JURY

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

UNITED STATES OF AMERICA	)	
	)	
v.	)	Cr. No. 08-34-02-S
	)	
ROBERTO VALERIO	)	

JURY INSTRUCTIONS

Introduction

At this time, it is my duty to instruct you on the law applicable to this case. You must accept the rules of law that I give you and apply them to the facts in this case as you find those facts to be.

In applying the law that I am about to explain to you in these instructions, you must consider the instructions as a whole. You should not choose one part and disregard another. You must accept and apply the law as I give it to you in its entirety.

You must accept and apply the rules of law that I give to you whether you agree with them or not. It would be a violation of the oath you took as jurors to base a decision on any version of the law other than that contained in my instructions just as it would be a violation of that oath to return a decision upon anything but the evidence in this case. It is not up to you to decide what the law is or should be. Your duty is to apply the law as I explain it to you.

You should not worry about memorizing or writing down all of the instructions as I state them, because I will send into the jury room a written copy of my instructions. However, you must know that the law is as I will give it to you from the bench; the written copy is merely a guide to assist you.

Presumption of Innocence

As I have previously told you during the course of this trial, the Defendant is presumed to be innocent of the accusations against him. This presumption of innocence remains with the Defendant unless and until the Government presents evidence satisfying you beyond a reasonable doubt that the Defendant is guilty.

The presumption of innocence is sufficient to require a not guilty verdict unless you find that such evidence has been presented.

If you find that the Government has proved this Defendant guilty beyond a reasonable doubt, the presumption of innocence disappears and is of no further avail to him. However, until that time, the presumption remains with the Defendant.

Defendant's Constitutional Right Not to Testify

Roberto Valerio has a constitutional right not to testify and no inference of guilt, or of anything else, may be drawn from the fact that he did not testify. For any of you to draw such an inference would be wrong; indeed, it would be a violation of your oath as a juror.

Proof of All Elements

I will shortly explain the offense with which the Defendant is charged and the elements the Government must prove in order to establish that the Defendant is guilty of that offense.

In order for the Government to prove the Defendant guilty of an offense, it must convince you, beyond a reasonable doubt, that it has proved each and every element of that offense. Possibilities or even probabilities are not sufficient.

If the Government fails to prove any one or more elements of an offense beyond a reasonable doubt, you must find the Defendant not guilty of that particular offense.

On the other hand, if you are convinced, beyond a reasonable doubt, that all elements of an offense with which the Defendant has been charged have been proved, then you should find the Defendant guilty of that offense.

Bear in mind that the requirement that the Government prove every element of an offense with which a Defendant is charged does not mean that the Government is required to prove every statement contained in the indictment.

What it means is that the Government must prove facts sufficient to prove all of the elements of the offense with which the Defendant is charged as I have explained them.

Reasonable Doubt

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 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.

Concluding my instructions on the burden, then, I instruct you that what the Government must do to meet its heavy burden is to establish the truth of each part 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 the 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.

Indictment - Effect

You will have the indictment with you in the jury room to help you remember the precise nature of the charges against [redacted] Defendant.

I remind you, once again, that an indictment is nothing more than an accusation. It should not be considered as evidence of guilt. It may not even be the basis of an inference of guilt. All that it does is to bring this matter before you for determination. Beyond that, it has no significance, whatever. It merely sets forth the elements of the offenses which the Government must prove beyond a reasonable doubt.

Now you have will also have the indictment of the Defendant's alleged co-conspirators, Government's Exhibit 80. I am also instructing you that this exhibit may not be considered as evidence of guilt. The purpose for which it was admitted was to provide you with information about the each of the alleged co-conspirators' plea agreements.

Summary of the Charges

The superceding indictment contains ten counts directed at the Defendant. Count I charges the Defendant with conspiring to commit fraud in connection with access devices, beginning in or about April 2006 and continuing until in or about February 2008. Counts II-V and Count VII charge the Defendant with counterfeit access device fraud for knowingly and with the intent to defraud, produce, use, and traffic in one or more counterfeit access devices, on diverse occasions from on or about March 23, 2007 to on or about August 17, 2007. Counts VIII-XI charge the Defendant aggravated identity theft for knowingly transferring, possessing, and using, without lawful authority, a means of identification of another person during and in relation to the commission of access device fraud and conspiracy to commit access device fraud, on diverse occasions from on or about March 23, 2007 to on or about August 17, 2007.

