

1 receive may be printed, typed or  
2 written by hand. Certain sections may  
3 have been crossed out or added.  
4 Disregard any deleted sections and do  
5 not try to guess what they might have  
6 been. Only consider the final version  
7 of the instructions in your  
8 deliberations.

9  
10 "You must decide what the facts  
11 are. It is up to all of you, and you  
12 alone, to decide what happened, based  
13 only on the evidence that has been  
14 presented to you in this trial.

15  
16 "Do not let bias, sympathy,  
17 prejudice, or public opinion influence  
18 your decision. Bias includes, but is  
19 not limited to, bias for or against  
20 the witnesses, attorneys, defendant or  
21 alleged victim based on disability,  
22 gender, nationality, national origin,  
23 race or ethnicity, religion, gender  
24 identity, sexual orientation, age, or  
25 socioeconomic status.

26  
27 "You must follow the law as I  
28 explain it to you, even if you

1 disagree with it. If you believe that  
2 the attorneys' comments on the law  
3 conflict with my instructions, you  
4 must follow my instructions.

5  
6 "Pay careful attention to all of  
7 these instructions and consider them  
8 together. If I repeat any instruction  
9 or idea, do not conclude that it is  
10 more important than any other  
11 instruction or idea just because I  
12 repeated it.

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

26  
27 "Some of these instructions may  
28 not apply depending on your findings

1           about the facts of the case. Do not  
2           assume just because I give a  
3           particular instruction that I am  
4           suggesting anything about the facts.  
5           After you have decided what the facts  
6           are, follow the instructions that do  
7           apply to the facts as you find them.

8  
9           "Do not do any research on your  
10          own or as a group. Do not use a  
11          dictionary, the Internet, or other  
12          reference materials. Do not  
13          investigate the facts or law. Do not  
14          conduct any experiments, or visit the  
15          scene of any event involved in this  
16          case. If you happen to pass by the  
17          scene, do not stop or investigate.

18  
19          "You have been given notebooks  
20          and may have taken notes during the  
21          trial. You may use your notes during  
22          deliberations. The notes are for your  
23          own individual use to help you  
24          remember what happened during the  
25          trial. Please keep in mind that your  
26          notes may be inaccurate or incomplete.  
27          If there is a disagreement about the  
28          testimony and stipulations at trial,

1           you may ask that the court reporter's  
2           record be read to you. It is the  
3           record that must guide your  
4           deliberations, not your notes. You  
5           must accept the court reporter's  
6           record as accurate.

7  
8           "Please do not remove your notes  
9           from the jury room.

10  
11           "At the end of the trial, your  
12           notes will be collected and destroyed.

13  
14           "It is alleged that the crime  
15           occurred on or about September 20th,  
16           1985. The People are not required to  
17           prove that the crime took place  
18           exactly on that day but only that it  
19           happened reasonably close to that day.

20  
21           "The fact that a criminal charge  
22           has been filed against the defendant  
23           is not evidence that the charge is  
24           true. You must not be biased against  
25           the defendant just because he has  
26           been arrested, charged with a crime,  
27           or brought to trial.

28

1            "A defendant in a criminal case  
2            is presumed to be innocent. This  
3            presumption requires that the People  
4            prove each element of a crime and  
5            special allegation beyond a reasonable  
6            doubt. Whenever I tell you the People  
7            must prove something, I mean they must  
8            prove it beyond a reasonable doubt.  
9

10           "Proof beyond a reasonable  
11           doubt is proof that leaves you with an  
12           abiding conviction that the charge is  
13           true. The evidence need not eliminate  
14           all possible doubt because everything  
15           in life is open to some possible or  
16           imaginary doubt.  
17

18           "In deciding whether the People  
19           have proved their case beyond a  
20           reasonable doubt, you must impartially  
21           compare and consider all the evidence  
22           that was received throughout the  
23           entire trial. Unless the evidence  
24           proves the defendant guilty beyond a  
25           reasonable doubt, he is entitled to an  
26           acquittal and you must find him not  
27           guilty.  
28

1            "You must decide what the facts  
2            are in this case. You must use only  
3            the evidence that is presented in the  
4            courtroom. Evidence is the sworn  
5            testimony of witnesses, the exhibits  
6            admitted into evidence, and anything  
7            else I told you to consider as  
8            evidence.

