. 9 (6659): NOT GUILTY.

28 THE COURT: DO YOU HAVE "YES" ANSWERS?

1 PROSPECTIVE JUROR NO. 9 (6659) : YES, I DO.

2 THE COURT: WHICH ONES?

3 PROSPECTIVE JUROR NO. 9 (6659) : 6 AND 7.

4 THE COURT: TELL US, PLEASE.

5 PROSPECTIVE JUROR NO. 9 (6659) : A CLOSE FRIEND IS
6 JUST A PRODUCT ATTORNEY. HE PRIMARILY IS IN THE
7 EXERCISE EQUIPMENT.

8 THE COURT: CAN'T DISCUSS THE CASE WITH HIM OR
9 ANYBODY ELSE WHILE THE CASE IS ONGOING.

10 PROSPECTIVE JUROR NO. 9 (6659) : YES, I
11 UNDERSTAND.

12 THE COURT: NO. 7?

13 PROSPECTIVE JUROR NO. 9 (6659) : AND NO. 7. I
14 HAVE AN UNCLE THAT WAS KILLED BY A DRUNK DRIVER.

15 THE COURT: WAS THE PERSON ARRESTED?

16 PROSPECTIVE JUROR NO. 9 (6659) : YES.

17 THE COURT: PROSECUTED?

18 PROSPECTIVE JUROR NO. 9 (6659) : YES.

19 THE COURT: AND WHICH POLICE DEPARTMENT MADE THE
20 ARREST?

21 PROSPECTIVE JUROR NO. 9 (6659) : I HAVE NO IDEA.
22 I THINK IT WAS IN SAN BERNARDINO SOMEWHERE.

23 THE COURT: WERE YOU SATISFIED WITH THE OUTCOME OF
24 THE CASE IN COURT?

25 PROSPECTIVE JUROR NO. 9 (6659) : YES.

26 THE COURT: DO YOU KNOW THE ETHNICITY OF THE
27 PERSON THAT WAS THE DRUNK DRIVER?

28 PROSPECTIVE JUROR NO. 9 (6659) : HISPANIC.

1 THE COURT: IS THERE ANYTHING ABOUT THAT CASE THAT
2 WOULD IMPACT YOU IN DECIDING MR. BURGHARDT'S CASE?
3 PROSPECTIVE JUROR NO. 9 (6659): NO.
4 THE COURT: ANY OTHER "YES" ANSWERS?
5 PROSPECTIVE JUROR NO. 9 (6659): NO.
6 THE COURT: CAN YOU GIVE BOTH SIDES A FAIR TRIAL?
7 PROSPECTIVE JUROR NO. 9 (6659): YES.
8 THE COURT: VERY GOOD.
9 MR. LEONARD?
10 MR. LEONARD: NO QUESTIONS.
11 PASS FOR CAUSE.
12 THE COURT: MR. STENNIS.
13 MR. STENNIS: NO QUESTIONS.
14 PASS FOR CAUSE.
15 THE COURT: NEXT PEREMPTORY IS WITH THE DEFENSE.
16 MR. LEONARD: YES.
17 ACCEPT THE PANEL AS CONSTITUTED.
18 THE COURT: NEXT PEREMPTORY IS WITH THE PEOPLE.
19 MR. STENNIS: ACCEPT THE PANEL.
20 THE COURT: GREAT.
21 SWEAR THE PANEL.
22 THE CLERK: WOULD THE JURY PANEL PLEASE STAND AND
23 RAISE YOUR RIGHT HAND.
24 YOU DO, AND EACH OF YOU, UNDERSTAND AND
25 AGREE THAT YOU WILL WELL AND TRULY TRY THE CAUSE NOW
26 PENDING BEFORE THIS COURT AND A TRUE VERDICT RENDER
27 ACCORDING ONLY TO THE EVIDENCE PRESENTED TO YOU AND TO
28 THE INSTRUCTIONS OF THE COURT.

1 IF YOU UNDERSTAND AND AGREE, PLEASE SAY,
2 "YES."
3 THE JURY: YES.
4 THE CLERK: YOU MAY BE SEATED.
5 THE COURT: ALL RIGHT.
6 WE'RE GOING TO SELECT TWO ALTERNATES. IF
7 YOU ARE THE FIRST NUMBER CALLED, PLEASE SIT IN THE UPPER
8 VACANT SEAT. AND IF YOU'RE THE SECOND NUMBER CALLED,
9 SIT IN THE LOWER VACANT SEAT.
10 MARCIA.
11 THE CLERK: FOR ALTERNATE SEAT NO. 1, JUROR
12 NO. 7750.
13 FOR ALTERNATE SEAT NO. 2, 9022.
14 THE COURT: ALL RIGHT.
15 PROSPECTIVE ALTERNATE NO. 1, WOULD YOU GIVE
16 US THE INFORMATION ON QUESTION NUMBER --
17 PROSPECTIVE ALTERNATE JUROR NO. 1 (7750): MY
18 NO. 7750.
19 I LIVE IN TORRANCE.
20 MY OCCUPATION, I'M A BUYER.
21 I AM MARRIED. MY WIFE IS AN EDUCATOR. I
22 HAVE GROWN CHILDREN.
23 MY SON IS A BUSINESS MANAGER. MY DAUGHTER
24 IS IN COLLEGE.
25 AND I HAVE BEEN ON -- IN FOUR JURIES, THREE
26 CRIMINAL AND ONE CIVIL.
27 THE COURT: YOUR DAUGHTER GOES TO WHAT COLLEGE?
28 PROSPECTIVE ALTERNATE JUROR NO. 1 (7750):

