

The Duty to Follow Instructions And the Presumption of Innocence

Your decision must be based only on the evidence presented during the trial. You must not be influenced in any way by either sympathy for or prejudice against the Defendants or for or against the Government.

You must follow the law as I explain it – even if you do not agree with the law – and you must follow all of my instructions as a whole. You must not single out or disregard any of the Court's instructions on the law.

The indictment or formal charge against any Defendant isn't evidence of guilt. The law presumes every Defendant is innocent. Thus each Defendant, even though charged, begins the trial with no evidence against him or her. The presumption of innocence alone is sufficient to find the Defendants not guilty and can be overcome as to a particular Defendant only if the Government proves, beyond a reasonable doubt, separately as to that Defendant, each element of the crime charged.

A Defendant does not have to prove his or her innocence or produce any evidence at all. A Defendant does not have to testify. Since a Defendant has the right to remain silent and may choose whether to testify, you cannot consider in any way while making your decision the fact that these Defendants chose not to testify.

The Government must separately prove each Defendant's guilt beyond a reasonable doubt. If it fails to do so, you must find that Defendant not guilty.

It is confusing because we say “guilty” and “not guilty.” But, “not guilty” is not the same as “actually innocent.” To find a Defendant is “guilty” of a crime that he or she is charged with, the jury must unanimously agree that the Government has proven, beyond a reasonable doubt, that that Defendant committed the crime that he or she is charged with having committed. In other words, the jury never reaches the question of whether or not a Defendant is actually innocent of a crime. Rather, the jury answers only the question, “Did the Government prove, beyond a reasonable doubt, that this Defendant was guilty of the crime that was charged in the indictment?” If the Government did prove it, then you must find the Defendant guilty of that crime. If the Government did not prove it, then the only verdict you can return as to that crime or charge against that Defendant is “not guilty,” because the Government has failed to carry its burden to prove that that Defendant is guilty of that crime or charge.

Definition of “Reasonable Doubt”

The Government's burden of proof is heavy, but it doesn't have to prove a Defendant's guilt beyond all possible doubt. The Government's proof only has to exclude any "reasonable doubt" concerning that Defendant's guilt.

A "reasonable doubt" is a real doubt, based on your reason and common sense after you have carefully and impartially considered all the evidence in the case.

“Proof beyond a reasonable doubt” is proof so convincing that you would be willing to rely and act on it without hesitation in the most important of your own affairs. If you are convinced that the Defendant [_____] has been proved guilty beyond a reasonable doubt, say so. If you are not convinced, say so. If you are convinced that the Defendant [_____] has been proved guilty beyond a reasonable doubt, say so. If you are not convinced, say so.

**Consideration of Direct and Circumstantial Evidence;
Arguments of Counsel; Comments by the Court**

As I said before, you must consider only the evidence that I have admitted in the case. Evidence includes the testimony of witnesses and the exhibits admitted. But, anything the lawyers say is not evidence and is not binding on you.

You should not assume from anything I have said that I have any opinion about any factual issue in this case. Except for my instructions to you on the law, you should disregard anything I may have said during the trial in arriving at your own decision about the facts.

Your own recollection and interpretation of the evidence is what matters.

In considering the evidence, you may use reasoning and common sense to make deductions and reach conclusions. You should not be

concerned about whether the evidence is direct or circumstantial.

"Direct evidence" is the testimony of a person who asserts that he or she has actual knowledge of a fact, such as an eyewitness.

"Circumstantial evidence" is proof of a chain of facts and circumstances that tend to prove or disprove a fact. There is no legal difference in the weight you may give to either direct or circumstantial evidence.

Credibility of Witnesses

When I say you must consider all the evidence, I do not mean that you must accept all the evidence as true or accurate. You should decide whether you believe what each witness had to say, and how important that testimony was. In making that decision, you may believe or disbelieve any witness, in whole or in part. That is, you may accept some, all, or none of any witness's testimony, just as you may reject some, all, or none of any witness's testimony. Also, the number of witnesses testifying concerning a particular point does not necessarily matter.

To decide whether you believe any witness, I suggest that you ask yourself a few questions:

- Did the witness impress you as a person who was telling the truth?
- Did the witness have any particular reason not to tell the truth?
- Did the witness have a personal interest in the outcome of the

case?

- Did the witness seem to have a good memory?
- Did the witness have the opportunity and ability to accurately observe the things he or she testified about?
- Did the witness appear to understand the questions clearly and answer them directly?
- Did the witness's testimony differ from other testimony or other evidence?

Confession or Statement of Defendant

If the Government offers evidence that a Defendant made a statement or admission to someone after being arrested or detained, you must consider that evidence with caution and great care.

