UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

UNITED STATES OF AMERICA

v. CR No. 06-002-01/02 ML

ROBERT A. URCIUOLI and
FRANCES P. DRISCOLL

JURY INSTRUCTIONS

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PART I: GENERAL INSTRUCTIONS

1. INTRODUCTION

Members of the jury, we have now come to the end of this trial. This case, like all criminal cases, is a serious one. I say this because the defendants and the United States have a deep concern for your mature consideration of the evidence as presented and the law which I am about to give you.

Although you as the jury are the sole judges of the facts, you are duty bound to follow the law as I instruct you, and to apply that law to the facts as you find them to be from the evidence which has been presented during this trial. You are not to single out any one instruction as stating the law. Rather, you must consider these instructions in their entirety. You are not to be concerned with the wisdom of any rule of law, regardless of any opinion which you might have as to what the law ought to be. It would be a violation of your sworn duty to base your verdict upon any version of the law other than that which I am about to give to you.

You have been chosen and sworn as jurors in this case to try the issues of fact presented by the allegations of the indictment and the denials made by the "not guilty" pleas of the defendants. You are to perform this duty without bias or prejudice as to any party. The law does not permit jurors to be governed by sympathy, prejudice, or public opinion. The accused and the government are entitled to an impartial consideration of all the evidence. Moreover, the parties and the public expect that you will carefully and impartially consider all the evidence in the case, follow the law as stated by the Court, and reach a just verdict, regardless of the consequences.

The fact that the prosecution is brought in the name of the United States of America entitles the government to no greater consideration than that accorded to any other party to a

litigation. By the same token, it is entitled to no less consideration. All parties, whether the government or individuals, stand as equals at the bar of justice.

2. EVIDENCE RECEIVED IN THIS CASE

For the purpose of determining whether or not the government has sustained its burden of proof, you must evaluate all of the evidence. The evidence in this case consists of the sworn testimony of the witnesses, all exhibits received in evidence, and any facts to which the parties have stipulated.

Any proposed testimony or proposed exhibit to which an objection was sustained by the Court, as well as any testimony ordered stricken by the Court, must be entirely disregarded.

Anything you may have seen or heard outside the courtroom is not proper evidence and must be entirely disregarded.

3. INDICTMENT – DEFINED

An indictment is not evidence. This case, like most criminal cases, began with an indictment. You will have that indictment before you in the course of your deliberations in the jury room. The indictment was returned by a grand jury, which heard only the government's side of the case. The fact that the defendants have had an indictment filed against them is no evidence whatsoever of the guilt of any defendant. An indictment is nothing more than an accusation. It is a piece of paper filed with the Court to bring a criminal charge against a defendant. Here, the defendants have pleaded not guilty and have put in issue the charges alleged in the indictment. The government therefore has the burden of proving the allegations made against the defendants.

The fact that an indictment has been filed in this case does not give rise to a presumption of guilt. It does not even lead to an inference of guilt. The indictment simply brings this matter before you for determination. Beyond that, it has no significance whatsoever.

4. INFERENCES – DEFINED

In determining whether the government has sustained its burden of proof, you are to consider only the evidence. But in your consideration of the evidence, you are not limited to the statements of witnesses, or solely to what you see and hear as the witnesses testify. You are permitted to draw, from the facts which you find have been proven, such reasonable inferences as seem justified in light of your experiences.

Inferences are deductions or conclusions which reason and common sense lead you to draw from facts which have been established by the evidence in the case. You may not, however, draw an inference from another inference.

5. EVIDENCE – DIRECT AND CIRCUMSTANTIAL

There are two kinds of evidence: direct and circumstantial. Direct evidence is direct proof of a fact, such as testimony of an eyewitness that the witness saw something. Circumstantial evidence is indirect evidence, that is, proof of a fact or facts from which you could draw the inference, by reason and common sense, that another fact exists, even though it has not been proven directly. You are entitled to consider both kinds of evidence. The law permits you to give equal weight to both, but it is for you to decide how much weight to give to any evidence.

6. OBJECTIONS AND WEIGHT OF THE EVIDENCE

The fact that the Court may have admitted evidence over objection should not influence you in determining the weight that you will give such evidence. Nor should statements made by counsel, either for or against the admission of offered evidence, influence your determination of the weight that you will give the evidence if admitted. In other words, you should determine the weight that you will give such evidence on the basis of your own consideration of it and without regard to the statements of counsel concerning the admissibility of such evidence.

7. JURY'S RECOLLECTION CONTROLS

If any reference by the Court or by counsel to matters of evidence does not coincide with your own recollection, it is your recollection which should control during your deliberations.

