

1 VAN NUYS, CALIFORNIA; FRIDAY, MARCH 1, 1996

2 9:50 A.M.

3 DEPARTMENT NW "N" HON. STANLEY M. WEISBERG, JUDGE

4 (APPEARANCES AS HERETOFORE NOTED)

5 (MARY LU MURPHY, OFFICIAL REPORTER)

6 (MARILYN A. FADALE, OFFICIAL REPORTER)

7

8 THE COURT: OKAY. IN THE TRIAL, THE DEFENDANTS

9 AND ALL COUNSEL ARE PRESENT.

10 MS. ABRAMSON: I HAVE A QUESTION, YOUR HONOR,

11 ABOUT THIS.

12 THE COURT: YES.

13 MS. ABRAMSON: MAYBE I AM REMEMBERING CASE

14 AUTHORITY THAT IS NO LONGER GOOD LAW, BUT ON PAGE 13 OF

15 THE PACKAGE, AIDING AND ABETTING, 3.01, AM I SHOWING MY

16 AGE IN REMEMBERING THAT AT ONE POINT WE WERE INSTRUCTING

17 ON SHARED INTENT, BECAUSE THIS DOESN'T INDICATE WITH THE

18 SAME INTENT PARTICULARLY FOR FIRST-DEGREE MURDER.

19 LIKE I SAY, I AM REMEMBERING THERE WAS CASE

20 AUTHORITY FOR IT.

21 THE COURT: NO, NO. THAT'S THE LAW. "WITH

22 KNOWLEDGE OF THE UNLAWFUL PURPOSE OF THE PERPETRATOR."

23 THAT'S THE SHARED INTENT.

24 IS THAT WHAT YOU'RE REFERRING TO?

25 MS. ABRAMSON: JUST KNOWLEDGE IS ENOUGH FOR

26 SHARED INTENT?

27 THE COURT: AND WITH THE INTENT FOR PURPOSE OF

28 COMMITTING, ENCOURAGING OR -- THE SECOND LINE.

1 MS. ABRAMSON: YES. THE COMMISSION OF THE CRIME.

2 IS IT CLEAR THAT THAT MEANS SHARING THE INTENT THOUGH?

3 THE COURT: YES. THAT'S WHAT THAT WAS PUT IN

4 FOR.

5 MS. ABRAMSON: ALL RIGHT. LET'S HOPE THEY

6 UNDERSTAND IT.

7 THE COURT: THAT'S A STANDARD INSTRUCTION. DO

8 YOU HAVE YOUR CALJIC THERE?

9 MS. ABRAMSON: NO. I AM SURE YOU DID THE

10 STANDARD INSTRUCTION. I AM NOT ASSUMING YOU WROTE THIS

11 ONE.

12 THE COURT: LET'S DOUBLE CHECK. THAT WAS CHANGED

13 MANY YEARS AGO TO CONFORM WITH BEEMAN.

14 MS. ABRAMSON: BEEMAN, THAT'S THE CASE.

15 THE COURT: YES. THAT'S WHEN THEY PUT IN THAT

16 SECOND SENTENCE.

17 MS. ABRAMSON: THANK YOU, JUDGE. THAT'S WHAT I

18 WAS REFERRING TO.

19 MR. GESSLER: YOUR HONOR, ON PAGE 27 --

20 THE COURT: YES.

21 BY THE WAY, THE FORMAT I GAVE YOU IS NOT

22 THE FORMAT THAT'S GOING TO THE JURY. I JUST MADE IT

23 THAT WAY SO IT WOULD BE EASIER, QUICKER TO PRINT OUT AND

24 QUICKER TO COPY AND SAVE PAPER, BECAUSE THIS IS THE ONE

25 TO GO TO THE JURY, AND IT'S ABOUT FOUR TIMES AS THICK.

26 SEE?

27 MR. GESSLER: TRADITIONALISM WON OUT.

28 THE COURT: BUT JUST FOR THE CONVENIENCE OF

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1 MAKING IT AVAILABLE TO YOU.

2 WHICH PAGE, 26?

3 MR. GESSLER: 27, YOUR HONOR, THE THIRD

4 PARAGRAPH, THE ONE WE TALKED A LITTLE BIT ABOUT

5 YESTERDAY, AND WE NOW MADE IT PREMEDITATION IN COUNTS 1

6 AND 2 WHICH I THINK ESTABLISHES WHAT WE'RE TALKING

7 ABOUT, BUT I AM NOT SURE IT MAKES IT CLEAR TO THE JURY,

8 AND I AM WONDERING IF ADDING "BOTH" IN BETWEEN COUNT 1

9 AND 2, WILL CALL IT TO THEIR ATTENTION THAT IT APPLIES

10 TO BOTH.

11 THE COURT: IN BOTH COUNT 1 AND 2?

12 MR. GESSLER: YES.

13 THE COURT: PEOPLE HAVE ANY PROBLEM WITH THAT?

14 MR. CONN: NO.

15 THE COURT: ALL RIGHT. ALL RIGHT. THAT'S 8.73.

16 THE INSTRUCTIONS THAT WILL GO TO THE JURY

17 ARE IDENTICAL TO THOSE THAT YOU HAVE, EXCEPT THAT THEY

18 WILL BE IN THE TRADITIONAL FORMAT, AND THE BRACKETS HAVE

19 BEEN REMOVED. WHEN IT IS PRINTED OUT, THE BRACKETS HAVE

20 BEEN REMOVED, AND OTHERWISE THEY'RE IDENTICAL, BUT FOR

21 ANYTHING THAT COMES TO MY ATTENTION AS I AM READING

22 THEM, WHICH OFTEN DOES OCCUR, THAT I MIGHT HAVE TO
23 CHANGE.

24 OKAY. ANYTHING ELSE NOW BEFORE WE HAVE THE
25 JURY OUT?

26 MS. ABRAMSON: NO, YOUR HONOR.

27 THE COURT: OKAY. CAN YOU MOVE THAT PODIUM AWAY?

28 OKAY. LET'S GET THE JURY OUT.

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1 (THE JURY ENTERS THE COURTROOM

2 AND THE FOLLOWING PROCEEDINGS

3 WERE HELD:)

4

5 THE COURT: OKAY. THE JURORS ARE IN THE JURY
6 BOX.

7 GOOD MORNING, LADIES AND GENTLEMEN.

8 OKAY. AND I AM SORRY FOR THE DELAY. IT
9 TOOK A LITTLE WHILE TO GET ALL THE PAPERWORK TOGETHER.

10 WHAT WILL OCCUR THIS MORNING IS I WILL BE
11 READING INSTRUCTIONS TO YOU ON THE LAW. THIS IS THE
12 PACKET OF INSTRUCTIONS I WILL BE READING TO YOU
13 (INDICATING). AND AFTER THAT IS COMPLETED, YOU WILL GO
14 IN AND BEGIN YOUR DELIBERATIONS.

15 IT WILL TAKE A LITTLE WHILE FOR THE CLERK
16 TO PROCESS PAPERWORK FOR THIS PACKET OF MATERIAL TO GO
17 INTO THE JURY ROOM, WHICH IS THE WRITTEN INSTRUCTIONS

18 WHICH I WILL BE READING FROM. BUT YOU WILL GET THIS AS
19 WELL.
20 ALSO, DURING DELIBERATIONS YOU WILL HAVE
21 ACCESS TO ALL OF THE EXHIBITS THAT HAVE BEEN RECEIVED IN
22 THE TRIAL. THERE WERE CERTAIN EXHIBITS THAT MIGHT HAVE
23 BEEN REFERRED TO DURING THE PROCEEDINGS THAT HAVE NOT
24 BEEN RECEIVED, AND YOU WILL NOT HAVE ACCESS TO. YOU
25 SHOULDN'T BE CONCERNED ABOUT THAT, OR SPECULATE AS TO
26 WHY IT WAS THAT CERTAIN EXHIBITS WERE NOT RECEIVED. IT
27 JUST OCCURS DURING THE COURSE OF TRIAL THAT SOME THINGS
28 GET MARKED AS AN EXHIBIT, AND FOR WHATEVER REASON,

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1 AREN'T PROVIDED TO THE JURY, AND YOU SHOULDN'T SPECULATE
2 ABOUT IT OR BE CONCERNED ABOUT IT.

3 BUT SINCE THERE ARE SO MANY EXHIBITS, THERE
4 WOULDN'T REALLY BE ROOM FOR ALL OF THEM AT THE SAME TIME
5 IN THE JURY ROOM, OR IF THEY WERE ALL IN THE JURY ROOM
6 AT THE SAME TIME, IT WOULD MAKE IT RATHER DIFFICULT FOR
7 YOU TO MOVE AROUND.

8 SO WHAT WE HAVE DONE -- WHAT THE LAWYERS
9 HAVE DONE ACTUALLY, AND I APPRECIATE THEIR ASSISTANCE,
10 THEY HAVE PREPARED A LIST OF ALL OF THE EXHIBITS, WITH A
11 DESCRIPTION OF THE EXHIBIT, THE NUMBER AND A
12 DESCRIPTION, AND THIS LIST WILL GO INTO THE JURY ROOM.
13 SO THAT WHEN YOU WANT PARTICULAR EXHIBITS, WHICHEVER

14 EXHIBITS YOU WANT, YOU CAN JUST LET THE CLERK KNOW
15 THROUGH THE BAILIFF, AND THOSE EXHIBITS WILL BE MADE
16 AVAILABLE TO YOU.

17 AND I WILL EXPLAIN A LITTLE LATER ON SOME
18 OF THE MECHANICS OF HOW YOU CAN COMMUNICATE WITH THE
19 COURT DURING THE TIME YOU ARE DELIBERATING.

20 THE READING OF THESE INSTRUCTIONS WILL TAKE
21 QUITE AWHILE. AND DEPENDING ON HOW QUICKLY OR HOW
22 SLOWLY I READ, WE MIGHT TAKE BREAK SOMEWHERE ALONG THE
23 LINE HERE AND GIVE EVERYONE A CHANCE TO STRETCH, IF IT'S
24 TAKING THE LENGTH OF TIME WHERE I FEEL SUCH WOULD BE
25 APPROPRIATE TO TAKE BREAK.

26 SO LET'S START OFF.

27 (READING:)

28

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1 "LADIES AND GENTLEMEN OF THE
2 JURY: YOU HAVE HEARD ALL OF THE EVIDENCE,
3 AND YOU HAVE ALSO HEARD THE ARGUMENTS OF THE
4 ATTORNEYS, AND NOW IT IS MY DUTY TO INSTRUCT
5 YOU ON THE LAW THAT APPLIES TO THIS CASE.
6 THE LAW REQUIRES THAT I READ THE
7 INSTRUCTIONS TO YOU, AND YOU WILL HAVE
8 THEM -- THESE INSTRUCTIONS IN WRITTEN FORM
9 IN THE JURY ROOM TO REFER TO DURING YOUR

10 DELIBERATIONS.

11 YOU MUST BASE YOUR DECISION ON

12 THE FACTS AND ON THE LAW.

13 YOU HAVE TWO DUTIES TO PERFORM.

14 FIRST, YOU MUST DETERMINE THE FACTS FROM THE

15 EVIDENCE RECEIVED IN THE TRIAL, AND NOT FROM

16 ANY OTHER SOURCE. A "FACT" IS SOMETHING

17 PROVED DIRECTLY OR CIRCUMSTANTIALLY BY THE

18 EVIDENCE OR BY A STIPULATION. A STIPULATION

19 IS AN AGREEMENT BETWEEN THE ATTORNEYS

20 REGARDING THE FACTS. SECOND, YOU MUST APPLY

21 THE LAW THAT I STATE TO YOU, TO THE FACTS,

22 AS YOU DETERMINE THEM, AND IN THIS WAY

23 ARRIVE AT YOUR VERDICT AND ANY FINDING YOU

24 ARE INSTRUCTED TO INCLUDE IN YOUR VERDICT.

25 YOU MUST ACCEPT AND FOLLOW THE

26 LAW AS I STATE IT TO YOU, WHETHER OR NOT YOU

27 AGREE WITH THE LAW. IF ANYTHING CONCERNING

28 THE LAW SAID BY THE ATTORNEYS IN THEIR

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1 ARGUMENTS OR AT ANY OTHER TIME DURING THE

2 TRIAL CONFLICTS WITH MY INSTRUCTIONS ON THE

3 LAW, YOU MUST FOLLOW MY INSTRUCTIONS.

4 YOU MUST NOT BE INFLUENCED BY

5 PITY FOR A DEFENDANT OR BY PREJUDICE AGAINST

6 HIM. YOU MUST NOT BE BIASED AGAINST THE
7 DEFENDANT BECAUSE HE HAS BEEN ARRESTED FOR
8 THIS OFFENSE, CHARGED WITH A CRIME, OR
9 BROUGHT TO TRIAL. NONE OF THESE
10 CIRCUMSTANCES IS EVIDENCE OF GUILT, AND YOU
11 MUST NOT INFER OR ASSUME FROM ANY OR ALL OF
12 THEM THAT HE IS MORE LIKELY TO BE GUILTY
13 THAN INNOCENT.

14 YOU MUST NOT BE INFLUENCED BY
15 MERE SENTIMENT, CONJECTURE, SYMPATHY,
16 PASSION, PREJUDICE, PUBLIC OPINION, OR
17 PUBLIC FEELING. BOTH THE PEOPLE AND THE
18 DEFENDANT HAVE A RIGHT TO EXPECT THAT YOU
19 WILL CONSCIENTIOUSLY CONSIDER AND WEIGH THE
20 EVIDENCE, APPLY THE LAW, AND REACH A JUST
21 VERDICT, REGARDLESS OF THE CONSEQUENCES.

22
23 IF ANY RULE, DIRECTION OR IDEA
24 IS REPEATED OR STATED IN DIFFERENT WAYS IN
25 THESE INSTRUCTIONS, NO EMPHASIS IS INTENDED,
26 AND YOU MUST NOT DRAW ANY INFERENCE BECAUSE
27 OF ITS REPETITION. DO NOT SINGLE OUT ANY
28 PARTICULAR SENTENCE OR ANY INDIVIDUAL POINT

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1 OR INSTRUCTION AND IGNORE THE OTHERS.

2 CONSIDER THE INSTRUCTIONS AS A WHOLE, AND
3 EACH IN LIGHT OF ALL THE OTHERS.

4 THE ORDER IN WHICH THE
5 INSTRUCTIONS ARE GIVEN HAS NO SIGNIFICANCE
6 AS TO THEIR RELATIVE IMPORTANCE.

7
8 STATEMENTS MADE BY THE
9 ATTORNEYS DURING THE TRIAL ARE NOT EVIDENCE,
10 ALTHOUGH IF THE ATTORNEYS HAVE STIPULATED OR
11 AGREED TO A FACT, YOU MUST REGARD THAT FACT
12 AS CONCLUSIVELY PROVED AS TO THE PARTY OR
13 PARTIES MAKING THE STIPULATION.

14 IF AN OBJECTION WAS SUSTAINED
15 TO A QUESTION, DO NOT GUESS WHAT THE ANSWER
16 MIGHT HAVE BEEN. DO NOT SPECULATE AS TO THE
17 REASON FOR THE OBJECTION.

18 DO NOT ASSUME TO BE TRUE ANY
19 INSINUATION SUGGESTED BY A QUESTION ASKED A
20 WITNESS. A QUESTION IS NOT EVIDENCE, AND
21 MAY BE CONSIDERED ONLY AS IT ENABLES YOU TO
22 UNDERSTAND THE ANSWER.

23 DO NOT CONSIDER FOR ANY PURPOSE
24 ANY OFFER OF EVIDENCE THAT WAS REJECTED, OR
25 ANY EVIDENCE THAT WAS STRICKEN BY THE COURT.
26 TREAT IT AS THOUGH YOU HAD NEVER HEARD OF
27 IT.

28

1 YOU MUST DECIDE ALL QUESTIONS
2 OF FACT IN THIS CASE FROM THE EVIDENCE
3 RECEIVED IN THIS TRIAL, AND NOT FROM ANY
4 OTHER SOURCE. YOU MUST NOT MAKE ANY
5 INDEPENDENT INVESTIGATION OF THE FACTS OR
6 THE LAW, OR CONSIDER OR DISCUSS FACTS AS TO
7 WHICH THERE IS NO EVIDENCE. THIS MEANS, FOR
8 EXAMPLE, THAT YOU MUST NOT ON YOUR OWN VISIT
9 THE SCENE, CONDUCT EXPERIMENTS, OR CONSULT
10 REFERENCE WORKS OR PERSONS FOR ADDITIONAL
11 INFORMATION.

12 YOU MUST NOT DISCUSS THIS CASE
13 WITH ANY OTHER PERSON, EXCEPT A FELLOW
14 JUROR, AND YOU MUST NOT DISCUSS THE CASE
15 WITH A FELLOW JUROR UNTIL THE CASE IS
16 SUBMITTED TO YOU FOR YOUR DECISION AND ONLY
17 WHEN ALL THE JURORS ARE PRESENT IN THE JURY
18 ROOM.

19
20 THE WORD "DEFENDANT" APPLIES
21 EQUALLY TO EACH DEFENDANT, UNLESS YOU ARE
22 EXPRESSLY INSTRUCTED OTHERWISE.

23
24 EVIDENCE CONSISTS OF TESTIMONY
25 OF WITNESSES, WRITINGS, MATERIAL OBJECTS, OR
26 ANYTHING PRESENTED TO THE SENSES AND OFFERED

27 TO PROVE THE EXISTENCE OR NON-EXISTENCE OF A
28 FACT.

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1 EVIDENCE IS EITHER DIRECT OR
2 CIRCUMSTANCIAL.

3 DIRECT EVIDENCE IS EVIDENCE
4 THAT DIRECTLY PROVES A FACT WITHOUT THE
5 NECESSITY OF AN INFERENCE. IT IS EVIDENCE
6 WHICH BY ITSELF, IF FOUND TO BE TRUE,
7 ESTABLISHES THAT FACT.

