

Charge

1
2 ascertain the truth in any given
3 situation.

4 You as the jurors and I as the Court
5 have a great responsibility to see that
6 a just result is reached both on the law
7 and on the facts.

8 We have now arrived at that phase of
9 the work where you will be instructed on
10 the law and then retire to your final
11 deliberations.

12 You will find that this charge is
13 divided into two principal parts. First
14 is the general statement of the law
15 which is applicable to jury trials in a
16 criminal case. Second is a statement on
17 the law which is particularly applicable
18 to the crimes charged in the indictment.

19 On the other hand and with equal
20 emphasis I charge you that you are bound
21 to accept the law of the case as it is
22 given to you by the Court.

23 After you have determined the
24 questions of fact, apply the law as
25 charged by the Court and render a

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verdict based upon the facts as you have decided them and under the law as charged by the Court.

Now, during the course of the trial incidents may have occurred which you were instructed to disregard and dismiss from your minds. And at times questions were asked as to which objections were posed and sustained. Whether these matters were trivial or consequential is of no concern here for they are not in the case. You must not be influenced by them nor should you draw any inference with respect to any of them. Decide the case solely upon the competent evidence before you and determine the issues on what you believe to be the credible, believable evidence.

During the course of the trial I might have made certain rulings as to objections made by the People or by the defendant. Such rulings have been on matters of law only and are not to be taken by you as any indication of my

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2 opinion of the guilt or innocence of the
3 defendant.

4 I have endeavored to preside here
5 impartially without influencing you in
6 your determination of the facts.

7 It is for you to say what the facts
8 in the case are and whether the
9 defendant is to be convicted or
10 acquitted.

11 You should not speculate on my
12 reasons for rulings. They were made
13 pursuant to the rules of evidence as I
14 understand them to be and do not reflect
15 any opinion that I may have about this
16 case. My opinion is immaterial since
17 you are the triers of the fact and to
18 decide the guilt or the innocence.

19 Now, you have it in your power to
20 draw proper, reasonable and just
21 inferences from the testimony and from
22 the exhibits in evidence after carefully
23 analyzing, weighing, considering the
24 testimony of each witness who has
25 testified at the trial and all the

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2 exhibits in the case. The defendant is
3 entitled to every inference in his favor
4 which can reasonably be drawn from the
5 evidence or from the lack of evidence.

6 Where two inferences may be drawn
7 from the evidence, one consistent with
8 guilt and one consistent with innocence,
9 the defendant is entitled to the
10 inference of innocence.

11 Now, you have to base your verdict
12 upon the evidence alone. Do not be
13 affected by sympathy or other
14 considerations outside of the evidence.
15 Do not be concerned about what the
16 reactions to your verdict may be whether
17 it is popular or unpopular, whether it
18 pleases or displeases anyone or what its
19 effect may be as far as punishment is
20 concerned. Punishment is not your
21 function nor a matter for your concern
22 but a function which the law places upon
23 the Court alone.

24 Therefore, you the jury may not in
25 determining the issue of guilt or

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2 innocence consider or speculate
3 concerning matters relating to sentence
4 or to punishment.

5 Now, the argument, remarks and
6 summation of counsel are not in
7 evidence. Neither is what I might have
8 said in regard to the evidence or in my
9 rulings. You must take the evidence
10 from the mouths of the witnesses as you
11 heard them and from the exhibits which
12 have been received in evidence.

13 You are likewise not to draw any
14 inference from any rulings or
15 instructions of mine as to any of the
16 testimony and you must not infer that I
17 hold any views for or against either the
18 prosecution or the defendant.

19 I charge you that it is your
20 recollection of the evidence and your
21 determination of the issues of fact
22 which control. Do not hesitate to ask
23 the Court to have testimony read back if
24 you wish to have the exhibit evidence
25 brought into you for your examination.

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2 Likewise, if there is any portion of
3 my charge to you on the law that you do
4 not understand, do not hesitate to ask
5 for me to read it back to you again.
6 However, if you do have a question, do
7 not indicate to the Court how
8 deliberations are progressing or how you
9 are voting.

