

1 THE COURT: Will the three alternates please
2 stand, raise your right hand and be sworn?

3 THE CLERK: Do each of you understand and
4 agree that if called upon as a trial juror, you will
5 well and truly try the cause now pending before this
6 Court and a true verdict render according only to the
7 evidence presented to you and to the instructions of
8 the Court? If so, answer, "I do."

9 (Whereupon the alternate jurors answered in the
10 affirmative.)

11 THE COURT: I told you at the beginning I
12 couldn't promise you an opportunity to be on my jury.
13 I wish I could have had all of you here. Then again,
14 I don't know how long deliberations would take with a
15 jury of 40. I guess I'm going to have to wait and so
16 are you till next year.

17 Couldn't have gotten this far without you. We
18 thank you for being with us, being attentive. I know
19 this process can be tedious. I hope you've picked up
20 something about what goes on in the court that will be
21 of value to you in the future. I hope you're in court
22 in the future only for jury service, but I do hope you
23 come back and we can see you again next year.

24 On behalf of Department 2 and all of the judges
25 of this court, on behalf of People of the State of
26 California, on behalf of Mr. Yablonsky and the defense,
27 Court now is going to thank and excuse each of you.

28 Counsel, why don't you approach off the record?

1 Mr. Buell, Mr. Miller, take those two seats.
2 Mr. Buell will sit next to 026XXXXXXXXXX. Ms. Hayes,
3 you'll take the seat right next to 025XXXXXXXXXX. Thank
4 you.

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

7 (Whereupon the following proceedings were held in open
8 court in the presence of the jury:)

9 THE COURT: Ladies and gentlemen, we're going
10 to be done here right away. I'm going to do
11 pre-instruction. I believe you all heard me talk
12 about following the law. The Court doesn't just give
13 you a copy of the Penal Code and copy of the Evidence
14 Code and send you back there and say good luck. We
15 use instructions that have been formulated and tested
16 for years.

17 It is an attempt, to the extent that the
18 lawyers and judges are capable of putting things in
19 ordinary language, we do. I hope we're successful, but
20 we have our limitations. It seems like when we go to
21 law school it results in us saying things in a way
22 that's more complicated than any other job.

23 These are the instructions that I'll be giving
24 you when the trial is over as well. Those instructions
25 will be an explanation of how you apply the law and what
26 the law is and what needs to be proved, those kinds of
27 things, what the elements are of the offenses, what the
28 elements are of the -- any allegations in the case.

1 Those will be more specific. They'll come at the end of
2 the trial.

3 Now I'm going to read you a general
4 pre-instruction set of -- pretrial set of instructions.

5 "The trial will now proceed as
6 follows: The People may present an
7 opening statement. The defense is not
8 required to present an opening
9 statement, but if it chooses to do so,
10 it may give it either after the
11 People's opening statement or at the
12 beginning of the defense case. The
13 purpose of an opening statement is to
14 give you an overview of what the
15 attorneys expect the evidence will
16 show.

17
18 "Next, the People will offer
19 their evidence. Evidence usually
20 includes witness testimony and
21 exhibits. After the People present
22 their evidence, the defense may also
23 present evidence but is not required
24 to do so. Because he is presumed
25 innocent, the defendant does not have
26 to prove he is not guilty.

27
28 "After you have heard all the

1 evidence and the attorneys have given
2 their final arguments, I will instruct
3 you on the law that applies to this
4 case. After you have heard all the
5 arguments and instructions, you will
6 go to the jury room to deliberate.

7
8 "I will now explain some basic
9 rules of law and procedure. These
10 rules ensure that both sides receive a
11 fair trial.

12
13 "During the trial, do not talk
14 about the case or about any of the
15 people or any subject involved in the
16 case with anyone, not even your
17 family, friends, spiritual advisers,
18 or therapists."

19 There's an example of what judges and lawyers
20 do that most people wouldn't do because I said, don't
21 talk about this case with anyone. Then I say, not even
22 your family, friends, spiritual advisers or therapists.
23 We just cannot help it. Why don't we say, don't talk to
24 your barber either, but you can see the point is, don't
25 talk to anyone about this case.

26 Anybody know why? I'm going to tell you why.
27 The reason is that we are going to take a careful
28 approach to everything we do in this trial. We want

1 everyone to feel that they've had a fair day in court.

2 Sometimes trial courts are compared to battle
3 fields. This is, believe me, an arena at this point.
4 Mr. Thomas and Mr. Sanders are both very professional.
5 They're going to be very courteous to one another
6 throughout this entire proceeding, but they have an
7 opposite end in mind. One of them is going to be trying
8 to convince you that Mr. Yablonsky is guilty beyond a
9 reasonable doubt. The other one's going to be trying to
10 convince you that Mr. Thomas hasn't proved that
11 Mr. Yablonsky is guilty beyond a reasonable doubt.