8 CIRCUMSTANCIAL EVIDENCE IS
9 EVIDENCE THAT, IF FOUND TO BE TRUE, PROVES A
10 FACT FROM WHICH AN INFERENCE OF THE
11 EXISTENCE OF ANOTHER FACT MAY BE DRAWN.

12 AN INFERENCE IS A DEDUCTION OF
13 FACT THAT MAY LOGICALLY AND REASONABLY BE
14 DRAWN FROM ANOTHER FACT OR GROUP OF FACTS
15 ESTABLISHED BY THE EVIDENCE. IT IS NOT
16 NECESSARY THAT FACTS BE PROVED BY DIRECT
17 EVIDENCE. THEY MAY BE PROVED ALSO BY
18 CIRCUMSTANCIAL EVIDENCE OR BY A COMBINATION
19 OF DIRECT EVIDENCE AND CIRCUMSTANCIAL
20 EVIDENCE. BOTH DIRECT EVIDENCE AND
21 CIRCUMSTANCIAL EVIDENCE ARE ACCEPTABLE AS A
22 MEANS OF PROOF. NEITHER IS ENTITLED TO ANY

23 GREATER WEIGHT THAN THE OTHER.
24
25 HOWEVER, A FINDING OF GUILT AS
26 TO ANY CRIME MAY NOT BE BASED ON
27 CIRCUMSTANCIAL EVIDENCE UNLESS THE PROVED
28 CIRCUMSTANCES ARE NOT ONLY (1) CONSISTENT

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1 WITH THE THEORY THAT THE DEFENDANT IS GUILTY
2 OF THE CRIME, BUT (2) CANNOT BE RECONCILED
3 WITH ANY OTHER RATIONAL CONCLUSION.
4 FURTHER, EACH FACT WHICH IS
5 ESSENTIAL TO COMPLETE A SET OF CIRCUMSTANCES
6 NECESSARY TO ESTABLISH THE DEFENDANT'S GUILT
7 MUST BE PROVED BEYOND A REASONABLE DOUBT.
8 IN OTHER WORDS, BEFORE AN INFERENCE
9 ESSENTIAL TO ESTABLISH GUILT MAY BE FOUND TO
10 HAVE BEEN PROVED BEYOND A REASONABLE DOUBT,
11 EACH FACT OR CIRCUMSTANCE UPON WHICH SUCH
12 INFERENCE NECESSARILY RESTS MUST BE PROVED
13 BEYOND A REASONABLE DOUBT.
14 ALSO, IF THE CIRCUMSTANCIAL
15 EVIDENCE AS TO ANY PARTICULAR COUNT IS
16 SUSCEPTIBLE OF TWO REASONABLE
17 INTERPRETATIONS, ONE OF WHICH POINTS TO THE
18 DEFENDANT'S GUILT AND THE OTHER TO HIS

19 INNOCENCE, YOU MUST ADOPT THAT
20 INTERPRETATION WHICH POINTS TO THE
21 DEFENDANT'S INNOCENCE, AND REJECT THAT
22 INTERPRETATION WHICH POINTS TO HIS GUILT.
23 IF, ON THE OTHER HAND, ONE
24 INTERPRETATION OF SUCH EVIDENCE APPEARS TO
25 YOU TO BE REASONABLE AND THE OTHER
26 INTERPRETATION TO BE UNREASONABLE, YOU MUST
27 ACCEPT THE REASONABLE INTERPRETATION AND
28 REJECT THE UNREASONABLE.

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1
2 IF YOU FIND THAT BEFORE THIS
3 TRIAL A DEFENDANT MADE A WILLFULLY FALSE OR
4 DELIBERATELY MISLEADING STATEMENT CONCERNING
5 THE CRIMES FOR WHICH HE IS NOW BEING TRIED,
6 YOU MAY CONSIDER SUCH STATEMENT AS A
7 CIRCUMSTANCE TENDING TO PROVE A
8 CONSCIOUSNESS OF GUILT. HOWEVER, SUCH
9 CONDUCT IS NOT SUFFICIENT BY ITSELF TO PROVE
10 GUILT, AND ITS WEIGHT AND SIGNIFICANCE, IF
11 ANY, ARE MATTERS FOR YOUR DETERMINATION.

12
13 IF YOU FIND THAT A DEFENDANT
14 ATTEMPTED TO OR DID PERSUADE A WITNESS TO

15 TESTIFY FALSELY, OR ATTEMPTED TO OR DID
16 FABRICATE EVIDENCE TO BE PRODUCED AT THE
17 TRIAL, SUCH CONDUCT MAY BE CONSIDERED BY YOU
18 AS A CIRCUMSTANCE TENDING TO SHOW A
19 CONSCIOUSNESS OF GUILT. HOWEVER, SUCH
20 CONDUCT IS NOT SUFFICIENT BY ITSELF TO PROVE
21 GUILT, AND ITS WEIGHT AND SIGNIFICANCE, IF
22 ANY, ARE MATTERS FOR YOUR DETERMINATION.

23

24 IF YOU FIND THAT A DEFENDANT
25 ATTEMPTED TO SUPPRESS EVIDENCE AGAINST
26 HIMSELF IN ANY MANNER, SUCH AS BY AN OFFER
27 TO COMPENSATE A WITNESS, BY DESTROYING
28 EVIDENCE, OR BY CONCEALING EVIDENCE, SUCH

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1 ATTEMPT MAY BE CONSIDERED BY YOU AS A
2 CIRCUMSTANCE TENDING TO SHOW A CONSCIOUSNESS
3 OF GUILT. HOWEVER, SUCH CONDUCT IS NOT
4 SUFFICIENT BY ITSELF TO PROVE GUILT, AND ITS
5 WEIGHT AND SIGNIFICANCE, IF ANY, ARE MATTERS
6 FOR YOUR CONSIDERATION.

7

8 EVIDENCE HAS BEEN ADMITTED
9 AGAINST ONE OF THE DEFENDANTS AND NOT
10 ADMITTED AGAINST THE OTHER.

11 AT THE TIME THE EVIDENCE WAS
12 ADMITTED YOU WERE ADMONISHED THAT IT COULD
13 NOT BE CONSIDERED BY YOU AGAINST THE OTHER
14 DEFENDANT.

15 DO NOT CONSIDER SUCH EVIDENCE
16 AGAINST THE OTHER DEFENDANT.

17

18 EVIDENCE HAS BEEN RECEIVED OF A
19 STATEMENT MADE BY DEFENDANT AFTER HIS
20 ARREST.

21 AT THE TIME THE EVIDENCE OF
22 THIS STATEMENT WAS RECEIVED YOU WERE TOLD
23 THAT IT COULD NOT BE CONSIDERED BY YOU
24 AGAINST THE OTHER DEFENDANT.

25 DO NOT CONSIDER THE EVIDENCE OF
26 SUCH STATEMENT AGAINST THE OTHER DEFENDANT.

27

28 CERTAIN EVIDENCE WAS ADMITTED

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1 FOR A LIMITED PURPOSE.

2 AT THE TIME THIS EVIDENCE WAS
3 ADMITTED YOU WERE ADMONISHED THAT IT COULD
4 NOT BE CONSIDERED BY YOU FOR ANY OTHER
5 PURPOSE OTHER THAN THE LIMITED PURPOSE FOR
6 WHICH IT WAS ADMITTED.

7 DO NOT CONSIDER SUCH EVIDENCE
8 FOR ANY PURPOSE EXCEPT THE LIMITED PURPOSE
9 FOR WHICH IT WAS ADMITTED.

10
11 NEITHER SIDE IS REQUIRED TO
12 CALL AS WITNESSES ALL PERSONS WHO MAY HAVE
13 BEEN PRESENT AT ANY OF THE EVENTS DISCLOSED
14 BY THE EVIDENCE, OR WHO MAY APPEAR TO HAVE
15 SOME KNOWLEDGE OF THESE EVENTS, OR TO
16 PRODUCE ALL OBJECTS OR DOCUMENTS MENTIONED
17 OR SUGGESTED BY THE EVIDENCE.

18
19 EVIDENCE THAT ON SOME FORMER
20 OCCASION, A WITNESS MADE A STATEMENT OR
21 STATEMENTS THAT WERE INCONSISTENT OR
22 CONSISTENT WITH HIS OR HER TESTIMONY IN THIS
23 TRIAL, MAY BE CONSIDERED BY YOU NOT ONLY FOR
24 THE PURPOSE OF TESTING THE CREDIBILITY OF
25 THE WITNESS, BUT ALSO AS EVIDENCE OF THE
26 TRUTH OF THE FACTS AS STATED BY THE WITNESS
27 ON SUCH FORMER OCCASION.

28 IF YOU DISBELIEVE A WITNESS'

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1 TESTIMONY THAT HE OR SHE NO LONGER REMEMBERS
2 A CERTAIN EVENT, SUCH TESTIMONY IS

INCONSISTENT WITH A PRIOR STATEMENT OR
STATEMENTS MADE BY HIM OR HER DESCRIBING
THAT EVENT.

EVERY PERSON WHO TESTIFIES
UNDER OATH IS A WITNESS. YOU ARE THE SOLE
JUDGES OF THE BELIEVABILITY OF A WITNESS AND
THE WEIGHT TO BE GIVEN TO THE TESTIMONY OF
EACH WITNESS.

IN DETERMINING THE
BELIEVABILITY OF A WITNESS YOU MAY CONSIDER
ANYTHING THAT HAS A TENDENCY IN REASON TO
PROVE OR DISPROVE THE TRUTHFULNESS OF THE
TESTIMONY OF THE WITNESS, INCLUDING, BUT NOT
LIMITED TO ANY OF THE FOLLOWING:

THE EXTENT OF THE OPPORTUNITY
OR THE ABILITY OF THE WITNESS TO SEE OR HEAR
OR OTHERWISE BECOME AWARE OF ANY MATTER
ABOUT WHICH THE WITNESS HAS TESTIFIED;

THE ABILITY OF THE WITNESS TO
REMEMBER OR TO COMMUNICATE ANY MATTER ABOUT
WHICH THE WITNESS HAS TESTIFIED;

THE CHARACTER AND QUALITY OF
THAT TESTIMONY;

THE Demeanor AND MANNER OF THE
WITNESS WHILE TESTIFYING;

1 THE EXISTENCE OR NON-EXISTENCE
2 OF A BIAS, INTEREST, OR OTHER MOTIVE;
3 EVIDENCE OF THE EXISTENCE OR
4 NON-EXISTENCE OF ANY FACT TESTIFIED TO BY
5 THE WITNESS;
6 THE ATTITUDE OF THE WITNESS
7 TOWARD THIS ACTION, OR TOWARDS THE GIVING OF
8 TESTIMONY;
9 A STATEMENT PREVIOUSLY MADE BY
10 THE WITNESS THAT IS CONSISTENT OR
11 INCONSISTENT WITH THE TESTIMONY OF THE
12 WITNESS;
13 THE CHARACTER OF THE WITNESS
14 FOR HONESTY OR TRUTHFULNESS OR THEIR
15 OPPOSITES;
16 AN ADMISSION BY THE WITNESS OF
17 UNTRUTHFULNESS.

18
19 DISCREPANCIES IN A WITNESS'
20 TESTIMONY OR BETWEEN HIS OR HER TESTIMONY
21 AND THAT OF OTHERS, IF THERE WERE ANY, DO
22 NOT NECESSARILY MEAN THAT THE WITNESS SHOULD
23 BE DISCREDITED. FAILURE OF RECOLLECTION IS
24 A COMMON EXPERIENCE, AND INNOCENT
25 MISRECOLLECTION IS NOT UNCOMMON. IT IS A
26 FACT, ALSO, THAT TWO PERSONS WITNESSING AN
27 INCIDENT OR A TRANSACTION OFTEN WILL SEE OR

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1 PERTAINS TO A FACT OF IMPORTANCE OR ONLY TO
2 A TRIVIAL DETAIL SHOULD BE CONSIDERED IN
3 WEIGHING ITS SIGNIFICANCE.
4

5 A WITNESS, WHO IS WILLFULLY
6 FALSE IN ONE MATERIAL PART OF HIS OR HER
7 TESTIMONY, IS TO BE DISTRUSTED IN OTHERS.
8 YOU MAY REJECT THE WHOLE TESTIMONY OF A
9 WITNESS WHO WILLFULLY HAS TESTIFIED FALSELY
10 AS TO A MATERIAL POINT UNLESS, FROM ALL OF
11 THE EVIDENCE, YOU BELIEVE A PROBABILITY OF
12 TRUTH FAVORS HIS OR HER TESTIMONY IN OTHER
13 PARTICULARS.
14

15 YOU ARE NOT BOUND TO DECIDE AN
16 ISSUE OF FACT IN ACCORDANCE WITH THE
17 TESTIMONY OF A NUMBER OF WITNESSES, WHICH
18 DOES NOT CONVINCE YOU, AS AGAINST THE
19 TESTIMONY OF A LESSER NUMBER OR OTHER
20 EVIDENCE, WHICH APPEALS TO YOUR MIND WITH
21 MORE CONVINCING FORCE. YOU MAY NOT
22 DISREGARD THE TESTIMONY OF THE GREATER
23 NUMBER OF WITNESSES MERELY FROM CAPRICE,

24 WHIM OR PREJUDICE, OR FROM A DESIRE TO FAVOR
25 ONE SIDE AGAINST THE OTHER. YOU MUST NOT
26 DECIDE AN ISSUE BY THE SIMPLE PROCESS OF
27 COUNTING THE NUMBER OF WITNESSES WHO HAVE
28 TESTIFIED ON THE OPPOSING SIDES. THE FINAL

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1 TEST IS NOT IN THE RELATIVE NUMBER OF
2 WITNESSES, BUT IN THE CONVINCING FORCE OF
3 THE EVIDENCE.

4

5 YOU SHOULD GIVE THE TESTIMONY
6 OF A SINGLE WITNESS WHATEVER WEIGHT YOU
7 THINK IT DESERVES. HOWEVER, TESTIMONY BY
8 ONE WITNESS WHICH YOU BELIEVE CONCERNING ANY
9 FACT IS SUFFICIENT FOR THE PROOF OF THAT
10 FACT. YOU SHOULD CAREFULLY REVIEW ALL THE
11 EVIDENCE UPON WHICH THE PROOF OF SUCH FACT
12 DEPENDS.

13

14 EVIDENCE HAS BEEN INTRODUCED
15 FOR THE PURPOSE OF SHOWING THAT THE
16 DEFENDANTS COMMITTED CRIMES OTHER THAN THAT
17 FOR WHICH HE IS ON TRIAL; NAMELY THE THEFT
18 FROM THE LIST RESIDENCE AND THE BURGLARY OF
19 THE GINSBERG RESIDENCE IN JULY OF 1988.

20 SUCH EVIDENCE, IF BELIEVED, WAS
21 NOT RECEIVED AND MAY NOT BE CONSIDERED BY
22 YOU TO PROVE THAT THE DEFENDANT IS A PERSON
23 OF BAD CHARACTER OR THAT HE HAS A
24 DISPOSITION TO COMMIT CRIMES.

25 SUCH EVIDENCE, IF BELIEVED, WAS
26 NOT RECEIVED AND MAY NOT BE CONSIDERED BY
27 YOU TO PROVE THAT THE DEFENDANT IS A PERSON
28 OF BAD CHARACTER OR THAT HE HAS A

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1 DISPOSITION TO COMMIT CRIMES" --
2 WHICH I JUST SAID TO YOU TWICE.
3 MS. ABRAMSON: TWO DEFENDANTS, YOUR HONOR.
4 THE COURT: YES.
5 (READING:)
6 "SUCH EVIDENCE WAS RECEIVED AND
7 MAY BE CONSIDERED BY YOU ONLY FOR THE
8 LIMITED PURPOSE OF DETERMINING IF IT TENDS
9 TO SHOW THE RELATIONSHIP BETWEEN THE
10 DEFENDANTS AND THEIR PARENTS.
11 FOR THE LIMITED PURPOSE FOR
12 WHICH YOU MAY CONSIDER SUCH EVIDENCE, YOU
13 MAY WEIGH IT IN THE SAME MANNER AS YOU DO
14 ALL OTHER EVIDENCE IN THIS CASE.
15 YOU ARE NOT PERMITTED TO

16 CONSIDER SUCH EVIDENCE FOR ANY OTHER
17 PURPOSE."

18

19 THE COURT: THESE INSTRUCTIONS ARE GENERATED BY
20 COMPUTER, BUT I CAN'T BLAME THE COMPUTER. IT COULD BE
21 THIS WAS MY MISTAKE BY DUPLICATING A PARAGRAPH HERE.

22 BUT AS I GO THROUGH READING THESE
23 INSTRUCTIONS, OCCASIONALLY I WILL NOTICE THAT THERE ARE
24 SOME ERRORS, AND I WILL PAUSE TO CORRECT THEM.

25 (READING:)

26 "MOTIVE IS NOT AN ELEMENT OF
27 THE CRIME CHARGED AND NEED NOT BE SHOWN.
28 HOWEVER, YOU MAY CONSIDER MOTIVE OR LACK OF

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1 MOTIVE AS A CIRCUMSTANCE IN THIS CASE.
2 PRESENCE OF MOTIVE MAY TEND TO ESTABLISH
3 GUILT. ABSENCE OF MOTIVE MAY TEND TO
4 ESTABLISH INNOCENCE. YOU WILL THEREFORE
5 GIVE ITS PRESENCE OR ABSENCE, AS THE CASE
6 MAY BE, THE WEIGHT TO WHICH YOU FIND IT TO
7 BE ENTITLED.