1 LONG BEACH STATE.

2 THE COURT: WHAT IS SHE STUDYING?

3 PROSPECTIVE ALTERNATE JUROR NO. 1 (7750):

4 MECHANICAL ENGINEERING.

5 THE COURT: AND WHAT DO YOU BUY WHEN YOU BUY?

6 PROSPECTIVE ALTERNATE JUROR NO. 1 (7750):

7 ELECTRONICS.

8 THE COURT: DID THE CIVIL CASE REACH A VERDICT?

9 PROSPECTIVE ALTERNATE JUROR NO. 1 (7750): YES, IT
10 DID.

11 THE COURT: AND WHAT WERE THE CHARGES IN THE THREE
12 CRIMINAL CASES?

13 PROSPECTIVE ALTERNATE JUROR NO. 1 (7750): FIRST
14 ONE WAS D.U.I.

15 THE COURT: VERDICT?

16 PROSPECTIVE ALTERNATE JUROR NO. 1 (7750): YES.

17 THE COURT: SECOND ONE?

18 PROSPECTIVE ALTERNATE JUROR NO. 1 (7750):
19 ATTEMPTED MURDER.

20 THE COURT: VERDICT?

21 PROSPECTIVE ALTERNATE JUROR NO. 1 (7750): YES.

22 AND THE THIRD ONE WAS ROBBERY.

23 THE COURT: VERDICT?

24 PROSPECTIVE ALTERNATE JUROR NO. 1 (7750): YES.

25 THE COURT: ALL RIGHT.

26 WERE YOU EVER AN ALTERNATE?

27 PROSPECTIVE ALTERNATE JUROR NO. 1 (7750): I WAS
28 AN ALTERNATE IN THE ROBBERY CASE.

1 THE COURT: SO YOU KNOW WHAT THE ALTERNATES DO.
2 PROSPECTIVE ALTERNATE JUROR NO. 1 (7750): YES.
3 THE COURT: YOU'RE A SUBSTITUTE JUROR. WE HAVE
4 OUR TWELVE JURORS, BUT SOMETIMES A JUROR HAS TO LEAVE
5 THE CASE FOR ONE REASON OR THE OTHER.
6 WE DON'T THEN PROCEED WITH 11 JURORS. WE
7 HAVE TO REPLACE THAT JUROR AND THE REPLACEMENT IS ONE OF
8 THE ALTERNATES.
9 ANY QUARREL WITH ANY OF THE LEGAL
10 CONCEPTS --
11 PROSPECTIVE ALTERNATE JUROR NO. 1 (7750): NO,
12 SIR.
13 THE COURT: -- THAT YOU HEARD?
14 PROSPECTIVE ALTERNATE JUROR NO. 1 (7750): NO.
15 THE COURT: WOULD YOU HAVE ANY PROBLEM VOTING
16 GUILTY IF THAT WAS WHAT THE EVIDENCE CALLED FOR?
17 PROSPECTIVE ALTERNATE JUROR NO. 1 (7750): NO..
18 THE COURT: WOULD YOU HAVE ANY PROBLEM VOTING NOT
19 GUILTY IF THAT'S WHAT THE EVIDENCE CALLED FOR?
20 PROSPECTIVE ALTERNATE JUROR NO. 1 (7750): NO.
21 THE COURT: DO YOU HAVE ANY "YES" ANSWERS?
22 PROSPECTIVE ALTERNATE JUROR NO. 1 (7750): YES, I
23 DO.
24 THE COURT: WHICH ONES?
25 PROSPECTIVE ALTERNATE JUROR NO. 1 (7750): NO. 6.
26 MY BROTHER'S AN ATTORNEY IN VENTURA COUNTY.
27 THE COURT: WHAT KIND OF LAW DOES HE PRACTICE?
28 PROSPECTIVE ALTERNATE JUROR NO. 1 (7750): I

1 HAVEN'T TALKED TO HIM SINCE HE CHANGED FIRMS, BUT I
2 BELIEVE STILL IN WORKMEN COMPENSATION LAW.

3 THE COURT: HAS HE EVER PRACTICED CRIMINAL LAW?

4 PROSPECTIVE ALTERNATE JUROR NO. 1 (7750): NO.

5 THE COURT: YOU CAN'T DISCUSS THE CASE WITH YOUR
6 BROTHER OR ANYBODY ELSE, WHILE THE CASE IS GOING ON;
7 RIGHT?

8 PROSPECTIVE ALTERNATE JUROR NO. 1 (7750):
9 CORRECT.

10 THE COURT: ALL RIGHT.

11 IS THAT YOUR ONLY "YES" ANSWER?

12 PROSPECTIVE ALTERNATE JUROR NO. 1 (7750): THAT'S
13 MY ONLY "YES" ANSWER.

14 THE COURT: CAN YOU BE FAIR TO BOTH SIDES?

15 PROSPECTIVE ALTERNATE JUROR NO. 1 (7750): YES, I
16 CAN.

17 THE COURT: VERY GOOD.

18 PROSPECTIVE ALTERNATE NO. 2, CAN YOU GIVE
19 US THE INFORMATION, PLEASE?

20 QUESTION ONE.

21 PROSPECTIVE ALTERNATE JUROR NO. 2 (9022): MY
22 JUROR I.D. NUMBER IS 9022.

23 I LIVE IN EL SEGUNDO.

24 I AM A MECHANICAL ENGINEER AT AN AEROSPACE
25 COMPANY, AND A PART-TIME MASTERS STUDENT IN MECHANICAL
26 ENGINEERING.

27 I AM NOT MARRIED.

28 AND I DON'T HAVE ANY PRIOR JURY EXPERIENCE.

1 THE COURT: YOU UNDERSTAND NOW WHAT THE FRAME OF
2 MIND IS MANDATORY FOR JURORS TO HAVE?

3 PROSPECTIVE ALTERNATE JUROR NO. 2 (9022): YES.

4 THE COURT: AND YOU UNDERSTAND WHAT THE PURPOSE OF
5 THE ALTERNATES IS --

6 PROSPECTIVE ALTERNATE JUROR NO. 2 (9022): YES.

7 THE COURT: -- IF YOU'RE A SUBSTITUTE JUROR?

8 YOU HAVE TO PAY JUST AS CLOSE ATTENTION AS
9 THE TWELVE JURORS BECAUSE ANY MOMENT ONE OF THEM MIGHT
10 HAVE AN EMERGENCY AND HAVE TO LEAVE THE CASE.

11 WE DON'T THEN, YOU KNOW, GO BACK AND START
12 AT THE BEGINNING. WE JUST, YOU KNOW, KEEP GOING.

13 SO YOU HAVE TO STAY RIGHT ON TOP OF ALL THE
14 EVIDENCE.

15 ARE YOU WILLING TO DO THAT?

16 PROSPECTIVE ALTERNATE JUROR NO. 2 (9022): YES.

17 THE COURT: ANY QUARREL WITH ANY OF THE LEGAL
18 CONCEPTS WE TALKED ABOUT?

19 PROSPECTIVE ALTERNATE JUROR NO. 2 (9022): NO.

20 THE COURT: IF YOU THOUGHT THE EVIDENCE PROVED
21 GUILT BEYOND A REASONABLE DOUBT, WHAT WOULD YOUR VERDICT
22 BE?

23 PROSPECTIVE ALTERNATE JUROR NO. 2 (9022): GUILTY.

24 THE COURT: IF YOU THOUGHT, WELL, I THINK HE'S
25 PROBABLY GUILTY OR MIGHT BE GUILTY, COULD BE GUILTY, BUT
26 I'M NOT CONVINCED BEYOND A REASONABLE DOUBT, WHAT WOULD
27 YOUR VERDICT BE?

