{Jury instructions}
(THE FOLLOWING PROCEEDINGS WERE
HELD IN OPEN COURT, IN THE
PRESENCE OF THE JURY:)

THE COURT: LET'S HAVE THE JURORS JUST TAKE THE LAST TWO AVAILABLE SEATS, PLEASE.
ALL RIGHT.
THANK YOU, COUNSEL.
ALL RIGHT.
GOOD AFTERNOON, LADIES AND GENTLEMEN.

(THE JURY ANSWERED COLLECTIVELY,
"GOOD AFTERNOON.")

THE COURT: FIRST OF ALL, I HOPE THIS WILL BE THE LAST TIME THAT I HAVE TO APOLOGIZE TO YOU FOR KEEPING YOU WAITING SO LONG, BUT I SUSPECT THAT WON'T BE TRUE IN THIS CASE.
FOR YOUR INFORMATION, I HAD PLANNED ON STARTING WITH YOU THIS MORNING AT 10:00 O'CLOCK. CERTAIN ISSUES WERE RAISED BEFORE ME THAT I HAD TO DEAL WITH, AND AS HAS BEEN MY EXPERIENCE UNFORTUNATELY, MANY OF THESE THINGS TOOK LONGER TO DEAL WITH THAN I HAD ORIGINALLY ANTICIPATED.
HAD I KNOWN THAT WE WOULD BE THIS LATE GETTING STARTED WITH YOU TODAY, I WOULD NOT HAVE BROUGHT YOU IN TODAY. BUT WE'RE HERE, AND I WOULD LIKE TO USE AS MUCH OF THE COURT TIME AS WE HAVE AVAILABLE TO AT LEAST GET STARTED WITH SOME OF THE PRELIMINARIES.
NOW, WHAT WILL HAPPEN TODAY IS, I AM GOING TO GIVE YOU SOME PRELIMINARY INSTRUCTIONS ON THE LAW THAT APPLIES TO THIS CASE.
NOW, WHAT WE ARE GOING TO DO, AS SOON AS I FINISH DOING THAT IS, WE WILL RECESS FOR THE DAY, AND THEN TOMORROW MORNING AT 10:00 O'CLOCK, WE WILL START WITH THE OPENING STATEMENTS BY THE LAWYERS AND THEN PROCEED TO THE PRESENTATION OF EVIDENCE.
NOW, WHAT I'M GOING TO GIVE YOU TODAY ARE PRELIMINARY INSTRUCTIONS. THIS IS SORT OF MY EFFORT TO GIVE YOU A GAUGE OR RULE BY WHICH YOU SHOULD LOOK AT THE EVIDENCE AS IT IS PRESENTED TO YOU.
I'M REQUIRED BY THE LAW TO STATE TO YOU THE LAW THAT APPLIES TO THIS CASE HERE IN OPEN COURT. HOWEVER, IT'S ALSO MY PERSONAL POLICY TO MAKE THESE INSTRUCTIONS AVAILABLE TO YOU IN THE JURY ROOM WHEN YOU DO YOUR DELIBERATIONS IN WRITTEN FORM.
SO I ENCOURAGE YOU EACH TO LISTEN VERY CAREFULLY TO MY INSTRUCTIONS ON THE LAW. HOWEVER, YOU NEED NOT TAKE ANY DETAILED NOTES AS TO THEIR CONTENTS SINCE THEY WILL BE AVAILABLE TO YOU IN THEIR EXACT WRITTEN FORM IN THE JURY ROOM.

(READING.)

LADIES AND GENTLEMEN OF THE JURY:
IT IS MY DUTY TO INSTRUCT YOU ON THE LAW THAT APPLIES TO THIS CASE.
THE LAW REQUIRES THAT I READ THESE INSTRUCTIONS TO YOU. YOU WILL HAVE THESE INSTRUCTIONS IN WRITTEN FORM IN THE JURY ROOM TO REFER TO DURING YOUR DELIBERATIONS.
YOU MUST BASE YOUR DECISION ON THE FACTS AND THE LAW.
YOU HAVE TWO DUTIES TO PERFORM. FIRST, YOU MUST DETERMINE THE FACTS FROM THE EVIDENCE RECEIVED IN THE TRIAL AND NOT FROM ANY OTHER SOURCE.
A "FACT" IS SOMETHING PROVED DIRECTLY OR CIRCUMSTANTIALLY BY THE

EVIDENCE OR BY STIPULATION. A STIPULATION IS AN AGREEMENT BETWEEN THE ATTORNEYS REGARDING THE FACTS.

SECOND, YOU MUST APPLY THE LAW THAT I STATE TO YOU TO THE FACTS AS YOU DETERMINE THEM AND IN THIS WAY ARRIVE AT YOUR VERDICT AND ANY FINDING YOU ARE INSTRUCTED TO INCLUDE WITH YOUR VERDICT.

YOU MUST ACCEPT AND FOLLOW THE LAW AS I STATE IT TO YOU WHETHER OR NOT YOU AGREE WITH THE LAW. IF ANYTHING CONCERNING THE LAW SAID BY THE ATTORNEYS IN THEIR ARGUMENTS OR AT ANY OTHER TIME DURING THE TRIAL CONFLICT WITH MY INSTRUCTIONS ON THE LAW, YOU MUST FOLLOW MY INSTRUCTIONS.

