

The New York Times

June 20, 2004

Peterson Judge to Subpoena Videotape of Juror Remark

By ELIZABETH AHLIN

SAN FRANCISCO, June 19 - The judge in the murder trial of Scott Peterson will issue a subpoena Monday for videotape that shows a brief conversation between a juror and the brother of Mr. Peterson's wife, Laci, a law enforcement official said.

The judge, Alfred A. Delucchi of San Mateo County Superior Court, will issue the subpoena to Peter Shaplen, who oversees pool coverage of the trial in Redwood City for several television networks, said Lt. Lisa Williams of the county sheriff's office. Court was not in session Friday when Judge Delucchi asked for a copy of the video.

Mr. Peterson is charged with killing Laci Peterson and her unborn child in December 2002.

Ms. Peterson's brother, Brent Rocha, who testified last week, is a courtroom regular who usually sits in the front row. On Thursday, he and one of the jurors, an airport screener known publicly only as Juror No. 5, stopped to pick up their belongings at the same time after walking through the metal detectors at the courthouse entrance.

After an exchange that lasted several seconds, the two walked their separate ways, but not before television cameras recorded the juror saying, "could lose today."

It was unclear what the juror meant. Mr. Shaplen, who has examined the footage, said it was probably an innocent exchange.

"It was real clear that it was inadvertent," he said.

Judge Delucchi admonishes the jury daily not to speak with anyone regarding the case, but his instructions do not mention causal conversation with people associated with the trial.

Kathy Kellermann, a senior consultant with Trial Behavior Consulting, said that short, social contact often occurs between jurors and witnesses. In this case, Ms. Kellermann said, where the entire exchange is not audible on videotape, the judge will have to determine whether the juror somehow showed bias.

"It could be about a variety of things," Ms. Kellermann said. "The trouble is, when you're in the courthouse and you hear the word 'lose,' you jump to the context of a trial."

She added, "The real issue is would a juror willfully violate a judge's order? Not very often."

There are six alternates should Judge Delucchi decide to remove the juror.