10 Now, in performing your function of
11 determining what the facts are and where
12 the truth lies, it is necessary of
13 course for you to evaluate the testimony
14 of all the witnesses in order to
15 determine their credibility and the
16 weight which you find should be given to
17 their testimony. In order to reach a
18 solution regarding their credibility,
19 that is, the determination of whether or
20 not a person is telling the truth, you
21 should apply all the tests and
22 considerations and use the common sense
23 which you would ordinarily apply in your
24 own affairs and in your every day life
25 in judging the credibility of statements

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2 made to you and in judging whether or
3 not the person making them is telling
4 the truth.

5 You may for example consider the
6 apparent interest or lack of interest of
7 any witness in the case. You may
8 consider the bias and prejudice of any
9 witness in the case if he or she has any
10 such bias or prejudice.

11 You may also consider the
12 appearance, demeanor, conduct and
13 behavior of the witness as he or she sat
14 in the witness stand and testified. You
15 may further consider the opportunities
16 that the witness had to observe the
17 facts about which he or she testified
18 and you may consider the probability or
19 improbability of his or her story in
20 view of all the other evidence and facts
21 or circumstances proven in the trial.

22 Now, the fundamental duty of the
23 jury in this case is to determine the
24 facts. You are the fact finding body.
25 The law says you are the exclusive

Charge

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2 judges of the facts.

3 Now, whatever your verdict may be in
4 this case, it must be by an unanimous
5 vote of the jury. In other words, all
6 12 of you must agree.

7 Now, if in your deliberations you
8 find that any witness has knowingly and
9 wilfully testified falsely as to any
10 material fact, you are at liberty to
11 disregard his or her entire testimony or
12 you may disregard as much of his or her
13 testimony as you believe was untruthful
14 and accept as much of his or her
15 testimony as you find to have been
16 truthfully given.

17 Now, the mere fact that an
18 indictment was returned creates no
19 presumption of the defendant's guilt.
20 The indictment is merely an accusation,
21 the mechanics by which an accused is
22 brought to trial. It is without
23 probative force and carries no
24 implication of guilt whatsoever.

25 Now, in this and in every criminal

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2 case the accused is presumed to be
3 innocent and that presumption remains
4 with him throughout the trial and unless
5 his guilt is proven beyond a reasonable
6 doubt. That presumption of innocence
7 exists now at this moment and
8 accompanies you to the jury room and
9 only if the evidence which you accept
10 and believe convinces you beyond a
11 reasonable doubt that the defendant is
12 guilty is the presumption discarded and
13 a verdict of guilty returned. Only then
14 is the presumption destroyed.

15 Now, on a criminal case, the burden
16 of proof to establish the guilt of the
17 defendant beyond a reasonable doubt
18 rests with the prosecution. This burden
19 remains on the prosecution throughout
20 the trial and never shifts to the
21 defendant.

22 No defendant is required to prove
23 his innocence. Therefore, before you
24 convict the defendant you must be
25 convinced of his guilt beyond a

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reasonable doubt.

The rule of law is that the prosecution must prove beyond a reasonable doubt the defendant's guilt as to each and every element of the crimes submitted to you by the Court. If this burden is not fulfilled, you must acquit the defendant. If this burden is fulfilled, you must convict the defendant.

Now, our law provides that both the People and the defendant may as a matter of right call and examine witnesses and each party may cross-examine every witness called by the other party. There is of course no duty upon the defense to call any witnesses since as I have already explained to you it is always incumbent upon the People to prove each and every essential element of the crimes charged beyond a reasonable doubt and this burden never shifts. However, it is not the number of witnesses called which is controlling

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upon your judgment but it is the quality of the testimony which must prevail.

Now, what is meant by intent and how may it be determined?

A person acts intentionally with respect to a resulted conduct described by statute and defined in offense when his conscious objective is to cause such result or to engage in such conduct. Intent then is a matter of the operation of a person's mind and we are therefore limited to an examination of the external indications of his thinking to determine what he was actually intending at the time of the acts charged.

