

## Summation - Plaintiff

1 THE COURT: You may be seated.

2 Members of the jury, I charge you on the law of  
3 damages must not be taken as a suggestion that you should  
4 find for the plaintiff or plaintiffs. It is for you to  
5 decide on the evidence that has been presented and the rules  
6 of law that I will give to you whether the plaintiff or  
7 plaintiffs are entitled to recover from the defendant.

8 If you decide that the plaintiff or plaintiffs are  
9 not entitled to recover from the defendant, you need not  
10 consider damages. Only if you decide that the plaintiff or  
11 plaintiffs are entitled to recover will you consider the  
12 measure of damages.

13 If you find the plaintiff or plaintiffs are  
14 entitled to recover from the defendant, you must render a  
15 verdict in a sum of money that will justly and fairly  
16 compensate the plaintiff or plaintiffs for all losses  
17 resulting from the injuries that they sustained.

18 You must now decide from the evidence before you  
19 the total amount of damages suffered by the plaintiff or the  
20 plaintiffs in dollars in accordance with the rules that I'm  
21 about to explain to you.

22 In arriving at your total, you must not consider  
23 the percentages of negligence that you found at the  
24 liability stage of the trial. You do not consider that.  
25 But it must simply -- you must simply report the total

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1 amount of plaintiffs' damages.

2 You are reminded, as I told you at the liability  
3 portion of the trial, you are the sole exclusive judges of  
4 the facts and in this field you are supreme.

5 You recall that at the beginning of the trial I  
6 stated to you, and at the end of the liability phase,  
7 certain principles that you could have them in mind as the  
8 trial progressed. Briefly that you are not bound -- you are  
9 bound rather, let me briefly, that you are bound to accept  
10 the rules of law that I give to you whether you agree with  
11 them or not.

12 Further, that you must not conclude from my  
13 rulings or anything that I've said during the course of this  
14 trial that I favor any party to this lawsuit.

15 Furthermore, that you may not draw any inference  
16 from an unanswered question nor consider testimony which has  
17 been struck from the record in reaching your decision, and  
18 that there is no magical formula which can be used in  
19 evaluating the testimony of the witness.

20 The tests used in your every day affairs to decide  
21 the reliability or unreliability of statements made to you  
22 by others is the test that you are to apply in your  
23 deliberations in this case.

24 The law does not require that you have to accept  
25 all the evidence that I have admitted during this trial. In

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1 deciding what evidence you will accept, you must make your  
2 own evaluation of testimony given by each of the witnesses  
3 and decide how much weight you will give to that witness'  
4 testimony.

5 Again, I will remind you about falsus in uno. If  
6 you find that any witness has testified falsely as to a  
7 material fact, that is, as to an important matter, the law  
8 permits you to disregard completely the entire testimony of  
9 that witness upon the principle that one who testifies  
10 falsely about one material fact is likely to testify falsely  
11 about everything.

12 You are not required, however, to consider such a  
13 witness as totally unworthy of belief. You may accept so  
14 much of his or her testimony that you deem true and  
15 disregard what you feel is false.

16 By the process by which I have just described to  
17 you, you, as the sole judges of the facts, decide which of  
18 the witnesses you will believe, what portion of their  
19 testimony you will accept and what weight you will give to  
20 that testimony.

21 Burden of proof. The burden of proof rests on the  
22 plaintiff or plaintiffs. That means that it must be  
23 established by a fair preponderance of the credible  
24 evidence, that the claim that plaintiff or plaintiffs make  
25 are true. The credible evidence means the testimony or

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1 exhibits that you find worthy to be believed.

2 A preponderance of the evidence means a greater  
3 part of such evidence. That does not mean the greater  
4 number of witnesses or the greater length of time taken by  
5 either side. The phrase refers to the quality of the  
6 evidence; that is, its convincing quality, the weight and  
7 effect that it has on your minds.

8 The law requires that, in order for the plaintiff  
9 or plaintiffs to prevail on a claim, the evidence that  
10 supports his and/or her claim must appeal to you as more  
11 nearly representing what took place than the evidence  
12 opposed to his and/or her claim.