You must decide for yourself (1) whether the Defendant made the statement, and (2) if so, how much weight to give to it. To make these decisions, you must consider all the evidence about the statement - including the circumstances under which it was made.

Credibility of Witnesses—Law Enforcement Officer

You have heard the testimony of one or more law enforcement officers. The fact that a witness is employed as a law enforcement officer does not mean that his testimony necessarily deserves more or less consideration or

greater or lesser weight than that of any other witness. You must decide, after reviewing all the evidence, whether you believe the testimony of each law enforcement witness and how much weight, if any, it deserves.

Testimony of Witness with Plea Agreement

You must consider some witnesses' testimony with more caution than others.

In this case, the Government has made a plea agreement with [#] witness[es], [_____ and _____], in exchange for [his, her, their] testimony. Such "plea bargaining" provides for the possibility of a lesser sentence than the witness would normally face. Plea bargaining is lawful and proper, and the rules of this court expressly provide for it.

But, a witness who hopes to gain more favorable treatment may have a reason to make a false statement in order to strike a good bargain with the Government.

So, while a witness of this kind may be entirely truthful when testifying, you should consider that testimony with more caution than the testimony of other witnesses.

Also, the fact that a witness has pleaded guilty to an offense is not evidence of the guilt of any other person.

Summary Witnesses and Charts

[] testified as a summary witness. [His, her] testimony was only for the purpose of assisting you to understand the evidence which was introduced in the record. [He, she] did not testify that [he, she] had any personal knowledge about any of the events which are relevant to these proceedings. The Court instructs you that, in assessing the credibility and weight of [his/her] testimony, you may consider the fairness or unfairness, as determined by you, of the exhibits [he/she] testified about and the partiality or impartiality, as determined by you, of [his, her] testimony.

Furthermore, charts and other summary materials utilized by the attorneys for the purpose of summarizing the evidence are only as good as the exhibits upon which they are based. They are an interpretation of the evidence by the party who submitted them. I caution you that it is for you to decide whether the charts correctly present the information set forth in the exhibits upon which they are based, and it is for you to decide whether to accept or reject, in whole or in part, a party's interpretation of those exhibits.

Impeachment of Witnesses Because of Inconsistent Statements or Felony Conviction

You should also ask yourself whether there was evidence that a witness testified falsely about an important fact. Also, ask yourself whether there was evidence that at some other time a witness said or did something, or didn't

say or do something, that was different from the testimony the witness gave during this trial.

To decide whether you believe a witness, you may consider the fact that the witness has been convicted (whether by guilty plea or by a jury verdict) of a felony or a crime involving dishonesty or a false statement. A felony is any crime for which the punishment could be more than one year imprisonment.

But, keep in mind that a simple mistake doesn't mean a witness was not telling the truth as he or she remembers it. People naturally tend to forget some things or remember them inaccurately. So, if a witness misstated something, you must decide whether it was because of an innocent lapse in memory or an intentional deception. The significance of your decision may depend on whether the misstatement is about an important fact or about an unimportant detail.

Stipulated Facts

The Government and the Defendant[s] [has/have] stipulated – that is, they have agreed – that certain facts are as stated in the stipulation. You must therefore treat those facts as having been proved.

Stipulated Testimony

The Government and the Defendant[s] [has/have] stipulated – that is, they have agreed – that if a certain witness were called as a witness, he or

she would testify in a particular way. That stipulated testimony has been read to you in court. You should consider the testimony that was read to you as being that witness' testimony, just as if it had been given in court from the witness stand.

Conspiracy: Co-Conspirator Acts and Statements

You may consider acts knowingly done and statements knowingly made by a Defendant's co-conspirators during the existence of the conspiracy and in furtherance of it as evidence pertaining to the Defendant even though the acts and statements were done or made in the absence of and without the knowledge of the Defendant. This includes acts done or statements made before the Defendant had joined an existing conspiracy, because a person who knowingly, voluntarily, and intentionally joins an existing conspiracy is responsible for all of the conduct of the co-conspirators from the beginning of the conspiracy.

Introduction to Indictment

The indictment in this case includes not only certain charges, but also a "Background" or what may be called an "introduction" in paragraphs [] through []. The indictment is not proof of anything and therefore is not proof that those statements are correct or true. Accordingly, you may not accept the statements in those paragraphs or anywhere else in the

indictment. Instead, you must determine the facts of this case from the evidence admitted at trial.