YOU MUST NOT BE INFLUENCED BY PITY FOR A DEFENDANT OR BY PREJUDICE AGAINST HIM. YOU MUST NOT BE BIASED AGAINST THE DEFENDANT BECAUSE HE HAS BEEN ARRESTED FOR THIS OFFENSE, CHARGED WITH A CRIME OR BROUGHT TO TRIAL. NONE OF THESE CIRCUMSTANCES IS EVIDENCE OF GUILT AND YOU MUST NOT INFER OR ASSUME FROM ANY OR ALL OF THEM THAT HE IS MORE LIKELY TO BE GUILTY THAN INNOCENT.

YOU MUST NOT BE INFLUENCED BY MERE SENTIMENT, CONJECTURE, SYMPATHY, PASSION, PREJUDICE, PUBLIC OPINION OR PUBLIC FEELING. BOTH THE PROSECUTION AND THE DEFENDANT HAVE A RIGHT TO EXPECT THAT YOU WILL CONSCIENTIOUSLY CONSIDER AND WEIGH THE EVIDENCE, APPLY THE LAW AND REACH A JUST VERDICT REGARDLESS OF THE CIRCUMSTANCES.

YOU MUST DECIDE THIS CASE SOLELY UPON THE EVIDENCE PRESENTED HERE IN THE COURTROOM. YOU MUST COMPLETELY DISREGARD ANY PRESS, TELEVISION, RADIO OR OTHER MEDIA REPORTS THAT YOU MAY HAVE READ, SEEN OR HEARD CONCERNING THIS CASE OR THE DEFENDANT. THESE REPORTS ARE NOT EVIDENCE AND YOU MUST NOT BE INFLUENCED IN ANY MANNER BY SUCH PUBLICITY.

YOU ARE NOT TO DISCUSS AMONG YOURSELVES OR WITH ANYONE ELSE ANY SUBJECT CONNECTED WITH THIS TRIAL. YOU ARE NOT TO FORM OR EXPRESS ANY OPINION ON THE CASE UNTIL THE CASE IS SUBMITTED TO YOU FOR YOUR DELIBERATIONS IN THE JURY ROOM.

YOU MUST COMPLETELY DISREGARD ANY PRESS, TELEVISION, RADIO OR OTHER MEDIA REPORTS THAT YOU MAY HAVE READ, SEEN OR HEARD CONCERNING THIS CASE OR THE DEFENDANT. YOU MUST NOT READ OR LISTEN TO ANY ACCOUNTS OR DISCUSSIONS OF THE CASE REPORTED BY NEWSPAPERS OR OTHER NEWS MEDIA.

YOU MUST NOT MAKE ANY INDEPENDENT INVESTIGATION OF THE FACTS OR THE LAW OR CONSIDER OR DISCUSS FACTS AS TO WHICH THERE IS NO EVIDENCE. THIS MEANS, FOR EXAMPLE, THAT YOU MUST NOT ON YOUR OWN VISIT THE SCENE, CONDUCT EXPERIMENTS OR CONSULT REFERENCE WORKS OR PERSONS FOR ADDITIONAL INFORMATION.

PRIOR TO AND WITHIN 90 DAYS OF YOUR DISCHARGE, YOU MUST NOT REQUEST, ACCEPT, AGREE TO ACCEPT OR DISCUSS WITH ANY PERSON RECEIVING OR ACCEPTING ANY PAYMENT OR BENEFIT IN CONSIDERATION FOR SUPPLYING ANY INFORMATION CONCERNING THE TRIAL.

YOU HAVE A DUTY TO IMMEDIATELY REPORT TO THE COURT ANY ACT OF JUROR MISCONDUCT THAT YOU SEE, HEAR OR LEARN. YOUR FAILURE TO DO SO IS MISCONDUCT IN AND OF ITSELF. IF YOU ARE UNCERTAIN WHETHER A PARTICULAR ACT IS MISCONDUCT, YOU SHOULD REPORT THE ACT AND ALLOW THE COURT TO MAKE THE DETERMINATION.

YOU MUST PROMPTLY REPORT TO THE COURT ANY INCIDENT WITHIN YOUR KNOWLEDGE INVOLVING ANY ATTEMPT BY ANY PERSON TO IMPROPERLY INFLUENCE ANY MEMBER OF THE JURY.

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

THE OTHERS. CONSIDER THE INSTRUCTIONS AS A WHOLE AND EACH IN LIGHT OF THE OTHERS.

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

STATEMENTS MADE BY THE ATTORNEYS DURING THE TRIAL ARE NOT EVIDENCE, ALTHOUGH IF THE ATTORNEYS HAVE STIPULATED OR AGREED TO A FACT, YOU MUST REGARD THAT FACT AS CONCLUSIVELY PROVED.

IF AN OBJECTION IS SUSTAINED TO A QUESTION, DO NOT GUESS WHAT THE ANSWER MIGHT HAVE BEEN. DO NOT SPECULATE AS TO THE REASON FOR THE OBJECTION.

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

DO NOT CONSIDER FOR ANY PURPOSE ANY OFFER OF EVIDENCE THAT WAS REJECTED OR ANY EVIDENCE THAT WAS STRICKEN BY THE COURT. YOU MUST TREAT IT AS THOUGH YOU HAD NEVER HEARD IT.

