

1 (Proceedings in the presence of the jury as
2 follows:)

3 THE COURT: Good morning, ladies and gentlemen.

4 As I've previously told you, this is the time in
5 the case where it's my duty to explain to you the law
6 that applies in this case and the things that the
7 Government must prove with respect to each of the
8 charges against the defendant, and it's your duty to
9 apply to the facts, as you determine the facts to be,
10 the law as I'm about to explain it to you.

11 And in applying the law, it's important that you
12 consider what I'm about to tell you in context. In
13 other words, don't pick out one or two of the points
14 and focus on them to the exclusion of everything else.
15 In order to fairly apply the law, you must consider my
16 explanation in its entirety.

17 Let me start by saying that you've heard
18 evidence about acts allegedly committed by other
19 persons who are not on trial before you. You heard
20 evidence about things that were done by Waskar Pena,
21 Eduardo Garcia, Cornelio Ozorio, Alejandro Pujols and
22 Christopher Garcia. And they're named in the
23 indictment as co-conspirators, but they're, obviously,
24 not on trial before you. And you shouldn't concern
25 yourselves with why these individuals aren't present in

1 this trial and are not part of this case. That
2 shouldn't have any bearing whatsoever on your
3 deliberations in this case. Your job is to decide
4 whether the Government has proven Mr. Gonzalez, the
5 defendant in this case, guilty of any one or more of
6 the charges against him, and that's what you should
7 focus on.

8 If you start guessing as to why these other
9 individuals aren't here, the chances are very good that
10 you may be wrong in your guess, and if that affects
11 your decision in any way, that's simply unfair to
12 either side in this case.

13 So focus on the evidence against Mr. Gonzalez
14 and what he has done or not done and make your decision
15 on that basis.

16 Now, as you may know, the indictment in this
17 case contains four counts or charges against
18 Mr. Gonzalez. Count I charges him with conspiring to
19 possess 500 grams or more of cocaine with intent to
20 distribute it.

21 Count II charges the defendant with possessing
22 500 grams or more of cocaine with the intent to
23 distribute it, and also with aiding and abetting others
24 in committing that offense. And this count refers to
25 the cocaine allegedly seized from Mr. Ozorio and also

1 from the basement at 234 Gallatin Street.

2 Count IV -- I skipped a count because you only
3 have four counts before you, but the fourth count in
4 the indictment or the third count that you will
5 consider charges the defendant with possessing an
6 unspecified quantity of cocaine with intent to
7 distribute it, and with aiding and abetting others in
8 doing so. And this count refers to the quantity of
9 cocaine that was seized from the Lincoln Continental
10 Towne Car that you've heard about.

11 Count V charges the defendant with possessing a
12 firearm in furtherance of a drug trafficking crime and
13 with aiding and abetting others in doing so.

14 Now, as I told you the first day, because there
15 are four different counts, or charges against the
16 defendant, it's important that you consider each of
17 those counts separately. You must look at the things
18 that the Government has to prove in order to convict
19 the defendant of a particular count and the evidence
20 that relates to that charge or count, and you should
21 make an independent determination on each count.

22 So in other words, just because you may find the
23 defendant is guilty or not guilty of any one of these
24 charges does not necessarily mean that he's also guilty
25 or not guilty of any other charge. You have to look at

1 each charge and the evidence pertaining to that charge
2 separately.

3 Now, I'm going to talk about the charges or
4 counts in a different order than the order in which
5 they are set forth in the indictment, because I think
6 it will help you understanding these charges a little
7 bit better.

8 First, I'm going to talk about the charges of
9 possession of cocaine with intent to distribute and
10 aiding and abetting others in possessing cocaine with
11 intent to distribute, which are the charges referred to
12 in Counts II and IV of the indictment. Then I'm going
13 to talk about the conspiracy charge, Count I, the
14 conspiracy to possess 500 grams or more of cocaine with
15 the intent to distribute it. And last, I will talk
16 about the charge in Count V of possessing a firearm in
17 furtherance of a drug trafficking crime or aiding and
18 abetting others in possessing a firearm in furtherance
19 of a drug trafficking crime.

20 Now, Count II, as I said, charges that on or
21 about December 11, 2005, the defendant knowingly and
22 intentionally possessed 500 grams or more of a mixture
23 or substance containing a detectable amount of cocaine
24 with intent to distribute it in violation of a federal
25 statute, Section 841(a)(1) of Title 21 of the United

1 States Code. And it also charges that the defendant
2 aided and abetted others in doing so in violation of
3 another federal statute, Section 841(b)(1)(B) of Title
4 21 of the United States Code. And as I've stated
5 before, this charge, the charge contained in Count II,
6 refers to the quantities of cocaine that were seized
7 from Mr. Ozorio and from the basement at 234 Gallatin
8 Street.

9 Count IV also charges possession of cocaine with
10 intent to distribute it. More specifically, it charges
11 that on or about December 11, 2005, the same date, the
12 defendant knowingly and intentionally possessed an
13 unspecified quantity of a mixture or substance
14 containing a detectable amount of cocaine with intent
15 to distribute it, also in violation of Section
16 841(a)(1), and that he aided and abetted others in
17 possessing cocaine, a substance containing a detectable
18 amount of cocaine with intent to distribute it in
19 violation of Section 841(b)(1)(B). And as I've said,
20 this count refers to the quantity of cocaine that was
21 seized from the Lincoln Continental Towne Car.

22 Now, because the things that the Government is
23 required to prove in order to convict the defendant of
24 either of those charges are virtually identical, except
25 for the fact that with respect to Count II the

1 Government must prove not only that the defendant
2 possessed the cocaine with intent to distribute it or
3 aided and abetted others in doing so, but with respect
4 to Count II, the Government also has to prove that the
5 quantity of cocaine involved was 500 grams or more.

6 But apart from that, the things that the
7 Government has to prove in connection with each count
8 are virtually identical. So, therefore, I'm going to
9 explain those elements together. I'm going to give you
10 my explanation of the things the Government has to
11 prove with respect to Counts II and IV at the same time
12 rather than repeat.

13 Let me start by reading Section 841(a)(1), the
14 statute that relates to possession with intent to
15 distribute. That section says, and I'll quote the
16 relevant part of the statute for you. That section
17 says: "It shall be unlawful for any person knowingly
18 or intentionally to distribute, or to possess with
19 intent to distribute, a controlled substance." And a
20 controlled substance is cocaine or any mixture or
21 substance containing a detectable amount of cocaine.

22 Now, in order to establish that Mr. Gonzalez is
23 guilty of possessing a mixture or substance containing
24 a detectable amount of cocaine with intent to
25 distribute it, the Government has to prove three things

1 or elements. First, it has to prove that Mr. Gonzalez
2 possessed a mixture or substance containing a
3 detectable amount of cocaine, and, as I said, in the
4 case of Count II, it also has to prove that the
5 quantity was 500 grams or more.