Now, bear in mind that you must determine intent at the time of the commission of the acts charged but in determining what the intent was you may take into consideration all the facts and circumstances surrounding the commission of the crime including what was said and done and the events leading up to, during and after the event.

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1 Charge

2 Now, this completes my instructic
3 on the constitutional safeguard or th
4 presumption of innocence and the burd
5 of proof.

6 I now discuss with you the
7 constitutionally mandated standard of
8 proof in all criminal cases, that of
9 proof of guilt beyond a reasonable
10 doubt.

11 The standard of proof required by
12 law in every criminal case is proof of
13 guilt beyond a reasonable doubt. That
14 standard, however, does not require the
15 People to prove the defendant's guilt
16 beyond all possibility of doubt or
17 beyond a shadow of a doubt. It requires
18 the People to establish the defendant's
19 guilt beyond a reasonable doubt.

20 Our law, therefore, requires that
21 before this jury may convict the
22 defendant, each of you must be satisfied
23 that the credible evidence is sufficient
24 to convince you beyond a reasonable
25 doubt that the defendant is in fact

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2 guilty. The evidence must satisfy you
3 beyond a reasonable doubt that the
4 defendant is in fact the person who
5 committed the crimes charged. The
6 evidence must also establish beyond a
7 reasonable doubt each and every
8 essential element of the crimes charged
9 as I shall later define such elements.

10 Now, what does the law mean when it
11 requires proof of guilt beyond a
12 reasonable doubt? When is a doubt of
13 guilt a reasonable doubt under our law?

14 A doubt of the defendant's guilt to
15 be a reasonable doubt is one for which a
16 reason can be given. The doubt should
17 be sufficiently clear to you as a juror
18 that you would be capable of giving a
19 reason for your views although you have
20 no obligation to articulate your views.
21 The doubt to be reasonable must
22 therefore arise because of the nature
23 and quality of the evidence in the case
24 or from the lack or insufficiency of the
25 evidence in the case. The doubt to be a

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reasonable doubt should be one which a reasonable person acting in a manner of this importance would be likely to entertain because of the evidence or because of the lack or insufficiency of the evidence in the case.

A doubt of guilt is not reasonable if instead of being based upon the nature and quality of the evidence or insufficiency of the evidence it is based on some guess or whim or speculation unrelated to the evidence in the case. Also, a doubt of guilt is not a reasonable doubt if it is based merely on sympathy for the defendant or from a mere desire by a juror to avoid a disagreeable duty.

I therefore repeat, a doubt of the defendant's guilt to be a reasonable doubt must either arise from the nature and quality of the evidence in the case or from the lack or insufficiency of the evidence in the case.

Therefore, the first duty of each

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juror is to consider and weigh all the evidence in the case and decide which you believe is credible and worthy of your consideration. The next duty of each juror is to determine whether the juror has in fact a reasonable doubt of the defendant's guilt as that term is defined in our law.

A reasonable doubt our law says is an actual doubt, one in your mind after you have considered all the evidence in the case. If after doing so you then feel uncertain and not fully convinced of the defendant's guilt and you are also satisfied that in entertaining such a doubt you are acting as a reasonable person should act in a matter of this importance, that is a reasonable doubt of which the defendant is entitled to the benefit.

I repeat, it is the duty of each juror to carefully review, weigh and consider the evidence in the case. If after doing so you find that the People

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have not proven the defendant's guilt beyond a reasonable doubt as I have defined that term to you, then you must find the defendant not guilty. On the other hand, if you are satisfied that the People have proven the defendant's guilt beyond a reasonable doubt as I have defined that term to you, then you must then find the defendant guilty.

Now, the question of the interest of any witness in the outcome of the case and the effect of such interest on his or her testimony is one for your determination as jurors.