Each count of the indictment is considered to be a separate offense charged against the Defendant. You are to consider and decide each count separately and on its own merits. The fact that you may find the Defendant guilty or not guilty as to one of the offenses charged should not control or have any bearing whatsoever on your finding as to any other offense charged in the indictment.

Count I

(Conspiring to Commit Fraud in Connection with Access Devices)

Defendant is accused of conspiring to knowingly and with the intent to defraud, produce, use, and traffic in counterfeit access devices and unauthorized access devices. It is against federal law to conspire with someone to commit this crime.

For you to find the Defendant guilty of conspiracy, you must be convinced that the government has proven each of the following things beyond a reasonable doubt, as to the Defendant:

First, that the agreement charged in the indictment, and not some other agreement or agreements, existed between at least two people, including the Defendant, to commit access device fraud as charged in the indictment;

Second, that the Defendant willfully joined in that agreement;

Third, that one of the conspirators committed an overt act during the period of the conspiracy in an effort to further the purpose of the conspiracy.

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. But 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 establish proof of the existence of a conspiracy, but you may consider such factors.

To act "willfully" means to act voluntarily and intelligently and with the specific intent that the underlying crime be committed—that is to say, with bad purpose, either to disobey or disregard the law—not to act by ignorance, accident or mistake. The government must prove two types of intent beyond a reasonable doubt before the Defendant can be said to have willfully joined a conspiracy: an intent to agree and an intent, whether reasonable or not, that the underlying crime be committed. Mere presence at the scene of a crime is not alone enough, but you may consider it among other factors. Intent may be inferred from the surrounding circumstances.

Proof that the Defendant willfully joined in the agreement must be based upon evidence of his own words and/or actions. You need not find that the Defendant agreed specifically to or knew about all the details of the crime, or knew every other co-conspirator or that he participated in each act of the agreement or played a major role. But the government must prove beyond a reasonable doubt that he knew the essential features and general aims of the venture. Even if the Defendant was not part of the agreement at the very start, he can be found guilty of conspiracy

if the government proves that he willfully joined the agreement later. On the other hand, a person who has no knowledge of a conspiracy, but simply happens to act in a way that furthers some object or purpose of the conspiracy, does not thereby become a conspirator.

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 government is not required to prove that the Defendant 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.

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

Counts II-V and VII

(Counterfeit Access Device Fraud)

The Defendant is charged in Counts II-V and Count VII of the superseding indictment with production, use, or trafficking in counterfeit access devices in violation of Section 1029(a)(1) of Title 18 of the United States Code. In order for the Defendant to be found guilty of these charges, the government must prove each of the following elements beyond a reasonable doubt:

First, that the Defendant did knowingly use, produce, or traffic in a counterfeit access device;

Second, that the Defendant acted with the intent to defraud;

Third, the Defendant's conduct affected interstate or foreign commerce.

The term "access device" means any card, plate, code, account number, electronic serial number, mobile identification number, personal identification number, or other telecommunications service, equipment, or instrument identifier, or other means of account access that can be used alone or in conjunction with another access device to obtain money, goods, services or any other thing of value, or that can be used to initiate a transfer of funds other than a transfer originated solely by paper instrument. It includes credit cards.

The term "counterfeit access device" means any access device that is counterfeit, fictitious, altered, or forged, or an

identifiable component of an access device or a counterfeit access device.

The term "unauthorized access device" means any access device that is lost, stolen, expired, revoked, canceled, or obtained with intent to defraud.

The term "produce" includes design, alter, authenticate, duplicate, or assemble.

The term "traffic" means transfer, or otherwise dispose of, to another, or obtain control of with intent to transfer or dispose of.

To act with "intent to defraud" means to act with the intent to deceive or cheat someone. Good faith on the part of the Defendant is a complete defense to a charge of credit card fraud. If the Defendant actually believed in good faith that he was acting properly, even if he was mistaken in that belief, and even if others were injured by his conduct, there would be no crime. An honest mistake in judgment does not rise to the level of criminal conduct. A Defendant does not act in good faith if, even though he or she honestly holds a certain opinion or belief, he or she also acted with the purpose of deceiving others. While the term good faith has no precise definition, it means among other things a belief or opinion honestly held, an absence of malice or ill will, and an intention to avoid taking unfair advantage of another. The burden is on the government to prove fraudulent

intent and consequent lack of good faith beyond a reasonable doubt. The defendant is under no obligation to prove good faith.