6 The second thing that the Government must prove
7 is that Mr. Gonzalez had the specific intent to
8 distribute that cocaine, not only possessed it, but he
9 had the intent to distribute it. And the third thing
10 the Government has to prove is that, in doing so,
11 Mr. Gonzalez acted knowingly and intentionally.

12 In determining whether the Government has proven
13 that Mr. Gonzalez possessed a mixture or substance
14 containing a detectable amount of cocaine, keep in mind
15 that there are two kinds of possession that the law
16 recognizes. There's what's called actual possession,
17 and there is also what is called constructive
18 possession.

19 When a defendant has direct and immediate
20 control over a substance, that defendant may be said to
21 actually possess the substance or to have actual
22 possession of the substance.

23 Direct and immediate control may be found by you
24 to exist when the defendant has the substance on his
25 person or has it within his immediate reach. When a

1 defendant has indirect power and control over a
2 substance, the defendant may be said to have
3 constructive possession over that substance. Even
4 though the substance is not on his person or within his
5 immediate reach, if he has the ability to exercise
6 power and control over it, he has constructive
7 possession of that substance. Indirect control may
8 exist when the object or substance is readily
9 accessible to the defendant, and he has the power and
10 ability and the intention to exercise control over it.

11 Now, the law also recognizes that in addition to
12 the two types of possession, actual and constructive,
13 that possession may be either sole or joint. If one
14 person alone has either actual or constructive
15 possession of a substance, that person is said to be in
16 sole possession of the substance.

17 If a person, or two or more persons share either
18 actual or constructive possession of a substance, then
19 those two persons are said to be in joint possession of
20 that substance.

21 So to summarize, a person doesn't have to have a
22 substance on his person or within his immediate reach
23 in order to be deemed in possession of that substance,
24 but in order to be deemed in possession, whether it's
25 actual possession or constructive possession, the

1 person must have both the power and the intention to
2 exercise control over that substance, either by himself
3 or jointly in conjunction with other person or persons.

4 Evidence that a person was present near the
5 substance, or that the defendant associated with
6 someone who possessed the substance, or that the
7 defendant knew that the substance was in a particular
8 location are certainly factors that you can consider in
9 determining whether the defendant possessed the
10 substance, but they are not by themselves sufficient to
11 establish possession.

12 As I've said, in order to establish possession,
13 there has to be evidence that the defendant had both
14 the intention and the power to exercise control over
15 the substance, either by himself or in conjunction with
16 others.

17 In determining whether the defendant possessed a
18 mixture or substance containing a detectable amount of
19 cocaine with the specific intent to distribute it, you
20 should also keep in mind that the intent required is an
21 intent to distribute the cocaine, that is to say to see
22 that it is delivered to other persons, knowing that
23 it's a controlled substance, and knowing that
24 distributing this controlled substance to other persons
25 violates the law. It's illegal. And that, in fact,

1 the person is acting with the intent to violate the
2 law.

3 Now, the term "distribute," as I said, means to
4 deliver a controlled substance into the possession of
5 another person.

6 The Government is not required to prove that the
7 defendant specifically knew that the controlled
8 substance was cocaine. It's sufficient if the evidence
9 establishes beyond a reasonable doubt that the
10 defendant knew that it was some type of a controlled
11 substance and that it was illegal to distribute it to
12 other persons.

13 Now, how do you go about determining intent?
14 Well, obviously, you can't look into a person's mind to
15 see what that person is thinking, but you may infer
16 intent or intent to distribute from the quantity of the
17 cocaine involved. If the quantity is greater than what
18 would be used by the person himself, you can certainly
19 consider that as evidence of intent to distribute, and
20 you can look at any other facts that have been
21 established, or any other evidence that's been
22 presented to determine whether the defendant possessed
23 the cocaine with an intent to distribute it or to see
24 that it was distributed to other persons.

25 I've also told you that the Government has to

1 prove that the defendant acted knowingly. To act
2 knowingly means to act voluntarily and with an
3 awareness of the nature and likely consequences of the
4 act in question and not because of ignorance, mistake
5 or accident.

6 The purpose of requiring proof that the
7 defendant acted knowingly is to be sure that no one is
8 convicted for an act that he did not intend to commit
9 or the nature of which he did not understand. Whether
10 a defendant acted knowingly, again, can be inferred
11 from the circumstances. It can be inferred from
12 evidence as to what the defendant said, what the
13 defendant did, and from any other evidence that may
14 satisfy you as to what the defendant knew or intended
15 at the time that he may have engaged in any of the acts
16 in question.

17 But even though the evidence doesn't have to be
18 direct evidence, you may infer knowledge and intent
19 from the surrounding circumstances. Keep in mind that
20 the evidence has to be sufficient to satisfy you beyond
21 a reasonable doubt as to what the defendant intended or
22 knew.

23 Now, I told you that under both Counts II and
24 IV, the two possession with intent to distribute
25 counts, that those counts also charge the defendant

1 with aiding and abetting others in committing those
2 offenses. And that also -- that, too, would be a
3 violation of federal law. That's a different federal
4 statute. And that statute is found in Section 2 of
5 Title 18 of the United States Code. It's the so-called
6 aiding and abetting statute. Again, I'll read to you
7 the relevant portion of that statute.

8 That statute says, "Whoever commits an offense
9 against the United States, or aids, abets, counsels,
10 commands, induces or procures its commission, is
11 punishable as a principal. Whoever willfully causes an
12 act to be done, which, if directly performed by him or
13 another would be an offense against the United States,
14 is punishable as a principal."

15 That may not be the clearest way to express it,
16 so let me see if I can put it another way that might be
17 a little bit more understandable.

18 Basically, what that statute says is that a
19 person who aids or abets in the commission of a crime
20 or who willfully causes the crime to be committed by
21 another person, may be found guilty of that crime to
22 the same extent as the person who actually committed
23 the crime. Or to put it still another way, an
24 individual may be convicted of a crime if that
25 individual personally committed the crime, or if that

1 individual aided or abetted someone else who personally
2 committed the crime.

3 Now, in order to establish that a defendant is
4 guilty of aiding and abetting, there are three things
5 or elements that the Government must prove. They are
6 different than the three things or elements that I've
7 already described.

8 In order to establish that the defendant is
9 guilty of aiding and abetting, the Government has to
10 prove, first of all, that the particular crime in
11 question, here the two crimes the defendant is charged
12 with aiding and abetting are the possession with intent
13 to deliver 500 grams or more of cocaine as charged in
14 Count II, and the possession with intent to deliver of
15 the unspecified quantity of cocaine charged in Count
16 IV.

