UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

UNITED STATES OF AMERICA

v. CR No. 010-076-ML

ROBERT S. CIRESI

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 defendant 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" plea of the defendant. 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 an

individual, stand as equals at the bar of justice.

2. 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. The defendant before you has the benefit of that presumption throughout the trial, and you are not to convict the defendant of a particular charge unless you are unanimously persuaded of the defendant's guilt on that charge beyond a reasonable doubt.

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

3. BURDEN OF PROOF

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

4. DEFENDANT'S 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 defendantl not to testify. This right is guaranteed by the Constitution. If the 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 must have something to hide, otherwise he would have testified," or, "He must be guilty because he did not get up on the stand and tell me that he was not guilty." It is absolutely prohibited for you to draw such inferences in this case.

5. CONSIDER EACH COUNT SEPARATELY

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

PART II: THE OFFENSES CHARGED

6. INDICTMENT – DEFINED

This case, like most criminal cases, began with the filing of an indictment. You will have the 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 defendant has had an indictment filed against him is no evidence whatsoever of guilt. An indictment is not evidence. It is nothing more than an accusation. It is a piece of paper filed with the Court to bring a criminal charge against a defendant.

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. Here, the defendant has pleaded not guilty and has put in issue the charges alleged in the indictment. The government therefore has the burden of proving the allegations made against the defendant.

7. "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.

8. CHARGES CONTAINED IN THE INDICTMENT

The indictment in this case contains three counts or "charges." The defendant in this case is Robert Ciresi.

Count One of the indictment charges that the defendant conspired to commit an offense against the United States in violation of 18 U.S.C. § 371. Specifically, Count One charges that, beginning from a date unknown but as least as early as the fall of 2008, and continuing to at least on or about May 6, 2010, defendant Ciresi conspired with Joseph Burchfield, Raymond Douglas III, John Zambarano, Edward Imondi, and others known and unknown to the Grand Jury to commit the offenses of:

- federal program bribery, in violation of 18 U.S.C. § 666(a)(2) and18 U.S.C. § 2
- extortion under color of official right, in violation of 18 U.S.C. § 1951 and18 U.S.C. § 2.

Count Three of the indictment charges the defendant with federal program bribery, in violation of Title 18, Section 666(a)(2) .

Count Four of the indictment charges the defendant with extortion under color of official right, in violation of Title 18, Section 1951.

You need not attach any particular significance to the fact that the indictment does not contain a **Count Two**

I remind you that a separate crime is alleged against the defendant 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 the defendant guilty or not guilty as to one of the offenses charged should not control your verdict as to the other offenses charged against the defendant.

9. **COUNT THREE** : FEDERAL PROGRAM BRIBERY - 18 U.S.C. §666(a)(2)

Count Three of the indictment charges that, on or about February 10, 2009, the defendant committed federal program bribery in violation of Title 18, United States Code, Section 666(a)(2).

10. 18 U.S.C. § 666(a)(2)

A violation of section 666(a)(2) occurs when a defendant, "corruptly gives, offers, or agrees to give anything of value to any person, with intent to influence or reward an agent of … a local … government … in connection with any business, transaction, or series of transactions of such … government … involving anything of value of $5,000 or more," and the local government "receives, in any one year period, benefits in excess of $10,000 under a Federal program involving a grant, contract, subsidy, loan, guarantee, insurance, or other form of Federal assistance."

Section 666(a)(2) of Title 18 "does not apply to bona fide salary, wages, fees, or other compensation paid, or expenses paid or reimbursed, in the usual course of business."

11. 18 U.S.C. § 666(a)(2) – ELEMENTS OF THE OFFENSE

To sustain the charge of federal program bribery, the government must prove the following elements beyond a reasonable doubt:

First, that the defendant offered, gave, or agreed to give something of value to John Zambarano, Joseph Burchfield and/or Raymond Douglas;

Second, that John Zambarano, Joseph Burchfield and/or Raymond Douglas were agents of a local government or of an agency of a local government;

Third, that the defendant acted corruptly with the intent to influence or reward John Zambarano, Joseph Burchfield and/or Raymond Douglas with respect to a transaction of the Town Council of the Town of North Providence;

Fourth, that this business, transaction or series of transactions involved anything of a value of $5,000 or more; and

Fifth, that the local government, in a one year period, received benefits of more than $10,000 under any Federal program involving a grant, contract, subsidy, loan, guarantee, insurance, or other assistance. The one year period must begin no more than 12 months before the defendant committed these acts and must end no more than 12 months afterward.

12. AGENT DEFINED

The second element the government must prove beyond a reasonable doubt is that, at the time alleged in the indictment, John Zambarano, Joseph Burchfield, and/or Raymond Douglas were agents of the Town of North Providence.

Elected officials are agents of the government to which they were elected to serve.

