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cold lunch or I could -- we can break now, take your lunch early and I will charge you at 1:30.

Don't discuss the case, you heard all the evidence, you heard the summations but you still have to hear my charge on the law. Talk about anything else you want. Don't talk about the Nets, it will only depress you. You can't talk about much, you can't talk about the Jets, you can't talk about the Giants, the Knicks. Any sports fans? Politics, what are you going to talk about?

Talk about what a nice Thanksgiving you had. See you at 1:30.

THE COURT OFFICER: Jury exiting.  
(Jury leaves the courtroom.)  
(Luncheon recess taken.)

\* \* \* \*

AFTERNOON SESSION:

(The following proceedings held on the record in the open court in the presence of the Court and all counsel. Time noted 1:35 p.m.)

THE COURT OFFICER: All rise, jury entering.

(Jury enters the courtroom.)

THE COURT: Please be seated.

1 well, how was your lunch, okay?

2 All right, you remember at the beginning  
3 I told you what your role as jurors were, you are  
4 the judges of the facts and that is what you are  
5 about to do. And you are going to judge  
6 impartially and you are going to judge without  
7 sympathy for either side, and without favor  
8 basically, you know favoritism, you know sometimes  
9 people analogize trials to debates but debates are  
10 different. In a debate you vote for the best  
11 debater. In a trial, of course, it helps to be an  
12 able attorney and fortunately both these lawyers  
13 are, but in the trial the jury's role is not to  
14 decide who the better lawyer is but to decide what  
15 the facts are. And the role of the attorney is to  
16 help the jury in doing that, from the perspective  
17 of their client, but ultimately that role is  
18 yours.

19 Now you have to accept the rules of law  
20 as I have given them to you and I am about to give  
21 them to you. One thing I should emphasize, when  
22 something is objected to and I sustain the  
23 objection, I said it before but just remember, it  
24 is not part of the trial. If it is out, it's out.  
25 I don't care what they said, if it's out, it's

1 out.

2 Now in deciding this case, you may  
3 consider only the exhibits which have been  
4 admitted in evidence and the testimony of the  
5 witnesses as you have heard it in this courtroom  
6 or as read to you from examination before trial.  
7 Remarks, arguments, summation of attorneys are not  
8 evidence nor is anything that the court says but  
9 of course you can consider the arguments of the  
10 attorneys in reaching your own analysis of the  
11 facts.

12 while you have to consider all of the  
13 evidence, the law did not require you to accept  
14 all of the evidence that I admitted. With equal  
15 value, in deciding what evidence you will accept,  
16 you must make your own evaluation of the testimony  
17 given by each of the witnesses and decide how much  
18 weight you choose to give to that testimony. The  
19 testimony of a witness may not conform to the  
20 facts as they occurred because he or she is  
21 intentionally lying, because the witness did not  
22 accurately see or hear what he or she is  
23 testifying about, because the witness's  
24 recollection is faulty or because the witness has  
25 not expressed himself or herself clearly in

1           testifying.

2                   There is no magical formula by which you  
3           evaluate testimony. You bring with you to this  
4           courtroom all of your experiences and backgrounds  
5           of your individual lives. In your everyday  
6           affairs, you decide for yourself the reliability  
7           or unreliability of things people tell you. The  
8           same tests that you use in your everyday dealings  
9           are the tests which you apply this to your  
10          deliberations.

11                   The interest or lack of interest of any  
12          witness in the outcome of this case, bias or  
13          prejudice of a witness, if there be any, the  
14          appearance, the manner in which the witness gives  
15          testimony on the stand, the opportunity that the  
16          witness had to observe the facts about which he or  
17          she testifies, the probability or improbability of  
18          the witness's testimony when considered in the  
19          light of all the other evidence in the case, are  
20          all items to be considered by you in deciding how  
21          much weight, if any, you will give to this  
22          witness's testimony. If it appears that there is  
23          a discrepancy in the evidence, you will have to  
24          consider whether the apparent discrepancy can be  
25          reconciled by fitting the two stories together.

1 If however that is not possible, you will then  
2 have to decide which of the conflicting stories  
3 you will accept.