8. PRESUMPTION OF INNOCENCE

It is a cardinal principle of our system of justice that every person accused of a crime is presumed to be innocent unless and until his or her guilt is established beyond a reasonable doubt. The presumption is not a mere formality. It is a matter of the utmost importance.

The presumption of innocence alone may be sufficient to raise a reasonable doubt and to require the acquittal of a defendant. Each defendant before you has the benefit of that presumption throughout the trial, and you are not to convict a defendant of a particular charge unless you are unanimously persuaded of that defendant's guilt on that charge beyond a reasonable doubt.

This presumption was with each defendant when the trial began and remains with each defendant even now as I speak to you and will continue with each defendant into your deliberations unless and until you are convinced that the government has proven a defendant's individual guilt beyond a reasonable doubt.

9. BURDEN OF PROOF

As I have said, the burden is upon the government to prove beyond a reasonable doubt that a defendant is guilty of the charge made against the defendant. It is a strict and heavy burden, but it does not mean that a defendant's guilt must be proved beyond all possible doubt. It does require that the evidence exclude any reasonable doubt concerning a defendant's guilt.

A reasonable doubt may arise not only from the evidence produced but also from a lack of evidence. Reasonable doubt exists when, after weighing and considering all the evidence, using reason and common sense, jurors cannot say that they have a settled conviction of the truth of the charge.

Of course, a defendant is never to be convicted on suspicion or conjecture. If, for example, you view the evidence in the case as reasonably permitting either of two conclusions–one that a defendant is guilty as charged, the other that the defendant is not guilty–you will find the defendant not guilty.

It is not sufficient for the government to establish a probability, though a strong one, that a fact charged is more likely to be true than not true. That is not enough to meet the burden of proof beyond a reasonable doubt. On the other hand, there are very few things in this world that we know with absolute certainty, and in criminal cases the law does not require proof that

overcomes every possible doubt.

I instruct you that what the government must do to meet its burden is to establish the truth of each element of each offense charged by proof that convinces you and leaves you with no reasonable doubt, and thus satisfies you that you can, consistently with your oath as jurors, base your verdict upon it. If you so find as to a particular charge against a defendant, you will return a verdict of guilty on that charge. If, on the other hand, you think there is a reasonable doubt about whether the defendant is guilty of a particular offense, you must give the defendant the benefit of the doubt and find the defendant not guilty of that offense.

10. DEFENDANT'S CONSTITUTIONAL RIGHT NOT TO TESTIFY OR INTRODUCE EVIDENCE

A defendant does not have to testify or introduce any evidence at all. This principle is related to the fact that the burden of proof is upon the government and not on the defendant.

A defendant in a criminal case need not say anything. It is the right of every defendant not to testify. This right is guaranteed by the Constitution. If a defendant chooses not to testify, you may not draw any adverse inference from that fact. By that I mean you may not say, "Well, he or she must have something to hide, otherwise he or she would have testified," or, "He or she must be guilty because he or she did not get up on the stand and tell me that he or she is not guilty." It is absolutely impermissible for you to draw such inferences in this case.

11. CONSIDER EACH DEFENDANT AND EACH COUNT SEPARATELY

It is your duty to give separate and personal consideration to the case of each defendant.

When you do so, you should analyze what the evidence in the case shows with respect to that particular defendant, leaving out of consideration entirely any evidence admitted solely against the other defendant. The fact that you return a verdict of guilty or not guilty as to one defendant on any count of the indictment should not, in any way, affect your verdict regarding the other defendant.

You must consider each charge separately. The fact that you find a defendant guilty or not guilty on one count does not mean that you should find the same defendant guilty or not guilty on any other count.

PART II: THE OFFENSES CHARGED

12. "IN OR ABOUT" – DEFINED

You will note that the indictment charges that the offenses were committed "in or about" or "on or about" certain dates. The proof need not establish with certainty the exact date of the alleged offense. It is sufficient that the evidence in the case establishes beyond a reasonable doubt that the offenses were committed on dates reasonably near the dates alleged in the indictment.

13. CHARGES CONTAINED IN THE INDICTMENT

The indictment in this case contains 37 counts or "charges." The defendants in this case are Robert Urciuoli and Frances Driscoll.

Counts 4 through 38 charge defendant Urciuoli with the commission of honest services mail fraud. Counts 4 through 38 pertain to mailings allegedly made or caused to be made by defendant Urciuoli.

Count 1 of the indictment charges that defendant Urciuoli conspired to commit an offense against the United States in violation of 18 U.S.C. § 371. Specifically, Count 1 charges that beginning in or about August of 1997, and continuing to on or about January 8, 2004, defendant Urciuoli conspired with Roger Williams Medical Center and John Celona to commit honest services mail fraud, in violation of 18 U.S.C. §§ 1341 and 1346.