Obviously, the defendant who testified at this trial is an interested witness since he will be directly affected by the outcome of the case. That does not mean that he's not told the truth. If the jury automatically disbelieved a defendant, it would make no sense for any defendant ever to testify. His interest is simply one factor you can consider in weighing his

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all of it, some of it or none of it.
Your own careful conversation and
judgment alone will dictate the weight
you give to the testimony of an
interested witness.

Now, we come to that part of the
charge where I will explain to you the
material legal principles applicable to
the crimes charged in the indictment.

The following instructions are
applicable to count one on the verdict
sheet.

You will be receiving a verdict
sheet when you go back which has some
instructions on here and I will discuss
that with you in just a couple of
moments.

Now, the first count on the verdict
sheet is offering a false instrument for
filing in the degree first.

Section 175.35 of the Penal Law of
our State insofar as it is applicable in
this case reads as follows:

A person is guilty of offering a

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2 false instrument for filing in the first
3 degree when knowing that a written
4 instrument contains a false statement or
5 false information and with intent to
6 defraud the State or any political
7 subdivision thereof he offers or
8 presents it to a public office or public
9 servant with the knowledge or belief
10 that it would be filed with, registered
11 or recorded in or otherwise become a
12 part of the records of such public
13 office or public servant.

14 In order for you to find the
15 defendant guilty of this crime, the
16 People are required to prove from all of
17 the evidence in the case beyond a
18 reasonable doubt each of the following
19 six elements:

20 One, that on or about November 2,
21 1992, in the County of Kings, the
22 defendant offered or presented to a
23 public office or public servant, to wit,
24 presented a voter registration form with
25 a false address, a certain item which

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was introduced into evidence by the People as People's Exhibit number five.

I charge you that the Board of Election is a public office or public servant.

Two, that what the defendant offered or presented was a written instrument, to wit, a voter registration form.

According to the law, a written instrument means any instrument or article containing written or printed matter or equivalent thereof used for the purpose of reciting, conveying or recording information or constituting a symbol or evidence of value, right, privilege or identification which is capable of being used to the advantage or disadvantage of some person.

Three, that such written instrument contained a false statement or false information, to wit, a false address.

Consider the definition of residence as follows:

According to the law a residence is

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that place where a person maintains a fixed, permanent and principal home and to which he wherever temporarily located always intends to return.

Additionally, a candidate who has two residences may choose one to which he has the legitimate, significant and continuing attachment as his residence for purpose of the election law. It is for the candidate to decide which address is to be his voting and campaign address. However, the address chosen by the defendant as his residence must comport with the definition of residence as I have previously given it to you.

Four, that the defendant knew that such written instrument contained false statement or false information.

According to the law, a person knows that a written statement contains a false statement or false information when he is aware that it contains such false statement or false information.

Five, that the defendant offered or

Charge

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2 presented such written instruction to
3 the Board of Election with the knowledge
4 or belief that it would be filed with,
5 registered or recorded in or otherwise
6 become a part of the records of such
7 public office or public servant.

8 Six, that the defendant offered or
9 presented such written instrument to the
10 Board of Election with the intent to
11 defraud the State or a political
12 subdivision of the State.

13 To defraud means to cheat or deprive
14 another person of property or a thing of
15 value or a right.

16 According to the law, a person
17 intends to defraud when his conscious
18 aim or objective is fraud.

19 Therefore, with respect to this
20 count of the indictment, if you find
21 that the People have proven to your
22 satisfaction beyond a reasonable doubt
23 each of these six elements as I have
24 just explained them, you must find the
25 defendant guilty of the crime of

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offering a false instrument for filing in the first degree.

On the other hand, if you find the People have failed to prove to your satisfaction beyond a reasonable doubt any one or more of these six elements, you must find the defendant not guilty of offering a false instrument for filing in the first degree.

You then go to count two and those instructions are on your verdict sheet.

The following instructions are applicable to count two on the verdict sheet, false registration.

Section 17-104 subdivision four of the Election Law of our state insofar as it is applicable to this case reads as follows:

A person is guilty of false registration when he knowingly gives a false residence with the election district when registering as an elector.