17 So the first thing the Government has to prove
18 is that at least one of those crimes was actually
19 committed.

20 The second thing the Government has to prove is
21 that this defendant assisted in the commission of that
22 crime or caused it to be committed. And third, the
23 Government has to show that the defendant intended to
24 assist in the commission of that crime or to cause it
25 to be committed. Unless the crime that the defendant

1 is accused of aiding and abetting was committed by
2 someone, the defendant can't be guilty of aiding and
3 abetting. You can't be guilty of aiding and abetting
4 an offense that was never committed. But if the crime
5 in question was committed, the Government doesn't have
6 to prove that the defendant personally committed the
7 crime, what it must prove is that someone committed the
8 crime, and that the defendant willfully did something
9 to assist in the commission of that crime.

10 Now, I said "willfully." Assisting in the
11 commission of a crime is willful if it's done knowingly
12 and voluntarily and with the intent to help facilitate
13 the commission of the crime. And again, mere presence
14 where a crime is committed is not by itself sufficient
15 to prove that a defendant is guilty of aiding and
16 abetting. It's a factor you can consider, but by
17 itself it doesn't prove that the defendant aided and
18 abetted. There must be evidence that the defendant did
19 something to facilitate the commission of a crime.

20 In other words, putting it about as briefly as I
21 can, the defendant must be a participant in the crime
22 and not merely a spectator.

23 So much for the two counts that charge
24 possession with intent to distribute or aiding and
25 abetting possession with intent to distribute a

1 substance containing a detectable amount of cocaine.

2 I'm now going to move to the conspiracy charge.
3 That's Count I. Count I charges that from sometime
4 around December 1, 2005, up to and including December
5 11, 2005, the defendant conspired or agreed with other
6 individuals to possess 500 grams or more of a substance
7 or mixture containing a detectable amount of cocaine
8 with intent to distribute it. And this involves still
9 another statute, the conspiracy statute, which is
10 Section 846 of Title 21 of the United States Code.

11 And, again, I'll read to you the relevant
12 portion of that statute. That statute says, "Any
13 person who conspires to commit any offense defined by
14 the laws concerning drugs shall be guilty of the
15 offense of conspiracy." And the law concerning drugs
16 that Mr. Gonzalez is charged with conspiring to violate
17 is the law that makes it unlawful to possess 500 grams
18 or more of cocaine with intent to distribute it, which,
19 as I said, is the charge set forth in Count II. In
20 order to establish that the defendant is guilty of
21 conspiring to possess 500 grams or more of a mixture or
22 substance containing a detectable amount of cocaine
23 with intent to distribute it, the Government has to
24 prove three things, and again, they're three different
25 things. Don't be confused by the fact that in many of

1 these charges there are three elements the Government
2 has to prove because, as I'm sure you realize, in each
3 case the three things may be different.

4 In order to establish that the defendant is
5 guilty of conspiracy to possess 500 grams or more of
6 cocaine with intent to distribute it, the three things
7 that the Government must prove are: First, that there
8 was a conspiracy by two or more persons to possess 500
9 grams or more of cocaine, or the substance containing a
10 detectable amount of cocaine, with intent to distribute
11 it.

12 The second thing the Government must prove is
13 that this defendant voluntarily participated in the
14 conspiracy or was a member of the conspiracy. The
15 third thing the Government must prove is that the
16 defendant intended that the offense of possessing 500
17 grams or more of cocaine with intent to distribute be
18 committed. He must have intended that this offense
19 would be committed.

20 Let me define some of these terms for you. You
21 probably have a general idea what some of these things
22 mean, but a general idea isn't good enough. You need
23 to be very precise about some of these things.

24 First of all, a conspiracy. A conspiracy is a
25 mutual understanding or agreement by two or more

1 persons to accomplish some unlawful purpose or
2 accomplish some lawful purpose by unlawful means.

3 Conspiracy is sometimes referred to as a kind of
4 a partnership for criminal purposes in which each
5 member of the conspiracy becomes the agent of every
6 other member of the conspiracy. And it's important to
7 remember that conspiracy to commit a crime and the
8 actual commission of the crime are two separate and
9 distinct offenses. The gist of the offense of
10 conspiracy is the agreement to engage in the unlawful
11 activity. And one may be guilty of conspiracy even if
12 the crime that was the object of the conspiracy, that
13 is to say, the crime that the conspirators agreed to
14 commit, was never committed.

15 The essence of the offense of conspiracy is
16 participating in a plan or a scheme to do something
17 unlawful.

18 So one may be guilty of conspiracy even if the
19 role of the conspiracy was never achieved or
20 accomplished.

21 Now, in order to establish that a conspiracy
22 existed, there must be proof that the alleged members
23 of the conspiracy reached some mutual agreement or
24 understanding to try to accomplish their common,
25 unlawful plan. But proof of a conspiracy does not

1 require evidence that the alleged members of the
2 conspiracy specifically stated the terms of their
3 agreement, either in writing or verbally. Doesn't have
4 to be evidence of a written document or that they
5 specifically agreed exactly what it was that they were
6 going to do. An informal or an unspoken agreement is
7 sufficient.

8 What is required is evidence of a mutual
9 agreement or understanding, whether it was expressed or
10 tacit, whether it was verbal or written, there has to
11 be proof that there was a mutual agreement or
12 understanding to commit this unlawful act.

13 The fact that various persons may have engaged
14 in similar conduct or that they may have associated
15 with one another, or they may have had discussions with
16 one another, again, are factors that you can consider,
17 but they don't, by themselves, prove a conspiracy.
18 There has to be evidence that there was a mutual
19 agreement or understanding, and that the defendant was
20 a party to that mutual agreement or understanding.

21 And again, the evidence doesn't have to be
22 direct evidence. A conspiracy can be proven by
23 circumstantial evidence. That is to say, by evidence
24 from which you can infer the existence of a conspiracy.
25 Keep in mind, too, that proof of a conspiracy does not

1 require evidence that everyone involved in the
2 conspiracy agreed on all of the details regarding the
3 methods to be used or even that they all had direct
4 discussions with one another. It does require proof
5 beyond a reasonable doubt that the members of the
6 alleged conspiracy somehow reached a mutual agreement
7 or understanding that they would attempt to accomplish
8 a common plan that was unlawful, that they agreed, they
9 had the -- they reached some mutual agreement to do
10 something illegal.

11 If you find that the defendant is guilty of the
12 conspiracy charged in Count I, you may also find that
13 he is guilty of the offense charged in Count II, the
14 possession with intent to distribute 500 grams or more
15 of cocaine, provided that you find that the Government
16 has proven five things. Before I get to the five
17 things, let me just try to put this in a little
18 different perspective. Just as an individual may be
19 guilty of aiding and abetting in the commission of
20 possession with intent to distribute, so may an
21 individual who is guilty of conspiracy to commit an
22 offense be convicted of the offense that's the object
23 in the conspiracy. But in order to find that someone
24 who's guilty of conspiracy to commit an offense is also
25 guilty of the offense, the Government has to prove five

1 things.