8

9 THE FLIGHT OF A PERSON
10 IMMEDIATELY AFTER THE COMMISSION OF A CRIME
11 OR AFTER HE IS ACCUSED OF A CRIME IS NOT

12 SUFFICIENT IN ITSELF TO ESTABLISH HIS GUILT,
13 BUT IS A FACT WHICH, IF PROVED, MAY BE
14 CONSIDERED BY YOU IN THE LIGHT OF ALL THE
15 OTHER PROVED FACTS IN DECIDING THE QUESTION
16 OF HIS GUILT OR INNOCENCE. THE WEIGHT TO
17 WHICH SUCH CIRCUMSTANCE IS ENTITLED TO IS A
18 MATTER FOR THE JURY TO DETERMINE.

19
20 WHEN, AS IN THIS CASE, IT IS
21 ALLEGED THAT THE CRIME CHARGED WAS COMMITTED
22 "ON OR ABOUT" A CERTAIN DATE, IF THE JURY
23 FINDS THAT THE CRIME WAS COMMITTED IT IS NOT
24 NECESSARY THAT THE PROOF SHOW THAT IT WAS
25 COMMITTED ON THAT PRECISE DATE; IT IS
26 SUFFICIENT IF THE PROOF SHOWS THAT THE CRIME
27 WAS COMMITTED ON OR ABOUT THAT DATE.

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1 YOU MUST NOT DRAW ANY INFERENCE
2 FROM THE FACT THAT A DEFENDANT DOES NOT
3 TESTIFY. FURTHER, YOU MUST NEITHER DISCUSS
4 THIS MATTER NOR PERMIT IT TO ENTER INTO YOUR
5 DELIBERATIONS IN ANY WAY.

6
7 IN DECIDING WHETHER OR NOT TO

8 TESTIFY, THE DEFENDANT MAY CHOOSE TO RELY ON
9 THE STATE OF THE EVIDENCE AND UPON THE
10 FAILURE, IF ANY, OF THE PEOPLE TO PROVE
11 BEYOND A REASONABLE DOUBT EVERY ESSENTIALLY
12 ELEMENT OF THE CHARGE AGAINST HIM. NO LACK
13 OF TESTIMONY ON DEFENDANT'S PART WILL MAKE
14 UP FOR A FAILURE OF PROOF BY THE PEOPLE SO
15 AS TO SUPPORT A FINDING AGAINST HIM ON ANY
16 SUCH ESSENTIAL ELEMENT.

17
18 A CONFESSION IS A STATEMENT
19 MADE BY A DEFENDANT OTHER THAN AT HIS TRIAL
20 IN WHICH HE HAS ACKNOWLEDGED HIS GUILT OF
21 THE CRIMES FOR WHICH SUCH DEFENDANT IS ON
22 TRIAL. IN ORDER TO CONSTITUTE A CONFESSION,
23 SUCH A STATEMENT MUST ACKNOWLEDGE
24 PARTICIPATION IN THE CRIMES AS WELL AS
25 REQUIRED CRIMINAL INTENT OR STATE OF MIND.

26 AN ADMISSION IS A STATEMENT
27 MADE BY A DEFENDANT, OTHER THAN AT HIS
28 TRIAL, WHICH DOES NOT BY ITSELF ACKNOWLEDGE

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1 HIS GUILT OF THE CRIMES FOR WHICH SUCH
2 DEFENDANT IS ON TRIAL, BUT WHICH STATEMENT
3 TENDS TO PROVE HIS GUILT WHEN CONSIDERED

4 WITH THE REST OF THE EVIDENCE.

5 YOU ARE THE EXCLUSIVE JUDGES AS
6 TO WHETHER THE DEFENDANT MADE A CONFESSION
7 OR AN ADMISSION, AND IF SO, WHETHER SUCH
8 STATEMENT IS TRUE IN WHOLE OR IN PART. IF
9 YOU SHOULD FIND THAT THE DEFENDANT DID NOT
10 MAKE THE STATEMENT, YOU MUST REJECT IT. IF
11 YOU FIND THAT IT IS TRUE IN WHOLE OR IN
12 PART, YOU MAY CONSIDER THAT PART WHICH YOU
13 FIND TO BE TRUE.

14 EVIDENCE OF AN ORAL CONFESSION
15 OR AN ORAL ADMISSION OF THE DEFENDANT SHOULD
16 BE VIEWED WITH CAUTION. ANY EXCULPATORY
17 OUT-OF-COURT STATEMENT MADE BY THE DEFENDANT
18 IS NOT AN ADMISSION OR CONFESSION AND SHOULD
19 BE VIEWED IN THE SAME MANNER AS MAY OTHER
20 EVIDENCE IN THE TRIAL.

21
22 IF YOU SHOULD FIND FROM THE
23 EVIDENCE THAT THERE WAS AN OCCASION WHEN A
24 DEFENDANT (1) UNDER CONDITIONS WHICH
25 REASONABLY AFFORDED HIM AN OPPORTUNITY TO
26 REPLY, (2) FAILED TO MAKE DENIAL IN THE FACE
27 OF AN ACCUSATION, EXPRESSED DIRECTLY TO HIM
28 OR IN HIS PRESENCE, CHARGING HIM WITH THE

1 CRIME FOR WHICH SUCH DEFENDANT NOW IS ON
2 TRIAL, OR TENDING TO CONNECT HIM WITH ITS
3 COMMISSION, AND (3) THAT HE HEARD THE
4 ACCUSATION AND UNDERSTOOD ITS NATURE, THEN
5 THE CIRCUMSTANCE OF HIS SILENCE AND CONDUCT
6 ON THAT OCCASION MAY HAVE BEEN CONSIDERED
7 AGAINST HIM AS INDICATING AN ADMISSION THAT
8 THE ACCUSATION THUS MADE WAS TRUE. EVIDENCE
9 OF SUCH AN ACCUSATORY STATEMENT IS NOT
10 RECEIVED FOR THE PURPOSE OF PROVING ITS
11 TRUTH, BUT ONLY AS IT SUPPLIES MEANING TO
12 THE SILENCE AND CONDUCT OF THE ACCUSED IN
13 THE FACE OF IT.

14 UNLESS YOU FIND THAT A
15 DEFENDANT'S SILENCE AND CONDUCT AT THE TIME
16 INDICATED AN ADMISSION THAT THE ACCUSATORY
17 STATEMENT WAS TRUE, YOU MUST ENTIRELY
18 DISREGARD THE STATEMENT.

19
20 NO PERSON MAY BE CONVICTED OF A
21 CRIMINAL OFFENSE UNLESS THERE IS SOME PROOF
22 OF EACH ELEMENT OF THE CRIME INDEPENDENT OF
23 ANY CONFESSION OR ADMISSION MADE BY HIM
24 OUTSIDE OF THIS TRIAL.

25 THE IDENTITY OF THE PERSON WHO
26 IS ALLEGED TO HAVE COMMITTED THE CRIME IS
27 NOT AN ELEMENT OF THE CRIME, NOR IS THE
28 DEGREE OF THE CRIME. SUCH IDENTITY OR

1 DEGREE OF THE CRIME MAY BE ESTABLISHED BY A
2 CONFESSION OR ADMISSION.

3
4 A PERSON IS QUALIFIED TO
5 TESTIFY AS AN EXPERT IF HE HAS SPECIAL
6 KNOWLEDGE, SKILL, EXPERIENCE, TRAINING OR
7 EDUCATION SUFFICIENT TO QUALIFY HIM AS AN
8 EXPERT ON THE SUBJECT TO WHICH HIS TESTIMONY
9 RELATES.

10 A DULY QUALIFIED EXPERT MAY
11 GIVE AN OPINION ON QUESTIONS IN CONTROVERSY
12 AT A TRIAL. TO ASSIST YOU IN DECIDING SUCH
13 QUESTIONS, YOU MAY CONSIDER THE OPINION WITH
14 THE REASONS GIVEN FOR IT, IF ANY, BY THE
15 EXPERT WHO GIVES THE OPINION. YOU MAY ALSO
16 CONSIDER THE QUALIFICATIONS AND CREDIBILITY
17 OF THE EXPERT.

18 YOU ARE NOT BOUND TO ACCEPT AN
19 EXPERT OPINION AS CONCLUSIVE, BUT SHOULD
20 GIVE TO IT THE WEIGHT TO WHICH YOU FIND IT
21 TO BE ENTITLED. YOU MAY DISREGARD ANY SUCH
22 OPINION IF YOU FIND IT TO BE UNREASONABLE.

23
24 IN EXAMINING AN EXPERT WITNESS,
25 COUNSEL MAY PROPOUND TO HIM OR HER A TYPE OF

26 QUESTION KNOWN IN THE LAW AS A HYPOTHETICAL
27 QUESTION. BY SUCH A QUESTION THE WITNESS IS
28 ASKED TO ASSUME TO BE TRUE A SET OF FACTS,

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1 AND TO GIVE AN OPINION BASED ON THAT
2 ASSUMPTION.

3 IN PERMITTING SUCH A QUESTION,
4 THE COURT DOES NOT RULE, AND DOES NOT
5 NECESSARILY FIND THAT ALL THE ASSUMED FACTS
6 HAVE BEEN PROVED. IT ONLY DETERMINES THAT
7 THOSE ASSUMED FACTS ARE WITHIN THE PROBABLE
8 OR POSSIBLE RANGE OF THE EVIDENCE. IT IS
9 FOR YOU, THE JURY, TO FIND FROM ALL THE
10 EVIDENCE WHETHER OR NOT THE FACTS ASSUMED IN
11 A HYPOTHETICAL QUESTION HAVE BEEN PROVED.
12 IF YOU SHOULD FIND THAT ANY ASSUMPTION IN
13 SUCH A QUESTION HAS NOT BEEN PROVED, YOU ARE
14 TO DETERMINE THE EFFECT OF THAT FAILURE OF
15 PROOF ON THE VALUE AND WEIGHT OF THE EXPERT
16 OPINION BASED ON THE ASSUMED FACTS.

17

18 IN RESOLVING ANY CONFLICT THAT
19 MAY EXIST IN THE TESTIMONY OF EXPERT
20 WITNESSES, YOU SHOULD WEIGH THE OPINION OF
21 ONE EXPERT AGAINST THAT OF ANOTHER. IN

22 DOING THIS, YOU SHOULD CONSIDER THE RELATIVE
23 QUALIFICATIONS AND CREDIBILITY OF THE EXPERT
24 WITNESSES, AS WELL AS THE REASONS FOR EACH
25 OPINION AND THE FACTS AND OTHER MATTERS UPON
26 WHICH IT WAS BASED.

27

28 IN DETERMINING THE WEIGHT TO BE

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1 GIVEN TO AN OPINION EXPRESSED BY ANY WITNESS
2 WHO DID NOT TESTIFY AS AN EXPERT WITNESS,
3 YOU SHOULD CONSIDER HIS OR HER CREDIBILITY,
4 THE EXTENT OF HIS OR HER OPPORTUNITY TO
5 PERCEIVE THE MATTERS UPON WHICH HIS OR HER
6 OPINION IS BASED AND THE REASONS, IF ANY,
7 GIVEN FOR IT. YOU ARE NOT REQUIRED TO
8 ACCEPT SUCH AN OPINION BUT SHOULD GIVE IT
9 THE WEIGHT, IF ANY, TO WHICH YOU FIND IT TO
10 BE ENTITLED.

11

12 A DEFENDANT IN A CRIMINAL
13 ACTION IS PRESUMED TO BE INNOCENT UNTIL THE
14 CONTRARY IS PROVED, AND IN CASE OF A
15 REASONABLE DOUBT WHETHER HIS GUILT IS
16 SATISFACTORILY SHOWN, HE IS ENTITLED TO A
17 VERDICT OF NOT GUILTY. THIS PRESUMPTION

18 PLACES UPON THE PEOPLE THE BURDEN OF PROVING
19 HIM GUILTY BEYOND A REASONABLE DOUBT.
20 REASONABLE DOUBT IS DEFINED AS
21 FOLLOWS: IT IS NOT A MERE POSSIBLE DOUBT;
22 BECAUSE EVERYTHING RELATING TO HUMAN AFFAIRS
23 IS OPEN TO SOME POSSIBLE OR IMAGINARY DOUBT.
24 IT IS THAT STATE OF THE CASE WHICH, AFTER
25 THE ENTIRE COMPARISON AND CONSIDERATION OF
26 ALL OF THE EVIDENCE, LEAVES THE MINDS OF THE
27 JURORS IN THAT CONDITION THAT THEY CANNOT
28 SAY THEY FEEL AN ABIDING CONVICTION OF THE

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1 TRUTH OF THE CHARGE.

2

3 THE PERSONS CONCERNED IN THE
4 COMMISSION OF A CRIME WHO ARE REGARDED BY
5 LAW AS PRINCIPALS IN THE CRIME THUS
6 COMMITTED AND EQUALLY GUILTY THEREOF
7 INCLUDE:

8 1. THOSE WHO DIRECTLY AND
9 ACTIVELY COMMIT THE ACT CONSTITUTING THE
10 CRIME, OR
11 2. THOSE WHO AID AND ABET THE
12 COMMISSION OF THE CRIME.

13

14 A PERSON AIDS AND ABETS THE
15 COMMISSION OF A CRIME WHEN HE OR SHE,
16 (1) WITH KNOWLEDGE OF THE UNLAWFUL
17 PURPOSE OF THE PERPETRATOR, AND
18 (2) WITH THE INTENT OR PURPOSE OF
19 COMMITTING, ENCOURAGING, OR FACILITATING THE
20 COMMISSION OF THE CRIME, BY ACT OR ADVICE
21 AIDS, PROMOTES, ENCOURAGES OR INSTIGATES THE
22 COMMISSION OF THE CRIME.

23 A PERSON WHO AIDS AND ABETS THE
24 COMMISSION OF A CRIME NEED NOT BE PERSONALLY
25 PRESENT AT THE SCENE OF THE CRIME.

26 MERE PRESENCE AT THE SCENE OF A
27 CRIME WHICH DOES NOT ITSELF ASSIST THE
28 COMMISSION OF THE CRIME DOES NOT AMOUNT TO

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1 AIDING AND ABETTING.

2 MERE KNOWLEDGE THAT A CRIME IS
3 BEING COMMITTED AND THE FAILURE TO PREVENT
4 IT DOES NOT AMOUNT TO AIDING AND ABETTING.

5
6 IN THE CRIMES AND ALLEGATIONS
7 CHARGED IN COUNTS ONE, TWO AND THREE, NAMELY
8 MURDER AND CONSPIRACY TO COMMIT MURDER, OR
9 THE LESSER CRIME OF VOLUNTARY MANSLAUGHTER

10 IN COUNT ONE, THERE MUST EXIST A UNION OR
11 JOINT OPERATION OF ACT OR CONDUCT AND A
12 CERTAIN SPECIFIC INTENT IN THE MIND OF THE
13 PERPETRATOR. UNLESS SUCH SPECIFIC INTENT
14 EXISTS, THE CRIME OR ALLEGATION TO WHICH IT
15 RELATES IS NOT COMMITTED.

16 THE SPECIFIC INTENT REQUIRED IS
17 INCLUDED IN THE DEFINITIONS OF THE CRIMES OR
18 ALLEGATIONS SET FORTH ELSEWHERE IN THESE
19 INSTRUCTIONS.

20
21 IN THE CRIMES CHARGED IN COUNTS
22 ONE, TWO AND THREE, NAMELY MURDER AND
23 CONSPIRACY TO COMMIT MURDER, THERE MUST
24 EXIST A UNION OR JOINT OPERATION OF ACT OR
25 CONDUCT AND A CERTAIN MENTAL STATE IN THE
26 MIND OF THE PERPETRATOR. UNLESS SUCH MENTAL
27 STATE EXISTS, THE CRIME TO WHICH IT RELATES
28 IS NOT COMMITTED.

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1 THE MENTAL STATE REQUIRED IS
2 INCLUDED IN THE DEFINITIONS OF THE CRIME SET
3 FORTH ELSEWHERE IN THESE INSTRUCTIONS.

4
5 EVIDENCE HAS BEEN RECEIVED

6 REGARDING A MENTAL DISORDER OF THE
7 DEFENDANT, ERIK MENENDEZ, AT THE TIME OF THE
8 COMMISSION OF THE CRIMES CHARGED AND THE
9 LESSER OFFENSE IN COUNT ONE OF VOLUNTARY
10 MANSLAUGHTER. YOU MAY CONSIDER SUCH
11 EVIDENCE IN DETERMINING WHETHER THE
12 DEFENDANT, ERIK MENENDEZ, ACTUALLY
13 PREMEDITATED, DELIBERATED OR HARBORED MALICE
14 AFORETHOUGHT, WHICH ARE ELEMENTS OF THE
15 CRIMES CHARGED IN COUNTS ONE AND TWO, NAMELY
16 MURDER, OR ACTUALLY FORMED THE SPECIFIC
17 INTENT TO KILL WHICH IS AN ELEMENT OF THE
18 LESSER CRIME OF VOLUNTARY MANSLAUGHTER IN
19 COUNT ONE AND OF THE CRIME OF CONSPIRACY IN
20 COUNT THREE.

21
22 THE SPECIFIC INTENT OR MENTAL
23 STATE WITH WHICH AN ACT IS DONE MAY BE SHOWN
24 BY THE CIRCUMSTANCES SURROUNDING THE
25 COMMISSION OF THE ACT. HOWEVER, YOU MAY NOT
26 FIND THE DEFENDANT GUILTY OF THE CRIME
27 CHARGED IN COUNTS ONE, TWO AND THREE, OR THE
28 CRIME OF VOLUNTARY MANSLAUGHTER, WHICH IS A

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1 LESSER CRIME TO THAT CHARGED IN COUNT ONE,

2 UNLESS THE PROVED CIRCUMSTANCE ARE NOT ONLY
3 (1) CONSISTENT WITH THE THEORY THAT THE
4 DEFENDANT HAD THE REQUIRED SPECIFIC INTENT
5 OR MENTAL STATE, BUT (2) CANNOT BE
6 RECONCILED WITH ANY OTHER RATIONAL
7 CONCLUSION.