28 PROSPECTIVE ALTERNATE JUROR NO. 2 (9022): NOT

1 GUILTY.

2 THE COURT: DO YOU HAVE "YES" ANSWERS.

3 PROSPECTIVE ALTERNATE JUROR NO. 2 (9022): I DO.

4 THE COURT: WHICH ONE?

5 PROSPECTIVE ALTERNATE JUROR NO. 2 (9022): 6, 7,
6 AND 9.

7 THE COURT: TELL US ABOUT 6.

8 PROSPECTIVE ALTERNATE JUROR NO. 2 (9022): I HAVE
9 A COUSIN WHO IS A LAWYER. HE NO LONGER PRACTICES LAW.

10 THE COURT: WHY NOT?

11 PROSPECTIVE ALTERNATE JUROR NO. 2 (9022): HE WENT
12 INTO INSURANCE INSTEAD.

13 THE COURT: AND WHAT KIND OF LAW DID HE PRACTICE
14 WHEN HE WAS?

15 PROSPECTIVE ALTERNATE JUROR NO. 2 (9022): I'M NOT
16 SURE, BUT I THINK IT -- I'M NOT SURE.

17 THE COURT: YOU KNOW YOU CAN'T TALK ABOUT THE CASE
18 WITH HIM OR ANYBODY ELSE.

19 PROSPECTIVE ALTERNATE JUROR NO. 2 (9022): I
20 UNDERSTAND.

21 THE COURT: NO. 7.

22 PROSPECTIVE ALTERNATE JUROR NO. 2 (9022): I ALSO
23 HAVE ANOTHER ANSWER FOR 6.

24 THE COURT: OKAY.

25 PROSPECTIVE ALTERNATE JUROR NO. 2 (9022): MY
26 MOM'S COUSIN IS A RETIRED CORPORATE LAWYER.

27 THE COURT: OKAY.

28 NO. 7.

1 PROSPECTIVE ALTERNATE JUROR NO. 2 (9022) : NO. 7.

2 MY BROTHER HAD A PERSONAL WATERCRAFT STOLEN FROM MY
3 FAMILY'S CABIN.

4 THE COURT: WHERE WAS THE CABIN?

5 PROSPECTIVE ALTERNATE JUROR NO. 2 (9022) : IN
6 MICHIGAN.

7 THE COURT: WAS IT EVER RECOVERED?

8 PROSPECTIVE ALTERNATE JUROR NO. 2 (9022) : IT WAS.

9 THE COURT: WAS ANYBODY ARRESTED?

10 PROSPECTIVE ALTERNATE JUROR NO. 2 (9022) : I'M NOT
11 SURE.

12 THE COURT: WAS IT A BOAT?

13 PROSPECTIVE ALTERNATE JUROR NO. 2 (9022) : JET
14 SKI.

15 THE COURT: JET SKI. WAS THE JET SKI IN THE SAME
16 CONDITION AS IT WAS WHEN IT WAS STOLEN?

17 PROSPECTIVE JUROR NO. 9 (6659) : IT WAS REPAINTED.

18 THE COURT: DID IT LOOK BETTER WHEN IT WAS
19 RETURNED?

20 PROSPECTIVE ALTERNATE JUROR NO. 2 (9022) : IT
21 LOOKED WORSE.

22 THE COURT: IS THERE ANYTHING ABOUT THAT CASE THAT
23 WOULD AFFECT YOU DECIDING MR. BURGHARDT'S CASE?

24 PROSPECTIVE ALTERNATE JUROR NO. 2 (9022) : NO.

25 THE COURT: DO YOU HAVE OTHER RESPONSES TO NO. 7?

26 PROSPECTIVE ALTERNATE JUROR NO. 2 (9022) : NO.

27 THE COURT: NO. 9.

28 PROSPECTIVE ALTERNATE JUROR NO. 2 (9022) : I HAVE

1 TWO UNCLES WHO ARE LAW ENFORCEMENT OFFICERS IN MICHIGAN.

2 THE COURT: DID YOU ACCEPT WHAT I SAID REGARDING

3 WITNESS CREDIBILITY?

4 PROSPECTIVE ALTERNATE JUROR NO. 2 (9022): YES.

5 THE COURT: THAT POLICE OFFICERS ARE NOT ENTITLED

6 TO ANY MORE OR LESS CREDIBILITY THAN ANYBODY ELSE?

7 PROSPECTIVE ALTERNATE JUROR NO. 2 (9022): YES.

8 THE COURT: DO YOU ACCEPT THAT?

9 PROSPECTIVE ALTERNATE JUROR NO. 2 (9022): YES.

10 THE COURT: CAN YOU THINK OF ANYTHING, ANY REASON

11 WHY YOU COULDN'T GIVE BOTH SIDES AN ABSOLUTELY FAIR

12 TRIAL?

13 PROSPECTIVE ALTERNATE JUROR NO. 2 (9022): NO.

14 THE COURT: VERY GOOD.

15 MR. LEONARD?

16 MR. LEONARD: NO QUESTIONS, YOUR HONOR.

17 I'LL PASS.

18 THE COURT: MR. STENNIS.

19 MR. STENNIS: NO QUESTIONS.

20 PASS FOR CAUSE.

21 THE COURT: NEXT PEREMPTORY IS WITH THE PEOPLE.

22 MR. STENNIS: EACH ACCEPT.

23 THE COURT: NEXT PEREMPTORY IS WITH THE DEFENSE.

24 MR. LEONARD: WE'D AS THE COURT TO THANK AND

25 EXCUSE PROSPECTIVE ALTERNATE NO. 2, JUDGE.

26 THE COURT: ALL RIGHT.

27 THANK YOU, SIR. YOU'RE EXCUSED. PLEASE

28 RETURN TO THE JURY ASSEMBLY ROOM.

1 MR. LEONARD: IS THIS RANDOM SELECTION?

2 THE COURT: NO. NO. 1 FIRST AND THEN NO. 2.

3 MR. LEONARD: THANKS.

4 THE CLERK: FOR ALTERNATE SEAT NO. 2, JUROR

5 NO. 7284.

6 THE COURT: WHAT HAPPENED TO 8019?

7 MR. LEONARD: WE SKIPPED TO THAT, JUDGE.

8 THE COURT: 7284.

9 PROSPECTIVE ALTERNATE JUROR NO. 2 (7284): HI.

10 THE COURT: CAN YOU GIVE US THE PERSONAL

11 INFORMATION, PLEASE.

12 PROSPECTIVE ALTERNATE JUROR NO. 2 (7284): SURE.

13 7284.

14 I'M FROM TORRANCE.

15 SINGLE. TWO KIDS UNDER 18.

16 I'M A PROJECT ADMINISTRATOR FOR A

17 CONSTRUCTION COMPANY.

18 AND I NEVER BEEN ON A JURY.

19 THE COURT: YET YOU UNDERSTAND THE FRAME OF MIND

20 THAT YOU HAVE TO HAVE TO DO THE JOB, TO DO THE JOB

21 PROPERLY?

22 PROSPECTIVE ALTERNATE JUROR NO. 2 (7284): YES.

23 THE COURT: YOU UNDERSTAND THE PURPOSE FOR

24 ALTERNATES?

25 PROSPECTIVE ALTERNATE JUROR NO. 2 (7284): YES.

26 THE COURT: ANY QUARREL OR ANY PROBLEM WITH ANY OF

27 THE LEGAL CONCEPTS YOU HEARD SO FAR?

28 PROSPECTIVE ALTERNATE JUROR NO. 2 (7284): NO.

1 THE COURT: AS YOU SIT THERE NOW, CAN YOU TELL US
2 WHETHER YOU ARE OBJECTIVE, OPEN MINDED, AND FAIR MINDED?

3 PROSPECTIVE ALTERNATE JUROR NO. 2 (7284): YES, I
4 AM.

5 THE COURT: IF THE STANDARD OF PROOF IS MET, WHAT
6 WOULD YOUR VERDICT BE?

7 PROSPECTIVE ALTERNATE JUROR NO. 2 (7284): GUILTY.

8 THE COURT: AND IF IT IS NOT MET, WHAT WOULD YOUR
9 VERDICT BE?

10 PROSPECTIVE ALTERNATE JUROR NO. 2 (7284): NOT
11 GUILTY.

12 THE COURT: DO YOU HAVE "YES" ANSWERS?

13 PROSPECTIVE ALTERNATE JUROR NO. 2 (7284): YES,
14 FOR 6, 7, 8, AND 9.

15 THE COURT: OKAY.

16 TELL US ABOUT 6, PLEASE.

17 PROSPECTIVE ALTERNATE JUROR NO. 2 (7284): 6. I
18 HAVE A COUSIN THAT WORKS FOR THE DISTRICT ATTORNEY'S
19 OFFICE IN COMPTON.