In order for you to find the defendant guilty of this crime, the

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People are required to prove from all the evidence in the case beyond a reasonable doubt each of the following four elements:

One, that on or about November 2, 1992, in the County of Kings the defendant registered as an elector in the 20th election district.

An elector is one who has a right to vote in an election. The boundaries of the 20th election district has been described for you and are set out in the map identified as People's Exhibits 1 and 2.

That the residence provided by the defendant when he so registered was 553 47th Street Brooklyn, New York, Kings County.

According to the law, a residence is that place where a person maintains a fixed, permanent and principal home and to which he wherever temporarily located always intends to return.

Additionally, a candidate who has

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two residences may choose one to which he has the legitimate, significant and continuing attachment as his residence for purpose of election law.

It is for the candidate to decide which address is to be his voting and campaign address. However, the address chosen by the defendant as his residence must comport with the definition of residence as I have previously given it to you.

Three, that at the time the defendant so registered his residence was not 553 47th Street Brooklyn, New York, Kings County.

Four, that the defendant knowingly provided a false residence when registering.

According to the law, a person knowingly provides false residence when he was aware that the residence being provided was not his residence.

Before you may reach a verdict of guilty, each of you after careful

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2 consideration of the evidence in the
3 case must be satisfied that the
4 prosecution has proved beyond a
5 reasonable doubt each and every element
6 of the crime of false registration.

7 Therefore, with respect to this
8 count of the indictment, if you find
9 that the People have proved to your
10 satisfaction beyond a reasonable doubt
11 each of these four elements as I just
12 explained them, you must find the
13 defendant guilty of the crime of false
14 registration. On the other hand, if you
15 find that the People have failed to
16 prove to your satisfaction beyond a
17 reasonable doubt any one or more of
18 these four elements, you must find the
19 defendant not guilty of false
20 registration.

21 You go to count three. Once again
22 that instruction is right on your
23 verdict sheet.

24 The following instructions are
25 applicable to count three on the verdict

Charge

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2 sheet, illegal voting.

3 Section 17.132 subdivision three of
4 the election law of our State insofar as
5 it's applicable to this case reads as
6 follows:

7 A person is guilty of illegal voting
8 when he votes at an election in an
9 election district or from a place where
10 he does not reside.

11 In order for you to find the
12 defendant guilty of this crime, the
13 People are required to prove from all
14 the evidence in the case beyond a
15 reasonable doubt each of the following
16 two elements:

17 One, that on or about November 3,
18 1993, in the County of Kings the
19 defendant voted from an address he did
20 not reside.

21 Two, that when the defendant voted
22 on or about November 3, 1993, he did not
23 reside within the approximate 51st
24 assembly and 20th election district.

25 According to the law a residence is

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2 that place where a person maintains a
3 fixed, permanent and principal home and
4 to which he wherever temporarily located
5 always intends to return.

6 Additionally, a candidate who has
7 two residences may choose one to which
8 he has a legitimate, significant and
9 continuing attachment as his residence
10 for purposes of the Election Law.

11 It is for the candidate to decide
12 which address is to be his voting and
13 campaign address. However, the address
14 chosen by the defendant as his residence
15 must comport with the definition of
16 residence as I have previously given it
17 to you.

18 Before you may reach a verdict of
19 guilty, each of you after careful
20 consideration of the evidence in this
21 case must be satisfied that the
22 prosecution had proven beyond a
23 reasonable doubt each and every element
24 of the crime of illegal voting.

25 Therefore, with respect to this

Charge

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2 count of the indictment, if you find
3 that the People have proven to your
4 satisfaction beyond a reasonable doubt
5 each of these two elements as I've just
6 explained them, you must find the
7 defendant guilty of the crime of illegal
8 voting.

9 On the other hand, if you find that
10 the People have failed to prove to your
11 satisfaction beyond a reasonable doubt
12 any one or more of these two elements,
13 you must find the defendant not guilty
14 of illegal voting.