9  
10           "Nothing that the attorneys say  
11           is evidence. In their opening  
12           statements and closing arguments, the  
13           attorneys will discuss the case, but  
14           their remarks are not evidence. Their  
15           questions are not evidence. Only the  
16           witnesses' answers are evidence. The  
17           attorneys' questions are significant  
18           only if they help you understand the  
19           witnesses' answers. Do not assume  
20           that something is true just because  
21           one of the attorneys asks a question  
22           that suggested it was true.

23  
24           "During the trial, the attorneys  
25           may have objected to questions or  
26           moved to strike answers given by the  
27           witnesses. I ruled on the objections  
28           according to the law. If I sustained

1 an objection, you must ignore the  
2 question. If the witness was not  
3 permitted to answer, do not guess what  
4 the answer might have been or why I  
5 ruled as I did. If I ordered  
6 testimony stricken from the record,  
7 you must disregard it and must not  
8 consider that testimony for any  
9 purpose.

10  
11 "You must disregard anything you  
12 saw or heard when the court was not in  
13 session, even if it was done or said  
14 by one of the parties or witnesses.

15  
16 "During the trial you were told  
17 that the People and the defense agreed  
18 or stipulated to certain facts. This  
19 means that they both accept those  
20 facts as true. Because there is no  
21 dispute about those facts, you must  
22 also accept them as true.

23  
24 "The court reporter has made a  
25 record of everything said during the  
26 trial. If you decide that it is  
27 necessary, you may ask the court  
28 reporter's notes be read to you. You

1           must accept the court reporter's notes  
2           as accurate.

3  
4           " Facts may be proved by direct or  
5           circumstantial evidence. Direct  
6           evidence can prove a fact by itself.  
7           For example, if a witness testified he  
8           saw it raining outside before he came  
9           in the courthouse, that testimony is  
10          direct evidence that it was raining.  
11          Circumstantial evidence may also be  
12          called indirect evidence.  
13          Circumstantial evidence does not  
14          directly prove the fact to be decided  
15          but is evidence of another fact or  
16          group of facts from which you may  
17          conclude the truth of the fact in  
18          question. For example, if a witness  
19          testified that he saw someone come  
20          inside wearing a raincoat covered with  
21          drops of water, that testimony is  
22          circumstantial evidence because it may  
23          support a conclusion that it was  
24          raining outside.

25  
26  
27           " Both direct and circumstantial  
28          evidence are acceptable types of



1 evidence to prove or disprove the  
2 elements of a charge including intent  
3 and mental state and acts necessary to  
4 a conviction and neither is  
5 necessarily more reliable than the  
6 other. Neither is entitled to any  
7 greater weight than the other. You  
8 must decide whether a fact in issue  
9 has been proved based on all the  
10 evidence.

11  
12 "Before you may rely on  
13 circumstantial evidence to conclude  
14 that a fact necessary to find the  
15 defendant guilty has been proved, you  
16 must be convinced that the People have  
17 proved each fact essential to the  
18 conclusion beyond a reasonable doubt.

19  
20 "Also, before you may rely on  
21 circumstantial evidence to find the  
22 defendant guilty, you must be  
23 convinced that the only reasonable  
24 conclusion supported by the  
25 circumstantial evidence is that the  
26 defendant is guilty. If you can draw  
27 two or more reasonable conclusions  
28 from the circumstantial evidence, and

1 one of those reasonable conclusions  
2 points to innocence and the other to  
3 guilt, you must accept the one that  
4 points to innocence. However, when  
5 considering circumstantial evidence,  
6 you must accept only reasonable  
7 conclusions and reject any that are  
8 unreasonable.

9  
10 "You alone must judge the  
11 credibility or believability of the  
12 witnesses. In deciding whether  
13 testimony is true and accurate, use  
14 your common sense and experience. You  
15 must judge the testimony of each  
16 witness by the same standards setting  
17 aside any bias or prejudice you may  
18 have. You may believe all, part, or  
19 none of any witness's testimony.  
20 Consider the testimony of each witness  
21 and decide how much of it you believe.