8 ALSO, IF THE EVIDENCE AS TO ANY
9 SUCH SPECIFIC INTENT OR MENTAL STATE IS
10 SUSCEPTIBLE OF TWO REASONABLE
11 INTERPRETATIONS, ONE OF WHICH POINTS TO THE
12 EXISTENCE OF THE SPECIFIC INTENT OR MENTAL
13 STATE AND THE OTHER TO THE ABSENCE OF THE
14 SPECIFIC INTENT OR MENTAL STATE, YOU MUST
15 ADOPT THAT INTERPRETATION WHICH POINTS TO
16 THE ABSENCE OF THE SPECIFIC INTENT OR MENTAL
17 STATE. IF, ON THE OTHER HAND, ONE
18 INTERPRETATION OF THE EVIDENCE AS TO SUCH
19 SPECIFIC INTENT OR MENTAL STATE APPEARS TO
20 YOU TO BE REASONABLE AND THE OTHER
21 INTERPRETATION TO BE UNREASONABLE, YOU MUST
22 ACCEPT THE REASON INTERPRETATION AND REJECT
23 THE UNREASONABLE."

24
25 THE COURT: OKAY. NOW I AM GOING TO GET INTO A
26 SERIES OF INSTRUCTIONS DEALING WITH THE CRIME OF
27 CONSPIRACY, AND THEN WE'LL GO ON TO INSTRUCTIONS
28 RELATING TO THE CHARGES IN COUNTS ONE AND TWO.

1 (READING:)

2
3 "A CONSPIRACY IS AN AGREEMENT
4 ENTERED INTO BETWEEN TWO OR MORE PERSONS
5 WITH A SPECIFIC INTENT TO AGREE TO COMMIT
6 THE PUBLIC OFFENSE OF MURDER AND WITH THE
7 FURTHER SPECIFIC INTENT TO COMMIT SUCH
8 OFFENSE, AND WITH THE SPECIFIC INTENT TO
9 KILL UNLAWFULLY, FOLLOWED BY AN OVERT ACT
10 COMMITTED IN THIS STATE BY ONE OR MORE OF
11 THE PARTIES FOR THE PURPOSE OF ACCOMPLISHING
12 THE OBJECT OF THE AGREEMENT. CONSPIRACY IS
13 A CRIME, AND THAT IS THE CRIME CHARGED IN
14 COUNT THREE OF THE INDICTMENT.

15
16 IN ORDER TO FIND A DEFENDANT
17 GUILTY OF CONSPIRACY, IN ADDITION TO PROOF
18 OF THE UNLAWFUL AGREEMENT AND SPECIFIC
19 INTENT, THERE MUST BE PROOF OF THE
20 COMMISSION OF AT LEAST ONE OF THE OVERT ACTS
21 ALLEGED IN THE INDICTMENT. IT IS NOT
22 NECESSARY TO THE GUILT OF ANY PARTICULAR
23 DEFENDANT THAT THE DEFENDANT PERSONALLY
24 COMMITTED THE OVERT ACT, IF HE WAS ONE OF
25 THE CONSPIRATORS WHEN SUCH AN ACT WAS
26 COMMITTED.

27 THE TERM "OVERT ACT" MEANS ANY
28 STEP TAKEN OR ACT COMMITTED BY ONE OR MORE

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1 OF THE CONSPIRATORS WHICH GOES BEYOND MERE
2 PLANNING OR AGREEMENT TO COMMIT A PUBLIC
3 OFFENSE, AND WHICH STEP OR ACT IS DONE IN
4 FURTHERANCE OF THE ACCOMPLISHMENT OF THE
5 OBJECT OF THE CONSPIRACY.

6 TO BE AN "OVERT ACT", THE STEP
7 TAKEN OR ACT COMMITTED NEED NOT, IN AND OF
8 ITSELF, CONSTITUTE THE CRIME OR EVEN AN
9 ATTEMPT TO COMMIT THE CRIME WHICH IS THE
10 ULTIMATE OBJECT OF THE CONSPIRACY. NOR IS
11 IT REQUIRED THAT SUCH STEP OR ACT, IN AND OF
12 ITSELF, BE A CRIMINAL OR AN UNLAWFUL ACT.

13 EACH MEMBER OF A CRIMINAL
14 CONSPIRACY IS LIABLE FOR EACH ACT AND BOUND
15 BY EACH DECLARATION OF EVERY OTHER MEMBER OF
16 THE CONSPIRACY IF SUCH ACT OR SUCH
17 DECLARATION IS IN FURTHERANCE OF THE OBJECT
18 OF THE CONSPIRACY.

19 THE ACT OF ONE CONSPIRATOR
20 PURSUANT TO AND IN FURTHERANCE OF THE COMMON
21 DESIGN OF THE CONSPIRACY IS THE ACT OF ALL
22 CONSPIRATORS.

23 A MEMBER OF A CONSPIRACY IS NOT
24 ONLY GUILTY OF A PARTICULAR CRIME THAT TO
25 HIS KNOWLEDGE HIS CONFEDERATES AGREED TO AND
26 DID COMMIT, BUT IS ALSO LIABLE FOR THE
27 NATURAL AND PROBABLE CONSEQUENCES OF ANY
28 CRIME OF A CO-CONSPIRATOR TO FURTHER THE

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1 OBJECT OF THE CONSPIRACY, EVEN THOUGH SUCH
2 CRIME OR ACT WAS NOT INTENDED AS A PART OF
3 THE AGREED UPON OBJECTIVE AND EVEN THOUGH HE
4 WAS NOT PRESENT AT THE TIME OF THE
5 COMMISSION OF SUCH CRIME OR ACT.

6 YOU MUST DETERMINE WHETHER THE
7 DEFENDANT IS GUILTY AS A MEMBER OF A
8 CONSPIRACY TO COMMIT THE ORIGINALLY AGREED
9 UPON CRIME OR CRIMES, AND, IF SO, WHETHER
10 THE CRIME ALLEGED IN COUNTS ONE AND TWO WERE
11 PERPETRATED BY CO-CONSPIRATORS IN
12 FURTHERANCE OF SUCH CONSPIRACY AND WAS A
13 NATURAL AND PROBABLE CONSEQUENCE OF THE
14 AGREED UPON CRIMINAL OBJECTIVE OF SUCH
15 CONSPIRACY.

16

17 THE FORMATION AND EXISTENCE OF
18 A CONSPIRACY MAY BE INFERRED FROM ALL THE

19 CIRCUMSTANCES TENDING TO SHOW THE COMMON
20 INTENT AND MAY BE PROVED IN THE SAME WAY AS
21 ANY OTHER FACT MAY BE PROVED, EITHER BY
22 DIRECT TESTIMONY OF THE FACT OR BY
23 CIRCUMSTANCIAL EVIDENCE, OR BY BOTH DIRECT
24 AND CIRCUMSTANCIAL EVIDENCE. IT IS NOT
25 NECESSARY TO SHOW A MEETING OF THE ALLEGED
26 CONSPIRATORS OR THE MAKING OF AN EXPRESS OR
27 FORMAL AGREEMENT.
28

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1 EVIDENCE THAT A PERSON WAS IN
2 THE COMPANY OF OR ASSOCIATED WITH ONE OR
3 MORE OTHER PERSONS ALLEGED OR PROVED TO HAVE
4 BEEN MEMBERS OF A CONSPIRACY IS NOT, IN
5 ITSELF, SUFFICIENT TO PROVE THAT SUCH PERSON
6 WAS A MEMBER OF THE ALLEGED CONSPIRACY.

7
8 NO ACT OR DECLARATION OF A
9 CONSPIRATOR THAT IS AN INDEPENDENT PRODUCT
10 OF HIS OWN MIND AND IS OUTSIDE THE COMMON
11 DESIGN AND NOT A FURTHERANCE OF THAT DESIGN
12 IS BINDING UPON HIS OR HER CO-CONSPIRATORS,
13 AND THEY ARE NOT CRIMINALLY LIABLE FOR ANY
14 SUCH ACT.

15

16 WHERE A CONSPIRATOR COMMITS AN
17 ACT WHICH IS NEITHER IN FURTHERANCE OF THE
18 OBJECT OF THE CONSPIRACY NOR THE NATURAL AND
19 PROBABLE CONSEQUENCE OF AN ATTEMPT TO ATTAIN
20 THAT OBJECT, HE ALONE IS RESPONSIBLE FOR AND
21 IS BOUND BY THAT ACT, AND NO RESPONSIBILITY
22 THEREFOR ATTACHES TO ANY OF HIS
23 CONFEDERATES.

24

25 THE ACT OR DECLARATION OF A
26 PERSON WHO IS NOT A MEMBER OF A CONSPIRACY
27 IS NOT BINDING UPON THE MEMBERS OF THE
28 CONSPIRACY, EVEN IF THE ACT OR DECLARATION

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1 TENDED TO PROMOTE THE OBJECT OF THE
2 CONSPIRACY.

3

4 EVIDENCE OF THE COMMISSION OF
5 AN ACT WHICH FURTHERED THE PURPOSE OF AN
6 ALLEGED CONSPIRACY IS NOT, IN ITSELF,
7 SUFFICIENT TO PROVE THAT THE PERSON
8 COMMITTING THE ACAT WAS A MEMBER OF SUCH A
9 CONSPIRACY.

10

11 ANY MEMBER OF A CONSPIRACY MAY
12 WITHDRAW FROM AND CEASE TO BE A PARTY TO THE
13 CONSPIRACY, BUT HIS LIABILITY FOR THE ACTS
14 OF HIS CO-CONSPIRATORS CONTINUES UNTIL HE
15 EFFECTIVELY WITHDRAWS FROM THE CONSPIRACY.

16 IN ORDER TO EFFECTIVELY
17 WITHDRAW FROM A CONSPIRACY, THERE MUST BE AN
18 AFFIRMATIVE AND BONA FIDE REJECTION OR
19 REPUDIATION OF THE CONSPIRACY WHICH MUST BE
20 COMMUNICATED TO THE OTHER CONSPIRATORS OF
21 WHOM HE HAS KNOWLEDGE.

22 IF A MEMBER OF A CONSPIRACY HAS
23 EFFECTIVELY WITHDRAWN FROM THE CONSPIRACY HE
24 IS NOT THEREAFTER LIABLE FOR ANY ACT OF THE
25 CO-CONSPIRATORS COMMITTED SUBSEQUENT TO HIS
26 WITHDRAWAL FROM THE CONSPIRACY, BUT HE IS
27 NOT RELIEVED FROM RESPONSIBILITY FOR THE
28 ACTS OF HIS CO-CONSPIRATORS COMMITTED WHILE

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1 HE WAS A MEMBER.

2

3 NO ACT OR DECLARATION OF A
4 CONSPIRATOR COMMITTED OR MADE AFTER THE
5 CONSPIRACY HAS BEEN TERMINATED IS BINDING
6 UPON CO-CONSPIRATORS, AND THEY ARE NOT

7 CRIMINALLY LIABLE FOR ANY SUCH ACT.

8
9 IN THIS CASE THE DEFENDANTS ARE
10 CHARGED WITH CONSPIRACY TO COMMIT THE
11 FOLLOWING PUBLIC CRIMES:

12
13 ON OR ABOUT AUGUST 20, 1989, IN THE
14 COUNTY OF LOS ANGELES, STATE OF CALIFORNIA,
15 THE SAID DEFENDANTS, ERIK GALEN MENENDEZ AND
16 JOSEPH LYLE MENENDEZ, DID WILLFULLY AND
17 UNLAWFULLY CONSPIRE TOGETHER TO COMMIT THE
18 CRIME OF MURDER OF JOSE AND MARY LOUISE
19 MENENDEZ IN VIOLATION OF PENAL CODE SECTION
20 187, A FELONY.

21
22 IT IS ALLEGED THAT THE
23 FOLLOWING OVERT ACTS WERE COMMITTED AT AND
24 IN THE COUNTY OF LOS ANGELES BY ONE OR MORE
25 OF THE DEFENDANTS FOR THE PURPOSE OF
26 FURTHERING THE OBJECT OF THE CONSPIRACY:

27 OVERT ACT NO. 1: ON AUGUST 18,
28 1989, DEFENDANTS PURCHASED TWO MOSSBERG

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1 SHOTGUNS IN SAN DIEGO.

2 OVERT ACT NO. 2: ON OR ABOUT

3 AUGUST 20, 1989, DEFENDANTS ACQUIRED SHOTGUN
4 AMMUNITION.

5 OVERT ACT NO. 3: ON AUGUST 20,
6 1989, LYLE MENENDEZ CONTACTED HIS FRIEND,
7 PERRY BERMAN, BY TELEPHONE, TO ARRANGE A
8 MEETING LATER THAT NIGHT TO SERVE AS AN
9 ALIBI.

10
11 EVIDENCE OF A STATEMENT MADE BY
12 ONE ALLEGED CONSPIRATOR OTHER THAN AT THIS
13 TRIAL SHALL NOT BE CONSIDERED BY YOU AS
14 AGAINST ANOTHER ALLEGED CONSPIRATOR UNLESS
15 YOU DETERMINE:

16 1. THAT FROM OTHER INDEPENDENT
17 EVIDENCE THAT AT THE TIME THE STATEMENT WAS
18 MADE A CONSPIRACY TO COMMIT A CRIME EXISTED;

19 2. THAT THE STATEMENT WAS MADE
20 WHILE THE PERSON MAKING THE STATEMENT WAS
21 PARTICIPATING IN THE CONSPIRACY, AND THAT
22 THE PERSON AGAINST WHOM IT WAS OFFERED WAS
23 PARTICIPATING IN THE CONSPIRACY BEFORE OR
24 DURING THAT TIME; AND

25 3. THAT SUCH STATEMENT WAS
26 MADE IN FURTHERANCE OF THE OBJECTIVE OF THE
27 CONSPIRACY.

28 THE WORD "STATEMENT" AS USED IN

1 THIS INSTRUCTION INCLUDES ANY ORAL OR
2 WRITTEN VERBAL EXPRESSION OR THE NONVERBAL
3 CONDUCT OF A PERSON INTENDED BY THAT PERSON
4 AS A SUBSTITUTE FOR ORAL OR WRITTEN VERBAL
5 EXPRESSION.

6
7 DEFENDANTS ARE CHARGED IN COUNT
8 THREE WITH CONSPIRACY TO COMMIT THE CRIME OF
9 MURDER, IN VIOLATION OF SECTION 187 OF THE
10 PENAL CODE.

11 IN ORDER TO FIND THE DEFENDANTS
12 GUILTY OF THE CRIME OF CONSPIRACY, YOU MUST
13 FIND BEYOND A REASONABLE DOUBT THAT THE
14 DEFENDANTS CONSPIRED TO COMMIT THE CRIME OF
15 MURDER WITH THE SPECIFIC INTENT TO KILL
16 UNLAWFULLY, AND YOU ALSO MUST UNANIMOUSLY
17 AGREE AS TO THE PARTICULAR CRIME THEY
18 CONSPIRED TO COMMIT.

19 IF YOU FIND THE DEFENDANTS
20 GUILTY OF CONSPIRACY, YOU WILL THEN INCLUDE
21 A FINDING ON THE QUESTION AS TO WHICH SUCH
22 ALLEGED CRIMES YOU UNANIMOUSLY AGREE THE
23 DEFENDANT CONSPIRED TO COMMIT. A FORM WILL
24 BE SUPPLIED FOR THAT PURPOSE FOR EACH
25 DEFENDANT."

26 THE COURT: THAT FORM IS A PART OF THE VERDICT
27 FORM FOR COUNT THREE.

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1 RELATING TO COUNTS ONE AND TWO, THE CHARGE IN THOSE TWO
2 COUNTS.

3 (READING:)

4

5 "HOMICIDE IS THE KILLING OF A HUMAN
6 BEING" -- LET ME START OVER AGAIN ON THIS ONE.

7 "HOMICIDE IS THE KILLING OF ONE
8 HUMAN BEING BY ANOTHER, EITHER LAWFULLY OR
9 UNLAWFULLY. HOMICIDE INCLUDES MURDER AND
10 MANSLAUGHTER, WHICH ARE UNLAWFUL.

11

12 DEFENDANT IS ACCUSED IN COUNTS
13 ONE AND TWO OF HAVING COMMITTED THE CRIME OF
14 MURDER, A VIOLATION OF SECTION 187 OF THE
15 PENAL CODE.

16 EVERY PERSON WHO UNLAWFULLY
17 KILLS A HUMAN BEING WITH MALICE AFORETHOUGHT
18 IS GUILTY OF THE CRIME OF MURDER IN
19 VIOLATION OF SECTION 187 OF THE PENAL CODE.

20 IN ORDER TO PROVE SUCH CRIME,
21 EACH OF THE FOLLOWING ELEMENTS MUST BE
22 PROVED:

23 1. A HUMAN BEING WAS KILLED.

24 2. THE KILLING WAS UNLAWFUL.

25 3. THE KILLING WAS DONE WITH

26 MALICE AFORETHOUGHT.

27

28 "MALICE" MAY BE EXPRESS OR

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1 IMPLIED.

