

1 JURY, AND ON THE RECORD AS FOLLOWS:)

2 THE COURT: I WOULDN'T CALL THIS EXACTLY TIMELY.
3 I ASSUME YOU FILED THIS BEFORE AND PUT THEM ON NOTICE.

4 MR. EIDE: I GAVE IT TO MARK THE OTHER DAY. IT ✓
5 WAS AN OVERSIGHT. THEY HAD TAKEN A STATEMENT FROM ME
6 AT THE TIME. I JUST DIDN'T LIST THEM. I MADE IT
7 AVAILABLE LAST MONDAY, WITHOUT SUBPOENA AND EVERYTHING.
8 MARK TALKED TO THEM. THERE WAS NO OBJECTION.

9 THE COURT: BUT YOU HAD ALREADY GIVEN THEM A
10 PRIOR NOTICE, WITH OTHER WITNESSES

11 MR. EIDE: YES, SIR.

12 MR. BENDER: WE'RE NOT COMPLAINING ABOUT THAT.
13 (THEREUPON, THE SIDE-BAR CONFERENCE WAS CONCLUDED.)

14 THE COURT: LADIES AND GENTLEMEN OF THE JURY,
15 YOU HAVE BEEN SELECTED AND SWORN AS THE JURY TO TRY
16 THE CASE OF THE STATE OF FLORIDA VERSUS SCOTTY MERSON.

17 THIS IS A CRIMINAL CASE. AND SCOTTY MERSON,
18 THE DEFENDANT, IS CHARGED WITH TWO SEPARATE CRIMES;
19 THE CRIME OF SEXUAL BATTERY IN COUNT ONE, AND THE
20 CRIME OF BURGLARY OF A DWELLING WITH BATTERY THEREIN,
21 AS ALLEGED IN COUNT TWO OF THE INFORMATION.

22 THE STATE OF FLORIDA, ALLEGING THROUGH
23 LAWSON LARMAR, STATE ATTORNEY OF THE NINTH JUDICIAL
24 CIRCUIT PROSECUTING FOR THE STATE OF FLORIDA IN ORANGE
25 COUNTY, OR LAWSON LAMAR, STATE ATTORNEY OF THE NINTH

1 JUDICIAL CIRCUIT PROSECUTING FOR THE STATE OF FLORIDA
2 IN ORANGE COUNTY, BY AND THROUGH THE UNDERSIGNED
3 DESIGNATED ASSISTANT STATE ATTORNEY, UNDER OATH,
4 CHARGES THAT SCOTTY MERSON, A PERSON 18 YEARS OF
5 AGE OR OLDER, ON OR ABOUT THE 17TH DAY OF MAY, 1990,
6 IN SAID COUNTY AND STATE, DID, IN VIOLATION OF FLORIDA
7 STATUTE 794.011 SUBSECTION (2), COMMIT A SEXUAL
8 BATTERY UPON ANGELA [REDACTED], A PERSON LESS THAN TWELVE
9 YEARS OF AGE, AND IN FURTHERANCE THEREOF DID PERFORM
10 CUNNILINGUS UPON ANGELA [REDACTED].

11 COUNT TWO ALLEGES THE FOLLOWING: LAWSON
12 LAMAR, STATE ATTORNEY OF THE NINTH JUDICIAL CIRCUIT
13 PROSECUTING FOR THE STATE OF FLORIDA IN ORANGE COUNTY,
14 OR LAWSON LAMAR, STATE ATTORNEY OF THE NINTH JUDICIAL
15 CIRCUIT PROSECUTING FOR THE STATE OF FLORIDA IN ORANGE
16 COUNTY, BY AND THROUGH THE UNDERSIGNED DESIGNATED
17 ASSISTANT STATE ATTORNEY, UNDER OATH, CHARGES THAT
18 SCOTTY MERSON ON OR ABOUT THE 17TH DAY OF MAY, 1990,
19 IN SAID COUNTY AND STATE, DID, IN VIOLATION OF
20 FLORIDA STATUTE 810.02 SUBSECTION (2), ENTER OR REMAIN
21 IN A CERTAIN STRUCTURE; TO-WIT: A DWELLING LOCATED
22 IN THE VICINITY OF 3020 HARRISON AVENUE, IN THE COUNTY
23 AND STATE AFORESAID, THE PROPERTY OF CATHY [REDACTED] AS
24 OWNER OR CUSTODIAN THEREOF, WITH THE INTENT TO COMMIT
25 AN OFFENSE THEREIN, AT A TIME WHEN THE SAID PREMISES