22  
23  
24 "In evaluating a witness's  
25 testimony, you may consider anything  
26 that reasonably tends to prove or  
27 disprove the truth or accuracy of that  
28 testimony. Among the factors that you

1           may consider are:

2           "How well could the witness see,  
3           hear, or otherwise perceive the things  
4           about which the witness testified?

5           "How well was the witness able to  
6           remember and describe what happened?

7           "What was the witness's behavior  
8           while testifying?

9           "Did the witness understand the  
10          questions and answer them directly?

11          "Was the witness's testimony  
12          influenced by a factor such as bias or  
13          prejudice, a personal relationship  
14          with someone involved in the case, or  
15          a personal interest in how the case is  
16          decided?

17          "What was the witness's attitude  
18          about the case or about testifying?

19          "Did the witness make a statement  
20          in the past that is consistent or  
21          inconsistent with his or her  
22          testimony?

23          "How reasonable is the testimony  
24          when you consider all the other  
25          evidence in the case?

26          "Did other evidence prove or  
27          disprove any fact about which the  
28          witness testified?

1                   "Did the witness admit to being  
2                   untruthful?

3                   "Has the witness been convicted  
4                   of a felony?

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

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

23  
24                  "If you decide that a witness  
25                  deliberately lied about something  
26                  significant in this case, you should  
27                  consider not believing anything that  
28                  witness says. Or, if you think the

1 witness lied about some things but  
2 told the truth about others, you may  
3 simply accept the part that you think  
4 is true and ignore the rest.

5  
6 "The crimes charged in this case  
7 require proof of the union or joint  
8 operation of act and wrongful intent.

9  
10 "For you to find a person guilty  
11 of the crime of murder as charged in  
12 Count I or to find the special  
13 circumstance of murder committed while  
14 in the commission or attempted  
15 commission of rape true" -- and there  
16 Should be a different punctuation mark instead of that  
17 period. The one you get is going to have a comma instead of  
18 a period where it says, rape period true. There should not  
19 be anything there; should there? Is that right?

20 I'll read that paragraph again. Ignore the  
21 period. It's not going to be there in the copy that you  
22 get.

23 "For you to find a person guilty  
24 of the crime of murder as charged in  
25 Count I or to find the special  
26 circumstance of murder committed while  
27 in the commission or attempted  
28 commission of rape true, that person

1 must not only commit the prohibited  
2 act, but must do so with specific  
3 intent and mental state.

4  
5 "The act and specific mental  
6 state required is explained in the  
7 instruction for that crime or  
8 allegation.

9  
10 "Neither side is required to call  
11 all witnesses who may have information  
12 in the case or produce all physical  
13 evidence that might be relevant.

14  
15 "The testimony of only one  
16 witness can prove any fact. Before  
17 you conclude that the testimony of one  
18 witness proves a fact, you should  
19 carefully review all the evidence.

20  
21 "If you determine there is a  
22 conflict in the evidence, you must  
23 decide what evidence, if any, to  
24 believe. Do not simply count the  
25 number of witnesses who agree or  
26 disagree on a point and accept the  
27 testimony of the greater number of  
28 witnesses. On the other hand, do not

1           disregard the testimony of any witness  
2           without reason or because of prejudice  
3           or desire to favor one side or the  
4           other. What is important is whether  
5           the testimony or any other evidence  
6           convinces you, not just the number of  
7           witnesses who testify about a certain  
8           point.

9  
10           "If you find that a witness has  
11           been convicted of a felony, you may  
12           consider that fact only in evaluating  
13           the credibility of the witness's  
14           testimony. The fact of a conviction  
15           does not necessarily destroy or impair  
16           a witness's credibility. It is up to  
17           you to decide the weight of that fact  
18           and whether that fact makes the  
19           witness less believable.