YOU MUST DECIDE ALL QUESTIONS OF FACT IN THIS CASE FROM THE EVIDENCE RECEIVED IN THIS TRIAL AND NOT FROM ANY OTHER SOURCE.

YOU MUST NOT MAKE ANY INDEPENDENT INVESTIGATION OF THE FACTS OR THE LAW OR CONSIDER OR DISCUSS FACTS AS TO WHICH THERE IS NO EVIDENCE.

THIS MEANS, FOR EXAMPLE, THAT YOU MUST NOT ON YOUR OWN, AS I INDICATED, VISIT THE CRIME SCENE, CONDUCT EXPERIMENTS OR CONSULT REFERENCE WORKS OR OTHER PERSONS FOR ADDITIONAL INFORMATION.

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

EVIDENCE CONSISTS OF THE TESTIMONY OF WITNESSES, WRITINGS, MATERIAL OBJECTS OR ANYTHING PRESENTED TO THE SENSES AND OFFERED TO PROVE THE EXISTENCE OR NONEXISTENCE OF A FACT.

EVIDENCE IS EITHER DIRECT OR CIRCUMSTANTIAL. DIRECT EVIDENCE IS EVIDENCE THAT DIRECTLY PROVES A FACT WITHOUT THE NECESSITY OF AN INFERENCE. IT'S EVIDENCE, WHICH BY ITSELF, IF FOUND TO BE TRUE, ESTABLISHES THAT FACT.

CIRCUMSTANTIAL EVIDENCE IS EVIDENCE, IF FOUND TO BE TRUE, PROVES A FACT FROM WHICH AN INFERENCE OF EXISTENCE OF ANOTHER FACT MAY BE DRAWN. AN INFERENCE IS A DEDUCTION OF FACT THAT MAY LOGICALLY AND REASONABLY BE DRAWN FROM ANOTHER FACT OR GROUP OF FACTS ESTABLISHED BY
THE EVIDENCE.

IT IS NOT NECESSARY THAT FACTS BE PROVED BY DIRECT EVIDENCE. THEY MAY BE PROVED ALSO BY CIRCUMSTANTIAL EVIDENCE OR BY A COMBINATION OF DIRECT EVIDENCE AND CIRCUMSTANTIAL EVIDENCE.

BOTH DIRECT EVIDENCE AND CIRCUMSTANTIAL EVIDENCE ARE ACCEPTABLE AS A MEANS OF PROOF. NEITHER IS ENTITLED TO ANY GREATER WEIGHT THAN THE OTHER.

HOWEVER, A FINDING OF GUILT AS TO ANY CRIME MAY NOT BE BASED ON CIRCUMSTANTIAL EVIDENCE UNLESS THE PROVED CIRCUMSTANCES ARE NOT ONLY, ONE, CONSISTENT WITH THE THEORY THAT THE DEFENDANT IS GUILTY OF THE CRIME, BUT, TWO, CANNOT BE RECONCILED WITH ANY OTHER RATIONAL CONCLUSION.

FURTHER, EACH FACT WHICH IS ESSENTIAL TO COMPLETE A SET OF CIRCUMSTANCES NECESSARY TO ESTABLISH THE DEFENDANT'S GUILT MUST BE PROVED BEYOND A REASONABLE DOUBT. IN OTHER WORDS, BEFORE AN INFERENCE ESSENTIAL TO ESTABLISH GUILT MAY BE FOUND TO HAVE BEEN PROVED BEYOND A REASONABLE DOUBT, EACH FACT OR CIRCUMSTANCE UPON WHICH SUCH