2 First, it has to prove that the substantive
3 offense charged, in this case the offense charged in
4 Count II, the possession of 500 grams or more with
5 intent to distribute, was committed.

6 Second, the Government has to prove that the
7 person or persons who committed that offense were
8 members of the conspiracy.

9 Third, it has to show that the offense was
10 committed pursuant to the conspiracy.

11 Fourth, it has to show that the defendant was a
12 member of the conspiracy at the time that offense was
13 committed.

14 And fifth, it has to show that the defendant
15 could have reasonably foreseen that the substantive
16 offense might have been committed by the
17 co-conspirators.

18 If you find that all five of those things have
19 been proven, you may, but you're not required to find,
20 that the defendant is guilty not only of the conspiracy
21 charge, but he's also guilty of the charge in Count II
22 that is alleged to have been the object or purpose of
23 the conspiracy, and you may find that even though you
24 don't find that the defendant actually possessed the
25 500 grams or more with intent to distribute.

1 If you find that he was guilty of conspiring to
2 possess the 500 grams or more with intent to
3 distribute, and you find that the Government has proven
4 each of the five things that I've mentioned, then you
5 may also, but you're not required to, find the
6 defendant guilty of possession of 500 grams or more
7 with intent to distribute.

8 The reason for this rule, the reason for saying
9 that a defendant who is guilty of conspiracy to commit
10 an offense may also be found guilty of that offense
11 even though he didn't personally commit it is that, as
12 I mentioned earlier, a conspiracy is considered to be a
13 partnership for criminal purposes in which each member
14 of the partnership or the conspiracy is responsible for
15 the unlawful acts committed by the other members of the
16 conspiracy in furtherance of the conspiracy. That's
17 the rationale.

18 If you're not satisfied that the Government has
19 proven all five of those elements, then you cannot find
20 the defendant guilty of possession with intent to
21 distribute the 500 grams simply because you may have
22 found him guilty of the conspiracy.

23 You could find him guilty of the 500 gram charge
24 if he actually possessed the 500 grams with intent to
25 distribute, or if he aided and abetted others in doing

1 so, but you can't find him guilty on the basis that he
2 is guilty of conspiracy unless you find that these five
3 things have been shown.

4 Now, I know that it's a little bit confusing and
5 you may be asking yourselves what's the difference
6 between finding someone guilty under the aiding and
7 abetting theory and finding someone guilty of the
8 substantive offense under the conspiracy theory.
9 Although the two offenses are similar in some respects,
10 there is a big difference between finding somebody
11 guilty on what others have done based on the aiding and
12 abetting theory as opposed to finding someone guilty of
13 a substantive offense based on what co-conspirators
14 have done. The difference is this. Proof of aiding
15 and abetting, as I told you earlier, requires evidence
16 that the crime was actually committed by someone.

17 The defendant can't be guilty of aiding and
18 abetting an offense that was never committed. Whereas,
19 proof of a conspiracy does not require a showing that
20 the unlawful act that was the object of the conspiracy
21 was committed. You can be guilty of conspiracy even
22 though the act was not committed. Obviously, you can't
23 be guilty of the act that was the object of the
24 conspiracy unless the act was committed. But you can't
25 be guilty of aiding and abetting unless the offense was

1 committed. You can be guilty of a conspiracy even if
2 the offense that was the object of the conspiracy was
3 not committed.

4 Now, I'm going to go to Count V. I've tried to
5 explain to you what the Government has to prove in
6 order to establish that the defendant was guilty of
7 either the possession with intent to distribute charges
8 in Counts II or IV. I've explained to you, or tried to
9 explain to you, what the Government must prove in order
10 to show that the defendant was guilty of aiding and
11 abetting, either the charge contained in Count II or
12 the charge contained in Count IV.

13 I've attempted to explain to you what the
14 Government must prove in order to establish the
15 defendant is guilty of the conspiracy charged in Count
16 I, and I've also attempted to explain to you how, if
17 the defendant is guilty of the conspiracy charged in
18 Count I, and the offense charged in Count II, which is
19 alleged to be the object of the conspiracy, how, if
20 those things are proven, the defendant also may be
21 found guilty of the offenses charged in Count II.

22 I'm now going to move to the charge in Count V,
23 which is possession of a firearm in furtherance of a
24 drug trafficking crime.

25 Count V charges that the defendant knowingly

1 possessed a firearm in furtherance of a drug
2 trafficking crime in violation of Section 924(c)(1) of
3 Title 18 of the United States Code and that he aided
4 and abetted others in doing so.

5 The drug trafficking crime or crimes in question
6 are the offenses of possession of cocaine with intent
7 to distribute it charged in Counts II and IV, and the
8 offense of conspiracy to possess 500 grams or more with
9 intent to distribute it, which is charged in Count I.

10 All three of those counts charge drug
11 trafficking crimes. So the question is whether the
12 Government has proven that the defendant possessed a
13 firearm in furtherance of any one or more of those
14 crimes, or whether he aided and abetted others in
15 possessing a firearm in furtherance of one or more of
16 those drug trafficking crimes.

17 Again, I'll begin by reading to you the relevant
18 section of the statute, 924(c)(1)(A). That section
19 says, "Any person who, in furtherance of a drug
20 trafficking crime, possesses a firearm, shall be guilty
21 of an offense against the United States."

22 In order to establish that the defendant is
23 guilty of the offense of possessing a firearm in
24 furtherance of a drug trafficking crime, the Government
25 must prove three things or elements. Three sounds like

1 a magic number, I know, but, again, it's three things,
2 but they're different from the other things.

3 First, the Government has to prove that the
4 defendant committed one or more of the drug trafficking
5 crimes charged in Counts I, II and IV; namely,
6 conspiracy, and/or possession with intent to distribute
7 cocaine, or that the defendant aided and abetted others
8 in committing one or more of those offenses.

9 Second, the Government has to prove that the
10 defendant knowingly possessed a firearm. And third,
11 the Government has to prove that the defendant
12 possessed the firearm in furtherance of the drug
13 trafficking crime or crimes in question.

14 In order to convict the defendant of possessing
15 a firearm in furtherance of a drug trafficking crime,
16 you must find some connection between the defendant's
17 possession of the firearm and the drug trafficking
18 crime in question. The defendant who possesses drugs
19 with intent to distribute them, and also possesses a
20 firearm, is not guilty of possessing a firearm in
21 furtherance of that crime if there was no connection
22 between the possession of the firearm and the
23 commission of the drug trafficking crime.

24 The possession of the firearm must be in
25 furtherance of the commission of the drug trafficking

1 crime. That is to say, the defendant must have
2 possessed the firearm in order to facilitate in some
3 way the possession of the -- rather the drug
4 trafficking offense.