13. FEDERAL PROGRAM BRIBERY—DEFENDANT ACTED CORRUPTLY

The third element the government must prove beyond a reasonable doubt is that the defendant acted corruptly, with the intent, at least in part, to influence or reward John Zambarano, Joseph Burchfield and/or Raymond Douglas in connection with some business, transaction, or series of transactions with the local government or agency.

To act corruptly means to act voluntarily and intentionally with an improper motive or purpose to influence or reward the recipient's actions. This involves conscious wrongdoing, or as it sometimes has been expressed, a bad or evil state of mind.

In considering this element, remember that it is the defendant's intent, at least in part to influence the recipient's actions, which is important, not the subsequent actions of the recipient or the organization or government. Thus, the government does not have to prove that John Zambarano,

Joseph Burchfield and/or Raymond Douglas accepted the bribe offer or that the bribe actually influenced the final decision of the government. It is not even necessary that John Zambarano, Joseph Burchfield and/or Raymond Douglas had the authority to perform the act which the defendant sought.

14. VALUE OF TRANSACTION

The fourth element the government must prove beyond a reasonable doubt is that the value of the transaction to which the alleged payment related was at least $5,000. To establish this element, the government must prove that the defendant intended to influence or reward John Zambarano, Joseph Burchfield and/or Raymond Douglas in connection with any business, transaction, or series of transactions of the Town of North Providence involving anything of value of $5,000 or more. If you find that the business or transaction in question had a value of at least $5,000, this element is satisfied.

The government is not required to prove that the defendant paid or offered at least $5,000. It is the value of the business or transaction that the alleged bribe was intended to influence or reward that is important for the purpose of this element.

In Government Exhibit # 83, the government and the defendant have agreed that the "application for Amendment to Zoning Map and Ordinance" filed on or about October 2, 2008 on behalf of Churchill & Banks Companies, which was voted on by the North Providence Town Council on or about February 10, 2009, involved business, a transaction, or a series of transactions involving $5,000 or more.

15. FEDERAL PROGRAM BRIBERY-

ORGANIZATION OR GOVERNMENT RECEIVED FEDERAL FUNDS

The fifth element that the government must prove to you beyond a reasonable doubt is that the Town of North Providence, in a one year period, received benefits of more than $10,000 under any Federal program involving a grant, contract, subsidy, loan guarantee, insurance or other assistance.

In Government Exhibit # 82, the government and the defendant have agreed that the Town of North Providence received at least $10,000 per year from the federal government during each year at issue.

16. UNANIMITY AS TO PARTICULAR PAYMENT

I instruct you that in order for you to find the defendant guilty of the charge of federal program bribery, you must unanimously agree on

(1) whether any particular payment or other thing of value violated the statute, and, if so,

(2) which payment or thing of value violated the statute.

17. BONA FIDE COMPENSATION

In order to meet its burden on a charge of federal program bribery, the government must prove beyond a reasonable doubt that the payments or things of value given to John Zambarano, Joseph Burchfield, and/or Raymond Douglas were given corruptly and were not bona fide compensation paid in the ordinary course of business.

18. 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.

19. **COUNT FOUR**: EXTORTION UNDER COLOR OF OFFICIAL RIGHT

Count Four of the indictment charges that, on or about February 10, 2009, the defendant committed extortion under color of official right in violation of Title 18 , United States Code, Section 1951, also known as the Hobbs Act.

20. 18 U.S.C. § 1951

A violation of the Hobbs Act occurs when a defendant "in any way or degree obstructs, delays, or affects commerce . . . by extortion or attempts or conspires to do so."

21. 18 U.S.C. § 1951 - ELEMENTS OF THE OFFENSE

To sustain its burden of proof on a charge of obstructing commerce by extortion, the government must prove each of the following elements beyond a reasonable doubt:

First: That the defendant knowingly and willfully obtained property from another;

Second: That the defendant did so by means of extortion under color of official right;

Third: That the defendant knew that the person extorted parted with the property because of the extortion; and

Fourth: That the extortion affected interstate commerce.

22. 18 U.S.C. § 1951- PROPERTY

With respect to the first element, the term "property" includes money.

23. 18 U.S.C. § 1951 - EXTORTION

With respect to the second element, "extortion" means the obtaining of property from another with his consent under color of official right.

24. 18 U.S.C. § 1951 - COLOR OF OFFICIAL RIGHT

A public official commits "extortion under color of official right" if he uses the power and authority of his office in order to obtain money, property, or something of value from another to which neither that public official nor that government office has an official right.

Extortion under color of official right means that a public official induced, obtained, accepted, or agreed to accept a payment to which he was not entitled, knowing that the payment was made in return for taking, withholding, or influencing official acts. The government may show that the benefit was meant to be given to the public official directly, or to a third party who is not a public official but who was acting in concert with the public official.

The government is not required to prove an explicit promise to perform the official acts in return for the payment. Passive acceptance of a benefit by a public official is a sufficient basis for this type of extortion, if the official knows that he is being offered payment in exchange for his ability to do official acts.