INFERENCE
NECESSARILY RESTS MUST BE PROVED BEYOND A REASONABLE DOUBT.
ALSO, IF THE CIRCUMSTANTIAL EVIDENCE AS TO ANY PARTICULAR COUNT IS SUSCEPTIBLE OF TWO REASONABLE INTERPRETATIONS, ONE OF WHICH POINTS TO THE DEFENDANT'S GUILT AND THE OTHER TO HIS INNOCENCE, YOU MUST ADOPT THAT INTERPRETATION WHICH POINTS TO THE DEFENDANT'S INNOCENCE AND REJECT THAT INTERPRETATION WHICH POINTS TO HIS GUILT.
IF, ON THE OTHER HAND, ONE INTERPRETATION OF SUCH EVIDENCE APPEARS TO YOU TO BE REASONABLE AND THE OTHER INTERPRETATION TO BE UNREASONABLE, YOU MUST ACCEPT THE REASONABLE INTERPRETATION AND REJECT THE UNREASONABLE.
CERTAIN EVIDENCE WILL BE ADMITTED FOR A LIMITED PURPOSE.
AT THE TIME THIS EVIDENCE IS ADMITTED, YOU WILL BE ADMONISHED THAT IT CANNOT BE CONSIDERED BY YOU FOR ANY PURPOSE OTHER THAN THE LIMITED PURPOSE FOR WHICH IT IS ADMITTED.
DO NOT CONSIDER SUCH EVIDENCE FOR ANY PURPOSE EXCEPT THE LIMITED PURPOSE FOR WHICH IT IS ADMITTED.
NEITHER SIDE IS REQUIRED TO CALL AS WITNESSES ALL PERSONS WHO MAY HAVE BEEN PRESENT AT ANY OF THE EVENTS DISCLOSED BY THE EVIDENCE OR WHO MAY APPEAR TO HAVE SOME KNOWLEDGE OF THESE EVENTS OR TO PRODUCE ALL OBJECTS OR DOCUMENTS MENTIONED OR SUGGESTED BY THE EVIDENCE.
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 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 HEAR, SEE 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;
THE EXISTENCE OR NONEXISTENCE OF A BIAS, INTEREST OR OTHER MOTIVE;
EVIDENCE OF THE EXISTENCE OR NONEXISTENCE OF ANY FACT TESTIFIED TO BY THE WITNESS;
THE ATTITUDE OF THE WITNESS TOWARD THIS ACTION OR TOWARD THE GIVING OF TESTIMONY;
A STATEMENT PREVIOUSLY MADE BY THE WITNESS THAT IS CONSISTENT OR INCONSISTENT WITH THE TESTIMONY OF THE WITNESS;
THE CHARACTER OF THE WITNESS FOR HONESTY OR TRUTHFULNESS OR THEIR OPPOSITES;
AN ADMISSION BY THE WITNESS OF UNTRUTHFULNESS.
DISCREPANCIES IN A WITNESS' TESTIMONY OR BETWEEN HIS AND HER TESTIMONY AND THAT OF OTHERS, IF THERE ARE ANY, DO NOT NECESSARILY MEAN THE WITNESS SHOULD BE DISCREDITED. FAILURE OF RECOLLECTION IS A COMMON EXPERIENCE. INNOCENT MISRECOLLECTION IS NOT UNCOMMON. IT IS ALSO A FACT THAT TWO PERSONS WITNESSING AN INCIDENT OR TRANSACTION OFTEN WILL SEE OR HEAR IT DIFFERENTLY. WHETHER A DISCREPANCY PERTAINS TO A FACT OF IMPORTANCE OR ONLY TO A TRIVIAL DETAIL SHOULD BE CONSIDERED IN WEIGHING ITS SIGNIFICANCE.
A WITNESS WHO IS WILLFULLY FALSE IN ONE MATERIAL PART OF HIS OR HER TESTIMONY IS TO BE DISTRUSTED IN OTHERS. YOU MAY REJECT THE WHOLE TESTIMONY OF A WITNESS WHO HAS WILLFULLY TESTIFIED FALSELY AS TO A

MATERIAL POINT UNLESS, FROM ALL THE EVIDENCE, YOU BELIEVE THE PROBABILITY OF TRUTH FAVORS HIS OR HER TESTIMONY IN OTHER PARTICULARS.
YOU ARE NOT BOUND TO DECIDE AN ISSUE OF FACT IN ACCORDANCE WITH THE TESTIMONY OF A NUMBER OF WITNESSES WHICH DOES NOT CONVINCE YOU AS AGAINST THE TESTIMONY OF A LESSER NUMBER OR OTHER EVIDENCE WHICH APPEALS TO YOUR MIND WITH MORE CONVINCING FORCE. YOU MAY NOT DISREGARD
THE TESTIMONY OF THE GREATER NUMBER OF WITNESSES MERELY FROM CAPRICE, WHIM OR PREJUDICE OR FROM A DESIRE TO FAVOR ONE SIDE AGAINST THE OTHER.
YOU MUST NOT DECIDE AN ISSUE BY THE SIMPLE PROCESS OF COUNTING THE NUMBER OF WITNESSES WHO HAVE TESTIFIED ON THE OPPOSING SIDES. THE FINAL TEST IS NOT IN THE RELATIVE NUMBER OF WITNESSES, BUT IN THE CONVINCING FORCE OF THE EVIDENCE.
YOU SHOULD GIVE THE TESTIMONY OF A SINGLE WITNESS WHATEVER WEIGHT YOU THINK IT DESERVES. HOWEVER, THE TESTIMONY BY ONE WITNESS WHICH YOU BELIEVE CONCERNING ANY FACT IS SUFFICIENT FOR THE PROOF OF THAT FACT.
YOU SHOULD CAREFULLY REVIEW ALL THE EVIDENCE UPON WHICH THE PROOF OF SUCH FACT DEPENDS.
EVIDENCE WILL BE INTRODUCED FOR THE PURPOSE OF SHOWING THAT THE DEFENDANT COMMITTED ACTS OTHER THAN THAT FOR WHICH HE IS ON TRIAL.
SUCH EVIDENCE, IF BELIEVED, WILL NOT BE RECEIVED AND MAY NOT BE CONSIDERED BY YOU TO PROVE THAT THE DEFENDANT IS A PERSON OF BAD CHARACTER OR THAT HE HAS A DISPOSITION TO COMMIT CRIMES.
SUCH EVIDENCE WILL BE RECEIVED AND MAY BE CONSIDERED BY YOU ONLY FOR THE LIMITED PURPOSE OF DETERMINING IF IT TENDS TO SHOW:
THE EXISTENCE OF INTENT, WHICH IS A NECESSARY ELEMENT OF THE CRIME CHARGED;
THE IDENTITY OF THE PERSON WHO COMMITTED THE CRIME, IF ANY, OF WHICH THE DEFENDANT IS ACCUSED;
A MOTIVE FOR THE COMMISSION OF THE CRIME CHARGED; OR
A CHARACTERISTIC, METHOD, PLAN OR SCHEME IN THE COMMISSION OF ACTS SIMILAR TO THE METHOD, PLAN OR SCHEME USED IN THE COMMISSION OF THE OFFENSE IN THIS CASE WHICH WOULD FURTHER TEND TO SHOW THE EXISTENCE OF
THE INTENT WHICH IS A NECESSARY ELEMENT OF THE CRIME CHARGED;
THE IDENTITY OF THE PERSON WHO COMMITTED THE CRIME, IF ANY, OF WHICH THE DEFENDANT IS ACCUSED OR A CLEAR CONNECTION BETWEEN THE OTHER ACT AND THE ONE OF WHICH THE DEFENDANT IS ACCUSED SO THAT IT MAY BE INFERRED THAT IF THE DEFENDANT COMMITTED THE OTHER ACTS, THE DEFENDANT ALSO COMMITTED THE ACTS -- EXCUSE ME -- ALSO COMMITTED THE CRIMES CHARGED IN THIS CASE.
FOR THE LIMITED PURPOSE FOR WHICH YOU MAY CONSIDER SUCH EVIDENCE, YOU MUST WEIGH IT IN THE SAME MANNER AS YOU DO ALL OTHER EVIDENCE IN THE CASE.
YOU ARE NOT PERMITTED TO CONSIDER SUCH EVIDENCE FOR ANY OTHER PURPOSE.
WITHIN THE MEANING OF THE PRECEDING INSTRUCTION, SUCH OTHER ACTS PURPORTEDLY COMMITTED BY THE DEFENDANT MUST BE PROVED BY A PREPONDERANCE OF THE EVIDENCE. YOU MUST NOT CONSIDER SUCH EVIDENCE FOR
ANY PURPOSE UNLESS YOU ARE SATISFIED THAT THE DEFENDANT COMMITTED SUCH
OTHER ACTS.
THE PROSECUTION HAS THE BURDEN OF PROVING THESE FACTS BY A PREPONDERANCE OF THE EVIDENCE.

