Introduction

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

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

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

Presumption of Innocence

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

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

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

Definition of "On or About"

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

Summary of the Charges

The indictment contains 5 separate counts. Count 1 charges the Defendant with conspiring to distribute and to possess with intent to distribute more than 5 kilograms of cocaine from on or about June 29, 2000 to on or about August 22, 2001. Count 2 charges the Defendant with attempting to possess with intent to distribute more than 5 kilograms of cocaine on or about April 30, 2001. Count 3 charges the Defendant with possessing a firearm in furtherance of a drug trafficking offense on or about April 30, 2001. Count 4 charges the Defendant with attempting to possess with intent to distribute more than 5 kilograms of cocaine on or about August 22, 2001. Count 5 charges the Defendant with possessing a firearm in furtherance of a drug trafficking offense on or about August 22, 2001.

Count 1

(conspiring to distribute and to possess with intent to distribute cocaine)

The Defendant is accused of conspiring to distribute and to possess with intent to distribute more than 5 kilograms of cocaine from on or about June 29, 2000 to on or about August 22, 2001. For you to find the Defendant guilty of this crime you must be convinced that the Government has proved each of these things beyond a reasonable doubt:

First, that there was a conspiracy by two or more persons to distribute and possess with intent to distribute more than five kilograms of cocaine as explained in the indictment;

Second, that the Defendant was a member of that conspiracy; and

Third, that the Defendant knowingly and willfully became a member of the conspiracy. In other words, that the Defendant knew that the conspiracy had an unlawful purpose but nevertheless, voluntarily joined it with the intention to help accomplish that purpose.

Conspiracy - Definition

A conspiracy is a mutual understanding or agreement by two or more persons to accomplish some unlawful purpose, or to accomplish some lawful purpose by unlawful means. A conspiracy is a kind of "partnership for criminal purposes," in which each member becomes the agent of every other member.

It is important to remember that conspiracy is a separate offense from the substantive crime that may be the goal of the conspiracy.

The gist of the offense of conspiracy is an agreement to violate or to disregard the law.

It does not matter whether the conspiracy succeeds or not or whether a defendant’s role is major or minor. The essence of the offense is participating in a plan or scheme to do something unlawful. Therefore, one who participates in a conspiracy may be guilty even though the goal of the conspiracy is not accomplished, and regardless of whether his role as a member of the conspiracy is major or minor.

Conspiracy - Intent

The Government must prove two types of intent in a conspiracy:

1. An intent to agree; and

2. An intent to commit the substantive offense.

The Defendant's intention may be shown by circumstantial evidence.

Conspiracy - Existence - Agreement

The fact that various persons may have engaged in similar conduct or may have associated with each other or may have had discussions among themselves does not necessarily prove the existence of a conspiracy.

In order to establish that a conspiracy existed, there must be proof that the alleged members reached a mutual agreement or understanding to try to accomplish a common and unlawful plan.

However, proof of a conspiracy does not require evidence that the members formally or specifically stated the terms of their agreement. The agreement may by an informal or tacit one and its existence may be proved by direct or circumstantial evidence.

Nor does proof of a conspiracy require evidence that everyone involved agreed on all the details regarding the methods to be used.

It does require proof beyond a reasonable doubt that the members of the alleged conspiracy somehow reached a mutual agreement or understanding that they would attempt to accomplish a common and unlawful plan.

A single Defendant can be convicted of conspiracy provided that an unlawful agreement with another or others is proved beyond a reasonable doubt. Now, some of the people who may have been involved in these events are not on trial. This does not matter.

There is no requirement that all members of a conspiracy be charged and prosecuted, or tried together in one proceeding.

Caution as to Cooperating Witness/Accomplice(s)

You have heard the testimony of Clifford Falla. He may have:

(1) Provided evidence under agreements with the Government; and/or

(2) Participated in the crimes charged against Anthony Gobbi.

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

You have also heard that Clifford Falla and Robert Nardolillo have pled guilty to criminal charges filed against them.