4 Now what you are gathering from this  
5 charge is it is technical and it is, that is why  
6 you have to pay attention. I don't get as a  
7 Judge, you don't get to speak as eloquently as  
8 attorneys do in their presentations because you're  
9 limited by these constricting rules of law that  
10 have to be explained that are technical and takes  
11 some times and some attention to follow.

12 You will recall that the witness  
13 Dr. Schribner testified concerning her  
14 qualification as an expert in the field of  
15 dentistry and oral surgery. Dr. Schribner, her  
16 opinion concerning issues in this case are  
17 allowable because when a case involves a matter of  
18 science or art or requires special knowledge or  
19 skill not ordinarily possessed by the average  
20 person, an expert is permitted to state her  
21 opinion for the information of the Court and jury.  
22 The opinions stated by the expert who testified  
23 before you was based on particular facts as the  
24 expert obtained knowledge of them and testified to  
25 them before you or as the attorney who questioned

1 the expert asked the expert to assume.

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

18 Now during the course of this trial, we  
19 had testimony from witnesses who in fact -- most  
20 of the witnesses in this case would be classified  
21 as interested witnesses. We've had testimony from  
22 the plaintiff's father and from the employees of  
23 the Board of Education, specifically Miss Garces  
24 and Miss Wicks.

25 An interested witness is not necessarily

1 less believable than a disinterested witness. The  
2 fact that they are interested in the outcome of  
3 the case does not mean that they have not told the  
4 truth. It is for you to decide from the demeanor  
5 of the witness on the stand and such other tests  
6 as your experience dictate whether or not the  
7 testimony has been influenced intentionally or  
8 unintentionally by their interest. You may  
9 conclude that even though a witness is designated  
10 as an interested witness, that their testimony was  
11 completely disinterested. In other words, not  
12 that they didn't have any interest in it but it  
13 was unbiased, that it was just a matter of fact  
14 testimony. You may conclude that.

15 You may, if you consider it proper under  
16 all the circumstances, not believe the testimony  
17 of such a witness if you believe that their  
18 testimony was completely motivated by their  
19 interest in the case, even though it is not  
20 otherwise challenged or contradicted however you  
21 are not required to reject the testimony of such a  
22 witness and may accept all or part of their  
23 testimony as you find reliable and reject such  
24 part as you find unreliable.

25 As I told you at the beginning of the

1 case, if you decide that a witness was lying about  
2 an important matter, you have a right to reject  
3 that witness's entire testimony. On the other  
4 hand, you can segregate the portion out you  
5 believe to have been a lie and concentrate on the  
6 rest of that witness's testimony, it is up to you.

7 Now facts must be proven by evidence.  
8 Evidence includes the testimony of witnesses  
9 concerning what the witness saw, heard or did.  
10 Evidence also includes writings, photographs or  
11 other physical objects which may be considered as  
12 proof of a fact. Evidence can either be direct or  
13 circumstantial. Facts may be proved either by  
14 direct or circumstantial evidence or by a  
15 combination of both. You may give circumstantial  
16 evidence less weight, more weight or the same  
17 weight as direct evidence.

18 Direct evidence is evidence of what the  
19 witness saw, heard or did which if believed by you  
20 proves a fact. Circumstantial evidence is  
21 evidence of a fact which does not directly prove a  
22 fact in dispute in the case, but which permits a  
23 reasonable inference or conclusion that the fact  
24 exists. Those facts which form the basis of an  
25 inference must be proved and inferences to be



1 drawn must be one that may be reasonably drawn.

2 when we are talking about circumstantial  
3 evidence a jury need not conclude that there is  
4 any evidence to be drawn from circumstantial  
5 evidence, you may decide that there is no valid  
6 inference to be drawn but on the other hand you  
7 have the right to draw inferences from  
8 circumstantial evidence. In reaching your  
9 conclusion, however, you may not guess or  
10 speculate and really that is all I want to say  
11 about that subject now.