1 WERE NOT OPEN TO THE PUBLIC NOR WAS THE SAID SCOTTY
2 MERSON LICENSED OR INVITED TO ENTER OR REMAIN.

3 AND DURING THE COURSE OF COMMITTING SAID
4 OFFENSE, SCOTTY MERSON DID COMMIT A BATTERY UPON
5 MICHELLE [REDACTED] BY INTENTIONALLY TOUCHING OR STRIKING
6 THE SAID MICHELLE [REDACTED] AGAINST HER WILL OR BY
7 INTENTIONALLY CAUSING BODILY HARM TO MICHELLE [REDACTED].

8 THE DEFINITION OF THE ELEMENTS OF THE CRIME
9 OF SEXUAL BATTERY AND THE DEFINITION OF THE ELEMENTS
10 OF THE CRIME OF BURGLARY OF A DWELLING WITH A BATTERY
11 THEREIN WILL BE EXPLAINED TO YOU AT THE CLOSE OF THE
12 CASE.

13 IT IS YOUR SOLEMN RESPONSIBILITY TO
14 DETERMINE IF THE STATE HAS PROVED ITS ACCUSATION
15 BEYOND A REASONABLE DOUBT AGAINST THE DEFENDANT.

16 YOUR VERDICT MUST BE BASED SOLELY ON THE
17 EVIDENCE, OR LACK OF EVIDENCE, AND THE LAW.

18 THE INFORMATION IS NOT EVIDENCE AND IS
19 NOT TO BE CONSIDERED BY YOU AS ANY PROOF OF GUILT.
20 THAT'S THE DOCUMENT I JUST READ FROM, A PIECE OF PAPER
21 FILED BY THE STATE ATTORNEY. AND AS I SAID, THAT IS
22 NOT EVIDENCE. THAT IS NOT TO BE CONSIDERED BY YOU AS
23 ANY PROOF OF GUILT.

24 IT IS THE JUDGE'S RESPONSIBILITY TO DECIDE
25 WHICH LAWS APPLY TO THIS CASE AND TO EXPLAIN THOSE

1 LAWS TO YOU. IT IS YOUR RESPONSIBILITY TO DECIDE
2 WHAT THE FACTS OF THIS CASE MAY BE AND TO APPLY THE
3 LAW TO THOSE FACTS.

4 THUS, THE PROVINCE OF THE JURY AND THE
5 PROVINCE OF THE COURT ARE WELL-DEFINED, AND THEY DO
6 NOT OVERLAP. THIS IS ONE OF THE FUNDAMENTAL PRINCIPLES
7 OF OUR SYSTEM OF JUSTICE.

8 BEFORE PROCEEDING FURTHER, IT WILL BE
9 HELPFUL IF YOU UNDERSTAND HOW A TRIAL IS CONDUCTED.
10 AT THE BEGINNING OF THE TRIAL, THE ATTORNEYS WILL
11 HAVE AN OPPORTUNITY, IF THEY WISH, TO MAKE AN OPENING
12 STATEMENT.

13 THE OPENING STATEMENT GIVES THE ATTORNEYS
14 A CHANCE TO TELL YOU WHAT EVIDENCE THEY BELIEVE WILL
15 BE PRESENTED DURING THE TRIAL. WHAT THE ATTORNEYS
16 SAY IS NOT EVIDENCE, AND YOU ARE NOT TO CONSIDER IT
17 AS SUCH.

18 FOLLOWING THE OPENING STATEMENTS, WITNESSES
19 WILL BE CALLED TO TESTIFY, UNDER OATH. THEY WILL BE
20 EXAMINED AND CROSS-EXAMINED BY THE ATTORNEYS.
21 DOCUMENTS AND OTHER EXHIBITS ALSO MAY BE PRODUCED
22 AS EVIDENCE.