20  
21           "You have heard evidence of  
22           statements that a witness made before  
23           the trial. If you decide that a  
24           witness made those statements, you may  
25           use those statements in two ways:

26           "1. To evaluate whether the  
27           witness' testimony in court was  
28           believable; and

1                   "2. As evidence that the  
2 information in those earlier  
3 statements is true.  
4

5                   "Witnesses were allowed to  
6 testify as experts and to give  
7 opinions. You must consider the  
8 opinions but are not required to  
9 accept them as true or correct. The  
10 meaning and importance of any opinion  
11 are for you to decide. In evaluating  
12 the believability of an expert  
13 witness, follow the instructions about  
14 the believability of witnesses  
15 generally. In addition, consider the  
16 expert's knowledge, skill, experience,  
17 training and education, the reasons  
18 the expert gave for any opinion, and  
19 the facts or information on which the  
20 expert relied in reaching that  
21 opinion. You must decide whether  
22 information on which the expert relied  
23 was true and accurate. You may  
24 disregard any opinion that you find  
25 unbelieve, unreasonable or unsupported  
26 by the evidence.  
27

28                   "An expert witness may be asked a



1 hypothetical question. A hypothetical  
2 question asks the witness to assume  
3 certain facts are true and to give an  
4 opinion based on the assumed facts.  
5 It is up to you to decide whether an  
6 assumed fact has been proved. If you  
7 conclude that an assumed fact is not  
8 true, consider the effect of the  
9 expert's reliance on that fact in  
10 evaluating the expert's opinion.

11  
12 "Witnesses, who were not  
13 testifying as experts, gave their  
14 opinions during the trial. You may  
15 but are not required to accept those  
16 opinions as true or correct. You may  
17 give the opinions whatever weight you  
18 think appropriate. Consider the  
19 extent of the witness's opportunity to  
20 perceive the matters on which his or  
21 her opinion is based, the reasons the  
22 witness gave for any opinion, and the  
23 facts or information on which the  
24 witness relied in forming that  
25 opinion. You must decide whether  
26 information on which the witness  
27 relied was true and accurate. You may  
28 disregard all or any part of an

1 opinion that you find unbelievable,  
2 unreasonable or unsupported by the  
3 evidence.

4  
5 "The defendant has an absolute  
6 constitutional right not to testify.  
7 He or she may rely on the state of the  
8 evidence and argue that the People  
9 have failed to prove the charges  
10 beyond a reasonable doubt. Do not  
11 consider for any reason at all the  
12 fact that the defendant did not  
13 testify. Do not discuss that fact  
14 during your deliberations or let it  
15 influence your decision in any way.

16  
17 "You've heard evidence that the  
18 defendant made oral statements before  
19 the trial. You must decide whether or  
20 not the defendant made any such  
21 statement in whole or in part. If you  
22 decide that the defendant made such  
23 statements, consider the statements  
24 along with all the other evidence in  
25 reaching your verdict. It is up to  
26 you decide what importance to give  
27 such statements.

28

1           "The defendant may not be  
2 convicted of any crime based on his  
3 out-of-court statements alone. You  
4 may only rely on the defendant's  
5 out-of-court statements to convict him  
6 if you conclude that other evidence  
7 shows that the charged crime was  
8 committed.

9  
10           "That other evidence may be  
11 slight and need only be enough to  
12 support a reasonable inference that a  
13 crime was committed.

14  
15           "The identity of the person who  
16 committed the crime and the degree of  
17 the crime may be proved by the  
18 defendant's statements alone.

19  
20           "You may not convict the  
21 defendant unless the People have  
22 proved his guilt beyond a reasonable  
23 doubt.

24  
25           "If a defendant made a false or  
26 misleading statement before this trial  
27 relating to the charged crime, knowing  
28 the statement was false or intending

1 to mislead, that conduct may show he  
2 was aware of his guilt of the crime  
3 and you may consider it in determining  
4 his guilt.

5  
6 "If you conclude that the  
7 defendant made the statement, it is up  
8 to you to decide its meaning and  
9 importance. However, evidence that  
10 the defendant made such a statement  
11 cannot prove guilt by itself.

12  
13 "The People are not required to  
14 prove that the defendant had a motive  
15 to commit the crime charged. In  
16 reaching your verdict, you may;  
17 however, consider whether the  
18 defendant had a motive.

19  
20 "Having a motive may be a factor  
21 tending to show the defendant is  
22 guilty. Not having a motive may be a  
23 factor tending to show the defendant  
24 is not guilty."

25 All of the instructions that I've given you so  
26 far, ladies and gentlemen, might have been given in any  
27 kind of trial. Now we're going to talk about the  
28 specifics of the charge in this case and the allegation