2 MALICE IS EXPRESS WHEN THERE IS

3 MANIFESTED AN INTENTION UNLAWFULLY TO KILL A

4 HUMAN BEING.

5 MALICE IS IMPLIED WHEN:

6 1. THE KILLING RESULTED FROM

7 AN INTENTIONAL ACT,

8 2. THE NATURAL CONSEQUENCES OF

9 THE ACT ARE DANGEROUS TO HUMAN LIFE, AND

10 3. THE ACT WAS DELIBERATELY

11 PERFORMED WITH KNOWLEDGE OF THE DANGER TO,

12 AND WITH CONSCIOUS DISREGARD FOR HUMAN LIFE.

13 WHEN IT IS SHOWN THAT THE

14 KILLING RESULTED FROM THE INTENTIONAL DOING

15 OF AN ACT WITH EXPRESS OR IMPLIED MALICE, NO

16 OTHER MENTAL STATE NEED BE SHOWN TO

17 ESTABLISH THE MENTAL STATE OF MALICE

18 AFORETHOUGHT.

19 THE MENTAL STATE CONSTITUTING

20 MALICE AFORETHOUGHT DOES NOT NECESSARILY
21 REQUIRE ANY ILL WILL OR HATRED OF THE PERSON
22 KILLED.

23 THE WORD "AFORETHOUGHT" DOES
24 NOT IMPLY DELIBERATION OR THE LAPSE OF
25 CONSIDERABLE TIME. IT ONLY MEANS THAT THE
26 REQUIRED MENTAL STATE MUST PRECEDE RATHER
27 THAN FOLLOW THE ACT.

28

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1 ALL MURDER WHICH IS PERPETRATED
2 BY ANY KIND OF WILLFUL, DELIBERATE AND
3 PREMEDITATED KILLING WITH EXPRESS MALICE
4 AFORETHOUGHT IS MURDER OF THE FIRST DEGREE.

5 THE WORD "WILLFUL," AS USED IN
6 THIS INSTRUCTION, MEANS INTENTIONAL.

7 THE WORD "DELIBERATE" MEANS
8 FORMED OR ARRIVED AT OR DETERMINED UPON AS A
9 RESULT OF CAREFUL THOUGHT AND WEIGHING OF
10 CONSIDERATIONS FOR AND AGAINST THE PROPOSED
11 COURSE OF ACTION. THE WORD "PREMEDITATED"
12 MEANS CONSIDERED BEFOREHAND.

13 IF YOU FIND THAT THE KILLING
14 WAS PRECEDED AND ACCOMPANIED BY A CLEAR,
15 DELIBERATE INTENT ON THE PART OF THE

16 DEFENDANT TO KILL, WHICH WAS THE RESULT OF
17 DELIBERATION AND PREMEDITATION, SO THAT IT
18 MUST HAVE BEEN FORMED UPON PRE-EXISTING
19 REFLECTION AND NOT UNDER A SUDDEN HEAT OF
20 PASSION OR OTHER CONDITION PRECLUDING THE
21 IDEA OF DELIBERATION, IT IS MURDER OF THE
22 FIRST DEGREE.

23 THE LAW DOES NOT UNDERTAKE TO
24 MEASURE IN UNITS OF TIME THE LENGTH OF THE
25 PERIOD DURING WHICH THE THOUGHT MUST BE
26 PONDERED BEFORE IT CAN RIPEN INTO AN INTENT
27 TO KILL WHICH IS TRULY DELIBERATE AND
28 PREMEDITATED. THE TIME WILL VARY WITH

-13162

1 DIFFERENT INDIVIDUALS AND UNDER VARYING
2 CIRCUMSTANCES.

3 THE TRUE TEST IS NOT THE
4 DURATION OF TIME, BUT RATHER THE EXTENT OF
5 THE REFLECTION. A COLD, CALCULATED JUDGMENT
6 AND DECISION, MAY BE ARRIVED AT IN A SHORT
7 PERIOD OF TIME, BUT A MERE UNCONSIDERED AND
8 RASH IMPULSE, EVEN THOUGH IT INCLUDE AN
9 INTENT TO KILL, IS NOT SUCH DELIBERATION AND
10 PREMEDITATION AS WILL FIX AN UNLAWFUL
11 KILLING AS MURDER OF THE FIRST DEGREE.

12 TO CONSTITUTE A DELIBERATE AND
13 PREMEDITATED KILLING, THE SLAYER MUST WEIGH
14 AND CONSIDER THE QUESTION OF KILLING AND THE
15 REASONS FOR AND AGAINST SUCH A CHOICE AND,
16 HAVING IN MIND THE CONSEQUENCES, HE DECIDES
17 TO AND DOES KILL.

18

19 MURDER WHICH IS IMMEDIATELY
20 PRECEDED BY LYING IN WAIT IS MURDER OF THE
21 FIRST DEGREE.

22 THE TERM "LYING IN WAIT" IS
23 DEFINED AS A WAITING AND WATCHING FOR AN
24 OPPORTUNE TIME TO ACT, TOGETHER WITH A
25 CONCEALMENT BY AMBUSH OR BY SOME OTHER
26 SECRET DESIGN TO TAKE THE OTHER PERSON BY
27 SURPRISE EVEN THOUGH THE VICTIM IS AWARE OF
28 THE MURDERER'S PRESENCE. THE LYING IN WAIT

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1 NEED NOT CONTINUE FOR ANY PARTICULAR PERIOD
2 OF TIME, PROVIDED THAT ITS DURATION IS SUCH
3 AS TO SHOW A STATE OF MIND EQUIVALENT TO
4 PREMEDITATION AND DELIBERATION.

5 THE WORD "PREMEDITATION" MEANS
6 CONSIDERED BEFOREHAND.

7 THE WORD "DELIBERATION" MEANS

8 FORMED OR ARRIVED AT OR DETERMINED UPON AS A
9 RESULT OF CAREFUL THOUGHT AND WEIGHING OF
10 CONSIDERATIONS FOR AND AGAINST THE PROPOSED
11 COURSE OF ACTION.

12 IF THE KILLING IS DONE WITHOUT
13 A PERIOD OF WAITING, WATCHING AND
14 CONCEALMENT, LYING IN WAIT IS NOT PRESENT.

15
16 MURDER OF THE SECOND DEGREE IS
17 THE UNLAWFUL KILLING OF A HUMAN BEING WITH
18 MALICE AFORETHOUGHT WHEN THERE IS MANIFESTED
19 AN INTENTION UNLAWFULLY TO KILL A HUMAN
20 BEING BUT THE EVIDENCE IS INSUFFICIENT TO
21 ESTABLISH DELIBERATION AND PREMEDITATION.

22
23 MURDER OF THE SECOND-DEGREE IS
24 ALSO THE UNLAWFUL KILLING OF A HUMAN BEING
25 WHEN:

- 26 1. THE KILLING RESULTED FROM
27 AN INTENTIONAL ACT,
28 2. THE NATURAL CONSEQUENCES OF

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1 THE ACT ARE DANGEROUS TO HUMAN LIFE, AND
2 3. THE ACT WAS DELIBERATELY
3 PERFORMED WITH KNOWLEDGE OF THE DANGER TO,

4 AND WITH CONSCIOUS DISREGARD FOR HUMAN LIFE.

5 WHEN THE KILLING IS A DIRECT
6 RESULT OF SUCH AN ACT, IT IS NOT NECESSARY
7 TO ESTABLISH THAT THE DEFENDANT INTENDED
8 THAT HIS ACT WOULD RESULT IN THE DEATH OF A
9 HUMAN BEING.

10
11 THE CRIME OF MANSLAUGHTER IS
12 THE UNLAWFUL KILLING OF A HUMAN BEING
13 WITHOUT MALICE AFORETHOUGHT.

14
15 IN COUNT ONE, THE KILLING OF
16 JOSE MENENDEZ, EVERY PERSON WHO UNLAWFULLY
17 KILLS ANOTHER HUMAN BEING WITHOUT MALICE
18 AFORETHOUGHT BUT WITH AN INTENT TO KILL, IS
19 GUILTY OF VOLUNTARY MANSLAUGHTER IN
20 VIOLATION OF SECTION 192(A) OF THE PENAL
21 CODE.

22 THERE IS NO MALICE AFORETHOUGHT
23 IF THE KILLING OF JOSE MENENDEZ OCCURRED
24 UPON A SUDDEN QUARREL OR HEAT OF PASSION.

25 IN ORDER TO PROVE SUCH CRIME,
26 EACH OF THE FOLLOWING ELEMENTS MUST BE
27 PROVED:

28 1. A HUMAN BEING WAS KILLED,

1 2. THE KILLING WAS UNLAWFUL,

2 AND

3 3. THE KILLING WAS DONE WITH
4 THE INTENT TO KILL.

5
6 TO REDUCE AN INTENTIONAL
7 FELONIOUS HOMICIDE FROM THE OFFENSE OF
8 MURDER TO MANSLAUGHTER UPON THE GROUNDS OF
9 SUDDEN QUARREL OR HEAT OF PASSION, THE
10 PROVOCATION MUST BE OF SUCH CHARACTER AND
11 DEGREE AS NATURALLY WOULD EXCITE AND AROUSE
12 SUCH PASSION, AND THE ASSAILANT MUST ACT
13 UNDER THE INFLUENCE OF THAT SUDDEN QUARREL
14 OR HEAT OF PASSION.

15 THE HEAT OF PASSION WHICH WILL
16 REDUCE HOMICIDE TO MANSLAUGHTER MUST BE SUCH
17 A PASSION AS NATURALLY WOULD BE AROUSED IN
18 THE MIND OF AN ORDINARILY REASONABLE PERSON
19 IN THE SAME CIRCUMSTANCES. A DEFENDANT IS
20 NOT PERMITTED TO SET UP HIS OWN STANDARD OF
21 CONDUCT AND TO JUSTIFY OR EXCUSE HIMSELF
22 BECAUSE HIS PASSIONS WERE AROUSED UNLESS THE
23 CIRCUMSTANCES IN WHICH THE DEFENDANT WAS
24 PLACED AND THE FACTS THAT CONFRONTED HIM
25 WERE SUCH AS ALSO WOULD HAVE AROUSED THE
26 PASSION OF THE ORDINARILY REASONABLE PERSON
27 FACED WITH THE SAME SITUATION. LEGALLY
28 ADEQUATE PROVOCATION MAY OCCUR IN A SHORT,

1 OR OVER A CONSIDERABLE, PERIOD OF TIME.

2 THE QUESTION TO BE ANSWERED IS
3 WHETHER OR NOT, AT THE TIME OF THE KILLING,
4 THE REASON OF THE ACCUSED WAS OBSCURED OR
5 DISTURBED BY PASSION TO SUCH AN EXTENT AS
6 WOULD CAUSE THE ORDINARILY REASONABLE PERSON
7 OF AVERAGE DISPOSITION TO ACT RASHLY AND
8 WITHOUT DELIBERATION AND REFLECTION, AND
9 FROM SUCH PASSION RATHER THAN FROM JUDGMENT.

10 IF THERE WAS PROVOCATION,
11 WHETHER OF SHORT OR LONG DURATION, BUT OF A
12 NATURE NOT NORMALLY SUFFICIENT TO AROUSE
13 PASSION, OR IF SUFFICIENT TIME ELAPSED
14 BETWEEN THE PROVOCATION AND THE FATAL BLOW
15 FOR PASSION TO SUBSIDE AND REASON TO RETURN,
16 AND IF AN UNLAWFUL KILLING OF A HUMAN BEING
17 FOLLOWED SUCH PROVOCATION AND HAD ALL THE
18 ELEMENTS OF MURDER, AS I HAVE DEFINED IT,
19 THE MERE FACT OF SLIGHT OR REMOTE
20 PROVOCATION WILL NOT REDUCE THE OFFENSE TO
21 MANSLAUGHTER.

22
23 TO REDUCE A KILLING UPON A
24 SUDDEN QUARREL OR HEAT OF PASSION FROM
25 MURDER TO MANSLAUGHTER THE KILLING MUST HAVE

26 OCCURRED WHILE THE SLAYER WAS ACTING UNDER
27 THE DIRECT AND IMMEDIATE INFLUENCE OF SUCH
28 QUARREL OR HEAT OF PASSION. WHERE THE

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1 INFLUENCE OF THE SUDDEN QUARREL OR HEAT OF
2 PASSION HAS CEASED TO OBSCURE THE MIND OF
3 THE ACCUSED AND SUFFICIENT TIME HAS ELAPSED
4 FOR ANGRY PASSION TO END AND FOR REASON TO
5 CONTROL HIS CONDUCT, IT WILL NO LONGER
6 REDUCE AN INTENTIONAL KILLING TO
7 MANSLAUGHTER. THE QUESTION AS TO WHETHER
8 THE COOLING PERIOD HAS ELAPSED AND REASON
9 HAS RETURNED IS NOT MEASURED BY THE STANDARD
10 OF ACCUSED, BUT THE DURATION OF THE COOLING
11 PERIOD IS THE TIME IT WOULD TAKE THE AVERAGE
12 OR ORDINARILY REASONABLE PERSON TO HAVE
13 COOLED SUCH PASSION AND FOR THAT PERSON'S
14 REASON TO HAVE RETURNED.

15

16 NEITHER FEAR, REVENGE, NOR THE
17 EMOTION INDUCED BY AND ACCOMPANYING OR
18 FOLLOWING AN ATTEMPT TO COMMIT A FELONY, NOR
19 ANY OR ALL OF THESE EMOTIONAL STATES, IN AND
20 OF THEMSELVES, CONSTITUTE THE HEAT OF
21 PASSION REFERRED TO IN THE LAW OF

22 MANSLAUGHTER. ANY OR ALL OF SUCH EMOTIONS
23 MAY BE INVOLVED IN A HEAT OF PASSION THAT
24 CAUSES JUDGMENT TO GIVE WAY TO IMPULSE AND
25 RASHNESS. ALSO ANY ONE OR MORE OF THEM MAY
26 EXIST IN THE MIND OF A PERSON WHO ACTS
27 DELIBERATELY AND FROM CHOICE, WHETHER SUCH
28 CHOICE IS REASONABLE OR UNREASONABLE.

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1
2 THE DISTINCTION BETWEEN MURDER
3 AND MANSLAUGHTER IS THAT MURDER REQUIRES
4 MALICE WHILE MANSLAUGHTER DOES NOT.
5 WHEN THE ACT CAUSING THE DEATH,
6 THOUGH UNLAWFUL, IS DONE IN THE HEAT OF
7 PASSION OR IS EXCITED BY A SUDDEN QUARREL
8 SUCH AS AMOUNTS TO ADEQUATE PROVOCATION, THE
9 OFFENSE IS MANSLAUGHTER. IN SUCH A CASE,
10 EVEN IF AN INTENT TO KILL EXISTS, THE LAW IS
11 THAT MALICE, WHICH IS AN ESSENTIAL ELEMENT
12 OF MURDER, IS ABSENT.

13 TO ESTABLISH THAT A KILLING IS
14 MURDER AND NOT MANSLAUGHTER, THE BURDEN IS
15 ON THE PEOPLE TO PROVE BEYOND A REASONABLE
16 DOUBT EACH OF THE ELEMENTS OF MURDER, AND
17 THAT THE ACT WHICH CAUSED THE DEATH WAS NOT

18 DONE IN THE HEAT OF PASSION OR UPON A SUDDEN
19 QUARREL.

20

21 IF A PERSON UNLAWFULLY INFLECTS
22 A PHYSICAL INJURY UPON ANOTHER PERSON AND
23 THAT JURY IS A CAUSE OF THE LATTER'S DEATH,
24 SUCH CONDUCT CONSTITUTES UNLAWFUL HOMICIDE
25 EVEN THOUGH THE INJURY INFLECTED WAS NOT THE
26 ONLY CAUSE OF DEATH. MOREOVER, THAT CONDUCT
27 CONSTITUTES UNLAWFUL HOMICIDE, EVEN IF:

28 1. THE PERSON INJURED HAD BEEN

-13155

1 ALREADY WEAKENED BY DISEASE, INJURY,
2 PHYSICAL CONDITION OR OTHER CAUSE,
3 2. IT IS PROBABLE THAT A
4 PERSON IN SOUND PHYSICAL CONDITION INJURED
5 IN THE SAME WAY WOULD NOT HAVE DIED FROM THE
6 INJURY,

7 3. IT IS PROBABLE THAT THE
8 INJURY ONLY HASTENED THE DEATH OF THE
9 INJURED PERSON, AND

10 4. THE INJURED PERSON WOULD
11 HAVE DIED SOON THEREAFTER FROM ANOTHER CAUSE
12 OR CAUSES.

13

14 MURDER IS CLASSIFIED INTO TWO
15 DEGREES, AND IF YOU SHOULD FIND THE
16 DEFENDANT GUILTY OF MURDER YOU MUST
17 DETERMINE AND STATE IN YOUR VERDICT WHETHER
18 YOU FIND THE MURDER TO BE OF THE FIRST OR
19 SECOND-DEGREE.

20

21 IF YOU ARE CONVINCED BEYOND A
22 REASONABLE DOUBT THAT THE CRIME OF MURDER
23 HAS BEEN COMMITTED BY DEFENDANT, BUT YOU
24 HAVE A REASONABLE DOUBT WHETHER SUCH MURDER
25 WAS OF THE FIRST OR THE SECOND DEGREE, YOU
26 MUST GIVE THE DEFENDANT THE BENEFIT OF THAT
27 DOUBT AND RETURN A VERDICT FIXING THE MURDER
28 AS OF THE SECOND-DEGREE.

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1

2 IF YOU ARE SATISFIED BEYOND A
3 REASONABLE DOUBT THAT THE KILLING OF JOSE
4 MENENDEZ WAS UNLAWFUL, BUT YOU HAVE A
5 REASONABLE DOUBT WHETHER THE CRIME IS MURDER
6 OR MANSLAUGHTER, YOU MUST GIVE THE DEFENDANT
7 THE BENEFIT OF SUCH DOUBT AND FIND IT TO BE
8 MANSLAUGHTER RATHER THAN MURDER.

9

10 IF THE EVIDENCE ESTABLISHES
11 THAT THERE WAS PROVOCATION WHICH PLAYED A
12 PART IN INDUCING AN UNLAWFUL KILLING OF A
13 HUMAN BEING, BUT THE PROVOCATION WAS NOT
14 SUFFICIENT TO REDUCE THE HOMICIDE TO
15 MANSLAUGHTER IN COUNT ONE, YOU SHOULD
16 CONSIDER THE PROVOCATION FOR SUCH BEARING AS
17 IT MAY HAVE ON WHETHER THE DEFENDANT KILLED
18 WITH OR WITHOUT DELIBERATION AND
19 PREMEDITATION IN BOTH COUNTS ONE AND TWO.