"PREPONDERANCE OF THE EVIDENCE" MEANS EVIDENCE THAT HAS MORE CONVINCING FORCE AND GREATER PROBABILITY OF TRUTH THAN THAT OPPOSED TO IT. IF THE EVIDENCE IS SO EVENLY BALANCED THAT YOU ARE UNABLE TO FIND THAT THE EVIDENCE ON EITHER SIDE OF AN ISSUE PREPONDERATES, YOUR FINDING ON THAT ISSUE MUST BE AGAINST THE PARTY WHO HAS THE BURDEN OF PROVING IT.

YOU SHOULD CONSIDER ALL OF THE EVIDENCE BEARING UPON EVERY ISSUE REGARDLESS OF WHO PRODUCED IT.

MOTIVE IS NOT AN ELEMENT OF THE CRIME CHARGED AND NEED NOT BE SHOWN. HOWEVER, YOU MAY CONSIDER MOTIVE OR LACK OF MOTIVE AS A CIRCUMSTANCE IN THIS CASE. PRESENCE OF MOTIVE MAY TEND TO ESTABLISH GUILT. ABSENCE OF MOTIVE MAY TEND TO ESTABLISH INNOCENCE. YOU WILL THEREFORE GIVE ITS PRESENCE OR ABSENCE, AS THE CASE MAY BE, THE WEIGHT TO WHICH YOU FIND IT TO BE ENTITLED.

AN ADMISSION IS A STATEMENT MADE BY THE DEFENDANT OTHER THAN AT HIS TRIAL WHICH DOES NOT BY ITSELF ACKNOWLEDGE HIS GUILT OF THE CRIMES FOR WHICH SUCH DEFENDANT IS ON TRIAL, BUT WHICH STATEMENT TENDS TO PROVE HIS GUILT WHEN CONSIDERED WITH THE REST OF THE EVIDENCE.

YOU ARE THE EXCLUSIVE JUDGES AS TO WHETHER THE DEFENDANT MADE AN ADMISSION, AND IF SO, WHETHER SUCH STATEMENT IS TRUE IN WHOLE OR IN PART. IF YOU SHOULD FIND THAT THE DEFENDANT DID NOT MAKE THE STATEMENT, YOU MUST REJECT IT. IF YOU FIND THAT IT IS TRUE IN WHOLE OR IN PART, YOU MAY CONSIDER THAT PART WHICH YOU FIND TO BE TRUE.

EVIDENCE OF AN ORAL ADMISSION OF THE DEFENDANT SHOULD BE VIEWED WITH CAUTION.

NO PERSON MAY BE CONVICTED OF A CRIMINAL OFFENSE UNLESS THERE IS SOME PROOF OF EACH ELEMENT OF THE CRIME INDEPENDENT OF ANY ADMISSION MADE BY HIM OUTSIDE OF THIS TRIAL.

THE IDENTITY OF THE PERSON WHO IS ALLEGED TO HAVE COMMITTED A CRIME IS NOT AN ELEMENT OF THE CRIME. SUCH IDENTITY MAY BE ESTABLISHED BY AN ADMISSION.

IN DETERMINING THE WEIGHT TO BE GIVEN AN OPINION EXPRESSED BY ANY WITNESS, YOU SHOULD CONSIDER HIS OR HER CREDIBILITY, THE EXTENT OF HIS OR HER OPPORTUNITY TO PERCEIVE THE MATTERS UPON WHICH HIS OR HER OPINION IS BASED AND THE REASONS, IF ANY, GIVEN FOR IT. YOU ARE NOT REQUIRED TO ACCEPT SUCH OPINION, BUT SHOULD GIVE IT THE WEIGHT, IF ANY, TO WHICH YOU FIND IT TO BE ENTITLED.