Count 2 of the indictment charges defendant Frances Driscoll with violating Section 2, Title

18 of the United States Code. Specifically, Count 2 charges that defendant Driscoll aided and abetted the crime of honest services mail fraud. You need not attach any particular significance to the fact that the indictment does not contain a Count 3.

I remind you that a separate crime is alleged against one of the defendants in each count of the indictment and you must consider each alleged offense, and any evidence pertaining to it, separately. The fact that you find one defendant guilty or not guilty as to one of the offenses charged should not control your verdict as to the other offenses charged against that defendant or the other defendant.

14. COUNTS 4 THROUGH 38: MAIL FRAUD

Counts 4 through 38 of the indictment each charge that defendant Urciuoli committed honest services mail fraud, in violation of 18 U.S.C. §§ 1341 and 1346, by mailing or causing the mailing of certain checks to John Celona.

As I instructed you previously, you must consider each count and the evidence pertaining to it separately. The fact that you may find defendant Urciuoli guilty or not guilty on one count must not affect your verdict as to any other count.

15. 18 U.S.C. § 1341

A violation of section 1341 occurs when a person, "having devised or intending to devise any scheme or artifice to defraud..., places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service...."

16. 18 U.S.C. § 1346

Title 18, Section 1346 defines a "scheme or artifice to defraud" as including "a scheme or artifice to deprive another of the intangible right of honest services."

17. 18 U.S.C. § 1341 – ELEMENTS OF THE OFFENSE

To sustain its burden of proof on a charge of mail fraud, the government must prove each of the following elements beyond a reasonable doubt as to defendant Urciuoli:

First: That a scheme to defraud existed substantially as charged in the indictment;

Second: That the defendant knowingly and willfully participated in this scheme with the intent to defraud; and

Third: That in furtherance of this scheme, the defendant used or caused the use of the United States mail on or about the date alleged in the indictment.

18. "SCHEME TO DEFRAUD"

The first element of mail fraud is the existence of a scheme to defraud. A "scheme" includes any plan, pattern, or course of action.

The term "defraud" means to deprive another of something of value by means of deception or cheating. A scheme to defraud is ordinarily accompanied by a desire or purpose to bring about some gain or benefit to oneself or some other person or entity or by a desire or purpose to cause some loss to some person. It includes a scheme to deprive another of the intangible right of honest services.

Public officials have a duty to act in the public's interest. A scheme to deprive the public of the honest services of a public official is a scheme intended to cause a public official to act based upon his or her own personal interests rather than for the benefit of the public.

In this case, the indictment charges the existence of a scheme to deprive the citizens of Rhode Island of the honest services of John Celona.

19. "KNOWINGLY" AND "WILLFULLY" – DEFINED

The second element of the offense of mail fraud requires proof that defendant Urciuoli knowingly and willfully participated in the scheme with the intent to defraud.

A defendant acts "knowingly" if he was conscious and aware of his action, realized what he was doing or what was happening around him, and did not act because of ignorance, mistake, or accident.

An act is done "willfully" if it is done voluntarily and intentionally, and with the specific intent to do something the law forbids–that is to say, with bad purpose, either to disobey or disregard the law. Thus, if a defendant acted in good faith, he cannot be guilty of the crime alleged.

20. "INTENT TO DEFRAUD" – DEFINED

To act with an "intent to defraud" means to act willfully and with the specific intent to deceive or cheat. Thus, a defendant who acted in good faith cannot be guilty of the crime. The burden of proving intent, as with all other elements of the offense, rests with the government.

The government must prove both of the following types of intent beyond a reasonable

doubt:

First: That the defendant intended to cause the public official to deviate from the honest performance of his public duties; and

Second: That the defendant intended to deceive the public.

21. INTENT TO DEPRIVE OF HONEST SERVICES

In order to prove an intention on the part of defendant Urciuoli that John Celona deviate from the honest performance of his public duties, the government must prove, beyond a reasonable doubt, that defendant Urciuoli intended the payment to cause John Celona to alter his official acts, to change an official position which he would otherwise have taken, or to take official actions that he would not have taken but for the payments.

The government must prove beyond a reasonable doubt that defendant intended to influence or otherwise improperly affect John Celona's performance of his public duties and thereby to deprive the public of John Celona's honest services.

22. INTENT TO DECEIVE

In addition to proving that defendant Urciuoli intended to deprive the public of the honest services of John Celona, the government must also prove that the defendant intended to deceive the public. A person who intends to bribe a public official, and thus, to deprive the public of the official's honest services, does not necessarily also intend to deceive the public. The government bears the burden of proving beyond a reasonable doubt that defendant Urciuoli intended to conceal the payment itself from the public or intended to conceal or misrepresent to the public

the nature of the payment.