12 A party is not required to call any  
13 particular person as a witness, however the  
14 failure to call a certain person as a witness may  
15 be the basis for an inference against the party  
16 not calling the witness. In this case, two of the  
17 defendants did not testify, that is Mr. Harper and  
18 Mr. Mitchell. You may, although you are not  
19 required to, conclude that the testimony of  
20 Mr. Harper and Mr. Mitchell would not support the  
21 defendant's position and would not contradict the  
22 evidence offered by the plaintiff on the question  
23 of this accident. And you may although not  
24 required to, draw the strongest inference against  
25 the defendant on that question, if the opposing

1 evidence permits, but that is up to you. You need  
2 not do that, but you may, as judges of the facts.

3 The burden of proof in this case and  
4 generally in civil cases with some exceptions that  
5 don't apply here, the burden of proof in this case  
6 rests on the plaintiff. That means that it must  
7 be established by a fair preponderance of the  
8 credible evidence that the claim the plaintiff  
9 makes it true. The credible evidence means the  
10 testimony and exhibits that you find to be worthy  
11 to be believed. A preponderance of the evidence  
12 means the greater part of such evidence. That  
13 does not mean the greater number of witnesses, or  
14 the greater length of time taken by either side.  
15 The phrase refers to the quality of the evidence,  
16 that is it's convincing quality, the weight and  
17 the effect that it has on your minds.

18 The law requires that in order for the  
19 plaintiff to prevail on a claim, the evidence that  
20 supports his claim, must appeal to you as more  
21 nearly representing what took place than the  
22 evidence opposed to his claim. If it does not or  
23 if it weighs so evenly that you are unable to say  
24 that there is a preponderance on either side, then  
25 you must decide the question in favor of the

1 defendant. It is only if the evidence favoring  
2 the plaintiff's claim outweighs the evidence  
3 opposed to it, then you can find in favor of  
4 defendants.

5 Okay, let us get a little more specific,  
6 what kind of a case is this. Well, it is not --  
7 it is a negligence case, that is the allegation,  
8 there was no intention alleged here, but there was  
9 alleged by the plaintiff an act of negligence.  
10 What is negligence. Negligence is a lack of  
11 ordinary care. It is failure to use that degree  
12 of care that a reasonably prudent person would use  
13 under the same circumstances. Negligence may  
14 arise from doing an act that a reasonably prudent  
15 person would not have done under the same  
16 circumstances or on the other hand from failing to  
17 do an act that a reasonably prudent person would  
18 have done under the same circumstances.

19 Negligence requires both a reasonably  
20 foreseeable danger of injury to another and  
21 conduct that is unreasonable in proportion to the  
22 danger. A person is only responsible for the acts  
23 of his conduct if the risk of injury is reasonably  
24 foreseeable. The exact occurrence or exact injury  
25 does not have to be foreseeable, but the injury as

1 a result of negligent conduct must be not merely  
2 possible but probable. For there to be  
3 negligence, a reasonably prudent person could  
4 foresee injury as a result of his conduct and  
5 acted unreasonably in light of what could be  
6 foreseen.

7 On the other hand there is no negligence  
8 if a reasonably prudent person could not have  
9 foreseen any injury as a result of this conduct or  
10 acted reasonably in the light of what could be  
11 foreseen.

12 Well, you have a couple of special  
13 circumstances in this case because every case has  
14 some special circumstances. It is conceded in  
15 this case that the plaintiff is autistic. If you  
16 find that the plaintiff's autism limited his  
17 ability to protect himself from injury and that  
18 the defendant knew or by the use of reasonable  
19 care should have known of the disability, then  
20 reasonable care on defendant's part required that  
21 he or she use such care as would be required for  
22 plaintiff's disability in light of plaintiff's  
23 disability.

24 We're also dealing with a case, we're  
25 dealing with specific circumstances within the

1 school. A person who has special training and  
2 experience in a profession, when operating in the  
3 profession on behalf of others who are relying on  
4 his special skills, has the duty to use the same  
5 degree of skill and care that others in the same  
6 profession in the community would reasonably use  
7 in the same situation.