5 Now, a firearm is any weapon which will or is
6 designed to or may be readily converted to expel a
7 projectile by the action of an explosive. The
8 definition of a firearm also includes the frame or the
9 receiver of any such weapon, and the weapon doesn't
10 have to be loaded in order to be a firearm. As long as
11 it is a weapon that could expel a projectile or a
12 bullet, then that qualifies as a firearm.

13 Now, in order to find the defendant guilty of
14 possessing a firearm in furtherance of a drug
15 trafficking crime, all of you must agree as to what
16 that drug trafficking crime was. You cannot find the
17 defendant guilty of this charge unless all of you agree
18 which one or more of the drug trafficking crimes the
19 firearm furthered. In other words, the Government has
20 to prove that the firearm was possessed in furtherance
21 of the conspiracy charged in Count I and/or the
22 possession of 500 grams of cocaine with intent to
23 distribute it charged in Count II, and/or the
24 possession of the unspecified quantity of cocaine
25 charged in Count IV.

1 You cannot find the defendant guilty of this
2 charge if some, but not all of you, think that the
3 firearm was possessed in furtherance of one of those
4 crimes, and others think that the firearm was possessed
5 in furtherance of a different crime. You must all
6 agree that the firearm was possessed in furtherance of
7 a particular crime or more than one particular crime.

8 Now, I've already told you what's meant by the
9 terms "possession" and what "aiding and abetting" is.
10 And those explanations apply equally to Count V except
11 here we're talking about possession of a firearm as
12 opposed to possession of drugs, and we're talking about
13 possession of a firearm in furtherance of a drug
14 trafficking crime, but other than that, the definitions
15 apply equally here.

16 The same is true of aiding and abetting. In
17 order to show that the defendant is guilty of aiding
18 and abetting others in possessing a firearm in
19 furtherance of a drug trafficking crime, the Government
20 has to show, first, that the crime of possessing a
21 firearm in furtherance of a drug trafficking crime was
22 committed by somebody; second, that the defendant
23 assisted in the commission of that crime, he did
24 something to facilitate the crime; and third, that he
25 intended to assist in the commission of that crime.

1 Mercifully, those are the things the Government
2 has to prove in connection with each of the four counts
3 charged in the indictment, and those are the ways in
4 which the Government may prove these various things.

5 In order to establish that the defendant is
6 guilty of any of these offenses on any of the theories
7 that I have described, you must find that the
8 Government has proven each and every one of the
9 elements of that particular offense beyond a reasonable
10 doubt.

11 If you find that the Government has failed to
12 prove all of the elements that it must prove in order
13 to convict the defendant of conspiracy, possession of
14 cocaine with intent to distribute, possession of a
15 firearm in furtherance of a drug trafficking crime, or
16 it's failed to prove all of the elements that it must
17 prove in order to convict the defendant with aiding and
18 abetting, possession with intent to distribute cocaine,
19 or possession of a firearm in furtherance of a drug
20 trafficking crime, unless it proves all of the
21 elements, you can't find the defendant guilty of that
22 particular offense on that theory.

23 On the other hand, if you find that the
24 Government has proven each and every one of the
25 elements that it must prove with respect to any of

1 those offenses or on any of those theories, then you
2 can and you should find the defendant guilty of that
3 particular offense.

4 Now, I told you that the Government has to prove
5 these things beyond a reasonable doubt, has to prove
6 each and every element of a particular offense beyond a
7 reasonable doubt. Now, what does that mean? Well, it
8 does not mean that the Government has to prove these
9 things beyond all doubt or beyond any conceivable
10 shadow of a doubt. What it means is the Government
11 must prove these things beyond a reasonable doubt.

12 And in determining whether a reasonable doubt
13 exists, you may use your common sense to decide what
14 the facts are, but bear in mind that those facts have
15 to demonstrate proof beyond a reasonable doubt.

16 A reasonable doubt can arise from the evidence
17 presented, or it may arise from a lack of evidence. I
18 can't provide you with a precise definition of what is
19 meant by proving something beyond a reasonable doubt.
20 It almost defies definition. And that's one of the
21 reasons why you are here. It's up to you to decide,
22 using your common sense and good judgment, whether the
23 Government has proven these things beyond a reasonable
24 doubt.

25 You'll have the indictment with you in the jury

1 room to help you remember the precise nature of the
2 charges against the defendant, what's charged in each
3 count. And I remind you, again, that the indictment is
4 not evidence. The indictment doesn't prove or disprove
5 anything. The indictment simply tells you what the
6 charges are so that you can determine whether the
7 Government has proven these charges beyond a reasonable
8 doubt.

9 And you'll note that the indictment makes
10 reference to particular dates. The Government doesn't
11 have to prove that these things occurred exactly on the
12 date specified in the indictment as long as you find
13 that the evidence is sufficient to establish that these
14 acts were committed on or close to the dates mentioned
15 in the indictment.

16 I've also told you that the case began with a
17 presumption of innocence. The defendant is presumed to
18 be not guilty unless and until the Government presents
19 evidence that satisfied you beyond a reasonable doubt
20 that he is guilty, but I also mentioned that if you're
21 satisfied the Government has presented such evidence,
22 the presumption of innocence vanishes. It no longer
23 has any effect.

24 Once evidence is presented of guilt beyond a
25 reasonable doubt, that's the end of the presumption of

1 innocence. But until then, unless the Government has
2 presented such evidence, the presumption of innocence
3 is sufficient to require an acquittal.

4 I told you what it is that the Government has to
5 prove and the burden of proof or the standard that you
6 apply in determining whether the Government has proven
7 these things, the beyond a reasonable doubt standard.
8 How do you go about deciding whether the Government has
9 proven these things beyond a reasonable doubt? As I've
10 indicated earlier, you must base that decision solely
11 on the evidence that's been presented to you during the
12 course of this trial. And the evidence, as I've said,
13 consists of the testimony of the witnesses, the
14 contents of the exhibits, and there were one or two
15 stipulations by the attorneys in which they agreed that
16 particular things were so.

17 The evidence does not include statements that
18 were made by the attorneys in the course of addressing
19 you or objecting or any other time. It does not
20 include statements where the witness may have made an
21 answer to a question where I struck the answer later.
22 That's not evidence that's properly before you.

23 Now, as to the testimony of the witnesses, your
24 task is to assess the credibility of the witnesses or
25 to determine how much weight that witness's testimony

1 deserves.

2 And in making that determination, there are a
3 number of factors that you can and should consider.
4 One is the opportunity or lack of opportunity the
5 witness had to have accurately observed the facts that
6 the witness related to you. In other words, was the
7 witness in a good position to have accurately seen,
8 heard or otherwise observed the things that the witness
9 testified about. If so, you may give that witness's
10 testimony more weight than if you find that the witness
11 wasn't really in a very good position to have
12 accurately seen these things.