20 THE COURT: WHAT DOES YOUR COUSIN DO NOW?

21 PROSPECTIVE ALTERNATE JUROR NO. 2 (7284): HE'S
22 STILL THERE.

23 THE COURT: I THOUGHT YOU SAID HE WORKED, PAST
24 TENSE.

25 PROSPECTIVE ALTERNATE JUROR NO. 2 (7284): OH. HE
26 WORKS. HE WORKS.

27 THE COURT: IS HE A DEPUTY D.A.?

28 PROSPECTIVE ALTERNATE JUROR NO. 2 (7284): I DON'T

1 REALLY KNOW HIS ACTUAL TITLE.

2 THE COURT: IS IT A LAWYER?

3 PROSPECTIVE ALTERNATE JUROR NO. 2 (7284): YES.

4 THE COURT: WHAT IS HIS NAME?

5 PROSPECTIVE ALTERNATE JUROR NO. 2 (7284): MICHAEL
6 DOHERTY (PHONETIC).

7 THE COURT: OH, SURE. I KNOW HIM. I KNOW MICHAEL
8 DOHERTY.

9 MR. LEONARD: EVERYONE KNOWS MIKE.

10 THE COURT: I USED TO WORK WITH HIM A LONG TIME
11 AGO.

12 PROSPECTIVE ALTERNATE JUROR NO. 2 (7284): OH,
13 REALLY?

14 THE COURT: YES. HE'S A GOOD GUY.

15 TELL HIM -- YOU SEE MY NAME, ARNOLD? TELL
16 HIM I SAID HI.

17 PROSPECTIVE ALTERNATE JUROR NO. 2 (7284): I WILL.

18 THE COURT: YEAH. HE'S A DEPUTY D.A. HE DOES
19 WHAT MR. STENNIS DOES. HE PROSECUTES PEOPLE THAT ARE
20 ACCUSED OF CRIMES.

21 DO YOU THINK BECAUSE HE DOES THAT, THAT IS
22 GOING TO GIVE YOU ALLEGIANCE WITH MR. STENNIS?

23 PROSPECTIVE ALTERNATE JUROR NO. 2 (7284): NO.

24 THE COURT: ALL RIGHT.

25 YOU CAN'T DISCUSS THE CASE WITH HIM OR
26 ANYBODY ELSE WHILE THE CASE IS GOING ON --

27 PROSPECTIVE ALTERNATE JUROR NO. 2 (7284): OKAY.

28 THE COURT: -- RIGHT?

1 NO. 7.

2 PROSPECTIVE ALTERNATE JUROR NO. 2 (7284): I --
3 WHERE I GREW UP -- I MEAN THERE'S A LOT OF PEOPLE THAT I
4 KNOW THAT HAVE BEEN VICTIMS OF CRIME. FAMILY MEMBERS
5 HAVE BEEN STABBED.

6 THE COURT: WHERE DID YOU GROW UP?

7 PROSPECTIVE ALTERNATE JUROR NO. 2 (7284): I GREW
8 UP IN TORRANCE.

9 THE COURT: AND THERE'S A LOT OF CRIME IN TORRANCE
10 WHEN YOU GREW UP?

11 PROSPECTIVE ALTERNATE JUROR NO. 2 (7284): WELL,
12 WHERE I WAS, IT'S, LIKE, HISPANIC STREET. WE ALL WERE
13 BORN AND RAISED AND LOTS OF FAMILIES. SO YOU SEE A LOT
14 OF PEOPLE IN AND OUT OF JAIL.

15 THE COURT: WHAT PART OF TORRANCE?

16 PROSPECTIVE ALTERNATE JUROR NO. 2 (7284): ON
17 DEL AMO BOULEVARD.

18 THE COURT: YOU'RE CLOSE TO CARSON.

19 PROSPECTIVE ALTERNATE JUROR NO. 2 (7284): NO.
20 IT'S IN TORRANCE, RIGHT BY THE --

21 THE COURT: NO. CLOSE TO THE CITY OF CARSON.

22 DEL AMO AND WHERE?

23 PROSPECTIVE ALTERNATE JUROR NO. 2 (7284):
24 CRENSHAW.

25 THE COURT: OKAY. OH, YEAH. OKAY.

26 I KNOW WHERE THAT IS.

27 WERE ANY OF THE CASES THAT YOU TALKED --
28 ANY OF THESE CASES WHERE YOU OR SOMEONE CLOSE TO YOU WAS

1 A VICTIM, WERE THEY SOLVED BY THE POLICE?

2 WERE ANY OF THE CRIMES SOLVED?

3 PROSPECTIVE ALTERNATE JUROR NO. 2 (7284): I'M --

4 I -- WELL, NO. MY UNCLE IS SHOT. THAT WASN'T SOLVED.

5 HE SURVIVED.

6 THE ONE WAS HE WAS MURDERED AT WILSON PARK.

7 ONE OF THE FIRST -- 4TH OF JULY. THAT WAS WHAT HE GOT,

8 MANSLAUGHTER. SO THAT WAS LOST.

9 THE COURT: WHO WAS KILLED?

10 PROSPECTIVE ALTERNATE JUROR NO. 2 (7284): MY

11 KID'S UNCLE.

12 THE COURT: AND WHO WAS THE PERSON RESPONSIBLE?

13 PROSPECTIVE ALTERNATE JUROR NO. 2 (7284): I'M NOT

14 SURE OF HIS NAME, BUT HE WENT TO JAIL FOR MANSLAUGHTER,

15 I BELIEVE, FOR SEVEN YEARS.

16 THE COURT: OKAY.

17 DO YOU KNOW THE ETHNICITY OF THAT PERSON?

18 PROSPECTIVE ALTERNATE JUROR NO. 2 (7284): HE WAS

19 WHITE.

20 THE COURT: IN ANY OF THESE CASES, DO YOU THINK

21 THAT THE POLICE TREATED YOU OR ANYONE CLOSE TO YOU

22 UNFAIRLY OR THAT THEY DIDN'T DO THEIR JOB THE WAY THEY

23 SHOULD?

24 PROSPECTIVE ALTERNATE JUROR NO. 2 (7284): I'M --

25 I WOULD ASSUME THEY DID THEIR JOB.

26 THE COURT: IS THERE ANYTHING ABOUT THESE CRIMES

27 THAT WOULD IMPACT YOU IN ANY WAY IN DECIDING THIS CASE?

28 PROSPECTIVE ALTERNATE JUROR NO. 2 (7284): NO.

1 THE COURT: NO. 8.

2 PROSPECTIVE ALTERNATE JUROR NO. 2 (7284):

3 NUMBER -- WELL, I HAVE FAMILY ARRESTED FOR CRIME, DRUG.

4 I HAVE A HUGE FAMILY BORN AND RAISED ON THE STREET.

5 THE COURT: ALL DRUGS?

6 PROSPECTIVE ALTERNATE JUROR NO. 2 (7284): THERE

7 IS DRUGS. THERE'S -- I HAVE, LIKE, A FIFTH GENERATION

8 COUSIN WHO IS IN THERE FOR MURDER. THERE'S ROBBERY.

9 THE COURT: AND THEY'RE ALL YOUR FAMILY MEMBERS?

10 PROSPECTIVE ALTERNATE JUROR NO. 2 (7284): YEAH,

11 BIG FAMILY.

12 THE COURT: WERE ANY OF THESE CRIMES ALLEGED TO BE

13 GANG RELATED?

14 PROSPECTIVE ALTERNATE JUROR NO. 2 (7284): NO.

15 THEY'RE PART -- YOU KNOW, THAT STREET IS PART OF A GANG.

16 SO I'M SURE THAT THEY CHOSE THEIR CRIMES BECAUSE OF DRUG

17 ABUSE.

18 THE COURT: DO YOU STILL HAVE FAMILY ON DEL AMO,

19 NEAR CRENSHAW?

20 PROSPECTIVE ALTERNATE JUROR NO. 2 (7284): YES, I

21 DO. I HAVE A LOT OF FAMILY.

22 THE COURT: WHAT GANG AFFILIATED WITH THAT AREA?

23 PROSPECTIVE ALTERNATE JUROR NO. 2 (7284): WHAT'S

24 THE NAME OF THE GANG FROM THERE?

25 THE COURT: YES.

26 PROSPECTIVE ALTERNATE JUROR NO. 2 (7284): RANNO

27 (PHONETIC).