8 The defendants in this case have special  
9 skills, the Board of Education as an entity and  
10 Mr. Harper and Mr. Mitchell as individuals. They  
11 have skills in dealing with children with special  
12 learning problems or behavioral problems. If you  
13 decide that the defendant did use the same degree  
14 of skill and care that other teachers,  
15 paraprofessionals in the community would  
16 reasonably use in the same situation, then you  
17 must find that the defendant was not negligent, no  
18 matter what resulted from defendant's conduct. On  
19 the other hand, if you decide that defendant did  
20 not use the same degree of skill and care that the  
21 average employee, professional in the community  
22 should or would use, then you must find the  
23 defendant was negligent.

24 We're also as I said dealing with a  
25 school situation. The Board of Education is

1 responsible for the acts of a teacher or  
2 paraprofessional employed by it when such acts are  
3 performed within the scope of that teacher or  
4 paraprofessional's employment.

5 It is not disputed that the defendants  
6 here in this case were acting within the scope of  
7 their employment when the infant plaintiff,  
8 Mr. Collins, was injured. Therefore whether the  
9 defendant, Board of Education, would be liable for  
10 Mr. Collins' injuries, depending on whether the  
11 defendant, through it's employees, was negligent,  
12 it is the duty of the teacher or paraprofessional  
13 to use the same degree of care over the pupils in  
14 his charge as a parent of ordinary prudence would  
15 use under the same circumstances.

16 The plaintiff claims that defendants  
17 were negligent in their supervision of the  
18 plaintiff. If you find that a parent of ordinary  
19 prudence would have employed the same degree of  
20 supervision that the defendants in this case  
21 employed, your finding would be that the Board of  
22 Education and the professionals were not  
23 negligent. If you find that a parent of ordinary  
24 prudence would have used greater supervision or  
25 would have considered that level of supervision

1 inadequate, your finding would be that the  
2 defendants were negligent.

3 To get more specifically into that, the  
4 defendant, Board of Education, has a duty while  
5 pupils are under it's control, to provide adequate  
6 supervision and to use reasonable care for their  
7 safety. The plaintiff claims that the plaintiff  
8 was injured on school grounds. There is no  
9 dispute about that. The plaintiff contends that  
10 the Board of Education through its employees was  
11 negligent in failing to provide adequate  
12 supervision of the pupils. The board claims that  
13 it acted properly and supervisors were present and  
14 there is no dispute that there were supervisors  
15 present and that in that situation, they had the  
16 proper supervision under the circumstances.

17 As it concerns the Board of Education's  
18 negligence, failure to use the same degree of  
19 supervision of the pupils under it's control as a  
20 reasonably prudent parent would use under the same  
21 circumstances is negligence. You see what we are  
22 saying? In these circumstances, in the school  
23 circumstances, the Board of Education and it's  
24 employees act as parents -- substitute parents for  
25 the children while the children are in their care,

1 and so the Board of Education has the same duty  
2 that a reasonably prudent parent would have in  
3 supervising their children or their students.

4 Among the circumstances to be taken into  
5 consideration are the age of the plaintiff, and  
6 the well known habit of children to run out and  
7 play, run around and play. If you find that a  
8 reasonably prudent parent would not have  
9 considered the situation to require a greater or  
10 additional supervision, you will find that the  
11 board was not negligent. If you find that a  
12 reasonably prudent parents would have considered  
13 that additional supervision was required under all  
14 the circumstances, your finding will be that the  
15 board was negligent.

16 All right, I have to stand up, I  
17 apologize, I don't know what happened to me, I'm  
18 not seeing very well and it is small print to it  
19 so I'm sort of stumbling through it. So in any  
20 event, I always stand up in the middle of my  
21 charge because everybody thinks it is a pretty  
22 easy being a Judge, you sit around all day, but  
23 you know that is where it gets you, because you  
24 are sitting all day, sometimes it hits you in the  
25 back, in the legs, there is no medium, if you're



1 working real hard, physical labor, if you're doing  
2 manual labor and you sit at the desk, gets you in  
3 the legs, gets you in the back, you can't avoid  
4 it, it is just a function of life.