20

21 BEFORE YOU MAY RETURN A VERDICT
22 IN THIS CASE, YOU MUST AGREE UNANIMOUSLY NOT
23 ONLY AS TO WHETHER THE DEFENDANT IS GUILTY
24 OR NOT GUILTY, BUT ALSO IF YOU SHOULD FIND
25 HIM GUILTY OF AN UNLAWFUL KILLING, YOU MUST
26 AGREE UNANIMOUSLY AS TO WHETHER OR NOT HE IS
27 GUILTY OF MURDER OF THE FIRST DEGREE OR
28 MURDER OF THE SECOND-DEGREE OR VOLUNTARY

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1 MANSLAUGHTER IN COUNT ONE, AND WHETHER HE IS
2 GUILTY OF MURDER IN THE FIRST DEGREE OR
3 MURDER OF THE SECOND-DEGREE IN COUNT TWO.

4

5 THE COURT: I HAVE ABOUT 20 MINUTES TO GO OR SO.

6 DO YOU WANT TO GO AHEAD? ANYBODY NEED A BREAK? WANT A
7 BREAK? OKAY.

8 OKAY. LET'S TAKE A BREAK HERE, AND WE WILL
9 PRESUME AT ABOUT -- WE'LL MAKE IT AT FIVE AFTER 11:00.
10 FIFTEEN MINUTE BREAK.

11 (A RECESS WAS TAKEN FROM
12 10:50 A.M UNTIL 11:05 A.M.)

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1 THE COURT: YOU HAD SOMETHING YOU WANTED TO
2 TALK ABOUT?

3 MS. NAJERA: YES, YOUR HONOR. 6.23, THE ONE
4 THAT WE HAD ORIGINALLY GOTTEN THAT MR. CONN REFERRED
5 TO WHEN HE ARGUED, WAS THE ONE THAT WAS 6.23
6 MODIFIED WHERE IT STATED THE LANGUAGE:

7 "IT IS ALLEGED THAT THE FOLLOWING
8 OVERT ACTS WERE COMMITTED IN THIS
9 STATE BY ONE OR MORE OF THE
10 DEFENDANTS."

11 AND THE 6.23 ON PAGE 19 OF THE COPY WE
12 HAVE, AND WHAT THE COURT READ, WAS WORDS TO THE
13 EFFECT OF --

14 THE COURT: WHAT IS IT YOU SAID YOU GOT?
15 SOMETHING FROM WHO?

16 MS. NAJERA: IN THE ORIGINAL PACKET THAT WE
17 HAD GONE THROUGH AND REFERRED TO, THE ORIGINAL
18 PACKET OF JURY INSTRUCTIONS.

19 THE COURT: THE ONES YOU SUBMITTED?
20 MS. NAJERA: THIS WAS --
21 THE COURT: I NEVER GAVE YOU ANYTHING OTHER
22 THAN WHAT I GAVE YOU THIS MORNING.
23 MS. NAJERA: THIS WAS THE ONE SUBMITTED -- A
24 COMBINATION OF BOTH OURS AND THE DEFENSE
25 INSTRUCTIONS, THE ONES WE ORIGINALLY WENT THROUGH.
26 MS. ABRAMSON: I NEVER GAVE ANY CONSPIRACY
27 INSTRUCTION.
28 MS. TOWERY: YES, WE DID.

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1 MS. NAJERA: YES, YOU DID.
2 MY UNDERSTANDING OF WHAT WE HAD, WAS THE
3 LANGUAGE USED WAS "IN THE STATE" AS OPPOSED TO "IN
4 THE COUNTY OF LOS ANGELES."
5 THE COURT: NO. I SAID I WAS GOING TO READ
6 WHATEVER IT WAS IN THE INDICTMENT, OR PUT IN WHAT
7 THE INDICTMENT SAID.
8 MS. TOWERY: THAT IS WHAT THE INDICTMENT
9 SAID.
10 THE COURT: WELL, THE INDICTMENT SAYS: "IN
11 THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA."
12 MS. NAJERA: OUR UNDERSTANDING WAS -- AND
13 APPARENTLY WE WERE MISTAKEN -- WAS THE COURT WAS

14 GOING WITH THE LANGUAGE OF 6.23 --

15 THE COURT: I SAID I WAS --

16 MS. NAJERA: -- THAT WAS GIVEN AT THE LAST
17 TRIAL.

18 THE COURT: NO. I SAID I WAS GOING TO PUT IN
19 WHAT IT WAS THAT WAS IN THE INDICTMENT. I CAN
20 MODIFY WHAT I READ IN THE WRITTEN INSTRUCTION TO THE
21 JURY AND PUT IN "COUNTY OF LOS ANGELES, STATE OF
22 CALIFORNIA," IF YOU --

23 MS. ABRAMSON: IT SAYS THAT IN --

24 MS. NAJERA: IN THE THIRD PARAGRAPH IT SAYS:

25 "THE FOLLOWING OVERT ACTS WERE
26 COMMITTED AT AND IN THE COUNTY OF LOS
27 ANGELES."

28 AND WE'D PREFER THAT IT SAY "AT OR IN

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1 THE STATE OF CALIFORNIA."

2 THE COURT: I'M READING FROM THE INDICTMENT.
3 THIS IS THE PIECE OF PAPER THAT THE GRAND JURY
4 DECIDED THE ISSUE ON. AND THAT'S WHAT I SAID I WAS
5 GOING TO USE, COUNTY OF LOS ANGELES, STATE OF
6 CALIFORNIA.

7 MS. NAJERA: WELL --

8 THE COURT: I DON'T HAVE THAT INSTRUCTION IN

9 FRONT OF ME. DOES IT SAY COUNTY OF LOS ANGELES,
10 STATE OF CALIFORNIA?

11 MS. NAJERA: NO. IT SIMPLY SAYS: "COMMITTED
12 IN THIS STATE BY ONE OR MORE OF THE DEFENDANTS."

13 THE COURT: NO, NO. I'M TALKING ABOUT THE
14 ONE I READ.

15 MS. NAJERA: THE ONE YOU READ SIMPLY SAYS
16 "STATE OF CALIFORNIA" IN THE THIRD PARAGRAPH.

17 MR. ABRAMSON: THE SECOND PARAGRAPH LAYS OUT
18 THE "DID CONSPIRE TOGETHER." THEN THE PARAGRAPH
19 THAT DESCRIBES OVERT ACTS DESCRIBES IT AS IN THE
20 INDICTMENT. "WERE COMMITTED AT AND IN THE COUNTY OF
21 LOS ANGELES." THAT'S HOW THEY DRAFTED THEIR
22 INDICTMENT.

23 THE COURT: LET ME LOOK.

24 THE INDICTMENT SAYS: "DEFENDANTS
25 COMMITTED THE FOLLOWING OVERT ACTS AT AND IN THE
26 COUNTY OF LOS ANGELES."

27 THAT'S WHAT THE INDICTMENT SAYS. I PUT
28 DOWN PRECISELY WHAT IT WAS THAT WAS IN THE

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1 INDICTMENT.

2 MS. NAJERA: IN THE FIRST TRIAL THEY WERE
3 INSTRUCTED --

4 THE COURT: WE'RE NOT TALKING ABOUT THE FIRST
5 TRIAL. WE'RE TALKING ABOUT THE DISCUSSIONS WE HAD
6 ABOUT THESE INSTRUCTIONS THAT WERE FINALIZED IN THIS
7 TRIAL. YOU CAN GO BACK TO THE TRANSCRIPT AND SEE
8 WHAT I SAID AND CHECK IT OUT. YOU CAN DO THAT
9 BETWEEN NOW AND 1:30. THESE INSTRUCTIONS, IN THEIR
10 WRITTEN FORM, WON'T GO TO THE JURY BEFORE THEN.

11 BUT I INDICATED THAT, IN CONFORMITY WITH
12 MY DISCUSSION WITH MR. GESSLER, I WOULD PUT IN THE
13 LANGUAGE THAT WAS IN THE INDICTMENT, WHICH I DID, IN
14 PRECISELY THE WAY IT WAS ALLEGED IN THE INDICTMENT.

15 OKAY. LET'S GET THE JURY OUT.

16 (THE JURY ENTERED THE COURTROOM
17 AND THE FOLLOWING PROCEEDINGS
18 WERE HELD:)

19

20 OKAY. THE JURY IS BACK AND I'LL
21 CONTINUE WITH THE INSTRUCTIONS.

22 I'M STILL IN THAT PORTION OF THE
23 INSTRUCTIONS DEALING WITH COUNTS 1 AND 2.

24 (READING:)

25 IF YOU FIND A DEFENDANT IN
26 THIS CASE GUILTY OF MURDER OF THE
27 FIRST DEGREE, YOU MUST THEN DETERMINE
28 IF ONE OR MORE OF THE FOLLOWING

1 SPECIAL CIRCUMSTANCES ARE TRUE OR NOT
2 TRUE. MURDER WHILE LYING IN WAIT AND
3 MULTIPLE MURDER CONVICTIONS.

4 THE PEOPLE HAVE THE BURDEN
5 OF PROVING THE TRUTH OF A SPECIAL
6 CIRCUMSTANCE. IF YOU HAVE A
7 REASONABLE DOUBT AS TO WHETHER A
8 SPECIAL CIRCUMSTANCE IS TRUE, YOU MUST
9 FIND IT TO BE NOT TRUE.

10 IF YOU FIND BEYOND A
11 REASONABLE DOUBT THAT THE DEFENDANT
12 WAS EITHER THE ACTUAL KILLER, A
13 COCONSPIRATOR, OR AN AIDER OR ABETTOR,
14 BUT YOU ARE UNABLE TO DECIDE WHICH,
15 THEN YOU MUST ALSO FIND BEYOND A
16 REASONABLE DOUBT THAT THE DEFENDANT,
17 WITH INTENT TO KILL, PARTICIPATED AS A
18 COCONSPIRATOR WITH OR AIDED AND
19 ABETTED AN ACTOR IN THE COMMISSION OF
20 THE MURDER IN THE FIRST DEGREE IN
21 ORDER TO FIND A SPECIAL CIRCUMSTANCE
22 TO BE TRUE.

23 ON THE OTHER HAND, IF YOU
24 FIND BEYOND A REASONABLE DOUBT THAT
25 THE DEFENDANT WAS THE ACTUAL KILLER,
26 YOU NEED NOT FIND THE DEFENDANT
27 INTENDED TO KILL A HUMAN BEING IN

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1 TO BE TRUE.

2 YOU MUST DECIDE SEPARATELY
3 AS TO EACH OF DEFENDANTS THE EXISTENCE
4 OR NONEXISTENCE OF EACH SPECIAL
5 CIRCUMSTANCE ALLEGED IN THIS CASE. IF
6 YOU CANNOT AGREE AS TO ALL THE
7 DEFENDANTS, BUT CAN AGREE AS TO ONE,
8 YOU MAKE YOUR FINDINGS AS TO THE ONE
9 UPON WHICH YOU DO AGREE.

10 YOU MUST DECIDE SEPARATELY
11 EACH SPECIAL CIRCUMSTANCE ALLEGED IN
12 THIS CASE AS TO THE EACH OF THE
13 DEFENDANTS. IF YOU CANNOT AGREE AS TO
14 ALL OF THE CIRCUMSTANCES, BUT YOU CAN
15 AGREE AS TO ONE OR MORE OF THEM, YOU
16 MUST MAKE YOUR FINDING AS TO THE ONE
17 OR MORE UPON WHICH YOU DO AGREE.

18 IN ORDER TO FIND A SPECIAL
19 CIRCUMSTANCE ALLEGED IN THIS CASE TO
20 BE TRUE OR UNTRUE, YOU MUST AGREE
21 UNANIMOUSLY. YOU WILL STATE YOUR
22 SPECIAL FINDING AS TO WHETHER THE

23 SPECIAL CIRCUMSTANCE IS TRUE OR IS NOT
24 TRUE ON THE FORM THAT WILL BE
25 SUPPLIED.
26 TO FIND THE SPECIAL
27 CIRCUMSTANCE REFERRED TO IN THESE
28 INSTRUCTIONS AS MULTIPLE MURDER

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1 CONVICTIONS IS TRUE, IT MUST BE PROVED
2 A DEFENDANT HAS IN THIS CASE BEEN
3 CONVICTED OF AT LEAST ONE CRIME OF
4 MURDER OF THE FIRST DEGREE AND ONE OR
5 MORE CRIMES OF MURDER OF THE FIRST OR
6 SECOND DEGREE.

7 TO FIND THAT THE SPECIAL
8 CIRCUMSTANCE REFERRED TO IN THESE
9 INSTRUCTIONS AS MURDER WHILE LYING IN
10 WAIT IS TRUE, EACH OF THE FOLLOWING
11 FACTS MUST BE PROVED:

12 ONE, A DEFENDANT
13 INTENTIONALLY KILLED THE VICTIM;
14 AND TWO, THE MURDER WAS
15 COMMITTED WHILE THE DEFENDANT WAS
16 LYING IN WAIT.

17 THE TERM "WHILE LYING IN WAIT,"

18 WITHIN THE MEANING OF THE LAW OF
19 SPECIAL CIRCUMSTANCES IS DEFINED AS A
20 WAITING AND WATCHING FOR AN OPPORTUNE
21 TIME TO ACT, TOGETHER WITH A
22 CONCEALMENT BY AMBUSH OR BY SOME OTHER
23 SECRET DESIGN TO TAKE THE OTHER PERSON
24 BY SURPRISE, EVEN THOUGH THE VICTIM IS
25 AWARE OF THE MURDERER'S PRESENCE. THE
26 LYING IN WAIT NEED NOT CONTINUE FOR
27 ANY PARTICULAR PERIOD OF TIME,
28 PROVIDED THAT ITS DURATION IS SUCH AS

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1 TO SHOW A STATE OF MIND EQUIVALENT TO
2 PREMEDITATION OR DELIBERATION.
3 THUS, IN ORDER FOR A KILLING
4 TO BE PERPETRATED WHILE LYING IN WAIT,
5 BOTH THE CONCEALMENT AND WATCHFUL
6 WAITING, AS WELL AS THE KILLING, MUST
7 OCCUR DURING THE SAME TIME PERIOD OR
8 IN AN UNINTERRUPTED ATTACK COMMENCING
9 NO LATER THAN THE MOMENT CONCEALMENT
10 ENDS.
11 IF THERE IS A CLEAR
12 INTERRUPTION SEPARATING THE PERIOD OF

13 LYING IN WAIT FROM THE PERIOD DURING
14 WHICH THE KILLING TAKES PLACE, SO THAT
15 THERE IS NEITHER AN IMMEDIATE KILLING
16 NOR A CONTINUOUS FLOW OF THE
17 UNINTERRUPTED LETHAL EVENTS, THE
18 SPECIAL CIRCUMSTANCE IS NOT PROVED.

19 A MERE CONCEALMENT OF
20 PURPOSE IS NOT SUFFICIENT TO MEET THE
21 REQUIREMENT OF CONCEALMENT SET FORTH
22 IN THIS SPECIAL CIRCUMSTANCE.

23 HOWEVER, WHEN A DEFENDANT
24 INTENTIONALLY MURDERS ANOTHER PERSON
25 UNDER CIRCUMSTANCES WHICH -- A
26 CONCEAL -- I'M SORRY -- WHICH INCLUDE:

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1 ONE, A CONCEALMENT OF
2 PURPOSE;
3 TWO, A SUBSTANTIAL PERIOD OF
4 WATCHING AND WAITING FOR AN OPPORTUNE
5 TIME TO ACT;
6 AND THREE, IMMEDIATELY
7 THEREAFTER, A SURPRISE ATTACK ON AN

8 UNSUSPECTING VICTIM FROM A POSITION OF
9 ADVANTAGE, THE SPECIAL CIRCUMSTANCE OF
10 MURDER WHILE LYING IN WAIT HAS BEEN
11 ESTABLISHED.

12 IF MURDER IS DONE WITHOUT A
13 PERIOD OF WAITING, WATCHING AND
14 CONCEALMENT, THE SPECIAL CIRCUMSTANCE
15 OF LYING IN WAIT IS NOT PRESENT.

16 YOU ARE NOT PERMITTED TO
17 FIND A SPECIAL CIRCUMSTANCE ALLEGED IN
18 THIS CASE TO BE TRUE BASED ON
19 CIRCUMSTANTIAL EVIDENCE UNLESS THE
20 PROVED CIRCUMSTANCES ARE NOT ONLY;

21 ONE, CONSISTENT WITH THE
22 THEORY THAT A SPECIAL CIRCUMSTANCE IS
23 TRUE;

24 BUT TWO, CANNOT BE
25 RECONCILED WITH ANY OTHER RATIONAL
26 CONCLUSION.

52393

1 FURTHER, EACH FACT WHICH IS
2 ESSENTIAL TO COMPLETE A SET OF

3 CIRCUMSTANCES NECESSARY TO ESTABLISH
4 THE TRUTH OF A SPECIAL CIRCUMSTANCE
5 MUST BE PROVEN BEYOND A REASONABLE
6 DOUBT.

7 IN OTHER WORDS, BEFORE AN
8 INFERENCE ESSENTIAL TO ESTABLISH A
9 SPECIAL CIRCUMSTANCE MAY BE FOUND TO
10 HAVE BEEN PROVED BEYOND A REASONABLE
11 DOUBT, EACH FACT OR CIRCUMSTANCE UPON
12 WHICH SUCH INFERENCE NECESSARILY RESTS
13 MUST BE PROVED BEYOND A REASONABLE
14 DOUBT.