13 If it does not or if it weighs so evenly that you  
14 are unable to say that there is a preponderance, a  
15 preponderance on either side, then you must decide the  
16 question in favor of the defendant. It is only if the  
17 evidence favoring the plaintiff's claim outweighs the  
18 evidence opposed to it that you can find in favor of the  
19 plaintiff or plaintiffs.

20 In deciding this case, you may consider only the  
21 exhibits which have been admitted into evidence and the  
22 testimony of the witnesses as you have heard them in this  
23 courtroom or as it has been read to you, testimony given to  
24 you at an Examination Before Trial.

25 Under our rules of practice, an Examination Before

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1 Trial is taken under oath and is entitled to equal  
2 consideration by you notwithstanding the fact it was taken  
3 before the trial and outside the courtroom; however,  
4 arguments, remarks and summations of the attorneys are not  
5 evidence nor is anything that I say to you now or may have  
6 said to you in regard to the facts is evidence.

7 Expert witnesses. You will recall that certain  
8 witnesses testified concerning their qualifications as an  
9 expert in their respective fields and they gave opinions  
10 concerning issues in that is case. There was Dr. Itzhak  
11 Haimovic, M.D. medical doctor, neurologist and a  
12 neurophysiologist. He was called by the plaintiff.

13 Then you had Dr. Michael Weintraub, an M.D.,  
14 neurologist and pain management doctor called by the  
15 defendant.

16 When a case involves a matter of science or art or  
17 it requires special knowledge or skills not ordinarily  
18 possessed by the average person, an expert is permitted to  
19 testify or state his or her opinion for the information of  
20 the Court and the jury.

21 The opinion stated by the experts who testified  
22 before you are based on particular facts as the experts  
23 obtain knowledge of them and testify to you before you or as  
24 the attorneys who questioned the experts ask the experts to  
25 assume. You may reject the experts' opinion if you find the

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1 facts to be different from those which form the basis for  
2 that opinion.

3 You may also reject the opinion if, after careful  
4 consideration of all the evidence in the case, expert or  
5 otherwise, you disagree with that opinion. In other words,  
6 you are not required to accept an expert's opinion to the  
7 exclusion of the facts and circumstances disclosed by other  
8 testimony. Such an opinion is subject to the same rules  
9 concerning reliability as the testimony of any other  
10 witness. It is given to assist you in reaching a proper  
11 conclusion and it is entitled to such weight as you find the  
12 expert's qualification in the field warrant and must be  
13 considered by you but is not controlling upon your judgment.

14 Interested witness. You recall the plaintiffs  
15 both testified before you at this stage of the trial as  
16 parties to the action, they are considered interested  
17 witnesses. What does this mean? An interested witness is  
18 not necessarily less believable than a disinterested  
19 witness. The fact that he and/or she is interested in the  
20 outcome of the case does not mean that he or she does not  
21 tell the truth. It is for you to decide from the demeanor  
22 of the witness on the witness stand and such other test as  
23 your experience dictates whether or not the testimony has  
24 been influenced intentionally or unintentionally by his  
25 and/or her interest.

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1           You may, if you consider proper under all the  
2           circumstances not believe the testimony of such a witness  
3           even though it is not otherwise challenged or contradicted.  
4           However, you are not required to reject the testimony of  
5           such a witness and you may accept all or such part of his  
6           and/or her testimony as you find reliable and reject such  
7           part as you find unworthy of acceptance.

8           I will now read to you the contentions of the  
9           parties, again, keeping in mind that these are their  
10          contentions.

11          I will read the plaintiffs' contentions first and  
12          then I will read the defendants' connections.

13          Plaintiffs' connections with respect to damages:  
14          The plaintiff, Antonia Mary Corapi, contends that as a  
15          result of her fall on April 14, 2007, she sustained a  
16          compression fracture of her first lumbar vertebral body.

17          Plaintiff further contends, as a result of the  
18          fracture, she underwent a surgical procedure known as  
19          kyphoplasty at the North Shore University Hospital in  
20          Plainview.