23 AFTER THE EVIDENCE HAS BEEN PRESENTED,
24 THE ATTORNEYS WILL HAVE THE OPPORTUNITY TO MAKE THEIR
25 FINAL ARGUMENT.

1 FOLLOWING THE ARGUMENTS BY THE ATTORNEYS,
2 THE COURT WILL INSTRUCT YOU ON THE LAW APPLICABLE
3 TO THE CASE. AFTER THE INSTRUCTIONS ARE GIVEN, THE
4 ALTERNATE JURORS WILL BE RELEASED AND YOU WILL THEN
5 RETIRE TO CONSIDER YOUR VERDICT.

6 MS. MENEUY AND MS. AUTRY, YOU ARE OUR
7 ALTERNATE JURORS. YOU WILL SERVE AS A JUROR IF, IN
8 FACT, ANY OF THE OTHER JURORS BECOME INCAPACITATED.
9 THE PURPOSE OF AN ALTERNATE JUROR, OBVIOUSLY, IS TO
10 TAKE THE PLACE OF ANOTHER JUROR IF, IN FACT, THAT
11 OTHER JUROR CAN'T DELIBERATE AND REACH A VERDICT.

12 WE WON'T KNOW THAT UNTIL THE END OF THE
13 CASE. SO WE ASK OF YOU THE SAME CLOSE ATTENTION
14 DURING THE COURSE OF THE TRIAL THAT I'M CERTAIN THE
15 OTHER JURORS WILL BE GIVING. BUT I THINK IT'S ONLY
16 FAIR TO LET YOU KNOW YOU ARE, IN FACT, THE ALTERNATES
17 ON THIS JURY.

18 YOU SHOULD NOT FORM ANY DEFINITE OR FIXED
19 OPINION ON THE MERITS OF THE CASE UNTIL YOU HAVE HEARD
20 ALL THE EVIDENCE, THE ARGUMENT OF THE LAWYERS, AND
21 THE INSTRUCTIONS ON THE LAW BY THE JUDGE. UNTIL THAT
22 TIME YOU SHOULD NOT DISCUSS THE CASE AMONG YOURSELVES.

23 DURING THE COURSE OF THE TRIAL THE COURT
24 MAY TAKE RECESSES, DURING WHICH YOU WILL BE PERMITTED
25 TO SEPARATE AND GO ABOUT YOUR PERSONAL AFFAIRS.

1 TO REMAIN SILENT, A JURY IS NOT PERMITTED TO DRAW
2 ANY INFERENCE OF GUILT. AND THE FACT THAT A DEFENDANT
3 DID NOT TAKE THE WITNESS STAND MUST NOT INFLUENCE YOUR
4 VERDICT IN ANY MANNER WHATSOEVER.

5 THE ATTORNEYS ARE TRAINED IN THE RULES OF
6 EVIDENCE AND TRIAL PROCEDURE. AND IT IS THERE THEIR
7 DUTY TO MAKE ALL OBJECTIONS THEY FEEL ARE PROPER.

8 WHEN AN OBJECTION IS MADE, YOU SHOULD NOT
9 SPECULATE ON THE REASON WHY IT IS MADE. LIKEWISE,
10 WHEN AN OBJECTION IS SUSTAINED, OR UPHOLD BY ME, YOU
11 MUST NOT SPECULATE ON WHAT MIGHT HAVE OCCURRED HAD
12 THE OBJECTION NOT BEEN SUSTAINED NOR WHAT A WITNESS
13 MIGHT HAVE SAID HAD HE OR SHE BEEN PERMITTED TO ANSWER.

14 I SHOULD ALSO ADVISE YOU THAT THE LADY
15 SEATED AT THE COUNSEL TABLE IS MS. TRISH CASHMAN,
16 ALSO A DEFENSE ATTORNEY IN THIS CASE.

17 THE STATE MAY PROCEED WITH OPENING STATEMENT.

18 MR. BENDER: THANK YOU, YOUR HONOR.

19 OPENING STATEMENT

20 MR. BENDER: "IF YOU TELL ANYBODY, I'M GOING TO
21 BLOW THIS HOUSE UP," THOSE WERE THE WORDS THAT TWO
22 YOUNG, FRIGHTENED GIRLS HEARD IN THE SUPPOSED SECURITY
23 OF THEIR BEDROOM, EARLY ONE MORNING, MAY 17TH, 1990,
24 OF THIS YEAR.

25 ANGELA AND MICHELLE ████████ WERE SLEEPING AT