

1 FRIDAY, MAY 1, 2009

9:00 A.M.

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P-R-O-C-E-E-D-I-N-G-S

4

5 THE COURT: On the record in People versus
6 Nathan Medina.

7

The record will reflect that both counsel
8 and Mr. Medina are present.

9

None of the jurors are present.

10

We have advised counsel through the clerk
11 that the clerk received a call this morning from
12 the juror in seat number 8, (JUROR NUMBER 8)
13 originally juror number 31, to the effect that Sue
14 can give us the details that (JUROR NUMBER 8's)
15 in-laws, who live out of town were rushed to the
16 hospital, or an in-law was rushed to the hospital
17 late last night, and he is anxious to go be with
18 his relatives.

19

I think they are in Southern California,
20 and he requested that he be permitted to do so.

21

So, Sue, if you could please give us the
22 details.

23

THE CLERK: Yes, (JUROR NUMBER 8) called me
24 this morning right at 8:15 and said that he had
25 been sitting out in the parking lot for some time
26 waiting for the courthouse to open; that he had an
27 emergency last night, his in-laws in San Jose were
28 both taken to the hospital and he is anxious to get

1 down there to be with his family.

2 He said he had been up since 3:00 o'clock
3 this morning and waiting to come here because he
4 didn't feel that he should leave town without
5 checking with the Court.

6 He has now arrived, he has been sitting out
7 in the hall waiting this morning. He at first said
8 that he could stay until 12:00, but really needed
9 to leave here at 12:00, although when he got here
10 he said that he would like to leave as soon as
11 possible.

12 THE COURT: So my intent is to ask (JUROR
13 NUMBER 8) to come in just himself so there is some
14 modicum of privacy, and inquire of the situation
15 and the scheduling and so forth and his desire to
16 be with his in-laws and then after hearing from him
17 I'll excuse him, hear from counsel and then make a
18 decision on how to proceed.

19 Any suggestions otherwise?

20 MR. MANOUKIAN: Sounds like an appropriate
21 procedure, your Honor.

22 THE COURT: Okay.

23 MR. MOAWAD: I agree, your Honor.

24 THE COURT: Okay. Thank you.

25

26 (WHEREUPON THE JUROR ENTERED

27 THE COURTROOM)

28 \

1 THE COURT: Good morning, (JUROR
2 NUMBER 8).

3 JUROR NUMBER 8: Good morning, your
4 Honor.

5 THE COURT: The record will reflect that
6 all parties are present.

7 And Juror Number 31 in seat eight is
8 present.

9 First, I want to thank you for coming in
10 this morning. I understand that you have some
11 pressing family issues, and I appreciate your
12 concern about stopping here first, but I don't want
13 to pry at all into the details, but we just need to
14 know the scheduling information.

15 And as I understand you have in-laws in San
16 Jose who have taken ill and have gone to the
17 hospital, and it's your desire to go be with
18 them.

19 (JUROR NUMBER 8): Yes, if at all
20 possible.

21 THE COURT: Okay.

22 (JUROR NUMBER 8): In fact, I just got off
23 the phone, and the phone has been ringing off the
24 hook, get a new phone and this is what happens.

25 They are all wondering when are we coming
26 down, when are we coming down? I said I have to
27 talk with everyone here to make sure, but there is
28 an alternate plan for today. I can deliberate if

1 necessary if it is absolutely necessary until noon
2 time, and then I would request to not come back for
3 the rest of today.

4 I would like to, you know, continue
5 deliberating --

6 THE COURT: Yes.

7 (JUROR NUMBER 8): -- of course, next week
8 and so forth as long as we need to, but that is
9 another alternative.

10 THE COURT: Okay.

11 (JUROR NUMBER 8): It is not the preferred
12 one, but it is optional.

13 THE COURT: I appreciate that.

14 Are your in-laws in the hospital?

15 (JUROR NUMBER 8): Yes.

16 THE COURT: And it's both your wife's
17 parents?

18 (JUROR NUMBER 8): Yes, it is the -- my
19 father-in-law had a possible heart attack. And
20 because they have been married around 65 years, you
21 know when one has something the other one has
22 either an anxiety or stroke and the mother-in-law,
23 so they both went.