23. PROVING INTENT AND KNOWLEDGE

Intent or knowledge may not ordinarily be proven directly because there is no way of directly scrutinizing the workings of the human mind. In determining what the defendant knew or intended at a particular time, you may consider any statements made or acts done or omitted by the defendant and all other facts and circumstances received in evidence that may aid in your determination of the defendant's knowledge or intent. You may infer, but you certainly are not required to infer, that a person intends the natural and probable consequences of acts knowingly done or knowingly omitted. It is entirely up to you, however, to decide what facts are proven by the evidence received during this trial.

24. USE OF THE MAILS IN FURTHERANCE OF THE SCHEME

The use of the mails in furtherance of the scheme is an essential element of the offense of mail fraud. The use of the mails itself need not be false or fraudulent.

It is not necessary that the government prove all of the details alleged in the indictment concerning the precise nature and purpose of the scheme, or that the material sent by mail was itself false or fraudulent, or that the alleged scheme actually succeeded in defrauding anyone, or that the use of the mails was intended as the specific or exclusive means of accomplishing the alleged fraud.

What must be proved beyond a reasonable doubt is that defendant Urciuoli knowingly devised or intended to devise a scheme to defraud that was substantially the same as the one

alleged in the indictment, and that the use of the mail on or about the date(s) alleged was closely related to the scheme because defendant Urciuoli caused a check to be mailed in an attempt to execute or carry out the scheme. To "cause" the mail to be used is to act with knowledge that the use of the mail will follow in the ordinary course of business or where such use can reasonably be foreseen.

25. MAIL FRAUD: SUCCESS IMMATERIAL

The government need not prove that the scheme was successfully carried out. Nor is the government required to prove that the scheme was capable of success. The government need only show that the deprivation of honest services of a public official was intended by the schemer.

26. CONFLICT OF INTEREST – DISTINGUISHED

The government has charged honest services mail fraud based on a claim that John Celona was paid to perform certain official acts. Paying a legislator to perform political acts is not the same as employing a legislator in a job which creates a conflict of interest between the legislator's political duties and his employment. In order to prove honest services mail fraud the government must establish that the payments to John Celona were made for the specific purpose of influencing his actions on official matters.

27. STATE LAW: ETHICS COMMISSION

The Ethics Commission is an independent public agency created by amendment to the Rhode Island Constitution. The Ethics Commission adopts, enforces, and administers Rhode Island's code of ethics, which governs the conduct of its public officials, including legislators.

Legislators may, under Rhode Island law, seek guidance from the Ethics Commission, but Rhode Island law does not require them to seek such guidance. A legislator who seeks guidance from the Ethics Commission may do so by making a request in writing to the Ethics Commission for an advisory opinion. An advisory opinion from the Rhode Island Ethics Commission is an opinion as to whether proposed action is in compliance with the Rhode Island code of ethics.

28. MAIL FRAUD – SUMMARY

To summarize, to find defendant Urciuoli guilty of mail fraud, it is not necessary that the government prove all of the details alleged in the indictment concerning the precise nature and purpose of the scheme or that the material transmitted by mail was itself false or fraudulent or that the alleged scheme actually succeeded in defrauding anyone or that the use of the mail was intended as the specific or exclusive means of accomplishing the alleged fraud.

What must be proven beyond a reasonable doubt is that defendant Urciuoli knowingly devised or intended to devise a scheme to defraud that was substantially the same as the one alleged in the indictment, and that the use of the mail on or about the date alleged was closely related to the scheme because defendant Urciuoli caused a check to be mailed in an attempt to execute or carry out the scheme.

29. COUNTS 4 THROUGH 38

In Counts 4 through 38, the government must prove beyond a reasonable doubt that the listed checks were mailed to John Celona. The parties have stipulated that the listed checks were mailed to John Celona.

Count	Date of Check	Check Number	Amount
4	2/1/2001	1074	$3,569.24
5	2/27/2001	1075	$4,461.55
6	3//29/2001	1076	$3,569.24
7	4/27/2001	1080	$3,569.24
8	5/31/2001	1087	$4,461.55
9	6/29/2001	1088	$3,569.24
10	7/30/2001	1091	$4,461.55
11	9/17/2001	1003	$3,569.24
12	10/19/2001	1007	$3,569.24
13	11/6/2001	1009	$4,461.55
14	12/1/2001	1010	$3,569.24
15	1/3/2002	1012	$3,569.24
16	1/30/2002	1014	$3,569.24
17	3/1/2002	1016	$5,000.00
18	3/27/2002	1018	$4,000.00
19	4/29/2002	1020	$5,000.00
20	6/26/2002	1024	$4,000.00