21          Plaintiff contends further that the kyphoplasty  
22          procedure was unsuccessful, that her pain continued, and  
23          that a further surgical procedure at Winthrop University  
24          Hospital was required involving bone grafting at T11-T12  
25          decompression procedure, and a T11 L3 spinal fusion with

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1 instrumentation together with complications from the surgery  
2 including pulmonary collapse, acute respiratory failure,  
3 acute renal failure, and congestive heart failure.

4 Plaintiff contends that she has a 16 centimeter  
5 scar at her surgical site.

6 Plaintiff further contends that her recovery from  
7 the surgical procedures were painful and that she continues  
8 to suffer pain to date together with the interruption of her  
9 usual and customary pre-accident life's activities.

10 And those are the contentions of the plaintiff.

11 And defendants' contentions, keeping in mind that  
12 these are defendants' contentions.

13 The defendant contends that plaintiff suffered  
14 from a long-standing, significant progressive degenerative  
15 spine and inflammatory bone disease that long predated this  
16 incident, that the incident of April 14, 2007 was incidental  
17 in nature in the setting of plaintiff's prior medical issues  
18 including severe osteoporosis, previous falls, marked  
19 elevation of sedimentation rate, atrial fibrillation, disk  
20 herniations, prior anxiety disorder and depression and a  
21 vitamin B12 deficiency; that the incident produced a soft  
22 tissue injury to the buttocks and back; that the surgery  
23 that was performed was unrelated to the incident and a  
24 reflection of this significant progressive degenerative  
25 spine and inflammatory bone disease as confirmed by



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1 objective neurological examination and review of all  
2 relevant medical records.

3 The defendant further contends that the  
4 plaintiff's claim for past and future pain and suffering are  
5 not causally related to the incident in question.

6 And those are the contentions of the defendant.

7 Therefore, this accident, plaintiffs' contend that  
8 this accident of April 14, 2007 was a proximate cause that  
9 is a substantial factor of plaintiff's injuries and/or  
10 aggravated her injuries.

11 The defendant claims that the accident of  
12 April 14, 2007 was not a proximate cause, a substantial  
13 factor in causing plaintiff's injuries.

14 Proximate cause. Again, I will define it for you:  
15 An act or omission is regarded as a cause of injury if it  
16 was a substantial factor in bringing about the injury or  
17 injuries; that is, such an effect in producing the injury  
18 that reasonable people would regard it as a cause of the  
19 injury.

20 There may be more than one cause of an injury. To  
21 be substantial, it cannot be slight or trivial.

22 If you decide that the defendant is liable for  
23 damages, plaintiff is entitled to recover a sum of money  
24 which will justly and fairly compensate her for any injuries  
25 and conscious pain and suffering up to the date of your

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1 verdict that was caused by the defendant.

2 Conscious pain and suffering means pain and  
3 suffering of which there was some level of awareness by the  
4 plaintiff.

5 Loss of enjoyment of life. In determining the  
6 amount, if any, to be awarded to the plaintiff for pain and  
7 suffering, you will take into consideration the effect that  
8 plaintiff's injuries may have on plaintiff's ability to  
9 enjoy life.

10 Loss of the enjoyment of life involves the loss of  
11 ability to perform daily tasks, to participate in the  
12 activities that are a part of a person's life before the  
13 injury and to experience the pleasures of life; however, a  
14 person suffers a loss of enjoyment of life only if the  
15 person is aware at some level of the loss that she has  
16 suffered.

17 If you find that plaintiff, as a result of her  
18 injuries, suffered some loss of the ability to enjoy life  
19 and that plaintiff was aware of that loss, you may take that  
20 loss into consideration in determining the amount to be  
21 awarded to the plaintiff for pain and suffering up to today.

22 With respect to any of plaintiff's injury or  
23 disabilities, plaintiff is entitled to recover for future  
24 pain and suffering and disability and loss of her ability to  
25 enjoy life. In this regard, you are to take into

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1 consideration the period of time that the injuries are  
2 expected to continue or rather injuries or disabilities are  
3 expected to continue.

4 If you find that the injuries or disabilities are  
5 permanent, you should take into consideration the period of  
6 time that plaintiff can be expected to live.