Conduct "affects" interstate or foreign commerce if the conduct has a demonstrated connection or link with such commerce. It is not necessary for the government to prove that the Defendant knew or intended that his conduct would affect commerce; it is only necessary that the natural consequences of his conduct affected commerce in some way.

Count VIII-XI

(Aggravated Identity Theft)

The Defendant is charged in Counts VIII-XI of the superseding indictment with aggravated identity theft. To find the Defendant guilty of each of those counts, you must find that the government has proven each of the following elements beyond a reasonable doubt:

First, that the Defendant committed the underlying crimes of access device fraud or conspiracy to commit access device fraud as set forth in each of the counts of the superseding indictment;

Second, that during and in relation to one or more of those other felony counts, the Defendant knowingly transferred, possessed, or used without lawful authority a means of identification;

Third, the means of identification belonged to another person;

Fourth, the Defendant knew means of identification actually belonged to another person;

The term "means of identification" means any name or number that may be used, alone or in conjunction with any other

information, to identify a specific individual, including any name, social security number, date of birth, official State or government issued driver's license or identification number, alien registration number, government passport number, employer or taxpayer identification number; unique biometric data, such as fingerprint, voice print, retina or iris image, or other unique physical representation; unique electronic identification number, address, or routing code; or telecommunication identifying information, meaning an electronic serial number or any other number or signal that identifies a specific telecommunications instrument or account, or a specific communication transmitted from a telecommunications instrument; or an access device as I perviously defined.

Knowingly

The word "knowingly," as that term has been used from time to time in these instructions, means that the act was done voluntarily and intentionally and not because of mistake or accident.

Willful Blindness

In deciding whether the Defendant acted knowingly, you may infer that the Defendant had knowledge of a fact if you find that he deliberately closed his eyes to a fact that otherwise would have been obvious to him. In order to infer knowledge, you must find that two things have been established. First, that the Defendant was aware of a high probability that the identities belonged to real people and were used without those people's knowledge or authority. Second, that the Defendant consciously and deliberately avoided learning of that fact. That is to say, the Defendant willfully made himself blind to that fact. It is entirely up to you to determine whether he deliberately closed his eyes to the fact and, if so, what inference, if any, should be drawn. However, it is important to bear in mind that mere negligence or mistake in failing to learn the fact is not sufficient. There must be a deliberate effort to remain ignorant of the fact.

AID AND ABET

Under federal law, one who aids, abets, commands, induces, or procures another to commit an offense against the United States is punishable to the same extent as the individual who actually committed the offense. Essentially, the term "aid and abet" means to intentionally help someone else commit a crime. To convict a Defendant as an aider or abettor, the Government must prove beyond a reasonable doubt:

First, that someone else committed the charged crime; and

Second, that defendant consciously shared the other person's knowledge of the underlying criminal act, intended to help him, and willfully took part in the endeavor, seeking to make it succeed.

Defendant need not perform the underlying criminal act, be present when it is performed, or be aware of the details of its execution to be guilty of aiding and abetting. But a general suspicion that an unlawful act may occur or that something criminal is happening is not enough. Mere presence at the scene of a crime and knowledge that a crime is being committed are also not sufficient to establish aiding and abetting.

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

Pinkerton Liability

There is another method by which you may evaluate whether to find the Defendant guilty of the substantive charges in the indictment.

If, in light of my instructions, you find beyond a reasonable doubt that the Defendant was guilty on the conspiracy count (Count I), then you may also, but you are not required to, find him guilty of the substantive crimes charged in Counts II-V and VII, provided you find beyond a reasonable doubt each of the following elements:

First, that someone committed each of the substantives crime charged in Counts II-V and VII;

Second, that the person you find actually committed the substantive crime was a member of the conspiracy of which you found the Defendant was a member;

Third, that this co-conspirator committed the substantive crimes in furtherance of the conspiracy;

Fourth, that Defendant was a member of this conspiracy at the time the substantive crime was committed and had not withdrawn from it; and

Fifth, that Defendant could reasonably have foreseen that one or more of his co-conspirators might commit the substantive crime.