5 There is another thing that I'll mention  
6 and I'll mention it to a Bronx jury because in the  
7 Bronx we all have retained to a certain extent our  
8 common sense, so you can talk about things, and  
9 the thing I noticed is that there is a basic  
10 difference between men and women.

11 Man can live in a house for 35 years,  
12 and never move anything, he won't move a chair, he  
13 wouldn't move a picture, pretty much the way it  
14 is, that's good. It could have come down from  
15 your grandfather, that is the way he had it,  
16 that's fine. Ladies however are different, they  
17 look around the house and they say, you know, I  
18 think the piano would be better over here, or I  
19 think the couch should be in another room, in the  
20 den, not in the living room, so they call upon the  
21 less intelligent members of the family, the one  
22 with the broad backs to move all there stuff  
23 around, so we do. Of course my son comes over and  
24 helps, he is a father himself, but he is a big  
25 strapping or should be, his mother fed him well

1 enough when he was home.

2 Now I keep up with him, but at the end  
3 of the day, he's raring to go, and I'm laying on  
4 the bed saying, no, no more, you know, but that is  
5 a part of life and I'm not asking for sympathy, I  
6 just want to explain to you why I stand up.

7 If you feel that you want to stand up,  
8 same thing, you get a little tired of sitting, the  
9 room is a little warm today too. You either  
10 freeze or too hot in this room, state controlled,  
11 no happy medium.

12 Okay, we're getting into a different  
13 aspect of the case, we're getting into the aspect  
14 of damages which was discussed by both parties and  
15 specifically by plaintiff.

16 Now my charge to you on the law of  
17 damages must not be taken as a suggestion that you  
18 should find for the plaintiff. It is for you to  
19 decide on the evidence presented and the rules of  
20 law I have given to you whether the plaintiff is  
21 entitled to a recover from the defendant. If you  
22 decide that the plaintiff is not entitled to  
23 recover from the defendant, you need not consider  
24 damages. Only if you decide that the plaintiff is  
25 entitled to recover from the defendant will you

1 consider the measure of damages. If you find that  
2 the plaintiff is entitled to recover from the  
3 defendant, you must render a verdict a sum of  
4 money that will justly and fairly compensate the  
5 plaintiff for all losses resulting from the  
6 injuries he sustained.

7 If you find that the defendant is  
8 liable, plaintiff is entitled to recover a sum of  
9 money which will justly and fairly compensate him  
10 for any injury and conscious pain and suffering to  
11 date caused by the defendant. If you find that  
12 the plaintiff, as a result of his injuries,  
13 suffered some loss of ability to enjoy life, you  
14 may take that into consideration in determining  
15 the amount to be awarded to plaintiff for pain and  
16 suffering.

17 If your verdict is in favor of the  
18 plaintiff, plaintiff will not be required to pay  
19 income taxes on the award and you must not add to  
20 or subtract from the award any amount on account  
21 of income taxes.

22 Okay, something that Mr. Certain alluded  
23 to in his summation. With respect to any  
24 plaintiff's injuries or disabilities, the  
25 plaintiff is also entitled in addition to past

1 damages, the plaintiff is entitled to recover for  
2 future pain, suffering and disability and the loss  
3 of his ability to enjoy life, if you find that the  
4 injuries to the plaintiff will continue into the  
5 future. In this regard, you should take into  
6 consideration the period of time that the injuries  
7 or disabilities are expected to continue. If you  
8 find that the injuries or disabilities are  
9 permanent, you should take into account the period  
10 of time that the plaintiff can be expected to  
11 live.

12 well, what does that mean? well, there  
13 are statistical tables, there are statistical  
14 tables for men, statistical tables for women, they  
15 are calculated by adjusters who look at the entire  
16 nation and decide what the average life span of a  
17 particular people in general is, and they generate  
18 a life expectancy table. In the plaintiff's case,  
19 it is 55.6 years. Now that is what the table  
20 says, but the fact is that people live less,  
21 people live more. My mother in October we  
22 celebrated her hundredth's birthday, my father  
23 died young, you don't know. Life is not certain,  
24 and such a table provides nothing more than a  
25 statistical average, it doesn't guarantee that

1 Mr. Collins will live an additional 55.6 years and  
2 it doesn't mean that it he won't live a longer  
3 period. Life experience and the evidence you have  
4 heard concerning the condition of Mr. Collins  
5 health, habits, activities, will aid you in  
6 deciding what Mr. Collins' present life expectancy  
7 is.