7 In accordance with statistical life expectancy  
8 tables, plaintiff has a life expectancy of 85 and a half  
9 years. Such table will provide nothing more than a  
10 statistical average. It neither guarantees that the  
11 plaintiff will live an additional 11.5 years or means that  
12 she will not live for a longer period.

13 The life expectancy figure that I have given to  
14 you is not binding upon you but may be considered by you  
15 together with your own experience and the evidence that  
16 you've heard concerning the condition of plaintiff's health,  
17 habits and her activities in deciding what the plaintiff's  
18 present life expectancy is.

19 Aggravation of a pre-existing injury. If you find  
20 that before the accident of April 14, 2007, the plaintiff  
21 had degenerative disk disease, osteoporosis, arthritis and  
22 other medical conditions, and further find that because of  
23 the accident, these conditions were aggravated so as to  
24 cause increased suffering and disability, then the plaintiff  
25 is entitled to recover for any increased disability or pain

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1 resulting from such aggravation.

2 She is not, however, entitled to recover for any  
3 physical ailment or disability which existed prior to the  
4 accident of April 14, 2007 and from any injuries from which  
5 she may now be suffering which were not caused or  
6 contributed to by the accident of April 14, 2007.

7 Plaintiff can recover only for damage caused by  
8 aggravation of a pre-existing condition, not for the  
9 condition itself.

10 The plaintiff should be compensated only to the  
11 extent that you find her condition was made worse by the  
12 defendant's negligence.

13 If you decide for the plaintiff on the question of  
14 damages, plaintiff will be entitled to recover the amount of  
15 reasonable expenditures for medical services and medicines  
16 including physician charges, hospital expenses, and x-ray  
17 charges. Thus, you will include in your verdict the amount  
18 that you find of the evidence to be a fair and reasonable  
19 amount of the medical expenses incurred as a result of  
20 plaintiff's injuries.

21 If you decide for the plaintiff on the question of  
22 damages, you must include in your verdict an award for past  
23 and future pain and suffering. That amount must include the  
24 amount for the injuries suffered and for the permanent  
25 effect of the injury.

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1           Based upon the evidence, you may include an award  
2           for past pain and suffering intended to compensate the  
3           plaintiff for pain and suffering incurred before your  
4           verdict and amounts included to compensate the plaintiff for  
5           pain and suffering to be incurred in the future.

6           To make an award for an item of pain and suffering  
7           to include in the future, you must state the period of years  
8           of which the amount is awarded to intend to provide  
9           compensation and the amount you fix must represent the full  
10          amount awarded to the plaintiff for that item of damage for  
11          that future period without reduction to present value.

12          Your verdict, you will include answers to the  
13          following questions and, again, I will read you the verdict  
14          sheet at the end of the charge.

15          State separately the amount awarded to the item of  
16          damages incurred up to the date of your verdict. You have  
17          medical expenses and then you have pain and suffering up to  
18          the date of your verdict.

19          With respect to damages to be awarded in the  
20          future with respect to pain and suffering, include permanent  
21          effect of the injury from the time of the verdict to the  
22          time that plaintiff could be expected to live.

23          If you decide to award an amount to compensate  
24          plaintiff for the pain and suffering to be incurred in the  
25          future, you must state the period of years over which such

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1 amounts are intended to provide compensation.

2 If your verdict is in favor of the plaintiff,  
3 plaintiff will not be required to pay income taxes on the  
4 award and you must not add to or subtract from the award any  
5 amount on account of income taxes.

6 Loss of services with respect to Peter Corapi. If  
7 you find the injured plaintiff's husband is entitled to  
8 recover, you will award him damages for the pecuniary loss  
9 which you find he sustained by the loss of his spouses  
10 services in society.

11 In deciding the amount of such damages, you may  
12 take into consideration the nature and extent of the wife's  
13 services in society before the injury including her  
14 disposition, temperament, character and attainments, the  
15 interest that she showed in her home, the social life of her  
16 family, and the comfort, happiness, education and general  
17 welfare of the members of the family. The services she  
18 rendered in superintending the household, assisting her  
19 spouse in the management of their affairs in which the  
20 spouse was engaged, her acts of affection and love and the  
21 extent to which her injuries she sustained prevented her  
22 from performing such services and providing such society.