24 THE COURT: Okay. Thank you.

25 Mr. Moawad, any questions?

26 MR. MOAWAD: Well, sort of.

27 I also hate to pry, sir, but I'm just
28 wondering about your availability next week, that

1 it --

2 (JUROR NUMBER 8): I should be fine for
3 next week. I'm glad that this is on a Friday. If
4 it is going to have to happen, it is going to
5 happen on a Friday that I can have Saturday, Sunday
6 no deliberations to even think about.

7 So I think that I can definitely be here
8 for Monday.

9 So, I mean, that will be no problem.

10 MR. MOAWAD: Okay.

11 THE COURT: Mr. Manoukian, any questions?

12 MR. MANOUKIAN: Just one.

13 (JUROR NUMBER 8), thank you.

14 And do you feel that you could -- you are
15 in a state where you could deliberate this morning
16 until moon?

17 (JUROR NUMBER 8): I am glad you brought
18 that one up. In fact, I should have said it, in
19 fact, I called Madam Clerk this morning, uhmm, to
20 be fair to Mr. Medina, and I do not think I could
21 completely give 100 percent. I wish I could say
22 that, but I am not going to tell you something I --
23 I know will not be. And the thing is I will
24 probably be anxious saying, okay, when is -- it is
25 almost 12:00 o'clock now. I think I'm going to
26 have my mind on that and, also, but if it is
27 absolutely necessary, since everyone else is here
28 already, that was the reason because I do did not

1 know the rules or anything like that, so that is
2 why I came in to find out. And I was hoping they
3 could call the other jurors to say, well, do not
4 come in today because this has happened. That is
5 what I was hoping, but, of course, it is up to the
6 Court to decide.

7 So to be truthful I do not -- I know I
8 cannot give 100 percent. And again, I do want to
9 be fair to Mr. Medina.

10 MR. MANOUKIAN: But you feel Monday that
11 you would be in a position you could do that?

12 (JUROR NUMBER 8): Yes, because then I am
13 going to know what exactly happened, what is going
14 to happen, what is the status, is this like
15 somebody else, I do not know if you have children
16 or married or anything, you worry until you know
17 absolutely.

18 Then also all of a sudden the worry goes
19 way down. And so sure I will be fine for Monday.

20 MR. MANOUKIAN: Okay.

21 (JUROR NUMBER 8): Because again two and a
22 half, three days I should be fine.

23 MR. MANOUKIAN: Okay. And do you feel even
24 with the -- you kind of being aware of the fact you
25 are distracted, that deliberating this first half
26 of the morning you feel would not be an appropriate
27 for you or do you feel that it's something you
28 will -- could do since you are kind of aware of

1 your mental state.

2 JUROR NUMBER 8: Again, I want to be fair
3 to Mr. Medina. And again, I know I cannot give the
4 100 percent, which is what I want to do.

5 MR. MANOUKIAN: All right.

6 JUROR NUMBER 8: So I mean it would be up
7 to the counsel and his honor to see if you really
8 want me to be here for this morning. Again, it is
9 only like two and a half hours, but again, I'm here
10 if you need me.

11 MR. MANOUKIAN: Okay. So you're willing to
12 do it, but you want to be sure we understand how
13 you are feeling?

14 (JUROR NUMBER 8): That is correct.

15 MR. MANOUKIAN: Okay. Thank you very much.
16 I appreciate it.

17 (JUROR NUMBER 8): Thank you.

18 THE COURT: Thank you, (JUROR NUMBER 8).

19 I'll ask that you step out in the hallway
20 and we will get to you in a moment.

21 (JUROR NUMBER 8): Okay. Thank you.