13 The second factor to consider is the witness's
14 memory. Although the witness may have been in a good
15 position to have seen and heard what the witness told
16 you, did it seem to you that the witness has an
17 accurate recollection of what it is that the witness
18 claims to have seen, or does it seem to you that the
19 witness's memory may be flawed. Again, that's a factor
20 you can consider.

21 A third factor is the witness's appearance on
22 the stand. One reason that we generally don't allow
23 testimony about what someone else outside of the
24 courtroom may have told the witness is that you don't
25 have the opportunity to see that person, the source of

1 the information, and the lawyers don't have a chance to
2 cross-examine that person.

3 So generally, we require the witness to come in
4 and testify personally, and one of the reasons for that
5 is it gives you a chance to size up the witness and to
6 make some judgment as to how much weight you think that
7 witness's testimony deserves, and that's a very
8 important consideration as well.

9 Another factor to keep in mind is the
10 probability or improbability of what the witness told
11 you. You don't have to accept something as a fact
12 simply because a witness said it was so or not so, and
13 no one directly contradicted the witness's testimony.

14 If what the witness says or said seems to you to
15 be inherently incredible or implausible, you don't have
16 to accept that testimony at face value just because the
17 witness said it and nobody directly contradicted it.

18 You can discount the testimony or disregard it
19 completely if you believe that the witness was mistaken
20 or lying or some other reason just is not reliable,
21 what the witness said is simply not reliable.

22 Another thing you can consider is whether the
23 witness has any outcome -- has any stake in the outcome
24 of the case, whether the witness has something to gain
25 or lose from your decision. Now, that doesn't mean, of

1 course, that simply because the witness may hope the
2 case comes out one way or another means that you should
3 disregard or even discount that witness's testimony,
4 because obviously, by the very nature of things, often
5 the main witnesses in any case are individuals who are
6 deeply involved in a case in one way or another. So
7 you shouldn't discount a witness's testimony just
8 because a witness has a stake in the outcome, but you
9 can consider that in assessing the witness's testimony.

10 Keep in mind, too, now, you've heard testimony
11 from a number of law enforcement officials or Government
12 agents, and keep in mind that you should not give any
13 greater weight to a witness's testimony, or any lesser
14 weight, for that matter, to a witness's testimony
15 simply because that witness may be a law enforcement
16 official or a Government agent or hold some other
17 position.

18 You should base your judgment with respect to
19 the credibility of a witness on your assessment of that
20 witness as an individual and not on what position that
21 person may hold.

22 Keep in mind, too, that in evaluating the
23 evidence, it's not the number of witnesses that
24 testifies on any particular point or any particular
25 side of a point that should be determinative, but

1 rather it's the quality of the testimony. So just
2 because you may have two or three witnesses who testify
3 on one side of the point, and one witness who testifies
4 in contradiction, that doesn't necessarily mean that
5 you should accept the version given by the two or three
6 witnesses. You should look at the credibility of the
7 witnesses and the quality of the testimony, and you may
8 find that even though only one witness said it happened
9 this way and two or three witnesses said it happened a
10 different way, you may accept the testimony of the one
11 witness if you find that witness was a very credible
12 witness or more credible witness than the two or three
13 witnesses.

14 Also, you'll have the exhibits with you in the
15 jury room. And you can evaluate, you should evaluate
16 those exhibits, and you can examine them to your
17 heart's content, but keep in mind that merely because
18 an exhibit has been admitted into evidence doesn't mean
19 that you are required to accept everything in that
20 exhibit at face value. You should look at the exhibits
21 in the same way as you look at the testimony of the
22 witnesses, that is to say, in light of all of the
23 evidence that's been presented during the course of the
24 trial, and you should give the exhibits whatever weight
25 you think they deserve when viewed in that context.

1 During the trial, you heard the transcribed
2 content of tape-recorded conversations, and you'll have
3 those transcripts of those conversations that have been
4 admitted into evidence, and you'll have them with you
5 in the jury room.

6 Now, I've told you that you can properly
7 consider only the evidence that has been admitted or
8 that is properly before you in determining the facts of
9 the case, but that doesn't mean that you are strictly
10 limited to the testimony of witnesses and the contents
11 of the exhibits in reaching your decision.

12 In reaching your decision, you are permitted to
13 draw from the facts that have been proven such
14 reasonable inferences or conclusions as may be
15 appropriate.

16 Inferences are deductions or conclusions which
17 reason and common sense lead you to draw from facts
18 that have been established. And the process of proving
19 facts by inferring them from other facts that have been
20 proven is sometimes referred to as proof by
21 circumstantial evidence.

22 I think, probably, the best way to explain that
23 is to tell you that you can prove a fact, any fact that
24 needs to be proven can be proven in one of two ways.
25 It can be proven by direct evidence, that is to say,

1 the testimony of someone who claims to have directly
2 observed that particular fact, or exhibit that shows
3 that fact or is that fact, or it can be proven by
4 circumstantial evidence, which means proving it by
5 establishing a series, two or more facts, by direct
6 evidence from which the existence or non-existence of a
7 third fact may be reasonably inferred.

8 Let me give you an example that I hope will more
9 clearly illustrate what I mean. Suppose on some winter
10 night before you go to bed you look out the window and
11 the ground is bare. The next morning you wake up, and
12 there's a foot of snow on the ground. If someone asked
13 you whether it snowed last night, your answer, I
14 assume, would be yes. But if you had to come to court
15 and prove it, how would you prove that?

16 Well, there are two ways you could prove it.
17 First, if you find someone or knew someone who was
18 awake when the snowflakes were falling, you could bring
19 that person in, and they could testify from their own
20 observation that it snowed last night. They actually
21 saw the snowflakes fall from the sky. That would be an
22 example of proving that it snowed by direct evidence,
23 the direct observation of the individual who saw the
24 snowflakes fall. If you didn't -- couldn't find
25 someone who saw the snowflakes falling, you could

1 testify as to two things from your direct observation.
2 You could testify, number one, that when you went to
3 bed the ground was bare; number two, when you woke up,
4 there was a foot of snow on the ground. That's proof
5 of those two facts by direct evidence, your direct
6 observation. And from those two facts, it would be
7 reasonable to infer that it snowed last night. That
8 would be an example of proving that it snowed by
9 circumstantial evidence, the proof by direct evidence
10 of two facts from which the existence of a third fact
11 can be reasonably inferred.

12 Now, a couple of words of caution. There's a
13 big difference between proving something by
14 circumstantial evidence and guessing as to what might
15 have happened. And the difference is that in order to
16 prove something by circumstantial evidence, the facts
17 from which you draw the inference must have been
18 established by the direct evidence, and the inference
19 that you draw must be a reasonable inference.

