IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
[ ] DIVISION

UNITED STATES OF AMERICA,	]
	]
Plaintiff,	]
	]
v.	]
	]
	]
	]
Defendant.	]
	]

COURT'S INSTRUCTIONS TO THE JURY (CRIMINAL)

Members of the Jury:

A jury trial has, in effect, two judges. I am one of the judges; the other judge is the jury. My duty is to preside over the trial, decide what evidence is proper for your consideration, and rule on legal and procedural issues. My duty at the end of the trial is to explain to you the rules of law that you must follow and apply in arriving at your verdict.

First, I will give some general instructions that apply in every case; for example, instructions about the burden of proof and how to judge the believability of witnesses. Then I will give you some specific rules of law about this particular case -- rules that you must follow in reaching your verdict --, and finally I will

explain to you the procedures you should follow in your deliberations.

Your Duty

Your duty will be to decide whether the Government has proven beyond a reasonable doubt all of the specific facts necessary to find the Defendant guilty of the crime charged in the Indictment.

As I have already told you, you must make your decision only on the basis of the testimony and other evidence presented here during the trial. You must not be influenced in any way by either sympathy or prejudice, for or against the Defendant, nor by sympathy or prejudice for or against the Government. Nor should you make your decision based on the personalities of the people involved or the ability of the attorneys. Trial is not a popularity contest. Your duty is to base your verdict solely upon the evidence, without prejudice or sympathy. You made that promise and took that oath before being accepted by the parties as jurors, and they have the right to expect nothing less.

You, as jurors, are the judges of the facts. Therefore, you have to decide from the evidence presented to you in court whether the Government has met its burden of proving the facts necessary to obtain a conviction. In doing so, your sworn duty is to follow all of the rules of law as I explain them to you.

You have no right to disregard or give special attention to any one

instruction, or to question the wisdom or correctness of any rule I may state to you. You must not substitute or follow your own notion or opinion as to what the law is or ought to be. Your duty is to apply the law as I explain it to you, regardless of whether you like the law or its consequences.

Presumption of Innocence

The Indictment or formal charge against [ ] is not evidence of guilt. Indeed, [ ], as any defendant, is presumed by the law to be innocent. The law does not require [ ] to prove his innocence or produce any evidence at all; **[**and because [ ] elected not to testify, you cannot consider that decision in any way during your deliberations.**]** The Government has the burden of proving [ ] guilty beyond a reasonable doubt, and if it fails to do so, you must acquit [ ]; that is, if the Government fails to convince you beyond a reasonable doubt as to [ ]'s guilt, you must find [ ] not guilty.

You will note that I did not say that you have to decide whether [ ] is guilty or *innocent*. The question of whether he is innocent is really not before you. You do not have to reach that question.

Beyond a Reasonable Doubt

In essence, your job is to sift through the evidence, determine what the facts are, and then decide whether those facts prove the requirements of the offense

beyond a reasonable doubt. If you are convinced beyond a reasonable doubt that the Government proved each required element of the offense, then your verdict should be guilty. On the other hand, if the Government fails to convince you beyond a reasonable doubt of the truth of any element of an offense, then you must find [ ] not guilty regardless of whether you personally believe he is innocent of the charges.

While the Government's burden of proof is a strict or heavy burden, the Government need not prove a Defendant's guilt *beyond all possible doubt*. The Government's proof is only required to exclude any "reasonable doubt" concerning the Defendant's guilt. A "reasonable doubt" is a real doubt, based upon reason and common sense after careful and impartial consideration of all the evidence in the case.

Proof beyond a reasonable doubt, therefore, is proof of such a convincing character that you would be willing to rely and act upon it without hesitation in the most important of your own affairs. If you are convinced that the Government has proven [ ] is guilty beyond a reasonable doubt, say so with a verdict of guilty. If you are not so convinced of [ ]'s guilt, say so with a verdict of not guilty.

Evidence

As I said earlier, in reaching your decision you must consider only the evidence that I have admitted in the case. The term "evidence" includes the testimony of the witnesses and the exhibits admitted or accepted in the record. Remember that anything the lawyers say is not evidence in the case. Your own recollection and interpretation of the evidence controls. What the lawyers say is not binding upon you. Also, you should not assume from anything I may have said that I have any opinion concerning any of the issues 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 concerning the facts.