15 Now, the following instructions are
16 applicable to count four on the verdict
17 sheet.

18 Consider the instructions on illegal
19 voting as I have previously given to
20 you.

21 This count refers to the conduct
22 alleged on May 4, 1993.

23 You then go to count five on the
24 verdict sheet.

25 The following instructions are

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2 applicable to count five on the verdict
3 sheet.

4 Consider the instructions on illegal
5 voting as I have previously given to
6 you. This counts refers to the conduct
7 alleged on December 14, 1993.

8 Then you go to count six on the
9 verdict sheet.

10 The following instructions are
11 applicable to count six on the verdict
12 sheet.

13 Consider the instructions on illegal
14 voting as I have previously given to
15 you. This counts refers to the conduct
16 alleged on December 2, 1993.

17 You go to count seven on the verdict
18 sheet.

19 The following instructions are
20 applicable to count seven on the verdict
21 sheet.

22 Consider the instructions on illegal
23 voting as I have previously given to
24 you. This count refers to conduct
25 alleged on November 2, 1993.

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2 Then you stop and you report your
3 verdict.

4 As you begin your deliberations,
5 remember that it is your recollection of
6 the testimony that controls.

7 If your recollection differs from
8 the evidentiary reference of the
9 attorneys in their summation or from my
10 reference in this charge, disregard what
11 we have said and use your own
12 recollection.

13 If during your deliberation your
14 recollection of any part of the
15 testimony fails or if you disagree among
16 yourselves about what a witness said,
17 you can ask to have that part of the
18 testimony read back to you. You may
19 also ask to inspect any exhibit that is
20 in evidence.

21 Similarly, if you are having any
22 doubts about my instruction on any point
23 of law, you can ask me to clarify the
24 law further or you can have that part of
25 my charge reread. Your foreperson will

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submit these requests to me in writing.
He will also tally the votes and report
your verdict to the Court when you reach
a verdict but remember that each of you
has an equal voice in your
deliberations.

Now, you may find in your
deliberations that you differ among
yourselves. Make every effort to
harmonize your various views and to come
to an agreement about the facts in this
particular case.

Don't go into the jury room with a
closed mind so that you refuse to listen
to the opinion of other jurors or to
discuss the evidence with other jurors.
You should always be open to reason and
willing to listen to the opinion of
others. However, you have a right, if
you believe you are right, to stick to
your arguments and to your conclusions.

Make every effort consistent with
your conscious and the evidence in this
case to harmonize your views with the

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2 views of your fellow jurors.

3 In deciding this case, use common
4 sense and good judgment and be impartial
5 and fair in your judgment. Don't let
6 sympathy or prejudice sway your minds.
7 Decide this case on the evidence and
8 according to the law as I have given it
9 to you.

10 Now, I have prepared a jury verdict
11 sheet which you will use in your
12 deliberations and in rendering your
13 verdict. You will separately report
14 your decision on each count submitted
15 for your consideration. Your verdict
16 will be either guilty or not guilty on
17 each count and must be unanimous with
18 respect to each count submitted in order
19 to constitute a verdict.

20 As I've said before, you must not
21 infer from your verdict sheet or from
22 anything I might have said in this
23 charge that I have any opinion in this
24 case or that the Court wants any
25 particular verdict. You will have done

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2 your duty if you give this case your
3 careful, unbiased consideration
4 regardless of the verdict.

5 If you have any questions, your
6 foreperson should submit them in
7 writing.

8 If you wish to have any part of the
9 charge or the testimony re-read, your
10 foreperson should also make that request
11 in writing specifying the portion you
12 want to have re-read.

13 Now, this completes my final
14 instruction.

15 At this particular point, however,
16 it's necessary for me to meet -- for the
17 Court to briefly meet and consult with
18 the attorneys on matters of law related
19 to the Court's final instructions and we
20 will be right back.

21 (The following sidebar discussion
22 was held outside the presence of the
23 jury)

24 THE COURT: Okay. Any request by
25 the District Attorney?