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

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

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

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

Conspiracy - Membership

Before the jury may find that the Defendant became a member of the conspiracy charged in the indictment, the evidence in the case must show beyond a reasonable doubt that the Defendant knew the purpose or goal of the agreement or understanding and deliberately entered into the agreement intending, in some way, to accomplish the goal or purpose by this common plan or joint action.

Merely associating with others and discussing common goals, mere similarity of conduct between or among such persons, merely being present at the place where a crime takes place or is discussed, or even knowing about criminal conduct does not, of itself, make someone a member of the conspiracy or a conspirator.

Conspiracy - Membership - Knowing Participation

In order to be considered a member of a conspiracy, the Defendant must have joined it or participated in it knowingly.

An act is said to be done "knowingly" if it is done voluntarily and intentionally, and not because of ignorance, mistake, accident, or some other innocent reason. The requirement that an act be done knowingly is designed to ensure that the Defendant will not be convicted for an act that he did not intend to commit or the nature of which he did not understand.

Thus, the Government must prove the Defendant knew the conspiracy existed and knew of its unlawful purpose.

However, the Government does not have to prove that the Defendant knew all of the details of the conspiracy.

One may be a member of a conspiracy even though he or she does not know all of the steps to be taken to accomplish the unlawful purpose of the conspiracy.

And, one may be a member of a conspiracy even though he or she does not know or have direct dealings with all of the other members of the conspiracy.

On the other hand, one cannot be considered a member of a conspiracy unless he or she joins or participates in it knowingly. Thus, a person who has no knowledge that a conspiracy to violate the law exists but happens to act in a way that furthers some purpose of the conspiracy does not thereby become a conspirator.

Mere knowledge that a conspiracy exists is not by itself sufficient to establish guilt. There must be proof that the Defendant was a member of the conspiracy. In other words, the Defendant must have been a party to the agreement and not a mere spectator.

In deciding whether the Defendant acted knowingly, you may infer that the Defendant had knowledge of a fact if you find that he deliberately closed his eyes to a fact that otherwise would have been obvious to him. In order to infer knowledge, you must find that two things have been established. First, that the Defendant was aware of a high probability of the fact in question. Second, that the Defendant consciously and deliberately avoided learning of that fact. That is to say, the Defendant willfully made himself blind to that fact. It is entirely up to you to determine whether the Defendant deliberately closed his eyes to the fact and, if so, what inference if any should be drawn. However, it is important to bear in mind that mere negligence or mistake in failing to learn the fact is not sufficient. There must be a deliberate effort to remain ignorant of the fact.

Conspiracy - Proof of Knowledge and Willfulness

Proof that the Defendant acted knowingly or willfully does not require direct evidence of what was in the Defendant's mind.

Whether the Defendant acted with knowledge of a particular fact or with a particular intent may be inferred from what the Defendant said or did and from any other pertinent facts established by the evidence that indicate what the Defendant knew or intended.

However, knowledge and willfulness, like all of the other elements of a crime, must be established beyond a reasonable doubt.

Conspiracy - Existence and Defendant's Membership - Proof

In determining whether a conspiracy existed, you may consider all the evidence that serves to establish the existence of the conspiracy including the actions and statements of all of the alleged conspirators.

However, in determining whether the Defendant was a member of that conspiracy, you should first consider the evidence regarding what the Defendant said or did because a person cannot be bound by the actions or statements of alleged conspirators until it is established that a conspiracy existed and that such person was a member of that conspiracy.

Having done that, 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 provided that you find such acts were done and such statements were made by a person whom you find to be a member of the conspiracy and that the acts were done or the statements were made during the conspiracy's existence and in furtherance of the conspiracy.

Defendant's Theory

The Defendant's position is that he did not participate in any alleged conspiracy or in any other crimes charged and that some of the Government's witnesses testified falsely.

That, of course, is a matter for you to decide.