If you find all five of these elements to exist beyond a reasonable doubt, then you may find the Defendant guilty of the substantive crime charged, even though he did not personally participate in the acts constituting the crime or did not have

actual knowledge of them.

If, however, you are not satisfied as to the existence of any one of these five elements, then you may not find the Defendant guilty of the particular substantive crime unless the government proves beyond a reasonable doubt that the Defendant personally committed that substantive crime, or aided and abetted its commission. Now, mere presence at the scene of a crime or merely knowing that a crime is being committed or is about to be committed is not sufficient conduct to find that a Defendant committed that crime.

However, the law recognizes a difference between mere presence and culpable presence. While mere presence is not sufficient to base criminal charges, a Defendant's presence at a crime scene, taken in the light of attendant circumstances, can constitute strong evidence of complicity.

Thus, you must evaluate the circumstances of this case in order to determine the quality of the Defendant's presence. This will assist you in determining whether the Defendant was merely present or culpably present.

Flight After Accusation/Consciousness of Guilt

Intentional flight by a defendant after he or she is accused of the crime for which he or she is now on trial, may be considered by you in the light of all the other evidence in the case. The burden is upon the government to prove intentional flight. Intentional flight after a defendant is accused of a crime is not alone sufficient to conclude that he or she is guilty. Travel is not necessarily "flight"; and flight does not create a presumption of guilt. At most, it may provide the basis for an inference of consciousness of guilt. But flight may not always reflect feelings of guilt. Moreover, feelings of guilt, which are present in many innocent people, do not necessarily reflect actual guilt. In your consideration of the evidence of flight, you should consider that there may be reasons for Defendant's actions in traveling out of the country that are fully consistent with innocence.

It is up to you as members of the jury to determine whether or not evidence of intentional flight has been proved, and if it shows a consciousness of guilt and the weight or significance to be attached to any such evidence.

Method of Assessing Evidence

Now that you know what it is that the Government must prove and the standard of proof to be applied, the next question is how do you determine whether the Government has proved these things beyond a reasonable doubt?

Obviously, you must make your determination solely from the evidence properly before you and from all reasonable and legitimate inferences to be drawn from that evidence.

The evidence that is properly before you consists of:

1. The testimony of the witnesses;
2. The exhibits that I have admitted into evidence; and
3. Any stipulations among the attorneys in which they agree as to what the facts are.

From that evidence, you may draw whatever conclusions are reasonable under the circumstances.

The evidence that is properly before you does not include:

1. Comments or statements by the attorneys;
2. Answers given by witnesses which I ordered stricken and instructed you to disregard;
3. Documents, photographs or other items which may have been referred to but have not been admitted into evidence. Since they are not proper evidence, you should not speculate or guess as to what they might say or show and you may not consider them except to the extent that, and

for the purpose that, they may have been read or shown to you during the course of the trial; or

4. Anything you may have heard or seen outside of this courtroom regarding the events in question or the participants in this case.

Witnesses - Credibility - General Factors

As to the testimony of witnesses, your principal task is to determine the credibility of the witnesses and the weight you will give to the testimony of each. Whether the government has sustained its burden of proof does not depend upon the number of witnesses it has called or upon the number of exhibits it has offered, but instead upon the nature and quality of the evidence presented. You do not have to accept the testimony of any witness if you find the witness not credible. You must decide which witnesses to believe and which facts are true. To do this, you must look at all the evidence, drawing upon your common sense and personal experience.

In making that determination, there are a number of factors that you may consider:

1. The opportunity or lack of opportunity the witness had to acquire knowledge of the facts about which the witnesses testified. In other words, was the witness in a position to have accurately perceived the facts that the witness related to you.
2. The reliability or unreliability of the witness's memory. In other words, did the witness have a clear recollection of what happened or was the witness's memory uncertain or unclear.
3. The witness's appearance on the stand. Did the witness

appear to be a person who was telling the complete and unadulterated truth, or did it appear that the witness was slanting things one way or another either consciously or unconsciously.