21	7/30/2002	1026	$5,000.00
22	8/26/2002	1027	$4,000.00
23	9/24/2002	1028	$4,000.00
24	10/24/2002	1029	$5,000.00
25	11/25/2002	1030	$4,000.00
26	12/23/2002	1031	$5,000.00
27	1/28/2003	1032	$4,000.00
28	2/24/2003	1033	$4,000.00
29	3/24/2003	1034	$4,000.00
30	4/25/2003	1035	$5,000.00
31	5/27/2003	1036	$4,000.00
32	6/20/2003	1037	$4,000.00
33	7/23/2003	1038	$5,000.00
34	8/25/2003	1039	$4,000.00
35	9/22/2003	1040	$5,000.00
36	10/23/2003	1041	$4,000.00
37	11/24/2003	1042	$4,000.00
38	1/8/2004	1043	$5,000.00

30. COUNT I: CONSPIRACY

Count 1 of the indictment alleges that defendant Urciuoli, in violation of 18 U.S.C. § 371, engaged in a conspiracy to commit a federal offense, specifically, that defendant Urciuoli conspired to commit honest services mail fraud. The indictment alleges that:

> From in or about August of 1997, and continuing until on or about January 8, 2004, in the District of Rhode Island, defendants URCIUOLI . . . and RWMC, knowingly, wilfully, and unlawfully combined, conspired, confederated, and agreed with each other, and with Celona, to commit an offense against the United States, specifically, having devised and intending to devise a scheme and artifice to defraud the State of Rhode Island and its citizens of their intangible right to the honest services of John Celona . . . for the purpose of executing that scheme and artifice, to knowingly and willfully cause to be place[d] in an authorized depository for mail, according to the directions thereon, to the person to whom it was addressed, matter to be delivered by the United States Postal Service, in violation of 18 U.S.C. § § 1341 and 1346.

31. 18 U.S.C. § 371

Title 18, Section 371 provides, in pertinent part, that "[i]f two or more persons conspire...to commit any offense against the United States...and one or more of such persons do any act to effect the object of the conspiracy," each is guilty of a violation of 18 U.S.C. § 371.

32. 18 U.S.C. § 371 – ELEMENTS OF THE OFFENSE

To sustain its burden of proof as to the offense charged in Count I, the government must prove each of the following elements beyond a reasonable doubt as to defendant Urciuoli:

First: That the agreement, as set forth in the indictment, and not some other agreement, existed between two or more persons;

Second: That defendant Urciuoli knowingly and willfully joined in that agreement; and,

Third: That one of the conspirators committed at least one of the overt acts set forth in the indictment in an effort to further the purpose of the conspiracy.

33. CONSPIRACY – GENERALLY

A conspiracy is an agreement or combination of two or more persons to violate the law. It is a kind of partnership in which each member of the conspiracy, just by being a member of the conspiracy, becomes an agent of every other member of the conspiracy. What this means is that each conspirator not only acts for himself, but also acts for the other conspirators. In other words, a conspiracy is a combination or an agreement to disobey or disregard the law to achieve the unlawful purpose.

In this case, the indictment alleges that there was an agreement between defendant Urciuoli, Roger Williams Medical Center, and John Celona to commit mail fraud. It is not necessary that the government prove that the unlawful purpose of the conspiracy actually was achieved in order to prove that the conspiracy existed. It must prove, however, that defendant Urciuoli, Roger Williams Medical Center and John Celona in some way or manner, or through some means, came to a mutual understanding to accomplish their common unlawful purpose and that they did so knowingly, willfully, and intentionally.

You are instructed, however, that a corporate officer, director, employee, or agent, acting alone on behalf of the corporation, cannot be convicted of conspiring with the corporation.

Consequently, defendant Urciuoli may not be convicted of conspiring solely with Roger Williams Medical Center.

34. CONSPIRACY – TIME PERIOD

The indictment charges that the conspiracy existed from in or about August of 1997 to on or about January 8, 2004. In determining whether defendant Urciuoli conspired as charged, you need not find the precise time frame in which the conspiracy was in existence. Instead, it is sufficient that you find that a conspiracy was in existence for any period of time reasonably described by the period alleged in the indictment, and that defendant Urciuoli was a member of that conspiracy during that period.

35. ROGER WILLIAMS MEDICAL CENTER – A CORPORATION

The indictment alleges that Roger Williams Medical Center conspired to commit honest services mail fraud. Roger Williams Medical Center is a corporation. A corporation is a legal entity that may act only through its agents. The agents of a corporation are its officers, directors, employees, and certain others who are authorized by the corporation to act for it. Although the corporation is named as a co-conspirator in the indictment, the corporation is not a defendant in this case. You should attach no significance to the fact that Roger Williams Medical Center is not a defendant in this case.