20 So in my example, if someone asks you if it's
21 going to snow next Monday night or next Sunday night,
22 it would not be reasonable to say yes based on the two
23 facts that I mentioned. And the second thing to keep
24 in mind is that, although any fact necessary to convict
25 a defendant of a crime can be proven either by direct

1 evidence or circumstantial evidence, it has to be
2 proven beyond a reasonable doubt. Whichever way it's
3 proven, it has to be proven beyond a reasonable doubt.

4 Now, I've told you it's up to you to decide the
5 facts in this case, and you should not interpret
6 anything that I may have said or done during the course
7 of the trial as indicating an opinion on my part as to
8 what I may believe the facts are. You shouldn't be
9 concerned with what you may think I think the facts
10 are. It's your job to decide what the facts are.

11 During the trial, there have been occasions when
12 the attorneys have objected to evidence offered by the
13 opposing attorney. A couple of things to keep in mind
14 there. First of all, you shouldn't give the evidence
15 any less weight, if I overruled the objection and
16 admitted the evidence, you shouldn't give it any less
17 weight just because somebody objected to it. That
18 evidence is properly before you, and you can consider
19 it for whatever value you think it has.

20 And the second thing to keep in mind is you
21 shouldn't penalize the attorney or the attorney's
22 client because the attorney may have found it necessary
23 to object. The attorney has a right, even an
24 obligation, to object to evidence that the attorney
25 believes is being offered but does not satisfy the

1 rules of evidence. So the fact that attorneys may have
2 objected to evidence should have no bearing on your
3 decision.

4 Also, as you know, this case is brought in the
5 name of the United States of America, but that does not
6 entitle the prosecution to any greater consideration
7 from you than the defendant. Every party that comes
8 into this Court comes in here as an equal regardless of
9 who they are, and you should give each side the same
10 consideration.

11 I hope that it goes without saying that neither
12 bias in favor of any person, or group, or cause,
13 prejudice against any person, or group, or cause, or
14 sympathy should have any role whatsoever in your
15 deliberations. Your job is to look objectively at the
16 evidence that has been admitted to determine from that
17 evidence what the facts are and to apply those facts to
18 the law as I have attempted to explain it to you.
19 That's all that either side in this case expects or has
20 a right to. That's what your job should be. It
21 shouldn't be swayed by any other considerations other
22 than what the evidence shows and what the law is.

23 I'm going to ask the lawyers to approach the
24 side bar briefly to tell me whether they think I have
25 forgotten to tell you anything I should have told you

1 or whether I have misstated anything that I did tell
2 you.

3 (Side-bar conference.)

4 THE COURT: Does the Government have any
5 objections to the charge?

6 MS. GOLDSTEIN: No, your Honor. There was no
7 charge given on flight. That was the only thing.

8 MR. MANN: I have specific objections, Judge. I
9 object to the Court not giving a definition of proof
10 beyond a reasonable doubt as I set forth in my proposed
11 instructions. Specifically, I object to the Court not
12 saying, (Reading:) For reasonable doubt, as I have
13 said, the burden is on the Government to prove beyond a
14 reasonable doubt that the defendant is guilty of the
15 charge made against the defendant. The Court did say
16 that.

17 (Reading:) It is a strict and heavy burden, but
18 it does not mean the defendant's guilt must be proved
19 beyond all possible doubt. It does require that the
20 evidence exclude any reasonable doubt concerning the
21 defendant's guilt.

22 A reasonable doubt may arise not only from the
23 evidence produced but also from a lack of evidence. I
24 acknowledge you said -- you made that statement.

25 (Reading:) Reasonable doubt exists when, after

1 weighing and considering all the evidence, using reason
2 and common sense, jurors cannot say that they have a
3 settled conviction of the truth of the charge.

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

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

18 Concluding my instructions on the burden, then,
19 I instruct you that what the Government must do to meet
20 its heavy burden is to establish the truth of each part
21 of each offense charged by proof that convinces you and
22 leaves you with no reasonable doubt, and thus satisfies
23 you that you can, consistently with your oath as
24 jurors, base your verdict upon it. If you so find as
25 to a particular charge against the defendant, you're to

1 return a verdict of guilty on that charge. If, on the
2 other hand, you think there is a reasonable doubt about
3 whether the defendant is guilty of a particular
4 offense, you must give the defendant the benefit of the
5 doubt and find the defendant not guilty.

6 That comes directly from my proposed instruction
7 on reasonable doubt.

8 THE COURT: And the First Circuit has repeatedly
9 said that the less said in attempting to define what a
10 reasonable doubt is, the better. So your objection is
11 noted.

12 Are these coming from your requests, your
13 supplemental request for the charge?

14 MR. MANN: Only one thing came from the
15 supplemental request. Do you want me to give you that?

16 THE COURT: All I'm trying to say is if you have
17 handed in a written request and I have failed to give
18 it, you can simply refer to the particular request you
19 submitted, and I think that will be sufficient.

20 MR. MANN: Every one of my objections comes
21 specifically from the requests I submitted, Judge.

22 THE COURT: Are they numbered?

23 MR. MANN: Only by page. I can refer to them
24 very specifically, I think.

25 THE COURT: Okay. Let's go down the list. What

1 page?

2 MR. MANN: One is the supplemental instructions
3 regarding aiding and abetting, specifically the last
4 paragraph that referred to the United States versus
5 Torres-Maldonado. Statement about that the defendant
6 were to find the defendant aided and abetted
7 Mr. Christopher Garcia, you must find that the
8 defendant, Domingo Gonzalez, must have known with
9 practical certainty that Mr. Garcia would be possessing
10 a gun in furtherance of a drug trafficking crime.
11 That's specifically aiding and abetting.

12 THE COURT: That's fine.

13 MR. MANN: Second, on page 16, referring to it's
14 numbered 4 refers to Count V, possession of a firearm
15 in furtherance of a drug trafficking crime, I
16 specifically object to the Court not giving the last
17 paragraph of that proposed instruction.

18 THE COURT: All right. How many more objections
19 do you have Mr. Mann? Do I need to send the jury out
20 to the jury room?

21 MR. MANN: One or two more.

22 THE COURT: All right. Go ahead.

23 MR. MANN: Am I protected by not reading these
24 objections into the record?

25 THE COURT: I will say that if you have

1 submitted a written request, it's included in the
2 written request that you submitted, which I have
3 reviewed, and I didn't give it, you can simply refer to
4 the page and, otherwise, identify the request that
5 you're talking about, and that will be sufficient.

6 MR. MANN: I just did refer to page 16, the
7 following paragraph.

8 THE COURT: Right. We'll incorporate that --
9 it's part of the record. Your request is part of the
10 file. That's one of the reasons the pretrial order
11 instructs counsel to number the requests, because then
12 you can simply say you object to the Court's failure to
13 give requested instruction number three or four or
14 whatever the number may be.