15 ALSO, IF CIRCUMSTANTIAL
16 EVIDENCE IS SUSCEPTIBLE OF TWO
17 REASONABLE INTERPRETATIONS, ONE OF
18 WHICH POINTS TO THE TRUTH OF THE
19 SPECIAL CIRCUMSTANCE AND THE OTHER TO
20 ITS UNTRUTH, YOU MUST ADOPT THE
21 INTERPRETATION WHICH POINTS TO ITS
22 UNTRUTH AND REJECT THE INTERPRETATION
23 WHICH POINTS TO ITS TRUTH.

24 IF, ON THE OTHER HAND, ONE
25 INTERPRETATION OF SUCH EVIDENCE
26 APPEARS TO YOU TO BE REASONABLE AND
27 THE OTHER INTERPRETATION TO BE
28 UNREASONABLE, YOU MUST ACCEPT THE

1 REASONABLE INTERPRETATION AND REJECT
2 THE UNREASONABLE.

3 SPECIFIC INTENT OR MENTAL
4 STATE WITH WHICH AN ACT IS DONE MAY BE
5 SHOWN BY THE CIRCUMSTANCES SURROUNDING
6 ITS COMMISSION, BUT YOU MAY NOT FIND A
7 SPECIAL CIRCUMSTANCE ALLEGED IN THIS
8 CASE TO BE TRUE UNLESS THE PROVED
9 SURROUNDING CIRCUMSTANCES ARE NOT
10 ONLY;

11 ONE, CONSISTENT WITH A
12 THEORY THAT THE DEFENDANT HAD THE
13 REQUIRED SPECIFIC INTENT OR MENTAL
14 STATE;

15 BUT TWO, CANNOT BE
16 RECONCILED WITH ANY OTHER RATIONAL
17 CONCLUSION.

18 ALSO, IF THE EVIDENCE AS TO
19 ANY SUCH SPECIFIC INTENT OR MENTAL
20 STATE IS SUSCEPTIBLE OF TWO REASONABLE
21 INTERPRETATIONS, ONE OF WHICH POINTS
22 TO THE EXISTENCE OF THE SPECIFIC
23 INTENT OR MENTAL STATE, AND THE OTHER
24 TO THE ABSENCE OF THE SPECIFIC INTENT
25 OR MENTAL STATE, YOU MUST ADOPT THAT

26 INTERPRETATION WHICH POINTS TO THE
27 ABSENCE OF THE SPECIFIC INTENT OR
28 MENTAL STATE.

52395

1 IF, ON THE OTHER HAND, ONE
2 INTERPRETATION OF THE EVIDENCE AS TO
3 SUCH SPECIFIC INTENT OR MENTAL STATE
4 APPEARS TO YOU TO BE REASONABLE, AND
5 THE OTHER INTERPRETATION TO BE
6 UNREASONABLE, YOU MUST ACCEPT THE
7 REASONABLE INTERPRETATION AND REJECT
8 THE UNREASONABLE.

9 IN YOUR DELIBERATIONS THE
10 SUBJECTS OF PENALTY OR PUNISHMENT IS
11 NOT TO BE DISCUSSED OR CONSIDERED BY
12 YOU. THAT IS A MATTER WHICH MUST NOT
13 IN ANY WAY AFFECT YOUR VERDICT OR
14 AFFECT YOUR FINDING AS TO THE SPECIAL
15 CIRCUMSTANCES ALLEGED IN THIS CASE.

16
17 YOU MUST DECIDE SEPARATELY
18 WHETHER EACH OF THE DEFENDANTS IS
19 GUILTY OR NOT GUILTY. IF YOU CANNOT
20 AGREE UPON A VERDICT AS TO BOTH OF THE

21 DEFENDANTS, BUT DO AGREE UPON A
22 VERDICT AS TO ANY ONE OF THEM, YOU
23 MUST RENDER A VERDICT AS TO THE ONE OR
24 MORE AS TO WHOM YOU DISAGREE.

25 EACH COUNT CHARGES A
26 DISTINCT CRIME. YOU MUST DECIDE EACH
27 COUNT SEPARATELY. THE DEFENDANT MAY
28 BE FOUND GUILTY OR NOT GUILTY OF ANY

52396

1 OR ALL OF THE CRIMES CHARGED. YOUR
2 FINDING AS TO EACH COUNT MUST BE
3 STATED IN A SEPARATE VERDICT.
4

5 IF YOU ARE NOT SATISFIED
6 BEYOND A REASONABLE DOUBT THAT THE
7 DEFENDANT IS GUILTY OF THE CRIME
8 CHARGED, YOU MAY NEVERTHELESS CONVICT
9 HIM OF ANY LESSER CRIME, IF YOU ARE
10 CONVINCED BEYOND A REASONABLE DOUBT
11 THAT THE DEFENDANT IS GUILTY OF SUCH
12 LESSER CRIME.

13 THE CRIME OF SECOND-DEGREE
14 MURDER IS LESSER TO THAT CHARGED IN
15 COUNTS 1 AND 2.

16 THE CRIME OF VOLUNTARY
17 MANSLAUGHTER IS LESSER TO THAT CHARGED
18 IN COUNT 1. THUS, YOU ARE TO
19 DETERMINE WHETHER A DEFENDANT IS
20 GUILTY OR NOT GUILTY OF THE CRIME
21 CHARGED IN COUNTS 1 AND 2, OR OF ANY
22 LESSER CRIMES. IN SO DOING YOU HAVE
23 DISCRETION TO CHOOSE THE ORDER IN
24 WHICH YOU EVALUATE EACH CRIME AND
25 CONSIDER THE EVIDENCE PERTAINING TO
26 IT. YOU MAY FIND IT PRODUCTIVE TO
27 CONSIDER AND REACH TENTATIVE
28 CONCLUSIONS ON ALL CHARGES AND LESSER

52397

1 CRIMES BEFORE REACHING ANY FINAL
2 VERDICTS. HOWEVER, THE COURT CANNOT
3 ACCEPT A GUILTY VERDICT ON A LESSER
4 CRIME UNLESS YOU HAVE UNANIMOUSLY
5 FOUND THE DEFENDANT NOT GUILTY OF THE
6 GREATER CRIME.

7

8 I HAVE NOT INTENDED BY
9 ANYTHING I HAVE SAID OR DONE, OR BY
10 ANY QUESTION I MAY HAVE ASKED, OR BY

11 ANY RULING I MAY HAVE MADE, TO
12 INTIMATE OR SUGGEST WHAT YOU SHOULD
13 FIND TO BE THE FACTS OR THAT I BELIEVE
14 OR DISBELIEVE ANY WITNESS. IF
15 ANYTHING I HAVE SAID OR DONE HAS
16 SEEMED TO SO INDICATE, YOU WILL
17 DISREGARD IT AND FORM YOUR OWN
18 CONCLUSIONS.

19 THE PURPOSE OF THE COURT'S
20 INSTRUCTIONS IS TO PROVIDE YOU WITH
21 THE APPLICABLE LAW SO THAT YOU MAY
22 ARRIVE AT A JUST AND LAWFUL VERDICT.
23 WHETHER SOME INSTRUCTIONS APPLY WILL
24 DEPEND UPON WHAT YOU FIND TO BE THE
25 FACTS. DISREGARD ANY INSTRUCTION
26 WHICH APPLIES TO FACTS DETERMINED BY
27 YOU NOT TO EXIST. DO NOT CONCLUDE
28 THAT BECAUSE AN INSTRUCTION HAS BEEN

52398

1 GIVEN THAT I'M EXPRESSING AN OPINION
2 AS TO THE FACTS.

3 THE PEOPLE AND THE DEFENDANT
4 ARE ENTITLED TO THE INDIVIDUAL OPINION
5 OF EACH JUROR. EACH OF YOU MUST

6 CONSIDER THE EVIDENCE FOR THE PURPOSE
7 OF REACHING A VERDICT IF YOU CAN DO
8 SO. EACH OF YOU MUST DECIDE THE CASE
9 FOR YOURSELF, BUT SHOULD DO SO ONLY
10 AFTER DISCUSSING THE EVIDENCE AND
11 INSTRUCTIONS WITH THE OTHER JURORS.

12 DO NOT HESITATE TO CHANGE AN
13 OPINION IF YOU ARE CONVINCED IT IS
14 WRONG; HOWEVER, DO NOT DECIDE ANY
15 QUESTION IN A PARTICULAR WAY BECAUSE A
16 MAJORITY OF THE JURORS, OR ANY OF
17 THEM, FAVOR SUCH A DECISION.

18 DO NOT DECIDE ANY ISSUE IN
19 THIS CASE BY CHANCE, SUCH AS BY THE
20 DRAWING OF LOTS OR BY ANY OTHER CHANCE
21 DETERMINATION.

22 THE ATTITUDE AND CONDUCT OF
23 JURORS AT ALL TIMES ARE VERY
24 IMPORTANT. IT IS RARELY HELPFUL FOR A
25 JUROR AT THE BEGINNING OF
26 DELIBERATIONS TO EXPRESS AN EMPHATIC
27 OPINION ON THE CASE OR TO ANNOUNCE A
28 DETERMINATION TO STAND FOR A CERTAIN

1 VERDICT. WHEN ONE DOES THAT AT THE
2 OUTSET, A SENSE OF PRIDE MAY BE
3 AROUSED AND ONE MAY HESITATE TO CHANGE
4 A POSITION, EVEN IF SHOWN IT IS
5 WRONG. REMEMBER THAT YOU ARE NOT
6 PARTICIPANTS OR ADVOCATES IN THIS
7 MATTER. YOU ARE IMPARTIAL JUDGES OF
8 THE FACTS.

9 DURING THE DELIBERATIONS ANY
10 QUESTION OR REQUEST THAT THE JURY MAY
11 HAVE SHOULD BE ADDRESSED TO THE COURT
12 ON A FORM THAT WILL BE PROVIDED TO
13 YOU.

14 PLEASE BEAR IN MIND CERTAIN THINGS
15 HERE. WHEN YOU MAKE A REQUEST OF ME DEALING WITH,
16 PERHAPS, A REQUEST FOR REREAD OF TESTIMONY --
17 AND I'M NOT SUGGESTING YOU'RE GOING TO REQUEST ANY
18 OF THESE THINGS. JUST TO COVER THE BASES HERE. IF
19 YOU HAVE A REQUEST FOR REREAD OF TESTIMONY, OR IF
20 YOU REQUEST A CLARIFICATION ON THE LAW, MAKE OUT THE
21 REQUEST IN WRITING THROUGH YOUR FOREMAN, FOREPERSON,
22 AND GIVE IT TO THE BAILIFF, AND IT WILL GET TO ME.
23 IT WILL TAKE A WHILE FOR ME TO RESPOND, BECAUSE
24 CERTAIN THINGS HAVE TO OCCUR.

25 IF THERE'S A REQUEST FOR REREAD OF
26 TESTIMONY, THEN WE WOULD REQUEST, IF YOU CAN DO SO,
27 TO SPECIFY WHAT IT IS THAT YOU'RE LOOKING FOR. IF
28 YOU WANT THE ENTIRETY OF A PARTICULAR WITNESS'

1 TESTIMONY, AND YOU NEED ALL OF IT, THEN WE'LL
2 PROVIDE ALL OF IT TO YOU. IF YOU ONLY NEED A
3 PORTION OF A WITNESS' TESTIMONY, AND YOU CAN SPELL
4 OUT WHAT IT IS YOU'RE LOOKING FOR, WHAT PART OF THE
5 TESTIMONY, WE'LL TRY TO FIND THAT.

6 WHATEVER THE REQUEST IS, IT WILL TAKE A
7 WHILE TO RESPOND TO IT. THE REPORTER HAS TO GO
8 THROUGH HER NOTES TO REVIEW THE MATERIALS. THERE
9 ARE PORTIONS OF THE TRANSCRIPTS DEALING WITH MATTERS
10 THAT HAVE TO BE REMOVED BEFORE SHE CAN READ IT TO
11 YOU.

12 OFTEN TIMES THERE WILL BE A NEED TO
13 CONSULT WITH THE LAWYERS TO GET THEIR ASSISTANCE IN
14 FINDING A PORTION OF THE TRANSCRIPT THAT WOULD BE
15 RESPONSIVE TO YOUR REQUEST.

16 IF YOU HAVE A QUESTION ON THE LAW, I'M
17 REQUIRED TO CONFER WITH THE LAWYERS BEFORE I
18 RESPOND. AND IT WILL TAKE A WHILE. THE LAWYERS
19 AREN'T GOING TO BE SITTING RIGHT HERE IN THE
20 COURTROOM. THEY WILL BE IN THEIR OFFICES, OR
21 ELSEWHERE, DURING THE TIME YOU'RE DELIBERATING. IT
22 WILL TAKE A LITTLE WHILE TO COMMUNICATE WITH THEM.

23 SO DURING THE TIME WE'RE RESPONDING TO
24 YOUR REQUEST, I WOULD ASK THAT YOU CONTINUE YOUR

25 DELIBERATIONS, IF AT ALL POSSIBLE, AND KEEP GOING
26 AHEAD AND DEALING WITH OTHER ISSUES THAT DON'T
27 RELATE TO THE QUESTION OR THE ISSUE THAT WE'RE
28 RESPONDING TO.

52401

1 AS FAR AS READBACK OF TESTIMONY, IF
2 THERE IS SUCH A REQUEST, AS I SAID YESTERDAY, THE
3 RESPONSE CAN BE HAVING TESTIMONY READ BACK, EITHER
4 IN COURT OR IN THE JURY ROOM, DEPENDING ON HOW THE
5 LAWYERS WANT TO PROCEED. EITHER WAY, WHEN WE HAVE
6 READBACK OF TESTIMONY, DURING THE TIME TESTIMONY IS
7 BEING READ BACK, YOU CANNOT DELIBERATE, BECAUSE,
8 CLEARLY, THERE WILL BE OTHER PEOPLE IN YOUR PRESENCE
9 BESIDES THE 12 JURORS.

10 FIRST OF ALL, WE'LL HAVE THE ALTERNATE
11 JURORS PRESENT FOR ANY READBACK OF TESTIMONY, AND
12 THE COURT REPORTER WILL BE THERE WITH YOU. AND IF
13 IT'S OPEN COURT, WE'LL ALL BE HERE, OR AT LEAST THE
14 LAWYERS AND THE PARTICIPANTS WILL BE HERE. SO THAT
15 YOU CANNOT DELIBERATE DURING THE TIME TESTIMONY IS
16 READ BACK.

17 OBVIOUSLY, IF TESTIMONY IS BEING READ
18 BACK AND YOU GET TO A POINT WHERE EVERYBODY AGREES
19 YOU'VE HEARD WHAT YOU WERE LOOKING FOR AND YOU DON'T

20 NEED THE REST OF A PARTICULAR WITNESS' TESTIMONY

21 READ BACK, YOU CAN TELL THE REPORTER TO STOP AND

22 DON'T READ ANY MORE.

23 BUT YOU CANNOT DELIBERATE DURING THE

24 TIME TESTIMONY IS BEING READ BACK, BECAUSE YOU CAN

25 ONLY DELIBERATE WHEN ALL 12 JURORS ARE ALONE IN THE

26 JURY ROOM.

27 (READING): THE INSTRUCTIONS

28 WHICH I HAVE BEEN READING TO YOU WILL

52402

1 BE MADE AVAILABLE IN THEIR WRITTEN

2 FORM FOR YOUR DELIBERATIONS. THEY

3 MUST NOT BE DEFACED IN ANY WAY BECAUSE

4 THEY'RE PART OF THE RECORD OF THIS

5 CASE. YOU'LL FIND THAT THE

6 INSTRUCTIONS ARE PRINTED IN THE FORM

7 HERE. PORTIONS MAY HAVE BEEN ADDED OR

8 DELETED. YOU MUST DISREGARD ANY

9 DELETED PART OF AN INSTRUCTION AND NOT

10 SPECULATE AS TO WHAT IT WAS OR THE

11 REASON FOR ITS DELETION. YOU ARE NOT

12 TO BE CONCERNED WITH THE REASONS FOR

13 ANY OF THE MODIFICATIONS.

14 EVERY PART OF THE TEXT OF AN

15 INSTRUCTION, WHETHER IT'S TYPED,
16 PRINTED, OR HANDWRITTEN -- AND I'VE
17 MADE A FEW CORRECTIONS HERE IN
18 HANDWRITING -- ARE OF EQUAL
19 IMPORTANCE. YOU ARE TO BE GOVERNED
20 ONLY BY THE INSTRUCTION IN ITS FINAL
21 WORDING.

22 DO NOT DISCLOSE TO ANYONE
23 OUTSIDE THE JURY, NOT EVEN TO ME OR
24 ANY MEMBER OF THE COURT STAFF, EITHER
25 ORALLY OR IN WRITING, HOW YOU MAY BE
26 DIVIDED NUMERICALLY IN YOUR BALLOTING
27 AS TO ANY ISSUE UNLESS I SPECIFICALLY
28 DIRECT OTHERWISE.

52403

1 YOU'VE ALL BE GIVEN NOTEBOOKS. MANY OF
2 YOU HAVE BEEN TAKING NOTES. LEAVE THE NOTEBOOKS IN
3 THE JURY ROOM DURING THE RECESSES AND WHEN YOU LEAVE
4 EACH DAY. YOU'LL OBVIOUSLY BE ABLE TO TAKE THE
5 NOTEBOOKS INTO THE JURY ROOM WITH YOU.

6 (READING): NOTES ARE ONLY
7 AN AID TO MEMORY AND MAY NOT TAKE
8 PRECEDENCE OVER INDEPENDENT
9 RECOLLECTION. A JUROR WHO HAS NOT

10 TAKEN NOTES SHOULD RELY ON HIS OR HER
11 INDEPENDENT RECOLLECTION OF THE
12 EVIDENCE AND NOT BE INFLUENCED BY THE
13 FACT THAT OTHER JURORS HAVE TAKEN
14 NOTES. NOTES ARE FOR THE NOTETAKER'S
15 OWN USE IN REFRESHING HIS ARE OR HER
16 RECOLLECTION OF THE EVIDENCE.