Offense Instructions

The indictment charges [_____] separate crimes, called “counts,” against each of the Defendants. Each count has a number. You’ll be given a copy of the indictment to refer to during your deliberations. The reason you are given a copy of the indictment is so that you can see what the charges against the Defendants are, because you are to decide, as to each particular charge, whether or not the government has proven beyond a reasonable doubt all of the required elements of that charge separately as to the Defendant [_____] and as to the Defendant [_____].

There are [___] conspiracy charges. They are found in Counts [___] and [___]. Counts [___] through [___] and Counts [___] through [___] charge that each of the Defendants committed what are called “substantive offenses,” specifically:

- (a) [set out]
- (b) [set out]
- (c) [set out]

I will explain the law governing these substantive offenses in a moment.

But first, note, that the Defendants are not charged in Counts [___] and [___] with committing a substantive offense – they are charged with conspiring

to commit those substantive offenses. I will give you specific instructions on conspiracy.

Count One

[Set out elements for each count]

[Set out Affirmative Defense Elements]

On or About; Knowingly; Willfully

You'll see that the indictment charges that a crime was committed "on or about" a certain date. The Government doesn't have to prove that the crime occurred on an exact date. The Government only has to prove beyond a reasonable doubt that the crime was committed on a date reasonably close to the date alleged.

The word "knowingly" means that an act was done voluntarily and intentionally and not because of a mistake or by accident.

The word "willfully" means that the act was committed voluntarily and purposely, with the intent to do something the law forbids; that is, with the bad purpose to disobey or disregard the law. While a person must have acted with the intent to do something the law forbids before you can find that the person acted "willfully," the person need not be aware of the specific law or rule that his or her conduct may be violating.

Caution: Punishment

Each count of the indictment charges a separate crime against [the/each] Defendant. You must consider each crime and the evidence relating to it separately. [And you must consider the case of each Defendant separately and individually.] If you find a Defendant guilty of one crime, that must not affect your verdict for any other crime [or any other Defendant].

I caution you that [the/each] Defendant is on trial only for the specific crimes charged in the indictment. You're here to determine from the evidence in this case whether [the/each] Defendant is guilty or not guilty of those specific crimes.

You must never consider punishment in any way to decide whether a Defendant is guilty. If you find a Defendant guilty, the punishment is for the Judge alone to decide later.

Duty to Deliberate

Your verdict, whether guilty or not guilty, must be unanimous – in other words, you must all agree. Your deliberations are secret, and you'll never have to explain your verdict to anyone.

Each of you must decide the case for yourself, but only after fully considering the evidence with the other jurors. So you must discuss the case with one another and try to reach an agreement. While you're discussing the case, don't hesitate to reexamine your own opinion and change your mind if

you become convinced that you were wrong. But do not give up your honest beliefs just because others think differently or because you simply want to get the case over with.

Remember that, in a very real way, you are judges – judges of the facts. Your only interest is to seek the truth from the evidence in the case.

Verdict

When you get to the jury room, choose one of your members to act as foreperson. The foreperson will direct your deliberations and will speak for you in court.

A verdict form has been prepared for your convenience.

[Explain verdict]

Take the verdict form with you to the jury room. When you've all agreed on the verdict, your foreperson must fill in the form, sign it, date it, and carry it out to the courtroom. Then you'll return to the courtroom.

If you wish to communicate with me at any time, please write down your message or question and give it to the court security officer. The court security officer will bring it to me and I'll respond as promptly as possible – either in writing or by talking to you in the courtroom. But I caution you not to tell me how many jurors have voted one way or the other at that time.

Note-taking

You've been permitted to take notes during the trial. Most of you – perhaps all of you – have taken advantage of that opportunity.

You must use your notes only as a memory aid during deliberations. You must not give your notes priority over your independent recollection of the evidence. And you must not allow yourself to be unduly influenced by the notes of other jurors.

I emphasize that notes are not entitled to any greater weight than your memories or impressions about the testimony.

Further Procedures/Schedule

Only twelve of you may deliberate. Therefore, I will now call the numbers of those of you who are alternates and who will not deliberate unless one of the regular jurors becomes unable to continue serving. Therefore, those of you who are alternate jurors will wait in chambers in [_____] until the verdict is announced. The alternate jurors are numbers ____, ____, ____, and ____.

I now direct all of the alternate jurors to go into the jury room to retrieve any items of personal property that you may have left in the jury room. Once you have done so, my courtroom deputy will take you to another room where you will wait while the regular jurors deliberate.

[Allow alternates to retrieve personal items;
Ms. Berry takes alternates to another room.]

Those of you who remain will now retire to the jury room to begin your deliberations. You may set your own schedule for breaks. Please keep me informed of the schedule you decide on.

GIVEN this the ____ day of _____, 20__.