8 In his closing remarks, counsel did  
9 offer figures to you suggesting amounts that would  
10 be proper compensation for his client, and he's  
11 perfectly -- has a perfect right to do that, and  
12 is permitted to make those suggestions because  
13 that is what they are, they are suggestions and  
14 argument, just like all the other arguments of  
15 counsel and not evidence and should not be  
16 considered by you as evidence of the plaintiff's  
17 damages. The determination of damages is solely  
18 for you the jury to decide.

19 Now I have got a few more matters that I  
20 will discuss with you. I will discuss the verdict  
21 sheet, your rights to return, the role of the  
22 Foreperson in the jury, but before I do that, I  
23 just want to go into the back, talk to the  
24 attorneys for a minute, sometimes you miss  
25 something, sometimes you add something, sometimes

1 you add too much, so I am just going to talk to  
2 the lawyers for a few minutes and then we will be  
3 back. You don't have to leave the courtroom.

4 (The following takes place on the record  
5 in the robing room in the presence of the Court  
6 and all counsel only.)

7 THE COURT: Exceptions to the charge  
8 defendant?

9 MR. MOHBAT: Renew my exception to the  
10 circumstantial evidence charge and to the  
11 negligent supervision charge as we discussed this  
12 morning.

13 THE COURT: Okay.

14 Mr. Certain?

15 MR. CERTAIN: None.

16 THE COURT: Okay, let's go.

17 (The following proceedings are held on  
18 the record in the presence of all parties.)

19 THE COURT: well, the first thing you  
20 are going to notice when you go back to the jury  
21 room, you know the dramatic moment in all the  
22 courtroom dramas, did I tell you I'm not allowed  
23 to watch any of those courtroom dramas, I told you  
24 that, right?

25 Try to practice law like those guys do,

1 you're in a lot of trouble. You know the scene  
2 where the jury returns and the clerk gets up and  
3 says has -- does the jury find the defendant  
4 guilty or not guilty. Well, you know, this is not  
5 a criminal case, sometimes that actually is how  
6 you go through it, but in a civil case, you don't  
7 go that way, you answer a series of questions in  
8 the jury room, for instance the first question was  
9 the defendant New York City Department of  
10 Education negligent in it's supervision of the  
11 room where the incident took place on March the  
12 25th, 2002.

13 And then there are some instructions  
14 below that. If your answer to the question is  
15 yes, proceed to question two. If your answer to  
16 that question is no, then report your verdict and  
17 then you will see question two, same thing, it  
18 will say if your answer is yes, go to question  
19 three, if it's no, report your verdict.

20 Then you get into -- if you get past  
21 those questions, you get into the questions about  
22 damages. State the amount, if any, that will  
23 fully and justly compensate plaintiff Alrick  
24 Collins for pain and suffering. Once again you  
25 give a dollar amount from zero to whatever you

1 think the proper -- whatever you think the proper  
2 amount is, and the verdict sheet is  
3 self-explanatory, I don't think you will have any  
4 trouble with that, that is what it is.

5 Now another difference between a civil  
6 and criminal venues are that in a criminal case,  
7 some of you may know, the verdict has to be  
8 unanimous. In a civil case, on any particular  
9 question, five of the six of you must agree. If  
10 five of you agree, even though there is one juror  
11 who dissents, that constitutes a verdict for that  
12 question. That doesn't mean you don't listen to  
13 the dissenting juror, you have a discussion and  
14 then you take the vote.

15 It doesn't have to be the same five  
16 jurors on each question. In other words, on  
17 question one, maybe jurors one through five agree  
18 and juror six doesn't agree, okay, that  
19 constitutes a yes for that question. On question  
20 two, perhaps it's two, three, four and five who  
21 agree and juror one disagrees, that constitutes a  
22 verdict, even though it's not exactly the same  
23 people, okay?