17 FINALLY, IF ANY
18 DISCREPANCIES EXIST BETWEEN A JUROR'S
19 RECOLLECTION OF THE EVIDENCE AND HIS
20 OR HER NOTES, HE OR SHE MAY REQUEST
21 THAT THE REPORTER READ BACK THE
22 RELEVANT PROCEEDINGS, AND THE TRIAL
23 TRANSCRIPT MUST PREVAIL OVER THE
24 NOTES.

25 YOU'LL BE PERMITTED TO
26 SEPARATE AT THE EVENING RECESS EACH
27 DAY, AND YOU ARE TO RETURN THE NEXT
28 SUCCEEDING COURT DATE. DURING SUCH

52404

1 PERIODS OF RECESS YOU MUST NOT DISCUSS
2 WITH ANYONE, ANY SUBJECT CONNECTED
3 WITH THIS TRIAL AND YOU MUST NOT
4 DELIBERATE FURTHER UPON THE CASE UNTIL

5 ALL 12 OF YOU, THE 12 DELIBERATING
6 JURORS, ARE TOGETHER AND REASSEMBLED
7 IN THE JURY ROOM. AT SUCH TIME YOU
8 SHALL NOTIFY THE CLERK OR BAILIFF WHEN
9 YOU'RE ALL 12 TOGETHER IN THE JURY
10 ROOM AND ASSEMBLED, AND THEN CONTINUE
11 YOUR DELIBERATIONS.
12 DURING DELIBERATIONS, YOU'LL ALSO BE
13 TAKING BREAKS, NOT JUST AT THE END OF THE DAY.
14 YOU'LL TAKE BREAKS FOR COFFEE AND THINGS OF THAT
15 SORT, AND AT LUNCH TIME.
16 DURING THOSE TIMES, AGAIN, WHEN YOU'RE
17 AWAY FROM THE JURY ROOM, YOU MUST NOT DISCUSS THE
18 CASE IN ANY FORM; ONLY DISCUSS IT WHEN ALL 12 JURORS
19 ARE IN THE JURY ROOM. AND YOU'LL BE PERMITTED TO
20 TAKE LUNCH BREAKS AND OTHER BREAKS IN THE PRESENCE
21 OF THE ALTERNATE JURORS DURING THAT TIME. BUT IT'S
22 VERY IMPORTANT THAT YOU NOT DISCUSS THE CASE WITH
23 THEM IN ANY WAY, NOT DISCUSS THE DELIBERATIONS, OR
24 WHAT'S GOING ON IN DELIBERATIONS WITH THE ALTERNATE
25 JURORS. KEEP ALL YOUR DISCUSSIONS IN THE JURY ROOM,
26 AND DON'T TALK ABOUT WHAT'S GOING ON IN THE JURY
27 ROOM, WHAT'S BEING SAID, THE PROGRESS OF
28 DELIBERATIONS, OR ANYTHING OF THAT NATURE, WITH

1 ANYONE DURING THE TIME YOU'RE DELIBERATING.

2 FURTHER -- AND THIS APPLIES TO ALL THE
3 JURORS, THE 12 JURORS AND THE ALTERNATE JURORS --
4 WHILE YOU'RE STILL ON THIS CASE YOU MUST KEEP IN
5 MIND THE INSTRUCTION I'VE GIVEN YOU AND CONTINUE
6 FOLLOWING IT.

7 (READING): THAT YOU ARE NOT
8 TO READ, LISTEN TO, OR WATCH ANY NEWS
9 COVERAGE ABOUT THIS CASE; NOR ARE YOU
10 TO PARTICIPATE IN OR PERMIT YOURSELF
11 TO BE PRESENT WHEN ANY DISCUSSION
12 ABOUT THIS CASE MAY OCCUR.

13 AS FOR THE ALTERNATE JURORS,
14 YOU ARE STILL BOUND BY THE ADMONITION
15 THAT YOU ARE NOT TO CONVERSE AMONG
16 YOURSELVES OR WITH ANYONE ELSE ON ANY
17 SUBJECT CONNECTED WITH THIS TRIAL OR
18 TO FORM OR EXPRESS ANY OPINION ON IT
19 UNTIL THE CASE IS SUBMITTED TO YOU,
20 WHICH MEANS, UNTIL SUCH TIME AS YOU
21 ARE SUBSTITUTED IN FOR ONE OF THE
22 DELIBERATING JURORS, IF THAT SHOULD
23 ARISE.

24 THIS MEANS THAT YOU ARE NOT
25 TO DECIDE HOW YOU WOULD VOTE IF YOU
26 WERE DELIBERATING WITH THE OTHER
27 JURORS, AND THAT YOU ARE NOT TO FORM

52406

1 AND UNTIL YOU HAVE BEEN SUBSTITUTED IN
2 AS A JUROR IN CASE.

3 FURTHER, DURING TIMES WHEN
4 YOU ARE TOGETHER WITH THE DELIBERATING
5 JURORS, SUCH AS DURING LUNCH AND AT
6 BREAKS, YOU ARE NOT TO DISCUSS THE
7 CASE WITH THE DELIBERATING JURORS, AND
8 THE DELIBERATING JURORS, AS I'VE
9 INDICATED, THEY ARE NOT TO DISCUSS THE
10 CASE OR THEIR DELIBERATIONS WITH YOU.

11 IN THIS CASE, THERE ARE VERDICT FORMS
12 FOR EACH COUNT. I'LL BRIEFLY DISCUSS THOSE VERDICT
13 FORMS WITH YOU. THESE VERDICT FORMS WILL BE SENT IN
14 TO YOU. THERE ARE SEVERAL POSSIBLE VERDICTS AS TO
15 EACH COUNT. SO LET ME JUST BRIEFLY GO OVER THE
16 FORMS WITH YOU.

17 AS YOU'RE AWARE, WE HAVE THREE COUNTS.
18 AND THERE ARE VERDICT FORMS FOR EACH COUNT AND
19 VERDICT FORMS FOR EACH DEFENDANT. THE VERDICT FORMS
20 FOR EACH DEFENDANT ARE IDENTICAL. SO I'LL JUST
21 REFER TO THEM, ALTHOUGH, AS I SAID, YOU HAVE FORMS
22 SEPARATELY FOR EACH DEFENDANT.

23 FOR COUNT 1, THE CHARGE OF MURDER, WHERE
24 THE VICTIM IS ALLEGED TO BE JOSE MENENDEZ, THE
25 VERDICT FORMS AND THE POSSIBLE VERDICTS ARE SET
26 FORTH IN THE VERDICT FORMS. THE POSSIBLE VERDICTS
27 ARE THESE. AND THERE'S PLACES TO FILL OUT,
28 DEPENDING UPON WHAT YOUR VERDICT IS, CERTAIN THINGS

52407

1 ON THE VERDICT FORMS: IF YOU WERE TO FIND THE
2 DEFENDANT GUILTY OF MURDER, THEN YOU HAVE A PLACE TO
3 INDICATE WHETHER IT'S MURDER OF THE FIRST DEGREE OR
4 SECOND DEGREE AS TO COUNT 1.

5 AND IF YOU FIND IT TO BE MURDER OF THE
6 FIRST DEGREE, THEN THERE'S A SPECIAL FINDING TO MAKE
7 AS TO WHETHER THIS WAS A MURDER WITH A SPECIAL
8 CIRCUMSTANCE WHILE LYING IN WAIT.

9 AND ON COUNT 1, IF YOU FIND THE
10 DEFENDANT GUILTY OF VOLUNTARY MANSLAUGHTER, THERE'S
11 A SEPARATE VERDICT FORM FOR THAT CHARGE; AND THEN
12 THERE IS A NOT GUILTY VERDICT FORM AS TO COUNT 1, IF
13 YOU FIND THE DEFENDANT NOT GUILTY AS TO COUNT 1.

14 COUNT 2, THERE IS SIMILARLY -- THERE IS
15 THE CHARGE INVOLVING THE KILLING OF MARY LOUISE
16 MENENDEZ. IF YOU FIND THE DEFENDANT GUILTY OF
17 MURDER, THEN YOU MAKE A FINDING AS TO WHETHER IT'S

18 FIRST OR SECOND-DEGREE MURDER, AND THEN THERE'S A
19 PLACE FOR A FINDING; IF IT'S FIRST-DEGREE MURDER, A
20 FINDING AS TO THE SPECIAL CIRCUMSTANCE OF WHILE
21 LYING IN WAIT; AND THERE'S ANOTHER SPECIAL
22 CIRCUMSTANCE ALLEGATION, A FINDING TO BE MADE ON
23 COUNT 2 AS TO WHETHER OR NOT THERE WERE MULTIPLE
24 MURDERS IN THIS CASE, AS I'VE EXPLAINED IT IN THE
25 INSTRUCTIONS.

26 AND IF YOU FIND THE DEFENDANT NOT GUILTY
27 OF COUNT 2, THERE'S A SEPARATE VERDICT FORM FOR
28 THAT.

52408

1 IN COUNT 3 THERE ARE TWO VERDICTS
2 FORMS. THIS IS THE CHARGE OF CONSPIRACY, AND THERE
3 ARE -- IF YOU FIND THE DEFENDANT GUILTY OF
4 CONSPIRACY, THEN THERE'S A FINDING THAT YOU ARE
5 REQUIRED TO MAKE AS TO THE CRIME THE DEFENDANT
6 CONSPIRED TO COMMIT, AND THERE'S A PLACE FOR YOU TO
7 INDICATE THAT FINDING.

8 IF YOU FIND THE DEFENDANT NOT GUILTY OF
9 CONSPIRACY, THEN THERE'S A SEPARATE FORM FOR THAT
10 PURPOSE.

11 ONLY ONE OF THE POSSIBLE VERDICTS MAY BE
12 RETURNED BY YOU AS TO ANY PARTICULAR COUNT. IF YOU

13 HAVE ALL AGREED UPON ONE VERDICT AS TO A PARTICULAR
14 COUNT, THE CORRESPONDING FORM IS THE ONLY VERDICT
15 FORM TO BE SIGNED AS TO THAT COUNT. THE OTHER FORMS
16 ARE TO BE LEFT UNSIGNED.

17 (READING): YOU WILL NOW
18 RETIRE AND SELECT ONE OF YOUR NUMBER
19 TO ACT AS FOREPERSON. HE OR SHE WILL
20 PRESIDE OVER YOUR DELIBERATIONS. IN
21 ORDER TO REACH VERDICTS ALL 12 JURORS
22 MUST AGREE TO A DECISION AND TO ANY
23 FINDING YOU HAVE BEEN INSTRUCTED TO
24 INCLUDE IN YOUR VERDICT. AS SOON AS
25 ALL OF YOU HAVE AGREED UPON A VERDICT,
26 SO THAT WHEN POLLED EACH MAY STATE
27 TRUTHFULLY THAT THE VERDICT EXPRESSES
28 HIS OR HER VOTE, HAVE THE VERDICT

52409

1 DATED AND SIGNED BY YOUR FOREPERSON,
2 AND THEN RETURN WITH THE VERDICT OR
3 VERDICTS TO THE COURTROOM. AND RETURN
4 ALL THE UNSIGNED VERDICT FORMS AS
5 WELL.

6 OKAY. WE'LL NOW SWEAR IN THE BAILIFF,
7 AND THE BAILIFF WILL TAKE CHARGE OF THE JURY.

8 THE CLERK: YOU DO SOLEMNLY SWEAR THAT YOU
9 WILL TAKE CHARGE OF THE JURY AND KEEP THEM TOGETHER
10 UNTIL OTHERWISE ORDERED BY THE COURT; THAT YOU WILL
11 NOT SPEAK TO THEM YOURSELF, OR ALLOW ANYONE ELSE TO
12 SPEAK TO THEM UPON ANY MATTER CONNECTED WITH THIS
13 CASE, EXCEPT ON ORDER OF THE COURT, AND WHEN THEY
14 HAVE AGREED UPON A VERDICT, YOU WILL RETURN THEM
15 INTO THE COURT, SO HELP YOU GOD.

16 THE BAILIFF: YES.

17 THE CLERK: YOU DO SOLEMNLY SWEAR THAT YOU
18 WILL TAKE CHARGE OF THE ALTERNATE JURORS AND KEEP
19 THEM APART FROM THE JURY WHILE THEY ARE DELIBERATING
20 ON THE CAUSE UNTIL OTHERWISE ORDERED BY THE COURT,
21 SO HELP YOU GOD.

22 THE BAILIFF: YES.

23 THE COURT: OKAY. WE'LL NOW LET THE BAILIFF
24 TAKE CHARGE OF THE JURY.

25 THE BAILIFF: THE FOUR ALTERNATES, YOU CAN GO
26 INTO THE JURY ROOM. GET YOUR PERSONAL ARTICLES.
27 LEAVE YOUR NOTEBOOKS ON YOUR SEATS AND DEPUTY ERNST
28 WILL MEET YOU IN THE BACK HALLWAY.

52410

1 THE 12 JURORS, GO INSIDE THE JURY ROOM,
2 AND I WILL BE WITH YOU IN A MOMENT. TAKE YOUR

3 NOTEBOOKS.

4 (DELIBERATIONS BEGAN AT 11:45 A.M.)

5

6 THE COURT: OKAY. THE JURY HAS LEFT THE
7 COURTROOM.

8 AS FAR AS ADMONITIONS TO THE JURORS AS
9 TO HOW THEY SHOULD CONDUCT THEMSELVES DURING
10 RECESSES AND BREAKS, DO COUNSEL STIPULATE THERE'S NO
11 NEED TO FURTHER ADMONISH THE JURORS IN THAT REGARD?

12 MR. GESSLER: YES, YOUR HONOR.

13 MS. ABRAMSON: SO STIPULATED.

14 MS. NAJERA: YES, YOUR HONOR.

15 MR. CONN: YES, YOUR HONOR.

16 THE COURT: AS FAR AS REQUESTS OF THE JURY
17 AND RESPONSE TO THOSE REQUESTS, I WOULD ASK THAT ONE
18 LAWYER FOR EACH PARTY BE AVAILABLE TO RESPOND BY
19 PHONE WITHIN 15 MINUTES, WHICH REQUIRES YOU TO
20 PROVIDE THE CLERK WITH A NUMBER WHERE YOU CAN BE
21 REACHED, BY BEEPER OR OTHERWISE. AND ONE LAWYER PER
22 PARTY TO BE IN COURT, AND BE IN A POSITION TO DEAL
23 WITH ALL ISSUES RELATING TO WHATEVER THE REQUEST IS,
24 OR THE NEED THAT BRINGS YOU TO COURT, WITHIN ONE
25 HOUR OF PHONE CONTACT.

26 AND THAT WILL REMAIN THE SITUATION
27 THROUGHOUT THE PROCEEDINGS UNLESS SOMETHING ARISES
28 WHERE WE HAVE TO CHANGE THAT TIME FRAME.

1 ANYTHING ELSE AT THIS POINT?

2 MS. ABRAMSON: YES, YOUR HONOR. WE'RE ASKING
3 FOR A FORMAL DEMAND OF PENALTY-PHASE NOTICE AT THIS
4 TIME. WE HAVE NEVER BEEN GIVEN SUCH NOTICE. AND
5 SINCE WE HAVE THAT TASK AT HAND TO PREPARE, WE WANT
6 TO KNOW WHAT WE'RE PREPARING FOR.

7 MR. GESSLER: IN ADDITION, DURING THE
8 DELIBERATIONS WE WOULD REQUEST NOTICE OF ANY
9 COMMUNICATIONS BY THE JURORS TO THE COURT.

10 THE COURT: YES. I'LL HAVE THE CLERK NOTIFY
11 YOU OF ANYTHING THAT WE GET.

12 MR. GESSLER: THANK YOU, YOUR HONOR.

13 MS. ABRAMSON: THANK YOU, YOUR HONOR.

14 THE COURT: OKAY. AS FAR AS THE NOTICE, WHEN
15 DO YOU INTEND TO RESPOND?

16 MR. CONN: WE WILL GIVE THAT TO THEM TODAY.
17 WE'RE WORKING ON IT RIGHT NOW.

18 MS. NAJERA: WE CAN RESPOND, ACTUALLY, I
19 THINK, WITHIN THE NEXT 15 MINUTES.

20 THAT BEING THE CASE, RIGHT BEFORE LUNCH,
21 WHEN CAN WE EXPECT ANY REPLY FROM THE DEFENSE AS TO
22 WHAT THEY'RE GOING TO PRESENT?

23 MS. ABRAMSON: WE SORT OF KIND OF HAVE TO SEE
24 FIRST.

25 MS. NAJERA: IF YOU HAVE SOME IDEA, BALL
26 BARK.

27 THE COURT: OKAY. LET'S DO THIS. ANTICIPATE
28 A RESPONSE FROM THE DEFENSE BY TOMORROW NOON, UNLESS

52412

1 THERE'S A REQUEST FOR --

2 MS. ABRAMSON: WE MAY HAVE A REQUEST FOR A
3 HEARING AS WELL, YOUR HONOR.

4 THE COURT: YOU LET ME KNOW.

5 MS. TOWERY: TOMORROW IS SATURDAY.

6 THE COURT: I'M SORRY. MONDAY. MONDAY.

7 MS. NAJERA: MONDAY NOON.

8 THE COURT: IF THERE'S NEED FOR HEARINGS ON
9 ANY ISSUES THAT RELATE TO THINGS THAT ARE STILL
10 ONGOING, THE COURT'S AVAILABLE FOR THAT.

11 MS. ABRAMSON: GOOD. OKAY.

12 THE COURT: WE'LL BE IN RECESS THEN.

13 AND LET'S CLEAR THE COURTROOM SO I CAN
14 SPEAK WITH COUNSEL FOR A MOMENT.

15 (PAGES 52413 THROUGH 52414

16 WERE HELD IN CAMERA AND SEALED

17 BY ORDER OF THE COURT.)