A PERSON IS QUALIFIED TO TESTIFY AS AN EXPERT IF HE OR SHE HAS SPECIAL KNOWLEDGE, SKILL, EXPERIENCE, TRAINING OR EDUCATION SUFFICIENT TO QUALIFY HIM OR HER AS AN EXPERT ON THE SUBJECT TO WHICH HIS OR HER TESTIMONY RELATES.

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

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

IN EXAMINING AN EXPERT WITNESS, COUNSEL MAY PROPOUND TO HIM OR HER A TYPE OF QUESTION KNOWN IN THE LAW AS A HYPOTHETICAL QUESTION. BY SUCH A QUESTION, THE WITNESS IS ASKED TO ASSUME TO BE TRUE A SET OF FACTS AND TO GIVE AN OPINION BASED UPON THAT ASSUMPTION.

IN PERMITTING SUCH A QUESTION, THE COURT DOES NOT RULE AND DOES NOT NECESSARILY FIND THAT ALL THE ASSUMED FACTS HAVE BEEN PROVED. IT ONLY

DETERMINES THAT THOSE ASSUMED FACTS ARE WITHIN THE PROBABLE OR POSSIBLE RANGE OF THE EVIDENCE.
IT IS FOR YOU, THE JURY, TO FIND FROM ALL THE EVIDENCE WHETHER OR NOT THE FACTS ASSUMED IN A HYPOTHETICAL QUESTION HAVE BEEN PROVED. IF YOU SHOULD FIND THAT ANY ASSUMPTION IN SUCH QUESTION HAS NOT BEEN PROVED, YOU ARE TO DETERMINE THE EFFECT OF THAT FAILURE OF PROOF ON THE VALUE AND WEIGHT OF THE EXPERT OPINION BASED UPON THE ASSUMED FACTS.
IN RESOLVING ANY CONFLICT THAT MAY EXIST IN THE TESTIMONY OF EXPERT WITNESSES, YOU SHOULD WEIGH THE OPINION OF ONE EXPERT AGAINST THAT OF ANOTHER. IN DOING THIS, YOU SHOULD CONSIDER THE RELATIVE QUALIFICATIONS AND CREDIBILITY OF THE EXPERT WITNESSES AS WELL AS THE REASONS FOR EACH OPINION AND THE FACTS OR OTHER MATTERS UPON WHICH IT WAS BASED.
A DEFENDANT IN A CRIMINAL ACTION IS PRESUMED TO BE INNOCENT UNTIL THE CONTRARY IS PROVED, AND IN CASE OF A REASONABLE DOUBT WHETHER HIS GUILT IS SATISFACTORILY SHOWN, HE IS ENTITLED TO A VERDICT OF NOT GUILTY. THIS PRESUMPTION PLACES UPON THE PROSECUTION THE BURDEN OF PROVING HIM GUILTY BEYOND A REASONABLE DOUBT.
REASONABLE DOUBT IS DEFINED AS FOLLOWS:
IT IS NOT A MERE POSSIBLE DOUBT BECAUSE EVERYTHING RELATING TO HUMAN AFFAIRS IS OPEN TO SOME POSSIBLE OR IMAGINARY DOUBT.
IT IS THAT STATE OF THE CASE WHICH, AFTER THE ENTIRE COMPARISON AND CONSIDERATION OF ALL THE EVIDENCE, LEAVES THE MINDS OF THE JURORS IN THAT CONDITION THAT THEY CANNOT SAY THEY FEEL AN ABIDING CONVICTION OF THE TRUTH OF THE CHARGE.
IN THE CRIMES CHARGED IN COUNTS 1 AND 2, THERE MUST EXIST A UNION OR JOINT OPERATION OF ACT OR CONDUCT AND A CERTAIN MENTAL STATE IN THE MIND OF THE PERPETRATOR. UNLESS SUCH MENTAL STATE EXISTS, THE CRIME TO WHICH IT RELATES IS NOT COMMITTED.
THE MENTAL STATE REQUIRED IS INCLUDED IN THE DEFINITION OF THE CRIMES SET FORTH ELSEWHERE IN MY INSTRUCTIONS.
THE DEFENDANT IN THIS CASE WILL INTRODUCE EVIDENCE FOR THE PURPOSE OF SHOWING THAT HE WAS NOT PRESENT AT THE TIME AND PLACE OF THE COMMISSION OF THE ALLEGED CRIME FOR WHICH HE IS HERE ON TRIAL. IF, AFTER CONSIDERATION OF ALL THE EVIDENCE, YOU HAVE A REASONABLE DOUBT THAT THE DEFENDANT WAS PRESENT AT THE TIME THE CRIME WAS COMMITTED, YOU MUST FIND HIM NOT GUILTY.
THE DEFENDANT IS ACCUSED IN COUNTS 1 AND 2 OF HAVING COMMITTED THE CRIME OF MURDER, A VIOLATION OF PENAL CODE SECTION 187.
EVERY PERSON WHO UNLAWFULLY KILLS A HUMAN BEING WITH MALICE AFORETHOUGHT IS GUILTY OF THE CRIME OF MURDER, IN VIOLATION OF SECTION 187 OF THE PENAL CODE.
IN ORDER TO PROVE SUCH CRIME, EACH OF THE FOLLOWING ELEMENTS MUST BE PROVED:
1. A HUMAN BEING WAS KILLED.
2. THE KILLING WAS UNLAWFUL.
3. THE KILLING WAS DONE WITH MALICE AFORETHOUGHT.
"MALICE" MAY BE EITHER EXPRESS OR IMPLIED.
MALICE IS EXPRESS WHEN THERE IS MANIFESTED AN INTENTION UNLAWFULLY TO KILL A HUMAN BEING.
MALICE IS IMPLIED WHEN:
1. THE KILLING RESULTED FROM AN INTENTIONAL ACT,
2. THE NATURAL CONSEQUENCE OF THE ACT ARE DANGEROUS TO HUMAN LIFE, AND
3. THE ACT WAS DELIBERATELY PERFORMED WITH KNOWLEDGE OF THE DANGER TO AND WITH CONSCIOUS DISREGARD FOR HUMAN LIFE.
WHEN IT IS SHOWN THAT A KILLING RESULTED FROM THE INTENTIONAL DOING OF