Conspiracy - Liability for Substantive Offenses Committed by Others

Before moving on to the remaining charges, I would like to explain the two ways the Government can prove the Defendant's guilt for Counts 2, 3, 4, and 5. The first is by convincing you that the Defendant personally committed or participated in the crime. The second is based on the legal rule that all members of a conspiracy are responsible for acts committed by the other members, as long as those acts are committed to help advance the conspiracy, and are within the reasonably foreseeable scope of the agreement.

In other words, under certain circumstances, the acts of one conspirator may be treated as the acts of all. This means that all the conspirators may be convicted of a crime committed by only one of them, even though they did not all personally participate in that crime themselves. The reason for this rule is simply that a co-conspirator who commits a substantive offense pursuant to a conspiracy is deemed to be the agent of the other conspirators. Therefore, all of the co-conspirators must have criminal responsibility for the commission of that substantive offense.

But, for you to find the Defendant guilty of Counts 2, 3, 4, or 5 based on this legal rule, you must be convinced that the Government has proved each and every one of the following elements beyond a reasonable doubt:

First, that the Defendant is guilty of the conspiracy charged in Count 1 of the indictment;

Second, that after he joined the conspiracy, and while he was still a member of it, one or more of the other members committed a crime as listed in Counts 2, 3, 4, and 5;

Third, that this crime was committed to help advance the conspiracy; and

Fourth, that this crime was within the reasonably foreseeable scope of the unlawful agreement. The crime must have been one that the Defendant could have reasonably anticipated as a necessary or natural consequence of the agreement.

If you find all four of these elements to exist beyond a reasonable doubt, then you may, but are not required, to find the Defendant guilty of the substantive offenses listed in Counts 2, 3, 4, and 5 even though the Defendant did not personally commit the offense or did not have actual knowledge of it.

COUNT 2

(attempt to possess with intent to distribute cocaine)

The Defendant is accused of attempting to possess with intent to distribute more than 5 kilograms of cocaine on or about April 30, 2001. It is against federal law to possess cocaine with the intent to distribute it to another person. For you to find the Defendant guilty of this crime, you must be satisfied that the Government has proved each of the following things beyond a reasonable doubt:

First, that the Defendant intended to commit the crime of possession with intent to distribute more than 5 kilograms of cocaine on or about April 30, 2001

or

that the Defendant intended to aid and abet the commission of that crime; and

Second, that the Defendant thereafter did an act constituting a substantial step towards the commission of that crime.

In order to find the Defendant guilty of committing the crime of attempted possession with intent to distribute over five kilograms of cocaine, the Government must prove beyond a reasonable doubt that the mental processes of the Defendant passed from the stage of thinking about the crime to actually intending to commit the crime; and that the physical process of the Defendant went

beyond the stage of mere preparation to some firm, clear, and undeniable action to accomplish that intent.

To "aid and abet" means intentionally to help someone else commit a crime. Under federal law, one who aids or abets another to commit an offense against the United States has himself committed a crime. To convict the Defendant as an aider or abettor, the Government must prove beyond a reasonable doubt that the Defendant associated himself in some way with the venture, that the Defendant participated in the venture as something he wished to bring about, and that the Defendant sought by his action to make the venture succeed. Mere presence at the scene, even coupled with knowledge that a crime is being committed, is insufficient to establish beyond a reasonable doubt that the Defendant acted as an aider and abettor. The Government must prove beyond a reasonable doubt that the Defendant shared in the criminal intent.

A "substantial step" is a step which strongly corroborates the Defendant's intent to commit the substantive offense. In determining whether the Defendant took a "substantial step" towards the commission of the crime, you must consider all of the evidence admitted in this case concerning the Defendant and the commission of the crime.

The Defendant may be found guilty of attempting to commit a certain crime even though no one actually did all of the acts necessary in order to commit that crime. The Defendant may not be

found guilty, however, of attempting to commit any crime merely by thinking about the crime or even by making some plans or some preparation for the commission of the crime.