4. The probability or improbability of the witness's testimony. Did what the witness had to say sound reasonable or plausible <u>or</u> did it appear to be highly unlikely or impossible.

5. Whether the witness had anything to gain or lose from the outcome of this case. In other words, was the witness totally impartial or did the witness have some stake in the outcome or some reason to favor one side or the other.

Witnesses - Credibility - Government Agents

The fact that a witness may be employed by a law enforcement agency does not, by itself, mean that you should give that witness's testimony any greater or any lesser weight simply because of that fact. You should assess the credibility and testimony of such a witness by applying the same factors as you would with respect to any other witness.

Witnesses - Cooperating Witness/Accomplice

You have heard the testimony of Michael Bermudez and James Hernandez. They are cooperating with the government in exchange for a sentencing recommendation.

Some people in this position are entirely truthful when testifying. Still, you should consider the testimony of these individuals with particular caution. They may have had reason to make up stories or exaggerate what others did because they wanted to help themselves.

You have also heard that Michael Bermudez and James Hernandez have pled guilty to criminal charges filed against them.

You may not consider a guilty plea or anything contained in a plea agreement as evidence of any kind against the Defendant. The guilt or innocence of a defendant who is on trial must be determined from the evidence or lack of evidence against that defendant, and not on whether someone else has admitted his guilt of the same or similar crimes.

However, you may consider the guilty plea and plea agreement in deciding how much weight to give to an individual's testimony.

The fact that an individual has pled guilty to a crime does not mean that you must disbelieve that person. However, it is a factor that you are entitled to take into account in assessing credibility.

Additionally, the mere fact that a plea agreement mentions that the Government has offered certain things in exchange for a witness's truthful testimony does not mean that the witness's testimony is truthful. It is up to <u>you</u>, and you alone to decide whether a witness's testimony was truthful and what effect, if any, the promise of lenience may have had on his testimony.

Statements by the Defendant

You have heard evidence that the Defendant made a statement in which the government claims he admitted certain facts.

It is for you to decide whether the Defendant made the statement, and if so, how much weight to give it. In making those decisions, you should consider all of the evidence about the statement, including the circumstances under which the statement may have been made and any facts or circumstances tending to corroborate or contradict the version of events described in the statement.

Witnesses - Number - Weight of Testimony

In evaluating the testimonial evidence, remember that you are not required to believe something to be a fact simply because a witness has stated it to be a fact and no one has contradicted what that witness said. If, in the light of all of the evidence, you believe that the witness is mistaken or has testified falsely or that he or she is proposing something that is inherently impossible or unworthy of belief, you may disregard that witness's testimony even in the absence of any contradictory evidence.

You should also bear in mind that it is not the number of witnesses testifying on either side of a particular issue that determines where the weight of the evidence lies. Rather, it is the quality of the witnesses's testimony that counts.

Thus, just because one witness testifies on one side of an issue and one witness testifies on the other side does not necessarily mean that you must consider the evidence evenly balanced. If you feel that one of the witnesses was more credible than the other, for whatever reason, you may find that the weight of the evidence lies on the side of that witness.

Similarly, just because there may be more witnesses testifying on one side of an issue than on the other does not mean that the weight of the evidence lies in favor of the greater

number of witnesses. Once again, it is the credibility or quality of the testimony that determines where the weight of the evidence lies.

Exhibits

In addition to assessing the credibility of the witnesses and the weight to be given to their testimony, you should also evaluate the exhibits which you will have with you in the jury room. Examine them and consider them carefully.

However, bear in mind that merely because an exhibit has been admitted into evidence does not mean that you are required to accept it at face value. Like the testimony of a witness, the significance of an exhibit or the weight you attach to it will depend upon your evaluation of that exhibit in light of all the facts and circumstances of the case.

Circumstantial Evidence

As I mentioned previously, you may consider only the evidence that is properly before you. However, that does not mean that, in determining the facts, you are limited to the statements of the witnesses or the contents of the exhibits.

In reaching your conclusions, you are permitted to draw, from facts which you find have been proved, such reasonable inferences as seem justified in the light of your experience.

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.

Such evidence is sometimes called circumstantial evidence.