While you should consider only the evidence, you are permitted to draw such reasonable inferences from the testimony and exhibits as you feel are justified in the light of your common sense and experience. In other words, you may make deductions and reach conclusions that reason and common sense lead you to draw from the facts that have been established by the evidence.

You should not be concerned about whether the evidence is direct or circumstantial. "Direct evidence" is the testimony of one who asserts actual knowledge of a fact, such as an eye witness. "Circumstantial evidence" is proof of a chain of facts and circumstances tending to prove, or disprove, any fact in

dispute. The law makes no distinction between the weight you may give to either direct or circumstantial evidence, or to the reasonable inferences you draw from direct or circumstantial evidence.

Credibility

Now, in saying that you must *consider* all of the evidence, I do not mean that you must *accept* all of 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. Also, the number of witnesses testifying concerning any particular dispute is not controlling.

In deciding whether you believe or do not believe any witness, I suggest that you ask yourself a few questions: Did the witness impress you as one 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 this case or a related case? Did the witness seem to have a good memory? Did the witness have the opportunity and ability to observe accurately the things about which he or she testified? 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? Was the witness candid, frank and forthright; or did the witness seem

to be evasive or suspect in some way? How did the way the witness testified on direct examination compare with how the witness testified on cross-examination? Was the witness's testimony consistent or contradictory? Did the witness appear to know what he or she was talking about? Did the witness strike you as someone who was trying to report his or her knowledge accurately?

These examples are the kinds of common sense questions you should ask yourselves in deciding whether a witness is or is not truthful. You are free to ask other common sense questions, as you see fit, during your deliberations in evaluating the credibility or weight of any testimony.

How much you choose to believe a witness may also be influenced by the witness's bias. Does the witness have a relationship with the Government or the Defendant that may affect how he or she testified? Does the witness have some interest, incentive, loyalty, or motive that might cause him or her to shade the truth? Does the witness have some bias, prejudice, or hostility that may cause him or her – consciously or unconsciously – to give you something other than a completely accurate account of the facts about which he or she testified?

[The greater a person's interest in the outcome of the case, the stronger the temptation might be a judge this person as an interested witness and the testimony as that of an interested witness. I must caution you, however, that the law states

that because someone is an interested witness should not automatically cause you to reject that person's testimony. The interest which that witness may have had should be considered in weighing the credibility and should be considered along with all of the other factors in judging credibility.**]**

[The fact that a witness has been convicted of a felony offense, or a crime involving dishonesty or false statement, is another factor you may consider in deciding whether you believe the testimony that witness gave in this trial.**]**

You should also ask yourself whether evidence was offered tending to prove that a witness testified falsely concerning some important fact; or whether evidence was offered that at some other time a witness said or did something, or failed to say or do something, that was different from the testimony he or she gave before you during this trial. You may also consider a witness's earlier silence or inaction that is inconsistent with his or her courtroom testimony to determine whether the witness's credibility has been tarnished.

When a witness is questioned about an earlier statement he or she may have made, **[**or earlier testimony he may have given**]**, such questioning is permitted to aid you in evaluating the truth or accuracy of the witness's testimony here at this trial.

Earlier statements made by a witness **[**or earlier testimony given by a

witness**]** are not ordinarily offered or received as evidence of the truth or accuracy of *those* statements, but are referred to for the purpose of giving you a comparison and aiding you in making your decision as to whether you believe or disbelieve the witness's testimony that you heard at *this* trial. **[**However, if the prior inconsistent statement of the witness was made under oath, you may also consider that sworn testimony as evidence in this case.**]**

Whether such prior statements of a witness are, in fact, consistent or inconsistent with his or her trial testimony is entirely for you to determine.

[The testimony of some witnesses must be considered with more caution than the testimony of other witnesses.

For example, a paid informer, or a witness who has been promised that he or she will not be charged or prosecuted, or a witness who hopes to gain more favorable treatment in his or her own case, may have a reason to make a false statement because the witness wants to strike a good bargain with the Government.

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

Government agents get no more credibility or believability on your part

because they are government agents or because they have a badge. On the other hand, they get no less credibility because of the fact that they are employed in an official government capacity.