Impossibility

Factual or legal impossibility is not a defense to a charge of attempting to commit a crime if the crime could have been committed had the factual circumstances been as the Defendant believed them to be. In other words, a person is guilty of an attempt to commit a crime if, acting with the kind of culpability otherwise required for the commission of the crime, he intentionally engages in conduct which would constitute the crime if the relevant factual circumstances were as he believed them to be.

COUNT 3

(possession of a firearm in furtherance of drug trafficking)

The Defendant is accused of possessing a firearm in furtherance of a drug trafficking crime on or about April 30, 2001. For you to find the Defendant guilty of this crime, you must be satisfied that the Government has proved each of the following things beyond a reasonable doubt:

First, that the Defendant committed the crime described in either Count 1 or Count 2; and

Second, that the Defendant possessed a firearm in furtherance of the commission of the crime described in either Count 1 or Count 2.

When determining whether the Defendant "possessed" an object, bear in mind that there are two kinds of possession: actual possession and constructive possession. Proof of either one is sufficient to satisfy the possession requirement. Whenever I use the term "possession" in these instructions, I mean actual as well as constructive possession.

Proof of possession requires a showing that the Defendant knew of the firearm and had both the power and the intention to exercise control over it.

When the Defendant has direct and immediate power and control over an object, the Defendant may be found to have "actual" possession of that object. Direct and immediate power and control

may exist when the object is on the Defendant's person or within his reach.

When the Defendant has indirect power and control over an object, the Defendant may be found to have "constructive" possession of that object even though the object is not on his person or within his reach. Indirect control may exist when the object is readily accessible to the Defendant and he has the power and the intention to exercise control over it.

Knowledge of and indirect control over an object may, depending upon the circumstances, be inferred from ownership or control over the area where the object was found.

One of the factors to be considered in determining whether such an inference is warranted is whether the Defendant had sole ownership and control over the area where the object was found or whether the Defendant shared ownership or control with others.

In any event, in order to infer that the Defendant possessed a firearm or owned or controlled the place where a firearm was found, you must find, beyond a reasonable doubt, that the Defendant knew about the presence of the firearm and intended to exercise control over them.

The Government is not required to prove that a Defendant owned an object in order to establish that the Defendant possessed the object, but ownership is a factor that may be considered.

The law also recognizes that possession may be “sole” or “joint.” Once again, proof of either one is sufficient to satisfy the possession requirement. Whenever I have used the word “possession” in these instructions, I mean joint as well as sole possession.

If one person alone has actual or constructive possession of an object, that person is said to have “sole possession.”

If two or more persons share actual or constructive possession of the object, they are said to have “joint possession.”

To summarize, a person does not have to have an object on his person in order to be deemed in possession of that object. However, a person must have both the power and intent to exercise control over the object (either alone or together with others) in order to be deemed in possession.

Evidence that the Defendant was present near the object, or that the Defendant associated with someone who possessed it, or that he knew that the object was there may be factors to be considered but they are not, by themselves, sufficient to establish possession.

To find possession, you must be satisfied that the Defendant knowingly had both the power and the intention to exercise dominion and control over the object (either alone or in conjunction with others).

The term “firearm” means any weapon which will, or is designed to, or may readily be converted to, expel a projectile by the action of an explosive. The term firearm also includes the frame or receiver of any such weapon.

The phrase “in furtherance of” means that you must find that the Defendant’s possession of the firearm furthered, advanced, or helped forward the drug trafficking crime.

COUNT 4

(attempt to possess with intent to distribute cocaine)

The Defendant is accused of attempting to possess with intent to distribute more than 5 kilograms of cocaine on or about August 22, 2001. For you to find the Defendant guilty of this crime, you must be satisfied that the Government has proved each of the following things beyond a reasonable doubt:

First, that the Defendant intended to commit the crime of possession with intent to distribute more than 5 kilograms of cocaine on or about August 22, 2001

or

that the Defendant intended to aid and abet the commission of that crime; and

Second, that the Defendant did an act constituting a substantial step towards the commission of that crime.