To put it another way, a fact may be proved either by direct evidence or by circumstantial evidence. Direct evidence includes such things as the testimony of an eyewitness who personally observed the fact in question or a photograph or document showing the actual thing described.

Circumstantial evidence consists of proof of a series of facts or circumstances from which the existence or nonexistence of another fact may be reasonably inferred.

The law makes no distinction between the weight to be given to direct and circumstantial evidence. However, it does require that any fact required to convict a Defendant be proved beyond a reasonable doubt.

Example of circumstantial evidence: rain on the driveway/grass.

Conduct of Court - General

As I have said before, it is up to you to determine the facts in this case. You should not interpret anything I have said or done during this trial as expressing an opinion on my part as to what the facts in this case are. I have not intended to express any such opinion and you should not be concerned about what my opinions might be regarding the facts. That is a matter for you to decide.

Objections by Counsel

During this trial there have been occasions when the attorneys have objected to a question that was asked of a witness. You should not penalize an attorney, or more importantly, his client, for objecting. It is the attorney's right and duty to protect a client's interests by objecting to what the attorney may believe is evidence that does not satisfy the requirements of the rules of evidence.

If I sustained the objection, it is important that you not speculate about what the answer to the objected-to question might have been. By sustaining the objection, the court has determined that the evidence should not be considered by you.

The Government as a Party

The mere fact that this case is brought in the name of the United States of America does not entitle the prosecution to any greater consideration than that accorded to the Defendant. By the same token, it does not mean that the prosecution is entitled to any less consideration. All parties, whether Government or individuals, stand as equals at the bar of justice.

Bias and Prejudice

Neither bias in favor of any person or cause, prejudice against any person or cause, nor sympathy of any kind should be permitted to influence you in the course of your deliberations.

All that any party here is entitled to, or, for that matter expects, is a verdict based upon your fair, scrupulous and conscientious examination of the evidence before you and your application of the law as I have explained it to you.

Verdict - Unanimity Required

In order to return a verdict in this case, all twelve of you must agree as to what that verdict will be. You cannot return a verdict of either guilty or not guilty with respect to any charge against the Defendant unless your decision is unanimous.

Therefore there are two things that you should keep in mind during the course of your deliberations.

On the one hand, you should listen carefully as to what your fellow jurors have to say and should be open minded enough to change your opinion if you become convinced that it was incorrect.

On the other hand, you must recognize that each of you has an individual responsibility to vote for the verdict that you believe is the correct one based on the evidence that has been presented and the law as I have explained it. Accordingly, you should have the courage to stick to your opinion even though some or all of the other jurors may disagree as long as you have listened to their views with an open mind.

Selection of Foreperson and Duty to Deliberate

When you begin your deliberations, you should elect one member of the jury as your foreperson. The foreperson will preside over the deliberations and speak for you here in court.

You will then discuss the case with your fellow jurors to reach agreement if you can do so. Your verdict must be unanimous. Each of you must decide the case for yourself, but you should do so only after you have considered all of the evidence, discussed it fully with the other jurors, and listened to the views of your fellow jurors.

Do not be afraid to change your opinion during the course of the deliberations if the discussion persuades you that should. Do not come to a decision simply because other jurors think it is right.

Communications with the Court

If it becomes necessary during your deliberations to communicate with me, you may send a note through the marshal, signed by the foreperson. No member of the jury should ever attempt to contact me except by a signed writing; and I will communicate with any member of the jury on anything concerning the case only in writing, or here in open court.

Jury Recollection Controls - Rehearing Testimony

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.

Occasionally, juries want to rehear testimony. Understand that in a short trial, generally, your collective recollection should be sufficient for you to be able to deliberate effectively. However, if you feel that you need to rehear testimony, I will consider your request. However keep in mind that this is a time-consuming and difficult process, so if you think you need this, consider your request carefully and be as specific as possible.

Return of Verdict

A verdict form has been prepared for you by the Court. After you have reached unanimous agreement on a verdict, your foreperson will fill in the form that has been given to you, sign and date it, and advise the Court that you are ready to return to the courtroom.

Copy of Instructions

I have instructed you on the law that governs your deliberations. As I mentioned at the beginning, I will send into the jury room a written copy of my instructions. You are reminded, however, that the law is as I have given it to you from the bench; the written copy is merely a guide to assist you.