AN ACT WITH EXPRESS OR IMPLIED MALICE, NO OTHER MENTAL STATE NEED BE SHOWN TO ESTABLISH THE MENTAL STATE OF MALICE AFORETHOUGHT.

THE MENTAL STATE CONSTITUTING MALICE AFORETHOUGHT DOES NOT NECESSARILY REQUIRE ANY ILL WILL OR HATRED OF THE PERSON KILLED.

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

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

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

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

IF YOU FIND THAT THE KILLING WAS PRECEDED AND ACCOMPANIED BY A CLEAR, DELIBERATE INTENT ON THE PART OF THE DEFENDANT TO KILL WHICH WAS THE RESULT OF DELIBERATION AND PREMEDITATION, SO THAT IT MUST HAVE BEEN FORMED UPON PREEXISTING REFLECTION AND NOT ON A SUDDEN HEAT OF PASSION OR OTHER CONDITION PRECLUDING THE IDEA OF DELIBERATION, IT IS MURDER OF THE FIRST DEGREE.

THE LAW DOES NOT UNDERTAKE TO MEASURE IN UNITS OF TIME THE LENGTH OF THE PERIOD DURING WHICH THE THOUGHT MUST BE PONDERED BEFORE IT CAN RIPEN INTO AN INTENT TO KILL WHICH IS TRULY DELIBERATE AND PREMEDITATED. THE TIME WILL VARY WITH DIFFERENT INDIVIDUALS AND UNDER VARYING CIRCUMSTANCES.

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

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

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

MURDER IS CLASSIFIED INTO TWO DEGREES, AND IF YOU SHOULD FIND THE DEFENDANT GUILTY OF MURDER, YOU MUST DETERMINE WHETHER YOU FIND THE MURDER TO BE OF THE FIRST OR SECOND DEGREE.

IF YOU FIND THE DEFENDANT IN THIS CASE GUILTY OF MURDER OF THE FIRST DEGREE, YOU MUST THEN DECIDE IF THE FOLLOWING SPECIAL CIRCUMSTANCE IS TRUE OR NOT TRUE:

THE DEFENDANT HAS IN THIS PROCEEDING BEEN CONVICTED OF MORE THAN ONE OFFENSE OF MURDER IN THE FIRST OR SECOND DEGREE.

THE PROSECUTION HAS THE BURDEN OF PROVING THE TRUTH OF A SPECIAL CIRCUMSTANCE. IF YOU SHOULD HAVE A REASONABLE DOUBT AS TO WHETHER A SPECIAL CIRCUMSTANCE IS TRUE, YOU MUST FIND IT TO BE NOT TRUE.

TO FIND THE SPECIAL CIRCUMSTANCE, REFERRED TO IN THESE INSTRUCTIONS AS MULTIPLE MURDER CONVICTIONS, IS TRUE, IT MUST BE PROVED:

THE DEFENDANT HAS IN THIS CASE BEEN CONVICTED OF AT LEAST ONE CRIME OF MURDER OF THE FIRST DEGREE AND ONE OR MORE CRIMES OF MURDER OF THE FIRST OR SECOND DEGREE.

IN YOUR DELIBERATIONS, THE SUBJECT OF PENALTY OR PUNISHMENT IS NOT TO BE DISCUSSED OR CONSIDERED BY YOU. THAT IS A MATTER WHICH MUST NOT IN ANY WAY AFFECT YOUR VERDICT OR AFFECT YOUR FINDING AS TO THE SPECIAL CIRCUMSTANCE ALLEGED IN THIS CASE.

IT IS ALLEGED IN COUNTS 1 AND 2 THAT IN THE COMMISSION OF THE CRIME CHARGED, THE DEFENDANT PERSONALLY USED A DEADLY OR DANGEROUS WEAPON.

IF YOU FIND SUCH DEFENDANT GUILTY OF THE CRIME THUS CHARGED, YOU MUST DETERMINE WHETHER OR NOT SUCH DEFENDANT PERSONALLY USED A DANGEROUS OR

DEADLY WEAPON IN THE COMMISSION OF SUCH CRIMES.