The terms "aid and abet" and "substantial step" have the meanings on which I instructed you previously.

COUNT 5

(possession of a firearm in furtherance of drug trafficking)

The Defendant is accused of possessing a firearm in furtherance of a drug trafficking crime on or about August 22, 2001. For you to find the Defendant guilty of this crime, you must be satisfied that the Government has proved each of the following things beyond a reasonable doubt:

First, that the Defendant committed the crime described in either Count 1 or Count 4; and

Second, that the Defendant possessed a firearm in furtherance of the commission of the crime described in either Count 1 or Count 4.

The terms “possession,” “firearm,” and “in furtherance of” have the meanings on which I instructed you previously.

Proof of All Elements

I have explained the offenses with which the Defendant is charged and the elements the Government must prove in order to establish that the Defendant is guilty of any one or more of those offenses.

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

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

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

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

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

Reasonable Doubt

The Government's obligation to prove the Defendant's guilt beyond a reasonable doubt does not mean that it must do so beyond all doubt or beyond any conceivable shadow of a doubt. What it means is that the Government must prove the Defendant's guilt beyond a reasonable doubt.

I cannot provide you with a definition of reasonable doubt. You know what "reasonable" means and you know what a "doubt" is. Therefore, it is up to you to decide whether the Government has proved the Defendant guilty beyond a reasonable doubt.

Indictment - Effect

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

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

Method of Assessing Evidence

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

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

The evidence that is properly before you consists of:

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

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

The evidence that is properly before you does not include:

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

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

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

Witnesses - Credibility - General Factors

As to the testimony of witnesses, your principal task is to determine the credibility of the witnesses and the weight you will give to the testimony of each.

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

1. The opportunity or lack of opportunity the witness had to acquire knowledge of the facts about which the witnesses testified. In other words, was the witness in a position to have accurately perceived the facts that the witness related to you.
2. The reliability or unreliability of the witness's memory. In other words, did the witness have a clear recollection of what happened or was the witness's memory uncertain or unclear.
3. The witness's appearance on the stand. Did the witness appear to be a person who was telling the complete and unadulterated truth, or did it appear that the witness was slanting things one way or another either consciously or unconsciously.
4. The probability or improbability of the witness's testimony. Did what the witness had to say sound reasonable or plausible or did it appear to be highly unlikely or impossible.

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

Witnesses - Credibility - Government Agents

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

Use of an Undercover Agent

You have heard testimony that agents of the Federal Bureau of Investigation and other law enforcement officers worked undercover during this investigation. There is nothing illegal or improper with the Government employing these techniques.

Whether or not you approve of the use of an undercover agent to detect criminal acts is not to enter into your deliberations in any way. If you are satisfied beyond a reasonable doubt that the Defendant committed the offenses charged in the indictment, the fact that the Government made use of an undercover agent is irrelevant to your determination.

Witnesses - Number - Weight of Testimony

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

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

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

Similarly, just because there may be more witnesses testifying on one side of an issue than on the other does not mean that the weight of the evidence lies in favor of the greater number of witnesses. Once again, it is the credibility or quality of the testimony that determines where the weight of the evidence lies.

Exhibits

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

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

Circumstantial Evidence

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

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

Inferences are deductions or conclusions which reason and common sense lead you to draw from facts which have been established by the evidence in the case.

Such evidence is sometimes called circumstantial evidence.

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

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

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

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

Conduct of Court - General

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

Objections by Counsel

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

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

The Government as a Party

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

Bias and Prejudice

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

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

Verdict - Unanimity Required

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

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

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

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

Selection of Foreperson and Duty to Deliberate

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

You will then discuss the case with your fellow jurors to reach agreement if you can do so. Your verdict must be unanimous.

Each of you must decide the case for yourself, but you should do so only after you have considered all of the evidence, discussed it fully with the other jurors, and listened to the views of your fellow jurors.

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

Communications with the Court

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

Jury Recollection Controls – Rehearing Testimony

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

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

Return of Verdict

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

Copy of Instructions

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