15 MR. MANN: This is number three on page three
16 titled "Joining the Conspiracy and Criminal Intent."

17 I specifically object to the Court, again, not
18 giving the last paragraph beginning with "Proof that
19 defendant willfully joined in agreement must be based
20 on evidence of his or her own words and/or actions."
21 There are parts in that paragraph that I don't think
22 you gave, Judge, specifically. Specifically, Judge,
23 (Reading:) Even if the defendant was not part of the
24 agreement at the very start, he can be found guilty of
25 conspiracy if the Government proves that he willfully

1 joined in the agreement later.

2 THE COURT: I don't think you need to read it.

3 MR. MANN: I won't read it into the record then.

4 May I just see if I have anything else?

5 THE COURT: Yes.

6 MR. MANN: I numbered it number one, aiding and
7 abetting, page 18 of Defendant's Proposed Instructions,
8 it's defined the term aiding and abetting. I object
9 to --

10 THE COURT: You object to the failure to give
11 that requested charge?

12 MR. MANN: Yes, Judge.

13 THE COURT: Anything else?

14 MR. MANN: No objection.

15 (End of side-bar conference.)

16 THE COURT: All right. Ms. Siemering -- I hope
17 I'm pronouncing your names correctly. Ms. Siemering,
18 Ms. Martone, Ms. Merola and Ms. Bouthillier, you've all
19 been alternates in this case, and your job is now done
20 since all of the regular jurors are prepared to
21 continue. I want to thank you very much for your
22 attention. I know it's not easy to be an alternate.
23 It's like being a backup quarterback. You never know
24 if you're going to be called upon, but you've got to be
25 ready if you are.

1 At this time, I'm going to excuse you with a
2 couple of cautionary words. First of all, you
3 shouldn't have any further discussions with the regular
4 jurors about this case. They have to deliberate on
5 their own now. And second, you should still not obtain
6 or attempt to obtain any information about anything to
7 do with this case from any outside sources, because
8 there is a very remote possibility that you may be
9 recalled if something should happen if one or more of
10 the regular jurors cannot continue.

11 So preserve your open minds until you hear that
12 the jury has returned a verdict in this case or the
13 case is over.

14 So thank you very much for your service, and
15 you're excused at this time.

16 (Alternates excused.)

17 THE COURT: As to the rest of you, ladies and
18 gentlemen, you are the jury in this case. And in order
19 to return a verdict in this case on any one of the
20 counts or charges, all of you must agree as to what
21 that verdict should be. You can't return a verdict of
22 guilty or not guilty on any of these charges unless you
23 are unanimous. When you go into the jury room, there
24 are two things that you should keep in mind, which at
25 least on the surface I know seem to be in conflict, and

1 I suppose they are.

2 The first thing is that you ought to approach
3 the deliberations with an open mind. And if you happen
4 to disagree with other jurors on a particular point,
5 you should have the humility to change your mind if
6 after listening with an open mind to what your other
7 jurors have to say you become convinced that they're
8 correct and you're incorrect. None of us is the
9 repository of all wisdom, and you should be humble
10 enough to reassess your position after you've listened
11 with an open mind to what the other jurors have to say.

12 The second equally important point is that you
13 also need to keep in mind that you have an individual
14 responsibility to vote for the verdict that you believe
15 is the correct verdict based on the evidence as it's
16 been presented and the law as I have explained it to
17 you, and you should have the courage to stick to your
18 convictions, if, after listening with an open mind, you
19 remain convinced that you are correct and the other
20 jurors are incorrect. And that should be so even if
21 you're the only one, even if all the other jurors
22 should disagree with you.

23 So I know those two things sound like they
24 conflict, but my experience over the years has been
25 that, in a vast majority of cases, jurors are able to

1 return unanimous verdicts without doing violence to
2 either of those principles, and I'm confident you will
3 also.

4 When you go into the jury room, the first thing
5 that you need to do is select a foreman or forelady,
6 and that person will have the responsibility of
7 ensuring that the deliberations are conducted in an
8 orderly manner, that everyone who wants a chance to
9 speak will have a clear chance to do so. And the
10 foreman or forelady will have the duty of completing
11 the verdict form that will go with you in the jury room
12 in a few minutes.

13 It's simply a matter of checking the applicable
14 boxes and signing it after the jury has reached a
15 unanimous decision.

16 The second responsibility, or the third
17 responsibility that the foreperson may or may not have
18 is if it's necessary to communicate with me for any
19 reason, the communication should be through the foreman
20 or forelady and should be in the form of a written
21 note, just a brief note telling me what your question
22 or problem is, and you should hand it to the security
23 officer who will be outside of your door. He'll
24 deliver it to me, and I will discuss it with the
25 lawyers, and I will try to respond as quickly as I

1 properly can to help you. And I say "quickly," because
2 I have other matters scheduled this morning so I may
3 not be able to get to it immediately. "Properly," I
4 say that because there are some things I cannot do,
5 cannot properly do to assist you. I've already told
6 you it's your job to decide the facts in the case. I
7 can't help you in deciding the facts. That's something
8 you have to do yourselves, but if there's anything that
9 I can do to assist you, I will certainly try.

10 I don't mean to suggest I expect you to have
11 problems or questions, because most juries don't, but
12 if you do, feel free to ask for my help, if you think
13 that's necessary.

14 You'll have a recording of my charge to you to
15 replay if you want. I know there was a lot thrown at
16 you there, and you may want to listen to some of that
17 again. That's up to you.

18 As far as your deliberations are concerned,
19 there's no time limit on the deliberations. You should
20 take as much time as is necessary to fairly decide this
21 case, and how long that is is entirely up to you. If
22 by the end of the day you have not reached a decision,
23 it's your choice as to whether you want to stay late if
24 you think you're close, or whether you prefer to come
25 back tomorrow and resume your deliberations.

1 If you do wish to stay late, please let us know
2 in enough time so that we can make arrangements to
3 staff the building. The clerk will check in the
4 afternoon if you haven't returned a verdict by then to
5 see what you think your timetable is.

6 Is there anything further before the jury is
7 sent out?

8 MS. GOLDSTEIN: Nothing further from the
9 Government.

10 MR. MANN: Nothing further from the defense,
11 your Honor.

12 THE COURT: One other thing. If you should need
13 to send me a note, please don't indicate on the note
14 what the status of your deliberation is. We don't want
15 to know if you're eight to four in favor of acquittal
16 or conviction. We don't need to know those things.
17 Just tell me what the question or problem is.

18 The security officer will come forth and the
19 clerk will administer the oath.

20 (Oath administered to security officer.)

21 THE COURT: All right. Ladies and gentlemen,
22 this case is now in your hands. You may return to the
23 jury room and begin your deliberations.

24

25