12 This is not where we come to compromise. This
13 isn't where we come to mediate. This is where we come
14 to a final determination with one person walking away as
15 a victor and one person ending this trial as the
16 vanquished.

17 My job, my goal as a judge, it's a pretty lofty
18 goal, but I take my job very seriously, is to make sure
19 that when this trial is over, whether you're the winner
20 or you're the loser, that you're going to leave this
21 court feeling like you had a fair trial, like you got a
22 chance to have your day in court. I want you to be my
23 partner in that. I told you that you're the judges of
24 the facts and not the judges of the law. That's my job.
25 I need your help if we're going to get through this and
26 guarantee that everyone's going to feel like they had a
27 fair trial.

28 What kind of things can happen that can make

1 people feel like they haven't had a fair trial? Failure
2 to avoid strict adherence to the orders that I make in
3 this case. I've had a situation before where the parent
4 of one of the defendants, I think it was just one
5 defendant in a trial. A parent saw a juror talking to a
6 police officer during the -- a break. Toward the end of
7 the trial, she wrote a note to me telling me about that.

8 I had to bring the police officer in. I had to
9 bring the juror in. It turns out they'd asked or been
10 discussing something about the flooding that was taking
11 place in Hesperia back in those days, and was the police
12 department in Hesperia going to do anything to improve
13 the condition of those roads.

14 They thought it was innocent, and it wasn't in
15 any way something about the trial, but the result was,
16 it cast suspicion. It cast doubt in the mind of the
17 defendant's mother as to whether or not her son had been
18 given a fair trial. We want to be like Ceasar's wife,
19 above the appearance of impropriety. That's why these
20 rules are in place.

21 When somebody presses you and says, oh, come
22 on. You can tell me about this. Nobody's going to
23 know. Well, you're going to know. You're going to be
24 asking yourself, was that just one thing that I've done
25 in not following the judge's instructions or are you
26 going to start off from this point on and make sure that
27 you scrupulously follow each of these instructions that
28 we give you?

1 Tell people that you are in Department 2 if you
2 want to. You can tell them when you're going to finish
3 your jury service. You can tell them what time you
4 start in the morning and what time you get through in
5 the evening. You can tell them that you're going to
6 have an hour and half lunch, and they can take you to
7 lunch. Tell them when the trial is over, you'll talk
8 about this case with them as long as they want to, but
9 please don't talk about anything about this case until
10 the trial is over.

11
12 "Do not share information about
13 the case in writing, by email, or on
14 the Internet.

15
16 "You must not talk about these
17 things with other jurors either until
18 the time comes for you to begin your
19 deliberations.

20
21 "As jurors, you may discuss the
22 case together only after all of the
23 evidence has been presented, the
24 attorneys have completed their
25 arguments, and I've instructed you on
26 the law. After I tell you to begin
27 your deliberations, you may discuss
28 the case only in the jury room and

1 only when all jurors are present.

2
3 "You must not allow anything that
4 happens outside the courtroom to
5 affect your decision.

6
7 "During the trial, do not read,
8 listen to, or watch any news report or
9 commentary about the case from any
10 source.

11
12 "Do not do any research on your
13 own or as a group. Do not use a
14 dictionary, the Internet, or other
15 reference materials. Do not
16 investigate the facts or law. Do not
17 conduct any tests or experiments or
18 visit the scene of any event involved
19 in this case. If you happen to pass
20 by the scene, do not stop or
21 investigate.

22
23 "If you have a cell phone or
24 other electronic device, keep it
25 turned off while you are in the
26 courtroom and during deliberations.
27 An electronic device includes any data
28 storage device. If someone needs to

1 contact you in an emergency, the court
2 can receive messages that it will
3 deliver to you without delay.

4 If you still have your court questionnaire,
5 there's handwritten phone number on the bottom of that
6 questionnaire. That's the telephone number to the
7 court, so you can tell your loved one, your work,
8 whoever might need to contact you in an emergency that
9 that's the number that you need to be reached at.

10 "During the trial, do not speak
11 to any party, witness, or lawyer
12 involved in the trial. Do not listen
13 to anyone who tries to talk to you
14 about the case or about any of the
15 people or subjects involved in it. If
16 someone asks you about the case, tell
17 him or her that you cannot discuss it.
18 If that person keeps talking to you
19 about the case, you must end the
20 conversation.

21
22 "When the trial has ended and
23 you've been released as jurors, you
24 may discuss the case with anyone.

25
26 "I'll remind you that under
27 California law, you must wait at least
28 90 days before negotiating or agreeing

1 to accept payment for information
2 about this case.

3
4 "If you receive any information
5 about this case from any source
6 outside of the trial, even
7 unintentionally, do not share that
8 information with any juror. If you do
9 receive such information, or if
10 someone tries to influence you or any
11 juror, you must immediately tell the
12 bailiff.