28 THE COURT: HOW DO YOU FEEL? THERE IS GOING TO BE

1 EVIDENCE THAT MR. BURGHARDT IS AFFILIATED WITH A GANG?

2 PROSPECTIVE ALTERNATE JUROR NO. 2 (7284): I DON'T
3 HAVE ANY -- I MEAN.

4 THE COURT: YOU FEEL THE EVIDENCE THAT HE'S
5 AFFILIATED WITH A GANG, WOULD YOU AUTOMATICALLY VOTE
6 GUILTY?

7 PROSPECTIVE ALTERNATE JUROR NO. 2 (7284): NO.

8 THE COURT: WOULD YOU BE WILLING TO CONSIDER THAT
9 EVIDENCE ALONG WITH EVERYTHING ELSE?

10 PROSPECTIVE ALTERNATE JUROR NO. 2 (7284): YES.

11 THE COURT: NO. 9.

12 PROSPECTIVE ALTERNATE JUROR NO. 2 (7284): FEW OF
13 THE PEOPLE FROM THE STREET ARE PART OF THE HAWTHORNE
14 POLICE DEPARTMENT. I HAD A SOFTBALL COACH, RETIRED
15 CANINE FROM TORRANCE.

16 AND ANOTHER FRIEND, L.A.P.D. NARCOTICS, AND
17 A STEP-BROTHER WHO IS A SHERIFF.

18 THE COURT: DID YOU ACCEPT WHAT I SAID REGARDING
19 WITNESS CREDIBILITY?

20 PROSPECTIVE ALTERNATE JUROR NO. 2 (7284): YES.

21 THE COURT: THERE IS GOOD AND BADS IN ALL
22 PROFESSIONS.

23 PROSPECTIVE ALTERNATE JUROR NO. 2 (7284):
24 ABSOLUTELY.

25 THE COURT: THERE'S GOOD AND BAD IN ALL
26 PROFESSIONS.

27 PROSPECTIVE ALTERNATE JUROR NO. 2 (7284):
28 CORRECT.

1 THE COURT: NO ONE IS ASSUMED TO HAVE MORE
2 CREDIBILITY THAN ANYBODY ELSE.

3 DO YOU ACCEPT THAT?

4 PROSPECTIVE ALTERNATE JUROR NO. 2 (7284): UH-HUH.

5 THE COURT: YES?

6 PROSPECTIVE ALTERNATE JUROR NO. 2 (7284): I DO.

7 THE COURT: CAN YOU GIVE BOTH SIDES A FAIR TRIAL?

8 PROSPECTIVE ALTERNATE JUROR NO. 2 (7284): YES.

9 THE COURT: GOOD.

10 MR. LEONARD?

11 MR. LEONARD: NO QUESTIONS.

12 I'LL PASS FOR CAUSE, JUDGE.

13 THE COURT: MR. STENNIS?

14 MR. STENNIS: NO QUESTIONS.

15 PASS FOR CAUSE.

16 THE COURT: NEXT PEREMPTORY IS WITH THE PEOPLE.

17 MR. STENNIS: ACCEPT.

18 THE COURT: NEXT PEREMPTORY IS WITH THE DEFENSE.

19 MR. LEONARD: ASK THE COURT TO EXCUSE ALTERNATE
20 NO. 1, JUDGE.

21 THE COURT: ALL RIGHT.

22 THANK YOU, SIR. RETURN TO JURY ASSEMBLY
23 ROOM, PLEASE.

24 THE CLERK: JUROR FOR ALTERNATE SEAT NO. 1, JUROR
25 NO. 6757.

26 THE COURT: HI.

27 PROSPECTIVE ALTERNATE JUROR NO. 1 (6757): HI.

28 THE COURT: CAN YOU GIVE US THE PERSONAL

1 INFORMATION, PLEASE?

2 PROSPECTIVE ALTERNATE JUROR NO. 1 (6757): JUROR
3 I.D. NO. 6757.

4 AREA OF RESIDENCE, REDONDO BEACH.

5 OCCUPATION, RETIRED SCHOOL TEACHER AND
6 INTERIOR DESIGNER.

7 MARRIED. MY SPOUSE IS A -- AN EXECUTIVE
8 RECRUITER. HE HAS HIS -- HIS OWN BUSINESS.

9 FOUR GROWN CHILDREN. OTTO (PHONETIC) IS IN
10 A THEATER COMPANY, CORNERSTONE THEATER COMPANY HERE IN
11 LOS ANGELES.

12 TIMOTHY IS UP IN BERKELEY. HE WORKS IN AN
13 ELEMENTARY SCHOOL.

14 KEVIN WORKS IN CHILD CARE.

15 AND BRIAN IS IN THE MORTGAGE DEPARTMENT AT
16 A PENTAGON FEDERAL CREDIT UNION, UP IN EUGENE, OREGON.

17 THE COURT: OKAY.

18 HAVE YOU EVER BEEN A JUROR?

19 PROSPECTIVE ALTERNATE JUROR NO. 1 (6757): NO, I
20 HAVEN'T.

21 THE COURT: AND WHAT LEVEL DID YOU TEACH?

22 PROSPECTIVE ALTERNATE JUROR NO. 1 (6757):
23 ELEMENTARY.

24 THE COURT: FOR HOW LONG?

25 PROSPECTIVE ALTERNATE JUROR NO. 1 (6757):
26 FIVE-AND-A-HALF YEARS.

27 THE COURT: WHAT DID YOU DO BEFORE THAT?

28 PROSPECTIVE ALTERNATE JUROR NO. 1 (6757): I WENT

1 IN TEACHING RIGHT AFTER COLLEGE.

2 SO BEFORE THAT I WAS IN COLLEGE.

3 AFTERWARDS I DID SOME VARIOUS WORKING IN
4 OFFICES, SECRETARIAL.

5 THE COURT: OKAY.

6 YOU UNDERSTAND THE PURPOSES FOR THE
7 ALTERNATES?

8 PROSPECTIVE ALTERNATE JUROR NO. 1 (6757): YES, I
9 DO.

10 THE COURT: DO YOU HAVE THE FRAME OF MIND THAT IS
11 MANDATORY?

12 PROSPECTIVE ALTERNATE JUROR NO. 1 (6757): YES.

13 THE COURT: ANY QUARREL WITH ANY OF THE LEGAL
14 CONCEPTS?

15 PROSPECTIVE ALTERNATE JUROR NO. 1 (6757): NO.

16 THE COURT: IF THE EVIDENCE PROVES GUILT BEYOND A
17 REASONABLE DOUBT, WHAT WOULD YOUR VERDICT BE?

18 PROSPECTIVE ALTERNATE JUROR NO. 1 (6757): GUILTY.

19 THE COURT: IF IT IS NOT PROVEN TO THAT EXTENT?

20 PROSPECTIVE ALTERNATE JUROR NO. 1 (6757): IT WILL
21 BE NOT GUILTY.

22 THE COURT: DO YOU HAVE "YES" ANSWERS?

23 PROSPECTIVE ALTERNATE JUROR NO. 1 (6757): YES.

24 THE COURT: WHICH ONES?

25 PROSPECTIVE ALTERNATE JUROR NO. 1 (6757): 6 AND
26 7.

27 THE COURT: TELL US ABOUT 6, PLEASE.

28 PROSPECTIVE ALTERNATE JUROR NO. 1 (6757): NO. 6.

1 MY FORMER -- MY EX-HUSBAND WAS AN ATTORNEY, AND HIS NAME
2 IS JOHN DONALD (PHONETIC). HE IS AN ATTORNEY, BUT HE IS
3 NOT PRACTICING.