24 You have a right to return to the  
25 courtroom, that means you can come back and you



1 can have any testimony that you wish to have read  
2 back to you read back, this is a short trial but  
3 if there are certain things that you can not agree  
4 on or can't remember, you can have it read back.

5 And that is a long process, but we get  
6 through it. It is not a big deal, that is why we  
7 have our talented court reporter here taking down  
8 everything that is said.

9 You also have a right to look at all the  
10 exhibits in the case and you can look at it. As I  
11 said before, don't speculate, in other words,  
12 you're limited to the evidence, you are supposed  
13 to use your common sense, which you have accrued  
14 from everyday life, but you can't think things in  
15 the jury room like, well, you know this happened  
16 to my brother-in-law, he is a big liar or they  
17 were all lying about him, you can't believe, that  
18 has nothing to do with anything. I'm not  
19 attacking anybody's brother-in-law but using that  
20 as an example because I have two of them, they are  
21 both useless.

22 If you reach a verdict or if you have a  
23 question, also if you need any of the law  
24 re-explained to you, you can have the law -- have  
25 me explain the law to you again. If you want to

1 have testimony read back, if you want to have an  
2 exhibit produced before the Court, if you want to  
3 have the law explained to you, you have to write a  
4 note, because we have to have a record of  
5 everything that transpires and the note has to be  
6 signed by the foreman of the jury.

7 Now whose the foreman of the jury?

8 Mr. Thornton (phonetic).

9 why is Mr. Thornton the foreman of the  
10 jury? Because he's the best looking juror? I  
11 mean he is a good looking guy, you can't take that  
12 away from him, but we are not getting into that.  
13 He is sitting in seat number one and the rule in  
14 this court, whoever is designated in the first  
15 seat becomes the foreperson for the reason that we  
16 assume that every New Yorker has sufficient  
17 intelligence, every New Yorker selected for a jury  
18 has sufficient intelligence to be the Foreperson  
19 so we don't bother with who it is, it doesn't  
20 really matter, doesn't have any more authority  
21 than anybody else, just has the duties and it is  
22 like judges, some judges are chief judges, they  
23 don't have any more authority over the law, but  
24 they have authority over all of us.

25 And you know in places like California,

1 you know they vote so they can start fighting even  
2 before they start consideration, they can fight  
3 about who gets to be Foreperson of the jury, but  
4 we avoid that.

5 I think that is about it. Take as  
6 little or as much time as you need to decide the  
7 questions, answer all the questions in the jury  
8 verdict, and when you are ready, if you do reach a  
9 verdict, you report it to the Court, you come back  
10 and you announce it to the Court. That is it  
11 about it.

12 Yes, ma'am?

13 A JUROR: Questions?

14 If you have a question like you say you  
15 want to see something, we will get the note to him  
16 (Indicating)?

17 THE COURT: That is right, if you want  
18 to see an exhibit or hear some testimony, give him  
19 a note, just give the foreman a note and we will  
20 get the note. If it's exhibits, we will be  
21 sending them up to the jury room, but if it's a  
22 charge on the law or re-reading of testimony, then  
23 you come down here.

24 At a point I'm asking the two alternates  
25 to remain seated, the court officer will take

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charge of the jury.

THE COURT OFFICER: All rise jury exiting.

(Jury commences deliberations. Time noted 2:20 p.m.)

(Off the record discussion held at the bench.)

THE COURT: I am going to ask you gentlemen to be patient, wait with us, not here, we have a room for you downstairs. It has a television there, a couple of court officers, nice guys, in fact, that is right near my chambers so you may see me walking back and forth there sometimes. Don't discuss the case, other than that. When we need you, we will call you back up, I want to thank you for your patience so far.

You can take charge of the alternates.

(Alternates leave the courtroom at this time. Time noted 2:22 p.m.)

THE COURT: Exhibits, if there is a note and you aren't here, is there anything that needs to be redacted?

MR. CERTAIN: There were things in the meds that we wanted to --

THE COURT: If they ask for it -- you