13 "Some words or phrases that may
14 be used during this trial have legal
15 meanings that are different from their
16 meanings in everyday use. These words
17 and phrases will be specifically
18 defined in the instructions. Please
19 be sure to listen carefully and follow
20 the definitions that I give you.
21 Words and phrases not specifically
22 defined in the instructions are to be
23 applied using their ordinary, everyday
24 meanings.

25
26 "Keep an open mind throughout the
27 trial. Do not make up your mind about
28 the verdict or any issue until you

1 have discussed the case with the other
2 jurors during deliberations. Do not
3 take anything I say or do during the
4 trial as an indication of what I think
5 about the facts, the witnesses, or
6 what your verdict should be.

7
8 "Do not let bias, sympathy,
9 prejudice, or public opinion influence
10 Your decision.

11
12 "You must reach your verdict
13 without any consideration of
14 punishment."

15 Something we may have brought during voir dire,
16 and that is this is not a death penalty case. If this
17 were a death penalty case, you would have known that.
18 We would have told you that.

19 We would have a trial in two phases. During
20 the first phase, there would have been attempt as to
21 whether or not you could reach a verdict as to guilt
22 beyond a reasonable doubt. During the second phase, the
23 jury would make a determination as to what they thought
24 the appropriate verdict -- the appropriate punishment
25 was, and the choices would be only life without
26 possibility of parole and death if the defendant was
27 indeed found to be guilty.

28 There's no penalty phase during this trial. If

1 Mr. Yablonsky is convicted, this Court will be the one
2 that decides what, within the legal range of sentences,
3 what Mr. Yablonsky's punishment should be. Again, don't
4 let punishment enter into your consideration at all. I
5 only went into that so you would understand that this is
6 not a death penalty case if you were wondering that by
7 any means.

8 "You will be given notebooks and
9 may take notes during the trial. Do
10 not remove them from the courtroom.
11 You may take your notes into the jury
12 room during deliberations. I do not
13 mean to discourage you from taking
14 notes but here are some points to
15 consider if you do take notes.

16 "1. Note-taking may tend to
17 distract you. It may affect your
18 ability to listen carefully to all the
19 testimony and to watch the witnesses
20 as they testify; and

21 "2. The notes are for your own
22 individual use to help you remember
23 what happened during the trial.
24 Please keep in mind that your notes
25 may be inaccurate or incomplete.

26
27 "At the end of the trial, your
28 notes will be collected and destroyed.

1
2 "I will now explain the
3 presumption of innocence and the
4 People's burden of proof. The
5 defendant has pleaded not guilty to
6 the charge. The fact that a criminal
7 charge has been filed against the
8 defendant is not evidence that the
9 charge is true. You must not be
10 biased against the defendant just
11 because he has been arrested, charged
12 with a crime, or brought to trial.

13
14 "A defendant in a criminal case
15 is presumed to be innocent. This
16 presumption requires that the People
17 prove a defendant guilty beyond a
18 reasonable doubt. Whenever I tell you
19 the People must prove something, I
20 mean they must prove it beyond a
21 reasonable doubt unless I specifically
22 tell you otherwise.

23
24 "Proof beyond a reasonable
25 doubt is proof that leaves you with an
26 abiding conviction that the charge is
27 true. The evidence need not eliminate
28 all possible doubt because everything

1 in life is open to some possible or
2 imaginary doubt.

3
4 "In deciding whether the People
5 have proved their case beyond a
6 reasonable doubt, you must impartially
7 compare and consider all the evidence
8 that was received throughout the
9 entire trial. Unless the evidence
10 proves the defendant guilty beyond a
11 reasonable doubt, he is entitled to an
12 acquittal and you must find him not
13 guilty.

14
15 "You must decide what the facts
16 are in this case. You must use only
17 the evidence that is presented in the
18 courtroom. Evidence is the sworn
19 testimony of witnesses, the exhibits
20 admitted into evidence, and anything
21 else I tell you to consider as
22 evidence.

23
24 "The fact that the defendant was
25 arrested, charged with a crime or
26 brought to trial is not evidence of
27 guilt.
28

1 "Nothing that the attorneys say
2 is evidence. In their opening
3 statements and closing arguments, the
4 attorneys will discuss the case, but
5 their remarks are not evidence. Their
6 questions are not evidence. Only the
7 witnesses' answers are evidence. The
8 attorneys' questions are significant
9 only if they help you understand the
10 witnesses' answers. Do not assume
11 that something is true just because
12 one of the attorneys asks a question
13 that suggests it is true.