4 THE COURT: WHAT KIND OF LAW DID HE PRACTICE?

5 PROSPECTIVE ALTERNATE JUROR NO. 1 (6757): HE WAS
6 IN BUSINESS FOR HIMSELF AND THEN HE WENT INTO, LIKE,
7 CORPORATE LAW.

8 THE COURT: OKAY.

9 DO YOU STILL HAVE CONTACT WITH HIM?

10 PROSPECTIVE ALTERNATE JUROR NO. 1 (6757): VERY
11 LITTLE.

12 THE COURT: YOU CAN'T DISCUSS THE CASE WITH HIM OR
13 ANYBODY ELSE WHILE THE CASE IS GOING ON.

14 PROSPECTIVE ALTERNATE JUROR NO. 1 (6757): THAT'S
15 FINE.

16 THE COURT: NO. 7.

17 PROSPECTIVE ALTERNATE JUROR NO. 1 (6757): NO. 7
18 IS THAT I GREW UP IN SOUTH CENTRAL LOS ANGELES. AND MY
19 PARENTS HAD A MARKET. AND WE WERE HELD UP A NUMBER OF
20 TIMES.

21 FIRST TIME I WAS SEVEN YEARS OLD WHEN THE
22 PEOPLE CAME INTO OUR HOME WITH GUNS.

23 THE COURT: HOW MANY TIMES DID THE MARKET GET
24 ROBBED, TO YOUR KNOWLEDGE?

25 PROSPECTIVE ALTERNATE JUROR NO. 1 (6757):
26 PROBABLY ABOUT EIGHT.

27 THE COURT: DID BOTH OF YOUR PARENTS WORK THERE?

28 PROSPECTIVE ALTERNATE JUROR NO. 1 (6757): YES.

1 THE COURT: WERE EITHER YOUR MOTHER OR YOUR FATHER
2 EVER PHYSICALLY INJURED?

3 PROSPECTIVE ALTERNATE JUROR NO. 1 (6757): NO.

4 THE COURT: WHAT WOULD THE -- WHAT WOULD BE -- WAS
5 THE ETHNICITY OF THE PEOPLE THAT WOULD COME IN AND
6 COMMIT THE ROBBERIES?

7 PROSPECTIVE ALTERNATE JUROR NO. 1 (6757): WELL,
8 THE ONE THAT I REMEMBER VIVIDLY WAS THE FIRST TIME, AND
9 IT WAS THREE BLACK MEN.

10 THE COURT: WERE YOU THERE AT THE TIME?

11 PROSPECTIVE ALTERNATE JUROR NO. 1 (6757): OH,
12 YES.

13 THE COURT: OH, YOU WERE THERE. AND YOU WERE
14 SEVEN YEARS OLD?

15 PROSPECTIVE ALTERNATE JUROR NO. 1 (6757): (NODS
16 HEAD IN THE AFFIRMATIVE.)

17 THE COURT: HOW DO YOU FEEL ABOUT THE FACT THAT
18 MR. BURGHARDT IS BLACK?

19 PROSPECTIVE ALTERNATE JUROR NO. 1 (6757): I DON'T
20 DISCRIMINATE ON PEOPLE'S ETHNICITY ONE WAY OR THE OTHER.

21 THE COURT: DID THE -- WERE THE POLICE CALLED FOR
22 EACH OF THESE ROBBERIES?

23 PROSPECTIVE ALTERNATE JUROR NO. 1 (6757): YES.

24 THE COURT: WERE ANY OF THE ROBBERIES SOLVED?

25 PROSPECTIVE ALTERNATE JUROR NO. 1 (6757): I
26 BELIEVE THERE WAS ONE WHERE WE -- WE APPEARED IN COURT,
27 RIGHT.

28 THE COURT: DO YOU THINK THAT ON ANY OTHER CASES

1 THAT WERE NOT INVOLVED THAT THE POLICE COULD HAVE DONE
2 MORE?

3 PROSPECTIVE ALTERNATE JUROR NO. 1 (6757) : NO.

4 THE COURT: IS THERE ANY CHANCE YOU WOULD HOLD ANY
5 OF THESE ROBBERIES AGAINST MR. BURGHARDT?

6 PROSPECTIVE ALTERNATE JUROR NO. 1 (6757) : NO.

7 THE COURT: ANY OTHER "YES" ANSWERS?

8 PROSPECTIVE ALTERNATE JUROR NO. 1 (6757) : NO.

9 THE COURT: CAN YOU BE FAIR TO BOTH SIDES?

10 PROSPECTIVE ALTERNATE JUROR NO. 1 (6757) : I'M
11 SORRY?

12 THE COURT: CAN YOU BE FAIR TO BOTH SIDES?

13 PROSPECTIVE ALTERNATE JUROR NO. 1 (6757) : YES.

14 THE COURT: VERY GOOD.

15 MR. LEONARD?

16 MR. LEONARD: NO QUESTIONS.

17 PASS FOR CAUSE.

18 THE COURT: MR. STENNIS?

19 MR. STENNIS: NO QUESTIONS.

20 PASS FOR CAUSE.

21 THE COURT: NEXT PEREMPTORY IS WITH THE PEOPLE.

22 MR. STENNIS: ACCEPT.

23 THE COURT: OKAY.

24 SWEAR THE PANEL -- OR SWEAR THE ALTERNATES.

25 THE CLERK: WOULD THE ALTERNATES PLEASE STAND AND
26 RAISE YOUR RIGHT HAND.

27 YOU DO, AND EACH OF YOU, UNDERSTAND AND
28 AGREE THAT YOU WILL WELL AND TRULY TRY THE CAUSE NOW

1 PENDING BEFORE THIS COURT AND A TRUE VERDICT RENDER
2 ACCORDING ONLY TO THE EVIDENCE PRESENTED TO YOU AND TO
3 THE INSTRUCTIONS OF THE COURT.

4 IF YOU UNDERSTAND AND AGREE, PLEASE SAY
5 "YES."

6 THE ALTERNATE JURORS: YES.

7 THE CLERK: YOU MAY BE SEATED.

8 THE COURT: FOR THOSE OF YOU IN THE AUDIENCE,
9 THANK YOU FOR BEING HERE YESTERDAY AND TODAY. WE DO
10 HAVE OUR JURY NOW. APPRECIATE YOU.

11 PLEASE RETURN TO THE JURY ASSEMBLY ROOM.
12 TURN IN YOUR BADGES AND PICK UP YOUR CERTIFICATES OF
13 COMPLETION.

14 LET ME SEE COUNSEL ON THE SIDE OFF THE
15 RECORD.

16
17 (A CONFERENCE WAS HELD AT
18 THE BENCH THAT WAS NOT
19 REPORTED.)

20
21 THE COURT: ALL RIGHT, FOLKS.