23 You will award the plaintiff's husband such an  
24 amount based upon the evidence and upon your own  
25 observation, experience, knowledge, consciously applied to

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1 be, whether it will please or displease anyone, be popular  
2 or unpopular or indeed any consideration outside the case as  
3 it has been presented to you in this courtroom.

4 You should consider only the evidence, both the  
5 testimony and the exhibits, find the facts from what you  
6 considered to be the believable evidence, and apply the law  
7 as I have given it to you to the facts as you determine them  
8 to be.

9 Your verdict will be determined by the conclusion  
10 that you reach no matter who the verdict helps or who the  
11 verdict hurts.

12 While it is important that all the jurors be  
13 considered, all of the views of all the jurors be  
14 considered, a verdict of five of six members of the jury  
15 will be sufficient.

16 Under the law, wherever five of your members are  
17 in agreement on a verdict, you may report your verdict to  
18 the Court.

19 I have now outlined for you the rules of law that  
20 apply to this case and the process by which you weigh the  
21 evidence and decide the facts.

22 In a few minutes, you will retire to the jury room  
23 for your deliberations.

24 Traditionally, juror number one acts as a  
25 foreperson. The first order of business when you are in the

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1 jury room will be the election of a foreperson.

2 In order that your deliberations may proceed in an  
3 orderly fashion, you must have a foreperson but, of course,  
4 that person's vote is entitled to no greater weight than  
5 that of any other juror.

6 Your function to reach a fair decision from the  
7 evidence is a very important one. When you are in the jury  
8 room, listen to each other and discuss the evidence and  
9 issues in the case amongst yourselves.

10 It is the duty of each of you as jurors to consult  
11 with one another and to deliberate with a view towards  
12 reaching an agreement on a verdict if you can do so without  
13 violating your individual judgment and your consciences.

14 While you should not surrender consciences  
15 convictions of what the truth is and the weight and effect  
16 of the evidence and while each of you must decide this case  
17 for yourself and not merely consent to the decision of your  
18 fellow jurors, you should examine the issues and the  
19 evidence before you with candor and frankness and with  
20 proper respect for the opinions of each other.

21 Remember in your deliberations that this dispute  
22 between the parties is for them a very important matter.  
23 They and the Court rely upon you to give full deliberations  
24 to the issue and evidence before you. By so doing, you  
25 carry out to the fullest your oaths that you took in this



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1 courtroom at the beginning of the trial as jurors to truly  
2 try the issues in this case and to render a true verdict.

3 If you have a question for the Court during your  
4 deliberations, write it down and give the note to the court  
5 officer who will be sitting outside your door and who will  
6 deliver the note to me without discussing it first with  
7 anyone else.

8 Further, do not use your cellphones for any reason  
9 why you are deliberating. This will prevent the necessity  
10 of me collecting your cellphones during deliberations.

11 This case will be decided on the basis of answers  
12 that you give to certain questions that will be submitted to  
13 you.

14 Each of the questions asked for a yes or no answer  
15 or some numerical figure. While it is important that the  
16 views of all the jurors be considered, five of the six of  
17 you must agree on the answer to any question but the same  
18 five persons need not agree on all of the answers.

19 When five of you have agreed on an answer, the  
20 foreperson of the jury will write the answer in the space  
21 provided for each answer and then each juror will sign the  
22 appropriate place to indicate his or her agreement.

23 When you have answered all questions that require  
24 answers, you report to the Court. Do not assume from the  
25 questions or from the wording of the questions or from my

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1 instructions on them what the answers should be.

2 In order to aid you in reaching a verdict, I have  
3 prepared what is known as a verdict sheet. This sheet will  
4 be taken into the jury room with you and used during your  
5 deliberations.

6 I'm going to ask that the court reporter mark this  
7 as a Court exhibit, please.

8 (Whereupon, the verdict sheet was received and  
9 marked Court Exhibit 4 in evidence.)