You should keep in mind, of course, that a simple mistake by a witness does not necessarily mean that the witness was not telling the truth as he or she remembers it, because people naturally tend to forget some things or remember other things inaccurately. So, if a witness has made a misstatement, you need to consider whether it was simply an innocent lapse of memory or an intentional falsehood; and the significance of whether the misstatement was intentional may depend on whether it relates to an important fact or only to an unimportant detail.

[You have heard the testimony of law enforcement officers. The fact that a witness is employed by the state or federal government as a law enforcement officer does not mean that his testimony necessarily deserves more or less weight than that of an ordinary witness.

In fact, you should treat them as ordinary witnesses. You should consider the same questions of bias, stake in the outcome, behavior while testifying, strength of recollection, experience, and logical soundness of their testimony that you consider with any other witness.

You must decide, after reviewing all the evidence, whether to accept the

testimony of the law enforcement witnesses, and exactly what weight, if any, to give it.**]**

[In any criminal case, the Government must prove, of course, the identity of the Defendant as the person who committed the alleged crime.

When a witness points out and identifies a Defendant as the person who committed the crime, you must first decide, as with any other witness, whether that witness is telling the truth. Then, if you believe the witness was truthful, you must still decide how accurate the identification was. Again, I suggest that you ask yourself a number of questions: Did the witness have an adequate opportunity at the time of the crime to observe the person in question? What length of time did the witness have to observe the person? What were the prevailing conditions at that time in terms of visibility or distance and the like? Had the witness known or observed the person at earlier times?

You may also consider the circumstances surrounding the later identification itself, including, for example, the manner in which the Defendant was presented to the witness for identification, and the length of time that elapsed between the incident in question and the witness' identification of the Defendant.

After examining all of the testimony and evidence in the case, if you have a reasonable doubt as to the identity of the Defendant as the perpetrator of the

offense charged, you must find the Defendant not guilty.**]**

[Expert Testimony

When scientific, technical or other specialized knowledge might be helpful, a person who has special training or experience in that field is allowed to state an opinion about the matter.

But that does not mean you must accept the witness's opinion. As with any other witness's testimony, you must decide for yourself whether to rely upon the opinion.**]**

Defendant's Right Not to Testify

[A defendant has a right not to testify. You cannot consider [ ]'s decision not to testify in any way during your deliberations. His decision not to testify is not to be considered as an indication of guilt or lack of guilt. [ ] relied on his constitutional right not to testify. [ ], as any defendant, has the right to rely on the presumption of innocence and the fact that the burden of proof rests on the Government throughout the trial. I instruct you, ladies and gentlemen, that you cannot consider [ ]'s decision not to testify in any way during your deliberations.**]**

[If a Defendant does testify, however, you should decide in the same way as you would any other witness whether you believe the Defendant's testimony. You may consider evidence of a Defendant's previous conviction of a crime only in

deciding whether you believe or disbelieve the Defendant as a witness, but you must never consider a prior conviction as evidence of guilt of the crime(s) for which the Defendant is on trial.**]**

Offense Charged

The Indictment charges an offense against [ ] in the one count before you. For this crime or offense, the law assigns specific requirements, referred to as "elements," every one of which the Government must prove beyond a reasonable doubt. The law requires that the Government has the burden of proving *every* assigned element. If the Government fails to prove *one* element of a crime, its proof comes up short and you cannot convict the Defendant of that charge. You should consider separately every element of the charge, and the evidence pertaining to it.

Also, the question of punishment should never be considered by the jury in any way in deciding the case. If [ ] is convicted, the matter of punishment is for the Judge alone to determine later.

COUNT ONE:

Count One of the Indictment charges that [ ] violated [ ]. That statute makes it a federal crime to [ ].

You can find [ ] guilty of this crime only if the Government proves beyond a reasonable doubt the following facts:

[insert 11th Cir. proposed jury instructions for the crime].

[Possession

The law recognizes several kinds of possession. A person may have actual possession or constructive possession. A person may also have sole possession or joint possession.

A person who knowingly has direct physical control of something is then in "actual possession" of it.

A person who is not in actual possession, but who has both the power and the intention to later take control over something either alone or together with someone else, is in "constructive possession" of it.