A DEADLY OR DANGEROUS WEAPON MEANS ANY WEAPON, INSTRUMENT OR OBJECT THAT IS CAPABLE OF BEING USED TO INFLICT GREAT BODILY INJURY OR DEATH.

THE TERM "USED A DEADLY OR DANGEROUS WEAPON" AS USED IN THIS INSTRUCTION MEANS TO DISPLAY SUCH WEAPON IN AN INTENTIONALLY MENACING MANNER OR INTENTIONALLY TO STRIKE OR HIT A HUMAN BEING WITH IT.

THE PROSECUTION HAS THE BURDEN OF PROVING THE TRUTH OF THIS ALLEGATION. IF YOU HAVE A REASONABLE DOUBT THAT IT IS TRUE, YOU MUST FIND IT TO BE NOT TRUE.

THE ATTITUDE AND CONDUCT OF JURORS AT ALL TIMES IS VERY IMPORTANT. YOU ARE NOT TO DISCUSS AMONGST YOURSELVES OR WITH ANY OTHER PERSON ANY SUBJECT CONNECTED WITH THIS TRIAL. YOU ARE NOT TO FORM OR EXPRESS ANY OPINION ON THE CASE UNTIL THE CASE IS SUBMITTED TO YOU FOR DELIBERATIONS IN THE JURY ROOM. REMEMBER THAT YOU ARE NOT PARTISANS OR ADVOCATES IN THIS MATTER. YOU ARE THE IMPARTIAL JUDGES OF THE FACTS.

YOU WILL BE GIVEN NOTEBOOKS AND PENCILS FOR YOUR USE DURING THE COURSE OF THE TRIAL. YOU ARE TO LEAVE THEM ON YOUR SEAT WHEN YOU LEAVE EACH DAY AND AT EACH RECESS. YOU WILL BE ABLE TO TAKE THEM INTO THE JURY ROOM FOR YOUR DELIBERATIONS.

A WORD OF CAUTION ABOUT NOTE-TAKING:

YOU MAY TAKE NOTES; HOWEVER, YOU SHOULD NOT PERMIT NOTE-TAKING TO DISTRACT YOU FROM THE ONGOING PROCEEDINGS. REMEMBER YOU ARE THE JUDGES

OF THE CREDIBILITY OF THE WITNESSES.

FURTHER, NOTES ARE ONLY AN AID TO MEMORY AND SHOULD NOT TAKE PRECEDENCE OVER INDEPENDENT RECOLLECTION. A JUROR WHO DOES NOT TAKE NOTES SHOULD RELY UPON HIS OR HER INDEPENDENT RECOLLECTION OF THE EVIDENCE AND NOT BE INFLUENCED BY THE FACT THAT OTHER JURORS DO TAKE NOTES. NOTES ARE FOR THE NOTE-TAKER'S OWN PERSONAL USE IN REFRESHING HIS OR HER RECOLLECTION OF THE EVIDENCE.

FINALLY, SHOULD ANY DISCREPANCY EXIST BETWEEN A JUROR'S RECOLLECTION OF THE EVIDENCE AND HIS OR HER NOTES, HE OR SHE MAY REQUEST THAT THE REPORTER READ BACK THE RELEVANT PROCEEDINGS, AND THE TRIAL TRANSCRIPT MUST PREVAIL OVER THE NOTES.

THE PURPOSE OF THE COURT'S INSTRUCTIONS IS TO PROVIDE YOU WITH THE APPLICABLE LAW SO THAT YOU MAY ARRIVE AT A JUST AND LAWFUL VERDICT.

WHETHER SOME OF THE INSTRUCTIONS APPLY WILL DEPEND UPON WHAT YOU FIND TO BE THE FACTS. DISREGARD ANY INSTRUCTION WHICH APPLIES TO FACTS DETERMINED BY YOU NOT TO EXIST. DO NOT CONCLUDE THAT BECAUSE AN INSTRUCTION HAS BEEN GIVEN THAT I AM EXPRESSING AN OPINION AS TO THE FACTS.

I DO NOT INTEND BY ANYTHING THAT I SAY OR DO OR BY ANY QUESTIONS THAT I MAY ASK OR BY ANY RULING THAT I MAY MAKE DURING THE COURSE OF THIS

TRIAL TO INTIMATE OR TO SUGGEST TO YOU WHAT YOU SHOULD FIND TO BE THE FACTS OR THAT I BELIEVE OR DISBELIEVE ANY OF THE WITNESSES WHO TESTIFY HERE IN COURT.
IF ANYTHING THAT I DO OR SAY SEEMS TO SO INDICATE, YOU WILL DISREGARD IT AND FORM YOUR OWN OPINION.
ALL RIGHT.
LADIES AND GENTLEMEN, THIS CONCLUDES MY PRELIMINARY INSTRUCTIONS TO YOU ON THE LAW AS IT APPLIES TO THIS CASE.
WE ARE GOING TO STAND IN RECESS NOW UNTIL TOMORROW MORNING AT 10:00 O'CLOCK WHEN WE WILL PROCEED TO THE OPENING STATEMENTS BY THE ATTORNEYS.
ALL RIGHT.
COUNSEL, WHY DON'T YOU BE SEATED, PLEASE.
ALL RIGHT.
LET'S EXCUSE THE JURY, PLEASE.