36. EXISTENCE OF THE CONSPIRACY

In your consideration of the conspiracy offense alleged in Count I, you should first determine, from all of the testimony and evidence in the case, whether or not a conspiracy existed as charged.

A conspiracy is an agreement, spoken or unspoken. The conspiracy does not have to be a formal agreement or plan in which everyone involved sat down together and worked out all the details. However, the government must prove beyond a reasonable doubt that those who were involved shared a general understanding about the crime. Mere similarity of conduct among various people, or the fact that they may have associated with each other or discussed common aims and interests, does not necessarily, in and of itself, establish proof of the existence of a conspiracy, but you may consider such factors.

Since a conspiracy, by its very nature, is often secret, neither the existence of the common agreement or scheme nor the fact of a defendant's participation in it need be proven by direct evidence. Both may be inferred from the circumstances of the case and course of dealings between defendant Urciuoli, Roger Williams Medical Center and John Celona.

37. MEMBERSHIP IN CONSPIRACY

In addition to proving that the conspiracy charged in the indictment existed, the government must also prove beyond a reasonable doubt that the defendant Urciuoli willfully joined in that agreement. To act "willfully" means to act voluntarily and intelligently, and with the specific intention that the underlying crime–here, honest services mail fraud–be committed.

In other words, to act willfully means to act with bad purpose, either to disobey or disregard the law–not to act by ignorance, accident, or mistake.

Proof that defendant Urciuoli willfully joined in the agreement must be based upon evidence of the defendant's own words and/or actions. You need not find that defendant Urciuoli agreed specifically to or knew about all of the details, or the scope, of the conspiracy, or that defendant Urciuoli participated in each act of the agreement or played a major role. However, the government must prove beyond a reasonable doubt that defendant Urciuoli knew the essential features and general aims of the venture. On the other hand, a person who has no knowledge of a conspiracy, but happens to act in a way that furthers some object or purpose of the conspiracy, does not thereby become a conspirator.

Mere knowledge of or acquiescence in an unlawful plan, without participation in it, is not sufficient. More is required under the law. What is necessary is that a defendant participated with knowledge of the purposes or objectives of the conspiracy and with the intention of aiding in the accomplishment of those objectives.

The extent of a defendant's participation in a conspiracy has no bearing on the issue of that defendant's guilt. A conspirator's liability is not measured by the extent or duration of that conspirator's participation. Each conspirator may perform separate and distinct acts and may perform them at different times. Some conspirators play major roles, while others play minor parts in the scheme. An equal role is not what the law requires. Even a single act may be sufficient to draw a defendant within the ambit of a conspiracy if the act is done with the intention of agreeing to join the conspiracy and the intention of accomplishing the conspiracy's unlawful purpose.

38. INTENT

To establish that defendant Urciuoli willfully joined in the conspiracy charged in the indictment, the government must prove two types of intent beyond a reasonable doubt: (1) an intent to agree; and (2) an intent that the underlying crime, in this case, honest services mail fraud, be committed. The government need not prove that defendant Urciuoli agreed to commit the underlying offense personally. It is sufficient that defendant Urciuoli intended that the offense be committed, if not by himself, then by a co-conspirator. An individual's intent may be inferred from all of the surrounding circumstances.

39. CONSIDERATION OF ACTS AND STATEMENTS OF CO-CONSPIRATORS

In deciding whether defendant Urciuoli was a member of the conspiracy, you should first consider the evidence of defendant Urciuoli's own acts and statements. You may also consider any other evidence in the case as it bears on the issue of defendant Urciuoli's membership. Specifically, you may consider the acts and statements of the other alleged co-conspirators, even if defendant Urciuoli was not present at the time the acts were done or the statements were made. However, you may do so only if you find that defendant Urciuoli was a member of the conspiracy at the time the acts were done or the statements made, and only if you find that the acts were done and the statements were made by a person whom you find to be a member of the conspiracy during the conspiracy's existence and in furtherance of one it its purposes. If the acts were performed or the statements were made at a time when defendant Urciuoli was not a member of the conspiracy, or were performed or made by someone whom you do not find to have been a

member of the conspiracy, or if they were not done or said in furtherance of the conspiracy, then they may be considered as evidence only against the conspiracy member who did or said them and not against defendant Urciuoli. You are instructed that in this case there are only two natural persons alleged to have entered into the agreement described in the indictment, defendant Urciuoli and John Celona.