22 WHAT'S GOING TO HAPPEN NOW IS I'M GOING TO
23 READ YOU ONE JURY INSTRUCTION THAT IS GOING TO SET THE
24 STAGE.

25 THE DEFENDANT: EXCUSE ME, YOUR HONOR.

26 MAY I ADDRESS THE COURT?

27 THE COURT: NO, YOU CAN'T. JUST WAIT UNTIL THE
28 JURORS LEAVE AND THEN YOU CAN EXPLAIN TO MR. LEONARD

1 | WHAT YOU WANT AND THEN YOU CAN TALK TO ME.

3 (MR. LEONARD AND HIS CLIENT
4 CONFER SOTTO VOCE.)

6 THE COURT: I'M GOING TO READ YOU ONE JURY
7 INSTRUCTION, AS I SAID. IT WILL KINDA SET THE STAGE FOR
8 WHAT THE CASE -- HOW THE CASE IS GOING TO PROCEED.

13 WE WILL RESUME THE TRIAL AT 1:30 P.M.
14 TOMORROW. THE COURTROOM DOORS WILL OPEN AT 1:30 P.M.
15 WHEN THEY DO OPEN, I'D LIKE ALL OF YOU TO COME ON INTO
16 THE COURTROOM AND GO ON INTO THE JURY DELIBERATION ROOM,
17 WHICH IS THE ROOM TO YOUR LEFT.

18 NOW, THERE IS A BUZZER ON THE WALL IN
19 THERE. WHEN ALL 14 OF YOU ARE IN THAT ROOM, I'D LIKE
20 ONE OF YOU TO HIT THE BUZZER ONE TIME. THAT WILL BE OUR
21 SIGNAL THAT YOU ARE ALL HERE.

22 THEN WHEN WE ARE READY FOR YOU TO COME OUT,
23 WE'LL BUZZ YOU TWICE, AND THAT WILL BE YOUR SIGNAL TO
24 COME OUT AND SIT IN THE JURY ROOM.

1 I DON'T KNOW IF MR. LEONARD IS GOING TO
2 MAKE AN OPENING STATEMENT. SOMETIMES ATTORNEYS CHOOSE
3 TO DO IT. SOMETIMES THEY DON'T. IT JUST DEPENDS ON HOW
4 THEY FEEL ABOUT THE CASE.

5 BUT ASSUMING THAT MR. LEONARD DOES MAKE AN
6 OPENING STATEMENT, WHAT HE SAYS ALSO IS NOT EVIDENCE.
7 IT'S WHAT HE WOULD BELIEVE THE EVIDENCE WILL SHOW.

8 AFTER THE OPENING STATEMENTS, THEN WE'LL
9 BEGIN WITH THE FIRST WITNESS -- BEGIN WITH THE
10 WITNESSES, AND THAT IS -- THAT WILL BEGIN WITH THE
11 EVIDENCE THAT YOU CAN CONSIDER IN DETERMINING WHETHER
12 THE STANDARD OF PROOF IS MET. AND TOMORROW WE WILL
13 PROVIDE NOTEBOOKS AND PENS FOR YOU, FOR THOSE OF YOU WHO
14 WISH TO TAKE NOTES.

15 ALL RIGHT. THE TRIAL WILL PROCEED AS
16 FOLLOWS, LADIES AND GENTLEMEN.

17 THE PEOPLE MAY PRESENT AN
18 OPENING STATEMENT.

19 THE DEFENSE IS NOT REQUIRED TO
20 PRESENT AN OPENING STATEMENT. BUT IF IT
21 CHOOSES TO DO SO, IT MAY GIVE IT AFTER
22 THE PEOPLE'S OPENING STATEMENT OR AT THE
23 BEGINNING OF THE DEFENSE CASE.

24 THE PURPOSE OF AN OPENING
25 STATEMENT IS TO GIVE YOU AN OVERVIEW OF
26 WHAT THE ATTORNEYS EXPECT THE EVIDENCE
27 WILL SHOW.

28 NEXT THE PEOPLE WILL OFFER

1 THEIR EVIDENCE.

2 EVIDENCE USUALLY INCLUDES
3 WITNESS TESTIMONY AND EXHIBITS.

4 AFTER THE PEOPLE PRESENT THEIR
5 EVIDENCE, THE DEFENSE MAY ALSO PRESENT
6 EVIDENCE BUT IS NOT REQUIRED TO DO SO.

7 BECAUSE HE IS PRESUMED TO BE
8 INNOCENT, THE DEFENDANT DOES NOT HAVE TO
9 PROVE THAT HE IS NOT GUILTY.

10 AFTER YOU HAVE HEARD ALL THE
11 EVIDENCE AND BEFORE THE ATTORNEYS HAVE
12 GIVEN YOU THEIR FINAL ARGUMENTS, I WILL
13 INSTRUCT YOU ON THE LAWS THAT APPLY TO
14 THIS CASE.

15 AFTER YOU HAVE HEARD THE
16 ARGUMENTS AND THE INSTRUCTIONS, YOU WILL
17 GO TO THE JURY ROOM TO DELIBERATE.

18 I WILL NOW EXPLAIN SOME BASIC
19 RULES OF LAW AND PROCEDURE.

20 THESE RULES INSURE THAT BOTH
21 SIDES RECEIVE A FAIR TRIAL.

22 DURING THE TRIAL, DO NOT TALK
23 ABOUT THE CASE OR ABOUT ANY OF THE
24 PEOPLE OR ANY SUBJECT INVOLVED IN THE
25 CASE WITH ANYONE, NOT EVEN YOUR FAMILY,
26 FRIENDS, SPIRITUAL ADVISORS, OR
27 THERAPISTS.

28 DO NOT SHARE INFORMATION ABOUT

1 THE CASE IN WRITING, BY E-MAIL OR ON THE
2 INTERNET.

3 YOU MUST NOT TALK ABOUT THESE
4 THINGS WITH THE OTHER JURORS EITHER
5 UNTIL THE TIME COMES FOR YOU TO BEGIN
6 YOUR DELIBERATIONS.

7 AS JURORS YOU MAY DISCUSS THE
8 CASE TOGETHER BUT ONLY AFTER ALL OF THE
9 EVIDENCE HAS BEEN PRESENTED, THE
10 ATTORNEYS HAVE COMPLETED THEIR
11 ARGUMENTS, AND I HAVE INSTRUCTED YOU ON
12 THE LAW.

13 AFTER I TELL YOU TO BEGIN YOUR
14 DELIBERATIONS, YOU MAY DISCUSS THE CASE
15 BUT ONLY IN THE JURY ROOM AND THEN ONLY
16 WHEN ALL JURORS ARE PRESENT.

17 DO NOT DO ANY RESEARCH ON YOUR
18 OWN OR AS A GROUP.

19 DO NOT USE A DICTIONARY, THE
20 INTERNET, OR OTHER REFERENCE MATERIALS.

21 DO NOT INVESTIGATE THE FACTS
22 OR THE LAW.

23 DO NOT CONDUCT ANY TESTS OR
24 ANY EXPERIMENTS OR VISIT THE SCENE OF
25 ANY EVENT INVOLVED IN THIS CASE.

26 IF YOU HAPPEN TO PASS BY THE
27 SCENE, DO NOT STOP OR INVESTIGATE.

28 DURING THE TRIAL DO NOT SPEAK

1 TO ANY PARTY, WITNESS, OR LAWYER
2 INVOLVED IN THE TRIAL.

3 DO NOT LISTEN TO ANYONE WHO
4 TRIES TO TALK TO YOU ABOUT THE CASE OR
5 ABOUT ANY OF THE PEOPLE OR SUBJECTS
6 INVOLVED IN IT.