If one person alone has possession of something, that possession is "sole." If two or more persons share possession, such possession is "joint."

Whenever the word "possession" has been used in these instructions it includes constructive as well as actual possession, and also joint as well as sole possession.**]**

[Defendant's Statement

When the Government offers testimony or evidence that a Defendant made a statement or admission to someone, after being arrested or detained, the jury should consider the evidence concerning such a statement with caution and great care.

You must decide (1) whether the Defendant made the statement and (2) if so, how much weight to give to it. In making these decisions you should consider all of the evidence about the statement, including the circumstances under which the Defendant may have made it.**]**

"Knowingly"

The word "knowingly," as that term is used in the Indictment and in these instructions, means that the act was done voluntarily and intentionally and not because of mistake or accident.

"Willfully"

The word "willfully," as that term is used in the indictment and in these instructions, means that the act was committed voluntarily and purposely, with the specific intent to do something the law forbids; that is, with bad purpose either to disobey or disregard the law.

"On or about"

You will note that the Indictment charges that certain offenses were committed "in or around" and "on or about" certain dates. The Government does not have to prove with certainty the exact date of the alleged offense. The evidence is sufficient if the Government proves beyond a reasonable doubt that the offense was committed on a date reasonably near the date alleged.

We will now hear summations, or closing arguments, from the attorneys. Remember that what the lawyers say is not evidence. I encourage you to test what the lawyers say against your own memory of the evidence. You are the judges of the facts – not the lawyers. You are the sole judges of the credibility of witnesses.

Final Instruction

Ladies and Gentlemen of the Jury:

I remind you once again that the arguments of counsel are not evidence in this case. The court allows counsel to make closing arguments or summations to help you recall the evidence and to help you tie the evidence together. You should not substitute what the lawyers say about the evidence for your own recollection. Neither should you decide this case based on the eloquence of these attorneys and their arguments. You must decide the case solely based on your view of the facts as you find them to be from the evidence, and applying the law to those facts as I have instructed you.

I caution you, members of the Jury, that you are here to determine from the evidence in this case whether the Defendant is guilty or not guilty. The Defendant is on trial only for the specific offense alleged in the one count of the Indictment.

Any verdict you reach in the jury room, whether guilty or not guilty, must be unanimous. In other words, to return a verdict you must all agree on each element of the count of the Indictment.

Your deliberations will be secret; you will never have to explain your verdict to anyone.

Your duty as jurors is to discuss the case with one another and consult with

one another in an effort to reach agreement, if you can do so. Each of you must decide the case for yourself, but only after full and impartial consideration of the evidence with the other members of the jury. While you are discussing the case, do not hesitate to reexamine your own opinion and change your mind, if you become convinced that your initial opinion was wrong. But do not give up your honest beliefs as to the weight or effect of the evidence solely because the others think differently, or merely to return a verdict.

In this case you have been permitted to take notes during the course of the trial, and most of you – perhaps all of you – have taken advantage of that opportunity and have made notes from time to time.

You will have your notes available to you during your deliberations, but you should make use of them only as an aid to your memory. In other words, you should not give your notes any precedence over your independent recollection of the evidence or the lack of evidence; and neither should you be unduly influenced by the notes of other jurors.

I emphasize that notes are not entitled to any greater weight than the memory or impression of each juror as to what the testimony may have been.

Remember, in a very real way you are judges – judges of the facts and judges of the credibility of the witnesses. Your only interest is to seek the truth

from the evidence in the case. Your duty is to decide whether the Government has proved the Defendant guilty beyond a reasonable doubt.

When you go to the jury room, you should first select one of your members to act as your foreperson. The foreperson will guide your deliberations and will speak for you here in court.

The court has prepared a verdict form for your convenience.

You will take the verdict form to the jury room. When you have reached unanimous agreement, you will have your foreperson fill in the verdict form, date and sign it. You will then knock on the jury room door and tell Ms. Calahan or the Court Security Officer that you have reached a verdict.

If you should desire to communicate with me at any time, please write down your message or question and pass the note to Ms. Calahan, who will bring it to my attention. I will then respond as promptly as possible, either in writing or by having you returned to the courtroom so that I can address you orally. I caution you, however, regarding any message or question you might send, that you should not tell me your numerical division at the time.

GIVEN this