40. "OVERT ACT" REQUIREMENT

In order to prove a conspiracy, the government must prove that, after the conspiracy was entered, one of the members of the conspiracy committed an overt act in an effort to accomplish some purpose of the conspiracy. In this case, paragraphs 21 through 94 of the indictment set forth the overt acts alleged to have been committed in furtherance of the conspiracy charged. Several numbered paragraphs and some words or sections of the numbered paragraphs have been eliminated from the indictment. You need not attach any particular significance to the fact that certain numbered paragraphs or portions of some of the paragraphs have been eliminated from the indictment.

An "overt act" is any act knowingly committed by one or more of the conspirators in an effort to accomplish some purpose of the conspiracy. Only one overt act has to be proven. The overt act need not itself be a crime. The government is not required to prove that defendant Urciuoli personally committed or knew about the overt act. It is sufficient if one conspirator committed one overt act at some time during the period of the conspiracy. However, you must

unanimously agree as to which overt act alleged in the indictment has been proven beyond a reasonable doubt.

41. CONSPIRACY – SUCCESS IMMATERIAL

The government does not have to prove that the conspiracy succeeded or that its object was achieved. The crime of conspiracy is complete upon the agreement to commit the underlying crime and the commission of one overt act.

42. COUNT 2: AIDING AND ABETTING

The indictment charges defendant Frances Driscoll with a violation of 18 U.S.C. § 2, that is aiding and abetting the crime of honest services mail fraud. To "aid and abet" means to intentionally help someone else commit a crime. To establish aiding and abetting, the government must prove beyond a reasonable doubt:

First, that someone else devised a scheme to deprive the citizens of Rhode Island of the honest services of John Celona;

Second, that defendant Driscoll consciously shared the other person's knowledge of the scheme and its fraudulent purpose, that she intended to help the other person, and that she willfully took part in the endeavor, seeking to make it succeed.

An act is done "willfully" if done voluntarily and intentionally with the intent that something the law forbids is done – that is to say with bad purpose, either to disobey or disregard the law.

Defendant Driscoll need not execute the honest services fraud, be present when it is executed, or be aware of the details of its execution to be guilty of aiding and abetting. A general suspicion that an unlawful act may occur or that something criminal is happening is not enough. Mere presence when the fraudulent scheme is being executed and knowledge that honest services fraud is being committed are also not sufficient to establish aiding and abetting. In order for the government to sustain its burden on the charge that defendant Driscoll aided and abetted the crime of honest services mail fraud, the government must prove beyond a reasonable doubt that someone else devised a scheme to deprive the citizens of Rhode Island of the honest services of John Celona and that defendant Driscoll consciously shared the other person's knowledge of the scheme and its fraudulent purpose and that she intended to help the other person, and that she willfully took part in the endeavor, seeking to make it succeed.

43. RELIANCE ON ADVICE OF COUNSEL

You have heard evidence that the defendants received advice from lawyers and you may consider that evidence in deciding whether the defendants acted willfully and knowingly.

The mere fact that the defendants may have received legal advice does not, in itself, necessarily constitute a complete defense. Instead, you must ask yourself whether the defendants honestly and in good faith sought the advice of a lawyer as to what he or she may lawfully do; whether he or she fully and honestly laid all the facts before his or her lawyer, and whether in good faith he or she honestly followed such advice, relying upon it and believing it to be correct. In short, you should consider whether, in seeking and obtaining advice from a lawyer, a defendant intended that his or her acts shall be lawful. If he or she did so, it is the law that a

defendant cannot be convicted of a crime which involves willful and unlawful intent, even if such advice were an inaccurate construction of the law.

On the other hand, no one can willfully and knowingly violate the law and excuse him or herself from the consequences of his or her conduct by pleading that he or she followed the advice of his or her lawyer.

Whether a defendant acted in good faith for the purpose of seeking guidance as to the specific acts in this case, and whether he or she made a full and complete report to his or her lawyer, and whether he or she acted substantially in accordance with the advice received, are questions for you to determine.

PART III: CONSIDERATION OF THE EVIDENCE

44. EXHIBITS

Exhibits admitted into evidence by the Court are properly before you, and will be available to you during your deliberations. An exhibit marked by the Court for identification is not evidence in the case unless or until it was admitted by the Court as a full exhibit. If it has not been admitted as a full exhibit, you may not consider it. If it was admitted, however, it is just as much a part of the evidence in the case as the testimony which you have heard from the witness stand.

45. STIPULATIONS

The evidence in this case includes facts to which the lawyers have agreed or stipulated. A stipulation means simply that the government and the defendant accept the truth of a particular proposition or fact. Since there is no disagreement, there is no need for evidence apart from the stipulation. You may accept the stipulation as fact and give it whatever weight you choose.