7 IF SOMEONE ASKS YOU ABOUT THE
8 CASE, TELL HIM OR HER THAT YOU CANNOT
9 DISCUSS IT.

10 IF THAT PERSON KEEPS TALKING
11 TO YOU ABOUT THE CASE, YOU MUST END THE
12 CONVERSATION.

13 IF YOU RECEIVE ANY INFORMATION
14 ABOUT THIS CASE FROM ANY SOURCE OUTSIDE
15 OF THE TRIAL, EVEN UNINTENTIONALLY, DO
16 NOT SHARE THAT INFORMATION WITH ANY
17 OTHER JUROR.

18 IF YOU DO RECEIVE SUCH
19 INFORMATION OR IF ANYONE TRIES TO
20 INFLUENCE YOU OR ANY JUROR, YOU MUST
21 IMMEDIATELY TELL THE BAILIFF.

22 SOME WORDS OR PHRASES THAT MAY
23 BE USED DURING THIS TRIAL HAVE LEGAL
24 MEANINGS THAT ARE DIFFERENT FROM THEIR
25 MEANINGS IN EVERYDAY USE.

26 THESE WORDS AND PHRASES WILL
27 BE SPECIFICALLY DEFINED IN THE JURY
28 INSTRUCTIONS.

1 PLEASE BE SURE TO LISTEN
2 CAREFULLY AND FOLLOW THE DEFINITIONS
3 THAT I GIVE TO YOU.
4 WORDS AND PHRASES NOT
5 SPECIFICALLY DEFINED IN THE INSTRUCTIONS
6 ARE TO BE APPLIED USING THEIR ORDINARY,
7 EVERYDAY MEANINGS.
8 KEEP AN OPEN MIND THROUGHOUT
9 THE TRIAL.
10 DO NOT MAKE UP YOUR MIND ABOUT
11 THE VERDICT OR ANY ISSUE UNTIL YOU HAVE
12 DISCUSSED THE CASE WITH THE OTHER JURORS
13 DURING DELIBERATIONS.
14 DO NOT TAKE ANYTHING I SAY OR
15 DO DURING THE TRIAL AS AN INDICATION
16 OF WHAT I THINK ABOUT THE FACTS, THE
17 WITNESSES, OR WHAT YOUR VERDICT SHOULD
18 BE.
19 DO NOT LET BIAS, SYMPATHY,
20 PREJUDICE, OR PUBLIC OPINION INFLUENCE
21 YOUR DECISION.
22 YOU WILL BE GIVEN NOTEBOOKS
23 AND WRITING IMPLEMENTS, AND YOU MAY TAKE
24 NOTES DURING THE TRIAL.
25 DO NOT REMOVE THE NOTEBOOK AND
26 WRITING IMPLEMENTS FROM THE COURTROOM.
27 YOU MAY TAKE YOUR NOTES INTO THE JURY
28 ROOM DURING DELIBERATIONS.

1 I DO NOT MEAN TO DISCOURAGE
2 YOU FROM TAKING NOTES, BUT HERE ARE SOME
3 POINTS TO CONSIDER IF YOU DO MAKE NOTES.

4 ONE, NOTETAKING MAY TEND TO
5 DISTRACT YOU.

6 IT MAY AFFECT YOUR ABILITY TO
7 LISTEN CAREFULLY TO ALL OF THE TESTIMONY
8 AND TO WATCH THE WITNESSES AS THEY
9 TESTIFY.

10 AND, TWO, THE NOTES ARE FOR
11 YOUR OWN INDIVIDUAL USE TO HELP YOU
12 REMEMBER WHAT HAPPENED DURING THE TRIAL.

13 PLEASE KEEP IN MIND THAT YOUR
14 NOTES MAY BE INACCURATE OR INCOMPLETE.

15 ALL RIGHT, FOLKS. THAT IS THE OPENING
16 ADMONITION, THE OPENING JURY INSTRUCTION.

17 WE'LL BE IN RECESS NOW. REMEMBER ALL OF
18 YOU PLEASE BE IN THE JURY DELIBERATION ROOM AT 1:30 P.M.
19 TOMORROW.

20 AND WHEN ALL 14 OF YOU ARE THERE, SOMEONE
21 HIT THAT BUZZER ONE TIME. THAT WILL BE OUR SIGNAL THAT
22 YOU ARE HERE.

23 SEE YOU TOMORROW, 1:30.

24
25 (THE FOLLOWING PROCEEDINGS
26 WERE HELD IN OPEN COURT,
27 OUTSIDE THE PRESENCE OF
28 THE JURY :)

1 THE COURT: YOU WANTED TO SAY SOMETHING,
2 MR. LEONARD?

3 THE DEFENDANT: I CAN SPEAK FOR MYSELF. I'M NOT
4 COMFORTABLE WITH THE JURY PANEL.

5 THE COURT: ANYTHING ELSE?

6 THE DEFENDANT: BEING THAT IT'S NOT A JURY OF MY
7 PEERS.

8 THE COURT: ANYTHING ELSE?

9 THE DEFENDANT: IS THERE ANY WAY WE CAN MAKE THAT
10 CONVENIENT FOR -- FOR BOTH OF US, IF THE DISTRICT
11 ATTORNEY AND ME --

12 THE COURT: IS THERE ANYTHING WHAT?

13 THE DEFENDANT: IS ANY WAY WE CAN MAKE IT
14 CONVENIENT FOR ME BY -- BY MAKING -- BY YOU GUYS MAKING
15 THE JURY PANEL JURY OF MY PEERS?

16 THE COURT: THIS IS A JURY OF YOUR PEERS.

17 THE DEFENDANT: OF MY ETHNICITY?

18 THE COURT: THAT DOESN'T COUNT. THAT'S WHAT A
19 JURY OF YOUR PEERS IS CONSIDERED TO BE.

20 MR. LEONARD IS A VERY EXPERIENCED ATTORNEY.

21 HOW LONG HAVE YOU BEEN PRACTICING LAW?

22 MR. LEONARD: ABOUT 32 YEARS, SIR.

23 THE COURT: HE'S DONE ENUMERABLE JURY TRIALS. HE
24 KNOWS WHAT AN APPROPRIATE JURY IS. HE HAS ACCEPTED THIS
25 JURY PANEL, AND THIS IS THE JURY WE'RE GOING TO PROCEED
26 WITH.

27 \ \ \\\n
28 \ \ \\\n

1 (AN UNIDENTIFIED JUROR COMES
2 INTO THE COURTROOM.)
3

4 THE BAILIFF: MISS, YOU HAVE TO WAIT OUTSIDE.
5

6 (THE UNIDENTIFIED JUROR
7 LEAVES THE COURTROOM.)
8

9 THE DEFENDANT: I'M NOT COMFORTABLE. IT'S A JURY
10 TRIAL OF MY PEERS.

11 THE COURT: YOU DON'T HAVE TO BE COMFORTABLE.
12 MR. LEONARD IS COMFORTABLE WITH IT.

13 ANYTHING BEFORE WE BREAK?

14 MR. LEONARD: NO. I HAVE NOTHING ELSE, JUDGE.

15 THE COURT: ANYTHING, MR. STENNIS?

16 MR. STENNIS: NO. NO.

17 THE COURT: ALL RIGHT.

18 SEE YOU TOMORROW.
19

20 (AT 4:12 P.M., THE MATTER
21 WAS CONTINUED TO WEDNESDAY,
22 JUNE 23, 2010, AT 1:30 P.M.,
23 FOR FURTHER PROCEEDINGS.)

24 (THE NEXT PAGE IS 601.)
25 --000--
26
27
28