25. 18 U.S.C. § 1951 - "COMMERCE" DEFINED

With respect to the fourth element, the term "commerce" means interstate commerce between any point in a state and any point outside that state. It is not necessary for you to find that the defendant knew or intended that his actions would affect interstate commerce. It is only necessary that the natural consequences of the acts committed by the defendant as charged in the indictment would affect commerce in any way or degree.

In Government Exhibit # 83, the government and the defendant have agreed that the firm of Churchill & Banks is a Rhode Island limited liability corporation, which, during the period described in the indictment operated in interstate commerce in the acquisition, development, construction and management of office, industrial, retail and residential properties in Rhode Island and other states.

26. **COUNTS THREE AND FOUR**: AIDING AND ABETTING

In Counts Three and Four, the defendant is charged with aiding and abetting the crimes of federal program bribery and obstructing commerce by extortion under color of official right in violation of 18 U.S.C. § 2.

Title 18 of the United States Code, Section 2 (a) states: "Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission,

is punishable as a principal."

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 committed the charged crime; and

Second: That the defendant willfully associated himself in some way with the crime and willfully participated in it as he would in something he wished to bring about.

This means that the government must prove that the defendant consciously shared the other person's knowledge of the underlying criminal act and intended to help him. The 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. 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.

27. **COUNT ONE**: CONSPIRACY

Count One of the indictment alleges that the defendant, in violation of 18 U.S.C. § 371, engaged in a conspiracy with John Zambarano, Joseph Burchfield, Raymond Douglas, Edward Imondi, and others known and unknown to the Grand Jury to commit a federal offense, specifically, that the defendant conspired to commit federal program bribery and obstruction of commerce by

extortion under color of official right.

28. 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.

29. 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:

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

Second: That the defendant 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.

30. 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 the defendant and John Zambarano, Joseph Burchfield, Raymond Douglas, Edward Imondi, and others known and unknown to the Grand Jury, to commit federal program bribery and obstruction of commerce by extortion. 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 the defendant and John Zambarano, Joseph Burchfield, Raymond Douglas, Edward Imondi, and the other conspirators, 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.

31. CONSPIRACY – TIME PERIOD

The indictment charges that the conspiracy existed from at least the fall of 2008 through at least on or about May 6, 2010. In determining whether the defendant 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 the defendant was a member of that conspiracy during that period.

32. EXISTENCE OF THE CONSPIRACY

In your consideration of the conspiracy offense alleged in Count One, 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 the defendant and John Zambarano, Joseph Burchfield, Raymond Douglas, Edward Imondi, and the other conspirators.

33. 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 willfully joined in that agreement. To act "willfully" means to act voluntarily and intelligently, and with the specific intention that the underlying crime–here, bribery and attempting to obstruct commerce - 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 the defendant willfully joined in the agreement must be based upon evidence of the defendant's own words and/or actions. You need not find that the defendant agreed specifically

to or knew about all of the details, or the scope, of the conspiracy, or knew every other co-conspirator or that the defendant participated in each act of the agreement or played a major role. However, the government must prove beyond a reasonable doubt that the defendant 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.

34. INTENT

To establish that the defendant willfully joined in a conspiracy, 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, bribery and obstruction of commerce by extortion under color of

official right, be committed. The government need not prove that the defendant agreed to commit the underlying offense personally. It is sufficient that the defendant 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.

35. CONSIDERATION OF ACTS AND STATEMENTS OF CO-CONSPIRATORS

In deciding whether the defendant was a member of the conspiracy, you should first consider the evidence of the defendant's own acts and statements. You may also consider any other evidence in the case as it bears on the issue of the defendant's membership. Specifically, you may consider the acts and statements of the other alleged co-conspirators, even if the defendant 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 the defendant 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 of its purposes. If the acts were performed or the statements were made at a time when the defendant 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 the defendant.

36. "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 44 through 141 of the indictment set forth the overt acts alleged to have been committed in furtherance of the conspiracy charged.

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

37. 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.

PART III: CONSIDERATION OF THE EVIDENCE

38. 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.

39. 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 or heard 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.

40. 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.

41. 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.

42. 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.

43. STIPULATIONS

The evidence in this case includes facts to which the parties 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.

44. 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.

45. 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 or she 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.

46. CONDUCT OF THE COURT

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.

47. 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.

48. OPINION EVIDENCE – EXPERT WITNESS

The rules of evidence ordinarily do not permit witnesses to testify as to opinions or conclusions. An exception to this rule exists as to those whom we call "expert witnesses." Such witnesses, who have special training or experience in a technical field, may state an opinion concerning that technical matter may also state the reasons for their opinion.

Merely because an expert witness has expressed an opinion, of course, does not mean that you must accept it. As with any other witness, you should consider the testimony and give it such weight as you think it deserves.

PART IV: THE DELIBERATIONS AND VERDICT

49. 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.

50. 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.