22 \

23 (WHEREUPON THE JUROR LEFT THE COURTROOM)

24 \

25 THE COURT: Okay. The record will reflect
26 that all parties remain present and none of the
27 jurors are present.

28 What is the People's position?

1 MR. MOAWAD: Well, your Honor, I have some
2 concerns that he's frankly going to be available
3 next week, not to mention I know that we lose
4 (JUROR NUMBER 11) at some point next week and I
5 don't know how many of the other jurors. I think
6 it's important that they -- I know that they were
7 discussing making some accommodations for people at
8 some point today, I don't know what those hours
9 are, but I would hate to cut that even shorter
10 today, as well as it appears that (JUROR NUMBER 8)
11 would be distracted.

12 I guess ultimately my biggest concern would
13 be that we do something to postpone deliberations,
14 move it further away from argument where things are
15 freshest in their minds, and then he ends up saying
16 on Monday that he can't be here because it turns
17 out the mother-in-law did have a stroke or whatever
18 other reason, and if the -- if it's truly a heart
19 attack and a stroke, I would imagine that one or
20 both of them would remain in the hospital on Monday
21 and there may be other things that need to be
22 done. I don't know.

23 I appreciate his confidence that it would
24 be less distracting for him once he knows, but
25 there may be other practicalities that would
26 interfere.

27 THE COURT: Okay. Thank you.

28 Mr. Manoukian, your position.

1 MR. MANOUKIAN: Well, your Honor, I would
2 say this with a great amount of reluctance, but I
3 certainly -- the defense's position is that I don't
4 need to recite the tortured procedural history of
5 this case was that we accommodate (JUROR NUMBER 8)
6 in whatever manner we can. He is a seated juror,
7 and from the defense perspective is an important
8 part of the collective jury that we want to
9 participate in deliberations. And I -- I say that
10 understanding all of the ramifications of what
11 that means.

12 I would just comment that he does seem
13 confident that he will be here Monday.

14 I think that his comments about knowing
15 what is going on and at least being able to be
16 there for the initial discovery of what is going on
17 to comfort his wife and to find out the situation
18 will set his mind at least, and if certainly they
19 are down there in the hospital there isn't anything
20 that he necessarily can do. And he again felt
21 confident that he would be available Monday, and
22 would be able to concentrate Monday, and expressed
23 a desire to participate. He said I want -- I would
24 like to continue deliberating.

25 So those are the defense's positions on
26 this newest development, your Honor.

27 THE COURT: Okay. Thank you.

28 I am going to excuse (JUROR NUMBER 8) for

1 the deliberations on this case. It is clear to me
2 that he is distraught, he is emotionally fragile.
3 It's absolutely clear to me he cannot deliberate
4 today, although he is willing to do so if
5 necessary. I agree with him that it's virtually
6 impossible for him to deliberate in substance on
7 this case.

8 I also appreciate and believe his belief
9 that he will be available Monday, but I agree that
10 that is a more uncertain future than any of us can
11 predict. With two presumably elderly in-laws, they
12 have been married 65 years, they have got to be up
13 there, one with a heart attack and one with either
14 stress, anxiety attack or a stroke, I don't think
15 it's at all clear that he will be free on Monday.
16 At that age, they tend to get worse before they get
17 better.

18 I think it's too uncertain in light of the
19 fact that we start losing jurors at the end of the
20 day today and next week, I don't believe I can risk
21 losing today's deliberations entirely.

22 So I'm going to excuse (JUROR NUMBER 8),
23 pick among our alternates by lot and we will call
24 in the alternate and instruct them to begin
25 deliberations anew.

26 Sue, you haven't put names in yet, have
27 you?

28 THE CLERK: I did.

1 THE COURT: Okay.

2 THE CLERK: Place the names in there, open
3 the box, spin the wheel.

4 Thank you.

5 And alternate (ALTERNATE JUROR NUMBER 1).
6 She was alternate in seat one of the alternates.

7 THE COURT: I'm going to ask (JUROR NUMBER
8 8) to come back in, and I'll thank him and instruct
9 him, explain my reasons to him.

10 MR. MOAWAD: Presumably the Court won't
11 need us for anything when she arrives, just as if
12 (JUROR NUMBER 8) had been there?

13 THE COURT: No, I have to instruct them to
14 start deliberations all over again, so we'll have
15 to come in and bring the jury panel in.

