



## Spector jury instructions to be altered

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**Spector jury instructions to be altered; After deciding against allowing deadlocked jurors to consider a lesser charge, the judge will remove a thorny sentence.**

The judge in the Phil Spector murder trial threw a life preserver to prosecutors Wednesday by agreeing to revoke an instruction that deadlocked jurors had said they found confusing, legal experts said.

Los Angeles County Superior Court Judge Larry Paul Fidler's decision came during a remarkable day in court, during which jurors were called into the courtroom to speak publicly about the issues behind the impasse, which has left the five-month trial hanging in the balance.

Spector, 67, is charged with murdering actress Lana Clarkson, who was found shot through the mouth in his Alhambra mansion Feb. 3, 2003. Spector's attorneys say the 40-year-old Clarkson, despondent over a faltering acting career and money problems, shot herself.

The jury, after 28 hours of deliberation over seven days, announced Tuesday it was split 7-5. At the judge's direction, the foreman did not reveal whether the majority favored guilt or innocence.

To break the deadlock, Fidler first considered, then rejected, instructing jurors they could consider the lesser offense of manslaughter. Then he ruled he will strike an instruction to jurors stating that prosecutors must prove Spector held the gun that went off in Clarkson's mouth.

The instruction stated: "If you do not find the prosecution has proved beyond a reasonable doubt that the defendant committed that act, you must return a verdict of not guilty."

Fidler said he now believes that sentence, which he had earlier approved after it was proposed by the defense, "misstates the law" and called it an "absolute error."

Loyola Law School professor Laurie Levenson, a former federal prosecutor, called Fidler's decision "a huge favor to the prosecution." Removing the instruction during deliberations "is a not-so-subtle message to the jury that there may be more ways to find Spector guilty than they have been thinking of," she said. Levenson had been appointed by Fidler to serve as a special master in the Spector trial to help resolve an evidence dispute.

Lois Heaney, president of the National Jury Project West in Oakland, said Fidler was "altering the rules by which a jury makes a decision." Heaney has worked on a number of high-profile trials, including the Robert Blake case, at which he consulted for the defense.

"If a juror has relied on that instruction," he or she is "likely to feel misled" or foolish, "or worse," Heaney said.

Levenson agreed with Fidler's position that the instruction was wrong on the law. As stated, it told jurors that to find Spector guilty, the jury had to conclude that the famed music producer caused Clarkson's death by pointing a gun at her, "which resulted in that gun entering Ms. Clarkson's mouth while in Mr. Spector's hand."

Levenson said that in order to obtain a second-degree conviction, the prosecution does not have to prove that Spector intended to kill Clarkson. Rather, the prosecution has to show there was implied malice, that he showed a callous disregard for her life.

Levenson said this could be demonstrated in several ways, beyond the specific requirement of the instruction.

"Even if Spector jokingly put the gun in her mouth, or even if he told her, 'Put it in your mouth, it's not loaded,' that could show a callous disregard for her life that would be sufficient for a conviction," Levenson said.

But, she added, "The more interaction a judge has with a jury the more likely they are going to be looking for signs from the court on what to do next," and that is not the way the system is supposed to work.

USC law professor Jean Rosenbluth said Fidler's action "has the potential of seeming coercive," particularly as some jurors said Wednesday the instruction had been a factor during their deliberations.

It could appear Fidler "wants jurors to give in" and reach a verdict even though they are deeply split, Rosenbluth said. She predicted that if Spector is convicted, his legal team will interview as many jurors as possible.

"They will try to get someone to say that the judge was signaling that Spector should be convicted. That would form the basis for a motion for a new trial," Rosenbluth said.

Fidler, before the deliberations began, decided not to allow the jurors the option of finding Spector guilty of manslaughter. The defense agreed, and the prosecution did not object.

On Tuesday, after the deadlock was announced, Fidler said further review of the law led him to believe a manslaughter option would be justified.

But after hearing from prosecutors, who favored the addition of a manslaughter option, and defense lawyers, who opposed it, Fidler decided to stick with the murder-only option.

"When the jury has arrived at an impasse, to then give them a new offense is in essence saying, 'You can't find [the defendant] guilty with what you have, try this.' I have a problem with that," Fidler said.

Fidler is expected to tell the jury about withdrawing the instruction today. Lawyers on both sides will submit proposed language to explain why he is taking the action.

Fidler also raised the possibility that the lawyers could reopen their closing arguments, in view of his decision to withdraw the special instruction. The defense immediately, and vehemently, objected.

Rosenbluth said it would be wise to steer clear of new arguments. "Unless you let the lawyers re-argue the entire case," she said, the jurors might put too much weight on the judge's action.

In addition, Rosenbluth said, if the defense re-argues, it could open the door to the prosecution explicitly presenting alternative theories of how the crime occurred.

Fidler called the jury in to ask if anything might help break their impasse. The polling offered a remarkable look inside the deliberations process, normally sacrosanct during a criminal trial.

One juror, an administrative assistant in the Los Angeles mayor's office, said the special jury instruction was "where some of us had a problem standing on that alone instead of the total picture."

A second juror, a producer for "Dateline NBC," said some jurors did not know if "every element of that instruction must be proved beyond a reasonable doubt." Two other jurors raised their hands when Fidler asked if they had difficulty with the instruction.

Dennis Riordan, one of Spector's attorneys, cited the "tremendous window" provided by those answers as one reason the defense did not want to re-argue the case. "My God! For the first time in the annals of American jurisprudence, we have a chance to take information from the jury and argue our case all over again!" he said, his voice amplified in the courtroom on a speakerphone as he participated in the proceedings from his San Francisco office.

Levenson said the dialogue with jurors was not improper, though "highly unusual." She said judges do their best to minimize contact with jurors who have begun deliberations. The reason is simple "We don't want the jurors to think there are outside influences on their deliberations, even from the judge."

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