10 THE COURT: Question number one: "Was the  
11 accident of April 14, 2007 a proximate cause, that is, a  
12 substantial factor in bringing about the injury or injuries  
13 to plaintiff, Antonia Mary Corapi?"

14 At least five of you must agree on the answer to  
15 this question and, if you answer yes, proceed to question  
16 two.

17 If your answer is no, proceed no further and  
18 report to the Court.

19 Question two: "State the amount awarded for the  
20 following items of damages, if any, up to the date of your  
21 verdict: Pain and suffering. You have a line and dollar  
22 sign; medical expenses, a line and dollar sign.

23 "If you decide not to make an award as to an item  
24 above, you will insert the word 'none' next to that item."

25 At least five jurors must agree on the answer to

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1 this question. And signatures of the jurors.

2 Proceed to question three. Question three:

3 "State the total amount awarded for the following item of  
4 damage, if any, from the date of your verdict to be incurred  
5 in the future:

6 "Pain and suffering, include the permanent effect  
7 of the injury, from the time of your verdict to the time  
8 that plaintiff, Antonia Mary Corapi, could be expected to  
9 live."

10 You have a line and a dollar sign.

11 "If you decide not to make an award as to the item  
12 above, you insert the word 'none' next to that item." At  
13 least five jurors must agree on the answer.

14 Proceed to question number four: "If you have  
15 made an award for an amount intended to compensate plaintiff  
16 for damages to be incurred in the future, state the period  
17 of years over which such a amount is intended to provide  
18 compensation."

19 Then as pain and suffering, include permanent  
20 effect of the injury and as blank years. At least five  
21 jurors must agree on the answer to this question and  
22 signatures of the jurors.

23 Proceed to question five: "As to plaintiff Peter  
24 Corapi: State the amount awarded for the following item of  
25 damage, if any, resulting from Plaintiff Peter Corapi's

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1 damage up to the date of your verdict: Loss of services and  
2 consortium." And there's a line and a dollar sign.

3 "If you decide not to make an award as to an item  
4 above, you will insert the word 'none' next to that item."

5 At least five jurors must agree on the answer to  
6 the question and have signatures of the jurors.

7 Proceed to question six: "State the total amount  
8 awarded for the following item of damage, if any, resulting  
9 from Plaintiff, Peter Corapi's, damage to be incurred in the  
10 future."

11 Then it has loss of services and consortium. You  
12 have a line and a dollar sign.

13 "If you decide not to make an award as to the  
14 above item, you will insert the word 'none' next to the  
15 item." At least five jurors must agree on the answer to the  
16 question.

17 Proceed to question seven. Question seven: "If  
18 you have made any award for an amount intended to compensate  
19 plaintiff for damage to be incurred in the future, state the  
20 period of years over which such amount is intended to  
21 provide compensation. Loss of services and consortium, line  
22 and years. At least five jurors must agree on the answer to  
23 this question and you have signature of the jurors.

24 The foreperson shall place his or her signature  
25 below and shall report their verdict of the jury in the

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1 action to the Court.

2 The two alternates are to be kept separate and I  
3 will let you know what is going to happen with the two  
4 alternates.

5 I'm going to ask you to go into the jury room. Do  
6 not start to deliberate yet. Wait in the jury room a  
7 moment, please.

8 Jurors, step out.

9 (Whereupon, the jury exits the courtroom.)

10 THE COURT: Any exceptions?

11 MR. NASH: No, Judge. No.

12 THE COURT: No requests?

13 MR. NASH: No.

14 THE COURT: Any exceptions?

15 MR. WASSERMAN: No.

16 THE COURT: Any requests?

17 MR. WASSERMAN: No, sir.

18 THE COURT: Do you want to hold on to the  
19 alternates while deliberating or let the two go? You can  
20 keep them here if you want just in case.

21 MR. NASH: I think we will keep them.

22 THE COURT: Keep them separate but have them wait.  
23 They can start. Get the exhibits together so we can send  
24 them in, please, the ones in evidence.

25 (Whereupon, the jury retires to commence