46. REMARKS OF COUNSEL

Remarks, statements, and questions by counsel are not evidence and you are not to consider them as evidence during your deliberations. Neither should you permit objections by counsel to the admission of evidence, or the rulings of the Court, to create any bias or prejudice toward counsel or the party whom he represents. It is the duty of counsel for both sides to represent their clients vigorously and to defend their client's rights and interests. In the

performance of that duty, counsel freely may make objection to the admission of offered evidence, or to any other ruling of the Court, and should not be penalized for doing so.

47. CONDUCT OF COURT AND COUNSEL

If during trial, or in instructing you, I have said or done anything that has caused you to believe that I was indicating an opinion as to what the facts are in this case, you should put that belief out of your mind. I did not intend to indicate any such opinion. In fact, I try not to have an opinion about the case because you are the sole and exclusive judges of the facts.

In determining the facts, you are to consider only that evidence which has properly been placed before you. It is the Court's duty to pass upon the admissibility of offered evidence, that is, to decide whether or not offered evidence should be considered by you. Evidence admitted by the Court is properly before you for your consideration; evidence which the Court has refused to admit, or may have stricken from the record after you heard it, is not a proper subject for your deliberations and you should not consider it.

48. EVIDENCE ADMITTED FOR A LIMITED PURPOSE

In some instances, evidence has been admitted for a limited purpose or against only one defendant. You must consider such evidence only in the manner in which I have instructed you and not for any other purpose.

PART IV: CREDIBILITY OF WITNESSES

49. TESTIMONY OF WITNESSES

The law does not require you to accept or credit the evidence admitted. In determining what evidence you will accept, you must make your own evaluation of the testimony given by each of the witnesses, and the weight you choose to give to his or her testimony.

In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe everything a witness says or only part of it or none of it.

In deciding what to believe, you may consider a number of factors, including the following: (1) the witness's ability to see or hear or know the things the witness testifies to; (2) the quality of the witness's memory; (3) the witness's manner while testifying; (4) whether the witness has an interest in the outcome of the case or any motive, bias, or prejudice; (5) whether the witness is contradicted by anything the witness said or wrote before trial or by other evidence; and (6) how reasonable the witness's testimony is when considered in light of other evidence which you believe.

Inconsistencies or discrepancies in the testimony of a witness or between the testimony of different witnesses may or may not cause you to disbelieve or discredit such testimony. Two or more persons witnessing an incident or a transaction may simply see or hear it differently. Innocent misrecollection, like failure of recollection, is not an uncommon experience. In weighing the effect of a discrepancy, however, always consider whether it pertains to a matter of importance or an insignificant detail and consider whether the discrepancy results from innocent error or from intentional falsehood.

The testimony of a witness may be discredited or impeached by showing that he or she previously made statements which are different than or inconsistent with his or her testimony here in court. These statements may be used to impeach the credibility of that witness. It is within your province to assess the credibility, if any, to be given the testimony of a witness who has made prior inconsistent or contradictory statements.

PART V: THE DELIBERATIONS AND VERDICT

50. UNANIMOUS VERDICT – JURY CONDUCT

To render a verdict, all twelve of you must agree, that is, your verdict must be unanimous. Therefore, during your deliberations and in your consideration of the evidence, you should exercise reasonable and intelligent judgment. It is not required that you yield your view simply because a majority holds to the contrary view, but in pursuing your deliberations, you should keep your minds reasonably open with respect to any point in dispute so that you will not be prevented from achieving a unanimous verdict due to mere stubbornness. It is your right, however, to maintain your view. The vote of each juror is as important as the vote of any other juror, and you need not give up your view, sincerely held, simply because a majority holds to the contrary view.

Do not approach your consideration of the case in an intellectual vacuum. You are not required to disregard your experiences and observations in the ordinary everyday affairs of life. Indeed, your experiences and observations are essential to your exercise of sound judgment and discretion, and it is your right and duty to consider the evidence in light of such experiences and observations. It is hoped and anticipated that you will sift all of the evidence in this case through maturity and common sense.

Of course, you should not permit prejudice, sympathy, or compassion to influence you. All that any party is entitled to, or expects, is a verdict based upon your fair, scrupulous, and conscientious examination of the evidence and an application of the law as I have instructed you to that evidence.

51. COMMUNICATIONS BETWEEN COURT AND JURY DURING DELIBERATIONS

During your deliberations, if you need further instruction or assistance by the Court in any way, I ask that, through your foreperson, you reduce such requests or questions as you may have to writing. The foreperson may then hand such written request or question to the marshal in whose charge you will be placed. The marshal will bring any written questions or requests to me. I will attempt to fulfill your request or answer your question. Other than the method outlined, please do not attempt to communicate privately or in any other way with the Court.

Bear in mind also that you are never to reveal to any person–not even to the Court–how the jury stands, numerically or otherwise, on the question of whether the accused is guilty or not guilty, until after you have reached a unanimous verdict.