16 MR. MANOUKIAN: I am sorry, we are --

17 THE COURT: When (ALTERNATE JUROR NUMBER 1)
18 gets here, I'm going to bring all of the jurors in
19 to instruct them to start deliberations anew, read
20 the standard substitution instruction. So you will
21 need to be available in a half hour, whenever
22 (ALTERNATE JUROR NUMBER 1) gets here.

23 MR. MANOUKIAN: That is fine.

24 THE COURT: I'm sorry?

25 MR. MANOUKIAN: I said that is fine.

26 \

27 (WHEREUPON THE JUROR ENTERED
28 THE COURTROOM)

1 THE COURT: Okay. The record will reflect
2 that all parties are present.

3 (JUROR NUMBER 8) has returned.

4 (JUROR NUMBER 8), I have given some thought
5 to your session, and it's my conclusion, first,
6 that it would be completely unfair to ask you to
7 deliberate today, both to you and the parties. I
8 don't think we can ask that of anyone, that would
9 be asking you to do the impossible.

10 Secondly, I'm going to excuse you from
11 further service, recognizing your willingness to
12 serve next week and I very much appreciate, that
13 it's a wonderful attitude and one that we
14 encourage, but for accommodation factors I think
15 it's best that we excuse you and we will bring in
16 an alternate juror, because I don't want you to
17 have this weighing on your mind all weekend if
18 things are not as rosy Monday as you would hope and
19 you feel the pressure to come back since you had
20 committed, and I don't want you to be in that
21 position, I want you to be with your in-laws as
22 long as you would like to be.

23 (JUROR NUMBER 8): Thank you.

24 THE COURT: And I just think it's too much
25 to ask of you under the circumstances.

26 So I'm excusing you now, and you are
27 welcome to head to San Jose immediately.

28 And I do need to tell you that you remain

1 under the prohibitions not to discuss the case with
2 anybody, obviously, not with any of the
3 deliberating jurors or alternates or anybody else.

4 When the case is completed, Sue will call
5 you and let you know that it's completed and what
6 the decision is, if there is a decision, and at
7 that point then you will be free of all of our
8 admonitions and you will be free to talk to anybody
9 about the case, if you want to, it's entirely up to
10 you. That is, the other jurors, the lawyers,
11 anybody you want.

12 But until that point we need to ask that
13 you maintain the rules that I have been placing you
14 under.

15 I want to wish your in-laws the best of
16 health. I want to thank you also for being so
17 conscientious to come in. Many people would have
18 said I'm out of here.

19 (JUROR NUMBER 8): Right.

20 THE COURT: You said I'll deal with it, and
21 I would have understood that completely, but your
22 conscientious participation as a juror is very much
23 appreciated, but I don't think that it's fair to
24 ask you to continue.

25 So thank you for coming in and good luck
26 with your folks and your in-laws.

27 Thank you for your service.

28 (JUROR NUMBER 8): Well, thank you very

1 much and thank you, gentlemen. I do appreciate
2 your time.

3 MR. MOAWAD: Thank you, sir.

4 MR. MANOUKIAN: Thank you, sir.

5 Good luck.

6 (JUROR NUMBER 8): Should I say anything to
7 the jurors that are out there now that I will not
8 be coming back, or is that to be left to you or --

9 THE COURT: I'll explain that to them.

10 (JUROR NUMBER 8): Okay.

11 THE COURT: I don't know if it's a great
12 idea. I don't think there is any harm in him --

13 MR. MANOUKIAN: I don't have an objection
14 to just saying that I'm leaving. He has been with
15 them for two months now or whatever.

16 THE COURT: Okay. As a human matter don't
17 talk about the case, but just say I have got to go,
18 sorry, and I'll explain to them everything.

19 (JUROR NUMBER 8): Okay. Very good.

20 THE COURT: You don't need to worry about
21 details, but if you would like to say I'm sorry, I
22 have to leave, that is fine.

23 (JUROR NUMBER 8): Okay. Thank you.

24 I am sorry I cannot stay. I wish I could.

25 THE COURT: I understand.

26 (JUROR NUMBER 8): All right. Thank you
27 very much.

28 MR. MOAWAD: Good luck.