14
15 "During the trial, the attorneys
16 may object to questions asked of a
17 witness. I will rule on the
18 objections according to the law. If I
19 sustain an objection, the witness will
20 not be permitted to answer, and you
21 must ignore the question. If the
22 witness does not answer, do not guess
23 what the answer might have been or why
24 I ruled as I did. If I ordered
25 testimony stricken from the record,
26 you must disregard it and must not
27 consider that testimony for any
28 purpose.

1
2 "You must disregard anything you
3 see or hear when the court is not in
4 session even if it is done or said by
5 one of the parties or witnesses.
6

7 "The court reporter is making a
8 record of everything said during the
9 trial. If you decide that it is
10 necessary, you may ask the court
11 reporter's record be read to you. You
12 must accept the court reporter's
13 record as accurate.
14

15 "You alone must judge the
16 credibility or believability of the
17 witnesses. In deciding whether
18 testimony is true and accurate, use
19 your common sense and experience. You
20 must judge the testimony of each
21 witness by the same standards, setting
22 aside any bias or prejudice you may
23 have. You may believe all, part, or
24 none of any witness's testimony.
25 Consider the testimony of each witness
26 and decide how much of it you believe.
27

28 "In evaluating a witness's

1 testimony, you may consider anything
2 that reasonably tends to prove or
3 disprove the truth or accuracy of that
4 testimony. Among the factors that you
5 may consider are:

6 "How well could the witness see,
7 hear, or otherwise perceive the things
8 about which the witness testified?

9 "How well was the witness able to
10 remember and describe what happened?

11 "What was the witness's behavior
12 while testifying?

13 "Did the witness understand the
14 questions and answer them directly?

15 "Was the witness's testimony
16 influenced by a factor such as bias or
17 prejudice, a personal relationship
18 with someone involved in the case, or
19 a personal interest in how the case is
20 decided?

21 "What was the witness's attitude
22 about the case or about testifying?

23 "Did the witness make a statement
24 in the past that is consistent or
25 inconsistent with his or her
26 testimony?

27 "How reasonable is the testimony
28 when you consider other evidence in

1 the case?

2 Add other evidence and being
3 untruthful

4
5 "Do not automatically reject
6 testimony just because of
7 inconsistencies or conflicts.
8 Consider whether the differences are
9 important or not. People sometimes
10 honestly forget things or make
11 mistakes about what they remember.
12 Also, two people may witness the same
13 event yet see or hear it differently.

14
15 "If you do not believe a
16 witness's testimony that he or she no
17 longer remembers something, that
18 testimony is inconsistent with the
19 witness' earlier statement on that
20 subject.

21
22 "If you decide that a witness
23 deliberately lied about something
24 significant in this case, you should
25 consider not believing anything that
26 witness says. Or, if you think the
27 witness lied about some things but
28 told the truth about others, you may

1 simply accept the part that you think
2 is true and ignore the rest."

3 This next instruction I'm going to read to you
4 requires a little explanation. Some of you have had
5 service in the past. You have probably not seen this
6 instruction. It has to do with jurors asking questions.
7 The people that put these instructions together thought
8 it would be a good idea to involve jurors more fully in
9 the experience by allowing jurors to ask questions. So
10 here's the instruction:

11 "If during the trial you have a
12 question that you believe should be
13 asked of a witness, you may write out
14 the question and send it to me through
15 the bailiff. I will discuss the
16 question with the attorneys and decide
17 whether it may be asked. Do not feel
18 slighted or disappointed if your
19 question is not asked. Your question
20 may not be asked for a variety of
21 reasons including that the question
22 may call for an answer that is
23 inadmissible for legal reasons. Also,
24 do not guess the reason your question
25 was not asked or speculate about what
26 the answer might have been.

27
28 "Always remember that you are not

1 advocates for one side or the other in
2 this case. You are impartial judges
3 of the facts."

4 It fails -- I should not say it fails.

5 Frequently this instruction fails to fully inform the
6 jurors what the purpose of this instruction is. It
7 relates to allowing you, the jury, to ask me or one of
8 the attorneys through me to pose a question to a witness
9 who is then on the stand testifying. It's not for you
10 to bring up issues that you think might be important in
11 the case. It's not for you to have an opportunity to
12 ask me what the law is.

13 I had a case -- well, I shouldn't talk about
14 specific cases, but I'll just say in a recent case a
15 question had to do with whether or not someone had
16 performed work on cars or whether that person had
17 basically gotten those cars under false pretenses and
18 chopped them up and sold them. One of the jurors wrote
19 a question, sent it to me, and the question was
20 something like, what qualifies the defendant to be a
21 mechanic? Is he certified? Something like that. The
22 defendant wasn't on the witness stand. There was no way
23 that question could have been answered.

24 Think about what it is that you want. I'm not
25 trying to discourage you. If you have a question you
26 would like to have asked, make sure that it's a question
27 that the witness can answer. Make sure it's a question
28 that you want asked of that particular witness on the